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Courtrooms of conflict. Criminal law, local elites and legal pluralities in colonial Java
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PART II — LEGITIMIZING LAW

At the beginning of the nineteenth century, the Dutch legitimized colonial law by incorporating pre-colonial knowledge holders of Javanese legal traditions in the pluralistic colonial courts. I will now turn to a more actor-focussed approach and investigate how these knowledge holders held, in the words of Lauren Benton, the “burden of translation” of the colonial courtroom into something that was understood by the Javanese population as a legitimate court. As Benton argues: “Staging loud and impressive theatrical events was relatively easy for colonizers; making these displays mean what they were intended to mean was much more difficult.”¹

In early-nineteenth century Java this process turned out to be rather complicated, in particular, since at that moment the Javanese jaksas and the Javanese-Islamic penghulus were entangled in longstanding jurisdictional disputes. At first, the problem of how to apply Javanese legal traditions was basically ‘solved’ by appointing both jaksas and penghulus as advisors in the pluralistic courts. Over time, however, the jaksa would be stripped of his advisory role and became the public prosecutor, whereas the penghulus remained attached to the pluralistic courts as a legal advisor. In the coming chapters, the transformation processes of both the penghulu and the jaksa is traced to answer the question why the penghulus and jaksas entered, and remained part of, the pluralistic courts.

Research on colonial justice in British India demonstrates why and how local advisors used colonial spaces. For example, until the 1860s, the British consulted Hindu pandits during court sessions. Since few colonial judges mastered Sanskrit, they were in fact completely dependent of the

¹ Benton, *Law and Colonial Cultures*, 16.

pandits, who convinced the British to observe the Brahmins as the most prominent population group in the Indian society.² Research into local nineteenth-century qadi registers assesses the strategies deployed by Islamic judges to secure their position under British rule.³ On the other hand, over time, a cooperation with the colonial government could also turn out to be less favourable for the local actors in question. The qadis in British India would eventually lose their established position, as historian Chris Bayly has described: “Progressively the kazi had ceased to be a judge and counsellor of rulers; he became merely a member of a Muslim ‘caste’ who married people.”⁴

In Java, similarly, the penghulus and jaksas would exercise their authority through the colonial courtrooms while simultaneously suffering from marginalization over time. Like the Indian qadis, the penghulu became a marriage official in contemporary Indonesia. Remarkably, although extensive historical research has been done on the history of Islam in Java, the penghulu is hardly mentioned in this historiography.⁵ Clifford Geertz, for example, only briefly describes the penghulu as “a somewhat marginal officer in the colonial bureaucracy.”⁶ An exception to this is the work of the former Adviser on Islamic Affairs G. F. Pijper, and, more recently, the work of the historian Muhamad Hisyam, who wrote a rich study on the social position of the penghulus and the considerable changes in their position during the late nineteenth century.⁷ Recent work done by legal anthropologist Stijn van Huis provides insights into the position of the penghulus and the religious courts in Cianjur.⁸ Little is known, however, about the penghulus during the early nineteenth century or about the exact position of the penghulus in the pluralistic courts, even though they were observed by the Dutch as *the* representative of the Islamic population.

² Metcalf, *Ideologies of the raj*, 11, 23-24.

³ Lhost, “Writing Law at the Edge of Empire.”

⁴ Bayly, *Empire and information*, 166.

⁵ Regarding the nineteenth-century the following (recent) works focus specifically on Islam in Java: Ricklefs, *Polarising Javanese Society: Islamic and Other Visions.*; Laffan, *The makings of Indonesian Islam.*

⁶ Geertz, *Religion of Java*, 132-133.

⁷ Pijper, *Studiën over de geschiedenis van de Islam.*; Hisyam, *Caught between Three Fires: The Javanese Pangulu under the Dutch Colonial Administration.*

⁸ Van Huis, *Islamic courts and women's divorce rights in Indonesia.*

The jaksas also eventually suffered from their transformation within the colonial legal system. Political scientist Daniel Lev depicts the jaksa of the early independent Indonesian state as a colonial relic from the past whose status could not compete with that of the Indonesian court judges. Referring to the late colonial period, he describes them as “the once lowly jaksa, often poorly educated and unused to exercise authority.”⁹ However, as I will argue below, this image does not correspond with the picture of the jaksa that speaks from the nineteenth-century archival sources. The discrepancy between this elitist jaksa of the early colonial state and the lowly post-colonial jaksa leads to the question what exactly happened to the profession and position of these Javanese public prosecutors. As with the penghulus, the historiography is almost silent on the jaksas, and they are often only mentioned as officials with judicial responsibilities.¹⁰

Through analysing the origins and professional development of both the penghulus and the jaksas, this part aims to go beyond the dominant colonial stereotypes of these actors. I argue that colonial depictions were instrumental in shaping the responsibilities and position of the penghulus and jaksas within the colonial legal system, but also that they simultaneously gave them space to manoeuvre. The jaksa, especially, used the pluralistic courts as a space to optimise his position as intermediary between his priyayi network and the colonial offices he worked in. Over time, however, the Dutch stripped him of most of his responsibilities and thereby marginalised an important local official. As Bayly has argued for British India, a static idea of local actors and intermediaries reflected an insecure and prejudiced colonial state: “British assessments of crime, religion, and native lethargy were more often reflections of the weakness and ignorance of the colonisers than a gauge of hegemony.”¹¹ In Java as well, both the Javanese elites and the Dutch officials had an interest in controlling the site of the courtroom and of criminal justice itself. The lack of local knowledge, and their reliance on local informants, caused fear and doubt on the part of Dutch officials. The advisors provided access to more knowledge, but simultaneously, as I argue throughout the coming chapters, fed the distrust.

⁹ Lev, *Legal evolution and political authority in Indonesia*, 75-76.

¹⁰ See for example: Sutherland, *The making of a bureaucratic elite*, 9.

¹¹ Bayly, *Empire and information*, 143.