

ISLAM AND NATIONAL LAW: A Formal Legal Review on Sharia Laws in Aceh

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DOI: 10.30631/al-risalah.v20i1.521

Submitted: November 16, 2019; Revised: April 09, 2020; Accepted: April 10, 2020

Abstract: The implementation of sharia in Aceh has gone through a democratic process subscribed by the Unitary State of the Republic of Indonesia. Nevertheless, some observers consider it problematic. Against this backdrop, this article discusses the principles of the formalization of sharia into positive law and further concretely analyses the case of formalization of sharia in Aceh. Employing a normative approach on research of law, this article shows that the principles of sharia codified in the *qanuns* of Aceh are grounded on the Qur'ān and the Sunna. The formalization of the sharia into the *qanuns* has gone through democracy and complies with the Indonesian law. Those *qanuns* contain regulations on *'aqīda*, *mu'āmalah*, Islamic convocation, and Islamic criminal law.

Keywords: Sharia, National Law, Aceh, Formal Legal, Indonesia

Abstrak: Implementasi Syari'at Islam di Aceh telah melalui proses demokrasi yang dianut oleh Negara Kesatuan Republik Indonesia. Namun, beberapa pengkaji terdahulu masih menganggap implementasi tersebut bermasalah. Karena itu, tulisan ini mendiskusikan prinsip-prinsip formalisasi syari'at Islam ke dalam hukum positif dan menganalisa formalisasi Syari'at Islam di Aceh ke dalam sistem hukum positif secara konkrit. Dengan menggunakan pendekatan penelitian hukum normatif, tulisan ini menunjukkan bahwa prinsip-prinsip Syari'at Islam dalam qanun-qanun Aceh berlandaskan pada al-Qur'ān dan al-Sunnah sebagai rujukan utama. Sementara formalisasi Syari'at Islam ke dalam qanun-qanun telah melalui proses demokrasi dan tunduk kepada sistem hukum Indonesia. Qanun-qanun tersebut memuat aturan tentang akidah, mu'alamah, syiar Islam, dan hukum pidana Islam.

Kata Kunci: Syari'at Islam, Hukum Nasional, Aceh, Legal Formal, Indonesia

Introduction

This article attempts at, firstly, discussing the principles of the formalization of sharia into positive law and, secondly, concretely analyzing the formalization of sharia into positive law in Aceh. Both efforts are relevant due to the existence of a gap left by the academia in the topic as well as for an answer upon controversy about the implementation of sharia in Aceh. For example, Kamaruzzaman Bustamam-Ahmad considers the implementation of sharia in Aceh represents merely the symbolization of Islamic teachings and would not solve the conflicts in Aceh.¹ Human Right Watch Report judges the sharia in Aceh unsatisfactory, especially for poor people, women, and youth with regards to a personal decision upon their faith, identity, and morality.² Additionally, Reed Taylor³ views the implementation of sharia in Aceh for women is a manifestation of irregularities in the positive law of Indonesia nowadays.⁴

Unlike the mentioned observers, some others response the sharia law in Aceh positively. Marzuki Abubakar, for example, conveys that the response of non-Muslims residing in Aceh remains positive upon the implementation of the sharia and they keep feeling safe to live and work in Aceh.⁵ Muhammad Ansor et al. shows that the implementation of sharia in Aceh respects, protects and gives freedom to non-Muslims to

perform worships based on their faiths.⁶ Like Marzuki and Muhammad Ansor et al., this article points out positively the sharia in Aceh, yet from a different perspective. Accordingly, through a discussion upon the formal-legal perspective of the implementation of the sharia, this article objects misperceptions of the first group with an argument that the implementation of the sharia runs in compliance with the law and has gone through the democratic processes followed by the Unitary State of the Republic Indonesia.⁷

With that aim in mind, this article would be divided into two parts. The first part discusses the principles and the basis of the law of the implementation of sharia in Aceh. As for the second, this article concretely analyses the formalization of sharia as the positive law in Aceh. Furthermore, the elaboration upon these two points would derive to our conclusion.

The Sharia and the Legal Basis of Its Implementation in Aceh Province

From the perspective of etymology, *sharī'a* means a clean path that is shown by Allah to human beings.⁸ The word is commonly used as the synonym of *al-dīn* and *millah*, which means all legal regulations that come from Allah and the *hadiths* of the Prophet Muhammad peace be upon him.⁹ Therefore, the

¹ Kamaruzzaman Bustamam-Ahmad, "The Application of Islamic Law in Indonesia: The Case Study in Aceh," *Journal of Indonesian Islam* 1, no. 1 (2007): 161.

² David Kloos, "In the Name of Syariah? Vigilante Violence, Territoriality, and Moral Authority in Aceh, Indonesia," in *Indonesia: Human Rights Watch*, 2010, p. 1.

³ Reed Taylor, "Syariah as Heterotopia: Responses from Muslim Women in Aceh, Indonesia," *Religions* 6, no. 2 (2015): 566-93.

⁴ *Ibid.*, p. 590.

⁵ Marzuki Abubakar, "Syariat Islam Di Aceh: Sebuah Model Kerukunan Dan Kebebasan Beragama," *Media Syari'ah* 13, no. 1 (2017): 103.

⁶ Ismail Fahmi Arrauf Muhammad Ansor, Yaser Amri, "Under the Shadow of Sharia: Christian Muslim Relations From Acehnese Christian Experience," *KOMUNITAS* 8, no. 1 (2016): 128.

⁷ Hasnil Basri Siregar, "Islamic Law in A National Legal System: A Study on the Implementation of Shari'ah in Aceh, Indonesia," *Asian Journal of Comparative Law* 3 (2008): 11.

⁸ Muhammad Tho'in, "The Effect of Sharia Principles Application and Service Againsts Customer Satisfaction of Sharia Financial Services Cooperative In Central Java," *International Journal of Economics, Business and Accounting Research (IJEBAR)* 2, no. 1 (2018): 41.

⁹ *Ibid.*, p. 42.

sharia is understood as the rules of the religion based on the revelation received by the Prophet Muhammad.¹⁰ The word is also understood as the law of Allah that requires the legislative body in a country to implement as working regulation.¹¹ Nevertheless, sharia is universal, whereas the formalization of the sharia is one of the ways to transform that universal and abstract norm of law concretely into written norms.¹² Against this backdrop, the underlying problems that require a meticulous study with regards to the implementation of the sharia into formal law are the issues of the binding legal basis and the value of its justice.

Aceh province has been given the status of *otonomi khusus* (distinctive autonomy) to implement the sharia.¹³ Law Number 4 of 1999 and Law Number 8 of 2001 give authority and the opportunity to Aceh of self-governance, including in matters of religious affairs and the legislation of regional regulations. Based on both stipulations, the regional authority of Aceh creates regional law products that strongly assume sharia, manifested in the *qanun* in which defined the distinctive institutions that carry that law.¹⁴ It is stated in the *Qanun* Number 11 of 2012, the *qanun* represent a symbol of the implementation of the sharia both in the dimension of

worship (*'ibāda*) and faith (*'aqīda*).¹⁵ The implementation of the sharia as one of the implications of the regional autonomy has brought about a more concrete understanding and practices of Islam compared to any time in the history of Islam in Indonesia.¹⁶ In addition to *Qanun* Number 11 of 2002 on *'aqīda* (faith), *'ibāda* (observances) and *syi'ar Islam* (Islamic convocation), the Aceh authority has also issued *Qanun* Number 6 of 2014 on *Kitab Jinayat* and *Qanun* Number 7 of 2013 on *Kitab Acara Jinayat* to implement the criminal law in Aceh.¹⁷

The existence of these *qanuns* is considerably beneficial for its ability to become the basis of the implementation of sharia in Aceh. The Acehnese even take pride in it. They convey that with the sharia, their lives become better.¹⁸ Research reveals that if Islamic law is correctly implemented in Aceh, that puts forward values of justice, equality, and prosperity, it would lift the level of economic, politic, and culture of Aceh people.¹⁹ It is in line with the meaning of the principle of justice from the perspective of Islamic law, which is against one-sidedness.²⁰ Therefore, we can say that the principles of sharia of Islam that are manifested through the *Qanuns* of sharia law in Aceh are grounded from the Qur'ān and the Sunna; both are the primary

¹⁰ Jan Michiel Otto, *Sharia and National Law in Indonesia* (Leiden University, 2010), 23.; Asifa Quraishi-Landes, "The Sharia Problem with Sharia Legislation," *Ohio NUL Review* 41 (2014): 547.

¹¹ *Ibid.*, p. 548.

¹² Jan Michiel Otto, *Sharia Incorporated: A Comparative Overview Of The Legal Systems Of Twelve Muslim Countries In Past And Present* (Amsterdam: Leiden University Press, 2010), p. 467.

¹³ Syahbandir, Efendi, dan Mahfud, "Zakat As Original Source of Revenue For Aceh," *Al-Risalah* 19, no. 1 (2019): 90.

¹⁴ R. Michael Feener, "Social Engineering through Shari'a: Islamic Law and State-Directed Da'wa in Contemporary Aceh," *Islamic Law and Society* 19, no. 3 (2012): 276.

¹⁵ *Ibid.*, p. 277.

¹⁶ *Ibid.*, p. 284.

¹⁷ Ramizah Wan Muhammad, Khairunnasriah Abdul Salam, Afridah Abbas, and Nasimah Hussin, "The Legal Framework of Islamic Criminal Law in Aceh with Refer-Ence to Application, Challenges and Way Forward," *Journal of Islam in Asia* 15, no. 3 (2018): 304.

¹⁸ Firdaus M Yunus, "Syariat Islam Di Aceh Antara Harapan Dan Tantangan Global," in *ICAIOS VII ARICIS II*, 2018, 106.

¹⁹ Kristina Großmann, "Women's Rights Activists and the Drafting Process of the Islamic Criminal Law Code (Qanun Jinayat)," in *Islam and the Limits of the State*, 2016, p. 94.

²⁰ Mahir Amin, "Konsep Keadilan Dalam Perspektif Filsafat Hukum Islam," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 4, no. 2 (2014): 330.

sources of Islamic teachings.²¹ Besides, a regional sharia regulation (*perda syari'ah*) is also considered to have served the justice that is also the principle of sharia.²² The Qur'ān is a blessing, not exclusively to Muslims, but also the whole humankind and the universe.²³ From the normative, regulative, and cognitive perspectives, the implementation of sharia of Islam by the respective authorities in Aceh is a success, despite not fully optimal.²⁴ Those authorities are *Mahkamah Syar'iyah* (Sharia Court), *Dinas Syari'at Islam* (The Office of the Sharia of Islam), *Baitul Mal* (House of Wealth), *Wilayahul Hisbah*, and *Dewan Pembinaan Pendidikan Dayah* (The Council of the Cultivation of the Dayah Education).²⁵ Accordingly, these institutions are expected to be able to reinforce the *qanuns* of sharia optimally in Aceh and that the people could give full support for the more serious implementation of the sharia.

Basically, the law is a result of an evaluation managed by reason based on human's conscience on justice about the human's conducts. Just that comes from human's conscience would lead to an assessment that every society has a different mode of conduct from others (obeying the prevailing norms) for the reason of actualizing justice.²⁶ A behaviour is considered just or unjust

based on an assessment that comes from the reasoning process as well as conscience about what a particular community wants within their ideology, ethics, morality, and religion. The Qur'ān places just as something to be required, not merely as a moral constraint.²⁷

When religion becomes an awareness (either of an individual or a community) that transforms into guidelines (norms or rules) in deciding how someone should behave, it could be the rule of positive law. When it has become the rule of law, piety is not wholly subject to subjective-private affairs but subject to the coercion of the community through a specific method and procedure. At this point, in order to make a law effective in that people obey it, there is a need for authority and power or state. This is how the principles of Islamic law transform unhurriedly into the system of positive law.²⁸

From the perspective of the formation of the formal or positive law, the sharia of Islam should be considered as a value, a norm—*volksgeist*—that exists and grows along with the development of the history of the state. For this reason, sharia should be expressed in the positive law (formal law), either through the legislation procedures, jurisprudence (the actual practice of law in courts), or any other methods of lawmaking. In line with the expressive function of law, i.e. conveying ideology, the value of justice applied in the community should be legally considered truth and justice.

From the perspective of Islamic philosophy, truth and kindness are connected to wisdom, law, and tradition. This view is supported by an Islamic philosopher, Ibn Miskawaih, that defines wisdom as *al-ḥikma*,

²¹ Muhammad Rusfi, "Filsafat Harta: Prinsip Hukum Islam Terhadap Hak Kepemilikan Harta," *Al-'Adalah* 13, no. 2 (2016): 245.

²² *Ibid.*, p. 246.

²³ Hasnil Basri Siregar, "Islamic Law in A National Legal System: A Study on the Implementation of Shari'ah in Aceh, Indonesia," p. 23.

²⁴ Helmi dan Achmad Nurmandi, "Dinamika Kelembagaan Dalam Pelekasana Otonomi Khusus Syariat Islam Di Aceh (Kajian Kelembagaan)," *Journal of Governance and Public Policy* 3, no. 2 (2017): 275.

²⁵ Yunus, "Syariat Islam Di Aceh Antara Harapan Dan Tantangan Global." p. 115.

²⁶ B. Arief Sidharta, *Refleksi Tentang Fundasi Dan Sifat Keilmuan Ilmu Hukum Sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia*, Disertasi (Bandung: Universitas Padjadjaran, 1996).

²⁷ Afifa Rangkuti, "Konsep Keadilan Dalam Perspektif Islam," *Tazkiya* 6, no. 1 (2017): 6.

²⁸ Abdul Shomad, *Hukum Islam: Penormaan Prinsip Syariah Dalam Hukum Indonesia* (Surabaya: Kencana, 2017), p. 58.

the law as *al-shari'ah* and tradition as *al-sunna*.²⁹ The formalization of sharia means making harmonious wisdom between the universal vision of sharia and particularity of a state to realize peaceful life. Practical wisdom (practical philosophy) brings about the law that manages human being in the world based on theoretical wisdom (theoretical philosophy). Sharia reflects the universal truth of religion. For this reason, the practical wisdom that manages rules bond to particular contexts is not sharia.

Sharia as a firm, clear, and explicit norm, as an ahistorical and universal truth, that is believed to be the sole truth with total acceptability and application, does not need reformulation in positive law. Nevertheless, the formalization in the context of written-positive law could only be conducted for *fiqh*, and it is urgent to do to give assurance of its application by the law enforcing institution.

All Muslims who believe in Allah as the source of legal power would unlikely deny the sharia of Islam as a rule of good conduct. Islamic law (sharia) is believed to be a norm that regulates good conducts, either with regards to humans' relationship with Allah or that with other creatures and the universe. Accordingly, Islamic law (sharia) is a set of rules or norms as a reflection of the ultimate, sole, and universal truth.

The Formalization of Sharia in the Concept of National Legal System in Aceh

1. Introduction to the Legal System

The system means an assembly of parts that work together in order to achieve a particular goal. The legal system, hence, is a set of stipulations, institutions, and traditions of

law³⁰ that reflect the principles and rules of the positive law existing in society.

The national legal system is the unity of diverse norms, including written and unwritten laws, customary law, and religious norm. The national legal system is an unbreakable unity, which means that the system views the diverse social communities that hold divergence social values and the custom that becomes the source of justice and the legislation of the laws, either in the national or regional level, as part of the legal system of the Republic of Indonesia.

Scholars have different views about the definition of the national legal system; nevertheless, they share a common view about the diversity of laws in Indonesia.³¹ Accordingly, the national legal system cannot be considered as a single positive law because this system is composed of various subsystems of laws. The heterogenic subsystem of law within a positive law system is part of the national legal system.

For this reason, the law should be viewed from the perspective of the system instead of merely normative point of view.³² The norm of law is only one element of the totality of the legal system, which includes the foundations of law, the norms of law (regulations, traditions, agreement and the foundation of international laws), professional law enforcers and institutions, structures, infrastructures, as well as the culture of law. This sys-

²⁹ Yamani, *Antara Al-Farabi Dan Khomeini: Filsafat Politik Islam* (Bandung: Mizan, 2002).

³⁰ Jimly Asshiddiqie, "Struktur Ketatanegaraan Indonesia Setelah Perubahan Keempat UUD Tahun 1945," in *Seminar Hukum Nasional VIII* (Bali: Badan Pembinaan Hukum Nasional, 2003), p. 36.

³¹ Bernard Arief Sidharta, *Refleksi Tentang Fundasi Dan Sifat Keilmuan Ilmu Hukum Sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia*, Disertasi (Bandung: Universitas Padjadjaran, 1996), p. 93.

³² Sunaryati Hartono, "Upaya Menyusun Hukum Ekonomi Indonesia Pasca Tahun 2003," in *Seminar Pembangunan Hukum Nasional VIII Buku 3*, n.d., p. 227.

tem is established from those elements, and all of those elements work effectively.

The system of law is not merely a set of written laws or regulations, but also includes a subsystem that is one interrelated part with another. Mochtar Kusumaatmadja views the elements of the legal system includes norms, institutions of law, and the concrete formalization of norms.³³ Consequently, in addition to unwritten regulations or laws, the legal system also includes operational elements, i.e. organizations, institutions, and officials as well as concrete implementing elements. Following the positivism school of law of Hans Kelsen, the written rules are drafted hierarchically based on the authority of the forming institutions. The structure of the written laws is called laws and regulations.³⁴

Article 2 of the decision of the People Consultative Assembly (TAP *Majelis Permusyawaratan Rakyat*) Number III/MPR/2000 about the legal system stipulates that the hierarchy of laws is as follows: the constitution of 1945, TAP MPR of the Republic of Indonesia, Laws, the Government Regulation in Lieu of Law (*Peraturan Pemerintah Pengganti Undang-undang, Perpu*), the Government Regulation, Presidential Decree, and the Regional Regulation. Currently, Article 7 of the constitution Number 2 of 2011 on the Establishment of Laws, defines the hierarchy of laws in Indonesia as follows:

1. The constitution of the Republic of Indonesia of 1945
2. The Decision of the People Consultative Assembly of the Republic of Indonesia (TAP MPR)
3. Laws/government regulation in lieu of law
4. Government regulation
5. The presidential decree
6. The province-level of regional regulation

³³ Ibid., p. 91.

³⁴ Ibid., p. 93.

7. The regency level of regional regulation

Law has a dynamic nature. Additionally, one law should be in harmony with other laws, both horizontally and vertically. A legal system should not have a stipulation that is contradicting to one another. This is the meaning of the harmonious and synchronic relationship between law and the others of its level or higher. To synchronize a legal system is a daunting task, for the existence of laws whose kind, form, and time of its establishment are not in harmony with others, either law at the same level or higher. Nevertheless, there should never be a contradiction between one norm and another within a legal system to ensure legal certainty.

To avoid contradiction within a legal system, there are foundations that should be followed by the legislative bodies, like the following:

1. A higher level of regulation wins over that of the lower (*lex superior derogate legi inferiori*)
2. A new regulation wins over the older (*lex posterior derogate legi priori*)
3. A specific regulation excludes the general one (*lex specialis derogate leg generali*)

All of these foundations play a critical role in a legal system in order to harmonize and synchronize the legal system. If a legal system in one particular field contains a contradiction, either with the law of the same level or that of the higher, those foundations function to control, so it does not occur. A legal system should not contradict to one another.

2. The Formalization of Sharia in Aceh as Positive Law

The formalization of the sharia of Islam as a form of regional autonomy of Aceh province is politically a strategy to put the armed conflict taking place in Aceh to an end. It is the most concrete political policy of

the central government that receives positive assessment and support from local Aceh people.³⁵ Showing a commitment to implement the sharia in Aceh, the government establishes the working institutions to ensure the reinforcement of the sharia law.

The fundamental question on the issue this article deals with is how the implementation of the universal value of sharia into positive law. Basically, the legislation of the *qanun* reflecting Islamic value in Aceh is one part of the legal system in Indonesia. It is based on the Constitution of 1945, which is the source of the governance system in Indonesia, that recognizes and respects the regional government apparatus that has the status of special autonomy. Aceh is a province that is given that kind of autonomy.³⁶

The legal basis of the implementation of the special autonomy in the Province of the Special Region of Aceh is the law Number 44 of 1999 that indicates the plausibility of implementing the sharia of Islam in Aceh.³⁷ Nevertheless, the implementation of the special autonomy law is yet to ensure justice. Accordingly, the central government issues the law Number 18 of 2001 about the Implementation of Special Autonomy of The Province of the Special Region of Aceh as the Province of Nanggroe Aceh Darussalam. Yet, the Law Number 18 of 2001 is not capable of accommodating the dynamics of the growing of aspiration, economic development, and political justice. For this reason, another law is issued, i.e. the Law

Number 11 of 2006 about the Governance of Aceh (*Undang-Undang Pemerintahan Aceh*, UUPA). The UUPA stipulation assumes the autonomy of Aceh people in its broadest sense in order to materialize prosperity for Aceh people.

One of the critical authority provided to the Aceh government with regards to legislating the implementation of the sharia is found in Article 125 par. (2) of the UUPA, that explicitly sets that the Islamic law implemented in Aceh includes observances (*‘ibāda*), family law, civil law, criminal law, justice, education, *dakwa*, Islamic convocation (*syiar*) and the defence of Islam. *Mahkamah Syar‘iyah* is given authority as the court upon problems related to criminal and civil law as well as familial dispute following the *qanuns*. *Mahkamah Syar‘iyah* is a court institution in Aceh that is inseparable from the religious court system in Indonesia.³⁸ Accordingly, *Mahkamah Syar‘iyah* is a conversion of the Religious Court. Nevertheless, because UUPA gives the *Mahkamah* authority of implementing the *qanuns* in Aceh, *Mahkamah Syar‘iyah* has an additional duty on acts violates sharia law as stipulated in the *qanuns*.

The UUPA gives Aceh government the authority of legislation in scopes of *al-syakhshiyah*, *muamalah*, *jinayah* that further manifests as *qanun* Aceh.³⁹ *Qanun* is legal provisions implemented exclusively in Aceh—not in any other regions in Indonesia—that are derived from Islamic principles.⁴⁰ Every Muslims residing in Aceh should obey and practice the sharia of Islam, and non-Muslims living in Aceh should re-

³⁵ Siti Ikramatoun, “Respon Masyarakat Aceh Terhadap Aturan Dan Implementasi Syariat Islam Pasca Tsunami,” *Jurnal Sosiologi Reflektif* 11, no. 1 (2017): 4.

³⁶ Cora Elly Novianti, “Demokrasi Dan Sistem Pemerintahan,” *Jurnal Konstitusi* 10, no. 2 (2016): 333–54.

³⁷ David Kloos, “In the Name of Syariah? Vigilante Violence, Territoriality, and Moral Authority in Aceh, Indonesia.” p. 73.

³⁸ *Undang-Undang Nomor 11 Tahun 2006 Tentang Pemerintahan Aceh*, Pasal 128., n.d.

³⁹ *Undang-Undang Nomor 11 Tahun 2006 Tentang Pemerintahan Aceh*, Pasal 1 Angka 21., n.d.

⁴⁰ Jum Anggriani, “Kedudukan Qanun Dalam Sistem Pemerintahan Daerah Dan Mekanisme Pengawasannya,” *Ius Quia Iustum Law Journal* 18, no. 3 (2011): 327.

spect the implementation of the *qanun*.⁴¹ One of the essential *qanuns* in implementing the sharia is *Qanun* Number 6 of 2014 on *jinayat* (criminal conducts).

Even though the *qanuns* of Aceh has been enlarged to cover criminal law, which is distinct substantively, the process of the formalization of Islamic law in *qanuns* of sharia in Aceh—viewing from its relationship to the national legal system—raises severe problems and concerns.⁴² Basically, the formalization of sharia of Islam in Aceh has encountered several problems, because the sharia that would be implemented should be in line consistently with the national law.⁴³ One example of the problems is a debate on the draft of *Qanun Jinayat* that stipulates *rajam* (stoning) for the adulterer. Article 241 of the UUPA points out that the *Qanun Jinayat* gives Aceh government the possibility of deciding the penalty according to the sharia of Islam in *jinayat* as long it is necessary and appropriate.⁴⁴ This article conveys that the *Qanun Jinayat* can disregard other stipulations that include a maximum penalty of 6 (six) months of detention and/or maximum mulct of Rp. 50.000.000, - (fifty million rupiahs) and reinforce the penalty of non-detention or non-mulct as long as does not violate other existing regulations.

There is a debate on the issue of the jurisdiction of the sharia approved by UUPA. The debate arises from the fact that law requires interpretation so that Article 241 of the UUPA gives Aceh government authority

of formulating and using the existing norms and penalties based on sharia provisions on *jinayat* if considered necessary and relevant. This means that the sharia as stipulated by UUPA is *qanun* or regional regulation which is a specific law, leading to the concept of *lex specialis derogate lex generalis* (a specific regulation excludes the general one). Consequently, the *qanun* of sharia cannot be annulled unless by a judicial review by the Supreme Court. On the other hand, some other scholars consider that the *qanun* of the sharia, even though it is in the same level as regional regulation cannot be modified by the Ministry of Home Affairs, but only through the material examination or judicial review by the Supreme Court.⁴⁵

Despite this debate, there has so far been no *qanun* that is annulled by the Ministry of Home Affairs as well as the Supreme Court for the reason of its contradiction with other laws. Viewing Article 72 of *Qanun Hukum Jinayat* and KUHP or other regulations outside KUHP, the *Qanun Jinayat* should be put forward.⁴⁶

Conclusion

From the above exploration, this article concludes that the implementation of sharia in Aceh has gone passed through democratic process subscribed by the Unitary State of the Republic of Indonesia, and is not in contradiction with the higher law. This line of the statement is evident that so far there has never been a sharia law manifested in the *qanun* that is annulled by the Ministry of

⁴¹ *Undang-Undang Nomor 11 Tahun 2006 Tentang Pemerintahan Aceh Pasal 126.*, n.d.

⁴² Husni Mubarrak A. Latief, *Disonansi Qanun Syariat Islam Dalam Bingkai Konstitusi Hukum Indonesia: Aceh Sebagai Studi Kasus*, (2012): 2779.

⁴³ M.B. Hooker, *Indonesian Syariah: Defining a National School of Islamic Law* (Singapore: ISEAS, 2008), p. 246.

⁴⁴ Al Yasa' Abubakar, "Syariat Islam Di Provinsi Nanggroe Aceh Darussalam: Otonomi Khusus Di Bidang Hukum," in *Sharia International Conference* (Banda Aceh, 2007), p. 13.

⁴⁵ Husni Mubarrak A. Latief dan Bukhari Ali, *Problematika Legislasi Qanun Jinayat Di Aceh Pasca Implementasi Undang-Undang Pemerintahan Aceh (UUPA)*, Laporan Penelitian (Banda Aceh: Lembaga Penelitian (Lemlit) IAIN Ar-Raniry, 2012).

⁴⁶ Zaki Ulya, "Dinamika Penerapan Hukum Jinayat Sebagai Wujud Rekonstruksi Syari'at Islam Di Aceh," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 5, no. 1 (2016): 141.

Home Affairs and the Supreme Court, questioning whether it vertically contradict to other regulations. Therefore, even though the implementation of the sharia is yet to be optimal, the negative criticisms addressed at the sharia law of Aceh – that it merely represents the symbolization of Islamic teachings, that it does not solve the conflict, and that it points to irregularities within the Indonesian law – are invalid.

The principles of sharia that reinforces the value of justice – especially with regards to the substance of the verdicts mentioned in the *qanuns* of criminal law and the formulation of respective institutions that are responsible with the implementation of the sharia such as *Mahkamah Syar'iyah* and *Wilayatul Hisbah* – have been included into the *qanuns* of Aceh. The formulation of Islamic law is held by approving the *qanuns* that comply with the substance of sharia, including the affairs related to *'aqīda*, *mu'āmalah*, Islamic convocation, and Islamic criminal law. Accordingly, there is a need for commitment and unity of vision that the implementation of the sharia in Aceh is not exclusive, but rather inclusive within the national legal and legislation system.

Bibliography

Journals

- Abubakar, Marzuki. "Syariat Islam Di Aceh: Sebuah Model Kerukunan Dan Kebebasan Beragama." *Media Syari'ah* 13, no. 1 (2017).
- Asifa Quraishi-Landes. "The Sharia Problem with Sharia Legislation." *Ohio NUL Review* 41 (2014).
- Bustamam-Ahmad, Kamaruzzaman. "The Application of Islamic Law in Indonesia: The Case Study in Aceh." *Journal of Indonesian Islam* 1, no. 1 (2007).
- Feener, R. Michael. "Social Engineering through Shari'a: Islamic Law and State-Directed Da'wa in Contemporary Aceh." *Islamic Law and Society* 19, no. 3 (2012).
- Hasnil Basri Siregar. "Islamic Law in A National Legal System: A Study on the Implementation of Shari'ah in Aceh, Indonesia." *Asian Journal of Comparative Law* 3 (2008).
- Helmi dan Achmad Nurmandi. "Dinamika Kelembagaan Dalam Pelekasana Otonomi Khusus Syariat Islam Di Aceh (Kajian Kelembagaan)." *Journal of Governance and Public Policy* 3, no. 2 (2017).
- Hutchinson, T. dan N. Duncan. "Defining and Describing What We Do: Doctrinal Legal Research." *Deakin Law Review* 17, no. 1 (2012): 84.
- Jum Anggriani. "Kedudukan Qanun Dalam Sistem Pemerintahan Daerah Dan Mekanisme Pengawasannya." *Ius Quia Iustum Law Journal* 18, no. 3 (2011).
- Mahir Amin. "Konsep Keadilan Dalam Perspektif Filsafat Hukum Islam." *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 4, no. 2 (2014).
- Muhammad Ansor, Yaser Amri, Ismail Fahmi Arrauf. "Under the Shadow of Sharia: Christian Muslim Relations From Acehnese Christian Experience." *KOMUNITAS* 8, no. 1 (2016).
- Muhammad Tho'in. "The Effect of Sharia Principles Application and Service Againsts Customer Satisfaction of Sharia Financial Services Cooperative In Central Java." *International Journal of Economics, Business and Accounting Research (IJE BAR)* 2, no. 1 (2018).
- Noviati, Cora Elly. "Demokrasi Dan Sistem Pemerintahan." *Jurnal Konstitusi* 10, no. 2 (2016): 333-54.
- Ramizah Wan Muhammad, Khairunnasriah Abdul Salam, Afridah Abbas, Nasimah Hussin. "The Legal Framework of Islamic Criminal Law in Aceh with Refer-Ence to Application, Challenges and Way Forward." *Journal of Islam in Asia* 15, no. 3 (2018): 304.

- Rangkuti, Afifa. "Konsep Keadilan Dalam Perspektif Islam." *Tazkiya* 6, no. 1 (2017).
- Reed Taylor. "Syariah as Heterotopia: Responses from Muslim Women in Aceh, Indonesia." *Religions* 6, no. 2 (2015): 566-93.
- Rusfi, Muhammad. "Filsafat Harta: Prinsip Hukum Islam Terhadap Hak Kepemilikan Harta." *Al-'Adalah* 13, no. 2 (2016).
- Siti Ikramatoun. "Respon Masyarakat Aceh Terhadap Aturan Dan Implementasi Syariat Islam Pasca Tsunami." *Jurnal Sosiologi Reflektif* 11, no. 1 (2017).
- Surbakti, Natangsa. "Penegakan Hukum Pidana Islam (Jinayah) Di Provinsi Nanggroe Aceh Darussalam." *Media Hukum* 17, no. 2 (2015).
- Syahbandir, Efendi, Mahfud. "Zakat As Original Source of Revenue For Aceh." *Al-Risalah* 19, no. 1 (2019).
- Thalib, Prawitra. "Distinction of Characteristics Sharia and Fiqh on Islamic Law." *Yuridika* 33, no. 3 (2018).
- Ulya, Zaki. "Dinamika Penerapan Hukum Jinayat Sebagai Wujud Rekonstruksi Syari'at Islam Di Aceh." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 5, no. 1 (2016).
- Husni Mubarrak A. Latief dan Bukhari Ali. *Problematika Legislasi Qanun Jinayat Di Aceh Pasca Implementasi Undang-Undang Pemerintahan Aceh (UUPA)*. Laporan Pe. Banda Aceh: Lembaga Penelitian (Lemlit) IAIN Ar-Raniry, 2012.
- Jan Michiel Otto. *Sharia and National Law in Indonesia*. Leiden University, 2010.
- Kristina Großmann. "Women's Rights Activists and the Drafting Process of the Islamic Criminal Law Code (Qanun Jinayat)." In *Islam and the Limits of the State*, 94, 2016.
- Latief, Husni Mubarrak A. *Disonansi Qanun Syariat Islam Dalam Bingkai Konstitusi Hukum Indonesia: Aceh Sebagai Studi Kasus*, 2012.
- Otto, Jan Michiel. *Sharia Incorporated: A Comparative Overview Of The Legal Systems Of Twelve Muslim Countries In Past And Present*. Amsterdam: Leiden University Press, 2010.
- Shomad, Abdul. *Hukum Islam: Penormaan Prinsip Syariah Dalam Hukum Indonesia*. Surabaya: Kencana, 2017.
- Sidharta, B. Arief. *Refleksi Tentang Fundasi Dan Sifat Keilmuan Ilmu Hukum Sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia*. Disertasi. Bandung: Universitas Padjadjaran, 1996.
- Yamani. *Antara Al-Farabi Dan Khomeini: Filsafat Politik Islam*. Bandung: Mizan, 2002.

Books

- Anwarul Yaqin. *Legal Research and Writing*. Malaysia: Malayan Law Journal SDN BHD, 2007.
- Bernard Arief Sidharta. *Refleksi Tentang Fundasi Dan Sifat Keilmuan Ilmu Hukum Sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia*. Disertasi. Bandung: Universitas Padjadjaran, 1996.
- David Kloos. "In the Name of Syariah? Vigilante Violence, Territoriality, and Moral Authority in Aceh, Indonesia." In *Indonesia: Human Rights Watch*, 1, 2010.
- Hooker, M.B. *Indonesian Syariah: Defining a National School of Islamic Law*. Singapore: ISEAS, 2008.

Conference Proceedings

- Abubakar, Al Yasa'. "Syariat Islam Di Provinsi Nanggroe Aceh Darussalam: Otonomi Khusus Di Bidang Hukum." In *Sharia International Conference*, 13. Banda Aceh, 2007.
- David Kloos. "In the Name of Syariah? Vigilante Violence, Territoriality, and Moral Authority in Aceh, Indonesia." In *Indonesia: Human Rights Watch*, 1, 2010.
- Jimly Asshiddiqie. "Struktur Ketatanegaraan Indonesia Setelah Perubahan Keempat

UUD Tahun 1945." In *Seminar Hukum Nasional VIII*, 36. Bali: Badan Pembinaan Hukum Nasional, 2003.

Sunaryati Hartono. "Upaya Menyusun Hukum Ekonomi Indonesia Pasca Tahun 2003." In *Seminar Pembangunan Hukum Nasional VIII Buku 3*, 227, n.d.

Yunus, Firdaus M. "Syariat Islam Di Aceh Antara Harapan Dan Tantangan Global." In *ICAIOS VII ARICIS II*, 106, 2018.

Laws

Law Number 11 of 2006 on Aceh Government