

ISLAMIC LAW SHARIA PERDA; AMONG WOMEN AND POLITICAL IDENTITY

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Abstract: Women and identity politics are actual problems and often invite endless long debates. Women are often forgotten in the history of the Indonesian Nation, especially related to policies such as sharia regulations. The birth of Islamic sharia regulations is not from a vacuum, but is born from a very long and twisted process. Regional autonomy has become the main entrance to the emergence of shari'a regulations as a form of regulatory decree both whose authority is attributive (inherent) or delegative (derivative). The rise of the expansion of new regions as a result of regional autonomy policy, apparently also led to the strengthening of identity politics that seemed to be inherent and must be present in every regional policy taken especially in sharia regulations. Women and sharia regulations become interesting phenomena to be studied from various sides, both political, cultural, legal and religious aspects. This paper portrays women and identity politics in shari'a regulations. A review of how women's representation and identity politics influence the contents of shari'a regulations.

Keywords: Women, Sharia Regulations, Identity Politics.

PENDAHULUAN

Women's involvement in public policy making has become a consideration since the ratification and promulgation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) into Law No. 7 of 1984. This is expected to be an intervention that is able to change Indonesia's political order. The expected change is not only in the number of women involved in decision-making circles, but also in the interests of women who are represented or represented in the administration of politics and policy makers such as regional regulations (perda).¹

Women have the same constitutional rights as men. The level of representation in formal political institutions at the national and local level, has a big influence on women's lives because it cannot be separated from regulations made by formal political

¹ Regional regulations (perda) are types of laws and regulations that have emerged along with the era of regional autonomy (otda). After the reform of the concept of decentralization of government was felt when Law No. 22 of 1999 concerning Regional Government emerged, then followed by the adoption of TAP MPR No. III / MPR / 2000 which regulates the recognition of regional regulations as a form of legislation in Indonesia. Then the above rules are replaced by Law No. 32 of 2004 concerning Regional Government and Law No. 10 of 2004 concerning the formation of laws and regulations.



institutions. Regional autonomy has become main entry point for the emergence of all local regulations as a form of regulatory decree whose authority is attributive (inherent) or delegative (derivative).

From this opportunity to transfer authority, the reverse flow of centralization of power is interpreted by opening as wide an effort as possible to make the regions independent with all emergence of local policies in conditions that are all transition and limited. With all these limitations, various regional legal products were born in the form of sharia regulations². The formulation of policies and application of sharia regulations³ are largely determined by who is involved in policy making process, what perspectives are used and what ideology is hidden behind public policies that are put in place. This paper will examine how women's representation influences content of perda and how women and politics identity⁴ in sharia regulations.

WOMEN AND IDENTITY POLITICS IN SHARIA REGULATIONS

Since the New Order, all political constellations seemed to marginalize religious issues from public sphere. This happened not only in Aceh, but almost all regions. The issue of shari'ah⁵ subsided, but politics became the price. Because shari'a is part of Aceh's identity, if identity is marginalized, there must be a price to pay, which is a prolonged conflict. Conflicts with government are prolonged, of course not only issue of shari'a, nor is it a matter of religion in general, but also issue of identity. Aceh felt different from other parts of Indonesia, because shari'ah became a political identity for people of Aceh.⁶

Currently there is euphoria in all parts of Indonesia. Religion comes again to public sphere⁷. In Aceh, shari'a theme became warm again, and seemed to arouse old

² Borrowing the language of Lili Zakiah Munir, with regulation making it increasingly difficult to become a Muslim woman in Indonesia, especially in areas that have already identified themselves as religiously labeled areas. See Lili Zakiah Munir in "Female Circumcision Forms Human Rights Violations", collection of articles on the Liberal Islam Network Website, 2003.

³ Historically-juridical, the legal basis used in the formation of sharia-nuanced local regulations is the 1945 Constitution Article 29 paragraph 2, Law No. 32 of 2004 and Law No. 10 of 2004 which has been replaced by Law No.12 of 2011.

⁴ Identity politics are usually used by leaders as political rhetoric as we call "native people" who want power and those for "newcomers" who have to give up power. So, in short, identity politics is only used as a manipulation tool—to mobilize politics—In order to fulfill its economic and political interests. Read "Kemala Chandakirana "Geertz and Tribal Issues" in Journal Prisma No. 2/1989.

⁵ Some radical fundamentalists interpret shari'a as a closed text that cannot be interpreted by everyone, even shari'a is a corpus that has a single and absolute meaning. Therefore it is very close to the possibility of a gender-sensitive perspective on women's issues. Read M. Hilaly Basya, "Sharia Justice Epistemology: A Deconstruction of Fundamentalism," in Women's Journal, No. 32, 2003. See also Mahmud Syaltut, *al-Islam Aqeedah wa Shari'ah*, cet.3 (Cairo: Dar al-Qalam, 1996), p.12.

⁶ Al-Makin, "Identity of Races in Issues of Shari'atization, Christianization, Heresy and Western Hegemony" in *ISLAMICA* Volume 11, Number 1, September 2016

⁷ Makin, *Challenging Islamic Orthodoxy*; Makin, "Benedict XVI and Islam"; Makin, "Revisiting Indonesian Public Reactions"; Al Makin, "Pluralism versus Islamic Orthodoxy, the Indonesian Public Debate over the Case of Lia Aminuddin, the Founder of Salamullah Religious Cult," in Thomas J. Connors (ed.), *Social Justice and Rule of Law: Addressing the Growth of a Pluralist Indonesian Democracy* (Tembalang, Semarang, Central Java, Indonesia; (New Haven: Faculty of Social and Political Sciences, Diponegoro University; Yale Indonesia Forum, 2010), pp. 187–206.



memories and identities which had been forced to be ruled out by the New Order. The local political constellation is interesting to explore, when the issue of disintegration of Indonesian nation became the main topic of national discourse, various attempts by political leaders in Jakarta to defend this country. East Timor had just separated, and finally became an independent state of East Timor. They are no longer ready if Aceh follows in its footsteps, namely through a referendum. Gus Dur at that time was quite telling to offer and exhale the issue of shari'a as compensation. But what's interesting is that Megawati has an important role in re-enacting shari'a as identity and political identity in Aceh.⁸

The issue of the implementation shari'a can be said to be an internal issue of Aceh⁹ community itself. However, this issue is mixed with integration and disintegration of Indonesian society in general, so that issue of sharia becomes a national discourse. Proven Aceh became a model for other regions to follow. Shari'a as a regional regulation which was passed politically locally in Aceh, and in other regions also followed it.

As for sharia regulations issued by the region, including:

1. Local Regulation 2/2004 concerning the Prevention, Enforcement and Eradication of Worship in Padang Pariaman;
2. Perda 6/2002 concerning Muslim Obligations in Solok;
3. Perda 11/2001 concerning the Eradication and Prevention of Immorality in West Sumatra;
4. Perda 24/2000 concerning Prohibition of Prostitution in Bengkulu City;
5. Bylaw 13/2002 concerning the Eradication of Immorality in South Sumatra;
6. Perda 2/2004 concerning the Eradication of Prostitution in Palembang;
7. Perda 6/2002 concerning Social Order (Prostitution, Citizens' Clothing, and Kebo Gathering) in Batam;
8. Draft Regulation on the Eradication of Prostitution and Liquor in Depok;
9. Perda 8/2005 concerning the Eradication of Immorality in Tangerang City;
10. Regional Regulation 6/2000 concerning Decency in Garut;
11. Circular Letter of August 29, 2003 concerning the Mandatory Headscarf of School Students in Cianjur and Perda 3/2006 concerning the Karimah-Community Building Movement in Cianjur;
12. Perda 7/1999 concerning Prostitution in Indramayu;
13. Circular of the Regent of Pamekasan Number 450/2002 concerning the Obligation of Headscarves for Government Employees, Perda 18/2001 concerning Prohibition of Liquor, and Perda 18/2004 concerning Prohibition of Prostitution in the Pamekasan Regency Area;
14. Perda 19/2004 concerning Prohibition of Liquor and Alcoholic Drinking, Perda 22/2004 concerning Prohibition of Doing Obscene and Doing Asusila in Gresik;
15. Perda 6/2002 concerning Muslim Dress in Solok;

⁸ Al-Makin, Ibid.

⁹ The idea of implementation of Islamic sharia in Aceh based on Perda No. 5/2000 concerning the Implementation of Islamic Sharia, which was endorsed by Governor Abdullah Puteh in December 2000. Then strengthened by Law No. 18/2001 on Special Autonomy for the Province of the Special Region of Aceh as the Province of Nanggroe Aceh Darussalam.



16. Local Regulation 10/2003 concerning the Prevention of Immorality in Gorontalo;
17. Local Regulation 5/2003 concerning Muslim Clothing in the Lima Puluh Kota District;
18. Perda 5/2007 concerning the Eradication of Prostitution in Lamongan.¹⁰

Shari'a regulations are classified into four categories based on substance regulated in the local regulation. ¹¹First, local regulations related to public morality issues in general, are often also called anti-disobedient regulations. Second, local regulations governing models and procedures for fashion. Third, local regulations concerning religious skills. Fourth, local regulations related to the issue of collecting social funds from the community (zakat, donation, and alms).

In the context of Islamic criminal law, sharia regulations on morality can be in the form of Regional Regulation on Dressing, Anti-Prostitution, Anti-Adultery, Anti-Alcoholic Beverages, or Anti-Disobedience¹². Realistically, some of the regulations issued tend to be directed towards women¹³, including sharia regulations related to dressing as wearing headscarves. The emergence of sharia regulations has an impact on improving religious religiosity, when viewed from the background issues. In addition, sharia regulations also provide solutions among people who experience religious values distortion. Although, for certain circles of some political elites in the region, this situation is drawn into a marketable political commodity.

As reported by the Indonesian National Commission on Violence Against Women, that the implementation of sharia regulations in several areas resulted in some discriminatory things against women. Among them are criminalization, wrongful arrest, persecution, extortion, vulnerability to violence, and some further consequences namely in the form of a cultural perpetuation of blaming women victims, and discrimination against women¹⁴

These regulations have arisen for a number of reasons. First, it is influenced by local customs which are still thick with patriarchal culture, for example, a community that views women as witchcraft. Second, the strong tendency of religious interpretations that are gender and not accommodating to human values,

¹⁰ Rumadi, "Islamic Sharia Regulations: Another Way Towards an Islamic State?", *Tashwirul Afkar Journal: Islamic Sharia Regulations Reach Meanings*, Ed. 20 (Jakarta: Lakpesdam, 2006), pp.17-18. See also Siti Musdah Mulia, "Marginalization of Women in Shari'a," *Tashwirul Afkar Journal: Perda of Islamic Sharia Reaches Meaning*, Ed. 20 (Jakarta: Lakpesdam, 2006), p. 41-44.

¹¹ Rumadi, *Four Categories of Religious Regulations*, in [http:// www. rumadi.google.com.](http://www.rumadi.google.com), posted 12/28/2009, accessed 27 July 2017. Also read Ahmad Suaedy, *Local Regulation on Religious and the Future of Indonesian Democracy, A Sketch*, [http://wwwahmadsuaedy.google.com.](http://wwwahmadsuaedy.google.com), posted 28 / 12/2009, accessed 27 July 2017.

¹² According to Musdah, a number of local regulations restrict women's freedom of activity in public spaces at night, Baca. Siti Musdah Mulia, *Ibid*

¹³ Read Sri Roviana, *The Identity of Acehese Women after the Enforcement of Islamic Sharia: A Literature Review in the Science of Usuluddin*, Volume 3, Number 1, January 2016

¹⁴ Tatik Krisnawati et al., *On Behalf of Regional Autonomy: Institutionalization of Discrimination in the Indonesian Nation's Record* (Jakarta: Indonesian National Commission on Violence Against Women, 2010). Read Sudarto, "Regional Regulation and Wisdom on Women" in *Women's Journal* 57; *Tracing Local Wisdom*, Jakarta, January 2008. See also the results of Lisabona Rahman's research (Research Team) *Representation of Women in Public Policy in the Era of Regional Autonomy* (Jakarta: Women Research Institute, 2005)



interpretations that position women as sexual objects, which do not have complete human consciousness.

Issues that concern later, when Islam as a religion of constructive liberative humanity, must be withdrawn and monopolized by thinking and religious models that tend to be technical and tribal Arabic. Then the purified religion turns into a monster which always makes women victims of shari'ah issues through various regulations with nuances of misogyny by carrying out religious texts as a basis for perpetuating the interests of the birth of local regulation¹⁵. When these misogyny themes are understood or studied in an incomprehensive manner, what actually happens is an offensive-oppressive act¹⁶ and demeaning women who are not morally grounded.

In addition, due to discrimination against women in sharia regulations in the regions, political imaging emerged from local and national political elites. Especially for women, the limitation of public participation for them often occurs because it is considered as a "genitals and disgrace" of the community. Political activity is a taboo realm for women, because it is identical with the world of men. Finally, the tyranny of the majority led to the practice of democracy, especially the domination of men, expressed in the products of law and public policy. They even get certain theological support which has a male perspective, rather than a female perspective

Enforcement of shari'a is not intended to provide "protection and liberation of women" from the shackles of patrialism and the shackles of political imaging. Later it will have an impact on perpetuation of discrimination against women which is justified by political regime and also justification for interpretation of irresponsible religious doctrines (read: Islam). Whereas Islamic doctrine provides a framework of equality between men and women in social and muamalah matters.¹⁷ Therefore, shari'a regulations that have been enacted need attention, so as not to create new problems between men and women, between the state and citizens in the frame of Indonesianness.

Any policy should be devoid of the influence of identity politics, such as sharia regulations that involve women's interests. When that happens, the phenomenon actually reflects political practices that do not neglect the main principles of democracy. That is, the policy product should provide protection to women and guarantee that their voices are respected within the framework of gender equality. These ideals actually require a legal umbrella in the form of government regulations that uphold democratic values. There are certain values that are universal and not negotiable. The matter above is a *conditio sine qua non* (not negotiable) for anyone who wants to create a more democratic world.

The relationship between women and shari'a regulations is interconnected with one another. In fact, the sharia regulations in practice do much to discredit women. This is also used as an attraction for some political elites to perpetuate their desire to

¹⁵ Read QS al-Ahzab: 59, See also Ibn al-Jawz, *Ahkam al-Nisa*, (Beirut: Dar al-Kitab a-Arabi, 2003), p. 136-139. al-Syawkani, in "Nayla al-Awtar", volume 6. (Beirut: Dar al-Jil, 1973), p. 207-208.

¹⁶ Read Khaled M. Abu Fadl, *In the Name of God, from Authoritarian Fiqh to Authoritative Fiqh*, (Jakarta: Serambi, 2004).

¹⁷ See Nasir Hamid Abu Zaid, *Gender Deconstruction: Criticism on Women's Discourse in Islam*. (Yogyakarta: Samha-UIN Suka, 2003). Also read Q.S al-Hujurat: 13



be in power and as a marketable political commodity, especially during regional elections. As if a soft land for rulers who miss power.

In the implementation of elections, it is not impossible if the issue of sharia regulations re-emerged, then used as a social mechanism to move identity politics in the name of religion frontally. That is why government must make in optima forma prevention steps as outlined in strict local election regulations, so that the building of Indonesia's democracy is not increasingly tainted by parties who think short-axis political-borrowing the term *Buya Syafi'i Maarif*¹⁸. This step is important to do, so that in various regions do not replicate blind identity politics model as happened in Jakarta. Although the main issue brought up in the Jakarta elections is not sharia regulations but radicalism.

CLOSING

The application of Islamic shari'a values in shari'a regulations is not a problem as long as it does not interfere with the privatization of women in relation to spirituality for their lives. However shari'a regulations in force in several regions have given rise to discrimination against women. Even though the Indonesian Government has ratified CEDAW and enacted it into Law No. 7 of 1984 which affected women had the same constitutional rights as men. God also explained in His kalam that there was no difference between them except His devout dimension.

The presence of shari'a-based local regulations is like a double-edged knife, when viewed from the background issues, sharia regulations provide a solution in a society that is distorted by religious values. The legalization of Islam in the mindset of public space through shari'a regulations also indicates that Islam can appear more expressive. Although, for certain circles of some political elites in the region, this situation is drawn into a political commodity that is marketable as power of political identity.

Therefore, good shari'a regulations are regulations that can protect anyone and wherever they are, both day and night. Do not let political elites or rulers who long for power use shari'a regulations as identity politics to fight for power and can later influence the erosion of democratic values that develop in society. In addition, it can also affect the legal objectives, thus impacting the disintegration of the Unitary State of the Republic of Indonesia.

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¹⁸ <http://nasional.kompas.com/read/2017/05/05/19170871/radikalisme.dan.politik.identitas>. accessed 11 August 2017.



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