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Courtrooms of conflict. Criminal law, local elites and legal pluralities in colonial Java

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5 — Mutilated Ritualization: The Penghulus

Despite the indistinctness about the application of Islamic law in colonial law practice, the penghulu remained appointed as an adviser to the landraad for the entire period of colonial rule. In this chapter, I will assess why the penghulus remained affiliated with the pluralistic law courts, even though the court members and president in practice did not listen to the legal advice provided by him. And, given this, why—both from the perspective of the penghulu and of the Dutch colonial government—the penghulus remained appointed advisors, despite their increasingly marginalized position in the landraad. Making use of early nineteenth-century landraad cases, I will debunk the colonial stereotype of the penghulu always advising to cut off hands, and position the penghulu in a broader social world in order to understand the development of their profession and their role in the colonial state.

5.1 The Penghulu in the Courtroom

During a pluralistic court session, the penghulu held two responsibilities. First, he was responsible for the oath-taking of the Javanese suspects and witnesses. According to the *Shafi'i* school of law, the oath had to be taken in the mosque.¹ However, in the landraad, taking the oath of suspects and witnesses took place during the court session in the courtroom, preceding the interrogation of the suspect and the witness accounts. The penghulu held the Quran above the head of the suspect or the witness (see Figure 8). According to Islamic law, it was not obligatory for witnesses to take the oath. From a moral perspective, the witness was obligated to speak the truth, but if, for example, an extremely harsh punishment could result from someone's testimony, the witness was allowed to refrain from providing incriminating testimony. However, according to the Dutch system, witnesses *were* obligated to take an oath and the pluralistic courts followed the Dutch procedure in this.² The Dutch colonial regulations did not

¹ Halim, "Contestation of the Oath Procedure." 21.

² Halim, "Contestation of the oath procedure," 22-24. After 1882, when the religious courts were brought under direct colonial supervision, the Dutch oath procedure also became obligated for the religious courts. In 1903, the Penghulu of Kraksaän filed a complaint on

specify what the text of the oath should contain, but according to the *Shafi'i* school of law, the oath contained at least the following words: “I swear” (*ahlaf* or *aqsam*) or “I testify” (*ashhadu*) followed by “in the name of Allah, no God but him” and with the addition of “who Knows what is hidden and what is obvious” (*al-ladhi ya'lam min al-Sirri ma ya'lam min al-'alaniyya*). These guidelines were probably applied by the penghulus in Java as well.³



Fig.11 Oath taking at a landraad. [KITLV no.90757].

The second portion of the penghulu's responsibilities in the pluralistic courts, would lead to more debate. As discussed before, the

this obligated oath-taking. However, government advisor Christiaan Snouck Hurgronje decided the complaint to be unjustified, since a voluntary oath-taking would demand “witnesses with high moral standards”, to be able to decide whether or not to take the oath. Snouck Hurgronje considered the number of such witnesses residing in Java too few.

³ Halim, “Contestation of the oath procedure,” 21 and 25.; Literature on the VOC era mentions that at that time the Islamic oath was taken by putting two fingers of the right hand on the Quran: Jones, *Wives, slaves, and concubines*, 86. For the nineteenth century, the sources only mention that the Quran was held above the head of the suspect or witness. I did not find anything in the colonial sources about the text of the oath itself.

penghulus provided legal advice—together with the jaksa until 1847, thereafter alone. Quite early in the nineteenth century, however, the pluralistic courts began to ignore the advice of the penghulu. The Dutch claimed that the penghulus' "archaic advice" of cutting off the right hand was the reason for ignoring their advice. The nineteenth-century archival materials collected for this dissertation, however, present a different and more regionally varied picture, which I will discuss below.

Javanese-Islamic Legal Advice in Pluralistic Courts

The exact Islamic sources that penghulus in the pluralistic courts based on their decisions is not clear from the criminal cases examined for this dissertation. In the preserved procedural documents and files of criminal cases, a reference is often made to "the native laws" or "the religious laws," but which legal sources the penghulu referred to is never specified. It is possible that the penghulu did refer to his legal sources during the court session, but that it was not noted by the registrar. It is also possible that the penghulus themselves were unclear about the laws or customs on which they based their advice.

For now, we can only see a difference in the references made to either "native" or "Islamic" laws, although this could also be a (random) choice of words from the registrar and not necessarily an accurate reflection of the legal sources used by the penghulu. However, there is a rather consistent difference between the choice of words between Semarang and the Batavia area. In Semarang in September 1820, for example, the house of a Javanese man named Krio was robbed. Several goods were stolen, among them a *kebaya* (Javanese dress). A man named Singotroeno was accused of the theft and brought to court on Monday, 9 October 1820. When their advice was asked, Chief Penghulu Hadjie Machmood and Jaksa Maas Ingebey Nittiprodjo first declared that they thought the accused was guilty of "having received and laid hold on stolen goods." They then offered their opinion that the suspect should be punished according to Islamic law, with a minimum of three months of forced labour at the public works, and that he should return the *kebaya* to Krio.⁴ Thus,

⁴ ANRI, GS Semarang, no. 4112. Landraad case Singotroeno, October 9, 1820. "*Zij hoofd jaksa en hoofd panghoeloe van gevoel zijn, dat den gevangene volgens de Mahommedaansche wetten moet worden gestraft ten minsten met drie maanden kettingslag*"

reference is only made to the Islamic laws and not to other Javanese laws or customs. This was different in the Western Quarters of the Ommelanden where there are references not to Islamic law but to “Native laws.”

As discussed in chapter 4, the relation between the penghulu and the jaksa also differed by region. In Batavia and the Ommelanden, where the landraad had only recently been installed, the jaksa was truly a public prosecutor who referred to the Dutch regulations, whereas the jaksa and the penghulu in Semarang provided their advice jointly. According to Henri Pierre Grobbee, in Priangan and Banten, Islamic law was used more often and more thoroughly than elsewhere. He argued that the people in most areas of Java still held on to a mix of Islamic, Hindu, and animist prescriptions.⁵

Future research on civil law cases at the landraden, and foremost on the laws applied in the religious penghulu courts, could provide us with a much better understanding of the Islamic law referred to and applied by the penghulus. Recently, legal anthropologist Van Huis has attempted to do this by comparing an ordinance of Sultan Agung from the seventeenth century with a description by Van den Berg from the nineteenth century, both on divorce cases in Java. From this, he argues that the laws applied originated partly from the *Shafi'i* school of law and partly from local customary law, with the latter providing a stronger position for women.⁶

Even though the precise origins of the penghulus' legal advice in criminal cases remains unclear for now, the landraad cases collected for this dissertation offer insight into the types of punishment the penghulu recommended. We will now take a closer look at the penghulus' advice regarding punishment, and then we will answer whether the penghulu always recommended mutilation as a punishment, as the Dutch claimed.

Cutting off Hands

The punishments imposed in eighteenth-century Java reflected influences from several traditions. Among those of particular concern to the Dutch in

om aan de gemeene werken alhier te arbeijden voor de kost zonder loon, mitsgaders restitutie van het baattje aan den eigenaar daarvan den Javaan Krio.”

⁵ Grobbee, *De Panghoeloe Als Adviseur in Strafzaken*, 1-2.

⁶ Van Huis, *Islamic courts and women's divorce rights in Indonesia*, 66-68. Van Huis shows an even longer influence of colonial compendia on Indonesian law, by showing that the 1991 compilation of Islamic laws displays much resemblance with the eighteenth-century Freijer Compendium.

the nineteenth century were Shafi'i *hudud* punishments. They especially disapproved of the cutting off of hands. *Hudud* offenses were those forbidden in the Quran. Some, such as adultery, theft, and highway robbery were punishable, under strict conditions, by fixed punishments such as stoning or amputation of the hand; other *hudud* punishments included banishment and beating.⁷ Most *hudud* punishments were also part of the Javanese and Dutch punishment traditions, such as whipping and banishment, and their origins in colonial Indonesia are therefore hard to trace.

In 1715, the Dutch resident of Cirebon Joan Frederick Gobius (1714–17) reported that in most parts of Java—except the less Islamic-oriented areas like Cirebon, the Ommelanden, and the east coast—corporal punishments were “handled” by Islamic officials.⁸ It is known that the *kyai fakih* in Banten imposed *hudud* punishments. Other sources show that also in Cirebon mutilation was carried out. Apart from these Islamic influences on the sentences, common Dutch punishments such as branding, chain gang and displaying a corpse after execution also became routine practice in Cirebon.⁹ In 1766, for example, the New Batavian Statutes stated that the regents of Central Priangan were entitled to punish buffalo thieves with chain labour, which was not a local punishment.¹⁰

In the eighteenth century, the Dutch felt no constraint themselves on corporal punishments. In Amsterdam, for example, theft and robbery were commonly punished with whipping and branding, and less regularly cut-off thumbs and cheek cuts were performed as well. With the arrival of enlightened ideas on criminal justice, however, corporal punishments became controversial.¹¹ Despite this, the Dutch still used these in Java in

⁷ Hallaq, *An Introduction to Islamic Law*, 155-156. The Dutch misused the term Hadd (*hudud*) by using it as a reference to exclusively mutilating punishments. *Hudud* in reality are certain offenses (such as adultery, drinking alcohol, theft and highway robbery) for which the punishments are decided by the Quran and the Sunna.

⁸ Ball, *Indonesian Legal History*, 59. Ball uses the word “handled.” It is unclear whether he means that the Islamic officials imposed the punishments or only executed them.

⁹ Hoadley, *Selective Judicial Competence*, 29.

¹⁰ Kern, *Javaansche Regtsbedeeling*, 53.

¹¹ Spierenburg, *The Spectacle of Suffering*, 199, 221. In the Netherlands, corporal punishments were abolished in 1854. The last public execution was in 1860 and in 1870 the death penalty was abolished. In the Netherlands Indies, corporal punishments were abolished in 1848, but whipping (with a rattan whip) was still allowed until 1866. The death penalty was never abolished.

1807, as shown on the drawing of the landraad in Semarang (see Figure 4). The cruelty of the punishments applied in the drawing is significant. People are hanged and mutilated. Two years later, in 1809, the resident of Semarang and Demak reported that the cutting off hands and feet was still common in the landraad of Semarang.¹² After this, Daendels prohibited torture and mutilating punishments, although according to Dutch observers the chief penghulu of Semarang was so powerful that he managed to maintain the practice of cutting of hands and feet.¹³ Upon his arrival on Java, Raffles found that mutilating punishments were still carried out and he issued a prohibition against it. According to historians Mildred Archer and John Bastin, the drawing played a part in this.¹⁴ However, the drawing was from 1807, before the abolishment of mutilating punishments by Daendels. In any case, Raffles was clearly displeased with the punishments applied and in his *History of Java* recalled that “the system acted upon was at once barbarous and revolting” and it happened “under the sanction of native law.”¹⁵

From 1819 onwards, in practice the pluralistic courts would impose typical Dutch-colonial punishments, and most convicts could count on forced chain labour and being flogged with a rattan cane, punishments that already existed from VOC times. In 1835, the chains and ankle cuffs that had linked the chain gangs (*kettinggangers*) were replaced by an “iron collar,” because—according to the decree—a test had shown that these appeared to be “far less disadvantageous to the health of the convicts.”¹⁶ In 1828, the Dutch-colonial punishments were officially introduced as the

¹² Daendels, *Staat der Nederlandsch Oostindische Bezittingen*. Appendix “Organique Stukken Batavia.” Buitenzorg, April 4, 1809. No.28

¹³ Ball, *Indonesian legal history*, 99.

¹⁴ Archer and Bastin, *The Raffles drawings in the India Office Library London*, 32-336. “The drawing must have had special significance for Raffles as evidence of the type of capital punishment inflicted before the arrival in Java of the British, and more specifically before Lord Minto issued his proclamation on 11 September 1811 abolishing torture and mutilation.”

¹⁵ Raffles, *The History of Java*, Volume 1,321.

¹⁶ S 1835, no.42. Chaingangers were convicts who were chained and had to perform forced labour. They wore feet chains that affixed several prisoners to each other. In 1835, the feet chains were replaced by neck collars: “...uitslag mededeelende der genomen proef, om de kettingen en voetbeugels van honderd, te Ambarawa aanwezige kettinggangers, door ijzeren halsbanden te doen vervangen, waaruit blijkt, dat deze halsbanden veel minder nadeelig zijn voor de gezondheid der veroordeelden, dan de tot nu toe in gebruik zijnde kettingen en voetbeugels.”

only punishments to be imposed.¹⁷ At the same time, however, the Java War had influenced ideas about the application of Islamic laws and the possible dangers of abolishing certain punishments. Governor General Johannes van den Bosch wrote to Merkus about this issue in 1830. Merkus had by then become commissioner of the princely lands and was designing a regulation for these semi-independent sultanates in central Java, right after the Java War. In his letter, Van den Bosch blamed the abolition of the Islamic punishments “of the Quran” for the spread and intensification of the Java war. He urged Merkus to allow the implementation of Islamic punishments again and referred to the British who had allowed *sati* (widow burning) in Malabar.¹⁸ In the princely lands, the punishment of cutting off hands would therefore not be abolished until 1847. Yet, for the rest of Java the ban on mutilation remained.

Altogether, the Dutch reduced the problem of implementing Javanese criminal laws to a debate on the application of Islamic corporal punishments. This was a very limited understanding of the actual judicial conflicts, since Diponegoro had certainly—regarding criminal law—not protested the abolition of mutilating punishments exclusively. He had foremost opposed the diminished control of the Islamic clerics and the sultan over the law courts in criminal cases. This protest was of no avail, though, and for the rest of the nineteenth century, the debate about Javanese-Islamic law would not increase much in value, as we saw in chapter 3. Instead, due to Dutch disparagement of Islamic punishments, the penghulu was marginalized into a stereotypical figure who was indifferent to his advisory role in the landraad and always advised to cut off hands.

A Stereotype Debunked

In 1864, a colonial journal published an article in which the marginalized role of the penghulu in criminal cases was called “a mockery of the Islamic commandment.” The author of this article blamed this on the prohibition of mutilating punishments, because Daendels had, by doing this, “destroyed” a “holy *adat* derived from the Quran.” The author described how in every theft case the penghulu offered advice according to the “religious or other

¹⁷ S 1828, no.16 and 62.

¹⁸ Peter Carey, *The Power of Prophecy*, 706.

laws and customs of this island” and always advised cutting off a hand.¹⁹ The article is representative of how nineteenth-century Dutch colonials discussed issues regarding the penghulu in the landraad. There emerged a stereotypical image of the penghulu as an old official who hardly spoke Arabic, fell asleep during court sessions, and always recommended *potong tangan*, or cutting off a hand. But why would the penghulu advise *potong tangan* in every single criminal case? Is this even true?

To answer these questions we return to the archival materials. In the colonial law journals, landraad criminal verdicts were sometimes published, although the exact advice of the penghulu remains unclear—it only says, “taken into consideration, the advice of the penghulu”—which shows that Dutch jurists were barely interested in what the penghulu might have argued in court. However, it is possible to compare the advice of the penghulu in the procedural documents of the landraad cases from Tangerang and Pekalongan, in western Java, preserved in the archives. We can only look at these landraden, because it is only there that the advice from the jaksa and penghulu was noted separately, in contrast to the Semarang landraad, where they provided advice together until 1848. Most cases originate from between 1820 and 1842, although some are as late as 1890.

An analysis of thirty theft cases debunks the stereotype of the penghulu. It shows that the penghulu did not advise cutting off hands in every case. In the twenty-five cases from before 1842, the penghulu recommended *potong tangan* six times (see Figure 12). Besides, it was certainly not always the case that the penghulu recommended a harsher punishment than the jaksa or the law court members.

On 16 January 1826, for example, there was a difference of opinion between the penghulu and the jaksa of the landraad in the West Quarters of the environs of Batavia (Tangerang). The penghulu recommended a relatively mild punishment of no more than thirty rattan strokes for the farmer Oetan Bappa Leha, who had stolen food to feed his family, who had not eaten for five days. However, the jaksa pleaded for three years of chain labour. Due to a positive statement of the *mandoor* (overseer), Oetan Bappa Leha was sentenced to a punishment milder than the jaksa’s recommendation, although the verdict was still harsh: thirty

¹⁹ "Eene bespotting van den adat," 198-201.

rattan strokes, to be executed at the bazar of Tangerang, and chain labour for one year. He also had to return the stolen rice.²⁰

Theft cases	1826–42	1863–85
Mutilating punishment	6	4
Other (milder) punishment	19	1 ²¹

Fig.12 Overview of the advice provided by the penghulus of the landraden in the Ommelanden and the landraad of Pekalongan in thirty theft cases (two from Pekalongan).

Other cases show a similar pattern. On Monday, 15 October 1827, Jaliman was put on trial, accused of burglary in the house of Ipa Bappa Iskal, who lived in the village Panggang. Jaliman was suspected, together with three other vagabonds, of stealing a box containing two pairs of golden earrings, six pairs of buttons, two *kebayas*, one black and one blue blanket, and a piece of white cloth. His comrades had not been caught yet, but Jaliman was arrested with one of the stolen items in his pocket. He declared that he had been forced by the others to join in the burglary. The penghulu took into consideration that the accused was only nineteen and, according to Javanese laws—the verdicts does specify which—he recommended a punishment of fewer than twenty strokes with a rattan cane. However, the jaksa had a higher punishment in mind and advised two years of forced labour in chains. The Javanese members and the Dutch assistant resident decided on a final verdict of forty strokes with a rattan cane and one year of chain labour.²²

A case from 1834 shows that the penghulu was certainly not always the one who recommend severe punishment. The name of the accused was Boender, who originated from the kampong Cipete in the Ommelanden and was—judging from his appearance—twenty-five years old. He was accused of a rather remarkable theft, robbing a house and stealing a *kebaya* from someone who was sleeping under this same “*baatje*”. The jaksa presented pincers as an item of proof, and the prisoner

²⁰ ANRI, GS Tangerang, no.27.I. Criminal case Oetang Bappa Leha. West Quarters of the Ommelanden of Batavia, January 16, 1826.

²¹ ANRI, IZ, no.121. Criminal case Tarban and Wardjo. Pekalongan, July 18, 1863. Advice by penghulu Mohamed Idrio: “*tatjir*” (*tazir*).

²² ANRI, GS Tangerang, no.189.2. Landraad case Jaliman. Western Quarters Ommelanden of Batavia, October 15, 1827.

confessed everything. Thereafter, the penghulu recommended, in accordance with “native laws,” a punishment of twenty rattan strokes and three months’ imprisonment. However, the jaksa pleaded for twenty rattan strokes and no less than four years of chain labour. The landraad took a middle course and sentenced the defendant to twenty-five rattan strokes followed by two years of chain labour.²³

Most striking however, is the following: in none of the cases I found was the advice of the penghulu followed: even when the penghulu’s advice did not involve any mutilating punishments, the landraad would usually apply the punishment requested by the prosecutor, the jaksa. Sometimes the judges would decide somewhere in between the demands of the jaksa and the advice of the penghulu, but even when the punishment was not mutilation, the penghulu’s advice was quite often ignored.

Also, the passive attitude of which the penghulu was often accused by Dutch officials and jurists is not apparent from the early nineteenth-century case files. During a session of the landraad of Tangerang, on 9 November 1831, when several “felons” who had been wandering around Tangerang were arrested, the penghulu took a critical view of the legal evidence presented. In the first session, the man Sarida was suspected of having been an accomplice in a burglary. His fellow suspects had been convicted already, but he had been absconding for a while. He denied this accusation and declared that he had simply been away working as a coolie. No proof could be presented that he was an accomplice to the burglary, but, the court argued, he could be found guilty of wandering and vagabondage with aggravating circumstances. The penghulu, however, stated that according to the “native laws” a certain case could only be decided on the judge’s discretion. The jaksa advised banishing the suspect for four years to labour at the public works. The jaksa’s advice was followed by the landraad, then presided over by Assistant Resident Bik. In this case, however, the Supreme Court intervened and acquitted the suspect.²⁴

On the same day, the penghulu was convinced of the innocence of the wandering man Tjenteng, who was suspected of attempted theft.

²³ ANRI GS Tangerang 27/III. Landraad case Boender. December 10, 1834. Landraad held in Mr. Cornelis in the South Quarters Ommelanden of Batavia.

²⁴ ANRI GS Tangerang, no.28/I. Landraad case Sarida. November 9, 1831. Landraad held in the South Quarters of the Ommelanden of Batavia.

However, the jaksa demanded thirty rattan strokes and four years of chain labour. Tjenteng had been convicted for theft before, and had been punished with a “corporal correction” (rattan strokes), and he had been imprisoned before, as well, although at that time his guilt had not been proven. This time, the jaksa accused him of theft. The penghulu saw no evidence and concluded that “despite being highly suspect,” there was not enough evidence against the prisoner. However, the members of the landraad saw enough reasons to declare the suspect guilty after all, since the prisoner had been hiding and had given a false alibi. His earlier misdeeds also played a part in the court’s deliberation, although only one of these had been proven, and the village chief had provided a negative statement on Tjenteng’s behaviour. The president and members decided that Tjenteng was above all a “bad and dangerous subject” and he was convicted of thirty rattan strokes and three years of chain labour outside of Java and Madura.²⁵

Altogether, the stereotype of an indifferent penghulu recommending mutilation in every criminal case was at best exaggerated. However, there is a development through time. The advice given by the penghulu in the cases from 1820 until 1842 is very diverse and relatively mild. The penghulu advised acquittal, flogging, imprisonment, banishment, and a few times cutting off the right hand, or leaving the decision to the judge. Later on, this changed. The cases from 1863 until 1890 (of which there are very few, so this has to be taken with some precaution) show that by that time the penghulu advising in theft cases, in which he considered the accused guilty, invariably recommended cutting off the right hand (see Figure 12). Another change compared to the first half of the nineteenth century is that in the case files from the second half of the nineteenth century, the advice is written down in Arabic instead of Dutch or Malay. Instead of *potong tangan* or *het afhakken van den rechterhand* the advice would be “*hadd*” (*hudud*). In one case the penghulu advised “*tacir*” (*ta’zir*).²⁶

²⁵ ANRI GS Tanggerang, no.28/I. Landraad case Tjenteng. November 9, 1831. Landraad held in the South Quarters of the Ommelanden of Batavia.

²⁶ The Dutch misused the term *Hadd* (*hudud*) by using it as a reference to exclusively mutilating punishments. *Hudud* in reality are certain offenses (such as adultery, drinking alcohol, theft and highway robbery) for which the punishments are decided by the Quran and the Sunna. Regarding other offenses the application of *ta’zir*, discretionary punishments, is possible. By applying *ta’zir* the judge held the right to evaluate a case based

Contemporary research done by the colonial jurist Grobbee, who wrote a dissertation on the penghulu in 1884, confirms the results from the archival sources for the second half of the nineteenth century. He mentioned *qicac* (revenge law), *radjam* (stoning), *hudud*, and *ta'zir* as punishments recommended by penghulus.²⁷ In the analysis of the court cases, it is important to consider the possibility that translations were made more carefully or in a different way during the first half of the nineteenth century. Later, the Arabic terms were possibly better known among the Dutch. We do not know if the penghulu in the courtroom changed from saying *potong tangan* to *hudud*, or if the registrars were simply getting used to these Arabic terms. However, even with these translation issues in mind, it is clear that the variety of punishments recommended by the penghulu diminished.

5.2 Origins of a Stereotype, 1819–72

The landraad cases studied for this dissertation, although not sufficiently answering all our questions, do provide us with information about a more complex reality than the negative stereotype of the penghulu had offered thus far. However, there are still questions to be asked. Why did the landraad ignore the penghulus in cases in which they did not recommend mutilation? Why did the advice of the penghulu change over time? And finally, why would penghulus remain seated in the landraad if the judges never listened to them?

There are several possible reasons why the landraad did not listen to the advice of the penghulu in criminal cases. In chapter 4, we discussed how the Supreme Court was very influential through the revision system and how they were neither knowledgeable nor interested in applying Javanese laws and thereby ignored article 121 of the Provisional

on the social, moral and legal unique features of the situation in which the case had taken place. For a discussion on how modern state formation (in the different context of Iran) diminished the possibilities for the application of *ta'zir*, see: Hallaq, *An Introduction to Islamic Law*, 155-156.

²⁷ Grobbee, *De Panghoeloe Als Adviseur in Strafzaken*, 39. Unfortunately, Grobbee's claim is not based on archival research in court cases though. He also does not refer to his informants or sources for this claim. "*De panghoeloe mocht vrijelijk adviseeren tot qicac (wraakrecht, doodstraf), radjam (steeniging), hadd (bepaalde straffen), tadzier (arbitraire correctie), tot afkapping van handen en voeten of geeseling, maar de rechter stoorde zich aan dat advies niet, en gaf zich zelfden de moeite om een considerans in het vonnis aan dit advies te wijden.*"

Regulation and article 75 of the Colonial Constitution. Behind this were two deeper patterns apparent across all layers of the Dutch colonial government and its legal system. First, criminal law was important for maintaining peace and order in Java, causing the landraden to design and impose colonial regulations, which were preferred over Javanese-Islamic laws. Second, the Dutch became convinced of the idea that the penghulus themselves—and the Javanese in general—were not particularly knowledgeable about Islamic law. We will now discuss these two patterns.

Order and Peace

The presidents of the landraden were, until 1869, colonial administrators who showed a strong preference for Dutch police regulations even when the advice of the penghulu did not call for mutilating punishments. The local colonial regulations were of major importance in this respect, particularly regarding the police law. A “daily police register of cases handled by the resident of Batavia” clearly shows that the focus in this was on Dutch-colonial laws. In the case of a *kebaya* stolen from a post office on 28 October 1834, the column “penalized according to the following laws” refers to the “Instructions for the Chief Baljuw and General Regulation.” The prosecutor was the assistant resident, and further investigations were carried out by the chief jaksa.²⁸

In fact, the colonial officials could shop in every regulation and code that suited them best in the particular case they were presiding, as the Dutch jurist Pinto pointed out in 1848: “In cases of crime and punishment, each judge merely applies justice according to a law code selected by his own disposal or conscience. Is there anything more pathetic?”²⁹ In chapter 7, we will discuss more thoroughly how the punishment of vagabondage was handled completely according to special European regulations, and how the exercise of colonial control through the landraad was conducted.

It is important to note, though, that this situation was not due only or simply to the unwillingness of the landraad presidents. For them, it was

²⁸ ANRI GS Tangerang, 27/III. Daily Police Register, handled by the resident of Batavia (*Dagelijkse rol van zaken verhandeld bij den Resident van Batavia*). Batavia, October 28, 1834.

²⁹ De Pinto and Van der Linden, “Overzicht over de nieuwe wetgeving voor NI.” “*Met andere woorden ieder crimineel regter spreekt er regt, wat misdaad en straf betreft, meerendeels naar een wetboek, in elke zaak hem door eigen lust of geweten voorgeschreven! Is er iets treurigers denkbaar?*”

complicated to apply Islamic-Javanese laws and customs, and to take the advice of the penghulu into account, since it was nowhere explicitly stated in the colonial regulations when and how which laws and regulations were to be followed. In 1849, an anonymous jurist complained that the 1819 regulation's provision to follow the local laws had created serious uncertainty. It was clear that no cruel or mutilating punishments could be applied. However, even if the landraden followed the Quran in criminal cases in which mutilation was not prescribed, according to the author there still existed the "biggest inequality" in punishments: "Would it be possible—by following the Quran—to declare a Muslim innocent of any crime or offense, who had murdered a Christian or a Heathen?"³⁰ Furthermore, many Muslims on Java lived according to locally oriented laws alongside their own religious laws. Finally, Java was also home to Buddhists and "all kinds of" non-Muslim foreign Orientals such as the Chinese:

In Java alone, one can find Sundanese, actual Javanese, and Madurese ... most of them are Islamic. All of them are ... devoted to their own ancestral customs and institutions, which differ for each of them. When one also considers that there are also Buddhists residing in Java, and all sorts of foreign Orientals such as Chinese, Arabs, Moors, etc., one has to come to the conclusion that it has been impossible, in criminal cases, to take into account the laws and customs of all these different tribes.³¹

³⁰ "Nalezing," 287-304. "*Zou men volgens den koran verklaren, dat de Islamiet, die een Christen of Heiden om het leven had gebragt, zich noch aan een misdrijf, noch aan overtreding had schuldig gemaakt?*"

³¹ "Nalezing," 287-304. "*...op Java alleen vindt men Sundanezen, eigenlijke Javanen, en Madurezen (...) zij belijden meest allen den Islam. Allen zijn (...) gehecht aan hunne eigene voorvaderlijke gewoonten en instellingen, welke bij elk hunner verschillen. Neemt nu hierbij in aanmerking, dat er zich ook nog eenige Budhisten op Java bevinden, en allerlei slag van oostersche vreemdelingen, als Chinezen, Arabieren, Mooren enz. dan zal men tot de overtuiging moeten komen, dat het (...) niet doenlijk was de wetten en gewoonten van alle deze verschillende volksstammen, bij de beoordeling van strafzaken, te volgen.*"

Consequently, the Dutch chairmen of the lower courts, such as the landraden, in many cases had great difficulty in determining which rules to apply.

Although civil law practices are generally beyond the scope of this research, I will now discuss a civil case decided on by a landraad to illustrate the dilemma from the perspective of the landraden presidents. In 1832, the landraad and the Council of Justice in Semarang disagreed on the proper procedure in a civil case between “the Moor” Mohamat Aina Jenal and the “Moor woman” Maidin Tartjar Maidin Sap. The disagreement originated from the Council of Justice’s application of Dutch laws that stated that a married woman was not allowed to start a legal case without assistance from her husband. Because of this, the Council of Justice had annulled the case altogether. However, according to Islamic laws, a married woman could file a lawsuit. Thus, the Council of Justice had overruled the Islamic legislation on this. The landraad, to the contrary, believed it was “inexpedient” to force a “to them completely unknown legal principle” to the “Natives” that would result in a complete “turnover of their religious customs.” The president of the landraad consulted the Supreme Court, writing that he wished to prevent the “unknowledgeable native” from becoming the victim of a difference in opinion between judges. Unfortunately, the response of the Supreme Court got lost in the archives, but the letter written by the landraad president provides us with one example of the dilemmas that colonial judges encountered regarding the application of Islamic law.³²

In cases of criminal law, however, in the early nineteenth century merely European law would be applied. The chairmen—Dutch administrative officials without legal training—therefore used the Dutch *Handbook of Law* by J. van der Linden as a guide.³³ Moreover, of paramount importance to most landraad presidents was the case law of the Supreme Court: “Therefore, quite soon, the case law of the reviewing judge—the Supreme Court—which regarding criminal law was based on the general principles of law, also for the Native, became the actual guideline for the law courts, with regard to all those issues for which no

³² ANRI, GS Samarang, no.4059. Letter from the landraad to the resident. Semarang, February 27, 1832.

³³ Ball, *Legal history*, 186.

formal regulations were explicitly provided.”³⁴ And, as discussed in chapter 4, the Supreme Court actively opposed following the advice of the penghulus. By pushing for uniformity throughout Java and beyond, the Supreme Court actively disregarded article 121 of the 1819 Provisional Regulations and article 75 of the Colonial Constitution of 1854, further causing the increasing replacement of Javanese legal cultures by European laws as applied by the pluralistic courts.



Fig.13 Chief Penghulu Pati Hadji Ibrahim, Bandung. [KITLV no. 15498].

³⁴ “Nalezing,” 287-304. “Zoo werd dan al spoedig de jurisprudentie van den regter in revisie, inzonderheid van het Hoog-Geregtshof, op algemeen erkende beginselen van het regt gegrond, met betrekking tot het strafregt in Nederlandsch-Indie, ook voor den Inlander, de eigenlijke rigtsnoer der regtbanken, ten aanzien van alle die materiën, waaromtrent niet bij wettelijke verordeningen uitdrukkelijk was voorzien.”

Dutch perceptions of Islam

The second reason that the penghulus' advice was not listened to—even when they advised non-mutilation or even mild punishments—has to do with a more deeply rooted idea and prejudice of the Dutch regarding both Islam and the Javanese. The Dutch were thoroughly unimpressed by the Javanese' knowledge of Islamic law. They often even argued that the Javanese could not even understand their own religion and that Javanese Islam was altered by all sorts of superstition. They even mocked penghulus who could not read Arabic.

During a debate in Dutch Parliament in 1851, H. Stolte recalled his experiences with a penghulu during the 1830s when he was working as the secretary of Pekalongan. At that time, he had been presiding over the landraad regularly and he was surprised that the penghulu would always advise *potong tangan* while holding the Quran, always opened to the same page. He had therefore given the penghulu some texts in Malay, written in Arabic script, and had asked him what these texts were about. It turned out that the chief penghulu could not read the Arabic script. "He was only familiar with the Javanese script." Stolte considered this dangerous: "When I am confronted with such a clerical class, I observe much danger. I prefer dealing with men who are knowledgeable." It is hard to decide whether Stolte's words are reliable. He was recalling this event after almost twenty years and might have exaggerated somewhat, in a political debate about Christian education. Interestingly, however, is the fact that he expected the penghulu to know the Arabic script. The penghulu were expected by the Dutch to be mainly knowledgeable of the Quran. Their knowledge of Javanese legal traditions, partly influenced by Islam, however, was not acknowledged.³⁵

Nineteenth-century Dutch scholars who specialized in Islamic law contributed to this persistent stereotype, since they often emphasized the Javanese' poor understanding of their own laws, although many had never exchanged even a word with a penghulu. In reality, there were many Islamic texts circulating in the Javanese and Malay languages. Besides, the

³⁵ "Handelingen Tweede Kamer", December 6, 1851, 444. www.statengeneraaldigitaal.nl (last accessed: August 8, 2014) H. Stolte: "*Hij was eeniglijk te huis in het Javaansche schrift. (... 'Wanneer ik nu zoodanig priesterdom tegenover mij heb, dan zie ik er veel gevaar in. Ik heb veel liever met mannen te doen, die op de hoogte zijn van zaken en die er wat van af weten dan die beneden die hoogte zijn.*"

penghulus were often well-educated men, who quite often studied Islam for years, as we will further discuss below. Nonetheless, the translations of Meursinge and Keyzer from the 1840s and 1850s circulated within the scholarly world and although they had little influence on the codification committees (as argued in chapter 3), they *were* the professors of the future colonial officials who studied in Delft and Leiden. Colonial officials, therefore, were taught that, first, there existed a universal kind of Islamic law and, second, that the Javanese did not understand this law and therefore diverged from it. Moreover, well into the nineteenth century, students at the School for Colonial Officials used the Javanese translation of Ibn Hajar al-Haytami's *Tuhfat al-Muhtāj* (*Kitab Toehpah*), edited by Keyzer, to learn the Javanese language. One of the students referred to it as the "Corpus Juris Javanum." Thus, an Arabic text, although well-known in Java, became *the* Javanese law in the eyes of a Dutch student.³⁶

Most likely, the students were also influenced by Keyzer's negative impression of the Javanese penghulus: "Little praise is usually awarded these Javanese priests; almost everyone complains about their ignorance; yes, one even states they do not have knowledge of their own laws at all."³⁷ Here, Keyzer did not identify his sources or the "one" who decried their ignorance. In any case, words like these maintained the negative stereotype of the penghulus among the Dutch who would become, for example, presidents of the landraden, and among the future jurists of the circuit courts and the colonial Supreme Court. It influenced their ideas about the law in Java and possibly even influenced the ways they worked with penghulus, their stance towards the pluralistic courts, and how they presided court sessions.

In the colonial law journals read by jurists in Java, Javanese-Islamic criminal law was hardly ever discussed seriously either. In 1872, for example, in an approving comment on the absence of Islamic law in the recently introduced colonial criminal code, the prominent jurist W.A.P.F.L.

³⁶ NL-HaNA, 2.10.02 MvK 1850-1900, Vb. September 24, 1873, no.7/1713. Request Roorda.; NL-HaNA, 2.10.02 MvK 1850-1900, Vb. September 24, 1873, no.2. Publisher Brill agrees on a reprint of the *Kitab Toehpak*; Veth, P.J. "Levensbericht T. Roorda." In *Jaarboek* (1874): 17-58.

³⁷ Keyzer, "De codificatie van het inlandsch regt op Java," 45-56. "*Weinig lof wordt gewoonlijk aan die javaansche priesters toegekend; bijna een ieder klaagt over hunne onwetendheid en onkunde, ja zelfs gaat men zoover, dat men hun kennis van hun eigen regt geheel en al ontzegt.*"

Winckel referred to an article in a colonial law journal that mentioned the advice of a penghulu in a criminal case. If we look at this article, it turns out to be a brief account of a legal “curiosity” (*rariteit*) in the light-hearted section called “Mengelwerk,” a miscellany of short stories. The full text of the article reads:

Recently, a Chinese walked past one of the numerous guard gates [*gardoehuisjes*] in Java. When he had passed, he was followed by two Natives, who were fulfilling their watch duty. One of them hit him [the Chinese] with a *patjol* [Javanese agricultural equipment], causing him to faint. He regained consciousness quickly, though, and called for help, upon which his attackers started running. Being accused and prosecuted for this crime, the culprits declared during the preliminary investigations that they had wanted to rob the Chinese because they suffered poverty. During the court session, however, the main suspect declared that he had delivered the blow, because the Chinese had refused to step out of his way and had bothered him by carrying a piece of pork meat!! And what was the advice of the priest after the investigation had ended? Acquittal of the accused, because the one who had been hit was just a Chinese.³⁸

Thus, even a prominent jurist like Winckel relied on this short, superficial article when formulating his opinions on Islamic law, and he concluded

³⁸ “Mengelwerk”, 176. “*Onlangs kwam een Chinees een der menigvuldige gardoehuisjes op Java voorbij. Toen hij gepasseerd was, werd hij achter opgelopen door twee Inlanders, die met de gardoe-wacht belast waren. Een hunner bracht hem een slag met een patjol toe, zoodat hij bewusteloos neerzonk. Hij kwam echter spoedig weder bij en roep om hulp, waarop zijne aanvallers het op een loopen zetten. Ter zake aangeklaagd en vervolgd, verklaarden de misdadigers bij het voorloopig onderzoek, dat zij den Chinees hadden willen berooven, omdat zij armoede leden. Ter teregtzitting evenwel beweerde de hoofdbeklaagde, hij die den slag had toegebracht, dat hij het gedaan had, omdat de chinees niet voor hem uit den weg had willen gaan en het hem geërgerd had, dat deze een stuk varkensvleesch bij zich droeg!! En wat was het advies van den priester na afloop van het onderzoek? Vrijspraak van de beklagden, omdat de geslagene maar een chinees was.*”

regarding Islamic law in general: "The infidel does not exist for that kind of law, other than to make his warfare to become a holy duty: the Mussulman who beats to death a Chinese, for example, is not punishable."³⁹

Altogether, there were several reasons for the ritualization of the penghulu. First, European laws became more codified and there was no room reserved for the Islamic-local laws. Regardless of what the penghulu might advise, his advice would not be considered. Second, the review by the Supreme Court urged the landraden to impose all sentences according to one uniform system. Regional differences and local customs were not supposed to influence the punishment. As said before, in every area, the advice of the penghulu might therefore differ. This was incompatible with the aims of the Supreme Court. Third, the Dutch regarded the Islamic texts, written in Arabic and originating from the Middle East, as the "true" Islamic law. There was little faith in the capacities of the penghulus, and even when they did not advise mutilation, their advice was discounted.

The position of the penghulu as an advisor led to a system in which the judge did not have to be knowledgeable about Islamic law, because the penghulu was present in the courtroom for advice. However, such advice was seldom followed, as judges showed a strong preference for European laws even when the penghulu's advice did not call for mutilation. Official criminal law policy to the contrary and the presence of the penghulu as an advisor notwithstanding, criminal law practice by the colonial courts moved decisively away from local and religious laws.

5.3 Professional Developments

As shown by the criminal cases collected for this study, it seems that the penghulus began advising cutting off hands in all theft cases only during the second half of the nineteenth century. Still, the question remains why the penghulus changed their advice? The most straightforward answer to this question may be that over time the penghulus simply settled into their ritualized role in the landraad, knowing their advice would not be taken into account anyway. Instead of formulating nuanced legal advice, they reduced their advice to a short phrase: *potong tangan*, or "*hadd*" (*hudud*).

³⁹ Winckel, "Het ontwerp-strafwetboek voor inlanders en daarmee gelijkgestelden", 4. "*De ongelooovige bestaat voor dat recht niet, dan om zijn beoorloging tot heiligen plicht te maken: de Muzelman b.v. die een Chinees dood slaat, is niet strafbaar.*"

A second explanation might have to do with changes to Islamic practice in Java in the later nineteenth century due to changes in Islam worldwide and changes in the role of the penghulu as a result of colonial intervention. Regarding the latter, it is important to consider the place of religion and sharia in nineteenth-century Javanese society.

Javanese Islam and the Penghulus

Historian Merle Ricklefs has defined early nineteenth-century religious life in Java as a “mystic synthesis” with three characteristics: a strong Islamic identity, the five pillars of Islam, and acceptance of “local spiritual powers” such as pagan gods. For example, the Javanese poem *Serat Centhini* (1815) mentions the goddess of the South Sea but also says that Sufis should live according to sharia.⁴⁰ Halfway through the nineteenth century a gradual change took place in Javanese Islam though. A small elite group of *putihan* (“white ones”) disapproved of local spiritual elements of mystic synthesis and turned to a more “pure Islam.” Often they were followers of puritan Sufi Islamic movements, like that inspired by the eleventh-century Sufi teacher Al-Ghazali, and aimed to separate law from mysticism. Moreover, new printing techniques suitable for Arabic script increased the circulation of Islamic texts. Due to these developments, Islamic schools increasingly became part of a single network of Islamic scholars who were in contact with each other in Java and met in Mecca and Singapore. Simultaneously, though, local prints and Javanese tariqats continued to compete. The *putihan* were also not a coherent group; orthodoxy was found in both Sufi tariqats and in more scientific or modern-oriented Islamic leaders. Also, there still existed several non-*putihan* local Islamic interpretations.⁴¹ It is hard to draw conclusions from this regarding the consequences for colonial legal practices, but the global Islamic changes might have possibly influenced the legal advice provided by certain penghulus who followed the reformist Islamic trajectories.

Notwithstanding global changes in Islam, colonial state formation in Java itself caused a greater divergence between penghulus, who fell under the regent and worked for the colonial government, and *kyais*, the independent religious teachers. When, during the early nineteenth century,

⁴⁰ Ricklefs, *Polarising Javanese Society*, 5-7.

⁴¹ Laffan *The makings of Indonesian Islam*, 50-54, 61, 64.

Javanese rulers lost most of their power to the colonial state, they also lost their power over the *kyai*. Officially, the regents took control over all religious issues, but in practice they controlled only Islamic clerics in service of the government: the penghulus. Partially because the priyayi were hardly capable anymore of exercising influence over the *kyai*, several competing tariqats came into existence and mystic sects were established. In 1882, there were 244 *perdikans* (tax-free religious villages). The early nineteenth-century colonial Great Post Road (*Jalan Raya Pos*, or *Grote Postweg*) had also contributed to this lively Islamic culture, creating faster connections between *pesantren* and *pondoks*.⁴² There was a growing gap between the penghulus and the independent *kyais*, who deplored the fact the penghulus were working for, and in the case of the landraad-penghulu even paid by, the non-Muslim colonial government.

At the beginning of the nineteenth century in Java, the division between the priyayi and *kyai* was not yet this apparent. Several *kyais* originated from penghulu families. Ahmad Rifa'i of Kalisalak (1786–1875), for example, was son of the chief penghulu of Kendal and became a *Shafi'i* scholar who went to Mecca at the end of the 1820s. He wrote “reworkings” of *Shafi'i* texts himself and established an Islamic school in 1839.⁴³ Also, in Indramayu, Haji Patih Mas Muhammad Salih was a priyayi official seated in the landraad who functioned simultaneously as religious teacher. He instructed, among others, the Regent Raden Tumenggung Soerianataningrat of Lebak.⁴⁴ The penghulu position was (informally) hereditary, but younger sons could take up positions either in the priyayi office or as independent *kyai*.

Over time, the division between the penghulu and *kyai* became more definite. Especially in the Priangan, where penghulus were involved in imposing the colonial Priangan system. In this area, the two groups had cooperated during the eighteenth century, when the chief penghulu, originating from the priyayi class, led the lower-class Islamic landowners, the *jalma bumi*. Marriages were conducted between members of penghulu and *jalma bumi* families. However, due to colonial state intervention, cooperation between the two groups decreased. Daendels gave the

⁴² Laffan, *The makings of Indonesian Islam*, 40–48.

⁴³ Laffan, *The makings of Indonesian Islam*, 47.

⁴⁴ Laffan, *The makings of Indonesian Islam*, 165.

penghulu major responsibilities, and benefits, in the Priangan system.⁴⁵ The *jalma bumi*, on the other hand, had no interest in coffee cultivation, they themselves grew wet rice, and were therefore operating independently from the colonial state. Over time, many became *kyais*. The gulf between the *jalma bumi* and the penghulu increased even more after 1870, when the *jalma bumi* had more opportunities to buy land, grew richer, went on the haj more often, and started *pesantren* after returning. This contrasts with the fate of the chief penghulus, who after the abolition of the Priangan system in that year, largely lost their worldly power and—although financially compensated by the colonial government—became governments officials paid by the colonial state.⁴⁶ The *kyais* looked down on the penghulu who worked for the colonial system.⁴⁷

Due to the dynamics of the Priangan system, the division between penghulu and *kyai* was particularly sharp there, but also in the rest of Java there existed a clear division between them. There, the intervention of the colonial state had furthered this division by, for example, protecting the tax-free *perdikans*, which made some *kyais* influential and rich landowners.⁴⁸ After 1882, when the religious courts were brought under the surveillance of the colonial government, the division between *priyayi* penghulus and *kyais* further increased.⁴⁹ *Kyais* even started to compete with the penghulu-led religious courts by offering their own marriage and divorce services locally.⁵⁰

Thus, the differences between the penghulu and the *kyais* increased over the nineteenth century. Where Carey observes the alliance of the Java

⁴⁵ Breman, *Koloniaal profijt van onvrije arbeid*, 237 and 304. The penghulus were responsible for the population censuses, which were important for the coffee cultivation of the Priangan system, and in return they got the right to obtain higher taxes and rice from the farmers. The Penghulus could read and write, and were for this reason selected for the task. Due to the tax raises the Penghulu became rich land owners and rice traders. They would become closely involved with the priangan system, because they also supervised the irrigation and the agrarian calendar.

⁴⁶ Breman, *Koloniaal profijt van onvrije arbeid*, 308.

⁴⁷ Breman, *Koloniaal profijt van onvrije arbeid*, 308; Van Huis, *Islamic courts and women's divorce rights in Indonesia*, 119-124.

⁴⁸ Laffan, *The makings of Indonesian Islam*, 46-47.

⁴⁹ Van Huis, *Islamic courts and women's divorce rights in Indonesia*, 38-39. In practice, the Landraden would take over cases from the religious courts when a conflict emerged. Thus, for example, the religious courts were responsible for inheritance cases, but if the division of the heritage lead to a conflict, then the Landraad would take over. It was a considerable intervention by the colonial courts.

⁵⁰ Van Huis *Islamic courts and women's divorce rights in Indonesia*, 119-124

War as a kind of proto-nationalism because of the first cooperation between the worldly royals and the Islamic clerics,⁵¹ as described in the former chapter, Laffan on the contrary sees this alliance as the end of an era. He argues that Diponegoro, descendent of a *kyai* himself, was the last prince in Java who would cooperate with the *kyais* that would fall under the *putihan*.⁵² Yet, at the end of the nineteenth century the division would not be entirely complete in practice. In the travel report of the Regent Adipati Ario Tjondro Adhi Negoro V in 1877, he described how the *kyai* of the big *pesantren* in Madiun (Regency Ponorogo) was the father of the current regent of Ponorogo. One of his brothers was a penghulu and would later become a *kyai*.⁵³ Thus the hostility towards penghulus differed per *kyai*, as is also shown by another example. The influential *pesantren* leader Muhammad Talha of Kalisupa was the son of the chief penghulu of Cianjur, studied locally and in Mecca, and established a *pesantren*. During the 1880s, he gave advice to penghulus on legal issues.⁵⁴

In general, however, the introduction of the penghulu as a government official—both in the Priangan system and as a legal advisor at the landraad—had changed the relation between the penghulu and the *kyai*. Albeit important for understanding the position of the penghulu in Java, the increasing *kyai* class and growing connections with the Arab world does not seem to have influenced the advice provided by the penghulus in the landraad, though. Rather, the penghulus seem to have settled on the issue of the ignored Islamic legal advice and their ritualised role of advisors who always advised to cut off hands. The question is why they agreed on this ritualised role?

The “Priyayization” of the Penghulu

The incorporation of the penghulus into the colonial legal system changed the relationship not only between the penghulu and the *kyai*, but also between the penghulu and the regent. New penghulus were appointed by the governor general, but the regent had a strong say in the choice. For

⁵¹ Carey, “Revolutionary Europe and the Destruction of Java’s Old Order,” 188.

⁵² Laffan, *The makings of Indonesian Islam*, 46-47.

⁵³ Purwa Lelana [pseud. R.A.A. Tjondronegoro V]. , *The Travels of Radèn Mas Arjo Poerwolelono*, 203.

⁵⁴ Laffan, *The makings of Indonesian Islam*, 153-154. According to Snouck Hurgronje who met him in August 1889.

example, in 1848 a new chief penghulu of Madura was selected based on the recommendation of the local regent, who declared him to be “an enlightened native priest and of good behaviour.”⁵⁵ In practice, often regents basically selected new penghulus, who thus became more dependent of them. The regent could even appoint relatives to the position of penghulu.⁵⁶ The historian Hisyam therefore states, “Usually the loyalty of many penghulu[s] to the bupati [regent] was greater than that they owed the people.” He frames the professional development of the penghulu as a process of “priyayization” in which the penghulu became part of the priyayi class.⁵⁷

In 1897, Snouck Hurgronje observed that candidates for the position of penghulu were often people from lower ranks or “less talented” members of priyayi families.⁵⁸ He also warned that the religious courts were often corrupt, both problems resulting from the colonial government’s underpayment of the penghulus.⁵⁹ The solution he proposed, however, was not to restore the independence of the penghulu profession from the colonial government, but rather to intensify colonial supervision over the penghulus. Snouck Hurgronje thought that the Netherlands Indies lacked a controlling higher Islamic class and in fact, he started to fulfil this role himself. He urged the colonial administration to interfere more in the process of appointing new penghulus, and from then on their knowledge of Arabic was tested by the colonial Advisor on Native Affairs—a position first held by himself and thereafter by some of his former students.⁶⁰

⁵⁵ ANRI, AS Bt. March 31, 1848, no.9. Letter assistant resident to the governor general. Bangkallang, March 3, 1848. Then, Madura was still ruled by a *rijksbestuurder* instead of a regent.

⁵⁶ Hisyam, *Caught between Three Fires*, 44.

⁵⁷ Hisyam, *Caught between Three Fires*, 69.

⁵⁸ ANRI Grote Bundel Bt. no.555. Bt December 28, 1897, no.38. “De intrekking der betrekkingen van adjunct hoofdpenghoeloe en adjunct penghoeloe, 1893-1897.” Advice C. Snouck Hurgronje. September 28, 1897.

⁵⁹ Yahaya, *Courting Jurisdictions*, 100.

⁶⁰ Hisyam, *Caught between Three Fires*, 44-45. In 1884, Grobbee had also proposed to start examinations of penghulu candidates. Grobbee, *De Panghoeloe als adviseur in strafzaken*, 11. “Een examen afgenomen door kundige Inlandsche rechtsgeleerden, te kiezen uit gezaghebbende priesters en hoofden, voorgezeten door een deskundig Europeaan, komt ons voor een noodzakelijk vereischte te zijn. Dat examen zou dan moeten loopen over 1. de Arabische taal, zonder welke studie van het Moslimsche Recht onmogelijk is; 2. het Moslimsch recht volgens een gezaghebbend Imam van de Sjafiitische secte; 3. costumierrecht.”

Hisyam observes all this as the completion of the process of the priyayization of the penghulus.⁶¹

Snouck Hurgronje not only intervened with the appointment of the penghulus, but also with the kind of Islamic law they applied, as described in chapter 3. He disapproved of an Islam that was too political, and thus of the various mystical orders that relied on charismatic leaders. Whereas other colonials observed the increasing influence and networks from Mecca with suspicion, the Advisors for Native Affairs in the period from 1906 until 1919 generally thought it to be a positive sign that Islam in the archipelago was modernizing. According to Laffan, in practice this led to an alteration of the legal traditions followed: “The Office of Native Affairs was giving official sanction to a more rigid form of Islamic practice. This is evident in its oversight of the religious courts and its decisions.”⁶² When, for example, a penghulu was appointed, the Office for Native Affairs preferred candidates who had studied international *Shafi’i* texts: “They thought that they would guide a movement of Indonesians into the orthodox public sphere and away from the otherworldly personal control of mystical teachers.”⁶³ In 1903, Snouck Hurgronje further decided that the penghulus should be obliged to take an oath of office before being appointed to a religious court. Even though this went against Muslim tradition, in which judges do not take oaths of office. Snouck Hurgronje wrote that he was aware that this diverged from the Islamic tradition, but since the colonial government both appointed and could dismiss penghulus, it had to exercise greater control over them.⁶⁴

The priyayization of the penghulu resulted in a class of these so-called Islamic priests who were not that powerful anymore. In 1895, Snouck Hurgronje argued that few aspired to the position of penghulu due to the condescending approach of European officials:

When recruiting suitable candidates for professions such as the penghulu, the situation which concerns me most is that the most suitable persons—

⁶¹ Hisyam, *Caught between Three Fires*, 67.

⁶² Laffan, *The makings of Indonesian Islam*, 201-202.

⁶³ Laffan, *The makings of Indonesian Islam*, 207-208.

⁶⁴ Halim, “Contestation of the oath procedure,” 24-25. The oath itself should have an Islamic character.

regarding intelligence and character—are not willing to be considered, because they do not want to be exposed to all the coarseness resulting from the presence of many European officials. Among the latter, there are relatively few who realize (1) that Natives, although this might not always show it, are just as sensitive to insults or coarseness as we are, (2) that hidden behind the modest appearance of many Native legal experts there is intelligence and civilization, which might differ in nature to that of the European officials, but is in essence not inferior to it.⁶⁵

Not much would change regarding the negative stereotype of the penghulus among the Dutch. A newspaper article written by a Dutch jurist in 1918 reflected the enduring stereotype of penghulus. It described penghulus who always slept through court cases or looked indifferent, and who, when asked for advice, would use “one or another Arabic phrase for an Islamic punishment.” Their advice sounded “as a hollow, unknown sound which therefore immediately got lost.”⁶⁶ In 1941, Landraadvoorzitter Wormser wrote in his memoirs, “I have met few penghulu, who did not advise *potong tangan*—the cutting off hands—for every crime. A punishment which the landraad was never allowed to execute, sometimes to my own regret.”⁶⁷

As argued before, the ritualised penghulu who always advised to cut-off hands seems to have been a self-fulfilling prophecy, meeting the

⁶⁵ Gobeë, *Ambtelijke adviezen van C. Snouck Hurgronje 1889-1936*, Part 1, 138. Advice Snouck Hurgronje. Batavia, December 29, 1895. “*bij het zoeken naar geschikte kandidaten voor ambten als dat van panghoeloe levert mij toch deze omstandigheid steeds het meeste bezwaar op, dat de door intellect en karakter daarvoor aangewezen personen niet in aanmerking willen komen wijl zij ongezind zijn, zich aan al de ruwheden bloot te stellen, die zij de functionarissen van wege vele Europeesche ambtenaren zien ten deel vallen. Onder deze laatsten zijn er betrekkelijk weinigen, die plegen te bedenken, 1 dat Inlanders, al blijkt het niet altijd naar buiten, voor belediging of grofheid even gevoelig zijn als wij, 2 dat onder het onbeduidende voorkomen van menig Inlandsch wetgeleerde een intellect en eene beschaving schuilen, die wel in vorm van die der Europeesche ambtenaren verschillen maar in wezen niet lager staan.*”

⁶⁶ Jurist [pseud.], “De Landraden op Java en Madoera”, 488-490.

⁶⁷ Wormser, *Drie En Dertig Jaren Op Java*, 35.

prejudices the Dutch already had about Islamic law. Yet, there were also colonial officials, although few, who presented a more positive picture of the penghulus and communicated more directly with them. Former Adviser on Native Affairs G.F. Pijper described the penghulus as well-educated men who had quite often studied Islam for years and half of whose books were about Islamic law. He acknowledged the centuries-old profession of the Javanese penghulus, referring to a seventeenth-century source on the “chief priest” of Banten, and their various responsibilities in the religious administration. He emphasized that all penghulu he knew mastered the Arabic language next to their mother tongue (being Javanese, Sundanese or Madurese), and a number of them also knew Dutch. They were trained at *pesantren* and had often continued their studies in Mecca. Pijper described sessions of the religious courts and his conversations with penghulus.⁶⁸ He recalled how in 1930, for example, the landraad penghulu in Tuban provided daily religious education to Arab and Javanese students.⁶⁹ The experiences of Pijper has been confirmed by the historian Hisyam.⁷⁰

This leads us to wonder why the penghulus, well-educated men, would agree to advise a court of justice that never took their advice into account? A 1901 article in *De Controleur* described how the penghulus were aware of their own symbolic role in court: “Who knows this himself very well, and—when he is a quite a little gentleman [*deftig heertje*—sometimes even smiles about his own advice.”⁷¹ The answer might have to do with the little number of well-paid professional options for well-to-do Javanese. The penghulu-landraad was a not unfavourable paid position within the colonial government. Besides, a penghulu-landraad combined his advisory role with other positions such as being the president of the religious court and administrator of the mosque, which remained a respectable position from the perspective of most Javanese.⁷²

Among the Dutch, despite the prevailing negative stereotype of the penghulus, there was no longer much discussion about the position of the

⁶⁸ Pijper, *Studiën over de geschiedenis van de Islam*, 63-96.

⁶⁹ Pijper, *Studiën over de geschiedenis van de Islam*, 81.

⁷⁰ See for example the two life stories of the penghulus Mas Hadji Ichsan and K.H.R. Mohammad Adnan: Hisyam, *Caught between three fires*, 261-289.

⁷¹ “W. in het Sociaal Weekblad en Abbas in de Controleur,” 683.

⁷² Hisyam, *Caught between Three Fires*, 66.

penghulu as an advisor during criminal cases. It was argued that the penghulu were needed in the landraad for oath taking. Besides, the idea that “eastern people” were different was quite strong. When in 1893, Snouck Hurgronje wanted to test new penghulus on their actual knowledge of Islamic law and the Arabic language, the Supreme Court responded that Islamic laws were not used. Yet, they thought the penghulus still to be important for their advice about religious and societal notions.⁷³ The *Indische Gids* wrote something similar in 1901: even though punishments were laid down in the Native Criminal Code, being informed about the notion of the degree of guilt of the “Eastern” people was still important because these were considered very different from Western notions. “To point out this difference is the duty of the Mahommedan priest, whose advise shall not be taken literally, but the law court should follow its spirit.”⁷⁴ The handbook written by the jurist Van Davelaar mentioned another purpose of the advice of the penghulu, which he called a “historical remnant,” but which he considered sometimes useful after all, because the penghulu “was not bribed, since he was not voting over the verdict.”⁷⁵

Above all, the possible abolition of the penghulu’s advisory role was a sensitive topic. The “Islamic priests” were still seen as powerful and a potential threat to colonial rule. All negative changes to their position were avoided. The discussion about the religious courts shows how careful the colonial government was in matters concerning the penghulus. At first, there was some thought of dismantling the religious courts altogether and making the landraden responsible for civil cases.⁷⁶ However, Karel

⁷³ 2.10.02 MvK, 1850-1900. MR, no.91. Letter by C. Snouck Hurgronje to the Director of Justice. Weltevreden, March 19, 1893.; 2.10.02 MvK, 1850-1900. MR, no.91. Advice Second Chamber of the Supreme Court. Batavia, September 13, 1893. The president of the Supreme Court was M. C. Piepers, see Chapter 9.

⁷⁴ “W. in het Sociaal Weekblad en Abbas in de Controleur,” 684. “*Om op dit onderscheid te wijzen, is de taak van de Mahomedaanschen priester: wiens advise zoo niet letterlijk dan toch in de geest er van door de rechtbank zal moeten opgevolgd worden.*”

⁷⁵ Van Davelaar, *Het strafproces op Java en Madoera*, 40. “...wij kunnen den hoofdpanghoeloe, als adviseur in het strafrecht, niet anders plaatsen dan als een historisch overblijfsel uit vroeger tijden. Vroeger zelf rechter, heeft men hem bijzitter gelaten, om niet te radicaal en te stuitend te veranderen. Dit alles neemt echter niet weg, dat de panghoeloe toevallig somtijds met vrucht kan worden geraadpleegd, namelijk omtrent het al of niet schuldig zijn van den beklaagde, omdat hij de Indische toestanden bij uitnemendheid kent en, daar hij niet medestemt, ook niet wordt omgekocht.”

⁷⁶ Van Huis, *Islamic courts and women's divorce rights in Indonesia*, 40-42. In 1922, a committee was established to revise the organisation of the religious courts (*priesterraen*).

Frederik Holle, Advisor on Native Affairs (1871-1896), among others, wrote in 1876 that this would not be advisable. According to Holle, history had shown that it would be dangerous to affect the class of the penghulu, not only because it would interfere in the religious life of the Javanese, but also because administering cases at the religious courts was a considerable part of the penghulus' income. "We Dutch know from our history how dangerous it is for a ruler to corrode both the religious conviction and the wallet of the people."⁷⁷

Out of fear to not offend the Islamic officials the colonial government sought their advice during court cases. However, doing so the government offended them even more by asking their advice but not taking this advice into consideration at all.

5.5 Conclusion: The Ritualization of Islamic Legal Advice

During the nineteenth century, in the pluralistic courts, the penghulu became part of a ritual in which he advised punishing convicts by cutting off their hands, and this advice was ignored by the court members. The positioning of the Dutch regarding the penghulu led to a farce that damaged the prestige of the penghulu. Although penghulus were considered more suitable as advisors than jaksas, their legal advice was hardly heeded and considered of little importance for criminal legal practice in the pluralistic courts. Dutch judges engaged in no real debate about or real engagement with the substance of Islamic law. Yet, the penghulus were still needed for legitimizing the colonial law courts. A curious situation arose in which the colonial government theoretically applied Javanese-Islamic legal traditions and treated the Islamic legal advisors with respect while the opposite was true. The Javanese legal traditions and institutions were marginalized and Islamic legal advice especially was ritualized and even ridiculed. The penghulus combined their position at the pluralistic courts with presiding over the religious courts and other religious responsibilities, thereby safeguarding their own position,

Their proposal was accepted in 1931 and introduced in 1937, the most impactfull reform being that all cases related to property, were transferred to the *landen*. The advice to improve the education and salary of the religious court members, was never executed. Finally, a Islamic supreme court was established in Surakarta in 1937.

⁷⁷ ANRI Coll. K.F. Holle, Box 7. Letter Holle the Director of Civil Service. March 7, 1876. *"Wij Nederlanders weten uit onze geschiedenis hoe gevaarlijk het is én het godsdienstig gevoel én de beurs van een volk als overheerscher aan te tasten."*

although their tightening connections to the priyayi and colonial government led to a divide between them and the *kyai*. Eventually, the ritualization of the role of the Javanese penghulus weakened their position as experts of Islamic law and threatened their position as legitimate representatives of the Javanese defendants.