

Implementation of Law in Aceh After Application Qanun Jinayah

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Abstract: Implementation of Shari'a kaffah in Aceh are still looking for the right format in application. This matter due to various obstacles and barriers that can not be covered for granted, such as conflict and others. Muslim Ibrahim says that the implementation of shari'ah kaffah certainly will face a number of obstacles, such factors as: first, the Aceh situation is still not conducive, however, seems to efforts towards its implementation shall continue to be implemented, since the implementation of the Shari'ah itself when implemented sincere hopefully can be a bit of a bidder for conduciveness situation in the province, and the software in the form of material and guide the implementation of all possible yet to hundreds qanuns formulated great detail. However, these obstacles become qanuns jinayah correction that reversed existing weaknesses remain to be executed and become one of the new models nuanced Islamic law, both in substance and applicative.

Keywords: Islamic Criminal Law, Kaffah

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I. Introduction

Problems of law on the establishment of Qanun jinayah namely the existence of such rules shall take into account the legislation in force in the Republic of Indonesia for Aceh is one of the province. Therefore, Qanun should be based on Nomor.12 Act of 2011 that regulates the type and hierarchy of legislation RI state starting from 1945, the MPR decree, law / decree, PP, Presidential, Provincial Laws and Regulation Regency / City. Problems of the law (vertical) have an impact on the implementation of the Qanun jinayah (Islamic criminal law) in Aceh. Implementation jinayah Qanun in Aceh has not shown significant results. In addition, understanding of the law jinayah also experience the difference. It has caused disparity (gap) in the middle of the community. Differences in understanding not only among the general public, but occurs also among scholars, academics, legal practitioners and scientists. Differences in understanding and misconceptions about law enforcement jinayah ranging from simple to the fundamental nature.

After the release of the legality of the government for the implementation of Shari'a in Aceh, raised several issues regarding how to apply for Islamic countries previously could not be used as a reference in the implementation, of whom one reason is socio-culturally different. Until even now there is no ideal example of a country that implement Shari'a. The existence of the legality of the government to implement sharia law in Aceh, responded by issuing some local governments with local regulations (Perda) in the framework of the implementation of Islamic Shari'a in Aceh. From regulation legislation is further developed into regional regulations concerning the administration of Islamic Shari'ah, which in turn spawned qanun Aceh.

Implementation of Shari'a in Aceh Kaffah is one interesting phenomenon to be observed regarding the application in society. This report explores how the implementation of Shari'a in Aceh as part of the territory of the unitary Republic of Indonesia. An overview of the socio-cultural conditions of the people of Aceh, which has been embedded and imprinted from age to age and from the kingdom of Aceh Darussalam to date. Rests of Indigenous culture unidirectional and relevant to religion, and expression that shows the meaning can be seen from the strands popular word called Maja hadih following: "Adat bak po teumeureuhom Hukom bak Syiah kuala, Kanun bak putroe phang Reusam bak laksamana, Adat ngon hukom lagee zat ngon sifeut".

The purpose of the poem above is behwa Indigenous culture is maintained by the king of Legal Personality 'is managed by the ulama (Shia kuala) Qanun taken care of by the king's consort (Princess Phang) reusam (way of life) is managed by the Indigenous commander with the law as a substance with properties.

Efforts application of Islamic law over state law has actually been carried out in Indonesia in stages, since tens of years ago by adopting Islamic law into state law. This can be seen with the Law No. 1 of 1974 on Marriage in general by most people regarded as munakahat Indonesian law, because according to the law, a Muslim may not be married outside the Islamic marriage law.¹

¹ Armia Ibrahim, *Peraturan Perundang-undangan Tentang Pelaksanaan Syariat Islam di Aceh*, www.Mahkamahsyariahaceh.go.id

The exit of Law Number. 22, 1999, Law Number. 44 of 1999 on Privileges Aceh and reinforced by Act 18 of 2001 on Special Autonomy, of which aims to implement and develop Shari'a in Aceh. Legislation of the central government against the Islamic Shari'ah in Aceh, nothing gained briefly but often tinged twists and a long political journey.

In addition, the legality of the implementation of Shari'a in Indonesia can not be separated from the political circumstances at that time as the statement put forward by Ridwan al Makassary ie Shari'ah implementation efforts can not be circumvented on the momentum of reform which has published political liberalization and paved space opportunities for the fundamentalists. Some areas are addressing this condition by practicing this idea, among others, Aceh, Banten, Tasikmalaya, Makassar and others.²

The local government to respond to these laws by issuing Regulation (local regulations) to regulate the process of implementing Shari'a kaffah in Aceh province. Local regulations include: Regional Regulation Number. 3, 2000 on the Ulema Consultative Assembly (MPU); Regional Regulation Number. 5, 2000 on the Implementation of Shari'a; Local Regulation Nomor. 6, 2000 on the Implementation of Education; Regional Regulation Number. 7 of 2000 concerning Indigenous Life; Qanun NAD Nomor.12 2003 on Alcoholic Drinks and the like; Qanun NAD Nomor.13 2003 on Maisir; and Qanun NAD Nomor.14 2003 on Seclusion (sordid). It became a phenomenon both interesting and challenging to observe, especially concerning the readiness of the government of Aceh and its people to accept and carry out Shari'a is kaffah. Controversy appear not only among Aceh alone but extends to every aspect of the archipelago in addressing the issue of the course of implementation of Shari'a Islam in Aceh kaffah. Observing the existence of Islamic law in the legislation in force in Indonesia, Ali Imron classify three forms: first, the Islamic law into national law in the form intact as in the books of fiqh; second, the Islamic law in the form of existing modifications or adjustments to the dynamic development of the people of Indonesia; and third, the material can be accepted as fiqh when there are many values and not benefit to conflict with the existing proposition.³

Al Yasa 'Abu Bakr said that the implementation of sharia law in Aceh is still trial and error (try one). So it is still necessary inputs from various parties in the process of implementing sharia law in Aceh. This involves Azra in his article mentions one of the problems the implementation of sharia law in Aceh because of the absence of the state as a reference implementation of the Shari'a. Regardless of the debate and controversy over the implementation of sharia law in Aceh. The local government of Aceh has socialized the application of sharia law into various corners and the community responded in various ways. The community hopes that with the implementation of the Shari'ah able to overcome all the problems that are raging in Aceh.

Issues Regarding Implementation of Islamic Shariah in Aceh

Implementation of Shari'a kaffah in Aceh province are still looking for the right format in its application. This is due to various obstacles and barriers that can not be covered for granted, such as conflict and others. Muslim Ibrahim says that the implementation of shari'ah kaffah certainly will face a number of obstacles, such factors as: first, the Aceh situation is still not conducive, however, seems to efforts towards its implementation shall continue to be implemented, since the implementation of shari'ah itself, when implemented sincerely hopefully can be a bit of a bidder for kondisifitas situation in Aceh; and second, the software in the form of material and guide the implementation of all possible yet to hundreds qanuns terumus in great detail.⁴

Another impact has also appeared on the implementation of Qanun is so, that is not the law of procedure for violators Qanun will be punished happened in Aceh, especially in criminal law. The enactment and implementation of Islamic Shari'a in Aceh within the framework of the Republic of Indonesia is one example of which is used as a benchmark by other regions in Indonesia who also want the enactment of Islamic law in Indonesia. Therefore it is natural that all eyes point in observing Aceh with Islamic legal practices diterapkannya. Between debate highlights the reason is because of their religious plurality in Indonesia as stated in the first principle of Pancasila.⁵

Apart from the spotlight, the desire imposition of Islamic law in Indonesia is not only for the Aceh region alone but there are areas in the Homeland, because in fact the percentage of the majority of Indonesia's

² Ridwan Al-Makassary, "Perda Syari'at Islam dan Implementasinya Terhadap Kebebasan Sipil, Non Muslim dan Perempuan, (case in Tasikmalaya)", Jurnal Republika, Vol.6 No.1 Year 2006, Universitas Lancang Kuning Pekanbaru, P. 210.

³ Ali Imron, "Problematika Implementasi Hukum Islam di Indonesia", Jurnal Masalah-Masalah Hukum, Vol. 37 No. 1 March 2008, University Diponegoro, Semarang, P. 44.

⁴ Muslim Ibrahim, Syariat Islam Di Aceh, The annual seminar UIN/STAIN Indonesia which is implemented in desember 2004 in Aceh, P.8

⁵ Aliansyah, Qanun Hukum Acara Jinayat Dalam Pelaksanaan Syariat Islam (Studi Terhadap Draf Qanun Hukum Acara *Jinayat Di Aceh*), Jurnal Legitimasi, Vol 1 Year, 2011.

population is Muslim. Moreover, the existence of Islamic law in Indonesia within a legislation to support law enforcement in Indonesia. This is due to the process of transformation of the moral values of Islam in daily life attitudes in acting fairly and properly.⁶

Viewed from different angles, the actual implementation of sharia law in Aceh kaffah is a problem which is not easy. It was necessary inputs and the stages to be executed, in addition to the need to adjust to the sociocultural conditions of the people of Aceh. What are the forms that must be done and how the corresponding concept applied in reality it is still sought formatnya. So that and implementation of Shari'ah was readily accepted in all dimensions of life and go hand in hand with the development of the people of Aceh today as well as tomorrow.

Implementation of Islamic Law in Aceh after the imposition of Islamic Sharia through the birth of the legislation that legitimizes its existence, the question has been to what extent the implementation of Islamic Sharia in Aceh province? Then if the implementation is in conformity with what was expected earlier? And whether implementation has reached a specific purpose, namely the National Legal Purposes?

Of the three questions that are crucial issues that reflect the realities that occur in people of Aceh in connection with the implementation of Islamic Law. In that case, there were some complaints and negative opinions Acehnese associated with the methods used in the implementation of Islamic Sharia, which tends to be done in ways nuanced violent and degrading by the community in various cities and districts in Aceh. And more wrenching again, the executor of Islamic Sharia, in this case law enforcement officials, as powerless to prevent the spread of violence that are often reported in various media. On behalf of the Islamic Sharia, the perpetrators often receive persecution and inhumane treatment of people who are caught and arrested, as bathed with sewage, paraded mass of naked, even to the sexual harassment (eg coercion scenes on the beach Lhok Nga by unscrupulous Wilayatul WH). Sordid case in 2007 in Abdya which also ended with the burning of the house of a widow alleged perpetrator's shame by residents.⁷

Implementation of Islamic Shariah has not kaffah implemented and can be said to be "merely a slogan". Emphasis is conducted also on a few things like nasty cases, seclusion, gambling, and wine. Violations of Sharia Islamic community responded by carasweeping in the streets, cafes, hotels and other public places that often ended in dispute as well as colored violent actions.

According to Rusdi Muhammad Ali in the inaugural speech of the Rector of The Institution of Master State Islamic Ar-Raniry Banda Aceh that the lack of understanding of the Qur'an will lead to a pattern of reasoning that does not have the spirit of universality, flexibility, dried in nuanced sociological and even be difficult to apply Islamic Shari'ah in human life. Yet the essence of the existence of Islamic Shariah is bringing benefits to humans in the world or in hereafter. Rusdi also said that the spirit of universality, flexibility and feel of sociological fact has been demonstrated by the Quran itself, at the beginning of Shari'a laws.

This spirit can be found when, God forbid acts riba. Allah practice to drink alcohol and do not directly and necessarily proscribe both them. Banned actions and deeds prohibition to drink alcohol and usury practices carried out gradually (tadarruj), according to the level and ability of people accept the ban or the imposition of a study hukum. Dalam thought Islamic law, the process of phasing is called the theory of gradualism law.⁸

Al-Qur'an in the beginning explaining the positive side and the negative side of the practice of usury and drink alcohol, while letting people feel disaster of the practice. Thus, people actually have and can sense from these practices bring disaster that will threaten human existence in the world both in terms of humanity and in terms of the damage caused. After people able to break away from dependence on alcohol, the Qur'an states clearly and explicitly on the prohibition of the practice of usury and drink alcohol.

Violations of the Laws Jinayah in Aceh

Attempts to Islamic law enforcement agencies have, until now has formed a number of bylaws. Exclusively for the purposes of criminal law enforcement Islam (Jinayah), by 2004 had formed five qanuns as a source of substantive law. Qanuns fifth question is, (1) Qanun No. 11 of 2002 on implementation of Islamic law field of faith, worship and symbols of Islam; (2) Qanun No. 12 of 2003 concerning the wine (liquor) and the like; (3) Qanun No. 13 of 2003 on Maisir (gambling); (4) Qanun No. 14 of 2003 on Seclusion (nasty); and (5) Qanun No. 7 of 2004 on Zakat Management. Until 2010, despite various Qanun been revised in the House of Representatives (DPR) of Aceh, but Qanun revised yet approved by the Governor of Nanggroe Aceh Darussalam (NAD). Establishment Islamic law in the Province of Nanggroe Aceh Darussalam (NAD), until

⁶ M. Arifin Hamid, "Internalisasi Wawasan Keislaman Menuju Efektifitas Penegakan Hukum Di Indonesia, The Magazine Ilmiah Hukum Amanna Gappa Universitas Hasanuddin Makassar, Vol. 13 No. xi Year 2003, P.369.

⁷ Teuku Reiza Yuanda, *Penerapan Syariat Islam di Aceh: Sebuah Review Singkat*, 2010.

⁸ Rusdi Ali Muhammad, *Teori Gradualisme: Aplikasi Penerapan Syariah Islam di NAD*, Swara Ditpertaiss: No.18 Th.II, 29 Oktober 2004, P. 1.

now there is still controversy regarding the enforcement of Islamic law in Aceh earth. This controversy relating to the formalization of the enforcement of Islamic law by making penalties ('uqubat) caning as a punishment principal. Used to and application of criminal whip by certain circles is seen as a form of cruelty, torture, contrary to the sense of justice and a violation of human rights on the ground in Aceh. Under the provisions of the above issues Islamic Criminal (Jinayah) becomes increasingly important and new in the criminal justice system in Indonesia, as well as a new authority for the Court of Shariah in the province earlier Aceh. Because Shari'ah Court is not authorized to investigate violations Syari'at Islam in the areas of criminal, let alone impose criminal penalties such as flogging or to imprisonment.

Prohibition Maisir (Gambling)

Gambling or gambling is a culture that is more negative impact than positive impact as well as wine. If the alcohol has the goal is to have fun so is gambling that aims to gain pleasure and profit without bothered.

Al-Yasa' adding that gambling as a social dilemma that must be faced and stopped. The essentially gambling is against the religion, morality and moral Pancasila, as well as endangering the livelihoods and lives of the people, nation and country.⁹

Gambling can also lead to hostility and anger among partner sepermainan, and not infrequently also lead to murder, obstructing recollection of God and prayer, damaging society by familiarizing life unemployed and idle, waiting for great results effortlessly and earnestly, damaging household, how many households into ruins that formerly lived in pleasure and happiness caused by gambling, so sometimes result in very pathetic, the culprit ended his life by suicide or be willing to live with poverty and humiliation.¹⁰

Prohibition Khamar (Liquors and the like)

Qanun Number. 12 Year 2003 concerning Khamar and the like in which states that every person who consumed liquor (liquor and the like) shall be punished with a flogging of 40 (forty) times.

Whip criminal threats against violations (any person who consumes wine) Qanun can not be reduced but can be added with the ruler's decision, this additional penalty category into ta'zir. Regarding penalties for consuming liquor is not regulated clearly in al-Qur'an. Prophet never punish perpetrators who drink alcohol with the punches a little or a lot, but not more than 40 times whip. This is what later became the basis for the criminal whip 40 times for drink khamar in-laws khamar in Nanggroe Aceh Darussalam.

Khamar according Qanun 12 of 2003 Chapter I Article 1 is: "*the strong drink if consumed can cause impaired health, awareness and power fikir*". Because maqashid Shari'ah is keeping a sense, it is very strict Shari'ah forbids.¹¹

The by-laws also set about the repetition of the same type of offense. This can be seen in Article 29 which states that "the repetition of violation of the provisions referred to in Article 26, 'uqubatnya be 1/3 (one third) of uqubat maximum.

Prohibition of Seclusion (sordid)

Qanun Aceh Province, No. 14 of 2003 Chapter I Article 1 explained that, seclusion / pervert is silent act between two people mukallaf or more of the opposite sex who is not mahram or without marriage. However, khlawat / bawdy not only occur in certain places deserted from the sight of others, but can also occur in a crowd or in the streets or in other public places, where men and women preoccupation without bond marriage.¹²

Prohibition seclusion is early prevention for fornication, this prohibition is different from other jarimah directly to the act itself, such as the prohibition of stealing, drank alcohol and gambling. Prohibition of adultery actually began from actions that lead to zina, this indicates that fornication occur due to other acts that become the cause of fornication.¹³ Prohibition of adultery actually began from actions that lead to zina. This indicates how Islam very concerned about the purity of a person human child.

Constraints faced by law enforcement officials in the Law Enforcement Jinayah in Aceh

⁹ Al-Yasa' Abubakar, Syariat Islam di Provinsi Nanggroe Aceh Darussalam, Paradigma, Kebijakan dan Kegiatan, ed. 3, (Banda Aceh: Dinas Syariat Islam Provinsi NAD, 2005), P. 265.

¹⁰ Mu'ammal Hamidy, dkk, Terjemah Tafsir Ayat Ahkam Ash-Shabuni, jilid I, cet. I, (Surabaya: PT. Bina Ilmu, 1985), P. 228.

¹¹ Al-Yasa' Abubakar, Sulaiman M. Hasan, Perbuatan Pidana dan Hukumnya Dalam Provinsi Nanggroe Aceh Darussalam, (Banda Aceh: Dinas Syari'at Islam NAD, 2006), P. 33.

¹² Sri Suyanta, Buku Pelaksanaan Panduan Syari'at Islam Untuk Remaja dan Mahasiswa. Cet, II, (Banda Aceh: Dinas Syari'at Islam Provinsi Nanggroe Aceh Darussalam 2008), P. 279-280.

¹³ *Ibid.*

Obstacles that occur in the implementation of the law jinayah can not be seen from the aspect of law enforcement alone. Rather, from the aspect of politics, culture and cultural institutions as well. According to Lawrence M. Friedman takes a few components that have established regulations that can be undone very well. Thus, the necessary three components, among others; First, structural component, ie the moving parts in a mechanism (institution). Second, is substantial, the results of which have been published by the legal system or in another sense that legislation itself. Third, the cultural, the cultural values of society.

These three components are very influential in the implementation of a regulation. He said that one of the basic structure and the real elements of the legal system. Substantial are other elements that support. Friedman analogize between structure and substantially into the shape of the body. According to structure represents a substantial body frame and is a collection of bones, flesh, and the contents of the body itself.¹⁴

Soerjono Soekanto stated that the prevailing cultural factors may result in the law can not be run properly. According to the culture, which is the result of work, taste and creativity that are based on human initiative in social life. A culture that has become a habit for someone hard to be removed if there is no element of culture modifiers. In addition, according Soerjono Soekanto that infrastructure is needed in order to support adherence to the rule of law.¹⁵ Therefore, in the application of Qanun jinayah required some components to the above mentioned law implemented that have been established by the government.

Substance Qanun

Qanun established by the Government of Aceh as qanuns jinayah, there are four (4) namely Qanun No. 11 of 2002 on the Implementation of Shari'a field Aqidah, Worship and syi'ar Islam; Qanun No. 12 of 2003 on Alcoholic Drinks and the like; Qanun No. 13 of 2003 on Maisir (Gambling); Qanun No. 14 of 2003 on Seclusion (sordid).

In substance, a bylaw of the above still contains weaknesses that can not be avoided. For example a number of substances qanuns following:

- a. Regarding Aceh Qanun No. 11 of 2002 on the Implementation of Shari'a field Aqidah, Worship and syi'ar Islam, adopted on October 14, 2002, in Banda Aceh coincides with 7 Sha'ban 1423 H. Regional Gazette NAD 2002 No. 54 Series E No. 15, and the Provincial Gazette of Nanggroe Aceh Darussalam 2002 No. 15, particularly in the chapter governing the definition of "cult" that does not meet the requirements of methodological, then the chapter about worship that is still limited to the five daily prayers and Friday prayers. Likewise, the clothes covering the genitalia and not translucent and show the body shape for men and women, while the penalty for violators is not clear, just celebrated its completion and coaching wilayatul hisbah.
- b. Regarding Aceh Qanun No. 12 of 2003 on Alcoholic Drinks and the like, was passed on July 15, 2003, in Banda Aceh to coincide with 15 Jumada Al-Awwal, 1424 H. Provincial Gazette of Nanggroe Aceh Darussalam 2003 Number 25 Series D No. 12, and the Regional Gazette Nanggroe Aceh Darussalam 2002 No. 28; Qanun No. 13 of 2003 on Maisir (Gambling), enacted on July 16, 2003, Banda Aceh to coincide with 15 Jumada Al-Awwal 1424 H. Provincial Gazette of Nanggroe Aceh Darussalam 2003 Number 26 Series D No. 13, and the Gazette of the Province Nanggroe Aceh Darussalam Year 2003 Number 29; Qanun No. 14 of 2003 on Seclusion (sordid), enacted on July 16, 2003, in Banda Aceh to coincide with 16 Jumada Al-Awwal 1424 H. Provincial Gazette of Nanggroe Aceh Darussalam 2003 Number 27 Series D No. 14, Provincial Gazette and Nanggroe Aceh Darussalam 2003 Number 30. In this bylaw does not regulate the length of detention when the investigation process, also does not regulate the arrest when the perpetrator fled.

Government Law Politics

When a Qanun has been ratified as a rule, the legal process will be executed by law enforcement authorities. In this context, the political position of the law is not done anymore. In this aspect, which should be raised is the maximum enforcement processes. All law enforcement authorities, both the police and hisbah wilayatul officers, prosecutors and judges should be running as the Shariah Court ought to uphold qanuns jinayah with all its weaknesses.

However, from the factual findings indicate that although jinayah bylaw has been approved as a rule in the field of Islamic Shariah as a guideline daily the entire community as well as a legal umbrella for the Acehnese, but still met various political commentary and debate about the substance of the Qanun , Statements such as "do not all have to be whipped khalwat", or the statement of the former Head of Rehabilitation and Reconstruction Agency (BRR) NAD-Nias, Kuntoro Mangunsubroto that "Shari'a causes inhibition of investors",

¹⁴ Lawrence M. Friedman, *The Legal Sistem*, translate by M.Khozim. (Bandung: Nusamedia,20013), P. 13-16

¹⁵ Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum*, (Jakarta : Rajawali Press, 2011), P. 203-206.

or "WH is not clear legal basis", or "*Islamic Shari'a law do not dwell on the whip*," or "*Shari'a infringement settlement begins in the village*", or "police blame for being weak in the eradication qanuns gambling".

Even worse qanuns enforcement jinayah in Supreme Shari'ah District Bieureun clearly intervened local authorities to ignore the judge's ruling court. If the observed number of statements on the authority of qanuns jinayah that have been imposed by the Government of Aceh alone, caught clearly that there has been the inconvenience of his own government in implementing such a by law. These statements have shown unease government on the one hand, and the government in implementing inconsistency Qanun is on the other side.

Differences in Perception

Enforcement qanun jinayah have problems because of the perception that was built between the government, the public and law enforcement on track difference. Perception built by the government so as to impose sharia law as an attempt to achieve justice and give rights to those who deserve and take the rights of the parties, not justice was subsequently spawned several qanuns jinayah as described earlier. Other hand, the perception among the public has a much more diverse. No one wants the implementation of Islamic Shariah kaffah that covers all dimensions of life and sanctions as stated in the Qur'an and al Hadist. Group supported by the Islamic boarding school and other Islamic organizations, such as Hizb Thahrir Indonesia and the Islamic Defenders Front Aceh branch. Meanwhile, law enforcement authorities be it police, prosecutors, and the Syariah Court, because it is very careful in running Qanun, then what is not regulated in full-laws, although it includes qanuns jinayah offense, will not be forwarded procedurally. Even sometimes, the legal settlement took place outside the court, the reason "we do not want in law enforcement efforts, had to break the law anyway".

Moral and Law Enforcement Integrity

Potential barriers to enforcement of Qanun jinayah can also be caused by low morale and integrity of the law enforcement. The stronger the moral and the integrity of law enforcement, especially in preventing and in making decisions on violation qanuns jinayah, the stronger enforcement jinayah Qanun in Aceh. Various cases of violations committed qanuns jinayah law enforcement agencies such as the case of khalwat unscrupulous members of the WH Banda Aceh, or cases of rape by three (3) members of the WH officers in Langsa on Friday, January 8, 2015. Moral and integrity demonstrated by elements stretcher obviously very disturbing enforcement of qanun jinayah. And then reappear impression that the Head of Shari'a Bireuen had accepted bribes so many executions have not been carried whips. Although the Department of Shari'a and the WH is not included in the category of law enforcement, but in the eyes of the people of Aceh, the two institutions are classified as law enforcement is supposed to be an example for the community spacious. In the other hand, the lower the integrity of law enforcement can also interfere with the enforcement jinayah qanun in Aceh. Cases arising out of the law enforcement authorities as an inhibitor is as was the case in the city of Lhokseumawe on a number of the WH officers who socialize in city of Lhokseumawe legal environment, but these activities are hampered by the authorities (police and military officers). Cases like this occur throughout Aceh.

Public pressure is Still Limited

Observations made so far, the public is very strong pressure on the government of Aceh in order to rule enforced qanuns jinayah emerged from some quarters as Boarding School Boarding School Darul Mujahidin, Dayah Babah Buloh, Hizb Thahrir Aceh, Aceh branch of the Islamic Defenders Front. Another element in the name of the public also appear as call-Chairman of Nahdlatul Ulama (NU) Pidie to support the enforcement of Shari'a that is not too much hope in the WH. Besides the pressure also came from the Indonesian Islamic Propagation Council (DDII) Aceh, which confirms that the Shari'a in Aceh has been no progress, the indicators used as an appraiser that many women are out of the house opened the nakedness, fornication, intoxication as well as ignorance of the ruling against shari'ah.

Another element which also put pressure on the government for enforcement qanuns jinayah as practiced by a number of student activists of Islamic Students Indonesia (PII), Pemuda Muhammadiyah, pressure exerted by stating that the Islamic Shari'a running in place, particularly in the area of Pidie district law , Also pressure from the Indonesian Muslim Student Action Union (KAMMI) North Aceh Ulama Consultative Assembly (MPU) East Aceh and North Aceh. By doing demonstrations, demanding KAMMI North Aceh government to seriously implement sharia law which is considered never considered again, even among MPU East Aceh and Tamiang considers that the implementation of Islamic Shariah law in force since 1999 still vague, this due to the doubt, whereas in the North Aceh MPU judging shari'ah still going nowhere, this condition is caused by a lack of public awareness to provide guidance to the members of his family. Weak pressure from various elements of the community towards the implementation of this jinayah Qanun Aceh shows that people do not have the same attitude towards the rule of Shari'ah. Pressures from elements of society that are not comprehensive, has given understanding to the Aceh Government that the people of Aceh are not

whole heartedly to implement the Shari'ah. When the attitude of people who are not compact in Islamic Shari'a government is certainly more passive than reactive.

Budget

An indication of the lack of budget for the implementation of sharia law in Aceh as revealed in the session of the House of Representatives Aceh (DPRA) for the year 2011 budget allocated \$ 2 billion. Figures like this are not possible to provide guidance and socialization Shari'ah optimally at different scale Acehness social level. As a result of the low allocation of funds towards the implementation of sharia law in Aceh, resulting in the absence of salary allowances for officers the WH (WH) as happened in Bireuen, and lack of office facilities and the salary of the WH in North Aceh District. This condition would affect enforcement efforts jinayah Qanun in Aceh. Consequences worse than the absence of honoraria WH, even some of the WH officers who are willing to take office electronic devices such as laptops, digital cameras, mobile phones belonging to people who are in the process of vetting of members WH. This case occurred in Bireuen.

II. Conclusion

Although qanuns have been imposed, but many obstacles that occur so that the implementation of Qanun jinayah be not yet fully effective, namely concerning the process litigation, because the by-laws does not regulate the length of detention for investigation and admitted that the law jinayah in Aceh do not have procedural law, so that they embrace the criminal Procedure Code which regulates criminal proceedings. In other cases, this weakness seen on the police authority wilyatul hisbah (WH) in handling cases of perpetrators jinayah, this authority is limited to the authority of the police so that in case of mis-undestanding between the WH and the police, the case can not be handled. The other drawback occurs when the perpetrator jinayah escape from the Aceh region, then there is no law jurisdiction the arrest of the perpetrators, this is because the authority is only valid in Aceh saja. As a result, many offenders who escape the sanctions jinayah. However, these obstacles become qanuns jinayah correction that reversed existing weaknesses, qanuns can run and be one of the new models nuanced Islamic law, both in substance and applicative.

Bibliography

- [1]. Abu Bakar. Al Yasa', Pelaksanaan Syari'at Islam di Aceh, Aceh: Dinas Syariat Islam, 2002.
- [2]. Abubakar.Al-Yasa', Syariat Islam di Provinsi Nanggroe Aceh Darussalam, Paradigma, Kebijakan dan Kegiatan, ed. 3, Banda Aceh: Dinas Syariat Islam Provinsi NAD, 2005.
- [3]. Aliansyah, Qanun Hukum Acara Jinayah Dalam Pelaksanaan Syariat Islam (Studi Terhadap Draf Qanun Hukum Acara Jinayah Di Aceh), Jurnal Legitimasi, Vol 1, 2011.
- [4]. Alim.Muhammad, Perda Bernuansa Syariah Dan Hubungannya Dengan Konstitusi, dalam Jurnal Hukum FH UII Vol. 17 No. 1 Januari 2010.
- [5]. Al-Makassary, Ridwan.Perda Syari'at Islam dan Implementasinya Terhadap Kebebasan Sipil, Non Muslim dan Perempuan, (Study Kasus Tasikmalaya", Jurnal Republika, Vol.6 No.1 Tahun 2006.
- [6]. Hamid. M Arifin Hamid, Internalisasi Wawasan Keislaman Menuju Efektifitas Penegakan Hukum Di Indonesia, Majalah Ilmiah Hukum Amanna Gappa Universitas Hasanuddin Makassar, Vol. 13 No. xi Tahun 2003.
- [7]. Hamidy.Mu'ammal, dkk, Terjemah Tafsir Ayat Ahkam Ash-Shabuni, jilid I, cet. I, Surabaya: PT. Bina Ilmu, 1985.
- [8]. Ibrahim, Armia, Peraturan Perundang-undangan Tentang Pelaksanaan Syariat Islam di Aceh, www. Mahkamahsyariahaceh.go.id
- [9]. Ibrahim.Muslim, 2004, Syariat Islam Di Aceh, Seminar UIN/STAIN, Aceh 2004.
- [10]. Imron, Ali. Problematika Implementasi Hukum Islam di Indonesia", Jurnal Masalah-Masalah Hukum, Vol. 37 No. 1 Maret 2008.
- [11]. M. Friedman, Lawrence, The Legal Sistem, translate by M.Khozim. Bandung:Nusamedia,2013.
- [12]. Muhammad. Rusdi Ali, Teori Gradualisme: Aplikasi Penerapan Syariah Islam di NAD, Swara Ditperta: No.18 Th.II, 29 Oktober 2004.
- [13]. Soekanto, Soerjono, Pokok-Pokok Sosiologi Hukum, Jakarta : Rajawali Press, 2011.
- [14]. Sulaiman M. Hasan&Al-Yasa' Abubakar,Perbuatan Pidana dan Hukumnya Dalam Provinsi Nanggroe Aceh Darussalam, Banda Aceh: Dinas Syari'at Islam NAD, 2006.
- [15]. Suyanta.Sri, Buku Pelaksanaan Panduan Syari'at Islam Untuk Remaja dan Mahasiswa.Cet, II, Aceh: Dinas Syari'at Islam Provinsi Nanggroe Aceh Darussalam, 2008.

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