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Criminalization of Women's Bodies in the Name of Religious and Legal Reasons: Abuse Justification towards Women Conducted by the State

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CRIMINALIZATION OF WOMEN'S BODIES
IN THE NAME OF RELIGIOUS AND LEGAL REASONS:
ABUSE JUSTIFICATION TOWARDS WOMEN CONDUCTED BY THE STATE

ABSTRACT

Violence and oppression experienced by women in the name of legal, religious, cultural reasons and also patriarchal interests remain afflicting many women around the world including Indonesia. In the present reformation era, and the decentralization system was implemented, cases of violence against women based on religious reasons (covered by legal reasons) have dramatically increased. The State, through the National Commission on Violence Against Women, national and local NGOs and the intellectuals/academicians having deep concerns with women's rights struggle have worked hard to exclude Indonesian women from the existing depressive and oppressive atmospheres. However, the local government have massively involved in perpetuating such depressive and oppressive atmospheres by issuing a lot of local regulations that are discriminate against women. This happens not only in the province of Aceh that has, broadly known, imposed part of Islamic law (sharia). Since the local governments got authority to make their own legislations, a lot of local regulations are then massively issued in many districts and municipalities. These regulations oblige women (including students) to have female Muslim wear. Those who refuse will be arrested and will be treated as "criminal". This is a really detrimental situation to women. According to the data of the National Commission on Violence against Women, there are more than 154 local regulations (Peraturan Daerah or "Perda") that discriminate against women spreading all over Indonesia. This paper describes Indonesian women's hard experience since the local autonomy enactment provides opportunities to local governments to make regulations that will potentially criminalize women's bodies in the name of religious and legal reasons.

Keywords: criminalization of women's bodies, oppression against women, violence against women conducted by the State

A. INTRODUCTION

As commonly understood, human rights including women rights are inherent rights in every human being that must be respected, protected, maintained and should not be overlooked, reduced or taken away by anyone, including the state. History shows us that some cultural and religion practices may be particularly harmfull and discriminative to the rights of women (and girls) and all these practices, regardless of their source and justification, should be eliminated. To eliminate these, the state, through their legal measures, has an obligation to uphold the principle of non-discrimination and gives its full energy to respect, protect and fulfil the rights of all persons.

But in reality many countries, including Indonesia would be actively involved to produce a variety of laws that discriminate women.

This paper is a sharing of the authors on the discriminatory conditions affecting women in the name of religion in Indonesia legalized massively through laws (especially the local regulations) by the state since the reform era. This paper is inspired from the results of monitoring conducted by Indonesian National Commission on Violence against Women and the screening of a documentary film also made by the Indonesian National Commission on Violence against Women, entitled "ATAS NAMA". The film was screened in several regions in Indonesia in order to commemorate International Women's Day 2011.

After the reform and regional autonomy, the cases of violence against women in the name of religion (which is covered by the law) as expressed in the film increases.

Ironically, when Indonesian National Commission on Violence against Women at national level were striving for women's progress, rights and equality, some regions published highly discriminatory rules restricting women's freedom and movement and partly carried out solely for the sake of practical politics. Thus, although the perpetrators were both "the state", both work and have the opposite vision.

B. LEGAL AND POLITICAL REFORM

As a wide and densely populated island nation, Indonesia is a pluralistic country. It is full of rich and diverse arts, culture, ethnicity and customs. The wealth of diversity is also reflected in the norms, the legal system and social order in Indonesia. In this condition the conlift among them often occurs. Since the independence, there have been at least 3 (three) legal systems prevailing in Indonesia that is state law, customary law and Islamic law. Of the three, it should be understood that the state's legal system has a more superior position compared to the customary law and Islamic law.

Customary law actually grows and develops naturally in indigenous communities in some areas, especially rural areas, and the legal system is still being used or practiced by the indigenous people (indigenous community) in everyday life. But since the reform, some indigenous communities perform various movements and demand their right to use the law (customary law). This movement in Indonesia by foreign writers is often referred to as the movement of "revival of adat". [1].

As the impact of reforms by giving authority and autonomy, Aceh Province finally used Sharia rules, most of which derived from Islamic law, set out in some regional laws in the form of qanun such as qanun on gambling, seclusion and prohibition of drinking alcoholic beverages. Although politically it has always said that the people of Aceh who require the use of Islamic law, but the use of these more or less, according to the opinion of the writer, is the result of a political compromise that is caused due to a prolonged "armed conflict" and the "the will of Aceh people for independence". The enforcement of Islamic Sharia in Aceh Province in formal-juridical based on Act No. 44 of 1999 on the Specialities of Aceh Special Province jo. Act No. 18 of 2001 on Special Autonomy for the Province of Nanggroe Aceh Darussalam. The two national legislations issued would not have applied if there had no been the momentum for reform.

Within 3 (three) the prevailing legal systems, it is still found a lot of rules or customs that put women at a disadvantage situation and discrimination. Although it must be recognized that much progress had been achieved, the reform also saves a lot of troubles. It is not as nice as expected, at least for some women in Indonesia. Suffering, misery, social inequality and discrimination both vertically and horizontally still keep going on. It is getting worse even after reforms undertaken by the state by using legal instruments.

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[1] i.e. see in Henley, D. and J. Davidson, 2008, *In the Name of Adat: Regional Perspectives on Reform, Tradition, and Democracy in Indonesia*, Modern Asian Studies, 42, p. 815-852 and Bedner, A.W. and Stijn van Huis, *The Return of the Native in Indonesian Law*, Bijdragen tot de Taal-, Land- en Volkunde, 164, 1, p. 165-193

After experiencing quite stagnant conditions when the administration of Soeharto's New Order regime for 32 years and finally fell in 1998, Indonesia's political and social conditions change very quickly. The reform era was begun, the stretching of democracy, freedom of expression and opinion are also moving very quickly. Globalization and information technology development are also a "conditio sine qua non" to speed up the process of change or transformation of existing socio-political and not only in Indonesia even in the whole world. Now, the word of reform is easily said by everyone. The reform in Indonesia, according to the author, is even transformed into an excessive euphoria.

It must be admitted that the 1998 reform was an important moment in the history of Indonesia. It is a moment of freedom from the authoritarian and centralized government followed by the desires and demands of different regions to implement the decentralization and the granting of authority or greater autonomy to them. Immediately after the reform, the demands of decentralization as well as authorizing or greater autonomy in regions were administered by Act No. 22 of 1999 on Local Government which was then replaced by Act No. 32 of 2004 on Regional Government.

In the reform reality and regional autonomy, instead of giving women opportunities to develop themselves, it adds to the list of discrimination for Indonesian women, especially when religious groups emerge, press, and spread issues under the pretext of providing protection to women. Not only in Aceh which apply Islamic law, the various regions began to expand by enacting local regulations in Indonesia with 'religious" nuance.

KH. Husein Muhammad said that the intention to formulate women's issues in the legislation should be appreciated, but viewing the subject matter, rather than protecting women; this rule would ignore the rights of expression, monitor behavior and contain the potential to criminalize women.[2] Kamala Candrakirana states this situation as "the institutionalization of discrimination" in which the state is considered as the initiators and perpetrators of discriminatory acts against their citizens. [3] Thus the two authority giants within the community, religion and state (law), have collaborated to discrimination against women by limiting and neglecting women's rights.

The religious regulations were passed although it is obvious that Article 10 Paragraph (3) point f of Act No. 32 of 2004 on Local Government stated that the religious affairs are under the central government administration, not local governments. Although it does not specifically regulate on religion, the background of making used the foundation of religious values. In addition, in Article 28a states that the regional head and deputy of regional head are forbidden to make decisions that specifically benefit themselves, family members, cronies, a certain group, or political groups in contrary with the laws, harm public interest, disturb group of people, or discriminate citizens and / or other community groups.

[2] KH. Husein Muhammad, 2010, *Mencari Format Relasi Agama dan Negara*, dalam Rumadi dan Wiwit Rizka Fathurahman, 2010, *Perempuan dalam Relasi Agama dan Negara*, Jakarta : Komnas Perempuan, p. 11-12

[3] Ibid., p. 12

C. VIOLENCE AND CRIMINALIZATION AGAINST WOMEN BODIES BASED ON LAW AND RELIGION IN INDONESIA

Here are presented the reality of the violence and the criminalization situation experienced by women in Indonesia due to the issuance of discriminatory local regulations.

1. IN THE LEVEL OF REGENCY / CITY

Since the reform and regional autonomy, Indonesian National Commission on Violence against Women noted that, at least in the period of 1999-2009, 154 policies / local laws had been issued that are discriminatory against both women and minorities. These data was compiled by the Indonesian National Commission on Violence against Women in the Monitoring Report of Fulfillment Condition of Women Constitutional Rights in 16 regencies / cities all over seven provinces in Indonesia. [4].

Of the total 154 policies, the discrimination against women can be classified into 5 (five) categories; regulating the criminalization against women, controlling over women's bodies, regulating worship / religious life, and arrangements of migrant workers. Discrimination against minorities also occurs because of restrictions on religious freedom, especially for the Ahmadiyya community, which finally has adversely affected women (see table 1). [5].

Table 1.
The Classification and the Number of Discriminatory Regional Policies[6]

	CATEGORIES	NR	%
1.	The criminalization against women	38	25
2.	Control over women's bodies	21	14
3.	Restrictions on freedom of religion for the Ahmadiyya community	9	6
4.	Regulating worship / religious life	82	53
5.	Regulating migrant workers	4	2
	TOTAL	154	100%

Slightly different, in his writing Robin Bush said that regional regulation can be divided into several quite distinct categories, some of which have nothing to do with sharia. Then he cites the opinion of Salim Arskal classifying local regulations into three categories: 1) Those Relating to "public order and social problems", Prostitution, gambling, alcohol consumption, etc.; 2) religious obligations-reading skills and the Qur'an , paying the zakat (alms or religious tax); and 3) religious Symbolism, primarily the wearing of Muslim clothing. Only two categories, and three can be said to be directly linked to Islamic Teachings - first category relates to "morality issues" that can be said to Reflect the most moral Teachings of Religions and the majority of Indonesian society. Of the 78 regulations currently on the books in Indonesia, 35 or nearly

[4] The Data on discriminatory policies can be seen in Andy Yentriyani etc., 2010, *Atas Nama Otonomi Daerah: Pelembagaan Diskriminasi dalam Tatanan Negara-Bangsa Indonesia*, Laporan Pemantauan Kondisi Pemenuhan Hak-Hak Konstitusional Perempuan di 16 Kabupaten/Kota pada 7 Propinsi, Jakarta: National Commission on Violence Against Women, p. 19

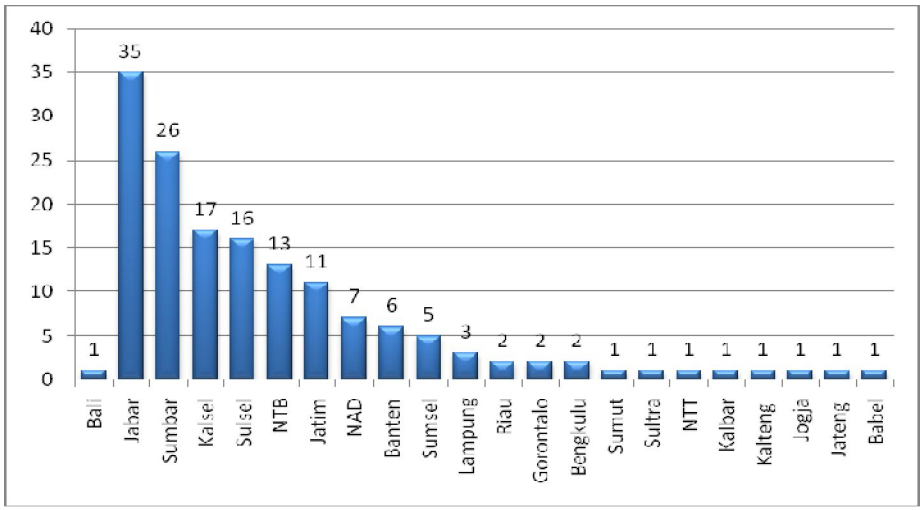
[5] Ibid., p. 20

[6] Processed secondary data, quoted from Andy Yentriyani etc., Ibid., p. 20

45% of the total, fall into the category of "morality" regulations Often Referred to as anti-vice regulations - "anti-vice regulations" - outlawing Prostitution, gambling, sale of alcoholic beverages, etc. For example, Regulation 5/2004 restricts the consumption and sale of liquor in Tasikmalaya. Regulation 21/2000 Outlaws Prostitution in Cianjur. Qanun 13/2003 prohibits gambling in Aceh. [7]

The distribution area of the provinces in which their regencies issued discriminatory policies can be seen in diagram 1. [8].

Diagram 1.
Regional Distribution of Discriminatory Regional Regulation



The recorded Provinces issuing the most discriminatory policies in a row are West Java, West Sumatra, South Kalimantan, South Sulawesi, West Nusa Tenggara and East Java. The discriminatory local policies against women recorded are more than a third policies of which restrict freedom of expression issued by the Province of West Sumatra, followed by West Java and South Sulawesi. West Java province was recorded as the most publishing local policies that criminalize women, followed by East Java and West Sumatra. For the waiver of the right to work and to live properly published the regencies that become the sources of women migrant workers, such as Cianjur and Sukabumi, both in West Java.

The distribution by year of publication on discriminatory policies can be seen in diagram 2. [9]

More than 80 local regulations were published almost simultaneously in a span of 2 (two) years, i.e between 2003 and 2005. This publication is suspected to arise after the easing of horizontal conflicts and mass violence occurred in several regions in Indonesia. In other words, the number of these discriminatory policies does not appear as a separate part of the post-conflict phenomenon with the background of "religion" and the issues between "the

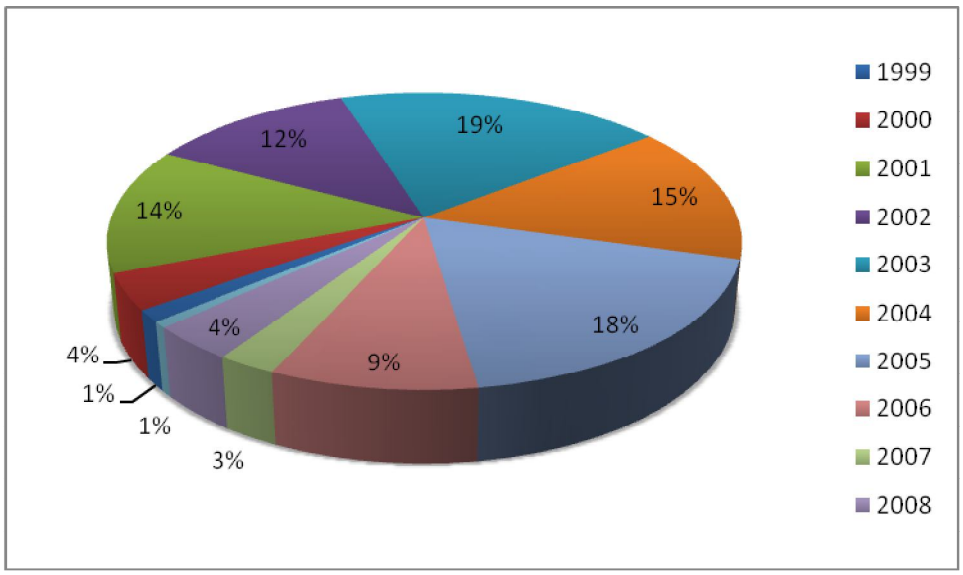
[7] Compared with Robin Bush, 2008, *Regional Sharia Regulations in Indonesia: Anomaly or Sympton?* Taken from *Expressing Islam: Religious Life and Politics in Indonesia* edited by Greg Fealy and Sally White, Singapore: Institute of Southeast Asian Studies, p. 174-191, see in http://asiafoundation.org/resources/pdfs/ShariaRegulations08RobinBush.pdf, p. 2-3

[8] Andy Yentriyani, *Op. Cit*., p. 21

[9] Processed secondary data, Ibid., p. 22

immigrant" and "native group". In 2006, the number of discriminatory policies declined. The decrease in the number of discriminatory policy was very likely due to the reaction of civil society at the national level, particularly related to policies that "in the nuanse of Islamic Law" and the advocate opposing the enactment of pornography law. [10].

Diagram 2.
The Distribution of Discriminatory Policies by The Year of Publishing



More than two thirds (106) of these discriminatory policies use similar terms, in the formulation of the proposition, stating that the intent of the policy-making is as "one of embodiment in practicing the teachings of religion" or to "increase faith and piety". More than half specifically mention that the purpose of the policy issuance is to "realize the Islamic character of the region", including the 7 (seven) policies on dress rules and 13 (thirteen) policies that criminalize women in the rules about prostitution. [11].

The presence of the same or similar rule formulation identified by the National Commission on Violence against Women was made only by copy-paste from other existing local regulations. [12] For example, there are at least 3 (three) regional regulations with almost similar formulation article namely in the Regional Regulation of Solok City No. 6 of 2002 on Compulsory Muslim Dressed; The Regional Regulation of Bulukumba Regency No. 5 of 2003 on Muslim Dress; and The Regional Regulation Pesisir Selatan Regency Number 4 of 2005 on Muslim Dress. Siti Musdah Mulia said that there is one area so enthusiastically proposing the Sharia law to the extent that the proposed draft regulation is intact duplication of other region's law, even the name of the copied region remains contained and has not been removed. [13]

In the formulation of several chapters in the regional regulation states that every employees, university students and senior high school students (high

[10] Ibid., p. 22
[11] Ibid., p. 22
[12] It was revealed in the discussion of the film "Atas Nama".
[13] Siti Musdah Mulia, 2006, *Perda Syariat dan Peminggiran Perempuan : Ada Apa dengan Demokrasi di Indonesia?*, Jakarta : Yayasan Jurnal Perempuan, Nr. 49, p. 128

school) or Madrasah Aliyah (MA) and Junior High School students (junior high) or Madrasah Tsanawiyah (MTs) are obliged to wear Muslim dress, while the common people are suggested or recommended.

In Islamic countries under the command of religion enshrined in the sacred texts of the Koran, every human being, especially women, are required to cover their body or "aurat". In Saudi Arabia, women traveling without a veil can be given severe punishment because they have committed a serious offense against the Islamic Sharia. Similarly in Iran, women must wear long veils that long, loose clothing that serves to cover the head or their body parts. This does not apply expressly for men. According to Asghar Ali Engineer, in general there is no standard manner in wearning veils. He gave an example in some countries in Southeast Asia. Further thought should be questioned again whether the wearing of "veil" or the Islamic headscarf is more of a socio-cultural practices in a region. [14]. Although the majority of the population is Muslim, Indonesia is not an Islamic state that rules of Muslim dress is not too precise to be applied by the state legally. Naturally without actually regulated by the state, the people of Indonesia, including women who are called to wear a Moslem dress would wear it with eagerness. Discrimination occurs when legal sanctions and social sanctions against violations of the clothing is only applied to women.

With a majority Muslim population, the publication of these regulations does not only affect Muslim women, but also affects the non-Muslim women. By not wearing Moslem dress, it does not mean they are Muslims or they are not Muslims. Thus, there is a "label" or "sign" that is automatically attached to them that could potentially harm themselves. For that, inevitably, some non-Muslim women react to "fit in" with the rule.

Various social and legal sanctions apply to women who do not wear this fashion. To social sanctions for students schools, they would be ostracized by friends and received a reprimand from the teacher or principal, even though these schools are public schools. For civil servants, they can be humiliated in public, such as publicly reprimanded at the time of the ceremony. Because it is a duty, a refusal to wear the hijab is against the order in the office that could have implications on the promotion or advancement. To legal sanctions, some cases in Tangerang, Banten province, as described in the film "Atas Nama" that has been mentioned above, carried out the arrest of women. Thus, women body is made as an object of criminalization again.

Dress manner is an integral part of the space to self-expression, a choice of how to express the thoughts and attitudes in accordance with their conscience. This is guaranteed by the Constitution of the Republic of Indonesia, UUD 1945 article 28E (2) which reads "every person has the right to freedom of belief, to express thoughts and attitudes in accordance with his conscience" and Article 28 (1) and (2) that guarantees (1) freedom of thought and conscience is a human right that can not be reduced under any circumstances; and (2) everyone is entitled to be free from discriminatory treatment on any ground and to protection against discriminatory treatment. Whatever the form of regional regulations, circulars or decision letters that discriminatory of regional heads causes women to lose their rights not to be afraid of doing

[14] Asghar Ali Engineer etc., 2010, *Pembebasan Perempuan*, dalam Rumadi and Wiwit Rizka Fathurahman, *Perempuan dalam Relasi Agama dan Negara*, Jakarta : Komnas Perempuan, p. 83-96

something - one of them is to dress as their wish and conscience which is really the citizens" constitutional rights.

Although the rules are intended to apply the same to women and men, the discrimination lies in the reality that social and legal sanctions are almost never applied to men. Siti Musdah Mulia said that the presence of a variety of local regulations has confirmed the subordination of women, limiting the freedom of women in dressing, limitting the movement and mobility of women and limitting women's activity time in the evening. It is obvious that this curb the rights and freedoms of women, placing women as mere objects of law, even lower, as sexual object[15].

From what is stated above, it can be distinguished 2 (two) types of discrimination; 1) the discrimination as the intent or purpose of the issuance of a policy that requires a certain type of clothing for women that limit freedom of expression and 2) the discrimination as a result of the implementation of policies that justify punishment given to women in the form of verbal or written reprimand to the arrest by the police (in this case the Unit of Pamong Praja police / Satpol PP and Wilayatul Hisbah in Aceh), which eventually become the culture of blaming women (blaming the victim) in the event of violence. [16]. Thus, rather than aimed at protecting women, discriminatory local regulations with religion nuanse would be a new disaster for women.

In the report of National Commission on Violence against Women also mentioned that at the beginning of this policy enforcement, in Bulakamba and Dompu, women not wearing hijab can not access public services freely. Some officials in government offices, explicitly or not, are just willing to serve those who dress in accordance with these rules. A prospective member of the regional parliament in Pangkep stated that his head of party will not approve his nomination as a member of the legislature if he did not wear veils. Everything indicates the occurrence of discrimination in the form of distinction in government positions and the reduction of women's rights in law and politics.

Here is one example of the interview that confirms this expressed by a Civil Servant in Dompu:

> *I just wear (Moslem dress) if I am in the office only. When I do not wear hijab, I was often shunned by my fellow in office. They often whispered in the back, they socialize with me but keep the distance and do not want to go out with me. There are reasons, and some gave direct reason because I do not wear veils. Someone's moral can not be measured with a veil. They assume that women who do not wear the hijab are not good women.* [17]

In addition to regulating the clothing, some of these discriminatory laws also regulate on prostitution and also set a curfew for women. Thus, if a woman is out at night, it is legal for the police to arrest her because the woman who goes out at night is a "suspect" to the practice of prostitution. Tangerang is one area having this rule. In addition, most recently, Pamekasan regency administration

[15] Siti Musdah Mulia, *Op. Cit.*, p. 122
[16] Andy Yentriyani, *Op. Cit.*, p. 32
[17] Ibid., p. 27

is planning to propose a law that would impose a curfew on all women after 11pm. [18]

With these rules, women workers in Tangerang are afraid to go home at night although some companies still apply night shift to female workers. This is due to the promulgation of Regional Regulation No. 8 of 2005 which aimed at banning prostitution. The Mayor of Tangerang stated that the issuance of these regulations is to accommodate public unrest following the rise of prostitution acts in Tangerang city. He said that before being implemented, as long as 3 months of socialization had been done and these rules have the full support of the people and alim ulama (religious clergy).

Article 4 Paragraph (1) of This local regulation reads: everyone with suspicious attitudes and behavior who causes a presumption that he / they are a prostitute is prohibited to be on public roads, in fields, in the inns, losmen (small hotel), hotels, dormitories, houses / rented houses, coffee shops, amusement places, the theaters, on street corners or in the hallway or elsewhere in the region. This formulation is an example of a formulation that does not put clarity as one of the principles of law making. The formulation is based on court of law solely on the mere assumption (suspicion and supposition). This formulation obviously just put the subjectivity of law enforcement officers who are obviously are very detrimental to women because they are multiple interpretations. Instead of the fear of being arrested while traveling (especially at night), the opportunity for women to get their right to work and overtime is lost because of this rule. [19]

Of the few examples of such policies, it appears that the regional rules are primarily intended to control women's bodies generally made with a single interpretation based on certain religious identity and political interests of certain groups covered by a vision to create a "religious" region. Thus, it is appropriate if Indonesian National Commission on Violence against Women states that the presence of these discriminatory rules put local governments as the originator and the active agents of discrimination. [20]

Ironically, in general, the policy issues were raised by the candidates for the Regional Head when the election of Regional Head would take place. After he/she was voted, this policy was legalized. The main purpose of the appearance of this issue is to draw public sympathy. By former President Abdurrahman Wahid, these conditions was labeled by the term of "a politicisation of religion"[21] or by some observers as well as female fighters it is called " imaging politic" that politicized identities by using the symbols coming from religion, ethnicity, or gender for the sake of political interest in the process of getting power.

2. IN NATIONAL LEVEL

One of the Bill, which the discussion process in Indonesia is the most horrendous, is the Bill of Anti-Pornography and Porno-Action. The Bill was finally passed by Parliament by Act No. 44 of 2008 on Pornography. If the

[18] Ziba Mir-Hosseini and Vanja Hamzić, 2010, *Control and Sexuality: the Revival of Zina Laws in Muslim Contexts*, London: Women Living under Muslim Laws, p. 57

[19] This illustration was taken from a clipping published by Jurnal Perempuan untuk Pencerahan dan Kesetaraan, No. 47 tahun 2006, Jakarta : Yayasan Jurnal Perempuan, p. 52-53

[20] Andy Yentriyani etc., 2010, *Op. Cit.*, p. 29

[21] Ziba Mir-Hosseini and Vanja Hamzić, *Op. Cit*., p. 62

previous nomenclature in the bill is the name of Pornography and Porno-action, after the nomenclature was approved the name of this law is only the Law on Pornography.

In connection with this frenzied discussion of the bill, Robin Bush reveals that:

> *... this bill spawned so much controversy throughout 2006 because of fears that it would outlaw expressions of local ethnicity and reduce Indonesia's diversity to an Islam-influenced dress code, that it remains "under discussion" to the present date. In the midst of the swirling controversy around that bill, in February of 2006, the now infamous "Tangerang incident" occurred, in which "public order officers" arrested a waitress and wife of a civil servant, as she waited by the roadside for a bus to take her home after work. She spent three days in prison under a charge of prostitution and lewd behavior, based on Perda 8, 2005, under which mere suspicion of or "appearance" of being a prostitute is grounds enough for arrest*[22].

The movement both to support and to reject this bill in the discussion always got great places in media coverage. Media always inserted a column, images or sounds to expose this story. Not only were women activists and even many celebrities who supported or opposed this bill, the chairman of the Special Committee on the bill continued was pursued by the mass media both domestic and international when it was in the discussion as well. [23]

What would make this bill heavily supported or rejected by the various elements of society?

The supporter exponents of this bill generally argued that the urgency of making laws is to uphold the moral values and to protect the dignity of every citizen. It can be seen in Article 3, point c of Act No. 44 of 2008 on Pornography which states that the purpose of this legislation is to provide guidance and education to public moral; as well as a general explanation stating that the provisions of the pornography law uphold moral values rooted from religious teachings.

This moral size was then questioned by the exponent who refused. Gadis Arivia stated that the question of pornography is not a question of morals, but a question of rights. According to Gadis Arivia, quoting from Kate Millet, Betty Friedan, Adrienne Rich and the novelist Erica Jong, we must be careful however to ban pornography as freedom of expression that must continue to be ensured and the principle of just and civilized human. What it needs to be done is not to ban pornography for the reasons of morality, but to make strict rules regarding the sale of pornographic products. Prohibition of pornography will nourish the practices of illegal pornography (not soft porn but hard porn) and because of the law enforcement in Indonesia is very weak, this rule will only nourish corruption practices. [24] In line with the views of Gadis Arivia, Siti Musdah stated that the definition of morality in these regulations has been degraded in such a way in which morality is only understood in the narrow

[22] Robin Bush, *Op. Cit.*, p. 5

[23] see Dita Indah Sari, 2006, *Karena Kekuasaan Butuh Patriakhi*, dalam Jurnal Perempuan untuk Pencerahan dan Kesetaraan, No. 47 tahun 2006, Jakarta : Yayasan Jurnal Perempuan, p. 7-8

[24] see Gadis Arivia, 2004, *Tubuhku Milikku: Perdebatan Tubuh Perempuan dalam Pornografi*, Jakarta: Yayasan Jurnal Perempuan, Nr. 38, p. 27

sense, it is equated with the question of morality, even it is reduced to the matter of woman's body. [25]

In addition to the debate on right and moral, by some observers of women, some of the provisions in the law is considered to have too broad meaning so that it is considered as "rubber Articles". There is also a chapter supposed to protect victims of pornography, even so it has the potential to ensnare "pornography victims" finally criminalized because this law does not see the socio-economic context in which women and children are often under persuasion, the use of power, and poverty serving as the objects of pornography. The article in question is Article 8 which reads: "Every person is prohibited from knowingly or with the consent of himself/herself into objects or models that contain pornographic content".

If in the discussion of the Bill some supporter exponents of the bill talked that one of the issuance purposes of this law is to protect the dignity of women and to prevent violence against women, this goal would be difficult to achieve because the law focuses only on morality. Whereas in pornography industry, violence against women can be started from the beginning of production in the form of coercion, seduction, and the lure to women to become objects of pornography; at the time of production in which women's bodies are exploited; at the time of deployment or circulation with the loss of bodily integrity of women and the impact such as social ostracism by society and even the justification that women are thus allowed for sexually abused and even raped. [26]

Dita Indah Sari stated that the rejection of the Bill on Pornography and Pornoaction showed diverse motivation. Although women activists became the main motor, gender equality and anti-patriarchy are not the sole aspiration that underlied the rejection. Some people, especially the art worker, carried the principle of freedom of expression. Others worried about the dominance of one particular religion (in this case is Islam). The other groups promoted pluralism and local customs, especially Bali, Papua and Kalimantan. A number of the bureaucracy, particularly from the tourism sector, worried about the threats to this sector. Others pointed out that the bill was upper-middle-class bias because poorer people will become victims of the limited opportunity to get a decent job and the lack of a humane environment to be able to hide the nakedness and acting "polite". Of various social groups that rejected, it was obvious, Dita Indah Sari stated that there was virtually no residual legitimacy can be claimed that this bill is good for social, economic, political, and culture. The bill is, therefore, according to Dita Indah Sari, is one of the denial to basic rights of life throughout human history namely the right to be different. [27]

In some cases, "bad" women also had experienced violence perpetrated by groups of mobs that used "attributes of religion" and "religious legitimacy". In the midst of people who called themselves "religious", the law had given legitimacy to a group of people to be "moral police" to pursue women who

[25] Siti Musdah Mulia, *Op. Cit*., p. 131
[26] Compared with the Clipping of Women Journal entitled *Catatan Kritis atas RUU Anti Pornografi dan Anti Pornoaksi*, 2004, Jakarta: Yayasan Jurnal Perempuan, Nr. 38, p. 45
[27] Dita Indah Sari, 2006, *Op. Cit.*, p. 9-10

were less fortunate and were forced to sell their bodies to survive. The group attacked, destroyed and even burned a few spots considered as vices.

In the prologue of the women journal, it is displayed an article saying “is it true that woman”s body is the source of sin? Then what is the use of it? Is it true that when pornography and prostitution are prohibited, automatically the rate of violence will decrease? Unfortunately, the reality is not like that. In real life even more hypocrisy a society, the higher the rate of violence and violations of women’s rights. Here is one opinion of the community leaders who claimed “to prevent children from rape in the home then children should close their body tightly”. There is another opinion stating that "to prevent women from sin and from the act of rape, women are prohibited to go out at night”. [28]

Of opinion can be seen that although the victim, she was (even children) was to blame in case of violence against them. Even at home, which should be a shelter, the children should cover their bodies tightly in order to avoid “undesirable”. Women are to blame when there is rape, an act of “sins” committed men because women’s bodies were “there”. Thus the female body should be covered and controlled by way of his freedom taken away by banning women out at night.

One of the causes of discrimination against women in the context of religious ideology is the doubt of injustice against women because of religious doctrine and thought that are considered sacred and should not be resisted. Many speculative doctrines pose women to be submissive and resigned. In normative-doctrinaire or some literal texts, they suggest the inequality (superior inferior). Yet, according to Nur Solihin, religious teachings should be neutral, universal and friendly to woman. Thus, it is necessary to hold the reconstruction of understanding religious texts through interpretation of the texts in order to give justice to women. Understanding of religious texts should be comprehensive and contextual so that Islam is truly a blessing for all mankind. [29]

In the view of feminists, such thoughts arise and will always appear as a moral principle believed to be the right by people is the principle formulated and constructed by men. The history describes women’s marginalization and dictation by men from time to time. In such a construction, women were always regarded as seducers and destroyers as well as various other negative stereotypes. Female bodies are the carrier of disasters and therefore should always be controlled. On the basis of morality, Pornography Law can be considered not to be intended to protect women as the result of porn industry, but rather to control their bodies.

D. THE LACK OF WOMEN’S PARTICIPATION IN THE PROCESS OF LEGISLATION MAKING

In contrast to the substantial aspect, when it is seen from the viewpoint of the democracy procedures of dicriminatory regional regulation making, it is considered by most discriminatory legal experts not to be the problem because of

[28] Dalam Prolog Jurnal Perempuan, 2004, Nr. 38, Jakarta : Yayasan Jurnal Perempuan, p. 4

[29] Nur Solihin, 2008, *Membincang Agama dan Negara tanpa Kekerasan Gender*, dalam Egalita (Jurnal Kesetaraan dan Keadilan Gender) Vol. III No. 2 Tahun 2008, Malang : PSG UIN Malang, p. 528-533

its making had been carried out in accordance with the mechanisms and rules of law making. Is this true?

One of the causes of the publication of discriminatory rules is due to the lack of female participation in the process of law making. The problem is, if the participation is available, the understanding of women's constitutional rights is still very low. The women, who are invited to participate, are not the ones who know the problems, understand the concept of gender differences, are not judicious. Women were invited only to meet the formal procedure so that their presence is merely to fill out the attendance list. When later the process of law making is questionable, the list of women attendance is easily shown as, in the writer's opinion, the duping efforts against women and simplifying the problem.

Until now the accessibility of women as part of public participation in law-making is very minimal even it can be said to be unavailable. Even if the invitation to participate is given, the material covered is generally not given in advance so it cannot be learned.

When a public hearing took place, rather than a session to discuss women, it became a session to suppress, to intimidate or to judge women who opposed or rejected the policy. Women who refused were given the stigma of "immoral women" or "women who are not religious". Thus, such women are not the type preferred by most men in Indonesia, especially for marriage. A stigma that is really heavy to bear, considering almost all Indonesian women would feel having lower dignity when they are given such stigma. Many women approve this matter; given the culture patriaki is still understood as a true culture of the majority of women in Indonesia.

Thus, women are "present" but they are "absent". Women have the right to vote, but they do not have the strength and bargaining power to make them heard. Even if women speak, rather than heard, their voice will usually only be accommodated and not impossible not to be used as a consideration material when ratification. Education and ignorance of women"s constitutional rights will also trigger this. Women who do not understand the issues of discrimination would easily say "agree" to the setting of policies as described above. As a simple example, when women were asked "agree or disagree with the regulation of prostitution or pornography". Concurrently, women must answer "agree". Particularly, when it is used as a cheap trick, such as; "when women did not agree, it is not impossible that it would jeopardize their marriages because their husbands will easily use the services of prostitutes". The lack of women"s unfamiliarity is used easily to deceive and fool women.

Finally, the majority opinion will be dragged as the desire of the originators because their power would dominate the entire aspects of community and national life. This is in contrary with Article 27 of the Constitution which guarantees equal rights in law and government. Similarly, in Article 28a of Act No. 32 of 2004 on Local Government stating a prohibition to publish regional regulation for the benefit of one particular group or discriminate against other citizens, including minorities.

E. APPLICATION FOR JUDICIAL REVIEW

One way for women to question and to sue various discriminatory regional laws is to file a judicial review. In Indonesia, the institution to apply for judicial review is divided into 2 (two); Constitutional Court and Supreme Court. The Constitutional

Court is based on Article 10 Paragraph (1) letter a of Act No. 24 of 2003 regarding the Constitutional Court has the authority to conduct judicial review to the regulations at the same level as law or the Constitution of Republic of Indonesia. For legislations under it, the authority of judicial review is in the Supreme Court.

In Article 31 Paragraph (1) and (2) Act No. 5 of 2004 on Amendments to Act No. 14 of 1985 on the Supreme Court state that: (1) The Supreme Court has the authority to test the laws under Acts against Acts, (2) The Supreme Court declare invalid the laws under Acts for the reasons of contrary to the higher laws or the establishment does not meet regulatory requirements.

Based on Article 31A paragraph (1) and (2) Act No. 3, 2009 regarding Second Amendment of Act No. 14 of 1985 on the Supreme Court: (1) the petition for judicial review of laws under Acts against Acts is filed by the applicants or their attorney to the Supreme Court and made in writing and copies as required in Indonesian language, and (2) the application for judicial review can only be done by those who consider their rights are impaired by the enactment of laws under Acts, namely individual Indonesian citizen; customary law community unit as long as they still alive and in accordance with the development of society and the principles of Republic of Indonesia regulated in Acts, or legal entity of public or private legal entities.

In more detailed, the request for a judicial review to the Supreme Court shall be detailed in the Supreme Court Regulation No. 1 of 2004 on the Rights of Material Testing (Perma 1/2004) using the terminology of Objection Petition. An objection may be filed directly to the Supreme Court or District Court.

The crucial rule, according to the writer is a weakness in Perma 1/2004, is a stipulation in Article 2 Paragraph (4) which reads: “the objection shall be filed within 180 days from the stipulated laws and regulations in question”.

Due to the lack of women’s participation in the process of making discriminatory policy as described above, the provisions of the grace period for 180 days to object becomes crucial. This regional regulation is generally just known by public, especially by the observer of women, after grace period has elapsed. Although there is a provision that all regional regulations must be published in the State Statute and the principle of “law ficti” which states that everyone is considered to be aware of law or legislation, but not many members of the public, particularly ordinary people who understand and have access to read the State Statute in short time.

According to the writer, Article 2 Paragraph (4) Perma 1/2004 is unreasonable and contrary to the “sense of justice”. It should be that whenever any citizen who has the right to raise objections or judicial review of various laws contrary to their rights as citizens and particularly those in conflict with human rights is without a limited time. Society change and transform, so does the laws. They should always be reviewed in line with changes in political or social transformation in society. The stipulation of this article is obviously in contrary with the principles of democracy and justice.

One example of a discriminatory policy applied for judicial review and denied was the Regional Regulation of Tangerang City No. 8 of 2005 on prostitution that has claimed the detention or imprisonment of a woman for 3 (three) days on the suspicion of prostitution as described above.

Robin Bush said that since the events of this imprisonment, the activists held a demonstration and sue the local government of Tangerang. However, this claim failed.

TAKDIR, a legal aid NGO, brought the case to the Supreme Court in a request for judicial review. In April 2007, in a surprisingly little-remarked-upon verdict, the Supreme Court rejected the request for judicial review of the Tangerang regulation against prostitution on the basis that the city government had followed all correct procedures in its formation, and as the municipality of Tangerang had a right to produce such regulation,the Court opined, there was no basis for judicial review of the content of the law. Women's groups and the NGOs that had brought the case to the Supreme Court for review were disappointed with this judgment, as they believed that the Court would have taken up not just the procedural issues of the formation of the regulation, but also its content[30].

F. CLOSING

From the explanation above, allow the writer to close this paper by quoting the opinion of Robin Bush suggesting that although Indonesia is often cited as the best example of a thriving and continually maturing democracy in Southeast Asia, however, the phenomenon of regionally-based legislation linked to religious teachings, which in some instances curtails the democratic freedoms of citizens, appears to be an exception to the overall picture of reform[31].

Theoritically and factually laws should eliminate all forms of "culturally and religiously justified" discrimination against women. It should protect all women without any discrimination as to race, color, language, religion, political or other opinion or values. Regarding numerous problems of discriminatory regional regulations to think and to "solve", it can be predicted that the position and condition of Indonesian women in the future is still far from ideal. Varied difficult situations still impress most Indonesian women because of the legitimated discrimination in the name of religious and legal reasons.

[30] Robin Bush, *Op. Cit.*, p. 6
[31] *Ibid.*, p. 1

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