

THE SHARIA LEGISLATION IN TASIKMALAYA

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Bersamaan dengan hadirnya demokrasi di Indonesia lewat Reformasi pada tahun 1998, praktek penyelenggaraan Negara berlangsung secara dinamis. Salah satu kedinamisannya adalah otonomi daerah yang implementasinya telah memicu interpretasi yang luas dikalangan masyarakat. Salah satu perihal yang mengundang pro dan kontra dalam hal otonomi daerah adalah keberadaan peraturan daerah syariah di beberapa tempat di Indonesia; satu diantaranya adalah pada Kabupaten Tasikmalaya. Sementara itu mereka yang tidak setuju mempunyai alasan bahwa urusan agama adalah pada tangan pemerintah pusat dan tidak diberikan sebagai bagian dari otonomi.

Kata kunci: formalisasi syariah, pemerintah daerah

Introduction

Like Moslems, other believers have religious law system which becomes the basis of their behavior. In Islam, the rules from God is named as Islamic Sharia. In fact, every religion has its own terms to name the religious law system. As a life system Islam has main three basic regulations, which are *Aqidah*: faith, *Sharia*, and *Ahlaq* (behavior) which should be conducted simultaneously.

Like what also happens to other religions, the Islamic Sharia has urgent position functioning to direct and guide the believers to worshipping the God. Therefore the implementation of Islamic Sharia in every aspect of human's live is absolute.

Meanwhile, as a nation whose number of Moslem is the biggest in the world, Indonesia has unique religiosity phenomenon compared to Moslems in other countries, regarding the society condition and state matters. The proof that Indonesian Moslems are unique compared to the others is that firstly it is in large number in addition to the fact that Islamic Sharia is not used as the basis to solve all problems related to state and social problems. Rather, the way of life and ideology of the country are Pancasila, some basic values from Indonesia which become the ultimate norm.¹

This condition triggers some reactions from both non Moslem and the Moslems. The party who demands the implementation of Islamic Sharia states that Pancasila as the country's foundation is not enough to guarantee the implementation of the sharia through the legislation of Islamic Shariah which is the objective of their struggle.

This party is encountered by those who disagree and demand that what so called legislation can never be realized. Then the groups are polarized into the group who support the sharia implementation and those who do not.

1. Marzuki Wahid and Rumadi, *Fiqh Madzhab Negara; Kritik atas Politik Hukum Islam di Indonesia*, LKis, Yogyakarta, 2001, page 1.

The demand on the Islamic Sharia legislation is not a new phenomenon in the history of Indonesia. The effort to do the legislation has been started since the formulation of constitution of Indonesia in The Indonesian Committee of Independence (BPUPKI). At the present, the group of Islamic Nationalist that become the members of *Dokuritsu Zyunbi Tyoosaki* (BPUPKI), an institution formed on April 25, 1945 by Japanese colonial, should struggle to face the other group represented by Secular Nationalist² demanding the absence of certain religious symbols in the philosophical foundation of Indonesia. This group believed that in order to avoid destructions and other negative effects leading to disintegration among nation, the religion symbols must not be included in the so-called philosophical foundation of Indonesia.

The debates and discussions in BPUPKI could not meet an agreement. Eventually the seven words in Jakarta Charter were eliminated. The seven controversial words in the Jakarta Charter of June 22, 1945 were: "Obligation to observe the Islamic *sharia* for its believers".

However, the failure to make the legislation real does not discourage this struggle at all. The effort is even still continuing up to the present of reformation era. Various of Islamic elements come with variety of demands to support the Islamic Sharia as they believe that this sharia is the only solution for all the multi dimensional crisis.

During the period of critical debate on the legislation and the actualization of the nature of Islamic *Sharia*, some regions even have declared the implementation of the *sharia*. The demands even escalated since the amendment of UUD 1945 in 2002 refused the *sharia*.

Of all the regions, Aceh, the north part of Indonesia was the first region which demanded the implementation of the *sharia* which was then positively responded by the Central Government through the making of formal regulation. Through the Acts Number 44/1999 on Special Autonomy of NAD, effective from Muharram 1, 1432 H (March 15, 2002), the *Sharia* has officially been implemented in *Serambi Mecca*.

Following Aceh, other regions then attempt to demand the Sharia implementation. One of the regions is Pamekasan, Madura, which will build "*Gerbang Salam*", a project intended to build society who will faithfully obey the rules with Islamic spirit.

Three regions in West Java: Garut, Cianjur and Tasikmalaya Kabupaten have once implemented the Islamic *Sharia* by issuing "Declaration of *Islamic Sharia* Execution" on Muharram 1, 1423 H followed by the pros and cons. The declaration then was only implemented for 3 months. Meanwhile, Tasikmalaya has firmly adopted the vision and mission of Islam as the starting point toward the implementation of the Sharia in the town popularly known as "*santri* (Islamic student) city".

If the Islamic Sharia executed in Nanggroe Aceh Darussalam Province is based on the Acts Number 14 year 1999, then what basis do other regions use to implement the same *Sharia*? If the local acts pass the use of Sharia in certain regions, they will be in complicated situation when facing Law No 22/1999 concerning the local ordinance as amended by Law No 32/2004 on Local Ordinance. Both laws firmly confirm that religious matter is not given as a part of autonomy. This paper will discuss the practice of *Sharia* in Tasikmalaya.

2. The terms of Islamic Nationalist and Secular Nationalist are merely the symbols to distinguish two contradicting groups of people; disputing on whether or not the certain Sharia should be implemented in Indonesia.

The following is the first objective description of Tasikmalaya Kabupaten. Tasikmalaya is the Kabupaten located in the far east of Western Java or is usually called East Priangan. The demographic and cultural condition of Tasikmalaya people has actually reflected the religious atmosphere as mirrored in their daily life.

Statistically, Tasikmalayan People are mostly Moslem. In addition to the fact that 99.6% of the people are Moslem, this town has been known for long as “Kota Santri” (Islamic Student city) as it has more or less 700 Islamic Boarding schools spreading all over areas of both in cities and villages.³ Then the so named Kota Santri has strong and solid sign of an area with Islamic values.

Islamic Sharia in Tasikmalaya.

Tasikmalaya is the district located in the eastern part of West Java province. This location is usually called as East Priangan. The Tasikmalaya district’ width is 2.563.35 km.⁴ The primary job of the people is farming which covers 41% of the total population. It is the general condition of agricultural people in other regions in Indonesia.⁵ This society tends to be religious despite the fact that they are somewhat mystical while still believing in dynamism-animism as reflected in their life pattern and traditions.

The religious life of the people in Tasikmalaya district (especially Islam) is the result of the struggle of the Kyai who spread this religion by using the local media such as leather puppet, traditional music, etc. The spreading of Islam also used trades and marriages.

The lives of Tasikmalayan especially of Moslem is significantly colored by Islamic values . The ingrained tradition ⁶ is held dear by the local people and supported by the local ordinance. In fact, the Tasikmalaya government has been proactive by providing the tourism object worth visiting, that is Kampung Naga Cultural Location.

The Kampung Naga is a traditional village whose width is 15 hectare areas and it connects the Tasikmalaya Kabupaten with Garut Kabupaten.⁷ Some rituals of Islam are conducted routinely in this area such as *Idul Adha*, which is held on *Dzul Hijah* 10, *Mendak Taun* on Muharram 28, *Maulid Nabi* (Birthday of Prophet commemoration) every *Rabiul Awal* 12, *Isro Miroj* on *Rajab* 27, *Nisyfu Syaban* every *Ruwah first* (*Syaban*), *Idul Fitri* on *Syawal first* and *Pedaratan* ceremony (the ceremony which is celebrated once every eight months) on *Maulud*.⁸

Besides Kampung Naga, the local ordinance also has set other tourism object whose uniqueness is not pole apart from the Kampung Naga. The other object is named Pamijahan which is known as the pilgrimage and is located in Pamijahan village, Bantarkalong sub district, about 65 (sixty five) kilometers from Tasikmalaya town to the south.⁹ The location is always busy with Islamic ceremonies when it reaches its peak season.

3. <http://www.klikpriangan.com/102003/tajuk.htm>

4. Attachment of Local Acts of Tasikmalaya Kabupaten No 13/2003 concerning on The Second Amendment of Tasikmalaya Kabupaten No 03/2001 concerning on Strategic Planning on Tasikmalaya Kabupaten of 2001-2005

5. *ibid.*

6. this tradition is believed to have been influenced by Islamic teachings. The teachings of Islamic values have acculturated with the local culture and produced the unique synthesis of culture inasmuch as not contradicting with the Islamic teachings themselves.

7. Attachment of the Local acts of Tasikmalaya Kabupaten No 13/2003 concerning the second amendment of Tasikmalaya Kabupaten No 03/2001 concerning the Strategic Planning of Tasikmalaya Kabupaten of 2001-2005

8. *Ibid.*

9. *Ibid.*, page., II-22

Then the legislation of the Sharia in Tasikmalaya is signed by the implementation of Local Acts Number 1 year 2000 forbidding the PELACURAN and other sinful activities. This activity is crystallized with the emergence of Local acts No 3/2001 concerning the Strategic Planning of Tasikmalaya District of 2001-2005. In such local acts then the Islamic / Religious visions are formulated as the target which will be reached by the people of Tasikmalaya.

The local act about the prostitution igniting the controversy, bears some ideas to be concerned: 1. In the decree Number 57/MUI-TSM/XII/1999 dated on December 22, 1999, the *Majelis Ulama Indonesia* (Indonesian Ulemas Organization) of Tasikmalaya district has released the Islamic decree related to the formulation of local acts on prostitution. The fatwa defined the concept of adultery which was then used by the local acts. Adultery was defined as “any action intended to have lusty pleasures either intentionally or not and or non official marital intercourse with or without payment or present.”¹⁰ This local act of prostitution eradication does not differentiate between the concept of *Zina Muhson* with *Zina Ghairu Mukhson* as stated in the Islamic Sharia. This local act does not mention the punishment for the law breakers, unlike what Islamic sharia has determined that is by stoning to death / *Rajam* or whipped.

The Islamic Sharia still includes the culture core of the local people who are Moslem by majority, together with the strong traditions colored by Islam, dreams and hopes of the people who dream of becoming civil society (*masyarakat madani*). This kind of Sharia is the one that would be implemented in Tasikmalaya.

The meaning of religiosity actually mirrors worshipping to God in one’s daily life according to the religion he believes.¹¹ According to the religious vision of Tasikmalaya district, this concept covers all the believers across all religions. While the word “Islamic” refers to the fact that 99.9% of the people are Moslem.¹²

As in like other regions, the idea of the implementation of Sharia ignites some refutation. One reason of the cons is that the fact the Moslem is the majority does not give them the rights to do the legislation. In other words, the majority is not supposed to annul the presence of the minority of believers who happen to have the same rights as the majority.

The refutation in fact comes from the Islamic groups. In order to refuse it, they did many actions starting from observing a dialog to demonstration against the legislation. The discourse stems from many society groups mostly is from Non Government Organization in Tasikmalaya.¹³ which refused it by both critical dialog and mass action.

While the supporter of the legislation had already done the actual action by raiding the “sinful” places in addition to forbidding a girl comes out in the night without any companion. The so called street justice truly cannot be accepted in any nations.

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10. Local Acts of Tasikmalaya Kabupaten No 28/2000 concerning on the First Amendment of Local Acts of Tasikmalaya Kabupaten No 01/2000 concerning on the prostitution eradication Article 1 letter g. compare the definition of adultery with that in the version of criminal-law on the procedural code (KUHP).
 11. Amendment of the local acts of Tasikmalaya Kabupaten No 13/2003 concerning on the second Amendment of Local Acts of Tasikmalaya Kabupaten No 03/2001 concerning on the Strategic Planning of Tasikmalaya Kabupaten for 2001-2005 page IV.2
 12. Ibid
 13. The group of Non-Government Organization which is against the sharia legislation such as LKaHAM whose members are the students of universities in Tasikmalaya. What unique from it is that most of the members are from the Islamic Boarding schools in Tasikmalaya.

The tension during the polarization of the two sides which pro and cons against the Local acts No 3/2001 urged the local ordinance to amend the local act number 3/2001. On October 9, 2003, the local ordinance had passed Local Act No 13/2003 concerning the Second Amendment of Local Act No 03/2001 on the strategic plan of Tasikmalaya District 2001-2005. Though the amendment has been made, the religious/Islamic mission is retained. Only then the policy to “Prepare the Islamic Local Acts” is finally eliminated.¹⁴

Viewing from the substantial meaning of the local act amendment then we can conclude:

1. The intention of the local ordinance to legalize the Islamic Sharia aimed to create the religious atmosphere was not longer strong as it was. The changing has caused the paradigm shifting in terms of Sharia implementation. Once the Sharia implementation was similar with legalizing the Islamic symbols, now the core or substantive values of Islam are considered more important hence are explored to be included in other various of local policies.

2. The Local ordinance and the DPRD of Tasikmalaya district did not longer force the only color of religion that was Islam. Rather they put other color of religion besides it. As in this case, the religious vision does not only refer to only one religion.

Together with the amendment of Local act No 3/2001 concerning the strategic plan of Tasikmalaya of 2001-2005 with Local act No 13/2003 concerning the Amendment of Local Act No3/2001 concerning the strategic plan of Tasikmalaya of 2001-2005 then the Tasikmalaya local ordinance also experiences some strategic changes. The most extreme strategic changing is the cancellation of the Sharia implementation into the local acts.

The strategy brings about the influence on the policy patterns of the local ordinance. Though it does not touch the principal matters, the efforts to make Islam as the guidance never end such as: 1. The calling from Bupati to observe *Dhuhur* and *Jumat* prayers to all government officers of District Secretary through Bupati Decree No 45111/1334/Sos dated on June 3, 2002; 2. The calling to wear Moslem or Moslemah apparel for the officers every Friday. This calling reveals the symbolic nuance of the Islamic teaching. 3. The activation of MUI of Tasikmalaya district to contribute the important thoughts of the things related to public's / *ummah*'s problems. The cooperation also takes a form of education and religious trainings conducted by Local ordinance together with MUI. Some *fatwas* of MUI are made to be the reference of local acts creation. 4. The obligation for all prospective elementary and Junior school students to pass the TPQ (Quranic Course) as the requirement to enter elementary and Junior school. This requirement is intended to introduce Alquran to the people from the very beginning.

Sharia Legislation: Public Aspiration or Political Elite's?

The efforts to implement the Sharia in West Java Province is different from that in Nanggroe Aceh Darussalaam Province and South Sulawesi. In the last two cities, the movement centered in the capital city while the vice versa in West Java.

14. CHAPTER IV “Strategi Pembangunan”, Point C “Strategi Pembangunan Keagamaan, Sosial dan Budaya”. Sub A, the Sixth Point of Local Acts No 3/2001 concerning the Strategic Planning of Tasikmalaya Kabupaten for 2001-2005

Meanwhile, according to Haedar Nashir, Bandung with the plurality and the socio-political dynamic is not the best place to spread and to polarize the struggles of the Sharia implementation idea. Unlike Aceh and South Sulawesi.¹⁵ Nevertheless, the three regions have the similarity in that they have faithful and even fanatic Moslem as the majority.

The fanaticism toward Islam really influences some majority of people in Tasikmalaya district. The reformation moment is perceived as the precious moment heading to the sharia implementation. The struggle was commenced on the early of December 2000 which was brought firstly by the local Islamic organizations included in FBPI (The Youth Moslem Forum) which then was taken to local ordinance area.¹⁶

The struggle in local ordinance even had better opportunity as in 1999 election, United Development Party / PPP ¹⁷ was in the first rank followed by Golkar and PDI-P. whilst the next winning contestant afterward were PKB, PAN, PBB, PK and PKP. ¹⁸

The membership of Tasikmalaya DPRD then is composed based on the vote which are¹⁹: 11 members of PPP, 9 members of GOLKAR, 8 people of PDI-P, PKB the total number of DPRD in Tasikmalaya in 1999 was 45 people.

Based on the election, the membership of DPRD can be categorized into religious party and the nationalist one. It is clear that the mass and Islamic ideology parties are consisting of PPP, PKB, PAN, PBB and PK. While for nationalist-mass basis parties are PDI-P, Golkar party and PKP in addition to some DPRD members representing the elements of TNI-POLRI.

The first group (Islam) though only PPP, PBB and PK who use the symbols of Islam, other two parties such as PAN and PKB are still relevantly included into this category though they use Pancasila as the basic ideology. This is because the constituents of these parties are Moslem at the most.

PKB by nature is established by the Islamic clerk (*kyai*) who has large number of Moslem as the basis, while mostly PAN's members are the community of Muhammadiyah organization whose members obviously are Moslem. These facts somehow will narrow the ideology of the parties as their majority constituents are Moslem.

On the other hand PDI-P's ideology is Pancasila as the majority of the constituents are secularists (nationalists). The Moslems supporting this party are usually those who come from *Abangan* group of Moslem (not puritan). Golkar Party is full with beaurocrate as its ideology is Pancasila, and the last, PKP is dominated by the army retirees together with ex-Golkar's with Pancasila as the party's ideology.

Islamic Party eventually has 50% of seats of the whole board members by placing 22 (twenty two) people while the nationalist party has got only 18 seats, and 5 seats for TNI/POLRI in their neutral position.

15. Haedar Nashir, *Gerakan Islam Syariat: Reproduksi Salafiyah Ideologis di Indonesia*, First Publication, Pusat Studi Agama dan Peradaban (PSAP) Muhammadiyah, Jakarta, 2007, page 354.

16. *Ibid.*, Page.372.

17. This party is based on Islam and always brings the issues on Sharia implementation as the part of the political campaign.

18. The Documents of Dinas Kesatuan Bangsa dan Hubungan Masyarakat (KESBANG DAN HUMAS) of Tasikmalaya Kabupaten.

19. *Ibid.*

As also found in other democracy countries, the majority decision will be accepted and implemented. The winning party then is able to make decision as the top power. It also happens in Tasikmalaya where PPP as the winner place its potential leader to be Bupati in several areas.

The fact that PPP whose ideology is Islam and support the Sharia implementation could win the general election truly affects the political constellation in Tasikmalaya. The public policies in DPRD level especially on formulating the Local acts are significantly influenced by PPP victory and seats composition in DPRD.

The local acts (Perda) is based on the juridical basis which are the valid and acceptable acts of positive laws in Indonesia. Of all the acts on which the *PERDA* based, none of them is the source of Islamic laws that are Al Quran and Hadist: the two mostly legal sources of law in Islam. If the regulation is made to implement the Islamic *Sharia* then it is unusual and strange that it even is not judicially based on the Islamic law itself.

Autonomy does not decentralize Religious Affairs.

The new order is believed to fail, as it is unable to distribute the welfare to all Indonesian society. The centralistic administration creates the centralized power and hegemony which compels people in every region to obey any policy.

Through Reformation, people gain their true power and authority to determine what best for their regions. The paternalistic and centralistic pattern of administration had killed democracy by making people powerless.

The local autonomy as demanded by the regions actually cannot be separated from the bigger agenda that is democratization in Indonesia. It should be perceived as Decentralization-Democratization where autonomy should mean the local people autonomy not the local ordinance autonomy. Therefore, the people always demand their voice to be articulated in the implementation of the authority.

The centralistic relation was a bad idea until Acts no 22 year 1999 had been released. Though some problems may still exist, but the Acts had terminated the power centralistic.

According to Abdul Gaffar Karim,²⁰ at least 10 problems are still shadowing the implementation of Acts no 22. First, it is related with the power relation between Central and Local. The locus of power is not stated explicitly yet whether it is in the local or in the central. Second is financial relation. Third, the local autonomy is still in bias as the party is still centralized as the authority distribution on executive level is not followed by such distribution in the local legislative level. Fourth, the politic regulation in Indonesia is unable to formulate the politic recruitment which can produce the politicians that can manage the power in the local level in a good and responsible way. Fifth, the emergence of regionalism that can lead to nation disintegration. Sixth, the efforts to reformat the relation between local and center always meet the difficulties. Seventh, the problems that occur during the cooperation building among the regions. Eighth, the executive is getting much stronger as the impact of the autonomy and the shift of power from executive to the legislative body.

20. Abdul Gaffar Karim ed., *Kompleksitas Persoalan Otonomi Daerah di Indonesia* First printing, Department of Governance of UGM in cooperation with Pustaka Pelajar, Yogyakarta, 2003, page., xvii-xxv.

The fact that these two bodies are getting stronger spurs the problem as they are too late to recruit the qualified human resources. Ninth, the autonomy that emerged together with the toppling down of new-order regime leads to the problem that people now have their power and become stronger. They even now have the room participate against the state in local level who has stronger human resources as the impact of political decentralization. This fact occurs the problem in terms of the relation between people and society in the local level. Tenth, the institution management and local mechanism are not ready.

Those complexities of the problems and the reason that the Law No 22/1999 is not longer up to date then the Law No 22/1999 was amended to Law No 32/2004. Up to the present, there are at least two times of amendment on Law No32/2004 which are: 1. Law No 8/2005 concerning the establishment of Substituting Law No 3/2005 on the Amendment of Law No 32/2004 concerning the local ordinance to be; 2. Law No 12/2008 concerning the Second Amendment on Law No32/2004 on Local Ordinance.

Both Law No 22/1999 and Law No 32/2004 with their amendments never transfer the religious affair to the locals. It means that all religious affairs belong to central government.²¹

The limitation on the authority is the right decision and in line with the constitution. As the country which does not put religion as its basis, 1945 constitution of article 29 should be understood that: a. The country cannot make any policy which against the belief on One Almighty God. Also includes the fact that the country must not make any policy limiting the certain believers to worship the God with their own way. b. The country is obliged to create the acts and rules to guarantee the believers able to worship their God. c. The country is obliged to create the rules and acts forbidding anyone harassing religion teachings (atheism).²²

Conclusion

The idea of religious vision in Tasikmalaya has created pros and cons. It also makes the complete implementation of Sharia face some troubles. Then what religious clerks and local ordinance can do is using the cultural approach which does not have any juridical power.

The local autonomy that is firstly meant to empower local people should not be used for legalizing the temporary demand which later could lead to nation disintegration and worse can create large gap between Moslem and non Moslem or between Nationalist and Religious people. In the other hand, the local ordinance should highly empower the natural and human resources to forward their local area.

The contradicting discourses on religion should not be encouraged anymore. Rather, the effective and concrete strategies enabling religion to develop the country which protects the Human Rights for religiosity (as regulated by 1945 constitution) must be supported, as an example is some Islamic teachings that have influenced the formation of law in Indonesia.

21. Law No 22/1999 used the terms " authority " while Law 32/2004 used the terms "matter/business". The difference between the two is signaled as the conceptual retardness.

22. Hartono Mardjono, Menegakkan Syariat Islam dalai Konteks Keindonesiaan, Mizan, First Printed in Bandung, 1997, page 28.

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