

The implementation of sharia bylaws and its negative social outcome for Indonesian women

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Abstract

The formalisation of sharia law has been the subject of wide-ranging debate in Indonesia, also internationally. This is because this idea has significant implications, politically and socially, not only for Muslims, but also for women and other followers of other religions who live in Indonesia. It is important to note that there are 78 sharia bylaws which have already been ratified by regional authorities. And more than 52 cities and regencies have applied these regulations at the regional level. Some analysts argue that the implementation of sharia bylaws reflects on the fact that the majority of the Indonesian population needs morality and public order which will be beneficial for improving their lives. However, others rebut this argument by pointing to the fact that the enactment of sharia laws will discriminate and trigger violence against women. This paper will examine the implementation of sharia bylaws and its impacts on Indonesian women. This paper will argue that the implementation of sharia laws have negative impacts on Indonesian women because it has caused negative social outcome for women and women is the most vulnerable from this policy. Formalisasi hukum syariah atau penerapan perda Syariah telah menjadi topik yang menarik debat hangat di Indonesia, juga secara internasional. Hal ini

karena kebijakan dan ide ini mempunyai dampak yang sangat serius –secara politik dan sosial–tidak hanya untuk kalangan Muslim, tapi juga untuk perempuan dan pemeluk agama lain di Indonesia. Penerapan perda Syariah hingga saat ini masih terus berjalan dan ada 78 Perda Syariah yang sudah diratifikasi oleh pemerintah lokal. Selain, lebih dari 52 kota dan kabupaten yang telah menerapkan Perda Syariah ini. Sebagian kalangan berargumen bahwa penerapan Perda Syariah adalah hal yang wajar karena mayoritas penduduk Indonesia adalah Muslim dan mereka membutuhkan aturan publik dan moralitas untuk kehidupan mereka. Namun, sebagian berpendapat bahwa menolak argumen tersebut dengan memberikan fakta bahwa perda Syariah akan mendiskriminasi dan memicu kekerasan terhadap perempuan. Artikel ini akan berargumen bahwa penerapan Perda Syariah memberikan dampak negatif terhadap perempuan karena ini mengakibatkan dampak sosial yang buruk terhadap perempuan dan perempuan menjadi pihak yang paling rentan menderita dari kebijakan ini.

Keywords: *Sharia bylaws; Discrimination; Violence; Women*

Introduction

The formalisation of sharia law has been the subject of wide-ranging debate in Indonesia, also internationally. This is because this idea has significant implications, politically and socially, not only for Muslims, but also for women and other followers of other religions who live in Indonesia. Although the majority of Indonesians are Muslims, sharia law has not been implemented formally in many regions in Indonesia. However, since the fall of President Soeharto and the New Order in 1998, Indonesia has transitioned from an authoritarian regime to a democracy and undergone decentralization. Since that time, local governments have used their authority to create regional religious regulations (sharia bylaws) that regulate religious norms.¹ Many regional authorities and proponents of

¹ Melissa Crouch, “Religious Regulations in Indonesia: Failing Vulnerable Groups”, *Review of Indonesian and Malaysian Affairs*, vol. 43, no. 2, (2009), 53.

sharia bylaws use the *Reformasi* era to formalize sharia Islam at the state level. Besides that, Islamist groups in Indonesia also use the *Reformasi* era to struggle for 'anti-pornography' bill which had been passed on 30 October 2008.²

It is important to note that there are 78 sharia bylaws which have already been ratified by regional authorities. And more than 52 cities and regencies have applied these regulations at the regional level.³ In general, these sharia bylaws are concerned with three broad sets of issues: firstly, public order and social problems such as prostitution, consumption of alcohol and gambling. Secondly, religious skills and obligations, such as reading the Qur'an, paying *zakat* (alms or religious tax), and attending Friday prayers. Thirdly, religious symbolism here is the wearing of Muslim clothing for women.⁴ As Robin Bush writes, these sharia bylaws attract significant attention from politicians, public figures, and intellectuals. This is because they raise a number of issues, including constitutional issues, discrimination (many of women and non Muslim felt threatened about sharia bylaws), and governance.⁵

Some analysts argue that the implementation of sharia bylaws reflects on the fact that the majority of the Indonesian population needs morality and public order which will be beneficial for improving their lives. However, others rebut this argument by pointing to the fact that the enactment of sharia laws will discriminate and trigger violence against

² J.C.H. Lee, "Mobilizing for Social Change in Muslim Societies Amidst Political Turmoil and Conservatism", *Development*, vol. 52, no. 2, (2009), 243.

³ Robin Bush, "Regional Sharia Regulations in Indonesia: Anomaly or Symptom?", in G. Fealy and S. White (eds.), *Expressing Islam: Religious Life and Politics in Indonesia*, Singapore: Institute of Southeast Asian Studies, 2008, 176.

⁴ Arskal Salim, 'Muslim Politics in Indonesia's Democratisation: The Religious Majority and the Rights of Minorities in the Post-New Order Era', in R.H. McLeod and A. MacIntyre (eds.), *Indonesia: Democracy and the Promise of Good Governance*, Singapore: Institute of Southeast Asian Studies, 2007, 126

⁵ Robin Bush, 'Regional Sharia Regulations ...', 175.

women. This paper will examine the implementation of sharia bylaws and its impacts on Indonesian women. I will argue that the implementation of sharia laws have negative impacts on Indonesian women. This paper consists of three parts. The first part examines the background of the emergence of sharia bylaws. The second part assesses impacts of sharia bylaws on Indonesian women. The third part reveals women's responses toward the implementation of sharia bylaws.

The background of the emergence of sharia bylaws

The process of democratization and regional autonomy which has taken place since the fall of the Soeharto regime has had positive and negative effects for Indonesia. The fall of Soeharto opened many opportunities for Indonesia to reform its political system to be more democratic. The event also rebalanced the power of the central government, which often treated regions as a government branch with no real authority. On the one hand, regulating decentralization through regional autonomy made the government more effective, efficient, and democratic. On the other hand, the creation and implementation of 'Islamic Sharia' regional bylaws (*Perda Syariah Islam*) in many regions has been one of the 'negative effects' in the country which constitutionally declares itself as a religiously neutral state. This can be seen as an example of Islamic radical groups in Indonesia using democratic processes for an undemocratic purpose.

In this respect, the regional religious regulations or sharia bylaws actually emerged as a response to the regional autonomy law which was passed in 1999. Under this new regulation, local governments at the district level have authority to issue their own regulations. And the central government cannot intervene in local administration.⁶ In fact, regional

⁶ Luthfi Assyaukanie, "The Rise of Religious Bylaws in Indonesia", *RSIS Commentaries*, 22 (2007), 1.

autonomy may succeed if it can achieve two outcomes. Firstly, its implementation is followed seriously by improving the government's bureaucracy. This is important to emphasize government services. Secondly, regional autonomy should create a governance finance that is oriented for people needs.⁷

The enactment of the Decentralized Law in January 2001 represents a fundamental change in the relationship between and position of the central and local governments. But there are many weaknesses in its implementation. This is because the law itself does not make clear how it should be implemented, leaving the relationship between central government and the regions ambiguous. Besides that, the Decentralization Law was labeled as contradictory, inadequate, and flawed.⁸ Another weakness was that the central government only provided for relatively few checks and balances relevant to the passing of sharia bylaws. The enormous power which was given by the central government to local authorities has gone too far, leaving room for the creation of unimportant laws. Ironically, some of the regulations from regions are about religious matters which are actually still under control of central government. Due to the laziness of the central government to properly address this issue, these laws continue to operate.⁹

The emergence of sharia bylaws in many Indonesian regions can also be seen as a new form of the sharia Islam movement in Indonesia. This kind of movement emerged after the failure of the formalization of sharia Islam at a national level. In 2002, the struggle of the implementation of sharia Islam at the central level has experienced a considerable setback. During deliberations on the process of amending the 1945 constitution,

⁷ Siti Musdah Mulia, "Perda Syariat and Peminggiran Perempuan", *Tashwinul Afkar*, 20 (2006), 23.

⁸ Melissa Crouch, "Religious Regulations"..., 55-56.

⁹ Melissa Crouch, "Religious Regulations"..., 55.

the People's Consultative Assembly (MPR) rejected a proposal to insert the Jakarta Charter into the Constitution. The Jakarta Charter is an old constitutional amendment which recognised the obligation of Muslims to implement the sharia in the country. The main factor behind this failure was a lack of supporters from mainstream political parties. There were only two small Islamic parties (the United Development Party and the Crescent Star Party) which supported the proposal. In contrast, the nationalist parties in parliament and major Islamic organizations such as Nahdhatul Ulama' (NU) and Muhammadiyah opposed idea.¹⁰ As a result, there is little prospect Sharia Islam could ever be formalised at the state level.

It is important to note that though the struggle of the formalization of sharia Islam in national level ended in failure, the proponents of sharia Islam still carry on with their cause. In fact, they use local (provincial and district) parliaments, along with the introduction of autonomy packages and direct elections as the strategic way to formalize sharia Islam. This has resulted in the enactment of sharia bylaws (*Perda syari'ah*) in dozens of provinces and districts throughout Indonesia.¹¹ Some national magazines in Indonesia such as *Gatra* and *Tempo* reported that the supporters of sharia are pursuing a strategy of controlling districts before spreading sharia to provincial and national levels. This strategy is described as "from village to city" and promoting sharia through the slow lane.¹² Clearly, the struggle to formalize sharia Islam remains alive.

¹⁰ Luthfi Assyaukanie, "The Rise of Religious Bylaws" ..., 1.

¹¹ Noorhaidi Hasan, "Islamic Militancy, Shari'a Bylaws, and Democratic Consolidation in Post-Suharto Indonesia", *KULTUR: The Indonesian Journal for Muslim Cultures*, vol. 4, no. 2 (2009), 40.

¹² Abubakar Eby Hara, "Pancasila and the Perda Syari'ah Debates in the Post-Suharto Era: Toward a New Political Consensus", in O. Atsushi et. al. (eds.), *Islam In Contention: Rethinking Islam and State in Indonesia*, Jakarta, Japan, Taiwan: The Wahid Institute, CSEAS, CAPAS, 2010, 47-48.

Moreover, the implementation of sharia Islam in Aceh has encouraged other regions in Indonesia to follow this success. After the central government allowed Aceh to implement sharia through a special autonomy law, other regions began to imitate Aceh by introducing regional regulations (*perda*), decrees (*keputusan*), instructions (*instruksi*), and circulars (*surat edaran*). And all of these laws contained Islamic injunctions.¹³ In this regard, it is widely known that Aceh has been the pivotal inspiration and pioneer of the implementation of the sharia bylaws in Indonesia. Advocates of sharia sought to imitate Aceh's example and insisted that the central government give them the same opportunity.¹⁴ Although the social, political and historical background of Aceh in implementing sharia bylaws is certainly different from other regions, advocates of sharia Islam thought that they deserved to have the same rights as Aceh.

The impacts of sharia bylaws on women

It has been asserted by the proponents of sharia bylaws that the formalizing of sharia Islam has produced positive impacts, including increased security, increased charitable contributions, donations and gifts, and improved levels of religious piety.¹⁵ However, as Moeslim Abdurrahman has said¹⁶, when a sharia bylaw is imposed, women, non-Muslims, and the poor will become the first victims of this regulation. This is because they have to follow a rigid interpretation of religious tenets which do not favor women and non-Muslims. The proponents of sharia bylaws mostly favor a patriarchal perspective which places Muslims as the first priority and ignoring the existence of non-Muslims. As a result, the willingness of

¹³ Arskal Salim, "Muslim Politics in Indonesia's Democratisation"..., 126.

¹⁴ Noorhaidi Hasan, "Islamic Militancy"..., 43.

¹⁵ Sukron Kamil, "Progressive Shari'a Perspectives of Non-Muslim Minority Rights", *KULTUR: The Indonesian Journal for Muslim Cultures*, vol. 4, no. 2 (2009), 135.

¹⁶ Moeslim Abdurrahman, "Korban Pertama dari Penerapan Syariat adalah Perempuan", www.islamlib.com, 16/9/2001, consulted 8 July 2011.

religious majority to impose the sharia bylaws on all Indonesians will negatively affect the rights of women.

In this regard, gender activists actually have been criticizing on the negative effects of power devolution which was represented by the nation's regional autonomy laws. They state that this new model of power will formalize traditional gender-biased attitudes towards women. The huge number of sharia bylaws which discriminate women will then prove this prediction. These sharia bylaws are commonly found in the provinces of Aceh, West Java, South Sulawesi, and West Sumatra. Such regulations typically oblige public servants and school children to wear Islamic dress; regulate restrictions on women's activities after dark unless accompanied by the husband or a male relative (*mahram*); allow the arbitrary arrest of any women who are suspected of sex engagement at work.¹⁷

Besides that, nowadays we can see elements of sharia which have penetrated other regional bylaws extensively. For example, in Pamekasan (East Java) women are required to wear the *jilbab* (veil) in public places such as schools and offices. In Gorontalo (North Sulawesi), women are not allowed to walk alone at midnight, and in Tangerang (Banten) women can be arrested because of suspicion of practicing prostitution if they are found in public places at night.¹⁸ These conditions clearly reverse social and political rights which were gained by women in the past decades. This is because women in Indonesia have actually made some success progress movements to enhance their rights and freedoms. Hence, sharia bylaws certainly have the potential to proliferate the notion of gender's discrimination.

¹⁷ Sally White & Maria Ulfa Anshor, "Islam and Gender in Contemporary Indonesia: Public Discourses on Duties, Rights and Morality", in G. Fealy and S. White (eds.), *Expressing Islam: Religious Life and Politics in Indonesia*, Singapore: Institute of Southeast Asian Studies, 2008, 151.

¹⁸ Manneke Budiman, "Treading the Path of the Shari'a: Indonesian Feminism at the Crossroads of Western Modernity and Islamism", *Journal of Indonesian Social Sciences and Humanities*, 1 (2008), 78.

Instead of protecting women's rights and implementing gender equality, many of the local leaders in Indonesia prefer to copy-paste sharia bylaws from other regions which are inspired by fundamental-scriptural interpretation of religion. In this regard, National Commission on Violence against Women (KOMNAS Perempuan) has reported that there are around 48 sharia bylaws which focus on regulating women. These sharia bylaws are mainly about: 1) regulations of how women should dress up in public places; and 2) regulations of how women should behave in public that includes the banning of women to enter the public places after 10:00 pm.¹⁹ Regulation of Kabupaten Bulukumba (South Sulawesi), for example, No. 04/2005 about *Muslimah* uniform which certainly discriminates against women. This is because it will limit the freedom of women to express their civil liberty. Another negative impact of such regulation for women is it will endanger their jobs if they refuse to obey the rule.²⁰

It should be noted that women become the main target of sharia bylaws in the regions which implement these regulations. This is because, within these laws, women are required to be responsible of the nation morality. In fact, religion is often used to allow restriction and segregation of women from public spaces.²¹ In 2005, there were many cases occurred in the implementation of sharia bylaws which were against women because of 'acts of indecency and immorality' and contravention of using the veil. Besides that, some regions also regulated sharia bylaws that restricted women activities in public places at night with the reason of protecting public morality.²²

¹⁹ Dewi Candraningrum, "Unquestioned Gender Lens in Contemporary Indonesian Shari'a-Ordinances (Perda Syari'ah)", *AlJami'ah*, vol. 45, no. 2 (2007), 298.

²⁰ Dewi Candraningrum, "Unquestioned Gender Lens...", 298-299.

²¹ Dewi Candraningrum, "Unquestioned Gender Lens"..., 295.

²² Susan Blackburn, "Indonesian Women and Political Islam", *Journal of Southeast Asian Studies*, vol. 39, no. 1 (February 2008), 98-99.

Interestingly, the research which was conducted by the Women Research Institute in 2005 concluded that women's rights were widely violated by sharia bylaws. This is because women's political agency has been restricted; conservative dress code has been forced; and the definition of prostitution has been monopolized by the rulers who are dominated by men. As a result, most sharia bylaws try to marginalise women from the public spheres and bring them to domestic spheres.²³

In this respect, research on "The implementation of Sharia Islam in regional autonomy era: its implications toward civil rights, women rights, and non-Muslim rights" that was conducted by CRCS (Center for the Study of Religion and Culture) UIN Jakarta also provides a useful insight into the reach and impact of sharia bylaws.²⁴ CRCS studied six regions of sharia bylaws that caused discrimination towards women rights. This research revealed that there were 17 % of the respondents who had ever imposed to wear the veil. While, 11,7 % of the respondents had heard about women who were harassed by cutting their hair because they were found not to wear the veil. This practice of harassment certainly contravened with the civil rights which should be implemented equally for all citizens. It also imposed the rigid interpretation of Islam which did not respect people with different opinions about wearing the veil.

Furthermore, it should be underlined that the formalisation of sharia bylaws in governing local administrations is only regulated in an artificial way. This is because the drafting process of syariah bylaws was often monopolized by fundamentalist groups which were only imposing religious sentiment rather than imposing the more substantial teaching of

²³ Saskia Wieringa, "Islamization in Indonesia: Women Activists' Discourses", *Signs*, vol. 32, no. 1, (Autumn 2006), 4.

²⁴ Sukron Kamil, et. al., *Syariah Islam dan HAM: Dampak Perda Syariah terhadap Kebebasan Sipil, Hak-hak Perempuan, dan Non-Muslim*, Jakarta: CRCS UIN Jakarta & KAS Jakarta, 2007, 182-183.

Islam such as combating authoritarianism and protecting women rights.²⁵ The prevailing feature of sharia bylaws that can be taken as one example is the obligation for women to wear the veil in public spaces. Instead of giving protection for women, the obligation often prefers to use the violence approach in implementing this law. For example, the act of harassing women such as pulling and cutting their hair is often experienced by women who are unveiled. Therefore, Aceh's local administration has obliged the moral police to ensure that women are wearing proper Muslim dress. In addition, these officers are responsible to deal with other social ills. The local government also claims that veiling women and banning them from going out of their houses at night are serious attempts to curtail prostitution and *zina* (promiscuity).²⁶

Similarly, some people in Bulukumba and Cianjur districts state that the implementation of sharia bylaws is only a symbol to show that the district is a religious area and is in good moral health. It is also a local government strategy to look like working seriously and to avoid solving serious problems such as corruption and poverty.²⁷ By considering the real fact, it can be said that the claim of local governments to protect women's rights is actually only a political movement which is difficult to believe.

Therefore, it is not a surprise that women in Aceh become objects of formalistic policies which are apparent in sharia bylaws by regulating women's dresses. We can see that there is a 'jilbab zone' area in Aceh which is located in the radius of Baiturrahman mosque in Banda Aceh.

²⁵ Musdah Mulia, *Islam and Violence against Women*, Jakarta: Institute of Religious and Gender Studies, 2006, 44-45.

²⁶ Siti Ruhaini Dzuhayatin, "Islamic Identity: A Women's Perspective", in F. Fianto *et al.* (eds.), *Islam & Universal Values: Islam's Contribution to the Construction of a Pluralistic World*, Jakarta: International Center for Islam and Pluralism, 2008, 53.

²⁷ Erwin Nur Rifah, "Contesting Women's Security and *Perda Syariah*: Have Indonesia's *Perda Syariah* Enhanced Women's Security?", *KULTUR: The Indonesian Journal for Muslim Cultures*, vol. 4, no. 2 (2009), 96.

Although out of the 'jilbab zone' the enforcement of sharia bylaws is less rigid, social pressure for women in other areas has grown bigger. As a result, in the name of sharia bylaws, most women in Aceh have been imposed with more restrictions and regulations which violate their rights.²⁸ Actually many people in Aceh are disappointed with the application of sharia bylaws because it does not touch the real problem of Aceh. Indeed, various social problems faced by the Acehnese such as security, poverty, injustices, violence against women, etc have been ignored by the local government. Then, the political dimension of sharia bylaws in Aceh which is dealing more with physical symbol and identities is too obvious. Consequently, Aceh people only gain politicization, symbolization, and control over women from sharia bylaws policy.²⁹ Their hope of justice and the end of violence among women which have occurred in long periods then cause disappointed feeling.

In the same manner, the regency of Temanggung, Central Java, has recently issued that the proper dress for women is one of important indicators of achieving good governance. As a consequence, all Muslim women in that area should adopt Muslim dress in government offices while non-Muslim women should be as covered as Muslim women. The tendency of using the veil as 'the public face' is prevailing in many regencies and provinces as a result of the emergence of the enactment of sharia bylaws. However, the regulation of women's dresses in practice often contradicts with the virtue of personal choice. Many NGO and Islamic women lead-

²⁸ Lily Zakiyah Munir hD Student at the University of Toronto, Ontario, Canada(IP), the University of Muhammadiyah Jakarta; "Gender, and Formal Sharia in Indonesia", Unpublished Article, 2003 www.lfip.org, consulted 9 July 2011: 13. hD Student at the University of Toronto, Ontario, Canada(IP), the University of Muhammadiyah Jakarta;

²⁹ Lily Zakiyah Munir, "Sharia and Justice for Women", Paper presented on 'Gender and Islam in Southeast Asia' to be held at Passau University, 29 September-30 October 2005, Germany, 3.

ers in Indonesia have actually been strongly opposed to this regulation.³⁰ This is because, as witnessed elsewhere, the veil issue has been largely used antagonistically to discriminate those who refuse to obey. If people have been forced to wear the veil although they are non Muslims, it also contravenes with the human rights.

It is important to note that there are several sharia bylaws that rule the limitation of women's access to economic, social, and educational activities after 10:00 pm. This regulation has been seen as violating working women's rights and restricted women's opportunities in enhancing their capabilities. According to Dewi Candraningrum,³¹ the examples of these sharia bylaws are: 1) District Regulation Sumatera Barat No. 11 Tahun 2001 about reducing and eradicating social illness; 2) Regulation City of Gresik No 7 Tahun 2002 about banning prostitution; 3) Regulation District Tangerang No. 8 Tahun 2005 about banning prostitution. Indeed, these sharia bylaws that deny women economic rights seem to be the setback of the socio-cultural construction. By issuing these sharia bylaws, men will become the sole breadwinner of the family and the control of women interests.

In addition, *perda* on Social Ills in Sumatra Barat, which contains an article about banning women from going out at night, implicitly associates women activities at night with prostitution. In fact, prostitution will not take place without men's participation. Hence, this sharia bylaw is certainly a setback in women's struggle for freedom and equal status. This regulation is also very strange because women in West Sumatra had been actively engaged in public spheres and now they are domesticated in the name of sharia bylaws.³²

³⁰ Siti Ruhaini Dzuhayatin, "Islamic Identity: A Women's Perspective", in F. Fianto *et. al.* (eds.), *Islam & Universal Values: Islam's Contribution to the Construction of a Pluralistic World*, Jakarta: International Center for Islam and Pluralism, 2008, 53.

³¹ Dewi Candraningrum, "Unquestioned Gender Lens"..., 300.

³² Lily Zakiyah Munir, "Islamic Fundamentalism"..., 6.

Perda of Gorontalo 10/2003 on Solving Social Problems takes a similar approach. This *perda* restricts women from going outside alone between 12.00 am and 4.00 am. They can walk outside if a male relative accompany them. Thus, the sharia bylaws have actually been felt negatively by vulnerable groups such as women because these rules indirectly trigger violence against women.³³ These sharia bylaws also place women as subjects which can be controlled by men. As a result, women lose their freedom and are more dependent to men for doing their activities at nights. These sharia bylaws have ignored women who live alone without husband or relative that are also commonly seen in Indonesia.

Meanwhile, the case of Lilis Lindawati from Tangerang who became the victim of the implementation of sharia bylaws should be discussed here to fully understand the impact of sharia bylaws on women. Tangerang's Local Regulation on the Prohibition of Prostitution No. 8/2005 asserts that police have an authority to arrest any women in public places whose attitudes seem suspicious that they are sex workers. Then, Lilis Lindawati was accused of practicing prostitution and jailed for three days. Other women unaccompanied at night had also been arrested and accused of practicing prostitution. Responding to this case, women's activists in Indonesia argue that the sharia bylaws not only harm women, but also have specially chosen women as their target. In fact, these laws also discriminate and oppress women as well as legalize violence against women.³⁴

As Arskal Salim stated,³⁵ arresting of women in Tangerang who were accused of practicing prostitution actually resulted in two serious prob-

³³ Melissa Crouch, 'Religious Regulations'..., 81-82.

³⁴ K. Andren, "Prostitution, Pornography, and Islamic Law: Women's NGO Confronting Islamic Conservatism in Post-Authoritarian Indonesia", Honours Thesis, Submitted at Discipline of Government and International Relations, The University of Sydney, 2007, 67-68.

³⁵ Arskal Salim, "Perda Berbasis Agama dan Perlindungan Konstitusional Penegakan HAM", *Jurnal Perempuan*, no. 60 (September 2008), 22-23.

lems. Firstly, the sharia bylaws have widened afraid and worried feeling for women who conduct activities outside their homes, especially at night times. Thus, these laws have blocked the rights of people, especially women, to apply for a job. Secondly, instead of protecting citizen's rights, the Tangerang government has issued injustice policy by accusing women as sex workers without valid proof. Tangerang's case has taken greater attention from national and international audiences because the local government regulated injustice rules which stimulate against women.

Violence against women, as the impact of the enactment of sharia bylaws, not only occurs in Tangerang and Aceh, but also occurs in other regions which implement sharia bylaws. Erwin Nur Rifah research about contesting women's security and Perda Syariah which have been applied in Cianjur and Bulukumba confirm this argument.³⁶ In both areas, the implementation of sharia bylaws does not improve power relations between men and women. In contrast, most government policies were made by men and ignored women's participation. As a result, all of the government policies have never given any room for women to be active and participate in the public spaces. The local government also made cooperation with militants or fundamentalist religious groups to ensure that women wear the *jilbab* (veil). In fact, the government engaged society to give a social sanction against women who do not wear the veil. Hence, women who do not wear Muslim dresses received two sanctions, formal sanction from the government and social sanction from the society.

Syamsurijal Adhan's research about the implementation of shariah bylaws in Bulukumba also proved that these laws gave direct negative impact for women.³⁷ In Bulukumba, some women have faced serious

³⁶ Erwin Nur Rifah, "Contesting Women's Security"..., 97-98.

³⁷ Syamsurijal Adhan, "Indah Kabar dari Rupa: Nasib Perempuan di balik Tabir Syariat Islam di Bulukumba", *Jurnal Perempuan*, no. 60 (September 2008), 67-69.

obstacles to participate in public spheres and cannot get public services. Women who do not wear Muslim clothes will not be served by the local government, but men are excluded from this regulation. The application of sharia bylaws in Bulukumba not only discriminates women, but also triggers psychological impact for women because some of them often feel afraid of the laws.

The above examples clearly show that the sharia bylaws are applied to discriminate women directly and indirectly. As Siti Musdah Mulia expresses,³⁸ the sharia bylaws contain many negative implications toward women and gender equality in Indonesia. This is because these laws strengthen the subordination of women, limit their rights to choose their model of dress, limit their room to be active and mobile, and limit their activities at night. She also saw that sharia bylaws only hinder women's rights because its interpretation is based on gender insensitive.³⁹ In this context, these ideas are very important for women to have the equal rights as similar as men. This notion should be struggled by men and women as the consequence of the equal rights of all citizens which was clearly declared in the Indonesian Constitution. Therefore, the enactment of sharia bylaws in Indonesia actually ignores the existence of women who shall have equal rights as other Indonesian citizens.

Women's responses toward sharia bylaws

As demonstrated above, sharia bylaws do not give any benefits for women, but only hinder women's rights and discriminate them. In this regards, several women's NGO leaders in Indonesia protested sharia bylaws because of its negative impacts for women. Also, these leaders opposed the laws because the regulations have violated the higher laws. According to

³⁸ Siti Musdah Mulia in Sally White & Maria Ulfah Anshor, Sally White & Maria Ulfah Anshor, "Islam and Gender"..., 151.

³⁹ Siti Musdah Mulia, *Islam and Violence against Women...*, 5.

Dewi Candraningrum⁴⁰ these higher laws are: (1) CEDAW (Convention on the Elimination of the Discrimination against Women Rights) which is ratified in Indonesia in Undang-Undang No. 7 Tahun 1984; (2) International Convention on Civil and Political Rights which is ratified in Undang-Undang No. 12 Tahun 2005; (3) Undang-undang Hak Asasi Manusia (Human Rights Law) No 39 Tahun 1999; (4) International Convention on Economic, Social, Cultural Rights which is ratified in Undang-Undang No. 11 Tahun 2005. The last law clearly mentions that the state must protect workers' rights, family rights, health rights and an adequate standard of living, educational rights and cultural rights. Moreover, the Indonesian Constitution recognises the equality among citizens without looking at their religion, ethnic, and gender background. Thus, it can be concluded that the sharia bylaws which often discriminate women, clearly contravene Indonesian's Constitution.⁴¹

Furthermore, many women activists in Indonesia have actually done important strategy to employ legal means to seek the revision of sharia bylaws. National Commission on Violence against Women (KOMNAS Perempuan) is working on a network with other groups in order to push for judicial review of sharia bylaws which regulate women's body, behavior and mobility.⁴² Although they had proved facts that sharia bylaws were contravened with the higher laws, the Supreme Court handed down its decision and declined to review the sharia bylaws in April 2007. For them, these laws had fulfilled the correct legal and political criteria.⁴³ While women activists efforts to review sharia bylaws was failed, they

⁴⁰ Dewi Candraningrum, "Unquestioned Gender Lens"..., 302.

⁴¹ Abubakar Eby Hara, "Pancasila and the Perda Syari'ah Debates in the Post-Suharto Era: Toward a New Political Consensus", in O. Atsushi et. al. (eds.), *Islam In Contention: Rethinking Islam and State in Indonesia*, Jakarta, Japan, Taiwan: the Wahid Institute, CSEAS, CAPAS, 2010, 39.

⁴² K. Andren, "Prostitution, Pornography, and Islamic Law"..., 69.

⁴³ S. White and M.U. Anshor, "Islam and Gender in Contemporary"..., 152.

continued to struggle for reviewing sharia bylaws by rallying and coordinating women groups in many areas. The successful effort of the collaboration of women's movement which was lead by LBH-APIK and KPI to combat sharia bylaws in Minangkabau-West Sumatra can be taken as a good example for other movements. Both of organizations campaigned that the draft 2001 sharia bylaws of Minangkabau discriminate women and violated CEDAW and the constitution.⁴⁴

Besides that, they also used public campaign to educate women about the negative impacts of sharia bylaws through seminars, workshops, public discussions, mass media, etc. According to Dewi Candraningrum,⁴⁵ sharia education and gender mainstreaming have to be done to prevent the future regulations which can enhance women rights and not merely deteriorate women's rights. Furthermore, both actions are important for preventing the upcoming of the new regulation which has similarity with sharia bylaws. Therefore, further assistance on the gender-sensitive formulations and gender equality shall be proceeded and supported not only by women, but also by all Indonesian people.

It is important to note that many sharia bylaws reflect a narrow, text-based and traditional interpretation of sharia. As a consequence, women, religious minorities and other Muslims groups which have different opinions from the hard-line Islamic groups often become the victims of such interpretation. The formalisation of sharia Islam through bylaws only represents sharia name only, without applying sharia's substantive meaning. In fact, the substantive meaning of sharia Islam is to encourage peace, justice, humanity, wisdom, and prosperity.⁴⁶ Therefore, many Muslim

⁴⁴ S.E. Wieringa, "Islamization in Indonesia: Women Activists' Discourses", *Signs*, vol. 32, no. 1 (Autumn 2006), 7. See also K. Andren, "Prostitution, Pornography, and Islamic Law"..., 70

⁴⁵ Dewi Candraningrum, "Unquestioned Gender Lens"..., 10-11.

⁴⁶ S. Adhan, "Indah Kabar dari Rupa"..., 70-71.

progressive activists and women activist encourage Muslims to consider the substantive approach to sharia that enhances women rights and gender equality. Muslims shall also show that sharia does not necessarily cause political chaos or conflict that will harm women, religious minorities and society.

Conclusion

This paper has discussed the implementation of sharia bylaws and its impacts on Indonesian women. It has suggested that sharia bylaws represent an old agenda which reemerges during the regional autonomy era. The regional autonomy agenda which was intended to increase the effectiveness and efficiency of bureaucracy has often been misused by local leaders to create sharia bylaws. The enactment of sharia bylaws also represents a renewed attempt by advocating sharia Islam to introduce sharia by stealth at the regional level, after their failure to do so through open democratic processes at the national level.

The introduction of such bylaws has many negative impacts on Indonesian women. This is because many of them became the main target as well as the victims of these laws. Sharia bylaws have caused violence against women because they force women to wear Muslim dresses, to restrict their activities at nights, not to gain public services. Ironically, in some regions, under sharia bylaws women are often accused of committing prostitution because of their activities at nights. Besides that, sharia bylaws have also resulted in hindering women rights to participate in public places. Consequently, women lose their rights to work, to activate, to express, and to gain education. By considering these facts, it can be said that the struggle of gender equality in Indonesia seems to be set back from previous times. Therefore, women activists in Indonesia continue the agenda of reviewing sharia bylaws and enhancing women rights by

educating people through many ways. At the same time, they also encourage Muslims to consider the true meaning and substance of sharia which enhance women rights and support gender equality.

Bibliography

- Abdurrahman, M., "Korban Pertama dari Penerapan Syariat adalah Perempuan", www.islamlib.com, 16/9/2001, consulted 8 July 2011.
- Adhan, S., "Indah Kabar dari Rupa: Nasib Perempuan di balik Tabir Syariat Islam di Bulukumba", *Jurnal Perempuan*, no. 60 (September 2008): 61-73.
- Andren, K., "Prostitution, Pornography, and Islamic Law: Women's NGO Confronting Islamic Conservatism in Post-Authoritarian Indonesia", Honours Thesis, Submitted at Discipline of Government and International Relations, the University of Sydney, 2007.
- Assyaukanie, L., "The Rise of Religious Bylaws in Indonesia", *RSIS Commentaries*, 22 (2007).
- Budiman, M., "Treading the Path of the Sharia: Indonesian Feminism at the Crossroads of Western Modernity and Islamism", *Journal of Indonesian Social Sciences and Humanities*, 1 (2008): 79-93.
- Blackburn, S., "Indonesian Women and Political Islam", *Journal of Southeast Asian Studies*, vol. 39, no. 1 (February 2008): 83-105.
- Bush, R., "Regional Sharia Regulations in Indonesia: Anomaly or Symptom?", in G. Fealy and S. White (eds.). *Expressing Islam: Religious Life and Politics in Indonesia*. Singapore: Institute of Southeast Asian Studies, 2008: 174-191.
- Candraningrum, D., "Unquestioned Gender Lens in Contemporary Indonesian Sharia-Ordinances (Perda Syari'ah)", *AlJami'ah*, vol. 45, no. 2 (2007): 289-320.
- Candraningrum, D., "Perda Sharia and the Indonesian Women's Critical Perspectives", a working-paper presented at the conference on 'Perda Sharia (New Arbitrary against Women in Indonesia: Perda Sharia and Women's Rights)', held by SOAI (Seudostasien Informationsstelle, Asienhaus) and MATA Asien, 11 November 2006, in Blick, at Berseemuseum Bremen, Germany, 1-12.
- Crouch, M., "Religious Regulations in Indonesia: Failing Vulnerable Groups", *Review of Indonesian and Malaysian Affairs*, vol. 43, no. 2 (2009): 53-103.

- Dzuhayatin, S.R., "Islamic Identity: A Women's Perspective", in F. Fianto *et. al.* (eds.), *Islam & Universal Values: Islam's Contribution to the Construction of a Pluralistic World*. Jakarta: International Center for Islam and Pluralism, 2008: 49-54.
- Hara, A.E., "Pancasila and the Perda Syari'ah Debates in the Post-Suharto Era: Toward a New Political Consensus", in O. Atsushi *et. al.* (eds.). *Islam In Contention: Rethinking Islam and State in Indonesia*. Jakarta, Japan, Taiwan: the Wahid Institute, CSEAS, CAPAS, 2010: 35-75.
- Hasan, N., "Islamic Militancy, Sharia Bylaws, and Democratic Consolidation in Post-Suharto Indonesia", *KULTUR: The Indonesian Journal for Muslim Cultures*, vol. 4, no. 2 (2009): 33-61.
- Kamil, S., "Progressive Sharia Perspectives of Non-Muslim Minority Rights", *KULTUR: The Indonesian Journal for Muslim Cultures*, vol. 4, no. 2 (2009): 133-157.
- Kamil, S., *et al.* *Syariah Islam dan HAM: Dampak Perda Syariah terhadap Kebebasan Sipil, Hak-hak Perempuan, dan Non-Muslim*. Jakarta: CRCs UIN Jakarta & KAS Jakarta, 2007.
- Lee, J.C.H., "Mobilizing for Social Change in Muslim Societies Amidst Political Turmoil and Conservatism", *Development*, vol. 52, no. 2 (2009): 239-245.
- Mulia, S.M., "Perda Syariat dan Peminggiran Perempuan", *Tashwirul Afkar*, 20 (2006): 21-44.
- Mulia, S.M. *Islam and Violence against Women*. Jakarta: Institute of Religious and Gender Studies, 2006.
- Munir, L.Z., "Islamic Fundamentalism and its Impact on Women", Paper presented in the Association of Asian Studies (AAS) Forum, 27-30 March 2003, New York, 1-9.
- Munir, L.Z., "Sharia and Justice for Women", Paper presented on 'Gender and Islam in Southeast Asia' to be held at Passau University, 29 September-30 October 2005, Germany.
- Munir, L.Z., "Islam, Gender, and Formal Sharia in Indonesia", Unpublished Article, 2003 www.lfip.org, consulted 9 July 2011.
- Salim, A., 'Muslim Politics in Indonesia's Democratisation: The Religious Majority and the Rights of Minorities in the Post-New Order Era', in R.H. McLeod and A. MacIntyre (eds.). *Indonesia: Democracy and the Promise of Good Governance*. Singapore: Institute of Southeast Asian Studies, 2007: 35-75.

- Salim, A., "Perda Berbasis Agama dan Perlindungan Konstitusional Penegakan HAM", *Jurnal Perempuan*, 60 (September 2008): 7-29.
- Rifah, E.N., "Contesting Women's Security and *Perda Syariah*: Have Indonesia's *Perda Syari'ahs* Enhanced Women's Security?", *KULTUR: The Indonesian Journal for Muslim Cultures*, vol. 4, no. 2 (2009): 87-113.
- Wieringa, S.E., "Islamization in Indonesia: Women Activists' Discourses", *Signs*, vol. 32, no. 1 (Autumn 2006): 1-8.
- White, S., and Anshor, M.U., "Islam and Gender in Contemporary Indonesia: Public Discourses on Duties, Rights and Morality", in G. Fealy and S. White (eds.). *Expressing Islam: Religious Life and Politics in Indonesia*. Singapore: Institute of Southeast Asian Studies, 2008: 137-158.