

THE INTERRELATION BETWEEN ISLAMIC LAW AND REGIONAL REGULATIONS IN JEMBER (EXAMINING THE *MAQĀSĪD AL-SHARĪ'AT*-BASED REASONING IN *ISTINBĀT AL-AHKĀM*)

Muhaimin

Abstrak: Studi ini mengkaji konsep dikotomis hukum sekuler dan shari'a. Konsep tersebut melahirkan wacana-wacana baru: pertama, shari'a dapat mempengaruhi hukum nasional (modern) tanpa menyebutkan kerangka Islam dalam proses perumusannya. Kedua, shari'a dapat berdiri sendiri bagi kelompok agama tertentu yang meyakini kebenarannya dan menempatkannya pada posisi yang lebih tinggi dari hukum sekuler. Ketiga, substansi shari'a dan hukum modern terintegrasi. Penelitian ini menggunakan pendekatan antropologis-sosiologis dengan kerangka *Maqāṣid al-Sharī'at*. Studi ini menyimpulkan bahwa produk hukum nasional dan daerah di satu sisi dianggap sebagai hukum shari'a selama bermanfaat dan melindungi semua orang. Di sisi lain, shari'a yang secara substansial mencerminkan kesetaraan dan keadilan dapat diklaim sebagai hukum modern.

Kata kunci: *Istinbāt*; Penalaran; *Maqāṣid al-Sharī'at*; Produk Hukum Daerah

Abstract: This study reviews the dichotomous concept of secular and shari'a laws. Such concept has led to new discourses: first, shari'a can influence national (modern) law without mentioning the Islamic framework in the formulation process. Second, the shari'a can stand on its own for particular religious groups who believe in its truth and place it in a higher position than the secular law. Third, the substance of shari'a and modern laws is integrable. This study uses an anthropological-sociological approach with *Maqāṣid al-Sharī'at* framework. As a result, the study shows both national and regional legal products, on the one hand, are considered as the shari'a law as long as they are beneficial to and protect all people. On the other hand, the shari'a, which substantially reflects equality and fairness, can be claimed as modern law.

Keywords: *Istinbāt*; Reasoning; Maqāṣid al-Sharī'at; Regional Legal Products

Introduction

After the reform era, shari'a has no longer been considered as one of the sources of national law in Indonesia, but a separated entity instead. In other words, shari'a-based legal products (the *Ijtihād* outcomes generated by Islamic jurists) are only regarded as a formal reference to determine the legal status of a person or group; adulterers in Aceh, an alcoholic drink seller in Bekasi, a blasphemer, a pluralist/liberalism (Feener & Cammack (ed.) 2007: 196 and Martin Van Bruinessen (ed.) 2013: 93). Some other examples claimed to disobey the concept of Regional Regulations with Shari'at nuances by several experts (Halim, 2008: 453). In the meantime, some experts in shari'a see the national law has similar functions and roles as the shari'a itself. Assumably, making and formulating regulations based on the laws of any particular religions is unnecessary. Afifuddin Muhadjir, for example, mentions any regulations, which substantively protect people from harms; discipline and stabilize situations among society; and uphold religious values, are considered as shari'a. Muhadjir illustrates an example of such legal existence with the traffic regulations in Indonesia as a legal product which is in line with the shari'a and applied to all Muslims without exception (Muhajir, 2017: 127-129).

However, the dichotomy between the national law and shari'a has not reached its end in term of legal contestations in Indonesia. For this reason, this study attempts to offer an insight with regards to the relationship between the Indonesian national laws and shari'a. This is far from the dichotomous nuance due to the implementation of reasoning in *Istinbāt al-Ahkām* (law-making) in both the shari'a and national laws. In this case, shari'a is considered ideological mindset of Indonesian people, and the value in the national law. In this study, the author focuses on studying bills (a draft of a proposed law) presented by the regional legislators in Jember Regency during the 2016-2017 term of office. Also, the regional regulations used as the samples in this study are shari'a-nuanced regulations. They have been 'purely' coming from a society that never had a prior religious legal system. (Muniron & Muhaimin, 2016; and Muhaimin & Wahab, 2017).

The author also applies *Maqāṣid al-Shari'at* as the analytical framework. Such an approach is taken to figure out any findings that can be accepted by those who think about the dichotomy between

the national and shari'a legal systems. Referring to the aforementioned issues and arguments, this study is classified into three topics: first, a discourse on regional legal products between public and shari'a interests; second, *Istinbāt al-Aḥkām* (law-making) in the regional regulations in Jember; and third, *Maqāṣid al-Sharī'at* as a binding entity for the integration of shari'a and national laws in Indonesia.

A Discourse on Regional Legal Products: Between Public and Shari'at Interests

The debate on the Regional Regulations as the regional legal products after the Reform era in Indonesia much emphasizes on discriminatory aspects of the law vis-à-vis universalism before the law. Another trending topic is a situation where religion becomes a political tool for someregional governments to get into and keep the power. Consequently, the existence of discriminatory regulations – regardless of their forms and sources – tends to justify the identity of the majority's power against the minority groups in society.

The formulation of regional regulations is based on the Regional Government Law No. 23/2014 and Law No. 12/2011, and is technically arranged under the Regulation of the Ministry of Home Affairs No. 80/2015 (Zahara, 2016: 234). Based on the Ministry of Home Affairs' regulation, the general scope of the Regional Regulations is illustrated as follows:

Table 1. General Scope of Regional Legal Products and Their Formation Processes

Forms of Regional Legal Products	Forms of Enactment	Subject Matters
1. Regional Regulation	1. Regional Head Decree	1. Matters related to Regional Autonomy
2. Regional Head Regulation	2. Regional People's Representative Council Decree	2. Elaboration on Higher Regulations or Laws
3. Regional Head Joint Regulation	3. The Chairperson of Regional People's Representative Council Decree	3. Rules for Regional Legal Substance
4. Regional People's Representative Council Regulation	4. The Honorary Board of the Regional People's Representative Council Decree	

<p>Authorities of the Regency</p> <ol style="list-style-type: none"> 1. Provisions in the regency/city territory 2. Locations in the regency/city included in the authorities 3. Societies in the regency/city 4. Impact or benefits to the regency/city 5. Efficient resources implemented by the regency/city 	<p>Planning</p> <ol style="list-style-type: none"> 1. Preparation for the Regional Regulation Formation Program 2. Cumulative Regional Regulation Planning 3. Regional Regulation Planning outside the Regional Regulation Formation Program 	<p>Subject Matters</p> <ol style="list-style-type: none"> 1. Village Arrangement 2. District Arrangement
<p>Legislation Phases</p> <ol style="list-style-type: none"> 1. Planning 2. Drafting 3. Deliberation 4. Approval 5. Enactment 6. Promulgation 	<p>Evaluation</p> <ol style="list-style-type: none"> 1. The Conformity of Regional Regulation with the Law 2. The conformity of Regional Regulation with any other higher regulations 3. The conformity of Regional Regulation with the context and culture of the regional societies 	<p>Implementation and Deregulation & Civil Society Involvement</p> <ol style="list-style-type: none"> 1. After the enactment, a Regional Regulation will be implemented at least in 30 days 2. It will be inactive if it is not in line with higher regulations or laws. 3. Individuals or groups can actively participate in expressing their aspiration 4. The public has the right to express their aspiration, orally or in writing, during the legislation and deliberation process.

In short, the preparation process to implement a law or regulation is rather complicated. In the law-making process in term of cumulative Regional Regulations as mentioned in the Regulation of the Ministry of Home Affairs No. 80/2015, for example, all regional regulations must have an academic draft. The academic draft here is a research-based scientific and legal foundation on a particular issue, This is to ensure that the process in the formulation of regional regulations is

scientifically and objectively accountable. In this context, the academic draft works to minimize the interest of politicians and government as the law executors. In addition, civil society involvement also plays an essential role in the process.

After the Reform era, besides the normative assumption in the context of the sociological realm, the public space is likely to be 'religionized'. There comes a political arena in which a religion can affect the formulation of law at the regional level. Academics call this phenomenon as shari'a-nuanced Regional Regulations. Such a phenomenon affects and leads to the following laws: first, Islam (read: shari'a) becomes a dominant tool to control and rule public space. As a result, two terminologies are often used in regional regulations, shari'a-nuanced Regional Regulations and Qanun or *Taqnīn*). Second, every regional regulation, which is assumed to be based on shari'a, tends to be unfavorable to minority groups, less sensitive to human rights issues, and not open to cultural or gender differences in society.

The effort to make religious teachings as the ideological foundation of the state has become a historical story since the early era of Indonesia. In the early days of the independence, for example, a political debate on Pancasila, the 1945 Constitution, and the Jakarta Charter brought Soekarno, M. Hatta, M. Natsir, K.H. Hasyim Ash'ari, and other figures to deal with it (Noer, 1999: 34). In that era, Indonesia has also begun to formulate laws and regulations derived from the 1945 Constitution. The proposal and request to include Islamic reasoning has continued to be strong. Accordingly, some of laws containing Islamic reasoning are made, such as Marriage Law, Inheritance Law, *Waqf* Law, and other laws referring to *fiqh* (Islamic jurisprudence) (Azizy, 2004: 12).

In line with what happened in the early days of Indonesian Independence and the development of Indonesian Nation, Azyumardi Azra mentions that a new political fragmentation goes beyond ideological politics and has solely become a tool for political opportunists and their political interest. No wonder if such fragmentation consequently has led to the following phenomena: first, the emergence of Islamic political parties which call out Islam as their principles, instead of Pancasila; second, the increasing number of aspirations from Muslims at provincial and regional levels to apply the shari'a; third, the

emergence and development of hardline and radical groups; fourth, the increasing use of Islamic symbols; fifth, the use of *fiqh* terminologies in politics; and *sixth*, the exposure of radical groups and terrorist groups hiding in the plain sight among society (Wahid (ed.), 2015: 117-119).

In addition, the fragmentation which tends to be an opportunist and prioritize momentary interests, has narrowed political choices at the regional or national levels. To face such a situation, political groups need to develop and purify social networks that have already been poisoned and threatened by radical groups in Indonesia. Given the fragmentation, the implementation of *shari'a*-based and nuanced-regulations will seem to get negative responses from some groups of society. Besides, politicians have played with the legal terminologies in *shari'a*-based Regional Regulations and have made them blurred. To this end, academics have created two frameworks on *shari'a*-nuanced Regional Regulations: religious-nuanced regulations (public morality, such as the prohibition of alcohol) and religious-based regulations (such as Regional Regulation on *zakat*, *infaq* and *sadaqat*).

How urgent is the existence of *shari'a* regulations? Is it true that the *shari'a*-nuanced regulations, derived from the Islamic jurisprudence, have a significant effect on building paradigm in society? Or would such regulations become sociologically counterproductive, on the contrary?

Asmuni mentions that the *shari'a*-nuanced Regional Regulations are not part of *shari'a*, but *siyāsāt* law (political authorities). He refers his argument to Ibn Qoyyim al-Jauziyah's thinking that *shari'a* has taken root in reasoning, which is a direct interpretation from the *shari'a* primary sources. In the meantime, discussion on *siyāsāt* law is merely related to public interests. He adds an example on the implementation of *siyāsāt* law during the times of Prophet Muhammad's companions. In the history, Umar bin Abdul Aziz asked a governor (Abu Bakar Ibn Muhammad, the Medina Governor, in this case) to codify the *sunnah qauliyat* and *sunnah amaliyat* of Prophet Muhammad. Another caliph who was famous for having high creativity in policymaking, Umar bin Khattab made many legal breakthroughs and policies on many issues, in the way he acted as Prophet Muhammad's replacement, through his own paradigm on legal reform (al-Raisūnī, 1999). He often stated that it was just his own opinion as a leader (Asmuni, 2006: 180).

In this context, Asmuni attempts to emphasize that imposing a religious paradigm on regulations or laws and claiming it as part of shari'a practices is mistaken. Here, the shari'a has a different scope from political authority (*siyāsah*).

The Center for the Study of Islam and Society of Syarif Hidayatullah State Islamic University, The Wahid Institute, and several other Non-Government Organizations (NGOs) are very concerned about the issue and conducted surveys on the Shari'at-nuanced Regional Regulations. Referring to the survey results, the author argues that society has an ambivalent response to the existence of *Shari'at*-nuanced Regional Regulations in Indonesia. In the early 2000s, the desire to create an Islamic state in Indonesia seemed low. However, several years later, around 2004-2005, a study reports the effective implementation of Shari'at-nuanced Regional Regulations in some regions had significantly inspired some other regions to do so. To some extent, the political dynamics after the Reform era, which have led to more open religious contestation in the public eye have shifted the social paradigm. Based on the survey, for example, establishing an Islamic state system has become a latent ideal (Permata, 2018).

Besides the survey results, the way the survey instruments arranged will determine the respective answers given by respondents. This, in turn, will likely to form different perceptions among society. The enactment of Shari'at-nuanced Regional Regulations in a particular region mostly depends on the patterns of political communication. The respondents may not understand the meaning of Shari'at-nuanced Regional Regulation mentioned in the research instruments. Consequently, they may give responses according to their perception, but not what a Shari'at-nuanced Regional Regulation truly means.

Shari'at-nuanced Regional Regulations are often associated with some generally-attached definitions. Rumadi, for example, classifies them into three essential categories: first, those dealing with morality, including adultery and anti-*maksiat* (sinful acts of disobedience); second, those related to dress code; third, those associated with religious capacity (Rumadi, 2006: 4).

Dani Muhtada (Muhtada, 2014) adds several categories proposed by Rumadi, as follow:

“In my opinion, Shari‘at-nuanced Regional Regulations are any regulations issued by the regional government and are directly or indirectly associated or at least considered to associate with Shari‘at law or norms.” There are seven categories of Shari‘at-nuanced Regional Regulations in Indonesia: first, Regulations on morality such as the prohibition of alcoholism, prostitution, or gambling; second, Regulations on zakat, infāq, and sadaqat policies; third, Regulations on Islamic education; fourth, Regulations on the development of the Islamic economy; fifth, Regulations on Muslim faith and belief such as the ban on Ahmadiyah activities or other Muslim sects that are considered heretical; sixth, Regulations on Muslim dress code, including the obligation to wear hijab for women; seventh, Regulations on other affairs, including the regulations on grand mosques, hajj services, and welcoming Ramadan.”

Other surveys on holistic awareness are also made by applying grounded-phenomenon approach. The surveys do not merely ask for responses to the case in a particular region where a regional regulation has been formulated and is directly assumed as a Shari‘at Regional Regulation. One of the surveys is conducted by Ihsan Ali Fauzi and Saiful Mujani. Their survey framework starts with a down-breaking discussion about ideological conflicts between Islam and Nationalists in Indonesia; the tendency of Muslims to choose one of the two ideologies; how groups of people perceive Shari‘at-nuanced Regional Regulations depending on their gender, religion, sect, or any other aspects; and their final decision on the regional regulations (Fauzi and Mujani, 2009: 12).

Ihsan and Saiful Mujani found interesting results from their research and advocacy (Fauzi and Mujani, 2009: 87) conducted in Jember Regency. The research and advocacy are briefly illustrated as follows:

“The survey conducted in Jember shows the people’s perception about the form of the state is clear. Almost all respondents answered that Indonesia is not an Islamic state. Although the majority of the population is Muslim, they did not have enough reason to claim that Indonesia is an Islamic state. Further, most respondents said that the Constitution does not mention Islam as the ideology of the state. This trend did not change very much in the two surveys, from 76% to 72%. The tendency to say that the 1945 Constitution implicitly mentions Islam as the ideology of the state was declining. In the second survey, no respondent claimed the 1945 Constitution regards Islam as the ideology of the state. In other words, their answer is consistent when they were asked if they agree that the government regulations based on Islamic teachings are applied in Indonesia. Only 24.0% (2007) and 36%

(2008) of the respondents agreed, while 68.0% (2007) and 64% (2008) of them said on the contrary. The first and second surveys did not show any significant change. The only change is about those who initially did not agree (8.0%) in the first survey, but then said in contrast in the second survey."

Although the ideological representation among the society in Jember is very consistent, this does not mean that they are resistant to the Regional Regulations with religious or Islamic features. 87% of the respondents stated that the Shari'at-based Regional Regulations do not automatically refer to discriminatory regulations to other groups. For this reason, no wonder if 67-70% of them claimed that the prostitution needs to be regulated under a Regional Regulation. However, 64-87% of them disagree with the Regulation that can make the authorities easily arrest people who are suspected of being prostitutes (Fauzi and Mujani, 2009: 89).

The author argues that political factors, both party ideology and political actors, determine the existence of Shari'at-nuanced Regional Regulations in Indonesia. The author does not find sufficient data and information to say the regulations as a form of public aspirations. Despite the data limitation, the author agrees with Azyumardi Azra and other researchers' opinion about the importance of social mobilization to urge the government to form a political alignment with the majority group. Also, the author cannot obtain more in-depth information about the dynamics of the Shari'at Regional Regulations in Indonesia. In other words, in this position, the author is unable to assess if the aforementioned Regional Regulations mentioned by other researchers, surveyors, and academics have undergone an assistance process from the province officials or the Ministry of Internal Affairs, or have been ratified as a plenary product to enact and obtain legislation registration number as the state official attachment.

The Dynamics of the Regional Regulation Formulation in Jember

According to Ripley, in Taufikurrahman, a public policy starts with the preparation phase and is set as the government agenda that will be implemented in the upcoming term of service. The next phase is the formulation and legitimation by compiling and deliberating the issues together. At last, the implementation and evaluation process takes place (Taufikurrahman, 2014: 29). In the meantime, Jimly Assiddiqie

mentions the legislation process includes four essential aspects; law-making initiatives, bill deliberation, bill enactment, and the ratification of law as the result of overall legislation process (Assidiqie, 2006: 32).

The substance of this process is included in the normative rules mentioned in the previous topic. This means that the government generally refers its policies or regulations to the vision, missions, and programs promoted during the political contestation and campaign. The formulation of the vision, mission, and programs has indeed undergone several processes including analysis, preparation that involves many parties, and study based on scientific texts according to the interests of People's representation.

In reality, the Regional Regulation conceptions vary and are complicated. The author mentions some problems or difficulties faced by local governments in the process of formulating Regional Regulations in their respective regions. Yurita Zahara, for instance, mentions that the legislative authority owned by the government, especially the people's representatives, is rarely used, while any regulations refer to or depend on it. In addition, there are social conditions where people propose the formulation of a regulation to maintain peace and social stability in their area to Regional People's Representative Council members (Zahara, 2016: 234).

Arbi Sanit also thinks that politicians have a lack of knowledge and sense in regulating social conditions around them. They tend to carry out supervision and *budgeting* process instead of initiating the formulation of bills or regulations (Sanit in Ali, 1996: 125). Ahmad Rizal even mentions internal and external factors causing the politicians to be unproductive in formulating the bills. The internal factors, for example, include the absence of expert staffs that are competent in regulation-making; and the low commitment among the Regional People's Representative Council members to their duties. In the meantime, the external factors are public ignorance of their performance and their lack of understanding about regional regulations (Rizal, 2017).

Although the Regional Regulations planning and formulation are not as ideal as the theoretical and normative narratives, other problems concerning the regional regulation drafting undeniably take place in certain regions. One of which is reinforcing the tyranny of

the majority against the minority (as the impact of policy politicizing religious values or other aspects in particular social and cultural groups) through discriminatory regulations. The Wahid Institute reports that many regulations are not gender-friendly; and cultural values in some communities do not tolerate religious diversity in Indonesia (Suaedy (ed.), 2015: 12).

In addition, the Minister of Home Affairs has annulled around 3000 regional regulations that are suspected of being discriminatory. These include Regional Regulations on Muslim dress code; the prohibition of *Ahmadiyah* religious activities; and other regulations that seem to negate the equality of human rights and the principle of the democracy (Rizal, 2017). As stated by the Ministry of Home Affairs, Regional Governments Level I are responsible for assisting the drafting and formulation of Regional Regulations under their authorities. In contrast, the Central Government has a role in dealing with the whole process as mandated by the Regional Government Law.

The process of Regional Regulation formulation and drafting in Jember is not fully understood as a form of political or parliament accountability. The author assumes that the number of Regional Regulations has not been adequate to date. As seen from the data on the 2016-2017 bills, only two regulations are successfully approved according to the appointed time. More importantly, the author has reviewed the Regional Regulations that have been enacted and deliberated since 2017 until now.

This indicates that the Regional People's Representative Council members tend to prioritize the political aspects and the desire to maintain their base in society. There are two Regional Regulations in Jember that are considered to have religion-nuance and discriminative. The Provincial Government disapproved them by making the following notes: first, they are similar to the higher regulations; second, they are not necessary due to the fact that they only address one particular religion; third, their substance is not implementable as the Regional People's Representative Council members are unable to properly elaborate the public protection aspect on every item in the regulations.

Another phenomenon indicating the lack of involvement of the Regional People's Representative Council members in Jember in initiating regulations is the absence of a bill about the local wisdom

preservation. Most of the regulations that have been made, at a glance, are derivations of the existing laws at the national level –some have even been arranged in details. Regarding the Regional Regulation on Intoxicating Liquor Control and Distribution, for example, there have been many regulations to use as a reference to deal with such control and distribution. In addition, the scope of the regulation contents is not much different from the one applied in some other regions, especially the regions with ongoing modernization and urbanization.

Some academic papers mention several regions that significantly prohibit the distribution of intoxicating liquor, without considering sociological, cultural, tourism and other factors. Here, the author agrees with such regulation due to the fact that Jember is a traditional-religious society. If, for example, the regulation on the intoxicating liquor is formulated in the context of optimizing and promoting the religious norms, it will be in line with what is proposed by the Prosperous Justice Party.

Apart from the assumption on the lack of policymaker competence in Jember, the author admits the law-making process carried out by the regional government in this Regency has complied with the standard procedures, ranging from the law-making initiatives, in-depth study, deliberation, to enactment and ratification. Additionally, according to the data and the social dynamics, the author has also found several central aspects of how Regional Regulations should be formulated by the regional government in this regency. The followings are the substantial values contained in each Regional Regulation initiatives:

1. Protecting and fulfilling the rights of minority groups
2. Protecting small and medium-sized enterprises
3. Prioritizing environmental issues
4. Protecting public facilities
5. Protecting public morals from social exploitations and crimes

The above substantial values are confirmed by almost all members of the Legal Bureau and academic drafters, who are the informants in this study. In their opinion, a Regional Regulation practically manages, preserves, and regulates regional stability. Managing, for instance, is related to social conditions and patterns of community interaction. In the meantime, preserving is a manifestation of regional government

presence. Regulating, on the other hand, is the responsibility and legislation functions which are inseparable from all Regional People's Representative Council members in Jember.

Other issues which are likely to be explored are how the Shari'at law in term of legislative planning procedures is transformed by the Jember government, and whether the regional government intends to make shari'a-nuanced Regional Regulations as other regional governments. In the 2016-2017 term of service, three religious-nuanced Regional Regulations were planned and discussed by the Regional People's Representative Council members with all stakeholder. These Regional Regulations are the Regional Regulation on critical Qur'an literacy, the Regional Regulation on *zakat*, *infaq* and *sadaqat*, and the Regional Regulation on Intoxicating Liquor.

The regional regulations are present due to public aspirations, mostly Muslims, calling for the regional government to set more religious norms to create a religious community. However, the regulations are considered as legal products that can violate the components of higher regulations by the Provincial Government. Moreover, they do not sufficiently urge to regulate the community based on the territorial regulations in Jember.

Even though the regulations do not seem to be implementable, the community in Jember do not show any undesirable acts against the rejection. They understand the Regional Regulation formulation process and procedures must go through political dynamics and adapt to the political rules of the game. This justifies Ihsan Ali Fauzi and Saiful Mujani's argument stating that the people of Jember has never questioned if a Regional Regulation displays religious aspects in the planning and formulation process. In other words, they obey the rules of game, laws, and ideological systems adopted in Indonesia.

Regarding the Regional Regulation on Intoxicating Liquor Control and Distribution, the Regional People's Representative Council members claim that this regulation was initially made referring to society's concern about the misuse of intoxicating liquor. There have been many cases involving alcohol consumption among children, non-standardized liquor. This also implies the efforts to improve the role of the Regional Government as the first-line responsible actors. For this reason, the need to formulate such regulation is necessary although

debates in terms of the religious, cultural, social, and economic point of view will likely to take place.

The dynamics in the formulation of Intoxicating Liquor Regional Regulations can be classified into several phases as follow: *first*, the rational choice between total prohibition or merely distribution control; *second*, the subject matter (intoxicating liquor) regulated and monitored by the regional government; *third*, the liquor producer and distributor license; *fourth*, the institution or executor in charge of the Regional Regulations.

In the first phase, there seems to be hesitation about rational choice for total control and prohibition of alcohol beverages. In this study, the author has expressed his opinion about how some regions implement or make additional regulations to the higher ones, involving the prohibition, control, and chain-breaking of liquor distribution and production. This is in line with the statements of experts in their presentation before the Regional People's Representative Council members in Jember. They express two different religious point of views. Some argued for total prohibition of the intoxicating liquor based on the reasoning of textual Shari'at law; and others mentioned that every prohibition has some exceptions. One of them is that non-Muslims are not bound to this regulation.

However, social experts say, if the prohibition or limitation is only addressed the liquor producers, there is no guarantee that people are free from drinking the liquor. Also, the economic aspect usually becomes the consideration taken by the regulation executors. Here, the regional economic accounts from hotel taxes and levies will drop if such prohibition also applies to foreign tourists.

Referring to the above reasons and considerations, the Regional People's Representative Council members have agreed that they would take the phrase 'distribution control', not a total prohibition of intoxicating liquor during the Plenary II (before the deliberation phase) session. According to the author, although this Regional Regulation is substantially derived from religious thinking, the society and stakeholders involved in the bill formulation will accept rational and objective choices.

This confirms that Regional Regulations, in any forms, are not legal products which are only subject to *fiqhiah* (Islamic jurisprudence)

reasoning. They are also more flexible in terms of political perspective and thoughts (*al-hukm al-siyāsī*). Like other legal products, they must comply with the principles of *common sense*, *the common good*, and *commonwealth* that are interconnected in societies. It does not matter whether the regulations refer to religious values, cultural dialectics, or social interaction. In other words, the law cannot run independently and efficiently without these principles. It goes similarly with the rules of *mu'āmalat* in *fiqh*. Islamic jurists' view highly depends on the social context and conditions where they and the people who ask for Islamic legal opinions live. (Kassab, 2018).

In the *second* phase, the intersection among *fiqh* schools regarding the permission of drinking intoxicating liquor for Muslims is hard to find. Although the quantity of the drinks is considered, the phrase '*kull musykir harām*' (every intoxicating object is forbidden; little or much) is undeniable. In this regard, The Regional People's Representative Council members do not play a role in changing the religious paradigm. The Regional Regulations are not considered to change religious, social, and cultural norms. All partial norms still apply to their sides. All Regional Regulations must be focused on universal matters and not merely address a particular group(s). To that end, the formulators have to involve experts to present academic views related to any subjects, such as medical specialists and NGOs concerned about victims of alcohol.

In the formulation of Regional Regulations, as the third phase, sociological considerations, based on facts, are needed to assess all society reports. The last phase is the coordination between the regional regulation executors and legal officers. They also have similar authority due to the higher regulations, including police and the Department of Industry and Trade, which grants operating licenses for companies and commercial businesses.

In this initial process and phase, the rational-academic design involves many parties to ask for their considerations in terms of diction, subject determination, social acceptance model (reception theory) and other aspects needed to construct the holism of the Regional Regulation. The Regional People's Representative Council members seem to realize that they represent two different powers: the people who have aspirations to uphold environmental order and

security, and the central government that requires contribution from regional economic independence. In turn, the regions can play a part in the economic growth in Indonesia nationally.

Similarly, the Regional Regulation narratives do not have absolute religious teachings. In this context, the contestation and consideration to include religious values in them are possible due to the following reasons: *first*, the existence of Muslim politicians; *second*, the involvement of community leaders who sometimes ask the drafters, academic experts, and initiators of the regional regulations to consider religious values as a means to communicate various policies to the community; *third*, the support and role of Jember communities who are dominated by Muslims, especially those who are affiliated with a traditional group (*Nahdlatul Ulama*); *fourth*, efficiency and effectiveness consideration in the implementation of the regulation in society. The representation of religious groups in Jember is considered to exist since the appointment of a religious figure (*kyai*) from *pesantren* (Islamic boarding school) as the Deputy Regent.. The Regent is also well-known for his religiosity.

Therefore, one can reason that a Regional Regulation applies religious paradigm in its formulation to meet public interests. One example is the Regional Regulation considering Legal Aid for the Poor. One Regional People's Representative Council member from Gerindra Party, who has a strong religious education background, mentioned the principles of protection in Islam are applied to everyone, including the poor.

More explicitly, one member from the National Awakening Party (Partai Kebangkitan Bangsa/ PKB) said in the discussion of public benefit (*mashlahat*) that religious considerations would certainly include as the basis or framework to facilitate the traditional society in Jember. He illustrated that Muslims dominate poor people in Jember. It means that the existence of this regulation is to protect them. Thus, the religious debate concerning a non-shari'a-based regional regulation is a political and sociological phenomenon among society.

In the context of the sociological and political sphere, Azyumardi Azra, Arskal Salim, Din Wahid, Nadhirsyah Hossen, and other scholars theoretically state that the argument to return

religion to public discourse is necessary for a politician or regulation formulator. Without religious claims, government regulations will lead to a conflict as religious dogmas and norms are usually more robust than the rules made by humans according to traditional society. However, they add Indonesia is not a religious state; a regulation must therefore balance ideological interests and political gain among the majority.

Referring to the above considerations and the legal procedures, the substance developed in the initial formulation of a Regional Regulation in Jember and the existing theoretical framework, the author concludes that a discussion of shari'a-nuanced Regional Regulations is no longer substantial. This is because its substance and essence depending on the socio-political condition of the society, and political communication between the authority and society in general.

Regarding this issue, the author agrees with Zaini Rahman's argument, stating that the shari'a law substantially protects human rights (*al-hifz*). At the same time, the complimentary legal concessions lie in freedom (*al-hurriyah*) (Rahman, 2017, 134). He adds: as long as the Regional Regulations promote protection for the public interest, the shari'a values may become part of the regional or national legal products. Further, Zaini Rahman expresses his opinion that the composition of shari'a must be interpreted with renewable paradigms. In other words, shari'a should not close its door for interpretation as what is often done in the *fiqh* tradition. One alternative is to rearrange its textual framework and turn it into *maslahat 'ammah* (public good). Representatives from all disciplines and society involvement in the efforts to formulate the policy or regulation become crucial (Rahman, 2017, 135).

Besides philosophical considerations, the Regional People's Representative Council members must think that law is about protecting human rights and social freedom. Here, the author agrees with the argument saying that the effectiveness and efficiency of the implementation of regulations should be measured sociologically. In other words, a regional regulation examined by politicians should indeed come from public hearings and aspirations, particularly if the regulation is related to Muslims' affairs. Thus, social contexts and society involvement in the formulation and implementation of

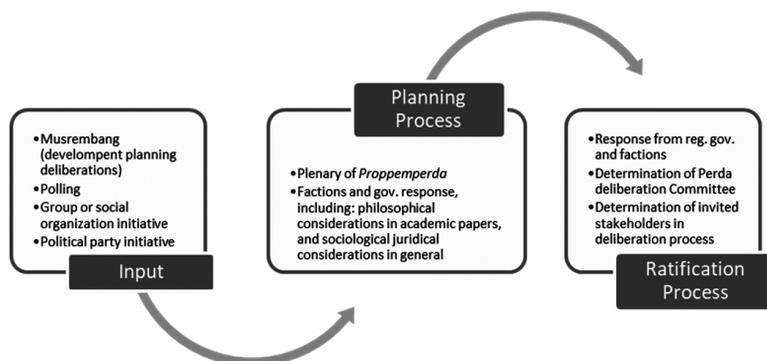
shari'a-based Regional Regulations become important. These can be acknowledged through surveys and representations of groups and community leaders from the society. With this, the narratives as well as aspects in the regulation can be accepted easily by the society, without leading to conflicts due to the feeling of being marginalized by the regulation.

The final phase in the formulation or drafting of a Religion Regulation is ideological and juridical representation. The author uses the word *ideological*, instead of *political* because all political parties in Indonesia have owned an ideological platform. In Jember, National Awakening Party (Partai Kebangkitan Bangsa/ PKB), Prosperous Justice Party (Partai Keadilan Sejahtera/ PKS), United Development Party (Partai Persatuan Pembangunan/ PPP), and National Mandate Party (Partai Amanat Nasional/ PAN), on the one hand, can give Islamic or religious nuance in law-making processes. On the other hand, the nationalist groups are represented by Great Indonesia Movement Party (*Partai Gerakan Indonesia Raya/ Gerindra*), Democratic Party (*Partai Demokrat*), and the Indonesian Democratic Party of Struggle (*Partai Demokrasi Indonesia Perjuangan/PDI-P*).

The collaboration between the nationalist parties and the Islamic ones sheds a color on the national politics. They have opportunities to propose the arguments in the discussion during the legislation processes. This means that they do not only active during political campaigns to gain public votes, but also during their service in the parliament. At the national level, the National Awakening Party, for example, initiated the formulation of law on *pesantren*. Another example is the Prosperous Justice Party's that initiated making of the Islamic Banking Law among others. Nevertheless, these debates must be limited to juridical views regarding the concepts which are usually presented in the academic drafts formulated by the Government Legal Bureau or higher education institutions.

Referring to the above elaboration, the following chart can illustrate the dynamics of Regional Regulation Formulation in the Regional People's Representative Council, Jember, inform its initial procedure to the formulation process of a Regional Regulation.

Chart 1. The Procedure and Dynamics of Regional Regulation Formulation



The chart shows that the formulation of a Regional Regulation is relatively easy. All depends on the wills and competencies of the policymakers in reading the conditions or circumstances of their environment. Based on the author's observation, the formulation process has been carried out according to the rules in the making of a regional-base legal products, both by the Regional Representative Council and Regional People's Representative Council levels. The only difference is the scope in which the regulation covers. The Regional Regulations issued by the Regional Representative Council are related to bureaucracy and governance. Meanwhile, those that come from the Regional People's Representative Council take root from the society aspirations.

***Maqāṣid al-Sharī'at* as the Transformative Adhesive of Sharī'at and Modern Law**

The debate about shari'a is dominated by the contestation between the use of the Islamic sources textually and contextually, especially related to the use of *qiyās* (logic). Contemporary *fiqh* scholars mention that the only way to get the ultimate benefit of shari'a is through *Maqāṣid al-Sharī'at*. According to Waryani Fajar Riyanto, understanding and promoting *Usūl al-Fiqh* as a method of shari'a-based law-making (*Istinbāt al-Aḥkām*) is necessary as those who study shari'a would understand *qasd al-shāri'* (the objectives designed by the absolute lawmaker, Allah) and *qasd al-taklīf* (the objectives of legal imposition) (Riyanto, 2012: 509). In understanding the meaning of

shari'a, some of the *fiqh* scholars simplify the discussion about *maṣlahat* (benefit) (Riyanto, 2012: 495).

On the first page of his book, Shaṭībī emphasizes the objective of *shari'*, which is to achieve benefits. He mentions two benefits that can be obtained from the application of *shari'a*: the Divine benefits—as narrated in Qur'ān—and human benefits—as a form of human effort in expecting the benefit they can achieve. The second is to make individuals understand their responsibility. The third is to make them apply *shari'a* as demanded. The last is to exclude (*al-ikhraj*) the people from their harmful desires (Riyanto, 2012: 520-529).

Further, identifying *maṣlahat* (benefit) is also an issue. Afifuddin Muhadjir, a prominent religious figure (*kiyai*), for example, interprets *maṣlahat* as the way how the *Maqāṣid al-Shari'at* is practiced. He mentions that *maṣlahat* refers to goodness and benefits. In this context, *maṣlahat* is interests and benefits under the five main principles (*al-kulliyat al-khams*): *hifẓ al-dīn* (protection and preservation of religion), *hifẓ al-'aql* (protection and preservation of intellect), *hifẓ al-nafs* (protection and preservation of soul), *hifẓ al-māl* (protection and preservation of property), and *hifẓ al-'irdh* (protection and preservation of lineage). In Islam, the true objectives of the state are in line with the objectives of the *shari'a*, i.e. the realization of benefits, justice, and prosperity for all. A country which applies worldly and eternal dimensions of benefits should consider the context of *Maqāṣid al-Shari'at*. This is at least in the following crucial aspects. *First*, understanding *nusus of shari'a* (*shari'a* texts or resources) about *maqāṣid-shari'a* will result in a textual and contextual legal formulation. *Second*, the *Maqāṣid al-Shari'at* help solve problems explicitly mentioned the Islamic texts (Muhajir, 2017: 192-193).

Zaini Rahman mentions the way to identify *maṣlahat* through *ijma'* (consensus) and the traditions of *ahl al-ḥall wa al-'aql*. He adds two institutional groups authorized to deal with such issues. The *first* is institutions or authorities that officially acquire *shari'a* in accordance with *shari'a*-based law-making (*Istinbāt al-Aḥkām/ḥai'at al-tashrī*). This group searches for narratives in Islamic sources (Qur'ān and Hadith) referring to the methods used in the Islamic traditions in Indonesia, *Nahdlatul Ulama*, for example, with its *manhaj* in the framework of

the *madhab*; *Muhammadiyah* with its referral-texts model; or MUI—as the state representative—with its methodologies, among others.

This group must be occupied by professionals who have specialties and expertise in exploring the two sides of benefits in *al-nusus al-shari'yyat* (shari'a texts). Medical, social, and other professional experts are also needed to formulate the legal status of a particular case or make specific regulations.

The second group is the institutions that have a legislative authority. In today's context, the representatives that are able to formulate shari'a along with modern laws are necessary. Even at the level of autocratic leadership, a king or queen cannot entirely maintain their authority without the help from those whose views or opinions are considered in the formulation of a regulation. In addition to the institutional instruments to identify benefits, another requirement is objective and independent formulator or experts in shari'a or legal products. The orientation of their thinking is addressed to the public interest and universal benefit, not just following what the leaders ask them to do or depending on the power owned by certain groups or organizations (Rahman, 2017: 282-284).

In terms of the legal product contents, Harisuddin classifies the regulations and other legal products related to shari'a in Indonesia into four categories. *First*, shari'a is as legal narrative and substance, such as the Compilation of Islamic Law (*Kompilasi Hukum Islam*), Islamic Banking Law, the Regional Regulation on Intoxicating Liquor, the Regional Regulation on Qur'an Literacy and so forth. *Second*, shari'a is in the substance of the law, such as the Traffic Law, the Customer Protection Law, the Regional Regulation on Legal Aid for the Poor, the Regional Regulation on Disability, and so on. *Third*, shari'a narratives and substances are not in the laws, indicating no Shari'at basis in the regulations or legal products and some even contradict to the shari'a. *Fourth*, the laws consist of shari'a narrative. Harisuddin believes that all these categories are continuously developing (Harisudin, 2014: 131-132).

According to Jasser Auda, a benefit is usually measured by reasoning instruments referring to the primary sources of Islamic law (*nas*). For this reason, some think that a benefit can be a part of *Maqāṣid al-Shari'at* itself. In response to this, Auda argues that such thinking can reduce the controversy about self-legitimacy of benefit in

Shari'at law. Considering that *maqāṣid* is induced from the primary sources of Islamic law (*nas*), a benefit can have legal legitimacy if it is in accordance with the *maqāṣid* as mentioned by *fiqh* experts (al-Qaraḍāwī, 1990: 62).

Therefore, both direct benefits (*maṣlahat mu'tabarāt*) and implicit benefits (*maṣlahat mursalat*) merge into one category of benefits as long as it reaches *maqāṣid* in Shari'at legal system (Auda, 2017: 308).

In this context, the author initially believes that the Regional Regulations, as the objects of this research, have *Maqāṣid al-Shari'at* components in terms of their basic formulation and scope. These are studied and analyzed by the policymakers through *ijtima* process (Auda, 2007: xx).

Table 2. The Principles and Objectives of Regional Regulations Ratification in Jember

No	Regional Regulations	Principles	Objectives
1	The Regional Regulation on Intoxicating Liquor Distribution	Creating peace and public order; controlling intoxicating liquor distribution, sale, and service, in an integrated and coordinated manner.	To provide control and supervision on intoxicating liquor production, distribution, and sale in the regions to maintain peace and public order; To provide a legal basis for the imposition of sanctions for violations stipulated in this Regional Regulation; To provide a legal basis for an intoxicating liquor license; To prohibit distribution or sale of intoxicating liquor in several places: youth centers, depots, retails, housings, bus stations, and other public places; houses of worship, schools and hospitals.
2	The Regional Regulation on Legal Aid for the Poor	Justice; Equality; Openness; Efficiency; Effectiveness; Accountability.	To guarantee and fulfill the right of legal aid recipients to get access to justice; To realize the constitutional rights of citizens in accordance with the principle of legal equality; To guarantee that the implementation of Legal Aid is carried out nationally in the Republic of Indonesia; To create an effective, efficient, and accountable justice system

No	Regional Regulations	Principles	Objectives
3	The Regional Regulation on Protection and Fulfillment of Disability Rights	Dignity and respect; Individual autonomy; No discrimination; Total participation; Diversity and humanity; Equality and equal opportunities; Accessibility; Children identity and capacity development; Inclusiveness; Special treatment; and more protection.	To respect, promote, protect, and fulfill human rights and the fundamental freedoms of persons with disabilities totally and in an equal manner; To guarantee the efforts to respect, promote, protect and fulfill the rights as inherent dignity in persons with disabilities; To manifest the standards of living of persons with disabilities, with better quality, fairness, and physical and spiritual independence, and dignity; To protect persons with disabilities from negligence, exploitation, harassment, and all discriminatory acts as well as violations of human rights; and To ensure the implementation of efforts to respect, promote, protect and fulfill the rights of persons with disabilities to improve themselves and use their abilities according to their talents and interests to enjoy, participate and contribute to all aspects of national, state, and social lives optimally, safely, freely, and dignifiedly.
4	The Regional Regulation on Openness and Access to Public Information	Every public information is open and accessible to every user of public information; Excluded public information is strict and limited; Every public information must be able to be accessed by every citizen promptly, on time and at low cost; Excluded public information is confidential according to the law, propriety, and public interest, based on possible consequences that arise when the information is open to the public, and after careful consideration that making the information inaccessible to the public can protect more significant interests than letting it be accessible.	To guarantee the rights of every citizen to know about public policymaking plans, public policy programs, and public decision-making processes, and the reasons for making public decisions; To encourage public participation in the process of public policymaking; To increase public participation in public policymaking and good public management institutions; To achieve good, transparent, effective, efficient, and accountable state administration; To know the reasons for public policies that affect the lives of many people; To develop science and to educate the life of the nation; and/or To improve information management and services within the public institutions to produce quality information services.

After the reduction of data related to the principles and teleology of the Regional Regulations, the next discussion is related to the interpretation of shari'a and *Maqāṣid al-Sharī'at* with a broader perspective, according to the basic assumptions of the two approaches of *Istinbāt al-Aḥkām* (law-making).

Sharī'at-nuanced Regional Regulations

From shari'a point of view, the author analyzes the Regional Regulation on Intoxicating liquor control by creating an analogy to prostitution and prostitutes' localization, according to K. H. Sahal Mahfudz's view. In this context, public morality is included in the religion on the one hand. On the other hand, a violation tendency happens as some Muslims disobey the shari'a. In this position, the choice is to transform the shari'a into the public sphere or take what is not regulated by the religion while considering other factors outside the obligations and prohibitions. The Jember Regional Government has set some regulations which are not clearly mentioned in Islamic texts. In other words, the Regional Government has taken its regulative authority that liquor cannot be consumed publicly as commonly happens in society.

In addition, a contextual consideration is taken in some areas of Jember as not all of the people are Muslims. To that end, the legislators do not have a normative obligation to prohibit every person in Jember from drinking alcohols. Information says that there are several tourist attractions and international events in Jember where the migrants or foreign tourists coming to Jember. During these events, the tourists often drink liquor as it may be their habits and traditions. In one of the villages in Jember, some farmers even plant fruits that can be used as one of the ingredients in making intoxicating beverages. This plantation is considered to be a local uniqueness and becomes an object of agro-tourism to attract foreign tourists. In simple words, the logic of shari'a about the prohibition of intoxicating liquor is no longer negotiable; in terms of consumption volume and manufacturing process.

If the paradigm of *Istinbāt al-Aḥkām* (law-making) cannot be the ultimate form of law (the highest regulation in society), the author assumes that *Maqāṣid al-Sharī'at* could be a method in legal problem-

solving. In the context of *Maqāṣid al-Sharī'at*, Jasser Auda says that *sadd al-dharī'at* (preventing damages) also requires *fath al-dharī'at* (facilitating damages) even though it is not explained textually or contextually in the *naṣṣ* (Auda, 2007: 311).

In conclusion, the existence of this regulation is to block further prohibition of liquor and consider other benefits, and give the regional authorities to effectively and efficiently take preventive actions; more specifically to carry out the concept of *sad al-dharī'ah* in shari'a.

General Regional Regulations and Public Interest

The general Regional Regulations are far different from the abar-nuanced Regional Regulations. In this context, the two poles can run in parallel. It means the Shari'at law has implicitly defined the concept of obligations or prohibitions from both textual interpretation and *bayānī* (analysis) derivation. Therefore, given the aforementioned components, it is understandable that any types of *Maqāṣid al-Sharī'at* definition can be seen from the dimensions of the regulation, including the principle, the legal formulator, the procedures and code of ethics, the logic of equality, a source of international law promoting freedom and equality of human rights, justice, and the effectiveness and efficiency of the regulatory system in their daily lives.

The following table presents the dimensions of *Maqāṣid al-Sharī'at* in three general Regional Regulations, transforming the principle and ethical values into Shari'at.

Table 3. The Dimensions of *Maqāṣid al-Sharī'at* in the Regional Regulations in Jember

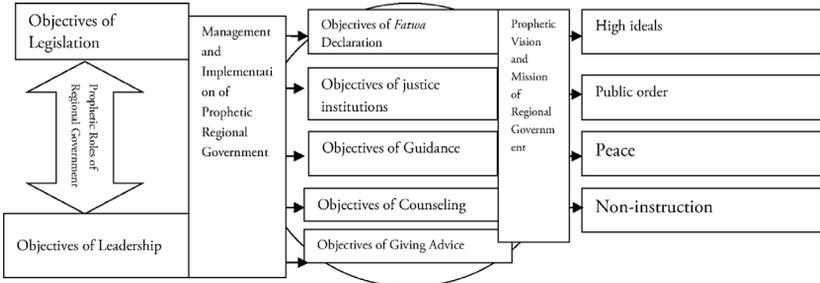
No	Regional Regulations	The Principles of <i>Maqāṣid al-Sharī'at</i>	The Dimensions of <i>Maqāṣid al-Sharī'at</i>
1	The Regional Regulation on Legal Aid for the Poor	<i>al-musāwāt</i> (equality) <i>al-ādālat</i> (justice) <i>al-shūrā</i> (consultation)	<i>Hifẓ al-nafs wa al-'ird</i> (protection and preservation of human rights to grow and develop properly); <i>hifẓ al-nasl</i> (protection and preservation of individual rights to pursue better life and goals and to produce better generations), and <i>hifẓ al-'aql</i> (protection and preservation of freedom of expression and scientific activities).

No	Regional Regulations	The Principles of <i>Maqāṣid al-Sharī'at</i>	The Dimensions of <i>Maqāṣid al-Sharī'at</i>
2	The Regional Regulation on Fulfillment and Protection of Disability Rights	<i>al-musāwāt</i> (equality) <i>al-'adālat</i> (justice) <i>al-ukhuwwah</i> (brotherhood) <i>al-shūrā</i> (consultation)	<i>Hifẓ al-naḥs wa al-'ird</i> (protection and preservation of human rights to grow and develop properly); <i>hifẓ al-nasl</i> (protection and preservation of individual rights to pursue better life and goals and to produce better generations), and <i>hifẓ al-'aql</i> (protection and preservation of freedom of expression and scientific activity).
3	The Regional Regulation on Openness and Access to Public Information	<i>al-ḥurriyat</i> (freedom) <i>al-musāwāt</i> (equality) <i>al-'adālat</i> (justice) <i>al-ukhuwwah</i> (brotherhood) <i>al-shūrā</i> (consultation)	<i>Hifẓ al-naḥs wa al-'ird</i> (protection and preservation of human rights to grow and develop properly); <i>hifẓ al-nasl</i> (protection and preservation of individual rights to pursue better life and goals and to produce better generations), and <i>hifẓ al-'aql</i> (protection and preservation of freedom of expression and scientific activity).

In this last section, the author assesses the objectives of the implementation of shari'a in Jember, referring to Jasser Auda's perspective, and the most dominant dimensions to assess and integrate with the Regional Regulations.

Al-Shaṭībī mentions four components of *Maqāṣid al-Sharī'at*, whereas Jasser classifies them into eight. In this framework, the author assesses that the *Maqāṣid al-Sharī'at*-based reasoning in the regional regulations, as an entity that regulates society (*ahl al-hall wa al-'aql* and the legislative institutions), tends to be in line with the prophetic *maqāṣid*. The rationalization of the prophetic *maqāṣid* is illustrated in the following chart:

Chart 2. The Prophetic Regional Regulations according to Jasser Auda's Opinion



The chart indicates the two regional regulations with different dimensions can be considered as a shari'a prophetic process based on the purposes or objectives in each dimension. The author believes that the Regional Government do not play a different role from Prophet Muhammad when he designed the Medina Charter (*Mithāq al-Madinat*) as the basic rules for the plural society in Medina. At the same time, the Prophet did not use his authority as a messenger of God. His companions might contribute their thoughts and ideas and express them to Prophet Muhammad in formulating what was best for the people.

The Medina society was built on a peace agreement among the Muslims, Christians, and Jews. The urgent social need that must be met back then was social order. Therefore, all components of society must put 'the insider interest' away to form 'the communal or public interest'. Although receiving various legal provisions from Allah, Prophet Muhammad was happy to carry out the decisions made by the Medina people. He gave equal rights and freedom to the people in Medina to carry out their respective religious provisions.

Thus, examining the *Maqāṣid al-Sharī'at*-based reasoning in the Regional Regulation formulation means studying the theory of *fiqh* holistically (*kullīyyat*). This means that the study is not limited to the texts or partial laws, but instead, refers to the principles of universal purposes or objectives. This approach becomes a high-value understanding and can overcome differences, including the gaps between *Sunnī* and *Shī'at*; the gaps in political ideology among Muslims; and the gaps between formalism and substantialism of shari'a. *Maqāṣid* is

a culture that people need for reconciliation in order to be able to coexist peacefully (Riyanto, 2012: 704).

Maqāṣid should be used as the main objective of all primary linguistic and rational methodologies in formulating Regional Regulations regardless of the methods and approaches. To that end, realizing *maqāṣid*, which is used as an approach system, will lead to an open, renewed, realistic and flexible legal system. As a result, the Regional Regulation formulation process becomes more practical and realistic according to *Maqāṣid al-Sharī'at* to achieve benefits.

Historically, Muslim scholars have, for centuries, struggled to find *maṣlahat* (benefit) formulas that work dynamically from time to time. *Maṣlahat* is basically a pure result of human potential, and not explicit statements from the religious texts. It is an independent concept that does not have an explicit argument but is considered eternal. The *fuqahā'* (*fiqh* experts) find it inductively based on existing *fiqh* rules as its particular foundation. Therefore, contrasting the results of inductive reasoning with their composing parts without adequate explanation is inappropriate (Saleh, 2009: 311-314).

A critical analysis on all substantial ideas and thoughts, expressed by Afifuddin Muhajir, Arskal Salim, Mahfud MD, Nadirsyah Hosen and others, is that the implementation of shari'a in a substantive manner must be pursued through the integration of shari'a with the national law or public policy in general. Such an effort needs to objectify the Islamic teachings. Accordingly, the implementation of the teachings is not only understood as a form of submission by Muslims to their God (*ta'abbudī*), but also as a joint rule which can be accepted by all parties rationally (*ta'aqulī*). (Abdillah, 2013: 252).

This objectification needs special attention. Essentially, fair regulations in a country are those that can be accepted by all parties and implemented voluntarily, not because of being forced to follow the majority group. In this context, this study fills the empty objectification space. At last, this study offers the middle way of all ideological-idealistic contestation against the shari'a formalization. Here, the formalization includes two methods in the implementation of Shari'at: formal implementation as a textual response to the obligations of shari'a and substantive implementation. Fortunately, the two can

come together at one point, upholding the benefit of humanity in the life of the nation-state.

Conclusion

In conclusion, this study presents a series of the analysis on how the interrelation between shari'a and the Regional Legal Products is carried out. In terms of the *istinbat* (deduction) reasoning in shari'a, the Regional People's Representative Council members or stakeholders who are interested in formulating the regional regulations are likely to apply social perspective and contemporary *fiqh* reasoning. The *istinbāt* reasoning, for instance, refers to the narrative thinking on public benefit or interest (*maṣlahat*). Here, the benefit is formulated based on contextual-instrumental considerations, not merely reducing or inducing the texts that existed among *faqīh* (*fiqh* experts/ jurists) in the early era of the shari'a codification. In addition, Muslim politicians tend to use the paradigm of reasoning in shari'a by applying the substance of shari'a principles. They include, but not limited to, equality, freedom, justice, deliberation, and the relationship of *ukhuwwat Islamiyyat* (Islamic brotherhood) and *wataniyyat* (nationhood) as their basis for consensus. One example is how the Prosperous Justice Party (Partai Keadilan Sejahtera) accepts the Regional Regulation formulation, although its ideology and shari'a-based reasoning demand more than just contents or substances.

With the *Maqāṣid al-Sharī'at* paradigm to analyze the Regional Regulations, as used by Jasser Auda, the author assumes that the Regional Regulations in Jember are considered as Prophetic *maqāṣid* model. This model aims at finding out the use of prophetic intentions in managing social values through the *risālat* (prophethood) of Prophet Muhammad. In addition, the prophetic-nuanced Regional Regulations also indicate that additional items of shari'a aspects are unnecessary. This is because the right processes and procedures will present great ideals of how the objectives of shari'a are implemented in a country. This also applies to countries that do not use the Qur'ān as the primary source of law or regard Prophet Muhammad (PBUH) as a messenger.

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