

The Development of The Application and/or Absorption of Islamic law towards Regional Legal Products in Madura

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Abstract— The application and / or absorption of Sharia law in the regional government areas of Madura, occurs because Madurese people uphold firmly their religious values in daily life, even the spirit of establishing Madura Province also grows from a strong religious awareness of all levels of Madurese society. After conducting a research, the application and / or absorption of the value of Islamic law in local legal products in Madura is divided into two types; *First*; direct absorption and / or application of regional legal products, in the form of local regulations or district regulations. *Second*, the absorption and / or application of the value of Islamic law in regional legal products do not directly in the form of Islamic legal products, but substantially, the material contained in the legal products has absorbed the values of Islamic law in it. Meanwhile, the Form of Synchronization of Sharia Regional Regulations in four districts in Madura; Pancasila; and the 1945 Constitution are: *First*, Synchronization in the field of aqidah and sharia. *Second*, synchronization in the field of morality in the Regional Regulation.

Keywords— *Legal Product, Sharia, Islamic Law;*

I. INTRODUCTION

The application and / or absorption of Sharia law in the regional government areas of Madura, occurs because Madurese people uphold firmly their religious values in daily life, even the spirit of establishing Madura Province also grows from a strong religious awareness from all level of societies. For example, in 2011 around 1,032 Mosques and 5,187 Mushalla in Pamekasan Regency were built on community waqf land that was used not only as a place of worship, but also education and economy. This shows how strong the religious awareness of the Madurese is.

Legal formation dynamics appear in harmony with the development of regional autonomy which makes local governments compete each other to regulate all matters relating to their regions into Regional Regulations (Perda), especially Perda regarding regional taxes and regional retribution. On the other hand, the demand of sharia-based laws formulation for their regions is rising. However, it causes pros and cons. For those who agree, the Sharia Regional Regulation is expected to be a solution for

accelerating development without losing identity and religiosity. Meanwhile, those who refuse argue that this kind of regulation will create national disunity because of the discrimination of religious minorities.

The application or absorption of various provisions and values of Islamic law in governmental aspects in society is one of the implementation of religious freedom in Indonesia, because this right is the right a person to determine, believe, and practice religion freely. This right is a core part of human rights that cannot be violated for any reason. Therefore the existence of this right gives the obligation to the state to be respected (to respect), protected (to protect), and fulfilled (to fulfill) as a manifestation of the state's recognition of the principles and values of human rights which become international agreements. However, it should be considered that this regulation does not create discrimination and feelings of oppression or anxiety to the minority groups. Because the essential purpose of the application of sharia is to safeguard and protect the dignity of humanity which in Islam is commonly referred as "maqashidu al-shariah".[1]

Therefore, the development of the adoption of Islamic legal values or even the application of Sharia-based law must remain in harmony with the values of Pancasila and the 1945 Constitution. It should also maintain the integrity of the Unitary State of the Republic of Indonesia. Based on those reasons, this research becomes essential. Considering the regional enthusiasm for developing the region based on the local potential of the area, including the values of the people's lives, is perfectly accommodated by Law No. 23 of 2014 concerning Regional Government. Thus, the formulation of the problem in this research is how is the form of absorption of the values or provisions of Islamic law in local legal products in local governments in Madura?

II. RESEARCH METHOD

This research used a normative legal research method, with a conceptual approach, a statute approach and a case approach.

III. RESULTS AND DISCUSSION

A. *The Forms of Application and / or Absorption of Islamic Law Value in Regional Legal Products in Madura*

The issue of applying Islamic law (sharia) begins to develop at the level of legislation, even it reach the country issues such as the issue of the Islamic State of Indonesia (NII) and the Khilafah version of Hizb ut-Tahrir. Because it is connected to the right of freedom opinion and assembly, which results from the application of freedom meaning without restrictions, all sects and ideologies from all over the world have the right to be studied and followed by the plot of thought. This also applies to the case of the formalization of the Islamic Sharia movement as a legal basis for Muslims in carrying out their daily routines, including *ubudiyah*, *muamalah* and other routines.[2]

According to Agus Purnomo, there are at least 4 (four) important reasons related to the desire for the formalization of Islamic law in legal products at a positive level in Indonesia, including:[2]

- 1) Historical perspective, meaning that some regions that apply Sharia regulations are often inseparable from historical reasons in the form of a strong past history of an area that wants the application of Islamic law.
- 2) Genealogically, the proposal of the implementation of Islamic law in Indonesia is also largely driven by people who have biological or political relations with people involved in similar organizations in the 1950s. [3]
- 3) Politically pragmatism. Sharia law becomes a political issue to get votes from prospective voters who have a strong desire to implement Islamic law.
- 4) Ideologically, it means the formulation of a Sharia Regional Regulation is driven by the ideology of an Islamic group in an area that wants the application of Islamic Sharia such as radical or fundamentalist Islam.

What is interesting in this context is the spirit of the formalization of Islamic law in local governments in Madura which actually does not have historical and ideological references as stated above. Generally the Madurese are affiliated with the largest Islamic organization in Indonesia called Nahdlatul Ulama (NU), which does not want the formalization of Islamic law. The Islamic character of Madura is characterized by Islamic Santri as the mass base of NU in other regions that are infatuated with an Islamic understanding of moderate, inclusive, and respects all forms of dissent, both interfaith and interfaith opinions.[4]

The diversity of NU is based on 3 (three) principles, they are *tawassuth* (moderate), *tasamuh* (tolerant), and *tawazun* (balance). Based on these three principles, NU reinforced its mission to accommodate all religious communities in Indonesia. One example of NU's attitude was when the proposal emerged to discuss *Ahmadiyah* which had been

sentenced astray by the Indonesian Ulema Council (MUI). Then the proposal was conducted through a Plenary Meeting of the Nahdlatul Ulama Management (PBNU) in September 2005.[5]

This is certainly different from the concept of formalization of Islamic sharia which emerged in several districts in Madura. Even for just a matter of fashion in primary and secondary education levels, there are several regions that implement the obligation for students to wear sharia clothes, including for students who are in different faith with the majority, Muslim.[6]

Thus, it needs to be analyzed in relation to the form of local legal products in Madura districts relating to the application and / or absorption of Islamic law understanding in them. The study referred is limited to identify the "sharia law product" development whether it is only the matters of *ubudiyah*, social, or even other matters related to *muamalah* in the context of the Indonesian legal state.[7]

B. *Synchronization of Sharia Regulations in Madura with Pancasila Values and the 1945 Constitution of the Republic of Indonesia*

If we consider the substance above, the main content of sharia law material that is commonly applied in each district in Madura is a law that is only focused on 3 (three) main materials such as *aqidah*, sharia, and morality.[6] this means that, for almost 20 years of the emergence of sharia-based laws, the object of the regulation remains the same, around the three areas above. Supposedly, the consistency of Sharia Regulations should penetrate into other issues that are more needed by Muslims in order to realize a prosperous living as a state based on the almighty divine value.

The object and material of sharia law regulation have never been directed at crucial things faced by the Indonesian nation today, such as rampant corruption, social conflict, and environmental damage. In fact, if you want to be consistent, prevention of these behaviors can be regulated in the product Sharia-based regional law. If this is the case, offers for regional Islamic legal products will easily find a place in the whole community.

However, this does not mean that the application and / or absorption of Islamic legal values in the regional legal products do not have a clear synchronization of the Pancasila and the 1945 Constitution of the Republic of Indonesia.[8] Sharia law products that develop in each district in Madura certainly do not conflict with the legal nomenclature on it. It is impossible for the Sharia Law to be implemented if it conflicts with Pancasila values, and conflicts with the norms regulated in the 1945 Constitution of the Republic of Indonesia.

As for some synchronization of Sharia Regulations in some regions in Madura; Pancasila; and the 1945 Constitution, among others are:

- 1) Synchronization in the *aqidah* and sharia aspects.

Aqidah and sharia are something that is very familiar in Islamic studies, both in the nature of contemporary or classical studies. Aqidah talks about the concept of faith, both the faith of a single faith in Allah, or other context of faiths that become a prerequisite for someone to be called as a believer. In short, the aqidah is a science that discusses the concept of God in detail.

Meanwhile, sharia is related to the values of human life in carrying out and implementing faith in the context of community life. Sharia is a guide for a Muslim how he should behave in the context of his life with others. Sharia is the norm that guides Muslims in interacting with their social lives. In a narrow sense, the meaning of sharia is also intended in the context of *ahkamul khomsah* consisting of: *fardlu*, *haram*, *sunnah*, *makruh*, and *mubah*. Both aqidah and sharia, is a prerequisite for every Muslim in an effort to increase the level of faith and declared a Muslim in accordance with the religion rules.

When it is synchronized with the Pancasila values, the citizen need for guidance of his religious values to become a good and perfect Muslim is an implementation of believe in the one supreme God value. As an effort to make Indonesian people religious, it needs legal instruments that are able to guide citizens to behave as they have been outlined by the dogma and values of a religion. Thus, the existence of sharia regulations to strengthen the Muslim personality of citizens can be synchronized with the first principle of the Pancasila who really expect the Indonesian people to be a religious person and obedient to the religious values.[9]

2) Synchronization in the moral aspects.

As stated above, the principal provisions in the Sharia Regulations in several districts in Madura are centered on 3 (three) main subjects in the form of sharia, aqidah, and morality. In the discussion above it has been stated that in the field of sharia and aqidah, the sharia regulation has a clear synchronization in the form of legal instruments to create the quality and personality of citizens who have full adherence to religious values as mandated by the first precepts of Pancasila.

In addition to the regulatory material in the aspect of aqidah and sharia, in several local regulations in Madura indicate the presence of "*akhlaqul karimah*" values in local legal products. Such an arrangement is an effort to create good personalities of Madurese, such as noble, get along well with each other, put the public interest first, and can live together in the complexity of differing views. This regulation is intended to create living in harmony among society. Therefore, the existence of regional regulation materials based on morality is closely related to the

spirit built by the third precepts of Pancasila in the form of "Indonesian Unity". Unity is the key to success in developing the country in the Direction of Development and Civilization.. Without the existence of unity, the concept of a unitary state established by the provisions of Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia is only an inevitability to be realized.

IV. CONCLUSIONS AND SUGGESTIONS

Based on all the discussion above, the conclusions are:

1. The application and / or absorption of Islamic legal values in regional legal products in Madura is divided into two types; First; direct absorption and / or application of regional legal products, whether in the form of regional regulations or district regulations. Second, the absorption and / or application of the value of Islamic law in regional legal products does not directly take the form of Islamic legal products, but substantially, the material contained in the legal products has absorbed the values of Islamic law in it.
2. Forms of Synchronization between Sharia Regional Regulations in four districts in Madura with Pancasila and the 1945 Constitution are: First, Synchronization in the aspect of aqidah and sharia is an effort to make the Indonesian people religious, it is needed legal instruments that can guide citizens to behave as they have outlined by the dogma and religion values. Thus, the existence of sharia regulations to strengthen the Muslim personality of citizens can be synchronized with the first principle of Pancasila, which indeed expects the Indonesian people to be religious and obedient to religious values. In the context of the 1945 Constitution of the Republic of Indonesia, the freedom to practice religious teachings has actually been guaranteed in the constitution. Second, synchronization in the aspect of morality in the Regional Regulation. It was explained that the existence of morality-based regional regulation material related to the spirit built by the third precepts of Pancasila in the form of "Indonesian Unity". Unity is the key to success in developing the country in the Direction of Development and Civilization. Without the existence of unity, the concept of a unitary state established by the provisions of Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia is only an inevitability to be realized.

Acknowledgment

This research is funded by Law Faculty, Universitas Trunojoyo Madura.

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