

The Reposition of the Ulama Aceh Institution's Role in Socio-Legal Studies

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This research was done, not only to maintain the integrity of the Republic of Indonesia (Unitary Republic of Indonesia), but also to strengthen Indonesia's legal system as a whole. Apart from this, Indonesian people today are still living a secular life, which is a problem that impacts on various legal issues requiring religious solutions. Concisely, a cleric must have a responsibility with the demands of religion to meet the needs of the community. The function of religion which is articulated and aggregated by the ulama is very important for the realisation of the nomocracy system in Indonesia. This research used the socio-legal-historical, as well as anthropological study as a legal method. It is concluded that the nomocracy system in Indonesian constitutional law is currently heavily influenced by liberal democracy.

Key words: *Ulama, Aceh, Socio-legal-study.*

Introduction

The introduction of regional government autonomy has been recently discussed and examined by practitioners within the community. Based on the provisions of Article 18A and Article 18B of the Constitution in 1945, the state gives privileges to the Regional Government in just about all rights as a special region. Aceh is one of the regions in Indonesia that is given the privilege, especially in the case of indigenous institutions that have been used as a legitimate regional institution based on the statutory regulations.

Historically, Aceh province was formed under the law No. 24 of 1956 (UU No. 24 IN 1956). As a privileged region which has given special autonomy as mentioned in (article 1 Decree of the Prime Minister of the Republic of Indonesia No. 1/MISI/1959), there are three institutions established in Aceh that have been maintained until now. The existence is recognised in the constitution No. 44 in 1999; those are Aceh Customary and Cultural Institutions (LAKA) which is also known as Aceh Customary Assembly (MAA), Muslim Scholar (Ulama) Consultative Assembly (MPU) and Regional Education Assembly (MPD). The special autonomy of Aceh became known as The Nangroe Aceh Darussalam province, was later replaced by Law number 11 in 2006.

The generational customs of the people in Aceh, although very diverse and widely practiced have very strong ties to the Aceh society, and do not go against the Islamic religion and the Islamic law or the sharia in Aceh (Khalsiah, 2018). The most popular slogan used by Aceh is clearly written in the explanation of UU No. 11 in 2006 namely: “Adat bak Po Teumeureuhom; hukom bak Syiah Kuala; Qanun bak Putro Phang; Reusam bak Laksamana” which means: the customs are from Sultan (king), the (islamic) law is from Ulama (Muslim Scholar), Constitutions are from Putro Phang (Legislative Assembly), and Diplomatic matters are from Laksamana (Ministry of Defense). From the slogan, it is clearly showed that the Aceh is a region that holds high respect for customs, law and religion as portrayed in the role of Ulama. All of these functions presented in three customary institutions are recognised in the constitution, to determine, the policy in the implementation of development and community involvement.

The role of indigenous institutions in Aceh is highly respected by the public. All the words and rules issued by the customary institutions are obeyed well. However, the fact is that the role of customary institutions becomes unclear and blurred during the period of validity of Law No. 5 in 1974 of Local Regulation,. Based on the consideration of the importance of indigenous institutions existence, it is necessary to do research about the reposition of Institutions' role in Aceh and examine these important questions:

“What is the present position and primary role of the institution of Aceh Ulama?” and “What is the function and purpose of the Ulama Institute in Socio-legal study?”

Literature Review

To answer the problem and deepen the directive view of the position and function of the customary institution implementing the special autonomy in the Aceh province, this paper is legally based on the Organ theory by Logemann (1954), and takes into consideration the fundamental meaning of decentralisation in the country of unity and privilege given to Aceh, in especially the role of indigenous stakeholders. The Organ theory states that the country is an organisation, either a department organisation or a collection of offices and power

organisations. In the formulation of constitutional law, Logemann mentioned that the constitutional law is the law of the State organisation. The law of the State organisation or in other words the law concerning its organisation (governance) of the State, which can be divided into two groups, namely: (1) The Law on matters of legal personality from the offices of the State and from that group of departments may be further incorporated in one legal personality. (2) The law of the State's power environment, which is an environment in which the rule of law of the country has the power to apply, in the form of a certain human environment, a certain area environment, a certain time environment.

Logemann (1954) saw the ruling law as a *persoonleer* and a *gebiedsleer* (about Person) while the governing law was seen as a *Leer der (Bijzondere) Rechtsbetrekkingen*. The core of Logemann's opinion is that the law of governing is teaching on competence (*competentieleer*). The governing law of the government can be said to be the doctrine of the privileged legal relationship (*leer van bijzondere rechtsbetrekkingen*). Logemann's line of opinion is based on the opinion of Van Vollenhoven. This means that the different size made by Logemann coincides with the differentiator size made by Van Vollenhoven, but it is not entirely the same. Logemann presents a more assertive outline than Van Vollenhoven. The provision of regional autonomy in Indonesia is conducted on a decentralized basis through a power emission system, which further. Manan (1945) mentioned that, "... The emission of power according to decentralisation is the fulfillment in the framework of the state arrangement or organisation not in the arrangement or organisation of government. Because it is concerned with the State organisation, the emission of power according to decentralisation is constitutional or in the field of State".

The views on the above of course have to do with the country's organisational theory presented by Logemann. Various policies have been issued by the central government in the past that often felt unfair by the Acehese people who caused insurgency in all parts of Aceh. If this is not responded wisely and prudent, it can threaten the integrity of the unitary Republic of Indonesia as contained in article 1 paragraph (1) Constitution 1945. One of the very major roles returned was the role of indigenous stakeholders who in the past had a very large role. To distinguish it from other regions, the indigenous stakeholders are then incorporated into a customary institution which was initially assembled in the Aceh customary and cultural institution (LAKA), the national development which of course requires a variety of facilities and infrastructure. One way is to do a good legal development. It can start from the lowest level, for example, from the rural level. One of them is doing good legal development. It can be started from the lowest level though, for example, from the rural level.

In the interdependencies, there are values and reality that life in society. When it is repeated based on the same pattern and persisting for a relatively long period of time, there is a social connection, and while the social relationship is executed systematically and based on certain

rules, then freezes, then the social relationship becomes an institution. In addition, should be noted also the five legal functions as stated by Basah (1986), namely: (1) Directive, as a director in development to form a society that is to be achieved in accordance with the purpose of State life (2) Integrative, as the builder of the Unity nation (3) Stabilisation, as a maintainer (including the development of the results) and the custodian of alignment, harmony and balance in the life of State and society (4) Effective, as an enhancement to the actions of the State administration, as well as the attitude of the participation of citizens in state and community life (5) Corrective, both against citizens and state administratively in obtaining justice.

Based on the consideration above, the law number 22 of 1999 which has been amended by law number 32 in 2004 in the implementation of regional autonomy emphasizes on the principles of democracy, Community participation, of justice, as well as observing the potential and diversity of the region. With the enactment of LAW No. 32 in 2004, the position is different, where this ACT gives the delegation of authority to the region, unlike the previous LAW that bestows all affairs. Government power in a country that is in the form of unity can be organized in a way compiled/stacked (gathered) Centralize the (centralized) So that all matters in the state are located in the hands of central government and all government authorities are carried out by a Single centralized government, or by the centre together with its own rights which are/are in the areas. In this case, Manan (1945) mentioned that: "The emission of power by decentralisation was carried out through public agencies (publieklichaam). Specifically, the decentralisation of the territory, these public bodies are the lower unit of government.

The emission of organs that run the central government's authority in such areas, according to Manan (1945) is known as deconsecration (Centralisatie met de

Deconcentratie). According to Soejito (1981), deconcentration is one form of decentralization, which is called administrative decentralisation (Ambtelijke Decentralisatie), namely the delegation of some governmental authority to equipment or government organs Own in the area, to be implemented. The same opinion is also expressed by Surianingrat (1981), and Koesoemahatmadja (1979), that deconcentration is power from superiors to subordinates in the framework of personnel or positions (AMBT), in order to smooth work solely. Meanwhile, the Muslimin (1986) does not include deconsecration as one form of decentralization. It is said that the deconsecration is indeed one aspect of regional, but not decentralized. Along with the opinion of the Muslimin (1986). Manan (1986) suggested that: Although the deconsecration contains the emission of power (Spreiding van Machten), but cannot be aligned with decentralization. Decentralisation is practicability (Staatkundig), while Deconcentration is only concerned with the administration of the State because it is personnel (Ambtelijk). The opinions are in line with the provisions of the law No. 32 in 2004, which states that decentralisation is the submission of government authority by the Government to the autonomous region in the NKRI (state of Republic of Indonesia) framework, whereas

deconcentration is the delegation of authority from the Government of the governor to as a government representative and/or device centre in the area.

Manan (1945) argued that "decentralisation as a system in the administration of state governments, especially in relation to regional autonomy, is an inseparable part of the ideals of forming and establishing independent governance of Indonesia. Governance is not merely a reaction to the centralistic Dutch East Indies governance system, But on the urge to establish a democratic government where all the people are involved and responsible". Meanwhile, the Muslim, suggests that on manifestations, decentralisation is evident in the following three points: (1) Political decentralization; (2) Functional decentralization; And decentralized culture. Functional decentralisation is a recognition of the right of the groups taking care of a kind of interest in the community, whether bound or not in a particular region, such as taking care of the interest of water for the farmer In a particular area (Subak in Bali).

The objective of decentralisation (territorial) is also to channel the spirit of freedom in a responsible. Responsible, educate, and train themselves to implement and establish local political activities in line with national politics in the country. With the enactment of Law No. 32 in 2004, the orientation of central-regional relations, far more geared towards increasing accountability to the area than to the centre. For that particular region of Aceh special enacted special legislation which is the administration of its territory in the form of special autonomy as Aceh province. Aceh Province is part of the territory of the NKRI, which has since been inhabited in generations by Acehnese, Gayo, Alas, Aneuk Jame, Kluet, Tamiang, and other tribes in its development are also inhabited by migrants. Today, Aceh Province consists of 16 districts, as well as 4 cities. Based on the provisions of Qanun Aceh No. 3 of 2004 on the formation and governance of Aceh customary assembly. Indigenous assembly of Aceh Province referred to customary institution which is a customary community organisation established by certain indigenous peoples have a certain region and its own property and has the right to solve Aceh customary matters.

Discussion

The Role of the Aceh Ulama Institution in the Past and Now

The Institution of Ulama in Aceh is a society or association of Ulama considered to understand the law of religion, especially the Islamic religion well. It is referred to as an institution because its collection has been endorsed by the Government through a prevailing legislation in Indonesia. Theoretically it can be classified as a cleric Ulama (Ulama who are not included in the structure of government/power) and Ulama belonging to the structure of the kingdom/power of the Ulama palace, such as MUI or MPU. The existence of Ulama in Aceh



existed before independence reached but was recognised legally in Indonesia post-Reformation and first once contained in the Law No. 44 in 1999 on the privileges of Aceh.

In international, there are already several countries that list the role of its institutions in a constitution such as Iran and Saudi Arabia. Even their clerical institutions were very influential in the governance system. This research will see how the position of Ulama in the government system in Aceh, because only Aceh area that allowed the central government to regulate the clerical institutions in his government system, while other areas have not been recognised Legally.

The Islamic countries of the world know several clerical institutions that play a role in the country's government system, namely: there is an Al-Wuzura assembly in Saudi Arabia that has executive and legislative authority (Qada Al-Syar'i), then on the leadership Imam Khomainsi Post Revolution 1979 in Iran until now, there is Wilayatul al-Faqih which is above the legislative and executive, there is the Council of Islamic Ideology or CII. In Pakistan as an advisor or consideration in the draft law, and in Malaysia there is the Islamic Council of Ulama which serves to make rules of Pentadhiran, namely the arrangement of Zakat, Waqf, and Baitul Mal. This writing seeks to examine the role and authority of clerical institutions in Aceh after the formalization of position and authority in Indonesian law. This formalization process, in reality, causes weak functions and roles.

Institute of Ulama in Aceh, formerly before this formalization of Ulama in Aceh can coexist with local government and can cooperate well. If paired with a clerical institution in several Muslim countries in the world, such as Iran with Wilayatul al-Faqih, it will be clearly seen the role difference between MPU and Wilayatul al-Faqih. Where the fatwa is not binding and can be used or not even used at all, unlike the role of Wilayatul al-Faqih in Iran, which every decision must be heard and become an important decision of the Iranian state or government.

The Existence and Function of Institutions in Socio Legal Studies

he existence and function of Ulama Institute in Socio-Legal review. Since the issuance of Law No. 44 in 1999 about Aceh privileges is clearly regulated about the four privileges of Aceh; Religion, education and customs and the role of Ulama. All areas of Aceh speciality are an umbrella of Islamic Sharia implementation. The focus of this research is the role of indigenous institutions in Aceh as one of the regional institutions that fill the benefits of Aceh. The follow-up of the act is the birth of several Qanun, one of which is Qanun No. 7 in 2000 in the implementation of customary life, then issued again Qanun Number 3 in 2004 about the establishment and the work of the customary assembly of Aceh Province.



Researcher has explained about what a customary institution is, customary court, and the establishment of the Aceh Customary Assembly (MAA) as well as some functions and authority of indigenous institutions in Aceh in accordance with Qanun No. 3 in 2004. In the field of customary, MAA has the task of bringing together all indigenous institutions in Aceh province, such as: mukim, tuha peut, tuha lapan, kekreun blang, panglima laot, panglima uteun, mukim and head of the Seuneubok. MAA has an important role in reviving the function of all the Customary Institutions that have been forgotten by the public because of the effect of the rules that have been valid during the validity of Law No. 5 in 1974 about the government in the region, who had been spoiled the implementation of three assemblies of Aceh. This task is not easy, because MAA must be able to facilitate all of these custom assemblies to be recognised again by local communities and governments.

Further discussion on MAA is not written in the Local Regulation No. 7 in 2000, but it can be seen in Qanun No. 3 in 2004 on the establishment of the composition and governance of Aceh Customary Assembly. In the Qanun it is discussed the authority, position and function of MAA Sections 3, 4 and 5. Further content of the articles can be seen in the Qanun. The structure of the Rganasinya can be seen in the basic calculation and by laws (AD-ART) MAA each both at the provincial and district level. For example, as can be seen in the chart below:

MAA, MPD and MPU are financed through the Regional Expenditure Budget (APBD). However, with financing through the APBD does not mean that these three institutions can enter the elements of local government or governments can intervene in these three institutions. The great hope was hung by Acehnese people to improve the system of the Pemeintahan that has been wanted to be perceived by society. An Islamic government, one of which was separated from the bondage of bad and excessive corruption, collusion, and nepotism (KKN) as it is today. It takes a long time and seriousness in handling it. The customary assembly is also given a duty in the case of customary judiciary if the community asks and the customary leaders assess the implementation of customary judiciary, where the establishment of peace in the context of the customary known two mechanisms, namely: Firstly, the procession of the completion of normative values (customary law) through the forum "Adat Meusapat", deliberations of indigenous people/related institutions and the parties concerned in the dispute resolution/human rights violations, using the principle of "luka tasipat, darah ta sukat", (compensation /Loss/). "but nyan geit peureulee beu bagah, beik jeut susah watei iblih teuka". Secondly, the procession of customary (public) settlements in public, with the core of the event: Peusijuk, Apology, Sayam (submission of compensation), advice and prayers. Kanun Al-Asyi is also called Adat Meukuta Alam, historians said to be very perfect according to the size of his time so that used to be guidelines by the Islamic kingdoms in Southeast Asia. In this case, Said, the famous historian, writes:



“Some refined regulations. The construction of law that was built by Iskandar Muda expanded its community to overseas, to India, Turkey, Egypt, the Netherlands, the United Kingdom, Portugal, Spain, and China. Many neighboring countries take the laws and regulations in Aceh for example, especially since the rule is a personality that is imbued entirely by the laws of religion, so the indigenous Meukuta Alam is the indigenous joint Sharak ”.

Kanun Al-Asyi so great influence on the Islamic kingdoms in this archipelago, even to other lands. Because Kanun Al-Asyi or indigenous Meukuta Alam is the al-Quran, al-Hadith, Ijmak Ulama, and Qias. The history of Aceh once noted that the implementation of customary judiciary in Aceh has already resolved customary matters based on the natural Meukuta of the crime and transgression by Sulaiman (1997) in his book “The history of Aceh (a lawsuit against tradition) states as a compilation of customary law, i.e. noting that Dhiyat-Dhiet an independent man is 100 camel paid to the deceased heir. If you have been paid for the heirs, then there can be no killing of those who persecute it, because they are repented and made peace.

The researcher can disclose that the position of MAA, MPD and MPU with the validity of Law No. 44 in 1999 to be aligned with the governor and the DPRD, with the validity of Law No. 11 in 2006 DPRD to DPRA. The current position is expected by the law to fill and advise each other criticism and input without dropping each other. The cooperation hopefully can gradually be well-developed as happened during the reign of Sultan Iskandar Muda in the Kingdom of Aceh Darussalam. Frequent changes in government systems also affect the Community's view and have shifted the position of Ulama and indigenous leaders who used to be very much appreciated and respected society changed with more respect for people who have important offices in government. This heavy-duty clerics and customary leaders to restore the community's appreciation. The way is more empowering the Ulama and traditional leaders.

Logemann mentioned that the country is a powerful organisation. Means the area is part of the organisation of such powers so to form a good organisation should be started from the improvement of leaders and Ulama and indigenous leaders who relate directly to society. It can start with better education, and change the education system that is now in a more Islamic direction. MAA, MPD and MPU have succeeded in collecting indigenous, religious and educational leaders in a whole institution and have been able to unite their vision and mission to build the Acehnese community in a better direction and have sought to restore the security of the community. However, satisfactory results have not been achieved by MAA, MPD and MPU, but they continue to strive in that direction.

Conclusion and Suggestion

Based on the description and discussion of the position and function of the three regional institutions in the implementation of special autonomy in Aceh province, it may be concluded



as follows: (1) The role of the Ulama Institute in the past and present in Aceh It is very different, once the Ulama are respected because of the charismatic personality, nobody dare to argue them, but after the cleric in the formalization cannot move freely, even every fatwa of Ulama there who still want to hear and follow, there is absolutely no matter. 2 Special region of Aceh province to become an independent institution. As an independent institution it is not an apparatus of regional governance, but rather an institution that is detached from the governmental elements. The substantial task has been entrusted to MAA, MPD and MPU to be able to jointly develop the region of Aceh, and hopefully MAA, MPD and MPU can provide advice, criticism and input related to the implementation of Islamic sharia in In Aceh and in accordance with their respective fields of course. The relationship of authority between the two is only a functional relationship, no longer the coordination relationship as at the time of Law No. 44 in 1999 is not valid. MAA, MPD and MPU are no longer the regional institutions that are under the governor, with a line of functional relationships and coordination, but rather have turned into an equal partner of the local government with a line of functional relationships.

Suggestion

1. The suggestions that can be proposed in this paper are as follows: (1) To issue regulations that can confirm the binding power of any suggestion, criticism and input from MAA, MPD and MPU so that it can be appreciated by local government. There are certain suggestions, criticism, and input that deserves to be followed and implemented.
2. We recommend that Ulama, indigenou leaders and education organisers of the institution of MAA, MPD and MPU as well as the customary leaders who are respected by the community can further improve the quality and influence in society.



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