



The Analysis of Aceh Law and Its Relevancy on National Law from Human Right Perspective

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Abstract

Islamization took place before the era of colonialization in Indonesia. Based on Law Number 22 of 1999, the local government has the authority to conduct some policies and consider the demands of the majority of individuals, for instance, bind them by implementing some Sharia laws, to find the better policy for all groups of people, and do not neglect the demands of the minority. Aceh is one of the provinces which is implementing Sharia law in form of Qanun Jinayat or Aceh regional law. Even though Aceh has the right to establish Sharia law, they have to be integrated into our national law. Up until now, the implementation of the Aceh law led to big attention from the international community, especially from human right activist and scholars. It is still a fruitful discussion among scholars and politicians in Indonesia. In this paper, the author discusses the analysis regarding the relation of Canon Law or Qanun with national law as well as the explanation of the Memorandum of Understanding between the Indonesia government and with Free Aceh Movement (GAM). It results that Qanun is not following Indonesia Law from a human rights perspective.

Keywords: Aceh Law; Sharia; National Law; Human Rights; Human Rights Violation; Qanun Jinayat

Abstrak

Islamisasi terjadi sebelum era penjajahan di Indonesia. Di bawah undang-undang No.22 Tahun 1999, pemerintah daerah mempunyai kekuasaan untuk melaksanakan beberapa kebijakan dan mempertimbangkan tuntutan mayoritas, misalnya mengikat mereka dengan menerapkan beberapa hukum Syariah, untuk mencari kebijakan yang lebih baik untuk semua kelompok masyarakat, tidak mengabaikan tuntutan masyarakat minoritas. Aceh merupakan salah satu provinsi yang menerapkan hukum syariah dalam bentuk Qanun Jinayat atau peraturan daerah Aceh. Meskipun Aceh memiliki hak untuk menegakkan hukum Syariah, mereka harus diintegrasikan ke dalam hukum nasional kita. Selama ini penerapan hukum Aceh mendapat perhatian besar dari dunia internasional, terutama para aktivis dan akademisi hak asasi manusia. Hal ini masih menjadi perdebatan yang berbuah manis di kalangan ulama dan aktor politik di Indonesia. Dalam tulisan ini, penulis ingin menjelaskan analisis kami mengenai hubungan Qanun dengan hukum nasional serta menjelaskan MoU antara pemerintah Indonesia dengan GAM, kemudian kami berpendapat bahwa Qanun tidak mengikuti hukum nasional kita melalui perspektif hak asasi manusia.

Kata kunci: Hukum Aceh; Syariah; Hukum Nasional; Hak asasi Manusia; Pelanggaran Hak Asasi Manusia; Qanun Jinayat

INTRODUCTION

Sharia, Islamic sharia, or Islamic law (Arabic: *شريعة* (IPA: [ʃa'ri:ʕa]) for law) is the religious legal system governing the members of the Islamic faith (Lexico, 2022). It is derived from the religious precepts of Islam, particularly the Quran and the Hadith. We may conclude that Sharia Law itself is based on the teachings of the Qur'an and the traditions of the Prophet (Hadith and Sunna), determining both religious and secular duties, also how we should give the penalties or punishment for lawbreaking.

Islamization has been running since a long time ago before the colonization began, yet specifically, the implementation of Sharia law itself has been proposed by some Muslim leaders due to their interest and some considerations that they made. Then, because of the legalization of Local Regulation or *PERDA* by the government, some local leaders have used their powers to implement regulations that are commonly regarded as based on Islamic law (Bush, 2008).

Why does Sharia law exist in Indonesia? Indonesia contains the largest Muslim population of all countries in the world as we can see the current number of Muslim inhabitants is estimated to be around 207 million individuals, this large number implies that approximately 13 percent of the total number of Muslims in the world live in Indonesia, thus indicating that Indonesia contains a clear Muslim majority population (Indonesia Investment, n.d.). It is crystal clear enough that due to the demands of the majority, which are Muslim, we cannot deny that a lot of Muslim leaders and movements want to implement the Sharia fully as their constitution.

The province of Aceh is one of the regions in Indonesia which is implementing Sharia law. Back to the history, of our founding fathers, Soekarno was promising the Acehnese have a right in implementing the Sharia. However, the central government still did not give its authority to them. Then, the conflict happened especially the problem with the Free Movement of Aceh (GAM). Seeing the threat of

national disintegration, then the central government re-offered a solution for the settlement of the Aceh case that was prolonged, and the solution taken by the central government was the enactment of the draft Law on the Implementation of Features Aceh Province into Law No. 44 of 1999 on the implementation of specialty Province of Aceh which was then followed by the release of Regional Regulation No. 5, 2000 by the parliament of Aceh on the implementation of Islamic Sharia.

But then, along with its implementation, most of all layers of the people both international and Indonesian felt that Canon or *Qanun* or Aceh's regional law is not following national law. In this paper, the author would like to explain an analysis regarding the relationship of *Qanun* with national law as well as the explanation of the MoU between the Indonesia governments with GAM, then it is argued that *Qanun* is not following our national law through human rights perspective. Therefore, the problem that needs to be discussed here is sharia law needs to be considered and how its relevancy to Indonesia's currently legal.

METHODS

The research methodology which is used to help the author in collecting the findings to answer the research question is the qualitative research method. The research process itself involves identifying and locating relevant information, analyzing what the author has found, and then developing and expressing the ideas. The author analyzes journals, books, Indonesia's governing documents, and other related international conventions which are related to international human rights law. In another hand, the author takes descriptive library research as the research method. Library research is a way to obtain data by learning and understanding data that has close relation with the problems from sources such as books, theories, notes, and documents.

RESULT AND DISCUSSION

The Highlight Development of Sharia Law in Indonesia after the Colonization Era

The attempt of Muslim leaders in the Committees for the Preparation of Indonesia's Independence (PPKI), discussed the formation of the Indonesian government, and some of the members who were Muslims proposed Islam as the state's religion (Mudzhar, 2003). Some Muslim leaders proposed the Jakarta Charter as the preamble to the constitution due to they perceived that they stood up for the "sharia constitutional status". However, their effort failed because they faced strong opposition from secular nationalists (Bruinessen, 1995).

Then, before the Reform-era changes, Indonesia was one of the most highly centralized countries in the world, and decentralization was among the chief demands of the reform movement following Suharto's resignation (Kahin, 2003). After the fall of Soeharto's reign, all things related to the state are changing, starting from the policy, the reign itself, and the governance. As we see in the Reform era, decentralization has been implemented and it was the new regulations that give the self-authority to the regional government to manage their own business. Based on the act. No.22 of 1999, the central government retained authority over six specified areas: foreign affairs, national defense and security, the administration of justice, monetary and fiscal policy, and religion. It is crystal clear that Law No. 22 states "religion", therefore the local government has the power to implement some policies and consider the demands from the majority of people, for instance, bind them by implementing some Sharia law, to find a better policy for all groups of people, and do not neglect the demands of the minority. Local authorities, on the other hand, were given freer to exercise power over matters not specifically reserved for the central government. Nevertheless, to implement regulations relating to morality, dress, and religious practice that are commonly regarded as based on Islamic law, some local leaders have used the powers granted to them through the decentralization laws (Bush, 2008).

The Explanation regarding Aceh Law

The Aceh provincial administration and legislative council have approved the *Qanun Jinayat* (behavior-governing by law) that obliges every Muslim and non-Muslim in Aceh to follow sharia, the Islamic legal code (Parlina, 2014).

Before the Memorandum of Understanding, the Provincial Government of Aceh had some authority which was based on some national legal basis, namely Law No. 44 of 1999 on the Implementation of Privileged Aceh; Act No. 18 of 2001 on Special Autonomy for Aceh Special Province as Nanggroe Aceh Darussalam with the existence of basic of law, it gives the authority to the province of Aceh in shaping laws and conducting the affairs of their household (MYS/ASH, 2015).

Due to Aceh's privilege, they fully implement Sharia which is different from national law. The Sharia which is implemented in Aceh includes *Aqidah*, *Syar'iyah*, and *Akhlak* which includes worship, *Ahwal Al-Syakhsyah* (family law), *Muamalah* (civil law), *Jinayah* (criminal law), *Qadha* (justice), *Tarbiyah* (education), *Da'wa*, *Syar*, and defense of Islam whereas all the provisions that applied are written in Aceh *Qanun* (Lintas Gayo, 2013).

Qanuns law already existed in the province of Aceh before the tsunami accident in 2004, Aceh already had three *Qanuns* about *Jinayah*. *Qanun* 12 of 2003 on *Khamar* (e.g. drink which contained alcohol), *Qanun* 13 of 2003 on *Maisir*, and *Qanun* No. 14 of 2003 on *Khalwat*, by *Qanun* No. 6 of 2014, third-*Qanun* revoked and declared invalid (MYS/ASH, 2015).

Here are the following key articles of *Qanun Jinayat* according to Jakartapost.com (Parlina, 2014):

"The sharia authorities will have the power to arrest suspected violators, and confiscate and conduct raids on their property, based on preliminary evidence; the authorities will have the power to detain a violator for up to 30 days before trial. This detention can be extended by another 30 days; A suspect has the right to be defended by a lawyer; Non-Muslim or military suspects will be tried in a sharia court unless the violation is covered by the Criminal Code (KUHP) or by the Military Code respectively; Even if the sharia court acquits a defendant, he or she will be required to undergo rehabilitation; Only one appeal may be filed with the sharia court; Prison

terms are for up to a maximum of 40 months; Caning up to a maximum to 40 lashes; Fines up to a maximum of 800 grams of gold.” (Parlina, 2014).

Judiciary Islamic Law in Aceh is part of the national justice system in the religious courts are carried out by the Court sharia free from the influence of any party. Sharia Court is a court for any person who is Muslim and lives in Aceh.

Sharia Court consists of, the Court Sharia Regency / City as a court of the first instance and the Court Sharia Aceh as a court of appeal. Sharia Court judges are elected and dismissed by the President upon the recommendation of the Chief Justice.

Sharia Court has the authority to examine, hear, decide, and resolve cases covering the fields of *Abwal Al-Syakhsyah* (family law), *Muamalah* (civil law), and *Jinayah* (criminal law), which is based on Islamic sharia. Provisions in the field *Abwal Al-Syakhsyah* (family law), *Muamalah* (civil law), and *Jinayah* (criminal law) are regulated by Aceh *Qanun*.

Court Decision Sharia Aceh may be requested cassation from the Supreme Court. The procedural law applicable in the Court Sharia is a procedural law regulated in Aceh *Qanun*. Sharia has a dispute of authority between the Court and other courts in the judicial environment under the authority of the Supreme Court on the first and last levels.

In the event of criminal law (*jinayah*) acts committed by two or more persons together who of them are not Muslim, non-Muslim religious actors can choose and subject themselves voluntarily to the law of *jinayah*. Everyone that religion is not Islam acts *jinayah* which are not regulated in the Criminal Justice Act or the criminal provisions beyond the Code of Criminal *jinayah* applicable law. Acehnese who acts *jinayah* outside Aceh applies the Code of Penal. The duty of inquiry and investigation to the enforcement of Islamic Sharia Court has the authority Sharia along the *jinayah* conducted by the Indonesian National Police and Civil Servant Investigators.

National criminal rules do not regulate homosexuality and the central government does not have the authority to legislate local law. But

early versions of rules that punish adultery with stoning to death were abolished because of pressure from the central government.

Aceh issued Law number 11 in 2006 contents on Governing Aceh as a shared commitment to peace between the Government of Indonesia and the Free Aceh Movement. Law on Governing Aceh is new hope for the people in Aceh or called Acehnese to prosper in lasting peace. The existence of the Law on Governing Aceh is a milestone in the course of the Indonesian people, especially for the Acehnese, because this law gushes hope for the creation of lasting peace, a comprehensive, fair, and dignified, as well as a container for carrying out development to realize a prosperous society in Aceh. Law on Governing Aceh itself consists of 40 Chapters and 273 Articles.

How the Author Perceives Aceh Law

The author does believe that most of Aceh law's content is not following our national law. Why is that so? Because *Qanun Jinayah*, which creates new discriminatory offenses that do not exist in the Indonesian national criminal code (*Hukum Pidana*). Therefore, the author would like to analyze this paper into two sections of discussion, first is the author's analysis of the relationship between *Qanun* with national law, and the second is the author's analysis of *Qanun* through human rights perspective and fundamentalism.

a. The Analysis of the Relation between Qanun and National Law

Based on Law Number 11 of the Year 2006, the systems of Negara Kesatuan Republik Indonesia follow the Constitution of the Republic of Indonesia of 1945 which recognizes and respects the units of regional administration as regulated by law. Article 2, paragraph 2:

“Aceh is the area of the province which is a group of the legal community who are privileged and are given special authority to regulate and manage their affairs and interests of local communities following the legislation in the system and the principle of Negara Kesatuan Republik Indonesia based on the Constitution of the Republic of Indonesia Year 1945, led by a governor.” (The International Federation of Red Cross and Red Crescent Societies (IFRC), 2006).

Indeed, if we take a look at the statement above, Aceh has the authority to regulate its household. The structure of the Aceh government is following a national that is led by a governor. However, one that makes it doesn't fit with national law is the way of Aceh in managing its province which is different from the implementation of national law.

Burned alive on a pole, killed by using a dagger, labeled with fuel, beaten, and forced labor on public works, are customary laws in Aceh, according to the plaque dated 22 April 1808, the court allowed to convict. A fact reported that the House of Representatives approved a legal product Aceh which has the same level as local regulations called by *Qanun*, namely *Qanun Jinayat*, *Qanun* number 6 on 2014, on September 14, 2009. The existence of this *Qanun* law has given rise to controversy in the community, at the local level (Aceh), national and international levels. Since the imposition of Islamic Shariah in Aceh, especially associated with the birth of *Qanun*, the *Qanun* is among the most controversial issues in Aceh. Not only because many reap the pros and cons, but also those who respond to this *Qanun*. Starting from the activist NGOs (Non-Government Organization), academics, scholars, and the Chairman of Defense, to the Chairman of the Constitutional Court. Contentious issues are also diverse among them which are the definition of forms of forbidden behaviors (*jarimah*) that shall be threatened with the main law (*uqubah*), the form of stoning, flogging, and many more. In Acehnese social life, there are many differences in the understanding of the caning itself. The implementation of local regulations (*Qanun*) was not also free from controversy from all of the citizens and legal practitioners. Application of caning in Aceh province that we could see in terms of *Qanun* Aceh which is a new law and customary law in Aceh. Those are the old law but there are many similarities between them, which have the basics of the same law, the same purpose of the application of flogging, and the same role as the form of caning which has been described in the *Qanun* Aceh. In short, it can be concluded that *Qanun* is not following Indonesian national law due to its

implementation, one of which is giving punishment that doesn't exist in national law.

On Monday 14 September 2009, the expansion of sharia law took a quantum leap with the legislation of new punishments that are cruel, inhuman, and degrading:

- *Adultery: 100 cane lashes for the unmarried and stoning to death for those who are married*
- *Homosexuality: 100 cane lashes and a maximum fine of 1,000 grams of fine gold, or imprisonment of up to 100 months*
- *Pedophilia: Up to 200 cane lashes and a fine of up to 2,000 grams of fine gold, or maximum imprisonment of 200 months*
- *Rape: At least 100 cane lashes and a maximum of 300 cane lashes or imprisonment of at least 100 months and a maximum of 200 months both opponents and supporters of the new law demonstrated outside parliament.*

Those severe punishments never exist in our national criminal code. It is one example that *Qanun* is in contrast to national law.

Moreover, the relationship between central governments with Aceh itself has the conflict that makes the changes in both *Qanun* and national law. The conflict in Aceh is a conflict because of the sense of disappointment that has long been buried in the hearts of Acehnese who feel very aggrieved by the government of Indonesia. The less harmonious relationship between Aceh and the central government and also the problem of profit sharing are very detrimental to Aceh which creates a conflict in Aceh that is more complicated. The disappointment of Acehnese was finally realized by revolts carried out by Islamic Armed Forces (DI/TII) and Free Aceh Movement (GAM). Finally, Acehnese is given freedom in terms of education, religion, and customs by the central government (Gayatri, 2007). Freedom is merely a chimera promised by the central government.

Decisions taken by the New Order regime with political model centralism were through Law No. 5 of 1974 on the main points of Local Government and Law No. 5 of 1979 on Village Governance Principles, the Order makes uniformity in all areas regardless of the values of local (Sinaga, n.d.). As a result of these two laws,

automatically the specialization in Aceh would be eliminated. Islamic Sharia which has become the hallmark of Acehese is lost because the institutions adapt existed for a long in Aceh where it should be replaced by a modern governance structure that is desired by the New Order government. This makes the disappointed of Acehese to the greater central government.

In contrast to Law No. 5 of 1974 and the previous regional government Law, Law No.22 of 1999 opened new horizons in the implementation of regional autonomy in Indonesia and shifted into a centralized perspective that decentralizes by giving broad authority, tangible and accountability to the area. Law 22 of 1999 defines decentralization as the devolution of government power by the government to an autonomous region within the framework of the Unitary Republic of Indonesia (NKRI). The formation of Law 22 of 1999 is a huge advancement when it is associated with the local desire to have the freedom to manage the household and their government. However, some parties granting broad authority to the area by the law are considered more as a government strategy to address the issue or issues of disintegration that hit Indonesia in the reform movement. This is reinforced by the provision of Special Autonomy (Autonomy) to the Province of East Timor in Article 118 of Law No.22 of 1999.

Even though some laws have been issued as a guideline for the province of Aceh in the care of the household but the disharmony between both of them makes the provincial government not obtain a sense of satisfaction in applying and doing all applicable laws in Aceh. This is why Aceh and the central government should issue an MoU to stop the unharmonious relationships and to give full authority and a sense of satisfaction to Aceh in the overall implementation of Islamic law and its privileges.

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Aceh is a milestone in the course of the Indonesian people, especially for the Acehese, because this law gushes the hope for the creation of lasting peace, a comprehensive, fair, and dignified, as well as a container for carrying out development to realize a prosperous society in Aceh. Law on Governing Aceh itself consists of 40 Chapters and 273 Articles.

The peace agreement between separatists and the central government can exist, which the Indonesian government to solve the problem of conflict in Aceh peacefully, comprehensively, sustainably, and with dignity for all parties on August 15, 2005, in Helsinki, Finland. The Government of Indonesia signed a Memorandum of Understanding (MoU) 10 with the GAM (Free Aceh Movement) (Bachri, 2014). The MoU provides an opportunity for Aceh to organize its government and various other privileges within the framework of NKRI (the Unitary Republic of Indonesia).

Some of the contents of the Memorandum of Understanding (MoU) between the Government of Indonesia and GAM, are as follows (UNHCR, 2004):

1. *Decisions of the House of Representatives of the Republic of Indonesia (DPR-RI) concerning Aceh will be done in consultation with and approval of the Legislative Aceh.*
2. *Administrative measures taken by the government of Indonesia concerning Aceh will be implemented in consultation with and approval of the Head of the Aceh administration.*
3. *Aceh has the right to use the symbols region including a flag, emblem, and hymn.*
4. *Qanun Aceh will be re-established for Aceh respecting the historical traditions and customs of Acehese and reflecting the contemporary legal requirements of Aceh.*
5. *Aceh has the right to set interest rates different from those set by Bank Indonesia.*
6. *Aceh has the right to set and raise taxes to fund internal activities that are authorized.*
7. *Aceh will enjoy direct and unhindered access to foreign countries by sea and air.*
8. *The legislature of Aceh will redraft the legal code for Aceh on the universal principles of human rights as contained in the UN International*

Covenant on Civil Rights and Political Rights and on Economic, Social, and Cultural Rights.

The author would like to emphasize one of the articles in this MoU, Article 1.1.2 which says:

“Aceh will exercise authority within all sectors of public affairs....except in the fields of foreign affairs, external defense, national security, monetary and fiscal matters, justice and freedom of religion, the policies of which belong to the Government of the Republic of Indonesia in conformity with the Constitution.” (UNHCR, 2004).

It has been translated into the Law on Governing in Aceh (LOGA) by saying:

“The Governments (pemerintahan) of Aceh and Regency/City (Kabupaten/Kota) have the authority to regulate and implement government functions in all public sectors except government functions that are the authority of the central government.”

“Authorities of the central government comprise government functions that are of national character, foreign affairs, defense, security, justice, monetary affairs, national fiscal affairs, and certain functions in the field of religion.”

This principle was misinterpreted by GAM, other stakeholders in Aceh, and even some House of Representatives (DPR) fractions, who believed that according to the MoU, Aceh would have the right to exercise all authority within all sectors of public affairs, meaning that the central government's authority in Aceh would be restricted to the six sectors mentioned in the MoU, while the wording of the MoU does not justify this interpretation, such an arrangement regarding central government functions in Aceh would also be unrealistic because there are still numerous functions outside the six sectors mentioned in the MoU that need to be regulated and/or even implemented by the central government.

b. The Analysis of Qanun through Human Right Perspective and Fundamentalism

The second discussion is regarding the analysis of Qanun through a human rights perspective and fundamentalism. We have analyzed the implementation of Sharia in Aceh from the human rights perspective which is according to the Universal Declaration of

Human Rights and fundamentalism. We do believe that national law should be integrated with Aceh law since it has a different basis of source of law, therefore the author does believe that Aceh law should consider several things due to the prosperity of the people, even though Aceh has a right to manage its household but still they have to be inline and accordance with national law, Five Principles of the Indonesian State (Pancasila), and the constitution of the Republic of Indonesia. Aceh has passed a new law that imposes severe sentences for consensual extra-marital sexual relations, rape, homosexuality, alcohol consumption, and gambling, previously, Aceh's partially-adopted Sharia law enforced dress codes and mandatory prayers.

From a Human rights perspective, they violate 5 articles which are;

“All human beings are born free and equal in dignity and rights.” (Article 1.); “Everyone is entitled to all the rights and freedoms outlined in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or another status.” (Article 2.); “Everyone has the right to life, liberty and security of person.” (Article 3.); “No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.” (Article 5.); “All are equal before the law and are entitled without any discrimination to equal protection of the law.” (Article 7.).” (UN, 1948).

Since Indonesia is one of those who signs this declaration, all the people in Indonesia, including Aceh should consider those articles to be integrated into the implementation of its regional law.

On Monday 14 September 2009, the Aceh Legislative Council (DPRD) passed a law that expands the range of violent punishments for alleged moral and sexual transgressions, including stoning to death for “adultery” and 100 lashes for homosexuality, these legislations have been passed despite protests from the Governor of Aceh and civil society.

We do believe that these new laws violate several Articles of the Universal Declaration on Human Rights, particularly those articles that the author has mentioned above.

These Articles are elaborated into major international human rights conventions – specifically, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Indonesia has signed and ratified and is therefore obligated to respect, protect and fulfill in its domestic laws and practice.

The name of religion, culture, and tradition should not be used as an excuse for killing and maiming for alleged moral transgressions. Stoning to death is a serious matter and a violation of international human rights law. Stoning is not regulated in the Koran. Stoning is prohibited as a form of torture by the National Constitution because it is a form of violation of human rights and is baseless to be implemented. In conclusion, it leads to big attention from the international community especially the Human Right activist and NGOs. How Aceh gives the punishment toward the people is too severe and seems to tend to be baseless, for instance, the stoning itself.

The other example of a case is regarding the Lesbian, Gay, Bisexual, and Transgender (LGBT) and Women's rights in Aceh. How do people see the phenomenon which we call the LGBT movement that is something unusual for Acehnese in society? However, it has been upheld by some parts of society outside Aceh due to consideration of human rights. Therefore, the LGBT movement happened because of the rise of human rights awareness. This is how the LGBT movement becomes an issue, the people in the name of the human right see that they are being the victims of traditionalist social culture. Indeed, it is contradicted by Sharia, however, those people are the same as human beings as the other Acehnese. Caning and slashing people even throwing a stone until they die who are LGBT are not following national law. There is no specific law in national law that should punish those people who are LGBT. Besides, it is not following our national law, it is violence the human right according to the Universal Declaration of Human Rights. Then, the other is how the woman should be covered up and behaved. Indeed as Muslima, they should be

covered up, dressed up, and behaved like other Muslims following Sharia. However, we cannot force them to be in line with what the majority of Acehnese should do, it is a matter of the awareness of the Muslima themselves, whether they have to be covered up now or later, because to be covered up, according to Koran itself, they should have a willingness and not forced by any people to cover themselves. The author would like to give an example of a case according to www.ciaonet.org regarding the practice of Sharia Police or *Wilayatul Hisbah* (WH). The most problematic institution set up under Islamic law has been the WH, the vice and virtue patrol tasked with monitoring compliance with Islamic law.

“On 19 February 2006, in one of the most notorious incidents, three women non-governmental organization (NGO) activists taking part in a UNDP workshop on peace education at the Sultan Hotel in Banda Aceh were seized without warning by a WH team for not wearing headscarves while talking quietly in the hallway outside their hotel rooms at about 11:30 pm. Some twenty WH men and women grabbed them by the arms, took them down the stairs “as though we were criminals” and put them into a vehicle with six previously seized women. They were taken to the mayor’s office, where they were told to sign statements admitting their guilt. They refused to do so, but in the end, had no choice. They were also obliged to listen to a 45-minute lecture on the need to live according to Shari’a principles. Other workshop participants went to the police station and made a formal complaint against the WH. The raid was overseen by Muzakkir Tulot, who made coarse remarks to the women and their fellow activists. Women complain that they are disproportionately the targets of WH raids, with far more operations against them for not wearing hijab than against men for not attending Friday prayer. Moreover, there is no tradition in Aceh of wearing the hijab, and one does not have to go too far off the main road in parts of Aceh to find it nowhere in evidence. A woman said: ‘If I don’t wear the hijab that should be between me and my God –, not me and the WH’.”

How a woman should ride a motorcycle is a strict rule for women in Aceh. How they ride the motorcycle rule is not following any law. Recently, according to jakartapost.com in Aceh, there was an investigation and patrol from Sharia police to secure the area and they arrested the

woman who use an unappropriated way to ride a motorcycle and wear tight cloth also not covered themselves. In short, they have the right to express themselves and use their property or things. Since there is no strict rule for man, the author sees that Aceh is biased and tends to be on one side. Also, we feel that Aceh too discriminate the women's right, in short, we could say that Aceh is lack legal protection for women. Then, the people who are arrested because of free sex or adultery, according to Sharia, they should be thrown with stones in the middle of the road and their bodies will be planted like a plant by all people until they die. From a Human rights perspective, this phenomenon is inhuman. According to our national law, the punishment for those people who did such crimes should be jailed or paid a fine, however in Sharia, they should be treated as lower beings and punished until they die. Although there are several NGOs and human right commission in Aceh, it seems that they cannot be doing anything under Sharia law's power itself. Therefore, it makes a controversy that is seen by any community and layers of international people.

"National Commission on Violence against Women (Komnas Perempuan) is particularly apprehensive that the Qanun eliminates the right of legal protection for women and children victims of sexual violence," The government was asked by Komnas Perempuan Aceh to postpone the socialization and review the existence of *qanuns*, so that it could be in step belong the grand design of Islamic law's implementation (MYS/ASH, 2015). The commission hoped that the central government to cancel *qanuns jinayat*, and wished there was confirmation of the integrity of national law and national vision.

Recently, On September 27, 2014, the Aceh provincial parliament approved the Principles of the Islamic Bylaw and the Islamic criminal code (*Qanun Jinayah*), which create new discriminatory offenses that do not exist in the Indonesian national criminal code (*Hukum Pidana*).

The bylaws extend Sharia, or Islamic law, to non-Muslims, which criminalizes consensual same-sex sexual acts as well as all

adultery (sexual relations outside of marriage) (Human Rights Watch, 2104).

The new bylaws violate fundamental human rights guaranteed under core international human rights treaties to which Indonesia is a party, which are the International Covenant on Civil and Political Rights, which Indonesia ratified in 2005, protects the rights to privacy and family (article 17), and freedom of religion (article 18) and expression (article 19), then the covenant prohibits discrimination based on sex, religion, and another status such as sexual orientation (article 2), it also prohibits punishments such as whipping that could amount to torture or cruel and inhuman punishment (article 7) (Human Rights Watch, 2104).

We also consider and define most Acehnese are fundamentalists, therefore we would like to analyze from a fundamentalism perspective. As we know that Aceh has a special police task force which is called Sharia Police. Its main job is to secure the area of Aceh from any irrelevant things according to Sharia to clean up everything irrelevant to their interpretation of the Koran. It is relevant to one of the characteristics of a fundamentalist which is reactionary and absolutist. Reactionary means that fundamentalists are primarily reacting to aspects of modernism that they see as posing a danger to their belief structure and organization (MCGONIGAL, 2017). For instance, a woman who has not covered up herself, a woman or man who loves the same gender (e.g. LGBT), the people who are gambling and drinking alcohol, indeed most Acehnese who are Islamic fundamentalist state that they are enemies of their faith because they did sin and it is irrelevant with Sharia. Why is that so? It is clear that in their faith, all the Muslima women who are Muslim should be covered up. No matter what are the excuses, for instance, due to lack of clothes so she cannot cover up herself or she wearing tight cloth because she feels comfortable with her cloth, indeed they say that all Muslims should identify themselves because *"Muslims first, Muslims second, and Muslim's last"*. The LGBT and gamblers will perceive that they are the people who did sin and should be cleaned up in society.

Meanwhile, the absolutist means that they take an absolutist stance against what they consider to be the dangers of relativism because fundamentalists believe they have special access to objective truth (MCGONIGAL, 2017). Indeed, it is quite similar to the meaning of reactionary, but it is more emphasizes their stances which they see are right is right, and wrong is wrong. There will be no doubt to decide whether things are right or not due to the interpretation of Sharia with the source from the Koran.

Therefore, in short, we argue that *Qanun* is not following national law because of its implementation (e.g. punishment) that does not exist in national law and its violation of human rights.

CONCLUSION

Due to the approval of Law No. 44 of 1999 on the Implementation of Privileged Aceh and Act No. 18 of 2001 on Special Autonomy for Aceh Special Province as Nanggroe Aceh Darussalam by the central government, it makes Aceh regulates its household freely. As the author has stated before that the structure of the local government and some laws are following our national law. However, the implementation of *Qanun Jinayat* and how they give severe punishment which never exists in our national law. It does not fit the national law of Indonesia, even though they have an autonomous right to manage their household, indeed the implementation of the *Qanun* should be integrated with national law. The author has argued in human rights perspective such as how *Qanun Jinayat* gives severe punishment and regulations which violate some articles of the Universal Declaration of Human Rights, specifically protecting the rights to privacy and family (article 17), and freedom of religion (article 18) and expression (article 19), then the covenant prohibits discrimination based on sex, religion, and another status such as sexual orientation (article 2), it also prohibits punishments such as whipping that could amount to torture or inhuman punishment (article 7). Therefore, in conclusion, the author does hope and suggests that even though each

province especially Aceh has the regional autonomous right to manage their household, conduct, and establish Sharia, they have to consider a lot of things on how they give the regulation and punishment toward the criminal also the people, since the current implementation leads to the international attention due to the violation on the human right and lack of legal protection of the human being as Acehnese. Moreover, the accordance between national law and Aceh law should be integrated.

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