

The Role of Islamic Law (Sharia) in Post-Tsunami Reconstruction

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Introduction

Few issues have generated as much controversy as Islamic law (sharia) in post-tsunami, post-conflict Aceh. Many of the international aid agencies involved in the large-scale reconstruction and rehabilitation effort have viewed sharia with suspicion and concern. Others have implicitly or explicitly supported the expanding application of Islamic law, by providing funding and other forms of humanitarian assistance to Acehnese religious institutions and organizations. Aceh's evolving Islamic legal system has also been the subject of heated national debate. As the only Indonesian province authorized to implement Islamic law in its entirety, Aceh has been viewed by Islamist groups as a model for the rest of the country, but by certain moderate Muslim and non-Muslim organizations as a potential threat to Indonesia's pluralist foundations.

The divisions between proponents and detractors of Islamic law have fuelled debate about whether sharia has a constructive role to play in the reconstruction of Aceh. There have been questions about whether Islamic law, as it has so far been interpreted and implemented, has assisted or impeded the large-scale reconstruction and rehabilitation effort. How has it affected the development priorities and programmes of international donors and aid agencies? Has it served as a panacea for social disunity and conflict, as the Indonesian government and Islamic leaders and scholars (*ulama*) intended, or has it created new destabilizing tensions within Aceh and in its relations with the outside world?

This chapter considers these questions from the viewpoints of the key stakeholders involved in Aceh's reconstruction; namely, the international and foreign humanitarian agencies at work in Aceh, Indonesian government officials, *ulama*, former Free Aceh Movement (*Gerakan Aceh Merdeka*, GAM) rebels and Acehnese NGOs and civil society organizations. It begins with a brief background of Islamic law in Aceh. The perspectives and

attitudes of the main governmental and non-governmental stakeholders about the role of sharia in the reconstruction process are then canvassed, as well as the points of correspondence and contention between them. Finally, the implementation of Islamic law is briefly examined within Aceh's post-tsunami, post-conflict policy environment to ascertain its role in the rebuilding of Aceh.

The central conclusion of the analysis is that while Islamic law could potentially play a constructive role in Aceh's efforts to rebuild itself, by emphasizing social welfare and justice, it has so far reinforced unequal power hierarchies, rather than promoting the formation of a more egalitarian society. In this, the 'constructive role' of sharia is considered in terms of the extent to which it has empowered Acehnese communities to regain control over their own lives. Further, it is argued that Islamic law, as it has been interpreted and applied in Aceh, appears to have been primarily concerned with morality as an end in itself, rather than with the Islamic principles of social justice and welfare as means to a greater end. This narrow focus has in turn contributed towards the growth of a kind of moral vigilantism, making it difficult for the public to hold to account those legally responsible for enforcing sharia, while at the same time enabling opportunistic Islamist groups to take the law into their own hands.

Background

Formally called Nanggroe Aceh Darussalam (lit; State of Aceh, Abode of Peace), Aceh has a reputation as the most devoutly Islamic region of Indonesia. Also known as *Serambi Mekkah* (Verandah of Mecca), the almost entirely Muslim region¹ was the first entry point for Islam into the Indonesian archipelago, via Indian and Arabic traders in the 8th century CE.² Over the centuries, Acehnese culture, customary law (*adat*) and identity have been heavily imbued with Islamic principles and practices, as embodied in the Acehnese saying, *adat ngon hukom lagee zat ngon sifeuet* ('the relationship between *adat* and (Islamic) law is like our essence with our character').³

Acehnese claims to a distinctive identity, however, have never been based solely on Islam. Though Acehnese uprisings against Indonesian rule were influenced strongly by Islamic conceptions of social justice and *jihad* (holy war), they largely stemmed from grievances over external interference and neglect. Acehnese involvement in the *Darul Islam* (House of Islam) rebellion of the 1950s and early 1960s resulted mainly from regionalist anger over Aceh's incorporation into North Sumatra, and eventually subsided after Jakarta reinstated the province of Aceh and conferred in

principle *Daerah Istimewa* (Special Region) status to the Acehnese people in the fields of religion (Islamic law), education and *adat*.⁴ Aceh's first separatist insurgency, which was launched in 1976 by the Free Aceh Movement (GAM), shared some common grievances with the *Darul Islam* rebels, such as regional resentment over the New Order regime's centralizing state policies, which gradually rendered meaningless Aceh's *Daerah Istimewa* status. Unlike the *Darul Islam* insurgents, however, who sought to establish an autonomous Aceh province within an Islamic Indonesian state, GAM 're-declared' the 'free and independent Sovereign State' of 'Acheh-Sumatra' with the aim of severing all ties with the 'foreign regime of Jakarta and the alien people of the island of Java'.⁵ Although virtually all GAM rebels were Muslims, the independence movement was explicitly nationalist in nature, basing its claims to territorial sovereignty on the construct of a distinctive Acehnese ethnic, linguistic, cultural, historical and geographically specific identity. GAM never sought to establish ties with Islamic movements elsewhere, and rejected Indonesian government offers to implement sharia in Aceh. For GAM, such offers were aimed at dividing Acehnese society and discrediting their cause in the eyes of the international community, 'to make us look like Afghanistan'.⁶

Though the fundamental issue that separated GAM and the Indonesian government for almost 30 years until both sides signed a peace agreement in Helsinki in August 2005 was competing nationalisms, and not religion (Islam), many in Jakarta believed that Islamic law could help to resolve the Aceh conflict. This belief became increasingly central to Indonesian government thinking following the collapse of the New Order regime in 1998, when politicians and legislators in Jakarta began to look towards decentralization, or regional autonomy, as the most democratic way of containing destabilizing centrifugal forces and were prepared to recognize a 'special' place for separatist regions like Aceh within Indonesia's unitary state. It was this rationale that informed the development of Law no 44/1999 on the 'Special Status of the Special Province of Aceh', which granted Aceh the right to implement Islamic law and to organize its own religious, customary law and educational affairs. The law also envisaged the creation of an independent *ulama* council with the same status and decision-making powers as Aceh's provincial parliament.⁷ Based on the three key tenets of the *Darul Islam* settlement, Law no 44/1999 reflected the dominant view in Jakarta that the contemporary conflict had stemmed from the New Order's failure to honour Aceh's special autonomous status. Related to this belief was the idea that Acehnese support for GAM would gradually decline if Acehnese *ulama* were restored to their pre-New Order position of socio-political influence. Among nationalist Islamist groups and organizations, which tended to portray Aceh as a symbol of the New Order's perceived injustices against

Muslims, there were also growing calls to implement sharia in Aceh as part of their broader goal to introduce Islamic law in other parts of Indonesia.⁸

Whereas Aceh's *Darul Islam* insurgents would have welcomed the opportunity to implement sharia, the structure and expectations of Acehnese society had undergone major changes since the 1960s.⁹ Acehnese *ulama*, like religious leaders elsewhere in Indonesia, had been emasculated under the New Order, and what little influence they retained had been through their incorporation into its institutional framework. In Aceh, *ulama* who joined the state-sponsored MUI (*Majelis Ulama Indonesia*, Indonesia Ulama Council) had been co-opted into the Indonesian military's territorial campaign against GAM during Suharto's final decade in power, when Aceh had effectively been turned into a Military Operations Area (*Daerah Operasi Militer*, DOM).¹⁰ Rural-based *ulama* who did not join the MUI or other state-sanctioned institutions were either arrested, or confined to an educational role in their Islamic boarding schools (*dayah*). After Suharto's resignation, MUI *ulama* in particular were unable to achieve significant political influence as many Acehnese people, whose daily experience of Indonesian authority was violence, 'preferred to listen to students and NGOs than to government officials and *ulama*'.¹¹ Law no 44/1999 was also passed weeks after the East Timorese people had successfully voted to secede from Indonesia, in a United Nations monitored referendum. For many Acehnese, who were angered by Jakarta's ambivalence about past and ongoing human rights violations committed by Indonesian security forces personnel, the most tangible embodiment of democracy was Aceh's own university student-led referendum movement (*Sentral Informasi Referendum Aceh*, SIRA), with its rallying call to decide Aceh's political status via popular ballot. The precariousness of Indonesian authority in Aceh was underscored in November 1999, when about 500,000 of Aceh's 4.2 million people gathered at the Baiturrahman mosque in Banda Aceh to demand a referendum on Acehnese independence. Even Acehnese *ulama*, who stood to benefit most from Islamic law, were divided between the minority of pro-integration urban-based MUI *ulama* and the rural-based Islamic boarding school *ulama*, who warned that 'the *dayah ulama* are ready to face the consequences' if the students' referendum demand was not met.¹²

It was within this context that the successive governments of Abdurrahman Wahid and Megawati Sukarnoputri adopted a dual-track Aceh policy approach that involved acquiescing to military pressure for more intensive counterinsurgency operations against GAM on one hand (as shown, for example, by the sharp annual increase in Aceh's civilian death toll between 1999 and 2004),¹³ while searching for a political solution to the conflict on the other hand. This latter approach took the form of a limited

peace process with GAM and a more comprehensive 'special autonomy' package pursuant to Law no 18/2001, which changed Aceh's name to Nanggroe Aceh Darussalam (NAD) and granted the province greater self-government in three core areas: (1) a greater share of its natural resource wealth, (2) the right to hold direct democratic local elections, and (3) authority to establish its own Islamic court system (called *Mahkamah Syari'at*).¹⁴ Law no 18/2001 was hardly implemented, however, amidst Aceh's deteriorating security situation, war-damaged infrastructure and unpopular political leadership, widely seen as corrupt. What limited advances were made under the new special autonomy arrangement were in the field of Islamic law, largely because of the political assertiveness of a newly formed MPU (*Majelis Permusyawaratan Ulama*, Consultative Council of Ulama) and a government sharia agency (*Dinas Syariat Islam*), which were established in July and August 2001 respectively and acted quickly to 'socialize' Islamic law among the local population.¹⁵ The MPU and sharia agency were also actively involved in drafting a slate of regional regulations (*qanun*) on Islamic law in accordance with Law no 18/2001 in preparation for the establishment of the *Mahkamah Syari'at*.

Although these sharia *qanun* and the *Mahkamah Syari'at* were introduced before the December 2004 tsunami, it was only in the aftermath of the natural disaster that Islamic law took on a life of its own. There were at least four reasons for this.

First, a basic Islamic legal framework had already been established in the form of a series of sharia *qanun* and gubernatorial decrees that were passed by Aceh's provincial parliament between 2002 and 2004. These *qanun* were by no means comprehensive, covering as they did only rudimentary guidelines on the structure and functions of sharia courts, the implementation of Islamic law in the areas of faith (*aqidah*), devotion (*ibadah*) and the greatness/magnificence of Islamic teachings (*Syi'ar Islam*). The *qanun* also included specific penalties in the form of imprisonment, fines and public canings for moral violations of Islamic law, such as the sale and consumption of alcohol (*khamar*), gambling (*maisir*) and illicit relations between men and women (*khalwat*).¹⁶ Aceh's Islamic legal framework was further reinforced by the introduction in July 2006 of a Law on Governing Aceh (Law no 11/2006, LoGA), which included three chapters on sharia: 'Syari'at Islam and its Implementation' (Chapter XVII), the 'Syari'yah Court' (Chapter XVIII) and the 'Ulama Consultative Assembly' (Chapter XIX). The LoGA required all Muslims domiciled in Aceh to follow Islamic law, all individuals in Aceh to respect sharia, and outlined the authority of Aceh's sharia courts in the fields of civil, family and criminal law.¹⁷ While Indonesian legislators predicted that Aceh's Islamic legal system would take 'more than one hundred years'¹⁸ to complete, the existence of these laws

and by-laws, combined with the sharia courts and a newly established vice squad, the *Wilayatul Hisbah* (lit; Control Team), meant that Islamic law could be enforced, albeit initially in a limited form.

Second, Aceh's religious bureaucracy became increasingly assertive in expanding its own authority after the tsunami.¹⁹ In particular, Aceh's sharia agency and the *Wilayatul Hisbah* (WH), which shared the same headquarters in Banda Aceh, became more zealous in their efforts to monitor the implementation of Islamic law. When the green-and-white uniformed WH was first established in 2004, it only operated in and around Banda Aceh.²⁰ By late 2006, however, the so-called 'moral police' had established a province-wide presence and had become far more vigilant in defending public morality. In the first half of 2007 alone, the WH handled 397 cases involving alleged violations of sharia, compared with 373 cases for all of 2006.²¹ Aceh's religious administration believed that Islamic law needed to be implemented in order for Acehese society to recover from the conflict and tsunami, and that its past failure to uphold sharia had contributed towards Aceh's contemporary problems. The WH's existence and expansion, however, was contingent on the presence of social maladies. As such, its vigilantism could not be divorced from its expansionary tendencies and desire to attract more state power and funding.²²

Third, Aceh's religious bureaucracy was able to assert its authority to the extent that it did because Aceh's political landscape changed dramatically after the tsunami.²³ Although the province remained under civil emergency rule for more than seven months after the tsunami, and intensive fighting between GAM and Indonesia's security forces continued in the countryside, GAM's political leadership and the Indonesian government decided to use the unique opportunity presented by the tsunami to search for a negotiated peace.²⁴ GAM remained basically opposed to sharia, but agreed to focus on the more substantive issue of Aceh's political status within Indonesia in a series of peace talks with Indonesian government representatives that were mediated in Helsinki by the former Finnish president, Maarti Ahtisaari, and his Crisis Management Initiative non-governmental organization. After these talks culminated in the signing of an historic peace agreement between both sides on 15 August 2005, GAM became more circumspect in their public criticism of Islamic law. One important concession by Jakarta through the Helsinki peace process was its decision to allow the Acehese to hold direct democratic local elections, and the former rebels were conscious of the fact that sharia was a highly sensitive political issue that could affect their own election campaign. According to a senior GAM representative, 'If we win [the election] we will put an end to sharia. But we have to be careful about how we approach this matter because most Acehese people accept it.'²⁵

Fourth, the accelerated expansion of Islamic law after the tsunami was made possible by a shift in public opinion. The great majority of Acehese people tried to make sense of, and cope with the natural disaster through religion. As the Christian²⁶ NGO World Vision observed, all of their Acehese interviewees believed that 'the culture of Islam is an excellent antidote to fear and grieving'.²⁷ Somewhat differently, Médecins Sans Frontières found in their psychological evaluation of tsunami victims in Banda Aceh that 'Without exception, the people we spoke with during the assessment understood the tsunami as a punishment or a warning from Allah for being "immoral"'.²⁸ Related to this popular belief that the tsunami was divine punishment for the collective sins committed by the Acehese people was the idea that strict adherence to sharia was necessary to prevent another disaster.²⁹ This message was often repeated by *ulama* during Friday prayers, either to advance their own conservative agenda, or to defend Acehese culture and values against the massive influx of foreign, non-Muslim aid workers and volunteers into Aceh, or both. For instance, during the first Friday prayers after the tsunami, the General Secretary of the Indonesian *Ulama* Council (MUI), Din Syamsuddin, told some 2000 worshippers at Banda Aceh's Baiturrahman Mosque that they might have been the cause of the disaster. 'Allah will not love us without also testing our love for Him ... Maybe this disaster was because we have forgotten Him and His teachings and failed to implement shariah law,' said Din Syamsuddin.³⁰ In a more widely publicized case, sharia judge H. Marluddin A. Jalil was applauded at a conference in the North Aceh capital of Lhokseumawe for saying that 'The tsunami was because of the sins of the people of Aceh' and 'The Holy Koran says that if women are good then the country is good.'³¹ Other religious leaders implausibly suggested that the tsunami was caused by the immoral conduct of women, because far more women died than men, and, unlike many men who wore shorts, more women were found naked because their sarongs were ripped off by the waves.³² The survival of mosques in Banda Aceh and the nearby fishing village of Lampuuk was also widely interpreted by sharia advocates as testimony of Allah's intervention in the disaster, and a warning to the Acehese to become better Muslims. Although national and international NGOs have since sought to dispel these superstitious explanations and to assuage the sense of guilt felt by many Acehese, by erecting roadside banners and providing tsunami/earthquake education programmes,³³ such messages have continued to be promoted in mosques throughout Aceh.

Little wonder, then, that sharia was accepted uncritically by many Acehese who sought solace in Islam and Friday prayers in the weeks and months after the tsunami. While few Acehese criticized Islamic law itself, however, certain groups and individuals expressed concerns about its

interpretation and application in Aceh. These tensions between advocates and detractors of Aceh's Islamic legal system are complicated and multi-layered, but a simplified version is presented in the following pages in order to assist our understanding of how sharia has been understood by the main stakeholders in Aceh as the province struggles to rebuild itself after the tsunami and after almost three decades of armed conflict.

Attitudes to Islamic law

How the key players in the reconstruction process have viewed Islamic law has varied considerably between different groups and organizations, and to a lesser extent, within them. There are already signs that the attitudes of foreign and international donors, Indonesian government officials, *ulama*, GAM and Acehese NGOs to sharia have affected their capacity to relate to one another, which in turn has implications for their normative commitment to a more coordinated aid effort. As the accelerated expansion of Islamic law in post-tsunami, post-conflict Aceh currently shows no signs of slowing down or stagnating, it is likely to influence future forms of engagement between foreign and Indonesian donors and their Acehese partners, as well as on their development priorities and activities in the region.

There has been a visible shift in the collective approach taken by the international development community towards sharia in Aceh. Divisions between foreign donors and aid agencies about the relevance of Islamic law to the reconstruction effort, that were quite pronounced immediately after the tsunami, have lessened considerably. This is largely because most of the foreign NGOs and aid agencies that openly criticized Islamic law were either asked to leave Aceh or left voluntarily, and those that remained passively accepted its inevitability or supported it. After the tsunami, the most vociferous critics of sharia were North American Christian missionary organizations.³⁴ Most of these proselytizing groups left within three months of their arrival, in part because of the lack of willing converts among Aceh's almost entirely Muslim population, in part because of threats by Islamist groups, and in part because of Indonesian government pressure. In the most public case, the North American Virginia-based Christian WorldHelp organization attempted in January 2005 to relocate 300 tsunami orphans from Banda Aceh to a Christian orphanage in Jakarta.³⁵ Drawing parallels between their own work and that of Mother Teresa, who placed Hindu children in Catholic orphanages in Calcutta, WorldHelp stated on its website that it would 'plant Christian principles as early as possible' in the minds of the Acehese Muslim orphans.³⁶ The Indonesian government, confronted by outraged Islamic organizations, quickly intervened and

banned all tsunami orphans from leaving Aceh on the grounds that the disaster had increased the risk of child trafficking.³⁷ As a result, WorldHelp 'immediately stopped all fundraising efforts' for Acehese tsunami victims and removed aid appeals from its website.³⁸

Of the foreign NGOs that remained in Aceh, the great majority refrained from publicly condemning Islamic law. Even the handful of Christian organizations that continued to work there did not openly evangelize, but tried to quietly promote their faith through their programmes. For example, the Michigan-based Christian International Aid organization aimed to 'demonstrate Christ's love' to the Acehese people, but emphasized the need to be 'appropriate in how we do it' by building medical training facilities in Banda Aceh.³⁹ While such faith-based organizations did not support sharia, they were conscious of the potentially inflammatory consequences of criticizing Islam and how this could undermine their credibility, activities and community relationships with their Acehese stakeholders. As Dudley Woodberry of the Fuller Theological Seminary explained: 'Most people are thinking that Christian witness involves both word and deed, so they are seeing this as a holy ministry,' but in tsunami-affected areas where they are not allowed to evangelize, 'it basically has to be the ministry of deed.'⁴⁰

Some other foreign development agencies have advocated a potentially constructive role for Islamic law in the reconstruction process. For instance, the Birmingham-based Islamic Foundation for Ecology and Environmental Sciences (IFEES) and the World Wildlife Fund (WWF) worked together after the tsunami to promote environmental protection and sustainability from an Islamic perspective.⁴¹ Within this approach it was thought that 'Islamic values should be adapted during the reconstruction and rehabilitation process in Aceh to strengthen and safeguard Aceh's environment against future threats as well as to ensure that Acehese people are considered in all decision-making processes.'⁴² Implicit in this approach were two interrelated assumptions, that: a) sharia was widely accepted by the Acehese people, and b) local communities were more likely to participate actively in development processes if foreign development programmes and discourses were positioned within an Islamic framework. These assumptions were also reflected in a joint report by the Indonesian government's National Development Planning Agency (*Badan Perencanaan dan Pembangunan Nasional*, Bappenas) and the Consultative Group on Indonesia (CGI), a consortium of 21 bilateral donor countries (including the USA, France, Germany and Japan) and 11 multilateral creditors, such as the World Bank, the IMF and the Asia Development Bank.⁴³ The CGI and Bappenas described their 'guiding principle' in Aceh's reconstruction as follows:

*All assistance towards rebuilding the lives, confidence and dignity of the Acehnese must take into consideration the fact that Islam is the primary cultural force in the province. Communities in Aceh are centred around meunasah, a community mosque; approximately 200,000 of 950,000 students in Aceh attend Islamic schools, one of two major universities in Banda Aceh was an Islamic university. As such, engaging mass-based Islamic organisations with networks and branches down to the village level ... is essential to ensure that programs for rehabilitation and reconstruction are designed in a people-centred and participatory manner.*⁴⁴

The CGI-Bappenas report went on to add, however, that while all reconstruction efforts must comply with Aceh's special autonomy status, including its right to implement Islamic law, the concept of sharia itself remained 'vaguely defined', with the result that 'while on the one hand, it is important to consider the fact that syariah is the law of the land, it is also equally important to understand that the Acehnese themselves were still engaged in a lively debate over what constitutes syariah.'⁴⁵ Because of this ongoing debate, the CGI-Bappenas report urged all parties involved in Aceh reconstruction to maintain a policy of strict neutrality regarding Islamic law.⁴⁶

There were at least three problems with this policy of 'neutrality'. The first was that the CGI-Bappenas report departed from its own normatively neutral position by assuming the cultural primacy of Islam in the reconstruction effort, despite its acknowledgement that less than one-third of Acehnese students (200,000 of 950,000) attended Islamic schools and only one of Banda Aceh's two main universities, the Ar-Raniry State Islamic Institute (*Institut Agama Islam Negara*, IAIN) was officially Islamic. The second problem was that the international development community's neutrality was arguably reprehensible in cases where the *Wilayatul Hisbah*, which had a reputation for 'arrogance' and 'thuggery' in their dealings with the civilian population,⁴⁷ overstepped their authority and violated international human rights instruments. The European Union (EU), which led the Aceh Monitoring Mission (AMM) that was mandated with 'monitoring and supporting the peace process'⁴⁸ in Aceh, was criticized harshly by some outside observers for adopting a double standard of defending the European Convention on Human Rights, on one hand, while refusing to interfere in cases where the WH humiliated and degraded alleged sharia violators without offering proper judicial recourse, on the other. Although the EU released a paper in December 2006 outlining its concerns about restrictions on religious freedom in Aceh, inequitable judicial access, corporal punishment, discrimination based on gender and lack of respect for privacy, the

AMM maintained that the sharia issue needed 'to be kept in perspective' because the 'main thing is there is peace'.⁴⁹ The EU and the AMM believed their neutrality regarding Islamic law was necessary to avoid being accused of meddling in Aceh's internal affairs and of taking sides in the uncertain peace process. In adopting a non-position on Islamic law in Aceh, however, the EU and the AMM were seen by some as being complicit in violations of the Acehnese people's civil and political rights to freedom of religion and expression.⁵⁰

The third problem with this 'neutral' policy was that while the Indonesian government's Bappenas agency and CGI donor countries and their aid agencies in Aceh argued that they simply wanted to help, some were politically motivated. Since its first unilateral offer of Islamic law to Aceh in 1999, the Indonesian government had encouraged the Acehnese people to accept sharia. CGI donor countries that declared their neutrality in relation to sharia were also sometimes believed to be otherwise by other foreign and Indonesian NGOs. For example, the USA and the US Agency for International Development (USAID), were seen by conservative Acehnese and Indonesian Muslims as being anti-Islam, or 'Islamophobes', with a hidden agenda to 'Christianize' or 'Americanize' the Acehnese people.⁵¹ This theory was typically promoted by Islamist groups whose political motivation was to increase their own power and influence through sharia. Like some conspiracy theories, however, there was an element of truth in this claim. Since the September 11, 2001 terrorist attacks on the USA, USAID had changed its Indonesia policy from primarily funding reform-minded civil society organizations, as a means of strengthening Indonesia's democratization process, towards sponsoring more than 30 Indonesian moderate Muslim organizations as potential bulwarks against religious orthodoxy. After the tsunami, the US government made little secret of its strategic interests in delivering aid to the world's most populous Muslim nation. The US Secretary of State, Colin Powell, described the USA's humanitarian assistance to Aceh as proof that 'America is not an anti-Islam, anti-Muslim nation.' More candidly, the US Senator Sam Brownback argued that the tsunami was 'a foreign policy moment'.⁵² As one former political counsel at the US embassy in Jakarta cynically put it: 'Now we're trying to bribe organizations, including Islamic organizations, to win them to our side.'⁵³ America's closest ally in the region, Australia (another CGI donor country), had equally strong strategic interests in containing Islamic extremism, especially after the 2002 Bali bombings and the 2003 Marriott Hotel bomb blast in Jakarta. In post-tsunami Aceh, therefore, geopolitical interests and security considerations certainly factored into the reconstruction priorities of USAID and its Australian counterpart, the Australian Agency for International Development (AusAID), as shown

by the interventions by both donor countries into Islamic education (for example, through AusAID's Learning Assistance Program for Islamic Schools programme, LAPIS).⁵⁴

Some foreign Islamic NGOs were also believed to have used the opportunity presented by the tsunami for religious or political gain. Two of Saudi Arabia's largest charity organizations, the International Islamic Relief Organization (IIRO), which had links to the Al-Qaeda terrorist network, and its affiliated World Assembly of Muslim Youth, were accused by US government agencies of using humanitarian assistance as a vehicle for disseminating radical Wahhabist (a scripturalist interpretation of Sunni Islam) ideas and for spreading Saudi foreign policy.⁵⁵ While the IIRO's charity work in Indonesia had previously been benign, and in Aceh had included rebuilding homes and other basic infrastructure, its post-tsunami religious activities (such as funding Islamic organizations and rebuilding mosques) were viewed by some as part of its characteristic 'religious imperative that comes hand-in-hand with aid'.⁵⁶ An earlier *US News and World Report* had also described the IIRO's charitable activities as being invariably accompanied by 'a blizzard of Wahhabist literature', which, in its most extreme form, included preaching 'mistrust of infidels, branding of rival sects as apostates, and emphasis on violent *jihād*' that 'laid the groundwork for terrorist groups around the world'.⁵⁷ Another Saudi-funded charitable organization in Aceh, the Medical Emergency Relief Charity (MER-C), which had 12 other Indonesian offices, mostly in the country's sectarian conflict areas, had also previously produced two *jihād* fundraising videos and was rumoured to have taken advantage of the post-tsunami situation to further its radical cause.⁵⁸

Beyond this mutual mistrust between foreign donors and their Muslim and non-Muslim aid agencies, the complicating dynamic of individual biases about Islamic law must be factored into the post-tsunami reconstruction equation. If Western, non-Muslim NGOs have not been especially candid in voicing their concerns about sharia, then the same could not be said for individual foreign development workers. Despite the burgeoning body of literature on post-tsunami reconstruction in Aceh, there has so far been a lack of reflective empirical research about this disconnect between the officially neutral nomenclature used by Western NGOs and donor agencies and the personal biases of some of their staff. More in-depth research is needed into how individual humanitarian and development workers view sharia, especially given the centrality of foreign assistance to the reconstruction process, the increasingly conservative Islamic environment within which foreign NGO employees must function, and what this means in terms of their capacity to constructively engage with the Acehnese Islamic groups and organizations they seek to embrace.

What limited information is currently available on this subject suggests a tendency by foreign NGO workers to view Islamic law in negative terms. As the head of Aceh's Rehabilitation and Reconstruction (BRR) Agency, Kuntoro Mangkusubroto, explained: 'Security has been the most frequent question asked by foreigners. But the application of sharia has also been of concern to them.'⁵⁹ Many foreigners have viewed Islamic law as an obstacle to the reconstruction effort, which they have mainly conceptualized in terms of material improvements such as rebuilding the provincial infrastructure, providing technical skills, generating employment, and so on. Some Western development workers have viewed sharia's defenders as dogmatic ideologues whose rigid adherence to an esoteric worldview has impeded rational decision-making and strategic development planning.⁶⁰ Such 'rational' attitudes about Islamic law have tended to be reinforced by the different language spoken by sharia advocates, whose understanding of 'development' and 'capacity-building' has included a dominant emphasis on spiritual growth and Islamic education, rather than on material development. In this, there has been an element of 'othering' the Acehnese people by foreign development workers on the basis of their Islamic identity, including misunderstandings about what this identity entails, and the association of Islamic law with anti-libertarian, explicitly prescriptive and radical belief systems. For instance, while the US military was generally praised for its rapid delivery of humanitarian assistance after the tsunami, some North American military aid personnel who went straight to Aceh from Iraq reportedly felt uncomfortable in another predominantly Muslim region, having themselves been 'past targets of Islamic fundamentalists'.⁶¹ As a result, their 'interpersonal interactions between independent groups and the local Acehnese appeared to be strained'.⁶² 'Creeping fears related to issues such as terrorist attacks on Westerners'⁶³ have also been articulated by foreign development workers on the Private Sector Development (PSD) Blog site, a joint initiative of the World Bank and International Finance Corporation (IFC). In one sense, the PSD Blog site has usefully illustrated this disconnect between the official position taken by institutions and the attitudes of staff employed to carry out their objectives. The World Bank and IFC have formally remained neutral about Aceh's Islamic legal system, but the PSD Blog authors, all of whom are World Bank Group members, have been overwhelmingly critical. Interestingly, the most common complaint about sharia among PSD bloggers has related to lifestyle limitations, and their need to escape to Weh Island near Banda Aceh, where there has been a 'complete seeming disregard by both local and expats for Aceh's shariah law' and where 'unmarried couples sharing cottages and women in bikinis sunning themselves is an open and familiar sight, as is the open consumption of beer and spirits ... and staff

all sporting dreadlocks are happy to provide joints as an off-the-menu specialty.⁶⁴

Such 'immoral' attitudes and behaviours have been used by conservative Indonesian and Acehnese Muslims and radical Islamist groups as justification for their agenda to implement Islamic law in full. Post-tsunami Aceh has been a magnet for fundamentalists of all religious denominations, who have viewed the devastated province as fertile terrain for proselytizing and recruiting new members. Unlike the fundamentalist Christian missionary organizations, however, many of the radical Islamist groups that flocked to Aceh after the tsunami were Muslim militia who had previously been recruited, armed and trained by Indonesia's armed forces for incorporation into their counterinsurgency campaign against GAM. After the tsunami, these militia proxies were especially alarmed by the potentially corrosive impact of Western aid workers, journalists and armed forces personnel on the moral fabric of Acehnese society, and more broadly, on Indonesia at large. Conceptualizing *jihad* in Indonesian nationalist terms, they aimed to defend Indonesia's moral integrity and cohesiveness against the infidel (*kafir*) intruders.⁶⁵

Three Muslim militias that established a high public profile in Aceh soon after the tsunami were the Islamic Defenders Front (*Front Pembela Islam*, FPI), Laskar Mujahidin and the Indonesian Mujahidin Council (*Majelis Mujahadin Indonesia*, MMI). The FPI, which was best known for its attacks on Jakarta nightclubs, bars and brothels during the Muslim fasting month of Ramadhan,⁶⁶ sent 250 militia to Aceh and announced plans to shuttle in another 800 of its members on Indonesian military warships.⁶⁷ Although FPI's Vice-Chairman and leader of its Aceh mission, Hilmy Bakar Almascaty, claimed that his team had simply come 'to help', he warned that 'If anyone who comes here does not respect the Shariah law, traditions and constitution, we must give them a warning and then we must attack.'⁶⁸ Hilmy further urged Aceh's military commander, General Endang Suwarya, 'to keep the US separate' from other humanitarian agencies, arguing that 'if you come here and take women and try and Westernise them, this is a problem for me'.⁶⁹ The Indonesian military-backed Laskar Mujahidin, which also sent 250 militia to Banda Aceh (50 of whom were flown in on Indonesian military planes), were equally anti-American and set up four base camps marked by English-language signs reading 'Islamic Law Enforcement' near the airport and around foreign aid agencies.⁷⁰ Though Laskar Mujahidin claimed the purpose of their Aceh mission was 'to help our Muslim brothers',⁷¹ they were linked to the militant Islamic Jemaah Islamiyah organization led by the radical Muslim cleric Abu Bakar Bashir. So was Majelis Mujahadin Indonesia (MMI), which was founded by Abu Bakar in August 2000 as a coalition of Islamist groups that aimed to turn

Indonesia into an Islamic state. After the tsunami, the MMI sent 206 militia to Aceh,⁷² 19 of whom were subsequently expelled from the province by the Indonesian Air Force after setting up a command post at Banda Aceh's Iskandar Muda Air Force base.⁷³

Despite their divisive language and unsettling effect on Western aid agencies, these Muslim militia gained a certain degree of respect among Aceh's civilian population for their tireless collection and burial of thousands of rotting corpses. Muslim burials were something that non-Muslim NGOs could not provide; their primary focus was on offering humanitarian assistance to tsunami survivors, not on performing last rites for the deceased. For Acehnese Muslims, however, Islamic burials were an important ritual in coming to terms with the deaths of their loved ones.⁷⁴ As one village leader explained:

*During the conflict, MMI were our enemies. But after the tsunami they worked here for three months. They never rested. When they found a corpse, they shouted 'Allah Akbar' ['God is Great'] and prayed for their souls. We knew why they were really here, but we thanked them because they helped us.*⁷⁵

According to this village leader, the 'real' reason why MMI and other Muslim militias came to Aceh was to impose their narrow interpretation of Islam on the Acehnese people. Indeed, the militias aimed to defend sharia and Acehnese morality against Western immorality at least as much as they sought to assist tsunami victims. In addition to providing Muslim burials, MMI staged proselytizing rallies (*dakwah*), offered 'spiritual guidance', announced plans to adopt and educate 10,000 Acehnese orphans and distributed 'prayer kits' containing copies of the Koran and prayer mats.⁷⁶ Laskar Mujahadeen and the FPI performed similar duties, but FPI were by far the most vocal about their other agenda to 'chase down any Christian group that does anything beyond offering aid'.⁷⁷

Not all Acehnese appreciated the Muslim militias' 'help'. GAM's exiled political leadership in Sweden issued a statement announcing that the 'FPI and MMI are not welcome in Aceh and have never been supported by the Acehnese people,' and that their 'counterproductive' and 'terroristic' activities 'contradict the teachings of Islam'.⁷⁸ For GAM, the Islamic militias, like sharia, were an unwanted 'gift' from Jakarta that aimed to create new horizontal socio-political cleavages based on 'SARA' (*Suku, Agama, Ras, Antargolongan*: Ethnic, Religion, Race and Inter-Group).⁷⁹ The day after Aceh's first direct gubernatorial elections on 11 December 2006, which delivered a clear victory to GAM candidate Irwandi Yusuf (with 38.57 per cent of the vote⁸⁰), the new governor clarified his position on Islamic law:

*The problem is that sharia law was imposed on us by the central government in Jakarta ... For us, sharia is less about punishment and more about how to improve the well-being of the people.*⁸¹

Irwandi Yusuf was careful not to reject sharia as such, but he vowed to stop its repressive expansion under his watch, because 'Sharia law was created not to get humans into trouble but to form an Islamic community.'⁸² Other GAM spokesmen also maintained that the Acehnese did not want Islamic law from 'outside forces, because Syariat Islam is already the flesh and blood of the Acehnese nation.'⁸³ In other words, GAM believed that sharia in Aceh should be based on personal communication with Allah, or God's law, as opposed to man's law, which they claimed had turned Islam into a political commodity.

Similar views have been expressed by human rights NGOs and Acehnese women's organizations, which have argued that Islamic law enforcement in Aceh has discriminated against already marginalized societal elements, mostly women and the poor. For many human rights NGOs, the most objectionable aspect of sharia in Aceh is that human rights issues – which are especially salient in Aceh given its history of violent conflict – are missing from the province's Islamic legal framework. Reflecting a common opinion in human rights NGO circles, Charmain Mohamed of Human Rights Watch argued that 'there can be no lasting peace in Aceh without accountability for human rights violations'.⁸⁴ The humanitarian NGO, International Islamic Christian Organization for Reconciliation and Reconstruction (IICORR) also pointed out that the 'extreme interpretation' of sharia in Aceh is incompatible with, and alien to, previous understandings of Islamic law by Acehnese people, and that its failure to provide redress for past human rights violations and corruption has had negative social consequences.⁸⁵ A London-based Acehnese human rights activist has similarly argued that in focusing on moral minutiae, Aceh's conservative religious administration has missed the point that sharia should strive for social justice and welfare:

*In contrast to their self-proclaimed agenda of defending Islam, in reality today's conservatives are actually diminishing Islam, reducing it to small things that are inadequate or irrelevant in the face of the challenges of modern life or development. Ask the conservatives questions that reach beyond their favorite topics of gambling, alcohol and head scarves, for example about how their interpretation of religion can promote or support the reconstruction of Aceh, or Aceh's political and economic development and they are unable to answer.*⁸⁶

It is true that until now, Aceh's religious administration has been unable to adequately account for its overarching emphasis on public morality, and why it has avoided addressing Aceh's social and economic problems, which are substantial. The head of Aceh's sharia agency, Alyasa Abubakar, has argued that Islamic law has a positive role to play in the reconstruction process because it 'helps to create a conducive atmosphere for the economy, prosperity and justice in Aceh', but he has not elaborated on how this can be achieved, beyond stating that 'people can work with peace of mind'.⁸⁷ The sharia agency director has remained equally non-committal about growing public demands for an *anti-korupsi qanun* to punish corrupt government officials, dismissing the issue as a non-priority on the grounds that 'there is already national legislation on corruption'.⁸⁸

While Acehnese women's NGOs have generally refrained from condemning Islamic law itself, some have objected to their exclusion from the development of sharia *qanun*, and have expressed their frustration that the expansion of Aceh's Islamic legal system has included a concurrent increase in acts of violence against them. The International Crisis Group reported that 'Women complain that they are disproportionately the targets of WH raids, with far more operations against them for not wearing *jilbabs* [Islamic headscarves] than against men for not attending Friday prayer.'⁸⁹ Women's NGOs such as Flower Aceh and the Acehnese Women's Empowerment Group have argued that the predominantly male WH (which in 2006 comprised 70 men and five women)⁹⁰ has been aggressively enforcing the wearing of headscarves and other minor moral issues, at the expense of their protection. Reflecting a common perception among Acehnese feminist groups and also among former GAM rebels, one female Indonesian journalist in Aceh blamed the discriminatory targeting of women under sharia on 'Arab cultural imperialism', arguing that the repressive behaviour of the WH was 'not necessary at all, since what happened in Aceh is Arabization, not Islamization',⁹¹ or the importation of Arab cultural norms and values, as opposed to the Islamic religion.

It is worth noting that Acehnese feminist NGOs that have criticized Islamic law have been marginalized in Aceh and have mainly appealed to foreign audiences. Since October 1999, when Aceh's first sharia by-law (Regional Regulation no 451.1/21249) was introduced (ordering the province's 119 policewomen to wear brown veils to 'serve as role models for Muslim teachings in Aceh'⁹²), women have found it increasingly difficult to speak openly about the *jilbab* issue, for fear of being labelled 'un-Islamic' or 'secular'. According to an Acehnese NGO, the focus on women's morality by Aceh's religious bureaucracy has ignited two new horizontal conflicts: between men and women, and between women and women.⁹³ This is because Aceh's male-dominated Islamic administration

has dictated the direction and form of sharia, and the expansion of Islamic law has created growing space for the voices of conservative women's organizations to be heard. The most prominent of these women's groups, the Bureau for Women's Empowerment (*Biro Pemberdayaan Perempuan*, BPP), has sent mixed messages about gender equality to the women they claim to represent by encouraging women to challenge traditional gender stereotypes on the one hand, while on the other, warning them not to 'forget their role as determined by God as women' or their husband's 'right to lead their wives and to fulfil their wives biological, sociological, psychological and economic rights'.⁹⁴ This has generally been the approach taken by post-Suharto Aceh governments, which have promoted 'the Islamic way to interpreting gender equality', as opposed to Western conceptions of gender equality that have been negatively associated with 'free for all action'.⁹⁵

The attitudes of Indonesian national government officials about Aceh's Islamic legal system have been somewhat mixed since the tsunami, but generally speaking, political support for sharia has been high. This strong support has been shown by Jakarta's concession to Aceh to implement Islamic law in its entirety. Since 1998, there has been a growing trend among Indonesia's political leadership to view sharia as a form of compensation for the past suffering of the Acehnese people under the New Order. Islamic law has also been used as a political weapon by government and military leaders to discredit GAM's separatist cause in the eyes of the international community by portraying the rebels as Muslim 'fundamentalists' or 'terrorists'. There have been dissenting voices in Jakarta, but these still constitute the minority. In August 2006, for instance, more than 50 members of Indonesia's national parliament unsuccessfully petitioned President Susilo Bambang Yudhoyono to abolish Islamic law.⁹⁶ Disturbed by the spread of sharia to other provinces (some 30 regional governments have passed moral regulations since 2001 reflecting conservative Islamic values), they argued that Islamic law went against the pluralist spirit of the 1945 constitution. Most Indonesian political leaders, however, like many Acehnese government officials and ordinary civilians, have remained reluctant to criticize Aceh's sharia laws because they do not want to be labelled un-Islamic by conservative Islamist groups. This fear of being thought a 'bad Muslim' was perhaps seen most clearly shown in 2002 by Indonesia's then Speaker of the People's Consultative Assembly (MPR), Amien Rais, who strained Indonesian-Malaysian relations by describing Malaysia's practice of caning illegal Indonesian workers as 'inhuman' and 'insulting', while remaining conspicuously silent about Aceh's decision to publicly cane violators of Islamic law.⁹⁷ Such concerns about upsetting conservative Islamists have tended to suppress healthy public debate on what form Aceh's Islamic legal system should take, and to what end.

Implementation of sharia

On balance, the application of sharia in post-tsunami, post-conflict Aceh has contributed little towards helping Acehnese communities to regain a sense of control over their own lives and livelihoods. While Islamic law could potentially assist the Acehnese people in coming to terms with their legacy of violence and social trauma (for example, by application to serious crimes such as murder, rape and corruption), Aceh's sharia framework is still in its infancy and the religious bureaucracy has been reluctant to search for new ways to address the province's serious social and economic issues through Islamic law. The following observations, while limited, highlight the need for greater critical reflection on the role of Islamic law in the reconstruction process and its implications for the kind of society that will emerge as Aceh continues to rebuild itself.

Of particular concern to both Acehnese and outsiders involved in the reconstruction effort are legal ambiguities within Aceh's Islamic system. For instance, while the Law on Governing Aceh (LoGA) only stipulates that Muslims domiciled in Aceh must 'comply with and practise Syariat Islam', it states that 'all individuals residing or present in Aceh are obliged to respect the implementation of Syariat Islam'.⁹⁸ There is no elucidation on whether non-Acehnese Muslims are required to submit to Aceh's Islamic laws, or the level of 'respect' for sharia that is required of non-Muslims. The most confusing Islamic provision in the LoGA is Article 129 on Islamic criminal law (*jinayah*), which stipulates that:

(1) In jinayah cases where criminal acts are committed by two or more people that include non-Muslims, then the non-Muslim perpetrators may choose to voluntarily surrender to jinayah law, (2) Each non-Muslim who commits a criminal act not regulated by the Criminal Code or in the criminal stipulation set outside the Criminal Code will be subjected to jinayah law, (3) Acehnese citizens who commit criminal acts outside Aceh are subject to the Criminal Code.

Not surprisingly, non-Muslims have expressed concerns about how this law will affect their rights to freedom of religion and expression. Article 129 does not clarify whether non-Muslim perpetrators may 'choose' to submit to civil law in *jinayah* cases, or whether non-Muslims will be punished for committing sharia crimes not included in Indonesia's Criminal Code (for example, the sale and consumption of food and beverages during Ramadhan, which in Aceh is punishable by up to six lashes, one year in jail or a maximum fine of Rp3 million (US\$330)). Another concern about religious freedom pertains to *Qanun* no 11/2002, which includes a penalty

of up to two years' imprisonment and a maximum 12 strokes of the cane for 'anyone who disseminates misguided understandings or ideologies'.⁹⁹

Some of the ambiguities in Aceh's Islamic legal system point to a lack of experience on the part of the legislators. Many of the *ulama* who were involved in drafting the sharia *qanun* from 2002 to 2004 came from Islamic boarding schools and had no legal background. This inexperience is reflected in *Qanun* no 11/2002 (Chapter VIII, Article 21), which states that Muslims who fail to attend prayers for three consecutive Fridays without an acceptable reason are liable to punishment by up to three strokes of the cane or six months' imprisonment. While it is relatively easy to monitor mosque attendance in villages with only one mosque, and where most villagers live below the poverty line, it is far more difficult in urban areas, and the law does not account for travel for work, family visits or other legitimate reasons.

The most worrying legislation in terms of the zeal and discriminatory manner with which it has been enforced by the *Wilayatul Hisbah* has been in the field of criminal law (*jinayah*). Significantly, although Aceh's sharia courts are authorized to settle cases in the fields of civil law (*mu'amalah*), family law (*ahwal al syakhsyah*) and criminal law, the only area that has expanded under the new system has been *jinayah*. Civil and family law cases have continued to be determined in the same manner as religious courts elsewhere in Indonesia, which are subject to the 'Compilation of Islamic Law' (*Kompilasi Hukum Islam*, KHI), which was introduced via Presidential Decree in 1991 to achieve greater national consistency in religious court rulings. According to one Islamic law expert:

From what I have observed at the Mahkamah Syari'at [sharia court] in Banda Aceh during visits in 2006–2007, the overwhelming bulk of its caseload remains in the field of family law, within which divorce cases still comprise the majority. Divorce, inheritance, and the significantly rarer cases of waqf [charitable endowments] in contemporary Aceh generally appear to still be decided according to the 1991 Kompilasi Hukum Islam, rather than any more recent, specifically Acehnese Islamic law. In this sense most of what happens in Aceh's Mahkamah Syari'at is not terribly different from established practice in the Islamic religious courts (Pengadilan Agama) elsewhere in Indonesia.¹⁰⁰

Despite the fact that most cases handled by Aceh's sharia courts have dealt with divorces, *jinayah* cases have generated the most publicity, especially the moral offences of *khalwat*, or close proximity between men and women, gambling (*maisir*), and the sale and consumption of alcohol (*khamar*) and other illegal substances. *Khalwat* is defined in *Qanun* no 14/2003 as 'the act

of being alone by two or more people who are not married or in a relationship sanctioned by Islam (*muhrim*), which could lead to immoral sexual acts or the opportunity to commit adultery.' It carries a maximum sentence of nine public lashes, a Rp10 million rupiah fine (US\$1,100), or up to six months' imprisonment.¹⁰¹ The decision by the drafters of the *khalwat qanun* not to impose a separate punishment for adultery (*zina*) appears to have been based on the assumption that the *khalwat* penalties were a sufficient deterrent for would-be adulterers. The maximum penalty for gambling is 12 strokes of the cane or a minimum fine of Rp15 million (US\$1,640) and a maximum fine of Rp35 million (US\$3,800).¹⁰² Consuming alcohol/illegal substances carries a fixed sentence of 40 lashes, up to Rp75 million (US\$8,200) in fines, or a maximum one year jail term.¹⁰³ Because no *qanun* have yet been passed to deal with serious criminal offences such as murder, theft and rape, all of the criminal cases that have been tried by Aceh's sharia courts since the tsunami have been in these three areas of *khalwat*, gambling and the sale or consumption of alcohol/narcotics. According to Aceh's sharia agency, of the 107 Islamic criminal convictions in 2005, 79 were for gambling, 20 were for drinking/substance abuse, and eight were *khalwat* offenders. In 2006, 44 of the 85 *jinayah* court convictions were gambling cases, 20 were for drinking alcohol and 21 were *khalwat* cases.¹⁰⁴

Although the sharia courts have dealt with more than twice as many gambling cases as *khalwat* offences since the tsunami, the media, feminist and human rights NGOs and Indonesian and foreign academics have portrayed Islamic law enforcement in Aceh as primarily focusing on monitoring and preventing *khalwat*.¹⁰⁵ There are several reasons for this. First, *khalwat* cases are more attractive to the mass media than gambling offences. Second, while Acehnese feminists (who, unlike gamblers, have established accessible NGOs) have been marginalized in Aceh, their opinions have been valued by many Western observers who themselves oppose Islamic law. Third, the great majority of *khalwat* cases never go to court. Fourth, the *Wilayatul Hisbah* has gained notoriety for its handling of several high-profile *khalwat* cases through its raids on segregated beauty salons, hotels and public humiliation of women who do not wear 'Islamic' dress. Fifth, the WH has itself expressed considerable interest in searching for *khalwat* offenders. The WH district secretary for Banda Aceh, has described his unit's civic duties as largely focusing on 'socializing' Islamic law, counselling unmarried couples and women to wear Islamic dress, and ensuring respect for the ban on gambling and alcohol:

We often go near the beach in the afternoon or late at night. Most of the time, we only give guidance and ask the couples to go home. It's only in cases of severe or repeated breaches that we make a report.¹⁰⁶

In fact, the WH's authority is limited to conducting identity checks, and they are required to obtain police assistance before undertaking investigations and making arrests. Despite this, there have been numerous reports of their involvement in more intrusive forms of behaviour. Even Aceh's WH chief admitted that 'If we see a woman date her boyfriend, we take her away from him.'¹⁰⁷ This problem of the WH encroaching on police authority was illustrated in February 2006, when the WH detained three women NGO activists who were participating in a UNDP workshop for not wearing headscarves while they were talking in their hotel corridor at about 11.30pm, and forced them to sign statements admitting their guilt.¹⁰⁸ Foreigners, too, have been illegally targeted. In one notorious incident in September 2006, the United Nations was forced to lodge a complaint with the Indonesian government after the WH raided the World Food Programme's Banda Aceh compound in search of development workers behaving in un-Islamic ways.¹⁰⁹

Such incidents have made the WH widely unpopular, and have earned it a reputation for aggressiveness and poor professionalism. There is a common perception in Aceh that women and poor people have been the principal targets of WH raids. This view that Islamic justice has been dispensed unevenly, and largely restricted to those who can financially afford it, has been reinforced by the penalty system for *jinayah* offences. Many of the men caught gambling have only raised stakes of a few dollars, and are unable to pay the minimum fine of Rp15 million (US\$1,640). In one typical case in August 2005, five young men who were arrested for playing dominos had only Rp30,000 (US\$3.30) between them.¹¹⁰ People who are able to pay fines for gambling, *khalkwat*, and alcohol consumption are not subjected to the public humiliation and physical distress of being caned. This selective application of Islamic justice has created resentment among the civilian population and reinforced the general perception that sharia has been reduced to a political elite commodity. Reflecting this sentiment, one Banda Aceh resident asked: 'Why is the caning sentence only targeting the gamblers, drinkers and those who have committed adultery? It should apply also to the graft convicts.'¹¹¹ From a different perspective, one 'lashing executioner' (*algojo hukuman cambuk*) contended that 'The law is equal for everybody. It's just that the people who have been caught are poor people.'¹¹² Those responsible for monitoring and enforcing Islamic law have also been fond of emphasizing that corporal punishment in Aceh is the most humane in the world, because a doctor must oversee public canings, which must stop if the person being caned is unable to bear the pain; and, unlike parts of the Middle East and Africa, Aceh does not amputate the hands of thieves¹¹³ or stone adulterers to death.

An interesting paradox in Acehese perceptions about sharia is that while many people have viewed the current enforcement of Islamic law as

unfair and discriminatory, corporal punishment has been very popular. Public canings have attracted enthusiastic audiences and have generally been characterized by a carnival quality. They have also been frequently televised for mass consumption in other parts of Indonesia and also in neighbouring Malaysia, where stricter interpretations of sharia in provinces such as Kelantan, Negeri Sembilan and Kedah have been viewed by conservative Acehese Muslims as a model for Aceh. The obvious explanation for this popular support is that such public spectacles are a form of free entertainment. Another possible reason is that the belief that the Acehese people caused the tsunami through their collective sins remains alive and well in Aceh. In June 2006, for instance, hundreds of Islamic boarding school students descended on a beach resort near Lhokseumawe and ordered people out of the sea on the grounds that their 'wicked deeds' might invite another tsunami.¹¹⁴ While such vigilantism has caused considerable concern among moderate Muslims and non-Muslims, the lingering question asked by many Acehese about whether they were ultimately responsible for the tsunami continues to be answered in sermons by *ulama* arguing that the Acehese people could become better Muslims by strict adherence to sharia.

Still, there remains a pronounced gap between in-principle support for Islamic law, and public resentment over its practical application. Contrary to the claim by Aceh's sharia agency chief that Islamic law will allow the Acehese people to work with greater peace of mind,¹¹⁵ sharia has been one of the most socially divisive issues in the reconstruction effort. The dominant emphasis by Aceh's religious authorities on punishments for moral offences has generated anger and mistrust among the civilian population. There have also been tensions between Aceh's recently elected GAM governor, Irwandi Yusuf, who has opposed the imposition of Islamic law, and the religious bureaucracy, which has been intent on increasing its own power and jurisdiction through its continued expansion. GAM's opposition to sharia in turn has implications for the capacity of Aceh's new executive to constructively engage with both Jakarta officials and Aceh's religious administration in resolving current and future problems arising from the implementation of sharia. The vigilantism of the WH and other opportunistic Islamist groups has also impeded efforts by foreign aid agencies to build more coordinated relationships with their Acehese partners.

Aceh's Islamic legal system is likely to continue to make a negligible contribution towards the large-scale reconstruction effort, unless the current focus on public morality as an end in itself is supplanted by a stronger emphasis on social welfare and justice as means to the greater goal of empowering local communities to recover from the conflict and tsunami.

The easy option, given the expansionary tendencies and ambitions of Aceh's Islamic administration, would be to further the existing trend towards emphasizing Acehese morality. This trend is likely to continue for the foreseeable future, given the currently high levels of support for Aceh's sharia laws in Jakarta and among conservative Islamist groups, as well as the policy of 'neutrality' adopted by large sections of the international development community, and the uncritical acceptance of Islamic law by many Acehese people.

The hard option would be to critically consider what Islamic law has actually achieved in terms of helping the Acehese people to rebuild their lives and communities. Harder still, would be to rethink how sharia could be interpreted and applied in Aceh to create a fairer and more equal society. As a starting point, regulatory mechanisms would need to be introduced to make Aceh's religious bureaucracy more accountable for its interpretation and enforcement of Islamic law. Punitive action would also need to be taken against opportunistic Islamist groups who take the law into their own hands. Finally, a rights-based approach is necessary if Islamic law is to play any constructive role in the rebuilding of Aceh. Though the new sharia system could potentially offer an alternative legal order in post-tsunami, post-conflict Aceh, considerable obstacles remain to ensuring that this new form of rule by law can also ensure meaningful rule of law in this long-troubled region. What is required in Aceh's sharia justice system, especially in the field of criminal law, is a stronger focus on defending and protecting the Acehese people against the threat and physical act of violence, and less emphasis on punishments for minor moral infringements.

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