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Research paper

The Whip Law, Implementing Shari'a Formalization at Local Community: The Case Of Padang Village In Bulukumba, South Sulawesi

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Abstract

Indonesia experienced a major change after the reformation. Various new religious organizations emerged followed by the movement of formalization and politicization of religion. The regions seem to compete in issuing Shari'a regulations. Even the formalization of the religion is not only applicable at the district level but also in certain areas have reached the village level in the form of Muslim Villages. One of the Muslim Villages in South Sulawesi is the Muslim Village of Padang in Bulukumba District. This village makes a Village Regulation on the Law of Whip. The aim of the research is to understand the existence, sustainability and the supporting factors of the caning law. The research finds the implementation of Whip Law as one of the instruments supporting the implementation of Islamic Shari'a in Padang Village only runs at the beginning of its enactment. Some of the factors causing the failure of the step are changes in leadership and priority program differences by local leaders, political competition at the village government level and lack of cultural support from the local community.

Keywords: *Whip Law; Padang Village; Shari'a Formalization; South Sulawesi*

1. Introduction

The beginning of reform in Indonesia is marked by the spirit of religious formalization. The formalization of religion is intended to bind the implementation of Islamic teachings through rules under the laws or district regulations [Perda]. Thus, the implementation of the Shari'a is considered more effective because it can be controlled by the government. The regions seem to compete in issuing Shari'a regulations.

The spirit of formalization of religion is not only applicable at the district level but in certain areas have reached the village level. The village authority established the enforcement of Shari'a through Village Regulation [Perdes]. That is what the Padang Village in Bulukumba District, South Sulawesi, made. This village issued the Muslim Village Regulation No. 05 of 2006 on the Implementation of the Whip Law. The Whip Law for Shari'a violators was imposed on the perpetrators of adultery, drinkers of alcoholic beverages and other additives, gambling, and persecution. Suddenly this village became famous for this controversial implementation of Islamic Law. There are no rules in Indonesia that have applied such provisions. Various circles come to the Padang Village to look closely at the unique religious phenomenon. How the characteristics,continuity and supporting factors of the Muslim Village Regulation are the main objectives of this study.

2. Literature review

2.1. Cultural Islam

The mainstream of Islam in South Sulawesi can actually be categorized as cultural Islam. The principle of cultural Islam are *tawassuth* that is moderate attitude, middle attitude, mediocrity, not extreme. In addition, also known as the principle of *at-tawazun*, which can be interpreted as balanced, not one-sided, no excess of an element or lack of other elements. *Al-i'tidal*, is a just and consistent attitude in all things. *At-tasamuh* is the attitude of tolerance and mutual respect. These principles are related to *sunnatullah* [the law of Allah] which necessitates the diversity, plurality of His creatures [1].

This type of Islam is also called Native Islam and recent years introduced as Islam Nusantara. The term Native Islam [*Islam Pribumi*] was popularized by Abdurahman Wahid to refer to a friendly, tolerant and moderate Islam, not dogmatic, non-formalistic, contextual, respectful of tradition, and prioritizing substance from symbols. Indigenous Islam and the like, are intended to provide opportunities for diversity of interpretations in the practice of religious life in each different region. Thus, Islam is no longer viewed as single but plural appearances [2]. According to his confession, he was not the first to initiate, but a continuation of Walisongo's strategic practice of Islam. With the indigenous practice, Walisongo managed to Islamize the land of Java, without having to confront and experience tension with the local culture [3].

With the indigenization of God's revelation understood by considering contextual factors, including legal awareness and sense of justice. What he calls "Islamic indigenization" is an attempt to "reconcile" Islam with local cultural forces, so that culture is not

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lost. Indigenization is seen as a necessity, not an attempt to avoid polarization between religion and local culture. The indigenization is also not to subordinate Islam to the local culture, because in the indigenization of Islam must remain on its Islamic nature. Indigenization is also not a syncretism, for it considers only local needs in formulating religious laws, without changing the law itself. Nor does it leave norms for culture, but that norms accommodate the needs of the culture by utilizing the opportunities provided by variations in *nash* [religious text] comprehension [4].

The name Islam Nusantara first introduced by Azra. He calls Islam Nusantara as a feature of Indonesian Islam which is experiencing an evolutionary Islamization process. The Islamization of different ethnic groups living in different areas is not really a single and uniform conversion, but a long process toward a greater compromise on Islamic exclusivity, a process that can be clearly observed, continues to this day. Thus acceptance of Islam is more accurately called adhesion than conversion [5, 6]. Thus, cultural Islam, Native Islam, and Islam Nusantara conceived the same meaning.

The latest development, cultural Islam is re-emphasized by Muhammadiyah through what is called "cultural da'wah". In 2002, Muhammadiyah specifically raised the theme along with its strategy and methodology. The cultural da'wah according to Muhammadiyah is a *da'wah* process that is adapted to cultural diversity by conducting creative and innovative cultural dialogues without eliminating the normative aspects of Islam [7]. In the context of its relation with the State, cultural Islam puts forward Islam as the value and ethics that become the basis in the practice of nation and state. Cultural Islam does not impose the teachings of Islam formulated into the structure of the State. If Islam blooms and lives in the culture of society, it will naturally become spririt in regulating the State.

2.2. The Integration Of Islam And Local Culture

The hallmark of cultural Islam in South Sulawesi lies in the integration of Islam into local cultural system called *panngaderreng*. It is a cultural system which includes [1] *adeq* as subsystem of government; [2] *rapang* as subsystem of knowledge; [3] *bicara* as subsystem of justice; and [4] *wariq* as subsystem of kinship and social structure. When Islam was accepted as state religion, then *saraq* [shari'a] was adopted into the fifth sub-system in the *panngaderreng*. In general, *adaq* can be interpreted as customs, while the local term of shari'a is *saraq*. *Saraq* and *adaq* relationships formulated in local principle : *mappakarajai sarae ri ade'e, mappakalebbi'i ade'e ri sara'e, temmakullei massera sara'e sibawa ade'e* [shari'a respects customs, customs respects shari'a, custom and shari'a can not be separated [8]. Such constellations are conducted to avoid conflicts of Islam and culture.

Such a practice is a fertile seeding ground for a sufism-oriented Islam. According to Andaya [9], the sufism approach is considered more appropriate to the mind of South Sulawesi people. Sufism is the right choice to compromise with local culture. Nevertheless, the Sufism approach can not be interpreted as stand alone, apart from *aqidah* [Islamic doctrine] and shari'a [Islamic Law]. Historian notes the spread of Islam in South Sulawesi does not separate those aspects of Islam. That was what pioneering *Ulamas* did, Dato ri Bandang in the Kingdom of Gowa, Dato Patimang in the Kingdom of Luwu, and Datok ri Tiro in Bulukumba area.[8] Aspects of sufism can be a counterbalance to the stiffness of shari'a oritentasion. In that way, Islam integrates itself first before it becomes a unifying factor of the local community.

As Shihab [10] said, the *da'is* [preacher] first introduce *tauhid* [doctrine of the unity of God], after that, they show the best way to actualize themselves in the process of transforming spirituality and religious morality. Through good exemplification, education is waged in order to establish commendable attributes and escape from disgraceful qualities. Although they do not proclaim the tradition of sufism openly, in carrying out the da'wah they practice Sunni mysticism tradition. Such Islamic configurations crystallize on the figure of Sheikh Yusuf [1626-1699] who was known as an Islamic scholar [Ulama] , *sufi*, and also a hero. As a scholar, he was appointed *mufti* [state religious advisor] to the Sultanate of Banten. As a *sufi* he held the title of *Sheikh Yusuf Tajul Khalwati*, the crown of Halwatiyah, a popular sufism sect in Islam World. But he was not a type of *sufi* who isolated himself for personal "pleasure". He fought against the Company untill he was exiled to Ceylon and Cape Town, South Africa [11].

The integration concept of Islam based on the reality of local culture makes possible to the integration of the community as well. All practices of life along life cycle lead to strengthening the idea of unity in the local people. The rites of the passages which in the local context is called *selamatan* is a social binding without considering the primordial background, to help and support each other when happiness is being achieved or unfortunate is being experienced. The ceremonial format is left in accordance with tradition and cultural schemes that have been standard but the substance is filled with the Islamic spirit. A more substantive implication, to be a good Islam does not have to be done with other Islamic groups like Arabic tradition, as [4] said, "Islamization is not Arabization".

Enculturation of cultural Islam rely on the conventional networks of *ulama*, *pesantren* [Islamic bording school], *mubalig* [Islamic preacher] and *parewa saraq* [religious servants]. Ulama becomes important because in addition to the central figure in *pesantren* this figure is also a mediator between Islam and local culture. The cultural position of the ulama is legitimized through the recognition of society by the tittle of *Gurutta* or *Anregurutta* which literally means our teacher. Such acknowledgment shows the strong emotional connection of the clergy to the community.

Meanwhile, *pesantren* is important to see its function as a centre of *ulama* cadre and a place where the sources of Islamic and cultural learning are mixed using the reference of classical books and practices under the control of *Gurutta* as a reference of the behavior of santri and society. The *pesantren* community is double functioning, besides undergoing the *pesantren* educational process also become the perpetrator of public service in ritual and religious ceremonies[12]. *Pondok pesantren* in South Sulawesi, which has interrelated institutional genealogy and scholarship also strengthens the cultural Islam to the remote area.

2.3. Shari'a Formalization

Theoretically, formalilization of Shari'a is a mode of politics of recognition. According to Taylor [13], number of strands in contemporary politics turn on the need, sometimes demand, for recognition. The need, is one of the driving forces behind nationalist movements in politics. And the demand comes to the fore in a number of ways in today's politics, on behalf of minority or subaltern groups. He further said, the demand for recognition is given urgency by the supposed links between recognition and identity. The term identity designates something like a person's understanding of who they are, of their fundamental defining characteristics as a human being. Identity is partly shaped by recognition or its absence. Nonrecognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being.

Although Indonesian Muslims are the majority in identity, Islamists feel they have not been adequately accommodated in the process of nation and state development. Therefore, in the course of the history always appear various efforts to get recognition in the form of application of shari'a. Shari'a is the rules that are sourced and become part of Islam. In understanding what is meant by Shari'a it is necessary to clarify its meaning, because sometimes Shari'a is defined as the same as *Fiqh* or *Qanun*. Shari'a in the sense of Islam is anything that Allah revealed and descended as a rule in human life to achieve the happiness of life in the world and the hereafter [14].

Fiqih is defined as an activity to understand the texts or theorems in the *Al-Qur'an* and *Hadith*. If the *Shari'a* is identical with Allah's provision that contains the absolute truth then *Fiqih* is an attempt to understand the provision. *Qanun* is a collection of rules

of law, so if we call with Qanun means a law based on the interpretation or understanding of Islam. Al-Mawardy himself interpreted it with the Constitutional Law in Islam. According to Al-Syatibi the purpose of the Shari'a [*maqasid al-shari'a*] is directed to the benefit of the people [*al-maslahah al-ammah*] and that the burden of religious obligation must be according to ability and limitations of human being [15]. In this paper the theory of *maqasid al-shariah* from al-Syatibi is more appropriate to apply.

Although Islam in Indonesia originated from a relatively similar way of religion, but in its development until now has emerged various typologies of Islamic thought. One of those associated with this discourse is formalistic typology. A formalistic typology is a mode of thought that prioritizes strict adherence to Islamic teaching formats. In the political context, this mode shows attention to imagined Islamic polity, such as the Islamic political system, Islamic parties, symbolic expression and Islamic idioms, societies, Islamic culture, and the experimentation of Islamic state system. Therefore, the formalists strongly emphasize ideologization or politicization that leads to formal religious symbolism. The relatively preserved symbolic movement, for example, is the recognition of the Jakarta Charter in the constitution of the Republic of Indonesia [16].

In Indonesia itself the struggle between Islam and the state, has been going on for quite a long time. Since the country began to reach the gate of independence, the struggle began to surface. At its height when there was a serious debate about the basis of the country, at that time some Muslims tried to make the word "Islamic Shari'a" must appear explicitly in the basis of the country. These people wanted the word embodied in the Jakarta Charter [the obligation to observe the Shari'a of Islam for its adherents] incorporated into the basis of the country.

The process of struggle between "Islamic Shari'a" and the State of Indonesia also has implications in regions level. The regions themselves have room to issue various policies with the emergence of the Law on Regional Autonomy, especially Rule No. 22 of 1999 on Regional Government, and Rule No. 25 of 1999 on Fiscal Balance between Central Government and Local Government. At least, this Rule has encouraged local governments to regulate their own territories by making various local regulations. This space is also used by local governments to formulate Perda-Perda "Shari'a Islam" [Regency Regulation on Islamic Law].

The beginning of the reformation era was marked by the emergence of new organizations including in South Sulawesi. One of them was *Komite Persiapan Penegakan Syariat Islam [KPPSI]* [Committee for Preparation of Islamic Shari'a Enactment]. KPPSI encouraged the shari'a formalization movement in South Sulawesi. The movement was immediately responded by the issuing of Sharia Regional Regulations in the districts. Admittedly, formalization and structural movement was taken because seeing the cultural appraoch built by Nahdlatul Ulama and Muhammadiyah did not much change the situation. The vision embodied was the realization of South Sulawesi as a special autonomous region for Islamic Shari'a enforcement [12].

3. Methodology

The research of caning law enforcement in Padang Village was done twice. First in 2006 when the regulation began to be implemented in the village. In 2016, or ten years later, I returned to the village to see the sustainability of the village rules. The research design is qualitative with focus on the execution of caning, sustainability of the law, and local community support. The aim of the research is to know the characteristics of the caning law, to know the sustainability and the supporting factors or the inhibiting factors. Village leadership in two different periods was still in the hands of the same person. My assumption is that by using two different time periods the changes that have taken place over the next ten years will be easily detected.

Methods of data collection are in-depth interviews, observations and document studies. Interviews with local village chief, local religious leaders, and community leaders both at the village and district levels. To facilitate the collection of data, I was assisted each of the two researches by assistants from local community members, both in the first phase [2006] and in the advanced stage [2016]. The data collected from interviews, field observations, and documents are then analyzed using descriptive and interactive analysis methods.

4. Results and Findings

Bulukumba Local government was one of the most serious region issuing the Shari'a Local Regulation [Perda] through the so-called Crash Religious Program [2002/2003]. Four Perda issued, consecutively : Perda No. 02 of 2003 on the Management of *Zakat* on Profession, *Infaq* and *Shadaqah*; Perda No. 03 of 2002 on Prohibition, Control, Order and Sale of Liquor; Perda No. 05 of 2003 on Muslim and Muslim Woman's Clothing; and Perda No. 06 of 2003 on Reading *Al-Qur'an* Fluently for Students and Bride Candidates[17] .

The follow-up of local regulations was the determination of the Muslim Village Model with Shari'a implementation in totality. A total of 12 villages / *kelurahan* selected as a pilot scattered in ten subdistricts in Bulukumba. The indicators of Muslim Village consisting of [1] clean of alcoholic beverages, [2] availability of mosque library and Al-Qur'an in homes, [3] presence of *majlis taklim* [religious learning gathering] in mosques, [4] using Muslim dress, [5] *zakat* paying obidience, [6] availability of religious councelling, [7] mosque posperity, [8] books of marriage order, [9] orphan donation, and [10] clean Friday [17].

4.1. Padang Muslim Village

This village is considered young age, the division of Bonto Macinna Village, Gantarang Subdistrict, Bulukumba Regency. It became a definitive one in 1998. In general, there is no difference with other villages. It is located around seven kilometers from the subdistrict capital. The main source of people's income is from rice. Only 29 percent [1.051 people] out of a total of 3.654 people work in the agricultural sector. More than 30 percent of them are farm laborers. The area of paddy fields and plantations is owned by only a small group of the village elites. As many as 24 percent of the 984 households belong to poor families. The economic conditions correlate with the level of education of citizens. There are still 28 percent of adult villagers who do not complete primary school [18].

The condition of the village has been touched by technology, such as electricity, television and radio in almost every home, as well as cars and motorcycles also appear pacing the village road. However, the village typical is still felt. Birds chirping in the morning and the villager's friendly smile every time we meet is a common sight. They are a humble farming community, long ago, the same as other villages in the region. In this village, people are still very homogeneous, even can be said one clump. Homogeneous not only in terms of work, but also of religion and ethnicity. Religious community in this area is 100 percent Muslim from Bugis-Konjo ethnicity.

4.2. The Existence of Village Law

The village changed instantly when applying the Whip Law as a Village Rule. In addition to referring to the Shari'a regulation at the Regency level this village issued the Village Regulation [Peraturan Desa or Perdes] No. 05 of 2006 on the Implementation of the Whip Law. The Law for a Shari'a offender is imposed on the perpetrators of the fornication, drinkers of alcoholic beverages and other additives, gambling, and acts of persecution. The sanctions are 100 lashes for adulterers, 80 lashes for those who slander someone to commit adultery, 40 lashes for gamblers and liquor drinker and 20 lashes for persecution. In this Islamic village, the implementation of the Shari'a is supervised by the Supervisory Team for the Implementation of Sharia Regulation. The team con-

sisting of community leaders, religious figures, police and civil servants oversee the community in the Islamic village in running its Shari'a.

Differences with other villages will also be felt when we enter in the middle of this village. Houses' owners and street names were written in Arabic letters. In some places displayed posters with writing invited people to perform prayers and pay *zakat* [alms giving]. One of the closely watched was the Muslim dress for women. The village head would not even serve the women who come to the village office if they do not cover their heads. On the wall of the village office a note read : "Muslim women guests are not served unless using Muslimah clothing, except Non-Muslims". In front of the village office was also made a village monument that contained the Village Regulation [Perdes] No. 5 of 2006 on the Whip Law for people who violate the rules of Islamic Shari'a.

According to Village Head, residents who have been sentenced to flogging about five people, for adultery, persecution, and liquor drinkers. The tool used as a whip is rattan and that the village chief himself who executed the caning. A resident admitted, "my younger brother, now in Japan, had been hit by the head of the village because of drinking. He and his friends were taken to the village head's house on the night of the incident. My younger brother was beaten by reason of warning, as a reprimand".Among people who have been flogged, some have left the village for a while in shame.

4.3. Failed Experiment

The whipping sentence is no longer in effect two or three years after it is enacted. Andi Rukman, the Village Head, said, " Now, never applied anymore, they [community] ask to be handed over to the police only. Indeed, one of the dictums in the rule states that people are reluctant to deal with the police and get punished according to the State Criminal Law. Therefore, the caning sentence applied as an alternative only". In fact, from the beginning of the legislation, caning is an initiative of the village elites, and is not entirely the result of community agreement. The village religious leader, for instance, denied the existence Syari'a regulatation. "As far as I know in this village there is no Perdes [village regulation] on Islamic Shari'a, there is only the Islamic Sharia Law, around 2006, began pioneered about the prohibition of drinking alcohol, as well as *zakat*, and about drinking liquor".

Village Regulation on Whip Law is not only new but also get the spotlight from various circles. The reason, the contains something out of the living law, or laws that live in society. There is no historical whipping law in the tradition of enforcing local legal norms. Thus, from the point of cultural legitimation, caning can not find the basis and cultural basis. As a result, the legislation itself is perceived as something foreign that is attempted to be introduced into the legal system of local society. The whip law is more a part of textually applying what is understood from Islamic teachings about the caning for several types of violation of Shari'a. The effort, was inaugurated in the euphoria spirit of the formal enforcement of Shari'a, by a local figure. He, the village head, takes advantage of the legitimacy of local culture in terms of the still-strong social strata.

Unfortunately, the process of legislation into village regulations tends to ignore the cultural process, so the result can not be used as a representation of the local community. Thus, it can be said that the failure of formal Shari'a enforcement in local communities is caused, among others, by the factor of the legislative process that ignores cultural processes.The lack of support from citizens was also caused by the implementation of the law which was considered less objective. In addition to the lack of adequate human resources support, there was the impression the sole player was the village head including the executor of the caning itself. A resident whose member of his family was punished by whip said that he did not mind his relative whipped because he was guilty but must treat everyone in the same way indiscriminately.

The change of regional leadership influenced the dynamics of the enforcement of Islamic law formally. The regent who made the "religion as a crash program" was replaced by another regent with different regency vision and development orientation. The development of the religious field depends on the viewpoint of subsequent regional leader. Initial leader that emphasized the formalization of the Shari'a, replaced by district leaders with an orientation to the application of Islamic teachings that are more likely to be substantial, not formal. A local religious leader, said, "everything changed after the change of regent. So it depends on the boss, because if the *bupati* [regent] speaks all under him follow, from the village heads to the village priests". The so-called cultural or substantive Islam without formalization is again the choice of leaders at the local level. Andi Rukman, the acting village head, did not mention anything about the enforcement of Islamic Shari'a, something that he encouraged first. He even peeled about *makrifat* and emphasized *da'wah* was not to be done by force. A preacher must fix the *niyat* [intention] first. This effort should not be tied to any practical interest. With a good *niyat* a person will feel calm and not frustrated.

Politics in the Padang Village also experienced its own dynamics. The village head who became the pioneer of Shari'a village had to end his tenure after serving two periods. The spirit of the villagers competing in the election was quite high. There were eight candidates who fought over the chair of the village head. One of whom was the wife of the village head himself. The wife of the village chief came out as the winner in the election. The next process was marked by the protests of other candidates and supporters. They did not accept the victory because it was considered a fraud in the voting process. "The office was destroyed, the door was burned and the glass of the office was thrown in by demonstrators. His wife is elected. Her name is Ibu Kuspawati, the difference is over 100 votes". However, the *Bupati* kept inaugurating the elected village head and has served for about two years. Competitors then sued the decision to the State Administrative Court. As a result, the election result of the village head is deemed flawed and must be re-election. The impact of local political competition made attention focused on enforcing the *shari'a* to be abandoned. "Padang has to start from the ground level again" said one of local figures.

5. Conclusion

The implementation of Islamic Shari'a in Padang Village has decreased qualitatively and quantitatively than in the early implementation of the pilot programs years earlier. Indicators of the Muslim village that were made to measure the programs declined. Implementation of Whip Law as one of the instruments supporting the implementation of Islamic *Shari'a* in Padang Village was not anymore implemented, although it has never been revoked.

The changes that have occurred in relation to these issues over the past ten years have led to conditions before the Muslim village program launched. Some of the factors causing waning of formal Islamic law enforcement in the research area are the disposition and incontinuity of the Islamic Shari'a program in the alternate *Bupati* [rejent] priority program. For another, the shift in Islamic issues from Formal Islam to Cultural Islam in the local central figure due to a rethinking of the conceptual tensions and operational issues of formal Shari'a. The political dynamics at the village level relating to the election politics of village leadership is also one of the reasons for the neglect of the enforcement of shari'a law. Inconsistencies in implementation also become other factors affect the weakening of the enforcement of Shari'a. Finally, the lack of cultural support about the idea and the process of execution of the caning law is also another factor.

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