Politics, Criminal Justice and Islamisation in Aceh

Dr Arskal Salim
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ISSN 1835-9116
2009

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This paper was originally presented as an ALC Occasional Seminar, supported by the Asian Law Centre and the Indonesia Forum as part of the University of Melbourne’s Asia Week on 18 August, 2009. The ALC Occasional Seminar Series is supported by the Attorney General’s Department.

Front Cover Images: Acehnese women voting (Christian Frey, www.studiofrey.com), Caning in Aceh (Binsar Bakkara, AP)
Politics, Criminal Justice and Islamisation in Aceh

Dr Arskal Salim
Institute for the Study of Muslim Civilisations, London

In 1999, the Indonesian government began offering limited implementation of shari’ a as a strategy to help solve the then long-running conflict in Aceh. It sought to provide ulama (religious leaders) with a greater role in the legislation of Islamic shari’ a, in an attempt to weaken the resistance of the Free Aceh Movement (GAM – Gerakan Aceh Merdeka). This objective became redundant, of course, with the Peace Agreement that was signed in Helsinki almost four years ago on 15 August 2005, formally ending the conflict between GAM and the government in Jakarta.

More recently, Aceh’s political situation again changed dramatically, for two reasons. The first was the rise of Irwandi Yusuf, a former leader of GAM, who was elected as the Governor of Aceh in 2007. The second was the success of Partai Aceh (the Aceh Party), which in the April 2009 elections won 33 of the 69 seats in the provincial legislature. Partai Aceh is a party founded by the ex-combatant members of GAM and it has a non-religious platform.

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1 Arskal Salim is currently Assistant Professor at the Institute for the Study of Muslim Civilisations, the Aga Khan University, London, United Kingdom. He completed his undergraduate degree at the Syariah Faculty, Syarif Hidayatullah State Islamic University (UIN) Jakarta, Indonesia. He received his PhD from the Faculty of Law, University of Melbourne in August 2006. He was at the Max Planck Institute for Social Anthropology, Germany, until September, 2009. In 2007 and 2008, he spent ten months in Aceh conducting fieldwork on legal pluralism and preparing a monograph with the working title, “Law as Contested Field: Custom, Religion and the State in Aceh”. Arskal’s publications include: Shari’ a and Politics in Modern Indonesia (Singapore: ISEAS, 2003); The Shift in Zakat Practice in Indonesia (Chiang Mai: Silkwormbooks, 2008); and Challenging the Secular State: The Islamization of Law in Modern Indonesia (Honolulu: University of Hawai‘i Press, 2008).
These recent political developments are likely to change the direction of the Islamisation of law in Aceh over the course of the next five years at least — and not necessarily the way the conservative ulama would wish. Although the formal implementation of shari’a in 2002 began with the wholehearted support of the provincial government, since 2007 some Acehnese have become pessimistic about political support for the application of shari’a in the region.

Three cases are relevant here. First, the new provincial government under Irwandi objects strongly to the death sentence being stipulated for adultery in a new bill on Islamic penal rules (Rancangan Qanun Hukum Jinayat (or Jinayah)) that is currently under consideration. This bill, together with a related bill on Islamic penal procedures (Rancangan Qanun Hukum Acara Jinayat), were prepared for the 2007 regional legislation program (Prolega), but only came to attention of current members of the legislature in late 2008. Both bills lack clarity, consistency and consistency with other (higher) regulations. The current legislature will be replaced by the newly-elected one at the end of September 2009, so there is only very limited time to pass these two bills on jinayah (Islamic criminal law), currently under discussion. If not passed, they will be deferred to the next session, or more precisely, handed over for discussion to the newly-elected legislature, which will be dominated by the non-religious party, Partai Aceh, which will not give these qanum priority.

Second, the political influence of the Ulama Consultative Assembly, or MPU, one of the province’s key governance agencies, has continued to decline, even after the passing of a new qanun (2/2009) on the MPU that clarified its powers. This decline in MPU’s political influence is due not only to the organisation’s internal weaknesses, but also because other informal ulama organisations have emerged as rivals to it, such as the Himpunan Ulama Dayah Aceh (HUDA) and the Majelis Ulama Nanggroe Aceh (MUNA).

Third, the expansion of the jurisdiction of Shari’a Courts is more evident on paper than in reality. The jurisdiction of Shari’a Courts continues to overlap with the jurisdictions of other important Acehnese institutions, such as traditional custom (adat). The special status granted to Aceh by the government in Jakarta not only strengthened the position of the ulama and shari’a, but also allowed for the revival of custom or adat. On the one hand, some judges of the Shari’a Court are reluctant to adjudicate on new criminal offences; on the other hand, some judges of the Aceh’s (secular) general civil court (Pengadilan Umum) feel uncomfortable about handing over cases to judges of the Shari’a Courts, for example, on property disputes between Muslims.

In this paper I will focus mainly on the implementation of shari’a-influenced legislation as a part of broader struggle between different groups contesting social and political controls in Aceh. In particular, I will look at the issue of the death penalty for adulterers as proposed in the new bill on jinayat legal norms, as it shows the intricate relationship between politics and the Islamisation of law in Aceh.

To set this in context, I will first provide a brief historical background.

Although Aceh’s identity has always been linked to Islam, it is not the only element. Other factors such as ethnicity, history, social tradition, politics and economy have also
shaped and reconstructed Acehnese identity. The conflicts between the Acehnese and, first, the Dutch and then, later, the Indonesian government, were not based solely on their demand for the implementation of shari`a.

It is true that Teungku Daud Beureueh, a leading Acehnese ulama who led the Darul Islam revolt from early 1950s to 1960, rebelled against the central government because the latter did not want to allow the formal application of shari`a in Aceh, and because he felt that the central government threatened the ethno-religious identity of Acehnese (Salim 2004; Syamsuddin 1985). Yet, the Free Aceh Movement (GAM), which recommenced Beureueh’s struggle in 1976 had other motives, which were not necessarily religious. In fact, GAM emphasised both ethno-cultural bonds and economic interests. For this reason, when post-Suharto governments offered Aceh the official implementation of shari`a, the leaders of GAM were not enthusiastic. They felt it could result in the world labelling the Acehnese as fundamentalists or Islamists.

As mentioned, the offer of shari`a by the central government was one of the several measures intended to end the protracted conflict in Aceh. It was, in fact, a part of a series of legal packages. The first offer was Law no. 44/1999, which granted the provincial government the right to initiate and establish policies on particular issues such as religion, customs (adat), education and the role of ulama. The next offer was Law no. 18/2001, which allowed for economic concessions and detailed how those particular issues in the previous statute were to be directed and locally managed, including the institutionalisation of shari`a (Salim 2003; 2008).

A number of Regional Regulations or Qanuns were introduced to put all stipulations on the special status in these two Laws into practice. For instance, three regulations were passed in 2000, dealing with the establishment of the MPU, the implementation of shari`a and the administration of adat. The institutionalisation of shari`a increased significantly with the establishment under the oversight of the Governor of Aceh of a Department of Islamic Shari`a (DSI or Dinas Syariat Islam) in 2001, the reconfiguration of the Shari`a Courts (Mahkamah Syar`iyah) in 2002, and the passing in 2003 of regulations in Aceh regarding appropriate Islamic behaviour, such as the wearing of headscarves for women, the observance of Friday prayer, payment of zakat (Islamic taxes), liquor consumption, gambling and khalwat or close proximity between different sexes who have no kin or spousal relationship (Lindsey et.al. 2007).

As a result of the Helsinki Peace Agreement in 2005, the most recent offer to Aceh was Law no. 11/2006. This Law provided Aceh with more concessions on economic and political matters, including the implementation of special autonomy. There are at least 16 Articles in this Law that focus on the issue of Islamic shari`a, including Shari`a Courts and the council of ulama. All issues required further implementing regulations in the form of qanun, or regional regulations of the Aceh legislature. Although the provincial government is allowed to propose and set up Islamic regulations, it does not have the authority to independently employ and train state officials, such as police, prosecutors and judges, to implement and enforce those regulations (Salim 2008). It is true that the local government was able to set up the so-called ‘Wilayatul Hisbah’ or ‘shari`a police’, but this institution has very limited resources, and very little power to arrest or prosecute.
Two draft qanun on jinayat (Islamic criminal law) are currently being debated: one on jinayat legal norms and the other on jinayat legal procedures.

The bill on jinayat legal norms identifies what are considered to be actions that violate norms of the Islamic criminal law (jarimah) and the penalties that should be imposed on the offenders (uqubat). The other bill on jinayat deals with the institutions responsible for applying the rules, how to establish evidence, the procedures for litigation and the methods for the examination of judges. Both bills were initiated and drafted by the executive branch of provincial government sometime before Irwandi Yusuf took over the Governorship. It is believed that the Provincial Department of Islamic Shari’a (DSI) under the leadership of Professor Alyasa Abubakar (from 2002 to 2008) prepared the drafts and submitted them to the present legislature, whose tenure, as I said, ends in October 2009.

The initial bill on jinayat legal norms stipulated a number of offences and sanctions (jarimah and uqubat). The bill was a compilation and revision of the three previous qanuns passed in 2003, with additional new provisions dealing with other offences. The first draft consisted of about 40 Articles or more when it was submitted to the legislature. After revision for almost a year by a special committee (pansus, Panitia Khusus) set up by the present legislature, the bill was revised and updated to contain more than 70 Articles (Rancangan Qanun Perubahan Pertama).

New jarimah (offences) or violations of shari’a were added, including ikhtilat (intimacy), zina (adultery and fornication), qadzaf (false accusation), sexual harassment, homosexuality, lesbianism and rape. Ikhtilat is defined as the intimacy between unmarried couple in either open or closed places. Ikhtilat is thus creates a broader offence than that recognised by khalwat, which mostly applies to intimacy taking place in isolated places. If this bill was passed intimate actions in public places between men and women who are not married would also be caught by the ikhtilat provisions.

Zina is the next jarimah defined in the bill. The formulation of this jarimah in this qanun is different to the vague, or perhaps loose, definition of adultery in the current Indonesian penal code. In the Indonesian penal code, adultery is only considered a legal offence if a spouse of the adulterer reports it to the police. The bill, however, defines zina as both adultery and fornication undertaken by mutual consent, and it does not require a report from the offended spouse.

This definition of zina also distinguishes it from rape, which is dealt with in this bill as another new offence under Islamic penal law in Aceh. Rape mainly refers to sexual acts carried out by force or threat. The bill defines ‘by force’ as forcing someone to do something s/he does not want to do, where the forced person is not capable of refusing or resisting. Yet, contrary to Law no. 23/2004 on domestic violence, the bill states that it cannot be used to punish a husband who forces his wife to have sexual intercourse. If passed, this bill would thus directly contradict a national law.

Another factor that makes the rape and other offences dealt with in this drafted qanun different to current Indonesian penal law at the national level is the type of punishment
Under the current bills, the punishments imposed on offenders include, among others, caning, fines and imprisonment. The amount of caning ranges from 10 lashes at minimum, to 400 lashes at maximum, depending on what sort of offence, and how many times it has been committed. The duration of imprisonment is calculated based on the amount of caning, on a formula by which every lash is equal to one month in prison. The bill, however, takes the unique approach (for Aceh, at least) of adopting gold as a basis for charging the payment of fines. The qanun drafters stated that a lash or a month's imprisonment is equivalent to a fine of twenty grams gold. The maximum fine is 8000 grams of gold for raping a child.

In the revised bill, stoning to death (rajam) for adultery has been introduced. The introduction of this severe punishment stemmed from discussion at a meeting of the Special Committee of (Pansus) regarding advice received from experts who work for the legislature. In the view of the proponents of the rajam punishment, this penalty historically refers, and can be traced back, to the era of Sultan Iskandar Muda in 17th century Aceh, the province's so-called 'Golden Age'. Rajam is also said by these experts to be a main feature of punishment in Islam. Therefore, if Aceh now seeks to seriously apply shari'ah in a real sense, such a harsh penalty must, they argue, be included in the qanun. Punishing adulterers without rajam and inflicting only caning, even the maximum amount, would suggest that the drafters of Aceh's qanun on jinayat lacks the will to implement shari'ah rigorously, the supporters of rajam argued.

Indeed, as chairman of the Pansus, Bachrom M Rasyid, an Islamic party (PPP- Partai Persatuan Pembangunan or United Development Party) legislator, explained to me:

“if Aceh wants to apply shari'ah entirely (secara kaffah), the legislature should not conceal any single particular punishment in Islam including rajam. As this specific punishment existed in the early days of Islam and has been practiced in a few Muslim countries, the Pansus proposes to include it in the qanun on jinayat”.

There is not sufficient space in this briefing paper to further analyse the Islamic legal reasoning that underpins these punishments, I will simply point out here that the penalties in this controversial new bill are much more severe than those in the existing three qanuns on jinayat. This is not just because the amount of caning has increased, but also because of the adoption of gold as the basis for determining the payment of fines. Several professors on Islamic law at the Ar-Raniry IAIN (Institut Agama Islam Negeri, or State Islamic Institute) in Banda Aceh, the provincial capital, have questioned the idea of making gold the reference for calculating the amount of fines. In their view, this method of setting fines is irrational, because gold is very costly and few Acehnese could afford it. In addition, there is no precedence or jurisprudence in the Indonesian criminal legal system for gold to be used for the payment of fines.

Finally, the introduction into the updated bill of rajam (stoning to death) for married adulterers has received strong criticism from the executive branch of the Acehnese provincial government. On behalf of the Governor of Aceh, the head of legal and social
relations affairs of provincial office, Hamid Zein, said:

“We don’t intend to disagree with the application of *rajam* in Aceh, but [for time being] we want its application to be deferred.... We think at this time the caning penalty is still more than sufficient, rather than applying *rajam* immediately.”

Hamid Zein also sent an alert to the legislature, stating that the Indonesian National Human Rights Commission (KOMNAS HAM or *Komisi Nasional Hak Asasi Manusia*) has invited the United Nations to review the existing *qanun* in Aceh, especially those providing for severe punishments. By doing so, it looks very much as though the executive is seeking support for their objections to the bill.

The fact that the government of Aceh has called for the elimination of the severe punishments in the bill, albeit in a round-about way, confirmed allegations that the current provincial executive is not supportive of the implementation of *shari’ah* in Aceh. Some groups in Aceh feel that this government has, from the beginning, shown reluctance to uphold the sort of *shari’ah* stipulated in the *qanun*. There is also a difference between how some Muslim groups define *shari’ah* and how Governor Irwandi defines it. These groups mostly emphasise the legal sanctions of *shari’ah*, but both the Governor and his deputy, Nazar, share the view that Islamic *shari’ah* is more than merely a set of punishments. In an interview with a local women’s tabloid, *Beujroh*, Governor Irwandi stated:

> “Islamic *shari’ah* does not simply involve punishment or labelling. Islamic *shari’ah* must be upheld in accordance with *shari’ah*, and does not need to be focused only on a single aspect alone. Economic empowerment must be considered part of *shari’ah*, making people honest, improving welfare and increasing healthy life are all core values of *shari’ah*. The punishments are only means to achieve the main objectives of *shari’ah*. It is [therefore] not plausible to have [a qanun stipulating that] hands of the thieves [be] cut off if a society still has many economic problems; the government remains unjust; welfare is not yet achieved; and unemployment is still unresolved. I totally disagree with that, and I have stated that I will revoke such a bill.”

There are three main reasons why many Acehnese consider the current provincial government to be opposed to ‘syariatisation’.

First, when *qanun* on *shari’ah* were first introduced, checkpoints were frequently established to stop women going past without headscarves, but the *Wilayatul Hisbah* (religious enforcement authority) rarely does this now. The reason often given is that inadequate support is provided by the government. The *Wilayatul Hisbah* frequently complains that they do not have enough funds, not even enough to buy petrol for their vehicles. In addition, when the *Wilayatul Hisbah* was restructured in early 2008, it was transferred from direct control of the Islamic *Shari’ah* Department (DSI) to become a part of the *Satuan Polisi Pamong Praja* (Municipal Police Unit). It was felt that this restructure was part of a systematic effort to weaken the implementation of *shari’ah*, as indeed it has.
Second, many people feel that close proximity between unmarried people is a quite common phenomenon in Aceh. It not only takes place both behind closed doors but is also frequently observed in open spaces. In their view, this demonstrates the failure of Wilayatul Hisbah to undertake regular inspections of places where unmarried couples are supposedly committing khalwat. They blame the current government which they say has not taken any serious steps to apply the sanctions of the Qanun on jinayah. In fact, the number of offences that reach the shari’a courts in a number of districts and cities has dramatically decreased over time, while at the same time news of people caught committing khalwat appears almost every day in the local newspaper, Harian Serambi.

Third, since the first caning in 2005 in Bireun, other districts have begun to apply this punishment to qanun offenders as well. However, since 2007 the number of offenders being caned overall in Aceh decreased, despite continued sentencing by Shari’a Courts in a number of districts. For example, in February 2009, 22 offenders in Bireun, were awaiting caning. What I often hear as the explanation for this is that the budget for the Shari’a District Office (Dinas Syariat Islam) is too limited to cover the costs of caning. In addition, some people suspect that the Public Prosecutors Office (Kantor Kejaksaan) has not been enthusiastic about administering caning. Above all, as pointed out by Afriko (forthcoming), a scholar of Acehnese issues, Governor Irwandi himself is not happy with caning being implemented in Aceh because it leads international audiences to discount Aceh as a destination for foreign investment.

### Jinayah Cases in the Shari’a Courts of Aceh

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases Filed</th>
<th>Cases Settled</th>
<th>Cases Deferred</th>
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<tbody>
<tr>
<td>2005</td>
<td>107</td>
<td>104</td>
<td>3</td>
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<tr>
<td>2006</td>
<td>75 + 2</td>
<td>76</td>
<td>2</td>
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<tr>
<td>2007</td>
<td>59 + 2</td>
<td>50</td>
<td>11</td>
</tr>
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<td>2008</td>
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<td>55</td>
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For these reasons, many Acehnese feel disappointed with the progress of shari’a implementation in their province, and there are even signs of some resistance. Acehnese, particularly those from dayah, or traditional religious school, backgrounds, have begun to feel dissatisfied with the way the current government of Aceh is implementing shari’a in the region. Two projects to help Acehnese academics improve their research knowledge and skills as part of the post-tsunami recovery, funded by the Aceh Research Training Institute (ARTI)\(^2\), have focused on reactions of dayah to the declining implementation of shari’a in Aceh. According to these studies (Afriko, forthcoming; Syihab, forthcoming), the dayah community have reacted in four ways.

First, in response to the lack of regular checks by the Wilayatul Hisbah, some dayah students, especially in the east coastal areas such as Bireun, Aceh Utara, Lhokseumawe and Aceh Timur, have begun taking over tasks previously performed by the Wilayatul Hisbah. They are now unilaterally conducting raids on women who wear tight clothing

\(^{2}\) An initiative of a consortium of Australian universities, including the University of Melbourne.
or do not wear a headscarf. They visit venues such as coffee shops, beaches or other recreation centres to reprimand, or even attack, unmarried couples holding hands or sitting close together. These violent attacks, described as ‘sweeping’, often end in clashes between students and other social groups, including ex-combatants from GAM.

Second, in response to the now more limited implementation of shari`a by the Acehnese government, a group of dayah students attempted to pressure the Governor into expressing a firm commitment to uphold shari`a. In January 2008, this group organised the so-called Zikir Akbar (a massive gathering for joint prayer) in the front of the renowned Great Mosque of Baiturrahman, Banda Aceh. About ten thousand dayah students and their teachers came from different districts to attend the joint prayer, urging the government of Aceh to apply shari`a more earnestly. According to Afriko (forthcoming), two weeks before the gathering, twelve representatives of this group met with Governor Irwandi at his office, inviting him to join the Zikir Akbar, but he did not show up on the day. His absence sent a message to this group that the government of Aceh was not on their side.

Third, in an effort to systematically organise a movement to press for the application of shari`a in Aceh, the same group of dayah students founded a branch of the Islamic Defenders Front (FPI- Fron Pembela Islam) in Aceh in November 2008. One of prominent leaders of this local organization is Teungku Muslim At-Thahiry. It is apparent that he is inspired by the violent FPI led by Habib Riziq in Jakarta. In fact, At-Thahiry went to Jakarta and visited Riziq during his imprisonment for his involvement in the incident on 1 June 2008 at the national monument (Monas) in Jakarta, when a coalition of groups and families demonstrating in favour of religious tolerance were violently attacked. At-Thahiry also met Teungku Yusuf Al-Qardhawi, an Acehnese who had been in a close contact with the FPI since the post-tsunami emergency in 2005. From Teungku Yusuf Al-Qardhawi, At-Thahiry learned more about the movement for amar makruf and nabi munkar (‘commanding good and prohibiting evil’), a theory underpinning much of FPI’s vigilante activities. They both share the view that such a movement is needed in Aceh to further the implementation of shari`a (Afriko, forthcoming). As this local branch of the FPI is, however, still in its infancy, there is little to say about its activities. It held a protest in January 2009 over Governor’s Regulation no. 25/2007 on the establishment of places of worship, claiming that this regulation would provide non-Muslims in Aceh with an easy means of building their places of worship, thus empowering what they consider to be ‘missions to destroy Islamic shari`a in Aceh’. For this reason, they demanded the annulment of the regulation, but without success.

Fourth, as they became more aware of the differences between their vision of shari`a and that proposed by the current government of Aceh and the Partai Aceh with its unclear religious platform, dayah students began to feel it was necessary to establish a new local political party, Partai Daulat Atjeh (PDA – Aceh Sovereignty Party), which would support their religious agenda. This party was established by two ulama from dayah: Teungku Hasanul Basri and Teungku Muhammad Nasir Wali. Unlike a local Islamic party founded by the ex-GAM members, GABTHAT, which failed to pass the verification process run by the Election Commission (KPU – Komisi Pemilu Umum), the PDA was approved to contest the 2009 ballot, but it received very few votes. PDA was, in the end, only able to send one representative to the provincial legislature. It could not
secure a single seat in either the district legislatures of Bireun and Aceh Utara, despite these being districts where it was supposed to have strong support.

Together, all these factors demonstrate that efforts to persuade or challenge the Partai Aceh and the current government of Aceh led by Irwandi, to apply shari’a more rigorously will end in failure. What then are the immediate and long term predictions for Islamisation of law in Aceh?

Given that the Partai Aceh’s vision of shari’a, which is similar to the views of Governor Irwandi (although the two are not always united on other issues) will dominate the provincial legislature from October 2009 through to 2014, many anticipate that decline of the shari’a application in Aceh will continue. It is true that, in principle, the forthcoming legislature cannot refuse to enact a number of qanun as instructed by Law no. 11/2006 on the Governance of Aceh, including those related to shari’a, but because the Partai Aceh has a simple majority in the legislature it can significantly revise the contents of these regulations.

With decreasing support for the application of shari’a in Aceh in the near future, opposition to the government of Aceh on this issue is likely from some students and ulama at certain dayah. The concerns of these students and ulama regarding government policies on shari’a seems, however, to be unsystematic and thus ineffective – so far at least. They are more focussed on the way shari’a is applied in a practical sense by the government, than on how it is drafted or discussed by the legislature. So, when the bills on jinayah are debated in the legislature later this year, there are unlikely to be statements issued by the dayah students supporting the harsh penalties currently proposed against the objections of the government of Aceh.

I will now move to the second case I want to address in this short paper, the Ulama Consultative Assembly (MPU) of Aceh.

The MPU is considered independent because it has the same status and level as the executive and the legislative branches of provincial government. In recent times, its relationship with the government has been awkward, particularly since the rise of Irwandi Yusuf, who won the provincial election in December 2006 and was sworn into office as Governor on 8 February 2007. The leader of MPU, Muslim Ibrahim, was re-elected for the second term at the MPU Congress on 5-8 February 2007. One of my informants thought that it was unusual that the MPU Congress overlapped with the date that the newly-elected Governor was sworn into office. Why did the MPU leadership organise its Congress during this transitional time? Why did they not wait until sometime after Governor Irwandi was sworn in? Would it have not been more appropriate for the new Governor, Irwandi, to have inaugurated the MPU leadership instead of MPU asking the former Governor (Mustafa Abubakar) to do this, just one day before Governor Irwandi began his tenure? No one can be sure of what actually passed between Governor Irwandi and the chairman of the MPU, or whether their exchange was personally or institutionally communicated, but we can speculate that their relationship is not particularly friendly. In any case, it would seem that these events ultimately shaped the relationship that would develop between the two of them.
Certainly, interaction between the MPU and the Governor since February 2007 has been characterised by a lack of communication, and there has not been a warm relationship between higher provincial officials, the umara (non-religious leaders), and ulama (religious leaders), even at public religious gatherings. In fact, the Governor in his official remarks at formal or public ceremonies has consistently not addressed the MPU as would be appropriate, given its role as one of the higher provincial governance bodies.

There are socio-historical factors that underlie this hostility between the Governor and the MPU leaders. The MPU developed from the MUI (Majelis Ulama Indonesia or Indonesian Ulama Council). The MUI was created by Soeharto’s New Order, and it was therefore tainted in the eyes of many GAM freedom fighters.

In addition, the establishment in Aceh of the other organisations of ulama, such as HUDA (Himpunan Ulama Dayah Aceh or the Association of Dayah Ulama of Aceh) in 1999 has challenged MPU’s influence on government and society. HUDA consists mainly of dayah from right across Aceh, while the MPU consists of religious leaders and Muslim intellectuals. HUDA thus has a different basis for its social legitimacy, which may be more attractive for Governor Irwandi. The emergence of HUDA creates a distinction between rural and urban ulama, even though the demarcation between the two is sometimes unclear. What is clear, however, is that that HUDA is much closer to the stance of the former GAM than is the MPU. During the political crisis in Aceh in 1999, for example, HUDA called for both shari’a and a referendum (the position favoured by GAM, as it expected to do well in a referendum), while the MPU (known then as MUI) preferred the introduction of shari’a under the auspices of special autonomy (a more pro-Jakarta stance).

Given these tensions, it is hardly surprising that the MPU has criticised a number of the Acehnese government’s policies in relation to the implementation of shari’a. Within less than a year of Irwandi’s rise, the MPU, in fact, organised two events to ‘evaluate the existing implementation of shari’a in Aceh’. More than 80 village elders attended a meeting in August 2008 to discuss the current implementation of shari’a at their villages. Then, in a seminar in May 2009, MPU invited prominent figures and religious officials from different institutions who had concerns about the declining implementation of shari’a in Aceh. This seminar questioned the extent to which the application of shari’a had succeeded in bringing significant change to Acehnese social life. These events each indicated to the executive that MPU was unhappy that the government had not taken what it saw as a sufficiently serious effort in applying shari’a.

It was not just MPU that was discontented. HUDA was also dissatisfied with what it saw as the high level of infringements of shari’a law in Aceh. HUDA had, in fact, been one of the major forces supporting Governor Irwandi to win the top position in the provincial government at the election, but Teungku Faisal Aly, the Secretary General of HUDA, has since stated fiercely:

“I question the extent to which Governor Irwandi Yusuf and his deputy, Muhammad Nazar, are truly committed to fully implement shari’a in Aceh”.

In his view, the increasing violation of khalwat rules in a number of districts in Aceh is
an indication of the government’s low commitment to the implementation of shari’a in Aceh.

As the 2009 election approached, HUDA therefore sought to divert their support from the GAM-sponsored Partai Aceh, to a new local Islamic party that represents rural ulama, the Partai Daulat Aceh, mentioned earlier. This party became attractive to a number of pro-GAM religious leaders and dayah students because of its high rhetorical commitment to the implementation of shari’a. Realising that their dayah base might disappear, the leaders of Partai Aceh quickly responded by founding a new ulama organisation called the Ulama Council of Nanggroe Aceh (Majelis Ulama Nanggroe Aceh or MUNA), and in July 2008, top leaders of Partai Aceh and Governor Irwandi attended a ceremony to mark its establishment. Members of MUNA were mostly local religious leaders involved with GAM during the conflict in Aceh (ICG 2008). MUNA soon attracted more than a thousand members from religious leaders from eastern coastal areas of Aceh.

Why did MUNA seek to affiliate with Partai Aceh? Teungku Muhibuddin Waly, a renowned and charismatic Acehnese ulama who joined MUNA as chair of its advisory board, says that the purpose of founding MUNA was to ‘bring back the supremacy of shari’a law in Aceh as it is believed to have been during the era of Sultan Iskandar Muda in the 17th century’. He further maintains that the political affiliation of MUNA with the Partai Aceh is intended to ensure the proper application of shari’a through both Partai Aceh, which has the majority of seats in the legislature, and Governor Irwandi. He hopes that this relationship will be strengthened in the years to come. In any case, the emergence of MUNA challenges the influence of both MPU and HUDA, as the advice of MUNA leaders (and not just of MPU and HUDA) would be sought in the implementation of shari’a in Aceh. Although MUNA is a new organisation, the legislature has given MUNA’s opinions real weight. So, for example, the legislature invited MUNA to attend public hearings on 7 August 2009 to discuss the bills on jinayah as an active participant. It remains unclear, however, whether MUNA will be able to achieve its ultimate objectives of enhanced shari’a implementation.

The last case I will cover in this paper is the re-emergence of the role of adat (or local traditional customs) in dispute resolution, and the extent to which this has affected the jurisdiction of shari’a courts in Aceh.

I have argued elsewhere (Salim 2008) that in the post-tsunami recovery process, informal institutions outside the shari’a courts, such as adat, seemed to help many Acehnese manage their legal problems. This resurgence of adat in Aceh has, however, still received relatively little attention. Most discussions on new developments in Aceh have focussed on the increasing implementation of shari’a and political changes in the aftermath of Helsinki Agreement. In fact, there has been evidence of a significant revival of adat in Aceh as a result of the enactment of a series of special autonomy laws, including two recent by-laws on adat. As Bowen (2003) has pointed out, the revival of adat in Aceh includes the struggle by more local authorities to control their own territories and their resources; more emphasis on local norms for dispute settlement and natural resources management; and greater emphasis on Aceh’s ‘past glories’.

The revival of adat is, however, in many ways inherently in opposition to the expansion
of the jurisdiction of the Shari’a Court of Aceh. In recent years, the Shari’a Court in Aceh has developed from a peripheral legal body, with a jurisdiction limited to family law, to become a significant institution with authority over a range of legal issues including Islamic financial cases, property disputes and penal offences. However, despite the increasing jurisdiction of the Shari’a Court in Aceh, several local developments indicate that its jurisdiction remains contested by adat authorities.

First, the ‘living law’ as practised by Acehnese community, as opposed to the ‘Law in books’, continues to influence many legal aspects of their lives. Even though the 1991 state-endorsed Compilation of Islamic Law (KHI, Kompilasi Hukum Islam) has been the official reference for settling family disputes at courts, local religious leaders still rely on the legal opinions of traditional Shafi’i jurisprudence to resolve the family law cases.

Second, despite the fact that legal procedures and sanctions should be carried out according to formal legal procedures and by the legal officials stipulated in the Qanun, non-formal methods and social sanctions as directed by local leaders often counter these, and these non-formal methods frequently lead to effective resolution of disputes.

Third, the qanun stipulate that the first step should be to settle disputes at the village level. This shows that dispute resolution at the village level should, in some ways, be more important than at the higher level. In other words, Aceh has a plural legal system, and people with disputes have the opportunity to enter the system at a variety of levels. Typically, they do this at levels other than that of the formal Shari’a Courts themselves.

Finally, I conclude by drawing on an Arabic aphorism: an-nas ‘ala dini mulukihi, which literally means, ‘people are dependent on the religion of their rulers’. Loosely interpreted in Aceh’s recent circumstances, this aphorism implies that the way the shari’a is being implemented is determined by the extent to which the government of Aceh pays attention to it. The current application of shari’a in Aceh is clearly a product of political process, and it reflects the fact that it is no longer a priority of the head of that process at the provincial level, Governor Irwandi.

What will happen next will depend to a great extent on how political players elsewhere in Aceh’s system, including ulama organisations and political parties decide to respond.
Postscript

Despite the strong objections of Governor Irwandi Yusuf, the provincial legislature (DPRA) eventually passed both drafts of *qanun* on *jinayat*, together with other three *qanuns*, on Monday, 14 September 2009. The passing of these *qanun*, which included the controversial provisions allowing for stoning to death, quickly attracted attention – and objection – at local, national and international levels.

On Wednesday, 9 September 2009, just several days before the *qanun* were passed, the Aceh Justice Resource Center (AJRC - a UNDP sponsored institution for legal research and dissemination) convened an expert round table meeting to criticise the draft *qanun* on *jinayat*. Participants at this meeting included leaders of the Pansus (the special committee of the legislature), law professors, religious leaders and Muslim intellectuals in Aceh. Rusjdi Ali Muhammad, Professor of Islamic Law at the Ar-Raniry State Institute for Islamic Studies (IAIN) in Banda Aceh, was critical of the stoning penalty, since in his view the *Qur’an*, the most authoritative source of law in Islam, did not provide for it. He further argued that, in any case, much would have to be done before it could be applied, including improving knowledge of Islam in the Acehnese community generally. The meeting did not result in any consensus, but it did identify a number of problematic provisions that should have been addressed by the legislature before the *qanun* were passed. Although this meeting was not part of formal legislative process, it did demonstrate a better way to identify the kind of regulation Aceh needs.

That the outgoing DPRA (2004-2009) enacted the *qanun* on *jinayat* despite fierce opposition to the stoning penalty demonstrates that the legislative process was based on politics and not the sort of socio-cultural consensus needed if regulation is to be effective. The decision was very much determined by the fact that the outgoing DPRA was less interested in whether the *qanun* would be implemented later and more in being able to a claim that they were the legislators who introduced tougher Islamic penal laws.

Finally, the passing of this *qanun* by the outgoing DPRA has created a dilemma for Governor Irwandi and the new DPRA, which is dominated by Partai Aceh, a non-religious party. The executive and the new legislature (who were sworn in only in early October 2009) cannot easily set aside the new *qanun*, as they fear they could lose political support in the next election if they can be portrayed as being ‘anti-shari’a’. Instead, the government has sought to deal with the *qanun* by not signing them and sending them back to the DPRA, considering both of them drafts open for revision or amendment. But whether this move will lead to the repealing of the *qanun* on *jinayat*, or the removal of the stoning penalty in particular, remains to be seen.
References


ARC Federation Fellowship
“Islam and Modernity:
Syari’ah, Terrorism and Governance in South-East Asia”

ARC Federation Fellowship
C/- Centre for Islamic Law and Society
Melbourne Law School
The University of Melbourne
Tel: +61 3 8344 6847
Fax: +61 3 8344 4546

cils-info@unimelb.edu.au
http://www.lindseyfederation.law.unimelb.edu.au