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ISLAMIC SHARIA IN ACEH AND ITS IMPLICATIONS IN OTHER REGIONS IN INDONESIA: CASE STUDY DURING IMPLEMENTATION ACEH AS NANGGROE ACEH DARUSSALAM

YASRUL HUDA
Universitas Islam Negeri Imam Bonjol, Padang, Indonesia
Email: admin-fst@uinib.ac.id

Abstract: This article will discuss the impact of implementation of Sharia law in Aceh to other provinces in Indonesia, including West Sumatera. Considering the development of various regional regulations in West Sumatra, there are some things that need to be noted. First, the desire to make regional regulations consuisting sharia is more dominated by the desires of certain political parties. It is not supported by other government agencies in the form of existing local regulation follow-up even though the political party always claims that the regulation is the desire of the wider community. Consequently, it is difficult to reject the impression that the presence of these regulations is solely for the political interests of parties, or the interests of heads of government. Second, the emergence of these regulations is highly determined by the figures driving the emergence of these regulations. So, when they are no longer in their positions, then the attention to the implementation of these regulations is reduced or nonexistent. Third, there are differences of opinion or understanding among regional leaders that overcoming the problem of poverty, problems in education and the economy is far more important than just making sharia regulations. As a result of the accumulation of these three things, the momentum of the emergence of the need for sharia regulations often appears and then disappears and then reappears following certain events in the community; like in the month of Ramadan or other Islamic celebrations.
Keywords: Sharia Law, Implication of Sharia, Special Autonomy, Islamic Criminal Law

Abstrak: Artikel ini akan membahas dampak penerapan syariat Islam di Aceh terhadap provinsi lain di Indonesia, termasuk Sumatera Barat. Melihat perkembangan berbagai peraturan daerah di Sumatera Barat, ada beberapa hal yang perlu diperhatikan. Pertama, keinginan untuk membuat peraturan daerah yang menganut syariah lebih didominasi oleh keinginan partai politik tertentu. Hal tersebut tidak didukung oleh instansi pemerintah lainnya berupa tindak lanjut perda yang ada, meskipun partai politik selalu mengklaim bahwa perda tersebut merupakan keinginan masyarakat luas. Akibatnya, sulit untuk menolak kesan bahwa kehadiran peraturan tersebut semata-mata untuk kepentingan politik partai, atau kepentingan kepala pemerintahan. Kedua, munculnya peraturan-peraturan tersebut sangat ditentukan oleh tokoh-tokoh pendorong munculnya peraturan-peraturan tersebut. Jadi, ketika mereka tidak lagi pada posisinya, maka perhatian terhadap pelaksanaan peraturan tersebut berkurang atau tidak ada. Ketiga, adanya perbedaan pendapat atau pemahaman di antara para pemimpin daerah bahwa mengatasi masalah kemiskinan, masalah pendidikan dan ekonomi jauh lebih penting daripada

hanya membuat peraturan syariah. Akibat akumulasi dari ketiga hal tersebut, momentum munculnya kebutuhan akan peraturan syariah seringkali muncul, kemudian menghilang dan kemudian muncul kembali mengikuti peristiwa-peristiwa tertentu di masyarakat; seperti di bulan Ramadhan atau perayaan Islam lainnya.

Kata Kunci: Hukum Syariah, Implikasi Syariah, Otonomi Khusus, Hukum Pidana Islam

Introduction

This article will set back on the implementation of special autonomy in Aceh as Nanggroe Aceh Darussalam (NAD), which had significant impact to further Sharia law in Indonesia. The momentum of the shifting from decentralization to regional autonomy in government was marked by the existence of Law Number 22 of 1999 concerning Regional Government and Number 25 of 1999 concerning Financial Balance between Central and Regional Governments.[1] Although the politics of decentralization initially caused controversy, the government immediately implemented both of these laws. Furthermore, the regional autonomy policy was followed by a special policy on Aceh Province in 2001 where the House of Representative (DPR) and the Central Government approved Law Number 18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh as the Province of Nanggroe Aceh Darussalam (NAD).[2] This law gives authority to the Aceh Province to formulate policies and make regulations on the life of the people that are in line with Islamic Sharia or at least not in conflict with Islamic Sharia.[3] It is important to note here that there are at least two important reasons why the government implemented the decentralization policy. First, it is to encourage democratization at the regional level, and second, decentralization is the best way to prevent separatism.[4]

It is well known that several regions in Indonesia, for example, Aceh, have long struggled for the right to self-regulation. This decentralization policy has resulted in the opening of opportunities for regions to better regulate their regions.[5] Therefore, it is not surprising

1 Maribeth Erb, Priyambudi Sulistiyanto and Carole Faucher, *Regionalism in Post-Suharto Indonesia* (Maribeth Erb, Carol Faucher and Priyambudi Sulistiyanto eds, Routledge 2013) <https://www.taylorfrancis.com/books/9781134263806>; M. Ricklefs, *Sejarah Indonesia Modern 1200-2004* (Serambi 2005); Anthony Reid, *The Lands BelowThe Winds* (Yale University Press 1988). Azyumardi Azra, *Indonesia Islam and Democracy; Dynamics in a Global Context* (The Asia Foundation, Solstice, dan ICIP 2006); Greg and Virginia Hooker Fealy (ed), 'Voices of Islam in Southeast Asia: A Contemporary Sourceboo' (ISEAS 2006).

2 Edward Aspinall, '19. Special Autonomy, Predatory Peace and the Resolution of the Aceh Conflict', *Regional Dynamics in a Decentralized Indonesia* (ISEAS Publishing 2014) <https://www.degruyter.com/document/doi/10.1355/9789814519175-026/html>; Arief Muljadi, *Landasan Dan Prinsip Hukum Otonomi Daerah Dalam Negara Kesatuan RI* (Prestasi Pustaka Publisher 2005).

3 Jeremy Menchik, Islam and Democracy in Indonesia: Tolerance without Liberalism (Cambridge University Press 2016) <https://www.cambridge.org/core/books/islam-and-democracy-in-indonesia/B7C0584E5C1F121C4C561474F5B2ECE6>; Ira M Lapidus (ed), 'Islam in Southeast Asia: Indonesia, Malaysia, and the Philippines', A History of Islamic Societies (3rd edn, Cambridge University Press 2014) <https://www.cambridge.org/core/books/history-of-islamic-societies/islam-in-southeast-asia-indonesia-malaysia-and-the-philippines/6326779F9E1D1772972BA1626385A874>.

4 Edward dan Greg Fealy Aspinal (ed), 'Local Power and Poltics', *Indonesia Decentralization & Democralizatio* (ISEAS Publishing 2003), 4. MB and Virginia hooker Hooker, 'Syariat Islam Di Era Otonomi Daerah' (2007); MB and Virginia hooker Hooker, 'Factor- Factor Yang Melatarbelakangi Dan Implikasi Pembuatan Perda Yang Bermuansa Agama Di Daerah ". Makalah Dipresentasikan Dalam Diskusi Publik Yang Diselenggarakan Oleh Lembaga Bantuan Hukum Padang Imparsial (the Indonesia Human Rights Monitor), Di Pa' (2007).

5 Muhammad Siddiq Armia, '(A Reflection of Implementation Sharia Law In Indonesia) Public Caning: Should It Be Maintained Or Eliminated?' [2019] QIJIS: Qudus International Journal of Islamic Studies; Rusjdi Ali muhammad, 'The Role of Wilayat Al-Hisbah In the Implementation of Islamic Shariah in Aceh' (2017) 2 Petita : Jurnal Kajian Ilmu Hukum dan Syariah; Ratno Lukito, 'Shariah and the Politics of Pluralism in Indonesia: Understanding State's Rational Approach to Adat and Islamic Law' (2019)

that in almost every region, the Regional Autonomy policy was welcomed with enthusiasm. One of the important regional authorities, for example, is regulated in Articles 18,19 and 22 of Law No. 22/1999 which regulates the authority, rights and obligations of the Regional House of Representative (DPRD), that the DPRD together with the regional heads make regional regulations. The provisions of this article are further updated by article 62 paragraph (1) letter a and article 78 paragraph (1) of Law No.22 of 2003 concerning the Organizational Structure and Position of the People's Consultative Assembly, the House of Representative, the Regional Representative Council and Regional Legislative Councils. In 2004, Laws No.22 / 1999 and No.25 / 1999 were perfected with the issuance of a new law namely Law No.32 / 2004 on Regional Government, although until now, more than two years after the birth of the new Regional Autonomy Law, implementing regulations in the form of Government Regulations have not been established yet. Specifically, for the Nanggroe Aceh NAD region, Law No.11 The year 2006 regarding the Government of Aceh, which was previously governed by Law No.44 / 1999 and Law No.18 / 2001, was established.[6] One of the main features of NAD's special autonomy is the enactment of Islamic Sharia while in other areas, is the issuance of Sharia Regional Regulations.[7]

This paper focuses on four important parts: The first part will describe the scope of Islamic Sharia in force in NAD. The second part will look at some examples of how the implementation of the *qanun* at Sharia Court that looks at several court decisions. The next part will contain challenges faced in further legal development, and the final section will look at the implications of the implementation of Islamic Sharia in NAD to other regions in Indonesia.

After being given authority to implement the Islamic Sharia in 2001, several *qanuns* (Aceh regional Islamic law) regarding criminal acts have been made by the Aceh government. This means that Sharia (Islamic law) which is enforced in NAD is no longer limited to Islamic civil matters, but which also includes criminal law (*jarimah / jinayah*). Until now, various kinds of criminal acts originating from the Islamic Sharia and have been regulated in several *qanuns*, including criminal acts in the field of *aqidah*, worship and *syiar* of Islam (Qanun No.11 of 2002), drinking *khamar* (alcohol) and similar drinks (Qanun No. 12 of 2003), *maisir* (gambling) (Qanun No.13 of 2003), *khalwat* (seclusion) (Qanun No.14 of 2003), and *zakat* (almsgiving) management (Qanun No.7 of 2004). In summary, the types of criminal acts above are described below.[8]

Criminal acts on *aqidah*, *ibadah* and Islamic *syiar*

Provisions for criminal acts regarding *aqidah (*creed), *ibadah* (worship) and *syiar* (sign, symbol, or slogan of Islam) are regulated in Local Regulation No. 5 of 2000. The criminal acts regulated in this *qanun* cover the maintaining of *aqidah*, practicing *ibadah*, and

4 Petita : Jurnal Kajian Ilmu Hukum dan Syariah 14 <http://petita.ar-raniry.ac.id/index.php/petita/article/view/8>.

6 Zaki Ulya, 'Politik Hukum Pembentukan Komisi Kebenaran Dan Rekonsiliasi Aceh: Re-Formulasi Legalitas KKR Aceh' (2017) 2 Petita : Jurnal Kajian Ilmu Hukum dan Syariah <http://jurnal.ar.raniry.ac.id/index.php/petita/index>.

7 David Kloos, 'Book Review: Shariʿa and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia, Written by R. Michael Feener' [2015] Bijdragen tot de taal-, land- en volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia; Michael Buehler, 'Shariʿa and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia by R. Michael Feener' [2014] Indonesia; R Michael Feener, 'Shariʿa and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia' [2013] Oxford Islamic Legal Studies.

8 Nyak Fadhlullah, 'Metode Perumusan Qanun Jinayah Aceh : Kajian Terhadap Pasal 33 Tentang Zina' (2017) 7 in Right (Jurnal Agama dan Hak Azazi Manusia) 16 <http://ejournal.uin-suka.ac.id/syariah/inright/article/view/1456/1262>.

administering Islamic *syiar*. Provisions for the maintenance of *aqidah* are regulated in article 5, paragraph: (1) each person is obliged to maintain their *aqidah* from the influence of deviant sect/understanding: (2) everyone is prohibited from spreading deviant sect/ understanding; (3) everyone is prohibited from intentionally leaving the *aqidah* and or insulting Islam. Articl; five is not given a detailed explanation except explanation in paragraph (2) only. Article five (2) does not apply to scientific freedom, research interests and the development of Islamic teachings at universities or other scientific institutions.

Furthermore, the practice of worship is regulated in articles 7 to 11 which regulate not only the individual obligations of every Muslim in carrying out worship but also local governments and community institutions must provide facilities for the implementation of worship activities. This worship emphasizes more on the obligation to carry out prayer and fasting as well as the provisions relating to the implementation of the two services. Then, the provisions on the implementation of Islamic *syiar* are regulated in articles 12 and 3. Article 12 contains recommendations to regional governments and community institutions to hold Islamic holidays, the use of Malay Arabic in government activities and in education and the use of the Islamic calendar in addition to the Gregorian calendar. Article 13 is an obligation for every Muslim to dress in Islamic dress. In this explanation, the Islamic dress is defined as clothing that covers the body that is not transparent and does not show the shape of the body.[9]

The threat of punishment for violators of the three forms of prohibition mentioned above is threatened with *ta'zir* (the punishment that can be administered at the discretion of the judge) of a maximum of two (2) years imprisonment or public caning of 12 (twelve) times for violators of article 5 paragraph 2. While the threat of punishment for those who apostatize or insult Islam will be regulated in separate *qanun*. The importance of regulating these separate provisions might result from apostasy being one of the crimes that has long been regulated in *fiqh* (Islamic jurisprudence). Whereas, insulting religion is an article in the Indonesian Criminal Code which often occurs in Indonesia, thus requiring separate rules. Meanwhile, sanctions against violators of article 10 paragraph (1) on fasting in Ramadan month are subjected to *ta'zir* in the form of a maximum of one-year imprisonment or a maximum of three million rupiahs fine or public caning at a maximum of six times and the revocation of business license. While the threat of punishment for violators of article 10 paragraph (2) is threatened with *ta'zir* in the form of a maximum of four months imprisonment or a public caning maximum of two times.

Drinking *khamar* and similar drinks

Provisions on the prohibition of drinking *khamar* and the like are regulated in Qanun No.12 of 2003 regarding *khamar* and similar drinks. The definition of *khamar* and the like in this qanun is a drink that makes a hangover if consumed, can disrupt physical and mental health. The prohibition is in the form of a prohibition on drinking *khamar* and similar drinks (article 5). Furthermore, in article 6 paragraph (1) it is stated that the prohibition on any person or legal entity in producing, providing, selling, importing, distributing, transporting, storing, trading, giving and promoting *khamar* or the like and in article 6 paragraph 2 in the form of prohibition to participate in carrying out as regulated in article 6 paragraph 1. The threat of law for drinkers of *khamar* and the like is

9 The definition of Islamic dress, as explained in Article 13, is also almost the same as in several Sharia Regulations in several Regencies / Municipalities in West Sumatra. Such a definition seems to only use the definitions commonly used in the daily life of society without reference to certain Islamic legal references. The difference between dressing regulation in Aceh and other regions such as West Sumatra is that in NAD there are only one article of regulation on the qanun, while in some districts in West Sumatera they have special regulations on dressing such as the districts of Solok, Sawahlunto Sijunjung, Agam and 50 Kota.

hudud crime in the form of 40 times of caning (article 26), for those who violate articles 6 through 8 threatened with *ta'zir* in the form of a maximum of one-year imprisonment, and at least three months and or a maximum fine of 75 million rupiahs and a minimum of 25 million rupiahs. Furthermore, for a repetitive act, the punishment will be plus 1/3 of the maximum sentence.

Maisir

The provisions regarding violations of *maisir* are contained in Qanun No.13 of 2003. *Maisir* is defined as an activity and / or act that is a bet between two or more parties where the winning party gets the payment. Furthermore, in article 2 it is stated that the scope of the *maisir* is any form of activity and/or action and circumstances that lead to betting and may result in disputes for the parties who fight and the people/institutions involved in the bet.

This qanun firmly states that gambling is forbidden (article 4), and every person is prohibited from carrying out acts of *maisir* (article 5). Furthermore, it will also emphasize the prohibition for anyone, including individuals or legal entities or business entities, not to organize and/or give gambling facilities (article 6 paragraph (1)), become gambling protection (paragraph (2)), and prohibit giving business licenses gambling (article 7). This category of sanctions against gambling belongs to *jarimah ta'zir*. The threat of punishment for perpetrators of gambling as meant in Article 5 is to be caned publicly maximum 12 times and minimum 6 times (article 23 paragraph (1)). The threat of sanctions for persons or legal entities or business entities that organize or provide facilities or protectors of gambling is threatened with a maximum penalty of 35 million rupiahs and at least 15 million rupiahs (article 23 paragraph (2)). While the repetition of violations will cause the addition of 1/3 of the maximum punishment (article 26). The execution of the sentence is carried out in a place that could be witnessed by many people attended by the public prosecutor and the appointed doctor. The caning is carried out using rattan whose size is between 0.75 cm to 1 meter and is done on the body except face, neck, chest and genital.

Khalwat

The prohibition on *khalwat* is regulated in Qanun No. 14 of 2003. This qanun defines khalwat as an act of two or more people of the opposite sex/without marriage ties to be alone without other people around. Specifically, in article 2, it is stated that *khalwat* is the activities, actions and circumstances that lead to adultery. Therefore, every person or community group or government apparatus and business entity is prohibited from providing facilities to facilitate and / or protect people from committing *khalwat.* Furthermore, in article 7, it is stated that everyone personally and in a group is obliged to prevent the occurrence of *khalwat.*

The threat of punishment for *khalwat* perpetrators is *ta'zir* in the form of whipping maximum nine times and at least three times and or a maximum fine of 10 million rupiahs or at least 2.5 million rupiahs (article 22 (1)). Violations of article 5 are liable to a maximum sentence of 6 months and a minimum of two months and or a maximum fine of 15 million rupiahs or at least 5 million rupiahs. Repetition of *khalwat* crime will cause the addition of punishment 1/3 of the maximum sentence. The caning sentence is witnessed by many people with the presence of public prosecutors and doctors. Caning is conducted using rattan with a size between 0.7 cm and 1 cm, length of 1 meter. Caning is carried out on the body except for the head, face, neck, chest and genitals.

Criminal Acts Related to the Obligation to Pay *Zakat*

Provisions regarding *zakat* are regulated in *Qanun* No.7 of 2004 concerning *zakat* management. Provisions for paying *zakat* are stated in article 3. In paragraph (1) it is stated

that every person who is Muslim and or anybody that conducts business activities in Aceh province, meeting the requirements as a *muzakki* (person who is obliged to pay *zakat*), must pay their *zakat* through the *Baitul Mal* (Religious Property Management *Agency*). Furthermore, paragraph (2) states that the payment of zakat is based on the *Nisab, Qadar* or *Alul* of the type of assets that are obligatory on *zakat*. The type of assets include: a) gold, silver, or other precious metals and money, b) trade and industry, c) agriculture, plantation, fisheries and animal husbandry, d) mining, e) income, f) *rikaz* (buried treasure). Furthermore, in case there is a type of income that is not mentioned in article 1, it will be determined by the Indonesian *Ulama (*religious scholar*)* Council (MUI). The meaning of paragraph 2, for example, profession *zakat*, such as salaries, royalties and other forms of honorarium.

The sanctions against *zakat* qanun violators are not only for *muzakkis* who are reluctant to pay *zakat*, but also for *muzakki*s who manipulates the amount of their properties to reduce or eliminate the obligation to pay *zakat*, falsification of property documents, embezzlement of zakat, deviation by the manager of *Baitul Mal* and others. Provisions regarding this matter are as below.

a. For the muzakkis (individuals or legal entities) who pay zakat in article 38 are threatened with *jarimah ta'zir* with a fine of maximum twice the value/amount of zakat that must be paid or at least once the value of zakat that must be paid, plus the obligation to pay for the audit when it's done.
b. For those who make fake letters or falsify the *Baitul Mal* letter are threatened with forgery of documents with the threat of ta'zir in the form of a caning maximum of 3 (three) times and at least one time in public, or a maximum fine of Rp. 1.5 million rupiah or a minimum of Rp. 500,000 or a maximum of six months or a maximum of two months imprisonment, provided for in article 39 paragraph (1)
c. Furthermore, for anyone who commits an action which results in harming Baitul Mal or *muzakki*, *mustahiq* (deserver) or other interests are threatened in Article 39 paragraph (2) with *ta'zir* in the form of whipping in public maximum three times, at least once, or a fine a maximum of Rp. 1,500,000.00 or at least Rp. 500,000.00 or a maximum sentence of six months, a minimum of two months and compensation for losses incurred as a result of the act.
d. For those who participate in or assist in the embezzlement of zakat or other religious assets are punished for embezzlement under the threat of ta'zir in the form of caning in public three times or at least once and a fine of the maximum double amount and at least equivalent amount/value of zakat or the embezzled amount.

Baitul Mal officers who distribute zakat illegally are threatened with *ta'zir*. It is in the form of caning in public maximum four times and minimum twice or a maximum of two million rupiahs or at least one million rupiahs fine or a maximum sentence of imprisonment for eight months and minimum four months.

From the types of criminal acts that have been regulated in the *Qanuns* above, it seems that the qanuns prioritize criminal acts related to public morals in the form of criminal acts which by the public consider as a despicable act. This can also mean that the crime is not a completely new crime for the people of NAD. Several existing qanuns are certainly not sufficient for the improvement of society, because they are still in need of other qanuns whose significance is no less important than existing qanuns. For example, there are plans to make a *qanun* that regulates criminal acts of theft and corruption. The *qanun*

concerning theft and corruption is, of course, awaited, considering the theft in all its forms is prevalent, including corruption which has been categorized as an extraordinary crime.

Qanuns in Practice at the Shariah Court

The implementation of Islamic Shari'ah through the Qanuns establishment in Aceh has attracted the attention of the national and international community. This can be seen from the wide coverage of mass media, both local, national, and international on some Islamic Shariah practices. This news such as the execution of caning carried out in public since a few years ago. In early 2007, for example, some media reported lashing to Lindawati and Syaiful Rizal, Bireuen residents in the courtyard of a mosque in the Kampung Mulia village, Banda Aceh city on January 12, 2007, due to a *khalwat* case.

Several cases of criminal violations that have been decided by the Shariah Court in Kualasimpang, Lhokseumawe and Bireun will be described below. These three areas were taken purposively, to see how the qanun is practiced in the sharia court. The cases presented are *khalwat*, *khamar*, *maisir* which included gambling perpetrators or facilitators.

1. *Khalwat*

Kualasimpang Syari'ah Court through Decision Number: 05 /JN. / 2006 / Msy-KSG which was decided on January 28, 2006, sentenced the defendant AH, male, 24 years old, and HW, female, 21 years old, to commit khalwat by imposing punishment to AH in the form of caning 9 (nine) times in public and a fine of Rp.2,500,000 (two million and five hundred rupiahs), two-month confinement subsidence, and to HW, whipping nine times in public, after HW gave birth to the baby. There are two interesting things about this case: first, the legal considerations made by the judge in completing this case are not only violations of article 22 paragraph (1) and (2) NAD Province Qanun Number 14 of 2003, but also using article 55 paragraph (1) to -1 of the Criminal Code. This means that in completing the case the judge did not only use the qanun as the legal basis for adjudicating the case, but also the Criminal Code. Second, the allegation made against AH and HW is khalwat even though what actually happened is categorized as adultery which is proven by HW's pregnancy. From the theory of the implementation of the law, it should be that the highest penalty must be charged, not the lowest. It can be understood that there is no qanun that regulates adultery, only *khalwat qanun* that is in force.

Another case is the decision of the Lhokseumawe Syari'ah Court Number 04 /JN/ 2006 / Msy-LSm dated May 9, 2006, regarding allegations of khalwat committed by ZA, male, age 49, with CMR, female, age 35. Both of them were allegedly carrying out a khalwat at a political party office in Lhokseumawe. This case is known because officers of *Wilayatul Hisbah* (Sharia Police)received public complaints that ZA and CMR had committed *a khalwat* and sentenced the defendant in the form of caning five times and paid a court fee of Rp. 1,000.This decision had no legal force because the defendants (ZA and CMR) appealed to the NAD provincial Sharia Court. Interestingly, in this case, the khalwat accusation is based on the fact that the defendants were in the office alone. While the defendant's refutation that they did not commit *khalwat* because of their presence in the office was for the party's interests. This case shows that the interpretation of *khalwat* will vary depending on how the *khalwat* is understood in practice in the legal user community. In completing this case, the judge was only guided by the *qanun*, without relating it to the Criminal Code.

2. Drinking *Khamar*

Sharia Court of Kualasimpang in Decision number 03 /JN/ 2006 / Msy-Ksg which was decided on January 30 2006 in a khamar case conducted by S, male, 39 years old, E, male

42 years, and M, male , 37 years old. They were subject to drinking *khamar* regulated in article 5 jo article 26 paragraph (1) *Qanun* No.12 of 2003, jo article 55 (1) of the Criminal Code. The judge who completed this case finally declared them guilty and sentenced the three defendants 40 times of caning and to pay case fee of Rp. 1,000 each. This case also shows that the judge was not only guided by the qanun but also the Criminal Code.

3. *Maisir*

In this section, several Sharia court decisions will be described. First, the decision of the Lhokseumawe Syari'ah Court Number 10 /JN/ 2006 / Msy-LSM which was decided on December 5, 2006, regarding a maisir case committed by MY, male, 38 years old, along with two of his friends (not caught). During the trial MY was found guilty of maisir, because of that he was sentenced to be caned six times in public and a case fee of Rp. 1,000 The basis for this case sentence is only a violation of Article 5 Qanun No. 13 of 2003 alone. Second, the Decision of the Lhokseumawe Syariah Court Number 03 /JN/ 2006 / Msy-LSM which was decided on February 9, 2006, concerning the maisir case which was carried out by E, a 16-year-old woman. He is not only accused of violating article 5 jo 23 verse (1) Qanun No. 13 of 2003, but also related to RI Law No. 3 of 1997 concerning juvenile justice. The judge stated that E had been found guilty of gambling and handed over to his parents/ guardians on the canning stage to be fostered and had to pay a case fee of 10,000 rupiahs. Third, the Decision of the Lhokseumawe sharia court number 08 /JN/ 2006 / Msy-Lsm, which was decided on December 5, 2006 concerning the crime case committed by Z, male, 25 years old, M, 24 years old male, and MN male 22 years old. They were prosecuted for violating article 5 jo.23 paragraph (1) Qanun Number 13 of 2003. The judge stated that the three were found guilty of violating article 5 jo.23 paragraph (1) of the qanun by imposing a sentence in the form of caning six times each in in public and pay court fee Rp. 1,000. Fourth, Bireun Sharia Court Decision number 01 /JN/ 2006 / Smy-Bir which was decided on February 2, 2005, against the *maisir* case by four people. First I, male, 50 years old, civil servant; second IB, male, 47 years old; third IL, 44 years old male, civil servant; and fourth S, male, 40 years old. The judge ruled that the four men were found to have violated Article 23 paragraph (2) of *Qanun* Number 13 of 2003 concerning conducting *maisir* and convicting Defendants I and IL 9 times whipping each, and Defendants IB and S seven lashes. This difference in sentence is based on the consideration that I and IL are civil servants while others are not. Fifth, Lhokseumawe Syari'ah Court Decision number 11 /JN/ 2006 // Msy-Lsm, which was decided on December 19, 2006, concerning the maisir case conducted by AS, male, 37 years old. The act of the defendant of organizing and facilitating those who will carry out *maisir* violates article 6 paragraph (1) jo article 23 paragraph (2) *Qanun* No.13 of 2003 concerning gambling. The judge found the defendant guilty and was sentenced to a fine of 15 million rupiahs, provided that if the fine was not paid, the sentence would be replaced with a whip six times in public and a case fee would be charged.

It is important to note from the criminal offense cases above that in resolving a defendant's case; two settlement patterns are used. First, the judge only followed not only the qanun in the qanun, and secondly, the judge not only followed the qanun but also other provisions such as the Criminal Code and other laws. This means that although the sharia court has the authority to carry out the qanun, the law practices in the sharia court show different things.

Challenges

The implementation of Islamic Sharia in NAD province has several significant challenges, especially related to the authority possessed by the Sharia Court. The authority of this

institution according to Law No. 18 of 2001 article 25 paragraph (2) is regulated in *qanun* and therefore *qanun* number 10 of 2002 specifies it in article 29 that the Shari'a Court has the authority to settle the matters of *ahwal al-syakhsiyah*, *mu'amalah* and *jinayah*. Although Presidential Decree Number 11 of 2003 disputed the authority of the Qanun version of the Sharia Court. The contradiction seems to be finished after the issuance of Law Number 11 Year 2006 chapter XII article 125 paragraph (1,2, and 3) which clarifies the authority of the sharia court including *jinayah* issues and also other authorities.

Concerning the authority of the sharia court above, some things must be prepared in the future. First is the implementation of Islamic Sharia (including criminal law) through several existing qanuns is an excellent first step. However, making sharia in the form of fragmented qanun as it is today is not ideal as the ideal one is to codify the sharia wholly in a complete qanun codification. Thus for the Aceh region at least it will be needed; firstly, the codification of civil law that covers the entire scope of civil law, secondly, the codification of criminal law which includes *hudud, qishash / diyat and ta'zil*, and, thirdly, the codification of formal punishment in the form of civil and criminal procedure.

To make a codification of civil, criminal and procedural law as above is not easy. Experience shows that it is very difficult to realize this, for example the Indonesian Criminal Code to replace the Indonesian Criminal Code inherited from the Dutch colonial government. However, for the context of Aceh where the relative population is relatively diverse it will not be difficult to make the Indonesian Criminal Code, because certain interests are also not too diverse. Although on the other hand, sharia "sources" such as the Quran, *Hadith* (sayings of the prophet Muhammad) and *fiqh* are still in the form of opinions of the *'ulama* contained in various *fiqh* books. This means that experts who can contextualize sharia in the context of Acehnese people who also have customs that are not necessarily in line with sharia texts are needed. This is an arena of Ijtihad and is a challenge for *'ulama* and academics in NAD and other regions. On the other hand, the readiness of people in NAD as a whole in returning to sharia must always be pursued in the form of continuous and comprehensive socialization. It should also be noted that global issues cannot be completely ignored in undertaking sharia codification efforts, especially those related to democratic issues, gender, human rights, and pluralism. Despite the many challenges faced by Aceh in implementing sharia, the efforts to realize a legal codification are a long-term work that must be started as soon as possible from now on.

Implications of the Implementation of Sharia to Other Regions[10]

Aceh which gained authority in implementing sharia in the form of qanuns and after the ratification of several qanuns containing Islamic sharia had a direct or indirect influence on several other regions in Indonesia.[11] These areas are regions that have strong Islamic tradition roots such as West Sumatra, West Java, Banten, South Sulawesi, Gorontalo, South Kalimantan, NTB, and others.[12] In those regions, there are various regional regulations

10 The data used in this section is sourced from the research "Islamic Law in Regional Indonesia, Australian Research Council Project, The Australian National University of Canberra carried out by Prof. Virginia Matheson Hooker and Prof and Prof. M.B. Hooker and involved the author in the study since 2005. This section discusses a lot about West Sumatra without intending to ignore other areas in Indonesia.

11 Moh Yasir Alimi, 'Rethinking Anthropology of Shari'a: Contestation over the Meanings and Uses of Shari'a in South Sulawesi, Indonesia' (2018) 12 Contemporary Islam 123 <http://link.springer.com/10.1007/s11562-017-0410-x>; Kikue Hamayotsu, 'Islamic Law in Contemporary Indonesia: Ideas and Institutions Ed. by R. Michael Feener and Mark E Cammack' (2015) 99 Indonesia 113 <https://muse.jhu.edu/content/crossref/journals/indonesia/v099/99.hamayotsu.html>.

12 Wahyuddin Halim, 'Sharia Implementation in South Sulawesi: An Analysis of the KPPSI Movement', *quo vadis Islamic studies in indonesia? (current trends and future challenges)* (Direktorat Pendidikan Tinggi Islam Departemen Agama dan program pascasarjana UIN alaudiddin makasar 2006); Pusat

named as sharia regulations. Despite the controversy about the naming of these regulations, the public still refers to them as sharia regulations, although there are other opinions that refute them. One important factor in the emergence of efforts to make Islamic sharia through local regulations is also due to the influence of the start of the implementation of Islamic sharia through the qanun in Aceh, although the emergence of sharia regulations is also due to various other factors.[13]

Regions that make sharia regulations base their legitimacy from law No.22 of 1999 which was updated by Law No.32 of 2006 concerning regional government. That is regulated in article 18 paragraph (1) letter d, the authority of the Regional House of Representative (DPRD), namely the DPRD together with the regional head, forms a regional regulation: furthermore this article is affirmed by article 62 paragraph (1) letter a and article 78 paragraph (1) letter a of law concerning the Organizational Structure and Position of the People's Consultative Assembly, the House of Representative, the Regional Representative Council and Regional Legislative Councils (Law number 22 of 2002) explaining that DPRD has the task and authority to form regional regulations that are discussed with the regional head for mutual agreement. In practice in some regions, regional regulations have been made that contain sharia. Although the regional authority is limited not related to the fields of foreign policy, defense, security, justice, monetary, national fiscal and religious, apparently so far there is no prohibition from the central government on sharia regulations.[14] Furthermore, the Minister of Home Affairs who at that time was held by M. Ma'ruf said that the regulations that are often associated as sharia regulations are only the implementation of government affairs and regional authorities which are still within the scope of Law No. 32/2004 and is not a sharia regulation. Of the several regions that make sharia regulations, there are two patterns seen; firstly, sharia regulations are made at the provincial level while regencies or cities only follow the provincial regulations. Second, sharia regulations are made at the district / city level while provinces only made general regulations. The first pattern is found in Riau, while the second pattern is in West Sumatra.

In West Sumatra, there are several patterns used in making regional regulations at the district / city level related to the implementation of Islamic sharia. First, regulations are made by the Mayor / Regent. Second, local regulations made jointly by the DPRD and the governor or Mayor / Regent. Third, state regulations made by *nagari*, lowest level of government in West Sumatra. The first type of regulation can be implemented faster because the Mayor / Regent can directly instruct the relevant officials to implement it. An example of this is Padang Mayor's instruction No. 451,422 / Binsos-iii // 2005 dated March 7, 2005. This instruction contains:

1. It is required for junior and senior high school students to attend *wirid* in the mosque / *mushalla* (smaller mosque) every Thursday night, the first and third week of the month, from 19.30.
2. Require students to attend dawn dawn prayer in the mosque/*mushalla* every Sunday morning starting at 04.00
3. The obligation to dress according to Islamic law for elementary to high school moslem students,
4. Obligation to campaign for anti-gambling, drugs and alcohol and other social problems

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Pengkajian Islam dan Masyarakat (PPIM), *"Islam & Good Governance",* (Pusat Pengkajian Islam dan Masyarakat (PPIM) 2006).

13 Ni'matul Huda, 'Hukum Tata Negara Indonesia' [2007] Jakarta: Raja Grafindo Persada.

14 MB and Virginia hooker Hooker, 'Sharia' in Greg Fealy and Virginia Hooker (ed), *Voices of Islam in southeast asia: A contemporary sourcebook* (ISEAS 2006), 193.

The mayor of Padang city also initiated the activation of the Amil Zakat of Padang city without first making *zakat* regulations like other regions and for the year of 2007, *Zakat* Board of Padang city had a target of being able to raise 5 billion funds.[15] The second pattern of regulation is to create a local regulation that was originally an initiative of DPRD members, especially DPRD members from PPP, PAN, PBB, and PKS or the initiative of several community leaders, or the initiative of the Regent / Mayor by submitting a draft of a regional regulation to the DPRD. Regional regulations that are a joint product of the DPRD and the head of this region are, 1) local regulations on the prevention of immorality, 2) local regulations on Muslim attire, 3) local regulations on reading the Quran, 4) local regulations on al-quran education, and 5), local regulations on Alms. However, it is important to note that although there have been many sharia regulations that have been made in various regions in Sumatra, for example Regulation No. 11 of 2001 concerning the prevention of immorality made by the West Sumatra DPRD, there has not yet been any instructions or circulars from the governor of West Sumatra as a technical implementing regulation of Region Regulation No. 11 of 2001. Things like this almost occur in all districts in West Sumatra. Although there are no technical regulations on the implementation of these regulations, in some areas they have been implemented sporadically.

The third pattern is the regulation made by the *nagari* government. Now in various countries. In West Sumatra, there are *nagari* regulations whose contents are intended to implement Islamic law. The argument that is often put forward as the basis of this legitimacy is that according to Minangkabau custom "*adat adalah sangka negeri*" (a custom applies only to that nagari) and *"adat basandi syara', syara basandi kitabullah*" (customs are based on sharia and sharia is based on Quran), this argument reinforces that the *nagari* has the authority to make rules itself which applies only in the environment of their own *nagari*. Similar regulations in the *nagari* regulate marriages, wedding proposals, prayers, dress codes, manners to dress, the environment, protected forests and so on. Due to the lack of seriousness in the making and implementation of sharia in these various regions, encouragement is necessary so that these regulations become more real in the community. It is hoped that Aceh's success in carrying out Islamic law will have a positive impact on the development of Islamic law in other areas.

Conclusion

The implementation Sharia law in Province of Aceh will have significant impact to other provinces of Indonesia. The provinces having Muslim majority will also request Sharia law to be implemented in their provinces. This problem can create other problems, including law instruments. The Sharia law in Province of Aceh has resulted from the compensation of armed conflict that had happened more than thirty years. However, other Indonesia provinces does not have any armed conflict to any compensations. Furthermore, most of Qanun (bylaws) in Aceh have based on the acts of special autonomy; thus, Qanun can implement smoothly as having strong legal background referred to the acts of special autonomy. Unfortunately, other provinces in Indonesia does have an act of special autonomy, so that the implementation of Sharia law in their provinces will be harder.

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