

Ulema's Views on The Application of Islamic Law in Banda Aceh City, Indonesia

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Abstract: The implementation of Islamic law (Shari'ah) in Aceh especially Banda Aceh city according to the scholars expertise cannot be implemented maximally in accordance to Qanun law no. 11 of 2002 concerning worship and shari'ah, the application of Islamic Shari'ah according to the assumption of society, it is not completely based on the principle and the purpose of the implementation of shari'ah, its application tends to seem political and symbolic, it only limits to women's clothing and caning law against violators of shari'a. The life of Banda Aceh people do not have significantly much difference in the conditions before and after the enactment of Islamic Shariah being.

Keywords: Al Quran; ulema; implementation; Islamic syariah; Banda Aceh

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I. INTRODUCTION

The existence of Islam and the Aceh people are two inseparable sides, like two sides of money. Therefore, the establishment of Islamic law in Aceh become the main major of the attention from Aceh people, the fact that has been strongly rooted since the emperior period of Aceh, but after Aceh merged into the Unitary State of the Republic of Indonesia, syari'at Islam is slowly eroded even many policies applied by the government of the Republic of Indonesia for Aceh is irrelevant to the Shariah of Islam itself. Therefore, the people of Aceh agree to make Islam as a means of struggle against injustice from the lack of sensitivity of the government to the aspirations of that region, it is especially related to economic issues. For example, in 1951 Tgk. Daud Beureueh proclaimed the establishment of an Islamic State in Aceh based in Darussalam.

But since Indonesia gained independence in 1945, the characteristics of Islam are no longer so dominant, even though Aceh has its features. This condition continued until the Law of the Government of Aceh Number 44 of 1999 on the Implementation of the Special Province of Aceh on 4 October 1999 and Law no. 18 of 2001 on Special Autonomy for the Special Province of Aceh as Nangroe Aceh Darussalam was established on August 9, 2001. This law authorizes the people of Aceh to apply Islamic law in the larger life. So as a follow-up of that constancy, governmental devices that are tasked to implement and oversee the implementation of the syariah, so that it can run well based on rule of Islamic Shari'ah.

In spite of that issue, 3 (three) structural institutions are formed:

1. The Office of Islamic Shariah

To apply the function of supervision for Islamic Shariah In Aceh, the agency of the Office of Islamic Sharia has authority are:

- a. Planning research and developing the elements of Islamic shari'ah.
- b. retaining Islamic values.
- c. Developing and guiding the implementation of Islamic Shari'ah which includes the areas of aqidah, worship, mu'amalah, morals, education and da'wah Islamiyah, amar ma'ruf nahi munkar, baitul mal, community, Islamic syari'ah, defense of islam, qadha, jinayat, munakahat and mawaris.
- d. Overseeing the implementation of Islamic Shariah, and
- e. Fostering and supervising the Quran Training Institute (LPTQ).

In addition to the Office of Islamic Sharia at the provincial level as a local governmental staffs under the governor authority, then the level of regency/city also formed the same institution that is the governmental staffs of regency/city under the Regent/Mayor. However, until now, the institutions which responsible for supervision and implementation of Islamic Shariah is not running well yet either its name or its organizational structure between one regency/city with other regency/city in Aceh.

2. The Sharia Court

The central government through the ministry of religious affair on 4 March 2003 coincided with the new year 1424 H has inaugurated the shari'a law court of Aceh in province level and regency/city level. The Shari'ah court itself is a substitute for a religious court with an expansion in terms of authority.

The syariah court consists of:

- a. regency and city Shariah Courts as first-level courts.
- b. The province Shariah Court as an appellate court is located in the capital of Aceh, Banda Aceh.

The Shariah Court has the duty of accepting, examining, and resolving cases among Muslims in the field of al-ahwal al-syakhshiyah (family law), muamalah (civil law) and jinayah (criminal). Then family law includes marriage, inheritance, and testament. The laws of muamalah include the issue of sale and purchase, accounts payable, qiradh (capital), profit sharing, borrowing, cooperating, wakilah, foreclosure, mortgage, lease, labor, and jinayah law cover khamar, maisir, and khalwat.

The duty of investigation for the enforcement of Islamic Shari'ah which is the authority of the Syar'iyah Court related to the jinayah done by the Police of the Republic of Indonesia and the Civil Servant Investigator.

3. Wilayatul Hisbah (WH)

Wilayatul Hisbah (WH) or Shari'a Police is an institution that handles Islamic law problem especially in relating to jinayah (criminal) that exists only in Indonesian jurisdiction. According to Alyasa Abubakar, the term "territory", in *al-Siyasah al-Syar'iyyah*, means "authority" and "power" owned by government institutions to uphold jihad, *hudud* justice, amar ma'ruf nahi mungkar, and the persecuted, these are the most important in religious necessities. While the word "hisbah" means monitoring, estimation and calculation.

On September 26, 2014, the Aceh Government through the Aceh House of Representatives (DPRA) passed the *Qanun Jinayah* regulation under the auspices of the Islamic Sharia Law.

Qanun Jinayah is an Islamic criminal law that regulates the punishment and how to punish the perpetrators of crimes or offenders of the Islamic Shariah in Aceh in the serious offenses category, such as khamar (liquor), maisir (gambling), khalwat (hidden deeds between two people of different types non-mahram), ikhtilath (sexual intercourse between two different types of non-married persons), sexual harassment, and rape, qadzaf (accusing people of committing adultery without being able to file at least four witnesses), liwath (gay sexual) and musahaqah (lesbian).

Qanun Jinayah is one proof of the seriousness of the Government of Aceh to regulate the life of its people. Unlike the previous regulation of *qanun* that only apply directly to the Acehnese-Moslem people, this *Qanun Jinayah* is also applied to anyone in Aceh, including non-Moslems. The equality before the law principle known in legal studies may be the reason why this *Qanun Jinayah* is also applied to non-Muslims in Aceh.

The crucial implementation of *Qanun Jinayah* to non-Moslem is a major step acrossing the context of the various religions in Aceh. Non-Moslem in Aceh are inevitably disliked, eventually becoming entangled in rules previously only made for the Muslim community. The Government of Aceh seems to ignore the diversity of religions in Aceh. Munawar A. Djalil as Head of Legal Office division of Islamic Sharia in Aceh during a talk show hosted by the students of the Faculty of Law of Syiah Kuala University (Unsyiah) Banda Aceh said that after *Qanun Jinayah* no. 6 Year 2014 is implemented in October 2015, then automatically apply the so-called *Fictie Law principle*, is that principle which states that everyone is considered to have known a rule that has been recorded in the State Institution. Thus, there is no reason for anyone to get free from the Law with a statement not knowing the existence of the Act.

It is necessary to study more deeply about this sharia law that finally touches the inter-religious in midst society. Yet many people feel that the *Qanun Jinayah* discourse imposed on non-Muslims in Aceh is an unclear sharia regulation. This can be viewed from the observation in the national mass media which often reviews about the other side of the enactment of this *qanun*. It can be seen from the point of view of news and parties involved in the news, such as human rights activists and even non-Muslim communities themselves.

By 18-year-implementation of Shari'ah Islam has already appeared a variety of reviews and analysis, one of them is from scholars as an important element in Aceh society, including before the implementation of UUPA of Aceh.

The view is still in dissatisfaction. The problem is how the views of Banda Aceh Scholars against the implementation of Islamic shari'ah, and this is what will be answered on this paper. The description is divided into five sections, namely introduction, clerical understanding, brief description of Banda Aceh, the views of Scholars in Banda Aceh, and the closing.

II. DEFINITION OF ULAMA

Ulama (scholar) is one of the words taken from the Arabic element, ie the 'ulama' plural form of the word, 'alimun, its meaning knows or the person who has deep knowledge. Semantically the scholars mean those

who have knowledge in religion. The Qur'an repeatedly reveals the word 'ulama' among them contained in Surat al-Syu'ara, verse 197 and the Fatir letter, verse 28.

In the context of the Banda Aceh community, the ulama can generally be grouped into four groups according to their own peculiarities. The four groups are:

1. Traditional scholars are a group of scholars who still hold firmly to the text of the Qur'an and the hadith of the Prophet without providing additional documents. The Moslems who follow the traditional scholars are the Moeslem who study the religion through *talaqqi* (study Qur'an) with the pious scholars who follow one of the four Imam Mazhab. They follow what is inherited by the early pious scholars whose sanad knowledge or sanad from the teachers are connected to the oral Rasulullah.

Understanding of Traditional Islam means here is the Muslims who understand the Qur'an textually in what our Prophet has done already. In other words, traditional Islamic understanding can be said of Textual Islam or the first thought path. Secondly, the understanding of Modern Islam is the one who understands the Qur'an and the Sunnah of the prophet according to the reality that occurs or the contemporary or the second way of thinking. Both of these understandings have the same argument hold on al-quran and Sunnah of the Prophet, this has some effects of conflict in society.

According to the experts there are some attributes attached to the traditional scholars, such as those which tend to be exclusive (closed) or narrow fanatics, unwilling to accept opinions, thoughts and suggestions from other groups (especially in the field of religion). This is because they assume that their group is the most correct. Then looking at Islam in totality so we do not distinguish Islam between things that are teachings and non-teachings. With this characteristic, traditional scholars assume all things that have to do with religion as a doctrine that must be maintained. They tend to be backward oriented, the traditional scholars considered that the various legal decisions taken by scholars in the past were ideal examples to be followed. It arises as a result of their exaggerated views of past scholars with all their attributes that cannot be defeated by later scholars or scholars.

Another feature is tend to textually and literally understand the verses of the Qur'an without looking at the background and social situations that cause the verses of the Qur'an is revealed, so that the use of a certain range of verses is limited to certain cases alone relating it to other situations that the verse may allow. While with the literal character, traditional scholars are less able to capture the message or meaning contained behind the verse.

The other thing is not to blame tradition in religion. Then Jumud and static. Jumud is a mind where it cannot see something that is more broadly, so traditional Islam tends to not follow the change and keep what has been looked good since by the past, without question critically whether what they maintain is still enough and able to compete with other forces.

2. Modern scholars, as opposed to traditional scholars. If the traditional scholars has six qualifications above, then modern scholars have the opposite characteristic. If traditional scholars tend to be textual, modern scholars are contextual. If traditional scholars are oriented backward, modern scholars orientate forward. Then if traditional scholars tend to be *jumurd* and *static*, modern scholars is dynamic. And so on.

3. Sufi scholars, ie scholars who move in the activities of Sufism and *tareqat*. As it is understood that Aceh has a big name that qualified in the field of *tasawuf tareqat*, such as Hamzah al-Fansuri, Syamsuddin as-umaterani, and so forth. These activities continue to grow to this day into a trance among the Acehnese scholars.

4. The dayah scholars. Dayah is one of the Islamic educational institutions that are deeply rooted and entrenched in Aceh society generally. The role and contribution of dayah from time to time shapes the character of an Islamic and intellectual generation. Seeing the role of dayah, the Government of Aceh in the year 2007 formed a container that is able to maintain and develop the world of Islamic education is through Qanun number 5, year 2007 with the name of the Institute of Education Dayah Aceh (BPPD).

In contrast to the other three types of ulama, Dayah scholars are structural, as they are contained in the structure of the Aceh Government. In addition there is also the Consultative Assembly of the People (MPU), a kind of MUI in other provinces.

III. BANDA ACEH IN BRIEFLY

Banda Aceh is located between 050 16 '15 " -050 36' 16" North Latitude and 950 16 '15 " - 950 22' 35" East Longitude with average height above sea level 0.80 meters. Banda Aceh City consists of 9 districts, 70 villages and 20 villages with an area of 61.36 km². The subdistricts in Banda Aceh are Meuraxa, Jaya Baru, Banda Raya, Baiturrahman, Lueng Bata, Kuta Alam, Kuta Raja, Syiah Kuala and Ulee Kareng subdistricts. The borders of Banda Aceh City are adjacent to Malacca Strait in the north and Regency of Aceh Besar in the south and the west by the Indonesian Ocean.

The population of Banda Aceh City is 274,185. In terms of religion, the people of Banda Aceh City 98% embraced Islam, other than 2% or more adhered to religions other than Islam, namely Crist, Catholic,

Hindu, Buddhist, and Confucian. The city is used as a sample, because the city is a miniature Aceh in its entirety and is the center of attention in various matters, including in terms of Islamic Shari'ah practice.

IV. THIRD THOUGHTS ABOUT THE IMPLEMENTATION OF ISLAMIC SYARI'AH IN BANDA ACEH

Scholars have an important role in implementing the Shari'a of Islam in Aceh even though the position of the scholars is not as an executive, but the role is based on the function.. M. Quraish Shihab said there are four roles attached to the scholars and the role which they should responsible for many things as a scholar, those are: *tabligh*, *tabayyun*, *tahkim* and *uswah*. Through these roles, the scholars implement the Shari'a in daily life of Aceh people. Through the role of *WEI*igh the scholars convey the da 'wah of Islam, teach the religious learning, convey Islamic Shari'a to the public. Through the role of *tabayyun* scholars interpret and explain the Qur'an, interpreting al-Hadith of the Prophet S.A.W then they will teach it to the society. Through the role of *tahkim*, scholars explores the sources of Islamic law to create decisions and legal certainty. Through *uswah* scholars gives a good figure likely to the prophet S.A.W.

In history, the implementation of Islamic Shariah conducted by the scholars to the Aceh people has become a very important part in the development of Islamic Shari'ah in Aceh and archipelago. In fact, the Islamic Shari'ah has been completely aplied by Aceh society for the whole district. The values of Islamic Shari'ah have been in growth for Aceh people as both in family life and in the life of the state and community.

Since the period of the Islamic Empire of Aceh Darussalam (1507-1874), and also the period of the sultanate under the colonialization of East Indies-Dutch (1874-1942) until the independence period, the Shari'a of Islam in Aceh has always been the reference of society in organizing their lives both as personality and family and society. According to the historical records in the empire of Aceh period, especially Iskandar Muda, the Islamic Shari'ah was really enforced.

Before the law existance of No. 44 of 1999, Aceh *ulama* have taught many things related to grow the values of *aqidah Islamiyah* to the community. They have done it sincerely and voluntarily and it was not due to the law being. According to Abu Mustafa and Tgk. Nuruzzahri, that the issue of *aqidah* is a fundamental issue in religion which must be a priority in the religious study. The duty of teaching Islmaic learning is a mandate of Allah and it becomes the responsibility for whole scholars as the prophet's heir. Because of the thought of scholars, if *aqidah* is true and strong then Islam will be true and strong and if *aqidah* is not true and not strong then Islam is not true and not strong vice versa. Furthermore, if religion is strong, the country will be safe, peaceful, and prosperous.

Therefore scholars work hard to teach and establish *aqidah* to the community in individually or in group. According to Tgk Abdul Manan, as a sense of responsibility of scholars in various occasions directly or indirectly always teach and establish *aqidah ummah*. Such as: in the recitals, khutbah, tausiyah, lectures or in the form of ritual costum, *aqidah* is most preferred then. Even the teaching of *aqidah* in educational institutions becomes the main lesson. In each moment to teach *aqidah tauhid* in daily, so does in schools both religious schools and public schools, scholars suggested to the government to have more hours of *aqidah tauhid* learning. In fact, the people of Aceh is a strong society as their belief.

Although the position of the scholar is not as an executive, but the Aceh scholars are significantly very crucial in organizing the implementation of Islamic law in the comunal life. Although the implementation of religious shari'a is ultimately an individual and family obligation, but the scholars have a high moral responsibility to maintain the continuity of Islamic Shari'ah in society either on individuals or families. The responsibilities of the scholars have been taking their parts so that the life of the implementation of the Shari'a in society has occurred to internalization, awake and maintainance well.

Scholars have the obligation to teach Islamic Shari'a to the community and guide them especially in *fardhu`ain* matter. Because *fardhu`ain* must be learnt by every Muslim both male and female. On the basis of that scholars stand upright in the middle of society as people having authority as the applicants of Islamic shari'ah. The strength of the scholars influence proves that in the culture of Aceh people, all men, women and children are required to study *fardhu ain*.

To fullfill the needs, the scholars held a Islamic lecture in mosques, musalla or recitation centers. The learning process had been for a long time, it is currently stronger because of being supported by the government. In this case the Governor of Aceh has instructed '*maghrib mengaji*', and the instruction has been run for entire Aceh districts. The Government of Aceh through the regent/mayor has allocated funds from APBK for such activities on a regular basis, even the salary of recitals teachers has been paid regularly by the government.

Although the scolars have no power to prevent and prohibit anything that can be harmful the violence based on Shari'a law, but the role is the scoupe of the scholars. In the culture of the Aceh community, the scholars' leadership is still significant and is on public trust and attention. The power of the scholars are still rooted for Aceh people, especially in the village and its influence is still affecting and regulating the commnal life. Therefore, scholars' leadership still have charisma in society, so through the charism of scholars for Islamic

shari'ah value can be maintained. By the power of charism on the scholars is able to prevent and supervise the behavior of society that is prohibited in Islam.

Doing prevention by enforcing *aqidah* and providing Islamic knowledge to the community is more effective and efficient to bring public awareness to avoid damage and religious restrictions. However it is worried about the religious symbolism is more dominant in society than the rise of religious awareness. This will lead to violence in the name of religious orders. In the culture of the Aceh people at the past, for those who violate the religious law will get moral and social punishment. The punishment is very heavy and very embarrassing for family.

One of the punishment is expelled or isolated from the society and of course expelled from the hometown. The community is very afraid of being sanctioned especially if it violates the religious norms that moral sanction is given by the scholars' permission. So the community do maintain the norms of religion and shari'a in their life.

It is very popular in Aceh society for the existence of customs is very strong even almost as strong as religious teachings. In traditional Aceh society use custom law as one of the regulation and passed down from generation to generation. Then the scholars took a positive thing on the customs of Aceh islamic regulation in implementing the Islamic Shari'a to the community through customary rituals. So almost every customary ritual activity in society is led by the scholars. The strength of customs in the social order of Aceh people because custom has existed for long time before the teaching of Islam entered Aceh. The customs are not only embraced by the lower classes or the royal routine activities, but also have become the social institution and the legal system of the country within a long time in the Aceh society. Customs have become one of the important elements in the administration of in this country which is preserved and passed down from generation to generation and firmly held by society.

Although Aceh's customs have historical background with Hinduism culture, Buddhism. This is because the religion of Acehnese ancestors is Hindu-Buddhism, Animism and Dinamismie. These beliefs have shaped the pattern of life and customs of society. The scholars have been conducting the selection of all the customs of Acehnese, some customs can be justified by *syara'* and become reinforcement of Islamic *da'wah*. And some other which are incompatible with Islam have been rejected by the scholars because they can destroy the *aqidah ummah*. The customs are justified by the Islamic Shari'ah that is practiced by the scholars as an effort to implement Islamic Shari'a in society.

Snouck Horgrunye's theory stating Islamic law in Aceh is an Islamic law in based on Aceh's custom is rejected by the time. Among Aceh people in many ways customary problems are always adapted to Islamic Shari'a values. This means that the old customs in society have been used as a form of ritual with Islamic sharia value. The scholars have influenced the living system of society with an Islamic system. Although not all customs can be removed by incorporating elements of shari'a, but at least through the customary approach Islamic shari'a can be applied and united with people's lives. undoubtfully, we often see in the implementation of the sacred valuable customs in Aceh is closer to the life of the scholars, in addition, Aceh has its own customary stakeholder.

And, the use of custom means a law as implementation of Islamic law. According to Amirul Hadi, customs that have the legal character of Aceh in the 17th century are often found, although the customs referred to the rules of royal legislation and various other laws imposed by the court which are not related to Islamic law. Adigium *Adat bak Po Teumeruehom* illustrates that the custom here is the state rule. The highest state rules were on Sultan Iskandar Muda's authority. While *Hukom bak Syiah Kuala*, illustrates that the law is on the scholars' authority. The scholars referred to is a law holder namely *Qadhi Malikul Adil*, the *qadhi* at that time was named Tgk. Syiah Kuala. And the Law of adigium referred to sharia law.

Scholars has implemented the Shari'a of Islam through the constitutional system in Aceh. It was applied in the period of Islamic empires in Aceh both the Peureulak Islamic empire, the Islamic kingdom of Samudera Pasai to the Islamic empire of Aceh Darussalam. This system is considered very precise and powerful in implementing by utilizing the system of state administration and the power. scholars at that time were familiar as tenacious and skillfull and knowledgeable in *siyasa*h (politic), it could easily affect the constitutional system of the period. So that Islamic Shari'a was under a strong legal system called as *Qanun Meukuta Alam*. And at that time there was no separation between sharia law and state law and the law existed. From those all can be understood that the Islamic Shari'a is not separated study but merged in one umbrella law that is *Qanun Meukuta Alam*. *Qanun Meukuta Alam* which contains the laws and regulations of the kingdom of Aceh, especially in regarding to Islamic law qanun al-asyi accommodates four madzhab.

Qanun al-Asyi is made with the approval of scholars and even scholars involved in the preparation of the qanun. The content of the qanun clearly illustrates the influence of the scholars. Because the position of scholars are so strategic that's why it can be utilized its influence to ground Islamic sharia in Aceh by incorporating Islamic law in the law of the kingdom of Aceh Darussalam. The most important thing is that the scholars get an important position in the system of Islamic empires in Aceh, as well as scholars can utilize its

influence to implement the Shari'a of Islam in the Kingdom. Therefore, among the very basic policies of the sovereign is based on Islamic Shari'a values. The Sultan who held the reins of power in the Islamic Kingdom of Aceh was encouraging that every social activity should be based on the values of Islamic Shari'a.

Position in the Aceh government for each level is held a special position relating to religious affairs. At the provincial level there is the *Majelis Ulama*, at the regency/city level there is also the *Majelis Ulama*, to the sub-district as well as the *Majelis Ulama*, at the level of Settlement there is a settlement leader, at the village level there is a leader. Through these positions the scholars can implement the Shari'a of Islam to the people.

But after the central government uniformed the system of government for Indonesia, the leader of settlement and village leader had no longer power in the community in Aceh. It was then the role of scholars in the community at the settlement level and the village level decreased, since the leader of village was subordinate to the village head and the leader of settlement had no role.

The scholars have applied Islamic law through the implementation of education. Since the early arrival of Islam to Aceh, the scholars have established educational institutions in almost all regions. The education institution both functioning as a place of teaching and learning process as well as a place of inheritance of science. The educational institution also serves as the implementation area of Islamic Shari'a. Educational institutions starting to the process of teaching Islamic Shari'a and in this institutions were begun the idealism to apply Islamic law as an ideal life. The implementation of Shari'a in Aceh was begun from a model of application that has been applied in formal educational institutions. The oldest educational institution in Aceh is a dayah educational institution, and it appeared the encouragement so that Shari'a was appeared and established in Aceh.

Scholars who have a dayah, the implementation of Islamic law is applied in dayah for life system. All rules and disciplines of dayah arranged based on Islamic Shari'ah, all academic staffs in dayah had obligatory prayers in congregation, must uphold amar ma'ruf and nahi mungkar. All dayah residents are required to wear clothing that covers the nakedness, preserves courtesy words, and Islamic interaction relations, as well as penalties and punishment based on Islamic Shari'a values.

In addition, the scholars were also implementing Islamic law through the arts of culture. Forms of art that exist in Aceh based on Islamic Shari'a values, all art systems were governed by an Islamic system. The art of *sedati* and *saman*, the poem was composed of religious messages that could foster understanding of religion to the listener. Sometimes the poem consists of salawat to the Prophet, and a moral message that could give a love of Prophet and religion. A scholar, Tgk. Chiek Pante Kulu, applied Islamic law by writing a book in the form of *saga prang sabi*. For anyone who reads it will be fascinated with the beauty of the language, will be interested because of the composition of the sentence that delivers understanding to the high emotional sense.

These poems became the most popular media of *dakwah* attracted to the community and also as a form of implementation of Islamic law that can attract the attention of the people. If it looked backwards to life of the community in the past, poetry and nazam were an official tool of communication on important occasions, especially in the event of royal sermons, customs and religion. And it was a tool and media conveying religious messages that were very interesting, usually people created special events, read nazam in Aceh language that contains the message of religion, history, and art.

V. THE SCHOLAR RUNS GRADUALLY

Law No. 44 of 1999 on Aceh's privileges, which contains one of the key points is the role of the scholars. The role of scholars contained in the law is: Giving consideration to the government in determining regional policy. To strengthen the position, duties, functions and responsibilities of the MPU, it is written in qanun number 3 of 2000 on the Establishment of Organization and Working Procedures of the Provincial Consultative Assembly of Aceh. Regarding to the position of the MPU mentioned in chapter III point 3 that scholars (MPU) are domiciled as: 1. An independent substance and not depend on a government implementing agency, 2. They are as an equal partner of the Government and the DPRD. While the job description of MPU is set on chapter 4, that the MPU has the duty to give consideration, input, guidance and advice and suggestions in determining the Regional Policy from the aspect of Islamic Shari'ah, either to the government or to the community. To run that duty is regulated in chapter 5: MPU has the function of establishing legal decision, giving consideration whether requested or not asked to the Regional policy especially in the field of governance, development and fostering society and Islamic economic order. While the MPU's responsibilities are regulated in chapter 6, the MPU is responsible for the implementation of an honest, clean, and authoritative government as well as Islamic in the region.

Aceh's law and qanun have placed the position of scholars as equal partners of the government. Although not as a government executive, it however has become a historical record in Indonesia that scholars have become part of the constitutional system. If this law is well executed then it would be a courage currently to put the scholars as an essential element in the state system. If the role of the scholars really can be implemented as mandated by the state law and qanun law, and scholars have a good knowledge so the history of Islamic glory ever etched might re-appear in Aceh.

Provincial MPU has carried out its duties based on the mandate of the law that gives consideration to the government to determine the policies that should be based on the values of Islamic Shari'a. Similarly, all MPU of regency/city in Aceh has run its duty in giving consideration to the government in determining the policy of Region. But not all governments in the regency / city implement the considerations given by scholars.

The authority of the MPU only gives consideration and advice to the government for requested or not requested. There is no MPU's authority to compel the government to obey all considerations given by the scholars. Although the role of the MPU has been poured into Aceh's qanun law but scholars have no stronger authority to perform its role in line to the expectations. Because the role of scholars is only limited to give consideration to the government for the development, especially in the field of religion that is being done by the government itself including the spiritual psychic development of the implementation of Islamic Shari'a.

If the government does not carry out the considerations and suggestions that have been given by the scholars, it will be fine, because there are no rules governing it. And scholars are not legally entitled to rebuke the government if it does not run qanun law which has been endorsed by the DPR, also can not protest to the government if they do not run the Islamic Shari'a, because it is not regulated in qanun. Furthermore, if there are Islamic Shari'a qanun law or other qanun which are not based on Islamic Shari'a, in qanun about some scholars do not get authority to the scholars to cancel, revise or correct the qanun law. This is the weakness of the MPU scholars position in running its role.

The various views of scholars on the role of scholars itself in qanun number 3 is actually on three sides. First, on the qanun side itself which does not authorize the more binding scholars. Second, on the government's attention to the qanun. And thirdly, on the government's attention to the role of scholars in giving consideration to Regional policy. To be able to run the role of scholars based on the qanun, then all parties including the government must understand deeply the position and function of the qanun.

The existence of the role of scholars in the state law and qanun law in Aceh has two views. First, it is negative, because the existence of the scholars is now highly dependent on the government. Furthermore, the scholars mindset are controlled tightly with rules, cannot be free to develop their knowledge. In addition, the rules of the qanun do not give the scholars the right to be independent and self-regulate like any other institution. The scholars' dependence on the government will actually decrease the Islamic Shari'a development. Secondly, the inclusion of the role of scholars in legislation has a positive side, because the presence of scholars in the state system is expected to give a new color in daily life of the state.

VI. CONCLUSION

The implementation of Islamic Shari'ah in Aceh especially Banda Aceh City according to the perception of religious scholars (scholars), impressed to have not been implemented maximally based on the mandate of Qanun no. 11 of 2002 concerning worship and shari'ah, the application of Islamic Shari'a according to the general impression of society, it is not significantly based on the principles and the objectives of the implementation of shari'ah, its application tend to be political and symbolic, it is only limited by violence of women's clothing, caning law against violators of shari'a.

The social living conditions of Banda Aceh people are not significantly different from the conditions before and after the legal existence of the Islamic Sharia, because the implementation of the Shari'a does not show maximum results. Although in several interviews of authors with religious expert, society and scholars leaders in Banda Aceh City in particular and Aceh scholars in general, some of them said that the issue of the implementation of Islamic Shari'a in Banda Aceh has varied responses. Some say that the shari'ah of Islam is significantly increasing, and this affects the social conditions of society closer to the practices of shari'ah itself.

But some of them also argue if the implementation of Islamic Shari'ah in Banda Aceh city still requires more intense rules. This kind of opinion is based on the starting point of the discourse on the application of Islamic Shari'ah from the first to the present.

REFERENCES

- [1] Abdullah Ahmed An-Na'im, *Islam dan Negara Sekuler: Menegoiskan Masa Depan Syariah*, Bandung: Mizan, 2007.
- [2] Al Yasa' Abubakar, *Syariat Islam di Provinsi Aceh Paradigma Kebijakan dan kegiatan*, Banda Aceh: Dinas Syariat Islam Provinsi Nanggroe Aceh Darussalam, 2005.
- [3] Al-Asmawi, Muhammad Said, *Nalar Kritis Syari'ah*, Yogyakarta, LKIS, 2004 *Problematika & Penerapan Syari'at Islam dalam Undang-Undang*, terjemahan, Jakarta, Gaung Persada Press., 2005.
- [4] Al-Maliki, Muhammad Alwi, *Syariat Islam: Pergumulan Teks dan Realitas*, terjemahan, Yogyakarta, elSAQ Press, 2003.
- [5] An-Na'im, Abdullah Ahmed, *Dekonstruksi Syari'ah Wacana Kebebasan Sipil, Hak asasi Manusia, dan Hubungan Internasional dalam Islam*, terjemahan, Yogyakarta: LKiS, 1994. "Syariat Islam Tidak Bisa Dipaksakan melalui Negara", dalam *Harian Kompas*, 6 Januari 2003, Jakarta, 2003.

- [6] Awwas, Irfan Suryahardi, *Risalah Kongres Mujahidin I dan Penegakan Syari'ah Islam*, Yogyakarta, Wihdah Press, 2001.
- [7] Ba'abduh, Al-Ustadz Luqman bin Muhammad, *Sebuah Tinjauan Syari'at, Mereka Adalah Teroris, Bantahan terhadap Buku Aku melawan Teroris karya Imam Samudra*, Malang, Pustaka Qaulan Sadida, 2005.
- [8] Burhanuddin, editor, *Syari'at Islam; Pandangan Muslim Liberal*, Jakarta, Jaringan Islam Liberal dan Asia Foundation, 2003.
- [9] Darbalah, Ishamuddin dan 'Ashim Abdul Majid, *Menolak Syari'at Islam dalam Perspektif Hukum Syar'i*, Solo; Pustaka Al-Alaq, 2004.
- [10] Daud Rasyid, "Formalisasi Syariat Islam Di Serambi Makkah" *Syariat Islam Yes Syariat Islam No Dilema Piagam Jakarta dalam Amandemen UUD 1945*, Jakarta: Paramadina, 2001.
- [11] Hizbut Tahrir Indonesia, *Menegakkan Syariat Islam*, Jakarta, Hizbut Tahrir Indonesia, 2002.
- [12] Karim, Khalil Abdul, *Historisitas Syariat Islam*, terjemahan, Yogyakarta, Pustaka Alif, 2003. Undang-Undang Hukum Pidana Republik Indonesia Disesuaikan dengan Syariat Islam, Yogyakarta: Markaz Majelis Mujahidin, 2002. Kongres Mujahidin II, untuk Penegakan Syariat Islam, Yogyakarta, Markaz Majelis Mujahidin, 2003. Pedoman Umum & Pelaksanaan Majelis Mujahidin untuk Penegakan Syariat Islam, Yogyakarta: Dewan Pimpinan Majelis Mujahidin, 2003.
- [13] Majelis Mujahidin Indonesia, *Usulan Amandeman UUD '45 Disesuaikan dengan Syariat Islam*, Yogyakarta: Markaz Pusat Majelis Mujahidin, 2001.
- [14] Masykuri Abdillah, *Formalisasi Syariat Islam di Indonesia: Sebuah Pergulatan yang Tak pernah Tuntas*, Jakarta: Renaisan, 2005.
- [15] Muhammad Thalal, dkk, *Ulama Aceh Dalam Melahirkan Human Resource Di Aceh*, (Banda Aceh, 2010)
- [16] Mu'ti, Abdul dan Ahmad Najib Burhani, editor, *Islam Tanpa Syariat*, Jakarta: Grafindo Khazanah Ilmu, 2005.
- [17] Pradja, Juhaya S., "Fikih dan Syariat", dalam Taufik Abdullah, editor, *Ensiklopedi Tematis Dunia Islam: Pemikiran dan Peradaban*, Jilid 4, Jakarta: PT Ichtisar Baru Van Hoeve, 2002.
- [18] Soufyan Ibrahim, dkk, *Toleransi dan Kiprah Perempuan dalam Penerapan Syariat Islam*, (Banda Aceh, Dinas Syari'at Islam Aceh, 2009), 141.
- [19] Soemadiningrat, H.R., Otje Salman, dkk., *Menyikapi dan Memahami Syariat Islam Secara Global dan Nasional: Dinamika Peradaban, Gagasan, dan Sketsa Tematis*, Bandung, Refika Aditama, 2004.
- [20] Syahrizal (editor), *Kontekstualisasi Syariat Islam di Nanggroe Aceh Darussalam*, Banda Aceh: Ar-Raniry Press, 2004.
- [21] Syamsul Rijal, *Syariat Islam di Aceh Problematika Implementasi Syari'ah*, (Banda Aceh, Dinas Syariat Islam, Provinsi Aceh, 2009), 145.
- [22] Taufik Adnan Amal dan Syamsul Rizal Panggabean, *Politik Syariat Islam: dari Indonesia Hingga Nigeria*, Jakarta: Pustaka Alvabet, 2004.
- [23] Rusjdi Ali Muhammad, *Penelitian dan Penyusunan Naskah tentang Pelaksanaan Syariat*, Banda Aceh: Dinas Syariat Islam Pemerintah Aceh, 2011. *Revitalisasi Syariat Islam di Aceh: Problem Solusi dan Implementasi Menuju Pelaksanaan Hukum Islam di Nanggroe Aceh Darussalam*, Jakarta: Logos wacana Ilmu, 2003.

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