

Meaning and Legal Position in Thoughts of Syeikh Muhammad Arsyad Al - Banjari

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Abstract: This article aims to analyze with the juridical discriptical method of the meaning and position of law. The text of Sheikh Muhammad Arsyad Al Banjari (1122 H-1227 H / 1710 M-1812 AD) in the book of *Sabil al-Muhtadin li at-Tafaquh fi Amr ad-Din* has a philosophical dimension, and history, no one has previously examined the meaning and position of the law in thought of Sheikh Muhammad Arsyad Al Banjari as the basis of the formation of law by the Institution of the Sultanate of Banjar around the XVIII-XIX century. The text of Sheikh Muhammad Arsyad Al Banjari in the field of *syari'ah*, as well as the influence and practice of Sheikh Muhammad Arsyad Al Banjari in the Sultanate of Banjar during the reign of Sultan Tahmidullah bin Sultan Tamjidullah able to surpass the institution of the sultanate of Banjar, so the Sultan uses the script of thought Sheikh Muhammad Arsyad Al Banjari in running the imperial government in terms of achieving justice and the welfare of the people at that time. One of the texts even in the time of the Sultanate of Adam was used as a reference as the forerunner of the birth of the Sultan Adam's Law and until now it is mentioned in the Marriage Law No. 01 of 1974 article 35.

1 INTRODUCTION

Y Study of Meaning and Legal Position "The thought of Sheikh Muhammad Arsyad Al Banjari in the Sultan of Banjar administration system" is a field of law study, especially the science of constitutional law, which is indirectly related to philosophical, political, and historical point of view.

In the perspective of the study of law, there are important things that need to be explained first is: what or what will be studied from the Thoughts of Sheikh Muhammad Arsyad Al Banjari in the system of the Sultan of Banjar ". Is the script or the contents of the action of Sheikh Muhammad Arsyad Al Banjari in the administration system of Sultan Banjar ", and / or both. According to the author, both are equally important because: on the one hand, 'The thought of Sheikh Muhammad Arsyad Al Banjari in the system of the Sultan of Banjar administration' is a political act that creates a new law (*rechtsscheppen*). On the other hand, the 'text' itself serves as a form of legal proof (*rechtsvaststellen*) on the sultan's policy of Banjari. This is in line with what will be extracted from this study is the essence and existence of the Text of Thought Sheikh Muhammad Arsyad Al Banjari in the government

system of Sultan Banjar "in the Sultanate of Banjar Sultanate.

The legal issues that arise are: what is the legal meaning of the Thoughts of Sheikh Muhammad Arsyad Al Banjari in the system of the Sultan of Banjar's government "; The thought of Sheikh Muhammad Arsyad Al Banjari in the Sultan of Banjar government system "is a political or legal action; Is the Text of Thought Sheikh Muhammad Arsyad Al Banjari in the Sultan of Banjar administration system "can be qualified as" norm "(legal norm); What is the legal basis of the binding force of the Text of Thought Sheikh Muhammad Arsyad Al Banjari in the system of the Sultan of Banjar "; Why the Sultanate of Banjar and the Indonesian Ulama especially the people of South Kalimantan respects, obeys, and implements the values, principles and principles contained in the text of the Thinking Sheikh Muhammad Arsyad Al Banjari; as well as the extent of the substance of the Text of Thought Sheikh Muhammad Arsyad Al Banjari in the system of the Sultan of Banjar administration "has been used as a spirit in the organization of national and state life in the Sultanate of Banjar at that time.

On the other hand, the problem of the legal position of the Text of Thought Sheikh Muhammad Arsyad Al Banjari in the system of Sultan Banjar administration "is equally important to be examined on this occasion. Conceptually, whether the Text of Thought Sheikh Muhammad Arsyad Al Banjari in the Sultan of Banjar administration system "can be qualified as Grundnorm in the sense of Hans Kelsen or more precisely as staatsfundamentalnorn in the sense of Hans Nawiasky.

Practically speaking, it is also questionable where the legal position of the text of the Thoughts of Sheikh Muhammad Arsyad Al Banjari in the system of the Sultan of Banjar 's government is: Is in the realm of the material legal source or the source of formal law; then if linked in the perspective of the provisions of the laws and regulations prevailing in the time of the Sultanate of Banjar at that time, where is the legal position of the Thoughts of Sheikh Muhammad Arsyad Al Banjari in the system of the Sultan of Banjar's administration? as well as the extent to which the implications of the meaning and legal position of the Thought Sheikh Muhammad Arsyad Al Banjari in the government system of the Sultan of Banjar "to the implementation of life of nation and state in the Sultanate of Banjar at that time.

Back to the question of the legal meaning of Sheikh Muhammad Arsyad Al Banjari in the system of Sultan Banjar administration ". To deepen the meaning of the thought of Sheikh Muhammad Arsyad Al Banjari is essential, it is not enough just to read the text of Thought Sheikh Muhammad Arsyad Al Banjari in the system of the Sultan of Banjar ". Rather it must be seen the historical context behind it, as well as the factors that influence the text of the Thinking Sheikh Muhammad Arsyad Al Banjari in the system of the Sultan of Banjar administration "made the policy of Sultan Banjar.

In the context of a more holistic study, the values, principles and principles of Islam from Sheikh Muhammad Arsyad Al Banjari in the system of the Sultan of Banjar administration "can only be known that the meaning of the text is related to the substance of the Qur'an and hadith.

The author performs an integrated interpretation (integrated) between text, context, and contextual. This is in line with this method of interpretation in philosophy known as the "Hermeneutics" method (

Whereas to know where the position of the law of Sheikh Muhammad Arsyad Al Banjari in the system of the Sultan of Banjar ", theoretically the least possible approach with two points of view:

First, in the perspective of Stufenbautheorie or Stufenbau des Rechts Hans Kelsen. It is subdivided into two theories of "the theory of the origin of the source of law" which is always associated with the terminology of Grundnorm and the "legal ladder theory" in relation to a hierarchical order of the laws of a country. For the latter, by Hans Nawiasky called the theory of Die Theorie vom Stufenaufbau der Rechtsordnung . Second, it refers to the theory of the source of law, namely the source of material law and the source of formal law.

The side of philosophical study of some of the above problems lies in ideas containing the values of "truth" and "justice" in bringing about prosperity and justice. Or with the reverse assertion that all forms of the ideology are contrary to the values of faith, therefore it becomes a common enemy. Epistemology about: what is the meaning of zakat thought Sheikh Muhammad Arsyad Al Banjari; what is the essence of the empire, why the empire exists; or where the empire came from. This problematic thing is difficult to ascertain before, although the meaning of productive zakat thought, custom of abstinence, tabala, Sheikh Muhammad Arsyad Al Banjari and the factors of sultanate policy can be studied and still open to debatable.

Another philosophical reflection of the meaning of the thought of Sheikh Muhammad Arsyad Al Banjari in the area of the Banjar sultanate is perhaps traceable from the conception of man as an individual being (creature of God) who has been given freedom in making his choice responsibly . As a nation, the people of the sultanate of Banjar also attached the right to self-determination (self-determination) as a sultanate.

The side of his political studies, lies in the reality that the thought of Sheikh Muhammad Arsyad Al Banjari is a single political act that expresses his opinion as a cleric in the Sultanate of Banjar. The problem is where to find the source of political legitimacy for Sheikh Muhammad Arsyad Al Banjari as a cleric at that time so that his thoughts became the source of law by the Sultan in arranging the rules and policies of the Sultanate at that time . While the side of historical studies is whether the thought of Sheikh Muhammad Arsyad Al Banjari is the result of the study that during it was done on the way to Mecca and Egypt. As to whether the conception of the thought of Sheikh Muhammad Arsyad Al Banjari built in the fight against conventional thinking earlier at that time.

Departing from some of the main issues (main problems) above, according to the writer is in need of a deep understanding so that this research / study,

given the juridical, meaning and legal position of the Text of Thought Sheikh Muhammad Arsyad Al Banjari in the system of government Banjar Kesultanan "until now is still used by the community, compared to now the role of ulama is only for the purpose of da'wah in society, while in the present government system the role of ulama has not significant meaning in the life of nation and state. Similarly, at the implementation level, there are occasional government policies that are still far from the ideals and spirit of justice and prosperity. The authors' expectations of this research study can be one of the links for on going legal reform efforts being undertaken by various parties. Sheikh Muhammad Arsyad Al Banjari wrote the book of Sabil al-muhtadin to meet two needs: cultural needs and structural needs. Cultural needs, because Sheikh Muhammad Arsyad Al-Banjari sees the existence of the emptiness of the fiqh book Malay language in the country while the structural needs, the request of the sultan Tahmidullah bin Sultan Tamjidullah to Sheikh Muhammad Arsyad Al Banjari to write books of jurisprudence in Malay. The Book of Sabil al Muhtadin is integrative between the Sultan's wishes with the wishes of al-Banjari as the Application of Law and Islamization to be the guideline of the life of a country. The legal product that was built by Sheikh Muhammad Arsyad Al Banjari is good if it is felt the effect by the life of the society and keep the law which still applied still relevant in Banjar society until now.

In the perspective of Kelsen's theory of "legal origin" ; value, soul, and spirit contained in the Text of Sheikh Muhammad Arsyad Al Banjari Thinking of his legal position as the basic norm. In the perspective of Nawiasky's "legal ladder" theory, his legal position as Staatsfundamentalnorm. Whereas in the perspective of the theory of "source of law": Substantively, the existence of Sheikh Muhammad Arsyad Al Banjari Script can be categorized in the source of material law; Formally or in terms of its legal form (after being formalized into the Rules of the Sultanate), the Text of Sheikh Muhammad Arsyad Al Banjari's Thought is the foundation for the establishment of the positive law of the sultanate. The law offered is to re-actualize the meaning of freedom of thought of independent and modern Sheikh Muhammad Arsyad Al Banjari without the influence and pressure of power both internal and external, renewed policy conceptions of the institution of sultanate, sovereignty and thought of ulama, and the source of law of the institution of the sultanate.

Referring to Ibn Khaldun's thought that "the people will follow the religion and customs of their kings" . The existence of Islamic political institutions is a strong indication that Islamic law has been applied in the life of the archipelago at that time, the kings together with the ulama encouraged their subjects to follow the rules and regulations set forth within the scope of royal political institutions and to enforce Islamic law as positive law .

The Banjar Sultanate of XVIII-XIX centuries which in its time was born a scholar named Sheikh Muhammad Arsyad Al Banjari 1710-1812M author of the book Sabil al- Muhtadin li at-Tafaqquh fi Amr ad-Din. was born in the village of Lok Gabang on Thursday 15 Safar 1122 H, coinciding March 19, 1710M.

Regarding the text on sheikh Muhammad Arsyad Al Banjari can be said to be still in a marginal position in Islamic historiography in Indonesia, the existing form of writing is limited to a discussion centered on Sheikh Muhammad Arsyad Al Banjari, not in the relationship and position of ulama in general. Although Sheikh Muhammad Arsyad Al Banjari there are some similarities with the position of ulama in Javanese and Sumatran societies, but in it is also tucked uniqueness due to various factors that surround it.

The name of Sheikh Muhammad Arsyad Al Banjari is attributed to his origins from Banjar (Borneo or South Kalimantan today). The term Banjar itself is a brief mention for Banjarmasin. A great Sultanate that once stood in Borneo. The term Banjarmasin is called for Kampung Oloh Masih or Orang Melayu . The origin of Banjar itself seems to be the second wave of Malays who migrated to Borneo from Sumatra in the past. The first wave was the Malays who had already settled in Borneo or Kalimantan now. The people of this first wave were then pressed by the arrival of the Banjar people. They (the first wave people) then shifted into the interior, which later called the Dayaks .

Sheikh Muhammad Arsyad Al Banjari as a study in this study due to several considerations. First, he is an independent and modern mujtahid who gives the spirit to make ideas and thoughts in implementing Islamic law in the life of a new state without having to tie to an old heritage that is less suited to the era at that time; second, he is a productive scholar with his various works in the field of fiqh and ushul fiqh, da'wah, politics, education, Islamic economics, tasawuf, third, insight fiqh Sheikh Muhammad Arsyad Al Banjari The flood that leads to the attitude of tawasut (moderate) and realistic to the changes of time so that

acceptable modern society, fourth, able to communicate contemporary problems with the way of thinking modern people, fifth, fatwa-fatwas have scientific weight and very influential in the Islamic world, , as an advisor to Sultan Sheikh Muhammad Arsyad Al Banjari contributed many legal thoughts to the sultanate of Banjar so the sultan ordered Sheikh Muhammad Arsyad Al Banjari to make the book as a guide for life especially Banjar and Banjar people in general and the book is called *Sabil al-Muhtadin li at -Tafaquh fi Amr ad-Dîn*, the book in the Sultanate of Adam used as a reference as the forerunner of the birth of the Law of Sultan Adam and became one of the reference Compilation of Islamic Law in Indonesia.

Understanding the meaning and legal position of Thought Sheikh Muhammad Arsyad Al Banjari uses several theories, among: Hermeneutics Theory, Stufenbau des Rechts Theory and Theory of Law Resources, as a knife of analysis.

To meet the two demands: the demands of cultural needs and structural needs, cultural needs, because Sheikh Muhammad Arsyad Al Banjari sees the existence of a vacuum of Malay-speaking jurisprudence in the country while the structural need, demand from Sultan Tahmidullah bin Sultan Tamjidullah (1761-1801 M) to write the book of jurisprudence of Malay is the Book of *Sabil al-Muhtadin li at-Tafaquh fiAmr ad-Din*. The book is a reference of Islamic law in the sultanate of Banjar which nuanced Islamization but was opposed in the Dutch colonial era. The object of investigation in this research is Sheikh Muhammad Arsyad Al Banjari Textile Thoughts, while the main problem to be solved is about the meaning and position of law of Sheikh Muhammad Arsyad Al Banjari Thoughts in the royal system of Banjar Sultanate.

Based on the object of research above, the type of research used is "normative legal research", with approaches: "juridical-philosophical", "historical", and "comparative law". The focus examined in the normative legal research method is to examine the rules and legal principles associated with the meaning and position of the law. Thought Sheikh Muhammad Arsyad Al Banjari and its implications . While the approach method used with the juridical-philosophical Approach. The juridical approach is used to study the meaning of law and the legal position of the Text of Thought Sheikh Muhammad Arsyad Al Banjari in the constitutional system of the Sultanate of Banjar. While the philosophical approach that the author means is to use "hermeneutics". The philosophy of hermeneutics is the philosophy of the nature of things to understand

or to understand something, namely philosophical reflection that analyzes and interprets a text (including the Text of Sheikh Muhammad Arsyad Al Banjari). Things or activities understand something essentially the same as the activity of interpreting .

Historical approach, used to examine the essence and existence of the text of Sheikh Muhammad Arsyad Al Banjari Thought in the context of its legal history. This means in what kind of atmosphere Thesis Sheikh Muhammad Al-Arya Arsyad Banjari was prepared, and what the motivation and purpose of the Sultanate of Banjar makes the text becomes the policy of the Sultanate of Banjar in running the life of the Sultanate of Banjar.

The legal history approach approach must also meet objective, logical, and honesty requirements . Comparative legal approach. In order to evaluate and find the meaning of law and correctly positioning the legal position of the Text of Thought Sheikh Muhammad Arsyad Al Banjari in the archipelago system of the archipelago at that time.

2 PROBLEM IDENTIFICATION

We Based on the description on the background, the problem identification is formulated as follows:

- a. What is the legal meaning of the text of the Thoughts of Sheikh Muhammad Arsyad Al Banjari, so that it can be qualified as the basis for the formation of the law?
- b. How is the legal position of the text of Thought Sheikh Muhammad Arsyad Al Banjari in the system of the Sultanate of Banjar?
- c. How far the implications of the meaning and legal position of the Text of Thought Sheikh Muhammad Arsyad Al Banjari against the implementation of the state life in the Sultanate of Banjar?

3 PURPOSE AND PURPOSE OF RESEARCH

The purpose of this study is to examine critically to find a clear and precise conception of the meaning of law and legal standing Thought Sheikh Muhammad Arsyad Al Banjari in the system of the Sultanate of Banjar. With this conception, it is further expected to find the meaning of law and to set clear benchmarks on the Text of Thought Sheikh Muhammad Arsyad Al Banjari as the foundation of the formation of positive law that time in the

Sultanate of Banjar. Subsequently positioned or precisely placed the legal position of the Text of Thought Sheikh Muhammad Arsyad Al-Banjari, both in the theoretical level (Stufenbau's theory, Kelsen-Nawiasky and the theory of the source of law) and in the practical level developed in the monarchical system of state administration at that time.

The usefulness of this research is academically, the findings can be used as a basic reference for the development of theoretical law, especially in the legal sciences normative and especially on the science of law of the country. Practically, the findings can be a source of inspiration for all government and community organizers in realizing the aspirations of a nation and a just state in an essential.

4 DISCUSSION

We From the above theme, there are at least two variables, namely: "The Meaning of the Law of Thought Thoughts of Sheikh Muhammad Arsyad Al Banjari" and "The Legal Position of the Text of Thought Sheikh Muhammad Arsyad Al Banjari" as independent variable. "State System of Republic of Indonesia" as dependent variable, but there is still intervening variable that is "Legal Implication of Thoughts of Sheikh Muhammad Arsyad Al Banjari". Then in terms of "Meaning and Legal Status of the Text of Thought Sheikh Muhammad Arsyad Al Banjari" is contained the meaning of the meaning of law and position the law. While the word "law" in this sentence is more emphasis on aspects of study or legal analysis that is within the framework of the analysis of theology of state law.

The term "The Text of Thought Sheikh Muhammad Arsyad Al Banjari" is referred to here, such as the manuscript of zakat, the custom of abangan (treasure gono-gini), Tabala (coffin) in the Book of Sabīl al-Muhtadīn. To understand the meaning (essence and soul), it is not enough just to see in terms of the formulation of his text, but must be seen in the context of what situation he was born, what his motivation, and how far the substance of the text of thought Sheikh Muhammad Arsyad Al Banjari has been contextualized in the life of the nation and state in the government of the Sultanate of Banjar at that time.

Based on the above description, it can be described the relevance of variables studied in the form of research paradigm as follows:

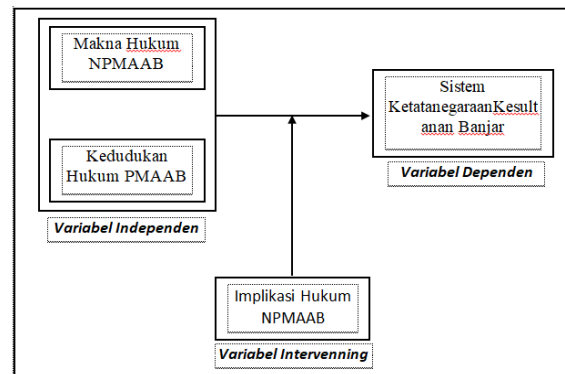


Figure 1: Paradigm on the Meaning of Law and Legal Position

The theoretical foundation used as a blade-analysis and to help solve basic problems in advance is: the theory of "Hermeneutics" as the grand theory. The theory of "Stufenbau" (Kelsen and Nawiasky) as middle-range theory, and the theory of "Source of Law" as applied theory. This discussion also elaborates further on the theories referred to in analyzing the meaning and thought of Sheikh Muhammad Arsyad Al-Banjari about the zakat in the Book of Sabīl al-Muhtadīn as his ijtihad.

Broadly speaking the understanding of hermeneutic theory can be known by two approaches: "Hermeneutics as the foundation of philosophy of law science" and hermeneutics as "a method or way of interpretation."

First, hermeneutics as the foundation of philosophy of law science. The philosophy of hermeneutics is the philosophy of the nature of things that understand or understand something, namely philosophical reflection which analyzes the conditions of possibility for the experience of thinking and association of Sheikh Muhammad Arsyad Al Banjari with reality, including the events of understanding and / or interpretation. The philosophy of hermeneutics focuses on all things thought about Sheikh Muhammad Arsyad Al Banjari about productive Zakah, Customs of abstinence (treasure gono gini or Adat Perpantang) and Tabala which has meaning as far as it can be revealed that he called language and understandable. In general, the hermeneutical philosophical object is a text that can be tangible writing, painting, behavior, natural events, and so forth. In this case according to the author's thought that the text of the Thinking Sheikh Muhammad Arsyad Al Banjari is one of the objects reflection philosophy hermeneutics.

Second, hermeneutics as a method of interpretation. The process of interpreting the

thought of Sheikh Muhammad Arsyad Al Banjari about productive zakat in the Book of Sabîl al-Muhtadîn takes place in the process of hermeneutical spiral circle (hermeneutische zirkel), ie movement back and forth between parts or elements and the whole, so as to achieve Consumation (final result) with the formation of a more complete understanding. So each part can only be understood precisely in the whole context, otherwise the whole can only be understood based on an understanding of the parts that make it happen.

Hermeneutics is basically a method or means to interpret symbols in the form of text or something that is treated as text to search for meaning and meaning. Where this method requires the ability to interpret the past is not experienced, as the thought of Sheikh Muhammad Arsyad Al Banjari about zakat productive, customs of abstinence (treasure gono gini), Tabala in the book of Sabîl al-Muhtadîn as an ijtihad of him which of course the circumstances of that time we do not experience, then brought into the present.

More simply in the process of hermeneutics there are 3 (three) main components in looking at the Thoughts of Sheikh Muhammad Arsyad Al Banjari about the zakat are:

the text of giving zakat to the poor can be used for productive activities is the result of ijtihad Sheikh Muhammad Arsyad Al Banjari, the reference books, the opinion of Sheikh Muhammad Arsyad Al Banjari is about the permissibility of the zakat portion for the poor and the poor is used for productive purposes already explained by Ash-Shafi'i in the Book of Al-Umm, and when further traced, such an opinion is not much different from that stated by 'Umar ibn al-Khattab which also refers to hadith.

Viewed Context at that time the poor faculties who receive zakat have not been able to utilize the charity is well feared the recipient of zakat only take advantage of momentary can not continuously, and contextualization done synergistically in an effort to understand, interpret, interpret, as well as to reconstruct meaning or if it is necessary with the deconstruction of meaning, of course the recipient of zakat in Ijtihad Sheikh Muhammad Arsyad Al Banjari will be more meaningful that the received zakat must bring benefits that are only used in a short time but long term so that the ability to utilize the gift of zakat is not only a recipient of zakat but than able to give zakat. In principle, the effort of reconstruction or deconstruction of occasional meaning is necessary to find a new meaning that is more in line with the times. Because not infrequently

the meaning of the text at the beginning of its creation, is not in accordance with the social reality in the future.

Specific interpretations of the text of the law (eg documents in the form of manuscripts) are always related to their content. Because, between the text of law with the contents of the law complement each other and strengthen in its function. For example: The distribution of Zakat for the poor and the poor is used for productive purposes (in terms of content or material content), it is the thinking that serves to create a new law in accordance with justice and welfare at that time, while the text of thought Sheikh Muhammad Arsyad Al Banjari (in the sense of legal form), legally serves to strengthen or reinforce the content and actions of thought itself.

Similarly, the customary text of the taboo or now known as the gono gini treasure is the common property of the husband and wife they earn by working each and producing during marriage. If one of them dies or divorce occurs, then his property, before inheritance, is divided in two first. Half the treasure is given to his living partner, half of whom then divided for the heirs according to the provisions of the applicable fiqh. The custom of the Challenge (Adat Perpantangan) or Treasure Gono-Gini is not mentioned either in the Qur'an, Al-Sunnah (hadith) or the books of Fiqh. This custom of abstinence has never existed in Islamic history before. This custom of abstinence is the thought of Sheikh Muhammad Arsyad al Banjari. In Banjar the division of inheritance like this has been running for a long time and is called "adat Perpantangan". In the Acehnese society this tradition has also lasted a long time called the "all-treasure" treasure. Adat Perpantangan is a contextual thought that takes into account Banjar people at that time who must live from work on the river, either trading or fishing or fishing. This work is not only done by a husband alone, but done by husband and wife together and individually by dividing the role of the job.

The thought of Sheikh Muhammad Arsyad Al Banjari about the operation of the corpse. In chapter janaiz. In this chapter it is explained about understanding, Sabîl Al-Muhtadîn Li Tafaqqihi Fi Umuriddin, (Darul Al-Fikr, t.th, Juz. I), one of which is burying the dead using a tabala. Sheikh Muhammad Arsyad Al Banjari explains: "And makruh again bid'ah planted the dead in the tabala but because of excuse like a watery ground or on the land that rupuy or there are women who do not attend mahramnya or fear of wild animals that scraped the tomb, then there is no makruh, it is only mandatory tabala if the fear of wild animals as the

previous reality ". In general, the Banjar area is located in the lowlands, so the water is close to the ground level. It could even have been under water.

Against this condition, burying corpses has become a habit for the Banjar people by using tabala as a means to honor and care for the corpse . Thus, the thought of Sheikh Muhammad Arsyad Al Banjari relating to burying the corpse by using tabala is for low areas (swamps), before the corpse is buried, it is inserted in a chest which the Banjar people called tabala. Therefore, the size of the burrow hole (grave) is more narrowly bathed with grave on high ground or non swamp (usually only 1.5 depax 3 span). Banjar people use tabala to bury corpses because of the watery soil conditions. But for non-aquatic lands the Banjar people buried bodies not using tabala. It is very clear that the thought of Sheikh Muhammad Arsyad Al Banjari in burying the corpse by using a kind of casket with the purpose of benefit.

Thus a valid and valid interpretation of the text of the law (The Thinking Text of Sheikh Muhammad Arsyad Al-Banjari) can be categorized in one corridor of intact interpretation between explicit and implicit meaning or between the sound of legal formulation and the spirit of the law. In this case, the role of language becomes important, because the accuracy of understanding (*subtilitas intelligent*) and the accuracy of translation (*explicandi subtilitas*) is very relevant to the law .

In the capacity as a middle-range theory, the theories of "grundnorm" and "stufenbau des rechts" make it possible to see the legal position of the text of the Thoughts of Sheikh Muhammad Arsyad Al Banjari both in theoretical and procedural contexts. Because in this study, on the one hand the writer wants to see whether the Text of Thought Sheikh Muhammad Arsyad Al Banjari can be qualified as the highest and final norm or called grundnorm, this is considering the ability of the Sultanate in translating and interpreting the command of Al Qur'an and Hadist in language Malay arabic at that time still lay so that the existence of thought Sheikh Muhammad Arsyad Al Banjari becomes light in the dark meaning of a text. On the other hand, the author looks at the location and legal position of the Sheikh's Muhammad Arsyad Al Banjari text of thought in the regulation hierarchy of the Sultanate of Banjar at that time. In the perspective of grundnorm theory it is used in its capacity with the theory of "the origin of the source of law", while the stufenbau des rechts are used in its capacity with the theory of "legislative hierarchy" in a country, so the thought of Sheikh Muhammad Arsyad Al Banjari

about Zakah and productive customs describes it as a legal source.

Methodologically, the search for a norm underlying the lower norm does not persist indefinitely (*regressus ad infinitum*). Ultimately there must be a norm regarded as the highest and final norm, or until it stops at the highest norm on which there is no higher norm.

The thought of Sheikh Muhammad Arsyad Al Banjari at that time is the legal basis that can be understood by the Sultanate in understanding the rules of religious principles. The highest norm of this kind is seen by Kelsen as Grundnorm or Basic Norm. Grundnorm can not be established by a power (which of course will require higher norms as the basis of its authority), but its existence is assumed or assumed to exist by the sensibilities of the Sultan in the basis of the regulatory policy drafted by the Sultan .

According to Kelsen the notion of "Grundnorm" as it is written in the original book: "Grundnorm voraussetzt: man soll sich so verhalten, wie die Verfassung vorschreibt, das heibt: wie es dem subjectively Sinn des verfassunggebenden Willensaktes, den Vorschriften des Verfassungsgebers, entspricht. " Max Knight becomes "The basic norm that one ought to behave in the constitution of the constitution. "(Grundnorm is a person who is supposed to act (obey) as stipulated in the constitution, that is, one should behave as the subjective meaning of the act / will / will that constitutes the constitution) . J.H.M. Klanderman in his book also provides insight into the conception of Grundnorm Kelsen: "... de Grundnorm niet een rechtsnorm maar een gedachte norm is "(Grundnorm is not a legal norm but a conceivable norm exists in mind).

Thus, the Grundnorm Kelsen refers to the thought of Sheikh Muhammad Arsyad Al-Banjari on the Zakat in the Book of Sabil almuhtadin that the distribution of Zakat for the poor and needy to be used for productive interest is something that is assumed, very abstract, and charged with commands that one should behave as established by a legal basis. Thus, the Grundnorm is not gesetzt, but vorausgesetzt, and it is not included in the positive legal order. The grundnorm lies outside and becomes the foundation of the rule of positive law, or by another term as "meta juristic".

Regarding the validity of a legal norm, not because it has a certain content, but because it is created in the ways defined in what is considered Grundnorm. Therefore, any content can be the content of legal norms. Vorausgesetzt of Grundnorm

has nothing to do with the recognition of values that go beyond positive law. The function of Grundnorm merely provides the basis for the objective application of a positive rule of law.

Furthermore, Kelsen in his *Stufenbau des rechts* or *stufenbautheorie* theories divide that level of norm into several layered or gradual layers of stages: starting from "Grundnorm" (as the highest / last level of norms, the sense as described above) up to "norm" (as the level of norms that are below it and so on down to the lowest level of norm).

Hans Nawiasky, one of Kelsen's disciples through "Theorie vom Stufenaufbau der Rechtsordnung", expressed a different view from his predecessor that the level of norms is divided into several levels, ranging from: "Staatsfundamentálnorm" (State Fundamental Norm, as the highest level of norm), "Staatsgrundgesetz" (the Constitution of the State), "Formellgesetz" (Act in the formal sense), to "Verordnung und Autonomesatzung" (Regulation of Implementation and Autonomy Regulations, as the lowest level of norm).

Abdul Hamid S. Attamimi attempts to compare between the two opinions above with the illustration as follows: in this case Nawiasky criticizes Kelsen, that the highest norm in the state should not be called "Staatsgrundnorm", but "Staatsfundamentálnorm". The consideration is that Grundnorm of a normary order is essentially unchanged, whereas the supreme norm of a state may be altered by rebellion, coup d'etat, conquest, and so on.

The above illustration of Attamimi according to the author is not clear enough, therefore the author adds the following understanding: Grundnorm is different from Staatsfundamentálnorm. The Fundamental Norms of the State (Staatsfundamentálnorm) is indeed the highest norm in a country, but not the same degree as Grundnorm in the Kelsen sense. Because Grundnorm is something that is assumed, abstract, universal, and it lies outside and underlies the legal system, so meta juristic.

The study of the sources of law in various literatures varies greatly, depending on the point of view used by the authors, therefore it takes carefulness in understanding it. In the context of the development of jurisprudence, the issue of the source of law also has a major significance for law-makers and law enforcers.

Joeniarto shared the notion of the source of law in three kinds of meaning: The source of law in the sense as the origin of positive law. The source of the

law in the sense as the forms of law which is also a place of the discovery of positive law. The source of law in the sense of things that should be the content of positive law.

Willem Zevenbergen further classifies the meaning of the source of the law, namely:

1. The source of the law in the basic sense is known as the principle of law (*rechtsbeginsel*), is as something in the last institution underlying the law, for example: the will of God, human reason, the soul of the nation (*volksgeist*).
2. The source of the law in the former legal sense and from it is embodied in the present law. For example *fiqh* about Zakat, Islamic law which became the law of the Sultanate.
3. Sources of law in the sense of being a binding base (*de geldingsbron*), rule of law such as the Sultanate, community organizations, and so on.
4. Legal sources may also mean the source of the legal or *kenbronal* identifiers, namely in the form of explanations for the present law and the laws of the past. The legal identifier (*kenbron*) is also said to be "*monuments de droit*". In this sense the source of the law is in the form of documents or events, in which the contents of the law can be recognized.
5. Sources of law in the sense as a source of existence or the emergence of law (*oustaansbron*), that is as a source for the existence or the emergence of law.

According to Van Apeldoorn, the source of the law is used in a variety of ways depending on the establishment of their respective pen, can be from the point of history, society, philosophy, and formal meaning. For the purposes of this writing it is relevant to borrow a notion of the source of law in the sense of philosophy which is divided into two meanings, namely:

1. As a source for the content of the law. In terms of problems when the content of the law can be said exactly as it should be? or relating to what issues are used as a measure to test the law as (law) is good.
2. As a source for the legal binding force. It relates to the question of why we should follow the law? In general the factors of the law's binding force are due; philosophical, juridical, and sociological factors.

Regardless of the diversity of the notion of the source of the law and the definition of the source of material law that the author sarikan above, it should be noted Bagir Manan's view that: in studying and

studying the source of law requires prudence, because the term source of law contains various understandings. Without careful and careful precision about what is meant by the source of the law can lead to errors, even misleading.

After the theory of hermeneutics and stufenbauthetheory successfully used as a knife analysis to find the meaning and legal position of the text of Sheikh Muhammad Arsyad Al Banjari Thinking, the theory of legal sources will easily determine whether the Text of Thought Sheikh Muhammad Arsyad Al Banjari can be qualified as a source of legal law or formal legal source .

Exploring the meaning of the text of the thought of Sheikh Muhammad Arsyad Al Banjari, the authors affirm that the thing to be interpreted is a unity between the "script" and "thought" it. Because the thought of Sheikh Muhammad Arsyad Al Banjari reflects the political action that created the law (Rechtscheppen), while the text serves as a legal proof (Rechtswastellen) for the use of the thought of Sheikh Muhammad Arsyad Al Banjari. So the understanding of the Text of Thought Sheikh Muhammad Arsyad Al Banjari in the corridor of an inseparable unity between the two elements. After the author looks at the structure of sentences and the use of language (legal language) from the Text of Thought Sheikh Muhammad Arsyad Al Banjari about productive Zakat, custom *parpantangan*, and the use of that *tabala*. This is in line with his theory that the object of hermeneutical philosophical reflection is language (in the form of spoken language, writing, nature, body, art, and other types of languages).

The thought of Shaykh Sheikh Muhammad Arsyad Al Banjari About Zakat in the Book of Sabil Al-Muhtadin The distribution of Zakat for the poor and indigent is used for productive, customary purposes which illustrates the fulfillment of the principles of justice and the use of the *tabala* for the corpses to be buried in the watery areas, carefully examined on the basis of an apodictic proposition which is the necessity of truth from the explanation given by predicate to the subject on the basis of reason associated with the theory of speech acts in the classical version , Zakat clearly productive , illustrated by a command of God or a book of command of believers or people to obey His command, then there are three important thoughts about productive zakat, described in Sabil al-Muhtadin which is not described in ash- Shirath al-Mustaqim. First, the recipient of zakat does not only use the part of zakat for the purposes of temporary or *cosumtif*, the two divisions of zakat may be

developed on the productive so that the recipient of zakat who can not utilize the zakat part can continue to use it. Third, by being allowed to be used for productive things and developed then that was only the recipient of zakat can also be a giver of zakat. If so, then by the law of fiction, highlighting the instruction of what consequences, move the modified state into a relative clause . One can observe this will be a divine echo. The thought of Sheikh Muhammad Arsyad Al Banjari glorifies the power of the word Zakat as the command of God becomes lighter. He no longer has to instruct people on how to share and use the results of zakat; that paying Zakat demonstrates the Law's obedience, articulating its power of what it will bring about in the world within the framework of Zakah benefits.

Sheikh Muhammad Arsyad Al Banjari in his thoughts about *parpantangan*, *parpantangan* or introspection is customary law in Borneo or South Kalimantan now with respect to the property of husband and wife. The word *parpantangan* comes from the word abstinence or *pintang* in Banjar. *Bapintangan* or *bapapintangan* have opposite meanings, meaning is dealing equally in comparison between two circumstances , where he observes the difference of family life of Arab society and then compare it with family life of Banjar society at that time which is external factor in his thinking. Wives in Arab society generally do not work. They are entirely the responsibility of her husband and are only obliged to decorate and serve her husband, so that in general wealth which is obtained during life as husband and wife is the result of husband's business. Therefore, if her husband died then the wife only gets a certain part according to the law of *fara'id* only. In contrast to the Arab community, in Banjar Sultanate society at that time and in effect today in South Kalimantan, especially in the area around the residence Sheikh Muhammad Arsyad Al Banjari namely In Pagar Village, not only head of the family who make a living to meet the daily needs family, husband and wife share the role in earning a living according to their ability.

By using *jukung* (a small boat without a motor with a rowing driver) , they are riding shoulder paddle along the Martapura River to bring merchandise to the market, search for wood, fish, and so on. Seeing the reality of both working together, Sheikh Muhammad Arsyad al-Banjari considered it unfair if women in the end did not get a share of the hard work. The Qur'an is revealed in the Arab lands, where women do not work to help their husbands to provide for their household needs, not to mention the issue implicitly and explicit ly.

Therefore, Sheikh Muhammad Arsyad al-Banjari argues that women should be given, at least, half of the wealth they get with their husbands.

Occurrence of working wife culture does not occur immediately. There are at least two factors that encourage the culture. Among these are the social factors in which the position of women and men of Banjar society is considered equal and the existence of economic factors. The economic life of the Banjar people in the past was closely related to the state of nature. Banjar communities, especially in the past, have been living in river valleys, such as the Martapura River, Nagara River, Tapin River, and others. The rivers are relatively fast and influenced by the tidal currents of sea water so easily accessible from the Java Sea. This of course causes the concentration of the population to occur in these areas, which are generally in the form of swamps. The natural situation in the form of swamps and surrounded by the river caused some people to work as fishermen of freshwater fish.

In addition, trade is also one of the main livelihoods of Banjar people. The economic condition of Banjar society in the past is highly dependent on the natural conditions caused the uncertainty of income earned. In addition, the main route of transportation that they must travel to both fish and trade is the river. To pedal down the river would require a lot of energy. This then causes the income that is only obtained by the husband is often not sufficient, so eventually the wife worked.

There are a number of factors affecting Shaykh Muhammad al-Banjari Arsyad in eliciting thoughts about *parpantangan*. In this case, those factors can be grouped into two groups, namely internal factors and external factors. Internal factors that are intended in this paper is related to his personality and way of thinking that is open to the locality is stated in his thoughts. The external factor in question is the condition of the Banjar community in South Kalimantan, especially in Kampung Dalam Pagar area, where he lives.

Thought Sheikh Mohamed Arsyad Al Banjari on *Tabala* about the use of *Tabala makruh* again *bid'ah* planted the dead in the *tabala* but because of aging such as watery land or on land that no bodies were *rupuy* or women who do not attend *mahram* or fear of wild animals that scrape the dirt grave it is not *makruh*, it is only mandatory *tabala* if the fear of wild animals as the previous reality.

It is very clear that the thought of Sheikh Sheikh Muhammad Arsyad Al Banjari in performing the burial of the corpse by using a kind of casket with the purpose of benefit. And in Islamic law this is

rukhsah given by God if human experience difficulties in running his *shari'ah*. All forms of conveniences including *rukhsah* that gives spaciousness in human life, and in fact there is no *rukhsah* shall not be lost one of the elements that *dharuri* it, but people will be in trouble. Thus the thought of Sheikh Muhammad Arsyad Al Banjari can be collected that the aim is a form in the level of *hajiyat*.

The legal implications of the text of the Thinking Sheikh Muhammad Arsyad Al Banjari as a source of reference here is more directed to the discussion of its existence as the foundation for the establishment of the positive law of Banjar Sultanate. We know that the limitations of jurisprudence at that time are still very limited, at once there has been the creation of a new law, even though the written positive law has not yet been established. Since then the previous legal order was ignored and built on it a new legal order namely the legal system of the Sultanate of Banjar. One day later, the Sultanate's administrative system and its positive legal order began to be built, and so it proceeded and worked on until now.

In the previous section it has been discussed that in the Sultanate of Banjar the legal position of the Text of Thought Sheikh Muhammad Arsyad Al Banjari can be qualified as *Grundnorm* (but not in the sense of Kelsen). Where, the location of *Grundnorm* is not on the Text of Thought Sheikh Muhammad Arsyad Al Banjari, but on the spirit and soul it contains. Because the spirit of Islam in the thought of Sheikh Muhammad Arsyad Al Banjari in the form of the principle of help, solidarity, prosperity, and justice, is universal, abstract, and meta juristic nature.

The thought of Sheikh Muhammad Arsyad Al Banjari in that sense can be used as a source of material law and / or the source of all sources of formal law. The logical explanation is why people obey the rule of law in social intercourse between them, because there is a regulation that binds it, why people obey the rules, because there is a legal source that regulates it, while the source of law is the norm that is considered the highest and used by the Sultan in the provisions regulation of the Sultanate of Banjar. The next question is where the source of binding power and the validity of the source of the law, the answer is because there is *Grundnorm*. The sultanate of Banjar *Grundnorm* lies in the spirit and soul of Islam itself. Therefore, should people respect and obey what is poured in the Thought Sheikh Muhammad Arsyad Al Banjari as a source of law.

5 CONCLUSIONS

Based on the results of research and analysis of some key issues that have been put forward earlier, then the conclusions can be submitted as follows:

Meaning of Script Thoughts Sheikh Muhammad Arsyad Al Banjari is an Islamic fiqh script about productive zakat, custom *parpantangan* and the use of *tabala* in the policy practice of the Sultanate of Banjar as a nation. While the freedom of the nation in free religion is a nation free from all imperialist, and free and independent to determine, organize and manage the state according to the purpose of its source of law, although at that time the struggle for imperialism was a threat to the banjar empire.

The legal position of the text of the Thought Sheikh Muhammad Arsyad Al Banjari in *Stufenbauthorie's* perspective: First, the text of Sheikh Muhammad Arsyad Al Banjari can not be qualified as *Grundnorm* in the sense of Kelsen. As for the case in the Sultanate of Banjar, the values, principles, and principles contained in the Text of Thought Sheikh Muhammad Arsyad Al Banjari domiciled as *Grundnorm*. It is the source of all sources of law and its existence exists outside the legal system (meta juristic). Everybody should respect and obey what is stipulated by the Text of Thought Sheikh Muhammad Arsyad Al Banjari especially about Zakat. Secondly, the Text of Thought Sheikh Muhammad Arsyad Al Banjari can not be qualified as *Staatsfundamentalnorn* in the sense of Nawiasky. As for the case in the Sultanate of this Banjar, *Staatsfundamentalnorn* it is the Book of *Sabil Al Muhtadin*, in which has the rules of Fiqh about Zakat that deliver a just society and prosperity. In the perspective of the theory of the source of law as well as in the government of Banjar Sultanate: substantively, the rules contained in the Text of Thought Sheikh Muhammad Arsyad Al Banjari can be qualified as a source of material law. While formally the legal position of the text of Thought Sheikh Muhammad Arsyad Al Banjari has not got a place in it.

The legal implication is that the text of Sheikh Muhammad Arsyad Al Banjari is a source of inspiration, reference and judgment (criticism) for the Sultanate of Banjar in making the provisions of the Sultan's regulations and policies in the life of the nation and the state.

SUGGESTION

From the above three conclusions after reflection we can benefit from abandoning disciplinary ambitions and interdisciplinary claims as being capable of conveying an analysis and institutional priority. The suggested term as a substitute is the simpler "infradisipliner", which has the virtue of generating a pre-disciplinary future that we sometimes boast about.

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