



## Authority of Nanggroe Aceh Darussalam Government to Protect Non Moslem in The Application Shari'ah

**Solikhah<sup>1</sup>, Burhanudin Harahap<sup>2</sup>, Luthfiah Trini Hastuti<sup>3</sup>, Yulia Budiwati<sup>4</sup>, Seno Wibowo Gumbira<sup>5</sup>,**

Lecturer at Faculty of Law, Universitas Sebelas Maret<sup>1,2,3</sup>  
Lecturer of Legal Science at Faculty of Law, Social and Political Science, Universitas Terbuka<sup>4,5</sup>

**Email correspondence:** [solikhahfh@gmail.com](mailto:solikhahfh@gmail.com)<sup>1</sup>

### Abstract

Aceh is an area that is given special privileges in running the Islamic Shari'ah. It is interested to study considering the population of Aceh. It is not only Muslim but also non Muslim. Some of the parties consider implementation of Islamic law for non-Muslim residents feel worry because it is against human rights. With this background, the researcher is interested in studying " Authority of Nanggroe Aceh Darussalam Government to Protect Non Moslem in The Application Islamic Shari'a". The data of research are obtained by interviewing with Islamic Shari'ah Office, Customary Assemblies of Aceh Aceh Parlemen of Representatives, Wilayatul Hisbah Aceh, the Shar'iah Court and the Attorney General of Aceh.

The results of the study indicate that the local regulations set for non-Moslem residents are declared voluntarily subject to the applicable rules. Non-Muslims who submit themselves to Islam gamble for punishment, a gambling of Islamic law or state law, are identified in the state's right to vote, as long as state law and qanun prohibit voting. It is the responsibility of non-Moslem to the Moslem community of Aceh. Legal protection does not violate the people of Aceh. It does not choose the law given the rights to implement in accordance with their beliefs as long as it does not violate the interests of the community. It does not violate the rules of the country. The outcome of the research is the draft scopus journal article Singapore Journal of Legal Studies, Proceeding International Conference GLOW 2017, the draft policy of the Provincial Government of Aceh in the implementation Islamic Shari'ah in Aceh and the draft book of Islamic law.

**Keywords :** Authority, Islamic Shari'ah, Nanggroe Aceh Darussalam

## I. INTRODUCTION

### A. Background

The people of Aceh are known as a devout society in the religion of Islam meaning that the spirit that grows in society. It has been widely run the pillars of Islam and has a relatively high fanaticism in religion. Aceh residents occupy an area of 55,390 km<sup>2</sup> with the majority (97.3%) are Moslem, while those who are non-Moslem mostly come from outside Aceh who are government employees or as immigrants<sup>1</sup>.

The strong Islamic nuances are very influential. It has political choice of the population community life in Aceh. The deep and special Islamic links of Aceh and

---

<sup>1</sup> Kompas Research Team, Political Map of General Election 1999-2004 (Jakarta: Book Publisher Kompas, 2004), p.13

people become the reinforcement and glue factor for the implementation of Islamic Shari'ah life people of Mecca. The implementation of Islamic Shariah in Aceh arises because of the policy Politics of the Central Government in the context of a prolonged conflict resolution in the Aceh region. At the beginning of the birth of the new order, the DPRD - GR (Regional People's Legislative Assembly - relationship) drafted a Regional Regulation on the implementation of elements of Shari'ah Islam as the operationalization of the privileged status of Aceh in 3 specific areas, namely religion, education and culture. However, the Regional Regulation of the implementation of Islamic Shari'ah can not be executed because it is not approved by the Central Government.

The disappointment of the Aceh people was encouraged by Independent Aceh Movement (GAM) which was established in 1970. In 1978 to 10 years the new order imposed increasingly repressive political and military policies by placing Aceh as a Military Operation Area (DOM) that many misuse the lives of the Aceh people . At this time the issue and plan of the implementation of Islamic Shari'ah. GAM did not remain silent with the formation of forces, so the guerrilla resistance against the Government of Indonesia continues until the end of the new order in 1998. After the new order ends, the reform order was born in which the policy which tend to be authoritarian still prevail in the early days of the Government during Habibie, Abdurrahman Wahid and Megawati Soekarnoputri. Although more decreased compared to the New Order period. While in the era of President Susilo Bambang Yudhoyono still imposed a Civil Emergency due to the still rebellion of GAM although Aceh since the reform era. It has changed the special economic status to Nanggroe Aceh Darussalam with the implementation of Islamic Shari'ah.

In the reformation era, political climate changes have put pressure and at the same time a new space for the Aceh people to regain their basic rights. In the era of representative assembly reform of the Republic of Indonesia representing the highest aspirations of the people Indonesia issued provisions Representative Assembly Number 5 of 1999 and Law Number 44 of 1999 on the Aceh status as a special autonomy with the implementation of Islamic Shari'ah in all aspects of life, education based on Islam and custom which is not contrary to shari'ah Allah SWT<sup>2</sup>.

In the timeframe of 1999-2002, when the separatist movement of the Independent Aceh Movement grew stronger, the Central Government in Jakarta supported by the

---

<sup>2</sup> Haedar Nasier. *Islamic Law Movement*. Jakarta : PSAP Muhammadiyah. Page 342.

House of Representatives made a new breakthrough by enacting Law No. 44 of 1999 on the Implementation of Special Feature of the Special Province of Aceh. In 2001 The Central Government even established Law No. 18 of 2001 on Special Autonomy for the Special Province of Aceh as the Province of Nanggroe Aceh Darussalam. Year of 2003 issued also Presidential Decree No. 11 on the Shari'ah Court in the Province of Nanggroe Aceh Darussalam. After provisions Representative Assembly and the two laws for Aceh is stipulated, then exit various Regional Regulations (Qanun) of Nanggroe Aceh Darussalam Province regarding the implementation of elements of Islamic Shari'a (18 Qanun ) and Instruction of Governor (11 Instruction) which regulate various aspects of implementation shari'ah of Islam in the earth Veranda of Mecca . This reduced the armed resistance Independent Aceh Movement to the achievement of the Helsinki peace agreement in 2005.

Concrete steps in the application of Islamic Shari'ah in Aceh were the execution of caning law in June 2005 in Bireuen District for 20 gamblers, adulterers and prostitutes who have been found guilty by the local Shari'ah court. The law of caning followed after the signing of the Decree of Executor Governor of Nanggroe Aceh Darussalam, Azwar Abubakar in Meulaboh area on Friday, June 10, 2005 to ensnare gamblers, adultery and prostitution. The Governor's Decree as a substitute for the Regional Regulation (Qanun), according to Azwar Abubakar is proof of the seriousness of Local Government and community of Nanggroe Aceh Darussalam to implement syari'at Islam in kaffah.

The application of caning law in Aceh has diverse views. For the temporary side, the application of caning law is felt to be lacking or does not reflect a sense of justice as the intent and content of Islamic shari'ah. Because it only touches the perpetrators with small cases and does not pursue cases big. Among the 20 people who were sentenced to whipping in Bireueun generally accepted the punishment as adherence to Islamic shari'ah, but among them some have requested that the caning and other shari'a law be applied also to those who engage in gambling and sharia violations at Islam that belongs to the upper class so as not to cause favoritism.

State interference not only for Moslem but also for non-Moslem residents. Statistics Center show that the number of non-Moslem Aceh residents in 2010 the percentage of Protestant Christians 0.84%, Catholics 0.16%, Buddhists 0.18% and Hindhu 0.02%. Non-Muslim persons who commit a crime (jarimah) together with Aceh Moslem are Moslem where non-Moslem choose and submit voluntarily to Qanun Jinayah. Voluntary submission is also known in the crime of storing and trading drinking liquor (khamar).

Any non-Moslem person who commits Jarimah acts in Aceh that is not governed by the Criminal Code or criminal provisions outside the Criminal Code but is regulated in Qanun Jinayah. The voluntary subjects and the validity of the Qanun Jinayah are also stated explicitly in Article 129 of Law Number 11 Year 2006 regarding Aceh Government. Article 129 Paragraph (1) states: "In the case of jinayah actions committed by two or more persons collectively of whom are non-Moslem, non-Moslem actors may elect or submit themselves voluntarily to the jinayah law."

Subsequently Article 129 Paragraph (2) states: "Every person who is not a non-Moslem religion commits jinayah actions that are not regulated in the Criminal Code or criminal provisions outside the Criminal Code apply jinayah law". Article 126 of Law Number 11 Year 2006 regarding Aceh Government states: (1) Every adherent of Islam in Aceh is obliged to obey and practice Islamic law; (2) Everyone residing or residing in Aceh shall respect the implementation of Islamic Shari'a. Here we see the use of subject and territorial principle. The principle of the subject implies anyone who is Moslem; while the territorial principle means applicable to all people living in Aceh.

However, there are still mechanisms that have not been clearly set. Qanun Jinayah Procedural law does not clearly regulate how the mechanism of non-Moslem declare voluntary submission and the process of submission stages voluntarily submitted. There are also some different views that assume the implementation of Islamic law for non-Moslem violate the right human rights and against the sense of justice. This is interested to study so that the authors are interested to examine about "Authority of Nanggroe Aceh Darussalam Government to Protect Non Moslem in The Application Shari'ah".

## **B. Research Question**

Based on the text, we will describe several questions :

1. How the authority of Aceh Government to protect non moslem in implementation Shari'ah ?
2. How the opinion non moslem in implementation shari'ah in Nanggroe Aceh Darussalam ?

## **C. Research Method**

### **1. Data Collection Method**

In this study researchers will use several methods of data collection. Here are some data collection methods that researchers do :

- a) Interview

Interview technique is the process of obtaining information for the purpose of research by way of question and answer while face to face between the interviewer with the respondent or the person interviewed with the respondent or the person interviewed by using a tool called interview guide (interview guide). The list of questions is just a note on the points to be asked, so that there is still a possibility of variation of questions tailored to the situation when the interviews were conducted. Interview method to be used is guided free method or in depth interviewing with the way the researcher prepared the interview guide according to the data to be obtained. Interview addressed to Aceh Shari'ah Office, Aceh Parlemen of Representatives, Aceh Customary Assembly, civil Police Unit and Wilayatul Hisbah Aceh, Aceh State Attorney, Aceh High Court, Syar'iyah Nanda Aceh Court, Syar'iyah Jantho Aceh Court and Syar'iyah Sigli Pidie Court.

b) Documentation study

Documentation study was conducted by examining cases that occur for non-Moslem citizens in Aceh so it becomes a formulation of local government policy in providing legal protection for non-Moslem citizens in Aceh.

c) Library Studies (Library Research)

A way of collecting data is done by reading and studying books: literature, legislation, research results, articles and all matters related to this research. This method is used in order to obtain secondary data that is collecting data in the form of scientific books related to the problems studied, documents and so on by reading and reviewing it and then drawn a valid conclusion about the problems associated with the research.

## 2. Processing and Data Analysis

Data analysis technique in this research is using interactive model of analysis. Analysis in qualitative research consists of three main components, namely data reduction, data presentation and conclusion with verification<sup>3</sup>.

For the primary data, the data were analyzed qualitatively through the depiction of the reality of non-Moslem citizens who became entangled in the case. For secondary data, legal materials were analyzed using hermeneutic method (interpretation) of the policy of Islamic syariat application for non-Moslem citizens in Nanggroe Aceh Darussalam.

## II. RESULT AND DISCUSSION

---

<sup>3</sup> Sutapa H.B.2002.*Introduction to Legal Research*.Surakarta :UNS Press.Page 96.

## **A.Result**

### **1). Interview with Aceh Customary Council**

Customary institutions play a very important role in resolving disputes and cases occurring within society. The socio-historical process has been going on since the past is also reinforced by Qanun Number 4 of 2003 on Mukim and Qanun Government Number 5 Year 2003 on Gampong Government. Mukim and Gampong function to foster community in the field of implementation of Islamic Sharia, education, socialization, socio-culture, peace and order of society, to settle in order to decide and or to establish law in the case of dispute - disputes or cases of custom and customary law.

Law Number 11 Year 2006 regarding Aceh Government in Chapter XIII Section 98 on customary institutions is as follows:

Paragraph (1) The adat institution functions and acts as a vehicle for public participation in the implementation of Aceh Government and Regency or City Government in the areas of security, peace, harmony and public order.

Paragraph (2) The settlement of social problems is customarily pursued through customary institutions.

The settlement of any disputes or cases that occur can be done gradually, first in a peaceful way through customary consultation at both the gampong level that tackles the Geuchik in cooperation with Tuha Peut and Tuha Lapan. If at the village level can not be solved then the matter is delegated to the Settlement At the level of settlement the process of settlement of the case is led by Imuem Mukim which also involves the indigenous leaders at the mukim level. The completed officials can be problems arising in the field of rice field mediated by Keujreun Blang, sea problems by Pawang uteun, market problems by Haria Peukan. Everything coordinated to Geuchik as Head of Gampong.

### **2). Interview with the Secretariat of the Aceh Parlemen Representatives**

The authority of the Aceh Provincial People's Legislative Assembly to make regional regulations. The existence of local regulations is *conditio sine quanon* in order to exercise autonomy authority. Local regulations should be used as guidelines for local governments in carrying out government affairs, provide legal protection for the people in the region.

### **3). Interview with the Head of Legal Affairs of the Office of Islamic Law Dr.Sukukri Muhammad Yusuf, MA**

The Islamic Sharia Institution was established on January 25, 2002 based on Regional Regulation No. 33 of 2001 as a concrete response in the enactment of Law Number 44 Year 1999 regarding the Implementation of Aceh Privileges and Law Number 18 Year 2001 regarding Nanggroe Aceh Darussalam.

The Office of Islamic Sharia plays a role in improving the quality of the individual, the family, and the people of Aceh. Efforts to self-improvement refer to an example given the Prophet when membiun Mecca society into a civil society. At least there are three stages taken, namely ta'win stage, tanzim and taudi. Ta'win is the stage of formation of Islamic society. The main activity at this stage is to perform the dakwah bil oral as the endeavor of socialization of aqidah, ukhuwah and ta'awun starting from the smallest unit and closest to the agreement of arranging the three aspects into sociological instruments. in ta'win stage is the occurrence of internalization of Islamic teachings into the personality of society and express it in the form of ghirah and defending the faith from the structural pressure of the oppressors.

In phase tanzim internalization and the externalization of Islamic teachings emerged in the form of Islamic institutionalization comprehensively in social reality. This activity will lead the community towards self-reliance known as taudi. Moslem is ready to become self-reliant society, especially in managerial. The main problem that becomes agenda in taudi phase is the liberation of people from poverty, ethnic conflict and also liberation on behalf of state and political ideology.

## **B. Discussion**

Based on the results of the interviews described above further strengthen the enforcement of Islamic law in the region of Nanggroe Aceh Darussalam. On the other hand many people assume how non-Muslim position there? The widespread concern of non-Muslims is seen as fearful, cruel and unfair. This principle is not supposed to happen because the concern is unfounded.

In Islam individuals are part of the ummah, the core of life exists in the ummah. Individuals are responsible for the society, non-Muslims are responsible for the life of the people of Aceh, the Quraish Shihab commentary in the Muslim life must be harmonious, then the non-Muslims have the responsibility to society. The Moslem community is connected with non-Muslim society, he is responsible for not doing the deeds that are

forbidden by muslims. Muslims should not eat pigs, non-Muslims should not be pigs and do trade liquor. If consumed alone may, but if traded should not.

Allah SWT has affirmed that He has shown two paths to man, that the right path is Islam and the unrighteous path is denial (kufr) against Islam. With the potential sense possessed by man, he is given the freedom to then accept Islam or reject it. With the nature and potential of reason, humans will be able to choose their own way of life. Prophet Muhammad has managed to realize well the message of Al-Qur'an. Konstitusi Medina is concrete evidence, for example, explicitly outlined that non-Muslims justified living together under the leadership of the Prophet . Even if there is a discussion that the Prophet (SAW) once acted strictly against the Jews, the attitude was simply not demonstrated because of religious differences (non-Muslim minorities) but because of their failure to obey the political power that is in the hands of the Prophet. Other when he went to accepted Ta'if unfriendly to the inhabitants there, he simply said: 'I just invite you to the truth, if you do not want to listen, it's okay'.

The Quran has given an affirmation of the need for tolerance that should be demonstrated by the rulers and the Muslim community against non-Muslim minorities. Many in the Islamic country or the Muslim majority are concerned with this, that is to give followers of other religions and beliefs the freedom of peace in the midst of the people Muslims and the widest opportunity to participate in various activities, as long as it does not concern the organization of worship.

Based on the context of history and socio-cultural developments is an unfounded concern if considered non-Muslim positions will be threatened in the middle of the Muslims if the Islamic Shari'a is upheld by them enforced. Non-Muslim communities feel protected by the implementation of Islamic Shari'ah. Inside Qanun Aceh Number 8 Year 2014 on the Main Principles of Islamic Shari'ah in the fourth contains Jinayat (Criminal Law) paragraph (2) mentioned that every non-Muslim can choose and submit voluntarily to jinayat law. Of course this gives freedom to non Muslims to choose the law of the country governed by the Criminal Code or Jinayat law.

In Qanun Aceh Number 6 Year 2014 on the Law of Jinayat Article 5 paragraph c that any non-Muslim person does Jarimah's acts in Aceh that are not regulated in the Criminal Code (KUHP) or criminal provisions outside the Criminal Code, but are regulated in This Qanun is valid Qanun. So if within the Criminal Code does not regulate the actions of Jarimah committed by non-Muslim penalties continue to use Qanun as the main foundation.



The Aceh Government has also ratified the Aceh Qanun Number 4 of 2016 on Guidelines for the Maintenance of Religious Harmony and the Establishment of Places of Worship. At present, Aceh as an area that has authority in running the Islamic Shari'a formally has a strong foundation in a number of Laws and Regulations such as Law No. 44/1999 on the Implementation of the Special Status of Aceh Province of Aceh. Syariat Islam always interact with local interests and its adherents.

In accordance with the basic principles of Islamic teachings, the attitude of tolerance and mutual respect contained in the Qur'an practiced the Prophet Muhammad into a historical legacy that is still maintained until now. Philosophically, the teachings contained in the attitude of tolerance is agreed in the difference, agree in disagreement. Therefore, the teachings of religious tolerance include two areas of study. Tolerance in the internal relations of a religion such as sect, mahzab, stream or class within a religion is called the internal harmony of religion.

Furthermore, tolerance among religious people in their daily life is used the term harmony between religions in which it gives recognition of respect and respect for other religious worldview according to the belief of his followers. In particular, the Government's attention to inter-religious harmony has been regulated in Article 127 Paragraph (2) of the Law of Aceh Government Number 11 Year 2006 namely "The Government of Aceh and District / City Government guarantees freedom, fostering harmony, respecting religious values that adopted by religious people to practice worship in accordance with the religion adopted. Other rules also refer to the Joint Regulation of the Minister of Religious Affairs and the Minister of Home Affairs No. 9 of 2006 / No. 8 of 2006 on the Implementation of Duties of Regional Head / Deputy Head of Region in Maintaining Religious Harmony, Empowerment Forum Religious Harmony, and Establishment of House of Worship.

There is also the Gubernatorial Regulation of Nanggroe Aceh Darussalam Number 16 of 2007 dated April 30, 2007 on Guidelines for Implementation of the Duties of Religious Harmony Forum, Gubernur Nanggroe Aceh Darussalam Regulation Number 25 Year 2007 concerning Guidelines for Establishment of Houses of Worship and Governor Regulation Number 22 Year 2001 on Guidelines for Implementation of Forum Duties Religious Harmony.

This Qanun specifically regulates the Guidelines for Maintaining Religious Harmony, Empowerment of Religious Harmony Forum (FKUB) and Establishment of

House of Worship. These three scopes need to be regulated for the creation of religious harmony in Aceh.

The objectives to be achieved are as follows:

1. Creation of harmony between religious communities in order to maintain public order.
2. Built a synergic relationship among religious people to discuss various obstacles encountered in creating harmony among religious people.
3. Well organized places of worship of religious people in order to create comfort in the implementation of the worship of each religion.
4. The establishment of a sense of shared responsibility, both by the community and the Government in accordance with their respective authorities in the context of maintaining religious harmony.

### **C. Conclusion**

Islamic Sharia for Muslims, non-Muslims living in Aceh are part of Aceh society, therefore non-Muslims have a responsibility to the life of aceh society. In Islam individuals are part of the ummah, the essence of life exists on people. Individuals are responsible answer to the society, non-Muslims are responsible for the life of the people of Aceh, the root of Quraish Shihab commentary in Muslim life must be harmonious, then non-Muslims have a responsibility to the community.

The making of the qanun is essentially non-discriminative, not distinguishing the Acehnese from groups, tribes, descendants to the whole of Aceh. to non-Muslims is aimed at the part of the Muslim community, entirely the rights of worship, the right to punishment, the right to choose the law, the right to choose sanctions law for lawless offenders: as part of the Aceh community for non-Muslims, as part of the country of Indonesia. At altogether wilayatul hisbah not directing to vote but offered orally to choose law Non-discriminative non-Muslim citizens not only in the enforcement of qanun but also non discriminatory in the context of lawlessness which is not enforced by qanun. Judi with domino not enforced by qanun, depending on the society where they do the violation, not distinguished by moslem and non muslim, if repeatedly enforced by qanun. Penuntutan done by state prosecutor , the evil of the uplifting society ap community, police, civil service, wilayatul hisbah investigators submitted to the prosecutor's office delegated to the Mahkamah Syar'iyah. Wilayatul Hisbah conduct Guidance on the defendant, the Investigator handed over the case to the Attorney and the execution of the sentence decided the Mahkamah Syar'iyah implemented to the mosque.

#### **D. References**

- Al Yasa'Abubakar.2005.Syari'at Islam In the Province of Nanggroe Aceh Darussalam: Paradigms, Policies and Activities.Edition Third (Banda Aceh: Dinas Syari'at Islam Provinsi Nanggroe Aceh Darussalam).
- Islamic Office Shari'ah.Province NAD.2004.Simple Act, Presidential Decree, Regional Qanun Regulation, Governor Instruction, Governor Relation Related Implementation of Islamic Sharia, Third Edition (Islamic Office Shari'ah Province Nanggroe Aceh Darussalam: Banda Aceh).
- Haedar Nashir.2007.Gerakan Islam Syariat.Jakarta: PSAP Muhammadiyah.  
Briefing Paper of Judges of the Court syar'iyah for securing the syar'iyah economy (not published), organized by the Center of Legal Clinic Faculty of Syar'iyah IAINAr-Raniry.2006.Medan.
- Nanih Machendrawaty and Agus Ahmad Safei.2001. Development of Islamic Society.
- Safwan Idris dkk.2002.Syariat in Syariat Territory Ulul Arham Foundation: Banda Aceh.
- People's Mind Site.14 June 2005. "The Law Enforcement Cuts for Corruptors: The Provincial Government of NAD Inaugurates the Imposition of the Law of Whip".
- R & D team Kompas.2004.Political Politics General Election 1999-2004.Kompas: Jakarta.

