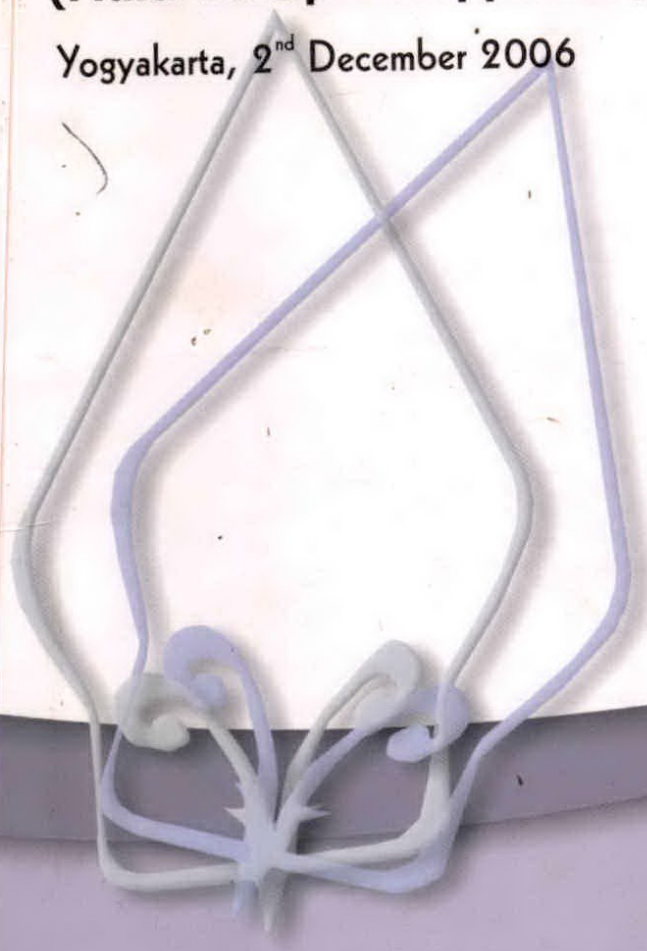


Proceeding

International Joint Seminar

**Muslim Countries and Development :
Achievements, Constraints and Alternative Solutions
(Multi-Discipline Approach)**

Yogyakarta, 2nd December 2006



Organized by:



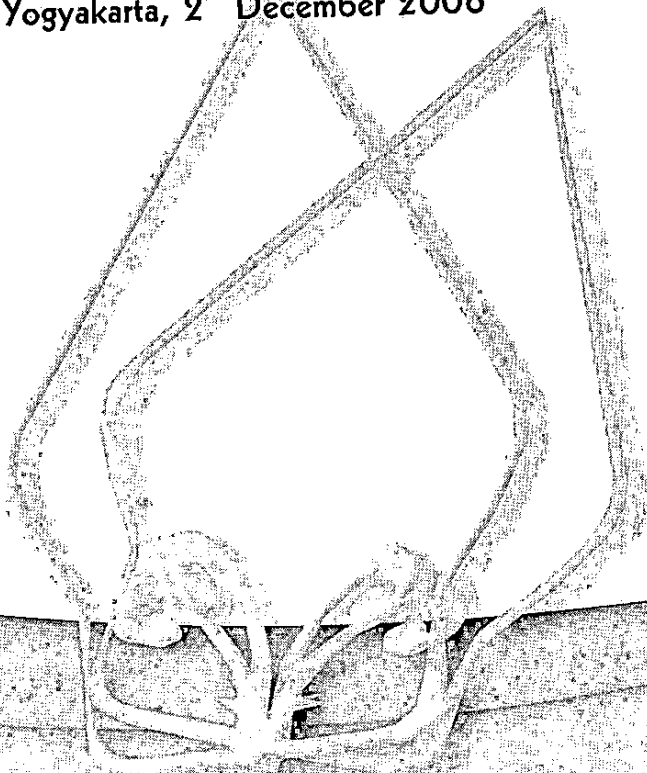
ISBN 979-3700-10-6

Proceeding

International Joint Seminar

**Muslim Countries and Development :
Achievements, Constraints and Alternative Solutions
(Multi-Discipline Approach)**

Yogyakarta, 2nd December 2006



Organized by:



Universitas
Muhammadiyah
Yogyakarta



International
Islamic
University
Malaysia



Education and
Cultural Attache
Embassy of The Republic
Indonesia in Malaysia

**MESSAGE FROM THE RECTOR OF
UNIVERSITAS MUHAMMADIYAH YOGYAKARTA (UMY)**

Assalamu'alaikum warahmatullahi wabarakatuh

All praise be to Allah SWT, Lord of the world. Peace and blessings on Muhammad SAW, His Servants and Messenger.

First of all, as the rector of Universitas Muhammadiyah Yogyakarta (UMY), I would like to welcome to the honourable guests, Rector, Dean of Postgraduate Studies (CPS), Dean of ISTAC, Dean of IRKHS, Deputy Deans and Head Departments from various Kulliyah, lecturers, postgraduate students of International Islamic University Malaysia (IIUM), and all participants in this joint seminar.

Academic cooperation between UMY and IIUM started several years ago. The cooperation between us is based on a solid foundation; both us are Islamic universities having same missions to develop Islamic society, to prepare future generations of Islamic intellectuals, and to cultivate Islamic civilization. In fact, improving academic quality and strengthening our position as the producers of knowledge and wisdom will offer a meaningful contribution to the development of Islamic civilization. This responsibility is particularly significant especially with the emergence of the information and knowledge society where value adding is mainly generated by the production and the dissemination of knowledge.

Today's joint seminar signifies our attempts to shoulder this responsibility. I am confident to say that this joint program will be a giant step for both of us to open other pathways of cooperation. I am also convinced that through strengthening our collaboration we can learn from each other and continue learning, as far as I am concerned, is a valuable ingredient to develop our universities.

I sincerely wish you good luck and success in joining this program

Wassalamu'alaikum Wr, Wb.

Dr. Khoiruddin Bashori

Rector, UMY

**MESSAGE FROM THE RECTOR OF
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA (IIUM)**

Assalamu'alaikum warahmatullahi wabarakatuh

In the name of Allah, the most Gracious and the most Merciful. Peace and blessings be upon our Prophet Muhammad (S.A.W).

First and foremost, I felt honoured, on behalf of the university to be warmly welcomed and to be given the opportunity to work hand in hand, organizing a respectable conference. Indeed, this is a great achievement towards a warmer bilateral tie between the International Islamic University Malaysia (IIUM) and Universitas Muhammadiyah Yogyakarta (UMY) after the MoU Phase.

I would also like to express my heartfelt thanks to Centre for Postgraduate Studies (CPS), Postgraduate Students Society (PGSS), contributors, paper presenters, participants and our Indonesian counterpart for making this program a prestigious event of the year.

This educational and cultural visit is not only an avenue to foster good relationship between organizations and individuals and to learn as much from one another but a step forward in promoting quality graduates who practices their ability outdoor and master his or her studies through first hand experience. The Islamic platform inculcated throughout the educational system namely the Islamization of knowledge, both theoretical and practical, will add value to our graduates. This comprehensive excellent we strived for must always be encouraged through conferences, seminars and intellectual-based activities in line with our lullaby: The journey of a thousand miles begin by a single step, the vision of centuries ahead must start from now.

My utmost support is with you always. Looking forward to a fruitful meeting.

Ma'assalamah

Wassalamu'alaikum Wr, Wb.

Prof. Dato' Dr. Syed Arabi Iddid

Rector, IIUM

**MESSAGE FROM EDUCATION AND CULTURAL ATTACHE
EMBASSY OF THE REPUBLIC OF INDONESIA
KUALA LUMPUR**

Assalamu 'alaikum warahmatullahi wabarakatuh

All praise be to Allah SWT. This is the moment where implementation of MoU between Universitas Muhammadiyah Yogyakarta (UMY) and International Islamic University Malaysia (IIUM) comes in the form of action by organizing this Joint Seminar. The efforts of both sides to implement the MoU are highly appreciated, especially, in the context of which both universities effort to enhance the quality of education.

Substantially, I believe that this Joint Seminar will bring many benefits. In term of the development of knowledge, it is a means for developing academic quality, for exchanging of information on academic development, as well as for constructing intellectual atmosphere at both universities. In term of international relations, both universities have taken part in increasing close relationship between Malaysia and Indonesia. RUM and UNY as well are using 'soft power' to increase bilateral relations among citizens which brings a lot of benefits for both nations.

Therefore, I hope that both RUM and UMY can make use of this program as a 'kick-off' for other programs in the future, especially in using UMY's vast networks with other Muhammadiyah Universities in various cities in Indonesia as well as IIUM's network. The support of IIUM for UMY also means a progress for IIUM and UMY. I hope such joint program will continue in future for betterment of both Indonesia and Malaysia. Embassy of the Republic of Indonesia in Kuala Lumpur will always support these efforts.

To our honorable guests, Rector, Dean of Postgraduate Studies (CPS), Dean of ISTAC, Dean of IRKHS, Deputy Deans and Head Departments from various Kulliyah, lecturers and students of IIUM, I warmly welcome you to Yogyakarta. I hope you enjoy your stay in the cultural city of Yogyakarta.

Finally, as the Attache of Education and Cultural, Embassy of the Republic of Indonesia, Kuala Lumpur, I sincerely wish you good luck *and a successful program with unforgettable memories.*

*Wabillahit Taufiq Wal Hidayah
Wassalamu 'alaikum warahmatullahi wabarakatuh.*

M.Imran Hanafi

Education and Cultural Attache, Embassy of the Republic of Indonesia

MESSAGE FROM DEAN CENTRE FOR POSTGRADUATE STUDIES

Assalamu'alaikum warahmatullahi wabarakatuh

Praise be to Allah. May the peace and blessings of Allah be on the last prophet and messenger, our master Muhammad and on his household and companions. It is a great privilege for me to foreword this message to this wonderful event that is jointly organized by the Universitas Muhammadiyah Yogyakarta (UMY) and International Islamic University (IIUM).

First and foremost I would like to record my special gratitude to management of Universitas Muhammadiyah Yogyakarta for their co-operation.

In order to obtain comprehensive excellence, the Centre for Postgraduate studies has always facilitates postgraduate students of the university to achieve the highest quality in their academic work. This seminar is one of the many programs that Centre for postgraduate studies has to ensure quality graduates.

I would therefore like to thank all the participants and programme coordinators who have worked hard to realize this event.

May Allah SWT shower His blessing upon us.

Wassalamu'alaikum Wr, Wb.

Prof. Dato' Dr. Wan Rafei Abdul Rahman
Dean, Centre For Postgraduate Studies

**MESSAGE FROM THE ACTIVE
PRESIDENT OF POSTGRADUATE STUDENTS'**

Assalamu'alaikum warahmatullahi wabarakatuh

On behalf of Postgraduate Students' Society (PGSS), my gratitude and appreciation to our beloved Dean of Studies, the Embassy of Indonesia in Kuala Lumpur, Muhammadiyah Yogyakarta and the organizing committee of IIUM and the Universitas Muhammadiyah Yogyakarta for their huge success. Postgraduate Students' Society (PGSS) under the supervision of the Center for Postgraduate Studies (CPG) is pleased to host this event.

As I strongly believe that the initial stages of unity are the key to building the new generation, who will represent the future more, such programs, not only achieve the mission of our universities but to achieve the global mission and vision. Therefore, I believe today, we have to have understanding and then only we can appreciate our diverse cultures. We should acknowledge the different strengths and weaknesses through knowledge in this age of information. I am sure this joint seminar will initiate unity among the future leaders along with integrating them.

Thank you,

Mohd Nabi Habibi

Active President Postgraduate Students' Society (PGSS)

MESSAGE FROM PROGRAM DIRECTOR

Assalamu'alaikum warahmatullahi wabarakatuh.

Praise be to Allah. May the peace and blessings of Allah be on the last Prophet and Messenger, our master Muhammad and on his household and companions.

Honestly speaking, we are pleased to be trusted by Postgraduate Students' Society (PGSS) and Centre for Postgraduate Studies (CPS) to organize the programme named Educational and Cultural Visit to Yogyakarta, Indonesia. For this, We express our gratitude to the management of both PGSS and CPS. This programme is of immense value. It has the potentials to promote intellectual endeavor, develop leadership capabilities and enrich cross-cultural understandings. We sincerely believe and hope that program of this kind will be organized in a regular fashion in future.

It is a great privilege for us to play twofold role in organizing this event: *as a host* and *as guest*. In fact, this is a fascinating experience to manage this event. Since our inception here, we have found meaningful interaction of students in an interweaving of cultures into complicated, yet beautiful, embroidery of social fabric. We are proud to say that this dearly loved university has produced graduates of high quality, who are distinct from those of the local universities.

Finally, we wish to express our special thanks to Bapak M.Imran Hanafi, Education and Cultural Attache of Indonesian Embassy, Bapak Herdaus, S.H., Assistant of Immigration Attache of Indonesian Embassy, Bapak Tharian Taharuddin for their immensely valuable assistance and co-operation in making this program a success. I sincerely appreciate all local committees at Yogyakarta, the colleagues and program coordinators and committee members who worked diligently to materialize this event. We wish to pass on good wishes to the PGSS for their valuable efforts it expended for this event.

May Allah s.w.t shower His blessing upon us.

Wassalam,

Nasrullah

Programme Director

Todi Kurniawan

Co-Programme Director

Contents

SCIENCES, TECHNOLOGY AND EDUCATION HUMAN RESOURCES DEVELOPMENT ISSUES

- Surface Waves Technology in Civil Engineering Applications**
Sri Atmaja P. Rosyidi 1-13
- Development of Earthquake Disaster Management
System in Bantul: Study on Housing and Infrastructures
Damages for Their Reconstruction**
Sri Atmaja P. Rosyidi, Surya Budi Lesmana, Chu-Chieh Jay Lin 14-25
- Cardiovascular Reactivity in Normotensive Young Adults
with Family History of Hypertension.**
Noriah M. Noor, Ikhlas M. Jenie, Tariq A. Razak 26-37
- Prevention of HIV/AIDS in Malaysia in The Light of
Qur'anic Solutions: The Role of Islamic Students of
International Islamic University Malaysia**
Asmawati Muhamad, Israr Ahmad Khan 38-54
- Fluorescence Detection of Human Premalignant and
Malignant Lesions**
Torla Hasan 55-70
- The Roles of Urban Architectural Landscape on
Shallow Groundwater, Case Study Jakarta Indonesia**
Muhammad Koeswadi 71-83
- The Islamicization of Architecture and Environmental
Design Education: Case Study of Kulliyah
of Architecture and Environmental Design (Kaed),
International Islamic University Malaysia**
Mansor Ibrahim, Maheran Yaman 84-97
- Moringa Oleifera Seeds for Use in Water Treatment**
Eman N. Ali, Suleyman A. Muyibi, Hamzah M. Salleh 98-103

Nursing and Its Contribution to The Health of Ummah

ECONOMICS AND DEVELOPMENT ISSUES

- The Role and Pitfalls of E-Government in Indonesia**
Punang Amaripuja 115-126
- Market Integration and Dynamic Linkages Between Shariah-Compliance Stocks and Interest Rate: Empirical Evidence on The Kuala Lumpur Syariah Index (Klsi) Malaysia**
Muchamad Imam Bintoro 127-134
- The Emerging Issues on The Objectives and Characteristics of Islamic Accounting for Islamic Business Organizations and Its Impact in Indonesia Islamic Accounting Development**
Rizal Yaya 135-150
- Relationship Between Organizational Justice in Performance Appraisal Context and Outcomes; Study on Islamic University in Yogyakarta**
Heru Kurnianto Tjahjono 151-164
- Making The Development More Sustainable and The Role of Women in Islam**
Masyhudi Muqorobin 165-185
- The Analysis of Exchange Rate Fluctuations and Its Implications on Indonesian Economy Empirical Evidence and Islamic Economic Perspective**
Imamudin Yuliadi 186-202
- Value for Money: For The Nigerian Construction Clients**
Olanrewaju Abdul Lateef, Kharuddin Bdul Rashid 203-215
- Environment Related Trade Barriers (Etbs): The Impact on Muslim Countries**
Noor Aini Bt. Zakaria, Rokiah Alavi 216-225
- Toward An Ideal Balance of Islamic Banking Products Portfolio The Case of Sharia Bank Industry in Indonesia**
Muhammad Akhyar Adnan 226-236
- On The Unique Mindset of A Muslim Business Entrepreneur: A Micro Developmental View**
Sabri Osman, Abu Sa'im Md. Shohabuddin 237-255

Inter-Regional Economic Cooperation Among The Oic Member States: Iternative Solution Towards Poverty Alleviation <i>Muhammad Ghali Ahmed</i>	256-263
The Impact of Rising Oil Prices on The Malaysian and Indonesian Economy <i>Mohd Edil Abd. Sukor</i>	264-277
Ways to Improve Economic Growth in The Third World Nation: Nigeria <i>Sherif Abdul Raheem Ajiteru, El-Fatih Abdel Salam</i>	278-292
Synthesising A Corporate Paradox, Profit Maximisation Versus Social Responsibility: Based on The Quran <i>Siti Maimon Haji Kamso</i>	293-305
 POLITICS AND LEGAL ENFORCEMENT ISSUES	
Legal Analysis on The Concept and The Practice of Impeachment: A Comparative Study Between Abdurrahman Wahid Case and William Jefferson Clinton Case <i>Iwan Satriawan</i>	307-339
Perda Syariah' V.S. Constitution: The Study of The Implementation of Perda Syariah (Sharia Byelaw) in Indonesia <i>M. Endriyo Susila, Yordan Gunawan</i>	340-349
State and Islamic Human Development (A Political Perspective) <i>Tulus Warsito</i>	350-365
The Perplexed Issues of Morality and Law: The Case of Ooi Kean Thong <i>Mohd Iqbal Bin Abdul Wahab, Ahmad Ibrahim</i>	366-375
The Ruling on Refusal to Take An Oath in Islamic Jurisprudence and Its Application in The Shari'Ah Courts in Malaysia and Philippines <i>Badruddin Paguimanan Ahmad, Arif Ali Arif Fiqh, Usul Al-Fiqh</i>	376-396
Constraints and Political Developments in Afghanistan, 2001-2006: A Critical Appraisal <i>Mohd Nabi Habibi, El-Fateh Abdul Salam</i>	397-406
Why Does Islamization of Political Science Matter? <i>Ali Muhammad, Wahabuddin Ra'ees</i>	407-413

**The Struggle for Regional Dominance in The Horn of Africa;
Its Historical Roots and Future Scenarios**
Ahmed Omar Abdalleh@fahad, N.M. Yassin Ahmed Ibrahim 414-421

**The New Roles The Muslim Plays in Competitive and Relatively
Repressive International Relations.**
Dr. Bambang Cipto 422-427

SOCIAL, RELIGIOUS AND CULTURAL ISSUES

**An Instrument to Measure Work Values Among
Malaysian Workers**
Wan Rafaei Abdul Rahman, Che Su Binti Mustaffa 429-434

**Islamic Education for All: An Overview of Approaches
Taken Towards Systematizing Inclusive Islamic Education
in Singapore**
Sharifah Thuraiya Su'ad Ahmad Alhabshi, Mohyani Razikin 435-442

**Muslim Education in The Autonomous Region
in Southern Philippines: Problems and Solutions**
Jeehan Daisy Jane C. Orcullo, Ismaiel Hassanein Ahmed 443-448

**The Role of Concordance in Education:
A Case Study of The Meaning of If and Whether**
Suryanto 449-480

**Poverty, Muslim Activism, and Social Welfare The Philanthropic
Vision of Charitable Institutions in Indonesian Islam
(The Case Study of Muhammadiyah)**
Hilman Latief 481-492

**Persuasive Communication in Preaching
(Case Study Abdullah Gymnastiar and Ja'far Umar Thalib)**
Twediana Budi Hapsari, M.Si 493-505

**School Cost Escalation : Critical Ideas for Financial Reform
in Indonesia**
Nurwanto 506-515

**Empowering The Ummah Through Non Governmental
Organization: The Role of Muslim Intellectuals**
Ariff Bin Osman 516-522

**Muslim Countries and Development "Barriers to Development:
How to Address Illiteracy and Poverty in Comoro Islands"**

**'Perda Syariah' V.S. Constitution:
The Study of the Implementation of Perda Syariah
(Sharia Byelaw) in Indonesia**

M. Endriyo Susila
Yordan Gunawan
University of Muhammadiyah Yogyakarta

Abstract

The spirit of Muslims in Indonesia to live under Sharia increases during the last five years. The presence of the Local Government Act 2004 (Undang-undang Nomor 32 Tahun 2004 Tentang Pemerintahan Daerah) gives the authority to the local governments to manage their regions on their own wisdom under the principle of autonomy. In several regions such as Bulukumba, Padang, Cianjur, Tangerang, and Banten this great opportunity has been employed by the local governments to promulgate byelaws concerning sharia-related issues. These byelaws are politically known as Perda Syariah.

The subject matter governed by what so called Perda Syariah covers several issues. In Bulukumba for example, it governs the obligation to wear the Islamic dress for men and women, the obligation to be able to read the Qur'an for elementary students intending to continue their study at high school as well as for those who want to get married, and the obligation to pay Zakat, Infaq, and Shadaqah. Besides, some kinds of punishment ('Uqubah) known under Islamic Criminal Law (Jinayat), have also been introduced for several offences. Amazingly, the presence of Sharia Ordinance (Perda Sharia) in the District of Bulukumba-South Sulawesi has effectively reduced the number of crimes in that region. The case of theft for instance, has drastically decreased from 78 cases in last year to zero case nowadays. The same phenomenon has also happened in the case of rape, which has decreased from 41 cases to zero case recently.

*It is undeniable that the application of what so called Perda Syariah in Bulukumba constitutes strong evidence to prove that the non-criminal society can come into reality, not just a dream. This great success has influenced other districts to follow it. Recently, around 37 districts in Indonesia are in the preparation of promulgating the same byelaws. However, the emergence of what so called Perda Syariah in several regions in Indonesia has invited attacks and criticisms. The objection basically to be referred to reasoning that it contradicts to the State Ideology (Pancasila), Constitution, and legislations of higher level. The position of byelaw is hierarchically subordinate against statute. According to the Law Making Procedure Act 2004 (Undang-undang Nomor 10 Tahun 2004 Tentang Prosedur Pembuatan Peraturan Perundang-undangan) the position of byelaw (Perda) is on the bottom comparing to statute. The law determines that the rule of the lower level should not be in contradiction with the upper level one. There is a legal maxim relating to this issue; *lex superiory derogate legi inferiori*.*

This paper tries to analyze whether the existence of the Sharia Byelaws (Perda Sharia) contravenes the State Ideology (Pancasila) and the Constitution or conversely they are inline with them.

Keywords: *Sharia byelaw, Autonomy, Constitution*

Introduction

The struggle for the implementation of Sharia upon Muslim in Indonesia continuously runs along Indonesian history. Several weeks before independence, a debate took place among the founding fathers on the issue of *dasar negara* (the basis of state, state ideology). The Muslims representatives proposed Islam as the basis of the state, but the proposal rejected by the nationalists and of course by the minority non-Muslims too. The result is Pancasila¹ (the Five Principle) was chosen.

First principle of Pancasila states, "*Ketuhanan Yang Maha Esa dengan kewajiban menjalankan Syariat Islam bagi pemeluknya* (believe in God (the One)² with obligation to perform shariah for Muslim)". Such a phrase also found in the Constitution 1945. Article 29 states that, "the state of Indonesia based on the principle of believing in God (the One) with the obligation of Muslim to perform the Sharia." Hence, the state of Indonesia identified as neither theocracy (Islamic state) nor secular state.

This concept considered as a middle way and hoped to be what so called win-win solution where the aspiration from both side accommodated. Unfortunately, the phrase '*dengan kewajiban menjalankan syariat Islam bagi pemeluknya* (with obligation to perform the Sharia for Muslim)' or what so called 'the seven words' erased from both Pancasila and Constitution 1945 one day after its existence. This policy taken to respond the issue that people of eastern Indonesia will separate from, if 'the seven words' is still there.

This incident (the deletion of the seven words) stimulates 'angry' of several parts of Muslims. We see along the Indonesian history some rebellions struggling for establishing Islamic state and political struggle to return the seven words back. It is probably the reason why the minority non-Muslim and some of the nationalists always suspects any effort made by Muslim relating to sharia as an initiation to establish the Islamic state in Indonesia, hence unreasonable rejections sometimes arise.

Once again, objection and rejection they made in responding the presence of the 'Perda Sharia' in several districts in Indonesia recently. In the case of Perda Syariah, rejection comes from activists, lawyers, academicians, political leaders as well as parliament members. The issues they rise up are mainly about gender bias, discrimination upon the minority, violation upon pluralism and national unity, and violation upon the spirit of Pancasila (the state Ideology) and the Constitution. On the other hand, the supports upon it come in much bigger volume. Controversy³ upon the existence of what so called 'Perda Sharia' colors our media in the last two years.

Kompas Daily reported that 56 parliament members rejected those byelaws and sent a letter to the Chairman of the House of Representative (DPR) for it. They

¹ Pancasila is a name of state ideology, originated from Sanskret meaning five principles. It covers five issues as follows; believe in God; humanity; unity, democracy, and social justice.

² It should be clear that the term used is God the One, not one God because it is impossible to offer one God for different religions. The term 'God the One' connotes that the God belongs to any religion.

³ Controversy on Perda Syariah is not the first happening in Indonesia. There some controversies taking place previously such as controversy on the implementation of Sharia in Aceh, National Educational System Bill, and Anti Pornography Bill.

pushed the Chairman to ask for the President in order to cancel those Byelaws⁴. This political maneuver is sponsored by Partai Damai Sejahtera (Peaceful and Prosperous Party), a Christian faction in the House. This maneuver invites strong reaction from people benefited by the presence of those byelaws, and encountered by the other parliament members. Around 134 parliament members sponsored by Partai Keadilan Sejahtera (Justice and Prosperous Party) and Partai Persatuan Pembangunan (Unity Development Party) pushed the Chairman of the House to reject the proposal of the former group⁵.

Adnan Buyung Nasution, a senior lawyer, accused that Perda Syariah (Sharia Byelaw) is illegal hence not to be imposed in Indonesia⁶. Hasyim Muzadi, the Chairman of Nahdlatul 'Ulama opines that such byelaws are unnecessary since the subject matters have been governed in Penal Code. The presence of such a byelaw is a mere repetition of the Penal Code⁷. Syafii Maarif, the previous Chairman of Muhammadiyah is of the same standpoint⁸.

HM Amin Syam, the Governor of South Sulawesi, comments, "incase byelaws which are influenced by religious norms should be cancelled, there will some legislations of higher level to be cancelled too". "We have Zakat Act and Pilgrimage Act, all are from Sharia", he explains⁹.

Daud Kahal, the Head of Information and Communication Biro of the District of Bulukumba, says that since liquor regulated under byelaws the number of criminality drops significantly. Besides, the regulation on Zakat under the byelaw in question has given big contribution in financing educational infrastructure and worshiping infrastructure. In several places, even the income from Zakat more than from tax¹⁰.

Andi Partabai Pobokari, the previous Mayor of District of Bulukumba explains that the application of what so called Perda Syariah in Bulukumba supported by the Non Muslim¹¹.

Ilham Arif Sirajuddin, the Mayor of Makassar, says that political action of the 56 parliament members will not stop him to propose byelaw on liquor and Zakat considering that such a regulation gives real contribution for the developmental program and for increasing security in his region¹².

A critical commentary proposed by Adian Husaini in responding the rejection of some parliament members upon the byelaws. He states that political action they made is not serious from the substance point of view. The action is merely a form of an opinion making aimed at demonising Sharia. They try to influence people to

⁴ Kompas Daily, published on June 14, 2006

⁵ Adian Husaini, "Mempersoalkan Perda Syariat", retrieved from <http://www.hidayatullah.com>, November 21, 2006

⁶ Retrieved from <http://www.hukumonline.com>, on November 11, 2006

⁷ "Ketua PBNU: Tak Perlu Perda Syariah", article retrieved from <http://www.Nopember> 20th, 2006

⁸ Syafii Maarif: Perda Syariah Tak Perlu, article retrieved from <http://www.tempointeraktif>

⁹ "Gelora Syariah Mengepung Kota, Gatra Magazine, 25th Edition, May 25, 2006

¹⁰ "Perda Syariah di Bulukumba Juga Didukung Non-Muslim, retrieved from <http://www.antaraneews.com>, November 21, 2006

¹¹ "Umat non Muslim juga mendukung penerapan perda-perda bernuansa syariah di Bulukumba", retrieved from <http://www.republika.com>, November 21, 2006

¹² Retrieved from <http://www.republika.co.id>, on June 16, 2006

look at sharia in negative view. Sharia potentially endangers the unity among the citizen¹³.

Based on all controversies above, we come into a fundamental question of what Perda Syariah (Sharia Byelaw) actually is.

Knowing 'Perda Syariah' Closer

What is widely known as Perda Sharia alongside the discussion is actually a form of legislations made by the local governments (byelaws) containing Islamic moral values. There are two levels of local government possessing authority to make Perda¹⁴ (byelaw) in Indonesia namely province and district. The term 'Sharia' added initially by those who reject it, suspecting that the presence of those byelaws is a form of the formalization of the sharia into Indonesian legal system. It is stimulated by the assumption that there are some sharia-related issues inside.

The presence of what so called 'Perda Syariah' constitutes a consequence of the enactment of the Local Government Act 2004 (Undang-undang Nomor 32 Tahun 2004 Tentang Pemerintahan Daerah). The Act gives an authority to the local governments to manage their regions on their own wisdom under the principle of autonomy. This great opportunity employed by the local governments to promulgate byelaws containing sharia-related issues, which widely known as Perda Syariah.

Bulukumba of South Sulawesi is the first district applying what so called Perda Syariah and earns great success. It inspires other districts and regions to apply the similar byelaws. Recently not less than 37 districts in Indonesia apply what so called Perda Syariah including district of Cianjur, Padang, Tangerang, and Banten.

The subject matter governed in those byelaws (Perda) covers several issues. In Bulukumba for example, the byelaw governs the obligation to wear the Islamic dress for men and women, the obligation to be able to read the Qur'an for elementary students intending to continue their study in high school as well as for those who want to get married, and the obligation to pay Zakat, Infaq, and Shadaqah. Besides, some kinds of punishment (*'Uqubah*) known under Islamic Criminal Law (*Jinayat*), have also been introduced for several offences.

Amazingly, the presence of Sharia Byelaw (Perda Sharia) in District of Bulukumba-South Sulawesi has effectively reduced the number of crimes in that region. The case of theft for instance, has drastically decreased from 78 cases in last year to zero case nowadays. The same phenomenon has also happened in the case of rape, which has decreased from 41 cases to zero case recently¹⁵. It is undeniable that the application of what so called 'Perda Syariah' in Bulukumba constitutes strong evidence to prove that the non-criminal society can come into reality, not just a dream.

¹³ Adian Husaini, *Op. cit*

¹⁴ Perda is an abbreviation of Peraturan Daerah (byelaw), one of legislations recognised under the Legislation Making Procedure 2004 (Undang-undang Nomor 10 Tahun 2004)

¹⁵ "Gelora Syariah Mengepung Kota", *Gatra Magazine*, 25th Edition, May 25, 2006

The Issue of Formalization of Sharia

The establishment of the Republic of Indonesia was initiated with proclamation of independence on August 17th, 1945. The first principle of Pancasila (the state ideology) mentions "Ketuhanan Yang Maha Esa dengan kewajiban menjalankan Syariat Islam bagi pemeluknya (believe in God (the One) with the obligation to obey sharia for Muslim)" constitutes spiritual basis in administering the state. Apart from the fact that the life of the seven words only one day, however, for many people, the Proclamation of Indonesian Independence is also a proclamation of the implementation of the Sharia for Muslim.

The spirit to live under sharia remains exists in the heart of Muslim in Indonesia. The struggle for it continuously runs from time to time. In terms of the strategy for realising it, Muslims divided into two groups. One group intends to apply the sharia formally and the other one prefers to an informal way. If the former insists on the application of the sharia for Muslim in its formal forms, the later is satisfied if the spirit of sharia accommodated in the legal system.

The first group represented by several organizations such as Hizbut Tahrir Indonesia (HTI), Partai Keadilan Sejahtera (PKS), Majelis Mujahidin Indonesia (MMI), Front Pembela Islam (FPI) and Forum Tokoh Peduli Syariah (Fortops). While Muhammadiyah and Nahdlatul 'Ulama may be considered as the second group. The first group struggles for 'Islamizing' the law and it seems that the issue of the formalization of sharia arose from here.

The situation in Indonesia nowadays can be considered a best moment for the first group. Some progresses obtained within the last five years. Initiated by the application of Sharia in Aceh Province, several years ago, some districts of other provinces start to introduce what so called Perda Syariah in their regions benefiting from the new policy of regional autonomy after the Local Government Act 2004 promulgated. For the first group the presence of what so called Perda Syariah in several regions in Indonesia recently is constitutes a great achievement.

Even though the presence of what so called Perda Syariah faces many challenges, but those supporting it is much more. National survey made by the Center of Islamic and Community Studies, Islamic State University of Jakarta (UIN Jakarta) shows that support against the application of Sharia increases from year 2001 to 2004, reaching more than 70 percent¹⁶.

Perda Syariah and the Issue of Disintegration

Those who reject Perda Sharia argue that the existence of such legislation will potentially promote national disintegration. People in several regions of eastern Indonesia where Muslim become minority such as Sulawesi Utara, Bali, Papua, and Nusa Tenggara Timur (NTT) generally worry looking at the emergence of Sharia Byelaw. They are anxious that the emergence of sharia byelaws will violate national unity. Religion for them should not enter into legislation¹⁷

¹⁶ *Ibid*
¹⁷ *Ibid*

It looks like a mere paranoia. What they worry is only a byelaw prohibiting some immoral and destructive conducts, such as the distribution of alcohol and prostitution. Peraturan Daerah No. 7 tahun 2005 issued in District of Tangerang for example, governs the prohibition of selling and distributing of alcoholic drink. While Peraturan Daerah Nomor 8 tahun 2005 on the other hand, govern the prohibition of prostitution. The prohibition of consuming intoxicating drink and prostitution recognised not only in Islam but also in other religions.

Patrialis Akbar, one of the members of parliament, states that 'if those byelaws to be cancelled, it will only show that we agree with *maksiat* (immoral conduct)'. He adds that those byelaws are not explicitly of Shariah. Perda Syariah (Sharia Byelaws) can only prevail in Aceh¹⁸.

On the other hand, Ma'ruf Amin, the Chairman of the Indonesian Ulema Council (MUI), states that there is no contradiction between Sharia byelaw and the Constitution even the Constitution itself gives moral basis for it¹⁹.

In fact, the presence of those byelaws gives a lot benefit to the society. Success story does not come only from Bulukumba. The application of such a byelaw in some other districts has also obtained good achievement. In Pandeglang, one of districts in Banten Province, under what so called 'Perda Syariah', male and female students separated during educational process in school. Separation of male and female students during educational process at school has reduced the number of sexual abuse happening in the school and prevented free intercourse among the students²⁰.

Another issue risen up by the disagreed is pluralism. The presence of such byelaw alleged as violating pluralism in Indonesia. For some people, the presence of byelaws containing shariah norms is ignoring the reality of pluralism. This allegation seems to be an exaggeration. It is not the first time we have byelaws introducing religious norms. In Bali and in Toraja there are byelaws made for actualising religious norms other than Islam. So far, those byelaws prevail peacefully, and there is no objection from Muslims.

Perda Syariah and the Issue of Constitutionality

The argumentation of the rejection upon the sharia byelaws can be classified into two categories namely political argumentation and legal argumentation. Those who relate the rejection with the issue national disintegration and pluralism to be considered employing political argumentation; while those who relate their rejection with the issue of constitutionality are considered proposing legal argumentation.

Assumption that the existence of those byelaws contradicts the spirit of Pancasila and Constitution 1945 comes from several groups of society. They did not explain clearly which principle of Pancasila or which article of the

¹⁸ "Jika Perda-Perda itu Dicabut, Berarti Kita Setuju dengan Kemaksiatan, an interview with Patrialis Akbar, retrieved from <http://www.eramuslim.com>, on June 29, 2006

¹⁹ "MUI: Tidak Ada Perda Syariah", retrieved from <http://www.kompas.com>, November 21, 2006

²⁰ "Kontroversi Perda Syariah", retrieved from <http://www.lioutan6.com>, November 21, 2006

Constitution has been violated, but only mention the spirit of Pancasila and Constitution 1945. If so, it is actually a matter of interpretation distinction. In fact, the presence of the byelaws is a kind of an implementation of the principle of autonomy under the Local Government Act 2004 (Undang-Undang Nomor 32 tahun 2004 tentang Pemerintahan daerah), not the implementation of Sharia.

M. Ma'ruf, the Minister of Internal Affairs, convinces that there is no constitutional infringement.²¹

Prof. Dr. Jan Michiel Otto, the Director of Van Vollenhoven Institute for Law, Governance and Development, University of Leiden, suggests that research is needed to evaluate the constitutionality of those byelaws, but as far as they prohibit gambling, prostitution, and liquor, they are not different from Penal Code (KUHP) and consequently they do not transgress the constitution.²²

MUI does not acknowledge the existence of Perda Syariah in Indonesia. What really exist are regulations containing Islamic values arriving for the sake of the interest of the society in a whole and agreed by many political parties²³.

Maftuh Basyuni, Minister of Religion, reminds that no law purely from our own. Penal Code (KUHP) is from Dutch and no one question it. Principally, a byelaw is acceptable as long as it does not contradict to the higher level legislation²⁴.

Agung Laksono, the Chairman of the House of Representative, comments the use of the term 'Perda Syariah' for calling several legislations made by the local government (byelaws) is inappropriate. He argues, Byelaw on Prostitution as prevail in the district of Tangerang cannot be considered as Perda Syariah²⁵.

Controversy on the presence of Perda Syariah (Sharia Byelaw) has also invited commentary from Vice President Jusuf Kalla. He suggested people not to question the presence of Perda Anti Maksiyat (Anti Immoral Conduct Byelaw) as long as it is inline with the Constitution. According to him, what so called Perda Syariah are not in contradiction with the Constitution. The existing laws also contain sharia provisions. He delivered this statement when opening the 9th Muslim Women Convention held in Jakarta on July 5th, 2006²⁶.

Local Government Act 2004 (Undang-undang Nomor 32 Tahun 2004 Tentang Pemerintahan Daerah) determines that the authority to review byelaws is on the hand of the Internal Affairs Department. According to Section 145 of the Act, byelaw (Perda) is subject to the control of the government. If a byelaw invites an objection, it can be submitted to the government for evaluation. If there is no

²¹ "Mendagri: Perda Syariah Masih Dalam Lingkup UU Pemda", retrieved from <http://www.kompas.com>, on August 21, 2006

²² "Gelora Syariah Mengepung Kota", Gatra Magazine, 25th Edition, June 25, 2006

²³ "MUI: Tidak Ada Ada Perda Syariah", retrieved from <http://www.kompas.com>, November 21, 2006

²⁴ "Pro Kontra Pemberlakuan Perda Syariah", retrieved from <http://www.ob.or.id/modules.php?name=news&file=article&sid=398>, on November 21, 2006

²⁵ "Luruskan Istilah Perda Syariah", retrieved from <http://www.republikaonline.com>, November 21, 2006

²⁶ "Wapres: Tak Perlu Mempersoalkan Perda Syariah", retrieved from <http://www.hidayatullah.com>, November 21, 2006

cancellation made by the government within 60 days after promulgation, this byelaw will come into effect automatically. However, if a byelaw contravenes the higher level legislations, government can cancel it by issuing Presidential Decree. If the decision of cancellation rejected by the local government based on legally acceptable reasons, the local government in question can propose an objection against the decision of cancellation to the Supreme Court (MA). If the Supreme Court accepts the objection fully or partially, Presidential Decree is cancelled by the Supreme Court and it will be no more valid accordingly.

Now we come to the judgement whether the existence of byelaws promoting good behaviours and prohibiting immoral conducts constitutional or unconstitutional. It is difficult to understand the preposition that those byelaws are unconstitutional considering that the freedom of citizen to express their religiousness is legal under the constitution 1945.

Conclusion

Based on all discussion above, some conclusions can be made as follows;

1. The byelaws in question are actually not Sharia Byelaws (Perda Sharia) as accused by those who disagree with them. There is no a single byelaws in question use the word 'sharia'. The indication showing that the subject matters of those byelaws purely from Sharia, cannot also be found. That there are similarities between subject matters of the byelaws with Islamic values is a fact, but to conclude that they are Sharia byelaws is too early. The reason is; firstly, the similarities occur not only with Islamic values (sharia) but also with customary law²⁷. There is no accepted customs as well as religion allowing prostitution, gambling and drinking alcohol. Besides, those three immoral conducts (*al-Maksiyat*) are of criminal offences recognized under Penal Code. Another reason is that, the references used in promulgating the byelaws are all in the form of statute and none of sharia.
2. What widely known as Perda Sharia is basically delegated legislation made by the local government (byelaw) to reduce and to prevent immoral conducts (*al-maksiyat*) which are prohibited by all religions such as prostitution, gambling, and drinking alcohol. It is exaggerating to say that such byelaws should not exist in Indonesia, the most populous Muslim country, while in Australia for example, the prohibition of prostitution, gambling and drinking alcohol is found.
3. The presence of byelaws in question in several regions and districts have given real contribution in improving the quality of life for the society. In District Bulukumba especially, the existance of the byelaws has succesfully reduced the number of crimes, hence supports do not come only from Muslim but from non Muslim also.
4. There is no contradiction between the byelaws with Pancasila, Constitution and with legislation of higher level. In fact, Pancasila and Constitution 1945

²⁷ Customary law prevailing in Padang is originated from Sharia. It can be concluded from the principle of *Adat basandi Syara', Syara' basandi Kitabullah* (Customs based on Sharia, Sharia based on the Book of Allah).

give legitimacy for the appearance of the byelaws. The first principle of Pancasila, *Ketuhanan Yang Maha Esa* (believe in God The One), shows that there is a very close relationship between state and God (Allah for Muslim). Believing Allah can be realised through the obedience upon His rules (Sharia for Muslim). Constitution 1945 provides clearer basis for this issue. Article 29 states that the state ensure the freedom of the citizen to worship in accordance with their religion. Worship in Islam includes adhering the sharia. Unfortunately, some people have made reduction on it. For them the coverage of worship is limited only those relating to ritual action such as prayer, fasting, paying zakah, and pilgrimage.

5. The presence of the byelaws followed all procedures of the law-making process required related statute (Undang-undang Nomor 10 Tahun 2004). The byelaws are purely a result of democratic process. The prevalence of the byelaw does not violate the principle of democracy since the rules only bind Muslim.
6. The objections against the existence of the byelaws are not supported by legal arguments but more of political arguments. There is not enough evidence that the presence of byelaws will threaten pluralism and stimulate disintegration. Strong rejection from some groups of society is promoted by misunderstanding upon the Sharia and prejudice against the government. In short, rejection is a mere paranoia and the expression of Islamophobia.

Recommendation

At last, the author propose some recommendation as follows;

1. Controversy should stop in order to avoid disintegration. To stop the controversy either executive review by Departemen Dalam Negeri (Internal Affairs Department) or judicial review by Mahkamah Agung (Supreme Court) is recommended.
2. The local executive leaders and parliament members should not bring this issue merely as a political issue, but they have to prove that the presence of what so called Perda Syariah will bring goodness for the society in a whole. The principle of *rahmatan lil alamin* (mercy for the universe) should arrive in a reality.

Bibliography

Legislations

Indonesian Constitution 1945

Legislation Making Procedure Act 2004 (Undang-undang Nomor 10 tahun 2004 Tentang Pembuatan Peraturan Perundang-undangan)

Local Government Act 2004 (Undang-undang Nomor 32 Tahun 2004 Tentang Pemerintahan Daerah)

Articles

Gelora Syariah Mengepung Kota", Gatra Magazine, edition., May 25 2006 edition

Mendagri: Perda Syariah Masih Dalam Lingkup UU Tentang Pemda", Kompas Daily, published on August 23, 2006

"MUI: Tidak Ada Perda Syariah", Kompas Daily, published on July 11, 2006

"Aa Gym Minta DPR Pahami Perda Syariah", Media Indonesia Daily, published on June 21, 2006

Adian Husaini, *"Mempersoalkan Perda Syariah"*, retrieved from <http://www.hidayatullah.com>, on Monday, June 19, 2006

_____, *Perda Syariah Bulukumba Juga Didukung Non-Muslim*, retrieved from <http://www.antara.com>, on November 21, 2006

"Dephukham Harus Ikut Mengkaji Perda Bernuansa Syari'at", retrieved from <http://www.hukumonline.com>, on Saturday, November 11, 2006

"Luruskan Istilah Perda Syariah" an article retrieved from <http://www.republikaonline.com>, November 21, 2006

"Jika Perda-Perda itu Dicabut, Berarti Kita Setuju dengan Kemaksiatan", an interview with Patrialis Akbar, retrieved from <http://www.eramuslim.com>, on November 21, 2006

"Kontroversi Perda Syariah", retrieved from <http://www.liputan6.com>, November 21, 2006

"Mendagri: Perda Syariah Masih Dalam Lingkup UU Pemda", retrieved from <http://www.kompas.com>, on August 21, 2006

"Pro Kontra Pemberlakuan Perda Syariah", retrieved from <http://www.ob.or.id/modules.php?name=news&file=article&sid=398>, on November 21, 2006

"Wapres: Tak Perlu Mempersoalkan Perda Syariah", retrieved from <http://www.hidayatullah.com>, November 21, 2006