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Demystifying the Shariah Debate in Southeast Asia: A case study of Aceh

By Tuty Raihanah Mostarom and Andini Gelar Ardani

30 November 2009

The passing of the Anti-Adultery Bill in Aceh has sparked concerns of growing intolerance and rigidity amongst Muslims in the country and that pluralism and human rights are being threatened. Such reactions may be unnecessarily alarmist.

Generalising the Shariah

A SCANNING of news articles in Southeast Asia on the Shariah for the past three months shows one particular trend — the ‘fear’ of the implementation of the Shariah or Islamic Law. The term ‘Shariah’ has been applied liberally in nearly all cases. The focus of debate is on criminal law but the cases highlighted range from labeling of halal products to the more controversial by-laws for adultery and alcohol consumption. It is the focus on punishment that seems to be driving the tragic tendency to link the implementation and ‘spread of Shariah’ in Southeast Asia to extremism. The Shariah is derived from the Quran. Logically, no religion would make anything mandatory should it undermine human rights and pluralism and promote intolerance and rigidity. Why then fear the Shariah?

Contextualising the Shariah

While it is commonly translated as ‘Islamic Law’, the Shariah actually refers to the path of correct conduct that God has revealed to his messengers, particularly to the Prophet Muhammad. In the early periods of Islam, scholars and jurists in the Islamic world developed Islamic jurisprudence (*fiqh*) based on the Quran and the Sunnah (the Prophetic Traditions). They used different degrees of analogical reasoning (*qiyas*) in the interpretation and application of the holy texts, based on consensus (*ijma*). As local practices were also taken into account in the development of these laws, the contexts in which such laws are to be applied is of primary importance.

The sanctions in the criminal laws deal with wrongs that are punishable by the state for the purpose of deterrence. There are three categories of punishment: (1) *hudud*, which leads to a prescribed and mandatory penalty; (2) *ta'zir*, for which penalties are discretionary and left to the public authorities to establish the rules, within the spirit of the Shariah, to punish such acts; and (3) *qisas*, for which punishment is set by law but the victim of the crime or next of kin may waiver the punishment by

accepting financial compensation. The adultery law in Aceh is classified as *hudud*.

An important aspect of *hudud* law overlooked by critics and supporters alike is that while the punishments are indeed severe, *hudud* law is tempered by the strict rules of evidence. Evidence must be based on either a voluntary confession or the evidence of eyewitnesses. In the case of adultery, it requires four eyewitnesses. Such preconditions must be fulfilled before the punishment is carried out. Based on this elaboration on the *hudud*, it is clear that the potential problems are not with the Shariah per se but with its implementation, such as during the course of trial prior to sentencing.

Why then, fear the implementation of Shariah?

The contextual flexibility found in Islam has served the faith well, but does create a problem. In Sunni Islam, which is the predominant orientation in Southeast Asia, there is no overarching authority figure to assist in creating a standard interpretation of law or faith. Muslims may seek advice from a number of authorities (*mufti*). Due to the lack of understanding, public perception is shaped by what is observed in countries where Shariah is imposed such as in Saudi Arabia, Iran, Egypt or even the Taliban-controlled areas of Afghanistan, and are misled and horrified. What is not understood is that societal norms and values have also played a part in the implementation of Shariah. For example, the cultural practices of genital mutilation, which is not a Shariah requirement, have been incorporated in some Muslim communities but not in others. The highly pluralistic characteristic and orientation of Islam in Southeast Asia would most likely pave a different trajectory. In fact, various forms of the Shariah are already being implemented in many countries in the region. In Malaysia and Singapore, for example, personal laws on marriage and divorce are essentially Shariah laws.

Aceh: political dynamics and the *Ulama*

The passing of the Aceh Anti-Adultery Bill in October of 2009 has understandably caused increased attention on this issue. While concern is expressed on the risking of human rights and minority rights, the critical question lies somewhere else: how did the implementation of the law come into being? The answers would indicate the potential of the spread of such Shariah criminal law in the archipelago.

Dr. Noorhadi Hasan, an associate professor of Islam and Politics at the State Islamic University Sunan Kalijaga Yogyakarta, suggests in an interview that the implementation is a local issue, driven by *ulama* (clerics and religious leaders) who are trying to reassert control of the development process in Aceh. The *ulama* are in a political struggle with former leaders of GAM, the Aceh freedom movement, whom the *ulama* have previously supported. They feel the need to regain their influence in the reconstruction and development of Aceh. If this is true, the law may not survive long in Aceh. Furthermore, a newly-installed parliament in Aceh made up of more moderates may revise the criminal code.

If the Anti-Adultery Bill is passed mainly due to internal political dynamics, it is highly unlikely that the implementation of harsh criminal laws will easily spread to other parts of Indonesia where plurality reigns and the Constitution will simply not allow it to take place.

Debate set to continue

The flaw is not in the law, nor with Islam. Factors that contribute to the fear of Shariah include the way Islamic law is implemented. There are also political motivations by some to enhance their Islamic credentials by resorting to the Shariah as a political tool. What is clear is that informed debate is critical to avoid misperceptions of Shariah and ultimately of Islam. It is necessary not to allow unfounded perceptions and emotions to take over rationality, contexts and reality, especially where it affects relations with others.

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