



Pandora's Box: Shariah Law in Indonesia

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A declaration that existing local shariah laws can stay in place could generate more shariah laws

In November 2007, Indonesia won the prestigious Democracy Award from the International Association of Political Consultants (IAPC) for its peaceful transition into democracy over the last nine years. It was the first time the award, whose previous recipients had been Nelson Mandela and Aung San Suu Ky, had ever been given to an entire nation.



The association's award, however seems a bit hollow after Home Affairs Minister Mardiyanto declared recently that the government sees no need to nullify some 600 shariah-based and -inspired bylaws passed by individual governments across the thousands of islands that make up the archipelago.

Mardiyanto's decision was the culmination of a June 6 request to his predecessor to look into the issue of shariah law following a petition by Indonesian lawmakers urging the government to void such religious laws in local jurisdictions because they discriminate against non-Muslims. The decision by Mardiyanto to let them stand is being looked upon with alarm by moderates Indonesia because of the possibility that other local jurisdictions will be encouraged to switch to shariah laws.

Indonesia was established in 1945 by Sukarno as a secular nation under so-called Pancasila, a Sanskrit word meaning five principles. They included national unity, internationalism, representative democracy, social justice and secular theism. In addition, the country has not one but three officially acknowledged justice systems. The most common is the civil continental system, a derivative of the European or continental legal system. The second is the native Adat or tribal system, a complex system of community rights common throughout Southeast Asia. The third is shariah law, the Islamic legal system, which holds that there is an absolute body of laws outside the realm of human beings, ordained by God, whose final verdicts can never be contested.

Thus, since absolutism and absolute power are prevalent, such Islamic bylaws are in opposition of the 1945 Constitution established by Sukarno for Indonesia as a democracy. Articles 28D and 28I enshrine democratic principles in law, including freedom of association and assembly as well as the right to express thoughts by speech and writing.

Constitutional scholars say Islamic law does not fit into Indonesia's democratic framework.

For instance, an Islamic law scholar, Abdullahi Ahmed An-Na'im of Emory University in Atlanta, Georgia, in *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*, wrote that, "If historical shariah is applied today, the population of Muslim countries would lose the most significant benefits of secularization. Even Muslim men, who are the only full citizens of an Islamic state under shariah stand to lose some of their fundamental constitutional rights if shariah is restored as the public law of the land." Under shariah public law, freedom of belief, expression and association of Muslim men would be greatly affected by the law of apostasy and the ruler's supremacy and power over the society.

When such bylaws are imposed in Indonesia, non-Muslims are considered second class citizens, in which fair treatment is hard to conceive. They would need to live under pledges of security or safe-conduct from Muslims. And with absolutism in the air, those who hold power absolute tend to absolute corruption, as Lord Action famously noted.

There are already examples. In the Padang municipality in West Sumatra, but female Muslims and non-Muslim women as well are obliged to wear the hijab, or headscarf. In Tangerang, located just a few kilometers from the capital city Jakarta, bylaws restrict women from walking alone in the streets after 10pm, or they face charges of prostitution. There have been incidents of wrongful arrests of female factory laborers who worked night shifts.

Although Aceh is so far the only province completely governed by shariah law, more than 50 regencies already are enforcing it. And with the Indonesian government's failure to distinguish religion from state affairs, democracy is on a dwindling down path into the darkness.

Statistically speaking, although Indonesia is nominally 90 percent Muslim, fewer than 10 percent of them are fundamentalists. However, the silence of the moderates may imply agreement and with the government seemingly unwilling to maintain the country's heterogeneous equilibrium, it would be naïve the world to sit back and believe that the world and things in general are heading for the better. A democracy award might have been too early, too soon, and too naïve.

The writer is a former law lecturer and an opinion columnist for The Jakarta Post.

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