

## **“Applied Research: Religious-nuanced Regulations and the Direction of Indonesia’s Democracy” Based on study conducted by the Wahid Institute in 2008**

### **I. Abstract**

This religious pluralism brief focuses on the creation, implementation and impacts of religious-nuanced regulations in seven (7) districts of Java. The study, conducted by the Wahid Institute, responded to the mushrooming of religious-nuanced district-level regulations which are enacted through Local Regulations (*Peraturan Daerah, Perda*), Memo (*Surat Edaran*) or Decree (*Surat Keputusan, SK*) from governors, regents, and mayors. It attempts to show the contributions of the regulations to the promotion of citizen rights and public order as claimed by the proponents.

The areas covered in the study were:

- In West Java: Banjar, Tasikmalaya, Cianjur
- In Central Java: Solo (Surakarta) and Yogyakarta
- In East Java: Pasuruan and Jombang

These areas were selected because they represented a wide range of religious-nuanced regulations, implementation and impacts. Data collection, processing and report writing was completed in April-May 2008. This included literature reviews and field research involving in-depth interviews with key informants (legislators, government officials, activists, entrepreneurs, religious leaders). The methodology was qualitative research.

The study highlights:

- details of the creation of the regulation,
- implementation and impacts of religious-nuanced regulations in the seven districts
- pattern of current local politics and economic conditions
- description of general reaction from local stakeholders groups
- vivid illustrations of the situation in each area
- compilation of the discussed rules and regulations

The Wahid Institute found that the religious-nuanced regulations do not represent any movements towards a non-democratic theocracy (religious-based state). In fact, in some areas the reaction from the society represented a positive experience of democratic transition. But there are desires to raise a certain local identity, to find an alternative ideology to the past authoritarian one, or to express concern for morality.

### **II. Religious-Nuanced Regulations**

According to Robin L. Bush (2007), there are at least 78 religion-nuanced *Perda* originating in 52 districts and cities across Indonesia. The national government has yet to address the question of whether such regulations, which are often misleadingly called *Perda Sharia*, are constitutional. The courts have not addressed the constitutionality of the content of these laws, only the constitutionality of the process by which they were enacted. Many opponents of these regulations argue that they were enacted primarily for political reasons and do not enjoy wide popular support within these districts.

The Wahid Institute noted that religious-nuanced regulations exist elsewhere outside Java, but little information exists on their creation, implementation or impacts. For instance: Rahima (2003) reviewed the situation in Tasikmalaya, Garut, Cianjur, Banten, ELSAM (2008) looked at Padang, Garut, Bulukumba, Sudarto in West Sumatera and CSRC (2007) summarized the situation in Aceh, Bulukumba, Indramayu, Tangerang, Tasikmalaya, Bima. The Wahid Institute also wrote briefly elsewhere about *Perda Injili* in Papua

Religion-nuanced rules typically regulate:

- (1) Social order, e.g. prohibiting prostitution, alcohol, adultery, *khalwat* (intimate acts between a man and a woman in public)
- (2) Quality of faith and obedience, e.g. requirement for school children and bride and groom to pray
- (3) Dress code, e.g. the requirement to wear *jilbab* and *koko* shirt for civil servants
- (4) Religious skills, e.g. literacy about Koran and Arabic
- (5) Economic mobilization, e.g. *zakat*, *shadaqah* and *infak*
- (6) Sanctions for criminal acts, e.g. whip and cutting hands for thief.

The religious-nuanced rules and regulations in the areas where the Wahid Institute conducted the research can be seen in Table 1 below.

**Table 1. Mapping of Religious-Nuanced Regulations in Java**

Category	District	Specific Regulation	Target Group
Local Regulations ( <i>Perda</i> ) or draft to ban prostitution, alcohol, gambling	Jombang, Solo, Tasikmalaya	- Perda No. 28/2000 Tasikmalaya on prostitution ban  - Perda No. 5/2005 Tasikmalaya restricting and monitoring alcohol  - Raperda Anti Pelacuran Jombang (still needs approval from local parliament)	- entire population of district
Local Regulations ( <i>Perda</i> ) to regulate activities during Ramadhan	Pasuruan city	- Perda No. 4/2006 on Regulating the opening hours of Restaurants and other food sellers during Ramadhan	- entire population of district especially food vendors
Local Regulations ( <i>Perda</i> ) regulating attire	Yogyakarta (it failed), Cianjur, Tasikmalaya	- Proposal to make Perda on Head Covers Requirement in Yogyakarta  - Surat Edaran Bupati No. 025/3643/org on recommendation to conduct joint prayer and wear <i>jilbab</i> for female officers  - Peraturan Bupati Cianjur No. 15/2006 on daily uniform of civil servants in Cianjur  - Surat Edaran Bupati No.	- civil servants - female civil servants - female students - female population of district

		451/Se/04/Sos/2001 on Promoting Quality of Faith and Piety through, among others, female Muslim students of all levels to wear uniforms that cover themselves	
Local Regulations ( <i>Perda</i> ) regulating the deeds of civil servants	Cianjur	- Surat Edaran Bupati Nol. 061.2/2896/org on working hours for Muslim civil servants on certain days	- civil servants
Regent Decrees to regulate religious skills of residents	Tasikmalaya	- Keputusan Bupati No. 421.2/Kep. 326A/Sos/2001 on Islamic requirement to enter schools (public and Muslim at elementary and junior high): read Arabic  - Instruksi Walikota Banjar No. 422/ins.132-Huk/05/2005 on Islamic requirement to enter junior and senior high schools	- students
Joint Decree ( <i>Surat Keputusan Bersama</i> ) to ban so-called deviant sect	Cianjur	Surat Keputusan Bersama Bupati Cianjur, Kejaksaan Negeri Cianjur, Kepala Department Agama Cianjur (Joint Decree of Regent, District Attorney, Head of Department of Religion in Cianjur) No. 21/2005 to ban the activities of Ahmadiyah	- entire population of district
Regent Decrees to enhance the Islamic image of the city	Cianjur, Tasikmalaya	- SK Bupati Cianjur No. 34/2001 in Lembaran Negara Kabupaten Cianjur No. 36/2001 on forming LPPI ( <i>Lembaga Pengkajian dan Pengembangan Islam</i> - whose task was to create the format for implementing Sharia in Cianjur)  - Perda No. 3/2006 on Gerbang Marhamah (Gerakan Pembangunan Masyarakat Berakhlakul Karimah – i.e. nurturing people to have pious deeds)  - Instruksi Bupati Cianjur No.2/2007 on Putting up Sign Boards about the Vision and Mission of Kabupaten and the execution of Koran reading ( <i>tadarrus al-Quran</i> ).	- entire population of district

		<p>- Perda No. 3/2001 Tasikmalaya on Strategic Plan (<i>Renstra</i>) to make religiously developed area in the eastern part of West Java (Priangan Timur)</p> <p>- Perda No. 13/2003 Tasikmalaya on the vision of Tasikmalaya as religiously Muslim district, advanced, prosperous and competitive agribusiness area in West Java by 2010</p> <p>- Perda No. 47/2004 on Strategic Plan of Banjar 2004-2009</p> <p>- Perda No. 6/2008 on management of alms, <i>infaq</i> and <i>shadaqah</i></p> <p>- Himbauan Bupati Tasikmalaya No. 556.3/SH/03/Sos/2001 on calls and guidance for managers and users of swimming pools (including for men and women not to swim at the same time, to remind users about praying time, for swimming learners to have teachers of their own sexes).</p>	
Regent Memo to Non-Muslim	Cianjur	Surat Peringatan Bupati Cianjur No. 453.2/2580/Kesbang to warn Catholic retreat houses at Lembah Karmel, Sukaresmi (Aug 1, 2005)	-non-Muslim
-	Solo	No regulations but in practice there are activities by groups on behalf of Islam that force residents to behave in certain way	- entire population of district

### III. Highlights of Issues

Throughout the report, the Wahid Institute noted the following as issues needing attention:

1. Religious symbolism through legislation is seen as a way to demonstrate government responsiveness to "social disease" of immorality.

2. The regulations are usually enacted without proper public consultation (*uji publik*) or proper academic research.
3. In some cities, the desire to label their city as “*santri* city” has been an aspiration since the New Order Era.
4. Religious elite often use politics as a tool to fight for their ideological agenda.
5. Groups critical of religious-nuanced regulations are not well organized and easily manipulated
6. Destructive groups using violence to impose ideas are not sufficiently challenged (in discourse and action).
7. Pluralism is yet to be a common “basic need”; it is still a common “desire”.
8. Local regulations have no clear technical guidance for execution so that it is not easy to measure the discriminative impacts of the rules, though they do exist.

#### IV. Findings

Summarizing the description provided by the Wahid Institute, the mapping of proponents and opponents of the religious-nuanced regulations in each district can be seen in Table 2.

District	Proponents	Opponents	Note
Cianjur	Majelis Muslim Bersatu, Relawan Marhamah (supported by figures from NU, Muhammadiyah, PUI, Persis, MUI)	Political party (PDIP); Paguyuban Pedagogang Kaki Lima Cianjur	Strong figure: Wasidi Swastomo (Bupati 2001-2005) with supporters from Golkar, PKB, PBB --- program continued by Tjetjep M Sholeh (Bupati 2006-2010)
Tasikmalaya	Ajengan Bendo (groups of currently famous proselytizers), FPI, Lasykar Taliban, MMI, Gerakan Anti Maksiat, Tasikmalaya Solidarity of Muslim, Forum Silaturahmi Pondok Pesantren	NU, culturalists, Muhammadiyah, Women’s NGO.  Cautious groups: Persis.	Political ruler: PPP followed by Golkar, PDIP and PKB. Strong figure: Tatang Farhanul Hakim (Bupati)
Banjar	NU, Muhammadiyah, Persis, MUI Banjar		Strong figure: Walikota as influenced by MUI, Department of Religion, Department of Education, managers of <i>madrasah diniyyah</i> and <i>taman pendidikan Al-Quran</i> .
Jombang	Nahdlatul Ulama; Forum Komunikasi	Political party (PDIP); Koalisi Antidiskriminasi	Opposition was based on: - the many “rubber” articles in the proposed regulation

	Masyarakat Jombang Peduli Syariah; Political party (PKB)	dan Prostitusi (WCC, KPI, ICDHRE, PMII, Yamajo, Yayasan Mbah Coolen, Humanistik, Lakpesdam NU, Student Crisis Center, YAPESI MARINDO)	<ul style="list-style-type: none"> <li>- no clarity on how to implement the articles in court</li> <li>- women will be most likely the victims suspected as prostitutes</li> <li>- No emphasis on presumption of innocence, compensation and rehabilitation.</li> <li>- there's no definitive limit between public and private boundaries thus actions such as raids</li> <li>- heavy sanction for prostitute and no sanction for users</li> <li>- no respect for people with distinct sexual orientation</li> </ul>
Pasuruan city	Political party (PKB), religious teachers, MUI Kota, Ponpes Sunniah Salafiyah Pasuruan, NU,	Provincial Official of East Java;	<p>The city is a split from Pasuruan Kabupaten and it was controversial politically as this involves voter basis for PPP and PKB.</p> <p>Opposition was based on:</p> <ul style="list-style-type: none"> <li>- strategic location of Pasuruan where people pass through to go to Bali, Surabaya and Malang so that awareness of non-Muslim needs is recommended</li> <li>- violation of Economic Social and Cultural Rights of citizens</li> <li>- respect during Ramadhan is not the proper basis to enact the rule</li> <li>- piety is private matter</li> </ul>
Yogyakarta	Forum Ukhuwah Islamiyah Yogyakarta (but no organizational support from NU or Muhammadiyah)	Forum Masyarakat Katolik Indonesia; the figure of Sultan;	<p>Politically ruled by PDIP, followed by PAN and Golkar.</p> <p>Opposition was based on:</p> <ul style="list-style-type: none"> <li>- Rules on attire initially may not affect the non-Muslim but it will</li> <li>- It collides with the culture of Javanese attire and principle of pluralism</li> </ul>
Solo	MMI, JMS, KKPI, FORKUIS, FPIS, LUIS, Laskar Jundullah, Laskar Hisbullah, Laskar Jihad,	No direct opponents.  Cautious groups: NU, Muhammadiyah, political party (PKS, PPP, PBB)	Politically ruled by PDIP, followed by Golkar, Demokrat and PAN

	Laskar Bismillah, Gerakan Pemuda Ka'bah, HTI, Front Anti Penculikan		
--	------------------------------------------------------------------------------------	--	--

In general the Wahid Institute observed that we should not worry about Indonesia going into a theocracy (religious-based state that is non-democratic). They did not deny, however, that there have been some limited attempts to shift an inclusive society into the more exclusive one. Yet the tools used, the ineffective implementation, and in some places also local resistance diffused those efforts. They suggest that the mushrooming of religious-nuanced regulations is a representation of the political need to demonstrate that morality is of concern, that each area has their own local identity (e.g. as the *santri* city), that they are participating actively in democracy, and that they are assessing alternative ideologies to the old authoritarian one.

The Wahid Institute also suggests that DPRD and local government are often not responding to people's concerns and aspirations. And when they do respond, they are not aware of, or do not consider all of the options and mechanisms available to them. The Wahid Institute suggested that local apparatus and parliament members carefully distinguish which problems need to be addressed through laws (e.g. when creating public disturbance), through persuasion, through dialog, or through education. Improper handling of issues could lead to distrust to government institutions and then people might direct their passion for politics through extra-constitutional ways. They suggest that civil society has an important role to play.

The Wahid Institute noted that the creation of these regulations has encouraged people to debate their ideas through public discourse and negotiation. This could be a positive experience under a democratic transition. They suggest that this type of outlet for conservative values may provide a peaceful means of expression.

## V. Recommendations

1. Responding to the split within NU (which used to be known as the bastion of moderation and pluralism), Wahid Institute noted that there are at least two groups within NU: the conservative (students and teachers of *pesantren*, the elderly) and the more open-minded youth. What is needed is better communication between them in the forms of *baths al-masail*, seminar, or workshops so that the elderly do not get drawn into the rightist groups. Also it may be possible to develop a forum with various civil society elements that fight for human rights and democracy where elderly NU members could play an important part.
2. When civil society is weak, as in most areas except Yogyakarta, civil society organizations need strengthening to balance the discriminative views of a few religious and political elite. There is a need to create critical civil society, with a broad network and intensive communication. Some kind of a caucus to produce anti-violent movement should be considered.
3. To promote democracy, Wahid Institute suggested awareness-raising on the fragility of rules developed only in the interests of the majority. Wahid Institute recommended a new strategy to socialize values of democracy through mosques and universities.

4. One needs to think about ways for engaging the more moderate NU, Muhammadiyah and the *abangan* (syncretist Muslim) to challenge the small but radical “street groups” acting on behalf of Islam and to strengthen local culture rather than to exploit them for mere short-term political gain.
5. In locations aspiring for symbolic identity, the counter discourse should focus more on real issues such as poverty, corruption, and public services. Wahid Institute recommended engaging local government officials, parliament members and civil society activists to respond to the socio-economic dimensions.
6. Groups wanting to formalize Sharia should be encouraged to participate formally in elections so that people can actually see their level of public support.
7. To empower the minority, Wahid Institute recommended a strengthening of legal advocacy for minority groups.
8. To increase trust in government, Wahid Institute encourages the state to take firm action against violent actions and intimidation taken on behalf of certain religions.

## Summary of CSRC Study

### ““Applied Research: Impact of Sharia Bylaws on Community in Tangerang””

#### I. Abstract

This study researched the enactment of syariah and syariah nuanced laws and impact on society in Tangerang city. This study was conducted by the Center for Study of Religion and Culture (UIN), in order to look at the negative actions that resulted from the misinterpretation and misapplication of this law.

The study was conducted in 11 kampongs (*kelurahan*) in 6 sub-districts (*kecamatan*) in Tangerang city. The sub-districts were selected based on their stage of development and also the number of non-Moslem residents, while the selection of kampongs was determined randomly. The study took two months, from May to June 2008. The results of the survey represent the opinion of Tangerang city residents with marginal error at 6% and confidence at 95%. The study involved literature review and field research involving in-depth interviews and meetings with key informants (legislators, government officials, activists, entrepreneurs, religious leaders). The research methodology was both quantitative and qualitative.

#### II. Religious Nuanced Regulations

There are several syariah and syariah nuanced regulations that are being applied in Tangerang City. This study focused on the District Law # 8 / 2005 concerning Anti-Prostitution, marriage regulations in Presidential Instruction #1 / 1991 concerning the Islamic - Civil Integrated Law (ICIL) which was derived from Law # 1 / 1974, and also regulations concerning the freedom of religion. (See chart below for list)

#	Category	Specific Regulation	Target Group
1	District Law (Perda) to ban prostitution	Perda Kota Tangerang Nomor 8 Tahun 2005 tentang Larangan pelacuran	District Residents
2	National Law on marriage	Inpres No. 1 Tahun 1991 tentang Kompilasi Hukum Islam yang diderivasi dari UU No. 1 Tahun 1974	District Residents
3	National Law on freedom of religion	— Surat Edaran Menteri Dalam Negeri No. 477 Tahun 1978 — Keppres Nomor 6 Tahun 2000 tentang agama-agama yang diakui Pemerintah — Penetapan Presiden Nomor 1 Tahun 1965 tentang Penodaan Agama — Surat Keputusan Bersama Menteri Agama dan Menteri Dalam Negeri Nomor 9 dan 8 Tahun 2006 tentang Pemeliharaan Kerukunan Umat Beragama	District Residents

#### III. Findings

Throughout the report, CSRC noted the following as issues needing attention:

6. The narrow interpretation of syariah led to the practice of discriminative acts from governments and also from residents. This included the enactment of discriminative acts, or the discriminative implementation of regulations (mostly noted here are the

- discriminative acts towards women and wives, and also discrimination towards non-Moslems)
7. The government in enacting the district law did not use a public consultation process
  8. There was a lack of involvement of the population in creating the district law
  9. Very little socialization of the laws, therefore many people are not aware that these laws even exist
  10. Majority of the residents see the enactment of the district law on anti-prostitution as needed by the people, therefore they support the law

### Number of the residents' reaction towards the syariah nuanced regulations

#	Regulations	Well Informed		Not Well Informed		Accepting		Not Accepting	
		Moslem	Non Moslem	Moslem	Non Moslem	Moslem	Non Moslem	Moslem	Non Moslem
1	District Law Number 8 Year 2005 – Anti Prostitution	49%	37%	51%	63%	90%	100%	10%	0%
2	Kompilasi Hukum Islam (has been enacted for 17 years)	21%	NA	76%	NA	NA	NA	NA	NA
3	Decree regulating the recognized religion	93%	72%	7%	28%	78%	100%	8%	0%
4	Decree regulating the vilification of religion (Penpres No. 1 Year 1965)	34%	60%	66%	40%	92%	84%	6%	8%
5	Decree on Religion Tolerance (SKB No. 9 & 8 Year 2006)	26%	68%	74%	33%	87%	63%	13%	35%
6	The forming of FKUB (Inter Faith Peace and Tolerance Forum)	20%	50%	80%	50%	NA	NA	19%	43%

### The Impacts towards

#	The Enactment Of	Positive Impact	Negative Impact
1	District Law # 8 / 2005 Concerning the	<ul style="list-style-type: none"> <li>- Decreasing number of prostitution cases</li> <li>- Decreasing number of public display of affections</li> <li>- Encouraging parents to be</li> </ul>	<ul style="list-style-type: none"> <li>- Numbers of mistakenly incarcerated cases (mostly women) because of the ambiguity of the law text</li> <li>- Bad stigmatization towards</li> </ul>

		<p>more discipline towards their young children</p> <ul style="list-style-type: none"> <li>- Lifting the political power of Tangerang city Mayor</li> </ul>	<p>women, especially those who work at night</p> <ul style="list-style-type: none"> <li>- Create an inconvenient situation for business people</li> </ul>
2	Kompilasi Hukum Islam	<ul style="list-style-type: none"> <li>- Minimal age for marriage</li> <li>- Marriage needs a consensus from both bride and groom</li> <li>- Every marriage should be recognized and listed by state</li> <li>- Polygamy is allowed with strict borders</li> <li>- Divorces should be performed in state religion affairs court</li> </ul>	<ul style="list-style-type: none"> <li>- Acknowledging for practices of nusyuz (slapping wives for poor performance)</li> <li>- Domestic affairs are the responsibility of wives</li> <li>- Different religion marriage is not acknowledged</li> <li>- The positive sides of Islamic Civil Integrated Law (ICIL) only discussed but not applied in practice</li> </ul>
3	Regulations on Freedom of Religion	<ul style="list-style-type: none"> <li>- The mandate of forming Forum for Inter Faith and Tolerance at Province and District Level</li> </ul>	<ul style="list-style-type: none"> <li>- Any other religion beside the 6 acknowledged religions are not recognized by state</li> <li>- Any other ritual acts other than commonly accepted within a recognized religion, are not tolerated</li> <li>- These kind of regulations are not in line with Pancasila</li> </ul>

#### IV. Recommendations

1. In future practice, district laws should pass a public consultation process before being enacted.
2. The Tangerang city Law # 8 / 2005 should be amended, especially in Article 4 that contains an ambiguity, or at least the technical guidance should be made.
3. Socialization of the progressive sides of the ICIL should be widely spread, and not only practicing the conservative restrictive parts
4. ICIL should be enacted fairly and justly, so that this law is not applied on paper only.
5. ICIL also needs to be amended, especially in some discriminative issues.
6. Good governance practices should be improved within the religious affairs court
7. All regulations that are not in line with the spirit of freedom of religion should be revoked.
8. Socialization of pluralism and freedom of religion practices should be widely spread towards youth and future leaders.