

# STUDIA ISLAMIKA

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Volume 23, Number 2, 2016



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THE RECEPTION OF SEYYED HOSSEIN NASR'S IDEAS  
WITHIN THE INDONESIAN INTELLECTUAL LANDSCAPE

Asfa Widiyanto

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HIGHER OBJECTIVES OF ISLAMIC INVESTMENT PRODUCTS:  
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FIQH ISSUES IN THE BORDER AREAS OF WEST KALIMANTAN

Hamka Siregar

# **STUDIA ISLAMIKA**



# STUDIA ISLAMIKA

Indonesian Journal for Islamic Studies  
Vol. 23, no. 2, 2016

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## Between Identity and Interest: Revisiting Sharia Bylaw in Current Indonesia

**Endi Aulia Garadian**

The emergence of sharia bylaws in several regions in Indonesia is increasingly worrisome. In many cases, they have generated socio-religious problems within society such as preventing the establishment of a house of worship and forbidding of religious activities, especially for minority sects such as Ahmadiyya and Shi'a. Furthermore, they also produce the discrimination against women. For example, in Tangerang City, a female worker was arrested by Civil Service Police Unit (Satuan Polisi Pamong Praja, Satpol PP) because she was accused of being prostitute because she returned home at night. Unfortunately, the basis of accusation is *Perda Kota Tangerang No. 5, 2005*.

One of the prominent factors giving occasion to the emergence of those sharia bylaws is the political opportunity after the decline of Suharto's New Order. Afterwards, the falling regime became a sign of this glitch. Ignoring the fact that they produce many problems within society, local governments still repeatedly produce sharia bylaws.

In Indonesia, the question of sharia bylaws has also attracted many scholars' attention. Some scholars, for instance, argued that sharia

bylaws appeared because of the lack of local government authority and the diversion of corruption cases (Bush 2008; Candraningrum 2003). Others asserted that the emergence of those regulations was affected by the political gambit from local politicians who have an interest in local elections (Buehler 2013; Salim 2013). Moreover, sharia bylaws were also used as a formalization of Islamic identity as well as to attract voters (Buehler 2013). In addition, speaking of the relationship among voters, sharia bylaws, and the state, Indonesian voters at the national level had not demanded the application of sharia as a national ideology by creating sharia bylaws while, on the contrary, voters in the local agreed to do this (Bush 2008).

In some cases, a historical background related to the Islamic State movement (*Darul Islam*, DI) has been considered as the origin of sharia bylaws, for example in West Java and South Sulawesi (Buehler 2013). Meanwhile, another opinion related to sharia bylaws said that the political will and social factors have also become the background of sharia bylaws emerging in some parts of Indonesia, namely Aceh, Padang, Cianjur, and Makassar (Makruf and Halimatussa'diyah, 2014). In those areas, the political ideology from political parties was absent in supporting these regulations, while the flourishing of sharia bylaws was caused by local elites trying to gain support in local elections (Makruf and Halimatussa'diyah, 2014).

Almost seven years after those researches were completed, recently the blooming of sharia bylaws in Indonesia is fairly understudied by scholars. The main reason is that the emergence of sharia bylaws is barely noticed. Currently, the process of "shariatization" in Indonesian society has become the midwife for the birth of sharia bylaws in many regions. And, it had also become the final argumentation of the emergence of sharia bylaws. Yet, is the study of the emergence of sharia bylaws locked in stalemate? Is there no gap and space to replenish the study?

Based on the questions given above, Center for the Study of Islam and Society (Pusat Pengkajian Islam dan Masyarakat, PPIM) Syarif Hidayatullah State Islamic University (Universitas Islam Negeri, UIN) Jakarta along with Knowledge Sector Initiative (KSI) Indonesia initiated the research entitled "State Regulation and Religious Life in Three Provinces in Indonesia: Banten, DKI Jakarta, and West Java". This research was conducted throughout December 2014 to June 2015. This research was a pilot project, so the data obtained was an initial step

to see how sharia bylaws today influence the religious life in society. It also tries to assess the recent position of the study of sharia bylaws in Indonesia within academic debates.

This research selected Banten (Pandeglang, Serang City, and Tangerang City), DKI Jakarta, and West Java (Bandung City, Sukabumi District, and Tasikmalaya) as the research locations for two reasons. *First*, for Jakarta, Bandung, and Tangerang City, these areas were selected as the representation of religious life in major urban areas. This was balanced with other locations (Pandeglang, Serang, Sukabumi, and, Tasikmalaya) that were the representatives of rural areas. From these variations, we could look into the different factors from the emergence of sharia bylaw such as elite authority, social and religious identity, local politics, and socio-economics factors. *Second*, in these regions there is an inclination to increase sharia bylaws rapidly. This fact shows us that the growth of these regulations does not only occur in the regions that have a history with the DI movement, such as Aceh, West Java, and South Sulawesi. Furthermore, this research was conducted using qualitative methods with two main data sampling approaches: (1) document review and (2) deep interviews (ethnographic study) with snowball-sampling method. Despite using the snowball-sampling method, at least eight keys stratified informants were determined for this research. They must be the local elites, religious leaders, leaders from minority groups, and political elites; each of these groups was represented by two people.

Sharia bylaws were evaluated using Arskal Salim's categorization. According to Salim (2007), sharia bylaws can be categorized into three types: the first category is public order and social problems (banning of alcoholic beverages, prostitution, narcotics, permission for an establishment of house of worship); the second category is religious education and religious obligation (compulsory of religious education (*madrasah diniyah*) to elementary school); and the third category is religious symbolism. In total, there are 112 sharia bylaw regulations in three provinces (compulsory to wearing Moslem clothes for civil servant and regulations of zakat, infaq, and shadaqah). In Banten, this research found 17 regulations (Pandeglang District, 7 regulations; Serang City, 7 regulations; Tangerang City, 2 regulations). DKI Jakarta is the largest producer of sharia bylaw regulation with 56 regulations produced. In addition, West Java produced 29 regulations (Bandung

City, 3 regulations; Sukabumi District, 10 regulations; Tasikmalaya, 26 regulations).

Sharia bylaws are distributed into several levels of state regulation. This study shows that there are 10 Local Regulations (*Peraturan Daerah, Perda*), 3 Governor Regulations (*Peraturan Gubernur, Pergub*), 1 Governor Instruction (*Instruksi Gubernur, Insgub*), 8 Regent Regulations (*Peraturan Bupati, Perbup*), and 4 Regent Instructions (*Instruksi Bupati, Insbup*). Thus, this study concludes that the regulations made by the executive government are more plentiful than those made by the legislative. From this data, there are 16 regulations made by the executive (*Pergub, Insgub, Perbup, and Insbup*), and 10 regulations are legitimated by legislative (*Perda*). The reason for this is that the process to make regulations in the executive branch is easier than that in the legislative because in the legislative the process of making a regulation must go through an intricate and long political process. Meanwhile, in the executive, the local leader could make the regulations immediately without considering any complex political process.

In the field, some aspects were more emphasized during the interviews. Aspects such as the relationship between religion and state; religion and social religious practices, religion and social tolerance; also democracy and civic values are important to delve into so as to understand the position and impact of sharia bylaws on the society in each location. In keeping with previous findings, this project argued that the emergence of sharia bylaw regulations is not only encouraged by religious factors, but also the influence of several other factors, including:

1. Response to the urban lifestyle

In some points, the issues of urban lifestyle can clash with religious values. For religious elites, once the urban lifestyle is left unchecked, then the result is a deterioration of religious values in society. For them, this phenomenon impedes religious life in their community. Based on this perceived problem, they are interested in encouraging the local government to release regulations that could counter the phenomenon. Regulations in this category include *Peraturan Daerah Kota Bandung No. 11 Tahun 2010 tentang Pelarangan, Pengawasan dan Pengendalian Minuman Beralkohol*.

2. Formalization of religion based on some groups' interests  
Some regulations have also arisen because there are interests of various actors, such as civil society organisations, religious elites, and even business groups who try to formalize religion into public space. For example, Pandeglang's *Peraturan Daerah No. 13 Tahun 2010 tentang Santunan Kematian*.
3. Political economy motives  
There is an economic motive behind these regulations. For instance, Muslim clothing manufacturers could get benefit from the enactment of sharia bylaws on the obligation of wearing Muslim clothing at school or at the government office. Then, the local religious authority has also encouraged the enactment of sharia by laws regarding *Wajib Belajar Madrasah Diniyyah* regulations. The regulations in this category include Serang's *Peraturan Daerah Nomor 30 Tahun 2009 tentang Wajib Belajar Pendidikan Keagamaan Islam*.
4. The strengthening of religious identity  
The impact of the emergence of sharia bylaws is the strengthening of religious identity at the local level. Sharia bylaws were often used by local elites to mobilize their political agenda for the elections. For example, *Peraturan Gubernur Jawa Barat Nomor 12 Tahun 2011 tentang Larangan Kegiatan Jemaat Ahmadiyah di Jawa Barat*.

In addition, this research also found that social regulations are more trusted by society rather than sharia bylaws regulations. The case for this example is in Serang City and Pandeglang District. In these regions there are social regulations made by religious authority (ulema) to ban of establishment of cinema and church. Their reason is that if the cinema is built, then the morality and piety of society will be corrupted. Moreover, the reason for banning the establishment of churches is that it will decrease Islamic identity as the result of Christianization.

Another finding in this research is that these regulations are experiencing a "suspended animation". The point is that a regulation has been made in the legislative process—that might be very long and tiring—in Parliament. But, once it is released to the public, it was only applied for a few months. It is not effective at all. However, this regulation was not repealed or was not reviewed. In fact, this regulation could be

resurrected for the sake of political imagery. It happened because sharia bylaw was a result of a political game, so its implementation might be simply torpid.

The findings of this research have been disseminated in a seminar on Wednesday, 21st October 2015 in the Auditorium of the Faculty of Social and Political Sciences at UIN Jakarta. We invited Prof. Ryaas Rasyid (Former Minister of State for Regional Autonomy), Prof. Bahtiar Effendy (Professor of Political Science), and Ismail Hassani (Director of Research of Setara Institute) as the speakers. Acting as moderator is Jajang Jahroni (Senior Researcher of PPIM UIN Jakarta).

Prof Ryaas said that there are some elements causing sharia bylaws being regarded as problematic and must be resisted. *First*, they have contradicted with higher regulations in both the constitution and the decentralisation laws (*Undang-Undang Nomor 22 Tahun 1999 tentang Pemerintahan Daerah* and *Undang-Undang Nomor 32 Tahun 2004 tentang Pemerintahan Daerah*). *Second*, sharia bylaws potentially bring problems to society like discrimination against minorities and women. *Third*, these regulations have caused a burden to the people such as regulations making Moslem clothes compulsory. In the seminar, he also suggested that the result of this research was not yet conclusive that the appearance of these regulations was caused by the relationship between religion and state becoming more collaborative. *Lastly*, Prof Ryaas proposed to the PPIM to conduct a study on other regions where Moslems are not the majority. It is important to investigate and to prove that the politics of identity have been institutionalised into the state through sharia bylaws.

Meanwhile, according to Ismail Hassani, the increase of sharia bylaws is caused by unresolved conceptual issues regarding the relationship between religion, state, and local government. There are several unclear mechanisms for the distribution of authority between central and local governments in terms of religion. The state also has no clear conception about legal pluralism and the political ideology of religious intolerance. Ismail said that the major obstacle to the central government was in the supervision, monitoring, and evaluation of local governments. Furthermore, he depicted that the religious domain is still obstacle challenge for the state. For example, when legislating sometimes religious arguments are used to resolve cases and/or set policies. This even occurs in the Constitutional Court, which should

give priority to constitutional justice over social justice.

On the contrary, Prof Bahtiar Effendy said that the issue of the relationship between religion and state is not the major cause for sharia bylaws continuing to emerge. He also explained that Indonesia is not a secular state. Since the nation's foundations were formulated in the Committee for Preparatory Work for Indonesian Independence (*Badan Penyelidik Usaha-Usaha Kemerdekaan Indonesia*, BPUPKI) in 1945, the founding fathers of Indonesia often engaged in religious debate rather than secular debate or other debate. His proposed solution to this problem was that the most effective way to handle the negative impact from sharia bylaws is to say that all these regulations have violated the constitution.

Finally, the goal of this research was to understand the current situation of sharia bylaw regulations on several areas in Indonesia. The report of this research, hopefully, can be a good start for the next research related to the future trends of the emergence and the impact of sharia bylaws in Indonesia. It is also expected that this research can foster and will contribute to the study of the relationship between state and religion in Indonesia more broadly.

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The journal invites scholars and experts working in all disciplines in the humanities and social sciences pertaining to Islam or Muslim societies. Articles should be original, research-based, unpublished and not under review for possible publication in other journals. All submitted papers are subject to review of the editors, editorial board, and blind reviewers. Submissions that violate our guidelines on formatting or length will be rejected without review.

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3. Feener, Michael R., and Mark E. Cammack, eds. 2007. *Islamic Law in Contemporary Indonesia: Ideas and Institutions*. Cambridge: Islamic Legal Studies Program.
4. Wahid, Din. 2014. *Nurturing Salafi Manhaj: A Study of Salafi Pesantrens in Contemporary Indonesia*. PhD dissertation. Utrecht University.
5. Utriza, Ayang. 2008. "Mencari Model Kerukunan Antaragama." *Kompas*. March 19: 59.
6. Ms. *Undhang-Undhang Banten*, L.Or.5598, Leiden University.
7. Interview with K.H. Sahal Mahfudz, Kajen, Pati, June 11<sup>th</sup>, 2007.

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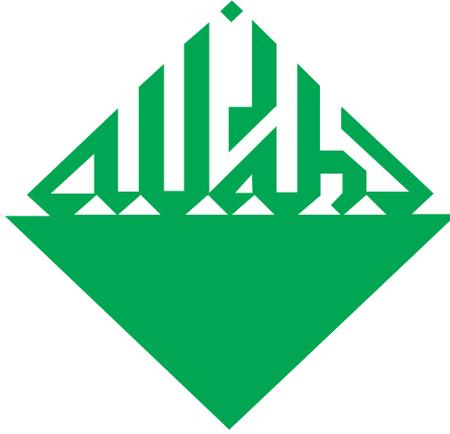


# ستوديا اسلاميا

# سثوديا اسراميا

مجة إنءونيسية للءراساء الإسلامية

السنة الثالثة والعشرون، العءء ٢، ٢٠١٦



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حزب العءءالة والرفاهية (PKS)  
وسياساء الصوية الإسلامية:  
اسءراءيجاء كواءر الحزب لءأطير قضايا  
نخبهم الفساءية المالية  
رانغا إيكاء سابورا

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الإسلام والمء والجزر في العلاءاء  
بين الءين والءولة في إنءونيسيا  
عصمة الرفيع

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