



Construction of the Khilafah State According to Taqiyuddin An-Nabhani: Foundation for Development of Perception Measurement Instruments about the Khilafah

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Abstract. Measuring perceptions of the khilafah is crucial to answer the differences in research results that are currently developing. However, to obtain reliable research results requires valid and reliable measurement instruments, while valid instruments can only be obtained from precise measurement constructs. This study aims to describe the construction of the caliphate state according to Taqiyuddin An Nabhani in the perspective of modern state theory. Research using a historical approach, data obtained from primary sources in the form of books written by Taqiyuddin An Nabhani such as Nidzamul Islam, Nidzmul Hukmi fil islam, and secondary sources in the form of books by his students such as democracy kufur system written by Abdul Qadim Zallum. According to Taqiyuddin An Nabhani, the caliphate is a general leadership that applies islamic law and charges it across the country. The Caliphate was established to realize sharia maqasid by imposing sanctions and criminal penalties according to Islamic law, the form of a unitary state, the form of government of the caliphate. In a caliphate state sovereignty is in the hands of God (Allah Swt) while power is in the hands of the people. Constitution in general life that all citizens both Muslim and non-Muslim get equal rights, *whereas in private life such as worship, marriage, food and clothing are left to their respective religions*

Keyword: Construction, caliphate, Modern State

Abstrak. Pengukuran persepsi tentang khilafah menjadi hal penting untuk menjawab perbedaan hasil penelitian yang saat ini berkembang. Namun untuk mendapatkan hasil penelitian yang dapat dipercaya membutuhkan instrumen pengukuran yang valid dan reliabel, sedangkan instrumen yang valid hanya dapat diperoleh dari konstruk pengukuran yang tepat. Penelitian ini bertujuan untuk mendeskripsikan konstruksi negara khilafah menurut Taqiyuddin An Nabhani dalam perspektif teori negara modern. Penelitian menggunakan metode penelitian sejarah dengan langkah pertama pengumpulan data terkait pemikiran negara Khilafah menurut Taqiyuddin An Nabhani (heuristics), kedua verifikasi data (source criticism), ketiga sintesis dan analisis, keempat penjelasan konstruk negara khilafah menurut Taqiyuddin An nabhani dalam perspektif teori negara modern. Menurut Taqiyuddin An Nabhani, khilafah adalah kepemimpinan umum yang menerapkan hukum islam dan mendakwahnya ke penjuru negeri. Khilafah didirikan untuk

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menwujudkan maqasid syariah dengan memberlakukan sanksi dan pidana sesuai hukum Islam, bentuk negara kesatuan, bentuk pemerintahan khilafah. Dalam negara khilafah kedaulatan di tangan Asy Syari' (Allah Swt) sedangkan kekuasaan di tangan umat. Konstitusi pada kehidupan umum bahwa semua warga negara baik muslim maupun non-muslim mendapatkan hak yang sama, sedangkan dalam kehidupan privat seperti peribadatan, pernikahan, makanan dan pakaian diserahkan kepada agama masing-masing. Hasil penelitian ini dapat digunakan sebagai fondasi dalam pengembangan instrumen pengukuran persepsi tentang khilafah

Kata kunci: Konstruksi, khilafah, negara modern

INTRODUCTION

The caliphate is an interesting term to study, various government policies were issued to fortify and hinder the entry of the khilafah concept into the government system of the Unitary State of the Republic of Indonesia, starting from the dissolution of organizations carrying the khilafah idea through Perpu No. 2 of 2017, to statutory regulations. As reported by the *Republika Daily* (21/1/2021), the government is screening the whereabouts of former members of organizations that promote the idea of the caliphate so that they don't get the opportunity to participate in the democratic party.

However, in the realm of academic studies, the caliphate is a term that has been widely researched. Fachrurrozi (2008) has researched the trilogy of leadership in Islam, and concluded that leadership in Islam is not just theological but a social need. It was further stated that leadership in Islam can be identified in three forms, namely khilafah, imamate and imarah. However, the khilafah is a more general system, whereas imamate is theological and imarah is sociological.

Hayati (2017) has also conducted a study of the living Qur'an regarding the caliphate system promoted by Hizbut Tahrir Indonesia (HTI). The results of the research show that the khilafah system promoted by HTI is a concept based on the verses of the Qur'an. Akbar (2017) examines more deeply the concept and reality of the khilafah system. The results of the study show that the kingdoms of Saudi Arabia and the Islamic Republic of Iran do not reflect the caliphate system as the concept of the caliphate was at the time of the Rashidun khulafaur. According to Akbar, the khilafah system is a political system that emerged from Islamic ideology that embodies government rules, judiciary and optimizes the role of consultation and

correction of the people. Meanwhile, the Islamic Republic of Iran does indeed prioritize the application of Islamic sharia but not purely in the caliphate system, while Saudi Arabia does not fully implement Islamic sharia, even if it applies Islamic sharia only in certain aspects such as qisas.

Khilafah, Taqiyuddin An nabhani and HTI are topics that attract many researchers. Taqiyuddin An nabhani as the founder of Hizbut Tahrir who carried the idea of caliphate was able to expand the territory of his organization in many countries. In Lebanon stands Hizbut Tahrir Lebanon, in Bangladesh stands Hizbut Tahrir Bangladesh, in England stands Hizbut Tahrir England, in Denmark, America, Australia, Malaysia and in Indonesia stands Hizbut Tahrir Indonesia (HTI). The spread of Hizbut Tahrir made Taqiyuddin An Nabhani's thoughts and the idea of the caliphate widely studied and researched.

Nurhadi and Dalimunthe (2020) have conducted a study on the differences in the concept of the caliphate between Sayyid Quthub and Taqiyuddin An Nabhani. The results showed that the concept of the khilafah according to Sayyid Quthub is a government led by rulers who are given absolute freedom to run sharia, the government system is conditional, the important thing is that Islamic values take precedence and Muslims are in one unit, while the pillars of government are ruler justice and obedience the people, as well as the function of deliberation between the people and the authorities. According to Taqiyuddin An-Nabhani, the caliph in the khilafah system is a person who represents the people in government to carry out Islamic law, the government system of the khilafah has a distinctive structure and is different from other systems, while the pillars of government according to An Nabhani are sovereignty in the hands of syara' meaning that the law maker's rights are in the hands of Allah, power is in the hands of the people, meaning that the executor of power is the people represented by the caliph, the caliph has the right to establish regulations based on legitimate sources of law and the caliph also has the right to create institutions.

Meanwhile, research related to people's perceptions of the caliphate has mixed results. Santosa and Nashrudin (2018) state that academics at four tertiary institutions in Metro have a negative view of the teachings of the founding of an Islamic state because according to respondents, the

Indonesian state is a final state and Islam does not teach rigidly related to the government system. Meanwhile, Chusniyah's research (2012) states that the teachings to establish Islamic government (Daulah Ideology) are positive teachings and have satisfied the attitude of respondents who reject the uncertainty and threats of their religious teachings. However, Chusniyah's research instruments need to be examined further because there are only 4 items specifically discussing the caliphate, so there is still a lack of information to provide a clear quantitative picture regarding people's perceptions of the caliphate. Based on these considerations, it is necessary to develop instruments that are built from the complete state construct so that they can be used for further measurements.

This study aims to describe the construction of the caliphate state according to Taqiyuddin An Nabhani in the perspective of modern state theory. The description of the khilafah state in the perspective of modern state theory is important to do, at least for several reasons: 1) the description of the khilafah state in the perspective of modern state theory will make it easier for people to imagine the life of a state in Islam, 2) the khilafah state is a scientific treasure just like the British, American, Russia, and China which enrich the political insights in the state so that it is legitimate to study and describe, 3) the construction of the khilafah state can be used as a basis for developing instruments for measuring public perceptions of the khilafah which is currently still controversial. Setiawan and Risnandar (2019) and Al-Amin (2017) have actually conducted studies on the construct of the khilafah state but it is not framed in modern state theory so that the construction of the khilafah state as a state is not depicted as modern today. However, the research above can be used as a foundation in this research.

This research is historical research because of the fact that the caliphate has become history. The steps in this research are as follows: first, research data collection, namely the process carried out by researchers to collect historical sources. In this study historical sources are written sources in the form of books and other written sources related to research. The primary sources in this research are books written by Taqiyuddin An Nabhani such Nizamul Islam, Nizhamul Hukmi fil Islam, Muqaddimah Dustur, Daulah, and secondary books written by Taqiyuddin's students and their followers

such as the kufr democracy system written by Abdul Qadim Zallum. Both verification or source criticism, in this study, researchers conducted external and internal verification, by comparing primary sources with secondary sources, and the results obtained were that the contents of the book could be used as study material in this study. Third, interpretation, the researcher conducts a study of historical sources related to historical reality, namely how Taqiyuddin An Nabhani expressed the historical reality of the caliphate in his books. Fourthly in historiography, the researcher describes the construction of the caliphate state according to Taqiyuddin An Nabhani with the perspective of modern state theory (Wardah, 2014).

The theory used to find the construct of the khilafah state in the perspective of Taqiyuddin An Nabhani is the theory of the modern state. Jelinek stated that the scope of state science is the essence of the state which includes the functions and objectives of the state, the origin of the state, the form of the state and government and the system of government (Muhtada & Diniyanto, 2012: 7). Maggalatung and Yunus (2013: 28-29) state almost the same thing but have a wider scope. That is, the scope of state science from the aspect of sociological review includes the theory of the nature of the state, the theory of the origin of the state, types of state and the theory of state justification. The juridical aspect of state science includes the theory of state objectives, state functions, state elements, forms of state and government, government systems, state apparatus, theory of sovereignty, theory of democracy and theory of cooperation between countries. According to Mac Iver in Kusriyah (2017: 2) states that the scope of state science includes the origins of the state, state functions, state forms and the basis of state authority. Based on the theory of the modern state above, the construct of the khilafah state that will be studied in this study includes the nature of the khilafah, the functions and objectives of the khilafah state, the origin or process of establishing the khilafah, the sovereignty and power of the caliph, the form of the state and the form of government, and the constitution that regulates the rights of rights of citizens of the caliphate.

RESULTS AND DISCUSSION

The essence of the Caliphate

Roger H Soltu stated that the state is an agent or institution that solves common problems on behalf of society. Regarding the relationship between the state and religion, Hasan Al Banna, Hasan Turabi, Sayyid Qutub view that the state cannot be separated from religion, whereas according to Ali Abdur Razik, Muhammad said Al Asymawi states that the state does not have the task of implementing religious teachings but organizes society with an orientation welfare of all people (Kusriyah, 2017: 9-16)

Taqiyuddin An-Nabhani stated that the caliphate has the same meaning as the Imamate. Caliphate is *niyabah* from the people to uphold Islam comprehensively and organize their affairs in the world based on Islamic sharia starting from hudud, crimes, *ta'zir*, jihad, preparing for war, and fulfilling the interests of Muslims (An-Nabhani, 1997). This opinion is based on several arguments listed in Al maidah: 49, Al baqarah: 178, Al baqarah: 216, At taubah: 123, Al maidah: 1, and At taubah: 103.

The Khilafah is a practical political force tasked with implementing and enforcing Islamic law. The caliphate *daulah* is not a political goal but a means (*thariqah*/method) to apply the Islamic system and law as a whole in people's lives (An-Nabhani, 1997). According to An-Nabhani (1997), Al-Nabhani (2003a: 38) a state is said to be a caliphate (*darul islam*) if it fulfills several requirements; 1) implementing Islamic law as a whole, 2) the security of the area is guaranteed by Muslim rulers.

Based on the explanation above, it means that the caliph as the leader of the state is not only concerned with religion but also for the general benefit outside of matters of religion or world life. The caliphate state is a state that does not release world life from the foundations of religion, but a state that regulates world life with religion.

Functions and Objectives of the Khilafah Daulah

The functions and objectives of the state can be known from various theories, namely, anarchism, individualism, socialism, power, freedom and the theory of peace. According to Rifai (2010), based on these theories the functions of the state include providing a sense of security from threats and

disturbances, making people happy and prosperous, providing a sense of justice in society, creating public order so that society is conducive and peaceful. Meanwhile, according to Charles E Meriam Budiardjo (2003: 55-56) the purpose of the state is to realize justice, order, security, welfare and freedom for its people.

According to Taqiyuddin An Nabhani's perspective, Islam regulates the life of the state based on Islamic beliefs originating from the Quran and Sunnah, while the law for upholding the state from an Islamic perspective is to apply Islamic sharia. The purpose of implementing sharia is to protect offspring, mind, property, soul, offspring (Afridawati, 2015; Bakry, 2019; Khusnudin, 2020). Thus the purpose of establishing the caliphate daulah is to realize the care of reason, offspring, property and soul. In order for the goal to be achieved, the state enforces the law and applies sanctions and punishment to the perpetrators.

Islam encourages young people who are able to marry, this aims to preserve offspring and protect their lineage (Sabiq, 2006a: 487-489). However, on the other hand, Islamic sharia forbids people from committing adultery because it can damage lineage (Sabiq, 2006b: 303-305).

Islamic Sharia orders people to seek knowledge as the prophet said: "Seeking knowledge is obligatory for every Muslim" and Allah commands to glorify knowledgeable people as Allah says: "Say, are those who know and those who do not know the same? (az-zumar:9). Islam also encourages people to do ijtihad with a reward of two if they are right and one if they are wrong. All of the above is part of the goal of Islamic Sharia to protect the mind because by seeking knowledge and doing ijtihad, the mind will continue to grow. In Surah Al Maidah verses 90-91, Allah forbids people from consuming things that can damage the mind such as khamr (Sabiq, 2006b: 271-273).

Islam commands to glorify humans such as respecting guests, helping people who are abused, freeing slavery, prohibiting backbiting and spying on other people (tajasus). Islam prohibits people from accusing adultery without bringing valid evidence because this can damage the glory of others. Islamic Sharia emphatically states that a person who accuses of committing adultery

without bringing valid evidence will be subject to a lashing or whipping (Rusyd, 2013: 696).

Islam preserves the human soul by forbidding killing without a just cause. Therefore, a person who kills without a valid reason shall be subject to hudūd punishment in the form of winter (Rusyd, 2013: 630-641). Allah said: "In qishash there is (guaranteed continuity) of life for you, O people of understanding" (al Baqarah: 179). Giving such a strict punishment with the intention that people are deterred and do not do the same thing again, because one of the functions of punishment in Islam is prevention (zawajir) (Al Maliki & Ad Da'ur, 2004: 6).

Islam encourages people to take good care of their wealth by not handing over the management of their wealth to idiots, forbidding people from doing soisyrathat is spending wealth for things that are forbidden by Allah. Islam also sanctions thieves by cutting off their hands (al Maidah: 38), all of which are regulated to prevent any temptation to violate other people's property (Sabiq, 2006b: 381).

Islam never forces others to convert to Islam as Allah says: "There is no compulsion in religion" (al Baqarah: 256). However, Islam forbids people to change their religion as the Messenger of God, may God bless him and grant him peace, said: "Whoever changes his religion (apostate), then kill him" (Rusyd, 2013: 721). This Islamic Sharia aims to preserve religion and prevent people from changing religions.

The state is obliged to provide a sense of security because life security is a basic need. People will not be able to live normally if their lives are threatened. Therefore, the state applies sanctions and criminal penalties for people who disturb public security, such as robbers. Islamic Sharia provides punishment for robbers such as exile, cutting off their legs and arms crosswise, killing or crucifying them, this is according to the degree of crime they committed (Al Maliki & Ad Da'ur, 2004: 104-109).

The state is responsible for the implementation of Allah's Sharia. Opposition to the state means opposition to Allah's Sharia, therefore Allah swt has provided Sharia for the protection of the state by prohibiting people from carrying out coups (bay)(Al Maliki & Ad Da'ur, 2004: 110-113). People who do bughat by force of arms will be fought (al-Maidah: 33).

Based on this, because the purpose of upholding the state is to implement sharia law, namely protecting the mind, soul, lineage and religion, so that this goal is achieved, the task or function of the caliphate daulah is to enforce sharia laws for all people, such as enforcing hudud, regulating community affairs. with Islam and regulate the system of Islamic life in general.

Power and Sovereignty in the Caliphate

Sovereignty is the authority that has the right to make applicable laws and regulations, while power is the party that implements and enforces laws and regulations (An-Nabhani, 1997: 49-50). Power and sovereignty are related to leadership

In the context of royal government, the king as the leader holds sovereignty and power at the same time. It is the king who has the right to make laws and enforce them. The king also chooses his successor who is usually chosen from the crown prince as the next executor and enforcer of the law. Meanwhile, in the context of a republican government, the people are the owners of sovereignty and power. The people have the right to make laws through parliament as a representation of the people and the people also elect the president as the executor and enforcer of the law either through direct or indirect elections (An-Nabhani, 1997: 31).

Meanwhile in Islam, the owner of power and sovereignty are separate. The owner of sovereignty is Allah swt, because the right to make laws belongs only to Allah swt. Human beings, both the people and their caliphs, are the ones affected by the law, not the law makers (Topan, 2013; Zallum, 2001). This is based on the following arguments QS al-Nisa': 59-65, 105, 115; al-Maidah: 44-50.

Power belongs to the people, meaning that it is the people who determine the ruler who will implement Islamic law. However, the conditions for becoming a ruler or caliph have been determined by Allah swt, the owner of sovereignty. Rulers as heads of state should be people who are able to carry out the duties of the caliphate with the criteria of being Muslim, male, independent, just, mature, and rational (Al-nabhani, 2003a: 47-55).

According to Al-Nabhani (2003a: 34-46) power belonging to the people means that power can be owned by someone through bai'at. This

means that Bai'at is a method of appointing someone to become a caliph. Without bai'at, a person is not valid to become caliph (Al-Nabhani, 2003a: 64-80).

So according to Taqiyuddin An Nabhani power and sovereignty are on different sides. Sovereignty is in the Hands of Allah SWT, while power is in the hands of the people and in the implementation of the law is represented by the caliph. This is different from modern countries where power and sovereignty are on the same side, namely the people.

The Process of Forming the Khilafah Daula

Regarding the origin or formation of the state, according to Kusriyah (2017) it can be approached from two ways: the first is a factual approach, the second is a theoretical approach. Factually or based on past historical experience, there are several theories about the origin of the state, including; 1) Occupation, the country that was established because of the occupation is Liberia. At first, no one ruled this area and was then occupied by Negro slaves who were later liberated in 1847. 2) Secession, a country that carried out secession, such as Timor Leste, which broke away in 1999 from the Indonesian government. 3) Consolidation, several countries merge into one country. 4) Division, countries formed due to separation such as Bosnia, Serbia, and Croatia which were previously one country, namely Yugoslavia.

Based on the theoretical approach, there are several theories about the origins of the formation of the state, namely the theocratic theory, the power theory, the hereditary theory, the contract theory. According to the theocratic theory or the divine theory, the state stands on God's will (Kusriyah, 2017: 46-47). The power theory states that the state is formed as a result of a struggle between economic powers. The winning group will dominate the weak group. The victorious power will take possession of the means of production to exploit the weak. The state is needed as a tool for coercion (Kusriyah, 2017: 50-51). The theory of lineage explains that the state is formed by a family which then evolves into a large family, tribe and finally becomes a state (Kusriyah, 2012: 52). The agreement theory states that the state was formed because of an agreement by all parties (Kusriyah, 2012: 47-50). The organism theory states that the state will stand by itself, will grow and will disappear according to natural law (Kusriyah, 2012: 51).

According to Taqiyuddin An-Nabhani, forming a caliphate daulah cannot be done through democracy, namely forming political parties and then participating in election contests and if they win and come to power then apply Islamic Sharia. His opinion is based on the fact that there are many political parties that win elections and their members become parliament but they fail to implement Islamic Sharia. Taqiyuddin An Nabhani mentions the FIS party in Algeria, the Muslim Brotherhood in Egypt, the Revah Party in Turkey, Hisbun Nahdah in Tunisia (An-Nabhani, 2001a).

According to An Nabhani, a coup is also not the way to form a caliphate daulah. This is based on the behavior of the Prophet when the da'wah in Mecca and the Islamic daulah was not established, the Prophet forbade his friends who asked permission to fight the people of Mina because they had not been ordered to fight. According to An Nabhani, the absence of the law of war or the use of weapons when preaching in Mecca (before the migration and the establishment of the Medina daulah) shows that a coup, namely overthrowing power with weapons, is not the way to establish a caliphate daulah.

Through the study of the apostle's method in establishing the state of Medina, Taqiyuddin An Nabhani stated that the method of establishing the caliphate is with the level of construction and cadre (Marhalah Tatsqif wa Takwin), interaction and struggle among the people (Marhalah Tafa'ul ma'a al-Ummah). , the application of Islamic law (Praise be to Tathbiq Ahkamul Islam) (Al-Nabhani & Al-Hizbiy, 2002; An-Nabhani, 2001a).

Reflecting on the behavior of the Prophet in Mecca, the Prophet fostered his companions with Islamic faith and Sharia. The purpose of this coaching is for friends to have responsibility as a Muslim and to make the Islamic creed as their way of life and Islamic Sharia as a benchmark in their actions. Furthermore, it is hoped that friends will have the responsibility and awareness to fight for the implementation of Islamic Sharia and not remain silent when they see disobedience everywhere. According to An Nabhani, this awareness is not only owned by individuals but must become a general awareness that continues to be propagated. Therefore, the presence of an organization or political party is needed in this awareness activity (Al-Nabhani & Al-Hizbiy, 2002). Thus coaching and cadre formation in the

context of establishing the caliphate daulah at this stage is coaching and cadre individuals to join political parties whose job is to raise awareness among the people (Al-Nabhani & Al-Hizbiy, 2002: 52).

People who have joined political parties are then deployed in the midst of society to fight and interact to carry out the process of awareness of the importance of life which must be regulated by Islamic Sharia. This is what the Apostle and his companions did after receiving orders to preach. According to An Nabhani, the hope is to gain the trust and power of the people, as happened in the process of bai'ah Aqobah II. This trust can be obtained after the community understands Islam (mafahim), making Islam a benchmark and standard of action (maqayis) and believe and believe (qonate) with Islam. The existence of mafahim, maqayis and qonaat has caused the people to withdraw their support for the kufr government and give their support to political parties fighting for Islamic Sharia. However, in order for the transition to the implementation of Islamic Sharia to go well, it requires the support of people who have power. On the basis of these considerations, according to An Nabhani, political parties do not only make efforts to raise the awareness of the people but also seek support from those who have power.

After getting power from the people and support from those who have power, the next stage is the application of Islamic Sharia. As the Apostle did after Bai'ah Aqabah II then the Apostle and his friends migrated to Medina to establish an Islamic daulah. This is marked by the enactment of the Medina charter which must be obeyed by all residents of Medina, both Muslims and non-Muslims. In addition to domestic arrangements with Islamic Sharia, the Prophet also regulated foreign political life by sending his envoys to preach abroad. The series of explanations above illustrate how the apostle's method of upholding the Islamic daulah.

From the explanation above, it can be concluded that the caliphate state was formed not through a coup process, or the occupation of an area, but through a process of awareness. The awareness process begins with cadre parties to interact with the community and after the community is aware of the dilapidated life of the community, they will demand the enforcement of Islamic rules. It is the demand for the enforcement of Islamic rules in the life

of the state that will become the embryo of a new life, namely life in a caliphate state. The process of establishing a caliphate state according to Taqiyuddin above emphasized that the establishment of the state was not by means of violence but by awareness.

Form of State and Islamic Government

Jellinek stated that the state form was divided into two, namely monarchy and republic, but Kusriyah stated that monarchy and republic were not state forms but forms of government. Rifai even stated that monarchy and republic are systems of government. In this study what is meant by the form of the state is the composition of the state, while the form of government is the form of transfer of power, while the system of government is the administration of government.

According to Al-nabhani (2003a: 58-60) if observed in the hadiths of the Prophet, it will be found that the Sharia has limited the form of the Khilafah state. The form of the caliphate state required by Sharia is a form of union, not a federation. It can be based on the hadiths of the Prophet among others; The Prophet said: "If two caliphs pledge allegiance, then kill the last of the two" (HR: Muslim). Wajhu dilala this hadith is very clear. The Prophet forbade the existence of two caliphs at the same time, and this hadith comes absolutely without limitation whether the two agree or not, one country or a different country (An-Nabhani, 2008).

The system of government is defined as the way in which government is administered by the authorities. A discussion of the government system means a discussion of; 1) position of head of state and head of government, 2) position of cabinet with president and parliament, 3) term of office of cabinet and president, 4) accountability of president and cabinet.

In the Islamic government system, the caliph is the representative of the people in power and implementation of syara' law. People will legitimately become caliphs if they are elected by the Muslims, and only have the authority for the post of caliph if they have taken allegiance based on syara' law. Every Muslim who is intelligent, mature, both male and female has the right to choose a caliph and pledge allegiance to him, but non-Muslims do not have this right (Al-Nabhani, 2003a: 18-47).

According to Al-Nabhani (2003b) article 35 of the draft constitution states that the caliph is the state, because he is the one who determines the following: 1) Legalizes syara' laws, 2) Responsible for domestic and foreign politics , 3) Rejecting and accepting foreign ambassadors and appointing and dismissing Muslim ambassadors, 4) Dismissing caliph assistants (mu'awin) and governors (wali), 5) Appointing and dismissing qadli, heads of departments, and war commanders, 6) Determine the laws related to ABPN.

Related to the division of powers, in the Islamic government system there is no division of powers such as the legislature, judiciary and executive (An-Nabhani, 2005). The power of the caliph is absolute to regulate the affairs of the people according to his opinion and *ijtihad*. It's just that it is not permissible to violate syara' law, even for reasons of benefit. The caliph is not justified in forbidding what is permissible or allowing what is unlawful.

Regarding the tenure of the caliph, according to (Al-Nabhani, 2003b: 208-210) there is no time limit for the caliph's office. As long as the caliph is able to maintain and implement syara' law and is able to carry out state duties, he will continue to serve as caliph unless there are certain reasons that make him unfit to serve as caliph, such as: lost like an apostate, openly and insanely wicked, 2) Not being able to carry out the duties of the caliph for some reason, 3) There is pressure that causes him to be unable to carry out the affairs of the Muslims, for example the caliph's companion dominates the government, or the caliph becomes a prisoner of the enemy. The *madzalim* court is an institution that assesses whether the caliph is worthy or not. This institution has the authority to dismiss or reprimand the caliph.

Meanwhile related to the relationship between the caliph, muawin and guardians as well as the assembly of the people that the opinion of the assembly of the people is binding in the daily activities of the state such as domestic, foreign, financial and military affairs as long as it does not conflict with syara' law. Muawin and wali must be dismissed by the caliph if the ummah assembly passes a vote of no confidence.

Based on the explanation above, it means that Islam has a unique form of state and government system, namely a unitary state that is not limited by territory, this indicates the impossibility of two caliphs in Islam. The caliph has legislative and judicial powers that are inseparable, but different from the

monarchy, because the caliph's power is limited by state sovereignty in the hands of Allah SWT.

Constitution for non-Muslims

The constitution is the state framework that contains legal provisions related to setting up institutions, recognizing the functions of institutions and the rights assigned, according to CF Strong the constitution regulates three things, namely: 1) regulated people's rights, 2) government power, 3) relationship between the government and the governed. The purpose of the constitution is to guarantee the rights of the governed, limit the arbitrariness of the government, and formulate the exercise of sovereign power. In general, the constitution contains three main things, namely: 1) constitutional arrangements, 2) division and limitation of tasks in constitutional administration, 3) guarantees of citizens' rights (Kusriyah (2012:73-93).

According to (An-Nabhani, 2001b, 2009) article 6 of the draft constitution states that in terms of legal and judicial aspects, the state does not discriminate between people as well as in terms of guaranteeing the necessities of life. All people are treated equally regardless of religion, race, skin color and others.

In article 7 it reads that the state implements Islamic law as a whole for all people who are Muslim both in terms of worship, morals and muamalah, while for non-Muslim citizens of the caliphate, matters of faith and worship are left to their respective religions, but outside of this it is enforced Islamic law.

Meanwhile in paragraph d, An Nabhani provides a more detailed explanation of the rights of non-Muslims specifically in terms of food, drink and clothing, that is, they are allowed to eat, drink and dress as much as is permitted by Islamic law. For matters of marriage and divorce between non-Muslims it is regulated according to their religion, but if it occurs between Muslims and non-Muslims then the case is resolved according to Islamic law. For matters of muamalat, uqubat, bayyinat, even state administration, economics, education and so on, the state applies Islamic law as a whole to its people, both Muslims and non-Muslims (Writing Team, 2002: 165-284).

Article 26 of the draft basic law states that the right to choose a caliph and pay allegiance to him is the right of every Muslim man and woman who

has reached puberty and is of sound mind. Non-Muslim citizens do not have the right to choose and pledge allegiance to the caliph (An-Nabhani, 2001b) Article 106 states that shura is a right for Muslims only and non-Muslims do not have that right but they can express their aspirations or opinions (Al-Nabhani, 2003b: 130).

Based on the explanation above, it means that the constitution for citizens of the caliphate is not the same but varies depending on the domain and identity of the citizens. In matters of a private nature such as clothing, food and weddings, the state constitution is in accordance with each religion, but in the public domain, the state constitution is in accordance with Islamic rules. This reflects that in life in the caliphate there is room for non-Muslim communities to live their lives based on their religion and beliefs.

CONCLUSION

The khilafah state is a state that implements Islamic law and preaches it throughout the country, its form is a unitary state, not a federal state, the government system is a khilafah, not a republic or monarchy, established to realize maqasid sharia by imposing sanctions and punishments according to Islamic law. Sovereignty in the hands of Ash Syari' means that the one who has the right to make laws is Allah, while power in the hands of the ummah means that those who carry out the laws are the people under the leadership of a caliph. The caliph has absolute power in the executive, legislative and judicial fields. The term of office for the caliph is not determined, but when the caliph is deemed incapable of running the government or becomes an apostate or is under pressure so that he is unable to lead the government, he will be demoted. In public life in the caliphate, Muslims and non-Muslims get the same rights, while in private areas such as worship, marriage, food and clothing are left to their respective religious beliefs.

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