

Research Article

Maqashid Syariah as a Basis for Establishing Decree in Indonesia

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In the governance of a country, the government plays a vital role in establishing regulations and policies. These decisions are made by state administrative officials in accordance with the provisions of laws and regulations, with the ultimate goal of creating good governance. In Indonesia, being a country with a Muslim majority, Islamic values can also be integrated into the government's operations. One such value is the principle of Maqasid Sharia, which serves as the basis and purpose in Islamic law. This principle encompasses three main objectives, which are Dharuriyah (necessities), Hajjiah (needs), and Tahsiniyah (enhancements). To explore this further, normative judicial research methods are utilized, focusing on primary legal materials, and employing deductive methods for analysis. By doing so, the principle of maqasid sharia can be utilized as a model for state administrative officials, particularly those who adhere to Islamic beliefs, in their decision-making processes.

Keywords: administrative decrees, Maqashid Sharia, State Administrative Law

1. INTRODUCTION

The government in carrying out state administration always faces many obstacles in its implementation. One of the obstacles in the implementation is the need to provide legal protection to the community, and the need for legal arrangements between state organizers and the community. Governance can be said to be good and running effectively when viewed from a legal point of view when the government is given the authority to produce two legal products, namely laws and regulations, and state administrative decisions.[1] Legislation is a written legal product whose material or substance has the binding power of part or all the products of the territory of the state. Meanwhile, the decision, in this case, is a state administrative decision is a written determination made by a state administrative official based on the provisions of laws and regulations, is concrete, individual, and final. [2]

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Publishing services provided by Knowledge E

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Selection and Peer-review under the responsibility of the 5th Sores Conference Committee.

The authority in terms of the implementation of decisions issued by administrative officials of this country necessarily requires the establishment of new rules that will be accepted as the legal basis for actions by all executive agencies of the country. [3], [4] The decisions made are expected to be able to run the government, including regulating decisions and procedures in running the government. The authority in making these decisions must certainly be based on the provisions of applicable money laws and regulations.[5], [6] So that it will guarantee legal certainty for the community. [7]

This authority in determining administrative decisions of the country is an important part of the administrative law of the country because the government will carry out the functions and authorities obtained by the authority. This authority must certainly be based on laws and regulations. Every decision issued by a state administrative official certainly has legal consequences on society. because of this law, it is expected to be able to provide a sense of justice for the community and be able to provide a sense of comfort.

In addition, Indonesia is the country with the largest Muslim population,[8], [9] the population census states that the Muslim population in Indonesia reaches 82%, which shows that the Muslim population is the majority in Indonesia. Islam teaches that justice is an important thing in community activities, it is forbidden to discriminate between residents, as exemplified by the Prophet Muhammad SAW. decisions taken by the Muslim government must certainly be based on the provisions of the Quran and sunnah rosul. Basically, Islam puts forward the principle of benefit, which is wasted in the purpose of Islam itself which is often known as Maqashid Sharia. [10]–[12] Maqashid Syariah In terminology can be interpreted as a value and meaning that is used as a purpose to be realized based on the provisions of Allah Swt.[13] which includes 3 (three) main things, namely the fulfillment of primary needs or in other terms called *dharuriyyah*, secondary needs or other terms called *Hajiyyah* and Tertiary needs in other terms are *Tahsiniyyah*. These three concepts of maqashid sharia, if studied and used as a basis for the formation of a provision for the decision of state administrative officials, will certainly provide an overview and other perspectives in the assessment of a State Administrative Decision.[14]

The purpose of this study is how an administrative decision of this country guarantees certainty for the Muslim and non-Muslim communities, in addition to knowing and explaining that the principle of maqashid sharia is used as one of the bases for making state administrative decisions by state administrative officials in Indonesia.

2. RESEARCH METHODS

The normative approach is an approach method used through research on library materials which are secondary data. The method of approaching legal principles will be one of the ways in normative legal research. As an effort to obtain objective data, this study uses data obtained through data collection in accordance with the approach method used. [15] For Literature Data, data collection is carried out through literature study techniques on a collection of Primary legal materials, in the form of laws and regulations. Collection of secondary legal materials that provide explanations for primary legal materials, in the form of books, journals, and others, and the next stage of collecting tertiary legal materials that complement the two legal materials, such as dictionaries, and newspapers.[16]

3. RESULT AND DISCUSSION

3.1. Administrative Decisions

State administrative decisions are one of the government's actions in the context of implementing laws in terms of carrying out its public function.[17] The concept of state administrative decisions is regulated in 2 (two) laws and regulations, the opposite of which is Law Number 5 of 1986 concerning The State Administrative Court which has been amended several times, and Law Number 30 of 2004 challenges Government Administration. Of the two regulations give each other a definition of state administrative decisions. Law Number 30 of 2014 concerning Government Administration regulates the orderly administration of government in running the government, including regulating decisions and procedures.

The concept of state administrative decisions regulated in the State Administrative Court Law is defined as a written determination issued by a state administrative agency or official that contains state administrative law actions based on applicable laws and regulations, which are concrete, individual, and final, which cause legal consequences for a person or civil legal entity.[2]

In the provisions of the article, a state administrative decision is a written decision of a state agency or official, including legal actions based on the provisions of laws and regulations, the provisions for their validity are concrete or practical, and in the future apply without law. Law It is not a fictitious or abstract law, but the existing provisions, of a concrete nature, certain, real, can be determined and, moreover, the validity of

the decision must be individual., and as is generally applicable, such decisions do not require the consent of a higher body or any other body and such decision shall be final. This means that the decision is binding and permanent, and the decision affects natural persons and legal entities according to civil law.[18]

Meanwhile, the concept of state administrative decisions regulated in the Public Administration Law is a written provision issued by government agencies and /or officials in the administration of government. This definition is further explained by a statute issued by a governmental body or official interpreted as, (a). a written determination that also includes factual acts; (b). Decisions of State Administrative Agencies and/or Officers in the executive, legislative, judicial, and other state administrators; (c). under the provisions of the legislation and the AUPB; (d). is final in a broader sense; (e). Decisions that have the potential to cause legal consequences; and/or (f). Decisions were applicable to Citizens of the Community.[19]

State administrative decisions in this Government Administration Law must be issued by an agency or government official, then the regulations are made in the context of implementing and carrying out government duties and functions. This provision is interpreted as a written provision containing facts and actions if implemented as a special provision of the State Administrative Court Law. The provisions of this Decision are regulated in Article 87 of the Administrative Law which states that this decision means:[18]

1. affidavits including deeds of fact.
2. decisions of state executive bodies and/or employees of the executive, legislative, judicial, and other state executive bodies.
3. Based on laws and regulations and AUPB.
4. The final decision is in a broader sense.
5. Decisions that may have legal repercussions. or
6. Decisions Applicable to Citizens of the Community.

This definition is an extension of the definition regulated by the provisions of the State Administrative Court Law. This is due to the element of decision clauses regulated in the State Administrative Court Law. It is:[18]

1. The decision was in the form of a written provision.
2. Decisions are issued by national executive bodies or officers.

3. The decision taken should include the legal action of the state government.
4. Decisions must be based on applicable laws and regulations.
5. Decisions must be specific, specific, and definitive. When
6. The decision must have legal repercussions for the person or legal entity.

3.2. Maqashid Sharia Principle

The concept of maqashid al-sharia is often interpreted as a goal that is the target of texts and particular laws to be realized in human life, whether in the form of commandments, prohibitions, and mubah, for individuals, families, pilgrims, and people.[20] In addition, maqashid al-sharia is also called wisdom, which is the purpose of establishing the law, whether required or not. For in every law prescribed by Allah swt for His servant there must be wisdom. It can be known by people who know it. Because Allah is holy from making sharia arbitrary, futile, or contradictory with a wisdom. Jumhur ulama of various schools agreed that maqashid al-sharia is the goal that must be realized through the application of sharia laws that have been passed down.

As al-Ghazali stated that maqashid al-sharia which includes the five maintenances must be realized using the principle of priority, which is to prioritize first maqashid al-sharia at the level of *dharuriyah*, *hajjyah*, and only then *tahsiniyah*. [21] The purpose of *dharuriyah* is the purpose of the law that must exist for the sake of human life. If that goal is not achieved, it will cause the benefit of human life in the world and in the akhirat, even destroying life itself. In human life, this need is such an important thing that it cannot be ignored. If these needs are not guaranteed, there will be chaos and disorder everywhere. These five primary necessities of life (*dharûriyyah*) in Islamic legal literature are called *al-maqâshid al-khamsah* or also called *al-kulliyat al-khoms* (five core / principal things), namely: *hifdz ad-din* (maintaining religion), *hifdz an-nafs* (nurturing the soul), *hifdz al-'aql* (nurturing reason), *h ifdz an-nasl* (nurturing offspring), and *hifdz al-mâl* (preserving property rights/ property).[22]–[24]

1. Protecting Religion, the existence of religion exists in all human natures, and positive law even offers protection as a form of human rights that must be protected from threats and interference from all parties.
2. Protecting the soul, Islam, like any other system protects the rights to life, freedom and a sense of security. He forbade suicide and murder. In Islam, the killing of a human being without a proper reason is likened to killing all human beings

3. Protecting reason, Reason is a characteristic that man possesses that distinguishes him from animals. Man, lives by his wits. thinking with his intellect, seeking a way out of his problems with his intellect, and various other functions of reason. When reason is disturbed, then the journey of his life as a human being is disturbed. As for when a person does not maintain his intellect, then of course his life is not as sweet as that of a person who has a reason.
4. Protecting offspring, Islam in realizing the protection of human offspring is mandated marriage in order to have pious and clear nasab (parental genealogy) offspring. In safeguarding this descent, Islam forbids adultery and accuses others of committing adultery without evidence of either male or female. The act of adultery is considered a heinous act because it can damage one's offspring. There are even very severe sanctions in the form of dera to adulterers so as not to try to approach adultery because there is a prohibition in the Quran.
5. Protecting property, Various kinds of transactions and covenants (*mu'âmalah*) in trade (*tijârah*), barter (*mubâdalah*), profit sharing (*mudhârabah*), and so on are recommended in Islam to protect the property of a Muslim to carry out a prosperous life. Islam strictly prohibits acts of theft, corruption, eating property, fraud, and robbery because these actions will lead to others being oppressed

The purpose of *hajj* is the preservation of the purpose of human life which consists of various secondary needs of human life. The needs of secondary life if not met or maintained will cause narrowness which results in the difficulty of human life. However, the narrowness of life will not result in damage that causes damage to human life in general. The secondary necessities of life are found in worship, customs, muamalat and jinayat.[23]

The purpose of *tahsiniah* is the purpose of the law aimed at perfecting human life by carrying out what is good and the most feasible according to habits and avoiding things that are despicable according to common sense. The achievement of the goals of Hukum Islam is usually found in the form of noble ethics or *al-akhlâq al-karîmah*. [23]

3.3. Application of Maqashid Sharia Principles as a Basis for Making State Administrative Decisions

State Administrative Decisions basically regulate decisions made by state administrators as stipulated in the Public Administration law and the State Administrative Court law. community.[25] In both laws, the determination of the decision must be based on several

terms and conditions. Decisions, when linked to the maqashid principle of sharia, must involve factual action. Thus, concrete actions must be based on the principle of expediency for society at large, and actions involving kindness are incompatible with personal interests or provisions in Islamic law.

Decisions should be based on laws and regulations and the principles of the AUPB. The AUPB regulation comes from the translation of the Dutch term "Algemene Beginselen van Behoorlijk Bestuur" (ABBB). In England this principle is better known as the Principle of Natural Justice or the General Principle of Good Behavior, while in France it is known as Les Principaux Generaux du Droit Coutumier Public. In general, according to L.P., this ABBB is defined as the General Principle of Good Governance (AUPB) based on the rules of public law that must be followed by the courts when applying positive law. This principle is a special category of general principles of law, mostly unwritten but used as a formal legal basis for administrative law.

4. CONCLUSION

State Administrative Decisions basically carry out decisions and decisions related to the decisions of government officials as stipulated in the State Administrative Law and the State Administrative Court Law. The decision is based on fulfilling the government's mission and providing legal certainty to the people. Both laws require that decision-making be based on several provisions and conditions, one of which is the observance of the principles of good governance.

Islam, in essence, establishes laws that uphold and nurture good and reject evil. This is in accordance with the purpose of Allah's Apostle. For this world that brings blessings to the whole world. Of course, when moving to KTUN, the government must consider the disadvantaged and beneficial aspects of the decision taken to apply the precautionary principle.

AckNOWLEDGMENTS

The author's gratitude is conveyed to the parties who have played a role in this study, both in the form of financial support, licensing, consultation, and data collection assistance. In this case, the Institute for Research and Community Service, Bandung Islamic University and the Faculty of Law, Bandung Islamic University.

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