

ISLAMIC LAW AND CRIMINAL JUSTICE IN ACEH

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EXECUTIVE SUMMARY

Aceh is the only part of Indonesia that has the legal right to apply Islamic law (*Shari'a*) in full. Since 1999, it has begun slowly to put in place an institutional framework for *Shari'a* enforcement. In the process, it is addressing hard questions: What aspects should be enforced first? Should existing police, prosecutors and courts be used or new entities created? How should violations be punished? Its efforts to find the answers are being watched closely by other local governments, some of which have enacted regulations inspired by or derived from *Shari'a*. These moves in turn are sparking a raging debate in Indonesia about what role government at any level should play in encouraging adherence to Islamic law and how far the Islamisation drive will or should be allowed to spread.

This report analyses the reasons usually put forward for why Aceh has been granted the right to apply *Shari'a* when many other regions have not: that Islam is central to Acehnese identity; that there is a historical precedent there; and that granting *Shari'a* would help woo an area wracked by insurgency away from separatism and restore trust in the central government. All three assumptions, but particularly the last, came into play when the first post-Soeharto government in 1998 began thinking about a political solution to the Aceh conflict.

Islamic courts in Aceh had long handled cases of marriage, divorce and inheritance. The breakthrough in terms of greater application came after special autonomy legislation was passed in 2001, which gave the courts a green light to extend their reach into criminal justice. It was at this point that serious issues of legal dualism emerged, with no clear line between what the division of labour would be between the regular state courts and *Shari'a* courts. The question of law enforcement was even murkier: this report looks at the role of the *wilayatul hisbah*, the “vice and virtue patrol” that Aceh has set up and how its role is gradually expanding much to the unhappiness of the police.

Crisis Group examines the practical problems that have emerged as Aceh tries to enforce the first three *Shari'a* regulations passed by the district government: criminalising consumption and sale of alcoholic beverages; gambling; and illicit relations between men and women. It looks

at how and why the government instituted caning as a punishment for all three, even though there was no precedent for it in Aceh, and the plans for expanding the application of Islamic law.

The report concludes that while the *Shari'a* officials in Aceh deeply believe that strict enforcement will facilitate broader goals like peace, reconstruction and reconciliation, there are other dynamics at work. The focus on morality seems to have become an end in itself. The religious bureaucracy has a vested interest in its own expansion. The zeal shown by the vice and virtue patrol in enforcing the regulations has encouraged a report-on-your-neighbour process and a kind of moral vigilantism. Women and the poor have become the primary targets of enforcement. There is no indication that implementation of *Shari'a* is advancing justice for most Acehnese. But for many of its advocates, that may be beside the point. The real issue is whether man's law or God's will prevails.

Jakarta/Brussels, 31 July 2006

ISLAMIC LAW AND CRIMINAL JUSTICE IN ACEH

I. INTRODUCTION

Since the beginning of 2006, debate has raged in Indonesia about the role of the government in upholding Islamic law (*Shari'a*). In May, two major news magazines carried articles on the number of districts – some 22 of 450 and growing – that have enacted regulations inspired by or derived from Islamic law. Most have to do with Muslim dress and Koranic literacy; a few go further. In June, 56 members of parliament signed a petition urging that these regulations be overturned as unconstitutional; shortly afterwards, 134 others came out with a counter-petition. A bill criminalising pornography and “porno-actions” (provocative, erotic or immoral behaviour, very broadly defined) has attracted strong support from religious organisations concerned about the nation’s morals and fierce criticism from those who see it as discriminatory toward non-Muslims, indigenous cultures, and women, potentially disastrous for writers and artists and generally too intrusive.

The questions that underlie this debate are as critical as they are unanswerable: how far will this drive for grassroots Islamisation spread? What factors are driving it or hindering it? What kind of society does it produce? How does it affect development priorities? And what influence, if any, will it have on the rest of Indonesia?

The autonomous region of Aceh, formally Nanggroe Aceh Darussalam (NAD), is a fascinating laboratory in this respect.¹ It is the only place in Indonesia that since 1999 has had the legal right to apply Islamic law in full. Known as the “veranda of Mecca”, it has a reputation for being one of the country’s most devoutly Islamic areas but also one of its most ethnocentric. In one sense, to be Acehnese is to be from the ethnic group that speaks Acehnese. In another, it is to live anywhere within the boundaries of the old sultanate of Aceh and identify with its history. But Acehnese have never claimed an identity based on Islam alone, and piety has never entailed the

kind of rigid puritanism associated with Saudi Arabia or the approach to Islam called salafism.

Through the centuries Aceh has been known as much for rebellion as for religiosity. It resisted Dutch colonial forces, and in the early years of an independent Indonesia rebelled against Jakarta for breaking its promises to grant special status. An insurgency, the Free Aceh Movement (Gerakan Aceh Merdeka, GAM) fighting for independence broke out in 1976 and continued in fits and starts through the signing of a peace agreement in Helsinki on 15 August 2005. That rebellion was always nationalist in essence, and GAM leaders never showed any serious interest in making common cause with fellow Muslims elsewhere.

The green light to apply Islamic law in 1999 was part of an effort in the immediate aftermath of President Soeharto’s downfall to find a political solution to the conflict. It was less based on popular demand than on an assessment by the Jakarta and Aceh political elite of what would mollify a population embittered by years of conflict, human rights violations and economic exploitation. But it did have support, particularly as the national legal system, which rarely delivered justice for the Acehnese anyway, had broken down completely in much of Aceh as a result of the war. *Shari'a* (*syariah* in Indonesian transliteration) was promoted as a panacea: many hoped it would eliminate social ills, produce an egalitarian society and, in the words of one scholar, make Acehnese “honest, thrifty, industrious, loyal, and smart”.²

But with the best intentions, the officials tasked with codifying and extending *Shari'a* are inadvertently producing something different: a religious bureaucracy committed to its own expansion; a focus on legislating and enforcing morality; and a quiet power struggle with secular law enforcement that may have long-term implications for both security sector and legal reform in Aceh.

¹ For earlier analyses of developments in Aceh, see Crisis Group Asia Briefings N°48, *Aceh: Now For the Hard Part*, 29 March 2006; N°44, *Aceh: So Far, So Good*, 13 December 2005; and N°40, *Aceh: A New Chance for Peace*, 15 August 2005.

² Prof. Dr. H. Al-Yasa' Abubakar, *Syari'at Islam di Provinsi Nanggroe Aceh Darussalam: Paradigma, Kebijakan dan Kegiatan*, Dinas Syariat Islam (Aceh, 2005), p. 84.

II. THE SHARI'A DEBATE

Three main arguments have been used by Acehnese and non-Acehnese alike to justify granting Aceh, as opposed to other strongly Muslim parts of Indonesia, the right to apply Islamic law in full:

- ❑ Islam is central to Acehnese identity and culture;
- ❑ there is a historical precedent for *Shari'a* in Aceh; and
- ❑ application of *Shari'a* has been a political demand of Acehnese since colonial times, and refusal to grant it would guarantee continued rebellion.

A. THE HISTORICAL PRECEDENT

There is vast scholarship on the extremely complicated history of Islamic law in Aceh but the simplified version is as follows. From the seventeenth century to the establishment of administrative control by Dutch colonial authorities in the late nineteenth century, formal justice was meted out by Islamic judges (*qadi*) appointed by the sultan and other local officials.³ As in most places in the Muslim world, the law was a mixture of *Shari'a* and traditional customary practices (*adat*) that varied from one locality to another. With the arrival of the Dutch, the system of locally-appointed *qadis* continued, but their authority was gradually reduced, and there were no religious courts as such – or at least none recognised by the colonial state. Criminal justice fell within the jurisdiction of colonial courts, and the Dutch tried to shift other matters, such as land and inheritance issues, to customary councils.⁴

Acehnese scholars and religious authorities (*ulama*) portray the struggle for restoration of Islamic law to its rightful place as a key element of Acehnese resistance to the Dutch, and later to the republican government under President Sukarno. That portrayal suggests Aceh was united on this point and belies the deep cleavages that began to emerge in the 1940s and 1950s between local aristocrats (*uleebelang*), who mostly threw their lot in with the Dutch and favoured a more secular administration,

and the religious scholars who occupied a prominent place in society. The *ulama* themselves were divided between the modernisers, who favoured a separate, or at least autonomous state based on Islamic law, and the more orthodox, who tended to side with the aristocrats. Islam was important to all but not in the same way: like the Dutch (and like Soeharto but not his successors), the aristocrats understood that a formal religious bureaucracy would undercut their own power. It was the modernising *ulama*, led by Daud Beureueh, who were determined to re-establish Islamic courts, in part as a way to expand their influence.

On their own initiative at the end of 1945, immediately after Sukarno's declaration of Indonesia's independence, provincial authorities in Aceh sent a directive to each district to set up a *Shari'a* court (*mahkamah syariah*).⁵ Under Beureueh's supervision, these gradually assumed jurisdiction over inheritance and some land-related issues, in addition to the marriage and divorce cases that were the bread-and-butter of religious courts elsewhere.⁶ Giving property issues back to the Islamic courts was opposed by some Acehnese jurists in the state system but they conceded the point, in the hope this would stop Beureueh and others from trying to secure more comprehensive application of Islamic law.⁷

Beureueh did indeed want Islamic law but he and other influential *ulama* wanted autonomy and recognition of Aceh's special status just as much. They supported the war against the Dutch as an obligatory jihad against a *kafir* occupier but that argument only made sense if the end result was an Islamic state, or at least a separate Islamic region. Their support was based on the assumption of a political bargain. In early 1948, in a meeting in Aceh, Beureueh and other *ulama* pressed Sukarno for assurance that an independent Indonesia would be an Islamic state. After a few non-committal comments, Sukarno, according to interviews Beureueh gave much later, promised that the state would be based on Islamic principles, and Acehnese would have the right to implement Islamic law.⁸

³ The master scholars, whose work had a major impact on the policies of the Dutch colonial government, were Christiaan Snouck Hurgronje (1857-1936) and Cornelis van Vollenhoven (1874-1933). Snouck specialised in Aceh, van Vollenhoven in *adat* (customary) law. See T. Lindsey, M.B. Hooker, R. Clarke, and J. Kingsley, "Shari'a Revival in Aceh", in M. Feener and M. Cammack, *Law Reform in Indonesia* (forthcoming, 2006).

⁴ Daniel Lev, *Islamic Courts in Indonesia* (1985), p. 10; Rusjdi Ali Muhammad, *Revitalisasi Syari'at Islam di Aceh* (2003), p. 48.

⁵ John R. Bowen, *Islam, Law, and Equality in Indonesia* (Cambridge, 2003), p. 71.

⁶ Lev, op. cit., p. 81. Islamic courts were established in North Sumatra by the governor in February 1947, about two years after the Acehnese initiative.

⁷ Ibid. p. 82, note 29.

⁸ M. Nur el-Ibrahimi, *Peranan Tgk. Muhammad Daud Beureueh di dalam Pergolakan di Aceh*, (Jakarta 2001), citing an interview with Beureueh, p. 78. A slightly different version of the exchange, also based on an interview with Beureueh, appears in Nazaruddin Sjamsuddin *The Republican Revolt* (1985), p. 30.

B. THE DARUL ISLAM REBELLION

As it turned out, Jakarta's failure to fulfil its promises went far beyond the issue of *Shari'a*. In 1951, in the new government's effort to streamline administration and save costs, Aceh lost its status as a separate province and was merged with North Sumatra. Outrage in Aceh was compounded by the neglect it suffered in comparison to the non-Acehnese parts of the new province. Education and health services all but collapsed, and government teachers were withdrawn to other parts of Sumatra. The one state high school in Banda Aceh was shut down, to angry protests from the *ulama* as well as other political leaders. Exports stagnated, and Aceh's agricultural needs were ignored. The Acehnese unit of the Indonesian military that Beureueh had helped set up was demobilised, and non-Acehnese officials flooded the province, bringing with them liquor, gambling and prostitution.⁹

Thus, when Beureueh initiated the Darul Islam (DI) rebellion in 1953, it could hardly be said that he did so simply to fight for *Shari'a*. Application of Islamic law, however, was one element of the entity he intended to establish, an Acehnese state in a larger Indonesian Islamic federation. He also ensured that his Darul Islam commanders set up Islamic courts in areas they controlled and appointed *qadis* to head them – just as GAM did decades later.¹⁰

In 1956, Jakarta, beset by rebellions elsewhere, finally agreed to reconstitute the separate province of Aceh, eliminating one of the original causes of the insurgency. DI rebel leaders split along *ulama*/non-*ulama* lines about whether the offer was sufficient; again it was clear that not all Acehnese, not even all Acehnese rebels, saw the full application of Islamic law as a non-negotiable demand. The *ulama*, led by Beureueh, demanded extensive autonomy, particularly in religion; the others seemed inclined to take the restored province and work from there, although they supported the eventual application of *Shari'a*.¹¹

The province of Aceh came into being (again) in 1957, and with it the official re-emergence of *Shari'a* courts.¹²

⁹ Sjamsuddin, op.cit., pp. 63-65.

¹⁰ Bowen cites a case of an inheritance dispute that came before a DI court. The loser decided to get even by telling government security forces where the DI camp was. The mobile police brigade then came and shot the winner. Bowen, op.cit., p. 95.

¹¹ Sjamsuddin, op.cit., p. 221.

¹² Government Regulation No. 29 1957 on Religious Courts/*Mahkamah Syariah* in Aceh, followed shortly by another government decree that standardised such courts for all areas outside Java and Madura. See "Penjelasan Atas Qanun Provinsi Nanggroe Aceh Darussalam Nomor 10 Tahun 2002 Tentang Peradilan Syariah Islam", in *Himpunan Undang-Undang*,

These developments were accompanied by a ceasefire and, eventually, a formal split within DI. The central government in Jakarta persuaded the non-*ulama* to leave the insurgency altogether in exchange for special status, beyond that of a normal province. In 1959, a ministerial decree designated Aceh as a "special area" (*daerah istimewa*), with autonomy in religion, customary practices and education.¹³

By this time, Beureueh had joined with another rebellion in Sumatra that in 1960 proclaimed the United Republic of Indonesia (*Republik Persatuan Indonesia*, RPI), a federation in which one state was to be the Islamic Republic of Aceh (*Republik Islam Aceh*, RIA). It was a last gasp, as more and more of Beureueh's men defected. In 1961, he reportedly wrote to Col. Muhammad Yasin, the regional military commander, attaching a "concept" for a presidential decree on a basic law for government of the special area that included full implementation of Islamic law.¹⁴ The commander replied that Beureueh should not submit anything to the central government until security in Aceh was fully restored but in the meantime, the local government could implement *Shari'a* "in accordance with the authority that the Aceh government already had" – which was not much.¹⁵ In 1961, for example, the provincial legislature passed Regulation No. 30 on "Limiting Sales of Food and Drink during Ramadan", which was about as far as its authority stretched.

A 1962 decision from Yasin declared that the provincial government could implement "elements" of *Shari'a* "in an orderly fashion" as long as there was no conflict with national laws.¹⁶ Criminal justice remained the exclusive preserve of the secular legal system, and there appeared to be little readiness to allow any significant moves beyond the traditional fields of family matters and inheritance.

C. THE NEW ORDER

The New Order government of President Soeharto deadened any efforts at legal creativity. In 1966, Aceh's

Keputusan President, Peraturan Daerah/Qanun, Instruksi Gubernur, Edaran Gubernur Berkaitan Pelaksanaan Syariah Islam (2005), p. 20.

¹³ Keputusan Perdana Menteri Republik Indonesia No. 1/Missi/1959 in M.Nur el-Ibrahimi, op.cit., p. 320. The non-*ulama*, who put together a revolutionary council to negotiate with the government, had initially submitted a list of twelve demands, one of which was the implementation of *Shari'a*. Sjamsuddin, op.cit., p. 292.

¹⁴ Al-Yasa' Abubakar, op. cit., p. 32.

¹⁵ Ibid.

¹⁶ "Keputusan Penguasa Perang No. KPTS/PEPERDA-061/2/1962 tentang Kebijakan Pelaksanaan Unsur-Unsur Syari'at Agama Islam bagi Pemeluk-Pemeluknya di Daerah Istimewa Aceh", cited in ibid, p. 33.

parliament created the Majelis Permusyawaratan Ulama (MPU), a council of religious scholars to advise the local government on religious matters and guide the faithful in their daily lives. But New Order uniformity had begun to make itself felt, and the MPU had no official status, because only the central government could set up new government agencies. It had no budget and was eventually turned into the Aceh branch of a Soeharto creation, the Indonesian Ulama Council (Majelis Ulama Indonesia, MUI), a move that sapped it of all legitimacy.

Likewise, in 1968, the provincial parliament adopted Regulation No. 6 on implementation of elements of *Shari'a*. Largely about facilitating worship, it involved no major changes in existing practice and did not venture into criminal justice. Even so the Ministry of Home Affairs rejected it, and the local parliament made no more attempts to test the system.¹⁷

After the Soeharto government passed a 1974 law on local government, there was no point anyway. Not only was any semblance of “specialness” of the Special Region of Aceh obliterated by imposition of a single, mandatory structure for all levels of local government, but traditional sources of authority were undermined as their structures were forced to give way to a giant bureaucracy run by the ruling Golkar party. This move toward a crushing uniformity was further strengthened by a 1979 law on village government that took away the last vestiges of power that customary leaders retained. Nothing more happened on Islamic law until regional autonomy laws were passed in 1999.

Throughout the 1980s, Aceh became defined less by its efforts to establish Islamic law than by the conflict between GAM and the Indonesian military. Many of the *ulama* were discredited because they were coopted by the government in the interests of both securing votes for Golkar and building defences against separatism. To press for *Shari'a* was to be against Pancasila, Soeharto's state ideology, even more so since GAM had declared its intention of establishing Islamic law when Aceh became independent.

The one important institutional development in this period was the establishment of religious courts (*pengadilan agama*, not *mahkamah syariah*) across Indonesia in 1989. No *Shari'a* courts other than these officially-constituted bodies were recognised, but in Aceh they handled the same kinds of issues that Daud Beureueh's courts had previously: marriage and divorce, property and inheritance issues. For most of its 32 years, the New Order was not the time to press an Islamic agenda.

Soeharto's downfall in 1998 caused a dramatic shift. As if a curtain had suddenly been lifted, revelations about atrocities committed on his watch poured out of Aceh. Day after day, particularly between June and August 1998, news broadcasts and articles were filled with eyewitness accounts of murders and rapes, and many mass grave sites were opened. In August 1998, General Wiranto, then commander of the Indonesian military, announced the end of Aceh's status as a military operations area (*daerah operasi militer*, DOM), and in early 1999, President Habibie formally apologised to the Acehnese for the treatment they had endured.¹⁸ There was a palpable sense in Jakarta that Aceh deserved some compensation.

At the same time, Habibie offered East Timor a referendum, and demands for equal treatment instantly arose from across the political spectrum in Aceh. GAM, buoyed by the new political openness, returned by the hundreds from Malaysia and began actively recruiting in mosques and prayerhouses across the province.

D. *SHARI'A* AS THE SOLUTION

All this made both Jakarta and many in Aceh more receptive to the idea that Islamic law offered a political solution. It was something the Acehnese wanted (although how much was debatable – after the Indonesian parliament granted it, one Acehnese called it an “unwanted gift”, and he was not alone).¹⁹ A woman from the Lhoksemawe area, for example, said the people she worked with believed that if *Shari'a* were adopted, the military would have to end its liaisons with local women, and the police would have to stop running gambling dens.²⁰ Some officials believed that *Shari'a* could block a major selling point of GAM, and “successful implementation of Islamic law would be one way of restoring public trust in the central government”.²¹

The result was the adoption in 1999 of Law No. 44 implementing the special status of Aceh – for the first time since that status had been granted in 1959.²² It called for implementation of *Shari'a* for Muslims but also protection of inter-religious relations. It defined *Shari'a* as “guidance on Islamic teachings in all aspects of life” (*tuntunan ajaran Islam dalam semua aspek kehidupan*) and gave the local government authority to set policies on religious life,

¹⁷ Ibid, pp. 36-37.

¹⁸ “Why Aceh Is Exploding,” Human Rights Watch, press backgrounder, 27 August 1999.

¹⁹ Bowen, op.cit., p. 232.

²⁰ Crisis Group interview, Acehnese human rights activist, Jakarta, 10 July 2006.

²¹ Al-Yasa' Abubakar, op. cit. p. 129.

²² Ibid p. 43. The drafting team for the 1999 law included a few Jakarta-based Acehnese and one delegate from Aceh, the late Syafwan Idris, rector of the State Islamic Institute in Banda Aceh.

custom, education and the *ulama*'s role, either through provincial regulations or decisions of the governor.

To oversee these policies, the provincial government in 2001 created the Office for Syariat Islam (Dinas Syariat Islam, the *Shari'a* office). Its functions were to draft new regulations, later called *qanuns*, for implementation of Islamic law; oversee the training of personnel; ensure the orderly functioning of places of worship and other Islamic facilities; provide guidance and outreach on matters pertaining to Islamic law and supervise adherence to it.²³ It was an entirely new religious bureaucracy, providing employment for hundreds of people and with it, vested interest in expanding *Shari'a* application.²⁴

That same year, a special Aceh autonomy law (Law No. 18/2001) allowed for the creation of *Shari'a* courts (again called *mahkamah syariah* as in the 1940s), with jurisdiction over not just the usual areas of family and property issues but also criminal cases. Under the terms of the 1999 law, all violations of local government laws, including any related to *Shari'a*, were to be tried in the regular district courts. Local *ulama* were worried that judges on those courts, which were in a state of disarray, would have neither the knowledge nor inclination to rule on *Shari'a*-related cases. The new courts could change this: it was now up to the provincial parliament to adopt regulations setting out the offences the courts could try.

E. SHARI'A AND THE CONFLICT

Between 2000 and the December 2004 tsunami, the conflict in Aceh grew worse, despite periodic efforts at a negotiated peace. As it continued, the Indonesian armed forces became one of the champions of Islamic law, because as noted, they saw it as a bulwark against GAM: the Acehnese had rebelled in the 1950s because they did not get *Shari'a*, the argument went, and one of GAM's promises to the people was enforcement of *Shari'a* – even though it was a secular movement that had tried to substitute Acehnese nationalism for Islam as its ideological foundation; therefore, to mobilise popular support against GAM, use *Shari'a*.

The military, according to an Acehnese *Shari'a* official, gave a boost to the growth of the religious bureaucracy. District-level *Shari'a* offices began to be established in 2002 through separate district council regulations. The military may not have been involved in setting up the first

few, though the latter were all in areas of intense conflict.²⁵ Aceh Tengah was the first to open such an office in November 2002. It had been the site of a dramatic escalation in violence in June-July 2001, when a GAM attack on a Javanese migrant settlement led to a combined military/militia counterattack. The next *Shari'a* offices to open were all in districts where violence was endemic: Aceh Besar, Pidie, Aceh Utara, and Aceh Timur. But after the Indonesian government declared a military emergency in Aceh in May 2003, most district offices were set up at the urging of the martial law administrator.²⁶

The Indonesian government used coopted Acehnese organisations to try to discredit GAM's Islamic credentials. But GAM's stance on *shari'a* was more complicated than its opponents suggested. It was certainly a nationalist movement more than an Islamic one, and its top leaders were ambivalent about Islamic law. But as noted, one of its promises to its grassroots base was that it would reinstate *shari'a* after independence, and there were periodic incidents, especially between 1999 and 2001, of local GAM commanders enforcing Islamic law. In one proclamation in 1999, a local GAM leader issued an edict that all women would have to wear the headscarf if they left their houses; in one town in the Gayo area of Central Aceh, GAM members cut the hair of women who disobeyed.²⁷ And in areas where it controlled village administration, GAM based its rudimentary justice system on *Shari'a*.²⁸

²³ Ibid, p. 154.

²⁴ The provincial office consists of a head, deputy head, an administrative section, and sections for research and development; human resource development; religious guidance; monitoring implementation; and justice, as well as units for *dakwah* (religious outreach) and Koranic study. Ibid, p. 155.

²⁵ Crisis Group interviews, former regional military commander Djali Yusuf, 11 July 2006 and Acehnese human rights activist, 12 July 2006.

²⁶ Al-Yasa' Abubakar writes: "In nearly every monthly evaluation meeting, the commander of the Iskandar Muda regional command asked about the formation of syariat Islam offices in districts and municipalities as well as their inclusion in the provincial budget". Op. cit., p. 157, note 1. The establishment of the provincial office was authorized by *Qanun* No. 33/2001.

²⁷ Bowen, op.cit., p. 232.

²⁸ Kirsten E. Schulze, "The Free Aceh Movement (GAM): Anatomy of a Separatist Organization", Policy Studies 2, East West Center Washington, 2004, p. 8.

III. THE NEW REGULATORY FRAMEWORK

Armed with the new authority under the 1999 law and later the 2001 special autonomy law to apply *Shari'a*, the government moved slowly to extend it to areas beyond those covered by existing religious courts. No one had ever had to give much thought to the infrastructure or personnel required for moving into the criminal justice sphere, because it had never been politically possible before. No one had had to think through penalties, criminal procedure, or enforcement institutions or how Islamic courts would be different from ordinary courts in these respects. The precedents were not in Aceh but in Muslim countries where Islamic law had been applied, including Malaysia, Pakistan, Iran and Saudi Arabia.

The first regulations – called *perda* before the 2001 special autonomy law and *qanun* afterwards – were focused more on these broader questions, rather than specific offences.

Perda No. 5/2000 on the implementation of Islamic Law states that all aspects of *Shari'a* will be applied, including those related to faith, worship, economic transactions, moral character, education and religious outreach; a treasury for *zakat* (alms) and other Islamic donations; social aspects, including Muslim dress; celebration of Muslim holidays; defence of Islam; judicial structures, criminal justice and inheritance. It sets up the *waliyatul hisbah* (WH) as the monitoring and enforcement body for *Shari'a*, but with no details about how it is to function.²⁹

Qanun No. 10/2002 on *Shari'a* courts for the first time extended the jurisdiction of religious courts beyond family and inheritance law to include economic transactions (*mualamat*) not previously covered as well as criminal cases (*jinayat*). The former includes buying and selling; use of capital; division of agricultural produce; establishment of companies; borrowing; foreclosing on property; mortgages; clearing land; mining; discoveries; banking; labour; and various forms of religious donations.

Criminal offences are divided into three categories. *Hudud* offences, including adultery, false accusations of adultery; theft, robbery, alcohol consumption, apostasy and rebellion, are those for which penalties are specified in the Koran. *Qishash-diyat* relates to murder and assault and either retaliation or recompense for them. *Ta'zir* offences are

everything else, crimes for which no specific penalties are mentioned and so left to the discretion of judges. These include gambling, cheating, falsification of documents, illicit relations, failing to fast during Ramadan and failing to observe daily prayers. *Ta'zir* also can incorporate offences which disrupt public order or undermine the public interest, such as traffic violations.³⁰

Any offences to be covered by the court must first have been codified in regulations (*qanun*) adopted by the provincial parliament.

Qanun No. 11/2002 on the implementation of Islamic law in the areas of faith, worship, and dissemination of Islamic teachings is the first regulation to criminalise certain kinds of behaviour under Islamic law. Among other things, it bans the dissemination of deviant teachings. It requires all Muslims to wear Muslim dress, defined as clothing which covers the *aurat* (for men this is knee to navel; for women it is the entire body save for the hands, feet, and face); that is not see-through; and does not show the shape of the body. It obliges all government offices and educational institutions to require Muslim dress on their premises. Finally, it tasks the WH with giving warnings to violators and imposing *ta'zir* punishments on repeat offenders. It is this *qanun* that is used to punish women who do not wear the headscarf.

Qanuns No. 12, 13 and 14/2003 on Khamar (sale and consumption of liquor), Maisir (Gambling) and Khalwat (illicit relations between men and women) criminalised these three vices because, according to the head of the *Shari'a* office in Banda Aceh, they were seen as particular problems by the Acehnese public.³¹ For the first time, Islamic punishments were prescribed in law, specifically caning.

Qanun No. 7/2004 on the management of zakat (alms) set up the treasury (*baitul mal*), which among other things receives fines for all *Shari'a* offences.

As noted above, before the courts can enforce Islamic law, it must be on the books, and it is the provincial parliament, composed overwhelmingly of people without expertise in this area, who have to draft it. The roles of the *Shari'a* office, the Ulama Consultative Council (MPU), and the law faculty

²⁹ In early discussions of this institution, and in *Perda* No. 5, it was spelled *waliyatul hisbah*. In all subsequent legislation, it was spelled *wilayatul hisbah*, and this is how it is spelled on members' uniforms.

³⁰ Rusjdi Ali Muhamad, op. cit., p. 152, and "Penjelasan atas Qanun Nomor 10", op. cit., p. 126.

³¹ Crisis Group interview, Banda Aceh, 18 June 2006. He said proof of the demand for these vices to be criminalised was that in 1999, after the law granting the right to implement *Shari'a* was announced, villagers spontaneously conducted "people's courts" to try local offenders. Of the eighteen trials held, nine were for *khalwat*, but none involved gambling or alcohol consumption. See list of cases in Rusjdi Ali Muhamad, op. cit. p. 96.

at the State Islamic Institute in Banda Aceh thus become critical.

The *Shari'a* office bases its advice on three sources: the texts of the Koran and *hadith* (traditions of the Prophet); compilations of independent interpretations (*ijtihad*) by scholars from the four major schools of Islamic law; and an evaluation of public needs. It then produces a new *ijtihad*. Al-Yasa' Abubakar, the office head, explicitly rejects a salafi approach, calling it an effort to turn the clock back to the seventh century, and stresses the importance of making Islamic teachings relevant to modern challenges.³² The worry of some Acehnese is that extension of *Shari'a* has been taken on as an agenda by conservative organisations more concerned with moral minutiae than with important social issues. "Ask the conservatives questions that reach beyond their favourite topics of gambling, alcohol and headscarves, for example about how their interpretation of religion can promote or support the reconstruction of Aceh, or Aceh's political and economic development, and they are unable to answer".³³

As with any local regulations, *qanuns* can be proposed by the executive or legislative branches of the Aceh government. The parliament sets up a drafting committee, which seeks inputs from outside; in the case of *Shari'a* drafts, the MPU's input is required. As the draft is revised, the committee can hold hearings or invite commentary through the media. Women's organisations have been particularly active in raising questions about proposed changes to the *khalwat qanun* (see below), but in general, the conservatives, who support more extensive *Shari'a* application, are more vocal than those concerned about its consequences.

IV. IMPLEMENTATION

Putting *Shari'a* into practice, especially when so many new institutions and procedures had to be set up, was never going to be problem-free, and Acehnese authorities have done their best to introduce correctives in response to obvious problems. But some of the difficulties are inherent in the very concept of a dual legal system, part Islamic, part secular, in which no one is quite certain where the dividing line lies.

A. THE WILAYATUL HISBAH

The most problematic institution set up under Islamic law has been the *wilayatul hisbah* (WH), the vice and virtue patrol tasked with monitoring compliance with Islamic law.

Its members are highly unpopular; even those who support broader application of *Shari'a* in Aceh acknowledge that the WH are poorly recruited and trained. Many police officers are wary of it gradually encroaching on their role, with no clear vision of what the ultimate division of labour will or should be. (One politician suggested that if *Shari'a* is properly applied, there will be no need for police.) In Bireuen district in late 2005, the WH were handling "minor" cases of gambling while the police took on "major" ones, but the distinction was arbitrary.³⁴ The provincial government is trying to improve standards of recruitment but in requiring university-level training in Islamic law, it may actually be skewing the selection towards those with a more conservative interpretation. And like the *Shari'a* office itself, the natural inclination of the WH is to look for ways to expand its authority.

1. Background

In the first regulation on *Shari'a* adopted following the 1999 law, the provincial government was mandated to set up the WH as an institution to "control and monitor" its implementation.³⁵ The law was very vague about exactly how this body would function. *Shari'a* offences would be investigated by civilian investigators as well as by "others viewed as appropriate to carry out these duties". It described the duties of civilian investigators in a way that suggested the WH would simply be part of the police, with the ability to take direct action at the scene of the crime, confiscate

³² Al-Yasa' Abubakar, op. cit, p. 198.

³³ Aguswandi, "the rise of Islamic conservatism in Aceh", *Jakarta Post*, 20 February 2006.

³⁴ See a critical report from the National Commission on Women, "Laporan Dialog Kebijakan Tentang Pelaksanaan Syariat Islam di NAD dan Dampaknya bagi Penegakan HAM Perempuan", 20-26 Oktober 2005, p. 5.

³⁵ Provincial Regulation No. 5/2000, Paragraph VI, Article 20, in Dinas Syariat Islam Provinsi Nanggroe Aceh Darussalam, *Himpunan*, op. cit..

goods, take fingerprints, summon witnesses and so forth. More details would be set forth in a gubernatorial decree.

But as more discussions took place among officials, academics and *ulama*, the idea of an institution separate from the police took root. Those involved in designing the *Shari'a* infrastructure appear to have relied on several texts on Islamic jurisprudence which describe different ways of maintaining order and morality.³⁶ One is through cooperation of individuals (*mutatawwi'in*) who voluntarily take on the task as a religious duty or in the hope good deeds will be rewarded in heaven. The second is through individuals (*muhtasibin*) who have professional competence, receive a salary and work in a formal institution. Acehnese viewed the Saudi Arabian and Malaysian religious police as possible models, understanding that any local counterpart would have to be significantly modified.³⁷

In August 2001, the provincial parliament passed a regulation setting up the *Shari'a* office with a division for overseeing implementation and preventing violations, though it made no mention of the WH per se.³⁸ The milestone regulations were passed in 2002 and 2003: Qanun 11 on implementing *Shari'a* and the three ventures into criminal codification. Qanun 11 authorises the WH to be set up at the provincial, district, subdistrict, village, and neighbourhood levels with the authority to monitor compliance, warn offenders and, if they do not mend their ways, turn them over to the police. Organisation of the WH, however, is left (again) to a gubernatorial decree after consultation with the *Ulama* Council, the MPU.

The WH itself, however, did not come into existence until after the long-awaited decree was issued by the governor's office in January 2004. It stated that a WH at each level of government was to be set up with a head, deputy, secretary and *muhtasibin* to monitor implementation and violations of *Shari'a*; provide guidance and spiritual advice to suspected offenders (after informing the family, police and/or village head); advise and warn offenders; stop violations; and warn those concerned about possible misuse of places or facilities for actions that violate *Shari'a*.³⁹ The WHs were given no police powers, however, only the authority to stop or prevent offences, ask the identity of perpetrators and turn over cases to the police for further investigation.⁴⁰ They were put under

police supervision but the police were reluctant to get too closely involved, so they eventually were physically and administratively housed in the *Shari'a* office.

The qualifications to become a WH member under the 2004 decree were general in the extreme: Indonesian citizen; loyal to *Shari'a*, Pancasila and the Indonesian constitution (in that order); qualified as an imam to lead prayers; and of good character. Candidates had to be "graduates" (*lulusan*) but it was not specified of what or at what educational level. The result was foreseeable: a haphazardly recruited, poorly disciplined, poorly supervised force that distinguished itself more by moral zeal than legal competence – and that quickly became very unpopular.⁴¹

2. The WH in Practice

A series of incidents illustrates the problem.

- In Sabang, on 30 September 2005, a mob attacked the district *Shari'a* office and the WH members inside after an overzealous WH harassed a girl who had just come home from a night class and was standing in front of her house at around 9 p.m. He grabbed her arm, demanded to know what she was doing, implying she was up to no good, took her photograph and was only stopped when her outraged mother and neighbours came to her rescue. The mob had to be calmed by the police, and the WH district head apologised, saying it was a new institution and "needed guidance".⁴²
- In January 2006, the WH, together with the police and a man named Muzakkir Tulot, who seems to oversee many such actions, raided beauty salons catering to both men and women.⁴³ In one a long-time male customer had gone to get his hair cut in a salon staffed by women; in another, a transvestite was having his hair styled by a woman; in a third, a man was cutting his woman friend's hair. In yet another, three foreigners who wanted haircuts were taken to the police station, and the media was told 40 pills had been found in their possession (they turned out to be anti-diarrhoea medicine).⁴⁴ Under Regulation No. 11, mixed salons are no longer permitted. But an angry salon owner suggested the

³⁶ Rusjdi Ali Muhammad, op. cit., p. 102. Among the texts cited are Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuh*, vol. iv (Damascus, 1989) and al-Mawardi, *al-Ahkam al-Sulthaniyyah* (Cairo, 1975).

³⁷ Rusjdi Ali Muhammad, op. cit., p. 107-108.

³⁸ Provincial Regulation No. 33/2001, paragraph 6, Articles 28-32, in *Himpunan*, op. cit., p. 92.

³⁹ Gubernatorial Decision No. 1/2004 on the Formation and Administration of the Wilayatul Hisbah, Article 4.

⁴⁰ Ibid, Article 6.

⁴¹ See "Rising Concerns over Brutality of *Shari'a* Police", *Aceh World*, 11-17 April 2006, p. 1. Also see National Commission on Women report, op. cit., which notes how recruitment standards for the WH vary from district to district.

⁴² "WH Salah Sergap, Warga Sabang Mengamuk", *Serambi*, 2 October 2005

⁴³ Tulot is head of the Banda Aceh public order office, a district-level office separate from the police and responsible for enforcing local administrative regulations.

⁴⁴ "Puluhan Salon Digerebek", *Serambi*, 3 January 2006.

WH was conducting raids just to show its authority and was impugning the morals of staff and customers of legitimate businesses. "I'm perfectly capable of ensuring no hanky-panky goes on in my salon", he said.⁴⁵

- On 19 February 2006, in one of the most notorious incidents, three women non-governmental organisation (NGO) activists taking part in a UNDP workshop on peace education at the Sultan Hotel in Banda Aceh were seized without warning by a WH team for not wearing headscarves while talking quietly in the hallway outside their hotel rooms at about 11:30 pm. Some twenty WH men and women grabbed them by the arms, took them down the stairs "as though we were criminals" and put them into a vehicle with six previously seized women. They were taken to the mayor's office, where they were told to sign statements admitting their guilt. They refused to do so, but in the end had no choice. They were also obliged to listen to a 45-minute lecture on the need to live according to *Shari'a* principles. Other workshop participants went to the police station and made a formal complaint against the WH. The raid was overseen by Muzakkir Tulot, who made coarse remarks to the women and their fellow activists.⁴⁶

Women complain that they are disproportionately the targets of WH raids, with far more operations against them for not wearing jilbabs than against men for not attending Friday prayer. Moreover, there is no tradition in Aceh of wearing the jilbab, and one does not have to go too far off the main road in parts of Aceh to find it nowhere in evidence. A woman said: "If I don't wear the jilbab, that should be between me and my God – not me and the WH".⁴⁷

In their zeal to prevent *khalwat*, the WH recently insisted that couples going to a rock music concert separate on entrance to the concert grounds, with young men on one side of a screen and young women on the other. They also insisted that the singers, from Jakarta, cover their heads. After 30,000 fans showed up, the barriers broke down and the couples reunited.⁴⁸

Widespread complaints against the WH led the provincial *Shari'a* office to require more rigorous qualifications for recruits: graduation from an Islamic law faculty, a regular

law faculty or at least seven years of *pesantren* (Islamic boarding school) education. Recruits also must be able to recite a specified number of Koranic verses and write in Arabic script, and as before, meet the qualifications to be an imam.

Setting the bar somewhat higher for recruits will not solve the problem, however, because there are two innate difficulties with the WH that will not go away with improved training. One is that the division of labour between the WH, the police and the public order office remains unclear. Provincial police whom Crisis Group interviewed see the WH as encroaching on their own role as law enforcers and do not want them to be given additional powers. They are ambivalent about the desirability of a separate enforcement agency for *Shari'a* at all but at the same time are reluctant to take on the task themselves. They already feel overburdened and have enough trouble enforcing the criminal code without taking on *Shari'a* ordinances.

WH officials, however, believe their authority should be increased, and in all likelihood it will be. One proposed revision is to give the WH, not the police, authority to investigate violations of *ta'zir* regulations. In the final version of the Aceh government law that the Indonesian parliament passed in mid-July 2006, responsibility for investigating *Shari'a* violations rests with the police and civilian investigators (*penyidik pegawai negeri sipil*). This suggests the WH will be recognized as civil servants, with a formal status as investigators similar to that of customs agents.⁴⁹ The head of the Banda Aceh WH would like to have full powers of arrest, search and seizure as well.⁵⁰ The legal dualism resulting from the WH's creation will not be comfortably resolved any time soon.

The second problem is that the WH's existence encourages citizens to report their friends and neighbours for suspected breaches of moral behaviour. Local newspapers carry ever more stories of the WH finding an unmarried couple walking along the beach or in a parked car thanks to "reports from the public." Not only does this give a new status to the local gossip, but it leads to a kind of religious vigilantism, with conservative Muslim groups taking enforcement into their own hands. On 4 June 2006, in the district of Aceh Besar, for example, a group of youths calling themselves the Anti-Vice Team (Tim Anti-Maksiat, TAM) found a couple in a parked car while patrolling at night on Lhoknga beach, not far from Banda Aceh. They "arrested" them, took them to a nearby mosque and called the WH. It was apparently the third time that TAM had

⁴⁵ "Lagi Tim Terpadu Tertibkan Salon Kecantikan", *Serambi*, 21 February 2006.

⁴⁶ Notes of incident made available to Crisis Group by workshop participants, and Crisis Group interviews, Banda Aceh, June 2006.

⁴⁷ Crisis Group interview, Banda Aceh, 18 June 2006.

⁴⁸ Nur Raihan, "Syariat Islam di Aceh, Menuju Islam Yang Kaffah", *detik.com*, 20 March 2006.

⁴⁹ Law on Aceh Government, Chapter 18 on *Shari'a* Courts, Article 129.

⁵⁰ Crisis Group interview, Banda Aceh, 18 June 2006.

carried out an “arrest”; they did it, they said, to show how serious they were about upholding *Shari’a*.⁵¹

B. PUNISHMENTS

All three criminal regulations are punishable by caning or fines. While many consider caning by definition a human rights violation, it tends to be viewed in Aceh as a punishment that is quickly over with, avoids detention and is designed to cause more shame than pain.⁵² The interesting question is how it came to be adopted as a punishment in Aceh and what it suggests about how punishments for more serious crimes will be determined as implementation of *Shari’a* expands.

At the outset, despite the 1999 law, the provincial government was constrained by national legislation in terms of the penalties it could impose. According to the regional autonomy law, also passed in 1999, violators of provincial or district regulations could not be detained more than three months or fined more than Rp.5,000,000 [then \$630].⁵³ There was no scope for applying penalties other than imprisonment or fines. If *Shari’a* was to be applied fully, local scholars argued, the restrictions in the autonomy law were an obstacle.⁵⁴

The 2001 special autonomy law gave more latitude to the provincial parliament, and on 4 March 2003, the Supreme Court in Jakarta ruled that the new *Shari’a* courts in Aceh could adjudicate *Shari’a* violations, based on local regulations and impose punishments.⁵⁵

Once it was determined that the first three offences to become the subject of *Shari’a* regulations would be alcohol consumption, gambling and *khalwat* (illicit relations), the task was to find the punishment to fit the crime. Legislators left it to religious scholars to comb books on *fiqih* (jurisprudence), for ideas. There was no question of using standard criminal penalties; if criminal offences were to be drawn from *fiqih*, then so were punishments.

Gambling and *khalwat* are *ta’zir* offences, that is by definition ones for which the Koran and *hadith* specify no specific punishment. This gave some latitude to the legal

drafters. But alcohol consumption is a *hudud* offence, for which the Koran specifies 40 lashes, and Acehnese scholars believed that if they were to apply Islamic law correctly, there was no way around this. The decision to apply Koranic punishments literally was not a throwback to some putative historical tradition of the Acehnese sultanate: its advocates readily admitted that they had never been used in Aceh.⁵⁶ To the extent there was creative thinking, it was about how to make caning acceptable.

Before the laws were passed, a delegation of *Shari’a* court judges and *ulama* took study tours to countries where caning was practiced: Malaysia, Singapore, Pakistan and Iran. A judge who went to the first three said the aim was to find a method that was consistent with Acehnese norms and values. They ruled out the Pakistani practice of whipping the offender with a rope as particularly painful. They found the Malaysian and Singaporean practice “sadistic” because of the size of the *rattan* and the force with which it was used.

Because the Acehnese drafters wanted to use caning primarily for public humiliation, they inserted a requirement that it be carried out in public at an announced time and in a place where many people could see; in practice, this has turned out to be after Friday prayers at a prominent mosque. The *rattan* used was deliberately specified to be smaller than that in Malaysia and Singapore: a meter long but not more than three-quarters to one centimetre in diameter. Men and women both wear thin white clothing, and the lashes strike the back between the shoulders and the waist. The caner must keep his arm parallel to the ground; his arm is not to be raised so that the armpit is visible, and drawing blood is prohibited. A doctor must be present both to certify that the offender can withstand the punishment and to stop it if it turns out he or she cannot.

The person who inflicts the caning is drawn from the WH and is usually from outside the immediate area of the offence. To hide his identity as a safeguard against revenge, the caner wears a hooded robe, orange or lime green. A Muslim preacher or scholar first gives a short sermon to the offender and the assembled throng. The canings have become public spectacles, with those arrested, especially when they are young men caught for alcohol consumption or gambling, waving to the crowd before and after and treating the process as a test of strength and fitness rather than as a public humiliation. Men are caned standing; women are seated, and pregnant women can only be caned two months after giving birth.

Once the *hudud* penalty of 40 lashes for alcohol consumption was established, punishments for the *ta’zir* offences were drawn up: between six and twelve lashes for gamblers and a fine of Rp.35,000,000 (\$3,900) for establishments or individuals who allow gambling to take

⁵¹ “Sepasang Remaja ditangkap di Lhoknga”, *Serambi*, 5 June 2006.

⁵² Crisis Group interviews, Dinas Syariat officials, Banda Aceh, Bireun and Sigli, June 2006.

⁵³ Article 71, Law No. 22/1999 on regional autonomy. Figures denoted in dollars (\$) in this report refer to U.S. dollars.

⁵⁴ Al-Yasa’ Abubakar, op. cit., p. 47.

⁵⁵ In any case, revisions to the regional autonomy law in 2004 were far more flexible: violations of local regulations could incur penalties of six months in prison or up to Rp.50,000,000 (\$5,500) or other penalties “in accordance with other legislation”, Article 143 of Law No. 32/2004.

⁵⁶ Al Yasa’ Abubakar, op. cit., p. 262.

place on their premises. The punishment for a couple guilty of *khalwat* was set at between three and nine lashes and/or a fine from Rp.2.5 million to Rp.10 million (\$275 to \$1,100). Those who knowingly provide facilities for offending couples can be imprisoned for between two months and six months or fined. Caning also has begun to be applied to those who do not attend Friday prayers (three lashes) in accordance with *Qanun* 11.

The laws went into force in 2005 after two years of preparing and educating the public. The first caning took place in Bireuen in August 2005; by December, 119 individuals from across the province had been convicted, most for gambling.⁵⁷ From the start, the canings have been controversial, not because of the corporal punishment – if anything, that aspect has been highly popular – but because those arrested have been overwhelmingly “little people”, men playing cards for stakes of a few thousand rupiahs (less than \$1). Why, many asked, were police-protected gambling rings not touched, let alone the big corruptors?

The answer from Acehese officials was twofold. First, the concept of applying Islamic law gradually was to start with offences where people are usually caught red-handed and that would be easy to prosecute, punish and use as moral examples. The idea was to start with little people and gradually work up.⁵⁸ More influential people are gradually getting caught: Lhokseumawe witnessed the first case of a member of a district council caught for *khalwat*.

If more serious cases are prosecuted, the punishments will have to be heavier, and simply increasing the lashes will not work. “No one would want someone who had embezzled billions to be given 100 lashes and then sent home,” said one official.⁵⁹ But once the subject of serious crimes is broached, the problem of legal dualism becomes more acute. Will the local parliament be tasked with drafting new regulations and determining new Islamic punishments for serious offences? Are the *Shari’a* courts prepared to try cases where complex evidence has to be presented? What if the public demands the death penalty for corruptors? What is the ultimate future of the Indonesian criminal code, and perhaps more importantly, criminal procedure code, in Aceh, if *Shari’a* is to be gradually extended?

⁵⁷ Statistics from the provincial *Shari’a* office for 2005 show 75 convictions for gambling, eighteen for sale or consumption of alcoholic beverages and eight for *khalwat*. Most cases came from six districts or municipalities: Kutacane, South East Aceh (23); Kualasimpang, Tamiang (twelve); Langsa (ten); Takengon, Bener Meriah (nineteen); Bireuen (eleven); and Banda Aceh (eleven).

⁵⁸ Crisis Group interview, Haji Waled Nu, MPU-Pidie member, June 2006.

⁵⁹ Crisis Group interview, Al-yasa’ Abubakar, head of Banda Aceh *Shari’a* Office, June 2006.

V. *SHARI’A* EXPANSION

The widening of *Shari’a* law has taken on a life of its own for several reasons: a base of legislation is in place from which to expand; a religious bureaucracy exists with an interest in extending its own authority; and so far, it is politically popular, at a time when local officials are elected by direct vote.

A. UNDERSTANDING THE DYNAMICS OF EXPANSION

Rather than move towards expanding the number of offences covered by provincial regulations, Aceh’s legislators have decided first to revise and expand the existing *qanun* on alcohol, gambling and *khalwat*. The drafts make clear there will be more use of caning and greater powers for the WH and also more crimes associated with these three offences. The most problematic is the inclusion of *zina* (adultery) and rape in the expanded *khalwat* regulation.

1. More caning

The existing *qanun* mandates 40 lashes for anyone found consuming alcohol but fines or imprisonment for producing, selling, distributing or promoting it, or assisting in the same. Fines or imprisonment are also mandated for anyone who gives a permit to a hotel or other establishment to serve liquor.

In February 2006, however, the *Shari’a* courts heard the first appeal filed in a *khamar* case. It involved a 21-year-old villager found selling alcohol in Tamiang in September 2005. He readily admitted his guilt and was fined Rp.30 million (about \$3,300). Although it was near the low end of the range mandated in the law (Rp.25 million to Rp.75 million), it was still an enormous sum. He appealed on the basis that he could not pay and asked to be caned instead. The court ruled that the court of first instance had correctly applied the penalty and rejected the appeal.⁶⁰

But perhaps because of the attention to this case, the proposed revisions to the law now include caning as an option for Muslim offenders. Any Muslim found producing, selling or distributing liquor can be sentenced to between twenty and 40 lashes, or fined between Rp.20 and Rp.40 million, or sentenced to between 40 and 80 months in prison. If the accused cannot pay a fine, his or her possessions can be seized, and if there are no goods to seize, caning or imprisonment can be substituted. Non-

⁶⁰ Crisis Group examination of legal documents at *Shari’a* court, Banda Aceh, 19 June 2006.

Muslims cannot be caned: they face a maximum of six months imprisonment for the same offence or a fine of between Rp.15 and Rp.30 million.⁶¹

The proposed revisions also distinguish between Muslims and non-Muslims in terms of penalties for providing facilities for alcohol-related offences. Muslims can be sentenced to between ten and twenty lashes, fined between Rp.10 million and Rp.20 million or imprisoned for between twenty and 40 months. Non-Muslims face a maximum imprisonment of six months or the same fines. Similar distinctions run through all the proposed revisions, raising serious questions about the principle of equality under the law.

The option of heavy sentences as an alternative to caning for Muslims seems to steer the prosecutor, and perhaps the accused, toward the latter. One argument, in addition to shame for the offender and education for the public, that *Shari'a* officials use to promote caning is that it is much cheaper than locking up and feeding someone over an extended period of time. (An academic in Aceh questioned this proposition: the expenses in holding a public caning may be one-off, he said, but they are not inconsequential. The construction of the platform, sometimes renting a tent or canopy, payments to the cleric who gives the sermon, payment to the WH member who carries out the caning, security and other expenses can quickly mount up.)⁶²

2. Greater powers for the WH

According to the original *qanuns*, after a WH member has repeatedly warned an offender, he or she must report the case to the police if it is to go any further; investigations are then carried out by the police, or in some cases by civil servants who have been specially authorised to investigate *Shari'a* offences.

The proposed revisions would spell out the role of the WH in greater detail, giving it far more authority to investigate on the order of the police, and if an offender is caught in the act, to arrest, search or confiscate as needed. WH members who already have civil servant status can go a step further and, supervised by the police, take depositions, which are then to be turned over to the public prosecutor's office. They can also take fingerprints and photographs, summon and investigate witnesses and become in effect full substitutes for the police.⁶³ Neither the police nor rights advocacy groups are likely to be happy with the proposed

changes. It will be a test of strength for the religious bureaucracy to get them adopted.

At the moment, there is no effective mechanism for complaining against the WH, and no prospect of one in the near future.

3. Revisions to the *Khalwat* regulation

The most far-reaching revisions have been proposed for the *khalwat* regulation. The original *qanun* prohibiting illicit relations was designed in part as a preventive measure, to stop erring couples before they committed the much more serious crime of *zina* (adultery), a *hudud* offence that carries a penalty of death by stoning.

The proposed revisions deal with *khalwat* and three crimes not previously covered by *Shari'a* in Aceh:

- ❑ *ikhtilath*, actions involving a male and female which properly should take place only between husband and wife, such as holding hands, kissing, hugging, sleeping together or not covering the body properly in front of the opposite sex;
- ❑ *zina*, consensual sexual relations between a man and a woman not his wife; and
- ❑ rape, defined as a man's forcible sexual penetration of a woman other than his wife.

Punishments are heavier in the proposed revisions than in the original law. For *khalwat*, caning, which is now three to nine lashes, would be raised to five to ten lashes and, again, be an option only for Muslims. *Ikhtilath* would draw between ten and twenty lashes. Minors caught in either act could not be caned (there are no prohibitions against caning of minors in the current regulations, although none has occurred).

Zina is a *hudud* crime, for which the Koran (Chapter 24:2) mandates 100 lashes. Traditional Islamic law requires four adult eye-witnesses to the act, in the absence of other proof. The revised *qanun* would include a provision for such testimony, but a confession of one of the accused would also be acceptable.⁶⁴

Anyone accused of *khalwat* or *ikhtilath* could claim he or she was forced into the act, and if proven, the penalties for

⁶¹ "Usulan Perbaikan dan Perubahan," 15 February 2006, suggestions from an NGO coalition in Aceh for changes and improvements to the proposed revisions.

⁶² Crisis Group interview, Banda Aceh, 19 June 2006.

⁶³ Proposed revisions, Chapter V, Articles 16-18.

⁶⁴ A confession implicates only the person confessing, not his or her partner. There is another interesting provision in the proposed changes: a husband or wife who sees his or her spouse commit *khalwat*, *ikhtilath* or *zina* but who has no other proof can swear an oath in front of a judge, using the name of Allah five times. If the accused spouse does not confess, he or she will have to swear a similar oath of innocence. If they both swear accordingly, neither will be punished but the marriage will be permanently dissolved.

the other accused would be doubled. The standards of evidence are to be those set out in the standard criminal procedure code and the determination of the judge “in the spirit of protecting the reputation and good name of a person as stated in Islamic law”. If the case is unproven, the accuser would be caned, as a *khalwat* offender.

A woman who confesses that she was forced to commit *zina* could accuse the man of rape. The accusation would have to be submitted to an investigator, together with a full statement and preliminary evidence to support her claim. If the claim is proven, the rapist would receive twice the normal penalty for *zina*, 200 lashes. The judge is to have discretion to substitute a fine or imprisonment for all or part of the caning. One lash is the equivalent of two months in prison or a fine of Rp.1 million (\$110).⁶⁵ If the claim is not proven, the woman would become guilty of a *hudud* crime – making a false accusation of rape – and draw 80 lashes as a punishment. If the accusation of rape is not proven but it is clear some form of intimate relations took place, *ikhthilath* or *zina*, both parties would receive the designated penalty.

These proposed changes are highly disadvantageous to rape victims – suggesting the woman is guilty of illicit sex unless proven otherwise.⁶⁶

B. PROPOSALS FOR NEW QANUN

Al-Yasa’ Abubakar, the head of the *Shari’a* office in Banda Aceh, stresses that while the aim is to apply Islamic law in full (*kaffah*), the process has to be slow and deliberate. No one is rushing to push laws through: no new *Shari’a*-based *qanuns* were passed in 2004 or 2005, and revisions to the existing *qanun* are to take precedence over introduction of new ones. That said, there is public pressure to apply *Shari’a* to corruption, theft and murder, and his office is working on “concepts” for extending it to these crimes. Theft is a *hudud* crime, the specified punishment for which is amputation of the hand. Abubakar said that one could not apply *Shari’a* to theft without including amputation as the penalty, but that did not mean it would ever be applied. He doubted that most Acehnese would support such a punishment.

Murder is different, he said. The idea of blood payments to victims has already been introduced by former Vice Governor Azwar Abu Bakar as a form of reconciliation after the conflict.⁶⁷ If families were willing to accept

payments from the perpetrator in exchange for forgiveness, not only would reconciliation be furthered, but the prison population could be kept down. If the families refused payment, the punishment would be death.⁶⁸

In addition to codifying more crimes, other “concepts” are on the table, such as a proposal to segregate boys and girls in elementary and high school classes. “This is not the Aceh I know”, an Acehnese police official concerned about the change said.⁶⁹ He and other religious scholars acknowledge the inherent problems of trying to apply *Shari’a* in stages. Ideally, they say, all criminal law would be codified in a single *qanun*, covering *hudud*, *ta’zir* and *qishash-diyat* (murder and assault), with Islamic criminal procedure codified in a second, but no one in Aceh has the resources or time to do this.⁷⁰

In the meantime, districts are going ahead and issuing their own regulations that sometimes take the basic laws on the books at the provincial level and go a step further. In Bireuen, a district regulation banning all private and public transport on state roads during Friday prayers went into force in June 2006 and threatened to disrupt Medan-Aceh commerce.⁷¹ In Takengon, a regulation prohibits women from going out after 10 p.m. without their *muhrim* (husband or immediate male relative); if they do, they are liable to prosecution under the *khalwat qanun*.⁷²

⁶⁵ Article 36 of proposed revision.

⁶⁶ For how similar legislation affected women in Pakistan, see “Double Jeopardy: Police Abuse of Women in Pakistan”, Human Rights Watch, 1992.

⁶⁷ See Crisis Group Briefing, *Aceh: Now for the Hard Part*, op. cit.

⁶⁸ Crisis Group interview, Al-Yasa’ Abubakar, 19 June 2006.

⁶⁹ Crisis Group interview, Banda Aceh Polda, 15 June 2006.

⁷⁰ Al-Yasa’ Abubakar, op. cit., p. 201

⁷¹ “Bireuen Lumpuh”, *Waspada*, 17 June 2006. The regulation in question is *Qanun* 11/2004.

⁷² Dewi Nova, Andy Yentriyani and Ismail Hasan, “Draft Kertas Kebijakan Materi Dialog Kebijakan Komnas Perempuan tentang Pelaksanaan Syariat Islam di Aceh”, 14 October 2005, p.25.

VI. CONCLUSION

Acehnese officials responsible for implementing *Shari'a* deeply believe that if standards of morality are restored and Acehnese become better Muslims, achieving other goals like peace, reconstruction and reconciliation will be easier. They believe both that failure to uphold *Shari'a* in the past led Acehnese to conflict and that the conflict itself produced a wide range of social ills that stricter adherence to Islam can help cure. They consider as well that Aceh can find a way of implementing *Shari'a* that responds to Acehnese needs and values.

But there are other dynamics at work. The focus on morality seems to have become an end in itself, with the zeal evident in the WH encouraging anti-vice vigilantism. The tendency for the religious bureaucracy is to grow and to demand more money from the state budget, meaning its tasks have to expand accordingly. The WH in Banda Aceh have already grown from thirteen members to 33 in one year.

As the bureaucracy expands, it will turn more and more to graduates of the ar-Raniry State Islamic Institute in Banda Aceh. That college has generally been a force for moderation, but organisations like Hizb-ut-Tahrir appear to be growing there and on other Acehnese campuses. If an older generation's sense of Acehnese values has served to mitigate the harsher aspects of caning, it is not clear whether a younger generation, more influenced by "globalised" Islam, will have the same compunctions.

Setting up the religious infrastructure is not simple. The police in Aceh are not happy either being tasked to enforce *Shari'a* or to see their authority ceded to the WH. Donors may be unwilling to continue funding police reform in Aceh if the WH will be playing a more active role.

The effectiveness of the public shaming aspect of *Shari'a* is also a question, although it is probably too early for any definitive conclusions. Religious officials say gambling has dropped substantially since caning was introduced but all gamblers caught were playing for very low stakes, and there have already been some recidivists, caned for a second time.

The sense is high in Aceh that women and the poor are the primary target of *Shari'a* enforcement, even as support for expanding *Shari'a* seems to remain strong, particularly in rural areas. A senior GAM official said *Shari'a* poses a real dilemma for the leadership: It has no interest in the issue but it is of critical importance for its base. The leaders have to factor this in, particularly as local elections approach.

As other areas of Indonesia turn to Aceh to see how *Shari'a* is working, they should look closely at these dynamics. But for many *Shari'a* advocates, bureaucratic confusion, effectiveness and even justice are secondary matters. The only issue is whether man's law or God's will prevail.

Jakarta/Brussels, 31 July 2006

APPENDIX A

MAP OF INDONESIA



Base 802898AI (C00429) 11-02

Courtesy of The General Libraries, The University of Texas at Austin

APPENDIX B

GLOSSARY OF TERMS

<i>adat</i>	traditional customary practices.
<i>aurat</i>	parts of the body that must be covered according to Islamic law; for men, the knee to navel; for women, the entire body save for the hands, feet, and face.
<i>daerah istimewa</i>	special region, designation accorded Aceh in 1959.
<i>daerah operasi militer (DOM)</i>	military operations area, Aceh so designated 1990-98.
<i>Dakwah</i>	from the Arabic for “call”, religious outreach and proselytisation.
Dinas Syariat	provincial Islamic law (<i>Shari’a</i>) office.
<i>fiqh</i>	Islamic jurisprudence.
<i>Gerakan Aceh Merdeka (GAM)</i>	Free Aceh Movement.
<i>hadith</i>	traditions of the Prophet, a major source of Islamic law.
<i>hudud</i>	criminal offences for which a penalty is specified in the Koran.
<i>ijtihad</i>	new interpretation, one source of Islamic law.
<i>ikhhtilath</i>	actions involving a male and female which properly should take place only between husband and wife.
<i>jilbab</i>	headscarf worn by Muslim women.
<i>jinayat</i>	criminal offences.
<i>kafir</i>	impious person.
<i>khalwat</i>	illicit relations between men and women.
<i>khamar</i>	alcoholic beverages forbidden under Islamic law.
<i>mahkamah syariah</i>	courts adjudicating questions of Islamic law (<i>Shari’a</i>).
<i>maisir</i>	gambling.
Majelis Permusyawaratan Ulama (MPU)	Consultative Council of Ulama, an advisory body to the local legislature in Aceh.
Majelis Ulama Indonesia (MUI)	Indonesian Ulama Council, an advisory body established by the Soeharto government.
<i>mualamat</i>	economic transactions.
<i>muhtasib, pl. muhtasib I</i>	officials formally tasked with upholding Islamic law.
<i>Nanggroe Aceh Darussalam (NAD)</i>	former autonomous region of Aceh.
<i>pengadilan agama</i>	religious courts.
<i>perda</i>	acronym for <i>peraturan daerah</i> , local regulation.
<i>qadi</i>	Islamic judge.
<i>qanun</i>	provincial regulation in Aceh (<i>perda</i> elsewhere in Indonesia).

<i>qishash-diyat</i>	offences of murder and assault and blood payments for them.
<i>Shari'a</i>	Islamic law (<i>syariah</i> in Indonesian transliteration).
<i>ta'zir</i>	offences under Islamic law for which no penalty is specified.
<i>ulama</i>	religious scholar (in Indonesia, the word is used as both singular and plural; the Arabic singular is 'alim).
<i>uleebelang</i>	aristocrats in Aceh.
<i>wilayatul hisbah (WH)</i>	religious police.
<i>zakat</i>	alms.
<i>zina</i>	adultery.

APPENDIX C

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