

Review of *Maslahah* Theory of Shari'a Regulation in Indonesia

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ABSTRACT

This study aims to analyze some Shari'a-compliant regional regulations in Indonesia with the Theory approach *Maslahah*. There are three reasons why this research is important. First, the shari'a-compliant regional regulations have become controversial in their implementation amidst the multicultural community. Secondly, the Shari'a regulation is often regarded as a sharia regulation in accordance with shari'a values so that there is a distinctive arrogance in the authority to interpret Islamic law. The third rule with the nuance of such success when reviewed from complies *Maslahah* is whether it with the values contained in *Maslahah*. From the results of this research, it is documented that some of the rules of the Shari'a language conform to the values of *Maslahah* Shari'a, but some do not reflect the values *Maslahah*. It is based on the fact that the values are *Maslahah* Shari'a intended for the social control of the people by providing for the common good, while the Shari'a rules are still less and far from the values *Maslahah* and more important to the interests of groups and groups.

Keywords: *Islamic law, Sharia of regional regulation, Maslahah*

1. INTRODUCTION

This article aims to analyze sharia-based regional regulations in Indonesia with the approach *Maslahah*. From the approach *Maslahah*, this research is expected to be able to find the meaning of the research question, whether local regulations with Islamic values contain values *Maslahah*.

The beginning of the issuance of sharia regulations, namely since the introduction of regional autonomy in 1999. The existence of regional autonomy has encouraged many regional governments to regulate their regions in accordance with the aspirations of the people in their respective regions. With the enactment of regional autonomy, the regional government has the right to regulate and manage their own government affairs and the interests of the local community in accordance with applicable laws.

This authority is regulated in Law Number 32 Year 2004 concerning Regional Government which states that regional governments regulate and manage their own government affairs according to the principle of regional autonomy and assistance tasks. [1] The consequence of the regional autonomy has pushed many regional governments to compete in regulating all their affairs that are related to regional needs into regional regulations. The existence of regional regulations in the administration of regional government is an inseparable part of decentralization, known as regional autonomy. In it has two essence of authority, namely "regulate" and "take care". This "regulating" authority means that the region has the right to make legal decisions in the form of laws and regulations which are then (inter alia) named Regional Regulations. [2].

One form of regional independence in regulating regional household affairs or regional government affairs is the formation of regional regulations. Because Perda is a strategic instrument as a means of achieving the goals of decentralization. In the context of regional autonomy, the existence of a regional regulation in principle has the role of maximizing decentralization. Because Law number 32 of 2004 has given special authority to regional governments, this has become an opportunity for some local communities, especially the majority of Muslims, who want Sharia-based Regional Regulations. In the implementation of Sharia Regional Regulations, some are accepted by the community and not a few of them reject it.

As for those who reject the Sharia-nuanced Regional Regulation arguing that the Regional Regulation is considered to violate the mandate of the country's constitution and ideology, namely Pancasila as the fundamental basis of the Indonesian state and Regional Regulations with Islamic sharia perspective are also indicated as having the potential to give birth to Human Rights Violations and national divisions. for example, a local regulation requiring civil servants in the regional administration to wear certain clothes considered Islamic or to read the Koran on Friday. Another example is the regulation which requires that every prospective regional head be able to read the Koran. Another example is the rule that requires all students in public schools to wear hooded uniforms (hijabs) or that require all students to be able to read the Qur'an as a condition for graduation in public schools. [3]

Whereas those who agree and accept Sharia-based Regional Regulations are of the opinion that the Regional Regulation is part of the local wisdom of the local community and also as a moral guidance for the community. Sharia values

infiltrated into the Regional Regulation are expected to be able to improve people's morals from social ills.

According to Pudjo Suharso [4] there are three community response groups in responding to Sharia regulations. The first group, those who reject the implementation of sharia regulations with a variety of arguments that are expressed, starting and unclear legal basis, the character of society, plurality and our state context. The second group is the group that emphasizes sharia shades as a necessity. This group bases its original argument on several things, (1) Anomaly of people's morality; (2) Correlational relationship between the mastery of the Koran and devotion; (3) Because women are considered as moral enforcers, the main targets of the various regulations above are women, as if making moral anomaly and immorality the same as women's bodies. And the third group is the group that does not respond or feel ignorant and appear to be indifferent to Sharia regulations.

Some people believe that with the Sharia regulation, the community can carry out religious commands and prohibitions as a form of preaching *amar ma'ruf nahi munkar* because the regulation has a binding nature so that the existence of Sharia regulations becomes the legitimacy of the community in carrying out religious obligations and prohibitions. The community feels secure with Polemics occur not only in the community but also in the environment of scholars and researchers are also involved in polemics about sharia regional regulations. For scholars who support as investigated by Saraini, Mustika, and Siti Kholifah in their research [5], they revealed that sharia regulations are very influential on gender equality meaning that sharia regulations also play a role in upholding gender equality.

Another research was carried out by Arfiansyah [6] who suggested that the Regional Regulation did not have the potential to undermine the constitution and ideology of the Republic of Indonesia. In fact, according to the author, the Indonesian people seem to understand the development of the Sharia Regional Regulation as part of the development of democracy in Indonesia. The three studies of his brother, Asmuni [7] in his research, stated that the nuances of Islamic sharia regulations are basically an effort taken to participate in managing a better state life by making Islam a spirit. Islamic teachings that contain universal values are true not only for their followers, but also for all humans. This is where the position of Islam as *rahmatan lil alamin* found its relevance.

Whereas contradictory scholars such as those studied by Listianingsih, Dessy Marliani [8], and Libbi, Ahmad Mudhar [9] argued that Sharia regional regulations both in Aceh and in Indonesia conflict with Human Rights values. Besides contradicting human rights according to Munawar Ahmad [10] that the phenomenon of sharia regulations is a form of political Islam arrogance over the attitude of the new order government. Meanwhile, according to Nur Hidayah's research, sharia regulations show the influence of conservative sharia interpretations laden with patriarchal values so that these sharia-based regulations discriminate against women, as reflected in their provisions regarding women's family and social roles, dress codes, curfew, public segregation, and prostitution.

From the studies conducted by these scholars, there are indeed pros and cons, but from several studies that have been carried out only touched on issues of perda and human rights as well as women's issues did not touch the matter of *Maslahah*. Therefore this research uses the approach *Maslahah*, why this research uses the approach *Maslahah*, because what is

studied is sharia nuanced regulations, then the approach *Maslahah* will find out whether the perda is indeed sharia.

From the findings of this study the authors argued that sharia nuanced regulations in accordance with the values of *Maslahah* sharia, but partly not reflect the values *Maslahah*. This is based on local regulations that are in accordance with the values of the *Maslahah* Shari'a aimed at social control of the community by prioritizing the general benefit, while the other sharia regulations are still lacking and far from the values of the *Maslahah* and prioritizing the interests of certain groups or groups. Further explanation from the research will discuss first, about the review of local regulations, and sharia regulations in Indonesia, second about *Maslahah* and third are the results of the analysis of these regulations with the approach *Maslahah*.

2. GENERAL REVIEW OF REGIONAL REGULATION

What is meant by regional regulations (Regional Regulations) are laws and regulations established by the Regional House of Representatives (DPRD) with the approval of the regional head who must meet certain formal requirements that can have legal force and are binding [11] and to regulate public interests or the governance structure which is the function of the Regency / City government in the field of autonomy and the task of guiding [12]

A. Basis for Regional Regulation

The basis used in the formation of regional legislation includes;

- Judicial foundation. It is the provision of the law that is the basis of the legislative authority. Whether the authority of the body or body has the legal basis set forth in the law or not. This is very important to mention in the Invitation because an official / body is not authorized to issue the rule.
- Sociological foundation. Ie, one of the legislation made must be understood by the community in accordance with the reality of life. This means that the law established must be in accordance with the living law (the living law) in society. In this condition, it is impossible for the legislation to be free from social phenomena in the community. By looking at the social conditions that occur in society in the context of the drafting of a statute, there are not so many directions of the institution of power in implementing it..
- Philosophical Basis. That is the basis of philosophy or views or ideas that become the basis when pouring the desires and policies of government into a plan or draft state regulation. A statutory formulation must obtain justification that can be accepted and studied philosophically. That justification must be in accordance with the ideals of truth, the ideals of justice and the ideals of morality. Legislation is said to have a philosophical basis if the formulation has justified that is philosophically studied. In the context of the Indonesian state which is at the core of this philosophical foundation is Pancasila as a national value system for the state life system.

- Political foundation. That is the policy line which becomes the next basis for the policy and direction of the governance of the state government. This can be expressed in political lines as currently stated in the National Legislation Program and the Regional Legislation Program, and also the National Development Program policy as the direction of government policy that will be implemented during his future administration. This means giving direction in making legislation that will be made by the body or official in charge.

B. Function of Regional Regulation

Regional regulation function is an attribute function that is regulated in Act Number 23 of 2014 concerning Regional Regulations. The function of Regional Regulations is formulated in Article 236 of Law Number 2014 concerning Regional Regulations as follows; [13]

- Completing regulations in the context of carrying out regional autonomy and co-administration tasks;
- Carrying out regulations as a further elaboration of the higher level legislation by taking into account the characteristics of each region.
- Organize matters that are not in conflict with each public interest.

3. GENERAL REVIEW OF SHARIA REGIONAL REGULATION

A. Phenomena of Sharia Regional Regulation

The formalization of religion which is interpreted in the form of regulations through Regional Regulations is often interpreted as Sharia Regional Regulations. In Indonesian constitutional law, indeed it is not familiar with the term Sharia Regional Regulation, what is generally only Regional Regulation. The content of the material in the Regional Regulation if regulating religious matters cannot be termed the Sharia Regional Regulation. Minister of Religion Lukman Lukman Hakim Syaifudin also disagrees with the term Sharia Regional Regulation in the rule of law in Indonesia. This term may appear only as a subject of discourse to more easily study a number of Regional Regulations that are nuanced in Sharia.

According to Wasisto [14], in terms of constitutionality, the main substance of Sharia Regional Regulations with general or conventional Regional Regulations is actually not different, both of which have included religious values, morality values, and customs values in the substance of the rules. The addition of the term Sharia only wants the Regional Regulation to give the view that the value of the UK is more emphasized than the worldly value.

In its development, Sharia Regional Regulations are also in the interests of the region, so that many regions make public policies, the substance of which is the implementation of Sharia values which are translated into laws.

B. Examples of Sharia Regional Regulation

Sharia of Regional Regulation			
No	Types of Sharia Regional Regulation	Regional	Categori

Sharia of Regional Regulation			
No	Types of Sharia Regional Regulation	Regional	Categori
1	Peraturan Daerah 24/2004 tentang Pencegahan, Penindakan dan Pemberantasan Maksiat	Padang Pariaman	Akhlak
2	Peraturan Daerah 10/2001, wajib baca Quran untuk siswa dan pengantin. Peraturan Daerah 6/2002, Wajib Berbusana Muslim	Solok	Akhlak
3	Peraturan Daerah 11/2001, pemberantasan dan pencegahan maksiat	Sumatra Barat	Akhlak
4	Instruksi Walikota, 7-3-2005, pemakaian busana muslimah	Kota Padang	Akhlak
5	Peraturan Daerah 8/2005, Pemberantasan Maksiat	Kota Tangerang	Akhlak
6	SE Bupati 450/2002 Pemberlakuan Syariat Islam	Pamekasan	Sharia
7	Peraturan Daerah 6/2000 tentang Kesusilaan. Sedang dibentuk tim kajian Peraturan Daerah penerapan Syariah Islam	Garut	Sharia
8	Peraturan Daerah 14/2001 Penanganan Pelacuran	Jember	Jinayah
9	Pengaturan Desa Padang, Bulukumba tentang Penganiayaan	Bulukumba	Jinayah
10	Perdes Mengenai Zina, Qadraf, Khamr dan Judi	Bulukumba	Jinayah
11	Peraturan Daerah Zakat, sedekah dan infak	Lombok Timur	Ibadah
12	April 2005, Hizbut Tahir dan PPP membentuk Komite Persiapan Peraturan Daerah Syariat	Riau	Sharia
13	2001, Pembentukan Komite Persiapan Penegakan Syariat Islam	Sulawesi Selatan	Sharia
14	Peraturan Daerah 4/2003, Busana Muslim dan baca Al Quran untuk siswa dan calon pengantin	Bulukumba	Akhlak
15	Peraturan Daerah 12/2003 Jilbab bagi PNS dan penambahan jam pelajaran agama Islam	Gowa	Akhlak
16	Peraturan Daerah 6/2002 Ketertiban Sosial, pemberantasan pelacuran, pengaturan pakaian dan pemberantasan kumpul kebo	Kepulauan Riau	Akhlak
17	Peraturan Daerah 7/1999, Prostitusi, SE Bupati, wajib busana muslim dan baca Quran untuk siswa	Indramayu	Akhlak

C. Category of Sharia Regional Regulation

Data processed and researched by Dani Muhtada, has classified the types of Sharia Regional Regulations including seven categories of Sharia Regional Regulations

- First*, local regulations related to morality. This includes Local Regulations on prohibiting alcoholism, prostitution, or gambling.
- Second*, Regional Regulations related to zakat, infaq, and shadaqah policies.

- c. *Third*, Regional Regulations related to Islamic education. This includes local regulations on madrasa diniyah and reading and writing of the Koran.
- d. *Fourth*, Regional Regulations related to the development of the Islamic economy. This includes Regional Regulations on Baitul Mal wat Tamwil (BMT) and Sharia Rural Banks (BPRS).
- e. *Fifth*, Regional Regulation Regional Regulation regarding the faith of a Muslim. This includes regulations regarding the prohibition of Ahmadiyah activities or other Muslim sects that are considered heretical.
- f. *Sixth*, Regional Regulations on Muslim dress, including the obligation to wear the hijab for women.
- g. *Seventh*, Sharia Regional Regulations in other categories. Regional regulations in this category are for example Regional Regulations on grand mosques, hajj services, and the reception of Ramadan. [15]

4. THEORY OF MASLAHAH

A. Theory of Maslahah

According to the language, the word *maslahah* comes from Arabic, the singular word from the word *al-mashalih*, similar to al-shalah, which means to bring good [16] and has also been translated into Indonesian as a word *masahah*, which means to bring good or to benefit. and denied damage. [17] According to Ibn Manzur, *masahah* means good and it is a form *mufrod* (singular) from the word *masalih* (plural) *Maslahah* also means benefits or a job that contains benefits. If it is said that trade is a benefit and that knowledge is also a benefit, then it means that the Regional Regulation and men science knowledge is due to the benefit of mental and physical benefits.

The scholars of 'ushul fiqh substantively provide understanding *maslahah* as a condition of bringing something that has a positive impact (benefits) and avoids things that have negative dimensions or (*mudharat*). [18]

B. Distribution of Maslahah

Imam al-Ghazali divided the *masah* into three parts namely the *masahah mu'tabarah*, *masghah masghoh*, *maslahah mursalah*.

- *The masahah mu'tabarah* is a mass that is in accordance with the Qur'an and the sunnah of the Holy Prophet. That is, there is a hint of the existence of a problem that is the basis of law. This problem is divided into two.
- *The Maslahah Mulghoh* is a *Maslahah* with little value and weak even contrary to the main and it is possible to contradict the *nash* again. In other words, this noble cause is the opposite of the proposition [19]. Just like adultery. The pleasures obtained by adultery can be called *maslahat* but they are canceled by *sharia* through existing *nash*. The same is true of badminton, drinking alcohol and so on. For

Najamuddin al-Thufi such an evil is a powerful force that can independently act as a source of law. This concept became a popular rule recognized by scholars' where there is a problem, there is the law of God.

- *The Maslahah Mursalah* is one that is not mentioned by *nash* but it is real and is much needed in maintaining the law as it is today, such as the policy of procurement of a prison or prison for crime, the procurement of currency as a means of exchange in transactions and etc.

C. Maslahah Level

According to al-Syatibi there are three categories of levels of need to achieve benefit, viz;

- *First, Maslahah Dharuriyyat*. Etymology is defined as the urgent or emergency need of a term we hear often. If that need and demand is not met then it will threaten the salvation of mankind both in the world and in the hereafter. These delicate affairs are all that is required for human life, which, if not obtained, will result in the breaking of the law of life, which will cause chaos, and the damage will be incurred [21].
- *Second, Masahah Hajiyyat*. The necessities of the pilgrimage are secondary needs, which if not created do not endanger their safety, but will be difficult. Islamic law eliminates all these difficulties. To avoid such difficulties, in Islamic law there is *rukhsah* (mildness), which is the law needed to ease the burden. So that the difficulty in carrying out the law can be alleviated by the conditions established by the 'ulema' scholars.
- *Third, Maslahah Tahsiniyyat*. Literally speaking means perfection, this level of need is a complementary need. According to Joseph Qardawi the need for *tahsiniyyat* is the level of need that when not satisfied does not threaten the existence of one of the five basic things and does not have difficulty [22]. In some areas of life, divided into several areas, whether it be worship, worship or 'change, Allah has provided matters relating to the need for *tahsiniyyat*. In the area of worship, according to Abd. The Khallaf Wahhab, gives an example of *Sayriat Islam* in purifying from impurities or washes such as body or body or dwelling in its environment. Islam also encourages people to dress themselves when traveling to the mosque, and to promote the worship of *sunnah*. [24]

D. Maslahah Mursalah

The scholars' required three terms of the holy religion to lay the foundations of the law.

- a. It is a real blessing, not an unexpected one. Examples of suspected acts are the revocation of a husband's right to treat his wife and to give her the right to divorce under any circumstances or circumstances.
- b. It is a general good, not a personal one. The law cannot be imparted merely to create a special favor for a ruler or a ruler, and to divert the views of the majority of

their people and their interests. But it has to do with the majority of humanity.

- c. Establishment of laws based on merit cannot be contrary to *nash* and *ijma* '.

5. THEORY MASLAHAH REVIEW OF SHARI'A REGIONAL REGULATION

Sharia regional regulations with material content related to morals or morality such as regulations concerning gambling, prostitution, and prohibition of liquor distribution. The Regional Regulation does not contradict the principles of formation and is also in line with the theory of the *maslahah* that promotes the common benefit of the community.

Sharia Regional Regulations with material content on the management of religious activities such as zakat, infaq, and shodaqah, these regulations do not contradict the principles of establishing legislation. And in line with the theory *maslahah* because in the Regional Regulation is limited to regulations for the Muslim community.

Regional Regulations with the content of Islamic Education material as well as Regional Regulations for the management of religious activities means that these regulations are only intended for citizens and institutes of gloom. Likewise with the Regional Regulation with the material content of the management of Islamic economics is also not in conflict with and in line with the theory of *maslahah*, because it is in the public interest and not personal interest.

Regional regulations with material content regulate the issue of one's religious life, such as the obligation to wear Muslim clothing, regarding the prohibition of Ahmadiyah activities. So regional regulations like this are very contrary to the principles of the formation of laws and regulations and also not in line with the theory of *maslahah* which is actually expected to be a regulation of legislation in addition to the interests of the nation and the state also for the benefit of the general public. So when there is a Regional Regulation that requires Muslim clothing while not in Islamic Bergama this clearly disturbs public order.

6. CONCLUSION

District rules are created in order to meet the real aspirations of the community should be used in the public interest in establishing a Co-operative alliance instead of just a particular group. From the above explanation the research can be concluded.

The rules of the District which bear the burden of being Shari'a or embodying one's religious life are not at all contrary to the principles of legislative enactment. Although it is also considered from the *maslahah* theory that it does not interfere with the order of the people is legitimate and can be implemented into the life of the people.

Regional Regulations with a Shari'a-compliant material load that are directly applicable to the public both Muslim and non-Muslim then the Regional Regulations may be revoked for inconsistency with the principles of legal regulation, and when reviewed from the *maslahah* theory they also do not contain together. So not all Shari'a-compliant District Rules have Shari'a values themselves. Only his name and his nominee are Shari'a

REFERENCES

- [1] Pasal 1 ayat 5 Undang-undang Nomor 32 Tahun 2004 tentang Pemerintahan Daerah.
- [2] Jumadi, Jumadi. "Kedudukan dan fungsi peraturan daerah (perda) kabupaten/kota sebagai instrument otonomi daerah dalam sistem perundang-undangan di Indonesia" *Jurnal Hukum Unsulbar* 1.1 (2018): 27-40.
- [3] Ali-Fauzi, Ihsan, and Saiful Mujani. *Gerakan Kebebasan Sipil: Studi dan Advokasi Kritis Ata Perda Syariah*. Centre for the Study of Islam and Democracy, 2009.
- [4] Pudho Suharso, Pro Kontra Implementasi Perda Syariah (Tinjauan Elemen Masyarakat). *Jurnal Al-Mawarid*, Edisi XVI Tahun 2006.
- [5] Saraini, Mustika, and Siti Kholifah. "Implementasi perda syariah sebagai upaya memperjuangkan kesetaraan gender" *Jurnal Sosiologi Pendidikan Humanis* 3, no. 2 (2019): 73-87
- [6] Arfiansyah, Arfiansyah. "Implikasi pemberlakuan perda syariat terhadap ideologi negara" *Jurnal Ilmiah Islam Futura* 15, no. 1 (2015): 20-39
- [7] Mth, Asmuni. "Menimbang Signifikansi Perda Syariat Islam (sebuah Tinjauan Perspektif Fikih)." *Al-Mawarid Journal of Islamic Law* 16 (2006).
- [8] Listianingsih, Dessy Marliani. "Analisis Pelaksanaan Peraturan Daerah Berbasis Syariah Provinsi Aceh dalam Perspektif Hak Asasi Manusia." *STAATSRECHT: Indonesian Constitutional Law Journal* 3, no. 1 (2019): 105-130.
- [9] Libbi, Ahmad Mudhar. "Analisis Peraturan Daerah Berperspektif Syariah Islam di Indonesia Ditinjau dari Konsep Hak Asasi Manusia." (2013). <http://repository.unej.ac.id/handle/123456789/3617>
- [10] Ahmad, Munawar. "Fenomena Perda Syariah: Institusional Identitas pada Tingkat Local State." *Jurnal Sosiologi Agama* 1, no. 1 (2017). <https://doi.org/10.14421/jsa.2007.%25x>
- [11] Djoko Prakoso, *Proses Pembuatan Peraturan Daerah*, Ghalia Indonesia, Jakarta, 1985, hlm. 43
- [12] Bagir Manan, *Ketentuan-Ketentuan Mengenai Peraturan Penyelenggaraan Hak Kemerdekaan Berkumpul Ditinjau dari Perspektif UUD 1945*, Makalah, Jakarta: Tidak Dipublikasikan, 199.
- [13] Maria Farida Indarti S, *Ilmu Perundang-Undangan: Jenis Fungsi dan Materi Muatan*, Yogyakarta: Kanisius 2007, hlm 323.
- [14] Wasisto Raharjo Jati, Permasalahan Implementasi Perda Syariah dalam Otonomi Daerah, *Jurnal Kajian Hukum Islam al-Manahij*, vol VII no 2 Juli 2018.
- [15] Dani Muhtada, *Perda Syariah di Indonesia: Penyebaran, Problem dan Tantangannya*, Disampaikan dalam orasi ilmiah dalam rangka Dies Natalis VII Fakultas Hukum Universitas Negeri Semarang pada tanggal 4 Desember 2014 di Semarang
- [16] Ibnu Manzur. *Lisan al-Arab*, Beirut. Li al-Thiba'ah wa al-Nashr. 1995
- [17] Munawar Kholil. *Kembali kepada al-Qur'an dan al-Sunnah*, Semarang: Bulan Bintang. 1995.
- [18] Dahlan Tamrin.. *Kaidah-Kaidah Hukum Islam*, Malang: UIN Maliki Press. 2010.
- [19] Abdul Manan. *Reformasi Hukum Islam di Indonesia*, Jakarta: PT Raja Grafindo Persada. 2006
- [20] Djazuli, *Fiqh Siyasah*, Bandung: Prenada Media. 2003.
- [21] Chaerul Umam. *Ushul Fiqih II*, Bandung: Pustaka Setia. 2001.
- [22] Yusuf Qardawi. *Fiqh Praktis bagi Kehidupan Modern*. Malang. Gema Insani Pers. 2002
- [23] Satria Efendi. *Ushul Fiqh*. Jakarta: Kencana. 2005.
- [24] Abdul Wahab Khallaf, *Ilmu Ushul Fiqh*, Dina Utama, Semarang, 1994.