
Positivisation of Islamic Sharia as Local Government Regulations for Minority Citizens as Liyan in Aceh

Helmi¹, Nyak Fadhlullah²

¹ Faculty of Social and Political Sciences, Universitas Syiah Kuala

² Indonesian Constitutional Study Institute (LKKI)

(Corresponding author: helmi_fisip@unsyiah.ac.id)

Abstract (Indonesian)

Although the majority of Aceh's population is Muslim, the rules formulated in the form of Islamic Sharia Qanun cannot be separated from social interaction with non-Muslims as a minority community. This study wants to reveal the position of non-Muslims in Qanun (Sharia rules) for the application of Islamic law in Aceh, with the aim of analyzing how Islamic Sharia Qanun is made and their problems with diverse views on the equality of identity in Aceh. This is based on several facts which show that the paradigm of equality of diverse identities in Aceh has not been a major concern among religious communities. This research is library research using secondary data. Data collection techniques are carried out by reviewing the literature and related documents, namely analyzing 13 Qanun (Sharia Rules) of the application of Islamic Sharia and one Aceh Special Region Regulation, as well as other valid and credible sources. The findings in this library research are the rules formulated in Aceh's Jinayat Qanun giving freedom to the choice of punishment for non-Muslims. This freedom is granted through the principle of surrender, which is regulated in article 129 of Law Number 11 concerning the Government of Aceh and Article 5 of the Aceh Qanun Number 6 of 2014 concerning Jinayat Law.

Keywords: Aceh; Citizen Minority; Islamic Sharia; Local Government

INTRODUCTION

When exploring other concepts, it is important to refer to the discourse of the birth of masculinistic philosophy by Platonists and Aristotelians. Liyan, in this case, is interpreted as humans who do not have the essence of participation. Liyan is also intended as the disappearance of participatory capacity when it is constructed as an identity whose presence must be protected, and restrained. This condition gives birth to the reality of fertility, that he is not his, the body is not his, his life is also not in his power (Riyanto, Christy, and Widodo, 2011).

The application of Sharia law in Aceh has triggered a variety of reactions, some arguing that this Sharia law have a detrimental effect on human rights issues, while others claim that Aceh should be ensure that Sharia law is part of the values of religious practice (Habiburrahim et al, 2020). The main problem in the application of Islamic law in Aceh is the emergence of the potential for a rift in the relationship between religious harmony in Aceh. Although in addition to the condition of harmony among religious believers, the issue of internal harmony among religious communities is also a separate issue between the application of Islamic law in Aceh (Sabil, Abubakar, and Munir, 2017).

This condition was born because of the assumption that these Qanun produced through the legislative process in parliament, of course with a long process of political lobbying, is an absolute truth that cannot be contested, including the desire to overhauling it.

This condition also forms a public perception that Islamic law in Aceh is not compatible with aspects of human rights, Islamic law is always considered as part of the restriction of freedom, including deprivation of minority rights. This perception forms a prolonged phobia towards Islamic law. Actually, the perception as written above does not stand alone, it is supported by the supporting pillars around it. The buffer is the behavior of individuals who act in the name of Islam to justify all opinions and behavior, although, in essence, the view of how to run the law in Islam is not rigid.

The phenomenon of formalization of sharia and its relation to conflicts between religions and intra-religion quite a lot of attention, not a few also discussing from the perspective of minority citizenship. Regarding Islamic law legislation in several regions in Indonesia is still an interesting discussion until now, one of the causes is the polarization of non-discriminatory discourse against women's

groups and minorities who are still the center of great discussion and consideration in policymaking, as well as the main agenda of the legislation. It is impossible not to mention being contaminated with the political interests of some circles.

Concerning the Qanun with contemporary issues, women's rights and positions, for example, some scholars have explored this issue in several writings. One of them was written Kristina Großmann (2016) that wrote about the Women's Rights Activists and the Drafting Process of the Islamic Criminal Law Code (Qanun Jinayat). Kristina saw the "scope of acting" activist (woman) who voiced women's rights in the Qanun Jinayat Draft. An important finding in Kristina's study is the phenomenon that is rarely touched: the emergence of women's participation, which is not part of the state apparatus or religious elite, in the process of drafting Islamic law. Through an empirical approach, Kristina's writing completes a hole in the study of Islamic law in contemporary Aceh that is still gaping, by showing that the implementation of Islamic law is not only formed by state actors but also by non-state actors, both women, and men.

Regarding the response to the application of Islamic law, Muhammad Ansor (2014) wrote in "Being Woman in

the Land of Sharia: Politics of the Female Body, Piety, and Resistance in Langsa, Aceh". Besides, there are two other writings written by Muhammad Ansor and colleagues relating to inter-religious relations under the application of Islamic law, namely "Under the Shadow of Sharia: Christian Muslim Relations From Acehnese Christian Experience", and "Jilbab and Reproductive Christian Women's Identity in Aceh School Public Spaces" (translated).

This paper tries to explain about the Sharia regulations and their problems with minority citizenship. As well as peeling how is the principle of submission in the Aceh Qanun? Where this principle is formulated to prevent the coercion of non-Muslims who do not have the obligation to run the Shari'a, but if it is considered more humane, it can be considered to choose one of the legal options given by the law.

METHODS

This research uses library research, as a sample used based on documents, books and trusted media. By reading and recording literature or books. A series of activities relating to the method of collecting library data, reading and recording and processing research materials. Data in library research still

exists to answer the problem of this research. Empiric information or data that has been collected by other people, in the form of research reports or official reports, books are the main reference in completing research. Because the problem of this research is very relevant answered through library research.

RESULTS AND DISCUSSION

The majority-minority interface in legal construction can be traced to the popular will concept by JJ. Rousseau, there are three main principles: first, people's power as the highest power must reflect the will of the public/common (*volente/general will*), second, the people themselves determine how he is led and by whom he is led, third, everyone has the right to determine himself and to participate in the decision making process that concerns the whole community (Bo, 2019). There are two main views related to this, in addition to the concept of the public will (*Volente general*), there is also a concept called sovereignty.

As a preliminary view which is often referred to in legal terms as a majority agreement, instead of being accepted, Rousseau's concept has been widely criticized by scholars. Bo (2019) is one who questions and criticizes this concept,

according to him the issue of minorities and their relation to the rules born of the rule of law were debated. If it is consistent with Rousseau's argument, as a mutually agreed rule, the law often becomes the will of the majority, so that it has the potential to negate the aspirations and rights of minorities. With this concept, Rousseau is considered to develop an anti-emancipatory attitude. If tested, it is clearly seen in his statement about minorities. According to him, the minority must adjust, if they don't want it, it will be destroyed. In this case, Rousseau instead tends to understand 'anti-democracy' and favor the totalitarianism.

Affirmation of Identity; Emergence of Minority Citizenship

Acehnese people tend to have high resistance to authentic religious identity. Scholars, one of whom is Peter Riddell, said that this trait was born from efforts to build self-perception, this construction can be seen how the people of Aceh see themselves as residents in the "Porch of Mecca". This then forms the identity formation for the people of Aceh (Djumala, 2013).

As an issue that is still a major concern of scholars, especially to conflict, identity is very often exploited and abused. Amartya Sen (2007), in his book "Identity

And Violence: The Illusion Of Destiny”, very clearly states that identity - which is often misunderstood as a single - is the main trigger of conflict and violence, and that idea was supported by Bertrand (2012) which identified identity as a channel that expresses violence. Moreover, Amartya Sen’s main argument is that human identity is something multidimensional, rather than monodimensional. The granting of identity barriers - especially based on religion - according to Sen is very dangerous, this also alludes to Huntington's (2004) thesis on the clash of civilization, which is both controversial and provocative. Sen concluded that a layered identity, familiar with multiculturalism, was the only solution to reduce the conflict that had taken place so far.

The issue of identity in Aceh has long been a complex discourse, beginning with the Dutch occupation. The narrative of Islam and *Kaphe* (infidels) was very common in the public discourse at that time, and even became the main spirit of decolonization. The slice of the nation-state then provides a new demarcation of identity in Aceh. After the establishment of the Unitary Republic of Indonesia, which resulted from imagined communities and formed a cosmopolitan identity (Anderson, 2016), the interaction between Aceh and

Jakarta - the Central Government- had more conflict than peace (Ichwan, 2019). This effect gave rise to “xenophobia” on non-Acehnese identities, the most traceable to the present is a “tribal” identity between Aceh and Java, which was initially considered a national narrative.

Contemporary identity in Aceh is no less complicated. Post-2005, a new trend was born which was referred to by scholars as shari'aalization. Makin (2016) told how the identity narrative started fighting in public discourse that was still traumatized, whether traumatized by disaster (earthquake and tsunami) or trauma due to conflict, this trauma then shaped the character of society to become a closed society. Moreover, there are main points become the main focus in maintaining the identity of the races, firstly western hegemony, secondly Christianization, and thirdly heretical sects (Makin, 2016).

Seeing the problem above, it is important to ask again whether differences in identity can give birth to conflict? Or the conflict that has been happening just exploits identity as a lighter to ignite the "fire of violence" so that it gets bigger, which is the real problem is the inadequate economic needs of the conflicting people.

The Principle of Submission in the Jinayat Aceh Qanun

The principle of self-submission is regulated in Article of the Law of the Government of Aceh (LoGA): (1) In this case, the act of Jinayah is carried out by two or more people together, including non-Muslim, non-Muslim religious actors can choose and subjugate voluntarily comply with the Jinayah law. (2) Every person who is not a Muslim commits acts of Jinayah that are not regulated in the Criminal Law Act or criminal provisions outside the Criminal Law Act in Jinayah. (3) Aceh residents who commit acts outside of Aceh apply the Criminal Law Code.

This provision was later adopted by the Aceh Jinayat Qanun which was ratified in 2014 and began to be implemented in 2015. The narratives stated when adopted in the Jinayat Qanun are also exactly the same, as stated in Article 5, “This Qanun applies to: a). Everyone who is a Muslim does Jarimah in Aceh; b). Every non-Muslim religious person who commits Jarimah in Aceh together with Muslims and chooses and submits voluntarily to the Jinayat Law; c). Any non-Muslim religious person who commits Jarimah in Aceh that is not regulated in the Criminal Code (KUHP) or criminal provisions outside the Criminal Code, but regulated in this Qanun; and D).

Business Entities that carry out business activities in Aceh”.

At first glance, it should be appreciated that there are efforts to implement a heterogeneous view in the Qanun Jinayat Aceh. This view can be seen in the granting of space and freedom to non-Muslims as minority citizens in choosing the punishment they will undergo, namely the existence of the principle of submission to Article 5 letter b above. But on the other hand, the principle of submission is not an alternative because the provisions only apply to the types of rules governed in qanun and national law, whereas if not regulated in national law, then the parties must comply with the Qanun Jinayat, as stipulated in Article 5 letter c above.

CONCLUSION

It is argued that the Qanun Jinayat in their formulation did not neglect minority rights. Instead of ignoring, in this case, the attention to the interaction of minorities who live side by side with the Acehnese people is entrusted in the legislation which is then regulated concretely in the Qanun. This paper wants to break the notion that the qanun Jinayat in no way gives room to minorities, and curb all actions taken by them. Non-Muslim groups living and domiciled in Aceh are

hereby recognized in the implementation of Islamic law and the implementation of the qanun Jinayat.

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