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The Communal Democracy of Yogyakarta Special Region's Government on the Islamic Law Eclecticism Perspective

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Abstract:

Law Number 13 of the Year 2012 on Yogyakarta Special Region's privileges containing a legal affirmative democracy system leads to the weakening of democracy and has implications for non-substantive democracy. It furthermore reflects the normative ambiguity of the democratic system which legitimizes Yogyakarta's privileged affairs. Therefore, this research aims to analyze Yogyakarta's privileged affairs based on Islamic Law Eclecticism by reconstructing the

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democratic system in Law Number 13. Using the normative-doctrinal method accompanied by statutory and conceptual approaches, this research used the content analysis method and legal descriptive techniques. This research shows that the democratic system of DIY is crystallized and simultaneously presented in the form of the Trilogy of Yogyakarta Democratic Principles. Those consist of *ngencengke oyot*, *ngencengke pang*, and *njagani godhong lan kembang*. Based on this, the reconstruction of the democratic system of Yogyakarta's privilege affairs leads to communal democracy as a form of revitalizing its privilege affairs. Besides, that trilogy, based on Islamic Law Eclecticisms, refers to the interconnection of *maqâšid al-syari'ah cum-rechtsidee* and *al-'urf*. The reconstruction of the democratic system in Law Number 13 potentially revitalizes Yogyakarta's privileged affairs by making local wisdom its core value.

Keywords:

Yogyakarta's Privilege Affairs; Local Government; Eclecticism of Islamic Law

Introduction

Indonesia is a democratic state of law.¹ As a result, it has ramifications for running a democratic state even though all of its operations are still governed by the law.² Yogyakarta Special Region (DIY) is not the exception, although it is based on the special principle of democracy, namely decentralization by Law Number 13 in the Year 2012 concerning the Privileges of Yogyakarta Special Region. DIY Government was entrusted with the authority of the special affairs of Yogyakarta in an attributive manner. The mandate of the Privileges, as stated in Article 7, paragraph 2, Law Number 13 in the Year 2012, includes: 1). Procedures for filling the positions, duties, and authorities of the Governor and Deputy Governor; 2). Local Government Agencies; 3). Culture affair; 4). Land affair; and 5).

¹ Article 1 of the "Undang-Undang Dasar Negara Republik Indonesia Tahun 1945".

² Hariyanto, "Implications of State Policy Through Village Funds Towards the Cultural Values of Mutual Cooperation in the Village," *DE LEGA LATA: Jurnal Ilmu Hukum* 7, no. 1 (January 12, 2022): 46-64, <https://doi.org/10.30596/DELEGALATA.V7I1.8721>.

Spatial Planning affair. At the provincial government level, this issue represents a type of modification, adjustment, and assertion of privileges. The justification serves as a legal justification for the legitimacy of Yogyakarta's privileged affairs.³

However, the implementation of Law Number 13 still generates some problems, particularly the attribution of the Law to *Sri Sultan Hamengku Buwana* and *Kanjeng Adipati Paku Alam*, both of whom are regional heads of the Yogyakarta Special Region. This political centering leads to the soft democracy⁴ because when both cannot run the mandate well, it will affect some aspects of DIY. As a consequence, it affects the existence of soft democracy⁵ and obscurity in solving the multidimensional problem of Yogyakarta's privileged affairs.

Additionally, this attribution generates a domino effect on other Yogyakarta's privileged affairs such as; 1). DIY government does not implement the principles of accountability, transparency, and participation,⁶ 2). The worsened intolerance which does not reflect *adi-luhung* (noble-valued) culture,⁷ 3). The fact of land affairs showing disorientation in the management and use of land, thus creating a significant polemic,⁸ and 4). There remains a decline or

³ Article 4 jo. Article 5 Law Number 13 the Year 2012 concerning the Privileges of the Special Region of Yogyakarta.

⁴ Paryanto, "Dinamika Politik Keistimewaan di Daerah Istimewa Yogyakarta Pasca Undang-Undang Nomor 13 Tahun 2012" (Magister Thesis, Universitas Muhammadiyah Yogyakarta, 2016).

⁵ Paul Spicker, "Government for the People: The Substantive Elements of Democracy," *International Journal of Social Welfare* 17, no. 3 (July 2008): 251-59, <https://doi.org/10.1111/J.1468-2397.2008.00556.X>.

⁶ Muh. Syaifullah, "Warga Kulon Progo Gugat Izin Penetapan Lokasi Bandara," accessed May 6, 2022. <https://nasional.tempo.co/read/665358/warga-kulon-progo-gugat-izin-penetapan-lokasibandara/full&view=ok>.

⁷ Kidung Asmara Sigit, Halili Hasan, and Ismail Hasani, "Pandemi Lahan Subur Diskriminasi dan Intoleransi," accessed May 6, 2022 <https://setara-institute.org/pandemi-lahan-subur-diskriminasi-dan-intoleransi/>.

⁸ Markus Yuwana, "Kepemilikan Tanah di Yogyakarta Dan Permasalahannya," accessed May 6, 2022 <https://regional.kompas.com/read/2018/02/28/13424071/kepemilikan-tanah-di-yogyakarta-danpermasalahannya?page=all>.

stagnant in the quality of spatial planning and unsustainable development.⁹

Besides, the implementation of Law number 13 also leads to legal norm problems, which is normative ambiguity (*geschiedj van normen*) over Yogyakarta's privileged affairs. The Law which adheres to a democratic system¹⁰ can potentially reduce the interests of democracy in Yogyakarta. Normative ambiguity of the democratic system is mainly caused by general interpretation implying the abuse of power by the local government of DIY.¹¹ This, furthermore, can lead to chaos in the concept of democracy, ignore human rights, and cause moral degradation¹² in the implementation of Yogyakarta's privilege affairs.

In coping with the problem, it is worth looking for other relevant perspectives or concepts. One of which is the Islamic Law Eclecticism consisting of interconnection between *maqâšid al-syarī'ah* (main purposes of sharia) and *al-'urf* (custom). Islamic Law Eclecticism emphasizes a contextual approach to explore the intents and purposes of Islamic Law.¹³ *Maqashid al-Sharia*, as the main orientation, is the fundamental principle and methodology of Islamic law. This is an interaction between *naş* and reality that consistently contains divine values and moral concepts of Islamic law such as justice, human dignity, freedom of will, wisdom, and cooperation in

⁹ Gusti Grehenson, "Kota Yogyakarta Darurat Tata Ruang," <https://www.ugm.ac.id/id/berita/13377-kotayogyakarta-darurat-tata-ruang>, accessed May 6, 2022.

¹⁰ Paryanto, "Dinamika Politik Keistimewaan di Daerah Istimewa Yogyakarta Pasca Undang-Undang Nomor 13 Tahun 2012."

¹¹ CNN Indonesia, "Larangan Sultan Jogja Soal Demo Di Malioboro Berbuntut Kasus," accessed May 6, 2022, <https://www.cnnindonesia.com/nasional/20211022112219-20-710881/larangan-sultan-jogja-soal-demo-di-malioboro-berbuntut-kasus>.

¹² Syahrul Sidiq, "Maqasid Syari'ah & Tantangan Modernitas: Sebuah Telaah Pemikiran Jasser Auda," in *RIGHT: Jurnal Agama dan Hak Azazi Manusia* 7, no. 1 (December 2017), <https://doi.org/10.14421/INRIGHT.V7I1.1461>.

¹³ A. Qodri Azizy, *Hukum Nasional: Eklektisisme Hukum Islam dan Hukum Umum* (Jakarta: Teraju, 2004), 292.

society.¹⁴ Meanwhile, the extension of *al-'urf* plays as a method of legal discovery.¹⁵

Given the existence of factual phenomena relating to the democracy of Yogyakarta Privileges Affairs, the special democracy in Law Number 13 can be likely seen through the framework of interconnectivity between *maqâsid al-syarī'ah* and *al-'urf*. This aims to substantively steer it towards a paradigm of democracy *a la* Yogyakarta. This also makes sense because the concept of *fiqh siyâsah*, which is an understanding of the practice of managing and regulating public and state affairs by those in power that results in the benefit of people, has some relevance to Islamic legal eclecticism and its relationship to democracy in the government of the Yogyakarta Special Region.¹⁶ Thus, Law Number 13 is put as a reflection of the concept of *fiqh siyâsah* in the context of Yogyakarta-style democracy that needs to be strengthened by *maqâsid al-syarī'ah* and *al-'urf*. Consequently, this research wants to discuss it based on Islamic Law Eclecticism that intersects with the context of modern constitutionalism.

There were several similar studies that have been conducted before, especially on the Government of Yogyakarta Special Region. One of them was done by Paryanto.¹⁷ He stated that the political dynamics of the privileges of DIY are based on the succession of the Governor and Deputy Governor. Meanwhile, other regional autonomy authorities act as imperative strategic factors. Different from Paryanto, Mas'udi¹⁸ said that the Yogyakarta Sultanate system is

¹⁴ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System Approach* (London: The International Institute of Islamic Thought, 2007), 1.

¹⁵ Mahfudz Junaedi, "Epistemologi Fikih Indonesia: Nalar Pemikiran Hazairin," *Syariat: Jurnal Studi Al-Qur'an dan Hukum* 7, no. 2 (December 2021): 160, <https://doi.org/10.32699/SYARIATI.V7I2.2110>.

¹⁶ Ahmad Sukardja, *Hukum Tata Negara dan Hukum Administrasi Negara dalam Perspektif Fikih Siyasah* (Jakarta: Sinar Grafika, 2014), 67; Refer to Wahyu Abdul Jafar, "Fiqh Siyasah dalam Perspektif Al-Qur'an dan Al-Hadist," *AL IMARAH: Jurnal Pemerintahan dan Politik Islam* 3, no. 1 (July 2018): 18-28, <https://doi.org/10.29300/IMR.V3I1.2140>.

¹⁷ Paryanto, "Dinamika Politik Keistimewaan di Daerah Istimewa Yogyakarta Pasca Undang-Undang Nomor 13 Tahun 2012."

¹⁸ Mas'udi Mas'udi, "Kedudukan Kesultanan Daerah Istimewa Yogyakarta Dalam Sistem Negara Republik Indonesia" (Magister Thesis, Universitas Islam Negeri Sunan Ampel Surabaya, 2016).

constitutional while governance problems are resolved through a deliberative approach. Meanwhile, according to Retno Setyowati,¹⁹ *Keraton* (the palace) is a political entity and a form of cultural institution that supports the privileges of Yogyakarta. She added that this was crystallized as a conceptual reflection and theory of structuration, power, and conflict on the dynamics of the palace.

Compared to those researches with different scientific substances, this current research is quite different, especially in the form of the substance on the democratization of regional government. Those researchers are only concern with the basic principles of DIY government theoretically and conceptually while this research discusses the eclecticism of Islamic Law in the framework of Indonesian law system. Therefore, researchers want to describe the regulation of Yogyakarta's privilege affairs in the context of the democratic regional autonomy of the Republic of Indonesia and then analyze it from the Islamic law eclecticism perspective as a basis for solving soft democracy problems in Yogyakarta.

Method

This research is a conceptional-normative study of law²⁰ based on the legal norms of the 1945 Constitution of the Republic of Indonesia and Law Number 13 in the Year 2012. It is also based on the legal doctrine as the *ratio decidendi* (the reason for the decision) of the democratic system over Yogyakarta's privilege affairs in the socio-legal spectrum.²¹ This legal research is furthermore a part of an integrative jurisprudence study; between analytical jurisprudence (based on the legal norms of Law Number 13 in the Year 2012) and sociological jurisprudence (based on the implications of Law Number 13 in the Year 2012 in Yogyakarta privileged affairs).²²

¹⁹ Retno Setyowati, "Dinamika Keraton Ngayogyakarta Hadiningrat Dalam Bingkai Keistimewaan Daerah Istimewa Yogyakarta" (Doctoral dissertation, Universitas Kristen Satya Wacana, 2017).

²⁰ Soetandyo Wignjosoebroto, *Hukum: Konsep dan Metode* (Malang: Setara Press, 2013), 67.

²¹ Sulistyowati Irianto, "Memperkenalkan Studi Sosiolegal dan Implikasi Metodologisnya," in Adriaan W. Bedner, et. al., *Kajian Sosio-Legal* (Jakarta: Pustaka Larasan, 2012), 4-5.

²² I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum* (Jakarta: Prenada Media Group, 2016), 40-41.

A legal approach is employed examining legal norms related to the democratic system of Yogyakarta's privilege affairs while the conceptual approach is used to construct legal arguments for solving research problems.²³ Analytical methods such as content analysis were used to analyze legal discourse on the norms of the Indonesian Constitution, and Law Number 13 in the Year 2012.²⁴ Legal descriptive techniques, on the other hand, lead to explaining the democracy of the Yogyakarta Special Region.²⁵

Result and Discussion

The Democratization in the Government of the Special Region of Yogyakarta

Decentralization²⁶ is the formation of autonomous regions with certain powers and fields of activity carried out based on their considerations, initiatives, and administration.²⁷ In the context of regional autonomy, Indonesia adheres to special autonomy which refers to historical, socio-cultural, and legal values.²⁸ The concept of regional autonomy in question has a constitutional reason. It refers to the grammatical meaning of Article 18 paragraph (1) of the UUD 1945. The use of the phrase '*divided*', in that Article, does not mean '*consisting of*' which leads to strengthening the regional autonomy concept based on a unitary state of the Republic of Indonesia. Meaning '*consists of*' implied that Indonesia is a pure federal form of

²³ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, (Jakarta: Prenadamedia Group, 2016), 13.

²⁴ Valerine J. L. Kriekhoff, "Analisis Konten dalam Penelitian Hukum: Suatu Telaah Awal," *Era Hukum: Jurnal Ilmiah Hukum* 2, no. 4 (1995): 93-94, <https://doi.org/10.24912/era%20hukum.v2i4.5174>.

²⁵ Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, 152.

²⁶ Hariyanto Hariyanto, "Hubungan Kewenangan antara Pemerintah Pusat dan Pemerintah Daerah Berdasarkan Negara Kesatuan Republik Indonesia," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, no. 2 (December 29, 2020): 99-115, <https://doi.org/10.24090/volkgeist.v3i2.4184>.

²⁷ Irwan Noor, "Deontologi Pemerintahan Daerah di Indonesia (Oase Akuntabilitas Politik Dalam Perspektif Partisipasi Politik)," *Politika: Jurnal Ilmu Politik* 1, no. 2 (May 13, 2013): 19-31, <https://doi.org/10.14710/POLITIKA.1.2.2010.19-31>.

²⁸ Titik Triwulan Tutik, "Analisis Hukum Tata Negara Sistem Penetapan Gubernur Kepala Daerah Istimewa Yogyakarta dalam Sistem Pemilihan Kepala Daerah Berdasarkan Pasal 18 Ayat (4) UUD 1945," *Jurnal Hukum dan Pembangunan* 41, no. 2 (2011): 71, <http://dx.doi.org/10.21143/jhp.vol41.no1.242>.

state. Therefore, article *a quo* is strengthened by its interpretive legal position. Article *a quo*, including Article 18A and Article 18B of the UUD 1945, requires local government to have the authority to administer their government based on the principles of decentralization and *medebewind* (assistance task). In the Yogyakarta Special Region, the development of its government shifted from traditional-feudal to modern structural.

At the beginning of the government, Yogyakarta was under the leadership of Sri Sultan Hamengku Buwana as the Governor and Kanjeng Adipati Paku Alam as the Deputy Governor.²⁹ DIY is considered a constitutional-democratic region which shows a legal affirmative of Law Number 13 in the Year 2012.³⁰ However, it generates another problematic issue such as the existence of soft democracy because of normative ambiguity. Law number 13 in the Year 2012 actually does not reflect the paradigm of divine law and the lack of the paradigm of sociocultural law. However, it strengthens the paradigm of normative-positivism of law. Therefore, it affects the democratic norm in the *nir*-construction of a substantive democracy.³¹ DIY, then, implements the concept of communal democracy based on local communities and Pancasila.³²

The foundation of democracy in DIY is crystallized by the local democratization trilogy which contains the principle of *ngencengke oyot* (understood as strengthening the roots), *ngencengke pang* (analogically understood as strengthening the branches), and *njagani godhong lan kembang* (understood as saving the leaves and flowers).³³ *Ngencengke oyot* still exists to strengthen the democratic roots of the *Keraton* (Yogyakarta Kingdom) in a participatory, competitive, and autonomous manner among Yogyakarta's people. The second principle, *ngencengke pang*, strengthens the democracy through the

²⁹ Article 7 Paragraph 2, Law Number 13 the Year 2012.

³⁰ R. M. Mac Iver, *The Web of Government* (New York: The Macmillan, 1961), 173.

³¹ In contrast, Article 7 Paragraph 3 Law Number 13 the Year 2012 mandated that Yogyakarta's Privilege Affairs be held by local wisdom based and partiality to the people.

³² Christine Susanna Tjhin, "Weaving Democratization on Local Level & Regional Level: Building Indonesia, Building ASEAN," *Politics and Social Change Working Paper Series*, 2005, 11.

³³ Bastian Widyatama, *Demokrasi Sebagai Siasat: Menafsikan Tapak Politik Demokrasi Sultan Hamengku Buwono IX* (Yogyakarta: Penerbit PolGov, 2017), 44-45.

cooperative movement, democratizing elections in districts/cities, and opening up public spaces as aspirations of citizens. Meanwhile, the last principle, *njagani godhong lan kembang*³⁴ maintains a broad democratic image accompanied by political ethics, the basis of nationalism-multiculturalism, and the implementation of constitutional supremacy.

The involvement of local communities and Pancasila³⁵ with the theological-philosophical-based inspires cultural communalism and divinity in DIY political situations. The communalism in DIY contains a democratic-nomocratic interrelation as mono-dualism paradigm constitutionalism based.³⁶ It takes constitutional democracy as a meeting point between the rule of law and people's sovereignty. As a primary system of government, it implies that the law is the fundamental aspect of the administration of the state.³⁷ The system that shapes the DIY governmental system can be illustrated in the Figure 1

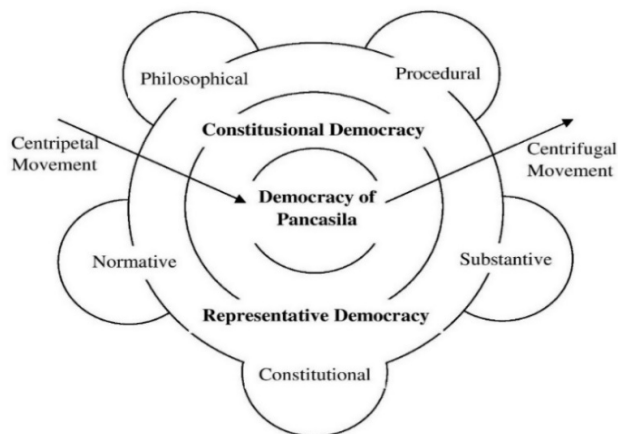


Figure 1. Synchronic Democratic Movement Concept

³⁴ Widyatama, *Demokrasi Sebagai Siasat: Menafsikan Tapak Politik Demokrasi Sultan Hamengku Buwono IX*, 59-60.

³⁵ Akhmadul Faruq, "Al-Pancasila Fi Al-Mandzûri Al-Maqâshidî Al-Syar'î: Dirâsah Tahlîliyah," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial*, 2021, 223, <https://doi.org/10.19105/AL-LHKAM.V16I1.5027>.

³⁶ John Ferejohn, et. al., *Constitutional Culture and Democratic Rule* (Cambridge: Cambridge University Press., 2001), 9.

³⁷ Spicker, "Government for the People: The Substantive Elements of Democracy," 251.

Based on Figure 1, it can be seen that there are five substances in Indonesia's democratic system. Those interact with each other by using the centripetal movement then shaped Pancasila-based democracy which beforehand formed representative and constitutional democracy. This synchronic movement also works in different paths, namely from the center to five substances that formed centrifuge movement. Besides, regarding the universality of constitutional democracy, Indonesia adheres to a democratic political system manifested as a system of government spreading across every province, district/city, and village. The embodiment of democracy refers to the meaning of democracy as people's participation in making political decisions and running the government to create a democratic state life.³⁸ Local democracy contains the urgency in implementing regional government democratically based on the community.³⁹ Therefore, the Government mandated Law Number 13 of the Year 2012 concerning The Privilege of the Yogyakarta Special Region.

Furthermore, article 7 paragraph 2 states that there are five components handled by the local government. Those relate to the governor's positions, duties, and authorities, the local government Agencies, culture, the spatial and land regulation. Yogyakarta's privilege affairs recognize the origin of rights (the existing right and developed in human life), populism, democracy, *Bhinneka Tunggal Ika* (unity in diversity), the effectiveness of the government system, national interests, and the use of local wisdom. This is a form of change, adjustment, and affirmation at the provincial level in realizing a democratic government, creating prosperity and peace, ensuring *Bhinneka Tunggal Ika*, and institutionalizing the role of the Sultanate and Duchy in preserving the nation's cultural heritage.

Other than that, the essence of democracy in Law Number 13 contains the accommodation of Pancasila values as a moderate *weltanschauung* legalized in the UUD 1945.⁴⁰ The primary principle of

³⁸ Sahya Anggara, *Sistem Politik Indonesia* (Bandung: Penerbit Pustaka Setia, 2013), 290.

³⁹ Tjhin, "Weaving Democratization on Local Level & Regional Level: Building Indonesia, Building ASEAN."

⁴⁰ Pancasila is a moral law in the form of a *grundnorm* (legitimation in making a law) that comes from an objectified will. Adji Samekto, *Pergeseran Pemikiran Hukum dari Era Yunani Menuju Postmodernisme* (Jakarta: Konstitusi Press, 2015), 81.

the constitution is embodied in how the law is articulated within the framework of democracy's functions.⁴¹ Yogyakarta's privilege affairs contain awareness of equality as the central pillar that includes freedom and justice based on human values as a social democratic framework.⁴² This political message contains the necessity to produce quality leaders based on the constitution and the nation's ideology that directs justice and prosperity through an electoral system based on constitutional democratization.⁴³ Therefore, Sri Sultan Hamengku Buwana and Kanjeng Adipati Paku Alam serve as central figures in the constitutional-democratic of Yogyakarta's privileged affairs.

The constitutionality of Yogyakarta's privileged affairs can be analyzed from several conceptual aspects.

First, the normative-constitutional review shows that Article 18B paragraph (1) and paragraph (7) of the UUD 1945 –using a hermeneutic-systematic approach– is legal standing and a *staatsgrundgesetz* (the body of the 1945 Constitution). It puts Law Number 13 as a formal *gesetz* (law) in the formal legality for implementing the Yogyakarta Special Region's privileges. Its democratic system within the legal articulation framework is strengthened by the doctrine of the clause *rebus sic stantibus* –as the content of democracy in Article 1 paragraph 2 of the UUD 1945 and Article 4 letter c of Law Number 13 of the Year 2012–if the conditions regulated are relevant to the requirements of the clause in question.⁴⁴

Second, a theoretical-discourse study states that the constitutional democracy system of Yogyakarta Special Region's government is the antithesis of the monarchy issue within the local government. The public issue is considered as *an argumentum ad hominem* (negative assumption) because debating democracy and monarchy in this modern era is a fatalistic of thinking based solely on

⁴¹ Talcott Parsons, *The Structure of Social Action: A Study in Social Theory with Special Reference to a Group of Recent European Writers* (London: Collier-Macmillan, 1966), 763–64.

⁴² CB. Mulyatno, "Demokrasi Sosial Menurut Herbert Marcuse," *Arete* 2, no. 2 (2013): 97–120.

⁴³ Aziz Huq and Tom Ginsburg, "How to Lose a Constitutional Democracy," *UCLA Law Review* 65, no. 1 (January 2017): 78–169, <https://doi.org/10.2139/SSRN.2901776>.

⁴⁴ Budiono Kusumohamidjojo, *Teori Hukum: Dilema Antara Hukum dan Kekuasaan* (Bandung: Yrama Widya, 2016), 203.

the classical concept of a government form. Actually, this is not '*apple to apple*', because it should be in the conflict context between the monarchy and the republic as a government form in the state concept.

The embodiment of the democratic system in Yogyakarta's privilege affairs as stated in Article 7 paragraph (2) *jo*. Paragraph (3) Law Number 13 in the Year 2012, is based on how the governor and deputy governor implement the representative democracy. Therefore, the context of democratization of Yogyakarta Special Region's Government within the framework of special (regional) autonomy is contained in the executive-legislative relationship based on the legitimacy of Yogyakarta people even though democratic mechanisms of Yogyakarta are not convergent (asymmetric). The system is considered a constitutional-democratic government based on the legality of the UUD 1945 and the legitimacy of Yogyakarta Special Region's people. Besides, it is strengthened by the historical 'genealogy' of Yogyakarta itself.⁴⁵

The Communal Democracy: Yogyakarta's Privilege Affairs Based on Islamic Law Eclecticism Perspective

Regarding the communal democracy of Yogyakarta, Sri Sultan Hamengku Buwana as the Governor and Kanjeng Adipati Paku Alam as the Deputy Governor are the main figures as *parardhya* or the vanguard for the implementation of special democratic affairs' intermediary agents. Their decision must be oriented toward the benefit of the people by prioritizing the people's sovereignty over the king's sovereignty. Furthermore, it must be accompanied by a welfare paradigm that concerns a wide range of specific difficulties while eliminating individual preferences.⁴⁶ On the other side, elements of society, whether affiliated with political parties -including the DPRD, local house of representative-or civil society coalitions, must have a pro-active movement and rational-critical reasons for the Local Government policies through ethical and constitutional channels.

⁴⁵ Dennis C. Mueller, *Constitutional Democracy* (Oxford: Oxford University Press, 1996), 68; Refer to Bambang Sigap Sumantri, "Sejarah Keraton: Di Tengah Dua Arus Pengubah Wajah," in Aloysius Soni BL de Rosari, '*Monarki Yogya' Inkonstitusional?* (Jakarta: PT. Kompas Media Nusantara, 2011), 26-27.

⁴⁶ Donny Gahral Adian, "Amartya Sen, Demokrasi dan Teori Keputusan Sosial," *Respons: Jurnal Etika Sosial* 16, no. 02 (2011): 165-80, <https://doi.org/10.25170/RESPONS.V16I02.730>.

They have to give support in building a constitutional and democratic civil society to strengthen the democratic tradition of the Sultanate, Duchy, or local government simultaneously.

On one side, the concept of communal democracy is based on the socio-religious aspects of *sangkan paraning dumadi* (divine noble values). In the context of *fiqh mu'amalah*, it is popularly represented by *hamemayu hayuning bawana* (sustainable environmental care) like in *siyāsah* (politics) with *manunggaling kawula gusti* (King-People symmetrical relationship). These are then implemented in all aspects of citizenship (*'ummah*), equal or non-discriminatory majority-minority relations, and leader policies on the protection and equality of majority-minority in a pluralistic society. The communal democracy concept in the Law Number 13 is therefore a civilizational system accompanied by the principle of civility in the life of the state and nation. In a larger scope, namely a country, it has a specific community identity in the majority considered as a way that prioritizes tolerance, equality, plurality, freedom, rights-obligation linkages, and philosophical conservatism⁴⁷ of Yogyakarta. Practically, democracy works as a system and principle of Yogyakarta Special Region mainly in solving conflicts.

On the other side, the concept of communal democracy contains an epistemological basis that includes *maqashid al-sharia cum rechtsidee* because of its core orientation to the theological-philosophical sides of Pancasila with cultural divinity communalism. In addition, it was also influenced by the existence of *al-'urf* because of the Yogyakarta democratic culture trilogy.⁴⁸ Such Islamic Law Eclecticism perspective, as stated by Ahmad Qodri Abdillah Azizy, leads to Indonesian Jurisprudence reflected by the interconnection between *maqâsid al-syarī'ah* and *al-'urf*. The *maqâsid al-syarī'ah* discourse as a part of Islamic law has shifted from the framework of *uṣūl fiqh* based on *al-mumāṣṣilāt al-qiyāsiyah az-zānniyah* (presumptive standard representations) in *bayānī* (divine text-based) epistemology to the framework of *uṣūl fiqh* based on *al-mumāṣṣilāt al-istidlāliyyah al-*

⁴⁷ Anthony Giddens, *The Third Way: The Renewal of Social Democracy* (Cambridge: Polity Press, 2008), 29.

⁴⁸ Junaedi, "Epistemologi Fikih Indonesia: Nalar Pemikiran Hazairin."

qat'iyah (defined inferential representation) in *burhānī* (reasoning based) epistemology.⁴⁹

In Jasser Auda's perspective, *maqâṣid al-syarī'ah* is based on the theory of Islamic law with a system approach. Therefore, Islamic law is deemed as an open system with the value of purposefulness.⁵⁰ The basis of *maqâṣid al-syarī'ah* rests on measuring the effectiveness of the system in achieving its goals. Islamic law is considered adequate if measured based on the achievement of its legal *maqashid*.⁵¹ The implication is that *maqâṣid al-syarī'ah* serves as a core orientation for interaction between *naṣ* (divine text) and reality that contains religious values and moral concepts such as justice, human dignity, freedom, wisdom, and cooperation in society.⁵²

The context of *maqâṣid al-syarī'ah* is basically relevant to the understanding of *siyâṣah fiqh* because as Ahmad Fathi thinks, the *siyâṣah fiqh* is the management of the benefit of humanity in accordance with the provisions of *Syara'*.⁵³ Whereas, *al-'urf* is defined as a source of law which is a part of the *maslahah* based on *syara'* as formulated in the rules: *al-sâbit bi al-'urfi ka al-ṣâbiti bi an-naṣṣi mâ lam yukhâlif syar'an* (anything steady as the custom is worthy as that of revealed as long as it is in line with shariah). Thus, the *sharia* accommodation of *al-'urf* is a tribute to local wisdom in addition to showing the dimension of *rahmatan lil 'âlamîn* (mercy for everything) value.⁵⁴ In this case, Law Number 13 becomes a set of laws that governs Yogyakarta with a *la* Yogyakarta democracy containing a trilogy of culture-based democracies. Therefore, this culture-based democracy actually

⁴⁹ Abu Ishaq al-Syatibi, *al-Muwāfaqat fi Ushul al-Syariah*, Juz I (Lebanon: Dar Al Kutub Al-Ilmiyah, 2009), 44; Refer to Ghofar Shidiq, "Teori Maqashid Al-Syarī'ah Dalam Hukum Islam," *Majalah Ilmiah Sultan Agung* 44, no. 118 (May 2023): 117-30; Compare to Ebrahim Moosa, "The Reconciliation of the Fundamentals of Islamic Law (Al-Muwāfaqāt Fi Uṣūl Al-Sharī'a)," *Islamic Law and Society* 23, no. 3 (July 2016): 318-22, <https://doi.org/10.1163/15685195-00233P06>.

⁵⁰ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System Approach*, 47-55.

⁵¹ Auda, 55.

⁵² Auda, 1.

⁵³ Ahmad Fathi Bahantsi, *al-Siyâṣah al-Jinaiyyah fi al-Syarī'at al-Islâmiyyah*, Cairo: Dar Al-Shuruq, n.d.

⁵⁴ M. Noor Harisudin, "Urf Sebagai Sumber Hukum Islam (Fiqh) Nusantara," *Jurnal Ushuluddin: Media Dialog Pemikiran Islam* 20, no. 1 (2016): 66-86, <https://doi.org/10.24252/JUMDPI.V20I1.2311>.

becomes a reflection of *fiqh siyāsah* which simultaneously combines *maqāṣid al-syarī'ah* and *al-'urf*. This reflection then becomes a basis for DIY to develop the communal democracy concept. The combination has also contained an Indonesian national spirit while not ignoring the precepts of the Qur'an and hadith in order to achieve national law purpose.⁵⁵ Also, the *ijtihad* value is resonant with that of Pancasila. The concept of Indonesian law, substantially, puts forward the spirit of Islamic religiosity.⁵⁶ Then, it is developed as a juridical-normative-ethical of legal state through the Indonesian Constitution.⁵⁷

In the theoretical framework of the law concept, essential contents of communal democracy led to Islamic law eclecticism. This happens because of the significant idea of Islamic law eclecticism. Incidentally, it is an approach towards legal thought in Indonesia.⁵⁸ The idea of communal democracy in the context of constitutional democracy is the content of Indonesian law which incidentally intersects with the context of Islamic and Indonesian law. Besides, it has to pay attention to Indonesian Jurisprudence; the range of Islamic law dynamically puts the priority on Sharia goals.⁵⁹ In a legal reform, communal democracy is considered as a legal reference for Yogyakarta Special Region's government with an intra-doctrinal-regulatory reform approach. This reflects the pattern of legal realism plus an inter-connection blend of legal texts, especially in Law Number 13 and the trilogy culture-based democracy.⁶⁰ The Islamic law eclecticism in Yogyakarta can be visualized in Figure 2.

⁵⁵ A. Qodri Azizy, *Hukum Nasional: Eklektisisme Hukum Islam dan Hukum Umum*, 66.

⁵⁶ Muhammad Shohibul Itmam, "Indonesian Jurisprudence: Ahmad Qodri Azizy's Perspective," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 16, no. 2 (November 19, 2019): 367-94, <https://doi.org/10.21154/JUSTICIA.V16I1.1639>; Refer also to Werner Menski, *Comparative Law in A Global Context: The Legal Systems of Asia and Africa* (Cambridge: Cambridge University Press., 2006), 56.

⁵⁷ A. Setya Wibowo, "Nalar Moderat: Autokritik Orang Prancis", Paper Presented Meeting Point Study, Organized by the Nurcholis Majid Society" (Jakarta, 2020), 66.

⁵⁸ Azizy, *Hukum Nasional: Eklektisisme Hukum Islam dan Hukum Umum*, 12.

⁵⁹ Imam Syaokani, "Hakikat Hukum Islam: Antara Divine Law dan Man-Made Law," *Ulumuddin Journal of Islamic Legal Studies* 7, no. 1 (2011), 506; <https://doi.org/10.22219/ULUMUDDIN.V7I1.1309>.

⁶⁰ Azizy, *Hukum Nasional: Eklektisisme Hukum Islam dan Hukum Umum*, 12.

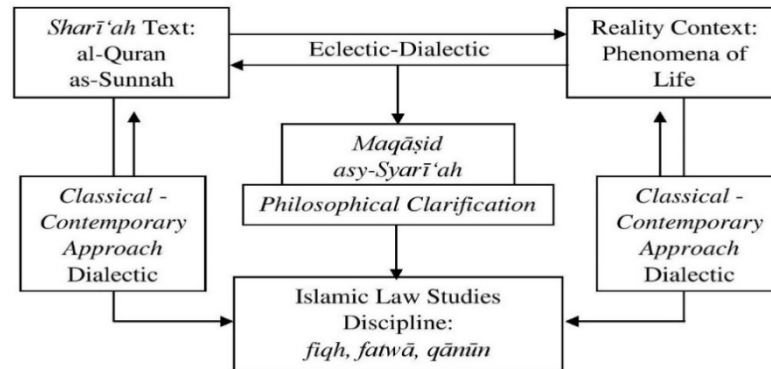


Figure 2. Ijtihad Model Based on *maqashid al-sharia*

Figure 2 shows that *maqāṣid al-syarī'ah*, local culture, and Law are inter-connected to each other. Because of that, the context of eclecticism in the field of Indonesian legal construction is accompanied by a critical, scientific, and proportional method in selecting elements of Indonesian legal doctrine.⁶¹ The law paradigm integrality leads to the moderate paradigm of law, the interrelation of Islamic law and general law applied with neither excess nor deficiency.⁶² This reason makes Islamic law eclecticism suitable to put its wisdom by paying attention to religious texts, the state constitution, local wisdom, and shared consensus. Furthermore, the eclecticism approach can unite the sources of law in the Indonesian state dialogically, completely, or correctly. In other words, eclecticism can be mentioned as dissolving the law system to benefit the progress of civilization.⁶³

The implementation of Yogyakarta's privilege affairs which leads to the concept of communal democracy within the framework of Islamic law eclecticism is therefore the embodiment of a democratic law. In the context of Yogyakarta Special Region's government, it is based on the execution of political power to manage the region. This emphasizes, also, the political legitimacy consensus as a condition of sustainable development. Besides, this indicates the urgency of

⁶¹ *Ibid.*, xiv.

⁶² Mohammad Hashim Kamali, *The Middle Path of Moderation in Islam: The Qur'anic Principle of Wasatiyyah* (Oxford: Oxford University Press, 2015), 12-35.

⁶³ Azizy, *Hukum Nasional: Eklektisisme Hukum Islam dan Hukum Umum*. 122.

synergy between civil society and the government. While people are supposed to be open and actively engage in the government's programs, the government needs to facilitate them well while paying attention to their aspirations, demands, and hopes.

This aims to build consensus-oriented as a shift in the function of the government from regulatory to facilitative. Therefore, it can be a solution for the democracy problem of Yogyakarta which leads to the goal of creating prosperity and peace for Yogyakarta people through the privilege affairs based on *maqâšid al-syarī'ah cum-rechtsidee* in special autonomy through legal reform democratically. The communal democracy conception leads to the reconstruction of the legal paradigm from the causal paradigm (*iqtirābah ta'līyyah*) to the teleological paradigm (*iqtirābah taqšīdiyyah*).⁶⁴ The implication is a core orientation for the interaction between *naş* and reality that contains religious values and moral concepts such as justice, human dignity, freedom, wisdom, and cooperation in society.⁶⁵

On that basis, we recommend the normative formulation of Law Number 13 in the Year 2012 in the context of the democratic system from democracy as universal recognition and equality of human rights to democracy as a system of Yogyakarta Special Region guaranteeing human rights based on the principle of kinship in wisdom. There is consequently a shift in understanding from an individualistic human rights-based democracy system to communal human rights-based on the local wisdom in Pancasila. The Yogyakarta Special Region government could use the concept of communal democracy not only to obtain legal legitimacy from the UUD 1945 and arrange normative recommendations of the democracy model in the region but also to design the democratic system that underlies its privilege affairs in combination to *maqâšid al-syarī'ah*. Of course, this should not ignore the existence of Law Number 13 in a legal atmosphere of justice beyond the law within the framework of the state of law. Therefore, the law does not only reflect the value of reality but also implies a value for reality.

Conclusion

⁶⁴ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A System Approach*, xxvii.

⁶⁵ Auda, 1.

The democratic system in Yogyakarta's privileged affairs is manifested in regional autonomy such as Law Number 13 of the Year 2012 and its derivatives. Its implementation uses the concept of communal democracy in accordance with the principle of local wisdom. In addition, the local leadership always uses other local cultures in carrying out the government such as *ngencengke oyot*, *ngencengke pang*, and *njagani godhong lan kembang*. These are in line with the Islamic law eclecticism while the concept of cultural-based democracy is resonant to merge among *maqâsid al-syarī'ah*, *siyâsah fiqh*, and *al-'urf*. To strengthen the democratic system, it is deemed necessary to reconstruct the norm of democracy accompanied by the Islamic Law Eclecticism paradigm as the concept of communal democracy for solving soft democracy problems. This conceptional-normative based research is actually a preliminary one that requires further studies on legal-empirical research to pick up the implementation of communal democracy, especially, in Yogyakarta. It could be in terms of research methodology or the basic concept of democracy and Islamic law. This sort of legal research can create theoretical ideas relevant to the times and the needs of human civilization.

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