



## An Examination of Refressive Da'wah in Khaled Aboe El-Fadl's Perspective on the Implementation of Qanun Syariah in Aceh

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### ABSTRACT

The implementation of Qanun Syariah in Aceh is considered something of a dilemma. On the one hand, the implementation of the Qanun is considered to violate the provisions of Indonesian positive law, on the other hand, in the process of implementing the Qanun, the Al-Quran and Hadith are used as a basis, and it contains repressive da'wah, da'wah by making the government the perpetrator of structural da'wah, which can pressure the public to obey the teachings. Islam. This research uses a qualitative method which is research that focuses on activities, relationships, situations and conditions in the field. In carrying out this research, the author went directly to institutions related to the implementation of Qanun Islamic Sharia in Aceh, such as: Wilayatul Hisbah, Islamic Sharia, Governor, DPRA, MPU, Ministry of Law and Human Rights. The results of this research state that Qanun Syariah according to Khaled Abou el Fadl is a contemporary form of da'wah that is included in government structures. Banda Aceh has the authority to carry it out in accordance with the legitimacy of the State.

Keywords: Da'wah, Sharia, Aceh, Khaled Abou elFadl

### ABSTRAK

*Cakupan Penerapan Qanun Syariah di Aceh dianggap sebagai sesuatu yang dilematik. Satu sisi penerapan Qanun dianggap melanggar ketentuan hukum positif Indonesia, disisi lain dalam proses penerapannya Qanun menjadikan Al-quran dan Hadist sebagai landasan yang di dalamnya mengandung dakwah refresif, dimana dakwah dengan menjadikan pemerintah sebagai pelaku dakwah struktural, yang dapat menekan masyarakat untuk taat terhadap ajaran Islam. Penelitian ini menggunakan metode kualitatif yang merupakan penelitian yang terfokus pada aktifitas, hubungan, situasi dan kondisi di lapangan, dalam pelaksanaan penelitian ini, penulis terjun langsung ke lembaga- lembaga yang terkait dengan penerapan Qanun Syariah Islam di Aceh, seperti: Wilayatul Hisbah, Syariat Islam, Gubernur, DPRA, MPU, Kemenkum Ham. Hasil penelitian ini menyatakan ada banyak peneliti yang focus terhadap penegakan Syariah Islam di Aceh dan salah satunya adalah Khaled Abou el Fadl. Qanun Syariah menurut Khaled Abou el Fadl merupakan bentuk dakwah kontemporer yang masuk ke dalam struktural pemerintahan. Banda Aceh memiliki otoritas dalam melaksanakannya sesuai dengan legitimasi Negara dan memiliki wewenang khusus dan legal untuk menerapkan Syariat Islam di wilayahnya.*

*Kata Kunci: Dakwah, Syariah, Aceh, Khaled Abou el Fad*

### INTRODUCTION

The The position of religion and the state in the classification division between private and public raises the inherent nature and politicization of religion itself. The state often intervenes in the regulation of religion, which in turn will create turbidity in the relationship between religion and the state. There is often a clash of terminology between religion (religion) spirituality (spituality) and belief (creed) in which it plays a political role.

In addition, sometimes the state uses religion as a card for the sake of controlling and controlling the government.<sup>1</sup>

On the other hand, religion must also have a role in the State so that Islamic teachings remain grounded and have their own portion. The design of the application of Islamic Sharia as a Regional Regulation is often considered contrary to the constitutional system as an adherent of the democratic system. Especially when viewed from the application of Islamic Sharia which is indeed more inclined to Islam, this is also considered to violate the concept of equality and human rights. Because in the principle of Human Rights, there should be no discrimination that comes from the content of laws that contain a regulation whose source is religious teachings.<sup>2</sup>

The dilemma of implementing Sharia bylaws in Islamic societies in Indonesia also lies in the different interpretations of Sharia itself. The changing shape and revival of Sharia in the Indonesian context is driven by two important actors, those at the theological level and those at the civil level. That is, socio-cultural. From a theological perspective, the two pillars of conservatives and progressives have contributed to the dynamics of the Sharia debate. The conservative circle argues for a literal interpretation and application of the Quran and hadith, while the progressive circle criticizes that literal application must also be accompanied by historical investigation for a progressive application of Sharia.

Many figures have spoken about the enforcement of Islamic sharia in Aceh. One of them is professor Khaled Abou el Fadl, a professor who is active in teaching at the American campus. He considers the application of Islamic teachings and sharia adopted into legal legitimacy, will lead to many perspectives, both negative and positive. For this reason, the purpose of this research is to map Khaled Abou el Fadl's thoughts in the scope of Islamic law.

establishing a policy in the regulations applied in Banda Aceh and its structural da'wah actors are held by officials who have authority.

## RESEARCH METHODS

This research uses qualitative methods. Qualitative research itself is research that focuses on activities, relationships, situations and conditions in the field. Qualitative research tends to be integrated into holistic descriptions that describe directly every activity or condition that takes place in an area or place, rather than focusing on individual attitudes or behaviors that occur in the field.<sup>3</sup> In conducting this research, the author goes directly to institutions related to the implementation of the Islamic Sharia Qanun in Aceh, such as: Wilayatul Hisbah, Islamic Sharia, Governor, DPRA, MPU, Ministry of Law and Human Rights.

Some previous studies that also talk about Islamic sharia, one of which is Cut maya Aprita Sari in her journal states the Pros and Cons of the Implementation of Islamic Sharia Qanun in Aceh that one of the objectives of implementing Islamic Sharia in Aceh is to achieve the benefit and welfare of the community. In the process of its implementation there

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<sup>1</sup>Alwiyah Sakti Ramdhon Syah, "Kedudukan Agama Dan Kebebasan Berkeyakinan Dalam Konteks Negara Hukum Pancasila," *Jurnal Noken: Ilmu-Ilmu Sosial* 3, no. 2 (2018): 36, <https://doi.org/10.33506/jn.v3i2.92>.

<sup>2</sup>putri Kurniawati, "No Title الواصل على طرفة .. جرائم تتغذى على طرفة," *Universitas Nusantara PGRI Kediri* 01, no. 6 (2017): 1-7.

<sup>3</sup> Nanda Saputra, *Metodologi Penelitian Kualitatif*, 2017.

should be no parties to the community who feel marginalized, both from the rules and from the authorities.<sup>4</sup>

Hooker, an Australian Islamic Law Researcher in Husni Mubarak's research entitled "Dissonance of Qanun Sharia Islam in the Frame of the Indonesian Legal Constitution: Aceh as a Case Study" which states that there are many obstacles and obstacles faced by Aceh in implementing Qanun Sharia, because it should be between Qanun Sharia and National Law must be consistent and go hand in hand.<sup>5</sup>

Wike Anngraini in her research entitled "Enforcement of Islamic Sharia in Banda Aceh City-Performance of Wilayatul Hisbah states that there is a need to establish Fiqh Aceh which has the perception of Aceh's local cultural wisdom so as to be able to release the conflict gap between Qanun and Indonesian Law.<sup>6</sup>

Ariesta Nurlailatul in her research entitled "The Application of Islamic Sharia in the Legal System in Aceh Province" states that Aceh has special rights granted by the State. In addition, Banda Aceh also has its own characteristics, history, customs so that it can implement Qanun Sharia. And this can be applied after going through many processes of agreement so that the application of Qanun can run well.<sup>7</sup>

The novelty in this research is that the main idea focus lies on Khaled Aboe elFadl who seriously examines the application of Sharia in Indonesia, especially in Aceh, and considers the application of Islamic Sharia as a form of refressive da'wah in order to implement Islamic teachings.

## RESULTS AND DISCUSSION

Khaled Abou el Fadl is famous as a scholar who works as a professor at the UCLA School of Law in the United States. He is known as a Muslim figure who is concerned with women's rights and upholds moderate Islamic values and norms. Khaled Abou el Fadl's mother is Afaf el-Nimr and his father is Abou el Fadl. His father was a moderate Muslim with an open mind. Khaled Abou el Fadl's primary and secondary education came from Kuwait. He also received education outside of school from his parents who taught him about Islamic law. He is also a memorizer of the Qur'an who follows the memorization according to the Arabic language. Of the many sciences he studied, Khaled Abou el Fadl liked the science of the Qur'an and the science of Islamic law taught by Muhammad al-Ghazâlî. Because he concentrated and focused on classical Islamic studies he became a scholar and writer who raised moderate themes and became an activist for women's defense.<sup>8</sup>

Among his many awards and distinctions, Dr. Abou El Fadl was awarded the University of Oslo Human Rights Award, the Leo and Lisl Eitinger Prize in 2007, and was named Carnegie Scholar in Islamic Law in 2005. He was previously appointed by President George W. Bush to serve on the US Commission on International Religious Freedom, and also serves as a member of the board of directors of Human Rights Watch. He works with

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<sup>4</sup> Cut Maya Aprita Sari, "Pro Dan Kontra Implementasi Qanun Syariat Islam Di Aceh," *Jurnal Review Politik* 06, no. 01 (2016): 68–89.

<sup>5</sup> Husni Mubarrak A Latief, "Disonansi Qanun Syariat Islam Dalam Bingkai Konstitusi Hukum Indonesia : Aceh Sebagai Studi Kasus," *Annual International Conference of Islamic Studies (AICIS XII)*, 2020, 2779–94.

<sup>6</sup> R. Rahayu, S. S., & Angriani, "Peran Organisasi Islam Dalam Pengembangan Dan Penerapan Hukum Islam Di Indonesia.," *Universitas Gadjah Mada* 35. (2020).

<sup>7</sup> Wenny Oktaferani, Ariesta Nurlailatul Jannah, and Fariha Ramadhanti, "Penerapan Syariat Islam Dalam Sistem Hukum Di Provinsi Aceh," *Politea : Jurnal Politik Islam* 5, no. 2 (2023): 105–17, <https://doi.org/10.20414/politea.v5i2.4429>.

<sup>8</sup> Raisul, "Pemikiran Hukum Islam Khaled Abou El Fadl," *Mazahib* 14 (2015): 148.

human rights organizations such as Amnesty International and the Lawyers' Committee for Human Rights as an expert in cases involving human rights. A prolific scholar and prominent public intellectual, Dr. Abou El Fadl is the author of many books and articles on various topics in Islam and Islamic law. He has taught and lectured on Islamic law throughout the United States and Europe in academic and non-academic settings for over twenty years. His work has been translated into numerous languages including Arabic, Persian, French, Spanish, Malay, Ethiopian, Vietnamese, Japanese, and others.<sup>9</sup>

Khaled Abou el-Fadl distinguishes religious authority into two groups, namely persuasive authority and coercive authority. Coercive authority is an action that can control the behavior of a group or person from society by means of coercion, threats and punishment, including the obligation to submit and obey the rules and policies set by the authority that oversees. The obligation to comply with these rules is usually related to leadership and power that contains political elements that have the power to regulate and implement these regulations. While persuasive authority is able to influence and change the behavior and actions of the community on the basis of their own willingness, willingness and without coercion.<sup>10</sup>

Furthermore, the nature of authority which means holding power (being in authority) means occupying a position of power that has the authority to make policies and regulations that have the ability to force regulations to be implemented and obeyed. In accordance with Khaled Abou el-Fadl's statement, the implementation of Qanun Sharia is part of a progressive da'wah to the community, because it will be quickly obeyed and implemented by the community. The perpetrators of contemporary da'wah in this study, starting from the power officials who carry out repressive da'wah to the community.

The community is encouraged to comply with every rule of Islamic sharia that has been regulated in Qanun when violating then the authorities can take repressive or coercive action and direct legal force to ensure that every regulation can be obeyed and not violated by the community. So in this case, the relationship between the regulatory authority and the community is bound based on these regulations and policies.

The process of policy implementation when viewed in terms of the State policy process goes through several stages according to Khaled Abou el-Fadl, namely; the initial stage is the formulation system, namely the in abstracto enforcement stage or the legislation stage. Second, it enters the applicative stage. That is the stage of applying the law by the legal apparatus authorized by the court or police. The third stage is the judicial stage. Fourth, the execution stage is the stage of concrete implementation of criminal law by law enforcement officials. This stage is known as the executive or administrative stage. Law enforcement in the state is carried out preventively and repressively. Preventive law enforcement is aimed at preventing violations of the law by the public and this task is generally assigned to executive bodies and the police. Although sometimes by law can also be appointed by the court as in the volunteer jurisdiction and the prosecutor's office with its duties, conducting preventive law enforcement. Repressive law enforcement is carried out if preventive efforts have been made and there are still violations of the law (Sugianto, 2009)

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<sup>9</sup> Lis Yulianti Syafrida Siregar, "KONSTRUKSI HERMENEUTIKA DALAM STUDI ISLAM TENTANG HADIS-HADIS MISOGINIS ( Studi Pemikiran Khaled Abou El Fadl )," *TAZKIR: Jurnal Penelitian Ilmu-Ilmu Sosial Dan Keislaman* 02, no. 2 (2016): 123–42.

<sup>10</sup> Fatikhatul Khasanah, "ISTRI BEKERJA DALAM RELASI SEKSUAL (Studi Pemikiran K.H. Husein Muhammad Dalam Buku Fiqih Perempuan: Refleksi Kiai Atas Tafsir Wacana Agama Dan Gender)," *At-Ta'aruf: Jurnal Hukum Keluarga Islam* 1, no. 1 (2022): 1–18, <https://doi.org/10.59579/ath.v1i1.3021>.

In this case, the law must be enforced repressively by law enforcement agencies that are given judicial duties. Repressive law enforcement at the operational level is supported and through institutions that are organizationally separate from one another, but still within the framework of law enforcement. In the first stage, repressive law enforcement begins with the police, followed by the prosecutor's office, then continues to the judiciary and finally to the correctional institution. From the description above, it can be understood that the law enforcement system includes three main components, namely the legal component to be applied; the institution that will apply it; and the personnel of the organizers which include administrative institutions and judicial institutions such as police, prosecutors, judges and various institutions that function to administer the law administratively at the executive level.

In the implementation of Islamic Sharia, Qanun Aceh makes the Al-Quran and Hadith as a reference for the rules that become the basis for instilling sociological values in society. In it, there is a study of *asbab an-nuzul* and *asbab an-wurud* that dissects the reality in society listed in the verse, hadith which is also able to explain reality integrally in certain studies. The principle of this part of reality has a purpose, namely the process of grounding God's teachings which have normative and sacred properties. In the process of implementing Islamic Sharia, through sociological analysis, a study is carried out in formulating concepts in the rules of Islamic law. The policy contained in Qanun, is part of the political will and sociological approach as juridical legitimacy.<sup>11</sup>

It not only recognizes the highest legal hierarchy, but also the values and norms that are running in Acehnese society. Because basically the law is part of the reflection of the values that are prevailing in society. The formulation of the rule of law and the Qur'an as the main source of Islamic Sharia also contains a set of rules governing human relations with God, human relations among others and human relations with the natural environment.

This holistic concept of Islamic Sharia places humans as the central point in the context of grounding God's teachings through the application of Islamic Sharia. The position of human as the central point in the frame of Islamic Sharia implementation has two dimensions that cannot be separated from each other. The dimension in question is human as a subject as well as human as an object of the regulation of Islamic Shari'a. Islamic legislation refers to its sources, namely the Qur'an and al-Hadith. The existence of these two sources is what distinguishes Islamic legislation from other legislation.

Thus the rule of law formulated by the fuqaha has divine values, because its source is the revelation of Allah SWT and the words of the Prophet Muhammad SAW. Every mujtahid in doing *istinbath* or deduction and excavation of shara' law always refers to these two sources, either directly or implied expressions from them. The mujtahid should understand the spirit of the Shari'a, the objectives of the Shari'a in general, as well as the general rules and principles of the Islamic Shari'a. In addition, the process of applying the Islamic Shari'a. In addition, the process of applying Islamic Sharia as the basis of law, if studied in the field of religious law such as Fiqh, then the application of Islamic Sharia falls into the category of Fiqh Siyasah.<sup>12</sup>

The word Qanun comes from Arabic which means law. Qanun can also mean a collection of legal materials arranged systematically in a gazette known as a law. In the history of Islamic legislation, Qanun is compiled as legal material in a field, either the field of civil law or the field of criminal law. From an institutional point of view, the Aceh Qanun is made by the Aceh government together with the DPRA, because this Qanun is nothing

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<sup>11</sup> Sari, "Pro Dan Kontra Implementasi Qanun Syariat Islam Di Aceh."

<sup>12</sup> Syahrizal Abbas, *Syariat Islam Di Aceh*, ed. Dinas Syari'at Islam Provonsi Aceh (Banda Aceh, 2009).

but a regional regulation (perda). Although it is a local regulation, it functions as a regulation, implementing Law No. 11/2006. This is because the law mandates the Aceh government and the DPRA to form Qanun Aceh as the implementation of a number of provisions in the articles of the LoGA.<sup>13</sup>

One of the objectives in the process of implementing Qanun Sharia is to create public obedience related to aspects of life that regulate *aqidah*, worship and *muamalah*. Obedience to aspects that regulate worship is the obligation of each individual and personal responsibility to God. Meanwhile, obedience related to *muamalah* aspects that regulate the relationship between individuals and other relations with the natural environment. This holistic concept of Islamic Sharia places humans as the central point in the context of grounding God's teachings through the application of Islamic Sharia.

The position of human as the central point in the frame of Islamic Sharia implementation has two dimensions that cannot be separated from each other. The dimension in question is human as a subject as well as human as an object of the regulation of Islamic Shari'a. Islamic legislation refers to its sources, namely the Qur'an and al-Hadith. The existence of these two sources is what distinguishes Islamic legislation from other legislation. Thus the rule of law formulated by the *fuqaha* has divine values, because its source is the revelation of Allah SWT and the words of the Prophet Muhammad SAW.

Every *mujtahid* in doing *istinbath* or deduction and excavation of *shara'* law always refers to these two sources, either directly or implied expressions from them. The *mujtahid* should understand the spirit of the Shari'a, the objectives of the Shari'a in general, as well as the general rules and principles of the Islamic Shari'a. In addition, the process of applying the Islamic Shari'a. In addition, the process of applying Islamic Sharia as the basis of law, if studied in the field of religious law such as *Fiqh*, then the application of Islamic Sharia falls into the category of *Fiqh Siyasa*.<sup>14</sup>

Laws that are based on Islamic Sharia have special features when compared to other laws. Another clear difference between Sharia law and other laws is that Sharia law regulates *halal-haram* and is related to morals. These two areas characterize the Sharia legal system as different from other legal systems created by human engineering, such as the laws in Western civil law. In Islamic legislation, the formulation of legal rules is bound by moral rules (*al gowaid al-akhlaq*) and divine values. Whereas the formulation of man-made legal rules only refers to the beneficial aspects of the law, namely maintaining the system and stability of society, even though it sometimes destroys some religious and moral principles.

The rule of law in Islam maintains virtue, ideality and the establishment of morality. One of the institutions most responsible for implementing Qanun No. 11/2002 is the Islamic Sharia Office. The draft Qanun was initially proposed by the Islamic Sharia Office and then received by the Governor's office, then became a report of the legal bureau of the governor's office and then submitted to the Governor. After receiving permission from the governor, then the Qanun will be an agenda in a coordination meeting with related agencies. Such as the Islamic Sharia Office, Governor, DPRA, MPU, WH, Kemenkum Ham.<sup>15</sup>

The initial process of the establishment of the Office of Islamic Shari'a, inaugurated on February 25, 2002, which has the initial task as the planner and responsible for the implementation of Islamic Shari'a in Aceh originated from the birth of Law No. 44/1999. The Office of Islamic Sharia became an important element of local government in Aceh

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<sup>13</sup> Sari, "Pro Dan Kontra Implementasi Qanun Syariat Islam Di Aceh."

<sup>14</sup> Abbas, *Syariat Islam Di Aceh*.

<sup>15</sup> Khasanah, "ISTRI BEKERJA DALAM RELASI SEKSUAL (Studi Pemikiran K.H. Husein Muhammad Dalam Buku *Fiqh Perempuan: Refleksi Kiai Atas Tafsir Wacana Agama Dan Gender*)."

whose duties were under the direction of the Governor. The objectives of the Office of Islamic Shari'a are formulated into several tasks, including: firstly, to develop and disseminate information on Islamic Shari'a in the community, secondly, to prepare and socialize qanuns on the implementation of Islamic Shari'a, thirdly, to prepare and nurture Islamic Shari'a resources. Third Preparing and fostering human resources both implementers and supervisors of the implementation of Islamic law. Fourth Fostering and establishing the implementation of worship both human resources and facilities as well as reviving religious syiar. Fifth Empowering judicial resources and conducting community guidance and counseling on the implementation of Islamic law.<sup>16</sup>

In addition to the Islamic Sharia Office as the drafter of Qanun, there is Wilayatul Hisbah as the supervisor of the implementation of Islamic Sharia. In Local Regulation No. 5/2000 on the implementation of Islamic Sharia in chapter VI article 20 paragraph (1) it is stated "The local government is obliged to form a body authorized to control/supervise the implementation of the provisions of this local regulation, so that it can run as well as possible". In addition, the existence of WH is also regulated in article 14 paragraph (1) to (5) Qanun Number 11 of 2002 concerning the implementation of Islamic Sharia in the field of aqidah, worship and shari.<sup>17</sup>

WH has the authority and responsibility regarding public order, decency and criminal offenses that require immediate resolution. The purpose of the WH is to maintain public order and maintain moral virtues and adab in society. The main task carried out by the WH is amar ma'ruf nahi mungkar, controlling the syiar of Islam, the implementation of worship such as prayer, fasting, zakat, covering the aurat, as well as related to the supervision of violations of decency such as khalwat, mixing between men and women in public places.

The Islamic Sharia contained in the Regional Regulation follows a formation process that goes through four stages so that it is eligible to be used as a legal basis. First, the policy in the regulation must not damage the integrity of the territory and contradict the integrity of the nation's ideology. Secondly, the law should only be built on the principles of democracy and nomocracy as a whole. Third, laws in Indonesia must be built for social justice where the state officially contributes to creating a just social structure through regulations that provide protection for weak and potentially discriminated citizens. Fourth, laws should only be built on religious tolerance. Because the existence of local regulations must fulfil the elements of complementarity and indeed the things listed in the local regulations are very important and needed by the community. Indonesia is a Pancasila state, the Pancasila state is a meeting point between the goodness of a religious state and the goodness of a secular state.

Religion gives spirit in the life of the nation and state. The state provides protection for its citizens to carry out the teachings of the religion they believe in.

## CONCLUSION

Write In the implementation of Islamic Sharia, Qanun Aceh makes the Al-Quran and Hadith as the reference of the rules that become the basis for instilling sociological values in society. In it, there is a study of asbab an-nuzul and asbab an-wurud that dissects the reality in society listed in the verse, hadith which is also able to explain reality integrally in certain studies. The principle of the reality part has a purpose, namely the process of grounding

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<sup>16</sup> Muthmainnah Baso, "Aurat Dan Busana," *Al-Qadau* 2, no. 1 (2015): 186–96.

<sup>17</sup> I Wayan Ardhi Wirawan et al., "Penyuluhan Penguatan Moderasi Beragama Berbasis Kearifan Lokal Pada Masyarakat Hindu," *Dharma Sevanam : Jurnal Pengabdian Masyarakat* 1, no. 2 (2022): 104–19, <https://doi.org/10.53977/sjpkm.v1i2.661>.

God's teachings which have normative and sacred properties. In the process of implementing Islamic Sharia, through sociological analysis, a review is carried out in formulating concepts in the rules of Islamic law.

The nature of authority which means holding power (being in authority) means occupying an official or structural position that gives the authority to issue orders and directions, the authority holder is usually obeyed because it has forced power. In accordance with Khaled Abou elFadl's statement, the implementation of Qanun Sharia is part of a progressive da'wah to the community, because it will be quickly obeyed and applied by the community. The perpetrators of contemporary da'wah in this study, starting from the authority officials who carry out repressive da'wah to the community.

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