

## Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism

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**Abstract:** Indonesia recognizes several legal systems i.e., state law, customary law, Islamic law, and international law. Islamic sharia in Aceh is part of legal pluralism in Indonesia. This study aims to discuss the application of Islamic sharia from the perspective of legal pluralism. This normative legal study employed a legal pluralism theory analysis. Legal pluralism is a theory that views law not only as positive or written law made by the state but also as a recognition of the legal reality that exists in a pluralistic society. The study collected data by means of a literature review. Findings revealed that Islamic sharia in Aceh as part of the recognition of the concept of legal pluralism has been implemented well in the context of state law, custom, and Islamic law. The state has provided juridical legitimacy through laws in the context of legal substance and judicial institutions or sharia courts. Likewise, revitalization has also occurred in traditional institutions in terms of customary law and customary justice. The argument emphasized in this study is that Islamic sharia in the context of legal pluralism has succeeded in manifesting legal harmonization between the state, custom, and Islamic law.

**Keywords:** Islamic Law; Islamic Sharia; Custom; Legal Pluralism; Harmonization of Law

### 1. Introduction

As a pluralistic country, Indonesia recognizes several legal systems i.e., state law, customary (*adat*) law, Islamic law, and international law. The recognition of legal diversity is then referred to as legal pluralism. Legal pluralism not only recognizes the diversity of laws, but also the diversity of judicial institutions, e.g., general court, religious court, and customary court. Customary justice in Indonesia can be seen in areas where traditional and cultural values are deeply rooted, e.g., in Aceh and West Sumatra.<sup>1</sup>

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<sup>1</sup> Salim, Arskal. "Dynamic legal pluralism in Indonesia: Contested legal orders in contemporary Aceh." *The Journal of Legal Pluralism and Unofficial Law* 42, no. 61 (2010): 1-29; von Benda-Beckmann, Franz, and Keebet von Benda-Beckmann. "The dynamics of change and continuity in plural legal orders." *The Journal of Legal Pluralism and Unofficial Law* 38, no. 53-54 (2006): 1-44.

According to Bell, aside from Indonesia, Singapore and Canada also describe themselves as multicultural and pluralist countries in the field of law. Since law is part of a one's culture, multiculturalism shall direct such countries to recognize legal diversity, recognizing all forms of legal pluralism. In reality, Singapore and Indonesia adhere to legal pluralism by giving state recognition to laws other than state law. However, Canada, in Bell's view, does not really implement legal pluralism in the life of the nation.<sup>2</sup>

Saldi Isra and Hilaire Tegnan explain that legal pluralism in Indonesia currently does not exactly help resolve the difficulties faced by the legal system. Although legal pluralism sounds promising, many of its proponents provide false and misleading interpretations. Many socio-legal experts have mentioned legal pluralism as a key concept in legal analysis. However, after almost 20 years of the claim, there has been little progress in developing the concept. Despite these convincing statements and the underlying unanimity, this concept raises complex issues that have not yet been resolved. Legal syncretism attempts to provide a somewhat different explanation of how laws interact with each other as society deals with these laws.<sup>3</sup>

Intaning has emphasized that in the legal pluralism approach, indigenous peoples are a semi-autonomous social area that creates law based on interplay with other legal communities. The application of the legal pluralism approach in customary law studies can be grouped into three categories. First, legal pluralism is weak wherein the state recognizes customary law both through statutory regulations and through court decisions. Second, legal pluralism is strong as described through the concept of a semi-autonomous social area. Third, there is multi-sited legal pluralism used to explain the relationship of various legal phenomena between international, national, and customary laws as well as the role of information and communication technology in bridging the relationship.<sup>4</sup>

Legal pluralism, according to Syafi'i, refers to customs and traditions that are organic elements forming a legal unit. Local knowledge and universal values fundamentally enrich Islamic law. This argument, however, is debatable given the extent to which custom and tradition can influence or shape Islamic law. Indonesia is no exception. Discussing the position of Islamic law in the context of Indonesian legal pluralism is not

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<sup>2</sup> Bell, Gary F. "Multiculturalism in law is legal pluralism-lessons from Indonesia, Singapore and Canada." *Sing. J. Legal Stud.* (2006): 315.

<sup>3</sup> Isra, Saldi, Ferdi Ferdi, and Hilaire Tegnan. "Rule of Law and Human Rights Challenges in South East Asia: A Case Study of Legal Pluralism in Indonesia." *Hasanuddin Law Review* 3, no. 2 (2017): 117-140.

<sup>4</sup> Intaning, Sartika. "Pendekatan Pluralisme Hukum dalam Studi Hukum Adat: Interaksi Hukum Adat dengan Hukum Nasional dan Internasional," *Undang: Jurnal Hukum* 4, No. 1 (2021): 81-124.

easy since it relates to the structure of Indonesian socio-cultural and socio-political realities. This in turn requires specific policies through political thoughts and actions.<sup>5</sup>

In Aceh, legal pluralism have been studied in several writings, e.g., Arskal Salim wrote that post-conflict and disaster in Aceh influenced rapid changes in the national legal system and legal structure. There have been various patterns of legal reasonings advocated by many different actors and institutions (i.e., local, national, and international). Dispute resolution has been carried out in various forums, through negotiation or adjudication. The argument emphasized here is that dispute resolution involving various actors from the villages, the courts, the provincial government, and the legislature, the Supreme Court is an implementation of legal pluralism.<sup>6</sup> In terms of international law, Halim examined the position of non-Muslims in Aceh as regulated in law and human rights with equal rights provided fairly and with dignity. In some cases, they have even submitted themselves to the rules of Islamic law without coercion.<sup>7</sup>

Further, Khairuddin Hasballah has explained that the people of Aceh have practiced legal pluralism in cases of inheritance distribution. The distribution of inheritance known as *patah titi* is an inheritance case in which an heir predeceases the testator, thereby preventing the surviving descendants of the heir from receiving inheritance rights. The *ulama* (Muslim scholars) and traditional leaders are of the opinion that this practice causes differences of opinion; some agree and some disagree. Furthermore, the substitute heirs as stated in the Compilation of Islamic Law, even though they do not exist in *fiqh* (Islamic jurisprudence) and customary literature, are still recognized as being in accordance with *maqashid sharia* (objectives of Islamic law), namely for the purposes of justice and benefit. In conclusion, such practice is a consequence of legal pluralism, which prioritizes harmonization and integration between the three legal systems.<sup>8</sup>

In a similar vein, Dedy Sumardi mentions that legal pluralism in Aceh has been implemented in the aspect of Islamic criminal law. The integration of legal traditions in Aceh is an effective way to achieve justice for women and children as well as the development of new laws to develop a national legal system that favors the interests of victims. The dialectic of legal traditions is determined by the role of actors who act as assistants to victims to ensure that victims' rights are not neglected. Islamic law,

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<sup>5</sup> Syafi'i, Ahmad. "Menggagas Hukum Islam yang Akomodatif-Transformatif dalam Konteks Legal Pluralism di Indonesia," *Al-Manhaj Jurnal Hukum dan Pranata Sosial Islam* 1, No. 1 (2019): 1-25.

<sup>6</sup> Salim, Arskal. *Contemporary Islamic law in Indonesia: Sharia and Legal Pluralism*, UK: Edinburgh University Press, 2015.

<sup>7</sup> Halim, Abdul. "Non-Muslims in the Qanun Jinayat and the choice of law in Sharia Courts in Aceh." *Human Rights Review* 23, no. 2 (2022): 265-288.

<sup>8</sup> Hasballah, Khairuddin, Ridwan Nurdin, Muslim Zainuddin, and Mutiara Fahmi. "Patah Titi and Substitute Heirs: A Study of Legal Pluralism on the Inheritance System in Aceh Community." *Ahkam: Jurnal Ilmu Syariah* 21, no. 2 (2021).

customary law, and the law on the protection on women and children are used interchangeably. Efforts to combine these three legal traditions are carried out to obtain justice and ensure the fulfillment of victims' rights and justice as a whole.<sup>9</sup>

In the context of legal pluralism, the recognition of the Islamic legal and customary legal systems in Aceh is quite reasonable and has a strong scientific logic. Aceh is the first region to embrace Islamic teachings in the Nusantara archipelago.<sup>10</sup> Apart from that, Aceh has been the center of Islamic education and civilization for a long time in Indonesia and even in Southeast Asia. A number of *ulama*, scholars, or scientists have deliberately come to Aceh to deepen their religious knowledge, making Aceh become the "Serambi Mekkah" (Veranda of Mecca) as Islamic law has been deeply rooted in its society. Some proportion of the people of Aceh have been implementing Islamic sharia in every field, such as worship, marriage, and inheritance, from the time of the Sultanate until present. Hence, Islam has penetrated and integrated relatively perfectly with the community's consciousness and has become a custom (tradition) integrated in today's daily life in which the people tend to adhere to.<sup>11</sup>

According to Al Yasa' Abubakar, there are at least two events that can be used as evidence that sociologically Islamic law has long been implemented in the social historical reality of the Acehnese people. Referring to the historical records when Sultan Iskandar Muda (1607-1675 AD) sentenced Meurah Pupoek, his own biological son, the future crown prince, to death by stoning because he was proven to have committed *zina* (adultery) with one of the wives of nobles within the palace. The application of Islamic sharia has since continued until the arrival of foreign nations to Aceh. In addition, Tengku Chik Di Tiro Muhammad Saman (d. 1891 AD), who launched a war against the Dutch colonialists in an effort to avoid war, had also carried a similar conduct. Tengku Chik Di Tiro sent a letter to propose three suggestions. First, the Queen of the Netherlands embraced Islam and ruled Islamically. Second, the Queen of the Netherlands allowed the people of Aceh to practice Islamic law and the people of Aceh would recognize the protection of the Queen of the Netherlands. Third, the Queen of the Netherlands ordered her troops to leave Aceh and Aceh would live as a sovereign country. If these three proposals could have not been accepted, then he and the people

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<sup>9</sup> Sumardi, Dedy, Ratno Lukito, and Moch Nur Ichwan. "Legal pluralism within the space of Sharia: Interlegality of criminal law traditions in Aceh, Indonesia." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (2021): 426-449.

<sup>10</sup> Azyumardi Azra, *Jaringan Ulama: Timur-Tengah dan Kepulauan Nusantara Abad XVII dan XVIII Melacak Akar-Akar Pembaharuan Pemikiran Islam di Indonesia*, Edisi Revisi, Jakarta: Kencana, 1998, p. 12. R. Hoesien Djajadiningrat, *Kesultanan Aceh: Suatu Pembahasan Atas Bahan-Bahan yang Tertera dalam karya Melayu Tentang Sejarah Kesultanan Aceh*, Banda Aceh: Proyek Rehabilitasi dan Perluasan Meuseum Daerah Istimewah Aceh, 1979, p. 12.

<sup>11</sup> Al Yasa' Abubakar, *Syari'at Islam di Provinsi Aceh Paradigma Kebijakan dan Kegiatan*, Banda Aceh: Dinas Syari'at Islam Provinsi Nanggroe Aceh Darussalam, 2005, p. 26 and 390.

of Aceh would have had no choice other than to fight against the Dutch, so that they could live under the protection of the sacred sharia.<sup>12</sup>

Furthermore, at the beginning of Indonesian independence, the people of Aceh showed a very strong desire to implement Islamic law in a *kaffah* (comprehensive) manner.<sup>13</sup> This is because the implementation of Islamic law for the community is a basic obligation, is part of religious teachings, and does not depend on anyone nor any circumstances. Every Muslim must strive to be able to carry out the sharia perfectly in his/her life. The awareness of the Muslim community shall be based on the teachings of Islamic law.<sup>14</sup> Nonetheless, in the sociological context of perception, participation and meaning of the sharia itself will be highly diverse and varied, according to scientific capacity, religious understanding, and even practice of Islamic law itself.

Islamic sharia was officially declared by the Governor of Nanggroe Aceh Darussalam Province in March 2002, coinciding with the 1st of Muharram 1423 Hijriah. This date and year are quite important milestones for Aceh in the implementation of Islamic sharia in a *kaffah* manner. By the beginning of Ramadan 1429 Hijriah, the implementation of Islamic sharia has reached more than 20 years. During this period, there have been many opinions, responses, writings, and criticisms addressed for the implementation of the sharia.<sup>15</sup>

Therefore, this study sought to strengthen previous studies that discussed Islamic law within the framework of the Unitary State of the Republic of Indonesia. Islamic sharia is not only the desire of the Acehnese people historically and sociologically, but also contains juridical legitimacy and traditional and cultural support. This normative legal study used the theory of legal pluralism was used as an analytical tool in accordance with the paradigm and framework of the legal system in Indonesia that is pluralistic and diverse.

## 2. Method

This study aims to discuss the application of Islamic sharia from the perspective of legal pluralism. This normative legal study employed a legal pluralism theory analysis. Legal pluralism is a theory that views law not only as positive or written law made by the state but also as a recognition of the legal reality that exists in a pluralistic society. The study collected data by means of a literature review. Legal pluralism is a legal theory that views law not only as positive or written law made by the state, but also as a

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<sup>12</sup> Al Yasa' Abubakar, *Syari'at Islam di Provinsi Aceh*, p. 123.

<sup>13</sup> Al Yasa' Abubakar, *Bunga Rampai Pelaksanaan Syari'at Islam: Pendukung Qanun Pelaksanaan Syari'at Islam*, Banda Aceh: Dinas Syari'at Islam, 2005, p. 61.

<sup>14</sup> Al Yasa' Abubakar, *Bunga Rampai Pelaksanaan Syari'at Islam*, p. 42.

<sup>15</sup> Dinas Syari'at Islam, *Rekaman Opini: Suntingan Artikel Tentang Syari'at Islam Dalam Media Cetak*, Dinas Syari'at Islam Propinsi Nanggroe Aceh Darussalam, Banda Aceh, 2005.

recognition of the legal reality that lives in a society, resulting in harmonization and accommodation of the legal system.<sup>16</sup> The legal reality in question is the state law, custom, and Islamic law, which have become the living law in society. This legal pluralism became an analytical tool in explaining the reality of the implementation of Islamic law in Aceh.

### 3. Legal Pluralism in Indonesia

During the Aceh sultanate, Islamic law and custom coexisted and were sometimes difficult to distinguish. The Dutch colonial presence contributed to the increasingly sharp demarcation between sharia and custom, wherein Dutch policies tended to support traditional institutions and traditional leaders. In the post-independence of Indonesia, the colonial legacy of legal pluralism continued with several modifications. Although customary law institutions (village courts) were largely eliminated in the 1950s for the sake of Indonesian unity and judicial integrity, customary norms have been maintained and continued to be applied by the state civil courts (district courts). Certain areas of Islamic law have been applied by the religious justice system (religious courts) in Indonesia, and Indonesia has developed a complex system of legal pluralism that allows various legal sub-systems to apply within the territory of one sovereign state.

One response to the frustration of Islamic interests was the emergence of a rebellion in the 1950s aimed at liberating the people of Aceh from Indonesia. In response, on the basis of 'national unity and integrity', the New Order regime (1968–1998) attempted to strengthen legal centralism by passing laws that effectively abolished the special status of Islamic religious courts in the province. Thereafter, in the post-New Order era, the central government's willingness to allow more legal pluralism in Aceh appeared to be the first step towards a political peace process. The central government believed that greater regional authority over religion, custom, and education would overcome the problems caused by violent conflict. Indonesian legal policy has changed dramatically to include the principle of 'distinction of laws', which states that certain groups of citizens have certain laws that apply exclusively to them. The tsunami disaster that caused extensive damage in December 2004 created a wave of momentum for further implementation of sharia, including the actual authority of sharia courts.<sup>17</sup>

Islamic law and customary law in Indonesia have experienced developments in recent years. The development is interesting to examine from the perspective of the history of legal pluralism. This concerns with how the ideals of modernity in Indonesia have been influenced by the state's efforts in the post-colonial era to make legal institutions an

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<sup>16</sup> Salim and Erlies Septiana Nurbayani, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi* (Jakarta: Rajawali Pres, 2017), p. 95-98.

<sup>17</sup> Salim, Arskal. (2013), *Loc.cit.*

integral part of national development. It also focuses on the political aspect and the 'conflictual' realm of legal pluralism in Indonesia, i.e., customary law, Islamic law, and civil law. The first aspect is studied by looking at how the state specifically handles Islamic law and customary law, while the second aspect is analyzed from actual cases of private interpersonal law, such as interfaith marriage, interfaith inheritance, and gender inheritance. Several socio-political factors influence the relationship between the state and non-state laws, and the way the state's strategy accommodating legal pluralism actually depends on the extent to which these legal traditions are able to adapt to national ideology.<sup>18</sup>

In terms of the latest development of thinking about legal pluralism, we should be careful to draw a clear line between the state law and the law that does not originate from the state. However, these various legal systems operate together, compete with each other, and at the same time adapt and adopt with one another. This is highly visible from how the international law even has an impact on local communities, how it has an impact on the national law, or how the national law has an impact on the local law. The linkages between the legal systems at the macro and micro levels (international, national, and local) must be traceable. Likewise, the relationships between the legal systems that have been in effect for a certain period and have an impact on what is currently happening shall also be seen as a series.<sup>19</sup>

The studies on legal pluralism also experience a development in Islamic religious universities, especially in the Faculty of Sharia and Law, although studies at the Faculty of Sharia and Law are still minimal and only included in certain sub-courses. The legal pluralism course is quite urgent so that students have a sensitivity to a sense of justice, which is the essence of law graduates. In its implementation, legal pluralism must be an independent course, or be inserted into several relevant courses.

In the future, studies on legal pluralism will continue to develop and can become an alternative in the practice and implementation of law in Indonesia. Moreover, law enforcement in Indonesia has been experiencing a number of problems, e.g., the implementation, the law enforcers, and the accumulation of cases in the courts. Thus, the customary justice institution is an alternative way out. For example, law enforcement by the police is promoting restorative justice, which is an alternative to completing the law without going through a formal judicial institution. Restorative justice is in line with the spirit of customary justice, which promotes brotherhood and peace.

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<sup>18</sup> Lukito, Ratno. *Legal Pluralism in Indonesia: Bridging the Unbridgeable*, London: Routledge, 2012.

<sup>19</sup> Irianto, Sulistyowati. "Sejarah dan perkembangan pemikiran pluralisme hukum dan konsekuensi metodologisnya." *Jurnal Hukum & Pembangunan* 33, no. 4 (2017): 485.

#### 4. Acehese Social Life

The people of Aceh, like any other society, also recognize social stratification. Social stratification is the differentiation of the population or society into hierarchical classes, manifested into the high and low classes. The basis and core of social stratification are the lack of balance in the distribution of rights and obligations, responsibilities of social values, and their influences among community members.<sup>20</sup> The elements of social stratification in society are usually based on two: 1) position (status), which is often referred to as social status; and 2) role, which is a dynamic aspect of position.

The social stratification in society mentioned above clearly has a significant influence on the process of implementing Islamic law in everyday life. Islamic law grows and develops in a space that is full of various influences, including social systems and social layers that exist in society. When the implementation of Islamic Sharia would be implemented by the central government for the Province of Nanggroe Aceh Darussalam, this has become an opportunity for the tradition and historical phenomenon to repeat, in which previously the sharia systems were implemented through traditional institutions. Its development and application have been based on the society's acceptance of Islam as a way of life and as a philosophy of life based on hundreds of years of historical experience that has reached the peak of achievement. It is also based on the methodology of its actualization in the form of a very harmonious blend of sharia legal order with Acehese cultural values.

In another context, to understand the character and behavior of the Acehese people in their social life, their outlook on life or *Weltanschauung* needs to be firstly known and understood. Aceh, which has been influenced by Islam for hundreds of years, cannot easily separate its culture from Islamic values. In Acehese society, there exists the adage of *Hukom ngon adat, lagee alat ngon sipheuet*, which means the customary law and religious law is like the inseparability of substance and nature.<sup>21</sup> The Islamic religion which has been adhered to for hundreds of years in Aceh cannot be easily separated from the culture and values of Islam.

In everyday life we find various elements of religion in Acehese society, such as greeting when meeting and parting, praying when there is something to eat, showing Islamic ways when holding a wedding party, and many others activities loaded with religious values that are continuously carried out by the Acehese. Therefore, the Acehese have their own culture of behaving, speaking, and conducting customary manners when meeting and when entertaining guests. According to Ibn Khaldun, one of the factors that shape human character is food and shelter. The Acehese people

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<sup>20</sup> Soerjono Soekanto, *Sosiologi: Suatu Pengantar*, Edisi Keempat, Jakarta: Rajawali Press, 2005, p. 228.

<sup>21</sup> Daud, Darni, Fadrial Karmil, and Agus Sabti. *Budaya Aceh, Dinamika Sejarah, dan Globalisasi*, Banda Aceh: Syiah Kuala Press, 2005, p. 159.



generally have a strong character, do not want to be dictated to, do not give up quickly at all opportunities, and are tough in facing adversity. Such circumstances have a major influence on the implementation of various elements or aspects of Islamic sharia.

Other characteristics of the Acehnese are a sense of mutual cooperation and a willingness to help others, which is never overlooked in everyday life. The life of the Acehnese people recognizes the expression of *hadith maja*, "*Ta weueh ie mata gob saboh tima, rho ie mata droe teueh saboh blang*" (to prevent other people's tears from spilling a bucket, it is possible to spill one's own tears in a rice field). This expression of advice implies that when helping people, one shall also keep in mind his/her own fate. This is one example of how helping others in times of difficulties, in fact, have to be paid with greater losses to oneself, despite the behavior of helping others being a very commendable trait in the life system of the Acehnese.

Another *hadith maja* expresses "*Deuek sama deuek Troe sama troe*" (hunger is equally suppressed, satiety is equally enjoyed). The philosophical value of this *hadith maja* expression is when living together, people should not be selfish and prioritize their own affairs. Such is the character of Acehnese people to maintain a sense of togetherness in life, such as when drinking coffee in a coffee shop, Acehnese will always invite other people to drink together. Another expression such as "*tajak ube lot tapak, ta duek ube lot punggong*" (walking on your own feet, sitting on your own back) is an expression of advice that philosophically means not to care about other people's affairs. This suggests that the character of Acehnese people is not to look for other people's mistakes and bad deeds since they are busy with their own affairs.

The character of the Acehnese people is also reflected in the houses they live in, namely Acehnese houses which are full of philosophical values. The narrow doors of Acehnese houses and wide verandas are a symbol of caution when entering an area, and when the habit of ducking when entering the door is practiced in the social order of society, then one will get a wide space without partitions, e.g., a veranda without rooms. This is a symbolic meaning of the structure of Acehnese houses that not everyone understands.

The partnership between the traditional elite (*keuchik*) and the religious elite (*teungku*) in Aceh, from the largest territory to the smallest interior called *gampong*, is that in everyday life they always hold a consensus, namely an exchange of ideas to achieve unanimity of opinion in supporting and implementing all matters. In the consensus, elderly and other respected people are also invited who are considered to represent the opinions of the entire village population. Everything regarding the public interest in the village is always managed jointly by the *keuchik* and *teungku meunasah* as a symbol of custom and sharia.

Every member of society's behavior always refers to the norms and standards contained in Islamic teachings. Custom contains religious values. Even during the time of the kingdom of Aceh, this custom was codified into *Qanun al-Atsyi (Adat Meukuta Alam)*.<sup>22</sup> Habits that are practiced daily (*adat/custom*) become the basis of law and guidelines for life and manners of daily life. Habits that have become entrenched for the people of Aceh as a result of the conception of a civilized social system have continued to this day, being the understanding of Acehnese custom (*adat*) according to *Atjehsch Nederlansch Worden Boek*.<sup>23</sup>

In the cumulative tradition of Acehnese life, religion is a social force and contributes to social cohesion in society. Everything that is about to be carried out can only succeed well when the religious and government leaders are united in word and deed. This is actually in line with what the Prophet recommended as "*ibdak binafsik*," which is to start implementing the sharia from the person, family, society, and country. This concept needs to be disseminated massively starting from Aceh.

When discussing about the socio-cultural conditions of the Acehnese people, it also implicitly discusses about the Islamic religion itself. This means that the culture of the Acehnese people contains Islamic values. This is because Aceh, which has been influenced by Islam for hundreds of years, cannot easily let go of its culture from Islamic teachings. The Islamic sharia crystallized in the Acehnese indigenous people not only becomes a discourse, but also becomes the awareness and moral application of the entire community. When examined in depth, the socio-cultural values of the Acehnese people philosophically tend to be open because they are democratic, egalitarian, and appreciative. These values are essentially universal values of Islamic teachings. For the people of Aceh, Islamic teachings along with their meanings and symbols have been ingrained both in attitudes and in human mindsets.

## 5. Strengthening Custom in the Implementation of Islamic Sharia

Historically, Islam has been entrenched in Acehnese society for a long time, making it indistinguishable between cultural and religious elements, both of which create a very strong harmony. One of the examples in the social structure of the community is the term *keuchik* (head of the *gampong/village*), who regulates all *gampong* issues, and the term *Tengku Imam gampong*, who regulates religious matters. The two institutions are usually known as *Bapak Gampong* for the *keuchik*, while *Tengku Imam* is referred to as *Ibu Gampong*. In addition, there are *Tuha Peut* and *Tuha Lapan*, *Keujrung Blang*, *Panglima Laot*, *Patua Sineubok*, and *Haria Pekan*, with each institution having a large function and role in Acehnese society.

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<sup>22</sup> Tuanku Abdul Jalil, *Adat Meukuta Alam*, (Banda Aceh: PDIA, 1991), p. xiv.

<sup>23</sup> Ismuha (ed.), *Bunga Rampai Temu Budaya Nusantara*, PKA-3, (Banda Aceh: Syiah Kuala University Press, 1988).

Sociologically, the people of Aceh show various responses to the strict implementation of Islamic law. The different responses have led to actions such as hijab raids against women who do not wear the headscarf, with the sanction of cutting their hair, and Friday prayer raids carried out by women against men who do not perform Friday prayers. Apart from that, there has also been an act of burning Islamic boarding schools (*pesantren*) which have developed ideas that may be considered too advanced, so that some people are very worried that it will damage the beliefs and patterns of worship adhered to by the community to this day. These cases are some examples of how certain tensions occur in the life of the Acehnese people in relation to the implementation of Islamic Sharia. Such incidents can awaken old wounds in the form of *ikhtilaf* which, if not anticipated, can lead to conflict, even though the essential value of the presence of Islamic law is *rahmatan lil 'alamin* (a mercy to all creation).

To avoid horizontal level conflict in the context of implementing Islamic law, there should be a method of interpreting local values. This method shall use a sociological framework in understanding and interpreting texts, both the Qur'an and Hadith. The basic paradigm of this method is that every text of the Qur'an and Hadith cannot be separated from the social atmosphere of the community when the texts appear, as the target of implementing the values of the Qur'an and al-Hadith is the society.

This method should also be applied within the framework of implementing Islamic law in Nanggroe Aceh Darussalam. Here, the local values of the Acehnese people can be adopted by various Qanuns as a concrete form of translating Islamic law in Aceh. The local value interpretation approach will produce a contextually specific building for the implementation of Islamic sharia and through this kind of approach it is hoped that Islamic legal conflicts in the implementation order will be accommodated in an open and democratic frame.

Law No. 44 of 1999 and Law No. 18 of 2001 are strong juridical bases for upholding the implementation of Islamic law in a *kaffah* manner in Nanggroe Aceh Darussalam. Before the promulgation of these two laws, the people of Aceh implemented Islamic law on a limited basis, especially in the field of family law and a small part of the field of *muamalah* (transactions) such as *waqf* (endowment), *hibah* (grants), *sadaqah* (alms), and wills. In contrast, the field of public law and other *muamalah* fields are almost completely untouched. Therefore, the existence of Law No. 44 of 1999 and Law No. 18 of 2001 became important moments in making Islamic law a living law in Aceh. This means that the existence of Islamic law will not be in conflict with the national laws applied in the Unitary State of the Republic of Indonesia.

Law No. 44 of 1999 and Law No. 18 of 2001 have brought the spirit of formalization of Islamic law into formal rules in the form of Qanun (bylaws). It is through this Qanun that various Islamic sharia rules can be upheld in the life of society and the nation. The issue

is to formulate the Qanun's materials in accordance with the sociological spirit contained in the sharia. Of the several Qanuns that have been produced by the Aceh Provincial Government together with the Aceh DPR, it seems that not all of them reflect sociological values and contextual frameworks. The clauses formulated in the Qanuns are still very normative as found in classical *fiqh* rules and lack of sociological nuances.

One example is in Qanun No. 11 of 2002 concerning the implementation of Islamic sharia in the field of Aqidah, Worship, and Islamic Sharia, which states that Muslims who change religions are threatened with death sentence. It turns out that the criminal sentence formulated in this Qanun does not comprehensively view the social context when the death sentence is prescribed. As a result, Qanun No. 11 of 2002 will prescribe the death penalty for Muslims who convert to other religions in Aceh. In fact, if we examine the sociological context, it turns out that the death penalty for Muslims who change religions is related to the incident of Muslims leaving the troops and joining the enemy (deserters). Hence, the death threat was not aimed solely at leaving Islam, but because there was an element of deserter. The Qur'an recognizes the existence of freedom of religion, and respects people of different religions.

The formulation of the Aceh Qanun materials sometimes intends to adopt *fiqh* rules without paying attention to social and humanistic aspects, even though the Qanun will be implemented in people's lives. Views that wish the adoption of unfiltered *fiqh* rules, in fact, have produced qanuns that lack high social ties. It is important to mention here that after the enactment of Law No. 11 of 2006 concerning the Governance of Aceh, the position of qanuns related to Islamic sharia is fairly strong from a juridical perspective, as these qanuns can only be canceled by means of a judicial review by the Supreme Court. Even though the Aceh Qanun was made by the Aceh government, its legal force is not the same as Regional Regulations in other regions, an effect of special autonomy for the Province of Aceh.

For this reason, for the development of Qanun materials which are the result of *ijtihad* (independent reasoning) on sharia texts, it is better to pay close attention to the ideas put forward by Rusjdi Ali Muhammad, as follows:<sup>24</sup>

- a. Every Qanun material formulated shall not only have access to the explicit texts of the Qur'an and Sunnah. However, it is necessary to explore in more depth the nature of the existence of these texts for humans. Understanding the nature of the texts will discover the spirit of the sharia.
- b. The discovery of the sharia spirit not only requires a study of legal philosophy, but also requires a sociological study in which an understanding of the conditions of society when the texts emerged will be very important, as the cases occurring

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<sup>24</sup> Syahrizal Abbas, *Kedudukan Qanun Aceh Dalam Sistem Hukum Nasional*, paper presented at the International Seminar at Hermes Palace, Banda Aceh, 2007, p. 2.

around the emergence of the texts could be used as a reference in formulating current Qanun materials.

- c. The thematic (*maudhui*) approach shall not only refer to verses and hadiths that talk about the same theme, but also to the understanding of the theme according to the companions. The companions' understanding is important considering that in their era the revelation had ceased since the death of the Prophet Muhammad, while legal issues continued to emerge.
- d. The sociological spirit that the Qur'an established in its laws needs to be considered by the people in Aceh because many traditions and legal practices in Aceh have become living laws and can provide a sense of justice for the community.
- e. The framework above will certainly be meaningful if the level of public education and socialization of Qanun materials can be improved in a better direction, so that the existence of the Islamic sharia Qanun and the value of *rahmatan lil 'alamin* can truly be felt by all people, both Muslims and non-Muslims.

## 6. Islamic Sharia and Legal Harmonization from the Perspective of Legal Pluralism

Islamic sharia in a holistic context places humans as the central point in order to promote Allah's teachings through the application of Islamic sharia. The position of humans as a central point in the framework of implementing Islamic law consists of two dimensions that cannot be separated from one another. The dimensions referred to are humans as the subject and as the object of sharia regulation.<sup>25</sup> The application of Islamic sharia refers to a dynamic framework in Islamic law, especially during the Companions period and several decades after the Companions, when the revelation ceased since the death of the Prophet Muhammad. At that time, legal problems continued to emerge along with the expansion of Islamic territory. The Islamic teachings contained in the Qur'an and Sunnah were understood by the companions in the spirit of universality, flexibility, and sociology which leads to the postulate that Islamic sharia carries the mission of *rahmatan lil 'alamin*.

The dynamic Islamic law can be seen in the spirit of universality and flexibility, and sociological nuances that have actually been shown by the Qur'an itself at the beginning of the application of its laws. Such spirit can be found when Allah forbids drinking *khamr* (alcohol) and the practice of usury. Allah does not directly and immediately forbid these

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<sup>25</sup> Rusjdi Ali Muhammad, *Penerapan Syari'at Islam di Aceh: Pendekatan Gradualisme dan Interpretasi Nilai Lokal*, Inaugural Speech of the Professor in the Field of Islamic Law and the Open Senate Meeting in the 41st Anniversary in Banda Aceh, 2004, p. 11.

two actions. Violations and prohibitions on drinking *khamr* and the practice of usury are carried out in stages (*tadarruj*) according to the level and willingness of the community to accept a ban or the imposition of a law. In the study of Islamic legal thought, this phasing process can be called the theory of legal gradualism.<sup>26</sup>

The gradualism of the prohibition of *khamr* and usury illustrates how much the Qur'an pays attention to sociological and anthropological conditions and traditions rooted in a society. The Qur'an does not directly and authoritatively forbid certain traditional practices, but it is very accommodating to these practices. The Qur'an initially explains the positive and negative sides of the practices of usury and drinking *khamr*, while allowing people to experience the benefits and harms of the practices. If society truly feels that such practices bring harm that will threaten human existence in the world, then the Qur'an states firmly and explicitly that the practices of usury and drinking alcohol is *haram* (unlawful). Thus, it can be said that the nature of obligations and prohibitions on something is determined by the level of benefit experienced by humans.

The sociological dimension inherent in the laws contained in the Qur'an and Sunnah should be able to be understood and studied in depth, so that when applied, the underlying sociological spirit will not be lost. Therefore, *asbab al-nuzul* (circumstances of revelation) and *asbab al-wurud* (circumstances of revealing Ḥadith) play an important role in revealing social realities and conditions when these rules are prescribed. The role played by the *asbab al-nuzul* and *asbab al-wurud* theories is not only to disclose social realities recorded in one verse or one hadith, but also to explain various realities integrally within a certain theme. Therefore, the principles of sociological analysis are closely related to the thematic (*maudhu'iy*) approach. Through these two approaches, it is hoped that God's sacred-normative teachings will be able to be implemented in the context of today's life. In plain language, it can be said that sociological analysis makes sociological reality the main consideration in formulating various rules of Islamic law.

The workings of contextual sociological analysis seem to have been widely practiced by the companions of the Prophet, especially Umar ibn Khattab. In other words, Umar understood the way sharia texts applied in a sociological framework, and not solely based on *fiqh an sich* justification. Umar had succeeded in instilling the spirit of sharia in the frame and sociological entity in every decision he made. One of the results of Umar's *ijtihad* inspired from the spirit of sharia and sociological entity was when he did not cut off the hand of a thief during a famine. At first glance, Umar's action contradicted the literal text of the Qur'an in surah al-Maidah verse 38. However, this verse was understood by Umar in the spirit of the sharia spirit, that the famine had to be used as a basis for postponing, even abolishing the maximum law against thieves at that time. According to Umar, the period of famine had made the elements of the crime

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<sup>26</sup> Rusjdi Ali Muhammad, *Penerapan Syari'at Islam di Aceh*, p. 13.

of theft unfulfilled. In relation to this, Friedman argues that obedience to the law is connected to four aspects, one of which is the response to social influence. Compliance with the law can manifest when violations of the law involve negative responses from social groups.<sup>27</sup>

Based on the theory of legal compliance, a strategy can be formulated within the framework of implementing Islamic law. There are at least several issues needed to be involved: *First*, the selection of the material substance of Islamic legal qanuns shall, wherever possible, be oriented towards providing protection for individuals and society. For this reason, the selection of legal issues to be regulated must be done selectively with the main priority being on aspects relating to the interests of society.<sup>28</sup> *Second*, a social climate that is conducive and supports legal compliance shall be established. It is important to understand that law is essentially part of a broader social system. All parts of the social system are largely determined by other subsystems. The implementation of Islamic law becomes disrupted when the prevailing economic pattern is still exploitative; the politics carried out are corrupt and full of money politics; and the culture adopted has been separated from the values of Islamic law.

In connection with the above discussions, Law No. 44 of 1999 and Law No. 18 of 2001 have provided a juridical basis for the implementation of Islamic sharia in Aceh. The presence of these two laws has opened up wide opportunities for the people of Aceh to implement Islamic sharia in a *kaffah* manner. The implementation of Islamic sharia in Aceh is in fact nothing new, as the people of Aceh have already made Islamic law the rules that regulate their daily life. However, in the past few decades the perfect implementation of Islamic sharia had experienced obstacles in juridical, sociological, and political domains.<sup>29</sup>

Juridical, sociological, and even political obstacles seem to have begun to lower and in certain circumstances they could be eliminated, if the government's strong will and awareness of the world of national law have increased. For example, the understanding that the special autonomous region of Aceh has unique values and social-philosophical awareness by allong Ache to create its own choice of law. In short, juridical legitimacy is an important matter, but what is more significant is the sociological legitimacy and philosophical legitimacy that penetrates into the soul of the people.<sup>30</sup> Therefore, it is

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<sup>27</sup> Zainuddin, Muslim. *Efektivitas Pelaksanaan Syari'at Islam dalam Dinas Syari'at Islam*, Rekaman Opini (Suntingan Artikel tentang Syari'at Islam dalam Media Cetak), Banda Aceh: Dinas Syari'at Islam Provinsi Nanggroe Aceh Darussalam, 2005, p. 97.

<sup>28</sup> *Ibid*, p. 99.

<sup>29</sup> Rusjdi Ali Muhammad, Teori Gradualisme: Aplikasi Penerapan Syari'ah Islam di NAD, in *Swara Ditperta*: No. 18 Th. II, 29 Oktober 2004, p. 3.

<sup>30</sup> Nurdin, Abidin. "Reposisi Peran Ulama Dalam Penerapan Syariat Islam Diaceh." *Al-Qalam* 18, no. 1 (2016): 54-65.

necessary to pay attention to the method of interpreting local values to avoid conflict within society.

In a further context, the application of Islamic sharia is in line with the theory of legal pluralism which recognizes legal and judicial systems, as well as the state, customary and Islamic laws, and even the international law. In Aceh, after the implementation of Islamic sharia, the laws and qanuns of Islamic law have been undoubtedly in line with the state laws and regulations. The most recent development is the enactment of Qanun Jinayat and Qanun Jinayat Procedural Law.<sup>31</sup> The two qanuns have a broader legal substance compared to the previous qanun which only regulated a few important aspects e.g., *khamar* (liquor), *khalwat* (behavior leading to *zina*) and *maisir* (gambling).

In the context of legal pluralism, in Aceh the existence of customary law has experienced a revitalization, e.g., in the field of rice fields coordinated by *keujrun blang*, in the field of maritime affairs by *panglima laot*, in the field of forestry by *pawang uten*, in the village (*gampong*) by *keuchik* and *imum meunasah*, and in the *kemukiman* by *imam mukim*. These customary fields or institutions are supported by Qanun Number 9 of 2008 concerning Development of Traditional Life and Customs, and Qanun Number 10 of 2008 concerning Customary Institutions and strengthened by Law No. 11 of 2006 concerning Aceh Governance (UUPA). These customary institutions have the authority to resolve disputes in communities that are recognized juridically, and in fact several customary institutions have been encouraged to strengthen the application of Islamic sharia, namely the *Keuchik*, *Imum Meunasah* and *Imum Mukim*.<sup>32</sup>

Referring to the theory of legal pluralism, the judicial institution, namely the Sharia Court, which resolves the legal process in cases of violations of Islamic sharia, is fully supported by the state, in this case the Supreme Court. Moreover, politically, the religious courts, which had previously been under the coordination of the Ministry of Religious Affairs, were moved under the coordination of the Supreme Court, which added a Religious Chamber which previously did not exist. In addition, traditional justice institutions run at the *gampong* and *imum mukim* levels also remain alive in Aceh. The customary courts resolved 18 legal cases (minor crimes) which were sociologically and anthropologically trusted by the community. These included Islamic law cases such as inheritance disputes, joint property, minor abuse, land disputes, and even disputes between citizens, all of which could be resolved through deliberation and consensus in the spirit of brotherhood and peace.<sup>33</sup>

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<sup>31</sup> Djawas, Mursyid. *Problematika Penegakan Qanun Jinayat di Aceh*, Aceh Besar: Sahifah, 2019.

<sup>32</sup> Zainuddin, Muslim. "Peran dan Fungsi Kelembagaan Mukim dalam Penyelesaian Perselisihan: Analisis Praktek Hukum Adat di Aceh." *Media Syari'ah: Wahana Kajian Hukum Islam dan Pranata Sosial* 19, no. 2 (2017): 319-356.

<sup>33</sup> Djawas, Mursyid. "Ijtihad Hakim dalam Penyelesaian Perkara Harta Bersama di Mahkamah Syar'iyah Banda Aceh." *Ar-Raniry: International Journal of Islamic Studies* 1, no. 2 (2020): 317-346.



In the context of legal pluralism, the application of Islamic sharia in Aceh has reflected harmonization between state law, customary law, and Islamic law. There has been no significant conflict between state law, customary law, and Islamic law, and even international law. In contrast to before independence until the beginning of the Old Order, the conflict, or rather the contradicted, between state law, custom and Islamic law was quite strong at the time, which had influenced almost all aspects of Indonesian society's life.

## 7. Conclusion

In a diverse and pluralistic country such as Indonesia, almost all aspects of life also have an impact on plurality. For example, in the legal field, legal pluralism is inevitable, as in the case of Islamic sharia in Aceh. Aceh is a region with strong custom and culture combined with Islamic law that has been formally implemented. Therefore, Islamic sharia in Aceh as part of the recognition of the concept of legal pluralism has been implemented well in the context of state law, custom, and Islamic law. The state provides juridical legitimacy through laws in the context of legal substance and judicial institutions, or sharia courts. Likewise, there is revitalization of traditional institutions in terms of customary law and customary justice. Minor dispute cases can be resolved peacefully without going through formal justice. The argument emphasized in this paper is that Islamic sharia in the context of legal pluralism has succeeded in manifesting legal harmonization between the state, custom, and Islamic law.

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