

# The Effectiveness of Sharia Local Laws in Making Good Local Government

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**Abstract.** The sharia-based local laws and regulations are justified by Indonesian statutory for local wisdom protections. Meanwhile, how they run to create welfare and good local government becomes the main issue. Therefore, it aims to evaluate their achievement due to the goals of the Shariah namely blessing and harmony. This is qualitative research, located in Pamekasan. It applies descriptive and evaluative analysis toward Sharia-based local laws in those locations. This research finds that Sharia-based local laws are significantly needed to accommodate Islamic values as local wisdom and identity for people in Pamekasan. The local laws generally rule on the prohibition of distribution of alcoholic beverages, the license of Islamic rural banking. Although the regions are Islamic cultured, in fact, the government apparatus has yet reflected the Islamic value and less attention in regulating zakat in whereas it is capable of reducing the poor.

**Keywords:** making, local laws, sharia, benefit, values

## 1 Introduction

The amendment of the 1945 Constitution of the State of the Republic of Indonesia not only brought changes to the state system in Indonesia but also it brought changes to the local government system that changed from centralization system to decentralization system. This change of local government system is known as the implementation of local autonomy based on the Indonesian Law Number 22 Year 1999 as the first laws in implementing local autonomy after Indonesia Reform in 1998. This law was subsequently replaced by the Indonesia Law Number 32 Year 2004 which was later amended and replaced by the Indonesian Law Number 23 Year 2014 on Local Government.

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The local governments in carrying out regional autonomy by exercising widespread autonomy except for government affairs which by law is determined as a matter of central government. In addition to running this local government, also has the authority in making local laws. This is based on Article 18 section (5) and section (6) of the 1945 Constitution of the State of the Republic of Indonesia.

The local government in making local laws can regulate based on three substance materials. The first material is the implementation of local autonomy and co-administration, the second is to enlighten of the provisions of the above regulations and the third is to rule local substance with the pre-requisite that it must be in accordance with the Indonesian

statutes. These three substances are the basis formulas of local laws and the emergence of local laws based on characteristics each regional. This local-based regulation shows the diversity of cultures in Indonesia. Besides each region has a different characteristic that we usually refer to as local wisdom which it must be protected by local government. This local wisdom can be a guideline for society to be able to advance its territory without violence and coercion. The community will follow voluntarily for the sake of advancing the region [1].

Making of local laws becomes very important, especially in the development programs in the area. Local legislations were established to enforce higher laws and accommodate the special conditions of the area. In addition, the formation of regional regulations is to organize regional governments in the social, economic, cultural and political spheres or other matters that are indeed necessary to be included in local laws [2]. Based on this, various regions have the opportunity to develop their areas according to local conditions so as to elicit the terms of sharia local laws.

The emergence of shariah local laws raises controversy due to its effectiveness. Besides, it is true that the majority of the residents is Muslims but some residents are another religion confessor. Therefore this paper tries to study the problems about role of sharia local law to improve welfare and What is the impact of sharia local law in creating good local governance in Pamekasan.

## **2 Method**

This research is a sociological legal research using qualitative research approach. A qualitative research approach is used because qualitative research aims to ensure opinions, attitudes and behaviors that are liked or disliked [3]. Therefore, this research is more pressing to describe, evaluate and analyze shariah local laws in realizing good local government. In this study the location is taken in Pamekasan as an existing area of sharia-based local regulations. The data are collected through the field observation on the implementation of Sharia Local Law in Pamekasan and the data base came from Local House of Representative (DPRD) of Pamekasan and the Legal Department of Pamekasan Regency.

In addition, the approach used in this research is an analytical approach to know the meaning of sharia local laws conceptually, as well as to know its application in the practice of local governance [4]. Then the statute approach is used to examine the various rules of law of Sharia local laws and in realizing good local government.

## **3 Result and Discussion**

### *1.1 The Position and Legal Basis in Making Sharia Local Laws*

Local laws are a regulation established together between the regional head and the Local House of Representatives as governed by the 1945 Constitution of State of Republic of Indonesia. The law has yet specifically regulated the existence of sharia local laws. However, the existence of sharia local laws provides benefit for local government. Drafting of sharia local laws should refer to Pancasila as the foundation of the state of Indonesia and the source of all sources of law. Pancasila as the foundation of the state provides a space for making of sharia local laws which based on the values in Pancasila. It has a big role in shaping the mindset of this nation so that is respected as one of the civilized nations in the world [5].

The values of Pancasila are a value that comes from the experience of Indonesian life which is then crystallized as the basis of the state. The basic formulation of this country was launched before independence and then passed on 18 August 1945. There are five main values

in Pancasila which became the basis for the drafting of sharia local laws that is god value, humanity value, unity value, community value and social justice value. This means that in the formation of local regulations should refer to those five values.

In addition, Pancasila as the source of all sources of Indonesian law means that in making laws should refer to Pancasila as both state philosophy and state ideology. The application of Pancasila as the source of all sources of Indonesian law includes two things, namely as a formal source of legal and legal material resources. The source of formal law is the source of law in terms of forms and procedures for the formulation of laws that bind the community. The source of legal material is the legal source that determines the material or content of legal norms. The formal source of this law refers to the mechanisms, processes and forms of law itself that must conform to the established rule of law. While the source of legal material in question in this case is the values contained in the five precepts of Pancasila.

Besides Pancasila as the first foundation of sharia local laws, the second basis is the 1945 Constitution of State of the Republic of Indonesia as the Indonesian Constitution. The Constitution contains the basic law governing the system of state and administration of both central government and local government. In the implementation of local government, the Constitution of Indonesia has been regulated in Article 18, Article 18A and Article 18B of the 1945 Constitution of the State of the Republic of Indonesia. However, specifically related to the formation of sharia local laws are Article 18 section (5) and section (6), Article 18B section (2), and Article 29.

Article 18 section (5) of the 1945 Constitution of the Republic of Indonesia states that "The regional government shall exercise its broadest autonomy, except for government affairs which by law are determined as the affairs of the Central Government" that the regional government in conducting its governance is based on the broadest regional autonomy and local wisdom. This regional autonomy has become an entry point for areas that have become religiously characterized areas such as districts in Madura Island, especially Pamekasan Regency. While Article 18 section (6) states that "Local Government has the right to enact local laws and other regulations to implement autonomy and assistance tasks". This Article provides the authority of regional governments in formulating local laws in which formally and materially in the formulation of local laws has been regulated in Indonesian Law Number 12 Year 2011. In this law regulate how the formation and formulation of local laws. However, in the formation of local laws must also refer to the division of authority and affairs between the central government and local government as regulated in Law Number 23 Year 2014 on Local Government.

The final article which can be used as the basis for the establishment of sharia local laws in the Indonesian Constitution is Article 29 Section (1) which states that " The State shall be based upon the belief in the One and Only God." The existence of this article is the basis that the state recognizes several religions that developed in Indonesia such as Islam. Islam that has existed long before Indonesia's independence has contributed a lot of rules in realizing the rule of law in Indonesia. While the Islamic movement has also helped in realizing the independence and equitable development as expected in the state goal in the opening of the 1945 Constitution of the Republic of Indonesia.

The formation of sharia-based local laws is not carried out by any region. Usually the formation of this local law to see the conditions and cultural traditions that exist in the region. Some regions in Indonesia have formed a culture based on certain religions such as Islam. Therefore, areas whose cultural roots are strongly influenced by Islam are highly likely to establish sharia-based local laws such as those in Pamekasan on Madura Island that have dedicated as Islamic nuanced districts. Pamekasan has slogan as "Gerbang Salam". Other

region in Madura Island such as Bangkalan, Sampang and Sumenep are also very strongly influenced by Islam culture because in Madura Island there are hundreds of Islamic Boarding School and prominent figures or scholars in the archipelago in Indonesia. So that Madura is very identic with a very religious society of Islam.

### *3.2. The Existence of Sharia Local Laws in Pamekasan*

Sharia local laws is a regulation regulates public affairs issues whose material contents takes from Islamic Law. However, the laws should still refer to the principles in the formulation of legislation due to not to cause problems or contradict in Indonesian legal system. There are various kinds of sharia local laws which regulate about the prohibition of alcoholic beverages, prostitution prohibition, restaurants opening hours in the month of Ramadan, the skills of reading Al-Quran, Madrasah Diniyah (Islamic Elementary School), and many more local laws in which contains the rules in accordance with sharia although in a region is not all Muslim but the existence of this local laws not intended to discriminate non-Muslim society.

Based on the observation toward the society culture its influence to the making of law, the arrangement of sharia local laws in Pamekasan are by two reasons, namely obedience to the Kyai (Islamic scholar) and local politics will [6]. It occurs because Santri (Islamic Boarding Students) should obey the Kyai and Kyai has a dominant role in supporting to the making of sharia local laws. Residents in Pamekasan are the muslims majority who graduated from various Pesantren (Islamic Boarding School) either from Pamekasan itself or from outside Pamekasan. After graduated from Pesantren, Santri does not only affect the community culture system but also affect the local government system both in the executive and legislative. In the executive, the Local Head of government in Pamekasan is much derived from among Santri. Similarly, in the legislature, the figures who occupy as representatives of the people in the DPRD (Local House of Representative) mostly comes from Santri of Pesantren. Those facts led to the birth of sharia local laws at which it was dominantly originated from their teachers in Pesantren. The system of obedience of Santri in Pesantren happens both during schooling and after graduation. Therefore, when the Santri occupies certain positions either in the executive or legislative, he tends to hear and ask for advices to his Kyai. This obedience is the tradition that prevails in Pesantren.

During this study and field observation, it can be summarized that the beginning of the emergence of sharia local laws in Pamekasan began when the Local Head of Pamekasan Dwiatmo Hadiyanto in 2001. He managed to establish sharia legislation about the prohibition of alcoholic beverages. Hadiyanto formed an institution to formulate the application of sharia law in Pamekasan. The body was called as the Lembaga Pengkajian dan Penerapan Syariat Islam translated as The Institution for Research toward the Implementation of Sharia, abbreviated as LP2SI. It was formed based on the Official Letter of Pamekasan Regent Number 188/126 / 441.012 / 2002 on the establishment of LP2SI, 20 April 2002.

The record of the Local Government of Pamekasan showed that Hadiyanto lose the Local Head election in 2003. Achmad Syafi'i won The Local Head Election in 2003. He formerly served as the chairman of the DPRD. During his tenure as the chairman of the DPRD, Syafi'i had an important role also in making the sharia local law of Pamekasan. Based on the data base of Legal Department of Pamekasan Regency, Achmad Syafi'i became Local Head of Pamekasan, he formed a sharia local laws that is Local Laws Number 18, 2004 regarding The Prohibition against Prostitution. After the period of Achmad Syafi,i, the next Local Head was Khalilurrahman. At this time, Khalilurrahman formed sharia local laws on the Management of Zakat and Charity. He also made a policy that the icon of Pamekasan is Gerbang Salam

(gerbang is identical to gate, salam is Islamic term for greeting). It was enforced by the official Letter of Pamekasan Regent Number 188/340 / 441.131 / 2009 regarding the “Gerbang Salam” as model and strategy of Islam Promotion. Gerbang Salam is a motto and a characteristic of Pamekasan at which it wants Islamic law to be carried out by the Pamekasan society.

The whole local laws aimed to bring the changes on the future generations of Pamekasan with idealism and well-manner. For instance, The Sharia Local Laws of Madrasah Diniyah. By this local law, it may provide children in primary school-aged the fundamental teaching and praying in Islamic Law. By a strong fundamental knowledge of Islamic values, the next generations will play a role in realizing good local government as they were taught to be well-manner persons.

Muhammad Alim believes that sharia local laws are made in the framework of religious implementation as guaranteed in Article 29 of the 1945 Constitution of the State of the Republic. In addition, sharia local laws are a manifestation of the pluralism of the legal system in Indonesia consisting of Customary Law, Islamic Law, and Western Civil Law. The implementation of sharia-based regional regulations is specifically aimed at adherents of Islam and does not harm adherents of other religions [7].

There are three problems in the formation of sharia local laws in a dilemma, namely whether the sharia local laws regulate the privacy or public sphere, choice or obligation, and discrimination or order[8]. In general, sharia-based regional regulations are intended for the activities of fellow Muslims. Indeed, there are personal affairs of each Muslim with his God, but the local laws realize a society that clings to the teachings of Islam. From 2000 to July 2018, the sharia local laws in Pamekasan has been formed at least 6 local laws namely: (1) Local Laws Number 18 Year 2001 on Prohibition of Alcoholic Beverages in Pamekasan, (2) Local Laws Number 18 Year 2004 on Prohibition of Prostitution; (3) Local Laws Number 7 Year 2008 on the Management of Zakat and Charity; (4) Local Laws Number 4 Year 2014 on the Quran's Recite Skills for Islamic Students; (5) Local Laws Number 5 Year 2014 on Controlling Activities in Ramadhan; (6) Local Laws Number 3 Year 2017 on the implementation of Islamic Elementary School.

### *3.3. Eradicate Poverty*

Islam is a religion that brings benefits to all nature and its contents in the world including humans who have different status there are rich and some are poor. The existence of these differences must be overcome so as not to gap too wide. Therefore, the existence of Islam provides a solution to pay attention to the poor with the obligation for Moslems to pay zakat (alms-giving) and recommend charity.

Zakat payment is the obligation of a Moslem as the implementation of the third Islamic pillars. Zakat was taken from the fortune or income of a Moslems. After being collected, zakat funds were distributed to the zakat recipients based on Quran Surah At-Taubah verse 60, namely fuqara (indigent/poor), masakin (needy), amil (zakat collector), muallaf (person who converts to Islam), riqab (slave who want to liberate himself), gharim (person who is burdened with a lot of debt), fisabilillah (a person who is entitled in the struggle of Islamic missionary endeavor), and ibnusabil (wayfarers) [9].

The obligatory of zakat for Muslims applies the values of God presence and social transcendental values in Muslims life. The value of God presence is the values of human relations with God. Meanwhile, social transcendental values are values in maintaining human relationships with humans. Therefore, while Indonesian Government issued Indonesian Law Number 23, 2011 on the Management of Zakat, it brought great potential to empower zakat

collections. The Government also issued its implementing regulations through Government Regulation Number 14, 2014 on The Implementation of Indonesian Law Number 23, 2011 on the Management of Zakat.

The issue of the Law was followed by Pamekasan Local Governments to issue a local regulation on the management of zakat. The Local Government of Pamekasan Regency issued Pamekasan Local Laws Number 7, 2008 on The Management of Zakat and Charity. The local law was issued to make zakat and charity managed well in order to improve community welfare and poverty alleviation. By a good, creative and innovative management of zakat and charity will be able to accelerate economic growth so that people feel the results of zakat and charity distributions.

Therefore, the empowerment of zakat management and community participation needs to be regulated in the proper regulation as has been done by Pamekasan Local Government. The purpose of this local law is clear to have professional management of zakat and the its right target of recipients. However, the local law in Pamekasan needs to adapt with the new Indonesian Law on Zakat Management. Therefore, the existence of this regulation on zakat which is formed by both the central government and local governments gives the following meaning: (1) To realize the realization of state objectives as stated in the preamble of the 1945 Constitution of State of Republic of Indonesia; (2) The importance of zakat for the state in building the community through the economic empowerment of Muslims for poverty alleviation and carrying out the mandate of article 34 of the 1945 Constitution of State of Republic of Indonesia where in this article states that Impoverished persons and abandoned children shall be taken care of by the State; (3) Establishment of organizational structure of zakat management from central to regional level with the existence of National Zakat Agency (Badan Amil Zakat Nasional - BAZNAS) central and regional; (4) The emergence of empowerment and the role of society in issuing and managing zakat and charity; and (5) Coordinated management of zakat and charity managed by government and private.

Management of zakat and charity is indeed very important to help realize the goal of national development in poverty eradication. According to Encik Muhammad Fauzan, there are three channels in the management of zakat, first through the BAZNAS as an official institution established by the Government, secondly through the LAZ (Lembaga Amil Zakat) formed by private parties and thirdly through the community directly channeled to the party who must accept it [10].

#### *3.4. Establish a Clean and Good Local Government*

The local government has the authority in making local laws whose material contents the implementation of local autonomy and assistance tasks and further elaboration of the higher rule of law. The implementation of local autonomy is intended to improve regional development and the implementation of good local government. Based on this, local governments with locally based religious wisdom are highly likely to establish local laws based on local wisdom or sharia-based local laws. This sharia-based local laws provides the following benefits: (1) Appropriate with the legal ideals of local communities. The existence of sharia legislation can help local people in realizing the public expectation to get sharia-based protection because this is in accordance with the circumstances of a very religious local society such as life in the community of Pamekasan. In addition, the existence of this regulation can realize the ideals of law in general is to create order, protection and justice in society. It also provides legal certainty to the condition of local communities such as providing legal certainty of Islamic School (madrasah) as a community-run educational institution that teaches about Islam. (2) Non- discrimination laws. Local laws are which according to Islamic

law, but the laws do not contain discriminatory content to non-Muslim society. For instance, local laws prohibit the prohibition of alcoholic beverages. Alcoholic drinks can be detrimental to health, mental, incompatible with the norm of glory, and threaten the next generation of the nation. Even in the raiding rules of food in Ramadhan, there is no charge of discrimination against non-Muslims. In Pamekasan Local Laws Number 5 Year 2014 on the Ordering of Activities in the Month of Ramadhan contains provisions that regulate shops, restaurants, and entertainment in the month of Ramadan to respect of Muslims for fasting. (3) Need accuracy in making sharia local laws. its formation Sharia law is not established in the framework of a few groups. Sharia local laws has complexity in its formulation. There are sharia local laws in that can lead to pro and contra among the society. Therefore, in its formation must be carried out carefully, and accompanied by academic research paper. In consequently, sharia local laws should be made in the public interest, non-discrimination, reflecting fairness, legal certainty, and empowering the life of the people of Pamekasan. Besides that, carefulness in sharia regulations is required, so as not to conflict with legislation and public interest. (4) Sharia Local Laws for Public Interest. The society of Pamekasan are Muslims majority. They can feel the impact of enforcement of sharia local laws, including non-Muslim communities. Impartiality of existing of sharia local laws is a manifestation of good government. In contrast to the local laws that regulates the business and the regional economy, which tends to policy on some groups. However, sharia law, will guarantee the absence of interest in a group in it. (5) Creating good Service and good government. Sharia local law must be able to create good service and good governance because the local laws have religious value where if they implement the laws get reward from Allah and otherwise not implement get a sin. This means that the community must implement the rules as well as possible to create good service and good governance

Carry out good service and good governance not solely because of the rules but more than that there is the value of worship till directly or indirectly affects the government administration. Therefore, basically sharia local laws have a good purpose for the community or even on the government administration. Because both government and society are a unity in the government administration.

### *3.5. Implementing a Clean and Good Local Government*

Implementation of government administration must be based on general principles of good government, namely the principle used as a guideline by government officials in issuing policies. These principles have been formulated in Indonesian Law Number 30 Year 2014 on Government Administration as follows: (1) Legal certainty, is a principle in a state law which prioritizes the basis of the provisions of legislation, propriety, tariff, and justice in every policy of governance. (2) Benefit, is a benefit that must be considered in a balanced manner between: one individual's interests with the other's individual interests, the individual's interests with the community, the interests of the Community Citizens and foreign society, the interests of one community group and the interests of other community groups, the interests of the government and the Citizens Society, the interests of the current generation and the interests of future generations, human interests and their ecosystems, and the interests of men and women. (3) Impartiality, is a principle requiring the Agency and / or Government Official to determine and / or perform Decisions and / or Measures considering the interests of the parties as a whole and not discriminatory. (5) Accuracy, is a principle which means that a Decision and / or Action must be based on complete information and documents to support the legality of the determination and / or implementation of Decisions and / or Actions so that the relevant Decisions and / or Actions are prepared carefully before the Decision and / or the action is

determined and / or carried out. (6) Not abusing authority, is a principle that requires every Agency and / or Government Official not to use its authority for personal interests or other interests and not in accordance with the purpose of granting such authority, not exceeding, not abusing, and / or not confusing authority. (7) Transparency, is a principle that serves the public to gain access and obtain correct, honest, and non-discriminatory information in the administration of government with due regard to the protection of private, state and state secrets. (8) Public Interest, is the principle that prioritizes welfare and general benefit in an aspirational, accommodative, selective, and non-discriminatory manner. (9) Good service, is a principle that provides timely services, procedures and costs are clear, in accordance with service standards, and the provisions of legislation.

The administration of good government, not only government officials who have an important role but also more than that the people because it has the highest sovereignty. Local Heads and the people must work together to implement the general principles of good government as described above. The existence of these principles provides guarantees for the basic rights and protection of the community. It is also mandated by the 1945 Constitution of the State of the Republic of Indonesia in article 27 section (1) which requires equal status in law and government. Even it regulates also in article 28 D section (3) which provides an opportunity for citizens to be entitled to equal opportunity in government. Therefore, citizens are not objects, but subjects that are active in government.

Sharia law can be a solution to realize good government and it is appropriate with benefit of sharia local laws. Sharia law provides control to the body / individual in acting, so as not to act with something that can harm other people and society. Sharia law also requires an order in the life of the community and the government. Therefore, the sharia law is created and implemented to provide legal certainty in accordance with the characteristics of Pamekasan by not violating the provisions of legislation

Thus the rules of the sharia local laws have a strategic role. Because with the existence of sharia local laws can form the mindset of society and government apparatus in carrying out their daily duties as the Caliph on earth. Sharia local laws will also be a control for local governments in determining their attitudes and subsequent policies and in providing services to the community.

In 2017, the Local Heads of Pamekasan, Ahmad Syafii, caught by the Corruption Eradication Commission. He was arrested for allegedly bribing procurement in Pamekasan. This is very contrary to the laws and values of Pamekasan which have several sharia regulations. The establishment of Sharia Local Laws is actually very effective in creating a good regional government that is free from corruption. But all returned to the regional leader in exemplifying appropriate behavior ordered in the Quran. It is necessary to evaluate these regulations to make a positive impact and benefit the community and regional leaders in Pamekasan.

#### **4 Conclusion**

Sharia local laws have a role and effectivity to increase society welfare such as Zakat Local Law of Pamekasan but it needs commitment all stake holder to implement that sharia local laws. In general, sharia local laws can create good government because the making of sharia local laws needs accuracy and it contains religious values that must be accounted not only to the community but also to God. The values of Islamic Sharia as outlined in this local wisdom should be able to form good morals and trustworthy regional leaders. However, to realize a good local government based on sharia local laws is required a shared commitment



and awareness of the community and regional leaders that the values of sharia should be implemented in everyday life.

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