

**SHARIA LAW IN THE ERA OF AUTONOMY:
critical voices on formalization and legislation of Islamic law in Aceh
and other regions of Indonesia¹
by Nurrohman ²**

Introduction

The downfall of the centralized new order rezime which followed by the emergence of the decentralization and autonomy era , deemed ,by some people, has carried out new wind because it will pave opportunity for the region to implement sharia law through bylaw (PERDA) instrumen. Not only Aceh which strive to make experience on sharia implementation, other regions also tried to impose bylaw aimed to eradicate sinfull acts prohibited by sharia.

Garut regent , for instance , issued bylaw No.6/200 on immoral acts. Tasikmalaya regent released bylaw No.1/2000 on eradicating prostitutes. Cianjur regent released bylaw No.21/2000 on prostitution prohobition. Tangerang Council endorsed the two bylaws on Nov.21,2005. Bylaw No.7/2005 bans the distribution and the sale of alcoholic drinks, except in three to five-star hotels and designated restaurants. Bylaw No.8/2005 bans people in public places , places visible from the street or in red-light districts from persuading or coercing – either through gesture or words - others into acts of prostitutions.³

But ,unfortunately, some bylaws or *qanun* (term used in Aceh) often deemed as trable maker bylaws, gender biased and not suitable to human rights demand.

Critical voices on formalization and legislation of Islamic law in Aceh and other regions in Indonesia that come from academician, human rights activists and others can be grouped to five. The first critic come from people who fear that Islamic law will not completely implemented, not *kaffah*, it means it will not regulate all aspect of life. The second groups are the opposite of the first. Their critic based on the sense of fear should sharia will be fully implemented. According to them, if sharia in the shape of Islamic laws that were written in classical books or as interpreted by some of rulers, it will cause more problems for society. The third group, people who

¹ This paper based on paper presented in workshop on *Pribumisasi Syari'at Islam ; Membangun visi kemanusiaan (Making sharia on earth ; building humanitarian vision)* hold by DPP FORMASI in Jakarta at October 15, 2003.

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³ Article 4 (1) of the bylaw states that “every person who acts and behaves suspiciously , and comes across as being a sex worker, is prohibited from being on streets , on playing fields, in hotels or dormitories, in residential areas or coffee shops, at amusement centers or theaters, on street corners or under bridges, or in any public place”

criticize the effort to make formalization and legislation of sharia particularly in Aceh. According to them this efforts not concordance with the wish of Aceh people on sharia and has no significant impact in solving Aceh problem. . The fourth, people who questioning the relationship between legislation of sharia with the need of Indonesian people to build good governance, civil society and democracy. The fifth, people who questioning the synchronization of sharia legislation or bylaw based on sharia with the national system of law.

This paper will elaborate those critics and in the end will be closed by writer comment and conclusion.

Critics on formalization and legislation of sharia in such regions

The first group

The first group, people who have high enthusiasm and fear if sharia implemented in Aceh only its cover its twigs not its trunk. Example of this critic voiced by a reader of *Serambi Indonesia* , daily news published in Aceh. According to him only the complete sharia which will can solve all of the problems faced by Aceh.

He pronounced in Indonesian language :“ *yang terbaik menurut masyarakat Aceh sekarang adalah tegaknya hukum Allah (syari’at Islam) secara kaffah. Cuma yang kita takuti bila syari’at Islam yang diberikan kepada Aceh ranting-rantingnya saja . Ranting-ranting syari’ah adalah bank syari’ah, takaful, baitul qiradl, bismillah di amplop surat , assalamualaikum di radio dan televisi. Sedang pokok syari’ah adalah melaksanakan hukum rajam, potong tangan dan qishash. Bila syari’at Islam kaffah benar-benar terwujud, Aceh akan jaya kembali. Hukum Allah pasti baik. Dengan hukum rajam orang tak berani berzina, hukum potong tangan maling tak berani mencuri, hukum qishash pembunuh tak berani membunuh. Dengan hukum Allah rakyat akan selamat....Insya Allah ta’la, cukup banyak uang negara yang bisa kita hemat. Sebab sejumlah penjara akan kosong, sejumlah hakim akan nganggur, sejumlah rumah sakit akan kekurangan pasien, sejumlah polisi akan dialihkan tugasnya.*”⁴ (*what is the best for Aceh society now is the enforcement of God law or sharia law completely. What we fear is if sharia given to Aceh just its twigs or its small branch. The twigs of sharia are like sharia bank , takaful insurance, baitul qiradl, bismillah in the envelope of letter, assalamualaikum in radio and television. While the trunks of sharia were imposing rajam punishment , cutting the hand and qishash. If the full sharia can be implemented, Aceh might be will gain back its triumph. God law certainly better . By rajam punishment people not dare to make*

⁴ Serambi Indonesia, Juni 16, 2002.

adultery or fornication , by cutting hand , thief not dare to steal and by qishash people not dare to kill someone. By God law , people will be salvaged. Insyallah or with God will, much state money can be saved. Because many prisons will empty, many judges will be idle, some of hospital will lack of patients, some of polices will be removed from their jobs)

The second group

The second groups are the opposite of the first groups. Their critics based on the fear if sharia completely and forcedly implemented through power and political instrument while in other hand the interpretations used were classical interpretation backed by state or ruler. History shows that forced implementation of sharia that follows conservative viewpoint has caused more problems particularly in relation with human rights demand.

Muslim Abdurrahman, one of the noted scholars in Indonesia, said that experience from other countries like Sudan , Iran , Afghanistan under Taliban regime tell us that forced implementation of sharia has caused more victims especially among women ⁵, non Muslims, and the poor. According to him if we are ready to get lesson from experience of Sudan, Pakistan or other countries that have previously imposing sharia law , I think , the first people who realize the bad impact of sharia implementation are women. Because in sharia law there are many regulations directed to women such as regulation on dress and inheritance. For instance, because of poverty, woman who has deprived socially, enable to work in garment factory and so on, eventually with no choice available, sinks in the prostitution world. Meanwhile, actually there is no woman who has an ideal to become prostitute unless circumstance forces her; to become prostitute is not woman choice. Then, when sharia law implemented, they are ordered, raided, captured and punished with flogging or stoning.

The second victims are non-Muslims, because they are treated as second class of citizens with limitations on political rights. The third victims are poor family or the lower class of society because when they steal chicken, for instance, it is clear that they have stole something while if the officers or rulers performed corruption or

⁵ G.Bertrand , a Muslim, through his letter published at *The Jakarta Post*, september 30,2003 gives a comment on *rajam* imposed in Nigeria: *On stoning, Does the open-minded Muslim community in Indonesia know that in a few days a woman in Nigeria will be executed by stoning because she had a baby out of wedlock? Will this community try to intervene through the Nigerian Embassy? A baby of two months old will be left without its mother. As a Muslim, I am ashamed of this barbaric act done in the name of our religion.*

abused their power the evidence often not so clear. So it is easy for them to evade punishment.⁶

Critics concerning the treatment of women, particularly in Aceh, often released by such women activists like MISPI (The partnership of true Indonesian women) and Flower Aceh. Cut Hasnyadin, one of the women activists, for instance, said that we are Aceh society actually wish if sharia implemented to all aspects of life not only focused to women such as their dresses and veils. *Jilbab* just a little part of sharia. The most important one in performing sharia is to reform the system of government. Regional government is incorrect in performing sharia, they are too emphasizing on symbols. “*Jangan perempuan yang dijadikan objek, tapi harus semuanya.*” (Don’t make women as a sole target of sharia but should be all) she said.⁷

Suraiya Kamaruzzaman activist of Flower Aceh in his writing published by *Serambi* daily said: according to my observation questioning violence toward women perpetrated by military more easy to obtain support from wider community compared when we raise problems of violence toward women as an impact of unclear policy of sharia implementation. This is because, religion has used as tool to justify and to make violence against women. If we want to see honestly and fairly, recent violence practiced against women in Aceh, which conducted in the name of religion, actually can be categorized as violence against women, in which, it is the concern of women movement. The problem faced by such activists is that brand of anti Islam (and possibility the brand infidel/ kafir) easily be accused to the groups or individual who questioned it. It is the background why, in my opinion, the position of women, particularly in Aceh, weaker if they are faced violence practiced in the name of religion (read: Islam).⁸

The fierce critic also comes from non-Muslim, especially Christian. But considered their position as minority, their critics implemented in the form of points of views accompanied with some expectations and hopes. The points of views of MPG (Christian Consultative Council) released in Banda Aceh date January 16, 2002, partly, said: they hope sharia that will be implemented in Aceh more focused on rising comprehensive understanding of the values of religion and spiritual life without accompanied by coercion act in conducting formalistic apparent. They also ask in imposing qanun (bylaw) the rights of women be protected, including the right of women to refuse polygamy and other regulation that contrary to the principle of

⁶ Source : interview conducted by Jaringan Islam Liberal (JIL) with Dr.Muslim Abdurrahman in 2002. see: www.Islamlib.com.

⁷ Interview with Cut Hasnyadin conducted at MISPI office in Banda Aceh, date July 10, 2002.

⁸ Source : *Serambi Indonesia*, date Desember 31, 1999.

equality between men and women be it in family or in social circumstance. They also ask that the punishment for the offenders which will be imposed in qanun in sharia judiciary system more aimed to remedy and to improve human dignity, not punishment which caused physical invalid such as cutting hand and leg and so on.

On behalf of individuals freedom to perform their religion according to their spiritual conscience, they also ask that the tool of state or police not to be involved in supervision of women dress or in the practice of religious ritual. They also hope that regional and central government can protect all of Indonesian people from all of forms of violence or colonial domination in the name of power and religion. To maintain Indonesian reputation in International forum, they also hope that there are no regulations with contradict to 1945 Indonesian constitution and to general policy. To maintain harmony among religious followers, it is better if in anon on sharpie law, clearly stipulated the rights of minority of Christian Catholic or Protestant to perform gathering together for praying be it in the house of worship or in the house of congregation members. They also hope that in imposing sharia law, it should be conducted after being socialized to all layers of society in order to ensure that sharia law that will be enacted is really the result of free choice of Aceh community themselves.

The third group

The third groups, people who criticize formalization and legislation of sharia law on the reason that it has no significance impact in resolving Aceh conflict comprehensively.⁹ Alyasa Abu Bakar , for instance, said that in the context of decentralization , everything will be granted to local government unless five affairs : religious affairs, monetary, foreign affairs , defense and security and law and judiciary. As special region Aceh actually ask to be granted more, compared with other regions. Central government often pledges that everything will be given to Aceh as long as Aceh not demand independent. In relation with sharia law there are two laws; Law No.44/1999 and Law No.18/2001. In Law No.44/1999, the specification of Aceh given in the form of the right to implement sharia law, while in the Law No.18/2001, the specification of Aceh granted through sharia court engaged by Mahkamah Syar'iyah in the frame of national law system.

assesses that the law No.44/1999 which enacted in the reign of Habibi clearer compared with the law No.18/2001. The law No.44/1999 formulated after Habibi visit to Aceh. But, according to Alyasa, there are two weaknesses on Habibi whe he visits Aceh. The first , Habibi not promised sharia when he is in Aceh . Secondly

⁹ See also : Nurrohman, *Weighing the benefits of sharia as solution to Aceh's problems*, The Jakarta Post, May 20, 2005.

Habibi not offered direct compensation to Aceh people who suffered and become victims of the long abuse of power. If he did that the problem might over. Habibi carried what Acehese people actually not ask such as his promise to built railway in Aceh and so on. Should Habibi promised to offer *diyat* compnsation the problem might be over, Alyasa said. So the people of Aceh see the central government not serious in solving Aceh problem. The central government likely has a phobi and afraid when hearing sharia.

But Alyasa acknowledges that Habibi actually better than the others. Raelizing that Aceh people disappointed with Habibi offering , Aceh people then healed with law No.44/1999. On sharia matters law No.44/1999 better than the other law. In law No.18/2001 there is an article which very disappointed, article related to dispute on jurisdiction between the courts. Disputes on jurisdiction should be returned to Indonesian Supreme Court that had final decision on this. As a result the expectation of Aceh people who wish to have law that can be used to appease conflict , to enforce sharia, to give wider autonomy can't be materialized. With this formulation there is no one who dare to promise what are Acehese hoped. The previous formulation of the draft of law (constructed by Aceh figures who inhabited in Aceh and by involving all of components occurred in Aceh) is more clear, Alyasa said.

In draft constructed by Aceh people, deliberated in regional representative council (DPRD) what is intended by law is sharia law which in its implementation will be regulated through *qanun*, not talked about judiciary institution. If qanun will be accepted as the sole law used in Aceh , the other institutions needed will follow adjusting to sharia law. Of course there will be formal and material law derived from sharia law. Judiciary just one of the law institutions. That in the future other laws will be adjusted in order to accommodate sharia implementation in Aceh , it is hopefully, if God will, Alyasa said. But what is certain that the law No.18/2001 not success in returning Aceh trust to central government.

Because the initial draft of law formerly come from DPRD, and then delivered by Aceh governor to DPR. So it is become initiative proposal from DPR to central government. But central government disagree with much of its contains and scraped. With heavy autonomy, what DPR proposes in the draft is how to regulate central government authority in Aceh, but what actually received by Aceh people is just additional authority given to Aceh. Principally it is a reversal. If Aceh given special autonomy, it means that all of authority will be given to Aceh unless what is stipulated in the law that will be given to central government. Now (in law No.18/2001) as a reversal, Aceh actually has been granted special autonomy, then what will be added, Alyasa said.

Meanwhile in the context of Indonesia wholly, everything will be granted to region except five affairs: religious affairs, monetary, foreign affairs, defense and security, and law and judiciary. As special region Aceh actually ask to be given more

compared with other regions. And central government often pledges that everything will be given to Aceh as long as Aceh halted their demand to independent. But what is stipulated in the law (law No.18/2001) like this, Alyasa added. Its formulation, including on religious matters not clear. In law No.44/1999, the specification of Aceh given in the form of the right to implement sharia law, while in the law No.18/2001, the specification of Aceh given through sharia court that will be performed by Mahkamah Syar'iyah in the frame of national law system. This formulation is not clear, Alyasa repeated. So everything still blurring because there isn't any qanun.

As a discourse, Aceh society from the early beginning has demanded sharia. What is aimed by sharia is Islamic law. The central government give it or not, it is their demand. Their demand never end as long as it isn't fulfilled yet, Alyasa said. Toward law No.18/2001, they are disappointed. Nanggroe Aceh Darussalam or NAD, the term given by this law to Aceh not greeted enthusiastically by Aceh people. So if we talk about politics, the people here disappointed to central government, this is the core problem. And it is not disappear because the formulation of law is like this, Alyasa added.

Concerning the institution of ulema in Aceh, there is a change in nomenclature. Formerly it called MUI (Indonesian Ulema Council), now it called MPU (Ulema Consultative Council). The change of nomenclature was aimed to add its role and quality. But ulema recruitment system in MPU, which based on representative of regions, has caused this institute the target of critic from Alyasa.

Surely, ulema, Alyasa said, not think about representation. They represent their ownself through their individual competency. Surely, it should be like this. Ulema is ulema, he is not represent any body. Ulema can be called the representative of truth, the representative of Koran and the representative of their own understanding. Thus, ulema can originated from one region because in this regions there are so many intellectual while in other regions there aren't. Actually ulema should be like this. But society cannot accepted it yet. Ulema should bow to the reality including in the manner, in which, ulema be recruited.

Alyasa also criticized the use of personal active theory not territorial active theory since in Aceh sharia law just imposed to people who embraced Islam. So, Christians who committed criminal offense can't be prosecuted and tried by Aceh law. So this law (Law No.18/2001) violated legal maxim, which anonymously agreed upon by the world, he said.¹⁰

¹⁰ Source : interview with Prof.Dr.Alyasa Abu Bakar, which conducted in Banda Aceh, date September 28, 2001. NU and Muhammadiyah until recently have different opinion on the scope of the sharia court. NU representative Soleh Amin said they should cover all people in Aceh, including non-Muslims and the military. He argued that it would be illogical and ineffecient to impose separate legal system in an area. "The same treatment for all Acehnese would make more efficient". Muhammadiyah responded that non-Muslim should not be subject to sharia because Indonesia adheres to national law. "We couldn't remove district courts in Aceh because it is part of the Unitary Republic of Indonesia."

Although not as fierce as Alyssa Abubakar in criticizing law No.18/2001, Rusydi M.Ali Muhammad, rector of Ar Raniry IAIN, has similar assessment. According to him the law used as the basic of sharia implementation in Aceh, for sure, still weak. Therefore if there is an idea to amend Indonesian constitution, by which, it can provide more certainty for Aceh, it would be a good offering. If this research (on sharia implementation in Aceh, conducted by Nurrohman and his team) enable to give input or suggestion to amend constitution and related laws in order to strengthen Aceh special position, of course, it will brought more benefits, he said. The implementation of sharia beside faced juridical obstacle, it also faced social obstacle, because there is a discourse that made person phobi on sharia law such as discourse on cutting hand, stoning and flogging. In addition there is *receptie* theory introduced by Snouck Hurgronye.¹¹

Mohamad Nazar one of the Aceh figure among young generation said that formalization and legislation of sharia has no significance impact in resolving Aceh conflict. In an interview, the chairman of SIRA (the center for Aceh referendum) said that the emergence of sharia formalization idea in Aceh produced more questions. Because the offering of sharia as solution to Aceh problem just raised by Aceh politician adventurers in Jakarta, in collaboration with few Aceh politicians, not come from Acehnese aspiration. Sharia law has been used by Jakarta as political instrument to influence opinion and aspiration of Aceh people and to appease international support toward Aceh. According to Nazar, sharia law is not good solution to solve Aceh conflict. Sharia law deliberately produced to turn people from the real issue faced by Aceh. Sharia law in Aceh not intended to restore community order because its departure is not from people conscience. People of Aceh, according to him, not supported the formalization of sharia. Sharia law in Aceh only camouflage. There is no significance realization from the package of sharia law in Aceh.

Jilbab (head covering) and the closure of shopping center during Friday gathering is not new, not a result of sharia law policy. It has long been practiced by Aceh people. Even it is an irony and funny if there are jilbab obligation area. Islam not recognize the limited area, in which, people obliged to use jilbab. Our survey reveal that prostitution rised in Loksumawe, coincide with sharia formalization. And also it is impossible to perform sharia law if there is still military operation in Aceh. Sharia law cannot be effectively performed because it will contradict to their political interest. For instance criminal law in Islam, it is difficult to be implemented to military and police that have killed Aceh people.

Amdi Hamdani and Amni Ahmad Marzuki both are Free Aceh Movement (GAM) activists; also criticize the formalization and legislation of sharia law in Aceh.

Said Hasballah M.Saad, an Acehnese who chairs the Muhammadiyah legal department. See : The Jakarta Post, March 3, 2006.

¹¹ Source : interview with Dr.Rusydi M.Ali Muhammad, date July 10,2002 in Banda Aceh

According to them, the main problem faced by Aceh actually three; 1) the unclear status of this region since the hand over of Dutch sovereignty to Indonesian republic; 2) economic injustice, Aceh rich but its people are poor 3) the gross human rights violation perpetrated by the state.

Concerning sharia, according to them, it should be distinguished between internalization and institutionalization. In internalization process, Aceh people, regardless of various understanding, actually have enough. But when sharia will be institutionalized by the state or government the possibility to become tool of power is high. If it is happen sharia law will be malaise from its original purpose. The wearing of *jilbab*, for instance, cannot be forced but should be adjusted to the conscience of Muslim community themselves. Cut Nyak Dien, female hero from Aceh, in her many image, not wear *jilbab*. But Aceh ulema never questioning it. Sharia law under state umbrella will caused state violence in the name of religion. It is very dangerous.

Aceh Islam is part of the Aceh people, it means that Islam in Aceh heavy contained with local content and not necessary similar with Islam in other region. . Aceh people actually pluralistic and democratic in nature, *resam* (local custom) that agreed upon in one region might be different from *resam* in other region. In wedding ceremony, for instance, Pidie custom different from Loksumawe. In Pidie the parent of bride usually prepared house for bridegroom while in Loksumawe , the parent of bridegroom who prepared house.

Sharia should be implemented democratically and contextually. *Hudud* (criminal law in Islam) should be adjusted to situation of society. In the theft case, for instance, what should be investigated first was the motive behind. If somebody steals because of scarcity where there are so many rich people who not released their *zakat*(obligatory almsgiving), the fault should be addressed to the rich.

Aceh ulema also give attention to public interest in implementing sharia. Concerning women leader, for instance, although there are sharia norms prohibited it, Aceh ulema allowed it as long as there is public interest that should be preserved and disadvantages that should be avoided.

Naqiyatuddin is one of example of Aceh queen that the process of her installment caused controversy among ulema. But eventually, Aceh ulema more choosing in install her because if she was not installed might be there are more dangerous will prevail. Aceh people highly respected consensus, especially consensus conducted by leaders who represent their will.

The struggle of GAM not different from the struggle of proponent of sharia law engaged by Daud Beureuh and his followers. Both sides went on the basis of Aceh people interest. What is different is that GAM based their struggle on Aceh sovereignty. Although there is different, GAM highly respected Daud Beureuh.

Concerning law No.18/2001, GAM just considered it as starting point to engage further dialog. Sharia law and Law No.18/2001 were the central government

solution to Aceh people. There is no correlation with GAM. Sharia law that implemented now just symbol or merely formality. Ulemas who seriously and eagerly want to implement sharia faced some difficulties because they have no power. Sharia law cannot be enforced if there is no power on it. The power held by Indonesian government. Beside it, the people trust to ulemas has decreased.

In Aceh there is no coercion on religion. The problem of Aceh was not religious problem. Aceh has no history of conflict among religious followers, from the early beginning non-Muslim in Aceh feel safe. Religion actually sacred, but it can't be exaggerated. The previous ruler (New Order regime) was hypocrite, not consistence in their promises and always sidelined and deprived Aceh people.¹²

Prof.Dahlan, dean of Law Faculty in Syahkuala University, also criticized the formalization of sharia. According to him, the implementation of sharia should be initiated from building people prosperity and encouraging reformation on Islamic thought. Reformation on religious thought should be engaged from within. If Muslims reluctant to reform their own thought who will ready to reform them. He questioned. Concerning Islamic criminal law it should be sidelined because according to him, criminal law that loaded in KUHP (Indonesian Code Penal) has contained Islamic values. Imposing official ceremony for implementing sharia was counter productive if the government they're self not showing their ability to combat corruption. Islamic institutions like *sidiq* (integrity) *amanah*(trust) ,*tabligh*(transparence) and *fathanah*(competency) should be internalized first, he said.

In his opinion, the offering of sharia by central government is connected with political bargaining. It means that central government hoped that the offering of sharia to Aceh would solve Aceh problem. But according to him, by solely sharia , the conflict cannot be ended. The most important conflict in Aceh is the sovereignty conflict, therefore Aceh likely better if treated as state in federal system. Because all people actually want federal, but how far the central government ready to amend or change current constitution. If Aceh still in Indonesian unitary state, the most important one is how to build morality among government officers. The state might be arranged as federal or unitary state, but as long as the moral of the leaders or government officers was decadence there is no hope. Corruption now widespread. He is not agreeing if punishment stipulated in Islamic criminal law implemented, because the most important one is morality and prosperity. He is more choosing prison sanction as long as the prison managed well. Because as long as there is no law enforcement, whatever regulation and sanction would not brought benefit to people. Actually Indonesian law is good enough, he said.

He also criticized the way of Acehnese people make *qanun*, by citing al-Qur'an and al-Hadits in its considering. It is undermined al-Qur'an because it is

¹² Source : interview with Amdi Hamdani and Amni Ahmad Marzuki in Banda Aceh , date July 15,2002.

equating al-Qur'an with the laws. We don't want to place al-Qur'an at first, then followed by al-Hadits and laws because al-Qur'an was not manmade. In making regulations there are mechanism and KEPRES (President decry) that from juridical view should be followed. In additions making regulations trough bottom up approach might be performed, but the problem is whether the central government ready to legitimize it because we are in context of unitary state not federal state, he said. ¹³

The fourth group

The fourth group who questioned the relationship between formalization and legislation of sharia law with the need of Indonesia to make good governance¹⁴ , civil society , democracy and human rights demand. This group including people who criticized KUHP revision that proposed by minister of justice and human rights, Yusril Ihza Mahendra. Because according to them the problem actually not in the law, so it should be revised, but in the system of judiciary, in which, corruptions are rampant. Reformations on judiciary system are badly needed. That is why law reformation failed.

Adnan Buyung Nasution , for instance , said that *"The inclusion of articles bearing the influence of certain religious teachings into the KUHP will go against the universal principles of criminal codes adopted by almost every country in the world,"* He also added that revision of KUHP,as arranged in new draft, will undermines the ideals of democratic society that imagined by the founding fathers of this country . *"Citizens from other religious beliefs would be discriminated against if the criminal code accommodated only one religious teaching as its foundation,"* Buyung said as quoted by The Jakarta Post daily ¹⁵.

Public caning such as recently applied in Aceh , also criticized by some scholars. Ridarson Galingging said that public caning is a primitive punishment prohibited by the Universal Declaration of Human Rights, which declares in Article 5 that "No one shall be subjected to torture or cruel , inhuman or degrading treatment or punishment." ¹⁶

¹³ Source : interview with Prof.Dahlan, SH,MH, that conducted in his office at SyahkualaUniversity , date July 10,2002.

¹⁴ Seppo Tiihonen, a Finnish scholar defined good governance as a process , where rules and well-funtioning institutions are applied to manage a nation's affairs in a manner that safeguards democracy , human rights, good order and human security , and economy and efficiency follow in the management of a country's resources.The jakarta Post., December 31,2005.

¹⁵ *The Jakarta Post,October 1, 2003.*

¹⁶ See The Jakarta Post, September 22,2005

The fifth group

The fifth groups are people who doubt that the demand to fully implement sharia law fully (*kaffah*) will bring harmony with national law system. Kirsten E. Schulze in his writing entitled *A Jumble of Purposes of Syari'ah Law in Aceh* raised a question, whether in national level sharia law will be compatible with Indonesian constitution. Completely Schulze said that: *The key question at the national level is, of course, whether the syariah is compatible with Indonesia's constitution. In a practical sense this may result in cases tried under the syariah in Aceh being appealed to the Supreme Court under national law. If the Supreme Court upholds the validity of the syariah it has effectively undermined national law, and if it doesn't the syariah in Aceh isn't worth the paper it was written on.*¹⁷

Indonesian constitution stipulates that the Supreme Court holds the authority to review regulation below the level of legislation. Local administration, through the amended 2004 Regional Autonomy Law, are given the autonomy to handle governmental duties, but it does not extend to all spheres.

Religion is one issue that does not come under the authority of local administrations, along with foreign affairs, defense and security, judicial and national monetary issues, as stipulated in Article 10 of the law. According to Article 145 of the law, the government can cancel local regulations that contravene national law and the Constitution.

Comment on conclusion

As a closing remark, the writer will try to make some comments. Although Indonesia now entering autonomy and decentralization era, and although Muslims as Indonesian citizen have the right to propose law or bylaw draft that will be deliberated in House of Representative (DPR) or in Regional Representative (DPRD) which contained sharia norm, but Muslims should realize their position as the son of the nation and realize their political power. In Indonesian history, the proponent of sharia law never reach majority in the House.

So it is better, instead, if Muslims uphold firmly reformation ideals to build civil society based on democratic mechanism and strive to build non-discrimination society. Sharia law would be better if placed as moral guidance for Muslims be it in private or in public. To force sharia law through power instrument will caused controversy and hypocrite attitudes. As a moral guidance the implementation of

¹⁷ See, The Jakarta Post, April 19, 2002.

sharia need the conscience¹⁸ from Muslims themselves. As part of the nation , it is better if Muslims gave more attention to such issues related common interest or public interest like injustice, poverty, ignorance, unemployment and corruptions.

. Good governance will become reality, if this nation capable to use human and natural resource effectively and efficiently, if there are consistencies from all the laws in enforcing social justice, if there are clear accountability, transparency and participation from the all layers of society. If Muslims intended to participate in drafting law, the law aimed to strengthen good governance should be prioritized. Since politics is the art of compromise and the art to accept reality, Muslims should able to prepare to accept non-idealistic norms that agreed upon by the majority of the law maker body. Muslim should avoid conducting violence act in the street because it will tarnish the image of Muslims themselves.

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¹⁸ After Tangerang council endorsed bylaw on prostitution, to avoid capture, Novi Ariyanti, a 23 year-old sex worker who usually waits for clients at bus shelter on Jl.Gatot Subroto in Cimone, has made a more drastic change to her appearance. She now wear Muslim dress – covering her neck, ears, hair and body shape – and a headscarf. “with my new look, I am earning more money because men these days are more intersted in women wearing *jilbab*” she said. Novi charges clients between Rp.200,000 and Rp.500,000. The Jakarta Post, March 11,2006, reported.

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