

# Shari'ah in Aceh

## panacea or blight?

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**A**ceh is the only place in Indonesia with the legal right to apply certain aspects of Shari'ah law outside matters related to family and inheritance. The history of Shari'ah in the modern Indonesian state is complex and although there are religious courts which mainly deal with family matters including inheritance, only in Aceh are they referred to as Shari'ah courts. Although some form of Shari'ah has been applied at different periods in Aceh's history, its current form of implementation raises serious issues as it seems to be founded on a superficial, conservative and narrow interpretation of Islam, in contrast to the more moderate understanding of Islam that has existed in Aceh for centuries.

Whilst the Helsinki *Memorandum of Understanding* (MoU) as well as the new legislation on Aceh's governance and associated international monitoring might have been an opportunity to revise the introduction of the Shari'ah, in reality application of a narrowly legalistic interpretation has continued. This article traces these developments, highlights some of the particular problems, and reflects on how the current mode of implementing Shari'ah poses serious theological and philosophical questions.

### Islam in Aceh

Despite its reputation for devoutness, Aceh's identity is not based on Islam alone, but is made up of ethnic, political, economic and historical factors. The conflicts with the Dutch and the central government have been associated with calls for Shari'ah law, but Islam was only one of many strands of the struggle. Teungku Daud Beureueh, the leader of Aceh's *ulama* (the legal scholars and arbiters of Shari'ah law) and Military Governor during the struggle for Indonesian independence (when Aceh was the only area of the Dutch East Indies not re-occupied by the allies after the defeat of Japan), demanded special status for Aceh within Indonesia, including – but not restricted to – the right to apply Shari'ah. Yet his vision of Shari'ah was not one based on

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severe punishments. He led *Darul Islam's* (DI) struggle against the centralizing tendencies of the Indonesian government in the 1950s due to disillusionment of the people of Aceh with the new republic's policies. The Free Aceh Movement (GAM) was, like the DI movement, more of an ethno-nationalist movement with economic and cultural underpinnings than an Islamist one.

After Suharto's fall some Jakarta-based political leaders believed that offering Aceh Shari'ah could undercut GAM's appeal, as well as restore public trust in the central government. But when President Wahid offered Shari'ah to strife-torn Aceh, many suspected a political trick and GAM leaders portrayed the move as part of a government effort to paint GAM as fundamentalists. Senior GAM representative Amni Marzuki said in an interview with Reuters in 2000, "the Indonesian government wants us to look like Afghanistan." Other leaders said they did not want the sort of Shari'ah being offered by Jakarta.

*Law No. 44/1999* (on the implementation of Aceh's special status) called for implementation of Shari'ah for Muslims and gave the local government authority to set policies on religious life, custom, education and the *ulama's* role. Regulation No. 5/2000 (on the Implementation of Islamic Law) established that all aspects of Shari'ah would be applied. In 2001 the provincial government created a Shari'ah office (*Dinas Syariat Islam*). That same year, the *Special Autonomy Law for Aceh* (Law No.18/2001) allowed for the creation of

Shari'ah courts with jurisdiction over not just the areas of family and property issues covered by existing religious courts but also criminal cases.

The introduction of Shari'ah in Aceh has been in the form of a narrowly conservative interpretation illustrated in the *Qanun* passed in 2002 which criminalized what is regarded as un-Islamic dress, providing a basis for punishing women who do not wear a headscarf. In 2003, a *Qanun* was passed criminalizing gambling, the sale and consumption of liquor, and illicit relations between men and women (including being caught in close proximity, or *khalwat*) specifying for the first time punishments such as caning in public.

It is not entirely clear how Shari'ah criminal laws can co-exist with secular laws or how to regulate the zealous enforcers of religious criminal laws. Most conspicuously, the increasingly unpopular enforcers of Shari'ah in Aceh, the *wilayatul hisbah*, are, as an International Crisis Group report states, a "haphazardly recruited, poorly disciplined, poorly supervised force that distinguishes itself more by moral zeal than legal competence." They seem to lack a proper understanding of their role, often taking people to their office for 'advice' despite the fact that legally they have no police powers and cannot make arrests. There have been many notorious incidents of their zealotry, such as the one in August 2006 when they forced their way into a UN compound in Banda Aceh, peering into staff

bedrooms (violating international conventions on diplomatic privilege and immunity), thus prompting the Acehese authorities and the Ministry of Foreign Affairs to apologize on behalf of the government. There have been other incidents of corruption and brutality.

The narrow, legalistic approach to Shari'ah in Aceh has caused much consternation to moderate and secular Muslims. They asserted that Shari'ah – especially regarding criminal law – was out of line with Indonesia's constitution. Of particular concern was the focus of the *Qanun* on morality and women, and especially raids against women where they have been publicly humiliated and verbally abused. On 9 March 2005 (International Women's Day) 1000 Acehese marched in protest accusing the officials responsible for enforcing Shari'ah with unfairly targeting women.

Some had hoped the peace agreement between the government and GAM would provide a basis for legitimate political reform that would create an opportunity to reverse the more debatable elements of Shari'ah implementation. GAM leaders, including Malik Mahmood, had expressed their opposition to the way Shari'ah was being implemented. The MoU determined that the legal code for Aceh would be redrafted 'on the basis of the universal principles of human rights as provided for in the United Nations International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights' (article 1.4.2). However, this seems to have had little effect. The *Law on Governing Aceh* (LoGA) passed in 2006 included 16 articles on Shari'ah effectively giving the province permission to apply Shari'ah criminal legislation. Women were sidelined in the LoGA deliberations.

Many GAM candidates came to power in the 2006 elections for Governor, Mayors and Regents, including Governor Irwandi Yusuf, who promised to block the more extreme provisions being proposed, such as the punishment of cutting off hands for thieves. However, elections to the provincial and regional assemblies are not due until 2009 and therefore the legislators who passed these laws (mainly from national political parties) are still in power. This has meant that the new GAM leadership does not have the votes in parliament to reverse the existing *Qanun* on Shari'ah even if they were willing to invest political capital in an enterprise which might lead them to be condemned by the *ulama* as irreligious. A new religious bureaucracy – the Dinas Shari'ah with its enforcement arm, the *wilayahul hisbah* made up of otherwise unemployable religious graduates, has been established which will be very difficult to dismantle.

The first laws on Shari'ah in Aceh were drawn up with little public participation by the unrepresentative and

corrupt parliament chosen in the 1999 elections that were boycotted by a large percentage of the population. The current Aceh Provincial Representative Assembly (DPRA) is more representative, but it only represents Jakarta-based political parties. These parties – including some Islamic parties – did poorly in the 2006 local elections in which the big winners were quite distinctly not the ones using Islamic rhetoric in their campaigns. It remains to be seen if the locally-based political parties which will participate in the elections for the first time in 2009 will be willing to invest political capital and develop policies on the issue of rolling back the Shari'ah or whether they will regard it as too risky.

## Imposition without consensus

Beyond all these institutional and political problems, important philosophical and theological objections to the current implementation of Shari'ah must be made.

Firstly, the claims of those supporting the imposition of Shari'ah in Aceh, who believe they have the right to force people to live according to Islam, must be challenged. As El-Affendi writes, "Shari'ah can never be imposed. When it is imposed it is not Shari'ah. When only coercion underpins Shari'ah, it becomes hypocrisy." In Islam the right to use force may only be exercised through the consent of the community and executed by legitimate authority. Thus no law should be implemented by a Muslim community without popular support and consent. There is no precedent in classical Islam for bypassing the popular will. In fact, it was the consensus (*'ijma'*) of the community that constituted the main argument in favour of the integrity of the Islamic tradition and the acceptance of its claim to be true.

The majority of Acehese have long believed and practised a faith based on persuasion rather than top-down enforcement of a restrictive interpretation. Although some claim that Shari'ah is the desire of the people of Aceh, the people have never been asked. According to an important Islamic scholar, Muhammad Assad, "... we have no longer any way of ascertaining the opinions of the community except by means of popular vote."

Neither can Shari'ah be imposed simply because it is God's law. On a philosophical level, it needs to be understood that the Shari'ah is interpreted through humans who are imperfect. According to the Islamic scholar Abou El Fadl:

'Shari'ah as conceived by God is flawless, but as understood by human beings who are imperfect and contingent. ... Regardless of how clear and precise the statements of the Qur'an and Sunnah

are, the meaning derived from these sources is negotiated through human agency. ... But the law of the state, regardless of its origins or basis, belongs to the state. Under this conception, no religious laws can or may be enforced by the state. All laws articulated and applied in a state are thoroughly human and should be treated as such.'

For state authorities to claim that they have the authority to interpret and implement Shari'ah could, from a certain perspective, be seen as a form of *shirk* (associating others with God), one of the greatest sins in Islam as it gives humans power to act in the name of God.

A second area that must be challenged relates to the particularly conservative and intrusive interpretation of Shari'ah that is being implemented. The fact is that there is no justification either in the Qur'an or the *hadith* (oral traditions relating to the words and deeds of the Prophet) for the government enforcing head covering for women or for punishing those who drink intoxicants by caning. The *Qanun* passed by the DRPA also fails to acknowledge contemporary realities or make necessary adjustments to some of the legal rulings and interpretations of Islamic jurists (*fiqhi*) dating from pre-modern times. Aceh's Shari'ah laws do not differentiate between Shari'ah and *fiqh* and in formulating them there seems to have been little effort to carry out independent reasoning or interpretation of the sources of law (known in Islam as *ijtihad*). Unfortunately the Shari'ah laws of Aceh do not seem to have taken into account the importance of the overriding values and foundational goals (*maqasid*) of Shari'ah.

Aceh's Shari'ah laws have made the private sphere public, as they are mainly concerned with personal issues like dress, drinking alcohol, gambling, and men and women being in close proximity. In a democratic and Islamic society, the authorities have no business interfering in the private lives of consenting adults. In encouraging reporting on friends and neighbours for suspected breaches of moral behaviour, Shari'ah in Aceh is encouraging Muslims to commit the sin of spying on others which is forbidden. In Islam, one is supposed to hide the sins of others, not publicize them nor parade and punish offenders in public. One of the names of God is *Gha'fur*, The Most Forgiving and Hider of Faults. The Prophet taught that if we cover the faults of others, God will cover our faults in the hereafter. The Shari'ah laws of Aceh have ignored the call for the forgiveness and compassion for offenders that can nurture the prospects for their reformation and return to society, as Hashim Kamali has noted in his study of the Shari'ah laws of Kelantan "the Qur'an leaves the door of reformation and repentance open to all *hudud* offences without any exception". Those implementing the Shari'ah seem to have forgotten this, despite

positive precedents from Achenese history. Daud Beureueh offers a good example of a broad-minded understanding of the Shari'a: he never considered stoning or whipping prostitutes or cutting off the hands of thieves, but advocated providing them with skills so that they could be self-sufficient.

## Conclusion

The way Shari'ah is being implemented in Aceh is increasing rather than decreasing injustice and will adversely affect Aceh's intellectual development, its economy, its community and above all Islam. The enforcement of Shari'ah laws as currently understood and legislated for risks derailing the ideal of the new Aceh as an open society, so widely cherished after years of conflict and isolation.

Although a poll in Aceh in 2007 indicated that only 7.2 per cent saw the Shari'ah as an important issue and only 23.3 per cent were happy with its implementation, 87.3 per cent felt that it could solve the problems of the people of Aceh. The answer to this apparent contradiction is that people understand Shari'ah from its broad principles like economic and social justice, not the legalistic interpretations and punishments for personal infringements being implemented in Aceh today. In Indonesia and Aceh today the Shari'ah is seen from an idealistic perspective due to the failure of the state to ensure security or justice – a view propounded by the religious scholars. The corruption of the judicial system has created a lack of trust in the civil courts among Indonesians and particularly Acehnese. The satisfaction rate amongst religious court clients is very high (80 per cent) and in Aceh tens of thousands of inheritance cases brought after the tsunami were settled with a very low number of appeals.

The important issues facing Aceh are not women's dress but justice, equity, honesty, good governance, and care of the environment. It is unfortunate that the Shari'ah debate has obscured many other important discussions in Aceh, and distracted attention away from the issue of how to build a better Aceh after the peace agreement, towards issues such as headscarves for women. Yet the elimination of poverty is a Shari'ah principle – and poverty afflicts 65 per cent of Aceh's population, much more so in rural areas. The Governor's vision of introducing and developing a people-oriented economy and intensifying economic and educational programs to empower poor families would seem to be more in line with the Shari'ah than what is currently being implemented in its name. If Shari'ah is to be implemented in Aceh those drafting and implementing the laws will need to consider how to implement its deeper principles. This is an important task for local political parties competing in the 2009 elections.