

The Implementation of Islamic Qanun Law in the Modern Aceh Society

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ABSTRACT

Aceh is a province that exists at the most northern tip of Sumatra Island, which has a variety of different ethnic groups, living side by side with one another, carrying out Islamic law or the Qanun law. The qanun is a regional regulation that is not owned by other provinces, but it must be obeyed by all levels of society in Aceh Province. This paper is aimed at exploring the implementation of the qanun law in Aceh society. To obtain data, direct observations are made to observe the community, and interview the relevant parties. This paper finds out that not all people in Aceh obey the qanun, because Acehnese people are plural. Yet, in order to support the implementation of the qanun law in reality, some efforts have been carried out continually by the regional government, as evidenced by the enactment of the Aceh Qanun Number 6 of 2014, concerning jinayat (criminal) law, and of the Aceh Qanun, number 7, 2013, concerning jinayat procedural law. Although many people cannot accept the implementation of the punishment, the rules must be followed.

Keywords: *Modernization, qanun law, Islam in Aceh*

1. INTRODUCTION

Islam has been in such a way incorporated into part of the Aceh culture, which is reflected in people's daily lives. As such is manifested by the implementation of Islamic sharia in Aceh, as pictured by the local's sayings, such as the following [1] : *Adat bak PoteuMeureuhom* (Custom is in the hand of the Sultan), *Hukom bak Syiah Kuala* (Law is in the hand of the Muslim scholars, or *ulama*), *Qanun bak Putroe Pahang* (Qanun is in the hand of Pahang's princess), *Reusam bak Laksamana* (Reusam is in hand of Admiral), *Hukom ngon adat* (Law with local custom), *Lagee zat ngon sifeuet* (Like substance with its characteristic).

The implementation of Islamic law in Aceh is based on the laws and regulations Number 44 Year 2009, and was implemented on March 15th, 2002 with the basic aim of upholding the *amar ma'ruf nahi mungkar*. This agreement is assumed to be one of the solutions to overcome prolonged bloody conflicts in Aceh. The contents of the law were then approved by Presidential Decree Number 11 Year 2003. After the peace agreement was reached, the implementation of Islamic sharia law was then approved by the Indonesian government through Law Number 11 Year 2006 concerning the Government of Aceh.

Islam has become a part of the lives of the people of Aceh. They are very obedient to the Islamic teachings and very concerned about the fatwas (religious advice) of the Muslim scholars, or *ulama*, because they consider *ulama* as heirs of the Prophet.[2] This is proof of why *ulama* in Aceh have a special place in terms of providing

viewpoints, suggestions, and advice to establish a policy.[3]

One of the proofs is the ratification and enforcement the Jinayat Qanun and the Jinayat Procedure Qanun, by the People's Representative Council of Aceh (DPRA), which consist of the regulation of the caning of criminal offenses, and the establishment of Islamic law implementing instruments, such as Sharia Court, Ulama Consultative Council, Wilayatul Hisbah, and Islamic Sharia Service.

Thus, the implementation of sharia law in Aceh is a reflection and continuity of the historical process of the past, in which the current generation craves for the establishment of Islamic law as before. In this context it can be understood, that the Aceh people in all their weaknesses and strengths, including social conflicts that have occurred within the society, must be reviewed within its won social and historical contexts. Based on this background, this paper would like to question, how is the implementation of the qanun law in the life of Islamic society of Aceh?

To obtain the data, this research uses participant observation on the everyday lives of the Acehnese people, interviews with the relevant parties, and literature studies on the social and cultural aspects of the Acehnese society. The combination of these methods is important, provided that the Acehnese society is a multicultural society, composing of several tribes ranging from the local Acehnese people, to Arab, Chinese, European and Indian descendants.

2. RESULTS AND DISCUSSION

Since the birth of regional autonomy in Aceh, there have been many changes in demands, such as a strong desire within the people of Aceh and the Government of Aceh to re-establish Islamic law in Aceh. This demand was finally approved by the central government by approving Law Number 44 Year 1999, concerning the implementation of the Province of Aceh Special Region (Daerah Istimewa Aceh) privileges. Then in 2001, the central government re-enacted Law Number 18 Year 2001 concerning special autonomy for the Province of Aceh Special Region (Daerah Istimewa Aceh) as the Province of Nanggroe Aceh Darussalam and the Islamic sharia law was declared in 2001. Law Number 44 Year 1999 and Law Number 18 Year 2001 are strong juridical basis for the upholding of the implementation of Islamic law in Aceh, and followed up by the issuance of regional regulations in the form of Qanun. These are :

- Qanun Number. 12 Year 2003 concerning khamr, alcohol-contained beverage and its kind;
- Qanun Number. 13 Year 2003 concerning maisir (gambling);
- Qanun Number. 14 Year 2003 concerning unguarded sociability between the opposite gender;
- Aceh Qanun Number. 6 Year 2014 concerning *jinayat* (criminal) law;
- Aceh Qanun Number. 7 Year 2013 concerning *jinayat* procedural law;

Aceh society takes up the enforcement of Islamic sharia into several regulations, namely the regulation of the implementation of Islamic shari'a (Regional Regulation Number 5 Year 2000), the arrangement of the organizational structure and working procedures of the Islamic Sharia Office (Regional Regulation Number 33 Year 2001) and the formation of the institution of Wilayatul Hisbah as an institution to control/oversee the implementation of Islamic Sharia in the society (Decree of the Governor of Nanggroe Aceh Darussalam Number 01 Year 2004).

2.1. General Description of Qanun

Etymologically, the word of qanun is rooted in Greek, kanon, which means to govern, measure, along with the extent of use in formal traditions, meaning that it extends to the standard rules accepted by an assembly. In Arabic, the form of past tense or fi'il madhi of qanun is qanna and the form of present tense or fi'il mudharinya is yaqannu, which means to make law or to legislate. In English, qanun is called a canon, which means regulation (regulation, rule or ordinance) and law, norms, laws (statute or code) and basic rules.

Terminologically, qanun can be interpreted as a form of national law that has a legal-formal function, meaning that law has mature foundations and theories through two processes, namely the process of legal cultivation and formalization by the legislative institution. In other words, the qanun is a positive law applicable in a country, made by the government, which is binding, and are coming up with sanctions for those who violate it.[4]

According to the Acehnese people, Islamic law is not only about the legal and judicial aspects, but also covers all aspects of life such as education, economy and social Affairs. Law Number 4 year 2004 concerning Judicial Power, Article 15, states that the Islamic sharia court in Aceh is a special court within the religious court and a special court within the general court.

2.2. Discussion

In following up on the implementation of Islamic sharia law, Aceh is given the authority to carry out a trial in Islamic sharia way, which will be carried out by the sharia court, and its authority is regulated in the qanun. The qanun governs the authority of sharia court, and the Islamic sharia court in Aceh is a special court within the religious courts, and a special court within the general court. Through the establishment of a special autonomous region which is regulated by law, Aceh as a part of Republic of Indonesia can implement Islamic sharia law in its jurisdiction.

The Acehnese people, according to many people, have a unique character. For example, it is said that this society is heroic, brave, resilient, and never give up. Some even call them as moorden, which means insanity, as mentioned by a Dutch journalist, RA.Kern. According to him, the Aceh society has the characteristics of insanity, like, they would do everything to kill the Dutch soldier, who were standby with their complete weapons, to defended their religion and their homeland, even though they did not have any meaningful weapons to answer Dutch's weapons who tried to defeat them.[5] Islamic values are indeed ingrained in Acehnese society, even though they support for the proclamation of independent Indonesia by Soekarno and Hatta: a fact that indicates the willingness of Aceh to join the Republic of Indonesia. Despite this, yet, the Acehnese people still want their governance to be based on Islamic shari.[6]

After the independence of Republic of Indonesia, the journey of sharia law in Aceh had its ups and downs. Changes and developments in the social and political conditions of the Republic of Indonesia also determine the implementation of sharia law in Aceh. Rusjdi Ali Muhammad gives descriptions of the birth of Law Number 44 year 1999 concerning the Implementation of Aceh's Privileges and Law Number 18 year 2001 concerning Special Autonomy of the Province of Special Region of Aceh as the Province of Nanggroe Aceh Darussalam (NAD). According to him, as such is due to government's attempt to regain the people's trust in resolving the conflict in Aceh.[3]

The long journey of Aceh people shows that the existence of Islam has become an inseparable part of their life. The people of Aceh are motivated to bring back the glory of Aceh in the past, by formal implementation of Islamic law in all aspects of life, as outlined in local regulations (hereinafter abbreviated as Perda), known as Qanun.

In Aceh people's comprehension, sharia law is not only about legal and judicial aspects, but also covers all aspects of life such as education, economy and social society. At the beginning of the independence of Republic of Indonesia, the people of Aceh had submitted pleas, and demanded that the central government would give them permission for the application of Islamic sharia law in Aceh.

Prior to the enactment of Law Number 44 year 1999 and Law Number 18 year 2001, the Acehese people carried out limited scope of Islamic law, mostly in the field of family law and a small portion in muamalah (human-relations), such as endowments, grants, alms-giving and wills. While in the field of community law and other muamalah fields almost completely untouched. Therefore, the enactment of Law No. 44 year 1999 and Law No. 18 year 2001 is an important moment in the history of Aceh as it becomes the framework of making shari'a law as a living law. It can be concluded that Islamic law will not be a problem for national law that applies in the Republic of Indonesia.

There are various kinds of legal foundations or constitutions which are the basis for the implementation of Islamic law or qanun in Aceh. These foundations will also influence the development and process of providing positive Islamic values in the Aceh people themselves. Therefore, these foundations are very important to be learned, so that the Acehese people can get a sense of caring for their own religion that has been upheld and fought for during this life. The special features of Aceh are its special authority to organize religious life, customs, education and roles of the Muslim scholars in the formulation of regional policies. The implementation of religious life is manifested in the form of the implementation of sharia law for its adherents in the society and regions to develop and regulate the implementation of religious life, while maintaining harmony between religious communities.

The development and regulation of the implementation of religious life is to strive for and make regional policies to regulate society life in accordance with Islamic teachings, and increase the faith and piety to the God Allah. In addition, adherents of other religions are guaranteed to carry out their religious worship in accordance with their respective beliefs.

Qanun is a part of Islamic law that is applicable in Nanggroe Aceh Darussalam (NAD). But the the people in Aceh remain obedient to the criminal code (KUHP) as a nationally applicable legal provision. This obedience is regulated in the following regulations:

- Article 25, Section (3) of Act Number 18 Year 2001 says: the authority approved in section (2) applies to Muslims.
- Regional Regulation Number 5 Year 2000, in article 2 section (2) says: the existence of other religions besides Islam is still accepted in this area, and followers can carry out their respective religions

Based on Law Number 4 year 2004 concerning the Judicial Power and Law Number 11 year 2006 concerning Aceh's governance which was made based on the points of the peace agreement between the Indonesia's government and the Aceh Free movement (GAM, Gerakan Aceh Merdeka) in Helsinki, Finland. In Law Number 18, it is stated that the sharia court will implement the Islamic law, which has beforehand been included into the qanun. Qanun is a regulation made by Aceh's regional government to implement sharia law for its adherents in Aceh.[7]

In addition to referring to the principle of Islamic personality as stated, it is also guided by Law Number 18 year 2001 which says "Qanun of NAD Province is regional regulation of NAD province which can override other legislation by following the principle of *lex specialis derogat lex generalis*, and the supreme court (Mahkamah Agung) has the authority to conduct a material test for Qanun."

With the application of Islamic personality principle, and the territorial principle as stated above, there are four kinds of guidelines, as follows:

1. For Acehese Muslim society who commit crimes in Aceh Province, Islamic law (qanun) is automatically applied to them;
2. For other Muslim societies (non-Acehese Muslim societies) who commit crimes in Aceh Province, Islamic law still applies;
3. For people in Aceh, non-Muslims who commit crimes in Aceh province or outside Aceh province, Islamic law will not be applied to them at all;
4. For the Muslim society in Aceh who committed crimes outside Aceh province, Islamic law also is not applied to them.

The Qanun regarding the Jinayat procedural law, it is very clear in Article 5 that the scope for the qanun applies to law enforcement agencies, and everyone who is in Aceh without considering the religion, whether they are Muslim or non-Muslim, there is no exception for non-Muslims and in Article 94, it is stated as follows:

Paragraph (1) *Jarimah* or violation of sharia law carried out by two or more people together, including non-Muslims, this non-Muslim perpetrators can choose and can be submissive to this qanun, be examined and judged by the sharia court regency/city.

Paragraph (2) If the deeds committed by the perpetrators of *jarimah* who is submissive to the general court do not

submit themselves to this qanun, then he is examined and judged in the general court.

Paragraph (3) If the deed of *jarimah*, which is committed by a perpetrator who is submissive to the general court, is not the criminal act that regulated in the criminal code or criminal provisions outside the criminal code, then the perpetrators of the *jarimah* are still judged in the sharia court regency/city.

The inherent philosophy in the *jinayat* law, which is in accordance with the qanun of Aceh number 6, year 2014 concerning the *jinayat* law had been ratified by the governor of Aceh on October 22nd, 2014, is the enactment of Aceh qanun, caused many pros and cons in various circles both academics, practitioners and ordinary people. Pros and cons of the policy which is issued by the Aceh government, which is related to the formation of sharia legal material, is very reasonable, and they need to be addressed wisely. Pros and cons of *jinayat* legal qanun are not only appear in the regions, but also at the national and even international level. To some extent, the pros and cons lead to rejection and opposition to the implementation of the *jinayat* legal qanun in Aceh (Syahrizal Abbas, 2015-xi).

The occurrence of rejection and opposition to the implementation of the *jinayat* legal qanun in Aceh, because many parties do not understand correctly about the essence of *jinayat* law, the purpose of punishment and benefit that want to be realized with the enforcement of *jinayah* law. For the Acehese people and the Acehese government, *jinayah* law has been very urgent to be implemented in Aceh in order to maintain the dignity of Aceh people, because *jinayah* law is the main way to protect the Acehese people from immoral acts that violate the Islamic teachings as stated in the Qur'an and the Sunnah. The Acehese people believe that by implementing the *jinayat* law, things such as peace, tranquility, happiness and life safety in the world and the hereafter will be realized.

From the philosophy of Aceh qanun, the Acehese people believe that their existence on earth is inseparable from the rules (laws) that are set by Allah. In the Indonesian constitution, the view of life is compiled and poured into Pancasila, the ideological principle of the nation the first verse of which states the belief in one supreme God. According to Bismar Siregar "It has been explicitly stated that based on Tap MPRS / XX / 1966 , Pancasila was established as the source of all legal sources, it was also explicitly agreed that an independent nation and state were not only for human services and struggles, but were determined by Allah. Pancasila which consists five precepts has its first precept about monotheism, and four other precepts are about *muamalat*, is made to be the source of all sources of law, in accordance with the sharia.[8] The qanun law in Aceh originates from Islamic law. Determination of punishment in this state of Pancasila should also consider the value of religion which stated by Sahetapy, namely that punishment in the perspective of Pancasila must be oriented to the principle of human recognition as a creature of God, the form of punishment must not be contradictory with any religious belief which

adhered by Indonesia people and the punishment must be given to faith awareness of the convicted person so that he repents and becomes a faithful and obedient human being. So the punishment must be done as a mental coaching of people who are convicted and transformed people into religious people.[9]

Based on the description stated above it can be said that the qanun of *jinayat* law becomes the protector and guide for the community in carrying out the laws of Allah on Aceh, and the *jinayat* law in Aceh is implemented in the context of special privileges and autonomy under the Republic of Indonesia (NKRI), so that *jinayat* law and *jinayat* procedural law work in the national legal system, therefore *jinayat* law enforcement in Aceh is carried out by law enforcement agencies in the criminal justice system namely the police, attorney, and sharia court (*Mahkamah Syariah*), because these institutions are authorized to carry out the qanun criminal justice in Aceh.

Article 1 number 10 of Law No.44 year 1999 states that "Islamic sharia is a guide to the Islamic teachings in all aspects of life." The very basic thing of this law is the provision of wider opportunities to regulate and manage their own households, including economic resources, exploring and empowering natural resources and human resources, growing initiative, creativity and democracy, enhancing community participation, exploring and implementing community governance in accordance with noble values known as DPRA (People's Representative Council of Aceh) in promoting the administration of government in the province of Nanggroe Aceh Darussalam for the application of Islamic sharia in social life.

It is certainly understandable, that the sociological conditions of the Acehese people are still tiered. The meaning of the tiered here is social stratification and class distinctions in society. Directly, these rules will affect the lower class society, namely, people who only have below standard economic capacity.

As for the pros and cons of those qanuns, especially regarding the type of punishment for adultery, there is one article that is debated and disputed, namely the problem of stoning (uqubat). Uqubat is a death sentence for violators of Islamic law (in this case, adultery) by throwing stones to the them. For unmarried offenders, they are punished with a whip of 100 lashes[10]. The issue was tried to be covered up by the Aceh legislature body, by ratifying the *jinayat* qanun and the *jinayat* procedural qanun. Many parties, both practitioners and legal academics who were directly or indirectly involved in the legislation process, remained silent. As if there was no attempt to clarify this matter.[11]

Sharia law 'is a law derived from the decree of Allah, which is stated in the Qur'an and the Sunnah, which has been used as a positive legal norm. This is the decree of Allah which has a legal dimension that involves the outward acts of the legal subject. This limitation is considered important, bearing in mind that the Book of God is very broad in scope, not only in aspects of outward law, but also includes aspects of theology and morals (ethics). Sharia law 'can also be interpreted as a set of rules based on Allah's provisions regarding human behavior that

is recognized and believed to be valid and binding for all Muslims.

During the enactment of Qanun Number 12 Year 2003, Qanun Number 13 Year 2003, and Qanun Number 14 Year 2003, the process of qanun case handling which can be found in society, had encountered many obstacles in its implementation. This happened because there were limitations in carrying out the judicial process and the application of penalties to crime perpetrators. Over time, those three qanuns were declared no longer valid and replaced with Aceh Qanun Number 7 Year 2013 concerning Law on Jinayat and Aceh Qanun Number 6 Year 2014 concerning Jinayat Law and caning, but in practice it is only applied to ordinary people and the lower classes, while caning sentences are almost not enforced to perpetrators from officials as well as middle and upper classes.

3. CONCLUSION

Efforts to implement Islamic sharia continue to be carried out by the the Acehnese people and government, so that they can carry out Islamic sharia comprehensively (*kaffah*), because the history of implementation of Islamic sharia in Aceh, which happened after Indonesian independence, experienced ups and downs by changes and developments in the social and political conditions of Republic of Indonesia. This helped to determine the implementation of Islamic sharia in Aceh. Initially, the implementation of qanun's enforcement encountered some obstacles, because it was supported by unclear regulations and strengthened by the prevailing culture. With the enactment of Aceh Qanun Number 6 Year 2014 concerning Jinayat Law and Aceh Qanun Number 7 Year 2013 concerning Jinayat Procedural Law, the implementation of caning still can be implemented, although many people will not accept the implementation of the sentence, the rule is still implemented.

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