Citizenship and Islam in Malaysia and Indonesia

David Kloos and Ward Berenschot

In July 2009, an Islamic court in the Malaysian federal state of Pahang sentenced Kartika Sari Dewi Shukarno, a nurse and part-time model, to a punishment of six strokes with a rattan cane (besides a fine of five thousand Malaysian ringgit [ca. 1000 euro]) for drinking beer in public.¹ Police, assisted by officials of the State Religious Department, had arrested her during one of their regular raids of holiday resorts in the region. The punishment was later upheld by the Pahang Syariah High Court. According to the judge, it was meant ‘to make the accused repent and serve as a lesson for Muslims.’² The case led to public outcry, both in Malaysia and abroad. Partly in response to this, the Sultan of Pahang interfered. The verdict was commuted, in early 2010, to three weeks of community service. Had the original sentence been carried out, Kartika would have become the first woman in Malaysia to be caned under Islamic (syariah) law. Instead, this doubtful honour went to three, less famous young women, who, after being sentenced for having pre-marital sex with their boyfriends, were caned between four and six times in a prison in the state of Selangor in February 2010. They had turned themselves in after realizing that they were pregnant.

In the Malaysian Islamic legal system, which exists side by side with the civil judiciary, caning may be meted out as a punishment for (particular) breaches of Islamic (syariah) law, including adultery, the use of intoxicants (such as alcohol) and apostasy. At present, three federal states (Pahang, Perlis and Kelantan) have implemented such punishments. Hudud laws, which enable Quranic (corporal) punishments, were first formulated in the states of Kelantan (1993) and Terengganu (2002), where the Islamic party PAS formed the local government. They were heavily contested from the beginning. Except for the punishment of caning, law enforcement institutions (which are controlled by the federal government) have refused to enforce syariah criminal enactments. However, at present, the United Malays National Organisation (UMNO) – the ruling party at the national level since independence in 1957 – is considering the implementation of hudud laws at both state and federal levels. A similar pattern can be

¹ We thank our interlocutors in Malaysia and Indonesia for their willingness to share their opinions and experiences with us. We thank Chris Chaplin, Ton Groeneweg, Henk Schulte Nordholt, and an anonymous reviewer for their helpful comments on an earlier version of this chapter.

observed in Indonesia where local governments have created a range of *syariah*-inspired bylaws, most of which are directed at matters of public morality. In the province of Aceh, where the right to implement *syariah* law was part of a broader autonomy package intended to put an end to a decades-long civil war, an Islamic criminal code has been implemented since the early 2000s.

These developments can be interpreted as a sign of the increasing strength and appeal of political Islam, in combination with the influence of transnational organizations and networks (Van Bruinessen 2013), or explained as a result of the growing anxiety about religious identities (Sidel 2006). But they also indicate changing interpretations of the ‘proper’ relation between state and citizen. The implementation of *syariah*-based laws in Malaysia and Indonesia amount to a reconceptualization of the positions of individual citizens vis-à-vis the state and other citizens. From a liberal-secular perspective, they amount to a massive infringement of personal freedom, an attack on women’s rights, an unwarranted foray of state institutions in religious matters, and an intrusion of the state into the private sphere. From forbidding women to go out after dark, punishing homosexuals, penalizing extra-marital sex to banning alcohol and prescribing modest dress, they do not just impose physical punishments for moral transgressions but also aim to regulate several aspects of people’s private lives. As such, they institute a form of differentiated citizenship, imposing different behavioural standards on Muslims and on women.

Yet, the lively and very heated debates about *syariah*-based regulations in Malaysia and Indonesia are rarely waged in liberal or secular terms. In both countries, NGOs and religious leaders engage in public campaigns to support, adjust or counter the institutionalization and enforcement of Islamic morality, while ‘ordinary’ Muslims often express a critical stance toward the advances of normative Islam generally (Kloos 2015; Peletz 1997). What stands out in this discussion, however, is the relative insignificance of liberal or secular discourse. Campaigns against *hudud*- and *syariah*-based regulations are not, generally, about defending individual rights. Instead, the debate is largely framed in terms of how, and in what ways, religious duties and injunctions need to be interpreted, and what role should be ascribed, in this process, to the state. In other words, conceptions of citizenship in both Indonesia and Malaysia are developing in interaction with evolving attitudes toward Islam, Islamic texts and discourses regarding ‘proper’ Islamic behaviour.

By this, we do not mean to say that Islamic piety and human rights (and related concepts such as pluralism or democracy) are incompatible. Quite the contrary. As Robert Hefner (2011:60) has argued, the Muslim world in general – and democratic Indonesia in particular – has been characterized, as a result of a ‘remarkable historical coincidence,’ by a convergence between religious revival and a widely shared embrace of democratic discourse (cf. Künkler and Stepan