

# **A civil society perspective of Aceh's sharia regulation**

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The granting of special status and autonomy to the Indonesian province of Aceh in accordance with law no. 44 of 1999 and law no. 18 of 2001, has given it four basic privileges: (1) Organizing religious life under the implementation of sharia law; (2) Organizing education; (3) Organizing custom (adat); and, (4) Giving ulema (Islamic clergy) the role in decision-making on regional matters. Based (1) on the above two laws, Aceh's legislative has the authority to regulate qanun (2).

The establishment of local regulations based on sharia law surprised the international community however, particularly as certain such provisions violate human rights, for instance those relating to corporal punishment. While it is important to advocate against any laws violating human rights principles, it is also necessary to take into account the views from Aceh society, before determining the method of advocacy.

This article is based on personal reflection and interviews with three prominent civil society representatives, who are all familiar with the situation in Aceh and are actively involved in the advocacy regarding sharia law. They are Bustami Arifin, an Acehnese staff member of the commission for disappeared and victims of violence, Jakarta (Kontras Jakarta), legal advocacy and human rights division; Hendra Fadli, the coordinator of Kontras Aceh; and Zulfikar, the head of the civil and political division of Aceh Legal Aid Institute (LBH Aceh).

## **Society's view regarding sharia law**

Generally, there is no rejection from the society regarding the imposition of sharia law in Aceh, for various reasons. Firstly, there is the view that historically, sharia law has always been accepted and prevalent in Aceh, although according to Bustami Arifin, society rejects the provisions regarding corporal punishment and restrictions against women, and wants more humane punishment. Another reason for the lack of rejection, as given by Zulfikar, notes that the society does not truly understand the sharia regulations. Since the government conducted little public awareness and education regarding these regulations, people continue to be ignorant of the content. The imposition of sharia law is also a sensitive issue, which is another reason for the lack of rejection.

In summary, the lack of social rejection should not be taken as acceptance of sharia law, but instead, the reasons behind the absence of rejection should be further reviewed.

## **Problems regarding the implementation of sharia law**

Aceh is facing several problems relating to the implementation of sharia law. One of the key issues is regarding the substance of the law, which is contradictory to other Indonesian laws, including international conventions that the country has ratified. Corporal punishment and restrictions against women are the main culprits here, which violate the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, and the International Covenant on Civil and Political Rights. These are all higher laws in the country which cannot be violated, and yet several articles of sharia law do so. Arifin and Fadli thus see

sharia law as 'an old product' that was imposed without following progressive human rights and international legal principles.

The absence of procedural law for the sharia regulations has resulted in their obscure and inconsistent implementation, according to Fadli. One example of this is the functioning of the wilayatul hisbah, the sharia police responsible for enforcing sharia law. While undertaking their duty, Fadli stated that the wilayatul hisbah sometimes refer to qanun, according to which they are the regional supervisor of sharia law, and do not have the authority of an investigator to arrest, detain, or seize, and sometimes they refer to criminal procedure law as a civil service official, who is thus granted special authority as an investigator.

The implementation of the sharia regulations is a crucial problem, with inconsistent application to different Aceh residents, as well as involving the practice of punishment without trial by residents themselves. According to Zulfikar, the majority of those given corporal punishment under sharia law are the poor and ordinary residents, the 'vulnerable community'. This is because ordinary folk know little about the law and their rights, while the court system does not do its part to inform them of their right to legal aid, right to appeal and so forth. This is further compounded by the fact that the process of sharia trial is very fast, with the perpetrator being brought to trial and sentenced to punishment on the same day. Wealthy and influential persons meanwhile, can easily make use of loopholes in the law through their lawyers.

There is agreement that the legislative process is the reason behind the problems facing sharia law. The regulations were created in a rush, precluding vibrant discussion, academic analysis, public participation and socialization. The central government offered sharia law in 2003 in an attempt to reduce the ongoing conflict in Aceh, but it was done without adequate preparation, resulting in today's deficiencies.

### **Impact of sharia law on society**

According to Bustami Arifin, society has become scared and grudging in response to the imposition of sharia law. People are scared to violate any provisions of the law, including for instance, the night curfew for women. The sentencing of corporal punishment would be shameful not only to the perpetrator, but also his family, thus resulting in a grudge. Fadli and Zulfikar also note that the imposition of sharia law encourages violence in the name of sharia. For instance, people themselves punish alleged perpetrators without any trial process and before they are brought to the wilayatul hisbah and are sentenced to any legal punishment. There are various forms of such social punishment, including being beaten and flushed by sewage water. In other words, sharia law encourages social conflict in two ways—first by allowing—and thus encouraging—violence, and second, by giving perpetrators and their families a reason for holding grudges.

### **Ulema's response**

There are two opposing views regarding the ulema in Aceh. Arifin sees the ulema as generally open minded and willing to have a dialogue with civil society. As long as civil society's arguments are responsible and contribute to the betterment of a Muslim society, they will be accepted. Contrary to this opinion, Fadli and Zulfikar state that the ulema are the strongest opposition to any revision of the sharia regulations. Moreover, they consider human rights as a "western product", and would see any revision of the regulations according to human rights principles as anti-sharia.

In these circumstances, it would be useful perhaps to have a discussion with the ulema regarding the substance of human rights and convince them of its value to Indonesian society.

## **The government's effort to solve this problem**

There was agreement by all three speakers that the government is not active enough to solve the problems of sharia law in Aceh. It tends to ignore any human rights violations that occur from the implementation of sharia law. In fact, when one international NGO put forward that the regulations violation human rights principles, the government denied it and simply noted that it must be respected as a specialty of Aceh.

### Civil society's effort to solve this problem

Fadli stated that he had submitted some case findings, the reports from Kontras, a working group on the issue, and from the UN Committee Against Torture to the competent parties. However, the government's lack of human rights understanding and sensitivity made it resistant to the civil society findings.

In 2009, the Aceh government had proposed a draft of the jinayah regulation (qanun jinayah: sharia-based penal code). This regulation ruled 10-400 lashes as punishment for certain crimes: jarimah (an act prohibited by islamic law ), drinking alcohol, gambling, khalwat (seclusion), ikhtilath (intimacy or mixing), adultery, sexual harassment, rape, qadzaf (accusing adultery without being able to present four witnesses as proof), liwath (homosexuality). It also added stoning as a punishment for adultery (3). In response, a civil society coalition was set up to eliminate or modify these provisions through a legislative drafting mechanism. Finally however, the jinayah regulation was not imposed; no legal action was therefore taken. The coalition stopped its work at this time, instead of continuing to advocate for the revision of other sharia regulation articles that violate human rights.

Four solutions have been suggested to deal with the sharia issue: evaluation, reaching an agreement, capacity building and change of provisions that violate human rights. According to Zulfikar, evaluation is the best way to solve the problem; the sharia regulation should be harmonized with other Indonesian and international laws, which would further ensure there is no imbalance between the theory and its application. In order for this to happen, requires reaching an agreement by all the interested parties. Fadli advocates the need for a conducive dialogue among all competent parties about the limitations of the sharia regulations and the understanding of human rights, with the purpose of coming to an agreement. Fadli noted that without such an agreement, mere legal action cannot solve the problem. As far as legal action is concerned, Bustami opines that the house of representative of Aceh (DPRA) must change the sharia articles that are not in accordance with human rights principles. The government must also provide capacity building opportunities to the wilayatul hisbah and open their mechanism to the public.

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Footnotes:

1. The policy paper of Indonesia's national commission on violence against women, "The analysis of Aceh's district regulation", <http://www.komnasperempuan.or.id/wp-content/uploads/2009/01/analisis-terhadapqanun-nangroe-aceh-darussalam.pdf>, page 1.
2. Article 1(8) of law no. 18 of 2001 defines qanun as a local regulation to implement Aceh's special autonomy law.
3. The Wahid Institute Monthly Report on Religious Issue, edition on 23 October 2009, "qanun jinayah NAD disahkan DPRA", [http://www.wahidinstitute.org/files/\\_docs/23.%20monthly%20xxiii.pdf](http://www.wahidinstitute.org/files/_docs/23.%20monthly%20xxiii.pdf)