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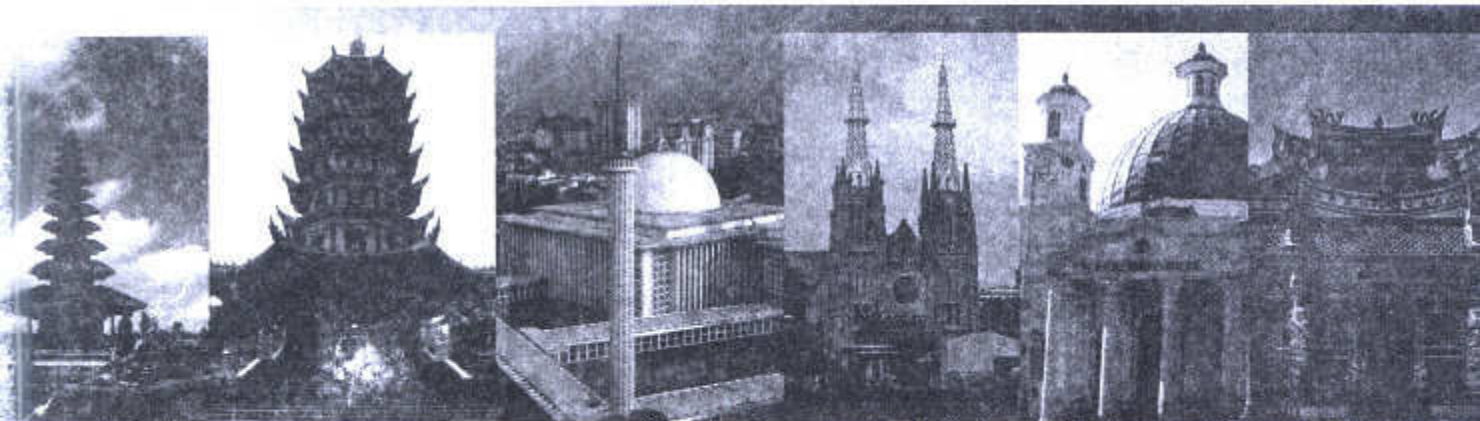


Center for Research and Development of Religious Literature and Heritage  
Office for Research and Development and Training  
Ministry of Religious Affairs of The Republic of Indonesia

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## EDITORIAL NOTES

The growth of religiously radical books has already occurred in parallel to the growth of universal ideologies, philosophical thoughts, and universal ideas of religion in the world-wide, spread globally by information and technological progress. This first article, “The Growth of “Islamic” Radical Books in Indonesia”, written by Choirul Fuad Yusuf, sociologically, attempts to describe how the development and spread of Islamic literary works, particularly on the conflictually-nuanced books in Indonesia. The article of which data is referred to the research-findings on *Survey of Religious Books in Indonesia*, highlighted some notes. *First*, the growth and development of Islamic books, since last decade, tends to be strongly dominated by the practical-Islam books. This phenomenon, is culturally predominantly caused by any pragmatic view of the Muslims at large. *Second*, if it is compared to its former development, the liberal books of Islam seems to face any decline of quantity and interest due to its messages perceived as too freely secular. *Third*, both fundamental books containing the ideas of teaching-purification, and radical “Islamic” books proposing the *syariah* Islam implementation totally and establishing Islamic state in Indonesia, tend to very be stagnant and not too popular amongst Indonesian Muslims because of their political aspiration for defending Indonesia as their country.

The second article is about “Lyrics in the Dolalak Dance in Purworejo Central Java” is written by Djarot, Timbul and Sudarsono. They highlighted that Islamic education teachings which is transmitted performatively in the form of folk-songs is relatively very effective. The article, which is very descriptive and informative in nature, shows that the performance art is methodologically significant and functional in the approaching people’s soul and spirituality to be closer to the God believed. So, for the future, the writers confidently recommend to Government to maintain and conserve this traditional method of Islamic teachings or *dakwah Islamiyah*.

The third article, Etin Anwar which talks on the use of social, religious and cultural heritage for community building and mosque participation by Indonesian Muslim communities in New York City and its impact on women's leadership in al-Hikmah mosque and their production of moral agency and pious self in the mosque setting. She argues that Indonesian Muslim women in Al-Hikmah mosque have more leadership capacity due to the cultural heritage of Indonesian Islam and the complementary status of women in their communities.

Further, Sulistiyowati's article on "Cultural Strategies of Abdi Dalem in the Global Era in Achieving Welfare" talks about the life of Abdi Dalem in facing the globalization era, particularly focusing on the why-ness of the Abdi Dalem have a strong dedication to the King. The Abdi Dalem (royal officials) of Jogjakarta Palace, historically, devoted of the Kings on the reach of blessing (*ngalap berkah*). They believed in the non-material as the highest values. To be an Abdi Dalem who devotes to the King will be functionally effective to gain both inner and outer welfare. Through her research carried out in 2009, she concludes that to be Abdi Dalem, actually, is not only motivated for the need of seeking for blessings (of the King or Sultan), but it is also inherited by their ancestors. Although, the monthly salary (*paring dalem*) received by Abdi Dalem, ranging from IDR 7,000.00 up to IDR 15,000.00 but they feel happier and more fortunate in getting welfare. This social fact, of course, becomes a very unique phenomenon in the modern era or *jaman saiki*.

The fifth article is "Traditional Ritual, Water Conservation and Islamic Thought, written by Muhammad Fathi Royyani. This article discusses the traditional ritual of water conservation and its relation to the Islamic thoughts on utilizing the natural resource. This article, substantially, explicates of how the relation of the concept of *Kawin Cai* and Islamic thought, known as the Seven Grade (*Martabat Tujuh*). This article important to read though it seems to be only as a reportive work.

The sixth article of "Islamic and Customary Law in the Aceh Darussalam Constitution" written by Gunawan Adnan tries to show readers that there is a tied and hard relationship between Islamic law

and customary law in the Aceh Darussalam constitution. This relationship phenomenon is clearly seen through the examination study of the manuscripts of the so-called the three law of Aceh, especially pertaining to *siyasaḥ*. The article jumps to a brief conclusion that the most Islamic law, especially the political domain (*siyasaḥ*) has been permeated into Monarchic Aceh Darussalam structure. The institution of *Ahlul Halli wal Aqdi* (parliament), *syura* system, King and functionary conditions are systemically needed for carrying out the state. Further, based on *qanun*, the form of Aceh Darussalam kingdom is not purely a monarchy, endowed by generations, but has been constructed by modern Islamic Republic State. Moreover, the relationship between Islamic law and customary law (*adat*) in Aceh Darussalam kingdom has already been found in the form of both total and selective absorptions.

The last article, written in Arabic “أثر التشيع في تصحيح الحديث”, by Abdul malik Ghazali, studied on the book of *Al-Mustadrak ‘ala Ṣaḥīḥain* written by Abu Abdillah al-Hakim al-Nisaburi (w. 405). The author argues that Al-Hakim easily approved on *hadis* either *hadis saḥih* or *hadis hasan*. This action, at least, indicated that Al-Hakim was already influenced by *syiah* domination in the reign of Muslim states at that time.

# Islamic and Customary Law in Aceh Darussalam Constitution

By Gunawan Adnan

## Abstract

It is confessed that the relationship between Islamic law and customary law in Aceh is very tight and hardly distinguished. This phenomenon hold also true and could be traced through the canonical texts of Aceh Darussalam kingdom. This article is aimed at examining this indication through a brief study on the manuscript of the so-called three laws of Aceh, especially pertaining to *siyasah* (politics) and the forms of relationship between the two legal systems. Furthermore, it will also discuss the substance of the text compared with al-Mawardi's thought in *al-Ahkam al-Sulthaniyyah*. The study safely comes to the conclusion that the majority of *siyasah* concept of Islamic law has been absorbed into the structure of canonical texts of Aceh Darussalam Kingdom. Last but not least, it is also found two forms of absorption, namely, total and selective absorptions.

**Keywords:** Aceh Darussalam, Islamic and customary law.

## Introduction

Many historians, both from Indonesia and from outside Indonesia (foreign historians) are of the opinion that Islam came for the first time to the archipelago (Nusantara) through Aceh. Marcopolo, for instance, who stopped by in the region of East Aceh, precisely in Perlak in 1292, stated that the citizen of that region were Muslims. The same holds also true to Samudra-Pasai, which is based on the archeological evidences like tomb stones

and the likes found in the old site of former Samudra-Pasai Kingdom and other existing information resources that this kingdom had been becoming an Islamic Kingdom approximately in 1270 A.C. Another trust worthy information resources even indicated that Islam had already come to Aceh since the 7th century.

The above information and evidences, at least, signaled that a tight and long acculturation process had occurred between Islam - especially Islamic law and teaching - and cultural values as well as local custom of Aceh. This relational and interactional (sociological) relationship between Islamic law and local elements which is generally known as customary law, in my opinion, is interesting and important to be studied. How is actually the relationship form between Islamic law and customary law in Aceh? This question is important to be answered since socio-culturally the Acehnese society is acknowledged to be accepted Islam as their way of life (life philosophy) in almost their entire aspect of life which has been becoming socio-cultural system of the Acehnese society. This interaction can be seen in a form of dialectic relationship between Islamic law and local elements and values (custom) which is reflected in the following Acehnese proverb that is well-known *adat ngon hukom, lagee zat ngon sipheut* meaning adat (custom) and law (Islamic law) is like the substance and the character. This proverb strongly indicated a tight relationship and acculturation, which can hardly be separated, between the so-called *hukum adat (adat/customary law)* on the one hand and Islamic law on the other.

Moreover, from a political perspective, Aceh Darussalam kingdoms official books and documents also depicts that Islamic law has been acknowledged and implemented in all part of life including politics and bureaucracy. The constitution that had been implemented by the Aceh Darussalam is believed based on Islamic law. In relation to this, at least three *qanuns* (canon/regulation) which can be used as a model and pattern to



see the element of Islamic law in the Aceh Darussalam state structure and state law, namely *Adat Meukuta Alam*, *Qanun al-Asyi Ahlussunnah wal-Jama'ah (Qanun Meukuta Alam Sultan Iskandar Muda)* and *Qanun Syara' Kerajaan Aceh*.

Some studies about the existence and content of Islam of Aceh Darussalam legislation have been conducted by various circles; culture and history enthusiasts, historian, jurist and others. In relation to the recognition to *Adat Meukuta Alam*, the main masterpiece was the translation and study of K.F.H van Langen and governance formation during Aceh sultanate. (van Langen, 1997). Afterwards Tuanku Abdul Jalil made the repeat translation and comment to this book in *Adat Meukuta Alam*. (Abdu Jalil, 1991). This book contains a lot of loading clarification concerning rank term, perform and position of peripheral of Aceh contained in the manuscript. Prof. Dr. G.J. Drewes which have studied the copy of Aceh custom expressing that manuscript as the one named *Adat Meukuta Alam*.

This *Adat Meukuta Alam* manuscript has also been electroplated by A. Hasjmy, what according to him, *Adat Meukuta Alam* or *Qanun Meukuta* contains various rules for Aceh Darussalam. Among others, ( 1) base and state foundation and also governance system; ( 2) source of law and type of applicable law in ; ( 3) central government and regional and state division; ( 4) state institutes at center level and also its authority and duty; ( 5) name and position title for high functionary mount at center level; ( 6) conditions become the sultan, minister, other high *kadi* functionaries and; ( 7) rights of citizen and relation to the State; ( 8) government structure of region and duties of all region functionary; ( 9) way of sultan appointment; ( 10) organization of armed forces and titles for high and middle ranking officers; ( 11) State in a state of war; ( 12) elementary regulation about commerce inside and outside the country; ( 13) governmental justice condition and people adherence; ( 14) others, *Adat Meukuta Alam* also specifies some fundamental line about way of

how sultan ought to and all other high functionaries run the government. Ali Hasyimi, 1977:346). Nevertheless, Hasjmy's opinion commented rather oblique by Sakti. According to Sakti most of all contents of the manuscript of *Qanun Meukuta Alam* which is cited by A. Hasjmy is precisely equal to the manuscript of *Tazkirah Thabaqat*. (Sakti, 2008).

Furthermore, the second manuscript of *Qanun Meukuta Alam* is *Qanun al-Asyi Ahlussunnah wal-Jama'ah (Qanun Meukuta Alam Iskandar Muda)*, which is hitherto not yet been deeply studied, except the only transcription made by M. Dhanny. This manuscript written by Teungku Di Mulek al Said Abdullah in the year 1310 H or about 1880 M in Aceh. Abdullah, 1983). Though this manuscript lean to the *Meukuta Alam (Iskandar Muda)*, this copy, however, was written far after a period of Sultan Iskandar Muda and this manuscript could possibly be personal initiative and collection of the author. This manuscript, nevertheless, remains to and can depict a lot of relevant matter to the legislation of Aceh Darussalam kingdom, because, among other things, it contains law order and custom, genealogy of higher functionary (*thabaqat*), tax regulation, condition and duty of sultan and name of functionary.

In relation to the third manuscript of *Qanun Adat Meukuta Alam*, I could explain here that the manuscript have been studied by Abdullah Sani<sup>1</sup> which also serve as his Master thesis at National University of Malaysia (UKM) Malaysia. He used the literature approach in studying the language of state system used in his compared manuscript together with the manuscript of *Bustanussalatin*. But, the manuscript study that is conducted by Sani focuses more to viewpoint of content analysis or an analysis

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<sup>1</sup> Abdullah Sani Usman Basyah. *Kamun Syarak Kerajaan Aceh pada Zaman Sultan Mansur Syah: Tahkik dan Kajian Bandingan dengan Bustanussalatin*, Tesis, tidak diterbitkan dan tidak ada tanggal dan tahun. (Malaysia: Fakultas Pengajian Islam Universitas Kebangsaan Malaysia).

on manuscript content. As far as I am concerned, this is the single study about the manuscript from a literature point of view.

The special focus of this article, however, is the relationship between Islamic law and the customary law in the state system of Aceh Darussalam. In this context there is two matters which will be developed, namely (1) Islamic law, especially about the adopted political system (*siyasa*); and (2) form of relationship between Islam and the custom of Aceh or local element in those three *qanuns*.

As seen at hereinafter part the writer uses the theory of relationship between Islamic law and *adat* or customary law. In this context, a more compatible approach to be used, according to writer, is the approach of law sociology that is an approach adopted to see the development of Islamic law from the aspect of interaction and its social reaction with community where the law or regulation formulated and practiced there. By using this approach, of course, the theories related to socio-historical elements of user society must also become the important part of this study. This approach model will enable us to have a clear understanding towards various forms of yielded relationship when Islamic law dealing with the traditional law, customary law or values and also other local elements.

Other part which is also important to be discussed in this study is concerning the substance of legislation text content of Aceh Darussalam kingdom as seen from the part of "relationship between manuscripts", "Aceh state system", "rule and position of *ulama*", "conditions and duties of a leader" and "total absorption and selective absorption" as comparing to Islamic law. Furthermore, the substance of the text related to state system, role and position of Muslim scholar, conditions and leader duties will be compared to the opinion of al-Mawardi in *Al-Ahkam al-Sulthaniyyah*. (Mawardi, 2006).

## **The Theory about the Relationship between Islamic Law and Customary Law.**

There are some theories which can be utilised in a study concerning the relationship between Islamic law and customary law in the archipelago (Nusantara). All Jurists and Dutch culturists, for example, Carel Frederik Winter ( 1799-1859) and Salomon Keyzer ( 1823-1868) confessing that before the arrival of Dutch colonial, the Islamic law has gone into effect in Indonesia. Therefore, in term of judicature Islamic law is applied to Islam indigenous people. This condition recognized as a period of *Receptio in Complexu*, a term which is then introduced by Lodewijk Willem Christian van Den Berg (1845-1927). He expressed that for Moslem should fully be implemented Islamic law because they are Muslims. (Thalib, 1985:15-16).

The previously mentioned two prominent figures, Carel Frederik Winter and Salomon Keyzer, render a service in contributing their concepts so that the Islamic law is legitimated and manifested in article 75 and 78 R.R (*regeeringsreglement*) 1855 or Dutch Staatsblad 1855. In the article 75 R.R Stbl.1855:2 subsection 2 mentioned: religious (Islamic) law (*godsdiensstige wetten*) and the custom of Indonesian inhabitants should be taken into consideration and implemented by the judge. Whereas in subsection 4 mentioned that religious law, *instelling*, and local custom should also be implemented by the European judge to them (local inhabitants) at a higher court in case of happening the so-called *hoege beroep* meaning a request for an appeal. In the article 78, subsection 2, even stressed that if the case occurs among the Indonesian or those who similar to them so they have to submit (obey) to decision of religious judge or their community leader in accordance with religious regulation (*godsdiensstige*) or their traditional regulation. (thalib, 1981:44).

The correctness of this *receptio in complexu* theory could possibly be supported by dominant factor, namely the majority of

Islamic s which have existed in Nusantara. Some s which could be mentioned here are Aceh, Jambi, Palembang, Mataram, Banten, Cirebon, Jailolo, Ternate, Tidore, Bacan, Obi, Goa, Bone, Wajo, Soppeng and Banjar. The theory and view of this van Den Berg had been argued by Cornelis van Vollenhoven (1874-1927) and Christian Snouck Hurgronje (1857-1936).<sup>2</sup> Both Vollenhoven and Hurgronje had persistently opposed the section 75 and 78 R.R that contains the above-mentioned *Receptio in Complexu*. Even Snouck Hurgronje introduced a new and different theory which was opposite to the theory of *Receptio in Complexu*. His new theory was then recognized with the theory of *Receptie exit*. The follower of this theory stated that the applicative law or regulation that should be implemented in Indonesia is the Indonesian own original customary law, which was in some certain cases affected by Islamic law. Therefore, the Islamic law could only have the power or be applied if it is accepted by customary law. According to this stream, Islamic law itself is not law. This theory was then adopted by Dutch colonial government in determining its law political policy in Indonesia.<sup>3</sup>

An Indonesian prominent jurist prominent, Hazairin, states that the theory of *receptie* has to be excluded or abolished from national law since it is totally contradictory to and opposite the so-called UUD 1945. This theory was then developed by Sajuti Thalib with the theory of *receptio a contrario* expressing that applicable law for people is their religious law.

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<sup>2</sup>Besides these two experts, it is also noted that another scholars like Piepers has also given his serious attention to this matter as can be traced through his articles in *Tijdschrift voor Ned. Indie*, 1895, I. A. Nederburg with his book *Wet en Adat*, 1896-1898, W. B. Bergsma with his book *Wet en Adat*, Van der Lith in his book *Gids*, 1882, Van Ossenbrungen in his book *Oorsprong en Eerste Ontwikkeling van Het Testee en Voogdijrecht*, 1902 and Clive Day in his book *The Dutch in Java*, 1904. (See also Soerjono Soekanto, 1954:51).

<sup>3</sup>It is ironic enough that the government of Indonesia still acknowledge this *Receptie theory* up to 1960, when the so-called Tap. MPRS 1960/II has been found/set which give such a good opportunity to put Islamic law into effect through legislation. (Hazairin, 1968:6-7).

## The Relationship between the Manuscripts

In order to clearly see the pattern of relationship and comparison between the manuscripts, each items of law from the manuscript will be compiled in a following table. From the table one can clearly see and compare the content of each manuscripts particularly pertaining conditions and election of state functionary. It seems that this is an important part off all manuscripts namely *Adat Meukuta Alam (AMA)*, *Qanun al-Asyi (QA)* and *Qanun Syarak (QS)*. This part is well-known as the *Tazkirah Thabaqat*. It is possible that the manuscript of Adat Meukuta Alam [do] not contain a lot of items in it because the manuscript is damaged and many parts of it are missing. The same condition is also happening to the *Qanun Syarak* which also contains a few thing or item because when it was taken from a *katakana* version it just contains about state constitution of Aceh Darussalam like a normal state legislation and an official manuscript.

Content	AMA	QA	QS
Condition and The Way for Election State Functionary	V	V	V
Condition for a King/Sulthan	X	V	V
The Structure of Power (Authority)	X	V	X
The Title of Vice	X	V	X
Protection and Salary of State Functionary.	V	X	X
Taxes and Custom (toll)	X	V	X
Regulations for Foreigner	V	V	X
Criminal Law	V	X	X
Religious Ceremony	V	X	X
Syara' (Religious) Law	X	V	V
History/Chronicle	X	V	X

Why does then the *Qanun al-Asyi* contains a lot of items? There are many possible answer could be given to the question. Among others, it is because this manuscript could possibly be a personal note of the manuscript writer, an official manuscript of the kingdom.

About the condition items and way of functionary election that contained in those three manuscripts are also not different. The most complete one is *Qanun Syarak*. It is because this manuscript contains a detail and systematic explanation on the matter of conditions of a functionary and the procedures of its election. This differs from *Adat Meukuta Alam*, which in contrast explains more about the inauguration procession or ceremony and its conditions. Furthermore, the above-mentioned procession is only limited to or especially for the so-called *Hulubalang* and *panglima sagi* only, while other functionary is not mentioned. The same is also happening to *Qanun al-Asyi* which contains only the condition of a *Qadhi Malikul Adil*. The phenomenon as such indicates that both *Adat Meukuta Alam* and *Qanun al-Asyi* differ from *Qanun Syara'* that seems to be more complete.

Prerequisite conditions become the king in *Qanun al-Asyi* and *Qanun Syara'* can be told that both are the same. Only in *Qanun Syarak* the explanation of the items of condition is more extensive. For the items of state constitution, *Qanun Syarak* represents the extension from *Adat Meukuta Alam* and *Qanun al-Asyi*, while for other items is difficult to be compared because of its difference. Nevertheless, for the items of *syari'ah* law, *Qanun al-Asyi* is more complete, although it is not systematic, compared to *Qanun Syara'*. In consequence, there is possibility of existing *Qanun al-Asyi* now has various versions, both in Aceh and abroad like in Malaysia, Dutch, or Portugal, do not derive from one complete manuscript about regulation of constitution, but had been codified by the writer of those *qanuns*.

## State Constitution of Aceh Darussalam Kingdom

In comparison to al-Mawardi, the state constitution of Aceh Darussalam explains only a small part of institutions in the structure of caliph authority or power. It expresses only the criterion, a few election procedures, appointment and the function of the institution of the *ahlul halli wal aqdi*, *imam / khalifah*, minister, governor, commander jihad, and judge. It does not clearly explain how the relationship of the institutions in an official structure.

On the contrary, *Qanun Adat Meukuta* explains the State institutes in more detailed compared to al-Mawardi and more technical in solving cases; so it is more like a regulation of criminal or civil legislation than that of a constitution. Moreover, *Adat Meukuta Alam* mentions that the institution of sultanate, *hulubalang*, *panglima* (commander) *sagi*, *imeum mukim*, *qadhi malikul adil*, the *teungku* (teacher/guru) of grand mosque, *rama setia*, *orang kaya* (plutocrat) of *sri raja lela*, and others. This is equal to al-Mawardi which does not mention the relationship between the aforementioned institutions in governance structure.

Both *Qanun al-Asyi* and *Qanun Syara'* elaborate these institutes in more detail. And so does *Qanun Syara'*, in article 12 for example, itemizing the relationship of the institutes by using terms such as "takluk/comply": "...*dan sekalian hakim tunduk di bawah hukum Malikul Adil*" meaning "...and all judges comply with the law of *Malikul Adil*".

## The Position and Role of Moslem Scholar

Al-Mawardi does not peculiarly explain the position of Moslem scholar in the structure of Islamic governance. It seems that, for al-Mawardi, the status of Moslem scholar in governance structure is attached to the holder of state institution position. One



of the criterion of *imam/khalifah*, minister *tafwidhi* / plenipotentiary (minister with full mandate, governor of the province, commander, and judge), is the ability of making clever and creative interpretation towards legal or law matters. It is, therefore, a special institution for gathering the *ulamas* (Muslim scholars) is not needed.

In the *Qanun Adat Meukuta Alam* does not mention that the *ulamas* are put in a special institution. It mentions only the function of *ulamas* in society and governance. At regional level, for instance, Muslim scholar is viewed as society component, whose duty is to discuss with the society in choosing or election the *hulubalang* or commander or *panglima sagi* and the partner for *hulubalang* itself in discussion and deliberation to make decision at its regional level especially which regards to sanction for criminal. Others, the authority of *ulama* at level is as a king partner in making decision and institution, whose authority is to determine the first Ramadhan. In *Qanun al-Asyi* is also mentioned that the function of *ulama* is king partner and adviser; at the level of kingdom, the *ulama* is placed at various stratified institutions.

The *Qanun Syara'* is a little bit broader in formulation the role of *ulama* in the structure of Aceh, although it could not clearly be depicted how is the relationship between *ulama* institution or the relationship between *ulama* institution and other institutions. *Qanun Syara'* expresses that judges are under *Qadhi Maluku Adil*, while *kadhi-kadhi* are under *Qadhi Muazzam*. Besides *Qadhi Maluku Adil*, mufti Four and seven *ulamas* each of them at Balairung Sari, Balai Gading, dan people court council, as mentioned by *Qanun al-Asyi*, *Qanun Syara'* also introduces the *imam rawatib*, *imam mukim*, *Syaikhul Islam*, and *Kadhi Muazzam*.

The *ulama* played such an important role at the time of Aceh Darussalam as described in *Qanun Syara'*, among others, is joining in compilation the Monarchic *Qanun Syara'* and was partner of executive institution in conducting deliberation to make

decision. Even, a minister has to own the condition of *ulama* like the condition for being a *Qadhi Malikul Adil*. The *Qhadi Malikul Adil* itself own such a big role so that can replace the sultan if a sultan dies and the new sultan not yet been selected.

### Conditions and Leader Duty

Al-Mawardi does not directly mention the conditions to be a caliph. Nevertheless, the conditions can be traced from criterion of *imam* council, because one of these council duties is to appoint one of them (*imam* council) to be caliph *imam*. According to al Mawardi, there are seven conditions to become the member of *imam* council, that is fair, having sufficient knowledge for conducting *ijtihad* (creative individual interpretation), Sensory health (ear, eye, and mouth), physical health (body organ, etc.) courage and knight and derive from the lineage or decent of Quraisy. (Mawardi, 2006:23-24).

*Qanun al-Asyi* contains the king conditions in three different places differ and with different language. In general, *Qanun al-Asyi* and *Qanun Syara'* can be said to have contained the king conditions as *imam* condition expressed by al-mawardi; at some part seems to be so detail. The elementary difference is that *Qanun al-Asyi* and *Qanun Syara'* do not contain or mention that the King condition has to derive from Quraisy circle or descent.

Moreover, regarding the king duties, according to al-Mawardi, there are ten duties which have to be done by a leader, *imam*, or Khalifah. (Mawardi, 2006:23-24). In general, *Qanun al-Asyi* mentions the same conditions with al-Mawardi's opinion. *Qanun al-Asyi*, however, itemizes the king conditions in more detail. At *Qanun al-Asyi* there is an emphasis so that the king will be close or obey to Allah. And so do the king, he is the executor of duty to enforce Islamic law, both in term of *ibadah* (worship) and *mu'amalat* (social interaction). So, what is contained in

*Qanun Syarak* can safely be said not differ from that of the *Qanun al-Asyi*; its difference only that *Qanun Syara'* explains in more detailed and systematic.

### **Total Absorption and Selective Absorption.**

According to Rahardjo, the systematic relationship between law and other sector or area of life in the society, for instance, culture, politics, economics, etc., potentially causes changes in the society. Nevertheless, not each process always causes changes because each system is trying to maintain its structure. (Raharjo, 1978:37-38). Hereinafter, it is also important to be understood that the law itself has various functions or duties as stated by Hoebel. Accordingly, the law has the following duties, among others:

1. Formulating relationship among society member by showing kinds of prohibited deeds or acts.
2. Allocating and affirming who may use power for whom along with its procedures.
3. Solving of disputes.
4. Maintaining ability of society adaptation by readjusting relations in society when the circumstance is changing. (Raharjo, 1978:37-38).

In relation to the relationship between Islamic law and customary law in the constitution of Aceh Darussalam, it seems that it can be linked with law function as mentioned by Hoebel above. At least, two forms of relationship of these two law system in three manuscripts of that regulation, namely total absorption and selective absorption

#### **1. Total Absorption**

The assumption developed here is that before the arrival of Islam, Aceh embraced a totally different state constitution. Before

its founding in the early 16<sup>th</sup> century, presently region of Banda Aceh and Aceh Besar were dominated by Indra Purba Islamic kingdom, Lamuri, what that was under the leadership of sultan of Alaidin Johansyah (1285-1207). Lamuri is a Kingdom that had already had regular and strong governance. So big the level of this, so that Indian King Rajendra I Cola from India had newly earned the victory over this kingdom after several times attacks. (Said, 1981:131-133).

Thereby, it can be stated that before the arrival of Islam, monarchic state constitution of Aceh, namely Lamuri and others used the teaching of Hindu Buddha as its reference. When Islamic kingdom replaced it, its governance system was also changed and based on Islamic teaching. Most part of Islamic constitution have been permeated totally into the state constitution of Aceh Darussalam kingdom.

Consequence from this power switchover is also the existence of switchover from absolute monarchy system to more complied law system. According to Weber, among fundamental things going into effect for legal authority is arranged with the technical norms. In this lawful State, a position may not be seen as private ownership by its occupant. (Raharjo, 1978:37-38).

In most part, the manuscripts of *Qanun al-Asyi* and *Qanun Syarak* mentioned that each state functionary has to punish, and if the functionary deviates he/she must be punished in accordance to *al-Qur'an*, *Sunnah*, *Ijmak*, *Qiyas* and *Qanun Syarak* of Aceh Darussalam kingdom. All functionaries were selected through a tight selection; personal criterion in the form of quality of moral and professionalism was much prioritized. The major and main condition of state functionary - starting from king to village leader, apart from universal conditions - is to obey Islam (Islamic law) and the ability to upright Islam and fulfil duty (responsibility) as Allah's caliph (deputy) on earth. So, the character of *ulama* must be adhered to a state functionary.

Some positions were selected by legislative institution, while some others, besides having main conditions, were selected through the appointment of sultan such as the position of Malikul Adil. If this phenomenon is linked to the terminology mentioned by al-Mawardi, that means the Aceh Darussalam really had *ahl halli wa al-aqdi* (legislative institute) whose commission, among others, electing all state functionaries. Even in *Qanun syara'* stated that this institute has also the authority to choose sultan. In other words, In Aceh Darussalam kingdom, power was not endowed. "Oh student, you have to know that the decision of *Qanun Syara'* of Aceh Monarchy Sultan Alauddin states that monarchic sultan of kings is not endowed at the opinion of the school of thought of *Ahlus Sunnah wal-Jama'ah* (p.b.u.t.). In other words, following the theory of reception in complex, the Islamic kingdom of Aceh Darussalam adopted the majority of Islamic teaching into its state constitution system, replacing the former regulation of Hindu-Buddha custom.

## 2. Selective Absorption

Referring to Rahardjo's opinion -- saying that not each process of systematic relation between law and other area will cause changes -- is true. It is very logical because each system establishes out for maintaining its structure. (Raharjo, 1978:37-38). Despite it has also been stated that in general the Islamic state constitution had been totally absorbed and permeated into Aceh monarchic structure, some visible matters seem to be a result of adjustment with the local element and value. About condition to become the king, for example, can be said that it differs from the opinion of al-Mawardi. (Raharjo, 1978:37-38).

Al-Mawardi emphatically expressed that *imam* / *khalifah* has to be from Quraisy tribe as the Prophet (p.b.u.h) said. Whereas in *Qanun al-Asyi* stated "You should know hi student, conditions of a king are as follow, first, Islam/Moslem, second, independent/free, third, men, fourth, sensible and matured, fifth,

from good generation despite not a Quraisy...". and so does Qanun Syara' only express "You have to know ooh student that condition to be chosen an Aceh sultan, first, Islam/Muslim; second, deriving from good clan; third, sensible and matured; fourth, have become the family of Aceh country..." (article 12)

From the above mentioned fact it is clearly indicated, for example, the element of Quraisy have been changed by a more typical Acehnese condition, that is "deriving from good decent/lineage" or " have become the family of Aceh country". This selective absorption could possibly be an effort of all *ulamas* to avoid or mitigate any collision of Islamic law with other local power elements that is the downwardly switchover of leadership succession.

Another example is rank/position name which seems to be mixed between Islamic and local name. it can be referred that, for example, on one side, there is name *Qadhi Malikul, Qadhi Mu'azzam and Mufti Ampat*, whereas on the other side there is Admiral name, *Orang Kaya Bendahara*, and *Rama Setia* ( police). And so do name of institute, besides mentioning Islamic name like *Baitul Mal, Balai Fardhah* and Council of People Law court. Furthermore, it also mentions name of *Balai Rung Sari* and *Balai Gading*, which is very typical Malay.

## **Conclusion**

It is not abundant to say that most Islamic law, especially, the area of *siyasa* (politics) has been permeated into Monarchic Aceh Darussalam structure. The three *qanun* manuscripts which are studied in this article indicate that the institution of *ahlul halli wal aqdi* (parliament), *syura* system, king and functionary conditions are really important and needed. Most of these things refer to the regulation of *fiqh siyasah*. This is proportional with the opinion of al-Mawardi in *al-Ahkam al - Sultaniyyah*. Even can be said that based on the *qanuns*, the form of Aceh Darussalam

kingdom is not really a pure monarchy endowed by generations, but have instructed to modern Islam Republic State.

Moreover, the relationship between Islamic law and adat or customary law in Aceh Darussalam kingdom is found in two forms, that is total absorption and selective absorption. It is called as a total absorption because most *fikih siyasah* have been fully permeated into the structure of Aceh Darussalam kingdom. It can also safely be said that it has been happened a "Total Transfer" from *Hindu-Buddha Lamuri* structure to Islamic structure when religion changed over to Islam. To be said as a selective absorption because some local elements and values still exist and do not follow the manual of *fikih siyasah*, especially about king conditions. The preservation of these local elements is viewed bringing more *mashlahat* (advantages) for the kingdom.

Just perhaps this brief article will not be able to disclose the secret and *hikmah* (wisdom/philosophy) implied in the above-mentioned three manuscripts. Nevertheless, this effort, at least, can be viewed as an early study which hence a further and deep study still be required. Finally, the writer heartfelty request the constructive criticism and input from all readers utilizing for the perfection of the study on historical manuscripts as a Nusantara most valuable inheritance representing incomparable pearl emerald of its value.

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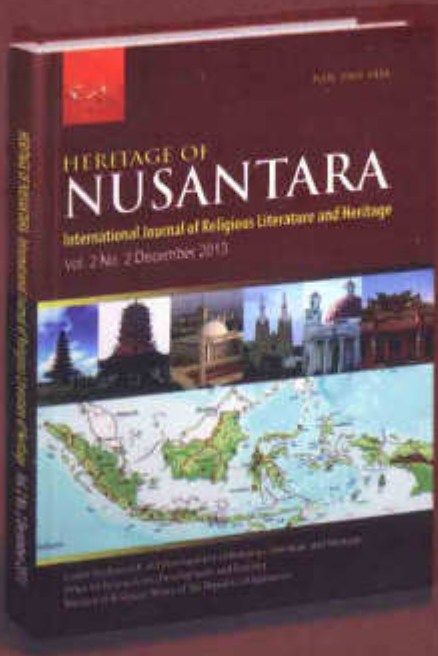


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