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Coup Government of Afghanistan From the Perspective of Islamic Constitutional Law

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Abstract:

The Taliban are currently in control of the government in Afghanistan after taking over the authority from President Ashraf Ghani. The takeover is classified as a government coup because it was not conducted under the Afghan Constitution. Departing from this issue, this normative research examines the background of the Afghan government coup d'état and analyzes it from the Islamic Constitutional Law perspective. The result concludes that (1) the coup of the Afghan government by the Taliban was triggered by the withdrawal of US troops from Afghanistan as a follow-up to the Doha agreement made between the United States and the Taliban. After the Taliban succeeded in occupying several areas, including the capital city of Kabul, Ashraf Ghani fled from Afghanistan to the United Arab Emirates, causing the collapse of the government; and (2) from the perspective of Islamic Constitutional Law, the Afghan government coup can be viewed from (a) the obligation to comply with the constitution, and (b) post-coup benefit considerations.

Keywords: government; *coup de etat*; Islamic constitutional law.

Introduction

Taliban is the governing group in Afghanistan, formed by Muhammad Mullah Omar in 1990.¹ Taliban adheres to the extreme *Sunni* sect.² It had the original goal of pushing the Soviet Union and challenging Afghanistan's instability, corruption, and

¹ Angana Kotokey and Anchita Borthakur, 'The Ideological Trajectory within the Taliban Movement in Afghanistan', *Asian Journal of Middle Eastern and Islamic Studies* 15, no. 2 (3 April 2021): 205–19, <https://doi.org/10.1080/25765949.2021.1928415>.

² Meirison Meirison, 'The Alleged Extremism of the Taliban and Its Relation with the Hanafite Jurisprudence', *Jurnal AL-AHKAM* 12, no. 2 (31 December 2021): 29–44, <https://doi.org/10.15548/alahkam.v12i2.3612>.

crime.³ The initial aims of the Taliban changed due to its success against the invaders of the Soviet Union and ending the lawlessness and bloody feuds of the warlords in the early 1990s.⁴ Moreover, Mullah Omar wanted a pure Islamic government. Various efforts to achieve this goal have been conducted, and on November 3, 1994, the Taliban carried out its first attack on Kandahar Province, followed by another attack on January 4, 1995 to control 12 provinces.⁵ With the aim of success, the forces of Afghanistan, including President Rabanni and Hikmatyar and their members, needed to be conquered.⁶

At the end of January 1995, a battle between the Taliban and Hizb Islami in the south of Kabul took place. The Taliban won until the Pakistani state rendered support to control Kabul, and in June 1996, President Rabanni appointed Hikmatyar as prime minister. The efforts weakened the government's position, which became an advantage in gaining Kabul. Therefore, in September 1996, the Taliban attacked Kabul⁷ and implemented extreme Islamic sharia law.⁸ On September 11, 2001, the world was shocked by the Al-Qaeda terrorist attacks on the *World Trade Center* (WTC) and the United States Pentagon building.⁹ The United States ordered the Taliban to discover Osama knowing that Al-Qaeda was the cause of these events.¹⁰ The Taliban believes Al-Qaeda was not involved in the September 11, 2001 tragedy, and this refusal prompted the United States to attack the group on October 7, 2001.¹¹

The US military attack resulted in the Taliban leaving Kabul on November 12, 2001.¹² Afghanistan became a more secure government with the withdrawal of the Taliban to other areas and the protection from the United States. The presence of the United States to fight this group lasted for approximately 1 decade (2001-2021). On August 31, 2021, President Joe Biden withdrew the United States military, all embassy workers, and all citizens living in Afghanistan.¹³ The withdrawal was

³ Ahmed Rashid, *Taliban: Militant Islam, Oil, and Fundamentalism in Central Asia* (London: Yale University Press, 2001), 25.

⁴ Larry P. Goodson, *Afghanistan's Endless War: State Failure, Regional Politics, and the Rise of the Taliban* (United States of Amerika: University of Washington Press, 2001).

⁵ Antonio Giustozzi, *The Taliban at War: 2001 - 2021* (United Kingdom: Oxford University Press, 2019); Tricia Bacon and Daniel Byman, 'De-Talibanization and the Onset of Insurgency in Afghanistan', *Studies in Conflict & Terrorism* 46, no. 10 (3 October 2023): 1840–67, <https://doi.org/10.1080/1057610X.2021.1872159>.

⁶ Ashley Jackson and Florian Weigand, 'The Taliban's War for Legitimacy in Afghanistan', *Current History* 118, no. 807 (2019): 143–48.

⁷ William Maley and Ahmad Shuja Jamal, 'Diplomacy of Disaster: The Afghanistan "Peace Process" and the Taliban Occupation of Kabul', *The Hague Journal of Diplomacy* 17, no. 1 (17 February 2022): 32–63, <https://doi.org/10.1163/1871191X-bja10089>.

⁸ Meirison, 'The Alleged Extremism of the Taliban and Its Relation with the Hanafite Jurisprudence'.

⁹ Daniel Byman, 'Does Al Qaeda Have a Future?', *The Washington Quarterly* 42, no. 3 (3 July 2019): 65–75, <https://doi.org/10.1080/0163660X.2019.1663117>.

¹⁰ Jonathan Cristol, 'The US and the Taliban Talk in Circles as the Bin Laden Threat Grows', in *The United States and the Taliban before and after 9/11*, ed. Jonathan Cristol (Cham: Springer International Publishing, 2019), 75–91, https://doi.org/10.1007/978-3-319-97172-8_5.

¹¹ Yaqoob-Ul- Hassan, 'Taliban and Al-Qaeda: The Unbreakable Relationship', *Strategic Analysis* 46, no. 2 (4 March 2022): 211–19, <https://doi.org/10.1080/09700161.2022.2076305>.

¹² Abdul Basit, 'The US-Taliban Deal and Expected US Exit from Afghanistan: Impact on South Asian Militant Landscape', *Counter Terrorist Trends and Analyses* 12, no. 4 (2020): 8–14.

¹³ Michael Kugelman, 'Mission Creep on Repeat: Deconstructing U.S. Strategy in Afghanistan', in *The Great Power Competition Volume 4: Lessons Learned in Afghanistan: America's Longest War*, ed. Adib



triggered by many factors, one of which was that the United States thought this conflict did not have a definite end. The exit from Afghanistan brought the Taliban back to power in August 2021 and caused President Ashraf Ghani to flee to the United Arab Emirates.¹⁴ The president left on August 15, 2021, and thought the agreement would be adhered to, but this was not the case. The essence of the deal is to prevent the Taliban from establishing a terrorist state in Afghanistan. The United States will also provide diplomatic assistance to the UN Security Council to remove the Taliban from the list of terrorist organizations.¹⁵ Judging from the events that took place from 1996 – 2021, the Taliban are determined to seize the government of Afghanistan and convert the state to a conservative Islamic system of government. The activities fall into the state government coups, namely situations where the takeover is not by the Afghan Constitution.

The study of the Taliban government in Afghanistan can be divided into main points of discussion: Firstly, the human rights of citizens after Taliban rule in Afghanistan. Pradnyawan et al state that the return of the Taliban in government will reduce the human rights index in Afghanistan.¹⁶ Akhbari and True stated that the Taliban government promised to guarantee the human rights of children and women.¹⁷ Kadir and Nurhaliza's research states that the Taliban government is bound by international conventions on human rights, although its application must be adapted to the local discourse.¹⁸ Shuja Jamal stated that the peace agreement between the Taliban and the United States without a commitment to safeguard human rights, this peace agreement would harm the Afghan people.¹⁹ Sahill's study shows that the return to power of the Taliban removed women's political rights. The Taliban government placed women back in the domestic sphere.²⁰

Secondly, the study of the Taliban Government as it relates to Politics and Governance. King's research shows that the Taliban were politically savvy in the face of military attacks from the United States.²¹ The United States' strategy of co-

Farhadi and Anthony Masys (Cham: Springer International Publishing, 2023), 249–70, https://doi.org/10.1007/978-3-031-22934-3_13.

¹⁴ Anthony King, 'Why Did the Taliban Win?', *Armed Forces & Society* 49, no. 4 (1 October 2023): 923–38, <https://doi.org/10.1177/0095327X221096702>.

¹⁵ Raj Verma, 'The US-Taliban Peace Deal and India's Strategic Options', *Australian Journal of International Affairs* 75, no. 1 (2 January 2021): 10–14, <https://doi.org/10.1080/10357718.2020.1769551>.

¹⁶ Sofyan Wimbo Agung Pradnyawan, Arief Budiono, and Jan Alizea Sybelle, 'Aspects of International Law and Human Rights on The Return of The Taliban in Afghanistan', *Audito Comparative Law Journal (ACLJ)* 3, no. 3 (16 November 2022): 132–38, <https://doi.org/10.22219/acj.v3i3.23237>.

¹⁷ Farkhondeh Akbari and Jacqui True, 'One Year on from the Taliban Takeover of Afghanistan: Re-Instituting Gender Apartheid', *Australian Journal of International Affairs* 76, no. 6 (2 November 2022): 624–33, <https://doi.org/10.1080/10357718.2022.2107172>.

¹⁸ M. Yakub Aiyub Kadir and Siti Nurhaliza, 'State Responsibility of Afghanistan Under Taliban Regime', *Jurnal Media Hukum* 30, no. 1 (14 January 2023): 1–20, <https://doi.org/10.18196/jmh.v30i1.16020>.

¹⁹ Shuja Jamal, 'When Diplomacy Is More Harmful to Human Rights than Conflict: The Effects of America's Deal with the Taliban', *Australian Journal of Human Rights* 28, no. 2–3 (2 September 2022): 442–47, <https://doi.org/10.1080/1323238X.2022.2135168>.

²⁰ Pamir H. Sahill, 'Dwelling in an All-Male World: A Critical Analysis of the Taliban Discourse on Afghan Women', *Women's Studies International Forum* 98 (1 May 2023): 102748, <https://doi.org/10.1016/j.wsif.2023.102748>.

²¹ King, 'Why Did the Taliban Win?'



operating with minority groups and strong groups in Afghanistan has actually become the basis for the resurgence of the Taliban group.²² Verma believes that the US deal with the Taliban did not bring stable peace in Afghanistan because it ignored regional powers in the Middle East.²³ Terpstra considers that the political dynamics in Afghanistan are a supporting factor for the Taliban to regain power in Afghanistan.²⁴ However, many studies have been conducted, there is no study that specifically highlights the coup in Afghanistan from the perspective of Islamic constitutional law. For this reason, the article aims to analyse the Afghan government's coup from Islamic constitutional law.

Method

This is normative legal research with *statutory* and *conceptual approaches*. The secondary data and research materials used consist of various literature books and journal articles related to the research topic and primary legal material in the form of the 2004 Afghanistan Constitution. Most of the research materials used were taken from digital sources and libraries. The research materials were analyzed qualitatively by using the theory of Islamic Constitutional Law.

Result and Discussion

Coup in the Perspective of Islamic Constitutional Law

In this modern era, the constitution is necessary for a nation as the embodiment of the social contract. James Bryce defines the constitution as “a framework of a political society organized by the law.” According to CF Strong, the constitution is a collection of principles governing government power, the rights of the governed, and the relationship between the two.²⁵ Meanwhile, KC Wheare stated that a constitution describes the entire system which can be in the form of a regulations collection that forms or governs a state's government.²⁶ Islam teaches and requires obedience to an agreement that does not conflict with Sharia. The constitution is the basic agreement in running a state. Obeying and implementing the constitution is an obligation in the Islamic view. Islam teaches its adherents to abide by treaties, including state constitutions.²⁷

Any form of power takeover conducted in a way that violates the Constitution can be considered a violation. A coup is related to the seizure of power through military force, and this may not always be the case. Therefore, the theoretical definition is related to military power. For example, Eric A. Nordlinger defines a coup as any activity by the military to seize power or political action to replace the

²² Bacon and Byman, 'De-Talibanization and the Onset of Insurgency in Afghanistan'.

²³ Verma, 'The US-Taliban Peace Deal and India's Strategic Options'.

²⁴ Niels Terpstra, 'Opportunity Structures, Rebel Governance, and Disputed Leadership: The Taliban's Upsurge in Kunduz Province, Afghanistan, 2011–2015', *Studies in Conflict & Terrorism* 45, no. 4 (3 April 2022): 258–84, <https://doi.org/10.1080/1057610X.2019.1702256>.

²⁵ C.F. Strong, *Konstitusi-Konstitusi Politik Modern: Studi Perbandingan Tentang Sejarah dan Bentuk*, trans. Derta Sri Widowati (Bandung: Nusamedia, 2019), 14.

²⁶ K. C. Wheare, *Konstitusi-Konstitusi Modern*, trans. Imam Baehaqie (Bandung: Nusamedia, 2018), 1.

²⁷ Emilia Justyna Powell, 'Complexity and Dissonance: Islamic Law States and the International Order', *International Studies Review* 24, no. 1 (1 March 2022): viac001, <https://doi.org/10.1093/isr/viac001>; T. Wildan, 'Principles of the Teaching of Nation and State Life in the Constitution of Medina', *IBDA` : Jurnal Kajian Islam Dan Budaya* 21, no. 1 (1 April 2023): 17–36, <https://doi.org/10.24090/ibda.v21i1.6747>.



regime as a political opponent with its regime.²⁸ According to Edward Luttwak, any form of power fight can be called a coup and may not always be through mass or military force.²⁹ Based on these definitions, it is a rebellion contrary to the constitutional agreement. In the original law (*al-ashlu fi al-fiqh al-Islamy*), an individual may not hold power except in a valid way, such as being appointed by the previous leader. Under certain conditions, succession is sometimes carried out through force. For example, the takeover of power by the crown prince from a priest. Therefore, the priest should strengthen the crown prince's power in an emergency and guard against greater slander when removed. One of the important lessons from leaving this power to the coup is to maintain unity and prevent greater damage.³⁰

Afghanistan and its History

The name Afghanistan comes from the Pashtun language, which denotes the land of the Afghans, the largest ethnic group in the state. It is an Islamic state, with the capital city of Kabul and the official name of the Islamic Republic of Afghanistan. Geographically, it is located between South and Central Asia. Pakistan borders this state in the south and east, as well as Turkmenistan, Uzbekistan, and Tajikistan in the north as well as China to the northeast. It is a very poor and conflict-prone state³¹ isolated from others in the center of South-Central Asia, making its territorial layout an important international trade route between South and East Asia to Europe and the Middle East. As an important route, it became a treasure sought by the empire's development, and for thousands of years, great armies have tried to conquer Afghanistan.³² The land used to be a sought-after treasure by emperors, and the following is a timeline of its history.

The history of Afghanistan began when the Assyrians, Medes, and Persians ruled all parts of this state between 900 BC and 550 BC.³³ The arrival of Darius I of Persia, who succeeded in conquering the border between Asia and Europe became the leader of the Afghan government and was considered the greatest conquest by the Persians.³⁴ The Persians ruled Afghanistan from around 550 BC – 330 BC, where the conquest of Darius III and the troops by Alexander the Great of Macedonia marked the end of the leadership.³⁵ Furthermore, India's Mauryan empire took control of southern Afghanistan and introduced Buddhism. In the mid-third century BC, the

²⁸ Ach Hakiki, 'The Role of Militarism in the Political and Social Dynamics of Myanmar Society', *International Review of Humanities Studies* 8, no. 1 (31 January 2023), <https://doi.org/10.7454/irhs.v8i1.1004>.

²⁹ Edward Luttwak, *Coup d'état: A Practical Handbook*, Revised edition (Cambridge, Massachusetts: Harvard University Press, 2016), 11–12, <http://site.ebrary.com/id/11202310>.

³⁰ Wizaratul Awqaf wa Asy-Syu'un Al-Islamiyah, *Al-Mausu'ah Al-Fiqhiyyah*, vol. 6 (Kuwait: Wizaratul Awqaf wa Asy-Syu'un Al-Islamiyah, 1994), 198.

³¹ Nadia Akseer et al., 'Coverage and Inequalities in Maternal and Child Health Interventions in Afghanistan', *BMC Public Health* 16, no. 2 (12 September 2016): 797, <https://doi.org/10.1186/s12889-016-3406-1>.

³² Thomas J. Barfield, 'Problems in Establishing Legitimacy in Afghanistan', *Iranian Studies* 37, no. 2 (2004): 263–93.

³³ Shaista Wahab and Barry Youngerman, *A Brief History of Afghanistan*, 2nd edition (New York: Facts on File, 2010), 35–38, <https://search.credoreference.com/content/title/fofbrief>.

³⁴ Jana Milia and Yusnarida Eka Nizmi, 'Kebijakan Luarnegeri Amerika Serikat Terhadap Kelompok Terorisme Al-Qaeda Pada Masa Pemerintahan Barack Obama', *Jurnal Online Mahasiswa (JOM) Bidang Ilmu Sosial Dan Ilmu Politik* 2, no. 2 (11 March 2015): 1–15.

³⁵ Meredith L. Runion, *The History of Afghanistan* (Bloomsbury Publishing USA, 2017).



Kushans nomadically established a kingdom that became a thriving cultural and commercial center. The end of the Kushan people's era was the region's division, which caused improper development. Meanwhile, the Iranian Sassanian Empire took over the Kushans.³⁶ The Sassanian Empire ended with the arrival of Arabs to the region for a hundred years. They spread the Islamic religion and other economic, social, and cultural teachings. The Abbasid dynasty led the 10th century after 100 years of Arab Muslim rule finally ended.³⁷ The end of Arabs was due to the appearance of Mahmud of Ghazni.³⁸

Mahmud of Ghazni was the founder of the Turkic Ghaznavid dynasty and a conqueror of regions where 17 conquests had occurred in Indian territory during the reign.³⁹ The conquests started with territorial expansion to India and eroded the teachings of Brahmanism, which was replaced. In the conquests, Mahmud of Ghazni defeated Hindu kings, Punjab, and other important areas up to the Kashmir plateau.⁴⁰ The greatest glory was achieved during the leadership with the power to conquer other areas.⁴¹ During his reign, Ghazni City was made the center and territory of power, covering the eastern part of Iran, Afghanistan, Pakistan, and several parts of India.⁴² The end of Mahmud's reign was due to death, then was replaced by the son named Mas'ud ibn Mahmud Ghaznawiyah and other kings.⁴³

In 1220, all Central Asia fell to the Mongols, namely Genghis Khan.⁴⁴ Cruelty and brutality in treating defeated political opponents was a factor in the leadership's success. Meanwhile, the power continued to expand rapidly throughout Mongolia and neighboring areas, such as on the border of Iran and Khawarizn in Central Asia, which covered Persia to Transoxiana. The conquering ability of the Mongols from the previous government in taking over all aspects of culture, economy, religion, and philosophy marked the destruction of Islamic civilization.⁴⁵ However, Afghanistan remained fragmented until 1380, and in the 1700s, the territories taken over by Genghis Khan were united as a single state. Until the 1870s, the power of the Mongols became increasingly weak and was taken back by the Arabs. They conquered the area and re-established the Islamic religion, which had previously stood but collapsed again under the attacks of the Mongols.⁴⁶

In the 1800s, the Arabs returned to power in Afghanistan under attack from the Indians. Additionally, the British, who were eager to protect the Indian Kingdom,

³⁶ Touraj Daryaee, *Sasanian Persia: The Rise and Fall of an Empire* (Bloomsbury Publishing, 2023).

³⁷ Malcolm Russell, *The Middle East and South Asia 2015-2016* (Rowman & Littlefield, 2015).

³⁸ Salma Ahmed Farooqui, *A Comprehensive History of Medieval India: Twelfth to the Mid-Eighteenth Century* (Pearson Education India, 2011).

³⁹ Noor Ul Amin, 'Mahmud Kashgari' Contribution: Turkic Tribes and Races in Indus Valley', *Peshawar Islamicus* 12, no. 2 (29 December 2021): 1–15.

⁴⁰ Hugh Kennedy, *Penaklukan Muslim yang Mengubah Dunia*, trans. Ratih Ramelan (Pustaka Alvabet, 2015).

⁴¹ Clifford Edmund Bosworth, *The Islamic Dynasties: A Chronological and Genealogical Handbook*, [Rev. ed.], Islamic Surveys (Edinburgh: Edinburgh University Press, 1980).

⁴² Hasan Ibrahim Hasan, *Tarikh Al-Islam*, vol. 3 (Cairo: Maktabah al-Nahdah al-Misriyah, 1979), 94.

⁴³ Bosworth, *The Islamic Dynasties*.

⁴⁴ Alexander V. Maiorov, 'The Mongol Invasion of Eastern Europe in 1223, 1237-1240', in *Oxford Research Encyclopedia of Asian History*, 2020, <https://doi.org/10.1093/acrefore/9780190277727.013.468>.

⁴⁵ Ira M. Lapidus, *A History of Islamic Societies* (Cambridge: Cambridge University Press, 2014).

⁴⁶ John J. Saunders, 'The Nomad as Empire Builder: A Comparison of the Arab and Mongol Conquests', in *The Expansion of the Early Islamic State* (Routledge, 2008).



were also fighting Afghanistan.⁴⁷ The domination of the British wanting an expansion of power led to a war with civilians known as the Anglo-Afghan War that lasted for three periods. In the Anglo-Afghan War I in 1838-1842, Shah Shujah Durrani, who served as king, was killed.⁴⁸ War II and III took place in 1878-1880 and 1919, finally ending with the declaration of Afghanistan's independence by Emir Amanullah Khan, who served as king of the Kingdom.⁴⁹ The acknowledgment of independence was first made by the Soviet Union, followed by Turkey, Persia, France, Germany, Italy, and several other states. In 1919-1929, the government of Emir Amanullah Khan modernized Afghanistan, introduced several social reforms and declared the state a monarchy. However, the efforts backfired and resulted in civil unrest, and in the end, Emir Amanullah Khan fled from Afghanistan.⁵⁰

Following this flight, Mohammad Zahir Shah became king in 1933 and ruled for 40 years. During the leadership, before World War II, in 1935, Afghanistan participated in the Disarmament Conference, which joined the League of Nations and several other conferences.⁵¹ At the end of World War II, Afghanistan sought assistance from the United States to accelerate its economic development. Therefore, about 15 million US dollars were provided through technical assistance and 10 million US dollars to improve air transportation. The United States assisted through many projects, such as the Helmand-Arghandab valley irrigation project, the Kajaki and Arghandab dam project, and the Marja-Shamalan canal system survey project.⁵² During the time of Mohammad Zahir Shah, Afghanistan succeeded in becoming a member of the United Nations in 1946. The membership of the United Nations aims to follow world peace and some international cooperation.⁵³ Afghanistan is also the first state to apply for technical assistance in the form of educational scholarships, supply of medicines, and others. Finally, the request was approved by the United Nations in 1949. The approval was through the assistance of several organizations under the auspices of the United Nations, such as the ILO, FAO, UNESCO, ICAO, and WHO.⁵⁴

Afghanistan, the Soviet Union, and the Mujahideen

⁴⁷ Kaushik Roy, *War and Society in Afghanistan: From the Mughals to the Americans, 1500–2013* (Oxford University Press, 2015), <https://doi.org/10.1093/acprof:oso/9780198099109.001.0001>.

⁴⁸ Amin Tarzi, 'Afghanistan: Martial Society Without Military Rule', in *Oxford Research Encyclopedia of Politics*, 2021, <https://doi.org/10.1093/acrefore/9780190228637.013.1917>.

⁴⁹ Milan L. Hauner, 'Afghanistan Between the Great Powers, 1938–1945', *International Journal of Middle East Studies* 14, no. 4 (November 1982): 481–99, <https://doi.org/10.1017/S002074380005217X>.

⁵⁰ Christopher M. Wyatt and Mohammed J. Gulzari, 'Afghanistan: The Failure to Integrate Din, Daulat, Watan and Millat and the Fall of King Amanullah', *Asian Affairs* 52, no. 1 (4 January 2021): 79–109, <https://doi.org/10.1080/03068374.2020.1850082>.

⁵¹ Mary S. Barton, *Counterterrorism Between the Wars: An International History, 1919–1937* (Oxford University Press, 2021).

⁵² R. K. Ramazani, 'Afghanistan and the USSR', *Middle East Journal* 12, no. 2 (1958): 144–52.

⁵³ Elisabeth Leake, 'States, Nations, and Self-Determination: Afghanistan and Decolonization at the United Nations', *Journal of Global History* 17, no. 2 (July 2022): 272–91, <https://doi.org/10.1017/S1740022822000080>.

⁵⁴ Ramazani, 'Afghanistan and the USSR'.



In 1953, Mohammad Daud Khan became prime minister, a general, and a cousin of the king.⁵⁵ Under the rule of Prime Minister Daud Khan, Afghanistan depended on the Soviet Union for economic and military assistance. It also carried out several social reforms that allowed women to have a greater presence in public, such as enrolling in universities, working in various civil services, and selecting to wear headscarves.⁵⁶ Furthermore, the Soviet Union also assisted in education through 600 full scholarships annually. In terms of politics, Afghanistan finally had political organizations because it was allowed to appear in the capital in 1965, such as *Afghan Millat* (Afghan Nation), *People's Democratic Party of Afghanistan* (PDPA), *Shu'la-i-Jawed* (Eternal Flame Party), and *Hezbi Islami* (Islamic Party). Several political organizations were actively dominated by the PDPA, which the Soviet Union supported during the parliamentary period of Daud's reign (1964-1973).⁵⁷

In 1956, the Prime Minister of the Soviet Union, Nikita Khrushchev, agreed to further aid Afghanistan. Ultimately, Daud Khan's government was forced to stop because of the coup by communists (pro-communist-Soviet Union) in 1978. The communists then controlled Afghanistan under the rule of Nur Mohammad Taraki, one of the founding members of the Afghan Communist Party. Meanwhile, Taraki assumed the presidency, and Babrak Karmal was appointed prime minister. The Soviet Union assisted all governments at this time because a friendship treaty was signed with the Soviet Union. The assistance by the communists caused conservative Muslim and ethnic leaders to object to this condition.⁵⁸

This conservative group formed the Mujahideen group as military and political resistance against the Soviet Union in Afghanistan. The leadership comes from different ethnicities, languages, families, and individuals. This differs from the movement of liberation groups or rebels with centralized leadership and an organized political and ideological basis. The Afghan Mujahideen group is not based on the same political ideology and does not have a movement centre.⁵⁹ The group's strength against the Soviet Union came from Afghanistan and was supported by the United States. In 1985, the Mujahideen soldiers held a meeting in Peshawar, forming the *Islamic Unity Afghan Warriors* (IUAW) Front. Furthermore, in 1986 the US also assisted Mujahideen in attacking the Soviet Union.⁶⁰

Fluctuations in the political situation between Afghanistan, the Soviet Union, and the United States continued to occur. In the end, a peace agreement was made between Afghanistan, the Soviet Union, the United States, and Pakistan. Based on the agreement, Mohammad Najibullah was selected as the new regime leader and

⁵⁵ Alam Payind, 'Soviet-Afghan Relations from Cooperation to Occupation', *International Journal of Middle East Studies* 21, no. 1 (1989): 107–28.

⁵⁶ Shukria Dellawar Tsirkas Christina, 'Reconstruction and Gender: Why Women Are Crucial to the Successful Reconstruction of Afghanistan', in *Rebuilding Afghanistan in Times of Crisis* (Routledge, 2019).

⁵⁷ Payind, 'Soviet-Afghan Relations from Cooperation to Occupation'.

⁵⁸ Vassily A. Klimentov, 'Communist Muslims': The USSR and the People's Democratic Party of Afghanistan's Conversion to Islam, 1978–1988', 2022, https://doi.org/10.1162/jcws_a_01055.

⁵⁹ Neamatollah Nojumi, 'The Afghan Mujahideen and Mass Mobilization', in *The Rise of the Taliban in Afghanistan: Mass Mobilization, Civil War, and the Future of the Region*, ed. Neamatollah Nojumi (New York: Palgrave Macmillan US, 2002), 83–94, https://doi.org/10.1007/978-0-312-29910-1_7.

⁶⁰ Conor Tobin, 'The United States and the Soviet-Afghan War, 1979–1989', in *Oxford Research Encyclopedia of American History*, 2020, <https://doi.org/10.1093/acrefore/9780199329175.013.832>.



was supported by the Soviet Union.⁶¹ However, the Mujahideen had not completely stopped attacking the Soviet Union. The group also continued to attack Mohammad Najibullah's government, which was seen as a supporter of the Soviet Union. The group wanted Afghanistan to be based on Islam led by Burhannudin Rabbani. Finally, the government of Mohammad Najibullah was overthrown in 1992, and the Soviet Union was removed.⁶²

Taliban Movement

The Taliban is an Islamic militant organization founded in 1994. It is a conservative organization that aims to have an Islamic government. Originally, it was a group of students led by Mulla Muhammad Umar Al-Hanafiyah in 1962 in Oruzkan, Qandahar Province.⁶³ The students come from various schools (*zawiyah*) in the border areas of Afghanistan and Pakistan in Peshawar, Bhalucistan, and surrounding areas managed by Deobandi ulema in India. The Taliban briefly occupied power in Afghanistan from 1996 to 2001 and later became allies of Al-Qaeda led by Osama bin Laden. It adopted several policies in Afghanistan while in power. For example, it is obligatory for women to wear the full hijab and not be allowed to go out alone. Education and employment for this gender were also restricted.⁶⁴ Due to some of its conservative policies, Saudi Arabia and Pakistan recognize the Taliban as the legitimate regime in Afghanistan.⁶⁵

In a different area in 1998, the United States, under the command of President Clinton, attacked Osama bin Laden's training base in Afghanistan. This was carried out because of rumors that Osama bin Laden with the Al-Qaeda organization, had funded the bombing of the United States embassy in Africa. In 2000, Osama bin Laden was considered the world's most wanted international terrorist and was suspected of hiding in Afghanistan. America demanded that Osama be deported to Saudi Arabia to be tried for the bombing of the American embassy. However, the Taliban rejected the order, and Afghanistan received sanctions from the United Nations by restricting trade and economic development.⁶⁶ On September 11, 2001, there were attacks on the World Trade Center (WTC) skyscraper in New York, the Pentagon building in Virginia, and a Pennsylvania field. The brutal attack through the hijacking and crashing of the plane left thousands of people dead. Meanwhile, Al-Qaeda is believed to have hijacked four commercial planes to conduct these acts of terrorism. The United States reported that the attack's mastermind was Osama bin Laden and the Al-Qaeda organization.⁶⁷

⁶¹ Tobin.

⁶² Adenrele Awotona, *Rebuilding Afghanistan in Times of Crisis: A Global Response* (New York: Routledge, 2019).

⁶³ Choirur Rois and Nur Robaniyah, 'Praktik Politik Islam: Kepemimpinan Taliban Di Afghanistan Dalam Tinjauan Politik Islam Kawasan', *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam* 19, no. 1 (30 June 2023): 1–27, <https://doi.org/10.24042/tps.v19i1.16369>.

⁶⁴ Angeles Ramírez, 'Control over Female "Muslim" Bodies: Culture, Politics and Dress Code Laws in Some Muslim and Non-Muslim Countries', *Identities* 22, no. 6 (2 November 2015): 671–86, <https://doi.org/10.1080/1070289X.2014.950972>.

⁶⁵ Nasreen Akhtar, 'Pakistan, Afghanistan, and the Taliban', *International Journal on World Peace* 25, no. 4 (2008): 49–73.

⁶⁶ Babar Shah, 'CHANGING NATURE OF UN SANCTIONS: A Case Study of Afghanistan', *Strategic Studies* 21, no. 1 (2001): 147–66.

⁶⁷ Peter L. Bergen, *The Osama Bin Laden I Know: An Oral History of Al Qaeda's Leader* (Simon and Schuster, 2006).



Pakistani government officials in Kandahar requested that Osama be given to the United States, but the Taliban refused. Upon the refusal, an attack was launched on October 7, 2001. Joint forces of America and Britain attacked Al-Qaeda bases in Afghanistan.⁶⁸ In November 2001, there was fierce fighting between them for weeks. In the battle, the Taliban lost and fled out of Kabul, heading south towards Kandahar, and the defeat ended their rule.⁶⁹ The United States then carried out protection against Afghanistan, which lasted for two decades, from 2001 to 2021. The United States tried to build a more democratic Afghanistan during its stay. Furthermore, several approaches were used to stabilize the nation's condition, such as adopting an economic, social, political, and infrastructure governance model.⁷⁰ In 2019, the general election for the president and vice president was successfully carried out. A total of 1.8 million Afghans voted in the presidential election out of an estimated 9.6 million eligible voters. Ashraf Ghani won the presidential election, beating Abdullah. Ghani won 923,592 (50.64%), while Abdullah had 720,841 (39.52%).⁷¹

Afghanistan Coup of 2021

On February 29, 2020, in Doha, an agreement was held between the United States and the Taliban with the title "Agreement for Bringing Peace to Afghanistan between the Islamic Emirate, which is not recognized as a state and is known as the Taliban, and the United States of America".⁷² The four important parts of the agreement are as follows: (1) An enforcement mechanism that will prevent the use of Afghan soil by any group or individual against the security of the United States and its allies; (2) An announcement of a deadline for all foreign forces' withdrawal from Afghanistan; (3) After guaranteeing the foreign forces' withdrawal, Afghanistan will not be used against the United States and its allies.⁷³

Furthermore, the Taliban will start intra-Afghan negotiations with the Afghan side on March 10, 2020; (4) A permanent and comprehensive ceasefire will be on the agenda for intra-Afghan dialogue and negotiations. Under the agreement, the United States is committed to withdrawing its military forces and allies, including non-diplomatic civilian personnel, within 14 months of the announcement. Furthermore, the United States is committed to working with all parties to free war and political prisoners. It also promised to end sanctions against the Taliban and refrained from

⁶⁸ Marc Sageman, 'Confronting Al-Qaeda: Understanding the Threat in Afghanistan', *Perspectives on Terrorism* 3, no. 4 (2009): 4–25.

⁶⁹ Jackson and Weigand, 'The Taliban's War for Legitimacy in Afghanistan'.

⁷⁰ Reza Sanati, 'Transitioning Afghanistan in the Post-Withdrawal Era: Setting the Stage for a Stable Political Order', *Alternatives: Turkish Journal of International Relations* 10, no. 1 (2011): 93–114.

⁷¹ Hafizullah Emadi, 'Minority, Marginality and Modernity: The Ismaili Community of Behsud, Wardak Province, in Afghanistan's Polity', *International Journal on Minority and Group Rights* 30, no. 4 (25 April 2023): 713–41, <https://doi.org/10.1163/15718115-bja10109>.

⁷² 'United States Signs Agreement with the Taliban, but Prospects for Its Full Implementation Remain Uncertain', *American Journal of International Law* 114, no. 3 (July 2020): 529–38, <https://doi.org/10.1017/ajil.2020.45>.

⁷³ *Comprehensive Peace Agreement: Agreement for Bringing Peace to Afghanistan between the Islamic Emirate of Afghanistan Which Is Not Recognized by the United States as a State and Is Known as the Taliban and the United States of America; Signed in Doha, Qatar on February 29, 2020, Which Corresponds to Rajab 5, 1441 on the Hijri Lunar Calendar and Hoot 10, 1398 on the Hijri Solar Calendar*, Treaties and Other International Acts Series (Washington, D.C.: United States Department of State, 2020), <https://purl.fdlp.gov/GPO/gpo132866>.



using force against Afghanistan's political independence and internal affairs. In the agreement, the Taliban stated their commitment not to allow their members, individuals, or other groups, including Al-Qaeda, to use Afghan soil to threaten the security of the United States and its allies.⁷⁴ However, the agreement on the negotiating table is not like what would occur. There was no enforcement of an official ceasefire, but violence was reduced. The Taliban resumed attacks against Afghan security forces and civilians. Dialogue between the government and the Taliban has also been slow. Therefore, violence continued in 2020 and 2021, especially as the United States stepped up airstrikes targeting the Taliban. Based on the UN documentation, from 2009 to 2020, the number of victims exceeded one hundred thousand.⁷⁵

At the end of June, several months ahead of schedule, US troops were reduced from 13,000 to 8,600, and the dialogue agenda had been slow. Meanwhile, the United States withdrew its forces until January 15, 2021, when only 3,500 troops remained. In February 2021, the new president of the United States, Joe Biden, ordered the plans to review the previous administration by Donald Trump, which decided to withdraw American troops. In addition, it was reported that the United States would continue with its withdrawal plans but would delay the date by several months. On August 30, 2021, all US military forces completely withdrew from Afghanistan.⁷⁶ Since the beginning, Trump's decision to withdraw American troops was not purely a desire to bring peace to Afghanistan. The US-Taliban negotiations were held without the approval and presence of the Afghan government. The Afghanistan President, Ashraf Ghani, even questioned the agreement and was considered controversial.⁷⁷ The high cost of US military operations is the most likely factor for the forces' withdrawal. More than US \$ 88 billion (IDR 1.26 quadrillion) has been spent to finance the military and maintain Afghanistan's security. Moreover, the Covid-19 pandemic has caused economic instability in America and globally.⁷⁸

The US military has created a high dependence on the new Afghan government in many ways. As evidenced by the withdrawal of American troops, the Taliban have begun to move to control the Afghanistan territory. In the summer of 2021, attacks were continued by threatening government-held urban areas and seizing several borders. In early August, the Taliban began direct attacks on various urban areas, including Kandahar in the south and Herat in the west. On August 6, 2021, the provincial capital of Nimruz was captured. It was the first provincial capital to fall,

⁷⁴ 'Afghanistan's Security Challenges under the Taliban | Crisis Group', accessed 30 December 2023, <https://www.crisisgroup.org/asia/south-asia/afghanistan/afghanistans-security-challenges-under-taliban>.

⁷⁵ Center for Preventive Action, 'Instability in Afghanistan', Global Conflict Tracker, accessed 30 December 2023, <https://cfr.org/global-conflict-tracker/conflict/war-afghanistan>.

⁷⁶ Adam Zeidan, 'Withdrawal of United States Troops from Afghanistan', accessed 30 December 2023, <https://www.britannica.com/event/withdrawal-of-United-States-troops-from-Afghanistan>.

⁷⁷ Susannah George and Dan Lamothe, 'Afghan President Ashraf Ghani Objects to U.S.-Taliban Peace Deal', 2022, https://www.washingtonpost.com/world/asia_pacific/afghan-government-questions-aspects-of-us-taliban-peace-deal/2020/03/01/0a973228-5a68-11ea-8efd-0f904bdd8057_story.html.

⁷⁸ Zongyun Li et al., 'A Comparative Analysis of COVID-19 and Global Financial Crises: Evidence from US Economy', *Economic Research-Ekonomiska Istraživanja* 35, no. 1 (31 December 2022): 2427–41, <https://doi.org/10.1080/1331677X.2021.1952640>.



and others began falling rapidly. In just days, more than ten other capital cities were captured, including Mazar'i Sharif in the north and Jalalabad in the east. However, Kabul remained under the control of the Afghan government. On August 15, 2021, Taliban militants managed to enter the capital, Kabul, and the Afghan government collapsed. The presidential palace was seized, and checkpoints were set to maintain security.⁷⁹

President Ashraf Ghani fled to the United Arab Emirates and left Afghanistan on Sunday, August 15, 2021, as Taliban militant forces moved closer to the capital Kabul. In a statement months after the coup, Ghani argued that he fled to protect the destruction of Kabul. The president "had no inkling" that it would be his last in Afghanistan. The head of security came to see and reported that the Taliban would kill them all. Ghani was informed that Khost and Jalalabad had fallen to the Taliban. "I did not know where we would go. Only when we took off, it became clear that we were leaving Afghanistan. Therefore, this was sudden," as stated in Ghani's statement.⁸⁰ Blasphemy and criticism came from various parties and the vice president, Amrullah Saleh after the president fled from Afghanistan. The reason is Ghani's escape hastened the conquest of the Taliban even though the agreement was almost complete. There have even been accusations that the president made off with a large sum of money but these were later denied. Ghani blamed the agreement between the United States and the Taliban in Doha since the deal paved the way for a coup on August 15, 2021.⁸¹

Meanwhile, the Taliban announced that their group would soon form a government after conquering Kabul. The leader, Mullah Abdul Ghani Baradar, promised to form an inclusive government and representative of all Afghans. The spokesman for the Taliban, Zabihullah Mujahid, also promised to build a peaceful life in Afghanistan. Zabihullah Mujahid also said that the Taliban no longer want internal and external enemies.⁸² On the other hand, the Taliban will also continue to fight for its goal of implementing Islamic law.⁸³ This promise certainly needs to be proven further in their actions. The Afghan people and the international public will look forward to real action from the Taliban government. Several issues regarding freedom, inclusivity, and women's rights, also emerged with the announcement of the new government.

Overview of the Coup Government of Afghanistan from the Perspective of Islamic Constitutional Law

Based on the theoretical framework presented in the previous part of this article, two important matters should be considered in viewing and assessing the events: first,

⁷⁹ Center for Preventive Action, 'Instability in Afghanistan'.

⁸⁰ Joshua Zitser, 'Last President of Afghanistan Said He Only Had 2 Minutes to Decide Whether to Flee Kabul, and He Didn't Realize He Was Flying into Exile until after Takeoff', Business Insider, 2021, <https://www.businessinsider.com/ex-afghan-leader-says-didnt-know-flight-out-of-kabul-was-to-exile-2021-12>.

⁸¹ 'President Ghani Rejects Peace Deal's Prisoner Swap with Taliban | Taliban News | Al Jazeera', accessed 30 December 2023, <https://www.aljazeera.com/news/2020/3/1/president-ghani-rejects-peace-deals-prisoner-swap-with-taliban>.

⁸² 'Afghanistan: A New Order Begins under the Taliban's Governance', *BBC News*, 8 September 2021, sec. Asia, <https://www.bbc.com/news/world-asia-58495112>.

⁸³ Ma'ruf Amini and Devina Arifani, 'The Taliban & Afghanistan: Conflict & Peace in International Law Perspective', *International Journal of Law Reconstruction* 5, no. 2 (30 September 2021): 306–16, <https://doi.org/10.26532/ijlr.v5i2.17704>.



the obligation to comply with the constitution because Islamic Constitutional Law places great emphasis on adherence to the constitution as a collective agreement; second, in the view of Islamic Constitutional Law, the benefit is very important because it is the goal of forming a state and government. These events are elaborated in the following. Firstly, Obligation to Submit to the Constitution. The rules regarding leadership succession or the appointment of new state leaders are regulated in a constitution. That is, the leadership change in a state should be conducted appropriately to the rules enshrined in the constitution. The leadership change can gain legality and legitimacy through the procedures established by the Constitution. Therefore, any change carried out outside or contrary to the procedures set out in the constitution can be illegal and have no legitimacy. In Islamic Constitutional Law, the basic law (*al-ashlu fi al-fiqh al-islamy*) is that a person may not assume power except by a valid means. The constitution should determine the legitimate path of a state. Therefore, power taken outside the constitutional path is illegitimate.

The government led by President Ashraf Ghani is based on the Afghan Constitution of January 3, 2004. Article 61 regulates the mechanism for filling the president's office through direct, free, general, and secret elections held 30 to 60 days before the term ends. The second round of the general election will be held two weeks from the results announcement date when the first does not reach 50%. In the second round of presidential elections, the candidate who gets the most votes is entitled to serve as president. Re-election will be held according to the provisions of the law when a candidate dies during the election. According to the constitution, the office of the presidential term in Afghanistan lasts for 5 years after the election or ends on the 1st of *Jawzah*. Furthermore, the first vice president is obliged to assume power when the president is absent, resigns, or dies. Article 67 explains that when there are conditions for resignation, impeachment, or death, as well as an incurable disease that prevents the president from performing, the entire series will be replaced by the first vice deputy. In the event of a resignation, impeachment, or death and incurable disease, the president should personally inform the National Assembly. Due to these circumstances, a new presidential election will be held appropriate to Article 61 of the Afghanistan Constitution, and the first vice president has the right to run as a presidential candidate.

Based on the Afghan constitution, the coup carried out by the Taliban is inappropriate. Any power takeover against the Constitution can be considered an offense. The Taliban's disobedience to the constitution contradicts the teachings of Islamic Constitutional Law, which requires submission and obedience to the constitution as a collective agreement of all elements of the Afghan people. The Taliban's non-compliance with the constitution is contrary to the words of Allah: "*O you who believe, fulfill your contracts (promises).*" (QS. Al-Maidah: 1), and also His words which mean: "*O you who believe! Obey Allah and obey the Messenger (Muhammad) and the Ulil Amri (those in authority) among you. Furthermore, when you differ in opinion about anything, refer it back to Allah (the Qur'an) and the Messenger (his sunnah) when you believe in Allah and the Last Day. That is the best [way] and best in the result.*" (QS. An-Nisa: 59).

Secondly, Post-Coup Settlement Considerations. The power takeover using a coup by the Taliban is in line with the teachings of Islamic law for obedience to the constitution. The benefits of the state should also be considered after the coup to keep life in Afghanistan sustainable, or the greater damage without government power will take place in society regardless of how it is achieved and exercised. The above



description has shown that President Ashraf Ghani, the legitimate leader of Afghanistan, has fled the state to the United Arab Emirates. The flight led to the collapse of the government and a power vacuum in Afghanistan. Therefore, there is no longer a government that can regulate people's lives, and this vacuum can potentially cause greater damage. Besides contradicting human sociological needs for the existence of a state and government, it is also contrary to Islamic teachings that require leadership for society, as a hadith of the Prophet Muhammad SAW says, "When three people go out on a trip, they should appoint one of them as a leader" (HR. Abu Daud). Therefore, Islam teaches the importance of leadership, especially in society and the state.

Considering the greater good and emergency conditions, the Taliban should fill Afghanistan's power vacuum by forming a government. The formation of a government is an emergency solution to keep the social life running. However, the new government formed by the Taliban should also consider the aspirations of the Afghan people. Another consideration is President Ghani's claim of fleeing to avoid the collapse of Kabul due to bloodshed. This is because the fight between the Afghan military and Taliban militants will cause greater bloodshed among ordinary people. Based on these considerations, forming a post-coup government is an alternative that should be carried out to safeguard the greater welfare of Afghanistan. Therefore, the Taliban remains obligated to create a more secure and peaceful Afghanistan. The promise to form a peaceful government should take into account tangible actions. Heriyanto holds that there has not been any source of international law that defines a coup d'etat to date. The ambiguity of a coup d'etat concept affects the emergence of various types of coups. This diversity of coups is greatly influenced by the overthrown actors.⁸⁴ From that point, the Islamic Constitutional Law approach can be used to end the ambiguity of the coup concept in the area of International Law. The two matters, namely: (1) the obligation to submit to the constitution and (2) post-coup settlement considerations, should be considered in viewing and assessing the coup as explained before, as these considerations can be important contributions to the International Law.

Conclusion

Based on the description and analysis, this research can be concluded as follows: the background to the coup of the Afghan government by the Taliban was triggered by the withdrawal of United States troops from Afghanistan. The withdrawal is a follow-up to the Doha agreement between the United States and the Taliban. Since US troops were withdrawn, Taliban militants began to control several areas until the capital, Kabul, was also captured. The flight of the President of Afghanistan, Ashraf Ghani, to the United Arab Emirates led to the collapse of the Afghan government, hence the Taliban easily came to power. From the perspective of Islamic Constitutional Law, the Afghan government coup can be viewed from two points, namely: 1) the obligation to comply with the constitution and 2) post-coup benefit considerations. From the first point, the actions of the Taliban in conducting the coup were contrary to the Constitution of Afghanistan. Therefore, it is not in line with the Islamic State Constitutional Law doctrine. From the second point, after the

⁸⁴ Dodik Setiawan Nur Heriyanto, 'Legalitas Pergantian Kekuasaan Di Afganistan Melalui Coup D'etat Oleh Taliban Menurut Hukum Internasional', *Jurnal Hukum IUS QUIA IUSTUM* 29, no. 3 (2 September 2022): 469–93, <https://doi.org/10.20885/iustum.vol29.iss3.art1>.



coup occurred, the Taliban should have filled the government on the grounds of an emergency and the occurrence of a vacuum due to President Ashraf Ghani's escape from Afghanistan.

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