

Legal Politics in the Establishment of the Sultan Adam Law (Positivization of Islamic Law in the Banjar Kingdom)

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Abstract

This study aims to determine the position and authority of Sultan Adam al-Watsiq Billah (1826-1857) in the formation of the Law of Sultan Adam 1835 and to describe the political aspects of law in the formation of the Law of Sultan Adam 1835. The method used is normative legal research with statutory, political, and socio-historical approaches. The results are first, Sultan Adam has authority as King and a religious leader in establishing Islamic law as the positive law of the Banjar kingdom in Sultan Adam Law. Second, the legal-political aspect in Sultan Adam Law is found in the purpose of its formation as stated in the preamble of the Sultan Adam Law Martapura version. They were named, perfecting religion and *i'tikaq*, maintaining the harmony of the unity, and guidelines for judges in deciding a case during their reign so that the people become good. As King and *qadhi* (judge), Sultan Adam used the religious and political approach through Sultan Adam Law when his political power weakened under Dutch rule. He has successfully applied it to the character of the Banjar Society, which is thick with Islamic (tradition), which is more obedient to religious leaders than rulers. The Banjar people still apply some of the Sultan Adam Law provisions to this day.

Keywords: Politics of law; Islamic law; Sultan Adam's Law

Abstrak

Penelitian ini bertujuan mengetahui kedudukan dan otoritas Sultan Adam al-Watsiq Billah (1826-1857) dalam pembentukan Undang-Undang Sultan Adam (UUSA 1835), dan mendeskripsikan aspek politik hukum dalam pembentukan UUSA 1835. Metode yang digunakan yaitu penelitian

hukum normatif dengan pendekatan perundang-undangan, politik, dan sosio-historis. Data yang digunakan bersifat sekunder dianalisis dengan teknik *content analysis* dan disajikan secara deskriptif kualitatif. Hasilnya pertama, Sultan Adam memiliki otoritas dalam kedudukannya sebagai raja sekaligus pemuka agama dalam menetapkan hukum Islam sebagai hukum positif kerajaan Banjar dalam bentuk UUSA. Kedua, aspek politik hukum dalam UUSA dapat ditemukan dari tujuan pembentukannya yang tertuang dalam *Mukaddimah* UUSA versi Martapura yaitu menyempurnakan agama dan *i'tikad*; menjaga kerukunan kesatuan; dan pedoman para hakim dalam memutuskan suatu perkara saat pemerintahannya agar rakyatnya menjadi baik. Pendekatan agama dan politik yang digunakan Sultan Adam selaku raja sekaligus *qadhi* melalui UUSA pada saat kekuatan politiknya melemah di bawah kekuasaan Belanda telah berhasil diterapkan terhadap karakter Masyarakat Banjar yang kental dengan (tradisi) Islam yang lebih patuh kepada pemuka agama ketimbang penguasa, dan sebagian dari ketentuan UUSA itupun masih diterapkan masyarakat Banjar hingga saat ini.

Kata Kunci: Politik Hukum, Hukum Islam, Undang-undang Sultan Adam

Introduction

South Kalimantan has historical stories of the development of Islamic law that are interesting to study, one of which is the combination of religion and the institutions of the Banjar kingdom. The position of Religion-based institutions is firmly one level below the King. At that time, the Islamic religious leaders structurally occupied a strategic role as nobles to regulate all traders, ordinary people, and farmers in the country.¹

The religious approach as a legal norm in leading the people of the Banjar kingdom has been carried out by the King of the Banjar kingdom, including the most famous for its monumental positive legal product, namely the 1835 Sultan Adam Law during the reign of King Sultan Adam al-Watsiq Billah (1826-26). 1857). Its influence is still lingering today for the people and residents of South Kalimantan in particular. Many people visit his grave in Martapura. His name is immortalized as a street name both in Martapura and in the city of Banjarmasin. His name is also immortalized for a Law College in Banjarmasin, the Sultan Adam School of Law (STIHS), and the Sultan Adam Riam Kanan Forest Park, as confirmed by Presidential Decree number 51 In

¹ Hayatun Na'imah, "Lahirnya Perda Berbasis Syari'ah Di Provinsi Kalimantan Selatan," *Syariah: Jurnal Hukum Dan Pemikiran* 16, no. 1 (10 Oktober 2017): 25–32, <https://doi.org/10.18592/sy.v16i1.1430>.

1989 and inaugurated by the President on December 18, 1989. The *Haulan* event (the anniversary of his death) is always held as a regional event every year.²

There is a relationship between politics, law, and legal politics that needs to be studied further on the existence of the Sultan Adam Law and its relevance to Islamic law in the archipelago lately. Discuss legal politics by raising historical-social settings in the past needs to realize an ideal national and state life system that contains goodness (*mashlahah*) at a pragmatic-practical level, legal politics, which may affect the character and legal culture; that exists in today's society.

Political contestation in a country will potentially influence the development of legal products that apply in that country and produce products with certain characters.³ There is debate in legal and political relations; whether law controls politics or vice versa, politics influences regulation. Mahfudh MD gave three answers. First, the law has a determining influence on politics because political activities are regulated and subject to the rule of law. Second, political determinants of law result from the crystallization of political wills that interact and even compete. Third, politics and regulation as a social subsystem are in a position where the degree of determinants is balanced. Even though the law is a product of political decisions, all political activities must be subject to legal rules once the law is made.⁴ Relevant to empiricism, which sees law from the legal material (in the book) and the formation and function (action) in social and political life.

Legal politics is interpreted in various ways, one of which is conveyed by Van Apeldoorn that legal politics is the politics of setting a goal and the content of laws and regulations that are limited to what is written. Satjipto Raharjo argues that legal politics is an activity to determine a choice regarding the goals and methods to be used to achieve legal goals in society, not limited to legislation. Teuku Muhammad Radhie argues that legal politics is a statement of the will of the rulers of the state and regarding the laws that apply in the territory of the state and regarding the direction of legal development.⁵ These three definitions show that a lawful product cannot be separated from specific goals in law, the process of achieving goals, and the actor, namely the ruler.

² Abdurrahman, "Undang-Undang Sultan Adam 1835 Dalam Perspektif Sejarah Hukum," *Al-Banjari: Jurnal Ilmiah Ilmu-Ilmu Keislaman*, hlm. 76, accessed October 7, 2020, <https://jurnal.uin-antasari.ac.id/index.php/al-banjari/article/view/1042>.

³ Athoillah Islamy, "Eksistensi Hukum Keluarga Islam di Indonesia dalam Kontestasi Politik Hukum dan Liberalisme Pemikiran Islam," *Al-Istinbath: Jurnal Hukum Islam* 4, no. 2 (30 November 2019): Hal. 166, <https://doi.org/10.29240/jhi.v4i2.1059>.

⁴ Moh. Mahfud MD, *Politik Hukum di Indonesia* (Jakarta: Rajawali Pres, 2009). p. 8

⁵ Summarized by Mohamad Nur Yasin, *Politik Hukum Ekonomi Syariah di Indonesia* (Malang: UIN Maliki Press, 2018). p. 92-94

Procedurally, according to Padmo Wahyono, legal politics includes the law's formation, application, and enforcement.⁶

So far, there have been several studies related to Sultan Adam Law 1835, including Hasan et al., which focus on examining the procedural aspects of law in the Sultan Adam Law, which contain legal principles and norms that are considered identical modern legal procedurals.⁷ Rustam Efendi analyzes the structure and meaning of Sultan Adam Law with a hermeneutic approach⁸ and a historical approach that Ridha widely discusses. Efendi traces the history of the birth of Sultan Adam Law with a socio-political system, and Abdurrahman and Anis use a legal history approach to ascertain the socio-political conditions during the Adam sultanate enforced Sultan Adam Law after ten years of his reign.⁹ These previous studies do not seem to have touched on the perspective of legal politics in-depth, which is the object of this research. For this reason, this study examines two problem formulations, namely how the position and authority of Sultan Adam in the formation of the Sultan Adam Law during the Banjar Sultanate and how the political-legal aspects in the construction of the Sultan Adam Law during the Banjar Sultanate.

This research is normative using a statutory, political, sociological-historical approach in analyzing primary legal materials, namely the Martapura version of the Sultan Adam Law 1835 manuscript and supplemented with secondary materials in the form of several relevant books and journals. All materials were analyzed using content analysis techniques and presented in a qualitative descriptive manner.

The results of this study are expected to provide an overview of the political dynamics of Islamic law at that time to reflect and at the same time relevance the legal culture and customs of the Banjar community today, that law is indeed a means of changing the order of life in society, nation and state to be better through political power.

⁶ Yasin.

⁷ Ahmadi Hasan, Anwar Hafidzi, dan Yusna Zaidah, "Modern Law Aspect on Procedural Decision of Sultan Adam Law," *Al-Ahkam* 29, no. 2 (7 November 2019): 159–66, <https://doi.org/10.21580/ahkam.2019.29.2.4285>.

⁸ Rustam Effendi, "Struktur dan Makna Undang-Undang Sultan Adam pada Masa Kerajaan Banjar Kalimantan Selatan," *Litera: Jurnal Penelitian Bahasa, Sastra, dan Pengajarannya*, Vol No.2 2013, <https://journal.uny.ac.id/index.php/litera/article/view/1586>.

⁹ Abdurrahman, "Undang-Undang Sultan Adam 1835 dalam Perspektif Sejarah Hukum"; M. Zaenal Arifin Anis, "Undang-Undang Sultan Sebagai Budaya Tandingan (Praktik Undang-Undang Sultan Adam di Tanah Kesultanan Banjar)," 2016, <http://eprints.ulm.ac.id/8556/>.

Discussion

The position and authority of Sultan Adam in the formation of Sultan Adam Law during the Sultanate of Banjar

The Law of Sultan Adam 1835 is a law issued by Sultan Adam al-Watsiq Billah in the tenth year after his coronation as King of Banjar in 1825, and his reign ended in 1857 (32 years), three years before the Dutch government dissolved the Banjar kingdom in 1860.¹⁰

Sultan Adam is the 18th king in the lineage that reigns in the Banjar Kingdom. This is based on the *Ranji* or genealogy followed by his descendants, better known as the *pedatuan* version and contained in *Manaqib* Sultan Adam al-Watsiq Billah, which is read on the 12th date 148 *Haul* (commemorate the day of the dead) (June 4, 2001). When viewed from the Banjar era, Prince Samudera (the first king who converted to Islam, Sultan Suriansyah) held the kingdom. Sultan Adam was the 12th King of the Banjar Sultanate lineage.¹¹

There are different opinions about the position of Sultan Adam as the King who ruled in the kingdom of Banjar. According to H. Gusti Shuria Roem, one of the compilation team of Sultan Adam's History. It is similar to the statement of a scholar figure Sheikh Abdurrahman Shidiq Al-Banjari or better known as Sheikh Abdurrahman Shidiq Sapat (1857-1939). In his famous work "Treatise *Sejaratul Aryadiyah*" he wrote that Sultan Adam is the 18th sultan.¹² It is different again in the book History of Banjar published by the South Kalimantan Provincial Government. The ranks of the 16th Sultan Adam noted in the lineage of the King of Banjar and Gazali Usman in his book "Kingdom of Banjar, History of the Development of Political Economy, Trade and Islam" puts Sultan Adam in the first place. The first 16 in the lineage of the kings of Banjar. Meanwhile, according to Eisenberger, Sultan Adam was the 20th sultan in the order of Banjar kings starting from Soeria Anata. Another opinion is from Kyai Haji Januri bin Haji Roys, and Sultan Adam al-Watsiq Billah is the 11th sultan in the order of the kings of Banjar.¹³

Sultan Adam is known as a person who is liked by the people and is steadfast in religious principles. He is said to be very concerned about the peace and welfare of his people. He is also known to be close to scholars, including

¹⁰ Abdurrahman, "Undang-Undang Sultan Adam 1835 dalam Perspektif Sejarah Hukum."

¹¹ Muhammad Fahmi Al Amruzi, Masyitah Umar, dan Anwar Hafidzi, "Sultan Adam Law in The Progressive Law Perspective in Banjar Communities In The 18th Century Ad," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 7, no. 1 (19 Juni 2020): 11–24, <https://doi.org/10.29300/mzn.v7i1.3133>; Abdurrahman, "Undang-Undang Sultan Adam 1835 dalam Perspektif Sejarah Hukum."

¹² Al Amruzi.

¹³ Al Amruzi.

having received lessons from Sheikh Muhammad Arsyad al-Banjari, a friend and advisor to his grandfather. During his reign, he also had many teachers and advisors, namely Mufti Haji Jamaluddin, son of Sheikh Muhammad Arsyad al-Banjari. The latter also had a role in the formation of Sultan Adam Law.

According to research by Eissenberger, who had served as *Controleur van Banjarmasin en Marabahan* in 1936, the original manuscript of Sultan Adam Law, which was handwritten in Arabic-Malay letters, was never found again. Eisenberger once found a manuscript in Martapura. It was written in 1880 but even then could not be seen again. In 1885 Eisenberger found a manuscript stored in the archives of the Banjarmasin Resident Office written by Tumenggung Soeri Ronggo in 1885. The first publication of the text of the Law of Sultan Adam was carried out by A.M. Joekes, who had served as Governor of Borneo (1891-1894) in *Indische Gids Magazine* in 1891. The manuscript was written in Banjar Malay Latin script accompanied by a Dutch translation. This manuscript was then reprocessed by the Commission for Customary Law *Koninklijke Instituut Voor de Taal, Land en Volkenkunde van Nederlands Indie* in the Netherlands which was later published in the *Adatrecht Bundels*, volume XIII in 1917.¹⁴

Assistant Resident Amuntai Helderman, on April 16, 1910, also wrote the legal product of the 13th Sultan of Banjar from the Suriansyah dynasty. However, this version of Amuntai is different from the Martapura version found by Eisenberger because there are additional articles after article 30. The contents are the same in articles 1 to 30, but Articles 31 to 38 are very different and close with closing words in the Amuntai version found The Helmerman.¹⁵

The structure of the Sultan Adam Law consists of two major parts, namely (1) the introduction or preamble and (2) the body or content of the law. In addition, Sultan Adam Law is also equipped with Transitional Regulations. The preamble of the Sultan Adam Law contains one paragraph, and the body of the Sultan Adam Law includes 31 cases (31 articles). This law includes matters of religion and worship, Administrative Law issues, Marriage Law, Judicial Procedure Law, Land Law, and Transitional Regulations. All regulations in each section of the articles in the Sultan Adam Law are Islamic law positivism, especially following the Shafi'i school, which is clearly stated in it.

1. Regulation of religion and worship (Articles 1, 2, 3, and 20 in Sultan Adam Law)

Article 1 contains an order to all people to have the intention (to believe) in *ablu al sunnah wa al jama'ah*. Article 2 includes four orders from the

¹⁴ Abdurrahman.

¹⁵ Effendi, "Struktur dan Makna Undang-Undang Sultan Adam pada Masa Kerajaan Banjar Kalimantan Selatan."

King, namely: (i) an order to the village elders to make a *surau*, (ii) an order to all the people to bring their children to pray five times in congregation, (iii) an order to all the people to bring their children Friday prayers, and (iv) orders to all the people to report to the King if there are people or groups of people who are reluctant to pray in congregation and or Friday prayers. All of these commands are intended to counteract the teachings of the *ablal albidaab* belief. Article 3 contains the King's order to all the people so that there are no disputes or disputes among citizens. What is meant by disputation here is primarily a dispute in terms of belief in the faith of religious teachings.

Article 20 contains an order to the village elders to guard the month. That article regulates to determine the beginning of Ramadan (start of the fast of Ramadan), the end of Ramadan (the feast of Eid al-Fitr), the beginning of the month of Hajj (the holiday of Hajj or Eid al-Adha), and the beginning of the month of Maulud (the month of the Prophet's birth). Furthermore, village elders who saw the moon were also ordered to convey it again to the judge, and the judge also brought it to the King.

2. Governance Law (articles 21 and 31 in Sultan Adam Law)

The spearhead of governance is entrusted to the village elders (*tetuba*) even though they do not receive wages from the King. They work sincerely and proudly to maintain security and peace, determine Islamic holidays and others, even take care of land disputes and domestic disputes first brought before the village *Tetuba* as a peacemaker. The division of government tasks in the kingdom's territory started from the *lalawangan* (district) led by a *mantri*; the *lurah* showed several villages assisted by the caliph (*kehalifah*), *bilal*, and *kaum*, and the *pembakal* led a village. There are three obligations burdened to the people: paying votive money, paying the *baktin* money, and carrying out *gawi* and *poepoe pinta*. Nazar is usually done by people who are classified as rich and to avoid the work of *gawi poepoe pinta*. *Gawi poepoe pinta* is the obligation of every people to carry out sincere work for the kingdom and without expecting a reward. In addition to the *gawi poepoe pinta*, the people are also required to pay service fees (*baktin*). The *baktin* fees can be paid with labor or doing some work for the benefit of the kingdom.¹⁶ Sultan Adam also forbade royal servants, such as *mantri*, *lalawangan*, *lurah*, and *pambakal* not to interfere in the affairs of the judges.

3. Marriage Law (articles 4, 5, 6, 18, 25, and 30 in Sultan Adam Law)

Articles 4 and 5 regulate the conditions for a valid marriage according to the Shafi'i school. At a wedding, a man pays a gift (*mabar/dowry*) and makes a promise. The promises called *ekral* are pronounced in front of the wife, judge, and witnesses and become the reason for the wife's right to divorce and sue

¹⁶ Effendi, "Struktur dan Makna Undang-Undang Sultan Adam pada Masa Kerajaan Banjar Kalimantan Selatan."

pasakb (broken) from the wife (article 6). Article 18 regulates how to deal with cases of *barambangan* ("separate beds") with the provision that the husband may not hold or touch (have intercourse) with his wife before there is an agreement to reconcile. To prevent slander in marriage, Sultan Adam Law made an article 25 in which the point is that a husband cannot accuse his wife of being a virgin (not a virgin or not single) without witnesses. Finally, Article 30 concerning the prohibition of adultery, the status of children resulting from adultery called *kampang* children, and the law on adulterers who the King directly imposes.

4. Law of Judicial Procedure (10 articles: Article 7-15, 19, and 24 in Sultan Adam Law)

This section stipulates in detail the duties and functions of the mufti as an adviser, not case breaker, which is the authority of the judge, except by order of the King with a valid appointment letter (royal stamp). It also regulates the prohibition of case lobbying between litigants and those with authority. Judges carry out their duties carefully and progressively, receiving input from the village head (*Lurah*) and caliph. The person sentenced is sentenced and can be assisted by *Bilal* and his clan to clarify the situation. In examining evidence-based cases, the defendant is given the right to reply in front of the village elders without abandoning the mediation process. If mediation is successful, judges can terminate the patient. The judge's decision is considered valid if it has been affixed with the royal seal held by the *ading-ading* (the sultan's younger brother), who holds the duty as mangkubumi, who will keep the archives of the judge's decision. The judge's decision is considered final and cannot be contested.

5. Land Tenure Law (Article 17, 23, 26, 27, 28, and 29 in Sultan Adam Law)

Article 17 regulates the recording and bookkeeping system of muamalah transactions, especially land-related, to avoid land disputes. Article 23 governs the expiration period (20 years or more) in claiming land ownership rights, almost the same as *verjaaring* in the Civil Code. Article 26 also stipulates an expiration period of 10 years for the heirs against claiming the rights to the inherited land that the testator has previously traded. Article 27 concerning claims for arable land disputes, and if the plaintiff wins the case in court, the plaintiff who wins the case may not claim land rent as long as the land is in the hands of his opponent. Article 28 concerning abandoned land is considered to have no owner to be managed by residents, especially Halabiu village residents or Negara village residents. Article 29 determines the expiry date of land ownership that has not been cultivated for two seasons so that the people make the best use of the land.

6. Transitional Regulations are outlined in the middle of the Sultan Adam Law, namely Article 16.

Article 16 regulates three things, namely (i) regulations that existed before Sultan Adam must be accepted or are not allowed to be reformed again, (ii) Somebody can revise the regulations contained in the Sultan Adam Law if it turns out that the contents of the law are clearly wrong, (iii) who has the right to revise the Sultan Adam Law is the judge.

Sultan Adam Law as a Political Product of Islamic Law of the Kingdom of Banjar

Sultan Adam is the sultan who is strict in carrying out worship and is respected by the people. He was also one of the sultans who was very concerned about the development of Islam.¹⁷ During the reign of Sultan Adam, the Kingdom of Banjar underwent a process of change in the way of life of the state and society due to the influx of Dutch colonialism and the entry of foreign cultures, especially Christianity. Sultan Adam issued a law on the 15th day of the month of Muharram 1251 H or 1835 to counteract the influence of Western civilization and strengthen the unity of the kingdom and the unity and integrity of the Banjar people.

As a king, Sultan Adam can regulate the people to submit and obey his orders with a specific purpose. Sultan Adam created Sultan Adam Law with the aim that it can be judged as his legal politics as stated in the preamble of the Sultan Adam Law Martapura version and in Dutch as follows:

“Pada hoedzrat¹ 1251 pada hari kamis jang kelima belas hari boelan Almoeharram djam poekoel sambilan pada koetika itoelah akoe Soeltan Adam memboeat oendang oendang pada sekalian ra’iatkoe soepaja djadi sampoerna agama ra’iatkoe dan atikat mereka itoe dan soepaja djangan djadi banjak djadi² perbantahan mereka itoe dan soepaja djadi kamoedahan segala hakim hakim mangboekoemkan mereka itoe akoe harap harap djoea bahwa djadi baik sekalian hal mereka itoe dengan sebab oendang oendangkoe ini maka adalah oendang oendangkoe ini beberapa perkara” (Martapura's version of Banjar Malay)

“In het jaar 1251 op Donderdag den vijftienden dag van de maand al’ moharam, ‘s morgens te negen ure, heb ik Sultan Adam deze verordening uitgegeven voor al mijne onderdanen opdat hun godsdienst en hun geloof volmaakt worden en opdat tusschen hen niet veelvuldige geschillen mogen bestaa--zoomede dat het den rechter gemakkelijker moge worden recht over hen te spreken. Ik hoop zeer dat al hunne verbondingen door deze mijne verordening geregeld (goed) mogen worden. Deze verordening bevat de volgende artikelen” (Martapura's Dutch version)

¹⁷ Gusti Khairul Saleh, *Manaqib Sultan Adam Al-Watsiq Billah Martapura Kalimantan Selatan* (Kalimantan Selatan: Yayasan Sultan Adam Al-Watsiq Billah, 2001), Hal. 6.

According to Rustam Effendi, the preamble of the Sultan Adam Law implies that Sultan Adam has three objectives in making Sultan Adam Law a legal product. Namely first, for the perfection of religion and faith; second, to maintain harmony so that there is no dispute; and, third, to facilitate judges in deciding a case during their reign so that the people become good.¹⁸

The first objective indicates that when Sultan Adam made the Sultan Adam Law, religion and people's intentions were still rudiments. Ideham et al., in the book *History of Banjar* (2003), quoted by Efendi, explained that in the period before Sultan Adam Law was drafted, two Banjar scholars taught Sufism which was very different from the methods developed by the royal cleric Sheikh Muhammad Arsyad Al-Banjari. The Sufism in question is the Sufism of Wahdatul Form which was developed by two Banjar scholars named Sheikh Muhammad Nafis bin Ideris bin Husein Al-Banjari and Sheikh Abdul Hamid Abulung. Sheikh Muhammad Nafis and Sheikh Abdul Hamid Abulung taught Sunni Sufism which was expanded with Wahdatul Wujud Sufism. Wahdatul Wujud is a tradition that teaches that nature (including humans) is one breath so that it cannot be separated. Nature is God, and God is Nature. Sheikh Abdul Hamid Abulung said, "No one exists but only Him. There is no me but Him. He is me. And I am Him".¹⁹

The second objective is also related to the 'hot' situation in religious life. On the one hand, the King and Sheikh Arsyad Al-Banjari wanted the Shafi'i school, *ahlusunah waljama'ab*, as the only school in the Banjar kingdom. On the other hand, there was also Sheikh Muhammad Nafis or Sheikh Abdul Hamid Abulung. He developed the school or flow called *wahdatul form*. The *intention of ahlusunah waljama'ab* is the religion of Islam based on the Sunni ideology and the Samaniyah tradition.²⁰

The third objective is to make it easier for judges to decide cases. The judge of the Banjar Kingdom is the person appointed by the King, and that person must understand the Islamic religion of the *Ahlusunah waljama'ab* school of Islam. The judges' knowledge of Islam is essential because Sultan Adam Law contains 31 thoroughly imbued with Islamic teachings. Jamali (2012) stated that the spirit and desire of Sultan Adam to ground the teachings of Islam based on the *ahlusunah waljama'ab* school were so at the forefront of Sultan Adam Law.²¹

Al Amruzi et al. considered that Sultan Adam Law is a progressive law because as a legal instrument, this law can get out of existing traditions and respond to society's problems and always strives to find meanings continuously.

¹⁸ Effendi, "Struktur dan Makna Undang-Undang Sultan Adam pada Masa Kerajaan Banjar Kalimantan Selatan."

¹⁹ Effendi.

²⁰ Effendi.

²¹ Effendi.

New and not shackled to absolute sense. This law can also act as a law that lives in the community and can meet their needs.²² Sheikh Muhammad Arsyad Al-Banjary inspired Sultan Adam by several breakthroughs made in his grandfather's era, Sultan Tahmidillah (1561-1801). Sultan Adam reaffirmed the idea of Sheikh Muhammad Arsyad Al-Banjary to form a Mufti and Qadhi institution to implement Islamic Shari'a following the principle of *ablusunah waljama'ah* to continue to be obeyed by the people,²³ as stated in article 16 (transitional rules) Sultan Adam Law, which reads:

"Mana mana segala perkara jang doeloe dari pada zamankoe tiada koebarikan dibabak lagi dan mana mana segala perkara pada zamankoe adja dibabak diboedjoerkan oleh hakim" (Martapura's version of Banjar Malay)

"Zaken van voor mijnen tijd (voor den aanvang mijner regeering), mogen niet meer in behandeling worden genomen, maar zaken gedurende mijn tijd (de tijd mijner regeering) is gebleken dat er een fout is begun. (Dutch version of Martapura)

Article 16 regulate three things, namely (i) regulations that existed before Sultan Adam must be accepted or are not allowed to be revised (remodeled) again, (ii) regulations contained in the Sultan Adam Law may be changed if it turns out that the contents of the law it is clear that the error is clear, (iii) the judge has the right to overhaul the Sultan Adam Law. The critical meaning contained in this article 16 is that Sultan Adam Law only contains additions and reinforcements to regulations made by previous sultans that have not been made in writing.²⁴

However, according to Abdurrahman's hypothesis, the position of *Qadhi* (judge) at the time of Sultan Adam was most likely not functioned (not abolished), where Sultan Adam immediately took over the position of Qadhi. The function of the sultan as a political and religious ruler is based the reason. In Sultan Adam Law, the dominant authority of Sultan Adam in making and enforcing Sultan Adam Law can see. He placed his name to signed it as stated in the preamble: "*Aku Sultan Adam memboeat oendang-oendang pada sekalian rakjatku ...*".²⁵ Sultan Adam involved the ulema as "resources" in its preparation, namely Hadji Djamaloedin (son of Sheikh Muhammad Arsyad Al-Banjari).²⁶

²² Amruzi, Umar, dan Hafidzi, "Sultan Adam Law in The Progressive Law Perspective in Banjar Communities In The 18th Century Ad."

²³ Mufti as the highest official who functions as the highest judge, religious advisor and supervisor of the Banjar Kingdom court as a whole. Meanwhile, Qadhi functions as the executor of the law that regulates the course of the *syar'iyah* court.

²⁴ Effendi, "Struktur dan Makna Undang-Undang Sultan Adam pada Masa Kerajaan Banjar Kalimantan Selatan."

²⁵ Martapura's version of Sultan Adam Law.

²⁶ Hadji Jamaluddin's name was mentioned by Sultan Adam in aerticle 31 of the Sultan Adam Law. Effendi, "Struktur dan Makna Undang-Undang Sultan Adam pada Masa Kerajaan Banjar Kalimantan Selatan."

According to M. Faqih de Rida, the local nuanced Islamic law regulated in the Sultan Adam Law indicated that the ruler (Sultan) does not consider it a problem if the social rules of society are based on Islamic law. The first reason was that the people at that time had long embraced Islam. Second, the factor of the ulama as a figure can be accepted by all parties and becomes a social glue.²⁷ The Kingdom of Banjar at the time of Sultan Adam was a theocratic state. In a theocratic state, the King considers himself to be the executor of God's law. So that the implementation of God's law can be carried out properly, the King asked the scholars to be directly involved in the government. Ulama leads religious ceremonies and, more than that becomes advisors to the King in making decisions.²⁸

In addition, Rida considered that Sultan Adam had an interest in perpetuating his power, which was actually *de jure* weak because the Dutch had controlled it. At the time of Sultan Adam, Banjar was already under Dutch rule and only had the status of a vassal state even though it was still recognized as a kingdom. Sultan Adam's policies were challenging to heed because his political power was fragile. Nevertheless, the Dutch still gave Sultan Adam space to lead the community. For this reason, the sultan is required to be able to translate this recognition into "like" political power with his strategy through the implementation of the law and his position as a *Qadhi* (judge) who has the capacity as a religious leader who is more obeyed by the community than the King. The Banjar community is a society known to be thick with Islamic (tradition), which continues on social compliance. People are more obedient to religious leaders than rulers so that the legal power exercised by the ulama contains formal and non-formal submission.²⁹

In the aspect of implementing and enforcing the law, Sultan Adam Law has succeeded in forming a society following the purpose of its formation. In fact, according to Al Amruzi et al., several legal provisions in the Sultan Adam Law are still valid and inherent in the lives of the Banjar people until now.³⁰ Include the establishment of a *surau/mushalla* in every village, the culture of praying together. Some of the rules regarding marriage are a source of law in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) (Presidential Instruction Number 1 of 1991). Except for the *barambangan*, which does not appear to be included in the two products of the

²⁷ M. Faqih Ridha, "Potret Lain Perjalanan Hukum Di Kerajaan Banjar," *Al-Banjari: Jurnal Ilmiah Ilmu-Ilmu Keislaman* 12, no. 1 (14 Agustus 2015), <https://doi.org/10.18592/al-banjari.v12i1.452>.

²⁸ Effendi, "Struktur dan Makna Undang-Undang Sultan Adam pada Masa Kerajaan Banjar Kalimantan Selatan."

²⁹ Ridha, "Potret Lain Perjalanan Hukum Di Kerajaan Banjar."

³⁰ Amruzi, Umar, dan Hafidzi, "Sultan Adam Law in The Progressive Law Perspective in Banjar Communities In The 18th Century Ad."

National Law. That proves that the purpose of establishing Sultan Adam Law by Sultan Adam has succeeded in forming a community structure that persists with a solid religious culture by maintaining the symbols of the existence of Islam, especially in the sphere of worship and muamalah. In line with the opinion of Lawrence M. Friedman, that the law has the functions of dispute settlement, social control, social engineering, and social maintenance, and politics play a role in maintaining and adapting systems, conversions, and capability functions.³¹

Regardless of whether the hypothesis is true or false about the purpose of making the Sultan Adam Law, we can deny the legal politics of establishing the Sultan Adam Law that it occurs within the scope of power. In the first hypothesis, against the three objectives stated in the preamble of the Sultan Adam Law, we can study that the differences in understanding and implementation of Islamic law teachings that occurred during the time of Sultan Adam contained potentials and resistances that went hand in hand. For this reason, in the study of legal politics, it is necessary to harmonize potential and resistance through academic instruments that are multi-functional, constructive, and solution-oriented. The natural diversity of social-mental attitudes and laws gives rise to fluctuating patterns of interaction between people and always intersects with the political dimension.³²

Politics is often associated with an administration of government and the state. Politics is a process of formation and distribution of power in society manifested in the decision-making process, especially in the state.³³ Politics as part of power has a dependence on the law. If it is related to the current politics in Indonesia, it must be submissive and obedient to the constitution and local wisdom. Meanwhile, the politics referred to in Sultan Adam Law refers to the Islamic law adopted by the sultan to solve socio-religious problems in his area of authority as local wisdom. Politics and law are interrelated and need each other. According to Mochtar Kusumatdkadja, law without power is wishful thinking, and authority without the law is despotism.³⁴ According to Salman Luthan, this statement implies that the rules of law will be of no use if they are not enforced, and the law can only be implemented with power, and power without the law will lead to arbitrariness.³⁵ This opinion aligns with Hans

³¹ Yasin, *Politik Hukum Ekonomi Syariah di Indonesia*, 11.

³² Yasin, 11.

³³ Rosdalina Bukido dkk., "Ilmu dan Kepentingan Politik Tinjauan Hukum Islam," *Al-Istinbath: Jurnal Hukum Islam* 4, no. 1 (26 Mei 2019): Hlm. 71, <https://doi.org/10.29240/jhi.v4i1.780>.

³⁴ Mochtar Kusumaatmadja, *Fungsi dan Perkembangan Hukum dalam Pembangunan Nasional*. (Bandung: Bina Cipta, tt), 5.

³⁵ Dikutip oleh Yasin dari Sultan Luthman, "Dialektika Hukum dan Kekuasaan", *Jurnal Hukum*, No. 14 Vol.7, Agustus 2000. Yasin, *Politik Hukum Ekonomi Syariah di Indonesia*, hal. 85.

Kelsen's theory of legal function, which says that "law is a political instrument," the law cannot be separated from politics.³⁶

Conclusion

Based on the results of this study, there are two conclusions. Firstly, Sultan Adam al-Watsiq Billah served as the last King of the Banjar kingdom for 32 years (1835-1857 Masehi), who succeeded in Islamic law positivism in Sultan Adam Law 1835. With his position, Sultan Adam had the authority to make norms binding law for its people through 31 articles (the Martapura version) contained in Sultan Adam Law 1835. Second, Sultan Adam Law 1835 is a political product by King Sultan Adam al-Watsiq Billah with three objectives of its formation. Namely, the perfection of religion and the intentions of Muslims, maintaining harmony and the unity of Muslims, and as a material and formal law to facilitate judges in deciding a case during their reign so that the people become good. Sultan Adam has legal-political authority because he is both a king and a religious leader (*qadhi*), informally establishing the law in Sultan Adam Law. According to the Theocratic States in the Banjar Kingdom, the King is the executor of God's law, and the Banjar people are known to be more obedient to religious leaders than to rulers. In its implementation, Sultan Adam Law can have succeeded in forming a community following its formation. Several legal provisions in the Sultan Adam Law are still valid and inherent as legal culture in the life of the Banjar people until now.

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³⁶ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russel Sage Foundation, 1975), p.5

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