

## HABERMAS ON RELIGION, LAW STATE, AND PUBLIC SPHERE

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### *Abstract*

*Articulating religious interest in secular public sphere is always elusive. Because it bring vast consequences for political and social aspect in a law state realism. A democratic state that stakes law supremacy has an obligation to accommodate every interest of their citizen and offer freedom of speech. Nevertheless, the emergence of religious articulation conveying doctrines and divisive argument tents to the dead-lock discussion among citizen. Certain law that in favors to particular religious interest also bloom discontent of other religions. Herbermas delivered a notion about communicative action that is able to implement to tackle this maze problem. This paper scrutinize Habermas theory and its relevant on the discourse of religion in the public sphere.*

**Keywords:** Habermas, Public Sphere, Law, Communicative Action

### INTRODUCTION

#### 1. Background

Besides the positive term that the religion can be accommodated by the State, on the other side, it is reaping the many dilemmas. The period of reformation that has been undergone by Indonesia for 14 years has brought many changes, especially the increasing freedom of expression. In addition, the strengthening of religious discourse in public space is a positive indicator of freedom of speech. As a democratic country, Indonesia is obliged to provide open space as wide as possible to the citizens to deliver his opinion. Religious values began to emerge in a public realm. The emergence of the religion than as evidence of the strengthening of public freedom gains a lot of problems (Bagir, 2011). Accommodation of religion by the government, such as sharia laws, remains the fierce debate. The accommodation is something positive but on the other hand, this religious accommodation has the potential to marginalize others. The emergence of religion in the public sphere is an indication of the public freedom strengthening, but it also emerged the particular problems.

Although the Parliament just issued a law about the management of zakat, the discourse on the bill of halal product assurance,

pornography laws, and KUB bill is still a central topic in the year 2011 (Zainal Abidin Bagir, 2012).

The law of zakat leads to be discrimination because numerous national zakat agencies have supported by government funds. This government accommodation on a particular religion may be considered discriminatory because it favors only on Muslim interests. But on the other hand, there is the obligation of governments to ensure the welfare of every citizen, including serving the Muslim interest as a part of an Indonesian citizen. The same debate has also appeared on the act of halal product assurance. Abdul Kadir Kardilang as a chairman of commission VIII in Parliament proposed that the necessary role of government in conducting the haji is needs to be clarified about the separation of the government role as a regulator, operator, supervisor in the Haji. Here, it can be seen how the government takes care of religious affairs in Indonesia(Bagir, 2012).

So the consequential question is to what extent the government can regulate religious affairs and tackle the problems to be solved. Also, how religion can be communicated and presented in the public realm is as important issues.

Issues of religion and state have indeed been discussed by various scholars in particular. In this discourse, many thinkers have contributed such as John Rawls, An-Naim, and Bikkhu Parekh. They have discussed the topic and offer solutions to the problems. The other prominent scholar who gave plausible contributions on the topic is Jurgen Habermas, with his ideas about the public sphere and law state. Habermas did not delineate about religion in public sphere specifically, but his concept about public sphere has brought a magnificent contribution to the topic. Researchers will examine how Jurgen Habermas's theory related to the public sphere and law state, so they can answer the problems above.

### 1.2. Problem of research

How the Jurgen Habermas theories about law state, deliberative democracy and public sphere describe the relationship between religion and state?

### 1.3. Aim of research

In this study, the authors will attempt to solve the problem of the role of the State toward religion and how religion can be raised in public affairs. To find solutions to these problems, the authors will conduct a study of literature related to the discourse. In this theoretical study, the authors will examine abruptly Jurgen Habermas' conceptions about the communicative action, public sphere, and law state.

## **METHOD**

Viewed from this type of study, it can be categorized as a literature study, because of the data obtained from the library. According Noeng Moehadjir, the literature study is divided into two. First, the literature study that requires an empirical test in the field. Second, the literature study that requires more processing than the philosophic and theoretical rather than empirical testing (Moehadjir, 2000). From the model introduced Noeng Muhadjir, the researchers emphasized the second model, where research on Jurgen Habermas's thought would be systematically pursued its meaning. The data that would be used in this study were drawn from the library materials derived from the work of the study

and or materials to review literature about the thought that would be studied.

## **RESULT AND DISCUSSION**

### 3.1. Religion in public space

The problem with the procedure of how religion can be communicated in the public area has been discussed by various scholars. The prominent scholar who has given a considerable opinion about this matter is John Rawls. He argued that religion can be articulated by public reason in public areas. The idea of public reason arises from a conception of democratic citizenship in a constitutional democracy (Rawls, 1997).

In the public reason idea, the doctrines about the truth which comes from certain religion must be replaced by the idea which is reasonable politically. And it is articulated by the citizen to the other citizen (Bagir, 2006). The citizen realizes that they cannot reach the consensus when the arguments are based on the divisive doctrines. Therefore, they must deliver the religious doctrine in the form of public reason, a notion that can be discussed by any citizen regardless of their religion.

In the Islamic thought tradition, there is a thinker who supports the Rawls' notion, namely An-Naim with its concept about the civic reason. It is not quite different from Rawls'. Civic reason presupposes a reason where it can be acknowledged in the concept of civic society. So, the reason is not exclusive, and not merely includes a certain religion. Thus, religion can present in the secular public sphere. Besides that, An-Naim also offered acceptable universal values. In this term, he refers to Human rights, where it can be situated as a universal value considered as general truth by all people.

By the concept offered by Rawls and An-Naim, religion can indeed be articulated in the public sphere, but it seems to be reduced in a 'reason'. So, the religion which presents in the public sphere may lose its essence as a religion.

On the other side, Bikkhu Parekh gave the opinion that religion is not necessary to be transformed into the reason when it presents in the public sphere. The only thing that should be done is a cultural dialogue. Parekh said that consensus and Human Right cannot be stated as a transcendental standard evaluation. The consensus can be negotiated, and it depends on the condition of culture. In the short description, the notion offered by the Parekh is a consensus dialogue or inter-cultural dialogue (Bagir, 2011). Unfortunately, the concept of dialogue does not deliver vivid techniques that can be applied in real practice. Nevertheless, the idea of dialogue is plausible, even though it cannot guarantee a multicultural society can reach the consensus and be able to live together by this conception.

Either Rawls, An-Naim, or Parekh has given plausible theory regard to the topic of how the religion articulated in the public area. But, they did not give a comprehensive and integrated concept that involves the complex dimensions of society. Therefore, the writer would analyze the theory of Habermas to obtain a better understanding of the topic.

### 3.2. Habermas' theory

In this part, the writer would like to deliver several key terms of Habermas' thought, where they can be used as a base for comprehending how Habermas' theory is applied in solving the problem about religion and state.

Like Rawls, Habermas also restricts the theological reason to enter the secular public sphere which is difficult to accept by all people with various religious backgrounds. Habermas suggests that the language which is used in the secular and diverse public space is the communicative language, in which each statement can be tested by all people (Hardiman, 2009). According to Habermas, a religious person cannot consider himself as an adherent, but as a citizen. Hence, when they speak for their religion in the public sphere, they have to speak as a citizen to live together politically. So, the reason which is offered must pass from the universalism test (Hardiman, 2009).

#### 3.2.1. Communicative action

In solving the management of complex society, Habermas believes that by communicative action, modern society with its complexity can be integrated. Communicative action is the basis for establishing deliberative proses to make a regulation that is fair for everyone.

It means that each action becomes a rational action which oriented for a consensus, agreement, and inter-understanding. Such kind of consensus only can be reached by the practical discourse, namely the communicative action procedure. Similar to Rawls, Habermas emphasized on the procedure, not on the substance (Hardiman, 2009).

In this kind of discourse, the member of society problematizes the truth claim from the norms and laws which regulate their action. So, it is avoidable for Habermas to talk about law both its process and impact. Habermas considered that law has a dual characteristic. Law is an entity that can force the citizen's behavior, and also something that can be considered as a process of communication in terms of freedom of speech and action.

#### 3.2.2. Law as a process of discursive communication

Continuing his predecessors in the Frankfurt School, Habermas remains the criticism on the capitalist, although, at his latest thought he began to decrease his critique on it. But, his basic characteristic of critical thought remains that Habermas's attempt -as followers of Marx- is emancipating humanity. And, the understanding of the law that he delivered is also a process of emancipation.

For Habermas, the law must be independent of the domination of capital power. Because the law is a form of universal values that must be obeyed by all people regardless of their power and social status. The consensus process in the formation of law should invite dialogue that involves minority, marginal, small, and marginalized opinions (Marwan, 2010). Deliberative progressive law is procedurals pattern which humanized the human. Emancipatory communication presupposes the absence of the proletariat. Towards a socio-political life which is better without

intervention, coercion, and pressure from any party (Marwan, 2010).

The law does not settle merely when it has been legalized and it has been a juridical form. Law should be continually communicated, debated, and discussed. So, the deliberative and just conversations are not held when the law will be made, but it is a perpetual process. So, what should be done by the Parliament is not restricted to hear a public opinion, but rather inviting the public to discuss and determine the regulations. And, people as a citizen should provide feedback, criticism, advice on legal institutions that have been legalized by the Parliament (Marwan, 2010). There are no coercion, anarchism, and interventions that affect public opinion and blurring the knowledge in discussion rooms.

### 3.2.3. Public Sphere

The public sphere is a democratic space where citizens can express their opinions, interests, and needs that shape a discursive form (Hardiman, 2009). Habermas divided the public space into several dimensions, where the civil society actors build the public sphere. First, a plurality (family, informal groups, voluntary organizations, etc.), publicity (mass media, cultural institutions, etc.), private (individual and moral development of the region), and the last is legality (the structures of common law and fundamental rights). So we can conclude that public space is not just a monolithic facet, but there are plenty of fields and dimensions in the middle of the communities and citizens. Also, the public space cannot be restricted, because it exists elsewhere (Hardiman, 2009).

By the existence of the public sphere that is independent from power and hegemony, the communication process can proceed. And, in the public spaces where the opinion expressed, it is not directly connected to the political sphere. The opinions in the public sphere should pass the legal process. And this is the function of law State, where the law as a medium and the procedures to be passed (Hardiman, 2009).

### 3.2.4. Deliberative democracy

Different from Frederick Angel, who regards the State as a capitalist tool that oppresses the people, Habermas is more malleable in this regard. Despite that, he realized that the environment can be dominated by the State and Capital. But, Habermas did not suggest a revolution to establish a just society, but rather he brought the notion about communicative action, that is used as balancing the power of the State and Capital.

Not advising the form of Marxism-style communist society, Habermas maintained the democratic state form, deliberative democracy more precisely. The word "deliberation" is derived from the Latin *deliberatio* which later became "deliberation" in English. This term has the meaning of "consultation", "considering", or in political terms is a "consensus". The term deliberative democracy has implied that practical discourse, opinion formation, and political aspirations, and popular sovereignty as a procedure (Hardiman, 2009).

The deliberative democratic theory does not focus on certain rules that govern the citizens, but it emphasizes on a procedure that generates the rules (Hardiman, 2009). This theory helps to make political decisions that are taken from a discussion process that is free from domination and involve the citizen. This process allows citizens to comply and evaluate regulations. So that when the government makes the rules and policies, all regulations must be taken through discursive procedures. The more discursive a regulation, the more legitimate a regulation.

In a democratic and deliberative system, the State is not a capitalist tool, but rather a representation of the people's will. And, every policy and law which are made by the State should be a result of a discursive process in a public sphere. Consequently, the State must be connected with the public space.

### 3.2.5. How does religion relate to the state?

In the case of religion that tries to be articulated in public spaces in Indonesia, we would refer to the communicative theory of Habermas. This tenet of the theory states that

the interest of religion must pass through the procedure for becoming a common consensus. Just like Rawls, a theological reason, which is particular reasons, should be changed to be a universal reason to make it able to be discussed. In Indonesia's case, the zakat management, pornography, management of Haji, and religious tolerance, they must be articulated as something that could be beneficial to all parties and accepted universally.

To entrance political territory, where the case might be discussed for creating a law, the opinion expressed by must pass through a legal procedure. By that procedure, the opinion which is in the public space can be entered into the political realm. And in the realm of politics, the opinion was obtained from public spaces will be formed into a strong consensus and binding form namely a legal law.

The government, as a legislative body in charge of forming laws to accommodate opinion, should not be subjective. Legislation must be sourced from the opinion formed from the public space that goes through the existing legal procedures. In this case, to make a law about zakat, haji, and pornography government should listen to the parties concerned in it. A legal law product cannot be made unilaterally. Because the law is a result of the communicative process. And the legal law is not something which is finish. A law could be criticized and changed.

Regard to Habermas, the position of law is very important. The law is a balancer and unifier. Multicultural society cans life together only with a consensus that is agreed together. And the consensus is not a subjective and dogmatic moral value, but it is a legal law that contains practical application and ties tightly and strictly and a result of discursive communication in the public sphere. If the law does not gain from the process of discursive communication which is done together, so society disobedience will occur.

## CONCLUSION

The religion can be articulated in the public share by transforming it to be a universal reason where every person can understand and the opinion which is offered provides the benefit to all member of society. The religion

can be accommodated in a certain law as a consensus by the condition that the opinion comes from the public sphere, where there is a process of communicative action about that matter. And the government who makes the regulation must consider the opinion that comes from the public sphere. So the law which is constructed is a consensus that is required by society.

So the important things offered by Habermas are a law which is a result of communicative action and the concept of the public sphere that each person can communicate in an equal position. From the public sphere idea, the people can control the state power, and also they can deliver the opinion to the state in a political level. From this procedure, the deliberative demarcation can be formed and religion will speak in the public sphere.

## REFERANCES

- Bagir, Z. A. ( 2006, September 18 ). Agama dalam Nalar Publik. Retrieved May 12, 2012, from [crsejogja.files.wordpress.com: crsejogja.files.wordpress.com/2008/.../m-akalah-zainal-abidin-bagir](http://crsejogja.files.wordpress.com/crsejogja.files.wordpress.com/2008/.../m-akalah-zainal-abidin-bagir).
- Bagir, Z. A. (2011). Pluralisme kewarganegaraan. Bandung: Mizan.
- Hardiman, F. B. (2009). Demokrasi Deliberatif. Yogyakarta: Penerbit Kanisius.
- Marwan, A. (2010, december 20). magister Ilmu Hukum UKSW. Retrieved may 21, 2012, from [edublog: http://mihuksw.edublogs.org/2010/12/20/hukum-progresif-deliberatif/](http://mihuksw.edublogs.org/2010/12/20/hukum-progresif-deliberatif/)
- Moehadjir, N. (2000). Metode penelitian kualitatif. Yogyakarta: Rake sarasin.
- Rawls, J. (1997). The Idea of Public Reason Revisited. JSTOR , 769.
- Bagir, dkk. (2012). Laporan tahunan kehidupan beragama di Indonesia 2011. Yogyakarta: CRCS UGM.