

RELIGION

Creeping Sharia?

Indonesian housewife Lillis Lindawati's February arrest for alleged prostitution has propelled Tangerang, an industrial satellite city of 3 million, into national headlines. Located just west of Jakarta, Tangerang is hosting the latest episode of a story that has plagued Indonesia from its very inception: a sometimes latent, sometimes violent battle between secularists and Islamists for control of Indonesia's social fabric.

*WRONGFUL ARREST FOR PROSTITUTION IN
TANGERANG SPARKS PUBLIC INDIGNATION*

The story behind her arrest and subsequent conviction has been well publicised in Indonesia. The pregnant mother of two was waiting for a bus to return home to her husband and family when she was picked up by police who accused her of being a prostitute. The evidence, that she was alone at night and in possession of lipstick and face powder, was enough to convict her the following day. Maintaining her innocence and unable to pay the Rp 300,000 fine (US\$34), she spent the next three days in jail.

Her story is not just an isolated case of wrongful arrest, and Ms Lindawati has risked the social stigma of being associated with prostitution to speak out against the impact a November 2005 local government regulation is having on women in Tangerang. The regulation permits the arrest of women on suspicion of prostitution alone and allows for scant evidence to bring convictions.

Critics of the regulation argue that it is part of a raft of "sharia" laws, introduced by Wahidin Halim, Tangerang's mayor, which have a distinctly Islamic flavour. In recent months new regulations in Tangerang have confined the sale of alcohol to hotels, forced local government employees to wear Muslim dress on Fridays, and banned acts of public intimacy, including hugging or kissing, which could "trigger passion."

"The effect of Tangerang's new regulation on prostitution is to discourage women from going out alone at night without a male escort," explains Mohamad Guntur Romli, from the Liberal Islamic Network (JIL), an Indonesian NGO. "This is a central concept within Islamic sharia law, that a woman can only be seen in public if accompanied by a *muhrim*, a male family member, or a trusted older family friend."

*TANGERANG REGULATION ON PROSTITUTION
PART OF BROADER WAVE OF REGIONAL
SHARIA LAWS*

Such Islamic-driven regional regulations are neither unique to Tangerang nor new to Indonesia but form part of an emerging trend across the archipelago, as regional governments continue to introduce similar regulations within their jurisdictions (see Box One, pg.7). The local contexts of the regulations are diverse and so are their causes, but a growing number of analysts see them as the latest attempt to introduce sharia to Indonesia.

The *Report* examines some of the theories behind the introduction of these regional regulations, details government and societal responses, and considers their wider implications for the very nature of Indonesia's social and legal systems.

Box One: Local government regulations related to morality and sharia

Region	Name of Regulation	Subject of Regulation	Details of Regulation
Padang, West Sumatra	Mayor's Instruction No. 451.422/Binsos-III/2005 (dated March 7)	Local residents	Full Islamic dress for Muslims; non-Muslims are advised to follow.
West Pasaman Regency, West Sumatra	Part of the regency's "Return to the Mosque" program	Local students at public and private Islamic schools (from elementary school to high school). Does not apply to Catholic and Protestant schools.	Full Islamic dress for female students and long sleeve shirts and pants for male students. (A number of Catholic students who study at public Islamic schools in Simpang Empat, the capital city of West Pasaman Regency, initially said they felt uncomfortable wearing Islamic dress but eventually became used to it.)
Solok, West Sumatra	Local regulation from 2000	Local residents	Full Islamic dress for men and women; every one must read the Koran.
Tangerang City, Banten	Tangerang City Regulation Number 8/2005	Local residents	Part of the regulation calls for the arresting of suspected prostitutes working in public places.
Cianjur Regency, West Java	Agreement between Cianjur Legislative Council and 36 community organisations in Cianjur, (Muharram 2001)	Local government employees	Women must wear Islamic headscarves; no activities during the call to prayer; additional hour of Islamic study every day; full Islamic dress for men and women on Fridays.
Indramayu Regency, West Java	Regent's call launched on Indramayu Regency's 475 th anniversary (2001)	Local government employees	Full Islamic dress for men and women on Fridays; call for fasting every Monday and Thursday; no activities during the call to prayer; Koran reading before work every day for 30 minutes.
Tasikmalaya Regency, West Java	Regent's Circular Letter (<i>Surat Edaran Bupati</i>) No. 451/SE/04/Sos/2001	Local students; women	The local regent recommends that all female Muslim students at primary schools, high schools, vocational schools, and universities wear Islamic dress. However, all women are ordered to wear headscarves.
Pamekasan Regency, East Java	Regent's Circular Letter (<i>Surat Edaran Bupati</i>) No. 450/2002	Local government employees	Women must wear Islamic headscarves; no activities during the call to prayer; additional hour of Islamic learning every day; full Islamic dress for men and women on Fridays.
Maros Regency, South Sulawesi	Regent's Circular Letter (<i>Surat Edaran Bupati</i>) dated Oct. 21, 2002	Local government employees	Women must wear Islamic headscarves; no activities during the call to prayer; additional hour of Islamic learning every day; full Islamic dress for men and women on Fridays.
Maros Regency, South Sulawesi	Maros Regulation, December 2005	Local students; government employees	All students from primary to senior high school must pass a Koran reading test before moving to the next grade; government employees can be promoted if they can read the Koran.
Sinjai Regency, South Sulawesi	Agreement between Sinjai Legislative Council, local communities, and local government officials.	Local government employees	Women must wear Islamic headscarves; no activities during the call to prayer; additional hour of Islamic study every day.
Gowa Regency, South Sulawesi	Local tradition and community agreement	Local government employees	Women must wear Islamic headscarves; no activities during the call to prayer; additional hour of Islamic study every day.
Gowa Regency, South Sulawesi	Gowa Local Regulation No. 7/2003	Local students	Regulation aimed at eradicating Koran illiteracy by requiring primary school students to pass a Koran reading test before moving to the next grade.
Gorontalo Regency, Gorontalo	Gorontalo Local Regulation No. 10/2003	Local women	Part of the regulation prohibits a woman from going outside during the late evening without her husband.

*Box does not represent all government regulations relating to issues of morality and sharia.

Possible drivers of sharia regulations

CAUSES OF "SHARIA" REGIONAL REGULATIONS

There are several different interpretations of the emergence of these regional regulations. They have been viewed variously as a product of Indonesia's historical and political context, a new type of populist political strategy, or a bid to improve the country's moral foundations.

National, political, and historical links

CONTINUATION OF FAILED NATIONAL ATTEMPT TO INTRODUCE SHARIA LAW

Regarding the first interpretation, JIL's Guntur points to three failed attempts by national level Islamic political parties in 2000, 2002, and 2004 to pass a constitutional amendment that would have made sharia compulsory for Muslims. Following that, he says Islamists reconfigured their strategy and moved away from national politics and instead sought to "build a constituency for sharia law from the local level upwards instead of from the national level downwards." That, he says, reflects the powers delegated to local governments through the 1999 Regional Autonomy Law and also the continuation of a debate that has waxed and waned throughout Indonesian history.

Since Indonesian intellectuals first thought of the archipelago as one nation in the 1920s, there has been strident debate over whether it should be secular or based on Islamic principles. During the writing of the 1945 Indonesian Constitution, eastern Indonesian Christians threatened to separate from Indonesia if the constitution's first article was not amended. Bowing to their pressure, the article includes the phrase "a belief in one God," and no longer includes "with an obligation for Muslims to implement Islamic law."

HISTORICALLY, EFFORTS TO INTRODUCE SHARIA LAW ARE NOTHING NEW

The debate resurfaced after Indonesia's first democratic election in 1955 when Islamic political parties won 48 percent of the vote but could not garner the two-thirds majority needed to amend the constitution. In 1959, President Soekarno effectively ended the controversy after declaring that the 1945 constitution's wording could not be changed. President Soeharto further enshrined secularism by marginalising and repressing Islamic forces, which he saw as a threat to his administration.

AFTER REPRESSION BY SOEHARTO, POLITICAL ISLAM FINDS ITS VOICE AGAIN FROM 1998

After Soeharto's 1998 departure, however, Islamic political parties have again found their voice, taking 23 percent of the vote in the 2004 legislative election. With no one party dominating parliament, they have proven to be an important force. The highly controversial anti-pornography bill is just one example of a law being pushed by Islamic parties at the national level. Furthermore, many ideas in that bill are found in the local sharia regulations.

ISLAM'S STRENGTH AS A SOCIAL FORCE SHOULD NOT BE UNDERESTIMATED

But it is necessary to look beyond formal politics to understand the power of Islamic forces in Indonesia. Under Soeharto, the marginalisation of Islamic political parties occurred simultaneously with the consolidation of Islam as a social force. It is this societal strength which gives Islamic ideas their current political potency, making it necessary to focus not only on Islamic political parties when explaining where these sharia-type regulations have surfaced but also on the ostensibly secular ones. For example, the local governments in Bulukumba, South Sulawesi, and Padang, West Sumatra, are not controlled

by Islamic political parties, but by the secular Golkar and PAN parties, respectively. The Mayor of Tangerang, moreover, is also officially a Golkar member.

To help explain this conundrum, Guntur, from JIL, told the *Report*, “You can’t just look at which party politicians belong to in order to locate their policies. There are those wishing to push an Islamic political agenda in all parties. Golkar is seeking to redefine their ideology so they can distance themselves from their dominant role under Soeharto. Golkar members are pragmatists, compromising on all sides and adopting individual standpoints on issues if they think it will win them popularity.”

MANY OSTENSIBLY SECULAR POLITICIANS HOLD STRONG BELIEFS ABOUT THE ROLE OF POLITICAL ISLAM

Sharia as a political populist strategy

Apart from explaining the emergence of these local sharia regulations in terms of their historical and national political contexts, others have pointed to the electoral success that political parties and individual candidates can secure if they are seen to champion Islam. Although this does not mean people living in areas with these laws support them across the board, analysts note.

INTRODUCTION OF “SHARIA” LAWS IS A POPULIST POLITICAL STRATEGY

Jajang Jahroni, a researcher at the State Islamic University in Jakarta, says, “Most people profess support for sharia when asked, but only as a general idea. If asked about the specific details of sharia, people are more reticent to give their support.”

POPULAR SUPPORT FOR SHARIA LAW TENDS TO BE MORE SYMBOLIC THAN CONCRETE

With the introduction of direct elections in 2004 for mayors and regents, populist politics have become even more pronounced. Particularly in areas known for their strong Islamic faith, politicians are now turning to sharia as a conveniently vague campaign platform, notes Guntur from JIL. “So parties introduce these regulations to be popular,” he says. “If people hear about a local sharia regulation, they think ‘good, Islam is being taken seriously here.’ But most do not follow Islam on a day-to-day level; they don’t pray or fast during Ramadan. This is more a question of religious symbolism than the reality of living with sharia.”

Securing popular support for these sharia-type laws, however, often comes down to semantics. In Tangerang, for example, local legislature members responsible for passing the regional regulations told the *Report* that people of all faiths, not just Muslims, are in favour of cleaning Tangerang’s streets of prostitution. That might be true; who, after all, is going to stand up for prostitution, or indeed pornography, at the national level? But critics of the regulations say that their true impact on ordinary people is rarely fully known; Ms Lindawati is now believed to be one of many women in Tangerang unfairly charged with prostitution.

Morality or sharia?

Many politicians who have introduced these regulations maintain that they are simply seeking to raise public standards of morality, denying that the regulations have religious undertones. In Tangerang, local legislature members say that banning alcohol sales on the streets is not equivalent to sharia because

DEFENDERS CLAIM THEY ARE MORALITY, NOT SHARIA REGULATIONS

it provides exceptions for its continued sale in three to five star hotels and duty free shops. That, they say, is very different from sharia which is absolute.

CRITICS ARGUE THEY ARE ONLY AIMED AT THE POOR

Dedi Ali Ahmad of the Indonesia Aid and Human Rights Association says that such logic does not undermine the suspicion that the regulations are sharia-based, but rather highlights the fact that such regulations are usually aimed at the poor. A bid to control public drunkenness may be a laudable objective, but the exceptions to the regulation simply make it difficult for the poor to buy alcohol, while doing nothing to stop richer patrons from buying alcohol in hotels and carrying out the same drunkenness the regulation aims to curb.

DEFENDERS CLAIM THE REGULATIONS ARE ONLY AIMED AT MUSLIMS

Similarly, Tangerang's mayor claims that his regulations require Muslim government employees to wear Muslim dress on Fridays to remind them of the vision of religious, responsible, and honest leadership, to which he is committed. He says that because the regulation applies only to Muslims, it cannot be described as an attempt at Islamisation.

CRITICS ARGUE MANY INDONESIAN MUSLIMS DO NOT FOLLOW STRICT ISLAMIC CODES

Analysts, however, highlight a flaw in that logic. Because Indonesians must claim a religion on their identity cards, many note Islam as their official faith although they do not strictly adhere to it. Sociologists have coined the phrases *abangan* and *santri* to describe Indonesian Muslims who are less and more devout, respectively. Given those variations, requiring all Muslims to dress more Islamically or to be able to read the Koran can still be regarded as Islamisation.

Opposition and available legal avenues

Many regents and mayors claim that the sharia regulations introduced in their jurisdictions have been broadly welcomed by the local population. However, pockets of local resistance have surfaced around the country, with the most systematic and coordinated occurring in response to Tangerang's regulation on prostitution.

OPPOSITION AGAINST THE REGULATIONS ORGANIZED IN TANGERANG

Initial demonstrations by NGOs and women's groups in Tangerang have morphed into a more organised movement, led by a coalition of NGOs from Jakarta and Tangerang, known as TAKDIR, to overturn the regulation. It is hoped, the group says, that their efforts can serve as a precedent for future actions elsewhere.

THOSE SEEKING TO OVERTURN REGIONAL REGULATIONS CAN APPEAL TO DEPARTMENT OF HOME AFFAIRS

Those seeking to overturn these regulations have three main avenues to exploit. The first relates to a clause in Law No.32 on Regional Autonomy from 2004, stating that all regional regulations must be submitted to the Ministry of Home Affairs once issued. The Ministry then has 60 days to approve the regulation, ask for revisions, or cancel it. Once that 60-day period passes, however, it takes a Presidential Instruction to cancel one, Agung Pambudhi, Director of Regional Autonomy Watch, told the *Report*. According to Agung, the Ministry has exercised its right to cancel regional regulations about 600 times, mostly on regional tax laws.

The second avenue available is to challenge the regulations in the Supreme

Court. Under Indonesian law, lower level regulations, such as Regional Regulations (*Peraturan Daerah*) or Presidential Instructions (*Keputusan Presiden*) are not legal if they contravene other higher laws (*Undang-Undang*) or the constitution (*Undang-Undang Dasar*). Moreover, it is the Supreme Court's task to hear those cases. Although it seems taking the case to the Constitutional Court could also be an option (see Adnan Nasution Interview, pg.18), Dedi, of TAKDIR explains that its case falls squarely within the jurisdiction of the Supreme Court as the Constitutional Court only deals with laws contravening the constitution.

OR THEY CAN APPEAL TO THE SUPREME COURT

On April 20, TAKDIR filed its suit with the Supreme Court, citing at least seven laws which they believe Tangerang's Regulation No.8 (2005) on prostitution contravenes (see Box Two). The case is extremely important, not only because it may set a precedent for future actions, but because it tests the relatively new powers of the Supreme Court to make judicial reviews.

NGO COALITION HAS FILED A SUIT AGAINST TANGERANG REGULATION ON PROSTITUTION

Box Two: Law Suit Filed Against Tangerang Perda No.8 (2005)

The law suit details several laws which the Tangerang Perda 8 2005 contravenes:

1. Criminal Code (KUHP): Cannot arrest someone for just being in a vicinity. They have to have attempted a crime.
2. Criminal Code (KUHP): Contravenes the principle of fair trial; can only arrest someone if there is a strong suspicion of wrong-doing based on previous evidence (witness, expert, letter or accusation).
3. Convention on the Elimination of all forms of discrimination against women (CEDAW) (Ratified by Indonesian Government through Law No.7 1984): in practice Perda 8 is aimed mostly at women.
4. Law No. 39 1999 on Human Rights.
5. Human Rights Clauses in Indonesian Constitution: Declaration of Universal Human Rights, Law No.12 2005: Convention on Civil Political Rights.
6. Law No. 10 2004 on the form of laws and regulations: Law No. 32 on Local Government; Regional regulations must be clear and easily enforceable and not contravene the public interest.
7. Convention on the Trade in Women: Perda 8 has the potential to criminalise victims of the trade in women.

TAKDIR Members: Kaki Lima, Kalyanamitra, KePPak Perempuan, LBH APIK Jakarta, PBHI Jakarta, Mitra Perempuan, FSPB, Wahid Institute, Yayasan Jurnal Perempuan, YAPHI.

Agung, the regional autonomy expert, thinks that this is the first time a regional regulation has been questioned directly by the people it has affected. "So far there have only been cases where a regional regulation overturned by the Ministry of Home Affairs has been brought to the Supreme Court by the local government which issued it and in most cases the local government won," he told the *Report*.

THIS CASE COULD BECOME AN IMPORTANT PRECEDENT

TAKDIR's Supreme Court case depends very much on the politics behind the scenes, says Dedi. "Our case was formally accepted, but after nearly two weeks we are still waiting for a registration number, which usually only takes one day. We know of other unrelated cases which have only taken three months to go through the Supreme Court, but it could also take years. It just depends on the politicians."

NGO COALITION STILL AWAITING CONFIRMATION OF THEIR LAW SUIT

Putting pressure on the central government is also an option which could either support or substitute the suit filed at the Supreme Court. Although TAKDIR requested an audience with the Ministry of Home Affairs on April 15, it has not received a response.

*CENTRAL GOVERNMENT SILENT ON THE
ISSUE*

Most analysts agree that the political sensitivities surrounding this issue have kept the government and President Yudhoyono in particular from intervening. “President Yudhoyono should be able to call the Minister of Home Affairs and ask about these regional issues. But he hasn’t,” says Jakarta-based legal expert Adnan Buyung Nasution.

*HIGH POTENTIAL FOR REGULATIONS TO
SPREAD FROM REGION TO REGION*

“The danger,” Agung maintains, “is that these regional regulations could spread from region to region, eventually building into a push for a change at the national level.” Indeed, this process already seems to be occurring with local governments copying and pasting regulations. But this is nothing new; he says that due to a weak capacity to formulate their own regulations, local governments in Indonesia often copy regulations from other regions. “In my experience if a regional regulation is not cancelled by the Ministry of Home Affairs, it nearly always gets copied by other regions,” says Agung. “I have seen many cases of regional regulations where references to the original locality of the regulation have even been kept in by mistake.”

Wider implications of the regional regulations*DEBATE ON THESE ISSUES IS AN INDICATION
OF A HEALTHY DEMOCRACY*

In some ways the furor over these regional regulations is a healthy indication of democracy at work. After years of political repression, Islamic politics are finding their voice and in the process courting debate over the interpretation of Islam in Indonesia. What sharia should mean in the Indonesian context depends on whether Indonesian Muslims decide if the reading of sharia in the Koran should be interpreted literally or revised according to its founding principles.

*EVERYTHING DEPENDS ON THE
INTERPRETATION OF SHARIA*

Nurrohman, from the Islamic Law Department at Bandung’s State Islamic University, wrote, “There are legal maxims in Islamic law which state that changes to the law are possible if the circumstances have changed and the existence of law depends on reasoning that can be used to develop Islamic law...A failure to reform laws which no longer suit the social climate could have two possible results: Muslims will either abandon some Islamic laws or live in a backward society.”

It is not only the interpretation of sharia that is in question, however. The place of Islam in Indonesia’s political structure is also at stake. While Indonesia’s two largest Islamic organisations, the NU and the Muhammadiyah, agree that Islam should be separate from the state, there is clearly an influential constituency within Indonesian politics today who support the opposite view.

*ISLAMIC GROUPS TURNING THEIR
ATTENTION TO MORE FUNDAMENTAL LEGAL
REFORM*

The struggle over the legality of Tangerang’s Regulation No.8 (2005) is just one field where this debate is being played out. If the regulation is found to contravene the Criminal Code, this might reinforce the idea that the Criminal Code itself needs a dose of Islamic reform. This is already a goal of some Islamic parties, particularly the PKS, who has called for revisions to the outdated code introduced by the colonial Dutch in order to “reflect local and national aspirations.”

The danger, however, is that a vocal minority seems to be controlling the

debate, professing to speak for the passive majority who appear intimidated by its violent supporters. Numerous threats and violent attacks have occurred against those seeking to put forward less literal interpretations of Islam, including several incidents in Tangerang. Groups of youths claiming to support sharia broke up a peaceful demonstration in Tangerang against the prostitution regulation, tearing the headscarves from the women protesters. TAKDIR had to cut its press conference short in Tangerang regarding its Supreme Court lawsuit due to a similar disturbance. However, the pervasive social pressure on many people to follow a more devout path is also particularly strong in a country like Indonesia where community life often dominates individuals.

With the apparent refusal of the central government to take a stand on the issue, those who reject the involvement of Islam in the state have only weak democratic institutions through which they can challenge their more fundamentalist interlocutors. Whether or not Indonesia's legal structures are robust enough to defend against a challenge to the secular state still remains to be seen. □

*CAN NEWLY DEMOCRATIC STRUCTURES
DEFEND AGAINST A VOCAL AND SOMETIMES
VIOLENT MINORITY?*