ENFORCING ISLAMIC LAW FOR NON-MUSLIMS
A CASE STUDY OF INDONESIA

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Indonesia has become one of the countries facing serious criticism on the methods used in the implementation of Islamic law. The Government of Aceh is the only Indonesian province with the delegated authority to legally implement Islamic law. During the first period of establishment, the perpetrators were generally Muslim, but currently non-Muslims can also be potentially treated with Islamic law. For instance, in an Aceh case, a non-Muslim having profession as alcoholic-drinking dealer was punished by the Islamic criminal law. This expanded authority happened because of the judge's interpretations. In some cases, judges can decide whether a non-Muslim can be punished with Islamic law or with other laws. However, realizing not to be punished in some occasion non-Muslim shows off alcoholic-drinking publicly. This action has violated the feelings of the Muslim majority. This fact places the judges in a difficult position, they must enforce the principal of equality before the law, and also protect legal certainty.

Key words: Islamic Law, Non-Muslims, *Qānūn*.

Introduction

This article critically discusses the implementation of Islamic law in the province of Aceh, Indonesia. The Act of Government of Aceh states that Aceh is allowed to enforce Islamic law (called *Qānūn*, or Aceh bylaws) for every Muslim living in Aceh.[1] Events in Aceh indicate that

Islamic law is enforced not only for Muslims, but also for non-Muslims.[2] This occurred in the alcoholic-drink dealer case *Renita Sinaga vs Government of Aceh*, judged by *Mahkamah Syar'iyah* (Islamic Court) in Takengon, Central Aceh.[3] The judgment will be further explored in this discussion.

In order to implement Islamic law the Indonesian central government delegates the authority to legislate local bylaws to Aceh's government. The bylaws are commonly known as *qānūn*, and constitute regional autonomy policy. The term *qānūn* is used in place of an old counterpart regional regulation. In terms of characteristics regional regulation and *qānūn* differ in certain respects, but both are products of regional (local) legislation. The local regulation, now termed as *qānūn*, covers all legal aspects in Aceh, including the *Sharī'ah*. The term *qānūn* sounds familiar to the Acehnese community as an Islamic concept. Simultaneously, the term reminds the Acehnese people of *Qānūn Meukuta Alam al-Asyi,*[4] the jurisprudential system developed and applied in Aceh in the past, thus recalling the memory of the Aceh Nation's glorious time under the reign of Sultan Iskandar Muda. Therefore, in memory of Aceh's past glory, all jurisprudential products issued by the Aceh government are named *qānūn*.

The *qānūn* containing materials on *Sharī'ah* legislate together with sanctions and extend beyond other regulations in Aceh. Due to this, Aceh has been granted a special autonomy which the central government approves under specific circumstances. To successfully implement the *Sharī'ah* formulated in the *qānūn* the Aceh government is required to make serious efforts to develop cross-institution synergy.[5] To anticipate the emergence of a negative impression of *Sharī'ah* implementation, particularly the *qānūn jināyat* (Islamic criminal law), requires further supporting *qānūn* to enable successful enactment of *Sharī'ah*. To succeed the *khamar* (alcoholic-drink) prohibition enactment in Aceh, there should be additional articles to regulate various sectors of lives such as business permits; community participation; instructional contents to be presented by teachers at educational institutions; journalism; and the roles and functions of Mosques, and other religious discussion forums. These will pave the way towards anticipating and preventing the emergence of jurisprudentially prohibited actions in Aceh.

Actually, the actions regarded jurisprudentially prohibited from a *Sharī'ah* perspective are not novel to the Acehnese. The *khamar*

prohibition, which is the subject of discussion in this verdict annotation, represents a prohibition recognized in many other communities and major world religions. For example, Hinduism recognizes the term *malimo*[6] meaning the five prohibitions, one of which is alcoholic-drink. Not only do religions prohibit such action, but the philosophy of some communities and cultures also prohibits alcoholic-drink as part of their moral codes and values. Therefore, the claim made by certain parties or groups that alcoholic-drink prohibition violates human rights does not have proper basis.

Islamic tenet categorizes legal actions into specific domains binding to all individuals within their religious practices.[7] The first domain is the worship to God, an obligatory commandment for all Muslims to perform. With regards to other types of illegal actions, the nation should interfere or intervene when the action disturbs the tranquillity of the community, as the nation should assure the comfort of citizens. When an individual or community, regardless of their religions, conducts an evil they are not perceived to have disturbed Islam or Muslims, but rather it is the community and the people in the neighbourhood who are affected. Such action is seen to have affected the people and is categorized as public law violation.[8] Public law places emphases on (a) community concerns; (b) public concerns; (c) state concerns.[9] Public law deals with any case in which there is a need to protect community concerns.

Case Analysis

Located in Kampung Baru village, Lut Tawar sub-district, Central Aceh district – or at least within the jurisdiction area of Takengon Syaria Court – on Thursday, 29th October, 2015 at around 16:30 WIB (Indonesian West Zone Time) – or at least some time in October, 2015 – the defendant Renita Sinaga, alias Mak Ucok, intentionally produced, stored, sold, or imported *khamar* into Takengon Syaria Court jurisdiction territory. The defendant's action is legally prosecutable. Thus, the *strafbaarfeit* should be defined as a norm breach or *normovertreding* (disturbance against legal orderliness) which is chargeable as a breach, and requires the presence of sanctioning to maintain legal orderliness.[10]

On 29 October 2015 at around 16:30 WIB – or at least some time in October, 2015 – the witnesses Nicko Simehate and Indrajaya, in their

capacity as police officers of Central Aceh Police Headquarter, received information from the community stating that the defendant sold alcohol at her home in Kampung Baru village, Lut Tawar sub-district, Central Aceh district. The defendant's action is against the *qānūn* regarding *jināyat* (Islamic criminal law). That the community submitted a complaint is a clear indication of the exaggerated action performed by the defendant, not a normal attitude. She seemed to 'show off' and intentionally provoke people by publicly displaying her alcoholic-drink products. Such an attitude triggered public sentiments which lead to the locals' report and the submission of complaint to the police.

A special jurisprudence has been set to be implemented in the special territory of Aceh. Aceh's territory is inhabited by people of different religions. Aceh recognizes non-Muslims as citizens, accordingly the setting of *jināyat* law onto them is different. Non-Muslims are given the right to decide their stances, whether they want to be treated or prosecuted under *jināyat* law or under the national criminal law. According to the traditional Aceh legal practice, legal or jurisprudential conflict between Muslims and non-Muslims is not recognized. They have lived together under their respective legal tradition.[11] Non-Muslims are not obliged to observe the regulations binding to Muslims in the territory. Non-Muslims are free to practice and behave according to their own tradition, as long as it does not disturb the Muslims. For example, the male non-Muslim Chinese fellows are free to wear shorts and the female are not obliged to wear *ḥijāb* (head cover).[12]

There are several measures that contribute towards securing the territory from comfort disturbance. This denotes a reflection to the case of Mak Ucok who ran an alcoholic-drink business for the past 15 years. Her action has caused discomfort to the community in the neighbourhood. The territory should be secured from disturbance. The fact that the security officers responded well to the people's report and complaint constitutes a positive intervention in providing security for the territory. There are three main requirements for intervention for territorial security: (1) the intervention should be purely for the concern or for the sake of the people of the territory; (2) the people of the territory should take the initiative to take legal action, such as submitting a report or complaint to the law enforcers; (3) the perpetrators hide a feeling of worry that their criminal actions will be revealed.

The function of territorial jurisdiction to the community is important. Van Vollenhoven studied this issue and divided the Indonesian archipelagic region into 19 jurisdictional environments. Jurisdictional environments have their own wisdom over the territory.[13] Whomsoever enters the territory should comply with the legal orderliness that applies to the community. Marriage issues that comes under private law should observe and follow the tradition practised by the community. The Criminal law – which is perceived to be superior to the private law – certainly has its own main concern and objective, namely to provide comfort and orderliness to the community.

The *Jināyat* law – which takes its original source from the books of *fiqh* (Islamic Jurisprudence) – does not have the power to enact law alone. Its implementation requires the voluntary will of the community itself, and its stakeholders. When *fiqh* is adopted as a national law the nation automatically acquires the authority for implementation. The law requires an authorized body for implementation. The implementation of *jināyat* law over *khamar* delict comes under national law enforcement.[14] A law does not replace the national authority.

On Charging

The General Attorney charged the defendant of having violated the Article 5 point c juncto Article 16 verse (1) of the Aceh *Qānūn* Number 6 Year 2014 regarding *jināyat* law. Article 5 point c stipulates that any *jarīmah* (breaking Islamic Criminal law) action perpetrated by a person whose religion is not Islam in Aceh where the action was not regulated in KUHP (the Book of Criminal Law) or not regulated under the provisions other than KUHP is regulated under this *Qānūn*. Article 16 verse (1) stipulates "Any person who intentionally produces, stores, collects, sells, or imports alcoholic-drink, is respectively charged with the punishment of caning at most 60 (sixty) times or being fined at most 600 (six hundred) grams of pure gold, or imprisonment the longest for 60 (sixty) months.[15]

Legal terms or the *jināyat* delict that is not regulated under the KUHP, and any legal products other than KUHP is considered to comply with *Jināyat Qānūn*. Thus, the Syaria Court has the authority to prosecute the case. The verdict number 0001/JN/2016/MS-Tkn,

dated on 18 March 2016 contains the term *khamar* which is mentioned 10 times. The word *khamar* is not recognized in the KUHP and Criminal Law products other than KUHP. Therefore, it is sufficiently reasonable for the *Sharī'ah* Court of Takengon to execute the prosecution of the case. The *qānūn* is intended to make Aceh secured and sterile from the actions of *khamar* storing, selling, producing, and drinking within the Aceh territory by both the Muslims and the non-Muslims. The *khamar* prohibition is in line with the tenets of the major world religions, public concerns, and community conduct.

The case is also related to issues of security and tranquillity for the community in general. The neighbourhood community feels uncomfortable if *khamar* is sold publicly. Therefore, the community objects to the presence of *khamar* and drunken persons. Acehnese people are a communal society. They are people who live together and are interdependent on one another.[16] They do not feel comfortable seeing disorderliness or violation against moral conducts because orderliness has long been observed by the community in the territory.

Therefore, prohibition of so-called *khamar* (alcohol containing beverage) drinking as termed in Islamic *jināyat* (criminal) law *qānūn* does not constitute a new regulation. *Khamar* has been put into highlights as of the moral norms in many societies. The difference lies in the substance and degree of its sanctioning. The idea is clearly understood when the *jināyat* law is implemented in a specific jurisdictional territory. When a resistance emerges, the resistance is a masterminded one.

On *Jināyat* Delict

The *Jināyat Qānūn* uses the term "any person" while KUHP uses the term "whomsoever". 'Any person' refers to any legal subject (perpetrator), either male or female. According to the criminal law study, any person is regarded capable of performing all actions on his/her own, except when a convincing statement is issued by a mental doctor or psychologist stating that the person is an invalid, insane, or pardonable under certain circumstances.[17] In the Mak Ucok instance, the defendant is not in an abnormal state (*Verstandelijke Vermogeus*) in terms of her mentality, nor is she suffering from insanity (*Zeekelijke Storing der*

Verstandelijke Vermogeus) as referred to in the Article 44 of KUHP. Therefore, the sanctioning over her is inevitable, as referred to in the Article 48 of KUHP.

The concept of "delict" in criminal law is intended to develop and uphold security and tranquility to a certain territory. Therefore, the delict concept in criminal law should not discriminate among people or subjects with regards to their religion, either Muslims or non-Muslims. Whether Muslim or non-Muslim, whomsoever conducts an action prohibited by regulation or law should be punished. For example, when a certain territory exercises a smoking prohibition, the prohibition is subject to the entire population in the territory, either the travellers or the local people. Similarly, the *jināyat* law should not discriminate against people. Unlike private law,[18] which applies relativity and is dependent on personal concerns, *jināyat* law is under public interest and accommodates both national and communal concerns. Non-Muslims who run business activity under *Sharī'ah* jurisdiction territory should certainly comply with the *Sharī'ah* business provisions.

Most delicts under the *Jināyat* Law are categorized as formil delicts – not materiil delicts.[19] Under the *Jināyat* Law along with many other delicts, the *khamar* (drunk), *khalwat* (adultery) and *maisir* (gambling) delicts are categorized as formal delicts. A formal delict is defined as a delict that does not require a consequential effect of the delict violation. The violation action is perceived to have been committed if an action possesses the substance of delict violation, and is therefore punishable. For example, the *qānūn* on *khamar* constitutes a formal delict. Violation against the *qānūn* does not require a consequential effect of the delict violation, namely a drunken state. When a perpetrator is associated with the *khamar* delict by such actions as producing, transporting, storing, selling, buying, and consuming alcoholic-drink, then the perpetrator is considered to have fulfilled the delict substance and is therefore punishable.

In dealing with crimes and law violations, Islamic tenets place greater emphasis on preventive measures. The reaction of community members to a criminal action is categorized as a preventive measure and not punishment. When the community reacts against a crime then the community is considered to have committed *eigenrechting*, where the community reaction is part of preventive measures. The nation should

act wisely by synergising with other institutions to develop the community for crime prevention.

The Criminal Law, including the *jināyat* law, is associated to the nation's supremacy.[20] All actions of crime and law violation are actions against the nation. Therefore, community members or citizens should not commit an action against the nation. When the nation is seen to have made mistakes the correction of those mistakes should be addressed to the institution associated with the instrument that possesses the power to rectify the mistakes.

The nation should assure the comfort of citizens. Since the birth of human rights protection documents such as the Medina Charter,[21] the Magna Charta in England,[22] the American Bill of Rights in the United States of America,[23] and *La Déclaration des Droit de L'homme et du Citoyen* in France[24] have placed the protection of citizens' rights as an inseparable aspect of the nation. It is therefore incompatible that assuring the rights of being drunk and selling *khamar* is part of human rights protection. The Medinah Pact Agreement* makes evident that the Prophet Muhammad (ﷺ) intended to protect the non-Muslims who were just defeated in war through an agreement.

This regard has caused the Aceh's people – both Muslims and non-Muslims – do not declare any objection to the regulation on *khamar* drinking. *Khamar* drinking prohibition is not a sudden novelty. Such prohibition has been understood by many religious communities elsewhere. The Hindus community also consider drinking or 'the state of being drunk' a prohibited action. Those in Hindu religion also lay down a regulation called "Malimo", the five prohibitions. One of the five prohibitions is "Drinking". The application of the drinking prohibition in Hindu Community does not discriminate whether the violator is a Hindu or a Muslim.

On Evidence

The facts revealed through the letter of charging and the defendant's

*The charter of Madinah was not an agreement between the Muslims and non-Muslims. There were no prior discussions and no signatures involved like the treaty of Ḥudaibiyah. It was a *sovereign act* of the holy Prophet (ﷺ). It was a Charter issued by a sovereign authority. It was announced by the holy Prophet (ﷺ) and all the people of Madinah, Muslims and non-Muslims accepted it and followed it – *Ed.*

identity during the court case prosecution proceedings show no indication that the defendant was mentally abnormal. In other words, the defendant was a capable person and could bear responsibility for all of her actions. The wording "any person" in the *qānūn* applied to the defendant as the legal subject in this case. The *jināyat* law is imposable to any person; there is no differentiation between Muslims and non-Muslims. When a non-Muslim would like to escape from the legal consequence of the *jināyat* law, he/she could simply show his/her identity card as proof of non-Muslim status. The duty of law enforcement officer was to provide the community with peace, comfort, and protection from evils and unlawful actions within their jurisdiction territory. However, it is somewhat peculiar when law implementation discriminates among people[25] – the Muslims should not commit evils, while the non-Muslims can do anything.

Based on the defendant's confession, it is true that that she is a Protestant Christian. However, regarding *jināyat* law, the provision in the Aceh Province *Qānūn* Number 6 Year 2014, the Article 5 point (c) stipulates "this *Qānūn* applies to any person whose religion is not Muslim committing *jarīmah* in Aceh where such violation is not regulated in the KUHP or in the criminal law other than KUHP, thus the case is prosecutable under this *Qānūn*." The defendant's action is therefore imposable under the provisions of the *Qānūn* Number 6 Year 2014 regarding the *jināyat* law. In this case the wording "any person" is met and is legally applicable. Judicial politics[26] is also quotable and interpreted accordingly, where the terms used in the *qānūn* on the *jināyat* law are generally unrecognized in public law language, such as the term *khamar*. The defendant has violated the provisions as regulated in the *Qānūn* Number 6 Year 2014 regarding the *jināyat* law.

In view of the stipulation in the Aceh *Qānūn* regarding the *jināyat* law, the defendant's action is categorized as a *jarīmah* action. In this case *khamar* is part of the matters regulated in the Aceh *Qānūn*. *Jarīmah* of *khamar* denotes a prohibited crime. In this case, the defendant confessed to being a Protestant Christian, and it was proven that the defendant committed *jarīmah* of *khamar* in Aceh.[27] As provided in Article 5 point c juncto Article 16 verse (1) of Aceh *Qānūn* number 6 Year 2014 regarding the *jināyat* law, such action is imposable with punishment. Hence, the state of *jarīmah* is convincing and has been

proven by law. The defendant attempted to escape from the charge by reasoning that she was non-Muslim. The exception given to non-Muslims with regards to regulation and law was informed and campaigned to the community. The exception is that a non-Muslim should explicitly and clearly state his or her disagreement to be prosecuted under the *qānūn* of *jināyat* law.

Allegedly, the perpetrator already knew that selling *khamar* is a punishable action, so causing her to take accountability over her business permit and other legal substances associated with the alcoholic-drink trade, as regulated under the *Qānūn* of Central Aceh District regarding alcoholic-drink which applies in the region.

Based on legal evidence, the court proceedings revealed that the defendant stores and sells various brands of *khamar*. According to the test-document, number PM.01.05.81.01.16.04A issued by the State POM[28] (Drugs and Foods Surveillance) Agency of Banda Aceh dated on 5th January, 2016 signed by Dra. Effiyanti, the evidence is an alcoholic-drink which is *khamar*, the legally prohibited product to circulate in Aceh according to the *Qānūn* Number 6 Year 2014 regarding the *jināyat* law. The delict as stipulated in the *Qānūn* Number 6 Year 2014 is a formal delict – not a materiil delict. The fact that the defendant was legally proven to have stored and sold *khamar* in Aceh territory constitutes a legally prohibited action.

In general Islamic Law puts strong emphasis on prevention. The *qānūn* in Aceh in addition leads to "Islamic Propagation". That Islamic propagation has gone spreading implies that the spirit for *jināyat* delict prevention has been rooted in the community. The prevention is not understood as permitted violence through community arbitrary justice action. Intervention in this instance means the community's objection to the perpetrators of *khamar* drinking, *khamar* sellers and distributors and any other actions and activities supporting the *khamar* delict. Islamic propagation is understood as '*dakwah* (preaching)' of Islamic tenets understanding – one of the core parts in Islam. To this extend, not a single violent action will take place throughout the effort towards Islamic law enforcement.

Responsibility Bearer

As the perpetrator of the *khamar* delict, the defendant could be

held accountable for her law breaching action as she was in a normal psychological state and she bore three types of capability: (1) the capability of understanding and knowing the implication and the direct consequence of her own actions; (2) the capability of comprehending that her actions were/are against community orderliness; (3) the capability of determining the will to act.[29] Therefore, the defendant was imposable under the *jināyat* (criminal) law.

The *qānūn* on *jināyat* law stipulates that *jarīmah* of *khamar* covers activities or actions such as producing, storing (collecting), selling, or importing *khamar* within a certain jurisdictional territory. The delict violations committed by the defendant were as follows: (1) storing *khamar*: in her house in Kampung Baru village, Lut Tawar sub-district, Central Aceh district; (2) selling *khamar*: therefore, fault had been found according to the delict violation. The *qānūn* on *jināyat* law included the *khamar* delict as a criminal delict. In the matter of a criminal delict, there should be either intension or carelessness aspects. The Sharia Court House of Takengon did not discuss the intension and carelessness aspects because they were not stipulated in the *qānūn*; thus it is unnecessary to prove their presence. It is also unnecessary to prove whether the *khamar* buyer becomes drunk or not. Mak Ucok was considered responsible for the circulation of *khamar* through trading activity.

To be consistent with *khamar* prohibition there should be a measure to trace who imported and transported *khamar* to Central Aceh. This investigation was important for tracing down the responsible parties associated with the case. As previously mentioned, all related institutions should be synergies for a successful *khamar* prohibition mission, ensuring Gayo community who abides by Islamic culture and is free from *khamar*.[30] The suppliers of *khamar* to Central Aceh and the surrounding territory are considered blamable because they know *khamar* will be consumed by either the Muslim or non-Muslim community. Therefore, to punish only the sellers is unfair, for the suppliers are also blamable and punishable.

When considering punishment according to criminalization doctrine there are several theories of criminalization: (1) absolute, retributive, or retaliatory theory (lextalionis), whose followers are E. Kant, Hegel, and Leo Polak. They propose that the law must exist as a consequence of crimes committed, in that the perpetrators must be punished. According

to Leo Polak (of the retributive school of thought), punishment should meet three conditions: (a) the action is reprehensible (breaches ethical codes at least); (b) preventive intension is not allowed; and (c) the degree of punishment is comparable to that of the delict. (2) relative or objective (utilitarian) theory suggests that punishment imposition should have a certain objective, and not be merely retaliatory. Generally, punishment is corrective or rehabilitative because the perpetrators are those with 'moral illness' and should be healed.[31] So, punishment places greater emphasis on treatment and education. Another objective of punishment is to serve as a preventive measure, so punishment imposition is intended to prevent the crime from spreading through imitative action by other community members. Another objective is to protect citizens; others do not need to copy criminal actions. (3) eclectic theory signifies the combination of the previously stated theories. Hence, criminalization is intended as: (a) retaliation, making the perpetrators suffer; (b) a preventive measure, prevent criminal action from taking place; (c) rehabilitation of the perpetrators; and (d) protection for the citizens, which has now developed into an idea of so-called restorative justice. Restorative Justice is intended to make the perpetrators restore the condition to the initial state.[32] Justice not only imposes a fair sanction onto the perpetrator, but also highlights the sense of justice for the victim.[33] This notion is accommodated into the KUHP Bill of 2005.

According to Article 54 of the KUHP Bill of 2005:

1) Objectives of criminalization are:
   a) preventing the emergence of criminal actions through enforcing the legal norms to educate citizens;
   b) reintegrating the punished criminals into the community through educating them into good and religious persons;
   c) resolving conflict arisen because of the criminal actions, so recovering harmony and providing tranquillity to citizens;
   d) releasing the punished criminals from the feeling of guilt; and
   e) forgiving the punished criminals.

2) Criminalization is not intended to make a human suffer and degrade humanity.

Article 55 of the KUHP Bill of 2005 also contains guidelines of criminalization that have not been regulated in our law or constitution.

Article 55:

1) Criminalization should consider:
   a) the guilt of the perpetrators;
   b) the motives and objectives of the perpetrators;
   c) the mental attitude of the perpetrators;
   d) whether the criminal action is committed by intention or plan;
   e) the way the criminal action was committed;
   f) the attitudes and actions of the perpetrators upon the completion of their criminal actions;
   g) the biography or life history and socio-economic condition of the perpetrators;
   h) the impact of punishment upon the future of the perpetrators;
   i) the impact of punishment upon the victims or the victims' families;
   j) forgiveness by the victims and/or the victims' families; and/or
   k) the community's perspectives towards the criminal actions.

2) Taking into account the justice and humanity aspects the criminal action obstacles, the perpetrators' personal make-up, and the conditions both during and after the committing of the criminal actions, can all be taken into consideration when deciding whether or not to impose punishment.

The police have found the normative formula including the unwritten norms which encapsulate the duty of the police, so ensuring public orderliness and providing security and peace for the community. These are in line with the verdict made by Hoge Raad dated 11 March 1917.[34] The traditional community in the country highly prioritizes the comfort and tranquility for its neighbourhood and environment.[35] Even family quarrels will matter to the village head of the community.

As afore-explained, the *qānūn* in Aceh stipulates that *khamar* and state of being drunk is a prohibited action in the perspective of Aceh community. If a defendant can show a proof that he or she is a non-Muslim, the defendant cannot be persecuted under the *qānūn*;

therefore he or she is free from the charge of *jināyat* law. However, the defendant is still prosecutable under the charge of a different law such as *Kitāb Undang-Undang Hukum Pidana* (National Criminal Law) or the by-law (local government regulation) regarding alcoholic drink.

On Legal Consideration

The defendant has understood the content of the charge upon her. She was not a newcomer in Kampung Baru village, Lut Tawar sub-district, Aceh Tengah and so she was aware of the nature of the charge. The defendant decided not to hire or to be assisted by a lawyer. She believed that her own defending argument was sufficient. Apart from that, the customary law concept perceives that making excuses to defend guiltiness and to win a case is taboo. The tougher someone stands in defending his or her guilt, the more unpleasant the person is in the public eye.

Furthermore, it is important to mention a number of legal considerations contained in the judge's verdict, as follows:

1) The use of terminology in the verdict.

The Takengon Sharia Court House's verdict number 0001/JN/2016/MS-Tkn uses a variety of terminologies. The term "*khamar*" is repeated 10 times in the 14 page verdict document. In addition, the term "alcoholic-drink" is repeated 25 times. The term "hard drink" is repeated 16 times. Actually, the terms "*khamar*", "alcoholic-drink", and "hard drink" have been understood to bear the meaning of a single referent. There are even other terms recognized in the traditional community to name this referent. Islamic tenet introduces the terminology for a so-called "drunken-state causing drink". When a type of drinking product is known to result in a drunken state, such drink is considered *ḥarām* (prohibited); even if a drunken state is brought about when only a small amount is consumed. The delict to this case is categorized as a formal delict. The delict confirmed the drink was a "drunken-state causing drink".

2) The attorney's charge was understood by the defendant, which indicated the defendant's familiarity with the terms and the language used by the attorney. The terms "*khamar*", "alcoholic-drink", and "hard

drink" are familiar to the Acehnese community. The defendant realizes she has committed wrong and faulty actions. Furthermore, it could be assured that the attorney and the judge council asked the defendant whether she had understood the content of the charge. The defendant certainly answered that she had understood. The verdict document did not contain any phrase to suggest the verdict was not understood by the defendant. Hence, the local community, including the defendant, realized that *khamar* 'was/is prohibited. Such legal awareness should be preserved and encouraged in the community. The traditional community, including the Gayonese community, perceived the emergence of the case in the midst of their community as a disgrace and so community members were unhappy. For 15 years the community knew the defendant sold *khamar*. However, when the case became exposed to public they did not feel happy.

3) The fact the defendant was not assisted by a lawyer suggests that she sincerely accepted the legal consequence of the case and the imposition of whatever sanctioning. The defendant made no efforts to seek excuses or arguments to defend herself. The defendant foresaw that if she could free herself from the charge then she would face the sanctioning and punishment made by the local community. The local community, such as neighbours and villagers, would socially isolate her. Rather than standing against the attorney's charge and face the social punishment by the community, the defendant foresaw that it would be more secured and comfortable for her to accept the imposition of whatever punishment. As part of a customary community, the citizen of a communal society will find it more 'painful' when he or she is isolated by neighbours and the surrounding people. When a customary community has imposed a social punishment to a society member, then the resolution for the punished member is to move away from the village. The community will not physically or verbally expel him or her, but it is the punished member who will take initiative to move away because of the feelings of pain and discomfort from being socially isolated. When the defendant has gone through the punishment, been rehabilitated and turned into a good person, then she certainly does not need to move away from the village.

4) The judge council also considers the good attitudes shown by Renita Sinaga, alias Mak Ucok, when she was attending the prosecution

proceedings. She committed a *qānūn* violation within the jurisdiction territory of the Takengon Syaria Court House. The judge also appreciated her honesty when stating her non-Muslim status, although she happened to argue that the *qānūn* on *jināyat* law did not apply to her. In this regards, the judge council highlighted that there was no religious discrimination. Such confirmation should have been clarified in the investigation phase, which was undertaken by the investigator and the attorney. The judges performed their duty well. Mak Ucok showed good attitude before the judges through giving information straight forwardly, politely, and respectfully. Her good attitude became a consideration for the judges to reduce the degree of her punishment.

5) The judge council carefully considered that the witnesses convincingly testified and swore according to the Islamic guidelines that it was true that the defendant had committed legal violation actions of storing and selling *khamar*. There was no sign of hatred from the witnesses when they made their testimony. The defendant did not state any objection to the testimonies made by the witnesses (Indrajaya bin Abd. Rahman and Nicko Simahate bin Drs. Win Ikhwani). The judges could take the testimonies as part of their verdict consideration. The analyses and considerations made by the judges should reflect the virtues and values of the verdict to be made.

6) The attorney brought the evidence before the court. The evidence comprised: (1) 48 (forty-eight) small bottles of alcoholic-drinks of red wine type-branded Columbus; (2) 22 (twenty-two) small bottles of alcoholic-drink of Vigur brand; (3) 8 (eight) big bottles of alcoholic-drink of the Sea Horse brand; (4) 2 (two) big bottles of alcoholic-drink of red wine type-branded Columbus. These four kinds of drink were tested in the Laboratory of POM RI (the State Drug and Food Surveillance Agency) of Banda Aceh, and the result showed that they were categorized as *khamar* types. Such types of *khamar* are prohibited according to the *Qānūn* Number 6 Year 2014 regarding the *jināyat* law. The prohibition not only covers the drinking, but also the buying, selling, storing, producing, importing, or transporting of *khamar*.

7) The defendant's action is seen to have covered three kinds of violation as referred to by stipulations of the *jināyat* law, namely: (1) buying, (2) storing, and (3) selling the *khamar* product. The three types of violation under the *jinayat* law were revealed and proven during

the court proceedings. The details of the violation action are as follows: (1) Buying: the perpetrator admitted to the buying of *khamar*, with the purchase being made from Mr. Koko (a wanted person) who lives in Medan city; (2) Storing: the defendant was proven to have stored the *khamar* drink, as mentioned in the legal consideration document; and (3) Selling: the defendant admits that the *khamar* stuffs were sold to others in order for her to improve her income and to fund her children's schooling needs. These actions were conducted for 15 years and commenced after the death of her husband.

8) The defendant Mak Ucok is blamable and should bear responsibility for her merchandise, despite that the defendant was not alone in selling the *khamar* to customers. In view of a criminal case, the aspects of intension (intention) and carelessness become unimportant. The defendant is blameable for "no one is punishable without fault" (*keine strafe ohne schuld* or *geen straf zonder schuld*).[36]The defendant had stood against the nation's law. The nation is represented by the Aceh Government together with the Aceh People Representative Council who have formulated and produced a Perdalevel (local government law) regulation called the *Jināyat* Law *Qānūn* to create orderliness in Aceh territory to anticipate crimes.

Sanctioning onto the *Jināyat qānūn* violators in Aceh is not a new concept within criminal prosecution system according the Criminal Law theory. The state as sovereignty owner has a responsibility to educate and civilize its people. The state is obliged to take interventions against any kinds of law violation taking place. The state – government in this regards – must take actions to provide security and comfort to its people. In other words, the government will be taken accountable when insecurity and discomfort emerge in the community. Therefore, Indonesian and Aceh Government are responsible for any dislikable deeds taking place in Aceh community. Getting drunk is one of the actions verily unfavorable among the Acehnese community members.

All the legal considerations elaborated above are logical according to logical legal thoughts. It can be said that sanctioning or punishment onto the defendant is decided according to legal verification. And, it can be said that it has nothing to do with the religions of the violators whether they are Muslims or Non-Muslims.

Conclusion

The enactment of a set of criminal laws including the *jināyat* law is embedded into a certain territory. In lieu of criminal law conception a defendant is not allowed to choose which type of law is to be applied to his or her case. All the perpetrators of a *jināyat* or criminal action are treated equally regardless of their religion, race, origin, and background. Therefore, the legal system of criminal law does not acknowledge the term "self-submission" (alternative compliance).Self-submission is only recognized in private law. Self-submission in the private law legal system should still consider whether other persons or a third party will be affected. Despite this, the *KUH Perdata* (the book of private law) deals with private matters. The legal subjects under private law have a lot of freedom of choice. Nevertheless, choosing to divorce under agreement is not allowed because there are allegations that choosing to divorce under agreement will affect and cause disadvantages to others.

Legal subjects who inhabit a certain territory should fully respect the laws that apply in that territory. Criminal law formulations are considered from various aspects and points of views. Not until all aspects such as religion, socio-culture, public orderliness and national security have been thoroughly and comprehensively considered, will the criminal law tenets be formulated into a law or legislation. Therefore, there are no alternatives. Alternative laws will disadvantage the people and community and goes against common sense. Prohibition of *khamar* is not made based on hatred, but because all religions do not want their followers to become drunkards. Apart from that, the community also wishes for the tranquillity and comfort of society. Freedom is confined to others' rights. Let's say that the non-Muslims do not have a firm prohibition against *khamar* or the like, then this fact should be in line with the rights of the Muslims to live peaceful lives that are free from disturbances resulting from behaviour disorders due to the *khamar* effect.

Notes and References

1. The Act Number 11 of 2006 on the Government of Aceh, Article 129
2. Rudolph Peters, *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law*, Cambridge, Cambridge University Press, 2016, p. 233.

Joseph Schacht, *An Introduction to Islamic* Law, Oxford, Oxford University Press, 1964, pp. 1-10. Noel James Coulson, *A History of Islamic Law,* Edinburg, Edinburgh University Press, 1964, pp. 21-23. See also Wael B. Hallaq, *An Introduction to Islamic Law,* Cambridge, Cambridge University Press, 2009.

3. Alcoholic-drink Judgment in Mahkamah Syar'iyah Takengon *Nomor: 0001/JN/ 2016/MS Tkn.*
4. The trend to use the term "*qānūn*" in Aceh shows that Aceh in the sultanate time had prospered and its legal system received the Roman influence. The Roman legal system used the term "qanonic" to refer to legal provisions. Based on this tradition, the Aceh people now use "qānūn" for all legal products produced by their local legislative council. See also Muhammad Hamidullah, *Fikih Islam dan Hukum Romawi Refleksi Atas Pengaruh Hukum Lama Terhadap Hukum Baru*. Yogyakarta, Gema Media, 2003, pp. 31-35.
5. Hasnil Basri Siregar, "Lessons Learned from the Implementation of Islamic Shari'ah Criminal Law in Aceh, Indonesia", *Journal of Law and Religion,* 2008, vol. XXIV, pp. 143-176.
6. Hindus Julius Lipner, *Their Religious Beliefs and Practices*, United Kingdom, Routledge, 2012, pp. 40-45.
7. Khurshid Ahmad, Ed., *Islam: Its Meaning and Message*, United Kingdom, Islamic Foundation, 1976, pp. 21-23.
8. Gregor Clunie and Haris Psarras, *The Public in Law: Representations of the Political in Legal Discourse,* United Kingdom, Routledge, 2016, pp. 51-52. In Indonesia public law is also guaranteed through judicial mechanism in constitutional court. See also Muhammad Siddiq Armia, "The Role of Indonesian Constitutional Court In Protecting Energy Security," *Jurnal Konstitusi*, 2016, vol. XIII, pp. 241-258. See also Muhammad Siddiq Armia, "Constitutional Courts And Judicial Review: Lesson Learned For Indonesia," *Jurnal Negara Hukum,* 2017, vol. VIII, pp.107-130.
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10. P.A.F. Lamintang and C. Djisman Samosir, *Hukum Pidana Indonesia*, Bandung, Penerbit Sinar Baru Bandung, 1983, pp. 5-6.
11. See also Robert Spencer, *The Myth of Islamic Tolerance: How Islamic Law Treats non-Muslims*, New York, Prometheus Books, 2005.
12 Robin Bush, 'Regional Sharia Regulations in Indonesia: Anomaly or Sympton?' in *Expressing Islam: Religious Life and Politics in Indonesia*, ed. Greg Fealy and Sally White, Singapore, Institute of Southeast Asian Studies, 2008, pp. 174-191.
13. See also Cornelis Vollenhoven, *Van Vollenhoven on Indonesian Adat Law: Selections from Het Adatrecht Van Nederlandsch-Indië.* Nederlandsch, M. Nijhoff, 1981.
14. Hasnil Basri Siregar, "Islamic Law in a National Legal System: A Study on the Implementation of Shari'ah in Aceh, Indonesia," *Asian Journal of Comparative Law,* 2008, vol. III, pp. 1-26.
15. Daniel S. Lev, "Colonial Law and the Genesis of the Indonesian State," *Indonesia,* 1985, vol. XL, pp. 57-74.
16. John Rex, 'The Concept of a Multicultural Society,' in Montserrat Guibernau and

John Rex, *The Ethnicity Reader: Nationalism, Multiculturalism & Migration*, Germany, Springer, 1997, pp. 217-228.

17. See also Wayne R. LaFave, and Austin Wakeman Scott, *Handbook on Criminal Law*, Minnesota, West Publishing Company, 1972.
18. Jan Remmelink, *Hukum Pidana*, *Komentar atas Pasal-Pasal Terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia*. Jakarta, Gramedia Pustaka Utama, 2003, pp. 21-22. In the 18th century, a famous traveler from England, Black Stone, conducted a research on classifying the behavioural disorders categorized as crimes from the perspectives of the private law contexts through analyzing the behaviours or actions of the object. Who is blamable or responsible over the public rights and responsibilities or who affects the community (its concerns or interest) is considered to have committed criminal law.
19. Materiil delict is the one that is associated with the emergence of legal consequence upon the delict violation, such as one in Article 338 of KUHP stipulating that "Murder is defined as causing the loss of someone's life by intention with one or more ways. The loss of one's life constitutes the result of murdering. When an action leads to killing, but does not result in death, such delict cannot be defined as murder. See also E.Y. Kanfer and S.R. Sianturi, *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya,* Jakarta, Storia Grafika, 2002, p. 237.
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23. Robert Allen Rutland, *The Birth of the Bill of Rights: 1776-1791*, Northeastern, Northeastern University Press, 1991, pp. 105-120.
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25. See also Nicholas Bamforth, Maleiha Malik, Colm O'Cinneide, *Discrimination Law: Theory and Context: Text and Materials*. United Kingdom, Sweet & Maxwell, 2008.
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32. John Braithwaite, *Restorative Justice & Responsive Regulation,* Oxford, Oxford University Press, 2002.
33. John Rawls, *A Theory of Justice*. US, Harvard University Press, 2009.
34. P.A.F. Lamintang and C. Djisman Samosir, *Hukum Pidana Indonesia*, Bandung, Penerbit Sinar Baru Bandung, 1983, p. 94.
35. Protection over the community denotes a modern philosophical thought in criminal law. In the past, criminal law is intended to protect individual person. Muliadi and Barda Nawawi, *Teori-teori dan Kebijakan Pidana*, Bandung, Penerbit Alumni, 1992, p. 32.
36. Sudarto, *Hukum dan Perkembangan Masyarakat*, Bandung, Sinar Baru, 1983, p. 85.