

6 Women in Local Politics

The Byelaw on Prostitution in Bantul¹

Muhammad Latif Fauzi

1 Introduction

Since the collapse of the New Order in 1998, the Indonesian government has promoted regional autonomy and decentralisation. This has resulted in an increasing number of regional regulations. Such regulations do not limit their reference to national laws, but also draw from religious doctrines and customs (*adat*). Several Muslim-dominated districts and cities, such as Bukittinggi, Bulukumba, Cianjur, and Tasikmalaya, have given substance to their Islamic political aspirations through the ratification of so-called Sharia regulations.² Some regulations are linked to religious skills and religious symbolism, such as the obligation to be able to read the Qur'an³ and the wearing of Muslim clothing including the *jilbab* (headscarf), while most are related to public morality issues, such as prostitution and the consumption of alcoholic beverages.⁴

With regard to public morality, in 2007 in Bantul, a district in the Yogyakarta Special Region (Daerah Istimewa Yogyakarta, DIY), a byelaw was issued attaching a penalty to enticing either in public places or locations visible from public places others into acts of prostitution. The regulation was accepted by the Regional House of Representatives (Dewan Perwakilan Rakyat Daerah, DPRD) of Bantul on 12 April 2007

- 1 An earlier version appeared in *Al-Jami'ah, Journal of Islamic Studies*, Vol. 50, No. 1, 2012.
- 2 Robin Bush, 'Regional Sharia Regulations in Indonesia: Anomaly or Symptom?', in Greg Fealy and Sally White (eds.), *Expressing Islam: Religious Life and Politics in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2008), 174–191.
- 3 To give an example, Solok Regulation No. 10/2001 on the obligation on reading the Qur'an makes it obligatory for elementary, junior, and senior students and grooms and brides to be able to read the Qur'an. The regent or official authorities issue certificates to validate their ability.
- 4 Arskal Salim, 'Muslim Politics in Indonesia's Democratisation', in R. McLeod and A. MacIntyre (eds.), *Indonesia: Democracy and the Promise of Good Governance* (Singapore: ISEAS, 2007), 126.

and subsequently validated on 1 May 2007. It was registered as Regional Regulation (Peraturan Daerah) No. 5/2007, henceforth referred to as the regulation. The regulation was presented as an instrument which would help make Bantul a district where its people could enjoy democracy, religiosity and welfare. It was also said to be an effort (*ikhtiar*) to clean up vice (*maksiat*) and to reflect the government's responsibility to attend to social order, relating to women in particular.

Bantul is located in the southern part of the Yogyakarta region. It has a population of 831,000. Many of the people earn a living as rice farmers, craftsmen, factory labourers, civil servants or merchants and most live in lowland areas and in villages committed to performing religious practices associated with 'traditional Islam'. The regional government stresses that it aims to apply a religious vision for the development of the region, something, it claims, that cannot be found in other regions in Yogyakarta. It expects the people to make their everyday life religious.⁵

Bantul is said to be considered a self-proclaimed social and political asset by Idham Samawi who served twice as its regent, from 1999 to 2004 and from 2004 to 2009. He was born into a noble religious family, Samawi. Haji Samawi, his father, was one of the founders of *Kedaulatan Rakyat*, the first newspaper in Yogyakarta. The nobility of Idham Samawi's family fortified his socio-political authority in society. Later, his wife, Sri Suryawidati, succeeded him as regent. Though her competence to be a good regent was doubted by many, she won the 2009 election. Her term in office has maintained the dynastic power of the family.⁶

The rise of Idham Samawi as the regent of Bantul occurred at a time when the Indonesian government introduced a new approach to national development through decentralisation and regional autonomy. The concept of decentralisation was embodied in Law 22/1999 on Local Government and Law 25/1999 on the Financial Balance between the Central and Regional Government. Both laws give provinces, districts and municipalities full autonomy to govern and administer their region in the interests of local people within the limits set by national legislation.⁷

5 See the profile of the Bantul district its website, www.bantulkab.go.id (accessed 16 June 2011).

6 'Rezim Keluarga di Pilkada', *Kompas*, 19 April 2010. The result of the regent elections on 23 May 2009 was as follows: (1) Sri Suryawidati-Sumarno: 67.77 per cent, (2) Sukardiyo-Darmawan Manaf: 28.26 per cent, and (3) Kardono-Ibnu Kadarmanto 3.97 per cent.

7 A number of laws, including Law 22/1999 on *Otonomi Daerah* (Regional Autonomy) which was afterwards renewed by Law 32/2004 on *Pemerintah Daerah* (Regional Government) and Law 10/2004 on *Pembentukan Peraturan*

In the spirit of decentralisation, during the Samawi's period, a number of local regulations concerning social order were issued, one of which was a response to prostitution in southern coastal areas of Bantul.

Right-wing Muslim organisations call for the enforcement of this regulation, stressing that prostitution is degrading to women who are forced into it, due to either economic discrimination or sexual exploitation. Opposition to the byelaw has been voiced by a number of activists. According to them, the regulation was drafted in a non-transparent way, did not include public participation and was merely aimed at wooing Muslim voters. The regulation has legal weaknesses and violates the principles of human rights and justice. Yet another argument, mainly put forward by gender activists, is that prostitution is an acceptable profession, not disreputable.

This research examines public debates on the subject and addresses the position of women in its legal implementation. In so doing, in the first part of this chapter, I describe how the regulation came into being and briefly deal with the history of Parangkusumo, the centre of prostitution, and the present state of affairs. In the next section, I look at diverse understandings of prostitution and the debates between the political parties in the Bantul Parliament on the bill. In the last part, I present emerging voices, mainly from NGOs on gender, which resist the implementation of such a byelaw on the ground that it supports the criminalisation of women.

2 From the Cepuri Pilgrim to Sexual Favours

In 1852, the colonial government recognised prostitution in an act intended 'to avoid harmful consequences resulting from prostitution'. Sex workers should operate in brothels to make it easier for the police to control them. Later, this provision proved to be problematic as the Act was understood to have legitimised brothels as commercial institutions. In 1858, another law was issued to clarify the 1852 Act. Brothels were described as places 'to limit the harmful effects' of prostitution by regularly having medical consultation.⁸

The later growth of the plantation and sugar industries in East and Central Java, the opening up of Java to private capital, and the significant

Perundang-undangan (Drafting of Laws and Regulations), have served as the legal basis for regional authorities to promulgate local regulations.

8 Gavin W. Jones, Endang Sulistyaningsih, and Terence H. Hull, 'Prostitution in Indonesia', a working paper in demography at the Australian National University, 1995.



Sanctuary of Cepuri, 28 km south from Yogyakarta

migration of male workers to and across Java created a huge demand for the services of prostitutes. The building of roads and railways had a similar effect. Cities along rail lines had to cope with an increasing number of rail passengers, and thus also with a growing demand for rooms and lodging, and sexual services. In Yogyakarta, the prostitution centre was initially located in the area of Pasar Kembang, a few metres from the Tugu railway station.⁹ In the 1990s pimps brought sex workers to other places, mainly to the southern coastal areas such as Parangbolong and Parangkusumo.

In addition to the beauty of its beach, Parangkusumo, located 28 km south of Yogyakarta, is well known for a pair of rocks surrounded by walls, called Cepuri. Villagers believe the rocks to be sacred and mystical, the place where Kanjeng Panembahan Senopati, the first King of the Mataram Kingdom, was said to have meditated. Many people believe that it was here that the King met with Kanjeng Ratu Kidul, the Queen of the Southern Sea of Java (Indian Ocean), for the first time. Cepuri is thus considered an important place for spiritual and cultural events. Visitors cannot freely enter and leave the complex and must be accompanied by a spiritual guardian (*juru kunci*). Sandals have to be taken off before entering. Visitors are obliged to be silent inside the site. Rituals in Cepuri can be performed on all days and at any time. Nevertheless, Tuesday Kliwon

9 Ibid.

and Friday Kliwon¹⁰ are particularly believed to be special moments to perform a pilgrimage. In addition to the pilgrimage, the offering to Kanjeng Ratu Kidul (*labuhan*), a traditional ceremony of letting offerings and flowers drift into the Southern Sea, is considered a very important ritual.¹¹ The choice of those two nights relates to a Javanese tradition which regards them as holy and sacred.¹²

Modernisation and economic development have, however, altered the adherence to these activities. Since the 1980s, economic activities in Parangkusumo have come to dominate these ritual practices. Traders offer goods, such as clothes, traditional medicine and massage services. People from Yogyakarta and neighbouring areas come there either to shop or to have a pleasant evening. The rise of economic activities, mainly on the regular ritual days, as well as the increasing number of houses in Parangkusumo, amplified the variety of products and services promoted. The commercialisation of sex has been one eventual consequence. According to RP Suraksotarwono, the spiritual guardian of Parangkusumo, the first sex workers came from Pasar Kembang. Some villagers welcomed this considerable business development as it has drawn a huge number of costumers from elsewhere.¹³

This success story led to a dramatic increase in prostitution and attracted hundreds of sex workers from other cities. Sex workers, who used to be called women lacking morals (*Wanita Tuna Susila*, WTS) and now are commonly referred to as commercial sex workers (*Pekerja Seks Komersial*, PSK), head to Parangkusumo regularly to seek customers. Only a small number of them are from Yogyakarta; most of them come from districts in Central Java, such as Demak, Magelang, Pati, Purwodadi, Solo and Sragen. Most are 'freelancers' and not attached to pimps. However, the sex workers have to rent rooms from pimps who earn 10,000 rupiah for each use.

Initially, sex workers came to Parangkusumo only on Tuesday Kliwon and Friday Kliwon nights. Later on, considering the income to be earned,

10 Kliwon is one of the five Javanese days.

11 Maharsi, 'Varian Keagamaan Masyarakat Pesisir Pantai Selatan (Studi Kasus Desa Parangtritis, Kretek, Bantul, DIY)', *Jurnal Penelitian Agama*, 13, 3, September–December 2004.

12 This belief is close to a tradition that a Javanese who performs a 40-day fast usually ends it on Friday Kliwon or Tuesday Kliwon. However, this tradition is gradually changing and locals have started to replace the 40 days with a three-day fast on Wednesday Wage, Thursday Pon, and Friday Kliwon.

13 Interview with RP Suraksotarwono, the spiritual guardian of Cepuri in Parangkusumo, August 2011.

they preferred to stay permanently rather than commute. Other residents also benefit from this situation in many ways. The most obvious places where such business is conducted are brothel complexes, hotels, massage parlours, and karaoke rooms. In addition, many villagers have opened shops selling food, cigarettes and daily provisions. Thus, the relationship between the sex industry and other economic activities in general cannot be ignored.¹⁴

The more dominant connotation of prostitution somehow has displaced the meaning of ritual. In daily parlance, sex is also called ritual. Some people in Parangkusumo have even named both Tuesday Kliwon and Friday Kliwon *hari ibu* (Mother's Day) as many sex workers are between 35 and 40 years old (and so the age of a mother).

The tariff for purchasing the services of a prostitute varies depending on how capable a customer is at haggling. In general, young sex workers would set the tariff at between 70,000 and 150,000 rupiah, while older sex workers tend not to set a fixed price. Customers usually pay between 25,000 and 35,000 rupiah. The more beautiful a prostitute looks, the higher the price. A former prostitute told me that when she was a sex worker it was common for her to have 20 customers a night.¹⁵

Anik, a former lady pimp, clarified that her shop might sell five packages, each containing 144 items, of condoms a month.¹⁶ On the ritual nights, through renting rooms, the pimps could earn more than 1,000,000 rupiah a night. In addition, owners of karaoke rooms also made quite reasonable incomes. The price for renting a karaoke room was 25,000–50,000 rupiah per hour. The owner could provide a karaoke guide (*pemandu karaoke*) to join, when demanded. The owner received no money from the karaoke guide. Usually a customer had to pay 50,000–75,000 rupiah and gave her the money direct. The karaoke guide offered the customer a karaoke 'plus'.¹⁷ For this service, the customer had to pay extra money ranging from 100,000 to 200,000 rupiah. Despite having no income from the karaoke guide, the owner could still benefit from selling other products, such as food and drinks, and renting out

14 Interview with Daru Waskita, journalist, in Bantul, July 2011.

15 Interview with Yani, sex worker, in Parangkusumo, July 2011.

16 Interview with Anik who says that she looks after sex workers. She used to be a prostitute, then a lady pimp, but now limits her business to running a karaoke house, July 2011.

17 'Plus', an Indonesian slang word, often referring to additional sexual services. If people read *pijat plus* or massage plus, they will understand that it is a massage with sexual favours.



Sacred rocks inside sanctuary of Cepuri

rooms for 'plus' services.¹⁸ Besides the link between sex workers, pimps and karaoke owners, others benefited from this connection indirectly. On the ritual days, bus drivers saw an increase in earnings due to an increase in passengers, including pilgrims, sex workers, visitors and traders.

During Ramadan, Cepuri remains open. Parangkusumo does become quieter however, as the religious atmosphere does still prevail. The Darus Salam mosque, inside the complex of Cepuri, holds a daily *iftar* (breaking of the fast). A religious gathering (*pengajian*) targeting a larger audience is carried out weekly. All villagers, including the owners of brothels, are expected to donate food for *takjil* (fast-breaking meal, commonly called *iftar*). Mothers, teenagers and children gather to wait for the coming of the Maghrib prayer. During that time, guided by the imam, they recite Islamic chanting (*dhikr*) and the prayer commonly recited for the dead. Rituals within the mosque represent the traditional teachings of Islam, which is institutionally affiliated with the biggest Muslim organisation, Nahdlatul Ulama.¹⁹ Prostitution is not strongly evident during Ramadan evenings.

18 Interview with Budi, the owner of Hesty Karaoke in Parangkusumo, July 2011.

19 Interview with Ahmad, the imam of the Darus Salam mosque on 11 August 2011. He has been an imam for 17 years. He admitted that his dakwah activity in the

3 The Making of a Prostitution Byelaw

The discussion on the prostitution regulation commenced in 2002, though it took until 2007 before the legislation was officially issued. On 15 March 2007 the regent submitted and read an Introductory Note (*Nota Pengantar*), which included a bill on the ban on prostitution, to the plenary meeting of the Regional House of Representatives of Bantul. This bill, drafted by the sub-division on law, claimed to rely upon social aspirations. It is said to have been drafted after three meetings were held in January 2007 involving state officials, social and religious leaders, activists and ordinary people. They came to the single conclusion that prostitution was a serious problem in terms of religious and social norms.

During the two days after this meeting, the parties represented in the Regional House of Representatives²⁰ prepared for a general debate on the regent's Introductory Note. On 20 March 2007 the plenary meeting heard, for the second time, the opinion of the parties. The majority of them asserted the necessity of the regulation and recommended the establishment of the special commission to discuss and examine the bill.²¹ The setting up of the special commission is a compulsory step in the legislation process and offers the only opportunity for members of the Regional House of Representatives to bargain their political interests. The final report represents the voices of all factions. It also plays a decisive role in determining the outlook of a bill. The head of the commission, Edy Susila, represented an Islamic party, the PPP, while the secretary, Jupriyanto, was from another Islamic party, the PKS.²² At the same time, the regent formed an executive team whose main task it was to ensure that the draft was accepted.

The bill was eventually accepted by the Regional House of Representatives of Bantul on 12 April 2007, registered as regulation No. 5/2007 and validated on 1 May 2007. Health, public safety, legal instruments and

area of Parangkusumo was not hampered by the prostitution. He tended to call sex workers *mbak-mbak nakal* (naughty women) as he argued that the naughty women meet men's need for sex while the good women meet men's need for building a family.

20 PDI-P, PAN, PKB, PKS, Golkar, and Kesatuan Baru (a coalition of Partai Demokrat, PPP and Partai Karya Peduli Bangsa).

21 Taken from the Official Proceeding of the 15th plenary meeting of the DPRD Bantul in 2007.

22 Keputusan DPRD Bantul No. 08/KEP/DPRD/2007 on Pembentukan Panitia Khusus (the DPRD Bantul's Decree on the Establishment of a Special Committee).

social harmony, violation of God's law, immorality and *akhlak karimah* (good behaviour) were mentioned as reasons for it being issued. In the section on punishment, it is stated that anyone acting in violation of this byelaw can be sentenced to a maximum of three months' imprisonment or a fine of a maximum of 10,000,000 rupiah. As mentioned before, the regulation was intended to make possible the arrest not only of sex workers but, more importantly, of pimps and brothel owners. Many people doubt however that the regulation will be fully implemented as, in many cases, pimps appear to be immune to the law because they usually behave as strongmen and have social power in society. It is commonly known that they have a close relationship with key members of the local administration, including the law apparatus, which can protect them from the power of the law. The law does, however, affect those at the lower level, predominantly sex workers. In prostitution actions in the Bantul court defendants are mostly sex workers, not the pimps or the brothel owners.

The byelaw has led to criticism not only by sex workers, but also by a number of other groups. Negative reactions were voiced by communities whose financial resources were affected by the implementation of the regulation. Community and women's groups also have strongly criticised the regulation, saying the ordinance is vague and dangerously ambiguous, leaving all women vulnerable to accusations of prostitution. In the plenary session of the Bantul Regional House of Representatives on discussing the regional budget of 2008, all political parties reemphasised their support for enforcement of the regulation aimed at preserving good religious conduct.

While the position of prostitution in society was problematic, this did not apply to the remarkable speed of the legislation process, which took only 20 days. It demonstrates that the Bantul authorities faced few complexities, both sociological and political, in making this law possible. Muslim organisations, such as Nahdlatul Ulama, Muhammadiyah and the MUI were invited to write an official letter expressing their support. More significantly, every single party, either Islamic or secular, supported the regulation.

The fact that all parties shared a religious outlook in their opinions about prostitution was undeniable. They spoke the same language, i.e. preserving good behaviour and saving a generation, and a few of them placed prostitution in a wider social economic context, looking at issues such as poverty and job opportunities. A slightly different reason for supporting the bill was given by the PKB. It argued that prostitution has to do with the free market mechanism of supply and demand. Finding a solution is about how to sever the ties between the seller

(prostitute) and the customer. Enforcing the law only with respect to the former would not solve the problem.²³

This case shows that differentiating between religious and secular parties is no longer relevant. This can be explained by looking at the balance of parties when the bill was accepted which changed by the decline of one secular party, the PDI-P and the rise of another one, the PD. Of the 45 seats in the Bantul legislature, the PD had one seat (2.2 per cent) in 2004 and five in 2009, a significant increase. On the other hand, the PDI-P won 16 seats (35.5 per cent) in 2004 but dramatically lost five seats (24.4 per cent) in 2009. Another important party, the Islamic PKS had five seats (11 per cent) both in 2004 and 2009 (see Appendix, Table 1).²⁴

In view of this it is safe to argue that the transformation of the so-called *politik aliran* (aliran politics) after the fall of Suharto still continues.²⁵ This can be seen from the fact that the current political situation in some local areas in Indonesia presents a picture of people's loose attachment to political parties, particularly in terms of declining membership figures and increasing numbers of swing voters.²⁶ This phenomenon refutes the premise that politics has become polarised between Islamic and non-Islamic parties. Moreover, the contradiction between urban-based parties and rural-based parties has become blurred. Both religious and non-religious streams are following the same direction. They tend to neglect their political ideologies, while rather pragmatic interests appear to drive their agendas.

The vast majority of Muslims in Bantul, about 95 per cent of the whole population, mostly living in rural areas, are a captive political market. Both secular and Islamic parties have to compete over their influence in that domain. The PDI-P, which usually avoids exploiting religious issues or speaking out in favour of the introduction of Sharia-based byelaws such as those relating to pornography and the wearing of a *hijab* by women, acts differently at the regional level. This observation leads me to conclude that presenting an Islamic image, in fact, is used by parties as a strategy to win over Muslim voters. It is, hence, relevant to consider Ufen's note on the dynamics of *politik aliran* in the *Reformasi* era. He

23 Pendapat Akhir Fraksi PKB atas Enam Raperda Kabupaten Bantul (The Final Opinion of the PKB's faction on Six Bills of Bantul), 12 April 2007.

24 Based on the data of both the Central and Bantul Commission of General Election.

25 R. William Liddle, 'New Patterns of Islamic Politics in Democratic Indonesia', *Asia Program Special Report* (Woodrow Wilson Center International Center for Scholars), no. 110, April 2003, pp. 4–13.

26 Andreas Ufen, 'The Evolution of Cleavages in the Indonesian Party System', Working Paper at the German Institute of Global and Area Studies, April 2008.

said 'parties are not "organic" aggregations of social interests, but are characterised by all kinds of deficiencies. Most of them are riddled with internal conflicts, their financing is often shady, their platforms are vague and party elites tend to monopolies decision making.'²⁷

4 Contestation over the Meaning of Prostitution

When defining prostitution, the fact that a prostitute receives money for her services is usually an essential element. However, simultaneously, in addition to being labelled immoral, sex workers are generally not well paid, though, according to a report by *The Economist*, an exceptional few of them earn a lot of money.²⁸ Therefore, there are many ways to perceive prostitution. Edlund and Korn, referring to the 1969 edition of the *Random House Dictionary of the English Language*, defined prostitution as an 'act or practice of engaging in sexual intercourse for money'.²⁹ Another definition rejects the point of selling one's body to distinguish between prostitutes and common women. As Ellis has argued, a prostitute cannot simply be a woman who sells her body because that is also done by women who marry in order to secure a home and a livelihood.³⁰ Unable to avoid a simplification, Edlund and Korn argue that a prostitute sells non-reproductive sex, 'commercial sex', whereas a wife sells reproductive sex.³¹

Likewise, in the discussions in the regional Parliament the most controversial debate had been about what prostitution is and what definition should be used. Some made a categorisation dependent upon the presence of money. The regulation does not. It states that indecent (immoral) actions with or without financial compensation are regarded as prostitution. It seems that the regulation ignores compound definitions of prostitution. It describes prostitution as any action, by a person or an institution, enticing, facilitating, organising and committing indecent acts. Because of this definition, the grey area between 'approval',

27 Andreas Ufen, 'From Aliran to Dealignment: Political Parties in post-Suharto Indonesia', *South East Asia Research*, 16, 1, 6.

28 *The Economist* in February 1998 reported that an Arabic prostitute could make 2,000 US dollars a night while a Latvian sex worker was reported to get 5,000 US dollars a month, 20 times the average salary.

29 Lena Edlund and Evelyn Korn, 'A Theory of Prostitution', *Journal of Political Economy*, 110, 1, 2002, 183–184.

30 Havelock Ellis, *Studies in the Psychology of Sex* (New York: Random House, 1936), 225.

31 Edlund and Korn, 'A Theory of Prostitution', 184.

‘acknowledgment’, and ‘prohibition’ of prostitution, which existed in the past and had been clear to the government, sex workers, brothels and the public, has disappeared.

Though insisting it was in favour of that position from early on, the PDI-P was somehow not convinced that prohibition was the best choice. That is why it held an SMS poll on 10 and 11 April 2011 on the *Persatuan* radio station, showing that the PDI-P understood the importance of the mechanism of public participation in the legislative process. Ignoring the fact that some groups were reluctant to have any form of interference at all, the public was offered two options: regulation or prohibition. There was no clear definition of what constituted the difference between the two. In total 224 messages were received, of which 45 (20.1 per cent) were in favour of regulation, while the rest, 79.9 per cent, preferred prohibition.³² This result made the PDI-P decide to approve of the draft; coming out in favour of prohibition was a reasonable decision to take.³³

Health was another factor brought into play. The Golkar party, referring to the result of the survey by the Health Office of Bantul, expressed strong support for the byelaw. A survey of 285 blood samples in 2004 found seven people who had HIV (Human Immunodeficiency Virus), the one of 2005 (with a sample of 422), six. A survey of 378 blood samples held in 2006 found 12 people with HIV, that of 2007 with a wider blood sampling of 403 people, four. The decrease in people with HIV in 2007 was claimed to be one of the positive effects of enforcing the regulation.³⁴

However, religious symbolism served as the main reason for the rejection of prostitution. Islamic parties explicitly cited a number of verses from the Qur’an. The New Unity Faction (Fraksi Kesatuan Baru) including the PPP related prostitution to God’s prohibition on jollification and adultery. With respect to the first, verse 64 of the chapter *al-Ankabut* (Q. 29; the Spider) was cited, cautioning human beings against jollification and pleasures in this world and reminding them of the endless happiness in the hereafter; with respect to the second, they referred to verse 32 of the chapter *al-Isra’* (Q. 17; the Night Journey or the Children of Israel), which explicitly forbids committing adultery.³⁵

32 The Final Opinion of the PDI Perjuangan Faction on the Six Bills of Bantul, 12 April 2007.

33 Interview with Tustiyani, the head of DPRD Bantul, July 2011.

34 The Final Opinion of the Golkar Party Faction on the Six Bills of Bantul, 12 April 2007.

35 The Final Opinion of the Fraksi Partai Golkar, the Fraksi Kesatuan Baru, and the Fraksi Partai Keadilan Sejahtera.

The PKS was in favor of banning prostitution but harshly criticised the regulation as it did not define morality in terms of religious norms. It also regretted the incompleteness of this byelaw as it limited the scope of prostitution and did not include cheating on one's spouse (*selingkuh*) as an act of prostitution. Machmudi noted that for the PKS promoting Sharia on the national level remains important. The party prefers to pursue the implementation of Sharia in a bottom-up approach, through educating Muslims to understand the essence of Sharia. In this way, they practise such teachings in their daily lives, and only when people accept Islamic law will they call for its implementation by the government.³⁶

5 Prostitution and Criminalisation of Women

Prostitution, in relation to the Sharia-based local regulations, has become a heatedly debated topic in recent years. Public attention has focused on the situation of female sex workers, the influence of prostitution on the young generation, the rise of economic activities surrounding prostitution centres and the adequacy of regulations. Much of the debate has simply been polarised between the so-called liberals and conservatives. The first demand that prostitution be decriminalised, normalised and humanised, while the second argue that prostitution should be eliminated. Social political interests play a major role for the government in determining its position between the two poles.

Kantola and Squires³⁷ categorised discourses responding to political debates on prostitution into four types: public nuisance, traditional morality, oppression-of-women and sex work. Public nuisance is the most dominant argument against prostitution. This discourse nevertheless remains silent on the marginalisation of street-class sex workers. Objections to sinful, shameful and evil prostitution are put by the traditional-morality model. These qualifications have been used for 100 years and are frequently mentioned whenever the topic is discussed. In the spirit of modernisation and gender-equality mainstreaming, the oppression-of-women argument does not highlight sin and vice, but the subordination of women and children.³⁸ The oppression model stresses

36 Yon Machmudi, *Islamising Indonesia: The Rise of Jemaah Tarbiyah and The Prosperous Justice Party* (Canberra: ANU E Press, 2008), 195.

37 Johanna Kantola and Judith Squires, 'Discourses Surrounding Prostitution Policies in the UK', in *European Journal of Women's Studies*, 11, 1, 2004.

38 Ronald Weitzer, 'Legalizing Prostitution: Morality Politics in Western Australia', *The British Journal of Criminology*, 49: 1 (2009), pp. 88–105.

the notion that prostitution is male domination of women. The model regards sex workers as victims and relates prostitution to sex trafficking problems. Those sexually exploited are often economically marginalised women and children with histories of prior physical and sexual abuse. The absence of economic alternatives has made them vulnerable to sex trafficking. The Coalition against Trafficking in Women (CATW) in the 'Who We Are' section of its website proclaims that '[w]e must take a principled position against the legalization of prostitution and discourage the demand for commercial sex without penalizing the victims. The wrong people continue to be arrested; the prostituted should be decriminalized.'³⁹ This model's favoured term, 'sexual slavery', is obviously opposed by the sex worker paradigm. Legalisation will institutionalise protection through workers' rights and the decriminalisation of sex workers.

I argue that the Bantul authorities were inclined to implement the traditional-morality model. It is stated in the byelaw's 'Consideration' that prostitution is an activity that disparages human dignity and violates religious tenets, the ideology of Pancasila and morality.⁴⁰ Both the legal drafters of the bill and most of the Bantul legislatives employed the oppression model to understand prostitution. In their opinion, the Bantul regulation on prostitution is aimed at protecting women from being 'sexual victims'.⁴¹ It seems that the Bantul administration has made a generalisation about prostitutes. Enik Maslahah, a female activist of Mitra Wacana, suggested that it should make a classification of prostitutes. Prostitutes should be divided into three types, i.e. those forced into prostitution, victims of trafficking, and those offering sexual intercourse for money. Such a classification can be used as the basis for addressing the problem of prostitution. It is not right that the prohibition of prostitution is strictly viewed in terms of eradication, while efforts to prevent, handle and rehabilitate those engaged in these practices are not undertaken.⁴²

It has been argued that the method chosen by the Bantul administration to abolish prostitution through the byelaw is worse than that undertaken by the Yogyakarta province in 1954 which byelaw was specifically concerned with brothels. This 1954 byelaw was aimed at eradicating

39 www.catwinternational.org/WhoWeAre (accessed 17 November 2011).

40 Bantul regulation No. 5/2007 on the Prohibition of Prostitution.

41 Christine M. Jacobsen and Dag Stenvoll, 'Muslim Women and Foreign Prostitutes: Victim Discourse, Subjectivity, and Governance', *Social Politics*, Volume 17 Number 3, (2010), pp. 274–276.

42 Enik Maslahah, 'Penurunan HIV/AIDS dan Perda', paper presented at the discussion 'Membangun Sinergisitas Gerakan HIV-AIDS, Gerakan Perempuan dan Gerakan HAM', 12 March 2008, Gedung Kepatihan Yogyakarta.

prostitution and maintaining people's health and safety. However, this regulation aimed in the first place at regulating pimps and houses used as places of prostitution, instead of arresting sex workers. The byelaw allowed the Yogyakarta administration to seal a house which was proven to be used as a brothel for three months, but it had to revoke its decision if the house was no longer used as a prostitution centre after this period. The definition of prostitution is much clearer in this law and it distinctively refers to acts of people selling their bodies and committing adultery for money.⁴³

The repressive approach has been developed by the Bantul administration which is of the opinion that the existence of prostitution is a result of social changes in a capitalist society. This thought clearly appeared in the government stakeholders' opinions when asked about the reason why a woman becomes a sex worker. Female prostitutes, they argued, are women who wear sexy clothes, lead luxurious lifestyles and feel reluctant to work hard, and have lost their dignity. Prostitution is understood as a result of excessive freedom and sexual permissiveness.⁴⁴ In line with this argument, paying less attention to its causal factors, prostitution is viewed as dirty, a vice and an immoral act. In many cases, however, prostitution is a consequence of a poor family economic existence.

The regulation led to quite a few wrongful arrests following the many raids conducted by the civil police (*Satuan Polisi Pamong Praja*, Satpol PP) in Parangkusumo. Sriyati, a 34-year-old masseuse, was accused of behaving in a sexy and provocative manner. While offering an advertisement of her massage services in front of her house, she was apprehended for being a prostitute. She could not refute the accusation and, therefore, was fined 500,000 rupiah. Instead of being sent to prison, she preferred to pay the fine by borrowing money from a friend. Being an elementary school graduate, she had to work hard to pay off the debt, since Sriyati could usually only earn 15,000 rupiah a day. The fine meant a downward spiral for her.⁴⁵ Another wrongful arrest occurred a couple of weeks after the regulation was issued. On 16 July 2007 the civil police detained 134 women. The story was that among them was a mother, who in the evening sat in front of her small shop (*warung*), was arrested and was charged with being a prostitute. The woman was in fact the wife of the head of Mancingan village, in Parangtritis. She failed to prove that

43 Peraturan Daerah Istimewa Yogyakarta No. 15/1954 tentang Penutupan Rumah-rumah Pelacuran.

44 Komnas Perempuan, *Atas Nama Otonomi Daerah*, 40.

45 Interview with Anik, the owner of a karaoke house in Parangkusumo, 20 July 2011.

she had not violated the law and, hence, was taken to the police station. However, before her appearance in court, her husband came with the necessary proof to secure her release.⁴⁶

The regulation has created the impression that the Bantul administration is keen to eradicate prostitution, but that it continues to be practised. The administration upped the number of police raids on Friday Kliwon and Tuesday Kliwon to as many as two or three times a day. However, the prostitutes preferred to leave the centre and moved to the village residential areas. Residents are hardly keen to stop them, as the prostitutes provide income by renting rooms. In view of this, activists condemned the way the regulation was enforced. The above cases show the existence of institutionalised discrimination and criminalisation of female sex workers.⁴⁷ Criminalisation lies primarily in the principle of legal moralism and, secondarily, in the harm, legal paternalism, and offence principles.⁴⁸ These principles relate to the view that individual liberty is justifiably limited to prevent harm to oneself and others, immoral behaviour, and offence to others. In other words, these principles have been referred to in advance in order to justify legal restrictions on the liberty of individual adults.⁴⁹

Harsh criticism was motivated by the fact that the regulation is aimed at catching the sex workers, not the pimps. Based on the records of the Bantul court, in addition to prostitutes and their customers, a number of young couples were arrested. Their cases are categorised as minor crimes (*tindak pidana ringan*). The records show that two months after its launch 127 sex workers were arrested in a month.⁵⁰ The fines varied and were dependent upon the judge's discretion. From 2007 to 2009, fines ranging from 300,000 to 500,000 rupiah were paid. In 2010, the fine declined to 100,000 rupiah. This considerable decrease was because

46 'Polres Bantul Rasia 134 PSK di Parangkusumo', *Suara Merdeka*, 17 July 2007.

47 Criminalisation is an act of controlling or restricting someone's actions and/or talk by making threats of criminal laws or an act of indentifying a legal activity as a crime. This approach has been used to relate prostitution to female morality, instead of poverty.

48 Rosemarie Tong, *Women, Sex, and the Law* (Maryland: Rowman & Littlefield Publishers, 1984), 39–43.

49 See Thomas Mappes and Jane Zembaty (eds.), *Social Ethics: Morality and Public Policy* (Boston: McGraw Hill, 2002); Thomas A. Mappes, 'Sexual Morality and the Concept of Using Another Person', in Alan Soble and Nicholas Power (eds.), *The Philosophy of Sex: Contemporary Readings* (Savage: Rowman & Littlefield, 2002), 207–223.

50 For a complete record of prostitution actions in the Bantul court from 2007 to 2011 see Appendix Table 2.

of one judge's belief that prostitutes were often mothers trying to earn money for their family. He believed that using the law as a deterrent and a sanction is therefore not necessarily the correct way to proceed in this context.⁵¹

Watin, the Coordinator of the People's Alliance Rejecting Land Evictions (Aliansi Rakyat Menolak Penggusuran, ARMP) stated that Parangkusumo people rely on tourism for their financial income. Following the issue of the regulation, traders suffered an economic decline of up to 90 per cent as Parangkusumo saw a significant decline in the number of visitors. People worried about raids and were fearful of being arrested and accused of violating the law.⁵² The decreasing number of sex customers had an impact on the income of food shops and those hiring out rooms. They condemned the regulation as having made their lives difficult. The regulation also hit the transport sector.⁵³

This situation triggered organisations attached to the Solidarity of Combating AIDS of Yogyakarta (Solidaritas Penanggulangan AIDS Yogyakarta, SPAY) to issue a press release criticising the regulation, which they claimed harmed and discriminated against women. These organisations held intense discussions involving social activists and prostitutes and agreed collectively that the regulation had to be rejected. The result was the establishment of an alliance, called the Alliance for the Rejection of the Bantul Regulation Banning Prostitution (Aliansi Tolak Perda Larangan Pelacuran di Bantul, ATPLP). The Indonesian Planned Parenthood Association (Perkumpulan Keluarga Berencana Indonesia, PKBI) served as the coordinator while the Institute for Islamic and Social Studies (Lembaga Kajian Islam dan Sosial, LKiS) was asked to appoint a campaign team.⁵⁴

This regulation was accused of contradicting higher laws, such as the Indonesian Penal Code (*Kitab Undang-undang Hukum Pidana*, KUHP). In the KUHP, mainly chapter IV 'assault on chastity' including Articles 295, 296, and 506, the main point in prostitution regulation is the criminalisation of pimps who make money from selling women

51 Interview with Sri Sugiarti, law clerk of the Bantul court, 12 August 2011.

52 'Prostitusi Dipicu Kemiskinan, Tega Tarik Denda Ketua Dewan Tak Peka Realitas Sosial', *Radar Jogja*, 6 May 2011.

53 Interview with Mulyono, the owner of a karaoke and rooms business, July 2011. See also Fisqiyatur Rohmah, 'Politik Peka Perempuan: Kajian Terhadap Peraturan Daerah No. 5 Tahun 2007 tentang Larangan Pelacuran di Kabupaten Bantul Daerah Istimewa Yogyakarta', UIN Sunan Kalijaga Yogyakarta, 2008.

54 Achmad Riza, 'Sejarah Perjalanan Aliansi Tolak Perda Larangan Pelacuran Bantul', www.ihap.or.id (accessed 26 February 2011).

as prostitutes. In addition, the content of the Bantul regulation was deemed vague and to be generalising prostitution problems in a too simplistic a way. As mentioned, Article 4, concerned with the definition of prostitution, is ambiguous. Descriptions of prostitution, such as 'enticing others in word and gesture to act obscenely' are unclear. Any couple, even a husband and a wife, found in a contiguous position would be liable to arrest for committing pornography. This is because the definition of prostitution is identical to that of pornography and does not acknowledge the presence of money to differentiate between sex workers and others.⁵⁵

For this reason, the ATPLP sought judicial review of this byelaw from the Supreme Court in October 2007. The ATPLP drew attention to a number of problems in the implementation, as reported in the judicial review manuscript.⁵⁶ The request was, however, rejected by the Supreme Court for the reason that the time frame for such a request had expired. In 2010, the National Commission on Violence against Women (Komisi Nasional Anti Kekerasan terhadap Perempuan) reported that the rejection of judicial review of the Bantul regulation on prostitution was based on technical administrative reasons, i.e. that, according to the Supreme Court Decree 1/1999, an application for judicial review must not be filed more than 180 days after the issue of the regulation. Here, the Supreme Court is seen as failing to exercise its authority to annul discriminatory local regulations. The time limit set to apply for judicial review hampers people's rights to access to justice.

In a discussion held by the ATPLP on 24 June 2008, KH. Husein Muhammad, the leader of Pesantren Dar al-Tauhid in Cirebon, argued that good objectives should be achieved through good ways. He referred to the concept of Islamic law, declaring that one affliction cannot be removed by creating another one. He denied the position of this byelaw as a legal norm.⁵⁷ Likewise, KH. Nur Jamil, the leader of Nahdlatul Ulama

55 See 'Permohonan Uji Materiil terhadap Peraturan Daerah Kabupaten Bantul no. 5 Tahun 2007 tentang Larangan Pelacuran di Kabupaten Bantul', (Judicial Review's Petition on Bantul Regulation No. 5/2007 on the Ban on Prostitution), submitted by the ATPLP, October 2007.

56 The ATPLP identified seven problems in the implementation of the byelaw, i.e. 1) women would be subject to a curfew; 2) the raids disregard the principle of 'presumption of innocence'; 3) the victims of wrongful arrest are not rehabilitated and do not receive financial compensation; 4) raids violate the right not to be arbitrarily treated; 5) raids are contrary to the right not to be treated in a way which humiliates human dignity; 6) house searches took place without permission of the local court; and 7) raids violated the right to freedom of religion.

57 'Perda Bantul No.5 Tahun 2007 Tidak Layak Sebagai Produk Hukum', www.pkbi-diy.info (accessed 28 May 2011).

in Kretek, Bantul, acknowledged that the regulation is not a long-term solution and reminded people of the importance of strengthening the function of social capital in order to limit the effect of prostitution on the younger generation. He criticised the use of religious symbols to legalise the regulation and the fact that the government was not able to alleviate poverty. He encouraged the involvement of religious leaders in implementing the law, in addition to the civil police who tend to use repressive power to enforce it.⁵⁸

The Alliance faced a number of challenges and obstacles when the government obstructed its campaign in several ways. First, not only did the Bantul administration ally with the ulama and the MUI, it also publicised the report of the District Health Office that the number of HIV infections had decreased as a result of the regulation. Thirdly, many Muslim organisations maintained and widely disseminated among their followers a religious interpretation of prostitution, one which was associated with adultery. This created a public feeling that the regulation is an effective tool for shaping morality and has no negative impact on the social and economic lives of local people. Fourthly, the Alliance was often deemed not to have the authority to criticise, or to contradict, the regulation.⁵⁹

Their struggle was also hindered by the fact that most members of the Alliance are university students in Yogyakarta coming from different cities. In demonstrations or public hearings, they were asked to show their identity cards (KTP) in an effort to show that they did not represent the people of Bantul. The Bantul administration used this point to weaken their movement.⁶⁰ Being aware of this difficulty, the Alliance changed tactics. It broadened its scope of activism to issues beyond prostitution and changed the name of the organisation to the Alliance of Those Concerned about Bantul's Policies (Aliansi Peduli Kebijakan Bantul, APKB).⁶¹

58 Interview with KH. Nur Jamil, August 2011.

59 Nugroho Angkasa, 'Pelarangan Tentang Pelacuran di Bantul Yogyakarta', *Kabar-Indonesia*, 6 August 2008.

60 Interview with Tustiyani, the head of DPRD Bantul, July 2011.

61 Interview with Subkhi Ridho, the coordinator of Lembaga Studi Islam dan Politik (LSIP, the Centre for the Study of Islam and Politics), member of the ATPLP, July 2011.

6 Conclusion

The Bantul byelaw on prostitution is one of many regulations on matters of public morality. The regulation touches upon a number of key concepts, such as the violation of religious teachings, human dignity, Pancasila and health. The rise of the PKS and PD and the decline of the PDI-P has been one of the socio-political factors which provides for a situation where the political parties find themselves stressing Islam and Muslim interests.

As a result of the absence of a single definition of prostitution, debate over the meaning of prostitution in the regulation occurred. While the secular parties relate prostitution to public participation and health issues, the Islamic ones connect prostitution with Qur'anic-based morality. The borders and limitations of prostitution are unclear. Unlike the preceding regulations, such as the 1954 Yogyakarta province regulation, and the KUHP, which only deal with the issue of pimps and brothel owners, the Bantul regulation has a broader scope, covering everyone committing indecent acts, including for example those acting seductively.

Besides the cases of wrongful arrest, the Bantul court reports record that no pimps have ever been arrested under the regulation. Instead, intense raids by the police resulted in women suffering significant economic hardship. Women activists and organisations harshly criticised the regulation as it has institutionalised the criminalisation of women. Legal attempts to change or revoke the byelaw, through judicial review petitions, have been made, but so far have been unsuccessful.

Appendix

TABLE 2 *Result of the national and Bantul elections in 2004 and 2009*

Party	National (percent)		Bantul (seat)	
	2004 (per cent)	2009 (per cent)	2004	2009
PDI-P	18,53	14,03	16	11
Partai Golkar	21,58	14,45	5	5
PD	7,45	20,85	1	5
PAN	6,44	6,01	7	7
PKS	7,34	7,88	5	5
PPP	8,15	5,32	3	4
PKB	10,57	4,94	6	3

TABLE 3 *Prostitution actions in the Bantul court (2007–2011)*

Year	Month												Σ
	1	2	3	4	5	6	7	8	9	10	11	12	
2007					2	8	127	18	15				152
2008	15			10	27	4		57	8				117
2009					41	13		17			21		92
2010								39			3	22	64
2011		57	58	7	7	24	39	6					198
Σ													623

