Contesting sharia : state law, decentralization and Minangkabau custom

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CONTESTING SHARIA:

STATE LAW, DECENTRALIZATION AND MINANGKABAU CUSTOM

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Transcription notes

In this thesis Arabic script is transliterated into English as follows:

English	Arabic	English	Arabic	Long vowels	
ʾ	أ				
t	ت	ḍ	ظ	ā	ـا
th	ث	ʿ	ع	ī	ـيـ - ـي
j	ج	gh	غ	ū	ـو
ḥ	ح	f	ف	ā	ى
kh	خ	q	ق		
d	د	k	ك		
dh	ذ	l	ل		
r	ر	m	م		
z	ز	n	ن		
s	س	h	ه		
sh	ش	w	و		
ṣ	ص	y	ي		
ẓ	ض	a	ة		
ṭ	ط	at	ة..		

Dipthongs		Assimilation of the definite article	
aw	ـَو	al-	الـ..
ay	ـَيـ	al-sh	الشـ
Wa-al	والـ..		

Hamza is dropped when it occurs at the beginning of a word.

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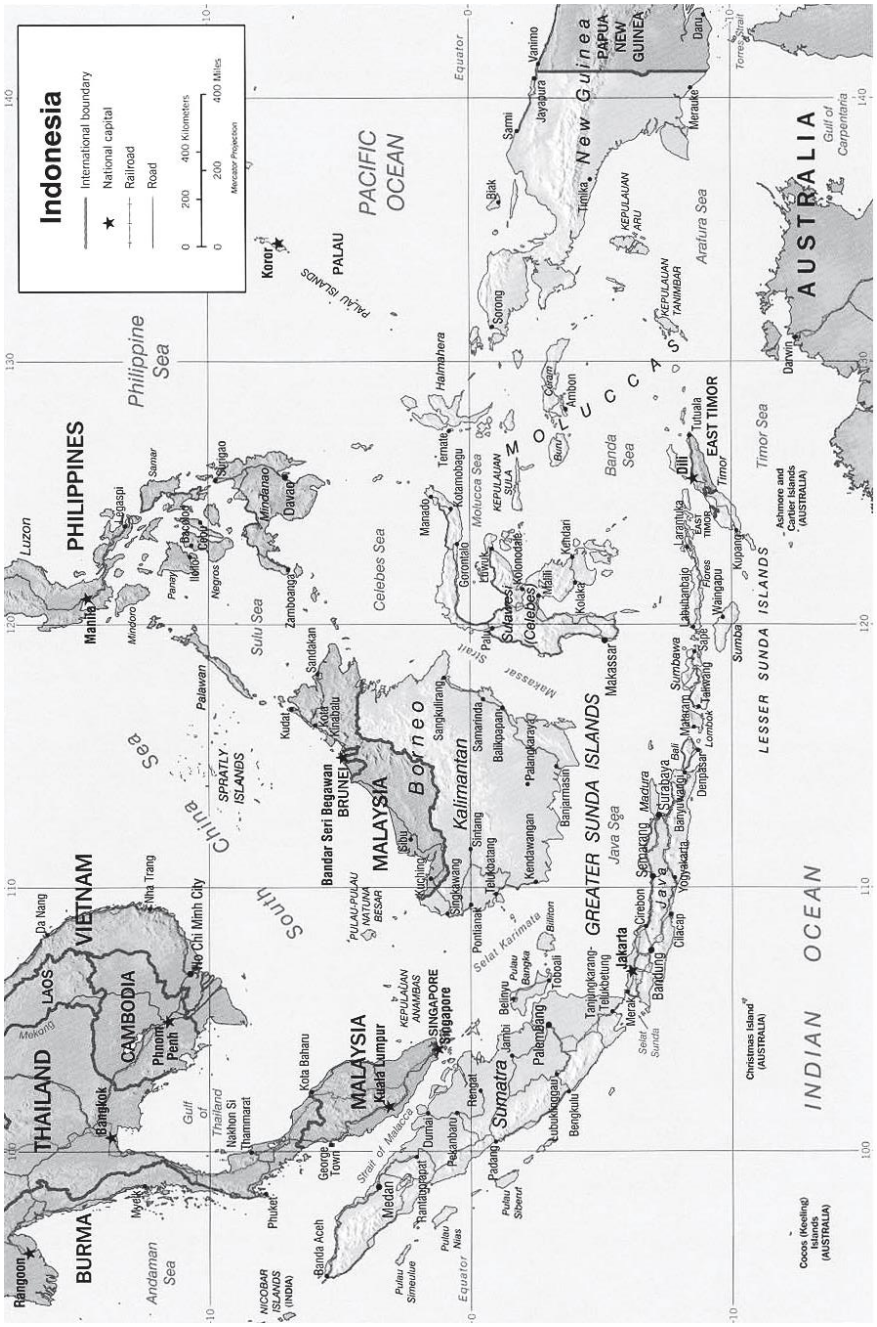
Last but not least, it remains for me to exonerate all these persons from any responsibility for errors or deficiencies in this study.

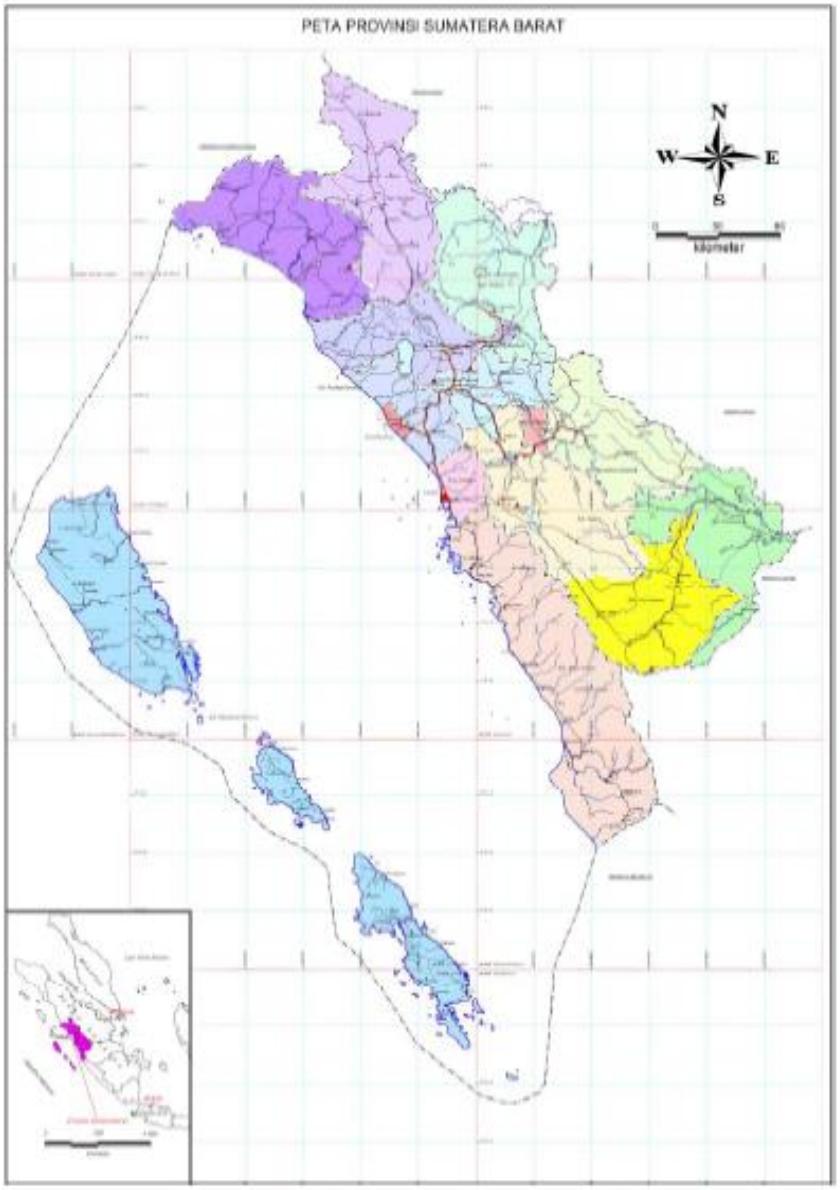
Leiden, April 2013

YH

Map of Indonesia (Blackwood 2010:5)



Map of the Province of West Sumatra (BPS 2010:vi)



Introduction

Background to the study

This study is concerned with the legislation of Sharia (Arabic: *Sharīʿa*). Specifically, it is concerned with the provincial and *kabupaten* (regional)/municipal laws in Minangkabau, West Sumatra, which have been introduced since the implementation of decentralization and local autonomy in 2000. There have been numerous attempts to legislate Sharia by the local authorities, including members of parliament, governor and *bupati* (the head of *kabupaten*) and mayor. Sharia legislation at the provincial and *kabupaten*/municipal level is commonly labeled as *Perda Sharia.* The word *Perda* is an abbreviation of *peraturan daerah,* literally meaning the provincial or *kabupaten*/municipal law. Thus, *Perda Sharia* implies that the rules and regulations stipulated in provincial/municipal law are aimed to implement Islamic teachings regarding Sharia. Accordingly; this study will examine those themes of Sharia that have been legislated for. It will also examine the contents, practice and implementation of these laws in the province of West Sumatra.

The position of Sharia in Minangkabau, West Sumatra, has been something of a mystery. The Minangkabau have a matrilineal society ruled by *adat* (custom). At the same time, it is one of the most thoroughly Islamized ethnic groups. This apparent contradiction and conflict between *adat* and Islam has induced a number of scholars to maintain that the matrilineal society has declined as the islamization of society has progressed (Kato 1982:11). In 1803 (Dobbin 1982), the Padri zealots started a movement of Islamic modernist scholars known as the *Kaum Muda.* At the beginning of the 20th century (Abdullah 1971), the penetration of a monetary economy, educational progress and increasing population mobility have generally been perceived as the causes of this purported decline (Kato 1978; 1-2). In fact,

despite the perceived decline of Minangkabau *adat*, the current development of the society shows that the matrilineal system is far from disappearing and still manages to survive (Kato 1978:2; Hadler 2007:177). The relationship between *adat* and Islam rests on a maxim of *adat – adat basandi Shara', Shara' basandi kitabullah* (adat is based on Sharia, Sharia is based on the Quran), that is commonly abbreviated as ABS-SBK. This maxim suggests that Minangkabau adat is subordinate to Sharia, however, practice demonstrates that the parts of society that are regulated by Sharia vary from time to time (Abdullah 1966; 1971; Dobbin 1983; Huda 2003). Accordingly, the matter of legislating Sharia for provincial and *kabupaten*/municipal laws is important to understand the position and development of Sharia in Minangkabau society today.

The possibility of legislating Sharia for provincial as well as *kabupaten*/municipality laws is created by one main factor: that is, the reformation of the state institutions that occurred after the collapse of the New Order Regime on 21 July 1998. The new era of the Indonesian government is commonly called the Era of Reformation — *Era Reformasi*. This term implies that the new government would conduct a 'reform', i.e. reform state institutions. In order prepare the grounds for these matters, the People's Consultative Assembly (*Majelis Permusyawaran Rakyat*/MPR) amended the 1945 constitution four times between 1999 and 2002.[1] The amendments resulted in a significant shift

[1]Debate and discussion on section 29 of the constitution took place inside and outside the parliament during 1999-2002, the constitutional amendment and reform period. Within parliament, the political parties PPP and PBB lodged their formal proposal to amend section 29 and reinsert Sharia into the constitution, even though together both parties only held 71 of the 462 seats. Outside of parliament, this proposal was supported by a number of Muslim groups, including the Islamic Defence Front (FPI), students at the Bogor Agricultural Institute (IPB) and the Bandung Institute of Technology (ITB). However, the proposal to reinsert Sharia into the constitution received no support from the two biggest Islamic organizations in Indonesia, Nahdlatul Ulama (NU) and Muhammadiyah (Hosen 2007:198-199). As a result, the attempt to amend section

concerning the establishment of new state institutions, also in terms of reshaping power relations between these institutions. The 1945 constitution stipulates that the executive (the president), the legislature (the parliament, *Dewan Perwakilan Rakyat*/DPR), and the judiciary (Supreme Court and Constitutional Court) possess the authority to deal with legal issues. The legitimacy of the president and parliament is derived from their election by the people. The president possesses the power of government in accordance with the constitution and the parliament holds legislative, financial and oversight functions.

The president and parliament possess an equal right to table a bill in parliament. Article 20 of the constitution stipulates that both institutions must discuss each bill aiming to reach a joint approval. Subsequently, in order to make a jointly approval bill become law, it requires an approval from the parliament and president. If the president disapprove to the jointly approval bill that has been approved by the parliament, it will automatically become law within thirty days. However, article 5 of the constitution stipulates that whether or not a law is to come into effect relies on the president who authorizes to issue a government regulation (Peraturan Pemerintah/PP); otherwise, the law is legally nothing but window dressing in legal terms.

The amended 1945 constitution further stipulates the authority of judicial institutions. The Supreme Court (Mahkamah Agung/MA) has the authority to implement judicial power and exercise judicial review of any laws and regulations. Meanwhile, Constitutional Court (Mahkamah Konsittusi/MK) possesses the authority to examine a case at the first and final level and has the final power of decision in matters of constitutional review. However, neither of these judicial institutions can exercise their authority without first receiving a plea from an individual or a

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29 of the constitution failed. This failure proves once again that Indonesia is neither a secular, nor an Islamic state.

group who claim that their legal or constitutional rights have been harmed by an existing law or regulation. This development suggests that the legal relations among state institutions are considerably reformed.

In addition to the reform of legal relations among the state institutions, the reform has also dealt with political parties. The number of political parties has drastically increased, from only three political parties under the New Order to 141 parties registered at the Ministry of Justice and Human Rights in 1999. However, only 48 of these parties participated in the general election of 7 June 1999 and only 21 parties won one or more of the 462 contested parliamentary seats (www.kpu.go.id). Among this number were several Islamic-oriented political parties who have attempted to introduce Sharia based state laws. This situation arose out of the strengthened role of parliament. Laws 3 and 4 of 1999 state that parliament has four mains functions: a) to table bills and legislate; b) to act as a check on government; c) to approve the government's budget; and d) to accommodate and channel the aspirations of the people.

Prior to amending the constitution, on 13 November 1998, the People's Consultative Assembly issued a decision authorizing the government to implement local autonomy and to devolve fiscal powers to the regions.[2] Historically, regimes have perceived autonomy as a threat to national unity and centralized government (Eckardt and Anwar 2006:233). After only a few months of preparation, in May 1999, as part of a wider package of political reforms, the government passed law 22/1999 on regional governance and law 25/1999 on devolving fiscal powers between

[2] See TAP MPR No.XV/MPR/1998 on the implementation of regional autonomy; administration, sharing and utilization of national sources under the justice principle; as well as the devolving of fiscal powers between the central and regional government in the framework of the unitary state of the Republic of Indonesia.

central, provincial and *kabupaten*/municipal government. Both laws stipulate a redistribution of political authority and financial resources among the three levels of government: central, provincial and *kabupaten*/municipal.

In connection to the implementation of regional autonomy, the central government decided to shift from centralized to decentralized government.[3] This "decentralization" is commonly defined as:

> The transfer or delegation of the legal and political authority to plan, to make decisions and to implement and manage public functions and development programs from the central government and its agencies to field organizations of those agencies, sub-national spheres of (regional) government, local government authorities, semi-autonomous public corporation, non-governmental organization, and community-based organizations; with corresponding resources, guided by the principles of subsidiarity and proximity (Ng'ndwe 2003:55-56).

Shifting to a policy of decentralization implies that the central government is willing to share its authority with the provincial and *kabupaten*/municipal governments and other institutions.

I would suggest that there are two grounds for this shift. First, it is the consolidation of state power through efforts to build state authority based on government consent. Second, it is a break with the past, occasioned by both internal and external sources of pressure for change. In connection with these two grounds, factors within government may also have forced the change. These factors

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[3]Through his political party PAN, Amien Rais actively campaigned for Indonesia to leave behind the unitary state and shift to federalism. His main argument was that Indonesia is too diverse to be a unitary state. He eventually withdrew this idea, however, because he received no significant support (Riyanto: 2000).

include: a) the fear for secession for certain regions; b) a determined approach towards deepening democracy; c) the economic crisis since 1998; d) structural change in the economy; and e) the demographic conditions of Indonesia. In addition, external factors may also have stimulated the government to shift to democratic decentralization; for instance, the expectations of or even pressure from international donors, including the World Bank (*cf,* Oluwu 2003:16-17; Pratiko 2003:33-34; Huda 2010:273-275).

The government maintains this decentralization and regional autonomy with a number of laws, rules and regulations that are growing rapidly. Law 22/1999 stipulates that provincial and *kabupaten*/municipal government have the authority to govern all matters with the exception of foreign affairs, national security, the judiciary, monetary policies, religion, the national development plan, state administration, the national economic plan, the human and natural resources strategic plan, national conservation and national standardization. On 15 October 2004 the government passed law 32/2004 as a revision to law 22/1999. Section 13 to 14 of this new law stipulates the authority of the regional government and enhances with a number of details relating to tasks concerning administration and fiscal issues. However, article 10 (3) states that the matters of foreign affairs, national security, judiciary, monetary policies and religion still belong to the authority of the central government.

The application of the principles of decentralization has also significantly reformed power relations within the provincial and *kabupaten*/municipal authorities. The provincial government mainly serves as the representative of central government at the region and has a limited authority concerning with the affairs of *kabupaten*/municipal government. The *kabupaten*/municipal government now possesses the authority to run the *kabupaten*/municipal government within the principles of decentralization. Although regional and central government share

power, the representatives of regional government also possess the same political legitimacy as those members of parliament who are directly elected by the people. Since 2005 this also applies to the governor, *bupati* (the head of *kabupaten*) and mayor.

The regional governments immediately asserted their authority when decentralization and local autonomy were implemented in 2000. The first things they were concernd with were plans to issue rules and regulations, including attempts to legislate Sharia for provincial and *kabupaten*/municipal law. A number of regional authorities justified these attempts by saying that they obtained the authority to legislate Sharia in order to maintain local governance. In addition, the emergence of a number of Islamic political parties and public demands to legalize Sharia significantly contributed to this matter. This development occurred in a number of regions where Islam is an embedded and accepted part of local culture, including, among other provinces, West Sumatra, West Java, Banten, South Sulawesi, and South Kalimantan (Bush 2008; Hooker 2008; Crouch 2009; Muntoha 2010).
This attempt to introduce Sharia legislation resulted in a public debate centered on whether local government has the authority to pass Sharia by-laws. Up to now, only the government of Aceh has the explicit authority to codify Sharia as a provincial/*kabupaten*/municipal law. This is called *qanun* and is stipulated in national laws 44/1999 and 11/2006. In other provinces it remains debatable whether regional government has the authority to legislate Sharia. There is a view that the district government has no authority to legislate Sharia in provincial/ *kabupaten*/municipal law as article 8 of law 22/1999 and article 10 (3) of law 32/2004 stipulate that religious matters are the subject of the central government, not the district government. The opposing view argues that local government does have the authority to legislate Sharia and that this is justified by articles 69 of law 22/1999 and 136 (1) of law 32/2004, which stipulate that the governor, head of *kabupaten*/municipality and members of the

regional parliament are authorized to issue a local law in order to maintain local needs and identity (*ciri khas daerah*). However, article 70 of law 22/1999 and article 136 (3) of law 32/2004 limit this authority by making it conditional that the local law does not contravene the public good (*kepentingan umum*) or higher ranking laws. Despite these different views, Sharia laws have been introduced in a number of provinces.

This study is devoted to the issue of legislating Sharia for provincial and *kabupaten*/municipal law (*peraturan daerah*) and its implementation after the government applied decentralization and local autonomy. This research uses the legislation of Sharia for the provincial/*kabupaten*/municipal law in West Sumatra. It is confined to those attempts to legislate Sharia that occurred between 2000 and 2011. It concerns the topics of legalized Sharia, the contents of the provincial as well as *kabupaten*/municipal laws, and the actual practice of these laws.

Related studies

To date, there have been a number of studies related to the issue of codification of Sharia for local law. However, not all of these studies applied an academic approach to this subject. Five academic studies that are worth mentioning briefly are those conducted by Deny Hamdani (2007), M.B. Hooker (2008), Robin Bush (2008), Melissa Crouch (2009) and Muntoha (2010). These studies can be summarized as follows:

Deny Hamdani confines his study to the issue of the headscarf in the changing social and political constellation of post-Suharto Indonesia. He devotes a chapter to the practices of Muslim dress code in the municipality of Padang and in a village, called Paninggahan in the region of Solok. He suggests that the formalization of Islamic attire has been unproductive in terms of promoting Islamic precepts, because this theme is an idea that is constantly contested within the complex Muslim social structure.

He also suggests that the imposition of Islamic attire on students in public schools has failed to encourage a personal awareness of religious and cultural identity (Hamdani 2007:128). Hamdani concludes that the imposition of the headscarf has resulted in a purely formal obligation; it has lost its profound inner meaning for those who wear it and the imposition of Islamic dress has transformed the headscarf into a tool of oppression – particularly for non-Muslim students who are forced to adopt this symbol of Islamic identity – rather than a liberating personal choice (Hamdani 2007:172-173). I would argue that these conclusions are premature. A study dealing with human action, the headscarf in this case, requires a long period to observe the practices in order to grasp whether a law has influenced human behavior.

M.B. Hooker, a well-known scholar in the field of law, also focuses his scholarly work on this phenomenon. However, he places this issue in the framework of broader theme: Sharia for the Indonesian *madhhab* (school of Islamic law). Hooker's research was concerned with whether the codification of Sharia for local law is in line with the efforts to define the Indonesian *madhhab*. Hooker examines the texts of Sharia by-laws issued in Aceh, South Sulawesi and West Sumatra as well as the draft criminal codes prepared by *Majelis Mujahidin Indonesia*, a Muslim group that promotes Sharia at a state level. He analyses the position of these local laws in connection with *Pancasila*, the constitution and other state laws and regulations. Hooker concluded that the legal status of a Sharia by-law is uncertain in terms of *Pancasila*, the constitution and regional autonomy laws. (Hooker 2008:243). After analyzing those Sharia by-laws issued in West Sumatra between 2001 and 2006, he concludes that these local laws are a 'work in progress'. Furthermore, he indicates that while these local laws are correct in form, they do not settle the question of validity. The intention of these local laws is to implement Sharia values; that is, to convert these values into public duty (Hooker 2008:268-269). Hooker further suggests that since conflicting assertions around

the legislation of Sharia occur, it requires a study on the effectiveness of the regulations in changing behavior (Hooker 2008:268-269). This study attempts to provide what Hooker has suggested.

Robin Bush shows her enthusiasm in studying this issue. She examines 78 local laws from 470 regions throughout Indonesia. She classifies them into three categories: 35 local laws dealing with public order and social problems; 17 local laws regarding Islamic skills and obligation; and 14 local laws concerning religious symbols (Bush 2008:180). Bush concludes that there are four motives that trigger local authorities to codify Sharia for local laws: history and local culture, corruption and the necessity to disguise or deflect attention from it, local electoral politics and the lack of technical government opportunity at the local level. However, she emphasizes that it is mainly motivated by local politics and the local capacity for good government (Bush 2008:182). Her conclusion is that the appeal of Islamist agendas seeking to formalize Sharia within the legal system is waning. Combined with the pressure on local government leaders to produce concrete results before the next direct elections, this appears to be shifting the emphasis of local politics towards good governance measures and away from symbolic regulations (Bush 2008:191). Her findings reveal that this phenomenon closely relates to local politics. To some extent, my study attempts to revisit her conclusion that indicates that codification of Sharia is waning within the legal system.

Melissa Crouch is also interested in this subject. She reports that the local government of West Sumatra has generated over 40 local Sharia laws, more than any other province in Indonesia (South Sulawesi and West Java are next). Crouch examines 160 local laws from 26 provinces in Indonesia and classifies these under nine themes: clothing, prostitution, social problems (*maksiat*), alcohol and drugs, religious rituals, *zakāt* management, Quranic education, local governance and non-Islamic regulations (Crouch

2009:58-60). She claims that these local laws have discriminated against vulnerable groups such as women, children, the poor and religious minorities. She concludes that the central government has failed to intervene because of the perceived need to maintain the support of the majority Muslim-voter base in a competitive political environment (Crouch 2009:80). However, current developments in the legal system mean that the review of what she claims to be discriminatory local laws is not only the task of the central government, but also that of the Supreme Court. Both have the power to review these laws and judge whether they contradict national laws and regulations. However, it should be noted that this review can only be instigated by a complaint from the discriminated people.

Another scholar who devotes his study to this subject is Muntoha. He raises three main points regarding this issue: the position of Sharia in the legal system, the implication of Sharia emerging in local law, and the categories of the local law regarding Sharia (Muntoha 2010:21). He concludes that the emergence of Sharia in local law is a reflection of the expectation of Muslims to obey Sharia, something which is guaranteed by article 29 of the constitution. He further argues that the national law provides a judicial and normative possibility (*celah yuridis dan normatif*) for the local authorities to codify Sharia in local law, in accordance with their local culture (Muntoha 2010:345-6). His study is based solely on normative discussions and lacks empirical research. Discrepancies between normative law and practice often occur.

In short, further study of the codification of Sharia in local law is necessary in order to gain a more comprehensive understanding of this phenomenon. For this purpose, it is important to pay close attention to the actors in this subject, to the drafts and final texts of the local laws, to how this issue is publicly discussed or debated, and also observe the implementation of those local laws over a longer period of time. This study is devoted to these comprehensive aspects of the phenomenon.

Focus of the study

This study examines four aspects of provincial and *kabupaten*/municipal Sharia by-laws: the draft, public discussion and debate of a draft during the period in which it is scrutinized by members of parliament, and the texts and implementation of Sharia by-laws. Several Sharia by-laws have been selected for scrutiny. A provincial law is defined as a law that is passed by the provincial parliament and the governor. A *kabupaten*/municipal law is defined as a law that is approved by the parliament and the *bupati* or the mayor.[4] In addition, this study also scrutinizes those regulations issued by the governor or *bupati*/mayor in connection with the legislation and implementation of Sharia.

To categorize whether a provincial or regional law is a Sharia by-law (*Perda Sharia*), I follow Rudolph Peters who suggests that, 'Whether the codification of the Sharia can still be regarded as Sharia and as Islamic, relies on the Muslims themselves; if they hold that it is Islamic and a legitimate interpretation of the Sharia there are no good arguments to view it differently' (Peters 2002:92-93). Thus, I categorize it as *Perda Sharia* if Muslims, politicians, government officers, journalists, or even non-Muslims name it *Perda Sharia*. Nevertheless, there is still another reason to rationalize a provincial or *kabupaten*/municipal law as *Perda Sharia*; that is, if the substantive law, the terms or vocabulary that are used in the texts of the law have been used in the Quran or Hadith or in other sources of Islamic teachings. In short, this study aims to

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[4]Law 10/2004 mentions the term local law (*Peraturan Daerah*), which it defines as a law that is issued by the local parliament (DPRD) and approved by local leaders, i.e. governor or head of region or mayor. Article 7 (2) of this law further classifies the local law into provincial, regional and village law. In 2011 the government amended law 10/2004 with law 12/2011 and the term 'local law' is no longer used. It has been replaced with the terms provincial law and regional law. Article 7 (1) of law 12/2011 stipulates regional law to be at the bottom of the hierarchy of national law; village law is deleted altogether from this legal hierarchy.

present a comprehensive position and the development of Sharia in the specific social context of Minangkabau society in West Sumatra.

Research questions

This thesis seeks to answer the following interconnected-questions: Which parts of Sharia have been used in legislating provincial and *kabupaten*/municipal laws? Who are the actors behind this development? What is/are the motive(s) of the local authorities to legislate Sharia? Are the rules regulated in the Sharia by-laws fully implemented? These questions guide this research project to study a number of aspects of this issue: the draft of law, the legal process in the provincial, *kabupaten*/municipal parliament, the texts, and the actual practice of the law.

Methods

Data for this study is gathered using two research methods – bibliographical and empirical investigation. Bibliographical investigation aims to obtain information dealing with Sharia and other closely related subjects to this theme. It covers several studies on this subject conducted in a number of Muslim communities, in Indonesia and West Sumatra, and several subjects related to the general issue of law. I have conducted research in four libraries located in Leiden: the library of Leiden University (UB), the library of KITLV, the library of faculty of law and the library of social sciences. In West Sumatra, I also used the collections owned by the library of the Sharia Faculty of the IAIN and the faculty of law at Andalas University. In addition, the texts of laws and regulations issued by Indonesian institutions have mainly been gathered by accessing several internet links provided by government and non-government institutions that I consider credible.

I conducted the empirical investigation in West Sumatra over three separate periods. My first fieldwork was carried out from

September 2008 to May 2009, the second was from 22 April to 28 November 2010 and the last one was conducted from 2 December 2011 to 23 January 2012. The purpose of this fieldwork varied. The first and second periods of fieldwork were primarily aimed at gaining data concerning: 1) the legal process relating to local laws in the parliament and at the provincial and *kabupaten*/municipality level. This process begins from the first idea of issuing the law, and moves through the drafting stage, public debates, and finally approval of the local law; 2) the implementation of the provincial and *kabupaten*/municipal laws; and 3) public opinion and responses, to these laws. My final period of fieldwork focused on gaining updates from the field.

During the first and second periods, I gathered data through a variety of ways. First, I conducted several in-depth interviews, conversations, talks and chats with people whom I classified to be directly or indirectly involved with the attempts of Sharia legislation and its implementation. I also classified the respondents based on whether they were opponents or proponents to the issue. This included members of the provincial or *kabupaten*/municipal parliaments for the periods of 1999-2004, 2004-2009 and 2009-2014; local authorities; *ulama* (Arabic *ʿulamāʾ*: religious scholars); teachers; students; administrators; academics; police officers; NGO activists; journalists and members of the general public. Secondly, I also conducted focus group discussions (FGD) in Padang, Solok and Bukittinggi. In addition, after withdrawing from the field, I have maintained contact with respondents via email, chatting, phone, SMS other forms of electronic communications. I have chosen not to mention their names in this thesis when I quote their ideas, thoughts and personal opinions. Rather, I only mention their position or job. Third, I collected the texts related to the legal process relating to provincial and regional laws; for example the drafts, minutes or text of speeches by the members of parliament and the governor or *bupati*/mayor. Finally, I collected news reports relating to this

issue published in the local newspaper between 2000 and 2010. I collected news from four daily local newspapers: *Daily Singgalang*, *Daily Haluan*, *Daily Padang Ekspres* and *Daily Pos Metro*. In addition, news related to this study was also gathered via internet links provided by several newspapers, TV channels and other social networks including Facebook and YouTube.

Organization of the book

This book is arranged in five chapters, excluding the introduction and conclusion. The introduction provides the background to the study and positions this book in relation to several previous studies of a similar nature. It also includes the related studies to this topic, the focus of this study, the research questions that this study attempts to answer, and the methods used.

Chapter one provides a general sketch of current developments in Sharia in the Muslim world. It includes a number of sections concerning the concept of Sharia, the role of Sharia in Muslim countries, the place of Sharia in the Indonesian legal system, a number of state legislated Sharia laws, the emergence of codification and legislation of Sharia in some provinces, and the position of Sharia in Minangkabau society in West Sumatra.

The contents of chapters' two to five are arranged on the basis of chronological themes relating to the legislation of Sharia. The first theme is the attempt of this legislation to deal with public morality matters. It is followed by three themes on Muslim dress code, the obligation to acquire the skills to recite the Quran and finally matters of *zakāt*. Thus, chapter two presents Sharia by-laws concerned with public morality and relating to criminal law. The chapter begins with a brief discussion of Islamic rules on public law, and it then presents an overview of the place of Islamic criminal law in Muslims countries. Subsequently, it discusses the presence of Islamic criminal law in the Indonesian legal system. The discussion continues in the context of West Sumatra, starting

from provincial law including its draft stage, public discussions in response to the draft and the content of the provincial law 11/2001. Further, this chapter presents six selected regional laws on this topic, derived from Bukittinggi, Padangpanjang, Payakumbuh, Padangpariaman, Sawahlunto/Sijunjung and Pesisir Selatan. The last part of this chapter concerns the municipality of Padang and the (draft) law 11/2005, *Satpol PP* (civil service police unit) and the actual practice of the law.

Chapter three presents the issue of Muslim dress code. This chapter begins with a discussion of the Islamic rules on this topic after which it presents a brief discussion on this matter in the Muslim world and the attitude of the Indonesian government towards this subject. Then, it provides a history of Muslim dress code in West Sumatran society and subsequently examines the provincial law concerning dress code. This chapter also examines a number of selected regional laws from Solok, Sawahlunto/Sijunjung, Pasaman, Limapuluhkota, Padangpanjang, Agam and Solok Selatan. The final section of this chapter presents the actual practice of Sharia law in the municipality of Padang.

Chapter four presents an overview of Quranic education. This chapter begins with a brief outline of the rules on reciting the Quran. This is followed by a short description of reciting the Quran in the Muslim world and the Indonesian government's policy on this issue. The next discussion is about Quranic education within Minangkabau traditions and this leads to an examination of the contents of the provincial law related to this subject. This is followed by a look at selected *kabupaten*/municipal laws of Solok, Sawahlunto/Sijunjung, Limapuluhkota, Pesisir Selatan and Agam. Then, this chapter presents the actual practices of Quranic education in the municipality of Padang, including *SD* Plus programs, implementation of regional law 6/2003 on Quranic education, Muslim responses to the policy and the impact of this policy on Quranic learning centers managed by Muslim communities.

The final chapter focuses on the institution of *zakāt*. It begins by presenting the Islamic rules on *zakāt* and also examines, briefly, developments in this area that have taken place in a number of Muslim countries. Subsequently, the government's concerns about issues of *zakāt* are presented, relating to a period from the 1960s until 2011, when the government issued law 23/2011 as a revision to law 38/1999 on *zakāt* management. The discussion continues in relation to *zakāt* in West Sumatra, starting with how this topic is dealt with at the provincial level and continuing with a look at selected *kabupaten*/municipal laws on this topic. The laws selected originate from the *kabupaten* Pesisir Selatan, Solok, Agam and from the municipality of Bukittinggi, Padangpajang and Padang. The actual practices of managing *zakāt* in the municipality of Padang are also examined. This includes the establishment of a semi-governmental *zakāt* institution (BAZDA), the collection and distribution of *zakāt* revenue, and resistance to *zakāt*.

This study ends with a conclusion and a recommendation. The conclusion presents a number of findings and offers new understanding regarding the position and development of Sharia in Minangkabau society in West Sumatra in particular and in Indonesia in general. The recommendation addresses the need for further studies in relation to the topic of this study.

Chapter 1
Sharia: From global to local

1.1 Introduction

Sharia has been central for Muslims since the time of the prophet to the present. Most Muslims believe that Sharia deals with all aspects of their life. However, the history of Sharia shows that categories of Sharia vary depending on time and place. Through the ages, Sharia has developed and it has also been confronted with various challenges. The most recent developments in Sharia show that it contests various values and laws, including issues surrounding its position within the legal system of a nation state.

This chapter aims to present the position of Sharia in Muslim countries; starting from a global picture and ending at the latest developments in Minangkabau, West Sumatra. To this end, the chapter begins with a brief discussion regarding the concept of Sharia. Subsequently, it presents the position of Sharia in a number of Muslims countries, which, in turn, will illustrate its position within the Indonesian legal system. This will also outline elements of Sharia that have been legalized and incorporated into the national law. Crucially, this chapter also discusses the situation since the government implemented a policy of decentralization and regional autonomy in 2000 that has resulted in the legislation of Sharia for provincial and regional/municipal laws. It also discusses the validity of provincial or regional /municipal law and the extent to which central government still has the authority to control these laws if they are in contradiction with the constitution or other, higher ranking laws. In the final subsection I

will present a brief history of Sharia within West Sumatran society. The chapter ends with conclusions on the issues presented.

1.2 The concept of Sharia

Currently, the word Sharia is widely used to refer to the rules or regulations that determine how Muslims behave and conduct their lives. Principally, these rules and regulations are derived deform two main sources of Islamic teachings, the Quran and ḥadīth. The scope of these rules and regulations has been gradually extended by Muslim scholars (*faqih/fuqahāʾ*), legal advisers (*mufti*) and judges (*qāḍī*). The Quran and ḥadīth clearly indicate that the word Sharia applies to the rules and regulations that set out how to behave and to live.

The word Sharia (*Sharāʾiʿ*, plural) originates from *sh-r-ʿ*, meaning, among other things, 'water hole, drinking place; approach to a water hole' (Wehr 1979:544). If this is interpreted as a well-trodden path for man and beast to a source of water in an arid desert environment then one can appreciate why this term became a metaphor for Muslims and a whole way of life ordained by God (Weis 1998:17). The Quran mentions a word related to Sharia in five verses and the word Sharia itself occurs in the chapter of *al-Jāthīya*/the Kneeling down (45): 18, which designates a path. The cognate *shirʿa* occurs once in the *chapter* of *al-Māʾida*/the Table spread (5): 48 and parallels *minhāj*, meaning the way or a path. The root *sh-r-ʿa* appears in verb form twice in the chapter of *al-Shūrā*/Consultation (42): 13 and 21. Lastly, the word *shurraʿan* appears in the chapter *al-ʾAʿrāf*/the Heights (7): 163 in relation to rebels (ʿAbd al-Bāqī 1988:378). In the ḥadīth the word *Sharia* occurs once in the ḥadīth of Ibn Ḥanbal. In the plural form it appears about a dozen times, including *al-imān wa sharāʾiʿ*, *sharāʾiʿ al-islām*, *wa sharāʾiʿ wa ḥudūda* and *al-Islām wa sharāʾiʿahu* (Wensinck 1955:101). Thus, Sharia is the most frequently used term in both

the Quran and the ḥadīth for expressing the rules, regulations and system of rules relating to behavior and conduct.

At the 2nd/8th century, the word Sharia was seldom applied by Muslim scholars. Indeed, the word *dīn* was used to describe Muslims' activities. This term was not only used in reference to dogma but also with regard to the law (Rahman 1979:102). For example, in *Risāla*, al-Shāfiʿī (d. 820) makes little use of the word Sharia or *Sharʿ*. The scholar al-Ghazālī (d. 1111) uses the word in *al-Mustaṣfā* in relation to *sharʿunā* (our law) and *Sharʿu man qablanā* (the law of those before us) (Celder 1997:322). In the 8th/14th century, Muslim scholars use this word widely in reference to rules or regulations relating to conduct or behavior. For instance, al-Shāṭibī (d. 1388) uses the word Sharia as a central theme in *al-Muwāfaqāt fī ʾuṣūl al-sharīʿa.* He defines it as rules that regulate conduct (*afʿāl*), ways of speaking (*aqwāl*) and intention (*iʿtiqād*) (al-Shāṭibī 2003). A more contemporary scholar, ʿAbd al-Wahhāb Khallāf (d. 1956) defines Sharia as a set of rules ordained by *Shāriʿ* (the Law Makers, God) dealing with the conduct (*afʿāl*) of *mukallaf* which are either imposed *(ṭalaban),* optional (*takhyīran*) or conditional (*waḍʿan*) (Khallāf 1992:100).

Muslim scholars categorize Muslims' conduct (*khitāb al-taklīf)* into five classifications: neutral or indifferent (*mubāḥ*), recommended (*mandūb*), disapproved (*makrūh),* obligatory (*wājib*) and forbidden (*ḥarām*). These categories deal with a Muslim's relationship with God, with other individual Muslims and with the community. Within these categories Sharia is not a uniform, fixed and unchangeable set of rules. Indeed, I found a variety of rules regarding behavior and conduct in various *fiqh* books, *kitāb al-fatāwā* and Muslim laws in different countries. Furthermore, the above three categories have not remained fixed over time. The rules that were initially seen as only relating to the relationship between a Muslim and God later developed. For instance, the purpose of *zakāt* was to maintain the relationship between a Muslim and God and it also had social purposes. Later, however,

zakāt became viewed as a matter of ritual. The development of *zakāt* over the last three decades has demonstrated its double function – its socio-economic purposes and its purpose as a ritual. The rules relating to fasting provide us with another example. Current developments show that there are new regulations in some Muslim countries, for instance Morocco, that include punishment for those who disrespect the rules of fasting in a provocative manner during Ramadan (Buskens 2010:122). Similar developments can also be seen with regard to regional laws in areas such as West Sumatra (see chapter 2).

Sharia, then, is part of a tradition of rules (which can be divided into five categories) that determine the correct forms and purpose of Muslim conduct. As a tradition of Muslim discourse, Sharia addresses the conception of the Islamic past and future and in particular to Islamic practice in the present (Asad 1984:14). Current developments in this tradition show that its scope has been widely extended. Sharia now also functions as a vocabulary for morality and justice. Indeed, it is a flexible vocabulary for a moral economy of claims and counter-claims between the masses and various factions, with regards to the obligations of ruler and ruled (Zubaida 2003:11). This development suggests that Sharia concerns all aspects of Muslim life, from birth to death; a total discourse that finds simultaneous expression within diverse institutions, be they religious, legal, moral, economic or political. However, attempts to legislate Sharia at a state level have forced to adjust it to the new circumstances of Muslim society today, so Sharia is primarily viewed in a narrow legal sense (Messick 1993:3).

1.3. Role of Sharia in Muslim countries

In the nineteenth and twentieth centuries, the majority of Muslim countries were subject to the political power of Western rulers. This domination led to the subordination of Sharia under the state legal systems imposed by these rulers. This position persisted after these Muslim countries gained their independence. The place of

Sharia in state legal systems can be classified into three categories: 1) Sharia formally dominates the state legal system and Islam is officially the religion of state; 2) Sharia is a source of state legislation but a Western-style legal system prevails; and 3) Sharia has no role in the legal system at all (*cf.* Otto 2010:635; Peters 2003:91).

Saudi Arabia and Iran fall into the first category. In the Kingdom of Saudi Arabia, Sharia is explicitly located in the state constitution and, formally, it is the sole source of political legitimacy and it is the source for the country's laws (Vogel 2011:55). This is evidenced by section 1 of the constitution, called *al-Niẓām al-ʾasāsī*, which states that the religion (of Saudi Arabia) is Islam. Article 7 states that 'Rule in the Kingdom of Saudi Arabia draws its authority from the Book of God Most High and Sunna of His Prophet'. These two texts have sovereignty (*ḥākiman)* over all regulations (*niẓām*) of the state (Vogel 2000:3). On 1 March 1992, King Fahd issued the first codified constitutional framework for his country, stating that the country will not adopt a Western-style system of democracy. He argued that the Islamic system, on which the constitution is based (*Shūrā*) is more suitable for the needs of the country (van Eijk 2010:151). In Iran, the role of Islam has been explicit since the country adopted a new constitution following the Revolution of 1979. The general principle of the constitution is illustrated by article 4, which states that 'all civil, penal, financial, economic, administrative, cultural, military, political and other laws and regulation must be based on Islamic criteria' (Mir-Hosseini 2010:348).

The majority of Muslim countries belong to the second category. However, there are nuances and variations from country to country, including Egypt, Indonesia, Malaysia, and Morocco. Article 2 of the Egyptian constitution, adopted in 1971, includes the clause: 'Islam is the religion of the state, Arabic is the official language, the principle of the Islamic Sharia shall be a chief source of legislation'. In 1980, the government of Egypt amended article 2

of the constitution and changed the wording from *mabādiʾ al-sharīʿa al-islāmīya maṣdar raʾīsī li al-tashrīʿ* (the principles of Islamic Sharia are *a* principle source of Legislation) to the more forceful statement, *mabādiʾ al- sharīʿa al-islāmīya al-maṣdar al-raʾīsī li al-tashrīʿ* (the principles of Islamic Sharia are *the* principle source of legislation). Henceforth, Sharia would play a more important role in Egyptian society (Lombardi 2006:1-2). The new stress on Egyptian citizenship was designed not to combat, but rather to balance the role of religion in national identity and political discussions. Similarly, the ban on parties with a religious reference was based on a claim that religion should not be used to divide the country (Brown 2011:117). While the position of Sharia is similar in many Muslim countries, different countries have different schools of law (*madhhab*); for example, Morocco has adopted the Malikite School, while Malaysia and Indonesia adhere to the Shafi'ite School.

Turkey belongs to the third category. In 1926, it adopted a totally different model in which the constitution establishes the Republic of Turkey as a democratic, secular and social state, governed by the rule of law and respecting fundamental human rights and freedom. Turkey implements the most rigorous secular project in the Muslim world and uses all available means to exclude Islamic norms from the public sphere. Codification of Turkish law is based on a number of European systems: civil and commercial law originally based on the Swiss system, administrative law founded on the French system, and criminal law based on the Italian system. Secularization of the law was largely completed in 1928 when Ataturk initiated secular reform and abolished Islam as the state's religion. Calls for increased religiosity in recent decades have had no effect on the country's law (Koçak 2010:231).

As we have seen, the position of Sharia within these three categories varies from country to country. Otto suggests that the development of Sharia in twelve Muslim countries shows two main

streams – a sense of moderation and some signs of reverse trends. Otto suggests that the moderation can be seen in: the rolling back of earlier reforms (Iran), the move towards constitutionalism (Saudi Arabia, Sudan, Afghanistan, Turkey), the continuing liberalization of marriage laws (Egypt, Morocco, Pakistan), restraint in the execution of cruel corporal punishment (Pakistan, Malaysia, Nigeria), significant progress in democracy and human rights (Indonesia) and the maintaining of the status quo (Mali). At the same time, Otto believes a second trend is emerging that is reflected in, among other things, the introduction of retribution punishment in Pakistan (1997), the rolling back of marriage law reform in Malaysia (1994) and the introduction of Sharia criminal law in Northern Nigeria (Otto 2010:620).

1.4 Position of Sharia in the Indonesian legal system

The position of Sharia in the Indonesian legal system finds its roots in the Dutch colonial administration. The colonial government attempted, not always successfully, to avoid being involved in religious matters. In 1882, it issued *staatsblad* 152/1882 which wrongly labeled Islamic courts in Java and Madura *priesterraad* or priests councils.. These courts were led by a group of judges called *penghulu,* which consisted of between three and eight non-salaried religious officials. Its jurisdiction covered family law, including marriage, divorce, inheritance and endowment (*waqf*). Crucially, however, decisions made by these courts could only be legally executed once the civil court had given its affirmation (*executoire verklaring*). For the government, elements of Sharia might be only valid if they had been absorbed by *adat* or customary law (Lev 1972:11). This position illustrates that the position of Sharia in the colonial legal system was double dependent; it relied on the civil court (*landraad)* to execute decisions taken by the priest councils on the one hand, while on the other hand its validity depended on

adat (Hooker 2008). In other words, Sharia was located on the periphery of the colonial legal administration.

There have been a number of attempts by individual Muslims or Islamic groups to make Sharia central to the Indonesian legal system. Their main objective is to gain constitutional acknowledgement of the legal standing of the implementation of Sharia for Muslims. This objective was advocated during sessions held by the BPUPK (*Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan*/Investigating Committee for the Preparation of Independence) between June and August 1945. The result was a phrase added to the preamble of the constitution, commonly called Jakarta charter, stating that Muslims have an obligation to adhere to Sharia. In fact, this phrase was commonly seen as the legal basis for further steps to implement Sharia. Ultimately, however, this phrase was removed from the final draft of the constitution and the head of the BPUPK promised to revisit this matter after independence (Anshari 1981). This issue re-emerged during the *Konstituante* debates held between 11 November and 7 December 1957; during the parliamentary sessions at the beginning of the New Order (1966-8); and in the parliamentary sessions held between 1999 and 2002 aimed at amending the constitution. But, these attempts failed to achieve their purpose (Hosen 2006).

Despite the fact that the constitution does not explicitly acknowledge Sharia, it has played a role in the development of the Indonesian legal system. There are two important factors that make it possible to apply Sharia. First, section 29 of the constitution regulates that: 1) the state shall be based upon a belief in the One and Only God; and 2) the state guarantees all citizens the freedom of worship, each according to his/her own religion or belief. This section indicates that Sharia is placed as a source for national law, not as national law itself. For that to occur, it must be transformed through the process of state legislation. This section requires that the implementation of Sharia must be based on an

individual consciousness or awareness, and not be imposed by state law. Furthermore, the state is obligated to facilitate and guarantee the implementation of Sharia; and the legislation to incorporate Sharia in national law must not be in an imperative form (Mahfud 2008:72). In fact, section 29 of the constitution is commonly used to justify Sharia legislation for state laws and regulations. Secondly, the government established the Ministry of Religious Affairs on 3 January 1946. This ministry primarily undertook tasks dealing with religious affairs that fell under the remit of the Ministry of Justice, the Ministry of Home Affairs and the Ministry of Education and Culture. It established offices at the provincial, regional/municipal and sub-regional (*kecamatan*) level and these have played a significant role in intensifying Islam across the country. Historically, the Ministry of Religious Affairs has been a bridge between the interests of the state and the Muslim communities.

Although section 29 of the constitution justifies legislation of Sharia for state law, evidence shows that the first Sharia legislation was not introduced until three decades after independence. This situation was mainly the result of three interconnected factors. Firstly, a number of Muslim groups, including the Darul Islam movement, utilized Sharia as an emblem that threatened the unity of Indonesia. They advocated replacing the unitary state with an Islamic state (Van Dijk 1981). Secondly, Sharia remained inapplicable for the state's purposes as it was unsystematic, lacked procedural rules, was often contradictory and was disconnected from the modernization project introduced by the government. This situation was also linked to a learning culture in which Sharia was primarily taught to gain piousness rather than as a functioning law. Thirdly, there was a woeful lack of well-educated actors who could be proponents of Sharia for state law. The consequence of this third factor was that the power relations and political interests of the ruler had nothing to do with Sharia. Since the 1970s, these three problems have gradually

changed and the attitude of Indonesia's rulers towards Sharia has begun to shift and we are seeing Sharia being introduced in certain contexts.

1.5 Integrating Sharia with the state

Although a number of scholars label the legislation of Sharia for state law as Islamization,[5] this study takes a different position. It sees this legislation as an attempt by the state to integrate Sharia and bring it in line with the state's interests (*cf.* Halim 2008). The word *integrate* implies that an act of adjustment is employed in three ways: to determine the means, the procedures and the methods of Sharia in order to bring it in line with *Pancasila* and the constitution. Integration also means acknowledging that there are other elements of Sharia that are not in line with these two standards. Further, the political interests of rulers, likely to gain the political support of Muslims if they permit the integration of Sharia, also play a role in this issue.

The government aims to achieve at least two objectives in legislating Sharia for the national law: first, to accommodate a living law in the society, and second, to use it for social engineering purposes (Hooker 2008; Azra 2005). This fact reveals that the state prioritizes the accommodation of elements of Sharia practiced by the majority of Muslims while at the same time also attempting to shape Sharia so that is in line with the state's interests. Consequently, the legislation of Sharia for state laws or regulations may be classified in two categories: real and symbolic. The first category contains 'real' legislation that is primarily designed to employ the law or regulation, while the latter is mostly aimed at maintaining the political interests of the rulers.

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[5]Among these scholars are Mark Cammack (Cammack 1997) and Arskal Salim (Salim 2008a; 2008b).

Historically, the symbolic elements of the government's policies first appeared in the 1950s, and have apparently continued to increase from the beginning of the New Order regime to the present. For example, the president holds an annual official state commemoration of the revelation of the Quran on the 17th day of Ramadan. The state also officially recognizes and remembers the birthday of the prophet Muḥammad, and the government regularly facilitates a national competition for reciting the Quran (MTQ). The president established a private charitable institution in 1982, *Yayasan Muslim Pancasila*, which collects money from civil servants to finance the building of mosques throughout Indonesia. It was also symbolic that in 1985 President Suharto was willing to finance (with his own money) a project for the compilation of Islamic law (*Kompilasi Hukum Islam*) (Nurlaelawati 2010:82). To add to this list of symbolic events, since 2000 the government has legislated a number of laws concerning Sharia; however, it hardly ever issues the regulations required for the law to come into effect. That said, the government has also introduced Sharia legislation that can be characterized as having real purposes. In other words, the government has tried to facilitate Indonesian Muslims in implementing Sharia and to define a form of Sharia that is in line with the state interests and the Indonesian context. The Ministry of Religious Affairs, the state institution tasked with dealing with religious concerns, has been playing a central role in maintaining these two interconnected purposes. Consequently, Sharia has been incorporated into a number of laws, rules, regulations, and institutions concerned with Islamic education, Islamic courts, marriage law, *zakāt*, pilgrimage, and Islamic finance institutions. The following subsections briefly present those laws, rules, regulations, and institutions that have incorporated Sharia.

1.5.1 Islamic education

Since the early years of independence, educational institutions have been under the remit of several ministries, including the Ministry of Education and the Ministry of Religious Affairs. The

former primarily manages secular educational institutions known as *pendidikan umum*. The latter manages religious educational institutions, widely known as *pendidikan agama* (Azra 2007:261). Both ministries are responsible for organizing schools from elementary level through to higher education.[6] The government provides teaching staff and facilities, as well as the curriculum for these institutions.

One of the most important aspects for the government is managing religious education and the form of Islam – Sharia –— that is to be taught. The Ministry of Religious Affairs has designed a curriculum for all levels of education for this purpose. We need look no further than the curriculum of higher Islamic education, particularly the faculties of Sharia at STAIN, IAIN, and UIN, to see the shape and form of Indonesian Islam. Hooker concludes three points with regard to this curriculum: firstly, Sharia must be managed as part of the wider secular curriculum, but in fact, there has been successful implementation of a standard national Sharia curriculum; secondly, the innovations that are occurring in regional curricula should not be seen as a threat to *fiqh*; and lastly, the curriculum has shown that it can accommodate more than one form of legal reasoning. Indeed, two forms of legal reasoning are applied in these institutions – one drawn from classical Muslim sources and the other from the western tradition (Hooker 2008:127-8). Students at Sharia faculties are trained to gain employment in positions related to their *fiqh* knowledge, including

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[6] The Ministry of Religious Affairs supervises Islamic education from elementary to higher education: it organizes Madrasah Ibtidaiyah (MI) for elementary schools, Madrasah Tsanawiyah (MTs) for junior high schools, Madrasah Aliyah (MA) for high schools and Sekolah Tinggi Agama Islam Negeri (STAIN), Institute Agama Islam Negeri (IAIN), Universitas Islam Negeri (UIN) for higher Islamic education. According to data released by the Ministry of Religious Affairs in 2010, the total numbers are as follows: MI:1,675 (state/*negeri*) & 20,564 (private/*swasta*); MTsN:1,415 (state/*negeri*) & 12,608 (private/*swasta*); MAN:748 (state/*negeri*) & 5.149 (private/*swasta*); STAIN:32, IAIN:14, & UIN: 6, in total 52 (state/*negeri*) & 522 (private/*swasta*), www.kemenag.go.id, accessed in 24/2/12.

as civil servants at the Ministry of Religious Affairs and judges in Islamic courts. It should be noted, however, that there are judges in Islamic courts who originate from other faculties at the IAIN or UIN, and who are also law graduates from secular universities.

Current developments in the Indonesian education system reveal a gradual strengthening of Islamic education, particularly since central government issued law 22/2003 on national education that recognizes all levels of religious educational institutions to be part of national education. Presidential decree 55/2007 gives the authority to the Ministry of Religious Affairs to set up curriculums for religious education at all levels, including for those educational institutions under the remit of the Ministry of Education. This situation confirms that the government persists in attempting to shape and guide Indonesian Islam and Indonesian Sharia.

1.5.2 Islamic courts

The Islamic court is an important Islamic institution and an arena where state-defined Sharia is imposed and put into practice. The colonial government first established this institution for Java and Madura in 1882 and the Indonesian government continued to maintain it after independence. Subsequently, in 1951, the government extended similar institutions, namely *mahkamah syarʿiyah,* to other regions in Indonesia. However, the government hardly provided sufficient facilities as it is a judicial institution and it also lacks authority to execute its decisions. Because of this situation, Hazairin (d.1975) who had expertise on Islamic and customary law, once suggested to abolish Islamic courts as he argued that they had no authority to execute their decision, they were poorly administrated and lacked facilities (Noer 1978:49-50).

The government finally acknowledged the authority of Islamic courts as a national judicial institution in section 7 (1) of the law 19/1964. When this amendment to the law was approved on 17 December 1970, the government decided to give Islamic

courts equal status with the other three courts regulated in law 14/1970. Section 10 (1) elucidates that there are four judicial institutions in Indonesia: civil courts, Islamic courts, military courts, and state administrative courts. However, this is the only regulation that implements equal status and this means that it is still the case that decisions made by the Islamic court cannot be executed without receiving an affirmation from the civil court. In 1980, the Ministry of Religious Affairs issued the ministry decision 6/1980 to standardize the name of Islamic courts – at the first level, *Pengadilan agama* and *Mahkamah Syarʾyah* became *Pengadilan Agama* and the Islamic appeal court became the *Pengadilan Tinggi Agama*.

The government also had the equal status of Islamic courts in mind in 1989 when it tabled a draft law on Islamic courts in parliament. A nationwide controversy ensued in response to the bill. The public debate showed that the bill was not only seen as a political shift by the government towards Islam, but it was partly an attempt by those Muslims advocating that Sharia should become a state matter (Mujiburrahman 2006:194). The debate ended after President Suharto guaranteed that the bill was disconnected with the ideological matters.

Finally, members of parliament approved the draft and the president promulgated it as law 7/1989 on Islamic courts on 27 December 1989. Section 7 regulates that the Islamic court's jurisdiction is marriage, inheritance, grants (*hiba)*, endowment (*waqf*) and almsgiving (*ṣadaqa*). Crucially, this law stipulates that the court was now an independent institution that can execute decisions without any affirmation from the civil court. In 2006, the jurisdiction of the Islamic court was extended when the government passed law 3/2006. Article 49 of this law states that the jurisdiction of this court is now: marriage, inheritance, *waṣiya*, *ḥiba*, *waqf*, *zakāt*, *infāq*, *ṣadaqa,* and Islamic economy.[7] Article 52A

[7] Article 49 further elaborates the scope of the Islamic courts to include economic disputes relating to: (a) *Bank Syariah* (Islamic banking), (b) *Lembaga*

also extends the jurisdiction of Islamic courts to include being a witness to the visibility of a crescent (*ruʾyat al-hilāl*), i.e. to determine the first day of each month of the lunar calendar. In addition, the government has bestowed special autonomy on the province of Aceh, which gives the province the authority to implement Sharia regulated under law 44/1999, 18/2001 and the presidential decree 11/2003. The jurisdiction of the Islamic court in Aceh province is underpinned by *Qanun,* a local law issued by provincial and regional/municipal authorities. In relation to the jurisdiction of Islamic courts, in 2011 the Supreme Court released data that reveals that the number of disputes settled in Islamic courts, including the *Mahkamah Sharia* of Aceh, had grown to 363.041 cases (in 2010 the number was 320.788) (www.badilag.net). The majority of these cases concerned divorce.

Before 2004, the Islamic court had not been a fully independent judicial institution and its structural, administrative and financial affairs were regulated by the Ministry of Religious Affairs. The widely held belief was that this situation meant that this judicial institution could be influenced by non-judicial interests. As previously stated, this came to an end when the government amended law 14/1970 on the judicial authority with law 35/1999 and, then, in 2004 the government issued law 4/2004. Article 42 (2) of law 4/2004 directs the transfer of the structural, administrative and financial affairs of Islamic courts from the Ministry of Religious Affairs to the Supreme Court by, at the latest, 30 June 2004. In fact, the transfer occurred ten days before the deadline. On 29 October 2009, the government issued law 48/2009

Keuangan Mikro Syariah (Sharia micro finance institution), (c) *Asuransi Syariah* (Islamic Insurance), (d) *Reasuransi Syariah* (Islamic reinsurance), (e) *Reksadana Syariah* (Sharia fund), (f) *Obligasi Syariah dan Surat Berharga Berjangka Menengah Syariah* (Sharia bond and mid-term Sharia securities), (g) *Sekuritas Syariah* (Sharia securities), (h) *Pembiayaan Syariah* (Sharia financing), (i) *Pegadaian Syariah* (Sharia mortgage), (j) *Dana Pensiun Lembaga Keuangan Syariah* (retirement fund of the Sharia finance), and (k) *Bisnis Syariah* (Sharia businesses).

as a revision to laws 50/2006 and 7/1989 on Islamic courts. This new law aimed to harmonize a number of rules regarding Islamic courts with law 48/2009 on judicial authorities. For example, law 50/2009 was amended with article 12A that regulates that judges in Islamic courts are also under the control of the Supreme Court and the Judicial Commission.

1.5.3 Marriage

The government had attempted to have a unified family law since the 1950s. In October 1950, the Minister of the Ministry of Religious Affairs, Wachid Hasjim (d. 1953), established a committee, chaired by Teuku Muhamad Hasan and assisted by several members representing Muslims, Protestants, Catholics and women activists, to draft a marriage bill. In May 1953 the committee produced three bills: one for all citizens; one specifically for Muslims, Protestants and Catholics; and one for those falling outside these three religious groups. But, the Minister was dissatisfied with this legislation. In the subsequent three years, his successor Minister Mohammad Ilyas (1911-1970), also proposed a draft regarding Islamic marriage to parliament. But the members of parliament failed to reach a consensus regarding the content and form of the marriage law, because all factions in the parliament had different interests toward this issue although they realized that a unified marriage law was a priority (Martyn 2005:124-125). Despite these failed attempts, the Ministry of Religious Affairs issued the decision 1/1955 regarding the compulsory registration of marriage. Since then, there were no further developments concerning marriage law until 5 March 1958 when Soemari, member of the parliament belonging to the National Party (PNI) tabled a marriage bill aimed to apply to all citizens, regardless of religion. This bill was nicknamed ‘Mrs. Soemari’s bill’ that was viewed as an anti-polygamy bill. The parliament members belonged to religious parties opposed the Soemari’s bill and characterized the bill as secular. They mainly argued that a

marriage law should be based on religious law. Consequently, the parliament failed to reach a consensus to have a unified marriage law (Martyn 2005:138-144).

At the beginning of the New Order, there were three bills proposed by different government institutions. The Ministry of Religious Affairs proposed another draft bill on Islamic marriage (*Rancangan undang-undang pernikahan ummat Islam*) to parliament on 22 May 1967. In the following year, the Ministry of Justice also proposed a marriage bill, namely, *Rancangan undang-undang pokok perkawinan* (bill on marriage) to the parliament on 7 September 1968 aimed at regulating marriage for all citizens without considering their religious devotions. These two bills were accepted by the parliament, but, both failed to become law as they were rejected by non-Muslim members, particularly those belonging to the Catholic party (Mujiburrahman 2006:160). In July 1973, the government proposed another marriage bill. This time a majority of Muslims rejected the draft, providing three arguments: first, a number of articles of the bill were claimed to be in contradiction to Sharia; second, Muslims were anxious that Islamic interests should be defended in parliament; and third, the government did not consult with any Islamic organizations or with Muslim officials at the Ministry of Religious Affairs when preparing the bill.

With the rejection of the proposed bill, a number of Muslim leaders approached the authorities – specifically the Armed Forces (ABRI) – because they believed that the bill would endanger socio-political stability. In response to this approach, in October 1973, General Sumitro, commander of the Security and Order Operation (*Kopkamtib)* and Soetopo Joewono, head of the coordinating body of state intelligence (BAKIN), intensively lobbied with leaders of the Islamic Party (PPP) and Muslim Leaders outside parliament (Mujiburrahaman 2006:164-5). Finally, a compromise was reached and the bill was revised with number of articles that were mostly viewed in line with Islamic teachings. On 22 December 1973,

parliament approved the bill and less than a month later the president passed it on 2 January 1974 as law 1/1974. On 1 April 1975, the president issued PP 9/1975 which legally implemented the law.

This law consists of 24 chapters and 67 sections concerning marriage matters, including the requirements for marriage, the cancellation of a marriage, the right and obligations of husband, wife and children, and other related issues. A number of rules regulated under law 1/1974 were new for Muslims, including the administration of marriage and also the rule that a divorce is only legitimate if conducted in front of an Islamic court. Furthermore, its contents show that these codified rules are regulated under the Shafi'ite School of law, but it also extends into other schools of laws and even adopted elements of Dutch and *adat* laws.

This unified marriage law was important for both the government and Muslims. For the government, this law was intended as a tool of social engineering, and to this end the law regulates the shape and form of the family. For example, a marriage must be administrated, rules on polygamy were tightened, and divorce must be conducted in court in order to guarantee the rights of both parties. Meanwhile, the majority of Muslims sees this law as a success in terms of achieving the codification of Sharia as state law.

1.5.4 Compilation of Islamic law

Kompilasi Hukum Islam – the Compilation of Islamic Law –commonly abbreviated as KHI, has marked a distinctive and real achievement in the Indonesian Islam project. The compilation of Islamic Law is redefinition; it is certainly not a purification of Sharia, but it is more than a selection or reworking because it imposes a new way of thinking about Sharia (Hooker 2008:18). From the process of drafting, the Compilation of Islamic Law is considered as an authoritative text, not least because many prominent Indonesian ulama were involved in the process of shaping it. That said, a

number of them acknowledged that they did not have much opportunity to articulate their views during discussions of the draft (Nurlaelawati 2010:88). This was the first (and perhaps the last) occasion that ulama were actively involved in the legal process of codifying elements of Sharia for national regulations. Thus, the authoritative position of the Compilation of Islamic Law is based on the fact that it is an *ijmāʿ*, i.e. the consensus of Indonesian ulama.

The idea of the Compilation of Islamic Law was originally derived from a situation where judges of the Islamic court had no standard legal references for examining disputes. Consequently, the same kinds of disputes could result in different judgments. To overcome this problem, in 1985, Bustanul Arifin (d. 2011), a member of the Supreme Court, advocated the idea of a set of standard legal references. In short, Muslim scholars, judges, and the Minister of Religious Affairs agreed. President Suharto also approved the plan and even offered a sum of his own money to fund the committee that would take the project forward. Bustanul Arifin was appointed as head of the committee that would prepare the draft. This process, which lasted six years, involved a number of activities, including examining 160 *fiqh* texts; holding seminars and discussions; consulting with 181 prominent ulama; examining Islamic court decisions; conducting comparative analysis with other Muslim laws from different countries. After more than six years, the committee finally succeeded in producing a Compilation of Islamic Law, *Kompilasi Hukum Islam*. (Nurlaelawati 2010:79-81) For the legal bases of KHI, on 10 June 1991 the president signed the presidential instruction no.1 of 1991 aiming to give the Ministry of Religion the right to disseminate the KHI. It consists of three simple divisions: book I on marriage and divorce (19 chapters and 170 sections); book II on inheritance (7 chapters and 43 sections); and book III on endowment (5 chapters and 13 sections). These books contain explanations and clarifications for a number of sections. In addition, section 229 states that the judge must pay

serious attention to the values of the community, in order for the decision to be just.

The Compilation of Islamic law is not an uncontested document. In October 2004, a working group from within the Ministry of Religious Affairs produced a counter legal draft to the Compilation of Islamic Law. This caused controversy and was withdrawn by Minister of Religious Affairs within weeks. The controversy derived from a number of issues in the draft: 1) a guardian, *wāli,* is not required in a marriage; 2) a ban on polygamy; 3) a compulsory marriage contract; 4) the mutual marriage gift, *maḥr*; 5) registration would be an essential element of marriage rather than an evidentiary requirement as it is at present; 6) *ʿidda* for men and women; 7) permission for an interreligious marriage; 8) *nushuz* (disobedience) could be the fault of both husband and wife; and 9) males and females would inherit equal shares of an estate and non-Muslim claimants would also be allowed to inherit (Hooker 2008; Nurlaelawati 2010). Given these issues, the counter draft was widely considered to be secular. Despite the fact that the KHI was challenged, after 15 years it has passed the efficacy test (Hooker 2008:26). It is an original attempts to legislate elements of Sharia, although, judges at the lowest level of the Islamic court have not yet fully incorporated the Compilation of Islamic Law in their decisions (Nurlaelawati 2010).

1.5.5 Endowment

The first regulation by the Indonesian government on endowment (*waqf*) occurred in 1977 when it issued the government regulation 28/1977.[8] This regulation is directly connected to law 5/1960 on

[8]Under the administration of the colonial government, *waqf* matters were regulated under *Staatsblad* no. 6196 issued in 31 January 1905, *Staatsblad* no. 12573 issued in 4 June 1931, *Staatsblad* no. 13390 issued in 24 December 1934 and *Staatsblad* no. 1935 issued in 27 may 1935. These regulations ruled that *waqaf* was administered under the authority of *bupati* and should be focused on the public interest (Djatnika 1983; Halim 2005).

agrarian law, which could affect the legal status of endowment property. In response to the issuance of this regulation, the Ministry of Religious Affairs established a section at its offices tasked with managing issues concerning endowment.

Although rules on endowment have been regulated in the Compilation of Islamic Law, on 27 October 2004 the government upgraded the regulation to a law by introducing law 41/2004. This law consists of 11 chapters and 81 sections. This not only strengthens the legal basis of endowment, locating it in the hierarchy of the Indonesian legal system, but it also provides more standardized and comprehensive rules concerning this subject.

There are five aspects that can be characterized as new rules on endowment: First, endowment property is classified as relative ownership or public ownership and both required registration with the relevant official institutions. Second, endowment property not only covers immovable property such as land or buildings, but also extends to moveable property including money, vehicles, and intellectual property. Third, endowment is seen as not just having ritual and social purposes, but also it also meets wider public needs and has a business purpose in accordance with Sharia. Fourth; the law suggests establishing an independence organization, namely, the Indonesian Endowment Institute (*Badan Wakaf Indonesia)*. Lastly, an administrator (*nāẓir)* of endowment must be professionally trained.

The government passed government regulation 42/2006 to implement the endowment law. However, there has not been any significant public attention with regards to the implementation of law 41/2004, although theoretically endowment was a potential economic source. According to data released in 2010 by the Ministry of Religious Affairs, the extent of *waqf* land in Indonesia has reached more than three billion m^2 and it is situated in more

than 400,000 different locations. 67.6 per cent of this land has been certified and 32.5 per cent remains uncertified.[9]

1.5.6 Pilgrimage

The government plays a central role in managing the pilgrimage (*hajj*) in Indonesian history. In this respect, it deals with the matters of politics, economy, growth of population, progress of Islam in Indonesia, the government's relationship with Saudi Arabia and health as well as security (*Agenda* n.d:149-158; Vredenbregt 1962:94-121). Accordingly, the government plays a central role in organizing the hajj and demonstrates regulated and systematized control of this religious duty. Three important points should be made in this regard: First, performance of pilgrimage must be religiously correct and administratively valid. Second, it is conducted overseas, in Mecca, thus its objectives must be limited and its purpose specific. Thirdly, it involves an amount of money. The Ministry of Religious Affairs determines the regulations and procedures relating to the hajj. Thus, one interpretation is that the pilgrim must not only surrender to God, but also to the state (Hooker 2008:205-6).

The government began to manage the pilgrimage in 1950. For this purpose, it issued rules and regulations including the decree of the Ministry of Religious Affairs no. A/III/I/648 (issued on 27 March 1950). This decree regulates several issues including the costs of the pilgrimage, transportation to and from Mecca, health, and passports, and it established a committee to manage the pilgrimage, its requirements, etc. (*Konperensi* 1950:354-460). These rules have been adjusted over the years. For example, in 1999 the pilgrimage was regulated under law when the

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[9] Endowment property has reached 3,181,586,921 m², is situated in 417,265 locations and 67.6 per cent of it has been certified by the government, www.kemenag.go.id accessed in 24/2/12.

government issued law 17/1999. This law is purely for administrative purposes, In addition, law 13/2008, in response to a decision by the government of Saudi Arabia, permits pilgrims to use a regular passport for the journey rather than a special passport (*paspor haji*).

There are two current and distinctive issues concerning the pilgrimage: the government's monopoly of the process, and how to manage the annual quota of pilgrims and whether people who have performed the pilgrimage have different rights to people who never do it. The way the Indonesian government manages the hajj has become a target of criticism and the state's monopoly of the process is seen as a source of corruption and inefficiency. Both political overtones and the fact that the hajj is a source of income for the government are factors for the government's involvement in the process (Noer 1978:58-64). Several NGOs expressed similar criticism to the parliament on 27 January 2004; they were critical of the lack of standard services and also stated that the monopoly actually weakens the organization of the pilgrimage. It should be noted, however, the majority of critics are involved in privates companies keen to play a role in this business.

The Saudi authorities have fixed an annual quota for pilgrims at 1% of the Muslim population of a country. Consequently, the Indonesian government operates a queue system.[10] Participation in the hajj requires payment of a deposit. Previously this was a minimum of 20 million rupiah; since 2010 this figure has increased to 25 million rupiah. The money is paid into a special bank account called a *tabungan haji*. This money cannot be withdrawn by the investor and no interest or shares are paid. This money provides the investor with a queue number generated by an online system. This number indicates the investor's place on the waiting list and it can take anything from three to ten years to

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[10]The quota for Indonesia is as follows:188,900 (2006), 189,000 (2007), 193,723 (2008), 191,000 (2009), 185,669 (2010) www.kemenag.go.id accessed 23/2/12.

reach the top and have the opportunity to perform the pilgrimage. The government has a right to use this sum of money before the investor receives permission to do the pilgrimage.

Clearly, the government gains financial advantage from this system. Assuming that at any one time there are 2 million investors, this generates a huge amount of money. According to a staff member at the Ministry of Religious Affairs, when the system was first established, the government only gained 2.5% of the monthly interest, but since 2006 the money was invested in a different way, giving the government approximately 10% of the monthly interest. Besides this financial gain, the government also obtains financial advantage from the journey cost of the pilgrimage.[11] Thus, it is understandable that public demands for the accountability of the management of the pilgrimage gradually increases.

Besides this financial advantage, the government also shapes Sharia in relation to the hajj. The Ministry of Religious Affairs has produced a number of manuals for the pilgrimage: *Panduan perjalanan haji* (Manual for the pilgrimage journey), *Bimbingan menasik haji* (Instruction and manual for the pilgrimage), *Hikmah ibadah haji* (wisdom behind the pilgrimage), and lastly *doʿa dan dhikir* (prayers and invocations). These four books are a

[11]Costs for the journey to the *ḥajj* vary from year to year and depend on places of embarkation. There are now eleven points of embarkation for the *ḥajj*. The costs (in US dollars) are as follows: Aceh 2,753 (2007), 3,258 (2008), 3.243 (2009), 3,147 (2010); Medan 2,753 (2007), 3,292 (2008), 3,333 (2009), 3,237 (2010); Padang 2,753 (2007), 3,258 (2008), 3,329 (2009), 3,233 (2010); Palembang 2,850 (2007), 3,379 (2008), 3,377 (2009), 3,280 (2010); Batam 2,753 (2007), 3,292 (2008), 3,376 (2009), 3,325 (2010); Jakarta 2,850 (2007), 3,430 (2008), 3,444 (2009), 3,364 (2010); Solo 2,850 (2007), 3,379 (2008), 3,407 (2009), 3,327 (2010); Surabaya 2,850 (2007), 3,430 (2008), 3,512 (2009), 3,432 (2010); Banjarmasin 2,950 (2007), 3,517 (2008), 3,518 (2009), 3,440 (2010); Balikpapan 2,950 (2007), 3,517 (2008), 3,544 (2009), 3,474 (2010); Makasar 2,950 (2007), 3,575 (2008), 3,575 (2009), 3,505 (2010) www.kemenag.go.id accessed 23/2/12.

package and are meant to be read together.[12] The fourth book reflects the government's construction of Sharia. This construction clearly shows that the current pilgrimage is the orthopraxy but also demonstrates what the Ministry of Religious Affairs believes to be the true significance of the pilgrimage (Hooker 2008:233). Compared to the colonial time, aspects of the pilgrimage vary significantly and it is undeniable that the pilgrimage is an aspect of Islam that is intertwined with politics (Eisenberger 1928; Noer 1978:64; Van Dijk 1991). Current developments show that the government's definition of the hajj is limited to a ritual journey and that participation results in increased social status (van Bruinessen 1995).

1.5.7 Islamic finance

The first Islamic finance institution was established in Indonesia in 1992. The Indonesian ulama Council (MUI) endorsed the idea of establishing an Islamic bank[13] that applied a non-interest system.

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[12] The first book consists of nine chapters: (1) introduction, (2) preparation, (3) departure, (4) activities in Saudi Arabia, (5) Returning (to Indonesia), (6) Medical Counseling and Care, (7), Devotional Visit (*ziarah*), (8) Travel Prayers and Funeral Prayers, and (9), epilogue (*Panduan* 2009). The second book consists of six chapters: (1) introduction, (2) Definitions and General (3) *Hajj Tamattu', Hajj Ifrad* and *Hajj Qiran,* (4) Previsions and the *Umrah* and Pilgrimage, (5) Question and answers on the pilgrimage matters, (6) epilogue (*Bimbingan* 2009). The third book only comprises three chapters: (1) Introduction, (2) Concept and General Significance of *Hikmah*, and (3) Insights into the pilgrimage (*Hikmah* 2009). The last book consists of nine parts: (1) *Doʿa* of departure, (2) *Doʿa* when performing *Tawaf*, (3), *Doʿa* when Performing *Sa'i,* (4) Intention, *Doʿa* when leaving for Arafah and *Doʿa* when Performing *wukuf*, (5) *Doʿa* when waiting (*mabit*) in Muzdalifa and Mina, (6) *Doʿa* when Performing the Farewell Circumambulation (*tawaf wada'*) and *doʿa* after Performing *Tawaf Wada',* (7), *Doʿa* when Visiting Madina, (8) *Doʿa* when Arriving at Home, and (9), Simple *Doʿa* (*Doʿa* 2009).

[13] In Indonesia, banks that apply an Islamic financial system are Bank Syariah or Sharia Bank rather than Islamic Bank or Bank Islam, as in Malaysia. According to Ash-Shiddigy the name is derived from a conversation between the MUI team, the Ministry of Finance and B.J. Sumarlin, an Indonesian Christian. A member of MUI said that the aim of establishing the bank was to provide a financial

This approval emanated from a national meeting of the Indonesian ulama Council in August 1990. The idea was fully supported by the up and coming Indonesian Association of Muslim Intellectuals (*Ikatan Cendikiawan Muslim Indonesia/ICMI*) and the approval also came from President Suharto. The first Islamic bank, *Bank Muamalat*, was established on 15 May 1992 and in the first few years this financial institution received public support, as evidenced by an 84 billion rupiah pledge to purchase a share in the bank (Hefner 2003:155-156).

The justification for establishing an Islamic bank came from law 7/1992 on banking systems, which provides the possibility to establish a new dual banking system. Furthermore, the government issued law 10/1998 as an amendment to law 7/1992. This new law explicitly refers to an Islamic banking system and provides further legal grounds for the secular banking system to create an Islamic branch. Besides these two laws, the Islamic banking system is also justified through law 23/1999, which was later amended by law 3/2004, stating rules on the authority of the Central Bank to regulate banking system, including an Islamic system. Furthermore, the government issued law 21/2008 on Islamic banking on 16 June 2008. Hence, the position of Islamic banking system has been fully acknowledged within the legal system.

In support of the growth of an Islamic banking system, the Indonesian ulama Council issued a legal opinion (*fatwa)* concerning the interest on loans on 24 January 2004. The *fatwa* classifies interest, which has been widely practiced by several financial institutions, including banks, insurance and mortgage institutions, as prohibited. Nevertheless, this *fatwa* is only valid in areas where

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institution for Muslims who believe that *ribā* or interest is not allowed. Consequently, the minister hastily named the bank Bank Syariah. Ash-shiddiqy mentioned this story when he was presenting a paper at the conference organized by the IAIN Padang in July 2010.

an Islamic banking system is operating. It is clear that the *fatwa* aims to stimulate Muslims to engage with the Islamic banking or other institutions. The increase in Islamic financial institutions proves that this intention has been partly achieved.

The growth of the Islamic economic system continued with the establishment of Islamic insurance and Islamic mortgage and other financial institutions. This development has also been reflected in educational institutions, which now have faculties of Islamic economy and teach other related subjects on this theme. This development has not only occurred at Islamic higher education institutions such as STAIN, IAIN or UIN, but also within secular higher educational institutions like the University of Indonesia (Azra 2007:263).

It is important to note that the emergence of the Islamic banking system and other Islamic financial institutions has occurred within less than twenty years. This can be accounted for by the fact that the aim of Islamic financial institutions is to stimulate economic growth. In addition, article 49 of law 3/2006 extended the jurisdiction of Islamic courts to include disputes related to Islamic finance. In this regard, the Supreme Court issued decree no. 20 of 2008 on 10 September 2008 providing a legal basis for Islamic courts to implement the Compilation of Law on Islamic Economy (*Kompilasi Hukum Ekonomi Syariah/KHES*). This compilation consists of four books: the first book regulates the subject of law and the scope of properties; the second book deals with contracts; the third books deals with regulations on *zakāt* and grant (*hiba*); and the fourth book regulates Sharia accountancy.

1.5.8 Penal code

The government has issued a number of laws, rules and regulations concerning penal codes, none of which give an explicit indication that they are derived from religious texts. That said, several substantive laws are derived from religious teachings, including

Sharia. This subsection is confined to the matters of blasphemy and pornography.

The criminal offences of hatred, heresy and blasphemy are dealt with in the Penal Code (*KUHP*), article 156a. This article, which is derived from article 4 of the presidential decree 1/PNPS/1965, was issued on 27 January 1965. The decree determines that hatred, heresy and blasphemy are offences and it obligates the government to record this in article 156a of the Penal Code. This article has been often used to justify a number of events. For example, in 1990 judges sentenced a famous journalist, Arswendo Atmowiloto, to five years in jail for committing blasphemy. This followed Atmowiloto publishing a list of figures most admired by readers in his weekly tabloid 'Monitor' on 15 October 1990. The Prophet Muḥammad was placed at number eleven in the list and this was seen as humiliation of the prophet.

A case currently going through the courts involves a number of Muslim groups who are demanding that the government abolishes the Ahmadiyah Organization which they accuse of breaching the rules of article 156a of the Penal Code rules. On 23 February 2009, six NGOs, together with four leading Indonesian scholars[14] proposed that the Constitutional Court cancel the presidential decree No.1/PNPS/1965 because it is in contradiction with the 1945 constitution. They argued that this law was issued in an emergency situation and thus it has become irrelevant in the current social realities and that it contravenes the constitution and its regulations. After hearing the case, the Constitutional Court rejected the proposal on 19 April 2010, declaring the decree still valid.

The law on pornography can also be included in the category of laws that have been adapted to include elements of

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[14] The NGOs are Imparsial, ELSAM, PBHI, DEMOS, Yayasan Desantra and YLBHI, and the scholars are KH.Abdurrahman Wahid, Prof. DR. Musdah Mulia, Prof. M. Dawam rahardjo and KH. Maman Imanul Haq.

Sharia. The government issued law 44/2008 on pornography on 26 November 2008. It consists of eight chapters and 45 sections. All the regulations on this are concerned with immorality. When the draft was still being discussed in parliament, this issue provoked wide public debate and discussion because cultural diversity meant that immorality varied from region to region. Despite several public rejections of this draft, immorality can now be punished.

1.6 Bringing Sharia to the regions

The provincial and regional/municipal governments possess the authority to issue laws. This is regulated in the constitution and laws 22/199 and 32/2004. Article 18 (6) of the constitution elucidates: 'regional authorities shall possess the authority to issue local laws and other regulations to implement the local autonomy and the duty of assistance'. The provincial and regional/municipal laws, and other regulations, must fit into legal frameworks with regard to substance, procedure and structure. Firstly, the substance of local laws must fulfill certain requirements: not contradict with public interests (*kepentingan umum)* or higher ranking laws; it may impose punishment; it should consider the principles of guardianship, humanity, nationality, justice and equality before the law.

Second, local laws should follow procedures set out by the legal authority belonging to the governor, *bupati*/mayor and the parliament. The governor and the provincial parliament possess the authority to table a draft law and these institutions are required to approve any bill. Subsequently, the jointly approved draft will be discussed by members of the provincial parliament. After the provincial parliament approves the bill, it requires approval from the governor in order to become provincial law. If the governor does not approve the bill within thirty days, it automatically becomes a provincial law; however, for it to become legally applicable, the governor must issue a governor's regulation

(*Peraturan gubernur*). If this is not forthcoming, the provincial law remains window dressing. This legal mechanism is also applied to region/municipal laws.

Third, local laws are the lowest ranking laws in the hierarchy of the national legal system. Law 10/2004 regulates that the law may be issued at the province, regional and village levels.[15] But, law 12/2011 revises this, removing village law from the hierarchy[16], reclassifying it as a regulation.[17]

Provincial and regional law have an equal validity compared to those laws issued by higher ranking state institutions such as the People's Consultative Assembly, the national parliament or the president. However, these laws are only valid in the province or region/municipality where they are issued. The validity of the law is justified by two factors: firstly, section 18A of the constitution authorizes these institutions to issue the law; and secondly, the provincial or regional/municipal authorities are representatives of the people and members of the provincial or regional/municipal parliament or the *bupati* or the mayor are elected through general election. Thus, the authority of these

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[15] The hierarchy of national law according to article 7 of the law 10/2004 is:1) the constitution of 1945 (*UUD 1945*); 2) the national law/*perpu* (*Undang-Undang/Peraturan Pemerintah Pengganti undang-undang*); 3) the government regulation (*Peraturan Pemerintah*); 4) President Regulation (*Peraturan President*); 5) local law (*Peraturan Daerah*).

[16] The hierarchy of national law according to article 7 of law 12/2011 is:1) Constitution of 1945 (*UUD 1945*); 2) decisions of the People's Consultative Assembly (*TAP MPR*); 3) National law/*perpu* (*Undang-Undang/Peraturan Pemerintah Pengganti undang-undang*); 4) Government regulations (*Peraturan Pemerintah*); 5) Presidential regulations (*Peraturan President*); 6) Provincial law (*Peraturan daerah provinsi*); 7) Regional law (*Peraturan Daerah Kabupaten/kota*)

[17]Regulations that are issued by the People's Consultative Assembly (MPR), Council of Representative of the region (DPD), Parliament, Supreme Court, Constitutional Court, Supreme Audit Board, Judicial Commission, Indonesian Bank, Ministers, states institutions that are established according to the law, provincial parliament, governor, regional/municipal parliament, *bupati*/major, head of village or equivalent.

institutions is equal to the authority possessed by the president, members of the People's Consultative Assembly and the national parliament that are authorized to issue laws.

However, as the unitary state (*eenheidstaat*) the central government has the power to control provincial and regional authorities, because decentralization and local autonomy means transfer or delegation of the legal and political authority. This control is commonly known as the general norm control mechanism (Asshiddieqy 2006:107). Two types of control mechanism are regulated under the constitution that stipulates the possibility to conduct judicial or constitutional review. Judicial review is mentioned in section 24A (1), which rules that the Supreme Court is authorized to review the ordinance and regulations made, while constitutional review is mentioned in section 24C (1), which rules that the Constitutional Court is authorized to review the law against the constitution.

Laws 22/1999 and 32/2004 introduce the norm control mechanism – executive preview and review. Executive preview is conducted by central government and provides for the review of a draft of any provincial law before the draft is discussed by provincial authorities. As the representative of central government, the governor may also review the drafts of regional laws before they are discussed in the provincial or regional/municipal parliament. The second type of review is also conducted by central government and involves the review of provincial laws or decisions made by the governor. As the representative of central government, the governor has the authority to review regional/municipal laws or regulations issued by a *bupati* or mayor.[18] In addition, the judicial review conducted by the Supreme Court is also applied to provincial, regional/municipal law.

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[18] The review mechanism regarding provincial and regional law may be seen in the appendices 1, 2 and 3.

In relation to this issue, the question of whether provincial or regional/municipal government has the authority to legalize Sharia legislation remains a matter of dispute. Laws 44/1999 and 18/2006 explicitly regulate that this authority only belongs to the province of Aceh. There are no explicit regulations regarding other provinces. This dispute is rooted in the fact that the laws relating to regional government mention that religious matters are outside the authority of regional government. In fact, the same laws also suggest that local government shall have the authority to issue regulations to maintain regional governance. Despite this dispute, Sharia legislation has been introduced in a number of provinces and regions/municipalities. The following subsections briefly present the Sharia legislation introduced in the province of Aceh and in other provinces.

1.6.1 Sharia in Aceh

The government of Aceh possesses a special autonomy to implement Sharia. This privilege is regulated under laws 44/1999, 18/2001 and 11/2006. The first two laws concern the special autonomy for the province of Aceh and the third law deals with detailed regulations issued after the Helsinki Memorandum of Understanding, signed between representatives of the Indonesian government and the Aceh Freedom movement (*Gerakan Aceh Merdeka, GAM*) on 15 August 2005. Law 44/1999 elucidates that Sharia has been an important element of Aceh society. Section 1 (1) specifies that Sharia is Islamic teaching regarding all aspects of life, and article 4 (1) authorizes the province to implement Sharia through local legislation at the provincial and regional/municipal levels. This legislation is called *Qanun*.

Although section 7 (1) of law 11/2006 determines that foreign affairs, national military and security, judicial, monetary and fiscal as well as religious affairs are excluded from the authority of the province of Aceh, section 125 (1) authorizes this province to codify Sharia regarding to: 1) theology (*ʿaqīda*), 2)

Sharia, and 3) moral (*akhlāq*).[19] Subsequently, the *Qanun* have been added to the jurisdiction of the *Maḥkāma Sharʿīya*, the special name for the Islamic court in Aceh, where the substantive law of the *Qanun* deals with the jurisdiction of the Islamic court. *Qanun* have also been added to the jurisdiction of the secular court, *pengadilan negeri*, if the substantive law of the *Qanun* concerns the jurisdiction of this court.

The government of Aceh has issued a number of *Qanun* concerning, among other things, the establishment of the Consultative Council of Ulama (Majelis Permusyawaran Ulama, MPU), implementation of Sharia relating to theology, ritual, public expression of Sharia, religious education, prohibition of drinking alcohol, gambling and *khalwat*, management of *zakāt* institutions, and Islamic education.[20] There is current public debate in Aceh regarding the extent to which *Qanun* will be codified in Islamic criminal law.

1.6.2 Sharia in other provinces

Although the authority of governments in other provinces to legalize Sharia is not explicitly regulated, a number of authorities

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[19] Furthermore, article 125 (2) mentions that the fields of Sharia regarding ritual (*ʿibāda*), family law (*āḥwal al-shakhṣīya*), private matters (*muʿāmala*), public law (*jināya*), court (*qaḍā),* education (*tarbīya*), (*daʿwa*), preaching (*Syiar Islam*) and defending Islam (*pembelaan Islam*).

[20] The *Qanun* issued included:1) *Qanun* 3/2000 on the establishment of MPU, 2) *Qanun* 5/2000 on the implementation of Sharia in Aceh, 3) *Qanun* 7/2000 on customary law and Sharia, 4) *Qanun* 43/2001 on the administration of MPU and the establishment of the plenary council, 5) *Qanun* 10/2002 on the establishment of a Sharia court, 6) *Qanun* 11/2002 on the implementation of Sharia in the area of theology (*aqīda)*, ritual (*ibāda)* and public expression of Sharia (*syi'ar)*, 7) *Qanun* 32/2002 on the religious educational system based on the Quran and Ḥadīth, 8) *Qanun* 11/2003 on the prohibition of drinking alcohol and similar types of beverages, 9) *Qanun* 13/2002 on the prohibition of gambling, 10) *Qanun* 14/2003 on the prohibition of the *khalwat*, 11) *Qanun* 7/2004 on the management of *zakat*, and 12) *Qanun* 11/2004 on the tasks and duties of the Sharia police.

have exercised their power to legislate Sharia for provincial, regional/municipal laws known as *Perda Sharia*, i.e. Sharia by-laws. They have sought to revitalize and enshrine Sharia in relation to beliefs and practices and other social problems such as prostitution, gambling, alcohol and drugs. This legislation occurred in a number of provinces, including South Sulawesi, South Kalimantan, East Java, South Sumatra and West Sumatra.

There is no precise information about how many provincial, regional/municipal governments across Indonesia have issued *Perda Sharia*. However, a study conducted by Crouch on this subject shows 160 *Perda Sharia* issued between 1999 and 2000 in 26 provinces. Crouch suggests that local governments in the province of West Sumatra have generated the most *Perda Sharia*, with over forty. This is followed by local governments in South Sulawesi and West Java, both of which have produced over 20 *Perda Sharia* (Crouch 2009:54-58). This number has gradually increased because the dynamics of local politics have intensified this issue. The majority of *Perda Sharia* concern issues relating to Muslim dress code, prohibition of prostitution, alcohol consumption, drugs and other addictive substances, several offences on immorality, rituals, *zakāt* institutions, Quranic education and other governance issues.
In May 2006, Sharia legislation in several provinces and regions/municipalities evoked public and parliamentary debate. The debate was initially provoked by two major news magazines, *Gatra* and *Tempo*, printing articles concerning this issue. *Gatra* wrote the headline '*Negeri Syariah tinggal selangkah lagi*' (Islamic State: only one step away) on 6 May 2006.[21] This was followed on 14

[21] *Gatra* carried a series of eight reports and four interviews. The reports were entitled: *Gelora Syariah Mengepung Kota, Peta Terapan Syariat Islam*, *Jalan Panjang Syariat Islam dan Negara, Belajar Damai dari Bulukumba*, *Menguji Niat Perda*, *Syariat Islam di Berbagai Daerah,* and *Sengketa Pandangan Porno*. The interviews were with: Hasyim Muzadi (chair of the NU), Tifatul Sembiring (the President of PKS), Muhammad Ismail Yusanto (Public speaker of the Hisbuttahrir Indonesia), Dewi Djakse (politician of PDI-P), and Adnan Buyung Nasution (Lawyer).

May 2006, by the *Tempo* headline '*Syariat Islam di daerah*' (Sharia in the regional areas).[22] These magazines triggered public fears about the emergence of Sharia in a number of regions. On 16 May 2006, this issue reached the heart of government when Konstang Panggawa (member of a Christian political party, PDS) interrupted a session of the parliament. He quoted the reports of *Gatra* and *Tempo* and suggested that members of parliament should carry out political steps to prevent the growth of Sharia in the regions. He said that *Perda Sharia* were in contradiction with higher laws and also contravened the constitution of 1945. Panggawa's interruption inflamed the debate on this issue among members of parliament and was widely covered by the media. The first reaction to Panggawa's views came from the Zulkifliemansyah (members of PKS political party) who said that Panggawa's views were totally wrong and it was a mistake to interpret *Perda Sharia* as contradicting higher laws and being against the constitution. They argued that *Perda Sharia* is justified (*Republika,* 17/5/2006).

Arguments for and against the issue increased among members of parliament. Those against the issuance of *Perda Sharia* were members of the Protestant and Catholic and nationalist parties, such as PDS and PDI; meanwhile, those pro Sharia were from the Islamic parties, such as, PKS, PAN, PBB. On 17 May 2006, 56 members of DPR signed a petition asking their leaders to write a letter to the president asking for the withdrawal of *Perda Sharia*. The petition was delivered to the vice chair of the parliament, Soetarjo Soerjogoernitro. A counter-petition was signed by 134 members of parliament, mainly from Islamic parties.[23] This

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[22]*Tempo* carried seven reports in the 14 May 2006 edition; namely, *Syariat Islam di Jalur Lambat, Dari Aceh Sampai Mataram, Jika Malam selalu Mencemaskan, Membawa Kontroversti ke MA, Akibat Menyontek Tetangga, Pecut Banbu dari Bulukumba,* and *Goyangan Tak Kunjung Reda*.

[23] A breakdown of these 134 members of parliament shows that: 22 are from the PPP, 30 from the PKS, 30 from the PAN, 20 from the BPD, 6 from the Golkar, 8 from the PBR, 5 from the Demokrasi and 3 from the PKB.

petition was delivered to the chair of parliament, Agung Laksono, on 27 June 2006. Finally, the two sides reached an agreement to reconcile the debate by suggesting that *Perda Sharia* should be examined according to the legal mechanisms of executive review, judicial review or constitutional review.

The central government, under the Ministry of Home Affairs, has conducted the executive review of provincial, regional/municipal laws, including *Perda Sharia.* This examination aimed to scrutinize whether the laws are in contravention of state laws and regulations. The examination revealed that between 2002 and 2006, 554 provincial and regional/municipal laws have been withdrawn. These laws dealt mostly with the issues of local tax and retribution (Huda 2010:156-7). None of the legislation withdrawn was *Perda Sharia*. However, the Supreme Court had only examined one *Perda Sharia* – 5/2006 – on the prohibition of prostitution, issued by the authorities of Tangerang. The case was put to the Supreme Court by a number of individuals and NGOs who characterized the provincial law as being in contravention with national laws. In March 2007, the Supreme Court ruled that law 5/2005 from Tangerang does not contravene any national law. [24]

1.7 Sharia in West Sumatra

The province of West Sumatra is mostly associated with being Minangkabau land. Minangkabau land covers an area that is larger than the provincial area. Indeed, the Bangkinang region in the

[24]The individuals who proposed judicial review by the Supreme Court were Lilis Mahmuda, Tuti Rachmawati and Hesti Prabowo who were from Tangerang, and they were supported by several NGOs, including the Jakarta Law Aid Institute (LBH Jakarta) the Apik Law Aid Institute, the Indonesian Lawyer Association (PBHI), and the Wahid Institute. They argued it contradicted with higher laws such as the Penal Law, Regulation no.7/1984 on the rectification of the CEDAW, NO.39/1999 on human rights and No.10/2004 on the legal procedure of promulgating the law.

province of Riau and the Kerinci area in the province of Jambi are also part of the Minangkabau culture. However, West Sumatra is also home to the Mentawai, who do not belong to Minangkabau culture. The following discussion deals with the Minangkabau culture, the majority of which comes under the administration of West Sumatra province.

West Sumatra now has twelve regions and seven municipalities, consisting of 176 sub-districts and 627 villages, called *nagari*. The population projection in 2009 was 4.83 million, comprising 2.37 million men and 2.46 million women. The population includes: 97.57% Muslims, 1.21% Protestant, 0.96% catholic, 0.04% Hindu, 0.19% Buddhist and 0.02% others. In 2009, there were 4,532 mosques, 11,868 *mushalla/surau* (prayer sites), 72 protestant churches, 49 catholic churches, and 6 *viharas* (West Sumatra 2010).

Minangkabau culture is defined by a handful of customs and rough linguistic commonalities, spreading out from a heartland of highland villages called the *darek* and into the expanding *rantau* (Hadler 2008:4). Before the arrival of Islam, the people of Minangkabau had obeyed the *adat* rules of this matrilineal society founded by Datuk Katumanggungan and Perpatih Nan Sabatang. It is widely believed that ulama who belonged to a Sufi order introduced Islam to the Minangkabau people in the 13th century, and in the next three centuries they succeeded in converting the Minangkabau people to Islam. They successfully shifted the role of *surau* to be the center of Islamic teachings for the Minangkabau people.

At the end of 18th century and at the beginning of the 19th century, some ulama who returned from Mecca, where they had gone to study Islam as well as to perform pilgrimage, applied a more legalistic approach to the Islamization of the society, and they began to devote attention to examining what was Islamic and what was un-Islamic. Haji Miskin, for example, preached against certain external abuses in Minangkabau society, in particular

gambling, opium-smoking, cock-fighting, the drinking of *tuak* (alcohol) and the chewing of betel (*sirih*). Another Padri leader, Tuanku Nan Renceh, introduced a new order that was based on four tenets: faith, circumcision, fasting and prayer five times a day. As symbol of the new order, tobacco, opium, betel, cock-fighting, gambling and strong drinks would be banned, men were to wear beards and dress completely in white, women had to cover their faces and the two sexes were not to bathe together (Dobbin 1974:336). The *adat* leaders were opposed to the new approach and this led to fierce tensions that resulted in a civil war. After a couple of years of war, a number of *adat* leaders requested help from the Dutch authorities to fight the ulama groups, namely the Padri. The involvement of the Dutch resulted in what is commonly called the Padri War. The conflict ended in 1937 when Tuanku Imam Bonjol was arrested and passed away in exile in Manado in 1864.

It is important to briefly mention the relationship between Sharia and Minangkabau *adat*. Initially, Padri leaders expected people to fully convert to Islam and disobey the *adat* that was claimed to be in contradiction with Sharia. In the memoirs he wrote in exile, Tuanku Imam Bonjol revealed an interesting notion concerning the relationship of Sharia and *adat* rules. In 1832, he was told by pilgrims who had returned from Mecca that the Wahhabi had fallen in Mecca and the version of Sharia promulgated by Haji Miskin (the first leader of the Padri in 1803) were no longer valid. This story influenced Tuanku Imam Bonjol's thought. In his memoirs, he recalls saying to one of his advisors, 'there are many laws in the Quran that we have overlooked. What do you think about this?' His advisor replied: 'We have overlooked many of the laws in the Quran'. (*Naskah* 2004:39). The memoir also reveals that in a meeting held among Islamic as well as *adat* authorities, they agreed that:

> This was the request of all the adat leaders to the Tuanku Imam. They applied the law according to the teaching of the Quran. And

> so they applied the law according to the teaching of the Quran. And the adat leaders used Sharia as the basis for adat (*adat basandi syarak*). If there was a problem with adat it would be brought to the adat leaders. If there was a problem with Sharia. If there was a problem with adat it would be brought to the Islamic authorities. (*Naskah* 2004:40-1).

This is the first text that mentions that Minangkabau people agreed to a maxim of *adat* based on Sharia (*adat basandi Syarak*). However, in the second half of the 19th century, Verkerk Pistorius pointed to a different maxim that is *adat* based on Sharia and Sharia based on adat (*adat basandi syarak, sharak basandi adat*) (Pistorius 1871).

At the end of the 19th century, Minangkabau *adat* was again under attack. This time from Aḥmad Khatib al-Minangkabawi (1860-1916) who left for Mecca as a teenager to study Islam. In Mecca, he married a daughter of Ṣalih al-Kurdi, from a rich Arab family, and he did not return to his homeland until his death in 1916. He wrote three books regarding the *adat* rules of inheritance and claimed that the *adat* practices of inheritance contradicted Sharia and, thus, he characterized it as *jāhilīya* tradition. He further suggested that *adat* rules should be replaced with Sharia. If they were not able to do this, he suggested that people should perform *hijra* and move to another place where Sharia was applied. His views were followed by ulama who had studied Islam with him in Mecca, including Khatib Muhammad Ali (1861-1836), a leading figure of *Kaum Tua*, and Abdul Karim Amrullah (1879-1945), well known as Haji Rasul, a leading figure of *Kaum Muda*. However, after observing actual practices of how property was treated according to *adat* rules, they concluded that Sharia could not be applied. They argued that property ruled under *adat* law did not fulfill the requirements necessary for the application of Sharia (Huda 2003).

At the beginning of the 20th century, Minangkabau ulama polarized into two groups: traditionalists, called the Old Group

(*Kaum Tua)* and modernists, called the New Group (*Kaum Muda)* (Abdullah 1971). They were involved in public debates on trivial doctrinal (*khilāfīya)* matters, comprising eighteen problems, such as: *berdiri mawlid* (standing while reciting the history of Prophet), permissibility of *Ṭarīqa Naqshbandiyya* and *Saṭṭarīya*, vocalizing the vow at the beginning of prayers and visiting graves (Abdulmutalib 1981). The impact of this polarization still continues today and ulama associated with the modernist group are mostly attached to organizations such as Muhammadiyah; while the traditionalist group tends to be part of organizations such as Tarbiyah Islamiyah or other Sufi orders.

Since independence, the relationship between Sharia and Minangkabau *adat* has, on the whole, been harmonious. Concerning inheritance, for example, in 1952 Minangkabau ulama and *adat* functionaries reached an agreement that Sharia can be applied to self-earned property and *adat* rules are applied to *adat* property. However, it was suggested that people should write a *waṣīya* that gives one third of the self-earned property to a nephew or niece (*kemanakan*). This agreement was re-emphasized by the ulama at a meeting in Padangpanjang between 21-25 July 1969 (Huda 2003:113).

However, the actual practices show that most Minangkabau people are reluctant to apply Sharia to self-earned property. This property tends to be collectively owned by family members. As long as all family members agree to this practice, according to Syarifuddin, it does not contradict Sharia (Syarifuddin 1984:333). Subsequently, this collective ownership tends to be regulated under *adat* rules (von Benda-Beckmann 1979). This practice suggests that the foundation of Minangkabau society is still ruled under *adat* law, although the maxim *adat basandi syarak, syarak basandi kitabullah*, has been widely accepted by the people. According to Hadler, 'the Minangkabau matriarchate is hard to kill' and the Minangkabau *adat* is still a strong basis of Minangkabau society (Hadler 2008:177).

Adat and Sharia have become two important themes of public discourse in West Sumatra since the implementation of decentralization and regional autonomy in 2000. There are strong views that local government should be based on public policies in accordance with local identity. This local identity refers specifically to the maxim of *adat*. Besides the possibility to issue laws created by the national decision to devolve power, provincial law 9/2000 also created more obvious chances to issue local legislation relating to village administration. This provincial law states that decentralization and local autonomy allow for the adjustment of government structure in accordance with Minangkabau culture, in which the lowest government structure is *nagari*. It also provides for the governance of society in accordance with the philosophy of *adat*: *adat* is based on Sharia, Sharia is based on the Quran; Sharia commands, *adat* implements; the nature is being a teacher (*adat basandi syarak, syarak basandi kitabullah. Syarak mangato, adat mamakai. Alam takambang jadi guru).* This philosophy authorizes the position of Sharia and *adat* as two central entities for the society.

1.8 Conclusions

The use of the term Sharia has grown in line with the development of Muslim history. Currently, it is primarily understood in a legal sense, particularly in the sense of positive law. Although early Muslim scholars did not use this term in discussing rules for Muslims, the Quran and ḥadīth clearly designate that this word means life rules for Muslims; a discursive tradition or a total discourse on Muslim life. As a set of rules, Sharia deals with different situations at different times and from place to place.

The position of Sharia in the era of nation states among the Muslim countries varies from country to country. Most of the legal systems of these countries employ European models, maintaining the systems applied by colonial governments. Current

developments, however, suggest that Sharia has been gradually adopted into the legal system of these countries. Thus, Sharia faces new challenges to adjust, particularly in relation to the nation state that also possesses its own meanings, structures and rules. The dynamic relation between the two varies from country to country.

In Indonesia, the government has legalized a number of aspects of Sharia for national law. The legislation is strongly intended to define an Indonesian Islam or an Indonesian *madhhab*. This term is commonly defined as Sharia in accordance with the state's purposes. The political parties and state institutions play an important role in determining to what extent the elements of Sharia should be legalized. Thus, the state is actively involved in shaping Sharia through education, family, endowment, pilgrimage, Islamic charity forms, economic activities and judicial institutions. In addition, with regard to public law, Sharia is mostly placed on the periphery, outside the legal sphere.

In Minangkabau, West Sumatra, the position of Sharia, juxtaposed with the *adat*, has been playing an important role in society. Most people obey Sharia in relation to rituals such as performing prayers, fasting during Ramadan, paying Islamic forms of charities, and performing pilgrimage. Besides ritual activities, several institutions relating to Sharia have been established including mosques, Islamic education centers (both state and private institutions), and a number of Sufi orders. In addition, the role of the Ministry of Religious Affairs, which established a sub-regional office (*kecamatan*) in the area, has played a key role in implementing Sharia legislation relating to state laws, rules and regulations. There have also been attempts to legislate other aspects of Sharia, which are not currently of the state's concern, in the provincial or regional/municipal law. This legislation will be examined in the subsequent chapters.

Chapter 2
Maintaining 'public morality': Prevention and elimination of unlawful acts

2.1 Introduction

In the early stages of decentralization it was a widely held view that the government had been less than successful in maintaining public morality despite its monopoly over policing the efficient administration of positive law (Hooker 2008:281). This lack of success was demonstrated by the widespread occurrence of prostitution, gambling, and drug and alcohol abuse. Here, I will suggest that public morality problems occur not only as a consequence of a discrepancy between the state penal law and the Islamic penal code, but also because of a lack of effective implementation of the penal code due to a culture of corruption among government officers.[25]

There is a significant distinction between the state's penal law and Islamic criminal law located within the issue of morality, which has been defined as the need to 'suppress practices condemned as immoral though they involve nothing that would ordinarily be thought of as harmful to other persons' (Hart 1963:25). However, this issue is not unknown in the Islamic criminal code, which deals with offences relating to committing prohibited acts or disobeying obligations set out in the Quran or

[25] The word corruption broadly means the misuse of office for personal gain (Klitgaard 2000:2).

ḥadīth. The discrepancy between the rules within the Indonesian penal codes and Islamic criminal law has become a challenge for many Indonesian Muslims who adhere to Islamic teachings, as well as obey the national penal codes enforced by the government.

The issue of maintaining public morality became a priority for local authorities with affiliations to Islamic political parties such as PAN, PPP, PK, and PBB. They orchestrated attempts to table a draft law on this subject aimed at preventing and eliminating public immorality. This chapter focuses on public morality and addresses three main questions: 1) To what extent are there attempts to introduce Sharia legislation relating to public immorality? 2) How has this issue been debated in public? 3) To what extent were the laws on this matter implemented in terms of actual practice? This chapter presents a number of discussions and practices on the following topics: 1) Islamic rules on public law; 2) Islamic public law in the Muslim world; 3) immorality within Indonesian public law; 4) public morality in West Sumatra; 5) local legislation on public morality that covers provincial and regional laws; 6) actual practice implemented by the municipality of Padang in terms of maintaining public morality; and 7) conclusions.

2.2. Islamic rules on public law

According to Islamic rules on public law, unlawful acts are mostly related to disobeying obligations or committing prohibited acts. Muslim jurists have classified unlawful acts into three groups: firstly, *ḥadd* or *ḥudūd.* These are offences that are mentioned in the Quran and consist of violations of the claims of God (*ḥuqūq Allāh*). They have a mandatory fixed punishment (*ḥadd* or *ḥudūd*). According to a majority of Muslim jurists in the Sunnī school, these offences fall into six categories: 1) theft (*sariqa)*; 2) banditry (*qaṭʿ al-ṭarīq, ḥirāba)*; 3) unlawful sexual intercourse (*zina*, Arabic: *zināʾ*); 4) unfounded accusations of unlawful sexual intercourse (*qadhf)*; 5) drinking alcohol (*shurb al-khamr*); and 6) apostasy (*ridda*). The

second group of unlawful acts is *qiṣāṣ* and *diya.* These are offences against the personal integrity, including homicide and wounding. These offences are widely regarded in terms of retaliation (*qiṣāṣ*) and financial compensation (*diya*). The third group of unlawful acts is *taʿzīr* and *siyāsa*. This relates to the discretionary punishment of sinful or forbidden behavior or acts endangering public order or state security (Bahnasiy 1965; al-Jazīrī 1990; al-Zuhaily 1997). The above classification is solely based on whether criminal offences and punishment have been elucidated in the Quran and ḥadīth. It is not based on whether the aim of the act is to inflict harm or evil on others.

The following paragraphs briefly discuss a number of offences that may be categorized as acts of public immorality. They relate to unlawful sexual intercourse; drinking alcoholic beverages and taking psychotropic substances, gambling, distributing pornographic prints and committing prohibited acts during the fasting month (*Ramadan*).

According to Sharia, sexual intercourse is only permitted within a marriage or between a slave woman and her master. Sexual intercourse that does not fall within bounds of these categories is considered to be unlawful sexual intercourse (*zina*). It is committed by a man and woman who are not married to each other, whether or not it takes place voluntarily, and whether or not payment is made. A man who engages in unlawful sexual intercourse commits a tortious act, regardless of whether or not the woman consented. The essential element that determines whether there should be punishment for unlawful sexual intercourse or not is actual penetration by the man into the vagina (Bahnasiy 1965:11-12; al-Jazīrī 1990:49; Ibn Rushd 1994:362-3). However, a strict standard of evidence is required to prove this offence; instead of the usual testimony of two witnesses, testimony by four witnesses in four different court sessions is required.

The Quran states that the punishment for those who commit unlawful sexual intercourse is flogging and the ḥadīth

states that the penalty is stoning. If the woman is not married, the man is liable for a proper bride price (*maḥr al-mithl*)[26] in return for having enjoyed her sexual service. If she is a slave, the man has to pay damages to her owner. Furthermore, the person who commits unlawful sexual intercourse can be punished with the fixed penalties of either 100 lashes or death by stones, depending on their own legal status (Bahnasiy 1965:17-18; al-Jazīrī 1990:45-64).

This rule extends to other sexually immoral acts, including prostitution and homosexuality, although there are different opinions about the punishment for these offences. In addition to this type of sexual immorality, the Quran also prohibits *khalwa* (close proximity between unmarried persons of the opposite sex) and any acts that facilitate others to commit these acts are also prohibited.[27]

The Quran prohibits the drinking of alcoholic beverages (*al-khamr*) and gambling (*al-maysr*).[28] Muslim jurists have extended this to prohibiting the consumption of any food and drink that can affect or damage the human psyche. These new extensions are derived from the texts of the Quran and ḥadiths. However, there are different opinions on the punishment for drinking alcohol. Shafi'ite follow the practice of the prophet, which says that the punishment is forty lashes. Other jurists follow ʿUmar who increases the punishment to eighty lashes. However, there is some controversy among the Islamic Jurists concerning drinking

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[26]*Maḥr mithl* is the average bride price that a woman of the same age and social status would receive upon marriage in that region.

[27]The Quran states the prohibition of committing unlawful sexual intercourse and its consequences in various verses: al-Furqān/the Criterion (25):68; al-Mumtaḥana/the Examined One (60):12; al-Isrāʾ/the Night Journey (17):32; and al-Nūr/the Light (24):2, 3. Several ḥadīth add more detailed rules relating to punishment and practice in the time of the prophet. In *Fiqh* books, the offences come under the heading of Islamic public law (*bāb al-jināya*).

[28]The Quran mentions the prohibition of alcoholic beverage and gambling in various: al-Baqara/the Heifer (2):219; al-Māʾida/the Table Spread (5):90 & 91.

beverages other than *khamr*. Most jurists put the consumption of such beverages on a par with *khamr* and therefore believe the punishment should be the same, regardless of the quantities involved. In contrast, the Hanafites hold that someone will only be punished if he actually becomes intoxicated (Bahnasiy 1965:18-22; al-Jazīrī 1990:10-15; Ibn Rushd 1994:370-2).

Other public moralities are regulated by discretionary rules (*taʿzīr*). *Taʿzīr* deals with any unlawful and sinful acts that are not constituted as *ḥudud* offences, homicide, or bodily harm. Executive officials and judges may impose corrective punishment on those who have committed such unlawful and sinful acts (Bahnasiy 1965:192-193). The function of these discretionary rules is not only to determine punishment of those who commit *ḥudd* and crimes against the person, but also those who cannot be sentenced to the appropriate punishment for procedural reasons, or are pardoned by the victim's next of kin, or because there is a lack of legally required evidence. It also determines punishment for those who have committed acts that resemble crime but do not fall under its legal definition; this includes illegal sexual acts that are not intercourse.

Current evidence suggests that the category of discretionary acts is increasing in different Muslim countries. For example, it is now seen as an immoral act in some Muslim countries not to fast during the Ramadan, or for a person to publish or distribute nude photographs. Islamic discretionary rules accommodate attempts to maintain public morality.

2.3 Islamic public law in Muslim countries

Current developments in the Muslim world show that Islamic public law varies from country to country. The application of public law can be classified into three categories: a country that officially disconnects with Islamic criminal law; a country that uses Islamic public law as the primary basis for its public code; and a

country that uses another source, and not Islamic public law, as the primary basis of its public codes. Turkey is the only Muslim country that belongs to the category of countries that is disconnected from the Islamic penal code. This disconnection began when the government adopted German public law in 1929 (Koçak 2010:264).

The second category of countries that have a public code based primarily on Islamic principles – albeit obeying different Islamic schools of law – includes Saudi Arabia, Iran, Pakistan, Sudan, Libya and Nigeria. The position of Islamic penal codes in these countries can be described as follows: Saudi Arabia applies substantive public law concerning *ḥudūd, qiṣāṣ* and *taʿzīr*, largely according to the Hanbalite doctrine though it has remained uncodified. This includes offences of unlawful sexual intercourse and abuse of alcohol. In 2001, the Saudi government enacted a code of criminal procedure that elucidates that punishment can only be inflicted on those who commit crimes prohibited by Sharia (Vogel 2000; Peters 2005:152; Van Eijk 2010:166).

Iran applies Islamic public law according to Shiite doctrines. In early 1981, the government applied a public code in accordance with Islamic criminal law, which included of unlawful sexual intercourse, homosexuality and abuse of alcohol. In the following two years the government enacted state laws relating to *ḥudūd* and *qiṣāṣ* and determined that the penalty for committing such offences would be flogging. In 1991, the Iranian parliament approved a new criminal law containing five books that cover a range of offences including *ḥudūd,* homicide, blood money and discretionary punishment (Mir-Husseini 2010:358-60).

Pakistan also applies Islamic public law. Under the Zia ul-Haq regime, in 1979, the government turned away from the legal code introduced by the British and adopted Islamic public law. A number of offences concerning *hudūd*, *qiṣāṣ*, and *taʿzīr*, largely determined by Hanafite doctrine, are now punishable (Lau 2010:218; Wasti 2009:7-8). Rules regarding unlawful sexual

intercourse, such as homosexuality, adultery and fornication, are identical to those set out in classical *fiqh*, which states that the penalty for the offender is not only flogging but also imprisonment. Punishment for a fornicator is flogging, not lapidation (stoning), and for the abuse of alcohol it is forty lashes (Peters 2005:156-7).

Sudan is another country that applies an Islamic public code. This is regulated under section 9 of the 1973 constitution that stipulates that Sharia is the principle source of Sudanese legislation. In subsequent years a number of offences were incorporated under Islamic criminal law. For example, in 1977 abuse of an alcoholic substance became an offence, and in 1984 it was decided that unlawful sexual intercourse is punishable with eighty lashes and one year of imprisonment.

In Libya, the implementation of an Islamic criminal code began when Qaddafi came to power. In 1973 and 1974, the government enacted state laws concerning offences regulated under Islamic public law, largely according to the Malikite doctrine. Unlawful sexual intercourse and abuse of alcohol are punishable offences. Similar developments occurred in Nigeria where Islamic criminal law is applied. The offence of *zina* is punishable by death by stoning if the offender is currently married or has been married; otherwise, the punishment is one hundred lashes. *Qadhf* or false accusation of *zina* is punishable with eighty lashes and abuse of alcohol is punished with eighty lashes. Since 2000, twelve northern Nigeria states have introduced new punishments for violation of Islamic criminal law. This development includes a number of offences of unlawful sexual intercourse, sodomy, and alcohol abuse (Weimann 2010:22-29).

There has also been development of Islamic criminal law in other Muslim countries that had experienced different colonial powers. Although most of these countries continue to apply public law implemented by their colonial administrations, they have attempted to adopt traces of Islamic criminal law. A number of

countries belong to this category, including Morocco, Egypt, Mali, Malaysia and Indonesia. In Morocco, the most recent developments show that in 2003 a number offences derived from Sharia were absorbed into Moroccan public law, including punishing Muslims who provocatively disrespect the rules of fasting during Ramadan, obstruction of religious practices, and other offences that corrupt Islamic values concerning family life and honor (Buskens 2010:122-4). Indonesia's experience regarding this issue is presented in the following sections.

2.4 Immorality within Indonesian public law

The Indonesian government still applies a penal code that was first implemented by the colonial government, although a number of sections have been abolished or added. The colonial government issued *Koninklijk staatsblad* no. 732 on *Wetboek van strafrecht voor Nederlandsch Indië* (WvSN) in 15 October 1915 and this penal code was came into force on June 1918. In 1946, the government issued law 1/1946 on this subject and changed its name into *Kitab Undang-Undang Hukum Pidana* (KUHP). Since the initial penal code was introduced and enforced by colonial power, the Indonesian government has drafted a number of versions of this law, including a bill put before parliament in 2005. However, a new penal code has never been passed. This failure may be because the government and parliament failed to reach a consensus concerning the variety of norm and code of conducts concerning public law.

KUHP and other state laws include a number of public immoralities as crimes. KUHP elucidates this matter in the chapter on public decency and public order. Sections 281 to 283 of KUHP highlight the prohibition of providing, performing, showing, distributing, and publication of any obscene material, such as nude photographs, in public; and the prohibition of earning a living from such material. Sections 284 to 288 prohibit adultery between

two parties, one of whom, or both of whom, is or are married. Section 284 specifies that this offence may only be punished if his or her spouse objects to the act; otherwise, it is not a crime. However, fornication is not included as a crime in KUHP. Sections 289 to 296 prohibit other illicit sexual acts, such as homosexuality, and providing facilities for and earning a living from these illicit sexual acts. It also classifies sexual intercourse with an underage person as a crime. Section 300 prohibits the selling or giving of alcoholic drinks to an underage person (below sixteen years old). In addition, section 484 elucidates that being drunk is only a crime if it disturbs public order. Section 303 elucidates the prohibition of gambling, including offering and providing facilities for gambling and living on the earnings from gambling. But, this offence is not considered a crime if the government permits it. At section 303, gambling is defined as any game in which there is a possibility to gain profit or that requires a player to rely on fortune rather than tactics or skillfulness. In 1974, the government decided to completely prohibit any form of gambling when it issued law 7/1974. This law came into effect when the government issued regulation 9/1981 aimed at qualifying any form of gambling as a crime.

The government has also issued a number of other laws that qualify immoral acts as crimes. This includes law 5/1997 on psychotropic and other substances, law 22/1997 on narcotics, 24/1997 on broadcasting, and 44/2008 on pornography. The first two laws rule that psychotropic substances and narcotics are strictly restricted to health and knowledge purposes. Any form of abuse of these substances is strictly prohibited and the offender may be punished with a minimum of four and a maximum of fifteen years in jail, or with a fine of a minimum of 150 and a maximum of 750 million rupiah. Various forms of indecent materials, including pornography and material related to gambling are also prohibited from publication or broadcast in any form of media. Law 24/1997 rules that offenders will be punished with

seven years in jail or a fine of 700 million rupiah. Law 44/2008 threatens the offender of a pornographic offence with punishment of a minimum of six months and a maximum of one year in jail or a fine of 250 million rupiah.

2.4.1 In the province of Aceh

Aside from the current developments in terms of issuing state laws concerning public immorality, a number of provinces and regions have codified public immorality in local law since 2000. The authorities in Aceh have issued *qanun* aimed at regulating public morality offences concerning the prohibition of drinking alcohol, gambling and *khalwat*. *Qanun* 12 of 2003 makes it an offence to consume *khamr* and psychotropic substance. *Khamr* is broadly defined as an alcoholic drink that may cause health and consciousness problems including brain damage. *Qanun* 12 elucidates that consuming alcohol and other psychotropic substances is prohibited (*ḥarām*). Thus, any parties – individual, organization or business, government and community – are prohibited from becoming involved with these substances. Every person is forbidden from consuming alcoholic and other psychotropic substances. Offenders will be punished with forty lashes. The punishment for habitual consumers adds a third more lashes to the basic punishment. This *qanun* prohibits an organization or business from producing, providing and selling alcoholic and psychotropic substances. Punishment for doing so is a minimum of three months and a maximum of one year prison or be fined with a minimum 25 billion and a maximum 75 billion rupiah. A government officer who issues such a permit will be punished with a minimum of three months and a maximum of one year in jail or be fined with a minimum 25 billion and a maximum 75 billion rupiah.

The offence of gambling is regulated under *qanun* 13 of 2003 and it defines gambling as an activity that involves a bet between two or more parties in which the winner makes a profit. This *qanun*

elucidates that gambling is prohibited (*ḥarām*). Consequently, every person is prohibited from committing any form of gambling. Offenders will be punished with a minimum of six and a maximum of twelve lashes in public. Habitual gamblers will be punished with one third extra lashes. *Qanun* 13 goes on to prohibit any organization or business from organizing, facilitating and protecting any form of gambling. Punishment for doing so is a fine of a minimum 5 million and a maximum 15 million rupiah. This *qanun* rules that no government institution has the authority to issue a license to legalize gambling. Any officer doing so will be fined with minimum 5 million and maximum 15 million rupiah. People should actively prevent any forms of gambling, for example by reporting it to the local authorities.

Qanun 14/2003 concerns *khalwat*. This is defined as close proximity between unmarried people of the opposite sex. The above *qanun* prohibits *khalwat*, facilitating *khalwat* and the protection of an offender. Punishment for committing *khalwat* is a minimum of three and a maximum of nine lashes or a fine of minimum 2.5 million rupiah and maximum 10 million rupiah. *Qanun* 14 also prohibits any private or government institution from providing facilities or protection for offenders. Anyone caught doing so will be punished with a minimum of two months and a maximum of six months in jail or be fine with minimum 5 million and maximum 15 million rupiah.

The three Aceh *qanun* outlined above reveal that the nature of these offences is decided by rules that are regulated under the Islamic penal code. They also reveal that those offences have shifted away from what KUHP has already ruled. This shift occurred as a result of legal and social factors: legally, the government of Aceh has the authority to codify Sharia and socially, most people of Aceh adhere to the rules of public morality in accordance with Sharia.

2.4.2 In other provinces

In other provinces and regions a number of local public morality laws have been issued mainly relating to the prohibition of prostitution, gambling, and alcoholic beverages. Here, I will provide an example by outlining two regional laws, one from Bulukumba in South Sulawesi and one from Sambas in West Kalimantan. The authorities in Bulukumba issued regional law 03/2002 prohibiting the abuse of alcoholic beverages. The law defines alcoholic beverages as any drinks containing elements of ethanol substances mixed with other substances. This definition emphasizes the technical methods required to produce alcohol, rather than focusing on the health problems caused by this substance. It does not, however, totally prohibit the consumption, sale or distribution of alcoholic beverages in this region. Sections 2 to 6 rule that the head of the region may issue a license to legalize the consumption or sale of alcohol; however, section 7 limits the places where alcoholic beverages may be sold to tourist destinations, hotels, restaurants and bars. Section 8 also restricts students and public officers from buying and consuming alcoholic beverages. Offenders will be punished with a maximum of six months in jail or fined a maximum of 5 million rupiah. Thus, this regional law follows the rules set out in KUHP rather than Sharia.

The authorities in Sambas issued regional law 3/2004 on the prohibition of prostitution and pornography. The prohibition of *zina* is also included in this local law, which defines prostitution and *zina* as two separate acts, despite them both involving sexual intercourse (whether consensual or by force) between a man and a women who are not married to each other. Pornography is defined as any act that stimulates sexual desire or lust, whether it be as a result of a way of dressing or of behavior. Offenders may be punished with a minimum of four months and a maximum of six months in jail or with a fine of minimum 3 million and maximum 5 million rupiah.

Similar local regulations can be found in other regions throughout the archipelago, such as in West Java, South Sulawesi, South Sumatra and other provinces. This development suggests that local authorities are challenged with problems of public morality and are attempting to solve these problems by issuing local laws. A number of regions still issue local laws aimed at prohibiting gambling, even though it has already been prohibited under national law.[29] Perhaps, the purpose of this is to put the matter firmly under the authority of the regional government, rather than national law who enforce it using the police.

2.5 Public morality in West Sumatra

In West Sumatra public immorality is formed by several sets of rules, including *adat* law and Sharia. These two rules are located at the periphery of state law; however, both are very much 'living' laws within society. Actual practice varies and requires an awareness of whether an immoral act is governed by *adat* or Sharia. It should be noted that *adat* rules regarding public immorality are more varied and more specific than Sharia. The history of this society reveals that the first conflict between groups of Muslims and *adat* functionaries occurred in the 19th century and was triggered in part as a result of public immorality issues, including gambling and smoking opium (Dobbin 1974:328). Current questions of public immorality largely deal with unlawful sexual intercourse, abuse of alcohol and other psychotropic substances, gambling, the spread of pornographic materials and other immoral conduct between men and women.

In recent decades, the provincial authorities have attempted to tackle the problems of prostitution. In 1978, the government took the political decision to establish a rehabilitation center located in Sukarami at Solok, aimed at offering prostitutes

[29]The regional law of Sambas 4/2004 on the prohibition of gambling.

an alternative and to provide them with the skills to support themselves without resorting to prostitution. However, it has little impact in terms of reducing the number of prostitutes. On the contrary, current evidence shows that number of prostitutes is gradually increasing. According to a government report, there were approximately 200 prostitutes in West Sumatra in 2000 (*Singgalang,* 22/7/2001). This actual figure is likely to be higher as not all prostitutes are willing to be recorded in this official data. Though prostitution is condemned, it is widely available in a number of cities in West Sumatra. For example, in Padang prostitutes can be easily observed on several main streets during nights, or they stay at cheap hostels or hotels located in the city. It has been widely rumored that corrupt government officers are involved in the prostitution, securing places for prostitutes to work or protecting the places where they reside. A number of other people also benefit from the earnings of prostitution, including taxi drivers and landlords.

The spread of other public immoralities such as gambling and the abuse of alcohol and other psychotropic substances, as well as the distribution of pornographic materials has been widespread. In the early 2000s, it was common to observe people freely selling and offering lottery cards, alcoholic drinks, and pornographic pictures in several public places in Padang, even next door to the police headquarters or the mayor's office in the city. These public immoralities have resulted in the increase of both crime and social problems, including a rise in the number of people who have contracted HIV/AIDS (Profile 2011:39).[30] Most people have become skeptical that the government is able to deal with such social problems effectively (*interview* with ulama, 27/7/2010).

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[30] According to the statistical data of West Sumatra the total crimes and offences registered at the court between 2005 and 2009 as follow. Crimes; 2005:2,184, 2006:2,447, 2007:2,875, 2008:2,872 and 2009:3.119 Offences; 2005:198,082, 2006:91,426, 2007:89,991, 2008:87,435 and 2009:82,569 (*West Sumatra* 2010:195).

For most people, the issue of public immorality is rooted in two main factors. First, there is a discrepancy between the rules regarding immoral acts and the state's law and the norms of *adat* and Sharia which the majority of people adhere to. Law enforcement is only possible according to the state's rules. Secondly, though state law has clearly classified a number of public immoralities as crimes, there is a lack of implementation. Police officers often justify this failure by saying that public immorality is hard to defeat because it has long been a part of human culture. Another argument used by the police to justify the failure to enforce state laws on public immorality is the lack of police numbers. This is may be justified by the fact that the ratio of police and population in Indonesia is still far from ideal, that is 1:400. The data shows that between 1995 and 2000 the ratio is 1:1.000 and this rate increased to 1:750 between 2000 and 2004. This number increased to 1:500 in 2009 (News.detik.com, 01/07/2010). In West Sumatra, the ratio rate reaches 1:504 in 2009 there were 9,568 police personnel for a population of approximately 4.83 million (West Sumatra 2010:53:57). The general population tends to take the opposite view to the police and it is frequently argued that the lack of enforcement is a result of corrupt police officers who are deeply involved in immoral acts such as gambling, prostitution, abuse of alcohol and drugs.

The issue of public immorality has become a prime concern among politicians, specifically those belonging to Islamic political parties such as PPP, PAN, PKS and PBB. These politicians advocate Sharia legislation as well as *adat* rules to regulate public immorality at the provincial and regional/municipal levels.

2.5.1 Provincial Law

Members of the provincial parliament marked a new achievement when they advocated a draft provincial law concerning public immorality. The parliament has the authority to table a draft provincial law according to the regional autonomy law of 1999 and

the amended constitution. Prior to this legislation, this institution lacked the authority to draft bills. This development attracted wide public attention. In addition, legislation concerning immorality is a relatively sensitive issue for the public, because many see it as an attempt to legalize Sharia rather than *adat* rules. Consequently, there has been a varied response to this development. As Indonesian legal history shows, public discussion and debate has been the usual response to any attempts to legalize Sharia. These responses tend to become emotional and polarized. The proponents of Sharia are accused of going against *Pancasila* and the constitution; meanwhile opponents of Sharia are accused of islamophobia.

The following section presents two subsections of the draft and provincial law 11/2001. This aims to examine the contents of both, and the extent to which the provincial law differed from the draft and why such a difference occurred.

2.5.1.1 The draft

The E commission of the provincial parliament is tasked to deal with social welfare (*kesejahteraan rakyat*) and this means it is also concerned with the issue of public immorality. Though some people have voiced the opinion that public immorality problems cannot be solved by a legal approach, this commission believed that these matters required legal solutions. Thus, members of the commission took the initiative to prepare a draft for provincial law. According to the chair of this ad hoc commission, the members of the parliament had conducted several public assessments before taking a decision to draft a bill on the matter. As he mentioned to me:

> We had been talking to people during several official visits to villages and other official public gatherings. People were mostly complaining about a gradual diminishing of public morality.

> According to them, the adat maxim *adat basandi Sharia, Sharia basandi kitabullah,* was nothing more than lip service and disconnected from people's attitudes and behaviors. However, I acknowledge that not all people felt the same about this, but most of them do. They suggested we should issue a provincial law to maintain public morality. This suggestion motivated members of the E commission of DPRD to draft and subsequently table a bill in parliament (Interview, the former chair of the commission, 07/06/2009).

In early of 2001 the E commission began the process of drafting a provincial law concerning the prohibition and elimination of public immorality (*Pelarangan dan pemberantasan maksiat).* The draft consisted of seven chapters and seventeen sections.[31] Below three parts of the draft are examined: the motives behind its issuance, the rules included in the draft and the penalties.

The draft mentions three main reasons for introducing the law. First, the province of West Sumatra is a region that has a distinctive character, not least that the society is ruled by both *adat* and Sharia. This is justified by the maxim: *adat* is based on Sharia; Sharia is based on the Quran; Sharia commands; *adat* implements; the messages are taken from nature (*adat basandi syara', syara' basandi kitabullah, syara' mangato, adat mamakai, alam takambang jadi guru*). Second, several immoral acts, including prostitution, unlawful sexual intercourse, homosexuality, gambling, pornographic acts, and the abuse of alcohol have affected, disturbed and disharmonized the foundation of society. These immoralities clearly contravene not only a number of state laws and regulations, but also religious and *adat* rules. Third, the purpose of issuing the provincial law is generally to maintain social harmony and specifically to protect new generations from the negative impact of immoral acts.

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[31] The draft can be seen in appendix 5.

Furthermore, this draft defines a number of key terms related to this issue. Public immorality (*maksiat*) is defined as conduct by any person that disturbs the foundations of social life and that is considered contrary to state regulations, and religious and traditional rules. This immorality includes male and female prostitution, unlawful sexual intercourse (*zina*), abortion, homosexuality, pornographic acts, gambling, and abuse of narcotics and alcoholic beverages. These immoralities may be classified into four main categories: 1) unlawful sexual intercourse; 2) gambling; 3) abuse of alcohol and other psychotropic substances; and 4) pornographic acts.

The drafter appears to be attempting to change the meaning of immoralities as defined in the national public laws. Though definitions of alcohol and other psychotropic substances are, on the whole, simply restated from what is written in the national public laws, unlawful sexual intercourse (*zina*) is defined as unlawful sexual intercourse committed by a man and women who are not married to each other, including consensual intercourse. Prostitution is defined as unlawful intercourse with financial benefits committed by a man and woman who are not married to each other. Homosexuality is defined as unlawful sexual intercourse by two people of the same sex. Nevertheless, the draft remains vague and imprecise about a number of immoral acts; for example, pornographic acts are defined as any acts and/or conduct that may stimulate sexual desire.

The draft rules that any person who is involved in, facilitates, provides, or permits public immorality shall be guilty of an offence. Section 10, entitled prohibition, states the following:

(1) Any person who commits public immorality (*maksiat*) shall be guilty of an offence;
(2) Any person whose conduct can stimulate or trigger another person to commit immoralities shall be guilty of an offence;
(3) Any female person who leaves their house between 10pm and 4am, without being accompanied by family members (*muḥrim*),

and/or she is not on duty obligated by law, and/or she is not doing any work justified by other legal norms, shall be guilty of an offence;

(4) Any owner of hotel/motel/inn/guest house who allows any guest to visit outside of visiting time or outside of the visiting room (guest room/lobby), or allows anyone to commit immoralities, or provides massage services, or allows males and females who are not married to each other to stay in the same room, shall be guilty of an offence.

The draft specifies a code of conduct for owners of hotels, entertainment venues, tourist destinations, educational institutions, state and privates institutions, business groups, and mass media. For example, the owner of a hotel should record the identity of guests who are staying and send this data to an appointed local authority. The hotel owner must provide transportation to take their female staff home if their shift ends after 10pm; the owner is also obligated to prevent any form of public morality offence. This draft implies that public immoralities commonly occur in these public places.

The penalties for offenders are regulated in section 14. Subsection 1 elucidates that offenders who commit the offences that have been regulated under national public laws will be punished according to the penalties set out in the national legislation and that details of the offence will be published in three local media sources. Subsection 2 rules that the penalty for offenders who commit offences stipulated under the draft will be imprisoned for a maximum of six months or fined a maximum of 5 million rupiah. Details of the offences will be published in three local media. Subsection 3 further rules that offenders who own hotels, entertainment venues, tourist destinations, educational institutions, state and private institutions, business groups, and mass media will be punished with a maximum of six months in jail or fined a maximum of 5 million rupiah. There will also be

administrative sanctions such as the withdrawing of a business licence. Subsections 4 to 6 elucidate that if an offender is a public officer the penalty will be doubled. The draft mentions legal institutions that should enforce this provincial law, including the police, the civil servants investigation bureau and the civil service police unit. The implementation of provincial law is approved by the governor of West Sumatra.

This draft shows that codes of conduct concerning public immorality are derived from state regulations, Minangkabau *adat* and Sharia. The standard rules regarding immorality are derived from Sharia and, to some extent, also from *adat*, while the penalties for these offences are adopted from state law. This evidence reveals that Sharia does play a central role in this issue. Hooker suggests that this development can be characterized by the attempts to adopt elements of Sharia into state values (Hooker 2008:291-2).

The provincial parliament established an ad hoc commission to produce and get joint approval of the draft with the provincial government. The commission subsequently planned a number of hearings with broader audiences, including academics, NGO activists, ulama, *adat* functionaries and public figures from civil society groups as well as other elements of society. These meetings were scheduled between 26 and 29 June 2001. The ad hoc commission intentionally decided not to circulate the draft to wider public audiences; nevertheless, it fell into the hands of journalists who published it. A local daily newspaper, *Haluan*, printed the draft between 24 and 26 June 2001. There was a swift reaction from the public to the draft that was keen to share its views with members of parliament.

The public response to the draft was varied. Some people were happy and fully supported the bill; others were shocked and rejected it completely; there were a number of skeptics who proposed a different idea, and there were those who were critical and asked for a revision. Opponents and proponents alike not only

came from West Sumatra, but also outside of the province. The draft triggered nationwide public debate and discussions centered on two main issues. First, whether or not a provincial law on public immorality was necessary; and second, the rules stipulated in the draft were seen to be in contradiction to national law and human rights. Opponents and proponents to the draft reacted emotionally rather than rationally to the proposed legislation.

Many of the proponents were local ulama, *adat* functionaries and activists from Muslim organizations, including Muhammadiyah, Aisiyah Muhammadiyah and Nahdlatul Ulama. Their support was publicly articulated whenever possible. In addition, proponents attempted to counter criticism of the draft. However, they tended to do this in an emotional way, attacking opponents with value judgments, rather than with rational arguments. For example, during a meeting of the ad hoc DPRD commission on 25 June 2001, the Chair of Muhammadiyah expressed his support by saying 'I acknowledge that this draft is still in the form of a draft, therefore it still requires enriching and revising. However, we should not be hasty and say that this draft contravenes [national laws] and thus must be fully rejected. This denial is a reflection of narrow-mindedness and inaccuracy' (*Singgalang*, 27/06/2001). This statement reveals that the Chair did not focus on countering the arguments of opponents; rather he judged them accusing them of being narrow-minded and inaccurate.

A similar approach was adopted by the leader of Aisiyah Muhammadiyah who delivered the following views on this issue: 'According to Aisiyah the draft is more respected than the [declaration of human rights], because it is based on *adat* and *syara'* [Islamic Law]'. She went on to accuse opponents of the draft of having been contaminated by Western values that are not in accordance with Islamic teachings (*Singgalang*, 27/06/2001). Classifying the draft as more respected than international human

rights legislation and judging opponents for their 'Western values' is an emotional reaction.

The Vice Director of the legal aid organization (PHBI) said: 'it is strange that some of us are promoting western values that are obviously not in line with our tradition and culture. It is time to implement the richness of Islamic values' (*Singgalang*, 27/06/2001). An outstanding local *ʿālim* (Islamic religious scholar), rather suspiciously supported the draft by saying, 'this draft aims to protect *akhlāq* of *ummat* [muslim communities] from disorder. Thus, all of us must support [the draft] and we should not be provoked by others whose agenda is to cancel the draft'. An *adat* functionary also supported the draft. He said, 'Muslims are the dominant population in Minangkabau; thus, it is logical that Islamic law influenced our tradition. Consequently Islamic law that is adopted in the draft must be obeyed in this region' (*Singgalang*, 27/06/2001). Similar voices were also heard from other individuals or Muslim and *adat* organizations, including the West Sumatra Ulama Council, a number of Muslim academics and *adat* functionaries. In addition, there were equally emotional responses among opponents of the draft. For example, an accusation was made that the members of parliament lacked intellectual capacities (*Haluan,* 03/06/2001).

Despite the emotion on both sides, there were some constructive arguments put forward, mostly by opponents who disagreed with the draft or certain sections of it. The governor of West Sumatra, NGO activists, and scholars belonged to this category. Their arguments can be summarized into three main points: First, substantive laws in the draft have already been regulated under national public laws. Thus, there was no point in issuing the same substantive laws, particularly ones that contravene the national laws. The suggestion was put forward to maintain public morality by reinforcing the national laws, rather than issuing local regulations on the matter. Second, it was argued that a legalistic approach, such as issuing a provincial law

concerning public immorality (*maksiat*), was not the best solution. 'To prohibit a woman from leaving her home between 10pm and 4am is not the best solution for prostitution practices, it will create more difficulties for good women', wrote AA Navis in the daily newspaper *Singgalang* (*Singgalang*, 21/07/2001). The next day, he wrote again and saying that the provincial government had already tried a similar approach to this issue but the result was unsuccessful and, in fact, the number of prostitutes in West Sumatra was on the increase. According to Navis, public immorality was rooted in a number of factors, such as economic, social, religios and *adat* problems. These factors must be taken into consideration when formulating solutions, rather than merely relying on a legal approach (*Singgalang*, 22/07/2001).

Third, the parliament should not issue any provincial law that is largely based on *adat* and Islamic teachings and with the purpose of implementing Islamic law in West Sumatra. West Sumatra is not only home to Muslims and the Minangkabau people, but also to the Mentawai region. It could be seen as a matter of discrimination to issue a provincial law that only applies to Muslims and Minangkabau people. Thus, Navis suggested issuing a similar regulation at the regional rather than at the provincial level (*Singgalang*, 24/07/2001).

> The most controversial point in the draft is section 10 (3) that states that 'any female person who leaves their house between 10pm and 4am, without being accompanied by family members (*muḥrim*), and/or she is not on duty obligated by law, and/or she is not doing any work justified by other legal norms, shall be guilty of an offence'. Several NGO activists argued that this section not only violated national public law, but also human rights as well. Further, it would create problems for women who, for example, must work during the night, such as in the traditional market, hospitals, hotels and other places. Thus, it was proposed to withdraw this section from the draft. However, there were a number of ulama and *adat* functionaries who supported the restrictions on women leaving their home during

> the night. They argued that not only was the restriction inspired by Sharia, but also that such actions were ruled as *cando* – indecency – under *adat*.
> Although there were a number of calls to withdraw the draft, during a speech by the governor to members of parliament on 10 September 2001, he suggested that parliament adjust the draft to fit in with the requirements of the national laws. To this end, the parliament might revise the draft by focusing merely on prevention (*pencegahan*) matters and excluding those sections of the draft dealing with the issue of elimination (*pemberantasan*).

In response to criticism of the draft, most members of parliament were reluctant to involve the wider public in a debate and tended to agree to revise major parts of the draft. Of the 55 members of parliament, only five had experience as members of provincial parliaments, and four had been regional parliament members.[32] The remainder had no such experience. It is commonly said that being a member of the parliament happens 'by accident'. This is as a result of a growth in political parties and the fact that there are few qualified figures for the role. In fact, many members of parliament began their careers as civil servants. However, a new law provided opportunities for them to join political parties. Consequently, this created the possibility for anyone who was interested to take on a political position (Asnan 2006:245-6). However, many of these new members underestimated the work involved. There were other factors that contributed to this situation. Political institutions like the parliament are not yet well equipped with comprehensive rules and regulations to facilitate the performance of their tasks. For example, the rules regarding the issuance of a provincial law were still, in general, regulated

[32] Figures for members of parliament in 1999 were as follows: KAMMI 1 person, PUI 1 person, PPP 10 people, PDI 5 people, PAN 11 people, PBB 3 people, PK 2 people, Golkar 12 people, PP 1 person, PKB 1 person, PPIM 1 person, and representatives of Military and Police 6 people (Asnan 2006:243-5).

under the presidential decision 44/1999 and a comprehensive rule on this issue is regulated under law 10/2004.

2.5.1.2 Provincial law 11/2001

After six revisions of the first draft, the parliament finally approved a final draft and the governor subsequently approved provincial law 11/2001 on the prevention and elimination of public immoralities (*pencegahan dan pemberantasan maksiat*) on 14 November 2001. It consists of seven chapters and 24 sections. It is not surprising that its contents are considerably different from the first draft.

A brief summary of its contents follows. The provincial law aims to adopt the notion of *adat* as well as Sharia in maintaining public morality. It specifies that a number of immoral acts violate the norms of religion, *adat* and national public laws. Specific public offences are defined in section 2 (2): unlawful sexual intercourse and other conduct that may result in unlawful sexual intercourse, gambling, abuse of alcohol, narcotics and psychotropic substances, and offences relating to pornographic materials.

Though the national public laws regulate public immorality, the provincial law is concerned with four main issues: unlawful sexual intercourse; gambling; abuse of alcohol, narcotics and other psychotropic substances; and pornographic material issues. Of these four classifications, only the definition of *zina* is different from what has been defined in national public laws. The definitions for other immoral acts, including gambling, abuse of alcohol, narcotics and other psychotropic substances and pornographic materials are largely copied from the national pubic laws. For instance, section 1 (e) defines *zina* as intercourse between a man and woman who are not married to each other, or between to people of the same sex, whether it takes place voluntarily or by force, and whether or not payment is made.

These four offences are regulated in sections 5 to 15 which are summarized as follows: Sections 5 and 6 elucidate that any

person who commits and facilitates unlawful sexual intercourse, or may trigger sexual desire through physical movement and/or not covering part(s) of the body that they are obligated to cover by religious and *adat* rules, produces any kind of writings, pictures, and entertainment that triggers sexual desire shall be guilty of an offence. Sections 7 to 10 rule that any person who commits gambling, facilitates gambling or provides a place or protection for such activities, earns a living from gambling, or licenses gambling shall be guilty of an offence. Sections 11 to 14 rule on the abuse of alcohol, narcotics and psychotropic substances. Section 12 specifies that any person who blends, produces, stores, sells, distributes, presents, protects and consumes alcohol, narcotics or psychotropic substances shall be guilty of an offence. These substances are strictly restricted to medical purposes. With regards to publishing and producing materials that may trigger immoral acts, section 14 elucidates that any person who is in charge of a state or private institution, or any person who has business relating to publishing, producing, and distributing mass media, including printing, electronics stores, and pictures and posters, that contravenes religious and *adat* values shall be guilty of an offence. This provincial law stipulates the importance of public participation. People are encouraged to report (suspected) offences and immoral acts to the local authorities. Furthermore, the general public is also obligated to warn people against committing public immoralities.

However, there are two significant weaknesses of provincial law 11/2001 – the lack of penalty and the lack of legal enforcement. Section 22 (1) only indicates that the offender will be punished according national public law. It only regulates an administrative penalty for any local officer who does not take any legal action following the report of a suspected offence. In addition, it does not explicitly indicate specific legal enforcement, although it mentions that the police have a role in enforcing this law. That said, the police are excluded from the subject of regional

autonomy. Enforcement is prescribed in the form of the civil service police unit (*Satuan Polisi Pamong Praja/Satpol PP*); however, as yet there are no legal enforcement institutions for regional governance.

According to law 22/1999, the governor is required to issue a decree in order to implement the provincial law. Without this, the legislation remains legally inapplicable. There is no specific regulation stating when the governor should issue this degree. Implicit in this rule is that implementation of the provincial law relies on the political will of the governor. The governor established a committee to prepare the draft for the governor decree; however, it failed to fulfill its task. To date, the governor has yet to issue a decree to implement provincial law 11/2001.

Although the provincial law legally cannot come into force, the evidence has shown that it has been widely used to justify certain acts as public immorality offences. Despite this disadvantageous situation, the presence of provincial law 11/2001 has resulted in the issue of public immorality becoming the concern of the regional authorities. However, it also causes a complex relationship between two legal enforcement bodies: the police department and the regional authorities, including *Satpol* PP. This issue is discussed further in the last section of this chapter.

2.5.2 Regional/municipal law

There are four municipalities and three regions that have issued a law concerning public immorality. They are the municipalities of Bukittinggi, Padangpanjang, Payakumbuh and Padang, and the regions of Padangpariman, Sawahlunto/Sijunjung and Pesisir Selatan. This raises the question, why is this issue only of concern in these areas? One explanation may be that these issues had become a priority for most politicians belonging to Islamic political parties, including PK(S), PAN, and PBB They mostly considered public immorality to have become widespread in these places and has caused social problems, for instance the abuse of alcohol and

other psychotropic substance and criminality (Interview with a member of the provincial parliement, 07/06/2009).

The following paragraphs briefly present the contents of each regional and municipal law. Attention is mainly focused on two issues: the category of public immoralities and the penalty for the offences.

2.5.2.1 The municipality of Bukittinggi

The municipality of Bukittinggi was the first region to issue a municipal law on public morality in West Sumatra. The parliament and the mayor issued municipal law 9/2000 on the prevention and elimination of public immorality on 28 September 2000. It consists of six chapters and eight sections. This law was revised in 2003 with the municipal law 20/2003.

Section two classifies public immoralities in three categories. Firstly, personal offences, including: 1) prostitution; 2) abuse of alcohol in public; 3) disrespecting the rules of fasting in a provocative manner during Ramadan; and 4) distributing pornographic material in public. The second category relates to the misuse of business premises for public immorality offences; and the third category refers to offences of protecting or facilitating immoral acts. The rules relating to unlawful sexual intercourse (*zina*) are excluded from this law and section 4 (2 & 3) specifies that drinking alcohol is only prohibited in public. This allows the authorities to grant licenses to businesses dealing with alcohol. However, this law adopts new elements of Sharia, i.e. disrespecting the rules of the fasting month. The penalty for offenders is a maximum of four months in jail or a fine of 4 million rupiah. The municipal law 20/2003 revised this penalty with a maximum of three months in jail or a fine of 1.5 million rupiah.

2.5.2.2 The municipality of Padangpanjang

The authorities of this municipality issued the municipal law 3/2004 on the prevention and elimination of public immorality on 3 February 2004. It consists of ten chapters and 23 sections. This law classifies public immoralities into eight categories: 1) Unlawful sexual intercourse (*zina*). Section 5 specifies that any person who commits sexual intercourse, conducts homosexual or lesbian relations, provides facilities or protects places for these offences, and lives on the earnings from unlawful sexual intercourse shall be guilty of these offences. 2) Indecent behavior. Sections 6 and 7 rule that any person who wears clothes that are not in accordance with Muslim dress code, behaves in a way that provokes sexual desire, lives on the earnings from harming people and protects any activities relating to harming people shall be guilty of an offence. 3) Publishing and distributing pornographic materials. Section 7 rules that any person who produces, distributes, stores, supplies or sells any pornographic materials shall be guilty of an offence. 4) Prohibits the abuse of alcohol. Section 10 elucidates that any person who sells alcohol without authorization, consumes it in public place, or facilitates and protects the abuse of alcohol shall be guilty an offence. 5) Disrespecting the rules of Ramadan. Article 8 rules that any person who shows disrespect for the rules of fasting during Ramadan, including smoking, drinking or eating in public shall be guilty an offence. 6) Playing games. Article 13 rules that students are prohibited from playing games, such as Playstation and billiards while wearing school uniform. 7) Abuse of narcotics and other psychotropic substances. Section 11 rules that any person who facilitates other people in the abuse of narcotics and other psychotropic substance shall be guilty an offence. 8) The prohibition of gambling. Section 12 elucidates that any person who facilitates gambling shall be guilty an offence.

Section 18 rules on the penalties for the above offences. Offenders involved in unlawful sexual intercourse, prostitutes and homosexuality will be punished with a maximum of six months in

jail or a fine of 5 million rupiah. The offence of indecent behavior is punished with a maximum one month in jail or a fine of 1 million rupiah. The offence of publishing or distributing pornographic pictures is punished with a maximum six months in jail or a fine of a maximum of 5 million rupiah. Offenders who disrespect the rules of fasting will be punished with a maximum three months in jail or a fine of 2.5 million rupiah. The offence of gambling, abuse of drugs and other psychotropic substance is punishable with a maximum six months in jail or a fine of 5 million rupiah.

The enforcement of this municipal law is conducted by the police department and also by the civil service investigator. However, these offences are not included in the tasks of *Satpol PP*.

2.5.2.3 Kabupaten of Pesisir Selatan, Padangpariman, Sawahlunto and Payakumbuh

The regional laws in these four areas are mainly duplications of provincial law 11/2001. The classifications regarding public immorality and its punishment repeat what is laid down in the provincial legislation. That is to say, there are four categories: 1) unlawful sexual intercourse and other acts that include intention to commit unlawful sexual intercourse; 2) gambling; 3) abuse of alcohol, narcotics and other psychotropic substance; and 4) publishing or distributing any form of pornographic materials. The evidence suggests that the regional law on this issue is largely motivated by a need to provide the legal grounds for the regional government to maintain public morality.

2.5.2.4 The municipality of Padang

The municipal parliament and the mayor issued municipal law 11/2005 on public order and peaceful society (*Ketertiban umum dan ketentraman masyarakat*) on 12 September 2005. Compared to similar laws from other regions, this law uses a different title – public order and peaceful society – to other regions that generally use the phrase 'public immorality'. This difference implies that this

municipal law has a specific aim. Before the municipal government proposed the draft of the law to the parliament in 2005, the parliament had received a different draft on this issue, entitled the control, prohibition and prevention of public immorality (*Penertiban, pelarangan, dan penindakan penyakit masyarakat*). This bill had been tabled by members of parliament belonging to Islamic political parties in October 2000.

In 2000, the municipal parliament established a commission to prepare a new draft. The commission comprised of 23 members, 14 of whom were from Islamic political parties and the remainder were from nationalist parties.[33] Interestingly, it was led by a member from *Golkar*, who opposed to the draft. However, on 22 March 2001, the committee successfully prepared the draft entitled the control, prohibition and prevention of public immorality. It was subsequently tabled for further plenary sessions in the parliament. The draft consisted of six chapters and nine sections.

The draft elucidates a number of public immoralities that are not in line with religious rules and *adat*, but it does not include offences regulated under the national laws. Thus, the municipal law is required to control, prohibit and prevent these immoral acts. The draft defines public immoralities in a broad sense; that is, any acts that contravene Islamic teachings, *adat,* and other rules. Sections 2 and 4 specify the categories of public immoralities: 1) prostitution and related conduct such as *khalwa* (close proximity between unmarried persons of the opposite sex); 2) abuse of alcohol, drugs and other psychotropic substances; 3) disrespect for the rules of fasting during Ramadan; 4) distributing or displaying pornographic material; 5) abuse of public places, including hotels,

[33] Total members of the parliament were 43 persons: there were 26 persons from Islamic political parties, they were 14 persons from PAN, 2 persons from PK, 6 persons from PPP, 2 persons from PBB, 1 persons from PUI and 1 persons from KAMMI; there were 13 persons from nationalist parties, 6 persons from PDIP, 6 persons from Golkar 6, and 1 persons from PKP; the rests were 5 persons representation of police and military (www.kpu.go.id).

cafés, tourist destinations and public transportation such as taxis[34] to facilitate public immorality offences; 6) living on the earnings from public immoralities. Section 6 rules on the penalties for these offences.

Offenders will be punished with a maximum of five months in jail or fined to a maximum of 5 million rupiah. To implement his law, section 3 gives authority to the mayor to issue any political decisions aimed at control, prohibition and prevention of public immorality offences, including determining which places or locations are permitted to run food businesses during Ramadan. The above classifications show that this draft is identical to the municipal law of Bukittinggi.

The draft was discussed in several public meetings. During August and September 2001 the parliament held a series of public meetings with several government institutions, academics, public figures, NGOs and Muslim organizations. These meetings reached agreement that such a municipal law on this issue was required. Subsequently, the parliament held several plenary sessions. On 2 December 2001, members of parliament agreed to send the draft to the mayor of Padang. This happened on 2 January 2002. Subsequently, the mayor delivered the position of the municipal government with regards to the draft in a letter, dated 20 April 2002, to the parliament. In the letter the mayor explicitly disagreed with the draft. He argued that the substantive laws in the draft were already regulated under national public laws. He further suggested that if there was an offence that was excluded in the national public law, but that contravened with *adat* or social values, then law 1/1955 regulated that a judge could authorize the punishment of offenders with a maximum of three months in jail. Thus, there was no need to issue a municipal law on these matters

[34] Most people believe that taxi drivers have been playing a role in prostitution business in the city in which they often provide prostitutes for the hotel guests (*conversation*, with a young businessman, 28/8/2010).

(Chaironi 2004:59; the letter of the mayor no.50/Huk/IV-2001). In addition, disapproval of the draft was also voiced by members of parliament, including the chair of the commission, (*Haluan* 19/12/2003). In short: as a result of insufficient support for the draft, the parliament finally withdrew the draft from the parliamentary agenda on 18 December 2003. This cancellation meant that the attempt by Islamic members of parliament, aimed at legalizing Sharia for at the municipal level, failed.

The wish for a municipal law concerning public immorality re-emerged soon after a new mayor was elected in Padang in 2004. The newly elected mayor held a different position on this issue. There are two factors contributing to this different stance: firstly, the mayor was maintaining his political power by collaborating with Muslims figures and organizations as well as Islamic political parties; secondly, he was responding to public demands to prioritize religious matters, including maintaining public morality. The municipality prepared a draft on this subject. In 2005, the mayor tabled the bill in parliament. In order to avoid public debate and controversy the mayor used a different approach to the issue and avoided any reference to or association with Sharia. The purpose of the draft appeared simple: to gain legal grounds for maintaining public morality. It took six months for the parliament to pass the draft and in 12 September 2005 the parliament and the mayor approved to the draft of municipality law 11/2005 on the public order and peaceful society (*Ketertiban umum dan ketentraman masyarakat*). A member of parliament expressed his views concerning the successful issuance of the municipal law saying that 'this municipal law marks an important achievement of the parliament. No single word related to Sharia or *adat* is used, but the purpose is clearly the same' (*Interview*, former member of the parliament, 07/07/2010).

The municipal law 11/2005 consists of twelve chapters and sixteen sections. Its purpose is to maintain public order, a peaceful society and, as the title of the law implies, to maximize the use of

public facilities to protect people's needs. Sections 2 and 3 prohibit the misuse of public roads; section 4 regulates the use of green spaces and public places; section 5 deals with cleanliness of the environment, including an obligation to keep public order in neighborhoods; section 9 mentions that business premises must only be used for the intended purposes. Section 10 explicitly outlines the prohibition of gambling and prostitution. Section 14 elucidates that these offences will be punished with a maximum of six months in jail or a fine with a maximum of 5 million rupiahs.

Although this legislation does not explicitly refer to the issue of public immoralities, any acts that contravene public order can be charged under the municipal law. In addition, issues relating to public immorality are implicitly regulated in a number of sections. For example, section 9 regulates that the owners of business premises such as hotels, tourist destinations and cafés, are only permitted to operate under license. In addition, municipal law 11/2005 results in two interconnected points: the municipal authority now has a legal basis for maintaining public morality, a domain previously belonging to the police and in which local authorities played a limited role. It also gives the authority to the mayor of Padang to take any political decision necessary for the maintenance of 'public order and peaceful society'.

On 26 March 2007, law 11/2005 was revised by municipal law 04/2007. This new law was only aimed at revising sections 13 and 14 concerning court procedures and the penalties for offences. It regulates that the offences may be punished with a maximum of three months in jail or a fine of a maximum of 5 million rupiah.

2.6 Actual practices for maintaining public morality in Padang

This section presents actual practices for maintaining public morality imposed by the municipal government of Padang. Before presenting the implementation of the municipal law, it presents an

overview of the civil service police unit (*Satuan polisi pamong praja,* abbreviated to *Satpol PP*), an institution authorized to implement the law.

2.6.1 *Satpol PP*

Satpol PP is a law enforcement institution that has significantly exceeded its power since the implementation of regional autonomy. It was established at the provincial and regional/municipal level. At the provincial level, *Satpol PP* is accountable to the governor and at the regional/municipal level it is directly accountable to the *bupati*/mayor. Its main tasks are dealing with the enforcement of the provincial or region/municipal laws and other rules and regulations issued by the governor or *bupati*/mayor (*Pembinaan* n.d:19).

Historically, this institution has existed since colonial times. It was part of the police institution that was called *de bestuurspolitie*, established in 1892, aimed at maintaining public order and security (Bloembergen 2009:110). During the Japanese occupation this institution was abolished, because the Japanese authority mainly relied on military forces. After the establishment of the police department on 18 august 1945, *Polisi pamong paraja* became a part of the police institution. However, the government paid specific attention to this institution on 30 October 1948 when it established an institution called *datasemen polisi penjaga keamanan kapanewon* whose task was to maintain public security primarily in the Yogjakarta area. On 10 November 1948 its name changed to *datasemen polisi pamong praja*. On 3 March 1950, the Minister of Home Affairs issued a decree to establish this institution in Java and Madura and named it *Kesatuan polisi pamong praja*. In these provinces it was to support local government activities. In 1960, the institution was established in other islands (Dajoh & Suwirjo 1997:6-7). In 1962, law 13/1961 on the police changed the name of the institution once again, this time to *Kesatuan pagar baya*, and in

the following year the Minister of Home Affairs revised its title to *Kesatuan pagar praja*.

The final name change resulted in the title *Satuan polisi pamong praja*, commonly abbreviated to *Satpol PP* when the government issued local government law 5/1974. Section 86 (1) of law 5/1974 elucidates that *Satpol PP* is tasked to maintain public order at the province and regional/municipal levels. However, the government strengthened the legal position of *Satpol PP* more than two decades later when it issued the government regulation 6/1998 on 7 January 1998. This rule authorizes *Satpol PP* for two main tasks: to support local rulers in maintaining public security and to enforce regulations issued by the local authorities.

After the implementation of law 22/1999 and 32/2004, the role of *Satpol PP* gradually increased. The president issued the government regulation 32/2004 on *Satpol PP.* Section 3 elucidates two tasks for this body: to maintain security and public order and to enforce provincial or regional/municipal laws. In order to implement these tasks, it may coordinate other law enforcement institutions, including the police, civil service investigator and other authorities. *Satpol PP* has the authority to investigate offences regulated under provincial or regional/municipal law and to take 'repressive non-judicial' actions in respect of those who contravene provincial or regional/municipal laws.

Current developments show that the authority of *Satpol PP* grew significantly when the president revised government regulation 32/2004 with 10/2010 on *Satuan Polisi Pamong Praja*. Section 6 elucidates that it has the authority to: 1) conduct non-judicial (i.e. the case does not need to be decreed by a court of justice) action regarding offences regulated under local law or other local regulations; 2) take any actions to prevent offences regulated by local law and other local regulations; 3) facilitate and empower security; 4) investigate offences regulated under local law or other local regulations; 5) issue any administrative penalty for offences committed. Further, *Satpol PP* has the authority to ask

the police to follow up cases if the criminal law is broken. In addition, section 24 of government regulation 10/2010 regulates that the staff of *Satpol PP* may be armed with gas-powered revolvers, blanks and electric shock sticks.

In order to maintain the organization of *Satpol PP* in the Municipality of Padang, municipal law 14/2004 on the civil service police unit was issued. Currently, this law enforcement agency employs 200 staff, most of who work in administrative functions; less than half are actively working as law enforcers.

2.6.2 Actual practices relating to municipal law

As a law enforcement institution, *Satpol PP* is tasked with enforcing municipal law and other regulations issued by the mayor. In order to maintain public morality, it encompasses municipal law 11/2005 which forms the rules of public immorality in general terms. In terms of actual practices, *Satpol PP* mostly deals with cases concerning 1) gambling; 2) prostitution; 3) *khalwa*; 4) abuse of alcohol, drugs and other psychotropic substances; 5) disrespect for the rules of fasting during Ramadan; 6) pornographic conduct or matters relating to pornographic materials; and 7) abuse of public facilities. *Satpol PP* operates in two ways. First: by carrying out regular or incidental inspections of places where public immorality offences are common. Second, by pursuing reports or complaints from people concerning suspected public immorality offences.

Satpol PP inspects public places and facilities, including hotels, motels, tourist destinations, cafés, bars, billiard rooms and markets. These inspections are scheduled at both regular and irregular times. The purpose is to assess whether the place is being used in accordance with its intended purpose. Thus, at hotels for example, *Satpol PP* examines the identity of guests of the opposite sex who are staying in the same room to find if they are married. From the assessment, *Satpol PP* can reach two conclusions: either that the hotel is being used according to its permit and the guests are married couples; or, that the guests staying in the same room

are unmarried. If this is the case, *Satpol PP* will take the couple to its headquarters and the owner of the hotel will be warned that the hotel is being abused and that he is liable for public immorality offences.

In 2005, the owners of hotels became upset about the regular sweeping of their premises conducted by *Satpol PP*. The association of hotels and restaurants (*Perhimpunan Hotel dan Restoran Indonesia*, PHRI) protested to the mayor of Padang. They argued that their income had significantly diminished because of a decreasing number of quests staying at hotels as direct result of *Satpol PP* carrying out frequent inspections. They suggested that *Satpol PP* reduce its checks. In response to the protest, the mayor reacted by saying that the inspections would not be stopped and there should be no problems if the hotel was being used according to its permits (*Singgalang*, 29/11/2005).

Satpol PP also inspected tourist destinations, in particular a number of places that are popular with local youths spending time with their partners. These places are mainly located in coastal areas, close to the beach, situated in southwest and northern Padang. There, many native people run small-scale businesses, such as kiosks, restaurants and cafés. The owners often provide a small temporary building[35] where a couple can spend their afternoons or evenings. According to *Satpol PP,* this is a public immorality offence, namely, *khalwa*, i.e. close proximity between unmarried persons of the opposite sex. Posing a metaphorical question, the chief officer of *Satpol PP* said 'if they are not committing public immorality why are they sitting and spending time in hidden places?' There were 21 couples arrested during an inspection of a tourist destination conducted on 18 March 2011 (Interview, the chief officer of *Satpol PP*, 19/05/2010).

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[35]In colloquial language this temporary building is named *pondok baremoh,* literally meaning a place for gaining pleasure.

Figure 2.1. The two couples sitting on the bench have been accused of committing *khalwa* (Photo is printed in *Daily Haluan*, 08/06/2011).

During the inspection, *Satpol PP* firstly examines the identity of the suspected couple. If they are not married, they will be taken to the headquarters of *Satpol PP*.

Besides conducting inspections, *Satpol PP* also receives reports or complaints from people who suspect the occurrence of public immorality. These kinds of cases mostly occur in rented houses (*rumah kost*) and people from the neighborhood report the cases to the *Satpol PP*. *Satpol PP* follows up such reports by inspecting the house and the marital status of the tenants. If *Satpol PP* is suspicious that these people have committed public immorality, they are taken to the headquarters. The following image shows three pairs of the opposite sex being interrogated at the *Satpol PP* headquarters. They are accused of violating municipal law 11/2005 because they had been living in the same house. The case emerged as a result of reports from the neighborhood.

Satpol PP records show that most of the cases dealing with public immorality offences are prostitution, unlawful sexual intercourse, *khalwa*, gambling, abuse of alcohol and psychotropic substance, and pornographic offences (*interview*, staff of *Satpol PP,*

10/07/2010). On the whole, these cases are dealt with by the local law enforcement authority and only a few cases are forwarded to the police department.

Figure 2.2. Six females and two males are being interrogated at the headquarters of *Satpol PP* (Photo is printed *Daily Haluan,* 04/06/2011

Cases of *khalwa* are usually dealt with using three solutions: firstly, if the offenders live in Padang, *Satpol PP* calls their parents or their relatives into the headquarters in order to discuss the situation. Most cases are solved by signing an agreement that their parents or relatives promise to tighten their control over the offenders. One parent told me that he felt so embarrassed when his child was arrested by *Satpol PP.* He acknowledged that it is a punishment (*conversation,* with a parent, 30/06/2010). Secondly, if the offenders do not have parents or relatives in Padang because they are studying at the university, *Satpol PP* asks for a member of the administrative or teaching staff to come to the headquarters. A university teacher told me that he once had dealings with *Satpol PP* when two of his students of the opposite sex were arrested (*Conversation*, with a teaching staff, 20/11/2009). Thirdly, if none of the above two solutions can be reached, *Satpol PP* asks the

offenders to sign a letter agreeing that they will not commit the offence in the future.

The case of prostitution is more complicated. This is because prostitution is generally well organized and in most cases there are government officers involved in protecting the practices, places and people involved (*interview*, with the staff of *Satpol PP,* 10/01/2009). On the whole, there are two solutions. One is to call the parent or relative of the prostitutes to the headquarters, and the other is to send them to a rehabilitation center located in the region of Solok. However, a number of cases have been closed when police or military officers have come to the headquarters and told to *Satpol PP* that the prostitute is his wife. In these cases, in order to avoid a conflict with officers of other law enforcement institutions, *Satpol PP* usually releases the prostitutes. The involvement of government officers in prostitution means that often people know when *Satpol PP* plan to inspect public places where there are occurrences of prostitution. This plan is leaked to the owner and, consequently, when *Satpol PP* arrives to inspect the premises there is no trace of public immorality.

Because the local government has no authority concerning national law – this is a matter for the judicial institutions of central government – those offences that are regulated under municipal law can only be prosecuted if they are also stipulated under the national public code. As previously mentioned, even when cases do breach national public law, *Satpol PP* tends to resolve these matters using its authority and it is reluctant to forward cases to the police. One particular example illustrates this. Two young women, SS and NA, were arrested by *Satpol PP* in Fallas café, located in the city center, while they were performing a striptease at 21.45 on 26 September 2011. After both of them signed a document in which they promised not to commit the same offence, *Satpol PP* released them. However, this case became the concern of the police following attention from the local media. On 15 October, the police arrested SS while she was in front of Busako Hotel in Bukittinggi

and NA was arrested the next day. Within a short time, the police had forwarded the case to the courts. They were charged under section 43 of the national law 44/2004 on pornography. After a number of court sessions, the judges of the criminal court punished them with one year in jail. The punishment was justified by the fact that they had breached section 34 of national law 44/2008 by performing a striptease. In this case, the judges did not use any sections of the municipal law to charge the women; rather they said that what they had done contravened the values of Minangkabau *adat* and contradicted attempts by the local government to maintain public morality. The verdict reveals that the judges executed the case using national public law, not municipal law (*Haluan* and *Singgalang,* 09/02/2012).

During the fasting month, Ramadan, the tasks of *Satpol PP* increase. Their attention turns not only to regular tasks such as inspecting public places, but also to incidents where the rules of fasting are disrespected. In this regard, since 2010, municipal authorities have paid an increasing amount of attention to when and where food businesses are permitted to operate during Ramadan. Restaurants, cafés and other food centers locate where, in areas where the majority of inhabitants are non-Muslim, are permitted. However, this requires *Satpol PP* to work harder in terms of inspecting whether the rules of fasting are being obeyed.
The issue of disrespecting the rules of Ramadan is increasingly becoming a public concern. In 2005, *Satpol PP* dealt with many incidents relating to permits for owners of restaurants, cafés, and other food businesses. One case arose when several young people decided to play games in an internet café and Playstation center rather than performing evening prayers (*ṣalāt at-tarāwiḥ*) during Ramadan.

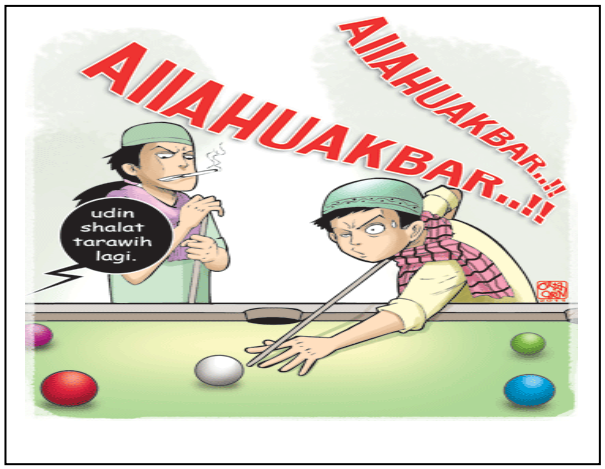

Figure 2.3. A cartoon of two young boys playing billiards in the evening during Ramadan. In the distance *adhān,* a call to prayer, has begun (Published in *Padang Ekspres* 14/08/2011)

Satpol PP also deals with issues concerning gambling and the abuse of alcohol, narcotics and psychotropic substances. However, according to the chief of *Satpol PP* these cases are mainly dealt with by the police because these matters are fully regulated under state laws. Where *Satpol PP* is involved in these matters, it is as part of a taskforce, called SK4, established by the municipal government and consisting of *Satpol PP*, police and military personnel.

Summarized, the actual practices relating to municipal law 11/2005 conducted by *Satpol PP* show that they are mostly in line with the rules mentioned in the draft of 2000 that was withdrawn by the parliament in 2003, rather than following the rules regulated under municipal law 11/2005. However, these practices are frequently justified using municipal law 11/2005, i.e. to maintain public order and peaceful society. The practices also reveal that the role of *Satpol PP* in maintaining public morality is dominant. Thus, it requires qualified and credible staff; otherwise, the issue of the accountability of this institution may arise.

2.7 Conclusions

The New Order government was commonly seen as unsuccessful in maintaining public morality, although there have been several state laws that prohibit immoral acts, such as the law on the prohibition of gambling, abuse of drugs, alcoholic beverages and other psychotropic substances. In order to solve public immorality problems, people generally see that it is necessary to authorize the provincial, regional and municipal governments (using a legal basis) to maintain public morality by issuing legislation. A number of the proponents of this plan advocate the legalization of Sharia.
This is evidenced by several drafts of the law in which the categories of offences have been regulated under Islamic criminal law. This includes the prohibition of unlawful sexual intercourse, homosexuality, close proximity between unmarried people of the opposite sex (*khalwa*), prostitution, living from the earnings of prostitution, provocatively disrespecting the rules of fasting during Ramadan, wearing clothes that are not in accordance with Muslim dress codes, gambling, spreading pornographic materials, drinking alcohol, and abusing narcotics and other psychotropic substances. This list reveals that a number of offences included in the regional/municipal legislation have already been regulated under the national law.

The drafts have evoked public debate and controversy. The resistance to the drafts was rooted in: 1) the fact that the substantive laws of the drafts have already been regulated under the national law; 2) the substantive laws were seen as not in line with legal principles; and 3) the legalization of Sharia is excluded from the authority of the provincial or regional/municipal government.

The proponents of the drafts, who mostly belonged to Islamic political parties, failed to ensure the legalization of Sharia as a solution for maintaining public morality. The effects of this failure are: firstly, the drafts were withdrawn from parliament, as was the case of the draft of 2000 in the municipality of Padang.

Secondly, the parliament made major revisions to the drafts and consequently elements of Sharia were excluded from, for example, the provincial law 11/2001 and other regional laws of Pesisir Selatan, Padang pariaman, Sawahlunto and Payakumbuh. Thirdly, the parliament made minor revisions which actually included several elements of Sharia in these local laws. The evidence for this can be seen in the laws issued in Bukittinggi and Padangpanjang.

Actual practices of maintaining public morality are enforced by the civil service police unit (*Satpol PP*) in the municipality of Padang. However, my research suggests that they did not enforce the rules that are explicitly regulated in the texts of the municipal law 11/2005. That said, they did deal with any acts that disturbed 'public order and peaceful society'. The offences included in this category include the prohibition of unlawful sexual intercourse, homosexuality, close proximity between unmarried people of the opposite sex (*khalwa*), prostitution, living from the earnings of prostitution, disrespecting the rules of fasting in a provocative manner during Ramadan, gambling, spreading pornographic materials, drinking alcohol, and abusing narcotics and other psychotropic substances. These offences refer to those regulated in the draft of 2000 that the parliament withdrew in 2003 because the categories were derived from Sharia.

Chapter 3
Dress codes: Islam, custom and uniform

3.1. Introduction

During my fieldwork in Padang (West Sumatra) in public places such as markets and wedding parties, I found that eight out of ten females had a dress style commonly called *busana muslim* or *pakaian muslim*. This Muslim dress comes in a floor length version, sometimes with long sleeves, and is worn with a loose or fitted headscarf. In rural areas, the number of women wearing this style of dress could be as many as nine out of ten. The current trend is for this type of dress, in its various styles, to be worn widely by Muslim females in public places, at both religious events and on non-religious occasions. Dress code has emerged as an important issue in West Sumatra since the implementation of decentralization and local autonomy. The local authorities decided to adopt this new uniform for civil servants and students in order to achieve a collective identity for West Sumatran society. The issue of Islamic dress codes relates not only to Muslim female dress, but also to Muslim male dress.

This chapter focuses on the issue of Islamic dress code in West Sumatra. It attempts to answer the question, what does wearing Muslim dress mean for West Sumatran people? This question leads us to seek explanations about what Muslim dress means for West Sumatran society, for local authorities and also for the wearer and the viewers of Muslim garments. This chapter presents a number of discussions and practices on the following

topics: 1) Islamic rules on dress; 2) current debates in the Muslim world about dress; 3) changes and regulations in Indonesia; 4) Muslim dress within West Sumatran culture; 5) the emergence of a dress code in local (provincial and regional) law; 6) Islamic dress practices in Padang; 7) public debate on this subject; and 8) conclusions.

3.2 Islamic rules on dress

Dress provides guidance on the issues of *ʿawra,* such as adornment, protection of the wearer from extreme weather and violence during, among other things, battle. It also distinguishes the wearer, so that they are easily identified and cannot be either ignored or molested. Certainly, the ulama paid more attention to the issue of *ʿawra* than to other issues, because uncovering *ʿawra* may be harmful for both the wearer and the viewer. The word *ʿawra* (singular) *ʿawrāt* (plural), is derived from *ʿawara* which means, among other things, defectiveness, faultiness, deficiency and imperfection (Wehr 1979:768-9). This meaning implies that these parts of the body need to be protected and even that they may be the source of embarrassment or temptation for either the wearer or the viewer. This notion is indicated by the use of the word *ʿawrāt* in the Quran in the chapter on *al-Aḥzāb*/the Allies (33):13, *ʾinna buyūtanā ʿawratun wa mā hiya bi ʿawratin* (truly our houses are bare and exposed, though they were not exposed). Further, the chapter of *al-Nūr* (the light) 24: 58 elucidates that there are three times where a state of undress is permitted: before the morning prayer, clothes may be discarded during the noonday heat, and after the late night prayer.

The ulama define *ʿawra* simply as parts of the body that, in principle, are not allowed to be seen by non-family members, except in an emergency situation. The issue of dress has been connected with notions of purity and impurity (*ṭahāra* and *najas*), ritual behavior (*sunnah*), and the differentiation of the believer

from the unbeliever (*ghiyār*), as well as the separation of the genders (*ḥijāb*). The ulama have different views on determining which parts of the body are *ʿawra*; this difference occurs because neither the Quran, nor the ḥadīth are explicit on this issue.

In order to prescribe rules on this matter, the ulama mostly refer to five groups of verses of the Quran. First is (1) *al-Aḥzāb*/the Allies (33): 53. This verse is concerned with the issue of visiting etiquette and *ḥijāb.* The word *ḥijāb* is understood as 'to cover'. Thus, this verse elucidates that *ḥijāb* means to cover the entire female body. This not only applied to the Prophet's wife, but to all Muslim females (Ibn ʿAraby 1958:1567). Second is *al-Aḥzab*/the Allies (33): 59. This contains the words *yudnīna ʿalayhinna min jalabībihinna* (they should cast their outer garments over their person (when out of doors). The word *jalabībihinna* is derived from *jilbāb* and it means that the whole body is *ʿawra* and, as such, should be covered. Third is *al-Nūr*/the light (24): 30-31. These two verses are often used as the basis for obligating Muslim females to wear *jilbāb* and to argue that not all of the female body is *ʿawra*. Fourth is *al-Aḥzāb*/the Allies (33): 32-33. These verses relate to certain rules of conduct, including the rule that Muslim females should not behave like non-Muslim females and should behave properly and stay at home if there is no pressing matter forcing her to leave the house (Ibn ʿArabi 1958:1523; al-Qurṭūbi 1998:127; Ibn Kathīr 1986:483). The fifth verse is *al-Nūr*/the light (24):60, which provides an exception for elderly women in terms of being less strict about covering their *ʿawra*. Besides these verses, there are a number of ḥadīth that have been used for the basis of Islamic dress codes. Nevertheless, no ḥadīth precisely determines which part of the body is *ʿawra* (Shihab 2005:83). Consequently, the ulama must have been influenced by other factors in attempting to understand this issue. These factors include diversity in applying logic, custom, sensitivity towards sexual issues and referring to different religious texts.

The views of the ulama concerning this issue may be summarized into three classifications. Firstly is the *ʿawra* of the Muslim male. They agree that this is the area from the navel to the knee. Secondly is the *ʿawra* of Muslim female. In terms of what is *ʿawra* for Muslim females when she is in the company of non-family members (*maḥram)*, there are two differing opinions among the ulama. The first and dominant view is that the entire female body must not be seen, with the exception of the face and the hands. The second view is that the whole of the female body, including the face and hands, but with the exception of the eyes, is *ʿawra.* This second view is held by a much smaller group of ulama. The ulama also have different views regarding what is *ʿawra* when Muslim females are accompanied by family members and other Muslim females. According to the Shafi'ite and Hanafite the area that is *ʿawra* is between the navel and the knee; according to the Malikite it is the entire body, with the exception of the face, head, neck, hands and feet, And, according to Hanbalite rules, it is all of the body, with the exception of the neck, face, head, hands, feet and calves. The third view relates to the *ʿawra* of a child. According to Hanafite rules, a child who is under four years old has no *ʿawra.* The genitals and anus of a child who is between four and ten years old is considered *ʿawra.* When a girl child is older than ten, her *ʿawra* is the same as an adult female's. The Shafi'ite hold a more restrictive view; that is to say, that the *ʿawra* of a child and an adult are the same (al-Zuhaily 1997).

Historically, terms that were used to identify Muslim dress varied widely within each country. Stillman identifies over one hundred terms for elements of Muslim dress, many of which are used for the *hijāb* (Stillman 1986:745-746). Furthermore, current discussions on Muslim dress are largely concerned with modest dress by women. The word *ḥijāb* is used widely in this context, along with the related word 'veil'. While the word 'veil' has no Arabic linguistic referent, *ḥijāb* is strongly rooted in Arabic language and culture (El Guindi 1999: xi). Discussions about female

Islamic dress commonly focus on three main terms: the headscarf (*khimār*), a gown or cloak (*jilbāb*) and a cloth covering for the face (*niqāb).*

3.3 Current debate in the Muslim world

Scholarly works on dress have provided us with rich and various theories from the perspective of appearance. In the words of Alison Lurie, the richness of dress is associated with language and includes vocabularies that are taboo, modern, ancient, as well as borrowed words, dialect, colloquialisms, slang and vulgarities (Lurie 1981:6). This leads us to the fact that this concept has several dimensions. First, it reveals personal identity, one that is defined geographically and historically and is linked to a specific community and to certain groups. At the same time, it also differentiates an individual from others. Second, dress is an indication of a person's social position in a society. This social position, given at birth, may be affected by class, caste, or lineage. Ultimately, dress may also be a symbol of economic position (Bernes & Eicher 1992:1). In other words, dress is a manifestation of culture and is imbued with a meaning understood by both the wearer and the viewer. From a socio-cultural perspective, dress can be defined simply as 'an assemblage of body modification and/or supplements displayed by a person in communicating with other human beings' (Eicher & Mary 1992:15).

Historically, discussions on Islamic dress have shown that this issue has raised important concerns throughout the Muslim world over the last two centuries. Such discussions have derived from a view that dress is not only seen as a devotional act, but that it has been heavily loaded with several purposes aimed at stigmatizing the wearers. This includes opinions that characterize Islamic dress as oppressive for women (Ahmed 1992; Scott 2007). This notion can be seen in the 1899 publication by Qāsim Amīn, *Taḥrīr al-marʾa* (the liberation of women) long regarded as a major

step in the history of Egyptian feminism. Amīn authored this book to raise four issues concerning Muslim females: 1) Muslim female dress code; 2) participation of Muslim females in public; 3) polygamy; and 4) divorce (*ṭalāq*). With regard to Muslim female dress, he argued that there was no religious teaching, either *naṣṣ* or Sharia, that obligates Muslim women to adhere to a particular dress code, i.e. *ḥijāb* or *jilbāb*, as had been practiced in most of the Muslim world. Any dress code had, in fact, emerged from actual practices, adhered to out of a sense of righteousness, rather than, as widely assumed, as a result of Islamic teachings. According to Amin, the Quran elucidates that Muslim females are allowed to uncover certain parts of her body even when in the presence of non-family members. However, it does not determine exactly which parts of the body are allowed to be bared (Amīn 1911:54-58). Amin's view was a clear attack on Islamic dress codes and aimed at eradicating what he saw as 'bad habits' among the natives (Asad 2003: 233). It could also be interpreted as an attempt to transform Muslim society along the lines of the Western model and to substitute the dominant Islamic-style male dress with Western garb (Ahmed 1992:161).

As Western culture became more prevalent in the Muslim world the issue of *hijāb* became an emblem for political differences and a resistance to the homogenizing and egalitarian force of Western civilization. Göle argued that 'it cross-cuts power relations between Islam and the West, modernity and tradition, secularism and religions, as well as between men and women themselves' (Göle 1996: 1). Currently, discussions dealing with Muslim dress focus largely on female attire and the notion that dress is seen not as a manifestation of religious devotion to God, but rather as a symbol of political resistance. This phenomenon has emerged in discussions in a number of European countries, including Belgium, the United Kingdom, France and the Netherlands. However, the discussions in these countries differ according to constitutional and educational traditions. Moors

points out that this issue has transformed from a non-issue into a hyperbolic threat to the nation state and 'it shifted from 'objective' problems to subjectively experienced feelings of fear, anxiety and discomfort' (Moors 2009:406-7).

Discussions dealing with Muslim dress have also occurred in countries where Muslims form the majority of the population. The importance placed on this issue is largely determined by the position held by Islam or Islamic teachings within the constitutional, legislative, as well as the cultural spheres of a particular country. Although the role of dress plays an important part in Islamic culture, on the whole Western fashion still dominates the Muslim world, with the notable exception of Saudi Arabia and a number of Gulf States where people generally adopt traditional attire. Even what it is commonly called *azyāʾ al-sharʿya* (literally, Islamic dress) usually includes modest forms of Western clothes (Stillmann 2003:161).

3.4 Changes and regulations in Indonesia

The Indonesian government's policies towards religious matters are founded on the country's colonial past and a history of the state distancing itself from any ideas of adapting religious teachings. In fact, since independence, the government has added a few elements of Islamic teachings to the educational process. This relates specifically to the weekly teaching of religion in schools. In January 1946, the establishment of the Ministry of Religious Affairs (MORA) made it possible for the Muslim community to maintain Islamic tradition through *daʿwa* and educational activities at all levels, from central government to village hierarchies. However, despite this move, the government stigmatized any symbols associated with Islam and viewed them as backward or as part of an attempt to threaten the Indonesian state. Consequently, Muslims in post-independence Indonesia who wanted to be seen as embracing or as a part of the modernization

process that was introduced by the state frequently avoided using any emblem related to Islam.

Although the Indonesian constitution guarantees the freedom of any citizen to perform their religious convictions, the position of the government towards Muslim dress has, at times, varied. Before the 1980s, the government only granted permission to those Muslims working and studying under the institutions managed by the Ministry of Religious Affairs to wear clothes in accordance with Muslim dress codes. At all other institutions such clothes were forbidden.

At the end of the 1980s, there was a new development concerning dress codes, in particular the headscarf. A number of female Muslim students studying at educational institutions managed by the Ministry of Education were not allowed to follow classes and were expelled from schools. This decision was based on a ruling issued by the Directorate General of Primary and Secondary schools of the Ministry of Education and Culture on 17 March 1982. This stated that wearing the headscarf was against school dress code. The headscarf issue rapidly became a dispute between students, their parents and schools across the country. Indeed, in some cities, including Jakarta, Bandung, Bogor, and Bengkulu, the disagreements about the headscarf ended up in court. However, the verdicts were disappointing for the parents and students (*Panji Masyarakat* 1989). In response to this situation, a number of female Muslim students decided to adjust their dress according to the schools' dress codes; however, there were also students who decided to transfer to private schools that allowed them to wear the headscarf (*Tempo* 1985; Alatas & Fifrida 2001; Hamdani 2007). This did not mean that the dispute on the headscarf had ended.

This issue raised the concerns of Muslim organizations including the Islamic Ulama Council (MUI). This organization proposed a revision of the school dress code to the government and eventually the matter reached and was discussed by members

of the cabinet. Subsequently, the government accommodated the demand and a decision to amend the dress code was taken. On 16 February 1991, the Ministry of Education and Culture via the Directorate General of Primary and Secondary schools issued a decree permitting female Muslim students to wear the headscarf during school sessions (Hamdani 2007). Responses to the decree were varied. There were schools that allowed the students to wear the headscarf at all times; there were also schools that set dress codes that only allowed Muslim dress on Fridays. Since the 1980s, there has been a clear shift and, with the exception of those in the military and the police, Muslim women working in government institutions are now allowed to wear Islamic dress during working hours.

A number of important factors were responsible for this shift in government policy towards Muslim dress. First, the government no longer saw the headscarf as an emblem that threatened the Indonesian state; rather, it accepted that it is a symbol of religious devotion. Wearers were, on the whole, motivated by religious convictions. The shift in government thinking, which came about in the 1980s, was a direct result of increasing numbers of students wearing Islamic attire both in and outside of school. Their demands for a change in the regulations could no longer be ignored by those in power (Alatas & Fifrida 2001). Second, there has been a gradual but definite move towards increased religious devotion in Indonesia in recent decades. This has been reflected in many ways, including a trend for Muslim women to wear more modest dress. This shift has been partly influenced by the emergence of a number of Muslim fashion designers since the 1980s, whose work has been promoted regularly in the specialized Muslim women's media (Bagdja 2007; Elmir 2009). The strong message from this is that Muslim dress can be fashionable and modern, as well as preserving Muslim women's modesty and conforming to Islamic conventions.

Since the implementation of decentralization and local autonomy, the issue of Muslim dress has emerged in several provinces and regions, including Aceh, South Sulawesi and West Sumatra. Public discussions on this subject vary according to the socio-political context of the provinces and regions. In Aceh, for example, the issue of Muslim dress emerges in section 13 (1) of *qanun* 11/2002, which elucidates *Setiap orang islam wajib berbusana islami* (every Muslim is obligated to wear Muslim dress). In the following paragraphs, we will see that this issue has a different nuance in West Sumatra.

3.5 Muslim dress within West Sumatran culture

Dress has always been an important symbol of identity for the Minangkabau people of West Sumatra. Islamic dress not only indicates piousness of the wearers, but also shows their adherence to Minangkabau *adat*. Current traditional Minangkabau male and female dress is in accordance with Islamic teaching because it covers the wearer's *ʿawra*. Historically, there has been a lack of historical evidence relating to whether Minangkabau *adat* dress has been in accordance with the Islamic norm or whether it was adjusted to fit the Islamic norm. However, what is certain is that the headscarf was added as a new element of Minangkabau female dress. The headscarf gradually shifted from being a shawl worn over the shoulder or diagonally across the female body to covering only a certain part of a woman's head. Ultimately it became used to cover women's heads entirely.

Due to the intensifying penetration of Western culture, beginning with the Dutch colonial government in the 19th century, dress emerged as an issue. As is commonly known, the colonial administration administered the population into European, native and foreign/oriental (Arab and Chinese) groups and subjected each of them to their own legal system. Included in this was the notion that European dress was worn by Europeans and natives and that

people of foreign/oriental origin wore dress according to their traditional dress code (Van Dijk 1997). Stillmann has suggested that Muslim men adjusted their traditional attire more rapidly than Muslim women (Stillmann 2003:166) and that this also occurred in Minangkabau society. At the beginning of the 20th century, the discussion about Islamic dress centered on male dress, and in particular male attempts to adopt a European style of dress for a particular reason. It was only in subsequent decades that the issue of female dress became part of the discussions.

Because Muslim men interacted with colonial government services before Muslim women, the initial discussions about dress in the second decade of the 20th century dealt with Islamic male dress. In the beginning, the issue of male dress derived from the daily activities of Muslim men; for instance, the use of trains, which due to the segregation policy, had different fares for natives and Europeans. (The fares were cheaper for Europeans than for natives). The consequence was that Muslim men adjusted their traditional dress to a European style in order to get the lower price. This triggered discussions about whether Muslim men should be allowed to wear Western dress (Kaptein 2009:183). Even though the colonial administration had provided a mechanism for the natives to be subject to European law, this issue became a concern of the ulama. Indeed, two opposing sides of ulama groups – *Kaum Tua* and *Kaum Muda* – were involved the discussions. The *Kaum Muda* tended towards allowing the adoption of Western dress, while the *Kaum Tua* ulama rejected this idea, arguing that wearing European dress meant being part of the European people who were commonly viewed as anti-Muslim. In contrast, the *Kaum Muda* argued that Islam did not obligate Muslim men to wear a certain style or color of clothes. Thus, Muslim men were permitted to wear European dress. Kaptein suggests that this subject was not the only concern of the ulama who resided in the Minangkabau region, but also reached the ulama in Islamic institutions in the Middle East (Kaptein 2009).

Discussions dealing with the issue of Muslim female dress first emerged publicly in 1928. Haji Rasul condemned some Muslim women for wearing a *short dress* that, he claimed, contradicted Islamic teachings. A number of Muslim women adopted this Western dress style that was short and sometimes also revealed a woman's décolletage. Haji Rasul authored *Tjermin Terus* attacking this new trend. According to Hamka, Haji Rasul's son, his father condemned this development by characterizing Muslim females who wore this dress style as prostitutes. This dysphemism was rejected by Muslim scholars who lived in the region as well as those at a distance, including Nur Sutan Iskandar who lived in Jakarta. Perhaps unsurprisingly, this issue became the subject of wide public debate and Haji Rasul went on to author two more books on the matter: *Pelita I* and *Pelita II* (Hamka 1982:193-4). Although the public rejected his views, Haji Rasul did not change his position and refused to revise his opinions. Despite attacks by the ulama, several Muslim women were attracted to the *kemajuan* program, which also manifested itself in the adopting of a new dress code that was in line with European dress.

Since independence, the culture of dress has remained a continuing discussion. On the whole, the Islamic dress code is obeyed when Muslims were attending religious or *adat* activities and it has also become an important collective identity for the society. In contrast, the government also maintained its own dress identity, which differed from the dress code of Muslim and *adat* adherents. Muslim women in governmental institutions were not permitted to wear the headscarf during their working hours. The government also imposed a rule that Muslim women had to adopt the governmental dress code if they were dealing with other government administrations. For example, Muslim women had to take off their headscarf when taking a photo to be used on an identity card, certificate or even for their pilgrimage documents. The government certainly applied restrictive rules in connection with this religious symbol in its institutions.

The ulama council of West Sumatra, MUI, was concerned about two situations in particular: firstly, the fact that wearing Islamic dress at government institutions was almost impossible for Muslim women; and secondly, that most Muslim women only wear the Muslim dress for religious activities. On 23 March 1983, MUI issued a *fatwa* concerning Islamic dress, and female dress in particular. The *fatwa* acknowledged that a Muslim dress code has been part of Minangkabau culture and it emphasized that the purpose of wearing Islamic dress was to cover *ʿawra* and to maintain the modesty of the wearer. The *fatwa* defined Islamic female dress as a dress that covers the female body, with the exception of her face, the palms of her hands up to her wrist and the soles of her feet up to her ankle. The text of the *fatwa* shows that MUI calls on Muslim females to wear dress that is in accordance with the Islamic dress code, and it also calls on the government to permit Muslim women to wear Islamic dress during work or study at governmental institutions. However, this *fatwa* had no impact on the government and there were no political decisions on this issue taken.

The expectations of MUI gradually changed, beginning in the 1990s. This decade is marked by a significant transformation in terms of Muslim women increasingly wearing dress according to the Islamic dress code not just for religious activities, but also for unrelated activities such as going to the market, wedding ceremonies and appearances in other public places. This shift was caused by a number of factors. First, the central government's attitude towards the aspirations of Muslim groups was gradually shifting and, as a reaction to this, it allowed female Muslim students to wear Islamic dress from 16 February 1991. In response to this decision, students –from primary level to senior high schools – began wearing variations of the school uniform that were in line with the Muslim dress code during school sessions on Fridays. Secondly, the image of Islamic dress was also changing significantly. It was no longer seen as a symbol of backwardness, but rather wearers are now seen as also being part of modernity.

This shift resulted in the growth of businesses related to female Islamic dress and the promotion of modest designs in specialist media. In addition, the growing devotion of Muslim women was also attributed to this shift. However, it was not just a question of women being motivated purely by Islamic teachings, but also by the growing popularity of modest dress (Alatas & Fifrida 2001; Bagdja 1997; Elmir 2009). At the end of the 1990s, and with the exception of the military and the police service, the wearing of Islamic dress was widespread among Indonesia's Muslim women.

3.6 Provincial, regional/municipal law on Islamic dress

Until the introduction of decentralization and local autonomy, the uniform for female civil servants and both male and female students in primary and secondary schools was commonly viewed as not being in accordance with the Islamic dress code. Female civil servants wore a uniform without a headscarf, with a blouse with short or long sleeves and a skirt that came below the knee. The uniform for girls in primary schools was a white blouse with short sleeves and a dark-red skirt which fell five centimeters above the knee. For boys it was a white shirt with short sleeves and dark-red shorts that-fell ten centimeters above the knee. At junior high schools female student wore a white short-sleeved blouse and a dark-blue skirt that fell approximately five centimeters below the knee, while male students wore a white shirt with short sleeves and dark-blue shorts that were no less than ten centimeters above the knee. At senior high school, female students wore a white short-sleeved blouse and a grey skirt that came five centimeters below the knee; and male students had a white short-sleeved shirt with long grey trousers (Hamdani 2007: 230-2).

When the local government gained the authority to maintain local identity, the idea to introduce a new uniform for schools and other government institutions that is in line with Islamic dress gained ground. In response to this idea, a number of

provincial and regional authorities came up with a plan to issue a provincial law or other form of regulation specifically aimed at applying a Muslim dress code. This plan was justified with the argument that, in fact, Muslim dress had been widely adopted as the identity of the society. The following subsections present how this issue is regulated and to what extent the new dress code is enforced.

3.6.1 Provincial law

The provincial DPRD had previously never issued provincial legislation relating to Islamic dress. However, members of the DRPD belonging to the Islamic parties of 1999-2004 had been concerned with the idea of issuing a provincial law on this subject. This initiative was based on the judicial right to table a bill to the parliament, as is stipulated in the Constitution. For example, the E commission, which is tasked with dealing with social welfare affairs (*kesejahteraan rakyat*), had prepared a draft on this subject in Islamic dress was required to maintain Minangkabau society, which had already embraced an Islamic dress code based on *adat* rules. He further argued that such a law was an attempt to minimize the negative impact of modern dress that was flooding the society (*Haluan*, 27/7/2004). The draft had been discussed limitedly within the E commission. Plans to draft a bill and table it in the DPRD emerged during the period towards the end of the current DRPD that would be replaced by a new intake of members of parliament following the general election of 2004. To date, no provincial law dealing with an Islamic dress code has been passed by DRPD, largely because there seems to be no interest from members of the DRPD of 2004-2009 or 2009-2014 in this issue.

Despite the fact that there is no provincial law there is still attention for this issue. On 6 October 2005, the governor issued a letter calling on civil servants to dress in accordance with a Muslim

dress code.[36] This letter did not specify exactly what this dress code was; however, it is commonly understood that Muslim dress means the covering of *ʿawra*. In fact, this letter has become one of the legal bases for government institutions applying a Muslim dress code for civil servants.

3.6.2 Regional/municipal law

Regulations concerning Muslim dress code throughout the regions in West Sumatra may be classified into two categories. The first category comprises those regulations issued by a *bupati* or mayor. The region of Tanah Datar and the Municipality of Padang are included in this category. In Tanah Datar, the former *bupati* issued a letter on Islamic dress on 27 June 2001, while in Padang it took until 7 March 2005 for the mayor to issue an instruction for Muslim students to switch their uniform to one in line an Islamic dress code during school sessions.

A number of local authorities came up with arguments against issuing a regional law on this subject. They believed that a decision by a *bupati* was sufficiently effective to rule on the dress code of civil servants and students. The head of the Law and Government Bureau of the Region of Tanah Datar said:

> The local authorities [the executive, *Bupati*, and the legislature, the *DPRD*] of this region reached an agreement that a Muslim dress code can only be issued in the form of a decision by the *Bupati*. This agreement is based on a practical reason; that is, to take such a matter through the DPRD legislation process would not only e time consuming, but also costly. Evidence shows that a decision issued by a *bupati* regarding an Islamic dress code is fully

[36] The number of the letter is 260/421/X/PPr-05, dated 6 October 2005, signed by the governor, and addressed to all the government institutions in West Sumatra. This letter also congratulates Muslims on fasting during the Ramadan 1426/2005.

> respected by both Muslim civil servants and students. In addition, people have become accustomed to Muslim dress and it is regularly worn by most Muslims in the region on a daily basis. It seems a bit strange to legislate that people who are regularly wearing Muslim garb to wear Islamic dress. Thus, it is argued, there is no need to issue a regional law on this matter (*Interview*, 1/12/2008).

In addition, the text of these letters shows that the *bupati* decided to issue an instruction not only based on his own decision but also following suggestions from members of the DPRD and the MUI in the region. Thus, the *bupati* was not only exercising his own authority in deciding to issue the letter, but also taking into consideration proposals from related institutions.

The same situation arose in the municipality of Padang, but for different reasons. Here, the mayor issued an 'instruction' aimed at changing the uniform of students so that it was in line with Muslim dress code.[37] The mayor argued that he had the authority to make decisions on this subject without the consent of the DPRD. He argued that there was 'no need to issue a municipal law on this subject, as long as Muslims support this policy and the purposes of the decision are fully understood' (*Haluan, 20/2/2005).* Predictably, this decision subsequently received support from the members of the DPRD, including politicians from PPP, PAN and Demokrat Party.

The second category of regulations relating to dress falls under the remit of regional or municipal law. The regions of Solok, Sawahlunto/Sijunjung, Pasaman, Limapuluh Kota, Padangpanjang, Agam and Solok Selatan are included in this second category. The local authorities, the executive and the legislature agreed that any

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[37]The mayor issued the 'Instruction' no.451.422/Binsos-III/2005, dated 7 March 2005, which was subsequently followed up by letters no.1556/420.DP/TU.2/2005, issued by the Head of Educational Affairs, dated 30 March 2005.

change in the dress code of civil servants and students must be regulated under regional law. It is widely argued that regional law would provide a strong legal basis for the continuity of the shift; if the local politics changed significantly it would not be an easy process to abolish the regional law. In addition to these arguments, members of the DPRD expected to enhance their public reputation by issuing a regional law on this subject. The implementation of this law mainly relied on whether the *bupati/m*ayor had any political interest in implementing the law. In addition, the presence of a regional law on this subject could be taken as an indication that there were no serious political tensions in the power relations between the *bupati/m*ayor and the DPRD.

The regional laws on Muslim dress code are confined to seven regions: Solok, Sawahlunto/Sijunjung, Pasaman, Limapuluhkota, the Municipality of Padangpanjang, the region of Agam, and Solok Selatan. These regional laws are aimed at regulating the dress of all Muslims who inhabit the region, but in particular civil servants and students. Although the rules state that they relate to a Muslim dress code, in fact, the rules are largely directed at Muslim women.

The texts of the regional laws reveal that there are four aspects that motivated the local authorities to issue the legislation. First is article 29 of the constitution, which guarantees that every citizen may perform their religious teachings and beliefs. Second is the desire to implement the Islamic teaching that obligates Muslims to wear Islamic dress. Third is the desire to implement the *adat* rule that has fully adopted the Islamic teachings on this issue. Fourth is to maintain a social life that reflects the piousness of every Muslim.

The authorities of Solok, Agam and Solok Selatan, for example, were not motivated to implement *adat,* but the other three aspects were seen as important. The authorities in Sawahlunto and Limapuluh Kota were purely motivated by the desire to implement Islamic teachings and to maintain piousness

in public life. The authorities of Pasaman were motivated by the constitution, and a desire to implement both Islamic teachings and *adat*. And the authorities in Padangpanjang were motivated by Islamic teaching, *adat* and the desire to maintain piousness, rather than by the constitution. This suggests that in all regions the passing of a law on Islamic dress was mostly motivated by a desire to implement the Islamic teachings. Consequently, the obligation to wear Muslim dress has become an imperative.

Although these local authorities have various motives, they all have the same purpose and objective in terms of issuing a law on this subject. Their purpose is to implement and maintain Islamic teachings regarding public life and to preserve the dress code according to *adat* rules. In addition, there are four objectives: first, to maintain pious attitudes among Muslims; second, to make Muslims accustomed with wearing Islamic dress during working hours and when they are in other public places; third, to ensure that society remains accustomed with Islamic and *adat* culture; and finally, to preserve the *adat* maxim: 'Sharia commands, *adat* applies' (*Shara' mangato, adat mamakai).* These purposes and objectives make it clear that the regional law on this issue is aimed at maintaining a collective identity for society, i.e. Muslim dress.

Muslim dress is defined in three different ways. These definitions range from the general and imprecise to the detailed and precise. It is defined as 'the dress of Muslim males and females that has an Islamic characteristic'.[38] This definition is obviously very general and imprecise and it does not mention what the Islamic characteristic is. It is also defined as 'Muslim dress is the

[38]This definition belongs to the law of *Kabupaten* Solok, Pasaman, Limapuluh kota and Solok Selatan. The original text says: *Pakaian Muslim dan Muslimah adalah pakaian yang bercirikan Islami* (Solok, Pasaman and Solok Selatan): *Berpakaian muslim dan muslimah adalah cara berpakaian seseorang laki-laki atau wanita menurut tuntunan agama Islam.*

dress that covers the ʿ*awra.*[39] This definition is straightforward and precise and apparently refers to the terms of Sharia. The last more detailed definition is 'the dress of Muslim men and women that covers ʿ*awra,* is not transparent, and not tight'. [40] This definition adds two new elements to the standard dress code to cover ʿ*awra*; that is, that the dress should not be transparent and tight. This definition implies an attempt to correct a dress mode that has been widely practiced by Muslim women, which is to cover ʿ*awra,* however, using textiles that are transparent and tight in style. Many believe that this new does not succeed in covering ʿ*awra*.

The Islamic dress code can be outlined as follows: The dress for Muslim men is a shirt with long or short sleeves and trousers; for Muslim women it is a headscarf that covers the hair, ears, neck, nape of neck and chest, and a long-sleeved blouse that covers the hips, plus trousers or an ankle-length skirt. Other important elements are that it must not be transparent or tight or show the body shape. In addition, dress can be adjusted for sporting activities, but it must still conform to the dress code.

The Islamic dress code applies to Muslims working in both government and private institutions, and students studying at both government and private educational institutions, ranging from primary to senior high schools. In the regions where there are higher educational institutions, such as universities, this dress code is also applied. Indeed, for this group of Muslims wearing Islamic dress is imperative. However, there are different rules regarding the rest of the Muslim population. For example, in the regions of Agam and Sawahlunto/Sijunjung the Muslim dress code is also imposed on all Muslims living in the area, whereas in other regions it remains optional. In addition, all regional laws

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[39]This definition belongs to the law of Kabupaten Agam: Pakaian muslim adalah pakaian yang menutup aurat.

[40] This definition belongs to the law of *Kabupaten* Sawahlunto/Sijunjung.

emphasize that the dress code is only applicable for Muslims working and living in the regions. Non-Muslims are permitted to dress according to their own religion or custom, or they are allowed to adopt Islamic dress.

These regional laws also regulate penalties for disobeying the dress code. Civil servants who disobey the code will be sanctioned according to rules specific to government workers.[41] For students who refuse to conform there are five sequential steps of sanctions: first, they receive a verbal warning; second if they continue to flout the code they will receive an official written warning in the form of a letter; the third step is to warn the parents of the student; if this does not have any effect, the student will be suspended from lessons; and finally, if all of the previous attempts have failed, then the student will be expelled from the school. It is worth noting that while the 'common' Muslim is not forced to obey the dress code, they are expected to wear Islamic dress when interacting with government institutions. Indeed, there is often a notice in public service offices stating 'no service for those not wearing Muslim dress'.[42] If they insist on being served, the officer will do so reluctantly and say: 'please put on Muslim dress next time you come here'.

To sum up, regional laws on Muslim dress code have provided a chance for Muslims to wear Islamic dress during their work or study at government institutions, where previously it had been strictly forbidden. However, the government's decision on this issue seems to have shifted from one extreme –that Muslims are not permitted to wear the Muslim dress –to another –that Muslims are being coerced into following an Islamic dress code.

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[41] This issue is regulated under article 30 of Act no. 43 of 1999 on Civil Servants. This article is subsequently regulated by Government Regulation (*Peraturan Pemerintah*) No. 53 of 2010 on Discipline for Civil Servants and the sanctions are regulated under article 10 of the Government Regulation.

[42] The notice says Bagi yang tidak memakai pakaian muslim tidak dilayani.

This shifting policy has a further implication. Under the previous regime, many devoted Muslims felt unhappy that the government would not allow them to wear dress according to their beliefs. However, the current rules mean that many non-Muslims and non-devout Muslims feel unhappy about pressure from the government to conform to an Islamic dress code. These implications are examined further in the following sections.

3.7 The practice of wearing Muslim dress

The previous mayor of Padang had been relatively late in taking a political decision on this issue compared to other regions that had widely implemented an Islamic dress code.[43] This delay may have been as a result of the mayor's lack of concern with religious issues. When a new figure was appointed to the post by the DRPD in 2004, the issue found its way onto the mayoral agenda. Indeed, on 7 March 2005, the new mayor issued an instruction obligating pupils, from primary school through to senior high school level, to replace their un-Islamic school uniforms with new Islamic versions. This instruction was also aimed at increasing the number of religious activities for students. In addition, in the same year, the mayor also instructed Muslims working at municipal institutions to wear Muslim dress during working hours and also for other activities relating to their work. This section presents the practices of Muslim dress in the Municipality of Padang. Subsequently, it will examine the meanings of Muslim dress for three different actors: 1) the mayor, as a policymaker; 2) the wearer; and 3) the viewer.

There were a number of considerations for the mayor in making a political decision to enforce a Muslim dress code for

[43] Muslim dress was applied in the Region of Tanah Datar in 2001, Solok in 2002, Sawahlunto/Sijunung in 2003, Pasaman in 2003, Limapuluh Kota in 2003, and Padangpanjang in 2004.

students and civil servants. These considerations are laid out in the text of the instruction and also in a public statement issued by the mayor and published in the media. The text of the instruction shows that this policy is a follow up of the *Pesantren Ramaḍan* program[44] conducted in 2004, which taught various subjects on Islamic teachings in a bid to improve religiosity among students. In addition, the mayor's personal aims also contributed to his decision to introduce this policy. Indeed, he said:

> That [to obligate the students to wear Islamic dress] is one of my personal intentions, and it has long been in my mind, even before gaining the post of mayor. I have been obsessed that Muslims who are living in this municipality should obey Sharia, as has been obligated to them by Islam. In addition to this, I also expect this decision will be in line with the adat maxim *adat basandi Syarak, Syarak basandi kitabullah* [adat is based on Sharia, Sharia is based on the Quran]. For me, Islamic teachings and adat must be applied in harmonious ways (Haluan, 17/04/2005).

The mayor also argued that imposing a Muslim dress code on students would provide a possibility for them to perform their *zuhur* and *asyar* prayers at the schools. Previously, these rituals could not be performed in schools because male students were wearing short trousers or female students did not cover their *ʿawra.* Obligating Muslim students to wear a uniform in accordance with an Islamic dress code not only motivates the implementation of Sharia on this matter, but also maintains Minangkabau *adat* and other ritual practices.

The obligation to wear Muslim dress was point ten in the mayor's instruction. It says that Muslim students from primary

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[44]*Pesantren Ramadan*, introduced in 2004, provides religious activities for Muslims students during the fasting month of Ramadan. The students are released from their school sessions for these activities and they have to follow religious programs, instructed by their school teachers, at the mosque in their neighborhood.

school onwards are obligated to wear Islamic dress and that non-Muslim students should also adjust their dress by wearing *baju kurung* (long skirt) for female students or long trousers for male students.[45] In practice, however, female students regularly wear a headscarf, a shirt with long sleeves, and an ankle-length skirt; male students wear a shirt with short sleeves and long trousers. Thus, the dress of the female students from primary through to senior high schools has totally changed; while uniforms for male students in senior high school remains the same and slightly changed for pupils in primary and junior highs schools. This new uniform was first applied in July 2005, for the academic year of 2005/2006.

This new dress code was aimed at all schools, whether state-run or privately owned. The municipal government granted one exception and that was for private educational institutions owned by non-Muslims.[46] These schools continue to apply the national school uniform according to the decree of the Directorate-General of Primary and Secondary schools issued by the Ministry of Education and Culture in 1991. Thus, Muslim students who are studying at non-Muslim schools can choose to wear dress either according to the instruction issued by the mayor or according to the decree of the Directorate General of Primary and Secondary Schools. However, this can gives rise to a dilemma for these pupils.

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[45] The text says bagi Murid/Siswa SD/MI,SLTP/MTS dan SLTA/SMK/MA se-Kota Padang diwajibkan berpakaian Muslim/Muslimah yang beragama Islam dan bagi non-Muslim dianjurkan menyesuaikan pakaian (memakai baju kurang bagi perempuan dan memakai celana panjang bagi laki-laki).

[46] There are a number of non-Muslim schools in Padang, including schools under the Prayoga Foundation (*Yayasan Prayoga*): elementary Schools; SD Agnes, SD Terisia, SD Yos Sudarso, SD Tirtonadi, and SD Fransiscus: Junior High School; SMP Frater, SMP Maria, and SMP Yos Sudarso: Senior High School; SMA Don Bosko, and SMA Xavarious (*Haluan,*17/04/2005).

3.7.1 The meaning of Islamic dress according to the mayor

The mayor asserted his authority by issuing his instruction enforcing a Muslim dress code in schools. This evidence is relevant to what James Scott has suggested; that is, that the ruling class dominates the means of physical and symbolic productions and control culture, religion, education and media to disseminate those values that reinforce its position (Scott 1985:315). In the case of an Islamic dress code, the mayor has a particular interpretation of the meaning of this subject. However, it does not automatically mean that the wearers or viewers preserve the same meanings. Indeed, they probably produce their own interpretations that can be different from or even contradict that of the mayor. In other words, although the mayor has the authority to force the wearer to apply this code, he cannot impose the meaning of it on other parties, because this is an issue of individual belief and value.

Although the mayor does not specifically refer to the meaning of wearing Muslim dress, his position can be surmised from several of his public statements. First, it identifies piousness. Wearing Muslim dress relates to an internalized set of meanings attached to a role played in a network of social relationships. The government has an obligation to provide possibilities for Muslims to practice and express their identity when working in government institutions or attending educational institutions. The wearing of Islamic dress is one way of doing this. It also creates a possibility for Muslims to perform their religious obligations, such as prayers, during school sessions.

Second, Muslim dress maintains an important sense of identity for Minangkabau society. The mayor argued that imposing Islamic dress on students is aimed at preserving the continuity of dress as an expression of the identity of their society, also for the future. However, he did not explain the above two points in great detail. This may be because he wanted to avoid accusations from his political opponents, non-Muslim or outsiders that he provides more privileges to Islam or *adat*. Or, it is also probable that he does

not have sufficient knowledge of the complex aspects of dress within Islamic teachings and *adat*. Instead, he regularly approaches this issue by using more rational arguments.

Third, Muslim dress can also be viewed as a form of sex education. Although the subject of sex education is not a part of the curriculum in schools, the introduction of an Islamic dress code has affected, in particular female, students' knowledge of sex. By covering their bodies not only to prevent sexual harassment by viewers, Islamic dress also restricts the wearer's mobility and ability to socialize, and therefore limits any associated sexual activity, such as walking hand in hand with their boyfriend in public places. This issue also connects to a fear of spreading AIDS that is widely seen as the effect of free sex (Parker 2009:65-9).

Four, in the context of sex education, Muslim dress also prevents the exposure of the wearer's reproductive organs and hides biological changes, such as puberty, which is occurring at an increasingly young age. Indeed, some female students can show signs of adolescence as soon as the fifth or sixth class of primary school. Accordingly, adopting Islamic dress may result in the wearer feeling more secure and induce a more polite attitude.

Five, Muslim dress is a symbol of health. Enforcing Muslim dress is also an attempt to protect the wearers from contracting dengue fever, a disease transmitted by *aedes aegyty* mosquitoes. This virus most commonly infects people under fifteen years old, although there are cases of adults with dengue fever. Although the *aedes aegypty* is not endemic in Padang, dengue fever remains a serious disease and a problem to be solved. The mayor claims that since the implementation of Muslim dress, the number of students suffering from dengue fever has significantly decreased. This goes against the general trend in Indonesia where incidents of this disease are increasing annually due to the effects of an unhealthy environment. The annual report from the Padang health center reveals that 1,586 people were recorded with the disease in 2009 and this number decreased to 1045 in 2010 (*The health* 2011:16).

However, there is no study that proves the effects of wearing Islamic dress on the decreasing number of sufferers; it seems the claim is based purely on the reasoning of the mayor.

Six, Muslim dress is also intended to create equality among the students. The body can also be an economic symbol and dress can reveal whether the student belongs to a rich or poor family. By wearing Islamic dress it is not easy to identify whether a female student is wearing, for example, luxurious or fake accessories, such as earrings and other jewelry. Students belonging to rich families have little possibility to show off their wealth, and female students from poor families do not feel inferior as any accessories are covered by their headscarf.

Seven, Muslim dress is a uniform. It now indicates whether the wearers are students of a certain level of education or civil servants working at an educational or other municipal department and it can even locate someone in the hierarchy (Lurie 1981:18-19). The type and color of Muslim uniform can reveal something of the status of the wearer. However, there is still a lack of study regarding the extent to which Muslim dress has influenced the dignity and confidence of the wearers: whether Islamic dress has significantly increased the dignity and confidence of the wearer or vice versa.

These meanings of Muslim dress put forward by the mayor are not only adopted from the existing values or belief in the society, but are also new interpretations of Muslim dress produced by the mayor closely related to his other tasks as the local ruler. For example, the role of Islamic dress as an identifier of Muslims and Minangkabau *adat* have long existed within the society, but the interpretation of the influence of Islamic dress on sex education, health and equality are aimed at sustaining other programs of the mayor as the local ruler (Parker 2009:67). In short, these meanings reveal that the mayor's intentions to apply a Muslim dress code also directly connect with his other tasks as the local ruler.

3.7.2 The meaning of Islamic dress for wearers

Although the Islamic dress code only applies to civil servants and students, there are a few non-Muslims who also adopt this style of dress. The meaning that wearers attach to Islamic dress can be distinguished into three categories: wearers who support the wearing of Islamic dress; those who are neutral to the issue; and those who are not comfortable wearing Islamic dress.

Those wearers who are proponents of Muslim dress are generally accustomed to wearing clothes that are in line with a Muslim dress code. On the whole, they wear Islamic dress not only during working hours or while attending school, but also when they leave their house for religious activities and even non-religious occasions such as shopping, visiting their colleagues and attending weddings. A few of this group acknowledged that they do not regularly wear Islamic dress when they are in their own neighborhood or for errands within walking distance, such as shopping at the kiosk close to their home or for short visits to their neighbor. For this group, the meaning of Muslim dress is not only the implementation of Sharia, it has also become synonymous with their identity. These people mostly belong to pious families who have always adhered to Islamic dress.

However, according to one wearer, adopting Muslim dress is not always easy. A school teacher said:

> Presently, dressing according to the Muslim dress code is not so easy. We are flooded with different dress values by the media, such as newspapers, TV programs, the internet, all of which are challenging our Islamic values. As a teacher, as well as parent, I am facing an uneasy situation about this [wearing Muslim dress] because students also tend to be more independent now and make their own decisions. *Alhamdulillah*, the government [mayor] obligates civil servants and students to wear Muslim dress. And the designs of Muslim dress are currently more varied and affordable (*Interview,* with the teacher, 15/07/2010).

The second category of wearers sees this issue as disconnected with Islamic teachings. They perceive Muslim dress solely as a uniform, or even that it is only a trend, or that the current government prefers modest dress. This group only wears the uniform for work or school and in their own time they feel free to wear any dress style they like. They also said that they often wear Muslim dress if they go to religious occasions, such as to a mosque or to visit their ancestors' graves before the fasting month. This group also felt that the number of people wearing Muslim dress in public places appeared to be growing. One middle-aged woman said that she felt uncomfortable attending gatherings where the majority of females were wearing Muslim dress. But, she acknowledged that she is not yet ready to wear Muslim dress, not only because she feels mentally unprepared to do so, but also because she lacks the money to purchase new dresses for different purposes (*Interview,* with a civil servant, 10/06/2010).

Muslim females belonging to this category tend to differentiate between religious and non-religious places. A religious place is simply defined as a place where religious activities occur, for instance a mosque, visiting a death (*taʿziya*) or a graveyard. A non-religious place is defined as a place where non-religious activities take places, such as schools, offices, and shopping centers. During my fieldwork, I observed that Muslim females in this group only wear Islamic dress when visiting religious places; they do not wear Muslim attire if they are going to non-religious places. This suggests that for a number of Muslims, not all aspects of their life are seen as areas that must be governed by Sharia.

Figure 3.1 Female students wearing school uniform, author, 22/01/2011

In addition, there are also non-Muslims students who opt to wear Muslim dress during their school sessions without feeling uncomfortable, even though they have the right to wear the national uniform. These students acknowledge that for the majority of Muslims, Islamic dress is an important part of their identity in terms of being Muslim. However, for this group, wearing Islamic dress does not mean they are Muslim. They see it merely as a school uniform. This opinion is expressed by a Christian student in a vocational school, who spoke frankly: 'I have been wearing this dress [pointing her headscarf] since the first year of my study and I enjoy it [smiles]. I have friends [non-Muslims] who are also wearing this, but other friends are wearing other dress [national uniform]. As a student, this is my school uniform' (*Interview*, with a Christian student, 25/05/2010).

The third category of wearers is those who feel uncomfortable with the obligation to adopt Islamic dress. There

are a number of Muslims and non-Muslims belonging to this group. They claim that they do not feel comfortable wearing Muslim dress to school. They argue that they do not like covering their body completely because it hides their beauty. But they acknowledge that they have no choice and cannot wear the national uniform because they are Muslims. Also in this group are a number of non-Muslim wearers who have to wear Muslim dress because the school authorities have imposed it on them. For example, a Christian student acknowledged that she was forced to wear Muslim dress when she was studying at the high schools in Padang but felt very uncomfortable wearing it (Fransiska Silalahi, interviewed by a reporter from *Journal Perempuan*, 60:116-119). Consequently, wearing the unwanted dress provoked a feeling of resistance and this is expressed in various ways.

One form of resistance includes students only wearing Muslim dress during school sessions and immediately taking it off when she leaves the school yard. According to Lurie, taking off the dress is a sign of defiance (Lurie 1981:19). Another form of resistance comes through the gossip and chat of those students who disagree with the dress code. One Christian student revealed:

> Because I am the only Christian student at the school, it [wearing Muslim dress] does not become a topic of discussion during the school sessions. But I chat with my friends about this subject when we are attending religious ceremonies in the church. We are fed up with wearing *jilbab* [Muslim dress]. Why should we, non-Muslims, wear *jilbab*? But we keep it [the protest] only in our heart (*Silalahi* 2008:118).

The only option for those who disagree with the dress code is this kind of daily resistance. We can see from the student above that she avoided confrontation with the school authorities by continuing to wear Islamic dress. Consequently, there was no impact from the daily resistance. However, these actions can

certainly reduce the feelings of resentment and discomfort as it helps the wearer see the dress as nothing more than a school uniform and disconnected from the idea of implementing Sharia or the communal identity of Minangkabau society.

3.7.3 The meaning for the viewer

Most viewers of Muslim dress also have their own interpretations of the attire worn by colleagues, children, family members and neighbors. They may perceive it in the same way as the ruling elite or the wearers or they may have different views. The interpretations of viewers can be classified into two categories: those viewers who interact with wearers during their working hours or school sessions, and those viewers who are involved with wearers in informal activities. The first category covers non-Muslim civil servants and students who do not wear Islamic dress, and the second category relates to parents or family members of civil servants or students, and the inhabitants of the municipality.

3.7.3.1 Non-Muslims

As previously stated, non-Muslim civil servants and students are not obligated to wear Muslim dress. Despite the fact that a few non-Muslims decide to adopt the dress, the majority opt to wear another uniform that is not in line with an Islamic dress code. This subsection deals only with non-Muslims who do not wear Muslim dress and who have been actively interacting with wearers during their working hours or school sessions. These viewers can be categorized as *happy* and *unhappy* viewers and these categories reflect their different perceptions of an Islamic dress code.

For the *happy* group, not adopting the Islamic dress code does not evoke any uncomfortable feelings. They argue that if wearing Muslim dress is meant to signify being Muslim and to identify adherents of Minangkabau *adat* then it follows that not wearing Muslim dress also identifies non-Muslims. The people

belonging to this category are proud to display their non-Muslimness publicly. They can express that 'I am not a Muslim' or 'I am a Christian' or 'I am a Buddhist' through their dress. This current development can be seen, for example, in public places where people are wearing T-shirts with slogans such as 'I love Christ'. This is something that almost never occurred prior to the implementation of the Muslim dress code. Indeed, the identity of non-Muslims was blurred in public.

Furthermore, those people who do not wear Islamic dress often feel a degree of pressure or competitive spirit in terms of achieving more than their peers who wear Islamic dress at work or in their places of study. A female Christian student at senior high school (*Sekolah Menangah Atas, SMA*) said that not wearing Islamic has triggered her motivation to study harder and to become actively involved in extracurricular activities (*Interview,* with a non-Muslim SMA student, 25/05/2010). Similarly, a Christian civil servant who dresses differently than the majority of her colleagues said that her non-Islamic dress influenced her to behave in accordance with Christian values.

In contrast with the first group of the viewers, the *unhappy* group feels uncomfortable not wearing Islamic dress during their working or school hours. They worry that by not wearing Islamic attire they will receive different treatment or may be discriminated against by their colleagues or teachers. They do not understand the government's motivation for implementing a dress code based on the beliefs of one religion, rather than on values that can be accepted by all inhabitants. However, they also acknowledge acts of non-compliance have little impact and that their objections go unheard.

Thus, the difference between the first and second group of viewers is located in perception. The first group demonstrates a degree of tolerance to Muslim attire; in contrast, the second group perceives the Islamic dress code as a form of discrimination.

3.7.3.2 Parents, family members and neighbors

This subsection deals with those viewers of Muslim dress who are parents, other family members or neighbors and who interact with wearers in settings such as at home, in the neighborhood and other places of informal activity. Specific attention is paid to whether the viewers are Muslim and non-Muslim, and the interpretations and impact of Muslim dress on this group are presented below.

Most of the Muslim viewers in this group are of the opinion that the Muslim dress code introduced by the mayor for civil servants and students is directly connected with an aim to implement Sharia as well as Minangkabau *adat*. They claim that Muslim dress has played an important role in the collective identity of Muslims and the Minangkabau *adat* community. Furthermore, they commonly argue that the government has an obligation to concern itself with social identity. A retired man said, 'I am delighted with the current government obligating them [civil servants and students] to wear Muslim dress; it is the government's task to maintain this important identity' (*Conversation,* with a retired civil servant, 10/08/2010). According to another viewer, implementing Muslim dress in educational institutions not only maintains the values of the dress, but also guarantees the continuity of the identity for the next generation. 'It is not easy to be a good Muslim in this modern era where modernity emphasizes the value of self-determination. The implementation of Muslim dress codes by the government may help to maintain the values of wearing the dress' (*Interview,* with a local ulama, 25/07/2010).

A number of parents who have children studying at schools where Muslim dress is imposed perceive Islamic dress as a response to modernity. The fear of the negative impact of modernity has become such a concern for parents that it has become an unofficial and informal discourse that amounts to a 'moral panic' about teenage girls. In this context, wearing Muslim

dress also means maintaining moral values and managing the wearer's mobility and socializing (Parker 2009:65). Thus, wearing Muslim dress is not only seen as a current need, but also important for the future.

Imposing an Islamic dress code in state schools may also create a new opportunity for traditional Muslim families to obtain better education at schools managed by the Ministry of Education.[47] Previously, traditional Muslim families opted to send their children to schools where Muslim dress is worn. On the whole, these schools are managed by the Ministry of Religious Affairs or are owned by private or Muslim institutions. Since Muslim dress has been implemented at all schools under the remit of the Ministry of Education, traditional Muslim families now have the possibility to study at schools with good academic reputations.
Another interpretation of Muslim dress is that it has gradually influenced other family members to switch their dress in accordance with an Islamic dress code. However, this gradual change is not wholly motivated by a desire to implement Sharia; rather, it originates from a need to fit in and adjust their way of dressing when attending occasions where the majority of females are wearing Islamic dress. A middle-aged woman said that currently most of the women attending all-female gatherings such as *arisan*[48] wear Muslim dress. Initially, she had not adopted Islamic dress, but had felt uncomfortable at being the odd one out. She

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[47]In the Indonesian educational system schools are managed by two different ministries: the Ministry of Education and the Ministry of Religious Affairs. The schools under the Ministry of Education have a better quality of education, thus become favored schools for study, rather than those under the Ministry of Religious Affairs. This fact is the result of, among other things, financial factors. Schools managed by the Ministry of Education are funded specifically for educational purposes, whereas schools under the Ministry of Religious Affairs are funded for religious purposes.

[48]*Arisan* is a regular social gathering whose members contribute to and take turns at winning an aggregate sum of money.

finally decided to purchase Muslim clothing and regularly wears it when attending these gatherings.

> Finally, I decided to continue wearing Muslim dress when I leave the house. In the beginning, I started to wear this [Muslim dress] because I felt odd attending female gatherings, but now I am more motivated by the religious teachings [*ajaran agama*]. I find that wearing Muslim dress is simple, but it is expensive [laugh], although various qualities of Muslim dress are now available in the dress shops or supermarket. They are affordable enough (*Conversation*, with a middle-aged female, 01/08/2010).

Another Muslim woman shared a similar story. She finally decided to adopt Islamic dress after finding herself being the odd one out when taking her children to kindergarten. She acknowledged that her child also often complained about her appearance and the fact that she did not wear Muslim dress (*Conversation*, with a young female, 20/07/2010). These two cases reveal that wearing Muslim dress is not solely motivated by the desire to implement Sharia, but that social aspects may also motivate Muslim women to wear it.

Non-religious aspects, such as appropriateness or properness, may also motivate Muslim women to wear (or not wear) Muslim dress. However, this is largely determined by whether wearing Muslim dress is located as a habit or a rule in the society (Hart 1994). If it is only a habit it will not generally result in women wearing it, whereas if there is a rule, women are forced to adopt the dress code or face criticism from society for inappropriate behavior. This situation can be seen in social gatherings among Muslim females in neighborhoods where not all of them wear Muslim dress. In this case, the dress is not aimed at covering *ʿawra*, but rather it is considered a value of appropriateness. We also see this reasoning at play when Muslim women leave their homes for short journeys or when they are

receiving familiar guests at home. However, this is not a factor within traditional Muslim families or families who have performed pilgrimage. These families regularly wear Muslim dress with the purpose of covering their *ʿawra* whenever they deal with other people who do not belong to their family (*muḥrim*).

Non-Muslim viewers in this group have a different interpretation of the Muslim dress code imposed by the government. For them, it evokes feelings of fear and discomfort. They are concerned that not wearing Islamic dress may result in different treatment. They suspect that inequality may occur in terms of accessing public services from government institutions or in public schools, or in terms of gaining equal opportunities as civil servants. However, there is no evidence to suggest that they or their family members have experienced discrimination relating to government services. In addition, viewers also experience what is commonly called 'political fear'. This political fear can be defined as a fear arising from a political discourse and several public discussions that locate this issue as an attempt to implement Sharia, and the desire to replace the state with an Islamic state. For this group, the government imposing an Islamic dress code is a sign that a number of Muslim groups are determined to shift Indonesia towards an Islamic state.

To sum up, the meanings of Muslim dress for the ruler, the wearers and the viewers outlined above demonstrate how closely linked this issue is with their lives and daily activities. The meanings attached to Islamic dress indicate the depth of involvement within the social-cultural-religious structure of their society. Religious individuals and families tend to attach religious significance to Muslim dress; non-religious people and families tend to attach non-religious meanings to the issues; a political-minded person will interpret it from a political standpoint; a local ruler will view the issue from the perspective of all his tasks as the ruler. In other words, these meanings also reflect their position in the socio-religious-economic structure.

3.8 Public debate: Contestation of values

Although local authorities have argued that issuing a Muslim dress code had a number of purposes, it is difficult to deny that the attempt was primarily to implement a dress code according to Sharia. This Muslim dress code has emerged in the form of an imperative stated in a number of regional laws or other forms of decisions issued by the local rulers. When the government began to implement these regulations, this issue became a topic of public discussion and debate. This discussion and debate is directly related to the codification of Sharia in regional law. The public discussion and debates dealt with the legal issue of whether the codification of Sharia in regional law is justified. This subject has also become an important political issue that has evoked considerable feelings of discomfort and fear among both opponents as well as proponents. The arguments of both sides are briefly presented below.

Proponents, including members of DRPD and local rulers, have argued that the adoption of Islamic values concerning dress is the government's concern and that the authority in this matter not only belongs to the local government, but is also guaranteed under the 1945 constitution and the philosophy of the state, *Pancasila.* They also argue that this issue is not related to Islamic teaching per se, but that it has been adopted as an important form of cultural identity. These arguments have received support from many Muslims and Muslim organizations, including Muhammadiyah and MUI, as well as *adat* organizations such as LKAAM (an umbrella *adat* organization). In addition, public discussions often became emotional when supporters accuse opponents of this issue of 'Islamophobia', which has its roots in colonial times.

By contrast, opponents argued that adopting the Islamic teachings concerning dress and issuing a regional law to this effect contradicts the constitution and other regulations. They further argued that only the province of Aceh has a special privilege

allowing it to implement Sharia. In other provinces, including West Sumatra, religious matters are governed by central government. Moreover, opponents accuse proponents of having a long term agenda to reintroduce an Islamic state and that imposing an Islamic dress code may threaten integration in Indonesia. They accused such a policy of provoking feelings of fear among vulnerable people.

Another argument put forward by a number of NGO activists is that imposing a Muslim dress code is in contradiction with human rights. They advocate two reasons to support this claim. First, imposing Muslim dress has resulted in discrimination for non-Muslims civil servants and students who dress differently from the majority. This situation also conflicts with the principle of equality before the law. They also predicted that this discrimination may lead to other discrimination in work or schools. Second, imposing Muslim dress meant that civil servants and students no longer had the right to decide their own dress.[49] However, this second reason looked misleading, as the government had always had a uniform policy – in whatever form – for civil servants and students. According to Lurie, wearing a uniform 'is to give up one's right to act as individual – in terms of speech is to be partly or wholly censored' (Lurie 1981:18).

The arguments used by the opponents and proponents of Muslim dress are emotional: the opponents accuse supporters of the code of threatening the foundations of the state. Proponents accuse the other side of Islamophobia and of being anti-Sharia, As a result of such emotive exchanges, it was almost impossible for both sides to discuss the issue in a proper way. For instance, there were few public discussions or forums where both sides of the issue were presented. As a result, the issue was confined to the realm of gossip, chat, rumor and scandal.

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[49]These arguments by proponents were also expressed during two programs on the Metro TV Channel, entitled *Genta Demokrasi*, that aired in September 2010.

The local authorities have attempted to clarify the issue of Muslim dress by disconnecting it with any attempt to disintegrate the state. For example, the governor of West Sumatra, in an interview with Perter Gontha, a television host, argued that the local government had intended to create harmony between the society and the government, but that it has become a challenge as the policy had created feelings of discomfort and worries about discrimination. He acknowledged that the inappropriate reactions to this subject also constituted a challenge for the local authorities. He also argued that without the dress code Muslims were being denied their right to implement the values derived from their religious teachings. The governor said:

> Truly, we are very respectful when the Balinese celebrate the *Nyepi* [last day of Balinese calendar when no work is done] and, for example, there are no flights back and forth to Bali. Not a single one of us raises a protest. This is because of all of us respect the religion of the Balinese. How come [some people protest] when the majority of Muslims issued a regulation only for them? This must be also respected. That is simple! However, the issue is seen as forcing others [non-Muslims] to obey the [Islamic] regulations. In fact it does not.... [50]

This issue is intermingled with other related issues dealing with attempts to implement Sharia in an Indonesian legal and historical context. Only time and experience will tell which direction this issue will ultimately take.

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[50] Governor Gamawan Fauzi, interview by Peter F. Gontha, TV Channel, www.youtube.com/watch?v=NMzxKvtzbQY, www.youtube.com/watch?v=XNVDGfIDrYE.

3.9 Conclusions

This chapter reveals that regional laws oblige Muslims who are employed as civil servants and students to dress according to an Islamic dress code. A number of local authorities are motivated to implement Sharia in relation to the dress code. This shift is justified by a view that Islamic dress provides a communal identity for the society. Consequently, the local government has the authority to issue a regional law on this subject. The dress code is regulated by a number of regional laws, which provide guidance not only concerning things such as covering *ʿawra,* but also other functions, such as adornment and distinguishing the wearer. These two new elements of the dress code have departed from the emphasis given by most ulama on the issue of *ʿawra*.

This matter of dress has become the subject of wide public debate and discussion. A number of non-Muslims and NGOs activists as well as politicians perceive this development to be in contravention with the constitution and the philosophy of the state, as well as the principle of equality before the law. The proponents of Muslim dress see this opposition as a form of discrimination of those Muslims who intend to implement Sharia. They argue that the constitution and the philosophy of the state guarantee their right to adhere to their religious teachings. These arguments are frequently repeated and have been used by both sides in the debate since the beginning of independence and the first attempts to codify Sharia in the state law.

For the local authority, the intention behind obligating Muslims to wear Islamic dress is not only to implement Sharia but it also links to other related governmental tasks. However, the wearers and viewers of Muslim dress may perceive these intentions differently.

After more than a half decade of the implementation of Muslim dress the result has been a shift in Muslim daily life. For example, the dress code appears to have enhanced the religiosity and cultural awareness not only of the wearers, but also among

Muslims in general. It has also created a new possibility for traditional Muslim families to continue their education in schools that have better academic reputations and that are managed by the Ministry of Education. However, the fact cannot be avoided that obligating Muslim students to wear Muslim dress has also raised feelings of discomfort and discrimination among non-Muslims or undevout Muslims. Thus, a further empirical study is required to examine whether this policy has had an impact in terms of the local government maintaining and managing public services. For example, whether or not local government officers have a particular preference for the wearers of Islamic dress during recruitment processes.

The continuity of this practice in the future may be determined by two factors. First, it relies on local politics. This practice will continue if the following mayor/local ruler has the same stance on this issue. If this is not the case, then there is a possibility that the dress code will be revised or replaced with another policy. For instance, a new rule could revise the current imperative form of the rule with an alternative more optional version. Second, it also relies on whether the current practice is seen as having affected any advancement in the society. As previously stated, a further study is required in order to examine these issues.

Chapter 4
Recitation of the Quran: Maintaining tradition

4.1. Introduction

Two important identifiers of the Minangkabau people are that they are adherents to a matrilineal society and that they are pious Muslims. Maintaining this identity was a central theme when the provincial government issued provincial law 9/2000 on village administration (*Pemerintahan nagari*). This law was aimed at returning to a nationwide unified village structure, based on the Javanese *desa* to *nagari,* the lowest government structure based on Minangkabau tradition (Von Benda-Beckmann 2007). A return to the *nagari* system would signal a return to their identity. To be a pious Muslim is important to the identity of the Minangkabau people and as a Muslim one should adhere to Islamic teachings. For this purpose, an ability to recite the Quran is necessary. This ability provides an individual with the ability to perform Islamic rituals.

A village prayer house, called *surau,* or a mosque is an important Islamic institution located in the village. According to the *adat* rules, there cannot be *nagari* without the *surau.* Historically, the *surau* has functioned as more than a place for performing rituals and as a center for Islamic learning, it also had a social function; under *adat* rules it was a place where male youths might spend the night if there was no place available for them at their matrilineal/parental house (Dobbin 1983:118-119). However, this function has gradually deteriorated since the government and Muslim reformers introduced a program of modernization early in

the twentieth century (Azra 1990). The current situation shows that this institution plays a very limited role, largely limited to ritual purposes, i.e. praying and other various Islamic celebrations. Its function as the educational center has been transformed and it is now part of a modern schooling system. However, the schooling system has not fully accommodated all the functions of the *surau*. Thus, the idea behind returning to *surau* is to restore Minangkabau identity and also to revitalize the function of *surau*.

One important aspect of the identity of the Minangkabau people, related to the function of *surau*, is being a pious Muslim. *Surau* plays a significant role in this regard as a place of Islamic teaching, including the teaching of recitation of the Quran. Culturally, the essential characteristic of a pious Muslim is having the ability to recite the Quran. This is an important requirement not only for performing the obligatory prayers five times a day, but also for other rituals during, for example, the fasting month. In recent decades, the increasing number of people without the skills to recite the Quran has been a cause for public concern. Indeed, this situation is commonly seen as an indication that the identity of the Minangkabau people has significantly deteriorated and might even threaten the continuity of Islam. Thus, a number of local authorities and other public figures advocated a plan to restore this identity using a legal approach, i.e. issuing provincial and regional/municipal laws aimed at introducing new subjects into schools, including recitation of the Quran.

This chapter presents those provincial and regional/municipal laws concerning Quranic recitation. It attempts to answer three questions: How is recitation of the Quran regulated? To what extent is the provincial, regional/municipal law applied? What is the implication of the law for other Islamic institutions? In order to answer these questions, this chapter is divided into seven sections: 1) rules on recitation of the Quran; 2) recitation of the Quran in the Muslim world; 3) the Indonesian government's policy on this theme; 4) Quranic recitation within

Minangkabau society; 5) the contents of provincial, regional/municipal law on this issue; 6) actual practice of Quranic recitation in Padang, including *SD plus*, recitation of the Quran in elementary schools, public response, and its impact on Quranic education institutions; and finally, 7) conclusions relating to the topic of this chapter are presented.

4.2 Rules on recitation of the Quran

Reciting the Quran in a correct way is an important subject for Muslims. This can be explained by the importance of the Quran for Islamic society; it is the word of God as revealed to the Prophet Muḥammad and, thus, the Prophet was concerned that it should be recited correctly for the purposes of proclaiming, pondering and remembering the message of God in worship and in devotional life. It also deals with the desire to obey the Quran through understanding and applying its contents in practical ways in the life of Islamic society. These concerns lead to dominant modes of Quranic piety: recitation (*qirāʾāt*) and exegesis (*tafsīr*) (*cf.* Denny 1980:91; Nielson 2001:xvi). This section is confined to the rules regarding the recitation of the Quran

The Quran was revealed to the prophet in the Arabic language,[51] which consists of several dialects. Traditions (*ḥadīth*) say that the revelation was given to the prophet in seven dialects (*aḥruf)* (Wensinck 1927:130). Muslim scholars have different opinions on the meaning of seven dialects. One view is that they are the dialects of all the Arabic tribes. Others say that it deals with seven issues: noun gender and number, verbal tense and mood, inflection, adding or dropping of words, difference in word order,

[51]The Quran mentions this matter in eleven verses: *al-Naḥl*/Bees (16):103; *al-Shuʿarāʾ*/The poets (26):195; *Fuṣṣilat*/Expounded (41):44; *Yūsuf*/Joseph (12):2; *al-Raʿd*/The thunder (13):37; *Ṭāhā* (20):113; *al-Zumar*/The crowd (39):27; *Fuṣṣilat*/Expounded (41):3; *al-Shūrā*/Consultation (42):7; *al-Zukhruf*/The gold adornment (43):3; *al-ʾaḥqāf*/Winding sand-tracts (46):12 (ʿAbd al-Bāqī 1992:579).

substitutions, and dialect references (Nielson 2001: 200). The rules for reciting the Quran (*tajwīd*) aim to guarantee the correct method of recitation. Modern copies of the Arabic text of the Quran contain symbols of the *tajwīd* and complete rules for recitation are also attached to copies of the Quran.[52]

The methods for reciting the Quran must conform to the rules that are now commonly called *tajwīd*. This notion is elucidated in the chapter *al-Qiyāma*/the resurrection (75): 16-18. The word *tajwīd* is derived from *jawada*, literally meaning 'to be or become good, to become better, to improve' (Wehr 1979:172). This meaning has come to be understood generally as the art of reciting the Quran, *ʿilm al-tajwīd*. Although, this term does not occur in the Quran itself, it was used in the early period. According to a ḥadīth, ʿAlī b. Abī Ṭalib, a son-in-law of the prophet, was asked about the meaning of the Quranic phrase *wa-rattil al-Qurʾāna tartīlā*[53] (to recite the Quran in slow, measured rhythmic tones). He replied by saying it was *tajwīd al-ḥurūf wa maʿrīfat al-wuqūf,* an excellent rendering of the consonant sounds and knowledge of the pause. The *al-wuqūf* has come to be known as the pause (*al-waqf*) and this, in turn, developed into *al-wuqūf wa al-ʾibtidāʾ,* the location of pauses and commencement that are important for *ʿilm al-tajwīd* (Denny 2000:72-3). While it is never incorrect to use the word 'recitation' in relation to the Quran, this term is so general that it fails to indicate precisely what is meant in a given instance. For example, the term *tartīl* expresses the precise, deliberate, rhythmic recitation of the words and phrases of the Quran, measuring them out properly in relation to each other in correct sequence and without haste (Denny 1980:97).

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[52] I possess two copies of the Quran, both of which contain the rules for reciting the Quran. They were printed in Semarang, Indonesia, in 2006 and 1993.

[53]This phrase is mentioned in the chapter *al-Muzammil*/the enfolded one (73):4.

There are two other related terms: *ʿilm al-qirāʾa* and *ʿilm al-tilāwa*. The word *qirāʾa* derives from the Arabic word *q-r-ʾ*, meaning 'to recite, to read' (Wehr 1979:882). A person who recites the Quran is called *qurrāʾ*[54] and the meaning of the Quran itself is the recitation. The word *tilāwa* literally means 'to read, read out loud, to recite' (Wehr 1979:117). However, *tilāwa* does not relate specifically to performance; that is the domain of *tajwīd* and, to a lesser extent, *qirāʾa* (Denny 2000:73).

The rules for reciting the Quran cover several topics. This includes: the point of articulation (*makhrāj al-ḥurūf),* manner of articulation (*ṣifāt al-ḥurūf*), allophones (*ḥurūf al-farʿīya*), assimilation (*idghām*) and dissimilation (*iẓhār*), extended duration of syllables (*madd*), and pause and beginning (*wuqūf wa-al-ibtidāʾ*) (al-Ḥuṣri 1999:17; Denny 2000:73-4; Nielson 2001:18-19). The etiquette of recitation and compensation for the reciter are also included in these rules.

On the whole, there are three styles of reciting the Quran: *taḥqīq*, *ḥadr* and *tadwīr.* The *taḥqiq* style is a very slow recitation that the reciter takes time for and focuses on complete articulation. In contrast, *ḥadr* is a rapid style of recitation in which the reciter adapts to a faster pace by eliding or assimilating phonemes. This method of recitation is purely for the reciter and is conducted in a monotone. The *tadwīr* style of recitation places finds a middle course between *taḥqīq* and *ḥadr* and adopts a medium tempo (Nielson 2001:20).

The following paragraph presents selected technical aspects of the rules for reciting the Quran.[55] The rules deal with, first, the letters of the Arabic alphabet and how they are

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[54] In the early period of Islamic history the *qurrāʾ* also meant villagers (Juynboll 1973).

[55] The rules are summarized from the manual of *tajwid* (*kitāb al-tajwīd)* that is attached to the author's two copies of the text of the Quran printed in Semarang, Indonesia, in 2006 and 1993.

articulated in the human vocal anatomy (*makhrāj al-ḥurūf*). They also provide an illustration of the mouth, throat, teeth and lips with indicators showing where the utterances originate. These kinds of diagrams are generally only included in modern *tajwīd* manuals. Second, the rules outline the manners of articulation (*ṣifāt al-ḥurūf*).

What follows is a brief presentation of the etiquette of articulation of the Arabic alphabet. First is the conjunction of syllable-final n/ن, which has no following vowel (*sukūn*) or marks of short vowels or when doubled at the end (*tanwīn*). This category is classified as *iẓhār* (clear) and *idghām* (assimilation). The *iẓhār* governs that the n/ن *sukūn* or *tanwīn* is clearly uttered according to its place of origin if it is followed by one of the letters of *iẓhār:* ء (آ إ أ), ه , ح, خ, ع and غ,. For example, *nārun ḥāmīya* is pronounced *nārunḥāmīya*. The *idghām* (assimilation) governs that the n/ن *sukūn* or *tanwīn* is assimilated into the following letters.

The *idghām* consists of *idghām bi-ghunna, idghām bi-lā-ghunna, iqlāb* and *ikhfāʾ. Idghām bi-ghunna* governs that the n/ن *sukun* or *tawīn* is fully assimilated with nasality (*ghunna*) into the subsequent consonants: و, م, ن and ي. For example, *surūrun marfūʿa* is pronounced *surūrummarfūʿa.* In contrast, *idghām bi-lā-ghunna* governs that the n/ن *sukūn* or *tanwīn* is assimilated without nasality to the consonants r/ر or l/ل. For example, *khayran yarah* is pronounced *khairayyarah. Iqlāb,* literally meaning to change, governs that the conjunction of syllable-final n/ن *sukūn* or *tanwīn* is transformed into m (م) with nasality (*ghunna*) if it is followed by b/ب. For example, *min baʿd* is pronounced *mimmbaʿd. Ikhfāʾ,* literally meaning hiding, governs that the conjunction of syllable-final n/ن *sukūn* or *tanwīn* is pronounced with nasality (*ghunna*) if it is followed by a number of consonants, *huruf al-ikhfāʾ*. These are: t/ت, th/ث, j/ج, d/د, dh/ذ, z/ز, s/س, sh/ش, ṣ/ص, ḍ/ض, ṭ/ط, ẓ/ظ, f/ف, q/ق, k/ك. For example, *min ṭīn* is uttered *minnṭīn.* The effect of n/ن and *ghunnah* in the cases of *ikhfāʾ, iqlāb* and *idghām* and the doubling in

idghām and the double n/ن into m (م), is to prolong the duration and to change the timbre.

Second is the conjunction of syllable-final m/م, which has no following vowel (*sukūn*). This category consists of *ikhfāʾ shafawī, idghām mutamāthilayn* and *iẓhār shafawī. Ikhfāʾ shafawī* governs whether the conjunction of the syllable-final m/م *sukūn* is uttered with nasality if it is followed by the consonant b/ب . For instance, *tarmīhim bi-ḥijāratin* is pronounced *tarmīhimmbiḥijāratin. Idghām mutamāthilayn* governs whether the conjunction of syllable-final m/م *sukūn* is assimilated to the following consonant m/م with nasality. For example, *innahā ʿalayhim muʾṣada* is pronounced *innahā ʿalayhimmuʾṣada. Iẓhār shafawī* governs that the conjunction of syllable-final m/م *sukūn* is clearly voiced in its original place without nasality if it is followed by any Arabic letter with the exception of the consonants m/م and n/ن. For instance, *alam nashraḥ* is voiced *alamnashraḥ.*

The third rule of etiquette concerns the consonants m/م and n/ن with *tashdīd* (مّ نّ), which is marked over a double consonant and the letter's repletion saved. It governs that the consonants m/م and n/ن with *tashdīd* (مّ نّ) are voiced with nasality and prolonged with two *madd.*[56] For example, *ʿamma yatasāʾalūn* is pronounced *ʿammmmayatasāʾalūn.* The fourth rule relates to *qalqala.* This is defined as vibrating the place of articulation so that a strong form is heard. This is the insertion of ə (*schwa*) for the consonants ب, ج, د, ط and ق, and is commonly called *hurūf al-qalqala.*

Another important rule concerns the pause and the beginning and the etiquette of recitation. The location of pauses and commencement are symbolized by seven marks: م is the sign for an obligated pause (al-*waqaf lāzim*); لا is the sign for a prohibited

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[56] *Madd* is the length of a voiced consonant. The length of *madd* varies between one and six *madd.*

pause (*ʿadam al-waqaf*); قلى is the sign that suggests it is better to pause than to continue (*al-waqaf ʾawlā*); صلى is the sign that suggests it is better to continue than to pause (*al-waṣlu ʾawlā*); ج is the sign that indicates that to continue or to pause is optional (*waqaf jaiz*); ∴ ∴ are two separated signs that indicate that it is permissible to pause in one of the signs, but it is not allowed to pause between the two (*waqaf muʿanaqa*); and finally, ع is the sign for the end of a chapter (*ṣūra*) or a particular verse (*āyat*) (*rukūʿ*).

The etiquette of recitation of the Quran consists of six points. They are: an ablution should be performed before the recitation; the recitation should be conducted in a clean place and that a mosque is the best place for the recitation; the reciter should be wearing clean and tidy clothes, facing *qibla (kaʿba)*; reciting the prayer that is called *basmala;* that is: *Allāhumma aftaḥ-lanā ḥikmata-ka wa-nshur ʿalaynā raḥmati-ka min khazāʾini raḥmati-ka yā ʾarḥam al-raḥīmīn;* starting with reciting *aʿūdhu bi-llāhi min al-shayṭān al-rajīm* (I seek refuge in God from the accused satan) that is called *taʿawwudh* (seeking protection) and *bi-smi llāh al-raḥmān al-rahīm* (in the name of Allah, Most Gracious, Most Merciful). The ritual should end with reciting *ṣadaqa llāhu l-ʿaẓīm* (God the Mighty has spoken truly) (al-Ghazāli n.d; al-Suyūṭī 1967).

It is important to make a final remark regarding the above rules, and that is that in actual practice the rules are a supplementary text in the process of learning to recite the Quran. The most important method for applying the rules is through direct transmission from a teacher to student. Thus, without a teacher it is almost impossible to learn the art of reciting the Quran.

4.3 Recitation of the Quran in the Muslim world

As we have established, having the skill to recite the Quran in a correct way is essential for every Muslim, whether or not they are native Arabic speakers. This is not only because recitation of the

Quran is a ritual itself, but also because this skill is required in order to successfully perform other rituals; for example, for performing prayer five times a day. Thus, this skill has become the foremost concern of pious Muslim individuals, families and society. Indeed, religious study usually begins with learning to recite and read the Quran.

Across the Muslim world, the recitation of the Quran has remained the model for elementary religious education. In Arabic speaking countries, like Egypt (Starrett 1998; Nielson 2001) and Morocco (Eickelman 1985), the recitation of the Quran often takes place in a small school known as a *kuttāb* or *maktab*. In Egypt, the *kuttab* is small local institution for the memorization of the Quran in which students are taught basic reading and writing skills (Starrett 1998:27). As a country where Islam is the state religion and Arabic its official language, the government of Egypt is obligated by the Constitution and by Law no.139 of 1981 to teach the recitation of the Quran in educational institutions, and to encourage the home environment and society to promote such skills. Consequently, the government has introduced the recitation and memorization of the Quran in schools and it regularly organizes competitions for the recital of the Quran (Starrett 1998:118; Nielson 2001:136-7). There is a similar story in Morocco where memorization and the ability to recite the Quran correctly and accurately have become important themes in schools where this subject is taught from the first year of primary education (Eickelman 1978:492).

Recitation of the Quran has also become an important part of Islamic education in non-Arabic countries, including in Southeast Asia. Teaching takes place in mosques, prayer houses, teacher's houses and in educational institutions managed by the government or private Muslim benefactors (Hefner 2009:7). In Malaysia, for example, recitation of the Quran was first introduced in an Islamic educational institution in the early 1800s. At this time, students were expected to master recitation of the Quran,

even without possessing skills in the Arabic language (Hefner 2009:112).

4.4 The Indonesian government's policy on Quranic recitation.

In the 1960s, the Indonesian government began to consider the idea that Muslim traditions regarding Quranic matters were part of the government's concern. Initially, the government was mainly concerned with holding symbolic events related to these matters, but gradually it extended its remit and introduced more substantial activities.

The government manages at least two symbolic events in connection with the Quran: the annual commemoration of the first revelation of the Quran and MTQ (*Musabaqah Tilawatil Quran*) the national competition for reciting the Quran. The event of commemorating the first revelation of the Quran was first held during Sukarno's presidency and has grown into an annual appointment in the Presidential agenda. Although the ulama have different opinions concerning the date of the first revelation, there is consensus that it occurred during Ramadan, as indicated in the Quran. The government decided to conduct the commemoration on the seventeenth day of Ramadan, bearing in mind that this was also the day that Indonesia declared independence in 1945. This event is held alternately in the State Palace or at the Istiqlal mosque and it usually consists of three programs: the recitation of a few verses of the Quran by a *qāriʾ* (reciter), followed by a translation, a speech from a Muslim scholar concerning the revitalization of Quranic values, a short speech from the President and, lastly, *doʿa* (prayers, Arabic: *duʿāʾ*) often conducted by someone from the Ministry of Religious Affairs.

In 1968, the government introduced the national competition for reciting the Quran, namely MTQ (*Musabaqah Tilawtil Quran*). This event was held for the first time in Makasar in

that year (Muchtar 1998:260). Since then, the competition has been held every two or three years and in 2012 the competition celebrated its 25th anniversary. Before the government began sponsoring MTQ, similar events had been organized on a voluntary basis by the Muslim community in a number of cities, including in Asahan, North Sumatra in 1946, in Makasar in 1949, and in Jakarta in 1952. Prior to the 1950s, the organization of Quranic reciters (*qurrāʾ*) existed in number of regions; for example, in Jombang, Makasar, Banjarmasin, Palembang, Kudus, and Medan. On 15 January 1951 Wahid Hasyim, the Minister of Religious Affairs, established the organization of Quranic reciters, *Jamiʿīyatu al-qurrāʾ wa al-ḥuffāḍ*, based in Jakarta. In subsequent years, sister organizations were established in other regions. In 1953, this organization held its first national summit in Jakarta (Halim 2006:168-172).

Today, MTQ is a regular feature of the governmental agenda from national to village level. The first MTQ was aimed only at adult reciters, but subsequent events introduced various levels of competitions. For instance, the 24th MTQ in 2009 was open to adults, teenagers and children. The types of competition were also extended into understanding the meaning of the Quran, memorizing entire texts, and writing Quranic texts, i.e. calligraphy. In addition, MTQ events have also been held by different government departments and private institutions, including special MTQ events for university students, journalists, and disabled people. In short, MTQ has emerged as the public face of Quranic tradition. However, this competition has not been without criticism. Abdurrahman Wahid, popularly called Gus Dur, the fourth President of Indonesia, once criticized the national event for being 'useless'. However, he was not expecting this event to be withdrawn from the government's agenda; he was merely expressing his own opinion.

Besides the symbolic purpose of holding regular competitions for reciting the Quran, the government relates these

events to its concern for Quranic education and how the Quran is taught to Muslims. In 1971, Mohammad Dachlan, the Minister for Religious Affairs, together with Ibrahim Hossen, the head of the Bureau of Public and Foreign relations of Religious Affairs, established a higher Quranic education institution, namely PTIQ (*Pendidikan Tinggi Ilmu al-Quran*). This institution primarily provided training in the art of Quranic recitation and the study of related knowledge (Muchtar 1998:260). Similar institutions were subsequently established in a number of provinces throughout Indonesia, including in West Sumatra in 1993.

A more fundamental policy towards Quranic education was introduced on 13 May 1982 when two ministries, the Ministry of Home Affairs and the Ministry of Religious Affairs, issued the joint decree No.128 and 44A concerning this issue. The decree was aimed at improving Muslims' (mainly students) ability to recite and write Quranic texts. This development demonstrated the government's desire to enhance the ability of Muslim students in this area and make compulsory the subject of religion (*agama),* which had long been implemented from primary school to university. The Minister for Religious Affairs followed up the decree by issuing the Ministerial Instruction No.3 in 1990, aimed at providing a manual for reciting and writing Quranic texts.

The current trend shows that the government's interest in this subject has gradually increased. The government amended the 1945 constitution and the National Education System law No. 20 of 2003 in relation to this subject. Sections 12 (4), 30 (5) and 37 (3) of the constitution require the government to provide more space for religious education. Subsequently, the government issued the government regulation No. 55 of 2009 to implement these three articles. Section 3 of the government regulation gives the authority to the Ministry of Religious Affairs – the government institution whose main tasks concern religious matters – to manage religious education at all levels. This government regulation also elucidates the task of the Ministry of Religious Affairs to design religious

education (*pelajaran agama)* and to include Quranic education *(pendidikan al-Quran)* for all levels of education. Section 24 of the regulation defines Quranic education as educating Muslim students to have the ability to recite, write, understand and implement the Quran. Subsection 5 elucidates that the curriculum for Quranic education consists of reading and writing Quranic texts, memorizing certain verses of the Quran, understanding the way to pronounce the letters (*tajwid*) and memorizing some prayers (*doʿa*) that are stated in the Quran.

On 6 December 2010, the Ministry of religious Affairs issued the Ministerial Decree No. 16 of 2010 on the management of religious education in schools. This decree states that it aims to standardize religious education from kindergartens to senior high schools. Section 6 of the decree elucidates the contents of this subject, focusing on building the personality of students with the following topics: first, deepening and extending religious knowledge; second, motivating students to obey their religious teachings in daily life; third, obeying religious teachings as the foundation of life as an individual, family member, community, and nation; fourth, maintaining a good personality with a focus on honesty, self-discipline, hard work, independence, self-esteem, competitiveness, cooperation, sincerity and responsibility; and fifth, maintaining inter-religious understanding among students.

These objectives indicate that the direction of religious education will be shaped by the government. Current developments in government policy regarding religious education demonstrate the role of the Indonesian government in shaping religious understanding and this is set to become more significant in the coming decades.

Prior to the central government's involvement with the issue of Quranic education, decentralization and local autonomy meant that a number of local governments had been concerned with these issues. For example, in the province of Aceh *Qanun* no. 5 of 2008 obligates students to have the ability to recite the Quran.

Furthermore, this ability is also obligatory for anyone running for the post of governor, *bupati*/the mayor and members of the parliament regulated under section 13 (1) c of the *Qanun* no. 3 of 2008 (http://dishubkomintel.acehprov. go.id). The government of Bulukumba issued the regional law no. 6 of 2003 on the obligation for students and bridegrooms to have the ability to recite the Quran. A number of regions in West Sumatra have also issued similar laws.

4.5 Quranic education within West Sumatran tradition

The history of the learning tradition in West Sumatra shows that it is not necessary to learn the Arabic language in order to learn the Arabic alphabet with the aim of gaining the ability to recite the Quran for ritual purposes. This situation continues in present times. Historically, a *surau* located in the surrounding area of a village played the role of an Islamic as well as an *adat* institution. As an Islamic institution it was the center for basic Islamic training, including for prayers, learning the Quran, *fiqh* and other religious subjects. As an *adat* institution, it was a place where *adat* rules were taught to a new generation, a sleeping place for male teenagers, and for short stays for journeying traders (Dobbin 1983:120; Radjab 1974:23; Azra 1990:66).

However, this tradition is no longer compatible with the development of society, which has been responsive to the social changes and modernization introduced by the colonial government and Muslim reformers. On the one hand, at the end of the nineteenth century, most people adjusted swiftly to the modernization programs introduced by the colonial government, including the system of education. On the other hand, in the early twentieth century, Muslim reformers also targeted the *surau* tradition in order to modernize society. These two factors gradually reduced the role of *surau* as centers for Islamic

education. After independence the deteriorating role of *surau* continued.

Despite this deterioration of the function of *surau,* they have contributed significantly to forming the identities of Minangkabau people, their adherence to Islamic teachings as well as *adat*. Practicing rituals and being able to recite the Quran are two important communal identities of the Minangkabau people. A conversation with Minangkabau people revealed that someone lacking the skills to perform these two things will be stigmatized and no longer seen as a Minangkabau person, and only as an animal, specifically a buffalo (*kabau*).[57] For most people, particularly those in traditional Muslim families, the ability to recite the Quran is required for a number of events. For example, the Quran is read when a family member is approaching death, or during a gathering commemorating the death of relatives. Extracts of the Quran are also recited at the graveyard during visits before or after the fasting month. Because the ability to recite the Quran is seen as a marker of identity, attaining this goal is celebrated in the villages and a celebration, namely, *Khatam* Quran, will be held. This event is also seen as being a symbol of *mukallaf* (obligated to follow the law). Further, the skill of reciting the Quran is also required for those wanting to get married and raise a family according to the Islamic teachings.

The current situation shows that only a small number of people are still learning the skills to recite the Quran in *surau*. In most villages, as well as in urban areas, this form of teaching has transferred to other places or institutions under the initiative of family members, community based organizations or even the local

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[57]To stigmatize one who does not practice Islamic rituals or has no ability to recite the Quran is common among the Minangkabau people. It is spoken of in a metaphoric way, i.e. using the Minangkabau words, *minang* meaning Islam and *kabau* meaning buffalo. Thus, one who does not practice Islamic teachings is no longer part of the Minangkabau people, and is seen only as a *kabau* (buffalo).

government. Families who have someone who can teach the Quran often establish centers of learning, not only for their family members, but also for other children in the neighborhood. Since the 1960s, mosques have gradually transformed into the primary centers for Quranic learning, such as TPA (*Taman Pendidikan Alquran*/Education center for the Quran) and TPSA (*Taman Pendidikan Seni Alquran*/Education center for the Quranic arts). Subsequently, similar institutions were established in most of the mosques in West Sumatra. In the last two decades, reciting the Quran has also been taught in formal education institutions owned by private Muslim benefactors. This new subject has mainly been introduced in these private schools in order to attract new students. It should be noted, however, that this subject is an additional subject, to be taught alongside the religious education enforced by the government. This subject is set up for those students who do not have the ability to recite the Quran.

Figure 4.2. Children learning how to recite and write the Arabic alphabet at the Quranic learning center located in Kampung Baru.

Besides reciting the Quran, theology, history of the prophet, the performance and meaning of ritual, ethics, memorizing a number of verses of the Quran and *doʿa* (prayers) are also taught in these institutions. Generally, these subjects are not systematically arranged in a curriculum, but rather are taught dependent on the ability of the students. Various teaching methods are used in these centers, including *metode juz amma, metode iqraʾ* and *metode tartil*.[58]

In short, this section has shown that both continuity and change have been present in relation to the function of *surau* in maintaining the identity of the Minangkabau people. The ability to recite the Quran is still an important identifier for the society and thus is continued in the changing institutions. In the beginning, *surau* was the only institution that maintained this identity, but this function has been gradually deteriorating and it has been transferred into other institutions that are no longer fully under the control of the society. This change has been followed by changes in the methods of teaching. When the government shifted from *desa* to *nagari* as the lowest level of government structure, the spirit of returning to *nagari* was followed by the desire to revitalize the function of the *surau* as the *nagari* institution that plays a role in maintaining the identity of society.

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[58] A handbook, namely *juz amma*, is commonly used for teaching metode *juz amma*. This handbook consists of two main parts: the first part consists of how to read the Arabic alphabet, starting from single letters and moving on to combined letters; the second part consists of 36 verses, starting from *al-Fatiḥa* (the Opening) and subsequently moving on to *al-Nās* (Mankind) and ending with the verse *al-Nabāʾ* (the Great event). *Metode iqraʾ* was initially designed by As'ad Humam in Kota Gede, Jogjakarta and this method soon spread throughout the archipelago. This method is particularly effective for students who have the ability to read Roman letters. The *tartīl method* was introduced by Gazali, a teacher at STIQ (The Higher Education for the Quranic Arts) in Padang. According to him, an integrated approach is applied in teaching the students to recite the Quran. This method consists of seven sub-subjects, including reciting the Quran, writing words of the Quran, dictating words of the Quran, applying rhythm in reciting the Quran (*murattal*), *ʿilmu tajwid*, and adopting a proper attitude towards the Quran (*akhlāq al-karīma*) (*Interview* with Gazali, 16/10/2009).

4.6 Local law on Quranic recitation

It is widely believed that the identity of Muslim and *adat* adherents has, at best, been changing gradually and at worst is in crisis. This situation has occurred on the one hand as a consequence of social changes, including the decreasing function of social actors and institutions, including ulama, adat functionaries and *surau*, and the increasing dominance of central government in terms of defining almost all aspects of the society on the other hand. When the local government was given the authority to define what is best for the society, it voiced the opinion that attempts must be made to maintain a society in which Muslims in West Sumatra should have the ability to recite the source of Islamic teachings, the Quran. This could be achieved by introducing a new subject to the school's curriculum, i.e. recitation of the Quran. This skill was excluded from the aims of those religious subjects (*pelajaran agama*) that were regulated under law 2/1989 on the national education system. Thus, introducing the new subject to schools was meant to fill the gap between social need and the educational system applied by the government. Besides obligating students to learn this skill, brides and bridegrooms are also expected to be able to recite the Quran. Such a step was seen as a way of achieving the collective identity of the society. In order to provide legal grounds for this purpose, a number of local authorities attempted to issue provincial and regional laws on this matter.

4.6.1 Provincial law

The provincial parliament of West Sumatra was rather late in taking action on the issue of Quranic education. It passed a provincial law on this subject in 2006, while a number of other regional governments had already passed legislation as early as 2001. However, members of the 1999-2004 parliament had prepared a draft bill on this subject in 2004, but they decided to suspend it given the imminent general election of that year and

the influx of newly elected members. The draft was primarily prepared by members of parliament belonging to Islamic parties,[59] but subsequently this draft received support from almost all parliament members.

On 11 September 2006, parliament tabled the draft of the provincial law. According to the explanation in parliament, there were three main purposes for issuing a provincial law on this subject. First, they sought to maintain the social identity of Minangkabau people, which placed great store in the ability to recite the Quran. Indeed, as previously mentioned, culturally, it was unacceptable not to possess these skills and other members of the community would be critical of those without the ability to recite the Quran. Members of parliament expressed concern that the number of people without this ability has been significantly increasing. Second, they were attempting to improve the quality of people's lives. The Quran states that religious teachings must be the foundations of life. Consequently, every Muslim should have the ability to understand the rules in the Quran and the government has an obligation to introduce this subject in schools. Third, the provincial law is meant to guarantee continuity and reflect the way this issue has been regulated under regional or municipal laws.

The draft was named *Pendidikan Alquran* (Quranic Education) and consisted of 12 chapters and 21 sections. The drafters acknowledged that, initially, the draft was named '*Pemberantasan buta huruf al-Quran*' (the elimination of illiteracy of the Quran), and subsequently this title was changed into '*Pandai baca tulis al-Quran*' (the ability to recite and write Quranic text).

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[59] There are fourteen members of DRPD who are from different political parties: Mahjeldi Anharullah, Muslim M. Yatim, and Mochklasin from PKS; Rizal Moenir, and Syafril A. Hadi from Demokrat; Salmiati from PBB: Irdinansyah Tarmizi, Saidal Masfiyuddin, and Usman Husen from Golkar; M.Asli Chaidir and Hayatul Fikri from PAN; Guspardi Gasand Abdul Kadir from PPP: Erwina Sikumbang from PDIP (Adnan 2006:244).

Finally, the title of the draft that was proposed on 11 September 2006 was '*Pendidikan al-Quran*' (Quranic education). No more than half a year later, on 15 February 2007, the parliament and the governor agreed to approve the draft as Provincial law No. 3 of 2007 on Quranic education. This title differs from that of the regional law on this issue, which uses the words 'obligation to have the ability to recite the Quran'.

This provincial law is fuelled by the spirit of returning to *nagari* and *surau* and also refers to national law No. 20 of 2003 on the national education system. The main purpose of this provincial law is to introduce Quranic education as a new subject in both private and state schools. Its objectives further aim to improve the personal development of students and to encourage them to become pious, skilled in the recitation of the Quran, and to help them understand and implement Quranic values. To achieve this, Quranic education is defined as a systematic attempt to improve the ability of students in terms of reading, writing and understanding the Quran. Section 4 elucidates that this provincial law only applies to Muslims, but to Muslims at all stages of education. In addition, this law also states that Quranic education must be applied at both formal and informal educational institutions.[60] With regard to formal education, recitation must be taught for two hours every week. Further, section 14 elucidates that this skill should also be learned by a prospective bride and groom.

This law also determines a standard competency that is to be achieved. These competencies are regulated under section 13:

a. Competency for primary school students, meaning to have the ability to recite the Quran, to write Quranic words, to understand certain verses of the Quran, to understand basic *tajwid*

[60]The classification of educational institutions is referred to in Law No. 20/2003 on the educational system.

[rules of pronunciation, duration and dividing Quranic texts] and to memorize ten verses of *juzʾ ʿamma* [the last thirty chapters of the Quran].

b. Competency for the junior high school students means to have the ability to recite the Quran, to write Quranic words, to understand certain verses of the Quran, to understand *tajwid* and Quranic arts, to memorizing fifteen verses of the *juzʾ ʿamma* and other verses of the Quran.

c. Competency for senior high school students means to have the ability to recite the Quran, to write Quranic words, to understand certain verses of the Quran, to understand *tajwid* and Quranic arts, to memorize twenty verses of *juzʾ ʿamma* and other verses of the Quran.[61]

In addition, students should have a certificate to prove that he/she has accomplished the desired level of competency and has the ability to recite the Quran. The certificate may be officially issued by one of the above mentioned three education systems. In order to implement the provincial law, the provincial as well as regional government has the obligation to provide teachers, financial support and other facilities for this education.

Other important elements of this law deals with punishment and this is regulated in section 18. This sections also states that any student who does not meet the requirements of standard competency regulated under section 13, cannot be allowed to continue on to the next level of education. However, there is an exception to this rule and that is if the parent provides a written guarantee to the school that their child will meet the necessary standards within a short period of time. If this is

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[61] Students in primary school should memorize the following chapters: of al-Nās, al-Falaq, al-Ikhlāṣ, al-Massad, al-Naṣr, al-Kāfirūn, al-Kawthar, al-Māʿūn, Quraysh, and al-Fīl. Students in junior high school should memorize five more chapters: al-Humaza, al-ʿAṣr, al-Takāthur, al-Qāriʿa, and al-ʿĀdiyāt. Students in senior high school are required to memorize five other chapters: al-Zalzala, al-Bayyina, al-Qadr, al-ʿAlaq, and al-Tīn.

forthcoming, the school is permitted to accept an unqualified student to continue in his/her studies. At the same time, a prospective bride and groom who do not fulfill the requirements for reciting the Quran must delay their marriage for a certain period of time. Further, section 18 also states that the punishment for an official who issues a fake certificate for Quranic education is a maximum of three months in jail and/or a fine of a maximum of 30 million rupiah. Lastly, this provincial law obliged the government to begin implementing Quranic education in the academic year of 2008.

On 20 August 2009, the parliament and governor issued provincial law No. 2 of 2009 on the implementation of education. This provincial law mentions that the education system in West Sumatra must adopt the values held by the Minangkabau community, i.e. *adat is based on Sharia and Sharia is based on the Quran*. To implement this notion, section 14 (3) determines that Quranic education and BAM (*Budaya Alam Minangkabau*/Minangkabau culture) will be taught in primary schools through to senior high schools. In the following year, the governor issued the governor decree No. 71 of 2010 with the requirement to implement provincial law No. 2 of 2009. The provincial government has prepared a handbook for students in the first six classes of primary schools. However, the implementation of Quranic education in schools in some regions in West Sumatra is not based on this provincial law, rather it is based on the regional law that has been issued by the regional government before the provincial authorities became involved in this issue.

4.6.2 Regional law

As soon as the government returned to *nagari* as the lowest structure in 2001, the regional government became involved in a number of social issues related to the identity of local people. Most people recognized that one of the social problems to be dealt with

was the lack of ability in the community to recite the Quran, something which is widely perceived as important to the communal identity of the Minangkabau people. There were two solutions for this problem, firstly, to introduce Quranic recitation into the curriculum in schools and secondly, to require prospective brides and grooms to have the ability to recite the Quran. A legal basis was necessary for such steps and consequently, almost all regional governments planned to issue a regional law in this regard. This section of the chapter presents five of these regional laws, selected because they were the first regions to issue such legislation. They are the regions of Solok in 2001, Sawahlunto/Sijunjung, Limapuluh Kota and the Municipality of Padang in 2003, the region of Pesisir Selatan in 2004 and the region of Agam in 2005.

The title of these regional laws indicates the obligation for various groups of people to have the ability to recite the Quran. Students and prospective brides and grooms are included in the regional laws of Solok, Limapuluhkota, Pesisir Selatan and Sawahlunto/Sijunjung. Meanwhile, the regional law of Sawahlunto/Sijunjung extends the obligation to civil servants as well. The regional law of Agam elucidates that all people are required to obtain this skill, not just students and prospective brides and grooms. The municipal law of Padang only requires students in primary schools to be taught recitation of the Quran. The regional laws of Solok, Sawahlunto/Sijunjung, Limapuluh Kota, Padang, and Agam focus on rules regarding the obligation to learn to recite and write the Quran, while the regional law of Pesisir Selatan adds the obligation to perform prayers. Despite these differences, these regional governments have three interconnected reasons for legislating on this issue: the central position that the Quran holds for Muslims in performing ritual, the position of Islam and *adat* in the community, and the important role of educational institutions.

The main purpose of these regional laws is to maintain the identity of Muslims and Minangkabau people. This can be achieved by ensuring that people have the ability to recite and write texts from the Quran. This skill will enhance knowledge that can subsequently be applied to their lives. For this purpose, Quranic education must be added to the curriculum of all schools, from primary to senior high school. The regional law further determines that the standards of competency required for this subject vary depending on the level of education: For primary school, students are expected to have the ability to recite and write Quranic texts and to know the basics of *tajwid* (the rules for pronunciation, duration and dividing Quranic texts). Students of junior high schools are expected to reach an intermediate level of ability in reciting and writing Quranic texts and to know *tajwid*. Finally, senior high school pupils must attain an advanced level in terms of reciting and writing Quranic texts and knowing *tajwid*, but in addition they are also expected to have a basic ability in performing Quranic arts. Besides these competencies, they must also have the skills to perform prayers and memorize some verses of the Quran. In addition, the regional law of Agam elucidates that Quranic education also applies to kindergartens and to higher education institutions. The regional law of Pesisir Selatan obligates students to perform regular prayers. And the regional law of Sawahlunto/Sijunjung obligates civil servants to have the ability to recite the Quran.

Any student who has fulfilled the standard competencies will be awarded a certificate. Obtaining this certificate is a requirement for applying to the next level of education and they will also have to undergo an oral examination to test their skills. All the regional laws determine that applicants who meet the necessary requirements will be accepted for the level of study it applied to. However, if their parents can provide a guarantee that the applicant will reach the standard of ability within a short

period of time, the school may also accept an unqualified applicant.

In respect of the issue of prospective brides and grooms having the ability to recite the Quran, the regional laws vary in terms of punishment. The regional laws of Solok, Limapuluh Kota, and Pesisir Selatan regulate that a marriage can only be undertaken if the couple can prove that they have the necessary skill. However, the regional law of Sawahlunto/Sijunjung regulates that the marriage may go ahead if both of them give a guarantee that they will learn to recite the Quran. They will not be given a marriage certificate, validating their union, until they have proved themselves in this matter. The regional law of Agam is more sympathetic and regulates that a marriage may be undertaken in all cases and it only recommends that recitation of the Quran be learned after the marriage has taken place. It should be noted here that this requirement violates what has been regulated in the Marriage Law of 1/1974 and the KHI.

There are also penalties for anyone issuing a fake certificate for the accomplishment of Quranic education. In this regard, the regional laws of Solok, Limapuluh Kota, and Padang regulate that the offender will be punished with a maximum six months in jail and/or fined with a maximum of 5 million rupiah. The regional law of Pesisir Selatan regulates a slightly different punishment, i.e. if the offender is a civil servant the punishment will be determined under the government regulation 30/1980 on the discipline of civil servants. By contrast, the regional law of Sawahlunto/Sijunjung makes no mention of any penalty for this issue. In addition, the regional law of Agam does not prescribe a penalty for people who do not have the ability to recite the Quran. Instead, section 4 only suggests that people gain the ability to recite the Quran.

In sum, a number of local governments now obligate people to gain the skills to recite the Quran, although not all regional laws prescribe penalties for those who do not fulfill this requirement. The different approaches to this issue depend on the significance

of this issue in each region. However, an important consequence of this development is that regional governments have to provide facilities for the implementation of this regional law. These facilities include teachers, allocated time for the subject, and textbooks and manuals for this subject. This is, of course, a very costly policy for local governments. Besides the financial implications, this situation has also resulted in the government reducing the role of *surau* or mosques or other private places as the centers of Quranic learning. This contradicts with the idea of returning to *nagari* and *surau*. This matter will be discussed further in the following section.

4.7 Practices of Quranic recitation

The municipal law of Padang No. 06 of 2003, issued in December 2003, is the legal basis for the government to obligate students to meet a required level of competency in terms of reciting the Quran. To implement this municipal law the mayor issued the instruction No. 451.422/Binsos-iii/2005 on 5 March 2005. The municipal government has introduced recitation of the Quran into selected primary schools since 1998. However, the municipal government has been involved with this issue since 1998 when it implemented the *SD Plus program* in a handful of primary schools. Before examining the implementation of the municipal law, this section will discuss the *SD plus* program, followed by a discussion about people's response to the implementation of Quranic education, and then it will discuss the impact of this program on the learning centers voluntarily managed by the Muslim community.

4.7.1 *SD Plus*

The municipal government initially introduced Quranic recitation, namely the *SD Plus* program, in a select number of primary schools in 1998. This program was specifically designed for students in the

fifth and sixth years of primary school who have not yet achieved the ability to recite the Quran in a proper way. The students are required to attend three sessions of one and a half hours every week. This program was put in place for one academic year, thus, there are a total of 84 sessions a year. Although the program is taught in schools, the sessions have no impact on the existing resources available for formal education. Rather, the municipality provides financial support and facilities for this special program. It is the responsibility of Gazali, a member of the teaching staff at STIQ (High Education for Quranic Arts and knowledge), the originator of the program. He was given a number of tasks following his initial proposal to the municipal government in 1998, including designing the curriculum, recruiting and training the teachers and evaluating the program. This program was first implemented in the academic year of 1998 and ended in 2005.

Gazali once commented on the historical background of the program:

> Quranic education is non-formal education that is commonly held in Quranic learning centers such as MPA/MDA [*Madrasah Pendidikan Alquran/Madrasah Diniyah Awaliyah*] located in mosques elsewhere in this city. Its curriculum has been standardized and is very good. However, most of the teachers do not have the necessary ability to implement the curriculum. Consequently, the students who have finished the Quranic education in those institutions do not meet a standard competency in reciting the Quran according to the curriculum. This situation is shown in the results of a survey conducted in 1998, which indicates that 70 per cent of the students do not have the ability to recite the Quran in a proper way. Then, I discussed this finding with Zaitul Ikhlas, a member of E commission of DRPD from *Golkar,* and I proposed an *SD Plus* program to overcome the problem among students (*Interview* with Gazali, 16/10/2006).

Gazali's personal relationship with the members of parliament is an entry point for developing the idea of a *SD plus* program. This subject immediately became the concern of parliament and Gazali was asked to design the *SD Plus* program. In short, the municipality agreed to implement it in selected primary schools. For this purpose, Gazali prepared a method of learning the Quran that he named the *tartīl* method. This method applies an integrated approach to seven aspects of learning the Quran: reciting, writing, dictating, reciting the Quran in *murattal* (a proper way), reciting with a rhythm of *murattal*, applying *ʿilmu tajwid*, and proper manners for reciting the Quran.

The number of primary schools where this program is applied increased every year. Between July 1998 and June 1999 this program was only applied in two primary schools, primary school No. 25 in Kuranji and No. 33 in Rawang. In the following years the number of SD programs gradually increased to reach four primary schools in 1999/2000, eleven in 2000/2001, 75 in 2001/2002, eventually reaching 250 primary schools in 2002/2003. Since 2003/2004 the number of primary schools teaching the SD program has been decreasing, first to 150, then to 75 in 2004/2005 and the program ended in the 2005/2006 academic year with only 50 primary schools teaching SD. The peak of the program occurred in 2003/2004 when the municipality provided 2 billion rupiah to support the program. The SD program gained public attention and a number of private primary schools also adopted the system. For instance, the primary school in Pratiwi has been teaching the SD program since 1999 (*Haluan*, 29/8/2003).

This issue finally became the concern of the municipal government. Besides funding the *SD Plus* program in primary schools belonging to the government, the municipality also became involved in how this subject could be taught at the Quranic learning centers organized by the Muslim community. In 1999 the municipality provided two million rupiah for each learning center in this regard, and in subsequent years the municipality provided a

financial incentive for 483 teachers teaching at 90 Quranic learning centers. In 2003, the municipal government tabled a draft municipal law regarding Quranic education in primary schools in parliament. Within a short time the draft was approved as municipal law No.6 of 2003 in December 2003. Local politics changed in 2004 when a new figure was elected by the parliament to the post of mayor of Padang. The new mayor subsequently implemented municipal law No.6 of 2006 in the academic year of 2005. This saw the end of the *SD Plus* program in this year.

4.7.2 Quranic recitation

When the newly elected the mayor took up his post in 2004, he became involved in the issue of religious education in schools. According to him, the religious education that has been introduced at all levels of education was not sufficient for the students. Thus, he decided it should be enriched by adding other religious subjects and activities (*Interview*, with the mayor, 20/07/2010). In 2004, the mayor decided to hold religious activities for Muslim students during the fasting month and to introduce a new subject, namely BTA (*Baca-tulis al-Quran*/reciting and writing the Quran) in primary schools starting in 2008.

On 7 March 2005, the mayor issued an instruction obligating Muslim students to attend religious activities held in mosques in their neighborhood. This includes religious gatherings for adolescents (*wirid remaja*) and early morning education (*didikan subuh)*. The former is designed for students of junior and senior high schools and is held at the mosque every first and third Thursday of the month at 7.30pm. School teachers are encouraged not to give students homework on the nights of these Thursday classes. The early morning sessions are designed for students of primary schools and involve attending the mosque in their neighborhood starting at 5.30am every Sunday. These two activities are supervised by school teachers living in the neighborhood. The curriculum for these activities is provided by

educational institutions belonging to the municipality and the religious Ministry. Besides these extracurricular activities, the students are also obliged to attend other annual activities, namely, *Pesantren Ramadan* (Ramadan School) where the municipality decides to switch teaching sessions from the school to the mosque. At the *Pesantren Ramadan* the students will receive a number of courses including theology, Islamic jurisprudence, reciting the Quran, and other subjects indirectly connected to religious teachings, including learning about drug abuse and other psychotropic substances. In addition, since 2008 the municipal government has also obligated non-Muslim students to attend religious activities organized by their church or temple. The municipality provides equal financial support for religious activities organized for both Muslim and non-Muslim students.[62]

According to the mayor, the objective of these religious activities is the implementation of a return to the *surau* as the center of religious activities. For Muslims, *surau* is the mosque and for non-Muslims it is the church or temple. Furthermore, this idea is also linked to the mayor's own personal experiences and opinions. He once said:

> First, I was inspired by the religious tradition among Buddhist people when I was visiting Cambodia. Most of the youth there spend a number of months in religious places learning religious teachings, aimed at maintaining a religious foundation for their life. We had a similar experience when the younger generation spent their childhood in *surau*. So, when I was appointed as the mayor of Padang in 2004, I introduced some religious activities based in mosques as well as in schools. For instance, I introduced Pesantren Ramadan in 2004 and this was followed by other

[62]The municipality provides financial support of 15,000 rupiah per student and school teachers who organize activities receive an incentive of 25,000 rupiah per day.

> religious activities. I expect these activities will establish religious foundations for the younger generation and that we will see the results in the next 20 years. Second, referring to my personal education in sport, regularly performing *ṣalat* (prayers) in proper ways will be good in terms of shaping students' posture and to prevent them from developing hunched backs (*Interview* with the mayor, 20/07/2010).

Aside from these two reasons, the mayor also justifies this policy by saying that teaching the students *pelajaran agama* (religious subject) for only two hours per week is inadequate.[63] Thus, the students are obligated to attend a number of religious activities and the BTA (*Baca Tulis al-Quran*) was introduced for students in primary school. He further argued that the participation of the community is required to support these mosque-based programs. Thus, these mosque-based programs are seen as the responsibility of the government and Muslim communities.

BTA is applied in primary schools as the implementation of the municipal law 6/2003.[64] For this purpose, the municipality

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[63]The total hours for studying religion at school amounts to only 80 hours per year. This number is accumulated from 2 hours per week for the 40 weeks of study in a year. Meanwhile, the total hours of studying Islam within *wirid remaja,* and *Pesantren Ramadhan* for the students of SMP and SMA is approximately 250 hours per year. For *BTA, Didikan Subuh*, and *Pesantren Ramadan* students of SD the number amounts to 370 hours per year.

[64] In order to examine the practices of BTA in primary schools, data is gathered from two schools: the primary schools located in Kampung Baru nan XX and primary school No.30 located in Cengkeh Nan XX of sub-district of Lubuk Begalung. The total number of primary schools in this sub-district are 38, located in 15 *kelurahan*, with the total number of students reaching 9,616 in 2006; 8,989 in 2007 and 9,720 in 2008. The total number of students in the primary school of Kampung Baru nan XX reached 506 in 2008, and for SD 30 in Cengkeh nan XX it was 825. www.padang.go.id/v2/content/view/291/226/ , accessed on 10 August 2011. The main reason for selecting these two primary schools is that primary school No.30 is one of the best schools in the municipality, while SD is considered of average quality.

provides the teachers and curriculum as well other facilities. BTA is taught to students in each year for two hours per week. The handbook for the students has only been available since the 2009/2010 academic year. As can be seen in the handbook, the standard competency for this subject is described as: 1) the first year students must have the ability to pronounce and write single Arabic letters from *alif* to *ya,* and understand a few basic manners in terms of reciting the Quran; 2) second year students must have the ability to pronounce and write combined Arabic letters; 3) the third year students must have the ability to pronounce and write Quranic words. The students are required to have the ability to recite the Quran and memorize one chapter of the Quran, i.e. *al-Nās*; 4) In the fourth year, students should have the ability to recite in a proper way, to write, memorize, and translate chapters of the Quran: *al-Nās* (114), *al-Fīl* (105), *al-Baqara* (2):155-158, and *al-Humaza* (104); 5) Fifth year students should have the ability to pronounce long vowels and to recite, write, memorize and translate chapters of the Quran: *al-Takāthur* (102), *al-Qāriʿa* (101), *al-ʿĀdiyāt* (100), *al-Zalzala* (99); 6) Students in the sixth year are expected to be able to recite, write, memorize and translate the chapters of the Quran: *al-Tīn* (95), *al-Sharḥ* (94), *al-Ḍuḥā* (93), *Āli ʿImrān* (3):133-135 and 159 (concerning *akhlāq*), *al-Nisāʾ* (4):142-145 (concerning *akhlāq al-mazmūma*). This competency is extended from the standard competency regulated under the municipal law.

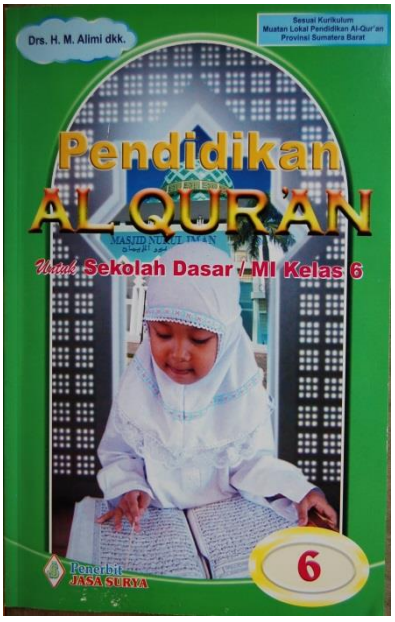

Figure 4.2: The cover of a handbook for students in the sixth year of primary school. It shows a five-year old child reciting the Quran.

The attitude of students toward this subject may be classified in two main categories. The first group of students perceives this subject as easy to follow and have little difficulty with it. They mention that they have learned each topic at the mosque or Quranic learning center in their neighborhood or in their home with a private tutor. A sixth-year student at primary school No. 30 said, 'I always gain more than 9 every semester in this subject, because it is very easy. I learned it when I was five years old. This subject is boring and useless. I think there is no need to learn this subject at schools, this is *mubazir* (useless)' (*Conversation* with a student of primary school No.30, 10/06/2010). A similar impression was expressed by another student: 'I have been able to recite the Quran since I was five years old and able to memorize some verses from *juz amma.* When I was studying BTA at school, it was very easy' (*Conversation* with a student at primary school No. 30, 05/06/2010). Most of the students at the primary schools belonged

to this category. The second category relates to a small number of students who do not have any difficulty in following the subject, but they have problems memorizing selected verses of the Quran and the words for performing prayers. The students in this category have not yet learned to recite the Quran, or, if they did, they lacked the serious attention necessary. One student said: 'I like this subject and it's useful for me because I never learned to recite the Quran in the mosque' (*Conversation* with a student at primary school No.25, 05/05/2010). In addition, many of the students belonging to this category receive little input from their parents regarding religious activities at home.

Thus, most of the students lacked enthusiasm for this subject. According to a number of teachers of this subject, BTA can only benefit students who have never learned to recite the Quran at Quranic learning centers. 'For the students who have been learning to recite the Quran at MDA or TPA, this subject is *mubazir.* But, I am only doing my job' (*Interview,* with a teacher at primary school No.30, 15/05/2010).

It seems that the municipal authorities realized that the atmosphere in which BTA was being taught needed stimulation. For this purpose, the municipality held an annual competition for memorizing verses of the *juz amma* for primary school students.[65] The competition consists of two rounds. The first round is held at the sub-district *(kecamatan)* level and each primary school sets up a group consisting of fifteen to twenty students. This round is aimed to determine who the best five groups are. The second round is held at the municipal level and the best five groups from eleven sub-districts compete to find the best five once again. However, the students selected for the competition are not those students who gained the skills to memorize the Quran at primary school;

[65]For the best five groups in the first round, the students must be able memorize 12 verses of *juz amma*, i.e *al-nās* (114) to *al-ḍuhā* (93) and in addition the verse *al-ṭāriq* (86).

rather, they learned at the Quranic learning centers in their neighborhood.

Clearly, the implementation of BTA in primary schools has been a costly policy. Not only because the municipality has to provide teaching staffs for 354 primary schools in Padang, but also in terms of providing facilities and other supporting material for these classes. The facts show that this subject is largely a repetition of what the majority of students have already been learning at the Quranic learning centers. Moreover, most of the students have met the standard of competency before they begin BTA at school, because the standard of competency applied at the Quranic learning centers are much higher than those of the primary schools.

Since 2000, the municipality has attempted to standardize the competency of students who have been undertaking Quranic education at the Quranic learning centers by conducting a test. This test is held every May and is conducted in the Quranic learning centers. The test consists of two parts: a written and a spoken test. The written test aims to evaluate six subjects regarding theology, Islamic jurisprudence, *ilm tajwid*, history of the Prophet Muḥammad, *doʿā*, and memorizing some verses. The spoken test aims to evaluate the students' ability to recite the Quran, words of prayer, *doʿā* and to write Quranic texts. Students who have passed the test obtain a certificate issued by the municipal authority. This certificate will be used as a requirement for the students applying for the next level of their education.

Applying BTA in primary education has been a costly policy, because the government provides funds, teachers, and other facilities. Meanwhile, most students continue to study at the Quranic learning centers. This situation could be explained by local authorities aiming to increase their political reputation.

4.7.3 Response

Since the municipal government has become involved with the issue of the obligation for students to have the ability to recite the Quran, people have raised their response to this subject. These responses can be classified into two categories: supportive responses and opposing responses. Those people who opposed the idea voiced two main arguments. Firstly, the government should not issue any regulation that only applied to Muslims. Doing so was viewed as contravening the principle that everybody is equal before the law (Ali Fauzi & Saiful 2009:35). This opinion was commonly raised by NGO activists.

Secondly, some argued that issuing and implementing a municipal law concerning this matter was not the best solution for the problem of the degradation of Minangkabau identity and the role of *surau* or mosques as Quranic learning centers:

> The deterioration of Minangkabau identity cannot be solved by a legal approach such as issuing a municipal law to obligate students to have the ability to recite the Quran. This problem must be solved by a cultural approach, such as facilitating society to solve its own problems, improving the facilities of Quranic learning centers managed by the community, or improving the capacity of the teachers by offering them capacity building training (*Conversation*, with a lecture of IAIN, 05/05/2010).

In addition, they suggested that rather than adding Quranic education to the primary school curriculum, it was best for the government to play a part in improving the quality of the learning process in the Quranic learning centers managed by the community (*Conversation*, with a lecture of IAIN, 03/05/2010).

In contrast, those supporters of the government's plan were many. This support was revealed in a survey conducted by the Freedom Institute[66], centered in Jakarta, in 2007 and 2008. It shows that 92.3% (2007) and 76.9% (2008) of the respondents agreed with a regional law that obligates Muslims to have the ability to recite the Quran, and a further 92.3% of the respondents in 2007 and 2008 said that this regulation was not discriminatory to non-Muslims (Ali-Fauzi & Saiful 2009:47). Further, this support lies in an argument that the government has the obligation to provide Quranic education in primary schools as part of its attempts to implement Islamic teachings, as guaranteed by the constitution of 1945 (*Conversation,* with a civil servant, 05/04/2010). Another supporter argued that 'It is good that the government is now concerned with this issue, but I do not agree that Quranic education, a new subject, should be introduced in the schools. It is better for the government to support the Quranic learning centers as places to continue learning the Quran' (*Conversation*, with a local ulama, 25/08/2010).

These responses show that the majority of people supported the involvement of the government in this issue. In contrast, it also suggests that only a small number of people believed that the government should not become dominant in connection with social problems and that solutions should be found without the involvement of the authorities.

4.7.4 Impact

The introduction of Quranic education in primary schools demonstrates that the ability to recite the Quran has become an obligation. Previously, it has been a voluntarily initiative of the people. There is little doubt that this decision is a political matter and one initially aimed at progressing the political interests of the

[66]This survey was also conducted in the municipality of Padang.

decision maker, in this case the mayor. He has certainly gained a good political reputation and won the election for a second term as mayor of the municipality in 2008. It has also been successful in terms of increasing the ability of students to recite the Quran. The evidence can be seen, for example, in the fact that all applicants to junior high school No.11 during the selection process for the academic year 2010/2011 possessed the ability to recite the Quran. This situation is different from previous years when there were a number of applicants who lacked the necessary recitation skills. The principal of primary school No. 30 also claimed that all his students from the third to the sixth class now have the ability to recite the Quran. She acknowledged that there were a few students who were not able to recite the Quran when BTA and other religious activities were first introduced in 2005 (*Conversation* with the principal of the primary school no. 30 30/07/2010).

A similar impact may also be seen in those students attending ritual activities at the mosque in their neighborhood. For example, it is common for an *imām* of prayer to be criticized by his *makmum* (follower) students if he does not pronounce the words of the Quran correctly, or if he repeatedly recites the same short verse of the Quran as the *imām* of prayer. Indeed, students are now very outspoken and often gossip about a preacher conducting the Friday sermon if he mispronounces or mistranslates verses of the Quran. One preacher expressed his appreciation for the improvement the students have made in terms of both reciting and memorizing verses of the Quran. He said: 'The program of the government to improve the ability of students to recite the Quran has shown its results. For example, the students may openly criticize the *imām* if he mispronounces a verse of the Quran. I now have to recheck the Quran to see whether or not my recitation is still accurate' (*Conversation* with a *daʿī*, 10/09/2010). A similar notion was also expressed by an adult Muslim who regularly performs his prayers at the mosque in his neighborhood. He said that an *imām* of prayer must now be aware of his own ability in

relation to pronouncing the words of the Quran; otherwise he will be a target of criticism from the students (*conversation* with an adult Muslim, 06/10/2009).

The obligation to have the ability to recite the Quran has also raised concern among Muslim activists regarding the fact that it has gradually reduced the interest of students to learn the Quran in the Quranic learning centers managed by the Muslim community. This waning interest is influencing the function of these institutions. This concern was voiced by the head of the Quranic learning centers forum in 2003. According to him, since the involvement of the government in this area, and particularly since the implementation of *SD plus*, the number of students who are studying at Quranic learning centers (TPA/MDA) has decreased (*Haluan,* 22/10/2003). Similar concerns have been voiced by other local ulama and scholars. This development indicates that the government‘s dominance and power in issues of public life is gradually increasing. Nevertheless, there is no significant form of resistance from the public to this dominance. Perhaps this lack of resistance is the result of the public's lack of power to resist the increasing authority of, for instance, local ulama, adat leaders, and other public leaders.

However, introducing Quranic education in primary schools is not the only factor that has caused a decrease in the interest of students to learn the Quran in Quranic learning centers. Other factors include a lack of teaching facilities and the teaching method applied. A mother who works as a teacher at a university said: 'I do not want to send my two children to the TPA/MDA to learn the Quran. My children would be sitting on the floor during their studies. This is not good for their health' (*Conversation*, with a female civil servant, 20/07/2010). Similar reasons were voiced by another mother that decided to invite a teacher to come to their house to teach her children to recite the Quran. She argued that 'the learning method that is used by the teachers at the TPA/MDA at the mosques here is very old fashioned and the teachers use a

stick during their learning processes' (*Conversation,* with a mother of two children, 05/08/2010).

These complaints appear to confirm the situation at the majority of the learning centers. Most of them are located in mosque buildings and *surau* or *muṣalla* (private mosque). In Padang, the total number of mosques reaches almost six hundred and with the *surau* or *muṣalla* this reaches almost seven hundred and fifty (BPS 2010:157). Only a few of these buildings provide special rooms for teaching the Quran and, thus, pupils generally sit on the floor during the learning process. Furthermore, only a few of the teachers in these learning centers are professionals and most of them are working there to supplement their income. For example, a number of students from IAIN are working as teachers in these learning centers.

4.8 Conclusions

This chapter shows that the contents of a number of local laws concerning the obligation to have the ability to recite the Quran differ from region to region. Most of them obligate students to be able to recite the Quran, but they differ in terms of whether it is also obligatory for civil servants or prospective brides and grooms. The municipal law of Padang only obliges students of primary schools in this regard. To achieve this, the authority applies BTA in primary schools and obligates students of primary and senior high schools to attend religious activities held in mosques in their neighborhood. Despite the fact that the practices have been showing signs of success and most of the students are now able to recite the Quran, this policy has created competition between the schools managed by the government and the Quranic learning centers managed by the Muslim community.

Current developments indicate that introducing Quranic recitation in primary schools has gradually weakened the function of Quranic learning centers managed by the Muslim community.

This situation became more intense once the central government implemented Quranic education regulated under the government regulation 55/2007 and the ministerial decree of the Ministry of Religious Affairs 16/2010, which elucidate that religious subjects, including Quranic education, were exclusively the authority of the government. Implementation of this scheme appears to be successful in terms of maintaining the identity of the Minangkabau people, as both Muslims and *adat* adherents, who have the ability to recite the Quran and to perform Islamic rituals. However, the role of the Quranic learning centers managed by the Muslim community is gradually being diminished. Consequently, since the start of the twentieth century, the function of the mosque, *surau* and *muṣalla* has transformed into places solely for ritual activities. However, further development will depend on the Muslim response to the growing domination of the government in public life. Thus, further empirical study on the issue of how Muslims respond to the increasing dominance of the government in public life is required.

CHAPTER 5
ZAKĀT IN TRANSITION:
THE INVOLVEMENT OF GOVERNMENT

5.1 Introduction

The involvement of the government of Indonesia in *zakāt* matters has gradually increased over the last decade. This shift occurred after central government passed law 38/1999 on *zakāt* management on 23 September 1999. The government revised this legislation with law 23/2011 on 25 November 2011. These laws have contributed to the growth of a number of *zakāt* institutions managed by regional governments, generally known as semi-government *zakāt* institutions (*Badan Amil Zakāt Daerah*/BAZDA). These institutions have appeared since the implementation of decentralization and local autonomy in 2000. Regional governments have attempted to justify their involvement by legislating on *zakāt* in provincial or regional/municipal law. Consequently, central government has not passed any rules to implement law 38/1999. A number of Muslim scholars see this development as a sign of the increasing achievements of Indonesian Muslims in terms of legislating Sharia in state law. Others, by contrast, see it as state interference in the practice of religious beliefs.

In a broader account, the contemporary development of Muslim society shows that charitable practices, including matters of *zakāt*, have shaped various institutions and structures in Muslim society. This developing situation cannot be removed from the political, social, and economic context as all of these elements are

involved in the growth of *zakāt* institutions. There are a number of motives at play behind this practice, including a desire to relieve suffering or to end need, a desire for personal salvation, the struggle for political power or social standing, the wish to honor, a hope for beneficial gain and advantages, as well as a desire to assert social control (Bonner 2003:2).

This chapter presents the issues concerning government involvement in *zakāt* matters. I attempt to answer two main questions in this chapter: to what extent has the government codified rules on *zakāt* in national and local law? And, what are the actual practices of local government in terms of managing BAZDA. This chapter presents the following topics: 1) *zakāt* rules and a new interpretation of *zakāt*; 2) roles of *zakāt* institutions in the Muslim world; 3) changes and regulations relating to *zakāt* made by the government of Indonesia; 4) provincial and regional/municipal laws on *zakāt*; 5) actual practices of local government for managing BAZDA conducted by the municipal government of Padang; 6) resistance; and 7) conclusions.

5.2 Rules on *zakāt* and a new interpretation

This section presents the rules on *zakāt*, which consist of two interconnected subtopics. The first deals with the rules on *zakāt* as mentioned in the Quran, ḥadīth and by Muslim scholars. The second concerns new interpretations by a number of Indonesian scholars who have attempted to offer a set of new rules aimed at contextualizing *zakāt* matters in accordance with the current Indonesian situation. The distinction between these two approaches is that the first set of rules emphasizes *zakāt* as a religious obligation, while the second entwines this subject with economic factors.

5.2.1 Rules on *zakāt*

The payment of *zakāt* is at the very heart of Islamic teachings. Indeed, it is one of the five pillars of Islam. It widely defines one's status as a Muslim, along with the confession of faith, obligatory prayers, fasting during Ramadan and the pilgrimage to Mecca for those who can afford the trip. The word *zakāt* is derived from the verb *zakā*, which means, among other things, 'to thrive; to grow, increase; to be pure at heart, be just, righteous, good; to be fit, suitable' (Wehr 1979:441). Based on these meanings, *zakāt* is commonly seen as function of increasing, i.e. blessing, the property from which it is taken and purifying from sin those who give it or their property. The word is also linked to another word, *ṣadāqa,* which is commonly used for voluntarily giving alms. Both words are used interchangeably in the Quran. Although *zakāt* and *ṣadāqa* are not distinguished from each other in the Quran, certain verses clearly imply two kinds of donations, as is mentioned in *al-Baqara/*the Cow (2):177. The word *zakāt* appears 32 times in the Quran, always in the singular, and the command to give *zakāt* is frequently joined with the command to offer prayer (*ṣalāt*).

According to Muslim tradition, failure to pay *zakāt* is a sign of hypocrisy and the prayers of those who do not pay *zakāt* will not be accepted. The purpose of *zakāt* is, as its meaning in the Quran suggests, to cleanse both the payer's wealth and himself. By relinquishing some of his wealth, the payer purifies what remains; he also limits his greed, thus soothing his conscience. This interpretation draws support from two sayings attributed to the Prophet: 'Goods on which one has paid *zakāt* cease being part of one's treasure', and 'Allah instituted *zakāt* so that you can enjoy the rest of your wealth with a clear conscience'. Even more important is that the payers give without expecting anything in return; they are solely an expression of pious generosity. This means that the act of paying *zakāt* forms its own reward. Further, modern proponents of *zakāt* have emphasized different dimensions,

including the reduction of inequality and its fairness to payers and recipients (Kuran 2003:283).

According to Muslim tradition, *zakāt* matters consist of *zakāt* for property (*zakāt al-māl*) and *zakāt* for individuals (*zakāt al-fiṭr*). The following paragraphs deal briefly with the rules of these two types of *zakāt*. It should be noted, however, that it is confined to the rules that the majority of Muslim scholars concur with.

5.2.1.1 *Zakāt* on property

The discourse dealing with *zakāt* on property covers five issues: They are the person for whom it is obligatory (*muzakkī*), the kinds of property on which it is imposed, the rates and amount at which it is levied (*niṣāb*), the periods during which it is levied (*ḥawl*) and the recipients (*mustaḥiqq*).

Muslim scholars agree that the person for whom *zakāt* is obligatory means any Muslim who is free, sane (*balīgh*) and who has complete ownership of property equal to the minimum prescribed scale (*niṣāb*). However, there is disagreement about its obligation upon orphans, the insane, slaves, the *ahl-al-dhimma* (non-Muslims), and people without sufficient ownership, i.e. someone who is in debt or when the capital of the property is held in a trust (al-Jazīriy 1990:590; Ibn Rushd 1994:225).

So there is agreement about some of the categories for which *zakāt* is obligatory and disagreement about others. They refer to the Quran reference to *zakāt al-māl* relating to two types of minerals – gold and silver – that are not molded into jewelry; three kinds of animals – camels, cows and sheep; two categories of grains – wheat or barley; and two categories of fruit – dates and raisins. There is some dispute about whether olives are also included (Ibn Rushd 1994:226).[67] In addition, *zakāt* applies almost exclusively to

[67] The Quran mentions these categories in a number of verses; *al-Baqara*:267, *al-Nisāʾ*:14, *al-Tawba*:34, *al-Dhāriyāt*:19, *al-Maʿārij*:24).

the property of private individuals. The property of a government, as well as property owned by the public treasury is not subject to *zakāt.*

Subsequently, the rules deal with the rate of *zakāt* (*niṣāb*) for each category of property in which *zakāt* is levied and the quantities for which *zakāt* is charged on those items reaching the *nisāb*. For example, the *niṣāb* of silver is five *awqiya* (ounces). This amount of silver is based on an authentic saying by the Prophet, 'there is no *ṣadāqa* in what is less than five *awqiya* (ounces) of silver'. According to Muslim scholars, an *awqiya* is equal to five *dirhams* by weight and they agree that the amount due on this is one quarter of a tenth. The rule for gold is that its *zakāt* is one-fortieth, as long as it remains in its mineral state. The rule for *zakāt* on animals is that a person who owns up to 24 camels must pay one goat for every five camels; for cows, the *zakāt* is a one-year old cow for every thirty cows; for goats the *zakāt* is one sheep for every forty goats. The rate for farm output depends on whether or not the land is irrigated. The obligation of *zakāt* for crops on rain-fed land is one-tenth (*ʿushr*) and the *zakāt* for a crop on irrigated land is a half of one-tenth, as established by the Prophet. In addition, the *niṣāb* for goods (*ʿurūd*) is derived from goods acquired for sale, and in particular it is based on goods held prior to the payment of *zakāt*. The *niṣāb* of these goods is based on commodities, as it are these that present the value of consumable things and capital as well as the *ḥawl* for goods according to those who impose *zakāt* on goods (al-Jazīriy 1990:593-5; Ibn Rushd 1994:234-45).

The beneficiaries of *zakāt* enumerated in *al-Tawba/*the Repentance (9):60 fall into eight broad and flexible categories: 1) the poor (*fuqarāʾ*); 2) indigent (*masākīn*), 3) collecting agents (*ʿāmilūn ʿalayhā);* 4) those whose hearts are won over (*al-muʾallafa qulūbuhum*); 5) slaves (*riqāb*); 6) debtors (*ghārimūn*) who lack the means to repay their debts; 7) those in the 'path of God" (*fī sabīl Allāh).* The most common interpretation of this is that these are volunteers engaged in *jihad;* and 8) travelers (*ibn al-sabīl)* who in

the course of their journey find themselves without immediate available assets to meet their expenses. However, the Quran is silent on the enforcement of the *zakāt* obligation and the disbursement of *zakāt* revenue.

5.2.1.2 *Zakāt* for individuals (*zakāt al-fiṭr*)

The discussion on *zakāt* for individuals deals with five issues. They concern the identification of whether or not it is obligatory, the person for whom it is obligatory, the amount that is due and for what kinds of commodities, the time when it is due and the people entitled to receive it.

The majority of Muslim scholars maintain that paying *zakāt al fiṭr* is an obligation for all Muslims whether they are male or female, infant, child or adult, slave or freeman. The parent pays this obligation for their infant or child and the master pays for his slave. This obligation does not require the *niṣāb* of property. However, Muslim scholars stipulate that *zakāt al fiṭr* is obligated for those who have a surplus of food for himself and for his family members. Further, one group of scholars agree that the category of food includes wheat, dates, barley or *aqiṭ* (cheese made from sour milk). Another group believes that this obligation is levied on staple foods from the land or the food of Muslims. The quantity of food is not to be less than one *ṣāʿ* (a specified measure of contents) of wheat shared by two people or a *ṣāʿ* of barley or one of dates for each person (al-Jazīriy 1990:627-30; Ibn Rushd 1994:254-5).

Zakāt al-fiṭr becomes obligatory at the end of Ramadan and Muslims are permitted to pay it from the beginning of the fasting month. Muslim scholars agree that the revenue should go purely to the poor. However, they disagree on whether the poor non-Muslims should be included as recipients. The disagreement is about whether the basis for *zakāt al-fiṭr* is poverty alone or whether it is about poverty and about being a Muslim. Those who maintain that it is about poverty as well as being Muslim do not believe non-Muslims should receive payments, while those who maintain that

it is purely about poverty alone believe it is permissible for non-Muslims to be recipients.

Lastly, most Muslims believe that it is the obligation of Muslim rulers to send out officials (*ʿāmil*) to collect *zakāt* and to assist property owners in fulfilling their *zakāt* duties. This belief is justified by the practices of the Prophet and the early caliphate. According to Islamic sources, the collection of *zakāt* revenue was already in full force during the lifetime of the Prophet and his companions. While the Muslim community was based in Mecca, the Prophet's fledgling government was not yet regulating assistance to the poor. Only with the relocation of the rapidly growing community to Medina did *zakāt* become a formal and compulsory transfer system. Muslims were required to make periodic payments to the public treasury (*bayt al-māl*) that financed the new state's activities. After the Prophet passed away, there was a challenge to *zakāt*. Some of the tribes that had joined Islam under the Prophet challenged Abu Bakr, the first caliph. One sign of this challenge was their refusal to pay *zakāt*, which they claimed was a purely personal obligation to the Prophet. Subsequently, the Prophet's companions, ʿUmar, ʿUthmān and ʿĀlī, conducted the collection of *zakāt*. During the Umayyad period, zeal for the collection of *zakāt* grew. The Ummayads, the first dynasty of Muslim caliphs invested further energy in organizing *zakāt* collection and toward the end of the Umayyad period a government office for *zakāt* (*diwān al-ṣadāqa*) was established. A similar institution existed under the successor dynasty of the Abbasid caliphs, which set up an office of good works and *zakāt* (*diwān al-birr wa al-ṣadāqa*) (*Zysow* 2002:409).

5.2.2 New interpretation of the rules on *zakāt*

A number of Indonesian Muslim scholars challenge the above mentioned classical rules on *zakāt*. Among this group are Jusuf Wibisono (1950), Hazairin (1950) T.M. Hasbi Ash-Shiddieqy (1969), Amien Rais (1987), Dawam Rahardjo (1988), Masdar F.Masudi

(1991), Permono (1992) and Hafidhuddin (2002). These scholars primarily argue that the basis for the rules on *zakāt* is a particular social and economic structure of the society that existed when the rules were formulated. In addition, this obligation mainly centers on the religious obligation of the payers (*muzakkī*) and gives less attention to whether *zakāt* revenue has actually improved the lives of recipients. Thus, they advocate comprehending *zakāt* in terms of modern realities. Their challenge to the classical interpretation of *zakāt* deals with six themes: 1) who is obliged to pay *zakāt*; 2) the kinds of wealth on which it is imposed; 3) the rates and the amount at which it is levied (*nisāb*); 4) the role of Indonesian government in *zakāt*, i.e. whether its role is *ʿāmil* (collector), whether it should be a regulator, or whether its role should be both regulator and *ʿamil* (collector); 5) who is entitled to receive *zakāt* revenue; and 6) whether *zakāt* is similar to tax. The following paragraphs present a brief summary of these themes.

The obligation to pay *zakāt* is no longer just for an individual; it is also levied on institutions that own property valued at an amount that reaches a minimum rate of *nisāb*. It is confined to Islamic institutions. Under the new interpretation, the kinds of wealth on which *zakāt* is due is extended to any property that results from business in the fields of mining, fisheries, plantations, export-import, housing, farming and salaried employment (Ash-Shiddieqy 1969:21-41; Hazairin 1971:107-8; Mas'udi 1991:137-42). The recipients of *zakāt* revenue are still limited to the eight groups of recipients regulated by the verse of *al-Tawba/*the Repentance (9):60; however, their meanings have been extended to meet modern realities. Accordingly, *zakāt* revenue may be utilized for fulfilling the needs of the community, including for financing public facilities such as hospitals, schools, paying the health costs of the poor, constructing orphanage facilities, paying the debts of the needy, to finance the government's program to eliminate poverty, to fund rehabilitation centers, empowering society, and to provide facilities for the state

army (*cf.* Ash-Shiddieqy 1969:13; Rahardjo 1988:43; Mas'ud 1991:147-162).

The standard *nisāb* of property must be based on rates that are fixed in accordance with the sense of justice of the society (Rais 1987:60-1: Mas'udi 1991:142). For example, Amien Rais, who has written on the issue of *zakāt* on income among professionals, including bankers, consultants, auditors, brokers, exporters and importers and accountants, suggests that *zakāt* should be paid at a rate ranging from five to 25 per cent of their monthly income (Rais 1987:61).

Muslims scholars dispute the role of the Indonesian government as the collector (*ʿāmil)* of *zakāt*. Some scholars believe the government's role as *ʿamil* is legally justified because it is an important task of the government to provide services for people who are the recipients of *zakāt*. For this purpose, the government may establish a *zakāt* institution such as a public treasury (*bayt al-māl*) (*cf.* Ali 1988:35; Ash-Shiddieqy 1969; Mas'udi 1991; Permono 1992). For others, *zakāt* is a matter of religion and *zakāt* revenue flows from the *zakāt* payers (*muzakkī*) directly to the recipients (*mustaḥiqq*) and there should be no interference between the two parties (Rais 1987:64). According to this opinion, the government may only be involved in *zakāt* matters as a regulator.

Another dispute has arisen over the matter of whether or not *zakāt* is the same thing as tax. In this regard, Mas'udi advocates that tax is the same as *zakāt*. According to him, those who have paid tax have no need to pay *zakāt* as well. As was the case during the Prophet's time, tax is *zakāt* for Muslims. However, it is still necessary to make a vow regarding the intention to pay *zakāt* (Mas'udi 1991:34). According to other scholars, there is a significant distinction between *zakāt* and tax, with the former being a religious obligation and the latter an obligation to the government (Rahardjo 1988:41).

Despite the fact that there are disputes between Muslim scholars about certain aspects of *zakāt*, these new rules for *zakāt*

have created the possibility for the government and NGOs to become involved in managing *zakāt* institutions. This development began in the 1980s when a number of NGOs activists and local governments established *zakāt* institutions aimed at collecting and distributing *zakāt* and other forms of Islamic charity. This development also links to the growth of Islamic finance, such as Islamic banking, insurances, mortgages, and other micro finance institutions.

5.3 Roles of *zakāt* in the Muslim world

The involvement of the government in collecting *zakāt* ceased with the advent of colonialism and the introduction of systems of government that excluded religious doctrine. Indeed, authorities in most Muslim countries largely renounced Islamic codes of law, including *zakāt* (Kuran 2008:285). However, since the second half of the twentieth century there has been renewed interest by government to become involved in this religious matter. The discussions surrounding this theme are not only religious, but have also extended into economics, a field that advocates developing a *zakāt* law appropriate for modern conditions.

Besides attempts to revive *zakāt* institutions, the government has also convened numerous conferences, and published several manuals and pamphlets instructing Muslims on how to fulfill their obligations regarding *zakāt*. In addition, various private *zakāt* organizations have been formed. This reinterpretation of the rules of *zakāt* has been challenged by the ulama, such as Rashīd Riḍā in his interpretation of the Quran and Yūsuf Qaraḍāwi in his prominent work, *fiqh al-zakāt.* Contemporary development of *zakāt* shows that *zakāt* is enforceable by law in Saudi Arabia (1951), Libya (1971), Yemen (1975), Malaysia (1980s), Pakistan (1980), and Sudan (1984).[68] However, there has also been a

[68]Collection of zakāt in Saudi Arabia is based on Royal Decree No. 17/2/28/8634, dated 29 Djumādā thāny 1370/7 April 1951. In Libya it is Law no. 89 of 1971. In

movement across the Muslim world to create new intermediaries to receive voluntary payments of *zakāt*. Among these are quasi-governmental agencies (set up by the government) in places such as Jordan (1979), Bahrain (1979), Kuwait (1982), Egypt (1977), as well as Indonesia (1999) (Zysow:418-420).

5.4 Changes and regulations in Indonesia

This section briefly provides details of the shifting attitude of the government and the regulations it has passed concerning *zakāt*, from the beginning of independence to the most current situation and law 32/2011 on *zakāt* management.

5.4.1 Changing attitude of the government

Zakāt matters have been the responsibility of the Ministry of Religious Affairs and are regulated under the government regulation no.5/SD/1946, issued on 25 March 1946, concerning the tasks of the Ministry of Religious Affairs. This regulation elucidated that religious matters previously dealt with by the Ministry of Home Affairs, the Ministry of Justice and the Ministry of Education and Culture, would now be dealt with by the Ministry of Religious Affairs. For example, the tasks of *zakāt*, *waqf* (endowment) and *ibadah sosial* (social donation), commonly abbreviated as *zawaibsos*, came under the Ministry of Home Affairs but were now transferred to the Ministry of Religious Affairs. On 8 December 1951, the Minister of Religious Affairs issued the circular letter (*Surat Edaran*) no. A/VVII/17367 aimed at encouraging Muslims to pay *zakāt*. This circular was followed up with a manual stating that *zakāt* and social donation were tasks of the Office of Religious Affairs (*Jawatan*

Malaysia the collection of zakāt is separately administered in each state by the Religious Affairs Council. Pakistan has enacted the *Zakāt and Ushr Ordinance of 1980.* Meanwhile, Sudan introduced *Qanūn al-zakāt wa-al-ḍarāʾib of 1984.*

Urusan Agama) (Ikhwan 2006:188-9). However, the Ministry of Religious Affairs finally decided not to issue any further policy to develop *zakāt* institutions, giving the reason that it wanted to avoid being accused of restoring the spirit of the Djakarta Charter, which stated that Muslims are obligated to follow Sharia. During the 1950s, any attempts to advocate Sharia being part of the government's concern could be politically perceived as a move towards an Islamic state (Zarkasyi 2010:1). Accordingly, matters of *zakāt* escaped the attention of the Old Order government.

The New Order regime did not believe that matters of *zakāt* should be the concern of the government; rather, it believed it was the individual concern of Muslims. However, Muslim leaders and bureaucrats have advocated that it be the state's concern since the beginning of the New Order government. In 1967, the Ministry of Religious Affairs prepared a draft *zakāt* law and proposed it to the parliament, also sending copies to the Ministry for Social Affairs and the Ministry of Finance in Letter No.MA/099/67, dated 14 July 1967. In response to the draft, the Minister of Finance suggested that it would be better if *zakāt* was subject to ministerial regulation rather than state law. The Ministry of Religious Affairs agreed to the suggestion. On 15 July 1968, K.H. Moh. Dahlan, as the Minister of Religious Affairs, passed the ministerial decrees No.4/1968 and 5/1968. The first decree concerns the establishment of a Muslim treasury (*bayt al-māl*) in villages and the latter deals with the establishment of a national *zakāt* committee. In addition, the Ministry of Religious Affairs also considered suggestions on this subject made at a conference in Sukabumi in 1952 (Ichwan 2006:190). In contrast, the president did not accept that this subject was the concern of the government and instructed the Minister of Religious Affairs to cancel the two ministerial decrees. In response to this rebuttal, the minister immediately passed instruction No.1/1969 to cancel the implementation of the decrees (Zarkasyi 2010:2).

Despite the failure of the Ministry of Religious Affairs, a number of ulama approached the president directly about *zakāt* matters. Before meeting with the president on 24 September 1968, eleven ulama[69] held a meeting to prepare a draft recommendation. They agreed to propose that Indonesian Muslims, particularly those living in Jakarta, establish an institution of *zakāt* to intensify the collection and distribution of *zakāt* revenue. They also suggested that the president, as a Muslim, should be a pioneer in paying *zakāt* (Fadlullah 1993:100-103).

The president took the suggestions on board and on 26 October, during the commemoration of the *isrāʾ wa-al-miʿrāj* of the Prophet, he said:

> As we know, *zakāt* is a religious obligation for those who are rich. Ninety per cent of the Indonesian population is Muslim. If ten million of them are willing to pay *zakāt*, and each of them pay Rp. 10,000, the revenue collected annually will be Rp. 2.5 billion. This amount of money could be used to construct mosques, hospitals and orphanages, to help elderly people, to provide work for the needy, social and religious facilities [...]. As the first step, I announce to all Indonesian Muslims that as a private citizen I agree to manage and collect *zakāt* revenue. Let us together as Indonesian Muslims be united and become Muslim who dedicate our activities to improve the welfare of Indonesian Muslims in particular and the entire Indonesian population in general. As a private citizen, I will devote myself to receiving *zakāt* revenue in cash or in other forms from all Muslims in this homeland. God willing, I will regularly publicize to all citizens how much money I receive and I will be responsible its usage. I really expect that this appeal will receive public attention and will receive support

[69]These ulama are Prof. Dr. Hamka, K.H Ahmad Azhari, K.H.M. Sjukri Ghazali, K.H. Muhammad Sodry, K.H. Taufigurrahman, K.H. M.Saleh su'aidi, Ustadh. M.Ali Alhamidy, Ustadh Muchtar Luthfy, K.H. A.Malik Ahmad, Abdul Kadir, R.H, and M.A. Zawawy (Fadlullah 1993:102).

> and feedback from the leaders and all Muslims (Effendi, et al. 1981:259-260).

This speech reveals that the president intended to emphasize *zakāt* matters as a private concern rather than the state's. However, four days after delivering the speech, the president passed a letter no.07/Pres/1968 instructing three officers – Major-General Alamsyah Ratu Perwiranegara, Colonel Inf. Drs. M. Azwar Hamid and Colonel Inf. Ali Afandi – to make all necessary preparations for a nationwide *zakāt* collection. Subsequently, on 28 November 1968, the president also passed another letter no.B.133/Press/11/1968 instructing institutions of the government to be involved in *zakāt* matters.

On 29 May 1969, the president announced the amount of collected revenue when he was delivering a speech at the commemoration of the birth of the Prophet (*maulud Nabi*). The collected revenue had reached more than 20 million rupiah and almost 1500 dollars, collected from more than 1100 Muslims[70] (Department 1969a:11-12). On 9 October 1969, at the commemoration of the *israʾ miʿrāj* of the Prophet, the president again announced the collected revenue, which had now reached almost 21 million in rupiah and a further 1400 dollars. More than 16 million had been distributed to the recipients in several regions, including West Irian[71] (Departement 1969b:9). Nevertheless, the president only included issue of *zakāt* in his official speeches on these two occasions. That said, the president was still concerned with this subject and tried to establish a *zakāt* institution under the Ministry of Public Welfare, not under the Ministry of Religious

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[70]Amount of revenue collected was Rp.20,448,196.30 and US$1,378.01 collected from 1,170 payers (Departement 1969a:12).

[71]Amount of revenue collected revenue was Rp.20,817,885.07 and US$1.374,01. Rp.16.200.000.00 of this revenue was distributed (Departement 1969b:9).

Affairs. For this purpose, he passed decree No.44/1969, dated 21 May 1969 on the establishment of a committee for the utilization of *zakāt*, but with the possibility of the collected revenue being transferred to the president's own account No. A.10.000 (Ichwan 2006). Furthermore, in 1970 the president established a body, the President's Socio-Religious Fund (*Dana Sosial Kerohanian Presiden*), to collect revenue for social donation and religious affairs. But, the government failed to announce the development of this fund adequately. Similar concerns emerged in 1982 when the president, together with Alamsyah Ratu Perwiranegara (the Minister of Religious Affairs from 1978-1983, d. 1998), Widjojo Nitisastro (the coordinating Minister for economy, finance and industry from 1973-1983, d. 9 March 2012) and Sudharmono (the vice president from 1988-1993, d.2006) established *Yayasan Amal bahakti Muslim Pancasila*. This foundation collected charity from Muslim civil servants and military staff. The collected revenue was mainly used to fund the establishment of new mosques throughout the archipelago.[72] By 2009, the money from this fund had built almost one thousand mosques (www.yamp.co.id, accessed in 6/04/2012).

Despite the personal involvement of the president in matters of *zakāt*, the provincial governments also felt the need to take political steps towards this issue. The governor of Jakarta, Ali Sadikin, established a semi-autonomous *zakāt* agency, *Badan Amil Zakāt* (BAZ), in December 1968. Ali Sadikin passed several provincial regulations dealing with the issue of collecting and distributing *zakāt* revenue. Since then, this institution has become a model for other provincial governments who have set up their own *zakāt* institutions: East Kalimantan (1972), West Sumatra (1973), West Java (1974), South Kalimantan (1974), South Sumatra

[72]Revenue is deducted from the monthly wage of the civil servants and military officers. Civil servants who belong to the first four categories pay Rp.50.00, Rp.100,00, Rp.500.00, and Rp.1.000,00, respectively; and for military officers, it is Rp.50.00, Rp.100,00, Rp.500.00, and Rp.2.000,00, respectively (www.yamp.co.id).

(1975), Lampung (1975), Irian Jaya (1978), North Sulawesi and South Sulawesi (1985) (Abdullah 1991:60). These provincial governments established their quasi-governmental *zakāt* agencies with difference names.

In 1991, the Ministry of Home Affairs and the Ministry of Religious Affairs passed a joint decree, No.29 and 47 of 1991, concerning the establishment of institutions of *zakāt*, *infāq* and *ṣadāqa*. Again, the president denied the notion that an institution of *zakāt* was the concern of the government. The government treats the institution of *zakāt* as a purely public organization. For this purpose, its role is as a counselor and it does not get involved in managing the institution. The government maintained this position until the fall of the New Order Regime in 1998. However, the new government took a different stance on this issue. The shift was revealed on 23 September 1999 when the president passed the codification of rules on *zakāt*: law 38/1999.

5.4.2 Regulations on *zakāt*

Although the government passed a law on *zakāt* in 1999, it does not directly mean that the institution of *zakāt* becomes a state concern. Despite having implemented law 38/1999, the parliament and government decided to revise it. The president passed the revision as law 32/2011, promulgated on 25 November 2011. The following paragraphs briefly present these two laws.

5.4.2.1 Law 38/1999

The Ministry of Religious Affairs has advocated that *zakāt* matters have been a state concern since the beginning of the New Order regime, but it received no support from the president. When the new government came to power, the Ministry of Religious Affairs prepared a draft proposal on this subject. On 4 February 1999, the Minister of Religious Affairs presented this draft to the president. On 30 April 1999, the State Secretary signaled the agreement of the

president on this issue and suggested the establishment of a committee to improve the draft. On 20 May 1999, the committee finished preparing the draft entitled Collecting, Zakāt, *Infaq* and *Sadaqa*. On 25 May 1999, the Minister of Religious Affairs proposed the draft to the president. Subsequently, the president approved a letter, No. R.31/PU/VI/1999, on 24 June 1999 to table the draft to parliament. Within three months, the parliament and president agreed to approve the draft as law. On 23 September 1999, the government promulgated the draft as law 38/1999 on *zakāt* management.

Law 38/1999 consists of ten chapters and 25 sections. The basis of this law is the 1945 constitution that guarantees the citizens the right to adhere to their religious teachings. This law further specifies that *zakāt* revenue is a latent financial source for the improvement of social welfare. This law elucidates a number of themes concerning *zakāt* matters: For example, it states that *zakāt* is obligatory for any Muslim and institution belonging to Islam that possesses property on which *zakāt* is due (Section 2). The obligation of Muslim institutions to pay *zakāt* is a new discourse in Muslim tradition. The shift of the government's position is regulated in Section 3, which states that the government has the obligation to protect, supervise and provide services to *zakāt* payers (*muzakkī*), the recipients (*mustaḥiqq*) and *ʿāmil* (collectors) of *zakāt*. This section clearly justifies the role of the government in managing the institution of *zakāt*. For this purpose, the government may establish an institution of *zakāt*, in this case the *Badan ʿĀmil Zakāt* (BAZ), in line with the governmental structure, i.e. at national, provincial, regional and sub-regional levels (Section 6). Muslim organizations are also permitted to establish a similar institution, namely *Lembaga ʿĀmil Zakāt* (LAZ), but this institution must be under the authorization of the government (Section 7). These regulations show an important shift in the government's position concerning *zakāt* matters and illustrate the government's intention to control the institutions of *zakāt*.

The kind of wealth on which *zakāt* is imposed deals with *zakāt* on property as well as *zakāt al-fiṭr.* The kinds of property include: 1) gold, silver and money; 2) businesses and companies; 3) income from crops, gardening and fisheries; 4) income from mining; 5) livestock; 6) wages; and 7) *rikāz* (buried treasures of the earth) (Section 11). Besides these properties, the institution of *zakāt* may also receive revenue from other forms of Islamic charity (Section 13). This law presents a new discourse dealing with *zakāt* in which the amount of *zakāt* is deducted from the tax of the *zakāt* payer. However, this deduction is only possible if the revenue is distributed to a *zakāt* institution managed by the government or a private institution (LAZ) that has been authorized by the government (Section 14 (3)). This law does not specify the person entitled to receive the revenue, but does mention that, 'the revenue is distributed to the recipients in accordance with Islamic rules' (Section 16). Those who do not pay the *zakāt* are not penalized; rather, it is the *ʿāmil* who can be punished for not managing *zakāt* revenue in a proper way. The penalty for such a breach is a maximum of three months in jail or a fine of a maximum of three million rupiah (Section 21).

The contents of law 38/1999 regulate a number of new rules on *zakāt*. This change is in line with the innovative rules advocated by Indonesian Muslim scholars. It is important to note that this law reveals that the intention of the government is to monopolize and control the institution of *zakāt*. Nevertheless, this law shows that the obligation of paying *zakāt* is not in the form of an imperative. Paying *zakāt* is still voluntary. It only elucidates that there is a penalty for those *ʿāmil* who does not manage the revenue properly. This law has affected the growth of institutions concerning *zakāt* matters, within both government institutions and in the wider Muslim society. In 2001, the president passed the Presidential Decision No.8 of 2001 on the establishment of the national *zakāt* board, namely BAZNAS (*Badan Amil Zakat Nasional*). The Minister for Religious Affairs passed the Ministerial Decision No. 581/1999 on

the implementation of the *zakāt* law. Subsequently, the Director of the Bureau of Muslim and Pilgrimage Affairs of the Ministry of Religious Affairs has issued the decision No. D.291/2000, which is a manual on *zakāt*. In 2001, the Ministry of Religious Affairs also set up the Directorate Zakāt and Waqf. In addition, a number of local governments have been attempting to establish institutions of *zakāt*, such as BAZDA (*Badan Amil Zakat Daerah*).

In connection with the issue of *zakāt* and other forms of charity, the president passed the government regulation No.60/2010 concerning *zakāt* and other forms of obligated religious donations that may be deducted from an individual's gross income. However, this regulation does not refer to law 38/1999, but solely to law 7/1983 concerning income tax. Section 1 elucidates that any *zakāt* that has been paid by a Muslim or an institution belonging to Muslims, or other obligated charity practiced by non-Muslims, may be deducted from the gross income. Income tax cannot be counted as *zakāt* as the *zakāt* law suggests. This deduction is only possible if the revenue is paid to institutions organized by the government or LAZ, which has authorization from the government. If this is not the case, the revenue cannot be deducted from the gross income (Section 2).

5.4.2.2 Law 23/2011

Members of the DRPD prepared a draft amendment to law 38/1999, which had been put forward by the Ministry of Religious Affairs. They argued that the rules on *zakāt* regulated under law 38/1999 were no longer in accordance with the current situation regarding matters of *zakāt*. Departing from public debate and discussion concerning a number of rules regulated by *zakāt* law, the DPRD and the government agreed to put the amendment to law 38/1999 on the national legislation program (*Program legislasi nasional, Prolegnas*) in 2010. The DPRD and the president finally approved the amendment, which became law 23/2011 on *zakāt* management.

This law consists of eleven chapters and 47 sections. It provides comprehensive rules on *zakāt* matters and authorizes the

government to play a more central role compared to the previous law. This law elucidates more detailed regulations concerning the principles of *zakāt*: Sharia, trusteeship, utility, justice, law and order, integration and accountability (Section 2). This law also extends the kinds of property to which *zakāt* is obligated. It now includes: 1) gold, silver and other precious metal; 2) money and other forms of valuable documents; 3) income from business; 4) income from crops, gardening and forestry; 5) livestock; 6) mining; 7) industry; 8) wages and services; 9) *rikāz* (Section 4).

Further, this law allows for the institutions of *zakāt* to be organized by both the government and society. The government may establish a non-structural national *zakāt* board, namely BAZNAS (*Badan Amil Zakāt Nasional*) for the national, provincial, regional, and sub-regional levels (Sections 5-15). Muslim society is allowed to establish a *zakāt* institution, namely LAZ (*Lembaga Amil Zakat*), albeit under some restrictions, including that LAZ must belong to a Muslim organization that has been established for educational, *daʿwa* and social purposes (Sections 17 and 18). This law also obligates the government to provide financial support to BAZNAS, although it may retain a certain amount from the collected revenue (Section 30).

An important new aspect of law 23/2011 concerns the potential to penalize the LAZ, *ʿāmil* and *zakāt* payer (*muzakkī*) who do not follow the necessary procedures. The license of LAZ may be revoked if this institution does not regularly report to the authorized institutions concerning its collected and distributed revenues (Section 36). Any *ʿāmil* who does not distribute the revenue to recipients may be punished with a maximum of five years in jail or pay a fine to the maximum of 500 million rupiah (Section 40). A *zakāt* payer (*muzakkī*) who intentionally does not pay *zakāt* may be punished with a maximum of five years in jail or a fine of a maximum of 500 million rupiah (Section 39). In addition, any *ʿāmil* or LAZ without a license from the government that collects and distributes *zakāt* revenue and other forms of Islamic

charity may be punished with a maximum of one year in jail or pay a fine of a maximum of 50 million rupiah.

This section reveals the most current developments regarding the institution of *zakāt* as a state concern. This changing attitude of the government has developed over a relatively long period. A number of interconnected factors may account for this shift. As Hooker suggests, the government must demonstrate its Islamic credentials because the majority of the population is Muslim. Hooker also acknowledges that the involvement of the government in this issue has financial implications. However, he says, 'whether or not they make any impact on the state budget is irrelevant; symbolic importance is everything' (Hooker 2008:31). Other factors also play a role in this situation. The new rules on *zakāt* produced by Indonesian Muslim scholars have created the possibility for government involvement in this issue. Included in these rules is the fact that *zakāt* is apparently no longer a purely religious obligation; it has now also become an economic issue. The accumulation of *zakāt* and other forms of Islamic charities revenue is a latent financial source for the government. In addition, the growing number of *zakāt* institutions managed by Muslim activists have, to some extent, influenced the interest of the government in this subject. Among these institutions are: BAMUIS BNI, BAZIS DKI, BAZMA, BMM, *Dompet Duafa (DD), Dompet Peduli Ummat Daarut Tauhid (DPU-DT), Pos Keadilan Peduli Ummat (PKPU), Yaysan Baitul Maal BRI (YBM BRI)*. These institutions have gained a respectable public reputation. This reputation has had both economic and political implications for Muslims and for the government. Lastly, this shift also shows that the power of the state over society is growing significantly.

5.5. Provincial, regional/municipal laws on *zakāt*

This section presents the local laws concerning *zakāt*. The provincial authorities have had little involvement in this matter, but it is considered to be a concern of regional government.

5.5.1 Provincial law

Members of the provincial parliament and the governor have shown no support for *zakāt* being the concern of the provincial government. This raises the question, why are matters of *zakāt* not on the agenda of the provincial authorities?

A short explanation is that these authorities have simply shown no political interest in this subject. There is considerable evidence to support this claim. In 2007, the governor of West Sumatra stated that the government should not interfere with the practices of *zakāt* in society (*Padang Ekspres,* 29/09/07). In March 2009, the governor also showed his reluctance to get involved with *zakāt* matters. He called on ulama to come to a consensus concerning a number of disputed rules on *zakāt* before the government would get involved in this subject. He went on to admit that it was not easy to gain this consensus among the ulama. The implication is that the provincial government would not get involved in this issue. In addition, in 2010 the newly elected governor excluded *zakāt* matters from the provincial government's remit. One explanation for this is that the governor belongs to the PKS political party, which maintains a charity institution, PKPU. He is also a member of the Muhammadiyah Organization that relies heavily on the Muslim charitable tradition for its finance.

5.5.2 Regional/Municipal law

This subsection presents six regional laws on the rules of *zakāt*. These regional laws originate from the region of Pesisir Selatan, the region of Solok, the Municipality of Bukittinggi, the Region of Agam, the Municipality of Padanpanjang and the Municipality of Padang. These six have been chosen because the first three passed the earliest regional laws on this subject, while the last three are the latest laws to be passed on *zakāt*, approved during the first decade of the decentralization era. This selection seeks to show

whether there are any differences in the content of the regional laws.

The titles of these regional laws vary from region to region. The regional law of Solok is called *Pengelolaan zakāt, infaq dan ṣadaqah* (Zakāt, *Infāq*, and *Ṣadāqa* Management), whereas the laws from the other five regions are copied from the national law entitled *Pengelolaan Zakāt* (Zakāt Management). This last name implies that the regulations are mainly concentrated on *zakāt* matters and that other forms of Islamic charity are less important. The former is concerned with all forms of Islamic charity. While the structures of these regional laws are varied, their scopes deal with similar topics: consideration; legal bases; general terms; principles and objectives; the structure of *zakāt* institutions; *zakāt* payers (*muzakkī*), properties on which *zakāt* is due and the people entitled to receive the revenue (*mustaḥiqq*); ways of collecting and distributing the revenue; controlling institutions of *zakāt*; and the penalties. These contents are the same as those of law 38/1999. Nevertheless, the differences occur in the detail of both regulations.

Regional authorities have similar intentions in terms of codifying *zakāt*. The intention is to implement *zakāt* as an important Islamic teaching and it is meant as a financial source that may be used by the local government. This implies that local governments are interested in the advantages to be had from *zakāt* revenue and other forms of Islamic charity. The next part of the regulations deals with the legal basis. Five out of the six regional laws mention a number of state laws that justify codifying *zakāt* rules in regional law. In contrast, the regional law of Pesisir Selatan refers to the Quran, as follows:

> [this regulation is based on] what has been stated in the Quran in the verse of *al-Tawba*:103 on the obligation of an institution to collect *zakāt* from the *zakāt* payers (*muzakkī*) and also in the verse of *al-Baqara*: 267, which deals with the kinds of properties on

> which *zakāt* is obligated if its value has reached a maximum amount (*niiāb*) (regional law 31/2003).

This phrase shows that this regulation is not in accordance with the Indonesian legislation system norm under which it is only justified to mention the national law for legal reference as is regulated under law 24/2004.

These six regional laws vary in terms of whether paying *zakāt* is obligatory only for Muslims. The regional laws of Solok, Bukittinggi and Padang do not deal with this issue at all. Meanwhile, the regional law of Agam and the municipal law of Padang Panjang acknowledge that paying *zakāt* is an obligation for all Muslims. For example, the regional law of Agam states, 'every Indonesian Muslim or an institution that is owned by a Muslim has an obligation to pay *zakāt* from their properties that have fulfilled the *zakāt* requirements'. The mention of Indonesian Muslims in this clause is odd, because the regional law is only for Muslims who live in the region. This section is obviously copied from law 38/1999. The regional law of the Municipality of Padangpanjang modifies the section with, 'every Muslim who lives in the Municipality of Padangpanjang or an institution that belongs to Muslims has an obligation to pay *zakāt* from their properties which have fulfilled the *zakāt* requirements'. This clause shows that it is not an imperative, but merely a statement that considers *zakāt* to be an obligation for all Muslims. The regional law of Pesisir Selatan takes a different position and clearly obligates Muslims to pay *zakāt* and also suggests that they should also pay other forms of Islamic charity. This imperative statement is located in Section two: '(1) every *zakāt* payer (*muzakkī*) who lives in the Region of Pesisir Selatan is required to pay *zakāt*; (2) Besides paying *zakāt* they are also encouraged to pay *infāq* (charitable gift), *ṣadāqa* (almsgiving), *waqf* (endowment), *waṣīya* (will), *warisan* (inheritance) and *kifarat* (expiatory gifts)'. Thus, these three different positions

of the regional laws may indicate those regions where Islamic teachings have intensified.

Another issue to examine here deals with the role of the Indonesian Constitution and the philosophy of the state, *Pancasila*, as well as Islam or Islamic teachings in the text of the regional laws. These factors are not present in the regional laws of Agam and the Municipality of Bukittingi. Meanwhile, the regional law of Solok clearly mentions that, 'the legal principles of the management of *zakāt* are *iman* (belief) and *taqwa* (devotion to God), and openness, rules of law which are in accordance with the *Pancasila* and the Constitution of 1945'. This section of the legislation is a repetition of clause 4 in law 38/1999. The regional law of the Municipality of Padangpanjang explicitly includes Sharia as its legal principle alongside *Pancasila* and the 1945 constitution. As can be seen in Section 4, 'the legal principle of *zakāt* management is Sharia that is based on *iman* (belief) and *taqwa* (devotion to God), openness and the rule of law which are in line with *Pancasila* and the Constitution of 1945'. The regional law of Pesisir Selatan explicitly posits Islamic teachings as its legal base without referring to Indonesian legal principles. Section 4 mentions, 'the legal principle of *zakāt* management is Islamic teachings that are based on *iman* (belief), devotion to Allah, openness and rules of law which are in line with valid regulations'. By mentioning Islamic teachings and devotion to Allah, this regional law puts greater emphasis on Islamic teachings rather than Indonesian legal principles. Consequently, this is often used as an argument for opponents who say that the regional law goes against *Pancasila* and the 1945 constitution.

The objectives of the regional law are similar to those of law 38/1999. They are:

1. Regional law is to provide some services for Muslims who practice *zakāt* in accordance with Islamic teachings.

2. Regional law is to improve the function and role of Islamic institutions in order to achieve social welfare and justice.
3. Regional law is to improve the effectiveness, efficiency and accountability of *zakāt* practices.

These objectives suggest that the presence of the regional law on *zakāt* may provide a way to utilize *zakāt* revenue. In order to achieve the above objectives, these laws provide for institutions of *zakāt* managed by local government, namely BAZDA (*Badan Amil Zakat*), and those managed by Muslim organizations or individuals, namely LAZ (*Lembaga Amil Zakāt*). However, these laws do not specify how these institutions are attached to the government structure.

The structure of the BAZDA varies from region to region. In Agam, for example, the government has established BAZDA in line with the local government structures, ranging from regional (*kabupaten*), sub-regional (*kecamatan*), to village level (*nagari*). In other regions, this institution is established only at the regional and sub-regional level. This structure implies that the purpose of *zakāt* institutions is primarily collecting *zakāt* revenue from Muslims who work for government institutions.

The kinds of property on which *zakāt* is due is another important aspect of the regional laws. This issue emerges in different clauses of the regional law, but they are all in line with Section 11 of law 38/1999.[73] This classification still remains in general terms and only the regional law of the Municipality of Padang attempts to elaborate on it. In addition, the issue of whether *zakāt* may be deducted from income tax also emerged, though it lacked further detail.

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[73] They consist of: 1) gold, silver, money; 2) production from trading and companies; 3) agricultural production; 4) mines; 5) livestock; 6) production of goods and services; and 7) treasures.

The issue of who is entitled to receive *zakāt* is another important aspect of the regional law. None of the above mentioned regional laws defines the recipients in detail. For example, the regional laws of Pesisir Selatan and the Municipality of Padangpanjang define it with the phrase 'recipients who are regulated under the Islamic teachings'. Only the regional law of the Municipality of Padang adds to this, stating: 'Muslims who are not able to pay medical costs are defined as poor and indigent'. This implies that the groups of recipients still conform to what is laid out in the Quran in the chapter of *al-Tawba*/the Repentance: 60. This is also the case with law 38/1999. The last issue with regards to regional law deals with punishment. All the regional laws examined only prescribe punishment for an *ʿāmil* who wrongly administrates *zakāt* revenue. The punishment is jail for a maximum of three months or a fine to a maximum of 3 million rupiah. Muslims who do not want to pay *zakāt* are excluded from these laws.

Most of the regional laws show that there is no single section indicating a shift of *zakāt* from a voluntarily to an obligatory practice, with the exception of the regional law of Pesisir Selatan. Few elements of the current understanding of *zakāt* matters have been adopted into these regional laws. Most of the rules prescribed are written in general terms and are mentioned in various sources of Islamic legal texts. The texts also show that most of the regulations in these regional laws are copied from law 38/1999. In addition, there is little difference between the regional laws passed in the early period of decentralization compared to those passed recently. This evidence suggests that the local authorities were motivated to pass regional law on this subject in response to a popular demand to adopt elements of Sharia, to provide a legal basis for their interest in establishing alternative financial sources, *zakāt* revenue; and perhaps also by the need to gain the political interest of the rulers. However, most members of the local parliament belonged to Islamic political parties and most were reluctant to support the regional law on *zakāt*. This

reluctance is caused by a fact that they also belonged to social organizations that rely financially on Muslim charity revenue.

5.6 The practices in the Municipality of Padang

This section provides details of the actual practices and the involvement of the mayor of the Municipality of Padang in managing BAZDA. It seeks to discover how the mayor maintained BAZDA within the framework of his authority as the local ruler, including organizing the board of BAZDA, and how money flows from *zakāt* payers (*muzakkī*) to BAZDA through *ʿamil* of *zakāt*, as well as how it subsequently flows from BAZDA to the recipients. I will argue here that the people involved in managing BAZDA and the people to whom the *zakāt* revenue is flowing are often linked to the mayor as a person and as a local ruler.

DRPD appointed Fauzi Bahar as the mayor in 2004 and he regained the position through the public elections held in October 2008. He was born in the sub-region (*Kecamatan*) of Koto Tangah, in the Padang regency on 6 August 1962. During his childhood, he received religious teaching from his parents and via his involvement in mosque activities. He enrolled for tertiary education (undergraduate level) at the sport's department of the State University of Padang (IKIP) in Padang in 1986 and he gained a degree on the magister management at the University of Indonesia in 2002. After finishing his undergraduate studies, he worked in the navy and in 2004 he become a politician. His success as the mayor obviously contributed to his win in the direct election in October 2008. Most Muslims believed that he had a good public reputation, not least because he had been involved in setting up programs to promote Sharia as a concern of the municipality.

When the mayor turned his attention to managing BAZDA in 2006, he justified his plan with Islamic teachings. He repeatedly argued that Islamic teaching regulated that his position as the mayor meant he was an *ulil amr* (ruler) obligated to implement

Sharia. He further claimed that he had the religious authority to collect *zakāt* revenue from *zakāt* payers (*muzakkī*) who live in the region. However, he admitted that this authority was confined to *muzakkī* who are working in the institutions that are under his authority, i.e. civil servants. To support this argument, the mayor often quoted the verse of *al-Tawba/*the Repentance (9):103, *khudh min amwālihim ṣadāqatan tuṭahhiruhum wa tuzakkīhim bihā wa ṣalli ʿalayhim.* (Of their goods, take alms, so that thou mightiest purify and sanctify them; and pray on their behalf). He further argued that this verse clearly commands any leader to take *zakāt* from *muzakkī*. In addition, he often quoted legal opinions among Muslim scholars that *zakāt* is only legitimate if it is distributed through ʿ*āmil*; otherwise, it will be qualified as other forms of charity. He repeatedly maintained the policy with religious arguments; for instance, those *muzakkī* who refused to pay *zakāt* would experience a misfortune or disaster and this attitude was characterized as *zalīm*. He further argued that nobody would become poor after paying *zakāt*. On the contrary, the *muzakkī* would receive a blessing from God (*Singgalang*, 18/02/2007; 27/03/2007, *Haluan,* 03/02/2007).

Besides these religious notions, the mayor repeatedly mentioned a hypothetical calculation of a potential source of *zakāt* revenue. According to him, if 40 per cent, that is one hundred Muslim families in the municipality, pay 25,000 rupiah of *zakāt* per month, derived from 2.5 per cent of their monthly income, there would be an annual revenue of at least 30 million rupiah collected. This collected revenue would be more than sufficient to fund the government programs for eliminating poverty (*Singgalang*, 27/03/2007). His campaigns were not only aimed at convincing the civil servants under his authority to pay *zakāt*, but he also attempted to approach civil servants who were not working for the municipality.

5.6.1 Establishment of BAZDA

This section briefly examines the ways the mayor appointed people to BAZDA between 2006 and 2011. On 11 April 2006, the mayor passed decision No.43 of 2006 for the establishment of BAZDA (which had previously been called BAZ). On 9 May 2011, the mayor passed decision No. 80 of 2011 for the establishment of BAZDA for the period 2011 to 2014.

Section 6 of Law 38/1999 regulates the procedure for the establishment of BAZDA. Its structure consists of consultative, advisory and executive boards. According to this section, the head of the Ministry of Religious Affairs in the municipality proposes candidates for the boards and subsequently it is the mayor who makes the final decisions. The mayor did not apply this procedure in 2006, but he did follow these rules in 2011. In 2006, the mayor appointed four people – to protect their anonymity we will call them Aman, Amin, Amir and Hamid – to carry out the selection of candidates for the boards. After these people had completed their assignment, the mayor passed decision No.43 of 2006 on the establishment of BAZDA. Sixty people were appointed to the boards of BAZDA, which comprise consultative, advisory and executive boards and sections for collecting, distributing, empowering, developing and publishing *muzakkī* and *mustaḥiqq*. Aman, Amin, Amir and Hamid were appointed to the executive board that was tasked with running BAZDA. Aman was appointed as the Chair, Amin and Amir were the Vice-Chairs, and Hamid became Secretary of the board. However, the day to day activities revealed Amin to be the central figure at BAZDA.

In 2011, the mayor applied the procedure regulated under the law 38/1999 for appointing the boards for BAZDA. He encouraged the head of the Ministry of Religious Affairs in the Municipality to get involved in organizing the new boards for the period 2011-2014. On 16 February 2011, a meeting was held to discuss these new appointments. The participants at the meeting, including the head of the Ministry of Religious Affairs and MUI, as

well as the representatives of Muslim organizations, agreed to reappoint the same executive boards, i.e. Aman, Amin and Amir, to exactly the same positions, for the simple reason that these people had succeeded in managing BAZDA since 2006. On 9 May 2011, the mayor passed decision No.80 of 2011 to create the new boards of BAZDA for 2011-2012. Consequently, 58 people were appointed to the boards of BAZDA. The mayor reappointed Aman, Amin and Amir to the executive boards together with five other board members. Aman is the Chair, Amin and Amir hold the position of Vice-Chair; however, it is Amin who remains the key figure in managing BAZDA day to day, despite only being the Vice-Chair. This information raises questions about Amin's role since 2006. The answer would appear to be that he has gained his position simply because he belongs to the mayor's network.[74]

Initially, the mayor provided BAZDA with an office situated in the building of the Nurul Iman mosque. After few months it moved to a larger office in the Bagindo Azizchan Building, situated in Bagindo Azizchan Street. A year later, the mayor facilitated BAZDA with yet another new office, this time situated at Jalan Ujung Gurun No. 7B in Padang. Soon after, the city was hit by an earthquake on 30 September 2009, and BAZDA was forced to move its office back to the Nurul Iman mosque.

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[74] I arrive at this conclusion after applying social network analysis to uncover the relationship between Aman, Amin, Amir and the mayor. Amin has more common connections with the mayor and both of them are members of the same political party, namely PAN and Muhammadiyah. Amin was the head of DPRD of Padang 1999-2004 and has positions in other social organizations that directly link to the mayor. Amir is rather isolated in the network of the mayor, because he only has links with Aman as they are both teaching at the IAIN and both of them held the position of Dean when BAZDA established in 2006. Although, Aman does not have any overlap in terms of contacts with the mayor, he is a well-known ulama, professor and on the board of the Tarbiyah Islamiyah organization. Aman's social reputation may be used to justify why the mayor trusts him to be the chair of the executive board of BAZDA, although it is not Aman who runs the day-to-day activities of BAZDA.

The mayor established branches of BAZDA at the *kecamatan* (sub-regional) and *kelurahan* (village) levels. However, they have different names: BAZ (*Badan Amil Zakāt*) for the *kecamatan* level, and UPZ (*Unit Pengumpul Zakāt)*, which literally means a unit for *zakāt* collection, at the *kelurahan* level. There are a total of twelve BAZ and 104 UPZ offices. The executive boards initially designed the annual programs for these agencies. This included the procedures for collecting and distributing *zakāt* revenues, improving the services system, publicizing the programs of BAZDA, assisting BAZDA in collecting *zakāt* revenue, improving the linkage with other *zakāt* agencies, and improving the accountability of BAZDA.

On 11 January 2007, the executive boards passed decision No.2 of 2007 concerning a standard operational procedure for BAZDA. There are a number of principles applied by BAZDA, BAZ and LAZ. Firstly, the boards of BAZDA will not get involved in any debate concerning *zakāt* matters that are disputed by the ulama (*khilāfiya*). Secondly, the collection and distribution of *zakāt* and other forms of Islamic charity will take place within the area where the agency is located. Thirdly, the recipients are determined under the following procedure: UPZ proposes names of recipients to BAZ, then BAZ proposes them to BAZDA. The executive boards of BAZDA, BAZ and UPZ hold a meeting to determine the recipients. BAZDA then passes this decision to the mayor for approval. Then the mayor will pass the municipal decision concerning the recipients of *zakāt* revenue. Fourthly, BAZDA expects *muzakkī* to be any Muslim who owns property that has fulfilled *nisāb.* The kinds of property covered include income from farming, livestock, gold, silver, money, professional income, business, mining and investment. The types of property outlined remain in general terms and mostly refer to law 38/1999 with the addition of income earned by professionals, a particular concern for BAZDA. However, BAZDA has no any authority to force any *muzakkī* to pay their *zakāt* to BAZDA. Subsequently, the mayor approaches *muzakkī* who are civil servants working at various

institutions of the municipality to pay their *zakāt* to BAZDA. It is clear that the mayor has an influence over the civil servants. How the mayor uses his political power in relation to matters of *zakāt* will be further examined in the context of collecting and distributing *zakāt* revenue from civil servants.

5.6.2 Collecting *zakāt*

The two most important issues concerning the collection of *zakāt* revenue are determining who the *zakāt* payers are and on what kind of wealth *zakāt* is levied. The answer to these questions is simply that the *zakāt* payers and the kinds of property covered relate to those areas over which the mayor has authority. It is clear to Muslim civil servants, for example, that their monthly income is a target. Consequently, the method for collecting *zakāt* relates to the power mechanism employed by the mayor. Thus, the treasurers of municipal institutions directly deduct 2.5 per cent from the monthly income of civil servants. Subsequently, the same treasurers deposit the collected revenue in the bank account of BAZDA.[75] Besides this method of collection, since March 2007, Bank Nagari has provided a transfer facility system at its ATMs for those who want to transfer their *zakāt* directly from their account into BAZDA's.

Before applying this mechanism, the mayor claimed that he consulted with the Ulama Council of the municipality, his staff experts, and a number of Muslim scholars about whether the salary of civil servants was liable for *zakāt*. According to MUI, any civil servant who has a gross monthly income equal to 83 grams of gold is obligated to pay 2.5 per cent of this income in *zakāt*. This means that a civil servant who earns more than 1 million rupiah

[75]BAZDA has accounts with several banks: Bank Nagari, Bank BNI branch of Padang, Bank Syariah Mandiri, BRI, Muamalah Bank, BCA, BTPN, BII, Bukopin, Danamon, Permata, BTN, Mega Bank, LIPPO Bank and Mandiri Bank.

per month is obliged to pay *zakāt*. Meanwhile, civil servants who earn less than one million gross per month are obligated to pay *ṣadāqa* or *infaq*.

However, a number of civil servants resisted the mayor's policy, which on paper was voluntary but in practice was obligatory. This resistance was channeled to the head of MUI West Sumatra, which has a different opinion from MUI in the municipality concerning how to calculate the *zakāt* due on the income of civil servants. On 19 December 2006, the head of MUI in West Sumatra, who is also the Director of the Zakāt Empowering of the Ministry of Religious Affairs, talked to the media about this matter. His statement appeared in the *Daily Singgalang* over the following two days. He characterized a regional government, without directly mentioning the name of the region, which was deducting 2.5 per cent of the income from those civil servants earning less than 2 million rupiah per month as *ẓālim* (unjust). He argued that *zakāt* was only obligatory for those civil servants whose monthly income fulfilled *nisāb.* As long as the income does not fulfill this basic requirement, a civil servant has no obligation to pay *zakāt*. (*Singgalang*, 20/12/2006).

The head of BAZDA's executive board reacted immediately to the statement. On 20 December 2006, he called other executive board members to a meeting at the office of BAZDA in order to respond to the head of MUI's statements. They reached an agreement that they would hold a press conference. Their reaction appeared in two local daily newspapers, the daily *Singgalang* and *Padang Ekspres*. The daily *Padang Ekspres* printed it under the headline *Kewajiban zakāt jangan diperdebatkan* (No need to debate on the obligation of *zakāt*). Meanwhile, the daily *Singgalang* printed the story under the more straightforward headline, *Soal pungutan zakāt, Salmadanis:* Nasrun [Haroen] '*kencingi dapur*' (With regards to the collection of *zakāt*, Salmadanis: Nasrun 'Peeing in his own kitchen'). According to the head of BAZDA, as the Director of Zakāt Empowering of the Ministry of Religious Affairs, the head of MUI in

West Sumatra should not be accusing the regional government of being *ẓālim*, but rather be supporting the attempt by the regional government to manage BAZDA. The head of BAZDA further characterized the head of MUI by using a Minangkabau language expression for those who demonstrate inappropriate attitudes as someone peeing in his own kitchen'.

The head of BAZDA went on to argue that if *zakāt* was based on the take home pay of civil servants, there would be few who actually had the obligation to pay *zakāt*. Consequently, the attempt to manage BAZDA is rife with difficulties (*Singgalang*, 21/12/2006). In addition, another board member of BAZDA added that the way *zakāt* was calculated by BAZDA in Padang was different from the opinion of the head of MUI. He further acknowledged that there were different opinions among ulama concerning the way to calculate *zakāt* (*Padang Ekspres,* 21/12/2006). However, the head of MUI gave no response to the reaction by the executive boards of BAZDA Padang. This brought the public debate to an end.[76]

The mayor decided to continue to collect *zakāt* from civil servants and he actively took part in serial campaigns promoting his policy for managing BAZDA. Although, the collection of *zakāt* revenue was in theory voluntary, in actual practice it had become obligatory. These current developments reveal that the mayor has acknowledged his decision to obligate civil servants to pay *zakāt* from their monthly salaries. Indeed, he often publicly threatened to punish those who disobeyed this obligation (*Singgalang*, 26/02/09).

The amount of *zakāt* revenue collected has gradually been increasing since 2006 up to 2011. In 2006, the collected revenue

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[76]According to the vice-chair of the board of BAZDA, the mayor prevented the executive boards of BAZDA from becoming involved further in the debate about these matters, because it would result in a negative impact on the efforts to manage zakāt. The mayor argued that the different views on the matter could not be reconciled and that he would continue his policy on zakāt collection (*Correspondence* via email with the vice executive board, 10/6/210).

was less than 1 billion rupiah and it increased to more than 1.5 billion rupiah in 2007. A significant amount of revenue was collected in 2008 when the revenue doubled compared to that in 2006. In the next three years, the annual revenue increased significantly. In 2009, it reached more than 10 billion rupiah and subsequently increased to almost 12 billion rupiah in 2010. In 2011, the collected revenue amounted to almost 15 billion rupiah, which meant that it had gained more than a billion rupiah per month and exceeded the annual collected revenue in 2006 when the government began managing BAZDA (*Annual Report* 2006-2011). The details of annual collected revenue are presented in *appendix 8.*

5.6.3 Distribution of the collected revenue

The issues concerning the distribution of *zakāt* revenue include the people entitled to receive *zakāt* revenue, how to select them, how and when to distribute the revenue to them. According to the decision of BAZDA No. 02 of 2007 dated 11 January 2007, the recipients of *zakāt* revenue cover the usual eight categories.

BAZDA puts the recipients into six of its programs. First, is *Padang religious*. This is a *daʿwa* program that includes special activities during Ramadan. Second is *Padang sehat* (health). This program funds the costs of medical treatment for the poor or the needy. Third is *Padang sejahtera* (prosperous). This is designed to fund small-scale businesses run by the poor or the needy. In conducting this program, BAZDA has cooperation with other small-scale financial institutions that employ a Sharia system, including *BMT Rangkiang Basamo* (starting from 2009), Bank Muamalah (2011), and BTN (2011). Fourth is *Padang Makmur* (welfare). This funds the renovation of houses belonging to the poor and needy as well as public facilities. Five is *Padang Peduli* (care). This fund provides aid in the wake of any catastrophes and helps homeless people. Six is *Padang cerdas* (smart). This program provides financial support for students from primary schools to universities.

The distribution of annually collected revenue varies from year to year. Table 5.1 shows the distribution of the collected revenue in 2009, 2010 and 2011. The last three years shows that the highest share of the revenue went to providing financial support for students. This amount reached 58.99% (Rp.4,669,269,000.00) in 2009, 32.06% (Rp.4,808,250,00.00) in 2010 and 32.92% (Rp.4,778,231,000.00) in 2011. The lowest share of the revenue went to the Padang welfare program, which received 2.91% (Rp.292,177,000.00) in 2009, decreasing to 1.1% (Rp.165,000,000.00) in 2010 and increasing again to 3.45% (196.113,000.00) in 2011. The share of revenue that went to the Padang prosperous program increased by less than 1% (Rp.1,500,000.00) in 2009 and significantly increased in the next two years: 26,70% (Rp.4,004,000,000.00) in 2010 and 25,79% (Rp.3.742,892,500.00) in 2011.

Table 5.1: Distribution of *zakāt* revenue in 2009 to 2011

No	Programs	Percentage of the distribution of the *zakāt* revenue		
		2009	2010	2011
01	Padang Smart	58.99 %	32.06 %	32.92 %
02	Padang Health	9.64 %	24.96 %	16.37 %
03	Padang Prosperous	0.02 %	26.70 %	25.79 %
04	Padang Welfare	3.69 %	1.10 %	1.35 %
05	Padang Care*	8.70 %	2.66 %	3.45 %
06	Padang Religious*		7.35 %	7.76 %

Source: Calculated from annual report 2009, 2010, and 2011
Notes: * in 2009 Padang care and religious came under the same program

This distribution reveals that BAZDA focuses its support on the programs of the municipal government, i.e., those of the mayor, in three main sectors: education, healthcare and providing financial resources to the poor and the needy to run their small-scale businesses. This evidence also reveals that most of the collected revenue is distributed to the recipients in the form of charity, rather than in the form of finance to improve the economic life of the recipients. This situation also means that the boards of BAZDA as well as the mayor have not yet conformed to the new rules of *zakāt*, which treat the revenue as an economic factor. However, their attitude to this new paradigm has been shifting since 2010 when they spent more than 4 billion on funding small-scale businesses belonging to the poor and needy. In other words, the repeated intention of the mayor to diminish poverty in the city finally got started in 2010. In addition, it is undeniable that the mayor has gained political advantage from actively managing BAZDA and maintaining political power as the local ruler. The involvement of the government in managing BAZDA has also benefited the poor and the needy that now have an alternative financial solution besides what Muslim organizations have been providing.

5.7 Resistance

This section briefly presents forms of resistance to the involvement of the local government in managing BAZDA, and to the coercion used to get civil servants to pay *zakāt* from their monthly wages, and to the way BAZDA selects the recipients. Any resistance is rooted in a conflict of values as well as a conflict of interests among the parties involved, and every struggle is also a struggle over value (Scott 1985:1). Thus, resistance to government involvement in *zakāt* matters is caused by the different values and interests embraced by the different parties in this matter.

A number of bureaucrats, members of parliament, civil servants, Muslim organizations and individuals have shown their reluctance to support the involvement of the local government in *zakāt* matters. The governor of West Sumatra publicly expressed his resistance during a meeting on 28 October 2007. The meeting aimed at evaluating the management and effectiveness of disaster relief and emergency aid was hosted by the governor. Since the tsunami in Aceh on 26 December 2004, several catastrophes have touched the area including earthquakes and floods that caused serious damage in West Sumatra. In a meeting, the mayor of the Municipality of Padang suggested to the governor that he should take a political decision to collect *zakāt fiṭr* from the members of the *Pesantren Ramaḍan* in order to provide financial support for sufferers of natural disaster. According to the mayor, *zakāt fiṭr* revenue could reach approximately 1.3 billion rupiah. This amount of revenue was sufficient to support the victims. The governor refused to accept the suggestion. He argued that the decision about whether or not to pay *zakāt fiṭr* rests solely with the participants of the *Pesantren Ramaḍan* as the *zakāt* payers, as well as their parents. He further argued that the government did not have the authority to decide how the *zakāt* must be paid. He stated that if the government decided to collect the *zakāt fiṭr*, the government would receive protests from the parents as well as the students. The mayor gave no reaction to the response of the governor (*Padang Ekspres,* 29/09/07).

The disagreement concerning the collection of *zakāt* from the civil servants was also publicly expressed during a speech by the governor at the opening ceremony of a meeting of all BAZDA in West Sumatra on 6 March 2009. According to the governor, the core of the problem behind the refusal to collect *zakāt* derived from the disagreement among ulama on how *zakāt* should be calculated for civil servants. For example, he asked, should civil servants who have a debt still be obligated to pay *zakāt*? Thus, he challenged the ulama to reach a consensus (*ijma)* on the matter in

order to implement some fixed rules. Nevertheless, the governor seemed to realize that such a consensus was no easy gain.

Members of the local parliaments, who were mostly members of PKS, PAN or other Islamic parties, also showed their resistance to this matter. This came in the form of a reluctance to approve the draft regional law concerning *zakāt* matters. PAN and PKS members of parliament in the municipality of Padangpanjang were reluctant to approve the draft proposed by mayor on July 2007 (*Padang Ekspres*, 30/07/2007). PKS members were also reluctant to give their consent to the draft regional law proposed by the head of Pasaman region (*Padang Ekspres*, 17/02/2007). A similar situation also occurred in Solok when the members of the parliament were examining the draft of the regional law on *zakāt* matters in 2003. The explanation is simple and lies in the different interests of the members of parliament. For example, members of PAN were mostly members of Muhammadiyah whose activities are supported by *zakāt* and other forms of Muslim charity. PKS also has a charity organization, PKPU, although officially this political party is not affiliated to it. In practice, however, the cooperation between PKS and PKPU continues.

Resistance also emerged among teachers in a number of state schools in the municipality of Padang. However, this resistance was not directly addressed to the mayor; but rather channeled through the bureaucracy of the municipality. They mainly argued that their monthly salary should not be subject to *zakāt*. In response, the mayor reaffirmed his commitment to deducting *zakāt* from the salary of civil servants. He threatened the civil servants who disagreed with the policy of an administrative punishment including a transfer to other schools that do not have good reputations. Further, the mayor instructed the principals of the schools to take any decision to force the civil servants to pay the *zakāt* to BAZDA. The head of the Bureau of Junior and Senior High Schools at the Ministry of Education of the municipality acknowledged that there were a number of teachers who were still

unwilling to pay *zakāt* to BAZDA. This does not mean that they did not pay *zakāt*, but they preferred to pay it directly to recipients. In a bid to handle such resistance, the principals were given wider authority and could take any decision necessary to force the teachers to paying their *zakāt* to BAZDA (*Singgalang*. 16/02/09). The refusal of these civil servants was rooted in their beliefs about whether or not their salary fulfilled the minimum income requirement. According to them, their salary did not fulfill the *haul* (*Correspondence*, with a teacher, 30/08/09).

Since August 2006, the executive boards of BAZDA have been busy responding to a series of protests from the poor and needy who argue that they should be recipients of *zakāt* revenue. They protested that they had fulfilled the requirements defined by BAZDA (*singgalang* 14/08/2006). For instance, Harimiati, a needy mother of three children, challenged the boards of BAZDA by asking why she did not qualify as a beneficiary of the revenue. She argued that she had fulfilled the requirements for a recipient. Her case was published in the Daily *Singgalang* (*Singgalang*, 22/10/06). Harimiati succeeded in gaining the right to be a recipient and she finally received *zakāt* revenue to support the school fees of her children.

By contrast to the case of Herimiati, there are a number of different types of resistance conducted by the poor or needy who are excluded from the recipients of *zakāt* revenue. This form of resistance is known as daily resistance and is a common weapon for relatively powerless people. Their resistance is conducted in several forms, including foot dragging, dissimilation, desertion, false compliance and feigned ignorance. According to Scott, this resistance has the following characteristics: it requires little or no coordination or planning, it exploits an implicit understanding and informal networks, they more often represent a form of individual self-help and they typically avoid any direct, symbolic confrontation with authority. This type of resistance is commonly

found among the poor families in villages, schools teachers, students, and among low-ranking civil servants.

However, the reason why these groups are excluded from those receiving *zakāt* revenue is because they do not have a good reputation. The poor or needy or any person who is entitled to receive *zakāt* revenue should have a good reputation or a good name (Bailey 1972:2). Scott suggests the ways of maintaining a good name include devoting time and labor to village projects, cooking at feasts, and taking care of the village prayer house (*mosque, surau*) and assembly hall (*balai*). It also requires swallowing a lot of pride and feigning a respect for social betters that one does not always feel. However, a good reputation pays dividends in terms of employment, *zakāt* gifts, help when ill and public shows of respect and consideration (Scott 1985:24-25).

5.8 Conclusions

Until the last two decades, the ideas and practices of *zakāt* were absent from the historical dimension of Islamic societies, despite the fact that they permeate the experience of Muslim past and present. The current concern for *zakāt* matters entwines religious matters, economic factors and the political history of Islamic society. This development has gradually resulted in a shifting attitude among Muslims, including scholars, intellectuals, and ulama, as well as government or ruling figures.

Currently, the issue of *zakāt* is experiencing a transition from the implementation of piousness towards an economic phenomenon. The shift towards economic aspects may ultimately lead to *zakāt* becoming a political concern. This shifting situation is revealed in the attitude of the government toward this subject since the 1960s, into the present day when the government passed law 38/1999 and 23/2011 on *zakāt* management, the codification of the rules of *zakāt* in regional laws and the actual practices of the local government in managing BAZDA. The contents of the

national and regional laws show that they embrace both old and new rules on *zakāt*. It is undeniable that the local ruler, the mayor, has gained a political advantage from his involvement in the management of BAZDA. This involvement has increased his political power over his political rivals and provided him with a financial source for financing government programs. The flow of money shows that it mainly flows within the government structures or institutions.

Support for the government's involvement relies on whether the local government is able to show its credibility and accountability in managing BAZDA. Furthermore, it requires the application of the principles of transparency, not only in managing the collection and distribution of revenues, but also to demonstrate the improvements in the social-economic lives of beneficiaries. The resistance to the involvement of the government in managing *zakāt* institutions results from a desire by some *zakāt* payers to pay the revenue directly to the recipients, or because *zakāt* payers belong to a *zakāt* institution managed by political parties or social organizations.

The institution of *zakāt* is now in a phase of transition, from being a purely religious matter to becoming a social-political institution managed by the government. The future development of *zakāt* is worthy of further study, particularly in connection with the new *zakāt* law 23/2011, which shows the strengthening role of government in this area. By contrast, the awareness of Muslims of the significance of *zakāt* institutions has also been increasing significantly.

CONCLUSIONS

The preceding chapters have presented a decade of the developments of Sharia legislation that have occurred in the Minangkabau society in West Sumatra since the government of Indonesia implemented a policy of decentralization and local autonomy in 2000. The ten year period covered by this study aims to understand what Sharia legislation has meant in terms of the developments of Sharia in the Indonesian legal system in general and for the Minangkabau society in particular.

The Minangkabau society in West Sumatra is widely known in Indonesia to be an Islamized society, although the Minangkabau people also adhere to *adat* norms. This society went through several stages of conflict and reconciliation with respect to its religious identities. Before the 19th century, ulama belonging primarily to the sufi orders Islamized the society and there was no significant evidence to suggest that these attempts resulted in conflict. This process of Islamization contrasted with what happened at the beginning of the 19th century. In 1803, a number of ulama began to force people to obey particular aspects of Islamic teachings. These efforts were resisted by *adat* groups. Consequently, this process of Islamization became a source of fierce conflict between the two groups. Ultimately, this clash led to what is commonly called the Padri war, a civil war. After the clash ended in 1837, those ulama belonging to the sufi orders and who had received religious education at the education centers in Mecca and Egypt continued in their attempts to Islamize the society. The historical evidence shows that the Islamization of the

Minangkabau society was successful insofar as the majority of people came to practice Islamic teachings and acknowledge Sharia, although these practices were, on the whole, limited to rituals matters.

The evidence also shows that there was a 'Minangkabauization' of Islam as people continued to obey *adat* norms, albeit for the most part in respect of interpersonal relationships. The success of these two processes has resulted in the distinctive character of Islam in Minangkabau society in West Sumatra.

We may now conclude that Minangkabau society rests on at least three prominent distinguishing features. The first of these is the fulfillment of the five pillars of Islamic rituals: reciting the confessions of faith, performing prayer five times a day, fasting in the month of Ramadan, the giving of *zakāt* and pilgrimage to Mecca for those who are able to undertake it. People have maintained this important feature by establishing and managing various institutions of Sharia, including mosques, Islamic educational and charitable institutions where Sharia is taught, told, produced, transformed and practiced. These institutions were managed locally by the people in the villages where they were established. The second prominent feature is a strong sense of Islamic identity. For the vast majority of Minangkabau people, Islam was the only conceivable religious element of identity. In public, this identity is widely expressed by, for example, Minangkabau people having the ability to recite the Quran, performing rituals and wearing clothes in accordance with Islamic dress codes. In short, people are required to show that they are pious Muslims. If they fail to do so, they will be judged a non-Minangkabau person. The third characteristic is that people also accept an array of *adat* norms, primarily in terms of interpersonal matters. In this respect, people continue to obey the family structure according to *adat* norms. For example, it is rare to find a Minangkabau family who will share the property of a deceased relative according to Sharia rules of

inheritance, despite the property being privately-owned. Instead, heirs receive their share according to *adat* rules, which state that property will be inherited by female heirs. These features illustrate the overlapping identities[77] of the Minangkabau people, i.e. they are adherents of Islam as well as of *adat* rules. Besides these two overlapping identities, the people are also expected to obey the rules and regulations set by the state – rules and regulations that aim to maintain the state's power in accordance with its own interests. Indeed, as this study shows, the state has passed several laws and regulations; however, not all of these are in line with the rules of Sharia and *adat*.

In 2000, the authority of provincial and regional/municipal governments was extended when the central government implemented a policy of decentralization and local autonomy. This was the first time that the provincial and regional/municipal governments had the power to maintain local governance since independence in 1945. Local authorities as well as members of parliament welcomed this new authority enthusiastically by advocating the idea to issue local laws or regulations. Furthermore, they viewed this shift as a moment to introduce Sharia legislation at the provincial and regional/municipal level. Indeed, this political shift was seen as a moment to introduce Sharia legislation at the provincial and regional/municipal level.

This Sharia legislation dealt with four main themes: unlawful acts, an Islamic dress code, Quranic recitation and the involvement of the government in managing *zakāt* institutions. At the heart of the Sharia legislation lies the idea that the Minangkabau people have to be regulated by rules that are in accordance with both Sharia and *adat* norms. It should also be noted that there is no convincing evidence to indicate that these

[77] Franz and Keebet von Benda-Beckmann name 'overlapping identities' with 'ambivalent identities' (Von Benda-Beckmann 2007:417-442).

efforts were in any way connected with attempts to establish an Islamic state.

There are three classifications of substantive laws that were legislated for under Sharia: 1) those substantive Sharia by-laws that are regulated under national laws and regulations, but are lacking implementation. Rules regarding the prohibition of gambling, abuse of alcohol and other psychotropic substances are included in this first category; 2) substantive Sharia by-laws excluded from national laws and regulations (this includes the prohibition of unlawful sexual intercourse and the obligation for students to be able to recite the Quran); and 3) legislation where the central government began to accommodate a religious reaching into regulation which was accomplished by regional and provincial law. The national regulations regarding an Islamic dress code fall into this category. In other words, the aims of the Sharia legislation in each of these three categories are varied. The objective of the first category was to bring these issues under the authority of regional implementing institutions; the second category aimed to add new substantive laws; and the third category aimed to accomplish the shift that had been begun by the central government.

All that said, the justification for Sharia legislation was debatable, not least because – with the exception of the province of Aceh – there lacked an explicit rule that gave power to the provincial and regional/municipal authorities to legislate Sharia law. Proponents of Sharia legislation justified it by arguing that laws 22/1999 and 32/2004 gave the authority to provincial and regional/municipal governments to issue a law in accordance with local culture. They further argued that Sharia has been adopted into the culture of the Minangkabau people. According to this view, Sharia legislation is justified. In contrast, opponents said that Sharia legislation was unjustified. They argued that there was no state rule that explicitly regulated for Sharia legislation.

I would suggest that Sharia legislation is only justified as long as it is substantive law that does not relate to public law. I argue that laws 22/1999 and 32/2004 clearly state that judicial matters are included in the authority of the central government, not the provincial and regional/municipal authorities. This means that judicial institutions, i.e. state courts and the police are the law enforcement institutions that should implement the laws and rules issued by the central government. Theoretically, a law requires a legal organ to enforce it. The legal organs here are the police and the state courts. These two institutions are outside the jurisdiction of the provincial and regional/municipal governments. Meanwhile, the provincial and regional/municipal governments possess a different law enforcement institution – the civil service police unit, *Satpol PP*. This legal position is different from the research findings of Muntoha (2010:246). He suggests that the provincial and regional/municipal authorities possess the authority to legislate Sharia as long as its substantive law has been accepted by the local culture. This position on Sharia is also referred to in a legal theory proposed during the colonial era by C. Snouck Hurgronje. He too suggested that the government would acknowledge Sharia if it had been adopted into local culture.

The effect of the debate regarding whether or not Sharia legislation is justified has manifested itself in the legal processes and implementation of each of the abovementioned categories of laws. There were different authorities concerned with these four types of Sharia legislation: All authorities at the provincial and regional/municipal level supported the issuance of laws that obligate Muslim students and civil servants to wear clothes according to an Islamic dress code, and those that oblige students to have the ability to recite the Quran. All members of the provincial and regional/municipal parliament who are from Islamic political parties supported the issue of a law related to maintaining public morality and aimed at preventing and eliminating unlawful acts. However, they were reluctant to

support a law regarding the involvement of the government in managing *zakāt* institutions. Heads of a region or mayors supported laws that give the authority to the government to manage *zakāt* institutions. This finding shows that we cannot generalize and say that all proponents of Sharia legislation were from Islamist groups. However, my study does confirm another of Bush's conclusion –that Sharia legislation is closely related to local politics; specifically, the introduction of Sharia legislation is dependent on the fulfillment of political interests.

The laws regarding an Islamic dress code and Quranic recitation received a degree of support from the authorities, including politicians who were members of the provincial and regional/municipal parliament as well as from society at large. As a result, the process of legislation and implementation of the law was successful.

The involvement of the government in managing *zakāt* institutions raises two issues: one legal and one practical. The first concerns the issue that the national law 39/1999 on the management of *zakāt* (this law was amended by law 23/2011) gives the government the possibility to manage institutions of *zakāt*. However, central government opted to delay issuing the government regulation on the implementation of the law. Consequently, this law cannot legally come into force and Hooker (2008) and Salim (2007) characterize the *zakāt* law as symbolic. However, local governments required a legal basis for their involvement in managing *zakāt* institutions. To solve this problem, they legislated on *zakāt* rules with the aim to justify their involvement in this subject. One version of events regarding the involvement of the mayor of Padang in this matter reveals that the collected revenues of *zakāt* were used as a source to fund the mayor's programs. In order to have open access to this institution, the mayor selected people from his network to manage the day to day activities of the institution. Consequently, people saw this institution transform from a religious institution into a political

tool of the local ruler. Beuhler (2008:282) has warned that the involvement of the government in *zakāt* institutions may become a source of political corruption.

The law on public morality is the most problematic: theoretically and practically. As Hooker (2008:292) has suggested, a number of practical problems dealt with the overlapping jurisdiction of the civil service police unit (Satpol PP) and the national police force and in a theoretical matter; that is to say, whether values or morality based on religion can be enforced by law. Drafters of the provincial law 11/2001 initially appeared to be aware that regulating unlawful acts requires judicial institutions, the police and state court, for implementation. The draft revealed that there was an attempt to include these judicial institutions under the remit of the provincial law. The provincial law 11/2001 shows that this effort failed and it was only *Satpol PP* who had the authority to enforce the provincial law.

This study reveals that the attempts to regulate values and morality based on religion apparently did not succeed. This failure can be seen in two examples: the first is that a draft provincial law was ultimately cancelled by members of the Padang municipal parliament because they failed to reach an agreement and approve the draft. The second was that members of parliament approved a revised draft of such laws, but these were never legally valid. This was the case with the provincial law 11/2001, the municipal laws of Bukittinggi and Padangpanjang, and of other regions. Although the prohibition of immoral acts failed to be regulated or implemented under a law, it did not mean that the law enforcement institution – *Satpol PP* – did nothing regarding this prohibition. Indeed, prohibition was justified under the heading of 'public order' offences. Consequently, the category of unlawful acts varied from region to region and from year to year. This situation created an overlapping jurisdiction between *Satpol PP* and the police and varied definitions of what constitutes an unlawful act. In addition,

unqualified staff at *Satpol PP* and a corruption culture among government officers did little to ameliorate the situation.

This study, then, suggests the effects of a decade of implementation of Sharia by-laws. The legislation regarding the obligation for Muslims students and civil servants to wear Islamic dress, and the obligation that students have the ability to recite the Quran has clearly strengthened the religious identity of the Minangkabau people. The Sharia legislation has resulted in a shift in terms of the dress code in government institutions, from a preference for students and civil servants to adopt Muslim dress to an obligation. According to Hamdani (1997:128), this shift has failed to encourage a personal awareness of religious and cultural identity, because it has lost its profound inner meaning for those who wear it. Furthermore, he characterizes this imposition as a tool of oppression, particularly for non-Muslim students.

Different to Hamdani's findings, this study revealed that non-Muslim students also see this rule as an opportunity to publicly express their own different religious identity, i.e. being a non-Muslim. It also revealed that Muslim women have now grown accustomed to wearing clothes according to a Muslim dress code. For example, Islamic dress can be observed in public places, including markets and tourist destinations, where seven or eight out of ten women were wearing clothes according to a Muslim dress code. However, it is also the case that the majority of Muslim women did not wear Islamic dress if they were only leaving their home for a short visit in their neighborhood, even though they might meet non-family members. This evidence suggests that the practice of wearing Islamic dress does not fully conform to the dress code regulated in Sharia, i.e. that Muslims must cover their *ʿawra* if they are not with family members.

The most significant achievement of the Sharia legislation is an obligation for students to have the ability to recite the Quran. This is in spite of a government report that shows that two out of ten students still lacked this ability. However, people tend to see

the introduction of a new subject, the recitation of the Quran, into primary schools, as well as adding other supplementary activities related to this subject to the curriculum was an attempt by the government to guarantee the continuity and sustainability of the identity of Minangkabau people: that is to say, being a pious Muslim.

The involvement of government in managing *zakāt* institutions and maintaining public immorality resulted in a different effect. The mayor of Padang gained political advantage as a result of increasing amounts of *zakāt* revenue, which he could use as an alternative financial source to fund government programs. At the same time he also received resistance from *zakāt* payers who were working as civil servants. However, he was able to counter this resistance with his authority and also because this specific form of individual resistance lacked the impact to change the policy (Scott 1985; 1986). The mayor claimed that government involvement as the *zakāt* collector (*ʿāmil*) was religiously justified. In contrast, opponents argued that this involvement was an interference in religious practices and that the decision to pay *zakāt* or not was no longer and individual decision but that of the mayor's. This new practice was in contradiction with the rules of *zakāt*. This case shows that new norms on *zakāt* rules are being formed.

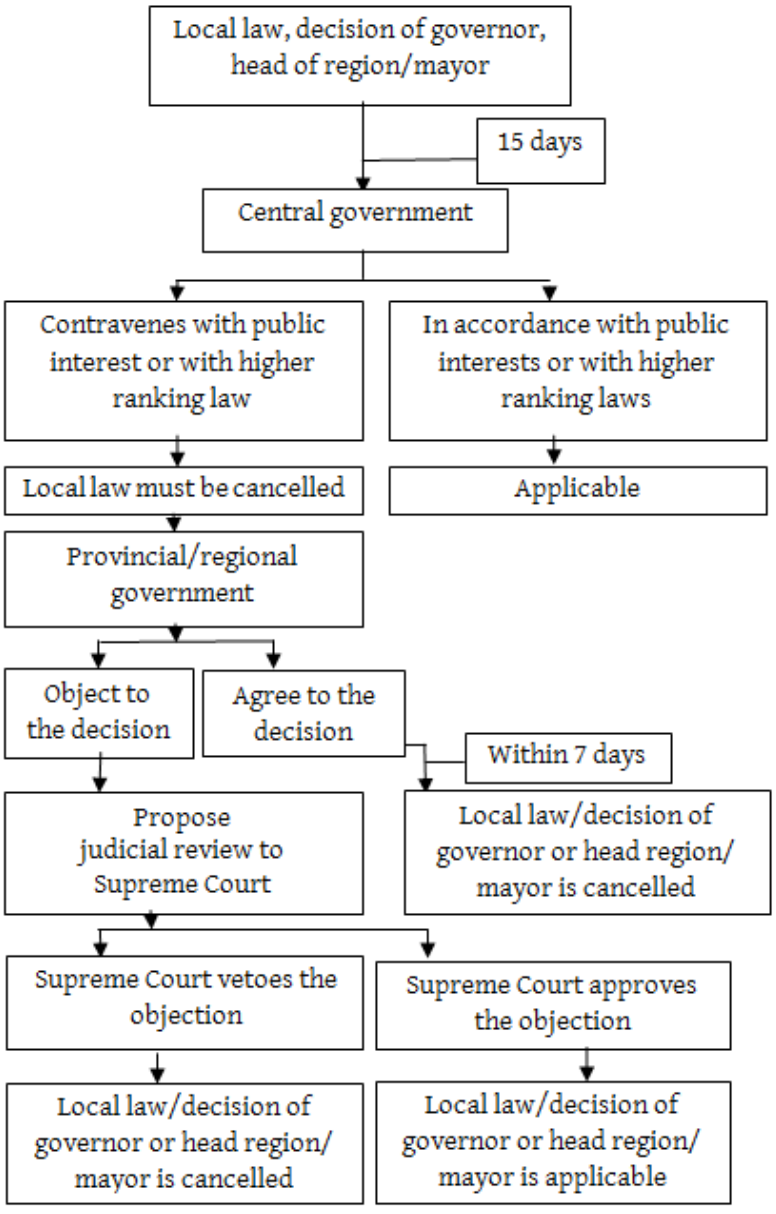
On a different matter, the attempt to legislate Sharia regarding unlawful acts and public morality failed. The categories of unlawful acts were not legislated for in terms of the norms that were regulated under Islamic public law (*fiqh al-jināya*), but they were legislated for as values. This situation illustrates that Islamic public law still rests in the margins of the Indonesian legal system. This marginality might well be linked to how this subject was formed and taught at Islamic higher education institutions and in various forms of Islamic *da'wa*. Most Islamic education institutions, primarily the higher education institutions such as STAIN, IAIN and UIN, regarded Sharia as a theory of the ideal Muslim society,

one which only had practical significance in matters relating to ritual devotion, family relations, and endowment. Sharia is not being taught as a functioning law. However, this approach was adopted under the consideration that the initial intention of establishing Islamic higher education was primarily to train students to work for government institutions, including the Ministry of Religious Affairs, Islamic courts, Islamic schools, and to work as an ulama. The development of state Islamic higher education institutions in recent decades shows that the paradigm of the study of Sharia has begun to entwine two approaches. This trend is illustrated in terms of Islamic higher education institutions offering new subjects, departments and faculties. Islamic higher education is being challenged to train students to be competent and to be able to work in a wide variety of occupations and not just gain employment in traditional institutions.

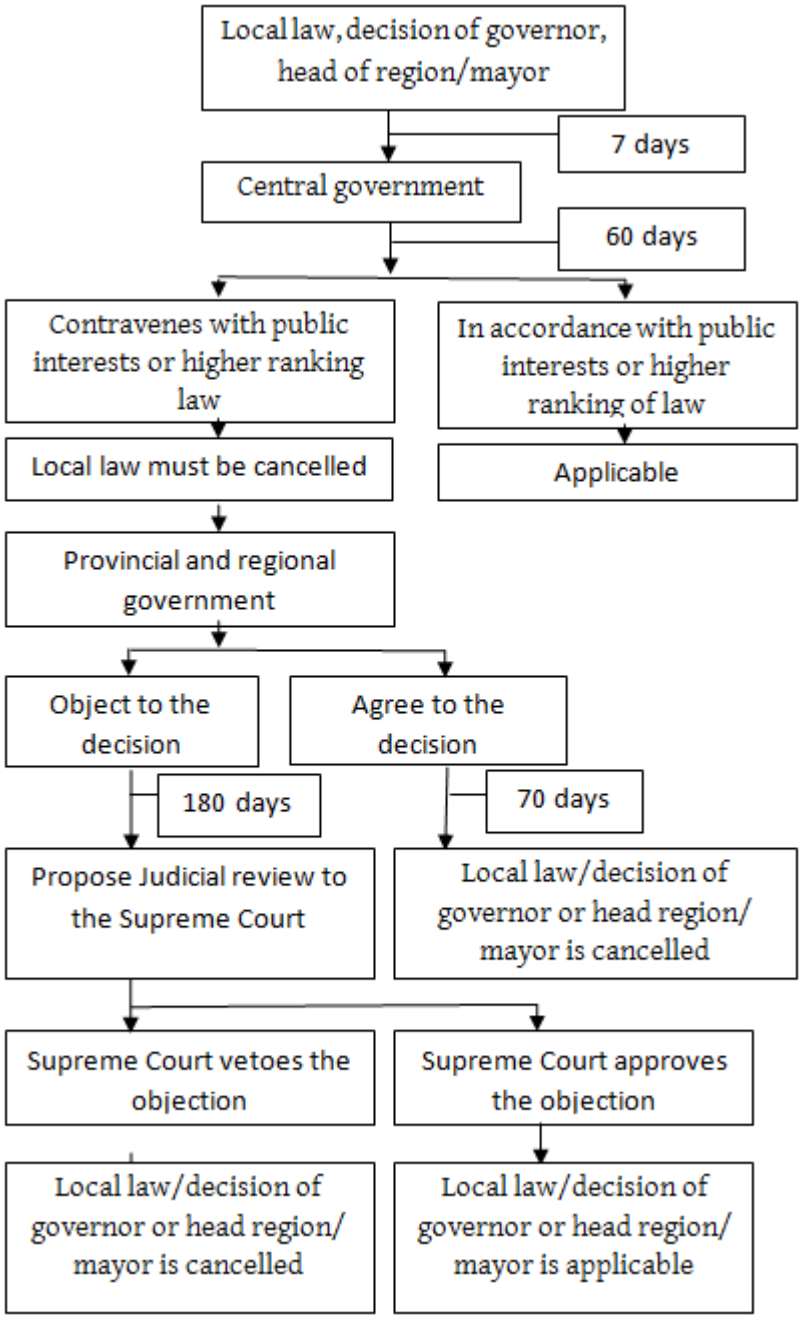
In addition, the position of ulama was also located in the periphery in the process of Sharia legislation. The legislation has now become the 'business' of politicians and bureaucrats, rather than of ulama. This situation is particularly clear when one understands that the power of the state significantly increased in terms of providing rules for its citizens, including Muslims.

Appendices

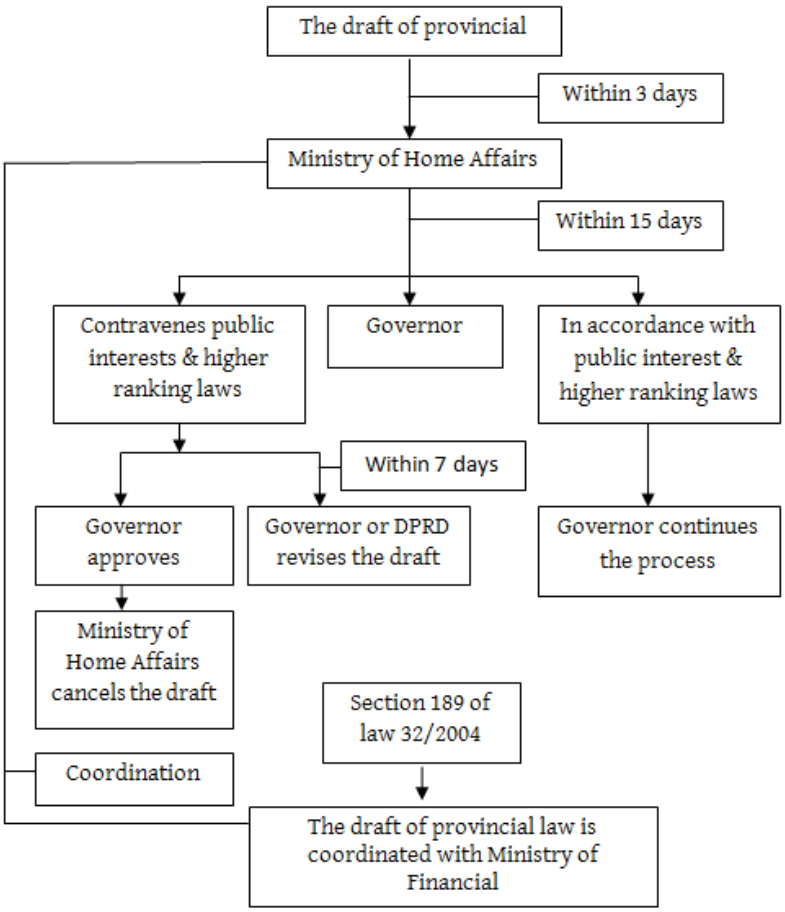
Appendix 1. Executive review to provincial and regional law/decision of governor/head of region/mayor according to section 114 law No.22/1999



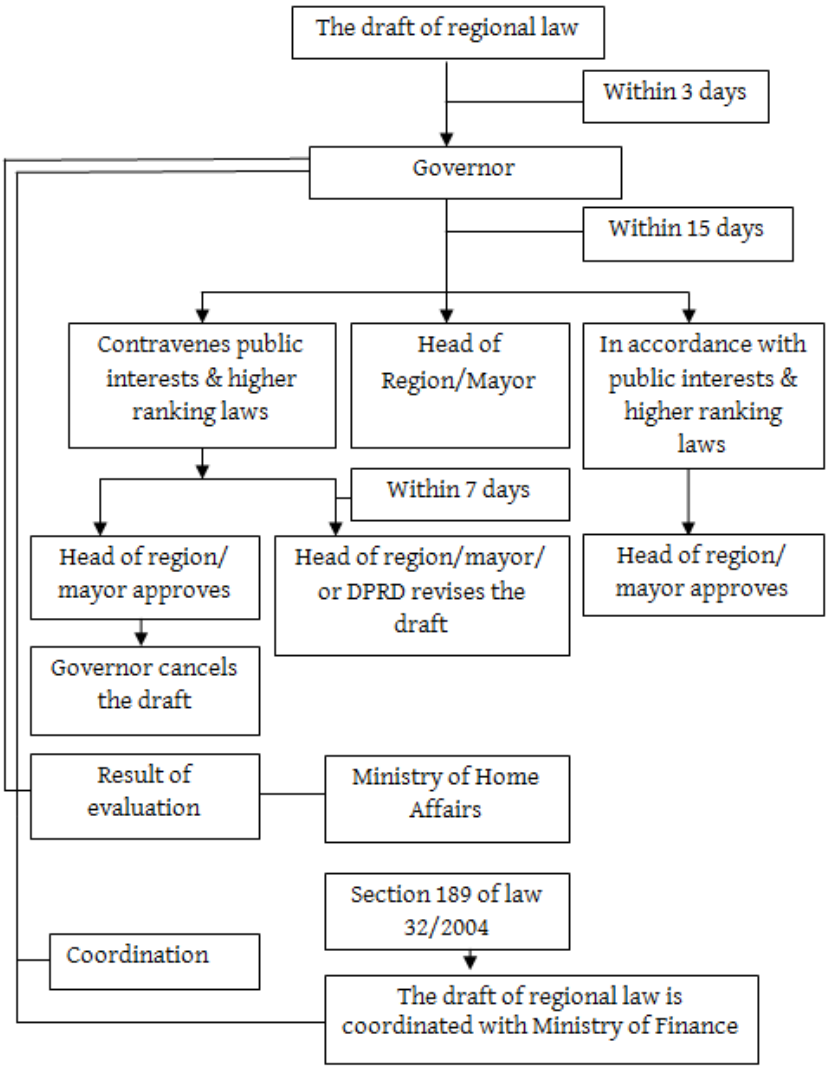
Appendix 2. Executive review procedure for provincial and regional law/decision of governor/head of region/mayor according to section Procedure according to section 145 of law No.32/2004



Appendix 3. Executive preview procedure for the draft of provincial laws according to section 185 of law No.32/2004



Appendix 4. Executive preview procedure for the draft of regional law according to section 185 of law No.32/2004



Appendix 5. The draft provincial law on the prohibition and prevention of public immorality.

DRAFT OF
PROVINCIAL LAW OF THE PROVINCE OF WEST SUMATRA

NUMBER: YEAR 2001

ON
PROHIBITION AND PREVENTION PUBLIC IMMORALITY

WITH THE MERCY OF THE ONE AND ONLY GOD
MAYOR OF THE MUNICIPALITY OF PADANG

Considering : 1. Province of West Sumatra is a province that has a distinctive tradition based on 'adat is based on Sharia, Sharia is based on the Quran, Sharia commands, adat implements'.

2.Several forms of public immoralities including prostitution, unlawful sexual intercourse, homosexuality, pornographic acts, abuse of alcoholic substances and other public immoralities have been disturbing security and social order and damaging social principles. These public immoralities are in contradiction with the norms ruled by state law, religion and adat.

3. In order to maintain social stability and community in general, as well as to protect the new generations from the negative impact of public immoralities in particular, preventive measures are necessary.

4. Taking into consideration the above factors, it is necessary to outline these rules in provincial law.

Justified by 1. National law 1/1946 on Penal Code.

2. National law 61/1958 on the Establishment of the provinces of West Sumatra, Jambi and Riau. The government regulation 29/1979.
3. National law 8/1981 on the Criminal law procedure.
4. National law 23/1997 on Health.
5. National law 5/1997 on Psychotropic substances.
6. National law 22/1997 on Narcotics.
7. National law 24/1997 on Broadcasting.
8. National law 22/1999 on Local autonomy.
9. National law 39/1999 on Human rights.
10. Government regulation 6/1988 on Coordination among local government institutions in the regions.
11. Government regulation 25/2005 on the authority of the central government and provincial government as the frame for autonomy.
12. Decision of DPRD of the province of West Sumatra 18/SB/1999 on the rules of conduct of DRPD.

DECIDED TO:

Agreed with PROVINCIAL LAW OF THE PROVINCE OF WEST SUMATRA ON PREVENTING AND ELIMINATING PUBLIC IMMORALITY IN WEST SUMATRA

CHAPTER I

GENERAL ELUCIDATIONS

Section 1

Definitions used in this provincial law are as below:

a. Region means the province of West Sumatra;

b. Local government means the government of West Sumatra;

c. Governor means the governor of West Sumatra;

d. Public immorality means any conduct that may disharmonize the foundations of social and contravene state laws, religion and *adat* including a number of offences of prostitution/gigolo, unlawful sexual intercourse, abortion, homosexuality, pornographic conduct, gambling, abuse of alcohol, narcotics and other forms of public immorality.

e. Prostitution means sexual intercourse between a man and a woman who are not married and with a view to financial gain.

f. Unlawful sexual intercourse means sexual intercourse that is committed by a couple who have no marriage relationship, whether it is committed for reason of pleasure or not.

g. Abortion means the expulsion of a fetus from the womb, without medical reason, before it is able to survive independently.

h. Homosexuality means sexual intercourse that is committed by members of the same sex.

i. Pornographic act means any conduct that may provoke sexual desire.

j. Gambling means any conduct or games that result in financial gain and depend solely on luck and where money or property are used as a stake.

k. Abuse of narcotics means the abuse of alcohol and includes consuming, distributing, storing narcotics and other psychotropic substances that are prohibited by law.

l. Alcoholic drink is drink containing alcohol.

m. Pornography means a pornographic picture, writing or behavior that may provoke sexual desire.

n. Transvestite means somebody who dresses as a member of the opposite sex.

o. Obligation means tasks that have to be conducted by people.

p. Prohibition means something that is prohibited conduct.

CHAPTER II
SCOPE AND PURPOSES

Section 2

(1) The scope of public immorality in this provincial law includes any conducts relating to public immoralities that is mentioned in Section 1, subsection d, and carried out conducted in West Sumatra.
(2) Any activity and/or conduct relating to public immorality that is mentioned in the subsection of this section is an offence.

Section 3

The purposes of this provincial law are:
a. to guarantee the stability of society.
b. to prevent moral disorder of society in general, and the younger generation in particular;
c. to restore and maintain the philosophy of the people of West Sumatra, '*adat* is based on Sharia, Sharia is based on the Quran, Sharia commands *adat* applies' and apply it to daily life.

CHAPTER III
OBLIGATION AND PROHIBITION

Part one
Obligation
Paragraph I
The owner of a hotel/motel/home stay

Section 4

Any owner of hotel/motel/home stay is obligated to:

a. report the identity of guests who are staying at the hotel/motel/home stay to the local authority in the neighborhood.;
b. provide a visitors room or a lobby;
c. enforce the rule that guests of the hotel/motel/home stay only receives guests in the visitors room;
d. rule that hotel/motel/home stay are not allowed to receive guests between 10pm and 6am;
e. provide rules about guest conduct in accordance with this provincial law;
f. prevent any public immorality offences;
g. report to the authorized or law enforcement institution any suspected public immorality offence;
h. provide transportation for staff returning homes after 10pm.

Paragraph 2
The owners of public entertainment and tourist establishments

Section 5

Any owner of a public entertainment or and tourist establishment has an obligation to:

a. guarantee that no public immorality offences occur in their venues;
b. announce to the public that public immorality is prohibited in their venues;
c. provide rules of conduct in accordance with this provincial law;
d. prevent any public immorality offences;
e. report to law enforcement institutions any suspected public immorality offences;
f. provide transportation for staff returning homes after 10pm.

Paragraph 3
Educational institutions

Section 6

Any principal of an educational institution has an obligation to:

a. maintain public morality in his institution;
b. announce that public immoralities are an offence;
c. announce that the educational institution supports the provincial law;
d. cooperate with parents of the students and the legal enforcement institution if a suspected public immorality has occurred;
e. prevent any public immorality offences;
f. report suspected public immorality offences to the law enforcement institutions;
g. provide transportation for staff returning homes after 10pm.

Paragraph 4
State and private institutions

Section 7

Any officer of a state, private, civil or military institution has an obligation to:

a. maintain public morality;
b. announce that public immoralities are an offence;
c. provide rules of conduct in accordance with this provincial law;
d. prevent any public immorality offences;
e. report any suspected public immorality offence to authorized or the law enforcement institution;
f. provide transportation for staff returning homes after 10pm.

Paragraph 5
Businesses/companies

Section 8
Any owner of a business or company has an obligation to:
a. maintain public morality;
b. announce that public immoralities are an offence;
c. provide rules of conduct in accordance with this provincial law;
d. not run any business related to public immorality offences;
e. prevent any public immorality offence;
f. report any suspected public immorality offence to authorized or law enforcement institutions;
g. provide transportation for staff returning homes after 10pm.

Paragraph 6
Media

Section 9
Any owner of printed or electronic media has an obligation to:
a. maintain public morality;
b. announce that public immoralities are an offence;
c. provide rules of conduct in accordance with this provincial law;
d. not publish any form of public immorality;
e. prevent any public immorality offence;
f. report any suspected public immorality offence to authorized or legal enforcement institutions;
g. provide transportation for staff returning homes after 10pm.

Part two
Prohibition

Section 10

(5) Any person who commits public immorality (*maksiat*) shall be guilty of an offence;
(6) Any person whose conduct stimulates or triggers another person to commit immoralities shall be guilty of an offence;
(7) Any female who leaves her house between 10pm and 04am without being accompanied by family members (*muḥrim*), and/or she is not on duty or obligated by laws and/or she is not doing any work justified by other legal norms, shall be guilty of an offence;
(8) Any owner of hotel/motel/inn/guest house who allows any guest to visit outside of visiting times or not in a visiting room (guest room/lobby) or allows anyone to commit immoralities, or provides massage services, or allows men and women who are not married to each other to stay in the same room shall be guilty of an offence.
(9) Any person working in the above establishments regulated in sections 4, 5, 6, 7, 8, and 9, who allows any person to commit public immorality shall be guilty of an offence.

CHAPTER IV
SUPERVISION AND CONTROL

Section 11

(1) The governor or other authorized institution regulated under the state law and regulations is obliged to implement provincial law.
(2) Supervision of the implementation of this provincial law is conducted by the government, law enforcement institutions, parents, *adat* leaders, ulama, scholars, educators and the public.
(3) The provincial government shall be restricted in controlling activities in relation to public immorality offence that occur in border areas.

(4) The government shall establish an institution that controls public morality in the villages. Members of this institution should be representative of the local ulama, adat leaders, youth, NGO activists, and the village government. The establishment of this institution is managed by the regional/municipal government.

CHAPTER V
ADDITIONAL RULES

Section 12

(1) Provincial, regional and municipal government and other related institutions have the responsibility to control, prevent and prohibit any person from committing any public immorality.
(2) Provincial, regional and municipality government and other related institutions have an obligation to censor any news or broadcast content that relates to public immorality offences.
(3) Provincial, regional and municipality government and other related institutions shall publicize the penalties for committing offences regulated in this provincial law via various printed or electronic media including stickers, billboards, and advertisements.

Section 13

(1) This provincial law aims to reemphasize the public immorality offences that have been regulated under the national public law.
(2) Regional and municipal government may determine other public immorality offences that are excluded in this provincial law.

CHAPTER VI
PENALTY AND INVESTIGATION

Section 14

(1) Any person who commits public immorality that has been regulated under the national public law is punished

according to the national public law and, in addition to this penalty, the name of the offender and the offence will be published in three local media. The costs publishing are the responsibility of the offender.

(2) Any person who commits public immorality that has not been regulated under the national public law will be imprisoned for a maximum six months or fined with a maximum 5 million rupiah. In addition, the name of the offender and the offence will be published in three local media. The costs of publishing are the responsibility of the offender.

(3) Any person who commits offences under sections 4, 5, 6, 7, 8, and 9 will be imprisoned with a maximum six months or fined to a maximum 5 million rupiah and an administrative penalty.

(4) Any business owner, principal or other government officer who commits a public immorality offence will be imprisoned for a maximum of one year or fined with a maximum 10 million rupiah, plus an administrative penalty. In addition their business license will be confiscated.

(5) Any person who protects a place of public immorality or an offender will be imprisoned with a maximum of one year or fined with a maximum 10 million rupiah.

(6) Any government officers, civil or military, who commit a public immorality offence will be imprisoned with a maximum of one year or fined with a maximum 10 million rupiah, plus an administrative penalty.

(7) Any offender who has been imprisoned or fined must subsequently participate in a mental rehabilitation program for six months.

(8) All verdicts must be executed within fifteen days.

(9) The public immoralities regulated in this provincial law are offences.

(10) Other public immoralities excluded in subsections 1, 2, 3, and 4 of this section may be punished if they affect and destabilize society.

Section 15

(1) Besides the public investigator the civil servant investigator at government institutions may investigate the offences ruled in section 14.

(2) The investigator has the authority to:
   a. Receive public reports concerning suspected offences;
   b. Take immediate and necessary action in response to the report;
   c. Remove the offender from his or her activities and examine the offender's identity;
   d. Confiscate property or documents belonging to the offender;
   e. Take fingerprints of the offender;
   f. Call any person who is a witness or suspect in the investigation;
   g. Present any expert who has authority related to the case;
   h. Withdraw the case if the required evidence is not met or if the case is not an offence;
   i. Take any legal action according to the law.

(3) The investigator mentioned in subsection (1) of this section must write a report consisting of:
   a. Investigation of the offender;
   b. Searching for evidence of the offence;
   c. Confiscation of evidences;
   d. Administrative investigation;
   e. Examination of witnesses;
   f. Investigation of the location of the offence.

(4) The investigator mentioned in subsection (1) of this section coordinates with the police concerning with the offence and subsequently pass the case to the public prosecutor in accordance with national law No.8/1981 on the Criminal procedure code.

(5) An investigation, as ruled under subsection 1, 2 ,3, and 4 of this section, must be conducted within three months, unless the suspect is not under arrest.

(6) An investigation is legally invalid if it is not conducted according to this law.

BAB VII
FINAL ELUCIDATION

Section 16

(1) Implementation of this provincial law is the responsibility of the governor of the province of West Sumatra and the Civil Service Police Unit is the law enforcement institution.
(2) Any revenue from fines regulated under section 14 of this law belongs to the provincial or regional/municipal budget.
(3) Any consequences of this law are under the concern of the provincial, regional/municipality government.
(4) Further elucidation of this provincial law is regulated under the governor's decree.

Section 17

(1) This provincial law comes into effect at the time of promulgation.
(2) In order gain public acknowledgment, this provincial law shall be noted in the provincial documents of West Sumatra.

Issued in : Padang

Date :

GOVERNOR OF WEST SUMATRA

Appendix 6. The provincial law of West Sumatra No.11/2001 on the prevention and elimination of public immorality

PROVINCIAL LAW OF WEST SUMATRA
NO.11 OF 2001
ON
PREVENTION AND ELIMINATION OF PUBLIC IMMORALITY

WITH THE MERCY OF GOD
GOVERNOR OF WEST SUMATRA PROVINCE

Considering: a. West Sumatra Province is a region whose society has the social philosophy, *adat* is based on Sharia and Sharia is on the Quran. The norms of this philosophy must be implemented in society;

b. This philosophy must be implemented through attempts to prevent and eliminate public immorality;
c. Social immorality disturbs and destabilizes society. There is evidence that such immorality disturbs religious norms, *adat* and other regulations;
d. In order to obey the social norms, local regulations on the prevention and elimination of social immorality are required.

Justified by: 1. National Law No.1/1946, on the Criminal Law (announced on 26 February 1946);

2. National law No.61/1958, on Establishment of *Swatantra* West Sumatra, Jambi and Riau provinces and Government regulation No.29 of 1979;

3. National law No.8/1981, on Criminal Procedure code (State paper, 1981, no.76, additional of State Paper No.3209);

4. National law No.23/1992, on Health (State paper, 1992 No. 100, Additional of State Paper No.3495);
5. National Law No.5/1997, on Psychotropic substances (State paper, 1997 No. 10, Additional of State Paper No.3671);
6. National law No.22/1997 on Drugs (State paper, 1997, no. 67, additional of State Paper No. 3698);
7. National law No.24/1997 on Broadcasting;
8. National law No.22/1999 on Local government (State paper, 1999 No. 60, additional of State Paper No. 3839);
9. National law No.40/1999 on Press (State Paper, 1999 no.166, additional of State Paper No.3887);
10. National law No.6/1988, on Coordination of local governments activities (State Paper, 1988, No. 10, Additional State paper No. 3373);
11. Government law No.25/2000, on Government authority and Provincial authority as an autonomous region (State paper, 2000, No. 54, Additional State paper, No. 3952);
12. Presidential decision No.44/1999, on Techniques for arranging regulations, drafts of government regulations, and draft of Presidential decree;
13. Provincial law of West Sumatra Province No.9 of 2000, on General principles of authorities in *nagari*.

Under the Agreement of

THE PROVINCIAL PARLIAMENT

OF WEST SUMATRA PROVINCE

DECIDED TO:

In Agreement with PROVINCIAL LAW OF THE PROVINCE OF WEST SUMATRA ON PREVENTION AND ELEMINATION OF PUBLIC IMMORALITY

CHAPTER ONE

GENERAL ELUCIDATIONS

Section 1

The following terms are used in this provincial law:

a. Region means the province of West Sumatra;

b. Local government means the government of West Sumatra;

c. Governor means the governor of West Sumatra;

d. Public immorality means conducts that may disharmonize the foundations of society and contravene religious and *adat* norms, whether or not they have been regulated in national or local regulations;

e. Unlawful sexual intercourse means sexual intercourse that is committed by a couple who are not married, whether or not it is committed for pleasure, or under duress, or for the promise of benefits to one of the two. Homosexuality and lesbianism are categorized as unlawful sexual intercourse;

f. Gambling means all actions aimed at financial benefits and depending solely on luck, or all types of games that use money

or property as a stake, including buying a ticket that aims to gain or win a prize;

g. Alcohol means any type of drink that contains alcohol or any type of drink that causes inebriation and can damage physical metabolism including the brain.

h. Drugs and other psychotropic substances mean any kind of drugs or substance, whether or not synthetic or semi-synthetic or derived from plants, which can cause a decrease of human consciousness, feeling of confusion, or for reducing a pain as mentioned in the appendices of law no.5/1997 on Psychotropic substance and law No.22/1997 on Drugs.

i. Publishing and producing material that can stimulate people's desire to commit public immorality means any acts of publishing and producing pornographic stories, pictures, posters and other form of entertainments that contravene religious and *adat* values.

CHAPTER II

SCOPES AND OBJECTIVES

Section 2

(1) The scopes of preventing and eliminating of public immorality in this local regulation means all actions and/or activities related to public immorality;

(2) Actions and/or activities such as those mentioned above means any kind of unlawful sexual intercourse, or an action that is intended to commit unlawful sexual intercourse, gambling,

drinking alcohol, drugs and the publishing or producing of pornographic materials.

(3) If the above acts and/or activities have been regulated under higher ranking laws and regulations, they remain regulated by those laws and regulations.

Section 3

The objectives of preventing and elimination public immorality are:

a. To implement the principles and philosophy of *Adat is based on Sharia, Sharia is based on the Quran*;

b. To protect society from the disturbing effect of public immorality;

c. To support law enforcement of regulations that concern public immorality;

d. To improve social participation in preventing and eliminating public immoralities.

Section 4

Detailed rules on the prevention and elimination of public immoralities will be further regulated in regional or municipal law.

CHAPTER III

PREVENTION AND ELIMINATION OF PUBLIC IMMORALITIES

Part One

Unlawful sexual intercourse

Section 5

(1) Every person who commits unlawful sexual intercourse shall be guilty of an offence;

(2) Every person who facilitates an unlawful sexual intercourse and also acts that trigger sexual desire as a result of a physical movement and/or not covering parts of the body that religion and *adat* state should be covered shall be guilty of an offence;

(3) Every person who produces any kind of writings, pictures, and entertainment that triggers sexual desire shall be guilty of an offence.

Section 6

Every person, including military or civil servants, who are involved in protecting or facilitating any kind of unlawful sexual intercourse shall be guilty of an offence.

Part Two

Gambling

Section 7

Every person who allows his property to be uses for facilitating gambling or to support gambling activities shall be guilty of an offence.

Section 8

(1) Every person who commits gambling or is involved in a gambling business shall be guilty of an offence;

(2) Every person who allows his own business facilities or house to be used as a place of gambling shall be guilty of an offence.

Section 9

(1) Every person, including military or civil servants, who support gambling activities shall be guilty of an offence;

(2) Every person who permits or licenses gambling activities shall be guilty of an offence.

Section 10

Any person who lives on the earnings from gambling or participates in gambling for pleasure shall be guilty of an offence.

Part Three

Abuse of alcohol, narcotic and psychotropic substances

Section 11

(1) Every person has an obligation to prevent the distribution and spread of alcohol, narcotics and psychotropic substances.

(2) Every person has an obligation to prevent other people from abusing alcohol, narcotics and psychotropic substances.

Section 12

(1) Every person who blends, produces, stores, sells, distributes and presents alcohol, narcotics or psychotropic substances shall be guilty of an offence;

(2) Use of alcohol, narcotics and psychotropic substance is meant solely for medical reasons and must be justified and prescribed by a professional physician.

Section 13

(1) Every person who blends, produces, stores, distributes and sells alcohol, narcotics and psychotropic substances without an official from the authorized institution shall be guilty of an offence.

(2) Every person who plants any kind of plantations that can be used as ingredients for any type of narcotics, narcotics and psychotropic substances shall be guilty of an offence;

(3) Every person who licenses other people involves in the abuse of alcohol, narcotics, psychotropic substances shall be guilty of an offence.

Section 14

Every person, including military or civil servants involved in the abuse of alcohol, narcotics and psychotropic substances shall be guilty an offence.

Part Four

Publishing and producing pictures that trigger public immorality

Section 15

Every person who in charge of the state or private institutions, or any person who has business and is involved in publishing, producing, and distributing mass media including printing and electronically producing or storing, pictures, posters that contravene religious or *adat* values and trigger public immorality shall be guilty of an offence.

CHAPTER FOUR

PUBLIC PARTICIPATION

Section 16

(1) The public has the right and responsibility to participate in preventing public immorality in order to maintain a social order;

(2) Public participation is proved by reporting suspected public immorality to the authorized institution;

(3) Every person who catches a suspected offender of public immoralities should report it to an authorized institution;

(4) Every person who in charge of an authorized institution has an obligation to guarantee the security and protection of a witness that is mentioned in section 16, points 1 and 2.

(5) Every person has the right to complain about, object to or express their dissatisfaction with the credibility of the authorized institution in protecting a witness.

(6) A comprehensive regulation on the issue of participation in preventing public immorality will be further regulated in regional or municipal law.

Section 17

Every person has an obligation to participate in preventing and eliminating public immoralities, as follows:

a. to warn people not to commit public immoralities;

b. to prevent the abusing of places for public immoralities;

c. to report suspected offences of public immorality to the government officers in the neighborhood.

Section 18

(1) The authorized institutions, mentioned in section 17 (c) above, should immediately follow up such as report and pass it to the police department or to other law enforcement institutions.

(2) The authorized officers who receive the report of the case should follow up the case.

(3) Any authorized officers who delays or postpones the follow up of a case shall be guilty of an offence.

(4) Any person who facilitates public immorality shall be guilty of an offence.

Section 19

The authorized institution may provide a reward to any person or institution who has been actively participating in preventing public immoralities.

CHAPTER FIVE

CONTROLLING AND MAINTAINING

Section 20

Local government has the obligation to control and observe all activities relating to the prevention and elimination of public immoralities.

Section 21

The obligations that mentioned in section 20 are focused on:

a. the prevention and elimination of public immoralities;

b. protecting the society from the effects of public immoralities;

c. preventing youth from committing public immoralities.

CHAPTER SIX

PENALTY

Section 22

(1) Any person who commits offence regulated in chapter three will be charged under the related laws.

(2) Authorized officers who do not follow up reported may be punished with the administrative punishments regulated under related regulations.

CHAPTER SEVEN

FINAL ELUCIDATION

Section 23

The procedure for the implementation of this provincial law will be further regulated under a Governor's decree.

Section 24

This provincial law is legally valid at the time of the issuance.

In order to implement this provincial law, it must be recorded in the Provincial Government Paper of West Sumatra Province.

Issued in : Padang

Date : 14 November 2001

GOVERNOR OF WEST SUMATRA

ZAINAL BAKAR

Promulgated in: Padang

Date : 14 November 2001

Secretariat of the province West Sumatra,

Signed by

Drs. H. Ali Amran

Provincial Government Paper of West Sumatra, No. 36 of 2001

Appendix 7. The draft of the municipal law of Padang on the control, prohibition and prevention of public immorality

THE DRAFT
MUNICIPAL LAW OF PADANG
NUMBER: YEAR 2001

ON

CONTROL, PROHIBITION AND PREVENTION OF PUBLIC IMMORALITY

WITH THE MERCY OF THE ONE AND ONLY GOD
MAYOR OF THE MUNICIPALITY OF PADANG

Considering: a. Public immoralities that have been occurring in society are causing social disharmony, disturbed social order and are not in accordance with religious rules, traditions or good conduct. These public immoralities have not yet been covered by the national pubic law and regulations. Consequently, these immoralities cannot be tackled by the Municipal authorities.

b. In order to maintain public morality in a Municipal of Padang, a municipal law aimed at controlling, prohibiting and preventing all forms of public immorality is required.

c. In relation to this, and as specified above under letters ‘a’ and ‘b’, the issuance of a Municipal law on this subject is required.

Legal basis:1. National law No.9/1956 on the establishment of autonomous regions in the province of Middle Sumatra (State paper No.20/1956)

2. National law No.73/1958 on the implementation of national law No.1/1946 on penal code (State paper No.12/1958, State paper 1660).

3. National law No.8/1981 on criminal procedure code (State paper 76, State paper 3209).

4. National law No.22/1999 on regional autonomy (State paper No.60/1999, State paper 3039).

5. Government regulation No.6/1988 on coordination among local government institutions in the regions (State paper No.10/1988).

6. Presidential decree No.44/1999 on techniques for the preparation of draft government regulations, and presidential decree.

7. Ministerial decree of the Ministry of Judiciary 04.PW-07-03/1984 on the authority of civil servants investigators.

8. Ministerial decree of the Ministry of Home affairs No.4/1997 on civil servants investigation.

9. Municipal law of Padang No.7/2000 on the Municipality grand plan.

10. Decision of the Mayor of Padang No.11/1996 on civil service police unit in following up the decision of the Ministry of Home Affairs No.33/1990.

Under consideration:

Suggestions and recommendations addressed by various elements of society including academics, village elders, learned religious scholars, religious figures, intellectuals, women's organizations, NGOs, legal aid experts, businessmen, government officers and law enforcement officers.

THE MUNICIPAL PARLIAMENT OF PADANG
DECIDES TO

In agreement with: MUNICIPAL LAW ON CONTROL, PROHIBITION AND PREVENTION OF PUBLIC IMMORALITY

CHAPTER I
GENERAL ELUCIDATIONS

Section 1

Within these Regional Regulations, the intended meaning of:

1. Region means the Municipality of Padang
2. Regional government means the Government of Padang
3. Head of the Region means Mayor of Padang
4. DPRD means the Municipal Parliament of Padang.
5. Public officer means civil servant tasked to enforce rules of conducts in accordance with the laws and regulations.
6. Public order means a dynamic situation that allows the government and society to undertake activities safely, orderly and peacefully.
7. Public immorality means any conduct that occurs in society that disturbs the peace in society and that is in accordance with religious teachings, traditions and other rules of conduct, but these public immoralities have not yet been ruled as offence under the national public law.
8. Prostitute means a woman who is paid to provide sexual intercourse and aimed to earn a living from this conducts, which is in contradiction with the state laws, religious teachings, adat and the living law in the society.
9. *Lelaki hidung belang* means the local colloquial term used for a man who enjoys sexual intercourse with a prostitute.
10. Middleman means any person who directly or indirectly works to facilitate the opposite sex to commit public immorality, whether or not he receives payment for the service.
11. The month of the Ramadan means the holy month when Muslims are obligated to fast during the hours of daylight.
12. *Kedai kaki lima* means the local colloquial term used to identify a kiosk where food, drink and other products are sold.
13. *Warung nasi* means the local colloquial term used for a restaurant or canteen where food and drink is serviced.

14. Alcoholic beverage means any drink containing with 5 per cent of or more of alcohol.
15. Games, such as video games and Play Stations or other similar products mean games that required payment.
16. Billiards means a game that uses small balls of ivory and a long stick on a square table covered with felt.
17. A billiard house means a place where billiards is played.
18. A music café means a drinking place or other similar type of place where the customers are entertained by music.
19. Guest house means a type of temporary shared accommodation.
20. Hotel means a building or commercial establishment where people pay for lodging, and where other public services, such food and beverage are often available.

CHAPTER II
PUBLIC IMMORALITY

Section 2

Public immorality offences in this Municipal law are classified as follows:

1. Any person who commits an offence directly or indirectly:
   a. Public immorality ruled in Chapter I, Section 1, subsection 7;
   b. Any conduct that disturbs public order or contravenes either traditional or religious rules of conduct;
   c. Drink and sell alcoholic beverages in public places;
   d. Sell food and drink including opening restaurants and food centers, during the day during the month of Ramadan, except in places permitted by the local authorities;
   e. Producing, distributing, displaying and selling any indecent material that is in contradiction with public morality
2. Abuse of public places, business places or transportation in relation to public immorality offences. These places include:
   a. Hotel, motel, guest house, public building, student dormitory or similar venues.
   b. Restaurant, music café, and other drinking venues.
   c. Billiard house, beauty salon, VCD and Play Station rental venues, massage houses and other places.

d. Tourist destination, parks, public places and other entertainment venues.
e. Taxi and other types of transport.

3. Any person who becomes a middleman involved in public immoralities, as ruled in Section 2, subsections 1 and 2 above.

CHAPTER III
CONTOROL, PROHIBITION AND PREVENTION

Section 3
Part One
Control

Based on this Municipal law, Mayor as the Head of the Region has the authority to establish a law enforcement institution that has the authority to enforce the law in respect of:

1. Offences of public immorality, both preventative and repressive measures.
2. Places or locations where it is permitted to open rice stalls during the month of Ramadan and taking into account the interests of religious tolerance.
3. Activities taking places, in billiard houses, music cafes, VCD and Play Station rental venues, massage houses and other places during the month of Ramadan.
4. The stipulation in Section 2, subsection 1 (d) and (e) during the month of Ramadan.
5. The stipulation in Section 2, subsection 2 to establish the rules of conduct for the owners of these public places.

Section 4
Part two
Prohibition

Every person who:

1. commits a public immorality offence regulated under chapter 1, section 1, subsection 7 of this Municipal law, or makes any transactions, negotiations or acts as a middleman in connection with public immorality offences, or provides facilities for the

committing of public immorality offences, shall be guilty of an offence;

2. abuses alcoholic beverages in public or public places shall be guilty of an offence;
3. owns, carries, prepares, distributes, controls, receives, stores or trades alcoholic substances without permission shall be guilty of an offence;
4. carries out public immorality offences ruled in section 2, subsection 1 of this municipality law shall be guilty of an offence;
5. conducts public immorality ruled in section 2, subsection 2 of this municipal law shall be guilty of an offence;
6. conducts public immorality ruled in section 2, subsection 3 of this municipal law shall be guilty of an offence;
7. Persuades, invites or forces another person to conduct public immorality in public place shall be guilty of an offence.

Section 5
Part three
Prevention

Every person who violates the stipulations of chapter four shall be guilty of a criminal offence.

CHAPTER IV
PENALTY

Section 6

1. Every person who commits an offence under section 2 and 4 shall be imprisoned for a maximum 5 months or fined with a maximum 5 million rupiah.
2. Criminal offences stated in section 6 are classified offences.

CHAPTER V
STIPULATION FOR INVESTIGATION

Section 7

1. Investigators of public immorality offences are:
   a. National Police officer
   b. Civil Servant Investigator of the municipal government.

c. Other law enforcement institutions that have the authority to carry out an investigation.

2. An investigator has the authority to:
   a. Receive public reports concerning suspected offences;
   b. Take immediate and necessaries action in response to the report;
   c. Remove the offender from his or her activities and examine the offender's identity;
   d. Confiscate property or documents belonging to the offender;
   e. Take fingerprints and photographs of the offender;
   f. Call any person who is a witness or a suspect for the purpose investigation;
   g. Present an expert who has the authority related to the case;
   h. Withdraw the case if the required evidence is not met or if the case is not an offence;
   i. Take any legal action according to the law.
3. An investigator mentioned in subsection 1 of this section must write a report consisting of:
   a. Detail of the investigation of the offender;
   b. Detail of the searching for evidence of the offence;
   c. The confiscation of any evidences;
   d. Detail of the administrative investigation;
   e. Detail of the examination of the witnesses;
   f. Detail of the investigation at the location of the offence.
   g. Detail of contact with the family or relatives of the offender.
4. Investigation outcome as stipulated in section 7, subsection 3 is submitted to the public prosecutor via the investigator of the police officer.

CHAPTER VI
FINAL ELUCIDATION

Section 8

1. The mayor of the municipality of Padang has the authority to extend public immorality offences that are excluded in this municipal law on the condition that there is consultation the municipal parliament.

2. This municipality law is entitled Control, Prohibition and Prevention of public Immorality.

Section 9

This municipal law takes effect from the date of promulgation and in order for it to be legally acknowledged it shall be recording in the Regional Paper of the municipality Padang.

Issued in : PADANG
Date :
Mayor of the Municipality of Padang

Appendix 8. Zakāt revenue collected by BAZDA in Padang 2006-2011

No.	Months	Years		
		2006	2007	2008
01	January		107,528,712.00	159,314,211.00
02	February		95,540,124.00	166,943,788.00
03	March		105,580,180.00	183,186,101.00
04	April		111,044,749.00	211,707,820.00
05	May		122,912,367.00	193,183,439.00
06	June		166,879,730.00	209,183,459.00
07	July		208,591,176.00	196,829,256.00
08	August		163,086,124.00	163,590,750.00
09	September		140,211,761.00	246,170,987.00
10	October		132,791,779.00	192,929,101.00
11	November		171,135,856.00	170,923,875.00
12	December		142,183,065.00	206,289,615.00
Total amount		**885,070,143.00**	**1,667,485,632.00**	**2,300,506,534.00**

No.	Months	Years		
		2009	2010	2011
01	January	220,232,939.00	822,997,621.00	1,088,877,751.00
02	February	429,957,662.00	1,070,604,851.00	907,639,256.00
03	March	783,640,249.00	951,747,962.84	1,007,722,049.00
04	April	817,152,204.00	820,156,763.00	1,046,828,391.00
05	May	843,419,981.00	898,480,119.00	1,038,706,903.00
06	June	1,571,745,536.00	1,118,258,577.00	1,084,601,669.00
07	July	965,529,585.00	1,432,255,861.00	2,015,288,177.00
08	August	863,913,714.00	875,815,239.00	2,463,494,476.00
09	September	941,254,182.00	1,000,834,511.00	875,295,803.00
10	October	830,073,149.00	839,667,550.00	1,079,786,743.00
11	November	817,307,946.00	903,837,253.00	1,016,444,623.00
12	December	901,875,336.00	1,045,030,771.00	2,035,591,342.00
Total amount		**885,070,143.00**	**10,033,089,718.00**	**11,779,686,718.84**

Sources: BAZDA Annual report 2006-2011

Glossary

ABS-SBK. An abbreviation for the maxim, *adat basandi syarak, syarak basandi kitabullah*, (Adat based on Sharia, Sharia based on the Quran). This maxim is widely used to justify the harmony between Islam, Sharia, and Minangkabau *adat*. It also implies that Minangkabau *adat* is subordinate to Islam and that *adat* is valid as long as its rules are in accordance with Sharia. This maxim is transformed from an old maxim: *adat basandi Syarak, Syarak basandi adat, (adat* based on Sharia, Sharia based on *adat*). This maxim indicates that Sharia was subordinate in *adat* rules in which Sharia is only applied as long as its rules are in line with *adat* rules. However, there is considerable dispute among the Minangkabau people as to which maxim should take precedence.

adat. The meaning of *adat* covers local custom, traditional law, morality, political systems, legal systems. In the Minangkabau world view, *adat* and Islam are considered the two pillars of society.

ʿāmil zakāt. Zakāt collector that might be an individual or institution. According to Sharia an ʿāmil is entitled to receive zakāt revenue.

ʿawra,ʿ awrāt (plural). Part of the body needed to be covered when one is together with non-family members, except in emergency situations.

BAM. An abbreviation for *Budaya Alam Minangkabau.* It is a new subject op study created under local autonomy, taught at the schools in West Sumatra as in attempt to maintain Minangkabau society. It contents covers the foundation of Minangkabau society according to *adat.*

Bank Muamalat. The first private bank to apply a system of non-interest, established in May 1992.

BAZ. An abbreviation for *Badan Amil Zakāt,* the institution of zakāt managed by the local government. This name was commonly used before the central government passed law 38/1999.

BAZDA. An abbreviation for *Badan Amil Zakāt Daerah*, the institution of zakāt under local government that is commonly used after the central government passed law 38/1999.

BAZIS. An abbreviation for *Badan Amil Zakat, Infag dan Ṣadāqa*, the institution established by local government that voluntarily collected zakāt, and other forms of Islamic charities.

BAZNAS. An abbreviation for *Badan Amil Zakat Nasional*, the institution of zakāt established by the central government. According to law 38/1999 this institution is set up at a national level, while according to law No.23/1999 BAZNAS it is also used in regions/municipalities.

BPUPK. An abbreviation for *Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan, (Dokuritu Zyunbi Tyoosakai)* the Investigating committee for the preparation of independence. This committee was established on 29 April 1945 to prepare for Indonesian independence, declared on 17 August 1945. In several literatures the name of BPUPK is added to a word Indonesian which is clearly incorrect because this committee was set up by the *rikugun* (Japanese Army), which had authority in the regions of Java and Madura. A similar committee, namely, *Cuo Sangi In,* was set up for Sumatra in May 1945. There was no such committee in the eastern part of the archipelago.

Bupati. The head of the region that was selected the general election for the first time in 2005. Previously, this position had been selected by members of regional parliament.

BTA. An abbreviation for *Baca Tulis al-Quran.* This is a new subject, created under the local autonomy, taught at primary schools in West Sumatra as part of implementation of the provincial as well as regional/municipal law on the obligation to have the ability to recite the Quran.

cando. A Minangkabau *adat* term dealing with immorality offences.

constitutional review. One of the tasks of *Mahkamah Konstitusi* (Constitutional Court) relating to examining whether a law or regulation is in contravention of the 1945 constitution.

darek. A region where Minangkabau tradition initially existed.

decentralization. The policy of the central government to transfer or delegate its authority in order to plan, to make decisions, to implement and to manage public functions and development

programs at the local government. The scope of the authority of local government is regulated by laws and regulations.

Didikan subuh. An activity held in mosques early on Sunday morning for students of primary school. It was introduced by the local government in order to enrich the religious knowledge and rituals of the students.

diya. Financial compensation paid by a perpetrator or his/her family to the victim or to his/her family in cases of homicide or grievous harm.

DPR. An abbreviation for *Dewan Perwakilan Rakyat* the People's Representative Council for central government. Its members are selected through a general election. According to the 1945 constitution this institution has legislative, budgeting and oversight functions.

DPRD. An abbreviation for *Dewan Perwakilan Rakyat Daerah*, it is the people's Representative Council for the provinces and regions or municipalities. The members of this institution are also selected through a general election.

fāqih. fuqahā' (plural)**.** Muslim legal scholars.

fatwa. A legal opinion given by a *muftī* and based on a request.

fiqh. Islamic jurisprudence that is commonly produced by a *fāqih*. In the Sunni tradition there are four mainstream schools of *fiqh* that are associated with the names of the founders: *Shīfiʿīya*, *Ḥanafīya*, *Mālikīya* and *Hanbalīya*.

executive review. One of the tasks of central government is to review the provincial, regional or municipal laws or other local regulations in terms of whether it contravenes with higher ranking laws and regulations. This exercise is conducted by the Ministry of Home Affairs and, as the representative of central government the governor may also carry out this review to the regional/municipal law or regulations.

Golkar. An abbreviation for *Golongan Karya*, a nationalist political party.

ḥadd, ḥudud (plural)**.** A mandatory fixed punishment for the fixed offences that are regulated in the Quran or ḥadith.

ḥarām. A category of normative standards of conduct relating to conduct that is classified as prohibited.

ḥawl. A period of possessing property on which zakāt must be paid by the owner. A standard period is one year.

ḥijāb. This term is used to identify Muslim dress. It literally means to cover, specifically to cover ʿ*awra*. See also ***ʿawra*** *and* ***jilbāb***.

IAIN. An abbreviation for *Institut Agama Islam Negeri,* State institute for Islamic studies. An Islamic higher education institution managed under the Ministry of Religious Affairs. See also ***UIN*** and ***STAIN***.

ʾibāḥa. A category of normative standard of conduct relating to conduct that is classified as neutral.

ICMI. Abbreviation for *Ikatan cendikiawan Muslim Indonesian*/Indonesian Association of Muslims Intellectuals. It was established in December 1992 and B.J.Habibie was pointed as its first chair.

infāq. A voluntary religious donation.

Immoral. Suppressed practices, condemned as immoral though they involve nothing that would ordinary be thought of as harm to other persons.

jilbāb. The kind of material used to cover ʿ*awra.* Alternative names include the ḥijāb. See also ***hijāb*** and ***ʿawra***.

judicial review. One of the tasks of the Supreme Court involving determining whether a law contravenes national laws.

karāha. A category of normative standard of conduct relating to conduct is classified as being disapproved of. While it implies that the conduct has a negative element, it is not prohibited.

Kaum Muda. A group of ʿulama in Minangkabau at the beginning of the twentieth century. Advocating modernization, including the introduction of a new interpretation of Sharia and the establishment of schools that adopted the Western model of education.

Kaum Tua. A rival of *Kaum Muda*. This group was primarily associated with traditional values and institutions, including with the *tarīqa* such as Naqshbandiyya and Satariyya.

khalwa. Close proximity between unmarried persons of the opposite sex.

khimar. A kind of *ḥijāb* that is commonly used as a headscarf.

KHI. An abbreviation for *Kompilasi Hukum Islam,* the compilation of Islamic Law. It has been the normative standards for judges in the Islamic court since 1991.

KUHP. An abbreviation for *Kitab Undang-undang Hukum Pidana, the* Indonesian penal codes. The majority of the Indonesian penal

codes are adopted from the *Wetboek van strafrecht voor Nederlands Indie (WvSN)* applied on 15 October 1925 based on the *Koninklijk staadblaad* No.732.

KUHAP. An abbreviation for *Kitab Undang-undang Hukum Acara Pidana*, the Indonesian penal codes procedures. These procedures are regulated under law No.8/1981.

LAZ. An abbreviation for *Lembaga Amil Zakāt*, Institution of zakāt managed by Muslim communities. This institution must be under the license of the government and law No.23/2011 elucidates more restrictive regulations for this institution.

LKAAM. An abbreviation for *Lembaga Kerapaan Adat Alam Minangkabau*, an umbrella for *adat* organizations. This institution was initially established by the New Order government in 1968.

local autonomy. Autonomy belonging to the provincial and regional/ municipal authorities in order to run the local government. Their authority is determined by national laws and regulations.

local law. Translated from *peraturan daerah,* meaning a provincial law passed by provincial parliament and the governor, or a regional/municipal law passed by the parliament and *bupati* or the mayor. Law No.10/2004 uses this term to covers provincial, regional/municipal and village law. However, this definition was revised by law No.12/2011 and now only refers to provincial and regional/municipal law.

MA. An abbreviation for *Mahkamah Agung*, the Supreme Court.

Mahkamah syarʿiyah. This is the current name for the Islamic court for the first and appeal level in Aceh. This name has shifted since this province has been granted special autonomy to apply Sharia and is now commonly called *qanun*. See also ***qanun.***

maksiat. A category of conduct relating to acts that are not in accordance with public morality.

MDA. An abbreviation for *Madrasah Diniyah Awaliyah,* a centre for Qurʿanic recitation managed by the Muslim community.

MK. An abbreviation for *Mahkamah Konstitusi*, the Constitutional Court.

MORA. An abbreviation for the Ministry of Religious Affairs, a translation from *Kementerian Agama,* a state institution that has

authority in relation to religious affairs in Indonesia; established on 3 January 1946.

MPR. An abbreviation for *Majelis Permusyawaran Rakyat*, the People's Consultative Assembly.

MTQ. An abbreviation for *Musabaqah Tilawatil Quran*, a nationwide competition for reciting Quran begun in 1968.

mufti. A jurist consult, one who issues a legal opinion. In the contemporary Muslim world, the jurist consult may be an individual or group of mufti.

muḥrim. Family member. A Muslim is permitted to uncover his/her *ʿawra* in the presence of *muḥrim*.

MUI. An abbreviation for *Majelis Ulama Indonesia,* the Indonesian ʿulama council; set up at the national, province and regional levels, established on 26 July 1975.

mukallaf. A Muslim to whom religious teachings are applied; a subject of law.

mustaḥiq. Person or group entitled to receive zakāt; the recipients of zakāt.

muzakki. Muslim person or institution possessing wealth on which zakāt is levied.

nadab. A category of normative standard of conduct relating to conduct classified as recommended. While the term implies conduct that has a positive element, it is not an obligation.

nagari. The lowest form of government structure, originally based on Minangkabau tradition.

niqāb. A type of cloth covering for the face of Muslim women.

niṣāb. The rate or amount of property on which *zakāt* is levied.

NU. An abbreviation for Nahdlatul Ulama; the largest Muslim organization in Indonesia.

PAN. An abbreviation for *Partai Amanat Nasional.* The national mandate party that is historically linked with Muhammadiyah.

Pancasila. The philosophy that forms the foundations of the Indonesian state.

PBB. An abbreviation for *Partai Bulan Bintang,* the crescent and star party that is widely known as an Islamic party.

PDI-P. An abbreviation for *Partai Demokrasi Indonesian Perjuangan,* the Indonesian democratic party that is commonly known as the nationalist party; led by Megawati Sukarno Putri, the daughter of Sukarno.

Pendidikan agama. A subject relating to religious teachings and taught in schools.

Perda. An abbreviation for *Peraturan daerah*. See also **local law**.

Pesantren Ramaḍan. An activity for primary to senior high school students, held in a mosque in their neighborhood during the fasting month. It was introduced by the local government with a view to enriching the religious knowledge and rituals activities of the students.

PHRI. An abbreviation for *Perhimpunan Hotel dan Restoran Indonesia,* the Indonesian association of hotels and restaurants.

PK. An abbreviation for *Partai Keadilan,* the justice party. An Islamic party, established on 22 July 1998. On 20 April 2002 this party changed its name to **PKS**.

PKS. An abbreviation for *Partai Keadilan Sejahtera,* the justice and welfare party.

pondok baremoh. A small temporary building located in tourist destinations where couples of the opposite sex spend their leisure time.

PP. An abbreviation for *Peraturan Pemerintah*, the government regulation that endows the president with the authority to make a law come into effect. Without PP, a law remains window dressing.

PPP. An abbreviation for *Partai Persatuan Pembangunan,* the unity and development party. It has been an Islamic party since the 1970s.

Provincial law. A law passed the provincial parliament and the governor and incorporated in the hierarchy of the Indonesian legal system.

PTIQ. An abbreviation for *Pendidikan Tinggi Ilmu al-Quran,* higher education for the Quranic arts.

qadhaf. Unfounded accusations of unlawful sexual intercourse.

qanun. The provincial and regional laws passed under the authority of Aceh province. Aceh has been granted special privileges to implement Sharia.

qiṣāṣ. *A* provision concerning offences against the person, including homicide and wounding.

rantau. A region located outside of Minangkabau land. See also ***darek***.

regional law. A law passed together with the regional/municipal parliament by and *Bupati/* mayor. According to law No.12/2011, it is the lowest rank of legislation in the hierarchy of the Indonesian legal system.

repressive non-judicial. The non-judicial authority belonging to *Satpol PP* whose tasks are confined to implementing provincial or regional/ municipal law.

ridda. Apostasy, an offence according to Sharia.

rikāz. A type of *zakāt* property that is defined as buried treasures of the earth.

ṣadāqa. Voluntarily alms as well as zakāt.

Satpol PP. Civil service police unit that now has the authority to uphold and implement provincial, regional/municipal law and other regulations passed by the local authorities.

SMA. An abbreviation for *Sekolah Menengah Atas,* senior high school.

STAIN. An abbreviation for *Sekolah Tinggi Agama Islam Negeri,* higher education for Islamic studies managed by the Ministry of Religious Affairs.

surau. *Adat* as well as Islamic institution utilized as place for rituals, a centre for Islamic teachings and other social functions. Currently it tends to function solely as a place for ritual.

taʿzīr. Discretionary punishment of sinful of forbidden behavior or an act endangering public order or state security.

TPA. An abbreviation for *Taman Pendidikan al-Quran,* the centre for Quranic education mostly located in a mosque and managed by the Muslim community.

TPSA. An abbreviation for *Taman Pendidikan Seni al-Quran,* the centre for the Quranic arts education.

UIN. An abbreviation for *Universitas Islam Negeri*, the Islamic higher education that transformed form IAIN or STAIN, established in the 2000s.

UPZ. An abbreviation for *Unit Pengumpul Zakāt,* the *zakāt* collector unit.

wajib. A category of normative standard of conduct relating to conduct classified as obligatory.

waqf. Religious endowment.

waṣiya. A vow to transfer an amount of property to an appointed receiver. The amount is a maximum of one-third of the total property of the owner.

wirid remaja. A weekly activity for junior and senior high schools students held in a mosque in their neighborhood. This activity comes under the supervision of school teachers living in the neighborhood.

zakāt al-māl. Literally meaning *zakāt* on property, it refers to kinds of property for which *zakāt* is obligatory.

zakāt al-fiṭr. *Zakāt* that is levied on individual Muslims and that should be paid during Ramadan.

Zina. **(Arabic: *zinā'*)** Sexual intercourse that occurs outside of a valid marriage, the semblance (*shubha*) of marriage, or lawful ownership (*milk yamīn*).

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2. Laws and regulations

2.1 Constitution

The Constitution of 1945

The Constitution 1945 - the first amendment of 1999

The Constitution 1945 - the second amendment of 2000

The Constitution 1945 - the third amendment of 2001

The Constitution 1945 - the fourth amendment of 2002

2.2 Decisions of MPR

Decision XV/MPR/1998 on the implementation of local autonomy.
Decision III/MPR/2000 on the source and hierarchy of laws and regulations.
Decision IV/MPR/2000 on recommendations for the implementation of local autonomy.
Decision IX/MPR/2000 on the establishment commission to prepare the amendment of the 1945 Constitution.

2.3 Law

Law 1/1946 on penal code
Law 13/1961 on police
Law 19/1964 on judicial authority
Law 18/1965 on principles of local government
Law 14/1970 on principles of judicial authority
Law 1/1974 on marriage
Law 5/1974 on principles of local government
Law 7/1974 on gambling.
Law 8/1981 on criminal procedure code
Law 14/1985 on the supreme court
Law 7/1989 on the islamic court
Law 10/1989 on the banking system
Law 7/1992 on the banking system
Law 11/1999 on regional autonomy
Law 17/1999 on organizing the journey of the *ḥajj*
Law 22/1999 on local government
Law 23/1999 on the Bank of Indonesia
Law 25/1999 on fiscal balance between central and local government
Law 35/1999 on the amendment of law 14/1970 (on principles of judicial authority)
Law 44/1999 on the implementation of special autonomy for Aceh

Law 38/1999 on the management of *zakāt*.
Law 18/2001 on special autonomy for the province of Aceh as the province of Nangroe Aceh Darussalam.
Law 20/2003 on the national education system.
Law 22/2003 on the bank of Indonesia
Law 3/2004 on the amendment of law 23/1999 (on the Bank of Indonesia)
Law 4/2004 on judicial authority
Law 5/2004 on the amendment of law 14/1985 (on the Supreme Court)
Law 10/2004 on procedures in the preparation of laws and regulations
Law 32/2004 on local government.
Law 33/2004 on fiscal balance between the central and local governments
Law 41/2004 on *waqf.*
Law 8/2005 on the acknowledgment of the government regulation in lieu of law on law 32/2004 (on local government as law)
Law 3/2006 on the amendment of law 7/1989 (on Islamic court)
Law 11/2006 on the government of Aceh.
Law 13/2008 on organizing the journey of the *ḥajj*
Law 19/2008 on *Surat Berharga Syariah Negara*
Law 21/2008 on the Islamic banking system.
Law 36/2008 on the fourth amendment of law 7/1983 (on income tax)
Law 44/2008 on pornography.
Law 3/2009 on the second amendment of law 14/1985 (on the Supreme Court)
Law 34/2009 on the acknowledgment of the government regulation in lieu of law on law 13/2008 (on organizing the journey of *ḥajj* as law)
Law 48/2009 on judicial authority
Law 50/2009 on the second amendment on law 7/1989 (on the Islamic court)

Law 12/2011 on the procedure in the preparation of laws and regulations
Law 23/2011 on the management of *zakāt*

2.4 Government Regulations

PP 28/1977 on *waqf*
PP 9/1975 on the implementation of marriage law
PP 1/1981 on the implementation law 7/1974 (on gambling)
PP 27/1983 on the implementation of criminal procedure codes
PP 6/1998 on the civil service police unit
PP 25/2000 on the authority of the central and provincial governments as autonomous governments
PP 32/2004 on the civil service police unit
PP 38/2007 on the distribution of authority among central, provincial and regional/municipal governments
PP 41/2007 on the organization of local government
PP 5/2007 on religious education
PP 18/2009 tentang Bantuan atau sumbangan termasuk zakāt atau sumbangan yang sifatnya wajib yang dikecualikan dari objek pajak penghasilan (aids or charity including *zakāt* or obligatory aids)
PP 60/2010 tentang zakat atau sumbangan keagamaan yang sifatnya wajib yang dapat dikurangkan dari penghasilan bruto (*zakāt* and other forms of religious obligatory charity that may deduct the gross income)
PP 6/2010 on the civil service police unit

2.5 Presidential decrees

President decree 1/PNPS/1965 on hatred, heresy and blasphemy offences
President decree 188/1998 on the procedure in the preparation of drafts of law

President decree 44/1999 on techniques in the preparation of regulations, drafts of law, government regulations, and presidential decisions
President decree 11/2003
President decree 55/2007

2.6 President instruction

President instruction 1/1991 on the compilation of Islamic law

2.7. Supreme Court and Constitutional Court

Supreme Court Decision 1/2004 on judicial Review rights

2.7 Ministerial decision

Joint ministerial decision 8 and 9/2006 on places of worship

2.8 Qanun

Qanun 3/2000 on the establishment of MPU,
Qanun 5/2000 on the implement sharī'a in Aceh,
Qanun 7/2000 on customary law and sharī'a,
Qanun 43/2001 on the administration of MPU and the establishment of the plenary council
Qanun 10/2002 on the establishment of sharī'a courts.
Qanun 11/2002 on shar implementation of sharī'a in the fields of theology (*aqīda)*, ritual (*ibāda)* and public expression of sharī'a (*syi'ar)*.
Qanun 32/2002 on the religious educational system based on the Qur'ān and Ḥadīth.
Qanun 11/2003 on the prohibition of drinking alcohol and similar beverages
Qanun 13/2002 on the prohibition of gambling
Qanun 14/2003 on the prohibition of *khalwat*
Qanun 7/2004 on *zakāt*.
Qanun 11/2004 on the tasks and duties of the sharī'a police

2.9 Provincial law

Provincial law of West Sumatra 11/2001 - on prevention and elimination of public immorality
Provincial law of West Sumatra 3/2007 - on Quranic education

Provincial law of West Sumatra 2/2009 - on the implementation of education

2.10 Municipal laws

Municipal law of Bukittinggi 9/2000 - on public order and elimination of public immorality

Municipal law of Bukittinggi 20/2003 - on the amendment of the municipal law of Bukittinggi 9/2000 (on public order and elimination of public immorality)

Municipal law of Bukittinggi 29/2004 - on the management of *zakāt*.

Municipal law of Padangpanjang 3/2004 - on prevention and elimination public immorality

Municipal law of Padangpanjang 7/2008 - on the management of *zakāt*.

Municipal law of Padang 6/2003 - on the obligation for elementary school students to be able to recite the Quran

Municipal law of Padang 14/2004 - on the civil service police unit

Municipal law of Padang 11/2005 - on public order and peace

Municipal law of Padang 2/2010 - on the management of *zakāt*

Municipal law of Payakumbuh 4/2007 - on prevention and elimination of public immorality

Municipal law of Sawahlunto 19/2006 - on prevention and elimination public immorality

2.10 Kabupaten/municipal law

Regional law of Bulukumba 03/2002 - on the prohibition of abusing alcoholic beverages

Regional law of Sambas 3/2004 - on the prohibition of prostitution and pornography

Regional law of Sambas 4/2004 - on the prohibition of gambling

Regional law of Agam 5/2005 - on the obligation to be able to recite the Quran

Regional law of Agam 6/2006 - on Muslim dress code.

Regional law of Agam 14/2007 - on the management of *zakāt*

Regional law of Limapuluh Kota 6/2003 - on the obligation for students and bridegrooms to be able to recite the Quran

Regional law of Limapuluh Kota 5/2005 - on Muslim dress code

Regional Law of Padangpariaman 02/2004 - on prevention and elimination of public immorality

Regional law of Pasaman 22/2003 - on Muslim dress code

Regional law of Pesisir Selatan 31/ 2003 - on the management of *zakāt*

Regional law of Pesisir Selatan 8/2004 - on the obligation for students and bridegrooms to be able to recite the Quran and perform prayers

Regional law of Pesisir Selatan 4/2006 - on prevention and elimination of public immorality

Regional law of Sawahlunto/Sijunjung 1/2003 - on the obligation for students, civil servants and bridegrooms to be able to recite the Quran

Regional law of Sawahlunto/Sijunjung 2/2003 - on Muslim dress code for student and civil servant

Regional law of Solok 6/ 2002 - on Muslim dress code

Regional law of Solok 13/2003 - on *zakāt*, *infāq* and *sadāqa*

Regional law of Solok 10/2004 - on the obligation for students of elementary, junior and senior high schools, and bridegrooms to be able to recite the Quran

Regional law of Solok Selatan 6/2005 - on Muslim dress code

2.11 Decision of Governor, head of region/mayor

Decision of the head of region of Limapuluh Kota 26/2003 - on the management of *zakāt*

Samenvatting

Dit werk beschrijft hoe Sharia-wetgeving, in Indonesië gewoonlijk *Perda Sharia* (Sharia-verordeningen) genoemd, is geïntroduceerd op provinciaal, regionaal en gemeentelijk bestuursniveau in West Sumatra, Indonesië. Dit proces is begonnen vanaf het decentralisatiebeleid dat de Indonesische overheid in 2000 inzette. Hoewel de wet op lokale autonomie voorschrijft dat religieuze zaken niet onder het gezag van de lokale overheid vallen, wordt Sharia-wetgeving door de lokale autoriteiten gelegitimeerd met het argument dat Sharia, in aanvulling op Minankabau gewoonterecht (*adat*), een *identity marker* van het volk is geworden (zoals het lokale gezegde luidt: '*adat* is gebaseerd op de Sharia, Sharia is gebaseerd op de koran' [*adat basandi Syara', Syara' basandi Kitabullah/ABSSBK*]). De Sharia-verordeningen die in dit boek behandeld worden, vallen in vier categoriën: publieke moraliteit, moslimse kledingvoorschriften, de verplichting om in staat te zijn de koran te reciteren en islamitische liefdadigheidsinstellingen. Deze dissertatie onderzoekt de volgende stadia van verwezelijking van Sharia verordeningen: het wetsvoorstel, het maatschappelijk en parlementaire debat erover en tenslotte de tekst en implementatie ervan. Een conclusie is dat de legitimatie voor Sharia-wetgeving op lokaal niveau discutabel is, niet in de laatste plaats omdat er geen expliciete regel is die de lokale autoriteiten het gezag geven om Sharia-wetgeving in te voeren.

Curriculum Vitae of Yasrul Huda

Yasrul Huda, born on 8 January 1967 in Pasaman, West Sumatra, Indonesia, completed his *doctorandus* degree in 1993 at the Sharia Faculty, the State Institute of Islamic Studies (IAIN) at Imam Bonjol Padang. Following his graduation in 1993 he was appointed as lecturer at the same faculty, where he works up to today. From 2001-2003 he studied for his MA degree at the Faculty of Theology and Arts at Leiden University under the *Indonesian-Netherlands Cooperation in Islamic Studies* (INIS) Program. In 2008 he was granted a four-year scholarship to do research for his PhD thesis under the *Training Indonesia's Young Leaders Programme* (TIYLP) at Leiden University.