



Troy Johnson

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Southeast Asia Research Centre Management Committee

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Dr James Lee

Southeast Asia Research Centre

The City University of Hong Kong
83 Tat Chee Avenue
Kowloon Tong, Hong Kong SAR
Tel: (852) 3442 6106
Fax: (852) 3442 0103
<http://www.cityu.edu.hk/searc>

Voices from Aceh: Perspectives on *Syariat* Law

Troy Johnson
Fulbright Fellow and
Visiting Fellow at The Wahid Institute, Jakarta
troyjohnson42@gmail.com

ABSTRACT

From its inception *Syariat* law in Aceh has been controversial. Grim forecasts were made as to its ability to contribute to a just society in this war and disaster torn province. Since the implementation of this new legal system began five years ago, the only province in Indonesia with a full mandate to develop an Islamic system has faced a barrage of criticism. While various civil society groups and the media have drawn attention to the lack of opportunities for Acehnese citizens to voice their concerns about the new legal apparatus, the diverse perspectives of Acehnese themselves have remained marginal in the debate.

This paper aims to place those perspectives in the foreground of reflections on the problematic implementation of Acehnese *Syariat* since 2001. After setting the establishment of this system of law in its historical context, the paper presents a wide range of voices from the province. Interview data collected from December 2006 to March 2007 is combined with a variety of media reports, and encompasses perspectives both from those charged with implementing *Syariat*, and the civil society actors who respond to them. This paper points to six key critical perspectives on the implementation of *Syariat* in Aceh, as articulated by the Acehnese themselves. Finally, it considers the implications of the success or failure of Islamic law in Aceh as “*Syariat* inspired” by-laws become more popular in provinces outside of NAD.

1. Introduction

The implementation of *Syariat* law (also transliterated as Shar'ia) in Indonesia's autonomous province of Nanggroe Aceh Darussalam (NAD) has received a great deal of attention over the last year, where the development of a *Syariat* legal system has been ongoing since 2001. The more pressing reasons for giving attention to the application of *Syariat* law in Aceh, the only Indonesian province with a full mandate to implement a *Syariat* legal system, include: a report issued by the International Crisis Group (ICG) in July 2006 profiling the implementation of *Syariat* law in NAD; a report issued by Komnas Perempuan, the national body of human rights for women in Indonesia, which criticized the treatment of women in NAD under *Syariat* law; the introduction of a law that stipulated the amputation of the hands of thieves; and the December 2006 NAD regional elections, which returned national and international media attention to Aceh and highlighted the implementation of *Syariat* law in the province.

The development and application of *Syariat* law in Aceh, as a new legal system, has been problematic and its implementation criticized as being "ad-hoc and partial."¹ A 2003 compilation of essays on *Syariat* law in Indonesia grimly forecasted that with the application of *Syariat* law "the Acehnese... could only be disappointed."² Most recently, the ICG report on *Syariat* law and its implementation in NAD suggested that *Syariat* law in Aceh has produced "a religious bureaucracy committed to its own expansion; a focus on legislating and enforcing morality; and a quiet power struggle with secular law enforcement...."³

This article evaluates the various criticisms that have been made regarding the implementation of *Syariat* law in Aceh. It briefly reviews the historical justifications and criticisms of *Syariat* law in Aceh before presenting a diverse set of voices from the debate. The evidence I present is derived from ethnographic data taken from media reports, interviews with the official bodies

¹ Azra (2003: 23).

² Salim (2003: 228).

³ ICG (2006: 1).

tasked with the implementation of *Syariat* law, and civil society actors concerned with the maintenance of law and human rights. It seeks to describe the concerns of various communities affected by the application of *Syariat* law in NAD.

2. A historical note

It is often said that Aceh is the “Veranda of Mecca.” The Acehnese feel that their Islamic identity is not only a strong part of Acehnese society, but also sets them apart from other areas of Indonesia. Under the Habibie and Megawati administrations the central government took steps to allow for the full application of *Syariat* law in Aceh⁴. There are both historical justifications for, and criticisms of the application of *Syariat* law in NAD which have been greeted with mixed opinions. Azyumardi Azra outlines three assumptions that have been used to justify the application of *Syariat* in Aceh: first, the vast majority of the population of Aceh is Muslim; second, *Syariat* would resolve the breakdown of law that accompanied the region’s protracted conflict; third, only *Syariat* law can overcome social ills.⁵ The ICG report also mentions the historical precedents for *Syariat* law in Aceh, pointing out that thieves were punished with amputation as early as the seventeenth century.⁶ It also calls attention to the fact that *Syariat* law was one element demanded by the Darul Islam (DI) independence movement in Aceh during the early 1950s.

However, according to the ICG report, the DI movement and, later, the Free Aceh Movement (GAM) that persisted until the peace agreement of 2004, were essentially nationalist movements. The GAM movement, in particular, was less concerned with the application of *Syariat* than independence. As mentioned in the ICG report, “Throughout the 1980s Aceh became defined less by its efforts to establish Islamic law than by the conflict between GAM and the Indonesian military.”⁷ GAM, which had been fighting a costly war with the central government for 30 years, was skeptical of *Syariat* law in Aceh, and

⁴ Law No. 44/1999; Law No. 18/2001. However, *Syariat* law cannot contradict the national law and the national courts have jurisdiction over the religious courts in NAD.

⁵ Azra (2006: 22).

⁶ ICG (2006); Azra (2006).

⁷ ICG (2006: 6).

saw it as a political move by Jakarta to undercut their support among Acehnese. Some saw its application “as an effort to absorb the political thought of the Acehnese and to conceal crimes committed by the Indonesian state” and felt that “the central government’s offer to apply *Syariat* in Aceh [had] no real relevance to the troubles and difficulties currently faced by the Acehnese.” Furthermore, it was argued that the Acehnese were “less concerned with the application of *Syariat* law than economic inequality and human rights abuses.”⁸ In short, the application of *Syariat* law in Aceh was seen as a political commodity for elites in Jakarta and Banda Aceh. Nevertheless, the process of developing a *Syariat* system has continued.

Syariat law in Aceh is currently comprised of only four *qanun*, or laws, passed to date.⁹ These four *qanun* essentially regulate six aspects of personal life for Muslims living in Aceh. They

- require Muslims to undertake religious duties including Friday prayer;
- require Muslims to wear Islamic clothing;
- prohibit Muslims and non-Muslims from consuming or selling liquor;
- prohibit Muslims and non-Muslims from gambling;
- prohibit *khalwat*, or close proximity between unmarried males and females;
- require Muslims to pay *zakat* (alms)¹⁰

Penalties for violating the *qanun* range from a warning or “educational” reprimand to a jail term or fine. In some cases, the punishment can be up to forty canings for a single offense. Currently, a controversial draft law is being debated in the NAD legislature that would stipulate amputation for thieves.¹¹

3. Limitations and criticism of implementation

Although *Syariat* law in Aceh has been criticized for “vague conceptions of how [it] would be implemented,” many Acehnese support the

⁸ Salim (2003: 225).

⁹ *Qanun* are equivalent to *Perda* (*Peraturan Daerah*) used in other areas of Indonesia. Under the 2001 autonomy law, *Qanun* replaced *Perda* in Aceh.

¹⁰ See appendix A for a more comprehensive list of *qanun* and punishments.

¹¹ For more information on the history of *Syariat* law in Aceh see the ICG report.

application of *Syariat* law and do not want to be seen as anti-*Syariat*.¹² According to one poll, 90 percent of Acehnese are in support of *Syariat* law.¹³ However, problems in its implementation have been frustrating for Acehnese who are reluctant to express their concerns. According to a representative of the Alliance of Independent Journalists (Aliansi Journalis Independen, AJI),

Substantially more people agree with *Syariat* but they feel that its implementation has been ridiculous. They are afraid to criticize *Syariat* law because they do not want to be seen as being un-Islamic.¹⁴

For example, one female activist from Women Volunteers for Humanity (Tim Relawan Perempuan Untuk Kemanusiaan, RPUK) said that it was very difficult to criticize *Syariat* law in Aceh. She once wrote an editorial piece criticizing the implementation of *Syariat* law. She reported that, "The next day, several *Syariat* officials approached me at my office and ordered me to *bertaubat* (to ask for forgiveness from Allah)."¹⁵

A more recent example illustrating this point involved a group of young Muslim activists from Yayasan Insan Cita Madani (YICM), who were criticized in the local media for their role in organizing public opinion polling on people's perceptions and understanding of *Syariat* law throughout the province. YICM's efforts involved inviting all members of the community to take part in focus-group discussions, workshops and training sessions on issues that affect their communities. Since the 2004 tsunami, their activities have increasingly focused on issues concerning *Syariat* law.

Our activities aim to ensure that *Syariat* law brings positive developments for Aceh's future and to make sure it accommodates non-Muslims. We do not want it to be perceived that *Syariat* law in Aceh exists as a way to terrorize the community.¹⁶

¹² Salim (2003: 227).

¹³ *South China Morning Post*, December 11, 2006.

¹⁴ Interview, December 9, 2006.

¹⁵ Interview, February 3, 2007.

¹⁶ Interview, February 2, 2007.

They carried out polling “to better understand how *Syariat* could be implemented more justly in Aceh.” It was immediately criticized by Majelis Permusyawaratan Ulama (MPU), a council of religious scholars involved with legislating *Syariat* law. The provincial head of the MPU, Dr. Tgk H Muslim Abraham MA “appealed to the Islamic community of Aceh to renounce the polling on *Syariat* laws in Aceh,” stating that “all of the *qanun* in Aceh are fully supported by every element of the Acehnese community.”¹⁷ Representatives of YICM commented, “This news exploded and became a big controversy... It is not something to be proud of.”¹⁸ In conjunction with the YICM polling, they conducted 360 in-depth interviews regarding people's feelings toward *Syariat* law. “The statement from MPU hindered the work of those conducting interviews in the field. Some people were afraid of filling out the forms.”¹⁹ According to one testimonial,

In Aceh, the *Syariat* Islam that is administered in the *qanun* is considered to be like Allah himself... To question the contents of the *qanun* is like questioning the existence of Allah. But actually it is the case that these *qanun* have been created by humans.²⁰

Despite fears of being seen as anti-*Syariat*, six points of criticism on its implementation are commonly voiced by Acehnese. First, the present *qanun* have been criticized for having been poorly written, amounting to vague guidelines that can be arbitrarily interpreted. Second, there have been few opportunities for citizens to participate in the process of developing the *qanun*. Third, community socialization has been weak and has left citizens with unclear understanding of how *Syariat* law functions. Fourth, the *qanun* have been criticized as being largely symbolic in nature, attaching sanction to private matters (such as dress or prayer) while ignoring more serious public offences. Fifth, many Acehnese feel that women and the poor have been

¹⁷ *Serambi*, December 28, 2006. Following mediation between MPU and YICM by several parties, an MPU spokesman admitted that the YICM report had been misread by the MPU chairperson who later agreed to take part in a panel discussion on the findings of the polling and interviews.

¹⁸ Interview, February 2, 2007.

¹⁹ *Ibid.*

²⁰ Komnas HAM Perempuan (2007:28).

more severely subjugated. Finally, the Wilayatul Hisbah (WH), the main body charged with implementing *Syariat* and sometimes called “*Syariat* police,” is poorly trained and occasionally acts aggressively and outside its authority.

Poorly written and vague laws

The *qanun* are generally thought by Acehnese activists to have been rushed into place by the provincial legislature (Dewan Perwakilan Rakyat Daerah, DPRD), in cooperation with the MPU in 2002 and 2003, with little attention to how they would be implemented. Those involved in the process of developing the laws have been criticized for not having the capacity – in terms of legal expertise or theological background – necessary to create a functional and just legal system.²¹ The vague and unbalanced interpretations of the law have led to an unclear understanding of how laws apply, to whom, and who has the authority to enforce them. As one professional working in advocacy commented, “Promoting *Syariat* is something that can be very abstract because [theoretically] there is no one understanding of *Syariat*. Therefore, it is unclear to many which regulations apply to who and in what circumstances.”²² In the case of women wearing the proper clothing, a representative of Komnas Perempuan, the National body for Human Rights and Women in Indonesia said:

Regulations about clothes can also be interpreted very widely based on the official view or the view of the community about what is meant by conservative clothes and what it should cover. The interpretation of conservative clothing can be very different from one person to the next, and many understand “Muslim clothing” is what is worn by women especially to pray.²³

According to a representative of RPUK who holds a degree in Islamic law, “Many of the rules in *Syariat* law in place in NAD are simply suggestions made in the Qur'an and not proscribed as compulsory laws.” Citing the issue of *jilbab* (head scarf) she says, “This is a suggestion, not compulsory, and there

²¹ ICG report.

²² Interview, February 3, 2007.

²³ Personal communication, January 29, 2007.

should be no punishment for it. But in Aceh it is different. For not wearing a *jilbab* you can be punished.”²⁴

A second problem cited in the drafting of the *qanun* is the fact that there are no regulations in the Qur'an for such offences as rape. More specifically, the *qanun* do not distinguish between rape, *zina* (adultery, or sex outside of wedlock) and *khalwat*, or close relations between men and women. According to the director of the WH for the city of Banda Aceh, “If there is a case of *zina*, it falls under the category of *khalwat*. This is enough for us to impose sanction.”²⁵ Violations of *khalwat* have been as simple as a female and male co-worker working in the same room alone. Naturally, differences between simple *khalwat* offences, sexual harassment or assault, and rape vary considerably and such loose definitions have been legally problematic in Aceh where sexual crimes against women have in the past been common.²⁶ Under the current system any of these offences is punishable under the same law. This is particularly problematic because *khalwat* is considered to be a *ta'zir* in the Qur'an and the *hadith* which specify no particular punishment.²⁷

Related to this issue is the fact that *Syariat* is a contested term. While some believe that *Syariat* stipulates an entire system for living, including normative guidelines for governance and justice, others feel that *Syariat* is interpretative and that the classical Islamic texts do not offer normative systems. According to a representative from the organization True Friends of Indonesian Women (Mitra Sejati Perempuan Indonesia, MISPI),

The issue is that we must come to an understanding of [*Syariat*] Islam that is applicable. If we have a normative understanding of Islam, everyone will agree. There will no debate as to the rules found in the Qur'an. The pro/con debate will only involve issues of participation and other administrative issues.²⁸

²⁴ Interview, February 3, 2007.

²⁵ Interview, February 2, 2007.

²⁶ Komnas HAM Perempuan (2007).

²⁷ ICG (2006: 14).

²⁸ Interview, February 1, 2007.

She continued by saying that she believes that *Syariat* Islam is normative and applicable, but admitted that “there are many others who believe that it is interpretive.” Others disagree. Members of YICM explained that even though they are in favor of the application of *Syariat* law, they recognize that, “only five percent of the Qur'an offers guidance on jurisprudence. The majority of its contents [sic] are simply moral guidelines or suggestions for how one should act.”²⁹

Finally, it has been reported that the *Syariat* courts, or Mukhama *Syariat*, are lacking qualified judges in Aceh.³⁰ Lack of qualified candidates and personnel is also a difficulty faced by the WH.

Lack of public participation

A second point of criticism is that the process of drafting *qanun* has not taken into consideration input from the general public. An AJI representative commented that, “because the present *qanun* were so quickly rushed into practice, many people feel that the system of law that has been created does not represent their interests.”³¹ This may not have helped efforts to overcome the perception among many that *Syariat* law in Aceh has been used by Jakarta and elites in Banda Aceh as a tool to augment their political influence as mentioned above. It is the feeling of YICM that

When laws are written and passed, community involvement is a prerequisite. However, *Syariat* law in Aceh is perceived to be a possession of the political elites... In the case of the four *qanun* we feel that there has been too little community involvement... Due to this, we are actively educating the public on why they need to take an interest in process of drafting the *qanun*.³²

Lack of public participation, particularly for women, is substantiated by representatives from Mahkama *Syariat*, the High Religious Court, who are working to incorporate input from all segments of society into the process, but

²⁹ Interview, February 2, 2007.

³⁰ *Jakarta Post*, February 10, 2007.

³¹ Interview, December 9, 2006.

³² Interview, February 2, 2007.

who admit that “Until now, women have had very little opportunity to participate in the process.”³³ According to the director of RPUK,

The process of developing a system of *Syariat* must be more flexible. Before a nation or a community can implement *Syariat* there must truly be better dialogue and preparation with the community. There has to be an agreed upon perspective of justice, because if the definition of law is not agreed upon by the people, it will not be perceived as just.³⁴

It appears that the bodies tasked with developing and implementing *Syariat* law are being forced to pay greater attention to the public and include them in the process. A representative from MISPI commented that “the government is changing and there are already opportunities [for the public] to help in the formulation of policy in Aceh.” She further stated that

It is a lie to claim that there has not been a change. Honestly, I have followed this process from early on. It is already considerably better. In the past [before *Syariat*] there was also no way to participate in the process of righting general laws in Aceh... Now the government has to listen to us again.³⁵

According to a representative from the Body for Reconstruction and Rehabilitation (Badan untuk Rekonstruksi dan Rehabilitasi, BRR), “There is a fear that women will be left out of the process of drafting the *qanun*. Therefore, it is our job to make sure that women are included in this effort.”³⁶ She said that the BRR, alongside UNIFEM and The Asia Foundation, is working with local NGOs to ensure that all elements of society are incorporated into the process of drafting and revising *qanun*. For the time-being, however, the present *qanun* remain applicable.

Socialization

Although socialization is an important aspect of the WH's duties, it is generally agreed that socialization of the public regarding *Syariat* law and the

³³ Interview, February 3, 2007.

³⁴ Ibid.

³⁵ Interview, February 1, 2007.

³⁶ Interview, December 7, 2006.

qanun has been poor. One purpose of the YICM polling was to determine whether or not the public feels it understands the current *qanun*. An official suggested that “Based on our findings, the largest portion of respondents, 46 percent (of 794), felt that they did not understand the existing *qanun*. 18 percent were unsure.”³⁷ A professional working on issues of empowerment in Aceh remarked that

Socialization should be more than just tell[ing] you [the laws’] name and when it will take effect. Reading what the *qanun* says will not help people in the villages who have no background with legal issues without explanation of what it means in everyday life which has not yet been done. And they (*Syariat* officials) all admit that it is not done... Real socialization needs to be more profound.³⁸

It was reported that socialization in the villages and sub-districts has been very limited and that most people only know the names of the *qanun*, not their content. Therefore, “The *qanun* are known only to a few women in the cities, but those who live in the villages have no idea what the *qanun* are.”³⁹ According to another professional working with the BRR to empower women, “In the villages, many women are poor. They care about procuring their basic needs. They do not understand the *qanun*.” “In some poor areas,” she said, “I have seen women wearing towels on their heads because they do not have the money to buy proper *jilbab*. They do not understand [the *qanun*]. They just don’t want to be caught.”⁴⁰

A related problem stemming from the lack of socialization is that of vigilantism. It is unclear to some members of society who has the authority to enforce the *qanun*. According to a Komnas Perempuan representative, “It is not just the WH officials who have the potential for restricting citizens and prejudice, but the wider community can make arbitrary judgments in the name of *Syariat*

³⁷ Interview, February 2, 2007. The YICM poll was based on a convenient sample, not a representative or scientific sample.

³⁸ Interview, February 3, 2007.

³⁹ Ibid.

⁴⁰ Interview, December 7, 2006.

law.”⁴¹ “Groups who are not affiliated with the WH that have no training and little understanding of the *qanun* often try to take matters into their own hands when they feel *Syariat* laws have been violated.”⁴² This has sometimes led to violent and dangerous situations for those accused of breaking *Syariat* code. The WH says that they “have a very limited number of people with a huge territory to cover. It is difficult to control people who claim to be WH.”⁴³ According to one example cited by WH members,

A man and a women were caught breaking *khalwat*. The community caught them and cut the women's hair and they beat them. A community member called the WH to report this. We went there to make sure that the violators would not be harmed further by the community.⁴⁴

Symbolic qanun

Originally, it was hoped that *Syariat* law would be used as a tool to promote good governance and prosperity and that it would be benign for both Muslims and non-Muslims. However, *Syariat* has been criticized for “promoting sanctions only against small symbolic offences such as Islamic dress or *khalwat*, causing many Acehnese to feel that private matters such as these are being made into public issues.”⁴⁵ Despite hopes by supporters that *Syariat* law in NAD would be able to correct societal problems, it has been poorly equipped to do so. As Azra has written, “Many are doubtful that Islamic law could be enforced successfully since there exist many constraints within *Syariat* as well as in Acehnese society itself.”⁴⁶ Results of the YICM poll showed that 83 percent (of 760) of respondents feel that the implementation of *Syariat* law has not positively affected the culture of governance in Aceh.

⁴¹ Personal communication, January 29, 2007.

⁴² Interview, February 2, 2007.

⁴³ Ibid.

⁴⁴ Interview, February 1, 2007.

⁴⁵ Interview, February 3, 2007.

⁴⁶ Azra (2003: 23).

One of the most obvious and controversial ways in which *Syariat* law in Aceh has focused on Islamic symbolism is with the requirement of *jilbab* for Muslim women:

Most of the women I have talked to say they feel [the *qanun*] are only symbolic and not important. There is not one *qanun* that deals with how one individual can disadvantage another. They say *jilbab* are not important. They complain that *Syariat* law does not compel government leaders to protect the interests of citizens... They feel that if a person wants to or does not want to pray, this is an individual choice, not one that should be regulated.⁴⁷

These concerns were expressed by male activists as well. On the other hand, a leader of an organization called the Communications Forum of the Young Generation of West Aceh praised sanctions on Islamic dress saying that the WH has had a “very positive impact mainly in promoting the use of traditional dress.”⁴⁸ However, most feel that issues of Islamic dress are beside the point. They do not feel that Islamic dress will lead to prosperity in Aceh, which is the nation's fourth poorest province and its most corrupt.⁴⁹

It was also hoped that the application of *Syariat* law would help solve the protracted conflict in Aceh. But on this count too, advocates of *Syariat* law has been disappointing. In particular, violence against women rose considerably in the years immediately following the formal implementation of *Syariat* law.⁵⁰ It was not until after the tsunami that peace talks were able to bring an end to the conflict, at which point violence against women decreased dramatically. However, violent crime in Aceh is currently on the rise. Komnas reported in October 2006 that more than 70 violent crimes have occurred in the province since the August 2005 peace accords. This increase in violent crime has been attributed to the government's inability to help former rebels re-enter society.⁵¹ Here again the results of the YICM polling are revealing: 81 percent of

⁴⁷ Interview, February 3, 2007.

⁴⁸ *Serambi*, December 7, 2006.

⁴⁹ *South China Morning Post*, December 19, 2006.

⁵⁰ Komnas HAM Perempuan (2007).

⁵¹ *National News*, October 18, 2006.

respondents said that the implementation of *Syariat* in Aceh had not met their expectations. According to the director of the WH, “The process of implementing the *qanun* has been a slow, step-by-step process. Until now we are trying to implement 'light weight' *qanun*, not those that could result on hands being chopped off.”⁵²

Because it is believed that *Syariat* law in Aceh has no authority over non-Muslims, they do not seem to be bothered by the *qanun*. This lack of concern about *Syariat* law is significant. Chinese and Christian Acehnese feel that *Syariat* law has been insubstantial and has not affected their lives in Aceh at all. As one church official commented, “Until now, there has been no effect on our lives. The *qanun* are just for little offences like clothing and gambling. It is just symbolic. In the future, we will see.”⁵³ This attitude seems to be shared by the majority of the non-Muslim Chinese community in Banda Aceh. However, according to the ICG report, non-Muslims are expected to respect the *qanun*. While they cannot receive caning, they can be fined and sentenced to prison terms for violations of the *qanun*. This also reflects inadequate socialization.

Inequality of law

It is widely believed that the current shape of *Syariat* law and the way it is applied in Aceh has been unbalanced and that, both practically and conceptually, it more severely affects less powerful members of society, particularly poor people and women. On December 17, 2006 the *Jakarta Post* quoted one Acehnese activist as having said, “All the *qanun* target vulnerable groups and the poor but no measures are being taken against corrupters.”⁵⁴ This concern is consistent with media reports and interviews. The YICM polling also found that only 20 percent of respondents (354) believed that *Syariat* law did not adversely target lower levels of society. According to a representative of Komnas Perempuan, “Until now, *Syariat* has no way of empowering poor people in Aceh.” She pointed out that it was hoped that the provincial treasury, through the practice of *zakat*, would be one way that

⁵² Interview, February 2, 2007.

⁵³ Interview, February 4, 2007.

⁵⁴ *Jakarta Post*, December 17, 2006.

Syariat could help the poor in Aceh, but “because of corruption, which is truly widespread, this has not happened.” She went on to comment:

I have only seen how *Syariat* [law] has wrongfully targeted people at the bottom of society. This often places added pressure on these people... Thus, there have been several cases of regional legislatures requiring quotas that charge middle class citizens with breaking the *qanun* as well. This is certainly not an upright system of law, but looks more like a political conspiracy.⁵⁵

The prevalent belief that *Syariat* law subjugates NAD’s marginalized and poor emanates from two concerns. First, many people feel that the *qanun* already in place target crimes that impoverished people are more likely to commit, such as petty theft and gambling, which are also *ta'zir* offenses. According to the data gained from the Provincial *Syariat* Office for the period of 2005-2006, *Syariat* violations are dominated by gambling cases.⁵⁶ It is often pointed out that there are no *qanun* dealing with social ills such as corruption or illegal resource extraction. Soon after the preliminary results of the NAD regional elections, governor-elect Yusuf Irwandi was quoted in Indonesian media as having said, “Common people steal because they're hungry and they usually commit such crimes because their situation forces them to do so.” He added that he would never pass a controversial draft law approved by authorities the previous week that would make it possible to punish thieves by cutting off their hands.⁵⁷

Second, many people feel the it is the impoverished who are most often punished under the *Syariat* law system, while the offenses of the wealthy go unpunished because they are able to hire lawyers to get them out of trouble or because no sanctions are brought against them at all. One respondent commented that

Those who are caned are only those who commit small offenses while people who commit offenses with much larger negative impacts to the

⁵⁵ Personal communication January 29, 2007.

⁵⁶ *Serambi*, January 16, 2007.

⁵⁷ *Jakarta Post*, December 17, 2006.

society do not receive such punishment. They are able to appeal to authorities of law and receive regular punishment, not physical punishment. This system is very discriminative.⁵⁸

The YICM polling also found a perception among Acehnese that “the majority of those punished for *khalwat* or gambling were from the lower classes of society or marginalized groups.” They found cases in Aceh of Taming and Lhoksumawe people who had violated certain *qanun*, but were able to hire lawyers to defend them and did not receive punishment. They found another case where the underage child of a high-ranking government official was caught having intercourse, but, according to YICM, there was no punishment. They compare this story with the story of a lower-class girl who had been accused of *khalwat* in Darussalam and whose head was forcefully shaved (*dibotaki*) by the community.⁵⁹ Such cases are occasionally reported in local and national media.

The media has also focused on the issue of women under a *Syariat* system. In December 2006, the *Jakarta Post* ran an op-ed entitled, “*Aceh’s Syariat bylaws hurting the needy and protecting the wicked.*” In this article, an Acehnese woman argued that *Syariat* had “worsened the lot of women in the province. *Syariat’s* implementation has focused on and discriminated against women who are [considered] to be agents of satanic deeds.”⁶⁰ Later that month, the *Jakarta Post* published an opinion piece on *Syariat*-inspired bylaws by Lily Zakiyah Munir, Director of the Center for Pesantren and Democratic Studies. In her opinion the implementation of *Syariat* law in Aceh, “seeking to enforce social order and morality, [has been] disheartening.” She argues that this has been “at the cost of women.”⁶¹

As mentioned above, it is acknowledged that women have been left out of the process of drafting and implementing. It is also thought that the symbolic nature of the *qanun*, have made women, who are required to wear *jilbab* and

⁵⁸ Interview, February 3, 2007.

⁵⁹ Interview, February 2, 2007.

⁶⁰ *Jakarta Post*, December 21, 2006.

⁶¹ *Jakarta Post*, December 29, 2006.

loose-fitting clothes, easy targets of the *Syariat* officials. According to a representative of Komnas Perempuan,

There is a fear among women that *Syariat* will lead to disadvantages for women. We have already seen this happen. For example, groups calling themselves *santri* (religious students) have arbitrarily stopped people who ride on busses and used abusive language with women wearing long pants in public areas because it does not reflect the morality they adhere to... This leaves a great potential that people's rights will be infringed upon because they are accused of *Syariat* offences. Potentially, they will be the victims of violent punishment [caning] and intimidation before their communities.⁶²

The WH sees this differently. According to them, the rules regulating women's dress are in place in place to protect women. Female WH patrol members said:

If she is dressed up in a sexy outfit it will arouse passion and lust in men, which will lead to a crime against her. In such cases she is indirectly the cause of such evil/crime... Not all men are able to control their lust and if she is in a secluded place, a woman could get raped... If she wears loose clothing, it is not likely that she will be followed by men or sexually abused. So this is some kind of control system.⁶³

When asked whether or not men should bear responsibility for their actions, like harassing or raping women, the WH members replied, "Yes, *Insyallah*," but felt that it is naive to expect men to be responsible for their actions. Their attitude removes responsibility from men (the would-be violators) for their actions and tries to prevent sexual crime by preemptively placing the onus on women (the would-be victims), thereby forcing women to change their behavior. Many women feel that this makes them into the criminals. So-called "responsible" men may feel offended by the assumption under the *Syariat* system they are not able to control their sexual desire and that the responsibility for their desire should be entrusted to women.

⁶² Personal communication, January 29, 2007.

⁶³ Interview, February 1, 2007.

Another way in which the implementation of *Syariat* law subjugates women is that it makes women the focus of suspicions that inherently disadvantage them socially and professionally. According to Komnas Perempuan,

Our opinion of how *Syariat* can disadvantage women include[s]... suspicion of women who go out of the home, work in one room with male colleagues, or ride in vehicles with male co-workers when it is thought that they should be home. Often, the WH believes that any woman in close proximity to men is already violating the law. The regulation about women returning home early in the *qanun* makes people think about professional women negatively. Also, the interpretation of these laws can be very loose so that anyone can be considered to be a law breaker.⁶⁴

In Bireun, for example, the local MPU issued a *fatwa* (religious decree) that forbade women from going out and working in the evenings. As one activist commented, “We must see this *fatwa* as disempowering to women who try to make a living by selling food and other items in the cooler evening hours... Clearly, this *fatwa* lowers their economic potential.”⁶⁵

A final point of contention is that violent punishment, namely caning, used to punish violators of the law, is inhumane. A recent report by Komnas Perempuan about violence suffered by women in NAD claimed that

16 cases of cruel and inhumane treatment and punishment under law of women have occurred from 2000 to 2006 in Aceh... These cases have occurred under the context of one, armed conflict and two, the current implementation of *qanun* (Islamic law) that restrict *khalwat*, gambling, and drinking alcohol... Surprisingly, five of the cases that have taken place in the post-conflict era have resulted from violations of *qanun*.⁶⁶

The report criticized the caning of females accused of violations in order to “frighten” them and the general public. This practice was criticized as being

⁶⁴ Personal communication, January 29, 2007.

⁶⁵ Interview, February 3, 2007.

⁶⁶ Komnas HAM Perempuan (2007: 26).

not only emotionally and socially disturbing for the woman being caned but for her family and community as well. An RPUK activist commented that “being punished violently in front of the community has lasting effects on one's family. It belittles and stigmatizes them in the community.”⁶⁷

Other Muslim women disagree. A representative of Mukhama Syariat argued that it is wrong to think that the violence and emotional damage suffered by those who are caned is less than those who suffer prison sentences. “Where will a woman suffer more violence, if she is caned or if she is in prison for several months? It should be clear that it is worse for a woman, especially one with children, to go to jail.”⁶⁸ Still others do not see caning as violent at all. Two female WH members, who said that they had studied in the Islamic law faculty at a local university, said:

We strongly disagree that caning is violence, because it is the rule. If the woman did not want to be punished then why did she break the rules of *Syariat*? If she didn't want to be punished then she should have followed the rules. Therefore, I totally disagree that caning is violence. It is just the rules in the Qur'an for the society.⁶⁹

The Komnas Perempuan report lists several recommendations including that caning must be stopped. It also calls the substance and application of the *qanun* “cruel and inhumane” and calls for regular evaluation of the implementation of the *qanun* which has until now not happened. Finally, it calls for a mechanism for sanctions against the WH itself and a process of reevaluation of the *qanun*.

Wilayatul Hizbah (WH)

The role of the WH is to implement the *qanun* in the field. For this reason, they are seen as the face of *Syariat* law in NAD. They have received much media criticism for being over-zealous and overstepping their role in implementing the *qanun*. For example, a representative of Aceh's Islamic Institute, Yusni Sabri, was quoted as having said that the WH members are

⁶⁷ Interview, February 3, 2007.

⁶⁸ Interview, February 1, 2007.

⁶⁹ Ibid.

getting a bad reputation among ordinary people. "The way the [WH] are acting when something happens is not appreciated... They're young, they have no experience...." ⁷⁰ They are criticized for intimidating foreigners, married couples, non-Muslims, and foreign aid workers. The director of the WH responds, however, that

There has been some misunderstanding by Westerners that the WH is the one applying [punishment], but this is not the case. We have no authority to administer sanctions outside of socialization and reprimands. Problems related to drafting the *qanun* and administering sanctions are duties belonging to the Mahkama *Syariat* and regional police, not the WH. The WH is mouth and paper. We do not carry weapons... and we have no authority over non-Muslims, the police, or the military.⁷¹

Their role, as they describe it, is threefold:

To inform the public about *qanun* and what they mean. To do this they use leaflets, pamphlets, magazines, newspapers, etc.

To function as "religious advocates," meaning that they try to give violators a better understanding of the rules of *Syariat* Islam. This is done in various phases once an individual is caught breaking the *qanun* and for repeated violations.

To report violations, or sometimes to escort violators, to the regional police.

Although their authority is only to socialize Muslims on how to act and dress properly and to report violators of the *qanun* to higher authorities, the WH is often criticized for overstepping their bounds. To cite one infamous example commonly reported:

⁷⁰ BBC, December 8, 2006.

⁷¹ Interview, February 2, 2007. According to the peace accords between GAM and Jakarta, "An independent and impartial court system, including a court of appeals, will be established for Aceh within the judicial system of the Republic of Indonesia" (Article 1.4.3). This is consistent with previous laws passed by the national legislature that firmly keep *Syariat* law in Indonesia under the authority of national law.

On 19 February 2006... three women non-governmental organization (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 *Syariat* principles. Other workshop participants went to the police station and made a formal complaint against the WH. The raid was overseen by Muzakir Tulot, who made coarse remarks to the women and their fellow activists.⁷²

This case was also reported by Komnas Perempuan and the international media.⁷³

In turn, the WH criticizes the International Crisis Group report which claimed that its members “are highly unpopular” and that “even those who support broader application of *Syariat* in Aceh acknowledge that the WH are poorly recruited and trained.”⁷⁴ The director of the WH in Banda Aceh felt the report was, “irresponsible, without checking facts,” and claimed that many points made in the report are incorrect. According to the WH, one mistake made in the ICG paper is that the recruitment process is weak:

We have a 6-step recruitment process. All of our members are required to have an undergraduate certificate in religious studies. We have tests for reading and writing, reciting the Qur’an, competency as a religious teacher, and communication skills. Typically, only about 15 percent of WH applicants pass these tests and become members.⁷⁵

⁷² ICG (2006: 12).

⁷³ For further examples see both the ICG’s and Komnas Perempuan’s reports.

⁷⁴ ICG (2006: 11).

⁷⁵ Interview, February 2, 2007.

Oddly, the requirements specified by the director of the WH are consistent with those described in the ICG report, which does not criticize the WH for having low recruitment standards itself, but reported “wide-spread complaints against the WH” in this respect.⁷⁶ When given the opportunity to comment on other points of contention in the report the director declined to specify any.

Although the WH claims to have good relations with the regular police (in contradiction to media reports), they hope that they will be able to expand their power in the future. As members of the WH patrol said, “Many people in the WH hope that, in the future, the police will not be necessary and that we will have more authority to investigate, prosecute, and punish violators.” They complain that the conventional legal process is too long and would be made smoother and quicker if the WH were given greater authority. They feel that, “The *qanun* we have now are not complete so we still need the police. In the future, we hope that the regular police will not exist.”⁷⁷

While it is recognized that for the time being the police are still needed, the WH definitely sees a niche for itself. As the director of the WH said:

There are illegal situations that cannot be resolved by the police, for example disturbing someone else’s wife, which is a sin. For these types of cases there is no violation under civil law... and the state court is incapable of resolving such a solution... In *Syariat* law, with the religious courts, there are solutions for this.⁷⁸

5. Conclusion

It is widely observed that legislators in Aceh lack the theological and legal expertise needed to create a functional *fiqh*-based *Syariat* legal system, that the *Syariat* courts lack experienced judges, and that the WH is operating with too few resources. As they admit, “We need the government to allocate more funding for training in order to improve our human resources.”⁷⁹ These

⁷⁶ ICG (2006: 13).

⁷⁷ Interview, February 1, 2007.

⁷⁸ Interview, February 1, 2007.

⁷⁹ Interview, February 2, 2007. For example, on December 9, 2006 *Serambi* reported that three factions of the DPRD of the province of Banda Aceh asked the governor of South Aceh to remove the head of Dinas *Syariat* due to his lack of ability and understanding of *Syariat*.

issues, along with those discussed above, have frustrated the implementation of *Syariat* law in Aceh.

The success of *Syariat* law—that is, convincing the Acehnese that *Syariat* law will lead to a more just and prosperous society — depends on several issues. First, *Syariat* law must overcome the fact that, despite public support, it is still perceived by many to be a “gift” from the central government in Jakarta to the *ulama* and political elites of Aceh. Second, greater efforts will have to be taken to ensure not only that *Syariat* law accommodates the whole of Acehnese society, but that society believes it will protect the interests of the poor and rich, women and men, non-Muslim and Muslim alike. Unfortunately, after five years of implementation, this has not yet happened. It will require a greater amount of public participation and a demonstration that lawmakers and enforcers are qualified and capable of carrying out their duties. Third, any additional *qanun* must focus on public matters that plague the whole of the society such as corruption, the illegal extraction of natural resources, and poverty reduction. Fourth, *Syariat* law needs to be expanded to be able to protect women from rape, sexual intimidation, and other violent crimes. Unfortunately, it is perceived by many that *Syariat* has done more to make women offenders than it has to protect them. Conceptually, this will be problematic because the Qur'an does not specify terms for rape, as distinguished from other sexual crimes that are sanctioned as violations of *khalwat* or *zina*. Lastly, more resources will have to be made available to the implementers of *Syariat* law in Aceh, namely the WH. However, this shortcoming is not specific to *Syariat* law in Aceh. The conventional legal system in Aceh is similarly ineffectual – as it is throughout Indonesia – due largely to a lack of resources.

Despite these problems, acceptance of *Syariat* law among the Acehnese cannot be expected to wane. YICM interviews found that 87.5 percent felt that *Syariat* Islam is the solution for problems facing society (the same study found that only 23.3 percent of respondents were satisfied with its implementation). While the creation of a *Syariat* legal system in Aceh will continue, the end result is uncertain. On the one hand, a *Syariat* legal system could represent the ideological tendencies of the MPU and religious courts. On the other hand,

Syariat law could represent the needs and voices of the wider Acehese society, such as those presented here.

In the meantime, the eyes of all Indonesia will be on Aceh as it continues the process of post-tsunami reconstruction, the reintegration of GAM, and the implementation of *Syariat* law. This will include both liberal and conservative groups in Indonesia. As Bahtir Effundy has argued, “The fact that Aceh, having been granted autonomous status by the central government, since 2000 has been officially administered by Islamic jurisprudence, only re-energized scattered efforts to implement Islamic *Syariat*.”⁸⁰ Bahtir's argument has merit. A representative from Hizbut Tahrir, a well-known international Islamic political group that promotes *Syariat* law as well as the establishment of a pan-Islamic Caliphate, admits that there have been many problems with *Syariat* law in Aceh but believes “This is an opportunity... The implementation of *Syariat* [in Aceh] is like a window or door to enter into the new era.”⁸¹ Elsewhere in Indonesia, *Syariat*-inspired bylaws (not called *qanun* outside of NAD) have taken root. Although the percentage is relatively low, with only about five percent of districts in Indonesia having implemented *Syariat*-inspired laws, some moderate Muslims fear that this represents a trend towards conservative Islam and a new threat to pluralism in Indonesia.

Certainly, organizations such as Hizbut Tahrir, which are active in Aceh, will see this as an opportunity to develop a *Syariat* system that can be exported to other areas of Indonesia. Other Acehese organizations, such as YICM, will see this as an opportunity to develop a *Syariat* system that truly addresses the needs of the people and ensures the rights of minority groups in the province. However, whether or not this is possible remains to be seen. Others will undoubtedly see the implementation of *Syariat* law in Aceh and its potential expansion across Indonesia as the defeat of pluralism and the secular state ideology of *Pancasila*. Of course, these perspectives will mean very little to the Acehese who, after thirty years of war-related poverty, desperately need a legal system that is functional and will contribute to the prosperity of the province.

⁸⁰ Effundy (2003: 221).

⁸¹ Interview, February 12, 2007.

List of Indonesian/Arabic Terms:

Bertaubat – Ask forgiveness from God

Baitul Mal – Islamic Treasury

Dibotaki – Forced head shaving

Fiqh – *Syariat* schools of thought of which there are many with different characteristics

Jilbab – Islamic head scarf

Khalwat – Close proximity between unmarried males and females

Khilafat – A pan-Islamic state based on *Syariat* with a Caliph as head of state

Maisir – Gambling

Qanun – *Syariat* inspired by-laws

Santri – Religious students or the religiously faithful

Ta'zir – A *Syariat* offence with no specificities punishment

Ulama – Religious scholars

Zakat – Alms giving

List of Abbreviations:

AIJ – Aliansi Journalis Independen AJI, The Alliance of Independent Journalists

BRR – Badan untuk Rekonstruksi dan Rehabilitasi, Body for Reconstruction and Rehabilitation

DI – Darul Islam

DPRD – Dewan Perwakilan Rakyat Daerah, Provincial Legislative Council for provinces

ICG – International Crisis Group

Komnas Perempuan – National Commission on Human Rights for Women

MISPI – Mitra Sejati Perempuan Indonesia, True Friends of Indonesian Women

MPU – Majelis Permusyawaratan Ulama, a council of religious scholars who draft *qanun*

NAD – Nanggroe Aceh Darussalam

RKUP – Tim Relawan Perempuan untuk Kemanusiaan, Women Volunteers for Humanity

WH – Wilayatul Hisbah, body charged with enforcing the *qanun*, sometimes called “*Syariat* police”

YICM – Yayasan Insan Cita Madani, an Islamic NGO working to address social issues in NAD

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