INTRODUCTION

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Community holds significant role in shaping the civilization. It embedded by the values which developed throughout the time. Community could be built by certain factors, such as: history, culture, traditions, religions, important stories, teaching, anti-corruption spirit, and specific regulation for the member. Accordingly, these particular aspects could create values that distinguished one community to another.

These values often called as local wisdom and customary practice. Historically, the term local wisdom has been used to describe the knowledge which fundamentally used and applied with harmony by community members. Local wisdom may be defined as a systematic process which consists of three elements or components: derived from experiences, integrated the spirit of community and can be both abstract and concrete.

Whereas in the literature, the term customary practice tends to refer to the massive activities and have been a routine and repeated all the time. It could be translated in both side, bad and good intention. Fundamentally, shariah principle recognizes the customary practice as a consideration. But, relying solely on customary practice is not sufficient to established the legal approach. Therefore, the local wisdom and customary practice need to be implemented all together.

The discussion on adopting local wisdom and customary practice to the modern court always fascinating. For instance, how both modern court and local values treat the victim and defendant. Let’s take the Rome Statute of the International Criminal Court (ICC) as the example. The ICC obliged to provide the victims a legal standing and could be formally allowed to participate during the court. On the other hands, the defendant has rights to an utterly fair trial, no matter how evil and hated the defendant was.

Preserving the rights of human being is one of the objectives in Shariah. Eventhough, the defendant strongly belief has commited the crime, but all the procedures in litigation process must be applied. This due to the aim to realize the just trial for all stakeholder in the court.

Moreover, Sharia law and jurisprudence acknowledge the individual rights within the family. The context of Islamic family law has been confined and suited the Muslim civilisation as part of the inclusive shariah principles. However, the practical applications of Islamic family law have the attempt to enact traditional doctrine that derived from customary bad practice. From this situation, it could lead into discrimination against one particular party. As a result, local wisdom and religious aspect has been moved aside and the justice to both party that involved in the dispute often being ignored.

From such discussion, lesson learned is about the internalisation of local wisdom, shariah and how civilisation in the past developed by using their values. It will create the responsibility and conceptualize the construction of litigation process in order to preserve the human rights. By using previous legacy and local wisdom, protecting human rights and actualising the objectives of Shariah, we able to see wider picture of bright future of justice implementation.
Islamic Legacy and Local Wisdom

The dispute settlement always finds the alternative ways. This due to inability of dispute parties to solve the disputes on their own. One of such alternatives is advocacy. The advocacy approach being employed in various types of disputes. Asri Wijayanti, Lelisari, Indah Kusuma Dewi, Chamdani and Satria Unggul Wicaksana Prakasa in their part examine the Mbojo tribe local wisdom in Bima, Nusa Tenggara which based on Shariah principle. Under the titled “The Mbojo Local Wisdom as an Alternative for The Settlement of Industrial Relations Disputes” stated that the advocacy approach derived from Mbojo local wisdom could be an affective way to solve the problem. In addition, there are 1340 local ethnic groups in Indonesia with their specific values and wisdom yet to be implemented. This is a great potential resource to elaborate such wisdom into advocacy by the government.

Indonesia has massive communities with high level of diversity. In early days, Indonesia used to be ruled by numerous types of government such as kingdoms and sultanate. This previous sovereignty inherited a unique type of justice and law implementation based on Islamic Shariah principles. Muhammad Fazlurrahman Syarif and Muhammad Syauqi Bin-Armia toke part of this study. Trough their section “The Contribution of Islamic Kingdoms in the Development of the Islamic Judiciary in Indonesia: Historical Legal Approach Analysis” explained how previous scholars were working together. Judges and scholars among these kingdoms share their experience and expertise to meet the need of justice implementation. Some of these scholars written down about their cases being handled and not to mention the ones who take previous writing as their references. Although the Islamic court is still the same, but the law implementation is still different where the later were refered to customary practice.

Court and Sentencing; Between Defendants’ Intention and Victims’ Participation

As was pointed out in the previous part to this paper, the judge’s decision on defendant based on proven objective and subjective facts, but the later is rare to be basic of the consideration. Eltonsius Banjo, Surastini Fitriasih and Eva Achjany Zulfa on their part examine the Article 2 and Article 3 of the PTPK Law. Their finding indicated that the court explored heavily on maladministration and financial loses within the corruption case and court. Meanwhile, the important factor of subjective fact, such as “intention” is least considered. Ideally, both objective and subjective facts need to be accomodated. Briefly, the sentence of the defendant needs to be proven by their intention as well, not solely maladministration and financial loses.

As previously stated, the intention to reapplying both objective and subjective facts is to preserve justice. Another focus on preserving justice is to allocate the participation from the victims. Oriola O. Oyewole believes that the victim's participation has important role. From the article “Delineating the Rethoric? The Intersection of Retributive and Restorative Justice in International Sentencing” stated that in the International Criminal Court, the victim has to participate. There is a need to justice restoration within criminal sentencing and victims during the trial has to be navigated. Thus, the article takes a position of study in victims hearing and reviews, in addition the discussion of post-sentencing during rehabilitation.
The Essence of Islamic Family Law within the Shariah Objectives

As discussed above, the preserving rights and local wisdom implementation, the Islamic family law takes important role as well. Divorce, where the majority of the case within the Islamic family law quit often being a hot topic. Thus, due to derivative impact of the rights allocation after the divorce. Khairani Mukdin, Zahrul Bawady, Tarmizi M.Djakfar and Muhammad Riza Nurdin discussed the No-Fault Divorce rule that has been implemented in Indonesia. Their article “Application of No-Fault Divorce Legal Rules as a Basis for Judges Considerations: A Case Study of Indonesia” explored the correlation of implementation Maqashid Shariah (objective of shariah) and No-Fault divorce. They stated that No-Fault divorce as primary considerations in Indonesian religious courts against the maqashid shariah. It’s true that No-Fault divorce could make the process much faster. However, the information of the cause of the divorce needs to be investigated as well in order to preserve justice. This is crucial, due to the rights of child custody and common property rights.

Thus far, the introduction has argued that the sharia principle accepted the local wisdom and customary practice as long as in line with shariah principle. This also to ascertain human rights and justice being preserved as best as possible. All articles published in volume 7 no. 2 have been thoroughly selected and appraised by the reviewer and experts.

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