

The Implementation of Sharia Regional Regulation on the Prevention, Eradication, and Prosecution of Social Pathology in Padang Panjang West Sumatera

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Abstract

According to Law number 32 of 2004 on Local Government, the city of Padang Panjang has set several laws and regulations concerning the welfare of its people, including regional regulation Number 3 of 2004 on the Prevention, Eradication, and Prosecution of Social Pathology. Social Pathology refers to the action/behavior of an individual or a group of people in the society which is unpleasant and or endangers the society as it is not in accordance with the applicable norms and customs. This paper discusses the implementation of the Sharia Regional Regulation No. 3 of 2004 on the Prevention, Eradication, and Prosecution of Social Pathology in Padang Panjang. This qualitative paper applied the normative juridical approach by conducting the study of the law and regulation and literature review related to the research problem. The result of the research are 1) the implementation of the Padang Panjang Regional Regulation No. 3 of 2004 on the Prevention, Eradication, and Prosecution of Social Pathology, in general, has succeeded in establishing a sharia area and preventing the occurrence of social pathology in the society of Padang Panjang. 2) The obstacle to the implementation of this law are consistency and discrimination.

Keywords:Implementation, Sharia Regional Regulation, Padang Panjang

RESUMEN

De acuerdo con la Ley número 32 de 2004 sobre Gobierno Local, la ciudad de Padang Panjang ha establecido varias leyes y reglamentos relacionados con el bienestar de su gente, incluido el reglamento regional Número 3 de 2004 sobre Prevención, Erradicación y Enjuiciamiento de Patología Social. La Patología Social se refiere a la acción/comportamiento de un individuo o grupo de personas en la sociedad que es desagradable y/o pone en peligro a la sociedad ya que no está de acuerdo con las normas y costumbres aplicables. Este documento analiza la implementación del Reglamento Regional de la Sharia No. 3 de 2004 sobre la prevención, erradicación y enjuiciamiento de la patología social en Padang Panjang. Este trabajo cualitativo aplicó el enfoque jurídico normativo mediante la realización del estudio de la ley y la regulación y la revisión de la literatura relacionada con el problema de investigación. El resultado de la investigación es 1) la implementación del Reglamento Regional Padang Panjang No. 3 de 2004 sobre la prevención, erradicación y enjuiciamiento de la patología social, en general, ha logrado establecer un área de la sharia y prevenir la aparición de patología social en la sociedad de Padang Panjang. 2) Los obstáculos para la aplicación de esta ley son la coherencia y la discriminación.

Palabras clave: implementación, regulación regional de la sharia, Padang Panjang

INTRODUCTION

Sharia Regional Regulation does not solely regulate life in the context of religion, broader than that, it also deals with the legal system applied in Indonesia in general. The first principle of Pancasila (Five Principles) clearly states “Belief in the Almighty God”, however it should not only be understood as it is stated in the Pancasila. The 1945 Constitution, article 28-29, also mention that religion and individual rights are protected, not only by the constitution but also by other regulations that follow and that strengthen similar matters, such as the law on human rights and the law on local government (Feener, 2012).

According to the 1945 Constitution article 18 B section 1, the Unitary State of the Republic of Indonesia recognizes and respects units of regional government of specific or special nature which are regulated by laws. The implementation of Law No 5 of 1979 on Village Government which set the region as the local state government or the extension of the Central Government like what has been applied during the New Order era, in fact, has ruled out the local government itself in various aspects (Atmaja, 2018).

Since the enactment of Law No. 23 of 2014 on Regional Government as the implementation on regional autonomy, regional governments hold bigger authority in managing their regions. With this authority, several regions in Indonesia, then, decided to apply the sharia regional regulation to their area. The regulation is known as Islamic Sharia Regional regulation because it is a legal product of regional government which is inspired by the sharia of Islam. With this regulation, the regional government of province, district or city are given freedom to set their public policy, including to issue the sharia regional regulation in the hope of solving the multi-dimensional problems (Purwanto, Mukharrom, Safitri, Marazi, & Dewantoro, 2022).

Law No. 32 of 2004 on Regional Government requires the regional government to organize their own government and to manage their regions so that they can accelerate the attempt to create a welfare community. The regional government owns the right to issue various

public policies as long as they are in line with the law and regulation issued by the central government. The implementation of Law No. 32 of 2004 has led to fundamental changes in the regulation of relations between the central and regional government in the field of government administration, known as regional autonomy (Lowndes & Pratchett, 2012).

Based on the implementation of Law No. Of 1974, Principle of Regional Government and Law No. 5 of 1979 on Village Government which stipulates the region as the local state government, and the enactment of Law No. 32 of 2004 on Regional Government, therefore the government of Padang Panjang establishes several laws and regulations for the welfare of its people. One of them is the Regional Regulation No. 3 of 2004 on the Prevention, Eradication, and Prosecution of Social Pathology (Muhammad, Suharizal, & Hilaire, 2020). In this case, social pathology refers to the action/behavior of an individual or a group of people in the society which is unpleasant and or endangers the society as it is not in accordance with the applicable norms and customs.

Based on the background of the problem above, this research is necessary to be studied further. In addition, the researchers are eager to dig deeper on how the implementation of Sharia Regional Regulation No. 3 of 2004 on the Prevention, Eradication, and Prosecution of Social Pathology for the people of Padang Panjang is applied in the region.

METHOD

This research is a qualitative research which applies a normative juridical approach to discuss the law and regulation and the literature review related to the research problems. The type of data used in this research is secondary data which consists of primary legal material and secondary legal material, such as books, journals, documents, electronic data, and articles that support this research. In addition, there are also some tertiary legal materials which include encyclopedias and dictionaries.

This primary data is collected through information and interviews from people who have the capacity and are appropriate to serve as informants, including: (1) people in the research location, such as parents of seclusion perpetrator or Acehese natives. (2) community leaders/clerics (3) government related to the implementation of Islamic law in Padang Panjang, such as Judges and Moslem Leader (4) academicians (5) seclusion perpetrators receiving corporal punishment.

RESULT AND DISCUSSION

Overview of Padang Panjang

Padang Panjang is one of the smallest cities in the province of West Sumatra. This city has an area of 2,300 hectares or about 0.05 percent of the area of West Sumatra. Despite its small size, Padang Panjang has a strategic position as it lies on a regional cross between the city of Padang and Bukittinggi.

Padang Panjang consists of 2 districts and 16 sub-districts. The district of West Padang Panjang with an area of 975 hectares is divided into 8 sub-districts. Meanwhile, the district of East Padang Panjang with an area of 1,325 hectares is also divided into 8 sub-districts.

On the Population Census in 2010, the population of Padang Panjang was recorded as many as 47,008 people, which consist of 23,369 males and 23,639 females. According to that composition, the sex ratio of the Padang Panjang population is 99.33. It means that there are 99 male residents in every 100 female residents. The population density of Padang Panjang in 2014

reached 2,183 people/km². The district of West Padang Panjang has a higher density, namely 2,925 people/km², compared to the district of East Padang Panjang, which has a population density of 1,637 people/km². Among the 16 sub-districts in Padang Panjang the highest level of population density is in the sub-district of Balai-Balai with a population density of 7,704 people/km², while the lowest density is in the sub-district of Ganting with the population density of 680 people/km².

The major ethnic lives in Padang Panjang is the Minang Kabau ethnic group who are muslims and has a strong grip on their customs and belief. They also uphold the value of independence. The sensitive issues of Sex, Religion, and Race (SARA) have never been heard to be a problem in the society. Although Islam is the major religion and Tiong Hoa is the minority, they can live harmoniously in the city of Padang Panjang because they respect the ethnic differences and uphold religious values.

Sharia Regional Regulation and its Dilemmatic Problems

The formalization of Islamic sharia in several regional legal products in Indonesia has some unique phenomena which are worth studied. One of them is the implementation of sharia regional regulation in Padang Panjang, West Sumatra.

Apart from the issue of effectiveness, there are several other problems which entail the stipulation of regional regulation with Islamic atmosphere. The researchers note at least three problems concerning the stipulation of those regional regulations (Errico & Farahbaksh, 1998; Annannab, Bakar, & Mohd Khan, 2022; El-Nasharty, 2022). The first problem is the issue of discrimination. That discrimination issue has been reviewed by Crouch and Candraningrum. Crouch mentions that some sharia regional regulations tend to discriminate against women and other minority groups. Regional regulation of the province of Gorontalo No. 10/2003 on the Prevention of Immorality, for example, has discriminate women as the object of the regulation. Article 6 section 1 of that regulation states that women are prohibited from going out of the house without *muhrim* (spouse, brother, son, or father) between 12 p.m. up to 4 a.m. However, similar regulations do not apply to men. Regulation on the prohibition of the followers of Ahmadiyah in some regions is also an example of the discrimination problems. This kind of case can be seen in the Governor's Regulation of the Province of West Sumatra No. 17/2011, the Governor's Regulation of the Province of Jambi No. 27/2011, the Regent's Regulation of the Regency of Pandeglang No. 5/2011, and the Regent's Regulation of the Regency of Bekasi No. 11/2011.

The second problem is the issue related to the quality of the regional regulation. Many of the articles stated in the regional regulations are the result of "copy-paste" from the article of similar law and regulation from other regions. This can be found, for example, in the case of the regional regulations of alms (zakat). Article 3 of the Regional Regulation of Padang Panjang No. 7/2008 is similar to Article 3 of the Regional Regulation of South Pesisir Regency No. 31/2003. Article 4 of the Regional Regulation of Padang Panjang No. 7/2008 is also similar to Article 3 of the Regional Regulation of South Solok Regency No. 18/2006. There are still many other examples of similarities between articles in the regional regulations of alms.

The similarities of the articles among regional regulations indicate that those regulations were drafted without in-depth study process. The policymakers seem to only copy the policies from other regions without reviewing whether the policies were needed and applicable to their regions.

The third problem is the issue of implementation of the sharia regional regulation. Until today, the implementation of the sharia regional regulation is still in question. As noted above,

there are only a few, or even none, effective studies concerning the implementation of sharia regional regulation in Indonesia.

The formalization of Islamic sharia into regional regulation is not only inconsistent with the constitutional principles of Indonesia as a democratic country, but also considered contrary to the principles of human rights. The content materials that come from Islamic sharia only refer to the point of view of one religion, i.e. Islam. It is contrary to the principle of non-discrimination and the principle of equality (Purwanto et al., 2022; Ayenagbo, 2022; Rehman, 2022).

In addition, the supporters of the formal implementation of Islamic sharia in Indonesia face at least three serious problems. One of them concerns with the historical problem. Historically, the idea of formalizing Islamic sharia in state politics is not a new matter. In the past, some Islamic groups fought seriously for this matter. The attempt can be seen in the process of composing Jakarta Charter, which then became a historical milestone for those who demand the idea of formalizing Islamic sharia in Indonesia.

The Implementation of Sharia Regional Regulation on the People of Padang Panjang

Sharia regional regulation is a regulation containing Islamic values and or norms based on the Quran and Hadith that is applied in a certain region. Regional Regulation is at the lowest level of the legal order in Indonesia. In the study of Islamic law, the term sharia is distinguished into two, the narrow and broad. Sharia in the narrow sense means that the text of revelation or hadith is related to the normative legal issues, while sharia in the broad sense refers to the hadith concerning the *aqidah* (belief), law, and morals (Zulfadli, Anggraini, & Fajri, 2020).

Sharia-based regional regulation is part of the regional people aspiration, thus every region has the right to create law or regulation which is appropriate to the uniqueness of their regions. In addition, the existing law and regulation have not guaranteed the law enforcement in the society, therefore it is accepted to try to apply Islamic law as an alternative to regional regulation which has been claimed to have many shortcomings.

In the 1945 Constitution, article 18, section 1 and 2, stated that: 'The Unitary State of the Republic of Indonesia is divided into provincial regions and those provincial regions are divided into regencies (*kabupaten*) and municipalities (*kota*), whereby every one of those provinces, regencies, and municipalities has its regional government, which shall be regulated by laws'. In other words, the article implies that Indonesia is a decentralized unitary state (Isra, de Villiers, & Arifin, 2019).

The emergence of sharia regional regulation has consequences as law in the region that have absolute binding power to all people, governmental institutions, private institutions, and also to the migrant people who conduct activities in that region. Sharia regional regulation is a special regulation based on the local custom dan the living law of the society in that region. The local custom is based more on the composition of the number of people in the region or the hegemonic strength of the political elites who hold the position in the legislative and executive institution. According to Munawar, the emergence of sharia regulation was simply born, but it was the result of the political journey of the Muslims in the country (Tamanaha, 2017).

The implementation of Islamic sharia is one of the ways to create Islamic sharia as a constitution (*dustur*) and state law (*qanun*). Sharia constitution only contains the most important principles of Islamic sharia which describe the Islamic sharia as a whole and comprehensively (*kamil* and *syamil*), even though stated in a concise and global editorial, the *manhaj* of the implementation of Islamic sharia in various fields are explained (Tamadonfar, 2001).

Padang Panjang is a region in Indonesia that has made several policies of regulation that shows a strong commitment in the attempt to prevent and eradicate the social pathology. Social

pathology is the action/behavior of an individual or a group of people in the society which is unpleasant and or endangers the society as it is not in accordance with the applicable norms and customs. Such as adultery, alcohol consumption, immorality, homosexuality, opening restaurant during the daylight in the month of Ramadhan, and so on. Therefore, individual actors or groups who violate Regional Regulation No. 3 of 2004 in Padang Panjang can be subject to administrative sanctions (Azhari & Fajri, 2022; Crouch, 2009; Al Subhi, 2022; Ayenagbo, 2022).

In essence, to form a regional regulation in the provision of Law No. 12 of 2011 on the Establishment of Law, article 6, concerning the content material of the law or regulation, one of the points is to stipulate that one of the principles in the formation of law, including regional regulation, is the principle of humanity. It means that the law or regulation makers must uphold and respect human rights. This is an implementation of civil rights in Indonesia that has to be carried out as state responsibility and obligation.

CONCLUSION

The implementation of Regional Regulation of Padang Panjang No 3 of 2004 on the Prevention, Eradication, and Prosecution of Social Pathology, in general, has succeed in creating a sharia area and has also succeeded in preventing the social pathology among the people of Padang Panjang. With the implementation of the regulation, the social pathology such as adultery, alcohol trading and consumption, and opening restaurant during daylight in the month of Ramadhan can be prevented. The implementation of the Sharia Regional Regulation No3 of 2004, those who wish to commit immoral action, adultery, consume alcoholic liquor, and or eat or provide food during the daylight of Ramadhan would think twice before they act as the government would also act decisively if there is anyone violate the regulation. The more important impact of the implementation of the regulation is the wider and stronger protection for the people of the city of Padang Panjang against the social pathology.

The government as the actor of the implementation of the program of Prevention, Eradication, and Prosecution of Social Pathology as stated in the Regional Regulation No. 3 of 2004 has acted decisively to enforce the regulation in the society, along with the imposition of punishment for the lawbreaker. In addition, what makes it more distinctive is that every leaders of the Regional Apparatus Work Unit were responsible for the implementation of the Regional Regulation No. 3 of 2004 in their institution. Thus, all elements of the Regional Apparatus are responsible for the success of this policy.

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