



CHAPTER V

CLOSING

A. Conclusion

Based on discussion about Local Legislation Program and legislation making method as listed in Code Num.10 Year 2004, then it can be concluded as follow:

First, The Planning phase is the early step of Local Legislation Program steps which are followed with the preparing phase, composing, formulating, discussing, legitimating, enacting, and publishing. All of phases, the planning phase is the most urgent and highly fundamental. At this phase, the academic text formulation has begun that will experience the changing whether was addition or reduction by either Local Legislative or Local Government. Consequently, by lying toward Code Num.10 Year 2004 over about Legislation Making that the establishment of the foundation, principle, and purpose in Local Regulation Num.2 Year 2009 about Old Age Prosperity's torso has been the continuous message of legal values what will intentionally be delivered in the background of regulation or Preamble.

The *mashlahat mursalah*'s values therein are absorbed by applying the principles of legislation making which is loading the positive law legislating system. That is, inline with verse 5 of Code Num.10 Year 2004 that the Local Regulation must be based on principles of a fine legislation making, where the emphasizing point here is the clear purpose, the effectiveness or advantageous, and the clear formulation. Further notice, it can be seen that verse 5 of Code Num.10 year 2004 is the indicators of *mashlahat mursalah* in its positive law contextual form. Thereby, the *mashlahat mursalah*'s concept within positive law's legislation has been in contextual conformity in the form of what and how such *mashlahah* could be determined whereas it cannot be found in Islamic classical law making method.

Second, The Local Regulation Num.2 about Old Age Prosperity cannot be said successfully applied when it could not be communicated with society. In other words, that the *mashlahah* here is optimally inaccessible if its application has disapproved the enactment rules of prevailing positive law in Indonesia. In addition, the legal language possessed different quality from Indonesian common language. That is, the regulation must give the understanding as clear as it could be, regarding the law that will be determined. However, such language must possess the oneness of meaning and can define the object of law in narrow sense, or by words which possess technical definition in its application. Therefore, the regulation cannot have a room to be interpreted unless for its indigenous purpose of regulation. In the tradition of law making the clearness of law is so much bound by legal terms that become the keyword to deliver the idea of law. And for all that, a fine regulation must consider this while it will be enacted. If we observe the Local Regulation Num. 2 Year 2009 about Old Age Prosperity, it would have been noticed of legal terms using within its articles explanation each. Furthermore, every relevant keyword is explained and has placed in the opening discussion, which in this

point is the Chapter I Common Provision. Consequently, the idea of law will easily be conceived and the *mashlahat mursalah* can be delivered very well.

B. Suggestions

a. Within Legal Drafting Process

Since the *mashlahat mursalah*'s contextual conformity with Local Regulation's Foundations, Principles and Purposes frameworked within legislation policy's boundaries will be held the hearing on, which surely be the Regulation Draft (RUU) beforehand, it has been a reality for either Head Region or DPRD to response on questions toward Regulation Draft in the hearing. In regard the hearing achieved at level three, there will be discussion, arguing and deliberation which so intense and very grounding in term of mutual agreement. Starting from this point, the *mashlahat mursalah* can room in the empty space by generalizing out its space scoping until includes the Islamic law's interests within, along with their footing, that is, the Local Regulation's Foundations, Principles and Purposes. What truly be the problem is, depending on who whose political interests are not covered in regulation. If the Moslem representatives in DPRD are above 50% or higher, then the legal requirement on Islamic law is represented sufficiently. That is how the law should be.

b. On The Statute Language Concerned

In its relevancy with socialization and publication, the language of law's function can deliver what truly are the indigenous purposes of its enactment. There is an emphasizing point where the writer here wants to imply straight forwardly, that Islamic law's term using can be replaced with more technical definition indicating on its usage. As for result, any misdirection and misinterpretation on words meaning can be avoided. However, because is indeed fundamentally important for legislation commission to understand the language that represents legal requirement in society.