

Positive Transformation of Islamic Law in Local Wisdom in the Sultan of Tidore

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ABSTRACT

Tidore is one of the Islamic Sultanates in the archipelago which applies Islamic Law positively from 1495 until the joining of Tidore into the lap of the Republic of Indonesia. Islamic law in the Tidore Sultanate is no longer applied as positive law but has become a value that lives with the customs of the people of the Tidore Sultanate. This research focuses on examining the transformation of the Islamic law that once prevailed in the Tidore sultanate into values, principles, and philosophies that live in the Tidore community. This research was built with a qualitative research type with a socio-historical approach involving traditional and religious leaders as resource persons and a study of the existing "Kie Se Kolano" regulatory text so that it is expected to produce an accurate picture of the object under study. This research is expected to provide conceptual ideas in building awareness that Islamic law has actually become the volkgeist (soul of the Nation) for the Indonesian people, especially for the Tidore community, especially the younger generation who are currently being bombarded with various information that may be able to keep the younger generation away from the soul. His Nation.

Keywords: Islamic Law; Sultanate of Tidore; transformation of Islamic Law.

INTRODUCTION

Tidore is an Islamic kingdom (Sultanate) that once existed in the archipelago (Hidayat & AF, 2006). It would not be complete to discuss the Sultanate in Indonesia without bringing Tidore into the study. As the Islamic Kingdom, the Tidore Sultanate expanded its power to the Halmahera Mainland, Seram Island, to the Land of Papua. The expansion carried out by the Tidore Sultanate carried a political mission and carried a mission of da'wah, or the spread of Islam (Handoko, 2009).

History records that Islam entered Tidore in 643 H to coincide with June 5, 1245 (Rahmatullah, 2016). However, the new Islamic government system occurred during the reign of Sultan Jamaluddin (Kolano Ciliati), who reigned from 1495-1512, which was marked by the replacement of the title "Kolano" to "Sultan." With the change of the government system in Tidore into an Islamic government system, the legal system in force in the Tidore Sultanate also adheres to the Islamic Law system (Amal, 2016); this proves that Sultanate in North Maluku, including Tidore, accept Islam. The Islamization process takes place without violence and bloodshed (conflict) (Rusdiyanto, 2018). Islam that was so accepted then combined with the local wisdom of the Tidore community, without leaving customs, Islamic law also applies in Tidore.

Islamic law was once a positive law in the Tidore sultanate; positive law applies (Mertokusumo, 2007). The application of positive law in civil, criminal, and family law in the Tidore Sultanate has been enforced for hundreds of years, both on Tidore Island and in areas that claim to be subject to the Tidore Sultanate. Based on the results of information obtained from the *jojau* (Prime Minister) of the Tidore Sultanate, in terms of *jinayat* (criminal law). The Tidore Sultanate implements the law of cutting hands for perpetrators of theft, stoning for perpetrators of adultery *muhshan*, whipping for perpetrators of adultery *ghairu muhshan*, and *qishsash* for perpetrators of criminal acts, persecution, and murder; this law also documented in the constitution of the Sultanate of Tidore named "*Kie Se Kolano*" in Article 14 states (Interview with M. Amin Faruk Jojau Prime Minister of the Sultanate of Tidore, Ternate, 2020):

"Ngori Kolano yang Tertinggi totoa luas toma segala hal-hal da'wa ge toma hakim ronga lolamo toma dulu setoma doja, mara thalaq, jalid, rajam, diyah se kisas ge imam jojaga bato sebab winjawa siksa oma jumati walomalofa"

The meaning of the sentence above can be described as follows:

I am the highest Ruler (Sultan) providing broadly the opportunity to submit all complaints to judges (officials authorized to try) both at the central and regional levels such as divorce cases (thalaq), criminal cases. such as hudud adultery ghoiru mukhsan and drunkards (volumes) / whips), criminal infidelity/adultery mukhsan (stoning), diyat (compensation), and qishash

while the authority to carry out executions is left to the picket priest because their souls are tormented on two Fridays."

Rosyidi stated that the implementation of positive Islamic law lasted for hundreds of years, even though the Tidore Sultanate experienced a change of Sultan and the ups and downs of the dynamics of state politics. The triumph of the Tidore Sultanate government and the golden period of the application of Islamic Law when Tidore was led by Sultan Saifuddin or known as "*Jou Kota*" (Rosyidi, 2009).

The Tidore sultanate has no longer applied positive Islamic law both in the criminal and civil, since the strengthening of the influence of colonialism with the application of the theory by Snouck Horgronje, which the Dutch East Indies government applied to all judicial institutions throughout the Dutch East Indies (Suadi & Candra, 2016). Until the Sultanate of Tidore joined the fold of the Unitary State of the Republic of Indonesia.

Positive Islamic law may not have been implemented in the Tidore Sultanate; instead, it transformed into *local wisdom* that lives in the community. Local wisdom can be interpreted as a way of life and knowledge manifested in the activities and values carried out and embraced by the local community (Njatrijani, 2018). The transformation of positive Islamic law into local wisdom in question is the change of positive Islamic law into principles, values, and philosophies that live and are embraced in the people's social life of the Tidore Sultanate. It is proven by the philosophy book that exists in the Tidore Sultanate; the book title is "*Adat ma toto agama, agama ma toto kitabullah, kitabullah ma toto Jou Allah Ta'ala*" in the language can be interpreted as "Custom lean to the religion (Islam), religion relies on the Kitabullah, and the Kitabullah comes from Allah swt."

There are several previous studies regarding the Tidore Sultanate, including Irham Rosyidi's dissertation (2009), which highlighted the values and principles in the constitution of the Tidore Sultanate. Then the journal by Rusdiyanto (2018) explores the Sultanate of Ternate and Tidore from the historical aspect by briefly describing the development and influence of Islamic law in the two Sultanates. Meanwhile, Rahmat's journal discusses the symbolic meaning and Islamic values in the architecture of the *Tidore Folajiko* (traditional house) traditional house (Rahmat, 2020). Farida Yusuf's Journal discusses the *Dama Nyili-Nyili ceremony* to describe the spirit of cooperation and is full of Islamic values. Although in some processions they still adhere to the teachings of their ancestors, this is reflected in the philosophy of "*Madofolo Dzikrullah, Madarifa Papa se Tete*" (relying on ancestral strength, based on Dhikrullah) (Yusuf et al., 2019).

This research focused on examining Islamic law applied in Tidore in the past and how it transformed into values inherent in people's lives of the Tidore Sultanate, meaning how Islam in the past (historical) and what is now in the Tidore community. This study uses a socio-historical approach to aspects of the application of Islamic law (positive), then transformed into noble values that live in the Tidore community (local wisdom), which is then studied with a knife of analysis of the

theory of *three elements of the legal system* (substance, law, legal structure, and legal culture) Lawrence M. Friedman in (Ali, 2009). What was the substance of Islamic law in the Tidore Sultanate then and now? What was the structure of Islamic law in the Tidore Sultanate then and now? Furthermore, the transformation of positive Islamic law into a legal culture in the form of local wisdom is reflected in the values, principles, and philosophy that live in the Tidore community. Studies on the history of law and its transformation in the Tidore Sultanate do not seem to have been carried out in previous studies.

The study of history in the legal world is considered very important lately because law reflects a picture of the soul of a nation or what is known as *volkgeist* (Latipulhayat, 2015). The study of legal history is expected to revive the noble values, mainly to revive an order of noble values in the Tidore people who have applied Islamic law as positive law.

Positive Islamic law may no longer be enforced in Tidore. However, the study of positive Islamic law has been implemented in Tidore, the history of application, and how the law applied in the territory of Tidore Sultanate seems worthy of being brought to the fore again, not just reminiscing about Tidore's glory in the past. This story also takes lessons from the historical development of Islamic law in Tidore and shares them with the younger generation of Tidore and the younger generation of Indonesia in general. Furthermore, the younger generation of Indonesia is currently being attacked by various kinds of current information and knowledge, which may result in The young generation beginning to forget their identity as a nation.

RESEARCH METHODS

This study targets the Tidore Sultanate, which is currently located in the administrative area of Tidore City, North Maluku Province, with research on the transformation of positive Islamic law into local wisdom with literature review and field research (observations and interviews) which were studied qualitatively. This study uses a socio-historical approach, legal history, and a study of the legal system, data obtained through field research involving parties (informants) who are considered credible.

The informants in this study were the entire community under the Tidore Sultanate, especially in the Tidore Archipelago Region. Furthermore, to minimize the area of research and information seeking, informant retrieval is carried out using a method, *purposive* which is a technique where the criteria for the object being sampled have been determined in advance (Sugiyono, 2008). Finally, the informants or resource persons in this study were representatives of the legal and customary institutions in the Tidore Sultanate, represented by Jojau (Prime Minister) of the Tidore Sultanate as key informants. Therefore, in addition to traditional institutions, the research also involves traditional leaders of North Maluku, religious leaders, and academics who are expected to provide objective, relevant and accountable data.

Among the traditional leaders, religious leaders and academics can be described as follows:

1. Muhammad Amin Farouk, (Joujau (Prime Minister) Tidore Sultanate);
2. Hi. Hidayatussalam (Mufti Majojo/Young Mufti of the Sultanate of Ternate & Traditional Leaders of North Maluku);
3. Abdurrahman Muhsin (Young Ulama North Maluku/Young Leader Alkhairaat);
4. Julkarnain Syawal (Secretary General of Ansor North Maluku GP, Academic, native son of Tidore);
5. Thamrin Taher (Academics & Education Practitioners, Chairperson of the Al-Qur'an Lovers Community (KOMPAQ North Tidore) Son of the Native of Rum Tidore Village);
6. Asriyani M. Arifin (Women Academy from Tomagoba Tidore);
7. Mawardi Djamaluddin (Academic and Researcher from Goto Tidore);

This research was conducted from February to August 2020 in the City of Tidore Islands. The data were obtained through guided free interviews, where each question was developed by the direction of the informant's answers to dig deeper regarding the information obtained. Meanwhile, the data obtained from the Prime Minister of the Tidore Sultanate (key informant), religious and customary leaders are data related to the history of the Sultanate, the structure and duties, and functions of traditional instruments about the application of Islamic law, the history of the application of Islamic law, the development of the application of Islamic law, the acquisition of manuscript documents. The constitution of Tidore (Kie Se Kolano), the meaning of values and philosophies in society, and their relation to values in Islam and Islamic law teachings. The data is obtained from academics. Tidore's native sons and daughters were taken to obtain data related to facts and the practice of transforming Islamic law into local wisdom in the Tidore community as informants to confirm the data from traditional stakeholders (*Jojuu*), religious, and community leaders.

The qualitative research model becomes relevant in the socio-historical and historical approach through guided free interviews because the excavation of the data obtained can be expanded or reduced according to data collection needs.

RESULT AND DISCUSSION

The Entry of Islam in the Sultanate of Tidore

Some claims explain that Islam in Tidore was brought directly by Sayyid Ja'far Sadiq, who is a descendant of the Prophet Muhammad *Salallahu' alaihi wa Salam* from the path of Fatimah Az-Zahra and Imam Ali bin Abi Talib. It is said that Sayyid Ja'far Sadiq married a woman named Baiguna, who later became known as Nur Syifa; from this marriage, 4 (four) children were born who later became "Kolano" in Moloku Kie Raha. One of the four children is named Sahjati, who is "estimated" to be the first King (Kolano) of Tidore (Amal, 2016).

The entry of Islam in Tidore theoretically has similarities with the spread of Islam in the archipelago. Islam was present in Tidore not using military conquest (expansion) but by assimilation with the community. Islam in Tidore is spread by marriage (Ricklefs, 2008). However, even so, several theories explain where Islam in the archipelago, including in Tidore, came from, these theories include (Dalimunthe, 2016):

1. Gujarat: This theory claims that Islam that entered Indonesia came from Gujarat (India). Based on the assumption of Snouck Hurgronje, Indonesia has long had relations with India, and the facts that show the role of the Arabs in spreading Islam in the archipelago are considered less intense, and the Islamic inscriptions found in Sumatra are from India;
2. Persian Theory: For this theory, Islam that entered Indonesia was Islam that came from Persia; this claim assumes that there are similarities between Islamic teachings in Indonesia and Shia traditions in Persia, as well as the style of Sufi teachings that developed in Indonesia. by the Persian model of Sufism;
3. Arab Theory: For this theory, the entry of Islam in Indonesia directly from its source, namely the Arabian Peninsula, is illustrated by the pattern of Islam in Indonesia, which is based on the Shafi'I school of thought. Especially in Egypt and the southern Arabian Peninsula, such as Hadramaut and Aden.

If seen from the facts on the ground (the Sultanate of Tidore), the theory that is closer to the facts is the Arabic theory or the Persian theory; this can explain as follows:

1. Evidence of the Relationship between Arab Theory in the Tidore Sultanate
 - a. The entry of Islam in Tidore is brought by Sayyid Ja'far Sadiq, who came from Medina (Arabic) on 6 Muharram 643 Hijriyah or coincided with June 5, 1245 AD;
 - b. The Syafi'I Madhhab became the Sultanate Madhhab in Moloku Kie Raha, including the Tidore Sultanate;
 - c. The Tariqah model that developed in Tidore is like the Tariqah Qadariyyah wa Naqsyabandiyah and Tariqah Alawiyyah originating from Hadramaut (Yemen).
2. Evidence of Persian Theory of Relationships in the Tidore Sultanate
 - a. The use of the title "Shah" after the Sultan's name;
 - b. Several Shi'ite traditions, such as Dabus and the Commemoration of the Day of Ashura (10 Muharram);

The Entry of Islamic Law in the Sultanate of Tidore

Even though Kolano Sahjati is a Muslim, the prevailing government system has not used an Islamic government system; it also means that the legal system applied to the Tidore Kingdom is not yet in the form of Islamic Law. In practice, the pattern of da'wah in the archipelago does not emphasize the issue of shari'ah alone. However, da'wah is carried out by introducing and teaching the values of *aqidah (tawhidan)* first, which is adapted to the pattern of local wisdom that exists during society. According to the arguments from Abdurahman Muhsin (Religious Leader / Young North Maluku Ulama) and Hidayatussalam (Academics, Mufti Muda (Mufti Majojo) of the Sultanate of Ternate Islamic da'wah is carried out slowly or slowly; therefore, Islam can be well received. After the values of *aqidah* are instilled and have penetrated the community's soul, the community is directed to get to know morality (Azra, 2013) and (Hilmi, 2011). this community has led some experts to argue that the pattern of Islam that spread in the archipelago prioritized the elements of teaching *Sufism* (Interview with Abdurrahman Muhsin Maluku religious Leaders, Ternate 2020; and Hidayatussalam academics, Mufti Muda (Mufti Majojo) of the Sultanate of Ternate Islamic, Ternate, 2020) law was.

Islamic then was introduced after the values of the Islamic faith and moral teachings (Akhlaq/Tasawuf) had been truly internalized. By the Government and its Society (Interview with Abdurrahman Muhsin Maluku religious Leaders, Ternate 2020; and Hidayatussalam academics, Mufti Muda (Mufti Majojo) of the Sultanate of Ternate Islamic, Ternate, 2020). Therefore, then the first King of Tidore to use the title "Sultan" as a substitute for "Kolano" was Kolano Ciliati y who later changed his name to Sultan Jamaluddin (Rahmatullah, 2016).

The replacement of "Kolano" to "Sultan" is a sign that the Tidore government system uses the Islamic Government System, and the applicable legal system is the Islamic legal system (Statement of His Majesty Sultan Tidore H. Husain Syah (Interview with Abdurrahman Muhsin, Religious Leader/Young Ulama of North Maluku; Hidayatussalam Academics, Mufti Muda (Mufti Majojo) and the Sultanate of Ternate, Ternate, 2020). Although the title "Kolano" was replaced but the title was not eliminated (deleted); the title "Kolano" was still side by side with "Sultan" (Interview with M. Amin Faruk Jojau Prime Minister of the Sultanate of Tidore, Ternate, 2020). The title "Kolano" became a sign that the presence of Islam did not eliminate the culture that existed. However, Islam came to color the existing cultural patterns with the values of *monotheism*.

The acceptance of the Islamic government system and the implementation of Islamic law in the Tidore Sultanate; could not be separated from the da'wah model delivered peacefully and gradually; therefore, Tidore people are ready to enact and implement new laws for them and feel safe with Islam. Before Islam came, Tidore already had its civilization, customs, and even laws, commonly referred to as *Papa se Tete* or ancestral teachings. (Interview with Zulkarnaen Syawal, Academic, Activist and Secretary General of GP Ansor North Maluku Region, Ternate, 2020). It is conceivable that if the entry of Islam into Tidore

immediately changed the social order of society that once existed, indeed in the course of proclaiming Islam in Tidore, there would be *chaos*. Perhaps the religion of Islam could not be lived in such a profound way.

In theory, a legal firm can be applied effectively and lastingly if the legal form is recognized both from a philosophical, juridical, and sociological perspective (Recognition Theory). Based on the theory of recognition, sociologically, a form of law can be applied through two approaches, namely, the strength of power (*machtstheorie*) and recognition from the community (*anerkennungstheorie*) (Anshori, 2009). The context of Islamic law in the Tidore Sultanate, the strength of power, and the recognition of the community towards the application of Islamic law can go hand in hand. Therefore, da'wah is not only carried out to the authorities but also to the entire community. As a result, although Islamic law in Tidore is no longer applied because the Republic of Indonesia has taken over Tidore's authority in implementing the law, Islamic law still lives during the Tidore community (Interview with Zulkarnaen Syawal Academic, Activist and Secretary General of GP Ansor North Maluku Region, Ternate, 2020).

Application of Islamic Law in the Sultanate of Tidore

Lawrence M. Friedman put forward a theory about the *Three Elements of Legal System* (three components in the legal system) that can be used to measure the effectiveness of an application of the law, but in this study, the theory is used to analyze whether or not a legal system applies in an area, or this case it is used to measure whether or not the Islamic legal system has applied in the Tidore Sultanate, the three elements include (Ali, 2009):

1. Legal Structure: Legal Institutions and their apparatus; (The Sultanate of Tidore Legal Structure represented by Pehak Lebe or known as the Supreme Court is currently led by a Qadhi concurrently Jou Kalem or the position of Minister of Religion, assisted by Pehak Kompania to assist law enforcement and execution);
2. Legal Substance: Legal Norms or Legislations that are enforced as positive law (Tidore Sultanate Legal Substance is represented by a Regulatory Manuscript called "Kie Se Kolano" which contains the Constitution of the Sultanate of Tidore, Criminal Law, Civil Law, State Administrative Law, and Law Program);
3. Legal Culture: Ways of view, customs, and teachings about the law that live

In terms of legal structure, in the Tidore sultanate, two institutions assisted the Sultan in administering the government, namely *Bobato Syareat* and *Bobato Hakekat*. (Hanafi, Fauzan and Rahman, 2020). Following the interview with M. Amin Faruk; bobato Syareat consists of 4 institutions; consists of *Customary Party* (Government), *Djuru Writer* (Secretary of State), *Kompania Party* (Military and Security), *Lebe Party* (Supreme Court), Jojau (Prime Minister) of the Tidore Sultanate). one is *Pehak Lebe* (Supreme Court) led by a Qadhi assisted by Imams

and Khatib. (Interview with Abdurrahman Muhsin, Religious Leader/Young Ulama of North Maluku; Hidayatussalam Academics, Mufti Muda (Mufti Majojo) and the Sultanate of Ternate, Ternate, 2020) *Pehak Lebe* as a Legal Structure (Law Enforcement Institution) is under *Bobato Syareat* as the organizer of the government; at that time, the concept of a modern state with the theory of power-sharing (Trias Politica) ala Montesquieu did not appear (Yulistyowati et al., 2017).

Meanwhile, in terms of legal substance, the Tidore Sultanate also has the "Kie Se Kolano Regulation" as its legal substance (Hanafi, Fauzan and Rahman, 2020), where the regulation is considered to meet the essential criteria as a Constitution (Rosyidi, 2009). Concerning *law enforcement*, Kie Se Kolano's regulations contain the Basic Book of Law, Civil Law, Criminal Law, Procedural Law, and Administration. This Kie Se Kolano Regulation has existed since the time of Sultan Syaifuddin or known as Jou Kota. However, the written and accessible text of the Kie Se Kolano Regulation is the Kie Se Kolano Regulation in the Era of Sultan Ahmad Fathuddin (Interview with M. Amin Faruk Jojau Prime Minister of the Sultanate of Tidore, Ternate, 2020).

Meanwhile, in terms of legal culture, the Tidore community has a principle that applies and lives during society to this day, namely "*custom ma toto religion, religion ma toto Kitabullah, Kitabullah ma toto jou Allah Ta'ala*" which can be interpreted as "customs rely on religion (Islam), religion relies on the Book of Allah, and the Book of Allah comes from Allah Subhanahu *wa Ta'ala*." (Hanafi, Fauzan and Rahman, 2020) This principle implies that all customs (customs) that exist during society must follow the teachings of Islamic Shari'ah; all forms of customs that do not follow Shari'ah must be rejected. Although other areas have similar principles, these principles signify that Islamic law was once established in the archipelago, including in the Tidore Sultanate (Interview with Abdurrahman Muhsin, Religious Leader/Young Ulama of North Maluku; Hidayatussalam Academics, Mufti Muda (Mufti Majojo) and the Sultanate of Ternate, Ternate, 2020).

Application of Islamic Law in the Territory of the Sultanate of Tidore

The Sultanate of Tidore, in the course of its government, carried out several expansions to expand its power and carry out the mission of spreading Islam. Thus, making Tidore one of the great Islamic kingdoms in the archipelago. Conceptually, there are 2 (two) areas of the Tidore Sultanate. The first is the Tidore Sultanate area located on Tidore Island, and the second is the Tidore Sultanate area outside Tidore Island. In practice, administratively, the territory of the Tidore Sultanate includes the Center, Nyili (Region/Province), and Gam (Kampung) (Interview with M. Amin Faruk Jojau Prime Minister of the Sultanate of Tidore, Ternate, 2020).

On the Tidore island, which is a circle of territory where there is the center of government of the Tidore Sultanate, the majority of the population is Muslim, and following the basis of the Tidore Sultanate State, which is based on Islam, the law that applies to its people is Islamic law. This law also applies in the Sultanate

of Tidore, which is outside the island of Tidore; for the Muslim population, the law applied is Islamic law.

Law carried out by an institution called *enforcement is Pehak Lebe*, the Supreme Court, with Qadhi or Jou Kalem as Supreme Court Justices. Furthermore, in carrying out the judicial function, Qadhi is assisted by Imams and Khatib to carry out judicial functions at the Nyili (region) or Gam (village) level. Therefore, during When heyday, both the imam and the khatib were chosen and inaugurated (certified) by the Sultan because priests and preachers carried out ritualistic tasks and other social functions, including judicial functions. Meanwhile, to take legal action such as arresting criminals, Qadhi is assisted by other customary institutions, namely the *Kompania Pehak*, led by a *Kapita Kie* (Army Commander) (Interview with Abdurrahman Muhsin, Religious Leader/Young Ulama of North Maluku; Hidayatussalam Academics, Mufti Muda (Mufti Majojo) and the Sultanate of Ternate, Ternate, 2020).

The expansion of the territory of the Tidore Sultanate carried out a mission of da'wah (spreading Islam). However, the mission that was brought was not carried out by deceiving, manipulating, or coercing. Until now, some *bobato* there are still (staff) of the Tidore Sultanate who do not embrace Islam, such as *Famanyira Tobaru* and *Famanyira Yaba*. Likewise, in the farthest territory of the Tidore sultanate, such as in Papua. The mission to spread Islam carried out by the Tidore Sultanate did make some areas in Papua convert to Islam, but some local kings (tribal chiefs) in Papua have not embraced Islam until now, and they are "customary" part of the Tidore Sultanate (Interview with Abdurrahman Muhsin, Religious Leader/Young Ulama of North Maluku; Hidayatussalam Academics, Mufti Muda (Mufti Majojo) and the Sultanate of Ternate).

For the people of Tidore who do not embrace Islam, the Sultanate of Tidore facilitates these non-Muslim communities to carry out the rules and legal concepts that follow their beliefs. The Sultanate of Tidore establishes their government legal institutions in each of these areas by the conditions. Each region's social and cultural aspects; then made the Tidore Sultanate relatively more stable in terms of political influence in its territory. There was no rebellion against the Sultanate based on ethnic and religious sentiments. The facts show that until now, the areas that were previously subject to the Tidore Sultanate still have an intimate "historical" relationship with the Tidore Sultanate. The political commotion in the Tidore Sultanate was none other than the political intervention of the colonizers (Portuguese, Spanish, Dutch) who messed with the Tidore Sultanate (Interview with Abdurrahman Muhsin, Religious Leader/Young Ulama of North Maluku; Hidayatussalam Academics, Mufti Muda (Mufti Majojo) and the Sultanate of Ternate, Ternate, 2020).

During the heyday of the Tidore Sultanate, Islamic law was applied positively in both criminal and civil cases, including state administrative law. Based on data obtained from the Jojau of the Tidore Sultanate contained in the constitutional text of the Tidore Sultanate (Kie Se Kolano regulations), Islamic

criminal law applies the law of cutting hands for perpetrators of theft. Qishash punishment for perpetrators of violent crimes and murder, this is following the provisions of Article 14 Kie Se Kolano Regulation, the location of execution for criminals is carried out in Tanjung Toseho, which is now a village in Oba District, Tidore Islands City (Interview with M. Amin Faruk Jojau Prime Minister of the Sultanate of Tidore, Ternate, 2020).

Meanwhile, for the perpetrators of adultery, *mukhshan*, *ghoiru mukhshon*, stoning, and *jalid (dera)* and exile by Article 14 of the Kie Se Kolano regulation. According to the *Jojau* Sultanate of Tidore, the place of execution for the perpetrators of adultery was in a place; *thatf* or now it became a village called Kai Yasa, in North Oba District, Tidore Islands City. The Kai Yasa language means a wrong marriage or can be interpreted as forbidden intercourse (Interview with M. Amin Faruk Jojau Prime Minister of the Sultanate of Tidore, Ternate, 2020). Article 14 of the Kie Se Kolano Regulation reads:

"Ngori Kolano yang Tertinggi totoa luas toma segala hal-hal da'wa ge toma hakim ronga lolamo toma dulu setoma doja, mara thalaq, jalid, rajam, diyah se kisas ge imam jojaga bato sebab winjawa siksa oma jumati walomalofa"

The meaning of the sentence above can be described as follows:

"I am the highest Ruler (Sultan) providing broadly the opportunity to submit all complaints to judges (officials who are authorized to judge) both at the central and regional levels such as divorce cases (*thalak*), criminal cases. Such as hudud adultery *ghoiru mukhshon* and drunkards (*jalid (volume)/whip*), criminal infidelity/adultery *mukhshon (stoning)*, *diyah* (compensation), and *qishash*. At the same time, the authority to carry out executions is left to the picket priest because their souls are tormented twice."

For the application of civil law, based on data obtained from the *Jojau* of the Tidore Sultanate, all civil cases include agreements, buying and selling, accounts payable, land disputes, inheritance, marriage, divorce, etc. Interestingly, in the case of divorce, the Tidore law also imposes a waiting period (*iddah*) for men, considers aspects of justice for women, and expects divorced parties to be reconciled (Interview with M. Amin Faruk Jojau Prime Minister of the Sultanate of Tidore, Ternate, 2020).

As for administrative law matters, the Tidore constitution regulates the registration, marriage, birth, death, and legal decisions and decrees of the king as stated in Article 12 of the Kie Se Kolano Regulation, which states:

"Ngori Kolano Lamo-Lamo tokaruniaai buku atau leo-leo enareni supaya nosijaga ngori Kolano ritadbir toma segala parentah adat se syara, atau sunat se fardu marasante sone se gogiya atau gi ngada'wa kityi se lamo"

atau hal-hal mega iya atau ngofa fugo atau bena iya apa jadi gena e nolefo mi-moi"

Which in meaning can be understood (Rosyidi, 2009):

"I, the Ruler, give a book to keep (a record) all state activities and instructions as well as standard orders and Shari'ah Law, which relate to both the sunnah and the *fardhu*. In matters of birth, death, marriage, and complaints/indictments both in small and large cases, as well as to be able to record cases of judges' decisions."

Islamic Law in the Tidore Sultanate Territory In the Colonial Era

Politics intervened by colonial countries (especially the Netherlands) directly or indirectly affected the social, cultural, political conditions and the direction of the legal policy of the Tidore sultanate. This policy can be seen clearly by implementing *the ReceptieHorgronje theory*. Snouckwhich quickly tried to castrate the application of Islamic law in the Sultanate of the Archipelago territory, including in Tidore (This theory suggests that Islamic law can only be applied when accepted by customary law. Therefore the establishment of a customary court is considered an effort to limit the authority of religious courts in enforcing Islamic law (Batubara, 2017). The most precise illustration of the application of the theory *Receptie* is the division of the Judiciary into 2 (two) namely, *Pehak Lebe* (Supreme Court) led by Qadhi, authorized to adjudicate cases Family Law, Grants, Endowments, and Wills, and the Customary Courts Institution (Swapraja) led by Jojau (Prime Minister), has the authority to adjudicate all criminal and civil cases (Interview with Abdurrahman Muhsin, Religious Leader/Young Ulama of North Maluku; Hidayatussalam Academics, Mufti Muda (Mufti Majojo) and the Sultanate of Ternate, Ternate, 2020).

This influence is also clearly illustrated through the text of the Kie Se Kolano Regulation, which contains a related article on services to *gebernemen* (Governor of the Dutch East Indies). The pattern of *civil law* that exists in the Continental European legal model applied in the Netherlands is also very thick in the Kie Se Kolano Regulation, where administrative orders are visible in several articles in the Kie Se Kolano Regulation.

However, efforts to eliminate the application of Islamic Law by the colonial government were considered a failure. Although the authority of the *Pehak Lebe* (Supreme Court) led by the Customary Court, and the interests of the colonial government entered into the Kie Se Kolano Regulation, the Kie Se Kolano Regulation still contained an order to be guided by the Book of Allah, and an order to enforce Islamic law in criminal cases. Both in the form of *qishash*, *diyath*, and stoning (*hudud*), which are forms of punishment (*jarimah*) in Islamic Criminal Law (Kie Se Kolano Regulation Manuscript) (Interview with Abdurrahman Muhsin, Religious Leader/Young Ulama of North Maluku; Hidayatussalam Academics, Mufti Muda (Mufti Majojo) and the Sultanate of Ternate, Ternate, 2020).

Since Islamic law in the Tidore Sultanate has taken root and has become part of the customs of the Tidore people themselves, by the principle or philosophy of "*Adat ma toto religion, religion ma toto Kitabullah, Kitabullah ma toto Jou Allah Ta'ala.*" The Tidore community's acceptance of Islamic law and its recognition as part of an inseparable custom in the Tidore community has caused positive Islamic law in Tidore to become resistant to the application of Receptie Theory to castrate the application of Islamic law.

Islamic Law in the Territory of the Sultanate of Tidore In the Era of Independence to the present

In the colonial period, positive Islamic law in Tidore was still enforced, despite challenges and efforts to eliminate the application of Islamic law from the Colonial government. When Sultan Zainal Abidin Syah, Tidore, declared a merger with the Unitary State of the Republic Indonesia, the practice of positive Islamic law was no longer enforced. The legal norms in the Kie Se Kolano Regulation were replaced with national legal norms, and the Tidore sultanate was not again had the authority to apply the law. It has been replaced by the national legal system that applies throughout the Unitary State of the Republic of Indonesia.

Islamic law in the Tidore Sultanate from the independence era to the present has been transformed. From the beginning, it was a positive law that was enforced into a value, principle, teaching, and philosophy that lives in society to this day.

Likewise, the structure of Islamic law that previously existed (*Pehak Lebe/Qadhi*) still survives today. However, its functions and authorities are no longer the same as before. The resolution of society is still carried out, especially those of a customary nature (Interview with Abdurrahman Muhsin, Religious Leader/Young Ulama of North Maluku; Hidayatussalam Academics, Mufti Muda (Mufti Majojo) and the Sultanate of Ternate, Ternate, 2020), so that *Qadhi* and *Jojau*, who were previously authorized to make a binding legal decision, are now a kind of mediator to settle disputes outside the court in a customary and familial manner.

The Kie Se Kolano regulation, at this time, is no longer the applicable legal norm. However, the noble values and orders guided by the Book of Allah become the grip attached to the souls and memories of the Tidore people. The principles, teachings, values, and philosophies that breathe Islamic law are still maintained in the community's social life. However, it must be admitted that the remnants of the transformed Islamic law are being challenged by the currents of modernization and technological developments. The principles, teachings, values, and faculties that still include (Interview with Abdurrahman Muhsin, Religious Leader/Young Ulama of North Maluku; Hidayatussalam Academics, Mufti Muda (Mufti Majojo) and the Sultanate of Ternate, Ternate, 2020):

1. *Ma Toto* Religion, Religion *Ma Toto* Kitabullah, Kitabullah *Ma Toto* Jou Allah swt. Which means, custom hinges on religion, religion hinges on the book of Allah, the book of Allah comes from Allah swt;
2. *Syah se Fakati*, which means that all decisions and policies, as well as solutions to problems, must be discussed to reach an agreement;
3. *Fara se filing*, which can be understood that the distribution of results must be done relatively;
4. *Ngaku se Rasai*, meaning that the holder of the trust must genuinely adhere to the mandate given;
5. *Mae se Kolofino*, which means to be afraid and ashamed of Allah subhanahu wa ta'ala to commit violations, whether related to relations with religion or social society;
6. *Adat se Nakodi* contains the meaning of civilized humanity, or in other words, humanizes humans.

The transformation of Islamic law into philosophy, principles, values, and teachings that live in the community indicates that Islamic law has been accepted in Tidore and has even become an inseparable part of the customs of the Tidore community (Interview with Abdurrahman Muhsin, Religious Leader/Young Ulama of North Maluku; Hidayatussalam Academics, Mufti Muda (Mufti Majojo) and the Sultanate of Ternate, Ternate, 2020). This law is because the pattern of teaching Islamic Law values in the Tidore Sultanate and Society is not carried out by coercion but is carried out slowly, using local wisdom facilities (as long as it does not conflict with the basic principles of Islam). The presence of Islam does not eliminate the existing culture and customs of the Tidore people but colors it with the Islamic value; this causes Islamic law so accepted by Tidore people and enforced as a Positive Law for Hundreds of Years even though for now. This positive Islamic law is no longer applied. However, its values are still alive and well in the Tidore community.

CONCLUSION

Tidore is one of the Sultanates in the archipelago that has applied Islamic law as positive law since Sultan Jamaluddin 1495 AD until the merger of the Sultanate of Tidore into the Unitary State of the Republic of Indonesia. Suppose it is measured using the theory of the *three elements of the legal system* Lawrence M. Friedman's (legal structure, legal substance, and legal culture). In that case, it will be known that Islamic law and its legal system once existed in the Tidore Sultanate.

In terms of the *legal structure*, the Tidore Sultanate has a *Lebe Pehak* (Supreme Court) led by Qadhi (Supreme Judge), who is also *Jou Kalem* (Minister of Religion) who oversees Imam and Khatib in *nyili* or *gam* (regions). Because the theory of separation of powers has not yet been developed, the judicial function is still attached to the executive branch. Meanwhile, in terms of *legal substance*, the Sultanate of Tidore has a regulation called "Kie Se Kolano." Kie Se Kolano is a constitution and the guidelines for Criminal Law, Civil Law, State Administration, and Procedural Law. Moreover, in terms of *legal culture* (*legal culture*), there is a

philosophy which states that "*Adat ma toto agama, agama ma toto kitabullah, kitabullah ma toto Jou Allah Ta'ala*" it can interpreted as "*Customs rely on religion (Islam), religion rests on kitabullah, kitabullah is from Allah Subhanahu wata'ala*".

Positive application of Islamic law in the Tidore Sultanate is enforced from both Criminal and Civil law, for Criminal law by Article 14 of the Kie Se Kolano Regulation, the Qishash, Hudud, Whip laws are carried out. The location for the execution of criminals still exists today, which is now a village with Toseho and Kai Yasa.

With the strengthening of the influence of Dutch colonialism, the application of Islamic law in the Tidore Sultanate gradually faded. With the division of the courts into 2, namely the autonomous court led by Jojau (Prime Minister), who tried criminal cases, and the court *Pehak Lebe* led by Qadhi/Jou Kalem (Minister of Foreign Affairs). Religion) to adjudicate civil cases. Until the merger of the Tidore Sultanate into the Republic of Indonesia and the unification of law, Islamic law was no longer applied positively in the Tidore Sultanate.

However, the Islamic law that has been in effect for a long time has transformed into the local wisdom of the people of the Tidore Sultanate and colored the social rules that apply to indigenous peoples. These rules include *Syah se Fakati*, *Fara se Filang*, *Ngaku se Rasai*, *Mae se Kolofino*, and *Adat se Nakodi*.

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