# In the Name of Regional Autonomy:

# The Institutionalisation of Discrimination in Indonesia

A Monitoring Report by
The National Commission on Violence Against Women
on The Status of Women's Constitutional Rights
in 16 Districts/Municipalities in 7 Provinces

Komnas Perempuan, 2010

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*Executive Summary*

# In the Name of Regional Autonomy: The Institutionalisation of Discrimination in Indonesia

Current national mechanisms have failed to fully ensure the constitutional rights of every citizen to be free from unfounded discrimination. The emergence of discriminatory local bylaws has taken Indonesia ever further from its ideals as a nation-state in the creation of prosperity, justice, and diversity for all.

As many as 154 local bylaws – enacted at the provincial level (19 policies), district/municipal level (134 policies), and village level (one policy) between 1999 and 2009 – have become instrumental in the institutionalisation of discrimination, either in intent or as an impact. These discriminatory local bylaws have been enacted in 69 districts/municipalities in 21 provinces. More than half of them (80 policies) were enacted almost simultaneously between 2003 and 2005. Districts in six provinces – West Java, West Sumatra, South Kalimantan, South Sulawesi, West Nusa Tenggara, and East Java – have proved particularly enthusiastic in enforcing the discriminatory local bylaws. Only 39 local bylaws – 14 policies at the provincial level, 22 at district/municipal level, and three at village level – aim to fulfil the right of victims to recovery.

Of the 154 local bylaws, 63 directly discriminate against women by restricting their right to freedom of expression (21 policies regulating dress codes), by criminalising them, thus impairing their rights to legal protection and legal certainty (37 policies on the prohibition of prostitution), by nullifying their rights to legal protection and certainty (one policy on the prohibition of *khalwat*), and by excluding their rights to protection (four policies on migrant workers). Of the rest, 82 local bylaws regulate religious issues which fall under the jurisdiction of the national government; they impair the freedom of every citizen to worship according to his or her faith and marginalise minority groups. Nine other policies limit the freedom of the Ahmadiyah group to subscribe to their own religion. All the rights being restricted or curtailed are constitutional rights guaranteed for every Indonesian citizen without exception, in particular the rights to (a) equality before the law and government, (b) freedom to express thoughts and opinions as dictated by conscience, (c) a humane and decent livelihood, (d) protection from fear to exercise their human rights, and (e) freedom from discriminatory treatment.

The discriminatory policies derive from the practice of prioritising procedural democracy. This practice exploits the deficiencies in mechanisms to facilitate public participation and accoun-

tability. It allows for the tyranny of the local "majority rules" mentality, which in turn encourages image politics, is lacking in substantive protection of rights, and diminishes community independence through excessive state intervention in the affairs of religions and morality. This precedence of procedural democracy reduces the quality of democracy and may bring Indonesia into a crisis because it threatens the foundation principles of the nation-state of Indonesia.

The discriminatory local bylaws have also eroded the authority and certainty of the law. This is so because the ineffective, in fact pointless, regional regulations have opened the door for corruption and power abuse, as well as the criminalisation and pauperisation of women. The policies have also enabled the emergence of "moral police", who have no qualms about using violence against members of the public, especially women, in the name of policy enforcement.

The current national mechanisms have failed to prevent or solve the problems caused by the discriminatory local bylaws. The Ministry of Home Affairs and the Supreme Court have not shown leadership in carrying out of their supervisory functions. Meanwhile, the Constitutional Court has no authority over local bylaws that violate the Constitution.

Based on the above findings, Komnas Perempuan (the National Commission on Violence Against Women) has proposed 20 main recommendations, that include:

- The Indonesian President elect to immediately declare legally null and void all discriminatory local bylaws that violate the human rights of citizens, especially the violations experienced by women and minority groups, in accordance to the responsibility of the state to uphold human rights;
- The Head of the Supreme Court to improve its responsiveness to the judicial review cases put forward by the public regarding the discriminatory regional regulations, and to declare legally null and void all those regional regulations that prove to be discriminatory either in intent or as an impact;
- The People's Consultative Assembly (MPR) to initiate further amendments to the 1945 Constitution aiming at improving the effectiveness of the national mechanisms in fulfilling the constitutional rights of every citizen with no exception, including expansion of the authority of the Constitutional Court (MK) to conduct constitutional reviews down to the lowest level of bylaws and to give to the MK new power to establish a management system for "constitutional complaints" that can be accessed by all citizens;
- The new members of the House of Representatives (elected 2009) to amend various laws that have enabled the formulation of the discriminatory regional regulations that violate constitutional guarantees;
- Regional heads to take proactive measures by revoking discriminatory regional laws and bills or those that may cause discrimination against women and minority groups, as part of the fulfilment of the constitutional guarantees for every citizen with no exception and for the sake of the integrity of the national law, and by improving the mechanisms to receive

and handle complaints from the public about the attitude or behaviour of the members of the Pamong Praja Police Unit (Satpol PP)[1] – in Aceh, the Wilayatul Hisbah – who resort to extortion, violence and sexual abuse in the course of carrying out their duties;

- The new members of the District/Municipal Parliaments (elected 2009) to improve the mechanisms for public participation in all the processes of policy formulation by ensuring equal access for all interested parties and to enact policies only after undergoing democratic public deliberations;
- The Human Rights Commission to improve the effectiveness of the national human rights mechanisms in handling all forms of discrimination suffered by members of the public as human rights violations; and
- Civil society organisations to improve the quality and coverage of political education – including civic education in schools – with a focus on the constitutional guarantees and on building public awareness of and resilience against the danger of politicisation of identity.

[1] Satpol PP or Pamong Praja Police Unit is under the jurisdiction of regional governments, not under the national police—*Translator.*

# Contents

# Foreword

The report entitled "In The Name of Regional Autonomy: The Institutionalization of Discrimination in Indonesia" was prepared based on the findings by the National Commission on Anti-Violence Against Women (Komnas Perempuan) during its monitoring on the fulfilment of women's constitutional rights in the era of regional autonomy. The monitoring was conducted in 16 Districts/Municipalities of 7 provinces by interviewing 339 respondents: 102 people at provincial level and 237 people at regency/city level. These respondents came from various backgrounds such as executives, legislative, law enforcers, religious leaders, traditional leaders, community leaders, critical groups, and women groups especially victims and minority groups in the area. The findings were submitted to the authority and the public at both national and regional levels in early 2009.

At the national level, reporting was made to the Constitutional Court and was responded directly by the Chairman of Constitutional Court, a representative of Regional City Council, Supreme Court and the National Commission for Human Rights. The submission at regional level was carried out in provinces where monitoring was held. These are Banten, West Java, South Sulawesi, South Kalimantan, West Nusa Tenggara, Aceh and D.I. Yogyakarta. All of the responses are also attached in this report in order to provide wider access to public to follow up the report's recommendations and the responses of respective institutions.

Decentralization is an absolute pre-requisite for democracy that has been developing in Indonesia since the start of reformation era in 1998. In practice, decentralization through regional autonomy policy created not only more room for democracy but also discriminative regional policies that distract the state from its responsibilities to fulfil its citizens' constitutional rights, especially women. In response to this situation, Komnas Perempuan pioneered a monitoring activity to understand the contradictions occurring within democracy in Indonesia and to find vulnerabilities within the regional autonomy system which stemmed from the imperfection of the national system. This means that it extends beyond local issues specific in particular areas.

The findings resulted from this monitoring is therefore intended not to discredit any regions in particular; rather, it is intended to improve regional autonomy system in those regions. Komnas Perempuan would like to extend its gratitude to all the respondents who were willing to share information and thoughts regarding regional autonomy implementation. We would also like to thank the entire documentation team who worked hard to ensure the integrity and accuracy of the analysis in this monitoring. In addition, we also thank those who responded positively in following up the findings and recommendations resulted from the monitoring, both those which come from the state and civil society. All responses that we received are included in the appendix to this report. We hope that the follow up will strengthen our joint commitment to create the ideals of this country as expressed in the Preamble of Indonesia's 1945 Constitution: freedom, unity, sovereignty, justice and welfare.

Jakarta, 23 February 2010
Komnas Perempuan

# Glossary

| | |
|---|---|
| Constitution | In Indonesia, the constitution used is the 1945 Constitution. It has gone through four amendments in the period of 1999 - 2002 |
| Criminalization | effort to control or limit someone's movement and/or speech by threatening to charge with crime or by establishing a legal activity as a crime. |
| Discrimination | limitation, restriction, differentiation, harassment, exclusion and/or omission, directly or indirectly, based on any grounds including religion, ethnicity, race, nationality, group, class, social status, economic status, gender, language, or political belief, which results in impairment or nullification of recognition, enjoyment or exercise of human rights and basic freedom in life individually or collectively in politics, economy, law, social, culture and other aspects of life. |
| Image Politics | a political measure, including by issuing policies, to create a mere image or to promote a counter image against certain stigma or image considered to be disadvantage to the region. |
| Institutionalization of Discrimination | positioning discrimination practices as legal within state administration and nationhood, where state agencies are the initiators as well as the direct perpetrators of discrimination against its citizens. |
| Moral Police | parties who feel that they have been mandated to supervise community's morality for the purpose of implementing policies that put morality as a consideration or purpose of such policies. |
| Prioritizing Procedural Democracy | justification of discriminatory policies through formalistic obedience towards procedures i.e. provided the formulation process meets the technical formulation requirements regardless of the substantial democracy. |
| Politization of Identity | the tool to mobilize public support by using symbols of religious, ethnic, race, or gender identity for certain political interest in winning the battle of power or to defeat the enemy. |
| Satpol PP | abbreviation for Satuan Polisi Pamong Praja or Pamong Praja Police Unit. It is a unit under executive branch at regional level, separated from the National Police Force. IT has the mandate to enforce regional policies related to public ordinance matter |
| Wilayatul Hisbah (WH) | A special unit designed in Aceh, as part of the Satpol PP, to enfoce *qanun* or the local regulations related to the implementation of Sharia |
| Wrongful arrest | an event where a person is arrested or legally processed on violation of law although they are not the perpetrators or did not perpetrate the charges. |

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# Chapter 1

# Introduction

Regional autonomy is an integral part of democratisation in Indonesia. Centralisation in virtually all aspects of policy making during the New Order authoritarian regime had very much weakened democracy for more than three decades. Hence, decentralisation is a non-negotiable prerequisite in creating a democratic Indonesia. With regional autonomy, the gap between the people and their leaders is narrowed, so that the accessibility to and the accountability of all aspects of governance become more viable. The legal foundation for the current regional autonomy system, Law No. 32/2004 on Regional Governments, set limits on the authority of regional governments and on the foundations for the creation of local bylaws.

In practice, there is no guarantee that regional autonomy will by itself result in a more democratic society; there needs to be specific efforts to substantively promote democracy and human rights. In various regions, local governments and parliaments have been successful in producing policies that improve the access of marginalised and forgotten people due to the systematic efforts of advocates of women and children who are victims of violence. Komnas Perempuan recorded, for example, 39 regional policies—14 at provincial level, 22 at district/municipal level, and three at village level—that aim at fulfilling victims' rights to recovery. On the other hand, in many regions policies have emerged that strengthen and preserve discriminatory practices already existing in the communities. These policies were derive from processes filled with all kinds of restrictions to and disregard for the rights of citizens to actively participate in governance. The silencing of dissenting opinion is usually carried out in the name of morality or the will of the majority, and/or by holding a monopoly over religious interpretations. In the implementation of the policies, those opposed to the policies are sidelined and the members of the public proven or considered to have violated them are punished. As a result, the initiation and implementation of the policies not only allow the practice of discrimination to continue to plague communities, but also allow it to create a new situation whereby the state institutions become the initiators and actors that directly discriminate against citizens. This situation is known as the institutionalisation of discrimination. Komnas Perempuan recorded the enactment of at least 154 such discriminatory local bylaws—19 at the provincial level, 134 at the district/municipality level, and one at the village level.

This counterproductive development has raised a number of questions—about the practice of politicking in the regions that has given birth to those policies, about the effectiveness of the current system of regional autonomy, and about the performance of the national mechanisms authorised to ensure that the goals of regional autonomy are achieved. Komnas Perempuan

addresses these questions by upholding its mandate to monitor all kinds of violence and human rights abuses against Indonesian women, with the view to eliminate such practices.

In the system of regional autonomy, what is it that binds the regional policy makers to their responsibilities regarding the structure of the nation-state of "Indonesia"? What is it that inspires the people in the regions to have common goals greater than their efforts to create their own special identities in their respective regions? What is it that could be used as a yardstick for the success of regional autonomy? How far have we completed the formation of the constitutional system and the national laws post-New Order regime that would ensure the survival of democracy and the upholding of human rights in Indonesia? How far have we affirmed and institutionalised a socio-political system that guarantees the rights of minority groups in all aspects of the administration of the nation and the state, that draws a line between the state and religion, and that manages a synergic and effective relationship between the national government and the regions for the welfare of the whole nation?

The 1945 Constitution states the ideals of the nation as well as the goals and foundation of the state. The Preamble of the Constitution states that:

> …the people of Indonesia…form[ed] a government of the state of Indonesia which shall protect all the people of Indonesia and…improve the public welfare, advance the intellectual life of the people, and contribute to the establishment of a world order based on freedom, abiding peace, and social justice….

This is the promise of the nation codified in the highest law of Indonesia. All laws and regulations made by political leaders and representatives of the people, at both the national and regional levels, are to bring to fruition the ideals of this nation. Through its articles, the 1945 Constitution affirms the rights of every individual. Komnas Perempuan found 40 rights stated in the 1945 Constitution, including the rights to legal certainty and equality before the law (Article 28 D Article 1); the right to freedom of thought and conscience (Article 28 I Article 1); the right to decent livelihood (Article 27 Article 2); the rights to security and protection from fear to do or not to do things guaranteed by the human rights charter (Article 28 G Article 1); as well as the right to be free from discriminatory treatment of any basis, and the right to protection from discriminatory treatment (Article 28 I Article 2). Overall, these 40 rights can be classified into 14 groups, as seen in Table I below:

Table 1

**40 Constitutional Rights in 14 Groups**

| | | |
|---|---|---|
| **I. RIGHTS TO CITIZENSHIP** | | |
| 1 | Right to the status of citizenship | Article 28 D (4) |
| 2 | Right to equality before the law and government | Article 27 (1),<br>Article 28 D (1),<br>Article 28 D (3) |
| **II. RIGHTS TO LIFE** | | |
| 3 | Rights to life and to defend one's life | Article 28 A,<br>Article 28 I (1) |
| 4 | Rights to life continuation, to grow, and to develop | Article 28 B (2) |
| **III. RIGHTS TO DEVELOP ONE'S SELF** | | |
| 5 | Right to develop one's self through the fulfilment of basic needs, to get education, and to get benefits from science and technology, arts, and culture | Article 28 C (1) |
| 6 | Right to social security that allows complete self development as a dignified human being | Article 28 H (3) |
| 7 | Right to communicate and to get information to develop the individuals and the social milieu | Article 28 F |
| 8 | Right to education | Article 31 (1),<br>Article 28 C (1) |
| **IV. RIGHTS TO FREEDOM OF THOUGHT & FREEDOM OF CHOICE** | | |
| 9 | Rights to freedom of thought and of conscience | Article 28 I (1) |
| 10 | Right to freedom to hold a belief | Article 28 E (2) |
| 11 | Rights to freedom to hold a religion and to worship accordingly | Article 28 E (1),<br>Article 29 (2) |
| 12 | Rights to freedom to choose education and learning, work, citizenship, housing | Article 28 E (1) |
| 13 | Right to freedom of association and of assembly | Article 28 E (3) |
| 14 | Right to express thoughts and opinions according to conscience | Article 28 E (2) |

| | | |
|---|---|---|
| **V. RIGHTS TO INFORMATION** | | |
| 15 | Rights to communicate and to get information | Article 28 F |
| 16 | Rights to seek, get, own, keep, manage, and disseminate information using all kinds of available channels | Article 28 F |
| **VI. RIGHTS TO WORK & DECENT LIVELIHOOD** | | |
| 17 | Right to work and decent livelihood fit for humanity | Article 27 (2) |
| 18 | Rights to work and get paid and to fair and proper treatment in work relations | Article 28 D (2) |
| 19 | Right not to be enslaved | Article 28 I (1) |
| **VII. RIGHTS TO POSSESSION & HOUSING** | | |
| 20 | Right to own personal possession | Article 28 H (4) |
| 21 | Right to have a residence | Article 28 H (1) |
| **VIII. RIGHTS TO HEALTH & HEALTHY ENVIRONMENT** | | |
| 22 | Right to live in well-being physically and spiritually | Article 28 H (1) |
| 23 | Right to get a good and healthy living environment | Article 28 H (1) |
| 24 | Right to get health services | Article 28 H (1) |
| **IX. RIGHT TO A FAMILY** | | |
| 25 | Right to form a family | Article 28 B (1) |
| **X. RIGHTS TO LEGAL CERTAINTY & JUSTICE** | | |
| 26 | Rights to just legal recognition, guarantee, protection, and certainty | Article 28 D (1) |
| 27 | Right to equal treatment before the law | Article 28 D (1), Article 27 (1) |
| 28 | Right to be recognised as a person before the law | Article 28 I (1) |
| **XI. RIGHTS TO BE FREE FROM THREAT, DISCRIMINATION, & VIOLENCE** | | |
| 29 | Rights to security and protection from fear to do or not to do things guaranteed by the human rights | Article 28 G (1) |
| 30 | Right to be free from torture or treatment that diminish human dignity | Article 28 G (2) |
| 31 | Right to be free from discriminatory treatment on any ground | Article 28 I (2) |
| 32 | Rights to facilities and to special treatment to get equal opportunities and equal benefits to obtain equality and justice | Article 28 H (2) |

| | | |
|---|---|---|
| **XII. RIGHTS TO PROTECTION** | | |
| 33 | Rights to protection of one's self, family, honour, dignity, and possession under one's authority | Article 28 G (1) |
| 34 | Right to protection from discriminatory treatment | Article 28 I (2) |
| 35 | Rights to protection of cultural identity and rights of indigenous communities in line with the development of the age and civilisations | Article 28 I (3) |
| 36 | Rights to protection from violence and discrimination | Article 28 B (2), Article 28 I (2) |
| 37 | Right to political asylum in another country | Article 28 G (2) |
| **XIII. RIGHTS TO FIGHT FOR RIGHTS** | | |
| 38 | Right to promote oneself in fighting for one's rights collectively | Article 28 C (2) |
| 39 | Rights to freedom of association, assembly, and expression | Article 28, Article 28 E (3) |
| **XIV. RIGHT TO GOVERNANCE** | | |
| 40 | Right to equal opportunities in governance | Article 28 D (3), Article 27 (1) |

The principle of non-discrimination is one of the main characteristics of the Indonesian Constitution. Every right mentioned in the 1945 Constitution is assigned to "every person" without exception—not to a special group, not to the majority—only. A guarantee with no exception is explicitly detailed in its own article which states that it is the right of every person to be free from discrimination. According to the Constitution, every person has equal standing and rights in defending his or her rights before the law or collectively. Furthermore, the 1945 Constitution states that every individual has the right to protection from discriminatory treatment (Article 28 I Article 2) and even has the right to facilities and special treatment in order to gain equal opportunities and equal benefits to obtain equality and justice (Article 28 H Article 2). The right to facilities and special treatment is provided in the Constitution to amend a discriminatory system and to ensure the freedom of citizens from the stranglehold of such a system.

Within the constitutional framework, the emergence of discriminatory local bylaws highlights the failure of the regional autonomy system. To understand this problem, Komnas Perempuan initiated a monitoring process in a number of regions that have produced discriminatory policies against women. This step was taken not as an attack on those regions but, on the contrary, to make explicit the contradictions which have emerged in the process of democratisation in Indonesia since the beginning of the reform era; a process without a comprehensive grand design. There are indeed local bylaws conducive to the fulfilment of women's human rights.

Komnas Perempuan reiterates its appreciation for the 39 local bylaws that promote empowerment of women, through the provision of services for women and children who are victims of violence, the management of migrant workers going abroad, the elimination of human trafficking, child protection, the mainstreaming of gender, and the management of HIV/AIDS. The focus of this monitoring on discriminatory policies was to identify vulnerable areas in the current system of regional autonomy, [so that steps could be taken] to refine and improve the system. Indeed, the dynamic behind the enactments of those local bylaws rests on national problems, in fact is rooted in the (imperfection of the) national system, and is not only a matter of specific local problems in certain regions.

This report of the findings of the monitoring study is divided into seven chapters following this introduction. Chapter 2 on the methodology of the monitoring details the reasons for choosing the regions, the approach used in the gathering and analyses of information, and the principles of the monitoring developed by Komnas Perempuan. The information on the findings of the regional policy monitoring is preceded by a national portrait regarding the issuances of discriminatory local bylaws in the last 10 years. This deliberation is presented in Chapter 3, followed by an interpretation of the national trend to enact discriminatory local bylaws in the social, economic, and political contexts in Indonesia since the reform era began in early 1998.

Chapter 4 elaborates on the ongoing manifestations of institutionalisation of discrimination brought about by the issuances of the discriminatory local bylaws against women. The institutionalisation of discrimination occurred in various forms: (a) the restriction on the right to freedom of expression brought about by the dress codes regulations, (b) the impairment of the rights to legal protection and legal certainty due to criminalisation through the prohibition of prostitution, (c) the annulment of the rights to legal protection and legal certainty due to the criminalisation of intimacy through the prohibition of *khalwat*[1], and (d) the disregard of the right to protection brought about by the regulations on migrant workers.

Chapter 5 explores the problems that have given impetus to the enactments of the discriminatory local bylaws against women. The findings show an ongoing deficit of the quality of democracy during the deliberation process of the local bylaws. Deficiencies in the quality of democracy are evident in both the procedure and substance of democracy. In terms of the procedure of democracy, this monitoring evaluates how far public participation and accountability have been involved in the formulation of the policies. In relation to the substance of democracy, this study focuses on the extent of consideration given to substantial protection and the principles of the constitution in discussions during the formulation of those policies.

Chapter 6 identifies the impact of the discriminatory local bylaws on women and, in general, on the national system of Indonesia. Identification of these impacts is based on an under-

[1] *Khalwat* (close proximity of two different sexes) is listed in a regional regulation (*qanun*) in Aceh. In short, the regulation outlaws any two adults of opposite sex without blood or marriage ties to be alone together in places that cannot be seen publicly.

standing of the injustices suffered by those discriminated against as a result of the policies. Therefore, the impacts of the discriminatory policies are spelt out within the context of legal certainty and the authority of the law in Indonesia.

Chapter 7 questions the national mechanisms available to ensure a system of regional autonomy that operates within the mandate to build a democratic Indonesia and to realise the ideals of the nation-state of Indonesia as identified in the 1945 Constitution. The presence of discriminatory local bylaws is not only a problem at the regional level, it is also related to the performance of state institutions at the national level that have the mandate to supervise administration of regional autonomy and to maintain the integrity of the national law. This monitoring study identified five state institutions that play a key role in the implementation of regional autonomy: (a) the Ministry of Home Affairs which, based on the mandate given by Law No. 32/2004 on Regional Governments, is to provide guidance in the implementation of regional autonomy, (b) the Ministry of Law and Human Rights which is mandated to deal with the regularisation of human rights, (c) the Ministry of Women Empowerment with the mandate to gender mainstreaming, (d) the Supreme Court with the mandate to conduct judicial reviews on local bylaws in the framework of the integrity of the national law, and (e) the Constitutional Court.

Understanding the problems caused by the discriminatory local bylaws, Komnas Perempuan made a number of recommendations to state institutions at the national, provincial, and district/municipal levels, as well as to non-governmental organisations. The conclusions of the findings and the recommendations are presented in Chapter 8 of this report. The findings and recommendations were presented to the public at the national level at the Constitutional Court on 23 March, 2009. Present were the head of the Constitutional Court, justices from the Supreme Court, and representatives from the Regional Representative Council (DPD), the National Commission on Human Rights (Komnas HAM), the Ministry of Home Affairs, and the Ministry of Women Empowerment, among those of other state institutions. The findings and recommendations from this monitoring were also presented to the public in seven provinces, where the monitoring took place, early April 2009. The responses to this report, presented during the reporting at the national level, are available in Appendix 4. The responses from regional heads or representatives from the provincial legislatures are included in Appendix 5.

The findings of the monitoring on the discriminatory local bylaws against women are the endnotes of the results of a decade of efforts by Indonesia to uphold democracy and human rights in the country. Monitoring commenced in December 2008, at the end of the first 10 years of the reform era, and continued to January 2009. The findings were first reported prior to the 2009 general election that would elect the nation's leaderships of the second decade of the democratisation process in Indonesia. It was expected that the recommendations of this monitoring would become part of the priority of the newly elected leaders. All the contradictions and inconsistencies that have emerged as a result of a reformed political system in the past 10 years must be addressed and overcome in order to achieve the ideals of the nation as dictated in the 1945 Constitution of the Republic of Indonesia.

# Chapter 2

# Methodology of the Monitoring

The methods used in the monitoring of the discriminatory local bylaws against women are outlined in five sections in this chapter. The first section makes clear the scope of the monitoring regarding regional elections and local bylaws, and describes the approaches used in the compilation and analyses of the information. The second section gives details about the participants or sources consulted in the monitoring. It also provides relevant information about the documentators, who conduct the monitoring. Section third section explains the principles adopted in the implementation of the monitoring as the mean for local capacity building. The fourth section describes the cross-monitoring system utilised to ensure impartiality and to enable comparative analyses.

The monitoring on the discriminatory local bylaws against women was developed based on the constitutional framework of the rights of every citizen without exception and on the governance of the nation-state of Indonesia. The final section of this chapter provides, and elaborates on, a definition of the principle of non-discrimination within the constitutional framework.

## 2.1. Scope of the Monitoring

The monitoring study was conducted in 16 districts/municipalities in seven provinces: (1) Banda Aceh city, (2) Bireuen district, and (3) Lhokseumawe city in the province of Nanggroe Aceh Darussalam; (4) Cianjur district, (5) Sukabumi district, (6) Tasikmalaya district, and (7) Indramayu district in the province of West Java; (8) Mataram city, (9) East Lombok district, and (10) Dompu district in the province of West Nusa Tenggara; (11) Banjar district and (12) North Hulu Sungai district in the province of South Kalimantan; (13) Pangkajene dan Kepulauan district and (14) Bulukumba district in the province of South Sulawesi; (15) Bantul district in the province of Yogyakarta; and (16) Tangerang district in the province of Banten.

These regions were chosen following the early mapping conducted by Komnas Perempuan which was based on the reports from its partners in the regions about the issuances of local bylaws that have infringed the fulfilment of women's constitutional rights. [2] The term 'local

[2] This early mapping was conducted in mid-2007 in a national consultation on the conditions of women after the enactments of local bylaws that utilised morality issues in their process of formulation.

bylaws' in this report refers to Regional Regulations (Perda) formulated by regional heads together with regional parliaments (DPRD), as well as Ordinances (Peraturan), Decrees (Surat Keputusan), and Circulars (Surat Edaran) issued by regional heads.

The 16 districts/municipalities monitored constitute a case study, as they make up some of the 69 districts/municipalities in 21 provinces that have issued discriminatory local bylaws against women. These regions, as in the case-study model, have issued various forms of discriminatory local bylaws against women, in particular those aimed at regulating rights over women's bodies and women's activities and at regulating migration. These regions span the whole of Indonesia from west to east.

This study adopted a qualitative approach in collecting and analysing information. Therefore, it focused on gathering information and gaining insights from resource persons or participants related to the contents, the formulation process, and the implementation of the local bylaws. The study additionally investigated the effects of the policies on society, particularly on women. The monitored local bylaws were chosen based on consultations with various parties; particularly civil society groups that have been active for some time in policy advocacy in the regions (see Table 2 for a list of the monitored policies). Research was conducted into practices of democracy that facilitated the enactments of the discriminatory local bylaws. These practices are closely related to the processes of state structures at the national, provincial, and district levels, which have been developed to ensure the constitutional rights of every citizen. The perceptions of informants contributing to this study pertain to the opinions of both state apparatuses and members of society, especially women, on how far the local bylaws have diminished or increased the fulfilment of the constitutional rights of citizens, especially those of women. The mapping was also conducted to gain insights from these informants on the impact of the local bylaws on the lives of people in general and on the perpetuity of democracy in Indonesia.

Table 2

**Monitored Local Bylaws Listed by Regions**

| Province | District/ Municipality | Monitored Policies |
|---|---|---|
| Nanggroe Aceh Darussalam | Banda Aceh<br>Bireuen<br>Lhokseumawe | Regional Regulation (Qanun) No. 14/2003 on *Khalwat* |
| West Java | Sukabumi | Regional Regulation (Perda) No. 13/2005 on the Recruitment of Indonesian Migrant Workers (TKI) Hailing from Sukabumi District |

| Province | District/ Municipality | Monitored Policies |
|---|---|---|
| | Cianjur | Regional Regulation No. 15/2002 on the Protection of Indonesian Migrant Workers (TKI) Hailing from Cianjur District |
| | Indramayu | Regional Regulation No. 4/2001 on the First Revision of Regional Regulation No. 7/1999 on Prostitution |
| | Tasikmalaya | Regional Regulation No. 28/2000 on the First Revision of Regional Regulation No. 01/2000 on the Elimination of Prostitution |
| West Nusatenggara | Mataram | Regional Regulation No. 19/1996 on Cleanliness, Beauty, and Order (which has oftentimes been urged to be revised to also include morality) |
| | East Lombok | Regional Regulation No. 12/2006 on the Placement, Protection, and Nurturing of Indonesian Migrant Workers Hailing from East Lombok District |
| | Dompu | Regional Regulation No. 1/2002 on Regional Development Programmes of Dompu District 2001-2005 |
| South Sulawesi | Pangkajene dan Kepulauan | District Head's Decree No. 48/2007 on the Designation of Tompo Bulu Village in Balocci Subdistrict and Mattiro Bombang Village in Liukang Tupabbiring Subdistrict as Islamic Villages |
| | Bulukumba | Regional Regulation No. 05/2003 on Dress Codes for Muslim Men and Women in Bulukumba District |
| South Kalimantan | Banjar | District Head's Ordinance No. 19/2008 on the Uniforms of Civil Servants in Government Offices in Banjar District |
| | North Hulu Sungai | Regional Regulation No. 32/2003 on the Prevention and Prohibition of Activities that Defile the Sanctity of the Month of Ramadan |
| Yogyakarta | Bantul | Regional Regulation No. 5/2007 on the Prohibition of Prostitution in Bantul District |
| Banten | Tangerang | Regional Regulation No. 8/2005 on the Prohibition of Prostitution |

Drawing from the information and insights gathered from research and consultations in relation to discriminatory local bylaws, this study aims to provide more understanding on the status of women's constitutional rights and the obstacles hindering their realisation. The study also aims to identify opportunities to achieve constitutional rights in the context of regional autonomy, at the district, provincial, and national levels.

## 2.2. Resource Persons

The collection of information from human resources was conducted by way of interviews and focus group discussions. From 22 December, 2008, to 29 January, 2009, more than 1,100 individuals were consulted. Interviews were carried out largely with decision-makers at the executive level and in legislature, law enforcers, and those often directly involved in the process of policy formulation, such as public figures, academics, and representatives of organisations advocating human rights or other social issues. Focus group discussions were mainly utilised to gain information and insights from the general public, especially from women of various strata in society.

Interviews were conducted with 339 resource persons at the provincial level (102 informants) and district/municipality level (237 informants). Forty of them were women whose constitutional rights had been violated by the implementation of discriminatory local bylaws; among them 21 were direct victims and 19 others were from minority groups in the regions. Included in the minority communities were those of different religions from that of the majority in the regions, indigenous people, those with same-sex sexual orientation, and transgendered people.

A total of 86 decision-makers at the executive level were interviewed, including a provincial governor and seven district heads. Other than regional heads, executive level representatives were also interviewed, including regional secretaries, officials from the Regional Development Planning Agencies, Law Bureaus, and implementers of regional regulations—the Pamong Praja Police Units, and, solely in Aceh, the Islamic Sharia Office (*Wilayatul Hisbah*). Informants from government offices included those from the regional offices of the Ministry of Law and Human Rights, the Ministry of Women Empowerment (or related bodies), and the Ministry of Social Services. At the provincial and district/municipality levels, 57 legislators were interviewed in their capacity as members of parliament, commissioners, or faction leaders. Law enforcement participants included those from the police force (19 informants), prosecutor's offices (7 informants), and the law courts (judges—14 informants). In Aceh, participants also came from the Ulama Consultative Assembly (Majelis Permusyawaratan Ulama) and the Aceh Customary Law Assembly (Majelis Adat Aceh).

Besides victims and informants from the state apparatus, also interviewed were two former district heads who initiated discriminatory local bylaws, and nine informants representing groups socially active in calling for the creation and implementation of the discriminatory policies

considered in this study. There were 54 public figures interviewed, including 29 Muslim leaders/teachers (*ulama*). The other 39 informants were representatives of relevant, critical groups such as academics, civil society organisations, and organisations advocating the fulfilment of human rights, especially women's organisations.

Besides interviews, public opinion was gained through focus group discussions (FGDs). In each district and province, four to six focus groups were formed, each with six to 13 participants, depending on local conditions. The focus group discussions were conducted mainly with groups of women who were homemakers, household heads, single parents, educators, civil organisation activists, activists of NGOs in the fields of women issues and other social issues. There were also discussions with critical groups representing media workers, activists who provided advocacy in public issues, and academics. More than 800 people participated in 98 focus group discussions.

## 2.3. Monitoring as a Strategy to Strengthen Local Capacities

Building up monitoring teams based on local capacities, and not parachuting researchers from Jakarta, was the approach Komnas Perempuan chose to carry out its mandate to create conditions conducive to the fulfilment of human rights for women. The documentators were individuals with diverse backgrounds who were recommended by the partners of Komnas Perempuan in the monitored regions. By this approach, Komnas Perempuan has not only contributed to the strengthening of local capacity but also helped to ensure the sustainability of advocacy for gender justice in the regions. The diversity within the monitoring teams worked to open doors for dialogue among different groups in society, who, although often meet each other in meetings, very seldom have the opportunity to work in teams. The diversity of the documentators was a unique strength in this study because all of them enriched each other's understanding of the problems and analysis of the monitoring results.

Based on the recommendations from its partners, Komnas Perempuan formed monitoring teams, each consisting of 21 documentators with balanced gender composition—11 women and 10 men. They had diverse backgrounds as academics, activists who provided advocacy in public policies, victim companions, university students, and homemakers. They were all united by their experience in undertaking research and/or in the management of community discussions, with basic understanding of human rights and gender equity. The age of the documentators ranged between 24 and 40, half of them were aged below 30.

For the capacity strengthening of the documentators, Komnas Perempuan conducted two preparation workshops. The first workshop focussed on building a common understanding of gender justice and the constitutional rights of women, and also the development of a monitoring framework. After the first meeting, each documentator was asked to conduct trials of the monitoring framework in his or her own regions and to discuss the local bylaws that were

to become the focus of the monitoring. The second workshop centred on deepening understanding about constitutional rights and discussions of the results of the trials to derive suggestions for improving the monitoring framework. In this meeting, a decision was made about which local bylaws would be monitored. The selection of the policies (as set out in Table 2) was based on various insights documentators gained from the trials. In brief, the policies being monitored can be categorised into those that regulate (a) migrant workers, (b) prostitution, (c) dress codes, (d) religious devotion (such as orderly conducts during the month of Ramadan, the writing and reciting of the Quran, and the designation of Islamic villages), and (e) *khalwat* and adultery, which only exist in the Aceh region.

Besides the preparations mentioned above, other preparations were made to ensure a smooth-running monitoring operation and optimise community cooperation. During the first semester of 2008, Komnas Perempuan visited a number of regional heads of the monitored regions. In those visits, Komnas Perempuan conveyed its plan to conduct in-depth monitoring on the fulfilment of women's rights in the regions. The plan was welcomed by most of the visited regional leaders, who agreed with Komnas Perempuan to use the monitoring as a medium to strengthen the structure of democracy and the fulfilment of human rights in the era of regional autonomy.

## 2.4. Cross-Monitoring System to Ensure Impartiality and Enable Comparative Analyses

For the monitoring, Komnas Perempuan utilised a cross-monitoring system. This meant that the documentators did not conduct the monitoring in their own regions, but in other regions. For example, documentators from West Java were tasked with monitoring in Aceh, while documentators from Aceh went to South Kalimantan. The cross-monitoring system opened the space for interaction between the documentators from other areas and other parties concerned with the improvement of human rights and democracy who lived in other districts/municipalities or provinces. In the past, interaction mostly occurred between the centre and the regions, while interaction among regions was scarce. This cross-monitoring system was primarily aimed at maintaining impartiality and to build (comparative) analyses comparing one region with other regions from the viewpoints of the documentators.

With this cross-monitoring system, each monitor became a "new person" in the designated region. As a new person, the monitor was expected to be more open and objective in investigating and absorbing information. Furthermore, resistance from informants providing information was expected to be minimal because they were less likely to know about or be compromised by the past activities or backgrounds of the documentators. This last issue was very important in terms of documentators who were known to be critical toward public policies in their own regions, a situation that could cause informants to be hesitant in providing information. The "new person" position became the paramount means to maintain the principle of

impartiality in monitoring and also a means to develop comparative analyses. The knowledge and experience of the documentators accumulated from their experience in their own regions became a strong foundation in capturing the similarities and differences of the socio-political dynamics among regions.

The main challenge of the cross-monitoring system was the preparedness of the documentators. The position as "new persons" demanded the documentators to internalise as much new information as possible and to understand local socio-political dynamics in as short a time as possible. Language was another challenge, which could hamper communication between the documentators and resource persons. This challenge was highlighted in the limited group discussions with women participants who were not used to using the Indonesian language as their medium of daily communication. Even when they were used to it, the diverse structure and dialects in different parts of Indonesia caused them to have difficulties in communicating with people from other regions. To combat this problem, each monitor was accompanied by a local field assistant from the beginning. The assistants helped to bridge the language gap between the documentators and resource persons. Furthermore, in the process of collective analyses after field monitoring, the documentators also gained valuable insights from their assistants, who hailed from their designated areas, so that their understanding about issues was enhanced and their analyses more accurate and comprehensive.

During deliberation sessions conducted after the monitoring, the documentators suggested this cross-monitoring system as the most empowering element of the monitoring process. The opportunity to stay in the designated regions for 10 to 15 days provided them with the opportunities to "discover" an Indonesia full of diversity, to interact with minority groups, and also to sharpen their communication and interviewing skills in an entirely new environment. Therefore, the documentators recommended that Komnas Perempuan not only improved local capacity building through use of the cross-monitoring system, but also developed this approach and shared it with other organisations engaged in similar activities, particularly those involved in the upholding of human rights.

## 2.5. Understanding the Non-Discrimination Principle in the Constitutional Framework

The 1945 Constitution of the Republic of Indonesia contains the vision, the mission, and the principles of the governance of the nation-state of Indonesia. Therefore, it is the primary reference of the nation and the state, and serves as the highest legal foundation for all legal products of Indonesia. The 1945 Constitution implies the non-discrimination principle in the statement about the commitment of the state of Indonesia to protect every citizen from any discriminatory treatment inflicted for any reason (Article 28 I (2)) and to protect the rights of every citizen to facilities and special treatment to acquire equal opportunities and benefits to obtain equality and justice (Article 28 H (2)).

Discrimination, according to Law No. 39 of 1999 on Human Rights, Article 1, is defined as:

> "every restriction, harassment, or excision, directly or indirectly, based on human differentiation according to religion, tribal origin, race, ethnicity, grouping, class, social status, economic status, sex, language, political convictions, which results in the impairment, violation, or nullification of the recognition, implementation, or exercise of human rights and fundamental freedoms in the lives of both the individuals and communities in the political, economic, legal, social, or cultural field and in other aspects of life."

The commitment of the state to eliminate discrimination has been declared since almost a quarter of a century ago, by the issue of Law No. 7/1984 on the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women. In this Law, discrimination is defined as:

> "any distinction, exclusion, or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

At the end of 2008, the commitment to eliminate discrimination was reaffirmed with the issue of Law No. 40/2008 on the Elimination of Racial and Ethnic Discrimination.

Law No. 32/2004 on Regional Governments states that to administer regional autonomy, the regional heads of provinces/districts/municipalities, with agreements from regional parliaments, could issue regional regulations. Article 136 states that regional regulations are the elaboration of higher laws and regulations with attention to the special characteristics of each region. But the same article also says that the regional regulations should not contradict the common interests and/or the higher laws and regulations. Because the Constitution is the highest legal foundation, clearly regional regulations may not violate the 1945 Constitution of the Republic of Indonesia.

Law No. 32/2004 on Regional Governments, particularly Article 138, reaffirms the commitment of the state to adhere to the principle of non-discrimination in the administration of the nation-state of Indonesia. This article declares that the foundations of the regional autonomy system in Indonesia are (a) guardianship, (b) humanity, (c) nationality, (d) social kinship (*kekeluargaan*), (e) archipelagic nationhood (*kenusantaraan*), (f) unity in diversity (Bhinneka Tunggal Ika), (g) justice, (h) equality before the law and government, (i) order and legal certainty, and (j) balance, harmony, and concord.[3]

The discriminatory local bylaws violate not only the principle of non-discrimination upheld by the Constitution, but they have become instrumental in the institutionalisation of discrimi-

[3] This writer has underlined the principles in Article 138 that are directly related to principle of non-discrimination.

nation. The discriminatory policies began with discriminatory practices existing in society, including gender-based discrimination. The discriminatory local bylaws, because they are legally binding, not only perpetuate the discriminatory practices in society but also, and above all, position the discriminatory practices as legal actions in the administration of the state and nation, whereby state institutions become the initiators and direct actors of discriminatory actions against its citizens. This situation constitutes institutionalisation of discrimination.

The local bylaws (among other policies) were considered in three areas to determine whether they are discriminatory or not. The first consideration was investigating the purpose behind formation of a particular policy by way of content analysis of the written policy or through analysis of relevant information gained from interviews with those involved in the initiation and formulation of the policy. The second area of consideration was measuring the impact of the existence and enforcement of the policy on the community. This was achieved through methods of observation, interviews with members of social groups targeted by the regional policy, and analysis of perceptions of the broader community. The final area of consideration pertains to the democratic practice involved in the process of formulating the policies. The main focus of attention here was how far citizens, without exception, could actively participate in the process of formulation and supervision of the policy in accord with their constitutional rights in governance (Article 28 D (3) of the 1945 Constitution). This consideration was addressed through observation methods and interviews with the parties involved in the policy formulation as well as the stakeholders which should have been involved. Particularly relevant stakeholders are those expected to directly or indirectly be affected by the regional policy.

# Chapter 3

# National Portrait of Discriminatory Local bylaws

The national portrait presented in this chapter is based on the data collected by Komnas Perempuan on local bylaws (see Appendices 2 and 3). The chapter is divided into three parts: (1) the general view of the distribution of discriminatory local bylaws in Indonesia issued in the last 10 years, (2) the general pattern in the creation of the discriminatory local bylaws, and (3) a brief assessment of the socio-political contexts in the monitored regions that implemented discriminatory policies against women.

## 3.1. General Picture

Between 1999 and 2009, as many as 154 local bylaws issued at the provincial level (19 policies), district/municipality level (134 policies), and village level (one policy) have enabled the institutionalisation of discrimination, either intentionally or as a result of the policies. The local bylaws have been issued in 69 districts/municipalities in 21 provinces since the reform era started, when regional autonomy became part of the democratisation agenda.

Of the 154 local bylaws, 63 are directly discriminatory against women, through restrictions on the right to freedom of expression (21 policies regulating dress codes), the impairment of the rights to legal protection and certainty (37 policies on the elimination of prostitution that criminalise women), the nullification of the rights to legal protection and certainty (one policy on the prohibition of *khalwat*), and the nullification of the right to protection (four policies on migrant workers). Of the rest, 82 local bylaws relate to religion, which should be under the authority of the central government (see Table 3). These policies have restricted the freedom of every citizen to worship according to his or her own faith and caused the marginalisation and exclusion of minority groups. Nine other policies specifically restrict the religious freedom of the Ahmadiyah group. All the rights being restricted or impaired are constitutional rights guaranteed for every citizen of Indonesia without exception (see Annex 2 for a complete list of the 154 discriminatory local bylaws).

Table 3

**Classification of the Discriminatory Regional Regulations**

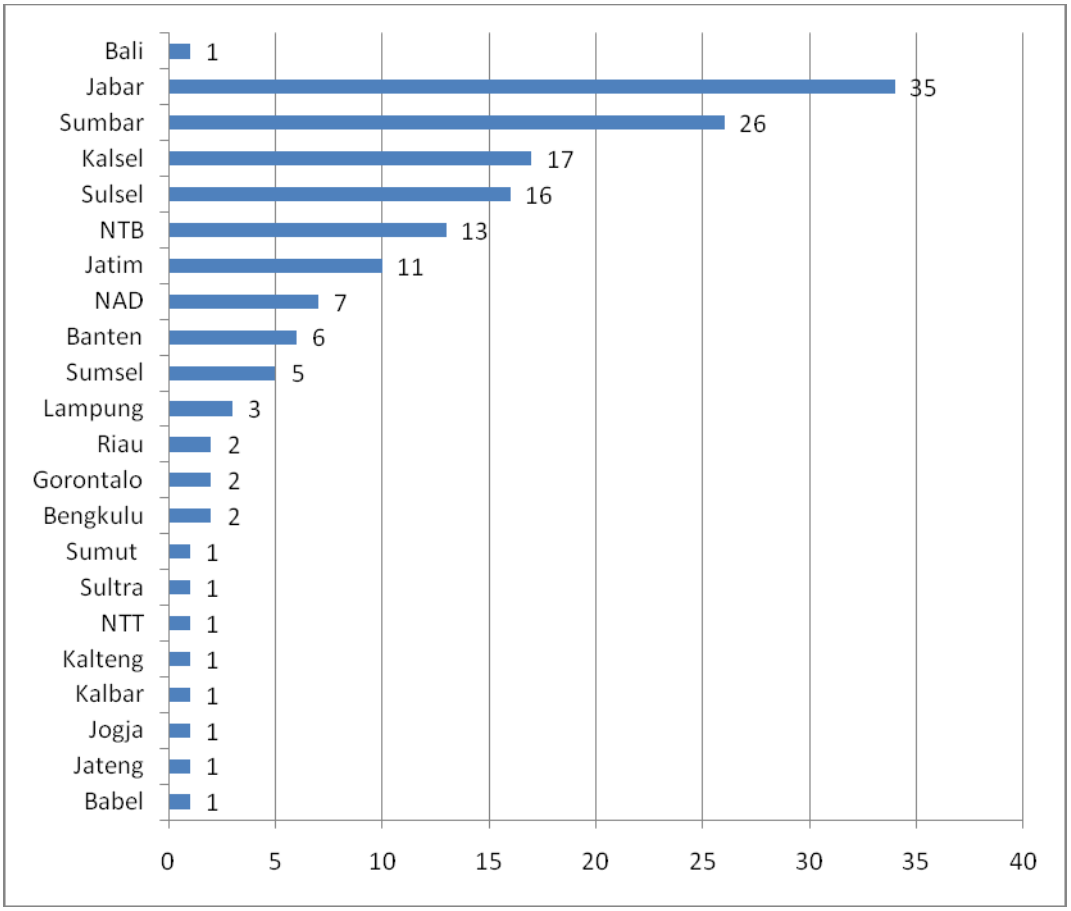
| No. | Category | Total |
|---|---|---|
| 1 | Criminalisation of women | 38 |
| 2 | Control over women's bodies | 21 |
| 3 | Restrictions on religious freedom of members of Ahmadiyah | 9 |
| 4 | Regulation on religious devotion or religious life | 82 |
| 5 | Regulation on migrant workers | 4 |
| **Total** | | **154** |

The social group most vulnerable to discrimination is women—including poor women and minority women—as well as other minority groups, particularly religious, cultural, and sexual-orientation minorities.

The provinces with the most districts issuing the highest number of discriminatory policies are West Java (35 policies), West Sumatra (26 policies), South Kalimantan (17 policies), South Sulawesi (16 policies), West Nusa Tenggara (13 policies), and East Java (11 policies) (see Diagram 1). In the context of discriminatory local bylaws against women, more than one third of the policies restricting freedom of expression have been issued by districts in the provinces of West Sumatra (8 policies), followed by West Java (5 policies), and South Sulawesi (3 policies). The districts in West Java have produced the highest number of discriminatory local bylaws against women (8 policies), followed by districts in East Java (7 policies) and West Sumatra (6 policies). Four policies on migrant workers that nullify the right to a humane and decent livelihood have been issued in the regions that have numerous female migrant workers, in particular, Cianjur and Sukabumi, both in the province of West Java.

Diagram 1

**Distribution of Discriminatory Regional Regulations**



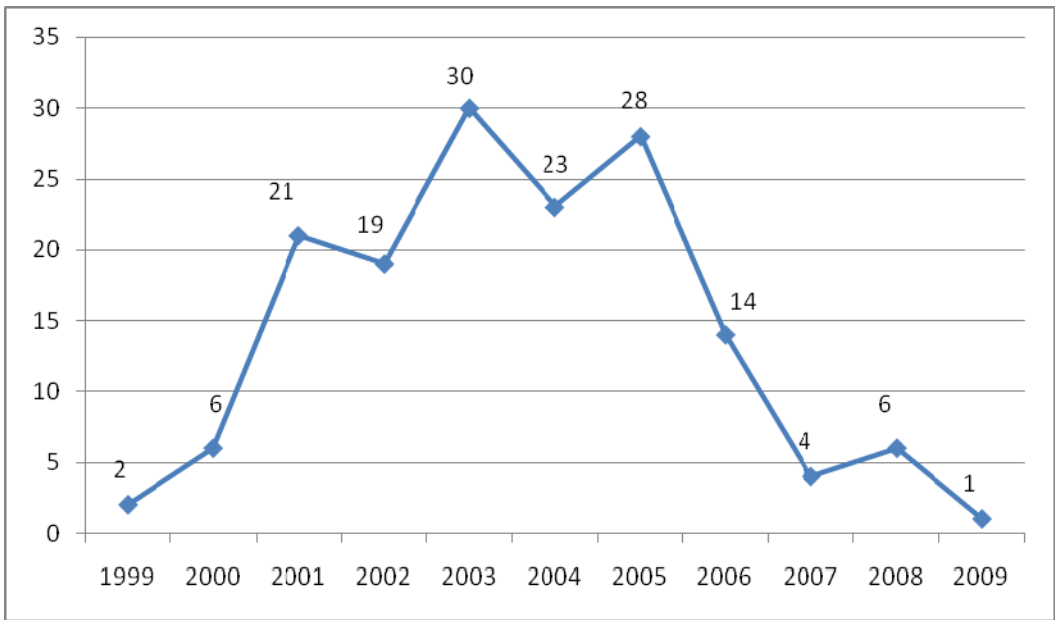

## 3.2. General Patterns in the Formation of Discriminatory Local bylaws

More than half of the discriminatory local bylaws (or 80 of them, as shown in Diagram 2), were issued almost simultaneously with the period of two years, between 2003 and 2005. Although the Law on Regional Governments was introduced in 1999, it was not implemented till the end of 2001, following the decline in various armed conflicts and mass violence in many regions of the country. In 2004, the Law on Regional Governments was amended, specifically in regard to the direct elections of district heads. The flood of the new discriminatory policies enacted in 2003 and 2005 perhaps can be understood as related to the post-conflict phenomenon, in which conditions are coloured by inter-group tensions including conflict between religious groups or between groups labelled "newcomers" and those considered "natives" to particular areas. In 2006, the proliferation of new discriminatory policies began to decline, which may be due to strong reactions from civil society at the national level, especially regarding

policies that at the time were considered to be "Sharia flavoured", and also as a result of the advocacy opposing the Anti-Pornography and "Anti-Porno-action" Bill.

Diagram 2

**Distribution of Policies based on the Year of Enactment**




More than two thirds of the discriminatory policies, or 106 of them, use similar terms in the formulation of their rationale and contents, which state that the issuances of the policies was intended as "one of the manifestations of religious teachings" or to "improve faith and devotion". More than half specifically state that the goal of the policies is to "give the region an Islamic character"; included here are seven local bylaws on dress codes and 13 policies on prostitution that criminalise women. This kind of formulation of the goals and objectives reflects the ongoing practice of image politics in those regions. Image politics pertains to a strategy of creating a particular image for political gain. For example, through the enactment of certain policies, strategists might create a unique image, or an image to counter a stigma or counter a negative image of the region. Often specific religious symbols are deployed in image politics or a definitive interpretation of a particular religion. The consequence is that community groups that do not adhere to such symbols are marginalised, in particular religious and cultural minority groups.

Since many policies were formulated with the sole purpose of creating an image to be used in identity politics, they have not been equipped with the practical capacity to address the real needs and challenges of the regions. This is in keeping with the propensity of image politics to go hand in glove with identity politicisation, which in effect is a means to mobilise support through use of religious, tribal, racial, or gender identity symbols for political gain in power

struggles or political rivalries.[4] Statements from various informants about the conception of discriminatory policies confirm that, though they had nothing to do with the roots of social problems, policies were always initiated and fiercely maintained by political elites on the eve of regional head or parliamentary elections.

A number of discriminatory policies that have been used in the arena of image politics are so alike in construction that they appear to have been plagiarised. Table 4 lists some samples of similarities in the wording of the local bylaws about dress codes. Such repetition or 'copy-paste' phenomenon can also be seen in the discriminatory local bylaws regarding prostitution, as will be elaborated on in Chapter 4.

Table 4

**Comparison of Policy Formulations**

| No | Regional Regulation | Formulation of a number of articles |
|---|---|---|
| 1 | Solok City Regional Regulation No. 6/2002 on Dress Codes for Muslim Women, Article 5 | Every male/female employee, male/female university student, and male/female senior high school student or Islamic senior high school (*Madrasah Aliyah*) student, as well as junior high school student or Islamic junior high school (*Madrasah Tsanawiyah*) student is required to wear Islamic dress for Muslim men and women; for members of the general public [this is] considered a suggestion. |
| 2 | Bulukumba District Regional Regulation No. 05/2003 on Dress Codes for Muslim Men and Women in Bulukumba District, Article 5 | Every male/female employee, male/female university student, and senior high school student or Islamic senior high school (*Madrasah Aliyah*) student, as well as junior high school student or Islamic junior high school (*Madrasah Tsanawiyah*) student who adheres to the religion of Islam is required to wear Islamic dress for Muslim men and women; for members of the general public who adhere to the religion of Islam [this is] considered a suggestion. |
| 3 | South Pesisir District Regional Regulation No. 4/2005 on Dress Codes for Muslim Men and Women | Every male/female employee, male/female university student, and male/female senior high school student or Islamic senior high school (*Madrasah Aliyah*) student, as well as junior high school student or Islamic junior high school (*Madrasah Tsanawiyah*) student is required to wear Islamic dress for Muslim men and women; for members of the general public [this is] considered a suggestion/proposition. |

[4] Image politics and identity politicisation is further discussed in Chapter 5

In the various regions that have issued the discriminatory local bylaws, Aceh was used as a reference by initiators of the policies, including in the regions monitored by Komnas Perempuan. The reason is that Aceh is the only province where Sharia is officially implemented, even though its implementation has eroded the integrity of the national legal system, especially in regard to a particular offence (the prohibition of *khalwat*) and a form of punishment (flogging) that are not recognised in the national legal system.

## 3.3. Status and Productivity of the Monitored Districts

The Regional Gross Domestic Product of 13 of the 16 monitored districts is below the national average, with that of five districts (Tasikmalaya, Cianjur, East Lombok, North Hulu Sungai, and Bulukumba) being among the bottom 30 percent of all districts. The incidence of poverty of nine of the monitored districts is higher than the national median, with four districts (Lhokseumawe, East Lombok, Dompu, and Pangkajene) being in the top 30 percent of all districts in Indonesia in this category.

The percentage of female-headed households in the monitored districts is higher than the national average, with 16.8 percent among the 16 districts compared with 12.2 percent in the national average. The monitored districts experienced an increase in the number of female-headed households between 2000 and 2007 (by 2 percent), a pattern quite the reverse of the national trend that decreased by one percent. The increase of the percentage of working women in the monitored districts is also higher than the increase at the national level—7.5 percent among the monitored districts compared to 6.9 percent at the national level. It is clear that the discriminatory local bylaws against women in actuality have added to the burden of women residents in these districts, the women who have increasingly become the pillars of survival or the keepers of economic sustainability for their families and communities.

Consistently, the monitored districts with higher incidences of poverty than the national median and with higher percentages of female-headed households than the national average are also in the bottom 30 percent of all districts in Indonesia in terms of the Human Development Index and the Gender Development Index (see Table 5). This data show that women who are the important pillars in household economies in these districts are forced to work in more trying circumstances than in most regions of Indonesia. This situation has in turn impacted on the overall capacity of the districts in achieving a decent standard of living.

Table 5

**Districts with Human and Gender Development Index in the bottom 30 percent**

(listed by districts with lowest index)

| Human Development Index | Gender Development Index |
|---|---|
| East Lombok – 61.12<br>Dompu – 64.04<br>Indramayu – 66.22<br>North Hulu Sungai – 67.01<br>Cianjur – 67.65<br>Pangkajene – 67.73 | Indramayu – 46.50<br>Cianjur – 49.00<br>Tasikmalaya –55.00<br>North Hulu Sungai – 55.30<br>Sukabumi – 56.00<br>Lhokseumawe – 57.20<br>Dompu – 57.40 |

The presence of the local bylaws that are the products of image politics, which use women's bodies as instruments in identity politicisation, confirms the failure of the regional autonomy system to address the problems of poverty and pauperisation that women are facing. Conversely, the local bylaws use interpretations of morality which are gender-biased to frame social problems. This situation reinforces discriminatory acts against women, as one participant in a focus group pointed out in a discussion of regulations on the prohibition of prostitution:

> "If prosperity for the people in this country could materialise, this [prostitution] would not occur…if we look further, the sickness [problem of free sex] is only a small fraction compared to [those who enter prostitution for] economic reasons…. If only there were enough job opportunities for women…. You can't only look at these women in a negative light."

# Chapter 4

# Institutionalisation of Discrimination Against Women

The results of the monitoring study of 14 local bylaws in 16 districts/municipalities in seven provinces show that the institutionalisation of discrimination against women proceeded through legal channels at district and provincial levels. With the exception of Regional Regulation No. 12/2006 on the Placement, Protection, and Rehabilitation of Indonesian Migrant Workers Hailing from East Lombok District, all the local bylaws essentially discriminate against women to the extent that they cannot enjoy their rights as citizens, which are guaranteed in the Constitution. The discrimination occurs on two levels: in the intent or purposes of the issuances of the local bylaws and (b) as a result or impact of the presence of such regulations. The study has found four areas of discrimination that violate constitutional rights: (1) restriction on the right to freedom of expression, brought about by local bylaws on dress codes, (2) the impairment of the rights to legal protection and certainty through the local bylaws on prostitution which criminalise women, (3) the nullification of the rights to legal protection and certainty through the regional policy on *khalwat*, and (4) the exclusion of the right to protection, brought about by the local bylaws on migrant workers. These four areas of discrimination are discussed in this chapter.

## 4.1. Restriction on the Right to Freedom of Expression Brought About by the Local bylaws on Dress Codes

> "I only use it in the office, only because I feel uncomfortable. Whenever I did not wear the *jilbab*, I was often kept at a distance or discriminated against by my colleagues in the office. For example, they often whispered behind my back, they befriended me but at arm's length, didn't want to walk around with me. They would find various excuses; some directly told me the reason was that I did not wear a *jilbab*. Although a person's morality was not measured by the *jilbab*…they considered a woman who did not wear a *jilbab* was not a good woman." (A woman, civil servant, Dompu)

Twenty-one local bylaws on dress codes were issued from 2000 to 2006. Two of them were the focus of the monitoring: (a) Banjar District Head's Ordinance No. 19/2008 on the Uniforms of Civil Servants in Government Offices in Banjar District and (b) Regional Regulation No. 05/2003 on Dress Codes for Muslim Men and Women in Bulukumba District.

Regulating dress codes is implied in (a) Regional Regulation No. 1/2002 on the Regional Development Programme of Dompu District (2001-2005) and (b) Pangkajene dan Kepulauan District Head's Decree No. 48/2007 on the Designation of Tompo Bulu Village in Balocci Subdistrict and Mattiro Bombang Village in Liukang Tupabbiring Subdistrict as "villages of Islamic character". The two policies are aimed at developing the image of "Islamic regions". The meaning of these local bylaws can be derived from the Dompu District Head's Decree No. Kd. 19.05./1/HM.00/1330/2004 on the Expansion of Regional Regulation No. 1/2002, which mentions the obligation for civil servants seeking promotion, prospective brides and bridegrooms, student candidates for junior and senior high school, and students who wish to obtain diplomas to read or recite the Quran and to wear Islamic dress, such as the *jilbab*.[5]

Based on information collected through interviews and focus group discussions in the Pangkajene dan Kepulauan district, better known as Pangkep district, the Pangkep district head has called for Muslim women employees to wear the *jilbab* in the workplace of the Pangkep district government and for female students to wear it in school. This formal request is in addition to the decrees already enacted relating to 'villages of Islamic character'.

Besides wearing the *jilbab* and the reciting and writing of the Quran,[6] other provisions deployed in the local bylaws to develop "Islamic" regions include regulations on religious devotion, obligation to write office name plates in Arabic, prohibition of trading during the time of fasting, and prohibition of mobility during the Friday prayer. The monitoring results of the North Hulu Sungai Regional Regulation No. 32/2003 on the Prevention and Prohibition of Activities that Defile the Sanctity of the Month of Ramadan reveal that this regional policy brings with it an unwritten pressure on women to wear the *jilbab* as a part of strengthening of the image of a religious region.

According to many informants, there is an obvious reason behind the local bylaws on religion that put pressure on people to wear Islamic dress. An official at the regional chapter of the Ministry of Women Empowerment, for example, explained:

> "The factor that drove the creation of the policies was the manifestation of a religious region. Dress code could become a character or symbol and is easy to regulate as a criterion, compared to other activities."

Although the dress codes are applicable to both men and women, there is more focus and pressure on women in the implementation of regulations. When dress becomes the standard

[5] Besides that decree, the Dompu district head has also issued the District Head's Decree No. 140/2004 dated 25 June on the Obligation to Recite the Quran for Civil Servants and Muslim Residents of Dompu, the District Head's Decree No. Kd. 19./HM.00/527/2004 dated 8 May on the Quran Recitation by All Civil Servants and Guests, and the District Head's Proposition No. 451.12/016/SOS/2003 on *Infaq* (Islamic voluntary alms) and *Zakat* (Islamic obligatory alms) of Civil Servants in Dompu, which has been in effect since 15 March 2003.

[6] Of the 82 documented local bylaws on religion, the local bylaws on the obligation to recite the Quran is the provision most used (in 24 policies) after the regulations on *zakat* (in 25 policies).

of morality women who are used as the symbol of morality in communities are first to carry the burden of obeying the regulations. This observation was affirmed by a participant in the focus group discussion of representatives of critical groups in Pangkep, who said:

> "Women are the barometer of the religious concept being developed. This is because the religious symbols that are linked to women [their dress] can be directly seen by human eyes, which is not the case in Quran recitation, fasting, being patient, and other regulations."

The initiators of the local bylaws on dress codes who were consulted in this study confirmed that the dress codes have been in line with their visions of creating the image of a religious region. The success in issuing the regulations and the obedience of the public to wear Islamic dress are achievements that they, the initiators, are proud of; even though the presence of the regulations that make the wearing of Islamic dress obligatory are based on a sole interpretation of religious identity and has put the regional governments in the position of both initiators and active perpetrators of discrimination. In the context of the implementation of regional autonomy according to Law No. 32/2004 on Regional Governments, this situation is a violation of Article 28a which firmly states that regional heads are prohibited:

> "…to issue decrees that give special benefits to themselves, their relatives, cronies, certain groups, or their political cliques, which are in violation of the laws and regulations, detrimental to the public interest, and cause unrest among groups of people, or discriminate against citizens and/or other groups of people."

The discrimination is mainly present in the form of restrictions on the constitutional right to freedom of expression. Clothing or dress is an integral part of the space where self identity is expressed; individual thoughts and character are asserted in the act of choosing attire. Freedom of expression is a fundamental right guaranteed by the Constitution (Article 28 E (2), 28 I (1)). Regulations on the obligation to wear certain kinds of clothing as the only legitimate way of dressing thus impair citizens' freedom of expression. Furthermore, the formulation of these regulations is based on the narrow interpretation of particular religious teachings. The Constitution states that every citizen has the right to freedom to worship according to his or her conviction (Article 29 (2)), as an integral part of the right to freedom of religion. Compared to the prohibition of the wearing of the *jilbab* that was once enforced by the New Order regime, the regulations on dress codes similarly violate the constitutional rights of citizens to enjoy the right to freedom of worship and freedom of expression.

The obligation, as with the prohibition, of wearing certain dress based on a particular religious identity is a violation of the constitutional rights of every citizen:

- to self expression (Article 28 E (2), 28 I (1));
- to worship according to one's conviction (29 (2));
- to be free from fear of doing anything that is within one's fundamental rights (28 G (1)).

Whether in the form of regional regulations, public notices/circulars, or regional heads' decrees, which call for or assert the obligation to conform to a particular dress code, the policies also violate women's constitutional rights to be free from fear to do anything within their fundamental rights (Article 28 G (1)), such as dress how they wish. This right is violated because women who refuse to obey the local bylaws are faced with punishment and also social sanctions. High school students who refuse to wear the *jilbab* can be reprimanded and punished by teachers or principals, even though the schools are state/public schools.[7] For civil servants, who are specific targets of the dress code regulations, refusal to wear the *jilbab* can result in public shaming. They can be reprimanded directly and publicly, or even barred from standing in the front row during a ceremony, for instance. Since it is an obligation, refusal to wear the *jilbab* becomes a disciplinary violation that is implied in the process of promotion and ranking.

**Aceh Regional Regulation (*Qanun*) No. 11/2002 on the Implementation of Sharia in the Fields of Belief (*Aqidah*), Worship (*Ibadah*), and Promotion (*syiar*) of Islam**

This regional regulation states that a violation of the obligation "to dress according to the guidance of the teachings of Islam" by a Muslim in Aceh is punishable by three months imprisonment or a fine of two million rupiah (approximately USD 200). In order to introduce this regulation, several billboards on road sides have been dedicated to illustrations of forms of suggested dress.

Although this regulation is applicable to all Muslim women and men, in practice focus is more on women, who are used as the symbol of Aceh's Islamic identity. The regulation on dress codes is enforced through raids, conducted by authorized institution, namely the *Wilayatul Hisbah* (WH) or by members of the public. Up to the time of writing this report, no cases of the violation of dress codes were punished with the sanctions mentioned above. Rather, those charged with breaking the dress code are usually reprimanded and their identity cards confiscated. To recover the confiscated identity cards taken during the raids, offenders are obliged to conduct *duhur* (noon) prayers at least three times with a congregation in a mosque authorized by the WH. Komnas Perempuan obtained information about violence and sexual abuse committed against women during the raids, particularly raids conducted by members of the general public during 2008.

Besides the wearing of the *jilbab*, the dress codes prompt further debate about the permissibility of wearing long trousers. A number of lecturers refused to let female students into their classes if they were not wearing the *jilbab* or if they wore long trousers deemed un-Islamic. A woman who was the head of her household told how she and her niece were once reprimanded by the WH for wearing long trousers, even though they were wearing the *jilbab* and long-sleeved, loose-fitting shirts.

During the early phases of the implementation of the dress codes in Bulukumba and Dompu, women who did not wear the *jilbab* could not conveniently access public services because some government offices, explicitly or not, were only willing to serve those who dressed

[7]This information was drawn from the focus group discussions of female first-time voters (aged between 18 and 21 years) in five regions, namely Bulukumba, Dompu, Banjar, Pangkep, and North Hulu Sungai.

according to the regulations.[8] A female legislative candidate in Pangkep said that the party chief refused to agree to her candidacy if she refused to wear the *jilbab*. All these sanctions equate to discrimination in the form of differentiating the positions of women in the government and in the form of diminishing the rights of women in the fields of law and politics.

Aside from the threat of formal punishment, women who refuse to obey the dress codes can also face social sanctions in the form of exclusion. One woman, whose constitutional right to freedom of expression was violated by the regional policy on dress codes in Dompu, argued that the social sanctions forced her to choose to wear a *jilbab*, though only in places where she was obliged to wear it, such as her workplace. Similarly, a female political party activist, who was forced to wear certain forms of Islamic dress, explained:

> "In everyday life I do not wear the *jilbab*…. When I go to official meetings, I wear it. I don't feel comfortable not wearing it…because people stare at me and make comments about my dress."

From information drawn from the focus group discussions in the five districts where local bylaws on dress codes have been enacted, the sentiments of social rejection described above were a usual response in these communities. Women do not dare to openly voice their rejection of these regulations for fear of being socially judged as immoral or even accused of rebelling against their religion.

Table 6

**Institutionalisation of Discrimination by Local Bylaws Regarding Dress Codes**

| Policies in Monitored Regions | Locus of Discrimination |
|---|---|
| Banjar District Head's Circular No. 065.2/00023/ORG on the Wearing of *Jilbab* for Women Civil Servants in the Work Area of Banjar District Government<br><br>Regional Regulation No. 05/2003 on Dress Codes for Muslim Men and Women in Bulukumba District | Discrimination in intent/purposes in the form of the obligation of women to wear certain kinds of dress based on a certain religious identity<br><br>Discrimination as an impact, caused by the implementation of the policies that justify the culture of blaming the victims<br><br>Discrimination as an impact of the implementation of the policies, where disobeying women are punished with administrative sanctions, and others are shamed in public with reprimands from their superiors |

[8] This information was gained in the focus group discussions of representatives of critical groups at the provincial level in South Sulawesi and Mataram, which focused on the formulation of regional regulations with religious tones in their respective regions.

| Policies in Monitored Regions | Locus of Discrimination |
|---|---|
| District Head's Ordinance No. 48/2007 on the Designation of Village Tompo Bulu in Subdistrict Balocci and Village Mattiro Bombang in Subdistrict Liukang Tupabbiring as Villages with Islamic Character | Discrimination as an impact, since the implementation of these local bylaws in turn brings about other policies which enforce certain dress codes for women based on a single interpretation of a certain religious identity |
| Regional Regulation No. 1/2002 on the Regional Development Programme of Dompu District for Year 2001-2005 | Discrimination as an impact, since the implementation of these local bylaws limits the opportunities of women to enjoy the right to be free to dress how they wish |
| North Hulu Sungai Regional Regulation No. 32/2003 on the Prevention and Prohibition of Activities that Defile the Sanctity of the Month of Ramadan | |

The local bylaws on dress codes furthermore cause women to experience multi-level discrimination, as shown in Table 6. Not only have the policies discriminated against women in intent and purposes as was intended in the conception of the policies, but the discrimination against women also occurs as an impact of the existence of the local bylaws on dress codes, which restrict the right of women to enjoy their fundamental rights in freely being able to dress how they wish.

It is difficult for the policy initiators to understand the criticism about the ongoing institutionalisation of discrimination caused by the existence of the policies on dress codes. According to the initiators, the dress codes were also meant to provide protection for women. One of the regional heads who initiated a regional policy on dress codes said:

> "[See for yourself] ... Muslim women here all wear the *jilbab*. That protects women from rape, from mugging if they wear jewellery. Women here may not swim in swimming pools wearing swimsuits. They may not perform as singers in single keyboard performance. This protects the honour of women."

Other district heads that adhered to the vision and mission to create religious regions also made similar statements. The quoted district head was further convinced that together with other policies about religion, the policies on dress codes had resulted in a decrease in the number of crimes in the district:[9]

> "One of the reasons for rape and sexual abuse is what a woman wears. If [a woman] wears Islamic dress, the men would think a thousand times, [before deciding] not to harm

[9] The data referred to are based on a publication by groups supporting the regional policy, which was said to originate from local police records. Upon further examination, the data proved to be different from that of the police which actually show facts to the contrary, that the cases of both general crimes and sexual violence continue to rise.

> the woman because she covers her *aurat.*[10] There is pity [on his part]. It would be different if she wore revealing clothes."

The assumption that wearing the *jilbab* or clothing that covers the *aurat* is a potent way to protect women from sexual violence exists not only among the initiators of the dress codes, but also among academics, legislators, and members of society. This perception is at the heart of the culture of blaming the victims. The regulations formulated from this perception perpetuate the impunity of the criminals because women victims are considered the responsible party in the sexual violence they experience. As a consequence, these regulations have the potential to obstruct the efforts of female victims of sexual violence to have their constitutional rights to justice fulfilled.

Besides the potential to obstruct the right to justice, the regulations on dress codes based on this assumption do not correspond with the experience and the real needs of women. These regulations, far from creating a sense of security, create a sense of burden. In a focus group discussion in Bulukumba, for example, a female first-time voter said that:

> "After these regulations were brought in, it's like we feel burdened when we leave our homes, we always have to wear the *jilbab*…[and] even now we still harassed. Even if a woman wears a *jilbab*, if she is cute, she'll still get wolf-whistles and cat calls."

A similar opinion was voiced by a woman in a focus group discussion in Dompu who said the dress codes were actually not needed by women:

> "For me, a feeling of security means that we can do anything within a reasonable limit and don't have to wear a *jilbab* because we ourselves know the limits and obey the rules."

A resource person in a focus group discussion of first-time voters in Bulukumba said that if the purpose was to protect women,

> "…it would be better for the government to form neighbourhood security posts and mobile patrols, and provide enough lighting in the corners of the city where many unwanted activities are often conducted."

While the capacity of the dress codes to protect women was being questioned, a number of women activists of civil society organisations and educators, as well as representatives from the critical groups who participated in focus group discussions in the monitored regions, voiced their concerns that the dress codes threatened cultural traditions in the regions; for example, the tradition of wearing *seulendang* (long scarves used by women in Aceh to cover their heads and to carry children), *cipo-cipo* (head covers that look like *songkok*[11] worn by women in South Sulawesi), *rimpu* (head covers that look like chadors worn in Dompu, West Nusa Tenggara),

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[10] *Aurat* are parts of the body which should not be left publicly uncovered according to Islamic religious laws. The word is usually used with sexual undertones —*Translator.*

[11] *Songkok* is a fez-like cap made of velvet—*Translator.*

and other traditional dress.[12] These traditions are gradually disappearing, not only because they are out of fashion due to modernity, but also because of the local bylaws on dress codes that seek to uniform the identity of women in the regions.

Besides (a) being used as an instrument for the institutionalisation of discrimination against women, especially in the form of restricting the right to freedom of expression, (b) having the potential to obstruct the right to justice, and (c) threatening the continuation of cultural traditions, the local bylaws on dress codes based on the narrow interpretation of certain religious teachings have also discriminated against minority groups. Amongst minority communities of *adat* or culturally traditional, such as the Kajang community in Bulukumba, the Bissu community in Pangkep, the Dayak Hindu Buda Bumi Segadung in Tasikmalaya, and the Dayak community in Banjar, there are different traditions and practices that respect the body and a person's sexuality (the synonym of which, in the rationale of the local bylaws, is *aurat*). The Kajang community, for example, uses a kind of hair bun to express respect for the head which they consider sacred.[13] When they mourn, the relatives of the deceased traditionally wear only sarongs to cover their bodies. According to the enforcers of the local bylaws on dress codes, the Kajang community, as well as other *adat* communities, are permitted to practice their traditions freely. In reality, however, they can only practice their traditions within their own private environments. As citizens of the Bulukumba region, the women of the Kajang community, like it or not, have to obey the regulation on dress codes for Muslim men and women enacted by the regional government, even though contrary to their beliefs. A young woman of the Kajang community said:

> "Indeed when we go to the market or anywhere, there are warnings [to wear the *jilbab*] … I am still afraid to go to Makassar through Bulukumba because of that regulation. But, if we are forced to wear the *jilbab*, to be on the safe side, what can we say?"

Some of the Kajang women, by their own will, wear the *jilbab* as a mark of engaging with the modern world. However, the obligation of wearing the *jilbab* in the local bylaws on dress codes causes a sense of unease, even the feeling that one's security is under threat if it is not obeyed. Religious minority groups, especially non-Muslims, also experience a similar situation. Being surrounded by the majority whose religion is Islam, non-Muslim members of society that have to obey the regulations on dress codes, explicitly or implicitly are forced to "conform to the norm". In other words, there is no choice for the minority groups, especially women, but to dress according to regulations. Although repeatedly argued that these regulations are not burdensome, all informants from the minority groups regret the enforced veiling. They worry that this demand might result in the rejection of diversity in Indonesia, which goes against the nation's motto. Many expressed this concern. For example, a non-Muslim woman said:

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[12] In the context of Aceh, the perception that long trousers are not Islamic and therefore may not be worn by women is a threat to tradition. Long trousers are a part of the *adat* or traditional costume of Acehnese women. In late 2009, the head of West Aceh district introduced a local bylaws prohibiting women from wearing trousers, particularly those that show the shape of their legs.

[13] The information was collected from interviews with Kajang *adat* leaders and four Kajang women.

"As a minority, we can only conform [to the norm]. When going out I wear a *jilbab*. Usually, there's someone who would say, "You look prettier wearing a *jilbab*". I just say 'thanks'…I actually don't object [to the regulation], but sometimes I feel sad. Where is this nation going, which is said to respect Unity in Diversity?" (A woman, civil servant)

## 4.2. Impairment of the Rights to Legal Protection and Certainty Through the Local Bylaws on Prostitution which Criminalise Women

"If possible, there should be no regional regulation like that in Tangerang. Women who have to go out at night are worried, scared about what could happen to them. For men, it's okay for them to go out at night." (Victim of a wrongful arrest, Tangerang)

Prostitution, in Indonesian "*pelacuran*", is a term closely associated with women. In the context of morality, this term has become a symbol for the classification of women at one or the other end of the binary between "respectable women" and "naughty women". Therefore, after the local bylaws on dress codes, the local bylaws on the prohibition of prostitution have the most direct impacts on the lives of women. The terms used in the local bylaws are prostitution, [women of] loose morals (*tunasusila*), sin of immorality (*maksiat*), adultery, social illness, and social disorder. The monitoring was conducted on five of the 38 local bylaws dealing with this issue: (a) Indramayu Regional Regulation No. 4/2001 on the First Amendment to the Indramayu District Regional Regulation No. 7/1999 on Prostitution, (b) Tasikmalaya Regional Regulation No. 28/2000 on the First Amendment to the Tasikmalaya District Regional Regulation No. 1/2000 on the Elimination of Prostitution, (c) Mataram Regional Regulation No. 19/1996 on Cleanliness, Beauty, and Order, (d) Tangerang Regional Regulation No. 8/2005 on the Prohibition of Prostitution, and (e) Bantul Regional Regulation No. 5/2007 on the Prohibition of Prostitution in the District of Bantul.

The Indramayu Regional Regulation No. 4/2001 has often been used as a reference in the formulation of local bylaws on prostitution in other regions seeking to issue similar regional regulations. Almost all informants from this region, often dubbed a pocket of sex workers, said that the enactment of the regional policy was meant to change the image of Indramayu city to become a region that was "Religious, Progressive, Self-reliant, and Prosperous", as exemplified by this quote from an informant from the district government:

"Indramayu was in the past known generally only for its negative aspects…the young women of Indramayu. The connotation was always negative, sex workers…The regional government decided that this could not be allowed to continue…. [With this regional regulation] we want to bring order to the region [so that it will be] clean from the stench of prostitution, [including from] the structures that they had erected not as places of residence but for prostitution… [to] erase the past image of Indramayu."

To build a religious image of the regions is the main goal of the issuances of the local bylaws on prostitution. Of the 38 documented local bylaws, 23 use religion as the rationale for the regulations and 13 specifically state that the goal of the local bylaws is to create "Islamic" regions. Other than the Indramayu regional regulation, the regional regulations of Tasikmalaya, Tangerang, and Bantul are also included in the category of policies with this inclination.

As shown in the Table 7 below, the four local bylaws also have similar notions about what is meant by prostitution. There are few variations in the revised version of the Indramayu Regional Regulation No. 4/2001 from that of Regional Regulation No. 7/1999, and in the revised version of Tasikmalaya Regional Regulation No. 28/2000 from that of Regional Regulation No. 1/2000, especially in the definition and the range of prohibitions related to prostitution. The contents of the two local bylaws are almost identical and also similar to the Tangerang Regional Regulation. This raised suspicions of plagiarism in the formulation of the local bylaws on prostitution from one region to another. A definition similar to that found in the above policies of the kinds of behaviour and attitudes that can be categorised as prostitution is also seen in the Bantul Regional Regulation, although with different wording. Only in the Mataram Regional Regulation is there no clear statement about the definition of prostitution except as a paraphrase of Article 24 about the prohibition of "acts or conduct that may cause disorder".

Table 7

**Similarities in Content of the Regional Regulations of Indramayu, Tasikmalaya, and Tangerang on the Prohibition of Prostitution**

| **Indramayu**<br>**Regional Regulation No. 4/2001, revision of**<br>**Regional Regulation No. 7/1999** | **Tasikmalaya**<br>**Regional Regulation No. 28/2000, revision of**<br>**Regional Regulation No. 1/2000** | **Tangerang**<br>**Regional Regulation No. 8/2005** |
|---|---|---|
| Article 6:<br>Anyone whose behaviour/attitude could raise suspicion that she/he[14] is a prostitute is prohibited to be on public roads, squares, in lodgings, inns, hotels, dormitories, citizens' homes, leased houses, at drinking stalls, amusement sites, entertain- | Article 5:<br>Anyone whose behaviour/attitude could identify that she/he is a prostitute is prohibited to be on public roads, squares, in lodgings, hotels, inns, dormitories, citizens' homes/leased houses, at drinking stalls, amusement sites, entertainment venues, on street | Article 4:<br>Anyone whose behaviour or attitude is suspicious, to the extent that it gives the impression that she/he/they are a prostitute/prostitutes, is/are prohibited to be on public roads, squares, in lodgings, inns, hotels, dormitories, citizens' |

[14] The term "ia" in Indonesian signifies the third person singular (he or she) without determining the gender – *Translator.*

<table>
<tr><td>ment venues, on street corners or back streets, standing, or walking, [or] in vehicles moving back and forth</td><td>corners or back streets, standing, or walking [or] in vehicles moving back and forth</td><td rowspan="2">homes/leased houses, coffee shops, at amusement sites, entertainment venues, on street corners or back streets or other places in areas that can be seen publicly</td></tr>
<tr><td>Article 4:<br>Anyone on public roads or places that could be seen from public roads or places where the public could enter is prohibited to use words, <u>codes</u>, signs, or other means, to persuade or force other people to conduct the act of prostitution</td><td>Article 3:<br>Anyone on public roads and/or places that could be seen from public roads or places where the public could enter is prohibited to use words, <u>codes</u>, signs, or other means, to persuade or force other people to conduct the act of prostitution</td></tr>
<tr><td colspan="3">Bantul<br>Regional Regulation No. 5/2007, Article 1:<br>Prostitution is a set of actions conducted by any person or institution including inviting, persuading, organising, providing opportunity, performing the act, or luring other people with words, codes, signs, or other acts to perform an act of obscenity either with or without payment</td></tr>
</table>

Note: Words *Italicised* and <u>underlined</u> show similar terminology used in the other policy definitions of prostitution.

Prostitution in the national law is also a crime where pimps are liable and can be punished. Different from the national law, these regional regulations stress the criminalisation of the individuals related to the practice of prostitution. Criminalisation in this context is an attempt to control or limit the movements and/or verbal expressions of a person by threatening to call such behaviour a crime or by making a legitimate activity a crime. Criminalisation creates legal uncertainty because it nullifies legal consistency. The criminalisation of prostitution in the regional regulations exists because the formulation of the laws nullifies the presumption of innocence by making the law enforcement rest on subjective presumptions about <u>behaviour or attitudes</u> deemed "suspicious", or that "could raise a suspicion", "could be identified", or "uses codes". This kind of legal ambiguity increases the chances for wrongful arrests. The definition of prostitution in the regional regulations on prostitution, except in the Indramayu Regional Regulation which states directly that women are the actors of prostitution, refers to "anyone" or "a person" without indicating a particular sex. But the social construct relating to prostitution makes women more vulnerable to criminalisation. With such an ambiguous legal formulation in the prostitution regulations, any woman, on account of her dress or behaviour, could be arrested, even punished, based only on suspicion.

The exact number of victims of wrongful arrests has not yet been confirmed. From the information compiled during the monitoring alone, Komnas Perempuan counted more than 20 cases of wrongful arrests. Four of the victims involved were contacted and interviewed; two in Bantul and one each in Indramayu and Tangerang. A case of wrongful arrest pertains, for example, to the arrest of a woman suspected of violating local bylaws on prostitution, when she has not actually committed a crime. In these four cases, as with many others, the women came under suspicion because they were in public places at night where there was possibility prostitution could take place. There were also cases of wrongful arrests based on the suspicion that the attitude of the arrested women was similar to the attitude of sex workers, or based on the accusation that the woman used codes signifying the provision of sexual services. Others were suspected of prostitution because of their way of dressing. Summaries of the experiences of two victims are presented in Illustrations Case 1 and Case 2 below.

*Illustration: Case 1*

**Criminalisation of women brought about by the Bantul Regional Regulation on the Prohibition of Prostitution**

The victim was heavily pregnant when the wrongful arrest took place. With her husband, she was buying goods at a vending stall in a beach usually considered a red light district in Bantul region. At that time, a raid on sex workers was conducted by the Satpol PP. The local apparatus shouted at the woman and pulled her into an official car. She was finally released after convincing the officers that she was married and not a sex worker. If not, she would have been taken to the Satpol PP station for further interrogation together with other women suspected of being sex workers. She said:

> "[I was] shocked because I was suddenly pulled from behind…[I] felt humiliated…although I don't have [a house] but if I was suspected as a sex worker, what could I do? People were looking at me, I felt ashamed…There was another woman, she tended bathrooms. She was taken to the office [of the Satpol PP]…then her husband was called [by telephone]…the husband had to bring their marriage certificate, household card, identity card…. She asked for compensation of one or two hundred for being shamed like that…. I did not want to do that [demanding compensation]. The most important thing was they apologised, and I forgave them."

*Illustration: Case 2*

**Criminalisation of women brought about by the Indramayu Regional Regulation on Prostitution**

The victim worked as a waitress and dishwasher at a food stall when the raid on sex workers occurred. The food stall was owned by her sibling who needed an extra hand because the permanent employees were on leave. Initially, she was hesitant to accept the job offer because she was worried about her reputation as a widow and public perceptions of waitresses at such food stalls. She finally took the offer because she really needed the

work. She worked from 7:30 pm to 3 am. The main customers of the food stall were passing truck drivers. Her salary was Rp10,000 to Rp15,000 (less than USD 2) per night, depending on the number of customers.

Failing to convince the raid officers that she was not a sex worker, the victim was taken to the Satpol PP station and then moved to the Police detention centre. She was kept there for one night. Because nobody came to redeem her, finally she was released. She said:

> "All the officers who interrogated me were men…. I told them, "Who wants a grandmother?" One asked, "So you don't have any money?" I did not have any money. [Because nobody came to get me] I was given Rp10,000 [approx. USD 1] transport money…I went home by myself. At home, my younger sibling [the owner of the food stall] was crying because there was no money [to get me]…. I was angry and ashamed because of other people's negative assumptions [caused by the event]…. I felt very wretched…afraid. [Therefore] I got married so people wouldn't think of me like that [being a sex worker].

Women are facing discrimination in the form of the impairment of their constitutional rights to protection and fair legal certainty (Article 28 D (1)) brought about by criminalisation in the regulations on prostitution. Women are more vulnerable to criminalisation, because the socio-cultural context of prostitution positions women differently to men before the law. That means that such regional regulations on prostitution also cause women to lose their constitutional rights to equality before the law (Article 27 (2) and 28 D (2)). In relation to dress codes or behaviour, which is a part of self expression, the cases of wrongful arrests caused by the criminalisation of the victims are clearly evidence of a violation of the constitutional right to freedom of expression (Article 28 E (2) and 28 I (1)). In addition, the threat of being accused of violating the local bylaws contravenes women's constitutional rights to be free from fear to do things within their human rights (Article 28 G (1)), such as express themselves freely or go out at night.

In one of the cases of the aforementioned wrongful arrests, the victim even felt she had to remarry so as not to be regarded as a sex worker. This is a sign that the criminalisation by the local bylaws on prostitution also strengthens the stereotype about women in relation to their marital status. It means that the local bylaws have failed to fulfil the constitutional right to protection from discriminatory treatment (Article 28 I (2)), in the case of differentiation of legal treatment based on marital status.

The implementation of the local bylaws on prostitution particularly disadvantages and targets underprivileged women. Raids on suspected prostitutes are often specifically carried out in locations considered to be centres of prostitution, which also are likely to be in areas of impoverished communities. This includes along main roads. In reality, working class women have to be on the streets late at night looking for work, earning a living or waiting for public transport. Similar problems were voiced by female workers who were participants in a focus group discussion in Tangerang. Two other cases of wrongful arrests also happened to female workers,

one operated a food stall and the other was a factory worker. According to their accounts, other female victims of wrongful arrests they knew of also came from the same social class. One official from a province where regional regulations on prostitution have been enforced in districts showed particular ignorance of real conditions in society, where women often need to be away from their homes at night to earn a living for their families:

> "Our society is very religious. If a woman walks alone in the middle of the night, that is a very bad image. If women are prohibited from roaming around during the night, that is good. That means women do not have that kind of profession [prostitution] so the differences are clear. This of course is a part of the protection for women."

In this context, besides becoming the ground for the institutionalisation of discrimination against women in the form of infringing on the right to legal protection brought about by the criminalisation, the regulations on prostitution also hamper women's constitutional rights to a decent and humane livelihood and occupation (Article 27 (2)). Such problematic impacts can easily intensify if companies refuse to employ women workers at night to avoid problems caused by the implementation of the local bylaws on prostitution; whereas working at night often affords more pay than daytime work. Similarly, to get higher pay rates for overtime usually requires night work.

The criminalization of women in the legal formulation of the definition of prostitution, which neglects the presumption of innocence, and in the legal enforcement based on gender-biased suspicions, is a violation to the constitutional rights of the citizens to:

- protection guarantee and fair legal certainty (Article 28 D (1));
- equal stance and treatment before the law (Article 27 (1), 28 D (1));
- freedom of expression (Article 28 E (2), 28 I (1));
- be free from fear to do anything within one's fundamental rights (Article 28 G (1));
- the feeling of security (Article 28 G (2));
- protection from discriminatory treatment (Article28 1(2)).

Regulations on prostitution have also become the foundation for the institutionalisation of discrimination against sex workers. A repressive approach to dealing with prostitution, in particular, punishment without addressing the roots of the problem, strengthens the social stigma and myth that sex workers are a social ill that must be eliminated. This approach is mainly based on the thought that the issue of prostitution is rooted in the degree of morality of the women, and ignores the issue of poverty surrounding them. Such a thought was voiced by a member of the Yogyakarta provincial government in his opinion about the Bantul regional regulation:

> "They defend prostitution using economic reasons. But this is evidently not so…there are still many good people that we have to defend other than this bunch of people with broken software…I would choose the good people in society. This is my perspective about this social ill."

This repressive attitude is also manifesting in the idea that prostitution is a result of changes in social values that occur in a society undergoing capitalisation. This way of thinking was

evident in a number of informants' rationalisations as to why a person becomes a sex worker. Some said it was because they, among others, "only want to appear sexy and live in luxury", "do not want to work hard"; also "because of the unlimited freedom that make people think they could have sex with anybody". This opinion about the development of free sex, especially, influenced the formulation of prostitution regulations, as happened in Tasikmalaya and Bantul, to extend to those who have sexual relations (outside of marriage) whether or not they receive payment for services. With this condition, the regulations on prostitution mix the issue of prostitution with other kinds of sexual relations, including rape.

By putting the issue of prostitution in the framework of morality, the initiators and champions of local bylaws on prostitution argue that the regional regulations were put in place "for the sake of the reputation and dignity of women" who might have or had become sex workers, and "for the sake of women to be protected from harassment of other parties". This argument was countered by a housewife in a focus group discussion in Tangerang:

> "The government should not regard the sex workers as the agitators of our husbands. If it continues to think only that way, this problem will never end. It is not the fault of the sex workers, but your husbands. Why should they want to romp around with sex workers?!"

For those who criticise the local bylaws on prostitution which use the repressive approach, these regulations have failed to define clearly the root causes of prostitution which rest on two levels. On the first level is the imbalance in gender-based relations of power between women and men. The framework of morality that is used to explain prostitution pushes women even further into a subordinate position where they are seen as temptresses and the ones who cannot rein in their lust. On the second level is ongoing impoverishment in Indonesia that pushes unskilled women without economic access into using their bodies to earn a living. The focus group discussions and interviews with women sex workers revealed that they were the backbone of their families. They came from poor groups in society. Becoming sex workers were their way to support their families. One religious leader explained that the facts of impoverishment should have compelled the state not to regard prostitution as just a problem of the morality of individual sex workers:

> "Women are treated only as objects…they only do that because their right, stated in the Constitution, that every citizen has the right to a decent living and job, is not fulfilled … [the content of the regional regulation] is a threat that if you do *this* you will be punished *thus*, a fine or imprisonment…the government does not take its responsibility seriously. If a member of society becomes a prostitute, that should be the government's responsibility, she should not continue to be burdened".

This line of thinking does not mean that those criticising the regional regulations on prostitution agree to let prostitution flourish or object to regulations on prostitution. On the contrary, the majority of informants were of the opinion that regulations on prostitution were needed to prevent more poor women being forced to enter the world of prostitution. Regu-

lations are also needed so that women sex workers are not further exploited or treated badly in the practice of prostitution because of their poverty. This thought demands comprehensive regulations, starting from prevention to effective programs put in place to ensure the self-reliance of those who want to withdraw from the world of prostitution. Included in these programmes should be the efforts to erase the social stigma of sex workers that prevent them from enjoying their fundamental rights without discrimination. Such regulations would be an appropriate response in line with the constitutional mandate to fulfil human rights, such as the right to special treatment and equal opportunities and benefits to be granted equality and justice (Article 28 H (2)). This cannot be achieved if the regulations exist only to criminalise prostitution and sex workers. A participant in the focus group discussion of university students in Indramayu emphasised the need for a more holistic approach to dealing with prostitution:

> "The government only bans them without thinking what happens after they quit their work. What will they eat? How could they live?"

This is also the thought behind the actions of a number of organisations in Yogyakarta and Bantul that have joined the Alliance Rejecting the Prohibition of Prostitution in requesting a judicial review from the Supreme Court.[15]

This study also found that the implementation of the local bylaws on prostitution was coloured by violence and abuse of power by state apparatus.[16] Physical, psychological, and sexual violence was committed mainly by the state apparatus responsible for the enforcement of regional regulations, in particular, the Satpol PP. In all the interviews with the representatives of the Satpol PP, it was maintained that each of their personnel had received directives and training. However, in the implementation, based on the views of the public as expressed in the focus group discussions, police attitudes were arrogant, although this does not apply in all monitored regions. The regional regulations indeed give a great deal of legal power to the Satpol PP as the enforcers of the local bylaws. Since the legal foundation disregards the presumption of innocence, members of the Satpol PP can arrest anybody they consider "suspicious" or are "using codes" as sex workers. Moreover, a woman could be arrested for appearing to be a sex worker, even if she was not in the act of providing sexual services. A woman can be arrested based only on her background, which later can become a justification for any discriminatory acts and violence perpetrated against her. In this situation, aside from losing legal protection (Article 28 D (2)), sex workers as citizens also lose their constitutional right to the feeling of security (Article 28 G (2)) and the right to be free from the threat of violent discriminatory treatment in any pretext (Article 28 I (2)).

Apart from committing violence and harassment, the apparatus' actions to shame sex workers by inviting journalists to join in the raids are sharply scrutinised, not only by groups of sex

[15] Up till this report was written, there was still no decision from the Supreme Court about this judicial review. In 2009 the Supreme Court decided to decline the submission for judicial review by claiming that the request had passed the permitted time frame, namely 180 days after the regulation was issued

[16] This is discussed further in part 6.2.2 of this report.

workers but also by various groups in society. In the focus group discussion in Yogyakarta on regional regulations, one of the resource persons proposed that the use of cameras be banned during the processing of their cases. Their arguments were not only about being shamed, but for privacy reasons, as many sex workers had been forced to become prostitutes and their families did not know what had happened to them. According to other informants, shaming sex workers before the camera was inhumane, as was expressed by a public figure who was also a former member of the legislature:

> "Through those cameras, they are publicised. I am rather [concerned] with that condition. The public see this not as an effort by the government to provide direction for the people, but rather to humiliate the women. That the women [sex workers] are indeed sinners, I already know."

As drawn from the findings in the monitoring process, Table 8 below concisely maps the ongoing institutionalisation of discrimination as the impact of the presence of local bylaws on prostitution, particularly those issued by the regional governments and parliaments of Indramayu, Tasikmalaya, Tangerang, and Bantul.

Table 8

**Institutionalisation of Discrimination by Local Bylaws on Prostitution**

| Monitored Local Bylaws | Locus of Discrimination |
|---|---|
| Indramayu Regional Regulation<br>Tasikmalaya Regional Regulation<br>Tangerang Regional Regulation<br>Bantul Regional Regulation | *Discrimination in intent/purposes and as an impact:*<br>The formulation of the content in the regulations that disregards the civil rights of women, including prostitutes<br>The formulation of content in the regulations that disregards the vulnerability of women, including poverty and gender inequality, which in fact calls for special treatment in addressing |
| Indramayu Regional Regulation, Article 1(f):<br>"Prostitution" is an act where a woman offers herself to have a sexual relation with a person of the opposite sex and accepts payment in the form of money or other forms. | *Discrimination in intent/purposes*<br>The formulation of the definition of prostitution that is based on the assumption that prostitutes are women, and the consequences of that formulation, limits opportunities for women to be treated equally before the law |

| Policies in Monitored Regions | Locus of Discrimination |
|---|---|
| Indramayu Regional Regulation Article 5 & 6<br>Tasikmalaya Regional Regulation Article 3 & 4<br>Tangerang Regional Regulation Article 4<br>Bantul Regional Regulation Article 4<br>Mataram Regional Regulation Article 24<br>(for the formulation of each article, see Table 4) | *Discrimination in intent/purposes*<br>The ambiguous formulation based on subjective presumptions has made women, because of their sex, the target in the implementation of the regulations. Besides restricting the movement of women, such a formulation results in wrongful arrests of women suspected of being prostitutes and causes legal differentiation which violates the right to equal standing before the law<br>*Discrimination as impact*<br>The prohibition of prostitution policy does not clearly define what elements of behaviour constitute prostitution, leaving it open to any subjective interpretation, and thus gives rise to legal uncertainty |
| Tasikmalaya Regional Regulation Article 1 (g) Prostitution is an act conducted by anybody intentionally and with the goal of looking for sexual gratification and or having sex or committing adultery outside of marriage with or without accepting payment in the form of money or in other forms.<br><br>Bantul Regional Regulation, Article 4<br>(for the content formulation, see Table 4) | *Discrimination in intent/purposes*<br>The definition of prostitution that uses marriage as a distinguishing factor has the potential to generate discrimination against groups in society that are not formally married. Discrimination based on the status of marriage is a form of discrimination emphasised in the Convention on the Elimination of All Forms of Discrimination Against Women which was ratified by the government of Indonesia in Law No. 7/1984<br>*Discrimination as impact*<br>The expanded definition of prostitution to include sexual relations without payment has the potential to deny female victims the right to justice because it mixes the issue of prostitution with sexual violence, including rape |

A statement from the focus group discussion of representatives of critical groups in Banten serves as a final note to this section. A participant said that the institutionalisation of discrimination which was present in intent and as the impact of the issuances of the local bylaws on prostitution had also generated suspicion about the movement of people between districts.

Prostitution is regarded as a "cultural import" and sex workers are portrayed as "newcomers", who came to benefit from, and upset, the economic progress enjoyed in the region:

> "The issue is not about people becoming prostitutes, for example, in the case of this Tangerang Regional Regulation. The goal is not to protect the people, but to protect the region…. [It seems Tangerang] wants to be a closed area [for newcomers] because of the marginalisation of the natives due to the influx of newcomers…one of them [one way to stop the flow of the newcomers] is [by prohibiting] prostitution."

Similar thoughts were also voiced in an interview regarding the Bantul regional regulation. One of the members of the regional legislature confirmed the existence of "natives" versus "newcomers" discourse when the Bantul regional regulation was being formulated. The Bantul government felt they needed to protect the people of Bantul from bad influences brought into the area by "outsiders" and felt the Bantul government should have not used the regional coffers to rehabilitate non-Bantul people. The informant did not feel comfortable with this line of thinking:

> "I am a nationalist…how can I differentiate between people—in who comes from Kalimantan, or who comes from Bantul. The Law on Regional Autonomy has also proclaimed it [i.e., the nationalistic principle]…"

The increase in such xenophobic attitudes makes clear that the conception and implementation of the regional regulations on prostitution also undermines the spirit of nationalism among the people, besides institutionalising discrimination against women.

## 4.3. Nullification of the Rights to Legal Protection and Certainty Through the Regional Policy (*Qanun*) on *Khalwat*

Aceh is the only province in Indonesia to have officially enacted Islamic Law. This was stipulated in Law No. 44/1999 on Aceh's Special Status, reinforced in Law No. 18/2001 on Special Autonomy for Aceh and further strengthened in Law No. 11/2006 of the Government of Aceh. Based on Law No. 44/ 1999 and Law No. 18/2001, various regional regulations (called *qanuns* in Aceh) have been issued in (Islamic) Sharia. Of significance, among others, is the regulation on the prohibition of *Khalwat* with flogging as punishment. Although later the Law No. 18/2001 was claimed to be overridden by Law No. 11/2006, the regulations issued on the basis of Law No. 18 continue to be in effect till the present day.

*Khalwat*, according to Regional Regulation No. 14/2003 Article 1, is defined as "the act of two or more adults of opposite sex who have no marriage or kin relationship being in close proximity".[17] In short, the *qanun* prohibits adult men and women without marriage ties or blood relations to be together without other people around, or in a place where intimate contact is

[17] *Mukallaf* means an adult. *Muhrim* means a close relative—*Translator.*

possible. The regulation states that *khalwat*/indecency (or fornication) is one of the acts of disobedience (*mungkar*) to God's word prohibited in Sharia and is also against the Acehnese customs, because the act could tempt a person into adultery. Every Muslim in Aceh who commits *khalwat* faces punishment in the form of three to nine strokes of the lash or a fine of Rp 2.5 million to Rp 10 million [USD. Aside from the *qanun* on *khalwat*, flogging is also the punishment for anyone violating Qanun No. 12/2003 on *khamar* (alcoholic drinks) and Qanun No. 13/2003 on *maisir* (gambling).

The formulation of the law on *khalwat* puts women in a situation without legal certainty by discarding the principle of the presumption of innocence. Legal certainty is one of the citizens' rights guaranteed in the Constitution (Article 28 D (1)). The explanation in the regional regulation on *khalwat* is ill-defined and in fact adds to the confusion about when the acts of two people being together constitute a legal violation. A female academic in Banda Aceh expressed confusion over the issue:

> "That the way people socialise must be regulated…I think the purpose of this regional regulation is *really* political. If its goal is to the benefit of the community, where is this benefit? It regulates a passive action, you do not have to do anything [to be accused of committing crime]…if I'm accused of *khalwat,* [it may be that] I could just be sitting there doing nothing, and someone comes and talks to me and I say nothing."

In the interpretation of *khalwat*, a number of informants argued that no matter where and when, a man and a woman should never be together alone, either in a room working, or driving or riding tandem on the roads. A member of the Aceh regional legislature who held such a view also based his arguments on his understanding of a statement by the Prophet Muhammad (*hadith*) that if two people of opposite sex were in one place, the third was Satan. Anyone can report on people they suspect of committing *khalwat*. A number of informants suggested that there should be exceptions in the regulations for people working together, for example. A member of the Banda Aceh regional parliament said that without such exceptions, new problems would arise from treating alike the conditions that might cause people of different sexes to be in the same room. There are many situations in social relations between men and women that have no sexual connotations, even if they are together alone. An example can be seen in Illustration: Case 3 below:

*Illustration: Case 3*

**Legal Uncertainty in the *Khalwat Qanun***

I had this experience when I was consulting my lecturer about my thesis. We had to enter a room. I was confused for a while when the lecturer said, "Please keep the door open. I am afraid this could be viewed as *khalwat*." He said that laughingly. But his words really struck me, that it was very difficult to interpret *khalwat*. That lecturer was not an ordinary person, but if even a professor had to say such words…. There should be a clear legal

interpretation so that when implemented there is no confusion, even for the Sharia enforcers – *Wilayatul Hisbah* (WH). If not, WH would always be viewed with terror; that is very scary. People would look at WH with fear, maybe more than the fear of a ghost." (Participant of a focus group discussion of representatives of women human rights activists, Banda Aceh)

In practice, the argument that *khalwat* could happen anywhere, anytime, has often been used in the enforcement of the ambiguous legal regulation. This results in the criminalisation of women in all kinds of social relations with the opposite sex. With this *khalwat* regulation, the accused, particularly the woman, is regarded as a criminal who committed indecent acts and is fit to be shamed. For example, a victim who agreed to have an interview with Komnas Perempuan said that she was arrested while sitting with her boyfriend in a food stall on a roadside. About 4 pm, the stall was raided by the Wilayatul Hisbah (WH). The unmarried pair was made to sit on an open-backed (pickup) truck to be taken to the WH office. Along the way, the truck constantly stopped where there were crowds, so that everyone could see the two. Journalists were invited to take their pictures. This treatment made the victims very afraid, and not only because of the threats and sneering from people along the way. The woman was afraid of the shame if her pictures were published and she was expelled from her university. Although they did not do anything wrong, the victim and her boyfriend were interrogated for hours and were only allowed home after the uncle of the boyfriend pledged a guarantee.

As was revealed time and again in the focus group discussions of women who were the heads of their households, female first-time voters, and civil organisation activists in Banda Aceh, Lhokseumawe, and Bireuen, the public tend to understand *khalwat* as adultery, not only a man and a woman being together in isolation. This view was evident in the many cases of people accused of *khalwat* that were reported to the WH. Those accused were forced to confess to having sexual relations. Three of the four women victims interviewed by Komnas Perempuan also said that in the accusation of *khalwat* against them it was alleged that they had had sexual relations with men who were not their husbands.

In cases where the charge of *khalwat* alleged adultery or sexual relations, the process of arrest and interrogation of the accused, in fact by the WH, was often violent. Participants in the focus group discussion of representatives of women sellers of *rujak* [a kind of fruit salad] at a beach said that the WH officials acted with macho aggression. They told of how the WH truck entered the tourist area and the WH "troops" went directly to the *rujak* stalls. Often they acted as if they were going to attack the seated customers, making loud intimidating noises with their footsteps. As a consequence, their arrival caused unrest among the *rujak* stalls. In the cases of wrongful arrests, the WH was reported to have not respected the principle of the presumption of innocence. Intentionally, the WH trucks would often stop in crowded places to parade the pairs being arrested. When interrogating the "violators" of the *qanun*, the WH officials were intimidating and also resorted to violence, by way of shouting, slapping, or

throwing things at the victims. Illustration: Case 4 describes the experience of a woman, a household head, who was violently abused by the public and WH, after she was accused of having violated the *khalwat qanun*. The WH in the enforcement of the regional policy tends to conduct arbitrary arrests and torture which are in violation of the constitutional rights of citizens (Article 28 G (2).[18]

*Illustration: Case 4*

**The Criminalisation of a Widow**

One day at the end of 2008, about 8 pm, when N (a widow with three children) was talking with a male friend who was a guest at her house, two young men from the neighbourhood came and forcefully took away the male guest. N asked the youths what the crime was, but they didn't answer. Later N learned that her guest was beaten by the two youths and accused of committing *khalwat* with N.

The next day, N was called to the office of the village head. She was accused of *khalwat* with her male friend. N rejected the accusation, but was ignored. N was reported to the office of the WH, and at the same time was banished from the village.

At the WH office, N was detained for two nights. Since there was no bed, N rested on an office table. N had to buy her own food. During detention, N was continuously pressured to admit that she had committed *khalwat*. N refused, she said:

> "Although I did not read the *qanun* I knew that what I did was not in violation of any law. We were not in a dark place, only in the house. There were lights. There were children, a younger sibling. That was not being together in isolation…the time was normal for a guest to visit. Or should a widow or a widower not receive guests?"

During interrogation, N was pressured to admit to having a sexual relationship with the male friend, because he had signed a confession that they had had sexual intercourse twice. N rejected the statement, and told the WH that the confession could be a ploy from the man to force her to marry him. The objection was responded to cynically, and the officers even threw a drink bottle at her.

After two days in detention, N was finally released after signing an agreement not to repeat the wrongdoing. Even then, N could not return to her village because she had been banished. Reminiscing on the event, N said:

> "In the past men warred against men, maybe the time will come when women will go to war for the sake of justice. Look at me, justice for me had been trampled…just because I received a guest, I was judged as immoral and banished from the village…if I have the opportunity, I want to go to [a legal aid foundation] to have a consultation. I want to know more…. Even if we can't help ourselves today, maybe someday we would be able to help others."

Another problem faced by the Aceh women in relation to the enforcement of the *khalwat* regulation is the unequal treatment before the law, in comparison to that for men. This is

[18] Section 6.2.2 elaborates on violence at the hands of state apparatuses.

related to the morality issue in the regulation about the prohibition of *khalwat*. In a patriarchal society, including Aceh, women are burdened with the obligation to become a symbol of morality for their communities. Consequently, in the enforcement of the *qanun*, women feel the impact the most. Women are put in the position where they are scrutinised, even spied upon. The more so for widows, burdened with stigma in the eyes of society, as was demonstrated in Illustration 4 above. One of the participants in the focus group discussion of representatives of women educators in Bireuen commented:

> "In an arrest, the woman bears the brunt of the interrogation, the man only needs to listen to a few words and he is done. It is worst [when] the interrogators are men…. Afterward, it is the woman who is blamed the most. That is what we cannot accept. It is often the woman who is blamed."

For the women accused of *khalwat*, the pressures to admit to having sexual relations are often multiplied when the men have admitted to it first. The men may have confessed because they are tortured, or they want to force their will to marry the women, as mentioned by a number of informants in the focus group discussions of representatives of women who head their households in three monitored districts in Aceh. This happens because of inadequacies or holes in the regulations, the absence of the presumption of innocence in the enforcement of the *khalwat qanun,* and the tendency of the WH and local people to marry off people accused of *khalwat*.

For the minority groups with same-sex and transgender orientation, the enforcement of regulation on *khalwat* and Sharia in general puts them in a position where they continuously experience discrimination. "We are considered queer and therefore become one of the targets to be straightened," said one of the participants in a focus group discussion in Banda Aceh. These people are always under suspicion. As a consequence, they think that their access to public spaces is more limited than before, including the access to health services and to work:

> "It's difficult for us to open a salon business because it is always tied to *khalwat*. But we make a living from this line of work."

Another person told how she was arrested three times with her older sister. As a consequence, her sister felt traumatised. "Now, wherever we go, we bring with us our family ID card," she said. Some of the transgendered informants choose to wear the *jilbab* when they go out "to be safe" from arbitrary arrests.

The multi-interpretable formulation of the regulation on *khalwat,* the enforcement of the law using violence, and the criminalisation of social interaction which is not a crime cause women in Aceh to lose their constitutional rights as citizens to:

- the guarantees of legal protection and fair legal certainty (Article 28 D (1));
- equal standing and treatment before the law (Article 27 (1), 28 D(1));
- be free from fear of doing things within their fundamental rights (Article 28 G (1));
- protection from torture or degrading and inhumane punishment or treatment (Article 28 G (2)).

All the problems described above are rooted in the multi-interpretable formulation of the law that causes legal uncertainty. Worse, this regional regulation criminalises a social act, that is a relationship between two adults of opposite sex who are neither a related by blood relation nor marriage, which is not a crime in the national legal system. Therefore, the regional regulation on *khalwat* has become an entry point for the institutionalisation of discrimination in the form of the nullification of the rights to legal protection and certainty of the people of Aceh in general, and especially of the women of Aceh. In the context of the integrity of the national law, this situation has undermined the constitutional rights of the inhabitants of Aceh to equal status and treatment before the law (Article 77 (1), 28 D (1)). People in Aceh are not free from fear to do things within their fundamental rights (Article 28 G (1)), such as freely socialise, because of the criminalisation brought about by the *qanun* on *khalwat*. Moreover, this regional regulation also introduces public flogging as a form of punishment, which is also not recognised in the national legal system. The purpose of public flogging is to shame the wrongdoers and to discourage others from doing the same. From the monitoring on the implementation of public flogging, which was conducted separately from this monitoring,[19] it was found that this kind of punishment is inhumane and violates the Constitution (Article 28 G (2)).

Substantial amounts of information relating to the feeling of unfairness among people as a result of the regional regulation has also been compiled from interviews with various parties involved in the discussions related to propositions to revise the *khalwat qanun*, particularly the parts related to the compilation of the *jinayat* (criminal) law. This information is said to have become material for consideration in the deliberation process. However the existing draft on the revisions repeats similar problems. In the draft, the prohibition of *khalwat* and the punishment of public flogging that are the key problems remain. Furthermore, in the draft there is a prohibition of *ikhtilath* (to be in an intimate relationship, dating) which is also a prohibition that is not recognised in the national legal system. This draft also regulates rape. Although the definition of rape refers to the international criminal law, the regulation confuses the boundary between sexual violence in the form of rape and the rules regarding morality such as *khalwat*, *ikhtilath*, and adultery. At the time of writing this report the *qanun* bill was still being deliberated. Komnas Perempuan hopes that the talks about the *qanun* bill involving leaders and the people of Aceh, including groups vulnerable to discrimination, will result in a regional policy that contributes to the feeling of justice, especially for women, who have particularly borne the burden of injustice during the armed conflicts that happened in the region.

[19]See the Komnas Perempuan Reports,"As Victims Also Survivors: The Experience of Acehnese Women in IDPs Camps", Jakarta: 2006, and "Seeking And Accessing Justice: The Experience of Acehnese Women from One Era to the Next", Jakarta: 2007.

## 4.4. Exclusion of the Right to Protection Brought About by the Local Bylaws on Migrant Workers

Monitoring of the local bylaws on migrant workers was conducted on Regional Regulation No. 15/2002 on the Protection of Indonesian Migrant Workers (TKI) Hailing from Cianjur District, Regional Regulation No. 13/2005 on the Recruitment of Indonesian Migrant Workers (TKI) Hailing from Sukabumi District, and Regional Regulation No. 12/2006 on the Placement, Protection, and Rehabilitation of Indonesian Migrant Workers Hailing from East Lombok District. The governments of these three concentrated areas of migrant workers state in the regional regulations that the issuances of these policies are a part of their efforts to fulfil their obligation to guarantee the availability of employment and to provide legal protection to the residents of the regions who are going abroad to find work.

Of the three monitored regional regulations, only the East Lombok regional regulation really pays attention to the efforts to provide protection for the migrant workers in their work places; however, there is still a need for a deeper understanding of the forms of protection that respond to the specific vulnerabilities of women migrant workers, for example, those related to protection from sexual violence. This regulation states that one of the forms of protection is the limitations on the minimum age of workers, which is 18-years old, in line with the Law of Child Protection, so that women migrant workers being sent abroad would already have emotional maturity. This minimum age limit is indeed important to prevent a child from entering a job that may be dangerous for him or her. But for women, the vulnerability of becoming victims of sexual violence does not depend on emotional maturity but rather on the imbalance in power relations between women and men and between employees and employers. Although there is space for improvement, taken as a whole, the East Lombok regional regulation is a legal breakthrough in the efforts to protect migrant workers.

**Regional Regulation No. 12/ 2006 on the Placement, Protection, and Rehabilitation of the Indonesian Migrant Workforce Hailing from East Lombok District**

The Regional Regulation of East Lombok was a legal breakthrough in the protection of migrant workers. This regional regulation explicitly prohibits the placement of workers in situations akin to slavery and includes articles aimed at protection. Articles include protection via procedures (Article 54-73); protection through regulations on costs (Article 74) and protection through regulations on the defense of workers (Article 75-78).

The Regional Regulation of East Lombok also regulates the settlement of disputes and public protests, to ensure access for families, the public, or non-government organisations to assistance from the Workers' Defense Team formed by the regional government.

On the other hand, the regional regulations of the Cianjur and Sukabumi districts on migrant workers concentrate more on pre-placement issues about permits, levies, and costs of establishment, rather than outlining the efforts to fulfil the rights of the migrant workers. Although titled "Protection of Workers", not one of the articles in the Cianjur Regional Regulation

explicitly states that 'protection' pertains to protecting the rights of workers or explains how protection is achieved. Meanwhile, the Sukabumi Regional Regulation contains one article that specifically deals with protection (Article 13). However, the article only frames the possibility of coordination between the regional government, the central government and related agencies in the repatriation of workers.

The problems of migrant workers, including those from Cianjur, Sukabumi, and East Lombok, are complex from the moment of departure to the time they return to their home regions. The complexity of the problems is related to the widespread impoverishment in the regions, extortion of prospective workers by middlemen and recruitment agents, widespread corruption at many levels of the government agencies that have authority in administration of the dispatch of workers, minimum supervision during the preparation process of prospective workers at training sites, and limitations in the capacity to provide protection to migrant workers in their work places. There are many reports about the poor conditions of exploited migrant workers such as long work hours, duties not included in contracts, substandard living conditions, unpaid salaries, levies that workers have to pay, discrimination rooted in the fear of foreigners (xenophobia), torture, sexual violence, and even slavery.

Women migrant workers, because of their gender and lines of work, work mostly in the informal sector and are therefore seldom protected by the labour law either in their country of origin or the host country. They are especially vulnerable to exploitation and gender-based violence. Therefore, women migrant workers need special treatment to get the protection that will really guarantee their rights as workers and as citizens working abroad. The complexity of the related problems requires the regional governments to be very careful in formulating effective local bylaws, including, if needed, the provision of special treatment for women migrant workers to enable them to receive equal benefits in the migration process. The right to special treatment is guaranteed by the Constitution, Article 28 H (2).

Regional Regulations on migrant workers that stress the administrative aspects but disregard the vulnerability of migrant workers, especially women migrant workers, to exploitation, discrimination, and violence are a violation of the constitutional rights of citizens to:

- the guarantee of protection from violence and discrimination (Article 28 B (2), 28 I (2));
- special treatment (Article 28 H (2));
- a decent job and livelihood (Article 27 (2)).

The absence of the guarantee of protection in these local bylaws has caused migrant workers, especially women migrant workers, to lose their constitutional rights to protection from violence and discrimination (Article 28 B (2) and 28 I (2)), a condition which has impacted negatively on their opportunities to work in decent and humane conditions. The lack of measures to facilitate the guarantee of protection has made the regional regulations for migrant workers of Cianjur and Sukabumi districts a platform for the institutionalisation of discrimination, as summarised in Table 9 below:

Table 9

**Institutionalisation of Discrimination by Local Bylaws on Migrant Workers**

| Monitored Local Bylaws | Locus of Discrimination |
|---|---|
| *Cianjur Regional Regulation No. 15/2002, Article 2 Article 2*:<br>The placement of Indonesian migrant workers (TKI) as stipulated in Article (1) is carried out in line with their competence to work in various kinds of jobs or positions *and is not in conflict with moral and religious norms* and was rightly and correctly based on the principle of equal rights without discrimination. | *Discrimination as an Impact*<br>Disregarding the need for special protection for women migrant workers.<br>*Discrimination as an Impact*<br>The inclusion of "the moral and religious norms" as one of the prerequisites for job potential limits work opportunities because of different standards of moral and religious norms.<br>*Discrimination as an Impact*<br>The religious norms prerequisite has the potential to diminish the rights of women to work. In the patriarchal view, only women who get permission from their husbands and do not leave them for too long are considered not to be in conflict with religious norms. |
| *Cianjur Regional Regulation No. 15/2002, Article 19:*<br>PJTKI (Indonesian Agency for Migrant Workers) or PJTKI regional branches that dispatch women workers to be housemaids or domestic helpers, babysitters, nannies, and nurses for the elderly, do so *in line with the allocation control of Indonesian migrant workers*, which is regulated according to existing laws and regulations. (*Italic emphasis by author*) | *Discrimination in intent/purposes*<br>Restricting women to only being able to work in certain kinds of jobs, closely tied to the gender-based stereotypical role of domestic duties and nurturing.<br>Limiting the rights of women to work because the lines of work they are restricted to have become part of *allocation control*, which is based on the Decree of the Minister of Manpower and Transmigration (Kepmenakertrans) No. KEP-104A/MEN/2002 Section I Article 1 Article 5, and Section III Article 35.36,27, 28.<br>Discriminating against women because gender differentiation in job allocation in this regulation content is applicable only to female workers. The regulation about allocation control does not affect men. |

| Monitored Local Bylaws | Locus of Discrimination |
|---|---|
| Regional Regulation No. 13/2005 on the Recruitment of Indonesian Migrant Workers (TKI) Hailing from Sukabumi District. | *Discrimination as an Impact*<br>Disregarding the special needs aspects in the protection of women migrant workers, even though Article 2 stipulates that "the placement and protection of migrant workers or prospective migrant workers is based on harmony, equal rights, democracy, social justice, gender equality and fairness, anti-discrimination, and anti-human trafficking". |

Responding to a question in an interview about protection, the head of one of the districts that enforces such regional regulations on migrant workers admitted that "this regional regulation cannot accommodate and answer all the problems of migrant workers". The absence of protection in the contents of this regional policy is reflected in the title, "Recruitment of Prospective Workers", which appears to sideline the obligation of the state to provide protection. One public figure commented on the lack of protection measures in the regulation:

> "As it is, [this regional regulation] is only administrative, while other rights are not regulated…. If a person works, for example, and gets paid, how far does that [payment] go to fulfil his or her needs and how about the right to health? While the worker is there [abroad], what happens if he or she is sick? … Many Indonesian migrant workers are treated unfairly, then their health deteriorates…. How is the safety of the workers guaranteed? And their individual rights?"

Both in Cianjur and Sukabumi, the regional regulations focus on administrative rules which ultimately create new problems for prospective migrant workers. Migrant workers are vulnerable to extortion in fulfilling the administrative requirements, and even fulfilling them does not mean freedom from exploitation and violence. This issue, among others, was raised by a law enforcer in one of the monitored districts:

> "The problems of female workers are more complex than the problem of drugs. In fact, the money generated is bigger than that of drugs, although both are illegal. Even when legal, there is extortion in Ministerial offices. Starting with recruitment—there are administrative levies or bribes. The prospective worker is then passed over to another person. She would be promised a certain amount in her salary but then she would be sold to another person. After that, she would be taken to another place, and be treated like who knows what. All of that needs supervision…what is the use of a regional regulation without sanctions? The sanctions have to put a stop to these exploitations. If a regional regulation has no sanctions, only directives, [the migrant workers] would not benefit but would rather suffer losses."

The disregard for the right to protection in turn causes migrant workers to become more vulnerable, especially female migrant workers who face various kinds of violence and discrimination. There continues to be public debate about whether a woman should be allowed to work abroad for a long duration, which is almost always more than one year. One of the religious leaders, an informant in this study, pointed out that these debates were often irrelevant because the majority of Cianjur women who worked abroad did so out of necessity. An informant who assists families of migrant workers facing difficulties gave an example:

> "Her husband lost his job, was jailed, for whatever reason could not provide for his family. What could be done in this situation? Someone had to replace him as breadwinner. In this crisis, the wife found a job abroad to take care of the daily needs so that her children would not starve."

In Cianjur, the focus group discussion of women who headed their households were informed that this issue was also used as a rationalisation for husbands to divorce their wives, or women had to end up divorcing their husbands because they were not granted permission to work. Such cases show that there is discrimination against women because of their gender, particularly in hampering their rights to independently choose whether to work or not. The local bylaws on migrant workers do not provide solutions to this problem. On the contrary, they reinforce the imbalance in power relations between men and women in decision making, and thus contribute to the violation of women's rights to be free from discriminatory treatment (28 I (2)).

The observations of this monitoring on four kinds of local bylaws outlined above bring us to the conclusion that there is ongoing institutionalisation of discrimination and violence against women. The institutionalisation of discrimination occurs in four forms. First, the institutionalisation of discrimination in the form of impairment of the right to freedom of expression brought about by the local bylaws on dress codes. Second, the institutionalisation of discrimination in the form of impairment of the rights to legal protection and certainty brought about by the criminalisation in the intent and as an impact of the local bylaws on prostitution. Third, the institutionalisation of discrimination in the form of nullification of the rights to legal protection and certainty brought about by the regional regulation (or *qanun*) on *khalwat*. The final form of the institutionalisation of discrimination is evident in the exclusion of the right to protection in the policies on migrant workers. Because discrimination has been institutionalised in this way, a number of women's constitutional rights have been violated, as summarised in Table 10 below:

Table 10

**Violations of Women's Constitutional Rights**

| Local bylaws | Women's Experience | Violated Rights | Guaranteed Rights in the Constitution |
|---|---|---|---|
| Dress Codes | Cannot dress how they wish | Right to freedom of expression according to one's wishes<br><br>Right to protection from fear to do things within one's fundamental rights | Article 28 E (2)<br><br>Article 28 G (1) |
| | Ostracised if they do not follow the dress codes | Right to be free from discriminatory treatment | Article 28 I (2) |
| Prostitution | Wrongfully arrested because of the disregard for the principle of the presumption of innocence | Right to legal certainty | Article 28 D (1) |
| | Women worried about going out at night and dressing as they wish | Right to protection from fear to do things within one's fundamental rights | Article 28 G (1) |
| | Women known to be sex workers are always the target of arrests, in all situations, and their protests if they experience violence are ignored | Right to equal standing before the law | Article 27 (1) |
| | Victims of wrongful arrests lose their jobs | Right to a decent livelihood | Article 27 (2) |
| | Impairment of women's rights to work at night | Right to be free from discriminatory treatment | Article 28 I (2) |

| Local bylaws | Women's Experience | Violated Rights | Guaranteed Rights in the Constitution |
|---|---|---|---|
| *Khalwat* (unrelated persons of the opposite sex being alone together) | Wrongful arrests because of the disregard for the principle of the presumption of innocence | Right to legal certainty | Article 28 D (1) |
| | Fear of social interaction with people of the opposite sex | Right to protection from fear to do things within one's fundamental rights | Article 28 G (1) |
| | Publically shamed in road processions and forced, with violence, to confess | Right to be free from torture or treatment that demeans human dignity | Article 28 G (2) |
| | Pauperisation experienced by women victims of wrongful arrests | Right to decent livelihood | Article 27 (2) |
| | Being the main target in the enforcement of this regulation because of their gender | Right to be free from discriminatory treatment | Article 28 I (2) |
| | | Right to equal standing and treatment before the law | Article 27 (1), 28 D (1) |
| Migrant Workers | No protection, particularly from sexual violence | Right to protection from violence and discrimination | Article 28 B (2) |
| | | Right to special treatment | Article 28 H (2) |
| | | Right to a decent livelihood | Article 27 (2), Article 28 D (2), Article 28 I (1) |
| | Limitation of work opportunities (a) because of gender differentiation in lines of work and (b) because women who go abroad to work are considered to have acted against the moral and religious norms | Right to be free from discriminatory treatment | Article 28 I (2) |

# Chapter 5

# Deficit in the Quality of Democracy

Monitoring of the local bylaws on dress codes, the prohibition of prostitution, *khalwat*, and migrant workers shows that the policies have become a platform for the institutionalisation of discrimination, born out of an emphasis on procedural democracy in the process of their formulation. The prioritisation of procedural democracy occurs because the legitimacy of the local bylaws is solely based on the evaluation of how far the formulation process has fulfilled aspects of procedural techniques, despite the fact that they ignore the substance of democracy. There are five main characteristics in the emphasis on procedural democracy that can be divided into two categories: the procedures and substance of democracy. In the procedures of democracy, the process of policy formulation exploits deficiencies in the mechanisms of public participation and accountability and allows for the tyranny of the local majority. In the substance of democracy, the process of policy formulation gives precedence to image politics, allowing for gaps in substantive protection and for the state to intervene excessively in issues of religion or morality. The emphasis on procedural democracy signifies a deficit in the quality of democracy and could bring Indonesia into a crisis because it threatens the structure of the nation-state of Indonesia.

## 5.1. Procedures of Democracy

Regional autonomy has been chosen as an instrument to promote democracy in Indonesia where, as affirmed in the 1945 Constitution, sovereignty is in the hands of the people (Article 1 (2)). With regional autonomy, the distance between the people and their leaders is narrowed to allow for situation more conducive to public accessibility and accountability in all aspects of governance, including in the formulation of policies. Law No. 32/2004 on Regional Governments was created to ensure that this process of democratisation would run smoothly. One of the ways this is achieved, as underscored in the law, is through the principle of transparency in the formulation of regional regulations (Article 147 (g)). Furthermore, Article 139 (l) states that the communities have the right to provide inputs either orally or in writing during the preparatory phase or deliberation of regional bills.

This study found, however, that in practice, guidelines set out in Law No. 32/2004 which are the foundation for the implementation of regional autonomy have not been followed in the formulation process of local bylaws. Exploitation of deficiencies in processes of public

participation and accountability, abuse of the concept of "local majority", and the continuing practice of corruption and abuse of power are three characteristics that have influenced the formulation of discriminatory local bylaws. This situation obstructs the rights of citizens to actively and equally participate in the formulation of law and governance, as guaranteed in the 1945 Constitution Article 27 (1), Article 28 D (1) and Article 28 D (3).

### 5.1.1. Exploitation of Deficiencies in the Processes of Public Participation and Accountability

> "I've never participated (in the formulation). It's only now, that I know about the regional regulations!" [Simultaneous answers of the participants of the focus group discussion representing female heads of households, Tangerang]

Less than 10 percent of the participants in the 98 focus group discussions conducted in this monitoring study have ever participated in the formulation of a regional regulation. In fact, they have not even read the regional regulations issued by their regions, including the monitored policies. Of the few with some knowledge about the policies, most were representatives of organisations which had always been critical of the regional governments or were at one time asked by the regional governments for their opinions as representatives of established civil society organisations, particularly mainstream women's organisations, such as Aisyah, Muslimat, Fatayat, Kowani, and Majelis Taklim. However, representatives from other women's organisations, either those working in the areas of service provisions for women victims or more broader gender equality, said that it was difficult for them to actively and consistently be involved in the policy formulation because of limitations of human resources in their organisations. Access for women at the grassroots to get involved in policy making is practically non-existent. Yet they are the ones to be most affected by those policies. An informant from the women's empowerment bureau explained this situation as follows:

> "Many of the regional regulations affecting or targeting women did not involve women in their formulation…. So, we can see that in the processes of the formulation of the regional regulations there's an imbalance in terms of quantity. We can imagine that, for sure, the end product would contain other's considerations [not women's]."

Differing views on public participation were held by informants at executive levels of local government and the legislatures of the regions that initiated and supported the enactments of the monitored local bylaws. In the case of the regional regulation on the prohibition of prostitution in Bantul, for example, the government executives and the legislature involved in the policy formulation declared that they pursued all avenues to gain public inputs. The initiative for the regional regulation emerged following reports from the public about the boom of prostitution in the regions of Parangtritis and Parang Kusumo. The policy went through the process of academic drafting, as well as polling via local radio and television stations. In 2006, following a comparative study in Tangerang, the regional parliament conducted the first and

last public hearing. According to one of the heads of the special committee of the Bantul regional parliament on this regional regulation on prostitution, no one spoke out against it:

> "Talk about democracy, talk about process, oh we were very good. We had interactive dialogue on radio stations. Those who supported the revoking of the regional regulation on the prohibition of prostitution only made up a bit more than 24%. Those who agreed to keep the regional regulation made up more than 74%.... [In the public hearing] we invited all…representatives of Muhammadiyah, NU, Fatayat, Anshor, Nasyatul Aisyah. There were representatives from IPN, GPNU, the pimps, the sex workers that organized themselves under Indonesian Women Coalition. Not one of them rejected…. Maybe they became afraid, because there were elders of the communication forum of *Pesantren* [Islamic Boarding School], leaders of Muhammadiyah, and Aisyah present."

A similar view was expressed by one of the Indramayu legislators when responding to the question on how far the formulation process of this policy had involved the diverse groups in society:

> "All elements including the groups owning entertainment services were invited. MUI, religious leaders, Islamic leaders, religious organisations, NGOs in the field of protection of women, including owners of cafés, discotheques. We socialised…. No one [rejected]. Who would dare to stage a demo? Except maybe in a Western country."

This study has found that the members of the legislature and the executive branch were more concerned with legitimising the policy content in their efforts at organising the procedures in policy-making. All participants from the critical groups and the groups of people affected by the discriminatory local bylaws said that up till now there has been no effective and accessible system in place for substantive public participation. For example, invitations to participate in public consultations often arrived late, in fact just one day before the event. The material for discussion was not distributed beforehand, but rather distributed during the consultation. This meant that those attending were unable to fully digest issues or to contribute thorough and well-considered ideas.

Whenever this deficient system was criticised, organisers responded with an apology, explaining that the disorganisation was due to a "technical error". This excuse was then used time and again. Even when members of the public got to attend the public hearings, there was no practical system in place to provide opportunities for them to voice their opinions freely. Public hearings that were supposed to be a space for public debate had in fact become a means to pressure or intimidate and judge the groups that reject or are critical of the concepts of the regional regulations. Those who opposed or questioned the policies were easily stigmatised as being "immoral or irreligious". Additionally, the executive and legislative institutions had no procedures in place in to ensure that the various public opinions became considerations that were taken seriously in the final process of policy enactments. Thus, the public consultations were only used as a means to demonstrate that the public obediently followed the procedure principle in attending. However, the substantive concerns of the public were disregarded. One

religious leader, who was invited several times to participate in the policy making process in his region, voiced concern over this situation, among other things:

> "Most of the hearings were conducted only as a front to fulfil the prerequisite to gather the stakeholders. Automatically at the time we signed in [to introduce ourselves], we would say which organisation we represented …when we gave our opinions, they were merely listed. We don't know whether they were considered during confirmation at the full meeting of the legislature, besides being just used as proof to show that so and so was present during whatever meeting. So the attendant lists were only used as a means to give [the policies] legitimation."

A similar problem occurred during the media polls by the initiators of the policies. The way the polls were conducted was more to guide the public to agree with the ideas being presented. There was no process in place to ensure that different public opinions compiled from the polls were calculated in the deliberation of the policy bills. An academic, who was invited to participate in the deliberation of a regional bill on the prohibition of prostitution said that:

> "If the public are asked whether they agree to a regulation on prostitution or not, of course all will say they agree. I also agree. But what kind of regulation? The kinds of questions [that open public discourse] were never asked…. There was never an indepth study. Differences of opinion were often glossed over in the deliberation at the levels of legislators and the executive branch."

A number of legislators admitted that there was no way to ensure that the inputs from the public were considered in the material for deliberation at the full meetings of the legislative bodies. One of the legislators, a member of the Yogyakarta regional parliament, voiced disappointment over this situation:

> "In the parliament there were no healthy debates, where people attended with their heads, actively listening, debating with their perspectives. This never happened. Those who came only did so to cast their votes…steered to the right or left by their parties. So there never was a quality decision. No depth. The rules of order in the national parliament and the regional parliaments are only administrative, in making the legal process legitimate according to the law but there's no room to debate an issue intellectually."

The limited scope for substantial public participation is not only a result of the lack of procedures in the legislative bodies and the executive branch of local government to ensure that public opinions are heard and considered. The room for public participation is also narrowed by allowing intimidation to occur to social groups with differing opinions and in the meeting rooms during the deliberation of policy bills. Reminiscing on the process of the Bantul regional regulation on prostitution, an NGO activist said:

> "Those who agreed were usually the groups using party attributes or mass groups using Islamic flags as their means. So, they are not Muslim in the true sense, but people who called themselves Muslim. We participated in the first, second, and third (socialisation efforts)…then we felt there was no use anymore, a waste of energy. We were not taken

> seriously so we gave up. We already knew that it was impossible. We even worried that the consultations would turn physical…it's useless if you're not invited to engage in dialogue."

The worry that the threat would manifest as violence is not baseless. Groups of people wanting to critically examine regional bills in Tangerang, for example, have had to face attacks from mass groups. One of the organisers of the factory workers communities in Tangerang told of their experience of this kind of situation:

> "At the time we were having discussions on the rationale, why should there be regional regulation [on prostitution], what was the rationale for them. We engaged members of parliament, city officials, MUI, to learn about the regulation. We are the workers, and we did not understand [the regulation]. So we asked help from our friends at the legal aid agency. We wanted to talk together about the ambiguous articles. But we were attacked by the Majelis Taklim [a group of reciting Quran]. They said we wanted to annul the regional regulation. Indeed, what power do we have? We are just members of society whose salaries were cut for taxes every month"

The practice of prioritising procedural democracy has narrowed the meaning of public participation into no more than being present without the right to give voice. The scope for public participation becomes more limited when the practice of image politics is involved, as seen in the deliberation on the local bylaws on dress codes and prostitution, as well as, in Aceh, on *khalwat*. Image politics is a political strategy used to create nothing more than an image or to put forward a rival image to counter a stigma or a particular image that is considered damaging to the regions. Within image politics, the easiest strategy to deploy is identity politicisation through the use of symbols identifying religion, tribe or ethnicity, race or gender for political gain in power struggles or to defeat opponents. Identity politicisation by using religious symbols can be powerful enough to stem any opposition to the issuances of regional regulations. A response from a former district head, an initiator of a regulation on dress codes, when asked about his opinions on the opportunity for the public to voice opinions different than his ideas, illustrates how religion can be used to thwart opposition:

> "Nobody was brave enough to oppose. When at the time someone did object, I called him. Then I asked: "Are you Muslim? What kind of Muslim are you?" To those who oppose the wearing of the *jilbab* I asked, "Are you Muslim?" In the end they felt ashamed. No one opposed that."

### 5.1.2. The Tyranny of Local Majorities

The local bylaws that were developed for the purpose of image creation through use of a particular religious identity emphasise the rationale that the majority have the right to dominate all aspects of people's lives in the society and the state. This view goes against the Constitution that guarantees equal rights before the law and government for all citizens without

exception. Democracy is for all citizens; not only for the majority. This guarantee has been reaffirmed in Law No. 32/2004 on Regional Governments Article 28a that prohibits the issuance of local bylaws for the benefit of a certain group or to discriminate against other citizens, which, in this case, includes minority groups in the regions.

Although they understood the constitutional mandate stated above, all the informants in this study who were initiators and supporters of the discriminatory local bylaws argued that the issuances of such policies were brought about by pressure from the public. An example can be seen in a statement by a member of parliament of one of the monitored districts:

> "Talking about democracy is talking about a quantitative approach. No matter how good, without support from the public, it's to no avail. This is the weakness of democracy. Talking about democracy…sorry, your opinion is not accommodated because there's already been an acclamation of the legislature. Sorry! You would not win the battle of demonstration either. "You want to stage a demonstration, at most you must pay." I said so [to the opposing camps]. But we, if I call *Majelis Taklim* now, ten thousand could come. We have Fatayat, GP Ansor, and Pemuda Muhammadiyah. Many more. This is talking about quantitative democracy."

A similar statement was voiced by a member of the legislature from another monitored district. According to him, the monitored policies were not meant to discriminate against anyone. There was nothing wrong with the process of policy formulation because the members of the legislature only tried to carry out the wishes of the people in the regions:

> "The formulation was according to the wish of the people. They want various religious norms, social norms of their own region to be accommodated. So we made such policies. This was not a challenge, but there was an enormous amount of inputs from the people for the comprehensiveness [of the local bylaws].

The will of the people, which is actually difficult to measure, is often linked to the results of polls, ideally an instrument to gauge the public opinion. But, as one of the academic informants pointed out, the way the questions are posed in the polls can steer the results to conform to the wishes of the pollsters. A public figure of South Sulawesi said he did not doubt his decision to support the regional policy on dress codes because:

> "From the polling, the result was that 91.11% agree with the enforcement of Sharia."

These poll results were accepted, with no regard to the criticisms on how they were conducted, and used

**Law No. 32/2004 on Regional Governments Article 28 (a)**

Regional heads and deputy heads are prohibited to issue decrees that give special benefits to themselves, their relatives, cronies, certain groups, or their political cliques, which are in violation of the laws and regulations, detrimental to the public interest, and causes unrest among groups of people, or discriminates against citizens and/or other groups of people.

as a numeral legitimation that the majority wanted or supported a regional bill. Using "the will of the majority", a former district head who openly initiated local bylaws on religion and dress codes said that there was nothing wrong if a regional regulation benefitted only the majority and marginalised all others who did not agree:

> "[The goal] is for us Muslims. That is what regional regulations are for. Because at the moment we hold the power…."

With a similar statement, an academic in West Java affirmed that authoritative power must submit to and obey the will of the majority in a region. The "will of the people" in accord with "the will of those who hold the power" is the norm supposedly to be obeyed by everyone committed to the promise of democracy:

> "As a true democrat…do not be afraid of whomsoever is in power. It is our commitment in a democratic state. We are now using democracy in Indonesia. Kupang in the eastern part of Indonesia which has a Catholic majority, let them make regional regulations according to Catholicism. We don't mind, as long as it is the will of the people. If we as a minority feel inconvenienced, we have the right to protest. Whether our protests are heard or not, it is their business."

Various informants suggested that policies enacted in the name of "the will of the majority" that sidelined minority opinions would end in the standardisation and uniformity of identities and was not a wise move. Not only will the policies marginalise the minority, but they will also eliminate the plurality that exists within the majority themselves. A member of the West Java legislature argued that this was a violation of the consensus of the Indonesian nation. He further said:

> "It could be that the [initiators of the] regional regulations do not know the history of Pancasila, of why it has become the philosophy of our nation. They only know Pancasila as a political ideology. They do not know the meaning contained in the Pancasila. Our country is a law-based country. Religious laws do not have a superior position above other laws. If religious laws are above the state laws then what's going to happen? Religious politicking. Then…conflicts. Because of the current interests, it has been forgotten that according to the national consensus our country is a law-based country."

The national consensus as "the will of the majority" at the national level is a provision in the Constitution, as the foundation of the nation of Indonesia, intended to respect diversity, no matter how small the existing minority groups are. By using identity politics, the conceptual process of local bylaws that is used as an instrument for image politics has marginalised minority communities from the opportunities to participate in governance. Most of the informants representing minority groups, especially those not coming from the *adat* communities, stated that they were almost never asked for their opinions. A youth leader in the Banjar District elaborated on this exclusion:

> "Often the voice [of minority groups] is totally ignored because their number is less than one percent of the population of this district of which the majority are Muslims. They are so few that were they are grouped together, there might not be enough to even elect one candidate for the regional parliament. There is no way to ensure that their voice and opinions are heard in the formulation of public policies, including in the regulations on dress codes. This is even truer with the traditional Dayak groups, who live so far from the cities."

The critical groups and the social groups being targeted by the local bylaws confirmed that minority groups did not have a place in the formulation of the policies. Even if they were invited to a public hearing, there was no convenient way for the minority groups to voice their opinions. The minority groups were in a situation where they had to be extra careful in making statements so as not to offend the feelings of the majority. The following statement from one of the participants of a focus group discussion representing minority groups in Pangkep can be viewed as a reflection of the feeling of those marginalised, but at the same time also a reflection of the efforts to adapt to the tyranny of majority that is increasing in the practice of democracy in this era of autonomy:

> "Regarding the emergence of the policies with religious [symbols], actually during the development the minority groups were not pressured too much. But the fear to be treated unfairly by the majority is always there. Therefore, in our daily life, to respect the majority, we always try to adapt."

## 5.2. The Essence of Democracy

The essence of democracy, from the constitutional point of view, is about how the sovereignty of the people can be managed to achieve the ideals of the nation of Indonesia, that is a free nation, united, independent, just, and prosperous. To ensure that regional regulations hold true to these ideals, Law No. 32/2004 Article 138 (1) affirms that the regional regulations have to contain the principles of (a) guardianship, (b) humanity, (c) nationality, (d) social kinship (*kekeluargaan*), (e) archipelagic nationhood (*kenusantaraan*), (f) unity in diversity (*Bhinneka Tunggal Ika*), (g) justice, (h) equality before the law and government, (i) order and legal certainty, and (j) balance, harmony, and concord. The fundamental nature of democracy is left out of the process of formulating local bylaws when democratic procedures to ensure equal opportunities for every citizen to actively participate are not followed. Instead of fulfilling the accepted principles, the discriminatory local bylaws allow for image politics, a void in substantive protection, and excessive state interventions in the affairs of religion/morality. As a consequence, the regional regulations have gone ever further from the goals of the nation and the state of Indonesia as stipulated in the 1945 Constitution.

### 5.2.1. Image Politics

As defined earlier, image politics pertains to strategies used in power plays to promote a particular image for political gain or to defeat political opponents. Politicising identity through use of religious symbols, for example, is one of the ploys most often used in image politics.

A number of discriminatory policies were born from the wish of the initiators to create a regional image; often the image was a "religious" one, of "having faith and devotion", or an "Islamic" flavour. History is often referred to in the creation or promotion of a particular image, such as the struggles of ulamas in the regions. The image is also supported by regional mottos or slogans using terms such as "religious", "city of *santris*",[20] "*akhlakul karimah*".[21] Table 11 provides some examples of rhetoric used in the text of monitored local bylaws promoting certain images:

Table 11

**Image Politics in the Texts of Local bylaws**

| Monitored Local Bylaws | Rhetoric Promoting Certain Images |
|---|---|
| Regional Regulation (*Qanun*) No. 14/2003 on *Khalwat* (adultery) | "through the total comprehension and experience of Islamic teachings that extend over a long history…Aceh has long been known as the Veranda of Mecca" |
| Regional Regulation No. 1/2002 on the Regional Development Programme of Dompu District Year 2001-2005 | "the realisation of a prosperous and religious Dompu society for 2020 with the spirit of Ngahi Rawi Pahu" |
| District Head's Decree No. 48/2007 on the Designation of Tompo Bulu Village in Balocci Subdistrict and Mattiro Bombang Village in Liukang Tupabbiring Subdistrict as Villages with Islamic Flavour | "to realise the vision…as a more religious region" |
| Regional Regulation No. 05/2003 on Dress Codes for Muslim Men and Women in Bulukumba District | "…the realisation of a social situation that reflects the character of Muslim men and women, and with the efforts to realise a Bulukumba district society which is faithful and devoted" |
| Regional Regulation No. 32/2003 on the Prevention and Prohibition of Activities that Defile the Sanctity of the Month of Ramadan | "…that the society of the North Hulu Sungai region is a religious society…[so that] to worship in the month of Ramadan, there is a need for a conducive environment" |

[20] A *santri* is a devout Muslim. It also means a student of a madrasa or an Islamic seminary—*Translator.*
[21] A*khlakul karimah* is an Arabic term meaning "of good moral or character"—*Translator.*

The practice of image politics thus far has shown that politicisation of religious identity is most potent in stemming the flow of opposition to the issuances of the local bylaws. In this practice, there is no instrument more easily used in society than the woman's body. Control over women's bodies, in the name of religious-based morality, is considered normal in a patriarchal society. The following statement, made by the head of the Satpol PP in one of the monitored districts, reflects the public opinion on the local bylaws created for image politics by using identity politicisation of religion and women:

> "The policy is persuasive, and being persuasive isn't wrong. The majority of the residents here are Muslim. The *jilbab* is a sign of a Muslim, isn't it?"

The agendum to develop a religious image was also one of the rationales of the regional regulations on prostitution. Prostitution was defined as "conduct that goes against the norms of religion and morality". In the focus group discussion of women educators in Tangerang, the relation between the regional image and the regulation on prostitution was explained by one of the participants:

> "From the beginning the mayor declared that the city of Tangerang was an *akhlakul karimah* city. Then it was translated into several elements, one of them was the regulation on prostitution."

In Indramayu, for example, the issue of creating an image was popular among the policy makers and several groups who were disturbed about the image of their region as a source of sex workers. The sobriquet "*Randa Cilik Turunan Indramayu*" or RCTI[22] is a popular reference to the practice of easy marriage and divorce among youths of Indramayu that forces some of them to become sex workers. To change such an image the regional government was enthusiastic in producing and implementing the regional regulation on the prohibition of prostitution in Indramayu. One of the Indramayu parliamentary leaders said:

> "Although prostitution will never go away, at least the image that Indramayu is a supplier of sex workers might. And thank God that although it has not been eliminated altogether, we already know everywhere [that]…sex workers who claimed to have come from Indramayu actually came from out of town. Now, the district head here has implemented the *Misi Remaja*[23] [Religious, Progressive and Prosperous] programme. Thank God, [the bad image] has already changed."

The purpose of creating a regional image is also stated in the regional regulations on the protection of Indonesian migrant workers, as occurred in Cianjur district. Before that, the word religion was never mentioned in the regulations about migrant workers or in the highest regulations that existed at the time. Table 12 shows a comparison of the provision on the

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[22] "*Randa Cilik Turunan Indramayu*" means "Very Young Widow Hailing from Indramayu". The abbreviation RCTI also stands one of the more popular private television stations in Indonesia—*Translator.*

[23] *Misi* means mission. A *remaja* is a teenager. Here *remaja* is an acronym of "*Religius Maju dan Sejahtera*" or "Religious, Progressive, and Prosperous"—*Translator.*

placement of Indonesian migrant workers that came into effect in the year the Cianjur regional regulation was issued (2002) and the regulations that existed beforehand:

Table 12

**Comparison of the Provisions in the Articles on the Placement of Indonesian Migrant Workers**

| **Regional Regulation No. 15/2002 on the Protection of Indonesian Migrant Workers (TKI) Hailing from Cianjur District; Article 2 Article 1 and 2** | **Decree of the Minister of Manpower and Transmigration (Kepmenakertrans) No. KEP-104A/MEN/2002 on the Placement of Indonesian Migrant Workers; Article 2 Article 1 and 2** | **Decree of the Minister of Manpower and Transmigration (Kepmenakertrans) No. Kep-204/Men/1999 on the Placement of Indonesian Migrant Workers; Article 2** |
|---|---|---|
| (1)The placement of Indonesian migrant workers abroad can be applied to all countries with the provision that (a) the destination country of the placement guarantees the protection of the Indonesian migrant workers; (b) no harm is done to national interests; (c) the situation in the destination country poses no danger to the safety of the Indonesian migrant workers; (d) the destination country has diplomatic ties with Indonesia.<br>(2) The placement of the Indonesian migrant workers as stipulated in article (1) is conducted according to their competence to work in various kinds of jobs or positions and is not contrary to the norms of morality and religion and conducted with the principle of equal rights without discrimination, correctly, and orderly." (Author's emphasis in Bold) | (1) The placement of Indonesian migrant workers is conducted correctly, orderly, easily, cost effectively, speedily, and without discrimination.<br>(2) The services for the placement of Indonesian migrant workers begin with the pre-placement activities, and continue during the placement up to post-placement. | The placement of Indonesian migrant workers is conducted orderly, efficiently, and effectively to improve the protection, welfare of the workers, broaden the field of work, increase the quality of the work force and foreign exchange income with attention to the worth and dignity of human beings, the nation, and the state. |

It can be seen here that in the two decrees of the Minister of Manpower and Transmigration (Kepmenakertrans) there is no mention of the word religion. The addition of the word religion in the Cianjur regional regulation No. 15/2002 on the issue of the placement of Indonesian migrant workers abroad is suspected to be an effort at the regional level to adopt or to silence the voices of the groups that reject the placement programme of migrant workers hailing from Cianjur abroad, as was expressed by a religious leader in the region:

> "The head of the Cianjur district MUI at the time was one of the people disagreeing with or opposing the placement programme of Indonesian migrant workers. The reason was that there were so many cases presented in the mass media and there was no guarantee of protection for Indonesian migrant workers in their work places."

The inclusion of religious norms as a condition for the placement further constrains the fulfilment of women's rights to get a job. Various religious interpretations about women existing in society have positioned women as subordinates, for example, the prohibition for women to leave home without their *muhrim* (a close relative with marriage or blood ties). Additionally, women are stigmatised as wicked if they leave their homes for more than three days because the responsibility of women is to stay at home and serve their husbands. Another example of the subordination of women can be seen in the rejection of the fact that women can be household heads because men are commonly considered to be the sole breadwinners in households.

When asked about the reasons for the enactments of the local bylaws laden with identity politicisation, a leader of a noted Islamic-based mass organisation in West Java said that image politics was in essence a way for the political elites to mobilise public support for their own temporary political goals:

> "Sometimes the local bylaws are used to facilitate the modification of political environment in the elections of regional heads or to maintain power. So the regional regulations were in truth related to the political interests of the candidates of regional heads or to the fear of the regional heads about losing political support from Muslims."

Almost all resource persons representing academics, civil organisations, religious leaders, and key public figures also said that the only people who gained from these policies were the initiators. Yet Law No. 32/2004, Article 28 (a) clearly prohibits regional heads or deputy heads to formulate policies for their own benefits, or those of a certain group, or their own political group. The three following statements are examples of this view:

> "The formulators wanted to be seen as religious leaders. The religious side is only a formality." (An ulama, Banjarmasin)

> "The designation of villages as examples [of religious character] was only for cheap popularity. This can be seen in the designated villages. One of them was well-known as a source of ulamas. The other one was a model village, it can change its clothes to whatever whenever. That's why it's called a model village." (A media activist, Pangkajene dan Kepulauan)

"The policies are political. Since the vision of Dompu district is to be religious, the programme of "jilbabisation" is used as an example to show that Dompu is really religious. [This policy was created] for the sake of the powers that be…." (A youth leader, Dompu)

### 5.2.2. Lack of Substantive Protection

Regional regulations that were created for the purpose of image politics by using religious identity politicisation are not only advantageous solely for the political elites and their political groups. According to informants critical of such policies, the regional regulations ignored the problems that should have seriously been attended to by the regional governments. The following two statements, the first from a male ulama who was also an administrator of the MUI in one of the monitored regions and the second a homemaker, represent this kind of opinion:

"The policy is only a programme to become popular. It is a private matter. How come a person has to recite the Quran first to get promoted? The purpose of the programme is only to promote the government's image because, once again, the affairs of reciting the Quran and wearing the *jilbab* are the activities of Muslims."

"But I think the regional regulation on *jilbab* is not that important because there are still many other problems that need to be regulated in this region. What is the use of *jilbab* when many of the officials are still corrupt?" (A woman participant of a focus group discussion representing female heads of households, Bulukumba)

All the participants in the focus group discussions conducted in this monitoring study, that is 800 people in 98 discussions, stated that the main problem that should have been the focus of the regional governments was the issue of welfare or poverty eradication followed by the improvement of education quality and health services. But these three main issues were obscured every time the regional governments discussed the regional problems in the context of regional image creation using identity politicisation. In the context of prostitution, for example, a number of participants in the focus group discussion of women educators in Bantul argued that prostitution cannot be separated from the real issue of lack of employment opportunities and lack of prosperity for the people. A participant representing the executive level of governance in Tasikmalaya said:

"Ideally, before issuing the regional regulation, there should be a government policy that provides solutions to someone who has fallen so low as to choose

**Toward Substantive Protection**

*(North Hulu Sungai District Head)*

"The vision and mission of Amutai *Rawa Makmur 2020*, with the slogan *Amutai Kota Bertaqwa*, has to be applied in practical terms in programmes. Not limited to slogans only. There should be programmes with clear direction, clear targets, and reasonable budgets. The people need real results, not just symbols [in relation to the trend to issue regulations on religion]. We let that remain in the private realm. It is useless to force the issue. Moreover, it will become a new burden. The public, educators, and parents have to play a primary role in children's education in facing the globalisation of information".

> a life of prostitution. There are many reasons, but mainly there's an economic reason. The economic policies, the opening of new employment opportunities or new industries with a focus on female workers…this is the root of the real problem. We know prostitution will always exist as long as there are human beings, as in the past and the present. The purpose [of a regional regulation] is to minimise [the problem]; the regional government should not spend so much money ineffectively."

A similar opinion was also voiced in a focus group discussion in Indramayu, one of the districts that has issued a regional regulation on the prohibition of prostitution. One of the participants of the focus group discussion representing female heads of households in Indramayu district said that she did not agree with the criminalisation approach because:

> "If there is no employment, what can be done. So, if prostitution has to be eliminated, there should be employment opportunities."

The repressive and partial handling of the problem of prostitution has also caused the failure of the regional governments to guarantee protection for every citizen, including sex workers, as well as protection for the public in general. This issue was raised by the head of a district court, among others, in one of the monitored districts. He said that localisation or an allocated precinct might be a more effective solution than criminalisation in the regulation about prostitution:

> "Pity them who are burdened with economic problems. Prostitution has been a problem since the prophet Adam until the present. If there is localisation [a red light district], they will stay there. At the precinct a doctor comes every month, to give them injections to prevent the spread of venereal diseases…. Now look, if there is no special place for them, they become unmanageable, close to residential areas, to children. That is not good education…"

Similar opinions have been voiced by many people related to the handling of prostitution, which in essence call for the government to seriously take a stance in the problem of poverty which is the root of the problem of prostitution, besides the cultural change that is happening in society that positions women as sexual objects. If the regional governments continue to preoccupy themselves with image politics, it is doubtful that they can bring about local bylaws that provide real protection for citizens, especially women. A cultural observer from Tasikmalaya said:

> "The policy was born out of short-sightedness of those members of the public who had dubbed Tasikmalaya a *santri* town. To show that Tasikmalaya is indeed a *santri* town, there is no need to create a regional regulation on [the naming of] the city as a *santri* town, relating to Islamic religion; rather just show that in Tasikmalaya there is no corruption, for example. Then there is the problem of religious education. There should not be a regional regulation on the obligation of obtaining an *ibtidaiyah* [Islamic primary school] diploma to enter the junior high school. This will only cause the practice of selling and buying diplo-

mas. [It would be better if] teachers were paid more or the number of free schools increased, for example."

The opinion that the policy on dress codes does not provide any protection for women is not only found among the public. The same opinion also exists among those in the state apparatus who believe that religion should be understood as more than mere symbols. This opinion was voiced by the head of the legal section in one of the monitored districts:

> "There should not be any such regulations on dress codes. I think being religious is not just a matter of dress, but much more, including the welfare of the people. If the people are prosperous and the crime rate is low then we can say that we are religious."

As suggested in Chapter 4, there are many more constructive things that could be done by the regional governments to protect women than forcing them to wear the *jilbab*. Appropriate lighting and routine security patrolling in corners of cities where crimes often occur are just two examples of what could be done by the regional governments. In Dompu, during a focus group discussion of female heads of households, a participant said that protection for women could be achieved by strengthening women's independence, especially financially:

> "To protect women, the main focus should be on how the skills of the people, especially women, can be improved through skills training so that they can improve their welfare without depending on other people, including their husbands."

In South Kalimantan, the participants of almost all focus group discussions urged the government to support the establishment of a body where women victims of violence could complain about their cases and get access to recovery services. These kinds of services are non-existent so that victims have to deal with their problems, caused by the violence they experience, alone. This situation cannot be resolved by making regulations about dress codes that in fact blame the victims when violence occurs.

Aceh, as the barometer of the implementation of Sharia in Indonesia, also faces the same problem in the implementation of the regulation on *khalwat*. The cases of wrongful arrests cause women victims to experience injustice and impoverishment (see Chapters 4 & 6). The implementation of Sharia is seen to have targeted women because it focuses on dress codes and *khalwat* where women are the main focus of people's judgement on morality. In the focus group discussions in three districts and at the provincial level in Aceh, almost all participants said they did not feel protected by the presence of the regulation on *khalwat*. They hoped that future local bylaws or *qanuns* would be able to provide women with solutions for more pressing issues, such as the economic betterment of the people through the advancement of agriculture, rehabilitation services for female victims of the conflict, involvement of women in the formulation of policies, and improvement of protection for women from all forms of violence and discrimination. This hope might be realised, according to an Aceh woman activist, who said:

"The Aceh people have become more open than during the first years of the implementation [of Sharia]. The implementation of the *qanuns* that actually cause injustice and power abuse have made people see this issue [of implementing Sharia] more clearly, and they have started to think in a more substantive way beyond the implementation. Also, authorities no longer view criticisms of the *qanuns* as a rejection of Islamic values, or regard critics as anti-Islam, but see the criticisms as efforts to make things better for a more substantive justice system. This situation in turn makes more academics, human rights activists, and women, as well as other public figures, more willing and forthcoming in stating their opinions."

### 5.2.3. Diminution of Community Independence

Self-reliance and diversity of the people are two things threatened by identity politicisation. These are the two main concerns of participants as revealed in the findings of the monitoring. Regional regulations that were formed to accommodate image politics using religious identity politicisation control many things previously under the control of the people, either through education or worship activities. Therefore, the regional regulations are considered an excessive state intervention in religion or morality. Two following opinions illustrate how people from different walks of life viewed this issue:

"The issue of the inability to recite the Quran or the failure to hide the *aurat* is between us and the Above [God]. Why should it be administered by the state? The government does not need to involve itself too far in this…. [they] shouldn't control the private life of a person in their relation with the Above." (A female participant of a focus group discussion representing the critical groups)

"Only the Above [God] can judge whether worship is accepted or not. If we get involved in it, things will be confused, which is in the realm of religion and which is under state jurisdiction. In truth, religious teachings cannot be formalised. What should be regulated are relations between humans." (A female head of a provincial legal bureau)

Although participants in the focus group discussions representing women educators considered the regulations were positive, most of them stated that the government should put the issues of morality and religion in the realm of education, in schools and in families. The presence of repressive mechanisms to control the morality of the people through state apparatus in charge of public order, such as the Satpol PP, or the WH in the case of Aceh, is considered an ineffective way to implement the local bylaws. On this, a participant in a focus group discussion representing educators in Banten said:

"If the context is morality, then the remedy is education. The best religious education can only be conveyed through education. Besides formal and informal education, the most important thing is the ulama. Don't make the ulama a legitimation to get that [power]. Ulamas have to be involved, empowered, not replaced."

Agreeing that the affairs of morality and religion should be in the realm of education, an academic from West Java suggested that educators be more careful in adopting the regional regulations. Schools are one of the institutions where children learn early about diversity. The regional regulations that generate identity politicisation are not educational at all because they threaten sentiments of tolerance that so far have been maintained in society:

> "What's important is not only the dress code [uniform]. Nowadays, even the children are taught to be fanatics. That is not good. It should not be so. In the past, [people] lived in harmony. No differentiation in religion. Now everybody is showing off. How come? Small children are taught to be fanatics, what's the purpose? Where is loving kindness? That is what should be impressed on society."

The head of a regional office of the Ministry of Law and Human Rights affirmed that excessive state intervention in religion would in fact weaken society, not empower it.

> "Our society is very pluralistic…respecting each other's religions and there's enough regulation within their respective religions. So there is no need for the involvement of the provincial and district governments in religious matters. If religious affairs are administered, things will worsen. The communities, at least here, are mature enough for pluralism … and the improvement of religious qualities is not put in the hands of the state. There is no need for us to rely on the state and we never asked the state [to get involved]."

The reduction in self-reliance or independence of the people caused by excessive state intervention in matters of religion or morality, as with the absence of the guarantee for substantive protection, is intertwined with the regional regulations that give precedence to image politics. These three conditions are characteristic of the kind of democracy that has evolved by way of procedural democracy that exploits flawed processes in public participation and accountability and allows the domination of the local majority. The practice of giving precedence to procedural democracy, that is the justification of discriminatory local bylaws with obedience only to the formality of procedures, highlights the deficit in the quality of Indonesian democracy. Acceptance of this condition has caused Indonesia to arrive at a critical situation where the diversity, justice, prosperity, and independence of society are threatened. In view of this crisis, all informants from the critical groups called for serious reconsideration of the local bylaws. One of the participants of the focus group discussion representing women activists of civil organisations in West Java who agreed to this stance said:

> "Each human being has his or her own moral compass. Each has his or her own moral ethics. Why should our local bylaws enter so far into the private realm? Even if one is not an adherent to one of the six religions acknowledged by the state…he or she would have some local religion, such as Kaharingan, or others. He or she would have his or her own morality. Our law, such as the pornography law, opens the door for violence. The public is allowed to become the civilian police. If it is open to interpretation, then like it or not that opens the opportunity for arbitrary violence to punish people."

# Chapter 6

# Erosion of the Authority and Certainty of Law

The findings of Komnas Perempuan's monitoring of 16 districts in seven provinces show that the discriminatory local bylaws on dress codes, prostitution, *khalwat*, and migrant workers have resulted in the erosion of the authority and certainty of law. There are two forms of this erosion. The first is related to public perception that the political elites do not have the capability to administer the state and, in fact, use the law play image politics. Deterioration in the authority of the law can be seen in the pointless regulations on dress codes, the ineffectiveness of regional regulations on prostitution and on migrant workers, and the continuing practice of corruption and power abuse in the implementation of the local bylaws. The second form is related to legal certainty. The criminalisation and pauperisation of women, caused by the local bylaws on prostitution and *khalwat,* work to make any guarantee of legal certainty for women confusing and ambiguous. A woman never knows when she could be accused of violating something that is not a crime in the system of the national law. Confusion and lack of certainty in the law is also a result of violence against women perpetrated by state apparatus that ideally should be the protectors and enforcers of the law. Additionally, lack of certainty is due to the threats from "moral police", or those who think they have the mandate to supervise the morality of citizens in order to participate in the implementation of the local bylaws that put morality as the prime concern. These people do not shy away from using violence because they feel they have the right to act violently to uphold the law. This situation has caused a loss of trust towards the government and the law enforcement apparatus. In turn, it has corroded the authority and certainty of the law both at regional and national levels.

## 6.1. Eroding the Authority of the Law

The ability of a regional policy as a legal product to administer and promote order in society and government is used as the reference in evaluating the legal system that has been developed in the era of regional autonomy. This ability is measured by how far the content and implementation of the policy works to accurately, precisely, and justly answer real needs in society. This study found that the discriminatory policies that derived from the practice of giving precedence to procedural democracy had strengthened public perception about the impotence of Indonesian law in the era of regional autonomy.

### 6.1.1. Wasted Regulations

> "We have always covered our heads…it is the culture here because we have always worn headscarves since we were children. Before the circular [of the regional head] went out, we were already wearing the *jilbab*." (participant of a focus group discussion representing women activists of civil organisations in South Kalimantan)

In the monitoring of the local bylaws on dress codes, a number of informants said that as soon as the regional heads who initiated the regulations finished their terms, the policies gradually lost steam. People tend not to pay attention to the policies. This situation is an indication of the relation between the enactments of the local bylaws and image politics played by the initiators. If the local bylaws were really needed in societies, they would not wither together with the regional heads' leadership.

In the monitoring of the policies regarding dress codes, Komnas Perempuan found that many women did not care whether the policies existed or not. The regulations are considered a repetition of the existing tradition, without added value. This opinion, revealed by one of the participants in a focus group discussion representing women activists of civil organisations in South Kalimantan, is congruous with opinions found in many regions that have similar regulations, such as Bulukumba, Pangkep, Cianjur, Banjar, and Dompu. This situation has caused people to be reluctant to comment publicly on the issuances of the regulations. For them, it should have been clear that there are things which the state does not need to get involved in, as was expressed by one victim of the dress codes obligation:

> "What is the benefit of regulating whether a civil servant wears a *jilbab* or not? The focus should be on the performance of civil servants and the quality of their work to develop the regions. It's not about the *jilbab* but one's performance. I myself am reluctant to comment on that, on whether the regulation is beneficial or not, because I don't to want to burden my mind with such an unimportant things."

Because they are not needed and should not be administered by the state, the issued regulations are considered to be a waste of resources. A number of people critically argued that the political elites who insisted on issuing such regulations were using the law for their own personal interests. Regulations are used as a selling point to show policy makers as religious people with high moral standards. Many of those burdened with fulfilling the obligations of the regulations argue that dress codes cannot be used as the basis to judge a person's morality. Therefore, they only wear the *jilbab* in places where they are obliged to do so. "*Bongkar pasang*"[24] is their term to explain their behaviour in dealing with such regulations. The behaviour prevails not only among civil servants but also among students and women in general who do not wish to wear the *jilbab*. One of them said how the obligatory aspect has caused the policy on dress codes to become a pointless exercise.

[24] *Bongkar pasang* means to take apart and put together again, or to overhaul. The term is usually used by mechanics—*Translator.*

> "The problem is not about agreeing or not agreeing. Such a policy should not be obligatory. The important thing is to be oneself. The public has no right to force people to do this or that, especially to force people to wear the *jilbab*. I am not sure if that kind of policy can make this region religious. The religiosity is only symbolic!"

The regional regulations on dress codes impair people's freedom to choose their own dress as a part of their individual expression. This means that the regional regulations on dress codes violate the right of every person to express his or her own mind and stance according to his or her conscience, as stipulated in Article 28 E (2) of the 1945 Constitution, which provides for the freedom of every woman to choose to wear or not to wear the *jilbab*. Such critical thought is not always accepted by the general public; not until time proves that what really lies behind the implementation of such regulations is the shallow practice of image politics. One participant of a focus group discussion representing female single parents and heads of households explained how this had occurred in her district:

> "At the time the people thought the district head was a good person. Then they felt cheated after they learned about his corruption. Then the people felt they had become victims…. [The purpose of the issuance of the policy was for] his fame and popularity. The government wants to show itself as Islamic for political interests to maintain power through elections or regional elections. But the people themselves were not necessarily supportive. The policy itself is not directly beneficial to the people."

A similar criticism about the local bylaws on dress codes was conveyed by a member of a regional parliament:

> "The *Jilbab* is only a fashion trend. It has merely become religious enthusiasm that is shallow. There is no other philosophy that could be used in the policy. I object to a concept/paradigm that is forced on and included in a system that was never agreed to."

The experience that the law in the form of local bylaws is used by political elites in the practice of image politics has caused constituents to become more critical when faced with policies using the name of religion. Decision makers are urged to be able to provide substantive protection, as one participant emphasised in a focus group discussion representing female heads of households in the district:

> "The policy on the wearing of the *jilbab* should not be prioritised. The government should have prioritised policies that have a direct bearing on the economy, education, and health…. The government should benefit from the region's potentials, and should enhance the quality of education."

### 6.1.2. Ineffective Law in Practice

The authority of the law has increasingly diminished because the issued local bylaws are not effective in overcoming social problems. This condition is indicated in the monitoring of the regional regulations on prostitution and on migrant workers.

On the issue of prostitution, the root of the problem, at the very least, is poverty and also inequality in relationships of power between men and women. This problem has always existed and world history has proven that a repressive approach is ineffective. Hence, one of the religious leaders argued that the ongoing implementation of the local bylaws on prostitution would never solve the problem:

> "After the regional regulation was issued there were often raids there. But how long can the police continue to conduct raids there? Should the police send out officers every day to raid them and play cat and mouse with them [the sex workers]? I think such a process would never last. Even now the raids have ceased. That regional regulation has allowed repressive actions by the police and Satpol PP so that they [the sex workers] are treated inhumanely. The real problem has been not solved, and their lives have become uncertain."

Other than creating new problems caused by the many cases of wrongful arrests, the enforcement of the regulations that criminalise sex workers is believed to have caused prostitution to be more widespread and to go underground. According to one participant of a focus group discussion representing the targets of the regional regulations in Yogyakarta, this consequence cannot be stemmed:

> "We work to earn money…for our families, for our children to go to school. Hopefully there won't be any more raids…. As long as this regional regulation exists, now [the raids are] twice a month…[because our places are raided] now we flock the road sides. 'Cowboy' will do [meaning: anywhere]."

The advocacy organisations that so far have worked with communities of sex workers in ways to empower them are very concerned about the ongoing situation. Underground sex workers are more vulnerable to violence and discrimination. They also have difficulties accessing the very much needed health services. Understanding this problem, a participant in the focus group discussion representing women educators in Banten said:

> "I very much agree that rather than the [repressive] regional regulation on prostitution, it is better to create a special place like a red light precinct; a place far from the communities. No matter what, prostitution cannot be eradicated. It is better to manage it. Slowly set up a precinct and the data of sex workers can be recorded. Then later provide them with education and religious norms."

The regional regulations on migrant workers of Sukabumi and Cianjur that fail to ensure the protection of the workers but focus on administrative prerequisites have caused many people

to think that the policies are ineffective. The increasing number of migrant workers is not unrelated to the problem of poverty in the regions. The handling of the problem of migrant workers, therefore, has to be linked with the efforts to create new employment opportunities and to strengthen the economic sector of the regions. The protection of migrant workers abroad needs more than just the fulfilment of administrative prerequisites, which in the implementation has made the migrant workers cash cows for unscrupulous people. Moreover, there has not been any punishment handed out to people who violated the administrative regulations. Talking about this condition, a member of parliament of one of the districts said that the regulations were a waste:

> "…there haven't been any significant changes since the regional regulation was issued. It seems that the regulation is just an ornament."

According to one of the law enforcers who deals with migrant workers issues, the local bylaws were not effective because they could not be enforced by the law enforcement apparatus. This happens when the local bylaws contradict or overlap with superior laws. This situation could be prevented if the local bylaws were formulated meticulously and by inviting all relevant parties to participate in the formulation:

> "In most instances the formulation of the local bylaws did not involve legal apparatus. This happened almost everywhere. [The formulation] only occurred in the parliaments and regional governments. In the beginning, [the regional regulations were created because of] pressure from the people. The district heads and parliaments, because of the threat from the communities, enthusiastically made the regional regulations. As a result, they overlap with higher laws. This is a waste. They cannot be enforced, and, if forced, not effective."

The issuances of ineffective local bylaws that either do not address the roots of the problems or do not provide breakthroughs in solving complex social problems have caused people to increasingly doubt the capability and leadership of the state administrators. This situation also reinforces public suspicion about the personal interests of the power elites in issuing local bylaws that are clearly ineffective and even pointless. A number of participants in the focus group discussions even voiced their suspicion that the ineffective policies continued to be churned out because every one of the political elites were reaping financial benefits at each step in the process of policy making. The continuation of this situation naturally erodes the authority of the law in the public eye. Regional government administrators must deal with this problem immediately by improving themselves and issuing more effective local bylaws. A participant in a focus group discussion representing academics in one of the monitored districts said:

> "Regional regulations have to be comprehensive, not one-sided…. If they don't offer any solutions, the regional regulations would not be effective…. Regional regulations are effective if they address welfare, employment facilities, and if women are well-protected."

### 6.1.3. Corruption and Abuse of Power

From a focus group discussion of women targeted by the regional regulations on prostitution, this study found that female sex workers had become subject to extortion by various groups. Many are routinely forced to pay "security money". The money is given to local thugs who then share it with the state apparatus. According to these participants, the authorities include members of the Satpol PP, the police, and the military. If arrested, they also have to pay fines. The amount of the fines varies, between Rp50,000 to Rp75,000 per person [USD 4.5-8.5]. Some have had to pay hundreds of thousands of rupiah. They have never been given any proof of payment. A chief of a Satpol PP confirmed that there were opportunities for officers to be involved in corruption because there are people who try to bribe them. Besides bribes, according to him, the officers also faced intimidation from other authorities who protected prostitution:

> "Imagine, they come here with Rp 350,000 [USD 35]. If there are 65 people, that is Rp22 million [USD 220.000]. If I was tempted, I'd do it [participate in corruption]…if they are fined, they have to pay. I am sure the officers benefit from what the pimps offer."

The requirement for migrant workers to fulfil administrative prerequisites has become an opportunity to extort potential workers. In Sukabumi and Cianjur, potential migrant workers will only get official services from government offices if they do so through employees of the Indonesian Agency for Migrant Workers (PJTKI) or the Private Indonesian Migrant Workers Placement Implementer (PPTKIS) that have obtained recommendation letters or official permits (in Sukabumi from the regional office of the Ministry of Manpower and Transmigration, in Cianjur from the district head). The official permits are used as a legitimate rationale for illegal levies, extortion, and corruption. An advocate for the rights of migrant workers in Cianjur said:

> "In Cianjur I often met with people who misused such letters. They lend them to other people to look for bait—people who want to go abroad to work. If not careful, people can be conned. But people don't know how to fight back. Some use out-of-date letters. To get the permit or recommendation letters, of course you have to pay."

The Cianjur Regional Regulation No. 15/2002 allows the placement of migrant workers outside job contracts. This has generated more opportunities for extortion, illegal levies, and corruption. The regulation allows Indonesian migrant workers to be sent abroad for internship or for cultural exchange, although in reality they are going to work there. The use of the term "internship" means they can be hired on substandard salaries and working conditions, and they are not provided any protection.

Several informants indicated corruption was also involved in the enforcement of the regulation on *khalwat*. Informants interviewed by Komnas Perempuans and participants in a women's focus group in Aceh, said that those charged with the offence often had to pay extortion

money. A woman who was arrested with the charge of *khalwat*, only because she was sitting side by side with her boy friend in a foodstall, suspected that she would not have been released so quickly if the relatives of her boyfriend did not pay money to the WH. Similarly, another accused (see Illustration Case 3) said the arresting authorities indicated that she would not have to spend much time in detention if she "played money" to close her case. In another case in Banda Aceh, an accused said that relatives of hers and the man involved paid Rp1 million to the police (because their case was handed over to the police) and they did not receive any proof of payment. The money was supposedly bond money so that her detention could be postponed.

Corruption and extortion are forms of power abuse that cause ongoing degradation of credibility of the law in the eyes of the people. In view of this problem, the regional government administrators pass on the responsibility to each other. A member of the Indramayu parliament, for example, said that the authority of the law had collapsed because of the behaviour of the law enforcing apparatus and has nothing to do with the opportunities for power abuse created by the regional regulation on the prohibition of prostitution that institutionalises discrimination against women:

> "I want to ask where the money went. Into the region's coffers or not? Where is the money for the state coffers that resulted from the prostitution legal proceedings? In fact, we protested against the [attitude and behaviour of] law enforcement officials in the region…. The people were victimised. We the regional government were asked to work to keep the people in order. The people also want to be in kept in order. But, during the process of law enforcement, "cannibalism" occurred among law enforcement officials. Sorry, I have to use the word "cannibalism".

The attitude of passing on responsibility causes the public to become even more suspicious that there is no real willingness to improve conditions of law enforcement, not only by formulating policies that could solve social problems but also by preventing new problems caused by enforcement of the policies. A religious leader in one of the districts that had issued a regional regulation on the prohibition of prostitution, for example, said:

> "The more there are victims, the more the money there is from illegal levies…some benefits, some loses. How can it be that the state coffers are filled by way of arresting girls? Because of the regulation, the job became ambiguous. It could happen that a real prostitute, because of her support, could walk out free, while a religious student with no backing could go to jail."

## 6.2. Confusing Legal Certainty

This monitoring found that distrust of the law by the people in the era of regional autonomy was increasing because the discriminatory local bylaws have confused the legal certainty that is one of the foundational principles for the law to provide a sense of justice. A reduction of

legal certainty has come about because of the criminalisation of women in the regional regulations on the prohibition of prostitution and the prohibition of *khalwat*. This study also found that the criminalisation has caused the impoverishment of women, especially women victims of wrongful arrests. A number of informants point to the violence conducted by the state apparatus and the emergence of the "moral police" in the implementation of the local bylaws in the name of morality enforcement as the two factors that contributed to the burgeoning uncertainty of law, because they threaten the sense of security and the rights of citizens to legal protection.

### 6.2.1. Criminalisation and Pauperisation of Women

> "In Tangerang there are many female workers working the second or third shifts so they're just leaving at 11 pm. There are also female university students studying in Jakarta who come home at 9 pm, sometimes arriving at 10 pm. Mothers here, parents, are afraid their children might become victims of wrongful arrests." (From the focus group discussion representing labourers and workers, Tangerang.)

> "The wife of the neighbourhood head and I were victims of wrongful arrests [by Satpol PP]. I am nothing…I'm just trying to earn some money by opening a small kiosk…but I was arrested. In fact, I was there with my husband. They just arrested me and pushed me into the truck. They didn't care what I said or what I did. Only after my husband insisted, I was released…I really felt offended. My neighbour was also arrested, the wife of the neighbourhood head. She attended the public toilets. During the tomb cleaning season, the public toilets are crowded, so they are attended…it's a good extra-income. So why was she arrested? The Satpol PP suspected that all women around the beach were sex workers. If her husband was not a neighbourhood head, if my husband was not beside me that night, my God! I would have been brought to trial, the payment would reach hundreds of thousands, millions…. But what am I…? I just opened a small business, and this… Gosh! I cannot forget the hurt…. I keep feeling the fear whenever I remember that arrest. (WT, a woman vendor at the beach, Bantul, Yogyakarta.)

These two comments put forward by informants above show how the regional regulations do not only institutionalise discrimination against women but also ignore the principle of presumption of innocence, which in turn criminalises women. The cases of wrongful arrests—in Tangerang, Indramayu, and Bantul—are direct evidence of ongoing criminalisation. The diminution of the guarantee for the right to the principle of presumption of innocence, including in cases stemming from suspicions which are gender-biased, has caused women to face legal uncertainties. Women are always in a vulnerable position, not only

**Moving Toward Substantive Protection**

"The occurrence of cases of wrongful arrests is the reason why such regional regulations are difficult to be enacted here. Because we [a number of legislators] do not agree. What we want is for women to get protection, not become objects to be arrested because of regulations. (Member of Parliament.)

because they do not know when they could be found guilty of violating something that in truth is not a crime, but also because the local bylaws prevent them from their fundamental rights in economic, social, and political life. As a consequence, there are limitations placed on women's opportunities to develop themselves, for example, in education that requires them to have activities at night, or in employment that requires night work. The suggestion that women should only work during the day because the factories cannot provide shuttle services,[25] shows the limitation of employment opportunities for women is based on gender difference.

In Tangerang, the enforcement of the regional regulation on prostitution has caused victims of wrongful arrests to lose their livelihood. A participant in a focus group discussion representing labourers/workers said:

> "A friend who works [in a famous coffee factory] was just returning home after finishing her shift around 11 pm. She was arrested when she wanted to buy fried rice. Although released, she was ashamed because of the wrongful arrest. Also, many reporters came to the factory to interview her. Her boss said, 'I don't want a worker with this kind of problem.' In the end she was fired and went back to her village. So, again, women were disadvantaged."

According to the information from the court from all the monitored regions about the regulations on the prohibition of prostitution, the publicity about the cases of wrongful arrests has caused law enforcement officers to become more cautious in the implementation of the regional regulations. There is no information about the extent to which the regional governments put systems in place for the recovery or reparation of victims of wrongful arrests. Komnas Perempuan recorded that one of the victims of wrongful arrests in Tangerang suffered from depression because of her arrest and publicity about her case. She has moved from Tangerang and is facing a crisis in her marriage because of the arrest.[26]

Fear of being wrongfully arrested has caused a female victim of a wrongful arrest in Indramayu to remarry to avoid being suspected as a sex worker, especially because she was a widow. This is a further proof that the regional regulations that criminalise women have become a means for structural discrimination against women, including because of their marital status. The stigma of a widow as a "naughty woman" is the same as that of a sex worker. A participant in a focus group discussion representing first time voters said that women who were victims of mistaken arrests could not shed the stigma, even if they chose to fight for justice:

> "Although she protested, her good name has been tarnished. There has been a lot of news about the wrongful arrests [related to] sex workers…Stories went around the community about her being arrested doing this or that,...that she went out at night and

[25] According to the participants of a focus group discussion of labourers and workers in Tangerang, shuttle services were proposed by a number of factories to prevent the wrongful arrests of their female workers.
[26] Later Komnas Perempuan found out that the victim had passed away in late 2008 and no rehabilitation of her good name was conducted by the local authorities of Tangerang.

was arrested. Therefore, even if she complained about her case to Komnas Perempuan or others, her image has already been tarnished."

Another impact of the cases of arrests and wrongful arrests is the further impoverishment of the poor in the regions. The multi-interpretable law, whose enforcement is founded on "suspicion" has caused people to be unwilling to take risks in case they become victims of wrongful arrests. In the end they shy away from tourist areas where people have been wrongfully arrested. The impact is seriously felt by the people who rely on the local tourist industry, as told by a public figure in one of the regions:

> "Before the regional regulation, this area was busy…. Many people felt comfortable. They were not disturbed when enjoying the beach. They could carry out rituals without problems. Of course there were many people dating, but the economy of the people was good. Before the regional regulations were issued, people could make money from selling drinks and snacks, beach sarongs or shorts, renting out cheap accommodation, or attending the parking of motor vehicles. Now, after the arrests, the income of these people has decreased. Before each of them could make at least Rp 40,000 a night [USD 4.5]. On a good night even up to Rp200,000 [USD 21]. Now, even Rp 5,000 [less than USD1] is difficult to get. There are even people who [after the enactment of the regional regulation] lost their savings. They have many debts, don't know how to repay them."

In Aceh, as discussed in Chapter 2 of this report, the criminalisation of women also occurs on account of accusations of *khalwat*. The four women accused of *khalwat* who were interviewed by Komnas Perempuan in this monitoring study were victims of wrongful arrests. The ambiguity of the charge of *khalwat* has caused women in any situation to be criminalised if they are with someone of the opposite sex. Three of the four victims were accused of having sexual relations and were not given any opportunity to defend themselves. They were evicted from their residences, and one of them lives in poverty because of her being wrongfully arrested (See Illustration: Case 5).

*Illustration: Case 5*

**Criminalisation and Impoverishment of Women because of a Charge of *Khalwat***

After reading the word "love" on her mobile phone sent by a male friend, the victim's husband accused her of having an affair. The phone message was reported to a newly formed institution for ex-combatants following the signing of the Aceh peace agreement. A few days later, members of the institution came and took the victim to their office to be interrogated. During the interrogation, the victim suffered many forms of abuse, including insults, and frequent slapping so that her face was swollen. Her *jilbab* was torn. The victim was then brought to the local police for further examination.

In this examination, the victim was forced to admit to having committed adultery. The situation became worse because the man who sent her the SMS had confessed that they

had had a sexual relationship. The victim refused to make a confession. Later the victim learned that the man confessed because he could not stand being repeatedly beaten with a lump of wood.

During the legal process, the victim was detained by the police under house arrest in the home of her older brother, because there was no special room for female detainees. The victim was pregnant at the time. During the legal proceedings the victim was continually intimidated by the law enforcement officers. Because they wanted the case to end quickly, many rights of the victim were ignored. The prosecutor, for example, threatened to call reporters to expose the case because the victim was considered to have disrupted the legal proceedings. At that time, the victim told her lawyer that she could not attend the court session because she was not feeling well.

The court decided that she had violated the regulation on *khalwat* and therefore she was sentenced to five strokes of the lash. The victim, through her lawyer, appealed. The appeal court upheld the decision. The victim was found guilty of violating the *qanun* on *khalwat*. The sentence was a fine of Rp3 million. Because the victim was pregnant the public flogging was postponed. Meanwhile, the man was given six strokes of the lash. The man submitted an appeal to the Supreme Court, which upheld the previous court's decision.

Although the flogging has not yet been carried out, the court's decision, that she was guilty of violating the *qanun* on *khalwat*, has resulted in the victim being unable to return to her previous life. Her husband decided to leave her. Her husband's relatives tried to expel her from her house. The public ridiculed her. Fortunately, with support from the *Tengku Imum* (neighbourhood head), she could stay in her house with her three small children (a sixth grader, a first grader, and a 17-month toddler). She earns her living from cocoa and banana crops. She once decided to get married in an effort to do away with the public scorn. But she divorced again because the first wife of her second husband rejected polygamy.

> "My advice, which I also told them [the institution that interrogated her]. You may arrest people, but based on evidence. If it's by accusation only, I could do the same to you. This time this is happening to me. My husband did not first try to find out the truth because he was impulsive. But were this to happen to your sisters, would you accept it?"

### 6.2.2. Violence by Law Enforcement Apparatus

This study also found that the implementation of the regional regulations on prostitution is coloured by violence at the hands of law enforcement officers. Participants of the focus group discussions representing the people targeted by the regional regulations on prostitution also stated that they were always targeted in the raids, even though they were not offering sexual services at the time. It was only because of their background as sex workers that they were automatically accused of violating the law, whenever and wherever. In this situation, the sex workers choose to pay up, whether legal fines or "peace price", to avoid arrests. Even then there is no guarantee that they will not be arrested and experience violence.

All the women who were detained or arrested said that the arresting officers, especially the Satpol PP, did not shy away from yelling or verbally harassing them in the course of the arrest.

The women tell of many forms of harassment and abuse they experienced at the hands of Satpol PP:

> "They used to pull or push roughly. Some took the opportunity to touch our breasts or our behinds when we were put in the patrol cars."

Even if they experienced harassment or other violence by the officers at every step of the legal process, they could only keep their resentment to themselves, as conveyed by one of the informants:

> "I was once rounded up …at the time I was talking and drinking at a foodstall with my friend…then I was beaten by those men…I entered [the patrol car]. Only I got out again, ordered to photocopy my ID…then I was put in detention, if going to court I'd have to pay 25 [thousand rupiah, USD 2.5]. The police were talking indecently. At the time I wanted to pee…then they said, 'wanna pee…*diudani sisa wae*, *diudani sisan*...strip naked"'

To avoid further violence and "to be sent home" or to be freed as soon as possible, those with money would pay the "peace price". Often, the payment was not initiated by them, but asked for by the arresting officers. And even this would not guarantee that they would not experience violence. All of this is caused by their background as sex workers. And because of this background, they are unwilling to report any violence they experience to the police because they worry they would only experience more violence. These conditions caused a participant of a focus group discussion representing sex workers in Bantul to call for help:

> "We also have rights. Help us not to be marginalised, pushed aside, so much. We also have rights as human beings."

Victims of wrongful arrests who were accused of violating the regulation on *khalwat* in Aceh also attest to violence and arbitrary treatment by the WH. One of the victims who was forcefully kissed by one of the people who arrested her said that the WH officers did not care a bit about the violence she experienced. The officers even said that she deserved such treatment because she had violated the *qanun*. In another case, a woman victim accused of *khalwat* was thrown about by the WH to force her to confess (see Illustration: Case 4 in section 4.3).

Physical, psychological, and / or sexual violence by the enforcement officers shows that they are not professional in doing their job. This unprofessionalism erodes the trust of people in the guarantee of legal protection, because the officers who are supposed to be the law enforcers have become the violators. Violence by state apparatuses, either to get information or to punish any kind of action or alleged action, equates to torture and is against the law. Article 28 G (2) of the Constitution stipulates the guarantee for every citizen to be free from torture and treatment that diminish human dignity. The guarantee is also affirmed in Law No. 5/1998 on the Ratification of the Anti-Torture Convention.

### 6.2.3. "Moral Police"

The local bylaws that state morality as their rationale and goal, such as the regulations on dress codes and the prohibition of prostitution, create a situation where some people think they have been given a mandate to supervise the morality of the people. These groups are commonly known as the "moral police", as mentioned by the participants in the focus group discussions and by interviewees. These people could be the apparatus that indeed have official power to implement the regional regulations, such as the Satpol PP and, the WH in Aceh. They may also be members of the public, individuals or groups.

Information gained from the focus group discussions and interviews shows that people complain about the institutionalisation of violence due to the existence of the moral police. The moral police are not afraid to use violence to force the public to conform to the moral standards set in the regional regulations. Moral standards are often based on a singular interpretation of a certain religion and because of that the moral police often use religious symbols in their actions. As the regulations are related to morality, women are most often the targets of enforcement, in being forced to wear the *jilbab*, for example. Those who criticise the abuse by the moral police are accused of tarnishing the good name of religion and even of trying to destroy it. These accusations are usually launched with verbal and physical intimidation (See Chapter 5).

Often members of the public, particularly men, form into groups of moral police and conduct raids (also known as "sweepings") on members of society they believe have violated the regional regulations. It is during these raids that violence often occurs. Informants of this monitoring identified a number of specific civilian groups that are particularly violent. In Sulawesi, the group said to have carried out violent raids on victims deemed to be in breach of the regional regulations was the KPPSI (Komite Persiapan Pelaksanaan Syariat Islam or the Preparatory Committee for the Implementation of Islamic Sharia). The head of the Bulukumba KPPSI did not contradict this accusation, but said that violence no longer existed under his leadership:

> "Covering the *aurat* is not forced but rather fostered. Therefore, in the regional regulations there are no clear sanctions…. KPPSI were never violently abusive under my leadership. KPPSI wouldn't last if it continued to use violence. If there is an incident of immoral [conduct], it's a matter for the police. The police have the authority to enforce regulations. KPPSI does not. We only approach the law officials, provide input. It is the law enforcers who act."

A number of participants in the focus group discussions and informants in South Sulawesi, Tangerang, Banten, Mataram, and Yogyakarta identified FPI (Front Pembela Islam or Islam Defenders Front) as being violent toward members of the public in relation to the implementation of the local bylaws that give precedence to morality. During interviews, representatives from the FPI in the regions said that violence is only in "people's perceptions of how firm the

FPI are against immorality and disobedience to God". FPI also felt that their actions have been devalued as they are viewed as only conducting raids, while in fact they also preach and conduct social services. Raids on alcoholic drinking and prostitution were said to have only been conducted if they received reports from members of the public disturbed by these activities in their neighbourhoods. FPI maintain that reports from the public would be forwarded to the legal enforcers in writing. Only if the apparatus did not take further action would FPI conduct the raids. One of the FPI representatives interviewed in Yogyakarta said:

> "If the law enforcers fail to do their job, we will move. And only after we inform the police."

In the focus group discussions and interviews in West Java, especially Tasikmalaya, a number of participants identified the Tholiban group as moral police that also used violence. At an interview, Tholiban head KH Jenjen said that their actions were a part of their responsibility as members of society in handling all kinds of social problems in Tasikmalaya:

> "If the police are good, the enforcement apparatus good, why would we work? We don't get paid, no benefits. But if the police keep silent, I go out. I arise. The police should feel fortunate Tholiban exists. We are against destruction, arson, looting, or anything like that. None [was ever conducted]."

In Aceh, the study also found information about individuals and groups of society taking on the role of moral police. For a number of participants of focus group discussions in Aceh, this situation is reminiscent of how it was during the conflict there. The group most often mentioned is one calling themselves representatives of the *santri* group (religious students), or *dayah* (religious schools). In Bireuen, this group often goes out wearing white robes. In Lhokseumawe, a similar group often wear black robes and veils, while riding motorcycles with extra loud exhausts to show that they were "patrolling". Their main activity was conducting *jilbab* raids to be in line with group standards. Women who violate this standard, even though they might be wearing a *jilbab*, face intimidation and violence. Group members would yell at the women, using derogatory words such as "dogs", "satan", or words with sexual connotations, like "whore". In several instances, women have been kicked, flogged, or their dresses cut by scissors, torn, or smeared with paint. In response to these abusive groups, the head of the Islamic Sharia Office in Lhokseumawe, said:

> "They are citizens, not under our command. They suddenly show up using robes, like Arabs. Sometimes they conduct raids or sweepings. There's no coordination with us. But, we see the raids in a positive way. Many people are warned and so far there's been no conflict. We told the commandants or leaders of the *dayah*, the raids should not become anarchic…. We reminded them to act according to the preaching methods of the Prophet, full of philosophy, wisdom and good teachings."

The actions of the *dayah santri* groups are used as the rationale for universities in Lhokseumawe and Bireuen to compel their female students to wear skirts on the campuses. Female

students who wear long trousers are sent home and not allowed to attend classes. The participants in the focus group discussions representing educators that were lecturers at those universities said that the reason for the obligation was that:

> "It is better for us to make that regulation [that female students may not wear trousers or skirts that look like trousers] to prevent the *santri* groups from entering the campus to conduct raids."

*Illustration: Case 6*

**Raids by a female Group**

Besides by the *dayah* groups, the sweepings in Lhokseumawe were once conducted by a female group LUAS (Lembaga Ureung Inong Atjeh Samudra or Samudra Aceh Women Organisation). The sweepings targeted women around military posts. The group's actions were based on its dissatisfaction with the work of the WH, who as the enforcers of the Islamic Sharia were considered to have been discriminatory in carrying out their tasks. According to LUAS, the WH never went after the military posts that they knew were taking in women. The head of LUAS, Sabariah, said their actions were meant to restore the *marwah* [dignity] of Aceh women.

Their actions caused several members of LUAS to be arrested by the police. But the police never once arrested the members of *dayah* who conducted raids, who clearly used violence, especially toward women. Therefore the members of LUAS felt they had been treated unfairly. These arrests only reinforced public suspicion that the law, including Islamic Sharia, is implemented differently for civilians than it is for the military.

The failure of law officials to do anything about the moral police's abusive and arbitrary behaviour has caused people to feel they do not have legal protection. Participants in the focus group discussion representing small traders along the beach of Lhokseumawe, for example, said that the police often came too late. They had hoped that police could stop the mass violence or violence conducted by WH, the organisation established by the government to enforce the Sharia. Participants in the focus group discussion representing the targets of the regional regulations in Yogyakarta said that the police were seen around the sites of violence but did not try to stop it. They have doubts in the police's ability to prevent such violence because the number of police is always less than that of the "attackers".

The police in the regions where such moral police are active gave conflicting information about them. Some said that during their watch there was never any violence. Some said that the police had been ordered to and had tried to prevent unwanted occurrences.

If allowed to continue unhindered, the actions of the moral police would result in the loss of legal certainty, which in turn erodes the authority of the law in society. Firstly, the actions of the moral police give a clear statement as to a lack of faith in the ability of the law enforcers to

do their jobs. The civilian moral police maintain that they have taken action because the law enforcers have failed to enforce the law as required by the regional regulations. Secondly, the actions taken by the moral police destroy the public's sense of security because they create confusion about legal certainty. It is as if anyone can act as a law enforcer without clear authority. Thirdly, the attitude of the police in those unofficial raids carried out by the moral police can be viewed as an indirect violation of human rights by the state. Doing nothing to prevent unauthorised activities of moral police, even being present on site to watch such action taking place, equates to condoning such ongoing intimidation and violence against citizens, especially women.

The existence of laws that are very limited in their effectiveness, even pointless, in addressing complex social problems has caused the erosion of the public's faith in the authority of the law. At the same time, confusion over the certainty of the law continues because of criminalisation, and law enforcement officials committing violence against people and failing to intervene or put a stop to abusive actions of moral police. If serious steps are not taken quickly to address these issues, not only will the authority and certainty of the law diminish but the sense of justice for every citizen, particularly women who are the target of the regional regulations, will be destroyed.

# Chapter 7

# Deficiency of the National Mechanisms

The system of the state of Indonesia has created mechanisms to prevent and annul regional regulations that violate the national law in order to guarantee the integrity of the system of national law. Law No. 32/2004 on Regional Governments states that the Ministry of Home Affairs, as the implementer of regional autonomy, has the authority to prevent the issuance of regional bylaws, while the Supreme Court is tasked with reviewing judicial material, and the President of Indonesia has the authority to annul regional regulations.

Law No. 32/2004, as well as Law No. 10/2004 on the Enactment of Laws and Regulations, has outlined a spectrum of issues that may come under the authority of the regional governments. Likewise, there are limitations that may not be overstepped. This has become the reference for the implementation of the mandates for the prevention and annulment of regional regulations. Law No. 32/2004 on Regional Governments, Article 136, states that a regional regulation (1) is enacted by a regional head with the agreement of the regional parliament, (2) is formed within the framework of the implementation of regional autonomy of a province/district/municipality and in the provision of assistance with tasks, (3) further outlines higher laws and regulations with attention to the special characteristics of each region, and (4) should not contradict the public interests and/or higher laws and regulations. Although in Article 136 (3) there is a mention of the special characteristics of each region, article 4 of the same chapter affirms that the content of a regional regulation may not contradict the public interests and higher laws and regulations. The creation of a regional regulation, which is a part of the authority of a region to expand autonomy, has provided the opportunity for regions to innovatively improve the welfare of the people, public services, and the region's competitive edge, with attention to the principle of democracy as the prime mandate of regional autonomy. These laws also stipulate which matters are not under the authority of the regional governments, and the principles that must to be adhered to in the formulation of the regional regulations, as listed in the Table 13 below:

Table 13

**Exceptions and Principles of Regional Regulations According to Law No. 32/2004**

| Law No. 32/2004 on Regional Governments | | |
|---|---|---|
| **Exceptions to the Authority of Regional Governments (Article10 (3))** | **Principles in the Creation of Regional Regulations (Article 137)** | **Principles in the Content of Regional Regulations (Article 138 (1))** |
| International politics;<br>Defence;<br>Security;<br>Judiciary;<br>National Monetary and Fiscal Affairs;<br>Religion. | Clarity of goals;<br>Appropriate institutions or issuers;<br>Conformity between the types and contents;<br>Ability to be executed;<br>Efficiency and effectiveness;<br>Clarity of formulation; and<br>Openness. | Protection, guardianship;<br>Humanism;<br>Nationalism;<br>Social kinship (*kekeluargaan*);<br>Archipelagic nationhood (*kenusantaraan*);<br>Unity in diversity (*bhinneka tunggal ika*);<br>Justice;<br>Equality before the law and government;<br>Order and legal certainty; and/or<br>Balance, harmony, and concord. |
| Article136 (4): Regional regulations should not contradict the public interests and / or higher laws and regulations. | | |

Using the Law on Regional Governments as a guide, all the regional regulations monitored by Komnas Perempuan are found to be legally flawed, either in the formulation or the contents. The flaws are accentuated by the affects of their implementation. The regional regulations on dress codes and other regulations on religious issues have overstepped the authority of regional governments, even though they are meant for a limited circle, such as civil servants, school students, and employees. The local bylaws on dress codes in the form of Ordinances, Circulars, and Regional Heads' Decrees also do not have authority over these issues because they are under the authority of the central government. Indeed, based on Article 28 of the Law on Regional Governments, regional heads are not allowed to issue policies that only benefit a certain group or discriminate against citizens.

Furthermore, the formulation process of the regional policies on religion, that have been used as an instrument of image politics in identity politicisation, has resulted in citizens with alternative views and identities having unequal standing before the law and government. They are not able to voice their opinions freely and the regulations that prioritise identity politicisation have caused the marginalisation and discrimination of minority groups. As a consequence, such regional regulations have failed to provide guardianship, and threaten the nationhood and diversity of Indonesia.

A similar problem occurs in the formulation of the regional regulations on prostitution. The expansion of the prostitution issue into one of morality has meant these policies do not provide adequate guardianship, instead they criminalise women. The ambiguity in making prostitution a moral issue in the formulation of this regulation has caused legal uncertainty and injustice for the largely female victims of wrongful arrests.

The regional policies on migrant workers, except those of East Lombok, fail to make provisions for the protection of migrant workers. They also show discrepancies in uniformity between genders. The Cianjur and Sukabumi regional regulations on migrant workers open the door for the exploitation and criminalisation of migrant workers to occur, as well as further victimisation of female migrant workers who have been subject to sexual violence. Moreover, the Cianjur regional regulation accommodates the practice of religious-based identity politicisation. This regulation strips female migrant workers of equal standing before the law.

The regional regulation (*qanun*) No. 14/2003 on *khalwat*, although legitimised by Law No. 44/1999, also contains the same problem as that of the previously mentioned regional regulations. Besides not providing protection to women, the multi-interpretable formulation has resulted in legal uncertainty and caused injustice for the victims of wrongful arrests, especially women. Furthermore, this regional regulation has set a new legal precedence, because both the prohibition of *khalwat* and public flogging as the form of punishment for an offence are not known in the national legal system.

The institutionalisation of discrimination through regional regulations shows that the regional governments, in the name of regional autonomy, have violated all the limitations set in the two legal references, Law No. 32/2004 on Regional Governments and Law No. 10/2004 on the Enactment of Laws and Regulations. In the name of regional autonomy, as reflected in the opinion below, the regional governments have legitimised the issued regional policies even though they work to institutionalise discrimination and are constitutionally flawed. Informants from the legislative and executive level of provincial government expressly agreed with this view. One female provincial legislator said:

> "This problem of regional autonomy is caused by the strong egos of each of those districts, so that we cannot reprimand districts with regional regulations that cannot be implemented, because structurally we do not have the authority to reprimand or prohibit the enactment of a regional regulation. The problem is that so many people complain

about the district regulations. Because there is no response from the districts, the people run to the province. But we do not have authority over the issue. Thus this regional autonomy only causes headaches."

The findings from this monitoring study show that the existence of legally-flawed, even constitutionally-flawed, regional policies is made possible by the ineffectiveness and imperfection of the national mechanisms which are supposed to supervise the implementation of regional autonomy, including the formulation and enforcement of the regional policies. This chapter elaborates on the problems faced by those national mechanisms. The first problem lies in the neglect of the Ministry of Home Affairs as the supervisor in the implementation of regional autonomy to prevent the issuances of legally-flawed regional policies. The second problem is the paralysis of the Ministry of Law and Human Rights in carrying out its function to spearhead the promotion of human rights in the formulation of the regional policies. The third problem is the incapability of the Ministry of Women Empowerment in ensuring the principle of gender mainstreaming in the formulation of the regional policies. The fourth problem is the failure of the Supreme Court in carrying out its duty to maintain the integrity of the national law. The fifth problem discussed in this chapter is the powerlessness of the Constitutional Court because it does not have the authority to review legal products below the level of national laws.

## 7.1. Neglect of the Ministry of Home Affairs

"About coordination…[we] consulted with the legal bureau and the governance bureau. Our model [of coordination] is from the provincial parliament to the Ministry of Home Affairs, if the Ministry says no then it is a no. [Although] allowed by the regulations, if the Ministry says no, it is a no. If it is considered to disrupt national integrity I think the Ministry of Home Affairs as a cultivator of politics and the supervisor of the regional governments would annul it. But the fact is [the number of discriminatory regional regulations] does not decrease. In fact, other regions in Indonesia use them as objects for comparative studies, [with the view for them] to be implemented in their respective regions." [Leader of a provincial parliamentary commission.]

Based on Law No. 32/2004 on Regional Governments, the Minister of Home Affairs has the responsibility to coordinate the supervision and cultivation of the implementation of regional autonomy. The authority includes the examination and evaluation of an enacted regional regulation, as well as its annulment, that violates higher laws and regulations. According to Article 145 of Law No. 32/2004, a regional regulation that has been approved by the governor or district head or mayor, must be sent to the central government within seven days. With a presidential decree, the government can annul a regional regulation that contradicts the public interest or higher laws and regulations. In relation to the regional budgets of income and expenditure (APBD), before being enacted a provincial regional regulation has to be evaluated

by the Minister of Home Affairs, and a district/municipal regional regulation by the regional or district governor, according to Article 185 and 186 of Law No. 32/2004. The evaluation result is binding. According to Article 222 (1b), other than regional regulations on regional budgets, the supervision of the Ministry of Home Affairs on the administration of regional governments also covers the supervision on regional regulations and regional heads' decrees in general.

At the national level, the Minister of Home Affairs has used the authority to review the appropriateness of the regional bills selectively. In particular, the minister has only reviewed regional bills on finance and levies, and has scarcely taken the responsibility to review discriminatory bills that contradict the constitutional rights of citizens. So far, in carrying out its supervisory responsibility, the Ministry of Home Affairs has pushed for the annulment of more than 2,300 regional regulations[27] on taxes and levies. Other than that, one article in the Aceh Qanun No. 7/2006[28] on the Second Amendment to Qanun No. 3/2004 on the Elections of Governor/Deputy Governor, District Heads/Deputy District Heads, and Mayors/Deputy Mayors in the province of Nanggroe Aceh Darussalam, was annulled by Presidential Decree No. 87/2006. Only in 2007 did the Ministry of Home Affairs for the first time use its authority to state its disagreement with a regional bill on Muslim dress codes and on activities during the month of Ramadan from the district government of Central Hulu Sungai. This rejection was based on the principle that religion was not an affair under the jurisdiction of the regions.

The provincial governments, in this case the provincial legal bureaus, as the hand of the central government in the regions, have an important role in the supervision of the regional bills on regional budgets of income and expenditures, taxes, spatial planning, and other regional regulations related to public life. However, the officials of the provincial legal bureaus felt hindered in their capacity to fulfil their roles, due to the limitations of the legal foundation regarding the authority of the provincial legal bureaus and the current state of unproductive political dynamics generated by euphoria about regional autonomy. As the head of one provincial legal bureau explained:

> "It is the central government that has the authority of annulment. So we provide recommendations [to the district governments]. If the recommendations are not paid attention to, we of course issue reprimands, to urge for change…because the regional regulations made by the districts have to be changed by the districts themselves. We also make clarifications if there are suspicions that some regional regulations have violated human

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**[27] See http://newspaper.pikiran-rakyat.com/prprint.php?mib=beritadetail&id=47640, accessed on Thursday, 12 March 2009, 22:56 Indonesia Western Time.**

[28] Article 33 (2) item n and Article 34 (8) of the Aceh Qanun No. 7/2006 on the Second Amendment to the Nanggroe Aceh Darussalam Qanun No. 2/2004 on the Elections of the Governor/Deputy Governor, District Heads/Deputy District Heads, and Mayors/Deputy Mayors in the province of Nanggroe Aceh Darussalam which states that "husbands/wives should not occupy public and political positions in the concerned region" and "Governor *ad interim*, District Head *ad interim*, and Mayor *ad interim* may not become candidates for direct elections and may not resign from the position of Governor *ad interim*, District Head *ad interim*, and Mayor *ad interim* with the purpose of becoming candidates" were considered to be contrary to Law No. 39/1999 on Human Rights.

> rights…but they are just suggestions, urging for revision [of the regulations]. But whether they are followed up or not depends on the regions."

The absence of a strong legal foundation in the supervisory authority of the provincial legal bureaus reflects poor inter-institutional relations both vertically and horizontally in the administration of today's autonomy. Because of the lack of coordination and clarity of roles, the provinces are often unsure about how to take firm action on issues at the district level. This is indicated in the following statement from a member of a provincial parliament:

> "…I am at the provincial level, this is an issue of regional autonomy…. I cannot comment on it…[although] I indeed know that the [problematic] regional regulations exist."

Doubt in taking a stance on the problems created by the existence of discriminatory regional policies is also felt by officials of district legal bureaus. This situation exists because officials are faced with the dilemma of the need to manage the aspirations of the people, on the one hand, and the need to ascertain consistency with higher laws on the other, as was explained by a legal bureau official of the monitored districts:

> "We understand there are several issues that the regions may not manage; they may not be a matter of regional autonomy. One of them is religious affairs. They have not been handed over to the regions; it is not a part of regional autonomy…never been given to the regions to be a part of its affairs. But we as the government have the duty to accommodate the will of the people. However, that in fact goes against regional autonomy law. But, because it is the wish of the people, we do it. The government serves only as a facilitator or servant."

These doubts should not exist. The findings of this monitoring study, as elaborated earlier in this report, show that besides contradicting higher laws, there are differing opinions among the people about the need for the regulations on religious affairs. Diversity of opinions is even alive among the majority communities themselves, whose identity has been used by political elites as justification to issue regional policies in the name of the people's identity. Indeed, such regional regulations threaten the foundation of the nation state. With proactive support from the President, the Ministry of Home Affairs together with the legal bureaus of the provincial and district governments should take a stronger lead as spearheads in maintaining the integrity of national law in the era of regional autonomy.

## 7.2. Paralysis of the Ministry of Law and Human Rights

In its organisational structure and authority, the Ministry of Law and Human Rights (MoLHRs) has the function of harmonizing national law, which also covers regional policies. The ministry plays preventive function to the issuance of regional regulations that are not in line with higher laws, especially in the context of human rights. The special section tasked with this function is the Directorate for the Facilitation of Regional Regulation Formulation. Although

its authority is not binding, the role of the ministry is much needed essentially to improve the institutional capacity of the regions in formulating a policy and harmonising regulations to uphold human rights. The head of the regional office of the MoLHRs in one of the monitored provinces said:

> "The harmonisation of human rights, in particular, has not yet been carried out intensively. The Ministry of Law and Human Rights tried to coordinate with the district/municipal offices to harmonise or regularise the content of the regional regulations with the legal elements of human rights so that they do not curtail the rights of women…. Surely, the appeal or circular from the Minister of Home Affairs should be about coordination and should be implemented."

The Home Affairs Ministerial Circular No.188.34/1586/SJ/2006 on the Instructions for the Preparation and Planning of Regional Regulations states that prior to enactment, district regional bills can be discussed with the provincial regional offices of the MoLHRs, and provincial regional bills with the national office of the Ministry. Similarly, the Presidential Decree No. 49/2004 on the RANHAM (National Action Plan for Human Rights) stipulates the agenda to have the harmonization of laws and regulations in line with the human rights instruments. This decree stresses the importance of consultation in the creation of regional regulations and policies.

Komnas Perempuan found that as the coordination focal point in the regularisation of human rights in the regions, the regional offices of the MoLHRs do not have access to or significant influence in the formulation process of the regional policies at the level of district/municipality. The cause, among others, is that the existing legal foundation only provides the authority for the ministry's regional offices in a consultative capacity and even that is not a mandatory prerequisite in the formulation of the regional regulations on the part of regional governments. Therefore, the regional offices of the MoLHRs find it difficult to play a stronger role in ensuring the upholding human rights. Thus, procedural democracy means that not only the public but also the regional offices of the MoLHRs can only play a symbolic role in the formulation process of the regional regulations. The law development sub-section head of a provincial regional office of the MoLHRs said:

> "Unlike at the national level where there is Presidential Decree No. 61/2005 (on the System of the Making and Management of National Legislation Programme), the regions have no legal foundation to ensure the involvement of the Ministry of Law and Human Rights…. From the beginning, we could provide input, if invited by the regional parliaments, in the discussions of the academic drafts. But the invitations are often so sudden …. In fact, in the situation where the capacity of legal drafting is limited, the regional parliaments could use us. Currently eight personnel at the Yogyakarta regional office have participated in training to compile and prepare legislation to become legal drafters. They don't have to pay us, it is our job …. If they [bills] have already become regional regulations and there are problems, normally the legal bureaus of the regional governments

invite us to discuss the clarification points. Unfortunately, the sustainability [of this process] is difficult to maintain because the members of the deliberating teams often change."

Similar statements, about the constraints in the regularisation of human rights, were voiced by all informants representing the regional offices of MoLHRs consulted in this monitoring. The RANHAM committees in the regions, supposed to be a force in preventing the enactments of discriminatory regional policies, have so far failed to play a more active role. Members of the RANHAM committees that come from elements of regional management, public figures, and NGOs need to more widely socialise the understanding of human rights and should be able to respond quickly if human rights problems emerge in the regions, including in the regional legislation programmes. The presence of the RANHAM committees could become an opportunity to strengthen the position of the regional offices of the MoLHRs in performing its key role in the regularisation of human rights. According to the head of a regional office of the MoLHRs in one of the monitored provinces, the potential of the RANHAM committees has not yet been realised, they even tend to "work separately":

"That's why. We don't have a legal foundation to demand, as our right, to be involved. So we work separately. Currently we are coordinating at a low level. We don't use the normal rules. It depends on our approach with the legal bureaus. In the socialisation of human rights, we try not to overlap with others in socialising [human rights matters] to the people, also in the dissemination and education of human rights, because there are also regulations on these matters issued by the regional governments."

The discourses over regional policies that violate human rights and also the mandate to conduct regularisation of human rights have compelled the regional offices of the MoLHRs to take more proactive steps. All informants representing the regional offices of the MoLHRs in all the monitored regions revealed that they were compiling the regional regulations that had been issued in their respective districts to be evaluated and then coordinated on a national scale. The initiative could strengthen the position of the regional offices of the ministry to ensure the fulfilment of the constitutional human rights guarantee through regional policies. The head of the legal section of a provincial office of the MoLHRs told about a finding from the initiative:

"In 2008 [we] compiled the regional regulations related to human rights…. Not all of the 26 districts/municipalities have regional regulations related to women issues… problematic ones…. It seems that the regional regulations should be re-examined whether or not they violate higher laws and regulations, or as what we are doing now, whether or not they contravene human rights…. After the compilation, after just one analysis on the regional regulations, it turns out that there are many regulations that contravene [human rights]. There is one district regional regulation that is like the one in Aceh. Because there is no socialisation to the people, they remain calm. But if the regional regulation was to be read by non-Muslims they would surely go wild. How can it be that everything is about Islam? There are non-Muslims in the district also."

## 7.3. Incapacity of the Ministry of Women Empowerment Bodies

The Presidential Decree No. 9/2000 on the Mainstreaming of Gender in the National Development in essence is to order all the ministers, the heads of the non-departmental government agencies, the heads of the secretariats of the state's higher/highest level agencies, the Police Chief, the Attorney General, governors, district heads, and mayors to ensure that the perspective of gender justice is integrated in development, from the planning, formulation, implementation, monitoring, to evaluation of the policies and programmes of national development according to their respective tasks, functions, and authorities. This instruction stresses the need for systematic efforts to ensure the accommodation of gender perspectives and analysis, including primarily the constitutional rights of women, in the enactments of regional regulations. But, as with the fate of the Ministry of Law and Human Rights' regional offices, the Women Empowerment Bureaus/Bodies that serve the role of gender mainstreaming also do not have access to or significant influence in the formulation process of regional policies at the district/municipal level.

So far, this Komnas Perempuan study has found that the substantive agenda of gender mainstreaming is not yet a priority in the formulation of regional policies at the provincial and district/municipal levels. The bureaus for women empowerment are more involved with moving forward with the Law on the Elimination of Domestic Violence via the formation of the Integrated Service Centre for Women and Children Empowerment (P2TP2A), economic empowerment, and health services for mothers and children (Posyandu) in cooperation with the Health Ministry. Gender mainstreaming on the other hand, has rather reduced in importance to merely being one of the provisions in the issuances of regional policies that specifically deal with gender mainstreaming. Without adequate support in an institutional capacity, these women empowerment bodies will have difficulties in taking a leadership role in the actions against discrimination against women, which is the essence of the gender mainstreaming agenda in the regional regulations.

## 7.4. Failure of the Supreme Court

> "Is the judicial review one way to measure the truth? I don't think so. The Supreme Court tends to do technical and procedural reviews, not substantial…. If the substance of this regional regulation contradicts the Constitution, we can only appeal to the Supreme Court. The Supreme Court analyses or reviews the process and procedural mechanisms, not the substance. According to the Supreme Court, the substance is a matter of the will of the local people, what they want the nature of the regulation to be. Here the chaos starts to erupt. " (Comment from a participant in the focus group discussion of educators, Banten)

When the preventive mechanisms fail to function effectively in protecting the constitutional guarantee in the system of regional autonomy, then the only hope of protection lies in the

Supreme Court. It has the exclusive authority to conduct judicial reviews on regional policies. The judicial reviews on regional regulations can be conducted on the contents of an article, a chapter, and / or parts of a regional regulation. The authority of the Supreme Court is based on the mandate of Law No. 5/2004 on the Authority of the Judiciary. This foundation of the authority of the Supreme Court to conduct a judicial review is also stipulated in Article 24 A (1) of the 1945 Constitution, Article 11 (2) item b of Law No. 4/2004 on the Authority of the Judiciary, and Article 31 (2) of Law No. 5/2004 on the Supreme Court. The Law on the Supreme Court provides the measure or the reason for the annulment of a regulation below the level of national laws, either because it contradicts higher laws and regulations (material aspect); or the enactment process does not follow the existing rules (formal aspect).

The leadership of the Supreme Court in maintaining the integrity of the national law through judicial reviews is undermined in the judicial review decision on the regional regulation of Tangerang City No. 8/2005 on the Prohibition of Prostitution. The decision has been appealed against by Lilis Maemunah, Tuti Rahmawati, and Hesti Prabowo, all three of them victims of wrongful arrests in the enforcement of this discriminatory regional policy. A press release by Justice Djoko Sarwoko dated 1 March 2007, states that the Supreme Court rejected the judicial review appeal because:

> "the making of Regional Regulation No. 8/2005 has gone through a long process that involved all elements of society. The Supreme Court also judges that the Tangerang City Regional Regulation is a political implementation of the Government of Tangerang City, so that it is not included in the materials under judicial review".

The Supreme Court's choice to only examine the formal aspect of the Tangerang regional regulation explicitly shows that it has failed to guard the consistency of regional regulations with higher laws and regulations.

The procedures in place for judicial reviews by the Supreme Court do not provide any access for discourses, debates or the ideas from various parties that may provide explanations and clarity. Even the opposing parties in the case have no access at all during the process of the review. Although the Supreme Court review procedures allow for the presence of invited experts, in practice this does not occur. [29] This is despite the fact that the characteristics of the judicial review on laws and regulations are quite different from that of cassation cases where the examination is on the decisions of the lower courts, about the accuracy of points of law in a certain legal case. The head of the legal bureau of a province said:

> "We respect the decision of the court, although we don't have a copy. It means the highest court, the Supreme Court, has handled [the judicial review]. I think we have to respect that. Bureaucratically, what the court has decided upon, we have to be consistent with. That some people see it differently, well, that's their problem".

[29]The Supreme Court never publicised the decision of the judicial review on the Regional Regulation No. 8/2005. The plaintiff never got a copy of the decision.

The decision of the Supreme Court, as the last gatekeeper, is final, although it may ignore the sense of justice. Procedurally, democracy has prevailed and the people, including the plaintiff, are requested to accept the decision. The groups of people who still reject the regional policy are considered not only disloyal to democracy but also disobedient to the law, as implicit in the above statement.

The second test to the leadership of the Supreme Court came in the form of a judicial review appeal of Regional Regulation No. 5/2007 on the Prohibition of Prostitution in Bantul District. The appeal was presented on 1 May, 2007, by the Alliance Rejecting the Regional Regulation on the Prohibition of Prostitution in Bantul, which consists of 21 organisations and people whose constitutional rights were violated as a result of the regional regulation. Up till the time of writing, no information whatsoever has been provided by the Supreme Court about the judicial review process of this regional regulation. The only existing document is a letter from the Supreme Court, dated 14 November, 2007, about the receipt and registration of the files.[30]

The decision of the Supreme Court in the first case that rejected the judicial review appeal on the Tangerang regional regulation has given impetus to the initiators and supporters of the Bantul regional regulation. As mentioned in Chapter 4 of this report, the Bantul regional regulation does not differ much from the Tangerang regional regulation regarding the multi-interpretable formulation of its article and its implementation that has resulted in cases of wrongful arrests. One of the leaders of the special committee of the local parliament on this regional regulation argued that there was no doubt that the judicial review appeal to the Supreme Court would reinforce the Bantul regional regulation as a legal product:

> "One of the NGO friends is a proud member of a consortium, a community of pro-women advocates. That person appealed for a judicial review. That was the climax of their protests, to Jakarta…. To change a regional regulation is to appeal for a judicial review, isn't it? At least there's a wish for annulment…. They said they were not satisfied, unwilling, that is democracy. But though unwilling, the fact is the regional regulation has been legitimised and accepted by the majority, and in fact implemented too…. Remember [the judicial review] in Tangerang failed! That of Bantul is ongoing. At the regional government [of Bantul] there has already been an announcement that a legal team [has been formed] to deal with the judicial review."

The failure of the Supreme Court in its mandate to guard the integrity of the national law, as stipulated in the 1945 Constitution Article 24 A, can also be seen in its decision on the cassation appeal about the accusation of violating the regulation on *khalwat* decided upon by the Sharia Court in Aceh Province. The decision of the Supreme Court to reject all cassation appeals has resulted in not only reinforcement of the new kind of criminalisation in relation to social interaction based on the suspicion of adultery (*khalwat*) and the new kind of punishment (public flogging), both of which are not known in the national legal system. It has also resulted

[30] In March 2009, the Supreme Court decided to decline the request, claiming that the submission of the request had passed the permitted time frame, namely 180 days after the regulation was issued.

in the erosion of legal certainty. The ambiguous definition of *khalwat* has significantly broadened the opportunity for wrongful arrests based on suspicion, even accusations, in which the principle of presumption of innocence is ignored. The legal process experienced by those accused of violating the regulation on *khalwat*, as mentioned, is also marred by violence and intimidation. The decision of the Supreme Court to not investigate the accuracy of the legal process and the accusations involved in these charges of something that is not a criminal act clearly ignores the right to justice of every citizen, including the women of Aceh.

**Injustice caused by the erosion of the integrity of the national criminal law**

As stipulated in the 1945 Constitution of the Republic of Indonesia Article 24 A, other than reviewing regulations under national laws, the Supreme Court also has the authority to make judgment at the cassation level. In this capacity, records show the court has rejected at least three cassation appeals on the cases of suspected *khalwat* that had been decided upon by the Sharia Court at the district and provincial levels in Aceh. The three cases mentioned flogging as the form of punishment, both as the sole punishment, and as one of the punishments along with fines.

In the last case (see Illustration: Case 4 in this report), the victim was accused of adultery (not *khalwat*) only because she received an SMS. Without further investigation, the Supreme Court made the decision based on documents presented by the lower court. The Supreme Court's decision to reject the cassation appeal has caused injustice for the victim, who has been isolated by her community because of the accusation.

At this stage, the Komnas Perempuan monitoring has demonstrated the urgent need for a thorough study to be undertaken on the discriminatory regional regulations, including those based on morality and religion. In fact, those regional regulations should be examined not only on their legality but also their constitutionality because they have systemically eroded the guarantee of the constitutional rights of citizens, and institutionalised discrimination against women and other minority groups. Because the authority to conduct reviews on these regional regulations is in the hands of the Supreme Court, the Court should not merely conduct judicial reviews of the formal procedures involved in formulating the regional regulations. Rather, the Supreme Court should also conduct judicial reviews on the material or substantive content of all the regional policies put forward by the people for review.

## 7.5. Powerlessness of the Constitutional Court

By making the decision to reject a judicial review appeal based only on an evaluation of formal procedures in making the bylaw, the Supreme Court has contributed to sustaining the supremacy of procedural democracy over substantive democracy and has undermined the Constitution in the name of democracy and regional autonomy. As the only judicial body with the

authority to review regulations below the level of national laws, the decisions of the Supreme Court are the ultimate legal decisions that bind all state institutions and all citizens. But its decisions have in fact brought about a new injustice, and because of the kind of regional policies it has reinforced in the process, these decisions threaten the nationhood and diversity of Indonesia.

The Supreme Court's refusal to review the content of the regulations clearly illustrates the imperfection of the state administrative system of Indonesia, because it lacks the mechanisms to review the content of the regulations in a way that is just. Citizens whose constitutional rights have been violated by the Supreme Court's decisions have no choice but to continue to become "legal violators" of the regional regulations that undermine their constitutional rights. Victims of these unjust decisions further cannot use the existing constitutional review avenues because according to the Article 24 C (1) of the 1945 Constitution, the Constitutional Court only has the authority to review national laws regarding the Constitution.

This deficiency in the national mechanisms must be addressed urgently. Priority should be given to strengthening the roles in executive institutions at the provincial level and improving coordination. Likewise, improvements should be made in the relationship model between the national and regional governments as well as between institutions positioned horizontally on the same level. No less important is the need to improve of the structuring of Supreme Court that has the judicial authority over reviewing laws and regulations under national laws. Moreover, one breakthrough strategy needed to overcome the deficiencies in the national system is to give the Constitutional Court the authority to examine state policies below the level of national laws. With this authority, the Constitutional Court could work more optimally to ensure the fulfilment of the constitutional rights of every citizen, without exception.

Public participation is important in strengthening the role state institutions play as part of the national system in preventing and annulling the regional policies that contradict the Constitution; it is the key to maintaining the integrity of national law and striving for fulfilment of constitutional rights. Indonesia, in the era of regional autonomy, is a nation still searching for its identity. The active participation of the public in fostering and developing a national consensus is the main pillar of Indonesia's emerging democracy. The head of a regional chapter of an Islamic mass organisation in West Java said:

> "All of Indonesia has the strategic role to supervise the emergence of these regional regulations. This of course cannot be carried out by the Ministry of Home Affairs…the Supreme Court and the Constitutional Court, for them to conduct judicial reviews on all the existing regional regulations…. Currently [the regional governments] are in the state of euphoria. Since 1998, everything is administered by regional governments, and they overshoot everything…. They are searching for a form, sometimes excessively…. Some of the regulations are even in the public domain which should not be taken away by the state…. Our friends from the NGOs have an important role to push the official institutions to review all the regional regulations that contradict the Constitution".

# Chapter 8

# Conclusions and Recommendations

## 8.1. Conclusions

### 1. On the National Trend of Local Bylaws

1.1. The 154 local bylaws issued at the provincial level (19 policies), district/municipality level (134 policies), and village level (one policy) between 1999 and 2009 have enabled institutionalisation of discrimination, either through intent or as an impact of the policies. The local bylaws have been enacted in 69 districts/cities in 21 provinces within this period, from the beginning of the reform era when regional autonomy first became one of the agendas of democratisation. More than half of the discriminatory local bylaws (80 policies) were enacted almost simultaneously in the span of only two years, between 2003 and 2005.

1.2. Of the 154 local bylaws, 63 are directly discriminatory against women through restriction of the right to freedom of expression (21 policies on dress codes), the impairment of the rights to legal protection and certainty by criminalising women (37 policies on the elimination of prostitution and one policy on the prohibition of *khalwat* or being alone with an un-related member of the opposite sex), and the exclusion of the rights to protection of rights to have decent and humane employment conditions and livelihood (4 policies on migrant workers). Of the rest, 82 local bylaws regulate religious issues that should rather be under the jurisdiction of the central government. These policies impair the rights of every citizen to freely worship according to his or her faith, and have resulted in the ostracism of minority groups. Nine other policies have caused the impediment of the freedom to embrace a religion, and particularly target the Ahmadiyah religious group that is forced to obey the regional regulations that criminalise their very existence. All the rights impeded or curtailed are rights guaranteed in the Constitution that should apply to every Indonesian citizen Indonesia without exception.

1.3. The provinces whose districts are the most keen to issue discriminatory local bylaws, in order of the number of regulations, are West Java (35 policies), West Sumatra (26 policies), South Kalimantan (17 policies), South Sulawesi (16 policies), West Nusa Tenggara (13 policies), and East Java (11 policies). In the context of discriminatory local bylaws against women, more than one third of the policies that limit the freedom of expression have been issued in districts in West Sumatra pro-

vince (8 policies), followed by districts in West Java (5 policies), and districts in South Sulawesi (3 policies). The districts in West Java are the most willing to issue local bylaws that criminalise women (8 policies), followed by the districts in East Java (7 policies), and West Sumatra (6 policies). Two policies on migrant workers that disregard the rights to decent and humane employment conditions and livelihood have been issued by in regions that are areas with high concentrations of female migrant workers, in particular, Cianjur, Sukabumi, and Karawang. All three are in West Java.

1.4. More than two thirds of the discriminatory policies (106 policies) use similar terminology in the formulation of their rationale and contents, which state that the policy is intended as "one of the manifestations of the implementation of religious teachings" or to "improve faith and devotion". More than half specifically say that the goal of the policy is to "create an Islamic character in the region". This terminology is included in seven local bylaws on dress codes and 13 local bylaws that criminalise women through regulations on prostitution. Such a situation shows the existence of the practice of creating policies for image politics based on a certain religious identity, or the politicisation of identity.

1.5. Of the many regions that have issued discriminatory local bylaws, Aceh has been the reference for the initiators of the local bylaws in the regions monitored by Komnas Perempuan for the reason that it is the only province where Sharia is officially in effect. Meanwhile, the enforcement of the local bylaws related to Sharia in Aceh has caused the erosion of the integrity of the national legal system, especially in relation to the existence of a specific kind of crime (prohibition of *khalwat*) and its punishment (public flogging), which are not recognised in national law.

## 2. On Discrimination

2.1. Because the formulation of the policies is fuelled by identity politicisation, minority groups experience discrimination in governance participation. Because the local bylaws are based only on the religious identity of the majority, the policy makers have not felt the need to ask for or to consider the opinions of minority groups during the process of policy formulation. The exclusivity involved in the implementation of policies automatically undermines the protection of rights to religious freedom for minority groups. This attitude of policy makers has resulted in minority groups feeling isolated and marginalised, while the implementation of the policies openly pressures minority groups to "conform" accordingly.

2.2. The female body and sexuality have become the easiest and most effective tools used in image politics, resulting in discrimination against women. The initiators of the policies have the tendency to respond to the public's concerns over social problems in their communities by issuing policies based on stereotypes of women as

symbols of the morality of communities. Additionally, the policies are located in the culture of blaming female victims in cases of sexual violence, and based on religious justification in limiting women's rights to move about and express themselves freely. Through local bylaws that criminalise or control the female body and sexuality, the policy initiators have positioned themselves as the guardians of the morality of communities and protectors of women from violence—that is considered to be the fault of the women themselves.

2.3. Women are forced to obey the standardisation of identity, especially religious identity through the wearing the *jilbab*, as a result of the female body and sexuality being used as a symbol in image politics. Women who refuse to conform to a uniform identity are punished through harassment, isolation, limitation of access to public services, and even through fines or imprisonment (as experienced by Aceh women).

2.4. Underprivileged women and women working in the entertainment industry are specific targets of criminalisation through local bylaws on the elimination of prostitution. Meanwhile, poor women working abroad are not given legal protection by local bylaws on migrant workers because their special needs are neglected and they remain vulnerable to exploitation and other abuses.

2.5. Minority women have become victims of the violation of constitutional rights in multiple ways. Women belonging to marginalised minority groups are also discriminated against in the process of policy formulation and in so-called equal rights to benefit from the implementation of a public policy. Because of their gender, women from minority groups experience additional discrimination. For example, in the regions where women are obliged to wear the *jilbab*, women from minority groups, particularly those working in the public sector, are in a situation where they are forced to wear it to avoid being treated differently by their peers or being isolated from social interaction.

2.6. Women in Aceh do not have equal standing before the law in comparison to other women in Indonesia. They have to obey a legal standard that is different to the criminal legal system applicable throughout Indonesia, especially in the limitation to social relations between people of opposite sex. This discrepancy is brought about by the prohibition of *khalwat* and the risk of being punished by public flogging, a form of punishment not recognised in the Indonesian legal system.

## 3. On the Quality of Democracy

### *Performance of State Institutions*

3.1. The institutions of the executive and the legislative branches that have the authority to formulate local bylaws have provided only a limited space for public participation and for the sake of formal procedures only. Target groups, groups in society potentially most affected by the implementation of the policies, and critical groups

do not have equal opportunities to provide input in the formulation process. Even when they get the chance to do so, there are no effective and accessible mechanisms to ensure that their opinions will seriously be considered in the decision making process of the policies.

3.2. The practice of procedural democracy significantly opens way for image politics that easily exploits the female body as the symbol of morality and the region's religiosity. Formalistic obeisance to procedures has always been used as a rationalisation for the issuances of the local bylaws that substantively institutionalise discrimination.

### *Diversity and Self-Reliance of Communities*

3.3. The public tend to keep silent in the face of policies that use the issues of morality and religion as the rationale and standard in policy making because people are afraid to be accused of immorality. Members of the public tend to regard such policies as having no bearings on the needs of the people and often do not feel the urge to make their voices heard. In several cases, people who openly criticised the ideas and implementation of such policies were intimidated and experienced verbal and physical abuse. As a consequence, diversity of opinions and public debate could not flourish in the regions, stifling democracy.

3.4. The role and the independence of citizens in a democratic society are being subjugated by the state, especially through the local bylaws on religion that put people in boxes based on religious identities. This policy making has worked to narrow the space for public dialogue and erode respect for difference and diversity in society.

3.5. The utilisation of the Pamong Praja Police Unit (Satpol PP), or the Wilayatul Hisbah (WH) in Aceh, as the repressive mechanism in the enforcement of the discriminatory local bylaws against women has further legitimised state intervention in the personal lives of citizens and eroded the freedom of citizens to express and develop themselves.

3.6. In view of the narrow adherence to procedural democracy and the erosion of people's independence, some civil society groups actively urge the regional governments to issue public policies that aim to fulfil the needs of social welfare, achieve social justice and protection of other constitutional rights. These efforts are proven to have successfully prevented the enactments of some discriminatory policies. For example, in East Lombok, civil society groups advocating anti-discrimination initiated the idea and guided the formulation of the regional policy on migrant workers so that the enacted policy stresses protection rather than just the administration of the recruitment of Indonesian migrant workers. Civil groups that have been actively critical of discriminatory local bylaws, such as dress code regulations in Bulukumba and Dompu and policies that criminalise women through the prohibition of prosti-

tution in Mataram and Yogyakarta, have crucially contributed to the nurturing of substantive democracy and to curtailing the practice of image politics.

## 4. On the Authority and Certainty of the Law

4.1. The trust of the public in the legal system and legal authority is deteriorating because of the issuance of regulations on dress codes. These policies are deemed to have no credibility and are filled with politically motivated content. The lack of trust is exacerbated by growing suspicion of corruption among the initiators of the policies as well as by the occurrence of corruption in the numerous cases of wrongful arrests and violence committed by state apparatus in implementing the regulation the prohibition of *khalwat* and the elimination of prostitution.

4.2. The public are becoming more uncertain about the authority of the law when they see the presence of the police in the midst of the raids by civilian militia groups and then hear that the police let these things happen because they are outnumbered by civilian militia committing abuses and thus do not have the power to intervene. Police attitudes in these unauthorised raids amount to a direct violation of human rights by the state, because the law enforcers allow intimidation and violence against the public, especially women, to occur.

4.3. Since they are not developed to address the needs of the public, the discriminatory local bylaws are often ineffective and do not even qualify as legal regulations. In the case of the enforcement of the local bylaws on dress codes, many members of the communities have said that they would wear the *jilbab* only when they were in a formal situation, such as in schools or offices, or only when and where there were government officials around. In the regulations on prostitution that bring about the criminalisation of women, the public can see that, in reality, the enforcement of the regulation only causes prostitution to become more dispersed and hidden.

## 5. On the Integrity of the National Law

5.1. Special autonomy has the potential to create inconsistencies in the national legal system if it does not incorporate the concepts of constitutionality and a holistic civic administration. Such inconsistencies are illustrated in the context of the criminalisation of social relations between people of opposite sex (the prohibition of *khalwat*) and the punishment of public flogging in Aceh, both not recognised in the national legal system.

5.2. The procedures in place at executive levels of governance to prevent discriminatory local bylaws from being enacted are ineffective.

- At the provincial level, the Regional Office of the Ministry of Law and Human Rights, that is supposed to be the focal point of coordination for the harmoni-

zation of human rights in the regions, and the Bureau for Women Empowerment, whose role is in the mainstreaming of gender, do not have access or significant influence in the processes of regional policy making at the district/municipality levels.

- At the national level, the Home Affairs Ministry has selectively applied its authority to examine the feasibility of regional bills; that is only on the local bylaws related to finance and levies. It rarely carries out its responsibilities in relation to the discriminatory regional bills that violate the constitutional rights of citizens.

5.3. The Supreme Court, as an existing judicial mechanism, has failed to perform its function as the safety net in maintaining the consistency of national law, both in relation to the annulment of the regional regulations and in its decisions on cassation appeals. The Supreme Court refused to conduct a judicial review on the Tangerang Regional Regulation No. 8/2005 on the Prohibition of Prostitution, merely on account that it was deemed consistent with procedural principles. Supposedly serving as the last guardian of the national criminal court system, the Supreme Court, on the contrary, has upheld and reinforced the decisions of the Sharia Court in Aceh on a certain offence (*khalwat*) and punishment (public flogging) that are not recognised in the national criminal legal system.

5.4. The system of Indonesian administration today still has flaws in the judicial review mechanisms in dealing with discriminatory local bylaws, particularly in a situation where the Supreme Court fails to perform its duty to annul discriminatory local bylaws and the Constitutional Court does not have the authority to review regulations below the level of national law.

## 6. On the System of the Nation-State

6.1. The institutionalisation of discrimination, brought about by dysfunctional national mechanisms and the resulting inconsistencies in national law, has been allowed to occur in the name of "regional autonomy". This threatens the foundation of the nation and the ideals of the state as laid out in the 1945 Constitution of the Republic of Indonesia. The problem continues because there has not yet been a firm and holistic national consensus on the separation of state and religion, on the protection guarantee for minority citizens, and on the relationship between the central and regional governments. These issues consistently manifest in the legal system and civic administration of Indonesia.

## 8.2. Recommendations

To improve the capacity of the nation in fulfilling the constitutional guarantees for every citizen without exception and in achieving the constitutional mandate to eliminate all forms of discrimination, the National Commission on Violence Against Women puts forward the following 20 recommendations.

### The Government/Executive

1. The Indonesian President should:
    1.1. Declare legally null and void all the discriminatory local bylaws that violate the human rights of citizens, as experienced by women and minority groups, in accordance with the responsibility of the state to uphold human rights;
    1.2. Declare legally null and void all local bylaws that regulate religious issues, based on the Law on Regional Autonomy which states that religion is one area that remains fully under the authority of the government at the national level;
    1.3. Issue a Presidential Decree to strengthen the roles and functions of the Ministry of Law and Human Rights in maintaining consistency and harmony among the laws in relation to the human rights framework in the regional autonomy system, including by reinforcing the authority of the Provincial Office of the Ministry of Law and Human Rights during the formulating process of the local bylaws at the district/municipality level;
    1.4. Issue policies with the purpose of fulfilling the constitutional mandate about the special treatment required to enjoy equal opportunities and benefits in achieving equality and justice, especially for women, minority groups, and other groups vulnerable to discrimination.

3. The Minister of Home Affairs should improve the effectiveness of the Ministry of Home Affairs in performing its obligation to prevent the enactment of discriminatory regional regulations that erode the integrity of the national law.

4. The Minister of Law and Human Rights should improve the performance of the Ministry of Law and Human Rights in:
    4.1. Maintaining the consistency of laws and regulations that promote human rights and ensuring of the integrity of national law, including by perfecting the strategic roles of the RANHAM (National Action Plan on Human Rights) committee and the Regional Office of the Ministry of Law and Human Rights in all processes of formulating local bylaws;
    4.2. The harmonization of all national laws, including regional laws, to meet the standards of the Convention Against Torture; special attention should be given to rescinding public flogging and other forms of inhumane punishment.

5. The Minister of Women Empowerment should improve the performance of the Ministry in the mainstreaming of gender in the regional government offices to prevent the issuances of discriminatory local bylaws against women and to push for the elimination of all forms of discrimination against women as mandated by Law No. 7/1984 on the Ratification of the CEDAW (Convention on the Elimination of All Forms of Discrimination against Women).

## The Judicial

6. The Head of the Supreme Court should improve its responsiveness to judicial review appeals from the public regarding discriminatory regional regulations and should declare legally null and void all the regional regulations which are discriminatory, both in intent and as an impact, including the regional regulations on dress codes and those which discriminate against women, even if those discriminatory regional regulations have procedurally fulfilled Law No. 10/2004 on the Enactment of Laws and Regulations.
7. The Constitutional Court should integrate the perspective of gender justice in exercising its authority, both in the handling of judicial reviews on the laws and in constitutional studies, as well as in educating the public about the constitution.

## Law Enforcement Agencies

8. The National Police Chief should improve the roles of the police in preserving the authority and certainty of the law by taking decisive legal actions against any individuals or groups that conduct violent acts and force their will on other members of society for whatever reason, including religion, and by taking preventive action in refusing permits for civilian groups to conduct raids.
9. The Attorney General and the National Police Chief should instruct all heads of law enforcing institutions at all levels not to implement dress code rules that follow a certain religious tradition in the workplace of those institutions.

## The Legislative

10. The People's Consultative Assembly (MPR) should initiate an amendment to the 1945 Constitution to improve national mechanisms to effectively guarantee the fulfilment of the constitutional rights of every citizen without exception, including by widening the authority of the Constitutional Court to be able to make judicial reviews on regulations below the level of national laws and by giving new powers to the Constitutional Court to create a structure to manage constitutional complaints that can be accessed by all citizens.

11. The Regional Representative Council (DPD) should take proactive steps and exercise its authority to supervise law enforcement in the regions and to expand public dialogue on its findings on the fulfilment of the constitutional rights for every citizen without waiting for an amendment to the 1945 Constitution.

12. The House of Representatives (DPR) should:

    12.1. Initiate a bill to implement the constitutional mandate to provide special treatment that ensures equal opportunities and benefits in achieving equality and justice, especially for women, minority groups, and other groups vulnerable to discrimination;

    12.2. Conduct a comprehensive study on, and put in its agenda, the amendments to various national laws that have become the rationale for enactments of discriminatory regional regulations;

    12.3. Integrate the constitutional mandate to eliminate all forms of discrimination during the orientation process of elected members of parliament and in every opportunity to improve the capacity of the legislators.

### Independent State Agencies

13. The National Commission on Human Rights should improve the effectiveness of the national human rights mechanisms in the handling of all forms of discrimination experienced by members of society as human rights violations.

### Regional Governments

14. The Heads of District/Municipality Regional Governments should ensure that their leadership contributes to the ideals of the nation as stated in the 1945 Constitution, at the regional level.

15. The Heads of District/Municipality Governments and Parliaments should issue local bylaws that aim at implementing the constitutional mandate to provide special treatment that ensures equal opportunities and benefits required to achieve equality and justice, especially for women, minority groups, and other groups vulnerable to discrimination.

16. District/Municipality Parliaments should improve the mechanisms for public participation in the whole process of policy formulation to ensure equal access for all concerned parties and to ensure that the enacted policies are the products of democratic public debates.

17. Provincial Governors should take proactive steps to annul discriminatory regional bills, or *qanun* bills in the case of Aceh, that could potentially cause discrimination against women and minority groups in the regions, in order to fulfil the constitutional guarantees for every citizen without exception and to maintain the integrity of the national law.

18. The Heads of Provincial and District/Municipality Regional Governments should launch an education campaign on the Constitution and the guarantee of constitutional rights for every citizen in their own regions, including by integrating the human rights and gender fairness perspectives in the curricula used to improve the capacity of civil servants in the regions.

19. The Heads of Provincial and District/Municipality Regional Governments should improve the mechanisms for receiving and handling constituent's complaints about the attitude and behaviour of the members of the Pamong Praja Police Unit (Satpol PP), or the Wilayatul Hisbah (WH) in the case of Aceh, who resort to extortion, violence and sexual abuse in the course of their work.

## The Public

20. The civil society organisations should:

    20.1. Conduct continuous monitoring of the formulation and enforcement of local bylaws, using constitutional rights as the standard measure to evaluate them, and be ready to appeal for a judicial review against every discriminatory policy;

    20.2. Improve the quality and range of political education—including civic education in schools—with the focus on constitutional guarantees and on the building of public resilience against the danger of identity politicisation.

    All elements in society and state agencies should develop a concrete and comprehensive national consensus on issues that consistently manifest in the legal system and the civic administration of Indonesia, namely, the separation of state and religion, the protection guarantee for minority citizens, and the relationship between national and regional governments.

# Appendix

*Appendix 1*

# List of Discriminatory Local Bylaws

| 1.1. List of Policies – Category: Criminalisation of Women | | | | | |
|---|---|---|---|---|---|
| **No.** | **Regional Policies** | **Year** | **Province** | **District/ City** | **Notes** |
| 1 | Aceh Province's Regional Regulation (Qanun) No. 14/2003 on *Khalwat* | 2003 | Aceh | | existing |
| 2 | Tangerang City's Regional Regulation No. 8/2005 on the Prohibition of Prostitution | 2005 | Banten | Tangerang | existing |
| 3 | Bengkulu City's Regional Regulation No. 24/2000 on the Prohibition of Prostitution within the Bengkulu City | 2000 | Bengkulu | Bengkulu | existing |
| 4 | Gorontalo Province's Regional Regulation No. 10/2003 on the Prevention of Immorality | 2003 | Gorontalo | | existing |
| 5 | Tasikmalaya District's Regional Regulation No. 28/2000 on the First Amendment to the Regional Regulation No. 1/2000 on the Elimination of Prostitution | 2000 | West Java | Tasikmalaya | existing |
| 6 | Majalengka District's Regional Regulation on Prostitution (14 March 2009) | 2009 | West Java | Majalengka | Not yet existing |
| 7 | Indramayu District's Regional Regulation No. 4/2001 on the First Amendment to the Indramayu District's Regional Regulation No. 7/1999 on Prostitution | 2001 | West Java | Indramayu | existing |
| 8 | Garut District's Regional Regulation No. 6/2000 on Morality | 2000 | West Java | Garut | Not yet existing |
| 9 | Cilacap District's Regional Regulation No. 21/2003 on the First Amendment to the Cilacap District's Regional Regulation No. 13/1989 on the Elimination of Prostitution | 2003 | West Java | Cilacap | existing |
| 10 | Bekasi District's Regional Regulation No. 10/2002 on the Fourth Amendment to the Bekasi District's Regional Regulation No. 17/Hk-Pd/Tb.013.1/VIII/1984 on the Prohibition of Immoral Activities | 2002 | West Java | Bekasi | existing |

| No. | Regional Policies | Year | Province | District/ City | Notes |
|---|---|---|---|---|---|
| 11 | Badung District's Regional Regulation No. 6/2001 on the Elimination of Prostitution | 2001 | Bali | Badung | existing |
| 12 | Sumenep District's Regional Regulation No. 3/2002 on the Prohibition of Immoral Sites | 2002 | East Java | Sumenep | Not yet existing |
| 13 | Regional Regulation No. 5/2005 on the Elimination of Prostitution in Probolinggo District | 2005 | East Java | Probolinggo | Not yet existing |
| 14 | Pasuruan District's Regional Regulation No. 10/2001 on the Elimination of Prostitution | 2001 | East Java | Pasuruan | existing |
| 15 | Malang City's Regional Regulation No. 8/2005 on the Prohibition of Prostitution Sites and Obscene Acts | 2005 | East Java | Malang | existing |
| 16 | Lamongan District's Regional Regulation No. 05/2007 on the Elimination of Prostitution in Lamongan District | 2007 | East Java | Lamongan | existing |
| 17 | Jember District's Regional Regulation No. 14/2001 on the Handling of Prostitution | 2001 | East Java | Jember | existing |
| 18 | Gresik District's Regional Regulation No. 07/2002 on the Prohibition of Prostitution and Obscene Acts | 2002 | East Java | Gresik | existing |
| 19 | Bantul District's Regional Regulation No. 5/2007 on the Prohibition of Prostitution in Bantul District | 2007 | Yogyakarta | Bantul | existing |
| 20 | Ketapang District's Regional Regulation No. 11/2003 on the Prohibition of Prostitution | 2003 | West Kalimantan | Ketapang | Not yet existing |
| 21 | Banjar District's Regional Regulation No. 10/2007 on Social Order | 2007 | South Kalimantan | Banjar | Not yet existing |
| 22 | Palangkaraya City's Regional Regulation No. 26/2002 on the Ordering and Rehabilitation of Prostitutes in the Region of Palangkaraya City | 2002 | Central Kalimantan | Palangkaraya | Not yet existing |

| No. | Regional Policies | Year | Province | District/ City | Notes |
|---|---|---|---|---|---|
| 23 | Way Kanan District's Regional Regulation No. 7/2001 on the Prohibition of Prostitution and Immorality in the Region of Way Kanan District | 2001 | Lampung | Way Kanan | existing |
| 24 | Lampung Selatan District's Regional Regulation No. 4/2004 on the Prohibition of Prostitution, Immorality, and Gambling as well as the Prevention of Immoral Acts in the Region of Lampung Selatan District | 2004 | Lampung | Lampung Selatan | existing |
| 25 | Bandar Lampung City's Regional Regulation No. 15/2002 on the Prohibition of Prostitution and Immorality in the Region of Bandar Lampung City | 2002 | Lampung | Bandar Lampung | existing |
| 26 | Kupang City's Regional Regulation No. 39/1999 on the Ordering of Prostitution Sites in the Region of Kupang City | 1999 | East Nusatengga ra | Kupang | existing |
| 27 | Batam City's Regional Regulation No. 6/2002 on Social Order in Batam City | 2002 | Riau | Batam | existing |
| 28 | Bulukumba District's Regulation No. 05/2006 on the Implementation of Flogging Punishment in Padang Muslim Village of Gantarang Subdistrict | 2006 | South Sulawesi | village | existing |
| 29 | Sawahlunto/Sijunjung District's Regional Regulation No. 19/2006 on the Prevention and Overcoming of Immorality | 2006 | West Sumatra | Sawahlunto | existing |
| 30 | Padang Pariaman District's Regional Regulation No. 02/2004 on the Prevention, Confronting, and Elimination of Immorality | 2004 | West Sumatra | Padang Pariaman | existing |
| 31 | Padang Panjang City's Regional Regulation No. 3/2004 on the Prevention, Elimination, and Confronting of Social Ills | 2004 | West Sumatra | Padang Panjang | existing |
| 32 | Lahat District's Regional Regulation No. 3/2002 on the Prohibition of Prostitution and Immorality in Lahat District | 2002 | West Sumatra | Lahat | existing |

| No. | Regional Policies | Year | Province | District/ City | Notes |
|---|---|---|---|---|---|
| 33 | Bukittinggi City's Regional Regulation No. 20/2003 on the Amendment to the Bukittinggi City's Regional Regulation No. 9/2000 on the Ordering and Confronting of Social Ills | 2003 | West Sumatra | Bukittinggi | existing |
| 34 | West Sumatra Province's Regional Regulation No. 11/2001 on the Elimination and Prevention of Immorality | 2001 | West Sumatra | | existing |
| 35 | South Sumatra Province's Regional Regulation No. 13/2002 on the Elimination of Immorality in South Sumatra Province | 2002 | South Sumatra | | existing |
| 36 | Palembang City's Regional Regulation No. 2/2004 on the Elimination of Prostitution | 2004 | South Sumatra | Palembang | existing |
| 37 | Medan City's Regional Regulation No. 6/2003 on the Prohibition of Vagrancy and Begging as well as Immoral Acts in Medan City | 2003 | North Sumatra | Medan | existing |
| 38 | Cirebon District's Regional Regulation No. 05/2002 on the Prohibition of Gambling, Prostitution, and Alcoholic Drinks | 2002 | West Java | Cirebon | Not yet existing |

| 1.2. Regional Policies – Category: Control of the Woman Body | | | | | |
|---|---|---|---|---|---|
| **No.** | **Regional Policies** | **Year** | **Province** | **District/ City** | **Notes** |
| 1 | Aceh Special Province's Qanun/Regional Regulation No. 5/2000 on the Implementation of the Islamic Sharia | 2000 | Aceh | | Existing |
| 2 | Pandeglang District Head's Decree No. 09/2004 on Uniforms for Elementary, Junior High, and Senior High Schools | 2004 | Banten | Pandeglang | Not yet existing |

| No. | Regional Policies | Year | Province | District/ City | Notes |
|---|---|---|---|---|---|
| 3 | Cianjur District Head's Circular No. 025/3643/Org and Circular No. 061.2/2896/Org on Working hours and on Work Uniform Recommendations (for Muslim Men/Women) during Workdays | 2001 | West Java | Cianjur | Not yet existing |
| 4 | Cianjur District Head's Regional Regulation No. 15/2006 on Daily Official Dresses of the Staffs within the Compound of Cianjur District Government | 2006 | West Java | Cianjur | Not yet existing |
| 5 | Indramayu District Head's Circular [2001] on the Obligation to Wear Muslim Dresses and the Proficiency of Schoolchildren in Reciting the Quran | 2001 | West Java | Indramayu | Not yet existing |
| 6 | Sukabumi District's Instruction No. 4/2004 on the Obligation of Pupils and Students to Wear Muslim Dresses in Sukabumi District | 2004 | West Java | Sukabumi | |
| 7 | Sukabumi District Education Office's Circular No. 450/2198/TU on the Wearing of Muslim Dresses by Pupils and Students | 2004 | West Java | Sukabumi | Not yet existing |
| 8 | Banjar District Head's Circular No. 065.2/00023/ORG on the Wearing of Jilbab for Women Civil Servants in the Work Area of Banjar District Government; dated 12 January 2004 | 2004 | South Kalimantan | Banjar | Not yet existing |
| 9 | South Kalimantan Governor's Circular No. 065/02292/ORG dated 19 December 2001 on the Wearing of Official Uniforms during Working Hours | 2001 | South Kalimantan | | Existing |
| 10 | Dompu District Head's Decree No. Kd. 19.05./1/HM.00/1330/2004 on the Expansion of Regional Regulation No. 1/2002, on: [1] the Obligation to Recite the Quran by Civil Servants Getting a Promotion, by Prospective Brides and | 2004 | West Nusateng-gara | Dompu | Not yet existing |

| No. | Regional Policies | Year | Province | District/ City | Notes |
|---|---|---|---|---|---|
| | Bridegrooms, by Incoming Junior and Senior High School Students, and by Students Obtaining Diplomas; [2] the Obligation to Wear Muslim Dresses (jilbab); and [3] the Obligation to Spread Islamic Culture (Quran Recital Competitions, Middle-eastern Music, etc.) | | | | |
| 11 | Bulukumba District's Regional Regulation No. 05/2003 on Dress Codes for Muslim Men and Women in Bulukumba District | 2003 | South Sulawesi | Bulukumba | Existing |
| 12 | Enrekang District's Regional Regulation No. 6/2005 on Muslim Dresses | 2005 | South Sulawesi | Enrekang | Not yet existing |
| 13 | Maros District's Regional Regulation No. 16/2005 on Dress Codes for Muslim Men and Women | 2005 | South Sulawesi | Maros | Existing |
| 14 | Agam District's Regional Regulation No. 6/2005 on Muslim Dress Codes | 2005 | West Sumatra | Agam | Existing |
| 15 | Padang Mayor's Instruction No. 451.442/Binsos-III/2005 on the Implementation of Teenage Quran Recital, Education during Early Morning Prayers, and Anti-Illegal Gambling/Drugs as well as Dress Codes for Muslims among Pupils of General/Religious/Vocational Elementary/Junior High/Senior High Schools in Padang City | 2005 | West Sumatra | Padang | Existing |
| 16 | Pasaman District's Regional Regulation No. 22/2003 on Dress Codes for Muslim Men and Women among Pupils, Students, and Staffs | 2003 | West Sumatra | Pasaman | Existing |
| 17 | Pesisir Selatan District's Regional Regulation No. 4/2005 on Dress Codes for Muslim Men and Women | 2005 | West Sumatra | Pesisir Selatan | Existing |
| 18 | Sawahlunto/Sijunjung District's Regional Regulation No. 2/2003 on Dress Codes for Muslim Men and Women | 2003 | West Sumatra | Sawahlunto | Existing |

| No. | Regional Policies | Year | Province | District/ City | Notes |
|---|---|---|---|---|---|
| 19 | Solok City's Regional Regulation No. 6/2002 on the Obligation of Muslim Women to wear Muslim Dresses | 2002 | West Sumatra | Solok | Existing |
| 20 | Tanah Datar District Head's Recommendation Letter No. 451.4/556/ Kesra-2001 on Dress Code Recommendations for Muslim Men/Women, addressed to the Heads of Education and Manpower Offices | 2001 | West Sumatra | Tanah Datar | Existing |
| 21 | West Sumatra Governor's Recommendation Letter No. 260/421/X/ PPr-05 Re: Urging for the Attitude and Wearing of Muslim Women Dresses, addressed to the Heads of Ministerial Offices, Institutions, Bureaus, and District Heads/Mayors in all West Sumatra | 2001 | West Sumatra | | Existing |

| 1.3. Regional Policies – Category: Discrimination Against Migrant Workers | | | | | |
|---|---|---|---|---|---|
| **No.** | **Regional Policies** | **Year** | **Province** | **District/ City** | **Notes** |
| 1 | Regional Regulation No. 13/2005 on the Recruitment of Indonesian Migrant Workers (TKI) Hailing from Sukabumi District | 2002 | West Java | Sukabumi | Not et existing |
| 2 | Regional Regulation No. 15/2002 on the Protection of Indonesian Migrant Workers (TKI) Hailing from Cianjur District | 2002 | West Java | Cianjur | Not yet existing |
| 3 | Karawang District's Regional Regulation No. 22/2001 on Manpower Service Levies | 2001 | West Java | Karawang | Existing |
| 4 | East Java's Provincial Regional Regulation No. 02/2004 on the Recruitment and Protection Services of Indonesian Migrant Workers (TKI) Hailing from East Java | 2004 | West Nusateng-gara | Sumbawa | Not yet existing |

| 1.4. Regional Policies – Category: Limitation on the Ahmadiyah Community | | | | | |
|---|---|---|---|---|---|
| **No.** | **Regional Policies** | **Year** | **Province** | **District/ City** | **Notes** |
| 1 | Joint Decree No.: 451.7/KEP.58-Pem.Um/2004, KEP-857/0.2.22/Dsp.5/12/2004, kd.10.08/6/ST.03/1471/2004 on the Banning of Ahmadiyah Teaching Activities in Kuningan | 2004 | West Java | Kuningan | Not yet existing |
| 2 | Joint Decree No. 143/2006 on the Closure and Banning of Ahmadiyah Congregational Activities, dated 20 March 2006 | 2006 | West Java | Sukabumi | Not yet existing |
| 3 | Decree No. 583/KPTS/BAN. Kesbangpol and Linmas/2008 on the Banning of Ahmadiyah Sect and the Activities of its Adherents, Members, and/or Officials of Jemaat Ahmadiyah Indonesia (JAI) in the Region of South Sumatra | 2008 | South Sumatra | | Not yet existing |
| 4 | Joint Decree of District Head, District Attorney, Military District Commander 0612, Resort Police Chief, and City Resort Police Chief of Tasikmalaya on the Statement of Displeasure and Reprimand toward the Ahmadiyah Congregation in Tasikmalaya District | 2007 | West Java | Tasikmalaya | Not yet existing |
| 5 | Joint Decree No. 21/2005 on the Banning of Missionary Activities of Ahmadiyah Teachings/Doctrines in Cianjur District, signed by Cianjur District Head, Cianjur District Attorney, and Head of the Cianjur Religious Affairs Office, 17 October 2005 | 2005 | West Java | Cianjur | Not yet existing |

| No. | Regional Policies | Year | Province | District/ City | Notes |
|---|---|---|---|---|---|
| 6 | Joint Decree No. 450/Kep. 225 – PEM/2005 on the Banning of Ahmadiyah Teaching Activities in the Region of Garut District, signed by Garut District Head, Garut District Attorney, Garut Resort Police Chief, and Head of the Garut Religious Affairs Office, 9 August 2005 | 2005 | West Java | Garut | Not yet existing |
| 7 | Joint Statement on the Banning of the activities of Jamaah Ahmadiyah di Indonesia (JAI) in the Region of Bogor District, signed by Bogor District Head, District Parliament Speaker, 20 July 2005 Bogor district, Military District Commander 0621 Bogor, Cibinong District Attorney, Bogor Resort Police Chief, Head of Bogor District Court, ARS Air Force Base Commander, and Head of Religious Affairs Office and the Bogor District Office of the Indonesian Ulama Council (MUI) | 2005 | West Java | Bogor | Not yet existing |
| 8 | District Head's Circular No. 045.2/134/KUM/2002 that reaffirms the banning of Ahmadiyah teachings and urges government officials of the East Lombok District to take action against any violations against the banning as stated by law, 13 September 2002 | 2002 | West Nusateng-gara | East Lombok | Not yet existing |
| 9 | Mataram Mayor's Appeal No. 008/283/X/INKOM/02 regarding the Internally Displaced Persons of Jamaah Ahmadiyah from East Lombok, 10 October 2002 | 2002 | West Nusateng-gara | Mataram | Not yet existing |

| 1.5. Regional Policies – Category: on Religious Devotion or Religious Life | | | | | |
|---|---|---|---|---|---|
| **No.** | **Regional Policies** | **Year** | **Province** | **District/ City** | **Notes** |
| 1 | Bangka District's Regional Regulation No. 4/2006 on the Management of *Zakat*, *Infaq*, and *Shadaqah* | 2006 | Babel | Bangka | *zakat* |
| 2 | Serang City's Regional Regulation No. 1/2006 on the Madrasah Diniyah Awwaliyah | 2006 | Banten | Serang | Quran |
| 3 | Tangerang Regional Regulation No. 7/2005 on the Selling, Retailing, and Keeping of Alcoholic Drinks, Drunkenness | 2005 | Banten | Tangerang | Alcohol |
| 4 | Tangerang Mayor's Circular, August 2008, on the Temporary Closure of Entertainment Businesses during the Holy Month of Ramadan and Idul Fitri 1429 H. | 2008 | Banten | Tangerang | Fasting |
| 5 | Regional Regulation No. 4/2004 on *Zakat* Management | 2004 | Banten | | *zakat* |
| 6 | Bengkulu Mayor Instruction No. 3/2004 on Faith Improvement Activity Programme | 2004 | Bengkulu | Bengkulu | Morality |
| 7 | Gorontalo Province's Regional Regulation No. 22/2005 on Muslim Pupils Obligation to be Able to Read and Write the Quran | 2005 | Gorontalo | | Quran |
| 8 | Bandung District's Regional Regulation No. 9/2005 on *Zakat*, *Infaq,* and *Shadaqah* | 2005 | West Java | Bandung | *zakat* |
| 9 | Cianjur District Head's Circular No. 451/2719/ASSDA I September 2001 on the Civil Servant Movement to become Akhlaqul Karimah and to Achieve a Marhamah Society | 2001 | West Java | Cianjur | Morality |

| No. | Regional Policies | Year | Province | District/ City | Notes |
|---|---|---|---|---|---|
| 10 | Regional Regulation No. 08/2002 on Cianjur District's Strategic Planning Year 2001-2005 | 2002 | West Java | Cianjur | Morality |
| 11 | Cianjur District Head's Decree No. 36/2001 on the Foundation of the Islamic Research and Development Institution (LPPI) | 2001 | West Java | Cianjur | institution |
| 12 | Cirebon District's Regional Regulation No. 77/2004 on the Madrasah Diniyah Awaliyah Education | 2004 | West Java | Cirebon | Quran |
| 13 | Garut District's Regional Regulation No. 1/2003 on the Management of *Zakat*, *Infaq*, and *Shadaqah* | 2003 | West Java | Garut | *zakat* |
| 14 | Indramayu District's Regional Regulation No. 2/2003 on Madrasah Diniyah Awaliyah Compulsory Schooling | 2003 | West Java | Indramayu | Quran |
| 15 | Sukabumi District's Regional Regulation No. 11/2005 on the Ordering of Alcoholic Drinks | 2005 | West Java | Sukabumi | Alcohol |
| 16 | Sukabumi District's Regional Regulation No. 12/2005 on *Zakat* Management | 2005 | West Java | Sukabumi | *zakat* |
| 17 | Tasikmalaya District Head's Circular No. 451/SE/04/Sos/2001 on Efforts to Improve the Quality of Faith and Devotion | 2001 | West Java | Tasikmalaya | Morality |
| 18 | Tasikmalaya District's Regional Regulation No. 3/2001 on the Restoration of Security and Order based on Moral Teachings, Religion, Ethics, and the Region's Cultural Norms | 2001 | West Java | Tasikmalaya | Morality |

| No. | Regional Policies | Year | Province | District/ City | Notes |
|---|---|---|---|---|---|
| 19 | Regional Regulation No. 13/2003 on Tasikmalaya District's Strategic Planning Revision [incorporating Islamic religious vision] | 2003 | West Java | Tasikmalaya | Morality |
| 20 | Tasikmalaya District Head's Decree No. 421.2/Kep.326 A/Sos/2001 on the Prerequisites to Enter General/Religious Elementary/Junior High Schools in Tasikmalaya District | 2001 | West Java | Tasikmalaya | Quran |
| 21 | Tasikmalaya District Head's Recommendation No. 556.3/SP/03/Sos/2001 on the Management of Swimming Pool Users | 2001 | West Java | Tasikmalaya | public space |
| 22 | Semarang Mayor's Circular No. 435/4687 dated 27 August 2008 [containing entertaining business issues such as the requirement for bars, pubs, steam baths, billiard parlours, karaoke sites, discotheques, massage parlours, nightclubs, cafés, and similar places to limit their working hours] | 2008 | Central Java | Semarang | public space |
| 23 | Pamekasan (Madura) District Head's Circular No. 450/2002 on the Implementation of Islamic Sharia | 2002 | East Java | Pamekasan | Islamic Sharia |
| 24 | Pasuruan District's Regional Regulation No. 4/2006 on regulations regarding the opening of restaurants, Rombong, etc. during the Month of Ramadan | 2006 | East Java | Pasuruan | fasting |
| 25 | Sidoarjo District's Regional Regulation No. 4/2005 on the Management of *Zakat*, *Infaq*, and *Shadaqah* | 2005 | East Java | Sidoarjo | *zakat* |

| No. | Regional Policies | Year | Province | District/ City | Notes |
|---|---|---|---|---|---|
| 26 | Banjar District's Regional Regulation No. 5/2006 on the Writing Down of Identities using Malay-Arabic Script (LD No. 5/2006 Series E No. 3) | 2006 | South Kalimantan | Banjar | Image (Arabic script) |
| 27 | Banjar District's Regional Regulation No. 10/2001 on the Opening of Restaurants, Foodstalls, Rombong, etc. and on Eating, Drinking, or Smoking in Public during the Month of Ramadan | 2001 | South Kalimantan | Banjar | fasting |
| 28 | Banjar District's Regional Regulation No. 5/2004 on Ramadan (Amendment to the Regional Regulation on Ramadan No. 10/2001) | 2004 | South Kalimantan | Banjar | fasting |
| 29 | Banjar District's Regional Regulation No. 4/2004 on Khatam Alquran for Pupils of Elementary and High Schools | 2004 | South Kalimantan | Banjar | Quran |
| 30 | Banjar District's Regional Regulation No. 8/2005 on Jum'at Khusyu' | 2005 | South Kalimantan | Banjar | Shalat |
| 31 | Banjar District's Regional Regulation No. 9/2003 on the Management of *Zakat* | 2003 | South Kalimantan | Banjar | *zakat* |
| 32 | Banjarbaru District's Regional Regulation No. 5/2006 on the Prohibition of Alcoholic Drinks | 2006 | South Kalimantan | Banjar Baru | Alcohol |
| 33 | Banjarmasin City's Regional Regulation No. 13/2003 on Ramadan | 2003 | South Kalimantan | Banjarmasin | fasting |
| 34 | Regional Regulation No. 4/2005 on the Amendment to Banjarmasin City's Regional Regulation No. 13/2003 on the Banning of Activities during the Month of Ramadan | 2005 | South Kalimantan | Banjarmasin | fasting |

| No. | Regional Policies | Year | Province | District/ City | Notes |
|---|---|---|---|---|---|
| 35 | Banjarmasin City's Regional Regulation No. 31/2004 on the Management of *Zakat* | 2004 | South Kalimantan | Banjarmasin | *zakat* |
| 36 | Hulu Sungai Utara District's Regional Regulation No. 7/2000 on Gambling | 2000 | South Kalimantan | Hulu Sungai Utara | gambling |
| 37 | Hulu Sungai Utara District's Regional Regulation No. 6/1999 on Alcoholic Drinks | 1999 | South Kalimantan | Hulu Sungai Utara | Alcohol |
| 38 | Hulu Sungai Utara District's Regional Regulation No. 32/2003 on Ramadan | 2003 | South Kalimantan | Hulu Sungai Utara | fasting |
| 39 | Hulu Sungai Utara District's Regional Regulation No. 19/2005 on *Zakat*, *Infaq* and *Shadaqah* | 2005 | South Kalimantan | Hulu Sungai Utara | *zakat* |
| 40 | Aceh Regional Regulation No. 7/2000 on the Management of Adat Life | 2000 | Aceh | | adat |
| 41 | Aceh Regional Regulation No. 13/2003 on Maisir (Gambling) | 2003 | Aceh | | gambling |
| 42 | Aceh Regional Regulation No. 12/2003 on Khamar (Alcoholic Drinks), etc. | 2003 | Aceh | | Alcohol |
| 43 | Aceh Qanun No. 3/2008 on Local Parties [containing the prerequisite to recite the Quran for the candidates of the legislature] | 2008 | Aceh | | Quran |
| 44 | Aceh Regional Regulation No. 7/2004 on the Management of *Zakat* | 2004 | Aceh | | *zakat* |
| 45 | Bima District's Regional Regulation No. 2/2002 on Jum'at Khusu' | 2002 | West Nusatenggara | Bima | Shalat |
| 46 | Dompu District Head's Decree Kd.19./HM.00/527/2004, dated 8 May 2004, on the Obligation to Recite the Quran for all Civil Servants and Guests of the District Head | 2004 | West Nusatenggara | Dompu | Quran |

| No. | Regional Policies | Year | Province | District/ City | Notes |
|---|---|---|---|---|---|
| 47 | Dompu District's Regional Regulation No. 11/2004 on the Election of Village Heads (containing the obligation for candidates and their families to be able to read the Quran, proven by local religious offices' recommendations) | 2004 | West Nusatenggara | Dompu | Quran |
| 48 | Dompu District Head's Decree No. 140/2005, dated 25 June 2005, on the Obligation to Recite the Quran for Muslim Civil Servants | 2005 | West Nusatenggara | Dompu | Quran |
| 49 | Bima District's Regional Regulation No. 9/2002 on *Zakat* | 2002 | West Nusatenggara | Bima | *zakat* |
| 50 | Dompu District Head's Instruction No. 4/2003 on the Monthly 2.5% Salary Cuts for Civil Servants/Teachers | 2003 | West Nusatenggara | Dompu | *zakat* |
| 51 | District Head's Recommendation Letter No. 451.12/016/SOS/2003 on *Infaq* and *Zakat* for Civil Servants in Dompu | 2003 | West Nusatenggara | Dompu | *zakat* |
| 52 | East Lombok District's Regional Regulation No. 8/2002 on Alcoholic Drinks | 2002 | West Nusatenggara | East Lombok | Alcohol |
| 53 | East Lombok District's Regional Regulation No. 9/2002 on *Zakat* | 2002 | West Nusatenggara | East Lombok | *zakat* |
| 54 | East Lombok District Head's Instruction No. 4/2003 on the Monthly 2.5% Salary Cuts for Civil Servants/Teachers | 2003 | West Nusatenggara | East Lombok | *zakat* |
| 55 | Kampar District's Regional Regulation No. 2/2006 on the Management of *Zakat*, *Infaq* and *Shadaqah* | 2006 | Riau | Kampar | *zakat* |

| No. | Regional Policies | Year | Province | District/ City | Notes |
|---|---|---|---|---|---|
| 56 | Circular No. 44/1857/VIII, Bone Infokom Public Relations Office, dated 22 August 2008, on Prohibitions during the Month of Ramadan [among others requiring foodstalls, restaurants, and cafés not to open during the month of Ramadan and requiring hotels and inns not to admit couples who are not spouses] | 2008 | South Sulawesi | Bone | fasting |
| 57 | Regional Regulation No. 6/2003 on Quran Recital Skills for Students and Prospective Brides/Bridegrooms in the Bulukumba District | 2003 | South Sulawesi | Bulukumba | Quran |
| 58 | Regional Regulation No. 02/2003 on the Management of professional *Zakat*, *Infaq* and *Shadaqah* in the Bulukumba District | 2003 | South Sulawesi | Bulukumba | *zakat* |
| 59 | Gowa District's Regional Regulation No. 7/2003 on the Elimination of Quranic Illiteracy at the Basic Level as a Prerequisite to Complete Elementary School and to be Accepted at Higher Educational Levels | 2003 | South Sulawesi | Gowa | Quran |
| 60 | Makassar City's Regional Regulation No. 2/2003 on Professional *Zakat*, *Infaq* and *Shadaqah* | 2003 | South Sulawesi | Makassar | *zakat* |
| 61 | Makassar City's Regional Regulation No. 5/2006 on *Zakat* | 2006 | South Sulawesi | Makassar | *zakat* |
| 62 | Maros District's Regional Regulation No. 9/2001 on the Prohibitions to Distribute, Produce, and Consume Alcoholic Drinks, Narcotics, and Psychotropical Drugs | 2001 | South Sulawesi | Maros | Alcohol |

| No. | Regional Policies | Year | Province | District/ City | Notes |
|---|---|---|---|---|---|
| 63 | Maros District's Regional Regulation No. 15/2005 on the Literacy Movement and Quran Recital Skills in the Region of Maros District | 2005 | South Sulawesi | Maros | Quran |
| 64 | Maros District's Regional Regulation No. 17/2005 on *Zakat* Management | 2005 | South Sulawesi | Maros | *zakat* |
| 65 | Pangkep District's Regional Regulation No. 11/2006 on the Prohibition of Alcoholic Drink Distribution | 2006 | South Sulawesi | Pangkep | Alcohol |
| 66 | Polewali Mandar District's Regional Regulation No. 14/2006 on the Islamic Movement of Quran Recitals | 2006 | South Sulawesi | Polewali Mandar | Quran |
| 67 | South Sulawesi Province's Regional Regulation No. 4/2006 on Quranic Education | 2006 | South Sulawesi | | Quran |
| 68 | Kendari City's Regional Regulation No. 17/2005 on Quranic Literacy at School Age and for Muslims in Kendari City | 2005 | Southeast Sulawesi | Kendari | Quran |
| 69 | Agam District's Regional Regulation No. 5/2005 on Quranic Reading and Writing Skills | 2005 | West Sumatra | Agam | Quran |
| 70 | Bukittinggi District's Regional Regulation No. 29/2004 on the Management of *Zakat*, *Infaq*, and *Shadaqah* | 2004 | West Sumatra | Bukittinggi | *zakat* |
| 71 | Limapuluh Kota District's Regional Regulation No. 6/2003 on Quranic Reading and Writing Skills | 2003 | West Sumatra | Limapuluh Kota | Quran |
| 72 | Padang City's Regional Regulation No. 6/2003 on Quranic Reading and Writing Skills | 2003 | West Sumatra | Padang | Quran |

| No. | Regional Policies | Year | Province | District/ City | Notes |
|---|---|---|---|---|---|
| 73 | Padang Panjang District's Regional Regulation No. 7/2008 on *Zakat* | 2008 | West Sumatra | Padang Panjang | *zakat* |
| 74 | Pasaman District's Regional Regulation No. 21/2003 on Quranic Reading and Writing Skills | 2003 | West Sumatra | Pasaman | Quran |
| 75 | Pesisir Selatan District's Regional Regulation No. 8/2004 on Quranic Reading and Writing Skills | 2004 | West Sumatra | Pesisir Selatan | Quran |
| 76 | Pesisir Selatan District's Regional Regulation No. 31/2003 on the Management of *Zakat*, *Infaq*, and *Shadaqah* | 2003 | West Sumatra | Pesisir Selatan | *zakat* |
| 77 | Sawahlunto District's Regional Regulation No. 1/2003 on Quranic Reading and Writing Skills | 2003 | West Sumatra | Sawahlunto | Quran |
| 78 | Solok District's Regional Regulation No. 10/2001 on the Obligation to Recite the Quran for Students and Prospective Brides/Bridegrooms | 2001 | West Sumatra | Solok | Quran |
| 79 | Solok District's Regional Regulation No. 13/2003 on the Management of *Zakat*, *Infaq*, and *Shadaqah* | 2003 | West Sumatra | Solok | *zakat* |
| 80 | West Sumatra Province's Regional Regulation No. 7/2005 on Quranic Reading and Writing Skills | 2005 | West Sumatra | | Quran |
| 81 | Ogan Ilir District's Regional Regulation No. 35/2005 on the Management of *Zakat* | 2005 | South Sumatra | Ogan Ilir | *zakat* |
| 82 | South Sumatra Province's Regional Regulation No. 13/2004 on the Supervision and Ordering of Alcoholic Drink Distribution | 2004 | South Sumatra | | Alcohol |

*Appendix 2*

# List of Local Bylaws Conducive to the Fulfilment of the Constitutional Right of Citizens

| I | Gender Mainstreaming | | | |
|---|---|---|---|---|
| **No.** | **Policies** | **Year** | **Province** | **City/District** |
| 1 | Gubernatorial Regulation No. 39/2006 on the Planning Guidelines for the Regional Action Plan of Gender Mainstreaming in Banten Province | 2006 | Banten Province | |

| II | Policies on the Management of Migrant Workers [2 policies in the regions] | | | |
|---|---|---|---|---|
| **No.** | **Policies** | **Year** | **Province** | **City/District** |
| 2 | Sumbawa District's Regional Regulation No. 11/2003 on the Nurturing and Protection of Indonesian Migrant Workers | 2003 | West Nusatenggara | Sumbawa |
| 3 | East Lombok Regional Regulation No. 12/2006 on the Nurturing and Protection of Indonesian Migrant Workers Hailing from East Lombok District | 2006 | West Nusatenggara | East Lombok |

| III | Policies on Anti-Trafficking [7 policies] | | | |
|---|---|---|---|---|
| **No.** | **Policies** | **Year** | **Province** | **City/District** |
| 4 | North Sulawesi Province's Regional Regulation No. 1/2004 on the Prevention and Elimination of Human Trafficking, especially of Women and Children | 2004 | North Sulawesi | |
| 5 | North Sumatra Province's Regional Regulation No. 6/2004 on the Elimination of Women and Children Trafficking | 2004 | North Sumatra | |
| 6 | Riau Islands Province's Regional Regulation No. 12/2007 on the Elimination of Women and Children Trafficking | 2007 | Riau Islands | |
| 7 | West Java Province's Regional Regulation No. 3/2008 on the Prevention and Handling of Victims of Human Trafficking in West Java | 2008 | West Java | |
| 8 | Indramayu District's Regional Regulation No. 14/2005 on the Prevention and Prohibition of Trafficking for Commercial Sexual Exploitation of Children's Sexuality | 2005 | West Java | Indramayu |

| No. | Policies | Year | Province | City/District |
|---|---|---|---|---|
| 9 | South Sulawesi Province's Regional Regulation No. 9/2007 on the Prevention and Elimination of Women and Children Trafficking | 2007 | South Sulawesi | |
| 10 | Lampung Province's Regional Regulation No. 4/2006 on Trafficking Prevention | | Lampung | |

| IV | Child Protection [2 policies] | | | |
|---|---|---|---|---|
| **No.** | **Policies** | **Year** | **Province** | **City/District** |
| 11 | West Java Governor's Decree No. 43/2004 on West Java Province's Action Committee for the Elimination of Worst Forms of Work for Children | 2004 | West Java | |
| 12 | West Java Province's Regional Regulation No. 5/2006 on Child Protection | 2006 | West Java | |

| V | Protection and Handling of HIV/AIDS [1 policy] | | | |
|---|---|---|---|---|
| **No.** | **Policies** | **Year** | **Province** | **City/District** |
| 13 | Riau Islands' Regional Regulation No. 15/2007 on the Prevention of and Solution for HIV/AIDS | 2007 | Riau Islands | |

| VI | Free Education and Health Care [5 policies] | | | |
|---|---|---|---|---|
| **No.** | **Policies** | **Year** | **Province** | **City/District** |
| 14 | Gowa District's Regional Regulation No. 4/2008 on Free Education in Gowa | 2008 | South Sulawesi | Gowa |
| 15 | Pangkajene dan Kepulauan District Head's Instruction No. 440/125/Hukum dated 24 December 2005 on Free Education | 2005 | South Sulawesi | Pangkep |
| 16 | South Sulawesi Province's Regional Regulation No. 2/2008 on Governmental Issues under the Authority of South Sulawesi Regional Government [including free education and health care] | 2008 | South Sulawesi | |
| 17 | Jembrana District's Regional Regulation No. 15/2006 on the Pioneering of 12-Year Compulsory Education | 2006 | Bali | Jembrana |

| No. | Policies | Year | Province | City/District |
|---|---|---|---|---|
| 18 | Dompu District's Regional Regulation No. 4/2008 on the Implementation of Free Education and Health Care Programme for the People of Dompu District | 2008 | West Nusatenggara | Dompu |

| VII | Policies on Services [22 policies] | | | |
|---|---|---|---|---|
| **No.** | **Policies** | **Year** | **Province** | **City/District** |
| 19 | Bima District Head's Instruction No. 03/2005 on Cost Waiver for the Visum et Repertum of Women and Children Victims of Violence, 31 December 2005 | 2005 | West Nusatenggara | Bima |
| 20 | Bone District Head Decree No. 504/2006 on the Establishment of PPT Advocacy Team and Committee for Women and Children Victims of Violence, 1 January 2006 | 2006 | South Sulawesi | Bone |
| 21 | Buru District Head's Decree No. 463-116 Year 2008 on the Establishment of Integrated Service Centre | 2008 | South Sulawesi | Buru |
| 22 | Jember District Head's Decree on the Protection Centre for Women and Children (P3A) in Jember District, 20 February 2004 | 2004 | East Java | Jember |
| 23 | East Lombok District Head's Decree on the Cost Waiver for Visum et Repertum of Women and Children Victims of Violence, 13 July 2005 | 2005 | West Nusatenggara | East Lombok |
| 24 | Central Maluku District Head's Decree No. 463-142 Year 2008 on the Establishment of P2TP2A | 2008 | Maluku | Central Maluku |
| 25 | Ambon Mayor's Decree No. 390/2008 on the Establishment of P2TP2A | 2008 | Maluku | Ambon |
| 26 | Bengkulu Mayor's Decree No. 225/2006 on the Establishment of a Monitoring, Overcoming, and Handling Team for Women and Children Victims of Violence in Bengkulu City, 7 September 2006 | 2006 | Bengkulu | Bengkulu City |
| 27 | Joint Agreement of Sikka District Head, Sikka Resort Police, Maumere District Attorney's Office, and the Women Division of TRUK-F: No. 3/2006; No. B/2400/XII/2006/RES. Sikka; No. B-1805/P.3.15/Cs.1/12/2006; No. 53/D.P/TRUK F/2006 on Integrated Services for Women and Children Victims of Violence | 2006 | East Nusatenggara | Sikka |

| No. | Policies | Year | Province | City/District |
|---|---|---|---|---|
| 28 | Sido Urip Village's Regulation No. 01/2005 on legal protection for victims of violence in the region of Sido Urip Village, 2 December 2005 | 2005 | North Sumatra | Deli Serdang |
| 29 | Sidoarjo District's Regional Regulation No. 18/2006 on the Protection Implementation of Women and Children Victims of Violence, 17 December 2006 | 2006 | East Java | Sidoarjo |
| 30 | Lampung Province's Regional Regulation No. 6/2006 on Integrated Services for Women and Children Victims of Violence | 2006 | Lampung | |
| 31 | Jayakarta Village's Regulation No. 3/2006 on the Handling of Women Victims of Violence, 27 January 2006 | 2006 | Bengkulu | North Bengkulu |
| 32 | Sunda Kelapa Village's Regulation No. 2/2006 on the Handling of Women Victims of Violence | 2006 | Bengkulu | North Bengkulu |
| 33 | Yogyakarta Mayor's Regulation No. 16/2006 on the Integrated Services for Gender-based Victims of Violence, 1 March 2006 | 2006 | Yogyakarta | Yogyakarta City |
| 34 | Bengkulu District's Regional Regulation No. 21/2006 on the Prevention and Handling of Women and Children Victims of Violence | 2006 | Bengkulu | Bengkulu District |
| 35 | Lampung Province's Regional Regulation No.6/2006 on the Integrated Services for Women and Children Victims of Violence | 2006 | Lampung | |
| 36 | Cooperation Agreement between Yogyakarta Health Office and Panti Rapih Hospital on Integrated Services for Women and Children Victims of Violence, at the Hospital, 1 September 2005 | 2005 | Yogyakarta | |
| 37 | PPT Cooperation Agreement for Women and Children Victims of Violence (24 October 2004) of: Central Java's Regional Police, Bhayangkara Hospital Semarang, LPA Central Java, Perisai NGO, Kelompok Kerja Bantuan Hukum (Legal Aid Working Group), KPI Semarang Chapter, Gender PSW/ Lemlit (Research Body) Diponegoro University | 2004 | Central Java | |

| No. | Policies | Year | Province | City/District |
|---|---|---|---|---|
| 38 | Bone District Head's Decree No. 504/2006 that provides integrated services for women victims of violence in the general hospital owned by the regional government and the Bhayangkara hospital owned by the police | 2006 | South Sulawesi | Bone |
| 39 | North Bengkulu District Head's Decree No. 184/2006 that appoints accompanying volunteers | 2006 | Bengkulu | North Bengkulu |
| 40 | North Bengkulu District Head's Decree No. 21/2007 on the Establishment of Integrated Handling Team for Women and Children | 2007 | Bengkulu | North Bengkulu |

*Appendix 3*

# Statistics of Monitored Areas

## 3.1. Population Increase in Selected Areas in 2000 and 2007

| District/City/ Province | Male | | | Female | | | Male and Female | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2000 | 2007 | Expansion 2000-2007 (in %) | 2000 | 2007 | Expansion 2000-2007 (in %) | 2000 | 2007 | Expansion 2000-2007 (in %) |
| Aceh | - | 2 079 985 | - | - | 2 136 297 | - | - | 4 216 282 | - |
| - Bireuen *) | - | 175 164 | - | - | 179 472 | - | - | 354 636 | - |
| - Lhokseumawe *) | - | 78 160 | - | - | 79 515 | - | - | 157 675 | - |
| - Banda Aceh | - | 111 222 | - | - | 108 114 | - | - | 219 336 | - |
| | | | | | | | | | |
| West Java | 21 980 956 | 20 353 242 | -7,41 | 21 265 699 | 20 003 696 | -5,93 | 43 246 655 | 40 356 938 | -6,68 |
| - Tasikmalaya District | 1 059 671 | 821 346 | -22,49 | 981 565 | 847 603 | -13,65 | 2 041 236 | 1 668 949 | -18,24 |
| - Tasikmalaya City *) | | 289 480 | | | 298 259 | | | 587 739 | |
| - Cianjur | 973 451 | 1 106 366 | 13,65 | 948 655 | 1 032 099 | 8,80 | 1 922 106 | 2 138 465 | 11,26 |
| - Sukabumi | 1 090 024 | 1 126 269 | 3,33 | 962 395 | 1 082 676 | 12,50 | 2 052 419 | 2 208 945 | 7,63 |
| - Indramayu | 810 298 | 881 424 | 8,78 | 770 851 | 847 800 | 9,98 | 1 581 149 | 1 729 224 | 9,37 |
| | | | | | | | | | |
| Yogyakarta | 1 527 704 | 1 699 402 | 11,24 | 1 574 825 | 1 732 185 | 9,99 | 3 102 529 | 3 431 587 | 10,61 |
| - Bantul | 386 101 | 438 864 | 13,67 | 388 863 | 457 680 | 17,70 | 774 964 | 896 544 | 15,69 |
| | | | | | | | | | |
| Banten | | 4 726 267 | | | 4 703 944 | | | 9 430 211 | |
| - Tangerang City**) | 648 293 | 754 052 | 16,31 | 646 435 | 755 820 | 16,92 | 1 294 728 | 1 509 872 | 16,62 |
| | | | | | | | | | |
| West Nusatenggara | 1 866 051 | 2 040 919 | 9,37 | 1 939 486 | 2 245 919 | 15,80 | 3 805 537 | 4 286 838 | 12,65 |
| - East Lombok | 462 441 | 477 644 | 3,29 | 505 013 | 577 770 | 14,41 | 967 454 | 1 055 414 | 9,09 |
| - Mataram | 154 909 | 179 820 | 16,08 | 158 629 | 176 120 | 11,03 | 313 538 | 355 940 | 13,52 |
| - Bima | 256 797 | 204 481 | -20,37 | 246 206 | 207 442 | -15,74 | 503 003 | 411 923 | -18,11 |
| | | | | | | | | | |
| South Kalimantan | 1 482 838 | 1 685 996 | 13,70 | 1 473 946 | 1 699 776 | 15,32 | 2 956 784 | 3 385 772 | 14,51 |
| - Banjar | 269 226 | 234 888 | -12,75 | 261 547 | 243 972 | -6,72 | 530 773 | 478 860 | -9,78 |
| - Hulu Sungai Utara | 140 825 | 104 347 | -25,90 | 147 923 | 107 913 | -27,05 | 288 748 | 212 260 | -26,49 |
| | | | | | | | | | |
| South Sulawesi | 3 794 823 | 3 717 194 | -2,05 | 3 963 751 | 3 958 699 | -0,13 | 7 758 574 | 7 675 893 | -1,07 |
| - Bulukumba | 162 732 | 182 430 | 12,10 | 189 352 | 202 735 | 7,07 | 352 084 | 385 165 | 9,40 |
| - Pangkajene Kepulauan | 127 060 | 142 260 | 11,96 | 136 144 | 147 143 | 8,08 | 263 204 | 289 403 | 9,95 |

*Notes:* **) In year 2000 not yet formed*

***) In year 2000 still part of West Java*

| 3.2. Comparison between the Percentages of Women as Head of Families in 2000 and 2007 | | | |
|---|---|---|---|
| **District/City/ Province** | **2000** | **2007** | **% Change 2000-2007** |
| Aceh | - | 20,14 | - |
| - Bireuen *) | - | 26,12 | - |
| - Lhokseumawe *) | - | 16,87 | - |
| - Banda Aceh | - | 18,13 | - |
| | | | |
| West Java | 12,10 | 12,25 | 0,15 |
| - Tasikmalaya District | 13,45 | 14,23 | 0,78 |
| - Tasikmalaya City *) | | 14,42 | - |
| - Cianjur | 12,95 | 10,68 | -2,27 |
| - Sukabumi | 10,75 | 9,69 | -1,06 |
| - Indramayu | 12,89 | 14,05 | 1,16 |
| | | | |
| Yogyakarta | 19,63 | 19,44 | -0,19 |
| - Bantul | 13,85 | 16,49 | 2,64 |
| | | | |
| Banten | | 13,02 | |
| - Tangerang City **) | 10,62 | 9,98 | -0,64 |
| | | | |
| West Nusatenggara | 16,52 | 21,64 | 5,12 |
| - East Lombok | 20,07 | 28,60 | 8,53 |
| - Mataram | 15,54 | 16,94 | 1,40 |
| - Bima | 8,33 | 13,59 | 5,26 |
| | | | |
| South Kalimantan | 14,16 | 14,17 | 0,01 |
| - Banjar | 15,64 | 13,64 | -2,00 |
| - Hulu Sungai Utara | 16,28 | 21,72 | 5,44 |
| | | | |
| South Sulawesi | 15,61 | 18,44 | 2,83 |
| - Bulukumba | 21,25 | 20,32 | -0,93 |
| - Pangkajene Kepulauan | 16,33 | 18,09 | 1,76 |
| | | | |

*Notes: *) In year 2000 not yet formed*

***) In year 2000 still part of West Java*

| 3.3. Average Comparison in Terms of School Duration in 2000 and 2007 | | | |
|---|---|---|---|
| **District/City/ Province** | **2000** | **2007** | **Change 2000-2007 (Year)** |
| Aceh | 6,80 | 7,92 | 1,12 |
| - Bireuen *) | - | 8,61 | - |
| - Lhokseumawe *) | - | 9,10 | - |
| - Banda Aceh | 10,00 | 11,56 | 1,56 |
| | | | |
| West Java | 6,38 | 6,97 | 0,59 |
| - Tasikmalaya District | 6,16 | 6,25 | 0,09 |
| - Tasikmalaya City *) | - | 7,94 | - |
| - Cianjur | 5,55 | 5,73 | 0,18 |
| - Sukabumi | 5,40 | 5,99 | 0,59 |
| - Indramayu | 3,87 | 4,31 | 0,44 |
| | | | |
| Yogyakarta | 6,42 | 7,83 | 1,41 |
| - Bantul | 6,15 | 7,66 | 1,51 |
| | | | |
| Banten | - | 7,24 | - |
| - Tangerang City**) | 8,14 | 9,31 | 1,17 |
| | | | |
| West Nusatenggara | 4,90 | 5,80 | 0,90 |
| - East Lombok | 4,93 | 5,76 | 0,83 |
| - Mataram | 6,81 | 8,12 | 1,31 |
| - Bima | 5,66 | 6,92 | 1,26 |
| | | | |
| South Kalimantan | 5,92 | 6,85 | 0,93 |
| - Banjar | 6,14 | 6,57 | 0,43 |
| - Hulu Sungai Utara | 5,11 | 6,13 | 1,02 |
| | | | |
| South Sulawesi | 6,14 | 6,89 | 0,75 |
| - Bulukumba | 5,45 | 6,12 | 0,67 |
| - Pangkajene Kepulauan | 4,94 | 6,20 | 1,26 |
| | | | |

*Notes:* **) In year 2000 not yet formed*

***) In year 2000 still part of West Java*

| 3.4. Percentage Comparison of Illiterate Women in 2000 and 2007 | | | |
|---|---|---|---|
| **District/City/ Province** | **2000** | **2007** | **% Change 2000-2007** |
| Aceh | 9,90 | 6,56 | -3,34 |
| - Bireuen *) | - | 4,40 | - |
| - Lhokseumawe *) | - | 2,10 | - |
| - Banda Aceh | 3,20 | 2,86 | -0,34 |
| | | | |
| West Java | 9,33 | 6,08 | -3,25 |
| - Tasikmalaya District | 3,76 | 3,52 | -0,24 |
| - Tasikmalaya City *) | - | 1,12 | - |
| - Cianjur | 9,45 | 4,83 | -4,62 |
| - Sukabumi | 8,27 | 5,17 | -3,10 |
| - Indramayu | 33,60 | 18,86 | -14,74 |
| | | | |
| Yogyakarta | 24,37 | 16,90 | -7,47 |
| - Bantul | 24,44 | 16,63 | -7,81 |
| | | | |
| Banten | - | 6,05 | - |
| - Tangerang City**) | 8,96 | 2,34 | -6,62 |
| | | | |
| West Nusatenggara | 26,13 | 23,06 | -3,07 |
| - East Lombok | 23,85 | 22,89 | -0,96 |
| - Mataram | 19,97 | 11,60 | -8,37 |
| - Bima | 21,58 | 16,88 | -4,70 |
| | | | |
| South Kalimantan | 9,92 | 7,47 | -2,45 |
| - Banjar | 7,19 | 6,78 | -0,41 |
| - Hulu Sungai Utara | 11,67 | 9,63 | -2,04 |
| | | | |
| South Sulawesi | 17,25 | 14,73 | -2,52 |
| - Bulukumba | 23,01 | 20,17 | -2,84 |
| - Pangkajene Kepulauan | 19,09 | 15,01 | -4,08 |
| | | | |

*Notes: *) In year 2000 not yet formed*

***) In year 2000 still part of West Java*

| 3.5. Percentage Comparison of Working Women in 2000 and 2007 | | | |
|---|---|---|---|
| District/City/ Province | 2000 | 2007 | % Change 2000-2007 |
| Aceh | 38,40 | 41,34 | 2,94 |
| - Bireuen *) | - | 40,49 | - |
| - Lhokseumawe *) | - | 22,95 | - |
| - Banda Aceh | 31,70 | 34,01 | 2,31 |
| | | | |
| West Java | 31,92 | 39,51 | 7,59 |
| - Tasikmalaya District | 41,24 | 54,07 | 12,82 |
| - Tasikmalaya City *) | - | 47,15 | - |
| - Cianjur | 40,31 | 36,43 | -3,88 |
| - Sukabumi | 30,36 | 43,74 | 13,38 |
| - Indramayu | 38,18 | 40,96 | 2,78 |
| | | | |
| Yogyakarta | 57,52 | 61,83 | 4,32 |
| - Bantul | 57,32 | 56,52 | -0,80 |
| | | | |
| Banten | - | 42,13 | - |
| - Tangerang City**) | 30,06 | 37,39 | 7,33 |
| | | | |
| West Nusatenggara | 47,20 | 58,69 | 11,49 |
| - East Lombok | 40,47 | 55,37 | 14,90 |
| - Mataram | 31,99 | 43,74 | 11,74 |
| - Bima | 44,19 | 61,65 | 17,47 |
| | | | |
| South Kalimantan | 48,47 | 54,43 | 5,96 |
| - Banjar | 42,13 | 58,28 | 16,15 |
| - Hulu Sungai Utara | 57,93 | 65,72 | 7,79 |
| | | | |
| South Sulawesi | 28,32 | 40,35 | 12,03 |
| - Bulukumba | 20,92 | 51,84 | 30,92 |
| - Pangkajene Kepulauan | 13,56 | 34,24 | 20,68 |
| | | | |

*Notes: *) In year 2000 not yet formed*

***) In year 2000 still part of West Java*

| 3.6. Average Comparison of Marrying Age in Women Over 10 Years Old in 2000 and 2007 | | | |
|---|---|---|---|
| **District/City/ Province** | **2000** | **2007** | **Change 2000-2007 (Year)** |
| Aceh | - | 19,87 | - |
| - Bireuen *) | - | 19,95 | - |
| - Lhokseumawe *) | - | 20,81 | - |
| - Banda Aceh | - | 21,85 | - |
| | | | |
| West Java | 18,05 | 18,81 | 0,76 |
| - Tasikmalaya District | 17,62 | 17,85 | 0,23 |
| - Tasikmalaya City *) | - | 19,49 | - |
| - Cianjur | 17,21 | 18,29 | 1,08 |
| - Sukabumi | 17,1 | 17,75 | 0,65 |
| - Indramayu | 17,08 | 18,01 | 0,93 |
| | | | |
| Yogyakarta | 20,43 | 21,06 | 0,63 |
| - Bantul | 20,43 | 21,02 | 0,59 |
| | | | |
| Banten | - | 19,23 | - |
| - Tangerang City**) | 19,5 | 21,02 | 1,52 |
| | | | |
| West Nusatenggara | 19,51 | 19,67 | 0,16 |
| - East Lombok | 19,12 | 18,94 | -0,18 |
| - Mataram | 19,72 | 20,58 | 0,86 |
| - Bima | 20,42 | 21,05 | 0,63 |
| | | | |
| South Kalimantan | 18,13 | 19,26 | 1,13 |
| - Banjar | 18,58 | 19,26 | 0,68 |
| - Hulu Sungai Utara | 17,52 | 18,73 | 1,21 |
| | | | |
| South Sulawesi | 19,66 | 20,01 | 0,35 |
| - Bulukumba | 19,63 | 20,10 | 0,47 |
| - Pangkajene Kepulauan | 19,73 | 19,08 | -0,65 |
| | | | |

*Notes: *) In year 2000 not yet formed*

***) In year 2000 still part of West Java*

| 3.7. Comparison of Poverty Rate in 2000 and 2007 | | | | | | |
|---|---|---|---|---|---|---|
| District/City/ Province | 2002 | | 2007 | | Change 2000-2007 | |
| | Total (000) | % | Total (000) | % | Total | % |
| Aceh | 1199,9 | 29,83 | 1083,7 | 26,65 | -116,2 | -3,18 |
| - Bireuen *) | 86,7 | 25,29 | 93,0 | 27,18 | 6,3 | 1,89 |
| - Lhokseumawe *) | 36 | 25,51 | 19,4 | 12,75 | -16,6 | -12,76 |
| - Banda Aceh | 22,6 | 10,25 | 14,0 | 6,61 | -8,6 | -3,64 |
| | | | | | | |
| West Java | 4938,2 | 13,38 | 5457,9 | 13,55 | 519,7 | 0,17 |
| - Tasikmalaya District | 341,1 | 16,21 | 302,4 | 18,15 | -38,7 | 1,94 |
| - Tasikmalaya City *) | - | - | 54,5 | 9,30 | - | - |
| - Cianjur | 368,6 | 18,49 | 394,6 | 18,49 | 26,0 | 0,00 |
| - Sukabumi | 362,2 | 17,03 | 352,3 | 15,98 | -9,9 | -1,05 |
| - Indramayu | 300,3 | 18,65 | 361,7 | 20,96 | 61,4 | 2,31 |
| | | | | | | |
| Yogyakarta | 635,7 | 20,14 | 633,5 | 18,99 | -2,2 | -1,15 |
| - Bantul | 157,2 | 19,75 | 169,3 | 19,43 | 12,1 | -0,32 |
| | | | | | | |
| Banten | 786,7 | 9,22 | 886,2 | 9,07 | 99,5 | -0,15 |
| - Tangerang City**) | 62 | 4,38 | 76,9 | 4,92 | 14,9 | 0,54 |
| | | | | | | |
| West Nusatenggara | 1145,8 | 27,75 | 1118,6 | 24,99 | -27,2 | -2,76 |
| - East Lombok | 294,1 | 29,58 | 282,1 | 25,60 | -12,0 | -3,98 |
| - Mataram | 47,2 | 12,79 | 35,9 | 9,67 | -11,3 | -3,12 |
| - Bima | 133,7 | 25,83 | 108,1 | 25,12 | -25,6 | -0,71 |
| | | | | | | |
| South Kalimantan | 259,8 | 8,51 | 233,5 | 7,01 | -26,3 | -1,50 |
| - Banjar | 35,4 | 8,36 | 20,0 | 4,24 | -15,4 | -4,12 |
| - Hulu Sungai Utara | 35,8 | 12,18 | 23,3 | 11,16 | -12,5 | -1,02 |
| | | | | | | |
| South Sulawesi | 1309,2 | 15,88 | 1083,4 | 14,11 | -225,8 | -1,77 |
| - Bulukumba | 49,1 | 13,13 | 52,3 | 13,56 | 3,2 | 0,43 |
| - Pangkajene Kepulauan | 69 | 25,75 | 69,3 | 23,93 | 0,3 | -1,82 |
| | | | | | | |

*Notes: *) In year 2000 not yet formed*

***) In year 2000 still part of West Java*

| 3.8. Comparison of Human Development Index (HDI) between 1999 and 2007 | | | | | |
|---|---|---|---|---|---|
| District/City/ Province | 1999 | 2007 | Ranking | | Change 2000-2007 |
| | | | 1999 | 2007 | |
| Aceh | 65,30 | 70,35 | 12 | 17 | 5,05 |
| - Bireuen *) | - | 72,45 | - | 122 | - |
| - Lhokseumawe *) | - | 74,65 | - | 56 | - |
| - Banda Aceh | 70,50 | 76,31 | 23 | 24 | 5,81 |
| | | | | | |
| West Java | 64,60 | 70,71 | 14 | 15 | 6,11 |
| - Tasikmalaya District | 65,30 | 71,24 | 109 | 180 | 5,94 |
| - Tasikmalaya City *) | | 72,75 | | 109 | - |
| - Cianjur | 63,60 | 67,65 | 167 | 339 | 4,05 |
| - Sukabumi | 63,20 | 69,21 | 176 | 270 | 6,01 |
| - Indramayu | 56,50 | 66,22 | 269 | 388 | 9,72 |
| | | | | | |
| Yogyakarta | 68,70 | 74,15 | 2 | 4 | 5,45 |
| - Bantul | 65,80 | 72,78 | 102 | 106 | 6,98 |
| | | | | | |
| Banten | - | 69,29 | - | 23 | - |
| - Tangerang City**) | 68,30 | 74,4 | 52 | 64 | 6,10 |
| | | | | | 0,00 |
| West Nusatenggara | 54,20 | 63,71 | 26 | 32 | 9,51 |
| - East Lombok | 52,10 | 61,12 | 284 | 439 | 9,02 |
| - Mataram | 63,10 | 70,71 | 184 | 196 | 7,61 |
| - Bima | 57,30 | 67,13 | 264 | 365 | 9,83 |
| | | | | | |
| South Kalimantan | 62,20 | 68,01 | 21 | 26 | 5,81 |
| - Banjar | 63,70 | 69,43 | 161 | 248 | 5,73 |
| - Hulu Sungai Utara | 60,60 | 67,01 | 247 | 369 | 6,41 |
| | | | | | |
| South Sulawesi | 63,60 | 69,62 | 17 | 21 | 6,02 |
| - Bulukumba | 62,90 | 69,27 | 188 | 261 | 6,37 |
| - Pangkajene Kepulauan | 62,70 | 67,73 | 197 | 337 | 5,03 |
| | | | | | |

*Notes: *) In year 2000 not yet formed*

***) In year 2000 still part of West Java*

| 3.9. Comparison of Gender Development Index (GDI) between 1999 and 2006 | | | | | |
|---|---|---|---|---|---|
| District/City/ Province | 1999 | 2006 | Ranking | | Expansion 2000-2006 |
| | | | 1999 | 2006 | |
| Aceh | 59,00 | 62,80 | 8 | 13 | 3,80 |
| - Bireuen *) | - | 68,40 | - | 55 | - |
| - Lhokseumawe *) | - | 57,20 | - | 328 | - |
| - Banda Aceh | 57,50 | 61,20 | 118 | 212 | 3,70 |
| | | | | | |
| West Java | 54,60 | 60,80 | 17 | 20 | 6,20 |
| - Tasikmalaya District | 54,50 | 55,00 | 187 | 372 | 0,50 |
| - Tasikmalaya City *) | - | 64,00 | - | 141 | - |
| - Cianjur | 53,90 | 49,00 | 196 | 443 | -4,90 |
| - Sukabumi | 56,40 | 56,00 | 145 | 354 | -0,40 |
| - Indramayu | 40,20 | 46,50 | 289 | 451 | 6,30 |
| | | | | | |
| Yogyakarta | 66,40 | 70,30 | 1 | 2 | 3,90 |
| - Bantul | 62,10 | 70,30 | 33 | 29 | 8,20 |
| | | | | | |
| Banten | - | 59,00 | - | 28 | - |
| - Tangerang City**) | 56,90 | 63,80 | 134 | 145 | 6,90 |
| | | | | | |
| West Nusatenggara | 45,90 | 54,60 | 26 | 32 | 8,70 |
| - East Lombok | 38,80 | 59,40 | 293 | 266 | 20,60 |
| - Mataram | 54,60 | 62,30 | 186 | 188 | 7,70 |
| - Bima | 52,20 | 62,70 | 219 | 177 | 10,50 |
| | | | | | |
| South Kalimantan | 56,90 | 62,20 | 13 | 15 | 5,30 |
| - Banjar | 58,30 | 61,00 | 100 | 217 | 2,70 |
| - Hulu Sungai Utara | 58,50 | 55,30 | 94 | 366 | -3,20 |
| | | | | | |
| South Sulawesi | 53,30 | 59,00 | 22 | 27 | 5,70 |
| - Bulukumba | 52,70 | 59,10 | 209 | 272 | 6,40 |
| - Pangkajene Kepulauan | 43,90 | 59,00 | 282 | 273 | 15,10 |
| | | | | | |

*Notes: *) In year 2000 not yet formed*

***) In year 2000 still part of West Java*

| 3.10. Comparison of Gender Empowerment Index (GEI) between 1999 and 2006 | | | | | |
|---|---|---|---|---|---|
| District/City/ Province | 1999 | 2006 | Ranking | | Expansion 2000-2006 |
| | | | 1999 | 2006 | |
| Aceh | 52,4 | 49,7 | 6 | 28 | -2,7 |
| - Bireuen *) | - | 54,4 | - | 175 | - |
| - Lhokseumawe *) | - | 46,5 | - | 346 | - |
| - Banda Aceh | 37,4 | 48,2 | 253 | 307 | 10,8 |
| | | | | | |
| West Java | 47,7 | 54,4 | 14 | 22 | 6,7 |
| - Tasikmalaya District | 47,4 | 51,4 | 111 | 239 | 4 |
| - Tasikmalaya City *) | - | 44,5 | - | 392 | - |
| - Cianjur | 53,6 | 51,6 | 34 | 231 | -2 |
| - Sukabumi | 38,4 | 55,4 | 246 | 162 | 17 |
| - Indramayu | 35,5 | 52,9 | 270 | 205 | 17,4 |
| | | | | | |
| Yogyakarta | 58,8 | 62,4 | 1 | 6 | 3,6 |
| - Bantul | 55,7 | 63,3 | 15 | 38 | 7,6 |
| | | | | | |
| Banten | - | 46,5 | - | 30 | - |
| - Tangerang City**) | 40,6 | 45,4 | 229 | 379 | 4,8 |
| | | | | | |
| West Nusatenggara | 46,2 | 54,5 | 20 | 21 | 8,3 |
| - East Lombok | 43,3 | 57,4 | 192 | 128 | 14,1 |
| - Mataram | 39,6 | 53,7 | 236 | 188 | 14,1 |
| - Bima | 43,4 | 54,2 | 188 | 181 | 10,8 |
| | | | | | |
| South Kalimantan | 55,1 | 57,7 | 3 | 17 | 2,6 |
| - Banjar | 51,3 | 59,5 | 57 | 87 | 8,2 |
| - Hulu Sungai Utara | 51,9 | 55,3 | 50 | 164 | 3,4 |
| | | | | | |
| South Sulawesi | 43,9 | 51,8 | 23 | 25 | 7,9 |
| - Bulukumba | 44,5 | 45,6 | 165 | 372 | 1,1 |
| - Pangkajene Kepulauan | 39,1 | 52,9 | 240 | 206 | 13,8 |
| | | | | | |

*Notes: *) In year 2000 not yet formed*

***) In year 2000 still part of West Java*

| 3.11. Per Capita Gross Regional Domestic Product (GRDP) with Oil and Gas in 1999 and 2007 | |
|---|---|
| **District/City/ Province** | **2007** |
| Aceh | 17329348 |
| - Bireuen *) | 8786414 |
| - Lhokseumawe *) | 56737956 |
| - Banda Aceh | 12340849 |
| | |
| West Java | 13048168 |
| - Tasikmalaya District | 5547332 |
| - Tasikmalaya City *) | 10802829 |
| - Cianjur | 6339298 |
| - Sukabumi | 6565538 |
| - Indramayu | 19967093 |
| | |
| Yogyakarta | 9584047 |
| - Bantul | 7145697 |
| | |
| Banten | 11400592 |
| - Tangerang City**) | 26090042 |
| | |
| West Nusatenggara | 7808657 |
| - East Lombok | 4095600 |
| - Mataram | 8668928 |
| - Bima | 5313029 |
| | |
| South Kalimantan | 11613224 |
| - Banjar | 9870197 |
| - Hulu Sungai Utara | 4703845 |
| | |
| South Sulawesi | 8996056 |
| - Bulukumba | 5699441 |
| - Pangkajene Kepulauan | 10817285 |
| | |

*Notes: *) In year 2000 not yet formed*

***) In year 2000 still part of West Java*

| 3.12. Percentage of Women in Parliament in 2000 and 2006 | | | |
|---|---|---|---|
| **District/City/ Province** | **2002** | **2006** | **Change 2000-2006** |
| Aceh | 9,10 | 4,30 | -4,80 |
| - Bireuen *) | 0,00 | 5,70 | 5,70 |
| - Lhokseumawe *) | | 8,00 | 8,00 |
| - Banda Aceh | 0,00 | 6,70 | 6,70 |
| | | | |
| West Java | 3,00 | 10,10 | 7,10 |
| - Tasikmalaya District | 6,70 | 11,10 | 4,40 |
| - Tasikmalaya City *) | | 2,20 | 2,20 |
| - Cianjur | 13,30 | 15,60 | 2,30 |
| - Sukabumi | 6,70 | 13,60 | 6,90 |
| - Indramayu | 2,20 | 15,60 | 13,40 |
| | | | |
| Yogyakarta | 9,10 | 9,10 | 0,00 |
| - Bantul | 6,70 | 8,90 | 2,20 |
| | | | |
| Banten | 9,30 | 5,30 | -4,00 |
| - Tangerang City**) | 2,20 | 6,70 | 4,50 |
| | | | |
| West Nusatenggara | 5,50 | 7,30 | 1,80 |
| - East Lombok | 6,30 | 4,40 | -1,90 |
| - Mataram | 8,60 | 5,70 | -2,90 |
| - Bima | 0,00 | 4,00 | 4,00 |
| | | | |
| South Kalimantan | 12,70 | 9,10 | -3,60 |
| - Banjar | 10,00 | 12,50 | 2,50 |
| - Hulu Sungai Utara | 3,30 | 13,30 | 10,00 |
| | | | |
| South Sulawesi | 2,70 | 6,70 | 4,00 |
| - Bulukumba | 6,10 | 2,90 | -3,20 |
| - Pangkajene Kepulauan | 6,70 | 6,70 | 0,00 |
| | | | |

*Notes: *) In year 2000 not yet formed*

***) In year 2000 still part of West Java*

*Appendix 4*

# Responses at the National Level

## 4.1. Response from the Chairman of Constitutional Court

### SPEECH OF HEAD OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA PROF. DR. MAHFUD MD IN THE LAUNCHING OF THE MONITORING RESULTS OF KOMNAS PEREMPUAN ON THE FULFILMENT OF WOMEN'S CONSTITUTIONAL RIGHTS IN THE ERA OF REGIONAL AUTONOMY

*Constitutional Court, 23 March 2009*

Assalamualaikum warahmatullahi wabarakatuh. Ms. Kemala Candrakirana, judges of the Constitutional Court, justices of the Supreme Court, gentlemen lovers of women, and happy attending ladies.

First of all, I congratulate and thank Komnas Perempuan, for choosing the building of the Constitutional Court for this event. This is relevant for it relates to the constitutional rights of women. Friends, if we want to be honest and objective, in the past 10 years our constitutional life has seen much progress.

There are two ways to measure the progress of the constitutional life. First, on the human rights protection; second, on the system and the limitation of governmental power in order to protect human rights. Other than that, there are usually just complements to the content of the Constitution. Using only these measures, we can do the evaluation honestly and objectively, that there has been a very significant progress. For example, on the issue of human rights protection, now there has been an about face on the concept of residue in the relation between human rights and state power. It used to be that human rights were the residue of the state power. Now it is the other way round, the state power is the residue of human rights. How to explain this? In the past the formulation of the Constitution very briefly discussed human rights. They were recognized but had to be regulated by the law. Then the state made the law that took for itself all the human rights and a little residue is given to the people. [This was done] through constitutional violence.

Now it's not so anymore. Our human rights have multiplied. Chapter 28 plus a number of human rights chapters have taken over almost all international conventions. So now human rights are the rights owned by the people and the residue, a little, is given to the state. The residue is to do what? To regulate and protect without taking unfairly for itself the existing human rights.

The power of the state government now I think has been far more democratic. Whether it likes it or not, the government could not arbitrarily carry out interventions on other powers. I am amazed when people think for example that the government still likes to do intervention. The judiciary is now free, no intervention from the president. That is the old mindset, to think that there are interventions from the president.

So, our system of government is doing well. I am among those who do not believe that the hullabaloo around the planning of the elections administration is caused by government's engineering; fictitious DPD, fake DPD, I do not believe them a bit. The law says elections are under the jurisdiction of the KPU, not the government. We should not make such an arbitrary accusation.

Intervention does exist. I see that happens through the intervention of various political powers in various regions. Political powers in certain regions intervene in the KPU. We also know that the elections of the KPU and KPUD members are conducted by political parties. "I want to seek this, these are my people…" in the end [they] are put within the KPU, no matter what their capacity is. I think it is not a secret. Everybody knows it. I was once in the parliament.

So let's share about the development of human rights and our state system, which I think have changed much. Our mindset in the evaluation of every thing should change. So if there is a constitutional problem, we do not promptly make accusation that it is a government intervention, but we look at ourselves, whether NGOs, political parties, the press, whoever outside the political power. If we continue to see through old spectacles, we will never be able to improve things.

Then, related to the issues we are talking today, our Constitution has adopted almost all international conventions on human rights. According to my record here, since the reform era started, not less than eight laws have been issued, outside the 1945 Constitution, which directly mention women's rights: Law on Human Rights, Law on the Elimination of Domestic Violence, Law on the Elimination of Human Trafficking, Law on Child Protection, Law on Witness and Victim, Law on Citizenship, Law on Disaster Management, Law on the Placement and Protection of Indonesian Migrant Workers Abroad. All of them aim at the maximum protection for women. So from the point of view of the Constitution and the laws, nothing is lacking. We have already given attention to women, to uphold or provide protection to women's fundamental rights as stipulated in various international conventions. Furthermore, it is shown in the report of Komnas Perempuan, that the 10 years of reform has seen the issuances of 29 policies to handle and eliminate violence against women, 11 of which are at the national level, 15 at the regional level, and [the rest] at the Asian regional level. We have also ratified CEDAW, with Law No. 7/1984. Friends, I think it is a fact that at the constitutional and national law levels, we have done enough. The problem now is that at the lower levels there are 154 problematic regional regulations. This is a problem I have often cited everywhere.

In Indonesia there are government supervisions in the form of repressive supervision and legal supervision in courts, if there are problematic regional regulations. According to Law No. 32, every regional regulation upon its enactment is sent to the central government. Within 60 days the government could annul it by issuing a presidential decree. If there are 154 regional regulations, and not one annulment, the problem seems to be at the level of the government, not the Constitution or the national law. Why didn't the government annul them? Or maybe the government considered there were no problems? I happened to be an adviser in this research on the regional regulations. The government seems to have annulled many regional regulations. But the topics examined were taxes, levies. It never examined regional regulations on the Sharia, on religion. The problem is in this sector, not on the national law and the Constitution. So those recommendations really need to get the government's attention.

I have proposed when I was at the parliament, what if the government created a desk on regional regulations. Its sole task would be to examine regional regulations so that they could really be evaluated in 60 days. If there was no dedicated desk, there would be no intensive efforts to correct regional regulations. Then what happened was that the regional regulation on the Sharia was considered right, the discriminatory regional regulation against women was considered right. Only regional regulations that set too high a tax or levy were considered problematic. This is the importance of a special desk to evaluate and give recommendations to the president to issue presidential decrees. This is a problem at the general supervision which I think is very important in the future.

Second, what is the basis for an annulment of a regional regulation by the central government? Often a regional regulation is made based on democracy. But our state, the 1945 Constitution, is not only about democracy, but also nomocracy. Democracy is stipulated in Chapter 4, "Democracy guided by wisdom and prudence in consultation representation". That is democracy, the process of decision making, who wins. Like it or not, in democracy, [the main thing is] who wins. If we here are 200 people, 150 of which want something, then the other 50 have to back off. But Indonesia is also a state based on law (Chapter 1 Article 3), a nomocracy. Indonesia commits to the Rule of Law.

The process of decision making in a nomocracy is about who is right, not who wins. That's why those who win democratically are not necessarily right nomocratically. This is where the Supreme Court and the Constitutional Court come in. This is called legitimate democratically and right nomocratically. Something could be annulled because it is wrong nomocratically although it wins democratically. We may dream that our democracy is not about winning but consultation [for unanimity]. All democracies in the world are about consultation. When at the end the consultation does not work, they use voting. People say in the liberal America they do voting directly. Not true. If from the beginning there is an agreement, voting is not necessary. It may be that our consultation is longer. But the essence is the same. If from the beginning there is a consensus, there is no need for voting.

But in essence we return to the fact that democracy is about which side is the largest, but the largest side is not necessarily right so we regulate that the winner should win according to certain measures and certain procedures. What are the legal criteria? In our legal system there are four criteria. First, whatever the law you want, it may not destroy the territorial integrity and may not be contrary to the integrity of the ideology of the nation. This is to protect the whole nation and state. There should be no regulations and laws that allow even the smallest chunk of the territory of Indonesia to be separated. Second, laws could only be developed based on the principles of democracy and nomocracy as one whole. Third, laws in Indonesia have to be developed for social justice, not individual or liberal justice. This means social justice where the state officially participates in creating a just social structure through regulations that provide protection for vulnerable citizens who have the potentiality of being discriminated against. Fourth, laws could only be developed based on religious tolerance. These are the four measures. Without fulfilling these four criteria, the regulations would be caught during the judicial reviews. If [the regulations] step out of the four criteria, they would contradict one of the contents of the Constitution. We could find the chapter, because the Constitution in fact pictures the four stipulations.

That's why, when there was an uproar about the Sharia regional regulations, we remember [the debate was] whether Sharia regional regulations might be created in Indonesia or not. According to me, it is not about may or may not, but need or need not. Are there benefits or not. For example, in a certain region people who want to get married have to be able to first recite and write the Quran; if they want to enter state schools they have to be able to first recite and write the Quran. According to me such things are not necessary. Without the regional regulations all adherents of a religion are never prevented from performing their religious duties. I have a different opinion than Ms Kemala, Indonesia is not a secular state and also not a religious state. Indonesia is a Pancasila state. The Pancasila state is the meeting point of the goodness of a religious state and the goodness of a secular state. Here religious state is like the Vatican or Saudi Arabia, where a religion becomes the religion of the state. But religion provides the spirit in the life of the nation and the state. Not really secular, like America. Here the state does not apply religious laws but the state has the responsibility to protect every adherent of any religion that want to implement the teachings of his or her religion correctly.

When in 1999 we created the Law on Regional Autonomy, there were four absolute responsibilities of the [national] government, i.e., diplomacy, finance, defence and security, and judiciary. After the agreement was reached, the Indonesian Ulama Council (MUI) came and proposed that the issue of religion should become the national concern. If not, every region whose majority and minority have different religions would formulate their own regional regulations. That would threaten the territorial integration and our ideological integration. So even though that was not deliberated in the special committee, at the request of the MUI and several Islamic organisations, the stipulation that religious issues become the concern of the central government was put in the final draft. It means there has been an effort to save the national

unity according to its territorial and ideological integration in the concept of the total people's defence and security (Hankamrata) of the Republic of Indonesia.

Now, about the supervision of the judiciary. On the issue of discrimination against women, we could not expect the government's role at the moment because all of the regional regulations have been evaluated. The 60 days had passed and the regulations have come to be in effect. There is another way according to the laws, i.e., to request judicial reviews to the Supreme Court, to include both the form—i.e., the procedures—and the substance—i.e., the contents—of the regulations. There are 180 days for the Supreme Court to hand out judicial proofs over the problematic regional regulations. According to the report, not one of the regulations was annulled. Maybe there was no appeal, or the Supreme Court considered there had been no discrimination, or the Supreme Court was not sharp enough to see it. We will discuss that today. If the Supreme Court could not [do it], [then it] could not [be done].

If the Supreme Court's 160 days were gone, [what's left] is the stipulation in Law No. 32, that is, legislative reviews. The change would be done by the regional parliaments themselves depending on the results of the upcoming elections. Indeed that is our political rule of the game according to the Constitution. It means, the results of the upcoming elections at the regional parliaments could from now on, while it is still in the campaign season, be pushed to the better direction and commitment.

In our system of state, the government could do legal supervision, the Supreme Court could do repressive supervision, and the political supervision could be done through legislative reviews on emerging problems. So [is the situation with] the issue of the discriminatory regional regulations against women that we have seen in today's report.

Then there is the issue of culture. For in the name of the laws and the Constitution, in this country there was never discrimination against women. Our Constitution has clearly stipulated this. Our political experience is the same. We have many women figures. We have S.K. Trimurti, Ms Fatmawati, Maria Ulfah. We have president Megawati. We have ministers of women empowerment, Kofifah Indar Parawansa, Meutia Hatta. Women enter the field of politics without constraint from the laws and the Constitution. If the number is still low, that is the problem of the culture, not the Constitution. The culture in our society still regards women not fit to lead. That's the existing culture. Friends, I am a lecturer. I see how great women are. Of 10 graduates, seven are women.

Here I need to explain the view of the Constitutional Court on the issues on hand, i.e., the issues of legislative candidates, affirmative action, i.e., the affirmative policy for women. Some have said that the decision of the Constitutional Court to validate the majority vote has caused women to lose their rights. Let me explain. First, the review of the law by the Constitutional Court is based on the petitioners' request that the 30% requirement is removed, replaced by the majority vote. The rationales are justice and people's sovereignty. For the sake of justice, if

a person gets more votes, it should be faster. It is according to the will of the people that if there were more people voting for a person, that person should be the winner, not like the above. It makes sense.

And second, in the reviewed law there is no affirmative action guarantee that women have to win. There is no such a thing. If there is, then the Constitutional Court would have sided with that. There are some special treatments in the existing law, that of every three legislative candidates, there should be one woman candidate. But not that for every three legislative winners there has to be one woman winner. There is no such a thing. So, of every three legislative candidates there should be one woman candidate, that has been confirmed by the Constitutional Court. It is according to the affirmative action. So why the Constitutional Court did not made a decision that of three legislative winners there should have been one woman? It was not done because it would contradict the Constitution. The discussion was going on for days. Finally there was a voting, and one dissenting opinion. If it is wished that it becomes a policy, in the future such an affirmative action should be included in the effective laws. But don't force the Constitutional Court to regulate based on a thing that does not exist. Forcing things are not the mandate of the Constitutional Court.

I'd happily welcome, and say congratulations, waiting for the recommendations for the Constitutional Court, for what are going to be done by the Constitutional Court.

That's all.

Assalamualaikum warahmatullahi wabarakatuh.

## 4.2. Response from the Vice Chairman of Regional Representative Council

# REGIONAL AUTONOMY AND THE CONSTITUTIONAL RIGHTS OF CITIZENS (AN EFFORT TO BUILD AN IDEAL FORMAT)

**Laode Ida**

*Deputy Head*
*Regional Representative Council*

## Consequences (weaknesses) of Regional Autonomy

- Power: democracy is based on a majority. The ethnicity or religion of the majority controls the political arena, so that political policies tend to represent only the interests of the majority
- Culture: freedom to express local culture→ patriarchal or religious. Decisions are made based on cultural perception and or on the values of the dominant religion (inherited perception)

## Central-Regional Relations

- Failure of the central government to provide supervision → because of (1) the absence of supervisory instruments in the making of local policies based on minority's and women's rights, and (2) the difficulties in doing supervision due to the huge number of autonomous regions, and or (3) the routine workloads of concerned officials in Jakarta.
- The absence of punishment for regions issuing discriminatory policies → the allowing of discriminatory actions, because the bureaucracy tends to provide services based on ethnicity.

## Proposals for Improvement

- Revision to regional autonomy policies, apply guided autonomy → reclaim the regional power that has generally created problems in implementation.
- Strengthen the monitoring and supervision on the planning, making, and implementation of local policies → develop an effective institutionalized supervision
- Carry out a system of reward and punishment to regional governments

## Steps by the Regional Representative Council

- Urge for the revision of Law No. 32/2004 (a revised draft is still in process)
- Urge for the creation of indicators for the supervision of regional autonomy implementation
- Strengthen its power so there could be an effective supervision on the administration of regional governments (through a constitutional amendment, a draft of which is being prepared)

**Happy discussions**
**SUCCESS**

## 4.3. Response from the Supreme Court's Representative

# THE SUPREME COURT AS THE IMPLEMENTER OF THE JUDICIARY POWER IN IMPLEMENTING THE FUNCTION OF JUDICIAL REVIEW IN THE CONTEXT OF MAINTAINING THE INTEGRITY OF THE NATIONAL LAW AND STRENGTHENING THE CAPACITY TO FULFIL THAT FUNCTION

By:

**Marina Sidabutar, SH, MH**

*Justice Supreme Court Republic of Indonesia*

Presented during:

**The Launching of the Report "In the Name of Regional Autonomy: The Institutionalisation of Discrimination in the Nation-State System"**
**Theme**
**The Constitutional Task of the New Post-Election Leadership: Free Indonesia from Discrimination**

***Komisi Nasional (Komnas) Perempuan, 23 March 2009***

When Prof. Dr. Paulus E. Lotulung requested our availability to take his place in accepting the invitation to be present in this respected forum, our heart was elated, but we want to ask for confirmation beforehand whether the inviter is willing to accept us, while he who was expected to attend was in his capacity as head of the reform team at the Supreme Court of the Republic of Indonesia.

Today we are present among all attendees whom we respect with full joy, although our feeling was a bit disturbed after reading the preliminary conclusions that were sent by the committee where the Supreme Court was viewed as to have failed to fulfil its function as the last resort mechanism in maintaining the consistency of the national law, both in relation to the problem of the annulment of regional policies and in the decision making regarding the cases it has received.

It was true that there were decisions not in line with truth and justice from the first level courts to the last level at the Supreme Court, but because those which were exposed were only such decisions while correct decisions were ignored because they were not interesting, a negative image was then formed until this day.

Prof. Dr. Bagir Manan as Head of the Supreme Court (retired since 1 November 2008) felt it was very important to convey his thoughts in the National Work Meetings from 2001 through 2008 with the following consecutive themes:

1. Rebuild the image of a dignified and respected court body.
2. Through nurturing and supervision, improve the integrity and quality of decisions.
3. Improve the image and authority of the court through the strengthening of professionalism and the quality of judges' decisions.
4. Development the management system of the judiciary.
5. Strengthen the technical capacity and judiciary management for the sake of quality and authoritative functioning of the judiciary power.
6. Supervision.
7. Nurturing of judiciary techniques.
8. Modernisation of Indonesian Supreme Court and the Judiciary.

Even Prof. Dr. Sartjito Rahardjo said that the Supreme Court still did not possess what was called the "Conscience of the court" but he also said that we were all responsible to continuously provide inputs for the progress of the Supreme Court, which is our own.

In line with his view, we gladly accept all the criticisms directed at the Supreme Court including the four circles of courts under its supervision, to become the source of introspection for betterment, in the sense that today should be better than yesterday.

To that goal we hope that after this event we will receive the results in the form of conclusions of this activity that could be used by the Supreme Court as inputs to fulfil the expectations of justice seekers, including Komnas Perempuan, of which we should be proud of.

The Reform Team led by Prof. Dr. Paulus E. Lotulung, the Junior Head of the State Administrative Circle of the Supreme Court, would immediately be responsive to criticisms, suggestions, and expectations addressed to the Supreme Court.

Komnas Perempuan's concerns about discrimination against minority groups has also become the concerns of various parties, among others, Hendardi (founder of the Setara Institute) in 2005 who said that after *Reformasi* there was no progress shown that the state was doing its responsibility to protect the right to liberty/freedom. He stated that it was urgent to pay attention to the following:

1. The legal system that guaranteed rights and freedom, especially the fundamental freedom of religion, thought, and conviction.
2. Protection from law enforcement officials.
3. Independence and impartiality of judicial system in enforcing the law.

Chapter 18 of the International Covenant on Civil and Political Rights and chapter 28 E (1) and chapter 29 (2) of the 1945 Constitution states that religious freedom is a fundamental freedom that is a natural right. This right was not only a right for itself but also a right in itself, meaning it is a non-derogable right.

Because it is expected from the speaker to talk about institutional constraints faced by the Supreme Court in implementing its authority to maintain the integrity of the national law through the judicial reviews on regulations below the level of national laws and the breakthroughs that the Supreme Court could resort to to strengthen its capacity to fulfil that authority, the two topics will be explained as the following:

I. That the Supreme Court is bound to the procedural regulations that are set merely by the Supreme Court Regulation No. 1/2004 on Judicial Review, including the 180-day time frame to hand in an appeal from the time of the enactment of the law or regulation in question, if the Supreme Court is of the opinion that the appeal is justified because the law or regulation is against higher laws or regulations, then it is best to annul the regulation because the justice has to "find the material truth not just the formal truth".

   - That the review is limited only to regulations below the level of national laws, whether or not they contradict higher laws in the legal hierarchy.
   - That the review is conducted only from the aspect of the legality of regulations and not the aspect of opportunity (usefulness) so that *rechtmatigheid* is faced with *doelmatigheid*.
   - That if at the same time the national law in question is being appealed to to the Constitutional Court while the regulation below the national law is being judicially reviewed by the Supreme Court, if the Supreme Court is made aware of the situation, the appeal at the Supreme Court will have to wait for the decision of the Constitutional Court; but it is a different case if the judicial review appeal at the Supreme Court has been granted because it contradicts a certain law while the judicial review appeal of the law in question is also granted by the Constitutional Court because it contradicts the Constitution. This could happen because there is no time frame to appeal for a judicial review to the Constitutional Court.
   - That because of the huge volume of cases at the Supreme Court, the maximum 14-working-day time frame to conduct a judicial review since the date the appeal is presented, as stipulated in Chapter 31 A of Law No. 3/2009, sometimes could not be followed so that the stipulation is best rescinded.

II. About breakthroughs, it may be better to use the term legal finding (*rechtsvinding*)

- That in certain cases the Supreme Court has sidestepped the 180-day time frame for an appeal for the following reasons:
  a. Seen from comparative law study as applied in different countries which have no such a limitation.
  b. Seen analogically from the aspects of the practice and procedures that are applied at the Constitutional Court that does not have such a time limitation.
  c. Seen philosophically from the aspects of legal protection the time limitation is considered a curtailment or limitation of human rights to make an appeal, to have opportunities and benefits to get justice.
  d. Seen from the aspect of the positive law that the time frame limitation is only regulated in a Supreme Court Regulation and not explicitly in the Law on Judicial Power or the Law on the Supreme Court.
- That the Supreme Court can (has to) change the paradigm that is limited only to the legality aspect but for the sake of justice for gender and minority groups it also has to consider the opportunity aspect (the usefulness or benefit) of the reviewed regulation. A judge has to be courageous enough to free himself or herself from the bind of the law, not to become a captive of the laws or regulations.
- That the criteria of regulatory reviews have to be widened in case of a regulation that contradicts other regulations that exist sectorally in the same level of hierarchy.
- That the benchmark of regulatory reviews has to be widened to cover the General Principles of Good Governance (Asas-Asas Umum Pemerintahan yang Baik—AAUPB) (as stipulated in Chapter 53 (2) of Law on State Administration) which consists of six principles complemented by the general principles of state apparatus (as stipulated in Chapter 3 of Law No. 28/1999) which consists of seven principles; added in Law No. 28/1999 are the public interest principles. Should be prioritised are the anti-discriminatory principles (which include the openness principles) and the justice principles (which are covered in the legal certainty principles). That the culture of dissenting opinion has been implemented while before it was seen as unethical because of the principle of "deliberation to reach consensus" (*musyawarah untuk mufakat*) that has been ingrained since a long time ago.

Actually, discriminatory policies and regulations in any forms will never be issued if state apparatus, i.e., state officials and other officials whose main functions and tasks are to manage the state as stipulated in existing laws and regulations, implement Law No. 88/1999 on the State Administration that is Clean and Free from Corruption, Collusion, and Nepotism (dated 19 May 1999).

The Law outlines the general principles of state administration in Chapter 6 on the general provision, called the general principles of good state governance which is the principles of

respecting the norms of morality, reasonableness, and the legal norms to manifest a state administration that is clean and free from corruption, collusion, and nepotism.

In the explanation on the principles of legal certainty it is stipulated that the principles are within a state of law that prioritises law and regulatory foundation, reasonableness and justice in each policy of state apparatus.

Using as the benchmark the meaning of the legal certainty principles, there should be no issuance of discriminatory regulations in any field, especially against women and minority groups as depicted by Komnas Perempuan in the results of the monitoring that has been conducted.

Even legal sociologist from the US Donald Black opined that the law was an instrument of social control, as a government social control.

Thus this talk has been presented with the hope it will please the attendees, with great thanks for this valued opportunities. May we all remain under the protection of the All Loving God—Amen.

## 4.4. Response from the Vice Chairperson of the National Commission on Human Rights

# THE ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION AS A NATIONAL MECHANISM IN HANDLING ALL KINDS OF DISCRIMINATIONS AS VIOLATIONS OF HUMAN RIGHTS[31]

By:

**Hesti Armiwulan**[32]

## A. Legal Foundation

1. The reform agenda as could be seen in the Objectives of Development Reform as stipulated in Chapter III, MPR Decree No. X/MPR/1998 on the Subjects of Development Reform in order to Save and Normalise the National Life as State Directives, among others, are:
   a. To realise people's sovereignty in all aspects of the life of the society, the nation, and the state through the widening and improving of people's orderly political participation to create national stability;
   b. To uphold the law based on the values of righteousness and justice, human rights toward the creation of public order and improvement in mental attitude;
   c. To lay the foundation of the framework and agenda of religious and socio-cultural development reform in the efforts to create a civil society.

2. MPR Decree No. XVII/MPR/1998 on Human Rights, legalised and issued on 13 November 1998, among others, stipulates:

   *Chapter 1:*

   The higher offices of the state and all government apparatus have to respect, uphold, and disseminate the understanding about human rights to the whole of society.

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[31] Presented in the Launching of the Report "In the Name of Regional Autonomy: The Institutionalisation of Discrimination in the Nation-State System" organised by Komnas Perempuan, at the Constitutional Court, on Monday, 23 March 2009.

[32] Wakil Ketua bidang Eksternal Komnas HAM periode Tahun 2007 - 2012

*Chapter 4:*

The conducting of education, study, monitoring, research, and mediation of human rights by a national human rights commission as stipulated by the law.

3. Law No. 39/1999, legalised and issued on 23 September 1999, in principle is meant to protect all existing laws and regulations related to human rights. Therefore, Law No. 39/1999 could be understood as the legal foundation, the standard and norm in order to provide recognition, progression, protection, enforcement, and fulfilment of human rights in Indonesia. Here are some chapters worthwhile to be quoted:

    a. Definition of discrimination as "every restriction, abuse, or exclusion, directly or not directly, based on the human differentiation based on religion, tribal origin, race, ethnicity, grouping, class, social status, economic status, sex, language, political convictions, which results in the impairment, violation, or nullification of the recognition, implementation, or exercise of human rights and the fundamental freedom in the lives of both the individuals and communities in the political, economic, legal, social, or cultural field and in other aspects of life" (Chapter 1.3).

    b. The state of the Republic of Indonesia recognises and highly respects human rights and the fundamental freedoms of human beings as rights that naturally ingrained within and inseparable from human beings, which have to be protected, respected, and upheld for the sake of improving human dignity, prosperity, happiness, and intellectuality as well as justice (Chapter 2).

    c. i. Every person is born free with the same and equal human worth and dignity, and is blessed with reason and conscience to live within the society, the nation, and the state in the spirit of solidarity (Chapter 3.1).

        ii. Every person has the rights to recognition, guarantee, protection, and fair legal treatment, and to obtain legal certainty and equal treatments before the law (Chapter 3.2).

        iii. Every person has the rights to human rights protection and human basic freedom, with no discrimination (Chapter 3.3).

    d. i. Protection, advancement, enforcement, and fulfilment of human rights are primarily the responsibility of the government.

        ii. The government has the obligation and responsibility to respect, protect, uphold, and advance human rights as stipulated in this Law, other laws and regulations, and the international laws on human rights accepted by the state of the Republic of Indonesia (Chapter 71).

        iii. Government's obligation and responsibility as meant by Chapter 71 include steps of effective implementation in legal, political, economic, social, cultural fields and state defence and security, and other fields (Chapter 72).

d. The National Human Rights Commission has the objectives of:
   (1) Developing conditions conducive for the implementation of human rights according to Pancasila, 1945 Constitution, and United Nations Charters, as well as the Universal Declaration of Human Rights; and
   (2) Improving human rights protection and enforcement for the sake of the development of the whole personality of Indonesian persons and their ability to participate in various fields of life.

   To achieve these objectives, the National Human Rights Commission does its functions to study, research, educate, monitor, and mediate on human rights (Chapter 76.1).

4. Republic of Indonesia's 1945 Constitution after the second amendment dated 17 August 2000 includes among others the addition of Chapter XA on Human Rights as stipulated in Chapter 28A through Chapter 28J. This means that the stipulations on human rights in Indonesia's Constitution are the constitutional rights of all residents and citizens of Indonesia.

   1. Every person has the rights to the recognition, guarantee, protection, and fair legal certainty as well as equal treatments before the law (Chapter 28D.1).
   2. Every person has the right to be free from discriminatory treatment based on any reason and has the right to get protection against such discriminatory treatments (Chapter 28I.2)
   3. Protection, advancement, enforcement, and fulfilment of human rights are the responsibility of the state, especially the government (Chapter 28I.4).
   4. To uphold and protect human rights according to the principles of a democratic state of law, the implementation of human rights is guaranteed, managed, and expressed in laws and regulations (Chapter 28I.5).

5. International Laws/Instruments on Human Rights that have been ratified/accepted by the Republic of Indonesia, as stipulated in Law No. 39/1999, become National Laws:

   a. The International Covenant on Civil and Political Rights (Law No. 12/2005).
   b. The International Covenant on Economic, Social, and Cultural Rights (Law No. 11/2005).
   c. Convention on the Political Rights of Women (Law No. 68/1958).
   d. Convention on the Rights of the Child (Presidential Decree No. 36/1990).
   e. Convention on the Elimination of All Forms of Discrimination against Women (Law No. 7/1984).
   f. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Law No. 5/1998).
   g. International Convention on the Elimination of All Forms of Racial Discrimination (Law No. 29/1999).

## B. Mechanisms for the Enforcement of Human Rights

Although the 1945 Constitution of the Republic of Indonesia guarantees every person to be free from discriminatory treatment, if looked carefully, the existing condition in Indonesia shows that among many problems of human rights violations, one problem that stands out is the violation of human rights caused by discriminatory treatments both existing in horizontal relations and in vertical relations. This is further proven by the results of the monitoring conducted by Komnas Perempuan.

In the legal system of Indonesia, in truth the enforcement of human rights laws follows that of the legal system in Indonesia. Violations of human rights laws are processed according to the judicial system by using existing legal instruments in Indonesia. The violators of human rights laws are given punishments as stipulated in the systems of civil law, criminal law, or administrative law.

Other than that it has to be admitted that until now there is still no guarantee that legal products could be ensured to have given protection to human rights. The law, in this case laws and regulations, has in fact not wholly and substantially created in the framework to uphold and protect human rights according to the principles of a democratic state of law as mandated by the 1945 Constitution. On the other hand, although the legal substance does not contain discriminatory stipulations, in the systems of the society and the state in everyday life there are often found discriminatory attitudes, treatments, or conducts.

Therefore, there are needs for mechanisms to allow citizens of Indonesia who experience discrimination to obtain legal protection and at the same time to obtain justice. In the system of the state of the Republic of Indonesia there are several institutions whose special tasks are to guarantee the protection and enforcement of human rights, i.e., the Constitutional Court, the Supreme Court, the Attorney General's Office, the Police, and the National Human Rights Commission.

As we know, the implementation of democracy has to be flanked by the Rule of Law, therefore, to prevent arbitrariness in the state management there is a need for the control of the judiciary. Chapter 24 of the 1945 Constitution stipulates that the judiciary power is exercised by the Supreme Court and the court bodies under it as well as by the Constitutional Court. If we look at the authority of the Supreme Court and the Constitutional Court as stipulated in the 1945 Constitution, it is limited to judicial reviews of laws and regulations. It means that the protection guarantee for the fulfilment of the constitutional rights of Indonesian citizens from discriminatory conducts is not at its highest if the substance of such discriminatory conducts is not found in the substance of laws and regulations.

Paying attention to those above, the National Human Rights Commission as an independent body, at the same level as other state bodies that are formally formed to ensure and control the implementation of human rights in Indonesia, has a significant role in the enforcement of human rights. The judicial foundation used as the basis for the rights of the National Human Rights Commission is Law No. 39/1999 on Human Rights that mandates the National Human Rights Commission to do the functions of Dissemination, Study and Research, Monitoring, and Mediation. The Law even gives the mandate to the Commission to investigate cases of human rights violations. But it has to be admitted that the Commission could not play its role fully because the Law does not stipulate clear and strong mechanisms to support the Commission's authority in implementing its function to enforce human rights. There is no independent authority that could be done by the National Human Rights Commission when it finds a clear violation of human rights other than to provide recommendations on the facts found by the Commission to the parties that violate the human rights. In truth the expectation of every body is very high for the National Human Rights Commission to ensure that the state, or in this case the administers of the government of Indonesia, really does the obligations to ensure the protection, enforcement, and fulfilment of human rights as guaranteed both by the 1945 Constitution and the laws and regulations. It means that if there is a discriminatory treatment that is against the constitutional rights of citizens as guaranteed by the 1945 Constitution of the Republic of Indonesia, the existing legal instruments could not provide the guarantee to fulfil the feeling of justice and legal certainty.

To really realise the guarantees of protection, enforcement, and fulfilment of human rights in a constitutional way in line with the reform agenda as stipulated in the MPR Decree No. XV/MPR/1998, the recommendation of the National Human Rights Commission is to at once establish a law on National Human Rights Commission as mandated by the MPR Decree No. XVII/MPR/1998 to equip the Commission with clear and strong authorities like those given to the Commission for Corruption Eradication.

*Appendix 5*

# Responses at Provincial Level

## 5.1. Response from the Governor of Nanggroe Aceh Darussalam

**GOVERNOR**
**NANGGROE ACEH DARUSSALAM**

**KEYNOTE SPEAKER**
**FOR THE EVENT:**
**THE CONSTITUTIONAL RESPONSIBILITY OF THE POST-ELECTIONS NEW LEADERSHIP**
**"FREE INDONESIA FROM DISCRIMINATION"**

*Saturday, 04 April 2009*

*"Bismillahirahmanirrahim". Assalamu'alaikum Warahmatullahi Wabarakathu*
*Hamdan wa syukran lillah, salatan wasalaman' ala rasulillah, wa'ala alihi washabihi wamauwalah.*

Whom I respect (to be adjusted):

- Civilian officials, the military and police officers,
- Academicians and bureaucrats,
- The head and board members of Komnas Perempuan,
- Leaders of domestic and international NGOs,
- Representatives of Komnas Perempuan,
- Monitors and women activists,
- Invitees and all who are present.

All praise and thanks to Allah SWT [glorious and exalted is He] who have given us His love, so that unto this day the people of Aceh may enjoy this beautiful peace. This moment of today is very important because it has to do with our will to strengthen the rights and the spirit of the women especially of Aceh and generally of Indonesia.

Shalawat and salam are poured for our leader, the Prophet Muhammad SAW [peace be upon Him], who had brought the humanity from the world of darkness to the world filled with knowledge and intelligence.

Gentlemen and Ladies whom we respect,

Before we conduct our meeting today, we often heard about the existence of regulations in Indonesia that seemingly discriminated against women. Not long ago, from the mass media we got the news that Komnas Perempuan had conducted a research on this issue in 16 districts in seven provinces in Indonesia. For the province of Aceh, there were three regions chosen as the locations of the research, i.e., the city of Banda Aceh, the district of Bireuen, and the district of North Aceh. The three regions were the focus of Komnas Perempuan's attention for the island of Sumatra. The other 13 districts which were the locations of the research were located in the island of Java and in the eastern part of Indonesia.

With the research, Komnas Perempuan has arrived at the conclusion that there are 154 discriminatory regional regulations in the past 10 years against the people of Indonesia. Of the number, 64 regional regulations are directly detrimental to women, says the report. Komnas Perempuan has also found discrimination against women in Aceh.

As we read in the mass media, one of the findings is the obligation to wear *jilbab* for women, including those who are civil servants, policewomen, the women corps of the Army, and so on. Komnas Perempuan concluded that the obligation to wear *jilbab* has violated the freedom of expression of women.

We of course value very much this report, as a field research, that was conveyed by Komnas Perempuan. In Aceh, this actually is not a new issue, because from the very beginning of the enforcement of the Islamic Sharia in Aceh, the debate about the issue has been closely engaged. There is a view that the Islamic Sharia plays a role in the enactments of the discriminatory policies against women. This is at least one understanding that we could discern from the previous reports.

Gentlemen and Ladies whom we respect,

Talking about discrimination against women, especially in Aceh, we will elaborate on two related issues. First, what is the real meaning of discrimination; second, how could it happen; and third, even if it happens, what is the background of it.

According to a dictionary of the Indonesian language, discrimination is unfair services towards certain individuals or groups, where the services are made based on the characteristics represented by certain groups. Discrimination is a common occurrence in human societies. That is because of the tendency of human beings to make differentiation on others. Discrimination could occur when someone is treated unfairly, whether it is caused by the characteristics of a certain sex, race, religion or belief, political orientation, or physical condition. Discrimination has the opportunity to happen because of the wrong implementation of laws or regulations.

Gentlemen/ladies and all present,

Especially for the region of Aceh, the accusation of discrimination against women that is most talked about is the enforcement of the Islamic Sharia. It is as if there is an assumption that the Islamic Sharia currently in effect in Aceh constrains the rights of women, because women have to wear *jilbab*, while such a regulation is not applicable to men.

Many women activists in Jakarta oppose this regulation. As once conveyed by the head of Komnas Perempuan to the mass media a while ago, the obligation to wear *jilbab* violated the freedom of expression of women.

Such is the view that often emerges as an effort to criticise the policies applicable in Aceh. The government and the legislature in Aceh are not averse to criticism. We are indeed happy with such a critical stance. However, the criticisms regarding the enforcement of the Islamic Sharia policies should be seen in the light of its existing background. The right of expression of human beings should not be taken as the only foundation. If this is made the reference point, many more things would be found which for other regions may still be regarded as controversies but in Aceh have become necessities.

Should this issue be debated so sharply? I think that if it is what we do, then we have to face the parts of the world that apply the Islamic Sharia.

Including here for example are the obligations for men to attend the Friday prayer as a member of a congregation, the prohibition to openly trade during the fasting month, etc. In Aceh, such regulations have been enacted into the positive law, not just the Islamic Sharia. Included here is the obligation to cover the *aurat* of Muslim women. Indeed the Islamic Sharia applicable in Aceh is a part of the positive law in Indonesia and is especially applicable in the jurisdiction of Aceh.

Hence, when other parties criticise the policies, inevitably the issue of religion will come up. This is the consequence of the decision to enact Islamic Sharia in Aceh.

Gentlemen and Ladies whom we respect,

We all understand that the province of Aceh has been declared a special region. One of the manifestations of the specialty is the enforcement of the religious Sharia, confirmed in Law No. 44 Year 1999 on the Implementation of the Specialty of Aceh and Law No. 11 Year 2006 on the Aceh Government. From these alone we have to understand that there exist in Aceh several policies that are not the same as those of other regions. Here the ulamas have the same level of positions as the executive branch and the legislature. Even the central government, if it wants to make policies regarding the province of Aceh, has to first discuss them with the government and the legislature of this region.

In line with the specialty of Aceh, the government then follows them up with the enactments of a number of *qanuns* related to the Islamic Sharia. There are, among others, Qanuns No. 10 Year 2002, No. 11 Year 2002, No. 12 Year 2003, No. 13 Year 2003, and No. 14 Year 2003. All the *qanun* regulations regulate Islamic Sharia, not only for women, but also for men. Some people regard the regulations are discriminatory against women, they could be reviewed. But for certain, no reviews would be able to evade the norms of the religion of Islam. If the norms of the religion of Islam decide on something, those should be in effect in Aceh, as a consequence of the government policies that have determined the legitimacy of Islamic Sharia in Aceh.

What we need to understand is that the religion of Islam is very respectful of women. If there is an assumption that the Islamic Sharia discriminates against women, that may only be caused by the interpretation influenced by the desire to have the wide freedom of expression as possessed by women in other places. In Aceh, women have the freedom of expression freely, as long as they do not deviate from the teachings of Islam. Do not equate the ways of expression of Aceh women with those of the women outside Aceh. In Aceh, "Muslim men and women", I repeat, "Muslim men and women", have the obligation to cover their *aurat* in public places. If they do not cover their *aurat*, they have violated the law.

This is the law that is often contrasted with the universal human rights, as if the freedom they possess in their regions have to be effected in Aceh.

Another example: Komnas Perempuan once wrote a letter to the president not to eliminate one of the prostitution sites in Tangerang. Maybe in Tangerang or Jakarta such a protest would get a lot of support from the people, but were this case to occur in Aceh, we could not imagine the reactions the people of Aceh would show to Komnas Perempuan.

Let us close our eyes. We ponder, what would happen if in the prostitution sites illegitimate children are born, grow to be adults, and become the leaders of the nation. Where are we going to take this country?

Therefore, we want to suggest, if you want to deliberate on the policies in Aceh, do so by looking at the issues comprehensively, including the cultural background and the specialty of Aceh. Do not equate it with other regions. There are regulations in Aceh different than those of other regions. There are laws that are applicable in special cases and have been enacted as positive laws. Meanwhile, in other regions, those regulations are not touched in the positive law because they regard the religious Sharia as an individual issue, related to the relation between the individuals and their God.

Nevertheless, the Aceh government does not close itself to the criticisms from all parties. The proof is that there is an effort to amend the *qanun jinayah* as stipulated in the Qanuns No. 11, No. 12, No. 13, and No. 14. There is an effort to revise them. But they will still refer to the Islamic law. We could only call on those who criticise us to be able to see the problems as

wide as possible, with a clear thought, not only focusing on just one problem. It is difficult to separate the existing laws in Aceh from the Islamic Sharia, and they should not be viewed incongruously in a separate way. Islam has become the culture here for decades. Moreover, in Aceh there are the Sharia Court and High Court, which view criminal violation through the religious perspective. Furthermore, in Aceh exists the adagium "*Hukom ngon adat lagee zat ngon sifeut*", i.e., law and *adat* is like matter and form, they cannot be separated.

It does not mean that we consider that there is no discrimination against women in Aceh. In fact it is the enforcement of the Islamic Sharia that often draws protests, because the security apparatus often act discriminately, e.g., only those who ride motorcycles are monitored or raided, while those in cars are free not to cover their *aurat*. These kinds of problems are closely related to the optimalisation of the officers of the Wilayatul Hisbah, which is very limited.

Gentlemen and Ladies whom we respect,

The Aceh government supports very much the efforts to eliminate discriminatory attitudes against women. In November last year, as the head of the Aceh government, we signed the Charter on the Rights of Aceh Women. The involvement of the Aceh government in the declaration will be followed by the commitment that the future policies of the government of Aceh will respect the equality of the rights of men and women. Besides, the government also fight for a *qanun* for the protection and empowerment of women, the draft of which has been scheduled for deliberation.

In the Aceh culture, there is no assumption that the position of men is higher than that of women. In fact, during the time of the Aceh sultanate, many women occupied the respected places in the government that could not be reached by men. For almost 60 years the Aceh sultanate was under the control of women.

Besides all that, if Komnas Perempuan found regulations in Aceh that are discriminatory against women, of course the people and government of Aceh will happily discuss the inputs. The spirit of the people of Aceh basically is the spirit of togetherness. Therefore let us together declare a war against various forms of discrimination against women and children, without exception.

Activists and all participants,

Thus is the brief presentation that we could impart, may what we have conveyed do not lessen the meaning being fought for by women to improve their worth and dignity.

*Wabillahitaufoq walhidayah*
*Wassalamualaikum warahmatullahi wabarakatuh*

**Governor of Aceh,**
**Irwandi Yusuf**

## 5.2. Response from the Governor of South Kalimantan

### GOVERNOR OF SOUTH KALIMANTAN

### WELCOMING SPEECH

### AT THE LAUNCHING OF THE REPORT ON THE MONITORING RESULTS OF KOMNAS PEREMPUAN ON THE CONDITION OF THE FULFILMENT OF WOMEN'S CONSTITUTIONAL RIGHTS IN THE ERA OF REGIONAL AUTONOMY

*Monday, 6 april 2009, Pukul 09.00 WITa,*
*Hotel Arum Banjarmasin*

*Assamu'alaikum Wr.Wb.,*

Let us raise all praise and thanks to Allah for His abundant blessings, so that on this day we could be present at the Launching of the Monitoring Report "In the Name of Regional Autonomy: the Institutionalisation of Discrimination in the Nation-State System".

I in the name of the government of South Kalimantan province congratulate all the activists of Komnas Perempuan for its struggle to uphold equality for women, especially through the monitoring on the condition of the fulfilment of women's constitutional rights in the era of regional autonomy. I also appreciate the event of the launching of this report, because the monitoring results collected in this report are valuable inputs for the better implementation of regional autonomy in the future.

Ladies and Gentlemen, all of you who are happily present,

History has recorded the long struggles of women to earn their rights to participate in the life of the nation and the state, at the level of both the society and the government. These long struggles of women have become even stronger since reform started to roll in this beloved country.

Together with the reforms in various aspects of life, the attention of the state to the existence of women has also been better compared to the situation in previous eras. In the political stage, for example, it used to be that the patriarchal culture put women as the subordinate and

marginalised them from access to politics, now it is open wide for women to advance in the political world with the 30% quota for women in the legislature.

Nevertheless it could not be denied that there is still doubt about the interest and capacity of women in the political field. Therefore women have to prepare themselves when they enter the political world, and the efforts to improve the roles of women in politics are a struggle that has to continue so that women politicians will form a new power that could empower and bring prosperity to the nation.

To improve the political roles of women, it is not enough just to fulfil the 30% quota in the legislative body. What needs to be prepared is quality not quantity, so that in the future we will no longer find women politicians who serve as accessories in the parliament. What are needed are not physically beautiful women, but women who are committed to the empowerment efforts of women and who could find and voice the interests of women.

Ladies and Gentlemen, all of you who are happily present,

Besides the quite open opportunities for women to advance in the political world, we could clearly see the respect and appreciation for women's rights to obtain legal justice through the Law on Domestic Violence. With the issuance of the Law on Domestic Violence, violence that used to be viewed as a private matter, which often victimises women, now has become a legal issue. Thus, it is very clear that today's women have got protection from violence and discrimination in the domestic realm.

Similarly in the implementation of regional autonomy, the establishment of regional apparatus that places Women Empowerment and Child Protection under one body is also a substantial effort from the regional government to provide a platform for women's struggles in improving their capacity and achieving equality.

Nevertheless, we admit that there are still things not in line with the demand for equality and women's equal rights, as found in the Komnas Perempuan monitoring on policies in 16 districts/cities, the results of which have been collected in the report being launched today.

The findings are valuable inputs for the South Kalimantan government, especially there are among the findings issues in Banjar and Hulu Sungai Utara districts that are parts of South Kalimantan province. These findings also at the same time challenge women activists to struggle more; such conditions mean that the struggle of women has still a long way to go.

Ladies and Gentlemen, all of you who are happily present,

For me, the demands of women for their rights are in line with and protected by the Constitution. With empowered women, this country will become stronger. By guaranteeing women's

rights to work and participate, many things could be done for the betterment of the nation and this region.

Therefore any differences of opinions that may come out of the monitoring results of Komnas Perempuan on the condition of the fulfilment of women's constitutional rights in the era of regional autonomy have to be seen in the light of efforts to better the life of the nation and the state.

In other words, I expect all parties, including women, to discuss the finding results in a more comprehensive way in the context of the spirit of regional autonomy, existing laws and regulations, and social, cultural, and religious values so that the results from the monitoring of Komnas Perempuan could contribute to our stepping forward in the life of the nation and in respecting human rights.

May this activity pave a new way to build a better quality of equality, to achieve better life for women today and tomorrow.

These are the few things that I wish to convey at this opportunity, may Allah SWT give protection and guidance in our efforts to build a better life.

That's all and thank you for your attention.

*Wassalamu'alaikum Wr.Wb.-*

**South Kalimantan Governor**,

**H. Rudy Ariffin**

## 5.3. Response from the Representative of Banten Regional Officer for Law and Human Rights

### HARMONISATION OF REGIONAL REGULATIONS IN THE HUMAN RIGHTS PERSPECTIVE

By :

**Dhahana Putra, SH, Msi**

*Head of Legal Section Banten Regional Office, Ministry of Law and Human Rights*

*Serang, 06 April 2009*

### Data on the Limitation of Regional Regulations by the Ministry of Home Affairs

- 2002 : 19 Regional Regulations
- 2003 : 105 Regional Regulations
- 2004 : 236 Regional Regulations
- 2005 : 136 Regional Regulations
- 2006 : 114 Regional Regulations
- 2007 : 173 Regional Regulations

### Definition of Harmonisation

- Harmonisation is a musical term to denote the concord or fitting and beauty of notes. In English-Indonesian dictionaries, harmony means conformity, accord, agreement, concord
- *Kamus Besar Bahasa Indonesia* (1998)
  - *Harmonisasi* means conformity, accord, matching, as opposed to discordance and nonconformity

## Why is harmonisation needed

- To prevent disharmony;
- As a consequence of the hierarchy of laws and regulations.

  Chapter 18 article (2) Law No. 10 Year 2004 on The enactments of laws and regulations stipulates:

  *"The harmonisation, the completeness, and the confirmation of the concepts of bills of laws and regulations from the President are coordinated by the ministers whose tasks and responsibilities are in the field of laws and regulations"*

## Operational Foundation

- Law No. 10/ 2004 on the Making of Laws and Regulations
- Home Affairs Minister's Decree No. 16/2006 on the Procedures of the Composition of Regional Legal Products
- Home Affairs Minister's Decree No. 17/ 2006 on the Procedures of the Composition of Regional Legal Products
- Home Affairs Minister's Circular No. 188.34/1586/SJ dated 25 July 2006 on the Directives for the Planning and Enactments of Regional Regulations

## Goals of Harmonisation

- Laws and regulations are the integral parts of the legal system
  - There is a complete wholeness between one regulation and other regulations both vertically and horizontally
  - Laws and regulations are not exempt from their own hierarchy
- Laws and regulations could be subjected to judicial reviews, both in substance and form
  - Constitutional Court (reviews the laws against the 1945 Constitution)
  - Supreme Court (reviews legislations below the national laws)
- Guaranteeing that the process of the making of laws and regulations is consistent to ensure legal certainty
  - Clarity of goals
  - Correct institutions or issuers
  - Conformity between the types and contents
  - Executability
  - Efficiency and effectiveness
  - Clarity of formulation
  - Openness

## Aspects that need harmonisation

- Procedural aspect
- Substantial aspect, and
- Composition technique aspect

## Procedural Aspect

- The formulation of regional legal products should pay attention to the principles of the making of laws and regulations:
  - Planning (prolegda and academic drafts)
  - Preparation
  - Elaboration
  - Decision
  - Enactment
  - Distribution

## Substantive Aspect

- Harmonisation of concepts of regional bills to higher laws and regulations
- Harmonisation of concepts of regional bills to public interests
- Harmonisation of regional bills to the principles of its contents
- Harmonisation of the contents of regional bills horizontally
- Harmonisation of regional regulations to human rights values

## Diagram of the Harmonisation Process of a Regional Bill Initiated by the Government

Composition of Academic Draft By the Initiator → Midway Meetings of related Agencies or offices → Harmonisation Meetings of Bureaus/Legal Sections → Deliberation at the DPRD

Deliberation of regional bills at the local parliaments is the final screening in the harmonisation efforts of the regional bills

**Diagram of the Harmonisation Process of a Regional Bill Initiated by a Regional Parliament**

| | | | | | | |
|---|---|---|---|---|---|---|
| Composition of An Academic Draft | → | Special Committee Meetings of the DPRD/Government | → | DIM Composition | → | Deliberation at the DPRD |

## Controversial Regional Regulations

- Regional Regulation of Tangerang City No. 8 Year 2005 on the Prohibition of Prostitution
  Stipulations in the regional regulation are not clear or multi-interpretable so that it has caused anxiety among the people especially women who do activities at night

## Implementation of human rights in the Province of Banten

- An executing committee for RANHAM has been formed in the province and each of the districts/municipalities
- Mapping of human rights
- Guidelines for the evaluation and harmonisation of regional regulations in the human rights parameters
- Desks for human rights consultations
- Human rights socialisation and training

## Problems in RANHAM Implementation

- Government apparatus have poor understanding of human rights
- Lack of coordination among stakeholders
- Low budgeting for RANHAM activities
- Unclarity of RANHAM vision and mission

## Human Rights Parameters (Rationale for the Evaluation of Regional Regulations)

- Civil rights
- Political rights
- Economic rights

- Social rights
- Cultural rights
- Women's rights, and
- Rights of the child

## REGIONAL REGULATION HARMONISATION CONCEPT IN THE HUMAN RIGHTS PARAMETERS

| Human Rights and Legal Foundation | Scope | Indicator |
|---|---|---|
| Civil and Political Rights<br>1. Right to life<br>- 1945 Constitution, Chapter 28 A, H (1), I (1)<br>- Law No. 39/1999 Chapter 9 (1), (2), (3)<br>- Law No. 12/2005 Chapter 6 (1), (2), (3), (4), (5), (6) | Every person has the right to life, to preserve life, and to improve livelihood<br>Every person has the right to sound and healthy environment<br>Every person has the right to live peacefully, safely, in peace, happily, and in prosperity both physically and spiritually | No regional regulation may prohibit members of society to move from one place to another, to freely say their opinions, to vote, and to be elected<br>Regional regulations have to be open, non-discriminatory, and provide security guarantee, peace, and prosperity both physically and spiritually |

## 5.4. Response from the Representative of South Kalimantan Regional Office for Law and Human Rights

### ROLES OF A REGIONAL OFFICE OF THE MINISTRY OF LAW AND HUMAN RIGHTS IN PREVENTING REGIONAL BILLS FROM VIOLATING HUMAN RIGHTS

By :

**Farida, SH, Msi**

Presented on

**The Komnas Perempuan Public Dialogue**
**"Constitutional Responsibilities of Post-Election Leadership: Free Indonesia from Discrimination**

*Banjarmasin*

## Allocations of Governmental Affairs

- Government (Central)
  - International politics
  - Security
  - Defence
  - Judiciary
  - National Monetary and Finance and
  - Religion
- Province
  - There are 16 obligatory affairs at the provincial scale (Chapter 13 of the Law No. 32 Year 2004)
  - Optional (governmental affairs that exist in reality and have the potential to improve the people's welfare, according to the condition, specialty, and high potential of a region)

- District/Municipality
  - There are 16 obligatory affairs
  - Optional
  - Terdapat 16 urusan wajib
  - Bersifat pilihan

## Laws and Regulations

Written legislations issued by state agencies or authorized officials and publicly binding

## Types and Hierarchy

- The 1945 Constitution of the Republic of Indonesia
- The Laws or Regulations in lieu of Laws
- Government Regulations
- Presidential Decrees, and
- Regional Regulations

## Types of Regional Legal Products

According Home Affairs Minister's Decree No. 15 Year 2006 on the Types of Regional Legal Products (earlier No. 22 Year 2001)

Chapter 2:

- Regional Regulation;
- Regional Head's Regulation;
- Regional Head's Joint Regulation;
- Regional Head's Decree; and
- Regional Head's Instruction.

## Contents of a Regional Regulation

- Management of Regional Autonomy;
- Supportive Tasks;
- Special Regional Condition; and
- Further exposition of higher laws and regulations

## Human Rights Principles

- Equality
  - Non-discriminatory
  - Equality of opportunity
  - Equality of access to public resources
  - Participation
- Worth And Dignity
  - Freedom
  - Freedom to choose
  - Autonomy
- Humanity
  - Respect for the rights of others
  - Mutual respect
  - Solidarity

## Why Harmonisation

- Legal disharmonisation often occurs in Indonesia
- As a consequence of the hierarchy of laws and regulations

  To obey the hierarchical principle of laws and regulations, there needs to be harmonisation in their composition. There are at least three other reasons, i.e.:
  - Laws and regulations are the integration of the legal system
  - Laws and regulations could be appealed for judicial review, in both substance and form
  - The harmonisation guarantees that the composition of laws and regulations is done consistently to ensure legal certainty

## How about Regional Bills?

- Who is responsible in coordinating harmonisation?
- Where is the role of the Ministry of Law and Human Rights?

## Role of Minister of Law and Human Rights in Harmonisation

- Chapter 18 article (2) of Law No. 10 Year 2004 on the Composition of Laws and Regulations:

  The harmonisation, the completeness, and the confirmation of the concepts of bills of laws and regulations from the President are coordinated by the ministers whose tasks and responsibilities are in the field of laws and regulations

UU No. Law No. 10 Year 2004 does not regulate the harmonisation of regional bills.

- Chapter 26:
  - Regional bills could come from the regional parliament or the governor, or the district head/mayor, respectively the heads of provincial, district or municipal governments
- Chapter 27:
  - Further rules about the methods to prepare regional bills from governor or district head/mayor are stipulated in a Presidential Decree

## Organisation and Management of Regional Offices of the Ministry of Law and Human Rights

### Legal foundation

- Regulation of the Minister of Law and Human Rights No. M-01-PR.07.10 Year 2005 on the Organisation and Management of the Regional Offices of the Ministry of Law and Human Rights

### Main Tasks and Functions:

- Regional offices should implement the main tasks and functions of the Ministry of Law and Human Rights of the Republic of Indonesia in provincial regions based on the policies of the Minister of Law and Human Rights and existing laws and regulations

### In doing its tasks, a Regional Office does the following functions:

- Program coordination, planning, control, and supervision
- Promotion of law and human rights
- Enforcement of laws on imprisonment, migration, public law administration, and intellectual property rights
- Protection of, promotion of, fulfillment of, enforcement of, and respect for human rights
- Legal services

- Development of a legal culture and provision of legal information, legal explanation, and human rights dissemination
- Implementation of policies and technical improvement in the administration of the regional office

## What need to be harmonised

- There are two aspects that need harmonisation:
  - Aspect of content concepts; and
  - Aspect of the composition techniques of laws and regulations

## Harmonisation with the Aspect of Content Concepts

- Harmonisation of the content concepts of regional bills with Pancasila as the source of all legislations
- Harmonisation of the content concepts of regional bills vertically
- Harmonisation of regional bills with the principles of the making and the content concepts of regional bills and other principles
- Harmonisation of the content of regional bills horizontally
- Harmonisation of the content of regional bills with international conventions
- Harmonisation of bills with legal theories, legal principles, legal system, and expert opinions
- Harmonisation of bills with related policies
- Harmonisation of bills with the jurisprudence, especially that related to the decisions of the Constitutional Court or the Supreme Court in judicial reviews
- Harmonisation of bills with other bills and among the chapters in the bills

## Harmonisation with Composition Techniques

- The framework of laws and regulations
- Special issues
- Language style
- The forms of laws and regulations, and
- Others as stipulated in the annex of Law No. 10 Year 2004

Future Bills will depend on:

- The knowledge and understanding of the legal initiators and law makers about the law and human rights
- The existence of a planning process based on need assessments and situational analyses

- The wide space for public participation
- The informal relation between the executive branch and the legislature
- The inner and sociological condition of society, including the civil society movements

## Conclusions

### Law as the foundation of human rights

- The state has the obligation to ensure the protection and promotion of human rights; therefore the state apparatus have to serve the people with an orientation to human rights
- The law has to ensure the inalienable worth and dignity of the people, their equal and inalienable rights, through its formulation and enforcement
- Legal certainty is needed based on the values of human rights

## Law = Political Product

Therefore…

- A Law has to start with the right to democratic governance
- Every human right has to be paid attention to in every formulation of every legal product
- Politicians should understand the basic human rights values
- Although a political product, a law has to always be in line with higher laws

Therefore…

- Democracy in legislation demands a process that involves actors who will enforce it in the field, and also opens the space for members of society
- Harmonisation and synchronisation with higher regulations
- Initiators of regulations and legislators have to understand the existing legal system and also the human rights values that Indonesia is upholding
- The harmonisation of a bill is an effort to implement a law or regulation with various interests and with other laws and regulations, whether higher, parallel, or lower, and other things outside the laws and regulations, so they all are composed systematically, not violating or overlapping with each other
- Thus harmonisation will result in good laws and regulations and be parts of a holistic system of legislations
- Harmonisation will prevent legal products that violate the principles of human rights

## 5.5. Response from the Head of West Nusa Tenggara Legal Bureau

**SUBJECT**

**THE ROLE OF THE LEGAL BUREAU IN TASK EVALUATION, CLARIFICATION, AND HARMONISATION OF REGIONAL LEGAL PRODUCTS**

Presented by:

**Head of the Legal Bureau of the Regional Secretariat of the Province of West Nusatenggara**

*Mataram, 04 April 2009*

### Main Tasks of The Legal Bureau Regional Secretariat, Province of West Nusatenggara

Based on:

- Government Regulation No. 41 Year 2007 on the Organisation of Regional Apparatus
- Regional Regulation of the Province of West Nusatenggara No. 6 2008 on the Organisation and Management of the Regional Secretariat and Parliamentary Secretariat of the Province of West Nusatenggara
- West Nusatenggara Gubernatorial Decree No. 20 Year 2008 on the Details of the Tasks, Function, and Management of the Regional Secretariat, Provincial Parliamentary Secretariat, and Expert Staff of the Governor of West Nusatenggara

Main Tasks of the Legal Bureau:

- To prepare the materials for policy composition, formulation, nurturing of coordination, and evaluation on the implementation of regulations, legal aid, nurturing and supervision of legal products, and nurturing of the law and human rights

## Promotion and Supervision of The Legal Products of District/Municipality Regions

are the tasks of the legal bureau of the regional secretariat of the Province of West Nusatenggara, i.e., by conducting evaluation, clarification, and harmonisation of legal products of the district/municipal regions

## Legal Foundation for The Evaluation, Clarification, and Harmonisation

- Law No. 32 Year 2004 on Regional Governments
- Government Regulation No.78 Year 2005 on the Guidelines of the Promotion and Supervision of the Implementation of Regional Governments
- Home Affairs Ministry's Regulation No. 16 Year 2007 on the Evaluation Management of the Regional Bills on Regional Budgets and of the Bills from Regional Heads on the Elaboration of Regional Budgets
- Home Affairs Ministry's Regulation No. 28 Year 2008 on the Evaluation Management of the Regional Bills on Regional Spatial Plans
- Home Affairs Ministry's Regulation No. 32 Year 2008 on the Guidelines on the Composition of the Budgets for Financial Year 2009
- Presidential Decree No. 40 Year 2004 on the National Action Plan on Human Rights (RAN-HAM)
- Home Affairs Ministry's Circular No. 188.34/1586/SJ, dated 25 July 2006, on the Directives for the Planning and Issuing of Regional Regulations

## Directives for The Planning and Issuing of Regional Regulations

Based on Home Affairs Ministry's Circular No. 188.34/1586/SJ, dated 25 July 2006

- Governors take inventory of the district/municipal regional regulations and revise or perfect the regional regulations whose contents are not in line with the values of the Pancasila, 1945 Constitution, higher laws, and whose rationale and contents are discriminatory, in violation of human rights, and may create conflicts
- Before regional bills are submitted by regional governments to regional parliaments for further deliberation, the district/municipal bills are brought for consultation by the legal sections of the districts/municipalities to the legal bureaus of the provinces while provincial regional bills are brought in for consultation with the Legal Bureau of the Home Affairs Ministry
- Regional bills initiated by regional parliaments of districts/municipalities, before being further deliberated with regional governments, have to be brought for consultation by the legal sections of the districts/municipalities to the legal bureaus of the provinces, while

provincial regional bills are brought in for consultation with the Legal Bureau of the Home Affairs Ministry

- District/municipal regional bills, before being brought for consultation by the legal sections of the districts/municipalities to the legal bureaus of the provinces, have to go through harmonisation with District/Municipal Committees on the National Action Plan for Human Rights, while provincial regional bills, before being brought for consultation by the legal bureaus of the provinces to the Legal Bureau of the Home Affairs Ministry, have to go through harmonisation with Provincial Committees of the National Action Plan for Human Rights (RANHAM)

## Constraints

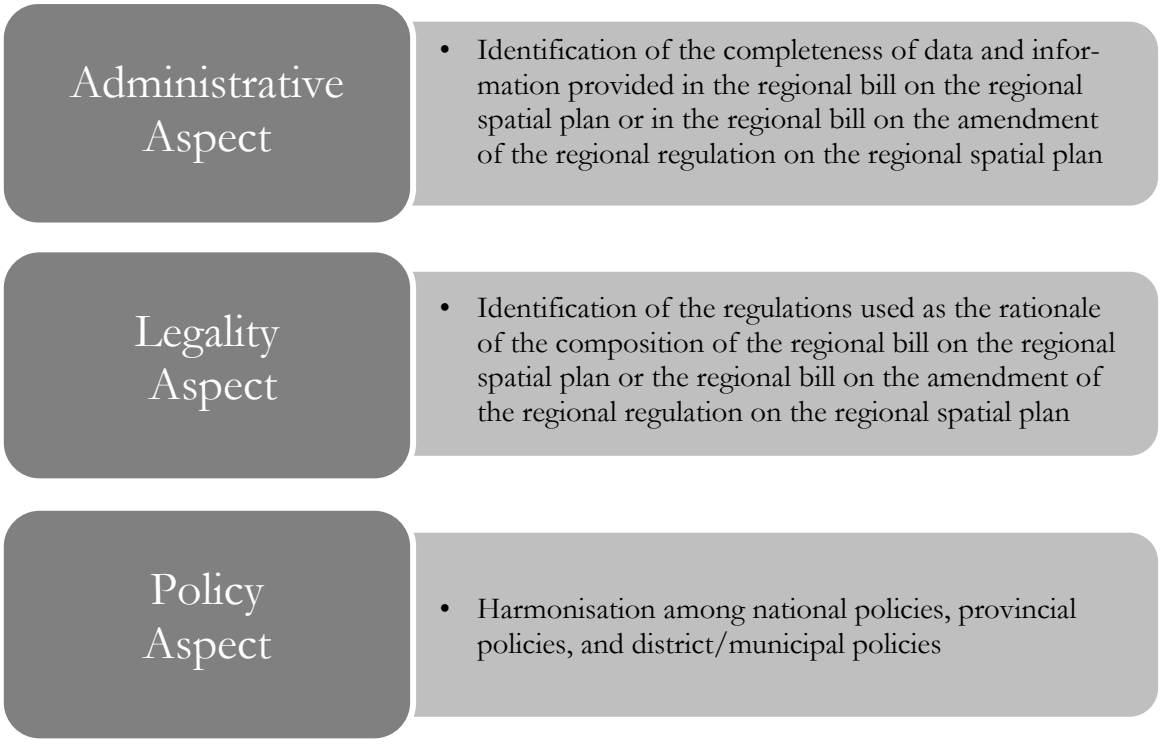
- Not all the submissions of district/municipal bills to the governor were done on time. There were several districts/municipalities that submitted the bills after the appointed deadlines, as stipulated in the existing laws and regulations, for evaluation
- District/municipal governments submitted regional regulations and regional head decrees to the governor for clarification as mandated by the law
- District/municipal governments did not yet submitted district heads' or mayors' regulations to the governor, both for evaluation and clarification, except the district heads' or mayors' regulations on the elaboration of the regional budgets or budget revisions

### Timeframe for Evaluation, Clarification, and Harmonisation of a Regional Bill

| Process | Time | Remark |
|---|---|---|
| Harmonising a regional bill with the RANHAM Committee<br>Submission of a regional bill to the governor for evaluation | -<br>3 days | Before submission to the regional parliament after a common agreement |
| Evaluation by the Governor | 15 days | Since received |
| Follow-up on evaluation results and district/municipality | 7 days | Since received |
| Submission of evaluation results to the Minister of Home Affairs | 7 days | After evaluation |
| Submission to the governor for clarification | 7 days | After enactment |

| | | |
|---|---|---|
| Annulment of a regional regulation<br>Stopping of the enforcement of a regional regulation by the district head or mayor | 60 days<br>7 days | Since received<br>Since received |

## Scope of Evaluation/Clarification




## Annulment of a Regional Regulation

Governor and district head or mayor follows-up on the evaluation results within at most seven workdays since received

In case a district head or mayor does not follow it up as stipulated in article (1) and continues to enact the bill to become a regional regulation and/or regional head's decree, the governor could annul it with a gubernatorial decree

## Results of Evaluations on Regional Bills Year 2008

| No. | District/Municipality | Year 2008 | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Regional Budget | Levy | Tax | RT/ RW | OPD | Other | Total |
| 1. | West Lombok District | 3 | - | - | - | 1 | - | 4 |
| 2. | Central Lombok District | 2 | - | - | - | 1 | - | 3 |
| 3. | East Lombok District | 3 | - | - | - | 1 | - | 4 |
| 4. | Mataram City | 3 | - | - | - | 1 | - | 4 |
| 5. | Sumbawa District | 3 | - | - | - | 1 | - | 4 |
| 6. | West Sumbawa District | 2 | - | - | - | 1 | - | 3 |
| 7. | Dompu District | 3 | - | - | - | 1 | - | 4 |
| 8. | Bima District | 2 | - | - | - | - | - | 2 |
| 9. | Bima City | 3 | - | - | - | 1 | 1 | 5 |
| | **TOTAL** | **24** | **0** | **0** | **0** | **8** | **1** | **33** |

## Results of Evaluations on Regional Bills Year 2009

| No. | District/Municipality | Tahun 2008 | | | | | |
|---|---|---|---|---|---|---|---|
| | | Regional Budget | Levy | Tax | RT/ RW | Other | Total |
| 1. | West Lombok District | 1 | - | - | - | - | 1 |
| 2. | Central Lombok District | 1 | - | - | - | - | 1 |
| 3. | East Lombok District | 1 | 1 | 1 | - | 1 | 4 |
| 4. | North Lombok District | 1 | - | - | - | 1 | 2 |
| 5. | Mataram City | 1 | - | - | - | - | 1 |
| 6. | Sumbawa District | 1 | - | - | - | - | 1 |
| 7. | West Sumbawa District | 1 | - | - | - | - | 1 |
| 8. | Dompu District | 1 | - | - | - | - | 1 |
| 9. | Bima District | 1 | - | - | - | - | 1 |
| 10. | Bima City | 1 | - | - | - | - | 1 |
| | **TOTAL** | **10** | **1** | **1** | **0** | **2** | **14** |

If a district head or mayor does not accept the Decision on the Annulment of a Regional Regulation or a Regional Head's Decree as stipulated in Chapter 40 according to reasons that could be justified by laws and regulations, the district head or mayor could submit a protest to the Supreme Court at the latest 15 workdays since receiving the annulment

## 5.6. Response from the Representative of Banten Academia

### POLITICAL PARTICIPATION OF BANTEN WOMEN IN THE ERA OF REGIONAL AUTONOMY[33]

Oleh:

**Gandung Ismanto,[34] Listyaningsih[35]**

## Introduction

The low level of women's political participation both nationally and locally is a fundamental problem related to the existing role of women—as citizens with equal standing in a democracy—in articulating their interests. One of the indications of the lowly standing of women in politics is the low level of women representation in the legislature which during the period between 1999 and 2004 is only 8.8% at the national level, 6% at the provincial level, and 2% at the district/municipality level. The data from the Centre for Electoral Reform (2002) even show a lowering tendency of women representation in the Indonesian parliament, from 12.5% in 1992 to 9% in 1999. The highest level of women representation was reached in the period from 1987 to 1992 with 13% of all members of parliament.

In the province of Banten (2005) the condition is about the same, that is, the proportion of the male members of the regional legislature is much higher (95%). Also in district/municipality level the average figure is 5.41%: in Pandeglang 2%, Tangerang District 2.2%, Serang District 6.67%, Tangerang City 2%, Cilegon City 13%, and Lebak 6.6%.

In the executive branch, at the national level there is an imbalance: of every 100 staff members at the departmental and non-departmental agencies there are only eight women. At the echelon I, II, and III, only about 7% of the structural staff are women (State Ministry of Women Empowerment, 2004). In the Banten province the proportion of women civil servants only reaches 27% (BPD, 2005) of the 2,768 civil servants in government offices.

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[33] Paper, presented during the exposure of the Results of Komnas Perempuan's Monitoring on the Condition of the Fulfilment of Women's Constitutional Rights in the Era of Regional Autonomy, 6 April 2009.

[34] Political and policy observer, researcher, and lecturer at the Public Administration Study Programme of the University of Sultan Ageng Tirtayasa.

[35] Gender observer, lecturer, and researcher at the Public Administration Study Programme of the University of Sultan Ageng Tirtayasa.

The qualitative picture above is of course paradoxical to the number of women that is almost half (49.50%) the Banten population of 9,308,944 (BPS, 2005). Although direct correlation is not possible, the fact that women are not physically represented in the state institutions could create gaps brought about by the non-representation of women's aspiration and interests in the making of gender-sensitive public policies. This could happen because the climate and scope of political policies often do not side with the problems considered non-public, such as: child protection, women reproductive health, violence against women, etc. Therefore, the wider participation of women in politics is very important because women's political stances tend to give importance to issues pertaining to *conventional politics* rather than *hard politics*. The problem is, there are still a number of factors that prevent the progress of women participation in politics, both in terms of women participation and the sensitivity of political parties toward issues of *conventional politics*. This writing tries to analyse it by abstracting the researches that the writers conducted in 2004, and by elaborating the issue from a number of latest publications.

## Understanding Public Participation

Talking about women public participation, we could not avoid discussing political participation according to the political sciences. According to Verba, Nie, and Kim in Afan Gaffar (1991), political participation is *"legal activities by private citizens that are more or less directly aimed at influencing the selection of governmental personnel and/or the actions they take"*. Budiardjo (1981) defined political participation as the active participation of individuals or groups of people in political life by having state leaders and by directly or indirectly influence government policies. Meanwhile, Gabriel Almond in Mas'oed and MacAndrew (1978) differentiated simpler political participation into two forms: conventional political participation such as votings, political discussions, campaigning, joining interest groups, and communicating with political leaders; and non-conventional political participation such as petitioning, demonstrations, confrontations, strikes, political violence against properties (breaking, bombing, arson), revolutionary acts. In line with that, Huntington and Nelson in Afan Gaffar (1983) differentiated five types of political participation, i.e., *Electoral activities, Lobbying, Contacting, Organisational activities, Violent activities.*

Therefore, the term political participation could be understood as: (1) the behaviour or activities of common citizens, (2) which are performed to legitimately influence the government's actions and its implementation of policies, and to participate in the elections of their leaders, (3) both directly and indirectly, and (4) autonomously or independently. Depending on its fields, political participation could be related to *electoral activities* or *non-electoral activities*.

## The Root of Gender-Biased Problems

It has to be realised that the traditions in most of the world cultures see women and men as different and opposing identities from the biological perspective. The bipolar and diametrical

views are naturally present in almost all human cultures. The Greek culture, for example, saw dualism in the existence of women and men, as stated by Aristotle in a number of his manuscripts, and was also held by a number of Western philosophers, including Aquinas, Rousseau, Hegel, Nietzsche, and Freud.

The Greek cultural tradition, in its understanding of gender, saw women and men as individuals that are not only sexually different, but diametrical to each other. The Greek view is reflected in the myth of Pandora[36] that identifies in men everything that is good while women are identified with everything that is bad and wrong. The enculturisation of this myth could be found in and understood from almost all the manuscripts of Plato and Aristotle, including the *Timaeus*, *Politics*, and *Metaphysics*.

Relatively similar views could be found in the "culture" of European Christianity with its patriarchal orientation in the context of both theology and social institutions. In a number of classical Christian literatures we could found the views that put women as the "source of all sins", known as the "original sin" of human beings. Thomas Aquinas in his book *Civitas Dei* said that "through a woman the first sin came about; sin brings death to all of us". A similar conclusion could be found in the teachings of Saint Albert the Great, a teacher of Aquinas.

Relatively similar cultures could also be found in other parts of the world, e.g.: the practice of burying girls alive in the pre-Islamic Arabia, the shackling of women in China, the cremation of living women in India, the female genital mutilations in Africa, the discrimination of women in the Javanese tradition, etc. These practices were institutionalised when the influence of the European culture was spreading through the European colonisations of Asia and Africa. In its new form after undergoing a metamorphosis with Globalism and Liberalism, this tradition has put women as subordinates of men and even as a commodity—there still happens, even in Europe that is considered the leader in the emancipation movement and gender equality, the human trafficking from the third world to Europe, which is a proof that women still have a long way to go in their struggle to be really equal to men.

## Women and Politics

The participation of women in politics very much depends on the ability of the political system to provide an adequate space for citizens to voice their aspirations without geographical and temporal limits, and without fear or hesitation. This condition could not be found in a society very much coloured by the patriarchal culture, which puts the values of men in the superor-

[36] The Pandora motif tells that in the beginning the world was occupied only by men in a good world. Then Zeus created the first woman (Pandora) as a punishment and a curse to the Titan that had stole the fire of Zeus from the Olympus. This Pandora later destroyed the life of men, becoming the source of evil and destruction. This myth is very similar to the doctrine of original sin that sin came into the world through Eve who managed to "pull down" Adam from heaven to the mortal world.

dinate position so that, intentionally or not, directly or indirectly, it discriminates against women in the political process. The rigid sociological roles, i.e., public roles for men and domestic roles for women, marginalise women. This dichotomy of roles in turn makes women fail to participate in the public processes. Although some women try to come out to play their public roles, most of them are placed only in the secondary position. The situation in political meetings that have a strong male colour, complete with male-appetite humours that usually exploit women's sexuality, makes many women psychologically unable to stay long in those fora. If they stay, they would be considered "eager" or "easy". As a consequence, even when a woman has entered the public sector, she still has to play her traditional roles such as by becoming a master of ceremony, a receptionist, a caretaker of food and drink, etc.

The segmentation of the activities of men and women according to their domains as explained above shows again the values in society that put women's roles far from the political matters. This could not be separated from the stigma that political matters are not the problems of women, the same with the issue of economic provision in a family. Women are considered not suitable to participate in the "dirty" politics and only the men may deal with the "dirtiness" so that the women who have to stay close with children would not be contaminated.

Perception plays an important role in determining the quality of a person's political participation. A good perception tends to create sympathy and empathy, while a bad perception tends to give birth to antipathy and apathy. For practical reasons, a discussion on perception needs to be done to identify and map the picture of women's political participation. Perception, as mentioned above, will have influences on the way a person behave and act when facing with a problem and issue. Thus women's perception in politics and her gender roles in society will influence the way they do their daily activities, for perception is born from a set of values that crystallised in a person through various processes of social interactions and education in his or her environment. Women's perception of politics which is often identified with a dirty world, full of conspiracy and intrigues, tough and full of deception, becomes a social reference that shapes the mindset of women to stay away from those things.

The 2004 elections gave us a picture that although women's political participation in elections were very high, the participation of women in elections was not an independent participation because they followed the choices of the families (husbands), only a small number made their choices by intentionally involving themselves in the elections because they thought "*tos wayahna*", as a habit in the society that has to be followed, and be understood as something that would determine their fate as citizens, and as an opportunity for change to better their lives and those of the communities.

The low participation of women in public activities as mentioned above occurred because of at least two important factors, the cultural accommodative power and the structural supportive power. The constraints could be seen from the various practices in society that tend to put women in the marginalised position and tend to legitimise women's domestic roles and their

stereotype. Women's public perception that views politics as "dirty" activities and very masculine is a cultural reality that is less accommodative for a wider political participation of women in politics. Women are considered not suitable and are not allowed to be active in politics because their nature is to stay at home and to especially do house chores. It is not infrequent that women are prohibited to be active in politics because their capabilities are always considered below those of men both in politics and in religious doctrines. These things then suppress political participation, as a manifestation of the root of the still strong patriarchal culture.

The problems mentioned above are cultural factors that constrain women participation in political activities. Meanwhile, on a different aspect, the gender-insensitive policies decided upon by the policy makers without involving women, besides being the products of the existing culture in society, factually have become a structural constraint that further narrows women's political participation.

The low political participation of women is caused by several factors, including the cultural factor, related to the construct of traditions existing in society. Some of the constraints are:

1) The cultural perception that political activities are identical to meetings in the evening, fierce competition that tends to be dirty, etc., which are considered contrary to the existing values of society. And for women this perception is a taboo that may not be violated;
2) The domestic roles understood fatalistically reduce the opportunities for women to participate in public sectors. Add to that the reality that actually women do not only have domestic roles because in many cases women are partners of their husbands in supporting their families' economy. Women's subordinate position in the structure of the family could be seen from the obligation to obey and follow, and to become not more than complements to their husbands' position, or to obey the husbands' decision about women's public roles;
3) The misunderstanding of religious teachings tends to limit the roles of women in politics because they are considered to have been represented by their husbands who are the household heads.

Besides the cultural factors mentioned above, there are also structural mechanisms that hamper the wider participation of women in politics. In the latest elections (2004), for example, the structural constraints in the system of political recruitment in political parties that were not sensitive to gender limited the opportunity for the emergence of women parliamentary candidates. The small number of women candidates in most of the big political parties is a strong indication of such a structural constraint. In addition, the system used by the parties to groom their cadres does not open the access for women to occupy strategic positions in the political parties, narrowing the opportunity for women to be active in them. Generally, the structural factors, often found as the weakness in the socio-economic sector, also reduce women's opportunity to participate in political activities, including in the political parties. The researchers also found from the typology of women politicians in Banten that the women who could be accommodated structurally in the political institutions are those who (1) came from the economically established circles; (2) hailed from the aristocratic families and/or culturally influential

families; (3) came from the professional circles; (4) came from the circles of activists; or (5) came from the fortunate grassroots communities (post-elections 1999 and 2004) who have successfully transformed themselves to become an economically, socially, and politically elite group.

These are the empirical facts that we should understand to see the reality of the low political participation of women. The deep-rooted masculinity in the culture of political activities is like a huge mountain that prevents the bridging of gaps created by the existing and the intentionally-designed political culture, or is taken for granted as a part of the past cultural heritage that is deemed to have reached the peak and considered universal in effect.

## Closing Remarks: the Implication of the Regional Autonomy

The regional autonomy has given a wide opportunity to women to be active in the public sector. The number of women politicians who have emerged at this time is the indication, although generally influenced by the political climate at the national scope which is more and more "forced" to mainstream gender equality in politics. Thus democracy, decentralisation, and regional autonomy have the limited role as a "windfall" that enables women to play an active part in politics, not yet as an opportunity to make social changes through taking sides in the political issues.

A study by the Research Institute for Democracy and Peace (RIDEP) (2005) on "Enhancing Women's Leadership in Politics and for the Promotion of Gender Equality" illustrates at least some of the above descriptions, among others:

1. The lack of political commitment among the political elites to support gender equality;
2. The strong commitment to support gender equality among women activists does not have any influence on the decision makers;
3. Some religious leaders have the awareness about gender equality but not a clear commitment on how to act on it;
4. The gender issue is still regarded as an exclusive issue among women so that a strong support is needed from other groups to achieve their goals, e.g., by forming an alliance with decision makers and interest groups or designing programmes for the media and by increasing men's participation in supporting gender equality.

The first point above seems to be the key in describing the role of political parties in increasing women's political participation. The failure of the political parties to seriously accommodate the interests of women in the last elections could be a main factor in bringing about the nadir in the public trust for the political parties at this point in time. A study by the Centre for Policy and Population Studies (PSKK) of the Gadjah Mada University in 2007, which puts political parties as the most distrusted non-governmental institutions—besides business associations

(ranked second) and NGOs (third)—proves that indication. The apex of people's distrust seems to be represented in the strengthening of public interests that later managed to "force" the Constitutional Court to accommodate for independent candidates in the elections of regional heads.

Although the issue of independent candidates is not directly related to women's interests, the strong resistance from the political parties to stop the progress of and make difficult the mechanisms for the inclusion of independent candidates is believed to worsen public trust toward political parties in the coming 2009 elections.

The following facts illustrate the neglect of soft political issues closely related to women issues:

1. The low expenditure per capita for health, 1.33%;
2. The increasing number of families belonging to the group of "people with social welfare problems" (PMKS), 33.43%;
3. The increasing number of women belonging to the group of "people with social welfare problems, consisting of socially and economically vulnerable women (95.96%) and women victims of violence (4.04%);
4. The increasing number of cases of violence against children; it is recorded that there are 7,860 children victims of violence, 7,527 children who have problems with the law, 58,780 neglected children, and 2,347 street children;
5. The disparity in the availability of health infrastructure and services; it is recorded that there are 20 hospitals in the northern region and only four in the southern region;
6. The capacity of hospitals in the northern region is 81,656 persons per hospital, while in the southern region it is 136,808 persons per hospital;
7. 37.1% of sick people do not get inpatient services;
8. There are 110 community health centres (Puskesmas) or 63.95% in the northern region and 62 community health centres or 36.05% in the southern region;
9. 80.76% of the health personnel are assigned to the northern region, the remaining 19.24% to the southern region;
10. The maternal mortality rate and the infant mortality rate reach 292 per 100 thousand, ranked the third nationally;
11. Only 59.7% of all births are attended by medical personnel;
12. The clean water service could be accessed only by 67.0% of the households;
13. Only 69.8% of the households have their own latrines;
14. It is recorded that 10.2% of the houses have earth floors;
15. The number of under-fives with bad nutritional status is found to be increasing (1.12%) and 10.85% of the under-fives suffered from poor nutrition; not mentioning the cases of polio, diarrhoea, vomiting-diarrhoea, etc.;

16. The number of the poor among the population tends to increase, at the moment it is recorded to have reached 9.07%;
17. The number of the poor located in the urban areas is 35.92%, in the rural areas 64.08%; the distribution of the poor based on location: Lebak 42.95%, Pandeglang 39.77%, Serang 25.69%, Cilegon 9.37%, Tangerang 13.79%, and Tangerang City 5.1%;
18. The figure for the people's purchasing power only reaches Rp618,000 or 84% of Rp737,720, the minimum standard of the United Nations Development Programme (UNDP);
19. 230,457 households or 20% occupy residential sites unfit for living in;
20. Mean years of schooling (ARLS) is only 8.5 years, meaning on average students drop out after grade 8;
21. The education of 46.31% of the population is the elementary school or below, 13.76% finished junior high school, 15.48% finished senior high school, 13.86% have diplomas or the bachelor degrees, and the level of education of the remaining 10.59% of the population is not known;
22. The relevance and competitiveness of the graduates of the middle and higher education are low according to the needs of the business sector;
23. 57.14% of the 1,221 villages are considered disadvantaged, consisted of 458 disadvantaged villages in disadvantaged regions and 306 disadvantaged villages in non-disadvantaged regions (State Ministry for the Development of Disadvantaged Regions (Meneg PDT, 17 April 2006);
24. The micro, small, and medium enterprises (UMKM) employ 1,256,471 workers or 31.99% of the total number of workers, 65% of whom are women;
25. The income per capita of farmers and fishermen on average is only Rp8 million per capita per year or equal to Rp667,000 per capita per month.

At the end of the day, there is no other way for political parties but to seriously change their political direction to become more gender conscious by (1) seriously accommodating for the women candidates and giving them equal position and (2) paying more attention to soft politics than hard politics. These necessities are relevant when it is seen that women voters are easily moved by gender-based political sentiments. The empirical evidence shown in the 2004 presidential election, that it was very much determined by women voters, as was also the case with the 2006 Banten regional elections, has to be taken as a strong reference to do the two things above.

The rest is how the political parties could return to their lines of action to perform political education (as opposed to the current practice of only tending to the recruitment process in the parties) that takes the gender mainstreaming seriously. Then the political life will become more civil and gender-balanced with women participation in real politics, not only as "showcases", or even only as political commodity. Hopefully….

*Serang, April 2009.*

## 5.7. Response from the Representative of South Kalimantan Academia

### WORRISOME DEMOCRATIC PROCEDURES: THE OTHER SIDE OF DISCRIMINATORY REGIONAL REGULATIONS[37]

By:

**Mukhtar Sarman[38]**

The concept of democracy is generally understood as the government of the people, by the people, and for the people. Operationally the concept is then manifested in the forms of electoral procedures to elect "people's representatives" and or state leaders. Technically, the term democracy has also become a mantra for decision making procedures involving the people who have equal voting rights, that an election winner is legitimate if supported by the majority of voters, at least 50% + 1.

For some, the system of procedural democracy is far from satisfying. They question the fundamental rights that are afterward never really put into effect. They protest that the results of the majority votes are not always positive on issues concerning the interests of the often neglected minority groups. Proactively, there is an accusation that the democratic system is not fair because it tends to side with the interests of the upper class or even to be manipulated by the powers that be only to support their own interests and never for the interests of the lower classes or marginalised groups. Even, in some cases, the democratic procedures are not more than a power show illustrating the phenomenon of the tyranny of the majority. It is assumed that this happens because democracy is not understood as something substantive.

The question is, is there a truly substantive democracy in the real world? Those supporting the term "substantive democracy" usually hold that democracy should be a set of procedures to achieve the goals and interests of the grassroots or vulnerable groups. This pattern of thought is indeed the foundation of socialism that in practice has been adopted by the communist

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[37] An introductory discourse for the national dialogue on "The Constitutional Obligation of the Post-Election Leadership: Free Indonesia from Discrimination" organised by Komnas Perempuan on 6 April 2009 in Banjarmasin.

[38] Mukhtar Sarman is the head of the Centre for Policy and Regional Development Studies (PK2PD) of the University of Lambung Mangkurat and head of the Master's Programme for Development Administration (MSAP) at the University of Lambung Mangkurat.

system. In reality, even the communist system in the end justifies a proletariat dictatorship as currently practiced openly by North Korea.

What is "wrong" then in the practice of the democratic model? Democracy as a system that accommodates the interests of the public seems to have nothing wrong in it. Indeed it is the elites who are often "not right" in implementing the rules of democracy when they act as if they know and understand the norms of democracy when formulating a public policy. They often manipulate the norms of democracy to become not more than a procedure patterned to support the majority of interest groups based on formality participation. In truth, the participation itself demands a more fundamental thing, freedom! But what is meant by freedom here is not the freedom of the elites to do whatever they want in the name of democracy, but the freedom for the people to participate in the procedures of democracy, including to get involved actively in the process of enacting a public policy such as a law or a regional regulation.

On the other hand, democracy is in fact a secular system that mainstreams freedom, pluralism, and tolerance. Therefore it is a misnomer to subordinate the system of democracy under a certain ideology to make it exclusive, whether secular such as communism or non-secular such as a certain religious ideology. Also because of that, it is a misnomer when through democratic procedures a public policy such as a regional regulation is subordinated to a religious ideology because the elites are trapped in their efforts to build a political image based on identification with a certain religion.

I am forced to use the term "misnomer" because when I read the results of the study of Komnas Perempuan on a number of discriminatory regional regulations in Indonesia, the logic used there is also a bit of a "misnomer" because it seems to judge that it is the practice of procedural democracy in Indonesia that has prompted the enactments of discriminatory policies against vulnerable groups, especially women. But, without procedural democracy, how are we going to formulate a public policy?

I agree that some of the regional regulations issued by a number of regional governments in Indonesia, including South Kalimantan, are indeed "problematic" when viewed from the human rights point of view and the feeling of justice for certain minority groups. But I do not agree that the problematic regional regulations have been enacted because of the implementation of procedural democracy. From my experience, the regional regulation on Islamic dress codes for civil servants in the regional government's work space, for example, is not substantially bad when the intention is to provide the image of politeness for the civil servants. Unfortunately, the regional regulation does not clearly define the criteria for what it terms "Islamic dresses"; whether it is only *jilbab* (i.e., scarves to cover women's heads) or includes the whole range of dresses that cover the *aurat* of women. The regional regulation has become a problem when enforced upon all civil servants without exception, including non-Muslims. There should have been a special regulation that provides exception for non-Muslims to wear other kinds of dresses as long as they are within the limit of politeness.

The same thing happens in the case of the Regional Regulation on Ramadan that has caused the owners of all *sakadup* foodstalls everywhere and people who need to have lunch during the month of Ramadan to feel they have become the victims of unnecessary policies. The intent of the initiators of the regional regulation to make Muslims respect the fasting month may be good. But regulating how people should behave to perform the fasting rite in the public space, according to me, is too much. Moreover, for a number of reasons not every Muslim has to fast (i.e., he or she may have lunch) and maybe not all the existing population are Muslims. How could they get food if all foodstalls and restaurants are obliged to close because of the regional regulation on Ramadan? Indeed, because of the impact of the regional regulation, should the foodstall operators on the road sides whose livelihood depends on the stalls be made bankrupt just like that without any compensation from the regional government?

So far as such discriminatory regional regulations, I see that the main problem is that the formulators of the policies have acted "pretentiously" and have ignored the interests of minority groups or vulnerable groups that suffer the most negative impacts. And I agree if those regional regulations are revised or put in their places proportionately. Some of the regional regulations are indeed "tendentious" and my guess is that one of the reasons is that the elites in the regions "have nothing to do" and or the regional heads have failed to fulfil their political responsibility to make the people in their regions prosper.

*Wallahualam (And God knows the truth).*

## 5.8. Response from the Representative of West Nusa Tenggara Academia

# DISCRIMINATION AGAINST WOMEN IN REGIONAL AUTONOMY

# A CRITICISM

By:

**M. Saleh Ending**

*Head of the Research Institute of IAIN Mataram*

After the dawn of the regional autonomy on 1 January 2001, the regions started to get more opportunities to have more authority in governance.

## The Philosophy of Regional Autonomy

Like a rolling snowball, the reform movement that ended the power of the New Order regime in 1998 had prompted various demands for change. One of them was the demand that the regions were given the autonomy with a wide authority to manage themselves. The clamour over the issue of regional autonomy arose when the power of the New Order collapsed; the regions woke up and cried for more authority and power as their main demand, as well as a fairer share of the budget.

The central government responded to the demands by issuing a set of laws. It could be said that the regional autonomy was born in 1999 with the enactment of Law No. 22 Year 1999 on regional governments, later revised to become Law No. 32 Year 2004, as well as the enactment of the supplemental Law No. 25 Year 1999 on the financial balance between national and regional governments, later revised to become Law No. 33 Year 2004.

There are several ideal and philosophical reasons for the carrying out of regional autonomy by regional governments, as stated by Liang Gie (2006: 171-172). First, from the point of view of politics as a power play, regional autonomy is meant to prevent the accumulation of power in only one hand that could result in a tyranny. Second, in politics, the carrying out of regional autonomy is deemed an act of democratisation, to attract the people to participate in governance and to train themselves in using their democratic rights. Third, from the point of view

of organisational techniques, it is to achieve an efficient system of government. The management of whatever deemed to have an urgency to be managed by the local governments should be handed over to the regions. Fourth, from the point of view of culture, regional autonomy is needed so that full attention could be given to the specialty of each region, in terms of geography, population, economic activities, cultural characteristics, and historical background. Fifth, from the point of view of economic development, decentralisation is needed for the regional government could do more to promote development directly.

But so far what has happened mostly is the transfer of a part of the authority from the central government to regional governments which had been started, in a limited way, from the time of the New Order. This condition is not in line with the spirit contained in the two laws, which state that autonomy is not just a matter of decentralisation, but more importantly the increasing initiatives in the regions to manage their own resources.

According to my observation so far, the regional autonomy has failed, first, to close the gap in the services to the public from the government (the chain of services become shorter and could be ascertained by the government); second, to improve the welfare of the people; third, to improve the competitiveness of one region over the others, from which could be expected a competition among all the regions; fourth, to realise the local democratic agenda through the participation of the people in the process of enacting public policies, in fact the people are still discriminated against, such as by the issuances of the regional regulations that enforce discriminatory policies against women and other minority groups.

One of the examples is in the results of the research conducted by Komnas Perempuan, that indeed the state and the regions have performed hegemony through the regional regulations issued by the local political elites. The powers that be do not give an equal standing to men and women before the law, including the regional regulations they have issued. There are still marginalisation of women or ostracism from access to possessions and opportunities to work in certain kinds of job, subordination of women to lower priority in the work place so that women find it difficult to get into strategic positions close to the decision making process. There are also the labelling (stereotyping) with negative connotation against women that causes injustice, and the violence against women through the view that men have domination in all sectors of life.

The government, in issuing the policies through the regional regulations, has been very discriminatory against women. This builds a political image based on a religion, and on the local jargons of the Islamic religious scholars, without giving heed to the cultural dimensions that have for a long time a deep root within the society.

Persons who wear Islamic dresses, who wear *jilbab*, who are able to recite the Quran, are considered to have a good achievement at work and could get promoted. Persons who do not wear Islamic dresses and *jilbab* are considered to have performed poorly, and even their religi-

osity is questioned. Prostitutes are considered a group of society who are dirty, unclean, and disgusting. But if we are honest I think the solution is not in the issuing of a bunch of regional regulations but in the tackling of the root problems such as poverty and the lack of jobs.

## The Resolution of the Leaders

The people have to be given the leeway to develop initiatives and be self-reliant in a democratic environment. If not, the current government in the autonomy era is no different than when the government was still centralised. It means we do not learn from history. Thus it is very logical that today sees the emergence of the local authoritarianism. The autonomy programmes originally are meant to push for the welfare of the people, e.g., freedom, now in fact they have caused wide impropriety in the Regional Budget of Revenues and Expenditures (APBD), money politics in the regional head elections, various regional levies, and the issuances of discriminatory policies against women and other minority groups for the sake of keeping an image.

The awareness about such facts demands that regional leaders are not simply populists, but have to have visions far ahead and could issue smart policies, respect the rights of the minorities, and able to articulate Law No. 32 Year 2004 on Regional Governments[39].

If this norm is applied intentionally and consistently, it could be expected that there will not emerge the attitudes and views of the hegemony of the majority and the tyranny of the minority. As a nation fated by God to be a plural society, all of us should see the plurality as God's blessing that needs to be maintained and sustained. Forcing the will of a group by using religion or culture in essence is an attitude contrary to the providence of plurality. In other words, the natural fact of Indonesia's plurality could become the social capital for the future of democracy in Indonesia.

The central government (the leadership) has to stand resolute when it finds that the discriminatory regional regulations issued by the lower governments are in violation of the universal principle of democracy (plurality and the common good). The deviation of the meaning of democracy could be found in the implementation of the regional autonomy policies. Instead of giving the authority to the regions to manage their own homes professionally and accountably, regional policies are still considered by many people and regional governments as the freedom to issue regulations filled with the spirit of primordialism, religion, and tribalism. For the sake of democracy, public participation is very important to urge the state to be resolute against views and policies with primordial colours.

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[39] Chapter 28 (a): "Regional heads and regional head deputies are prohibited to issue decrees that give special benefits to themselves, their relatives, cronies, certain groups, or their political cliques, which are in violation of the laws and regulations, detrimental to the public interest, and causing unrest among groups of people, or discriminate against citizens and/or other groups of people."

## Common Efforts

The struggle to eliminate discrimination and at the same time to empower women faces the horizontal challenges coming from the culture of the people that shackles the logic of not only the men but also the women themselves. The number of women is huge in this country, very few of them are really aware that their rights are being circumcised and that their position is socially subordinated. Therefore the necessary analysing and criticising of the discriminatory regional regulations against women both formally and non-formally have to be done simultaneously, systematically, and sustainably for both men and women in universities so they would be more responsive and have a gender insight.

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## 5.9. Response from the Representative of Yogyakarta Academia

# THE INSTITUTIONALISATION OF DISCRIMINATION AGAINST WOMEN IN REGIONAL AUTONOMY AND FEASIBLE ADVOCACY EFFORTS

By:

**Damaria Pakpahan**[40]

## Introduction

### Personal Experience: The Personal is Political[41]

*I went to Aceh several times in relation to my work and once stayed a bit longer, almost two months in 2005 after the tsunami. At the time as a woman I dressed in a relax way because there were many expatriates in Aceh. But during my visits in 2006 and 2007, as a woman I was conditioned to wear long dresses and at least to wear a scarf, or a hat but with the scarf ready so that if needed in a certain situation it could be used to cover the hair. I felt too warm in long dresses, covering my neck, arms, legs, and head. I thought, isn't Indonesia a tropical country? Just look around, are there any traditional regional dresses of Indonesia's ethnic groups that cover the hair of women and men? If there are, they are more for ornamental purposes. And as far as I know, Tjoet Nyak Dien—the mighty heroine who fought against the Dutch colonial government—was seen with her hair visible both in her photographs and paintings. One of my grandmothers, a Muslim—who as a Batak was a neighbour of Aceh—did not wear jilbab, her hair was knotted in a bun, she wore the distinctive Sumatran kurung dress on top and sarong below. What I do not understand is that these days, even girl babies, under-threes, and under-fives, are wearing jilbab!*

### A Friend's Story

*A woman friend was working at the Social Services Ministry. When a new minister from a religion-based party was appointed, most of the staffs started to wear jilbab. The friend, although a Muslim, did not wear it. But most of her colleagues wore jilbab because almost all female staffs were wearing it. "It's inconvenient not to wear it," said most of her colleagues. The friend did not care because she was active in the women movement.*

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[40] Woman activist, one of the founders of the Rumpun Tjoet Nyak Dien (RTND) and the Coalition of Indonesian Women for Justice and Democracy (KPI-KD). Thanks to my many friends at JPY for their trust and especially to Imma and Enik who have contacted me.

[41] A feminist dictum: my person is my politics and the personal is political. This of course defies the patriarchs of positivism who differentiate between the formal institutional politics and the daily politics where the private is political in the sense that domestic violence is taken to the public sphere.

I include this experience to show how a regulation in a region has limited the way women could dress; they have to wear dresses according to certain dress codes. The second following story deals with a working culture that caused a woman to adjust to a certain condition.

**International Experience: Still Limited**

> *March 2008 saw me in New York participating in the meetings of the Committee on the Status of Women. One of the meetings was about CEDAW. It was explained there that an individual or an organisation could use the complaint mechanism if the state failed to protect women from discrimination. I put forth questions about the regional regulations on the Sharia. I told the meeting that Indonesia was not a theocracy, not an Islamic country, yet the regulations discriminated and marginalised women. I complained that the State Minister of Women Empowerment and the government of SBY seemed to not saying anything about the seriously discriminatory policies. In the room only myself is Indonesian.* [42] *There was a Malaysian who said the Islamic Sharia was good for women and the Malaysian was surprised that Indonesia was not an Islamic country.*

This experience shows that our voice or even our advocacy for changes of policies and destiny has to be taken also to the international world. The membership of the CEDAW Watch that is already in Jakarta is still limited to certain universities and NGOs, i.e., still Jakarta-centrist. It means CEDAW Watch needs to be developed in terms of membership and geographical outreach to the regions. The decentralisation of advocacy needs also be developed, spread out, so that it would not be limited to a few small groups, a situation that could lead to elitism.

From the experience in New York, I learned that there were only two organisations listed officially in the NGO Forum of the UN System: Kowani and INFID (International NGO Forum on Indonesian Development). I forgot whether the PKK was included or not. But it is unfortunate that Indonesia with its plurality and its great size is only represented by two organisations, Kowani whose voice is not heard in promoting anti-discriminatory policies, and INFID whose women perspective is not very strong.

## Responses to the Findings of Komnas Perempuan[43]

Congratulations to Komnas Perempuan for its hard work with its monitoring teams in 16 districts and cities in seven provinces (one of the monitors, from Yogyakarta, is Enik Maslahah) so that the report "In the Name of Regional Autonomy: The Institutionalisation of Discrimination in Indonesia" could be launched now.

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[42] I met with three Indonesians when I registered, two from Kowani representing West Sumatra and Dewi Motik. Unfortunately I did not meet them in the meetings or discussions that I attended.

[43] See Chapter 3, National Portrait of Discriminatory Regional Policies, p. 13.

From the findings of the monitoring teams, it could be seen that the policies that are anti-discrimination, pro-equality and pro-gender fairness, pro-victims so that they become survivors, are smaller in number compared to the discriminatory policies.

**The Picture of Pro-Women Policies**

| Period/Level | Province | District/Municipality | Total number of policies | Goals–Impact of the policies in practice |
|---|---|---|---|---|
| 1999 - 2009 | 4 | 16 | 23 | Fulfilling victims' right to recovery |

**The Picture of Discriminatory Policies**

| Period /Level | Province | District/ Muni-cipality | Village | Total number of policies | Goals–Impact of the policies in practice | Remarks |
|---|---|---|---|---|---|---|
| 1999-2009 | 19 Policies | 134 Policies | 1 Policy | 154 Policies | Instruments for the institutio-nalisation of discrimination → goals & impact | |
| 2003 - 2005 | 21 - 6 top provinces most keen to issue "anti-women minorities" regional policies | 69 | | | Enacted almost simultaneously, there are even cases of copy and paste (Tangerang and Depok) | Of the 154 discriminatory policies, almost half of them, 80, have been simultaneously issued in the provinces of West Java (35),[44] West Sumatra (26), South Kalimantan (17), South Sulawesi (16), West Nusatenggara (13), and East Java (11) |

[44] Chapter 3, p. 14.

The higher number of the discriminatory policies shows us that:

- There is a political inclination to politicise the religion of the majority or, in Gus Dur's term, the "Arabisation".[45] The struggle to establish the Islamic Sharia by certain groups continues in many ways, including through the use of violence and mass mobilisation as well as through seemingly constitutional ways;
- Of course the presence of these discriminatory regional regulations has also inspired minority groups—who happen to be the majority in their specific regions—to try to issue their versions of discriminatory regional regulations. In Manokwari, West Papua, there were talks about a regional bill on the Bible—although currently the efforts seem to have lost steam;
- The policies on women and minority groups (based on religion, culture, belief, sexual orientation) are the first things to be regulated because these two groups are believed to be unable to stage a strong opposition; they are in the minority and do not dare to speak out. Although women in number are in the majority, the patriarchal hegemony and domination are still strong in their various manifestations. It is then not a mystery that some women have said openly that they are happy if their husbands practice polygamy (whether they are happy in their hearts or not is another matter; or whether they would be happy were it to really happen to them). A woman even said "God willing, [my husband will] be a polygamist";[46]
- In the context of women movements, these mean the struggle of the women movements is still very hard and difficult. The groups against equality for women are still strong, and they want to domesticate women;
- The Regional Regulations on Migrant Workers,[47] in this case the migrant domestic servants, are still gender-biased, discriminatory, stereotypical, marginalising, and differentiating the gender roles, and of course do not pay attention to the issue of protection;
- Unfortunately Komnas Perempuan did not look into the advocacy efforts for a regional policy on domestic workers that have been going on for a long time. Since 1999 the Network for the Protection of Domestic Workers (JPPRT) has been fighting hard for it with the assistance from the Amnesty International (2006) and Human Rights Watch (2007/8), yet so far the Yogyakarta government has not agreed to it, while regional regulations with religious colours have been issued so fast. Thus, policies for the protection of poor women are ignored, more important are the keeping of an image, political interests, skin-deep formality, not the substance.

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[45] Thinking about the Arabisation, I am reminded of the Wahabi movement in West Sumatra led by Tuanku Imam Bonjol that occupied the Batak region using violence, including arson, murder, and rape; the story of which is still a controversy to this day among the people of Toba Batak and Mandailing.

[46] This was stated by a member of the Muslimah HTI Indonesia in a meeting with the Network of Yogyakarta Women in the talkshow Berani Bicara (Dare To Talk), debating the issue of polygamy, TVRI Yogyakarta, 28 March 2009.

[47] See pp. 38-42.

- Currently even activists would think twice if they want to act because they have to face the hardliners who do not shy away from using violence in their activities. Our colleagues of the left, transgenders and transsexuals (among others the attack in the incident of Hostorenggo Kaliurang early 2000) have been pressured and threatened, their meetings forcefully dispersed. Oddly, the legal enforcement apparatus seem to have "allowed" the violent groups to act unhindered. The law and the law enforcement apparatus[48] did not seem to side with the groups being attacked.

## Follow-ups on Advocacy

- *Unfinished advocacy*. That past human rights violations are still sadly hanging with no closures proves that the current government has a very low commitment to the upholding of human rights and women's rights. President SBY[49] stopped the process of the formation of the Truth and Reconciliation Commission despite the fact that capable people were ready for it. With the absence of such a commission, the handling of human rights issues fell into the grey zone, mired in indecisiveness, while it is clear that the high-ranked military leaders of the past enjoyed impunity. In other words, militarism and Soehartoism are still so strong that the crimes against humanity could not be revealed and solved. Victims remain victims, not survivors with the rights to truth, rehabilitation, and reconciliation. The last is stressed to show that here we are not talking about revengeful politics. But as a nation we need to know what happened in the past with all its complexities. We should not use a group of people as a scapegoat like what happened in 1965 when the communist party PKI and its mass organisations were blamed as a scapegoat to bring down Sukarno.
- The substantive democracy is more than just the procedures. And although it is said that there is a democratic government, still the 1965 cases have not been solved. This is so because what really exists is the procedural democracy, not the substantive one. The hardline religious groups have grown after 1998 during the era of democratic transition, while the left, above all the communists—could not grow at all in Indonesia. Yet it is clear from the history that they were one of the groups that from the very beginning had contributed to the fight against colonialism. They were detained, exiled to Boven Digul, and killed for their struggles.
- Advocacy for actions. Advocacy should come from the grassroots in the form of organisations, villages, then to the district/municipality level, provincial level, national level, regional (ASEAN/Asia) level, and international level—the CEDAW committee; as mentioned above, the experience of Indonesian activists at the international level is still limited.

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[48] See page 72 on the indifference toward the actions of the "moral police".

[49] SBY did not agree when AA Gym became a polygamist. But he cried when watching the film *Ayat-Ayat Cinta* which romantically, softly, and gently defends polygamy. He did not cry when the Ahmadiyah was arbitrarily persecuted.

For example, the advocacy in the case of the infamous Puji. We also learned only recently after listening to the complaint of the police (who also did not know about CEDAW) that CEDAW, the Law on Child Protection, and the Convention on the Rights of the Child have no teeth because there is no clear punishment for marrying a child. And police investigators called me because they had difficulties arresting Puji. They even asked NGOs to raise the issue of his alleged fake diploma.

- Cooperation with other programmes. Komnas Perempuan could, together with the National Commission on Human Rights or with various programmes and projects on the strengthening of capacities on social and governance issues such as LGSP (USAID), ACCESS and ANTARA (USAID), and Partnership. Komnas Perempuan could work with them to include issues on anti-discrimination policies and efforts to make changes in their programmes by introducing the international conventions and the national policies that are consistent and synchronous with, and that do not violate, the human rights and women's rights in enacting policies.
- Creativity. Advocacy should be done creatively such as utilising arts, through theatres, art shows, comics, cartoons, story films, games, TV series, happening arts, etc. Demonstrations have become too banal.
- Sustainability of resistance. Resistance to the Anti-Pornography Law should be continued in various regions using various instruments. The proposition of Komnas Perempuan that there should be issued a Law on Anti-Sexual Violence has to be followed up seriously, because these are the issues that really have meaning for women and children, both girls and boys, such as the issues of anti-sexual harassment in the work place and educational institutions (not one of Indonesian universities has an anti-sexual harassment policy), rape, etc.

## Roles of Public Monitoring and Ideas for the Strengthening of Public Participation in the Era of Regional Autonomy

- Supporting the synergy among pro-constitution groups, nationalist groups (not the nationalism of Soeharto era that was militaristic, persecuting Islamic groups and eliminating communist groups), pro-democracy groups, progressive mass media, professional organisations, labour unions, urban poor groups, farmers' groups, student movements, human rights organisations such as the legal aid bodies, child protection organisations, and women organisations that fight for pro-poor policies and take the side of the vulnerable. Together fighting against discriminatory policies, not keeping the silence. It is overdue that such bills are fought against. If the bills are already enacted into laws, they have to be taken to the higher level, by demanding judicial reviews. In other words, the civil development and the anti-discrimination policies need to be initiated, spread, and practiced in the daily life.

- The idea of the movement of the Regional Human Rights Commissions (Komdaham) that was put forth by the late Mas Mansour Fakih in 2002 should be realised so that human rights violations at the regional level could be handled quickly.
- The number of grassroots monitors at the village, even hamlet, level needs to be increased. Here the organising becomes a central issue. Besides that, the understanding and the skills to do monitoring are very important here, i.e., how to do monitoring on women human rights and minority rights with simple instruments that could be used in training in villages.
- Urging women individuals and members of society to have courage to voice their experience of discrimination that they suffered as women and minority groups, by doing campaigns about discriminatory policies through various *arisan* tontine meetings, Quran recital groups, prayer groups, through the media including radios, community radios, TVs, the Internet, mailing lists, SMSs, etc. Those who bravely share their experience should be accompanied by support groups, so that they are not alone in fighting for the discriminatory that they experience.
- Education with human rights contents (mainstreaming the education of human rights and women's rights) need to be instilled, socialized, and campaigned early. The contents should include the issues of tolerance, plurality, non-discrimination, as well as the autonomy of the body and thought, so that girls would know their rights and responsibility in a healthy and balanced way, and understand if there are violations against them.
- It is important for women movements, in the forms of NGOs and civil society organisations, to take the stance—either alone or together in a network such as done by our friends from the Alliance to Reject the Regional Regulation on Prostitution in Bantul—in criticising and resisting discriminatory policies and practices.
- Researches on activities with feminist perspective need to be continued. For example—although the presence of women perspective is not known—in South Sulawesi the LAPAR NGO advocates against the discriminatory Regional Regulation on the Islamic Sharia that has been issued to prevent crimes and to protect the ummah (not citizens, even from the language it is already biased). It is interesting to learn about the results of a comparative research on the levels of crimes before and after the enactment of the regulation. It was found that the rate of crimes increased when the regional regulation was put into effect. Ironically, the increase occurred for the sexual crime, i.e., rape.

## 5.10. Response from the Representative of West Java Academia

### DISCRIMINATION IN REGIONAL REGULATIONS

By:

**Niken Savitri**

## Foreword

The monitoring report of Komnas Perempuan on over 154 regional policies issued at the levels of provinces, districts/cities, and villages is a comprehensive report that has been long awaited. Since a few years back, there have been sporadic complaints from several non-governmental organisations representing victims of discriminatory treatments caused by regional policies. Several articles in the mass media, seminars, and discussions at local and national levels have deliberated on such discriminatory regional policies. But so far those voices have not been responded to as should be and there have been no full reparation over the damages caused by the discriminatory treatments based on those policies.

Therefore, this monitoring report that covers several regions on such discriminatory policies should trigger a betterment to undo the damages that have been done. Although a little too late, since it is being familiarised on the eve of the general elections, so that it could not be used as a bargaining chip for doing political contracts with the candidates of the national and regional parliaments, it should not be too late for regional dignitaries in particular and stakeholders in general to try strategic and constructive efforts to better the shortcomings and damages that have been caused.

In this paper I try to respond to Komnas Perempuan's findings and to provide an overview on the institutional relations expected to better the non-constructive conditions that have brought about the discriminatory conducts and offer a bigger role of universities in regional development that could be done based on non-discriminatory policies.

## Responses to Komnas Perempuan's Monitoring Report

As stated above, what has been completed by Komnas Perempuan was a monitoring activity done progressively, structurally, and systematically. This activity has resulted in a holistic finding of basic phenomena in relation to the fulfilment of the human rights of every citizen. This

activity thus has to become the foundation for future processes of policy making in the regions and for the planning towards the betterment of the conducts of regional governments that until now have caused discriminatory impacts on the people in their regions (especially the women group).

The monitoring report has also succeeded in providing a juridical theoretical portrait of discriminatory regional policies by providing a general description of the existing regional regulations. By not neglecting the regional policies which are conducive to the fulfilment of human rights, this report has given a picture of the distribution of discriminatory regional policies, both in space and time.

The creation of norms, including regional policies, could be done two ways, bottom-up and top-down. In the first way the people, according to their needs and aspiration, wish for a norm to manage interactions among them. With this it could be assumed that the norm would be in line with their wish and they will obey it. If in this context a norm is proved to be discriminatory for a part of the people, there should be a further analysis on the reasons it could happen.

The second way is the creation of a norm by the top-down method. In this case the legislators in a region create a norm meant to direct the people toward a better society. If in the creation of the norm it is found that the norm discriminates against a part of the society, questions should be asked about how the policy makers in the region have failed to represent all components of society in the region that caused them to produce such a regional policy that does not represent all components of the people there.

Because the process of the creation of norms is very significant in the issuance of discriminatory norms, the monitoring report from Komnas Perempuan has to be followed up with more fundamental research on the creation of norms in the regions that have been used as the object of the monitoring. By analysing the roots of the discrimination problems in regional policies, the causes of the discriminatory elements could be eliminated. Thus it could be expected that this monitoring activity would be followed up with deeper activities aiming at the roots of the problems.

## Regional Autonomy Implementation and Inter-Institutional Relations

The creation of legal norms in the regions is basically a regulation process conducted by the regional governments—the content is supposedly to implement regional autonomy and tasks of assistance—and the regional governments have to take into account the special conditions of their respective regions as well as the further deliberation of higher laws and regulations (Chapter 12 of Law No. 10/2004). From the formulation of the chapter it is clear that regional regulations are to be made without violating the existing set of directives and with their

objectives in line with the respective interests of the regions. In regional regulations sometimes the term "taking into account the special conditions" has been taken to mean the freedom to enact regulations that directly and indirectly have resulted in the discrimination of a part of society.

The implementation of regional autonomy is meant among others to realise regional potentials and to give opportunities to each region to manifest its local wisdom that could be adjusted to the needs and aspiration of its own people. In realising this goal, policies could be enacted by each region according to its wishes and needs.

As described in the report, although the regions are allowed to enact policies autonomously and independently, there are norms set by the central government that are *dwingenrecht* and may not be violated by the norms enacted in the regions. More so if the regional norms are of the objective, general kind, directing human attitudes and imposing general obligatory burdens. In this case regional policy makers may not formulate norms that are contradictory to the norms set by the central government or those that should be under the jurisdiction of the central government.

Besides that, Chapter 6 of Law No. 10/2004 also stipulates that the contents of a regulation have to be in accordance with the principles of (a) protection, (b) humanity, (c) justice, as well as other principles that have to be included in a regulation. Thus in its formulation and enactment, a regional regulation may not contradict the principles in Chapter 6, including the three principles mentioned above, especially if in reality it causes an impact, stigma, and codification of roles of a certain group of people, as deliberated in length by Komnas Perempuan through its monitoring report.

The creation of legal norms at the level of regional governments, according to the procedures, has involved the participation of people's representatives (both as members of regional parliaments and as elements of other parts of society), but has not in general balancedly represented by all groups, so that the formulations of the legal norms often try to regulate every aspect of human actions in the regions without considering the existence of groups that are discriminated against or the impacts of the implementation that could cause discrimination. The percentage of women in regional parliaments is very low, the role of women among representatives of social groups is also small, therefore women's interests are not voiced in the deliberation over regional policies.

Besides the low percentage of women, the tendency of legislators to regulate human actions through legal norms has become a decisive factor in the abundance of the deviation of the contents of the legal norms that regulate the people's morality. Yet it is known that other than legal norms, in society other norms are functioning, growing, and developing. These norms have all always been regulating people's attitudes, conducts, interactions, and relations with each other. If all attitudes have to be regulated by legal norms, they will take the place of other

norms in society. In turn this will repeat the 18th century legalism where justice was dead among the people, with only legal certainty at the forefront.

Moreover, the implementation of regional autonomy, that in fact has caused the enactments of excessive regional policies, has proved that there are no good relations and control mechanisms between the norm makers at the central government and those at the regional governments. The system and mechanisms set through the procedures of the judicial review appeal to the Supreme Court should have been able to serve as a control mechanism, but so far the system has proved to have too many constraints in speed and correctness in the resulting decisions.

Other than the poor central and regional system and mechanisms in the process of norm creation, the regional system and mechanisms for norm formulation are also not standardised. Mechanisms that involve all stakeholders (people, academicians, governments, and legislators) in the formulation of a norm are very much needed. Effective discussions on a subject matter to be formulated in the form of a norm have always to be done before the norm is enacted, by receiving inputs from as many elements in society as could be.

The gender mainstreaming that has been enacted through Presidential Instruction No. 9/2000 has to become the reference point, not only in the process of planning and development in the regions, but also in the creation of every legal norm in the regions. Thus gender mainstreaming is not only a slogan that looks like a good programme but could not be integrated into development activities in the regions, including the creation of legal norms.

Problems arise in a society where patriarchy dominates, where the people involved in the norm creation will reflect the dominance of such thinking, as described above. To prevent discrimination in the formulation of norms, there needs to be not only relations among institutions but also a paradigm shift from the dominant group in society.

## Universities' Role in the Elimination of Discrimination

It is undeniable that universities have the obligation to change the thought paradigm of the patriarchal society. That obligation could be realised in various ways.

First, through education, by ingraining subject matters about discrimination into as many students as possible who are potential policymakers in the regions. Training and familiarization could always be done to cover ever-widening audience, not only students of certain disciplines.

Universities could also play an active role by staying with and paying attention to the initiation of regional norms, from the deliberation of the academic papers to the juridical and technical

legal drafting. The idea of rainbow coalitions that has been put forth by many observers of discriminatory regional regulations has to become one way to control the creation of legal norms in the future in the regions. The universities have to play an active role in such coalitions, both as initiators and activists to ensure the smooth working of the coalitions as they are meant to be.

Universities could also continue the monitoring that Komnas Perempuan has started, to provide criticisms about regional policies that are going to be enacted and that have been in force, so that there will be appropriate measures of annulments or replacements. Together with regional bodies, universities could act in synergy to always provide criticisms about government policies in the regions, especially in relation to the fulfilment of human rights. Together with elements within the society, universities have to ensure the commitment of the regional legislators to be elected soon to always use and consider the principles of non-discrimination in each regional policy, including in formulating regulations.

The last thing universities could do is to accompany victims of discriminatory policies, both through legal channels and social channels. Accompaniment could be done not only after victimisation, but also beforehand by providing training and familiarisation to the apparatus (the Satpol PP or legal enforcers) on the importance of human rights fulfilment for every member of society without exception.

**Conclusion**

Lastly, this monitoring report is not a pretty theoretical draft paper to be read then kept in a closed drawer. But policymakers in the regions have to study it to repair the damages caused by the existing discriminatory policies. Every stakeholder involved in the formulation of regional policies should see this report as a constructive criticism to improve the empowerment of the people to respect every individual as should be and respect the rights of every person, whether they belong to the majority or the minority.

## 5.11. Response from the Representative of Women Activists in Nangroe Aceh Darussalam

# THE INSTITUTIONALISATION OF DISCRIMINATION; IN THE CONTEXT OF SUBSTANCE AND IMPLEMENTATION OF THE *KHALWAT QANUN*

By:

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## Background:

The issuances of:

- Law No. 44 Year 1999 on the Implementation of the Specialty of the Aceh Special Province
- Law No. 18 Year 2001 on the Special Autonomy for Aceh (Not in effect after the issuance of Law No. 11/2006)
- Law No. 11 Year 2006 on the Aceh Government

have caused the issuances of various Islamic Sharia *Qanuns*, among others: *Qanun* on the implementation of Islamic Sharia in the field of Islamic *Aqidah* (Doctrine), *Ibadah* (Devotion), and *Syiar* (Glory), as well as the *Khalwat Qanun*.

## The Goal of the Qanuns on the Islamic Sharia:

In several Qanuns:

- The promotion of the image of Aceh as an Islamic region well-known as the Veranda of Mecca
- Is it true that only by regulating *khalwat,* Islamic dress codes, prohibition of gambling or alcoholic drinks, such an "image" will occur?
- How about other non-Islamic attitudes and actions?

## Relation to Regional Autonomy

- With regional autonomy, the regions in truth have the opportunity to make better and fairer policies compared to many national legislations that contained many weaknesses

## *Khalwat* Regulation in Aceh:

Definition:

Regulation on the conduct of being together in isolation between two *mukallafs* or more of different sexes who are not *muhrims* or without marriage ties

## Consequences of the Definition:

- The *khalwat* in this *Qanun* is a situation, not an action
- This kind of regulation is detrimental to people who intentionally or not intentionally are found in a situation where they are with people of the opposite sex, and could be accused of doing *khalwat*
- The formulation of *khalwat* which prohibits people to be in a closed or secluded place … will cause people who are in such places without doing anything (sexual) will be regarded as doing adultery and will be punished. This has the potential to violate the principles of justice and presumption of innocence
- This kind of view prevalent in the culture and tradition will be detrimental to women, because if arrested with the accusation of *khalwat* (which is only a situation), the women would be considered "naughty", with no dignity
- The experience from the implementation of the controversial *khalwat* prohibition (Qanun No. 14/2003) proves that it is very difficult to enforce and in general the condemned felt they were treated very unfairly
- Therefore there is a need to rethink (a more open interpretation) to review whether the prohibition of *khalwat* should be abolished or not, with all the consequences and the potential to cause unfair and uncertain law enforcement
- The formulation should not be interpreted in an absolute way that causes people who are simply together without doing anything in a secluded place could be accused of adultery; for example, a man and a woman working in a room in an office could get punished
- The Quran only prohibits "people not to do activities that could lead to adultery"
- The Quran also prohibits many other actions, such as "gossiping", blasphemy, etc. The problem is, why is it that only *khalwat* is categorised as a crime (*jinayah*) which carries a flogging penalty? How about other prohibitions?

- Sanction:

  For *khalwat* the sanction is flogging, maximum nine times and minimum three times, a fine of at most Rp10 million and at least Rp2.5 million
- As one of the violations (not crimes), there is a need to rethink whether flogging is relevant. Isn't this a discrimination compared to the punishment for actors of other violations?
- Shouldn't the ratification of the anti-torture convention in 1998 by Indonesia be a consideration for the implementation of other kinds of punishment that are more humane and educational?
- Flogging is against the Anti-Torture Convention that has been ratified by the Indonesian government. (The will to punish is more pronounced than the will to educate the *ummah*. This should be reconsidered.)
- In many cases, the accused who did not actually do *ikhtilat* (free social relation between unrelated men and women) or adultery were punished because of the injustice of the rules and the legal uncertainty
- During the process of arrests and investigations (because of the absence of the formal law to implement the *Jinayah* (criminal) law) there were many arbitrary arrests and torture

## Regulation on Dress Codes

Regional Regulation (*Qanun*) No. 11 Year 2002

> states that a violation to the obligation to dress according to Islamic teachings carries the criminal penalty of a three-month imprisonment and or a fine of Rp2 million

Such a rule also creates injustice and legal uncertainty

- There is no clarity in the regulation about the forms (criteria) of the required dress
- The public and the WH may have different views about the dress codes, so there have happened many violence to "force" other people to dress according to a certain interpretation

## Recommendations

- There is a need to revise policies that substantially contain discrimination and injustice
- By making progressive policies, Aceh could become an example for other regions as a region that creates fair Islamic laws
- *Khalwat* needs to be redefined, as an act of crime (*jinayah*) so there won't be legal uncertainty in its enforcement
- Nevertheless:
  The law should provide justice for all people, providing benefits and protection Not just "to punish"