

## The Formulation of Good Governance Fiqh for Indonesia as a Welfare State

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### Abstract

This study departs from the fact that fiqh, which is the religious guideline for Muslims, does not yet contain specific formulations of good governance that are relevant and increasingly needed in today's state life, especially for Indonesian muslim. This study is intended to identify the principles of good governance and formulate them by looking at their relevance to Indonesia in the context of the welfare state. For that purpose, this study uses the documentation method by collecting and interpreting qualitative data from *fiqh* books, the 1945 Constitution, and relevant laws and regulations in Indonesia. This study shows that in fiqh books that contain discussions or allude to citizenship and state administration, there are principles of deliberation, justice, welfare, and mutual benefit. These principles can be formulated as good governance fiqh that is relevant to Indonesia which contains the principles of legal certainty, legal urgency, and legal universality. Legal certainty includes accountability and justice. The legal urgency includes aspects of transparency and professionalism. While the universality aspect of law is in the form of guaranteeing general welfare and mutual benefit.

**Keywords:** Deliberation; Fiqh Formulation; Good Governance; Justice; Welfare State.

### Abstrak

Studi ini berangkat dari fakta bahwa fikih yang menjadi pedoman beragama bagi umat Islam, terutama di Indonesia, belum memuat secara spesifik rumusan good governance yang relevan dan semakin dibutuhkan dalam kehidupan bernegara saat ini. Studi ini dimaksudkan untuk mengidentifikasi prinsip-prinsip good governance dan merumuskannya dengan melihat relevansinya dengan Indonesia dalam konteks negara kesejahteraan. Untuk itu, studi ini menggunakan metode dokumentasi dengan menghimpun dan menginterpretasikan data kualitatif dari kitab-kitab fikih, Undang-Undang Dasar 1945, dan peraturan perundang-undangan di Indonesia yang relevan. Studi ini menunjukkan bahwa dalam kitab-kitab fikih yang memuat bahasan atau menyinggung tentang kewarganegaraan dan ketatanegaraan terdapat prinsip-prinsip musyawarah, keadilan, kesejahteraan, dan kemashlahatan bersama. Prinsip-prinsip ini dapat diformulasikan sebagai fikih good governance yang relevan dengan Indonesia yang memuat prinsip kepastian hukum, urgensi hukum, dan universalitas hukum. Kepastian hukum tersebut meliputi akuntabilitas dan keadilan. Urgensi hukum meliputi aspek transparansi dan

profesionalitas. Sedangkan aspek universalitas hukum berupa terjaminnya kesejahteraan umum dan kemaslahatan bersama.

**Kata Kunci:** Musyawarah; Formulasi Fiqh; Good Governance; Keadilan; Negara Kesejahteraan



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## Introduction

Good Governance is one of the central themes in various discussions of government policy during the reform period. This is significant for realizing a welfare state, both from a social and economic perspective. The term that was often used in the past is good government which is usually associated with clean government of all cases. The use of the term good governance replacing the term good government is intended to further expand the scope of the concept. First, the change from government to governance (Rahaman, 2017) shows that what requires this principle is not only governance in a narrow sense, namely the executive, but all aspects and networks of state administration. It even concerns organizational activities carried out by the community.

Second, the word governance represents the entire process in an order, not only in institutions represented by the word government. Therefore, good governance is often translated into Indonesian into good governance. The goal of good governance is not only clean government of all cases, but also it must meet certain good standards (Asshiddiqie, 2015). Indonesia which defines itself as a democratic country must carry out good governance, because democracy is related to good governance.

A number of studies can be found regarding the relevance of fiqh to good governance and its relevance to the conditions of Indonesia. Priyo Handoko conducted a study on the implementation of good governance in the justice system in Indonesia. This study shows that good governance in the judiciary can be seen from the necessity to apply the principles of transparency and accountability, as well as the demand that judges always act honestly, fairly and reliably. This study confirms that the increase in judicial performance must be demonstrated by the independence of the judiciary. Independence will be supported by transparency and accountability (Handoko, 2020).

By using the ushul fiqh approach and the theory of increasing norms, Joko Setyono also highlighted the principles of good governance in Islamic studies. This study shows that the principles of good governance can be found in the main sources for the formation of Islamic law, as well as in various fiqh literature which are the result of the ijihad of fiqh experts on these main sources. These principles are: equality, tolerance, fairness, benefit, deliberation, honesty, objective, effectiveness and efficiency, responsibility, trustworthiness, and visionary (Setyono, 2015).

Along with that, Muhammad Islahuddin also conducted a study related to this. He revealed that the values of good governance in Islamic law are all oriented towards creating benefits for everyone. The values of benefit can be reduced to values of equality, tolerance, fairness, deliberation, honesty, and objectivity. Therefore, the theory of good governance is very relevant to the theory of *mashlahah mursalah* and *maqashid sharia*. *Maslahah mursalah* can be used as a framework for its implementation, while its orientation is *maqashid sharia*, namely maintaining religion, soul, mind, lineage and property (Islahuddin, 2020).

These studies provide an illustration that the field of study of *fiqh* which focuses on good governance still needs to be improved, because the tendency that has emerged is only to express the principles of good governance in Islamic literature. So far, no studies have been found that link aspects of good governance within the framework of the welfare state in Indonesia. The relationship between the two needs to be seen, bearing in mind that a welfare state aims to provide social services to all citizens and guarantee their minimum welfare, whereas in Islamic law there is the *maqasid sharia* theory which demands that the application of every law must be benefit-oriented, including the welfare of society.

Based on that consideration, this study is intended to fill this void. This study is directed at two aspects. First, how are the principles of good governance in the main sources of Islamic law and *fiqh* literature that guide the life of Muslims. Second, how is the formulation of *fiqh* regarding good governance relevant to the concept of a welfare state in Indonesia.

## **Method**

This study is a document study that collects and interprets data qualitatively. The data collected is related to *fiqh* formulations about good governance and then compared with data about the welfare state principles adopted by Indonesia. Sources of data are authoritative *fiqh* books in four schools of thought, as well as Indonesian state constitutional documents, namely the 1945 Constitution and its derivative regulations which reflect the basic principles of the Indonesian state.

*Fiqh* books are used as a source to identify the principles of good governance, bearing in mind that so far no specific and detailed discussion on good governance has been found there. The 1945 Constitution is used as a data source to identify the principles of a welfare state that is adhered to by the Indonesian state, and this data can be confirmed in its relevant derivative laws and regulations. Both types of data are compared, analyzed, and described qualitatively to provide a *fiqh* formulation of good governance that is relevant for Indonesia.

## **Result and Discussion**

### **The Essence of Good Governance**

Terms “government” and “governance” in the dictionary are often considered to have the same meaning, namely the way to exercise authority in an organization, institution or state. Government is also defined as an entity that carries out governmental power in a country (Effendi, 2005). However, from the information above, the two terms are distinguished from the aspect of their scope or range.

The word governance is etymologically derived from the Greek, *kybernan* to the Latin *governorate* and to the governor of Old French. *Kybernan* means to 'direct', 'guide' or 'organize' (Iqbal & Lewis, 2009). Oxford Learner's Pocket Dictionary, defines govern by law and running (managing) a city or country (Bull, 2008). Jhon M. Echols and Hassan Shadily interpreted governing by governing the State, controlling the situation, and making decisions (Echols & Shadily, 2008).

The word governance is used in academic discourse related to scientific studies, namely developmental politics, public administration, and international relations. However, the meaning contained in the dictionary was still less extensive. International institutions, such as the Organization for Economic Cooperation and Development (OECD), the World Bank, and the United Nations Development Program (UNDP) have different meanings of governance, as do several competent academic circles.

OECD defines the word governance with measures of political authority as well as supervision in society related to the management of social resources and economic growth (OECD, 1993). Governance improvements appear to be very important to support economic growth (Andrews-Speed & Zhang, 2019). The OECD seeks to connect the authorities with those who are controlled in order to protect the economic environment and determine the distribution of profits for both parties. This understanding looks very thick with economic nuances so that the word governance is basically a description of the relationship between the rulers and the people, but the emphasis in this meaning is on the part of the political authority who at the same time has the power to oversee the economic environment, because it is related to economic growth which requires social stability.

UNDP defines governance as the exercise of administrative, political and economic authority in a country at all levels of government (Kabumba, 2006). Governance includes processes, mechanisms, and the existence of people and institutions in society that constantly articulate their interests, voice their rights and mediate differences. The emphasis lies on democratization, law enforcement and justice. Whereas LAN RI interprets good governance with good and responsible governance (Effendi, 2005).

If good governance is seen from the Islamic aspect, then there is no single expression in Arabic to represent the meaning of government in its various manifestations. The concept closest to governance in Arabic is al-ḥakimiya, which in connotations goes beyond the procedural view of governance to identify the importance of a higher moral social order in which all decision-making structures or 'authorities' must be subject to (Iqbal & Lewis, 2009).

UNDP recognizes the existence of the community and the private sector is important in the context of governance because it can provide a new color for a policy outcome. On another aspect, to measure the success rate of implementing democratic governance in a country, UNDP uses the Human Development Index (level of human development). This was later adopted by many countries, including Indonesia, when discussing development outcomes. Mahbub ul Haq stated the term human governance to encourage governance discourse to prioritize the active participation of civil society, because the main target of governance is to improve welfare and improve the lives of humanity (Haq, 1999). At that level, the composition and processes in policy making must be truly participatory, accountable, and responsive in the political, economic and civil culture areas so that human governance basically aims at making good political governance, good economic governance, and good civic governance.

The World Bank defines governance as a method / attitude of power used to manage a country's economic and social resources. In its 1994 report, the World Bank outlined three important aspects in the ecology of governance (Bank, 1994; "International Fund for Agricultural Development," 1977; World Bank, 2002). First, related to the structure of a country's political regime. For the World Bank, this structure is very important because it is related to the attitudes and behavior of the political elite in that structure which plays a major role in policy change. Second, the World Bank emphasizes the process of how these economic and social resources are managed. Management according to the guidance of the World Bank always relies on economic growth, usually in the form of growth figures which are then interpreted into the level of welfare that has been achieved. Third, the institutional capacity of the government to design, formulate and implement policies. The World Bank sees this capacity as having an effect on the domestic policy process that is being implemented.

### **Principles of Good Governance**

Since UNDP was first established (born) in 1965, the duties and profiles of this institution are related to academic discussions, politics, and (humanitarian) aid practices. As a large international development institution, UNDP (Pratikno, 2005) has positioned the development agenda as very important, in this case the humanitarian dimension is highly considered (Dam, 2001). UNDP, formulated nine fundamental aspects (principles) that must be considered (Syafri, 2002). First, participation, which is the participation of community members in decision making, either directly or through legitimate representative institutions that

represent their interests. The form of participation is built or based on democratic principles, namely the freedom to assemble and express opinions in a constructive manner. As the owner of sovereignty, every citizen of the State has the right and obligation to take part in the state, government and community processes. This participation can be done directly or through intermediary institutions, such as DPRD, NGOs, and others. The participation that is given can take the form of thoughts, funds, energy, or other useful forms. Citizen participation is carried out not only at the implementation stage, but as a whole, starting from the stages of policy formulation, implementation, evaluation, and utilization of the results. The main requirement for citizens to be said to participate in national, state and governmental activities is a sense of volunteerism, emotional involvement and direct and indirect benefits from involvement.

Second, law enforcement (rule of law). The legal framework must be fair and implemented indiscriminately, especially the law for human rights. Good governance is carried out in the context of democratizing the life of the nation and state. One of the conditions for democratic life is the existence of law enforcement that is just and indiscriminate. Without firm law enforcement, democratic life will not be created, but anarchy. Without law enforcement, people freely try to achieve their own goals without paying attention to the interests of others by justifying any means. Therefore, the first step in creating good governance is to build a healthy legal system, both the software, the hardware and the human resources who run the system (Office of United Nations High Commissioner for Human Rights, 2007)

Third, transparency. Transparency is built on the basis of the free flow of information. Institutional processes and information can be directly received by those in need. Information must be understood and monitored. Transparency or openness is in accordance with the spirit of an era that is completely open to the information revolution. This openness covers all aspects of activities related to the public interest, from the decision-making process, the use of public funds, to the evaluation stage (Shihab, 2002).

Fourth, responsiveness. Institutions and processes must try to serve each stakeholder. As a logical consequence of openness, every component involved in the process of developing good governance must be responsive to the wishes or complaints of stakeholders. Efforts to increase responsiveness are primarily aimed at the public sector which has tended to be closed, arrogant and power-oriented. To determine public satisfaction with the services provided by the public sector, periodic surveys are needed to determine the level of customer satisfaction (Akhmouch, 2012).

Fifth, consensus orientation, Good Governance mediates different interests to obtain the best choices for broader interests, both in terms of policies and procedures. State, governmental and social activities are basically political activities, which contain two main things, namely conflict and consensus. In good

governance, decision making or joint problem solving is prioritized based on consensus, which is followed by a willingness to consistently implement the consensus that has been decided together. Consensus for the Indonesian people is actually not new, because our basic value in solving the nation's problems is through deliberation to reach consensus.

Sixth, equality. All citizens, both men and women have the opportunity to improve or maintain their welfare. All have the same rights and obligations as citizens. Also included in this case are minorities who have the same rights as the majority. There is no such thing as being immune to the law, because all must comply before the law.

Seventh, effectiveness and efficiency. Processes and institutions produce according to what has been outlined by using the best available resources. This requires a thorough policy making, monitoring and evaluation process to measure whether the results are in line with the desired expectations.

Eighth, accountability, decision makers in government, private sector, society (civil society) are responsible to the public and stakeholder institutions. This accountability depends on the organization and the nature of the decisions made, for example whether the decisions are for the internal or external interests of the organization (Walter, 2011). Ninth, strategic vision. Leaders and the public must have a broad perspective of good governance and human development, and go far in line with what is needed for this kind of development (Heryanto, 2014).

The State Administration Institute of the Republic of Indonesia (LAN RI) defines governance as the process of exercising state power in the provision of public good and service. (Karianga, 2013).

In 2003 LANRI stated twelve principles of good governance, namely (Sedarmayanti, 2010). First, accountability. Accountability to the public for any activities carried out (Madriasmu, 2004; Wouters & Ryngaert, 2004). The implementation of good governance is a prerequisite for any government to realize people's aspirations and achieve the goals of the State. Thus it is necessary to develop and implement a clear and precise accountability system, so that the implementation and development can run well. According to Hughes (Hughes, 2012). government organizations are made by the public and for the public, therefore it is necessary to be accountable to the public. Government, private sector, and civil society decision-making is responsible for the public, as well as institutional stakeholders. These responsibilities differ depending on the organization and whether the decisions are internal or external (Graham, John & Plumptre, Tim, Amos, 2003).

Second, transparency. Transparency and openness (*Institute for Local Government, Promoting Good Government at The Local Level (Paper—ILG, n.d.; Thoha, 2002)*) are essential for sustainable development. Communities and private sector institutions are engaged in policy development, they are better collaborators and partners of government in service delivery, have a better

ability to control government, and lead to improved development outcomes (U.N.D.P., 2014).

Third, equality. Equality for citizens without discrimination (Moh Mahfud MD, 2014). Equality addresses capacity gaps (political, economic, legal, or cultural) and demands the continuation of progressive development that is oriented towards the public interest, not the interests of groups or individuals. Institutions that guarantee non-discrimination have the potential to reduce crises that are very vulnerable to occurring (UNDP, 2011).

Fourth, the rule of law. If it is related to the bureaucratic apparatus, it means that there is clarity and predictability of the bureaucracy to the private sector; and from a civil society perspective this means that there is a legal framework necessary to guarantee the right of citizens to uphold government accountability (Sedarmayanti, 2010). The rule of law is very important to create a strong rule of law and protect all citizens, regardless of ethnicity, religion, skin color, because all are the same before the law (Fuady, 2009).

Fifth, justice. All citizens of the country have the same opportunity to obtain prosperity and justice (Karianga, 2013). Through the principles of good governance, every citizen has the same opportunity to gain welfare. However, because the abilities of each citizen are different, the public sector must play a role so that welfare and justice can go hand in hand.

Sixth, decentralization. Since declaring national independence, after the second world war, Indonesia has tried to implement centralization and decentralization (Hendra Karianga, 2019). There are restrictions on the power of the State and State organs by applying the principle of vertical distribution of power or horizontal separation of powers. This limitation of power is to avoid abuse of power and to develop a mechanism of checks and balances between the branches of power (Asshiddiqie, 2015; Walker, 1994).

Seventh, togetherness. Efforts to implement good governance are carried out jointly between the State, institutions and citizens. This is done through dialogue on an ongoing basis, mutual trust (Thoah, 2002). This shows that solid teamwork will result in good performance.

Eighth, professionalism. Adequate technical capabilities and skills in carrying out the duties and responsibilities, both administrative and functional in nature, are assigned to them (Sampara, 2015; Zakout et al., 2006). Based on this, it is prohibited to divert the position or responsibility entrusted to him, because this is contrary to the principle of professionalism.

Ninth, quick response. The logical consequence of such openness is that each component is involved in the development process. Good governance needs to be responsive to the wishes and complaints of every stakeholder (Karianga, 2013). The term that is developing today is an official or leader who wants to hear the aspirations of the people.

Tenth, effective and efficient. Management of public resources is done efficiently and effectively (Toha, 2008). This is intended, in order to be able to



compete fairly in the world arena, government activities must prioritize effectiveness and efficiency in every activity. In meeting people's needs, governments must plan and make the best use of the resources they have. The concept of efficiency in the context of good governance also includes sustainable use of natural resources and environmental protection. The pressure for effectiveness and efficiency is primarily aimed at the public sector.

Eleventh, competitive. Efforts to simplify and carry out transparency of the regulatory system and as an effort to improve the quality of administration. Apart from that, it also guarantees optimal conditions for achieving productivity and competition in terms of achieving social and economic growth (Thoha, 2002).

Twelfth, the concern of international institutions according to the concept defined by the United Nations Development Program (UNDP) in its policy document issued in January 1997 is an agreement concerning the regulation of the State created jointly by the government, civil society and the private sector. In order to achieve good governance, it is necessary to build a dialogue between stakeholders in the State, so that all parties feel that they own the regulatory system. Without the agreement that is born from this dialogue, prosperity will not be achieved because political and economic aspirations face obstacles. Concern about the welfare of this community has actually been around for a long time in the Islamic religion and this also continues to be driven by a national institution, LAN RI.

### **Fiqh Formulation of Good Governance**

Jurisprudence of Fiqh in language is understanding (*al-fahmu*), whereas in term it is the knowledge of every shar'i law which is practical in which how to obtain it through the *ijtiha>d* path, such as knowledge of intention in wudu 'is mandatory and the problems of *ijtiha>diyah* another. Jurisprudence according to the meaning of language is understanding. Meanwhile, according to the term is knowledge of religious laws produced by means of *ijtiha>d*. Jurisprudence is an understanding, while terminology is the knowledge of shar'i laws (not rational laws) in the form of practices (not shar'i laws in the form of beliefs such as the nature of qudrah obligatory for God, which is obtained from legal axioms in detail, such as the aqimūshalāta axiom. This is an order where an order indicates an obligation, therefore prayer is obligatory and also prohibits approaching zina in the phrase walā taqrabūzzina. The references are from the Koran, Sunnah, Ijma ', and Qiyas (Solikhudin, 2019).

Jurisprudence of Fiqh in language is understanding, whereas in terms it is knowledge in the form of definite laws which are in harmony with reality which is taken from an axiom where the law is not a science of essence and nature such as Zaid's essence and Zaid's white skin, in the form of shari 'ah, it is not a knowledge of the law of calculation or custom where the science of shari' ah is attributed to the maker of shari 'ah, namely Allah or the Prophet Muhammad, in

the form of knowledge of practice, not knowledge of beliefs such as the obligatory nature of *qudrah*, which is obtained from legal axioms in detail such as the phrase *walā taqrabūzzina* which contains prohibitions. If there is a prohibition then the law is haram. The conclusion is that it approaches adultery with haram law (Solikhudin, 2019).

Good governance is state governance which is related to social, cultural, political, and economic resources which are regulated in accordance with the power exercised in society (Solikhudin, 2019). The meaning of good in good governance contains two meanings. First, values that support the desire/will of the people and values that can increase people's ability to achieve (national) goals of independence, sustainable development and social justice; and second, the functional aspects of effective and efficient governance in carrying out their duties to achieve these goals (Syafri, 2002).

Based on this definition, good governance is oriented towards: first, the ideal orientation of the State which is directed towards national goals; second, a government that functions ideally, namely effectively and efficiently in making efforts to achieve national goals.

The first orientation refers to democratization in state life with constituent elements such as legitimacy (whether the government) is elected and has the trust of the people; accountability (King et al., 2013) securing of human rights; autonomy and devaluation of power, and assurance of civilian control. Meanwhile, the second orientation depends on the extent to which the government has the competence and the political and administrative structures and mechanisms to function effectively and efficiently.

Thus, the fiqh of good governance is knowledge of religious laws and good governance in the life of the nation and state which is extracted by means of *ijtihad* and produced from primary sources of Islamic law. This kind of fiqh emphasizes the aspects of democratization, justice, welfare and the common good. This is certainly in harmony with the teachings of Islam.

Islam has actually formulated the concept of democracy that folds all circles in making decisions. Democracy requires the realization of a strong government marked by a democratic leader election process, therefore the State must have political and social legitimacy through recognition and engagement of citizens with the State and fulfillment of citizens' obligations to the State. This concept of democracy can be found in the Qur'an, surah an-nisa ': 18 and an-nahl: 90.

Islam recognizes and supports sustainable economic development. This is characterized by restrictions on the use of measurable economic resources. This includes the search for state financial resources and a fair allocation of funds. Freedom of investment and guaranteed budget allocation for the general public. The concept of economic development can be seen in the Qur'an, surah al-hujurat: 13.

Islam also upholds a just legal system. Every citizen and member of society must have guarantees of security, exercise of basic rights, protection as individuals and as citizens. Democracy requires the State to guarantee a just legal framework and the realization of a corruption prevention scheme, both politically and administratively. The creation of a just legal framework and a fair legal framework that guarantees equality for all citizens and protection of human rights. The concept of a just legal system is described in the Qur'an surah as-Shura: 38 and Ali Imran: 38. The objective of a democratic political regime, economic development and a just legal system is to realize the general benefit, as stated in the fiqh rule: the leader's policy towards the people must be in accordance with the general good.

### **Implications of the Implementation of Good Governance Fiqh in the Welfare State of Indonesia**

The implication of implementing the Jurisprudence of Good Governance in the Welfare State of Indonesia is the emergence of good governance (mortal). This is because there are professional and ethical state administrators who can carry out their functions and duties efficiently and effectively so that the community feels well served. At the same time, state administrators also do not abuse power (abuse of power).

The provisions of State administrators have been stated in Article 1 number 1 of Law Number 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion and Nepotism, "State Administrators are State Officials who carry out executive, legislative or judicial functions, and other officials whose functions and functions are its main task is related to state administration in accordance with the provisions of the prevailing laws and regulations (Indonesian Law number 28 of 1999).

State administrators have a very important role in the administration of the State to realize the goals of the state as set forth in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, namely protecting the entire Indonesian nation and all Indonesian bloodshed and for advancing public welfare, educating the nation's life and participate in implementing world order based on freedom, eternal peace and social justice (Wulansari, 2014).

In order to achieve the said goals of the country, professional and ethical state administrators are needed in order to carry out their functions and duties efficiently and effectively. In order to create a professional state administrator, every state administrator must fulfill the requirements as a state administrator as stipulated in the statutory regulations, while in order to create an ethical state administrator (Asshiddiqie, 2011), it is necessary to regulate ethics in statutory regulations. The regulation must be general in nature so that it applies to every state administrator.

Ethical arrangements in statutory regulations (Diantha, 2018) must serve as guidelines for state administrators in carrying out their functions and duties as state servants and public servants. The regulated ethics must be imbued with the noble values of the Indonesian nation's culture in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia.

Good ethical arrangements will lead to good governance. Jimly Asshiddiqie explained five main characteristics of good governance, namely: (a) strong and effective; (b) limited and accountable; (c) democratic and participatory; (d) clean and transparent; and (e) the rule of law and the living ethics. Strong and effective is a government that is able to anticipate and solve various challenges and problems with the right policy steps. Limited and accountable are limited governmental powers according to legal provisions in accordance with the principles of constitutionalism and are accountable for policies and their implementation internally to the organization and to the public. Democratic and participatory is a government that absorbs people's aspirations and involves people's participation in policy making, implementation and evaluation, as well as in the preparation of government organizations (Asshiddiqie, 2015).

The rule of law and the living ethics is the principle of the rule of law in which leadership in a country actually lies in the law, not the person (the rule of law, and not of man). The law here is a single system of rules culminating in the constitution. In accordance with the principles of the rule of law and the supremacy of the constitution, our leader is the constitution. Apart from the rule of law, there are also ethics that govern individual behavior related to an organization internally. Ethics regulates human behavior that is not covered by the rule of law. Ethics need to be positivated into positive ethics in the form of code ethics or code of conduct with enforcement mechanisms and instruments.

Good governance is a concept that is in line with the concepts and terminology of democracy, civil society, people's participation, human rights, and sustainable community development. This concept is also linked to public sector reform. The goal of good governance is to provide quality services to the community, transparency, public accountability and creating a managerial management that is free from corruption.

If we look at the reality of governance in Indonesia, it is more concerned with the increase in civil service salaries and welfare, but it can be said not to think optimally about transparency, accountability in public services to the community. In fact, service practices for the community are still slow and unprofessional. One of the complaints that people often hear about dealing with government officials is that apart from being convoluted due to the rigid bureaucracy, the behavior of the officials who are sometimes less friendly (Wibisono & dkk, 2013).

Current state administration is still faced with conditions that are not in accordance with the needs and changes in various fields of life as a society, nation and state. This can be caused by unpreparedness to respond to a wide-

dimensional value transformation and the impact of various complex development problems. Meanwhile, the new order of Indonesian society is faced with global hopes and challenges triggered by advances in science, information, communication, transportation, investment and trade.

Conditions and rapid changes followed by a shift in value need to be addressed wisely through continuous and continuous activity steps in various aspects of development to build public trust in realizing national development goals. Therefore, it is necessary to have a conception of a state administration system that contains values, perceptions, and behavioral references that are capable of realizing human rights as mandated by the 1945 Constitution of the Republic of Indonesia so that society can obtain state administration in accordance with the hopes and ideals of the national goals.

Azyumardi Azra stated that one of the important fruits of Reformasi was the availability of space for freedom which tended to be increasingly seemingly endless. Every voice, desire, and interest has equal rights to be written by various groups. However, the voice will become chaotic, desires will become chaotic, even interests will become riotous, when efforts to make it happen are carried out without rules. This is what we have witnessed recently in connection with the actualization of the interests of the political elite and the strengthening of people's aspirations which tend to run out of control (Azra, 2009).

Politics becomes the entrance to the desire to reach power by justifying all means. As a result, democracy has deviated because actions and actions in the name of democracy often lead to anarchy. These are all estuaries of political behavior that flow beyond the mechanisms and systems inscribed in the constitution and law and order. Therefore, carrying out practical politics must be juxtaposed with the application of good governance fiqh to avoid the desire to gain power by justifying any means.

If the implementation of good governance fiqh is carried out in a sustainable manner, there will be legal certainty (*qat'iyah*) such as justice, accountability, and so on. Legal urgency (*darūrah*) is also realized, such as professionalism, transparency, and so on. The universal dimension (*kulliyah*) (Ghazālī, 2010; Zuhailī & Wahbah, 1996) also appears, such as the achievement of public welfare and the public interest between the government, the private sector and civil society.

## Conclusion

This study concludes that although the main sources of Islamic law and various fiqh literatures do not contain specific formulations regarding good governance, the values already exist and are often included in various themes. These values include deliberation, democratization, justice, welfare, and the common good. These principles can be formulated into good governance fiqh adapted to the conditions of Indonesia as a welfare state by considering aspects

of legal certainty, legal urgency and legal universality. The aspect of legal certainty can be reduced to accountability and justice. The aspect of legal urgency can be reduced to transparency and professionalism. The universality aspect of law can be described as guaranteeing the welfare and common good.

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