

RECONSTRUCTION OF REGULATIONS FOR THE ESTABLISHMENT AND IMPLEMENTATION OF ISLAMIC BOARDING SCHOOLS BASED ON JUSTICE VALUES

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ABSTRACT

Islamic boarding schools are genuine Indonesia. National education should be oriented towards Islamic boarding schools by cultivating open and tolerant human relations. Whereas the contents of Article 3 of the National Education System Law are developing abilities and forming character and Islamic boarding schools have been implementing them for a long time. Islamic boarding school is an institution that forms independence, responsibility and forms character education which is the basic capital of living in society as a whole. This study aims to analyze and find a reconstruction of the regulations for the establishment and implementation of Islamic boarding schools based on the value of justice. Method The approach used in this research is social legal research and a comparative approach. The analysis used in this study is descriptive qualitative. The results of the study found that the regulations for the establishment and implementation of Islamic boarding schools in Law Number 18 of 2019 are not yet fair, the regulations for the establishment and implementation of Islamic boarding schools are not based on the value of justice because the articles related to the establishment and implementation emphasize the value of procedural justice, and ignore the value of Pancasila justice as a value that underlies various aspects of development in Indonesia. justice-based reconstruction by providing new norms in Articles 5 to Article 13 of Law Number 18 of 2019.

Keywords: Reconstruction, Regulation, Establishment, Administration, Islamic Boarding School, Justice

INTRODUCTION

Islamic boarding schools are genuine Indonesia. National education should be oriented towards Islamic boarding schools by cultivating open and tolerant human relations. Whereas the contents of Article 3 of the National Education System Law are developing abilities and forming character and Islamic boarding schools have been implementing them for a long time. Islamic boarding school is an institution that forms independence, responsibility and forms character education which is the basic capital of living in society as a whole.

Historically, Islamic boarding schools are the oldest and oldest educational institutions in Indonesia. The existence of Islamic boarding school has been tested by the times, so that until now it still survives with various kinds of dynamics. The most prominent feature that distinguishes Islamic boarding schools from other educational institutions is the twenty-four hour education system, by conditioning the students in one dormitory location which is divided into booths or rooms making it easier to apply a total education system. Learning at Islamic boarding schools contributes a lot to educating the nation's life because through education at Islamic boarding schools the students as sons and daughters of the nation are equipped not only with knowledge but also shape the attitudes and character of the students and various skills needed for community service.

Indeed historical data about when the Islamic boarding school was founded and who and where in detail is difficult to trace. Therefore it is not surprising that until now it is still being debated, so data and information about Islamic boarding school cannot be obtained with certainty. In 1994-1995, the Indonesian Ministry of Religion Islamic Boarding School Sub-Directorate attempted to collect data on the oldest Islamic boarding schools in Indonesia.¹

Islamic boarding school with its uniqueness, character and elements, including the debate over the origin of its name, is an original Islamic educational institution that was created from Indonesia², although its existence cannot be separated from the history of the arrival of Islam in Indonesia. Another problem that arises is the lack of data and references related to Islamic boarding school, whether in the form of manuscripts or other historical relics that explains the early history of the existence of Islamic boarding school or something else. This is what then gives rise to statements and explanations about the historicization of Islamic boarding schools which tend to be prejudiced and very diverse. However, it is precisely this short side that lies the difference or the determining factor to continue to be used as material for study and research.

The emergence of debates from various circles of historians, of course, does not diminish the value and substance that the existence of Islamic boarding schools is the creation of the history of the nation's children after experiencing a process of struggle and cultural acculturation between Islamic culture and pre-Islamic culture. Islamic boarding schools are an Islamic education system that has similarities with the Hindu-Buddhist education system. Islamic boarding schools are equated with mandalas and dormitories in the treasury of pre-Islamic educational institutions.³

¹ From the results of data collection carried out by the Islamic Boarding School Sub-Directorate of the Ministry of Religion of the Republic of Indonesia, information was obtained that the oldest Islamic boarding school was founded in 1062 under the name of the Jan Tampes II Islamic boarding school in Pamekasan, Madura. For more details, see Ahmad Syahid. (ed), Islamic Boarding Schools and Community Economic Development, Ministry of Religion and INCIS, 2002, page 22

² Zamakhsyari Dhofier, 1990, Islamic Boarding School Traditions: A Study of Kiai's Views of Life, Jakarta: LP3ES, page 41

³ In this regard, Nurcholish Madjid in Amin Haedari once emphasized that Islamic boarding schools are artifacts of Indonesian civilization which were built as traditional, unique and original religious educational institutions. As an artifact of civilization, the existence of Islamic boarding schools is certain to have a strong connection with the history and culture that developed at its inception. If it is true that Islamic boarding schools are in line with the start of the Islamic missionary mission in the archipelago, this means that the existence of Islamic boarding schools is very much influenced by the culture that developed previously, none other than Hindu-Buddhist culture. Nurcholish emphasized that Islamic boarding

Meanwhile, in another opinion, it was stated that the early existence of Islamic boarding schools in Indonesia, especially Java, could not be ruled out by the role of Walisongo. The issue of Walisongo's initiation regarding the first introduction and establishment of the Islamic boarding school was even more pointedly debated, especially regarding the figure who first founded or created the Islamic boarding school education model.

In its development, Islamic boarding school cannot be separated from the spread and broadcast of Islam in Indonesia. That is why in studying the development of Islamic boarding schools, they are grouped into several phases, namely: 1) The phase of the entry of Islam into Indonesia; 2) Dutch colonial phase; 3) Japanese colonial phase; and 4) The independent Indonesia phase.

In order to achieve professional and juridical management of Islamic boarding schools, in 2019, the government issued Law Number 18 of 2019 concerning Islamic Boarding Schools, which was then followed by Regulation of the Minister of Religion Number 31 of 2020 concerning the Establishment and Implementation of Islamic Boarding Schools. The purpose of issuing Law Number 18 of 2019 concerning Islamic Boarding Schools is as stated in Article 3 namely to form superior individuals in various fields who understand and practice the values of their religious teachings and/or become experts in religious knowledge who are faithful, pious, have noble character, knowledgeable, independent, helpful, balanced, and moderate; forming a moderate understanding of religion and diversity and love for the motherland as well as forming behavior that encourages the creation of religious harmony; and improve the quality of life of people who are empowered to meet the educational needs of citizens and social welfare of the community.⁴

As for statistical data released by the Directorate of Diniyah Education and Islamic Boarding Schools of the Ministry of Religion of the Republic of Indonesia in the 2020/2021 school year there were 30,494 Islamic boarding schools spread throughout Indonesia with a total of 4,370,000 active students. Of the active students (4,370,000), 3,850,000 students live in Islamic boarding schools, and the remaining 870,000 students do not live in Islamic boarding schools for various reasons.⁵

Meanwhile, based on preliminary studies that promovendus conducted randomly, it appears that Law Number 18 of 2019 concerning Islamic Boarding Schools is very onerous and difficult to implement, especially in remote rural areas because the requirements for its establishment and implementation are onerous and difficult to obtain. This certainly raises problems, for example there are traditional Islamic boarding school which are already in operation but cannot register at the Ministry of Religion, in addition there are also Muslim communities who have discouraged building Islamic boarding schools due to the difficulty and difficulty of fulfilling the requirements for the establishment and operation of Islamic boarding schools.

RESEARCH METHOD

The research method⁶ in this is social legal research, which can also be called applied social legal research⁷, which is legal research that examines the implementation or implementation of positive legal provisions and contracts in fact in every particular legal event that occurs in society in order to achieve the goal which has been specified. Juridical and⁸ empirical legal research⁹ on law will produce theories about the existence and function of law in society, along with the changes that occur in processes of social change.¹⁰ Primary data is data that is directly collected by the researcher from the source of the question.¹¹ Data obtained directly from the community, subjects studied at institutions, or community groups, direct actors who can provide information to researchers who are known as respondents and informants. Secondary data¹² is in the form of primary, secondary and tertiary legal materials.¹³ The analytical method used in this study uses a descriptive qualitative analysis method.

schools have a historical relationship with pre-Islamic institutions that have existed since Hindu-Buddhist rule, so all that remains is to continue them through the Islamization process with all forms of adjustments and changes. For more details, see Amin Haedari et al., *The Future of Islamic Boarding Schools in the Challenges of Global Modernity and Complexity*, Jakarta: IRD Press, 2004, page 2-3. Meanwhile, Bruinessen expressed the opinion that Islamic boarding schools have great meaning and are an important part of the historical journey of the Indonesian nation, especially Java. Islamic boarding schools are original Indonesian educational institutions with deep roots from pre-Islamic times, namely educational institutions in the form of Buddhist dormitories-mandala or asyrama - which were transferred to become Islamic educational institutions. See at Martin van Bruinessen, *Kitab Kuning: Pesantren dan Tarekat dan Tradisi-tradisi Islam di Indonesia*, (Bandung: Mizan, 1995), h. 24. Sementara itu, menurut Agus Sunyoto Pesantren sebagai wujud

⁴ Article 3 Law Number 18 Year 2019 concerning Islamic Boarding Schools

⁵ <https://ditpd.pontren.kemenag.go.id/article/pesantren--dulu--kini--dan--menhadap> (2 May 2023)

⁶ Anis Mashdurohatur, Ariy Khaerudin, Teguh Prasetyo, *Intellectual Property Protection of Indigenous Peoples in Indonesia: Quo Vadis?*, *Sociological Jurisprudence Journal*, Volume. 43. Issue. 1.2020.pp.1-7.

⁷ Abdulkadir Muhammad, *Law and Legal Research*, (Bandung: Citra Aditya Bakti, 2004), p. 134.

⁸ Non-doctrinal legal research (empirical legal research), namely research that will not only discuss law (laws) as prescriptions recorded as dead letters of law, but also as socio-political forces structured within the enforcement organization, following are the processes in the socio-cultural context. These are studies with research on text in context. See Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana, 2014), p. 47.

⁹ Empirical legal research attempts to see law in a real sense and examine how society's legal behavior behaves and how law works in society. See Supri Yono et al, *Reconstruction of Separate-Creditor Positions in the Process Declaring Bankruptcy in Indonesia Based on Justice Value*, *Scholars International Journal of Law, Crime and Justice*, Nov, 2020; 3(11):pp. 334-341

¹⁰ Soetandjo Wignjosobroto, *Social/Non-doctrinal Research Methods for Studying Law in its Concept as a Social Reality*, *Epsitema Digest*, Volume 3/2013, p. 13..

¹¹ Suryo Subroto, *School Education Management*, (Jakarta: PN Rineka Cipta. 2003), p. 39.

¹² Secondary data is data obtained from written materials. See Soerjono Soekanto, *Introduction to Legal Research*, (Jakarta: University of Indonesia, 1986), p. 11. See too Anis Mashdurohatur, & Gunarto, *Trademark Legal Protection against SMEs in Enhancing Global Competitiveness Based on the values of Pancasila*, 2nd International Conference on Indonesian Legal Studies (ICILS 2019), *Advances in Social Science, Education and Humanities Research*, Atlantis Press. volume 363,2019. pp 93-99. See too Yeltriana, Anis Mashdurohatur, Jelly Leviza, *Ideal Reconstruction of Protection for Layoff Victim At the Industrial Relations Court Based on Justice*, *International Journal of Law, Government and Communication*, Volume 4. Issue. 14. 2019. pp.32-49. See too Anis Mashdurohatur, *Hukum Perlindungan Konsumen (Kajian Teori dan Praktik)*, UNISSULA Press, 2019. 1-137 see too Anis Mashdurohatur, *Transfer of Intellectual Property Rights (Studies on the Division of Joint Property (Gono-gini) Post-Divorce)*, *International Conference on Law Reform (INCLAR 2019)*, Atlantis Press 2019.pp.70-75.

¹³ Suratman and H. Philips Dillah, *Legal Research Methods*, (Bandung: Alfabeta, 2013), p. 66.

RESEARCH RESULTS AND DISCUSSION

1. Regulations on Establishment and Implementation of Islamic Boarding Schools in Several Islamic Countries

In Malaysia, Islamic religious education is a very important education for every citizen. This is because Islam is able to provide knowledge of the world and the hereafter. So it is not surprising that many parents in Malaysia today choose to enroll their children in Islamic religious education institutions such as Islamic boarding schools.

As one of the countries where the majority of people are Muslim, Malaysia has quality Islamic boarding schools. Therefore, many students who come from outside Malaysia choose to pursue Islamic religious education in this country.

The historical history of the establishment of Islamic boarding schools in Malaysia is actually no different from the existence of the largest Islamic boarding school in Indonesia. This is because culturally, linguistically, and also the number of adherents of Islam in these two countries is the same.

The aim of Islamic Education is to form a Muslim personality that develops spiritual, physical, emotional, intellectual and social potential. This goal does not only produce good human beings but also includes the formation of human beings who are religious and worldly. Furthermore, education must be based on Islamic teaching which aims to produce quality human beings who can meet the needs of the world and life in the hereafter.

As is the case in Indonesia, Islamic education in Malaysia cannot be ascertained exactly when it started, but this problem can be seen in the historical background of the arrival of Islam in this country and the educational activities that took place at that time. The arrival of Islam and the process of Islamization took place through trade routes on the role of Muslim traders and missionaries from Arab and Gujarat, local preachers and Islamic rulers. Malaysia became the main base for the spread of Islam to the East Indian Archipelago. Even though Malaysia consists of various mixed ethnicities and ethnic groups, Malaysia has been able to make Islam the official religion and carry out Islamic education properly.¹⁴

Since independence in 1957, Islamic religious knowledge has been made into Malaysia's national education curriculum and is given 120 minutes per week. However, the government did not put pressure on or pass Islamic religious studies exams, so this subject did not receive serious attention from students at that time. In 1975, various important steps to strengthen Islamic education were taken by the Ministry of Education. In 1982, Prime Minister Mahathir Muhammad decided to carry out a policy of inculcating Islamic values in the government. In 1983, the Ministry of Education stated that moral values would be taught to non-Muslim students, while religious knowledge would be taught to Muslim students. Types and levels of Islamic education in Malaysia consist of Islamic boarding schools (Islamic boarding schools), madrasah schools, and other Islamic religious schools.

As for other policies towards Islamic education in Malaysia, among others:

1. Since independence in 1957, Islamic religious knowledge has been made into Malaysia's national education curriculum.
2. In 1975, the Ministry of Education took several important steps to strengthen Islamic education.
3. In 1982, Prime Minister Mahathir Muhammad decided to implement a policy of inculcating Islamic values in the government.
4. In 1983, the Ministry of Education stated that moral values would be taught to non-Muslim students, while religious knowledge would be taught to Muslim students.¹⁵

Sources of legislation in Malaysia are divided into two sources, namely written laws and unwritten laws. The source of written law is the main source of law in Malaysia. It is said to be a written source because it is stated clearly and the formulation process goes through the Parliamentary Ranks or the State Invitational Council.¹⁶

Brunei Darussalam as an Islamic country always follows these developments in order to achieve its goals. The religion of Islam in Brunei Darussalam is estimated to have been introduced around 977 via the East-Southeast Asia route by traders from China. About 500 years later, Islam only became the official state religion in Brunei Darussalam since his reign was led by Raja Awang Alak Betatar. Raja Awang Alak Betatar converted to Islam and changed his name to Muhammad Shah around 1406 AD.

In general, the education system of Brunei Darussalam has similarities and differences with Indonesia. The similarity lies in the junior secondary education system. The difference is in the education system for the upper secondary level and in the use of English in the teaching and learning process.¹⁷ The education system in Brunei Darussalam has an A7-3-2-2 pattern which represents the length of study period for each level of education, such as 7 years of elementary level, 3 years of junior high level, 2 years of senior high level, and 2 years of pre-university.¹⁸

During the time of Sultan Hassan (the 9th sultan), the Muslim community of Brunei had religious government institutions. Religion at that time was considered to have an important role in guiding the country of Brunei towards prosperity. During Sultan Hassan's reign, Islamic law, namely the Qanun Law (Institute of Tahfiz al-Qur'an) which consisted of 46 articles and 6 sections, was strengthened as the country's constitution.

In addition, Sultan Hassan has also made efforts to improve the government, among others by forming an Islamic Religious Council on the basis of the 1955 Religion Law and the Kapada Court. This assembly is tasked with providing and advising the sultan on matters of state ideology religion. For this reason, a Department of Religious Matters was formed whose job was to disseminate Islamic understanding, both to the government and its officials and to the wider community. Another step taken by the sultan was to make Islam really function as the way of life of the people of Brunei and the only one.

Formal education in Brunei began in 1912, beginning with the opening of a Malay school in Bandar Seri Begawan. In the 1950s, Sultan Begawan also carried out educational reforms. Several policies were born, including: 1) in 1954 formed the

¹⁴Andi Aslindah, Islamic Education in Malaysia: Types, Levels, Policies and Goals of Education, Journal: Lentera Pendidikan, Vol. 18, No. 1 Juni 2015.

¹⁵Adi Radih, Dynamics of Islamic Development in Southeast Asia. Ar-Sembilan, <http://arsembilan.blogspot.com/2013/10/makalah-bisnis-perkembangan.html> (1 March 2023)..

¹⁶ Sharifah Hana Abd Rahman et al., 2015, Legal System in Malaysia. Selangor: Islamic Academy Legal Department KUIS, page.73..

¹⁷ Binti Maunah, 2011. Comparison of Islamic Education Yogyakarta: Teras, page 191.

¹⁸ Ibid, page 189.

MMS (Syari'ah Deliberation Council), 2) formed the Department of Religion, Customs and Virtue, and 3) Total Islamic Religious Education. Furthermore, in 1956 new classes of Islamic religious education were established at 7 madrasas in Brunei.

Brunei's Islamic education system, including education in Islamic boarding schools, is organized by the Ministry of Education, Ministry of Religious Affairs, Department of Curriculum Development, grade levels, objectives and student ability levels. For Arab schools and special religious schools, the curriculum is more detailed than for public schools. The teaching of the Islamic Religion is made into a special subject which is an in-depth study of a law and the intentions of teaching the Islamic Religion are understood so that they can practice the teaching as a way of life and become a guide when studying other sciences, especially science.

The implementation of the Islamic boarding school (ma'had) in Brunei was initially carried out privately by the ulama through the institutions they owned which were informal or unofficial.¹⁹ Then it was held through the Ministry of Education and the Ministry of Religious Affairs, Department of Curriculum Development. The curriculum is supported by the same as the Tahfiz al-Qur'an Institute (ITQ): Oral Subjects: the Qur'an, and Arabic; Compulsory Subjects: Arabic, Malay, Islamic Fiqh, Interpretation/Hadith; Elective Subjects: History, Natural Sciences, Hisab, and others. Given the importance of teaching religion for the strength of the state, Brunei combines science education with religious education. Islamic teachings were strengthened in religious and Arabic schools such as ma'had al-Qur'an which were directly under the kingdom and received promising financial facilities and institutional infrastructure from the palace.

Egypt is an Islamic country that is very popular in the field of culture and science since the reign of the Fathimiyah dynasty. Egypt is also a country that gave birth to many influential figures in the Islamic world. So that this country becomes the talk of the world community. Egypt is a very dynamic country in the struggle for knowledge. So that many students from various parts of the world are very interested in the academic atmosphere. It is known that since the time of the Fathimiyah dynasty, Egypt has become the center of Middle Eastern civilization apart from Baghdad and Syria.²⁰

The term Egypt comes from someone named Mishr Ibn Mihsrayim Ibn Ham Ibn Nuh. Egypt had a good relationship with the Prophet during his lifetime. The proof is that the Prophet's own wife, Maria Al-Qibthiyah came from Egypt, and the Prophet had a child from this woman named Ibrahim.

Geographically, Egypt is in the North African region, which is a very important area for the spread of Islam to mainland Europe. This area became a gateway for Islam to enter the area, which had been under Christian rule for centuries, and had also become a "stronghold" of Islam in this area.

Egypt was conquered under the guidance of Amru bin Ash ra. The conquest of Alexandria was a sign that all of Egypt was in the hands of the Muslims. In conquest, the Muslims had no other choice, except for the conquest of Egypt after the conquest of Syria and Palestine. This was done because of fears that the Romans who ruled Egypt at that time would undermine the stability of the Muslim region.

Egypt fell into Muslim hands, Amru bin Ash offered its inhabitants three choices: accept Islam, pay Jizya, or go to war. Of these three choices, they prefer to go to war. In the end, they lost and had to pay the Jizya. Later, Islam won more and more victories in Egypt after conquering other cities in Egypt.

In the early days of the development of Islam, Islamic education had not been implemented officially. Sustainability of the implementation of Islamic education is carried out in general and informal in nature in an effort to spread Islamic da'wah as well as planting and strengthening the foundations of Islamic faith and worship. This implies that the process of Islamic education only takes place at the home of a friend known as Dar al-Arqam. After that the process of Islamic education is carried out in mosques. The educational process in these two locations took place in halaqahs, which were called "learning circles" which later developed into madrasas.

Before the 19th century, the traditional education system was governed by religious leaders and leaders in Egypt. After the 1919 Revolution and the independence of Egypt in 1922, a new chapter of Egyptian Islamic education began. Education is administered or controlled by the Ministry of Education, more broadly by provincial councils. Meanwhile, educational institutions for children are organized in the villages which focus on reading and writing Arabic, learning mathematics, and learning the verses of Allah's words in the al-kitab (Injil) and Allah's words in the Koran. This institution is known as Kuttub. Goldziher translates the word kuttub with maktab with elementary school which aims to provide first level education to students.

Regulations regarding the education system, the government of Egypt are monitored and evaluated by the Ministry of Education. The education system that prevailed in the Egyptian government was ultimately diverse. The secular education system is in the form of education for the public while the Islamic education system is managed by al-Azhar University, namely private education coupled with the presence of immigrants from foreign countries to study in Egypt.

With the establishment of primary and secondary schools, the need for qualified teachers became imperative, so a training center was opened to educate teachers named Dar-Al-Ulum. This institute is busy training teachers of physics, geometry, geography, history, and khat (beautiful writing). In addition, teachers need to be trained in fields of study taught at al-Azhar, such as the Koran, interpreters, hadith, fiqh, and Arabic. Dar al-Ulum seeks to link the field of religious studies with the general research field.

The consistency of the Egyptian government can also be seen from its seriousness in organizing higher education both in the university and non-university fields. Higher education consists of general education and al-Azhar education. The Egyptian government's non-university higher education is consistently provided in faculties and institutes. Education is designed to prepare students to work as innovators in their respective countries and improve the quality of Islamic knowledge.

From the three Islamic countries, as promovendus mentioned above, it appears that the establishment and implementation of Islamic boarding schools have similarities with the establishment and implementation of Islamic boarding schools in Indonesia, which are organized by the Ministry of Religion. Except in Malaysia, the establishment and operation of privately owned Islamic boarding schools is based on the same law as the law on religious education in the Ministry of Religion. Meanwhile, in Indonesia

¹⁹ Suddin Bani, Development of Islamic Education in Brunei Darussalam, Lentera Pendidikan, Vol. 11, no. 2, Desember 2008, page 278.

²⁰ Harun Nasution Islam Viewed from Various Aspects, Jilid II, Jakarta: Bulan Bintang, Jurnal Studia Didaktika, Vol. 10 No. 1 Year 2016.

the establishment and implementation of Islamic boarding schools organized by the private sector is based on Islamic boarding schools laws. Meanwhile, religious education is based on the religious education law at the Ministry of Religion.

2. Implementation of Regulations on Establishment and Implementation of Islamic Boarding Schools

In view of the legal structure, there are several weaknesses in the implementation of Islamic boarding schools based on Article 5 of the Islamic Boarding School Law, namely:

- 1) The fuzzy definition of Islamic boarding school: Article 5 of the Islamic Boarding School Law does not provide a clear definition of Islamic boarding school. This can lead to legal uncertainty in the meaning of Islamic boarding school and allows for different interpretations.
- 2) Potential overlap with other regulations: Article 5 of the Islamic Boarding School Law does not explicitly state the relationship between existing education regulations and Islamic boarding schools. Therefore, there is potential for overlapping with other regulations in the regulation of the establishment of Islamic boarding schools.
- 3) Potential conflicts between the government and the community: Article 5 of the Islamic Boarding Schools Law authorizes the government to issue permits for the establishment of Islamic boarding schools, but this can lead to conflict with communities who are dissatisfied with the government's decision-making.
- 4) Land ownership requirements are not regulated: Article 5 of the Islamic Boarding School Law does not regulate land ownership requirements that must be owned by Islamic boarding schools. This can cause problems in the management of Islamic boarding school land and also allows for land disputes.
- 5) Non-regulation of government's obligations in funding Islamic boarding schools: Article 5 of the Islamic Boarding School Law does not regulate government obligations in providing support and funding to Islamic boarding schools. This can cause difficulties for Islamic boarding school in obtaining sufficient and sustainable funding.

In terms of legal substance, Law Number 18 of 2019 concerning Islamic Boarding Schools provides a strong legal basis for the development of Islamic boarding schools in Indonesia, as well as providing guarantees and legal certainty for administrators and educators at Islamic boarding schools. This law also recognizes the important role of Islamic boarding schools in shaping the character and personality of the younger generation of Indonesia who have good morals and love for the Unitary Republic of Indonesia.

Legal substance is "The substance is composed of substantive rules and also about how institutions should behave".²¹ This means that the substance of law consists of substantive rules and also how institutions should behave. Thus, namely the entire legal rules, legal norms, and legal principles, both written and unwritten, including court decisions.²² According to Friedman (Lawrence M. Friedman, Op.cit): "Another aspect of the legal system is its substance. By this is meant the actual rules, norms, and behavioral patterns of people inside the system...the stress here is on living law, not just rules in law books."

Another aspect of the legal system is its substance. What is meant by substance are rules, norms, and real human behavior patterns that are in that system. So the legal substance concerns the applicable laws and regulations which have binding power and become guidelines for law enforcement officials.

Judging from its substance, the legal system is directed at understanding the provisions governing human behavior, namely regulations, norms and behavior patterns of people in a system. Thus, the legal substance essentially includes all legal regulations, both written and unwritten, such as court decisions that can become new regulations or new laws, material law (substantive law), formal law, customary law. In other words, substance also concerns living law, and not just the rules in the law (law in books).

In view of the legal substance, there are several weaknesses in the implementation of the establishment of Islamic boarding schools based on Article 5 of the Islamic Boarding School Law, namely:

- 1) Vague definition of Islamic boarding school: Article 5 of the Islamic Boarding School Law does not provide a clear definition of Islamic boarding school. A vague definition can lead to different views and interpretations in the implementation of the rules for establishing a Islamic boarding school.
- 2) Not regulated in detail regarding the requirements and procedures for establishing Islamic boarding schools: Article 5 of the Islamic Boarding School Law does not provide detailed provisions regarding the requirements and procedures for establishing Islamic boarding schools, such as administrative requirements, administrator requirements, and educator requirements. This ambiguity can lead to difficulties for prospective Islamic boarding school founders in understanding and following the procedures for establishing a Islamic boarding school.
- 3) Not regulated in detail regarding the examination of the establishment of Islamic boarding schools: Article 5 of the Islamic Boarding School Law does not provide detailed provisions regarding the examination of the establishment of Islamic boarding schools that have been proposed. This can lead to problems in examining the establishment of Islamic boarding school, especially in terms of assessing the quality and safety of Islamic boarding school.
- 4) Not regulated in detail regarding the supervision of Islamic boarding schools: Article 5 of the Islamic Boarding School Law does not regulate in detail regarding the supervision of Islamic boarding schools. This can lead to problems in the supervision of Islamic boarding school activities and their management which can have an impact on the safety and quality of the Islamic boarding school

Administrative requirements that are quite strict can limit the freedom of Islamic boarding school to develop and innovate in education. In addition, some Islamic boarding school that existed before this law was enacted may find it difficult to comply with the administrative requirements that have been set.

The following are some of the weaknesses in establishing Islamic boarding schools according to Article 5 of Law Number 18 of 2019 Concerning Islamic Boarding Schools:

²¹ Lawrence M. Friedman., 1984. *American Law: An Introduction*. New York: W.W. Norton and Co., page14.

²²Achmad Ali, 2009, *Revealing Legal Theory and Judicial Prudence Including Interpretation of Laws (Legisprudence)*, Jakarta: Kencana, page 204.

- 1) There is no supervision from the government: Article 5 stipulates that the establishment of a Islamic boarding school can be carried out by individuals, community groups or institutions. This has resulted in many Islamic boarding schools being established without any supervision from the government, which can lead to problems such as a lack of education standards, security and safety, and protection of students' rights.
- 2) Lack of clear national standards: Article 5 also does not mention clear national standards regarding the establishment and management of Islamic boarding schools. This causes differences in standards and quality between one Islamic boarding school and another.
- 3) Lack of transparency in financial management: Article 5 also does not explicitly regulate the transparency of Islamic boarding school financial management. This can lead to misappropriation or corruption in the management of Islamic boarding school funds.
- 4) Lack of preparedness of human resources: Article 5 does not stipulate requirements or standards for teaching staff and Islamic boarding school managers. This causes a lack of readiness of human resources in managing and providing quality education in Islamic boarding schools.
- 5) There is no cooperation with formal educational institutions: Article 5 also does not encourage cooperation between Islamic boarding school and formal educational institutions. This can cause a break in the educational process for Islamic boarding school students who wish to continue their formal education at a higher level.

However, the implementation of the establishment of Islamic boarding schools in Article 5 has several weaknesses in terms of legal culture, including:

- 1) Administrative Constraints and Costs of Establishment

The implementation of the establishment of a Islamic boarding school in Article 5 requires several administrative requirements such as a permit from the Minister of Religion and permits from the local government. This can be time-consuming and costly, especially for Islamic boarding school that are just about to be established and do not yet have sufficient resources.

- 2) Educational Quality Assessment

Article 5 also stipulates that Islamic boarding school must provide quality education, but it is unclear how the assessment of the quality of education is carried out. This can lead to differences in assessment between the government and Islamic boarding school, which can complicate the licensing process.

- 3) There is no guarantee of the independence of Islamic boarding schools

Although Article 5 provides freedom for Islamic boarding school to develop curricula and teaching methods, Islamic boarding school still depend on permits from the government and policies set by the government. This can reduce the independence of the Islamic boarding school in making decisions related to the development of the Islamic boarding school.

- 4) There is No Protection of Islamic Boarding School Rights

Article 5 does not provide protection for Islamic boarding school rights, such as the right to choose a curriculum and teaching methods that suit the needs of the Islamic boarding school, or the right to maintain the identity and values of the Islamic boarding school. This can lead to different views between Islamic boarding school and the government, which can hinder the development of Islamic boarding school.

- 5) The Potential for Discrimination Against Non-Muslim Islamic Boarding Schools

Article 5 does not provide certainty for non-Muslim Islamic boarding school, so there is a potential for discrimination against non-Muslim Islamic boarding school in making government decisions regarding permits and development of Islamic boarding school.

Legal culture can change at any time as a result of growing legal awareness. This change is embedded in the fact that certain values or attitudes towards law are no longer appropriate for society. This occurs when a society develops awareness with regard to individual rights and democracy and abandons old notions such as status and the patriarchal system. This was pioneered by a small class of legal elites who applied an internal legal culture. Conversely, when the legal culture changes, society will be more open to changes in legal institutions and the law itself. In situations like these, foreign laws can easily be adapted and implemented.

3. Reconstruction of Regulations for the Establishment and Implementation of Islamic Boarding Schools Based on the Value of Justice

Justice in society is a fundamental norm in our daily lives. People will be greatly affected by actions that they perceive as fair or unfair.²³ Fair and justice is the recognition and treatment of a balance between rights and obligations. If there is recognition and equal treatment of rights and obligations, automatically if we recognize the "right to life", then on the contrary we must defend the right to life by working hard, and the hard work that is done does not cause harm to other people, because other people also have the same rights (right to life) as well as the rights that exist in individuals.²⁴ Justice can only be understood if it is positioned as a condition that is to be realized by law.

The concepts of justice in society are related to government policies, in this case for example in the establishment of Islamic boarding schools. In addition, justice is often associated with procedures. Procedure is a mechanism for determining a decision, which becomes a guideline for determining whether a policy creates injustice or not.²⁵

According to Kahar Kahar Masyhur "fair" is giving the rights of every person who is entitled in full without more or less between those who are entitled in the same circumstances.²⁶

²³ Van den Bos, K. Van Prooijen, J.W & Wilke, H.A.M., 2004. Group Belongingness and Procedural Justice : Social Inclusion and Exclusion by Peer Affect the Psychology of Voice. *Journal of Personality and Social Psychology*. Vol 87 (1) page 66 –79.

²⁴ Suhrawardi K. Lunis, 2000, *Legal Profession Ethics*, Jakarta: Sinar Grafika, Cetakan ke-2, page 50.

²⁵ <https://media.neliti.com/media/publications/113141-ID-keadilan-prosedural-dan-keadilan-distrib.pdf>. Access March 2, 2023..

²⁶ Kahar Masyhur, 1985, *Building Morals and Akhlak*, Jakarta: Kalam Mulia, page 71.

Efforts to realize justice in the law is a dynamic process that takes a lot of time. These efforts are often dominated by forces fighting within the general framework of the political order to actualize it.²⁷ If so, what is the view of justice according to generally accepted rules or regulations governing human relations in society or positive law in Indonesia.²⁸

The view of justice in the national law of the Indonesian nation is focused on the basis of the state, namely Pancasila, of which the fifth precept reads: "Social justice for all Indonesian people". Such a conception, when connected with the second precept of Pancasila as the source of national law for the Indonesian nation, in essence instructs us to always carry out harmonious relations between humans individually with other groups of individuals so as to create a just and civilized relationship. Just and civilized relations can be likened to light and fire, if the fire is big, the light will be bright: so if the civilization is high, then justice will be steady.²⁹

Furthermore, if it is connected with "social justice", then justice must be related to social relations. Social justice can be interpreted as:³⁰

- 1) Returning lost rights to those who are entitled.
- 2) Eradicate persecution, fear and rape and entrepreneurs.
- 3) Realizing equality against the law between every individual, businessmen and luxury people who get it unfairly.

This means that justice here is closely related to the concept of social justice. Social justice concerns the interests of society, naturally individuals with social justice must set aside their individual freedom for the benefit of other individuals.

National law regulates justice for all parties, therefore justice in the perspective of national law is justice that harmonizes or harmonizes general justices among some of the individual justices. In this case, justice focuses more on the balance between the individual rights of the community and the general obligations that exist within the legal community.

According to Islam, as stated by Murtadha Mutahhari, that the concept of justice is known in four ways; First, fair means balance in the sense that a society that wants to survive and be established, then that society must be in a state of balance, where everything in it must exist at its proper level and not at the same level. Social balance requires us to look at the balance of needs with a relative view through determining the relevant balance by applying the proper potential to that balance.³¹

Procedures are always related to requirements. Requirements are conditions such as documents or goods/other things that must be fulfilled in managing a type of service, both technical and administrative requirements. Procedural justice refers to the fairness received from the procedure used to make decisions, as well as refers to the formal level of the decision-making process associated with results.³²

There are six procedural rules that affect the judgment of fairness. The six rules apply to two models of the justice assessment process, namely the instrumental process and the relational process. The six rules are:³³

1. Consistency; procedures must be maintained consistently from time to time and apply to each member.
2. Minimization of bias; a procedure should not favor the interests of either party.
3. Accuracy; in assessing justice, it must be based on objective records or accurate facts.
4. Correctable; a procedure should consider the possibility of amending the rule when necessary.
5. Representative; there is an effort to involve all relevant parties in the preparation of procedures and provide an open opportunity for all parties to exercise control.
6. Ethical; The established procedures must be in accordance with applicable ethical and moral standards.

Of the six elements of procedural justice put forward by Leventhal, only three are considered the most important, namely consistency, accuracy and ethics.

With regard to the procedures and requirements that must be met in the establishment and implementation of Islamic boarding schools as stipulated in articles 5 to 13 of Law Number 18 of 2019 concerning Islamic Boarding Schools, these articles are not yet based on the values of justice Pancasila, the Indonesian state ideology which is also the basis for the development of education in Indonesia. Articles 5 to 13 put more emphasis on procedural justice. The procedures and requirements for establishing Islamic boarding schools are as stipulated in Article 5 to Article 13. Article 5 to Article 13 of Law Number 18 of 2019 concerning Islamic Boarding Schools is too difficult for the community to fulfill, especially rural communities or other remote areas, underprivileged communities but are determined to establish Islamic boarding schools and so on, as stated in the promovendus in Chapter 4 of this dissertation. Therefore, articles 5 to 13 of Law Number 18 of 2019 must be reconstructed by incorporating the values of Pancasila justice and the values of justice for the Islamic religion. Pancasila is a moral obligation that binds members of society in relation to other members of society. Pancasila justice is a thought that aims to achieve social justice for all Indonesian people, with the principle that everyone in Indonesia will receive fair treatment in various fields including education. As for the concept of the value of Islamic religious justice, it means social balance, justice that comes from God who is just, because it is God who upholds justice (quiman bilqisth), fair in the sense of equality; equality in rights, regardless of who.

As it is known that among the objectives of the establishment of the Republic of Indonesia as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia, is to educate the life of the nation and realize general welfare. Education must be felt in a fair and equitable manner by all Indonesian people. It is clear that education is something that is very important and valuable as a prerequisite for realizing general welfare for all Indonesian people. In addition, education is the responsibility of all of us, starting from the family, the wider community, and the government. And because of that, education should be enjoyed by various groups of people, starting from Elementary Schools, Junior High Schools, High Schools to Universities.

²⁷ Carl Joachim Friedrich, 2004, *Historical Perspective Legal Philosophy*, Bandung: Nuansa dan Nusamedia, page 239.

²⁸ Mochtar Kusumaatmadja dan B. Arief Sidharta, 2000, *Introduction to Legal Science, A First Introduction to the Scope of Application of Legal Science*, Bandung: Alumni, page 4.

²⁹ Purnadi Purbacaraka dan Soerjono Soekanto, 1982, *Reflections on Legal Philosophy*, Jakarta: Rajawali, page 83.

³⁰ Kahar Masyhur, Loc.cit.

³¹ Murtadha Muthahhari, 1995, *Divine Justice: Principles of the Islamic Worldview*, Bandung: Mizan, page 53-58.

³² Ibid.

³³ Ibid.

Law is a set of life guidelines (commands and prohibitions) that regulate order in a society, and must be obeyed by members of the community concerned, because violations of these life guidelines can lead to action on the part of the government of that society.³⁴ According to Siti Musdah Mulia, laws are normative rules that regulate patterns of human behavior. Law does not grow in a vacuum (empty), but rather grows from public awareness that requires a common rule.³⁵ Meanwhile, Islamic law by TM. Hasbi Ash Shiddieqy as quoted by Ismail Muhammad Syah is formulated as a collection of efforts by jurists to apply shari'ah to the needs of society.³⁶

In relation to the legal aspect, that the justice of Islamic law originates from God who is just, because in essence it is Allah who upholds justice (quiman bilqisth), it must be believed that Allah does not abuse (unjust) His servants (Q.S. 10/Yunus: 449).

Fair in the sense of equality, namely equality in rights, regardless of who; from where the person who will be given a decision by the person who is handed over to uphold justice (Q.S. 4/al-Nisaa: 58). The firmness of the principle of justice is explained by one of the verses of the Qur'an Q.S. 57/al-Hadid:25. In that verse, there is the word mizan (justice) with hadid (iron). Iron is a hard object, and used as a weapon.

Likewise, law and justice must be upheld in any way, if necessary by force and violence, so that those who are guilty or wrong must accept the consequences in the form of sanctions or humiliation, while those who are right or those who have rights can receive their rights.³⁷ Upholding justice in a fair and equitable manner without favoritism is a major imperative in the field of justice, even if it relates to oneself, close family, or people who have influence or power, as clearly stated in the letter an-Nisa verse 135.³⁸

The concept of an ideal model of an Islamic constitution that regulates rights and obligations based on justice. Among the contents of the institutional concept are (1) everyone has the right to protection for his personal freedom. (2) Everyone has the right to food, housing, clothing, education and medical care. The state must take all necessary steps to provide facilities to the best of its ability. (3) Everyone has the right to have thoughts, express opinions and beliefs as long as they are within the limits set by law. (4) all people are equal before the law. (5) all people with the same abilities are entitled to equal opportunities and equal income for the same work, regardless of religion, ethnicity, origin and so on (6) everyone is presumed innocent until finally declared guilty by a court, and several rights and obligations relating to social, political, economic, security and so on.³⁹

One of the greatest contributions of Islam to mankind is the principle of social justice in every aspect of human life. Islam provides a rule that can be implemented by all people who believe. Every member of society is encouraged to improve the material life of society without distinguishing form, descent and type of person. Everyone is seen as equal to be given the opportunity to develop their full potential in life.⁴⁰

Basically human life cannot be separated from law. Throughout the history of human civilization, the central role of law in efforts to create an atmosphere that allows humans to feel protected, coexist peacefully and maintain their existence in the world has been recognized.⁴¹

Justice is the essence or essence of law. Justice can not only be formulated mathematically that what is called fair is if someone gets the same share as other people. Likewise, justice is not sufficiently interpreted by the symbol of numbers. Because justice actually lies behind something that appears in that number (metaphysical), philosophically formulated by law officers/judges.⁴² The essence of justice is an assessment of a treatment or action by studying it from a norm. So in this case there are two parties involved, namely the party making the treatment or action and the other party subject to the action, in this discussion, the parties in question are the authorities or the government, as the party that regulates people's lives through legal instruments, and the community as a party whose procedures for acting in the state are regulated by legal provisions.

Justice as: redressing a wrong, finding a balance between legitimate but conflicting interests.⁴³ This definition illustrates that the value of justice is attached to the purpose of law. The idea of justice is reflected by decisions against the use of cruel punishments, forbidding punishment a second time for the same offense and forbidding the enactment of laws that abolish a person's rights and property. Another theory which states that justice is attached to the purpose of law was put forward by Tourtoulon⁴⁴ who firmly stated "lex injusta non est lex", that is, an unfair law is not a law. On the other hand, the idea of justice requires giving everyone the right to protection and self-defense.

Islamic education in Indonesia, especially Islamic boarding schools, is organized based on Law Number 18 of 2019 concerning Islamic Boarding Schools. As for the regulation of the implementation of Islamic boarding schools in this law, promovendus has stated weaknesses. These weaknesses are contained in Article 5 (2) which states that Islamic boarding school must meet at least the following elements: kiai, students who live in Islamic boarding schools, boarding schools or dormitories, mosques or prayer rooms, and study of the Yellow Book or Dirasah Islamiah with an ullimin education pattern.

In this article the weakness is the lack of clarity regarding administrative requirements, it does not explain the administrative requirements that must be met in establishing a Islamic boarding school, such as business permits and registration

³⁴ E. Utrecht, 1966, Introduction to Indonesian Law, Jakarta: Balai Buku Ihtiar, page 13.

³⁵ Siti Musdah Mulia, 2005, "Renewal of Islamic Family Law in Indonesia", in Komaruddin Hidayat and Ahmad Gaus AF (Editors), Islamic State and Civil Society, Jakarta: Paramadina, page 302.

³⁶ Ismail Muhammad Syah, 1992, Philosophy of Islamic Law, Jakarta: Bumi Aksara, page 19.

³⁷ Muhammad Tahir Azhari, 2003, The Rule of Law: A Study of its Principles from the Point of View of Islamic Law, Its Implementation in the Medina State Period and the Present Time, Jakarta: Prenada Media, page 117 – 124.

³⁸ Didin Hafidhuddin, 2000, Actual Da'wah, Jakarta: Gema Insani, page 215.

³⁹ Abdurrachman Qadir, 1998, Zakat in Mahdah and Social Dimensions, Jakarta: PT. Raja Grafindo Persada, page 133 – 134.

⁴⁰ Afzalur Rahman, 1995, Islamic Economic Doctrine, volume 1, Translation Soeroyo, Nastangin, Yogyakarta: PT. Dana Bhakti Wakaf, page 74.

⁴¹ Johnny Ibrahim, 2005, Normative Legal Research Theory and Methodology, Surabaya: Bayu Media, page 1.

⁴² Andi Ayyub Saleh, 2006, Tamasya Deep Legal Contemplation "Law in Book and Law in Action" Towards Legal Discovery (Rechtsvinding), Jakarta: Yarsif Watampone, page 70.

⁴³ Rudolf Heimanson, 1967, Dictionary of Political Science and Law, Massachusetts: Dobbs Fery Oceana Publication, page 96.

⁴⁴ Radbruch & Dabin, 1950, The Legal Philosophi, New York: Harvard University Press, page 432. Periksa juga Paul Siegart, 1986, The Lawfull Right of Mankind an Introduction to the International Legal Code of Human Right, Oxfort University Press, New York, page 22.

of Islamic boarding school which causes uncertainty for parties wishing to establish a Islamic boarding school. Another weakness is the difficulty in fulfilling the requirements for facilities and infrastructure because the requirements that must be met are quite stringent, making it difficult for small Islamic boarding schools located in rural or remote areas. Several requirements, such as the availability of adequate buildings, libraries and laboratories, can be obstacles in establishing a Islamic boarding school. The limited quality of human resources, such as the requirements for educators and educational staff in the establishment of Islamic boarding schools also seems quite strict, where each teacher or instructor must have qualifications in accordance with their field, which results in difficulty finding qualified educators and education staff.

Article 6 of Law Number 18 of 2019 concerning Islamic Boarding Schools regulates the requirements for establishing Islamic boarding schools, including: Islamic boarding schools must be established by mass organizations or individuals who have permission from the local government, must have caregivers or leaders who have a minimum educational qualification of bachelor's degree and are able to understand Islamic teachings, must have formal and non-formal education programs in accordance with national education standards, must carry out educational activities with due observance of religious, moral and social principles, and must be able to protect and safeguard the rights of students and avoid discriminatory actions against students.

In the second part of article 6 it is stated that the establishment of a Islamic boarding school must be registered *umtut* to obtain permission from the Minister. "Like the regulation stipulated by the Ministry of Religion Number 13 of 2018 that bodies, institutions and organizations must register as legal entities to be able to receive government funds, Islamic boarding schools are no exception. Islamic boarding schools that teach the national curriculum must be registered. The Ministry of Religion through the field in charge issues permits for the establishment and operation of Islamic boarding schools. There is concern for Islamic boarding schools that do not have permits, so they are considered illegal and not affirmed and facilitated by the government, while sociological facts show that Islamic boarding schools grow and develop without prior permission from the government.

The weaknesses of establishing a Islamic boarding school according to Article 6 of Law Number 18 of 2019 are: it is difficult for Islamic boarding school to provide adequate facilities and infrastructure such as classrooms, laboratories and libraries. Islamic boarding schools realize that this can affect the quality of education provided and hinder Islamic boarding school from providing comprehensive education. Islamic boarding schools find it difficult to get qualified teaching staff as required, both in terms of formal and religious education.

Requirements for operational permits are difficult to fulfill: Article 6 paragraph (1) of the Islamic Boarding School Law stipulates that Islamic boarding school must meet administrative requirements, institutional requirements, and curriculum requirements in accordance with the provisions stipulated by the government. However, these requirements may be difficult to meet for Islamic boarding school that are located in remote areas or that have limited financial and human resources. Another weakness is the convoluted permit application process: Article 6 paragraph (2) of the Islamic Boarding School Law stipulates that the process of applying for a Islamic boarding school operational permit must go through stages of verification, evaluation, and recommendations from the regional and provincial governments, before finally obtaining a permit from the Ministry of Religion. This convoluted process can take a long time and complicate the establishment of a Islamic boarding school. Lack of supervision and supervision: Article 6 paragraph (3) of the Islamic Boarding School Law stipulates that the government is responsible for supervising and supervising Islamic boarding schools that are already operating. However, a lack of human and financial resources in the government can lead to less effective supervision and oversight, so that Islamic boarding school that do not meet standards can still operate. Article 6 paragraph (4) of the Islamic Boarding Schools Law stipulates that the government will determine the cost of applying for a Islamic boarding school operational permit. However, the fees charged can be too high for Islamic boarding school which are located in remote areas or who have limited financial resources. Another weakness is the limitation on the number of recognized Islamic boarding school: Article 6 paragraph (5) of the Islamic Boarding School Law stipulates that the number of Islamic boarding school recognized by the government cannot exceed the number set by the government. This can limit the number of Islamic boarding school that can operate and make it difficult for the community to access the Islamic boarding school.

Article 7 of Law Number 18 of 2019 regulates the requirements for establishing Islamic boarding schools. Some of the weaknesses that can occur in the implementation of the establishment of Islamic boarding schools include: The requirements for establishing Islamic boarding schools listed in Article 7 of the Law often conflict with pre-existing regulations, such as regulations on the establishment of schools or regulations on the establishment of other religious institutions. This causes ambiguity in the implementation of the requirements for establishing a Islamic boarding school. Fulfilling the requirements for establishing Islamic boarding schools as stipulated in Article 7 of the Islamic Boarding School Law will experience obstacles in administrative and bureaucratic processes which can cause the process of establishing Islamic boarding schools to be slower and more expensive; The requirement for the establishment of a Islamic boarding school has a large enough fund. This can cause difficulties for those who wish to establish a Islamic boarding school, especially for Islamic boarding school which are located in less developed areas; The requirement for Islamic boarding school to have qualified teaching staff and have educator certificates can cause difficulties for Islamic boarding school in remote areas to attract qualified teaching staff, including the need to have adequate infrastructure, such as classrooms, living rooms, teacher rooms, dining rooms, and other facilities. sanitation.

As a unique model of Islamic education in Indonesia, Islamic boarding schools are institutions that continue to grow and play an important role in the development of religion and culture in society. Therefore, Law Number 18 of 2019 was created to provide a legal and regulatory basis for the implementation of Islamic boarding schools in Indonesia. However, the law also has several weaknesses that may occur in the implementation of Islamic boarding schools. The following are the weaknesses based on Article 8 to Article 14 of Law Number 18 of 2019 concerning Islamic Boarding Schools:

Article 8: human resources and teaching staff in Islamic boarding schools. This article contains the obligation of Islamic Boarding Schools to provide teachers who are qualified and have competence in the field being taught. However, weaknesses may occur if the Islamic Boarding School has difficulty finding teachers who are qualified and competent in the subject matter being taught.

Article 9: Kiai requirements. This article contains Islamic Boarding School obligations for Kiai with Islamic Boarding School education; Islamic higher education, and/or; have the competence of Islamic religious knowledge. However, the weakness of this article does not include moral problems when moral violations are committed by clerics, educators, education staff, and administrators.

Article 10: Islamic Boarding School funding and operational costs. This article contains the obligation of Islamic Boarding Schools to provide sufficient funds to finance operational activities. However, weaknesses may occur if the Islamic boarding school has difficulties in obtaining sufficient funding or is not effective in using existing funds.

Article 11: Monitoring and evaluation in Islamic Boarding Schools. This article contains the government's obligation to supervise and evaluate activities in Islamic boarding schools. However, weaknesses may occur if monitoring and evaluation are not carried out strictly enough or are not carried out consistently.

Article 12: Protection of students' rights in Islamic Boarding Schools. This article contains the obligation of Islamic boarding schools to provide protection for the rights of students, such as the right to education, health and safety. However, weaknesses may occur if the rights of students are not fulfilled or are not properly protected.

Article 13: Security and comfort in Islamic boarding schools. This article contains the Islamic Boarding School's obligation to create a safe and comfortable environment for students. However, weaknesses may occur if the environment in the Islamic Boarding School is inadequate or does not meet standards

As promovendus stated that Law Number 18 of 2019 concerning Islamic Boarding Schools contains mainly articles relating to the establishment and administration. Therefore these articles must be reconstructed to make this law worth justice, progressive and *istihsan*.

The reconstruction referred to in this study is reconstruction, as an effort to rearrange the rules contained in the rule of law. Basically, legal reconstruction is a process of rearranging the concept of a rule of law, as the definition of reconstruction according to Black's Law Dictionary is defined as the act or process of re-building, re-creating, or re-organizing something.⁴⁵ From this understanding, reconstruction is defined as an activity or process to rebuild or re-create or reorganize something.

Table Reconstruction of Establishment and Implementation Regulations Islamic Boarding School

Chapter	Article Content	Weaknesses	Reconstruction of Article
5	Islamic boarding schools have the fewest elements: kiai, students who live in Islamic boarding schools, huts or dormitories, mosques or prayer rooms, and study of the Yellow Book or Dirasah Islamiah with a muallimin education pattern.	Islamic boarding schools must have students who live in Islamic boarding schools, have huts or dormitories, and have mosques or prayer rooms	These three provisions are very difficult to implement because students in rural and remote areas live in their own homes and make use of the mosque or prayer room in the village. This qualification requirement must be alternative by adding the word "and or". This means that students can live in their own homes, when they do not live in Islamic boarding schools.
6	Requirements for establishing a Islamic boarding school: <ul style="list-style-type: none"> • founded by mass organizations or individuals who have permission from the government. • have caregivers or leaders who have a minimum educational qualification of bachelor's degree and are able to understand Islamic teachings, • having formal and non-formal education programs in accordance with national education standards. • carrying out education by taking into account religious, moral and social principles, • able to protect and maintain the rights of students and avoid discriminatory actions against students. 	Caretakers and leaders of Islamic boarding schools must have a minimum educational qualification of bachelor's degree.	This bachelor's minimum qualification requirement, coupled with the word "graduate equivalent" for Islamic boarding school administrators and caregivers is very burdensome and does not accommodate the reality on the ground, due to the fact that many Islamic boarding schools whose caregivers and leaders do not have a bachelor's degree, but succeed brilliantly. This qualification requirement should be omitted. Carry out education by paying attention to religious, moral and social principles, plus "culture, knowledge and technology".
7	The requirements for establishing a Islamic	<ul style="list-style-type: none"> • Islamic boarding schools must have 	The definition of large funds for Islamic boarding school and qualified staff is

⁴⁵ Bryan A. Garner, 1999, Black's Law Dictionary, Edisi ke-7, S.T. Paul. Minn: West Group, page 1278.

	boarding school often conflict with existing regulations, such as regulations for establishing schools or regulations for establishing other religious institutions. • The requirement for the establishment of a Islamic boarding school to have sufficient funds. • Islamic boarding schools must have qualified teaching staff and have educator certificates.	large funds.	relatively and very vague, causing uncertainty.
8	Islamic boarding schools must fulfill administrative requirements, facilities and infrastructure requirements, as well as the requirements of educators and education staff.	The lack of clarity regarding administrative requirements does not explain the administrative requirements that must be met in establishing a Islamic boarding school, such as business permits and registration of Islamic boarding school.	Because it creates uncertainty for parties who want to establish a Islamic boarding school, this article must be formulated in such a way that it does not cause multiple interpretations.
9	Islamic boarding school's obligation to provide Kiai with Islamic boarding school education; Islamic higher education, and/or; have the competence of Islamic religious knowledge.	It does not contain moral problems when there are moral violations committed by Kiai, educators, educational staff, and administrators. The weakness of this article is that it does not contain moral problems when moral violations are committed by clerics, educators, education staff, and administrators.	This article must be reformulated to contain the obligation to maintain morals and noble character that must be owned by Kiai, educators, educational staff, and administrators as a characteristic of Islamic boarding schools.
10	Islamic boarding schools must provide sufficient funds to finance operational activities.	There is no firm definition of sufficient funding. .	The definition of funds is quite uncertain. It is necessary to reformulate this article by stating the minimum amount of funds provided.
11	The government is obliged to supervise and evaluate activities in Islamic boarding schools.	Weaknesses may occur if monitoring and evaluation are not carried out strictly enough or are not carried out	This article needs to determine the periodization of supervision and evaluation so that there is certainty over the period of supervision and evaluation.
12	Islamic boarding schools must provide protection for the rights of students, such as the right to education, health and safety.	Weaknesses when the rights of students are not fulfilled or are not properly protected.	This article needs to contain strict sanctions against Islamic boarding schools when the protection and rights of students are not given.
13	Islamic boarding schools are obliged to create a safe and comfortable environment for students.	Weaknesses may occur if the environment in the Islamic boarding school is inadequate or does not meet standards	This article needs to contain strict sanctions against Islamic boarding schools if they do not create a safe and comfortable environment

CONCLUSION

Regulations on the establishment and operation of Islamic boarding schools are not based on the value of justice because the articles relating to the establishment and implementation place more emphasis on the value of procedural justice, and ignore the value of Pancasila justice as the value that underlies various aspects of development in Indonesia. Weaknesses in the regulations regarding the establishment of Islamic boarding schools and the implementation of Islamic boarding schools, such as not incorporating the values of justice, Pancasila and Islamic values, students live in Islamic boarding schools, Islamic boarding schools have boarding houses or dormitories, caregivers and educators are at least undergraduate, have large funds, lack of clarity regarding administrative requirements, do not contain moral issues, unclear funding, unclear monitoring and evaluation. granting the rights of students, and setting the Islamic boarding school environment. The regulation regarding the establishment and operation of Islamic boarding schools in Law Number 18 of 2019 concerning Islamic Boarding Schools does not accommodate the interests of

parties who according to the law also have the same obligation to take part in development, especially in the field of education. Therefore, it is necessary to reconstruct the articles so as to accommodate the interests and rights of all parties.

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