



# Regime change, democracy and Islam

## The case of Indonesia



Universiteit  
Leiden

REGIME CHANGE, DEMOCRACY AND  
ISLAM  
THE CASE OF INDONESIA

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## INTRODUCTION

Kees van Dijk

Islam in Indonesia has long been praised for its tolerance, locally and abroad, by the general public and in academic circles, and by politicians and heads of state. Among the aspects highlighted are the incorporation of rituals and beliefs that, strictly speaking, do not conform with Islam, and the willingness of Indonesian Muslims to accept in their midst Christians, other non-Muslims, and fellow Muslims who are considered heretics by mainstream Islam. However, this image of tolerance, of an 'Islam with a smiling face', has been challenged in the last ten to fifteen years by armed confrontations, if not civil wars, in the Moluccas, Poso on Celebes, and Banjarmasin on Borneo, in which religion was one of the motivating factors; by mob violence perpetrated by local Muslims and Islamic vigilante groups such as the FPI (Front Pembela Islam, Front of the Defenders of Islam); and by the emergence of terrorist organizations. Initially, terrorism in Indonesia was the work of Jemaah Islamiyah (Islamic Community), a group made up of Indonesians and Malaysians that had close links with Al-Qaeda and Islamic insurgents in the Philippines. Jemaah Islamiyah was responsible for bombing outrages on Bali and other terrorist attacks, in the early years of this century. Most of its former leaders and members have now been killed, jailed or have been executed. Recent reports suggest that Jemaah Islamiyah has been replaced by a number of smaller terrorist groups, less capable of building large bombs like the ones used in Bali, but also, in the absence of one mother organization, more difficult for the authorities to detect and round up.

The ugly side of Islamic radicalism has also come to the fore in the, at times, violent protests by local Muslims against the presence of Christian places of worship, churches and ordinary houses where congregations meet, and, to a lesser extent, against Chinese temples, often leading to such places being closed down or regular services being discontinued. Part of the problem can be traced back to a joint decree by the Ministers of the Interior and Religious Affairs issued in 1969 and revised in 2006, requiring the consent of the local administration and local residents for the building of houses of worship;<sup>1</sup> a condition not always easy to meet for Christians in an Islamic environment, and giving protestors a legal argument to justify their actions.

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<sup>1</sup> According to the Indonesian 2006 regulation the agreement of 90 worshippers and 60 local residents of another religion is required. In Aceh these figures are 150 and 90.



Christians and Chinese are not the only victims of intolerance. The vast majority of Indonesian Muslims is Sunni, and in the last couple of years Ahmadiyah members and Shi'ites have become the victims of some brutal attacks (see the report by Bastiaan Scherpen). Such incidents already took place during the New Order, the years between 1965 and 1998, when Suharto was in power and, generally speaking, political Islam was forbidden and its proponents were liable to prosecution, and radical groups were kept under close watch. After 1998, the year that Suharto was forced to step down as president, the protests and attacks became more frequent, with a steep increase in the last couple of years. According to figures published in the newspaper *The Jakarta Post* on 29 October 2010, the number of cases amounted to 470 between 1967 and 1998, and 700 between 1998 and 2010. A more recent figure, published by the Setara Institute for Democracy and Peace, which has the promotion of religious tolerance as one of its aims, counted 144 attacks against religious minorities in 2011 and 264 in 2012. Another NGO with the same objective, the Wahid Institute, mentioned a figure of 274 for 2012. The latter institute also noted an increase in such incidents over the years since 2009, while a Human Rights Watch published in January 2013 concludes that violence against religious minorities – it also mentions attacks against the Bahai – has ‘deepened.’<sup>2</sup>

Such violence against religious minorities cost Indonesia a reprimand by the United Nations’ Commissioner for Human Rights, Navi Pillay, when she visited Indonesia in November 2012. After meeting with representatives of groups experiencing the consequences of this violence she said that she ‘was distressed to hear accounts of violent attacks, forced displacement, denial of identity cards and other forms of discrimination and harassment against them.’ She warned that Indonesia’s ‘rich culture and history of diversity and tolerance’ might become a thing of the past if the situation did not change and if ‘firm action is not taken to address increasing levels of violence and hatred towards minorities and narrow and extremist-interpretations of Islam.’<sup>3</sup>

One important development was the promulgation of the Law on Regional Government in 1999 (UU no. 22 1999) and its revision in 2004 (UU 32/2004), which give regional governments – those of the provinces, regencies and cities – far-reaching autonomy, and have presented proponents of a strict Islam with an additional means to advance their cause. The law allows for regional administrations to issue local regulations independently of

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<sup>2</sup> *The Jakarta Post.com* 29-12-2012, 3-2-2013.

<sup>3</sup> [www.un.org/apps/news/story.asp?NewsID=43478](http://www.un.org/apps/news/story.asp?NewsID=43478) (accessed 21-1-2013).

supervision or control by a higher administrative level, except in a few fields that remain the prerogative of the national government, of which religion is one. The fact that local administrations are not allowed to issue religious by-laws has not prevented them from implementing so-called Sharia Regional Regulations (Peraturan Daerah Shari'a, Perda Shari'a). These may take a variety of forms. Some require civil servants to attend Islamic courses in the Fasting Month or make being able to read the Koran a prerequisite for entering secondary education, or for concluding a marriage. A number of new by-laws, and among those most criticized, try to regulate the lives of women. They force them to conform to Islamic dress codes (a headscarf and 'unrevealing garments') at government offices and institutions of secondary education or introduce a kind of curfew, not allowing women to leave the house unaccompanied by a male relative in the evening or making them afraid to do so. In August 2012 the (Indonesian) National Committee on Violence against Women counted 282 by-laws discriminating against women. Ninety-six of them concerned regulations on prostitution and pornography, 60 on dress codes and 'religious standards', and 38 restricted 'women's mobility'.<sup>4</sup>

A special case is presented by Aceh on the northern tip of Sumatra. In an effort to persuade the separatist Free Aceh Movement (Gerakan Aceh Merdeka, GAM) to lay down arms, Jakarta granted the province special autonomy in October 1999 (Law no. 44 1999). Aceh was given the right to draft its own laws and regulations in the fields of religion, education and local customs; a power other provinces do not have. The result has been a number of Islamic laws (*Qunans*) promoting 'correct' Islamic behaviour (including the way women dress; men seem to escape such restrictions), forbidding non-Sunni practices and beliefs, making punishable acts like gambling and the consumption of alcoholic beverages, and giving local authorities the power to act upon and punish illicit sexual relations (also assuming that two unmarried persons of different sex without close family ties who are alone together in a secluded space are guilty of illicit sex) (see: report by Moch Nur Ichwan).

The central government cannot interfere when such laws and regulations are promulgated in Aceh, but regional autonomy also makes annulment or revision of local legislation elsewhere in Indonesia difficult. The argument that the Law on Regional Government does not allow the issuing of religion-inspired by-laws, does not impress the proponents of enforcing such legislation. They argue away the Islamic nature of such regulations, stressing instead the need to uphold Indonesian and local (if not Asian) values

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<sup>4</sup> *The Jakarta Post.com* (17-9-2012).

and norms of morality as the reason for their introduction; at times also suggesting a connection between the way women dress and sexual harassment. Politicians equally do not seem to mind, or when forced to comment advance similar arguments. It took until February 2006 for the central government to announce that it might interfere and annul such local regulations, but two years later the then Minister of the Interior, Mardiyanto, was still quoted as saying that there were no Sharia regulations of force in Indonesia, only ‘by-laws that implement the Islamic dos and don’ts’.<sup>5</sup> In January 2012 his successor, Gamawan Fauzi, mentioned an impressive number of by-laws reviewed by his ministry since he was appointed in 2009: 15,000; resulting in the rejection ‘partially or completely’ of 915 of them. Since 2002 his department has ‘annulled’ a total of 1878 by-laws. Over 1800 of these are said to concern local taxed and levies, 22 the sale of alcoholic beverages.<sup>6</sup> Other instances of ‘Sharia by-laws’ were not mentioned. This in itself already indicates that the most contested local religious regulations escaped scrutiny. Moreover, annulled may not be the right word. The 1999 Law on Regional Government still gave the central government the authority to annul by-laws that are in violation of higher legal products or against the general interest (art.114, par. 1), the revision of 2004 (art. 145, par. 3) requires a Presidential Decree (Peraturan Presiden) to do so. The Minister of the Interior does not have the authority to cancel by-laws, and a governor cannot annul a by-law issued in a city or regency in his province.<sup>7</sup>

Some of the information presented in the media and in scholarly and NGO reports about inter-religious violence, assaults on religious minorities, and discrimination of women as a consequence of a greater stress on Islam in Indonesia, or the support for implementation of Islamic law in all its aspects, may overstate the case.<sup>8</sup> On the other hand, using the description ‘smiling Islam’ to sketch the nature of mainstream Islam in Indonesia is to view the actual situation, both past and present, through rose-tinted glasses. Though the collapse of the New Order in 1998 was a watershed in Indonesian history, ushering in a period of real democracy and freedom of expression, known in Indonesia as the *Reformasi* or Reform Era,

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<sup>5</sup> *The Jakarta Post.com* 16-2-2008.

<sup>6</sup> *The Jakarta Post.com*.18-1-2013.

<sup>7</sup> The likelihood that many of disputed local regulations can be cancelled appears to be zero. The law requires that a Presidential Decree is issued with sixty days after the regional administration has submitted a by-law to the central government for scrutiny (which has to take place within a week after its promulgation). In 2012 two Joint Regulations of the Minister of the Interior and of Justice and Human Rights were issued on regional regulations but these take the form of guidelines for local governments in drafting them to assure that they are not in breach of human rights.

<sup>8</sup> Ms Pillay, for instance, also expressed her concern about Aceh condemning ‘enforcing brutal punishments of stoning’ there, which as is pointed out in the Aceh section of this report is included in the draft of a new Islamic Act, which did not come of force because the Governor refused to sign it.



the topics discussed in this report are not simply the outcome of the decentralization, the introduction of a democratic political system, and greater freedoms that came after 1998. As pointed out in a number of contributions, Islamic radicalism in Indonesia did not suddenly appear after 1998. Its roots can be traced back to the New Order, not only to its closing days, but also to its early years, and further back in Indonesia's history. Efforts to promote Islam have also been initiated by the New Order government. In this respect, mention should be made of defining the competence of Religious Courts and the publication of a uniform codification of Islamic family and inheritance law to be consulted by its judges in pronouncing judgements (see: reports by Euis Narlaewati and Stijn van Huis).

Still, it cannot be denied that what is briefly described above takes place in Indonesia against the background of a stricter adherence to the precepts of Islam in wider society. As in the rest of the Muslim world, people dressing and behaving in an Islamic way have become more numerous, institutions to propagate the faith, such as Islamic schools and religious instruction meetings, have increased in number and in popularity, and the exponents of radical Islam have become more vocal, staging demonstrations and organizing mass gatherings.

The way Islam has manifested in Indonesia in recent years justifies a separate report on Indonesia in the Islam Research Programme. It also influences the selection of the topics presented in this report. The report has three sections:

- Sharia based laws in Indonesian and the implication for women and children in legal practice
- The shariatization in Aceh
- Islamic political parties and socio-religious organizations.

The first section deals with the consequences of the introduction of Sharia based legal products in Indonesia in general, the second with the support for and resistance against enforcing an Islamic way of life in Aceh, where, as already mentioned, this was allowed to go further than in other parts of the country. In the third section the leaders of the Islamic political parties and the large socio-religious organizations affiliated with them take centre stage. They are the prime actors in determining to what extent national and regional legislation can reflect Islamic principles. They also play an important role in the Islamic debate in Indonesia, either as a driving force of a further Islamization of society and

legislation, such as the Islamist Partai Keadilan Sejahtera (PKS, Justice and Welfare Party) and the Jema'ah Tarbiyah (Community of Education), or as people called upon to take an active role in countering intolerance and radicalism, such as in the case of the Nahdlatul Ulama (Awakening of Ulama) and Muhammadiyah.

## **PART 1: SHARIA-BASED LAWS AND REGULATIONS**

**Kees van Dijk**

In the closing years of the New Order the Indonesian government made a number of gestures to show that it had the aspirations of the Islamic community at heart. One was the promulgation of the Religious Judicature Act of December 1889. The act gave Islamic courts their own well-defined independent place in Indonesia's legal system. Muslims no longer had to worry, as they had done in the past, that the state might aim at dissolving the religious courts, while their decisions no longer could be challenged in secular courts. Their scope was also extended. Up to then, the authority of the religious courts had been limited to matters concerning marriage and divorce, now deciding on inheritance cases was added to its powers. By doing so a decision from 1937 was undone, much protested by Muslims at that time, to remove inheritance from the competence of Islamic courts operating within the Dutch legal system (which at that time only existed in Java, Madura, and South Kalimantan). The reason why the colonial authorities (obsessed by the study of *adat* (custom) and certainly not of Islam) had decided to do so was that they had come to the conclusion that inheritance rules in Java were based on customary law, not on Islamic law. A second gesture was to provide the Islamic courts and their judges with a codification of Islamic law in the fields of marriage, inheritance and endowment. Published in 1991 as a Presidential Instruction on the 'Compilation of Islamic Law in Indonesia', it became generally to be referred to as the *kompilasi*. As Euis Nurlaelawati has argued in her Phd thesis about the *kompilasi*, it brings together the relevant traditional legal texts and Quranic quotations, while the influence of customary law and the wish to bring the Islam legal system in Indonesia in line with modern times can also be discerned.

After 1998 the role of the state in promoting Islam changed. What came to the fore can best be described as an effort to promote decency and morality by stressing religious values. As is pointed out in this section of the report, the resulting stated intentions and regulation more often than not were not well thought-out and formulated, and because of this, and also because of their impact on the life of Indonesians, at times are vehemently contested by part of the Islamic community (and in a number of instances also by non-Muslims). At the national level the original puritan draft of the Anti-Pornography Act of 2008 is one example. Its wording led to protests by feminists, artists, Hindus and Christians, fearing that their way of life might be affected. Another is the new curriculum for primary and secondary education

to be implemented in July 2013 stressing the importance of the teaching of religion, citizenship and patriotism to improve, as the rather vague justification of the proposal goes, the character of the students. In teaching other subjects a link has to be made with religion. It has, for instance, to be made clear to students that they have to accept the Indonesian language 'as a gift from God, a means that could unite the country amid differences in local languages'.<sup>1</sup> As could be expected, much confusion in the educational sector is the result. Finally, in March this year plans were revealed to adjust the criminal code, among other things make living together outside wedlock punishable by law and increasing the sentences for adultery.

The same intention of creating a society governed by high moral standards is one of the motives behind a specific category of regulations issued by regional representative bodies and heads of administration. All issued after 1999, after the central government allowed greater regional autonomy, they are often lumped together as Sharia Regional Regulations (Peraturan Daerah Shari'a, Perda Shari'a) because of the religious motivation which underlies their drafting. Their promulgation is an interplay of religious sentiments of local politicians and administrators responsible for the issuing, driving by national and local Islamist pressure groups, the desire for political gain by playing the religious card, and the give and take of coalitions between political parties; and, not to forget, social pressure and a wider and stricter adherence to Islam and its prescripts and rituals in society. Upholding the bylaws is a matter of the secular authorities. Except in Aceh, there is no Sharia police and the powers of the religious courts, again with the exception of Aceh, do not extend to matters dealt with in the bylaws.

Part of the regional regulations have come under scrutiny because they limit women's options of how to dress and restrict the freedom of movement of women. A number of them, their history and reception, are discussed in this section. Selected are examples from Cianjur in West Java and Tangerang in Banten presented in the report by Euis Nurlaelawati, Bantul in Yogyakarta, and Bulukumba in South Sulawesi reported on by respectively Muhammad Latif Fauzi and Stijn van Huis. (Aceh has a special section of its own in this report). All, in one or another way, are an attempt to combat anti-social behaviour and inspired by the conviction that Islam and religiosity provide the means to accomplish this.

Some of these bylaws prescribe Islamic dress codes for civil servants (and in an exceptional case for non-Muslim civil servants as well). In Bulukumba women visiting

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<sup>1</sup> [www.thejakartapost.com/news/2013/02/new-national-curriculum](http://www.thejakartapost.com/news/2013/02/new-national-curriculum).

government offices and the religious court also have to wear a headscarf. Euis Nurlaelawati's research in Cianjur seems to indicate that not many of the female civil servants concerned do mind. A headscarf is becoming a widely accepted article of female dress in Indonesia, but as Stijn van Huis contribution indicates, social pressure still cannot be excluded. Other regional regulations issued or announced but never implemented concern the freedom of women to be alone out in the streets in the evening, promulgated, it appears, usually as part of the effort to root out prostitution.<sup>2</sup> One of these was issued in Tangerang. Because of stereotyping of women being out on their own in the evening (and using makeup), and probably also because of reference to traditional Islamic restrictions on women travelling alone influenced its implementation, the bylaw resulted in the arrests of non-prostitutes and the fear is that this can happen again. Similar wrongful arrests were made in Bantul.

The reasoning behind such rules, and behind the wider campaign to discourage women from wearing 'revealing' clothes and to have them cover their head, indicate that (and Indonesia is no exception on this point) conservative or male chauvinist ideas still prevail about sexual needs of men and them finding it difficult to control their sex drive. Euis Nurlaelawati's analysis shows that they also influence the decisions of the Islamic courts. Both Euis Nurlaelawati and Stijn van Huis also investigate the access to justice of women provided by religious courts and whether their judges are sensitive to the interests of the women involved. Both are positive about the granting of divorce to women petitioning the court to do so (though Euis Nurlaelawati notes that in such instances judges tend to follow classical rules not allowing a post-divorce allowance, rather than the *kompilasi* which does). Both also point at problems arising after a divorce has been granted. From Euis Nurlaelawati's discussion about the courts in Tangerang, Serang and Cianjur it becomes clear that where custody over and alimony for children after divorce are concerned religious courts lack sufficient instruments to enforce their decisions outside court and are unable to take action when the former husband disregards the verdict. Stijn van Huis in his research about the Islamic courts, in his case conducted in Bulukumba in South Sulawesi and focussing on divorce cases, also touches upon problems women may encounter when it comes to their post-divorce rights with respect to alimony, child support and dividing of communal marital property among the former spouses. Besides the follow-up after court that may cause divorced women not getting what they are entitled to, he also points at the procedure

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<sup>2</sup> In Padang it was contemplated in 2001 to forbid women not accompanied by a close male relative or husband to leave the house after 9 o'clock in the evening, but no regulation was issued.

followed in reaching a decision. Judges prefer to settle complicated matters by an informal out-of-court compromise, which is not mentioned in the final sentence. As Stijn van Huis states ‘The Islamic court personnel have a preference for informal agreements, and push claims of women outside the realm of the court. Even when the claim is formally made in the court, the judge will attempt to negotiate an agreement with both parties.’ Discussing enforcing court decisions he identifies as the weakest element rulings about child support, where there no mechanism at all are in place to force the former husband to fulfil his obligation.

From all contributions in this part of the report it can be surmised how strong traditional Islamic legal doctrines and notions still are. A telling example of this is provided by Euis Nurlaelawati’s analysis of the decisions taken by religious courts in Cianjur, Tangerang and Serang (Banten) regarding polygamy. Existing secular legislation and the section of the *kompilasi* limiting the practice are disregarded, the judges giving priority to classical religious arguments allowing polygamy. It seems that, to use an Indonesian expression, much ‘sozialisation’ of the *kompilasi* still has to be done before judges base their decisions on those aspects of the *kompilasi* that have been included to further the interests of women and children. In other words, much training and much convincing is still needed.



# SHARIA-BASED LAWS: THE LEGAL POSITION OF WOMEN AND CHILDREN IN BANTEN AND WEST JAVA

Euis Nurlaelawati

## 1: INTRODUCTION

Since the fall of Suharto in 1998, calls for the introduction of Sharia have become more widespread. This does not mean that prior to 1998 no developments in this area occurred. A familiar example is that of the Presidential proclamation Instruction No.1 of 1991, the *Kompilasi Hukum Islam*, which is considered as a step towards further codification of Islamic law at a national level. Not only at a national level but also at a local level there are many ongoing developments in this field. Indeed, as an effect of the policy of decentralization that was implemented in 1999, the ways in which the introduction of Sharia manifests at a local level can vary greatly from area to area.

The glorification and introduction of a number of Sharia-based local regulations in a number of districts clearly parallels with the central government's failure to adopt Islamic law in other than familial areas. In fact, the Islamic laws that have been adopted as parts of the national legal system are those on familial issues covered in the marriage law of 1974 and the *kompilasi*. This form of legalization of Islamic law by the state began a long time ago and employed quite high legal devices. Meanwhile, attempts to apply Sharia in the ritualistic and moral realms took a new form, one that utilizes the power of local government, and, as mentioned before, the policy of decentralization.

It should be noted that apart from Aceh, where a widespread form of self-government is allowed following the Helsinki agreement of August 2005, and despite the policy of decentralization, religion remains a recurrent subject within central government; and in different regions the introduction of Sharia is actually limited, in an Islamic sense, to filling the public space, mostly in the ritualistic and moral sphere.<sup>1</sup> This does not mean that these initiatives are insignificant. An example is the (demand for) serious curtailment of the freedom of movement of women under Sharia-based local regulations (*Peraturan Daerah berdasarkan shari`a*) by, for instance, requiring women to wear a headscarf (*jilbab*) and restricting them from going out at night.

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<sup>1</sup> Arskal Salim, 'Muslim Politics in Indonesia's Democratisations: The Religious Majority and The Rights of Minority in the Post-New Order Era,' in RH McLeod and MacIntyre (eds.), *Indonesia: Democracy and the Promise of Good Governance*, Singapore: South East Asian Studies, 2007.

In a social system that underlines the legal position of men, the issue of the relationship between men and women has become a serious problem in a number of fields. Injustice and inequalities have often been produced, as can be seen in the level of violence based on gender prejudice and the political and economic marginalization of women. Likewise, the position and voice of children has often been denied in the process of taking decisions at home, and children are often discriminated against or treated badly by their parents or other parties. In the court system, these inequalities may manifest themselves in the form of court verdicts that appear to be unfair, and which emanate from subordination and gender-biased perspectives and decision-making methods.

Generally speaking, continuous efforts have been made in Indonesia with regard to legal improvement and legislation to defend the rights and equal status of women and children. Several articles in the Marriage Law (Law No. 1 of 1974) and in the Compilation of Islamic Law (1991), for example, try to provide some protection to women and children. Furthermore, a number of laws ratifying a number of international covenants have strengthened the empowerment and protection of women and children. In addition, judicial system reforms have also been introduced by Religious Courts as a result of the close working relationships with international donors. While, to some extent, women have become more fortunate and now receive better justice in some cases, the expectations and intentions have not been entirely fulfilled, and this has brought about continuous demands for revision and refinement of these legal products in order that they may mould with the many social changes that have occurred and that affect the interests of children and the dynamic relations between women and men. Less positive, however, is the fact that rather than protecting women, the introduction of some Sharia-based local regulations has, as pointed out by some researchers, weakened the position of women in public areas and restricted their rights.

The research proposed here primarily focus on the position of women in legal practice. It was carried out by examining judicial practices in the form of a number of court decisions, narratives of hearings, and of laws on familial issues, particularly those that relate to women such as the Law of Marriage and the *kompilasi*, and by observing Shari-based local regulations applied in the Cianjur and Tangerang regions in particular. The familial cases that will be observed include divorce, custody, spousal alimony and alimony for children, and polygamy cases in three courts in Cianjur, West Java and Serang and Tangerang in Banten. As a comparison, separate research on these issues in the court of Bulukumba was undertaken by Stijn van Huis. In regard to women's issues in public spheres, observations was made on

Tangerang's Sharia-based local regulation on the prohibition of prostitution, which leads to restrictions on women going out late at night, and the Cianjur Sharia-based local regulation on the requirement for female Muslim civil servants to wear *jilbab*. Besides these two Sharia-based local regulations, another sharia-based local regulation on prostitution issued in Bantul was also studied by Ahmad Fauzi Latif for the purpose of this research. The legal position of children will also be considered; however, only when they are involved in women's issues, so its discussion will be limited.

There will be a critical analysis of the laws of the observed cases mentioned above by referring to international legal standards, including the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenants of Rights of Child (CRC). Both national laws and the Sharia-based local regulations and their implementation will be reviewed in a bid to discover whether or not they conform with the aforementioned international treaties that have been ratified by Indonesia.

The national laws and Sharia-based local regulations will be also looked at from a practical level by observing women's responses, their application by judges of religious courts and responsible authorities. It must be noted that, with the exception of Aceh, there is no direct connection between Sharia-based local regulations and the authority of religious courts. In fact, Sharia-based local regulations in both Tangerang and Cianjur have not changed the position and responsibilities of the courts, since it is not the religious courts that supervise the implementation of the regulations. Neither do these regulations have relevance to the range of cases that can be adjudicated by the religious courts. However, although this research will illustrate some cases in regard to the application of these two Sharia-based local regulations, it will primarily focus on their recent implementation and society's – in particular, women's – responses.

In light of the above, the following research questions are examined:

- How does the national legislation relate to local/regional initiatives to implement Islamic law?
- Have Sharia-based laws on women and children strengthened this group's legal position?
- How do individual judges deal with women's rights and how have women been treated in court?
- Have judges in religious courts become sensitive to gender issues? Which judges have been sensitive and how have they been sensitive?

-How do initiatives for the codification of Sharia at a national and a local level, and their implementation, relate to international human rights treaties, including the aforementioned CEDAW, ICCPR and the ICRC?

-Are these Sharia-based laws on women and children in line with international human rights conventions?

### **Purpose of the research project**

This research has several purposes. It is aimed at investigating the relationship between the national legislation of Sharia with the implementation of Sharia at the local/regional level. It also seeks to understand the exact areas in which Islamic law is implemented at the national level and in the local districts within different regional contexts. It also examines to what extent the initiatives behind the implementation and the codification of Sharia at the national and local level in Indonesia relate to the empowerment of women. Further, it is aimed at surveying how individual judges deal with women's and children's rights, such as the rights of women within marriage, divorce, polygamy law and the custody of children. It seeks to uncover those cases where women have become powerful and where they remain powerless. It is hoped that this research will inform relevant parties, international donors and communities, the Indonesian government and women centres about whether or not the Sharia-based laws on women and children have strengthened women's legal position and are in line with international conventions, such as the ICCPR and ICESCR conventions that protect human and women's rights, in particular. It therefore intends to draw together a number of key issues that could lead to a number of future actions being taken by the aforementioned relevant parties in order to enhance the empowerment of Indonesian Muslim women.

### **Review of literature**

There have been a number of studies on the issue of women under Islamic Sharia conducted by both academics and researchers from centres concerned with women, all of which have different focuses and aims. While the studies on women's issues relating to family laws have been around for a long time, those on women's issues in the public arena are relatively new, following a recent trend for enacting regulations managing the behaviour of women with reference to Islamic doctrines.

*On women under family laws*

In response to the need for monitoring and evaluating the training program on gender sensitivity for judges, the Centre for the Study of Law and Human Rights (PUSKUMHAM) of the Syarif Hidayatullah State Islamic University in Jakarta, in cooperation with The Asia Foundation (TAF), conducted research on the impact of training on judges' judicial attitudes. This research found that a number of judges have become more sensitive towards gender issues and that they have attempted to accommodate the interests of women and children in their legal works.<sup>2</sup> Surveying the development of the judicial system and its effects on women and the poor, another research report by Cate Sumner and Tim Lindsey found that women have increased and better access to justice. They mention that a number of court reforms have allowed poor people, most of whom are women, to resolve their cases more easily and legalize their personal status.<sup>3</sup>

Focusing on a very special issue of polygamy, Nurmila depicts that the laws on polygamy have not been well followed in practice.<sup>4</sup> Similarly, focusing on the very specific issue of divorce and post-divorce rights of women in Cianjur, Stijn van Huis who is doing research for his Doctoral thesis and published an article on the issue, discovered that women are often aggravated and did not receive their rights of spousal alimony or alimony for their children. Stijn van Huis mentions that judges mostly included such rights in decisions, but he found that the decisions were rarely implemented.<sup>5</sup> Although her book focuses on judicial practices in familial issues, rather than women's issues in general, Nurlaelawati discusses hundreds of decisions that have touched women and demonstrated that judges have often referred to classical legal doctrines, resulting in women's subordination. For example, judges often agreed with proposals for polygamy although the reasons presented by men were not included in the laws.<sup>6</sup>

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<sup>2</sup> Arskal Salim (eds.) *Demi Keadilan dan Kesetaraan: Dokumentasi Program Sensitivitas Jender Hakim Agama*, Jakarta: PUSKUMHAM, 2009.

<sup>3</sup> Cate Sumner and Tim Lindsey, *Courting Reform: Justice for the Poor*, Lowy Institute, 2010.

<sup>4</sup> Nina Nurmila, *Women, Islam and Everyday Life: Renegotiating Polygamy in Indonesia*, London and New York: Routledge, 2009.

<sup>5</sup> Van Huis, Stijn (2011) 'Akses terhadap Hak-hak Pascaperceraian bagi Perempuan Bercerai di Cianjur', in Ward Berenschot (eds.), *Akses terhadap Keadilan: Perjuangan Masyarakat Miskin dan Kurang Beruntung untuk Menuntut Hak di Indonesia*. Jakarta: HuMA, 233-253.

<sup>6</sup> Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practices of the Indonesian Religious Courts*, The Netherlands: Amsterdam University Press, 2010.

### *On women in public space*

In respect of the issue of women in public space and the application of Shari'a-based local regulations, a number of researches have been undertaken and they have demonstrated similar findings, i.e. that women in public areas are often offended against. Human Rights Watch illustrates a number of abuses of the application of the sharia-based local regulations in Aceh. It presents a number of cases where the apparatus has implemented the regulation on seclusion (*khalwat*) in an abusive fashion.<sup>7</sup> The Center for the Study of Religion and Culture (CSRC) UIN Jakarta, which has researched the application of Sharia-based local regulations and its impact on the civil freedom of minority groups and women, reported that the application of Sharia-based local regulations in general has harmed people's right to freedom. In regard to the requirement of wearing *jilbab* for Cianjur female state officials on working days, the report showed that the regulation has threatened women.<sup>8</sup> Komnas Perempuan's research report revealed the same findings.<sup>9</sup> In an article presented in a seminar, Nur Rif'ah and Honest Dody Molasy demonstrated that many women were not happy with the regulations on wearing *jilbab*. Women, Nur Rif'ah discussed, refuted the argument, posited by proponents of the regulations, that the enactment of these regulations is designed to provide them with security.<sup>10</sup> Based on the data gathered from a number of researches, Bush recalled a number of abuses in the application of Sharia-based local regulations in Indonesia, including in Tangerang.<sup>11</sup>

Nonetheless, to date, there have been no detailed studies on the issue of women and children in terms of looking comprehensively at family laws at the national level and Sharia-based local regulations and their acceptance and application by judges and within society. Equally, there have been no studies that examine these Indonesian issues from the perspective of a number of international treaties. That said, several studies have made an attempt to look at women's issues in the context of the above two points and in relation to the international protection of human rights. In his recent book, Otto, along with his colleagues, studied the incorporation of Islamic law into the national legal systems of twelve representative Muslim

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<sup>7</sup> Human Rights Watch, 'Policing Morality: Abuses in the Application of Perda in Aceh', 2010.

<sup>8</sup> Sukron Kamil dkk., *Syari'ah Islam dan HAM, Dampak Perda Syariah terhadap Kebebasan Sipil, Hak-Hak Perempuan, dan Non Muslim*, Jakarta, CSRC UIN Jakarta dan KAS, 2007

<sup>9</sup> Komnas Perempuan, 'Atas Atas Nama Otonomi Daerah: Pelembagaan Diskriminasi dalam Tata-nan Negara-Bangsa Indonesia. Laporan Pemantauan tentang Kondisi Pemenuhan Hak-hak Konstitusional Perempuan di 16 Kabupaten/Kota pada 7 Provinsi', 2009.

<sup>10</sup> Erwin Nur Rif'ah and Honest Dody Molasy, 'Contesting Women Security under the Implementation of Perda Syariah', a paper presented on SEAS Conference, June 5, 2010.

<sup>11</sup> Robin Bush, 'Sharia Local Regulations: Anomaly or Symptom?', in G. Fealy and Sally White (eds), *Expressing Islam: Religious Life and Politics in Indonesia*, Singapore: South East Asian Studies, 20008.



states, including Indonesia, and also discussed the legal rules on women's issues and observed their implementation. However, although this research generally explored the sensitive topic of Western human rights and contributed to current international debates on Sharia, law and politics, they did not go into detailed discussion on actual legal practices.<sup>12</sup> Cammack and Feener produced a book that included a number of works that discussed women issues and observed their implementation at the practical level.<sup>13</sup> The book addresses issues relating to Islamic legal theory and provides analysis of the work of specific groups of contemporary scholars, jurists and activists, and more concrete manifestations of Islamic law in modern Indonesia, including court systems, positive law, the drafting of new 'Islamic' legislation, and contemporary debates on the implementation of Sharia. However, the book is not devoted specifically to women's issues and did not develop the discussion to include the idea of human rights protection.

There has been a hole that needs to be filled in relation to the study of women from a legal perspective, theoretically and practically. This study is therefore important for exploring if –through their national laws and Sharia-based local regulations – the Indonesian government and its national and local regulations conform with international treaties, and whether the issuance of Sharia-based local regulations and their application of the law of Marriage and the *kompilasi* by religious court judges have been adaptive and responsive to the interests of women and children. While I believe a number of attempts have been made to improve women's legal status by a number of parties, there is still a lack of attention paid to this subject. This study is therefore also significant in terms of understanding whether or not the legal status of women has developed, to what extent it has (or has not) developed, and how and why it has or has not improved. This study, then, will contribute to the discourse and to the programs and planning relating to the development of the legal status of women and children in Indonesia.

## **Methodology**

The research is qualitative research and involves bibliographical and empirical investigations with socio-legal and content analytical approaches. The bibliographical research has been

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<sup>12</sup> Jan Michiel Otto (ed), *Shari'a Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, Leiden: Leiden University Press, 2010.

<sup>13</sup> Michael Feener and Mark E. Cammack, *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, Harvard: Harvard University Press, 2007.

done by consulting a number of books, articles, journals, research reports, laws and regulations.

The empirical research was with two focuses: 1) women in familial issues; and 2) women in public areas. For the first focus, the empirical research was completed by attending a number of hearings, interviewing judges and litigants, in particular those who are women, and observing and analyzing a number of decisions. The research was undertaken over six months in three periods; the first lasted from May to June, the second from August to October, and the last took place in December of 2010. During these fieldwork periods, I attended hearings conducted in two religious courts, Tangerang and Serang. I also interviewed all of the judges, and a number of litigants attending these two courts, and a number of local authorities. In 2011, to discover the legal knowledge and awareness of women in general, I interviewed 12 women and distributed questionnaires to 100 women in three different cities of Tangerang.

In addition, I also collected 158 decisions issued by the three courts being surveyed. The decisions collected were read and analyzed. These include decisions issued by the Religious Courts of Tangerang, Serang and Cianjur. Excluding decisions on inheritance cases, I observed 42 decisions issued by the court of Tangerang, 49 by Serang, and 24 by Cianjur. The details of these cases are presented in the following table.

No	Cases	Number of cases			Total
		Serang	Tangerang	Cianjur	
1	Divorce petitioned by wives	15	9	8	32
2	Divorce petitioned by husbands and spousal alimony	7	7	4	18
3	Polygamy	5	4	9	18
4	Custody	4	3	3	10
5	Children maintenance	2	2	-	4
6	Guardianship	1	7	-	8
7	Joint property	1	6	-	7
8	Marriage confirmation	12	4	-	16
9	Marriage dispensation	1	-	-	1
10	Child legalization	1		-	1
T o t a l		49	42	24	115

For the second focus, the empirical research was conducted by interviewing a number of women in Cianjur and officials in some state offices and by distributing questionnaires to them. I visited three state public offices: *Pemda* (Pemerintahan Daerah/local government), the police office, and state local hospital. I interviewed nine state officials and a number of Cianjur local people, and distributed 50 questionnaires on the application of Sharia-based local regulations/Perdas (September-November 2011). I also interviewed seven local women in Tangerang about their responses to the Sharia-based local regulation that prohibits their movements late at night.

### **Structure of the report**

This report consists of six chapters and starts with chapter One as an introduction that explains the background, research focus, aims, methodology, and structure of the report. An overview of the implementation of Sharia-based laws on familial issues and the issue of public morality is provided in order to shed some light on the application of sharia at the national and local levels.

Chapter Two discusses the formation and development of Islamic family law and of local regulations inspired by Islamic values and teachings on public morality, religious observance and others. Attention is devoted to their formal and institutional development, marked by the issuing of the *kompilasi of Hukum Islam* and Sharia-based local regulations and also to a number of detailed rules on women's issues in particular. The overview provides a guide to the key issues in terms of the introduction of legal reforms, the improvement or stagnancy of women's legal status in the Indonesian Islamic laws, national statutory and local regulations.

Chapter Three explores the legal attempts of women in court and the judicial discretion of judges in resolving familial issues. This chapter attempts to reveal the fate of women in court and its relevant drivers. Subsequently, this chapter discusses how women present their cases and make attempts to resolve their cases and how judges treat them and give their judicial interpretation on the cases. It also examines the extent to which government and relevant communities and institutions, national and international, work on the issue of women's development. This is to show how some elements have contributed to the legal position or fate, be it weak or strong, of women at the practical level and where and how women's legal status has or has not improved.

Chapter Four analyzes the Sharia-based local regulations introduced by Cianjur's local government on the requirement for female state officials to wear *jilbab* and by Tangerang's local government on the prohibition of prostitution and restrictions on women going out late at night. This chapter first surveys the implementation of and response to the regulations from local society, women in particular. Exploring the views and voices of local people, specifically women, this chapter examines the position, acceptance or resistance of women to the regulations.

Chapter Five discusses the relevance of Sharia-based laws at both the national and local level to the international legal standards that Indonesia has ratified. This chapter analyzes several relevant legal issues and observes their conformity or inconformity with international or universal rights. This chapter scrutinizes how certain rules on women's issues in both national family law and local regulations conform with or contradict the rights protected in certain international covenants. Finally, this chapter looks at how a number of groups concerned with the protection of women's interest and the development of women's legal status have recently made a number of legal attempts to improve the standing of women and how women in general have been advocated and motivated to negotiate judges' rulings.

Chapter Six presents a conclusion summarizing the findings of the study.

## **2: WOMEN IN INDONESIA'S NATIONAL STATUTORY AND LOCAL REGULATIONS**

Women have long been an important issue in the legal discourse in Muslim countries. Under Islamic sharia, women are treated differently from men. In light of the fact that many classical Islamic family laws placed women in a subordinate position, the Indonesian government initiated legal reforms and introduced novel rules at a national level, as presented in the 1974 Law of Marriage and the 1991 *Kompilasi Hukum Islam* (Compilation of Islamic Law), henceforth called *Kompilasi*, issued in 1991 under presidential Instruction (*Instruksi Presiden/Inpres*), to improve women's standing in family law. While in some familial issues the legal status of women has improved, the effect of the adoption of Islamic Sharia at the regional level has led to new regulations that tightly control their movements in public areas.

This chapter discusses women and the legal rules that apply to them under Islamic family law and local Sharia regulations. It presents a number of Islamic familial rules on women as presented in the *Kompilasi* and observes two local regulations from Tangerang and Cianjur inspired by Islamic Sharia and that affect women both socially and politically.

## **Personal or family laws**

Following the trend of codification of Islamic family law in a number of Muslim countries, Indonesia issued a so-called *Kompilasi Hukum Islam*. Keeping pace with the growing demand by society for gender equality, Indonesia has used the *Kompilasi* to heed women's interests, paying special attention to the issues of polygamy, divorce, marital property, and post-divorce rights for women. This specific attention ties in with the State agenda to empower women in accordance with the program of social and economic development. Here, I will discuss briefly the rules on these issues laid down in the *Kompilasi*. I refer to the *Kompilasi*, but am aware of its low legal standing as it was only issued as a Presidential Instruction. The *Kompilasi* is a regulation that applies specifically to Indonesian Muslims and any legal issues relating to the *Kompilasi* are dealt with by judges in the religious courts.

## **Polygamy**

Referring to the modern rules of polygamy introduced by a number of Muslim countries, we see at least two trends emerge. The first trend is for polygamy to be entirely abolished and considered as a crime; and the second trend is for it to be permitted but, in order to avoid the abuse of its practice, it is governed by strict regulations.<sup>14</sup> The practice of polygamy requires the court's permission and is dependent on husbands meeting certain requirements and conditions. By including these restrictive conditions and requirements, these countries consider the Quranic standard of 'equal justice' no longer a matter for the moral conscience of the individual, but rather a legal matter to be decided by the court.

Indonesia has taken the second approach, allowing its practice. Articles 55, 56 and 57 of the *Kompilasi* thoroughly administer polygamy and list reasons and qualifications. These articles insist that the polygamous marriage can be solemnized only if all these conditions are fulfilled, and if one of the stated reasons exists. Failure to fulfill the requirements results in the prohibition of its practice. Above all, the approval of the court is absolutely essential and this means that the polygamous marriage can only be legally recognized if it is approved by the court. However, article 59 (3) and 59 abolish the necessity for the wife's consent. Article 58 (3) regulates the condition where wives are absent and their whereabouts are not known, preventing them from being involved in the case. It states that the consent of a wife or wives

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<sup>14</sup> For a detailed discussion of the legal reform on polygamy in a number of Muslim countries, see Jan Michiel Otto (ed), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, Leiden: Leiden University Press, 2010. See also John L. Esposito, *Women in Muslim Family Law*, New York: Syracuse University Press, 1982, 92.

can be denied if she or they are hardly heard or are impossible to involve in the case, or if her or their whereabouts have not been known for two years, or if other conditions prevent her or them from being involved in the case that is being reviewed by the judge.<sup>15</sup> Further, article 59 administers situations where husbands have presented grounds for divorce, but wives have refused to give their consent. In such a situation, the courts have superior authority. It states that:

In cases where wives are reluctant to give her or their consent and the husbands' proposal for polygamy has met one of the specified reasons as ruled in art 55 (2), the religious court has the right to make a decision on the proposal, after they have heard the wives' argument and clarifications in court, and wives and husbands can file the decisions to higher courts.<sup>16</sup>

The issue of polygamy is also regulated in governmental regulations, i.e. Peraturan Pemerintah (PP) No. 10/1983 and PP No. 45/1990 that apply to civil servants. PP No. 10/1983 regulates the procedure for a male civil servant entering into polygamy and prohibits female civil servants from being second wives to male civil servants. PP No. 45/1990 presents stricter rules prohibiting female civil servants from marrying not only male married civil servants, but also non-civil servant men. In detail, the PP. No. 10/1983 regulates that a male civil servants can only become polygamous if permission is obtained from his superior. Female civil servants cannot become a second wife to a male civil servant. PP. No. 45 amended some rules, including the rule on the prohibition of female civil servants from becoming a second wife. This governmental regulation prohibits a female civil servant from becoming a second wife not only to a male civil servant but also to a non-civil servant. A civil servant woman is therefore not allowed to marry any married men (someone's husband) in Indonesia.

## **Divorce**

In the issue of divorce, Indonesia, like other Muslim countries, has limited the practice of divorce by requiring both husband and wife to bring a petition for divorce to court. The *Kompilasi* includes detailed rules on divorce and specifies grounds for it to be permitted. It also makes quite a good reform in terms of divorce and its implementation via a wife's petition, which is known in Indonesian as *gugat cerai*. The *Kompilasi* introduces two methods for divorce proceedings to be taken by a wife, as regulated by article 148. The article

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<sup>15</sup> Article 58 of the *Kompilasi*.

<sup>16</sup> Article 59 of the *Kompilasi*.



does not regulate very clearly but states that in cases where the woman wishes to petition for a divorce using *khuluk* (divorce with financial compensation), the judges of religious court must provide an explanation on the effects of *khuluk*. After both parties, wife and husband, agree on the amount of financial compensation (*iwadl*), the religious court issues a decision on granting the husband permission to pronounce the divorce formula. No appeals are accepted on this decision (4). However, when no agreement is reached regarding the amount of compensation, the religious court judges are required to hear and treat the case as a 'common case' (6).<sup>17</sup> In other words, the divorce cannot be proceeded as *khuluk*.

From this article, I understand that not all divorces under wives's petitions or *gugat cerai* can be treated as *khuluk*. The *Kompilasi* has therefore gone beyond *fiqh* or Islamic classical legal doctrines and introduced important reforms, giving wives the right to petition for divorce without always having to pay financial compensation. This means, therefore, that a wife also has a right to spousal alimony if, when she divorced, her petition was made using non-*khuluk* proceedings.

### **Custody and alimony**

The issue of custody is regulated in article 105. It grants custody of children younger than 12 to their mothers, and gives freedom to those aged 12 or older to choose one of their parents to be their custodians.

Spousal alimony and alimony for children after divorce are also administered in the *Kompilasi*. On the issue of alimony for children, article 156 (d) rules that when a marriage dissolves husbands must provide financial support for their children according to their financial capacity. This support continues until the children become mature and are able to support themselves or until they reach the age of 21.<sup>18</sup> The issue of spousal alimony is regulated in articles 149 and 152. Article 149 regulates that husbands are obliged to award proper *mut'ah* (gift of consolation) to their ex-wives, be it in the form of goods or money, if the marriage is dissolved by *talak* (divorce resulting from a husband's petition), unless the marriage was never consummated. Husbands are also to provide financial support, housing, and clothes, in the interim period prior to the divorce being finalized or *iddah*, unless the wife is divorced for *bain* (irrevocable divorce), or is considered to be deliberately not getting

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<sup>17</sup> Article 148 of the *Kompilasi*.

<sup>18</sup> Article 156 (2) of the *Kompilasi*

pregnant.<sup>19</sup> The ruling that a wife's disobedience will harm her entitlement to financial maintenance is stressed in article 152, which states that an ex-wife has a right to financial maintenance during the *iddah* unless she is disobedient.<sup>20</sup>

### ***Perda Shari'a* and women: Morality and ethics**

Sharia is accommodated not only into laws at a national level, but it is also taken as a basis for regulations issued at a local level. It is the second amendment of Indonesia's 1945 Constitution by the People's Consultative Assembly established during the reforms of 1998 that has marked the rise of the enactment of Sharia-based local regulations in a number of districts in Indonesia. Article 18 of the Constitution signalled the possibility for local government to issue such Islamic regulations. Indeed, the article provides a legal basis for the districts that are endowed with regional autonomy to manage their own regional affairs, including issuing a number of local regulations (*Peraturan Daerah/Perdas*). Regional autonomy itself is mandated in the Regional Autonomy Laws No 22/1999 and 25/ 1999 which were implemented in 2001.<sup>21</sup>

The primary objective of these laws is to offer more authority and power to regions to manage their own affairs and development. The enacting of regulations has, therefore, become one of the local government's main tools for developing their own regions.<sup>22</sup> It is in this context that Sharia-based local regulations have begun to be enacted. Aside from Aceh, a number of regions and cities have enacted such regulations, including, among others, Bulukumba, Tangerang, and Cianjur. Although the majority of the regulations enacted by these three districts apply to both men and women, the issue of women has become quite central to the project of enacting these local regulations.

There are at least two areas in which women are specifically and tightly controlled and managed by these regulations in the three districts. These two areas relate primarily to morality and ethics. One is the area of how women should behave in public and the other relates to when women should go out. The regulation on women's behaviour in public has been enacted by Bulukumba and Cianjur, and the second regulation on women going out has been issued in Tangerang. These regulations arise from a way of thinking of a number of

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<sup>19</sup> Article 149 of the *Kompilasi*.

<sup>20</sup> Article 52 of the *Kompilasi*.

<sup>21</sup> Nur Rifah and Honest Dody Molasy, 'Questioning Women Security in Perda Syariah (Critis to Indonesian District Policies)',

<sup>22</sup> M.B. Hooker, *Indonesian Syariah: Defining a National School of Islamic Law*, Singapore: ISEAS, 2008, 244.

Islamists who claim that Indonesia faces many serious problems as a result of a degradation of morality and ethics in society. These Islamists argue that women are the source of a number of these problems.<sup>23</sup> So, in order to resolve these issues, women are obliged to control and manage their attitudes and behaviours.

Through regulation No. 5/2003, Bulukumba regulates that women should dress in accordance with Islamic Sharia, i.e. they are obliged to wear the *jilbab*. This regulation was drawn up in the context of South Sulawesi's erstwhile call for an Indonesia-wide implementation of Sharia, which found its momentum in the central government's policy on regional autonomy. The regulation was initiated in the Committee for the Preparation of Enforcement of Islamic Sharia (*Komite Persiapan Penegakan Sharia Islam*, KPPSI), whose members believed that the enforcement of Islamic Sharia is 'the solution to the all too evident ills of society'.<sup>24</sup> The requirement to wear the *jilbab* is considered to be one of the ways to cure such illness. The regulation obliges all female civil servants to wear *jilbab* during working hours. It also requires female teachers and school children, and all female citizens who seek service from district governments, to cover their heads.

Taking the same tone as the KPPSI, an association of Muslims in Cianjur, called SIMLUI (*Silaturahmi dan Musyawarah Umat Islam*/Islamic Muslim Bond and Consultation), urged for the implementation of Islamic Sharia in Cianjur, and convinced the people of Cianjur that Islamic Sharia is the solution to social ills and could improve the good morality of Cianjur society. Members of SIMLUI therefore promoted a number of regulations inspired by Islamic doctrines and adopted Islamic clothing, meaning that Muslim women should wear *jilbab*. Through a circular letter issued by Bupati in Cianjur, No. 025/3643/Org and Letter No 061. 2/ 2896/Org, Cianjur government requires Muslims to wear Muslim/Muslimah uniforms on workdays. This regulation constitutes the further implementation of Perda Cianjur No. 3/ 2006 on the establishment of pious society (*gerakan pembangunan masyarakat berakhlaqul karimah/Gerbang marhamah*). However, while the Bulukumba regulation on *jilbab* applies to all women, particularly when they visit governmental offices, the regulation of Cianjur applies only to Muslim state officials. In addition, the regulation also governs Muslim men's clothing, requiring them also to wear Muslim dress; this is known as *baju Koko*.

Tangerang follows the same reasoning as Bulukumba and Cianjur regarding to women's contribution to the growth of social illness and the moral hazards of society.

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<sup>23</sup> Karni, Budiarti, and Barus, 'Batas Niat Baik dan Komoditas Politik', *Nasional*, at [www.gatra.com](http://www.gatra.com), 2006.

<sup>24</sup> M.B. Hooker, *Indonesian Syariah*, 264.

Tangerang, however, has developed this thinking in a quite different way and through local regulation No. 8/2005 has forbidden women to go out at night after 10 PM unless accompanied by a close male relative (*muhrim*). This regulation is designed to ban the practice of prostitution. However, the regulation also manages to limit women's appearance at night. Under this regulation, the mere suspicion or appearance of being a prostitute can become sufficient grounds for arrest.<sup>25</sup>

All these regulations that affect women were, as will be discussed later, according to their proponents, issued by these three local governments in order to provide security for women and protect their dignity and safety. They agreed that women should be protected. However, according to opponents of these regulations, the way women are protected has marginalized women and confined them to domestic life, and that the reality is that women have become the victims of the implementation of the regulations justified by Islamic sharia.

### **Women's legal knowledge**

I have found that Indonesian Muslim women now have more knowledge about the law than previously. This can be seen by the fact that they know of the existence of the relevant laws and most of the rules covered in the laws. Based on a questionnaire distributed to 100 respondents and interviews with 23 women, this research found that women have become aware of a number of legal rules regarding their status. Almost all the respondents, 86 of 100, know the familial rules covered in the state laws, i.e., the Marriage Law No. 1/1974 and the *Kompilasi*, on marriage, divorce, polygamy, custody, and inheritance. However, only a few of them (23) know the rule that a husband's sexual harassment of his wife is a criminal offence, as regulated in UU *Penghapusan Kekerasan dalam Rumah Tangga* (Law on the Elimination of Domestic Violence).

Nonetheless, their literacy does not mean that they approve or agree with the rules. Most of them agree with the rules that would give them certainty in legal transactions. 88 of them, for example, support the rule for the requirement for the registration of a marriage and 76 of them also approve the rules on a minimum age for marriage, i.e., 16 years for women and 19 for men, demonstrating that they do not agree with the marriage of minors. Their agreement is also given to other rules that put them in a position against or can result in confrontation with men or their husbands. Almost all the respondents (90) strongly agree that polygamy should only be permitted if the existing wife or wives of the husband consent, and

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<sup>25</sup> 'Perempuan, Perda, dan Domestifikasi' *Kompas*, 4 March 2006.

only if one of three reasons, as specified in the law, is present. The majority of them also agree with the law that mothers should have a priority in terms of custody of children aged 12 years and younger (*ghayr mumayyiz*) after a divorce.

Their answers diverge on some of the other rules. For example, almost half of the respondents (46) see as fair the rule that states that a wife should lose her right to spousal alimony during the *iddah* or the period while she is waiting for the divorce petitioned by her to be finalised. The remaining respondents, more than half (54) consider it as biased and unjust, particularly when the petition for divorce by a wife is motivated by a husband's faults, such as a husband's bad behaviour, polygamy, or a failure to provide financial support. They also differ in their views relating to the listed reasons given for polygamy. While the majority of respondents (77) agree that acute illness is a legitimate reason for polygamy, only 34 consider a wife's infertility to be an appropriate reason for polygamy. One of the women interviewed asserted that while it is difficult to communicate about and discuss acute illness, infertility has a solution. Adoption, she said, can be a solution, allowing a couple to maintain their marriage and meaning a husband does not have to take another wife. Although both of these conditions are beyond wives' control and responsibility, acute illness might disadvantage husbands and could lead husbands to *zina*.<sup>26</sup>

Interestingly, although the majority of respondents agreed that a sexual relationship could only be fulfilled when both husband and wife desire each other, most of them (74), doubt if marital rape (sexual harassment of a wife by a husband) can be criminalized, as ruled in law No. 23/2004. One of the respondents said that she has just learned about this rule from the television news, and she said she found it hard to define what sexual harassment of a wife by her husband is. So, for her the rule is positive, as she believed that it was issued to protect women. However, she questions the mechanism of investigation and worries that there will be negative effects should the rule be strictly applied.<sup>27</sup> These divergent answers may arise because this rule is not very relevant to the debate about whether or not women have been given an equal position within legal rules. Most of the women respondents appear to be afraid that when the rule is applied, it will result in further dilemmas and more serious problems. Although most of them agree with the rules that empower them, many of them feel more comfortable with classical legal doctrines for some cases. For example, they do not

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<sup>26</sup> Interview with AS, Tangerang, February 2012.

<sup>27</sup> Interview with NP, Tangerang, February 2012.

agree with the prohibition of polygamy. They also do not agree that guardianship in marriage can be held by female relatives.

## **Conclusion**

The legal status of women has been improved within Indonesian Islamic family law in accordance with the state's project for legal rationalization and codification. The rules that give women a better position include, among others, the rules of divorce, the restriction of polygamy, and the fair distribution of joint property between spouses. The legal status of women has also been improved in the case of inheritance, where women as daughters assume an equal position with men in terms of collateral. Nonetheless, despite these reforms, women remain subordinate in some cases. In the case of polygamy, although the consent of the wife is necessary, it can be waived in certain circumstances.

The subsistence of this weak position of women's legal status within Indonesian family law is worsened by the recent increase in local regulations justified by Sharia. Some of these local regulations control women's attitudes and performance on the assumption that women have contributed to the moral decadence of Muslim society. Tangerang, Cianjur, and Bantul are among those regencies that have enacted Sharia-based local regulations which affect women. Women's performance in public areas has become the target of the content of these regulations. The requirement to wear *jilbab* for women working in state offices and for all women seeking services from those offices is among the content of these regulations in Cianjur and Bulukumba. And the restriction of women's appearance in public spaces late at night is regulated in Sharia-based local regulations relating to the prohibition of prostitution in Tangerang. In Bantul, studied by Fauzi for this program, prostitution is severely prohibited by one of its Sharia-based local regulations. The regulation applies not only to women as prostitutes but also to their pimps and brothel owners.

## **3: WOMEN AT RELIGIOUS COURT: JUDGES' LEGAL DISCRETION AND WOMEN'S LEGAL ATTEMPTS**

Unlike men, since long time, women have not been able to avoid court when fixing their rights. Since 1974, and a series of reforms, both men and women involve the courts in their affairs, and men are just as likely as women to be forced to use the court to validate their legal actions. However, although both of them are equally obliged to use the courts, the reality is that in some cases, like divorce, custody and decisions about alimony, women use



the courts more than men do. Men use the courts more than women only in cases of polygamy, where the involvement of wives is also required.

This chapter discusses major familial issues relating to the legal position of Indonesian Muslim women in practice in West Java and Banten, in particular. It observes women's fate in legal cases in the courts and the factors that contributing to these outcomes. The key points that are answered in this part relate to how religious court judges see and position women when they are involved in legal disputes, i.e., whether or not women have better access to justice, and how women play their roles in court. For the purpose of comparison, the legal practice relating to women in the religious court of another district, Bulukumba, will also be studied in a separate but integrated project to this research.

### **Remaining subordinate: In which case(s) and why?**

Despite many reforms, women continue to have a weak position in court in cases of polygamy, custody, and post-divorce alimony for their children. There are a number of factors that contribute to this.

### **Polygamy: loose application of law and traditional interpretation**

In the case of polygamy, women are often not able to negotiate or indeed influence the judges' judicial discretion. Although the issue of polygamy is well and exclusively regulated in a number of laws, as mentioned before, including the *Kompilasi* and PP No. 10/ 1983, which was amended in 1990 by the PP No. 45/ 1990, to make the practice of polygamy more difficult, judges in the three courts observed remain gender-biased and unreceptive to women in this matter.

Based on its observations, Pusat Studi Hukum, Konstitusi dan Hak Asasi Manusia, PUSKUMHAM/The Centre for the Studi of Law, Constitution, and Human Rights, State Islamic University, Jakarta revealed that a number of judges have been sensitive to gender issues, as can be demonstrated by their attitude when resolving cases of divorce, joint property and polygamy. It also reported that some judges in the courts of Padang, Aceh and Makassar, have been very much concerned with protecting women's rights and are receptive to gender issues.<sup>28</sup> Hearings on cases of polygamy where judges required husbands to rethink and where they warned husbands of the effects of their unfairness or unequal treatment of

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<sup>28</sup> See Arskal Salim (eds.), *Demi Keadilan dan Kesetaraan: Dokumentasi Program Sensitivitas Gender Hakim Agama* (Jakarta: PUSKUMHAM, 2009).

their co-wives, for example, illustrate that gender sensitivity has been widespread in the courts of Aceh and Makassar. Another case from Aceh on divorce, in which judges awarded a greater portion of joint property to the wife – the reason for this couple to divorce being the husband’s polygamy – clearly demonstrates that these judges are quite sensitive about gender issues. It must be mentioned, however, that the rise of this gender sensitivity was not instantaneous, but rather resulted from serious training of judges on the strengthening of gender sensitivity run by a number of Centres of Women Studies. Through these trainings, principles of equality, justice and fairness, as set out in a number of international treaties and in the Indonesian laws that ratify them, were introduced.<sup>29</sup>

By contrast, I have found that most of the judges in the three courts featured in this research seem to remain biased or unreceptive in respect of this issue, despite also having received training on gender sensitivity. The judges of these three courts often refer to the Quranic verse that allows polygamy. Although the Quran stresses justice and a number of verses tend to discourage polygamy, many judges are of the view that polygamy is acceptable and refuse to acknowledge it as deviating from the Quran. One of judges said that polygamy is allowed according to the firm law, the Quran, and no law can be made to violate it.<sup>30</sup> It seems, then, that gender sensitivity training does not work and certainly as a single factor is incapable of awakening judges to these issues. Indeed, a number of other factors are also relevant: personal identity, educational and family background also contribute to the positive effects of the training and encourage the rise of gender sensitivity among judges. The way training is conducted may also be a factor that should be considered. The theory of typology of persons, including judges and their gender sensitivity, can be used to explain this.<sup>31</sup> In fact, Puskumham found that the judges of these three courts were trained by a centre for women studies (Pusat Studi Wanita, PSW), with an approach and a method quite different from that employed by the institution that trained the judges of Aceh, Makasar and Padang.<sup>32</sup>

I collected nine judgements on polygamy issued within the period 2007-2009 by the religious court of Cianjur. These judgements relate to cases of polygamy brought before the court in these two years. All of the nine judgements showed that all the petitions for polygamy were approved by the court. The reasons for approval varied according to the

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<sup>29</sup> For the curricula and materials of the training see, Arskal Salim (eds), *Demi Keadilan dan Kesetaraan*, 22-26.

<sup>30</sup> Interview with the head of religious court of Tangerang, May 2011.

<sup>31</sup> See Geeta Sarma and Deepa Sonpal, ‘Gender Awareness and Sensitivity Applications’, Unnati Organization for Development Education, Gujarat, India, 2008. See also Karen Chapanskiy, ‘Gender Bias in the Courts: Social Change Strategies’, *Journal of Legal Ethics*, vol. 4:1, 1991.

<sup>32</sup> See Arskal, *Demi Keadilan dan Kesetaraan*, 32-35.

reasons put forward by the petitioners (husbands), from the inability of existing wives to provide descendants and acute illness of the wives, to a high sexual desire that needs to be fulfilled. It is worth mentioning that, although not explicitly mentioned, high sexual desire is the dominant reason for these petitions. Indeed, four of the nine judgements revealed that the reasons for the polygamy proposals were that their wives could not satisfy their husbands' sexual desires or lust. These judgements clearly indicate that judges in this court remain open to polygamy and are not particularly strict about the rules, often approving the illegal reasons presented by husbands as grounds for polygamy.<sup>33</sup>

The court of Cianjur is not an exception. Many judges in the other two courts in my research showed similar tendencies. Besides judgements issued by the court of Cianjur, I also collected judgements issued by two courts in Serang and Tangerang, Banten. From the 45 judgements issued by the court of Serang on various cases, six are on polygamy; from 72 judgements collected from the court of Tangerang, five are on polygamy.<sup>34</sup> Although the reasons presented in the decisions issued by the court of Tangerang include religious observance (*ibadah*)<sup>35</sup> in two cases, wives' failure to satisfy the sexual desire of their husbands in two cases, and the husband's high mobility in one case, all five of the petitions,

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<sup>33</sup> I have copies of all nine judgements. Some of them are identified as Decisions No. 255/Pdt.G/2008/PA.Cjr, No. 290/Pdt.G/2008/PA.Cjr, 393/Pdt.G/2007/PA.Cjr, and No. 358/Pdt.G/2007/PA.Cjr

<sup>34</sup> This number has contributed to large number of polygamy cases being approved by religious courts across the country. *Hukumonline*, Indonesia's leading source of legal news, counted that from 1,016 applications for permission to marry polygamously lodged in religious courts in 2004, 800 were approved. It further informs that the approval by religious courts was given to 776 of 1,148 applications in 2006. Quoting this issue in his article, Butt states that, given Indonesia's large population, those numbers seem quite small. Nonetheless, he suggests that the proportion of approvals may support his and other researchers' claims of a relatively judges' permissive approach to polygamy, to which I agree. See Simon Butt, 'Islam, the State and the Constitutional Court in Indonesia', *Pacific Rim Law and Policy Journal*, Vol. 19, No. 2, 2010, 291. For the details on the number of polygamy applications and approvals in those years, see *Menguak Sisi Gelap Poligami*, HUKUMONLINE, Dec. 23, 2006, [www.hukumonline.com/berita/baca/hol15941/menguak-sisi-gelap-poligami](http://www.hukumonline.com/berita/baca/hol15941/menguak-sisi-gelap-poligami) (accessed in June 2011); *Syarat Poligami akan Diperkuat*, HUKUMONLINE, Feb. 19, 2009 [www.hukumonline.com/berita/baca/hol21230/syarat-poligami-akan-diperketat](http://www.hukumonline.com/berita/baca/hol21230/syarat-poligami-akan-diperketat) (accessed in June 2011).

<sup>35</sup> Many Indonesian Muslims consider the practice of polygamy as one of religious observances (*ibadah*) to be performed by Muslims. The most famous idea of this was displayed by Muhammad Insa. Insa intended to practice polygamy, but he found that the rule prevented him to do so. Having been irritated by the rule on polygamy in both The Law of Marriage and the *Kompilasi* and declaring that the rule was in violation to his religious freedom, he petitioned for judicial review on the rule to Constitutional Court rather than to seriously apply for polygamy at Religious Court. He argued that the practice polygamy is one of *ibadah* and the State has to give freedom to Muslims to manifest it and is not to restrict it. Arguing that the rule does not violate people's right, the Constitutional Court dismissed Insa's application. For further discussion on this issue, see Faye Yik-Wei Chan, 'Religious Freedom vs. Women's Rights in Indonesia: The Case of Muhammad Insa', *Archipel* 83, Paris, 2012, 113-145. See also Simon Butt, 'Islam, The State, and Constitutional Court', *Pacific Rim Law and Policy Journal*, Vol. 19, No. 2, 2010.

plus two petitions in the court of Serang, were basically approved in order to fulfil the high sexual desire of the petitioners (husbands).<sup>36</sup>

Two of these cases will be illustrated in more detail below. One case is from the court of Serang and the other is from Cianjur. The cases are illustrated as box cases:

Box case 1 (Decision No. 526/Pdt.G/2009/PA.Srg)

A (a husband with one wife) proposed a polygamous marriage in the court of Serang. While his wife and four children live in Bandung, West Java, the husband, a housing contractor, is often away visiting a number of cities, including Serang, Banten. While staying in Serang, he had been responsible for housing in the city for one year. His wife did not come with him to Serang. He met a woman and fell in love with her and, fearing that he had committed extra-marital sexual intercourse, he decided to marry her and went to court to ask for permission. He presented the court with the reason that his wife could not fulfil his sexual needs as she was living far away. The judges approved the proposal on the condition that his wife gave her consent, that the husband had sufficient financial resources. The judgement also stated that it was feared that the husband would be tempted into extra-marital sexual intercourse (*zina*) unless his proposal was granted.

The husband put forward a reason that was not specified in the law. He simply stated that his wife had not moved with him to the new city and he intended to avoid extra-marital sexual intercourse (*zina*) with the new woman. The wife gave her consent, but, according to the law, this consent could only be obtained after the husband had presented a legitimate reason, one specified in the law. It should be this legal argument and not the consent of the wife that is taken as the grounds for the judges to approve the proposal.

Box case 2 (No. 290/Pdt.G/2008/PA.Cjr)

NES, a married woman with four children, could not do anything but give her agreement when her husband, HR, asked for her consent to his intention to practice polygamy. Having been married to her husband for 20 years, HR claimed that his wife was no longer

<sup>36</sup> Some of these judgements are identified as decisions No. 280/Pdt.G/2009/PA. Srg, No. 526/Pdt.G/2009/PA.Srg, No. 322/Pdt.G/2009/PA.Srg, No. 211/Pdt.G/2008/PA.Tng, and No. 164/Pdt.G/2008/PA.Tng.

able to satisfy his sexual desire. On these assumed grounds, HR petitioned for polygamy in the court of Cianjur. He applied to marry a widow and promised to treat his co-wives justly and declared that he was capable of supporting the two wives financially. Unlike most wives in such cases, who are reluctant to show up at court, NES appeared in court to declare her consent. One of the witnesses, NES' sister, approved a number of statements regarding the case and, reluctantly, stated that she, as the defendant's sister, would support her sister's decision. She assumed that this would be the best solution for her sister and her sister's husband.

The judges approved the proposal without making any further statements or requiring evidence to support the petition. They simply noted what had been stated by both litigants and witnesses and relied on confessions made by the defendant. They stated that this was sufficient for them to award HR permission for a polygamous marriage. In addition, while the judges were aware that the argument presented was not specified in the law, they declared that HR had met the necessary qualifications and had presented an appropriate argument to support his petition.

These cases are, of course, striking, as the issue of polygamy in Indonesia, as touched on previously, are in fact well and exclusively ruled on in the the *Kompilasi* and PP No. 10/1983 applying to civil servants, which was then amended in 1990 by the PP No. 45/ 1990. The *Kompilasi* clearly stresses that one or more reasons should be presented first and the qualifications are to be met afterwards.<sup>37</sup> With such comprehensive rules, the practice of polygamy should be better controlled and no arbitrary polygamous marriage can be legitimately concluded unless the arguments put forward in such cases are those specified in the laws. The above cases suggest that, in fact, the contrary is true and clearly demonstrate that judges in these courts do not always adhere to the rules strictly and that, in contrast to the issue of divorce, polygamy is quite difficult to control and to be 'verneculized' (interpreted according to modern legal discourse). A number of judges clearly believe that polygamy is a legal practice that has clear Islamic legal rationale. Some of them even frankly admitted that if they were to oppose polygamy, they believed they would be deviating from Sharia.<sup>38</sup> These factors combined lead judges to a loose application of the state law.

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<sup>37</sup> Art 2/ PP. No. 10/1983 and art 2/PP. No.45/1990.

<sup>38</sup> Based on interviews with six judges of Religious Court of Serang and Tangerang, 2011.

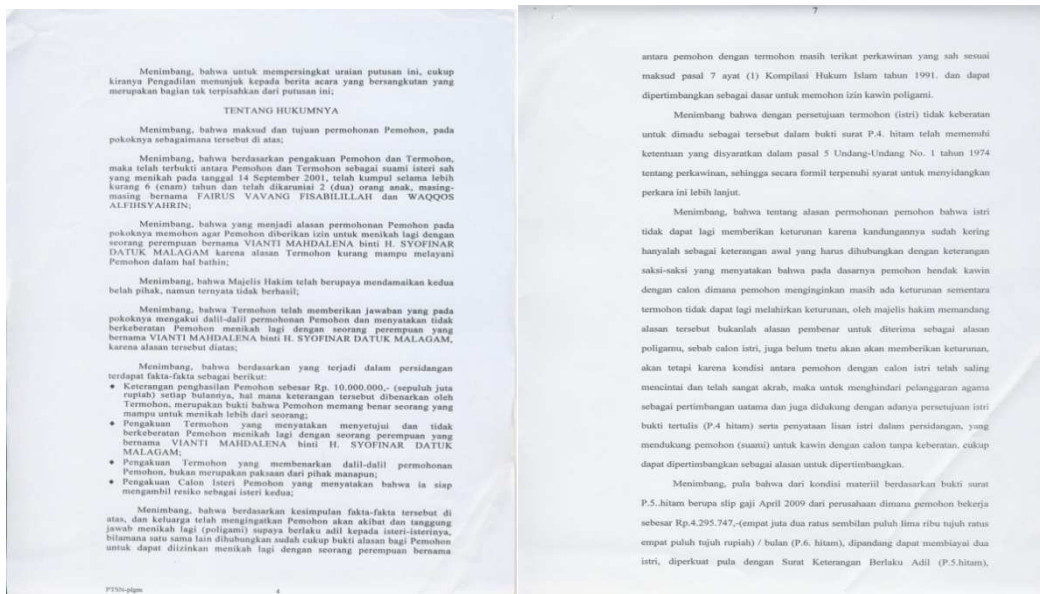
Such a tendency can be seen, forexample, from the judges arguments that they are not required to observe whether or not the consent of the wife is given sincerely. They had neither to check whether or not the husband genuinely has a high sexual desire, nor to discover whether or not the existing wife of the husband is really not able to have children, when husbands present such reasons to support their request for polygamy.<sup>39</sup> Above all, in their judgements, most of the judges looked at and stressed the qualifications to be met by husbands, rather than the reasons why husbands wanted a polygamous marriage. Consequently, they could accept any reasons presented by husbands, even those not included in the laws. Rather than stressing justice, to which judges should be committed, in their legal reasoning, the emphasis here appears to be on the concept of *maslahah* (public good). To my view, this is absurd as it is founded on only the interests of the husband and his new wife.

Interestingly, many judges questioned admitted to having received training on gender sensitivity; indeed, many judges felt that they were receptive to gender issues. In practice, however, they appear to have misunderstood the issue and, in fact, gender is manifested in a quite improper fashion. This lack of gender sensitivity and the improper manifestation of gender were clearly understood from the judges statements during an academic forum at which I presented a paper and that a number of the judges from the three courts attended. The forum discussed access to Islamic justice, and one of the sessions was devoted to women's issues. When the discussion came to the issue of polygamy and one of the speakers, Maria Ulfah, expressed her disapproval of this practice, one of judges present angrily stood up and declared his unwavering support for polygamy, arguing that permission for polygamy is clearly stated in the Quran. He was supported in his view by another female judge who offered a more reasonable and practical argument. She admitted that she and other colleagues were often faced with requests for polygamous marriages and she said that she often saw first wives receive bad treatment from their husbands if they refused to give consent to their husbands. This female judge assumed that if the petition was not approved, a wife would receive worse treatment from her husband. Concluding her point of view, she said that by giving her permission for polygamy she was attempting to protect women, a thought that evoked criticism from other seminar attendants, gender activists in particular, who viewed the female judge's way of thinking as absurd and compounding problems of domestic violence, as she solved one form of domestic violence with another.

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<sup>39</sup> Interview with judges of Tangerang, July 2011 and based on content analysis of decisions on several petitions for polygamy. For the same findings on this, see M.B. Hooker, *Indonesian Syariah: Defining National School of Islamic Law*, Singapore: ISEAS, 2008, 12-13.

In addition, judges rarely communicate the reasons for their legal decisions. Researches on the issue of polygamy report that polygamy is detrimental to first wives and that, in fact, many first wives go on to petition for divorce on the grounds of continuous disputes resulting from a husbands' polygamy. Rather than considering the effects that their approval has on the fate of first marriages, judges focus on their anxiety that husbands would be tempted to commit *zina* with their new female partner. Many divorces petitioned by wives whose decisions are in my collections were affected by husbands' polygamy. Of 21 divorce cases under wives' petition



heard in the courts of Tangerang and Serang, seven were triggered by the husbands' polygamy. While not all of these polygamous marriages had been granted formal or legal permission by the courts, petitioners gave a clear message to the judges that polygamy is a potential source of divorce.

Table 1  
Divorce petitions by wives motivated by husbands' polygamy

No/Court	Presented reasons	Triggers
209/Pdt.G/2009/PA Srg. (gugat)	Husband's polygamy	Husbands' infidelity and his polygamy

98/Pdt.G/2008/PA Tng (gugat)	Husband's failure to provide financial support for his wife and child Wife's resistance to sharing her husband with another woman	Husband's polygamy
154/Pdt.G/2009/PA Srg (Gugat)	Husband's ignorant behaviour towards the wife and his failure to spend regular time in his first marital home Husband's polygamy without wife's consent	Husband's polygamy
224/Pdt.G/2009/PA Srg (gugat)	Husband's bad communication regarding financial resources and his income Change in husband's behaviour Husband's polygamy	Husband's polygamy
239/Pdt.G/2008/PA Srg (gugat)	Husband's financial problems Husband's pronouncement or declaration of divorce formula outside court	Husband's polygamy
562/Pdt.G/2008/PA Tng (gugat)	Financial problems Husband's ignorant behaviour towards wife and prolonged absence Husband's polygamy	Husband's polygamy
223/Pdt.G/2008/PA Srg (gugat)	Husband's polygamy Continuous disputes	Husband's polygamy

### **Custody and alimony for children: absence of execution mechanisms**

In cases of custody and post-divorce alimony for children, women also often remain to have weak position. In the classical legal doctrines, the rules relating to custody vary according to the divergence of schools of Islamic law. However, they agree in a matter that age of the children decides which parties have the right to custody over the children when their parents separate.<sup>40</sup>

Custody refers to the physical care and control of a minor. In other words, custody is the right to the physical presence of the child. 'Custody' can only exist in relation to the

<sup>40</sup> See Wahbah Zuhayly, *Al-Fiqh al-Islamiyy wa Adillatuhu* (Damaskus: Dar al-Fikr, 1984), Vol. 10, 4th edition, 7306. See also Al-Jaziri, *Al-Fiqh ala al-Madhahib al-Arba'a*, 596-598; Dimsaqy, *Kifayat al-Akhyar*, Vol. II, 152, and Bajuri, *Hashiya Kifayat al-Akhyar*, Vol. II, 198 and 203.



minor's person, not over his or her property. The person who is granted this right is called a custodian. A custodian has narrower duties than a guardian, who is someone who has rights and duties with respect to the care and control of a minor's person or property. With regard to guardianship, which includes financial maintenance for children, fathers and their relatives are given more rights. Decision making about the persons and property of children under legal age is consistently vested in the father and, in cases where he is absent, in one of his relatives.<sup>41</sup> While physical care of the children can be the responsibility of mothers or fathers, mothers have superior rights in terms of the custody of children under the age of puberty (*ghayr mumayyiz*).<sup>42</sup>

In Indonesia, the rule on custody modifies those of the classical legal doctrines (*fiqh*) and does not follow Shafi'ite legal opinion to which Indonesians Muslim adhere for the majority of legal issues. Shafi'ites define the age of puberty as seven.<sup>43</sup> In *Kompilasi*, it is ruled that custody of children aged under 12 is to be awarded to their mothers and children aged 12 and above can choose which parent (mother or father) they will stay with.<sup>44</sup>

In Indonesian religious courts, a custody case can be resolved by filing a separate case or as part of a divorce case. Cases of custody are mostly brought by women. In custodial cases a woman can face two issues: first she wishes to obtain the right to become a custodian according to the law (that is, to retain custody of children under the age of 12, while children over 12 can choose which parent they will live with); secondly, she may struggle to have the courts' decision to make her custodian actually implemented. In the first instance, problems can arise when the man argues that the divorce petition is motivated by the wife's behaviour. For example, among the reasons given by husbands seeking custody on the grounds that the wife is not fit to bring up the children are the women leaving the marital home to work and the woman's religious impiety. These two issues were clearly present among the judgements I collected for this research.

In Indonesian religious courts, judges' decisions relating to custody cases generally emphasised the best interests of children, as is stressed in the *kompilasi*. However, these rulings rest on the perception of individual judges as to what constitutes the 'best interests' of the children. This is a highly abstract notion. A number of decisions in the cases I studied

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<sup>41</sup> Asha Bajpai, 'Custody and Guardianship of Children in India', in *Family Law Quarterly*, Vol. 39, no. 2, .2005, 441-457.

<sup>42</sup> Wahbah Zuhayly, *Al-Fiqh al-Islamiyy wa Adillatuhu*, 7308. See also Al-Jaziri, *Al-Fiqh ala al-Madhahib al-Arba'a*, 597-598

<sup>43</sup> Wahbah Zuhayly, *Al-Fiqh al-Islamiyy wa Adillatuhu*, 7322.

<sup>44</sup> Art. 105 of the KHI. See also Euis Nurlaelawati, *Modernization, Tradition and Identity*, 144-145.

stated that they were made in ‘the best interests of children’. However, since every case has a different character and nature, it is difficult to draw general conclusions about this. Judges do mention a number of factors or reasons for awarding or dismissing custody. However, what is clear is that decisions often favour the party that was able to negotiate or influence and change a judge’s decision most effectively. The attitudes of husbands and the tendencies of judges can also be seen in a number of decisions issued by courts in other Muslim countries.<sup>45</sup>

Of the 13 custody cases heard in the courts of Tangerang, Serang and Cianjur whose decisions were either integrated in decisions on divorce cases (petitioned for by wives) or separate custody cases, five decisions dismissed the wives’ rights to custody. Although this is a small number given the fact that eight decisions awarded wives the right to custody, these cases do demonstrate an imbalance and the judges’ unequal approach to the issue; an approach that leaves many wives aggrieved.<sup>46</sup> Two of the five wives who were refused custody by judges in the courts of first instance did not negotiate their cases or file an appeal with higher courts. The reason for dismissing the wife in the first case was that she works outside the house. In her divorce petition, she also petitioned for custody of her 4-years-old son. Although working mothers have negotiated and been awarded custody in some cases, as this case demonstrates, often women’s capabilities in terms of carrying out the task of raising their children are often questioned. Indeed, it was on these grounds that the wife in the case we are examining here was robbed of her rights, despite the fact that the husband worked too.<sup>47</sup> In this case, the principle of the ‘best interests of the children’ is not very clear or well-defined.

The reason why the petition of wife in the second case was dismissed was given as the wife being of ‘bad character’, apparently demonstrated by her husband’s accusation that she had cheated on him. In this case, the mother alleged that the father has poisoned the mind of their 8 year-old child (son) against her and petitioned the court to award her custody. She lost her case because the judges found that she was not an appropriate person to raise the child.

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<sup>45</sup> See Asha Bajpai, ‘Custody and Guardianship of Children in India’, 448-455.

<sup>46</sup> What I found is strengthened by the statement from the National Commission of Children Protection (Komisi Nasional Perlindungan Anak/Komnas Anak). Seto Mulyadi, a consultant for the Department of Child Protection, mentioned that they have heard a number of complaints made by women who lost custodial rights over their children aged under 12 and reported the cases they received to the Judicial commission. He mentioned that in 2012, it received 12 custody cases in which women (mothers) were deprived of their rights by judges on a number of grounds. See Cornelus Eko Susanto, ‘Kak Seto Adukan Masalah Hak Asuh Anak ke KY’, *MICOM*, 13 October 2012, accessed in 12 December 2012.

<sup>47</sup> Personal interview with JH, Serang, 2010.

Instead, they agreed with the husband's allegation that she was not a good and pious mother. The judge emphasised that they had taken into account the child's best interests and stressed that the custodian should be able to develop the child physically, mentally, spiritually, and socially in a normal manner. They assumed that if they awarded this son's custody to his mother, the son might be able to grow up physically but not spiritually.<sup>48</sup>

In the second case, despite the woman being awarded custody by a judge, the ruling was not executed as a result of either the financial or intellectual power of the man. It should be noted that, although a number of mothers lose their rights to custody, as mentioned above, in the cases studied more mothers were awarded custody rights than not. Nonetheless, this does not mean they obtain these rights in practice. Three of the five female litigants interviewed were awarded custody by the courts, but they could not execute the rulings.<sup>49</sup> The following provides details of one of these three cases:

#### Box case 3

A divorced mother spent two years making a legal attempt to gain custody of her two sons who are now under her ex-husband's control. The judges of the appellate court decided that she had the right to custody over her two sons. These judges overturned the decision issued by the judge of a first instance court who gave her husband the right to custody of the children. Having been awarded custody, the husband took the children to his new house. At this point, the mother filed an appeal. She went on to win this case. Basing on the decision issued by the appellate court, the wife asked her ex-husband to hand the children over to her, but the husband refused to do so. Since then, the mother has made a series of attempts to obtain what is her right. She has approached centres for women's studies and legal aid organisations that she thinks may be able to help her and asked a number of individuals for advice on what she should do. So far, she has failed to get the custody order implemented, although she has begun to be given access to her two sons. She is now wondering about the future of her sons, as her ex-husband remarried four months ago.<sup>50</sup>

<sup>48</sup> Personal interview with YL, Tangerang, 2010. See judgement No. 484. Pdt.G/2010/Tgr.

<sup>49</sup> Personal interviews with RF Tangerang, 2010.

<sup>50</sup> Personal interview with RF, Tangerang, 2010.

Another kind of problem also arises in custody cases in relation to post-divorce alimony for children, including irregular or even non-payment of maintenance by ex-husbands. In cases where women are awarded the right to custody, husbands, as it is regulated, are obliged to provide alimony for their children. All of the 37 court decisions collected from courts in Tangerang, Serang and Cianjur, and six hearings on divorce petitioned by husbands in courts in Serang and Tangerang, include obligations for the husbands to contribute to the upbringing of children under the mothers' custody. While there are a few husbands who have complied with this ruling, none of the twelve husbands interviewed were paying alimony according to their judgements. Four of these twelve husbands had paid maintenance only during the first few months and two of the remaining eight made regular payments for a few years and still pay it now but irregularly. However, the other six had not paid any maintenance at all.

**Spousal alimony after ‘*cerai gugat*’ (divorce petitioned by wife): modifying or preserving classical *khuluk*?**

Although, as will be discussed below, women have become more fortunate in the case of alimony after divorce petitioned by husbands, women remain confronted with problems in cases of divorce petitioned by themselves. This relates, essentially, to the previously discussed two forms of divorce. Under Indonesian Islamic law, divorce can be petitioned by both husbands and wives. Divorce petitioned by wives, according to the *Kompilasi*, can be proceeded in two ways, *khuluk* and non-*khuluk*. Although these two ways seem to be the same, they are in practice different and, as mentioned before, the difference is clearly described in article 148. The article describes the difference by stressing the necessity of financial compensation to be paid by wives under the *khuluk* method and the need for the husbands' agreement about the amount of money and the effects proceeding in such a way.<sup>51</sup> The article also states that divorce proceedings can be heard as *perkara biasa* (common case), which I understand as *cerai gugat* under the ‘non-*khuluk*’ method, in particular when agreement on the amount of financial compensation is not achieved.

My understanding is that this article means that when a wife petitions for divorce and her husband agrees to it and does not demand any money as compensation (or a wife does not pay her husband), the divorce is considered to be a common divorce and not *khuluk*. Under this condition, the wife is entitled to spousal alimony (*nafka*) within *iddah* (waiting period) and the divorce is not categorized as *bain* (irrevocable), but rather *raj'i* (revocable). All the

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<sup>51</sup> Article 148 (3 and 4).

cases examined for this research, in which the wives petitioned for divorce, are considered to be *khuluk* and result in *bain (irrevocable) divorce*. Wives are therefore not awarded rights to spousal alimony or *nafka* and above all *mut'ah*. The reasons behind these judicial decisions might include, firstly, a lack of understanding by the judges involved of the reforms relating to forms of divorce in Indonesia; secondly, their misunderstanding of the rule specified in the relevant article; and, thirdly, a tendency for judges to adopt a traditional view of divorce initiated by wives.

Indeed, a number of judges interviewed strongly maintained that, under the classical legal doctrine, divorce petitioned for by a wife is called *khuluk* and no post-divorce payments, i.e. spousal alimony or compensation gifts (*mut'ah*), are to be awarded to her.<sup>52</sup> They then stressed that the *Kompilasi* adopted the same ruling. In practice, many of the judges interviewed, however, admitted to having tried to create justice by awarding wives spousal alimony and *mut'ah*. Nonetheless, in doing so they did not refer to article 148 when making their decision, but declared to have performed an Islamic legal interpretation (*ijtihad*).

Those decisions on divorces petitioned by women that were collected from the court of Serang illustrated the judges' vague understanding of the issue. The decisions issued by the courts of Tangerang and Cianjur demonstrated the same problem. It seems that judges are not very familiar with the reforms made in the *Kompilasi*. This, coupled with their preference for and adoption of classical Islamic legal doctrines, has prevented judges from providing women with better protection in these matters. Therefore, although some admitted to frequently ruling that husband should make two payments of financial maintenance: (*nafkah iddah*) and gift of consolation (*mut'ah*), many women continue to suffer because they are not granted any property, despite their petition for divorce being motivated by fault on the husband's part.

### **Achieving better justice: In which case(s) and why**

There are still cases related to divorce, post-divorce spousal alimony, and *isbat nikah* (marriage confirmation) that have gone in favour of women. Although these remain few and far between, women have become more powerful in these cases.

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<sup>52</sup> Interview with two judges of Tangerang, August 2011. My personal conversation with some judges through a special forum (conducted in the English language) for judges called 'Judicial English Forum', which is managed by Muhammad Noor, proves this assumption. When I raised this issue into a seminar organized by LBH APIK (Indonesian Legal Aids for Women), held in the building of the Ministry of Women and Children Affairs, one of the judges of Jakarta's religious courts responded to it and his response demonstrated his lack of understanding of the rule.

### ***Cerai gugat: increased legal assistance and knowledge and better service. The increase of legal assistance***

Gender discourse and the existence of women centres have helped Indonesian women to become more aware about their legal position. Funded by and coordinated with national and foreign donors, these centres provide advocacy to society. In addition, the Ministry of Religious Affairs has, since 2006, had a special program of ‘Kursus Calon Pengantin/Suscatin (Course on Islamic legal Knowledge for Brides and Grooms)’. The program is held at the Offices of Religious Affairs (Kantor Urusan Agama). The prospective couples (grooms and brides) are awarded certificates for the completion of Suscating. The most significant and influential legal aid relevant to this is run by legal aid posts (POSBAKUM) inside court buildings, operated extensively since 2011, and by PEKKA (Perempuan Kepala Keluarga, Female Heads of Households), an NGO supporting the empowerment of female households in respect of gaining their legal rights.<sup>53</sup> For example, since its establishment in 2012, in its first four months of operation Cianjur’s legal aid post provided legal assistance to more than 220 people,<sup>54</sup> the majority of whom were women seeking legal aid.

As a result of this legal assistance, women have become more secure and optimistic about legal proceedings in court. Unlike men, who can still secure a divorce without going to court, women often have no choice but to go to court to petition for a divorce or to request a certificate or confirmation of divorce. Like the women studied by Peletz,<sup>55</sup> Hirsch<sup>56</sup> and Stiles<sup>57</sup>, Indonesian women who were divorced extra-judicially also go to court to obtain a formal divorce certificate. Although, as we have noted, some Indonesian judges have become more sensitive to gender issues, others remain biased, and tend to pronounce in favour of men. Moreover, as even those judges sensitive to gender issues often attempt to prevent divorce on the grounds that divorce will create problems for both parents and children,

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<sup>53</sup> Cate Sumner and Tim Lindsey, *Courting Reform: Justice for the Poor*, Lowy Institute, 2010, 42-44.

<sup>54</sup> ‘Laporan Pelaksanaan Sidang Keliling, Prodeo dan Posbakum Tahun 2012 Bulan Januari s/d April 2012’, Pengadilan Agama Cianjur. May 8, 2012.

<sup>55</sup> Michael Peletz, *Islamic Modern*, 131-54. See also Judith Tucker, *Women, Family and Gender in Islamic Law* (Cambridge: Cambridge University Press, 2008).

<sup>56</sup> Susan F. Hirsch, *Pronouncing and Preserving: Gender and the Discourses of Disputing in African Islamic Court* (Chicago: The University of Chicago, 1998)

<sup>57</sup> Erin E. Stiles, “There Is no Stranger Here to Marriage: Muslim Women Divorce in Rural Zanzibar”, *Africa*, 75 (4).

women frequently feel that they have an uphill struggle to win their cases.<sup>58</sup> An increase in legal knowledge motivates them to continue their struggle in court.

Female litigants usually highlight those events that they believe are most important in their petition for divorce. They often explain that their marital relationship is no longer sustainable or pleasant and the reasons why such a situation has arisen; they then make supporting statements. For example, women who petition for divorce on the grounds that their husbands failed to support their families often try to prove that this duty was performed by the wife's natal family. By stressing this fact, they want to demonstrate that the marriage is no longer economically beneficial or viable for them.<sup>59</sup> Hirsch and Stiles noted that, under similar conditions, i.e. having been abandoned by their husbands and deprived of financial support, the women in their studies express similar thoughts about their marriages.

In my experience, almost all wives who petition for divorce assert that their parents have assumed the financial burden for their family. They repeatedly question the benefit of prolonging their marriages to husbands who fail to provide support. Wives stress that marriage is an economic partnership. They would prefer to end their marriages and to lead a life alone but with greater reliance on their parents. It is common for plaintiffs to say that their husbands failed to maintain them.

### **Better services by the court**

Aside from the increase in legal assistance, better services in court also lead to better access to justice for women. Supported by the wider international community, including the Australian Family Court, Indonesia's religious courts are trying to develop their services. The courts received a bigger budget from the State Budget in 2008 and 2009 and, subsequently, have run a program of 'Prodeo' (courts for the poor/fee waivers) and courts on circuit (*sidang keliling*), which are largely targeted at poor women.

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<sup>58</sup> Interviews with ER and N, 5 October 2010.

<sup>59</sup> Based on my notes on hearings of cases in SS and DS, 5 October 2010.



Judges waiting for the next case to be heard at 'Sidang keliling' conducted in the KUA building

'Prodeo' constitutes a program to give a better service for poor clients. Under this program, fees are waived for poorer clients. Since it is women who come more frequently to religious courts (although the system is applicable to both women and men), 'Prodeo' has been widely and well utilized by women. This better service is completed by another program called courts on circuit. In this program, judges travel to remote areas to collect and hear cases. This program was initiated due to the fact that Indonesia is huge and has many remote areas where transportation is a problem, resulting in people in these remote areas being prevented from coming to court. A research study by AusAid, in collaboration with PEKKA, demonstrated that in 2009 more than 13,000 marriage legalization cases were filed with the religious courts; and, in the same year, there was a 50% rise in the number of divorce cases, most of which were petitioned by women.<sup>60</sup> In its annual report for 2012, the court of Cianjur revealed that from January to April it has heard 183 fee waiver (prodeo) cases and 133 cases on circuit,<sup>61</sup> including cases for divorce and marriage legalizations.

In addition, it has been observed that judges in these three courts are often lenient about the hearing schedule, and are often willing to re-open day hearings for late comers. This has resulted litigants, including women, having a good perception of judicial practices. It also helps to remove any reluctance by women to come to court to resolve their cases.

<sup>60</sup> Cate Sumner and Tim Lindsey, *Courting Reform*, 32-33.

<sup>61</sup> 'Laporan Pelaksanaan Sidang Keliling, Prodeo dan Posbakum Tahun 2012 Bulan Januari s/d April 2012', Pengadilan Agama Cianjur. May 8, 2012.



### **Spousal alimony after *talak* (divorce petitioned by husband): gender sensitivity among judges**

Gender sensitivity among judges constitutes another factor in terms of gaining better access to justice for women. Partly thanks to trainings held by a number of centres, in cooperation with international donors, such as the Embassy of the Kingdom of the Netherlands and the Asia Foundation, a number of judges from the three courts observed, Serang, Tangerang and Cianjur, have become more sensitive to gender issues, particularly in respect of divorce. Almost all divorces initiated by wives heard in these three courts have resulted in approval.

The gender sensitivity of judges can also be seen in their attempts to affirm that wives should receive spousal alimony after divorce. In all eighteen cases heard in the courts of Tangerang and Serang, the judges stated that husbands were required to submit to the clerk and pay the spousal alimony and *mut'ah* (gift of consolation) before they were permitted to pronounce the divorce formula in court.<sup>62</sup> However, judges are often very realistic and adapt to the actual circumstances of husbands. It is not uncommon in situations where husbands have financial problems, for judges to be lenient and allow a husband to pronounce the divorce formula without making the payment in court. This usually comes with a warning from the judge that husbands are expected to fulfil their obligations in future. The judges would argue that such a decision, i.e. allowing the divorce to be pronounced, avoids leaving wives with an unclear legal status. Equally, judges also take into account the financial conditions of husbands and consequently ignore the amount demanded by wives and decide on a different rate of maintenance to be paid by husbands.<sup>63</sup> There is, however, some evidence that, although economic issue still mean that many husband do not perform their obligations, changes in judges' attitudes in this area have helped improve justice for women to a degree.

Consider two cases from the religious courts of Tangerang and Serang. Case one is noted from my attendance at a hearing in the Tangerang court. The case, involving a husband (S) who wanted to divorce his wife (RH), had already been heard in two previous sessions. With the divorce agreed, the third hearing began with the confirmation of a number of agreements made in the previous hearings on the issue of post-divorce rights to be fulfilled by the husband: spousal alimony to be paid at 700,000 rupiahs per month for a period of three

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<sup>62</sup> Based on notes on hearings held in courts of Serang and Tangerang and interviews with a number of judges in Serang and Tangerang, September, October and November, 2010.

<sup>63</sup> Based on notes on hearings held in courts of Serang and Tangerang and analysis on a number of judgements issued by these two courts.

months. This amounts 2,100,000 rupiahs. *Mut'ah* (gift of consolation) was to be paid at the rate of 500,000 rupiahs. Thus, the sum of all the payments became 2,600,000 rupiahs. There was no agreement on alimony for children as they had no child. After the wife and husband had agreed the total of the payments, the judges asked the husband if he had the money ready; the husband responded with a positive sign. Without being asked, the husband submitted the money to the clerk who checked if the amount was correct. He then passed the money to the wife. She received the money in a casual fashion and did not do what the chief judge asked her to do; that is, to check again the amount of the money. Consequently, having verified that the wife was not menstruating, the chief judge permitted the husband to pronounce the divorce formula. The hearing was then closed and the litigants shook the judges' hands and were dismissed.<sup>64</sup>

Other two case had been heard when RH approached the chief judge. She tried to verify the rulings on the alimony and stated that she now realized that the amount she had accepted was not the amount that she had originally proposed; that she had received less than she had expected. She also said that she would only agree to the divorce if her financial request was met by her husband. The chief judge responded to this approach in a relaxed fashion and said that he indeed remembered the amount requested by her, but found that the amount was too much and was not realistic. The judge had taken into account the financial circumstances of the husband and decided to lower the amount of alimony that the wife would receive. To stop her complaint, the chief judge said that judges could fulfil either the whole petition or part of it and reminded her of her right to appeal the rulings before the final hearing on the declaration of the divorce formula.

Case two involves a wife who was divorced by her husband. She was very aware of her post-divorce rights and demanded that she be paid by her husband. One of her demands was dismissed, as, according to judges, it was an excessive, illogical and unlawful demand, not admitted in law, i.e. *uang sakit hati* (financial compensation for a broken heart). However, the judges met her other demands on spousal alimony and gift of consolation and agreed the amounts to be paid to the wife. The judges asked the husband to make the payments at court and the husband did so.

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<sup>64</sup> Based on notes on hearing held in court of Tangerang, 5 October 2010.

## Conclusion

At a practical level, women seeking resolution of their cases in the three courts observed fall into two legal positions: on the one hand, those who remain subordinate, and on the other, those who have a stronger status. Women's weak position emerges most often in cases such as polygamy, custody of children, and payment of maintenance for children after divorce. Meanwhile, a stronger position is evident in cases of divorce petitioned by wives themselves (*cerai gugat*) and in winning spousal alimony after divorce petitioned by husbands.

Women's weak position has resulted from a number of factors. In the case of polygamy, judges continue to adhere to traditional legal doctrines, while at the same time they are applying the state law on polygamy loosely. In custody cases, judges do not have a standard conception of maintaining and prioritizing 'the best interests of the child'. Meanwhile, the flaws and lack of regulation of mechanisms designed to enforce rulings constitutes a significant factor in terms of judges struggling to provide better justice and legal certainty for women in cases of alimony for children. This weak position of women in such cases was also reflected by women in Bulukumba, where Stijn van Huis did his research.

Likewise, a number of factors have contributed to women gaining a stronger position in certain cases. In the case of divorce petitioned by wives, for example, judges have attempted to provide better justice through the program of 'prodeo' and 'court on circuit', which give women easier and better access to legal services. Similarly, in the case of spousal alimony, judges are attempting to require husbands to make payments of spousal alimony in court in order to improve the protection of women's rights.

## 4: SHARIA-BASED LOCAL REGULATIONS AND MANAGING WOMEN IN PUBLIC AREAS: RESPONSES AND APPLICATIONS

While the introduction of Sharia-based local regulations or Perda Sharia was intended by proponents to cure moral illness within society,<sup>65</sup> many have argued that the end result has been the subordination of women in public areas and the worsening of gender injustice.<sup>66</sup>

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<sup>65</sup> See Rumadi, 'Mengawal Pluralisme di Tengah Kegamangan Negara', in *Menyoal Komitmen Negara terhadap Jaminan Kebebasan Beragama di Indonesia*, (Jakarta: Wahid Institute, 2007). See also Robin Bush, 'Regional Shari'a Regulation in Indonesia: Anomaly or Symptom?', in G. Fealy and Sally White (eds.), *Expressing Islam: Religious Life and Politics in Indonesia*, Singapore: South East Asian Studies, 20008, 181.

<sup>66</sup> See N. Nisa, et.al, 'Bersama Menolak Perda Diskriminatif', 2(2) *Nawala*, www.wahidinstitute.org, 2007, accessed on 12 September 2012. See also Mulia, 'Peminggiran Perempuan dalam Perda Syariah' 20 *Tashwirul Afkar* 21, 2007 and Robin Bush, 'Sharia Local Regulations: Anomaly or Symptom?' 181. For the discussion on their application that supports the views of opponents, see Komnas HAM, 'Kekerasan terhadap Perempuan 2005: KDRT dan Pembatasan Atas Nama Kesusilaan', Catatan Tahunan

Rather than protecting women, the introduction of Perda Sharia in some cases is seen by researchers as having weakened the position of women in public areas, restricted their rights,<sup>67</sup> and threatened their security.

This chapter discusses the state's management and control of women in public areas in the form of the requirement, set out in a regulation issued by the Bupati (regent), to wear *jilbab* in Cianjur and not to go out at midnight according to Perda Sharia in Tangerang, Banten. This chapter is based on interviews with and responses to questionnaires by a number of officials of three state institutions: local government offices, state hospitals, and religious courts, as well as a number of local people, in Cianjur and Tangerang. It observes the responses to and application of the two regulations mentioned above and, more generally, how women in these two cities view these changes. In relation to this chapter, a Perda of Bantul which regulates the practice of prostitution is also observed for this research project by another researcher, Muhammad Latif Fauzi. This Perda, justified by Sharia, has arguably threatened and harmed women.

### ***Jilbab* requirement in Cianjur**

The circular letter issued by the Bupati in Cianjur, No. 025/3643/Org and Letter No 061. 2/2896/Org on office hours and the requirement to wear Muslim/Muslimah uniforms on workdays constitute the further implementation of Perda Cianjur No. 3/2006 on the movement to establish a pious society (*gerakan pembangunan masyarakat berakhlaqul karimah/Gerbang marhamah*). It is also an example of a regulation that manages and controls women in public areas, and has led to widespread debate and criticism. Some studies on the issue of the obligation to wear *jilbab* explain that both those who support and those who oppose this regulation based their arguments on the concept of '*maslaha*' for women, i.e. women's security and the protection of their dignity. Those 'pro' the regulation tend to believe in segregating women to secure them, while the 'contra' group argue that to secure women does not mean to segregate them, but rather to give them the freedom to choose. To segregate women means to block and threaten them and consider them as 'objects'.

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tentang Kekerasan terhadap Perempuan, Jakarta, Maret, 2006, 11-12; Sukron Kamil dan Chaider S. Bamualim (eds.), *Syariah Islam dan HAM: Dampak Perda Syariah terhadap Kebebasan Sipil, Hak-hak Perempuan dan Non-Muslim*, Jakarta: CSRC, 2007. See also, Human Right Watch, *Policing Morality: Abuses in the Application of Shari'a in Aceh*, Indonesia, New York, 2010.

<sup>67</sup> See Robin Bush, 'Regional Shari'a Regulation in Indonesia: Anomaly or Symptom?', 181. See also LSIP, 'Perda Syariah Parsial Mendiskriminasi Perempuan', <http://oldkesra.menkokesra.go.id>, 2005, accessed on 11 November 2012.

Regardless of this debate, the issuance of this regulation in Cianjur was a response by the local government to a number of moral hazards confronting young men and women in Cianjur, which is well known as *kota santri* (the city of Islamic learners). In attempts to develop a good morality in Cianjur society, the local state formulated a number of Islamic agendas, starting with the establishment of the program of ‘*Gerbang Marhamah*’. *Gerbang Marhamah* is a significant program by the Cianjur *Bupati* (regent), Warsidi, to revive Islamic norms in Cianjur. It is an abbreviation of ‘*Gerakan Pembangunan Masyarakat Berahlakul Karimah/Movement on Development of Creating Pious Society*’.<sup>68</sup> The program is widespread throughout Cianjur and is therefore well-known. A giant gate as you enter the city of Cianjur has the words ‘‘*Gerbang Marhamah*’ welcomes all people coming to Cianjur’.

A number of regulations were issued to support the implementation of the ‘*Gerbang Marhamah*’ project, one of which is the regulation on clothing, which requires Muslim women to wear *jilbab* and Muslim men to wear Islamic cloth (*baju Muslim* or best known as *baju koko*) in their offices. While the regulation applies to both sexes, the focus of the regulation, however, seems to be on women’s attitudes and the belief by some groups of Muslims that women influence the conduct of men and are the sources of ‘social illness’, as stated by a local leader in Cianjur.<sup>69</sup> Consequently, the regulation disproportionately affects women.



A large billboard with Islamic slogan in Cianjur

Although the circular letter does not evenly apply to all Muslim women, the main *Gerbang Marhamah* project, which has been widely and well socialized, has led Cianjur’s state apparatus to propagate this program of morality development among all Muslim women. In

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<sup>68</sup> Jaih Mubarak, ‘*Gerakan Pelaksanaan Syariah Islam di Cianjur*’, a paper presented at the Annual Conference (Konferensi Tahunan) Pascasarjana PTAIN se-Indonesia, held by the Graduate School of IAIN Ar-Raniry Banda Aceh and the Ministry of Religious Affairs, 1-4 December 2004, Banda Aceh NAD.

<sup>69</sup> Interview with one of local leaders, 2011, Cianjur. See also E. Nur Rif’ah, ‘*Questioning Women’s Security in Perda Syariah*’, 6-7.

accordance with the project, the word '*akhlak*', derived from the Arabic word meaning 'good conduct', is frequently used in a number of Cianjur governance projects. Besides being used in the overall vision, which states '*Cianjur Lebih Sehat, Cerdas, Sejahtera dan Berakhlakul Karimah* (Cianjur becomes healthier, smarter, more prosperous, and better behaved)' and in the missions of the Cianjur regency, one of which says '*Meningkatkan Pembinaan Akhlakul Karimah dalam Kehidupan Bermasyarakat, Berbangsa dan Bernegara* (building better morality in social, national, and governmental lives)', the word is used in a number of slogans created to improve the quality of the city. One slogan displayed on large billboards in the city urges Cianjur's people to improve their moral conduct in order to reach the summit of their faith: '*Baikkan Akhlakmu, Niscaya Imanmu akan Sempurna*' (improve your morality, and your faith becomes perfect'). While the above slogans are aimed at all Cianjur citizens of both sexes, one slogan on another giant billboard specifically urges Muslim women to contribute to the development of morality by covering their heads, as this is considered to be a sign of the piety of Muslim women. The slogan reads, '*berjilbab ciri wanita Muslimah beriman*' (veiling constitutes a sign of pious Muslim women)'. A number of groups who support the regulation also help to disseminate it. Nurul Ammah, an Organization of the Development Assembly of the Great Mosque of Cianjur, for example, carries out intensive socialization of the regulation almost every fasting month (Ramadhan), by distributing head scarves for women.<sup>70</sup>

With regard to the regulation's application, earlier research by Komnas Perempuan, Centre for Study of Religion and Culture (CSRC) and by the Wahid Institute, demonstrates women's grievances about the regulations, reporting three famous cases in which three non-Muslim women, working at the post office, as a school teacher, and studying at the State Senior High School were forced to wear *jilbab*. It was reported that while a non-Muslim student can ask for a dispensation, a teacher has no choice other than to follow the regulation, as teachers should set an example for their students. Notably, almost all the Cianjur Muslim women who responded to this research agreed with the regulation on wearing *jilbab* and appeared to see it as a positive policy. This research found that in a number of state public offices, such as Pemerintahan Daerah/Pemda (local state government), Dewan Perwakilan Rakyat Daerah/DPRD (Local Representative Assembly), police offices and local state hospitals, the regulation has been widely applied. Indeed, there appears to have been no negotiation about this regulation by Muslim women working in these public offices; rather,

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<sup>70</sup> 'Nurul Ammah Sosialisasikan Pemakaian Jilbab di Cianjur', [www.kapanlagi.com](http://www.kapanlagi.com), October 2006.

there appears to have been a gradual acceptance of the rule. That is to say, initially, women wore *jilbab* because they were forced to do so by the regulation, and they felt bad if they did not abide by the rule.

To strengthen the enforcement of the circular letter, Pemda even issued a special regulation.<sup>71</sup> Of 32 Pemda officials interviewed for this research, 14 were women and only four of them did not agree with the regulation. I talked to four head officials from the local state hospital (Rumah Sakit Umum Daerah), all of whom agreed with the regulation and see it as a positive policy. One of them affirms that the regulation has been widely applied throughout the hospital and mentioned that all Muslim female staff, including nurses and doctors, wear *jilbab*.<sup>72</sup> The same phenomenon was also found in local police offices where all female staff, except those who are non-Muslim, wear *jilbab*. Eleven officials from police bureau interviewed expressed their support for the regulation, and only one rejected the regulation. The majority see the regulation as a positive policy. However, it is interesting to note that the majority of female police officers, who are different from the civilian staffs who work at the police bureau, do not wear *jilbab*, arguing that they are not bound by Cianjur's local regulations.

Although these state public offices supported and applied the regulation extensively, they showed no hostility to unveiled women coming to their offices seeking assistance or service. Veiled and unveiled women were treated equally. This is because the women know that the local regulation only applies formally to state officials. However, unveiled women attending public offices are reminded of the socialization of the program 'Gerbang Marhamah', and Pemda often warns them and recommends they wear it when they come back on any subsequent visit. While respondents from Pemda stated that the wearing of *jilbab* has a positive impact on the working performance of female staff, those people I talked to at the hospital mentioned that it made no difference to their and has nothing to do with the working performance. However, one of them said that female staff wearing *jilbab* became more aware of the need to behave well.<sup>73</sup>

The religious court is another state institution that submits to the regulation on wearing *jilbab* in Cianjur. Yet, interestingly, in practice only a few judges appear to know about the regulation. This, I think, is because many judges come from cities other than

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<sup>71</sup> Interviews with a number of staff from these institutions and based on a questionnaire distributed among them.

<sup>72</sup> Interview with DK, the head of department of information and HUMAS of State local hospital of Cianjur, Cianjur, 17 December 2011.

<sup>73</sup> Interview with a member of Pemda's staff, 21 December 2012.

Cianjur.<sup>74</sup> Judges are selected and then mandated to work at any court where a vacancy arises, and they are often transferred from one court to another.<sup>75</sup> That said, there are a number of female judges who do go to work veiled and who have no problem with the regulations. Despite the regulation only applying to officials, these veiled judges also strongly support the wider application of the regulation to other Muslim women. Although they always treat female litigants coming to court without *jilbab* well, they often warn them to wear it when they come to court on another occasion.<sup>76</sup>



A giant billboard urging women to wear *jilbab*



Members of the Union of Women Organisations (Gabungan Organisasi Wanita) of Cianjur

Besides female state officials, respondents also included Muslim women in general. From 52 respondents, only three stated that they disagree with the wearing of *jilbab* as regulated by the state. According to my observations, women attempt to control their behaviour when they decide to wear *jilbab*; indeed, some argue that *jilbab* is, for them, a kind of control. So, while, there is criticism as a result of a few abuses in the application of the regulation on wearing *jilbab*, it has clearly gained support from local women. A head and tutor of one 'religious gathering' stated that the call to wear *jilbab* is a good policy, and she would support it being applied to all Muslim women.<sup>77</sup>

<sup>74</sup> Based on interviews and observations. I thank two of my assistant researchers, Dede and Habibi, for their great efforts in carrying out interviews with a number of judges and for their observations on how the regulation has affected judicial practices.

<sup>75</sup> See Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practices of the Indonesian Religious Courts*, Amsterdam: Amsterdam University Press, 2010.

<sup>76</sup> Different from the court of Ciamis, which, according to one of my respondents, provides *jilbab* in the office for female litigants who arrive unveiled to hearings, the court of Cianjur does not do this, but instead warns them to wear the veil when coming to court in future.

<sup>77</sup> Interview with AS, Cianjur, December 2012.



The absence of resistance, however, is not necessarily because everyone agrees entirely with the regulation, (certainly a number of women criticized its strict enforcement), but it is related to their ideas on *jilbab*. Firstly, wearing the *jilbab* is not seen as being linked to keeping women in the home; rather, they see it as one of their religious obligations and that it is simply being promoted by the local government. Most of the women surveyed in Cianjur agree that women should be involved in creating a pious and religious life in Cianjur. Wearing *jilbab* is considered by them as one of the ways to do this. A female official at one of the hospitals shared this view and said that there is no reason for her to resist her regulation.<sup>78</sup> Another female official at Pemda said that wearing *jilbab* should not be regulated by the state; however, she admitted to deciding to wear *jilbab* a long time ago. Initially, when the regulation came into force, she then wore when going to and at her office. In 2010, she decided to wear it in all circumstances.<sup>79</sup>

Second, wearing the *jilbab* has been a trend since 1990s, when designers responded to the Islamization of dress in Indonesia and many women chose to change their style of dress from non-Islamic to Islamic in order to integrate with their (Islamic) community.<sup>80</sup> Indeed, as Eva argued, Indonesia has been a forerunner amongst Muslim countries that have adopted and developed an Islamic dress mode. Nowadays, wearing *jilbab* has become a trend within Muslim circles and many women state that wearing *jilbab* is also a way of obtaining admission to their (Islamic) community.<sup>81</sup> One woman confessed that she decided to wear *jilbab* as she needed to be admitted into her community. She narrated that she delivers her daughter to school every day and she saw that almost all the other women were wearing *jilbab*. She felt uncomfortable being unveiled in this situation and so, in 2009, decided to wear *jilbab*.<sup>82</sup>

Rather than this being an issue of whether to wear *jilbab* or not – or, of whether women resist wearing it or not – I think the focus should be on the state's behaviour in this regard. The regulation requiring women to cover their bodies because they are considered to be 'the source' of moral malaise within society needs to be reviewed, not least because there

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<sup>78</sup> Interview with SW, Cianjur, December 2011.

<sup>79</sup> Interview with DN, Cianjur, December 2011.

<sup>80</sup> Ali Tantowi, 'The Transformation of Muslim Women's Dress in Indonesia: Identity, Politics and Trends', A thesis submitted to the Faculty of Humanities for the Degree of MA in Islamic Studies, Leiden University. 2010. Tantowi stated that women's preference for going veiled was seemingly dominated by the accommodation of modernity, rather than religiosity. Their religious motivation to go veiled was doubtful; their decision to go veiled was most motivated by their adjustment to the communities in which they lived where going veiled was the norm. See his 'The Transformation of Muslim Women's Dress in Indonesia', 64.

<sup>81</sup> Interviews with a number of Muslim women of Cianjur, Cianjur, 2011.

<sup>82</sup> Interview with DY, Cianjur 2011.

have been a number of abuses in its application, as mentioned earlier. Above all, this regulation curbs women's freedom to act and violates the protection of the expression of human rights as it only adopts one interpretation of this matter.

### **Restrictions on Tangerang women going out at night**

Another Sharia-based local regulation that manages and controls women behaviour in public is the regulation on the restriction of women going out late at night. As previously mentioned, this regulation, identified as Perda No. 8/2005, applies to women in Tangerang, Banten. This regulation was issued with the aim of reducing moral decadency and crimes by banning the practice of prostitution. The security of women security was also a motivating factor behind this regulation.<sup>83</sup>

This Tangerang Sharia-based local regulation is no longer so controversial; however, when it was first introduced it gained much attention, particularly after civilian police apprehended a few women in patrols by mistake. This infamous incident, of the police wrongly arresting a woman called Lilis for being a prostitute, is often used as an example of how the legal apparatus abuses the application of this Tangerang regulation in particular and other Shari'a local regulations in general. Lilis, who is a teacher at a local primary school and the wife of a state official or civil servant, was waiting for her local transportation to take her home from work when the patrol was conducted. In the end, at the time of her arrest, Lilis was unable to reach her husband to prove that she was not a prostitute. Consequently, she had to spend three nights in police custody. Besides Lilis, two other women were wrongly apprehended by the civilian police; Lia, who was taking care of her mother's '*warung roko*' (small cigarette shop on the street) and Lina, an employee of Pabrik Semen who was waiting for her order of Nasi Goreng, when another patrol was conducted.<sup>84</sup>

According to research, these misunderstandings and abuses occur due to the textual ambiguity or vague words of the regulation. Article 4 of the regulation states that, '*Setiap orang yang sikap atau perilakunya mencurigakan sehingga menimbulkan suatu anggapan bahwa ia/mereka pelacur, dilarang berada di jalan-jalan umum... atau di tempat lain*' (every

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<sup>83</sup> See Dewi Candarningrum, 'Perda Shari'a and the Indonesian Women's Critical Perspectives', a paper presented at an International conference on 'New Arbitrary Against Women in Indonesia: Perda Shari'a and Women Rights', 11 November 2006, held by SOAI (Suedostasien Informationstelle, Asienhaus) and Mata Asien in Blick, at UBERSEMUSEUM Bremen, Germany.

<sup>84</sup> See Sukron Kamil dan Chaider S. Bamualim (eds), *Syariah Islam dan HAM: Dampak Perda Syariah terhadap Kebebasan Sipil, Hak-hak Perempuan dan Non-Muslim*, Jakarta: CSRC, 2007. See also Robin Bush, 'Sharia Local Regulations: Anomaly or Symptom?', 179, and Sally White and Maria Ulfah Anshor, 'Islam and Gender in Contemporary Indonesia', 152.

woman whose conduct and behaviour leads to an assumption that she is prostitute is not allowed to be in a public area). This sentence is deemed to be so general and unclear that it results in multiple cases of misinterpretation.<sup>85</sup>

These incidents, that of Lilis in particular, have given rise to criticism and negative responses from several parties, including gender activists who, having failed to sue the major for defamation of character, then made legal attempts to gain justice by proposing judicial review of this Tangerang Sharia-based local regulation by the Supreme Court. The Supreme Court refused to carry out judicial review on the grounds that what the actions of the city's legal apparatus did not contravene the correct procedure in terms of drawing up the regulation and that the regulation does not contradict higher national laws.<sup>86</sup>

The debate about the existence of this Tangerang Perda has died down somewhat, not least because the regulation is no longer strictly applied, a phenomenon that is taken by some analysts, such as Bush and Buchler, as an indication that the issuance of Perda in general has been taken by politicians or state local governments as a political tool to cultivate support for their political positions.<sup>87</sup> Nonetheless, Tangerang people in general, and women in particular, remain aware of its existence and implementation. Women who work keep in mind that the regulation is still in effect, and they take care when going out late at night, by ensuring they avoid 'inappropriate' (*mencurigakan dan merangsang*) clothing and behaviour. Interestingly, while many of the women questioned were positive about the regulation and argue that the application of the regulation could provide them with a sense of security and actually protect them from the bad behaviour of irresponsible men, they felt insecure and afraid of getting caught by the patrol. Moreover, at the same time the Tangerang government issued this regulation it also banned alcohol, they felt threatened by the civilian police's impeachment and accuse in the patrol.<sup>88</sup>

Women's feelings of insecurity have not, generally, made them give up working. However, I must mention that it was reported that Lilis lost her job and was afraid to leave her home, after the incident that left her shocked and traumatised. The decision by most

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<sup>85</sup> Sukron Kamil dan Chaider S. Bamualim (eds), *Syariah Islam dan HAM*, 9-10.

<sup>86</sup> See 'MA Tolak Permohonan Uji Materiil Perda Pelacuran Tangerang', [www.hukumonline.com](http://www.hukumonline.com), dated 16 April 2007. See also Bush, 179-180. For a good discussion on the broader issues of the complexity of the review of the legal position of these *perdas*, see Nicolas Parsons and Marcus Meitzner, 'Sharia By-Laws in Indonesia,' 199-202.

<sup>87</sup> Robin Bush, 'Regional Shari'a Regulation in Indonesia: Anomaly or Symptom?', 187-189, and Michael Buchler, 'The rise of Shari'a by-laws in Indonesian Districts: An Indication for Changing Patterns of Power Accumulation and Political Corruption', *South East Asia Research*, 16, 2, 255-285.

<sup>88</sup> Interview with a number of Tangerang women, Tangerang, December 2011- February 2012.

women to continue working is reasonable and also influenced by the fact, as noted by Kamil, that Tangerang is an industrial area. Indeed, in late 2001, industry in the city reached its peak, accounting for 1,407 industrial firms.<sup>89</sup> This has given people in Tangerang a great opportunity in terms of becoming involved in the development of industry. It offers something different from rural and agricultural-based systems of living, where women have tended not to be a part of public life. In an urban tradition, with highly developed industry and trade, women are involved in work. Inevitably, this requires some women to work until late, as men do. Unlike governmental offices, women workers are very evident in shopping malls or trade centres such as the ITC or WTC, Carrefour, hospitals, and many factories. These women come from areas both inside and outside Tangerang. It is common for malls, shopping centres, hospitals and factories to have shifts that finish as late as 9 or 10 in the evening. This means many women are travelling home late at night. The bad system of transportation means they are often staying out on the street. Women often report feeling unsafe and afraid in these situations, not of bad behaviour by men, but of the sight of police who might begin conducting patrols again.

A female worker at one of the city's private hospitals, who often came home late at night, admitted to being frightened not only of improper behaviour by men when travelling on public transport, but also of being suspicious about the police. She criticised the poor system of public transport, which she cannot rely on. Often the buses she uses to get home are full and so she is forced to wait on the street for the next service.<sup>90</sup>

Another female worker at a shopping centre admitted that she had decided to adopt the *jilbab* when travelling to and from work, in the hope that it will make her less suspicious to the police. She felt happy and was grateful that, so far, she has never got into serious problems. However, she did not know for sure whether or not the security and safety she felt was a positive effect of the implementation of the regulation.<sup>91</sup> She acknowledged that besides banning prostitution or behaviour that suggests prostitution, the regulation also bans the drinking of alcohol, which often results in improper and dangerous behaviour by the drinkers. Although all the women interviewed did not have serious objections to the regulation, they did send the message that it is important to educate the police to carry out the rules properly and fairly.

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<sup>89</sup> Sukron Kamil dan Chaider S. *Bamualim, Syariah Islam dan HAM*, 8.

<sup>90</sup> Interview with RK, Tangerang, February 2012.

<sup>91</sup> Interview with MM, Tangerang, December 2011.

So, while respondents were generally positive towards the regulation, they did question the effectiveness of the regulations in Tangerang and other cities in terms of ‘curing’ the moral ‘sickness’. A number of scholars believe that the issuance of Sharia-based local regulations should clarify motives. A legal expert, Yesmil Anwar, for an instance, said:

We are often very sensitive about morality and ethics, but not about social ethics. We are concerned about *zina* (illicit sexual intercourse), but not about poverty. Meanwhile, it could happen that a woman committed *zina* and decide to become a prostitute because she had no food and was starving. So, these (altogether) are very complex.<sup>92</sup>

Indeed, government agencies often claim that prostitution is a result of people being overwhelmed by freedoms and liberal sexual attitudes.<sup>93</sup> Rather than attempting to pay special attention to the factors leading women to works as prostitutes, government agencies have determined that prostitution is nothing more than a dirty vice and an immoral act. The reality, in many cases, prostitution is a consequence of poverty or poor family economic circumstances.

The Tangerang regulation has created a strong image that the government has been ambiguous about prohibiting prostitution. Although like similar regulations in places such as Bantul, the Tangerang regulation also targets pimps and brother owners, in practice it seems to be more concerned with controlling women’s behaviour. The introduction of article 4, which restricts women’s presence in public at night, proves this. Further, strictly bound by a commitment to eradication, Tangerang’s government has not undertaken any efforts in terms of the prevention, handling of or rehabilitation for those engaged in prostitution. Enik Maslahah, a female gender activist, argues that these things also have to be considered by the government for an effective policy. She believes that there are several categories of prostitutes and that the problems of prostitution should be addressed on the basis of this categorisation.<sup>94</sup>

## Conclusion

The introduction of Sharia-based local regulations in both Cianjur and Tangerang has been seen by a number of parties as discriminatory to women and as having substantially harmed

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<sup>92</sup> ‘Jalan Berliku Terapkan Perda Syariah’, Kliping Cyber Media, Nopember 30 2009.

<sup>93</sup> Komnas Perempuan, *Atas Nama Otonomi Daerah*, p. 40.

<sup>94</sup> Enik Maslahah, ‘Penurunan HIV/AIDS dan Perda’, a paper presented in the discussion on ‘Membangun Sinergisitas Gerakan HIV-AIDS, Gerakan Perempuan dan Gerakan HAM’, 12 March 2008, Gedung Kepatihan Yogyakarta.

women in public spheres. Interestingly, the majority of local people, including women, have not resisted the regulations. In the case of the Cianjur regulation, which requires female state civil servants to wear *jilbab*, Cianjur women see it as positive policy, arguing that they should be involved in the realization of the program of Gerbang Marhamah. They forced themselves to wear *jilbab* and their decision to abide by the regulation was influenced by the rise of a trend for Islamic clothing.

By contrast, although Tangerang women see the regulation that restricts their presence in public spaces late at night as protecting their security, abuses in its application have resulted in fears of being wrongly apprehended by patrols. Their fear emerges, not because they intend to be outside the home late at night, but because they had no choice, i.e. late shifts at work and bad public transportation, which make it very difficult to abide by the regulation. Although they agree with the prohibition of the practice of prostitution in their district, women who have to work late at night, in particular, have been deterred by the regulation and its implementation.

That women have been the most affected by such Sharia-based local regulations is also evidenced by the case of Bantul's local regulation No. 5/2007. The regulation was issued to eliminate the practice of prostitution totally, and was, therefore designed to target not only the sex workers but also pimps and brothel owners. The reality is, however, that while a number of women as sex workers were arrested, and a number of women were wrongly arrested and accused of prostitution, (resulting in significant economic problems), not a single pimp has been arrested.

## **5: THE RELEVANCE OF SHARIA-BASED LAWS IN INDONESIA TO INTERNATIONAL TREATISES: SOME VOICES AND CRITICAL ANALYSIS**

The emergence of Sharia-based local regulations has led to a number of studies by national and international scholars. Indeed, following an increase in such regulations, a number of research reports and articles have been published. This research focuses on such issues as their legality,<sup>95</sup> motives of their issuance,<sup>96</sup> and their implementation and their effects on

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<sup>95</sup> Nicolas Parsons and Marcus Meitzner, 'Sharia By-Laws in Indonesia: A Legal and Political Analysis', *Asian Law*, vol. 11, 2009, 190-217.

<sup>96</sup> Robin Bush, 'Sharia Local Regulations: Anomaly or Symptom?', 186-190, and Michael Buchler, 'The rise of Shari'a by-laws in Indonesian Districts: An Indication for Changing Patterns of Power Accumulation and Political Corruption', *South East Asia Research*, 16, 2, 255-285.

human rights protection.<sup>97</sup> The Sharia-based local regulations that gained most attention were those that touch on morality or ethics which, if we refer to Arskal's categorization, might fall into either the first category, i.e. public order and anti-vice regulations, including the banning of prostitution and alcohol, or the third category, i.e. religious symbolism, which includes the obligation to wear Muslim clothing.<sup>98</sup> The Sharia-based local regulations that specifically control women in public spheres gained wide attention.

This chapter will analyze the contents of Sharia-based laws on women, in particular from the perspective of human rights and gender equality notions with the reference to international legal standards. It will look not only at Sharia-based local regulations, but also national law on familial issues. It will discuss whether or not the laws on women and their implementation by legal apparatus have been in accordance with the international covenants that Indonesia has ratified. It will also observe these from the perspective of gender activists. This will be done by presenting a number of recent legal attempts by Indonesian women in order to examine the extent to which women in Indonesia in general, and gender activists in particular, understand and criticize the laws on women and their implementation and how their arguments have provoked criticism and challenges from a number of groups of Muslims.

### **Sharia-based Laws and international covenants: notions of human rights and gender equality**

To analyze the consistency and conformity of the contents of the Sharia-based laws in Indonesia with international legal standards, I shall re-examine a number of rules or issues that have been the objects of my discussion in previous chapters. The rules that I will analyze are those on polygamy, custody and alimony for children, and on the obligation to wearing *jilbab*. Meanwhile, the legal sources that I will use as standards include the Convention on the Elimination of Discrimination against Women (CEDAW), the International Convention of Civil and Political Rights (ICCPR), and the International Convention of the Rights of the Child (ICRC). These international standards have been chosen for a number of reasons, not

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<sup>97</sup> Human Right Watch, *Policing Morality: Abuses in the Application of Sharia in Aceh, Indonesia*, New York, 2010; Wahid Institute, 'Applied Research: Religious-Nuanced Regulations and the Directions of Indonesia's Democracy', Jakarta, 10/29/2008, and Sukron Kamil and Chaider S. Bamualim (eds), *Syariah Islam dan HAM: Dampak Perda Syariah terhadap Kebebasan Sipil, Hak-hak Perempuan dan Non-Muslim*, Jakarta: CSRC, 2007.

<sup>98</sup> Arskal Salim, 'Muslim Politics in Indonesia's Democratisations: The Religious Majority and the Rights of Minorities in the Post-New Order Era', in R.H. McLeod and A.MacLntyre (eds), *Indonesia, Democracy, and the Promise of Good Governance*, Singapore: Institute of South East Asian Studies, 2007, 115-137.

least that Indonesia is a signatory to these major human rights treaties.<sup>99</sup>The ICRC is a specific international treaty that affirms the basic rights of children.<sup>100</sup> CEDAW first came into force in 1981 and requires all state signatories to eliminate discrimination on the basis of gender in public and private spheres.<sup>101</sup> ICCPR stresses that men and women should enjoy equal access to all civil and political rights<sup>102</sup> and it requires the settlement of principles of legal certainty for any legal action.<sup>103</sup>

### **Rule and practice of polygamy**

The rules on polygamy and legal practices by judges that often permit polygamy need review in relation to whether or not they violate the rights of women protected in both CEDAW and ICCPR.

#### *a: Right to legal certainty*

As one of the parties ratifying CEDAW, Indonesia is obliged to adapt its laws to the rules of CEDAW. However, has Indonesian engagement with this international treaty had an impact on Islamic law, and polygamy practices, in particular? As previously mentioned, Indonesia has made a number of serious legal attempts to manage polygamy. The Law of Marriage of 1974 and the *Kompilasi* thoroughly administer the issue of polygamy. The PP No. 1/ 1983 and No. 45/1990 introduced detailed regulations for civil servants. However, as all these laws basically allow the practice and imply that the consent of wives can be ignored in certain cases, polygamous marriage is regularly and easily practised in Indonesia.<sup>104</sup> The fact that local ulama continue to help many husbands to practice polygamy demonstrates that there are many opportunities for husbands to enter into polygamy and it also demonstrates that the state has not created legal certainty. Moreover, when men come to religious courts to obtain approval for a polygamous marriage, judges often agree on the grounds that approving the petition for polygamy is better than leaving husbands vulnerable to committing *zina*. Frequent approval of polygamy, as presented in the decisions collected for my research and

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<sup>99</sup> CEDAW was adopted in December 18, 1979, entered into force in September 3, 1981, and Indonesia ratified it in 1984. Meanwhile, ICCPR was adopted in December 16, 1966, entered into force in March 23, 1976, and was ratified by Indonesia in 2006.

<sup>100</sup> CRC was adopted on November 20, 1989, entered into force in September 2, 1990, and was ratified by Indonesia in 1990.

<sup>101</sup> Article 2 of CEDAW.

<sup>102</sup> Article 3 of ICCPR.

<sup>103</sup> Article 15 of ICCPR.

<sup>104</sup> See article 59 of the *Kompilasi*.



discussed in a previous chapter, and the fact that a number of famous people in Indonesia, including A.A. Gym and Zainal Maarif, have polygamous marriages, clearly shows the lenience used in applying the law.<sup>105</sup>

While to some extent the laws on polygamy may conform with international standards, the continued acceptance and approval of polygamy by judges and by local ulama in Indonesia violates international regulations. The laws on polygamy and their application, therefore, must be reviewed, as they have prevented women from obtaining legal certainty, a right that is and should be protected by CEDAW and the Indonesian state. Such a review should stress the question of whether or not polygamy is considered by men and other proponents as a religious right or doctrine or a legal right of men. This question needs an exact answer in order to establish the legal certainty, as many women in Indonesia are uncertain about whether or not they have a right to speak out and say they are not happy about sharing their husband with other women. The review should also focus on the protection of the first wife's standard of living. Frequently, first wives are confronted with either maintaining or ending their marriage when the family's standard of living is no longer being met because of their husband's polygamy.

*b: Right to equality*

If we refer to CEDAW, the laws on and practice of polygamy also violate certain articles of CEDAW regarding equality. CEDAW affirms equality to all people, men and women, within marriage. Article 16 of CEDAW states that:

Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent.<sup>106</sup>

Article 59 of the *Kompilasi* states that the consent of a wife can be ignored in certain cases. In practice, most judges focus on the husband meeting the necessary conditions for polygamy and approve the proposal when they considered these to have been met. This clearly means that, while reasons for polygamy are very much related to wives, the conditions of wives are not paramount in practice. In fact, it is not only wives who happen to have conditions listed as the legal reasons for husbands to take up a second wife that are

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<sup>105</sup> For a discussion of this case, see Sally White and Maria Ulfah Anshor, 'Islam and Gender in Contemporary Indonesia', 142.

<sup>106</sup> See article 16 of CEDAW.

confronted to share their husbands. Wives who do not have such conditions as listed in the law seem to also have no right to decide about the fate of their marriage. As mentioned in chapter two of this paper, although almost all of the women interviewed state their agreement to the laws that allow polygamy, they also declare that if it was their husband in question then they would object to polygamy. This suggests that although no woman or wife would give her sincere consent to her husband's proposal for polygamy, husbands can often obtain the necessary consent from their wives required in court. This illustrates an inequality. In practice, polygamy seems to be considered as a man's right and women can do nothing but say 'yes' and be confronted with sharing their husbands, or, if they say 'no', then their marriage will be ended.

In this context, the issuance of the Law on the elimination of violence against women (UU Penghapusan Kekerasan dalam Rumah Tangga No. 23/2004) needs to be mentioned. The Law provides thorough rules in relation to domestic violence. According to the law, domestic violence is categorized into four categories, including physical, mental, sexual, and '*penelantaran*' (neglect of financial support and children care).<sup>107</sup> A polygamous marriage that results in a wife suffering can be considered, therefore, as mental violence. Many researchers, such as Nurmila and Brenner, have confirmed the effects of polygamy on existing marriages.<sup>108</sup> Nonetheless, it seems that rather than referring to and considering such conventions and Law No. 23 and viewing polygamy as a form of domestic violence judges tend to consult *fiqh* doctrines and Quranic verses, and apply the rules in the KHI loosely.<sup>109</sup>

### **The rule on and practice of alimony for children**

The rule on alimony for children and some judges' practices in these matters violate several human rights protected in ICRC and CEDAW.

#### *Right to legal certainty*

Article 3 ICRC states that:

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<sup>107</sup> See arts. 5, 6, 7, and 8 of UU PKDRT. See also Ratna Batara Munti, *Advokasi Kebijakan Pro Perempuan: Agenda Politik untuk Kesetaraan dan Demokrasi*, (Jakarta: Yayasan TIFA dan PSKW Pasca Sarjana UI, 2008).

<sup>108</sup> See, for example, Nina Nurmila, *Women, Islam and Everyday Life: Renegotiating Polygamy in Indonesia*, London and New York: Routledge, 2009; Syzanne Brenner, 'Holy Matrimony? The Print of Politics of Polygamy in Indonesia', in Andrew N. Weintraub, *Islam and Popular Culture in Indonesia and Malaysia*, London and New York: Routledge, 2011, 212-234, and, Naoko Yamada, 'Interwinning Norms and Laws in the Discourse of Polygamy in Early Twentieth Century West Sumatera', in Yoko Hayami (ed), *The Family in Flux in Southeast Asia: Institution, Ideology, Practice*, Japan: Kyoto University Press, 63-86.

<sup>109</sup> See Euis Nurlaelawati, *Modernization, Tradition and Identity*, 178-179.

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.<sup>110</sup>

The main problem in terms of contravention of this international convention is the uncertain and non-strict execution of rulings as a result of an absence of a clear law. Husbands in Indonesia view paying alimony to their children after divorce as a religious obligation and therefore understand that failure to fulfill this obligation will not result in punishment. Indeed, any punishment is also believed to be a religious sanction and will be meted out in the hereafter. This has contributed to the lenient implementation of the rulings by husbands. The absence of clear rules on a mechanism to enforce the execution of rulings has encouraged judges' negligence in terms of implementation.

*Right to economy and basic needs (life protection)*

Irregular and uncertain payment of alimony for children by fathers contravenes the human right to the fulfilment of basic human needs. Children constitute a weak and vulnerable group and they need assistance from adults, parents in this case. Parents have a responsibility to bring up their children both physically and mentally and also to maintain them financially. These constitute the basic responsibilities of parents and must not be neglected.

Negligence and failure to fulfil these basic duties disregards and violates the legal international standard of the protection of the rights of humans, including children. Article 16 (1) of ICRC states:

States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.<sup>111</sup>

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<sup>110</sup> International Convention of Rights of the Child, Pasal 3 (2).

<sup>111</sup> Article 18 (1) of ICRC.

### **The requirement to wear *jilbab***

If we refer to CEDAW and ICCPR, the requirement to wearing *jilbab* by the state may violate some human rights. The violated rights include, at the very least, the right to freedom of religion and the right to freedom of expression and equality.

#### *a: Right to freedom of religion*

The ICCPR, which was ratified by Indonesia in 2006, states that no one shall be subject to coercion which would impair (his or her) freedom to have or adopt a religion or belief of his (or her) choice (ICCPR art 18).<sup>112</sup> To clarify the article, the UN HRC general comment No. 22 was issued and states that governments can limit the right of freedom of religion only when it is necessary to protect public safety, public order, health, or the fundamental rights and freedom of others. Any restriction must be non-discriminatory and proportionate.<sup>113</sup> The requirement to wear *jilbab* violates the right of freedom to religion, as the state has limited the right to freedom of one's religious conviction. The state has forced its citizens to conform to one religious interpretation of clothing, and does not give them a chance to choose.<sup>114</sup> There are a number of interpretations of Quranic verses regarding the requirement to wearing *jilbab*,<sup>115</sup> which means that even with Islam there are differing opinions about the obligation to wear *jilbab*. Muslim women, therefore, should be able to choose what to wear and whether or not to wear *jilbab* according to their own religious beliefs. The state has an obligation to protect women's choices.<sup>116</sup>

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<sup>112</sup> Article 18 of ICCPR.

<sup>113</sup> General Comment No.22, UN HRC.

<sup>114</sup> As quoted in Human Rights Watch's report on the application of Sharia in Aceh, the UN special rapporteur on freedom of religion and belief, Asma Jahangir, viewed that the State has violated international human law when handing out religious sanctions to people that do not abide by religious doctrines. He stated that, 'the use of coercive methods and sanctions applied to individuals who do not wish to wear a religious dress of a specific symbol seen as sanctioned by religion' is generally in violation of international human law', See Human Rights Watch, *Policing Morality*, 64-65,

<sup>115</sup> For the discussion of different views on *jilbab*, see generally Jamal A. Badawi, *The Muslim Woman's Dress According to the Qur'an and Sunnah* (Islamic Propagation Centre International, 1998). See also S. Mutawalli ad-Darsh, *Hijab or Niqab: Muslim Women's Dress*, Islamic Book Trust, 1997. In Indonesia, different views also exist among Muslim scholars. Quraish Shihab, for example, believes that *jilbab* is not an obligation. See Quraish Shihab, *Tafsir al-Misbah*, Jakarta: Lentera Hati, 2002, 32, and *Wawasan al-Qur'an*, Bandung: PT. Mizan Pustaka, 228.

<sup>116</sup> Article 18(1) ICCPR. For a good discussion of this, see C. Evans, *The Right to Freedom of Religion Under International Law*, Oxford: Oxford University Press, 2001.

*b: Right to freedom of expression and equality*

Article 3 of ICCPR states that men and women should enjoy equal access to all civil and political rights. It affirms the equality of all people. It also protects freedom of expression, through some symbolic signs, including through clothes, and the freedom to appear in public without fear, as if he or she does conform to the rules.<sup>117</sup> CEDAW also deals with this and states that the state must ‘refrain from engaging in any act or practice of discrimination against women.’<sup>118</sup>

Even though, and in contrast to cases in Aceh, the regulation on wearing *jilbab* in Cianjur applies only to officials and its application is not as strict as that in Aceh, controlling ways women dress is a violation of human rights. The state should protect every citizen’s behaviour as long as it does not harm public life. The view that women’s dressing ‘inappropriately’ constitutes a moral hazard is weak and lacks proof; it cannot be taken as a basis for controlling the bodies of citizens, i.e. women. Although it might be true that in some cases the harassment of women by men may have been motivated by a woman’s inappropriate clothing, the state requiring women to hide their bodies, nonetheless, constitutes female oppression, discrimination and gender inequality and, disadvantages those who do not abide by the rules. Furthermore, although there is no clear evidence of resistance from women in Cianjur to this regulation, the state controlling ways people dress is a violation of their right of expression in public spheres. Mulia, for example, states that Sharia-influenced local regulations ‘strengthens the subordination of women, limits their right to choose how they dress, limits their room to manoeuvre and mobility, and limits their activities at night’.<sup>119</sup>

### **Feminist voices and the recent legal developments: Human rights and gender notions**

Gender and women’s right activists affiliated to a number of institutions and NGOs, such as Rahima, Fahmina, Puan Amal Hayati, Komnas Perempuan (Women National Commission), and LBH APIK (legal aid centre for women), have struggled to improve women’s legal status. They have addressed their activism not just to the state, but also to their own Islamic

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<sup>117</sup> Article 3 of ICCPR.

<sup>118</sup> Article 2 of CEDAW.

<sup>119</sup> See Musdah Mulia, ‘Perda Shariat dan Peminggiran Perempuan’, a paper presented at an Indonesian Conference on Religion and Peace, dated 11 August, [www.icrp-online.org](http://www.icrp-online.org), accessed 25 October 2012.

communities. As White notes, they have sought to change gender attitudes at both an intellectual and a grassroots level.<sup>120</sup> They held seminars to disseminate ideas on gender equality and to challenge traditional interpretations of Islamic teaching, and they trained men and women to be ‘gender sensitive’ in their actions and ideals.<sup>121</sup> With the same aim, they also published journals focusing on a number of gender issues. In doing so, they attempted to contribute to public debate and, in turn, public policy on women and gender issues.

Among the significant attempts made by these women’s rights activists are the proposal for a Counter Legal Draft of KHI or an alternative to the KHI, and a proposal for a law on elimination of domestic violence. Unfortunately provisions of the Counter Legal Draft were too controversial and so the Counter Legal Draft of KHI was dismissed.<sup>122</sup> Meanwhile, the draft on the elimination of domestic violence was issued in 2004 as Law No. 23/2004. This law applies to all Indonesians regardless of their religion and, although the main idea was to protect women, it also touches on the issue of violence committed by and against all members of family in a domestic setting.

The struggle by women’s right activists to influence Islamic communities and to change gender attitudes appears, to some extent, to have succeeded. In fact, a number of women have been influenced or obtained direct help and support from activists and have also been engaged in supporting the development of the legal status of women and, at the same time, children. In addition to the attempts made by activists, there have recently been recently a number of legal attempts made by women in general.

We have seen at least two kinds of legal attempts recently. Their role will be discussed here in relation to the acceleration of the development of women’s legal status and in terms of understanding the extent to which both women in general, and activists in particular, criticize legal actions and comprehend the notion of gender equality and human rights. First, I will discuss two attempts at judicial reviews, proposed by two famous Indonesian women who acted in response to what they considered to be a gender bias and the subordination of women in the decisions of judges. In addition, I will discuss the proposal to issue a new law on gender equity by the Commission VIII in the Parliament.

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<sup>120</sup>Sally White and Maria Ulfah Anshor, ‘Islam and Gender in Contemporary Indonesia’, 139.

<sup>121</sup>See Sally White and Maria Ulfah Anshor, ‘Islam and Gender in Contemporary Indonesia’, 139. See also Arskal Salim, *Demi Keadilan dan Kesetaraan*, 23-40, and Burhanuddin and Fathurrahman, *Tentang Perempuan Islam: Wacana dan Gerakan*, Jakarta: Gramedia Pustaka/ PPIM, 2004, 113-152. See also a number of policy reports written by The Asia Foundation on the program of women’s empowerment, in particular, at <http://asiafoundation.org/>.

<sup>122</sup> See Euis Nurlaelawati, *Modernization, Tradition, and Identity*, 125-130. See also Sally White and Maria Ulfah Anshor, ‘Islam and Gender in Contemporary Indonesia’, 146.

### **Judicial review to improve the rights of women in divorce case**

The first attempt was made by Halimah, the ex-wife of Bambang Trihatmojo, the son of the former President Suharto. She felt that she had received injustice in court following her rejection of her husband's petition to divorce her. She believed that the decision made by the religious court judges to approve her husband's petition had no appropriate legal bases and had constitutionally harmed and subordinated her. She rejected the court's decision and took her case to the appellate court.

The appellate court accepted her objection and annulled the decision of the first instance court. After his wife won the case in the appellate court, Bambang filed the case with the Supreme Court, which rejected his appeal. However, Bambang did not give up and proposed that the Supreme Court review its own decision. Consequently, the Supreme Court decided to revise its decision and approved his petition to divorce Halimah.

Halimah on her part also did not give up. She scrutinized the legal reasoning used by the judges and decided to appeal to *Mahkamah Konstitusi* (MK), the Constitutional Court. She asked the judges to reconsider the legal reasoning of the religious courts judges (of the first instance and the Supreme Court) applied to her case. Halimah referred to article 39 (2f) of the Marriage Law No. 1/1974, which is in accordance article 116 of the *Kompilasi*. This regulates the procedures and grounds for divorce. These articles stipulate that one of the grounds that a petition for divorce may be approved is a protracted or continuous dispute between spouses. Halimah argued that the rule does not specify in detail the conditions that result in continuous dispute. In other words, she questioned the type of dispute that the judges might consider to be valid grounds for divorce.<sup>123</sup> Some scholars and activists, such as Sinta Nuriah, Musdah Mulia, and Prof. Bismar Siregar, consider her questioning of what constitute valid grounds for divorce to be reasonable and acceptable. Halimah admitted that she had had several disputes and arguments with her husband. However, she insisted that the source of their discontent was the fact that Bambang, her husband, had married another woman, Mayangsari, a quite famous singer.<sup>124</sup>

Given the considerable support from various parties, Halimah and her lawyer were confident that the judges of the Constitutional Court would accept her fundamental objection to the court ruling by the religious judges. Although she had given up hope that Bambang

<sup>123</sup> 'Halimah Kamil Files Judicial Review', *The Jakarta Post*, July 11, 2011, accessed in August 7, 2012-

<sup>124</sup> 'Halimah Agustina Kamil Gave Evidence in Judicial Review of Act of Marriage', [www.mahkamahkonstitusi](http://www.mahkamahkonstitusi), July 21, 2011, accessed in August 7, 2012.

would stay with her as her husband, she insisted on fighting for a general improvement in women's legal position in marital life. She requested the annulment of the article that presented protracted or continuous dispute as a valid basis for divorce.

Unfortunately, after several hearings and discussions the MK rejected her proposal. *Mahkamah Konstitusi* argued that the article in question was, in principle, issued to legally protect human rights in general and specifically rights within marriage. According to Mahfud MD., the chairman of the *Mahkamah Konstitusi*, the article should be maintained to provide a legal recourse for a couple which, due to continuous disputes, could not realize the sacred purpose of marriage.<sup>125</sup>

### **Judicial review to protect the rights of children**

The second attempt at judicial review was made by Machicha Muchtar, the ex-unofficial wife of Murdiono, former *Sekretaris Negara* (State Secretary). For a long time Machicha had not been able, despite many attempts, to obtain legal documents for her son, born in her unofficial marriage with Murdiono, that stated a legal relationship to his biological father.

Machicha was unofficially married to Murdiono in 1993 and bore him a baby, named Muhammad Iqbal Ramadhan. At the time, Murdiono was tied by the marriage with his first wife. Having married informally, Machicha was not considered a legitimate spouse and had difficulty obtaining legal documents for her son, including a certificate of birth. Worse still, later Murdiono divorced Machicha according to Islamic law and did not recognize Iqbal as his son. He paid no financial support for Iqbal.

In order to solve these problems, Machicha turned to a religious court in 2008 to ask for *isbat nikah* (a legal and official confirmation of her marriage) and for legalization of the status of her son. She was not able to prove the existence of the marriage contract, since Murdiono refused to show up. Hence, she failed to obtain the certificate of marriage confirmation and to obtain formal recognition of her child's legal relation with his biological father.<sup>126</sup> The court can only provide an *isbat nikah* if both of parties agree, of their own free will, that they have concluded an Islamic marriage and if they have no dispute over the issue.

As Machicha failed to obtain the legal confirmation of her marriage with Murdiono and of his legal paternity of their son, she decided to turn to *Mahkamah Konstitusi*, like Halimah, for a discussion of the rule that, according to her, harmed her and her son's interest.

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<sup>125</sup> 'Gugatan Ditolak MK, Halimah tak Akan Rujuk', *Kapanlagi.com*, March 27, 2012, accessed in August 12, 2012.

<sup>126</sup> Interview with Nurul Irfan, Machicha's legal expert, Jakarta, May 2012.



She asked for a judicial review of one relevant article of the Marriage Law. The article she referred to was not article 7 of *Kompilasi on isbat nikah*, but rather article 43 of the Law of Marriage, which regulates the legal status of children and their relations to their mothers and fathers. Article 43 states that children born out of wedlock only have a legal relationship with their mothers and their mother's relatives.<sup>127</sup> In relation to this issue, article 4 should also be mentioned, which stipulates that a child is considered to be a legal child if he or she is born during the existence of an official marriage, he or she has been conceived during a marriage even if the birth takes place after the dissolution of this marriage, or if he or she is born as a result of technological reproduction such as in vitro fertilization.

Machicha was supported by many people, including her legal expert, Nurul Irfan, in her petition to the *Mahkamah Konstitusi* requesting that it study and annul or amend article 43. Unlike Halimah, Machicha won her case. After several discussions and hearings, the *Mahkamah Konstitusi* decided to approve the proposal and to amend the article. The rule that children born out of wedlock have a legal relation to their mothers and their relatives was amended to the effect that children born out of wedlock also have a legal relation to their biological fathers if medical technology can convincingly prove their biological paternity.<sup>128</sup> The *Mahkamah Kosntitusi* considered that it is not fair and proper to pronounce or decree that children born out of wedlock have a legal private relationship with only their mothers and thus to free men, who have had sexual intercourse that resulted in pregnancy, from financial or custodial responsibilities to their children.

This decision of the *Mahkamah Konstitusi* raised many reactions and criticism, since it was considered to deviate from the classical Islamic legal doctrine (*fiqh*). The legal expert in this case, Irfan, who is a lecturer at the Faculty of Sharia and Law of State Islamic University, Jakarta, also received criticism from his senior colleagues. His colleagues allege that he was too rough and had gone far beyond *fiqh*.<sup>129</sup> Many parties, including Muslim organizations such as MUI (Indonesian Ulama Council), opposed the decision. The commission of law and legislation of MUI understood that the decision issued by the *Mahkamah Konstitusi*, which stresses the word 'out of marriage', includes not only informal (unregistered) marriage but also adultery, and therefore claimed that adultery is being legalized and the previous rules are being revived. They also asserted that the *Mahkamah Konstitusi* has gone beyond Sharia and beyond what was actually being appealed by the

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<sup>127</sup> See article 4 of the Law of Marriage.

<sup>128</sup> 'MK Sahkan Status Anak di Luar Nikah Resmi', *Kompas*, 19 February 2012, accessed on 11 July 2012.

<sup>129</sup> Interview with Nurul Irfan, Jakarta, May 2012.

petitioner. While the petitioner questioned the legal status of her child born out of her unregistered (Islamic) marriage, the *Mahkamah Konstitusi* has dealt with a broader issue, including the legal status of child born out of wedlock.<sup>130</sup>

Arguing that the decision distorted Muslim's legal understanding of the issue, MUI decided to issue a fatwa. It is interesting that the fatwa provided detailed rules on the rights of children born out of wedlock. Although the basic references of the fatwa are the Qur'an, Hadith, and *fiqh* doctrines, and therefore the fatwa affirms the absence of legal relations of children with their biological fathers, it introduced new reforms to accommodate the interests of child. The fatwa states that: 1. children born out of wedlock do not have a legal relation to their biological fathers, do not inherit from, and would not be financially supported by their biological fathers; 2. children born out of wedlock have a legal relation with only their mothers; 3. children born out of wedlock are not to bear the sin of the adultery committed by their parents; 4. the adulterer should be sentenced to *hadd* (stoning) to keep legal genealogy; 5. the government is entitled to force male adulterers to provide proper financial support for their children, to award property or estate through *wasiat wajibah* (obligatory bequest) after their death, and; 6. the sanction specified above (point 5) does not mean the legalization of relations between the children and their biological fathers, but merely protects the rights of children.<sup>131</sup>

In contrast to those parties, Komisi Nasional Perlindungan Anak (Komnas PA, National Commission of Children Protection), highly appreciated the decision and considered it to be a good solution to one of the biggest problems that it regularly has to deal with. The chairman of Komnas PA, Arist Merdeka Sirait, informed that, 'in 2011, there were 38 cases on legal status of children born out of wedlock brought to us (Komnas), in which the private rights and custodial right of the children involved were questioned'. He hoped that those cases could now be solved and children would get their basic rights.<sup>132</sup>

### **Proposal to issue a new law**

Another recent attempt to improve the legal status of women is the proposal to issue a new law on Justice and Gender Equity (Keadilan dan Kesenjangan Gender /RUU KKG) by the Commission VII of the Parliament. It is interesting that the draft is well-known among society. The draft has been discussed by Muslim organizations several times. One of the

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<sup>130</sup> 'Keputusan MK Kebablasan', *Kompas*, 9 April 2012, accessed on 23 July 2012.

<sup>131</sup> See Fatwa MUI No. 11/ 2012

<sup>132</sup> 'MK Sahkan Anak Lahir di Luar Nikah Resmi', *Kompas*, 19 February 2012, accessed on 11 July 2012.

discussions was held on 18 June 2012, involving, among others, Fatayat NU, Wanita Republik Indonesia, and Korps Wanita Indonesia, Majelis Intelektual dan Ulama Muda Indonesia (MIUMI), and Badan Pemberdayaan Perempuan dan Perlindungan Anak Pemerintah Aceh. The committee also intended to invite activists from other organizations to hear their views, comments and recommendations.<sup>133</sup>

The draft received many comments and observations. A number of Muslim organizations criticized and rejected the draft and considered it a counter-productive legal product to basic rules. They also considered it as a serious challenge to the established system of marital relationships. Majelis Intelektual dan Ulama Muda Indonesia (MIUMI), for example, rejected the draft arguing that the notion of gender is contradictory or not compatible with Islam.<sup>134</sup> This organization also believes that the philosophical base of the draft is not Pancasila. One of the legal experts of MIUMI mentions that while Pancasila stresses ‘*keadilan/ justice,*’ the draft underlines ‘*kesetaraan/equity,*’ and he highlights that the two terms or notions are different.<sup>135</sup> Another organization, FUI (Forum Umat Islam) also rejected the draft. While MIUMI puts its accent on the contradiction of the draft with ideology, FUI alleges the draft is not compatible and congruent with the culture of Indonesia. One of its leaders finds that the role and empowerment of women in public spheres expected by the draft is excessive and disproportionate. According to him, the excessive role and involvement of women in the political field would harm and disadvantage women’s positions as wives and mothers.<sup>136</sup>

Some organizations and high-ranking officials nonetheless expressed their appreciation and support for the proposal of the draft. Komnas HAM, Komnas Perempuan, and LBH APIK are among such organizations and stand at the forefront of support for the ratification of the draft.<sup>137</sup> The Minister of Women Empowerment and Children Protection highlighted the significance of the law in eliminating discrimination against women.<sup>138</sup>

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<sup>133</sup> ‘DPR Kaget Draft UU Kesetaraan Gender Beredar Luas’, *People’s News Blog (Koran Digital)*, Monday, 18 June 2012, accessed on 3 Jul 2012.

<sup>134</sup> Fahmi Salim, MA, ‘Catatan Diskusi Gender di Gedung Parlemen RI: Islam dan Kesetaraan Faham Gender’, *Kompasiana*, 28 June 2012, accessed on 6 July 2012.

<sup>135</sup> ‘Ahli Hukum kritik RUU Kesetaraan Gender’, *Hukumonline*. See also, ‘MIUMI Serahkan 7.500 Suara Masyarakat Tolak RUU Kesetaraan Gender’, *Nahi Munkar.com*, 17 July 2012.

<sup>136</sup> Yusuf Wibisono, ‘Turun Jalan, FUI Jombang Tolak RUU Gender’, 8 June 2012, accessed on 9 August 2012.

<sup>137</sup> Interview with Ratna Batara Munti, July 2012.

<sup>138</sup> ‘PBB Apresiasi Program Kesetaraan Gender Indonesia’, *Kompas*, 12 Juli 2012, accessed on 9 August 2012.

## **Conclusion**

Indonesia has ratified a number of international covenants and has, therefore, to conform with their laws and rules. Although, the laws on Muslim women have, to some extent, introduced a number of reforms to accommodate women's interest and to meet the protection of women rights, looked at from the perspective of international legal standards, women remain disadvantaged. Indonesia's Sharia-based regulations have challenged a number of rights, including the right to equality and legal certainty. The rule on polygamy states that the wife's consent can be denied and this, coupled with the continued acceptance and approval of polygamy by judges and by local 'ulama in Indonesia, for example, has contravened the right of legal certainty.

A number of rights have been also challenged by the rules in Sharia-based local regulations. The right of freedom of religion and expression, protected by international covenants that have been ratified by Indonesia, has been challenged by the two Sharia-based local regulations of Tangerang and Cianjur, which discriminate against women in public arenas by forcing them to cover their heads and restricting their movements late at night. These regulations have limited women's freedom to express their choices and it prevents them from obtaining equal treatment.

Aware of this contravention by Indonesian laws of the international and universal concept of human rights, recently many parties, including individual figures and gender activists, have attempted to bring about legal developments using proposals for judicial review and for the issuance of laws that accelerate women's legal status. They refer to the international concept of gender equality and the protection of women's rights. Unfortunately, they are frequently criticized for their efforts and are challenged by Islamist and conservative groups of Muslim who, in doing so, clearly demonstrate that their conception of gender equality and women rights is at odds with international conventions.

## **6: CONCLUSION**

Islamic family law is the only area of Islamic law that was upheld by Indonesians soon after Islam was adopted as their religion in the 12<sup>th</sup> century. In light of the fact that many classical Islamic family laws placed women in a subordinate position, the Indonesian government initiated legal reforms and introduced novel rules at a national level, such as the 1974 Law of Marriage and the 1991 *Kompilasi Hukum Islam*, to improve women's standing in family law. For example, a husband's right to unilateral divorce was limited, polygamy was restricted,

and women's rights to property were strengthened through the rule of joint property within the marital bond.

There are, therefore, cases related to divorce, post-divorce spousal alimony, and *isbat nikah* (marriage confirmation) where women have benefited, although these remain few and far between. Where women have greater education in legal advocacy and know the legal and court system better they can negotiate the judicial process to decide the fate of their marriage and have better access to justice. The increase in women's legal knowledge and better services provided by courts, influenced by both national concerns and international conventions, have brought women better access to justice. Almost all their divorce petitions end in approval and they are now more able to deal with their divorce proceedings due to recently developed programs of 'prodeo' and circuit courts. Due to the awakening of judges' gender sensitivity they can also obtain their rights on spousal alimony. Indeed, judges often require husbands to make the payments in court before they are permitted to pronounce divorce formula. Although economic issues still mean that many husbands do not fulfil their legal obligations, changes in judges' attitude has, to some extent, helped improve justice for women.

However, despite many reforms on substantial laws, this research has shown that women using three courts, as well as a court in Bulukumba, continue to remain subordinate and weak in cases of polygamy, custody and post-divorce alimony for their children. In the case of polygamy, the strict interpretation of Quranic verses by the judges of religious courts, and the lenient application of Islamic law interpreted by the state, often results in bad decisions for Muslim women in Indonesia. The ambiguous legal conception of '*maslaha* (public interest)' and the lack of rules in relation to providing a mechanism to ensure judges' decisions relating to alimony and custody are actually executed, mean that many Muslim women in Indonesia feel aggrieved. Although, according to other studies, judges have been more sensitive and receptive to gender issues, and many Muslim women in other regions have therefore been powerful, the aforementioned factors have led the women in my research to less justice in courts. Many women have been abandoned in terms of their rights on custody, due poor implementation mechanisms. They are also often unable to claim their rights to alimony for their children because husbands consider this to be a religious obligation and, therefore, they are not legally forced to perform the obligation.

In practice, gender injustice is worsened by the rise of local Sharia regulations, such as those that regulate women's dress in Cianjur and women's access to public areas at night

issued in Tangerang. This research did not find cases that could support earlier research done by a number of institutions, such as Komnas Perempuan, the Wahid Institute, and CSRC, that reported negative effects of the regulations on women. It also found that the majority of women accepted the regulations in a positive way. However, these two regulations have substantially harmed women in the public sphere. The Cianjur regulation, which requires female state civil servants to wear *jilbab*, has forced these women to accept the state's Islamic-based interpretation of clothing and this disrupts women's access to free and comfortable public service, and also disrupts a conducive working atmosphere. The Tangerang regulation has resulted in women, making their way home from late night shifts, being fearful of being apprehended by patrols. The same effects are noted in Bantul, where women's fears were compounded by cases of women being mistaken for prostitutes and arrested by the civil police.

Moreover, looked at from the perspective of international legal standards, these Sharia-based local regulations, and also regulations on familial issues where women have not benefitted yet, have challenged a number of rights of equality, freedom of religion and expression, protected by covenants that have been ratified by Indonesia, such as CEDAW, ICRC, and ICCPR. Therefore, rather than this being an issue about whether or not to wear the *jilbab*, the focus should be on the state's behaviour. These regulations needs to be reviewed, as, although abuses in their applications are no longer reported, they have curbed women's freedom to act and violated the protection of human rights in general. Likewise, regulations relating to familial issues also need to be strengthened and their application needs to be controlled. Reforms relating to women's issues often focus on how women can solve their marital problems easily in a formal and legal way and fail to deal with the effects of their legalized acts.

In short, the discussion on woman in Sharia-based laws in Indonesia has led me to draw the following conclusions:

1. Although a number of regulations have been made to protect women's rights, and despite Indonesian women, including Muslim women, benefitting in some cases at a practical level, they remain in a subordinate position in relation to some specific issues due to the lack of innovative judicial interpretation and of clear mechanism of rulings' execution.
2. There is still a huge gap among Muslim legal experts in understanding gender notions and women's rights protection in relation to Shari'a. Although the majority of Indonesian people, including 'ulama and judges, agree with the notion of gender equality, they rarely accept and

agree with the notion of rights protection with reference to universal concepts and international treaties. As a result, the laws based on Sharia have remained in conflict with a number of rules of the international covenants.

3. The state has been ambiguous in solving problems of public morality. In prostitution cases, for example, rather than emphasizing the need to address the factors that lead women into prostitution and to provide women with better security, the state has targeted women as the way of eradicating prostitution. In the issue of the rise of moral illness within society, the state has made women the object of the regulation by controlling their behavior and movements.

4. The demand for gender equality can be seen as a consequence of the better quality of education of women and the rise of their legal awareness, facilitated by the changes in legal, political and social circumstances as a result of *Reformasi*. With changes in regime and politics, democracy has taken root and this has served as a catalyst for the strengthening of the position of civil society vis-à-vis the state.

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# **THE ISLAMIC COURT OF BULUKUMBA AND WOMEN'S ACCESS TO DIVORCE AND POST-DIVORCE RIGHTS**

Stijn Cornelis van Huis

Bulukumba is a *kabupaten* (district) on the south-eastern edge of the province of South Sulawesi. The Islamic court is located in the sub-district Ujung Bulu. From Makassar<sup>1</sup>, the capital city of South Sulawesi, it is a 153 kilometre and four hour ride to the East along a sometimes bumpy coastal road. In 2009, Bulukumba had 394,746 inhabitants of whom 394,397 were registered as Muslim. At present, the 1,155 square km of Bulukumba's area consists of 10 *kecamatan* (sub-districts) 27 *kelurahan* (town quarters) and 99 *desa* (villages). Bulukumba is largely an agrarian district: 67 per cent of the working population is farmer; 14 per cent involved in trade; 8 per cent works in (governmental) services; and 5 per cent in industry. (Bulukumba dalam Angka 2010).

## **1: INTRODUCTION**

This case study about the Islamic court in Bulukumba, South Sulawesi, is part of a broader research about the relation between the State, Islam and society in Indonesia. It contributes to Dr Nurlaelawati's research that concerns the role the Islamic court plays regarding women's and children's rights. This case study looks at the role that the (state) Islamic court plays in Bulukumba's society and focuses on whether women access the court in divorce and post-divorce matters, in which cases and why (not).

As elsewhere in Indonesia (see the report of Fauzi) and the Islamic world, Bulukumba has issued so-called Sharia bylaws that attempt to regulate public morality and especially (Muslim) women's dress. Through looking at women's agency in divorce, I will assess whether those regulations concerning the public sphere signal a stronger control over women in the private sphere.

A second focus in this study is the relation between rules and practice or in this case rights and practice. Does the fact that, according to Indonesian family law, Muslim women and their children have rights to support and marital property also mean that they can realize those rights in practice? Through qualitative and quantitative data acquired during a four month field work period, I try to answer this question and place the answer in the social and cultural context of the women concerned. Finally, this case study looks at the role of the

judge and especially whether the use of judicial discretion is favourable or unfavourable to the women and children involved.

Below I will first give a historical background of Bulukumba, its Islamic court and the Sharia bylaws, before I turn to the main subject of the study, the contemporary Islamic court of Bulukumba and its role in providing divorce and post-divorce rights to women.

## **2: THE HISTORY OF BULUKUMBA, ITS ISLAMIC COURT AND ITS SHARIA BYLAWS**

The district of Bulukumba has a long history of Dutch rule, which started several years after the Bungaya treaty of 1667 (see below). Shortly after the treaty, the VOC erected fortress Boele Comba. Subsequently, Bulukumba appeared in several eighteenth- and nineteenth-century voyage stories, as well as reports by the VOC, as the fortress was frequently used by travellers and soldier as a stopover on their journeys in the archipelago.<sup>1</sup>

In 1637, Governor General Van Diemen (1636-1645), succeeded in pushing the king of Goa to sign a contract concerning trade privileges for the Dutch and protection of Dutch trade ships. Nonetheless, Goa continued to trade with other parties than the VOC, most notably the Portuguese. Aside from enabling other parties in the spice trade, Goa's conquest of the territory of South Sulawesi and beyond (Sumbawa, Buton), had transformed the kingdom into a main economic player in the region. By the time that Goa had reached a trade agreement with the Sultan of the main Javanese kingdom of Mataram, Makassar had become a direct threat to VOC interests in Indonesia (Van Rijneveld 1840:45).

The Dutch in 1660 sent a fleet of 22 ships and 2,700 soldiers to Makassar to force the king of Goa, Hasanuddin, to sign a contract with the VOC. After a Dutch victory, Hasanuddin unwillingly signed the contract presented to him by the VOC. As a consequence, the Portuguese community of Makassar was expelled to the island of Timor. However, a few years later, Hasanuddin was involved in attacks on VOC interests again. This time, the Dutch (headed by Cornelis Speelman) wanted to settle the matter for good and decided to make use of the local political tensions as a result of the conquest of the kingdom of Bone by Goa. With the help of Arung Palakka, successor to the throne of (Buginese) Bone, and aided by troops of the Sultanate of Ternate, Goa was attacked from land and sea. Makassar was destroyed the same year (1667) and forced to sign the so-called *Bongaais Tractaat* (Bungaya

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<sup>1</sup> Fortress Boele Comba played an especially important role in the struggle of the Dutch against Bone of 1824-1825 as port for the supply of soldiers and materials for the attack on Bone over land. See Van Rijneveld (1840).

treaty) that would become the fundament of Dutch political relations in Sulawesi and the Moluccas (Van der Kroef 1961).

The treaty established that the parties would not allow other trade partners than the VOC and all international traders had to be banned. Interisland trade required licences from the VOC. The kingdom Goa had to allow Dutch presence in Makassar (fortress Ujung Pandang was renamed fortress Rotterdam). A number of principalities, previously falling under Goa's influence, were put under VOC rule. Fortifications were built in the VOC-ruled areas to protect VOC ships from and to the Moluccas, one of which was fortress Boele Comba.

Until the first decades of the twentieth century, despite Dutch attempts to create a power balance between the large autonomous kingdoms (*zelfbesturende landschappen*), warfare broke out regularly between the kingdoms of South Sulawesi. Only since the late 1910s did the Dutch succeed in increasing bureaucratic control over both the areas under Dutch rule and the autonomous kingdoms. Just over two decades later the Japanese occupied the Dutch East Indies. After the Japanese surrender in 1945 many *adat* (custom) leaders supported a Dutch return, which would mean a return to the old aristocratic rule. Society, however, had changed and nationalists, communists and Islamic parties challenged both Dutch and aristocratic rule. Many guerrilla groups sprang up in South Sulawesi, which the Dutch – with the infamous Westerling as the main symbol – tried to suppress with sometimes brutal force.

When the Dutch decided to recognize Indonesia's independence in 1949, the guerrilla warfare in South Sulawesi was far from over. In 1951, Sukarno turned the Indonesian federation into an unitary republic, which – especially outside Java – met resistance. Moreover, the Indonesian state did not become an Islamic state based on Sharia, as the more Islamic oriented guerrillas had hoped for. Since the Indonesian national army did not incorporate all the guerrillas that had fought against the Dutch, many dissatisfied fighters still roamed the country side of South Sulawesi. When Kahar Muzakkar decided to join the Islamic rebellion of the Darul Islam and become its leader in South Sulawesi, he attracted substantial support. In the end, it took the Indonesian forces fourteen years to defeat the rebellion. In 1965, Kahar Muzakkar was killed by Indonesian forces in an ambush.

After the communist coup and subsequent coming to power of Suharto, order was restored. The new military elite merged with the old aristocratic elite in South Sulawesi. As a



result, old and new patron-client relations became the power base in society ruled by a number of powerful clans.

### **The history of the Islamic Court in South Sulawesi**

With the intention of increasing control over the principalities within its territory, in the eighteenth century the large kingdoms of Goa and Bone had created an Islamic bureaucracy that was directly accountable to, and of which the heads were appointed by, the Sultan. Purportedly, this move was supported by the VOC, who favoured a more integrated kingdom above a loose bond between the various kingdoms and the local principalities (Röttger-Rössler 2000).

The Islamic bureaucracy changed the relation between the kings, the principalities and the old local *adat* councils dramatically as it penetrated into the formerly relatively autonomous principalities and villages, making the relation between the king and the local *karaeng* more hierarchical. As a result, the role of the local *adat* councils in the large kingdoms was increasingly restricted to local village affairs. Only the local nobles that were part of the sultanate bureaucracy could transcend village level affairs. As both the cause and the result of those developments, the higher nobility that was related to the ‘royal clan’ became main actors of a further Islamization of society, initially propagating a Sufi form of Islam (Andaya 1984).

As part of the Islamic bureaucracy of the Sultan, *syarat* or local Islamic courts were set up (referred to by the Dutch as ‘*priesteraad*’) headed by the highest local official on Islamic affairs, the *kali* or *penghulu* (Javanese). Those *syarat* assumed jurisdiction over marriage, divorce and inheritance affairs. In 1877, a report commissioned by the department of justice in Batavia about Islamic justice in the directly ruled areas of the outer Island, found that in South Sulawesi – including in the *Oosterdistricten* of which district Bulukumba was a part – *syarat* were found in every *regentschap* and principality (Adatrechtbundel I: 225-34).<sup>2</sup>

From the late nineteenth century onwards, with the rise of modernist Islam, the Dutch Islam policy changed into an *adat*-centered politics. Islam was only to play a role when it was incorporated into or received by local custom. A circular in 1919 by the Governor of Sulawesi<sup>3</sup> instructs the Dutch administrative heads (*assistent-residenten*) of the autonomous

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<sup>2</sup> *Regeeringsrapporten over de Mohammedaansche Rechtspraak op de Buitenbezittingen* commissioned by circulair 1876 No 7276/8576 of the Department of Justice.

<sup>3</sup> Circular of the Governor of Sulawesi of 11 march 1919 No 22/IV to the *assistent-residenten* of Mandar, Paré-Paré, Boné, Loewoe and East Sulawesi.

kingdoms (*zelfbesturende landschappen*) not to establish new *syarat* and to consider the abolishment of *syarat* 'that were established under our influence.' Thus, the circular demonstrates that the Dutch colonial government (or even further back, the VOC) up to that time had allowed the founding of Islamic courts in South Sulawesi, and moreover, that by the second decade of the twentieth century the colonial policy in this regard had changed.

Indeed, a number of judgements by *landraad* would deny the *syarat* jurisdiction in family law matters. For example, in 1929 the *landraad* of Bulukumba<sup>4</sup> established that the *syarat* did not possess independent judicial powers (*zelfstandige rechtsmacht*). A judgement by the *landraad* in Selayar stated that *syarat* were not part of the Buginese-Makassarese *adat*, not even in divorce matters and thus not part of the Dutch legal system.<sup>5</sup>

Although after independence there were political actors that wanted to do away altogether with the Islamic court, in the end a national Islamic court would be set up by the central government in Jakarta. Government Regulation 45/1957 regulated that all districts outside Java ought to set up an Islamic court. In South Sulawesi the Islamic court thus retained its lost status and the Islamic court became part of the national Islamic court (see also the report of Nurlaelawati).

### **Islamization of politics in South Sulawesi after 1998**

After the fall of Suharto in 1998 Islamist ideas that had been repressed came to the surface. In 2000, the Preparatory Committee for the Implementation of Sharia-law in Indonesia (*Komite Persiapan Penerapan Syariah se\_Indonesia*, KPPSI) was founded during a meeting in Makassar with the participation of representatives of all major Muslim organizations (NU, Muhammadiyah, MUI, ICMI, HMI, DDI and others) and a variety of prominent figures including Jusuf Kalla (the future vice-president of Indonesia), the president of the *Partai Islam seMalaysia* (PAS), the deans of Universitas Muslim Indonesia and the Law Faculty of Universitas Hasanuddin, and the infamous Abu bakar Ba'syir.

Not surprisingly, the main point on KPPSI's agenda was the incorporation of Sharia-inspired regulations into the legal system of South Sulawesi. Politically, the KPPSI took, and still takes, an anti-New Order and anti-corruption stance. Sharia will increase law and order, so the argument goes. Moreover, KPPSI argued that the sharia policy for Aceh has opened-up

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<sup>4</sup> Decision of the *landraad* of Bulukumba of 20-9-1929.

<sup>5</sup> Decision of the *landraad* of Selayar of 26-10-1931.

the legal possibility for a further ‘shariatization’ of regions with a traditionally strong Islamic character (Buehler 2008).

The members at the first meeting agreed to establish the *Laskar Jundullah*, a paramilitary organization that could be used to pressure politicians to adopt Sharia-inspired regulations and to oversee their enforcement. Furthermore, in an act of symbolism, Abdul Azis Kahar Muzakkar, the son of the executed *Darul Islam* leader of South Sulawesi, was chosen as head of the executive board of KPPSI.

KPPSI lost its political legitimacy due to terrorism allegations against some of the members of *Laskar Jundullah* after several bomb-attacks hit Makassar in the years 2000-2004, as well as the latter’s alleged involvement in the interreligious conflict in Poso in the same period, (Buehler 2008). The Sharia agenda of the KPPSI, however, was taken up by the mainstream political parties in South Sulawesi that typically are headed by members of the high nobility.

Michael Buehler (2008:30-31) sheds light on the possible political motives for the Islamic turn of the nobility. First, the Sharia agenda includes regulations concerning the management of Islamic charity. The latter enables local governments to raise money through taxation of civil servants, which can be redistributed to their constituency. Through the distribution of Islamic charity money, the district heads can play their traditional role as patrons by creating and capitalizing on pyramidal hierarchies in the Islamic networks. In those patron-client networks the religious figures (*ustadz(a)* and *ulama*) are expected to act as power brokers in return for prioritization of Islamic matters and an increase in funds. In particular, Quran recitation groups (*majeli ta’lim*) are important as they reach both male and female voters. Moreover, through creating an Islamic ‘police’ the grip on the population can be increased. As of 2007, all Buginese and Makassarese majority districts had enacted Sharia-inspired regulations – Bulukumba being one of the first (Buehler 2008).

### **Bulukumba’s Sharia bylaws**

The government of Bulukumba has promoted its Muslim character actively through local regulations. Since the year 2002, Sharia bylaws concern prohibitions on alcohol,<sup>6</sup> the management of Islamic charity (*zakat, infaq and shadaqah*),<sup>7</sup> Muslim dress-codes in

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<sup>6</sup> Local regulation No 3 of 2002.

<sup>7</sup> Local regulation No 2 of 2003.

governmental buildings,<sup>8</sup> and the ability to recite the Quran set as a requirement for marriage, secondary school and certain positions in the bureaucracy.<sup>9</sup>

Since 2003, each of the ten sub-districts – but twelve in total – has a *desa percontohan* (model village) or *desa Muslim* (Muslim village), the apparatus of which is expected to encourage adherence to the Sharia bylaws within the village and to set the example for other villages in the sub-district. The introduction of Sharia bylaws in Bulukumba has attracted media attention,<sup>10</sup> and the move by the Muslim village council of Padang – as one of the first places outside Aceh – to implement caning as a penalty for indecent behaviour (*khalwat*) in 2005 was even taken up by the National Commission for the Elimination of Violence against Women (Komnas Perempuan 2009).

The Bupati of Bulukumba (1995-2005), who has actively promoted and introduced the Sharia bylaws, is Patabai Pabokori, a high noble, who had been a KPPSI member since its establishment in 2000. Students of the STAI Al-Ghazali told me that his successors (AM Sukri Sappewali (2005-2010) and Zainuddin Hasan (2010-present) are more lax with regards to the implementation of the regulations. Although I had not been in Bulukumba before 2010 and I cannot compare the situation with the year 2005, I did notice that in at least one Muslim village (*desa Muslim* Balong) women openly ignored the veiling regulation and, moreover, did not object to being interviewed by a male Western researcher and a male research assistant without a male relative being present.<sup>11</sup>

In 2007, Bulukumba's Sharia politics reached the national newspapers once again when *desa* Padang wanted to introduce the punishment of amputation for theft. This time, the district government intervened and declared that caning and amputations are illegal under Indonesian law and the vice-Bupati stated that since 'Bulukumba is not an independent republik' the practices are also illegal in Bulukumba.<sup>12</sup> According to a female activist from *desa* Padang, who had testified for Komnas Perempuan in one of the caning cases, no new caning punishments have taken place ever since.<sup>13</sup>

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<sup>8</sup> Local regulation No 5 of 2003 and local regulation No 6 of 2005.

<sup>9</sup> Local regulation No 6 of 2005.

<sup>10</sup> See for example Gamal Ferdhi, Nurul H Maarif, 'Depancalisasi Lewat Perda SI', *The Wahid Institute edisi VII*, in: *Gatra*, edisi 24/XII, 29 April 2006; Subair Umam 'Formalisasi Syarat Islam Perjuangan Ahistori: Belajar dari Bulukumba dan Luwu', *the Wahid Institute*, Edisi 1, November 2005- Februari 2006.

<sup>11</sup> My own observation during an interview with Bu Misrawati in *desa Muslim* Balong, *kecamatan* Ujung Loe, Bulukumba, 23-7- 2011.

<sup>12</sup> Abdul Manan, & Irmawati, 'Bukan Republik Bulukumba', *Tempo*, Edisi 41/ XXXVI/03, 3-9 December 2007.

<sup>13</sup> Interview with Bu Esse of the local women organization Sipakatua Sipakalebbi, 9-11 2010 in Bulukumba.

Such experiences give the impression that the height of the *syariasasi* (shariatization) in Bulukumba lies behind us. Moreover, if Michael Buehler's analysis is right, then the local elite was not so interested in the *syariasasi* itself, but more in the patronage networks they could build through the process. This is not to say that the Sharia bylaws are without effect. Government offices are instructed to refuse to help unveiled Muslim women.<sup>14</sup> Due to public pressure, the abovementioned female activist from *desa* Padang, currently always wears a veil in public, whilst before 2003 she would not have done so.

### **The Islamic court and the Sharia bylaws**

The Islamic court of Bulukumba also implements the veiling regulation, although no visible signs are displayed explicitly instructing women to do so. Before my research started, it was clear that Pak Muhammad Rusydi Thahir, the current head of the Islamic court of Bulukumba in 2010-2011, is an outspoken proponent of the Sharia bylaws. According to him, they will bring benefit to the community (*kemaslahatan*) as Allah will reward good conduct. He did not look favourably on gender activists and the researchers of Komnas Perempuan, who, he said, came to Bulukumba for a few days in 2009 and, based on very little knowledge, wrote a long and judgemental report.<sup>15</sup>

As a consequence of the veiling policy, women who do not wear a veil on a daily basis will put on a veil before entering the court and take it off again on leaving. In the hundred plus hearings studied for this research, I observed only one occasion when an unveiled woman was able to enter the court room. It concerned a woman of high status whom the clerks (and the judges) clearly did not dare to correct. On another occasion, an unveiled woman who came to the Islamic court as a witness and had not brought a veil with her, was requested by the assistant-clerk to put on a *mukenah* (praying dress for Muslim women) instead, before allowing her to enter the court room.

## **3: THE ISLAMIC COURT OF BULUKUMBA AND WOMEN'S DIVORCE RIGHTS**

### **Divorce in Bulukumba: Rights awareness and women's agency in divorce**

Although it perhaps seems to make sense to start with marriage and proceed with divorce, I will focus on divorce in Bulukumba first, as divorce is the research object through which the

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<sup>14</sup> Interview with Nurlaila Umat, an official of *KemenAg* Bulukumba, Urusan Agama Islam, 3-8 2011.

<sup>15</sup> Interview with Pak Muhammad Rusydi Thahir, the Head of the Islamic court of Bulukumba, 9-11 2010.

position and functioning of the Islamic court is assessed. Marriage, on the other hand, is made subsidiary to divorce and is only examined in so far its local characteristics are relevant to divorce and post-divorce rights in Bulukumba.

There are no statistics about the divorce rate in Bulukumba and a short field work period does not provide enough data to calculate it. An alternative way to calculate the divorce rate is by dividing the number of divorces of a year with the number of marriages of the same year. According to the annual report of the Islamic court of Bulukumba of 2008, 426 divorce requests were registered that year. The same year, 3,700 marriages were concluded and, thus, the divorce rate of Bulukumba in 2008 was about 11.5 per cent, and in line with the national divorce rate of 10 per cent. 345 of the divorce cases were *gugat cerai* cases, i.e. divorce cases filed by the wife. This means that 81 per cent of the divorces were initiated by the wife. Since the year 2008, there has been a steady rise in the total number of divorces, but not in the divorce rate, as the number of marriages have also risen. In 2009, 447 divorces took place of which 364 or (81.4 per cent) were filed by the wife. 3,982 marriages were registered that year, setting the divorce rate at 11.2 per cent. In 2010, the numbers are 519 divorces of which 392 (75.5 per cent) were filed by the wife.

The field work that I conducted from May-August 2011 has resulted in the following data. First, through analyses of the registers, the year reports, and around 100 court files of the Islamic court of Bulukumba, I am able to give a reliable overview regarding the number and background of divorce cases, the number and nature of post-divorce claims, the sex of the plaintiffs, the number of cases *in absentio*, the number of *prodeo* cases (court fee waivers), and more.

Secondly, a survey concerning divorce and divorce rights was conducted among 120 respondents in four subdistricts. In order of distance to the courts they are: Ujung Bulu, Gantarang, Bonto Bahari and Bulukumpa, spread over four villages and four *kampung* (town quarters). The targeted sample group consisted of divorced Muslim women, preferably with children, but not necessarily divorced formally at the court. Unfortunately, in some villages in Bulukumba it was difficult for the surveyors to find the targeted number of divorced women with children (15 respondents per village or hamlet). To be able to reach the target of 15 respondents a number of married women (21) who had experienced a divorce from a previous marriage were included as well as a number of divorced women who did not have children. The latter respondents had to skip some of the questions regarding child support.

The third kind of data is secondary quantitative data, primarily population statistics about Bulukumba and South Sulawesi. Fourth, qualitative data has been obtained through semi-structured and unstructured interviews with key informants and through court observations. The Islamic court of Bulukumba afforded me access to observe all divorce hearings, provided that there were no objections from the litigants. Fortunately, no one objected. The key informants consisted primarily of women who had divorced at the Islamic court of Bulukumba and whom I tried to trace back in order to ask questions about the backgrounds of divorce, the court process, and the implementation post-divorce rights by the husband. In addition, I interviewed judges and other personnel of the religious court of Bulukumba. Other informants include academics, a legal aid NGO and officials of relevant state institutions (Ministry of Religious Affairs, KUA, the civil registry, a prison officer).

Confronted with the high percentage of women filing for divorce, Prof. Nuril Ilmi Idrus of Hasanuddin University in Makassar explained to me that it is indeed custom that women file for divorce, since in Buginese culture women are considered the honour-bearers of the family. If a woman is divorced by her husband, her *sirri* (honour, status, shame) and also that of her kin is affected. Indeed, the custom seems to go far back. Matthes (1875) paraphrases the *hoofdpriester* or *penghulu* (the highest local official on Muslim affairs in colonial times) of Makassar who asserted that during his career he had received dozens of men, but hundreds of women who had come to him seeking divorce. Although there is a possibility that many men at that time did not go to the *penghulu* because they were of the opinion that, under Islamic law, they had the right to divorce their wife without involvement of anyone else, the enormous difference between male and female clients in this anecdote indicates that, indeed, more women divorced their husbands than vice versa.

The outcomes of the Divorce Survey indicates that women in Bulukumba do not consider divorce to be a male thing. To the statement, ‘the right to divorce is with the husband’, an overwhelming 76 per cent of respondents did not agree and an additional 10 per cent did not agree at all, compared with a mere 8 per cent that agreed with this statement. Conversely, women in Bulukumba know that they have the right to divorce their husband as 60.8 per cent agreed and 36.7 per cent very much agreed with that statement. Most of the women (66.7 per cent) believe that they do not have to ‘buy’ a divorce through the *khul* procedure (a consensual divorce procedure in Islamic law in which women can offer (part of) the bride price to their husband in return for a divorce), compared to 16.6 per cent that believed returning (part) of the bride price (*mahar*) is the means for a woman to secure a divorce if the husband initially does not agree to ending the marriage. Women are thus well aware that they can divorce on legal grounds bypassing Islamic or *adat* procedures.

The picture above demonstrates a strong awareness of women’s rights to divorce. However, that awareness does not correlate with a perception of the equality of sexes. Patriarchy is the norm. A staggering 97 per cent of respondents agreed with the statement that the husband is the leader of the family. The public role of men, including that as the head and provider of the family, however, can backfire, as the next example will demonstrate.

One of the divorced women who I interviewed as part of the qualitative research, very much resented the passive and unambitious behaviour of her husband. After marriage she and her husband had to live in the house of her parents-in-law as they were still incapable of maintaining a household of their own. She was eager to move out some day, but her husband did not put much effort in establishing their financial independence. The couple lived mostly from the support of her husband’s parents and, to make matters worse, her husband liked to gamble and drink *balo* (a local-brewed palm wine). She had warned her husband that if he did not give up these money-wasting habits she would leave him. When, one night, he came home late, smelling of alcohol she exploded. ‘*Saya cambuk dia, pake tongkat*’ (I caned him with a stick), she said proudly. Not long after this incident, she filed for divorce at the Islamic court.

The story above indicates that women in Bulukumba possess a lot of authority and independence within the family, although a clear division of roles is still being strived for. A good Buginese or Makassarese husband is expected to be ambitious and to do all he can do for the improvement of the family’s status and position (Chabot 1996). Women, on the other hand, are the main decision-makers of the household and the family, especially in conflict



situations (Rötgger-Rössler 2000). If the husband does not act as he is supposed to do, women will stand up to him, often backed by her kin, and, ultimately, they will even leave him.

Moreover, in the Buginese-Makassarese bilateral kinship system, women do not have to depend economically on their husband because in divorce situations they can always rely on support from their own kin and their own inheritance. Since women are considered to be the status-bearers of the kin group, in the middle and higher classes the husband's status and position may in fact be jeopardized by divorce as his status and career, for a large part, has been built through his wife's status and family network (Rötgger-Rössler 2000).

The latter dependence on the wife's network will only apply when the husband is not a member of the same kin group. Although I cannot present figures here, I have observed during the interviews and courtroom observations that today a large number of marriages in Bulukumba are marriages between (second, third, etc.) cousins, arranged by the parents or other family members. Marrying within the kin group traditionally assures the parents that there is no difference in status between the spouses and that land remains within the extended family. In the words of H. Th. Chabot, the goal of cousin marriages is: 'keeping the blood pure and the goods together' (1996:230). Moreover, arranged marriage demonstrates that parents have an obedient daughter, a characteristic of a woman looked upon favourably (Idrus 2003:236-237). That said, arranged marriages in South Sulawesi do not appear to be more stable than other marriages (Idrus 2003). In the nineteenth century, B. F. Matthes already gave an account of the *penghulu* of Makassar who observed that arranged marriages without consent of the spouses often lead to unhappy marriages, adultery and divorce (1875:45).

The arranged marriages I have observed had been concluded at a very young age, thereby increasing the instability of the marriage. One of the women I interviewed had been married off to her first cousin, just after she had finished primary school. Her husband was only a few years older. Although clearly she was a minor at the time of marriage, the imam *desa* provided her with an official marriage certificate. The marriage only lasted a year, according to her because her husband 'still acted as a child' (*Alasannya kayak anak-anak dulu, suamiku*) and was always going out with his friends leaving her home alone. Only being 13 years of age, she and her family decided to go to the Islamic court to divorce. She did not have to return the *mahar*; indeed, her husband had not asked her to because 'she was still family'.

To summarise, in the patriarchal society that is Bulukumba, female agency in divorce, as reflected in the outcomes of the survey, can be explained by cultural factors. Those cultural factors ensure a larger socio-economic independence of married women than one would expect from the traditional roles most women play – even in arranged marriages.

### **Women's reasons for divorce**

Let us now turn to the reasons for divorce. Women's reasons for divorce do not necessarily correspond with the legal grounds for divorce in the statistics of the Islamic court. The statistics are made by the clerks on the basis of a short screening of the court files. 'Continuous quarrelling' is the easiest legal basis for divorce to be established. Case law even holds that a divorce suit itself is proof of marriage breakdown. Therefore, most women will not bother to provide proof for any other grounds for divorce if there is no legal reason to do so (for instance, questioning the husband's moral behaviour in a child custody dispute). Therefore, the grounds of 'continuous quarrelling' have the potency to absorb all other reasons for divorce that women had to leave their husband.

The survey can provide a more reliable picture of the main reasons for divorce. In the questionnaire I adopted a set of reasons for divorce that are similar to the standard grounds in the annual reports of the Islamic court. They are: 'no harmonious relationship', 'my husband had another woman or wife', 'economic reasons', 'domestic violence', 'no offspring', and 'pressure from a third party'. The respondents were asked what the real reasons for divorce were and, unlike the statistics of the grounds for divorce in the annual reports of the Islamic court, they could give multiple answers. The latter to make sure that the specific reasons women had for divorce were not simply absorbed by the broad reasons for divorce

As the outcomes suggest, many women provided multiple answers and, in particular, many combinations occurred with the answer 'no harmonious relationship'. 'No harmonious relationship' tops the list with 36.7 per cent of the respondents giving it as their single answer. A further 40 per cent mentioned it as one of their answers. 'My husband had another woman or wife' was only given by 5 per cent as the sole reason for divorce. However, another 26.7 per cent mention it as one of the reasons, mainly in combination with 'no harmonious relationship'. 'Domestic violence' is mentioned by 8.3 per cent, the same number as 'economic reasons' and 'pressure from a third party'. Finally, 'no offspring' is at the bottom of the list of reasons and is mentioned by only 7.5 per cent of the respondents. Thus,

the main reason for divorce is a lack of chemistry between the spouses, followed by adulterous behaviour.

Research in Indonesia and elsewhere has indicated that a young marriage age increases the chance of a divorce occurring (Jones 2001; Guest 1992). Hence, the survey assessed the age of the respondents when they married for the first time. In Bulukumba, 12.5 per cent of the respondents had been married before the legal age for women to marry, i.e. 16 years. More than half of the respondents had been married before the age of 20. Almost 90 per cent of the respondents were married at the age of 25 years or younger. The mean age of first marriage of the respondents is 22.4 years.

The mean age of first marriage of the respondents in Bulukumba (in 2011) was higher than in Indonesia as a whole (21.6 years) and in South Sulawesi (23.6 years; Jones 1994:80). There might be two reasons for this. Firstly, all respondents in the survey had been divorced, and therefore the survey is not representative of all married women in Bulukumba. There is a considerable chance that women who married young are overrepresented, since they have a bigger chance of divorce. Second, there are no big cities in Bulukumba and in big cities, such as Makassar, the age of first marriage is usually considerably higher.

When people in Bulukumba marry below the legal age, they do not seem to go to the Islamic court to ask for dispensation (*dispensasi kawin*). In 2010, no such cases were listed. This is rather surprising as 12.5 per cent had been married below the legal age, whilst 98.3 per cent of the respondents answered that the marriage had been officially registered. There are three possible explanations: underage marriages remain unregistered until the legal age is reached, they are registered by the KUA without prior dispensation from the Islamic court, or they had received a fake marriage certificate but are unaware of that.

*Isbath nikah* (a court's confirmation of the legality of a marriage) provides a legal means to register informal marriages that were concluded in accordance with religious requirements. In 2010, the Islamic court of Bulukumba received 43 *isbath nikah* requests (out of a total of 499 cases). Most *isbath nikah* cases are related to the pensions of widows after husbands have passed away. Most of these informal marriages had been concluded before the marriage law. However, cases after 1974 also occur and in such cases underage marriages can be legalised for reasons of the sake of the children already born, or to be able to divorce formally.

In addition to young marriage, the practice of *merantau*, or husbands who migrate for work, seems to contribute to the divorce figure. In the interviews I held in *desa* Tamatto in the sub-district Ujung Loe, several divorced women informed me that the reason for divorce had been that the husband had left South Sulawesi to work and never sent money back again. In two cases the husband had also informally married a second wife. When the women found out they divorced their husband.

To summarise, we have seen that in Bulukumba 75-80 per cent of the divorces are filed by women. Divorce is usually caused by intimate, rather than material or economic, reasons. An underlying reason for the problems in the intimate sphere might be the young age of marriage, although in Bulukumba the mean marriage age is above the Indonesian average. Most divorces occur because of the fact that the spouses do not connect well, resulting in quarrels. Those quarrels in many cases are worsened due to adultery, (unregistered) polygamy or economic conditions and can even turn violent. However, as the caning example demonstrates, passivity and socially negative behaviour of the husband has an economic component. Drinking and gambling by the husband costs money and has financial consequences for the family. Women in Bulukumba, being assigned a role of household managers, and being supported by their kin, are generally sufficiently empowered to break out of such an unhappy marriage.

### **Judicial divorce: The only socially accepted divorce in Bulukumba**

The introduction of the Marriage Law in 1974 meant that a divorce must be brought before the court to be formally recognized. Through the Divorce Survey I could assess to what extent the state has managed to bring this message across to its citizens in Bulukumba. The results indicate that in Bulukumba there is sufficient awareness that divorce requires a judicial process and that most divorces are indeed concluded at the Islamic court.

72 per cent of the respondents had divorced at the Islamic court, compared to 25 per cent that had not. The surveyors have indicated that at least some respondents of this 25 per cent had not divorced in the Islamic court, but their husbands did – sometimes without their knowing. In reality, the percentage of formal divorces might even be higher as the question concerned was probably too ambiguously formulated in terms of discerning whether the women themselves physically went to the court to divorce. However, the figure of 72.5 per cent already indicates that Bulukumba has a relatively low number of informal divorces as compared to the 50 per cent of informal divorces estimated for the whole of Indonesia

(Feener & Cammack 2007). To be able to divorce formally you have to be formally married first. In Bulukumba formal marriage is the norm. 98.3 per cent of the respondents answered that they had registered their first marriage at the KUA.

The numbers above indicate that both the right to divorce and the fact that divorce has been turned into a judicial proceeding is publicly known. This is reflected in the figure of 91.7 per cent of the respondents that were aware that one needs to obtain a divorce certificate (*akta cerai*) to be formally divorced. 25 per cent of the respondents however, thinks that a formal divorce can also be arranged at the KUA. Perhaps, this reflects the local reality in which KUA or village officials provide mediation and ‘legal aid’ services and help with the paperwork of a divorce process. The main sources of knowledge about the Islamic court as the place to file a divorce are family and friends (38 respondents), the neighbourhood head (*Ketua RT*) and village officials (*aparatur desa*) (14 respondents), the KUA (12 respondents), or they knew it themselves (10 respondents).

Semi-structured interviews with 15 divorced women also confirmed a high level of awareness. Bringing a case to the Islamic court is considered the only way to divorce by most informants. The latter is reflected in the following answer to the question why the informant went to the Islamic court to divorce and not divorced informally: ‘The reason [to divorce] is that I wanted to be unstained (*bersih*), if you only separate like that you will not be unstained [clean?]’ (*Maksudnya kan mau bersih, kalau cuma pisah-pisah begitu saja kan tidak bersih namanya*). The divorce must be ‘black on white’ (*hitam di atas putih*), otherwise ‘it will be difficult to remarry’.

Another woman relates divorce at the Islamic court with custom (*adat-istiadat*):

Researcher: Why did you divorce at the Islamic court and not outside? I ask this question because in a number of areas in Indonesia it is common (*cukup biasa*) to divorce [elsewhere,] not before the Islamic court.

Informant: Do you mean divorce in the village (*cerai di kampung saja*)?

Researcher: Yes

Informant: Because here that is not customary (*karena adat-istiadatnya disini kan ga begitu*). Here you have to divorce before the court.[...]

Researcher: Thus in the village there are no people who are willing to divorce a couple?

Informant: No, they would not dare (*Gak mau, takut*).

Even if the marriage had an informal status, women prefer an official divorce, in order to obtain an unstained status. Bu Karmila had been married for nine years and two children were born from the marriage. The marriage had an informal status because the KUA refused to provide the couple a marriage certificate, since her husband was still registered as married to someone else. Bu Karmila clarified that her former husband had indeed been married before, but had been divorced by his first wife through the Islamic court. According to Bu Karmila, the first wife did not want to cooperate with the remarriage and kept the divorce papers to herself. When, after nine years of marriage, Bu Karmila found out that her husband had been adulterous and she wanted to divorce him formally so that she may obtain official divorce papers, and be free to remarry formally in the future. The Islamic court advised an *isbath nikah* procedure, through which the marriage is formally recognised first, after which the divorce can take place.

It remained unclear why the husband had not received a divorce certificate before. To go deeper into this problem would be speculation and beyond the point I want to make: that formal divorces through the Islamic court seem to be the norm in Bulukumba, and informally divorced women are stigmatised. Women are very much made aware that they had better divorce at the Islamic court, or else they will be considered ‘stained women’ and not suitable for remarriage.

Because of this stigma, the Islamic court of Bulukumba is able to successfully fulfil two important roles with regard to divorce. First, the role as registrars of divorces, as part of civil registration of the state. Second, providing clear, ‘uncontaminated’, legal identities to women, so that they become appropriate marriage candidates in their communities. The stigma on informal divorce seems to have a cultural component, but probably is mainly caused by the fact that governmental institutions such as the KUA implement the regulations with regard to divorce and polygamy. That is to say, they are strict on issuing marriage certificates to men (and women) who are still registered as married. Through the stigma on informal divorce, a chain of formality is promoted: formal divorce enables a formal remarriage, which in turn facilitates birth certificates for children born out a second marriage, making the latter formal heirs, etc.

#### **4: THE ISLAMIC COURT OF BULUKUMBA AND WOMEN'S POST-DIVORCE RIGHTS**

Above I have established that the Islamic court is the main forum for divorce in Bulukumba, making divorce very accessible for women. The Islamic court plays an important role in civil registration and endows women and children with a clear marital status as part of their legal identity. A good access to the Islamic court does not automatically mean that post-divorce rights are just as accessible for women. As I have argued elsewhere, (Bedner & Van Huis 2010), the role of the Islamic court in settling disputes concerning post-divorce rights is seldom fully assessed (e.g. Benda-Beckmann 1983). In this section I will look into the role of the Islamic court of Bulukumba in providing access to post-divorce rights.

The focus here is on the frequency of post-divorce cases that have been brought before the court and the reasons for a woman bringing a case to the court or not. Therefore, this part represents research on access to justice, rather than a legal analysis of post-divorce cases.

To start with, the number of post-divorce cases that are brought before court are difficult to establish. Most of the post-divorce cases registered by the Islamic court are part of, and filed as, a divorce case. Thus, such cases are not registered as a post-divorce case and it would require going through the divorce register books to establish case-by-case whether post-divorce (counter)claims were part of the petition. Having said that, the number of cases at the Islamic court of Bulukumba that include post-divorce claims for the years 2008 and 2009 are as follows:

##### **Spousal divorce rights**

First of all, the spousal post-divorce claims can be subdivided into three components: unpaid due maintenance (*nafkah yang lampau*), maintenance during the three-month waiting period (*nafkah iddah*) and the gift of consolation (*mut'ah*). According to the register of the Islamic court in Bulukumba, in 2008 a total of 14 women made spousal divorce claims on a total of 426 divorce claims (3.3 per cent). In practice, spousal divorce claims are primarily substantiated in *talak* divorce cases, i.e. cases filed by the husband, thus it is sensible to compare spousal post-divorce claims with the number of *talak* divorce cases. Looked upon in this way, the percentage of women making spousal divorce claims increases significantly: 14 claims on 81 *talak* divorces means 17.3 per cent of the women claims spousal post-divorce rights in *talak* cases.

In 2009, the total number of women that included spousal post-divorce claims in the divorce suit was also 14, but the number of divorce cases slightly higher – 447 divorces in total and 83 *talak* divorces. The percentage of women making spousal divorce claims at the Islamic court for 2009 is thus 3.1 per cent of the total number of divorces and 16.9 per cent of the total of *talak* divorces.

When the spousal post-divorce rights are subdivided the picture will be as follows: In 2008 there were 12 and in 2009 seven *nafkah yang lampau* claims. In 2008 there were six, and in 2009 seven *nafkah iddah* claims. Finally, in 2008 there were two, and in 2009 six, *mut'ah* claims. The Divorce Survey also assessed the claiming behaviour of women during the divorce process. In the Divorce survey 19 of the 87 respondents that had divorced at the Islamic court answered that they had claimed spousal divorce rights. 16 of the 19 claims made by the respondents were endorsed by the court, although only five entirely and 11 not entirely. The survey thus indicates a much higher percentage (22 per cent) of women claiming spousal post-divorce rights than appears from the analysis of the 2008 and 2009 court registers (respectively, 3.3 and 3.1 per cent). It can be an indication that in the past it was more common to claim spousal post-divorce rights. The age of the respondents in the Divorce Survey varied from 18 years to 72 (median age 33.5 years) and they were not necessarily divorced recently. However, this explanation is unsatisfactory.

The main explanation for the large discrepancy between the number of formally registered claims and the number of claims that the respondents had stated they had made can be largely explained by the tendency of judges to settle disputes informally during the divorce process. As I have observed in the court room on numerous occasions, informal settlements are not only reached during the mandatory mediation session, but also at every other stage of the divorce process. Such agreements between the parties are not registered in the court files, but often have been reached after the involvement of a judge. Therefore, it is likely that many of the respondents had made a claim during a divorce hearing at the Islamic court, which was informally negotiated by the judge and which led to an agreement between the two parties, but which was not formally part of the court judgement and not registered in the register books.

The Divorce Survey also assessed the reasons the respondents had not claimed their spousal post-divorce rights. 46 respondents had not claimed spousal rights and 35 of them gave a reason for this. Those reasons for non-claiming can be divided into five categories. The first category is 'no need for support'. 19 respondents gave an answer that can be



brought under that category. Seven answers can be brought under the category 'I did not want to delay the divorce process'. Four answers can be categorized as 'I did not want to go through the trouble'. Four respondents gave as a reason 'the claim would not have been endorsed'. Finally, in the category 'others', one of the respondents was in absentia during the divorce process at the court.

A respondent who I have interviewed as part of the qualitative part of the research, provided insight into why she did not claim any post-divorce rights. According to her, one of the clerks (*panitera*) that had assisted her during the process, had dissuaded her from claiming any post-divorce rights:

'There was a women there, a clerk, she said it would be [a] long [process], since it had to be arranged first [with] the husband, [to know] whether he approved [to the claim] or not. We would have to meet each other first to mediate how much [support] I want. If we would differ than it will become cumbersome. If there is no point of agreement, he wants 300 and I want 500, the process will take much longer. It would constantly have to be dealt with, [and I would have to go] back and forth, back and forth [to the court]'

### **Child support**

The second post-divorce right I will deal with here is child support (*nafkah anak*). In Indonesia, the father remains legally responsible for the maintenance of his legal children, no matter who has custody over them. Women can make child support claims in divorce cases filed by themselves or their husband.

In 2008, seven women claimed child support, or 1.6 per cent of the total. In 2009, the numbers are slightly lower, six child support claims or 1.3 per cent. One must realise that those percentages are based on the total number of couples that had been divorced at the Islamic court of Bulukumba. Of course, not all of them had children. Still, I think the numbers will give a good indication of the number of women that make child support claims, since in Indonesia it is normal to have children shortly after marriage, usually within two years after marriage (Choe et al. 2001). The percentages of 1.6 in 2008 and 1.3 per cent in 2009, do not reflect actual numbers, but rather indicate that few women make formal child support claims at the Islamic court.

The Divorce Survey reveals much higher numbers of women that claim child support rights. 23 of the 64 respondents who had addressed the Islamic court to divorce and had children answered that they had claimed child support from the father. According to 21 of the respondents, their claims were endorsed by the court, although in 12 cases only partly. The large discrepancy between formally registered claims and claims that the respondents in the survey had believed they had made can be explained along the same lines as the discrepancy above regarding spousal post-divorce rights claims. Judges prefer to settle disputes informally during the divorce process and strive for an agreement between the parties, since judges hope that such agreements will be better implemented. Those agreements are not formalised into court orders and are not part of the formal judgement of the court.

In the Divorce Survey, 33 respondents gave a reason for their non-claiming behaviour. Eight respondents gave an answer that can be categorized as 'no need for support'. Four respondents thought that the claim 'would not be endorsed'. Four respondents 'did not want to go through the trouble'. Three respondents 'did not want to delay the process'. Falling into the category 'others', three respondents did not make a child support claim because the husband had custody of the children and one was in absentia during the divorce process.

The examples above indicate that the advice and interventions of actors within the Islamic court play an important role in the claiming behaviour of women with regard to post-divorce rights. The Islamic court personnel have a preference for informal agreements, and push claims of women outside the realm of the court. Even when the claim is formally made in the court, the judge will attempt to negotiate an agreement with both parties.

### **Communal marital property**

The third post-divorce right I have assessed is communal marital property (*harta bersama*). In Bulukumba the Islamic court registered seven *harta bersama* claims in 2008 and nine in 2009. This denotes a percentage of 1.6 per cent in 2008 and 2 per cent in 2009. All but one of those *harta bersama* claims are included in the divorce suit itself, rather than filed as a separate lawsuit after the divorce has come into effect.

The Supreme Court has recently attempted to encourage people who want to claim *harta bersama* to start a lawsuit after the divorce has been recognised. It has issued an instruction in 2010 (*Petunjuk Teknis, Juknis*) in which the Islamic courts are requested to convince claimants to reach an agreement during the mediation stage or make a separate claim after divorce. *Harta bersama* claims potentially postpone the divorce itself when they

become part of the divorce suit since the communal property often still has to be established by the court in the field. Moreover, when a relatively high amount of property is at stake, the chance of appeal increases and consequently also of a postponed divorce. Whether the interventions of the court personnel are successful remains to be seen. A separate lawsuit after the divorce means that one has to pay the court fees twice. When mediation has been unsuccessful, it remains to be seen whether the parties are willing to postpone the *harta bersama* claim and finish the divorce suit first, before claiming their rights before court.

Outside the realm of the court, only a minority of the divorced couples in Bulukumba makes informal agreements on communal property. The Divorce Survey reveals that 15 or 12.5 per cent of all 120 respondents had made an arrangement with their husband concerning marital property and 64 did not (40 respondents chose not to answer this question). 46 respondents provided reasons for not seeking a marital property arrangement with the husband. 19 respondents answered that they 'did not need the marital property'. 13 respondents said that 'there was no marital property'. Seven respondents gave an answer that can be categorized as 'I did not want to delay the process'. Three respondents 'did not want to go up against their ex-husband'. Four claims fall under the category 'other reasons', including a respondent's reason that her children would get her part of the marital property in the future.

The latter kind of agreement is illustrative of other cases in Bulukumba in which the rights of the spouses themselves are subordinate to the rights of the children. In the following interview with Bu Misra the husband had wanted to divide the communal marital property, but for the sake of the children the Islamic court decided that he had to refrain from his legal rights.

Interviewer: so he turned up and then he asked for, he immediately asked for, he claimed, communal marital property?

Respondent: Yes, he asked to divide the property. But I resisted, because I have [custody of] our only child.

Interviewer: And the property, [consisted of] a house or land?

Respondent: a house.

Interviewer: This house?

Respondent: This one.

Interviewer: Oh, so he wanted to sell this house and divide the money?

Respondent: Yes, he said he wanted to divide it, he wanted to take it. But I resisted, persisted, I have our only child. And in court, eh, what is it (*bagaimana*) , the judge, he said, the judge said it could not be divided because I have a child. In case we would have no children, then it could be divided. [...]

Interviewer: So the marital property was not divided at all?

Respondent: It was not divided.

With this quote I intend to illustrate that women with children are more inclined to defend property rights. Property seems to be considered more essential for the future of their children than child support arrangements.

### **Bride price (*mahar*)**

The fourth and last post-divorce right I have looked at is the bride price or *mahar*. *Mahar* is the money bride price paid by the groom to the bride. The *mahar* remains the property of the wife after divorce, at least if the marriage is ‘consummated’. When this is not the case, because of unwillingness of the wife to sleep with her husband, half of the *mahar* must be returned. In 2008, 11 women, or in 2.6 of all divorce cases, filed a *mahar* claim. In 2009, nine or 2 per cent of the women involved in a divorce case made a *mahar* claim.

A special feature of Bulukumba and South Sulawesi in general is that the bride price is often given in non-moving goods (e.g. a plot of land, standing trees on a plot of leased land, a house) rather than in money or gold. This makes the *mahar* cases in South Sulawesi more complicated. The goods will represent a customary value in ‘Real’, the latter referring to the currency of Saudi Arabia. The amount is based on the status of the bride and is thus traditionally linked with the amount of noble blood the wife possesses (Chabot 1996).

### **Enforceability of court orders**

If you look at the execution of court orders and the enforceability of court orders a mixed picture occurs. With regard to spousal support for the three month waiting period, implementation is facilitated by the Islamic court, since husbands are pushed by the court to pay the entire sum established in the court order before the divorce is uttered.

In contrast, child support implementation depends on the ex-husband’s goodwill. Many women complained that their ex-husband did not provide the support established in the court order. Although there is a legal mechanism for collecting debts in the law, the Islamic

court of Bulukumba has never enforced a child support court order through that procedure yet.

Somewhere in the middle is the enforcement of court orders concerning marital property, which can be effective but is relatively expensive. According to estimations by the chief clerk, enforcement requires about Rp 1 million in court fees and, depending on the expected resistance, additional payments (to police, sometimes military) of at least Rp 4 million. The current chief clerk had a good reputation in getting court orders enforced. According to him, the network of his father, who was a high ranking officer in the armed forces, helped him in getting information about the expected resistance. Moreover, he combines a tough appearance (he is a tall, strong man, from the infamous Jeneponto area), with understanding for the context.

For instance, he told me that in many cases the persons involved would respond with violence to the threat of force by the police. Therefore, he said that he tends to give people a last chance, although there is no legal necessity to do so. Together with someone from the police he will visit the location in person and try to convince the person who is ordered to hand over the property concerned to do so voluntarily. He said that many people respond to the last chance to avoid the shame of a forced foreclosure. In another case he postponed the enforcement and gave the person the chance to harvest the rice first. According to the chief clerk, such a humane approach greatly facilitates enforcement of court orders

### **Satisfaction concerning support**

In the Divorce Survey I asked whether the women concerned were satisfied with the contribution of the father of their children in terms of child or spousal support. A mere 8.5 per cent of the respondents were satisfied with the father's contribution and 40 per cent were dissatisfied. The image about post-divorce rights presented above already indicated that child support is unenforceable and apparently many fathers do not pay enough support in the eyes of their ex-wives.

Nonetheless, the background of this dissatisfaction appears to be more of a moral issue than an economic necessity: 72 per cent of the respondents stated that their economic situation had actually improved after divorce. One of the main reasons is that divorced women return to their parents' care. Moreover, many divorced women leave the area and find employment in the factories of Makassar or are recruited to work abroad. This often means

that the children are brought under the care of the grandparents and the divorce therefore still caused substantial emotional harm to the mother and the children.

## **5: CONCLUSION**

The Sharia bylaws in Bulukumba have a historical component as they echo the Darul Islam movement in South Sulawesi (1951-1965). In 2011, the implementation of the veiling requirement became more lax in the street (although with the foundation of a local branch of the FPI this might have changed), but was still very much upheld in the government offices and in the Islamic court. With regard to family law issues, the Sharia bylaws seem not to have any negative influence for women's rights.

The Islamic court of Bulukumba is effective in making divorce for women accessible since almost all women who petition for a divorce at the Islamic court are successful. A majority of the women in Bulukumba divorce formally, through a court decision. The status of women in informal divorces is considered stained and they may have difficulties remarrying, whereas remarriage for formally divorced women is much more accessible.

The lion's share of the divorces – about 80 per cent– are petitioned by the wife. The reasons for divorce that women mentioned in the Divorce Survey are: a lack of harmony (76.7 per cent), adulterous behaviour or informal polygamy (31.7 per cent), domestic violence (8.3 per cent) economic reasons (8.3 per cent) pressure by the family (8.3 per cent) and no offspring (7.5 per cent). The cultural context facilitates divorce as well. A good husband is expected to be ambitious and to do all he can do to improve the family's status and position (Chabot 1996). However, if the husband does not act as he is supposed to do, women will stand up to him, often backed or pressured by her kin, and in the end she will leave him.

With regard to the use of judicial discretion, it seems that judges tend to allocate a larger portion of marital property to the mother when the children reside with her. However, the use of discretion can also have negative consequences. First of all, women are discouraged by judges from claiming their rights and encouraged to come to an informal agreement. Secondly, the amount of child and spousal support in the court order is often lower than what women had claimed as the judge will tend to follow the husband's counterclaim, in order to have a larger chance that the support is paid by him.

A major obstacle in realizing post-divorce rights is that, generally speaking, enforcement of court orders is problematic. Enforcement of spousal support is well-

facilitated, but only concerns the three months waiting period. Child support orders are considered unenforceable by the judges themselves and no single case has been enforced by the Islamic court of Bulukumba yet. Finally, enforcement of property cases is relatively expensive due to a mix of formal court fees and informal payments to police and others. The execution of child support court orders is problematic and most women are dissatisfied with the father's support to their children after divorce.

Still, women with children can cope economically after a divorce as they are supported by their kin, mostly their parents. Many other divorced women will work (abroad) for a period of time, leaving the children's care to their grandparents and so contributing to the household's income – however difficult it is to leave their children.

### **Recommendation**

Based on this study, I would recommend that in addition to the current projects that aim at improving the accessibility of the Islamic courts at legal aid and legal assistance, programs should be developed centring on the development of enforcement mechanisms for child support. Otherwise a court order concerning post-divorce rights of women and children has no teeth and can easily be ignored.

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# WOMEN IN LOCAL POLITICS: THE BYLAW ON PROSTITUTION IN BANTUL

Muhammad Latif Fauzi

## 1: INTRODUCTION

Since the collapse of the New Order regime in 1998, the Indonesian government has implemented policies of local autonomy and decentralisation. This development has since been expanded by an increasing number of regional regulations. Such regulations do not limit their reference to national laws, but also draw from religious doctrines and customs (*adat*). In this respect, several Muslim dominated districts and cities, such as Bukittinggi, Bulukumba, Cianjur, and Tasikmalaya, have inaugurated their Islamic political aspirations through the ratification of so-called Sharia regulations.<sup>1</sup> Some regulations are linked to religious skills and religious symbolism, such as obligations on reading the Quran and the wearing of Muslim clothing and *jilbab* (veil), while most are related to public morality issues, such as prostitution and alcoholic drinks.<sup>2</sup>

With regard to public morality matters, in 2007 the Bantul administration, a district in the Yogyakarta Special Region (Daerah Istimewa Yogyakarta, DIY), issued a bylaw banning people, either in public places or locations visible from public places, from enticing others into acts of prostitution. The regulation was declared by Dewan Perwakilan Rakyat Daerah (the House of Representative, DPRD) of Bantul on 12 April 2007 and subsequently validated on 1 May 2007. It was registered as Peraturan Daerah (Regional Regulation, Perda) No. 5/2007. It has been claimed to be an instrument assisting Bantul in becoming a district that affords democracy, religiosity and welfare for its people. It is also positioned as an effort (*ikhtiar*) to clean up vices (*maksiat*) and confirms it as the government's responsibility to attend to social order, relating to women in particular.

Bantul is located in the southern part of the DIY. It has a population of 831,000 people whose occupations include rice farming, craftsmen, factory labour, civil servants and merchants. The main agriculture products are rice, sugarcane, and staple crops. The annual income in 2009 was more than 88 billion rupiahs.<sup>3</sup> Most of Bantul's people live in lowland areas and villages committed to performing traditional religious practices. The government

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<sup>1</sup> Robin Bush, "Regional Sharia Regulations in Indonesia: Anomaly or Symptom?" in Greg Fealy and Sally White (ed.), *Expressing Islam: Religious Life and Politics in Indonesia* (Singapore: Institute of Southeast Asian Studies), 2008, pp. 174-191.

<sup>2</sup> Arskal Salim, "Muslim Politics in Indonesia's Democratisation," in R. McLeod and A. MacIntyre (eds), *Indonesia: Democracy and the Promise of Good Governance* (Singapore: ISEAS, 2007), p. 126.

<sup>3</sup> Bantul Statistics Bureau, *Bantul in Figures* (Bantul: BPS, 2008), p. 320.

has claimed that it aims to apply a religious vision for the development of the region, something that cannot be found in other regions in Yogyakarta. The government expects its people to be religious by enhancing their everyday life with religiosity and morality.<sup>4</sup>

The region was allegedly deemed a self-proclaimed social and political capital by Idham Samawi who ruled Bantul for two terms, 1999 to 2004 and 2004 to 2009. He was born in a noble religious family, Samawi. Haji Samawi, his father, was one of the founders of *Kedaulatan Rakyat*, the first newspaper in Yogyakarta. The nobility of Samawi's family fortified the socio-political authority of the son in the society. Later on, his wife, Sri Suryawidati, succeeded his position as the regent. Though her capability was underestimated by the majority, she won the 2009 election. Her reign has maintained the dynastic power of the family.<sup>5</sup>

The rise of Idham Samawi as the regent of Bantul occurred during a time when the Indonesian government was challenged by the implementation of a new approach to national development through decentralisation and regional autonomy. The concept of decentralisation was provisioned in Law 22/1999 on Local Government<sup>6</sup> and Law 25/1999 on Financial Balance between the Central Government and Regional Government. Both laws, in principle, formally state that regional authorities (provinces, districts, and municipalities) have full autonomy to govern and administrate the interests of local people within the boundary of the state of the Republic of Indonesia. In the spirit of decentralisation,<sup>7</sup> during the Samawi's period, the Bantul administration issued a number of local regulations concerning social orders, one of which was a response to prostitution in south coastal areas.

Right-wing Muslim organisations call for the enforcement of this regulation. Prostitution is profoundly positioned to be degrading to women who are forced into it, either due to economic discrimination or sexual exploitation. Opposition to this bylaw has been voiced by a number of activists. According to them, the Perda was drafted in a non-transparent way, did not include public participation and was merely aimed at wooing

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<sup>4</sup> See the profile of the Bantul district on its website, [www.bantulkab.go.id](http://www.bantulkab.go.id) (consulted on 16 June 2011).

<sup>5</sup> "Rezim Keluarga di Pilkada" in *Kompas*, 19 April 2010. The result of the Regent election on 23 May 2009 is as follows: (1) Sri Suryawidati-Sumarno: 67,77 percent, (2) Sukardiyono-Darmawan Manaf: 28,26 percent, and (3) Kardono-Ibnu Kadarmanto 3,97 percent.

<sup>6</sup>The law was then ratified by the central government Law 32/2004 on Regional Government.

<sup>7</sup>A number of laws, including Law 22/1999 on *Otonomi Daerah* (Regional Autonomy) which was afterwards renewed with Law 32/2004 on *Pemerintah Daerah* (District Government) and Law 10/2004 on *Pembentukan Peraturan Perundang-undangan* (Formulation of Laws), have served as the legal basis for regional authorities to promulgate local regulations. Article 10 in the Law 10/2004 declares that "the content of district regulation is all materials that support the application of district autonomy, assistance tasks, and district specific aspirations as well as further explanation of the higher Laws."

Muslim voters. This regulation has legal weakness and violates the principles of human rights and justice. The other position, mainly argued by gender activists, argues that prostitution is an acceptable profession that many women would choose to enter.

Though this regulation is not directly linked with familial matters such as marriage and inheritance, it has impacted the position of women. This research examines public debates on the subject and addresses the position of women in the legal implementation. In so doing, in the first part of this report, I describe how the regulation of prostitution comes into being with a brief explanation of the history and the current situation of Parangkusumo, the centre of prostitution. In the next part, I look at diverse understandings of prostitution. In this regard, debates among political factions within the Bantul parliament on the legal reasoning in the bill are presented. In the last part, I present emerging voices, mainly from NGOs on gender, which resisted the implementation of such a bylaw as it is believed to support the criminalisation of women.

## **2: FROM THE CEPURI PILGRIM TO SEXUAL FLAVOURS**

Organised forms and the related problems of the sex industry in Indonesia have emerged and expanded since the Dutch colonial era. In 1852, the government recognised prostitution in an act regulating those in the commercial sex industry ‘to avoid harmful consequences resulting from prostitution.’ Sex workers were suggested to operate in brothels to help the police control them. Later, this provision proved to be problematic as the act was understood to have legitimised brothels as commercial institutions. In 1858, another law was eventually issued to clarify the 1852 act. Brothels were positioned as places ‘to limit the harmful effects’ of prostitution by regularly having medical consultation.<sup>8</sup>

The later growth of the plantation and sugar industries in East and Central Java, the opening of private capital, and the significant migrations of male workers to Java created a huge demand for the services of prostitutes. The building of roads and railways greatly expanded prostitution. In line with this constructed infrastructure, cities passed by the railway were aggraded by the increase in the number of rail passengers. Their arrival demanded rooms and lodging, including for sexual services. In Yogyakarta, the prostitution centre was located in the area of Pasar Kembang, a few metres from the Tugu rail station.<sup>9</sup> Not limited in

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<sup>8</sup> Gavin W. Jones, Endang Sulistyarningsih, and Terence H. Hull, “Prostitution in Indonesia”, a working paper in demography at the Australian National University, 1995.

<sup>9</sup> *Ibid.*

this complex, in the 1990s pimps brought sex workers to other places, mainly to the south coastal areas such as Parangbolong and Parangkusumo.

In addition to the beauty of the beach, Parangkusumo, located 28 km south of Yogyakarta, is well known for a pair of rocks surrounded by walls called Cepuri. Villagers believe the rocks to be sacred and mystical and where Kanjeng Panembahan Senopati, the first King of the Mataram Kingdom, was said to have meditated at the time. Many people said that it was here that the King met with Kanjeng Ratu Kidul, the Ruler of the South Sea of Java, for the first time. Cepuri is thus considered as an important place for spiritual and cultural events. Visitors cannot freely go in and out of this complex and must be accompanied by a spiritual guardian (*juru kunci*). Sandals have to be taken off before entering. They are obliged to be silent inside the site. Rituals in Cepuri can be performed on all days and at any time. Nevertheless, Tuesday and Friday Kliwon<sup>10</sup> are believed to be particularly special moments to perform pilgrimage. In addition to pilgrimage, the offering to Kanjeng Ratu Kidul (*labuhan*), a traditional ceremony of throwing offerings and flowers into the South Sea (Indian Ocean), is considered a very important part in the ritual.<sup>11</sup> The choice of those two nights relates to a Javanese tradition which regards them as holy and sacred.<sup>12</sup>

Modernisation and economic development have, however, altered the adherence to these activities. Since the 1980s, economic activities in Parangkusumo have come to dominate these ritual practices. Traders offer goods, such as clothes, traditional medicine, and massage services. People from Yogyakarta and its neighbouring areas, come there either to shop or have a night of pleasure. The rise of economic activities, mainly on the regular ritual days, as well as the increasing number of houses in Parangkusumo, amplified the variety of products and services promoted. The commercialisation of sex has been one eventual consequence. According to RP Suraksotarwono, the spiritual guardian (*juru kunci*) of Parangkusumo, the first sex workers were those who worked in Pasar Kembang in Yogyakarta. Some villagers enjoyed this considerable business development as it has invited a huge number of costumers from diverse cities.<sup>13</sup>

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<sup>10</sup>Kliwon is one of the Javanese days, called *pasaran*. Other days include Legi, Pahing, Pon, and Wage.

<sup>11</sup> Maharsi, "Varian Keagamaan Masyarakat Pesisir Pantai Selatan (Studi Kasus Desa Parangtritis, Kretek, Bantul, DIY)" in *Jurnal Penelitian Agama*, 13, 3, September-December 2004.

<sup>12</sup>This belief is close to a tradition that a Javanese who performs 40-days-fasting usually ends on Friday Kliwon or Tuesday Kliwon. Nevertheless, this tradition tends to change nowadays. Instead of 40 days, locals start to replace this tradition with 3 days-fasting on Wednesday Wage, Thursday Pon, and Friday Kliwon.

<sup>13</sup> Interview with RP Suraksotarwono, the spiritual guardian as well as the elder generation in Parangkusumo, August 2011.

This success story made the extent of prostitution increase dramatically and invited hundreds of sex workers from varied cities. Sex workers, who used to be called *Wanita Tuna Susila* (women lacking morals, WTS) and now commonly referred to as *Pekerja Seks Komersial* (commercial sex workers, PSK) come regularly to seek customers. However, only a small number of them are from Yogyakarta; most of them come from districts in Central Java, such as Demak, Pati, Magelang, Solo, Purwodadi and Sragen. Most are ‘freelancers’ and not attached to pimps. All the pimps rent rooms to sex workers and earn Rp. 10,000 for each use.

Initially, sex workers only came to Parangkusumo on Tuesday and Friday Kliwon nights. Later on, considering the potential income, they preferred to stay permanently rather than regularly commute. Other resident’s also benefit from this situation in many forms. The most obvious places where such business is conducted are brothel complexes, hotels, massage parlours, and karaoke rooms. In addition, many villagers have opened stores selling food, cigarettes and daily provisions. Thus, the relation between the sex industry and other economic activities in general cannot be ignored.<sup>14</sup> The more-dominant connotation of prostitution somehow had displaced the meaning of ritual. In daily speak, sex is also called ritual. Many people have even named *hari ibu* (mother’s day) a ritual day as many sex workers are between 35 to 40 years (and so the age of a mother).

The tariff for purchasing their service varies depending on how capable a customer is at bidding. In general, young sex workers would set the tariff from Rp. 70,000 to Rp. 150,000, while older sex workers tend not to set an exact price. Customers usually pay from Rp. 25,000 to Rp. 35,000. The more beautiful a prostitute looks, the higher the cost. From 2000 to 2006, it was likely that a young prostitute could have twenty customers a night.<sup>15</sup>

Anik, an ex-pimp, clarified that her store might sell five packages, each containing 144 items, of condoms a month.<sup>16</sup> On the ritual nights, through renting rooms, the pimps would earn more than Rp. 1,000,000 a night. In addition, owners of karaoke halls also made quite reasonable incomes. Someone who rents a karaoke room must pay Rp. 25,000 – Rp.50,000 for an hour. The owner could provide a PK (*pemandu karaoke*, the karaoke guide) to join, when demanded. The owner does not determine the tariff of using the PK. Usually a customer has to pay Rp. 50,000 – Rp. 75,000 and give the money directly to her. The PK

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<sup>14</sup> Interview with Daru Waskita, journalist, in Bantul, July 2011.

<sup>15</sup> Interview with Yani, sex worker, in Parangkusumo, July 2011.

<sup>16</sup> Interview with Anik who claimed herself as the caretaker of sex workers. She used to be a prostitute, then a pimp, but now limits her business to karaoke house, July 2011.

offers the customer a karaoke ‘plus’.<sup>17</sup> For this service, the customer must pay extra money ranging from Rp. 100,000 to Rp. 200,000. Despite having no charge from the PK, the owner can still benefit from selling other products, such as foods, drinks, beers, and rooms for doing ‘plus’ service.<sup>18</sup> Besides the linkage between sex workers, pimps and karaoke owners, other types of occupation also indirectly benefit from this connection. On the ritual days, bus drivers have more passengers, including pilgrims, sex workers, visitors, and traders and hence reap relatively bigger incomes compared to regular days.

During Ramadhan, Cepuri remains open. The situation in Parangkusumo looks quieter however as the religious atmosphere is clearly visible. The Darus Salam mosque, inside the complex of Cepuri, holds a daily *iftar* (opening of fast). A religious gathering (*pengajian*) targeting a larger audience is carried out weekly. All villagers, including the owners of brothels, are scheduled to donate food for *takjil* (fast-breaking meal, commonly called *iftar*). Mothers, teenagers, and children gather to wait for the coming of the Maghrib prayer. During that time, guided by the imam, they recite Islamic chanting (*dzikr*), commonly recited is the prayer for the dead. Rituals within the mosque represent the traditional teaching of Islam, which is institutionally affiliated with the biggest Muslim organisation, Nahdlatul Ulama.<sup>19</sup> Prostitution is not strongly evident during Ramadhan evenings.

### **3: THE MAKING OF A PROSTITUTION BYLAW**

The discussion on the prostitution regulation commenced in 2002, though the official legislation occurred in 2007. The legislation started when the Regent submitted and read a *Nota Pengantar* (Introductory Note) on the *Rancangan Peraturan Daerah* (the Bill of Bantul Regulation, Raperda) in *Sidang Paripurna* (the Plenary Meeting) of the Dewan Perwakilan Rakyat Daerah Bantul (the People’s Representative Council of Bantul, DPRD Bantul) on 15 March 2007. Attached to this *Nota Pengantar*, *Rancangan Peraturan Daerah tentang Larangan Pelacuran* (the Bill of the Regulation on the Ban on Prostitution) was a reading in the parliamentary session. This Raperda, drafted by the sub-division on law, claimed to rely upon social aspirations. Three meetings held in January 2007 involving state officials, social

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<sup>17</sup> ‘Plus’ is an Indonesian slang word referring to sexual services. In other cases, if it reads  *pijat plus* or massage plus, one will understand that it is a massage with sexual favours.

<sup>18</sup> Interview with Budi, the owner of Hesty Karaoke in Parangkusumo, July 2011.

<sup>19</sup> Interview with Ahmad, the imam of the Darus Salam mosque on 11 August 2011. He has been an imam for 17 years. He admitted that his *dakwah* activity in the area of Parangkusumo was not hampered by the influence of prostitution. He tended to call sex workers *mbak-mbak nakal* (naughty women) as he argued that the naughty women meet men’s need for sexual orientations while the good women meet men’s need for nurturers.

and religious elites, activists and grassroots. They came to a single conclusion that prostitution had been a serious problem in terms of religious and social norms.

During the two days subsequent to this meeting, the parliamentary factions<sup>20</sup> prepared a *pemandangan umum* (public opinion) concerning the note of the Regent. It was on 20 March 2007 that the plenary meeting heard, for the second time, the public opinion of the factions. The majority of them asserted the necessity of the Perda and recommended the establishment of *Panitia Khusus* (the Special Commission, Pansus) to discuss and examine the draft.<sup>21</sup> At the same time, the regent also formed an executive team whose main task was to guarantee that the draft would come to legislation.

The bill was eventually legalised on 27 April 2007, registered as Perda No. 5/2007 and validated on 1 May 2007. Health, public safety, legal instruments and social harmony, violation of God's law, immorality, and *akhlak karimah* (good behaviour) are selected to emphasise its legal reasoning. As described, this law was legalised in order to arrest not only sex workers, but more importantly, pimps and brothel owners. In the section on punishment, it is stated that anyone breaking this provision receives three months imprisonment or is fined a maximum of Rp. 10,000,000. Many people are doubtful however that this will be fully implemented as, in many cases, pimps appear to be immune to the law because they usually behave as strongmen and have social power in society. It is commonly known that they have a close relationship with government leaders, including the law apparatus, which could protect their position from the power of the law. The law affects those at a low level, predominantly sex workers.<sup>22</sup>

The Pansus is a compulsory step in the legislation process. Unlike the Pansus, the parliamentary faction is not considered to be official within the DPRD's structure.<sup>23</sup> Political parties can only bargain their political interests through this circle. The final report represents the existing voices of all the factions. It also plays a decisive role in determining the outlook of a bill. The head of the Pansus, Edy Susila, represented an Islamic party, PPP (Partai Persatuan Pembangunan, the Unity and Development Party), while the secretary, Jupriyanto,

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<sup>20</sup>Six parliament factions represented the leading parties in the 2004 Bantul general election, i.e. the factions of Partai Demokrasi Indonesia-Perjuangan, Partai Amanat Nasional, Partai Kebangkitan Bangsa, Partai Keadilan Sejahtera, Partai Golkar, and Kesatuan Baru (a coalition of Partai Demokrat, Partai Persatuan Pembangunan, and Partai Karya Peduli Bangsa).

<sup>21</sup>Taken from the Official Proceeding of the 15<sup>th</sup> Plenary Meeting of the DPRD Bantul 2007.

<sup>22</sup>This can be proved by the cases of prostitution in the Bantul court where defendants are mostly sex workers, not the pimps or the brothel owners.

<sup>23</sup>This is according to the law no. 29/2009 on the structure and position of Majelis Permusyawaratan Rakyat (the People's Consultative Assembly, MPR) and Dewan Perwakilan Rakyat (the People's Representative Council, DPRD).



was also from another Islamic party, PKS (Partai Keadilan Sejahtera, the Prosperous Justice Party).<sup>24</sup>

This bylaw banning prostitution has led to disputes. Negative reactions and rejections were voiced by communities whose financial resources were affected by the imprudent implementation of the Perda. Community and women's groups have strongly criticised the regulation, saying the ordinance is vague and dangerously ambiguous, leaving all women vulnerable to accusations of soliciting prostitution. In the Plenary Meeting of the DPRD Bantul *Pengesahan Anggaran Pendapatan dan Belanja Daerah* 2008 (the Validation of the Budget of Income and Expense of 2008), all political factions reemphasised their support for the Perda enforcement aimed at preserving good religious conduct.

With regard to the problematic position of prostitution, the legislation process, which took twenty days, is remarkable. This fact somehow demonstrates the low complexities, both sociological and political, that the Bantul authority faced to make this law possible. Muslim organisations, such as Nahdlatul Ulama', Muhammadiyah, and MUI (Majelis Ulama Indonesia, the Indonesian Ulama Council) were invited to write an official letter expressing their support. More significantly, every single faction, either Islamic or nationalist, walked on the same ground.

The fact that all parties shared a religious outlook in perceiving prostitution was indeed undeniable. They spoke the same language, i.e. preserving good behaviour and saving a generation, and a few of them placed prostitution in a wider social economic context, such as poverty and job opportunities. A slightly different reasoning for supporting the bill has been used by PKB (Partai Kebangkitan Bangsa, the National Awakening Party) faction. It argued that prostitution has to do with the market mechanism law; supply and demand. It is about how to sever the mutual ties between the seller (prostitute) and the customer. Enforcing the law only for the first mentioned does not truly solve the problem.<sup>25</sup>

In this case, the division of parties between either religious or secularly inclined is no longer relevant. This can be explained by understanding the political situation when the bill became legislation. The decline of PDI-P (Partai Demokrasi Indonesia-Perjuangan, the Indonesian Democratic Party-Struggle) and the rise of two political parties, PKS and PD (Partai Demokrat, the Democratic Party) in Bantul are deemed to influence the configuration

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<sup>24</sup>Keputusan DPRD Bantul no. 08/KEP/DPRD/2007 on Pembentukan Panitia Khusus (the DPRD Bantul's Decree on the Establishment of the Special Committee).

<sup>25</sup>Pendapat Akhir Fraksi PKB atas Enam Raperda Kabupaten Bantul (The Final Opinion of the PKB's faction on Six Bills of Bantul), 12 April 2007.

of the political atmosphere. On the one hand, out of 45 seats in the Bantul legislature, the PD had one seat (2.2%) in 2004, and reaped a significant increase, five seats, in 2009. PKS had five seats or 11% both in 2004 and 2009. On the other hand, PDI-P, reaped sixteen seats (35.5%) in 2004 but dramatically lost five seats (24.4%) in 2009.<sup>26</sup> Details of how the parties voted are described in the Appendix (Table 1).

Based on the above data, it is safe to argue that the transformation of the so-called *politik aliran* (political flows) after the fall of Suharto continues.<sup>27</sup> This can be seen from the fact that the current political situation in some local areas in Indonesia presents a picture of the people's loose attachment to political parties, particularly in terms of declining membership figures and increasing numbers of swing voters.<sup>28</sup> This phenomenon refutes the premise that politics has become polarised between Islamic and non-Islamic parties. Moreover, the contradiction between urban-based parties and rural-based parties has become blurred. Both religious and non-religious streams went the same direction. They tend to neglect their political ideologies, whereas pragmatic interests appeared dominantly to drive their agendas.

The vast majority of Muslims in Bantul, about 95% of the whole population, mostly residing in rural areas, is a captive political market. It is not an exaggeration to state that both nationalist and Islamic parties have to compete over their influence in that domain. The PDI-P, which usually avoids utilising religious issues and introducing Sharia-based bylaws such as pornography and wearing *hijab* for women, at the regional level is absent. This indication leads me to conclude that speaking for Islam as well as on behalf of Muslim desires is, in fact, used by parties as a strategic way to win over Muslim voters. It is, hence, relevant to consider Ufen's note on the dynamics of *politik aliran* in the *reformasi* era. He said 'parties are not 'organic' aggregations of social interests, but are characterised by all kinds of deficiencies. Most of them are ridden with internal conflicts, their financing is often shady, their platforms are vague and party elites tend to monopolise decision making.'<sup>29</sup>

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<sup>26</sup> Based on the data of Komisi Pemilihan Umum (KPU) Pusat and KPU Bantul

<sup>27</sup> R. William Liddle, "New Patterns of Islamic Politics in Democratic Indonesia" in *Asia Program Special Report* (Woodrow Wilson Center International Center for Scholars), no. 110, April 2003, pp. 4-13.

<sup>28</sup> Andreas Ufen, "The Evolution of Cleavages in the Indonesian Party System", Working Paper at the German Institute of Global and Area Studies, April 2008.

<sup>29</sup> Andreas Ufen, "From Aliran to Dealignment: Political Parties in post-Suharto Indonesia" in *South East Asia Research*, 16, 1, p. 6.

#### 4: CONTESTATION OVER THE MEANING OF PROSTITUTION

Prostitution is commonly linked with poverty, poor education, low skills, and intensive labour. However, simultaneously, despite being labelled immoral, prostitutes generally get well paid. This is indeed related to the way it is perceived. Edlund and Korn, referring to the 1969 edition of the *Random House Dictionary of the English Language*, defined prostitution as an ‘act or practice of engaging in sexual intercourse for money.’<sup>30</sup> Another definition rejects the point of selling one’s body to distinguish prostitutes and common women. It has been argued that it is also done every day by women who become wives in order to gain a home and a livelihood. Unable to avoid a simplification, they argue that a prostitute sells non-reproductive sex, ‘commercial sex,’ whereas a wife sells reproductive sex.<sup>31</sup>

Likewise, in the Pansus discussions, the most controversial debate was about what prostitution is and whose definition should be taken. Some make a categorisation dependent upon the presence of money. Nevertheless, this Perda does not make such a division. It declares that indecent (immoral) actions with or without financial compensation are regarded as prostitution. Despite being known as an old profession, it seems that the Perda ignores compound definitions of prostitution. The Perda defines prostitution as any action, done by a person or an institution, enticing, facilitating, organising, and committing indecent acts. Unlike before, by this definition, the grey area of the distinction between ‘approval’, ‘acknowledgment’, and ‘prohibition’ of prostitution has been clear to the government, the sex workers, the brothels, and the public.

It goes without saying that everyone can propose an analysis of what factors throw someone to prostitution. Koentjoro, a scholar affiliated with the Psychology Faculty at Gadjah Mada University in Yogyakarta, doing many studies on prostitution, believes high material demands, cultural support, and poverty are the key factors. Meanwhile, in developed counties that have social security policies, prostitution can still be found. Sex workers and prostitution develop in many ways and integrate themselves as part of social culture. In this regard, scholars are inclined to argue that prostitution practices have to be controlled for four reasons: teasing a man who is not interested in prostitution, expanding its area to other parts, the spread of sexual diseases, and the increasing number of sex workers if brothels are permanently closed.<sup>32</sup>

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<sup>30</sup>Lena Edlund and Evelyn Korn, “A Theory of Prostitution” in *Journal of Political Economy*, 110, 1, 2002.

<sup>31</sup>*Ibid.*

<sup>32</sup> Koentjoro, “Pelacuran sebuah Problema Sosial Multi-Perspektif” in *Jurnal Psikologia*, vol. 4, No. 2, June 2009. Read an interview with him published in *Tempo* magazine, August 198, entitled “Bila wanita diibaratkan

Though insisting it was in favour of the position from early on, the PDI-P was somehow not convinced with the choice of prohibition. That is why they held polling via mobile short message service (SMS). The polling was conducted over two days, 10-11 April 2011 on the Persatuan radio station. The public was offered two options, regulation or prohibition. The options seem to neglect the fact that some groups were reluctant to have such a regulation. There was no clear definition on the distinction between regulation and prohibition. This polling can necessarily be seen as the PDI-P being very aware of the mechanism of public participation in the legislative process. The polling reports 224 messages were received, of which 45 people (20.1%) were in favour with regulation, while the rest, 79.9%, emphasised prohibition.<sup>33</sup> This significant result pushed the PDI-P to legalise the draft. Prohibition is a reasonable decision to be drawn.<sup>34</sup>

In addition to public participation, social illness and health was brought into play. The Golongan Karya (Functional Group, Golkar) party, referring to the result of the survey by the Health Office (Dinas Kesehatan) of Bantul, expressed its strong support for this bylaw. A survey of 285 samples in 2004 found seven HIV (Human Immunodeficiency Virus) sufferers, while there were six sufferers out of 422 samples in a 2005 survey. A survey of 378 samples held in 2006 found twelve HIV sufferers, whilst the 2007 survey with a wider sampling found that among 403, four were sufferers. The decrease of sufferers in 2007 was claimed to be the positive effect of this enforced regulation.<sup>35</sup>

Moreover, religious symbolism has served as the main reason for the rejection of prostitution. As stated in their final opinions, Islamic parties explicitly cited certain verses from the Quran. The Fraksi Kesatuan Baru (the New Unity Faction) including Partai Persatuan Pembangunan (PPP, the United Development Party) related prostitution to God's prohibition on jollification and adultery. The first referred to chapter *Al-Ankabut* (the Spider) verse 64 cautioning human beings against jollification and pleasures in this world and the endless happiness in the hereafter. The second mentioned was chapter *al-Isra'* (the Night Journey or the Children of Israel) verse 32, which explicitly bans humans from committing adultery.<sup>36</sup>

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sepetak...”, retrieved from <http://majalah.tempointeraktif.com/id/arsip/1989/08/26/PRK/mbm.19890826.PRK21158.id.html> (accessed 26 July 2011).

<sup>33</sup> The Final Opinion of the PDI Perjuangan Faction on the Six Bills of Bantul, 12 April 2007.

<sup>34</sup> Interview with Tustiyani, the head of DPRD Bantul, July 2011.

<sup>35</sup> The Final Opinion of the Golkar Party Faction on the Six Bills of Bantul, 12 April 2007.

<sup>36</sup> The Final Opinion of the Fraksi Partai Golkar, the Fraksi Kesatuan Baru, and the Fraksi Partai Keadilan Sejahtera.

Regardless of being in favour of the motion, the faction of the PKS harshly criticised the Perda as it did not define morality in terms of religious norms. This faction also regretted the incompleteness of this bylaw as it limited the scope of prostitution and did not include cheating (*selingkuh*) as an act of prostitution. Machmudi noted that for the PKS promoting Sharia to the state level remains important. PKS prefers to pursue the implementation of Sharia in a smooth way, not a top-down approach, through educating Muslims to understand the essence of Sharia. Through this, they practice such teachings in their daily lives and later call for its implementation in governmental policies.<sup>37</sup>

## **5: PROSTITUTION AND CRIMINALISATION OF WOMEN**

Prostitution, in relation to the Sharia-based local regulations, has become a tremendously topical issue in recent years. Public attention has focused on the situation of female sex workers, the influence on the young generation, the rise of economic activities surrounding the centre, and the adequacy of regulation. Much of the debate over prostitution has simply been polarised between the so-called liberals and conservatives. The first demand prostitution be decriminalised, normalised and humanised, while the second argue that prostitution should be abolished. Social political interests play a major role in determining the government's position between the two poles.

Kantola and Squires,<sup>38</sup> categorised discourses responding to political debates on prostitution into four types: public nuisance, traditional morality, oppression-of-women, and sex work. Public nuisance is the most dominant argument against prostitution. This discourse is nevertheless silent on the marginalisation of street-class sex workers. Objections to sinful, shameful, and evil prostitution are represented by the traditional-morality model. These characterisations have been used for a hundred years and repeatedly spoken whenever the topic is discussed. In the spirit of modernisation and gender-equality mainstreaming, the oppression-of-women does not rely on sin and vice, but the subordination of women and children.<sup>39</sup>

The oppression model stresses the notion that prostitution is male domination of women. The model regards sex workers as victim and relates prostitution to sex trafficking

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<sup>37</sup> Yon Machmudi, *Islamising Indonesia: The Rise of Jemaah Tarbiyah and The Prosperous Justice Party* (Canberra: ANU E Press, 2008), p. 195.

<sup>38</sup> Johanna Kantola and Judith Squires, "Discourses Surrounding Prostitution Policies in the UK " in *European Journal of Women's Studies*, 11, 1, 2004.

<sup>39</sup> Ronald Weitzer, "Legalizing Prostitution: Morality Politics in Western Australia", in *The British Journal of Criminology*, 49: 1 (2009)pp. 88-105.

problems. Those sexually exploited are often economically marginalised women and children with histories of prior physical and sexual abuse. The absence of economic alternatives has made them vulnerable to sex trafficking. The Coalition against Trafficking in Women (CATW) in the 'Who We Are' section of its website proclaims that 'We must take a principled position against the legalization of prostitution and discourage the demand for commercial sex without penalizing the victims. The wrong people continue to be arrested; the prostituted should be decriminalized.'<sup>40</sup> This model's favoured term, 'sexual slavery', is obviously opposed by the sex worker paradigm. Legalisation will institutionalise protection through workers' rights and the decriminalisation of sex workers.

I argue that the Bantul authority was inclined to implement the second model, the traditional-morality one. It has been stated in the legislations 'Consideration' that prostitution is an activity that disparages human dignity and violates religious tenets, the ideology of Pancasila and morality.<sup>41</sup> Legal drafters employed the oppression model to understand prostitution. In their opinion, the regulation is aimed at protecting women from being 'sexual victims'.<sup>42</sup> It seems that the government has made a generalisation about prostitutes. Enik Maslahah, a female activist of Mitra Wacana, suggested that the government should make a categorisation of prostitutes. Prostitutes should be divided into three types, i.e. those thrown into prostitution, survivors of trafficking, and those selling sexual intercourse for money. This categorisation can be used as the basis of addressing the problem of prostitution. It sounds awkward that the prohibition of prostitution is strictly bound in terms of eradication, while prevention, handling and rehabilitation for those engaged in these practices are not undertaken.<sup>43</sup>

It has been argued that the government's method for abolishing prostitution through this bylaw is worse than that undertaken by the Yogyakarta province in 1954 whose bylaw was specifically concerned with brothels. This 1954 law was aimed at eradicating prostitution and maintaining people's health and safety. However, this regulation was rather directed to regulating pimps and houses used as places of prostitution, instead of arresting sex workers. The law declared that the government could seal a house obviously proven to be used as

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<sup>40</sup> [www.catwinternational.org/WhoWeAre](http://www.catwinternational.org/WhoWeAre) (accessed 17 November 2011).

<sup>41</sup> Perda Kabupaten Bantul No. 5/2007 tentang Larangan Pelacuran.

<sup>42</sup> Christine M. Jacobsen and Dag Stenvoll, "Muslim Women and Foreign Prostitutes: Victim Discourse, Subjectivity, and Governance, *Social Politics*, Volume 17 Number 3, (2010), pp. 274-276.

<sup>43</sup> Enik Maslahah, "Penurunan HIV/AIDS dan Perda" paper presented in the discussion "Membangun Sinergisitas Gerakan HIV-AIDS, Gerakan Perempuan dan Gerakan HAM", 12 March 2008, Gedung Kepatihan Yogyakarta.

brothel for three months, but that it had to revoke its decision if the house was no longer used as a prostitution centre. The definition of prostitution is much clearer in this law and it distinctively refers to acts of people selling their bodies and committing adultery for money.<sup>44</sup>

The repressive approach has been developed by government agencies who posit the view that the existence of prostitution is a result of social changes in a capital society. This thought clearly appeared in the stakeholders' opinions when asked about the reason why a woman becomes a sex worker. Female prostitutes, they argued, are women who wear sexy clothes, lead luxurious lifestyles and feel reluctant to work hard, and have lost their dignity. Prostitution is understood as a result of excessive freedom and sexual permissiveness.<sup>45</sup> In line with this argument, paying less attention to its causal factors, prostitution is viewed as dirty, a vice and an immoral act. In many cases, however, prostitution is a consequence of a poor family economic existence.

Wrongful arrest occurred in many of the Satpol PP raids in Parangkusumo. Sriyati, a 34-year old masseuse, was accused of behaving in a sexy and provocative manner. While offering her massage services in front of her house, she was apprehended for being a prostitute. She had no evidence to refute the accusation and, therefore, was fined Rp. 500,000. Instead of being sent to prison, she preferred to pay the fine by borrowing money from her friend. This elementary-school graduate had to work hard to pay off the debt, since Sriyati could usually only earn Rp. 15,000 a day. The fine was considered to be a vicious circle.<sup>46</sup> Another wrongful arrest occurred a couple of weeks after the regulation was issued. It was on 16 July 2007 that the Satpol PP detained 134 women. The story was that in the evening a mother, who sat in front of her small shop (*warung*), was arrested and was charged with being a prostitute. The woman was in fact the wife of the head of Mancingan village, in Parangtritis. She failed to prove that she had not violated the law and, hence, was brought to the police offices. Before her appearance in court, her husband came with the necessary proofs to secure her release.<sup>47</sup>

The regulation has created a strong impression that the government is keen to aggressively eradicate prostitution, but that it continues to be practiced. The volume of police raids was significantly raised every Friday or Tuesday Kliwon, to as many as two or three times a day. However, the prostitutes preferred to leave the centre and remain in the village

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<sup>44</sup>Peraturan Daerah Istimewa Yogyakarta no. 15/1954 tentang Penutupan Rumah-rumah Pelacuran.

<sup>45</sup> Komnas Perempuan, *Atas Nama Otonomi Daerah*, p. 40.

<sup>46</sup> Interview with Anik, the owner of karaoke house in Parangkusumo, 20 July 2011.

<sup>47</sup> "Polres Bantul Rasia 134 PSK di Parangkusumo", *Suara Merdeka*, 17 July 2007.

housing complex. Residents are powerless to stop their presence, as the prostitutes provide income by renting rooms. In this respect, activists condemned the way the regulation was enforced. The above cases emphasised the existence of institutionalising discrimination and criminalisation against female sex worker.<sup>48</sup> The criminalisation view relies source primarily on the principle of legal moralism and, secondarily, on the harm, legal paternalism, and offense principle.<sup>49</sup>

Harsh criticism was motivated by the fact that the regulation is aimed at catching the sex workers, not the pimps. Based on the records of the Bantul court, in addition to prostitutes and their customers, a number of young couples were arrested. Their cases are categorised as minor crimes (*tindak pidana ringan*). The records show that two months after its launch, 127 sex workers were arrested in a month.<sup>50</sup> The fines varied and were dependent upon the judge's considerations. From 2007 to 2009, fines ranging from Rp. 300,000 to Rp. 500,000 were paid. In 2010, the fine declined to Rp. 100.000. This considerable decrease was because of one judge's belief that prostitutes were often mothers trying to earn money for their family. Using the law as a deterrent and a sanction is not, therefore, necessarily the correct way to proceed in this context.<sup>51</sup>

Watin, the Coordinator of the Aliansi Rakyat Menolak Penggusuran (ARMP, the People's Alliance Rejecting Land Alleviation) stated that Parangkusumo people rely on tourism for their financial incomes. Now, following the issuance of the regulation, traders have suffered an economic decline of up to 90% as Parangkusumo has suffered a significant decline in the number of visitors. People worried about raids and are fearful of being arrested and accused of violating the law.<sup>52</sup> The decreasing number of sex customers has had an impact on the income of food shops and room services. They condemned the regulation as having made their lives difficult. The regulation has also hit the transportation business sector.<sup>53</sup>

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<sup>48</sup>Criminalisation is an act of controlling or restricting someone's actions and/or talks by making threats of criminal laws or an act of charging a legal activity with a crime. This approach has been used to relate prostitution to female morality, instead of poverty.

<sup>49</sup>Rosemarie Tong, *Women, Sex, and the Law* (Maryland: Rowman & Littlefield Publishers, 1984), pp. 39-43.

<sup>50</sup>The complete record of prostitution lawsuits in the Bantul court from 2007 to can be seen in the Appendix (Table 2).

<sup>51</sup> Interview with Sri Sugiarti, law clerk of the Bantul court, 12 August 2011.

<sup>52</sup> "Prostitusi Dipicu Kemiskinan, Tega Tarik Denda Ketua Dewan Tak Peka Realitas Sosial" Radar Jogja, 6 May 2011.

<sup>53</sup> Interview with Mulyono, the owner of karaoke and rooms business, July 2011. See also Fisqiyatur Rohmah, "Politik Peka Perempuan: Kajian Terhadap Peraturan Daerah No. 5 Tahun 2007 tentang Larangan Pelacuran di Kabupaten Bantul Daerah Istimewa Yogyakarta", UIN Sunan Kalijaga Yogyakarta, 2008.



This situation triggered organisations attached to Solidaritas Penanggulangan AIDS Yogyakarta (SPAY, the Solidarity of AIDS Reduction of Yogyakarta) to issue a press release criticising the regulation, which it claimed harmed and discriminated against women. This community held intense discussions involving social activists and prostitutes and agreed collectively that the regulation had to be rejected. This dynamic led to the establishment of an alliance, called Aliansi Tolak Perda Larangan Pelacuran di Bantul (ATPLP, the Alliance for the Rejection to the Bantul Regulation Banning Prostitution). PKBI (Perkumpulan Keluarga Berencana Indonesia, the Indonesian Planned Parenthood) served as the coordinator while Lembaga Kajian Islam dan Sosial (LKIS, the Centre for the Study of Islam and Social) was appointed to be the campaign team.<sup>54</sup>

This regulation was accused of contradicting higher laws, such as the *Kitab Undang-undang Hukum Pidana* (KUHP, the Indonesian Penal Code). In the KUHP, mainly chapter IV ‘assault of the chastity’ including articles 295, 296, and 506, the major point of prostitution regulation lies in the criminalisation of pimps who make money from selling women as prostitutes. In addition, its contents were deemed vague and simply generalising prostitution problems. As mentioned, Article 4, concerned with the definition of prostitution, is ambiguous in some ways. Indicators of prostitution, such as ‘enticing others with sayings and signs to act obscenely’ are unclear. Any couple, even a husband and a wife, found in a contiguous position is liable to arrest for committing pornography. This is because the definition of prostitution is identical to that of pornography and does not acknowledge the presence of money to differentiate between sex workers and others.<sup>55</sup>

For this reason, the ATPLP filed for a judicial review of this bylaw with the Supreme Court in October 2007. The ATPLP found some problems in the implementation, as reported in the judicial review manuscript.<sup>56</sup> This request was rejected by the Court who relied upon the fact that timeframe for such a request had expired; that it was more than 180 days since the law had been issued. The Supreme Court is seen as failing to exercise its authority to annul discriminative local regulations. In 2010, the Komnas Perempuan reported that the

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<sup>54</sup> Achmad Riza, “Sejarah Perjalanan Aliansi Tolak Perda Larangan Pelacuran Bantul” on [www.ihap.or.id](http://www.ihap.or.id) (accessed 26 February 2011).

<sup>55</sup>See “Permohonan Uji Materiil terhadap Peraturan Daerah Kabupaten Bantul no. 5 Tahun 2007 tentang Larangan Pelacuran di Kabupaten Bantul” (Judicial Review’s Petition on the Bantul Regulation No. 5/2007 on the Ban on Prostitution), submitted by the ATPLP, October 2007.

<sup>56</sup>The ATPLP has identified seven problems in the implementation, i.e. as if women are bound with night hour regulation; raids disobeyed the principle of ‘presumption of innocence’; the victims of wrongful arrest did not rights of rehabilitation and indemnification; raids violated the right not to have arbitrary treatment; raids broke the right not to have treatment humiliating human dignity, house frisk was executed without permission of the local court, and raids violated the right to freedom of religion.

rejection of the judicial review on the Bantul regulation on prostitution was based on technical administrative reasons, i.e. that, according to the Supreme Court Decree 1/1999, a file for judicial review must not exceed 180 days after the issuance of the regulation. This time limitation policy hampers people's rights to access to justice.

In a discussion held by the ATPLP on 24 June 2008, KH.Husein Muhammad, the leader of Pesantren Dar al-Tauhid in Cirebon, argued that good objectives should be achieved through good ways. He referred to the concept of Islamic law, declaring that one affliction cannot be removed by creating another one. He denied the position of this bylaw as a legal norm.<sup>57</sup> Likewise, KH. Nur Jamil, the leader of Nahdlatul Ulama in Kretek, Bantul, acknowledged that the regulation is not a long-term solution and reminded people of the importance of strengthening the function of social capital in order to limit the effect of prostitution on the younger generation. He criticised the use of religious symbols to legalise the regulation and the fact that the government was not able to alleviate poverty. He encouraged the involvement of religious leaders in implementing the law, in addition to the civil police who tend to use repressive power to enforce it.<sup>58</sup>

Challenges and obstacles were faced by the Alliance when the government intercepted their campaign in a number of ways. First of all, not only did the Bantul government ally with ulama' and the MUI, it also publicised the report of the District Health Office that the number of HIV infections had decreased as a result of the regulation. Secondly, the religious interpretation of prostitution, associated with adultery, was made by many among Muslim organisations and widely disseminated among their followers. This created a public feeling that the regulation is an effective tool for shaping morality and that there is no need to build an argument that the regulation has a negative impact on the social and economic lives of local people. Thirdly, the Alliance was often deemed as not having the authority to criticise, or to contradict, the regulation.<sup>59</sup>

Their struggle was also hindered by the fact that most members of the Alliance are university students in Yogyakarta coming from different cities. In demonstrations or public hearings, they were asked to show their identity cards (KTP) and failed to prove that they represented the people of Bantul. The government used this point to weaken their

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<sup>57</sup> "Perda Bantul No.5 Tahun 2007 Tidak Layak Sebagai Produk Hukum" on [www.pkbi-diy.info](http://www.pkbi-diy.info) (accessed 28 May 2011).

<sup>58</sup> Interview with KH. Nur Jamil, August 2011.

<sup>59</sup> Nugroho Angkasa, "Pelarangan Tentang Pelacuran di Bantul Yogyakarta", *KabarIndonesia*, 6 August 2008.

movement.<sup>60</sup> Being aware of this difficulty, the Alliance changed their direction. To expand their space, and not limit their campaign to the issue of prostitution, the name of ATPLP was shifted to Aliansi Peduli Kebijakan Bantul (APKB, the Alliance of Bantul's Policies Care).<sup>61</sup>

## **6: CONCLUSION**

The issuance of the Bantul bylaw on prostitution is one of many regulations on public morality matters. A number of key concepts are included in the regulation, such as the violation of religious teachings, human dignity, Pancasila and health. The fact that Bantul is inhabited by rural Muslims has served as a basis for political parties, Islamic or nationalist. In addition, the rise of PKS and PD and the decline of PDI-P is another socio-political factor behind the appearance of the regulation. The battleground provides a situation where the political parties find themselves struggling and speaking for Islam or Muslim interests.

As a result of no single definition of prostitution, contestation over the meaning of prostitution in the regulation occurred. While the nationalist parties relate prostitution to public participation and health issues, the Islamic parties connect prostitution with Quranic-based morality. The borders and limitations of prostitution are unclear. Unlike the preceding regulations, such as the 1954 Yogyakarta province regulation and the KUHP, which limit the subject of prostitution to pimps and brothel owners, the Bantul regulation has broadened the scope of prostitution, covering not only prostitutes and pimps, but everyone committing indecent acts, such as giving a sexy performance.

Regardless of the cases of wrongful arrest, the Bantul court reports record that no pimps have ever been arrested under this regulation. Instead, intense raids by government agents resulted in women suffering significant economic decline. Women activists and organisations harshly criticised the regulation as it has institutionalised the criminalisation of women. The way the government and some ulama' relate prostitution to adultery has hindered the resistance movement. Legal attempts, through judicial review petitions, have been attempted, but so far have been unsuccessful.

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<sup>60</sup> Interview with Tustiyani, the head of DPRD Bantul, July 2011.

<sup>61</sup> Interview with Subkhi Ridho, the Coordinator of Lembaga Studi Islam dan Politik (LSIP, the Centre for the Study of Islam and Politics), member of the ATPLP, July 2011.

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Interview with Tustiyani, the head of DPRD Bantul, July 2011.

Interview with Yani, sex worker, in Parangkusumo, July 2011.

## APPENDIX

Table 1. Result of National and Bantul Election in 2004 and 2009

No	Party	National (%)		Bantul (seat)	
		2004 (%)	2009 (%)	2004	2009
1	PDI-P	18,53	14,03	16	11
2	Partai Golkar	21,58	14,45	5	5
3	PD	7,45	20,85	1	5
4	PAN	6,44	6,01	7	7
5	PKS	7,34	7,88	5	5
6	PPP	8,15	5,32	3	4
7	PKB	10,57	4,94	6	3

Table 2. Prostitution lawsuits in the Bantul court (2007-2011)

Year	Month												Σ
	1	2	3	4	5	6	7	8	9	10	11	12	
2007					2	8	12	18	15				15
							7						2
2008	15			10	27	4		57	8				11
													7
2009					41	13		17			21		92
2010								39			3	22	64
2011		57	58	7	7	24	39	6					19
													8
Σ													62
													3



## **PART 2: THE INTRODUCTION OF ISLAMIC LAW IN ACEH**

Kees van Dijk

Aceh has always been both a special and (for the central government) a troublesome province. The region is well-known for the religious disposition of its inhabitants and is invariably mentioned as one of Indonesia's 'most Islamic' regions. Aceh also has a history of fierce resistance against any infringements on its freedom to arrange its own affairs. In the closing decades of the nineteenth century it took the Dutch much effort to subjugate Aceh, something that the Acehnese maintain they never fully accomplished. Between 1945 and 1950 no Dutch troops were sent to Aceh. The Dutch refrained from any effort to re-establish their authority there, afraid, if the Acehnese are to be believed, of the resistance they might encounter. During this period Aceh wholeheartedly supported Indonesia's struggle for independence, but in 1953 it clashed with Jakarta. Acehnese leaders, resisting control by the central government over the local administration and local units of the Indonesian army, took up arms and joined the rebellions that were taking place in other parts of Indonesia, striving for an Islamic State of Indonesia. An additional cause for concern that the province's existence was in danger was that Acehnese religious leaders had their doubts about the orthodoxy of Islam being promoted by the central government. In 1957 a ceasefire was agreed and in May 1959 Aceh was granted special status. It became the Special Region of Aceh (Daerah Istimewa Aceh) (the only other province with the same status was and is Yogyakarta) and it was given autonomy in the fields of religion, customs, and education.

In fact, May 1959 was not the right moment in Indonesian history to be awarded a degree of self-rule. Two months later President Sukarno proclaimed a return to the Constitution of 1945. The proclamation ushered in Guided Democracy, a period that would prove to be at least as oppressive as that of the New Order. The new name given to the province survived, but that was all that was accomplished. Centralization not decentralization characterized the years between 1959 and 1998. The dissatisfaction this caused once again resulted in Acehnese taking up arms. In 1976 the Gerakan Aceh Merdeka (GMA Free Aceh Movement) was founded. Suppression of the GAM was brutal, with many ordinary citizens falling victim to the army's operations as well.

1998 and the fall of the Suharto regime was a watershed moment. To redress the mistakes of the past, decentralization became a political priority. This new policy was coupled with efforts to end rebellions in a number of provinces that had plagued the country

for years. Under B.J. Habibie, the first President after Suharto, East Timor (Timor Leste) was granted independence, while Aceh's prerogatives of May 1959 were reconfirmed. Under his successors, Abdurrahman Wahid and Megawati Soekarnoputri, expecting or hoping that religious concessions might end the GAM rebellion, Jakarta gave Aceh the authority to develop its own Islamic legal system, culminating in Law no. 18 of 2001 on special autonomy for Aceh. The law also gave Aceh a new name, Nanggroe Aceh Darussalam, Aceh Country Abode of Peace, combining Acehnese and Arabic terminology. The miscalculation in Jakarta was that for the GAM it was independence that mattered in the end, not religious reform. As Reza Idria points out, some Acehnese Islamic leaders almost took it as an insult that it was Jakarta, and not them, that determined what the introduction of Islamic law would mean in a region well-known for its devotion to Islam and its rich Islamic tradition.

It took until after the tsunami of December 2004 for an agreement to be reached. The paradox was that, by then, the central government had put into place a framework for the implementation of Islamic law in Aceh, which, as would later become clear, GAM leaders could only partly endorse. As Reza Idria writes, in the negotiations leading up to the Memorandum of Understanding between GAM and the Indonesian government of 15 August 2005, Shari'a formed no part of the discussions. The tension between Islamization promoted from outside and local opinions is illustrated by the inclusion of the punishment of stoning to death for those who commit adultery in a draft law in 2009. As Moch Nur Ichwan notes, this was the work of the national Islamic party PKS (which evoked the threat, often used in Islamist circles, of eternal damnation in order to get fellow-Muslim politicians to support its view), but the new bill did not take effect because the governor of Aceh, a former GAM leader, refused to sign it.

Those instruments used to enforce Islamic law and that were already in place at that moment are listed by Moch Nur Ichwan. He also points out that most studies on Shari'a in Aceh have emphasized its enforcement, and rarely deal with the reactions of the Acehnese population to its implementation. A similar remark can be made about the reports published by human rights and other NGOs, and by the coverage in Indonesian and foreign mass media. Hence, he and Reza Idria, who emphasizes the same point, pay particular attention to criticism and counter-streams in Acehnese society. In part, such dissent takes the form of a critical discussion of the concrete shape that Shari'a legislation has taken; stressing how little attention is paid to the real problems that have to be tackled, such as the combat of corruption and poverty and how detrimental the new legislation is to the position of women and

members of minority groups. Another point of concern is the strict interpretation of Sunni tenets that characterize the religious laws promulgated thus far in Aceh, disregarding the beliefs and practices of the Shi'a, Sufi, Ahmadiyah and other religious minority communities and the concomitant lack of religious tolerance such an approach reflects. To a degree, resistance finds its expression in defiance of religious directives imposed from above by the population at large and by punkers, homosexuals and other people with a different way of life and who are trying to preserve their own subculture.

A question to be asked when discussing Islamic legislation – in Aceh and elsewhere – is whether ‘religion’ can be isolated in studying its implementation. Religiously inspired by-laws in other parts of Indonesia are defended not by an appeal to Islam, but by evoking Indonesian and local values and norms of decency. One cannot simply dismiss such reasoning as justifications conjured up by politicians in Jakarta and others in order to circumvent the legal ban on the drafting of religious regulations by local administrations. The result would be an oversimplified picture of what makes people play an active role in the introduction and enforcement of Islamic law. All three reports in this section touch upon this matter. Reza Idria calls attention to the fact that in Aceh behaviour is often prohibited because it is incompatible with Islamic and Achenese culture, while among the criticism of the present situation discussed by Moch Nur Ichwan is an appeal to remember the age-old role of Achenese customary law in solving problems in society. The report by David Kloos zooms in on the topic. As becomes clear from his study, those participating in or commenting on mob action in order to punish people accused of sinful behaviour appeal to Acehnese customs and traditions, rather than to Islam when justifying and explaining vigilante violence. Other factors are also at play: the good name of the community that must be protected, and the fact that it is difficult to restrain young people from resorting to violence. In fact, many enjoy such acts, a mentality, to mention another example, they share with members of the FPI in Jakarta (and, indeed, many other youth groups in the world). Kloos also demonstrates other, at times, ignored realities. One is that a person can be proud of being a Muslim, and thus act in the name of religion, while at the same time his personal conduct may not reflect that of an Islamic role model. Another is the role played by fear and the desire for safety and well-being when individual police officers are confronted with an angry crowd and that influences their decision about whether to interfere or not (a reluctance to act that was also manifest in various parts of Indonesia during the turbulent years of 1998-1999 and in the attacks against the Ahmadiyah and other religious minorities). As recently as February 2013

the Indonesian National Police used this as an excuse to defend police inactivity. Its spokesman, commenting on a Human Rights' Watch report, explained that when police officers are 'outnumbered by a mob, an omission could happen.'<sup>1</sup>

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<sup>1</sup> *The Jakarta Post.com* 3-2-2013.

# ALTERNATIVES TO SHARIATISM: PROGRESSIVE MUSLIM INTELLECTUALS, FEMINISTS, QUEERS AND SUFIS IN CONTEMPORARY ACEH

Moch Nur Ichwan

## 1: INTRODUCTION

To end the ‘Aceh problem’—the rebellion of the Independence Aceh Movement (GAM)—the central government in Jakarta issued Law of Aceh as Special Region (No. 44/1999) and the Law of Special Autonomy of the Province of Nangroe Aceh Darussalam (No. 18/2001), respectively in 1999 and 2001.<sup>1</sup> This granted Aceh with ‘exceptionalities’ in the fields of religion, custom (*adat*), education, and the role of *ulama*. The first exceptionality (religious field) has been interpreted as the official implementation of shari‘a, and the rest are also oriented towards strengthening its implementation and should not be in contradiction with it. This law means that, unlike other parts of Indonesia, Aceh is the only province allowed constitutionally to implement Shari‘a. Despite this, the conflict with GAM did not end, because the latter was not demanding shari‘a, but rather independence from Indonesia. However, the disastrous earthquake and tsunami of 26 December 2004, which killed thousands of Acehnese people and destroyed Aceh’s infrastructure, have brought about tremendous changes in the political, social, cultural, economic and religious spheres. Indeed, the tragedy led to an official ending to the conflict between the Indonesian central government and GAM with the signing of the Helsinki Peace Agreement in 2005. This document, in turn, led to the issuance of another important Law on the Governing of Aceh (LoGA) in 2006, in which the implementation of Shari‘a and other exceptionalities were strengthened further. Another exceptionality was added in this law: the creation of local political parties.

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<sup>1</sup> On the history of conflicts between Aceh and Indonesian central government, see Anthony Reid, “Aceh and Indonesia: a Stormy Marriage,” *Prosea Research Paper* 42, Teipei: Academia Sinica, 2001; Anthony Reid, “War, Peace and the Burden of History in Aceh, *Working Paper Series* No. 1, Asia Research Institute, National University of Singapore, June 2003; Anthony Reid (Ed.) *Verandah of Violence: The Background to the Aceh Problem*, Singapore: NUS Press in association with University of Washington Press, 2006; Edward Aspinall, “Modernity, History and Ethnicity: Indonesian and Acehnese Nationalism in Conflict,” *Review of Indonesian and Malaysian Affairs (RIMA)*, 36: 1 (2002), 3-33; Edward Aspinall and Harold Crouch, *The Aceh Peace Process: Why It Failed*, Policy Studies No. 1, Washington DC: East West Center, 2003; Kirsten E. Schulze, *The Free Aceh Movement (GAM): Anatomy of a Separatist Organization*, Washington DC: the East-West Center Washington, 2004.

Apart from this state initiative in respect of Shari‘atization, there have been demands for a more total implementation of Shari‘a voiced by Islamist groups such as DDII (Indonesian Council for Islamic Dakwah), KAMMI (Indonesian Islamic Students Association), Hizbut Tahrir Indonesia (HTI) and Defender of Islam Front (FPI – Front Pembela Islam). While DDII has existed since the New Order period, and KAMMI emerged at the end of 1990s, the FPI and HTI came to Aceh after the tsunami, although the latter claimed to have existed in Aceh much earlier.<sup>2</sup> They saw the current state of official Shari‘atization as an opportunity to endorse the totalized implementation of Shari‘a in all aspects of life.

Despite growing official Shari‘atization processes, however, some developments indicate otherwise. There have also been alternative voices that have responded to the officialization of Shari‘a critically. These voices comprise progressive Muslim intellectuals, academics, feminists, queer activists, human rights activists as well as spiritual sufi groups. Although these progressive actors have different agendas, they share a concern about the trivialization of Shari‘a as a merely symbolic affair, which has resulted in discrimination and violence. Some Sufi groups have also criticized the over-emphasizing of exoteric Shari‘a regulations and the neglect of esoteric aspects of Islam. Unlike the progressive forces, the Sufi response has been mainly spiritual. They believe that the current exoteric Shari‘a politicization has marginalized esoteric approaches to Islam, and indeed marginalized Sufi groups in defining the future of Acehese Islam.

Most studies on Aceh have emphasized officialized Shari‘a.<sup>3</sup> The question of how the people respond to it – especially critically – has so far been neglected. Moreover, most national and international knowledge of the region has been based mainly on media reports, which give the impression that most of the Acehese people have accepted the state imposed

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<sup>2</sup> Marzi Afriko, “Syariat Islam dan Radikalisme Massa: Melacak Jejak Awal Kehadiran FPI di Aceh,” in Arskal Salim and Adlin Sila (eds.), *Serambi Mekkah yang Berubah: Views from Within*, Jakarta: Alvabet & Aceh Research Training Institute (ARTI), 2010, 45-6.

<sup>3</sup> Alyasa’ Abubakar, *Syariat Islam di Provinsi Naggroe Aceh Darussalam: Paradigma, Kebijakan dan Kegiatan*, Banda Aceh: Dinas Syariat Islam, 2003/2008 (5th edition); Tim Lindsey, M.B. Hooker, R. Clarke and J. Kingsley, “Shari’a Revival in Aceh”, R. Michael Feener and Mark Cammack, *Islamic Law in Contemporary Indonesia*, Islamic Legal Studies Program, Harvard Law School and Harvard University Press, 2007; Moch Nur Ichwan, “The Politics of Shari‘atization: Central Governmental and Regional Discourses of Shari‘a Implementation in Aceh,” in R. Michael Feener and Mark Cammack, *Islamic Law in Contemporary Indonesia*, Islamic Legal Studies Program, Harvard Law School and Harvard University Press, 2007, 193-215; Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia*. Honolulu: Hawaii University Press, 2008; Michael Feener, ‘Social Engineering through Shari‘a: Islamic Law and State-Directed Da’wa in Contemporary Aceh,’ *Islamic Law and Society*, 19: 3 (2012), pp. 275-311; Michael Feener, *Shari‘a as Social Engineering*, London: Oxford University Press, 2013 (forthcoming).

Shari‘a and that there are no dissenting voices. Therefore, I will focus on the development of ‘alternative voices’ against both officialized and totalized ‘Shari‘atism’ – a political agenda and ideology that places Shari‘a as both private and public law and, indeed, above all kinds of laws, and necessitates the use of the state to enforce it – in Aceh after the tsunami. They do not reject Shari‘a as such, and therefore they reject being labelled as ‘anti-shari‘a’; however, they disagree on how it is interpreted and imposed by the government and by Islamist movements, and offer their own perspective and interpretation of Shari‘a.

The questions to be dealt with are how the alternative voices have challenged the officialized and totalized Shari‘atism discourses, and how this has related to the process of democratization in the region. However, one thing that should be underlined is, as previously mentioned, all of these resisting actors usually reject being labelled ‘anti-Shari‘a’, a dangerous label in Aceh; however, they disagree with the way that Shari‘a has been interpreted and politicized by the government. They believe in their own interpretation of Shari‘a. This is ‘concealed resistance’ against Shari‘atism, which is not Shari‘a itself.<sup>4</sup> In this paper I will focus on the critical responses of progressive Muslim intellectuals, feminists, queers (especially Violet Grey and Putroe Sejati), and neo-sufis (especially Amran Waly’s Majelis Pengkajian Tauhid Tasawuf) to the officialized Shari‘atization and Shari‘atism in general.<sup>5</sup>

## **2: ACEH’S EXCEPTIONALISM, SHARI‘ATISM AND NON-SHARI‘A SPACES**

Pancasila (Lit. five pillars) is the Indonesian state ideology formulated by founding fathers in 1945 in order to bridge between the nationalist groups who demanded a religiously neutral state and Islamic groups who demanded an Islamic state for the future independent Indonesian state. Pancasila tries to accommodate the democratic principles of humanism, national unity, deliberative democracy and social justice (2nd to 5th pillars) as well as religious values (1st pillar). These pillars are also reflected in laws and government policies. Apart from laws on general citizen affairs, some laws on religious affairs have also been established, such as laws on religious courts, *zakat* (alms giving), *hajj* (pilgrimage to Mecca),

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<sup>4</sup> Shari‘atism here is defined as a political agenda and ideology that places Shari‘a as both private and public law and above all kinds of laws, and necessitates the use of the state to enforce it.

<sup>5</sup> On cultural resistance and everyday indifference to shari‘a and shari‘atism, see respectively Reza Idria, *Cultural Resistance against Shari‘atism in Aceh*; and David Kloos, *Strengthening local leadership: Shari‘a, customs, and the dynamics of vigilante violence in Aceh*, in their IRP reports.

*waqf* (endowment), and Shari‘a banking. All of these religious laws are in fact related to Islamic laws or affairs. While a law on Religious Courts, which was followed by the issuance of a Presidential Decision on the Compilation of Islamic Laws in 1991,<sup>6</sup> was issued during the New Order in 1988, the rest were issued after the collapse of the New Order government in 1998. However, the word ‘shari‘a’ is not used in the above Islam-inspired laws and the Compilation; they use the term ‘*hukum Islam*’ (Islamic law) instead. They cover only family law, and do not include public and penal law. During the Suharto era, the term Shari‘a in official documents was associated with the Jakarta Charter, in which the phrase ‘with the obligation to carry out the Islamic shari‘a for its believers’ (*dengan kewajiban menjalankan syariat Islam bagi pemeluk-pemeluknya*), which was abrogated from the final version of the first pillar of Pancasila (belief in One Almighty God).<sup>7</sup> Shari‘a inspired bylaws – without using the term shari‘a – were also issued in a number of districts and municipalities.<sup>8</sup> This phenomenon was related to the decentralization or regional autonomy policy. Although the law on regional autonomy states that religion is not part of decentralized affairs, the shari‘a bylaws were justified on non-religious grounds, i.e. that they are based on public morality and existing laws at the national level, such as the law on narcotics and the Penal Code Bill (KUHP).

The most striking phenomenon in the post-new Order era is the official implementation of more comprehensive Shari‘a in Aceh, which not only covers family law, but also public and penal law. Shari‘a implementation in Aceh is imposed from above and, therefore, is part of the central and local government policy. The implementation of Islamic Shari‘a is based on Law No. 44/1999 on The Implementation of the Specialness of Aceh and Law no 18/2001 on Aceh as Special Autonomy of the Province of Nanggroe Aceh Darussalam in 2001. The Shari‘a implementation was officially inaugurated by Governor Abdullah Puteh

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<sup>6</sup> On Compilation of Islamic laws, see Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, Amsterdam: Amsterdam University Press, 2010.

<sup>7</sup> The phrase was preceded by ‘belief in God’ (*Ketuhanan*). The Jakarta Charter was formulated by the Committee for the Preparation of Independence (PPKI) in 1945 in which secular and Muslim nationalists discussed the relations between state and religion as well as the basis for the future Indonesian independent state. See Moch Nur Ichwan, “The Seven Word Controversy,” *IIAS Newsletter* 30 (March 2003), 23-24.

<sup>8</sup> See Nicholas Parsons and Marcus Mietzner, “Shari‘a By-Laws in Indonesia: A Legal and Political Analysis,” *Asian Law*, 11 (2009).



on 14 March 2002.<sup>9</sup> This was later strengthened in the Law on the Governing of Aceh (LoGA) in 2006.

Official implementation of Shari‘a in Aceh is part of the ‘specialness’ or, to be precise, the exceptionality of Aceh. It has exceptionality in terms of religious affairs. It has other exceptionalities, as mentioned in the Law no. 44/1999, in education, *adat*, and the role of *ulama* in local government policymaking (Art.3:2). In education, Aceh has the right to formulate her own concept of Shari‘a-based education. In the field of *adat* (customs), Aceh can revive her own *adat* law and justice (*peradilan adat*),<sup>10</sup> as well as culture in general. It is for the Majelis Adat Aceh (MAA – Acehnese Adat Council) at the provincial, district or municipality levels to deal with *adat* affairs, including *adat* justice. *Adat* justice, which is mainly arbitration, at the *gampong* (village) level is respected by both the general and the Shari‘a courts. However, those cases resolved under *adat* justice are not brought to either the general or Shari‘a courts. The other exceptionality is the role of *ulama* in local governance, alongside their traditional role in society. Aceh has a Majelis Permusyawaratan Ulama (MPU – Ulama Deliberation Council), which is part of provincial, district and municipal governance.<sup>11</sup> Another exceptionality is that Aceh is the only province allowed to have a local political party.<sup>12</sup> All of these exceptionalities are required not to contradict with Shari‘a.

As far as Shari‘a is concerned, a number of *Qanuns* (bylaws) have been issued since 2002:

- *Qanun* No. 10/2002 on Islamic Courts.
- *Qanun* No. 11/2002 on the Implementation of Islamic Shari‘a in the Fields of Islamic Belief (*‘aqidah*), Worship (*‘ibadah*) and Symbols (*shi‘ar*).
- *Qanun* No. 12/2003 on Intoxicants and the like (*khamr*);
- *Qanun* No. 13/2003 on Gambling (*maysir*),

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<sup>9</sup> Moch Nur Ichwan, “The Politics of Shari‘atization: Central Governmental and Regional Discourses of Shari‘a Implementation in Aceh,” in Michael Feener and Mark Cammack, *Islamic law in Contemporary Indonesia: Ideas and Institutions*, Cambridge: Islamic Legal Studies Program, Harvard Law School, 2007.

<sup>10</sup> *Adat* justice is basically arbitration, which is a conflict transformation approach conducted before bringing a case to the court. The report of UNDP and Bappenas after the tsunami states: ‘The adat justice system is more comprehensible and accessible than the formal justice system’. However, the UNDP and Bappenas report also indicates that it is not free of deficiencies. There is a lack of neutrality, a lack of capacity on the part of informal justice duty-bearers and there are unclear standards and guidelines. See UNDP and Bappenas, ‘Access to Justice in Aceh: Making the Transition to Sustainable Peace and Development in Aceh’, [www.undp.or.id/pubs/docs/Access%20to%20Justice.pdf](http://www.undp.or.id/pubs/docs/Access%20to%20Justice.pdf). However, the Majelis Adat Aceh has conducted a number of trainings and workshops on *adat* justice in the last years after the Tsunami.

<sup>11</sup> On MPU, see Moch Nur Ichwan, “Official Ulama and Politics of Re-Islamisation: The Majelis Permusyawaratan Ulama, Shari‘atisation and Contested Religious Authority in Post-New Order’s Aceh,” *Journal of Islamic Studies* (2012).

<sup>12</sup> The establishment of local parties is based on LoGA (Arts. 75-88).

- *Qanun* No. 14/2003 on Illicit Relations between Men and Women (*khalwat*) in seclusion.

The Law on Special Autonomy does not regulate how Shari‘a is to be implemented. This vagueness is acknowledged by Prof. Alyasa’ Abubakar, an important figure behind the first shari‘a *qanuns*. He was the first chairperson of the Shari‘a Office (Dinas Syariat Islam), which was responsible for drafting the *qanuns* and was used to drive the notion that the implementation could be ‘more comprehensive and more perfect’ (*lebih penuh dan lebih sempurna*). For this reason, the term ‘*kaaffah* (comprehensive, totalized) implementation of Shari‘a’ has been adopted.<sup>13</sup>

In these *qanuns*, Shari‘a is defined as ‘Islamic guidance in all aspects of life’ (*tuntunan ajaran Islam dalam semua aspek kehidupan*). However, although it sounds comprehensive, so far implementation remains partial,<sup>14</sup> with only three deeds being regulated and punishable, viz., drinking alcoholic or intoxicating drinks, gambling and doing *khalwat*.<sup>15</sup> Islamic clothing, especially the *jilbab* for women, is also part of the implemented Shari‘a, but a violation in this respect is not punishable. However, the Shari‘a police (Wilayatul Hisbah) – in 2006 this body was merged with the Public Order Agency (Satpol Pamong Praja), a law-enforcement body – often raid women who do not wear the *jilbab* or do not wear the *jilbab* properly according to the Shari‘a police standard, i.e. that it should not show the form of the body. The Shari‘a police would record the data of the violaters and give them advice on wearing the *jilbab* appropriately.<sup>16</sup> The punishment of caning for drinkers, gamblers and those who commit *khalwat* and adultery has been used in some towns in Aceh since 2005.<sup>17</sup> However, as shown by Gramsci, hegemony is never total. There is always space for manoeuvre or resistance.<sup>18</sup> Various critical groups are resisting the dominant politics of

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<sup>13</sup> Al-Yasa’ Abubakar, *Syariat Islam di Provinsi Naggroe Aceh Darussalam: Paradigma, Kebijakan dann Kegiatan*, Banda Aceh: Dinas Syariat Islam, 2008 (5th edition), 28-30.

<sup>14</sup> Moch Nur Ichwan, “The Politics of Shari‘atization: Central Governmental and Regional Discourses of Shari‘a Implementation in Aceh,” in Michael Feener and Mark Cammack, *Islamic law in Contemporary Indonesia: Ideas and Institutions*, Cambridge: Islamic Legal Studies Program, Harvard Law School, 2007.

<sup>15</sup> *Khalwat* is an act involving a non-married man and woman in seclusion.

<sup>16</sup> Dina Afrianty, “Local Women’s Movements in Aceh and the Struggle for Equality and Justice: The Women’s Network for Policy,” *RIMA: Review of Indonesian and Malaysian Affairs* 45: 1/2 (Dec 2011), 37-68.

<sup>17</sup> Apart from its controversial nature, however, as Michael Feener has pointed out, shari‘a implementation has also had a positive impact on social engineering in the region. In such a society, in which shari‘a is culturally and legally imbedded, development and societal reform is best introduced through shari‘a language. Michael Feener, ‘Social Engineering through Shari‘a: Islamic Law and State-Directed Da’wa in Contemporary Aceh,’ *Islamic Law and Society*, 19: 3 (2012), pp. 275-311; Michael Feener, *Shari‘a as Social Engineering*, London: Oxford University Press (forthcoming). See also Kloos in this volume.

<sup>18</sup> Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy: Towards Radical Democratic Politics*, London: Verso, 2001 (2<sup>nd</sup> edition), 7-14.

Shari‘a by developing an ‘alternative politics’, which seeks to ‘create autonomous spaces of action outside of the state arena’.<sup>19</sup> Progressive Muslim intellectuals, feminists, queers, and sufis have created ‘alternative politics’ by developing non-Shari‘a spaces in their own ways, as we will see later.

### **3: PROGRESSIVE MUSLIM INTELLECTUALS AND THE NEGOTIATION OF DEMOCRATIC SPACE**

A number of progressive Muslim intellectuals resist official and totalized Shari‘atization in their writings. But they have not resisted openly, for fear of being misunderstood by others, which could hinder their progressive thought. They usually offer a different interpretation of Shari‘a. The interpretation of Shari‘a, therefore, is contested. Those who use intellectual resistance can be classified into individual and institutional actors. Individual actors include progressive academics and public intellectuals (including journalists); whereas institutional actors include discussion groups that promote their ideas through writings in mass media. Individual actors can also be institutional actors.

#### **Individual actors**

Most critical intellectuals emphasize the ‘social’, rather than legal, aspects of Shari‘a. They can be divided into progressive academics and public intellectuals. Included in the first category are Teuku Safir Iskandar Wijaya, Basan Basri M. Nur and Fuad Mardhatillah UY Tiba.<sup>20</sup> Interestingly, these three scholars were involved in the Rehabilitation and Reconstruction Agency (BRR), but they had already been involved in progressive thought long before they were involved in the BRR. Their thoughts materialized in a number of BRR programmes, which are more progressive than Islamist in nature.

Teuku Safir Iskandar Wijaya is a lecturer at Usuluddin (Theology) Faculty and director of the post-graduate programme of the State Institute of Islamic Studies (IAIN) Ar-Raniry. He obtained his PhD at the Syarif Hidayatullah State Islamic University (UIN), Jakarta.<sup>21</sup> He is acknowledged by his students as a liberal thinker who suggests a scientific

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<sup>19</sup> Paul Routledge, ‘Resisting and Reshaping Destructive Development: Social Movements and Globalising Networks’, in R.J. Johnston, P.J. Taylor and M.J. Watts (eds), *Geographies of Global Change: Remapping the World*, 2nd ed., Oxford: Blackwell Publishing, 2002, 318.

<sup>20</sup> Interview with Teuku Safir Iskandar Wijaya, 9 July 2010, and Basan Basri M. Nur, 9 July 2010.

<sup>21</sup> He promotes this thought mainly through his lectures at IAIN Ar-Raniry, rather than through his writings. However, there are some important articles which could be used to understand his thought, apart from interview with him and his former students.

approach to Islam. He said that studying Islam scientifically means that one should leave faith ‘outside the classroom’. He has criticized *dayah* thought and tradition for being backward and naïve in understanding Islamic texts. Because of his severe criticism, he was known among *dayah* students and *ulama* as someone who is trying to establish a particular school of thought (*madhhab*), called ‘*Safirisme*’ (Safirism).

Teuku Safir introduced two Acehnese words signifying criticism of the hegemonic interpretation of (officialized) ‘Shari‘a’ and ‘Islam *kaffah*’ (comprehensive Islam), two important words in Aceh today. He associates these terms with the Acehnese ‘*cari ap*’ (meaning ‘seeking for foods’) and ‘Islam *kappah*’ (meaning ‘just enough Islam’). Teuku Safir used ‘*cari ap*’ to criticize some circles, including *ulama*, of supporting Shari‘a for economic purposes. By ‘Islam *kappah*’ he means that what has occurred in Aceh is not comprehensive Shari‘a, but rather imposed trivial Islam. He suggests, as an alternative, what he calls ‘Social Shari‘a’, which prioritizes socio-economic betterment of society, rather than the legal aspects of Shari‘a. Poverty, ignorance, and underdevelopment are social facts in Aceh which must be tackled seriously.

Hasan Basri M Nur,<sup>22</sup> another academic of IAIN Ar-Raniry, shares Teuku Safir’s concern to highlight the social aspects of Shari‘a. He argues that Shari‘a should begin with those aspects that have a wide impact on society. He argues that if Shari‘a is to be implemented, the government should develop a ‘Shari‘a of public services’ (*Syariat pelayanan public*) that serve the people’s needs and interests at large, such as education, employment, guarantee of social safety, and economic progress.<sup>23</sup> It should, therefore, also eliminate corruption and other kinds of power abuse. Based on this thought, he is critical of the fact that until now no *Qanun* against corruption has materialized. The existing *Qanuns* on gambling (*maisir*), intoxicating beverages (*khamr*) and man-woman relations in seclusion (*khalwat*) are not necessary because they do not have a wide impact on society. He is also against the regulation of clothing, because he sees dress as a personal matter. He wrote a satirical article ‘*Bercelana Pendek ke Kantor*’ (wearing short trousers to the office), in which he said that male public servants should wear short trousers to work because Islamic *fiqh* stipulates that the part of a man’s body that should be covered is between the navel and the

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<sup>22</sup> Hasan Basri M Nur was graduated from the Faculty of Dakwah of IAIN Bandung and taught there for a couple of years, before he moved to IAIN Ar-Raniry, Aceh.

<sup>23</sup> Interview with Hasan Basri M Nur, Banda Aceh, 9 July 2010.

knee.<sup>24</sup> During Ramadan 2010, he wrote that the high price of basic products was the ‘terror’ for poor people’s devotion, which is against Shari’a.<sup>25</sup> He has criticized political elites who used illegal methods and money politics to win the election or to gain certain positions in the government for ‘worshipping idols’, in the sense that political power and money are idols, which is part of *shirk* (polytheistic) practices forbidden in Islam.<sup>26</sup>

The other important critical scholar is Fuad Mardhatillah UY Tumpa, a lecturer at the Tarbiyah (Education) Faculty of the IAIN Ar-Raniry.<sup>27</sup> Apart from being an academic, he has also been a human rights activist since the 1990s (when the Suharto regime implemented a Military Operation Zone for Aceh and many human rights abuses happened). However, it seems that the period of his education (1995-97) at McGill University, where he obtained an MA in Islamic Studies, was an important time in terms of the development of his Islamic thought, and encountering critical discourses of Islam. Some months after his return from McGill, in 1998, he established the University Students Forum for Human Rights Discussion. He is also a trainer in human rights issues in Aceh.

Fuad Mardhatillah proposed two important concepts of ‘Tawhid for Liberation’ (*Tauhid Pembebasan*) and ‘Protestant Islam’. Tawhid for Liberation suggests that faith should liberate its believers as well as humankind from any kind of oppression. Whereas, Protestant Islam is a ‘theological breakthrough which becomes the paradigm for developing critical, open, dynamic and progressive thought,’ and constitutes ‘the ideal spirit for changes and an ideological framework which is believed to be the true condition for creating a movement resistant to any form of entrapping hegemony, stunting colonialization of thought, and social and structural oppression which causes poverty and underdevelopment of Muslim society’.<sup>28</sup> Tawhid for Liberation is the essence of any theological thought, including Protestant Islam. For him, Protestant Islam, which is based on ‘Tawhid for Liberation’ is the most relevant religious thought for Acehnese society today.<sup>29</sup> Compared to the previous scholars, Fuad Mardhatillah’s thought is more systematic.

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<sup>24</sup> Hasan Basri M Nur, “Bercelana Pendek ke Kantor,” *Serambi Aceh*, 10 December 2009. This article triggered polemics. Tgk Harmen Nuqirman and Tgk Mahfudh Muhammad wrote articles challenging Hasan Basri’s article (*Serambi Indonesia*, 9 and 23 December 2009).

<sup>25</sup> Hasan Basri M Nur, “‘Teror’ Beribadah,” *Serambi Aceh*, 7 August 2010; accessed 10 January 2011.

<sup>26</sup> Hasan Basri M Nur, “Penyembahan ‘Berhala’ di Aceh,” [www.acehutara.go.id](http://www.acehutara.go.id); accessed 10 January 2011.

<sup>27</sup> He was born in Aceh on 3 February 1961.

<sup>28</sup> Fuad Mardhatillah UY Tiba, “Islam Protestan (Sebuah Paradigma Pemikiran Islam, Membangun Spirit Perlawanan,” *Jurnal Gelombang Baru*, edition IV (2009), 71-2.

<sup>29</sup> Interview with Fuad Mardhatillah UY Tiba, Banda Aceh, 16 July 2010.

Teuku Muhammad Jafar Sulaiman, an activist of the Young Sufi League (Liga Sufi Muda), of KSD and later FIRLI (Forum Islam Rahmatan Lil Alamin) (see below), is one of the most critical young intellectuals in Aceh. His claim of being a young Sufi does not negate his stance as a progressive Muslim intellectual. He proposes that Islam should have no *madhhab* (school of thought) or at least no single *madhhab*, but rather *multi-madhhabs*. He appears to challenge an article in *Qanun* No. 11/2002 on *Aqidah, Ibadah* and *Syiar* (belief, devotion, and Islamic symbol) that stipulates that the accepted school of *aqidah* is *Ahl al-Sunnah wa al-Jamaah* (the people of the Tradition and of Community) (Art. 1:7).<sup>30</sup> He suggests that the government should not side with a particular *madhhab*, but rather protect all *madhhabs* and encourage them to live peacefully. He also calls for the deconstruction of the Arabization of Islam in Aceh.<sup>31</sup> He also argues that ‘Islamic Shari‘a does not need to be defended’ and that pluralism is the future of Aceh.<sup>32</sup>

The critique of Shari‘atization is not related only to social and legal arguments, but also to practical aspects; namely, the annual budget allocated to the project of Shari‘a implementation. Murizal Hamzah, a senior journalist at *Sinar Harapan* and the *Globe Journal*, said that Shari‘a could not be implemented effectively, because it is related to budget matters. To carry out a punishment of caning, for instance, the court needs money to provide the place and equipment, and to pay those involved in the punishment process, such as the doctor, lawyer, attorney, judge, executor. This is also the case for operations by the Wilayatul Hisbah (Shari‘a police). It could not conduct raids on those violating Shari‘a *Qanuns* without an operations budget. They are dependent on the budget allocated by the provincial or district/municipal government.

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<sup>30</sup> Islam has been divided into two major groups, Sunnism and Shi‘ism. *Ahl al-Sunnah wa al-Jamaah* (the people of the Tradition and Community) is the original, Arabic name of Sunnism. See Michael Feener, “Constructions of Religious Authority in Indonesian Islamism: ‘The Way and the Community’ Re-imagined,” in Anthony Reid, Michael Gilsenan (eds.), *Islamic Legitimacy in a Plural Asia*, London and New York: Routledge, 2009, 139-153.

<sup>31</sup> Teuku Muhammad Jafar Sulaiman, “Islam tanpa Mazhab (Dekonstruksi Arabisasi Dalam Islam Model Aceh),” <http://id.acehinstiute.org/>; accessed 12 February 2011.

<sup>32</sup> Teuku Muhammad Jafar Sulaiman, “Syari‘at Islam Tidak Perlu Dibela (Negosiasi Pluralisme Sebagai Islam Masa Depan Aceh),” [http://id.acehinstitute.org/index.php?option=com\\_content&view=article&id=810:syariat-islam-tidak-perlu-dibela-negosiasi-pluralisme-sebagai-islam-masa-depan-aceh&catid=133:paradigma&Itemid=280](http://id.acehinstitute.org/index.php?option=com_content&view=article&id=810:syariat-islam-tidak-perlu-dibela-negosiasi-pluralisme-sebagai-islam-masa-depan-aceh&catid=133:paradigma&Itemid=280). Accessed 1 September 2010. In 2005, the Indonesian Council of Ulama (MUI) issued a fatwa stating that ‘religious pluralism’ – as well as religious secularism and liberalism – are religiously forbidden (*haram*). The fatwa understands religious pluralism as religious ‘relativism’ and ‘syncretism’. However, Jafar Sulaiman and other progressive Muslims understand it as respecting diversity and peaceful pro-existence between different groups.

## **Institutional actors**

Apart from individual scholars, there are also some intellectual institutional circles that discuss critically the implementation of Shari‘a in Aceh. We will look at some of them, especially The Aceh Institute, KSAF Institute, Komunitas Panteu, and KSD.

The Aceh Institute could be included in the category of institutions that is critical of Shari‘a implementation, although it does not specifically deal with Islam. It covers all issues (political, cultural, economic, education) concerning Aceh. Established on 28 October 2003, it claims to be ‘an independent, non-profit, non-partisan research institute’. As a research institute, it tries to be objective about various ideological groups in the region. But anyone examining the publications and discourses developed by this institute would find that it is more concerned with progressive issues, such as human rights, gender justice, pluralism and democracy. Moreover, its website ([www.theacehinstitute.org](http://www.theacehinstitute.org)) has become one of the most important media for disseminating progressive ideas regarding Shari‘a and Islam. Fuad Mardhatillah is one of the institution’s senior researchers and regularly writes essays for the website. Most progressive intellectuals, including those mentioned earlier and those that will be mentioned later, have published their writings on this site too.<sup>33</sup>

KSAF Institute (Kelompok Studi Agama dan Filsafat – Religion and Philosophy Studies Institute), headed by Novendra Djamal, who is also an activist for NGO Prodeelat,<sup>34</sup> focuses on the philosophical study of Shari‘a and Islam in general. It emerged as an informal discussion group in 2002, but only gave itself a name after 2009. It not only organizes regular discussions, but also provides classical courses, such as a three-month theology course. The central figure in KSAF is Andi Mahdi, a young Shi‘a young intellectual who graduated from Qum. Although the members of KSAF are heterogeneous, their core members are Shi‘ite. They criticize the official Shari‘atization not based on their Shi‘ite paradigm, at least directly, but rather based on a philosophical analysis of its logical arguments. According to Mahdi, although Shari‘a was set up to lead people closer to Islam, the reality has shown that Shari‘a results in them distancing themselves from Islam. Some articles of *Qanun* could lead to a different end. For example, the *Qanun* of Islamic Shari‘a in Aceh defines the subjects of Shari‘a implementation as those ‘Acehnese’ Muslim people who commit actions against

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<sup>33</sup> For further information about this research institution, see [www.theacehinstitute.org](http://www.theacehinstitute.org).

<sup>34</sup> Prodeelat is an NGO working to empower *adat* (customary) governance by empowering *mukim*. In Acehnese, the *adat* structure of governance, *mukim*, is an area comprising a number of *gampongs* (villages). Mukim is led by *geuchik*. Interview with Novendra Djamal, head of KSAF and activist of Prodeelat, Banda Aceh, 15 July 2010.

Shari‘a *Qanun* ‘in Aceh’. This *Qanun* excludes ‘non-Acehnese’ Muslims who commit actions against Shari‘a *Qanun* in Aceh and ‘Acehnese’ Muslims who commit actions against Shari‘a *Qanun* ‘outside Aceh’.<sup>35</sup> For example, when the head of the Court of Sabang and his girlfriend were caught committing *khalwat* in a hotel in April 2007, and they left Aceh, the Shari‘a court could not ask the police to arrest them, because they were outside the Shari‘a court’s jurisdiction.

Affan Ramli, a member of KSAF and a young Shi‘ite intellectual, wrote a book, *Merajam Dalil Syariat* (Beating to Death the Shari‘a Arguments),<sup>36</sup> in which he critically distinguishes between ‘Islamic Shari‘a’ and ‘NAD Shari‘a’ (NAD stands for Nanggroe Aceh Darussalam). By making this distinction, he suggests that Islamic Shari‘a is God-made teachings, while NAD Shari‘a is man-made and could contradict the former. He criticizes the arguments of both proponents and opponents of Shari‘atization based on logic (*mantiq*). He shows the logical weaknesses of the arguments of both groups, but mostly he is in line with the opponents of Shari‘atization. As a young Shi‘ite intellectual, he criticizes Majelis Permusyawaratan Ulama (MPU – Consultative Council of Ulama) for not reaching the qualified standard of *ulama* council. This is because the *ulama* of this council do not meet the requisite level of *mujtahid* (one who is authorized to perform *ijtihad* or independent reasoning). In this regard, he is actually referring to the Shi‘ite standard of *marja‘* (*ulama* who are authorized to be the referent in respect of Islamic knowledge and affairs).<sup>37</sup>

Komunitas Panteue (Panteue Community) was established in 2006, and led by Ampuh Devayan,<sup>38</sup> a senior journalist at the local daily *Serambi Indonesia*, focusing on culture, education and writing. In 2009, it organized a series of ‘Alternative Ramadan Lectures’. Unlike the usual Ramadan lectures, which are mostly monologues, these lectures encourage the audience to think and respond to what they are hearing. Panteue organizes *pengajian* (religious discussion) in an open *gubug panggung* (gazebo), usually at night. The *pengajian* is open to the public, but the audience are mostly students and NGO activists. The *pengajian* is also called ‘nature school’ (*sekolah alam*).

At the end of 2010, Panteue systematically developed themes for discussions in 2011. The themes are:

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<sup>35</sup> Interview with Andi Mahdi, Banda Aceh, 15 July 2010.

<sup>36</sup> Affan Rami, *Merajam Dalil Syariat*, Banda Aceh: Bandar Publishing, 2010.

<sup>37</sup> Interview with Affan Ramli, Banda Aceh, 15 July 2010.

<sup>38</sup> Ampuh Devayan is a journalist at the daily *Serambi Indonesia*, managing the cultural column ‘Panteue’. His essays in Panteue were published in a book *Dari Panteue Menuju Insan Kamil*. He is one of a number of important Shi‘ite intellectuals. Some of the essays can be read at <http://devayan.multiply.com/journal>.



1. New theology.
2. Islam and plural readings of the text.
3. Understanding the meaning of texts based on hermeneutics and *Usul al-Fiqh* (principles of the understanding of Islamic law).
4. Analysis of the concept of *Maqasid al-Shari'a* (objectives of Shari'a).
5. Moral philosophy.
6. Islamic political philosophy.
7. Government by *Ulama* and democracy.
8. Social philosophy.
9. *Madani* (civil) society: secular or religious?
10. Social justice.
11. Philosophy of history.
12. Qur'an school's philosophy of history: Baqir al-Sadr's thought.<sup>39</sup>
13. Philosophy of religion.
14. Religious pluralism.

The above topics reflect the progressive-liberal thought of Islam. Islam is not only seen as a collection of dead doctrines, but it is related to other contextual issues using critical approaches, such as hermeneutics, philosophy, political science, history, sociology. Panteue tries to show that the assumptions developed in society concerning Shari'a do not have a sound logical basis. They cannot differentiate between Shari'a as religious teachings and 'Shari'a' as political policy. Similarly, the people are unable to distinguish between current Shari'a (policies) and real religious Shari'a. They tend to forget the political dimension of Shari'atization. Some of the topics also reflect the Shi'ite bias, such as that on government by *Ulama* (*wilayat-e-faqih*) and Baqir al-Sadr's thought. Other topics, such as moral philosophy, Islamic political philosophy and social philosophy, also contain elements of Shi'ite bias.

Kelompok Studi Darussalam (KSD – Darussalam Study Group), led by Alkaf Muchtar Ali Piyeung, a young critical Muslim intellectual, emerged formally in 2010. KSD tries to develop critical thought concerning religion and social life in Aceh. These endeavours are done through discussion and articles in local newspapers, such as *Serambi Indonesia* and

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<sup>39</sup> Muhammad Baqir al-Sadr is a Iraqi Shi'ite scholar and philosopher.

*Harian Aceh*, or online media, such as [www.acehinstitute.org](http://www.acehinstitute.org). KSD also cooperates with national Islamic reform groups, such as Paramadina.<sup>40</sup>

Alkaf Muchtar Ali Piyeung is coordinator of KSD and graduated from IAIN Ar-Raniry and UIN Sunan Kalijaga. He believes in the significance of religious pluralism as a way of countering religious fundamentalism and terrorism.<sup>41</sup> He also views constructive interreligious dialogue as important. Such dialogue would not only create productive and harmonious relations, but also resolve threats of religious fundamentalism, violence, and exclusivism as well as other human problems. For him, the intellectuals' task is to protect good interreligious relations and formulate tolerance based on sound theological and socio-historical foundation.<sup>42</sup> However, he suggests a slogan: 'Islamic state, no; secular state, no!' He opposes the idea of an Islamic state, as well as a secular state. However, what he means by 'secular state' is a state that not only separates the state from religion, in the sense of the church or religious organizations and doctrines, but also from religious *values*. He suggests that there should be a differentiation but not a separation of state and religion, in the sense that religious values should be allowed to be the basis of the statescraft. However, this should not bring about sacralization of the state.<sup>43</sup>

Harist Muzani, a member of KSD, wrote about the importance of revisiting the Shari'a *Qanuns* in Aceh. Through his article '*Mencambuk Qanun Syariat Islam*' (Caning the *Qanuns* of Islamic Shari'a) he showed that there are some clauses in the *Qanuns* that have resulted in a dilemma for the people of Aceh.<sup>44</sup> These clauses should be amended so that they do not become boomerangs working against the Aceh people and exacerbating problems in the relations between Aceh and international world. Asrizal Lutfi, another KSD member, proposed what he called '*Pribumisasi Syariat*' (indigenization of Shari'a);<sup>45</sup> that is to say, that Shari'a should not be imposed structurally by the government, but rather should emerge

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<sup>40</sup> Paramadina is an institution established by prominent Indonesian progressive intellectual, Nurcholish Madjid. Nurcholish Madjid triggered the debates on the need for secularization in Islamic thought in the 1970s. On Madjid and Paramadina, see Greg Barton, "Indonesia's Nurcholish Madjid and Abdurrahman Wahid as Intellectual Ulama: The Meeting of Islamic Traditionalism and Modernism in Neo-modernist Thought." *Islam and Christian-Muslim Relations* 8(3) (October 1997): 323-350.

<sup>41</sup> Alkaf Muchtar Ali Piyeung, "Agama Tanpa Wajah Garang," *The Aceh Institute*, 22 March 2012; [www.acehinstitute.org](http://www.acehinstitute.org).

<sup>42</sup> Alkaf Muchtar Ali Piyeung, "Studi dan Dialog Antar Agama," *The Aceh Institute*, February 2010; [www.acehinstitute.org/index.php?option=com\\_content&view=article&id=504:studi-dan-dialog-antar-agama&catid=74:paradigma-islam](http://www.acehinstitute.org/index.php?option=com_content&view=article&id=504:studi-dan-dialog-antar-agama&catid=74:paradigma-islam).

<sup>43</sup> Alkaf Muchtar Ali Piyeung, "Negara Islam No, Sekularisme No!," *The Aceh Traffic*, 5 May 2011, [www.acehtraffic.com/2011/05/negara-islam-no-sekularisme-no.html](http://www.acehtraffic.com/2011/05/negara-islam-no-sekularisme-no.html).

<sup>44</sup> Harist Muzani, "Mencambuk Qanun Syariat Islam," *Harian Aceh*, 31 December 2010.

<sup>45</sup> Asrizal Lutfi, "Pribumisasi Syariat" [http://acehinstitute.org/index.php?option=com\\_content&view=article&id=445%3Apribumisasi-syariat&catid=74%3Aparadigma-islam](http://acehinstitute.org/index.php?option=com_content&view=article&id=445%3Apribumisasi-syariat&catid=74%3Aparadigma-islam).

from the awareness of individuals. To cultivate this awareness, he suggests that educational and cultural approaches should be prioritized in order that customs (*adat*) and culture synthesize themselves with Shari‘a. This term reminds us of Abdurrahman Wahid’s thought on ‘*Pribumisasi Islam*’ (indigenization of Islam).<sup>46</sup> It seems that Luthfi was inspired by Wahid’s concept, although he later developed it in the context of Aceh.

The above discussion groups share relatively similar activities, such as having regular discussions and publishing their writings in local newspapers. They also offer their own interpretation of Shari‘a, which is more progressive and even liberal.

### **Networking progressive Muslim Groups: Forum Islam Rahmatan Lil Alamin**

Prior to the provincial parliamentary session that discussed the Draft *Qanun on Jinayat* (Penal Law), a networking group was created in Aceh in August 2009, the Jaringan Masyarakat Sipil Peduli Syariat (JMSPS – Network of Civil Society Concerned with Shari‘a). JMSPS comprises a number of civil society groups in Aceh, in particular those related to human rights, women and queer movements and concerned with the development of Shari‘a, specifically the draft *Qanun on Jinayat*, which was to be discussed in Aceh’s 2009 parliamentary session. They viewed the draft *Qanun on Jinayat* as containing discriminatory or unjust articles on women and LGBTs (lesbianism, gay, bisexual and transgender).<sup>47</sup> However, since the governor refused to sign the draft, the JMSPS’ activities have been almost unheard of, although they have not officially dissolved.

Another network emerged. Some progressive Muslim civil society groups that had developed critical views of Shari‘atism, such as The Aceh Institute, KSAF Institute, Komunitas Panteu, KSD (Kelompok Studi Darussalam), Tikar Pandan Community, Bandar Institute, Do Karim Writing School and Radio Nara FM – they established a network institution, called Forum Islam Rahmatan Lil ‘Alamin (Forum for Islam as Blessing to Universe – FIRL) on 9 April 2011. This establishment was marked by the ‘Declaration of Islam Rahmatan Lil ‘Alamin’. Unlike JMSPS, FIRL was aimed at building dialogue between various Muslim organizations, theological schools, and groups (*taqrib bayna al-madzahib*), including between Sunnism and Shi‘ism. Moreover, many of the human rights and women and LGBT groups that had previously participated in JMSPS, were not invited to join FIRL.

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<sup>46</sup> Abdurrahman Wahid, “Pribumisasi Islam,” in Muntaha Azhari and Abdul Mun’im Saleh, *Islam Indonesia Menatap Masa Depan*, Jakarta: P3M, 1989, 81-96.

<sup>47</sup> Interview with Laila Juari, Siti Maimunah and Destika Gilang Lestari, who are also activists of Network of Civil Society Concerned with Shari‘a, 20 July 2010.

Forum Islam Rahmatan Lil Alamin (FIRL) was established particularly as a response to the issue of ‘religious deviant groups’ emerging in Aceh in the beginning of 2011 against a group called Millata Abraham. By that time, Acehnese Muslims had been familiar with Majelis Ulama Indonesia’s (MUI’s) fatwa on Ahmadiyah (2005) and MUI’s ten criteria of religious deviant groups (2007).<sup>48</sup> In 2007 Aceh’s Majelis Permusyawaratan Ulama (MPU) had also issued similar criteria,<sup>49</sup> containing not just ten but seventeen criteria.<sup>50</sup> Despite this, there was no real issue regarding deviant groups until 2011, when a group called Millata Abraham emerged. There was no issue of Ahmadiyah, because people believe that there is no Ahmadiyah in Aceh. It was not clear when Millata Abraham began to operate in Aceh, but according to Professor Muslim Ibrahim, the chairperson of MPU, the group originated outside Aceh.<sup>51</sup> He said that this group has teachings close to those of al-Qiyadah al-Islamiyah, a group established by Ahmad Moshaddeq in 23 Juli 2006. Al-Qiyadah al-Islamiyah was considered deviant by the MUI in October 2007 and banned by the government a month later.

Millata Abraham was banned by the Aceh government using a Governor’s Decree, an unusual case. At that moment, there was an inclination that the issue of ‘deviant groups’ would develop and spread to other Muslim groups, such as Shi’ism. There has been a long presence of Shi’ism in the region. Some scholars—such as Fatimi, Jamil, Hasjmi, Azmi, and Aceh—believe that the first Muslim traders who took part in the Islamisation of Aceh, and even of Nusantara (Malay-Indonesian archipelago), were Shi’as.<sup>52</sup> They also believed that some Sultanates of Peurlak were Shi’a ones. However, they also admitted that Shi’i traces have vanished over the course of time as a result of the huge impact of Sunni-isation in Aceh. Some said that there were some Shi’a communities which maintained secretly their identity but that later generations did not recognise their original identity, although they still

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<sup>48</sup> On MUI, see Moch Nur Ichwan, “Towards a Puritanical Moderate Islam: The Majelis Ulama Indonesia and the Politics of Religious Orthodoxy,” in Martinvan Bruinessen (ed.), *Islam in Contemporary Indonesia: Explaining the ‘Conservative Turn’*, Singapore: ISEAS, 2013 (forthcoming).

<sup>49</sup> On MPU, see Ichwan 2011.

<sup>50</sup> Majelis Permusyawaratan Ulama, *Kumpulan Keputusan Majelis Permusyawaratan Ulama Provinsi Nanggroe Aceh Darussalam*, Banda Aceh: Sekretariat Majelis Permusyawaratan Ulama, 2008, 189-95.

<sup>51</sup> Personal communication with Prof. Muslim Ibrahim, chairperson of provincial Majelis Permusyawaratan Ulama, 24 July 2011.

<sup>52</sup> S.Q. Fatimi, *Islam Comes to Malaysia*, Singapore: Malaysian Sociological Research Institute, 1963; Ali Hasjmy, *Syi’ah dan Ahlussunnah: Saling Rebut Pengaruh dan Kekuasaan sejak awal Sejarah Islam di kepulauan Nusantara*. Surabaya: PT. Bina Ilmu, 1983; Wan Hussein Azmi, “Islam di Aceh: Masuk dan Berkembangnya hingga abad XVI”, in Ali Hasjmy (ed) *Sejarah Masuk dan Berkembangnya Islam di Indonesia*. Bandung: Al-Ma’arif, 1981, 174-218; Aboebakar Atjeh *Aliran Syi’ah di Nusantara*, Jakarta: Islamic Research Institute, 1977; Jamil is quoted in Hasyimi (1983). On further discussion on Shia in Indonesia, including Aceh, see Zulkifli, *The Struggle of Shi’a in Indonesia*, unpublished dissertation, Leiden University, 2009.

celebrate Ashura, a typically Shi'a ceremony. This tradition has been accepted as part of mainstream local Sunni tradition. Nevertheless, in the post-New Order era, there is a small number of Shi'a intellectuals, such as those involved in KSAF, Institute and Komunitas Panteu, who openly organize Shi'a-based study meetings of Islam, especially after the coming of Andi Mahdi, a graduate of Qum university, Iran, and originated from Solo, Central Java, in the beginning of the 2000s. Some young Sunni students joined their discussions and lectures. Although most of them maintain a Sunni identity, some did join Shi'ism and become important activists, such as Affan Ramli and Novendra Djamal.<sup>53</sup>

This trend caused concern among some civil society groups, especially those associated with Shi'ism, such as KSAF Institute and Komunitas Panteu, because there was a rumour that Shi'ism would be the next target of banning.<sup>54</sup> There was also anxiety among progressive intellectuals that there would be restrictions on religious thought. The FIRL activists said that the issue of 'deviant groups' was dangerous for the future of intra-Islamic relations in the region, and that, in turn, this could lead to interreligious problems. They doubled their efforts to disseminate a peaceful face of Islam in Aceh, in Indonesia and at the international level.<sup>55</sup> As a forum, FIRL is still new, but it has great potential since it comprises progressive actors and forces in Aceh.

The FIRL organized a number of seminars or 'public discussions' (*diskusi publik*), on various issues pertaining to Islam, Shari'a and relations among Muslim communities, as way of challenging a monological understanding of Shari'atism and in order to disseminate alternative views. Here, we will discuss two seminars. In the public discussion held on 13 August 2011, entitled 'The Existence of Shari'a in Modernization and Multidimensional Crises', three speakers were invited: Hasanuddin Yusuf Adan (Dewan Dakwah Islamiyah Indonesia – DDII), Fuad Mardhatillah, and Affan Ramli, representing, respectively, conservative, progressive Sunni and Shi'ite intellectuals. We will not discuss the conservative thought of the first speaker here and will instead focus on the progressive thought of the second and the third speakers – Fuad Mardhatillah, and Affan Ramli.

Fuad Mardhatillah argued that Islamic laws that cannot be used to solve human problems are not Islamic. He emphasized that the basic awareness necessary for the implementation of Shari'a is, firstly, rationality of science and basic human goodness (*fitrah*);

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<sup>53</sup> Interview with Andi Mahdi, Affan Ramly and Novendra Djamal, Shi'a intellectuals, on 15 July 2011.

<sup>54</sup> Interview with Andi Mahdi, Shi'ite intellectual, and Teuku Jafar Sulaiman, chairperson of FIRL, both on 15 July 2011.

<sup>55</sup> Interview with Alkaf Muchtar Ali Piyeung, 29 May 2011.

secondly, changing (reinterpreting) the dynamic and dialectic of pre-determination and free-will; and thirdly, building and protecting the social balance.<sup>56</sup> He also suggested, among other things, that science is important for a critical understanding of the meaning, scope and methodology of implementation of the teachings of '*rahmatan lil 'alamin*' (blessing to the universe), and that Qur'anic teachings should be re-read and re-thought critically, comprehensively and openly through an inter-methodology interpretation.

Affan Ramli, a Shi'ite intellectual and Prodeelat activist, was critical of the fact that Aceh is not ready for the academic conceptual formulation of Shari'a implementation, and that it is 'concerned merely with trivial moral matters'.<sup>57</sup> He also said that Acehnese academics and *ulama* are not prepared for scientific challenges, because Shari'a is merely a political commodity. As a Shi'ite intellectual he compared these Acehnese academics and *ulama* with Shi'ite *ulama* and intellectuals in Iran who are equipped with a conceptual framework for Shari'a implementation. However, he also pointed out that the Acehnese *gampong* (villages) and *mukim* (area comprising a number of *gampongs*) are more prepared for creating good governance, because they have a good *adat* mechanism for solving social problems. As a Prodeelat activist, he also promoted the empowerment of *adat* governance (*pemerintahan adat*) in the *mukim* level.<sup>58</sup>

Another public discussion was held on 25 August 2011, on 'Implementation of Shari'a from the Local Wisdom Perspective'. The aim of this seminar, as reflected in its Terms of Reference was: 'to share between various parties – government, *adat* practitioners, *ulama* and *satri* (students) of *dayah* (Islamic boarding school), and public – the creation of understanding with respect to differences, and to invent a concept of the implementation of Shari'a from the local wisdom perspective, which could then be used as a reference for policies in response to differences and to avoid violence in the implementation of Shari'a in Aceh'.<sup>59</sup> It is clear from this statement that there are different Muslim groups in Aceh which could potentially lead to conflict because of their different views on Islam. FIRL tried to revive the relations between Islam and *adat* (customary law) and 'local wisdom'. It reminded

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<sup>56</sup> Fuad Mardhatillah UY Timpa, "Positivisasi Syariat Islam di Tengah Modernisasi dan Krisis Multidimensi (Suatu Tinjauan Filsafat Kritis)," powerpoint presentation at Public Discussion of Forum Islam Rahmatan Lil 'Alamin (FIRL), Banda Aceh, 13 August 2011, slide 1.

<sup>57</sup> Forum Islam Rahmatan Lil-'Alamin, *Notulensi Diskusi Publik Eksistensi Syariat Islam di tengah Modernisasi dan Krisis Multidimensi*, Banda Aceh, 13 August 2011, 6. I would like to thank TM Jafar Sulaiman and Alkaf Muchtar Ali Piyeung for making some of FIRL discussion notes available to me.

<sup>58</sup> On Prodeelat, see note 34 in this report.

<sup>59</sup> Forum Islam Rahmatan Lil-'Alamin, "Term of Reference Diskusi Publik Penerapan Syariat Islam dalam Perspektif Kearifan Lokal Aceh," Banda Aceh: Forum Islam Rahmatan Lil-'Alamin, 2011.

Acehnese people that the relationship between Islam and *adat* has become part of its long history, as reflected in the Acehnese proverb ‘*Hukom ngon adat lagee zat ngon sifeut*’ (the relationship between Islamic law and *adat* is like that between essence and its attribute). FIRL believes that the fusing of Shari‘a with customs and local wisdom has been part of Acehnese culture and should be maintained. It seems that the main aim of this approach is to moderate Shari‘a and to prevent it from Arabization.

Working in a region where Shari‘a has been adopted formally means that most progressive Muslim intellectuals are caught in the logic of Shari‘a.<sup>60</sup> Everyone should take the issues of Shari‘a into account, either to be critical or to as a basis for their constructive reform agendas of democratization. For the most part, they do not negate Shari‘a as an abstract divine way of life, but rather challenge its interpretation constructed by the local authority and Islamist groups. This is not an easy task, because they could be charged with being anti-Shari‘a by the Muslim community, a charge that could weaken their credibility in terms of leading change in society. They struggle to negotiate the widening of democratic space in Aceh, but without disregarding the universal values of Shari‘a.

#### **4: FEMINISTS AND THE NEGOTIATION OF WOMEN’S SPACE**

Women have a strategic place in Acehnese history. There were a number of female rulers (sultanah) in the seventeenth and eighteenth centuries – Sultanah Safiyatuddin Syah, Sultanah Zakiyatuddin Syah, Sultanah Kamalatsyah dan Sultanah Inayat Syah – and female heroins during the Dutch colonial era. During the conflict era, before the Helsinki Peace Agreement of 2005, there were also GAM women fighters and a military sub-group called *Inong Bale*.<sup>61</sup> To endorse peace in Aceh, the Acehnese women organized the first Aceh Women’s Congress on 22 February 2000. Although this congress could not end the conflict, (like so many other efforts at that time), it expressed a women’s voice in the peace process in the region. Within such a context, some women’s rights NGOs and movements emerged, such as Mitra Sejati Perempuan Indonesia (True Partner of Indonesian Women/MISPI),<sup>62</sup> Flower Aceh, Liga Inong Aceh (Lina), Jaringan Perempuan Untuk Kebijakan (Women’s Network for Policy/JPUK), Komite Perempuan Aceh Bangkit (Committee for Aceh Women’s

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<sup>60</sup> Cf. Reza Idria, “Mesin Syariat,” *Journal Gelombang Baru*, vol. 4 (2009), pp. 7-15.

<sup>61</sup> On *Inong Bale*, see Jacqueline Koch, “‘Widows’ of Aceh Fight for Freedom in a Bitter Land,” *The Age*, 9 December 2000; [www.theage.com.au/news/2000/12/09/FFXXZ1S5HGC.html](http://www.theage.com.au/news/2000/12/09/FFXXZ1S5HGC.html), accessed 12 December 2012.

<sup>62</sup> On MISPI, see Dina Afrianty, *Local Women’s NGOs and the Reform of Islamic Law in Aceh: Case Study of MISPI*, University of Melbourne, Asia Institute and Law School, 2010.

Awakening/KPAB), and Relawan Perempuan untuk Kemanusiaan (Women Volunteer for Humanity/RpuK).<sup>63</sup> There is also an official Gender Working Group (GWG), formed by the governor in 2010, to coordinate local and international NGOs that shared the goal of protecting women and children in the post-tsunami reconstruction period.

Women's NGOs and movements have some shared concerns, such as women's involvement in the process of Aceh's reconstruction, rehabilitation and reconciliation in the post-tsunami and post-conflict period; women's involvement in legal drafting and policymaking; violence against women during the period of the conflict and in refugees camps;<sup>64</sup> re-evaluation of the Shari'a *qanuns* and the understanding of and application of Shari'a in general. In this context, we will focus on the last concern.

Since the implementation of Shari'a in 2001 this strategic position of women in Aceh has been problematized by the *qanuns*. The *qanuns*, which were formulated mainly by male *ulama* (Islamic traditional scholars), established a number of restrictions on women. Apart from the marginalization of women in the process of reconstruction, there were also restrictions in the area of policymaking and legal drafting, the regulation of Muslim clothing and the affects of this in practice, (as demonstrated by Shari'a police's raids in relation to the wearing of the *jilbab*), and the regulation of *khalwat* (illicit relations between men and women in seclusion), which primarily affects women. Women's movements criticized such practices and suggested a more equal implementation of shari'a and recommended the re-education of the Shari'a police.<sup>65</sup>

There are three important roles that can be distinguished in the context of Shari'a implementation: first, the issuance of the Aceh Charter on Women's Rights; and second, the issuance of a *Qanun* on the Empowerment and Protection of Women (No. 6/2009); third, the women's movement's response to the draft *Qanun* on *Jinayat*. Acehnese women's NGOs and movements were successful in endorsing the issuance of the Aceh Charter on Women's Rights. It was signed on 11 November 2008 in Banda Aceh by the governor of Aceh, chairman of the regional parliament, representatives of the Indonesian government, judiciary, police, Islamic institutions and non-governmental organizations. This charter is important

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<sup>63</sup> On the women's movements and gender mainstreaming in post-tsunami era, see Marjaana Jauhola, *Post-Tsunami Reconstruction in Indonesia: Negotiating Normativity through Gender Mainstreaming Initiatives in Aceh*, London etc.: Routledge, 2013 (forthcoming).

<sup>64</sup> National Women's Commission recorded 191 case of violence against women in the forms of domestic violence and sexual harassment in refugee camps in Aceh between October 2005 to February 2006. "Acehnese Women Demand Justice on IWD," *Aceh Kita*, [www.europe-solidaire.org/spip.php?article5370](http://www.europe-solidaire.org/spip.php?article5370)

<sup>65</sup> Interview with Laila Juari, Siti Maimunah and Destika Gilang Lestari, Banda Aceh, 20 July 2010.



because it is the first charter on women's rights in the Islamic world.<sup>66</sup> The chairperson of the Ulama Deliberation Council (MPU), Prof. Muslim Ibrahim, also signed it. This means that the MPU viewed that the Charter was in line with, at least not in contravention of, Islamic values and principles.<sup>67</sup> The MPU also has a special Commission for Women and Children.

The charter is important for the struggle regarding women's rights in Aceh because, as suggested by some feminists and moderate *ulama*, it would provide a moral force for women's movements to endorse equality of rights between women and men.<sup>68</sup> However, there has always been a discrepancy between theory and reality. This is also the case with the charter. Article 3 of the charter, for instance, says: '[w]omen in Aceh shall have the right to freedom from discrimination, intimidation and violence'. However, it is taking a long time for this to materialise. Discrimination and violence against women is still rife in government, parliament, the courts and society in general.

Another important development in the women's rights struggle was the issuance of the *Qanun* on the Empowerment and Protection of Women (No. 6/2009) on 14 October 2009. This qanun was the follow up to the Law on the Governing of Aceh (LoGA), which stipulated a 30% representation of women in all areas of development in the region. The *qanun* is aimed at enhancing participation of women in development, and their quality of life, so that they can compete with men. It is designed to guarantee women opportunities to be able to fulfil their rights, and provide them with safety. It is undisputedly an important legal document in women's struggle, not only in Aceh, but also in Indonesia. There is no such law or bylaw in other parts of the country.

Despite the *Qanun* on Empowerment and Protection of Women being issued, the draft *Qanun* on *Jinayat* was discussed in the Aceh parliament at the end of 2009. *Jinayat* is the law on crimes (*jarimah*) and punishment (*'uquat*). This draft *qanun* threatened gender justice as well as the existence of the queer movement because it contained regulations that would restrict them both. To challenge the draft *qanun*, women's movements, human rights movements and queer movements formed *Jaringan Masyarakat Sipil Peduli Syariah* (JMSPS – Network of Civil Society Concerned with Shari'a) in August 2009.<sup>69</sup> The network deals

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<sup>66</sup> See "Aceh Adopts First Charter on Women's Rights in Islamic World," [fnfasia.org/index.php?option=com\\_content&view=article&id=247:aceh-adopts&catid=26:indonesia&Itemid=58](http://fnfasia.org/index.php?option=com_content&view=article&id=247:aceh-adopts&catid=26:indonesia&Itemid=58)

<sup>67</sup> Interview with Prof. Dr. Muslim Ibrahim, Banda Aceh, February 2009.

<sup>68</sup> Interview with Prof. Dr. Rusydi Muhammad, Banda Aceh, 20 February 2009; with Dr. Nurjannah Ismail, Banda Aceh, 21 February 2009; and with Suraiya Kamaruzzaman, February 2009.

<sup>69</sup> Interview with Laila Juari, Siti Maimunah and Destika Gilang Lestari, Banda Aceh, 20 July 2010.

with general issues or cases related to the implementation of Shari‘a that are seen as discriminative or unjust. The general coordinator of the network is Arabiani Abubakar, assisted by two coordinators who are involved in organizing civil society and advocacy.<sup>70</sup> The JMSPS held a series of discussions challenging the draft *Qanun* on *Jinayat*. They criticized the draft *qanun* not only from a human rights and women’s rights perspective but also from a progressive Islamic point of view.

The draft *Qanun* on *Jinayat* was drafted by the Shari‘a Office (Dinas Syariat Islam) to replace the previous *qanuns* on *khalwat*, *maysir* and *khamr*. Along with this draft *qanun*, another draft *Qanun* on Penal Legal Procedure was also proposed – but in this article we will focus on the former. (The latter was actually part of a package with the *Qanun* on *Jinayat*).<sup>71</sup> The draft *Qanun* on *Jinayat* regulates more comprehensive Islamic penal law, including crime and punishment relating to alcoholic drinks (*khamar*), gambling (*maysir*), illicit relations between a man and a woman in seclusion (*khalwat*), mixing between men and women (*ikhtilath*), adultery (*zina*), sexual harassment, rape, false charges of adultery (*qadzaf*), sodomy (*liwath*), and *musahaqah* (female same-sex activity) (Art.2). A number of harsh punishments (*hudud*) were also introduced. The drafts were formulated by the Shari‘a Office during Alyasa’ Abubakar’s period of leadership. The Shari‘ah Office’s draft did not contain *rajam* (stoning to death) for a married person who commits adultery (*zina*). However, when the draft was discussed in the Acehese Parliament, the Islamic party PKS insisted on its inclusion. The representatives of PKS warned other legislators that they would go to hell if they opposed such an inclusion. It is not clear whether because of this warning or for other reasons, most of the legislators, including those from nationalist parties, approved the draft *qanun*. Nevertheless, the governor, Irwandi Yusuf, disagreed with the inclusion, arguing that the government had not proposed such a measure and did not agree with it. In Aceh, a *qanun* must be approved by both the Aceh government and the parliament; however, as result of this disagreement, the draft law could not be enacted. Although this can be considered as a successful challenge of the draft *qanun* by the women’s movements, in cooperation with other human rights movements, it was not a perfect victory as it was only achieved because the governor refused to ratify it and they failed to get any party in parliament to endorse their challenge.

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<sup>70</sup> Interview with Laila Juari, Siti Maimunah and Destika Gilang Lestari, Banda Aceh, 20 July 2010.

<sup>71</sup> Interview with Laila Juari and Siti Maimunah, women’s movement activists, 20 July 2010; and Ichal and Echa, queer activists of Violet Grey, 21 July 2010.

The governor's rejection of the *Qanun* was respected by the women's organizations, but condemned by Islamist movements because his refusal made the *Qanun* ineffective. The establishment of the Gender Working Group (GWG), a network of women's movements, on 10 June 2010 by the governor,<sup>72</sup> also reflects his further opposition to the *Qanun*. Although the GWG's main task is to coordinate local and international NGOs in protecting women and children in the post-tsunami reconstruction, it also organises regular discussions on Islamic views on gender issues. Some Muslim scholars who understood the relations between Islam and gender justice have been invited to these events.

Apart from the feminist struggle for gender equality, there is also a more conservative women's struggle taking place in *dayah* (traditional Islamic boarding schools) and in rural areas. As pointed out by David Kloos, many *dayahs'* female leaders and students support the implementation of Shari'a, but this does not mean that they are not critical of its application.<sup>73</sup> For instance, many have criticized the fact that Shari'a regulates and punishes women's behaviours rather than those of men. They also want Acehese women to be trained, disciplined, knowledgeable and ready to become future leaders of Aceh.

## **5: MUSLIM QUEERS AND THE NEGOTIATION OF LGBT SPACE**

Before the tsunami, there were transgender and gay communities in Aceh, but they were not well organized. That said, they did have meeting points where they could meet and chat. Many transgender people work in beauty salons, and some of them, along with some gays, are activists in HIV/AIDS NGOs working in Aceh or neighbouring cities, such as Medan. The issue of LGBT was not widely debated in Aceh until 2006 when a gay couple, Hartoyo and 'Bobby', were arrested by angry people and treated badly, not only by the people but also by the police.<sup>74</sup> Indeed, the police sexually abused the victims. The case was brought to the court in 2007 with a disappointingly light sanction for the police. It was in that year (2007) that a queer organization called Violet Grey was established to protect LGBT rights in Aceh. So far,

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<sup>72</sup> The GWG was based on Gubernurial Decree no. 260/352/2010, issued on 10 June 2010.

<sup>73</sup> David Koos, "Supporting Syariah, Advancing Women," *Inside Indonesia*, 31 July 2010, [www.insideindonesia.org/weekly-articles/supporting-syariah-advancing-women](http://www.insideindonesia.org/weekly-articles/supporting-syariah-advancing-women); accessed 10 December 2012.

<sup>74</sup> The story of Hartoyo is very important in contemporary queer history in Aceh. While having intimate relations in bed, two gay men, Hartoyo and 'Bobby', were violently arrested by neighbouring people in Banda Aceh on 22 January 2006. While 'Bobby' (not real name) disappeared after that event, afraid that his sexual orientation and the incident would be discovered by his family, Hartoyo tried to get support from human rights NGOs in Jakarta and later he wrote his 'autobiography' with the help of Titiana Adinda. For further information about Hartoyo, see Hartoyo, *Biarkan Aku Memilih: Pengakuan seorang Gay yang Coming Out*, Jakarta: Alex Media Komputindo, 2009.

there are two major queer organizations in Aceh: Violet Grey and Putroe Sejati.<sup>75</sup> This chapter will deal with these two queer organizations.

### **Violet Grey and Putroe Sejati**

Violet Grey (VG), established on 2 November 2007, is the first Lesbian, Gay, Bisexual, Transsexual, Intersexual and Queer (LGBT-IQ) organization in Aceh.<sup>76</sup> Its establishment was motivated by the fact that LGBT-IQ people were marginalized and their rights were being violated in various fields, including education, health, civil services, and politics.<sup>77</sup> The case of Hartoyo greatly influenced their decision to form an organization to advocate LGBT-IQ people against violence and marginalization in the future. It has also been engaged in several projects related to HIV-AIDS issues supported by the National Commission on HIV-AIDS, Medan-Aceh Partnership (MAP) and other funding institutions.

Violet Grey's main objectives are as follows:

1. To disseminate information related to sexual and reproductive health issues to LGBT-IQ groups.
2. To endorse the fulfillment of human rights for LGBT-IQ groups through advocacy and public awareness building.
3. To develop human resource capacity of Violet Grey's members and all associated groups.<sup>78</sup>
4. To expand the organizational network at the national and international level.<sup>79</sup>

Given the severe conditions and limitations they faced, Violet Grey has cooperated with feminist organizations, human rights groups and Legal Assistance Institutes (LBH).<sup>80</sup> They also built network with other LGBT organizations at the national level, such as Gaya

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<sup>75</sup> There are also some small queer communities, which have not exposed themselves to the public, such as Rainbow Aceh, a lesbian community.

<sup>76</sup> Violet Grey now has 4 staff members and 15 volunteers. Personal communication with Ichall, 1 November 2012.

<sup>77</sup> Interview with Ichall and Echa, Banda Aceh, 2010.

<sup>78</sup> Associated groups are LGBT communities under its supervision, such as Putroe Sejati Aceh and Atapku.

<sup>79</sup> HIVOS, "Violet Grey – Aceh," [www.hivos.nl/esl/community/partner/50008669](http://www.hivos.nl/esl/community/partner/50008669).

<sup>80</sup> However, as Ichall and Echa told me, they view the position of some human rights activists as vague (*abu-abu*); they are critical of human rights abuses, but do not fully support LGBT-IQ rights. Interview with Ichall and Echa, Banda Aceh, 2010.

Nusantara and Arus Pelangi, and gained international funding from organizations such as HIVOS and World Vision.

Another organization, Putroe Sejati Aceh (true girls of Aceh-PSA), is mainly concerned with transsexuals. There is quite limited information about PSA.<sup>81</sup> It has a Facebook page, but contains only some photos and no information.<sup>82</sup> There are about 150 transsexuals in Banda Aceh, mostly work in beauty salons. Apart from charity and social activities, the greatest event they organized, and indeed the most controversial one, was Miss Transsexual Aceh 2010.<sup>83</sup>

### **Miss Transsexual Aceh 2010**

The controversial ‘Miss Transsexual Aceh (Duta Waria Aceh)’ was organized by Putroe Sejati Aceh in the auditorium of the Radio Republik Indonesia building, Banda Aceh, in 2010.<sup>84</sup> It was also supported actively by Violet Grey.<sup>85</sup> Forty transsexuals participated in the event, representing 23 districts and cities in Aceh. Some participants wore sexy outfits and others dressed in *jilbab*. The auditorium was fully occupied, and some people even had to sit on the ground or watch from the balconies.<sup>86</sup> Zifana Letisia, a nursing student and part-time beauty therapist from North Aceh, won the competition and was crowned the pageant winner. The other finalists were Jasmine Mulan Sayuri, from South Aceh, and Joy, from Central Aceh. Zifana represented Aceh at the Miss Transsexual Indonesia 2010.

This event soon sparked controversy in the region. The chair of the organizing committee, Timmy Mayubi (Jimmy Saputra), claimed that it had received permission to go ahead from the Majelis Permusyawaratan Ulama (Ulama Deliberation Council). All public

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<sup>81</sup> During my fieldwork in Aceh in 2010, I failed to contact the chairperson of Putroe Sejati, Cut Sherly. I tried to contact her by phone and sms, but she did not answer. This is probably because of the sensitivity of the issue of Pemilihan Duta Waria (Miss Transsexual Aceh 2010) conducted that year.

<sup>82</sup> The Jakarta Globe mentions only: ‘Putroe Sejati Aceh (True Sons of Aceh), an organization that provides shelters for transsexuals’. It mistakenly translated ‘*putroe*’ as ‘sons’; it should be ‘girls’. The writer confused it with the Indonesian ‘putra’, which means ‘son’. Nurdin Hasan, ‘Under the Shadow of Shari‘ah Law, Transsexuals Take to the Stage in Aceh in Rare Beauty Contest’, [www.thejakartaglobe.com/news/under-the-shadow-of-Shari-ah-law-transsexuals-take-to-the-stage-in-aceh-in-rare-beauty-contest/358655](http://www.thejakartaglobe.com/news/under-the-shadow-of-Shari-ah-law-transsexuals-take-to-the-stage-in-aceh-in-rare-beauty-contest/358655); accessed 10 October 2012.

<sup>83</sup> There are some underground lesbian communities in Aceh, one of which is Atapku. Atapku is a lesbian organization, or community, as they call it, concerned with Lesbian, Bisexual and Transsexual issues, established on 4 October 2011. It seems, however, it is not well organized. Their Facebook only provides pictures of gatherings and the first birthday celebration of Atapku. However, some of their members serve as volunteers at VG where they learn how to run an organization and develop networks. Personal communication with Ichall, 1 November 2012.

<sup>84</sup> See also Reza Idria’s report on this issue.

<sup>85</sup> Interview with Ichall and Echa, Banda Aceh, 21 July 2010.

<sup>86</sup> Hasan, “Under the Shadow of Shari‘ah Law.”

events must get official permission not only from the police, but also from the MPU. However, the chairperson of the MPU of Banda Aceh clarified that the committee had cheated the process and only asked permission for a charity and social event, and not for 'Miss Transsexual Aceh'.<sup>87</sup> The MPU demanded that the organizing committee submit a public apology in print and online media to the people of Aceh for deceiving the MPU when they first sought permission to organize the event. The MPU also demanded that the pageant winner not be sent to the national level competition because it would be against Aceh's image as a Shari'a province. The MPU also threatened that if there was no apology, they would take further action.

Most of the protesters portrayed the contest as violating the image of Aceh as a Shari'a region, and even violating Shari'a itself. The vice chairperson of the MPU of Banda Aceh, Abdullah Atiby, said that it was insult not only to the MPU and to the whole Aceh people, but also to Islamic Shari'a. The secretary general of HUDA (Himpunan ulama Dayah Aceh), Teungku Faisal Ali, charged the contest with violating the implementation of Shari'a in Aceh.<sup>88</sup>

Due to these severe protests, the organizing committee sent a letter of apology to the MPU of Banda Aceh and to the media, arguing that the contest was a last-minute idea among the transsexuals, and not planned.

It was actually not the first event, since there had previously been an event called 'Miss Transsexuals for Concern about HIV/AIDS' (Pemilihan Waria Peduli HIV/AIDS) in 2009, held during the commemoration of VG's birthday.<sup>89</sup> However, this event did not trigger controversy because it was not covered by the media.

Indeed, there have been many other social activities, such as "LGBT Aceh Peduli Bencana" (Acehnese LGBT for disaster relief) soon after the disasters of Mentawai and the Merapi volcano eruption. They also commemorate IDAHO (international day against homophobia) every year. Moreover, the VG in particular is also actively engaged in building networks through social media.

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<sup>87</sup> Personal communication with Prof. Muslim Ibrahim, the then chairperson of MPU of Aceh province, Banda Aceh, 2010. He said that he phoned the chairperson of MUI of Banda Aceh directly, and the latter told him about the cheating.

<sup>88</sup> Azhari, "Kontes Waria di 'Negeri' Bersyariat," [www.antaranews.com/berita/1266393795/kontes-waria-di-negeri-bersyariat](http://www.antaranews.com/berita/1266393795/kontes-waria-di-negeri-bersyariat); accessed 2 October 2012.

<sup>89</sup> Interview with Ichall and Echa, Banda Aceh, 21 July 2010.

## Queer and Shari‘a

For most LGBT people, accepting themselves as LGBT takes a long time. In the first phase, they usually find it difficult to accept themselves and feel they will be condemned by God. Most of them have tried to conform to the heteronormativity, but they simply cannot make this work. They have come to the conclusion that being LGBT is God’s decision (*taqdir*). They interpret *fitrah*, which is usually understood from a heteronormative perspective, as being what God has decided for them upon their creation. God has created them as LGBT people.<sup>90</sup> They interpret the Quranic story of Lut (Lot) and the people of Sodom differently. While the majority of Indonesian’s believe that the people of Sodom were destroyed by God because of their same-sex behaviour, LGBT people believe that they were destroyed because they disobeyed God and His prophet; not because of their sexual orientation.

It is important to consider the views of the participants of Miss Transsexual Aceh 2010 relating to Shari‘a. When questioned about transsexuality in the context of Shari‘a implementation, Joy, a 19-year-old transsexual from Central Aceh district, loudly declared: ‘The application of Islamic law in Aceh is not in accordance with the wishes of the people because many people in Aceh are still violating Shari‘a, especially during Ramadan when they are not fasting and commit adulterous affairs’.<sup>91</sup>

Another participant, Cut Nyak, from Pidie district, views Shari‘a law as a ‘tool applied in Aceh to manage the public because the majority of Acehnese were Muslims’. She also added that she supported the implementation of Shari‘a in the province. Like Cut Nyak, Alin, 23-year-old from Lhokseumawe, said: ‘I will follow the law of Islamic Shari‘a because I live in Aceh’. However, she and many others like her have their own notions about following Shari‘a, which are not always in line with the *ulama*. They have a different way of experiencing religion.

Zifana said that they are very careful in dealing with the issue of Islamic Shari‘a law. She suggests that a special forum is needed in Aceh to try and find some middle-ground over this matter.<sup>92</sup>

## Queer and *Qanun Jinayat*

The previous *qanuns* related only to gambling, drinking alcohol, *khalwat* (illicit relations between men and women in seclusion) and Islamic symbols (*syiar*); they have never included

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<sup>90</sup> Interview with Ichall and Echa, 21 July 2010.

<sup>91</sup> Nurdin Hasan, “Under the Shadow of Shari‘ah Law.”

<sup>92</sup> Hasan, “Under the Shadow of Shari‘ah Law.”

the issue of LGBT. This situation confused the Shari'a police when they dealt with transsexuals or other queers. The previously mentioned *Qanun Jinayat*, passed by the parliament in 2009, aimed at, among other things, limiting the LGBT in Aceh by setting up punishment for actions commonly associated with LGBT persons, such as *liwat* (sodomy or male same-sex activity), and *musahaqah* (tribadism – female same-sex activity). LGBT groups were worried about these articles in the *qanun*, because they were a direct threat to their existence. Indeed, this was the reason why they became involved in the movement challenging the draft *qanun*, in particular through the *Jaringan Masyarakat Sipil Peduli Syariah* (JMSPS).

The Governor's refusal to ratify the draft *qanun* yielded some relief for the LGBT people and groups. Yet, it is possible that in the future the draft *qanun* will be discussed again in the Aceh parliament and signed by both the parliament and the governor. Indeed, the demand for such a *qanun* has been strong.

Despite various Shari'a law restrictions, LGBT in Aceh have survived. They have even actively organized themselves, anticipating possibly greater discrimination and violence in the name of *adat* (customary law), Shari'a law or for other reasons. They are even more active than many other LGBT groups in other regions, perhaps with the exception of Bali, Yogyakarta and Jakarta. However, with an absence of LGBT intellectuals who are expert in Islam, the production of LGBT Islamic knowledge relevant to the context of Aceh is difficult, even though they can ask other intellectuals to speak for them. The possible enactment of *Qanun Jinayat* in the future would be a great challenge to their existence in the region.

## **6: SUFIS AND THE NEGOTIATION OF SPIRITUAL SPACE (THE CASE OF AMRAN WALY'S NEO-SUFISM MOVEMENT)**

Aceh has long history of Sufism, dating back to the early spread of Islam in the region before the thirteenth century. Anthony H. Johns argued that it is through Sufism that Islam was first introduced to Aceh and other Southeast Asian regions.<sup>93</sup> There has been a long history of contestation between Shari'a-oriented *ulama* and Sufism-oriented *ulama*, at least since Nuruddin Ar-Raniry (d. 1658) attacked Hamzah Fansuri's (d. 1590) and Nuruddin Sumatrani's (d. 1630) *tasawwuf* (Sufism) teachings during the reign of Iskandar Thani in the seventeenth century (1636-1641) and ordered their books to be burned. Although Abdurrauf

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<sup>93</sup> Anthony H. Johns, "Islamization in Southeast Asia: Reflections and Reconsiderations with Special Reference to the Role of Sufism," *Southeast Asian Studies*, Vol. 31, No.1, June 1993, 43-61.



al-Sinkili tried to reconcile Shari'a and *tasawwuf* (Sufi), the contestation between the two kinds of *ulama* continues in Aceh today.<sup>94</sup>

The overwhelming Shari'atization project of the last decade has resulted in exoteric Islam dominating almost all public spheres in Aceh. This trend has marginalized the spiritual or Sufi movements and way of life. However, this does not mean that spiritual Sufi movements do not exist in Aceh. There are both traditional and neo-Sufi movements that have tried to create their own spaces.

### **Traditonal Sufi Orders and Neo-Sufi Groups**

There are traditional Sufi (*tasawwuf*) orders in contemporary Aceh, such as Naqshabandiyah, Sadhaliyah, Qadiriyyah wa Naqshabandiyah (TQN) and Naqshabandi Haqqani, as well as neo-Sufi groups, such as Majelis Tasawuf Hamzah Fansuri and Majelis Pengkajian Tauhid Tasawuf (MPTT).

The Qadiriyyah wa Naqshabandiyah (TQN), whose headquarters is located in Tungkop, Aceh Besar, is led by Tgk. Sulfanwandi Hasan. It organizes *pengajian* and *dhikr* (remembering God) every Thursday evening in the mosque of the *dayah* (traditional boarding school) Yayasan Raudhatul Qur'an Darussalam, which he leads.<sup>95</sup> Most of the audiences come from the urban society of Banda Aceh. The *pengajian* usually emphasizes soul purification by way of *dhikr*, rather than Shari'a bylaws. According to Tgk. Sulfan, Muslims can enjoy religion by practising *dhikr*, and not by implementing laws in the form of *Qanuns*. *Dhikr* is spiritual food for humans that should be fulfilled so that human spirituality survives. Therefore, it is Islamic spirituality and not Islamic laws that should be revived.<sup>96</sup>

Naqshabandi Haqqani of Aceh is led by Teungku Muhammad Zamhuri al-Hafizh (as *khalifa*), one of the *imams* of the Baiturrahman grand mosque, Banda Aceh. Teungku Zamhuri led *dhikr* every Wednesday night at the mosque of Gampong Lambhuk Banda Aceh, conducted after the *Isha'* prayer. This regular *dhikr* practice is usually attended by about 20 people, coming from Lambhuk and surrounding villages. In post-tsunami 2004, Teungku Zamhuri and his disciples coordinated donations from the members (*jamaah*) of Nashbandi Haqqani from around the world for the survivors. The peculiarity of this Sufi order is that it

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<sup>94</sup> Amirul Hadi, *Islam and State in Sumatra: A Study of Seventeenth-Century Aceh*, Leiden, etc.: Brill, 2004, 148-161.

<sup>95</sup> *Dhikr* is an activity of remembering God by reciting His name (Allah) or another 99 names, known as *al-asma' al-husna* (beautiful names), such as al-Rahman (the Compassionate) and al-Rahim (the Merciful), repeatedly and frequently. Different Sufi orders have different ways of practicing *dhikr*.

<sup>96</sup> Communication with Sehat Ihsan Shadiqin, who sometimes attended the *pengajian* of TQN, 5 January 2011.

uses music, called in Aceh '*rapai*', in the process of *dhikr*. Using *rapai* music for *dhikr* is unusual in Aceh, because most Shari'a-oriented *ulama* consider music forbidden in religion, let alone in *dhikr*. However, Teungku Zamhuri views *rapai* as a medium for making the heart peaceful and for concentrating on *dhikr*. He believes that the Sufis in the past used music for *dhikr* to aid concentration. Concerning Shari'a, Teungku Zamhuri said that implementation of Shari'a as it is today will not bring people closer to God. For him, God should be approached by *dhikr* and good deeds to others.<sup>97</sup>

There are also neo-Sufi groups that emphasize spiritual aspects of Islam, Majelis Tasawuf Hamzah Fansuri and Majelis Pengkajian Tauhid Tasawuf (MPTT). Majelis Tasawuf Hamzah Fansuri is led by Abu Alimin, the head of *dayah* Hamzah Fansuri of Ujong Pancu. Unlike other *dayah*, the students of *dayah* Hamsah Fansuri come at night, sleep there after studying and go home in the morning. What is taught there is not the science of *shari'a*, but rather of *haqiqah* (substance of God) and of *ma'rifah* (spiritual knowledge of God). Some *ulama* accuse Abu Alimin of spreading Hamzah Fansuri's teaching of *wahdat al-wujud* (union with God), which is considered by mainstream Acehnese *ulama* as 'deviant'. Abu Alimin is not interested in Shari'a *Qanuns*.<sup>98</sup> Further we will focus on the Majelis Pengkajian Tauhid Tasawuf.

### **Abuya Syaikh Amran Waly and Majelis Pengkajian Tauhid Tasawuf**

The Majelis Pengkajian Tauhid Tasawuf (MPTT) is a neo-Sufi movement led by Abuya Syaikh Haji Amran Waly al-Khalidy, one of the sons of the most important Sufi leader of modern Aceh, Abuya Syaikh Muhammad Waly al-Khalidy, known as Syaikh Muda Waly,<sup>99</sup> and leader of Dayah Darul Ihsan of Labuhan Haji, South Aceh. MPTT has established its branches in more than 13 districts in the region, and has attracted many Malaysian Muslims as well, especially in Terengganu, where the MPTT-inspired institution Ikatan Pendidikan Tauhid Tasauf (IPTAF – Association of Tauhid Tasawuf Education) was established.<sup>100</sup> The MPTT organized its first Muzakarah Ulama (Ulama Conference) in Meulaboh, on 9-10 March 2010, attended by its followers from various parts of Aceh and Malaysia. It was

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<sup>97</sup> Sehat Ihsan Shadiqin, "Tasawuf dalam Wilayah Syariat: Sufisme dalam Masyarakat Aceh Kontemporer," *Jurnal Ar-Raniry*, No. 86, July-December 2009, 76-94.

<sup>98</sup> Shadiqin (2009), 80-5.

<sup>99</sup> On Abuya Syaikh Muda Waly, see Teungku Muhibbuddin Waly, *Maulana Teungku Syeikh Haji Muhammad Waly al-Khalidy: Ulama Besar Aceh dan Perannya dalam Pembangunan Pendidikan*, Jakarta: Intermasa, 1997.

<sup>100</sup> Interview with Ustaz Mustaffa Kamal bin Hamzah, head of Ikatan Pendidikan Tauhid Tasauf (IPTAF) Terengganu, Malaysia, in Meulaboh, 9 March 2010.

supposed to be a Sufi conference, until the Majelis Permusyawaratan Ulama (MPU), the state *ulama* institution, intervened and enforced Shari‘a-oriented programmes, replacing the original, Sufi oriented ones. But the MPTT members organized unofficial Sufistic programmes, held after the *Subh*, *Maghrib* and *Isha*’ prayers, as a hidden resistance to the intervention of the state’s Shari‘a-oriented *ulama*. During my participation observation, I regularly heard resistance discourses regarding official Shari‘atization.<sup>101</sup> In general, they view that the *Qanuns* and other official Shari‘a discourses have neglected the richness of the esoteric dimensions of Islam. The completeness of Islam is not measured by its translation of exoteric aspects of Islam into state laws and regulations, but rather, it is measured by the esoteric dimensions of Islam into Muslim individual religiosity practices, without disregarding the exoteric ones.

Abuya Amran Waly’s and MPTT’s open polemics with the Shari‘a *ulama* began in the beginning of 2009 when it requested the support of Majelis Permusyawaratan Ulama (MPU), an official Shari‘a *ulama* institution established by the state, and also the MPU’s permission to arrange a Southeast Asian congress on ‘*Tauhid-Tasawuf*’, the term used by MPTT, in Banda Aceh. All public events in Aceh must seek permission not only from the police, but also from the MPU. MPTT failed to get the MPU support. MPU did not give support and permission because, as said in its letter, it did not know the teachings of Abuya Amran Waly taught in the MPTT. Consequently, the MPTT invited the MPU to attend its regular *pengajian* (religious learning gathering). But no MPU members attended. It seems that the MPU did in fact know Amran Waly’s teachings and had some thoughts about them, not least doubts about their legitimacy.

A more serious problem between Amran Wali and the Shari‘a *ulama* occurred when Amran Waly published a small book, entitled *Ajaran Tauhid-Tasawuf Abuya Syekh H. Amran Waly & Penjelasan beberapa ucapan Abdul Karim al-Jili dalam Kitabnya al-Insanul-Kamil fi Ma‘rifatil-Awakhir wal-Awa’il* (The teaching of *Tauhid-Tasawuf* by Abuya Syekh H. Amran Waly and Commentary on Some Statements of Abdul karim al-Jili in his book *al-Insanul-Kamil fi Ma‘rifatil-Awakhir wal-Awa’il*) in November 2009.<sup>102</sup> The book was controversial since it explains a number of Sufistic statements by the Sufi master Abdul Karim al-Jili, which many Shari‘a *ulama* considered were expressing the teaching of *wahdat*

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<sup>101</sup> Participatory observation during the Muzakarah Ulama, Meulaboh, West Aceh, 9-10 March 2010.

<sup>102</sup> Abuya Syekh Amran Waly, *Ajaran Tauhid-Tasawuf Abuya Syekh H. Amran Waly & Penjelasan beberapa ucapan Abdul Karim al-Jili dalam Kitabnya al-Insanul-Kamil fi Ma‘rifatil-Awakhir wal-Awa’il*, Pimpinan Pusat Pengkajian Tauhid Tasauf Aceh, (9 November 2009).

*al-wujud* (unity of existence between men and God). Tgk Ibrahim Bardan, well-known as Abu Pantan, and the MPU of North Aceh arranged a meeting in the former's Dayah Malikussaleh, Pantonlabu, North Aceh, on 15 May 2010, in order to discuss Amran Wali's book. The meeting concluded that the content of the book is dangerous for people's belief and that it could lead to *wahdat al-wujud*. He called on the people to hand in their copies of Amran Waly's book to the MPU in order to be burned.<sup>103</sup> The charges levelled at them by the *ulama* were rejected by Amran Waly and MPTT.

Since this incident, Amran Waly has been actively seeking political patronage. His first political patron was the *bupati* (regent) of West Aceh (Meulaboh), Ramli MS, who was also seeking religious legitimacy. Ramli was controversial because of his Shari'a policy concerning women's clothing. He issued Regent Regulation (Peraturan Bupati) No. 5/2010 that forbids women to wear trousers. He was criticized by many activists and Muslim intellectuals. Some *ulama*, such as Alyasa' Abubakar, told me that the regent regulation is not necessary. They said that the traditional clothing for Acehnese women is actually trousers. In such a situation, the legitimacy of a charismatic religious leader such as Amran Waly was needed. This alliance is reflected in the slogan of Meulaboh as 'the city of *Tauhid-Tasawwuf*'. It was named after the MPTT.

The alignment with the regent of West Aceh enabled Amran Waly to arrange the *Mudhakarrah Ulama* (Ulama Congress). Regent Ramli supported the *Mudhakarrah* politically and financially. The MPU then issued its permission but with strict conditions. The most important conditions were that the Congress, which was called Mudzakarah Ulama, should not be held in Banda Aceh; its programme should be changed to a Shari'a congress, rather than a *Tauhid-Tasawwuf* congress; Amran Waly should not give a speech; and participants from outside Aceh should not give speeches either.

MPTT organized its first Muzakarrah Ulama (Ulama Conference) in Meulaboh on 9-10 March 2010, attended by Amran Waly's followers from various towns in Aceh, and Indonesia, and from Malaysia, especially Trengganu. Although it was changed into a Shari'a Congress, as previously mentioned, the MPTT members organized unofficial Sufistic programmes after the *Subh*, *Maghrib* and *Isha'* prayers, as a way of resisting the intervention of state Shari'a-oriented *ulama*. During my participation observation, I heard many discourses that rejected official Shari'atization. There was a feeling of being oppressed by the Shari'a *ulama* and the government with its 'simplistic' policies, as they saw it, of

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<sup>103</sup> "MPU Larang Peredaran Buku Syeh Amran Wali," *Serambi Indonesia*, 26 November 2009.

Islamization as formal Shari‘atization. They believe the *Qanuns* and other official Shari‘a discourses have neglected the most fundamental aspect of Islam, i.e. its esoteric dimension. They see the implementation of Shari‘a in Aceh today as trivial and artificial, because it does not touch on the substantive aspects of Islam.

Since the congress, MPTT has been actively seeking political support from various district authorities in Aceh. During this period, approaches were made between Amran Waly and the regent of Abdy, Akmal Ibrahim, who wants to run the regent of Abdy for the second time, and the South Aceh regent, Husein Yusuf, who was seeking to legitimize the religious image of his governance. Approaches were also made to the authority of Pidie. On 1 June 2011, Abuya Amran Waly gave a speech in al-Falah grand mosque of Pidie, attended by the vice regent and other regency officials. Like West Aceh, the local government of Pidie needs the religious legitimacy that Amran Waly and MPTT can provide. It seems that such mutual relations of political and religious legitimacies will develop in the future, in accordance with the local leader elections (*pilkada*) that will be held in the Aceh province and in some districts or cities. Amran Waly and MPTT do not usually consider such relations to be political, but rather *da‘wah* (religious call) activities relating to all elements of society and government officials.

### **Critique of Shari‘atism**

Amran Waly’s critical views of Shari‘a are typical of the Sufism view of the exoteric teachings. He does not oppose Shari‘a as such, but he suggests focusing on the more advanced stages of *Haqiqah* (true reality) and *ma‘rifah* (knowledge of the Divine). *Tasawuf* would cleanse the heart of all relations other than that with Allah. With a cleansed heart, affection follows, and good relations with God and with all fellow creatures on earth would be protected. ‘Performing Shari‘a without *haqiqah* (divine reality) would lead to *fasiq*. *Fasiq* would lead to hypocrisy. Hypocrisy causes *fitnah* (chaos) and many problems which creates destruction in this world’.<sup>104</sup> Moreover, Shari‘a is aimed at eliminating *shirk jali* (apparent polytheism), and *haqiqah* eliminating *shirk khafi* (hidden polytheism).<sup>105</sup> That is to say, that eliminating hidden polytheism is harder than eliminating apparent polytheism and that Shari‘a is the basic foundation, which requires a higher religious experience of divine reality. This means that privatized religious experience is better than a public appearance of

<sup>104</sup> Amran Waly, *Ajaran Tauhid-Tasawuf*, 8.

<sup>105</sup> Amran Waly, “Soal-jawab seputar Tauhid-tasawuf Abuya Syech Amran Waly”, brochure dated 10 October 2009.

religiosity. My experience socializing with members of the MPTT during the *Mudzakarah* and some meetings with MPPT's members afterwards, has informed me that what is called 'amal (deed) is a spiritual exercise rather than a social service. Their social services are usually related to spiritual practices. They are generally critical of what they called the 'qanunization of shari'a'. Shari'a is divine and qanunization of it could trivialize it and could even hinder the path to the spiritual realm and to deeper knowledge of God.

## **7: CONCLUSION**

Due to the fact that Shari'a in Aceh is protected by law, most Acehnese critical actors do not confront, at least openly, Shari'a. This does not mean, however, that there is no 'space', however limited, for proposing a reinterpretation of Shari'a. In this regard, the Shari'a *Qanuns* are regarded as only one version of Shari'a, a version that is 'etatist'. In fact, there are other possible interpretations circulating in society. Progressive Muslim intellectuals, feminists, queers and Sufis have tried to challenge the official Shari'a in their own way and introduce alternative interpretations, which are more inclusive, pluralist, and liberating. There have been relations and networks between progressive Muslim intellectuals, feminists and queers, but not between these groups and the Sufis. The four groups have contributed to the creation of a more democratic Aceh. However, Shari'a in Aceh is still involved in an on-going process and no one can yet predict how this will end. The alternative voices of progressive Muslim intellectuals, feminists, queers and Sufis have negotiated their understanding of Shari'a and what officialized Shari'a should be. In this way, they have developed 'alternative politics' and created non-Shari'a spaces. They are, however, still elitist and minor, compared with the totalizing forces of Shari'a both in society and government and parliament. Despite this fact, without their active role, the future of democratization in Aceh will not be realized. Nonetheless, one should not imagine democracy in the Western way, which marginalizes religion, because, if this should happen, it would be democracy in Islamic garb, if not Islamic democracy. Indeed, we should think in terms of there not being a single democracy, but rather plural democracies.

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Interview with Andi Mahdi, Banda Aceh, 15 July 2010.

Interview with Fuad Mardhatillah UY Tiba, Banda Aceh, 16 July 2010.

Interview with Hasan Basri M Nur, Banda Aceh, 9 July 2010.

Interview with Laila Juari, women's movement activists, 20 July 2010.

Interview with Siti Maimunah, women's movement activists, 20 July 2010.

Interview with Novendra Djamal, head of KSAF and activist of Prodeelat, Banda Aceh, 15 July 2010.

Interview with Echa, queer activists of Violet Grey, 21 July 2010.

Interview with Destika Gilang Lestari, human rights activist and activist of Network of Civil Society Concerned with Shari'a, 20 July 2010.

Interview with Teuku Safir Iskandar Wijaya, 9 July 2010.

Interview with Basan Basri M. Nur, 9 July 2010.

Interview with Ustaz Mustaffa Kamal bin Hamzah, head of Ikatan Pendidikan Tauhid Tasauf (IPTAF) Terengganu, Meulaboh, 9 March 2010.

Interview with Prof. Dr. Rusydi Muhammad, Banda Aceh, 20 February 2009

Interview with Dr. Nurjannah Ismail, Banda Aceh, 21 February 2009.

Interview with with Suraiya Kamaruzzaman, February 2009.

Interview Prof. Muslim Ibrahim, chairperson of provincial Majelis Permusyawaratan Ulama, February 2009, and 24 July 2011.

## **APPENDIX**

### **Aceh Charter for the Women's Rights**

We the signatories of the Aceh Charter for the Women's Rights, believe:

that the equitable treatment of women is in accordance with the fundamental principles of Islam - justice, consensus, equality, tolerance, piety and peace – so that violation of these values constitutes a violation of the values of Islam, which brought peace and blessings into the world;

that the main objective of the existence of a state is to materialize protection, justice and prosperity for the people;

that in the endeavour to materialize the protection, justice and prosperity, male and female citizens are main resources;

that it is time for Aceh to respond to the complex problems facing women through policies and regulations – particularly through legal products that promote justice – designed to encourage protection, development, recognition and the fulfillment by the State of the rights of women so as to provide the foundation for the development and empowerment of a just and equitable society;

that the protection, enhancement, acknowledgement, and fulfillment of women's rights can be seen from, among other things, the extent to which the government guarantees the open access for women in gaining equal and just recognition, respect, and treatment in all fields of life.

Therefore, there should no longer be any effort to downgrade and marginalize the roles of women in all fields of life, because women are citizens who have the same dignity as men.

We the signatories support and recognize that the content of the Aceh Charter for the Women's Rights constitutes a form of basic recognition for the protection and fulfillment of women's rights in Aceh.

In the name of justice, human progress, and common good for wives, daughters, sisters, and mothers in Aceh, we call all elements of society for recognizing, honouring, and implementing the charter in all levels of prevailing policies and regulations in Aceh.

Banda Aceh, 11 November 2008

1. Irwandi Yusuf (Governor)
2. Sayed Fuad Zakaria (chairperson of the parliament of Aceh)
3. Prof. Dr. Tgk. H. Muslim Ibrahim (chairperson of Ulama Deliberation Council)
4. Mayor general Soenarko (regional military commander of Iskandar Muda)
5. Inspector General Police Drs Rismawan, MM (head of the provincial police of Aceh)
6. Yafizam, SH (head of the provincial attorney office)
7. Badruzzaman, SH, M.Hum. (chairperson of Acehese Custom Council)
8. Drs. H. M. Saleh Puteh, SH (head of Shari'a Court of Aceh province)
9. Dra. Hj. Rayhan Putry, M.Pd. (chairperson of Women's Empowerment and Children Protection Board of Aceh province)
10. Marcus Lange (team leader of GTZ Good Governance in Population Administration)
11. Darwati A. Gani (head of Family Prosperity Empowerment Team of Aceh province)
12. Tgk. H. Muhammad Faisal Ali ([representative of] drafting team of the Aceh Charter for the Women's Rights).

Supported by:

1. Komite Muhammadiyah untuk Pemulihan Aceh (KMPA)
2. Annisa Centre
3. Perserikatan Solidaritas
4. Perempuan Bungong Jeumpa Komunitas Aceh
5. Radio Komunitas Suara Perempuan

6. Kelompok Kerja Transformasi Gender Aceh (KKTGA)
7. Rabithah Taliban Aceh (RTA)
8. Perum LKBN Antara Biro Aceh
9. Badan Koordinasi Organisasi Wanita Provinsi Aceh (BKOW Aceh).
10. Yayasan Bungong Jeumpa.
11. Seulusoh
12. Yayasan Pelita
13. GERAK Aceh
14. Pusaka Indonesia
15. Forum LSM Aceh
16. Koalisi NGO HA
17. Beujroh
18. Komite Perempuan Indonesia
19. Perempuan untuk Solidaritas Aceh (PUSA)
20. ICMi Provinsi Aceh
21. Yayasan Sambinoe
22. Yayasan Sri Ratu Safiatuddin
23. Yayasan Ratu Nirhasyiah
24. KPPI
25. KPAID Provinsi Aceh
26. IWAPI Provinsi Aceh
27. Jaringan Perempuan untuk Kebijakan (JPUK)
28. LBH Banda Aceh
29. LBH Apik Aceh
30. Pusat Studi Gender IAIN Ar-Raniry
31. PUSHAM Universitas Syah Kuala
32. Binkara Radio
33. Antero Radio
34. Aceh TV.

(Source: Banner of Aceh Charter for the Women's Rights at Ratu Safiatuddin Square, Banda Aceh)

# CULTURAL RESISTANCE TO SHARIATISM IN ACEH

Reza Idria

## 1: INTRODUCTION

It is impossible to talk about the roots of the implementation of Sharia<sup>1</sup> in contemporary Aceh, a province situated in the western part of the Indonesian archipelago, without referring to the political situation in Indonesia after the fall of General Suharto. Political turbulence brought to an end the New Order government — the longest ruling regime in the modern history of Southeast Asia — 21 May 1998. The dramatic resignation of Suharto, followed by the independence of Timor Leste, caused a serious challenge to the unity of the Republic. Some provinces also demanded referendums (on either remaining in the Republic or becoming fully independent) including Aceh, Papua, Banten, Maluku and Riau.

In Aceh, soon after the collapse of the Suharto regime, a series of demonstrations took place demanding a referendum to further their desire for secession from the Republic.<sup>2</sup> A separatist group, the Free Aceh Movement (Gerakan Aceh Merdeka/GAM), gained in popularity.<sup>3</sup> Since the arrival of the reformasi era throughout Indonesia in 1998, GAM had been increasing its rebellious activities in many parts of Aceh. Needless to say, the GAM soldiers had much to benefit from the unstable political situation at the national level. A series of guerilla attacks on the Indonesian army, as well as massive propaganda about the coming era of independence in Aceh, promoted its cause. The loss of Timor Leste after the referendum forced the Government of Indonesia to find another ‘soft’ solution. The central

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<sup>1</sup> Sharia is an Arabic term, literally meaning ‘path to water’ and in the religious sense (Islam) means ‘duty to God’. Cf. M.B. Hooker, *Indonesian Syariah: Defining a National School of Islamic Law*, (ISEAS publishing: Singapore, 2008), p. ix. Sharia normally refers to legal practices or living law as a sort of Islamic way of life on the basis of the two main sources in Islam; the Qur’an and the Hadith. However, the formulation of Sharia differs from one Muslim country to another. In the context of Aceh, Sharia can be an ambiguous term, pertaining to (1) Sharia in the normal sense, i.e. Islamic law; and (2) Sharia in the sense of the government’s policy and regulations in relation to religious matters. The Sharia resistance that is the focus of this paper mainly contests the second term. In short, the resistance to Sharia discussed here is not resistance to Islam and Sharia as such, but rather resistance to the authority’s interpretation and tasks in formulating regional regulations, which they label as Sharia and in accordance with Islamic teachings.

<sup>2</sup> It was on 8 November 1992 that 2 million Acehnese gathered in front of Masjid Raya Baiturrahman, Banda Aceh, to demand a referendum for Aceh. Led by several associations of the Acehnese student activists and SIRA (Centre of Information for the Aceh Referendum), this provocative action forced the central government in Jakarta to take advanced steps to reduce potential chaos.

<sup>3</sup> The Free Aceh Movement (GAM), also known as the Aceh Sumatera National Liberation Front (ASNLF), was declared by Hasan Muhammad di Tiro in 1976. About the early formation of this rebellious movement, see Hasan Muhammad di Tiro, *The Unfinished Diary of Tgk. Hasan Tiro*, (ASNLF, 1981); see also Tim Kell, *The Roots of Acehnese Rebellion 1989-1992*, (Ithaca: Cornell Indonesian Modern Project, 1995). For a comprehensive study about the conflict and the roots of the peace process in Aceh after the tsunami of 2004, see Anthony Reid, *Verandah of Violence, the Background to the Aceh Problem*, (NUS Publishing & Seattle: Singapore University Press & University of Washington Press, 2006).



government thus avoided options on either accepting the Acehese demand for the referendum or again using military oppression to tackle the Aceh case.<sup>4</sup> Both options would provide no benefits to the central government at that time. In particular, the first option could trigger similar demands from other regions. Jakarta might also consider that nearly every Acehese was strongly against the government and supported GAM at that moment. Therefore, religious identity, which is historically and culturally central to the Acehese, became a valuable asset to be exploited by the Indonesian government, just as the first Indonesian president, Sukarno, used it to suppress the Acehese rebellion in 1960s.<sup>5</sup> Understanding the political situation, both in the past and the present, will lead us to know why some Acehese Muslims are now fighting against ‘Islamic law’.

To understand why the Sharia proposal became an integral part of the response to the political situation in Aceh, particularly after the fall of Suharto, one must look closely at the activities of the Free Aceh Movement during the war. Although many researchers argue that GAM had already been transformed into non-religious movement,<sup>6</sup> it was clear in the time of conflict that many local GAM combatants tried to convince the people of Aceh that their struggle was a struggle along the path of God (*jihad fi sabilillah*), one that sought to bring a victory for Islam in Aceh.<sup>7</sup> It was important for GAM to reject being labelled as an Islamic separatist group if they wanted to gain international support; however, at the local level they needed Islam to gain adherents. It is evident that the contradiction and ambiguity of GAM

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<sup>4</sup> In order to quash the GAM rebellion, Suharto pronounced Aceh to be a Military Operation Zone (DOM). During the DOM 1989-1998, some regions of Aceh such as Pidie, Aceh Utara (the North of Aceh) and Aceh Timur (the East of Aceh) had become mass killing fields. Thousands of people had been killed, raped and tortured. See, Al-Chaidar, *Aceh Bersimbah Darah: Mengungkap Penerapan Status Daerah Operasi Militer (DOM) di Aceh 1989-1998* (Jakarta: Pustaka Al-Kautsar, 1998). Later on, President Megawati was responsible for human rights violations in the region after she declared martial law in the province of Aceh in 2003.

<sup>5</sup> As in 1953, Aceh started to confront the Indonesian government. Teungku Daud Beureueh led the struggle and declared Aceh to be part of the Darul Islam or Negara Islam Indonesia (the Indonesian Islamic State) under the Imam SM Kartosoewiryo. The conflict ended after Sukarno offered Aceh special status, including local government rights to implement Islamic law. See, Nazaruddin Sjamsuddin, *The Republican Revolt: a Study of the Acehese Rebellion*, (Institute of Southeast Asian Studies, 1985). See also C. van Dijk, *Rebellion under the Banner of Islam: the Darul Islam in Indonesia*, (The Hague: M. Nijhoff, 1981).

<sup>6</sup> About the notion of transformation of the rebellious movement, see for example in Edward Aspinall, *Islam and Nation: Separatist Rebellion in Aceh, Indonesia*, (California: Stanford University Press, 2009), see also Kirsten E. Schulze, *The Free Aceh Movement (GAM), Anatomy of a Separatist Organization*, (Washington DC: East-West Center, 2004). The European-based GAM leaders, mainly in Sweden and Norway, objected to the use of the terms Islam and Jihad and showed their hesitance to applying Sharia law in Aceh. Most of them used terms such as ‘historical consciousness’ (*kesadaran sejarah*) or ‘historical duty’ (*tugas sejarah*) if asked about the spirit behind the struggle for independence. However, according to some interviews I conducted prior to the Helsinki peace agreement, many local combatants stressed in public their convictions about Jihad and a victory for Islam as their goal for independence.

<sup>7</sup> However, one could also argue that the form of Jihad as understood by GAM differs from the Acehese Jihad that was waged against the Dutch during the colonial era. About this notion, see for example in James T. Siegel, “The Curse of the Photograph: Atjeh 1901”, in *Indonesia*, no. 80 (October, 2005), pp. 21-38.

propaganda were taken into consideration by the central government when formulating a counter strategy to delegitimize the rebellion.

Thus, the central government proposed a special approach to the province of Aceh. The government first issued the law (UU) No.44/1999 on the special status of the province of Aceh, concerning religion, *adat* (custom) and education. This was followed two years later by the issuance of the law UU No.18/2001. The latter granted special autonomy for Aceh and allowed Sharia to be implemented.<sup>8</sup> These new regulations granted broader powers to the provincial government to implement the so called ‘comprehensive Islamic Law’ or Sharia (*Syari’at Islam*) and the special right to establish a Sharia Court (*Mahkamah Syari’ah*) and the Official Department of Sharia (*Dinas Syari’at Islam*). It also changed the name of the province from Aceh to Nanggroe Aceh Darussalam. According to some local elites, the new name sounds more Islamic, peaceful and independent. Unfortunately, these new regulations and status contributed nothing to stopping the conflict.

## **2: SHARIA FOR A DECADE: A VIEW FROM WITHIN**

Since 2001, Sharia and the indefatigable conflict between Aceh and Jakarta have been intertwined. However, according to many Acehnese, God eventually sent his hand to stop the war.<sup>9</sup> The earthquakes and tsunami on 26 December 2004 changed the political situation in the region. On 15 August 2005, in Helsinki, Finland, the Free Aceh Movement and the Indonesian government signed a memorandum of understanding (MoU), ending one of the bloodiest conflicts in Southeast Asia. Damien Kingsbury wrote a chronological story of the peace process in Helsinki, describing the negotiations round by round. It shows clearly that there was no talk about Sharia.<sup>10</sup> Nonetheless, the implementation of Sharia, although it had no significant contribution to ending the conflict, had already been promulgated in the Undang-Undang Pemerintahan Aceh/UUPA (the Law on Aceh Governance) after the Helsinki proposal. The central government legalized the UUPA on the basis of the law UU no. 11/2006. Broadly speaking, after the Helsinki MoU and the enforcement of the Law on

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<sup>8</sup> See, Taufik Adnan Amal & Samsu Rizal Panggabean, *Politik Syariat Islam dari Indonesia sampai Nigeria*, (Jakarta: Pustaka Alvabet, 2004), pp. 26-29. According to the law no. 18/2001, special autonomy for Aceh includes redistribution of revenues, reformation of the government structures and Islamic law.

<sup>9</sup> See my work “Muslim Theological Perspectives on Natural Disasters: The Case of Indonesian Earthquakes and Tsunami of 2004”, MA Thesis submitted to Leiden University, 2010.

<sup>10</sup> Damien Kingsbury was GAM political adviser during the peace talks in Helsinki, Finland. See, Damien Kingsbury, “The Aceh Peace Process,” in Arndt Graf et al, *Aceh: History, Politics and Culture* (Singapore: ISEAS Publishing, 2010), pp. 135-156.

the Aceh Governance (UUPA), Sharia has been handed over to the Aceh provincial government. The central government has transferred a ‘tool’ to local authorities.

Meanwhile, the tsunami recovery process and the peace in Aceh attracted an international presence to the region. Interestingly, the first public caning took place in 2006, but it did not draw international attention to the consequences of the implementation of Sharia. Conflict resolution and disaster management preoccupied the minds of people as reconstruction and rehabilitation were underway. Reports about Aceh in local and international media were dominated by news concerning the peace keeping, reconstruction progress and aid transparency. Arguably, Sharia was not an interesting issue for the mass media at that time.<sup>11</sup> Moreover, Irwandi Yusuf and Muhammad Nazar had been elected to become new governor and vice-governor of Aceh. Both are known for their ‘secular’ background, especially Irwandi Yusuf who was a former GAM spokesman. Both men are very much in line with international GAM leaders and their political views, which meant that neither had a particular interest in promulgating Sharia.<sup>12</sup> Following the peace agreement, the Free Aceh Movement has been transformed into a local party, Partai Aceh (PA, The Aceh Party). However, the situation changed soon after many international NGOs left Aceh. The Sharia police, popularly known as WH (*Wilayahul Hizbah*), have announced their presence with wholesale arrests of those violating Sharia regulations (*Qanun*).<sup>13</sup> They have carried out intensive raids on the so-called ‘suspect locales’, secluded places such as beaches, cafes and hotels. This has been followed by the issuance of various prohibitions that, according to the authorities, are incompatible with Sharia, such as celebrating New Year’s Eve, public entertainment, and more. Acehese women are obliged to wear the *jilbab* (head scarf) and are prohibited from wearing tight dresses.

The abuse of Sharia and its relation to the politics of Jakarta can also be traced back to when the Aceh Party won the general election in 2009. Shortly before leaving the parliament building, the members of the exiting Aceh representative council (DPRD Aceh), members of national political parties such as Golkar, PDI-P, PKS and PPP (as opposed to local parties including PA), passed a draft of the *Qanun Jinayah* or the Islamic Penal Law. This law

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<sup>11</sup> I have made initial studies of the archives of Serambi Indonesia, a daily Acehese newspaper dated from 2005-2007. It is difficult to find news concerning Sharia affairs during the time of emergency. News about the disaster rehabilitation and reconstruction dominated.

<sup>12</sup> Ichwan, 2011, *op. cit.*, p. 204.

<sup>13</sup> According to the Aceh Sharia Qanun, public caning is punishment for those who commit the following acts: *khalwat* (sexual retreat), *maisir* (gambling), *khamar* (alcohol consumption). After the issuance of UU no.11/2011, all Acehese government’s regulation are considered Qanun.

includes stoning to death for those who commit adultery and 100 lashes for homosexuality. However, this regulation has been postponed because the governor, Irwandi Yusuf has refused to sign the *qanun*. However, according to the autonomous status, Irwandi Yusuf has no right to intervene in Sharia policy as it has been applied by his regents who govern the provinces subdivisions.

There have been human rights abuses by Sharia officers and regional government officers within Aceh province. For example, two members of the Sharia Police raped and tortured a 20-year-old female student they had in custody on July 15 2010. Furthermore, there are regents who have started to apply controversial regulations in their own regions. As an example, Ramli MS, the regent of West Aceh, issued a *Qanun* forbidding women to wear jeans and ‘tight’ clothing.<sup>14</sup> Thus, Muslim women in West Aceh have been required to wear full-body clothing which does not reveal their figure and only shows their face and palms. Another ‘strange’ regulation was issued by the regent of South Aceh, Husein Yusuf. Oddly, he has prohibited male civil servants from having beards.<sup>15</sup> Since then, local and international media and Human Rights-based NGOs have started to report abuses in relation to the administration of Sharia in Aceh.<sup>16</sup>

Sharia has now been implemented for a decade. Its dynamic appears in the ongoing process of the regulations, some of which we have just mentioned. I should thank many researchers who have already provided critical studies concerning the background of the imposition of Sharia in contemporary Aceh; works such as those by Amal & Panggabean (2003);<sup>17</sup> Kingsbury (2007);<sup>18</sup> Feener & Cammack (2007);<sup>19</sup> Salim (2008);<sup>20</sup> Aspinall (2009);<sup>21</sup> Ramly (2010);<sup>22</sup> Basri (2011);<sup>23</sup> and Ichwan (2011).<sup>24</sup> Most of the aforementioned

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<sup>14</sup> The regulation was issued on 27 May 2010 and applied in West Aceh only. At the provincial level, the Qanun about Muslim dress was issued in 2002 where the article no.13 only stated that every Muslim should wear Islamic dress. It is followed by the explanation of the article no.13 that Islamic dress should cover *aurat*, not transparent and not sensual. There is no subsection that jeans and trousers are forbidden.

<sup>15</sup> Serambi Indonesia, 12 May 2010.

<sup>16</sup> See for example, Human Right Watch, “Policing Morality: Abuses in the Application of Sharia in Aceh, Indonesia”, HRW report 2010, 4 December 2010.

<sup>17</sup> Amal & Panggabean (2004), *ibid*.

<sup>18</sup> “Damien Kingsbury, “The free Aceh Movement: Islam and Democratization”, *Journal of Contemporary Asia*, vol. 37, no. 2, pp. 166-189.

<sup>19</sup> R. Michael Feener & Mark E. Cammack, *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, (Cambridge, Massachusetts: Islamic Legal Studies Program, Harvard Law School & Harvard University Press, 2007).

<sup>20</sup> Arskal Salim (2008) *Challenging the Secular State: The Islamization of Law in Modern Indonesia*. Honolulu: Hawaii University Press.

<sup>21</sup> Aspinall, *op. cit.*, 2009.

<sup>22</sup> Affan Ramly, *Merajam Dalil Syariat*, (Banda Aceh: Bandar Publishing, 2010).

studies have, more or less, indicated how Sharia became a ‘means’ of quelling separatist sentiment.

However, in spite of the works of these scholars there are still many stories left, many accounts to be analyzed and many findings to be discussed concerning the ongoing processes of Sharia in Aceh. The introductions of many of the aforementioned studies have focused on the legal issue of Sharia in Aceh. Only a few examine how ordinary Acehnese perceive Sharia, as Moch Nur Ichwan notes:

Despite growing Shari‘atization processes, however, some developments indicate otherwise. There have been also growing resistances from “progressive circles” such as some Muslim politicians (especially, but not exclusively, ex-GAM), public intellectuals, academics (especially, but not exclusively, of the State Institute of Islamic Studies (IAIN) Ar-Raniry), feminists, queer activists, Shi‘ite intellectuals, literary writers, and human rights activists.<sup>25</sup>

According to Ichwan, the condition has so far been neglected by many researchers. In his own study, Ichwan tries to conceptualize types of Sharia resistance as an ‘alternative voice to shariatization’ in Aceh. Modes of Acehnese resistance to Sharia may vary by education, political views, region, gender and personal disposition.

Ichwan pays attention to intellectual and religious-based group activities when challenging Sharia, which leaves some aspects still unexplored. This paper attempts to provide a more in-depth account of how individuals of less powerful, vulnerable and cultural groups in Aceh respond to the ongoing processes of Sharia, mainly in their daily and cultural activities. By closely examining the Acehnese peoples' activities, I will analyze some forms of cultural resistance to Sharia in Acehnese society, particularly in Banda Aceh. For example, I am impressed that the Sharia authority, the Aceh ulama council, and the local government of Aceh often prohibit things that, according to them, are incompatible with Acehnese culture and Islamic culture (*‘tidak sesuai dengan kebudayaan Aceh dan kebudayaan Islam’*). Within

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<sup>23</sup> Hasan Basri, “Applying Islamic Law (Syari‘at) in Aceh: A Perspective from Within” in in Arndt Graf et al, *Aceh: History, Politics and Culture* (Singapore: ISEAS Publishing, 2010), pp. 265-286.

<sup>24</sup> Moch Nur Ichwan, “Official Ulama and Politics of Re-Islamisation: The Majelis Permusyawaratan Ulama, Shari‘atisation and Contested Religious Authority in Post-New Order’s Aceh,” *Journal of Islamic Studies*, vol. 22, no. 2, pp. 183-214.

<sup>25</sup> Moch Nur Ichwan, 2010, “Alternative Voices to Officialized and Totalized Shariatism in Aceh”, a research in progress report presented at the IRP meeting, the Netherlands Embassy Jakarta, 30 May, 2011. I offer my sincere and special thanks to Dr. Nur Ichwan for fruitful discussions before exploring the topic of this research.

the confines of this study, I would like to examine how some Acehnese people respond to and challenge such prohibitions.

According to social theorists, cultural resistance is the practice of using meanings and symbols to combat a dominant power. The term resistance covers a wide variety of forms of collective actions and may take a defensive form, such as concealment and including the ambiguous form of mimicry, which from above may be read as a mistake, but viewed from below looks more like mockery. In this case, the strategy adopted is ‘defensive’, ‘subversion rather than confrontation’.<sup>26</sup> Moreover, F. Bailey coined modes of resistance such as ‘pilfering, feigned ignorance, sabotage, arson, wangling, fiddling, and dodging’.<sup>27</sup> Although I will pay no attention to groups of peasants or workers in Aceh in this paper, James C. Scott’s concept ‘weapons of the weak’ is helpful in understanding how daily resistance has been expressed by less powerful people.<sup>28</sup> All these concepts are fundamental within this study.

### **3: RESISTANCE TO SHARIA: AN OVERVIEW**

It is important to note that nearly all Acehnese are afraid of being labelled as ‘anti-Sharia’.<sup>29</sup> However, from the very beginning, some elements of Acehnese society have shown their disapproval of the central government proposal to apply Islamic law in Aceh. Prior to the tsunami of 2004, opponents of Sharia could be categorized into two main groups, each with different purposes. The first is a group that was dominated by the traditional Dayah-based Ulama, including Waled Nu, one of the influential Acehnese Muslim scholars who called the proposal on Sharia ‘*cari ‘ab*’ or ‘*tipu Jakarta*’, a deception, and only intended to ignore the Acehnese.<sup>30</sup> In a seminar I had attended, Tgk Nuruzzahri or Waled Nu, a leading figure of the Himpunan Ulama Dayah Aceh/HUDA (the Aceh Ulama Dayah Council) criticized about this matter in his speech in front of the Aceh civil society networks at the Sultan Hotel, Banda Aceh, June 17, 2007. He called “*cari’ab*” (Acehnese words literally means “looking for meal”) and refused to call “Sharia” to the formalization of Islamic law in Aceh. Furthermore, the Dayah Ulama also criticized the government’s version of Sharia for being only a partial understanding of Islamic law. In short, if Jakarta had any interest in showing good will, it

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<sup>26</sup> Peter Burke, *History and Social Theory: Second Edition*, (Cambridge-Malden: Polity Press, 2007), pp. 91-92.

<sup>27</sup> F.G. Bailey, *The Kingdom of Individuals*, (New York-Ithaca, 1993), p. 17.

<sup>28</sup> James C. Scott *Weapons of the Weak: Everyday Forms of Peasant Resistance*, (New Haven: Yale University Press).

<sup>29</sup> Ichwan, *op. cit.*, “Alternative Voice”, p. 5.

<sup>30</sup> See, Rusjdi Ali Muhammad, *Revitalisasi Syariat Islam di Aceh: Problem, Solusi dan Implementasi*, (Banda Aceh: Ar-Raniry Press, 2003).

would allow for a comprehensive Islamic Law, one which is total not partial, called *Syariat Islam Kaffah*. However, according to the Dayah Ulama, the government did the opposite and therefore they rejected the government version of Sharia.<sup>31</sup>

The second group comprised various elements but shared the same view regarding the government proposal. They were politicians (mainly GAM leaders), human rights activists and university intellectuals who saw the implementation of Sharia as a political tool of the government to create horizontal conflict among the Acehnese. For example, according to Nur Djuli, a senior leader of GAM, Aceh had become a centre of Islamic teaching throughout Indonesia. It is ironic, then, that the Indonesian government is now trying to ‘re-Islamize’ Aceh. Djuli argued that this special status is only a government tactic to win the hearts of the Acehnese. Moreover, Djuli said that GAM made no attempt to establish an Islamic state. Ideologically, GAM was motivated by historical consciousness and GAM’s struggle is based on the idea of independence, not religious issues.<sup>32</sup>

For some Acehnese human rights activists, Sharia is a government policy used to conceal the human rights violence in the past.<sup>33</sup> While it is said that professors at IAIN Ar-Raniry and the University of Syiah Kuala were involved in designing the Sharia regulation, others, including intellectuals at a number of other Aceh universities, have shown their opposition to the imposition of Sharia.<sup>34</sup> In 2003, IAIN Ar-Raniry organized a public seminar concerning the issue. Many participants, mainly lecturers, reportedly criticized the Indonesian government decision to end the war by giving Islamic status to Aceh province. One even said that the Sharia is a ‘harassment policy’.<sup>35</sup>

Recently, the Sharia authorities have been concentrating their efforts on the issue of women’s dress, organizing public canings, forbidding public entertainment, as well as issuing many prohibitions concerning private matters. This has provoked counter discourses from those who believe that these regulations do not touch the substance of Islam and Sharia itself. In fact, there have been many books and media articles written by contemporary Acehnese

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<sup>31</sup> See, H. Anwar Fuadi A. Salam, *Dapatkah Syariah Islam diberlakukan di Aceh?* (Banda Aceh: Gua Hira, 2001). However, recently many Dayah-based Ulama have changed their opinion, and many of them now have become the Sharia supporters.

<sup>32</sup> See, Damien Kingsbury, “The free Aceh Movement: Islam and Democratization”, *Journal of Contemporary Asia*, vol. 37, no. 2, pp. 166-189.

<sup>33</sup> Interview with Wiratmadinata (International Center for Transitional Justice-Aceh Program) and Hendra Fadli (Kontras Aceh), 23 March 2011.

<sup>34</sup> See, Otto Syamsuddin Ishak, *Dari Maaf ke Panik Aceh: Sebuah Sketsa Sosiologi-Politik*, (Jakarta: Tifa Press, 2008), p. 358.

<sup>35</sup> See, Lily Zakiah Munir, “Simbolisasi, Politisasi dan Kontrol terhadap Perempuan di Aceh”, in Burhanuddin (ed.), *Syariat Islam: Pandangan Muslim Liberal* (Jakarta: Jaringan Islam Liberal-the Asia Foundation, 2003), p. 131.

intellectuals such as Fuad Mardhatillah,<sup>36</sup> Affan Ramly,<sup>37</sup> Husni Mubarak A. Latief,<sup>38</sup> Teuku Harits Muzanni,<sup>39</sup> Asrizal Luthfi<sup>40</sup> and Teuku Muhammad Jafar Sulaiman.<sup>41</sup> They have criticized this version of Sharia as a ‘top-down policy’ formulated without popular consent.

Furthermore, Irwandi Yusuf’s objection to signing the *qanun Jinayah* is also inseparable from the reaction of Acehnese civil society organizations that demonstrated their resistance to Sharia. After the draft of *qanun Jinayah* was published in the newspapers, a hundred activists from the Jaringan Masyarakat Sipil Peduli Syariat/JMSPS (the Civil Society’s Network concerning Sharia) went to the Aceh Parliament and asked the member of the parliament and the governor of Aceh to stop proposing Sharia *Qanuns* containing human rights violations.<sup>42</sup> JMSPS comprises several local NGOs, such as the Human Rights-NGO coalition, Aceh Legal Aid Foundation (LBH), women volunteers on humanitarian issues (RPUK), Flower Aceh, KKTGA, Komunitas Tikar Pandan, Aceh Judicial and Monitoring Institute, Violet Grey, Women Voice Radio, Gender Working Group, SEIA, Fatayat NU, Sekolah Menulis Dokarim, Kontras Aceh, Center for Human Rights Studies-Unsyiah, Sri Ratu Safiatuddin Foundation and others. The group successfully pushed Irwandi to postpone the implementation of the *qanun Jinayah*.

The decision by politicians, intellectuals, and humanitarian activists to protest and Irwandi Yusuf’s decision to postpone the implementation of the Islamic penal law show that forms of resistance to Sharia are various and exist. But how do ordinary Acehnese, without the backing of any political party, intellectual academy, material and the power of money, resist Sharia?

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<sup>36</sup> Fuad Mardhatillah, “Islam Protestan”, *Journal Gelombang Baru*, vol. 4 (2009), pp. 63-102.

<sup>37</sup> Affan Ramly, *Merajam Dalil Syariat*, (Banda Aceh: Bandar Publishing, 2010).

<sup>38</sup> Husni Mubarak A. Latief, Sengkarut Syariat Atas Bawah, *Journal Gelombang Baru*, vol. 4 (2009), pp. 111-122.

<sup>39</sup> Teuku Harist Muzani, “Syariat Tanpa Simbol,” available at [www.acehinstitute.org/index.php?option=com\\_content&view=article&id=385:syariat-tanpa-simbol&catid=74:paradigma-islam](http://www.acehinstitute.org/index.php?option=com_content&view=article&id=385:syariat-tanpa-simbol&catid=74:paradigma-islam), accessed online on 2 March 2011.

<sup>40</sup> Asrizal Luthfi, “Pribumisasi Syariat”, available online at [www.acehinstitute.org/index.php?option=com\\_content&view=article&id=445:pribumisasi-syariat&catid=74:paradigma-islam](http://www.acehinstitute.org/index.php?option=com_content&view=article&id=445:pribumisasi-syariat&catid=74:paradigma-islam), accessed on 2 March 2011.

<sup>41</sup> Teuku Muhammad Jafar Sulaiman, “Syariat Islam tidak Perlu Dibela” (Negosiasi Pluralisme Sebagai Islam Masa Depan Aceh), available online at [www.acehinstitute.org/id/index.php?option=com\\_content&view=article&id=810:syariat-islam-tidak-perlu-dibela-negosiasi-pluralisme-sebagai-islam-masa-depan-aceh&catid=133:paradigma&Itemid=280](http://www.acehinstitute.org/id/index.php?option=com_content&view=article&id=810:syariat-islam-tidak-perlu-dibela-negosiasi-pluralisme-sebagai-islam-masa-depan-aceh&catid=133:paradigma&Itemid=280), accessed 2 March 2011.

<sup>42</sup> *Serambi Indonesia*, 22 November 2009.



#### **4: SHARIA AND CULTURAL RESISTANCE: VOICES FROM BELOW**

On 31 December 2011, the Aceh ulama council and the mayor of Banda Aceh put an advertisement in the Serambi Indonesia newspaper. The authority prohibited the Acehnese people from celebrating New Year's Eve. They did the same in 2009 and 2010. The threat was that fireworks and trumpets would be seized by the Sharia police. The beach nearby Banda Aceh would be closed to the public during the night. But, by midnight, thousands of people were driving cars and motorcycles, blowing trumpets and illuminating the sky of Banda Aceh with their fireworks. No one knows exactly where people bought the trumpets and fireworks and where they hid them before midnight. Everyone knew, however, that the Sharia police could not do anything about the crowds that night.

This is not the first time that 'feigned ignorance, sabotage, arson, fiddling, and dodging' were used against the Sharia authority. For instance, there have been beauty contests held in Banda Aceh, such as Miss Aceh Fair, Miss Coffee, *Ratu Waria Aceh* (Queer Queen of Aceh) and *Duta Wisata Aceh* (Aceh Tourism Ambassador) without having approval from the Sharia office.

Some Islamic student groups and ulama condemned the contests and asked the government not to give permission to those wanting to organize these events. The group called Violet Grey<sup>43</sup> found their own way to combat the rule. In 2009, Violet Grey hosted a controversial activity, *Pemilihan Ratu Waria*, a queer festival. Violet Grey had hidden their true agenda and asked for approval from the Aceh Ulama Council and the Sharia police to organize a music concert and a seminar for charity. After the event, Violet Grey announced to the public who had won the festival. Ulama and some hardline Islamist groups and Muslim student organizations such as Hizbut Tahrir, FPI, LDK and KAMMI demanded the dissolution of Violet Grey.<sup>44</sup>

The two accounts below provide a more in-depth story and analysis in terms of how specific groups of Acehnese express their opposition to the administration of Sharia.

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<sup>43</sup> Violet Grey is an organization that claims to strive for the rights of lesbian, gay, bisexual and transgender people (LGBT) in Aceh. Initially, this group was introduced to the public in 2007 as an organization focused on anti-HIV/AIDS campaigns as well as disseminating information related to sexual and reproductive health issues. It was supported by some international NGOs such as Hivos, World Vision and the National Commission on HIV-AIDS. Violet Grey has now shifted its focus to human rights issues, especially advocating the rights of lesbian, gay and transgender in Aceh who face discrimination and intimidation from both society and authorities.

<sup>44</sup> See [www.antaraneews.com/berita/1266144439/ulama-kecam-kontes-waria-aceh](http://www.antaraneews.com/berita/1266144439/ulama-kecam-kontes-waria-aceh), accessed on 2 March 2011.

## 5: CHALLENGING ARABIZATION THROUGH ARAB MOVIES

One of the unusual phenomena in Banda Aceh is that there is no public cinema at all in the city. This is different to the capital cities of other Indonesian provinces where watching films at movie theatres is a regular feature of urban lifestyles. For example, neighbouring cities such as Medan and Padang have at least three movie theatres each, generally in plazas and malls. Banda Aceh, despite the development of various business projects after the tsunami, has no movie theatre.

In the 1980s and 1990s, however, there were four popular movie theatres in Banda Aceh. The oldest one was the Garuda Theatre located close to the Blang Padang public playground. In fact, the Garuda Theatre was a building for art performances and one of the colonial legacies of Banda Aceh. After independence, it became the first commercial public cinema in the town. In 2004, the building was hit by the tsunami. Now, it has been rebuilt for other purposes, mainly for weddings, and there is no regular schedule either for art performances or movies. Further, there are movie theatres dedicated to the memory of the people of Banda Aceh, including the Gajah Theatre, Jelita Theatre and PAS 21. PAS 21 was burnt down during the conflict of 2001 and the Jelita theatre was closed in the late '90s after the political situation worsened. The latter has now become a supermarket and has been renamed Hermes Mall.

The Gajah Theatre was the last movie theatre in Aceh, even surviving the conflict. However, it was closed to the public following the disaster of 2004 and is now used as a military warehouse. Thus, there is currently no place for a cinema in Banda Aceh. It is said that the Sharia authority regard the presence of a movie theatre in Aceh as not compatible with the implementation of Sharia. Indeed, the authority considers cinemas to be potential places for Sharia violations. In his article, *Bioskop di Banda Aceh: Sejarah Esek-Esek* (Cinema in Banda Aceh: A History of Improper Sexuality) Sehat Ihsan Sadiqin wrote: 'it is commonly thought that people in Banda Aceh went to the cinema not only for watching movies but also for *khalwat*'.<sup>45</sup> According to Sadiqin, this is one of the reasons why the local government then asked the owner of the cinema to separate males and females in the building. He acknowledges the possibility of the cinema becoming a place where Sharia violations could take place. However, it is not clear whether Sadiqin agrees with the local

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<sup>45</sup> Sehat Ihsan Sadiqin, "Bioskop di Banda Aceh: Sejarah Esek-Esek", available on <http://hiburan.kompasiana.com/film/2010/05/21/bioskop-di-banda-aceh-sejarah-esek-esek/>.

government policy on cinema, because he also wrote that entertainment, including movies, are a necessity and not in contradiction with Islam.<sup>46</sup>

In fact, until now, there has been no regulation that prohibits people from opening or going to the cinema in the Sharia *qanuns*. But prior to the tsunami, the Sharia police regularly came to raid those accused of committing *khalwat* while watching movies at the cinema. Consequently, people stayed away from the cinemas and in the end they were forced to close. Needless to say, people in Aceh are now watching films on television or VCD players.

Fozan Santa, an Acehnese-born filmmaker, is one of the leading figures against the Sharia policy concerning cinema. Along with some of his colleagues he runs a local organization called Sekolah Menulis Dokarim (the Dokarim Writing School). This organization was founded in 2003 by some Acehnese writers, and is known as an alternative literary school for Acehnese students interested in literature. Initially, the programme was primarily about creative writing and publishing.<sup>47</sup> Fozan joined the organization on February 2005, shortly after the tsunami. He was very critical of the government's policy, and, according to him, the intensity of the implementation of Sharia has destroyed one of the important things in life — the right to entertainment.

In some discussions, Fozan argued that film is a strongly effective medium for learning and the cinema is an important public sphere where people share information and culture. His background as a movie director as well as a screenplay writer resulted in the Dokarim program changing from training for writers only to also running an annual film festival in Banda Aceh.

The festival is unlike any other film festival. Since Banda Aceh has no movie theatre, Fozan and his friends brought screens and VCD players to the university campus, cafés and villages for the festival. Interestingly, all the movies shown in the festival are concerned with the situation in the Middle East and North Africa. Indeed, Fozan and the Dokarim school members call the festival the 'Festival Film Arab' or the Arab Film Festival. But why an Arab film festival?

Fozan, who graduated from IAIN Sunan Kalijaga, Yogyakarta, argues that Sharia has led to the imposition of Arab culture in Aceh. According to him, many contemporary Acehnese do not distinguish the difference between Islam and Arab culture. Through his

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<sup>46</sup> *Ibid.*

<sup>47</sup> Sekolah Menulis Dokarim is a member of Cultural League Komunitas Tikar Pandan, see [www.tikarpandan.org](http://www.tikarpandan.org), latest accessed on 5 August 2011.

knowledge of Islam and Muslim cultures he wants to illustrate that what is happening in Aceh now is a process of Arabization, rather than Islamization. The slogan of the festival is: ‘*Sinoe Aceh Sideh Arab, Sinoe Sideh Hana Rab*’, which literally means ‘Here is Aceh, there is the Arab World; Here (Aceh) and There (Arabia) are not close (and not so alike)’. It highlights that there have been many differences between the two cultures and the fact that one cannot destroy the other.

Below are some of the movie titles that have played at the festival:

In 2009:

1. *Condemnations*, Walid Mattar, Tunisia, 2009, 15 min
2. *The Unknown Lady*, Fajr Yacoub, Syria-Palestine, 2010, 22 min
3. *La Trappola*, Lemnaouer Ahmine, Aljazair, 2010, 62 min
4. *I am George*, Mohsen Abdelghan, Mesir, 2010, 10 min
5. *Saba Flous*, Anis Lassoude, Tunisia, 2010, 15 min
6. *Jasmin Bird*, Sulafa Hijazi, Syria, 2009, 90 min<sup>48</sup>

In 2010:

1. *Caramel*, Nadine Labaki, Lebanon, 2007, 90 min
2. *The Stoning of Soraya M*, Cyrus Nowraste, Iran, 2009, 110 min
3. *Baran*, Majid Majidi, Iran, 2003, 98 min
4. *Le Grand Voyage*, Ismael Ferroukhi, Morocco-Perancis, 2007, 108 min
5. *Shouf Shouf Habibi*, Albert Ter Heerdt, Morocco-Belanda, 2008, 85 min
6. *Turtle Can Fly*, Bahman Gohbadi, Iraq, 2007, 95 min<sup>49</sup>

The Arab Film Festival, organized by the Dokarim School, is an interesting phenomenon within the ongoing processes of Sharia. On the one hand, it seems that this programme supports the notion of Sharia in Aceh. Many people attend the festival. Fozan argues that many ordinary Acehnese regard ‘Arab’ and ‘Islam’ as being synonymous. Everything that comes from the Arab world is considered Islamic and treated as holy. Dokarim wants to show

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<sup>48</sup> The Dokarim report, 2009.

<sup>49</sup> The Dokarim report, 2010.

the contrary through Arab movies. Another important note is that the organization did not obey the Sharia rule requiring men and women to watch the movies separately.

## **6: PUNK: RESISTANCE TO SHARIA FROM THE STREET**

A piece of writing appeared on the social network website, Facebook. The writing, entitled ‘*Aku Azhari, Aku Seorang Punker: Apa Ada Masalah Besar?*’ (I am Azhari and I am punker: Is there a big problem with that?) was posted by Azhari Aiyub on 13 February 2011.<sup>50</sup> Within a matter of hours, some 70 comments were posted in response. The article talks about a punker who was angry because his dignity as a human being was being violated. The entry also talks about the chronological history of the punk community. Azhari further discusses punk ideology and nihilist philosophy, punk anarchical ideas and statements about how such a marginalized group survives in Aceh at a time of growing hypocrisy. In fact, Azhari is Acehnese-born and a well-known figure within modern Indonesian literature. He does not wear punk clothes or live on the streets like many other punkers. His writing nonetheless showcases his sympathy with punk communities with regards to the Sharia Police-backed arrest of many members of the punk community in Banda Aceh.

Azhari first reacted when he read news coverage of the arrest of several punkers by Sharia Police.<sup>51</sup> These punkers were taken to the State Police Academy in Saree, Aceh Besar, where these punkers were shaved. A number of pictures showing how these punkers’ hair was shaved were published by several mass media. Azhari was furious and wrote the article in response. He told me that he had previously sent the article to several local media for publication but they all rejected his article, despite the fact that none of Azhari’s writings had ever been rejected before. Azhari accused the local media of supporting the interests of politicians whose religious hedonistic and hypocritical lifestyles were being disrupted by the presence of the punkers ‘who do not see what is considered important by several politicians and rich people in Aceh as important’.<sup>52</sup>

How punk came to be and how long they have been in Aceh is not exactly known. It is said that punk communities existed in Aceh prior to 2000. They started by establishing a number

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<sup>50</sup> [www.facebook.com/note.php?note\\_id=10150142263646015](http://www.facebook.com/note.php?note_id=10150142263646015), accessed on 15 July 2011. This article has also been published by *Distraction Zine*, vol. 4, June 2011. Internet access can easily be found in many places including coffee shops around Banda Aceh and is one of the valuable contributions made by the international development presence involved in rebuilding Aceh after the disaster. Most Acehnese now have a Facebook account.

<sup>51</sup> Serambi Indonesia, 12 February 2011.

<sup>52</sup> Interview with Azhari Aiyub, 16 March 2011.

of rock bands and conducted several music festivals as a show of resistance to the never-ending political disputes in Aceh. People in Banda Aceh have been struck by the presence of youth with unusual dress. They look different from others since they usually play music and walk around on the streets of Banda Aceh. They call themselves 'Punkers'. A few people complained in the media about the presence of punk in Banda Aceh, because they look 'weird and un-Islamic' and, culturally, punk is not part of Acehnese culture. Some parents also said that they were afraid their children would join the group.<sup>53</sup> Since January 2011, members of the punk community in Banda Aceh have become the main target of regular sweepings by the Sharia police. They are usually arrested and imprisoned for several days before being returned to their parents.

Dedi Besi, who is considered senior within Aceh punk community, said that he became a punker in 1998. Dedi learned about punk when was studying in Yogyakarta. He believes that being a punker is in line with his job as an archeologist. Then, he was called Dedi Besi (Dedi Iron) by his fellow punkers because he likes to look at and collect junk metal and iron, especially rusty nails he finds on the streets. Dedi used these rusted nails as accessories for his clothing. He looks polite and is very far from looking like an urchin. He always carries a small guitar wherever he goes. He does not have to be a beggar because his parents are relatively wealthy. I was even more amazed by the fact that Dedi is now teaching archeology at the Faculty of Adab at the State Institute of Islamic Studies (IAIN) Ar-Raniry.

Dedi asserted that many Acehnese punkers know about things that are forbidden by Islam. They do not live freely, nor do they indulge in free sex even though they are accused of doing so; they do not rob people, and they do not provoke riots. They only gather, walk on the street and play musical instruments. Perhaps, their appearance is unlike that of the rest of the community, but this does not mean that they are criminals. He does not deny that there are drunken punkers who like to fight, but this does not give the authorities the right to suppress and reject punkers' existence in Aceh by deploying the Sharia Police as the guardians of Sharia Law. He believes that the Sharia Police should take a more humane approach to the punkers.<sup>54</sup>

Dedi argues that many people who have short hairdos and wear conservative clothes commit violent acts, steal, are corrupt, drink, and adopt undesirable practices. Dedi Besi sees the tension between the punkers and the Sharia Police as being a result of the Sharia Police's

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<sup>53</sup> Readers forum of Serambi Indonesia, 3 January 2011.

<sup>54</sup> Interview with Dedi Besi on 29 June 2011.

failure to understand what punk is. In fact, there are many kinds of punks and most are not involved in negative activities. Nonetheless, punkers have suffered blanket indictments.

After the arrests, the Sharia Police banned some of the punk communities, publishing a list in the mass media. These include:

1. *Rantai Hitam* (Black Chain)
2. Museum Street Punk
3. Rock in Love
4. *Damai Boleh Ribut Boleh* or *DaboRibo* (Peace Okay Chaos Okay)
5. *Netral* (Impartial)
6. *Anak Brutal* (Bad boys)
7. *Ello*
8. *Tangoel Rebel* (Rebel Dyke)
9. *Jusuid Guero*
10. Black Green
11. Brume + Horizontal
12. Lamb of Gun<sup>55</sup>

Meanwhile, Syahril, a Sharia Police officer, said that the arrests were lawful because punk is western culture, which is unfamiliar to Acehnese people. Therefore, the punkers' existence is deemed to have disturbed order within the city of Banda Aceh. According to Syahril, punkers have been involved in activities that have worried the local people. Syahril did not provide further details about such activities, but he did emphasize that punkers should not exist in Aceh. Punks have to respect Aceh as a region that is implementing Sharia Law. If the punkers do not want to respect the Sharia Law, then they should leave Aceh.<sup>56</sup>

Despite the punkers' resistance, a number of Islamic organizations support the Sharia Police's extreme measures. These Islamic organizations issued a press release stating their support for the arrests. Teuku Zulkhairi, a member of Dewan Dakwah Islamiyah/DDI (Islamic Da'wa Council) and the President of IAIN postgraduate students, is one of the outspoken supporters of the Sharia Police. He wrote an article entitled '*Menyorot Komunitas Punk Aceh*' (Bringing to Light Aceh Punk Communities).<sup>57</sup> Zulkhairi further attacked those who defended punkers and called them 'a group whose way of thinking should be

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<sup>55</sup> Serambi Indonesia, 11 February 2011.

<sup>56</sup> Interview with Syahril, on April 2011.

<sup>57</sup> Harian Aceh, 24 January 2011.

questioned' and a group that "always hides behind Human Rights Issues when defending things advocated by non-Muslims'. He further asked 'how would a Muslim justify a punker's way of life?'

This is where the debate stands. Lowbat Boeloek, a leader of a punk community, stated that their activities have not violated Sharia Law. The punk community to which Lowbat belongs is called Tanggoel Rebel. They often took to the streets to announce that they have the right to live in Aceh and they protested against the arrest of several of their friends. Boeloek himself is an educated young man. He is finishing his studies at the Economics Faculty of Syiah Kuala University. Boeloek condemns the Government of Banda Aceh, which, through its Department of Sharia Law, has generalized and categorized the existence of punkers' ways of life as '*penyakit masyarakat*' (communal diseases).<sup>58</sup>

Lowbat Boeloek claimed that they still carry out the five-times-a-day prayers and they have helped to clean Banda Aceh's streets of rubbish. It is not the business of the Sharia Police to worry about their hairdos and clothing styles. Everything depends on personal tastes and aesthetic perspectives and these clearly differ between people. Punk communities can easily point out a number of cases of corruption implicating those who claimed to be religious (and claimed to be Muslims) who, on different occasions, would deliver sermons on morals and on how to maintain Sharia Law. Meanwhile, their deeds are far removed from Islamic teachings. Punkers exist to fight against their hypocrisy, Lowbat continued.

As a rebel movement, punk started out in London and spread throughout the world. In Indonesia, punk communities generally grow in big cities such as Jakarta, Bandung, Surabaya, and Jogjakarta. These communities are characterized by their clothes, hairdos, and gatherings. Leather jackets, nails, colourful Mohawk hairdos, and special shoes have made them different from the majority of people. Punk has been identified as part of a counterculture, groups that resist surrounding social conventions.<sup>59</sup>

The emergence of a Muslim punk community in Jogjakarta has been an interesting phenomenon.<sup>60</sup> Members of this group dress like punkers but they emphasize their roles as Muslims. Besides singing on the streets, these particular punkers also carry out regular religious study groups called PUNKAJIAN, a creative way of writing '*Pengkajian*', which means study. Dedi and Lowbat claimed that many of them also did what the Jogjakarta

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<sup>58</sup> Interview with Lowbat Boeloek.

<sup>59</sup> See for example in Roger Sabin (ed.), *Punk Rock, So What? The Cultural Legacy of Punk*, (Routledge: London & New York, 1999).

<sup>60</sup> <http://punkmuslim.multiply.com/>



Muslim punkers did. Nonetheless, the Government of Aceh and the Sharia Police only look at the way these punkers dress and judge it to be different from the local standard of ethics and local religious understanding. Lowbat asserted that tastes will never be the same 'until Judgement Day'.

The fact that the punkers' existence is not welcomed is not a problem confined to Banda Aceh. Other big cities in Indonesia such as Bandung, Jakarta, and Jogja also have punk communities and they often have to deal with the police as well. I can accept the critical notion that it is still too early to identify Punk as a form of cultural resistance toward Sharia Law in Aceh as it must be further problematized and debated. However, for a small city like Banda Aceh with all of its Sharia-based regulations, the existence of punkers becomes a phenomenon since the city is different from other big cities in Indonesia without Sharia regulations. Lowbat Boeloek further stated that Acehnese punkers existed prior to 2000 but they were drowned in the tsunami or killed in the conflict. On 9 September 1999, some punkers gathered again and re-established their movement because they were sick of the hypocrisy of the Achenese elite; in particular, the fact that after tsunami money was poured into Aceh, some people used religion as a political tool. In fact, many real problems in society cannot be solved simply by wearing tidy clothes or worshipping God.

It is the way Punkers dress and the songs they sing that the authorities and the Sharia Police dislike. Often, the police dispersed them as they were gathering at particular locations within Banda Aceh. Such dispersals have made the relationship between the punk communities and the Sharia Police worsen. Indeed, the situation became worse when the police and the punkers clashed and one of the Sharia Police officers was stabbed. Punkers have been targeted by the Sharia Police since the beginning of 2011. However, the punkers have fought back. They took to the streets, shouting that they do not want to be eradicated by the Sharia Police.

It is interesting to see how the democratic process runs in Aceh in regard to this case. After the tsunami, the international presence influenced the rapid adoption of human rights norms among Acehnese civil society organizations. The role of lawyers from Banda Aceh's Legal Aid Institution (LBH), an institution aiming to provide free legal aid to people, was clear when some young lawyers tried to release the arrested punkers. Nevertheless, LBH was unable to sue the Sharia Police because the punkers who had been tortured did not want to report the Sharia Police to the national police. 'It doesn't make any sense, they are the same,' Boeloek said.

The problem with the punkers is yet to be resolved even though a number of parties have tried to invite the Sharia Police and representatives of punk communities to participate in a comprehensive dialogue. Discussions and seminars have been held in order to respond to the violence experienced by this minority group. However, physical clashes between the Sharia Police and punkers continue to occur. Two days prior to Ramadhan, on 29 July 2011, Sharia Police once again conducted raids against punkers in Banda Aceh.<sup>61</sup> During the raid, one punker, named Rully or Oyie, was arrested and beaten by the authorities. This was done in front of the Deputy Mayor of Banda Aceh.<sup>62</sup> I believe that the involvement of the Deputy Mayor means that the government program Visit Banda Aceh Year 2011, should be taken into consideration when trying to find out why the Sharia Police and the Government of Banda Aceh have been aggressive and hostile against punkers. Banda Aceh's tourism motto '*Bandar Wisata Islami*' ('Islamic Tourism City' or "'A Spiritual Gateway to Islamic Tourism') is likely to be spoiled when tourists come and observe activities that are considered inappropriate or not part of the Acehnese culture that the campaigns want to show.

Nonetheless, 2011 becomes another important year for overseeing a number of contradictions happening and committed by the Aceh Government. On the one hand, the Government of Banda Aceh is preparing 2011 as the visit Banda Aceh year by showcasing Islamic tourism. On the other hand, the Government is not yet ready to provide attractions to tourists. In the end, the Government can only show the mass graves and several tsunami-related sites to incoming tourists. There are not many objects to sell. The entertainment industry is not running because Sharia Law bans men and women from gathering, especially at night. Other contradictions emerge from a number of festivals, including the *Peunayong* Festival<sup>63</sup> and the River Festival among others, held by Banda Aceh's Ministry of Tourism to support the Visit Banda Aceh Year 2011 programs. The Government failed to deploy enough Sharia Police officers to oversee the separate attendance of men and women at these events.

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<sup>61</sup> <http://harian-aceh.com/2011/07/28/satpol-pp-dan-wh-keroyok-anak-punk>, accessed on 31 July 2011.

<sup>62</sup> Interview with Junaidi Hanafiah, a journalist of *Harian Aceh*, 2 August 2011.

<sup>63</sup> Peunayong is a China town situated in the center of Banda Aceh.

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# STRENGTHENING LOCAL LEADERSHIP. SHARIA, CUSTOMS, AND THE DYNAMICS OF VIGILANTE VIOLENCE IN ACEH

David Kloos

## 1: INTRODUCTION<sup>1</sup>

In 2011, local and national media reported on a violent incident in the village of Ajun Jeumpet, in the rural district of Aceh Besar. A group of (male) villagers had forced their way into a house to ‘arrest’ the resident, a middle-aged man, and his visitor, an eighteen year old woman. The two were dragged violently out of the house and accused of *khalwat* (illicit proximity of an unmarried couple of opposing sexes), which is a criminal offence under current Shari’a legislation.<sup>2</sup> According to local reporters, the man was an amateur photographer, while the woman acted as his ‘model’. Reports about what happened after the raid diverged. According to some, the couple was immediately ‘handed over’ to the Wilayatul Hisbah (the ‘Shari’a police’). Other reports stated that they were taken to the local police station first.<sup>3</sup> Either way, a few months after the ‘arrest’, the couple was brought before the Shari’a court in Jantho (the administrative centre of Aceh Besar). Both were found guilty, and sentenced to the lash. The sanction – seven strokes for the man, four for the woman – was

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<sup>1</sup> Acknowledgments: I am grateful to Kees van Dijk for his comments on an earlier version of this report. Thanks also to Moch Nur Ichwan and Reza Idria, the other two researchers in the Aceh ‘cluster’, for many stimulating conversations. I would like to thank Nico Kaptein and Marise van Amersfoort for supervising the IRP ‘Indonesia team’ and for their personal support.

<sup>2</sup> In Indonesia, Shari’a law has been implemented nationally in two distinct domains; namely, that of family law and the financial sector. The domains pertaining to public behaviour, including, among other possible regulations, criminal law and the use of Islam as the ideological basis for governance, have not been engaged by the national government. What sets Aceh apart is that it is the only province that has been allowed, as a result of Law No. 44/1999 on the ‘Special Status of the Province of Aceh Special Region’, to implement Shari’a law in exactly these two domains. The implementation of state Shari’a was initiated in 2002-2003, when Governor Abdullah Puteh issued a series of bylaws (called *qanun*) regarding the creation of a system of Islamic courts (*Mahkamah Syariah*), the regulation of belief (*aqida*), worship (*ibadah*), and symbols (*shi’ar*, a term commonly used for manners of conduct associated with the lives of the Prophet of saints), and the criminal persecution of the use of intoxicants (*khamr*), the practice of gambling (*maysir*), and illicit relations between men and women (*khalwat*). A number of newly created government institutions have been tasked with the enforcement and socialisation of these regulations, including (besides the courts and the already existing Provincial Council of Religious Scholars, Majelis Permusyawaratan Ulama, or MPU), the State Shari’a Agency (*Dinas Syariat Islam*) and a Shari’a police force (*Wilayatul Hisbah*, or WH). For detailed discussions, see Michael Feener, *Shari’a as Social Engineering: the Implementation of Islamic law in Contemporary Aceh* (Oxford: Oxford University Press, forthcoming); Timothy Lindsey et. al., ‘Shari’a revival in Aceh’, In *Islamic law in contemporary Indonesia: ideas and institutions*, edited by R. Michael Michael Feener and Mark E. Cammack (Cambridge, MA: Harvard University Press, 2007), pp. 216-54; Arskal Salim and Azyumardi Azra, *Shari’a and politics in modern Indonesia* (Singapore: ISEAS, 2003).

<sup>3</sup> ‘Pasangan selingkuh dicambuk 9 kali’, *Serambi Indonesia*, 9 April 2011; ‘Fotografer “Bugil” dihukum cambuk’, *Jawa Pos*, 9 April 2011; ‘Pelaku mesum pingsan setelah dihukum cambuk’, [www.mediaindonesia.com](http://www.mediaindonesia.com), 4 April 2011; ‘Indonesian couples caned over extramarital affairs’, *Jakarta Globe*, 9 April 2011, [www.thejakartaglobe.com/indonesia/indonesian-couples-caned-over-extramarital-affairs/434272](http://www.thejakartaglobe.com/indonesia/indonesian-couples-caned-over-extramarital-affairs/434272) (Accessed 12-12-2012).

carried out on 8 April. In the meantime, three men had been charged by the parents of the woman for sexually harassing their daughter. During the ‘arrest’, the girl had been stripped bare and grabbed indecently. One man, a 45 year old civil servant, was arrested and brought to trial. The others were not.

Alarmed by this apparent lack of interest in persecuting vigilantes, local human rights activists in Aceh issued a statement. The provincial branch of KontraS, a renowned Indonesian human rights group, estimated that more than a 100 cases of street justice related to Shari’a law had occurred in the preceding three years. These cases included the use of different kinds of violence, including unlawful imprisonment, raids of public spaces, and beatings. KontraS coordinator, Hendra Fadli, urged the state Shari’a Office to ‘educate people in the province to prevent them from taking justice into their own hands in the name of Islam’. Evi Narti Zain, executive director of the human rights coalition HAM Aceh added that ‘conducting street justice and vigilante crackdowns on people’s homes simply because of alleged violations of Shari’a law constitutes a violation of human rights’.<sup>4</sup>

Vigilante violence, or ‘street justice’, is one of the most contentious aspects of the current implementation of Shari’a law in Aceh. According to human rights advocates, the Islamic penal code encourages local communities to police public morality in their own villages and neighbourhoods, spy on their neighbour’s behaviour, and carry out violent punishment of alleged violators of Shari’a-based norms, including heavy-handed arrests, beatings, forced marriages, sexual harassment, and the practice of publicly ‘cleansing’ accused wrongdoers with sewage water.<sup>5</sup> Different reports have stated that local authorities, including the police, district and provincial administrators, and magistrates, do little to curb these human rights abuses, and in some cases even appear to openly approve of them. These conclusions contrast sharply with some statements made by officials involved in the process of Shari’a implementation, who believe that Shari’a law should be regarded as a basis for protection against, rather than an encouragement of, vigilante violence.<sup>6</sup>

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<sup>4</sup>‘Activists denounce Shariah vigilante justice in Aceh’, *Jakarta Globe*, 13 April 2011, [www.thejakartaglobe.com/indonesia/activists-denounce-shariah-vigilante-justice-in-aceh/435042](http://www.thejakartaglobe.com/indonesia/activists-denounce-shariah-vigilante-justice-in-aceh/435042) (Accessed 12-12-2012).

<sup>5</sup>For example, a 2006 report by the International Crisis Group stated that the ‘existence’ of the WH (Shari’a Police) alone ‘encourages citizens to report their friends and neighbours for suspected breaches of moral behaviour’. International Crisis Group, ‘Islamic law and criminal justice in Aceh’, Asia Report No. 117, 31 July 2006. Human Rights Watch advanced a similar argument, when stating that the law on *khalwat* particularly ‘encourages private individuals to participate in the implementation of the law’. Human Rights Watch, ‘Policing Morality: Abuses in the Application of Sharia in Aceh, Indonesia’, December 2010.

<sup>6</sup>The former head of the Shari’a Office, Alyasa Abubakar, has repeatedly warned that Shari’a punishments may only be executed by official state institutions, in order to prevent the excessive violence associated with the

This report discusses the apparent increase in vigilante violence in Aceh in recent years, and its relation to the process of state Shari'a implementation. Although I share many of the concerns referred to above, I am critical of viewing vigilante violence and morality policing exclusively, or even primarily, within the framework of state Shari'a. I signal three problems. Firstly, the exclusivist framework of Shari'a law offers few possibilities for understanding why people in Aceh think that violence is justified in some situations, and not in others, even if the alleged offence appears to be similar. Secondly, it offers little room for an analysis of different *kinds* of violence, and its interpretation by people in Aceh. Thirdly, and perhaps most importantly, a dominant focus on the legal particularities of Shari'a hides from view the ways in which local conflicts about public morality issues are connected to broader contestations about public space in the post-conflict, post-tsunami context. In this respect, the approach taken in this report connects closely to the other two IRP reports in the Aceh 'cluster', written by Moch Nur Ichwan and Reza Idria, which also deal with the impact of Shari'a law on processes of limiting, negotiating, and claiming public space.<sup>7</sup>

It is true that the framework of state Shari'a has been used, occasionally, to legitimize the use of (non-state) violence. Since the ending of the conflict in 2005, local activist groups and paramilitary associations have carried out raids, violent actions and punishments in order to 'help' the government in its implementation of Shari'a. At the same time, however, I contend that the social and political mechanisms that underlie violence organized and carried out by particular Shari'a stakeholders cannot explain the violent outbursts through which angry villagers try to 'protect' their own living environment against moral 'transgressions'. In fact, state Shari'a does not seem to be the central issue in many such cases. Instead, people involved typically point out the centrality of local customs (*adat*), or 'village law' (*hukum kampung*).

This report outlines historical and structural changes, as well as specific cases, to point out the dynamics of (public morality related) vigilante violence in Aceh today. Contrary to earlier discussions about this topic, it focuses on the motivations of perpetrators. It builds on a diverse set of data, including literature, media reports, formal interviews, and everyday fieldwork participation, collected during multiple visits to Aceh in the period 2008-2012. The

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occurrence of village level vigilantism or 'people's tribunals' (*pengadilan rakyat*). See Feener, *Shari'a and social engineering*, Chapter 7: 'Sanctions and socialization'.

<sup>7</sup> See Moch Nur Ichwan, 'Alternatives to Shari'atism: Progressive Muslim Intellectuals, Feminists, Queers and Sufis in Contemporary Aceh'; Reza Idria, 'Cultural resistance against Shariatism in Aceh' (Reports IRP – Jakarta, 2013).



report consists of three parts. The first section is directed at providing historical context. I then move on to discuss a number of cases, giving a sense of the different kinds of violence we are dealing with. The third part zooms out again, and tries to construct a broader picture by making some general statements about structural factors as well as the different actors involved in the outbreak or facilitation of vigilante violence.

## **2: BACKGROUND: SHARI'A LAW, LOCAL CUSTOMS AND THE STATE IN ACEH**

### **Islamic law and the Aceh conflict**

Islam is a central element in the perception of Acehnese ethnic identity. 'Being Acehnese' is perceived by most people in Aceh as a combination of speaking (a dialect of) the Acehnese language, identifying with the Acehnese past, adhering to a local variation of Acehnese customs (*adat*), and adhering to Islam. According to official statistics, 98 per cent of circa four million inhabitants of Aceh province consider themselves to be Muslim, while the large majority is ethnically Acehnese. In the past century and a half, Islam has played an important part in the rise of Acehnese self-consciousness and emerging nationalism, from the 'Holy War' against Dutch colonial domination (1873-1942) until the emergence of the (largely ethno-nationalist) separatist rebellion waged by the Gerakan Aceh Merdeka (Aceh Independence Movement) (1976-2005).

The first governor of Aceh after Indonesian independence in 1945 was a reform-minded *ulama* (religious scholar), Teungku Daud Beureueh, who saw it as his task to create a 'truly Islamic' polity in Aceh.<sup>8</sup> His government made a serious attempt at implementing a system of Islamic courts (*Mahkamah Syariah*), to be placed under the sole control of religious specialists (the *ulama*), and function autonomously from the central government.<sup>9</sup> The rise to power of reformist *ulama* was a contested development, however, both inside and outside Aceh. Ultimately, the attempts to Islamize the political and juridical system failed, partly because of a lack of support by local elites. Disappointment among reformist *ulama*, in

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<sup>8</sup>Teungku Daud Beureueh was the leader of the reformist All-Acehnese Association of Ulama (PUSA). This movement gained a rather powerful position during the Japanese occupation, particularly in the domain of Islamic law, which used to be the jurisdiction of the traditional aristocracy (the *uleebalang*). After the surrender of the Japanese, the tension between these two groups erupted into a violent struggle for power known as the Social Revolution. In this brief but intense civil war, the class of *uleebalang* was stripped from power. Many of them were killed or incarcerated. In subsequent years, reformist *ulama* obtained important positions in the provincial government. For a detailed discussion, see Anthony J.S. Reid, *The blood of the people: revolution and the end of traditional rule in Northern Sumatra* (Kuala Lumpur: Oxford University Press, 1979).

<sup>9</sup>See Eric E. Morris, *Islam and politics in Aceh: a study of center-periphery relations in Indonesia*. Unpublished PhD dissertation (Cornell University, Ithaca, 1983), pp.162-63.

combination with a range of other social and economic factors, culminated in the outbreak of a rebellion under the banner of Darul Islam ('Abode of Islam', 1953-62). Central to this revolt was the idea of the 'broken promise'. According to Daud Beureueh, who led the rebellion, President Sukarno had promised him, in a personal conversation in 1947, that Aceh would be allowed to implement Shari'a law. When the government abolished Aceh province in 1951, and nullified most of its 'Islamic' regulations, this was regarded as treason. The insurgency, which lasted from 1953 until 1962, was not designed to separate Aceh from Indonesia, but to make Indonesia as a whole into an Islamic state, based on the primacy of Shari'a law.<sup>10</sup>

The Darul Islam revolt was ended once the Indonesian government restored Acehese autonomy in matters of religion, education and customs. In 1962, Daud Bereueh descended from the mountains, and retired from politics. Peace did not last very long, however. The 1965 military coup heralded a period of strong administrative centralization, and a concentration of power in Jakarta, while former Darul Islam supporters were transformed from rebels into state agents.<sup>11</sup> Islamic law was not a priority of the New Order regime, and the *ulama* were increasingly co-opted or otherwise appeased by the government.

In the early 1970s, large quantities of oil and Liquid Natural Gas (LNG) were discovered just off the coast of North Aceh. The policy by the central government to appropriate these resources formed the basis for a new conflict. In 1976, Hasan di Tiro – a grandson of a famous *ulama* fighting in the war against the Dutch – established the Gerakan Aceh Merdeka (Aceh Independence Movement, or GAM). The GAM came forth, at least in part, from the Darul Islam. Unlike its predecessor, however, it was not primarily an Islamist movement. While Islam played a part in its ideology in the early years, in the 1980s and 1990s the GAM developed a largely secular, ethno-nationalist discourse, directed at 'restoring' Aceh to its pre-colonial position as an independent state. When, in 1999, Aceh province was allowed the implementation of (a regional formulation of) an Islamic penal code as part of a broader autonomy package, the initiative was immediately rejected by the

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<sup>10</sup> For detailed discussions of this period, see Kees van Dijk, *Rebellion under the banner of Islam: the Darul Islam in Indonesia* (Leiden: KITLV Press); Nazaruddin Sjamsuddin, *The republican revolt: a study of the Acehese rebellion* (Singapore: Institute of Southeast Asian Studies, 1985).

<sup>11</sup> In the 1970s and 1980s, this group – which included many descendants of reformist *ulama* – became known as the 'technocrats'. This process has been rather well documented. See e.g., Edward Aspinall, *Islam and nation: separatist rebellion in Aceh, Indonesia* (Stanford: Stanford University Press, 2009); Tim Kell, *The roots of Acehese rebellion, 1989-1992* (Ithaca: Cornell Modern Indonesia Project Cornell University, 1995); Morris, *Islam and politics in Aceh*; Rodd McGibbon, 'Local leadership and the Aceh conflict', in *Verandah of violence: background to the Aceh problem* (Singapore: NUS Press, 2006), pp. 315-59.

GAM as a move to deflect attention from the roots of the conflict, and delegitimize the separatist movement in the eyes of the Acehnese people.<sup>12</sup>

The first Shari'a court was opened in 2003, and the first public caning took place in 2005. Ever since, there has been a lot of debate, both in the provincial parliament and in neighbourhood coffee shops, about the way in which Shari'a regulations have been implemented and enforced.<sup>13</sup> In August 2005, the GAM signed a peace agreement with the Indonesian government. Since then, the rebel movement has been disarmed, and turned into a political party, the Partai Aceh (PA), which is currently in power both at the provincial level and in most districts. The stance of the PA and many of its representatives towards Shari'a has been ambiguous. In some respects, Shari'a law has been further developed. In general, however, Aceh's new leaders have prioritized other issues, much to the dismay of pro-Shari'a advocates.<sup>14</sup>

### **Violence in the name of Shari'a**

While Shari'a has been a concern of the state in the 1950s and again since 1999, the concept has functioned throughout the twentieth century as a source for action by vigilantes. Perhaps the best known example is the 'white robes' movement (*jubah putih*), led by the charismatic religious teacher Teungku Bantaqiah in the village of Beutong Ateuh. In the late 1980s, students of Teungku Bantaqiah were known to patrol the roads in their area in an attempt to bring people 'back to Shari'a'. In one violent incident mentioned in the literature, a Chinese Indonesian was killed for refusing to close his restaurant during the fasting month. A case comparable to that of Teungku Bantaqiah is that of Teungku Ahmed Dewi, an *ulama* from Bantayan Idi Cut, East Aceh, whose students were known to chase away young, unmarried couples from the beach at Idi Cut.<sup>15</sup>

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<sup>12</sup> Law no. 44/1999 on the Special Status of the Province of Aceh; For a discussion of the stance of, respectively, the GAM and the Indonesian government, see Aspinall, *Islam and nation*; and Michelle A. Miller, *Rebellion and reform in Indonesia: Jakarta's security and autonomy policies in Aceh* (London: Routledge, 2009).

<sup>13</sup> For a detailed discussion of these debates as carried out in the public sphere, see Feener, *Shari'a and social engineering*, Chapter 7: 'Sanctions and socialization'.

<sup>14</sup> An important example of this ambiguity is the Qanun Jinayat, a controversial new bill intended to integrate the existing, separate regulations on Islamic criminal law into a comprehensive penal code. The law was formally approved by the outgoing provincial parliament on 14 September 2009, though under fierce protest. Local as well as international human rights and women's rights organizations objected to the criminalization of women and gender minorities, and against the excessive punishments it contained, of which the measure of 'stoning to death' (*rajam*) convicted adulterers is the most controversial. Then Governor of Aceh, Irwandi Yusuf (a former GAM spokesman), refused to sign the law, preventing it from coming into effect. The stance of his successor, the former GAM negotiator Zaini Abdullah (elected in April 2012), has been unclear.

<sup>15</sup> See Mahdi Syihab, 'Penegakan Syariat: etnografi aksi razia santri dayah di aceh utara', in *Serambi Mekkah yang berubah*, ed. Arskal Salim and Adlin Sila (Tangerang: Pustaka Alvabet and Aceh Research Training

Although evidently not new, the problem of vigilante violence became more urgent in the early 2000s. In late 1999, shortly after the announcement of the Autonomy Law, reports appeared in local newspapers about ‘headscarf raids’ (*razia jilbab*), directed at Acehese women not wearing a headscarf, and carried out by groups of unidentified men. In one incident, a group of masked men stopped a bus of female factory workers in Langsa (East Aceh). Seven women were reportedly ordered to get off the bus, after which they had their hair cut and heads shaven. In response to these disturbing incidents, the local women’s rights organization Flower Aceh sounded the alarm, alerting ‘all parties’ that this violence should stop immediately.<sup>16</sup> As suddenly as the incidents happened, they stopped again by the end of 1999. Although the perpetrators were never identified, it was widely speculated that these may be TNI elements pretending to be GAM, in an attempt to give the separatists a bad name. GAM spokespeople quickly distanced themselves from the raids. Representatives of formal (political and religious) authority in Aceh (state administrators and *ulama*), as well as most opinion makers, remained conspicuously silent about the incidents, much to the disdain of human rights and women’s rights activists.<sup>17</sup>

While the 1999 ‘headscarf raids’ were almost certainly conflict related incidents, the post-conflict years have seen more, rather than less, examples of non-state violence carried out ‘in the name of Shari’a’. A crucial aspect of this development is that many of these incidents are hardly covert, but take place openly, often without (implicit or explicit) consent of local authorities.

In 2006, a group of young Banda Aceh residents calling itself Tim Anti-Maksiat (‘Anti-Sin Team’) began to patrol areas in and around the city, including the popular beach at

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Institute, 2010), pp. 57-91 (60-61). Reportedly, many of Teungku Bantaqiah’s students were self-declared former ‘sinners’, who regarded their participation in these raids as a form of personal repentance. Teungku Bantaqiah was widely believed to possess magical skills of self-defense, such as the ability to become invisible, or invulnerable. Both Teungku Bantaqiah and Teungku Ahmed Dewi were accused by the government of cooperating with the GAM. In 1999, Teungku Bantaqiah and fifty-six of his students were killed in what Edward Aspinall has called ‘one of the more notorious military massacres of 1999’. Aspinall, *Islam and nation*, p. 99. See also: Dyah Rahmany, *Matinya Bantaqiah: menguak tragedi Beutong Ateuh* (Lembaga Studi Pers dan Pembangunan, Jakarta, 2001); Otto Syamsuddin Ishak, *Sang martir: Teungku Bantaqiah* (Jakarta: Yappika, 2003).

<sup>16</sup> ‘Hentikan kekerasan dalam razia jilbab di Aceh; di Aceh Timur tujuh wanita digunduli’, *Serambi Indonesia*, 18 September 1999.

<sup>17</sup> Jacqueline Siapno, who carried out fieldwork in the province in the 1990s, was told by one of her female interlocutors that this silence was ‘perceived by women as condoning street harassment against women’. In some cases, the violence was even explicitly endorsed. A (male) journalist reportedly stated that ‘[i]t is a good thing that someone is forcing [women] to veil. We have been trying to conduct a socialization program for veiling since 1995 and have been unsuccessful. So it is a good thing that society is now forcing them to do so – if not they will never veil.’ Jacqueline A. Siapno, *Gender, Islam, nationalism and the state in Aceh: the paradox of power, co-optation and resistance* (London: RoutledgeCurzon, 2002), 37-38.

Lhok Nga, carrying out ‘arrests’ of unmarried couples, and alerting the WH to further ‘process’ these case. According to its members, the initiative was motivated by the wish to ‘uphold Shari’a’ throughout Aceh.<sup>18</sup> A similar, more forceful initiative is the Badan Anti Maksiat (‘Anti-Sin League’), which was founded in August 2006 by Fakhruddin bin Hasjmi. This organization, which claimed an active membership of 300, has carried out raids in beauty salons (annex brothels), coffee shops (annex gambling dens) and among ‘indecently dressed’ women on the street. Far from an isolated fringe group, the BAM seems to uphold excellent contacts with the police, the Shari’a police (WH), the Ulama Council (MPU), the local government, the Shari’a Office, and the leaders of traditional religious boarding schools (*dayah*). It has even received funding from the government, and has been allowed to join the Shari’a police during its operations. In an interview with a researcher, Fakhruddin described his movement as ‘helping the state in the effort to implement the Shari’a in Aceh’.<sup>19</sup>

The ‘operations’ carried out by the Badan Anti Maksiat may be compared to those of the radically Islamist Front Pembelaan Islam (Islamic Defenders Front), an Indonesian paramilitary group infamous for its violent ‘sweepings’ of bars and brothels in big cities, attacks on religious and gender minority groups, and ties to the Indonesian police force and military.<sup>20</sup> The FPI established a branch in Aceh in 2008, but so far its actions have been much less extensive and disruptive than in other parts of Indonesia. One of the reasons for this may be the movement’s ties to the military, which are highly sensitive in Aceh. While there are some signs of sympathy shown by young religious leaders (as related to the view that the GAM-dominated provincial government has not done enough to enforce Shari’a law), support for the FPI seems to be marginal.<sup>21</sup>

More important than the BAM or the FPI, at least in terms of popular support for vigilante violence, is the stance of Aceh’s class of traditional religious scholars, a group commonly referred to as the *ulama dayah*. A *dayah* is a traditional Islamic boarding school, of which Aceh province counts many hundreds, particularly in the countryside. So far, the *ulama dayah* have kept aloof from the process of Shari’a implementation, both for political

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<sup>18</sup>International Crisis Group, ‘Islamic law and criminal justice in Aceh’, 9-10. It is unclear from this report how, and by whom, these people were mobilized.

<sup>19</sup>See Feener, *Shari’a and social engineering*, Chapter 7: ‘Sanctions and socialization’.

<sup>20</sup>See Chaider S. Bamualim, ‘Islamic militancy and resentment against Hadramis in post-Suharto Indonesia: a case study of Habib Rizieq Syihab and his Islamic Defenders Front’, *Comparative Studies of South Asia, Africa and the Middle East* 31 (2), 267-81.

<sup>21</sup> Marzi Afriko, ‘Syariat Islam dan radikalisme massa: melacak jejak awal kehadiran FPI di Aceh’, in *Serambi Mekkah yang berubah: views from within*, ed. Arskal Salim dan Adlin Sila (Tangerang: Pustaka Alvabet bekerja sama dengan Aceh Research Training Institute, 2010), pp. 19-56.

and for doctrinal reasons.<sup>22</sup> In principle, however, most *ulama dayah* are supportive of the project of state Shari'a, not only because of the perceived need to 'clear' Aceh from sinful behaviour, but also because of the possibilities it offers for elevating the *ulama's* political status. Different *ulama* associations have been involved in the process of drafting the Shari'a laws from the very start. In a few known cases, *dayah* leaders disappointed with the way in which the new laws has been enforced so far, have mobilized their students to 'assist' the state by carrying out intimidating raids in the close vicinity of the *dayah*.<sup>23</sup> So far, however, this has been a minor phenomenon.

### **Adat**

So far in this section, I have concentrated on the state, and on groups and individuals engaged in 'assisting' the state in enforcing of Shari'a law. However, as we shall see in the next section, actions in 'defence' of public morality often are not (or not primarily) engaged with state Shari'a. People in Aceh (and elsewhere in Indonesia) distinguish between different legal frameworks. Besides secular law (typically glossed 'state law', *hukum negara*) and Islamic law (*hukum Islam*, or *hukum Syariat*) people refer to customary law (*hukum adat*), or sometimes called 'village law' (*hukum kampung*) as a central framework for enforcing norms. In the Indonesian plural legal system, *adat* law is formally recognized.

*Adat* is a broad term, which refers to local, 'ethnically' or 'territorially' based hybrid structures of moral values, traditional customs and legal institutions, based on a variety of ideas and social arrangements related to family, kinship, ritual, reciprocity, leadership, communal responsibility and conflict. People in Aceh often speak of *adat* in the context of kinship relations. Although Acehnese society has incorporated forms of institutionalized, male-centred Islamic law since at least the sixteenth century, the Acehnese kinship system is traditionally matrifocal in character, which means that houses and key productive resources are inherited by daughters. Traditionally, men move into the house of their wives after getting married, which is still a common practice today. Secondly, people refer to *adat* as laying down the communal rituals marking important events, such as birth, death, marriage, or the

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<sup>22</sup> Many *ulama* in Aceh uphold an ambiguous relationship with the state, as many of them have tried to strike a balance between government support and institutional independence. By 'doctrinal reasons' I mean that the content of state Shari'a diverges in a number of important aspects from more traditionalist (or 'classical') interpretations of Islamic law.

<sup>23</sup> Mahdi Syahib, 'Penegakan Syariat: etnografi aksi razia santri', in *Serambi Mekkah yang berubah: views from within*, ed. Arskal Salim dan Adlin Sila (Tangerang: Pustaka Alvabet bekerja sama dengan Aceh Research Training Institute, 2010), pp. 57-92.

harvest. The exact ways in which such rituals are performed are highly place-specific. Thus, people might claim that they are unable to say ‘what is *adat*’ in another district, or even a neighbouring village. Thirdly, traditional village leadership is organised, at least in part, on the basis of *adat* institutions. *Keuchik*, the indication of village headman (or –woman) is an *adat* title, just like village imam (*imam* or *teungku meunasah*) and the village ‘council of elders’ (*teuha peut*). Acehnese also recognise *adat* institutions on a supra-village (*mukim*, ‘district’, or *nanggroe*, ‘country’) level, as associated with pre-colonial rule. Finally, *adat* refers to the ways in which internal conflicts are solved within local communities. Thus, people commonly argue that it is not necessary to involve the police or the (secular or Islamic) court as long as it is possible to deal with a conflict ‘by means of *adat*’ (*secara adat*).

In terms of the formulation and enforcement of local norms of correct behaviour, Islam and *adat* are deeply intertwined concepts. This was the case in the late nineteenth century, when the first (Dutch-language) ethnographies of Acehnese society were written, and it is still the case today.<sup>24</sup> Most Acehnese think that Islam and *adat* are complementary rather than conflicting sources for social norms.

*Adat* is a central concept in a strong Acehnese tradition of gender segregation and social control. Often, *adat* based solutions to morality related conflicts are explicitly non-violent, as they are directed at consultation (*musyawara*), peace-making rituals (*perdamaian* – which may involve public apologies or ritual meals, *kenduri*, and fines, *det*), and against aggravating discord (*fitnah*). However, the occasional use of violence, and the ‘right’ to carry out punishment without consulting village institutions, has been a part of village life for a long time, especially where it concerns perceived breaches of sexual morality, and the shameful situations associated with these breaches. An Acehnese researcher, T. Bachtiar, when writing about social control as an aspect of Acehnese village life in the late 1970s, stated that villagers acknowledged the right to take the law into one’s own hands’ (*main hakim sendiri*; lit. ‘acting as their own judge’) in order to prevent ‘disgrace’ (*aib*, or *kecelaan*). Thus, the use of violence was viewed as a ‘moral right’, albeit one that should be approached with care.<sup>25</sup>

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<sup>24</sup> See, in particular, Julius Jacobs, *Het familie- en kampongleven op Groot-Atjeh: eene bijdrage tot de ethnographie van Noord-Sumatra* (Leiden: Brill); and Christiaan Snouck Hurgronje, *De Atjehers* (2 Vols.) (Batavia: Landsdrukkerij, 1893-95).

<sup>25</sup> T. Bachtiar E. Panglima Polem, ‘Pengendalian social di Aceh Besar’, in *Segi-segi social budaya masyarakat Aceh: hasil-hasil penelitian dengan metode “grounded research”*, ed. Alfian (LP3ES, 1977), pp. 101-16. In one case described by the author, a man murdered his wife after he caught her in the act of committing adultery (*zina*). According to the author, this violent reaction was accepted by the village community as his moral ‘right’.

While it is important for our purposes to recognize these cultural aspects, it is crucial to emphasize that the interpretation of ‘customs’ is always contingent, and never a static ‘condition’ of Acehnese (village) society. The discourse of sexual morality described by T. Bachtiar was strongly influenced by ideas of ‘moral crisis’ (*krisis moral*), and the danger of ‘free commingling’ (*pergaulan bebas*) that were disseminated in society in the 1970s.<sup>26</sup> However, while ideas about moral degradation were clearly part and parcel of the Shari’a-minded currents of Islamic political activism since the late colonial period, the discourses and practices of social control described by T. Bachtiar did not focus on the notion of Shari’a: ‘What needs to be noted is that the absorption of these Islamic teachings [namely about morally ‘correct’ behaviour] resides in the domain of personal character (*akhlak*) rather than in the sphere of Shari’a (law). Because of this, it is not [perceived as] strange when someone feels proud about being Islamic in character, while at the same time his life is not in accordance with the domains of worship and Shari’a.’<sup>27</sup> As we shall see, the distinction between state Shari’a and *adat*-based approaches to moral transgressions is also very important today, even if, in public discourse, both frameworks are strongly intertwined. Equally important, in this respect, is that, in recent decades, next to a ‘religious revival’ also a ‘revival of tradition’ has occurred, noticeable in an increase in political claims related to ethnic or regional identities and loyalties.<sup>28</sup>

### **Cases: Different kinds of conflict, different kinds of violence**

In the previous section we have seen that vigilante violence ‘in the name of Shari’a’ indeed occurs in contemporary Aceh, but that it is situated at the margins of (social and political) activism. In this section, I focus on various forms of vigilantism that are more ‘embedded’ in Acehnese society.

### **The criminalization of ‘deviancy’: the cases of Teungku Aiyub and Mirza Alfath**

Non-mainstream religious groups are under pressure in Aceh. In his report for the IRP, Moch Nur Ichwan describes the controversy around the Majelis Pengkajian Tauhid Tasawwuf

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‘[I]t was even lamented’, he continues, ‘that he did not murder both’.

<sup>26</sup> Ibid., p. 108.

<sup>27</sup> Ibid., p. 112.

<sup>28</sup> See, e.g., Adriaan Bedner and Stijn van Huis, ‘The return of the native in Indonesian law: indigenous communities in Indonesian legislation’, *Bijdragen tot de Taal-, Land-, en Volkenkunde* 164, 2-3 (2008), 165-93; Jamie S. Davidson and David Henley ed. *The revival of tradition in Indonesian politics: the deployment of adat from colonialism to indigenism* (London/New York: Routledge, 2007); Gerry van Klinken and Henk Schulte Nordholte ed., *Renegotiating boundaries: local politics in post-Suharto Indonesia* (Leiden: KITLV Press, 2007).



(MPTT), a neo-Sufi movement founded and led by Abuya Syaikh Haji Amran Waly al-Khalidy, which has branches in Aceh, North Sumatra, and Malaysia. Many *ulama*, both inside and outside the MPU, have questioned or attacked Amran Waly's teachings for being 'un-Islamic'. One of his books was 'banned' by the MPU.<sup>29</sup> Compared to many other, smaller groups, however, Amran Waly has been able to mobilize considerable (political) support. In April 2011, the Governor of Aceh province, Irwandi Yusuf, issued a press statement in which he announced a Governor Decree (Peraturan Gubernur, Pergub) containing a formal ban on 14 'deviant sects' (*aliran sesat*). This decision was made after the government of Aceh, with the assistance of the Council of Ulama (MPU), had investigated the practices and doctrines allegedly disseminated by a total of 17 non-mainstream groups.<sup>30</sup> While it is possible to speculate about Irwandi's motives (up until that point he had rarely expressed an interest in such matters, and it is well possible that this was a strategy to increase support among conservative religious leaders), there is no question that such regulations resonated with fears and tensions within Acehnese society about fringe groups trying to lead Acehnese Muslims 'astray'.

The sensitivity associated with alleged 'deviant sects' is partly a result of the continuation of New Order discourse about 'correct religion' in the post-Suharto era. It is also, however, rooted in an older and more regional-specific discourse about the need to keep Aceh 'clean' from harmful 'outside' influences. The tensions building around alleged 'deviant sects' in recent years is an Indonesia-wide phenomenon, and not specific to Aceh. However, the 'opening up' of Aceh after the ending of the conflict, and in the wake of the 2004 tsunami, does lead to particular anxieties, which are easily capitalized on by political actors – particularly those with a flair for populism.

Recently, two cases have sparked concern, both inside and outside Aceh, about the violent escalation of cases related to deviancy and the 'integrity' of Islam. Both cases – the first dealing with the murder of a religious teacher accused of deviancy in the district of Bireuen, the second with the near-lynching (and subsequent arrest) of a university lecturer accused of insulting Islam in Lhokseumawe – are sensitive because of the supposed 'threat' caused to Acehnese society. They show the urgency of the problem, as well as the complexity of these conflicts, as they are played out on the ground. I will discuss both cases briefly and in turn.

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<sup>29</sup> Moch Nur Ichwan, 'Alternatives to Shari'atism'.

<sup>30</sup> 'Pemerintah Aceh Larang 14 Aliran Keagamaan', *Serambi Indonesia*, 7 April 2011.

On Friday 17 November 2012, a religious teacher known as Teungku Aiyub, residing in the sub-district of Plimbang, Bireuen (on the North coast of Aceh province), was killed by an angry mob. In the clash, one of his students and one of his attackers were also killed. Ten people were seriously injured. While various versions of the story circulate, the general picture is the following. On that night, a relatively small group of some dozen approached Teungku Aiyub's house, who at that moment was leading his weekly religious lessons. Teungku Aiyub's group surprised the visitors by coming out of the house attacking them with swords and machetes. The mob then fled, only to return with many hundreds more. In the meantime, most of Teungku Aiyub's followers had escaped from the location, leaving behind only three, including Teungku Aiyub himself. Police and military officers reportedly arrived at the scene after the initial outbreak. However, when the mob returned they did not, or could not, prevent the murder of Teungku Aiyub. Teungku Aiyub's house was burned to the ground. The leader of the accused 'sect' and one of his students were shot and also burned, apparently in front of the eyes of the police.<sup>31</sup>

By the time of the violent clash, the controversy around Teungku Aiyub had been dragging on for almost two years – a period in which the group was regularly accused of adhering to deviant teachings. According to the villagers, Teungku Aiyub claimed that the places of worship in the village were 'not pure', while his followers were prohibited from following the village imam in prayer. Villagers were also concerned about the lessons taught by Teungku Aiyub about rituals related to death.<sup>32</sup> Finally, there were all kinds of rumours – and this is often found in combination with accusations of deviancy – of sexual transgressions making part of the 'mysterious' meetings in the teacher's house. As a result of these accusations, in March 2011 it had almost come to a clash. Afterwards, the district level MPU started an investigation, without reaching a clear conclusion about the nature of his teachings.<sup>33</sup> The only result was that Teungku Aiyub was forbidden to teach adults because, supposedly, he did not possess enough knowledge.

The case of Teungku Aiyub sparked concern among local human rights groups. A KontraS spokesperson issued a statement, in which he called all parties involved to 'respect

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<sup>31</sup> See, e.g., 'Malam berdarah di Jambo Dalam', *Modus Aceh*, Edisi 19-25 November 2012; 'Inilah kronologis bentrokan warga dengan kelompok Tgk Aiyub', [www.wartaaceh.com](http://www.wartaaceh.com), 17-11-2012 (Accessed 15-12-2012); 'Balai pengajian diamuk massa, 3 tewas dan 9 luka', [www.acehkita.com](http://www.acehkita.com), 17-11-2012 (Accessed 29-12-2012).

<sup>32</sup> 'Malam berdarah di Jambo Dalam'.

<sup>33</sup> 'Satu lagi: soal dugaan ajaran sesat!', *Modus Aceh*, 31 March 2011; 'Wawancara Sekretaris MPU Bireuen: jangan terlalu mudah menggolongkan seseorang sesat', [Atjehpost.com](http://Atjehpost.com), 18 November 2012 (Accessed 29-12-2012).

the supremacy of the law and not to take the law into one's own hands'. In addition, he called on the police to seriously investigate the case, and to prevent such outbreaks in the future.<sup>34</sup> According to the Bupati (District Head), Ruslan M. Daud, he even received a visit by an officer of the United Nations intent on investigating what happened in Plimbang.<sup>35</sup>

The second case I would like to discuss is that of Mirza Alfath, a lecturer at the Law Faculty of the Universitas Malikussaleh, Lhokseumawe (North Aceh). On 20 November 2012, Mirza was accused in the largest regional newspaper *Serambi Indonesia* of 'insulting' Islam and 'glorifying Jews' on his Facebook page.<sup>36</sup> The same night, a large mob (consisting of 'hundreds' of people according to most media reports) accumulated in front of his house. Soon after, people started throwing rocks at the house.<sup>37</sup> Before the situation could escalate further, the police arrived at the scene, closing the property off. Mirza Alfath was 'brought into safety' at the police station.

In subsequent days, Mirza was questioned by the police and by members of the local (Kota Lhokseumawe) branch of the Ulama Council (MPU). The council showed particular interest in two accusations; namely, whether Mirza was an 'atheist', and whether he was a supporter of Israeli policies in the Palestina conflict.<sup>38</sup> Mirza responded that he had not been understood correctly, and that the nature of these postings was 'academic' rather than a literal reflection of his opinions, and that he had been quoting others in order to raise a debate. On the basis of these 'interrogations', the MPU concluded that Mirza's Facebook postings were 'off the mark' (*sudah jelas melenceng*), and that Mirza had stated that he was willing to repent for his writings. On Friday 23 November, and in the presence of a congregation present at the *Islamic Centre Mosque* in Lhokseumawe, Mirza admitted his mistake. He asked for forgiveness from the Islamic community, the Acehnese community, the people of Lhokseumawe, his neighbours and his Facebook network for Facebook postings that 'were considered as insulting and harming Islam'. He also promised to leave his residence in Keude. In addition, he confirmed his adherence to Islam by pronouncing the confession of

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<sup>34</sup> 'KontraS ajak semua pihak hormati hukum', *Acehkita.com*, 19-11-2012.

<sup>35</sup> 'Buntut Bentrokan Plimbang; Bupati Bilang Petugas PBB Akan Turun ke Bireuen', *Atjehpost.com*, 05-12-2012 (Accessed 29-12-2012).

<sup>36</sup> Teuku Zulkhairi, 'Akun Facebook "Mirza Alfaths" Menghina Islam', *Serambi Indonesia* 20-11-2012.

<sup>37</sup> 'Mirza terjaring di jaring Facebook', *Modus Aceh*, 26 November – 2 Desember 2012.

<sup>38</sup> 'Dibalik pertemuan Mirza dengan MPU', *Modus Aceh*, Edisi 26 Nov – 2 Dec. 2012. In one Facebook posting, Mirza had written that 'God is the most creative product of human imagination' (*Tuhan itu produk imajinasi manusia yang paling kreatif*).

faith (*syahadat*).<sup>39</sup>

In the aftermath of this incident, some debate has arisen about the nature of social media outlets, such as Facebook, as constituting a private or a public space, and the question to what extent Mirza was ‘spreading’ dangerous thoughts. Central, in this respect, was the fact that he was a university teacher, and thus the question of whether he was using the lecture hall to voice his views on religious matters. Students were quoted saying that he was not.<sup>40</sup>

### **Protecting the ‘good name’ of the village: Blang Daruet and Juroung**

In 2009-2010 I lived in Aceh to carry out fieldwork for my PhD dissertation.<sup>41</sup> In my research, I focused on two different locations. Desa Blang Daruet is a city neighbourhood in Banda Aceh, which was completely destroyed as a result of the 2004 Indian Ocean tsunami.<sup>42</sup> Desa Juroung is a small village in Aceh Besar, located just off the main road from Banda Aceh to Medan.<sup>43</sup> In both locations, vigilante violence occasionally occurred. To give some insight in this kind of violence, I will give two examples, one for each location.

About half a year before I came to live in Daruet, a young couple was accused of adultery (*zina*). The couple was not originally from Daruet. The woman came from the mountainous area of Gayo, while the man had ventured from West Aceh. Both of them lived in Daruet alone, in the same street but in separate houses. Their neighbours had become suspicious when seeing the woman visiting the house of the man in the evening. Eventually, a group of villagers, mostly young men between their late teens and early thirties, mobilized in front of the house to catch the two ‘in the act’. The couple was dragged out of the house, the woman covered only in sheets. On the street, the man was beaten, and the woman’s hair was cut short. After this, both of them were ‘given a bath’ (*dimandikan*, or *siram*) using filthy

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<sup>39</sup> ‘Mirza terjaring di jaring Facebook’; ‘Disaksikan Ribuan Jemaah Salat Jumat, Mirza Alfath Ucapkan Dua Kalimat Syahadat’, *Atjehpost.com*, 23-11-2012 (Accessed 29-12-2012).

<sup>40</sup> ‘Tidak ada yang aneh’, *Modus Aceh*, Edisi 26 Nov. – 2 Dec. 2012. For one of the few informed and nuanced contributions on the contestations around Mirza Alfath, see the following comment by an Unimal student, Bisma Yadhya Putra: ‘Polemik Mirza Alfath(isme)’, *Atjehpost.com*, 9 December 2012 (Accessed 29 December 2012).

<sup>41</sup> My dissertation, entitled ‘Becoming better Muslims: religious authority and ethical improvement in Aceh, Indonesia’, is due for defense in mid-2012.

<sup>42</sup> A staggering total of 75 per cent of about 3000 inhabitants died. In the following years, Blang Daruet was physically reconstructed with the help of two international NGO’s. When I came there in 2009, almost all of the survivors had been given a house to live in. The large majority of villagers lived in what people called ‘tsunami houses’ (*rumah tsunami*), concrete houses with three rooms: a sitting room, two bedrooms, a miniature bathroom, and a kitchenette (most aid houses in Banda Aceh look roughly like this).

<sup>43</sup> Both these names are pseudonyms, as are all the names referring in this reports to people in these places.

water from the gutter. After this public ‘cleansing’, village leaders contacted the authorities. The couple was taken on the back of a motorcycle to the police station, where they were held for a few days. In the mean time, their parents were summoned to Banda Aceh. Upon their arrival, consultations (*musyawarah*) were held to discuss the way in which the case should be ‘solved’ (*diselesaikan*). Ultimately, matters were settled when the couple was married in the Blang Daruet mosque – an event witnessed by many of the local residents. Immediately thereafter, the couple moved away from Daruet. The *keuchik* told me that he had ‘no idea’ where they had gone.

Hussein (21) was one of the young men who took part in the ‘arrest’. When I asked him why such rough treatment had been necessary, he mentioned various reasons. Firstly, he argued, the couple was supposed to ‘learn what shame was’ (*supaya dia tahu malu*). Their treatment was meant, moreover, to be a ‘warning’ (*peringatan*) not only to this couple but also to others, that such conduct was not allowed in Daruet. Only in this way, Hussein explained, could the ‘good name’ of Blang Daruet be protected. ‘If we are soft on them, people in other villages will think that you can do whatever you like in Daruet, that it is just free here (*bebas aja*). The village would attract even more sinfulness’ (*tarik maksiat lagi*). He also claimed that ‘every village throughout Aceh (*seluruh Aceh*)’ would react like this.

Various versions of the role of the village leaders circulated. According to the *keuchik* himself, he was not present at the ‘arrest’, and he was only alerted about the matter when the beatings and the ‘cleansing’ had already taken place. According to Hussein as well as others involved, however, both the *keuchik* and the village *imam* had been present, standing at the back. Regardless of the question of who was speaking the ‘truth’, the important point is that, according to the *keuchik*, the arrest was the ‘business of the *pemuda*’, and he did not consider it his duty to interfere. As Hussein formulated it: ‘the *keuchik* just makes sure we do not beat them to death’. When I asked them ‘how much’ of a beating should suffice, he answered: ‘we beat them until we felt satisfied’ (*dipukul sampai puas*).

All this does not mean that there was no debate in Daruet about the question of whether this violence constituted a proper response. I often heard people explain that ‘actually’ the beatings and the practice of ‘washing’ the wrongdoers should not be allowed, but that it was difficult to ‘contain’ the youth. Also, people generally thought that the anxiety about sexual ‘transgressions’ (mainly *khalwat* and *zina*) had increased after the tsunami. I will return to both these arguments in the next section.

The second incident I would like to mention concerns a *khalwat* (seclusion) case in Juroung, which I witnessed – at least partly – myself. In early 2010, two teenagers were ‘caught’ (*ditangkap*) while sitting underneath the house of the girl’s grandmother, a Juroung resident. The boy and the girl came from different villages, and knew each other from school. The girl often visited her grandmother in Juroung (who lived in the house together with her adult son and another granddaughter). The villagers who came to ‘arrest’ the couple consisted of five or six young men. Later, they were joined by a dozen others. The pair was taken to the *meunasah* (village communal hall). On the way, the boy received repeated blows on the arms and chest (not on the face). At the *meunasah*, the couple was drenched with water from the tank of the *meunasah* (in contrast to the previous case in Daruet, this was clean water).

After this public ‘cleansing’ had taken place, village leaders were alerted, including the *keuchik*, the *imam*, and one of the leaders of the adjacent Islamic boarding school, who was also the head of the Juroung village ‘council’ (*teuha peut*). A village meeting was called (*musyawarah*), during which the parents of the boy and girl were contacted, and requested to come to Juroung. In the meantime, the girl was allowed to return to her grandmother’s house. The boy was required to stay at the *meunasah*. After the parents arrived, some village leaders suggested to the families that the couple should be married in the *dayah* mosque, but this was refused. Instead, the parents of the couple apologized to the *kampung* leaders, after which they were allowed to take their children home.

One of the key players in this incident was the ‘head’ of the village *pemuda*, Syihab (28). When I asked him, a couple of days after the incident, how he viewed the ‘arrest’ of the couple, he answered that, ‘in Juroung, village law applies (*hukum kampong berlaku*). ‘It is allowed to receive guests at night, but not to meet in dark spots or in the shrubs (*semak-semak*). We have rules.’ Syihab had personally taken the initiative for the ‘arrest’, but he regarded all (male) *pemuda* to be responsible. He mentioned two reasons in particular. Firstly, he stated that illicit behaviour such as *khalwat* had ‘damaging’ effects on the moral integrity of the Juroung residents (*merusakkan warga*). It was the task of the *pemuda*, he explained, to protect the ‘good name’ of the village. He regarded it irresponsible to ‘just let pass’ (*dibiarin aja*) such behaviour, because the people of Juroung would feel ashamed for their village. The second reason was that ‘state law’ (*hukum negara*, as opposed to *adat*, or ‘village’ law) was, in his view, utterly unreliable. ‘If we revert to state law, perhaps [the problem] won’t be dealt with (...) We have seen that often enough’. This was an argument I heard very often, both in Daruet and in Juroung.

The *keuchik* arrived late on the scene, after the beating and the cleansing had taken place. About the role of the *pemuda*, he was somewhat ambiguous. In his view, the *pemuda* were allowed to ‘arrest’ – heavy-handedly if necessary – but not to carry out punishments. He did not approve of the beatings, or of the public cleansing. In his view, this punishment was ‘too harsh’ (*terlalu keras*) and ‘forbidden by Islam’ (*agama melarang*). He occasionally told the *pemuda* to be calm, but also acknowledged that this was difficult ‘if emotions are in play’ (*kalau sudah emosi*). There were, in other words, limits to his authority. ‘I can only speak tough to them’ (*saya bisa ngomong kasar dengan mereka*). But apparently, this had little effect.

A somewhat different view was advanced by the head of the *teuha peut*, who was also a *dayah* leader. Just like the *keuchik*, he arrived on the scene after the public shaming had taken place. But unlike the *keuchik*, he agreed with the punishment. ‘As *kampung* leaders, we often remind the people about the rules, so this is the logical consequence’. The main condition, he argued, was that no lasting physical damage was inflicted, for that might cause retaliations or even damages to be paid by the village (an important part of *adat* law). He was also less ambiguous about the *pemuda*. They functioned as a kind of ‘village police’, he argued. At the same time, he acknowledged that there was a risk, because ‘children [are] difficult to control’ (*anak muda, susah dikontrol*).

There are both differences and important similarities between Daruet and Juroung. Daruet is a city neighbourhood where it is possible, to some extent, to live a (relatively) anonymous life, while in the small village of Juroung this is more difficult. Connected to the difference between an urban and a rural locale is the influence of the *dayah*, which is more pronounced in Juroung. Another important difference is the tsunami, which literally transformed Daruet, one effect being the coming of many ‘newcomers’. Nonetheless, it is important to emphasize that the relatively ‘open’ social structure of Daruet does not make social control less pervasive here. I will return to a number of these structural factors – including the tsunami – in the next section. For now, I would like to focus on a few conspicuous similarities between both places.

In both places, a distinction was made between ‘original inhabitants’ (people who were born in the *kampung*) and ‘newcomers’ (people who had come to live there recently, or people who came to visit or stay temporarily). With regard to moral transgressions (including *khalwat* and *zina*, but also, for example, alcohol use or more mundane criminal offences such

as stealing), the stance of local villagers tended to be much harder toward ‘newcomers’ than toward original inhabitants. It was often explained to me that, if ‘original villagers’ were caught in immoral behaviour, the village leadership would try to solve the case in a relatively soft and inconspicuous way. However, when outsiders misbehaved, this was framed much more as a disturbance to the moral integrity of the village, soliciting a tough response. The explanation was often the same: if newcomers were not dealt with adequately, this may create rumours about their village being ‘free’ (*bebas*) and unconcerned about sinful behaviour, thus staining the good name of the village. By the *pemuda* especially, this was seen as a proper justification for the use of violence.

This connects to another conspicuous similarity between both locations; namely, the near-absence in discussions about such matters of ‘Shari’a’ as a framework for motivating violence. During my conversation with Agam, which took about one and a half hours, the term was never mentioned. The only time that Agam referred to the system of state Shari’a, was when he explained that the WH (the ‘Shari’a police’) was a hopelessly inadequate institution (and moreover, never came to Juroung). This does not mean that the institutions of ‘state law’ (*hukum negara*), including the (‘ordinary’) police were perceived as more adequate. The crucial issue was not the distinction between ‘religious’ and ‘secular’ law, but rather the weakness of the state. In the final part of this section, I will discuss one more case, which allows us to consider the tangle of state and non-state actors, and the important impact of public profiling through media attention and political opportunism.

### **Motivations: The case of Pango Raya**

This case centres on the locality of a new bridge, which connects the Ulee Kareng district in Banda Aceh to the main road to Medan. The bridge is located next to the village of Pango Raya, Aceh Besar. During the first half of 2012, it became a popular spot for ‘hanging out’ (*nongkrong*) for Banda Aceh youth. As one newspaper reported in May:

The long and wide bridge at Pango Raya functions not only as a place for traffic and transport. It has also become a cool place for killing time, especially in the late afternoon, while waiting for the sun to set. Or at night, while enjoying the flickering stars in the vast and infinite sky. Since a few months now this bridge is becoming an alternative place for hanging out for the people of Banda Aceh. Particularly for young people who want to



spend their time at dusk together with their friends of the same age.<sup>44</sup>

Three months later, this idyllic association with the Pango Raya Bridge was disturbed, when the location became known for violent actions against ‘sinful behaviour’, carried out by local youth from Pango village. Many of these cases involved young courting couples, some of whom might have thought of visiting a romantic spot, and some of whom may have been interested primarily in a ‘dark spot’, as the bridge was still partly a construction site.

This then became a topic in the media in October, when the Vice-Mayor of Banda Aceh, Illiza Sa’aduddin Djamal, decided to visit Pango one night, together with the Shari’a police, to help the villagers ‘restore’ moral order at the Pango locality. The case thus gives us an interesting reversal of the cases discussed in the first section, in which non-state actors decided to ‘help the state’ to enforce public morality. Here it is representative of the state ‘helping’ a local community get rid of unwanted elements.

The policing actions by the Pango youth have occasionally been violent, with some accused wrongdoers being severely beaten. As far as I can tell, people have not been beaten to death, although several have ended up in the hospital. In one case, the situation almost escalated, when a (male) police officer visiting the bridge threatened the youth with a gun. No shots were fired, however, and the villagers ultimately persuaded the man and his female companion to leave the location.<sup>45</sup>

In December 2012, I talked to three of the youngsters involved in the ‘policing’ of the Pango Raya Bridge. They were between 18 and 23 years old, and when they spoke about their motivations for engaging in regular nightly patrolling, they did this in terms of ‘preventing sinful behaviour’, and ‘protecting the village’ against the dangers coming from outside.

Compared to the cases described above, the role of the *keuchik* may be called rather remarkable. According to these youth, it was the village head who first ‘ordered’ them to patrol at the bridge and to ‘throw out’ (*mengusir*) unwanted elements. To facilitate these actions, the *pemuda* were provided with coffee and cigarettes (no money). The actions were approved by the local police chief. After a few months, the *keuchik* arranged for a number of big signs be put up at the bridge, reading ‘Beware. It is forbidden to stay on the bridge at

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<sup>44</sup> ‘Jembatan Pango, Tempat Konkow Baru Kawula Muda Banda Aceh’, [www.atjehpost.com](http://www.atjehpost.com), 25-05-2012 (Accessed 29-12-2012).

<sup>45</sup> Most of the information in this section is derived from an interview I had with some of the Pango youth, as I explain below.

night. At your own risk. [Signed] Team Community Pango'.<sup>46</sup> My interlocutors emphasized to me the significance of these signs, both in relation to their own role, and that of the village leadership. While it was the *keuchik* who 'took responsibility' by ordering the *pemuda* to start patrolling, the signs were understood, essentially, as relinquishing that same responsibility, giving the youth 'free reign'. 'The *keuchik* has pulled his hands from it (*keuchik sudah lepas tangan*)'.

While the *keuchik* thus played an important role initially, the *pemuda* were more than willing to take up the task. As these youngsters explained it to me, it was important to counter, and discourage, 'transgressions of village norms' (*pelanggaran norma-norma kampung*). By this they meant sexual norms; that is, the prohibition of (sexual) 'immorality' (*mesum*), illicit 'relations' (*perhubungan*), proximity (*khalwat*) and adultery (*zina*), but also other disturbance of public order. Thus, in their explanations they shifted automatically from chasing away courting couples to a large brawl with a motorcycle gang.<sup>47</sup> Allowing such behaviour would give the outside world the impression that Pango was a 'free haven' (*tempat bebas*), or as a 'village full of adultery' (*kampung zina*). Like their counterparts in Daruet and Juroung, their actions were directed at protecting the 'good name' (*nama baik*) of the village. Through the construction of the bridge, they argued, Kampung Pango Raya had been given a very bad name (*sudah jelek nama kampung*). Violence was sometimes unavoidable, they explained, for they were occasionally met with resistance. Equally important, however, was the fact that these actions were supposed to have a 'deterrent effect' (*efek jera*) on all 'sinners' to come there.

As mentioned already, a significant factor in the Pango case was the Vice-Mayor of Banda Aceh, Illiza Sa'aduddin Djamaal (of the national Islamic party PPP). On 26 October, Illiza visited Pango village, in the company of the Head of the Ulee Kareng Sub-district and the Head of the provincial Adat Council (Majelis Adat Aceh, MAA), to perform a number of *adat* rituals together with the village Woman's council (Pembinaan Kesejahteraan Keluarga, PKK). She stated that, by doing so, she wished to express her 'support for local customs (*adat-istiadat*), especially those which are infused by Islam (*yang Islami*) and those which do not contradict Shari'a'.<sup>48</sup>

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<sup>46</sup> 'Awat...! Dilarang duduk di atas jembatan para malam hari. Risiko tanggung sendiri. Tim Masyarakat Pango Raya'.

<sup>47</sup> Interestingly, they referred to these gangs as 'punk groups'. In his report for the IRP, Reza Idria describes how, in the public opinion, 'punk' lifestyle has come to stand for all kinds of 'sinful', or more generally socially undesirable behavior running counter to 'Sharia'. Reza Idria, 'Cultural resistance against Shariatism'.

<sup>48</sup> 'Illiza Serahkan Sange untuk Warga Pango', *Serambi Indonesia*, 27-09-2012.

A few weeks later, on 13 October, Illiza visited Pango again, this time at night and in the company of the Shari'a Police (WH) and a number of 'community organizations' (*organisasi masyarakat*) from Banda Aceh, to carry out a raid on the bridge together with Pango villagers.<sup>49</sup> At this event, which was widely covered in the press, Keuchik Kamaruzzaman stated that 'the Pango Bridge has become a location for hanging out by young couples who are not *muhrim* [i.e. closely related by kin] until late at night. This location has even been used as a place for using drugs and as a site for illegal road racing'. Illiza, on her part, announced the 'formation' of the 'Tim Amar Ma'ruh Nahi Mungkar Gampong Pango' ('Team Encouraging Good And Forbidding Evil'), consisting of Pango villagers. According to the Vice-Mayor, the problem of Shari'a offences had 'escalated' in Banda Aceh. The newspaper *Serambi Indonesia* reported:

For this reason, the government remains committed to the enforcement of Islamic Shari'a. Yet, Illiza stated, the involvement and the support of the [local] community is an issue of the greatest importance. Without the support of [local] residents, these efforts would be in vain. Illiza said: 'The Tim Amar Ma'ruh Nahi Mungkar, which has already been formed in two villages, namely Kuta Alam and Pango Raya, has the authority to keep watch over every breach of Shari'a that occurs in each respective area, by means of persuasion, not by means of violence'.<sup>50</sup>

Illiza's focus on Shari'a is hardly surprising. During the past years, it has been a spearhead issue in her campaigns, especially in the run-up to elections. However, for the three youngsters that I interviewed, Shari'a hardly played a role. The only time they referred to the particularities of Shari'a law was in the context of Illiza's visit, and the impossibility for the WH to patrol this place 24 hours a day.

### **3: CHALLENGES IN PREVENTING VIOLENCE**

The point of departure in this final section is that, in order to understand and further dissect the underlying dynamics of vigilante violence in Aceh, it is important to take notice both of 'structural' factors (i.e. factors pertaining to the structural changes – political, economic, legal, ecological, etc.) and the behaviour of (and interactions between) particular (groups of)

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<sup>49</sup> 'Ratusan Warga "Razia" Muda-Mudi di Jembatan Pango', *Serambi Indonesia*, 14-10-2012.

<sup>50</sup> *Ibid.*

actors. I will begin by outlining three, interrelated structural factors; namely, technology and mobility, the impact and aftermath of the tsunami, and legal reconfigurations (including the implementation of the Shari'a law) in the post New Order, post-conflict era. I then move on to systematically discuss the role of the most important actors.

### **Structural factors**

The Acehnese have always been a mobile people. The practice of *merantau* (travelling away from one's place of birth to look for work, knowledge, and experience), is a form of culturally embedded mobility, for which the Acehnese have been renowned since at least the nineteenth century. Yet, the mobility enjoyed by many people today is unprecedented. Many households today own at least one or two motorcycles, and people increasingly work and study away from home.

The impact of this trend is relevant here in two distinct ways. Firstly, increasing numbers of people live alone, and away from home, to engage in work or study. This is true for women as well as for men. While *merantau* traditionally was a male affair, today women seem to be as mobile as their male counterparts. In city neighbourhoods, such as Daruet, where quite a large number of houses are rented out to temporary residents, this trend is one among other factors in an increased moral anxiety. Another relevant aspect is the fact that it has become easier to mobilize large numbers of people, within short periods of time, and on locations relatively far from people's homes.

The factor of mobility cannot be disconnected from the factor of technology more generally, and particularly communication technology. Today, news spreads much faster than it used to, and so do rumours, distorted truths, and calls for action. The speed in which a mob appeared in front of the house of Mirza Alfath would have been unthinkable without the impact of internet and the use of mobile phones. Social media especially should not be underestimated. Indonesia is the second 'Facebook-nation' after the US, and the network is extremely popular in Aceh.

The second structural factor I would like to mention here is the impact of the 2004 tsunami. It is common discourse in Aceh that the tsunami was a 'warning' (*peringatan*), a 'test' (*percobaan*) or even a 'punishment' given to Aceh for the sinful behaviour of its inhabitants. By pro-Shari'a activists, this is often used as an argument for a more vigorous enforcement of Shari'a, or the expansion of the existing body of laws.

For most ordinary Acehnese, however, the impact of the tsunami takes more

ambivalent forms. Many people are simultaneously enthusiastic and worried about the way in which Aceh has been ‘opened up’ (*sudah terbuka*) to the rest of the world after the 2004 tsunami, and the ending of the conflict in 2005. While it is clearly important that Aceh is able to connect easier to the rest of Indonesia and, indeed, the rest of the world, there has also been anxiety about the pace of these changes, and their impact on society. This ‘influence’ includes everything from aid workers and NGOs, domestic and foreign investment, non-Acehnese religious teachers, missionaries, researchers, tourists, alleged ‘terrorists’ as well as the more intangible forces of ‘westernization’ and ‘globalization’. This process has been perceived by most people as a blessing and a threat at the same time, and authoritative figures who, for whatever reason, have stakes in emphasizing public morality (politicians, government officials, preachers, religious teachers, members of the security forces) have responded to both emotions.

Unsurprisingly, the impact has been greatest in neighbourhoods that were directly affected by the disaster, such as Blang Daruet. In such places, senses of loss and grief have been accompanied by disruptive social and physical changes. There have been many ‘newcomers’.<sup>51</sup> This influx includes relatively ‘risky’ categories from a public morality point of view: single people (young men and women looking for jobs, students), but also members of the state security services (police, military, and intelligence), commonly glossed by ordinary villagers as *aparatus* (the ‘apparatus’). Compared to the situation preceding the tsunami, it has become less clear who owns what house, who lives where, for how long, and more generally ‘what is going on’ in the village. Social control is therefore regarded as less self-evident, but at least for some people all the more important.

The third factor I would like to mention here is the increasing complexity of legal practices in the post-New Order, post-conflict era. This issue has been discussed extensively by other authors, so there is no need to go into much detail here.<sup>52</sup> Suffice it to point out one, seemingly rather paradoxical development: while Shari’a law constitutes a significant extension of the legal framework, particularly in the field of public morality, at the same time

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<sup>51</sup> Every family living in Daruet before the tsunami was entitled to one or more aid houses (the number depending on the size of the family). In many cases, however, no survivors were left, which meant that the land and the house was automatically inherited by family members living elsewhere, who then decided to let the house to anybody who wanted to live in Banda Aceh. There were also many cases of survivors who did not wish to return to Daruet, and also let the house to others. Among the people who rented these places were many young civil servants based in Banda Aceh, most of whom have come with their families.

<sup>52</sup> See, e.g., Feener, *Shari’a and social engineering*; Miller, *Rebellion and reform in Indonesia*; Arskal Salim, *Challenging the secular state: the Islamization of law in modern Indonesia* (Honolulu, HI: University of Hawai’i Press).

there is a trend of the state encouraging local communities to solve local conflicts ‘between themselves’, on the basis of *adat* law.<sup>53</sup>

It is important to emphasize, moreover, that these conflicting trends take place in the context of post-conflict reconstruction and reconciliation. During the past decades, many people in Aceh have become deeply distrustful with the state, and disappointed about the capacity of state institutions to solve conflict and punish wrongdoings. Thus, when talking about the importance to solve (or ‘punish’) public morality cases ‘according to local traditions’ (*melalui adat*, or *secara adat*), many of my interlocutors argued that, should the (Shari’a or secular) authorities interfere, it would be questionable whether the law would actually ‘take its course’ (*hukum tidak berjalan* was the common phrase). Too often, I would be told, perpetrators were on the street after less than a day. Unsurprisingly, this judgement was usually coupled to complaints about corruption, and the role of close ties with the government or the police.

Generally speaking, then, solving conflicts within the community is regarded as more effective, easier, cheaper, and less time and energy consuming. However, one of the major problems, as we shall see, is that, in fact, it has become less and less self-evident to make a clear distinction between ‘traditional’ (village) institutions – crucial for *adat* law to come into effect – and the state. Rather than to view the outbreak of vigilante violence as a matter to be engaged either by the state or by ‘traditional’ leaders, it is important to understand how both these spheres interact, through the stances and behaviour of particular actors.

## **Actors**

I will now briefly outline five categories of actors: 1. The *pemuda kampung* (‘village youth’); 2. Village leadership; 3. Religious leadership; 4. The police; and 5. The media.

### **1: The *pemuda kampung***

While in Indonesia the word *pemuda* is also used in a more general sense, in this particular context I refer to the institutionalized role of male-gendered young adults, who, according to local customs, are responsible for guarding the village against ‘disruptions’ and bad influences from ‘outside’. The latter may include thieves, but also public morality breaches. As Syihab, the ‘head of the *pemuda*’ (*ketua pemuda*) in Juroung, summarized it, the *pemuda*

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<sup>53</sup> The latter development is not specific to Aceh, but an Indonesia-wide phenomenon, relating, firstly, to the decentralization laws coming into effect after the fall of Suharto in 1998, and secondly, to the broader *adat* ‘revival’ I mentioned already at the end of the first section.

are those ‘in front’ (*di depan*), taking care of the boundary between the domain of village integrity and the ‘outside world’.

In localized outbursts of vigilante violence, the *pemuda* commonly take centre stage (as we have seen in the cases of Daruet, Juroung, and Pango). The motivation I heard time and time and again, was the need to ‘protect the good name of the *kampung*’. This, I think, is a highly underestimated factor in discussions of public morality and vigilante violence more generally, in Aceh and perhaps elsewhere in Indonesia. The place of state Shari’a in this discourse is, moreover, ambiguous. Take, for example, a discussion I had with Saiful, a 30 year old Daruet resident, who once asked me whether I had witnessed a public caning yet. I answered I had not. ‘You should go’, he said. ‘Many people come and watch’. I asked whether a caning had ever taken place at the Daruet mosque.<sup>54</sup> ‘No,’ he said. ‘But this does not mean that there have not been violations of Shari’a (*pelanggaran Syariat*), there have been many!’ Most cases, he explained, were handled ‘internally’ to protect the name of Daruet. ‘Just so that the newspapers don’t start writing that the people of Dareut this, the people of Daruet that (*warga Daruet begini, warga Daruet begitu*). ‘When people come to Daruet from outside (*dari luar*), and do bad things here (*hal jahat*), only then we call in the WH’.

Another factor important to take seriously is cultural models of masculinity, which, in Aceh, builds both on traditions of gender segregation and on the history of (armed) conflict. It is often stated in Aceh that young men are ‘hot-blooded’ (*darah panas*) and that they are easily ‘agitated’ (*cepat emosi*). The factors of Acehnese masculinity and the responsibility of protecting the *kampung* against outside influences are of course interrelated. For this, the case of the Pango youth is exemplary. The young men I talked to gave various explanations for the use of violence in their attempts to ‘clear’ Pango Bridge from unwanted elements. People might not be ‘deterred’ sufficiently, or there might be resistance. But another important factor, they freely admitted, was that taking a hard stance felt good. Violence and intimidation was part and parcel of a process of cultivating group loyalty and cohesiveness (*kekompakkan*). To ‘defend’ the good name of the village also gave them a feeling of ‘personal pride’ (*kebanggaan sendiri*). The visit by the vice-mayor added to this feeling. They were proud to be regarded as an ‘anti-sinning movement’ (*gerakan anti-maksiat*) and joked that the Vice-Mayor regarded them as the ‘village WH’.

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<sup>54</sup>Public canings always take place at a mosque, and if possible at – or close to – the place where the Shari’a violation has taken place.

I was often told that, ‘ideally’, the *pemuda kampung* should tune their actions with the village leadership, particularly the *keuchik*, the imam, and the village council (*teuha peut*). However, I have also come to recognize it as a rather clear pattern, that in practice this form of consultation can be superficial and ineffective.

## **2: Village leadership**

Village leaders often do not agree with violence used against violators of public morality norms. This was my experience in Daruet and Juroung, but also in other places I visited. Although these people used many different wordings, it usually came down to the combined argument that beatings, or public ‘cleansings’ were neither Islamic nor proper *adat* punishments. Ideally, then, the village leadership should be warned before any ‘actions’ should take place, and that village consultations (*musyawarah*) should preclude any punishment. It is generally believed to be the responsibility of village leaders to ‘contain’ hot-blooded youth, and to prevent ‘anarchy’ (*anarki*). However, village leaders often told me that it was difficult to ‘contain’ the *pemuda*, and that they were often involved only after the violence had already taken place.

One explanation for this situation is that, in recent years, village leaders – and especially the *keuchik* – have been given ever more responsibilities, and that they are increasingly unable to keep all village affairs under their control. While the *keuchik* is considered as an *adat* leader, who is chosen by the villagers as their leader, he is also increasingly seen as an agent of the state, who needs to broker government support and successfully apply for state programs directed at village ‘development’. Quite often this double role leads to an entanglement of interests, and – at worst – a serious compromising of the *keuchik*’s moral authority. This problem manifests itself in different ways, one of them being the fact that village youth increasingly feel free to take ‘moral action’ without carefully consulting village leaders.

Another effect of the increasingly demanding nature of their job is that village leaders seek ways to diminish their responsibilities. Public order – and especially the (often tediously elongated) processes of consultation (*musyawarah*) and appeasement (*perdamaian*) – is one sphere in which village leaders can try to enlighten their traditional ‘burden’. This seems to be especially true in ‘sensitive’ cases, such as those related to the concern of deviancy. In the Tuengku Aiyub and Mirza Alfath cases, village leaders ostentatiously refrained from claiming



public responsibility.<sup>55</sup> In the case of Pango, the *keuchik* took ‘forceful action’, only to negate all personal responsibility a few months later when he had the signs put up at the bridge.

This process of rebuffing responsibility has a flipside, however. There is, throughout Aceh, a genuine concern about the ‘unclear’ of *adat* regulations, including commands, prohibitions, rights and obligations. A trend is emerging, therefore, in which village leaders try to formulate, and ‘officialize’ these regulations. In Juroung, such a document was first drafted in 2009, although it was still rudimentary in its outline.<sup>56</sup> In Daruet, the village leadership is working on a *qanun gampong* (‘village bylaw’) which is supposed to contain village rules as well as processual regulations regarding the enforcement of *adat*. This trend is only just emerging, and it remains too early to tell what its effect will be.

### 3: Religious leadership

The problem of moral authority is not limited to the village leadership, but can be extended to the role of religious leaders. The *ulama* from the nearby *dayah* in Juroung told me that they did not approve of the use of violence, but that they could do little to prevent it. A more general pattern in the stance of *ulama* toward (potentially) violent conflicts and incidents is that of indecisiveness. In particular cases, this stance seems to be connected to political calculation, according to which it is more strategic to remain ‘silent’ than to stand up for (and making the impression of ‘defending’) alleged wrongdoers falling victim to vigilante violence.

Still, this problem is not just about leadership skills and political calculation. Indecisiveness is also due to the simple fact that, among the *ulama*, there is no consensus about the question what does, and what does not constitute proper *adat* ‘enforcement’. One of the most telling examples I encountered during my interviews with the leadership of the provincial Council of Ulama (Majelis Permusyawaratan Ulama, MPU) in December 2012. The MPU Chairman, Ghazali M. Syah, stated that he did not have a problem with the practice

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<sup>55</sup> In the case of Mirza Alfath, village leaders emphasized that he had lived in Desa Keude Aceh only since recently, and that they knew very little about him. ‘Mirza terjaring di jaring Facebook’.

<sup>56</sup> In January 2009, in an attempt to professionalize village ‘regulations’ (*peraturan kampong*), the village leadership of Juroung issued an ‘announcement’ (*pengumuman*), which was signed by the *keuchik*, the different members of the *teuha peut*, and the *kepala pemuda*, while copies were sent to the Camat (Sub-District Head) and the Kapolsek (local Chief of Police). The document consists of five brief statements. The first two concern ‘customary sanctions’ (*sangsi adat*) for thieves. The final three are of a more general nature, stating that ‘guests may not enter the village after 10 o’clock at night’, ‘guests who want to spend the night have to report to the assistant village head (*ketua lorong*)’, and ‘those who are in the company of a girl who is not close family (*muhrim*) at night have to be arrested’ (*ditangkap*). At a later meeting, these provisions were further elaborated, but this was not officialised in a document. During this meeting it was decided that violators of public morality (such as drinking alcohol, or engaging in *khalwat*) should receive three warnings before being ‘arrested’.

of public ‘cleansing’, which he viewed, indeed, as a ‘legitimate’ *adat* punishment. He did not even regard the practice to be a form of violence, because it does not inflict ‘physical’ damage.<sup>57</sup> In contrast, Vice-Chairman Teungku Faisal Ali (who, incidentally, is one of the most prominent and vocal pro-Shari’a activists in present-day Aceh), this punishment is permitted neither by *adat* nor by Islam, and should be discouraged as much as possible.<sup>58</sup>

Of course, debate and differences of opinion are a key aspect of traditional Islamic scholarship. The problem, then, is that the MPU is a state institution, and the confusion about what should, and what should not be ‘allowed’ has a particular impact on the way in which it functions. The case of Teungku Aiyub is a good example. When violence broke out in November 2012, the controversy about Teungku Aiyub’s teachings, and the alleged activities in which his group engaged, had been dragging along for at least two years. In fact, this was not the first time that a large mob gathered in front of his house: this had already happened once in March 2011. Then, the situation was defused just in time.<sup>59</sup> Teungku Aiyub was ‘brought into safety’ by the police, and immediately afterwards the district level MPU started an investigation. One of the reasons why the conflict kept festering, then, was that the MPU never decided whether the group should be considered a ‘deviant sect’ (*aliran sesat*) or not.<sup>60</sup> Ironically, it was only after the violent clash that the MPU, by word of its Vice-Chairman Teungku H. Jamaluddin, declared that the group did *not* represent a deviant sect.<sup>61</sup>

The *ulama* reacted less indecisively in the case of Mirza Alfath. It is questionable, however, whether such a stance would lead to less violence in the long term. In public statements, the blame for the incident was placed entirely on Mirza Alfath, while the aggressive demeanour of the crowd was hardly called into question.<sup>62</sup> Also, no attempts were made by religious leaders to defuse the disturbing rumours that immediately surrounded the

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<sup>57</sup> Interview with Ghazali M. Syah, 11 December 2012.

<sup>58</sup> Interview with Teungku Faisal Ali, 11 December 2012.

<sup>59</sup> ‘Satu lagi: soal dugaan ajaran sesat!’, *Modus Aceh*, 31 March 2011. In this incident, it did not come to a clash. However, the mob did burn down Teungku Aiyub’s *balai* (shelter used for teaching), as well as a vehicle.

<sup>60</sup> In the aftermath of the March 2011 incident, MPU Bireuen chairman Teungku Hanafiah Hamza blamed Teungku Aiyub’s unwillingness to cooperate in the investigation for the fact that it was ‘difficult to come to a conclusion’ about his teachings. ‘Malam berdarah di Jambo Dalam’.

<sup>61</sup> ‘Bentrok warga Bireuen, ulama: tak terbukti ajaran sesat’, *www.tempo.co*, 17-11-2012 (Accessed 26-12-2012).

<sup>62</sup> After meeting with Mirza, and interrogating him about his Facebook postings, the MPU concluded that, ‘if he wants to ask forgiveness in front of the community (*masyarakat*) and pronounces the confession of faith (*mengucap dua kalimah syahadat*) and promises not to do this again, Mirza may be allowed to return to his house’. ‘Mirza terjaring di jaring Facebook’.

person of Mirza as soon as his Facebook postings became an issue in the media.<sup>63</sup>

#### 4: The police

So far, the role of the police in preventing vigilante violence in Aceh has not been very constructive. In some cases, including the Tim Anti-Maksiat and the Pango Raya actions, the police has openly supported vigilantes. To a large extent, this stance fits a broader Indonesian picture in which conflicts are increasingly left to local communities to solve. Village conflicts (including public morality breaches) are increasingly viewed as ‘village’ matters, which should not concern the police. In some cases, this leads to confusion, particularly when cases are actively ‘handed back’ to village communities by the police after reports are already filed. Equally compromising people’s access to justice is the fact that the police are generally unwilling to arrest perpetrators of vigilante violence.<sup>64</sup> In the case of Pango Raya, the *pemuda*, despite involved in a series of violent incidents, have not been held accountable by the police.

Another cause for concern is the inadequate performance of the police during outbreaks of mass violence, including the case of Teungku Aiyub. To some extent, this may be ascribed to slackness. Another, often underestimated factor is fear, certainly in the Acehnese context, where – as one of my interlocutors in Daruet put it – people ‘know how to use a weapon’. Cases such as the outbreak in Plimbang show that local police officers are under-equipped, under-financed, and under-supported by the government, which means that, even if they want to, it is difficult to ensure other people’s safety without compromising their own.<sup>65</sup>

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<sup>63</sup> Take, for example, a rumour reproduced in a report in *Modus Aceh*. According to the reporter, it was told in the neighborhood that, shortly after the police had come to form a ‘defense line’ in front of Mirza’s house, a mysterious girl had come forward from the crowd. This girl then pointed at a spot on the facade, after which she called out: ‘That is the image of the sun, like the symbol found in the beliefs of the illuminati’. Subsequently, the reporter ominously comments: ‘Indeed, in ancient Egyptian mythology the sun is a symbol of Dewa Ra. In Judaism, Dewa Ra is claimed to be one of their Gods [sic]. In synagogues, it is common to display signs of the sun. So is this deliberate or a mere coincidence? Who knows, perhaps only the owner is able to tell.’ ‘Mirza terjaring di jaring Facebook’.

<sup>64</sup> This is confirmed by a Human Rights Watch report, which quotes the chief of police in the Baiturrahman sub-district, Banda Aceh, who explains that the police rarely apprehends the perpetrators of violence in *khalwat* cases: ‘We never arrest people for that kind of violence, because it’s hard to prove who was the actor, or the couple didn’t see who it was. And if it was committed by many people, we can’t arrest them all.’ Human Rights Watch, ‘Policing morality’, p. 49.

<sup>65</sup> A particularly disturbing fact in the Teungku Aiyub case is that, after the initial clash, the police had already arrived at the scene, but when the mob came back for the second time – this time with many more – they were unable to keep the situation under control. Ultimately, Teungku Aiyub was shot by the police in both his legs. The police chief later declared that they were forced to do so when Teungku Aiyub launched an attack with a

The policy of police and other state law enforcement services to allow community leaders to solve local conflicts themselves is not necessarily an undesirable process. As I have argued, people in Aceh do not have much trust in (state) law ‘running its course’ (*hukum berjalan*). In addition, official legal processes are generally viewed as a costly, unpractical, time and energy consuming process.<sup>66</sup> At the same time, however, it is important that the routes to conflict resolution by means of state law (*hukum negara*) are not entirely shut off by the same state institutions. The use of *adat* law, in other words, should be equally open to appeal. It is important to emphasize, in this respect, that most Acehnese regard these different legal frameworks to be complementary, rather than conflicting in nature.

An interesting development, in this respect, is the current attempt to integrate, more systematically than before, *adat* law with police tasks, in a program known as *polisi masyarakat* (‘community police’, *polmas*). In the *polmas* program, village communities are asked by the police to designate one member of the village council (*teuha peut*) to act as a police ‘counterpart’ in addressing *adat* breaches, making sure that public morality issues (such as *khalwat*, or *zina*) are solved without the use of violence. As one spokesperson of an Acehnese community based NGO expressed it to me, the *polmas* concept constitutes a potentially revolutionary attempt at increasing trust between local communities and the state security system.<sup>67</sup> According to this model, cases are not just ‘given back’ to the community to solve, but the local village community becomes a more integral part of the law enforcement structure. I will return to this issue in the conclusion.

## 5: Media

The role of the media is problematic. Acehnese media, including the most important regional newspaper *Serambi Indonesia*, tend to report about public morality cases in highly sensationalist ways. Quite often media reports blame the victims for violent incidents.<sup>68</sup> Newspapers often report in detail about ‘sinful acts’, while joining in with the practice of

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sword. After this had happened, they could not prevent the killing of Teungku Aiyub, and the mutilation of his body. ‘Polisi: penembakan Teungku Aiyub sesuai prosedur’, *www.acehkita.com* (Accessed 23-12-2012)

<sup>66</sup> Cf. UNDP Indonesia, ‘Access to justice in Aceh: making the transition to sustainable peace and development in Aceh’ (2006), p. 79.

<sup>67</sup> Interview, Sanusi Syarif, Yayasan Rumpun Bambu, 14 December 2012.

<sup>68</sup> Sarah J. Newman, ‘Patrolling sexuality: a case study on *khalwat* and vigilantism in Aceh’; Paper presented at the 2<sup>nd</sup> ICAIOS conference, Banda Aceh, 23-24 February 2009. According to Newman, ‘*Serambi* reports on *khalwat* cases not only promote the patrolling and regulation of sexuality through vigilantism, but may also undermine the formal legal process on which Sharia Law is built in Aceh by validating and promoting informal and often illegal forms of law enforcement. By glorifying vigilantes as heroes, especially when their actions are often in themselves illegal, *Serambi* diminishes the integrity of the law.’

shaming by publishing the names and residence of those who are ‘caught’ and beaten. Reporters eagerly seek out sensational stories, as they make use of their contacts with the police and the WH (who have stakes in sharing this information). Thus, the terms ‘community’ (*masyarakat*) and ‘citizens’ (*warga*) consequently stand for the *victims* of ‘other’ people’s sinful behaviour (or the dissemination of deviant teachings), rather than as the *perpetrators* of a crime.

With regard to the way in which newspaper reports are framed, it may be noted that journalists are seldom interested in identifying mobilizing agents in the outbreak of mass violence. Thus, instances of citizens taking the law into their own hands are framed in terms of ‘people running amok’ (*masyarakat mangamuk*), or the outbreak of ‘anarchy’ (*sudah jadi anarki*), both of which imply spontaneity, and an absence of people organizing the violence.

Another factor is the increasingly stark competition between self-declared ‘pro-Shari’a’-minded journalists and journalists who are (implicitly or explicitly) accused of taking a ‘soft’ line in matters of Islamic morality.<sup>69</sup> One effect of this competition is that, in general, journalists increasingly conform to the framework which I have criticized in this report; namely, to put every single issue of public morality and accompanying violent in terms of Shari’a. Politicians and other actors with stakes in the process of Shari’a implementation capitalize on this polarization.

#### **4: CONCLUSION**

Morality related vigilante violence cannot be reduced to the framework of state Shari’a. Instead, explanations must take into account a range of factors. In this report I have focused on perpetrators of violence, local community leaders, the security apparatus, and the media in order to reach a better understanding of the dynamic of vigilante violence. Local community leaders generally do not approve of the use of violence, but they experience difficulties in containing local youth seeking to protect the ‘good name’ of the village. The sensationalist nature of media reports adds to this dynamic. What we are dealing with, then, is a problem of moral authority at the local level, which is connected primarily to low levels of trust in the state, of which village leaders increasingly make part. Policies to prevent vigilante violence

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<sup>69</sup> A particular conspicuous example is the formation, on 13 December 2012, of the so-called ‘Kaukus Wartawan Peduli Syariat Islam’ (‘Assembly of Journalists who Care about Shari’a’). This initiative immediately received public support from the government and from *ulama* associations. ‘Wartawan Gagas Kaukus Pembela Syariat’, *Serambi Indonesia*, 23 September 2012; ‘Ulama dan Pemerintah Aceh Dukung Kaukus Syariat’, *Serambi Indonesia*, 24 September 2012; ‘Kaukus Wartawan Peduli Syariat Dideklarasikan’, *Serambi Indonesia*, 13 December 2012.

should be directed, therefore, to a combination of emphasizing the rule of law and a strengthening of local leadership.

Most ordinary Acehnese value a legal system that consists of a combination of secular law, Islamic law, and customary law. The problem is that the boundaries between these domains have become more blurred, due to the gradual intrusion of the state at village level. Connected to this process, ordinary villagers often experience a fundamental lack of legitimacy and real power on the side of local community leaders to guide the legal process, and prevent arbitrariness. It is my contention, therefore, that any policy of advocating the rule of law and respect for human rights treatises must be accompanied by addressing the problem of trust in local institutions. This should be an explicit concern of the Indonesian government, and the Dutch embassy should be prepared to address these issues in their communications about human rights and good governance.

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### **PART 3: ISLAMIC POLITICAL PARTIES AND SOCIO-RELIGIOUS ORGANIZATIONS**

Kees van Dijk

A paradox in present-day Indonesia is that Islam thrives but that Islamic political parties do not. With one exception, the PKS, their election results are poor. This is all the more remarkable because some of these parties are closely linked to socio-religious organizations that do seem to thrive and can claim a large following, which in the case of Nahdlatul Ulama and Muhammadiyah amounts to tens of millions. This is an indication that recruiting or winning over national and local religious leaders in an effort to gain more votes at general elections appears to be less effective than is often assumed, also in Indonesia.

Disappointing past election performance confronts politicians of Islamic parties with a dilemma. They may reach out to non-Muslims, accepting them as members and fielding them as candidates, or they may focus on non-religious issues in their campaign, but such approaches can backfire. Immediately after May 1998, when the Reform Era was taking shape and new political parties were established, the phenomenon of Islamic parties being 'open' to others reflected concerns by Amien Rais of the PAN and Abdurrachman Wahid of the PKB about the intensity of communal conflicts in those days. Gradually, the selection of candidates with a different religion and downplaying Islam became a strategy to tap new groups of voters, but it has been argued that the decision not to stress their own, specific, religious stand, may have cost votes, and, indeed, could well explain poor election results in the past.

Currently, Indonesia's politicians are preparing for the general elections that will take place in April 2014. A number of them told *The Jakarta Post* (23-1-2013) how they intended to deal with what the newspaper called 'the country's increasingly secular voters.' PAN would 'no longer use Islamic attributes,' while PKB stressed that it had never 'introduced itself as an exclusive Islamic party.' Speaking on behalf of the PKS, a political party that owes part of its success in the past to its image of being a 'clean' party, i.e. its leaders are not tainted by corruption, the chairman of the PKS faction in Parliament, Hidayat Nur Wahib, underlined the importance of impressing upon the electorate the party's 'commitment to good governance and corruption eradication' (A few days later the chairman of the PKS, Luthfi Hasan Ishaq, would be arrested on suspicion of corruption). The PPP refused to adjust its religious approach.

One of the reasons for the weak election performance of Islamic political parties is that they do not have a monopoly on Islam. Labelling their rivals, Golkar, PDI-P and Partai Demokrat, 'secular parties' or using the term 'secular voters' fails to appreciate the role of Islam in politics in general. Already in the New Order politicians and office holders, including President Suharto himself, rushed to Islamic institutions and gatherings in the hope that this would increase their popularity. Organizational ties were also developed. In the New Order Golkar established links with traditional and modernist Muslims via a number of organizations<sup>1</sup>, while in August 2007 the PDI-P launched its Islamic wing, Baitul Muslimin (House of Muslims). At times the secular PDI-P even appears to be an Islamic party. At the close of the New Order protestors supporting the PDI-P suspended their street protests to pray, while Sukarno's daughter, Megawati, the party's popular leader, initially appeared on election posters with her hair uncovered, but was later depicted wearing a headdress.

One of the signs of 'secular' parties taking an Islamic stand is, as Ahmad-Norma Permata's contribution indicates, that they can be actively involved in the drafting of the so-called Shari'a Regional Regulations; though it can not be denied that such a role is facilitated by the networks and coalitions local PKS leaders have been able to build. On the national level a similar mechanism is at work. A specific example is presented by Sjaifuddin Zuhri when he relates how Hidayat Nur Wahib of the PKS tried to gain financial support from President Susilo Bambang Yudhoyono for the rebuilding of a mosque in Central Java after the earthquake of 2006; an indication that the latter and his Partai Demokrat also nourish their contacts with the Islamic community.

A second factor contributing to the poor election results of the Islamic political parties is that they and the organizations they turn to in order to mobilise support are complex entities. Within one and the same party or organization members have different, even mutually exclusive, opinions about what an Islamic society implies and what reaching it involves; while disputes amongst the leaders can be frequent and bitter. Adding to this is a built-in source of conflict in such parties and organizations: the presence of religious advisory boards and fatwa councils, institutions that can and do clash with their executive boards, with one of the most important issues of friction being the primacy of religious considerations over political ones. To illustrate the latter, an in-depth analysis is provided by Permata of the rivalries within PKS and the socio-religious organization affiliated with it, Jemaah Tarbiyah, and between the two. PKS is a proper choice because it is an Islamist party that, together with

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<sup>1</sup> GUPPI, Mathla'ul Anwar and an association of former HMI members

the Jemaah Tarbiyah, strives after, and is identified with, the promotion of a radical Islamization of Indonesian society; but the processes described in Permata's report are also very present in the other Islamic parties and socio-religious organizations. It also underscores that in the relation between political party and affiliated organization, the latter may be or intends to be a moral compass, something that also comes to the fore in Bastiaan Scherpen's report about reactions to the Ahmadiyah persecution in which he touches upon the relations between PKB and Nahdlatul Ulama.

Permata's contribution and that by Zuhri show how diverse membership can be. Members of Muhammadiyah and Nahdlatul Ulama and other Islamic organizations have joined PKS, while among the members of the Nahdlatul Ulama and Muhammadiyah are PKS and Jemaah Tarbiyah activists. The latter has created much more problems than the former. It has given rise to the accusation of 'infiltration' of Islamists in Muhammadiyah and Nahdlatul Ulama. There may indeed have been cases of real infiltrations, but in others instances, and they may be more numerous, using that word conceals the point that similar radical Islamic ideas are also held in Nahdlatul Ulama and Muhammadiyah circles. The tension is caused by the PKS. Its missionary zeal has occasioned fierce competition over control of social and religious institutions. Zuhri concentrates on one of these, the mosque and other places of worship; reconstructing how PKS took over a 'Muhammadiyah' mosque in Central Java and the 'war' that was the result. Others (also touched upon by Zuhri) are boards of branches of Nahdlatul Ulama and Muhammadiyah, and secular and religious schools and universities. In a sense, politics can also be interpreted in this way. In the PKS, as Permata explains, many members still see politics as a means to propagate the faith, rejecting compromises that come with politics.

Both Permata and Zuhri draw attention to the important role the Muslim Brotherhood plays in the ideology and missionary strategy of the PKS. Can Permata's report serve as an example of the internal dynamics of Islamic organizations; that of Zuhri provides an insight into competition due to Islamization efforts within the Islamic community, which is also played out elsewhere in Indonesia. Their contributions are complementary. While Permata concentrates on PKS as a political party, Zuhri focuses on its religious work among Muslims and the central role the mosque plays in the religious propaganda and political mobilization of the PKS. Zuhri describes how concerned Muhammadiyah and Nahdlatul Ulama have become over the growing influence of Islamists in their community and the competition over religious institutions, forcing them in 2006 and 2007 to take measures to stem the tide of such

‘infiltration and sabotage’. Warnings against ‘Middle Eastern’ Islamists points of view have also become more frequent.

As stated in the general introduction to this report, Islamic political parties and socio-religious organizations are prime actors in the embedding of religion in national and regional legislation. They can act as a motor as well as a brake. There have been frequent appeals to Muhammadiyah and Nahdlatul Ulama, as the largest socio-religious organizations in Indonesia, to speak out in favour of religious tolerance, and to combat the spread of terrorism in the country. A litmus test of religious tolerance is the attitude towards Ahmadiyah and the reaction to the harassment of its members. That is why this section concludes with a report by Scherpen on the response of the Islamic political parties and the socio-religious organizations associated with them to the mob violence targeting Ahmadiyah communities. It is a case study showing how difficult it is for the Indonesian government, and Islamic parties and organizations to deal with, on the one hand, demands to ban the Ahmadiyah as a deviant sect, and calls in Indonesia and abroad to uphold the principles of religious freedom and human rights. It also brings to the fore that to different groups, Western governments and Muslims, such universal values can have different meanings, especially when it concerns religious minority groups.

The fall of the New Order preceded the Arab Spring by more than ten years. Between 1965 and 1998 Indonesia could hardly be called a democracy, though general elections were held once in these five years. After 1998, Indonesia came to be mentioned as a country showing that democracy and Islam are compatible. At the beginning of this introduction the paradox has been mentioned that against the background of Islamization of society Islamic parties do not fare so well in Indonesia. Hopefully the reports in this and the other sections shed some light on a second paradox: how, in a political system where Islamic parties play a secondary role, legislation can be promulgated that is clearly Islamic.

# A STUDY ON THE INTERNAL DYNAMICS OF THE JUSTICE WELFARE PARTY (PKS) AND JAMA'AH TARBIYAH

Ahmad-Norma Permata

## 1: INTRODUCTION

This research explores the internal dynamics of the Justice<sup>1</sup> Welfare Party or *Partai Keadilan Sejahtera* (PKS) and its mass organizational roots and supporter, the *Jamaah Tarbiyah* (JT).<sup>2</sup> Since a political organization is never a unitary actor, there are always internal plurality, differences, tensions and even conflicts. This study uncovers the internal dynamics inside the two organizations, the tensions and dividing issues between the two, as well as the key figures in each group.

JT is a unique organization in contemporary Indonesian politics. At its core, it is an Indonesian branch of the Egyptian Muslim Brothers, founded in 1983 by a group of graduates in Middle Eastern studies. However, it is joined by networks of activists from different organizations, ranging from domestic political and social organizations—such as DDII,<sup>3</sup> Muhammadiyah,<sup>4</sup> NU,<sup>5</sup> HMI<sup>6</sup>—to Salafi<sup>7</sup> groups, that make it different from its Egyptian

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<sup>1</sup> It is intriguing to observe how the word “justice” has been used ubiquitously among the Muslim Brothers network across the globe (political party and social movement): e.g. “Justice and Development” is used at the same time in Turkey, Libya, Morocco, Syria and Algeria; while the Egyptian Brotherhood party is named the “Justice and Freedom Party”. A closer analysis reveals that at least for PKS “justice” does not refer to the idea of “fair treatment”, but rather to “political retaliations”. They perceived themselves as victims of repression and persecution both by western colonial rulers and secular national governments. And now the time has come for them to fight back, to do what others had done to them, to do justice.

<sup>2</sup> *Jamaah Tarbiyah* literally means “Community of Education”. In practical terms, “education” means training and indoctrination, i.e. of comprehensive Islamic way of life.

<sup>3</sup> *Dewan Dakwah Islamiyah Indonesia* (or Indonesian Islamic Propagation Council) was founded in 1967 by Mohammad Natsir and several other ex-Masyumi politicians after they were thwarted by the Suharto regime in their bid to return to politics. It received large funds from Middle Eastern countries, especially Saudi.

<sup>4</sup> *Muhammadiyah* (literally meaning the followers of Muhammad) is a social religious organization founded in 1912. It is known as a modernist Islamic organization as it follows modern principles of organization management. It now runs thousands of education and health institutions.

<sup>5</sup> Stands for *Nahdhatul Ulama* (or The Awakening of Ulama). It is the largest Indonesian Islamic social organization founded in 1926. It is known for being traditionalist as it is loosely organized under the authority of traditional clerics who run tens of thousands of Islamic boarding schools.

<sup>6</sup> *Himpunan Mahasiswa Islam* (Islamic Student Association), founded in 1947, is the largest university student organization in Indonesia and a powerful political network. It has been a supplier of leaders and activists to the country’s political parties, including Akbar Tanjung (former chairman of Golkar), Ismail Hassan Metareum (former chairman of PPP) and Anas Urbaningrum (current chairman of the ruling party Democrat). In 1986, responding to the Law that obliged mass organizations to adopt state Ideology, Pancasila, the organization split into two camps: its leadership accepted the law in order to be acknowledged as a legal organization by the government—subsequently known as the DIPO faction, (an acronym of Diponegoro Street where its office located in Jakarta). Another group, however, rejected Pancasila and retained the Islamic ideology, and went underground. It is known as the MPO faction since they declared themselves as the Organization’s Savior Council (*Majelis Penyelamat Organisasi*). When the law was cancelled, the DIPO faction dropped Pancasila

Brotherhood sister. In 1998, JT activists founded a political party named Justice Party (*Partai Keadilan*, PK), which was then renamed the Justice Welfare Party (*Partai Keadilan Sejahtera*, PKS). The relation between JT and PKS is also unique because JT is an informal organization insofar as it is not registered to—and thus it is not bound by—Indonesian laws and regulations. JT is a shadow organization for PKS. It is different from the relations between the NU and PKB<sup>8</sup> or Muhammadiyah and PAN,<sup>9</sup> both of which are formal organizations, albeit operating in different arenas, (one is social and the other is political).

The Justice Welfare Party (PKS) is one of the stars of Indonesian democratization. *Firstly*, it marks a new era of Muslim politics. This is because the party was born not from mainstream Muslim organizations. This is a critical point, as during the New Order era the government manipulated and compromised all Muslims organizations and key figures within them. Consequently, virtually no Muslim organization operating at that time was immune from the regime's political engineering. The PKS, although it was founded during the Suharto regime, was led by a new generation of Muslim activists who were outside the existing Muslim organizations. These activists perceive themselves as a part of and a continuity of Muslim politics in Indonesian history, yet they have broken away and differentiate themselves from existing Muslim organizations and activists whom they deem to be compromised and contaminated by the regime.<sup>10</sup>

*Secondly*, the party has many of the brightest Muslim politicians who are graduates, not from Islamic educational institutions like the leaders of other Muslim organizations, but from top rank secular universities across the country. The PKS leadership are, uncommonly, not religious scholars by training, like other Muslim organizations. These activists are graduates from secular academic disciplines ranging from engineering, economics, and medicine to physics and mathematics. These universities are still the main avenue for the

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from its ideology and readopted Islam, but the two factions failed to reconcile—as they developed distinct traditions and network—and run independently as twin HMI organizations.

<sup>7</sup> From Arabic *Salaf al-Shalih*, or pristine generation—i.e. refers to the first generation of Muslims, the companion of the prophet Muhammad. These are conservative groups that adopt Saudi-style Islamic ideas and practices.

<sup>8</sup> *Partai Kebangkitan Bangsa* (or, Ulama Awakening Party) was founded by NU leaders, but has no organizational link with NU.

<sup>9</sup> *Partai Amanat Nasional* (or National Mandate Party) was founded by Muhammadiyah leaders but has no organizational link with Muhammadiyah.

<sup>10</sup> Yon Machmudi, *Partai Keadilan Sejahtera: Wajah Baru Politik Islam Indonesia*, Jakarta: Harkatuna, 2005, pp. 23-24.

younger generation wanting a route into the bureaucracy and other professional occupations. In this way, the party quickly established its networks among the country's elite.<sup>11</sup>

*Thirdly*, many perceive its political ideology as suspicious with regard to its participation in democratic politics. The Jamaah Tarbiyah adopts its ideology from the Egyptian Muslim Brothers (*Ikhwanul Muslimin*) and its gradual Islamization political project, namely: (i) Islamization of individuals; (ii) Islamization of families; (iii) Islamization of the society; (iv) Islamization of the political system.<sup>12</sup> The program drew critics from inside and outside Muslim communities. Many Muslim organizations see the party as spreading aggressive activities that are not only undermining their territories, but also jeopardizing Indonesian Muslims moderate political tone. Others even accused the party of promoting a radical political agenda to change the Indonesian nation-state into an Islamic political system.

*Fourthly*, the party also impresses the Indonesian public because of their organizational consolidation. It is the only major political party in Indonesia that does not suffer from an organizational split. It is also the only party capable of maintaining the solidity of their supporters. These characteristics have given the party advantages, especially in local elections, in which it has won several plurality majorities in situations where multiple candidates were standing for election. The Jakarta gubernatorial election in 2007 is a telling example, in which the JT needed all the other 16 parties in the provincial parliament to join forces in order to beat the PKS by 56% to 44%. The solidity of its supporters is also a powerful weapon for the party in political negotiations, or to pressure its demands.<sup>13</sup> (in which PKS can only be defeated by narrow margin when all other 16 parties joined forces)

### **Internal fractures**

That said, observers will not fail to notice internal—sometimes very serious—rifts inside the organization. *Firstly*, internal tensions had already begun to surface during its foundation. In 1998, following the regime change, senior activists of the JT discussed the possibility of forming a political party to advance their interests and agendas, but reached no agreement regarding the timing. Some of them agreed that the time was right to create a political party and join in democratic competition; others thought they were not ready yet and preferred to

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<sup>11</sup> Elisabeth Collins, "Islam is the Solution," *Kultur*, Vol. 3, 2003.

<sup>12</sup> Hilmi Aminuddin, *Strategi Dakwah Gerakan Islam*, Jakarta: Pustaka Tarbiatuna, 2003, p. 144.

<sup>13</sup> Ahmad-Norma Permata, "The Prosperous Justice Party and the Decline of Political Islam in 2009 Election in Indonesia," in Remy Madinier (ed.), *Islam and the 2009 Indonesian Elections: Political and Cultural Issues: The Case of Prosperous Justice Party (PKS)*, Bangkok: IRASEC, 2010, pp. 48-49.

stay aloof from power competition. The dispute was resolved by distributing questionnaires to around 6,000 Tarbiyah activists around the world. Sixty-eight per cent of those who returned the questionnaires agreed to create a political party.<sup>14</sup>

*Secondly*, different strands can also be found among the party leadership on how to manage the organization. During the first four years of its history, under the name of Justice Party (*Partai Keadilan*, PK) its organization was decentralized and more democratic, with the highest decision-making body being the party national congress. This meant that sovereignty was in the hands of the party members. However, from 2003, when the party was renamed the Justice Welfare Party (*Partai Keadilan Sejahtera*, PKS), the party's statute was also amended, and the highest decision-making body was handed over to the elite in the Deliberation Assembly (*Majelis Syuro*). This change not only represents different organizational structures, but also competing political perspectives: i.e. democratic versus pragmatic tendencies.<sup>15</sup>

*Thirdly*, different opinions also emerge in the party programmatic platforms. There are several inconsistencies in the party organizational statutes. Many who see this as intentional say that it indicates the party's double faces. Yet, closer analysis shows that, in fact, these inconsistencies represent disagreements among the authors and deep divisions within the party itself. For instance, there are clauses in its statute (*Anggaran Rumah Tangga*, ART) that stipulate that PKS is an open party and all Indonesians aged 17 and over are eligible to become members. However, other clauses in the same statute prescribe that in order to become a party member it was necessary to recite an oath that includes the Islamic *shahadah*—"there is no God but Allah, and Muhammad is His Messenger". This would make them, at least nominally, Muslims— thus, only Muslims can become party members.<sup>16</sup>

*Lastly*, the party's political behaviour also records its internal differences. For example, the party saw the 1999 legislative elections as just another activity of religious propagation (*da'wa* or *tabligh*). During election campaigns the party leadership instructed its activists to intensify their religious activities, to persuade people to accept Islam instead of promoting their party, and to pray to God to help them win the elections. However, five years later, during the 2004 elections, the same leadership body issued a fatwa to their activists and

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<sup>14</sup> Collins, *Ibid.*

<sup>15</sup> Ahmad-Norma Permata, "Islamist Party and Democratic Participation: Prosperous Justice Party in Indonesia 1998-2007" Doctoral Dissertation, Westfaelische-Wilhelms Universitaet Muenster, 2008, pp. 187.

<sup>16</sup> *Ibid.*, 176.



members to mobilize people to vote for the party in elections, regardless of whether they agree or not with the party's political perspectives.<sup>17</sup>

Close observation reveals that tensions and frictions between JT and PKS—as well as inside each of the two—stem from their experiences in democratic political competition. Basically, JT members are PKS members. However, intensive and increasingly systematic and specialized political activities separated PKS activists from other JT members who do not get involved in party organizations. PKS activists are increasingly pragmatic in their behaviour, while JT members are more likely to remain normative. Inside PKS, there are divisions between “office oriented” and “policy oriented” politicians—the former perceived politics as a competition to maximise power and as a resource that has to be pursued in its own way and with its own rules, while the latter perceive politics as a competition to influence public policies and something that needs to be pursued in accordance with Islamic principles. Furthermore, inside the “office oriented” camp there are “pragmatists” who have established networks with former president Suharto's family, the military and Chinese businessmen, and pushed an idea that the party should become an open, secular, political party. There are also “reformists”—who are politically closer to the networks of democratic activists that brought down the Suharto regime—who moved the PKS political agenda in line with the wider Indonesian agenda for democratization. By contrast, among the “policy oriented” camp there are “moderates” who accept office-seeking politics as a tolerable short-term strategy, and “radicals” who perceive politics purely as a struggle to influence policies; they staunchly insist that PKS activists are, in principle, preachers and not politicians. Meanwhile, within JT there are differences between “loyalists” who blindly support PKS, and “critics” who support PKS only when it follows JT principles. Furthermore, inside the “loyalist” camp there are groups of people who are loyal to certain leaders—because of the access and resources these leaders share, or for other more personal reasons—while at the same time being critical of other leaders. It should be noted that those who are loyal to organizations defend them vehemently from external critics. By contrast, among the “critical” activists there are those who stayed inside the JT network and criticized the PKS from this position, and those who left the JT network and criticized the PKS as outsiders.

The tensions, frictions and divisions are intensely disturbing and unsettling for JT and PKS leaders, and they are desperately seeking ways to overcome them. Two ideas are worth close attention. *Firstly*, some perceive the problem to be rooted in the separation of the JT and

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<sup>17</sup> *Ibid.* 213-218.

PKS leaderships. The two organizations are basically two sides of the same coin, adhering to the Muslim Brotherhood's motto that the party is the *jamaah* (a community of the faithful), and the *jamaah* is the party (*al-hizb hiya al-jamaah, wa al-jamaah hiya al-hizb*). However, the two have different rules and patterns of behaviours: JT follows Islamic principles under the guidance of the supreme leader (*muraqib 'am*), while the PKS follows the Indonesian political system and competitions led by the party's president. Therefore, JT and PKS tend to go different ways. To overcome the problem, this perspective suggests that the leaderships should be united and the supreme leader of JT should assume the position of the party president of PKS. In this way, there will be a single line of command across both the JT and PKS network of organizations; this would minimize tensions and frictions.<sup>18</sup> *Secondly*, another argument, started from the same observation, is that the root of the tensions and frictions among the JT and PKS is the incompatibility of the two organizations: JT are informal and follow their own internally set rules, while PKS is a political party that must be comply with the state rules and the political reality. However, in contrast to the previous perspective, which proposes leadership unification, this group suggests that JT and PKS must be separated organizationally. JT needs to be formalized as a social organization, registered and bound by the state regulations. In this manner, the two organizations—which are in fact composed of the same group of people—can operate in different arenas, the one social the other political, and need not interfere with or disturb each other.<sup>19</sup> In other words, PKS politicians can do their pragmatic political jobs without the worry of being exposed to the scrutiny of JT members .

### **Review of the literature**

Researchers and analysts have different attitudes to the internal dynamics of the PKS and Jamaah Tarbiyah.

1. Some deem the current dynamics to be a sign of the party's strength and superiority. Such opinions are commonly written by party functionaries and members. Zulkiflimansyah, a PKS member of parliament, has written several articles in this vein. He eloquently argues how the party, which evolved from the *dakwah* movement, seeks to achieve progressive objectives in democratizing Indonesia, without losing its commitment to moral ideals. Yon Machmudi, an academic and PKS founder, explains that Jamaah Tarbiyah and PKS

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<sup>18</sup> Yusuf Supendi, interview Jakarta.

<sup>19</sup> Abu Ridho, Interview Jakarta.

represent a new generation of Muslim politics and social activism. It transcends the moderate vs. radical dichotomy of Muslim political activists that was typical during the New Order era—the former stressing too much on accommodation, the latter putting too much weight on purification. The Tarbiyah community overcomes the dilemma of purification and accommodation through non-confrontational gradual Islamization. This strategy succeeded in attracting followers and sympathizers both from modernist and traditionalist factions of Indonesian Muslims—something that Machmudi argues has never happened before.<sup>20</sup>

2. Others accused the internal dynamics of reflecting the parties' hypocrisy. One widely circulated article of this type is by Sadanand Dhume. In it, he describes the PKS as a radical party actively promoting the Islamization of Indonesian politics. Although Dhume sees the PKS as a peaceful political organization that is willing to participate in the democratic political process, he believes that this is merely a façade to conceal its real agenda. He wrote, provocatively, that 'Despite the Justice Party's social work, little separates its thinking from Jemaah Islamiyah's. Like Jemaah Islamiyah, in its founding manifesto, the Justice Party called for the creation of an Islamic caliphate. Like Jemaah Islamiyah, it has placed secrecy—facilitated by the cell structure both groups borrowed from the Brotherhood—at the heart of its organization. Both offer a selective vision of modernity—one in which global science and technology are welcome, but un-Islamic values are shunned. The two groups differ chiefly in their methods: Jemaah Islamiyah is revolutionary; the Justice Party is evolutionary..<sup>21</sup>
3. Yet others try to capture the complexity and paradox more comprehensively. Martin van Bruinessen wrote that the PKS are 'imperfect democrats but perhaps Indonesia's strongest force for democratization' based on the fact that many of the party's spokesmen believe in anti-Islamic conspiracies, are anti-Zionistic, anti-Western, and have been known to be hostile to liberals and secularist Muslims. At the same time it 'is one of the very few forces in the political arena that may seriously contribute to a gradual democratization of the country, as it believes in participation in the existing political

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<sup>20</sup> See Zulkifliemansyah, "Overcoming the Fear: PKS and the Democratization," *Jakarta Post* 5.12.2005. "Prospect for the Justice and Prosperous Party (PKS) and Political Islam," USINDO Open Forum, Washington D.C. 8.6.2006. "Understanding PKS as Living Entity within Indonesia's Democratic Space," *Jakarta Post* 10,08.2007. Yon Machmudi, *Partai Keadilan Sejahtera: Wajah Baru Islam Politik Indonesia*, Jakarta: Harakatuna, 2005.

<sup>21</sup> Dhume, Sadanand, 2005, "Radicals March on Indonesia's Future", *Far Eastern Economic Review*, Hong Kong: May 2005. Vol.168, Iss. 5.

system and in changing society through persuasion of individuals rather than through grabbing power'.<sup>22</sup> (Van Bruinessen 2003).

Likewise, Bubbalo and Fealy wrote that the PKS has some ambivalence towards the West, actively participated in various protests against the American support of Israel and the invasion of Iraq, and tended to be suspicious of the political agendas of the EU and US, especially the 'war on terror'. Yet, many of its senior figures have a Western tertiary education and visit the West frequently, and their awareness of international developments is probably higher than that of any other Indonesian Islamic party.<sup>23</sup>

Meanwhile Kees van Dijk explains that the ambiguity visible in PKS political behaviours is a logical consequence of the complexity of the changing political environment in Indonesia. This complexity has created asymmetrical alliances among different political actors and, subsequently, ambiguous behaviours and internal dynamics among political actors seeking to compromise their ideological objectives and political realities. PKS is distinctly Indonesia in its structures and behaviours.<sup>24</sup>

### **A theoretical note: a failing or a post Islamism?**

Any attempt to explain the developments of political organization will face at least two dilemmas: The first is a dilemma between the rational and natural perspectives of an organization. The rational perspective conceives organization primarily as a tool for a group of people to achieve certain—previously set—objectives. Perhaps this is the most widely used definition of organization, i.e. that any development and dynamics within the organization can only be explained in light of the organizations objectives, because any member of the organization should act according to the specific tasks and division of labour of that organization. This implies that the yardstick by which we can measure or value behaviours of the members and dynamics of the organization are the organizational objectives that are set a priori.

The natural perspective of organization, however, proposes different ideas. This perspective maintains that in any organization, as long as there are multiple people there will

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<sup>22</sup> Martin van Bruinessen "Genealogies of Islamic Radicalism in post-Soeharto Indonesia," in *Southeast Asian Research*, Vol. 10, No. 2, pp. 117-154.

<sup>23</sup> Bubbalo, Anthony and Greg Fealy, 2005, *Joining the Caravan? The Middle East, Islamism and Indonesia*, Alexandria: Longueville.

<sup>24</sup> van Dijk, C. (2009) "Different Settings, Different Definitions, and Different Agendas: Islamic and Secular Political Parties in Indonesia and Malaysia." In: Mohamed Salih, M.A. (Ed.), *Interpreting Islamic Political Parties*, pp. 51-81. New York: Palgrave Macmillan.

be multiple objectives being pursued. Consequently, the real objectives of the organization are never set a priori, but rather a posteriori following successive problems faced by the organization. Of course it does have previously set, long-term, objectives, but they are often being subordinated or compromised by more immediate and more urgent short-term objectives. And, because there is a plurality of objectives being pursued simultaneously by different members, the real objectives of the organization is none other than the lowest common denominator; the objectives that all members agreed upon, namely the survival of the organization. Hence, in contrast with the rational perspective, which takes the a priori objectives as the yardstick of all members' behaviours and organizational dynamics, the natural perspectives put the highest value on any behaviour and dynamic that guarantees the survival of the organization.

The second is the dilemma between *collective* and *selective* system of incentives. The former deems that the incentives a political organization gives to its members as collective incentives should be distributed to all members equally. The most fundamental of these are identity and solidarity. As politics is about collective goods, not owned by certain groups but available to all, political organizations also promote collective incentives to all of their members. This explains why people join and participate in political organizations without being paid or receiving other material rewards. The latter, meanwhile, propose to understand organization as an arena in which to pursue personal interests and, therefore, different members will receive different rewards according to their different roles, efforts, and achievements. This perspective explains why in political organizations, which are by default voluntary organizations—people participate not because they are being paid or coerced to—members are constantly competing for control of the organization and for power and resources. This is because different organizational positions provide different authorities that entail different sets of incentives.<sup>25</sup>

Perceived from this perspective, the tensions and frictions among the JT and PKS is part of the normal process of organizations seeking to survive in a rapidly changing political environment. However, it will become interesting in light of the current discussions on Islam-based politics. Two theories are relevant at this point: namely, Oliver Roy's thesis on the failure of political Islam, and Asef Bayat's notion of a post-Islamism. Roy built his observations on the Islam-based politics in Afghanistan. He argues that Islam-based politics failed to accomplish its mission to build a comprehensive Islamic system of life that includes

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<sup>25</sup> Angelo Panebianco, *Political Parties: Organization and Power*, Cambridge: Cambridge UP., 1988, Chapter 1.

an Islamic society and an Islamic state. For him, the failure came from its circular ideological and political program, in which political Islam believes that a true Islamic society can only be built under an Islamic state—which will ensure the enactments and enforcements of Islamic values; yet, at the same time a true Islamic state can only be created if the politicians uphold and enact Islamic principles, i.e. under an Islamic society. Unable to break this vicious circle, political Islam gave up its political program of creating an Islamic state and resorted to promoting Islam in terms of private values.<sup>26</sup> Meanwhile, Asef Bayat, based on his observations of post-revolutionary Iran, found a different feature of political Islam that he calls ‘post-Islamism’. He explains that, having gone through a period of political experimentation and of establishing a comprehensive Islamic system of life, political Islam was exhausted both by internal contradictions and external pressures. However, in Bayat’s observation, instead of crumbling or giving up its missions, political Islam evolved into a new and more open movement by adapting to its environments and adopting critiques and questions once directed to it—such as democracy, human rights, gender equality, religious pluralism, etc.—as part of its new mission.<sup>27</sup>

The present research has found that similar to Roy’s thesis, JT and PKS are ensnared by their circular comprehensive agenda of Islamizing the society and the state. Although on paper the Muslim Brothers’ gradual Islamization, adopted by JT-PKS, seems to offer a breakthrough to escape the vicious circle, in reality the circle and its vices remains. It occurs when JT-PKS members have to decide which steps to take. Many of them believe they have accomplished Islamising the society and are now moving into Islamizing political system. However, there are just as many of them who believe that they are still in the phase of Islamizing the society, and are not yet ready to Islamize the state. Since they all believe that for each phase of Islamization there are different priorities and different strategies, as well as different leadership compositions, tensions and frictions emerge when they argue about which priorities should be implemented, which strategies should be pursued, and who should be in charge. And when money and power are involved, conflicts and confrontations are inevitable. However, similar also to what Bayat observed, JT-PKS have evolved in terms of qualitative development, by adapting into a democratizing political system, and adopting new ideas and programs—formerly foreign to them—into their own. Starting with a belief that the existing secular democratic (albeit pseudo) system will gradually be replaced with an alternative,

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<sup>26</sup> Oliver Roy, *The Failure of Political Islam*, Harvard UP 1994, pp. 60-68.

<sup>27</sup> Bayat, “What Is Post-Islamism” *ISIM Review*, 16, 2005: 5.

comprehensive Islamic system of life. Now, it sees itself more as a contributing system, which will improve the existing democratic system with an Islamic agenda.

## **2: HISTORICAL DEVELOPMENT AND INSTITUTIONAL SETTINGS**

### **Introduction**

This section deals with the historical development of JT and PKS, starting from its inception and moving on to the contemporary situation. The focus is the interplay between three factors: the ideas and ideals adopted from the Egyptian Muslim Brothers, the histories and legacies of Islam-based political activism in Indonesia, and the institutional frameworks provided by the dynamics of political competition. This will show how JT is uniquely Indonesian in character and needs to be assessed in its own context.

Among its unique characteristics, JT never publicly declared itself to be a branch of the Egyptian Muslim Brothers and it never disclosed its mechanism of relationships with its Egyptian Headquarters. This has resulted in different interpretations among observers, as well as among its members. It is unlike other transnational Islam-based organizations such as Hizbut Tahrir, Ahmadiyah, or Jamaah Tabligh, which publicly declare their status and, consequently, the people who join the organizations know that they are part of international networks and under the auspices of their headquarters overseas. Although among JT's top leadership it is clear that their organization is a local branch of the Egyptian MB and it is bound by their statute, this is not so clear for JT activists and members lower down the hierarchy. Many perceive the JT to be a domestic Islamist organization, or an organization only inspired by the Egyptian MB.

### **Chronological events**

The history of JT started when four returnees from Middle Eastern studies—Hilmy Aminuddin, Salim Segaf al-Jufri, Abdullah Baharmus, Encep Abdusyukur—founded an organization dedicated to Islamic propagation (*dakwah*), by adopting the Egyptian Muslim Brothers' organization, including its organizational structure, recruitment and training. They utilized cell-like groupings, in which one mentor recruits, trains, and supervises 5-10 members, and each cell only knows each other, they do not know about other cells.<sup>28</sup>

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<sup>28</sup> Some speculate that MB founder Hassan AL-Banna adopted the organizational structure of Mussolini's Fascist army, Francis Fukuyama and Nadav Samin, "Can Any Good Come of Radical Islam?" *Commentary Magazine*,

Initially, under the leadership of Salim Segaf, JT recruited only select members. They targeted those who are fluent in Arabic and knowledgeable in Islamic studies, and therefore they remained a limited and a small group. About a year later, Salim Segaf went to continue his studies in Saudi, and the reins of the organization were handed over to Hilmy Aminuddin. In contrast to Salim, Hilmy decided to simplify the recruitment requirements and targeted students of secular universities. In this way, JT succeeded in extensively recruiting new members and expanded its branches to various major cities across the country.<sup>29</sup>

By the late 1980s, JT had established a stronghold in many major cities, In Jakarta and Bogor it established a networks of institutions: '*Nurul Fikri*' (Arabic, lit. illumination of ideas) study groups assisted High School students doing their studies, but were used by JT activists to recruit members; '*Sabili*' (Arabic, lit. our way) magazine promoted Islamic teachings to the public, especially the youth led by Rahmat Abdullah; '*Khairu Ummah*' (Arabic, lit. best community) *dakwah* club led by Yusuf Supendi; '*Al-Hikmah*' (Arabic, lit. wisdom) Islamic boarding school led by Abdul Hasib Hasan; 'Studies and Information on Contemporary Islamic World', a study group that distributes information about international politics and conflicts, especially in Palestine and Afghanistan, led by Abu Ridho and Almuzammil Yusuf.<sup>30</sup>

During the 1990s, JT had stable networks in many universities in major cities across the country, and it started taking over intra-curricular and extra-curricular student organizations. From North Sumatra University in Medan North Sumatra, to Indonesian University in Jakarta, Bogor Institute of Agriculture (Institute Pertanian Bogor, IPB) in nearby Bogor, Bandung Institute of Technology (Institute Teknologi Bandung, ITB) in Bandung, Gadjahmada University (Universitas Gadjah Mada, UGM) in Yogyakarta, Sepuluh November Institute of Technology (Institut Teknologi Sepuluh November, ITS) in Surabaya and Brawijaya University in Malang, down to Hassanuddin University in Makassar South Sulawesi, the top leadership and activists among all these students are JT members.

During the months of crises ahead of the regime change, when Indonesian Islam-based political activism, under the umbrella of ICMI (Ikatan Cendekiawan Muslim Indonesia, or

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September 2002. Others say it refers to the Sufi tradition in which al-Banna had been a member. See, Ibrahim M. Abu Rabi, *Intellectual Origins of Islamic Resurgence in the Modern Arab World*, Albany: State University of New York Press, 1996: 67..

<sup>29</sup> Arief Munandar, "Antara Jemaah Dan Partai Politik: Dinamika Habitus Kader Partai Keadilan Sejahtera (PKS) Dalam Arena Politik Indonesia Pasca Pemilu 2004," Doctoral Dissertation, The University of Indonesia, p 246.

<sup>30</sup> Ali Said Damanik, *Fenomena Partai Keadilan: Transformasi 20 Tahun Gerakan Tarbiyah di Indonesia*, Jakarta: Teraju 2002, 139-175



Indonesian Muslim Intellectual Association)<sup>31</sup> was active in mobilizing issues and support, JT students' networks established KAMMI<sup>32</sup> facilitated by ICMI networks and led by Fachry Hamzah. Subsequently, this organization would supply many of the JT and PKS leadership.

When Suharto eventually stepped down and a new democratic government was formed, followed by the opening-up of the political system, JT activists discussed whether they should take the chance to participate in the competition for power. Opinion was split among JT's central leadership, and so they decided to hold a vote. More than 6000 questionnaires were distributed within their networks with three options: joining the political competition by creating a political party, joining with another, existing political party, or remaining non-political but going public. 56% of the returned polls voted for the first option.

A political party was established in 1998 named Partai Keadilan (PK, or Justice Party). During the 1998 elections it garnered 1.7% of the national votes and failed to pass the required electoral threshold. With only seven seats in the parliament it merged with Amien Rais' PAN, joining forces to push for new amendments to the constitution that would prevent the military from returning to power. During the short-lived Wahid presidency, PK received one ministerial post (Forestry), but this did not last long as the minister was sacked by President Wahid for arrested and brought to trial powerful businessmen for illegal loggings, in fear for political retaliation from the business network. During Megawati's presidency, she offered the PK another ministerial post, but the party declined, on the grounds that it rejected a female president, and she was perceived as being supported by secular and Christian politicians.

To be able to continue its participation in politics, JT needed to establish a new political party. It did this in 2003, with the then named Partai Keadilan Sejahtera (PKS, or Welfare Justice Party), using PK organizational networks and leadership. In the 2004 elections it surprisingly tripled its votes to 7.3%, and secured 45 seats in the parliament. For supporting the SB Yudhoyono presidential candidacy it received three ministerial posts: housing, agriculture, and youth and sport. In the 2009 elections it won 7.8% of votes, collected 57 parliamentary seats and became the biggest Islam-based political party. It also received four ministers: science and technology, agriculture, information and communication,

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<sup>31</sup> ICMI was founded in 1990 under the patronage of former president B.J. Habibie—then Minister of Research and Technology—and played a bridging role between the Suharto regime and Islam-based politics.

<sup>32</sup> *Keatuan Aksi Mahasiswa Muslim Indonesia* (Indonesian Muslim Student Action Union), was founded in March 1998.

and social affairs. Interestingly, although its percentage increased, the actual votes the party collected decreased from 8,325,020 votes in 2004 to 8,206,955.

### **Legacy of domestic Islam-based political activism**

A closer observation, however, reveals that the history of JT did not start from its foundation, and its history did not emerge out of the blue. When JT was created in the early 1980s, there were already networks of *dakwah* activists and organizations spanning across the major cities in the country, and especially among young academics. This network organized regular recruitment and training for activists, and established centres in—or near—campus mosques in various cities such as Jakarta, Bogor, Bandung, Yogyakarta, and Surabaya, Malang, Palembang, Lampung, Padang, Makassar.<sup>33</sup>

This network of activism dated back to 1968 when DDII organized training called Latihan Mujahid Dakwah (LMD, or Dakwah Fighters Training) in Jakarta for young Muslim activists. Well-known figures involved in this training include former Masyumi politicians such as Natsir, Roem, and former Minister of Religious Affairs Mukti Ali; while participants have also included Imaduddin Abdurrahim, Amien Rais, Kutowijoyo, and also Abu Ridho and Mashadi. The last two went on to become senior JT activists.<sup>34</sup>

From 1974, alumni of the LMD had spread to various campuses, with two of these locations rising to particular prominence. The first was the Salman<sup>35</sup> Mosque of Bandung Institute of Technology (ITB) where Imaduddin Abdurrahim established a series of trainings called Latihan Hidup Islami (LHI, or Islamic Life Exercise) to promote an Islamic way of life among students and the public. The second was the Salahuddin Mosque of Gadjahmada University in Yogyakarta, under the leadership of Amien Rais. Here they established a Salahuddin<sup>36</sup> Community that organizes lectures and discussions on Islam. From these two institutions emerged younger generations of *dakwah* activists that later on became JT leaders, such as Hidayat Nur Wahid, Mutamimul Ula, Untung Wahono, Tifatul Sembiring, Tjahjadi Takariawan, and many more.<sup>37</sup>

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<sup>33</sup> AM. Luthfi, “Gerakan Dakwah di Indonesia,” in Jimly Ashidiqy *et al.*, *Bang Imad: Pemikiran dan Gerakan Dakwahnya*, Solo: Gema Insani Press, 2002: 158-166.

<sup>34</sup> *Ibid.*

<sup>35</sup> The name refers to Salman Al-Farisi, the Prophet Muhammad’s companion who is regarded as his best military strategist.

<sup>36</sup> It refers to the Kurdish Muslim general during Crusade wars, Salahuddin Al-Ayyubi (1138-1193).

<sup>37</sup> *Ibid.*

### **Institutional frameworks for political competition**

Another factor that contributed to the unique trajectory of JT's historical development is the political institutions that have regulated political competitions in Indonesia in the last five decades. These institutional settings are characterized by a complex triangular antagonism and an alliance between the Suharto regime, the military and Islam-based politics.

The first institutional setting faced by Islam-based political actors was the refusal by the newly founded New Order regime to revive the banned Masyumi party as well as the return of ex-Masyumi politicians. In this setting the antagonism was between the Suharto regime, backed by the military, and Islam-based politics. The situation forced Islam-based politics to split their resources: on the one hand, they relied on younger politicians to get involved in political competitions through the newly created Parmusi party; on the other hand, the ex-Masyumi politicians created the non-political Indonesian Islamic Dakwah Council (DDII). It was the DDII that started a systematic synthesis of religious propagation and political activism, and spread it among secular university students.

The second institutional setting was the party law No 3/1975, which forced all Islam-based and Muslim-based political actors to fuse into a single party named the United Development Party (PPP), while the other parties were lumped into the Indonesian Democratic Party (PDI). In this setting, the antagonism was between the Suharto regime and Islam-based politics and other political parties; whereas the military suffered an internal fracture between Suharto aides and his critics and stayed aloof. Meanwhile, complexity increased in internal Islam-based politics as the fusion combined two bitter rivals, the traditionalist and modernist groups. This political ordeal in the mid-1970s brought university students into the limelight as they were involved in riots in Jakarta January 1974. This urged the regime to react by issuing a law that prohibited students from political activities. On the one hand, this succeeded in suppressing students political activism, known as the Normalisation of Campuses' Life/Student Coordination Body (Normalisasi Kehidupan Kampus/Badan Koordinasi Kemahasiswaan, NKK/BKK), issued in May 1978. However, this policy further intensified student political radicalism. In fact, it was under such a political atmosphere that senior members of the JT and PKS matured during the late 1970s and early 1980s.<sup>38</sup>

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<sup>38</sup> Adam Johnson and Jonathan Paris (ed.), 1999. *The Politics of Post Suharto Indonesia*, New York: Council of Foreign Relations, 1999, pp. 33-35. Damien Kingsbury, *The Politics of Indonesia*, Oxford UP, 2002, pp. 84-86.

The third institutional setting was the regime's move to mobilize ex Darul Islam rebels in a pretext to intercept the return of the communists.<sup>39</sup> The revived DI networks subsequently developed an ambiguous relationship towards the regime that revived it, and its 'evil twin', Islam-based politics. It was during this period that the name Hilmy Aminuddin, the son of high ranking DI leader, Danu Mohammad Hassan, emerged among DI detainees. He served three years in military detention and was released without charge. This history created a dark side to JT-PKS history, because many Islam-based activists accused Hilmy of being co-opted by the military or the intelligence service. JT-PKS rejected the allegation by pointing to the fact that Hilmy was released without charge.<sup>40</sup>

The fourth institutional setting was the political laws known as the package of five laws, in which one of them—law No. 8/1985—stipulated the mandatory adoption of state ideology, Pancasila, as the sole basis for all organizations. This setting drew a complex political constellation: On one side, there was the bitterest antagonism between the regime and Islam-based politics; on the other side, the regime was also in conflict with the joint forces of a group of retired military generals, ex-Masyumi politicians, and social activists, known as 'Petition 50'. On yet another side, the military suffered a further split between Suharto loyalists, under vice president Lt. Gen. Sudharmono, and professional soldiers resenting the growing Suharto family businesses under chief commander Gen. Benny Murdany.<sup>41</sup> The mandatory adoption of Pancasila as the sole ideology intensified radical tensions among Islam-based organizations. Indeed, many of them went clandestine—rejecting the law and preferring illegal status—including the Indonesian Islamic Students (PII)<sup>42</sup> and a faction of the Islamic Student Association (HMI), known as the 'MPO faction'. Many of the top activists of these clandestine Islam-based organizations subsequently joined JT and later on PKS, including Mutamimul Ula (former PII national chairman), Tamsil Linrung and Nur Sanita Nasution (HMI MPO).

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<sup>39</sup> The revival of the former DI combatants was conducted by Ali Moertopo, then Suharto's personal assistant, against the will of the commander of State Intelligence Coordination Agency (Badan Koordinasi Intelejen Negara, BAKIN) Sutopo Yuwono. Moertopo insisted that he had personal approval from Suharto (See, Heru Cahyono, *Pangkopkamtib Jenderal Soemitro dan Peristiwa 15 Januari '74*, Jakarta: Sinar Harapan, 1998, pp. 167. Asvi Warman Adam, *Menguak Misteri Sejarah*, Jakarta: Kompas, 2010, pp. 222-226.

<sup>40</sup> Yon Machmudi, *Islamizing Indonesia*, 2005, pp. 93-94.

<sup>41</sup> Jun Honna, "Military Ideology in Response to Democratic Pressure during the Late Suharto Era: Political and Institutional Contexts," *Indonesia*, Vol. 67. (Apr., 1999), pp. 77-126.

<sup>42</sup> PII was founded in 1947, and was an influential network because many of its activists became notable figures in Indonesian social and political organizations, until it went clandestine in 1985 when it rejected the adoption of Pancasila as the sole ideology. It was among the few organizations whose membership included students of secondary and higher education institutions.

The fifth institutional setting was the sour relations between Suharto and the military, which pushed the former president to form an alliance with Islam-based politics. This setting created a new and complicated platform of political constellations, in which every camp suffered internal fractures: the regime was split between pro- and anti-democratization; Islam-based politics was split in two directions, i.e. between pro- and anti-Suharto, and between pro- and anti-democracy; the military was also split in two directions, i.e. between Islam-leaning camp (green soldiers) and the secular-leaning and Christian (the red soldiers) factions and between those anti- and pro- democratization. It was this complicated political constellation that gave PKS politicians first-hand experience of politics never being simple and black-and-white, as it was understood by JT members. It was from this moment that PKS politicians—and in fact many others Islam-based politicians—learned about strategic alliances, based upon their similar political interests, and they set aside political ideology and went on to form a faction known as the pragmatists.<sup>43</sup>

## **Conclusion**

Jamaah Tarbiyah and PKS adopted the Egyptian Muslim Brothers' ideology and organizational structures; yet they grew, developed and evolved alongside the dynamics of Indonesia's political reality. This reality has made JT-PKS a unique phenomenon that needs to be understood in its own context.

## **3: IDEOLOGY, ORGANIZATION, FACTIONALISM**

### **Introduction**

This chapter explores the internal structures of JT and PKS, as well as the relationships between the two, both in term of organization and leadership. In principle, these organizations are two sides of the same coin, following the MB's principle, 'the community (*jama'ah*) is the party, and the party is the community'. However, since the two organizations operate in different arenas, the one political and the other social, and are governed under different regulations, inevitably they have developed different sets of rules and procedures that sometimes are not compatible with each other: JT as a social religious organization operates under the principles of personal ethics and piety, while PKS engages in political power

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<sup>43</sup> R. William Liddle, "The Islamic Turn in Indonesia: A Political Explanation," *The Journal of Asian Studies*, Vol. 55, No. 3. (Aug., 1996), pp. 613-634.

struggles and mostly operates under the principles of programmatic achievements and accountability. Consequently, the two often clash with each other.

### **The politics of gradual Islamization**

As an offshoot of the Egyptian MB, it has adopted its ideology, political programs and organizational structures. Ideologically, JT follows an ideal of ‘gradual Islamization’; namely, moving in phases from Islamizing the individuals, to Islamizing the families, to Islamizing the society, and then Islamizing the polity.<sup>44</sup>

For JT members, this evolutionary program is not only ideal, but also logical; meaning that it follows the logic of societal development: by Islamizing individuals it would be easier to move into injecting Islam into families as the smallest social units. And, once families live under Islamic teachings, then the society will move to uphold Islamic values and cultures. Finally, if Islamic norms become public norms, then the emergence of an Islamic political system is just a matter of time.<sup>45</sup>

The gradual Islamization also represents the moderateness of the MB movement, which is a peaceful Islam-based movement, and cannot be likened to radical Islam-based movements and organizations. JT activists are keen to put forward this argument, as there are continuous labelling and interpretations, by foreign as well as domestic writers, that the MB is a radical and revolutionary movement, and JT and PKS, as its derivative, will follow the same path. Furthermore, in the context of the Indonesian Islam-based movement, the gradual Islamization program of MB exemplifies a breakthrough that transcends the antagonism as well as the failures of radical movements such as Lasykar Jihad or FPI and accommodative movements such as Muhammadiyah and NU. This is a new trend among Indonesian Muslims that has given rise to a new type of *santri*.<sup>46</sup>

In the same vein, Abdi Sumaiti—a.k.a. Abu Ridho—added that gradual steps of preaching Islam was the method implemented by the Prophet Muhammad. He started by persuading individuals to follow Islam, and then internalize Islamic values and behaviours through Muslim families, which will externalize into Islamising social structures and customs.

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<sup>44</sup> The original concept of gradual reforms (*ishlah*) from MB founder Hassan Al-Banna runs as follows: Reforming individuals (*al-ishlah al-nafs*), reforming Muslim families (*al-ishlah al-bait al-Muslim*), reforming society (*al-ishlah al-mujtama*), national independence (*al-tahrir al-wathan*), reforming the government (*al-ishlah al-hukumah*), and International prominence and International expansions. See Fathi Yakan, *Revolusi Hassan Al-Banna: Dari Sayyid Qutub hingga Rasyid Al-Ganusyi*, Trans. Fauzun Jamal & Alimin, Bandung: Harakah, pp. 12-13.

<sup>45</sup> Interview with Khalid Machmud, 19.04.2007

<sup>46</sup> Interview with Yon Machmudi, a PKS founder and lecturer at the University of Indonesia.

After Islam becomes the framework of the society the Prophet established a political system, a state, followed by international expansions of Islam to other countries.<sup>47</sup>

Another typical ideological trait of the MB, which JT adopts, is concern and enthusiasm for international conflicts involving Muslims, though not only Palestine-related issues. This internationalism serves several functions for JT members. *Firstly*, it provides an ideological foundation for JT, as part of the MB network, to struggle for Islam and Muslims and to fight against the enemies of Islam—especially the Jews. For them, Jewish people always pose trouble for Muslims, and they—out of fear and hatred towards Islamic prominence—have been involved in the downfall of all major Islamic empires, from the conquering of the Umayyad dynasty by the Mongols, to the abolition of the Ottoman Empire by Atatürk.<sup>48</sup> *Secondly*, international issues are very useful materials for attracting new recruits, especially among students. *Thirdly*, it is also a strong issue for attracting public attention and sympathies.

From this gradual program, JT also adopts evolutionary political strategies, known as the ‘stages of dakwah’: The *first* stage is ‘foundation’ (*tandhim*) in which JT activists started to explore Islamic political programs and research the social and political environments in which they operate. The *second* is socialization (*sya’bi*) in which they started to socialize their political programs and recruit and train members. The third is institutionalization of their resources (*muassasi*), during which they encouraged JT members to pursue careers in diverse professional occupations (public, private, voluntary), utilizing networks of alumna from major universities, and achieving positions in their respective vocations in order to extract resources to support JT programs. The last is participation in power struggles through political competitions (*daulah*), in which they become involved in political competitions, assume public offices and implement policies.<sup>49</sup>

JT activists believe that the first and second stages were passed through during the 1980s, when the organizations carried out underground activities formulating strategies, recruiting and training members and activists. The third stage came during the 1990s, and when the political environment became more conducive they started to go public, run various institutions, while its members advanced their careers in various professional jobs. Finally, the

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<sup>47</sup> Interview with Abu Ridho, Jakarta

<sup>48</sup> Interview with Yusuf Supendi, Jakarta.

<sup>49</sup> Yon Machmudi, “Islamizing Indonesia,” 2005: 177-186. Anies Matta, *Menikmati Demokrasi: Strategi Dakwah Menikmati Kemenangan*, Jakarta: Pustaka Saksi, 2002: pp. 9-11.

fourth stage was entered from 1998 when they established a political party, participated in elections, held government offices and implemented public policies.<sup>50</sup>

## **Key ideological issues**

### **1: Islamic state**

PKS, following the Egyptian MB, do not have a specific blueprint concept of what kind of state or political system there should be. This is in contrast to Hizbut Tahrir, which seeks to revive a universal Islamic caliphate, or Jamaah Islamiyah under Abu Bakar Baasyir, that seeks to create a Southeast Asian alliance of Islamic governments.<sup>51</sup> In fact, just like those radical movements, PKS believes that Islam is a comprehensive system of life that should be enacted in the individual, societal, and political spheres. However, for the PKS, what makes those spheres Islamic is not the structures, but rather the behaviours of individuals within it. An Islamic society is a society where its people behave according to Islamic teachings, while the structure of the society can be modern, or traditional, or tribal. An Islamic society is where Muslims enact Islamic rituals regularly, Islamic values—dress codes, cuisines—become norms in public life, and crimes and immorality are minimized or absent.

Likewise, an Islamic political system is not confined to a universal caliphate, but can be a kingdom or a republic, as long as it follows Islamic principles. For PKS, people live in society and the state is a function to improve the society. Thus, the state serves as a supporting factor to create an Islamic society—an *ummah*. It is a structure that provides rules and regulations by which people should live, and it has the authority to enforce the rules and regulations, and punish transgressions. An Islamic state is a political system that is capable of enacting Islamic principles in the society.<sup>52</sup>

PKS also believes that Indonesia is fundamentally an Islamic state because it accommodates religion as part of state and government affairs. Pancasila, as Indonesian state ideology, was formulated by Muslim politicians, and its represents the spirit of Islamic teachings in political life. The problem for PKS is that Indonesian administrations have not implemented Pancasila comprehensively, because the rulers do not have a commitment to

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<sup>50</sup> M. Aay Furqon, *Partai Keadilan Sejahtera: Ideologi dan Praksis Politik Kaum Muda Muslim Indonesia*, Bandung: Teraju. 2004, pp. 124.

<sup>51</sup> Sidney Jones, "Al-Qaeda in Southeast Asia: The case of the "Ngruki Network" in Indonesia," *ICG Indonesia Briefing*, 8 August 2002.o. 14. pp. 693-617.

<sup>52</sup> Untung Wahono, interview, Jakarta.



Islamic principles. Only if political leaders and government officials, who are mostly Muslims, have a personal commitment to Islamic values, can Pancasila be applied comprehensively.

PKS accepts a democratic system on two grounds: *firstly*, democracy is a flexible system; it can be socialist or capitalist, monarchy or republic, secular or religious. Political consultation as the basic principle of democracy is perfectly in line with Islamic teaching. *Secondly*, democracy is a political reality in Indonesia—and internationally—and therefore it should be taken as a starting point for building an Islamic political system. Politics is a function of religious propagation (*dakwah*), and it—as the term *Tarbiyah* implies—means to change people and improve their conditions. Thus, *dakwah* activities, including those in politics, should start from comprehension and acceptance of reality, and not a denial of it.<sup>53</sup>

## **2: Religious pluralism**

For JT-PKS, Islam is the ultimate and universal truth that must be propagated to all humankind wherever and whoever they are. It is mandatory for every Muslim to preach their religion according to their capacity and opportunity. However, Islamic propagation should focus on achieving benefits and avoid loss and risks. In a societal and political context, this means that *dakwah* activities should be carried out in ways that avoid conflicts and instabilities—that will not only harm the society, but also give a negative image of Islam and Muslims.

Indonesia is a democratic and religious country, in which the constitution sanctions freedom of religion. This means that Indonesian people are free to live according to their faith. Religious pluralism does not entail an acknowledgement that all religions are the same, but refers to a condition in which people can profess and express their religious beliefs. Therefore, for the PKS it is not religious pluralism, but rather a pluralism of religions, meaning that we live in a country that recognizes different religions. This does not abolish the obligation for all Muslims to propagate Islam. Islam must be propagated, but in a peaceful way.

There are, in fact, two different pluralisms, external and internal. External pluralism means coexistence and tolerance toward other religions, while internal pluralism is understanding and cooperation with other Muslims from different traditions. With regard to external pluralism, the PKS shows a tolerant attitude towards other religions, while in relation

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<sup>53</sup> Abu Ridho, interview Jakarta.

to internal pluralism it also shows tolerance towards other Muslim groups as long as there is no question of doctrinal heresy or political interests. There are two cases worth special attention: *Firstly*, the Ahmadiyah controversy that sparked deadly violence against the members of a minority group. In this case, PKS politicians on the one hand urged the government authorities to act firmly to prevent any violent acts, yet at the same time they also urged the government to disqualify Ahmadiyah as an Islamic group. A study by Bastiaan Scherpen is mapping the political attitudes of Indonesian Islamic social and political organizations on the issue of Ahmadiyah, and PKS shows a harsh and conservative attitude.<sup>54</sup> PKS also reportedly expelled a member who converted to Shia and took care of his wife who decided to divorce him following his decision.<sup>55</sup> *Secondly*, JT-PKS also shows a changing attitude towards other Islamic organizations. In the past, it has aggressively recruited and mobilized members of other Islamic organizations, as well as infiltrated and taken over religious forums and mosques belonging to other organizations. Research by Syaifuddin Zuhri reveals a sensitive example of how the party took over Muhammadiyah's mosque in Yogyakarta, taking advantage at the moment of an earthquake disaster.<sup>56</sup> However, after major organizations such as Muhammadiyah and NU reacted officially by issuing statements and policies criticizing PKS, the party responded by issuing clarifications and instructions to its members to maintain harmony and brotherhood with other Islamic organizations.<sup>57</sup>

### **3: Gender equality**

Gender equality is an extremely sensitive issue in JT-PKS, and they treat it cautiously. Basically, PKS uphold a rather misogynist idea of gender, which believes that men are superior to women. The party Sharia Council issued a statement on the participation of women in politics, by specifying that men and women have a different set of obligations and rights, and women's participation in political life is allowed as long as it is deemed appropriate. Interestingly, the statement specifically listed inappropriate conduct that women in politics should avoid, such as excessive dressing, wearing too much perfume and speaking in a seductive voice—as if the Sharia Council was so worried that PKS female politicians

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<sup>54</sup> See Basstian Scharpen, "Enforcing Religious Freedom In Indonesia: Muslim Elites And The Ahmadiyah Controversy After The 2011 Cikeusik Clash," IRP Research Project 2012.

<sup>55</sup> Arief Munandar, "Antara Jamaah dan Partai Politik" 2011: 217.

<sup>56</sup> See Syaifuddin Zuhri, "Mosque As Religious Sphere: Looking At Conflict Over Al Muttaqun Mosque", IRP Research Project 2012.

<sup>57</sup> <http://news.detik.com/read/2009/03/28/175913/1106503/700/kampanye-di-semarang-hidayat-klarifikasi-pks-anti-maulid?nd992203605>.

were unable to understand what inappropriate conduct is by using their common sense.<sup>58</sup> The misogynist understanding of gender relations in the PKS is also visible from the fact that many PKS leaders from different factions—from radical and conservative, to pragmatic and liberal—practice polygamy.

There are female PKS politicians that have earned a good reputation in politics, such as Nur Sanita Nasution, the late Yoyoh Yusroh, and Ledia Hanifa. They support the interpretation that there are different obligations and rights between men and women, but that the two genders are equal, i.e. that men and women have equal status before God, state, and society. Yet, since they have different biological and psychological natures, they have different roles, both in private and in public lives.<sup>59</sup> A number of women have tried to initiate a more progressive understanding, but the unfortunate consequence was that they were expelled from the party structure for their efforts.<sup>60</sup>

The PKS provides relatively open opportunities for women, and women politicians and activists participate in every section of the party structure. Women were among the original founders of the party, (five out of fifty), and the party allocates seats for women in every organizational structure. In the powerful Deliberation Assembly, ten out of one hundred members are women; in the Party Advisory Board three members are women; there are even two women members in the Sharia Council—something very unusual for Islamic organizations. In addition, the PKS also has a special department for women, which deals specifically with women's issues.<sup>61</sup>

The PKS also presented a significant number of female candidates in the parliamentary elections. During the 2004 election it had 446 female candidates for national, provincial and district/mayoral legislatures and all of them passed the qualification requirements, although there is no further information on how many of them were actually elected as MPs. In comparison, the female candidates of other Muslim parties were as follows: PPP - 497 candidates; PKB - 551 candidates; PAN - 554 candidates, and PBB - 372 candidates. With regard to the recommended 30% quota for female candidates the PKS did even better, and fulfilled the quota in 65 electoral regions (*Daerah Pemilihan*). This was the highest number compared to other parties: the PAN and PKB managed to achieve this in 45

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<sup>58</sup> Permata 2008.

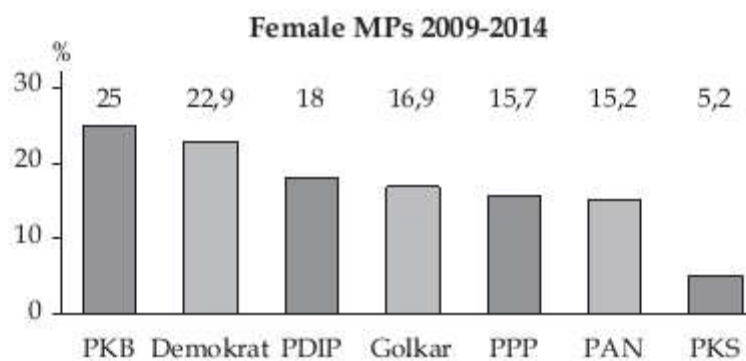
<sup>59</sup> Nur Sanita. Interview Jakarta.

<sup>60</sup> Arief Munandar, interview.

<sup>61</sup> Interview with PKS MP Yoyoh Yusroh, 21.06.2007.

regions, the PBB in 42 regions and the PPP only in 30 electoral regions.<sup>62</sup> In the national legislatures, the PKS had one female out of seven MPs (14%) during the 1999-2004 period. While it has more female MPs in the current period of 2004-2009 their percentage is lower, i.e. three out of forty five (6%).<sup>63</sup>

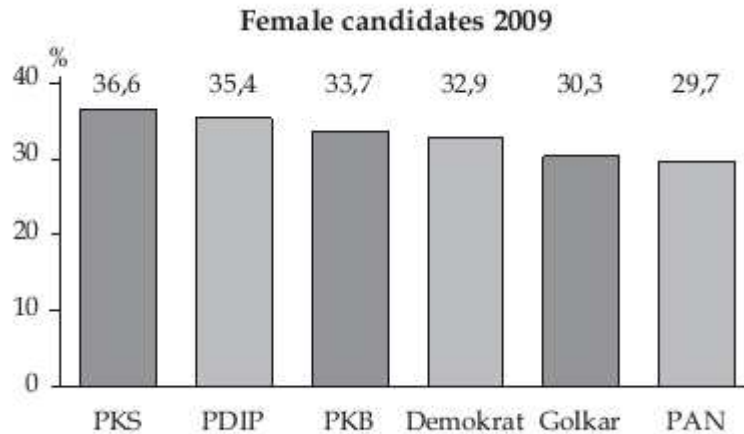
In the last general election, the PKS had the highest number of female candidates for national legislators among major parties—212 out of 579 or 36.1%. However, when it came to the number of candidates who were elected as parliamentarians, the party experienced the lowest number—3 out of 57 or only 5.2%. This discloses the reality of the situation of women politicians in the party who suffer from a paradox: on the one hand, at a personal level, female leaders and activists of the PKS have a high level of education and skills and have played substantial roles in contributing to the party’s achievements. On the other hand, at an institutional level, they have limited opportunities both to advance their careers and to be acknowledged for their contributions.<sup>64</sup>



<sup>62</sup> See *Republika*, 29.01.2004.

<sup>63</sup> Interview with PKS MP Yoyoh Yusroh, 21.06.2007.

<sup>64</sup> *Permata* 2010: 36-37.



### **Asymmetrical organizations**

Until 1998, JT was organized as a secretive movement, imitating the Egyptian MB, with a supreme leader at the top holding religious as well as organizational authority. He was assisted by deputies with different tasks. The JT supreme leader came under the auspices and of and was in consultation with the supreme leader of the Egyptian MB, especially in matters regarding organizational procedures and political strategies. However, he was not under the direction of the foreign authority. There are coordinative forums for regional as well as international MB networks. The network also uses the Hajj pilgrimage to coordinate with each other and consult with the Egyptian HQ.<sup>65</sup>

Under this centralistic leadership, JT organizes recruitments and indoctrination training through cell-like networks of activists, known as *usroh* groups, which consist of 5 to 12 participants supervised by a mentor. In many cases, members of a cell do not reveal who their mentor is to members of other cells. On their part, the mentors form further cells, etc. There are regular activities conducted by the groups: The first is a weekly meeting (*liqo'*), in which members of cells meet with their mentor to learn and discuss religious subjects, mostly theology and prophetic history. The second is a monthly gathering (*mabit*) in which cell members spend a night in a Mosque, to practice night prayers and hold in-depth discussions on certain topics with the mentors. The third is a gathering (*daurah*) in which larger numbers of participants gather and invite potential recruits, usually under cover of student events in schools and campuses. The fourth is traveling (*rihlah*) in which a large number of JT activists,

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<sup>65</sup> Yusuf Supendi, interview Jakarta.

accompanied by their families, travel to tourism sites, to socialize with each other in a more informal way. The fifth is outbound (*mukhayam*), during which a group of JT members spend several days out of town for physical exercise and learning survival skills.<sup>66</sup>

Among JT members there are formal as well as informal structures. Formal structures regulate how members interact with each other, based on seniority in joining the organization as well as their position in the organization. As the organization is composed of ramified *usroh* cells, networks of mentors and students, on paper each member will have certain relations with other members in terms of seniority. Informal structures, meanwhile, deal with non-structural factors that affect the way members interact or behave towards certain members. Commonly, they differentiate people who are trained in Islamic studies from those who have secular educational backgrounds. Among those who hold degrees in Islamic studies, the highest and most respected are those scholars of Islamic law (*syari'ah*), followed by theological studies (*ushul al-din*), and other Islamic studies (education, history, Arabic etc). Meanwhile, there are also degrees of seniority among those with secular educations. Hard science scholars hold the highest status, followed by social and cultural sciences.<sup>67</sup>

Since 1998, when JT established a political party, the organizational structures of JT blended into those of PKS. During 1998-2003, the highest decision-making body was the National Assembly, which holds the authority to compose and amend statutes, elect the Chairman of the *Shura* Assembly, and select chairmen and functionaries for the Advisory Council, Shariah Council, and Party Central Leadership. The *Shura* (or deliberation) Assembly has 99 members, 65 of whom are elected proportionally from 33 provinces based on the approximate numbers of JT members the provinces have, plus 2 special members of the current and former Assembly chairmen (Hilmy Aminuddin and Salim Segaf Al-Jufri), and 32 additional members selected by the Assembly based on professional expertise.

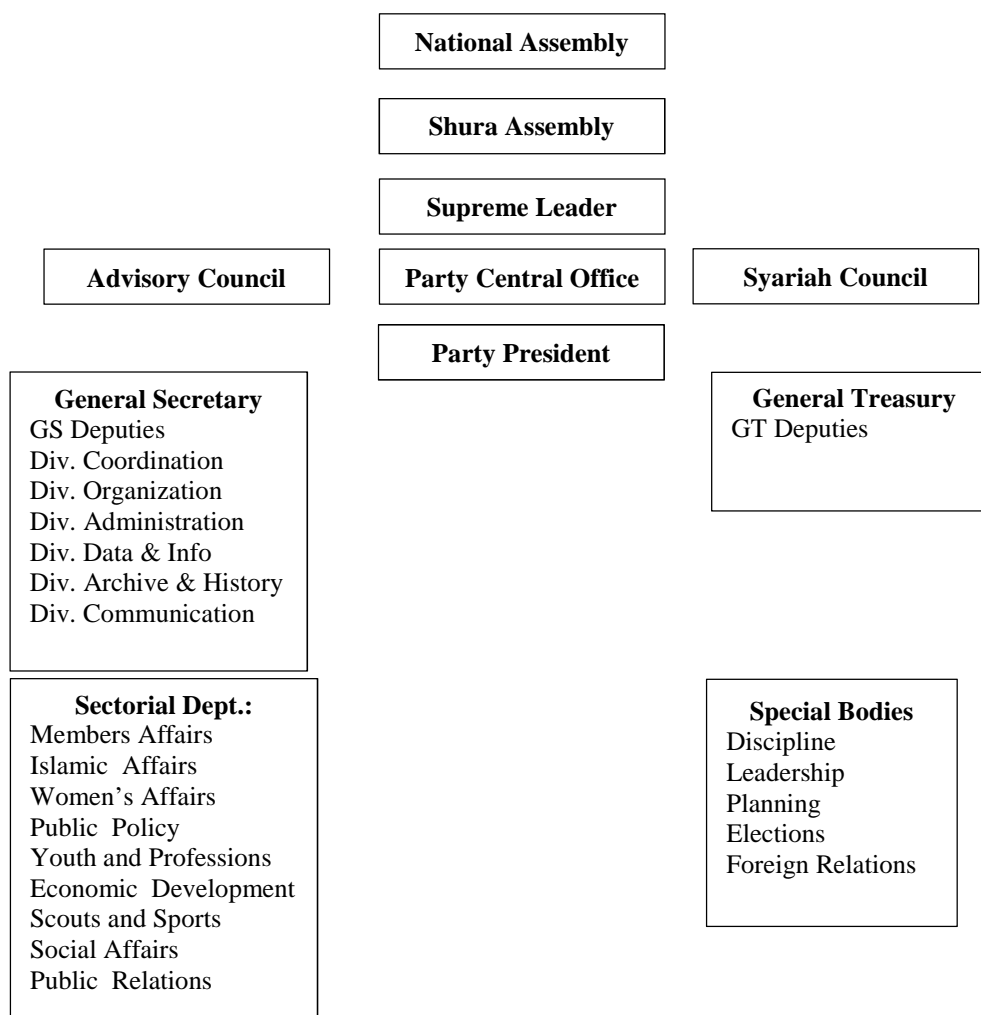
Since 2003, however, under the banner of the PKS, the highest decision-making body moved to the *Shura* Council, thus giving the supreme leader—as the chairman—a near-absolute authority. Although the National Assembly still holds rights to compose and amend statutes, and elect Chairman and members of Shura Council, it is in the hands of the *Shura* Council to decide where, when, and how the National Assembly should be held. This change represents what political scientists call ‘oligarchy’; that is, the shifting of the highest authority from the

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<sup>66</sup> Permata, 2008:99.

<sup>67</sup> Arief Munandar, interview Jakarta.

hands of the members into the hands of a few elite. The reason commonly put forward by JT and PKS leaders for this shift is that it simplifies the decision-making process.<sup>68</sup>



The new structures also create complexities as they blend JT organizational rules, which follow Islamic principles, and PKS organizational rules, which follow the national party system and the logic of political competition. As a consequence, what commonly happens is that most decisions are taken under political considerations but stated and communicated using religious principles. Party leaders need to communicate with their members using religious language, while at the same time make public statements using rational language. It also explains the party's ambiguous behaviour and its sometimes double standards. During national and especially regional elections, the PKS always issues official statements about

<sup>68</sup> Permata, 2008, p. 187.

why it nominates certain candidates using Islamic criteria, while there many media reports purporting to show how those decisions are made based purely on political deals.<sup>69</sup>

The powerful position of the supreme leader creates its own problems, as it creates an alternative authority and loyalty for party leaders and members. The authority enables him to bypass organizational procedures that split the party machinery between loyalty to the organization and the supreme leader. The most infamous case is the dominant position enjoyed by party general secretary, Anies Matta, who not only maintained the position across three different party presidents because of his closeness to the supreme leader, but even dared to take on party presidents. For example, he engineered the resignation of the party president, Hidayat Nur Wahid (PKS president 2003-2005), in 2005, under the auspices of the *Shura* Council.<sup>70</sup> While going against Tifatul Sembiring (PKS president 2003-2005), ahead of the 2009 election, he unilaterally established an ad hoc ‘National Election Winning Team’ (TPPN) headed by himself while the party president sat only as a regular member—though this team did not run well, as many of its members sided with Sembiring.<sup>71</sup>

It is this unsolved structural asymmetry that eventually created irreparable fractures within the JT and PKS. To maintain the good running of the organization, the JT leadership have to follow two incompatible rules of the game: the one subjective and symbolic, the other objective and tangible. This has created double standards for the party: on the one hand, it takes decisions based on rational political calculations of benefits-costs-risks, while at the same time it maintains the use of religious language—commonly backed up by quotations from the Qur’an and Prophetic Traditions—to communicate them, especially to their members.

Three cases are enough to show how this dilemma manifests. The first was the 2004 presidential elections, when the party was split between supporting Amien Rais, a democratic leading figure with high Islamic credentials but a low chance of winning, and the former Army commander Wiranto, a secular pro-Suharto candidate with a greater chance of success. What actually occurred was rivalry between Hilmy Aminuddin (the supreme leader) who had a political deal with Wiranto vs. Hidayat Nur Wahid (the party president) who committed his support to Amien Rais. Yet both of them tailored religious arguments to support their choices. The second example was the 2008 PKS national congress, held in Bali, at which it was proposed that the party should drop its exclusive Islamist ideology and declare itself as an

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<sup>69</sup> *Tempo*, 26.08.2012.

<sup>70</sup> Yusuf Supendi, interview Jakarta.

<sup>71</sup> Arief Munandar, 2011, pp. 93-94.



‘open party’. The supreme leader and party general secretary endorsed this idea, while the party president (Tifatul Sembiring) rejected it. The arguments were again tailored under religious debates. Yet, in fact, the leadership were disagreeing about the best strategy for the 2009 elections: to stay in a narrow niche of conservative Muslim voters, or move into the wider share of plural voters. The third case was a fatwa issued by the PKS Shariah Council of Solo, Central Java, in 2010, on the legality of electing a Christian as a political leader, in order to explain a political deal made between the party and the PDIP who nominated a Catholic F.X. Rudyatmoko.<sup>72</sup>

### **Frictions and factions**

After the 2004 elections, when the party tripled its votes and receives almost seven-fold the number of seats in the parliament, and held three ministerial offices, the central leadership was confronted with the unbearable task of maintaining polarizing trends between steadily idealistic JT activists and increasingly pragmatic PKS leaders. JT activists—most of whom were not involved in party structures—started to demand that JT’s top leaders, especially the supreme leader, return to the basic JT commitment as a *dakwah* movement and organization, and thus subdue its political agenda. The tension was high when in March 2009 a group of senior JT activists—including PKS 1999 presidential candidate Didin Hafiduddin—handed in a petition to the Supreme Leader Hilmy Aminuddin demanding that he should be held accountable in terms of ideological, organizational as well as the financial management of the PKS. They accused Hilmy of utilizing the JT for PKS political agendas.<sup>73</sup>

On the other hand, the political pressures on the PKS in the national arena forced the party leadership to rely more and more on effective decision-making mechanisms by recruiting practical minded politicians—sometimes from outside the JT. This new PKS leadership, in return, demanded that the Supreme Leader focus on allocating JT resources to support the party’s capacity to compete in an unstable political environment. Having succeeded in winning the Supreme Leader’s influence, they started to excommunicate and fire critical JT activists—including former party vice president Syamsul Balda and party founder Yusuf Supendi.

The polarization between the JT and PKS continues, and there is even polarization within the two. Inside the PKS, for example, there are divisions between ‘office oriented’

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<sup>72</sup> See Solo PKS Sharia Council “Pangkatangan Non Muslim Dalam Pemerintahan (Sebuah Pandangan Dan Analisa Syar’I” Januari 2010.

<sup>73</sup> Didin Hafiduddin, interview, Bogor.

politicians (who focus on maintaining party positions in political competitions) and ‘policy oriented’ (who focus on promoting Islamic policies) politicians. Furthermore, among office pursuers there are pragmatists, who use politics to advance personal and party interests—including collaborations with the Suharto family, military networks, and corrupt businessmen (Anies Matta, Fahri Hamzah, Zukieflimansyah); and reformists, who put the party’s interests in line with democratic reforms (Hidayat Nur Wahid, Tifatul Sembiring, Sohibul Iman). Among policy pursuers, there are moderates who do not get involved in pragmatic politics but tolerate it (Mutamimul Ula, Untung Wahono); and radicals who do not tolerate any pragmatic political behaviour (Abu Ridho, Yusuf Supendi).

Inside JT, among those who are not involved in party structures, there are divisions between loyalists—who unswervingly support decisions by the party leadership—and critical activists who criticize what they perceive as defiant behaviour and decisions by party elites. Among the loyalists, there are activists who are loyal to certain party leaders but critical toward others (mostly younger activists, still unstable in their financial life, who enjoy cliental relationships with certain party leaders), and those who are loyal to the party and eager to defend the PKS from outside critics. Meanwhile, among critics there are activists who remain in JT (Didin Hafiduddin, Daud Rasyid Sitorus), and those who have left the organization and launch their criticism from outside (Tizar Zein, Ihsan Tanjung, Mashadi).

If you ask about the frictions inside JT and PKS there are three different answers: The first is a cliché, that friction and factionalism are common phenomena in any organization, especially among political parties. Proponents of this argument typically add that the PKS was the most solid of all parties in Indonesia, the only party that does not suffer from an organizational split. The second answer was put forward by Yusuf Supendi, who argues that the frictions were caused by asymmetrical structures of JT and PKS, and deemed party structures as being foreign to MB tradition. In order to resolve the frictions, he proposes that the Supreme Leader take the position of party president, so that there will be a single authority and single line of command.<sup>74</sup> The third answer was provided by Abu Ridho, who sees the frictions as a result of blending two incompatible structures into a single organization: JT social structures and PKS political structures. To overcome the factionalism he suggests separating into two different organizations: JT, with a different leadership, should follow the

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<sup>74</sup> Yusuf Supendi, interview Jakarta.

logic of a social organization; and PKS, with another leadership, should follow the logic of political competitions.<sup>75</sup>

## Conclusion

This chapter explores the internal dynamics of JT and PKS, and finds that they follow and adopt the ideological programs and organizational structures of the Egyptian Muslim Brothers. Ideologically, JT-PKS follow MB's gradual Islamization—from individuals, to families, to society, to the state; while organizationally, it has adopted cell-like structures, in which five to ten recruits are trained under a mentor. It also adopts MB's gradual political strategy of Islamization: from recruitment (*tandzimi*), to socialization (*sya'bi*), to institutionalization (*mu'assasi*) to government (*daulah*).

Ideologically, JT and PKS take a moderate position. On the one hand, they try to stick to the basic premise of Islamism to create a comprehensive Islamic way of life; on the other hand, they also seek to adapt to the existing political and social environments. For instance, in relation to an Islamic State they support the idea that Muslims should found an Islamic state. However, they add that, whether it is an empire, a kingdom or a republic, the characteristics and mechanisms are in line with Islamic teachings. Likewise, on the issue of gender equality, they maintain that men and women are equal in front of God and in front of the law, yet the two are created with different natures, and thus they assume different rights and duties.

Organizationally, meanwhile, JT and PKS are trapped in an asymmetrical relation, in which they are bound together under the same authority, but managed by different sets of leadership, one with informal structures, the other with formal structures. Coping with rapidly changing political environments, such asymmetrical organizational structures have torn the organizations into two opposing tendencies: JT is consistently normative and idealistic and PKS increasingly pragmatic. As a result, increasing tensions and frictions are created, both between JT and PKS as well as inside the two.

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<sup>75</sup> Abu Ridho, interview, Jakarta.

## 4: DEMOCRATIC PARTICIPATIONS

### Introduction

This chapter discusses the PKS experience in terms of democratic political participation. The focus of this chapter is how the party has been caught between maximizing political interests and promoting Islamic values. It explores PKS behaviour in three political arenas: political mobilization, coalition and government formation, and policy formulation and implementation. In those three arenas, the party experienced dramatic change from normative perceptions and behaviours, perceiving politics as an integral part of *dakwah* activities and therefore need to be conducted in line with Islamic norms, into pragmatic understandings and dealings, by taking politics as an instrument for the objectives of *dakwah* that need to be handled in its own way. At the same time, the change marked the polarization between increasingly pragmatic PKS politicians and normative JT activists, which turned into tensions and frictions.

In terms of political mobilization, the PKS has experienced a trajectory from natural understanding of political competition, from perceiving elections as a formal test and a trial of the political party's reputation in society, into a rational understanding of it as contestations that involve strategies to engineer information and reputations, and into transactional understanding in which it realized that political competition through elections is not only about winning or losing, but rather how to play what it has. Similarly, in the arena of coalition and government formation, initially it perceived coalition exclusively in terms of ideological cooperation and rejected the notion of collaborating with a secular party. Subsequently, it started to realize that a coalition with a secular party might be taken as a pragmatic short-term strategy in order to achieve normative long-term objectives. Finally, in the arena of policy formulation and implementation the party seems to have been trapped between formulating symbolic-normative and rent-seeking policies.

### Electoral mobilizations

The PKS has experienced a significant change in political mobilization, in terms of how it understands the notion of mobilization as well as the way it carries it out. *Firstly*, during the early years of its history, JT and PKS leaders perceived political mobilization as a natural social process, in which reputation and popularity are by-products of society's appreciations of their good and beneficial deeds. *Secondly*, after they follow through various events of

political mobilizations—from rallies on the streets, media warfare to influence public opinions, to elections campaigns—they started to realize that politics is not a natural social process, but rather engineered events through the manipulation of information. Thus, they started not only to amplify their profiles and reputations, but also to fabricate them, sometimes completely out of nothing.<sup>76</sup> *Thirdly*, when they learnt more about the nature of democratic competitions, especially the idea plurality—that to win a competition does not only mean to become a majority, but to measure any achievement towards a certain benchmark—they started to utilize political mobilizations as a means of political transactions.

This change, however, did not occur for the PKS network as a whole, but rather more among its political elites. Not all PKS members agreed with such interpretations of politics, and many of them firmly believe that politics is just a means for *dakwah*, and political achievements are merely by-products of *dakwah* achievements. Thus, the change marks polarizations of perceptions and behaviours among JT-PKS members, between politically oriented and *dakwah* oriented factions.

The first event in which involved JT in serious political mobilizations was the 1999 elections. At this time—perhaps influenced by the idea of gradual Islamization—they understood politics as a natural social process, in which elections are merely arena for political parties to test their popularity and reputation in society. Therefore, they did not prepare a systematic campaign ahead of the elections, but rather intensified their regular activities: from coordination meetings, religious sermons, as well as personal rituals such as night prayers. A statement (*Bayan*) issued by party central office ten months ahead of Election Day informs us about what it deemed as important: *firstly*, JT members should dedicate their activities to Allah, not to the party. *Secondly*, the party's ultimate mission is to enact God's laws on earth, political activities through the party are merely a means to an end. *Thirdly*, maintaining harmony and preventing prejudices, especially with other Muslims, are more important than political achievements. *Fourthly*, elections are not a trial for the party but an arena for the JT to exercise their ability in implementing religious and political skills. *Fifthly*, minimizing political and social costs are more important than achievements.<sup>77</sup>

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<sup>76</sup> It has become PKS strategy for socializations, oftentimes taking advantages during natural disaster relief activities that often occurred in the country, to put its flags and stickers to aid packages being sent by other people to disaster victims; or escorting trucks carrying aids, not own by PKS, using vehicles with PKS flags—to fabricate public images that it is a party that care to the sufferings of the people.

<sup>77</sup> Justice Party Central Office Official Release, 22.08.1998.

Things were different during the 2004 elections, however. After the Justice Party failed to pass the 2.5% electoral threshold, JT founded a new Justice Welfare Party with a new understanding about politics and political mobilizations. There were at least three changes: *firstly*, in terms of organization, they had established a more systematic organizational structure. During the previous period, the party had not established institutionalized organizational structure—as they had barely one year from inception to election—and relied more on their internal networks of *usrah* cells. In addition, the electoral law had not required any organizational benchmark. For the 2004 elections, the electoral law No 8/2000 required that in order to be eligible to participate in the elections a political party needed to establish organizational branches in all of the provinces and half the total numbers of districts in those provinces.

*Secondly*, in terms of human resources, they started to sort and select party leaders and functionaries not only based on their seniority in the JT network, but also more on individual characters and skills suitable to the organization's requirements. It also systematically trained and upgraded the various skills and capabilities of party leaders and functionaries by organizing courses, workshops and training on various subjects, such as public speeches, writings in public media, talking in front of TV cameras, lobbying, fundraising, even in doing psychological warfare through black campaigns, though in rather soft manners, such as how to exploit weaknesses and scandals of other parties in order to demoralise their political competitors and to bold the confidence of its supporters. *Thirdly*, in terms of political strategy, in which they perceived politics no longer as a natural social process, but rather a competition needing to be pursued in its own way. They raised funds intensively, both from JT members and external donors, domestic and foreign. They perceived politics merely as a means to an end, and strategic collaborations with anyone were viewed as tolerable or even necessary, as long as the partners were committed to the long-term goals of the party missions.<sup>78</sup> They publicized their opinions and activities by organizing various rallies and protests against various domestic and international issues. PKS leaders have already aware and skilful in using public media by inviting reporters to their activities.<sup>79</sup>

At this point the disagreements started to emerge among JT-PKS members. Two issues are often put forward into controversy: *firstly*, on fundraisings, in which PKS functionaries are actively mobilize financial supports from external donors, including

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<sup>78</sup> Hidayat Nur Wahid, interview Jakarta. He also told how years ahead of election time they also persuaded JT members to save white shirts and headscarves to be printed with the party logo for election campaigns.

<sup>79</sup> Permata, 2008, p. 216.

government institutions, network close of Suharto family and business companies owned by non-Muslims. Critics and protests started to emerge from JT activists who saw these activities as defiant both morally and politically. Morally, the critics argued that politics should be taken as integral part of dakwah activities, and therefore should be funded exclusively by morally accountable funds. While politically, they accused PKS politicians who received funds from non-Muslims as collaborating with enemies and thus betraying their own missions. Both proponents and opponents supported their opinions with religious arguments tailored with quotations from religious books and authorities.<sup>80</sup>

Later on PKS exhibit another trend of behaviour in political mobilizations, namely transacting votes with other political resources. Following the rules of games in a multi-party democratic system, PKS politicians quickly learnt that the options available for election participants are not only either win or lose, but rather to win bigger or smaller prize according to whatever they got. In democratic politics, for political party votes are like money for Business Company, in which it is transferable into other resources. Once PKS politicians got this idea, they started to transact their votes for other resources, offices or money. It is then known as “political dowry” (*mahar*). They play the game effectively, and most of the time smoothly, especially during gubernatorial and district/mayoral elections, because they have loyal voters. In 2007 Jakarta gubernatorial election, PKS received 30 billion rupiahs (3 million US Dollars) for nominating Let. Gen. (ret) Adang Darajatun, former vice-commander of the Indonesian Police.<sup>81</sup> While in the last 2012 Jakarta Gubernatorial election, after its candidates lost in the first round, PKS asked for 100 billion rupiah (USD 100 million) from the incumbent Fauzi Bowo in return for its 500,000 votes; but the latter bargained for Rp. 20 billion (USD 20 million), and a deal was reached.<sup>82</sup>

These political behaviours added more fuel to the existing resistance by JT conservative activists, since such political transactions have enabled certain politicians to enjoy lavish lifestyles. The tensions were so high that a few critical JT activists were actually

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<sup>80</sup> A telling example is a story about the case of a PKS politician, a holder of a doctoral degree in Islamic studies from Saudi. In the 2004 election he lost in his home district, a traditional Muslim stronghold in Banten province, to a Catholic North Sumatran politician from the secular party PDIP. Perplexed by the defeat—as he believed he had had good communications and coordination with his supporters—he conducted an inquiry on why he lost. He found that it was because his rival used direct aids (a euphemism for money politics) with the voters a few days ahead of the polling day. In the 2009 election, unwilling to repeat the same mistake, he then provided his voters with direct aids—and he won a seat in the parliament. The politician opined that money politics is more tolerable than letting a Catholic politician from a secular party represent his Muslim community. Interview with a former student turned expert commission staff in the parliament.

<sup>81</sup> Yusuf Supendi, interview Jakarta.

<sup>82</sup> *Tempo*, 26 August 2012.

excommunicated or expelled from the party for criticizing such PKS pragmatic behaviour. Indeed, some even left the JT and organized their own groups criticizing the PKS and JT leadership for misleading the organization and betraying MB political missions.<sup>83</sup> However, the skilful politicians were able to secure support both from high ranking party officials, by providing a significant cash supply badly needed by the party in increasingly capital intensive political competitions, as well as from younger JT activists, by opening channels for funds, networks and careers.<sup>84</sup>

### **Coalitions and government formations**

Similar to what happened in terms of political mobilization, the PKS also experienced changing perceptions and behaviour with regard to political coalitions in government formation. Initially, during the early years of its history, PKS leaders understood government as an institutional mechanism for formulating and implementing policies, and that political parties will pursue policies following their particular ideology and programmatic. Later on, they started to learn that coalitions, just like gathering votes, are instrumental to political objectives and thus should be pursued in their own rights. Again, this change also marked the emergence of internal divisions between activists who perceived political activities as an integral part of *dakwah* activities and thus should be pursued in line with Islamic principles. This is in contrast to those who perceived politics as instrumental to *dakwah* objectives and thus the end justifies the means.

The first joint venture that the party participated in was the formation of the Communication Forum of Islamic Parties (FSPPI, *Forum Silaturahmi Partai-Partai Islam*) in 1998 together with other Islam-based parties. They demanded that the government cancel Law No. 3/1985 and No 8/1985 that required organizations to adopt Pancasila as their sole foundation—they were successful in this. Secondly, fully recognizing their minimal calibre, eight of the Forums' members—ten minus PPP and PBB—agreed to join their remaining votes in the election in order to get additional seats, the so called *Stembus Accord*.<sup>85</sup>

The second political move was joining PAN to form the Reform Faction (*Fraksi*) in the Parliament. This is rather interesting as PAN is actually not an Islamic party; at the same time, other Islam-based parties from FSPPI also requested that the PKS join the Islamic Party Faction. According to Hidayat Nurwahid, Amien Rais, not PAN, was the deciding factor.

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<sup>83</sup> Email correspondence with an ex-JT member.

<sup>84</sup> Arief Munandar, "Antara Jamaah dan Partai Politik," 2011, pp. 98-99.

<sup>85</sup> Permata, 2008: 240-241.



PKS leaders knew Amien very well, and they were confident that he would pursue political agendas parallel with those of the PKS. Furthermore, Amien Rais and other PAN leaders also had credentials as reformists, which was in line with PKS political visions. Finally, the PKS decision to join PAN was based on democratic reasoning, as it made the Reform Faction the fifth largest faction in the parliament, with 41 seats. Thus, it had the right to receive the vice chairmanship in the legislature, defeating the Military Faction, which held 38 seats.<sup>86</sup>

The next political coalition that the PKS joined was the formation of the Central Axis, a coalition of Islam-based politicians under Amien Rais and designed to challenge the candidacy of B. J. Habibie (who was perceived as a remnant of the Suharto regime) and Megawati (who was perceived as a secular politician backed by Christians).<sup>87</sup> Amien Rais, against all the odds, nominated Abdurrahman Wahid as the alternative candidate. Initially the PKS, together with another Islam-based party, the PBB, preferred to support Habibie.<sup>88</sup> When eventually Habibie cancelled his candidacy, the PKS reluctantly gave their support to Wahid with a qualifying statement that it was the least bad choice.<sup>89</sup> Senior JT activists and former interim PKS president Untung Wahono observed that it was beyond doubt that the PKS preferred Habibie to Wahid.<sup>90</sup>

When Wahid was elected president, he offered the PKS one ministerial position in his cabinet. They accepted and nominated its chairman, Nur Mahmudi Ismail, for the position. In a meeting held following the offer, PKS leaders discussed which department was the most preferable, and they agreed on several criteria: *firstly*, it must be a populist ministerial post, i.e. it must deal directly with the public; *secondly*, it should be in accordance with the party's human resources in order to maximize its performance; *thirdly*, it should not depend on foreign funds; *fourthly*, it also preferred a department with the least amount of problems. Based on these criteria, the PKS proposed the Ministry of Agriculture. Wahid seemed to agree

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<sup>86</sup> Damanik, *Fenomena Partai Keadilan*, 2002: 282-286.

<sup>87</sup> Different from the widely held belief that the coalition had been initiated by Amien Rais in order to mobilize support from Muslim politicians, closer observation revealed the opposite situation, where the forum was initiated by a number of senior Muslim politicians to bring Rais back into his proper habitat of Islamic politics. It was triggered by Rais' agreement to join forces with Megawati and Abdurrahman Wahid in furthering reform agendas. This move was responded to with anxiety by Islamic politicians, based on ideology as well as democratic considerations. On the one hand, ideologically, they associated Megawati and her PDI-P as representing secular and Christian politics; while on the other hand many perceived both Megawati and Wahid as not really reformist, because they were reluctant to support reform agendas such as amending the constitution and demilitarization of politics. See, Suharsono, *Cemerlangnya Poros Tengah*, Jakarta: Perennial Press, pp. 86-88.

<sup>88</sup> Untung Wahono, *Peran Politik Poros Tengah*, Jakarta: Pustaka Tarbiatuna., 2003, p. 115.

<sup>89</sup> PK Bayanat, 17.09.1998).

<sup>90</sup> Wahono, 2003, p. 134.

with the PKS proposal and Ismail was on the cabinet list as the Minister of Agriculture. However, when the new Indonesian United cabinet was made public, Ismail was shifted to the Minister of Forestry and Horticulture.<sup>91</sup>

When President Abdurrahman Wahid was impeached by the parliament, the PKS fully supported the impeachment and Megawati's rise to presidency. Interestingly, the PKS did not join the cabinet, although Megawati reportedly offered one ministerial position. At least four factors might have motivated the PKS to take this decision. *Firstly*, the Megawati presidency was controversial among conservative Muslims because of her gender. PKS conservative ideology perceives political leadership to be the privilege of male politicians, and thus Megawati was not a choice when there were many capable male politicians. *Secondly*, joining the government under the Megawati presidency was not preferable from a policy point of view, because she and her party were perceived as the reincarnation of the secular-nationalist PNI from the previous era, and thus the arch-rivals of Islamic politics. *Thirdly*, another anti-Megawati sentiment was that many people perceived PDI-P as the political camp for Christian politicians, notably Maj. Gen. (ret.) Theo Syafe'i, one of Megawati's closest aides, who was believed to have strong anti-Islam sentiment. *Fourthly*, PKS leaders felt that they needed to improve their party organization as it had failed to pass the electoral threshold and was unable to participate in the next election as a result.<sup>92</sup>

The party perception and attitude towards political cooperation changed drastically when the party was renamed PKS. The first moment was the 2004 presidential election. In line with the change of party leadership, their perceptions and attitudes towards political coalition were also moving from idealistic, policy oriented into pragmatic, power oriented. Again, this change exacerbated tensions between normative JT activists and increasingly pragmatic PKS politicians.

The first signs were revealed during the 2004 presidential elections. Consistent with its attitude in the past, PKS leaders under Hidayat Nur Wahid supported the Rais presidency. A few weeks ahead of Election Day, however, a new option was pushed by Hilmy Aminuddin to back Wiranto. Hilmy argued that the top priority of the PKS' strategic political agenda was to stop Megawati—who had been made favourite by some observers as he paired with NU chairman Hasyim Muzadi. Amien Rais was preferable ideologically, yet his chances of winning were slim. Wiranto, meanwhile, had a greater chance as he was supported by the

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<sup>91</sup> (PK, Bayanat, 29.10.1999).

<sup>92</sup> Permata 2008: 245.

winner of the last election, the Golkar party. Undaunted by Hilmy's move, Hidayat urged a vote in the *Shura* Assembly and won the support of the majority of the members of the party's highest decision-making body.

This incident marked the tension and split among the PKS leadership, between reformists (those who put the PKS agenda in line with the agenda of democratic reforms) and pragmatists (those who take politics purely as instrument to achieve power and interests). Hilmy Aminuddin, the Supreme Leader of the JT, and then the chairman of PKS' *Shura* Assembly, lost face in front of the council and Wiranto for failing to bring the party to support him. He blamed Hidayat Nur Wahid for this. It was said that since then he vowed that after 2009 Hidayat, who was then elected speaker of the People's Consultation Assembly (MPR), would be an ordinary legislative member.<sup>93</sup> The tension continued until 2009, when the pragmatic camp, represented by the party's general secretary, Anies Matta, was in constant conflict with the reformist faction under the party president, Tifatul Sembiring.

Later developments show how the pragmatic camp had the upper hand. Two simultaneous factors are at play here. On the one hand is the powerful position of Hilmy Aminuddin, who combined the spiritual authority of JT and the organizational authority of the PKS. Personally, he is very charismatic—a combination of spiritual piety, Sundanese aristocracy, and authoritarian attitudes similar to a military commander. As the founder of JT he has a lot of pupils under his mentorship, and he gave many of them important positions in party structures and together they orchestrate the PKS management.<sup>94</sup> On the other hand, the PKS' pragmatic trend is also framed by real world politics and the increasingly capital-intensive political competition. Commenting on this topic, Minister of Interior Gamawan Fauzi acknowledged that the costs for a district/mayoral candidacy can be as high as 50 billion rupiahs (USD 50 million).<sup>95</sup> This—in addition to the rampant corruption among regional governments—forces political parties to collect huge amounts of money for regional elections as well as other political activities. In this situation, just like other parties, the PKS relied heavily on their practically-minded politicians.

During SB Yudhoyono's presidency, the PKS has shown another peculiar pattern of coalition behaviour, in which it took coalition agreements hostage for political leverage. In Yudhoyono's first term (2005-2010) as a coalition partner, the PKS was involved in political bargaining with the president regarding the plan to raise oil prices. At first, PKS leaders

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<sup>93</sup> Arif Munandar, "Antara Jamaah dan Partai Politik," 2011, p. 262

<sup>94</sup> Arif Munandar "Antara Jamaah dan Partai Politik," 2011, pp. 29, 334; *Jakarta Post*, 29 March 2011.

<sup>95</sup> [www.inilah.com/read/detail/490041/begitu-mahalnya-menjadi-bupati/](http://www.inilah.com/read/detail/490041/begitu-mahalnya-menjadi-bupati/).

rejected the plan as it was unpopular and might cause a heavier economic burden to the already suffering Indonesians. The PKS clearly understood that supporting this government policy would incite negative reactions from their supporters. The party president Tifatul Sembiring repeatedly insisted that his party rejected the plan. One week later, however, the party leader met with the president, and it turned its political stand on the issue 180 degrees. ‘We have to come to term with political realities,’ said Tifatul Sembiring, referring to the fact that the majority of parties in the parliament supported the plan, and the fact that the PKS is part of the government, and abstaining from supporting the government policy at such a decisive moment would risk its cabinet portfolio.<sup>96</sup>

The decision triggered waves of reactions from PKS supporters. KAMMI, the PKS student organization, sent their representative to the PKS Faction in parliament to deliver their protests, and questioned the party’s commitment to the struggle for the poor. KAMMI’s branches in some provinces also voiced similar demands.<sup>97</sup> Some PKS regional branches also voiced their disappointment in the party’s decision to support the unpopular policy. A few of them even urged their leaders to withdraw from the coalition government, since the support had resulted in a deterioration of PKS popularity. The damaging impact of the oil price policy has caused great concerns among PKS leaders, since some surveys reported that only 2.6% of Indonesian voters intended to give their ballots to the PKS in the next election—a two thirds decline from the 7.3% it garnered in elections a year before.<sup>98</sup>

In Yudhoyono’s second term, the PKS played the game of political hostage several times. The first case was in relation to PKS participation in initiating a special parliamentary committee in December 2009 to inquire into alleged illegal bailouts by the Indonesian Central Bank, under Budiono (then newly elected vice president) and former Finance Minister Sri Mulyani, to save the failing Century Bank. This was a serious case as it could lead to an inquiry about Yudhoyono campaign funds during the presidential election. President Yudhoyono saw the PKS move as deviant. He believed that as it was a coalition member and had received cabinet portfolios in his administration, it was supposed to back his position. Indeed, the president struck back. Muhammad Misbakhun, a PKS politician who was among the initiators of the Century Bank inquiry in parliament, was reported to the police for submitting fictitious credits to the failed Century Bank. Misbakhun was found guilty and was

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<sup>96</sup> *Tempo*, 28 Maret-03 April, 2005.

<sup>97</sup> *Tempo*, 21-27 March 2005.

<sup>98</sup> Interview with Imam Nur Azis, 22.05.2007.

sentenced to two years in jail and expelled by his party from the parliament.<sup>99</sup> Another reaction from the president occurred in October 2011 when he sacked a PKS Minister of Research and Technology, Suharna Suryapranata, and gave the post to his own party.<sup>100</sup>

Yet the PKS once again played the bad boy role in the coalition, by joining opposition parties now proposing the government increase oil prices in order to reduce the budget deficit, whereas the government desperately rejected any plan to increase oil prices fearing the public's negative reaction. The president's Democrat Party harshly criticized the PKS moves as unethical, and urged the PKS to leave the coalition if it did not want to support the government. PKS MPs replied that they were just doing what parliamentarians should do; namely, channelling public political aspirations. The PKS' peculiar decision to remain in the coalition but at the same time constantly criticize the government was caused by the internal dynamics and the tensions between the reformists who wanted to build a positive public image of the party and the pragmatists who did not want the party to lose its cabinet portfolios. The situation was especially dilemmatic to PKS ministers in the cabinet, such as the Minister of Communication and Information Tifatul Sembiring who was accused of becoming the mouthpiece of the government, while his own party criticized government policies.<sup>101</sup>

The next point, and perhaps the most controversial behaviour during the political coalition, took place in local politics. Law No. 32/2004 stipulates that only a party or a coalition of political parties with 15% of the seats in the local legislature can nominate candidates in local elections. Because the PKS are only a minority in many regions, it needed to enter into a coalition in order to be able to nominate candidates. Until 2008, PKS had won in 92 regional elections, eight of which were provincial, while the other 84 were at district level. There are two important points in this case: *Firstly*, out of the 92 regional government positions won by the party, it only won five without coalition (or 5.4%). The other 86 wins were in coalition with other parties. Out of these 86 coalitions won by the PKS, only twelve (or 13.9%) of the elected leaders were PKS members. As such, in these regional elections the PKS was only a rather unimportant junior coalition partner, or it recruited candidates from outside the party. *Secondly*, and perhaps more interestingly, in the regional elections, the PKS joined coalitions not only with Islamic parties (60%) but also with secular ones (40%), and even with a Christian party, although they did not win in this case. Of those 86 coalitions, 33

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<sup>99</sup> [www.tempo.co/read/news/2011/06/10/078339847/PKS-Siapkan-Pengganti-Misbakhun-Arifinto-dan-Yoyoh](http://www.tempo.co/read/news/2011/06/10/078339847/PKS-Siapkan-Pengganti-Misbakhun-Arifinto-dan-Yoyoh).

<sup>100</sup> <http://nasional.kompas.com/read/2011/10/18/18581479/Menristek.Suharna.Surapranata.Sudah.Berpamita>

<sup>101</sup> Sapto Waluyo, interview Jakarta. *Kompas* 15 April 2009. *Koran Tempo* 08 March 2011.

were with the PAN (Muslim-based party), 29 were with the Golkar (secular party), 24 were with the PPP (Islamic party), 22 were with the PD (secular), 20 were with the PKB (Muslim-based party), 17 were with the PBB (Islamic party), 14 were with the PDIP (secular party)—and a failed coalition with the PDS (Christian party).

### **Policy formulation and implementation**

Policy is what governments do or do not do. It includes the whole range of government behaviours. There are two different perspectives in understanding policymaking processes: *firstly*, normative perspective called ‘policy accountability’, in which a political party formulates and implements policies that are in line with its ideology or programmatic platform, even though it may contradict people’s aspirations and thus could risk voters’ support for the party in the next election. *Secondly*, rational perspective called ‘policy effectiveness’, in which a party pursues policies that respond to public aspirations in order to secure voters support in the next election, even though it may run counter to its ideology or programmatic platforms.

In terms of behaviour, the PKS consistently promotes populist policies that appeal to public sentiments; yet in terms of understanding, it has perceived the policies differently in different periods. Previously, it opted for populist policies because it regarded policies as derivative of ideology and programmatic platforms. Later on, parallel with its increasingly pragmatic and rational understandings on politics, it has pursued a similar course of populist policies. However, this time it no longer understands it as a logical consequence of its ideological formulations, but rather as strategies to attract public sympathies.

An example of the populist orientation of PKS policies is visible in its selection of cabinet portfolios, in which it prefers ministerial posts that have direct access to the public, such as Social affairs, Housing, Agriculture, Youth and Sports. It is through such populist ministers that the party can promote itself to the vast networks in society, especially among economically lower class that comprise the majority of Indonesian votes. As seen from previous discussions, PKS leaders preferred ministers that have direct access to the public as it is interested in promoting its ideology and programmatic agendas. Yet, in later years, it has not only promoted its ideological agendas, but also promotes its political profiles. There are other interesting facts about PKS public offices. It seeks to extract as many resources as possible from every office it holds. It mobilizes party functionaries as assistants and aides for its ministers, even replacing housekeepers of the prayer rooms in the offices with party

members. The PKS also maximizes the collaboration of networks of its public officers, for example West Java governor Ahmad Heryawan, a senior JT activist and reputed rally organiser, received many awards—normally followed by grants and other subsidies—from PKS ministers.<sup>102</sup>

The PKS also exhibits inconsistent patterns in policymaking, as can be seen in the case of the oil prices. During Yudhoyono's first presidential term, the PKS initially rejected the government's plan to increase the oil price, on the grounds that it would worsen economic conditions in society. Then, it supported it on the grounds that it should play nice as a coalition partner. During the second term of Yudhoyono's presidency, the PKS again played with the oil price issue, this time by supporting a proposal from opposition parties to increase the oil price when the government opted for the opposite. It seems that this time the PKS was playing two different games at once: *firstly*, it tested the water both in relation to the governing party as well as with the opposition; and *secondly*, it played at internal power bargains between its central office and its ministers in public offices—as there has been continuous tensions between General Secretary Anis Matta and former party president Tifatul Sembiring who is the Minister of Information and Technology. The idea is that the Central Office is capable of causing troubles, or preventing it for the party's ministers and thus, the latter need to comply with the former.<sup>103</sup>

The PKS also displayed a double-standard populist policy when it supported the Anti-Pornography Law that censored pornographic displays and lustful entertainments, but did not apply it to its own politician who was caught watching a porn video. The law was controversial, as many groups accused it of being arbitrary, ambiguous, imposing uniform esthetical standards, and discriminating against women. It was ratified as Law No. 44/2008 on 28 October 2008. The PKS is among the staunchest supporters of the bill, and a PKS politician served as the vice-chairwoman of the bill's committee. Unfortunately, a PKS MP was caught watching a porn video during a parliamentary session. Since then, the PKS has been in a defensive position, as the media blew up the scandal and pressed the PKS to impose the pornographic law on its own politician. In the end, the PKS did not impose the law, insisting that the MP was opening a spam email that contained pornographic material. Nevertheless, the PKS still pushed the policy forwards by proposing and supporting the

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<sup>102</sup> [www.ahmadheryawan.com/8-profil-ahmad-heryawan/3333-daftar-penghargaan](http://www.ahmadheryawan.com/8-profil-ahmad-heryawan/3333-daftar-penghargaan).

<sup>103</sup> <http://www.tempo.co/read/fokus/2012/03/24/2316/Kenaikan-Harga-BBM-PKS-Dituding-Berpolitik-Dua-Muka>.

government to create a Taskforce for Prevention and Treatment of Pornography,<sup>104</sup> as a special body that supervises the implementation of the anti-pornography law. The Taskforce will be coordinated by a Coordinator Minister for Social Affairs and involve various ministries such as Religious Affairs, Educations, Law, Women Empowerment, the Police and also non-governmental institutions such as academics and NGO activists.<sup>105</sup>

Lastly, the PKS is also involved in implementing Sharia-inspired local regulations. These are local regulations implemented by provincial and district governments based on religious values, such as prohibition of liquor and gambling, forcing people (especially women) to wear Islamic clothing, halting public activities during Friday congregations, obliging Quranic literacy, etc. Out of 151 local governments implementing such regulations, 42 of them are supported by the PKS. In this case, it seems that the PKS' perspective on policymaking is more rational and normative, as it is eager to support government leaders with any policy visions, not only those who implement Sharia-inspired regulations.

## **Conclusion**

Many analysts and commentators worried that the PKS, once it achieves a government position, will pursue Islamist policy courses that could endanger the foundations of Indonesian democracy. Against such interpretation, this chapter has found that PKS political behaviours are structured more by the dynamics of the political realities, both internal and external, of the party. In three major democratic arenas—electoral mobilization, coalition and government formation, and policy formulation—the PKS shows an increasingly rational pattern of behaviour.

Formerly, it perceived elections merely as a contest to measure its reputation in society. Later on, it changed its perception on elections and viewed them as a competition where parties fight against each other using any means necessary in order to achieve victory or to undermine opponents. Finally, its perceptions on mobilization have changed again into an arena where parties are not only competing and fighting, but also cooperating and colluding with each other. Similarly, in coalition and government formation the PKS changed its perception and behaviour. Initially, it understood coalition as cooperation among like-minded politicians and ideologically close parties. Consequently, it was only willing to cooperate with Islam-based parties or Islam-based politicians. Subsequently, it understood

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<sup>104</sup> Presidential Decree No. 25/2012, ratified at 3 March 2012.

<sup>105</sup> <http://nasional.kompas.com/read/2012/03/13/15352741/Satgas.Antipornografi.Sudah.Bekerja.sejak.3.Maret>.



coalition as a short-term political strategy justified by its long-term goals, and therefore they started to be willing to join coalitions not only with secular political parties but also with Christian ones. Finally, currently the party perceives coalitions as a political card that can be played in different ways to maximize interests. It can even be used for internal contestations.

## **5: CONCLUSION**

This research explores the internal dynamics of the Indonesian Welfare Justice Party (PKS) and its organizational root and supporter, the Jamaah Tarbiyah (JT), in the context of democratizing Indonesian politics. The emergence of the PKS on the Indonesian political scene has attracted vast scholarly and popular attention, debates and controversies—both in terms of its ideological profile as an offshoot of the Egyptian Muslim Brothers, and with its amazing political achievements; shifting from a small party that had failed to pass the electoral threshold into the largest Islam-based party in the parliament and part of government. Its ideological orientation drew suspicions of pursuing a radical Islamist agenda in order to replace democracy with an Islamic political system. While its rocketing success raised questions about the prospect of Indonesian democratization that enabled an apparently radical party to become prominent.

This research starts with tracking the historical development of the JT and PKS. It is true that the JT was founded following the ideological formula and organizational structures of the Egyptian MB model, by a group of young graduates of Middle Eastern Islamic studies in the early 1980s. However, further inquiry reveals that the organization has developed through existing networks of activists and leadership, nurtured by Islam-based politicians and activists from a previous era, especially young academics in secular universities. The JT evolved into a movement characterized by a mixed political agenda, between MB Islamist politics, to create a comprehensive Islamic way of life through a gradual process of *dakwah*, political democratization against authoritarian regimes and politically involved military, as well as intra-Muslim competitions against other Islam-based political and social organizations.

Such a developmental trajectory and institutional settings created certain internal dynamics inside the JT and PKS. Amid progressing democratic consolidation—especially the consolidation of the party system that made political parties work more professionally—the PKS witnessed an increasingly pragmatic tendency, both in its organizational structures and political behaviour. Organizationally, it experienced a process of oligarchy, in which, initially,

the highest authority was in the hands of its members, exercised through the national congress. Later, it was handed over to its elites in the Deliberation Assembly—on the grounds of organizational effectiveness. Behaviourally, it experienced a change in perception and behaviour regarding politics, from perceiving politics as part of Islamic propagation (*dakwah*) to being conducted following Islamic principles and as an instrument of propagation that needed to be pursued in its own way. These changes created polarization, divisions and factionalism both between the JT and the PKS, as well as inside the two.

These internal tensions, divisions and frictions in turn influenced the party's democratic participation: in political mobilization, coalition and government formation, and policy formulation. Initially, the party perceived political mobilization merely as a contest of profiles and reputations by political actors in front of the public; then it started to perceive political mobilization as a political competition and fighting that needs special preparation and strategies. Finally, they started to realize that during political mobilization political parties do not only compete against, but also cooperate and collude with, each other. In terms of coalition and government formation, initially the party perceived it exclusively from an ideological perspective and thus it was willing to cooperate only with Islam-based political parties and rejected cooperating with secular ones. Yet, later on, it changed its perception into a rational perspective in which coalitions are seen as strategies to maximize political gains, and they are willing to cooperate with any party with any ideology—including Christian parties. Finally, it started to see government coalitions as political cards that can be played against other parties in order to maximize interests or even in intra-party power contestations. Lastly, with respect to policy formulation, the PKS consistently pursues populist policy courses; yet, it perceives these differently at different times. Initially, it understood policymaking normatively as a derivative of ideological orientations. Later, while pursuing the same populist policy pattern, the party started to perceive populism rationally and as instrumental to attracting public sympathies in order to increase votes in the next elections. As a result, it exhibits inconsistent behaviour in policymaking: on the one hand, it is always keen to join government coalitions; on the other hand, it is also willing to criticize unpopular government policies.

The phenomenon of the JT and PKS in Indonesian democratizing politics is also interesting in light of current theoretical debates on the prospect of Islam-based politics. Two theories are relevant: Oliver Roy's thesis on the failure of political Islam, and Asef Bayat's ideas on a political Post-Islamism. Similar to Roy's observation, the PKS is also trapped in its

own utopian vicious circle of a comprehensive Islamization of society and the state: i.e. that a true Islamic society can only be built under an Islamic state, and that the formation of a true Islamic state requires an Islamic society—in the form of tensions between its political section (PKS) and its social section (JT). Realizing the situation, JT-PKS leaders are now starting to discuss how to overcome the tensions: some suggested a unification in which one of its sections need to be subordinate to the other; others opted for a complete separation between political and social sections, and thus pursue the comprehensive agenda of Islamization in separated ways.

However, the development of the JT and PKS also resembles Bayat's notion of post-Islamism, in which political Islam, exhausted by its own mission of building a comprehensive Islamic way of life both in society and in the state, started to adopt programs it once criticized - such as democracy, human rights, gender equality, religious pluralism, etc. The situation looks the same as what happened with JT-PKS, in which it no longer perceives itself as bringing an alternative ideology and programs offered to replace the existing ones, both in the Muslim community and for religiously plural Indonesian people. Rather, it started to acknowledge its ideology and programs as supplementary to making the Muslim community, Indonesian society, and Indonesian nation-state better.

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<http://nasional.kompas.com/read/2012/03/13/15352741/Satgas.Antipornografi.Sudah.Bekerja.sejak.3.Maret>

<http://news.detik.com/read/2009/03/28/175913/1106503/700/kampanye-di-semarang-hidayat-klarifikasi-pks-anti-maulid?nd992203605>

### **Interviews**

Abdi Sumaiti (a.k.a Abu Ridho, senior JT member, PKS member of second chamber

parliament (DPD) Jakarta, 17.01.2012

Arief Munandar, Senior JT member, Jakarta 10.12.2011

Didin Hafiduddin, former PKS presidential candidate, Bogor 12.12.2011

Hidayat Nur Wahid, PKM member of parliament, former PKS president, Jakarta 06.07.2007

Imam Nur Azis, Deputi PKS Winning Election Body, Jakarta 22.05.2007.

Khalid Machmud, Head of PKS Yogyakarta Province, Yogyakarta 19.04.2007

Nur Sanita, PKS member of parliament, Jakarta 17,01,2012

Sapto Waluyo, Senior JT member, Jakarta 11.12.2011

Untung Wahono, JT senior member, former PKS interim President, Jakarta 16.01.2012

Yon Machmudi, PKS founder, lecturer at the University of Indonesia, Jakarta 22.06.2007

Yoyoh Yusroh, former PKS member of parliament, Jakarta 21.06.2007

Yusuf Supendi, PKS Founder, former PKS member of parliament, Jakarta 10.11.2011



## APPENDIX

<b>PKS INVOLVEMENT IN LOCAL GOVERNMENTS IMPLEMENTING SHARIA REGULATIONS</b>		
<b>NO</b>	<b>REGION</b>	<b>HEAD OF GOVERNMENT</b>
1	Kab. Bangka Barat	PKS
2	Kab. Bengkulu Utara	PKS
3	Prov. Bengkulu	PKS
4	Kab. Sukabumi	PKS
5	Kota Depok	PKS
6	Kab. Bekasi	PKS
7	Kota Banjarmasin	PKS
8	Kab. Kepulauan	PKS
9	Kab. Kampar	PKS
10	Kab. Solok Selatan	PKS
11	Prov. Bangka Belitung	Other Party
12	Kab. Pandeglang	Other Party
13	Kab. Serang	Other Party
14	Kab. Muko-Muko	Other Party
15	Kab. Gorontalo	Other Party
16	Prov. Gorontalo	Other Party
17	Kab. Cianjur	Other Party
18	Kab. Indramayu	Other Party
19	Kota Tasikmalaya	Other Party
20	Kota Semarang	Other Party
21	Kab. Cilacap	Other Party
22	Kab. Gresik	Other Party
23	Kab. Sidoarjo	Other Party
24	Kab. Ketapang	Other Party
25	Kab. Balangan	Other Party
26	Kab. Hulu Sungai Utara	Other Party
27	Kota Banjarbaru	Other Party

28	Kota Baru	Other Party
29	Prov. Kep. Riau	Other Party
30	Kota Batam	PKS
31	Kota Kupang	Other Party
32	Kab. Pelalawan	Other Party
33	Kota Dumai	Other Party
34	Kab. Pangkep	Other Party
35	Kab. Luwu Utara	Other Party
36	Kab. Selayar	Other Party
37	Kota Kendari	PKS
38	Kab. Pasaman	Other Party
38	Kab. Padang Pariaman	Other Party
40	Kab. Hulu Sungai Selatan	PKS
41	Kab. Tanah Laut	Other Party
42	Kab. Pangkep	Other Party

# THE MOSQUE AS RELIGIOUS SPHERE:LOOKING AT THE CONFLICT OVER AL MUTTAQUN MOSQUE

Syaifudin Zuhri

## 1: INTRODUCTION

For Muslims, the mosque is a central institution. Not only does the mosque serve as a religious institution where sermons, prayer and worship are performed in order to create a 'moral community,'<sup>1</sup> but also as 'religious sphere.'<sup>2</sup> Theoretically, the notion of 'mosque as religious sphere' is derived from the idea of public sphere in the Western context, something that is considered as lacking theoretical significance in the Muslim world. The limited definition of the so-called public sphere in the Western context implies the receding role of religion, enclosing the significance of religion in the household and the private sphere. Introducing the concept of a religious sphere makes it possible to do justice to the considerable role of religion in public space.<sup>3</sup> Within the just mentioned perspective, the centrality of the mosque lies in its multiple-functionality, which represents a way for Islam to leave the private sphere and to officially enter the public sphere linking to the dynamics of Muslim life and its many facets, from the religious, social and cultural to politics.<sup>4</sup> In politics, for example, the mosque functions as a vehicle for supporting certain political views or otherwise as a social site for the mobilization of collective action, in addition to being an arena for controlling religious discourse prevalent in society.<sup>5</sup>

However, the strategic position of the mosque in many cases leads to conflicts between Muslims agencies, groups and views, even government, over who has power in

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<sup>1</sup> Barbara D. Metcalf, "Islam in Contemporary Southeast Asia: History, Community, Morality," in Robert W. Hefner and Patricia Horvatic, *Islam in an Era of Nation States: Politics and Religious Renewal in Muslim Southeast Asia* (Hawai'i: Hawai'i University Press, 1997), pp. 309-320.

<sup>2</sup> Dale F. Eickelman and Armando Salvatore, "Public Islam as an Antidote to Violence?," in Esther E. Gottlieb (ed.), *Identity Conflicts: Can Violence be Regulated?* (New Jersey: Transaction Publishers, 2007), pp. 80-81.

<sup>3</sup> Armando Salvatore and Dale F. Eickelman, "Preface Public Islam and the Common Good," Armando Salvatore and Dale F. Eickelman (eds.), *Islam and the Common Good* (Leiden: Brill, 2006), pp. xi-xxv; José Casanova, *Public Religions in the Modern World* (Chicago: University of Chicago Press, 1994); Craig Calhoun (ed.), *Habermas and the Public Sphere* (Studies in Contemporary German Social Thought) (Cambridge: MIT Press, 1993); Reinhard Schulze, *A Modern History of the Islamic World* (London: IB Tauris, 2000); Dale F. Eickelman and James Piscatori, *Muslim Politics*, 2nd ed. (Princeton: Princeton University Press, 2004), xvii; Quintan Wiktorowicz, *The Management of Islamic Activism* (New York: State University of New York Press, 2001), p. 53.

<sup>4</sup> Stefano Allievi, "Mosques in Europe: Real Problems and False Solutions," in Stefano Allievi (ed.), *Mosques in Europe: Why a Solution has Become a Problem* (London: Alliance Publishing Trust, 2010), p. 24.

<sup>5</sup> Akbar S. Ahmed, "Mosque: the Mosque in Politics," Jhon Esposito (ed.), *The Oxford Encyclopaedia of the Modern Islamic World*, 3rd ed (Oxford: Oxford University Press, 1995), pp. 140-143; Quintan Wiktorowicz, "State Power and the Regulation of Islam in Jordan," *Journal of Church and State* (1999) 41 (4), pp. 677-696.

relation to the mosque. This has happened in Europe, and also elsewhere, where Muslims are struggling to maintain their Islamic identity in the face of rapid changing of modernity and the western political circumstances of non-Muslim surroundings. Mosques in European countries have been one of the most heatedly debated issues – and, in many cases, the cause of conflicts - between Muslims and their non-Muslim environments, between Muslims and governments, not to mention between the multiple Islamic interpretations and views of Muslims themselves.<sup>6</sup> In Malaysia, Partai Islam Semalaysia (PAS, Pan-Malaysian Islamic Party) and the United Malays National Organization (UMNO) have disputed each other's control over the mosque. The contesting issue between these parties is the extent to which mosques are open to political campaigning.<sup>7</sup>

In Indonesia, as with other Muslim countries, there has traditionally been a distinction between 'official' and 'private' mosques. Whereas the former type is founded by the state, which controls all related activities and disseminates a 'depoliticized' version of Islam designed to remain passive in the face of state power, the private one, in contrast, is built with private donations, often from wealthy individuals and provides a 'free' space for an Islamic discourse that is not controlled by the state.<sup>8</sup> Unfortunately, no accurate data is available on the number of mosques in Indonesia. One estimate from 2010, not differentiating between official and private ones, mentions a number of 800,000.<sup>9</sup> This number probably does not include smaller places of worship, such as *surau*, *langgar* and *musholla*.<sup>10</sup> Each district usually has only one official mosque, often called the *Masjid Jami* (Grand Mosque), whereas the others are private. These private mosques are usually attached to Islamic organizations, primarily Muhammadiyah and Nahdlatul Ulama (NU). For these two organizations, mosques are pivotal in disseminating their Islamic discourse to their audiences, despite the half-hearted political interests of both organizations in Indonesian politics. In addition to official and private mosques, there are also the semi-official mosques funded primarily by the New Order

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<sup>6</sup> Stefano Allievi, *Conflicts Over Mosques in Europe: Policy Issues and Trends* (London: NEF Initiative on Religion and Democracy in Europe, 2009).

<sup>7</sup> "PAS claims KL mosque misused by UMNO" <[www.themalaysianinsider.com/litee/malaysia/article/pas-claims-kl-mosque-misused-by-umno/](http://www.themalaysianinsider.com/litee/malaysia/article/pas-claims-kl-mosque-misused-by-umno/)> (accessed 7 December 2012); Adib Zalkapli, "PAS, UMNO tussle over Selangor mosques" <[www.themalaysianinsider.com/malaysia/article/pas-umno-tussle-over-selangor-mosques](http://www.themalaysianinsider.com/malaysia/article/pas-umno-tussle-over-selangor-mosques)> (accessed 7 December 2012).

<sup>8</sup> Jean-Claude Vatin, "Popular Puritanism versus State Reformism" in Richard T. Antoun. *Muslim Preacher in the Modern World: A Jordanian Case Study in Comparative Perspective* (Princeton: Princeton University Press, 1989), 212-218; Patrick D. Gaffney, "The Changing Voice of Islam: the Emergence of Professional Preachers in Contemporary Egypt," *The Muslim World* 81 (January, 1991), 27-47.

<sup>9</sup> "Dialog Jum'at," *Republika*, 29 January 2010.

<sup>10</sup> *Surau*, *langgar* and *musholla* mean a small hall served as a place for prayer, mainly five-times daily prayers, but not Friday prayer which is mostly performed in the mosque.

government through Yayasan Amal Bhakti Muslim Pancasila (YAMP). The YAMP is a semi-governmental organization initiated by the New Order government in 1982. By 2009 it had built 999 mosques throughout the archipelago. Unlike mosques attached to Muhammadiyah and NU, these semi-official mosques are erected on the initiative of the state and show particular symbols that refer to the interests of the state; for example, the ornament on the top of the mosque that reproduces the word of Allah in Arabic script within a pentagonal frame, resembling the pentagonal symbol of Pancasila.<sup>11</sup> Consequently, these YAMP mosques are often called ‘Masjid Pancasila’.

This article emphasizes the political dimension of the mosque. In so doing, it concentrates on the conflict between an Indonesian Islamist party, Partai Keadilan Sejahtera/PKS (Justice and Prosperous party), and the second largest Indonesian Muslim organization, Muhammadiyah, over Al Muttaqun mosque in Prambanan, Klaten, Central Java. The article starts with a discussion about the centrality of mosque in the lights of PKS politics and the party’s political performance in Klaten. The last two sections of the article will specifically deal with the conflict between PKS and Muhammadiyah over Al Muttaqun mosque.

## **2: THE PKS VIEW OF THE CENTRALITY OF THE MOSQUE**

Partai Keadilan Sejahtera (PKS) (the new name of the Partai Keadilan (PK) after the party's failure to pass the electoral threshold in the 1999 general election) was founded on 20 July 1998. The party was officially launched on 9 August 1998 by a number of *tarbiyah*<sup>12</sup> activists at Al-Azhar mosque in Jakarta. As a movement, *tarbiyah* introduced a creed that combined the Islamism of Egypt’s Ikwanul Muslimin (Muslim Brotherhood) with the idea of individual faith and reform and one of the specific characters of *tarbiyah* is their overt political

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<sup>11</sup> Hugh O’Neil, “Islamic Architecture under the New Order,” in Virginia M. Hooker (ed.), *Culture and Society in New Order Indonesia* (Kuala Lumpur: Oxford University Press, 1993), p. 160. Another important article relating to the discussion of mosque architecture in the light of Indonesian history is by Kees van Dijk who discusses varieties, characteristics and changes of mosque structural design from pre-independence Indonesia to the New Order. See, Kees van Dijk, “the Changing Contour of Mosques,” in Peter J.M. Nas, *The Past in the Present Architecture in Indonesia* (Leiden: KITLV Press, 2007), pp. 45-60.

<sup>12</sup> As a movement, *tarbiyah* (Ar: education) refers to Islamic activism, which had flourished during the 1980s among major Indonesian universities as a response to the repressive policy of the New Order government through Normalisasi Kehidupan Kampus dan Badan Koordinasi Kampus/NKK-BKK (Normalization of Campus Policy-Campus Coordination Board). This saw the state prevent students from being active in politics or from criticizing the government precisely. Through mosques located on many campuses, the movement found fertile grounds for recruitment and the cultivation of members through small religious study groups (*halqa* and *liqa’*). Ali Said Damanik, *Fenomena Partai Keadilan: Transformasi 20 Tahun Gerakan Tarbiyah di Indonesia* (Jakarta: Teraju, 2002), pp. 67-68.

orientation.<sup>13</sup> This is clearly demonstrated through its statute in which PKS claims to be a manifestation of *umma* through the slogan *al-hizbu huwa al-jama'ah wa al-jama'atu hiya al-hizb* (the party is the Muslim community and the Muslim community is the party).<sup>14</sup> It also stresses that it is a *dakwah* (Ar: calling or invite) party which is translated as 'a party that strives to implement Islam as the solution for the life of the nation and the country, to realize the Islamic system and values as blessings for the universe'.<sup>15</sup> Nevertheless, the PKS ideology and political platform to cultivate *dakwah* have generated suspicion that the party harbours a hidden agenda to establish an Islamic state.<sup>16</sup> PKS is also depicted as being a fundamentalist party, a representation of Indonesian-Wahhabism, and of having aims to establish a worldwide *khilafah*.<sup>17</sup>

From a historical point of view, since its first development, *tarbiyah* has depended heavily on the mosque as its power base, particularly campus-based ones, throughout Indonesia.<sup>18</sup> In the 1980s, one of the founding fathers of *tarbiyah*, Imaduddin Abdul Rahim, introduced the thought, political concepts and organizational traditions underpinning Ikhwanul Muslimin to the Salman mosque community of Institut Teknologi Bandung (ITB). Due to the networks of Lembaga Dakwah Kampus/LDK (Campus Dakwah Bodies), *tarbiyah* could also expand the Islamic tradition of Ikhwanul Muslimin to mosques in other usually state-owned universities, such as Shalahuddin in Universitas Gadjah Mada (UGM) of Yogyakarta, Al-Huriyyah in Institut Pertanian Bogor (IPB), and Arief Rahman Hakim in Universitas Indonesia (UI) of Jakarta.<sup>19</sup> However, this model of political mobilization is not

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<sup>13</sup> Ahmad-Norma Permata, "Islamist Party and Democratic Participation: Prosperous Justice Party (PKS) in Indonesia 1998-2006," *Un-published Ph.D thesis*. Münster University, 2008, p. 16.

<sup>14</sup> Syamsul Balda, Abu Ridha, and Untung Wahono, *Politik Da'wah Partai Keadilan* (Jakarta: DPP Partai Keadilan, 2000), p. 57.

<sup>15</sup> PKS, *Anggaran Dasar dan Anggaran Rumah Tangga PKS*, article 2 and 5-6 (2006); Masdar Hilmy, *Islamism and Democracy in Indonesia. Piety and Pragmatism* (Singapore: ISEAS, 2010), pp. 123-124.

<sup>16</sup> Noorhaidi Hasan, Islamist Party, "Electoral Politics and Da'wa Mobilization among Youth: The Prosperous and Justice Party (PKS) in Indonesia," *The RSIS Working paper series* No. 184, 2009, p. 14; Noorhaidi Hasan, "Political Islam in Indonesia," in Ishtiaq Ahmed, *The Politics of Religion in South and Southeast Asia* (New York: Routledge, 2011), pp. 150-151.

<sup>17</sup> Firman Noor, "Moderate Islamic Fundamentalism: Understanding the Political Thinking of the Partai Keadilan Sejahtera (PKS)," *Studia Islamika*, Vol. 14, No. 3, 2007, pp. 449-481. Kees van Dijk, "Partai Keadilan Sejahtera: Radical, Moderate and Practical" in Kees van Dijk and Machasin, *Cleveringa Lecture*, 4 December 2004-UI Depok (Jakarta: KITLV-Jakarta, 2005), p. 10; Ken Michi, "Penetration of Islamism in Contemporary Indonesia: Militant or Moderate?" in Masatoshi Kisaichi, *Popular Movements and Democratizations in the Islamic World* (New York: Routledge, 2006), p. 132; Wahid, Abdurrahman (ed.), *Ilusi Negara Islam: Ekspansi Gerakan Islam Transnasional di Indonesia*, Jakarta: the Wahid Institute, 2009.

<sup>18</sup> Imdadun Rahmat, *Ideology Politik PKS. Dari Masjid Kampus ke Gedung Parlemen* (Yogyakarta: LKiS, 2008).

<sup>19</sup> Ali Said Damanik, *Fenomena Partai Keadilan*, p. 180.

peculiar to *tarbiyah* as Ikhwanul Muslimin in Egypt and other Islamist movements have used mosques as their headquarters in order to develop their political activism.

In addition to the above historical accounts, the importance of the mosque for PKS politics is well accentuated through the PKS call of *Gerakan Kembali ke Masjid* (Back to the Mosque Movement) in 2011, which the party used to emphasize the centrality of the mosque in terms of Islamic education and as a way of preventing teenagers from misbehaving.<sup>20</sup> However, this programme is neither merely ethical, nor religious as it is also closely linked to PKS political mobilization through the mosque. In addition, in 2011, Tifatul Sembiring, the former president of PKS and now the minister for Communication and Telecommunication, announced the so-called 'Online Masjid Raya' programme that connects thousands of *Remaja Masjid/Remas* (young activists of the mosque).<sup>21</sup> The programme is administered by a special PKS related body, Jaringan Pemuda dan Remaja Masjid Indonesia/JPRMI (Networks of Mosque Youth and Teenage-Indonesia). JPRMI, founded on 11 September 2005, is a national body of young activists of the mosque and is headed by an active member of PKS, Valentino Dinsi. Besides focusing on education, health and charitable activities, it has carried out a number of activities related to entrepreneurship. In addition, JPRMI provides five million rupiah for *takmir* ([senior] mosque managers) and *Remas* to develop their economic activities.<sup>22</sup> The two programmes without a doubt demonstrate the significant position of the mosque in the framework of PKS politics in Indonesia.

Along with PKS political activities through the mosque, the party has also been renowned for establishing Islamic schools or the so-called 'Sekolah Islam Terpadu' (Integrated Islamic Schools), rather than *madrasah* (confessional forms of Islamic education). This type of educational institution has flourished due to mosque-based activism and the schools are mainly established in areas surrounding mosques. The words 'Islam Terpadu' refer to a type of education that practices Islamic models of curricula and integrates secular and Islamic subjects. The *Tarbiyah* movement introduced the name and concept of these Islamic educational institutions in the 1990s, claiming that such education guaranteed the

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<sup>20</sup> PKS Serukan Gerakan kembali ke Masjid at <<http://beritapks.com/pks-serukan-gerakan-kembali-ke-masjid/>> (accessed 3 November 2012).

<sup>21</sup> The term *Remaja Masjid* implies young and teenage activists of mosque. They have been the backbone of mosque based activities among their age group, particularly religious lessons for teenagers and children. PKS attention for these young activists is not surprising if we look at the fact that the PKS relies on the political supports of the younger generation and the party's strategic agenda to educate and indoctrinate young activists for the sake of winning future elections.

<sup>22</sup> "JPRMI Kembangkan Kewirausahaan" *Republika*, 12 August 2011, "Juni Supriyanto, Tak Sebatas Pelatihan" <[http://koran.republika.co.id/koran/52/142898/Juni\\_Supriyanto\\_Tak\\_Sebatas\\_Pelatihan](http://koran.republika.co.id/koran/52/142898/Juni_Supriyanto_Tak_Sebatas_Pelatihan)> (accessed 3 May 2012).

fulfillment of spiritual and intellectual health of children and teenagers. In such educational institutions, students have to undergo a full-day of schooling where they learn secular and religious topics under the strict supervision of their teachers, resembling the model of the cadre education of Ikhwanul Muslimin, which emphasizes the dominant role of the *murabbi* (Ar: instructor) in supervising the religious life of the students.<sup>23</sup>

Another *dakwah* activity by the PKS is worthy of mention; namely, the PKS affiliated relief organization, Pos Keadilan Peduli Ummat/PKPU (Centre for Justice and the Care of Society). This has been one of the most important relief organizations operating specifically in disaster-affected areas, both nationally and internationally.<sup>24</sup> One of the most distinctive characteristics of PKPU is that it pays attention not only to tangible problems brought about by natural disasters, but also to religious ones. In so doing, PKPU has aimed at the building of mosques in many areas, including places where no natural disaster has occurred.

In short, the above discussion reveals that one of the remarkable characteristics of the PKS is its model of political mobilization, which combines the religious and political struggles. Stressing that it is a *dakwah* party makes for an institution that is a political party as well as an Islamic socio-religious organization. Its roots and past activities as well as its political performance emphasize the centrality of the mosque for the PKS. The following discussion is on PKS politics in the local context, i.e. Klaten, Central Java. How the *dakwah* slogan is translated into local politics is an important part of the discussion, in addition to the consequences of PKS *dakwah* politics.

### 3: PKS IN KLATEN

Klaten is home to the *abangan*<sup>25</sup> community. It also is a ‘red-area’ (*area merah*) as it had been a base for Sukarno’s Indonesian nationalist party (PNI, Partai Nasional Indonesia), rather than Islam.<sup>26</sup> Results of two general elections during the reformation era, in 2004 and 2009, place the Partai Demokrasi Indonesia-Perjuangan/PDIP (Indonesian Democratic Party-Struggle) of Sukarno’s daughter, Megawati, in pole position. It gained eighteen seats in the 2004 election for representatives of the Dewan Perwakilan Rakyat Daerah/DPRD (the

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<sup>23</sup> Noorhaidi Hasan, “Education, Young Islamists and Integrated Islamic Schools in Indonesia,” *Studia Islamika*, Vol. 19, No. 1, 2012, pp. 79-111.

<sup>24</sup> Hilman Latief, “Islamic Charities and Social Activism: Welfare, *Dakwah* and Politics in Indonesia,” *Unpublished Ph.D thesis*, Utrecht University, the Netherlands, 2012.

<sup>25</sup> *Abangan* refers to the Javanese community who practice Islamic values while continuing to hold animistic values central to their own well-being. It is also used to describe non-practicing Muslims. The term was popularized by Clifford Geertz in 1964 through his *The Religion of Java*.

<sup>26</sup> Sutiyono, *Benturan Budaya Islam: Puritan dan Sikretis* (Jakarta: Kompas, 2010), p. 32.



Regional People's Representative Council) of Klaten. This number decreased to fifteen seats in the 2009 election, whereas PKS garnered five seats in the 2004 and 2009 elections.<sup>27</sup> Even though PKS' political achievement at two elections remained the same, the party has been quite successful in establishing affiliated organizations. These organizations are without a doubt important vehicles for PKS' political mobilization in Klaten.

As far as the PKS in Klaten is concerned, the party, at least at present, has been in control of four affiliated organizations; Hidayah, Yayasan Adil Sejahtera (YASR), Pesantren (Islamic boarding school) Ibn Abbas and al-Muttaqun. Hidayah, founded in 1997, focuses on Islamic education and charity activities. It runs Taman Kanak-kanak Islam Terpadu/TKIT Mutiara Hati, Sekolah Dasar Islam Terpadu/SDIT Hidayah, Sekolah Menengah Pertama Islam Terpadu/SMPIT Hidayah, and a special body for charitable activism, Dompot Sosial Hidayah (DSH). Though it is hard to find clear evidence of a connection between these institutions and PKS, Muhammadiyah activists in Klaten have mentioned a number of cases that justify the aforementioned assumption. Darwanto, the head of the development for the branches of Pimpinan Daerah Muhammadiyah/PDM in Klaten, revealed that Muhammadiyah in Klaten received many complaints from Muhammadiyah members who sent their children to Hidayah educational institutions. They complained that their children were repeatedly instructed by their teachers to hand over leaflets promoting PKS programmes and views to their parents. In addition, Darwanto claimed that recipients of *zakat* (almsgiving) and *sedekah* (Ar. *Sadaqa*, meaning voluntarily giving) were indoctrinated by PKS when they attended meetings where DSH distributed *zakat* and *sedekah*.<sup>28</sup>

Similar to Hidayah, YASR was established in 1999. It professes to be an Islamic organization whose activities are related to Islamic education and *dakwah*. The organization is led by Suciningsih Wisnu who currently runs Sekolah Dasar Islam Terpadu/SDIT Cendekia and Pesantren Takwinul Ummat. However, unlike Hidayah, the relationship between YASR and PKS can be seen from the structure of the organization in which Hidayat Nur Wahid serves as the head of its consultative body. In addition, in the 2005 Klaten local elections, Suciningsih was a PKS candidate for the position of district head. Pesantren Ibn Abbas, founded on 23 July 2003 by Hidayat Nur Wahid, is an Islamic boarding school whose main curriculum is devoted to memorizing the Quran. In addition, it also runs Sekolah Menengah Pertama Islam Terpadu/SMPIT Ibnu Abbas, Sekolah Menengah Umum Islam

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<sup>27</sup> One seat in the Regional People's Representative Council was due to the PKS in Prambanan. M. Agung Suryantoro serves as the current representative of PKS from Prambanan at DPRD of Klaten.

<sup>28</sup> Darwanto, *Interview*, 13 April 2012.

Terpadu/SMUIT Ibnu Abbas, and a traditional higher Islamic education institution or *Ma'had Ali*.<sup>29</sup> The main goal of the *pesantren* is to educate teenagers and to create agents of *dakwah*. As is also the case with Hidayah, leaders of the *pesantren* belong to the PKS elite in Klaten. Among them are Mu'inuddinillah Basri, the director of the *pesantren*, and Suciningsih, the director of YASR and a member of the consultative body of the *pesantren*, as is Hidayat Nur Wahid. It is worth noting that, in addition to being director of the *pesantren* and an active member of the Shariah Council of PKS, Mu'inuddinillah Basri also serves as director of the post-graduate programme for Islamic studies at the Universitas Muhammadiyah Surakarta (UMS).

Hidayat Nur Wahid also established Yayasan Al Muttaqun (Al Muttaqun Foundation) on 26 June 2006, precisely one month after the Yogyakarta earth quake. In its official document, the foundation explains that it carries out a number of activities related to *dakwah*, collects and distributes *zakat*, *infak* and *sedekah*, and handles the management of Al Muttaqun mosque, which the foundation has made its headquarters.<sup>30</sup> However, it is important to note that the establishment of the foundation is closely related to PKS political activism through the mosque, i.e. the political efforts of Hidayat Nur Wahid and core members of PKS in relation to controlling the mosque, replacing Muhammadiyah. In addition, the establishment is also related to the efforts of PKS to acquire financial support from Middle Eastern *waqf* (endowment) foundations, which require potential recipients to have official permission from the government or at least a notary public certificate. In view of this, it is not surprising that the establishment of the Al Muttaqun foundation has generated conflict between Muhammadiyah. This conflict will be discussed in detail in the following section.

#### **4: DISPUTES OVER AL MUTTAQUN MOSQUE**

Disputes over mosques are not unusual in Indonesia as the country's mosques have been identified as adhering to the lines of certain Islamic organizations or views. Prior to Indonesian independence and during the first half of the New Order period, the conflicts involved reformist (Muhammadiyah) and traditionalist (Nahdlatul Ulama/NU) Muslims. In the practice of *azan* (the calling for prayer) for example, traditional Muslims read the *shalawat* (praises to the Prophet Muhammad) prior to the *azan*, whereas reformists consider such practice as *bid'ah* (unlawful innovation). Another example that illustrates the

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<sup>29</sup> [www.ibnu-abbas.com](http://www.ibnu-abbas.com).

<sup>30</sup> Kantor Notaris Mochamad Imron, *Akta Pendirian Yayasan*, 26 June 2006.

controversial issues between the two is related to the presence of the *bedug* (drum-like instrument), the function of which is to mark religious moments, mainly to alert Muslims to the five daily prayers. Whereas reformists consider this instrument to be un-Islamic and a kind of *bid'ah*, traditionalists have kept firmly to this tradition. However, during the 1980s, such controversial issues concerning *sunnah* (recommended ritual) and *bid'ah* were not given much public attention as Muhammadiyah and NU had started to work together.<sup>31</sup>

Following the Indonesian reformation of 1998, public disputes over the mosque re-emerged. A clear indication of the new prominence of disputes over mosques is the emergence of the 'sabotage and infiltration' of mosques issue. This refers to mosques that previously were attached to Muhammadiyah or NU but came to be controlled by organizations or groups whose Islamic ideals and principles are considered to be contradictory to those of these two organizations. The perpetrators of sabotage are usually identified as transnational and Islamist groups whose Islamic views challenge the idea of Indonesia as a national state and endanger social harmony in society. Specifically, the accusation of sabotage is directed at PKS, which is perceived as being the most active in resorting to such sabotage and infiltration. Responding to this external threat by PKS, in 2006 Muhammadiyah issued a circular letter on '*Konsolidasi Organisasi dan Amal Usaha Muhammadiyah*' (consolidating Muhammadiyah's organization and its social services bodies) aimed at protecting Muhammadiyah's assets from being taken over and infiltrated by the PKS.<sup>32</sup> In 2007, in an identical move, NU issued a fatwa alerting Indonesian Muslims to the danger presented by the idea of *khilafah*, the promotion of an Islamic state, and the call for by-laws implementing Shariah that were propagated by Islamist organizations through their mosque-based activism.<sup>33</sup> Though the NU's fatwa does not mention PKS by name, as the circular letter of Muhammadiyah does, NU shares the suspicion of Muhammadiyah and the PKS, where it concerns cases of so-called mosque infiltration.<sup>34</sup>

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<sup>31</sup> The growing acceptance between Muhammadiyah and NU has been identified since the 1970s when both started to work hand in hand for the benefit of the Muslim community, rather than antagonism between the two. See, William R. Liddle, "The Islamic Turn in Indonesia: 'A Political Explanation'," *Journal of Asian Studies*, Vol. 55, No. 3, Aug, 1996, p. 623.

<sup>32</sup> Muhammadiyah, Surat Keputusan Pimpinan Pusat Muhammadiyah, No. 149/Kep/I.0/B/2006 tentang Kebijakan Pimpinan Pusat Muhammadiyah mengenai Konsolidasi Organisasi dan Amal Usaha Muhammadiyah.

<sup>33</sup> Nahdlatul Ulama, Keputusan Majelis Bahtsul Masa'il Nahdlatul Ulama tentang Khilafah dan Formalisasi Shari'ah, 2007.

<sup>34</sup> "PBNU Minta PKS Hentikan Perebutan Masjid" at <[www.nu.or.id/a,public-m,dinamic-s,detail-ids,1-id,34016-lang,id-c,warta-t,PBNU+Minta+PKS+Hentikan+Perebutan+Masjid-.php](http://www.nu.or.id/a,public-m,dinamic-s,detail-ids,1-id,34016-lang,id-c,warta-t,PBNU+Minta+PKS+Hentikan+Perebutan+Masjid-.php)> (accessed 3 May 2012); Abdurrahman Wahid (ed.), *Ilusi Negara Islam: Ekspansi Gerakan Islam Transnasional di Indonesia* (Jakarta: the Wahid Institute, 2009), appendix 1 and 2.

Judging from the articles published in *Suara Muhammadiyah*, an official publication of the organization, during 2006-2007, the threat posed by PKS was seen as a major issue to which a number of Muhammadiyah national leading figures responded. An article entitled *Sendang Ayu: Pergulatan Muhammadiyah di Kaki Bukit Barisan* (Sendang Ayu: Muhammadiyah on the Hill of Bukit Barisan), drew attention to the fate of the Muhammadiyah local office in Purwodadi, Central Java, when, in 2006, Abdul Munir Mulkhan called attention to the problem of ideological infiltration in Muhammadiyah circles.<sup>35</sup> Responding to the article, Farid Setiawan's *Ahmad Dahlan Menangis: Tanggapan terhadap Tulisan Abdul Munir Mulkhan* (Ahmad Dahlan Cries: A Response to Abdul Munir Mulkhan's Article), and *Tiga Upaya Menyelamatkan Mu'alimin dan Mu'alimat* (Three Efforts to Save Mu'alimin and Mu'alimat [Muhammadiyah's schools]), clearly pointed to the problem of the 'tarbiyah virus' that not only infected the organization, but also the minds of Muhammadiyah activists.<sup>36</sup> Haedar Nashir joined in the discussion with his article, *Manifestasi Gerakan Tarbiyah: Bagaimana Sikap Muhammadiyah?* (Manifestation of the tarbiyah movement: How should Muhammadiyah Respond?), in which he called for reform within the organization in order to protect Muhammadiyah from the infiltration of the tarbiyah ideology and prevent the advance of the *jamaah*<sup>37</sup> (i.e. PKS) in the *jamaah* (i.e. Muhammadiyah).<sup>38</sup> To the local Muhammadiyah leaders in Prambanan the issue of sabotage and infiltration by the PKS presented just as great a problem as it did to the national ones. Following the Yogyakarta earthquake on 26 May 2006, PKS and Muhammadiyah became involved in a serious dispute concerning the status of Al Muttaqun mosque.

Al Muttaqun mosque is located in front of the Hindu temple, Candi Prambanan, in the sub-district of Prambanan, Klaten, Central Java.<sup>39</sup> It dates from 1955, was rebuilt in 1980, and again in 2006. Erected on a piece of land obtained from the Surakarta *kraton* (palace) as a

<sup>35</sup> Abdul Munir Mulkhan, "Sendang Ayu: Pergulatan Muhammadiyah di Kaki Bukit Barisan," *Suara Muhammadiyah*, 2 January 2006, p. 23.

<sup>36</sup> Farid Setiawan, "Ahmad Dahlan Menangis (Tanggapan Terhadap Tulisan Abdul Munir Mulkhan)," *Suara Muhammadiyah*, 20 February 2006, pp. 34-5; Farid Setiawan, "Tiga Upaya Menyelamatkan Mu'alimin dan Mu'alimat," *Suara Muhammadiyah*, 15 April 2006, pp. 34-5.

<sup>37</sup> *Jamaah* literally means 'group.' The term is not commonly only used to indicate grouping in terms of religious, but also of ideology and political affiliation.

<sup>38</sup> Haedar Nashir, *Manifestasi Gerakan Tarbiyah: Bagaimana Sikap Muhammadiyah?* (Yogyakarta: Suara Muhammadiyah, 2007), see also Masykur Waritmo, "Membendung Ideologi Lain di Lembaga Pendidikan Muhammadiyah," *Suara Muhammadiyah*, 31 May 2006, pp. 12-13.

<sup>39</sup> Though the Prambanan is located there, only one per cent of the inhabitants of Prambanan are Hindus, whereas the other ninety-four per cent are Muslims (Badan Pusat Statistik, Penduduk Menurut Kecamatan dan Pemeluk Agama di Kabupaten Klaten Tahun 2010, <[http://klatenkab.bps.go.id/Subyek\\_Statistik/04.Sosial/agama.pdf](http://klatenkab.bps.go.id/Subyek_Statistik/04.Sosial/agama.pdf)> (accessed 3 March 2012).

*waqf* (endowment) for Muslims living in Prambanan, the mosque is a private, rather than an official one. Despite the fact that the mosque was endowed to Muslims in general, the people living in the environs of the mosque maintained that it belonged to Muhammadiyah, prior to becoming a PKS one later. They based their view on the fact that the rituals performed in the mosque were akin to those of Muhammadiyah and that its *takmir* was affiliated to Muhammadiyah.<sup>40</sup>

Prior to the 2006 earthquake, the mosque was surrounded by two other buildings, a house belonging to Bani Ibrahim and the Taman Kanak-Kanak Aisyiyah Bustanul Athfal/TK ABA Ngangkruk. The house of Bani Ibrahim had been in the area since the colonial era when Ibrahim, the great-grandfather of the last occupant of the house, Ahmadi, served as *katib* (secretary whose duties include the registration of Islamic affairs, mainly marriage). TK ABA refers to an official name for the kindergarten administered by Aisyiyah, the women's body of Muhammadiyah. TK ABA Ngangkruk, founded in 1956, is one of the Muhammadiyah kindergartens that falls under the supervision of the Aisyiyah branch in Prambanan.<sup>41</sup>

One month after the Yogyakarta earthquake, a dispute over Al Muttaqun mosque between PKS and Muhammadiyah broke into the open.<sup>42</sup> It started when, responding to the earthquake casualties, PKS established a '*posko*' (a post for humanitarian aid) next to the mosque, helping people affected by this natural disaster. This led to a number of religious

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<sup>40</sup> There are at least four patterns of how certain mosque is identified as that of particular organization. First, the identification is based on a public announcement by certain individual or group who authorized over the land and building of the mosque and transferred his/her authority to certain organization through *waqf*. However, there are only a few mosque fall within this category. Second, the identification is built upon attributes characterize certain organization, such as the dominant symbol of the mosque, of color of the building, a piece of calendar hanging on the wall of the mosque, and others. These attributes mainly represent certain organization/group, such as the pentagonal symbols of the mosque which draws the Pancasila mosque and the crescent-star symbol which is mainly identified as the symbol of Muhammadiyah. The dominant color of the mosque building might also play a key role in the identification. The brown color is mainly attributed to that of PKS. Therefore, the color is not merely of aesthetical consideration, but also of political as well. Third, the rituals performed in the mosque might also signify the identification of mosque. Fourth, the organization affiliation of *takmir* is also another essential element of the identification. Most mosques in Indonesia are mainly identified through these later two patterns, as the case of Al Muttaqun mosque.

<sup>41</sup> Pimpinan Pusat Muhammadiyah, *Piagam Pendirian Taman Kanak-Kanak Aisyiyah Bustanul Athfal*, 7 May 1992, Dinas Pendidikan Agama Kabupaten Klaten, *Surat Piagam*, 1 May 1970, Pimpinan Aisyiyah Daerah, *Surat Tanda Terdaftar*, 1 December 1984, Pemerintah Kabupaten Klaten-Dinas Pendidikan dan Kebudayaan, *Sertifikat Nomor Identitas Sekolah (NIS)*, 1 July 2004.

<sup>42</sup> However, the root of the tension between the two can be traced back to periods prior to the 2006 Yogyakarta earthquake. According to one respected Muhammadiyah leader in Prambanan, the tension between Muhammadiyah and PKS has been identified since the tension between a father and son, between Muhammad Syukri and Hidayat Nur Wahid, had surreptitiously occurred. It is said that, as one of Muhammadiyah's leading figures in Prambanan, Syukri highly contested Hidayat Nur Wahid's activities in the *tarbiyah* movement, which had been at the root of the party and the most important circle for PKS' cadres and political mobilisation. Furthermore, he highly contested the efforts by his son who tried to drive Muhammadiyah into political affairs. Anonymus, *Interview*, 23 March 2012.

activities, cadre and recruit trainings by the PKS, such as *mabit* and *liqo*, held at the mosque.<sup>43</sup> It was then exacerbated by the fact that some people affiliated with PKS – in close relationship with Hidayat Nur Wahid precisely – announced a new *takmir* that, according to activists of Muhammadiyah, excluded members of their organization. This increased suspicion in Muhammadiyah circles that PKS had sabotaged and taken over the management of the mosque. The tension between Muhammadiyah and PKS came to a head when Hidayat Nur Wahid registered the so-called Al Muttaqun Foundation (Yayasan Al Muttaqun) at the office of the notary public, which issued a notarial deed (Akta Notaris) on 26 June 2006. The deed mentions that the mosque came under the control of Al Muttaqun foundation. In addition to Hidayat Nur Wahid, Agung Suryantoro, now serving as a PKS member of the Regional Representative Council (Dewan Perwakilan Rakyat Daerah/DPRD), and a number of Muhammadiyah leaders signed the deed, including the former chairman of Pengurus Cabang Muhammadiyah/PCM (Muhammadiyah Local Board) in Prambanan, Ahyadi, later appointed the chairman of Al Muttaqun *takmir*.

However, it is worth mentioning that the establishment of foundations by the PKS is not unusual, particularly when referring to cases in Prambanan after the 2006 earthquake. During my fieldwork, I found three notary deeds registered on 1 July 2007. These concerned the establishment of three foundations all named the TK ABA foundation. These deeds seem to be illegitimate as only the Muhammadiyah central board can issue deeds for the foundation of Muhammadiyah schools. When I confronted the leaders of Muhammadiyah of Prambanan with these findings, they acknowledged that the organization had investigated these problems. The investigation revealed that a number of Muhammadiyah leaders mentioned in the deeds did indeed know about the establishment of those foundations. However, they acknowledged that people from the circle of Hidayat Nur Wahid had asked them to hand over their identity cards (Kartu Tanda Penduduk/KTP) for the purpose of obtaining financial support for Muhammadiyah schools, not for registering new organizations. The PCM then reported the problem to the notary public who had issued the deeds and warned him that the PCM might

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<sup>43</sup> *Liqo* (Ar.: meeting) refers to weekly gatherings consisting of small groups (5-12 persons) to learn Islamic studies under the guidance of more senior and qualified Islamic teachers of PKS called *murabbi*, whereas *mabit* (literally means sleepover) refers to a spiritual gathering at night (usually held once a month) attended by a *liqo* group and *murabbi*. See Ali Said Damanik, *Fenomena Partai Keadilan*, pp. 129-133; Ahmad Ali Nurdin, "PKS's Democratic Experiences in Recruiting Members and Leaders, *Al Jami'ah: Journal of Islamic Studies*, Vol. 49, No. 2, 2011, pp. 340-345.

pursue the case in court. The three deeds were annulled by the notary public a few days later.<sup>44</sup>

Hidayat Nur Wahid played an important role in the transformation of Al Muttaqun mosque and served as chairman of the board (*dewan pembina*) of Al Muttaqun foundation. Hidayat Nur Wahid was born on 8 April 1960 in Prambanan. He studied at Muhammadiyah schools before continuing his studies at Pesantren Gontor in Ponorogo, East Java, the State Islamic Institute of Sunan Kalijaga (IAIN SUKA) and Ummul Qura in Medina, Saudi Arabia. Hidayat Nur Wahid served as the president of the PKS party, replacing Nur Mahmudi Isma'il when the latter was appointed Minister of Forestry and Plantation in 1999. In 2004, Hidayat Nur Wahid became chairman of the Majelis Permusyawaratan Rakyat/MPR (People's Consultative Assembly), gaining many contacts in the world of politics and in the bureaucracy.

With experiences he gained in politics and in the bureaucracy, while serving as chairman of the MPR, Hidayat Nur Wahid was seen as the mastermind behind the initiative to change the status of the mosque from a *waqf* for Muslims in general to one owned by a specific institution (i.e. Al Muttaqun foundation). Muhammadiyah activists in Klaten are sure that the transformation of the status of the mosque would have been impossible without the political intervention of Hidayat Nur Wahid as chairman of the MPR. They see the ultimate example of this as the fact that it took only one day (1 July 2006) for a land certificate for the mosque to be issued, legitimizing the ownership of Al Muttaqun foundation over the land (see figure 1 for the certificate). This is exceptional as usually such a procedure takes months to be completed.<sup>45</sup>

## **5: CULMINATION OF THE CONFLICT BETWEEN PKS AND MUHAMMADIYAH IN PRAMBANAN**

Following the 2006 earthquake and the establishment of Al Muttaqun foundation, Hidayat Nur Wahid had several meetings with a number of national leaders including the Indonesian president, Susilo Bambang Yudhoyono. He informed them that Al Muttaqun mosque had

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<sup>44</sup> Anonymous, *Interview*, 13 March 2012.

<sup>45</sup> For a land certificate to be issued, the National Land Agency (Badan Pertanahan Nasional/BPN) must perform several procedures, ranging from the registration by the applicant, measuring the land, and ensuring the status of the land is not in dispute. In its official regulation, the whole process needs at least ninety-eight days to complete for *waqf* land. See the regulation at <[www.bpn.go.id/Beranda/Layanan-Pertanahan/PELAYANAN-PENDAFTARAN-TANAH-PERTAMA-KALI/Wakaf/WAKAF-DARI-TANAH-BELUM-BERSERTIPIKAT-\(KONVERSI,-PE.aspx\)](http://www.bpn.go.id/Beranda/Layanan-Pertanahan/PELAYANAN-PENDAFTARAN-TANAH-PERTAMA-KALI/Wakaf/WAKAF-DARI-TANAH-BELUM-BERSERTIPIKAT-(KONVERSI,-PE.aspx)> (accessed 3 May 2012).

collapsed, and invited them to contribute to the restoration of the mosque. Having received a financial contribution from the *Waqf* Ministry of the Qatar government, PKS was able to rebuild the mosque in 2006 to the tune of 12 billion rupiah (see figure 2 for the new building). The new building was officially inaugurated on 13 March 2009. Hidayat Nur Wahid, the Indonesian Minister of Home Affairs, Mardiyanto, and a number of officials in Central Java, among them its governor, Bibit Waluyo and the head of Klaten district, Sunarno, attended this public ceremony, where the establishment of the Saihul Jasim Bin Muhammad Alistani Islamic Centre, named after the founder of modern Qatar, was also announced.

In his official speech at the inauguration, Hidayat Nur Wahid mentioned that the building of the mosque expressed his deep commitment to the development of his homeland (*bali ndeso, mbangun ndeso* [back to village to develop it]) and the building of the mosque was inspired by the Hindu legend of Bandung-Bondowoso who built the Prambanan temple in only one night.<sup>46</sup> With regard to its architecture, Hidayat Nur Wahid said that the building also represented the nature of Islam in Java, which, he stressed, respects other religious traditions and might have provided a model for the development of Islam in Indonesia.<sup>47</sup> He also mentioned that the building reflected the glorious past of Islam in Indonesia, Europe and the Middle East. The gate of the mosque was modelled on the gate of Cordoba's mosque in Spain, while the two minarets resembled those of two holy mosques in Mecca and Medina. Furthermore, there are names of Javanese *wali* in Arabic script written along the whole length of the interior wall of the mosque.

Leaders of PCM in Prambanan questioned the reports about the collapse of Al Muttaqun mosque in the media and also what Hidayat Nur Wahid had told the Indonesian president in May and again in October 2006. In an interview, the chairman of Al Mutaqun *takmir*, Ahyadi, implicitly acknowledged that the earthquake had not caused damage to the mosque. However, he refused to respond to the accusation by Muhammadiyah activists that Hidayat Nur Wahid had manipulated information about the condition of the building following the earthquake.<sup>48</sup> They argued that the mosque had still been standing firmly,

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<sup>46</sup> This reference to a Hindu legend rather than to Islamic ones, such as that of Sunan Kalijaga trying to build the Demak mosque in one night, is surprising. It might be that he wanted to relate the mosque to the Hindu temple located just in front of it, showing his respect for other religions, but he may also have been ignorant of the story of Demak mosque.

<sup>47</sup> "Masjid al Muttaqun Potret Keberagamaan," *Republika*, 13 March 2009.

<sup>48</sup> "SBY Dukung Pembangunan Kembali Masjid Prambanan,"

<[http://masjidrayaalmuttaqun.com/index.php?option=com\\_content&view=article&id=61:sby-dukung-pembangunan-kembali-masjid-prambanan&catid=34:umum&Itemid=66](http://masjidrayaalmuttaqun.com/index.php?option=com_content&view=article&id=61:sby-dukung-pembangunan-kembali-masjid-prambanan&catid=34:umum&Itemid=66)> (accessed 3 March 2012); Presiden Kunjungi Pengungsi Korban Gempa di Prambanan (date 30 May 2006), *Antaranews*,



unaffected by the earthquake (see figure 3), whereas two other buildings, the house of Bani Ibrahim and TK ABA Ngangkruk, were totally ruined (see figure 4).<sup>49</sup> A number of Muhammadiyah leaders in Prambanan said they were almost sure that Hidayat Nur Wahid had reported manipulated information for the sake of his party.

The conflict between PKS and Muhammadiyah deteriorated even further in October 2006 when PCM in Prambanan officially launched a plan for the rehabilitation of the TK ABA Ngangkruk building. According to Sajiran, the chairman of PCM in Prambanan, the *takmir* took a number of steps to prevent this. It had invited leaders of PCM and Aisyiah in Prambanan to a number of meetings in which the *takmir* and instructed Muhammadiyah to choose between two options, which amounted to the same thing; i.e. to abandon the kindergarten, either by moving it to another place or renting a house for the kindergarten, or building the school elsewhere. The reason was that the *takmir* wanted to establish an Islamic centre on the premises of the TK ABA. In addition, on 14 October 2006, the head of the village also came out against rebuilding the school. In an official letter he instructed Muhammadiyah to cancel the plans for the official cornerstone-laying ceremony for the reconstruction of the TK ABA building.<sup>50</sup> PCM did not comply and the ceremony took place on 15 October. It was attended by Amien Rais, former chairman of Muhammadiyah and the MPR,<sup>51</sup> and Chamamah Suratno, the chairperson of the central board of Aisyiyah.

Sajiran and other Muhammadiyah leaders in Prambanan said that they had been targets of intimidation prior to the cornerstone-laying ceremony. PKS activists and the *takmir* of Al Muttaqun had come to their houses and had threatened to harm them and their families if the ceremony went ahead. They added that the *takmir* had also warned them that they would burn and destroy the new building of TK ABA Ngangkruk once its construction was completed. Furthermore, Sajiran claims that Hidayat Nur Wahid had given money to high-ranking officials in Prambanan and Muhammadiyah members in an effort to prevent the rebuilding of the kindergarten. Mentioned were Mursyid Suprihatin, a teacher at the

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<[www.republika.co.id/berita/dunia-islam/islam-nusantara/09/03/14/37141-masjid-al-muttaqun-potret-keberagaman](http://www.republika.co.id/berita/dunia-islam/islam-nusantara/09/03/14/37141-masjid-al-muttaqun-potret-keberagaman)>; "Masjid Al Muttaqun Potret Keberagaman, *Republika*, 13 March 2009.

<sup>49</sup> Interview with some leaders of Muhammadiyah in Prambanan, 30 April 2012.

<sup>50</sup> Official letter from the head of village of Kebondalem Kidul to Pengurus Cabang Muhammadiyah in Prambanan to an official regarding his objection to the plans for the cornerstone-laying ceremony, No. 141/56/X/2006.

<sup>51</sup> Prior to the ceremony, the PCM met Amien Rais to discuss the possibility of him attending the ceremony and to consult with him about the conflict between PKS and Muhammadiyah in Prambanan. According to Sajiran, Amien Rais strongly rejected the plan of the *takmir* to close TK ABA. He also considered it wrong that Bani Ibrahim had accepted money in exchange for moving his house. Amien Rais gave 30 million rupiah to Bani Ibrahim (Ahmadi) and asked him to give a return the money to the *takmir*.

Muhammadiyah school in Prambanan, and Slamet Sugimin, one of Muhammadiyah activists in Prambanan. They would receive a 5 million monthly salary from Al Muttaqun foundation if they sided with Hidayat Nur Wahid rather than with Muhammadiyah. In addition, Hidayat Nur Wahid would have given free tickets for an exclusive pilgrimage package (*Haji-plus*) to the heads of the sub-districts (*camat*) of Prambanan and Ahyadi.<sup>52</sup>

Worried by the conflict over Al Muttaqun, the head of Klaten district invited Muhammadiyah and PKS leaders to a series of meeting in order to arrive at a solution.<sup>53</sup> It is also reported that national leaders of Muhammadiyah held a number of informal meetings with Hidayat Nur Wahid to discuss the problem.<sup>54</sup> A compromise was reached. Whereas the *takmir* of Al Muttaqun would be responsible for the mosque affairs and for rebuilding the mosque, Muhammadiyah would be allowed to continue with its plan for the construction of a new building for the TK ABA Ngangkruk next to the mosque. However, this did not mean that the tension between the two disappeared. A number of Muhammadiyah activists in Klaten remain of the opinion that the PKS have 'sabotaged' and taken over their mosque. In a series of interviews, they left no doubt that, in their opinion, the conflict between the two sides was far from over, pointing out that the affair has generated a '*perang*' or war between PKS and Muhammadiyah at the local level. Furthermore, from the moment the dispute over the mosque emerged, to show their resentment, Muhammadiyah leaders in Prambanan refused to visit the mosque to perform prayers or other religious rituals.

*The takmir* rejected the accusations of sabotage and of using the mosque for PKS politics; emphasizing that the mosque was endowed for Muslims in Kabondalem Kidul, Prambanan and open to all Muslims, regardless of their backgrounds, Ahyadi maintains that Muhammadiyah is in fact still in control of the mosque as a majority of the *takmir* members have a Muhammadiyah background.<sup>55</sup> However, Ahyadi's arguments seems to be apologetic as the problem of the changing management of the mosque from Muhammadiyah to PKS – not to mention sabotage and infiltration – is acknowledged by a majority of his colleagues in Muhammadiyah as well as the people who live near the mosque.

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<sup>52</sup> Sajiran, *Interview*, 3 April 2012.

<sup>53</sup> The conflict between PKS and Muhammadiyah received attention from the head of the regency (bupati) of Klaten to whom PCM complained about the attitudes of the local officers in Prambanan. The bupati then invited the heads of the sub-district and of the village to his office and instructed them not to challenge the plan of PCM to rehabilitate the TK ABA building.

<sup>54</sup> Anonymous, *Interview*, 23 March 2012.

<sup>55</sup> Ahyadi, *Interview*, 22 April 2012.

According to some Muhammadiyah members in Klaten, the politicization of Al Muttaqun mosque by the PKS is quite obvious. They point to a number of cases that indicate that the mosque is becoming a place for political mobilization by the PKS, such as through *mabit* and *liqo* meetings. In addition, a prominent Muhammadiyah leader in Prambanan says that he had received many complaints from the parents of students of the Muhammadiyah Boarding School/MBS in Prambanan. They received a leaflet issued by Al Muttaqun foundation inviting them to enroll their children at an Islamic school (Islamic centre) that was to be founded by Hidayat Nur Wahid and the *takmir* of Al Muttaqun.<sup>56</sup> Sajiran also points out that the exclusion of Muhammadiyah from the *takmir* and the list of *khatib* (preachers for Friday sermon) of the mosque also shows that the *takmir* has excluded Muhammadiyah and uses the mosque for PKS' political ends.<sup>57</sup>

Even though he admitted that in 2007 Hidayat Nur Wahid had paid for his pilgrimage, Ahyadi rejects the accusation that the PKS has used Al Muttaqun mosque for political mobilization. He stressed that Al Muttaqun mosque serves as a religious institution for Muslims in Kebondalem Kidul, Prambanan to express their religiosity. Moreover, the *takmir* of the mosque has explained to Muhammadiyah that they are not attached to a certain political party. The primary task of the *takmir* is to serve the religious needs of the people living near the mosque and to organize religious activities such as the five daily prayers. Countering the accusation that the *takmir* excludes Muhammadiyah members from joining the congregation, Ahyadi makes the case that a number of Muhammadiyah leaders are still involved in the management of the mosque and that the *takmir* invites *khatib* from Muhammadiyah to deliver Friday sermons at the mosque.<sup>58</sup> Ahyadi's explanation however does not impress Muhammadiyah leaders in Prambanan. He is considered to be a snake in the grass and of being a spy for Hidayat Nur Wahid in Muhammadiyah circles. Because of this, Ahyadi failed to become chairman of PCM in 2010. Sajiran was re-elected.<sup>59</sup>

Having experienced what they consider to be sabotage and infiltration, and responding to the 2006 circular letter from the Muhammadiyah central board concerning the protection of Muhammadiyah assets, the local board of Muhammadiyah in Klaten has taken measures to protect their mosques from other acts of sabotages. It has initiated a so called '*bersih-bersih*'

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<sup>56</sup> Anonymous, *Interview*, 23 March 2012; Iskak Sulistita, General Secretary of Pengurus Daerah Muhammadiyah/PDM, *interview*, 9 April 2012, Darwanto and Husni Thamri, PDM Klaten, *interview*, 13 April 2012.

<sup>57</sup> Sajiran, *Interview*, 3 April 2012.

<sup>58</sup> Ahyadi, *Interview*, 22 April 2012.

<sup>59</sup> Anonymous, *Interview*, 13 March 2012.

or purification programme intended to protect Muhammadiyah assets, to get rid of PKS activists in Muhammadiyah, and to shield the minds of Muhammadiyah followers from the *tarbiyah* ideology. In an interview, Iskak Sulistiya, the general secretary of Pimpinan Daerah Muhammadiyah/PDM in Klaten, explains that up to now this has taken two forms: *plangisasi* (labelling the mosque) and *Dai Muqim* (the resident Islamic preacher). In the *plangisasi* a 'label or stamp' is given to every Muhammadiyah mosque, leaving no doubt that they indeed belong to Muhammadiyah. Through *Dai Muqim*, Muhammadiyah invite their activists at the local level to participate in training courses for mosque management. In addition improving the skills of Islamic preachers through training, Muhammadiyah in Klaten also provides financial support to promote mosque-based outreach programmes and to protect Muhammadiyah mosques.<sup>60</sup> Furthermore, the current chairman of the Muhammadiyah branch in Prambanan considers the issuing of notary deeds for Muhammadiyah assets in Prambanan to be of primary importance, as it protects Muhammadiyah's schools and mosques from further attempts at sabotage.

## 6: CONCLUSION

The multi-functionality and significant position of the mosque can, in many cases, lead to disputes and conflicts over the mosque. As discussed above, the case of Al Muttaqun demonstrates that the mosque has become a ground for potential contestations, disputes and conflicts among Muslim agencies. The conflict between PKS and Muhammadiyah over the management of Al Muttaqun mosque is one example demonstrating the multi-functionality of the mosque and its significance in the practice of 'Muslim politics'.<sup>61</sup> In addition, it is also important to take into account the shifting nature of disputes over mosques in Indonesia. Prior to the reformation era, Islamic rituals had been one of the primary issues of contestation between Islamic proponents, while after 1998 politics came to play a key role. The Al Muttaqun case further demonstrates that the mosque, as the centre of religious rituals for Muslims, has played a significant role in the dissemination of a certain interpretation of Islam as well as in political mobilization. Because of this, the principle of the neutrality of the mosque is called into question.

As far as the dispute over Al Muttaqun mosque is concerned, the conflict is in essence an internal organizational confrontation as it represents the dynamics within a certain Muslim

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<sup>60</sup> Iskak Sulistiya, *Interview*, 9 April 2012.

<sup>61</sup> Dale F. Eickelman and James Piscatori, *Muslim Politics*, 2nd ed. (Princeton: Princeton University Press, 2004).

group. The dispute over Al Muttaqun mosque in Prambanan demonstrates that the conflict involved groups within Muhammadiyah. Therefore, the so-called external interference of PKS is probably better understood in terms of the internal dynamics of Muhammadiyah as some of its members later joined another group (i.e. PKS). Pragmatism does seem to be the driving factor determining this later development by Muhammadiyah activists. This argument is probably applicable to other cases involving activists of NU and other Indonesian Muslim organizations. In addition, this article further demonstrates that disputes over mosques and Muhammadiyah's assets in general are well-accentuated among Muhammadiyah elites at a local level, rather than the national one. Even though national leaders of Muhammadiyah have had a number of meetings with PKS leaders to lessen the tension between the two organizations, it seems that those meetings had little impact at the local level. There, leaders and members of Muhammadiyah remain suspicious of the PKS, seeing the party as a threat to Muhammadiyah assets. This suspicion manifests itself in the use of the word *perang* and the *bersih-bersih* programme.

To conclude, and to put the case in a more general trend, this specific form of conflict over the mosque might become more frequent in Indonesia in the future. Therefore, as a recommendation for future research on mosques in Indonesia, the variety of mosques in contemporary Indonesia is an important subject of inquiry. The research should also include a discussion of the central position the mosque has in the religious sphere of Muslims, as well as the socio-political position of the mosque in the Indonesian public sphere. One of the important questions concerning the latter is the extent to which the mosque plays a significant role in political mobilization, in addition to looking at models of mosque-based engagement in politics. Another important subject for examination is the relationship between Indonesian Muslim organizations and political parties, mainly Islamic parties. In order to do so, the clear-cut differentiation of civil society, on the one hand, and political-society, on the other, must be critically questioned

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Iskak Sulistiya, the general secretary of PDM Klaten, 9 April 2012.

Sajiran, the chairman of Muhammadiyah local office in Prambanan, 3 April 2012.

# APPENDIX

## Figure 1

PENDAFTARAN - PERTAMA

1. Nama Pemilik	2. Nama Pemegang Hak
No. 01002	PEMERINTAH DESA NUSONDALEM KIDUL KECAMATAN PRAMBANAN KAB. KLATEN DEKAPET, IDUKAN DI KLATEN
3. No. Pendaftaran	Tanggal, s/d dan s.d
1179/01/05/0048	
4. SALINAN	5. PEMBUNYUAN
Konvensional	KLATEN, tgl. 1 Juli 2006
6. Kepala Kantor Pertanahan Kabupaten / Kecamatan Klaten	
7. Dasar Pendaftaran	8. BOLDI IVANMIKO H. SH.M.Hut NIP. 010216350
9. Sisa Register, No. 0000000000 No. 0000000000	10. PENERBITAN SERTIFIKAT Klaten, tgl. 1 Juli 2006
11. Perencanaan Demografi Perumahan / Pengembang / Bidang No. 0000000000	12. Kepala Kantor Pertanahan Kabupaten / Kecamatan Klaten
13. Sisa Register No. 0107/2006 No. 0000000000 Luas 1889 m <sup>2</sup>	14. BOLDI QIATMIKO H. SH.M.Hut NIP. 010270360
15. PENUNJUK - Sebagai Tanah Pekarangan - Tanah Negara Bekas SSK Landu A No 4 corst. 10 Pabrik 1 Klaten	

A land certificate of the mosque (issued on 1 July 2006)

**Figure 2**



Photo of the new mosque building, dated 20 June 2012

**Figure 3**



Photo of the previous mosque building, dated 19 October 2006

**Figure 4**



Photo of the collapsed buildings of TK ABA Ngangkruk and Bani Ibrahim's house, dated 19 October 2006

# **ENFORCING RELIGIOUS FREEDOM IN INDONESIA: MUSLIM ELITES AND THE AHMADIYAH CONTROVERSY AFTER THE 2011 CIKEUSIK CLASH**

Bastiaan Scherpen

## **1: INTRODUCTION**

The Ahmadiyah controversy in Indonesia took a deadly turn for the worse in February 2011 when an angry mob clashed with followers of the sect in a remote village in Banten province, brutally killing three men in the process. With graphic footage of the Cikeusik mob attack circulating on YouTube, Islam-based organizations and parties were forced to take a stand. It is this topic that will be explored in this paper as a case study to examine the attitudes and behaviour of mainstream Islamic organizations like Nahdlatul Ulama and Muhammadiyah and Islam-based parties in Indonesia's House of People's Representatives (DPR). Based largely on personal interviews and examination of statements in various media, this paper shows that there is considerable divergence between politicians and the civil society groups associated with their parties in regards to proposals on how to handle the Ahmadiyah issue. Islamic idealism prevails among politicians while civil society groups generally seem to be more pragmatic in handling the issue – although there are exceptions. This divergence is much less visible when making a comparison along the lines of traditionalists, modernists and *tarbiyah* activists – the various groups traditionally seen as broadly making up the landscape of Indonesian Islam.

## **2: MUSLIMS, MINORITIES AND DEMOCRACY<sup>1</sup>**

While the sprawling Indonesian archipelago is often said to be a vanguard of 'pluralist' or 'moderate' Islam – as opposed to more 'radical' Islamic ideas and practices said to be prevailing in Middle Eastern countries – a number of developments in recent years have led people to start questioning the idea of Indonesia as a representative of 'Islam with a smiling face.'<sup>2</sup> But of all the focal points in the ongoing discussion of where Indonesia is headed in

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<sup>1</sup> Besides the people who were kind enough to free up some of their valuable time for an interview with me (and who are mentioned throughout this paper), I would like to thank the following people for their feedback, advice and help in contacting sources: Martin van Bruinessen, Kees van Dijk, Ridho al-Hamdi, Ahmad-Norma Permata, Nico Kaptein, Anita Rachman and Moch Nur Ichwan. Also, the Dutch Ministry of Foreign Affairs deserves a word of gratitude for facilitating the research on which this paper is based in large part, through its Islam Research Program.

<sup>2</sup> Martin van Bruinessen, 'What happened to the smiling face of Indonesian Islam? Muslim intellectualism and the conservative turn in post-Suharto Indonesia', RSIS Working Paper No. 222, Jan. 6, 2011. Online at: [www.rsis.edu.sg/publications/workingpapers/wp222.pdf](http://www.rsis.edu.sg/publications/workingpapers/wp222.pdf).

terms of democratization, controversies surrounding the freedom of worship have probably generated the most attention, internationally as well as domestically. The presence of the minority Muslim<sup>3</sup> sect Ahmadiyah is one of those controversies. The most important theological point of contention in the ongoing Ahmadiyah debate is the status of Mirza Ghulam Ahmad (1835-1908), and there is a long history in terms of highly complex claims and counter-claims with regard to the nature of Ghulam Ahmad's religious leadership.<sup>4</sup>

Indonesia's government has experienced considerable difficulties in coming to terms with the presence of the sect – an issue that was not really an issue until a powerful lobby group decided to take it up a decade ago.<sup>5</sup> The issue has proven to be particularly divisive and has led to heated debates across Islam-based organizations in recent years. The Indonesian Ulama Council (*Majelis Ulama Indonesia*, MUI) declared Ahmadiyah a deviant sect in several fatwas, most recently in 2005, and hardline groups have even threatened to topple the government if it fails to issue an outright ban on the sect. While Ahmadiyah communities throughout the country suffered intimidation and physical violence, the government issued a Joint Ministerial Decree (*Surat Keputusan Bersama*; SKB) on 8 June 2008. This SKB outlawed any form of Ahmadiyah proselytization but did not ban the organization itself. Human rights groups lamented what they saw as a restriction of the freedom of worship while hardline groups slammed what they considered to be a half-hearted move taken under foreign pressure. It was against this background that on 6 February 2011, three Ahmadis were brutally slain in the village of Umbulan, in the Cikeusik sub-district of Pandeglang in Banten province.

With the Ahmadiyah controversy taking a deadly turn for the worse and graphic footage of the Cikeusik mob attack circulating on YouTube, Islam-based organizations and parties were forced to take a stand. It is this topic that I will use here as a case study to examine the attitudes and behaviour of mainstream Islamic organizations like Nahdlatul

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<sup>3</sup> Whether or not Ahmadis are actually Muslims is at the core of the controversy. I choose to refrain from taking sides in this highly complex debate and call Ahmadiyah a Muslim sect because Ahmadis identify themselves as Muslims.

<sup>4</sup> A detailed examination of the debate on Mirza Ghulam Ahmad's status is beyond the scope of this paper. Herman L. Beck presents Ghulam Ahmad's ideas and doctrinal differences between Ahmadiyah and mainstream Sunni Islam in: 'The rupture between the Muhammadiyah and the Ahmadiyya', in: *Bijdragen tot de Taal,- Land-en Volkenkunde* 161-162 (2005): 210-246, 215-219. More comprehensive is Erni Budiwanti's account: *Pluralism collapses: A study of the Jama'ah Ahmadiyah Indonesia and its persecution*. Asia Research Institute Working Paper Series No. 117, National University of Singapore, 2009. For a detailed refutation of many accusations commonly levelled at Ahmadis, see: M.A. Suryawan, *Bukan sekedar hitam putih. Kontroversi pemahaman Ahmadiyah* (Tangerang: Azzahra Publishing, 2005).

<sup>5</sup> International Crisis Group, *Indonesia: Implications of the Ahmadiyah decree*. Asia Briefing No. 78. Jakarta/Brussels, 7 July 2008: 2-3, 14-15.

Ulama and Muhammadiyah and Islam-based political parties<sup>6</sup> in Indonesia's House of People's Representatives (*Dewan Perwakilan Rakyat*; DPR). This paper will show that there is considerable divergence between politicians and the civil society groups associated with their parties in regards to proposals on how to handle the Ahmadiyah issue. Islamic idealism prevails among politicians while civil society groups generally seem to be more pragmatic in handling the issue. This divergence is much less visible when making a comparison along the lines of traditionalists, modernists and *tarbiyah* activists – the various groups traditionally seen as broadly making up the landscape of Indonesian Islam, and which – as Syaifudin Zuhri shows in his contribution to this report – are involved in a struggle for various social spaces in the religious domain, like mosques.

### 3: THE STATE

Noted lawyer Adnan Buyung Nasution, who served as President Susilo Bambang Yudhoyono's top legal adviser (2007-2009), says that he strongly argued against disbanding Ahmadiyah but that the SKB was still issued as a compromise due to pressure from hardliners.<sup>7</sup> This seems to be confirmed in a confidential diplomatic cable from 11 June 2008 in which the US Embassy in Jakarta reports to Washington on the SKB's coming into force. The cable states that embassy officials had raised US concerns about the decree with one of Yudhoyono's foreign affairs advisers, who allegedly told the Americans that the decree's ambiguous wording was 'a delicate balance' and that 'we have to be a little tricky' in devising a compromise.<sup>8</sup>

Both in terms of domestic laws and international covenants and declarations, however, there is no lack of willingness on the part of the Indonesian government to show its dedication to the freedom of religion. To name a few examples, in 2005 Indonesia ratified the International Covenant on Civil and Political Rights (ICCPR) while 60 years earlier, the fledgling republic had already mentioned in its constitution that 'The state will guarantee the

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<sup>6</sup> The Prosperous Justice Party (*Partai Keadilan Sejahtera*; PKS), National Mandate Party (*Partai Amanat Nasional*; PAN), United Development Party (*Partai Persatuan Pembangunan*; PPP) and National Awakening Party (*Partai Kebangkitan Bangsa*; PKB) are (more or less) Islam-based but are relatively small parties. The Democratic Party (*Partai Demokrat*, PD), the Golkar Party (*Partai Golongan Karya*, Golkar) and the Indonesian Democratic Party – Struggle (*Partai Demokrasi Indonesia – Perjuangan*, PDI-P) are the largest parties but – although far from 'secular' – do not stake a vocal claim to Islam. Of all the parties mentioned here, only the PDI-P is not represented in President Susilo Bambang Yudhoyono's Second Indonesia United Cabinet.

<sup>7</sup> Adnan Buyung Nasution, *Nasihat untuk SBY* (Jakarta: Kompas Media Nusantara, 2012): 88-107.

<sup>8</sup> [US] Embassy Jakarta, Cable No. 08JAKARTA1143, 'Sect members allowed to worship despite edict.' Created June 11, 2008. Released by WikiLeaks on Aug. 30, 2011. Available online at: <http://wikileaks.org/cable/2008/06/08JAKARTA1143.html>. Retrieved Sept. 10, 2011.



freedom to every resident to adhere to their respective religion and to perform their religious duties in accordance with their religion and that faith'.<sup>9</sup>

### **3.1: Executive Branch: Dialogue That Remained a Monologue**

In the immediate aftermath of the deadly Cikeusik incident, President Yudhoyono surprised observers with a statement that many considered rather mild. He said he 'regretted' the fact that people had died. He did order a thorough investigation and said that police apparently had failed to offer protection.<sup>10</sup> Djoko Suyanto, the Coordinating Minister for Political, Legal and Security Affairs, added that the government 'condemns whoever is behind violence against any Indonesian citizen'. However, he also called on the Ahmadiyah community to 'respect the joint [ministerial] agreement signed in 2008'.<sup>11</sup>

Suryadharma Ali, a graduate of IAIN Syarif Hidayatullah (1984) and former Indonesian Islamic Student Movement (*Pergerakan Mahasiswa Islam Indonesia*; PMII) activist who has been the chairman of the PPP since 2007, is an important player in the Ahmadiyah controversy. Not only because he is the Religious Affairs Minister, but also because he has said that Ahmadiyah should be disbanded, in a more or less personal note.<sup>12</sup> Officially, however, the minister so far has maintained his support for the SKB while, as he said, the government was working on a more permanent solution. Representatives of the main Ahmadiyah organization in Indonesia, the Indonesian Ahmadiyah Community (*Jemaat Ahmadiyah Indonesia*; JAI), nevertheless refused to attend a meeting with Suryadharma Ali at the Religious Affairs Ministry, planned for 22 March 2011, saying the minister could not be expected to be a fair facilitator for dialogue. 'From the start he has been intent on disbanding Ahmadiyah', JAI spokesman Zafrullah Ahmad Pontoh said.<sup>13</sup> The smaller Indonesian

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<sup>9</sup> Muhammad As'ad, 'Ahmadiyah and the freedom of religion in Indonesia', in: *Journal of Indonesian Islam* 3-2 (December 2009): 390-413, 392-393.

<sup>10</sup> 'Police negligent in Ahmadiyah attack: Yudhoyono', *Tempo*, Feb. 8, 2011. Online at: [www.tempo.co.id/hg/nasional/2011/02/08/brk,20110208-312084,uk.html](http://www.tempo.co.id/hg/nasional/2011/02/08/brk,20110208-312084,uk.html). Retrieved Oct. 5, 2011.

<sup>11</sup> 'SBY orders investigation into fatal attack on Ahmadiyah', *Jakarta Globe*, Feb. 7, 2011. Online at: [www.thejakartaglobe.com/home/sby-orders-investigation-into-fatal-attack-on-ahmadiyah/421163](http://www.thejakartaglobe.com/home/sby-orders-investigation-into-fatal-attack-on-ahmadiyah/421163). Retrieved March 18, 2012.

<sup>12</sup> 'Ahmadiyah: Daripada dibiarkan, lebih baik dibubarkan', *PolitikIndonesia*, Feb. 28, 2011. Online at: <http://politikindonesia.com/index.php?k=politisiana&i=19223>. Retrieved Oct. 8, 2011. It is also worth noting that the minister supported "dialogue" as a way of bringing groups seen as deviant back to mainstream Islam. See: 'Shia Conversion Is Solution: Minister', *The Jakarta Post*, Sept. 6, 2012. Online at: [www.thejakartapost.com/news/2012/09/06/shia-conversion-solution-minister.html](http://www.thejakartapost.com/news/2012/09/06/shia-conversion-solution-minister.html). Retrieved Jan. 7, 2013.

<sup>13</sup> 'Menag tidak fair, alasan Ahmadiyah absen dialog', *PolitikIndonesia*, March 23, 2011. Online at: <http://politikindonesia.com/index.php?k=politik&i=20144>. Retrieved Oct. 8, 2011.

Ahmadiyah Movement (*Gerakan Ahmadiyah Indonesia*; GAI)<sup>14</sup>, however, did join the meeting.

### **3.2: Legislative Branch: The Search for a Solution**

On 9 February 2011, three days after the Cikeusik incident and a religion-inspired riot in Temanggung<sup>15</sup>, Central Java, the DPR's Commission VIII (chaired by PKB politician Abdul Kadir Karding until he was replaced in February 2012) met with the Minister of Religious Affairs and National Police Chief Gen. Timur Pradopo to discuss the government's role in protecting interreligious freedom and harmony and how to prevent violence. The minister said that the 1945 Constitution guarantees each citizen freedom of religion and belief as well as freedom of worship, but he added that 'in exercising these freedoms every person is subject to restrictions specified in the laws'. Suryadharma Ali also said that Ahmadiyah has been causing trouble from the start.<sup>16</sup>

#### **3.2.1: Traditionalist Parties: PKB and PPP**

The leader of the PKB fraction in the DPR and a chairman of the party's Central Leadership Board (DPP), Marwan Ja'far, said immediately after the Cikeusik incident that 'The attack on Ahmadiyah members is highly immoral, in violation of human rights and denies the principles of Islam's peaceful teachings'. He called the attack 'a setback for religious life in Indonesia' and said people should not take it upon themselves to decide who is an infidel and who is not.<sup>17</sup>

During meetings of the DPR's Commission VIII, Ali Maschan Moesa did most of the speaking for the PKB. On 9 February, during the meeting with the Religious Affairs Minister and the Chief of National Police, Moesa suggested a re-evaluation of current policies, to see whether they were wise in the context of interreligious dialogue. He also argued for a re-formulation of the SKB, saying that apparently it does not solve any problems. Just calling

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<sup>14</sup> Worldwide, there are two main groups of Ahmadis, the Qadian community and the Lahore community. They view Mirza Ghulam Ahmad in a slightly different light, with the Lahore Ahmadis saying he was a reformer (*mujaddid*) of the faith, and not the Messiah. In Indonesia, the GAI represents the latter group.

<sup>15</sup> On 8 February 2011, a Muslim crowd went on a rampage in the Central Java town of Temanggung, after a Christian man was sentenced to five years in prison for blaspheming Islam – which the crowd deemed insufficient. Several churches and government buildings were subsequently vandalized.

<sup>16</sup> DPR-RI, *Risalah rapat* [Minutes of a meeting of Commission VIII with the Minister of Religious Affairs and the National Police Chief], Feb. 9, 2011. Online at: [www.dpr.go.id/id/komisi/komisi8/risalah/1708/Raker-dengan-Menteri-Agama-dan-Polri](http://www.dpr.go.id/id/komisi/komisi8/risalah/1708/Raker-dengan-Menteri-Agama-dan-Polri). Retrieved March 18, 2012.

<sup>17</sup> 'Sejumlah partai Islam kutuk tragedi Cikeusik', *PolitikIndonesia*, Feb. 7, 2011. Online at: <http://politikindonesia.com/index.php?k=politik&i=18162>. Retrieved Oct. 8, 2011.

somebody an infidel (*kafir*) is easy, he said, and is the sign of a very shallow understanding of Islam. He stressed the need for dialogue, as even when people agree that others are wrong, there should be talk, not violence. ‘We cannot just say: leave Islam, while people actually want to be Muslims,’ Moesa said.<sup>18</sup>

For the PKB, the Ahmadiyah issue also seems to have been used as an opportunity to showcase its ties to NU, of which it claims to be the sole legitimate political representative. According to then-Commission VIII chairman Karding<sup>19</sup>, as such the PKB follows the decisions of NU’s Central Leadership Board (PBNU). Asked what he thought about the position of one of the most liberal *kyais*, or religious leaders, at the top of NU, Masdar Farid Mas’udi (whose views will be discussed in greater detail below), Karding said he agreed that only God is able to decide whether someone’s beliefs are deviant or not. At the same time, the young PKB politician said the Ahmadiyah presence posed a very complex political challenge, mainly from the legal point of view. ‘Ahmadiyah has to be regulated, but the SKB has no [legal] power,’ he said, adding that it would be difficult to decide whether Ahmadiyah could legally be seen as a religion in itself (*agama*) or as a stream (*aliran*) within Islam. Karding concluded that the best solution was to come up with an umbrella law that would also deal with Ahmadiyah and that would, once and for all, guarantee religious harmony in Indonesia.

On the more conservative side of traditionalist Muslim politics, the PPP is a staunch supporter of an outright ban on Ahmadiyah. PPP politicians themselves describe the party as the only true representative of pluralist Indonesian Islam, and people from most mainstream Islamic organizations indeed are active in the party. Unlike the PKB, which is based on Pancasila, the PPP is based on Islam, because it wants to stress that it believes only Islam is the true *rahmatan lil alamin* (blessing for all creation).

Suryadharma Ali is the general chairman of the PPP, but, as mentioned, because he is also the Minister of Religious Affairs, he was obviously expected to not stray too far from the official government line in the Ahmadiyah controversy. PPP lawmakers do not face such restrictions and, after Cikeusik, seem to have been trying to make up for this limitation faced by their political leader.

On 9 February, Commission VIII member Hasrul Azwar made the case for disbanding the sect by explaining that ever since Ahmadiyah arrived in Indonesia in the 1920s, there had

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<sup>18</sup> DPR-RI, *Risalah Rapat* Feb. 9, 2011.

<sup>19</sup> Personal interview with Abdul Kadir Karding in Jakarta, Oct. 13, 2011.

been trouble. He even had a bad experience himself when once in Medan, North Sumatra, he performed *salah*, the obligatory prayer at an Ahmadiyah mosque. After he was done, the space he had occupied was cleaned with water by the Ahmadis, he said. ‘But who is the infidel: me or the Ahmadiyah?’<sup>20</sup>

According to Hasrul Azwar, all the government had to do was act decisively and disband Ahmadiyah. The lawmaker also said that the Ahmadiyah issue should not be classified as a human rights issue. ‘It’s sacrilege, desecration of the religion I profess,’ he said, adding that people should not hide behind human rights to insult religion. A week later, also at the DPR and facing JAI leader (*amir*) Abdul Basit, Hasrul Azwar made sure there would be no misunderstanding about his position. Ahmadiyah beliefs were substantially different from true Islam, he stressed, and there was only one solution: ‘Disband Ahmadiyah!’<sup>21</sup>

However, outside of the DPR, at least one senior PPP politician held a less combative position right after the Cikeusik clash. Lukman Hakim Saifudin, the deputy head of the People’s Consultative Assembly (*Majelis Permusyawaratan Rakyat*; MPR), a chairman of the PPP’s central leadership board and a former NU activist, said the violent acts could not be justified but he also stressed that all parties involved should respect the SKB.<sup>22</sup> That sentiment was shared by M. Arwani Thomafi, another PPP chairman and also a member of Commission VIII at the time of the Cikeusik incident. Arwani said he believed that with the SKB, there was sufficient legal grounds to ban Ahmadiyah, but that the SBY government apparently did not want to ‘follow through on what has already been decided at the level of the Religious Affairs Minister’ based on ‘its [the government’s] own political considerations.’<sup>23</sup>

Regarding the Ahmadiyah issue, Arwani stressed there had been no reconsideration of the party line after Cikeusik. The PPP had made up its mind and it was up to the president to act, he explained. The reasoning behind this stance is that the PPP sees Indonesian society, or at least its constituents, as people for whom religion plays a very important role. This does not mean, however, that those people are fundamentalists or opponents of pluralism, Arwani pointed out. ‘Indeed it has been proven that Indonesian society is a society that can be united by Pancasila,’ he said. But when it comes to religious beliefs, he said, that is something

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<sup>20</sup> DPR-RI, *Risalah Rapat* Feb. 9. 2011.

<sup>21</sup> Statements from this Feb. 16, 2011 meeting between representatives of the JAI and members of the DPR’s Commission VIII are taken from a recording by TV Parlemen.

<sup>22</sup> ‘Sejumlah partai Islam kutuk tragedi Cikeusik’, *Politik Indonesia*, Feb. 7, 2011.

<sup>23</sup> Personal interview with M. Arwani Thomafi in Jakarta, July 25, 2011.

deeply rooted in people's hearts, 'which should be seen as a fundamental issue.' He added that for Christians, or Hindus, it would also be unacceptable if something that is considered holy would be mocked or even abused. 'Muhammad in Islam is considered very noble, and very sacred, protected from sinful acts. If this concept is being violated, what happens is that the people get really angry.'

For Arwani, the Ahmadiyah issue was not a problem of pluralism, but an internal problem of Islam. 'It has no relation at all to pluralism, and nor is it in any way tied to the freedom of religion,' he said. When it comes to human rights, Arwani stressed that these are limited by other people's human rights, which, however, do indeed include the freedom to adhere any religion of one's choice. 'But don't follow a religion that destroys other religions,' he said. 'Christians believe that God is Jesus. What if all of a sudden a person appears who claims to be a Christian. But his God isn't Jesus. His God is Goliath, for example, or Pharaoh. (...) Christians would get angry, right?'

### **3.2.2: Initiative Lies With Ahmadiyah: PAN**

The *Partai Amanat Nasional* (National Mandate Party, PAN) was founded in 1998 by a group of reform-minded people that included the Muhammadiyah general chairman of the time, Amien Rais. It is therefore often seen as a Muhammadiyah-linked party, but in fact there are no structural links between the two organizations, and PAN is not based on Islam. It does however see religion as the 'moral and ethical foundation of nation and state'.<sup>24</sup>

During the 9 February hearing of Commission VIII, Amran and Dewi Coryati spoke on behalf of PAN. Amran argued that the SKB really needed to be made more well-known at the grassroots level of society, as he had contacted some leaders in his constituency who only after the Cikeusik incident had heard – on television – about the very existence of the SKB. Amran, from South Sulawesi, later explained<sup>25</sup> that his party does defend freedom of religion, but in the sense of 'enjoying religion in line with its teachings'. Christians, for example, are free to worship based on the Bible. But in the case of Ahmadiyah, it is clear that the sect is deviant because Islamic leaders – and even the Qur'an – have made it very clear that Muhammad is the final prophet. 'Ahmadiyah says there is another one after the last one. That deviates from the Islamic Shariah', he said. Therefore there are two alternatives: if Ahmadis want to identify as Muslims, they have to return to Islam's teachings. And if they do not want

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<sup>24</sup> 'Platform Partai Amanat Nasional', Partai Amanat Nasional. Online at: [www.pan.or.id/index.php?comp=home.detail.99](http://www.pan.or.id/index.php?comp=home.detail.99). Retrieved Nov. 12, 2011.

<sup>25</sup> Personal interview with Amran in Jakarta on Aug. 1, 2011.

to return to Islam's teachings, they should leave Islam. But the lawmaker also stressed that Ahmadis have the right to live in Indonesia as citizens of the Republic and that dialogue was the only solution.

During the 16 February meeting with the JAI leader, most of the speaking for PAN was being done not by Amran, but by Ahmad Rubaie, the faction's deputy chairman at the DPR. He said that blood should not have flown, calling the Cikeusik incident a violation of human rights. But he explained that every religion has its leaders and that for Indonesian Muslims the guide should be MUI, which 'cannot enforce beliefs but it does have the authority to explain, socialize and teach'. And as MUI issued a fatwa in 2005 declaring Ahmadiyah deviant, the best solution would be that Ahmadis return to Islam, to 'maintain the purity of the Islamic *ummah*'. Differences of interpretation should then be left to MUI. If they do not want to join Islam, the PAN politician said, they have to declare a new religion. 'The initiative lies with Ahmadiyah.'

### **3.2.3: Real-World Implications: PKS**

The PKS in recent years has received more attention from scholars and media than all the other more or less Islam-based parties combined, probably because of widespread fears – in Indonesia and abroad – of its Islamist agenda. It is a well-organized party that takes Islamic issues very seriously, but it seems to be particularly concerned with morality issues like the anti-pornography legislation that was passed in 2008.<sup>26</sup> With regard to the Ahmadiyah controversy, the PKS' Central Shariah Board (*Dewan Syariah Pusat*; DSP) had, already in May 2008, made its position abundantly clear in a detailed *bayan* (explanation taking the shape of a fatwa).<sup>27</sup> What is most interesting about this *bayan* is that it explicitly refers to the practical implications of Ahmadiyah's deviance for Muslims – something that other political parties and also civil society groups seem less concerned about.

According to the DSP, led by KH. Surahman Hidayat (who in October 2011 briefly became deputy chairman of Commission VIII), 'Ahmadiyah has desecrated the holiness of Islam, desecrated the holiness of the Qur'an and desecrated the Prophet Muhammad SAW as the final prophet and messenger'. Ahmadis who have already been told about their deviance and who refuse to repent have to be considered as *murtad* (apostates) and *musyrikin*

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<sup>26</sup> PKS observer Ahmad-Norma Permata pointed this out to me.

<sup>27</sup> 'Bayan DSP PKS Nomor: 17/B/K/DSP-PKS/1429 Tentang Ahmadiyah', May 9, 2008. Online at: <http://harakatuna.wordpress.com/2011/02/10/bayan-dsp-pks-tentang-ahmadiyah-1429-2008/>. Retrieved Dec. 18, 2011.

(idolaters), not as *ahlul kitab* (People of the Book, like Christians). Furthermore, as a legal consequence of the Ahmadiyah followers' apostasy: 'It is not halal to marry an Ahmadiyah woman, to let a Muslim woman marry an Ahmadiyah man or to eat the meat of animals slaughtered by an Ahmadi'. Also, someone who dies as a follower of Ahmadiyah cannot be given Muslim funerary rites or prayers and is not allowed to be buried in a Muslim cemetery.<sup>28</sup>

The *bayan* from the DPS is the most detailed exposé of the practical consequences of the perceived deviance of Ahmadis and shows a preoccupation of the more religion-minded elements within the PKS with practical Islam. But on the political level, PKS lawmakers have also been calling upon the government to act firmly against Ahmadiyah, primarily to prevent conflict within society.<sup>29</sup> Former KAMMI<sup>30</sup> activist and now senior PKS parliamentarian Mahfudz Siddiq said in 2010 that it was time for the government to act.<sup>31</sup> He said that if the government had a reason to disband Ahmadiyah, it better go ahead. 'There already is the MUI fatwa, so the government already has clarity about Ahmadiyah's status, but so far this hasn't been executed.' Mahfudz said he feared that if the government continued to drag its feet on the issue, that would amount to 'inviting a dangerous situation'.

After Cikeusik, PKS secretary general Anis Matta asked the police to act decisively against those responsible for the violence: 'Although the background is religious, this is a criminal act.' Matta, who is also the deputy chairman of the DPR, added that the problems related to Ahmadiyah's status could be debated later, but that the legal issue of people being murdered should be the priority.<sup>32</sup> In an interview on the same day that Matta spoke, PKS lawmaker and member of Commission VIII Herlini Amran said two things should happen: the government should stand firm on the issue and Ahmadiyah should stop claiming to be part of Islam. The root of the problem is one of faith, she said, adding that Ahmadis would have a pleasant life, side by side with people of other denominations, including Islam, if only they would let go of their claim to be part of Islam. From the government, Herlini was expecting

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<sup>28</sup> In March 2011, in West Java's West Bandung district, residents of Cililin removed the (already-buried) body of an Ahmadi from an Islamic burial ground. See: 'Makam pengikut Ahmadiyah dibongkar warga, jenazah diletakkan di tanah kosong', Pos Kota, March 3, 2011. Online at: [www.poskota.co.id/berita-terkini/2011/03/03/makam-pengikut-ahmadiyah-dibongkar-warga-jenazah-diletakkan-di-tanah-kosong](http://www.poskota.co.id/berita-terkini/2011/03/03/makam-pengikut-ahmadiyah-dibongkar-warga-jenazah-diletakkan-di-tanah-kosong). Retrieved Dec. 18, 2011.

<sup>29</sup> For a detailed examination of the various camps within the PKS and their goals and strategies, see the contribution of Ahmad-Norma Permata in this report.

<sup>30</sup> KAMMI, or *Kesatuan Aksi Mahasiswa Muslim Indonesia* (Action Unit of Indonesian Muslim Students), is not officially tied to the PKS, but shares its ideological outlook. Its positioning will be discussed in section 3.

<sup>31</sup> 'PKS: Penyelesaian Ahmadiyah Jangan Berlarut-Larut', Mahfudz Siddik's blog, Sept. 3, 2010. Online at: <http://mahfudziddik.blogspot.com/2010/09/pks-penyelesaian-ahmadiyah-jangan.html>. Retrieved Sept. 21, 2011.

<sup>32</sup> 'Sejumlah partai Islam kutuk tragedi Cikeusik', Politik Indonesia, Feb. 7, 2011.

clarity: ‘The government, especially the Prosecutor’s Office, really needs to take a firm stand against Ahmadiyah. You want to disband it or not? ... Don’t let it be undecided, like now. Like this, the Ahmadis themselves are put in danger.’<sup>33</sup>

Asked if she felt that Ahmadis’ human rights were being violated by telling them to leave Islam, she said that ‘not everything should be connected with human rights issues, especially issues related to belief and faith.’ Discussing the 2005 MUI fatwa that some activists and Ahmadis themselves have blamed for the violence against the sect, Herlini said: ‘MUI has been carrying out its tasks properly and in accordance with prevailing legislation. In line with its task to protect Islam, MUI has conducted an in-depth assessment of Ahmadiyah’s presence. (...) Ahmadiyah’s *aqidah* [creed] is distorted, so it should be declared heretical.’ And therefore, Herlini said, the decree against Ahmadiyah cannot legitimately be seen as one of the triggers of the deadly violence in Cikeusik. Herlini also said the government should listen to the Islamic *ummah* – the majority in Indonesia.<sup>34</sup>

In the meeting between lawmakers and senior government officials on 9 February 2011 lawmaker Jazuli Juwaini – from Banten – did most of the speaking for the PKS. He started by saying that he ‘deplored’ the fact that ‘people were massacred in the name of religion’.

‘All Indonesian citizens should be protected, whatever their beliefs, faith or religion,’ he said, criticizing the chief of police by asking him how it was possible that mass violence such as in Cikeusik could be allowed to happen. He also wanted to know whether the attack was masterminded by someone and how it was possible that all of a sudden such a large amount of people showed up in this relatively remote area. Addressing the Minister of Religious Affairs, Jazuli said that Ahmadiyah’s controversial status should be clear by now, and that ‘We have to differentiate between giving people freedom of religion and the desecration of religion.’ And he added: ‘Religious freedom does not mean desecrating a religion that already exists.’ He also said it was a good thing the minister invited Ahmadiyah to a dialogue, to tell them that if they want to use the name Islam, they should return to the true teachings of Islam, and if they do not want that, they should start their own religion – without using the name Islam. However, he stressed that ‘no matter how much someone had deviated from Islam, nobody should be allowed to take the law into their own hands, killing people with impunity, destroying property – this can never be justified.’

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<sup>33</sup> ‘Herlini Amran: Sebaiknya Ahmadiyah buat agama baru saja’, PolitikIndonesia, Feb. 7, 2011. Online at: <http://politikindonesia.com/index.php?k=wawancara&i=18180>. Retrieved Dec. 18, 2011.

<sup>34</sup> Ibidem.



#### 4: VOICES OF ISLAM IN CIVIL SOCIETY

Indonesia's mainstream, Islam-based political parties to some extent all fall back on social groups. The most important of these are the traditionalist socio-religious organization Nahdlatul Ulama (NU, founded in 1926) and the modernist Muhammadiyah (founded in 1912). The number of people affiliated to these organizations is hard to estimate but runs in the tens of millions for both, with NU seen as the bigger of the two. Although there is no formal link, Muhammadiyah is often seen as tied to PAN, as this party was founded in 1998 by the Muhammadiyah chairman at that time, Amien Rais. In a similar way, the PKB (founded in 1999) is tied to NU. However, the PPP (founded in 1973 through a merger of four Islamic parties, including NU) also targets the NU voter base. The PKS draws from the *tarbiyah* movement and is particularly successful among urban voters, and is informally tied to the active and well-organized student group KAMMI.

The MUI, the organization that has outlawed Ahmadiyah on religious grounds in no less than three fatwas since 1980, is of course another important player in Indonesian Islamic civil society, but its positioning does not fall within the scope of this paper. Suffice here to say that after the Cikeusik attack, it was quick to explain that violence against Ahmadiis should not be tolerated. Slamet Effendy Yusuf, the head of the council's religious harmony division – and also a chairman on the PBNU's Tanfidziyah, or executive council – advocated zero tolerance in regard to 'activities that lead to death.'<sup>35</sup> Theoretically, MUI represents the broad spectrum of Indonesian Muslims, through the leaders of the many Islamic organizations in the country. It is a government-funded, but relatively independent organization that aims to advise both the government and the *ummah* with its fatwas. However, largely due to the one-organization-one-vote system<sup>36</sup>, hardline groups have come to dominate the MUI.

In the following three sections, I will discuss the various positions on the Ahmadiyah issue taken up by key figures in Islamic civil society, starting with NU.

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<sup>35</sup> 'Zero tolerance buat kekerasan atas Ahmadiyah'. PolitikIndonesia, Feb. 7, 2011. Online at: <http://politikindonesia.com/index.php?k=pendapat&i=18179>. Retrieved March 16, 2012.

<sup>36</sup> Many, relatively small (compared with NU and Muhammadiyah) groups like Hizbut Tahrir Indonesia, the FPI and the FUI have the same power as massive movements like NU and Muhammadiyah, Ahmad Suaedy explains. See his 'Religious freedom and violence in Indonesia', in: Ota Atsushi, Okamoto Masaaki and Ahmad Suaedy (eds.), *Islam in contention: Rethinking Islam and state in Indonesia*. Jakarta, Kyoto and Taipei: WI, CSEAS and CAPAS, 2010: 139-169. The late former Indonesian president and eminence grise of NU Abdurrahman Wahid has called MUI a "bunker of radical Islam." See: Abdurrahman Wahid, 'Musuh dalam selimut', in: Abdurrahman Wahid (ed.), *Ilusi Negara Islam. Ekspansi gerakan Islam transnasional di Indonesia* (Jakarta: Gerakan Bhinneka Tunggal Ika, Wahid Institute, Maarif Institute, 2010): 11-41, 39.

#### 4.1: Traditionalists

Nahdlatul Ulama presents itself as the moderate voice of pluralist inclusivism and a run-of-the-mill socio-religious organization facilitating democracy through its insistence on dialogue. The *nahdliyin* (NU followers), the argument goes, understand that the Qur'an does not condone violence against minorities and therefore are rarely involved in violence. In this sense, the NU masses are contrasted with the hardliners involved in the Cikeusik attack and those in Temanggung soon after, who 'use sticks rather than logic'.<sup>37</sup>

It is interesting to note that a lot of prominent players in the Ahmadiyah controversy have roots in NU circles. This of course does not mean that NU as an organization bears any kind of responsibility for steps taken by such functionaries as part of their non-NU positions, but it does show that NU is far from monolithic and that the traditionalist Islamic beliefs found at all levels of this socio-religious organization can give rise to a wide array of perspectives, particularly in a politically delicate debate. One key player, for instance, is KH. Ma'ruf Amin. He is a chairman on MUI's executive board and a member of President Yudhoyono's advisory council (*Dewan Pertimbangan Presiden*, Wantimpres), where he deals with religious affairs. As a former chairman on the *Syuriah* (supreme council) and current member of the *Mustasyar* (advisory council), he also has serious NU credentials.

After NU's leadership congress in 2010, Martin van Bruinessen, a longtime observer of the organization, wrote: 'With this new board, NU is poised to seek a new balance between the conservatism and politicization of the past period and the search for a new religious discourse of the 1990s. (...) The slide towards fundamentalist and anti-liberal religious views is unlikely to continue under the new board and it may even be reversed.'<sup>38</sup> In this light, it is a case in point that NU sent KH. Masdar Farid Mas'udi to represent it in a meeting with Commission VIII on 17 February 2011. Masdar is one of the most liberal thinkers at the top of NU. He is considered one of the seniors of liberal Islam in Indonesia<sup>39</sup> and is currently a chairman (*rais*) of the *Syuriah*.

At the DPR, Masdar said the main way to get followers of the JAI back into the fold of mainstream Islam is to open up a peaceful dialogue and refrain from forcing conventional

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<sup>37</sup> Zainal Abidin Nawawi, 'NU dan revitalisasi pluralisme agama', NU website, Feb. 28, 2011. Online at: [http://nu.or.id/page/id/dinamic\\_detil/4/27067/Kolom/NU\\_dan\\_Revitalisasi\\_Pluralisme\\_Agama.html](http://nu.or.id/page/id/dinamic_detil/4/27067/Kolom/NU_dan_Revitalisasi_Pluralisme_Agama.html). Retrieved Oct. 3, 2011.

<sup>38</sup> Martin van Bruinessen, 'New leadership, new policies?', Inside Indonesia 100 (April-June 2009). Online at: [www.insideindonesia.org/weekly-articles-100-apr-june-2010/new-leadership-new-policies-16061866](http://www.insideindonesia.org/weekly-articles-100-apr-june-2010/new-leadership-new-policies-16061866). Retrieved March 16, 2012.

<sup>39</sup> Budi Handrianto, *50 tokoh Islam Liberal Indonesia. Pengusung ide sekularisme, pluralisme, dan liberalisme agama*. (Jakarta: Hujjah Press, 2007): 145-146.

beliefs upon them. ‘Gently straighten them out. As is mentioned in the Qur’an, invite those whose understanding differs from ours, with *dakwah*, with good advice. If that doesn’t work, argue with them politely. If you hit a wall, then so be it – leave it to Allah,’ Masdar told the lawmakers.<sup>40</sup> In the hearing, Masdar was reluctant to label Ahmadiyah a deviant sect. ‘Humans do not have the right to determine whether a person’s beliefs are heretical or not,’ he said. ‘When it comes to religion, there is indeed such a thing as deviance. But if [this concept] is being used as a social norm, this will destroy our social life.’<sup>41</sup>

Years earlier, in reaction to the 2005 MUI fatwa labelling Ahmadiyah deviant, Masdar had already raised his objections to the confrontational approach, predicting that it would only lead to more violence.<sup>42</sup> He believes that radical beliefs imported from the Middle East are to blame for the Ahmadiyah-related trouble in recent years.<sup>43</sup> According to Masdar, the reason why NU never officially labelled Ahmadiyah deviant but merely as ‘different,’ is that such a label could be used as a license to kill, or at least provoke violence. On a more personal level, he said it would be arrogant to make a decision on a matter that is only God’s to decide. Although Masdar himself does not agree with Ahmadiyah beliefs about prophethood, he said the debate about religious interpretation should be open. In fact, crucial to his position is the belief that Muhammad was indeed the final prophet: ‘The doctrine about the finality of prophethood,’ he said, ‘basically leads to the doctrine of freedom of thought.’<sup>44</sup> Basically, because it is clear that there will not be any other prophets, it is up to the *ummah* to decide on how to fulfill religious requirements: ‘We no longer have to be afraid that [our interpretation of Islam] will be blocked by someone with absolute authority [i.e., a prophet].’ The only absolute truth that is left, is the Qur’an, he added.

The way out of the Ahmadiyah controversy according to Masdar would require two separate developments: the state should protect the basic rights of all citizens and the mainstream Muslims should become more mature, with the faithful realizing that it is not their responsibility to homogenize society. The two steps should remain separated, Masdar said, as

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<sup>40</sup> ‘Luruskan Ahmadiyah dengan kelembutan’, Kompas, Feb. 17, 2011. Online at: <http://nasional.kompas.com/read/2011/02/17/22493848/NU.Luruskan.Ahmadiyah.dengan.Kelembutan>. Retrieved March 16, 2012.

<sup>41</sup> *Ibidem*.

<sup>42</sup> Ahmad Subakir, Ilham Mashuri and M. Asror Yusuf, ‘Respon tokoh Islam atas fatwa MUI tentang Gerakan Ahmadiyah Indonesia.’ Online at <http://ern.pendis.kemenag.go.id/DokPdf/ern-III-06.pdf>. Retrieved Sept. 21, 2011.

<sup>43</sup> Personal interview with KH. Masdar Farid Mas’udi in Jakarta, Oct. 6, 2011.

<sup>44</sup> This is a position derived from the works of Muhammad Iqbal (1877-1938), particularly the concept of ‘inductive intellect.’ See Iqbal’s ‘The spirit of Muslim culture,’ the fifth in his compilation of lectures titled *The reconstruction of religious thought in Islam* (1930).

‘The state does not have the right to judge whether beliefs are right or wrong.’

The general chairman of NU, Said Aqil Siradj, although quick to denounce the Cikeusik violence and to call for harsh measures against the perpetrators, in his public statements stressed that Ahmadiyah teachings are not in line with those of NU. However, he has been careful not to use the word ‘deviant’. ‘The Ahmadiyah teachings are rejected by all of Islam, that is true. But we cannot abuse them [Ahmadis],’ he explained. He also said violence would only increase the distance between Ahmadis and mainstream Muslims, so the only solution to the problem would be a civilized dialogue to bring Ahmadis back on the right track: ‘I, from NU, am ready for a discussion, a dialogue with Ahmadiyah. An objective discussion, not one to berate or harass.’ With talks, Said Aqil said, Ahmadis could accept the offer to return to the true teachings. ‘*Insyah Allah*, if the result is that a part of the Ahmadiyah community returns to Sunni Islam, *alhamdulillah*. I am not aiming for all of them to return to Sunni Islam.’<sup>45</sup> When asked about the possibility of disbanding Ahmadiyah, Said Aqil said such a step fell within the domain of the state, and therefore was beyond NU’s reach.<sup>46</sup> He also called acts like those in Cikeusik ‘signs of a society that is uncultured and unethical.’<sup>47</sup>

NU’s *Syuriah* in an official explanation of its stance on the issue (*taushiyah*) said in relation to the Cikeusik incident that ‘the teachings about Mirza Ghulam Ahmad’s prophethood that are followed by Ahmadiyah are not in line with the creed of *ahlussunnah wal jama’ah* [mainstream traditionalist (non-modernist) Sunni Islam]’. It also said that differences in religious understanding can never be used to justify violence and that the government is constitutionally responsible for legal enforcement and the protection of ‘all citizens regardless of their religion or beliefs’.<sup>48</sup> But a colleague of Masdar at the *Syuriah*, KH. Hasyim Muzadi, is one of the more purist and politics-minded people at the top of NU. He was quoted as saying in March 2011 that Ahmadiyah activity and proselytization should be outlawed, as was stipulated in the SKB. Hasyim Muzadi believes the issue should not be framed in terms of the freedom of religion: ‘Ahmadiyah teachings really have to be brought to a halt, because they

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<sup>45</sup> Imam Maruf, ‘PBNU: Penyerangan Ahmadiyah adalah tindakan biadab’, *Kabar Haji*, Feb. 7, 2011. Online at: <http://kabarhaji.com/kabar/1716/pbnu-penyserangan-ahmadiyah-adalah-tindakan-biadab>. Retrieved Oct. 3, 2011.

<sup>46</sup> Edy M. Ya’kub, ‘NU, Ahmadiyah, dan FPI’, *Antara*, March 5, 2011. Online at: [www.antaraneews.com/berita/248702/nu-ahmadiyah-dan-fpi](http://www.antaraneews.com/berita/248702/nu-ahmadiyah-dan-fpi). Retrieved Oct. 3, 2011.

<sup>47</sup> ‘Penyerangan terhadap Ahmadiyah: Membenturkan Umat Islam kepada Negara’, *Al Kisah Magazine*, Feb. 16, 2011. Online at: <http://majalah-alkisah.com/index.php/component/content/article/799-penyserangan-terhadap-ahmadiyah-membenturkan-umat-islam-kepada-negara>. Retrieved Nov. 23, 2011.

<sup>48</sup> ‘Seruan anti kekerasan Syuriah PBNU’, Feb. 16, 2011. Online at: [www.nu.or.id/a,public-m,dinamic-s,detail-ids,6-id,26888-lang,id-c,taushiyah-t,Seruan+Anti+Kekerasan+Syuriah+PBNU-.php](http://www.nu.or.id/a,public-m,dinamic-s,detail-ids,6-id,26888-lang,id-c,taushiyah-t,Seruan+Anti+Kekerasan+Syuriah+PBNU-.php). Retrieved May 19, 2012.

make the Islamic *ummah* vulnerable, except when Ahmadiyah becomes a religion of its own and not [claims to be part of] Islam. This has no relation to the freedom of religion, but only with desecration of religion,' said the former PBNU general chairman (2000-2005 and 2005-2010).<sup>49</sup>

The current position of NU, under the general leadership of Said Aqil, is more accommodating toward Ahmadiyah than the organization's stance under the lengthy leadership of Hasyim Muzadi. During those eventful years, the Ahmadiyah issue was portrayed as a problem of desecration of religion rather than freedom of religion. 'Pancasila provides freedom of religion and belief to every citizen. But that does in no way mean it provides freedom to tarnish a religion that is considered legitimate in Indonesia,' Hasyim Muzadi said after the issuance of the SKB in June 2008.<sup>50</sup> The PBNU leader at the time also called the SKB an appropriate step to prevent Ahmadiis from spreading their beliefs.<sup>51</sup> More interesting, however, is that there was a meeting of NU leaders in Bogor in September 2005, presided over by Ma'ruf Amin, Said Aqil Siradj, Masdar F. Mas'udi and Rozy Munir, to discuss NU's formal stance in the Ahmadiyah debate. The results of the meeting – calling Ahmadiyah 'deviant and outside of Islam [*sesat dan keluar dari Islam*]' – were placed on the official NU website in May 2008, right when pressure on the government to do something about Ahmadiyah was mounting. In the statement, the government was asked to 'take a firm and consistent stand in dealing with Ahmadiyah in Indonesia [*memiliki sikap yang tegas dan konsisten dalam menyikapi keberadaan aliran Ahmadiyah di Indonesia*]'.<sup>52</sup> However, according to Masdar this statement was in fact a draft version that was never accepted by a majority of the *ulama* attending the meeting.<sup>53</sup> His position was confirmed by one of the chairmen of NU's executive board, Imam Aziz, who stressed that NU has never officially labelled Ahmadiyah a deviant sect. 'NU would never call another group deviant [*sesat*],

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<sup>49</sup> Edy M. Ya'kub, 'NU, Ahmadiyah, dan FPI', Antara, March 5, 2011. Online at: [www.antaranews.com/berita/248702/nu-ahmadiyah-dan-fpi](http://www.antaranews.com/berita/248702/nu-ahmadiyah-dan-fpi). Retrieved Oct. 3, 2011.

<sup>50</sup> 'PBNU: Pancasila jamin kebebasan beragama, tidak kebebasan menodai agama', NU website, June 12, 2008. Online at: [http://nu.or.id/page/id/dinamic\\_detil/1/12741/Warta/PBNU\\_\\_Pancasila\\_Jamin\\_Kebebasan\\_Beragama\\_\\_Tidak\\_Kebebasan\\_Menodai\\_Agama.html](http://nu.or.id/page/id/dinamic_detil/1/12741/Warta/PBNU__Pancasila_Jamin_Kebebasan_Beragama__Tidak_Kebebasan_Menodai_Agama.html). Retrieved Nov. 20, 2011.

<sup>51</sup> 'PBNU minta Ahmadiyah tak lagi kembangkan ajarannya', NU website, June 11, 2008. Online at: [http://nu.or.id/page/id/dinamic\\_detil/1/12736/Warta/PBNU\\_Minta\\_Ahmadiyah\\_Tak\\_Lagi\\_Kembangkan\\_Ajarannya.html](http://nu.or.id/page/id/dinamic_detil/1/12736/Warta/PBNU_Minta_Ahmadiyah_Tak_Lagi_Kembangkan_Ajarannya.html). Retrieved Nov. 20, 2011.

<sup>52</sup> 'Taushiyah: Sikap PBNU tentang Ahmadiyah', NU website, May 9, 2008. Online at [www.nu.or.id/page/id/dinamic\\_detil/6/12315/Taushiyah/Sikap\\_PBNU\\_tentang\\_Ahmadiyah.html](http://www.nu.or.id/page/id/dinamic_detil/6/12315/Taushiyah/Sikap_PBNU_tentang_Ahmadiyah.html). Retrieved Nov. 20, 2011.

<sup>53</sup> Masdar explained this in the Oct. 6, 2011, interview in Jakarta. The question remains how the 2005 Bogor statement – including the crucial word 'deviant' – ended up on NU's website in 2008, at such a politically expedient moment.

infidel [*kafir*] or heretic [*bid'ah*]. That's an official decision. NU's basic attitude is like that,' Imam said, adding that Ahmadis have a constitutional right to worship, and that nobody can take that away.<sup>54</sup> KH. Malik Madani, secretary general of the *Syuriah*, after the Cikeusik incident also made it clear that for NU, the disbandment of Ahmadiyah was not an option.<sup>55</sup>

According to Imam Azis, one of the founders of the Yogyakarta-based NGO LKiS, which is aimed at promoting inclusivistic and tolerant understandings of Islam, the main problem in Indonesia is a lack of understanding – among the general population but also at the level of government – of the issue of minority rights. People have to stay within certain cultural or religious boundaries, Imam explained, and if they step outside of those boundaries, they are seen as deviant. 'And that is a problem, an ontological problem,' he said. 'Ahmadiyah is seen as an aberration, and to cure it, they should come back to the mainstream.' For these reasons, Imam said the use of a human rights discourse – as opposed to dealing with the issue from a religious perspective – would be very useful. 'No matter how different they are from us, they still have rights.'

NU's vantage point in the Ahmadiyah controversy has been the prevention of violence, Imam explained. He too said that he does not agree with the Ahmadis' ideas about prophethood, but added that violent confrontation should be avoided at all cost. Instead, *dakwah* is the highest duty, he said, without a time limit. 'It is possible that other people are flawed, but the flaws have to be overcome gradually and by way of persuasion. If we beleaguer them, the distance will only increase.' All that the *nahdliyin* – the followers of NU – can do is bring across their message, and it is up to the others to decide what they want to do with that message. And when people do take recourse to violence, then the state should get involved, for it is the task of the state to protect people's civil rights (but not to interfere in matters of faith). In this sense, Imam said actions by NU's *Gerakan Pemuda Ansor* (youth movement) that will now be discussed should be seen as merely symbolic.

In mid-July 2011, the website of GP Ansor<sup>56</sup> featured a photo of members of its paramilitary subdivision called Banser GP Ansor clearing the streets of Temanggung of rubble after the riot there. The organization, at least under its current leader, Nusron Wahid, has been very outspoken on several issues pertaining to religious pluralism. On 8 February, for

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<sup>54</sup> Personal interview with Imam Aziz in Jakarta, Nov. 15, 2011.

<sup>55</sup> 'PBNU Tolak Pembubaran Ahmadiyah', KBR68H, March 4, 2011. Online at: [www.kbr68h.com/berita/nasional/3169-pbnu-tolak-pembubaran-ahmadiyah](http://www.kbr68h.com/berita/nasional/3169-pbnu-tolak-pembubaran-ahmadiyah). Retrieved Nov. 23, 2011.

<sup>56</sup> <http://gp-ansor.org/>.

instance, right after Cikeusik and Temanggung, Nusron said that places of worship are holy and need to be protected from disturbances from anyone, anywhere.<sup>57</sup> He said the destruction of churches in Temanggung could lead to national disintegration and called the incident ‘barbaric’ and ‘legally and morally unacceptable in Indonesia.’ For that reason, in relation to the Cikeusik incident, Nusron said the central leadership of Ansor had instructed its Banten branches to send out Banser units to protect Ahmadis there.<sup>58</sup>

#### 4.2: Modernists

The 45<sup>th</sup> *muktamar* (leadership congress) of Muhammadiyah in 2005 marked the end of the leadership of Ahmad Syafi’i Ma’arif and the beginning of a turn to conservatism within what is likely the biggest modernist Muslim organization in the world. Ma’arif was replaced by Sirajuddin ‘Din’ Syamsuddin and with the latter at the helm, many progressive – mostly young – Muhammadiyah intellectuals from the start felt marginalized.<sup>59</sup> The emergence of the informal Jaringan Intelektual Muda Muhammadiyah (Network of Young Muhammadiyah Intellectuals, JIMM) under the mentorship of the late Moeslim Abdurrahman and the founding of the Maarif Institute should be seen as the progressive intellectuals’ answer to the rise of conservative functionaries. However, as Pradana Boy ZTF argues, Muhammadiyah’s ‘left wing’ starting to organize itself led to even stronger resistance from the right and mutual entrenchment, instead of the hoped for accommodation of liberal thought and a move back to the middle.<sup>60</sup>

As Herman L. Beck shows<sup>61</sup>, the history of Ahmadiyah-Muhammadiyah relations is an interesting one. In the early years of Ahmadiyah missionary activity in the Dutch-controlled Java of the 1920s, namely, the organization’s Lahore branch developed cordial relations with representatives of the Indonesian modernists. This could happen because of the fact that the organizations shared a modernist outlook, stressing Islam’s compatibility with modernity, rationality and science. However, Muhammadiyah decidedly broke with the Ahmadiyah at its 18<sup>th</sup> congress, held in Solo in 1929.

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<sup>57</sup> ‘Rusuh Temanggung: Ansor bantu renovasi gereja’, PolitikIndonesia. Online at: <http://politikindonesia.com/index.php?k=politik&i=18238>. Retrieved Dec. 9, 2011.

<sup>58</sup> ‘Penyerangan terhadap Ahmadiyah: Membenturkan Umat Islam kepada Negara’, Al Kisah Magazine, Feb. 16, 2011. Online at: <http://majalah-alkisah.com/index.php/component/content/article/799-penyerangan-terhadap-ahmadiyah-membenturkan-umat-islam-kepada-negara>. Retrieved Nov. 22, 2011.

<sup>59</sup> Pradana Boy ZTF, *Para pembela Islam. Pertarungan konservatif dan progresif di tubuh Muhammadiyah*. (Depok: Gramata Publishing, 2009), 1.

<sup>60</sup> Ibidem, 185.

<sup>61</sup> Herman L. Beck, ‘The rupture between the Muhammadiyah and the Ahmadiyah,’ in: *Bijdragen tot de Taal-, Land- en Volkenkunde* 161-2 (2005): 210-246.

At Muhammadiyah's 2010 *muktamar*, Din Syamsuddin was re-elected, but self-professed anti-liberals such as Adian Husaini<sup>62</sup> did not return to the organization's Central Leadership Board (PP Muhammadiyah). Din seems to have a well-developed sense for political reality: in a period characterized by emboldened hardline religious activism in wider society, it might not have been a bad idea to coopt, in a way, some of the figures who share such a train of thought. With regard to Ahmadiyah, Din also seems to have been carefully choosing his words. Interestingly, Din had been one of the people signing the 2005 fatwa placing the sect outside of Islam, as he was then the secretary general of MUI. After the SKB was released in 2008, Din said the government had acted because Ahmadiyah had strayed from mainstream Islam and that the next step should be 'efforts to persuade Ahmadiyah followers to return to mainstream Islamic teachings'.<sup>63</sup> After the Cikeusik incident he urged the central government to be firm on Ahmadiyah, saying its hesitant stance 'could lead to unrest and could open up opportunities for a group of people to take matters into their hands in dealing with this issue.' He also said 'the state has the power to disband Ahmadiyah or to give it a choice to form a new religion outside of Islam' but urged Ahmadiis to embrace the teachings of mainstream Islam. Din also stressed that violence is not the right way to bring Ahmadiis back into the fold, but that there should be dialogue and *dakwah*.<sup>64</sup>

Another senior Muhammadiyah leader, Syamsul Anwar – the chairman of the Tarjih and Tajdid Council (*Majelis Tarjih dan Tajdid*), tasked with ruling on legal matters in the religious domain – explained that there should be a distinction between the religious side of the Ahmadiyah controversy and its social dimensions.<sup>65</sup> 'There is no statement [within Muhammadiyah] about whether or not it is necessary to ban [Ahmadiyah]. There just isn't,' he said. 'The teachings [of Ahmadiyah] are unacceptable. That is clear. And we reject the spreading of those teachings. But we also reject violence against Ahmadiyah.' Syamsul used the analogy of a house in describing mainstream Muslims' problem with Ahmadiyah. 'For us it's like an attack on our teachings. Our teachings are being distorted. We live in a house, then someone comes in and starts making changes to our house. That's how we feel – because they

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<sup>62</sup> Adian Hussaini, who has been active in organizations like KISDI and DDII, was a member of Muhammadiyah's Majelis Tabligh in 2005-2010. He is best known for his column 'Catatan Akhir Pekan' (Weekend Notes) in the magazine *Suara Hidayatullah*, in which he promotes what Pradana calls an "ultra-conservative explanation of Islam." See Pradana, *Para pembela Islam*, 10.

<sup>63</sup> Budiwanti, *Pluralism collapses*, 16.

<sup>64</sup> 'Din Syamsuddin: Kafir meyakini ada nabi baru'. Hidayatullah.com, Feb. 18, 2011. Online at: [www.hidayatullah.com/read/15420/18/02/2011/din-syamsuddin%3A-kafir-meyakini-ada-nabi-baru.html](http://www.hidayatullah.com/read/15420/18/02/2011/din-syamsuddin%3A-kafir-meyakini-ada-nabi-baru.html). Retrieved March 18, 2012.

<sup>65</sup> Personal interview with Syamsul Anwar in Yogyakarta, Nov. 9, 2011.



say they are part of Islam, and share our faith. So that means we share the same house. They live in the same house, but they start making changes without permission.’

When asked about possible solutions, Syamsul said it was important to keep the dialogue going, as it was preferable that people keep living in the same metaphorical house. And with dialogue, the Ahmadis might be persuaded to return. A human rights discourse can be useful, but only when dealing with violence and destruction, not in relation to matters of faith. ‘Human rights are good, but they don’t always solve the problem,’ Syamsul said, adding that the Ahmadiyah controversy had already become a political problem, thus in need of a political solution.

One of the representatives of the young, progressive wing of Muhammadiyah is Fajar Riza UI Haq, the executive director of the Maarif Institute, which has no formal ties to the organization. He urged people after the Cikeusik incident to not be provoked into taking violent action over religious affairs because in doing so they would only serve political interests.<sup>66</sup> For Fajar, the way out of the Ahmadiyah controversy is for the government to take a firm stand against vigilante groups, to prevent further violence.<sup>67</sup> ‘The government must rule the public domain, because that’s the state’s authority. When civil society actors come to the public sphere they should obey the law (...) And the government at the same time should respect the rights of civil society – at the private level. (...) If NU and Muhammadiyah decide that Ahmadiyah is not Islamic, for example, the government should respect that. But [in the public sphere] both Muslim organizations should respect the government’s rule.’

However, it is important to note that not all aspects of Fajar’s vision are shared by the Muhammadiyah old guard and the views of Agus Sukaca offer some interesting contrast. This general chairman of Muhammadiyah’s Tabligh Council (*Majelis Tabligh*) is in charge of matters pertaining to the implementation and socialization of decisions taken by the previously mentioned Tarjih and Tajdid Council that has long been led by Syamsul. According to Agus, it is clear that Ahmadiyah is deviant: Muhammadiyah said so decades ago and in recent years MUI has confirmed it.<sup>68</sup> For Agus the problem would be solved if Ahmadis declare a new religion. But ideally, Ahmadiyah would return to the straight path of Islam. ‘If

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<sup>66</sup> ‘Maarif Institute: Masyarakat jangan terprovokasi’, PolitikIndonesia, Feb. 17, 2011. Online at: <http://politikindonesia.com/index.php?k=politik&i=18654>. Retrieved Dec. 9, 2011.

<sup>67</sup> Personal interview with Fajar Riza UI Haq in Jakarta, Aug. 23, 2011.

<sup>68</sup> Personal interview with Agus Sukaca in Yogyakarta, Nov. 7, 2011.

they come back that would be the best solution. If they don't want that, they have to create their own religion. And if they don't want that, the government has to disband them,' Agus said when asked whether he thought the SKB was an appropriate measure. 'Actually it is not enough. Except when a statement would be added that this group is outside of Islam', he added. According to Muhammadiyah's top *tabligh* (outreach) official, Ahmadiyah issue is not a matter of human rights being violated. 'As long as they claim to be part of Islam, I am of the opinion that the Islamic *ummah* has the right to have an opinion, or to take steps, to prevent the deviance from being spread. I think this is part of the Islamic effort to keep the faith pure. Because of that, this is not a human rights issue. It is a problem of truth,' he said, stressing however that violence was not the solution to solve this type of problem. In fact, if only the government would act decisively, further clashes would be prevented, he argued.

#### 4.3. Tarbiyah activists

Although the student movement KAMMI shares the goals and strategies of the PKS – leadership based on Islamic values through elaborate Islam-based education of cadres – the two are not formally tied. The movement that claims to have 15,000 members at over 300 campuses from Sabang to Merauke is thus not the PKS' official student organization. It is however a representative of the unofficial *tarbiyah* movement that also spawned the PKS. Because of that, it should not come as a surprise that Fahri Hamzah, a founder of KAMMI, is now a senior PKS lawmaker. Mahfudz Siddiq, chairman of Commission I at the DPR on behalf of the PKS, also has a KAMMI background.

A month after the Cikeusik incident, the then-chairman of KAMMI told media that the Ahmadiyah issue was clear. 'We want the government to take firm action,' said Rijalul Imam, adding that the government should act as the leader of the *ummah* and that further clashes should be prevented.<sup>69</sup> For KAMMI, Rijalal continued, there were three options: (1) Ahmadiyah declares itself a new religion ('the best solution'); (2) the Ahmadiyah organization is outlawed; and (3) Ahmadis return to the true teachings of Islam.

In March 2011, KAMMI elected a new general chairman: Muhammad Ilyas, a LIPIA<sup>70</sup>-educated 30-year-old from an NU-family in Sidoarjo, East Java. According to Ilyas,

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<sup>69</sup> 'KAMMI: Persoalan Ahmadiyah sudah jelas,' Republika Online, March 13, 2011. Online at: <http://www.republika.co.id/berita/breaking-news/nasional/11/03/13/169036-kammi-persoalan-ahmadiyah-sudah-jelas>. Retrieved Oct. 11, 2011.

<sup>70</sup> The *Lembaga Ilmu Pengetahuan Islam dan Arab*, or LIPIA, is a Saudi-affiliated institute of higher education focusing on Arabic language and Islam based in South Jakarta. It is generally seen as promoting conservative

it is important to take into account the first principle of the state ideology of Pancasila to find a solution for the Ahmadiyah controversy: belief in the one and only God.<sup>71</sup> For Ilyas, this means that there is only limited room for deviance. In the case of Islam, he said, it is clear that Muhammad is the final Prophet: ‘When there is someone who says that there is another prophet after Muhammad, that means that person is not a Muslim. And Ahmadiyah has to be found in that area. They have their own prophet, their own book; Ahmadiyah cannot claim to be part of Islam.’ For this reason, Ilyas said he supported the MUI fatwa declaring Ahmadis to be outside of Islam. The solution Ilyas preferred was that Ahmadis would return to the true faith. He stressed however that violence was never an option. But if Ahmadis would refuse to repent, they would have to declare a new religion. ‘But I am an optimist,’ Ilyas said. ‘Rapprochement would be better. The solution is *dakwah*.’

Asked whether disbandment of the organization would be of any help, the KAMMI chairman said he did not think that would solve anything. The SKB in itself also was not enough, as there always needed to be dialogue: ‘There have to be laws, but the rapprochement has to be facilitated through dialogue. Don’t keep repeating the same history, until we end up with violence.’

With regard to human rights discourses in the ongoing controversy, Ilyas said it was difficult to draw the line, as mainstream Muslims also had rights. ‘People can choose whatever religion they want to follow, that is their right. We cannot force them. But we have to teach people our understanding. If they want to accept it, that’s great. If not, go ahead. But then they cannot lay a claim to Islam, because there are rules.’

## 5: CONCLUSION

The Ahmadiyah controversy over the past few years has given rise to an interesting interplay of ideological considerations and political pragmatism. This can be seen from the variety of arguments used, solutions proposed and references made to such notions as the rule of law, human rights, religious pluralism and social stability. The framing of rights discourses is a crucial element in this ongoing debate, particularly the relation between various conceptualizations of the rights of believers, the rights of citizens and the rights of human beings. Such rights are seen by some as one and the same, by others as complementary to each other and yet other people consider them to be in outright contradiction.

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values, but also counts progressive activists like Ulil Abshar Abdalla, a founder of the *Jaringan Islam Liberal* (Liberal Islam Network), among its alumni.

<sup>71</sup> Personal interview with Muhammad Ilyas in Jakarta, Nov. 25, 2011.

There is an overwhelming rejection of Ahmadiyah teachings within mainstream Indonesian Islam, among both politicians and civil society activists. Practically nobody agrees with Ahmadis' religious beliefs, and only very few people hesitate to call them deviant. For the majority it is clear: Ahmadis are not proper Muslims and they should either repent or stop claiming to be part of Islam. However, the almost universal rejection of Ahmadiyah teachings on the level of religious understanding does not mean that most people (or even many people) think that violent confrontation is an option to solve the problem. In fact, most mainstream Muslim civil society leaders and politicians from Islam-based parties do consider Ahmadiyah deviant in terms of religious understandings but still propagate a civilized solution in which Ahmadis' rights as citizens and human beings are respected in the context of the Indonesian nation-state. Of course there also are organizations on the scene that are very outspoken in their rejection of Ahmadiyah and that – unlike the mainstream organizations – do not shy away from (threatening with) violence. These are fringe groups, but they have nevertheless been able to attract a lot of media attention and have proven their capability to escalate tensions up until the level of bloodshed.

The attack in Cikeusik in February 2011, probably in large part due to the graphic footage circulating on the Internet since its immediate aftermath, led to a surge of international criticism and expressions of concern over the protection of religious minorities in Indonesia. European governments<sup>72</sup> and the European Parliament<sup>73</sup>, but also the UN High Commissioner for Human Rights, Amnesty International, Human Rights Watch and still others called for a thorough investigation. But even though Indonesia's National Commission on Human Rights (KOMNAS HAM) said in a preliminary report that the Cikeusik violence was planned and organized<sup>74</sup>, and there was video evidence that three people had been beaten to death, in the end nobody was charged with murder. After a high-security trial at the State Court in Serang, twelve defendants ultimately were found guilty of violating articles of the Criminal Code (*Kitab Undang-Undang Hukum Pidana, KUHP*) on violence (160), incitement (170),

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<sup>72</sup> EU Delegation to Brunei Darussalam and Indonesia, *EU Statement on the recent attack and killings of Ahmadis in Banten*, Feb. 8, 2011. Online at: [http://eeas.europa.eu/delegations/indonesia/documents/press\\_corner/20110208\\_en.pdf](http://eeas.europa.eu/delegations/indonesia/documents/press_corner/20110208_en.pdf). Retrieved March 15, 2012.

<sup>73</sup> *European Parliament resolution of 7 July 2011 on Indonesia, including attacks on minorities*. Online at: [www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0341+0+DOC+XML+V0//EN&language=EN](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0341+0+DOC+XML+V0//EN&language=EN). Retrieved Aug. 13, 2011.

<sup>74</sup> 'Komnas HAM: Rusuh Cikeusik Terencana-Terorganisir.' *PolitikIndonesia*, Feb. 23, 2011. Online at: <http://politikindonesia.com/index.php?k=hukum&i=19013>. Retrieved March 15, 2012.

molestation (351) and willful participation in an assault resulting in serious injuries or death (358). They were sentenced to jail terms of three to six months.<sup>75</sup>

The main issue discussed in this paper is how people define the limits of the freedom of religion and the role of the state therein. In that sense, the Ahmadiyah controversy in Indonesia is part of a wider debate on secularism and the state – normal in any democracy – and should not merely be seen in terms of ‘religious radicals’ targeting minority groups. Sadly, however, the Ahmadiyah controversy in Indonesia is also an excellent example of how democratization can become a victim of its own success. This is the case for more than one reason. Without access to a wide range of print and online publications susceptible to their ideas, religious hardliners would have never been able to set the terms of the debate on Ahmadiyah to the extent they have done since at least the 2005 MUI fatwa on the matter. The objections against Ahmadiyah beliefs that are mentioned in the MUI fatwas are used time and again by most people who have publicly aired their views on the matter: Ahmadiyah claims that its founder Mirza Ghulam Ahmad is a prophet, so the sect is deviant because there is no prophet after Muhammad. Period. Standing up for a group like Ahmadiyah, which even mainstream Muslim organizations and political parties at the national level see as clearly having crossed the line, is politically not very attractive.

Thus, there is a large degree of consensus on who is to blame in the Ahmadiyah controversy, but when talking about solutions, the issue becomes a lot more complicated. Some say Ahmadis are the problem and thus hold the key to the solution. Others argue that the state should interfere – with some saying it should do so for religious reasons and others highlighting civil rights. The form of proposed state intervention varies, too. There are those who maintain that the state should outlaw Ahmadiyah and there are those who instead want the government apparatus to protect all citizens, including Ahmadis. Whereas civil society activists – from the traditionalist, modernist and *tarbiyah* camps – all stressed the need for continued dialogue, lawmakers – not entirely unexpectedly – advocated a legal solution. Representatives from the liberal and the conservative camp within traditionalist Muslim politics, former Commission VIII chairman Abdul Kadir Karding (PKB) and Religious Affairs

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<sup>75</sup> ‘12 terdakwa Cikeusik divonis 3-6 bulan’, in: *Kompas* July 29, 2011, p. 5. Later, on Aug. 15, 2011, Deden Sujana, the Ahmadis’ head of security who was said to have had travelled to Umbulan to help protect Ahmadiyah interests there, was sentenced to six months in jail for obstruction of justice (as he had ignored a police order to leave the premises ahead of the attack) and violent assault (because he had punched one of the men who later were convicted over the incident).

Minister Suryadharma Ali (PPP) respectively, have both stated their support for a legal solution to once and for all settle the Ahmadiyah dispute.

For organizations like NU and Muhammadiyah, it is important to note that although they are not officially political in outlook, their decisions – or lack thereof – do have a political impact.

When we look at Muslim leaders' reactions to the Cikeusik incident, any assumed schism between Indonesia's modernists and traditionalists is not that clear. In fact, the major line of division when we look at the variety of approaches to the Ahmadiyah controversy is not between modernists and traditionalists, but between civil society groups and politicians. Lawmakers adopted a far more idealistic stance on the issue than civil society leaders. The politicians seemed to be a lot more concerned about perceived threats to the 'purity of Islam' than the functionaries of organizations like NU and Muhammadiyah, who overall proved to be pragmatic in their approach.

One crucial aspect of Indonesian society to keep in mind when looking at such cases as Cikeusik is that – borrowing a view on corruption put forward by Edward Aspinall and Gerry van Klinken<sup>76</sup> – freedom of religion in Indonesia should be seen as a political process instead of an abstract concept devoid of political causes and implications. This view should be combined with a realistic understanding of the role of the law in Indonesian society, as presented by Robert Cribb in the same edited volume: 'All this illegal activity leads some observers into the impression that law matters little in Indonesia. This is a mistaken impression. The central characteristic of the Indonesian system is that law matters, but only to some people and only in some circumstances. Indonesia is not a lawless society, but rather one in which law is unevenly implemented.'<sup>77</sup>

In this context it is worth to note that throughout the Ahmadiyah controversy in 2011, PKS lawmakers more than other parliamentarians of Islam-based parties tried to push the issue into the judicial sphere by stressing the law enforcement implications of Cikeusik and downplaying its religious dimensions.<sup>78</sup> The latter part of the story was sufficiently covered by the PPP, and it seems that the PKS – despite its fundamental objections to Ahmadiyah

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<sup>76</sup> Edward Aspinall and Gerry van Klinken, 'The state and illegality in Indonesia', introduction to: Edward Aspinall and Gerry van Klinken (eds.), *The state and illegality in Indonesia*. Verhandelingen van het Koninklijk Instituut voor Taal-, Land- en Volkenkunde No. 269 (Leiden: KITLV Press, 2011): 1-28, 28.

<sup>77</sup> Robert Cribb, 'A system of exemptions. Historicizing state illegality in Indonesia', in: Aspinall and Van Klinken (eds.), *The state and illegality in Indonesia*: 31-44, 33.

<sup>78</sup> At the same time though, the PKS, through its 2008 bayan on Ahmadiyah, had warned its followers in great detail about the practical implications of Ahmadiyah's perceived deviance.

beliefs on religious grounds – used the controversy to boost its credentials as a mature, law-abiding party for all citizens. In doing so, it took up a position quite in line with that of NU and Muhammadiyah, as these socio-religious organizations also stressed the need for the state to focus on law enforcement and not religious matters. The PPP at the DPR called for an outright ban on Ahmadiyah, while from within the PKB there was both a denunciation of the Cikeusik violence in similar terms as NU condemned the killings and a push for a legal solution. PAN lawmakers stressed that Ahmadis have the right to live in Indonesia as citizens but also saw a need for dialogue to bring Ahmadis back to the straight path.

Even though there are plenty of laws that could have been invoked to offer Ahmadis protection from persecution (the 1945 Constitution, to name but one example), there was only very little to be gained politically from taking their side in a dispute that has successfully been cast in a religious light by hard-line activists. For many, the responsibility for the conflict and violence lies squarely with Ahmadiyah. As a result, the law did not matter so much – neither on that fateful day in early February 2011, nor later in court.

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