

# The Influence of Shari'ah Inspired Regulations on The Life of The Community in Tangerang

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## **Abtraks**

*Penelitian ini membahas tentang penelitian yang diadakan oleh pusat kajian agamadan budaya Universitas Islam Negeri Syarif Hidayatullah Jakarta terhadap beberapa nuansa syariah hukum Islam di kota Tangerang. Masalah hukum yang menjadi pertanyaan dalam pelarangan prostitusi (no 8/2005), hukum perkawinan sebagaimana yang tercantum dalam kompilasi hukum Islam (KHI), dan peraturan agama termasuk keputusan mengenai aliran Ahmadiyah. Hasil temuan penelitian menyatakan bahwa secara hukum dianggap tidak saja memberi dampak negatif, namun juga positif. Peraturan keagamaan secara umum cenderung melanggar kebebasan beragama dan bahkan mengancam kebebasan akademik, khususnya isu mengenai. Keputusan bersama menteri telah memengaruhi bentuk forum kerukunan umat beragama (FKUB), mengalami deskriminasi, misalnya tentang konstruksi penempatan tempat-tempat ibadah bagi para pemeluk agama minoritas. Perda no.8/2005 mengenai prostitusi di kota tangerang tidak saja berdampak pada penurunan prostitusi, namun juga berakibat pada masalah pelanggaran hak-hak perempuan (mereka saat ini tidak berani keluar rumah setelah jam 10 malam) dan kebebasan berpendapat. Meskipun draf hukum telah dimusyawarahkan dengan tokoh masyarakat.*

**Kata Kunci:** Nuansa Syariah hukum Islam, peraturan agama, prostitusi, peraturan perkawinan, dampak positif dan negatif.

## **Abstract**

*The presentation will discuss the findings of a research that was carried out by the Center for the Study of Religion and Culture of the State Islamic University Syarif Hidayatullah Jakarta on several Shariah-nuanced bylaws of Tangerang City (which was funded by Respect). The bylaws in question are those on the Prohibition of Prostitution (no 8/2005), the Marriage Law as stipulated in the Compilation of Islamic Law (KHI), and regulations on religion including the decree concerning the Ahmadiyah. The main findings of the research are that the bylaws have negative but also positive impacts. The joint Ministerial Decree has been influential in the formation of the Forum Kerukunan Umat Beragama FKBU, Forum for Religious Harmony) but has been discriminatorial in matters such as the construction of places for religious worship for adherents of minority religions. The Perda No. 8/2005 on prostitution in the City of Tangerang has indeed resulted in reducing prostitution but has also resulted in the violation of women's civil rights (they are now afraid to be active outside the house after 10 o'clock at night) and their freedom of expression and academic freedom. Although the draft of the bylaw was discussed with figures in society, the law was socialized in a top-down manner.*

**Key Word:** Shariah-nuanced bylaws, regulate Religion, prostitution, marriage regulation, negative and positive impacts.

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## A. Introduction

This paper is based on the findings of Respect-funded research conducted by the Center for the Study of Religion and Culture (CSRC), UIN Jakarta on Tangerang Bylaw No.8/2005 on the ban of prostitution, Marriage Law as stipulated in Presidential Instruction Inpres No.1/1991 on the Compilation of Islamic Law (KHI) as well as the regulation on religion (Circulation of the Minister of the Interior 477/1978; Presidential Decision No.6/2000; Presidential Decree No.1/1965, and Shared Ministerial Decree of the Minister of Religious Affairs and the Minister of the Interior No. 8-9/2006). The study was conducted on the positive and negative influence of the implementation of these three legal products on social life in the city of Tangerang and the factors that influenced their implementation. The most important finding was that all three impacted society negatively although there were also some positive aspects because of other influencing factors including religious doctrine, culture and politics.

Indonesian politics since the Reformation after 1998 have shown a proliferation in the formalization of Islamic Law in various regions. At least 22 cities/regencies show a preference for this while other sources even mention the number of 50.<sup>2</sup> The phenomenon becomes apparent through the emergence of Regional Bylaws (Perda) at the provincial as well as city/regency levels. Strategic plannings (Renstra), Instructions (Surat Keputusan), Instructions or circulations by Mayors/Regents and others contain formalizations of Islamic law or are at least Shariah-inspired although in various ways. They range from regulations on Friday religious services,

the obligation to be able to read the Qur'an, Muslim ways of dress, the usage of ZIS (Zakat, Infak and Sedekah), regulations pertaining to liquor and prostitution up to the enforcement of various Islamic penal punishments (the last one only in Aceh) such as caning for perpetrators of gambling and *khalwat* (adult non-married men and women being together in quiet places).

On the national level, efforts to implement the Shariah have been attempted for years since Indonesia's creation. Lastly these efforts failed to reinstall the so-called Jakarta Charter containing the clause "with the obligation to implement Islamic law for Muslims" in the amendment to the Constitution in 2002. By using Law No.22/1999 on Regional Autonomy, efforts for the formalization of Islamic law have taken on a new pattern i.e. through the regions. This is possible because the law relinquished at least 11 fields of authority to the regional government.<sup>3</sup> Although the Law stipulates that five domains remain under the authority of the Central Government,<sup>4</sup> Religion among them, the Law also states that the legalization process of regional bylaws no longer need to involve the Central Government as long as they not violate general interests or regulations regulated by higher laws. Recently, the Law has been revised by Law No.32/2004 which stipulates that a regional bylaw has to be approved by the Central Government or, at the regency level, by the Provincial Government except in Nanggroe Aceh Darussalam (NAD) which obtained special status through Law No.11/2006

<sup>3</sup> These include the fields of Land, Agriculture, Education and Culture, Employment, Health, Environment, Public Works, Transport, Trade and Industry, Capital Investment, and Cooperation.

<sup>4</sup> Foreign Affairs, Defense and Security, Law, Monetary and Fiscal Policies, and Religion.

<sup>2</sup> *Tempo* Magazine, 14 May 2006, p. 29.

on the Government of Aceh. Nevertheless, up to the present, apparently because of political considerations, the Central Government has not yet involved itself in the issue.

Naturally, the Law on Regional Autonomy is not the only factor that causes the proliferation of Shariah or Shariah-inspired regional bylaws. Among other contributing factors are the politization of religion in the regions concomitant with the elections of the regional leaders, understanding among adherents of the comprehensive implementation of Islam, the politization of the multidimensional crisis that hit Indonesia since 1998 and the politization of the negative impact of modernization and globalization.

Among the available regional bylaws, the most common one is that on the ban or the regulation of liquor, prostitution and gambling, which is mainstream in virtually all the regions that have formalized Islamic law or that have Shariah-inspired regional bylaws. One among them is Tangerang which has approved Regional Bylaw No.8/2005 on the Ban of Prostitution and Regional Bylaw No.7/2005 on the Ban of Liquor.

Apart from that, as in other regions, the City of Tangerang naturally also enforces legal products prevailing on the national level with a Shariah or Shariah-inspired content. Among them are regulations that regulate marriage and religion as has already been mentioned above.

Different from the regional bylaw on the ban of liquor, which does not invite many controversy, the regional bylaw on the ban on prostitution of the City of Tangerang has drawn the attention of many. The reason is that in its enactment incidents have occurred where the police have wrongly apprehended women suspected of being prostitutes. This regional bylaw was therefore considered to threaten

individual freedom of movement and activity, especially for women during nighttime because they are afraid that they will be apprehended by the police.

Findings from research conducted by the CSRC also revealed that the formalization of Islamic law in various regions also threatened, and in some cases even violated, civil freedom, women's rights and the rights of non-Muslims.<sup>5</sup> Regional bylaws in Tangerang and also national Shariah inspired legal products may also threaten or at least trigger injustice towards non-Muslims of whom quite a few live in the area. Although the majority of the people in Tangerang adhere to Islam (1.334.575 people), there are 59.073 Protestants, 36.890 Catholics, 52.492 Buddhists and 5.363 Hindus.<sup>6</sup>

#### **A bird's eye view of the focus and the method of the research**

The focus of the research was Regional Bylaw on the Ban of Prostitution of the City of Tangerang No.8/2005, the regulations pertaining to marriage in the Islamic Law Compilation (KHI) and three regulations regulating religion as explained above. The research centred on the question what the positive and negative impacts were of the implementation of these regulations towards life in the City of Tangerang and what the factors were that influenced their enactments.

The research was critically descriptive and used a qualitative and quantitative approach. It was conducted between May and June 2008 in 11 villages (*kelurahan*) in 6 sub districts.

<sup>5</sup> Sukron Kamil et al., *Syari'ah Islam dan HAM, Dampak Perda Syariah terhadap Kebebasan Sipil, Hak-Hak Perempuan, dan Non Muslim*, Jakarta, CSRC UIN Jakarta dan KAS, 2007.

<sup>6</sup> <http://www.kotatangerang.go.id>, last accessed, 8 December 2006 and Dhaniel Dakidae, *Profil Daerah Kabupaten dan Kota*, Jakarta: PT Kompas Media Nusantara, 2003, 3rd edition.

The 6 sub districts were chosen based on the level of urbanity and the number of non-Muslims in the area while the *kelurahan* were chosen randomly. Data were collected through surveys and in-depth interviews, documentary study and observation while the multistage random sampling technique was applied. There were 300 respondents randomly taken from among the inhabitants of the City of Tangerang (1.462.726 people). The margin of error was 6 % on a level of reliability of 95 %. In accordance with their percentage of the population, 10 % of the 300 questionnaires were distributed among non-Muslims using the non-probability technique but they were not questioned about the KHI. The questionnaires for Muslims and for non-Muslims were closed (structured) and the data were collected through life interviews during which the respondents were not allowed to fill in the questionnaires themselves.

The City of Tangerang was chosen because of practical reasons (located near Jakarta) and because the enactment the anti-Prostitution bylaw of Tangerang as one of the regional shariah-inspired bylaws in force caused much uproar in Tangerang (apart from Aceh). Apart from that Tangerang is a support area for Jakarta and the gateway to Jakarta as well.

## **B. Discussion Research Findings**

Generally speaking, the finding was that all three legal products had negative impact although some positive influence was also encountered. The most problematic regulation concerned the one on religion, followed by the regional bylaw against prostitution and finally the one that regulates marriage in the KHI.

### *1. Regulations that regulate Religion*

As said above, three regulations that regulate religion formed the object of the study. They were Circulation of the Minister of the Interior 477/1978;

Presidential Decision No.6/2000; Presidential Decree No.1/1965, and Shared Ministerial Decree of the Minister of Religious Affairs and the Minister of the Interior No. 8-9/2006. When measured from the point of view of religious freedom all three caused problems. All three violated, or at least threatened, the right to freedom of religion and part of them threatened and violated the right to academic freedom. Of course, the findings would be different if other measurements were used. For instance, the interest of the State to secure the purity of the teachings of the official faith such as the thesis of the theocratic state, or the measure of social stability. When looked at from these two angles all three legal products had a positive influence. The last mentioned was the most obvious positive one because it regulates the obligation of the formation of a Forum of Harmony among the Religious Community (FKUB) on the provincial and city/regency levels.

The research found that among Tangerang society, a majority of both Muslims (93 %) and non-Muslims (72 %) were aware of the existence of the Circulation of the Minister of the Interior No.477/1978 and Presidential Decision No.6/2000 which only acknowledged six official religions: Islam, Roman Catholicism, Christianity (Protestantism), Hinduism, Buddhism, and Confucianism. 78 % of the Muslim community agreed to this while all (100 %) of the non-Muslims agreed. The same attitude was found among figures in society such as H.M. Natsir, the Chairman of the Local Management Board of the Muhammadiyah of the City of Tangerang. Their reason was that these 'official' religions had a reasonable number of adherents while other faiths could not be considered as religions but could only be seen as currents of faith.

Theologically, the views of the grassroots and of these figures in the City of Tangerang can be explained because both Muslims and non-Muslims's attitudes reflected the doctrine of the exclusivity of religion present among almost all religions even on a low level. In Islam, for instance, mainstream understanding of QS. 3: 19 and 75 is that salvation is only to be found in Islam. In Christianity, the concept 'salvation' as found in the expression *extra ecclesiam nulla salus* (there is no salvation outside the Church. The research found that this exclusivist side of the religion was the reason that the religious regulations had a Shariah dimension/nuance even, once again said, in a limited way.

Based on the data above, in generally we may say that the grassroots in the City of Tangerang categorically rejected the notion of a secular or liberal state as stated by Woodrow Wilson (1892) and John O. Sullivan (1837),<sup>7</sup> although figures among minority religions in Tangerang such as Pdt. Theodorus Bate were in favour of both concepts. With secular state is meant the concept that the state is not to interfere with religion while a liberal state is a good state when there is little government (the government is not to interfere with individual life such as with convictions).

It also means that the grassroots truly reject religious pluralism which, although declared *haram* by the MUI (Indonesian Ulama Council) as a representation of mainstream Islam, is supported by pluralist figures such as Nurcholish Madjid<sup>8</sup> and Abdurrahman

Wahid. The grassroots also do not know the concept of religious freedom whereas Amien Rais opinions, based on QS. 18: 29 Islam guarantees not only religious freedom but even atheism as long as it does not violate public order.<sup>9</sup> It also shows the importance to socialize the discourse on religious freedom and pluralism among society.

This being so, the research also found that knowledge about the discourse on religious freedom and justice was limited to only a small number of people, a mere one out of ten Muslims (8 %). They reject official religious regulations. For them, these regulations are in violation of freedom of religion and also discriminatory against adherents of religions and faiths that have not been recognized while it also invites violent actions against them.

The negative impact of the implementation of the regulation on official religions is that they do not provide for religious freedom for adherents of non-recognized religions. Before 2000, Confucianists in the City of Tangerang sheltered under a recognized religion and many among them converted to Buddhism. The same happened with adherents to small religious affiliations in Indonesia which are at the moment not recognized and this may very well happen in Tangerang too although cases have not been encountered. This may be the case, for instance, with the Baha'i although it has a branch and an official office in Indonesia; other local religions such as Sunda Wiwitan in Banten and West Java

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pluralism, including religious pluralism is not only a fact, but it also has positive values and is a requirement of humanity. See: Nurcholish Madjid, 'Asas-Asas Pluralisme dan Toleransi dalam Masyarakat Madani', Makalah Seminar *Masyarakat Madani dalam Perspektif Agama dan Politik*, Jakarta, 22 February, 1999.

<sup>9</sup> See M. Amin Rais, *Cakrawala Islam, Antara Cita dan Fakta*, Bandung: Mizan, 1991, pp. 53-57

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<sup>7</sup> See for instance Nyoman Rudana, *Who Governs? The Individual (Actor) Level*, in <http://www.scribd.com>. accessed 6 February 2006.

<sup>8</sup> According to Nurcholish Madjid, other religions than Islam also have the element of truth and adherents to other faiths also have the possibility to enter heaven just like Ibn 'Arabi thought, and

in general and with other currents of belief adhered to by segments of society in Jakarta and Central and East Java, the Patung religion in Kajang, Bulukumba, South Sulawesi, and the Sikhs who live in Jakarta and Parmalin in North Sumatra.<sup>10</sup> Their existence is not acknowledged and to a certain extent they have become the arena for the expansion of official religions. Marriages conducted on the basis of the religious systems outside the official religions are also legally not recognized which gives problems, for instance in obtaining birth certificates. Adherents to these religions are also discriminated. For instance, they have difficulty in getting their identity cards if they want to mention their true religion and they therefore mention a religion they do not adhere to but which is officially recognized, although now this obligation of the mention true religion in identity cards was not put into effect. They also do not receive religious services available to adherents of official religions.

As with the regulation on official religions, Presidential Decree No.1/1965 on religious defilement is known by a majority of the non-Muslims while only one third of the Muslims knew about it. Almost everybody in Tangerang agreed to the decree: 92 % of the Muslims and 84 % of the non-Muslims. Their perspective was similar to that of elite MUI figures and figures among the Christian community such as the minister Rabin J. Girsang. They all positioned themselves as guardians of the purity of their faiths by forbidding deviant currents and interpretations and they did not support religious freedom. They even had no objection to eliminate groups that

use new interpretations and actions in a religion that differs from the mainstream. For them, and for the Government, the Presidential Decree No.1/1965 on religious defilement was reinforced by article 156a from the Penal Code which intends to minimize or quash social unrest.

Only one out of ten people in Tangerang did not agree to the Presidential Decree (6 % of the Muslims and 8 % of the non-Muslims). Among their reasons was that, apart from being in violation of religious freedom, it was also often used as a means to resort to violent action and made life difficult for those whose religious affiliation was seen to defile religion.

According to respondents, forms of defilement include the creation of new rituals not found in the official religion, deviant interpretations of the teachings of the official religion, and different convictions than mainstream adherents.

In Islamic law, it would seem that the presidential decree uses the concept of apostasy (*murtad*). Seen from this perspective it certainly has a Shariah dimension as it is directed to people who change their religious affiliation and leave Islam and to people whose religious views and conduct deviate from mainstream Islam.<sup>11</sup>

Because of this it is no surprise that the decree found favour with the majority of the Muslim respondents and it is therefore also not surprising that they generally demanded the dispersion of the Jema'at Ahmadiyah since they considered it to defile Islam and to

<sup>10</sup> Part of this information was derived from the list of participants of the workshop "Need Assessment Materi Pendidikan Paralegal untuk Kelompok Agama Minoritas dan Aliran Kepercayaan" in Jakarta, Wednesday-Thursday, 27-28 May, 2008

<sup>11</sup> See Sayyid Sabiq, *Fiqh al-Sunnah*, Kairo: Dar al-Tsaqafah al-Islamiyah, 1365 H, vol. II, pp. 286-289, Sulaiman Rasyid, *Fiqh Islam*, Bandung: Sinar Baru Algensindo, 1995, 28<sup>th</sup> edition, pp. 444-445 and Abdullah Nashih Ulwan, *Hurriyyah al-I'tiqād fi as-Syari'ah al-Islâmiyyah*, Kairo: Dar as-Salam, n.y. pp. 78-95, and Abd ar-Rahman al-Jaziri, *Al-Fiqh 'alâ al-Madzâhib al'Arba'ah*, Kairo: Dar al-Hadits, 1994, vol. V, p. 328

threaten the pristine convictions of Islam. Only a meagre 6 % rejected it. Their reason was that, apart from being in violation of religious freedom, not every Ahmadiyah member believed in Mirza Ghula Ahmad as a prophet and they should therefore be considered mere non-Muslims like in Pakistan, Malaysian, Brunei Darussalam, Saudi Arabia and the Organization of the Islamic Conference (OKI, Rabthah al-'Alam al-Islami). That they themselves claim to be Muslims is their right because formally and surely society knows that they are considered to be non-Muslims. In that way Muslims can tolerate the Ahmadiyah.

In this case, the Shared Ministerial Decree of the Minister of Religious Affairs and the Minister of the Interior No. 8-9/2006 and the Attorney General No.3/2008 to order the Jema'at Ahmadiyah to discontinue the distribution of its deviating interpretations and activities is an extension of the Presidential Decree and article 156a from the Penal Code mentioned above. The Shared Decision is part of the policy of the Government to find a peaceful solution, both for the Jema'at Ahmadiyah and for conservative Muslims.

Because of the decree and the joint decision against the Ahmadiyah mentioned above, the sub district head of the City of Tangerang halted the internal religious activities of the Ahmadiyah such as prayer in the Annur Mosque, Babakan, Tangerang. He took this step to answer pressure by the community even though beforehand a meeting had taken place between Ahmadiyah members, the police and the local MUI. The manager of the Ahmadiyah, with 1000 members in the Tangerang Area (City and regency) was forced to take down all name boards and all attributes that

mentioned the Ahmadiyah.<sup>12</sup> In other places, Ahmadiyah members were harassed such as in Parung, Bogor, Sukabumi, Kuningan, Lombok, Bulukumba.<sup>13</sup> In Lombok, West Nusa Tenggara, 137 Ahmadiyah adherents were forced to flee from their village.<sup>14</sup>

Apparently, the decree on religious defilement not only threatened and violated religious freedom such as against the Ahmadiyah, it also threatened freedom of academic opinion in religious matters. This threat could hamper the advent of reinterpretations of conservative religious views. It also jeopardized the progression of religious studies. Although officially it did not occur in Tangerang itself, a death fatwa was once issued against Ulil Abshar Abdalla by KH. Athiyyan `Ali, a kyiai from Bandung. Athiyyan was of the opinion that Ulil was an apostate because his interpretation of Islam differed from the mainstream. For Ulil Abshar, all religions are true with variations of the level and measure of depth; prohibitions against mixed religious marriages were no longer relevant and regulations against interreligious marriages should be amended based on the principle of universal equality and there should be a divide between political and religious authority as religion is a private matter.<sup>15</sup>

Somewhat different from the legal product that regulates religion mentioned above, is the Shared Ministerial Decree of the Minister of Religious Affairs and the Minister of the

<sup>12</sup>*Kompas* daily, 18 April 2008 and <http://news.okezone.com> 20 June 2008.

<sup>13</sup> See the impartial report 'Penyeragaman dan totalisasi Dunia Kehidupan sebagai Ancaman terhadap Hak Asasi Manusia', Sebuah Studi Kebijakan di Indonesia, 2006.

<sup>14</sup> *Ibid.*

<sup>15</sup> Ulil Abshar-Abdalla, "Menyegarkan Kembali Pemahaman Islam", *Kompas* daily, 18 November 2002 and see also Ulil Abshar Abdallah, *Islam Liberal dan Fundamental*, Yogyakarta: eLSAQ Press, 2003. 2<sup>nd</sup> edition, pp. 1-9.

Interior No.8-9/2006 on the maintenance of religious harmony. Most Muslims were not aware of its existence (74 %) while it was well known among non-Muslims (68 %). The majority of Muslims thought that it was fair but 35 % of the non-Muslims (about 4 out of 10) thought it was not because it was felt to be discriminative in the stipulation that the construction of a building of religious service could only be realized if the surrounding people allowed it and because the procedure to do so was complicated. Although not in the majority, this non-Muslim view was confirmed by non-Muslim figures, especially Christians and Confucians. Moreover, the stipulations for the construction of a place of worship mentioned in article 14 paragraph 2 were discouraging. They state that at least 60 people from the local population should be supportive and a list of the names and identity card numbers of 90 members of the congregation was required. The requirement of 60 people invited manipulation, politization and could trigger conflict. We can therefore clearly state that the regulations in the shared decree violate the religious freedom of the non-Muslims.

A majority of the people (7 out of 10) considered the Forum of Harmony among the Religious Community (FKUB) in the decree to be properly in operation. They considered that proper communication had been created among figures of different religions while the FKUB had also engaged in campaigning issues of harmony and was quick to respond in cases when disharmony might ensue. However, 19 % thought it was not yet effective since the religious figures involved in the FKUB were not yet rooted in society and that their approach was merely superficial since they tended to abide to the exclusivity of their respective religion.

The level of tolerance of the Muslims toward non-Muslims heavily depended on the issue at hand. The more it tended to involve or threaten the convictions and the rituals of Islam, the more Muslims tended to be intolerant. However, the more the issue tended to be secular, such as social and economic issues, the more tolerant they became. The level of tolerance of non-Muslims was comparatively higher than that displayed by Muslims. They were very tolerant in both issues of conviction and ritual as in social and economic matters.

We may conclude that in practice, the religious legal regulations threaten and violate religious freedom and the regulations against religious defilement even threatens academic freedom. The religious rights of adherents to other than the official religions and those adhering to religious convictions and views not shared by mainstream believers is also violated. Apart from that, except for the issues regulated by the FKUB, the three forms of religious regulations, at least in part, are clearly in violation of the Pancasila (the stipulation of the Oneness of God), the 1945 Constitution, Law No.39/1999 on Human Rights, and ICCPR (International Covenant on Civil and Political Rights) which Indonesia had ratified by Law Decree No.12/2005.

## 2. *Regional Bylaw on Prostitution No.8/2005*

This regional bylaw was considered to contain a dimension of Shariah because Islamic Law proclaims illicit sex as *haram* and actions of illicit sex fall under the category of important sins and criminal acts (*jināyah*) because in Islam these acts are considered to violate proper procreation and human morality which should be ethic and not bestial. Perpetrators, when a girl or a boy who had never had permissible sex before were threatened with 100 cane



strokes whereas the penalty for perpetrators who had already had permissible sex, both because they were married or widowed was lapidation (*rajam*)<sup>16</sup> although this form of punishment was rejected by various specialists such as the Kahawarij and Prof. Dr. Anwarullah.<sup>17</sup> The regional bylaw and Islamic law agree in this issue because both prohibit prostitution, both individually and collectively. Both also prohibit activities that may lead to sexual intercourse in the public space or in the public eye. Nevertheless, the punishment as mentioned in the regional bylaw can hardly be considered to harmonize with Islamic law because under the bylaw, the penalty for acts of prostitution is a prison sentence of maximum three months or a fine of maximal fifteen million rupiah, far less severe than in Islamic law.

This being so, we have to admit that because prostitution is regulated in the Penal Code, Prof. Dr. Jan Michiel Otto opines that it cannot be called purely Shariah<sup>18</sup> but only Shariah-inspired. Moreover, the regional bylaw also forms an effort to turn living norms into living law bearing in mind that local values (*adat*) among society also considers prostitution a appalling act.

The positive influence of the enactment of Regional Bylaw No.8/2005 against prostitution in the City of Tangerang includes the decrease in the presence of prostitution and at least it was not as prevalent as before (interview finding); there was also a decrease in couples being intimate in public spaces (54 % of respondents); a decrease of free companionship between boys and girls

(46 %); increased motivation to educate youngsters well (52 %); more guaranteed social order (57 %); and a change in women's visual expression by an increase in wearing the headscarf (17 %).<sup>19</sup> The regional bylaw also increased the political power of the mayor of Tangerang, Wahidin Halim, and was able to divert attention from the dreadful bureaucracy of the city's administration, the deplorable state of the economy and the appalling healthcare they were submitted to.

Nevertheless, the negative impact of the enactment of the regional bylaw include misapprehensions because two ambiguous words are used: *mencurigakan* (to arouse suspicion) and *anggapan* (impression, suspicion, assumption) which are used in article 2 of the bylaw: 'Each person whose attitude or conduct arouses suspicion so that the impression arises that she/they is/are prostitute(s) are forbidden to be on the public roads ... or in other places ....'

As reported by the mass media, more than one woman was misapprehended by the police in Tangerang. Victims include Lia who was keeping an eye on a cigarette booth for her mother; Lina and Sri, employees of a cement factory who were waiting for a cook to finish cooking their dinner; Lilis Lindawati, the wife of an elementary school teacher who was waiting for public transport to go home, Triana who was helping her husband to sell cars in a hotel. She was apprehended when she went out to buy something to eat.<sup>20</sup>

These experiences caused the victims to get a bad reputation (33 %)

<sup>16</sup> Sayyid Sabiq, *Fiqh as-Sunnah*, vol II, pp. 280, 261.

<sup>17</sup> Lihat Sukron Kamil et al., *Syari'ah Islam dan HAM, Dampak Perda Syariah terhadap Kebebasan Sipil, Hak-Hak Perempuan, dan Non Muslim*, Jakarta, CSRC UIN Jakarta and KAS, 2007.

<sup>18</sup> *Kompas* daily, 16 August 2007, p. 45.

<sup>19</sup> This data was obtained from multiple response questions (where more than one answer was allowed). This means that while reading 54 % of the respondents claimed that the anti prostitution bylaw caused a decrease in couples being intimate in public places whereas the rest said that that was not the case etc.

<sup>20</sup> *Tempo* magazine, 14 May 2006, pp. 30-31.

and women have become afraid to engage in outdoor activities after dark after ten o'clock (30 % Muslims, 50 % non-Muslims). The bylaw also caused many people to seek other employment (3 %).<sup>21</sup>

Because of this, sociologically, the regional bylaw is problematic. This is because the City of Tangerang is an industrial town where, up until the end of 2001, as many as 1.407 industries developed. Tangerang is also a trade town which requires various primary, secondary and tertiary needs. In this way of urban life full of industry, trade and services as the basis of its production such as in Tangerang, women should be able to work unhindered until late at night.

This regional bylaw, at least the enactment of article 4 may be said to contravene higher laws such as the 1945 Constitution, amended version 2000, and the Law on Human Rights Nr.39/1999. It violates at least article 28c and 28h of the 1945 Constitution in its amended version which guarantees that each individual has the right to self development through the fulfilment of his/her basic needs ... 'live safe in body and soul, and to live ....'. This right can only be enjoyed through activities (work) including work at night. In article 28i of the 1945 Constitution is also mentioned that each person has the right to be free from whatever discriminatory treatment, including based on his or her gender. Likewise, the Law on Human Rights, article 11 and 18 contains more or less the same.<sup>22</sup>

It is even so that in the case of Lilis Lindawati the regional bylaw in its

enactment violated her right to work. She suffered trauma and had to change address a number of times. She sued the Government and lately access to justice under the law for employees who have been victimized was closed in order to protect the good name of the City's Administration to avoid other counter accusations.

The implementation of the regional bylaw has also violated the freedom of expression and academic freedom because the Islamic Defence Front (FPI, Front Pembela Islam) and the Majelis Taklim Coordination Board disrupted discussions organized by the Workers Forum of the prostitution regional bylaw.

These data accord with CSCR findings in 6 regions that have formalized Islamic Shariah. According to 40 % of the people, there are prohibitions to object to regional bylaws that contain Islamic Shariah in regions that employ Shariah regional bylaws. This is confirmed by a female activist in Aceh who stated that the enactment of Islamic Shariah in Aceh threatened the freedom of opinion. People are afraid to question the ways of implementation of the Islamic Shariah because they fear to be accused of being 'anti Islamic'.<sup>23</sup> Her statement was supported by an academic from the Syiah Kuala University in Banda Aceh. Because he criticized the enactment of the Shariah regional bylaw on one of the radio stations in Aceh he was accused of being pro-West and anti-Shariah by some people in Aceh.<sup>24</sup>

Although the draft of the regional anti prostitution bylaw in the City of Tangerang was discussed with figures

<sup>21</sup> From *multiple response interviews*.

<sup>22</sup> "UUD (Undang-Undang Dasar) 1945 versi amandemen 2000 dan UU (undang-Undang) HAM Nomor 39 tahun 1999", in Tim ICCE UIN Jakarta, *Pendidikan Kewargaan: Demokrasi, HAM, dan Masyarakat Madani*, Jakarta: ICCE UIN Jakarta, 2003, pp.284-285, 300-301.

<sup>23</sup> See *Kompas* daily, 11/03/2006.

<sup>24</sup> Saifuddin Bantasyam in the Workshop "Perda Kegamaan dan HAM: Promosi Nilai-Nilai HAM di Kalangan Pemimpin Muda Muslim" in the aula of the BKKBN Banda Aceh, 14 May 2008. The event was a cooperation of the CSRC UIN Jakarta, PKPM and KAS.

among society before it was turned into a bylaw (57 %) this was more a top-down socialization (interview finding). The draft was likewise not criticized with the involvement of general society (81 %).<sup>25</sup>

The moment it became a regional bylaw, according to virtually all respondents, it was not socialized and if it was it was done ineffectively so that half of society (51 %) of the Muslim community in the City of Tangerang did not know about it. Only 14 % was fully informed about it and 35 % had some idea.

The Muslim community in the City of Tangerang see the anti prostitution bylaw as necessary (80 %) and virtually everybody agrees to it (99 %) because they see it among others as a religious duty and because it reduces prostitution.

Nevertheless, the regional bylaw also received pros and contras although the contras were in the minority. Those against it, especially against article 4 and its implementation, included the Poor Society Network (JMM, Jaringan Masyarakat Miskin), and the National Workers Association (SPN, Serikat Pekerja Nasional) while those in favour included the BKMT, FPI, HTI (Hizbut Tahrir Indonesia), Muhammadiyah, NU, PKS (Justice and Prosperity Party/Partai Keadilan Sejahtera), PDS (Democracy and Love for the People Party/Partai Demokrasi Kasih Bangsa). The PGRI and society and ulama even once held a long march to support the regional bylaw.

### 3. Marriage Regulation in the Islamic Law Compilation (KHI)

Compared to the two influential legal products discussed above, only Presidential Instruction No.1/1991 on the Compilation of Islamic Law (KHI) can truly be called a Shariah regulation because it fully contains Shariah.

Even so, looking at its substance, especially concerning marriage the KHI is more a new reinterpretation which differs from tradition Shariah. In marriage matters, it has a progressive side compared to traditional Shariah. It contains many stipulations: minimal age for boys of 19 year and for girls of 16, agreement of both bride and groom, legal and registered weddings, tight regulations on polygamy and nullification of polygamous marriages that have not obtained permission from the religious court, official divorce at the religious court, marriage agreements (*ta'liq*) and stipulations on communal property. However, it also contains some static issues taken from traditional Shariah e.g. it acknowledges the concept of *nusyūz* (disobedience) for the wife, claims that taking care of the household is a woman's task and interreligious marriages.

Only two out of ten people in the City of Tangerang are aware of the existence of the KHI (76 % have no knowledge) although we may assume that they have some idea about the way it is being implemented. That a marriage has to have a certificate, that the *ta'liq* is made during the wedding proceedings and that divorce has to be made in front of the religious courts are well known both from people's own experience as well as from the TV. What they do not know is that these are stipulations from the KHI. In these three issues, the KHI has great impact on society but in other issues it has little if any impact. This is due to the limited socialization and because in matters of polygamy and minimum age the KHI is not enacted consistently by the officers of the Religious Affairs Office, the institution that has the authority to take care of marriages in the field.

As a result, many women's rights are violated. This research found that about one third (31 %) of the people in

<sup>25</sup> From multiple response interviews.

the City of Tangerang conducted marriages at a younger age than stipulated in the KHI. An influencing factor was that the bride was already pregnant before the wedding (62 %), poverty (21 %), ignorance of the age rule (14 %) and enforcement by the parents (14 %).<sup>26</sup> In many cases, pre-age marriages were supported by the officer from the Religious Affairs Office by simply raising the age of the bride and groom so that they accorded with the KHI. This was based on the age limitations in traditional Shariah (15 for boys or as soon as he has ejaculated for the first time or dreamt of intercourse, and for girls after her first period). As a result, 50 % of pre-age marriages were not harmonious and many marriages did not last long (30 %).<sup>27</sup>

Nevertheless, a positive point of the KHI is that two third (79 %) of the Muslims agree that a legal marriage has to be registered with the Religious Affairs Office. They stated as reason that not having a marriage certificate gave problems with the registration of children at school (56 %) and that the wife (50 %) and the children (30 %) could lose their inheritance rights.<sup>28</sup> Their views on registered marriage accord with those of modern Islamic law experts such as A. Hanafi (expert in the foundations of fiqh) and Amir Syarifuddin, Shariah Professor of the IAIN in Padang, West Sumatra, because of the possibility to raise the level of wellbeing, or the modern legal system that requires a written proof of formal marriages.<sup>29</sup>

Even though only 21 % agrees to marriages without a marriage certificate (*sirri*), 37 % state that *sirri* is practiced, especially for polygamous ends (41 %),

because parents withhold their consent (16 %) and because of the unavailability of funds (16 %).<sup>30</sup> In this issue, the influence of the KHI does not mean anything more in the City of Tangerang than food for discussion.

Another positive aspect of the enactment of the KHI is that researchers found that the majority (82 %) of the Muslims do not agreed to the loose stipulations on polygamy as found in traditional Shariah without tight conditions. However, nearly half of the people (42 %) experienced polygamous practices by using *sirri* as mentioned above. The tradition of polygamy in the City of Tangerang still exerts its influence in the City of Tangerang although it is waning.

The result is that because of polygamy the rights of women and children are violated. In this research we found that polygamy creates more negative impact than good. The practice of polygamy overwhelmingly threatens the harmony of the family (50 %), the family's economic situation deteriorate (22 %), the first wife is increasingly neglected (19 %), children are neglected (17 %) resulting in juvenile naughtiness and they will become the victim of vicious slander and libel (7 %).<sup>31</sup>

The strict condition that polygamy that has not been recognized by a religious court can be forcefully annulled as stipulated by KHI is a toothless tiger. The stipulation mostly violated is the condition that permission of the religious court has to be obtained, followed by the consent of the previous wife and the condition of the assurance that the husband will act justly towards his wife and his children (70-80 %). Polygamy is proclaimed *haram* by Shariah in Tangerang because it is unjust

<sup>26</sup> From *multiple response interviews*.

<sup>27</sup> From *multiple response interviews*.

<sup>28</sup> All three reasons from *multiple response interviews*.

<sup>29</sup> A. Hanafie, *Usul Fiqh*, Jakarta: Widjaya, 1989, pp. 144-145

<sup>30</sup> All three reasons from *multiple response interviews*.

<sup>31</sup> From *multiple response interviews*.

(68 %) and there is no guarantee that the husband can provide livelihood (59 %).<sup>32</sup>

As with *sirri* marriages, the view that polygamy is merely an emergency exit is for most grassroots in the City of Tangerang no more than talk. In practice, many of them (4 out of 10) agree to the loose polygamy regulations as stipulated by traditional Shariah. This points to the importance of the socialization that in Shariah monogamy is the principle and polygamy only an emergency exit. This is for instance the opinion of Nashiruddin at-Thusi. For him, polygamy only brings disorder,<sup>33</sup> or the view of feminist Muslims who regard polygamy as an institution to take care of orphans,<sup>34</sup> and Hamka's view that having one wife is the shortest way to a life without injustice.<sup>35</sup>

In the matter of the role in the household, the people of the City of Tangerang appear to be more advanced than the KHI and traditional Shariah as it is known and should be practiced according to the views of Abu bakar bin Abi Syaibah and Abu Ishak al-Jurjani who think that running the household is the obligation of the wife.<sup>36</sup> 84 % of the Muslim respondents think that household matters are the shared obligation of the husband and the wife. A mere 16 % thinks it is the role of the wife only. In this context, their views run parallel to those of Imam Malik, Imam Syafi'i and

Ahmad bin Hanbal. They think that the husband cannot force his wife to run the household because the marriage bond is one of mutual enjoyment (*istimtā*).<sup>37</sup> Apparently, the KHI has no negative impact in the way the Muslim community in Tangerang thinks about this issue although they also do not seem to be much influenced by the imams mentioned above. The reality that life's demands necessitate a division of tasks between husband and wife in running the household is more responsible for the way they see the issue.

Almost all the respondents (91 %) disagree to the notion that a wife who is disobedient (*nusyuz*) to her husband may be beaten. However, 1 out of 10 husbands (14 %) in the City of Tangerang potentially, and even regularly beat their wife if they think she is disobedient. One of the reasons they do this is that the Shariah, as they understand and the KHI allow it. Although it is influenced by patriarchal culture, the influence of the KHI is in this issue somewhat or rather negative.

The KHI exerts the largest influence in the matter of interreligious marriages although the opinion here is also influenced by other factors such as the fatwa of the MUI. Almost everybody is against marriage to a person of a different religion both of that between a Muslim man and a non-Muslim woman (93 %) as the other way round (96 %). They have to admit however that when forced to they would rather condone a marriage between a Muslim man and a non-Muslim woman than the opposite. In practice, among the Muslim community

<sup>32</sup> From *multiple response interviews*.

<sup>33</sup> Hasyimsah Nasution, *Filsafat Islam*, Jakarta: Gaya Media Pratama, 2001, p. 141.

<sup>34</sup> Siti Ruhaini Dzuhayatin, "Fiqh dan Permasalahan Perempuan Kontemporer", p. 11.

<sup>35</sup> Rusydi dan Afif, *Hamka Membahas Soal-Soal Islam*, Jakarta: Pustaka Panjimas, 1983, h. 183-184 dan lihat juga Rif'at Syauqi Nawawi, "Sikap Islam tentang Poligami dan Monogami", in Chuzaimah T. Yanggo and Hafiz Anshari AZ (ed.), *Problematika Hukum Islam Kontemporer*, Jakarta: Pustaka Firdaus, 1999, p. 121.

<sup>36</sup> Mahmud Yunus, *Hukum Perkawinan dalam Islam Menurut Mazhab Syafi'i, Hanafi, Maliki, dan Hanbali*, Jakarta: Hidakarya Agung, 1996, pp. 106-107.

<sup>37</sup> Mahmud Yunus, *Hukum Perkawinan dalam Islam*, pp. 64, 68-69 and Masykuri Abdillah, Mun'im A Sirri, Masykuri Abdillah and Mun'im A Sirri, "Hukum yang Memihak Kepentingan Laki-Laki: Perempuan dalam Kitab Fikih", in Ali Munhanif et al., *Perempuan dalam Literatur Islam Klasik*, Jakarta: Gramedia and PPIM UIN Jakarta, 2002, pp. 113-114, 118, 120.

marriages of mixed religious background occur at most in 1 to every 10 cases (14 %) whereas in the non-Muslim society the number is much higher and reaches 7 out of 10 marriages (73 %). In this matter, non-Muslim society is much more tolerant towards mixed religious marriages since it happens as a matter of course among them.

These data show that the views of liberal (rational) Shariah experts such as Musdah Mulia who unconditionally allow Muslim marriages to non-Muslims both women and man<sup>38</sup> are apparently unknown among Muslim grassroots society. They do seem to be aware of moderate views that allow Muslim men to marry non-Muslim *ahl al-kitāb* (Jews and Christians) women as expressed by Imam Maliki and Hanafi,<sup>39</sup> Sayyid Sabiq, and Rasyid Ridha.<sup>40</sup> Most well known and influential is the view that categorically bans interreligious marriages such as expressed by ‘Umar and ‘Umar bin Khathab. However, also influential is the view of the Majelis Ulama Indonesia by means of its Decision No.5/Kep/Munas/ II/MUI/1980 which proclaims every kind of interreligious marriage to be *haram* based on the notion that its potential to cause harm (*mafsadah*) is larger than its potential to do good.<sup>41</sup>

As an urban community who has easy access to transportation, Muslim

society seeks divorce in court (interview finding) and almost half of the women (42 %) use their right to file divorce when their husband violates his marriage agreement (*ta’liq*). The remaining percentage does not (26 %) or does not know (32 %). At the divorce, the majority also divide their shared property (65 %). The KHI seems to have a positive impact in this because divorce is announced in court, although the factor of gender awareness also plays a role.

Additionally, the research also asked Muslim respondents about the issue of forced weddings even though it is not dealt with in the KHI. The finding was that forced weddings as a parents’ choice still often occurred (28 %). Apart from religion, the idea that the parents know best what is good for their daughter (52 %) and economic and social status interests of the parents was also important (36 %).<sup>42</sup> Patriarchal culture is in this matter more influential than Shariah. The religious reasons referred to above are the views of Imam as-Syafi’i and Imam Maliki who allow a girl to be forcefully married off (*ijbār*) provided that her representative (*wali*) is *mujbir* (in a position to force her), so her father or above. Imam Hanafi and al-Hashash reject it, however.<sup>43</sup>

### C. Conclusions

Based on the discussion above, the conclusion is that the three Shariah inspired regulations – more or less – have stronger negative than positive impact, except for the KHI. Most problematic are the regulations on religion, followed by the regional bylaw on prostitution and lastly the marriage regulations in the KHI. Regulations on

<sup>38</sup> Siti Musdah Mulia, *Muslimah Reformis: Perempuan Pembaru Keagamaan*, Bandung: Mizan, 2004, pp. 57-59.

<sup>39</sup> M. Quraish Shihab, *Wawasan al-Qur’an*, Bandung: Mizan, 1996, p. 196.

<sup>40</sup> Mahmud Yunus, *Hukum Perkawinan*, pp. 49-52. And see also Sayyid Sabiq, *Fiqh as-Sunnah*, p. 67.

<sup>41</sup> Harun Nasution et al., *Ensiklopedi Islam, Jilid 4*, p. 42, Ahmad Sukarja, “Perkawinan Berbeda Agama Menurut Hukum Islam”, in Chuzaimah T. Yanggo and Hafiz Anshari AZ (ed.), *Problemata Hukum Islam Kontemporer*, Jakarta: Pustaka Firdaus, 1999, p. 10, and Sayyid Sabiq, *Fiqh as-Sunnah* p. 70.

<sup>42</sup> Both last mentioned data from *multiple response*.

<sup>43</sup> as-Shabuni, *Rawāi’ al-Bayān, Tafsīr Ayaāt al-Aḥkām min al-Qur’ān*. Vol II. Jakarta: Dar al-Kutub al-Islamiyyah, pp. 150-151.

religion generally violate religious freedom and even threaten/violate academic freedom in religious matters. The shared decisions by the two ministers have been influential in the formation of the FKBU but they are discriminatory in their regulations of the construction of places of worship for adherents of minority religions. The Regional Bylaw No.8/2005 on Prostitution in the City of Tangerang has indeed caused a reduction in prostitution, but it has caused violations of women's rights (they are afraid to engage in outdoor activities after 22.00 hours) and the freedom of expression and academic freedom. Even though the draft was discussed with figures among society, the socialization of the bylaw was done top down, insufficiently and ineffectively. Because the KHI was also weakly socialized and in cases such as polygamy and pre-age marriages it was not consistently enacted causing many women's rights to be violated. Nevertheless, the KHI is positive because it stipulates that marriages are only legal when a marriage certificate has been drawn up and that divorce should be sought in religious court.

There is a pressing need for socialization and campaigning religious freedom and religious pluralism, Human rights for women and minorities, academic freedom (and freedom of expression), and public involvement in the policy-making mechanism on religious public matters, especially among Muslims. The socialization and campaigning can be done through training, putting up banners and through the media apart from writing and publishing books. All legal products discussed above should be reviewed because their contents are problematic and – with the exception of the KHI – they mostly have a negative impact. *Wallah a'lam bi as-Shawab.*

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