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Contesting sharia : state law, decentralization and Minangkabau custom

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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 identities⁷⁷ 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 'awra 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 (*‘āmil*) 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 an 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.