

Sharia_of_Islamic_Higher_Educ ation_Institutions_in_Indonesia. pdf

by

Submission date: 20-Mar-2020 10:20AM (UTC+0700)

Submission ID: 1278545029

File name: Sharia_of_Islamic_Higher_Education_Institutions_in_Indonesia.pdf (573.17K)

Word count: 7247

Character count: 42712



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<https://journal.iain-samarinda.ac.id/index.php/mazahib/index>

P-ISSN: 1829-9067 | E-ISSN: 2460-6588

AN AMBIGUITY OF CONSTITUTIONAL LAW MAJOR AT THE FACULTY OF SHARIA OF ISLAMIC HIGHER EDUCATION INSTITUTIONS IN INDONESIA

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Abstract

This article examines the problem of majoring Constitutional Law at the Faculty of Sharia in Islamic Higher Education Institutions in Indonesia. There is an ambiguity of the essence of Constitutional Law at the Faculty of Sharia whose *Siyasah* (simply translated into Constitutional Law) as a major. The core subjects of constitutional law are legal studies on basic law aka constitution. Meanwhile, the essence of *siyasah* is politics. Does this ambiguity occur only in the nomenclature or also in its implementation as well that include the department's vision, mission, curriculum, competency, and profile of graduates? This study was a library research which employs a qualitative data analysis towards the so-called *siyasa* department's vision and mission documents, curriculum documents, textbooks assigned,

teaching materials, research journals, and websites across Islamic Higher Education Institutions in Indonesia. It found that there has been an ambiguity in some Departments of Constitutional Law at the Faculty of Sharia both in the Department nomenclature and in its implementation, such as vision, curriculum, student final assignments, student competency, and profile of graduates. This ambiguity lies in which specialization aims at by the major: law in general, politics, or constitution? On the one hand, the objective of the department is to train the students with legal studies focusing on Islamic Constitutional Law (*Qanūn Dustūri al-Islāmī*). On the other hand, the courses on politics are prominent too while there is not enough subjects on the Islamic Constitutional Law. It thus suggests the *siyāsa* Department management across the Faculty of Sharia in Indonesia reorient their vision and mission and match them with their curriculum and programs.

Keywords : Ambiguity, Constitutional Law, Faculty of Sharia

Abstrak

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Artikel ini mengkaji tentang Jurusan Hukum Tata Negara di Fakultas Syariah Perguruan Tinggi Keagamaan Islam (PTKI) di Indonesia. Secara⁴ lahiriyah, terlihat kerancuan pada esensi dan substansi Hukum Tata Negara di Fakultas Syariah dengan nomenklatur Hukum Tata Negara (Siyasah). Di satu sisi, Hukum Tata Negara memiliki substansi pada kajian hukum hukum, di sisi lain memiliki kajian yang serupa dengan ilmu politik. Pada dasarnya, Politik berbeda dengan hukum. Apakah kerancuan ini terjadi pada nomenklatur saja atau juga dalam implementasinya seperti visi, misi, kurikulum, kompetensi dan profil lulusan. Hal ini memerlukan kajian untuk mendapatkan jawabannya. Kajian ini dilakukan dengan studi kepustakaan yang menggunakan metode kualitatif. Data dikumpulkan melalui dokumen visi dan misi jurusan atau program studi, dokumen kurikulum, buku-buku referensi, bahan ajar, jurnal penelitian dan website. Setelah

terkumpul, data diolah dan dikaji hingga mendapatkan pemahaman yang jelas. Dari kajian yang dilakukan, artikel 10 menegaskan bahwa terdapat ambiguitas pada beberapa Jurusan Hukum Tata Negara di Fakultas Syariah Perguruan Tinggi Keagamaan Islam, baik pada nomenklatur Jurusan maupun dalam implementasinya seperti visi, kurikulum, tugas akhir mahasiswa kompetensi dan profil lulusan. Ambiguitas tersebut terjadi antara kajian hukum, politik dan ketatanegaraan. Pada satu sisi Jurusan ingin bertahan pada esensi dan substansi hukum, namun pada sisi lain esensi dan substansi politik dan ketatanegaraannya lebih menonjol. Sehingga, belum terlihat spesialisasi Hukum Tata Negara Islam (*Qānūn Dustūrī al-Islāmī*) pada Jurusan atau Program Studi tersebut sebagai domainnya Fakultas Syariah di PTKI.

Kata kunci: Ambiguitas, Hukum Tata Negara, Fakultas Syariah

A. Introduction

Constitutional Law is a trending legal studies especially in Indonesia nowadays. As a set of laws governing state organization, both vertical and horizontal relations, constitutional law studies is extremely important and cannot be separated from the State. The Constitutional Law could reform the state administration, as 12 that happened in Indonesia in the post-amendment of *Undang-Undang Dasar Negara Republik Indonesia 1945* (UUDNRI 1945, The Constitution of the Republic of Indonesia year 1945).¹ This reason makes Constitutional Law one of the study programs or departments at the Faculty of Law in Indonesia.

The department of constitutional law has long been known at the Faculty of Law of several Higher Educations in Indonesia. Constitutional Law is an interesting subject for practitioners and legal experts in Indonesia. In Faculty of Law, it is clear that the object of the study of Constitutional Law is the law governing state institutions but not the study

1 Winarno Adi Gunawan, 'Pemakzulan (Impeachment) Presiden Dalam Perspektif Hukum Tata Negara', *Jurnal Hukum & Pembangunan*, vol. 38, no. 3 (2008), pp. 416-38.

of state, government or even politics.²

The Faculty of Sharia is one of several faculties which has constitutional law program. In general, Faculty of Sharia is identical to Faculty of Islamic Law. Constitutional Law Department or Study Program at Faculty of Sharia in both state and private Islamic Higher Educations, has been proliferated in the post-Reformation Era of Indonesian politics. This Constitutional Law department is a program development of the *Jināyah Siyāsah* (Islamic criminal law and politics) Study Program which is split into the Study Program of Islamic Criminal Law and Constitutional Law (*Siyasah*). Then, the Constitutional Law (*Siyāsah*) Study Program has changed again to the Constitutional Law (*Siyāsah Syar'iyah*) Study Program based on the *Peraturan Menteri Agama No. 33 Tahun 2016* (The Minister of Religious Affairs Regulation No. 33 year 2016). The nomenclature of this regulation indicates that the subject of study in Islamic Higher Educations is Islamic Constitutional Law. This subject is really relevant to the domain of Faculty of Sharia as the Faculty of Islamic Law.

The term “*Siyasah*” or “*Siyasah Syar'iyah*” in the Constitutional Law study program in Islamic Higher Educations raises such a question as what is the concern of the study of Islamic Constitutional Law? On the one hand, the term “Constitutional Law” indicates that the object of study is Law which contains constitutional matter. On the other hand, the word “*Siyasah*”, explains explicitly that the object of study is Politics. Further, the nomenclature of program of constitutional law is also written as “*Siyasah Shar'iyah*” which literary means “shari’ah politics” or politics based on sharia. From this ambiguous nomenclature, other question arises whether ambiguity also occurs in the substance that is reflected in the vision, graduate profile, curriculum, and student final project? This is a very interesting topic to research. Therefore, this study explores such ambiguities on how the orientation of the Department of constitutional Law in several Faculties of Sharia in some Islamic Higher Education institutions (*Perguruan Tinggi Keagamaan Islam* or PTKI). This study is a library research using qualitative

² Susi Dewi Harijanti, ‘Khazanah: Bagir Manan’, *PADJADJARAN: Jurnal Ilmu Hukum*, vol. 2, no. 3 (2015), pp. 626–43.

methods. The data are collected through official documents of the study programs, curriculum documents, final project (graduate thesis), references and teaching materials. Mission and curriculum documents are generally collected through the official website of the Department of Constitutional Law and digital library repositories, as well as printed documents. This study was conducted in 14 Departments of Constitutional Law of state Islamic universities (UIN/IAIN). After the collected data is classified, selected and analyzed using content analysis methods, then, they are presented with a qualitative narrative using the theory of jurisprudence and sharia. Finally, a conclusion was drawn as an answer to the problem being studied.

B. Constitutional Law: Substance, Regulation and Object of Study in Faculty of Law

The subject of Administration and Constitutional Law has been discussed since the establishment of *Rechtshogeschool* or *Faculteit der Rechtsgeleerdheid* by Governor General D. Fockt in 1924.³ Before year 1998, studies concerning on Constitutional Law were not very popular in Indonesia. However, the wind of constitutional law studies changed in the *Era Reformasi* in Indonesia, especially since the amendment of 1945 Constitution. Constitutional law studies became an interesting topic for practitioners and legal experts in Indonesia.⁴

Some scholars have their own definition of constitutional law. For example, J.G. Kartaspoetra argues that constitutional law is a set of laws that regulate the organization of a country both in vertical and horizontal relations.⁵ Although there are many definitions argued by Kartaspoetra, they are substantially in common. Furthermore, Kartaspoetra sees an intense relationship between Constitutional Law and Constitutional studies, Political studies, and State Administrative Law. This relationship is expressed in

3 Admin, *Fakultas Hukum Universitas Indonesia* (2018), law.ui.ac.id/v3/even1directory/, accessed 10 Oct 2018.

4 Admin, *Hukum Tata Negara*, <https://www.jimlyschool.com/diklat/hukum-tata-negara/#>, accessed 6 Mar 2019.

5 R.G. Kartaspoetra, *Sistematika Hukum Tata Negara* (Jakarta: Rineka

the differences in each subject of study. However, some people similarize between Constitutional Law and State Administrative Law, because principally there is no difference in principle.

The definition of Constitutional Law above describes that Constitutional Law is not a product of certain independent laws/regulations, but it is a basic legal concept of a state which is derived from various regulations in a state. For instance, Constitutional Law in Indonesia is based on 1945 Constitution, the state constitution of Indonesia. The constitution, which becomes a general law, carries out such special law, regulations or acts as Judicial Power Act, Prosecutor's Act, Police Act, and so forth. Thus, there will be no Constitutional Law Act. Unlike the Civil Law and Criminal Law, there are distinctive legal products containing both laws, such as the *Kitab Undang Undang Hukum Pidana* (KUHP, Criminal Code) and the *Kitab Undang Undang Hukum Perdata* (KUHPer, Civil Code). Besides, the criminal law and civil law are also found in other legal products that do not specifically contain criminal or civil law.

The Faculty of Law in Indonesia does not have a Constitutional Law Department or Study Program. The Faculty of Law has only one Department or Study Program, namely *Ilmu Hukum* (legal studies). The constitutional Law studies in several faculties of law in non-Islamic Higher Education Institutions become specializations program of the legal studies. The constitutional studies are also written in various nomenclatures. For example, the Faculty of Law of Universitas Padjadjaran (UNPAD, Padjadjaran University) calls it by specificity program of Constitutional Law,⁶ the Faculty of Law of University of Gajah Mada⁷ and the Faculty of Law of University of Hasanuddin⁸ call it by the Constitutional Law specialization (*program peminatan*), the Faculty of Law

Cipta, 193).

- 6 Admin, *Program Studi Sarjana Fakultas Hukum Universitas Padjadjaran* (2018), <http://fh.unpad.ac.id/file/2014/10/Pedoman-S1-2014.pdf>, accessed 9 Oct 2018.
- 7 Admin, *Departemen Hukum Tata Negara Fakultas Hukum UGM* (2018), <http://law.ugm.ac.id/departemen-hukum-tata-negara/>, accessed 9 Oct 2018.
- 8 Admin, *Faculty of Law Hasanuddin University* (2018), <https://siharka.menpan.go.id/>, accessed 10 Oct 2018.

of University of Indonesia (UI) refers it to specialization of Constitutional Law.⁹

As a specialization program, Constitutional Law at the Faculty of Law makes law as the object of the study. This can be seen from the courses offered. Constitutional Law specificity program at Faculty of Law of Padjadjaran University offers 5 relevant courses. The courses are: Procedural Law of the Constitutional Court, Nationality and Immigration Law, *Capita-Selecta* of Constitutional Law, Comparative Constitutional Law.¹⁰ The Constitutional Law specialization at Faculty of Law of the Gadjah Mada University prepares 7 courses related to constitutional study, namely: Judicial Power, Presidential Institution, Legislative and Executive Relations, State Institutional Law, Regional Government Law, Political party and Election Law, and Comparison of Constitutional Law.¹¹ The Constitutional Law specialization program at Faculty of Law of the Andalas University offers 11 courses, namely: Legal studies, Rights for Legal Test, Law and Human Rights, Law of State Institutions, Constitutional Law, State studies, Judicial Power, Representative Institution, Legislation Design, Politics of Law and Practice of the Constitutional Court.¹²

C. Constitutional Law: Substance, Regulation and Object of Study in Faculty of Sharia

The Faculty of Sharia is the term for the Faculty of Islamic Law of Islamic Higher Educations in Indonesia. Although the word 'sharia' is actually not too identical to law in Indonesian language, the most relevant translation of "sharia" is Islamic law or sharia law. The word "Sharia" shows the rule of law made directly by God and messenger of God in Islamic teachings¹³ and the word law indicates the

9 Admin, *Fakultas Hukum Universitas Indonesia*.

10 Admin, *Program Studi Sarjana Fakultas Hukum Universitas Padjadjaran*.

11 Admin, *Departemen Hukum Tata Negara Fakultas Hukum UGM*.

12 Admin, *Fakultas Hukum Unand* (2018), <https://fhuk.unand.ac.id/index.php/2015-11-17-02-05-27/bahan-ajar-htn>, accessed 10 Oct 2018.

13 Abd Aziz bin Satham, *Ta'rif as-Siyasah as-Syar'iyah*, vol. 19 (2014), p. 110.

rule of law formulated by leader of Islamic schools (*Fiqh*).¹⁴ In another case, law is also known as *dustūr* (constitution)¹⁵ and *qānūn* (law).¹⁶

The Faculty of Sharia in Islamic Higher Education consists of several departments, those are: Islamic Family Law (*Ahwāl al-Syakhshiyah*), Sharia Economic Law, Constitutional Law, Islamic Criminal Law (*Jināyah*), Comparison of School of Islamic Law, *Falaq* (Islamic astronomy studies). These majors have academic field is Islamic Law. Some students who are graduated from these majors in faculty of sharia achieve the degree as *Sarjana Hukum* (SH, Bachelor of Law). This degree according to the regulation of Minister of Religious Affairs Regulation No. 33 of 2016.

The department of Constitutional Law becomes a part of Department of *Jinayah Siyasa* (Islamic Criminal Law and politics) such as at the State Islamic Institute of Antasari, Banjarmasin.¹⁷ Some Islamic universities such as State Islamic Institute of Imam Bonjol Padang that still keep the nomenclature.¹⁸ State Islamic Institute of Purwokerto¹⁹ and State Islamic Institute of Samarinda²⁰ also go by the nomenclature which issued by the Ministry of Religious Affairs. The *Jinayah Siyasa* Department generally divided into two majors, namely: Islamic Criminal Law and Constitutional Law. Initially, the nomenclature of Constitutional Law was the

14 Majdi Muhammad Asyur, *Asas Fiqh as-Siyasa as-Syar'iyah 'Inda Ahl as-Sunnah wa al-Jamaah* (Mishr, 2014).

15 Ibrahim An-Ni'mah, *Ushul at-Tasyri' ad-Dusturi al-Islami* (Irak: Diwan al-Faqh as-Sunni, 1430).

16 Taufiq bin Abd al-Aziz As-Sadiri, *Al-Islam wa ad-Dustur*.

17 Admin, *Profil Jurusan Hukum Tata Negara (Siyasa) Fakultas Syariah UIN Antasari* (2016), <http://fs.uin-antasari.ac.id/profil-prodi-hukum-tata-negara-siyasa/>, accessed 20 Oct 2018.

18 Admin, *Hukum Tata Negara Islam (Jinayah Siyasa) Fakultas Syariah UIN Imam Bonjol Padang* (2018), fs.uinib.ac.id/node/22, accessed 20 Oct 2018.

19 Admin, *Jurusan Hukum Pidana dan Politik Islam Program Studi Hukum Tata Negara IAIN Purwokerto* (2015), <http://syariah.iainpurwokerto.ac.id/jurusan/jurusan-hukum-pidana-dan-politik-islam/>, accessed 20 Oct 2018.

20 Admin, *Profil Singkat Program Studi Hukum Tata Negara (Siyasa) Jurusan Pidana Politik Islam Fakultas Syariah IAIN Samarinda*, <http://www.iain-samarinda.ac.id/prodi-hukum-tata-negara-islam-s1/>, accessed 20 Oct 2018.

Siyasah, then changed to *Hukum Tatanegara Islam (Siyasah Syar'iyah, Islamic Constitutional Law)* based on Minister of Religious Affairs Regulation No. 33 of 2016. All Departments of Constitutional Law which were established before 2016 use "*Siyasah*" as the synonym of Constitutional Law. After 2016, some new departments which concern on constitutional law use *Hukum Tatanegara Islam (Siyasah Syar'iyah, Islamic Constitutional Law)* for the name of department and study program. It seems that this nomenclature wants to show the specificity of Islamic Constitutional Law as seen in the vision of various Constitutional Law Department/Study Program in Islamic Higher Educations (PTKI). Nevertheless, this issue needs to have a clear arguments on how far does this nomenclature describe academic substances of Constitutional Law?

The Constitutional Law Department at State Islamic Institute of Batusangkar is one of the departments that uses initial nomenclature, namely Constitutional Law (*Siyasah*) based on the Director General of Islamic Education Decree Number 1499 of 2014 dated March 14, 2014. Meanwhile, the Constitutional Law Department in Faculty of Sharia and Islamic Economics of State Islamic Institute of Palu uses the second nomenclature, namely Constitutional Law (*Siyasah Syar'iyah*) based on the Director General of Islamic Education Decree Number 3244 Year 2017 dated June 12, 2017.²¹

Looking at the vision of the Department of State Administration in various Islamic Religious institutions, it is found that there are several kinds in institutional vision. First, a vision that illustrates integrative study between Islamic Constitutional Law and Islamic politics such as the Study Program of Constitutional Law at Universitas Islam Negeri Syarif Hidayatullah Jakarta (Syarif Hidayatullah State Islamic University, Jakarta)²² and Universitas Islam Negeri Sunan Kalijaga (Sunan Kalijaga State Islamic University, Yogyakarta),²³ which has first developed integration

21 Wahyuni, *Buku Saku Jurusan Hukum Tata Negara Islam Fakultas Syariah IAIN Palu* (Palu: Fakultas Syariah dan Ekonomi Islam Institut Agama Islam Negeri (IAIN) Palu, 2018).

22 Admin, *Hukum Tata Negara*, <https://fsh.uinjkt.ac.id/beranda/hukum-tata-negara/>.

23 Admin, *Program Studi Hukum Tata Negara*, <http://syariah.uin-suka>.

paradigm between Islamic and non-Islamic studies. *Second*, a vision that indicates more discussion on constitutional law studies such as in the Constitutional Law Department in Faculty of Sharia of State Islamic University of Imam Bonjol Padang²⁴ and State Islamic University of Makassar.²⁵ The Constitutional Law Department in State Islamic University of Imam Bonjol Padang formulated its vision: “Becoming the Center of Islamic Constitutional law studies”, while the Criminal and Constitutional Department of State Islamic University of Alauddin formulated its vision: “Become the leading institution of criminal and constitutional law studies in Indonesia”. *Third*, a vision that describes more on Islamic politics than legal studies, such as in the Constitutional Law Department in the Faculty of Sharia and Law of State Islamic University of North Sumatra. Faculty of Sharia and Law of State Islamic University of North Sumatra has a vision: “Become a Center of excellence in Assessment, Education, and Application of Islamic Constitutional Law studies or *Siyasah* in Indonesia in 2020”.²⁶ *Fourth*, a vision that describes more essence on Islamic Constitutional Law, such as the vision of the Islamic Constitutional Law Department in Palu: Be superior and competitive in the field of Islamic Constitutional Law in Indonesia based on Classical Islam in 2035 “. ²⁷

Constitutional Law Department in several institutions has designed curriculum by offering relevant courses that support the proficiency of Constitutional Law studies. Some Courses that can be tracked to support the proficiency in this department are: *Fiqh Siyasah*, State studies, Constitutional Law, State Administration Law, Law and Human Rights, State Administrative Justice, State Administrative Procedure Law, Legal studies, Law of Regional Government,

ac.id/id/page/prodi/247-Program-Studi-Hukum-Tata-Negara.

24 Admin, *Hukum Tata Negara Islam (Jinayah Siyasah) Fakultas Syariah UIN Imam Bonjol Padang*.

25 Admin, *Jurusan Hukum Pidana & Ketatageraan Fakultas Syariah dan Hukum UIN Alauddin Makasar*, <http://hpk.fsh.uin-alauddin.ac.id/visi> accessed 20 Oct 2018.

26 Admin, *Jurusan Hukum Tata Negara (Siyasah) Fakultas Syariah dan Hukum UIN Sumatera Utara* (2014), <http://www.fasih.uinsu.ac.id/?page=siyasah%0A>, accessed 20 Oct 2018.

27 Wahyuni, *Buku Saku Jurusan Hukum Tata Negara Islam Fakultas Syariah IAIN Palu*.

Comparative Constitutional Law, State Practice in Islam, Law of Constitution, Party and Election Law,²⁸ Procedural Law of Constitutional Court.²⁹ These offered courses do not reflect the subjects that support Islamic Constitutional Law, except for the *Fiqh Siyāsah* and *Fiqh Siyāsah Dustūriyah*. The latter is not even offered by all Constitutional Law Department in Islamic Higher Education.

In other field, graduate thesis of students in several Islamic institution illustrates variety of issues regarding constitutional matter. Of the many research titles found can be classified into seven categories. *First*, it is related to Constitutional Law, such as the research by Dhofir Catur Bashori, “The Competence of the Constitutional Court in Judging the Disputes of Election Before and After the Implementation of Act Number 1 of 2015 and Act Number 8 of 2015 about the Election of Governors, Regents, and Mayors”.³⁰ *Second*, the graduate thesis related to Islamic Constitutional Law, such as Imam Mustafa’s research, “Direct and Indirect Local Election from the Perspective of Islamic Constitutional Law”.³¹ *Third*, it is related to *Fiqh Siyāsah*, such as the research by Muhammad Aria “Leg²⁵ Analysis on the Clemency Granted by The President after the Constitutional Court’s Decision Number 56 / PUU-XIII / 2015 from the Perspective of *Fiqh Siyāsah-Dhustūriyah*”.³² This review of *Fiqh Siyāsah* is more done in the research (thesis) of students in the Constitutional Law (Siyasah) Department in State Islamic

28 Admin, *Jurusan Hukum Tata Negara (Siyasah) Fakultas Syariah dan Hukum UIN Sumatera Utara*.

29 Admin, *Hukum Tata Negara Islam (Jinayah Siyasah) Fakultas Syari-³⁰ UIN Imam Bonjol Padang*.

30 Dhofir Catur Bashori, ‘Kompetensi Mahkamah Konstitusi Dalam Mengadili Sengketa Pemilukada Sebelum Dan Sesudah Berlakunya Undang-Undang Nomor 1 Tahun 2015 Jo Undang-Undang Nomor 8 Tahun 2015 Tentang Pemilihan Gubernur, Bupati, Dan Walikota’ (UIN Sunan Ampe¹ 2015).

31 Imam Musthafa, *Pilkada Langsung Dan Tidak Langsung Perspektif Hukum Tata Negara Islam* (2015), [http://digilib.uin-suka.ac.id/16040/1/BAB I%2C V%2C DAFTAR PUSTAKA.pdf](http://digilib.uin-suka.ac.id/16040/1/BAB%20I%2C%20V%2C%20DAFTAR%20PUSTAKA.pdf), accessed 21 Oct 2018. ¹

32 Muhammad Aria, ‘Analisis Hukum Pemberian Grasi oleh Presiden Pascaputusan Mahkamah Konstitusi Nomor 56/PUU-XIII/2015 perspektif fikih Siyasah-Dhusturiyah’ (UIN Sunan Ampel Surabaya, 2018).

University of Sunan Ampel Surabaya.³³ *Fourth*, it is related to political issues, such as Nidaul Hasanah's research, "Views and Strategies of the *Persatuan Pembangunan* Party (PPP) Regarding Female Legislative Candidates in Bekasi District for the 2009-2014 Period".³⁴ *Fifth*, it is related to the issue on Islamic Politics (*siyasah*), such as Budi Susanto's research, "Money Politic Practice in Village Head Elections from Islamic Law Perspective in Ranah Singkuang Village, Kampar Subdistrict, Kampar Regency".³⁵ *Sixth*, it is related to the problems of the constitutionality, such as the research by Muhammad Hubbul Khair Wasahua, "Impeachment of the President (Comparative Study of Indonesian Constitutionality and Islamic State Constitutionality)"³⁶ and Indara Nurfiati, "The Position of Indonesian Ulama Council (MUI) in Indonesian Constitutionality Viewed from *Fiqh Siyasah*".³⁷ *Seventh*, it is not included in one of the previous six categories (unclear fields), such as Aziza Aziz Rahmaningsih's research, "The Effect of Organizational Activity on Academic Achievement in the View of Islamic Law (Study on Students of the Faculty of Sharia of Raden Intan Lampung Islamic University)".³⁸

The graduate profile of Constitutional Law department in several Islamic Higher Education Institutions can be classified

- 33 Admin, *Digital Library UIN Sunan Ampel 'Hukum > Hukum Tata Negara'*, <http://digilib.uinsby.ac.id/view/subjects/HT.html>, accessed 21 Oct 2018.
- 34 Nidaul Hasanah, *Pandangan Dan Strategi Partai Persatuan Pembangunan (PPP) Mengenai Calon Legislatif Perempuan Kabupaten Bekasi Periode 2009-2014* (2016), http://repository.uinjkt.ac.id/dspace/bitstream/123456789/32968/1/NIDAUL_HASANAH-FSH, accessed 21 Oct 2018.
- 35 Budi Susanto, 'Praktek Money Politic Pilkades Ditinjau Menurut Perspektif Hukum Islam Di Desa Ranah Singkuang Kecamatan Kampar Kabupaten Kampar' (Universitas Islam Negeri Riau, 2015).
- 36 Muhammad Hubbul Khair Wasahua, 'Impeachment Presiden (Studi Perbandingan Ketatanegaraan Indonesia dan Ketatanegaraan Islam)' (UIN Alauddin Makassar, 2017).
- 37 Indra Nurfiati, 'Kedudukan Majelis Ulama Indonesia (MUI) Dalam Ketatanegaraan Indonesia Ditinjau Dari Fiqh Siyasah' (UIN Sunan Ampel Surabaya, 2016).
- 38 Aziza Aziz Rahmaningsih, *Pengaruh Keaktifan Berorganisasi Terhadap Prestasi Akademik Dalam Pandangan Hukum Islam (Studi pada Mahasiswa Fakultas Syariah Universitas Islam Negeri Raden Intan Lampung)* (2018), <http://repository.radenintan.ac.id/704/1/SKRIPSI.pdf>, accessed 21 Oct 2018.

into four work competence: First, as legal practitioners such as: judge, clerk, bailiffs, advocate, legal consultant, legal drafter and mediator. Second, as academic scholar in legal studies or in Islamic legal thought: lecturer, researcher, law observer and analyst. Third, office administrator in government or non-government organization such as: National Army, National Police, *Wilāyatul Hisbah* (WH) in Aceh Province, legal administrators in various agencies (Local Government, Ministry of Religious Affairs, state and private corporations). Fourth, political practitioners such as: member of political parties, and legislators (People's Consultative Assembly, Regional People's Representative Assembly, House of Representatives, or Regional Representative Council).

Several Islamic Higher Education Institutions in Indonesia describe graduate profile in three academic competencies: main competencies, complementary competencies and supplemental competencies.³⁹ Constitutional Law Study Program at Faculty of Sharia and Law of Syarif Hidayatullah State Islamic University⁴⁰ and in the Constitutional Law Study Program at Faculty of Sharia and Law of Ar-Raniry State Islamic University describe academic competence based on the graduate profile without dividing such three academic competencies. In other institutions, graduate competencies are described separately from profiles such as in the Constitutional Law Study Program at Faculty of Sharia and Law of Sunan Kalijaga State Islamic University,⁴¹ in the Constitutional Law Study Program at Faculty of Sharia and Law of Sunan Gunung Djati State Islamic University, in the Constitutional Law Study Program at Faculty of Sharia and Law of Antasari State Islamic University⁴² and in the Constitutional Law Department at Faculty of Sharia of State Islamic Institute of Salatiga.⁴³ Some institutions write profiles

39 Admin, *Profil dan Kompetensi Lulusan HTN UIN Malang*, [https://forlap.ristekdikti.go.id/prodi/detail/QkU1RDFFN0QtQzk5NS00RTAzLTg0QjktQ0VBODBBOTcyRjMy/0.](https://forlap.ristekdikti.go.id/prodi/detail/QkU1RDFFN0QtQzk5NS00RTAzLTg0QjktQ0VBODBBOTcyRjMy/0.;); Admin, *Profil Jurusan Hukum Tata Negara*, <http://htn.uin-malang.ac.id/index.php/home/profil-lulusan/kompetensi-dasar>.

40 Admin, *Hukum Tata Negara*.

41 Admin, *Program Studi Hukum Tata Negara*.

42 Admin, *Profil Jurusan Hukum Tata Negara (Siyasah) Fakultas Syariah UIN Antasari*.

43 Admin, *Kompetensi Lulusan HTN*, <http://syariah.iainsalatiga.ac.id/>

2f without describing graduate competencies such as in the Constitutional Law Department at Faculty of Sharia of State Islamic Institute of Tulung Agung⁴⁴ and in the Constitutional Law Department at Faculty of Sharia of Teungku Dirundeng Meolaboh State Islamic Institute.⁴⁵

From all description of the graduate profile in several Islamic Higher Education Institutions, legal practitioner (in general field) is dominantly written as graduate profile. Unfortunately, constitutional law study in general is sound rather than Islamic Constitutional Law as academic competence. this condition shows the ambiguity of Islamic constitutional law study between what has written in the nomenclature of the department or study program, and the real implementation in some institutions. In other case, Islamic political study is written as academic competence even though the nomenclature of this department is inappropriate with Islamic Politics. This condition represented by, for instance, Antasari State Islamic University. The university described the academic competence as follows: "Understanding the theory of Constitutional Law and Political science, and its application in building national life which is comprehensively Islamic-oriented".⁴⁶ In State Islamic University of Malang, the scientific competence of Islamic Constitutional Law is described in complementary competence, not in main competence.⁴⁷ In State Islamic University of Bandung, the graduate profile of department of Constitutional Law described as legal practitioner in general such as member in executive and legislative field, legal consultant and practitioner.⁴⁸

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44 Admin, *Hukum Tata Negara Fakultas Syariah dan Hukum IAIN Tulung Agung*, <http://jurusan.iain-tulungagung.ac.id/htn/tentang-htn/profil-lulusan/>.

45 Admin, *Visi, Misi dan Tujuan Prodi Hukum Tata Negara (Siyasah)*, <http://staindirundeng.ac.id/visi-misi-dan-tujuan-prodi-hukum-tataneg-a-siyasah/>.

46 Admin, *Profil Jurusan Hukum Tata Negara (Siyasah) Fakultas Syariah UIN Antasari*.

47 Admin, *Profil 20n Kompetensi Lulusan HTN UIN Malang*; Admin, *Profil Jurusan Hukum Tata Negara*.

48 Admin, *Visi, Misi dan Tujuan Prodi Hukum Tata Negara (Siyasah)*,

D. Islamic Constitutional Law Department as an Ambiguity

Before discussing more problems of the Constitutional Law Department in Faculty of Sharia, this paragraph will explain some technical terms as an introduction to terminologically study of this article.

The first term is “constitution/Constitutionality”. Brotoatmojo, one of the early Indonesian scholars in legal studies, defines that constitution is a foundation of people’s aspiration in building the state. Constitution should contain several rules on how the state and people are governed.⁴⁹ Meanwhile, according to Herawati, constitution is a central power that regulates the life of the state which concerns the nature and form of the state, and distribution of authority among state institutions.⁵⁰ These two definitions illustrate that constitution is a system of order in all components of state institution. The essential object of constitution substantively is connectedness of all state organ. In other complicated explanation, Munawir Sadzali places constitution as politically product, therefore either constitution or politics are two entity that always interplay one each other.⁵¹

The second terms is Politics. Meriam Budiardjo defines politics as a variety of activities in state order which involves the process of determining the objectives of the system and implementing those objectives.⁵² In this definition it can be seen that politics is an activity to achieve a goal. It can also be understood here that the object of politics substantively is rather activity of power struggling than law.

Siyasah, *Fiqh Siyasah* and *Siyasah Syar’iyyah* are also become a key terms in this discussion. These three terms are used in Arabic-language literature. *Siyasah* initially means “to arrange, to manage” which is technically interpreted in political field. In Islamic terminology, politics

¹ <https://fsh.uinsgd.ac.id/site/detail/prodi/siyasah>.

49 R.R. Brotoatmodjo, *Dari Gubernur Djenderal Daendels sampai Presiden Sukarno 1808-1950* (Jakarta: Jajasan Kanisius, 1955).

50 Andi Herawati, ‘Konsep Ketatanegaraan Dalam Islam’, *Jurnal Hukum iktum*, vol. 1, no. 1 (2013), pp. 1-8.

51 Munawir Sjadzali, *Islam dan Tata Negara: Ajaran, Sejarah dan* ¹⁹ *nikiran* (Jakarta: UI Press, 1990).

52 Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Jakarta: Gramedia Pustaka Utama, 2003).

is the arrangement of people affairs based on Islamic law. In Islamic literature, this definition is popularly called *Fikih Siyasah* (Islamic jurisprudence on politics), another Islamic scholar, like Ibn Qayyim, calls it *Siyasah Syariyyah* (Sharia Politics).⁵³ *Siyasah* contains two dimensions, the first is the objectives of power, the second is ways of achieving and controlling power in political arena.⁵⁴ Khalid al-Fahdawy defines *Fiqh Siyasah* as a deep understanding (*fiqh*) of power controlling to arrange social-political-economic affairs which is regulated by sharia law as a manual instruction of people life.⁵⁵ In other words, *Fiqh Siyasah* is a politics based on Islamic values. Thus, *Fiqh Siyasah* is not an Islamic Constitutional Law, but it is a provision that becomes a reference for Islamic politics. The dynamic interplay between civilian and political elite makes the substance of *siyāsah syar’iyah* is similar to political studies. However, *siyāsah syar’iyah* is still different function with politics. Politics merely contains the way of power achieving and people servicing, *siyāsah syar’iyah* has a function in bringing people to the right way based on Islamic norms (*ishlāh*).⁵⁶

The next term is Constitutional Law. Constitutional Law is a set of laws that regulate organization of the state both in vertical relations and in horizontal relations. The object of constitutional law is a positive law that can be applied temporary at a certain time and place. Constitutional law contains certain mutual agreements on the form of state, and relationship among the state, citizens and their human rights. Constitutional Law also discuss on analysis, observations or investigations of living laws in a country.⁵⁷

From the explanation, the substantial object of constitutional study, Politics, *Siyasah*, *Fiqh Siyasah* and *Siyasah Syar’iyyah* are merely a law. However, there is such interconnection among law, as an object of study, Islamic

53 Muslim Mufti, *Politik Islam Sejarah dan Pemikiran* (Bandung: Pustaka Setia, 2015).

54 H.A. Djazuli, *Fiqh Siyasah: Implementasi Kemashlahatan Umat Dalam Rambu-Rambu Syariah* (Jakarta: Kencana Prenada Media Group, 2005).

55 Khalid Al-Fahdawy, *Al-Fiqh as-Siyasi al-Islamy* (Al-Awa’il, 2008).

56 Djazuli, *Fiqh Siyasah: Implementasi Kemashlahatan Umat Dalam Rambu-Rambu Syariah*.

57 Kartasapoetra, *Sistematika Hukum Tata Negara*.

norms and politics. From these terms, only Constitutional Law has substantial object in law. Nevertheless, the term constitutional law is different from Islamic constitutional law. In Arabic translation of Constitutional Law is *Qānūn ad-Dustūri*, while Islamic Constitutional Law is being translated into Arabic as *Qānūn Dustūri al-Islāmi*.

¹ Observing the Constitutional Law Department in Islamic Higher Education Institutions in Indonesia, it can be seen that vision, mission, profile, curriculum, design of student competence⁹ and final assignments, have no uniformity and firmness of Constitutional Law in the Faculty of Sharia as a Department which is based on law or Islamic Law. Moreover, in terms¹⁰ of nomenclature of the Department, there are such terms ambiguity of the substance and essence of Constitutional Law. On the one hand, it uses the nomenclature of Constitutional Law, but on the other hand it uses *siyasa* (politics) nomenclature as its synonym. In General Higher Education, the Constitutional Law and Politics Department lies in two different faculties, in consideration on different substantial object of study.

The unclarity of substantial object of study of Islamic constitutional law department in several faculties of sharia in Indonesia might be caused by academic references. Some references are rather inappropriate with constitutional law studies. Several references that use¹¹ by scholar in Islamic constitutional law department are *Islam dan Tata Negara: Ajaran Sejarah dan Pemikiran* (Islam¹⁷ and Constitution: teachings, history and thought)⁵⁸, *Fiqh Siyasa Ajaran, Sejarah dan Pemikiran* (Fiqh Siyasa: teachings, history and thought)⁵⁹, *Fiqh Siyasa: Implementasi Kemashlahatan Umat dalam Rambu-Rambu Syariah* (Fiqh Siyasa: The³² plementation of People beneficence in sharia norms)⁶⁰, *Fiqh Siyasa: Kontekstualisasi Doktrin Politik Islam* (Fiqh Siyasa: The contextualization of Islamic political doctrine)⁶¹, *Al-Ahkam as-Sulthaniyah wal Wilayahud Diniyah* (The

⁵⁸ ³adzali, *Islam dan Tata Negara: Ajaran, Sejarah dan Pemikiran*.

⁵⁹ J. Suyuti Pulungan, *Fiqh Siyasa Ajaran, Sejarah dan Pemikiran* (Jakarta: Rajawali Press, 1997).

⁶⁰ Djazuli, *Fiqh Siyasa: Implementasi Kemashlahatan Umat Dalam Rambu-Rambu Syariah*.

⁶¹ Muhammad Iqbal, *Fiqh Siyasa: Kontekstualisasi Doktri Politik Islam* (Jakarta: Kencana, 2016).

ordinances of Islamic Government)⁶². The study of fiqh siyāsah is closest meaning to *siyāsah dustūriyah* or politics of Islamic legislation. *Siyāsah dustūriyah* is quite different with *qānūn dustūry* which means ‘constitutional law’ in English terminology. Therefore, to make *siyāsah dustūriyah* similar to *qānūn dustūry* will birth an ambiguity for department Islamic constitutional law in several Islamic Higher Education Institutions.⁶³

Indeed, the term “*Siyasah Syar’iyyah*” is the law governing the state interest and organizing people interest based on the spirit of Sharia.⁶⁴ The phrase “law governing the state interests” might underlied the understanding that *siyasah syar’iyyah* is constitutional law. In fact, *siyasah syar’iyyah* is political attempt to institutionalize sharia law as a positive law in a state. The term constitutional law has different meaning, it is a set of laws that regulate the organization of a country or relations between state institutions in both vertical and horizontal relations, as well as relations between the state and citizens. Therefore, the object of study is legal rule or constitution, not politics.

The presence of the Constitutional Law Department in several Faculties of Sharia would like to emphasize on the specialization of Islamic Constitutional Law, either in normative or empirical studies. This specialization is supported by curriculum that shows Islamic Constitutional Law expertise. However, in several departments have their own way to describe specialization of Islamic constitutional law. This various way of description seems that departments of Islamic Constitutional Law have an ambiguity in academic competence, curriculum and graduate profile.

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E. Conclusion

Based on the above, it can be concluded that there have been ambiguities in several Departments of Constitutional Law in Islamic Higher Education Institutions, especially in terms of department nomenclature, curriculum, student graduate

62 Al-Mawardi, *Al-Ahkam as-Sulthaniyah wal Wilayatud Diniyah* (Beirut: Maktab al-Islami, 1996).

63 Mufti, *Politik Islam Tejarah dan Pemikiran*.

64 Muhammad Iqbal, *Fiqh Siyasah: Kontekstualisasi Doktri Politik Islam* (Jakarta: Kencana, 2016).

thesis and graduate profile and graduate competencies. This ambiguity can be seen from the mix-up of the law, politics and constitutionality as the core of the program. On the one hand, the department of Constitutional Law wants to keep the essence and substance of the law, on the other hand the essence and substance of politics and Islamic constitution studies are more prominent as described above. Therefore, the graduates' competencies are also ambiguous between the Bachelor of Law (SH), Bachelor of Political Science (SIP) or Bachelor of Government Science. Furthermore, there is no specialization of Islamic Constitutional Law (*Qanun Dusturi al-Islamy*) in the Department or Study Program as the domain of the Faculty of Sharia of Islamic Higher Education.

Ambiguity of Constitutional Law in some PTKI requires a reorientation of Study Programs in the Sharia Faculty. Furthermore, it is necessary to revise the nomenclature of the department to become the Islamic Constitutional Law department or only the Constitutional Law department. This is accompanied by an affirmation of the vision, mission, profile of graduates and curriculum oriented to the substance of Constitutional Law so as not to be trapped in the Department of Islamic Political studies or Islamic Political Thought.

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