

LAW AND ITS CHANGES IN ACEH COMMUNITY

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Abstract

In general, law and social acts are like two-sided knives where they need each other, likewise for human beings, because as social beings, they need for law. Social life undergoes changes (due to certain factors) that have an impact on the law. Slowly but surely, the law will change. The COVID-19 pandemic last year was one of the causes of social changes which had an impact on the law. Social change in a place cannot be denied and avoided, then do all social changes have an impact on the law? And what are the legal changes that have occurred to the people of Aceh? This study attempts to answer the above questions by using a legal sociology approach. The results of the study show that not all social changes have an effect on legal changes. There are several things that have changed in Aceh, such as lectures on Friday sermons in local languages, smoking laws, and wearing the veil.

Keywords: Legal Change, Social

INTRODUCTION

This world is new and always changing according to the times. Changes in the world have a major influence on human life as social beings. Changes that occur in this world are fast and some are slow, not least in Aceh. In jurisprudence, changes can be caused by many things, such as time, place, customs, intentions and so forth. Aceh, a province with a long history, has undergone many social and legal changes. Looking back, Aceh has long implemented Islamic law, starting from the kingdom period until today. However, during the colonial period until August 15, 2005, the implementation of Islamic law in Aceh experienced a setback due to the conflict. This conflict has a major influence on the implementation of Islamic law. The conflict also affects the law in Aceh. Covid 19 had a big influence on the law in Aceh. No one denies that covid 19 has changed human life, ranging from social, cultural, political, legal, education and even all aspects of the life of the world community. The impact of this change is enormous for both the large environment (the world community) and the small environment (certain communities). Social change itself greatly affects the law, because humans as a mukallaf or legal object are social beings who have interactions with the social environment. So do all social changes have an effect on legal changes? What legal changes have occurred to the Acehnese people?

RESEARCH METHODS

This study used a qualitative research method with an analytical descriptive approach. Because this research includes library research, the data collection method uses the documentation method by examining reading materials in the form of books related to legal changes in the Acehese community.

RESULTS AND DISCUSSION

Law and Social Change

Law and social acts are two things that cannot be separated, it is like a knife that has two sides. Law and social can change for certain reasons, the following is an explanation.

Definition and causes of social change

In general, law and social acts are like two-sided knives where they need each other, as well as law and social, this is because humans as social beings have a need for law. Social life undergoes changes (due to certain factors) that have an impact on the law. Slowly but surely, the law will change. The development of Islamic legal thought has been seen since the early days of Islam. The Prophet allowed Mu'az bin Jabal to *ijtihad* in giving legal answers to the people in Yemen. History has recorded a change in the *ijtihad* of a *mujtahid* priest, namely Imam Shafi'I who is known as *qaul qadim* and *qaul Jadid* (roibin 2008).

Historical studies of Islamic law have historical, sociological and anthropological dimensions, since Islamic law was revealed to historical and anthropological theories that can be used as analytical tools in Islamic law research. The social conditions, *uruf* or *adat* prevailing in a society are examples that have a close relationship between Islamic law and the social system (Muhammad Ali, tt). Soerjano Soekanto explained that there are differences, renewal, and progress of thought in people's lives causing social change. Legal changes do not necessarily or always coincide with social. Sometimes, changes only occur in the law or vice versa. This is because the law is not only influenced by social, but also influenced by politics, culture, science and others. Social change has a close relationship with renewal, where renewal also has a close relationship with development (Sutjipto Rahardjo, 1990). Sutjipto Rahardjo states that renewal and development can be grouped into a group of understanding, namely a form of activity or activity that is carried out intentionally with the aim of bringing people to planned or desired changes. This definition places change and renewal as a plan, not an event that occurs alone. As a result of social changes or the structure of its components, it can lead to greater adaptability to utilize the resources that come from the physical environment of the organism.

Legal problems can be seen from the perspective of social change, because legal changes have a relationship with social change. This statement

means that every social change requires a study of the law, perhaps a shift or change in law. The law must be able to detect or respond to problems caused by social change. Fatimah Halim in her research said that there are at least four factors that can cause social change, namely (Fatimah Halim, 2015): First, changes in population. The population of an area can affect its social. Because the culture and social that is owned depends on the number and background of a population. For example, Javanese people who migrate outside Java and join a heterogeneous society provide social change in their new place.

Second, physical habitat is only a limiting factor for the possibilities of human work. Physical habitat plays a passive role in social change, but has a major role in social change, such as the allocation of people's markets that can classify people in shopping. Inadvertently society will form social strata. The lower middle class will shop at the people's market, which usually only uses clothes as a cover for their genitals, just orders but does not pay attention to the value of benefit or ethics. Third, technological developments and advances have been able to change the mindset of a society. For example, the form of clothing used by people in the technological age is very different from classical society where the clothing model is very, very simple. The ease of communication and transactions has changed the pattern of economic transactions of a society which led to the clothing model to be worn.

Fourth, changes in the structure of society and culture. Usually this change is caused by a change in science or policy. The increase in knowledge causes people to make changes in their social structure which is followed by changes in behavior and also patterns of thinking. In addition to the four factors above, social change can also be caused by political policies (such as the regulation of the three Ministers regarding school dress), wars (such as the war against the colonialists or the conflict in Aceh) and the people's revolution. The revolution that took place in Tunisia in 2011 has brought major changes to the fabric of social life and even the practice of Islamic law. This revolution made the power of Tunisian clerics stronger in preaching Islam. Before the revolution the da'wah movement was very limited, even mosques only functioned as places of prayer except for the azzaitunah mosque, but after the revolution, mosques had many functions including religious learning media. People's practice of Islamic law is more and more free because there are no more blocking rules and even more women who cover their faces.

Legal and Social Changes

Law is a product that cannot be separated from socio-cultural, community conditions and places. The law regulates people's behavior, and also the habits that apply in society are also part of legal considerations. Jurisprudence can be viewed from several points of view. First, from the point of view of its elaboration, Fiqh is an elaboration of the texts of the Qur'an and Sunnah. In this case, Fiqh remains the same and will not change as long as there is no change in the meaning of the texts. Second, from the point of view of ijihad, Fiqh is the



result of the *ijtihad* of scholars who always interact with society and the environment during their respective lifetimes. This means that in giving birth to *ijtihad*, the scholars are influenced by their *ijtihad* by social factors. Because of this, the mass and environmental factors are more or less a consideration for a *mujtahid* or a scholar or a *mufti* or nowadays it is known as a fatwa institution in formulating *Fiqh* law, strengthening among opinions that are considered contradictory, and choosing the most appropriate for a situation and the place of some of the existing opinions.

The above is the basis for consideration, where a *Fiqh* law, strengthening *Fiqh*, and efforts to select certain opinions may change due to differences in the environment, time, and social conditions of the community. Legal and social changes are basically fundamental changes in the order of life in terms of culture, community structure, habits, and social behavior throughout the year.

Due to differences in time and place, a law that is deemed most appropriate to be applied to a certain time or place, then the law is deemed inappropriate to be applied to other times or places. Differences of opinion like this are considered normal in *Fiqh*, because the demands for a change are sometimes unavoidable.

In fact, the view of changes in law due to changes in time can be found in a number of expressions of the previous scholars. Imam Malik bin Anas (d. 179 H.) for example, as quoted by Ibn Hajar al-Haytami (d. 974 H.) once said:

يُحَدِّثُ لِلنَّاسِ فِتَاوَى بِقَدْرِ مَا أَحْدَثُوا مِنَ الْفُجُورِ .

"The fatwas on the law can be renewed and changed, according to changes in human behavior and morals(Ibn Hajar, 1983)."

Ibn Hajar himself when asked about the legal status of the attitude of women in his time who went out of the house to attend the recitation assembly and worship at the mosque with an appearance that attracted the attention of men, where this was allowed at the time of the Prophet S.A.W., he replied that for the present (In the time of Ibn Hajar this is no longer allowed for the following reasons:

لَأَنَّ الْأَحْكَامَ تَتَعَيَّرُ بِتَغْيِيرِ أَهْلِ الزَّمَانِ .

"The laws can change because of changes in humans who live at a time."

Ibn Qayyim al-Jauziyyah (d. 751 H) developed a rule about changing the law by saying:

تَغْيِيرُ الْفِتْوَى بِحَسَبِ تَغْيِيرِ الْأَزْمَنَةِ وَالْأَمْكِنَةِ وَالْأَحْوَالِ وَالنِّيَّاتِ وَالْعَوَائِدِ .

"The fatwa can change due to changes in time, place, circumstances, intentions, and habits(ibnu Qayyim, 1997)."

This rule was made by Ibn Qayyim as a systematic theory, so many experts think that the theory was initiated by Ibn Qayyim, even though the foundations for this theory have existed long before, as stated by Imam Malik bin Anas.

According to Yusuf al-Qaradawi, changes in fiqh law are not only caused by the five factors mentioned by Ibn Qayyim above, but fiqh laws can also change due to changes in syar'i knowledge and syar'i gairu, changes in human needs, changes in human abilities, political change and thought change (Yusuf Qaradawi, 2009).

Regarding changes in shar'i knowledge, al-Qaradawi explained that sometimes a fiqh expert builds a law or fatwa based on certain arguments, such as a hadith. But then he found that the hadith was da'if, so finally he changed his previous fatwa, or it could be the other way around. Al-Qaradawi provides an example of legal changes in this section by changing al-Shafi'i's fatwa from qaul qadim to qaul so>d, where he while living in Egypt discovered new things that had never been found before in Iraq and in the Hijaz, in Egypt. Among them are authentic traditions quoted from the students of Imam al-Lais bin Sa'ad (d. 175 H)(Muhammad Efendi).

Differences of opinion between the scholars of the school of thought and the Imam of their school are also inseparable from the various factors that encourage it. The cause may be rooted in the use of propositions, both normative and methodological arguments, perspectives in interpreting the arguments, or even differences in time or place between the two. As is well known, books containing authentic hadiths generally only began to be compiled in the middle of the third century Hijriah. In the history of hadith writing, the period of the third century Hijri is stated as a period of purification and refinement of the books of hadith(Nawir Yuslem, 2006). After the books of authentic hadith have been compiled, it may be easier for mazhab followers to find authentic hadiths that are sometimes not considered valid by their imam. This is a small sample of the differences between those driven by the demands of change.

It should be underlined here that not all Fiqh laws can change due to differences in time or place. Therefore, as-Subki (d. 756 H), as quoted by as-Sayyid 'Alwi al-Saqaf said that(sayed Sabiq, tt), a statement about changes in law due to differences in time and place should not be interpreted in general and freely. Other scholars more firmly set the limit, that the laws that can change due to differences in time and place are only laws that originate from maslahat (Arabic: maslahah) and 'uruf (Arabic: 'urf), or are built on the basis of consideration of both simultaneously(Ali al-Nadawi, 2000). In addition, people who have the competence to make changes are of course people who have the capacity for ijtihad in various forms.

Today, there is an opinion which states that in fact the main factor that causes changes to the law is the situation or in Arabic it is called al-sura al-hadisah(Taqiyuddin, tt). Actually this statement is the essence of the statement of Ibn Hajar, Qaradawi, and Ibn Qayyim. Because if we look more deeply, then we will understand that the era was the same. The time of the Prophet and the companions was the same, there was no change because the time remained twenty-four hours a day and night, while what changed was the situation at that time. For example, nowadays it is allowed not to perform Friday prayers in

certain areas by world scholars because of the corona outbreak. The basis of this permissibility has been explained by Ibn Hajar al-Haitami in al-Fatawa al-Kubra

أَنَّ سَبَبَ الْمَنْعِ فِي نَحْوِ الْمَجْدُومِ خَشْيَةُ ضَرَرِهِ وَحَيْثُ يُكُونُ الْمَنْعُ وَاجِبًا فِيهِ

Because the prohibition for people with diseases such as leprosy is fear of suffering for them, then this prohibition becomes obligatory (Ibn Hajar).

When mentioning the fatwa, Ibn Hajar based his fatwa on the opinion of Qadi Iyad which mentions quoting from the opinion of scholars (Ibn Hajar)

وَنَقَلَ الْقَاضِي عِيَاضٌ عَنِ الْعُلَمَاءِ أَنَّ الْأَجْدَمَ وَالْأَبْرَصَ يُمْنَعَانِ مِنَ الْمَسْجِدِ وَمِنَ الْجُمُعَةِ وَمِنَ اخْتِلَاطِهِمَا بِالنَّاسِ... لِيُحْتَرَزَ مِنْهُ وَيُنْبَغَى لِلسُّلْطَانِ مَنْعُهُ مِنْ مَخَالَطَةِ النَّاسِ وَيَأْمُرُهُ بِالزُّرُومِ بَيْنَهُ... .

The purpose of this legal change is tahqiq al-manat. In this case the author Indonesianizes it with the term solving the problem of the variable. This is the main foundation that must be considered by Islamic thinkers. Every time solving legal problems, there must be benefits in order to solve the problem.

Changes in circumstances (emergency conditions)

Changes in circumstances are one of the factors that must be considered by scholars in giving legal decisions, the situation referred to here is an emergency. Emergency as stated by Imam Suyuti, is the arrival of a person to a point where if he does not consume something that is prohibited or haram, then he will die, so this condition allows him to consume what is haram (Jalaluddin sayuti, 1993)." Here Imam Suyuti gives an example of the blood that is consumption where if someone does not consume it then he will die. It seems that in giving this example he wants to convey to us that protecting the soul or in this case the life so that it does not die is an obligation, so that in certain circumstances and does not have halal food, it is permissible to consume haram food.

Wahbah Zuhaili said that blood is a very dangerous or very difficult situation that befalls or is experienced by a person and it is feared that it will cause damage or will threaten his existence, limbs, honor, property, mind, and those associated with him. When a person faces a situation or situation like this and does not have or is able to find a way out, then it is permissible for him to carry out the prohibition of the Shari'a or leave the commandment of the Shari'ah with certain provisions."

It seems that this definition is looser in that it is not only life-threatening or otherwise, but can cause harm. It is not explained how severe or light it is, so it is possible because of an emergency to seek treatment at a male specialist when there is no female expert doctor or the same expertise as a male doctor.

Law and its Changes in Acehese Society

Laws continue to change or at least experience a shift from the origin. This change cannot be avoided because the times are moving. The situation today is very different from the situation ten years ago, let alone a hundred years or the era of friends. Now is the era of technology and the development of science is very rapid. This difference in circumstances has its own influence on the law. In this case the researcher will give some examples of legal changes that occurred in the past century, then ten years ago.

First, the researcher gives an example of the implementation of Friday prayers in Aceh (Alyasa Abubakar, 2016). The implementation of Friday prayers, especially the reading of the sermon, in Aceh changed about a hundred years ago. At first the reading of the Friday sermon was delivered in Arabic. We can find this in the first fiqh book in Aceh written by a great Acehnese scholar Nuruddin Ar-Raniry entitled *Siratal-Mustaqim*, he stated that Friday sermons must be delivered in Arabic. Furthermore, the same statement can also be found in the book that narrated it, namely *Sabilal Muhtadin* written by a great scholar from Banjar named Sheikh Muhammad Arsyad where he said (muhamamd Arsyad alBanjari, tt):

Sermons in Arabic for those who do not know Arabic, it is sufficient that knowing the assembly of speeches is a teaching and if you do not know the provisions of the meaning of each lafaz that become teaching, even if what is required is to hear him, he does not understand the meaning.

In the nineteenth century a cleric from Aceh came to make changes, he was Tgk. Chik Kuta Karang. He said that in foreign countries it is permissible to deliver sermons in regional languages with the aim that all sermon messages can be understood and absorbed by the congregation. Mr. Chik Kuta Karang explained as quoted by Al-Yasa 'Abubakar:

"Amma ba'du, as for later than that, it is necessary to read the Friday sermon in a sharp country like Aceh, in Acehnese language too, not in other languages. And if the sermon is read in Arabic to the Acehnese, surely there is no valid sermon on qaul mu'tamad, because the purpose of the sermon is maw'iz}ah, namely teaching advice, then there is no maw'iz}ah result for people who do not know the meaning sermon. And it is in Bujairimi, Hasyiyah Fath al-Wahhab: Al-Zahir, al-khutbah la tajzi illa bi al-lugah allati yah sunuha al-qawm. This means that it starts with the zahir kalam fukaha, that the Friday sermon is not adequate, that is, it is not valid, but in a language that is known to the meaning of the sermon by the people who are experts on Friday in that country. Said Qadi Husin, it is valid to read the Friday sermon in Arabic to the ajam people who do not know the meaning of the sermon. As for the Hijrah era in 1305, takyinlah (necessary) was held by the first qawl because reading the Friday sermon in Acehnese language to the Acehnese gave the impression of maw'izah in their hearts. Also special in the era of hijrah 1305, galiblah (even distribution) was ignorant in the country of Aceh because of infidel wars, pain for humans, sea and land riots.

This opinion is relatively new and has received criticism and even rejection from other scholars. However, even so, this opinion has indirectly been applied and even practiced in Aceh and even in Indonesia in general. As evidence, nowadays, in Aceh, there are no more preachers who read their sermons in Arabic except only in harmony.

The next example is the change in the law on cigarettes, today we find that scholars have given the latest fatwa on cigarettes, namely makrooh and haram. This fatwa has only been born in the last few years due to the results of research on the dangers of smoking both from a religious and medical perspective. Muhammadiyah clerics previously condemned smoking as permissible. The MUI (Indonesian Ulema Council) is also a body that forbids smoking, but the prohibition is not comprehensive but limited. Meanwhile, scholars and Islamic community organizations in Indonesia still condemn makruh. In particular, the Aceh MPU (Ulama Consultative Assembly) has also issued a fatwa related to the smoking law. The MPU explained that cigarettes are objects made from tobacco leaves and contain nicotine. The use of nicotine substances in a certain time can damage health. It is forbidden to smoke for people who have been prohibited by doctors. It is also illegal for smokers to disturb (disrespect) others. People who are caregivers, educators or guardians are guilty of allowing children to smoke.

In 2019, the researcher interviewed one of the Ulama at Dayah MUDI MESRA regarding the smoking law, he replied that smoking is haram and we have banned it for students in particular and the Muslim community in general. This statement gives an understanding that the law can change with several factors and the most concern is the problem of the law. The interview was conducted on 15 December 2019 with Abiya Muhammad Baidawi, he is a young cleric who is also the son-in-law of Abu MUDI.

In 2003, it was seen that the people of Aceh were wearing the veil, precisely at the MUDI MESRA Dayah. The use of the veil is a big change in Aceh, especially now that almost all female students in Aceh have used the veil, even many students and the community have used it. This change is inseparable from the addition of public knowledge about the genitals, although the scholars have differences of opinion, but using the veil is a big problem.

CONCLUSION

Not all laws can change because of social changes, especially the principal laws. The laws that change due to social change are only laws that are determined based on masalah. Some of the legal changes in Aceh are the use of the mother tongue in advice before reading the pillars of the sermon, smoking laws, and wearing the veil.

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