

THE ROLE OF WILAYAT AL-HISBAH IN THE IMPLEMENTATION OF ISLAMIC SHARIAH IN ACEH*

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Abstract: The *Wilayat al-Hisbah* (WH), known also as sharia police in Aceh, plays important roles in implementing Islamic law in Aceh - Indonesia. In one hand they must act professionally based on Islamic principles, unfortunately their future career is still unclear. In national level there are no clear regulations mentioning the WH career path. This consequences lead to the professionalism of WH. Most of them will switch their career to other career having clear future career and also having clear regulation arranging the career.

1. Introduction

This article will discuss the role Wilayat Al-Hisbah (WH) in Aceh and its challenges on the implementation of Islamic law. On one hand, the Government of Aceh must implement the principle of Islamic laws through WH, on the other hands must also be considering and coexisting with the legal pluralism in Indonesia.

WH which also known as sharia police has been established historically in the implementation of Islamic law. In that time, the WH officers have duties such as providing education/ counselling, prevention, and prosecution of violations of Islamic law, until the enactment of judicial decisions by courts. Such counselling / education acts are like providing a defence of the importance of Islamic law to society, so that people really understand that Islamic law is a society's need.

The prevention actions include precision of the scales in the market,¹ appealed to Muslims when the time of prayer was almost up, and so forth. Whilst the investigation is done

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¹Lucky Enggrani Fitri, 'Peranan Wilayatul Hisbah Dalam Pengawasan Pasar,' (2014) 1 (1) Jurnal Manajemen Terapan dan Keuangan 62-73.

for those who are in fact violating the rules, so that the laws and the deterrent effect can be truly felt by the offenders.²

Based on success story in Islamic history, the Government of Aceh tries to implement the WH enforcement system in Aceh, Indonesia. This system seems possible with autonomy implementation in Aceh, chiefly the autonomy to implement Sharia law in Aceh.³ This autonomy consequently requires a special police knowing more on how implement Sharia law, later known as Wilayat Al-Hisbah (WH). The role of WH in Sharia law is very important. This consider the Satuan Polisi Pamong Praja (Satpol PP), known as law enforcement officer having no sharia law background.

2. Discussion

The existence of WH legally recognized by Indonesian legal system, with the establishment of Act No.44 of 1999 on the Implementation of Special Feature of Aceh Province, and Act No.18 of 2001 on the Special Autonomy for the Special Province of Aceh as the Province of Nanggroe Aceh Darussalam. From these two laws, the local government at that time tried to fill the regulatory needs⁴ to mobilize the implementation of Islamic law, such as the formation of WH with various authorities.⁵ The need for WH institutions recalls that the need for special apparatus to enforce Islamic law with more Islamic approaches.

Among the various functions of WH at the time was to control and supervise the implementation of Shari'a during people's lives within the province of Aceh. Only, in other

²In Saudi Arabia, Sharia Police has terminology '*AlHaiah Amar Ma'ruf Nahi Mungkar*'. Lihat juga < <http://www.pv.gov.sa/>>. See also William Ochsenwald, 'Saudi Arabia and the Islamic Revival,' (1981) 13 (3) International Journal of Middle East Studies 271-286. R. Hrair Dekmejian, 'The rise of political Islamism in Saudi Arabia,' (1994) 48 (4) The Middle East Journal 627-643. Moch Nur Ichwan, 'The Politics of Shari'atisation: Central Governmental and Regional Discourses of Shari'a Implementation in Aceh, in '*Islamic Law in Modern Indonesia*,' (Harvard University Press 2007) 193-215.

³See also Undang-Undang Nomor 11 Tahun 2006 Tentang Pemerintahan Aceh; Peraturan Daerah Nomor 5 Tahun 2000 Tentang Pelaksanaan Syari'at Islam; Surat Keputusan Gubernur Nanggroe Aceh Darussalam Nomor 01 Tahun 2004 Tentang Organisasi Dan Tata Kerja Wilayatul Hisbah; Peraturan Pemerintah Nomor 6 Tahun 2010 tentang Satuan Polisi Pamong Praja; Peraturan Menteri Dalam Negeri Nomor 40 Tahun 2011 Tentang Pedoman Organisasi Dan Tata Kerja Satuan Polisi Pamong Praja.

⁴Qanun Aceh Nomor 5 Tahun 2007 tentang Susunan Organisasi dan Tata Kerja Dinas, Lembaga Teknis Daerah, dan Lembaga Daerah Provinsi Nanggroe Aceh Darussalam. Qanun No.11 Tahun 2002 Tentang Penyelenggaraan Syariat, Pasal 14 ayat 1-5. Lihat juga Peraturan Daerah Provinsi Nanggroe Aceh Darussalam No.33 Tahun 2001 Tentang Susunan Organisasi dan Tata Kerja Dinas Syari'at Islam.

⁵Keputusan Gubernur No. 1 Tahun 2004 Tentang Pembentukan Organisasi Wilyatatul Hisbah, Pasal 4. Peraturan Daerah Provinsi Nanggroe Aceh Darussalam No.5 Tahun 2000 tentang Pelaksanaan Syariat Islam, Pasal 13.

aspects still cause various problems. They include the conceptual and philosophical issues involved and the problem of their application. As a new institution in the Indonesian state system, the WH in its implementation requires many legal instruments, especially law enforcers who have legality of legislative authority such as police and prosecutors. However, the existence of police and prosecutors who master Islamic law is one of the serious obstacles. Similarly, the problem of hierarchy of sources of law relating to the rules of implementation of the articles in this qanun in the context of the application of Islamic Shari'ah should not conflict with the hierarchy above.

The future of WH has a bright shine with the existence of Act No.11 of 2006 on Government of Aceh. In this Act, WH unites with Satpol PP as additional provincial organ. However, WH in Act cannot react independently as attached state organ under the Satpol PP.⁶ Because it is attached to another institution, it is by itself subject to the rules in which it is attached. This legal fact is increasingly making the WH very difficult to develop, both in personal career and institutional institutions. The position of the WH is increasingly difficult, when the government regulation only regulates in detail the functional career of Satpol PP only, without including the WH into it.⁷

Based on the above facts, there are several options that can be considered to position Satpol PP and WH in the future. But keep in mind that every option has a worthy effect is also considered. These options are included; *Firstly*, the establishment of separate laws and regulations for the WH at the central government level, in particular for the WH functional level, be it functional functional positions as well as functional functional positions. These regulations may be government regulations or ministerial regulations. To be more specific and concrete, the regulations should be designed by the Government of Aceh, then seek approval from the central government. The importance of the design was made by the Government of Aceh aims to incorporate the values of Islamic Shari'a and the basic idea of WH formation in the Islamic tradition in the regulation. However, this option may be dealing with the politics of law at the national level. Bureaucracy, discussion and lengthy debates may occur during this

⁶Ahmad Basarah, 'Kajian Teoritis Terhadap Auxiliary States Organ Dalam Struktur Ketatanegaraan Indonesia,' (2014) 43 (1) Masalah-Masalah Hukum 1-8. See also Lukman Hakim and Agus Sudaryanto, 'An Institutionalization of the State Commissions as a State Institutions on the Basis of the 1945 Constitution of the Republic of Indonesia,' (2015) 33 Journal of Law, Policy and Globalization 77-85.

⁷See also Peraturan Pemerintah No. 6 Tahun 2010 Tentang Satuan Polisi Pamong Praja. Lihat juga Peraturan Menteri Pendayagunaan Aparatur Negara Dan Reformasi Birokrasi No. 4 TAHUN 2014 Tentang Jabatan Fungsional Polisi Pamong Praja Dan Angka Kreditnya.

regulatory arrangement. Therefore, the intensity of the escort until such regulation is ratified is indispensable.

Secondly, incorporation thoroughly in the unity of Satpol PP. This is because Satpol PP has a clear functional career level at the national level. The career path has been clearly regulated in government regulations and ministerial regulations. In this position, the WH can be shaped as a quasi-institution, the institution that only looks its name but in essence he is not an institution that exists. In other words, WH's name is only attached to Satpol PP without any role. However, this step resulted in the loss of the core of the formation of the WH itself as the guardian of Islamic law. WH will not be like Satpol PP which only become enforcer of regional regulation in general.

Thirdly, incorporation in part in unity of Satpol PP. The coordination line may be in Satpol PP but he has a separate institution and unity. As for his functional career ladder, he can attach to other institutions, such as in institutions, police, religious affairs offices, or to certain functional career positions under the ministry of the interior. But this step will also give rise to its own obstacles, especially about inter-agency cooperation that will take a lot of time.

Finally, is a totally comprehensive separation with Satpol PP. With this comprehensive separation there are in Aceh two local law enforcers. WH for Sharia-based regional regulations and Satpol PP for general-based regional regulations outside the Islamic Shari'a. With this separation, each institution will evolve according to its basic foundational philosophy, so that one is not inferior to the other. However, there are big jobs waiting for this step, one of which is the judicial review of the LoGA. Given the norms of the WH within the law,⁸ then to amend these norms there should be an attempt to test the law in the Constitutional Court.

It takes a logical legal standing to convince the judges of the constitution that the norms concerning WH contained in the PA Law are contrary to the constitution.⁹ It is not an easy job but it is also not impossible. The argument that can be built is one of the obstacles to the implementation of special autonomy, there is a certain position in the regional civil service system, which has no legal basis at the central level, such as the WH in Aceh. The Centre does not respond quickly to this, so there is no legal certainty in the region. Therefore, it is necessary to change the norm in certain articles in the Act of Government of Aceh.

⁸Allan-Randolph Brewer Carías (ed), *Constitutional Courts as Positive Legislators A Comparative Study* (Cambridge University Press 2011) 15.

⁹See also Gabe Ferrazzi, *Legal Standing And Models Of Local Government Functions In Selected Countries: Implications For Indonesia*, (Ministry of Home Affairs of Indonesia 2002)1-6.

3. Conclusion

In Indonesian legal system, the norms regarding WH is only regulated in the Act of Government of Aceh. Unfortunately, those norms are too weak as only attached on Satpol-PP's norms, making WH unable to stand on their on feet. Consequently, WH's role must be based on Satpol-PP regulations including career path and internal policies. It is difficult for WH to develop their life skill as uncertainty and gloomy future career.

Considering the hierarchical regulation in Indonesia, it is hard to solve problem regarding WH's career path, as regulated in national level. So, the Government of Aceh needs to legislate the regulation on WH's position in national level, such as making presidential decree on WH's career path. The decree at least can solve the problem on law uncertainty regarding WH's career path.

REFERENCES

- Abeng T, 'Business Ethics in Islamic Context: Perspectives of a Muslim Business Leader,' (1997) 7 (3) Business Ethics Quarterly 47-54.
- Abu Ya'la al-Farra' AY, Al-Ahkam al-Sultaniyyah (Matba'at Mustafa al-Babi al-Halabi 1966)
- Al-Hibri AY, 'Islamic Constitutionalism and the Concept of Democracy,' (1992) 24 (1) Case Western Reserve Journal of International Law 1-27.
- Arjomand SA, 'Islamic Constitutionalism,' (2007) 3 (1) Annual Review of Law and Social Science 115-140.
- Al-Mawardi, *al-Ahkam al-Sultaniyyah wa al-Wilayah al-Diniyyah* (Matba'at Mustafa al-Babi al-Halabi 1973)
- Al-Saqati, *Fi Adab al-Hisbah*, (Dar al-Fikr al-Hadith 1987)
- Basarah A, 'Kajian Teoritis Terhadap Auxiliary States Organ Dalam Struktur Ketatanegaraan Indonesia,' (2014) 43 (1) Masalah-Masalah Hukum 1-8.
- Blasi B and John T. Jost, 'System Justification Theory and Research: Implications for Law, Legal Advocacy, and Social Justice,' (2006) 94 (4) California Law Review 1119-1168.
- Carías AB (ed), *Constitutional Courts as Positive Legislators A Comparative Study* (Cambridge University Press 2011)
- Christian D, 'Naskah Akademik Dalam Pembentukan Undang-Undang Ditinjau Dari Perspektif Pembangunan Hukum Nasional,' (2015) 11 (4) Jurnal Legislasi Indonesia 41.
- Dahlan AA, *Ensiklopedi Hukum Islam* (Ichtiar Baru van Hoeve 1996)
- Daily MB, 'Anggaran Wilayatul Hisbah Perlu Ditingkatkan, diakses 16 Juni 2015, <<http://www.medanbisnisdaily.com/news/arsip/read/2011/12/15/62376/anggaran-wilayatul-hisbah-perlu-ditingkatkan/#.VYBKLfknKDQ>>
- Dedy Sumardi, "Islam, Pluralisme Hukum dan Refleksi Masyarakat Homogen." Jurnal Asy-Syir'ah, 50.2 (2016): 481-504.
- Dedy Sumardi, "Hudûd Dan HAM: Artikulasi Penggolongan Hudûd Abdullahi Ahmed An-Na'im." MIQOT: Jurnal Ilmu-ilmu Keislaman 35.2 (2011).
- Dekmejian RH, 'The Rise of Political Islamism in Saudi Arabia,' (1994) 48 (4) The Middle East Journal 627-643.

Dictionaries D, 'Definition Reposition', diakses 16 Juni 2015
<<http://www.oxforddictionaries.com/definition/english/reposition>>

Fitri A, 'Studi Analisis Peran Lembaga Hisbah Pada Masa Pemerintahan Khalifah Umar Ibn Khattab,' (Disertasi Doktor, IAIN Walisongo 2009)

Fitri LE, 'Peranan Wilayahul Hisbah Dalam Pengawasan Pasar,' (2014) 1 (1) Jurnal Manajemen Terapan dan Keuangan 62-73.

Gabe Ferrazzi, *Legal Standing And Models Of Local Government Functions In Selected Countries: Implications For Indonesia*, (Ministry of Home Affair of Indonesia 2002)

Hakim L and Agus Sudaryanto, 'An Institutionalization of the State Commisions as a State Institutions on the Basis of the 1945 Constitution of the Republic of Indonesia,' (2015) 33 Journal of Law, Policy and Globalization 77-85.

Harris J, 'A Clinical Approach To Legal Drafting,' (2015) 94 Amicus Curiae 1.

He W, 'Developing Problem-Solving Skills With Case Study In A Conceptual Management Course,' (2015) 11 (2) Journal of Business Case Studies 57-70.

Ibn Taymiyyah, *al-Hisbah fi al-Islam aw Wazifah al-Hukumah al-Islamiyyah*, (Dar al-Kutub al-'Ilmiyyah 1992)

Ichwan MN, 'The Politics of Shari 'atisation: Central Governmental and Regional Discourses of Shari 'a Implementation in Aceh, in *'Islamic Law in Modern Indonesia*,' (Harvard University Press 2007)

Indonesia KBB, 'Definisi Reposisi', diakses 16 Juni 2015, <<http://kbbi.web.id/reposisi>>

Indonesia S, 'Tim Terpadu Pidie Jaring 23 Ekor Kambing,' diakses 16 Juni 2015, <<http://aceh.tribunnews.com/2014/08/20/tim-terpadu-pidie-jaring-23-ekor-kambing>>

Indonesia S, 'Wilayahul Hisbah Tak Seharusnya Diserang,' diakses 16 Juni 2015 <<http://aceh.tribunnews.com/2015/05/11/wilayahul-hisbah-tak-seharusnya-diserang>>

Jacobstein JM, Roy M. Mersky, and Donald J. Dunn. *Fundamentals of Legal Research* (Foundation Press 1994) 1-10.

Keban YT, 'Pokok-Pokok Pikiran Perbaikan Sistem Manajemen SDM PNS di Indonesia,' (2004) 8 (2) Jurnal Kebijakan dan Administrasi Publik 19.

Keputusan Gubernur No. 1 Tahun 2004 Tentang Pembentukan Organisasi Wilyatatul Hisbah.

Keputusan Presiden Nomor 87 Tahun 1999 tentang Rumpun Jabatan Fungsional Pegawai Negeri Sipil.

Kloos D, *'Strengthening Local Leadership. Sharia, Customs, and the Dynamics of Vigilante Violence in Aceh,' Regime Change, Democracy And Islam The Case Of Indonesia* (University of Leiden 2013)

Knowles J, *Effective Legal Research* (Sweet & Maxwell 2012)

Kopertis12, 'Seputar Jabatan Struktural dan Jabatan Fungsional', diakses 16 Juni 2015, <<http://www.kopertis12.or.id/2010/08/03/seputar-jabatan-struktural-dan-jabatan-fungsional-pns.html>>

Kumorotomo W, *Etika Administrasi Negara*, (Rajawali Pers 1992)

Meredith S, 'Oscola, a UK Standard for Legal Citation,' (2011) 11 (2) Legal Information Management 111-114.

Milallos MTR, 'Muslim Veil As Politics: Political Autonomy, Women and Syariah Islam in Aceh,' (2007) 1 (3) Contemporary Islam 289-301.

Muhammad Siddiq, "Kegentingan Memaksa Atau Kepentingan Penguasa (Analisis Terhadap Pembentukan Peraturan Pemerintah Pengganti Undang-Undang (PERPPU))." Jurnal Asy-Syir'ah . 48.1 (2014).

Muhammad Siddiq Armia, "Eksekutif Review Terhadap Perda Retribusi Di Daerah Otonomi Khusus." Jurnal Rechtsvinding: Media Pembinaan Hukum Nasional 5.2 (2016): 245-260.

Muhammad Siddiq Armia, "The Role of Indonesian Constitutional Court In Protecting Energy Security." Jurnal Konstitusi 13.2 (2016): 241-258.

Muhammad Siddiq Armia, "Constitutional Courts And Judicial Review: Lesson Learned For Indonesia," Negara Hukum, Vol.8, No.1, June 2017, 107-130

Murti MS, 'Harmonisasi Peraturan Daerah Dengan Peraturan Perundang-Undangan Lainnya,' (2010) Jurnal Legislasi Daerah

Ochsenwald W, 'Saudi Arabia and the Islamic Revival,' (1981) 13 (3) International Journal of Middle East Studies 271-286.

Oudang M, *Perkembangan Kepolisian di Indonesia* (Mahabarata Djakarta 1952)

Parsons N, and Marcus Mietzner, 'Sharia Bylaws in Indonesia: A Legal and Political Analysis,' (2009) 11 (2) Australian Journal of Asian Law 190-217.

Peraturan Daerah Nomor 5 Tahun 2000 Tentang Pelaksanaan Syari'at Islam

Peraturan Daerah Provinsi Nanggroe Aceh Darussalam No.33 Tahun 2001 Tentang Susunan Organisasi dan Tata Kerja Dinas Syari'at Islam.

Peraturan Daerah Provinsi Nanggroe Aceh Darussalam No.5 Tahun 2000 tentang Pelaksanaan Syariat Islam.

Peraturan Menteri Pendayagunaan Aparatur Negara Dan Reformasi Birokrasi No. 4 Tahun 2014 Tentang Jabatan Fungsional Polisi Pamong Praja Dan Angka Kreditnya.

Peraturan Pemerintah No. 6 Tahun 2010 Tentang Satuan Polisi Pamong Praja.

Peraturan Pemerintah No. 40 Tahun 2010 tentang Perubahan Atas Peraturan Pemerintah No.16 Tahun 1994 Tentang Jabatan Fungsional Pegawai Negeri Sipil

Peraturan Pemerintah Nomor 6 Tahun 2010 tentang Satuan Polisi Pamong Praja

Peraturan Menteri Dalam Negeri Nomor 40 Tahun 2011 Tentang Pedoman Organisasi Dan Tata Kerja Satuan Polisi Pamong Praja

Perillo JM, 'UNIDROIT Principles of International Commercial Contracts: The Black Letter Text and a Review,' (1994) 63 Fordham Law Review 281.

Qanun Aceh Nomor 5 Tahun 2007 tentang Susunan Organisasi dan Tata Kerja Dinas, Lembaga Teknis Daerah, dan Lembaga Daerah Provinsi Nanggroe Aceh Darussalam.
Qanun No.11 Tahun 2002 Tentang Penyelenggaraan Syariat.

Ridwansyah, 'Penempatan Jabatan Fungsional,' (2013) 2 (3) Publika Jurnal Ilmu Administrasi Negara 6-8.

Rose-Ackerman S, Stefanie Egidy, and James Fowkes, *Due Process of Lawmaking* (Cambridge University Press 2015)

Rosengren KE, ed. *Advances in Content Analysis*. (Publications 1981) 31-35.

Salter M, *Writing Law Dissertations : An Introduction And Guide To The Conduct Of Legal Resarch* (Longman 2007)

Sekretariat Negara Republik Indonesia, *Sumber Tertib Hukum Republik Indonesia* (Sekretariat Negara Republik Indonesia 1985)

Setyadi SB, 'Pembentukan Peraturan Daerah,' (2007) 5 (2) Buletin Hukum Perbankan dan Kebanksentralan 1-17.

Siregar HB, 'Islamic Law in a National Legal System: A Study on the Implementation of Shari'ah in Aceh, Indonesia,' (2008) 3 (1) Asian Journal of Comparative Law 1-26.

Surat Keputusan Gubernur Nanggroe Aceh Darussalam Nomor 01 Tahun 2004 Tentang Organisasi Dan Tata Kerja Wilayatul Hisbah

Thaib D, *Kedaulatan Rakyat, Negara Hukum, dan Konstitusi*, (Liberty Publishing Company 1999) 107.

Uddin A, 'Religious Freedom Implications of Sharia Implementation in Aceh-Indonesia,' (2010) 7 (3) University of St. Thomas Law Journal 603-648

Undang-Undang No.12 tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.

Undang-Undang No.5 tahun 2014 tentang Aparatur Sipil Negara

Undang-Undang Nomor 11 Tahun 2006 Tentang Pemerintahan Aceh

Walker M and Irene Tinker, 'Development and Changing Bureaucratic Styles in Indonesia: The Case of the Pamong Praja,' (1975) 48 (1) Pacific Affairs 70-72.

Wikipedia, 'Karesidenan,' diakses 28 Oktober 2015, <
<https://id.wikipedia.org/wiki/Karesidenan>>

Zander M, *The Law-Making Process* (Bloomsbury Publishing 2015)

< <http://www.pv.gov.sa/>>.