State legal pluralism: the intersection of adat, jinayah, and national penal law in Gayo, Indonesia

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Glossary

Listed are only the important Indonesian and Gayonese terms that reappear in the text. Please note that I use the Indonesian and Gayonese spelling for Islamic legal terms originating from the Arabic language in accordance with how they are most commonly used in spoken and written Indonesian and Gayonese. The meaning and use of those terms in Indonesian and Gayonese may differ from those in the Arabic countries and they may even differ in subtle ways between Indonesian and Gayonese.

Adat: Customs, tradition; this term is used and understood differently by diverse communities in Indonesia to address all aspects of the life of a community. Adat can be used to and refer from a set of social practices and organization to a sense of appropriateness, habits, tradition and custom, art, and to a set of rules.

Adat law: legal aspects that are embodied in the adat.

Anak Buah: Subservient, the people; early known term for one of four and the lowest structure in Gayonese village political organization.

Asosiasi Perempuan Indonesia untuk Keadilan (APIK): Indonesian Women Association for Justice. A national women's organization which provides legal and humanitarian assistance to women in Indonesia.

Banta: secretary; secretary of the head of the village. The term is widely used in the village organizational structure.

Baitul Mal: Islamic finance institution; a state institution in Aceh province that is responsible to campaign, collect, improve and distribute donated religious properties and funds such as land and all forms of donation, charity, and alms to eight beneficiaries explicitly mentioned in the Quran.

Belah: clan; a communal division in Gayonese society.

Bintara Pembina Keamanan dan Ketertiban Masyarakat (Bhabinkamtibmas): Officer for Supervising Security and Public Order; community police unit in the Indonesian police department that is assigned to engage with village community.

Dana Desa: Village Fund; a development program under President Jokowi's administration to promote development in the village. The fund is used to boost infrastructure and human development and is an actualization of the President's political campaign during the election to tackle inequality of development. The Village Fund is part of the national budget and is directly transferred by the government to the village's bank account.

Darul Islam: House of Islam; a rebellion to found an Islamic state in Indonesia. It started with the proclamation of an Islamic State by Kartosoewirjo on August 7 1949 in West Java. The rebellion then spread to South Sulawesi and Aceh. It was eventually repressed in the early 1960s.

Dinas Syariat Islam (DSI): State Agency for the Shari'a; a special agency existing only in Aceh province that is responsible for administering and promoting the enforcement of Shari'a law at provincial and district level.

Farak: temporal banishment from the community; adat punishment for those who are involved in a premarital sex offense by expelling the offenders temporarily from the community. Offenders will be reintegrated once they have suffered punishment on the basis of a certain adat procedure or rituals.

Fiqh: deep understanding, full comprehension; technically it refers to Islamic jurisprudence or to the body of Islamic law extracted from various Islamic sources mainly from the Quran and Prophet's traditions. By the time, *fiqh* developed into several schools of thought across Muslim communities.

Forum Komunikasi Pimpinan Daerah (Forkopimda)*:* Communication Forum for District Leaders; a district forum that consists of the regent, the head of the district court, the head of the district Mahkamah Syar'iyah court, the head of the district police department, the district commander of the military, the head of the district office of the public prosecution counsel, the head of the district consultative assembly of ulama, and the head of the district adat agency.

Hudud (*sing. hadd*): fixed punishment; a form of penal punishment in Aceh Shari'a adopted from Islamic penal law. *Hudud* penalties cannot be adjusted or modified to local context as they have been clearly defined in the Quran and the Prophet's traditions. This punishment is applied to those who commit illegal sexual intercourse, drink liquor or make false accusations concerning unlawful sexual intercourse.

Hukum: law; refers to Islamic law in Gayonese and Acehnese society.

Imam (Indonesian) or *imem* (Gayonese)*:* clerk, religious leader; one of four officials in the Gayonese village political organization.

Istiadat: custom or tradition.

Jeret naru: a long grave, permanent banishment; adat punishment for those involved in extramarital sex. Gayonese adat permanently removes those involved in extramarital sex from the community. This removes all of the offenders' connections to the village and the community. By applying this life sentence, the offenders are considered dead and buried in a long grave.

Jinayah: Islamic penal law.

Kaum Mude: young group; modernist and progressive Muslim group in Gayo who try to abolish adat practices. This group associates the adat with backwardness and un-Islamic practices. Therefore, they seek to reform and purify Islam from adat. The group condemns Islamic mysticism and promotes free will in producing Islamic reasoning and interpretations of the Quran.

Kaum Tue: old group; traditionalist Muslim group in Gayo who do not question traditions and require students' obedience to the teacher. They tend to be moderate toward and negotiating with adat, acknowledging the right of individual ulama to produce ijtihad, and with less concerned for Islamic jurisprudence.

Kepala Desa: head of village.

Kepolisian Resor (*Polres*): Police station at district level.

Kepolisian Sektor (*Polsek*): Police station at sub-district level.

Khalwat: The act of a heterosexual unmarried couple, who are not of close lineage or kin, to be in a secluded or hidden place.

Lembaga Bantuan Hukum (*LBH*): Legal Assistance Organization; a national organization that provides free legal assistance to the community.

Liwath: gay

Mahkamah Syar'iyah: Shari'a court, religious court; a court in Aceh province that tries not only family disputes but also certain criminal cases regulated in a regional regulation (see Qanun). A court with this jurisdiction has been established only in Aceh province to support the enforcement of Shari'a. Judges of the *Mahkamah Syar'iyah* are recruited by the Indonesian government and regularly transferred to the Islamic courts in other parts of Indonesia. They also fall under the Supreme Court of Indonesia.

Majelis Adat Aceh (MAA): Aceh Adat Assembly; a state institution at the provincial level which is responsible for the administration and promotion of adat. It coordinates the work of the district agencies for adat.

Majelis Permusyawaratan Ulama (MPU): Ulama Assembly Board; a similar institution as the Majelis Ulama Indonesia (Ulama Assembly Board of Indonesia), but then in Aceh.

Mangang murum: eating together, feast; clan potluck tradition in the Gayonese community.

Marga: a territorial socio-political structure in Rejang-Lebong of South Sumatera which consists of more than one village.

Mu'amalah: civil act, human interaction, all human action in general excluding worship; technically it refers to Islamic jurisprudence ruling economic transactions, including banking and finance.

Mukim: parish community; traditional political territory in Aceh province which coordinates more than three villages. Historically and culturally, *mukim* is the territory in the parts of Aceh where the Acehnese constitute the majority. Later, mukim were introduced to all districts in Aceh province inhabited by other ethnic groups. Hierarchically and territorially, Mukim are below the sub-district level.

Musahaqah: lesbianism.

Musyawarah: village tribunal, public meeting, open meeting.

Nagari: a village in the Minangkabau community of West Sumatra that consists of more than one structured settlement.

Pengajian: religious studies circle held in mosques or public spaces. It is organized either by a community group or a state institution.

Perda Shari'a: Shari'a Inspired Regional regulation; a term used by scholars to indicate a regional regulation that is inspired by Shari'a or Islamic law in regions of Indonesia other than Aceh province.

Petue: adat counselor; one of four officials in the Gayonese village political organization who are responsible to ensure the application of adat and adat law in the village.

Polisi Masyarakat (*Polmas*)*:* Community Police; a unit in the police department that supervises the Bhabinkamtibmas (see *Bintara Pembina Keamanan dan Ketertiban Masyarakat*)

Pusaka Tinggi: inherited property in the Minangkabau community that cannot be divided following the standard rule of Islamic law on inheritance division. By local interpretation of Islamic law, this property is considered as a donation that has to be maintained following the rule of Islamic law on donated property.

Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Anak (P2TP2A): Integrated Services Center for Women and Children Empowerment; a state institution that provides services for abused women and children of the abused victims.

Qanun: regulation; a legal term for all regulations issued at any government level (provincial, district, and village) in Aceh province since 2002. Hierarchically Qanun are equal to regional regulations in other parts of Indonesia. The different legal term used in Aceh province is due to its special autonomy.

Qanun Kampung: village regulation.

Qazhab: lie, deceit; false allegations of unlawful sexual intercourse.

Rayat Genap Mupakat (RGM): The People's Consultative Board; a current term for one of the four village political institutions in Gayo. It constitutes the lowest structure in the village political organization and represents the local people (see *Anak Buah* and *Rayat*).

Rayat: the people; the term replaces *Anak Buah*.

Reje: king, chief, headman, head of village; one of the four officials/institutions in Gayonese political organization.

Relawan Perempuan untuk Kemanusiaan (RPuK): Women Volunteers for Humanity; a women's organization in Aceh Province.

Sarak Opat: One in four; traditional village political structure of the Gayonese that consists of the *reje* (headman), the *imem* (clerk, religious leader), the *petue* (adat counselor) and the *rayat* or *anak buah* (the people). the latter term has now been replaced by Rakyat Genap Mupakat (see Rakyat Genap Mupakat).

Satuan Polisi Pamong Praja (Satpol PP): Municipal Police.

Sumang: shame; a moral conception in Gayonese society that rules social behavior and interaction between genders, people of different age and lineages.

Sumang percerakan: shame in conversation.

Sumang pelangkahan: shame in walking.

Sumang penengonenen: shame in seeing.

Sumang kenunulen: shame in sitting.

Syaer: poem, poetry, rhythm, verse; a genre of oral tradition delivered frequently in the mosque and during religious festivities.

Ta'zir: judge's discretion; a punishment given by the judge for offenses that are not explicitly regulated in the Quran and the Prophet's traditions.

Tutup babah: to hold the tongue; traditional compensation that is paid by a perpetrator to his/her victims as a mean to end a case or a dispute.

Tutur: kinship title or term.

Waria: Indonesian common term for male-female transvestites.

Wilayatul Hisbah (WH): the State Shari'a Police; a unit under the Municipal Police that is responsible to monitor the enforcement of Shari'a. This is a parallel unit that operates at the provincial and district level.

Wilayatul Hisbah Kampong (WH Kampong): Village Shari'a Police; a unit in Central Aceh district only that has been created and funded by the district government to monitor the enforcement of adat and Aceh Shari'a. The members of the unit are local youths (with a minimum of three).

Zina: unlawful sexual intercourse (premarital sex and extramarital sex), sin; second most condemned action in Islam after betraying the oneness of God.

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Chapter I
Introduction

While adat penal law[1] has been abolished or at least curtailed by national penal law in most parts of Indonesia, in Aceh province it has reemerged with the support of the national state. Adat has become an additional formal legal system, next to the recent state-enacted Acehnese Islamic penal law (*jinayah*) and national Indonesian penal law. The reemergence of adat law produces a new dynamic wherein these three bodies of penal law apply to a single community. The state has designed these bodies of law in such a way that they are independent from one another.

This research investigates the dynamic intersection of these three bodies of law and the institutions applying them, focusing on how they address public morality and sexual deviances as they play out in the Gayonese community of Bener Meriah and Central Aceh, Aceh Province. Using ethnographic methods, this inquiry is led by the following questions: how do these three penal systems interact? Which actors play a dominant role in managing their implementation? What is the interest of the state and non-state legal agents in implementing the adat? What effect does the State's implementation of adat penal law have on the offender, victim, and legal actors (village apparatus, the Aceh Shari'a police, the normal police and public prosecutors)? How does this implementation affect or shape the power relationships among them?

In this book, I draw from and seek to contribute to four theoretical lines of thought in legal anthropology: the semi-autonomous social field, adat as a hybrid law, legal pluralism and lastly law and power. First, this book builds on Sally Falk Moore's idea of the semi-autonomous social field. In her work on Law and Social Change (Moore, 1973) and Law as Process (Moore, 1978) Falk Moore has shown how state law cannot be directly enforced to complex societies which generates rules for themselves internally. The semi-autonomous social field indicates the capacity of the social arrangement to generate and enforce rules, but is influenced by its surroundings. In this book we see it in how village elites champion adat law

[1] Adat penal law in this book refers to rules of conduct carrying sanctions. It forbids conduct perceived threatening, harmful, and endangering property, life, safety, morality, social arrangement, and stability. Gayo Adat penal law in the past included the death penalty aside from fines, social sanctions, such as social punishment, exile and isolation from the community and rehabilitation. Today, the application of adat sanctions is limited to fines and rehabilitation. The adat family and penal law are part of a wide range of adat in daily practice. The Gayonese use the term to describe the widest range of behavior and ideas that are continuously practiced by a community or extended family, including rituals, politics and governance, social and personal etiquette, family law, penal law, etc. They are all called adat, without any further classification.

over state law to handle sexual cases, but how this process is influenced by higher state actors.

This book shows that in order for the state to make its programs successful and impose law on society, it needs to recognize the adat and its institutions as part of the state. I discuss how this approach has increased the state control over village's politics, developmental projects, and transformed the social relationship between the villagers from reciprocal to nonreciprocal. Interestingly, however, the village elites have become autonomous from the state in enforcing adat law because they have been integrated into the state apparatus.

Second, I develop my ideas about adat following F. and K. von Benda-Beckmann's argument that adat law is hybrid law (F. and K. von Benda-Beckmann 2013, pp. 421–22). I will show how adat law hybridizes external law, culture and norms. Adat law, as I will discuss, is a dynamic, changing intermixture of political ideas, social norms and social practices, which continuously transforms to adapt itself to external religious forces, secular norms, external cultural elements and legal forces – whether from Islam or from national or international law. Adat internalizes such external forces and elements and thus incorporates many different norms. This generates a highly flexible and changeable penal practice that is always open for new (re)interpretation and (re)organization. One such internalized element in the practice of adat is the 'Divine Shari'a' which has been coopted and adapted into local culture.

One of the arguments I develop in this thesis is that the secular hybridization of Shari'a characterizing adat law can in some instances be understood as the outcome of a long and continuous transformation driven by Muslim scholars. What I am suggesting is that at least in the Gayo community, adat and the *jinayah* of Aceh Shari'a are both secular articulations of the Divine Shari'a. Both laws are interpreted and produced by humans in their effort to localize or make the Divine Will specific for a local context: the former by the community and the latter by the state. The difference between them is merely interpretative: the community is led by religious leaders and adat elites working in informal institutions such as Islamic boarding schools or imams and other village leaders and institutions. The state's interpretation, on the other hand, is led by Muslim scholars who work in various religious and public institutions such as the Ulama Assembly Board (MPU, *Majelis Permusyawaran Ulama*), the State Agency for the Shari'a (DSI, *Dinas Syariat Islam*) and local Islamic universities whose lecturers are often consulted by state agencies. The relationship between adat and the *jinayah* of Aceh Shari'a is thus similar to the relationship of adat with Indonesian national penal law: they may conflict, complement each other, or become alternatives.

The related *third* line of theory that I present in this book concerns the idea of legal pluralism. Regarding such pluralism in Aceh province, Arskal Salim has argued that the three legal systems constituting it will always contest each other's prevalence (Salim, 2015). By contrast, I argue that this is not always the case and that the three different penal legal systems operate side by side in a fairly harmonious way. The explanation for this difference lies in the legal field we focus on; Arskal Salim has looked at legal pluralism in family law in Aceh, while I examine the enforcement of adat penal law, Aceh Sharia and national penal law.

This book shows that the pluralism of penal law in Gayo does not provide those who are in conflict or victims of a crime any option to choose the law of their interest. They have to follow the legal procedures designed hierarchically by the government, starting from the village institutions as the lowest legal agencies. At village level, migrants are forced to follow adat law, even if they constitute a majority locally. Due to legal procedure in penal law, only higher legal institutions such as the police and public prosecutor can engage in "forum shopping", i.e. choosing a particular body of law and the legal institutions to apply it when addressing a particular situation. Because of the autonomy of law as designed by the state, the chosen body of law is binding, enforceable, and cannot be contested by those thus subjected to it.

Lastly this book shares Barbara Oomen's and Janine Ubink's findings on law and power in South Africa and Ghana respectively, where chiefs have enjoyed an increase of power in land management with the support of the state's constitution. Oomen and Ubink observed that the national state's policy to distribute power related to land management has been informed by its interests in creating social order and stability. This has allowed the chiefs to legitimate their actions and exercise power through state law and land management programs. The state's power has enabled chiefs to monopolize land ownership and to pocket the "lion's share" of the profits from land transactions with buyers from outside the community. The chiefs' approach to land administration has caused resentment from community members who at the same time often value the role of the chiefs in peace and dispute management generally. Considering the chiefs' traditional role and power in South Africa and Ghana and the lack of power of the national government in both countries, chiefs can often act beyond their jurisdiction and legal authorities (Oomen, 2005; Ubink, 2008, 2009).

Comparing Aceh to the situation found in South Africa and Ghana, my thesis will show that the inclusion of adat law and institution by the state legitimates and increases the authority of adat elites to exercise their power on behalf of the state. Politically, the adat elites represent the interests of the state's elites and

institutions at the village. They have become dependent on the state's budgets and projects and are engaged in a competition for such funds. Legally, however, as their power has increased and adat law has gained in autonomy, the adat elites have become increasingly difficult to control for the state.

Nonetheless, in Gayo the state has managed to remain the supreme power at the top of the hierarchical order in handling major crimes or unsolved disputes at the village level. The formalization of adat has rendered both adat and higher legal institutions (police department and public prosecutor's office) active and creative in navigating the three legal systems in ways that suit their own interests, but also those of victims or offenders. Sometimes they ignore one body of law that is supposed to be used to prosecute a case and they opt for another. The creativity of legal agents and the autonomy of village elites in their application of adat law have made the intersection of penal law highly dynamic.

State Legal Pluralism

In Muslim communities, three types of norms are operative: state legal norms, religious norms, and customary norms (Buskens, 2000). Using the same distinction, F. and K. von Benda-Beckmann have demonstrated how the Minangkabau in West Sumatra have negotiated the relative position of the three normative orders within the framework of the Indonesian constitution. Adat, Islam, and the state, together are considered the "three interwoven threads", while the Minangkabau consider Islam and adat as inseparable.

F. and K. von Benda-Beckmann observe that the debate among Minangkabau people about the relationship of Islam, adat, and state law, is more explicit and elaborate than in most other parts of Indonesia. The authorities of these systems are incessantly busy to position and reposition themselves against competitors in an endless process of deliberation, intended, sometimes, to accommodate other systems and, other times, to exclude them. The repositioning of two of the three legal systems almost always implicates the third one. In this sense, changing one system is changing them all (Benda-Beckmann 2006, F. and K. von Benda-Beckmann 2013). As we will see, this finding is relevant for Gayo as well.

The concept of legal pluralism is helpful to understand the interplay of more than one body of law in the social field. Scholars conceptualize this legal phenomenon in various ways. Woodman conceptualizes the operation of more than one legal system in one state as internal legal pluralism (Woodman, 1999). Hoekema and Thomas conceptualize this legal situation as formal legal pluralism since they are all under the command of the state (Hoekema, 2005; Thomas, 2009). Griffith and Vanderlinden define the existence of more than one legal system as

legal pluralism (Griffiths, 1986; Vanderlinden, 1989). Griffith has furthermore engaged in an ideological combat against approaches that give preferential treatment to the role of the state in managing the legal order, which is, according to him, a matter of doctrine and not a socially observable fact. The term legal pluralism then appears ideological, as the ending "ism" implies (Woodman, 1998, pp. 32–39). However, as Dupret argues, adding "ism" to the socio-legal discourse is misguided as it is a product of political theory that cannot be applied to sociological and analytical tools on legal phenomena (Dupret, 2007, pp. 16).

Considering these legal conceptions and debates and my own observations on 'legal facts' in Gayo community of Aceh Province, I have opted for the term state legal pluralism to indicate the existence of more than one body of law that is operated by the state or, in the case of adat law, is enabled and supported by the state. This is only a pragmatic choice. The absence of explicit 'ideological combat' in the operation of law in the social fields I studied and the intersection of the laws in practice have led me to use the term of legal pluralism instead of legal plural"ism". It expresses the empirical situation that there is a pluralism of laws operative in one community, but that there is no ideological debate about this pluralism. Instead, we should look at practice to distinguish the relation between these three systems, most importantly their effectiveness in enforcing rules and decisions.

The Emergence of State Legal Pluralism

The emergence of state legal pluralism in today's world is the result of the state's approach to overcome (potential) disorder, increase state control, and to manage the complexity of political situations and multiculturality in one country. Chiba observes that the existence of state legal pluralism in the modern world is to a large extent an outcome of conflict and protest from minorities which have led to political negotiations between the minorities and the majority (the state) (Chiba, 1998, pp. 236–237). Vanderlinden adds that state legal pluralism may also be a result of the state recognizing its incapacity to realize its "totalitarian ideal" of monopolizing the regulatory order. The state shifts its approach to strategically regaining control over communities after its failure to reject local rules (Vanderlinden, 1989, pp. 153).

The outcome of this political and legal negotiation varies from one country to another. It may result in "official and non-official law" (Chiba, 1998, pp. 236–237) or, non-state law becoming part of a larger body of state law (Woodman, 1999, pp. 9). Some countries, even in Europe, give limited institutional recognition to the minorities' law such as in marriage and inheritance practices, land matters and

fisheries (Hoekema, 2005; Turner and Arslan, 2014). Some others, particularly Latin America countries, constitutionally allow indigenous communities to apply their legal system in its entirety through their legal institutions, including in the case of major crimes such as murder. The constitutional recognition may also lead to "interlegality", which means that a legal system of a minority, or a, less powerful, dominated group adopts, integrates, or blends a valid and enforceable provision of a higher legal system to be enforced in its decisions. The reverse is also possible, where the state legal system adopts legal provisions from less powerful or marginalized or dominated groups (Collier, 1998; Proulx, 2005; Thomas, 2009; Gabbert, 2011).

In Indonesia, the government's response to the Aceh rebellion, in the end, was to allow the region to develop two legal systems in addition to Indonesian national penal law: Aceh Shari'a or State Shari'a (I use these two terms interchangeably) and adat. While Aceh Shari'a is new state law that is produced based on the local interpretation of Islamic teachings and is enacted through the same mechanisms as Indonesian national penal law, adat law is based on traditional law that is recognized institutionally to be part of the state law. Both Aceh Shari'a and adat law are now formally recognized and arranged hierarchically, as I will discussed in the following section.

Unlike in Latin American countries, the adat law in Aceh province is institutionally and formally designed to handle minor cases only. Major crimes fall under the jurisdiction of either Aceh Sharia' or Indonesian national penal law. In practice, however, this legal boundary is not solid, which allows legal institutions to apply legal differentiation for certain cases, making them subject to other bodies of law.

Legal differentiation is a process where a legal institution attaches different consequences to the same act or the same constellation of facts for one group of persons, or an individual, than for another. According to Bedner, applying legal differentiation may prevent the law from running out of control. It can be used as an instrument to accommodate a sense of justice for a group or individuals in a highly multicultural society like Indonesia. Its effective and lawful application depends very much on the capacity of judges or other state agents (Bedner, 2017).

As I will argue later in this book, legal agents like the police and adat leaders also apply legal differentiation by enforcing adat law in cases where they are supposed to use Aceh Shari'a or Indonesian national penal law. With the inclusion of adat institutions into the state, the application of legal differentiation now depends on the capacity and cultural and political concerns of a wider range of

legal agencies, including village elites instead of only judges, public prosecutors and police. This issue will be discussed in the cases studies in chapter IV and V.

State Legal Pluralism in Aceh: The *Jinayah* of Aceh's Sharia

For understanding why Aceh province has three penal legal systems (adat, *jinayah* or Aceh Shari'a, and Indonesian national penal law) as opposed to only two in other parts of Indonesia (adat and Indonesian national penal law) we have to return to the monetary crisis in Indonesia in 1997. This crisis caused political turmoil across the country. Provinces with a history of armed conflict, such as Aceh, Papua, and East Timor, took advantage of the instability to increase their campaign for independence. The Indonesian government employed different approaches to address these cases. It offered special autonomy to Aceh and later to Papua. It allowed Timor Leste to hold a referendum, which led to its secession (Habibie, 2006, pp. 4, 131–132, 131-265, 356-357, 402). Meanwhile to other parts of Indonesia, the government offered regional autonomy to reform the central-peripheries relationship through Law 22/1999 (Habibie, 2006, pp. 274–278).

As to Aceh province, the central government was open to all options except an independent state. The Aceh delegation to the House of Representatives of Indonesia proposed the introduction of Shari'a law as a way to end the armed conflict. Others claim that the Shari'a offer came from the Party of Indonesian Democratic Struggle (PDIP, *Partai Demokrat Indonesia Perjuangan*), a secular party, and that it took the Acehnese delegation by surprise. The proposal was agreed by the government although it clearly was against the state's secular constitution. However, the urge to maintain the unity of the country overruled the wish to maintain the constitution. After several meetings, the proposal on the introduction of Shari'a law in Aceh province was transformed into state Law 44/1999 on The Special Status of the Province of Aceh Special Region (Arfiansyah, 2009).

Feener has observed that the introduction of Shari'a in Aceh is not simply a reflection of a revival of Islam in the province and a longing to bring back the "golden age" of the Aceh Sultanate. It has been an instrument of the modern educated Muslim and local elites to establish a "new Aceh" by introducing a reformation based on Islamic values. It is aimed at facilitating social stability and development and must be considered as part of the general reconstruction project in post-conflict and post-tsunami Aceh. Aceh Shari'a, according to Feener, is thus an instrument of a social engineering project, which is ongoing despite disappointment of many local people and observers about its ineffective and unjust implementation (Feener, 2013).

The issue of Shari'a thus became important for the Indonesian Armed Forces and the GAM, which both used the plan for implementing Shari'a to attack the Islamic credentials of each other in order to reinforce their political position (Sulistiyanto, 2001, pp. 445; Kamaruzzaman, 2004; Schulze, 2006, pp. 231; Aspinall, 2007, pp. 257). At the same time Aceh Shari'a opened an opportunity for local scholars and political elites to advance the formalization of Islamic law within the structure of the state. This formalization had been the unachieved goal of their struggle since Indonesia became independent in 1945 (Feener, 2013, pp. 52).

Law 44/1999 introduced a general sense of autonomy in religious, cultural, and educational aspects as well as the participation of ulama (Islamic scholars) in governance. The Aceh government translated the autonomy in religious and cultural aspects into two new legal systems. In mid-2000, the Aceh government issued Regional Regulation 5/2000 on The Enforcement of *Syariat* Islam. The latter comprises aspects of *aqidah* (theology), *ibadah* (worship), *mua'malah* (civil), *akhlak* (ethics), education and *dakwah* (proselytization)/*amar ma'ruf nahi mungkar* (enjoining good and prohibiting wrong), *Baitul Mal* (Islamic finance institutions), social affairs (encouraging the practice of Islamic value in the community), Shari'a, Islamic defense (encouraging the state and community to defend the sacredness of Islam from any offenses), *Qadha* (judicial system), *jinayah*, marriage, and inheritance.

In 2001, the Indonesian government issued Law 18/2001, which introduced many new political and institutional terms in Aceh. It changed the name of the province from Aceh to Nanggroe Aceh Darussalam, the term for regional regulation to Qanun, and the religious court became the Mahkamah Syar'iyah. However, it did not expand the jurisdiction of this court. The law also states that Aceh's legislation can prevail over national law under the principle of *lex specalis derogat lex generalis*. According to former Head of the Sharia Office of Aceh, Alyasa Abubakar, this means that the authority of Aceh province to develop its law is limitless. However, as we will see later in this book, the central government in fact does control the development of the Shari'a. Chapter V, in particular, will discuss how the implementation of the Aceh Shari'a relies on the police, public prosecutors, and judges who are all recruited and trained by the central government and thus represent the central government in legal enforcement in Aceh province.

In 2002 the Aceh government expanded the jurisdiction of the Mahkamah Syar'iyah from family law cases to certain personal (*ahwal al-syakhshiyyah*), civil (*mu'amalah*) and penal (*jinayah*) law cases. With regards to criminal aspects, the Aceh government criminalized religious teaching deviating from Sunni theology

and tradition, eating and drinking in public spaces during Ramadhan, dressing in un-Islamic attires, drinking and distributing liquor, gambling, unmarried couples being in a secluded place (*khalwat*), and not paying, paying less, misusing and misdistributing *zakat* (alms). All these have been further regulated in several Qanun enacted from 2002 to 2004.

However, the Qanun could not be enforced until in 2005 when the jurisdiction of the Mahkamah Syar'iyah was finally arranged. The central government in Aceh went through long and complicated political negotiations amidst the escalation of armed conflict in the region. Finally, in 2004, supporters of the enforcement of Aceh Shari'a from various political and legal institutions at the regional and national level signed a joint agreement to synchronize the Mahkamah Syar'iyah and civil court jurisdictions. The agreement explained the task of every legal institution (police, public prosecutor, and court) at the provincial level in supporting the implementation of Aceh Shari'a. The Supreme Court responded to the joint agreement by issuing a decree that transferred partial jurisdiction of the civil court to the Mahkamah Syar'iyah, over *mu'amalah* and *jinayah*. This was done to avoid overlapping jurisdictions (Salim 2010). In early 2005, during this complicated negotiation, the Mahkamah Syar'iyah of Bireuen district ordered to flog fifteen offenders of the gambling rules. This order was supported by national legal institutions and became the first execution of an Aceh Shari'a based sentence (Bustami, 2007, pp. 102; Salim, 2010, pp. 17).

In 2006, as an outcome of the peace treaty between GAM and the central government, the Indonesian legislature enacted Law 11/2006 on the Governance of Aceh. The law comprised a regulation of the jurisdiction of the Mahkamah Syar'iyah in family, *mu'amalah*, and *jinayah* matters, as further detailed in Qanun. The law also orders the police and public prosecutors in Aceh province to support the enforcement of the *jinayah*.

In 2013, the Aceh government issued Qanun 7/2013 on Islamic Criminal Procedure, which regulates the role of police, public prosecutor, and judges in handling *jinayah*. In the following year, 2014, the government issued Qanun 6/2014 on *jinayah* which revised and added some crime categories relating to sexual offenses. The Qanun criminalized selling and consuming liquor, gambling, *musahaqah* (lesbianism), *liwath* (gay), *zina* (premarital and extramarital sex), rape, sexual abuse, indecent behavior in public spaces and *qazhab* (false allegations of *zina*). The Qanun became formally operative in October 2015 (Indonesia, 2014).

Since the first enactment of the Qanun on *jinayah* in 2003, Aceh has punished offenders based on two categories of crime: *hudud* (sing. *hadd*) and *ta'zir*

('discretionary' crimes). Hudud is a fixed penalty for offenses that are prescribed in the Quran and the prophet's traditions. They cannot be modified (Peters, 2005, pp. 53). This category has only one form of punishment: a fixed number of whip lashes. Before the enactment of the *Jinayah* Qanun of 2014, only offenses concerning liquor were categorized as *hudud*, with 40 lashes. The Qanun added *zina* (100 lashes) and *qazhab* (80 lashes).

Ta'zir is a discretionary punishment given by the judge for offenses that are not mentioned explicitly in the Quran and the prophet's tradition (Peters, 2005, pp. 16) such as *khalwat,* liquor distribution, and rape. The judge is given freedom to decide the appropriate punishment for these offenses, based on the facts established in the courtroom. The judges can order either flogging, a prison sentence, a fine or a mixture of these to the offender. The range of punishment is regulated in the relevant Qanuns.

Since the start of the implementation of Aceh Shari'a after the Tsunami and the ending of the armed conflict, the workload of state legal agencies to investigate sexual offenses has steadily increased, as previously, under the national penal law, such offenses were limited to cases where a complaint was filed by the spouse (either husband or wife) of the suspect. Although the Aceh government has established a special Shari'a Police to monitor the implementation of the Sharia, the latter have not been authorized to take over or intervene in investigations and prosecutions by the police and public prosecutors. As a result these state legal agencies in Aceh Province are busier than before.

Theoretically, following the design of legal pluralism in Aceh, a consequence of this broadened category for sexual offenses, the Mahkamah Syar'iyah should have tried sexual offenses more frequently than the district court. In practice however, as will be shown in this book, the Mahkamah Syar'iyah of both Central Aceh and Bener Meriah districts have tried fewer cases on sexual offenses than the district courts. This is caused by the active role state legal agencies play in moving cases from one legal system to the other based on their preferences and their awareness of the effects the treatment under a particular legal system has on those involved in a case.

One of the striking features of the implementation of Shari'a in Aceh has been its tendency to target women. Local activists have protested this development , even before the end of the armed conflict when wearing a hijab was the most visible display of a symbol of Islam in public space. Women were forced to wear a hijab although it had never been part of local traditional attires but a personal choice (Aquino Siapno, 2002, pp. 137, 174–177). Thus, during the conflict women's bodies became a showground for the Free Aceh Movement and the Indonesian

armed forces supported by the officials and urban religious elites to demonstrate each group's credentials and commitment to the Shari'a by forcing the wearing of a hijab in public spaces in the territories under their respective control. The Aceh government and Islamic groups continued these practices even after the conflict ended with the peace agreement in 2005 (Bowen, 2003, p. 232; Liputan6.com, 2004; Detik, 2006a, 2006b). It only ended being a contest when both hijab and Islamic attire eventually became "new norms" in public spaces.

However, not only in public spaces have women been targeted by the Jinayah aspect of Aceh Shari'a. Some articles from the Jinayah law of Aceh Shari'a such as rape, in which offenders will be set free after pronouncing an oath claiming their innocence in front of the judge, but also the treatment of other sexual offenses were protested by local and national activists and human rights defenders. During my field work both in the central part of Aceh; Central Aceh and Bener Meriah district, and in Banda Aceh, the capital city of Aceh province, I observed that many local activists were to a large extent inspired by this structural and legal discrimination against women and children under the sacred term of "Shari'a". Protesting anything related to the Shari'a openly in public would potentially engender immediate harms to the protesters. As a result, these debates and legal reform efforts have taken place underground.

Activists, as shown in this book, have consistently attempted to advance national law such as Law 23/2004 on the Elimination of Domestic Violence and Sexual Abuse in their efforts to advocate for victims and influence formal legal actors. However, they are hindered by the formal arrangement of legal pluralism mandating all sexual cases to be prosecuted under the Jinayah. Thus, in order to protect female victims, activists prefer the enforcement of national law, enforced within the legal competence of the district court, which is considered more protective than the Aceh Shari'a. However, because of Aceh's special autonomy, national law, enforced by district court, related to any harassment against women comes only secondary to the Aceh Shari'a. Nonetheless, as we will see later in this book, legal agents always seek for chances within the legal pluralism to advance the interest of those involved in case by moving the case from one to other legal systems.

The Formalization of Adat

Unlike their critical response to the introduction of the Aceh Shari'a (Salim, 2008a, pp. 5), the national government welcomed the introduction of adat criminal law. Interestingly, scholars and activists did not pay much attention to

the development of adat in Aceh, but focused mainly on Aceh Shari'a related issues.

The Indonesian government's endorsement of the development of adat in Indonesia was in line with Law 22/1999 on Regional Autonomy, which not only reflected a shift of Indonesia centralization to decentralization, also one from legal centralism to a degree of legal pluralism. Through this law, the central government recognized the diversity in culture and ethnic identity of the country. Later, it issued various policies to accommodate pressure from national and international campaigns on the protection of indigenous rights and autonomy for villages and adat (Bedner and Huis, 2008, pp. 169). This eventually led to the enactment of the Village Law of 2014. With this law, state legal pluralism became legally recognized nation-wide.

Aceh is one of few provinces that has legally developed and promoted the role of adat law at the village level to increase social order in the community. The first regulation of Aceh province relating to the development of adat was Regional Regulation 7/2000 on the Effectuation of Adat Life (*Penyelenggaraan Kehidupan Adat*), which supported the enforcement of adat law and recognized its institutions. In 2003, the Aceh government issued Qanun 4/2003 on the Governance of Mukim (parishes) and Qanun 5/2003 on the Governance of Gampong (villages), which reconstructs the organization of village politics, the authority of all village functionaries, and the validity of adat law.

The last legal developments on adat are Qanun 9/2008 on Supervising the Life of Adat and Qanun 10/2008 on Adat Institutions. Until today, these two Qanuns are the most important results from Aceh's autonomy concerning adat. Qanun 9/2008 regulates the jurisdiction of adat institutions in applying adat law and punishment. The adat institutions are allowed to tackle 18 minor cases[2], none of which is related to sexual offenses. However, the last point mentioned in the law says that adat institutions can also handle offenses breaching adat and custom

[2] Article 13 of Qanun 9/2008 states that the disputes included are: household quarrels, disputes among families regarding inheritance division, residential disputes, illicit relationships, disputes over property rights, theft in family, disputes over joint property of husband and wife, minor theft, theft of cattle or domesticated animals, offending adat regulations on farms and forestry, disputes over the sea, disputes in markets, minor persecutions, small-scale forest fires that harm an adat community, molestation, sedition, agitation, and defamation, minor pollution of the environment, threats (depending on the type), and lastly, other disputes that offend adat law and custom. An offender should be punished by one or more punishments as regulated in Article 16. They are; advice, admonition, apologizing, *sayam* (a compensation given to a victim who suffers permanent disabilities or whose property is severely damaged), *diyat* (blood money), isolation from the community, exclusion from the village, revocation of adat title, and other punishments regulated by local adat.

beyond the mentioned categories. This implies that the jurisdiction of adat institutions is uncertain. The limit seems to depend on local perspectives whether a case goes against local norms.

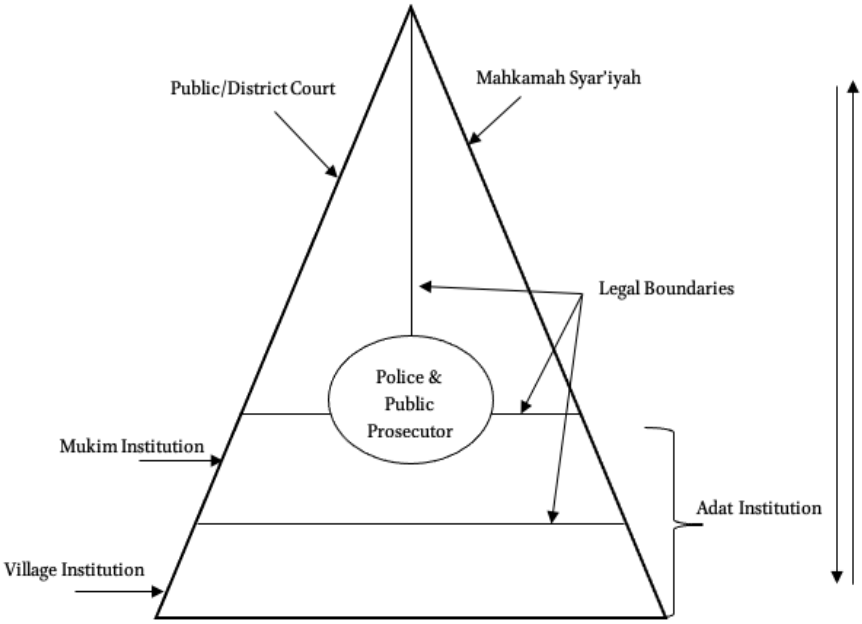
Qanun 10/2008 gives institutional recognition to adat institutions as part of the state (these adat institutions are all village institutions). This Qanun reintroduces adat terms for political institutions and re-arranges relevant traditional political structures and territories in line with the current political structures and administrative territories. The Qanun also grants political and legal power to adat (i.e., village) institutions to tackle minor crimes.

The state inclusion of adat as part of the state legal system is aimed at overcoming the limits of the state in maintaining social order. According to Badruzzaman, head of the Aceh Adat Assembly (MAA, *Majelis Adat Aceh*), there are many offenses which are not included in state positive law, which can be addressed through a "cultural approach" (i.e., adat).

In addition, according to Badruzzaman and Adjunct Commissioner of Police (AKP) El-Futri, who is the head of the Community Policing Unit of the Regional Police Department of Aceh Province, the state lacks a sufficient number of police officers across Indonesia to enforce its laws. Although Aceh province is among regions that have the highest number of police, El-Futri still considers the number insufficient to enforce the law and provide security to the community. This situation makes adat also important for the police department.

Adat institutions are a welcome help for the police and other regular legal agencies to address the 18 minor offenses mentioned in the Qanun. Other offenses, including various sexual offenses and the consumption and sale of liquor mentioned earlier, are within the jurisdiction of the Mahkamah Syar'iyah as they fall under the *jinayah* of Aceh Shari'a. Offenses covered by national law are within the jurisdiction of the district court.

These three penal law systems are arranged hierarchically, in which Aceh Shari'a and Indonesian national penal law share jurisdiction at the top of the hierarchical order. Both Aceh Shari'a and Indonesian Penal Law are enforced by the police, public prosecutors, and the national courts. Adat law is enforced by adat institutions and tried at adat tribunals. It is a bottom-up legal system for minor offenses. The cases that cannot be solved by the adat tribunal will be transferred to either the Mahkamah Syar'iyah or a national court depending on the type of case. I have pictured the legal design of the state legal pluralism in Aceh in the following diagram:



In practice, however, the jurisdictional divisions between these three legal systems is not as solid as it is formulated. Legal agencies, such as the police and paralegals from activist groups (who often act as a bridge between the state legal agencies and adat institutions) play a significant role in choosing between these systems. Moreover, in practice, the village officials often skip the mukim, another and hierarchically higher institution that the village, in this legal procedure. In practice they often transfer a case directly to the police.

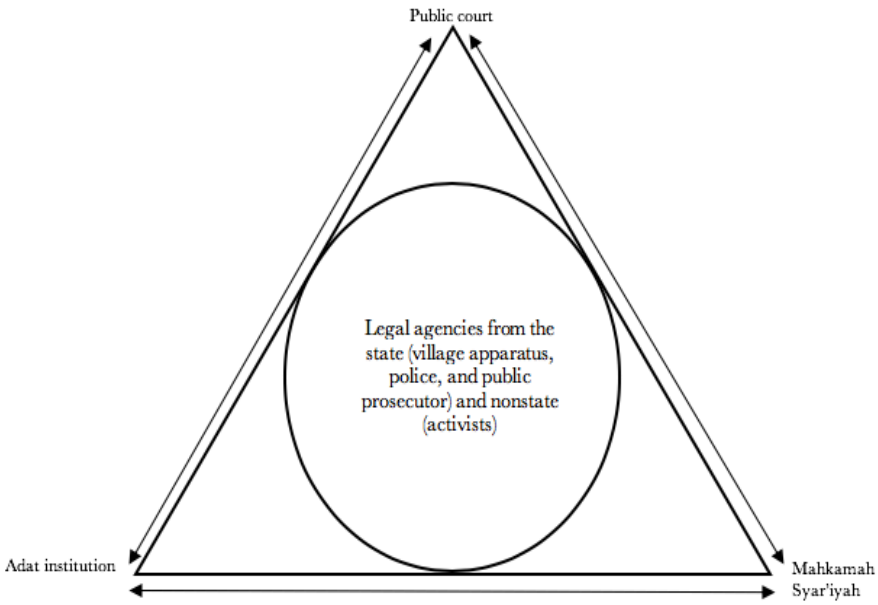
As I will show in this book, each of these actors can complement or become an alternative to the other. This is different from Arskal Salim's observation on the legal pluralism of family law in Aceh. Salim argues that the legal pluralism in family law in Aceh is a 'showground' where separate legal orders, different legal subjects, and norms co-exist and compete (Salim, 2015).

In the pluralism of penal law in Aceh, the creativity of legal institutions in observing the limits of each penal system makes the formal arrangement of hierarchical legal boundaries flexible, blurred, and sometimes even absent. In practice, each of these systems is autonomous in enforcing its judgments and cannot be overruled by the other ones. However, as they are applied in practice, they pragmatically complement each other and are used as alternatives. To some offenses, two legal systems may each apply a sanction to a single case so that eventually the offender receives double punishment. In Gayo, it is always the adat

institution ahead of other legal systems to enforce its law, because it is closer to the subject and less procedural than the other legal systems.

This difference in interaction within family law and penal law is caused by the difference in legal procedure and the autonomy of each body of law. In family law cases, a plaintiff can directly file his/her reports to the court with or without a lawyer; the court's judgment can be contested by another court or an adat tribunal. Meanwhile, in penal law, the state legal agency represents the state's interest against the offenders violating the state's law. With the formalization of adat, legal actors can access more options to pursue their interests and to apply legal differentiation in a particular legal case, since the case is subject to more than one legal system.

The legal dynamic and flexibility of legal boundaries of the three bodies of law in Gayo can be best pictured in a triangle, following the examples of Buskens and F. and K. von Benda-Beckmann. As the following diagram shows, the legal agencies fill the center of the triangle. They creatively interpret the limits of each body of law to advance their interests. Sometimes they invalidate one legal system, which is supposed to be applied, to attain a result they think is desirable.



A connected argument I will make is that the state recognition of adat has increased the legal power of villages elites. Village elites have become assertive in enforcing adat law beyond the legal boundaries designed by the state. Condoned

by higher state organs, adat institutions now regulate sexual offenses, which do not fall within their formal jurisdiction. Interestingly, this research also finds that although it looks as if adat elites do not face limitations in enforcing adat law, their increasing knowledge and awareness about human and individual rights has restrained them in the exercise of their authority. This awareness is an outcome of the trainings organized by the state and international agencies during the early design of the inclusion of adat institution as part of the state's legal and political institutions.

Secularized Shari'a

In this book, I will also discuss adat as yet another form of Shari'a, next to Aceh Shari'a. Both are products of a secular reading of Shari'a to extract actual concrete law from the abstract Divine Will. As products of such a secular reading, adat and the Aceh Shari'a complement or have become alternatives for each other and for Indonesian national penal law. This means that all bodies of law are equal at an ethical level and that their differences are mainly found in their legal sources, their place in the state hierarchy and how they are enforced in practice.

The sources of Aceh Shari'a are primarily the Quran and the recorded acts and saying of the Prophet (the prophet's tradition or *hadiths*) with some additions from classical Islamic legal texts, and Indonesian penal law. As already mentioned, Aceh Shari'a has adopted some punishments from the Quran (*hudud* in Aceh Shari'a's Qanun). These penalties are fixed and cannot be adjusted; however, the rules of evidence for *hudud* are so strict that punishment will almost never follow. According to Heyd, this makes the *jinayah* of not so much practical importance in the Islamic world (Heyd, 1973, pp. 1). Both the Quran and the prophet's traditions do not explicitly address many 'modern' crimes such as sexual abuse of children, the use of narcotics, or pedophilia. The punishment for such crimes depends on the judges' discretion, which is called *ta'zir* (Peters, 2005, pp. 53).

In Aceh, the *hudud* penalty applies only to *zina*, consumption of liquor, and false allegations of *zina*. Aceh province follows Indonesian national law in other crimes. Indonesian national penal law consists of the legacy of Dutch criminal law for the East Indies (Indonesia) as further developed by the Indonesian legislature (Cribb 2010; Haveman 2002; Pompe 1994). Aceh also follows the national penal law procedure for investigation, prosecution, and trials of *jinayah* cases, which include how to use digital materials as evidence. Practically, all Indonesian legal agencies; police, public prosecutors, and judge, are involved in the enforcement of the *jinayah*, starting from the investigation until detainment. It shows that Aceh

Shari'a is a top-down legal order in which the enforcement of the law is controlled by the central government.

By contrast, adat law is a bottom-up legal system that is created from local practice or communal consensus to maintain social order and stability within the community, clan, or extended family. During its development, adat law has been influenced and inspired by various external normative systems, like Shari'a, whose rules have been contextualized and vernacularized into local practice. Today, Gayonese believe that their adat is part of Shari'a as it has been greatly influenced by Islamic teaching.

Nonetheless, in this book I treat both adat and Aceh Shari'a as secular law, since both are constructed on human interpretations of the Divine Shari'a. In order to understand what drives their specific modes of interpretation, we must take a look at their different legal formulations and the political objectives underlying them.

Many scholars agree that Shari'a is the Divine Law which is an abstract and universal concept. Shari'a is not a form of positive law as common in a Western conception. To Muslims it is much more than that: it is the Divine law in a sense that it is a concrete embodiment of the Divine Will that is embodied in the Quran. It contains the injunction of the Divine Will as applied to every situation of human life both private and social. It not only consists of norms, but also of rituals, religious practices, moral concepts, and ethics. Shari'a sanctifies the whole experience of life and give religious significance to what may appear as the most mundane of activities such as how someone should eat, trade, socialize with a neighbor, clean and walk. All of these activities are projected as a way that brings the believer closer to God (Naṣr, 1994, pp. 85–86; Auda, 2008, pp. 57).

Shari'a thus is a total discourse in which the core of Islamic knowledge and center of social discourse are located. Jurists, scholars, and others endeavor to extract law from this broad discourse of the Shari'a. They produce contextualized Shari'a for specific purposes in a certain historical moment. In this effort they have narrowed and made concrete the abstract and universal concept of Shari'a. The product is human law, which is primarily based on the Quran and Hadiths (Messick, 1993, pp. 3; Naṣr, 1994, pp. 90–91; Zubaida, 2003, pp. 10–11).

This process started after the death of the prophet, when Islamic scholars had to produce judicial reasoning (*ijtihad*) to answer new questions which the prophet had not yet answered. They also established study circles, taught new communities of believers and took pupils (Bälz, 1995, pp. 43; Auda, 2008, pp. 56–69).

Cultural challenges forced the next generations of Muslim scholars to produce new judicial reasonings that adjusted the Prophet's tradition. They incorporated Shari'a into new geographical and cultural conditions, thus producing new Islamic law. Others justified legal aspects of existing local practices as being part of Islamic law. All these efforts resulted in practical laws or guidance to the path of God (Shari'a). Consequently, the actual legal rulings of the Shari'a vary and differ from one place and society to another. These new practices may appear deviant from the standard legal texts. They may also appear tighter and more extreme than the standard legal texts or *fiqh*s have regulated (Naṣr, 1994, pp. 92; Abubakar, 2016, pp. 190–246).

The broad, diverse meanings, contesting laws and practices of Shari'a have transformed into the present modern form of state-sponsored Shari'a since the colonial era and the rise of the nation-state. Early European scholars identified the Shari'a as the law governing the lives of Muslims in their colonies. Later, this view was criticized by other European scholars, who argued that custom was more important in this respect (Buskens, 2014, pp. 210–212).

Colonial administrations then had to decide whether to champion Islamic law or customary law for the sake of legal unification to rule the colony, a question that was not answered in a uniform manner. In Northern Nigeria, for example, the British constructed a new Islamic legal system that had never existed before. Inspired by Kabylia and the East Indies (Indonesia today), France formalized customary law rather than Islamic law. In most colonies, Islamic law was circumscribed as only applying in family matters, while in other fields the colonial powers applied their own law from Europe (Hallaq, 2009a, pp. 86–93; Buskens, 2014, pp. 210–212).

Some Muslim countries, such as Sudan, Egypt and Indonesia formalized Islamic law, following the colonial legal framework after their independence (Asad, 2003; Otto, 2010; Köndgen, 2017). In Indonesia, the supporters of Islamic law revived the Islamic legal system in family matters after its jurisdiction had been drastically decreased by the Dutch since the 1930s. The supporters saw the Islamic courts as a strong symbol of Muslim identity and campaigned for their survival after the formation of the Indonesia state. They viewed the Islamic court's procedure as an integral and indispensable part of the national legal system of the modern Muslim state (Huis, 2015, pp. 27–40, 44–48). A newly developed Islamic law replaced and reduced the diversity, flexibility, internally contesting laws and the practices in Muslim communities. Messick argues that the consequences of these radical changes of Shari'a went far beyond a narrow legal sense (Messick, 1993, pp. 3).

Bälz argues that the process of reading and interpreting the Shari'a for state enacted legalization is a "secular reading of Islam law" (Bälz reads Shari'a as Islamic law) (Bälz, 1999, pp. 233). I assume the secular reading of Islamic law is not limited to the modern state's interest in Islam.[3] Muslim scholars' efforts to produce legal rulings of the Divine Shari'a can also be considered a secular reading of the Shari'a, since it is meant to contextualize the Divine Will to respond to a certain social and cultural situation of a community in a certain historical moment.

Secular readings of Shari'a can be classified into state and non-state law, also called formal and informal Shari'a (Berger 1999, pp 113–14), or Islamic state law and Islamic folk law (F. and K. von Benda-Beckmann, 2012b, pp. 772). Formal Shari'a is applied by the state to regulate personal status, inheritance, and religious endowments. The application of informal Shari'a varies from one group to the other and extends to the public sphere and the political domain.

In Indonesia, many scholars associate the state enacted Islamic law with family law. A few, like Ratno Lukito (Lukito, 2007) Arskal Salim (Salim, 2008a), and Syukron Kamil (Kamil and Bamualim, 2007), have also included Islamic penal law, ethics and politics into their studies.

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[3] Secularity is not simply a separation of religion from state institutions or a situation in which religion is absent. Academic definitions of secularity are diverse. As I refer to it, secularity is a way of how to understand and practice religion. In the West, it is also understood as implementing or practicing Christian ethics shorn from its doctrines. It is a continuous commitment to do good without the concern of technicality and details of the teachings of Churches. A secular way of practicing religious teachings is not immediately obvious because it lacks the usual religious symbols and ritual (Smith, 2008, pp. 2–3). Thalal Asad suggests that secularism is a new concept of "religion," "politics," and "ethic" (Asad, 2003, pp. 2). Iqtidar talks about "continuous management of religious thought and practices by the state (Iqtidar, 2011, p. 21) Secular is also rendered in worldly meanings. In Arabic, the word "secular" is translated as "*'alāmiyy* (layman)." It generates the abstract noun *'amāniyyah* to mean secularism (Asad, 2003, pp. 206–207). Secular in this sense can be meant extracting and detailing the abstract and Divine religious teachings into worldly affairs of politics, ethics, and others. Thus, the secular reading of the *Shari'a* implies the process of translating, interpreting or extracting the Divine Shari'a, comprised in the Quran into the specific worldly context of human life that is furthered and organized by the state. This sense of secularism is clearly seen in Aceh. It is important to distinguish Shari'a as the holy Divine will embodied in the Quran, which is not discussed in this book, from human efforts extracting meaning from the Divine will for their specific purposes and context, which is the subject of this research. Having said this, the Aceh Shari'a is equal to and no purer than other law or regulation taking source from many sources including from religion.

Looking at the current discourse on the secular, the interpretation of the sacred text into a specific cultural context before the formation of nation-states can also be viewed as a secular reading of the Divine will (Shari'a), even if secular and secularism are mostly associated with modernity and modern political ideology.

In Aceh province, one particular secular reading of the Shari'a has been codified in the regional regulations called Qanun.[4] As already mentioned, these Qanun are similar to provincial and district regulations in other provinces of Indonesia. They are enforced by state legal institutions such as the police, public prosecutor and judiciary (Feener, 2013, pp. 212–217, 2016, pp. 18–19). Thus, Qanun or the Aceh Shari'a are a secular law. Because of the human effort to read and contextualize the Divine Shari'a, the scope of Aceh Shari'a is limited by other laws, just like with other forms of regulation.[5]

Adat, as I discuss it in this book, is a form of localized and contextualized Divine Shari'a. Originally, adat was not part of the Shari'a. However, the wide migration of Muslims in the past, as they conducted trade and war, introduced Shari'a and blended it with different normative systems and cultures across the globe. As a result, adat articulates Shari'a practices that differ from one community to another.

Later, the vernacularized Shari'a often became a source for local identity. Sometimes, it replaced local practices and tradition, or, sometimes, supported and preserved practices that originated from pre-Islamic times, such as *Pusaka Tinggi* in Minangkabau. This kind of Shari'a has continued to develop and transform over time, following the development of the community that professes Islam (Hamka, 1963; Abubakar, 2016, pp. 190–208). Adat and Shari'a are continuously (re)interpreted by different actors to make them fit each other and to direct the communal life to be in accordance with Islamic teaching.

Some scholars have introduced other terms to describe the living Shari'a operating outside of the state judicial system, such as Berger and F. and K. von Benda Beckmann mentioned earlier. To indicate the influence of Divine Shari'a on adat, I prefer the term of adat Shari'a, next to the state Shari'a of Aceh province. Both adat and Aceh's Shari'a are secular law, inspired by the same Divine Shari'a. While Aceh's Shari'a is a product of legislation, adat is unwritten but still

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[4] The Qanun is a legal term that was firstly introduced during the Ottoman empire. The *Qanun* were created to accommodate the principle of Shari'a within the system of secular law (see Heyd, 1973, pp. 2–3; Bälz, 1999, pp. 46; Zubaida, 2003, pp. 107–108; Hallaq, 2009a, pp. 78–79, 2009b, pp. 215).

[5] After the collapse of the New Order and the introduction of the regional autonomy and democracy, many regions enacted so-called *Perda* Shari'a (Regional Shari'a Regulations). In general, the *Perda* Shari'a regulate issues such as, sexuality, liquor, Islamic attire, Islamic finance (zakat and its institution (*Baitul Mal*)) and Islamic education. Until 2013, roughly 422 *Perda* Shari'a were enacted across Indonesia. They are scattered in 174 districts and municipality in 29 provinces. Among the 29 provinces, six provinces have proclaimed themselves Shari'a provinces: West Java, West Sumatra, South Borneo, East Java, South Sulawesi, and Aceh (Dewi Candraningrum, 2007; Kamil and Bamualim, 2007; Buehler, 2008; Salim, 2008b; Jati, 2013; Muhtada, 2014). Among the six Shari'a provinces, Aceh holds a special position because of its special autonomy.

formalized as part of the state legal system. An important part of this book will discuss the development of adat Shari'a, its relation with Aceh Shari'a, and what this means at the village level in Gayo.

Research on Gayo

The Gayonese

This research was conducted in the districts of Central Aceh and Bener Meriah in Aceh Province. Together with Gayo Lues district they are the home for the Gayonese, after the Acehnese the second largest ethnic group in Aceh province. Both Bener Meriah and Central Aceh districts are situated in the forested and mountainous area of Bukit Barisan. This land is so fertile that it has attracted people to establish or work in plantations since the start of Dutch colonialism in the area. The Dutch introduced various crops, including Arabica coffee (Bowen, 1991, pp. 76–79). Over time coffee has become the main plantation crop of Gayo and migrants from other parts of Indonesia who engage in its cultivation now stay permanently in both districts. A large number of Gayonese hold land with coffee plantations, many of whom live in other areas and hold other jobs (including as civil servants). Compared to the area for paddy fields, the traditional staple food the Gayonese, the coffee plantation area has grown exponentially over time and continues to expand. The coffee's international market value, its long harvesting/cultivating time (around 8 months), easy maintenance, and need for replacement only once every 15-20 years are among the causes for this rapid growth. Coffee is also intercropped with vegetables, as tomato, cabbages, and other for local markets.

However, a large number of Gayonese no longer consider farming as an attractive occupation. To many working for the government is far more promising and easier as it allows for side jobs, including as a coffee farmer. Thus, working for the government in whatever capacity (permanent civil servants or contracted as non-permanent staff) has been a dream for many Gayonese. The privileges that come with it are certainly enjoyed by those who stay in the city of Takengen, which is the center for government and trade. The distinction between rural people as farmers and urban people as government elites is quite clear in Gayo.

As a purely patriarchal society, Gayo has a male group with large privileges and power in society. Within families men determine what is right and wrong, where to work, who should possess something and under whose name. This defines all the social and power relations of the Gayonese, including who should lead the village government, adat institutions and other offices. Women and youth are always subordinate to older men. Some try to negotiate a more influential

position for themselves, but only those with an education and the corresponding social status can challenge the male domination to a certain extent.

Studies on Adat, Law, and Islam in Gayo

There are not many studies about the Gayonese. Studies about Aceh province usually concern the Acehnese, who live in the coastal areas. As the dominant ethnic group in the province, they have shaped its politics, religion, and culture. The Gayonese, by contrast, have only attracted limited attention from scholars.

Most of the studies on Gayo discuss the living Islam in the local context. They provide different observations about the relationship between Islam and adat in Gayo, depending on the historical moment, their methodology and their aims. For my research most important are the studies by Snouck Hurgronje and John Bowen, as they discuss Islam and law in Gayo. This dissertation frequently refers to their studies.

Snouck observed that although Islam is important for the Gayonese, it does not play an important role in their daily life. Far more important is adat, which directs their lives and in many aspects deviates from the Islamic legal texts in particular when it concerns family law (Snouck Hurgronje, 1996, pp. 270–272). Bowen, in general, speaks of the important role of Islam in local life. Islam is not only a source for local identity but also for legal reasoning and social transformation (Bowen, 1984, 1991, 1993). In the legal context, Bowen observes that the Gayonese struggle and always negotiate between adat and Islamic law in solving their family disputes (Bowen, 2003). Bowen differentiates adat from Islamic law in his observations on inheritance disputes. The practice of adat in family law, mainly concerning the inheritance of land, is related to maintaining the link to the ancestors. It holds that land cannot be divided. The inheritance should be maintained as communal or family land, which cannot be owned by individuals (Bowen, 2003). This opposes the principle of Islamic law that supports individual, private land ownership (Bowen, 1988, 2000, 2003). Although Bowen also did observe a process of legal transformation and factors that lead to the transformation of adat and Islamic law (Bowen, 1988, 1993, 2000), he has not discussed the outcome of the transformation today.

During my fieldwork, I observed that Gayonese today see adat as part of Islam and hence consider adat law as another form of Shari'a. Local scholars, like Mahmud Ibrahim and Aman Pinan have published three volumes on Adat and Shari'a, in which they claim that Gayonese adat is a manifestation and actualization of the abstract Divine Shari'a. All adat practices are in line with Shari'a. This idea of adat as an actualization of Islam has become important not

only to construct the identity of Gayonese as Muslims, but also to resist the application of the *jinayah* in the district to immoral acts and prohibited sexual intercourse (*zina*). This has driven Gayonese, as I will discuss in this book, to preferring the enforcement of adat law in tackling immoral acts and sexual offenses over the *jinayah* of Ach Shari'a.

Current scholarship on adat in Gayo, as well as Aceh in general, has helped me not to see the contestation between adat and Islamic law as a contestation between non-Islamic against Islamic law, but rather as an opposition between two forms of Islamic law that are supported and operated by different authorities: the community, led by their religious and adat leaders, and the state, led by Muslim scholars and officials affiliated with various state institutions. Adat is a result of the contextualization of Islamic teachings into the local context, which has been going on for years. These two forms of Shari'a – adat and Aceh Shari'a – operate simultaneously in the Gayonese Muslim community.

Fieldwork: Researching My Own Yard

Gayo is not new to me. I was born in Bener Meriah district, when it was still part of Central Aceh, and spent my childhood in the city center of Takengen of Central Aceh district. When I was 12 year old, I moved away from Gayo to coastal Aceh, where I now live, but I still return to Takengen once or twice a year to visit my parents for important events such as Eid Fitri and to attend the weddings of my relatives.

Researching in my own "yard" has had its benefits, burdens and obstacles. My nativity has helped me to build friendships with young and elder Gayonese and to access formal and informal institutions. My basic understanding of local culture and politeness has helped me to interact with my respondents easily.

Although I speak various Acehnese popular dialects, my Acehnese friends still identify me as a Gayonese. My Gayonese friends, with whom I speak Gayonese popular dialect, consider me as a "native outsider" who has a direct link to the Gayonese but does not fully share their culture. Many times, Khalisuddin, one of the founders of local printed and online news media of Lintasgayo.co, introduced me to his journalist friends and others as a Gayonese who wants to become Gayo. "He is re-becoming Gayonese" as he addressed my poor knowledge on local dynamics. This identification sometimes positioned me as "the other" to the Gayonese and, but, clearly, I am also not a full Acehnese. This research has thus also been a search for myself, for culture, and for others (Hau'ofa, 1982, pp. 222).

Many times, when I started speaking in Gayonese, my respondents were surprised and felt more relaxed by saying "aah you are part of our people, too!" That

expression often broke the barrier between us, although it did not guarantee that they would share all relevant information and knowledge. Many times, after knowing me as a native, my informants did not respond to my questions seriously as they thought I shared in the common knowledge about local culture (Greenhouse, 1985, pp. 261). Although they became aware of my lack of knowledge when they tested me about specific local cultural aspects, I found many informants reluctant to elaborate. They preferred to speak about themselves rather than about the social, political, legal, and cultural developments in Gayo. However, their personal histories sometimes helped me to understand the past and the current situation of Gayo.

Doing research as a 'native' makes one a subject of cultural expectations and constraints. My respondents considered it rude to ask about particular issues such as sexual phenomena and practices. No matter how relevant these issues were to my research, I could not challenge and break the cultural barrier as it would mean risking my engagement with the community and my informants. In this situation, as Fahim suggests, a 'rude' non-native researcher might have had an advantage and have been able to ask questions deemed inappropriate because he or she would be considered an "innocent child" who "do(es) not know" (Fahim and Helmer, 1980, pp. 646).

I was also expected to help the Gayonese collect information about their history after they knew I had been trained at a Dutch university. Often, I was asked to collect and learn all about Gayonese heritage taken by the Dutch during the colonial era. They were eager to get to know more about their past and origins, which are, unfortunately, undocumented until the coming of the Dutch. This also includes the primordial sentiments between groups in Gayo and between them and the Acehnese.

Being trained in a western university and researching my community put me in a specific social class of wealthy and successful persons, a definite social category in which I remain trapped (Koentjaraningrat 1982, pp. 177) During the first month of my fieldwork, I stayed at my parents' house in the city center of Takengen. Living with my parents forced me to fulfill many family obligations which continuously distracted me from my research. My old friends and neighbors looked upon me differently now, and I had to frequently discuss their perceptions and high expectations of me.

The social category issue drove me to decide moving to Lot Kala Village of Kebayakan sub-district. A large number of data used for this book were collected and started from this area. I lived in the house of Sapta, who introduced me to his brother Ichwan, the secretary of Lot Kala village. I stayed in both Sapta and his

brother's house interchangeably and sometimes in other friends' houses. Sapta and others helped me to start engaging with other community members independently. From Lot Kala, I interacted with other communities in the core Kebayakan sub-districts: Lot Kala, Jongok Meluem, Jongok Bathin, Mendale, Kala Lengkio, Bukit, and Gunung.

During the fieldwork, I sometimes could not separate my role as a researcher from how I was supposed to behave based on cultural expectations. I was often working with small community service organizations. My new colleagues, who were activists in Central Aceh and Bener Meriah district, involved me in their projects or other social activities. Although these activities were distractions, they enriched my perspective about social, political, and other dynamics in the regions.

The major cultural constraint that automatically limited me was that I was prohibited from interviewing anyone directly involved in a premarital or extramarital sex offense. Methodologically, this means that I could not write an ethnography based on these individuals' lives and experiences to get free from the subjectivity of the native researcher researching his own community (Abu-Lughod, 1991). Nor can I access an individual perspective of one who actively chooses among existing laws to see the interaction of laws in legal pluralism (Chiba, 1998). To overcome to a certain extent the limitations resulting from this situation, I approached state agencies, village Shari'a officer units, village institutions, police, ulama affiliated with state institutions, public prosecutors, and courts, as well as non-state organizations (Shahar, 2015, pp. 4-7,181-188). Those involved in these organizations are not reduced to passivity by hierarchical rule. They are actors who create considerable effects in the operation of the various bodies of law. Both state and non-state legal agencies applied the legal system in a differentiated manner, eliminating jurisdiction, or developing a hybrid of a mixed form of law when they were situated in a problematic situation of disputes or in processes that aim at changing the law (F. and K. von Benda-Beckmann, 2006, p. 24). This, I think, is another form of subjective perspective of legal pluralism as Chiba suggests.

One major benefit as a native researcher was that I could be an "informal" member of the Village Shari'a Officer, known as Wilayatul Hisbah (WH) *kampong*. The WH *kampong* was very protective of me. Although I was allowed to join their work sometimes, they limited me to observation. This prevented me from getting involved in conflicts or worse, like fighting with an offender's "backup". This occasionally happened, mainly with low rank police and armed officers who wanted their friend or relative released from the adat "trial". In some other occasions, I followed and assisted local activists' activities, in particular those from

two women's activists: Hasanah and Yusdarita. There, my contribution was mainly as a car driver and personal assistant.

After spending three weeks in Gayo, I would return for a week or more to Banda Aceh, the capital of Aceh Province, about seven hours by shared mini-bus from Takengen. The return was to see my family, interview officials and scholars and to participate in various activities organized by the local government, NGOs, or the State Islamic University of Ar-Raniry which I am affiliated to. In Banda Aceh, I consulted and learned a lot from Prof. Alyasa Abubakar who was the first head of the Provincial Agency for Shari'a, a Gayonese himself, and still serving as a professor in Islamic jurisprudence at the State Islamic University. He has been my mentor in understanding Gayonese, adat, Islamic law and the dynamic development of the Aceh Shari'a. I maintained this commute in the whole period of the first fieldwork conducted from August 2014 - September 2015 and in the second short visit from July to September 2017.

Researching Legal Institutions in Gayo

"We do not need that kind of Shari'a (Aceh Shari'a), we have it in our culture", was Mahmud Ibrahim's response to my question about the development of Aceh Shari'a in Central Aceh district.[6] This was a surprising statement to make during a first meeting. He was not withholding his thoughts, even if he did not know me. As we were meeting in his office, the district agency for the Islamic Treasure (Baitul Mal), I was expecting him to provide a statement supporting the implementation of Aceh Shari'a. Then, instead of providing an explanation for his statement, he continued with another: "We do not have *sumang* (shame) anymore. People easily break the adat norms. So that they also break religious orders (*perintah agama*)." Considering his career record, I was curious why such a religious official, who was very familiar with the government's programs, preferred adat over Aceh's Shari'a in dealing with immoral acts and *zina*. He ended our conversation by politely suggesting "…just do research on *sumang* and why our teenagers now are out of control." It was my first visit to his office and his remarks really struck home. It was this meeting that first inspired the present research. I went out from his office with curiosity about what is unique about Gayo adat. How do local actors negotiate the adat rules on *zina* with the *jinayah* of Aceh Shari'a and Indonesian national penal

[6] Mahmud Ibrahim was the Head of Agency for the State Islamic Treasury (*Baitul Mal*) and Member of the Ulama Consultative Board (MPU, *Majelis Permusyawaran Ulama*) of the district. He previously served as a secretary for Central Aceh district. He also organized a weekly religious studies circle (*pengajian*) in the district's grand mosque (Ruhama Mosque) every Friday morning. In addition to all that he founded an Islamic boarding school, Mahkammah Mahmudah, which is located in Takengen city.

law, which regulates the same issue? How can the community advance their adat against the state law? These questions led me to observe Gayo adat relating to public morality and *zina*, which are comprised in the adat penal law.

Mahmud Ibrahim's remark about the adat and shari'a, *sumang* (shame) norms and moral degradation of the local youth formed the starting point of this research to see the interaction of the three legal systems involved. I followed up his advice by observing courts, state legal institutions, interviewing adat elites and legal actors in Central Aceh and Bener Meriah district. During my fieldwork, I visited several legal institutions which are worth mentioning here. They are three courts: the Mahkamah Syar'iyah of Central Aceh, Bener Meriah District Court, and Central Aceh District Court where cases from Bener Meriah district were tried before for Bener Meriah got its own court, two public prosecutor's offices of these two districts, as well as several police stations, and the district agency for the state Shari'a of Central Aceh.

Legalization of jinayah law of Aceh Shari'a adds a penal aspect to the Mahkamah Syar'iyah, which provides an additional workload for judges on top of their cases concerning Islamic civil law. With this additional competence, the judges of Mahkamah Syar'iyah enforce two legal systems interchangeably in one day; Aceh Shari'a penal law (Jinayah) and Indonesian Islamic civil law. I observed that sometimes they tried zina cases after they heard witness for an inheritance case. This requires a new extra knowledge and skill for judges newly assigned to the Mahkamah Syar'iyah. If the public prosecutors or defendants do not agree with the court's verdict they have to appeal the case to the Mahkamah Syar'iyah at the provincial level. If the court of appeal upholds the verdict of the first instance court they can still appeal for cassation to the Supreme Court of Indonesia. During the research, however, I did not find a single judicial decision that was appealed. Therefore, the data presented in this book sources only from Mahkamah Syari'ah at district level.

In addition, the empirical materials for this study have been largely collected from actors and institutions I mention in the following paragraphs. I should make specific mention of my research assistant Sapta. He was always available to bring me to particular interlocutors and accompany me to remote villages. He also re-explained information from informants whose language I could not understand well. His contribution to this research has been invaluable.

All six judges at the Mahkamah Syar'iyah of Central Aceh were Acehnese from coastal Aceh. Later in mid 2015, they were joined by a Gayonese judge who was transferred from West Sumatra to enjoy the end of his career in his hometown. There were two registrars who were also Acehnese. Most court staff studied at the

Law Faculty of the State Islamic University of Ar-Raniry in Banda Aceh. Several members of this faculty were directly involved in designing the Aceh Shari'a; three out of five heads of the provincial agency for the Shari'a are professors at this law faculty, including Alyasa Abubakar. In short, the judges and registrar of the Mahkamah Syar'iyah of Takengen, as well as those at the Mahkamah Syar'iyah of Bener Meriah, are students from the same school. They have remained in contact with their professors from the university through formal and informal activities.

The Central Aceh Mahkamah Syar'iyah is among the busiest in Aceh province. Divorce requests constitute the highest number of registered cases to the court. The registrars sometimes complain of having not enough time to properly transcribe their notes from the courtroom. The archive management was not well organized until 2017 when a desk was included into the structural organization for this purpose. A special desk for the *jinayah* was added in 2015, following the formal enactment of the relevant Qanun in October 2015.

Since 2013, following the enactment of the legal procedure for prosecution, Shari'a offenses can be taken to court. Their trial in Central Aceh thus started only recently. The trial follows the district court procedure in criminal cases in which a public prosecutor, on behalf of the state, brings a case against an offender. None of the offenders in the cases I heard about had a lawyer and most of the offenders admitted guilt directly after having been caught by community members in the act or immediately after.

The scene of such trials is tense. The police, who escort the offenders from jail to the court, attend the trial in the courtroom. The public is not allowed to attend trial in order to protect the privacy of the offenders. Thanks to the relationship that I established earlier, I was allowed to observe trials, although once my presence was questioned by a judge whom I had not met before. After clarification by his colleagues I was allowed to stay. For the sake of the privacy, I was not allowed to take any pictures in the courtroom.

I visited the Mahkamah Syar'iyah of Bener Meriah less frequently than the Mahkamah Syar'iyah of Central Aceh. I found this court to be more relaxed. It was set up early 2014, as a new court in the new district that seceded from Central Aceh in 2004. Before that, all cases were tried at Central Aceh's Mahkamah Syar'iyah. In Bener Meriah, there were three judges who were all of Acehnese origin and who also received their education at the State Islamic University of Ar-Raniry. Mid 2015, a young Gayonese judge was transferred from West Sumatra to Bener Meriah district. During my fieldwork, the government rented three shops (*ruko, rumah toko*) which were transformed temporarily into the court. At the end of 2015, the

court moved to a new building right in front of the Military Camp in Bener Meriah district.

The information board of the Central Aceh district court provides the schedule of work of the courtroom, from 09.00 AM to 17.00 PM. It is always full. The judges' background was diverse, from across Indonesia, but none of them were Gayonese. Criminal cases from Bener Meriah district were tried at Central Aceh court until 2017, when a new court was set up for Bener Meriah. Unlike the Mahkamah Syar'iyah, only one police officer regularly attended the courtroom for security, except for special cases.

The public prosecutors of Central Aceh and Bener Meriah district had different backgrounds. All *jinayah* prosecutions start from these offices in the same way as for other crimes governed by Indonesian penal law. *Jinayah* cases are handled by one officer at the General Crime Unit of the office. At the Central Aceh office, it was Akbarsyah who was in charge of prosecuting *jinayah* cases, at the Bener Meriah office is was Sahdansyah, as the Head of the General Crime Unit, before he was promoted to the Special Crime Unit at the provincial public prosecutor's office. Sahdansyah was the only Gayonese in the public prosecutor's office of Bener Meriah and he shared the same concerns about moral degradation as other Gayonese. He would prosecute offenders with the maximum punishment if they were Gayonese; by contrast, the public prosecutor at the Central Aceh office was free from such sentiment.

Sahdansyah and Akbarsyah helped me to get access to the police department. At the police department, I had access to the Crime Unit, the Women and Children Services Unit, and some sectoral police stations in Central Aceh and Bener Meriah district to study, among other, the Bhabinkamtibmas Unit (the unit for community policing) and how they frame crimes.

The district agency for Aceh Shari'a in Central Aceh was another important institution for my research. One of the tasks of this institution is to promote the enforcement of Aceh Sharia in the region, but its programs are more cultural and educational than legal. It runs program such as reciting a Quran reciting competition for families and village officials as well as religious training for village imams. It also organizes biweekly Islamic studies circle (*pengajian*) of the Religious Study Coordination Body (BKMT, *Badan Kontak Majelis Taklim*) in all fourteen sub-district that form Central Aceh.

One of the most important programs of the district agency for Shari'a is the Village Shari'a officers (WH (*Wilayatul Hisbah*) *Kampong*). The members of this unit are (male) youth of the village, who are poorly paid by the agency. I looked at

this unit in Lot Kala, Mendale and Kala Lengkio villages, which are all located on the shore of the Lake of Lot Tawar.

The WH Kampong unit at Mendale village was the most aggressive among WH Kampong in the area. Occasionally they allowed me to join a raid and to attend the adat "trial." They are very careful in their operation. Although they record the violations using a small pocket camera, they prevent themselves from being recorded by any means for any purpose; "no selfie or wefie," Firmansyah, a member of the Mendale WH Kampong unit, once said to me. He argued that suspected offenders might hear the sound of a camera from a cell phone and thus notice action, which could potentially ruin the "raid operation." Moreover, the pocket camera used for collecting evidence might be stolen or lost. It is to guarantee the safety of the team not to be on pictures, to prevent blackmail or other problems.

There was no WH *Kampong* in Bener Meriah district. My research in Bener Meriah was conducted by following the activities of Hasanah and Yusdarita and interviewing adat actors and village officials. Working closely with Hasanah and Yusdarita, I could not separate my academic profession as a researcher from being a local activist. I found this approach helpful, as it enriched my knowledge on sexuality, morality, as well as the legal approach and negotiations in these matters.

The Organization of the Book

This book has six chapters, including this introduction. Chapter 2 discusses the inclusion of adat village institutions into the government structure. This chapter serves as the basic explanation of state legal pluralism in Gayo. The state institutional recognition over non-state institutions implies that all actors running the institution are also recognized as state actors. The chapter identifies the legal actors in the village and discusses the process of their inclusion into the government structure. It also pictures the social and political structures that control them.

To provide a comprehensive understanding of these social and political structures, this chapter explores the transformation of Gayonese village politics and social relations from traditional to modern – from colonial time to the present – and the influence of central government projects on modernization and social engineering since the start of the New Order in 1966 until the present.

In line with Falk Moore's Semi-Autonomous Social Field approach, the chapter argues that the state's norms cannot directly intervene in and control the social field at the village level. It will show that in order for the government to make interventions and run its social engineering projects, it needed to recognize the

whole body of adat as part of the state normative and institutional framework. This approach requires the government to provide financial incentives to village officials and reinforce their authority to gain their support in implementing state programs and ensuring social stability.

The official recognition of village or adat institutions has led to two strongly related but contradictory developments. On the one hand, this approach makes village/adat elites politically and economically dependent on the state. On the other hand, the village/adat elites can use the state's power to enforce adat law not only on Gayonese, but also on migrant villagers. The recognition also reinforces their autonomy vis-à-vis the government because they are the ones who administer adat law and this realm cannot be intervened by other legal institutions. The state's power thus bolsters the position of village/adat elites in enforcing adat law while at the same time making them politically and financially dependent.

Chapter 3 discusses the intersection of adat and Indonesian penal law relating to minor crimes and offenses. It analyzes the impact of the formalization of adat on village institutions, disputants, and state legal institutions. The chapter also explores the transformation and the use of adat both in adat family and penal law to provide a comprehensive picture of the nature of adat in Gayo today.

The chapter is divided into three sections. The first section discusses the definition of adat as used in this book. First, I look at the relevant literature on adat and then I move to the definition of adat law and how it operates in practice. In doing so, I will discuss the development of adat from colonial times to the present and how the interests of the government and various actors have led to its transformation. Along with discussing the change and use of adat family law, this section also presents the reemergence and the use of adat penal law. Section two focuses on the current form of adat penal law and on the institutional recognition of adat. Section three discusses the use of adat penal law by the police and the impact of this formalization on the plaintiff and the government.

Chapter 4 looks at the intersection of adat penal law and Aceh Shari'a in governing public morality and *zina*. The discussion starts from exploring the *sumang* norm as the foundation of local social interaction. It then discusses the importance of adat in governing public morality and *zina* (here I focus on premarital sex), and the enforcement of adat punishment to premarital sex offenders (*farak* or temporary exile).

This chapter further discusses the interest of the government in using adat to support the implementation of Aceh Shari'a by appointing Shari'a village officers (*Wilayatul Hisbah* (WH) *Kampong*) and providing financial support to this unit

and to adat tribunals. With the state legitimation and power, the WH *Kampong* and adat institutions have strengthened the *sumang*, which was slowly fading. In this manner Aceh Shari'a and adat support each other in controlling the morality of the community, one of the effects being an increase in the numbers of underage marriage in Central Aceh district.

Chapter 5 discusses the intersection of the three legal systems in place: adat, Aceh Shari'a and Indonesian national penal law. It does so by observing legal actors, both government and non-government (NGOs and individuals), which deal with cases of pedophilia, premarital sex and extramarital sex at the village level. Critical actors are the police department and the public prosecutor as they decide which body of law is suitable to prosecute cases transferred from the village level. The chapter discusses the interaction of these legal institutions (adat authorities, police and public prosecutor) by observing how they implement and choose between laws, sometimes in an unexpected and creative manner.

The chapter demonstrates that the actual boundaries of the three legal systems are determined by these legal institutions. Their ideas about the effect and the limits of a body of law, their sympathy towards victims and their attitude towards offenders determine their choices. The result is that some formally designed legal boundaries are blurred or even eradicated. Sometimes, legal institutions even transgress the law they are supposed to enforce. This suggests that although legal boundaries are formally designed in hierarchical order, the pluralism of penal law is dynamic and cannot be fully controlled by the central government. The limits of government and the creativity of the actors allow adat institutions to play a major role in managing the dynamic of these three bodies of law.

Chapter 6 summarizes the discussion on the current development of legal pluralism in Gayo by presenting three major findings of the book. The first concerns the relationship between the village and higher level of government; the second the influence of adat law on family and penal matters, and the third relates to the pluralism of penal law and how it impacts on those who are involved in a case, as well as on the village and the government actors. This Chapter also offers an insight into the legal development of Indonesia by comparing the pluralism of penal law in Aceh with practices in other parts of the world.

Chapter II
The Village in Gayo: From Traditional to Modern

Introduction

The discussion of this book starts with legal actors at the village level, which is the locus of the adat institution. From there, the discussion gradually moves to the formal legal institutions of the state. Village institutions are the lowest rung of the government. They channel the interests of the government to the community and, in doing so, they become the subjects of the government's policies. This chapter then serves as foundation for the following chapters to understand the role, interest, power and position of village actors in legal pluralism as well as the effect of legal pluralism on their legal authority.

I take a historical approach in my discussion to give a better and more comprehensive insight into villages institutions in Gayo. Inevitably, this leads me to present the transformation of village politics and law from traditional to modern, including a discussion on the transformation of adat institutions and their relation to social changes in Gayo. The period I cover runs from colonial time to the present. For the historical part of this chapter, I rely on the studies by Snouck Hurgronje and John Bowen who conducted research about two different areas in Gayo in two different periods. Snouck conducted his research on Gayo in 1904, Bowen started in 1982. Together, however, they provide a comprehensive overview of Gayonese's politics, law and social arrangements over time.

State legal pluralism started officially in Aceh province after the government recognized adat as part of its political and legal structure.[7] This inclusion of adat was the outcome of a long armed conflict between the Aceh rebel movement and the Indonesian armed forces. After the national financial crisis, Indonesia's central government sought to restructure the central-periphery relationship and decided to grant special autonomy to Aceh and other provinces where independence movements had engaged in armed struggle. In Aceh the central government allowed the inclusion of adat into the state system as a concession to promote resolution of the conflict.

[7] After the recognition of adat, all adat institutions have become village institutions. I therefore use adat and village institution, as well as their agents, interchangeably. The adat or village offices exercise traditional authority, enforcing and maintaining local norms and traditions.

At the national level, the financial crisis forced a political shift from authoritarianism towards democracy in 1998-1999. The state's turn to democracy also changed its approach to villages. The Indonesian government issued a series of regulations that allowed all ethnic groups in Indonesia to re-apply their traditional political structures and recognized the enforcement of adat law in the village. The permission on the application of adat law meant that Indonesia returned – at least in part – from the project of legal centralism to legal pluralism with different laws applying to different communities; as it had been applied by the Dutch colonial government (Hadikusuma, 1989, pp. 22–32).

The political and legal shift increased the government's control over the village and affected the social life of the Gayonese. During the New Order, a *reje* (headman) office was the only traditional Gayonese political institution the government recognized, while adat law was invalidated. However, although the New Order successfully abolished local political structures in accordance with the national policy on villages, it did not successfully change the social arrangements of the Gayonese.

Many scholars have warned that the reintroduction of adat in the post-authoritarian era would increase the opportunity for adat agents to use adat as an instrument to oppress less privileged groups and to advance their political interest at the village level (Bouchier, 2007). However, the Gayo case shows that although the government granted the village autonomy, which increased the authority of adat/village elites, it has combined this development with modernization projects that have helped to transform Gayo from a traditional into a more modern community. The government promoted a new and rationalized, political, and legal relationship among the village elites and Gayo communities. In this manner the central government managed to retain a considerable degree of control over the village.

With the inclusion of the adat institutions into the state structure, the government's control over the village has actually become stronger and deeper than it was at the time of the New Order. The government can now implant its own institutions within the village organization, such as policing units and midwife organizations. In addition, the government provides a regular income and government facilities to the elected village functionaries and legitimates their political and legal authority in the village. Adat institutions therefore now rely on and even compete for state resources.

Gayo Village Polities during the Colonial Era

During my fieldwork I could not find any pre-colonial documents about Gayonese village politics and organization. The oldest source are the writings by Snouck Hurgronje. Snouck based his work on information collected from Gayonese visiting Aceh's coastal areas and from Dutch military expeditions to the area. He provided a comprehensive account of Gayonese politics, law, social relationships and structures, and adat practices.

According to Snouck, Gayo's traditional village polity was structured by four elements known as *Sarak Opat*. The *Sarak Opat* consisted of a lord (*reje*) as the highest political authority, his assistant in adat (*petue*), a clergyman (imam or *imem*), and the subjects (*Anak Buah*). He described the polity as a patriarchal mini-republic (Snouck Hurgronje, 1996, pp. 66–67).

Snouck's began his observations about Gayonese politics and social structure from the development of a family. According to him, a Gayonese house consisted of nine rooms. Each room was occupied by a nuclear family (husband, wife and their children). In total, the house consisted of nine families of a single paternal bloodline. If the house could no longer accommodate the increasing number of families, a new house would be built (Snouck Hurgronje, 1996, pp. 64).

The growing number of houses formed a neighborhood of a single common paternal ancestor. The neighborhood was called *suku* (clan or communal sub-division) or *belah* ([communal] division). The members of *belah* called themselves *sudere* (siblings) or *sara ine* (one mother) to identify their relationships. The nature of *sara ine* is agnatic and hierarchical, in which a senior member of a *belah* is privileged and commands more respect than his juniors. This family pattern laid the foundation for the Gayonese patriarchal political system (Snouck Hurgronje, 1996, pp. 64).

Politically, a *belah* had a governing lord (*reje*), who was elected by members of the *belah.* The members of a *belah* were socio-politically tied to their *reje*. However, if a specific group from a *belah* migrated and created independent political institutions in their new territory, they could, in such circumstance, end their political tie and legal dependence on the *reje* of the former settlement. Although they would thus create separate political institutions, the migrated group maintained their paternal tie to their *belah* of origin by calling its inhabitants and themselves *se-asal* (of one origin). The idea of being of one origin prohibited them from intermarrying. Marriage between *se-asal* members could only be admitted upon a special agreement (Snouck Hurgronje, 1996, pp. 64–66).

According to Snouck, the kinship-based village political structure of the Gayonese was similar to the Acehnese. However, there were differences regarding

the highest political institution. The functions of *géucik* (head of village), *urëung tuhá* (elderly), *tëungku* (imam), and *anëuk* (the people) offices in the Acehnese polity were respectively similar to the function of *reje, petue, imem,* and *anak buah* in Gayo. However, a *géucik's* political power was limited by an *imëum* (not to confuse with *imem* in the Gayonese terminology). An *imeum* in the Acehnese constellation was a head of a *mukim* (parish community). The *mukim* was a political territory consisting of several villages. This territorial significance positioned an *imeum* as a higher political figure governing multiple *geuciks.* In Gayo, a *reje's* power was limited by *sudere* (senior *belah* members). The *sudere* played the role of a house of representatives, while a *reje* acted like the president. A *reje* was under the obligation to act in accordance with the *saudere* institution. If the *reje's* decisions deviated too much from what could be tolerated by the *sudere,* they could force a new *reje* election (Snouck Hurgronje, 1996, pp. 72).

Another difference between the Acehnese and Gayonese political structures lies in the scope of political power and loyalty of their members. In Aceh a *géucik's* political power extended over a limited territory. If a villager moved to another village, he ended his socio-political and judicial dependence on his old village. This meant that the *géucik* of the original village would lose his political and legal influence over the migrating member. In contrast, a Gayonese remained tied to his *reje* as long as he did not intentionally form new separate political and legal institutions in the new settlement or shifted his loyalty to the *reje* in the new settlement (Snouck Hurgronje, 1996, pp. 65,71). This political and legal arrangement remained in place in several parts of Central Aceh until 2004, when the Central Aceh government promoted the reorganization and establishment of new villages.

According to Bowen, the members of the *belah* did not have to be descendants of the same ancestry line, unlike argued by Snouck (Bowen, 1991, pp. 36–37). The marriage pattern of the Gayonese was moreover not exclusively patrilocal. The Gayonese have also practiced a matrilocal pattern of marriage, as for instance in Serbajadi. In that locality, a husband was almost under the obligation to live with his wife's family. It suggests that a *reje* could actually find himself governing people who were related both through a paternal and a maternal lineage (Bowen, 1991, p. 36). These differences correspond with relatively egalitarian versus strictly hierarchical social relations (Bowen, 1991, pp. 40, 48, 84).

Internally, Gayo community is divided in two big cultural communities; Bukit and Ciq. The social structures of these communities are different from each other. In pre-colonial Takengen, the capital of Central Aceh district today, there were three kingdoms: Bukit, Syiah Utama and Linge. These together formed the Bukit

culture, opposing the Ciq of Bebesen. The Ciq were believed to be descendants of Batak from North Sumatra. The Ciq gained equal recognition from the Dutch as the Bukit kingdoms (Bowen, 1991, pp. 52–55).[8] While the Ciq had a fairly homogeneous structure, the Bukit polities consisted of many different lineage structures, forming *belah* that were not connected to the same descendant. Each *belah* was independent and constituted a mini republic. By 1900, the Bukit domain, together with Syiah Utama, consisted of 25 to 30 separate *belah* (Bowen, 1991, p. 81).

The heterogenous lineage structure of the Bukit community, as described by Bowen, is still relevant today. During my fieldwork, many people who identified themselves as Gayonese in fact originated from other parts of Aceh and other regions. Although they are aware of their origin, they share with other Bukit *belah* negative sentiments about the Ciq and the coastal Acehnese community. Take for example Fatimah, who provided me with housing and other support during my fieldwork. She is from coastal Acehnese descent (Pidie), yet, she also claims to be a direct descendant of *reje* Gunung. Sapta, a young man from Kebayakan and my local collaborator, was also from Pidie origin. He is the son of Mustafa Aka who once led the Gayo state institute for adat (MANGGo, *Majelis Adat Negeri Gayo*). Sapta's great-grandfather visited Kebayakan during the colonial era and took an "oath" to become a member of Lot Kala *belah*. Both Fatimah and Sapta, although they are aware of their origin, deny being Acehnese and consciously identify as Gayonese.

The territorial meaning of *belah* in Kebayakan sub-district is different from the one discussed by Bowen for Isak. Kebayakan *belah*, according to the elderly, were in conformity with Snouck's description. *Belah* territory in Kebayakan is a housing complex or a compound, where *reje* and *imem*, as well as other functionaries, live next to each other. There is no territorial boundary between offices as is the case in Isak. In Kebayakan, paddy field areas are shared among *belah*s. The paddy field areas of each *belah* are also considered *belah* territory. This does not mean, however, that other *belah* members can not cultivate a paddy field in another *belah* territory. Fatimah's grandfather for example, who was a member of Gunung *belah*, opened a paddy field in the area belonging to Lot Kala *belah*. Because it was quite far from the Gunung *belah* compound, her grandfather built

[8] Later, the two cultural communities became known as *Uken* and *Toa,* indicating each a geographical area. Uken or upstream is associated with the area of Bukit, Syiah Utama, and Linge, around the shore and headwater of the lake. While Toa, or downstream, indicates the area of Ciq, who live close to the river of Peusangan streaming from the lake down to the northern coast of Aceh.

a house in the middle of the paddy field. Nonetheless, he and his family remained part of and expressed loyalty to Gunung *belah* culturally, legally and socio-politically.

A lord of Snouck's 'mini-republic' in Kebayakan ruled more than one *belah,* which is unlike the Isak community described by Bowen. In Kebayakan, the ruler was titled *pengulu* and represented the king of Bukit's interests in the villages, even if in practice he had considerable autonomy. In the past, according to the elderly of Kebayakan community, there were only three village communities in the core Kebayakan sub-district. Each community was a union of many different *belah*s. The first was Gunung Bukit village, inhabited by people from the *belah*s Gunung, central Bukit and Edge Bukit. Second, Lot Kala village where inhabitants from Lot, Wakil (Kala), Gading, Jalil, Cik, and Mude *belah*s settled in. This *belah* territory included the area of Takengen's present city center, before it was divided into several subdistricts in the late 1970s. The third village community was Jongok, which consisted of five *belah*s. Three *belah*s of Jongok community; Asir-Asir, Kemili, and Paya Jeget migrated to other parts of Gayo before the independence of Indonesia. Every migrating *belah* of Jongok community formed an independent mini-republic and cut their socio-political relationship and legal dependence from their origin of Jongok. Each one was ruled by a *pengulu*, except the Bukit community which was ruled directly by the king.

Internally, the village community prohibited marriage between themselves. They still maintain this prohibition as they consider themselves as originating from *sara ine* (one mother). In the past, the prohibition could be lifted only by the agreement of the *reje* from the bride's and the groom's side, which happened in particular when there had been a case of premarital sexual intercourse.

The differences in territorial meanings, power-sharing between *reje* and others offices, and type of village polity among the Gayonese indicate the complexity of Gayonese politics. Snouck, Bowen and this research suggest that there is no single overarching political organization. The absence of such a uniting organization as well as the self-perception of these communities as being egalitarian and autonomous within a mini republic of *belah* has promoted intense political competition among the Gayonese. There is no single political ideology strong enough to bestow power on a particular figure to rule and organize communities above the level of the mini republic. This competition among the Gayonese is reflected in local politics today, particularly during elections when local animosity becomes visible, including between *Uken* and *Toa*.

The following section discusses the changes in political territory of the Gayonese, from *belah* to village. These changes have affected the power

relationship between village functionaries and common villagers in profound ways, after the introduction of democracy in Indonesia since 1998.

Social Changes from *Belah* to Village

The shift from *belah* to village in Kebayakan sub-district and some other places around the Lake of Lot Tawar, such as Toweren and Bintang took place only recently. For about 32 years of Suharto's reign, the village was merely an administrative territory. However, the New Order regime abolished traditional political structures, but it did not succeed in changing the social relations of *belah* and their loyalty to the *reje* which underpinned local politics and legal practices. The New Order government also never succeeded in abolisihing adat.

Other traditional socio-political structures in Sumatra such as the Nagari system in the Minangkabau community of West Sumatra and the Marga system in the Rejang-Lebong community of South Sumatera were severely affected by the process of making villages uniform across Indonesia. The Nagari and Marga Lebong consisted of more than one structured settlement (*koto* (Minangkabau)) or village (Rejang-Lebong)) (Galizia, 1996, pp. 136; F. and K. von Benda-Beckmann, 2013, pp. 48). The *Nagari* and *Marga* are historically different: the *Nagari* has been a socio-political structure since the pre-Islamic time, whereas the *Marga* was created by the Dutch for colonial purposes (Galizia, 1996, pp. 136).

The Nagari and Marga systems lost their traditional significance after the central government divided them into several villages and forced the application of the uniform village organization. This disoriented feelings of social belonging and communal relationship, and changed the cultural structures and the adat leaders' authority because they were organized by and associated with the *Nagari* offices (Galizia, 1996, pp. 136; F. and K. von Benda-Beckmann, 2013, pp. 48). The villages became dependent on the government and more autonomous from the Nagari. Although the role of the adat office is still observable now in the village, it is less determining, as it only deals with minor issues such as *Pusako* allocation, inheritance, land and minor disputes. Meanwhile, Marga became impaired as they were less grounded in the local political culture (Galizia, 1996, pp. 159).

The difference between the Gayonese and their Sumatran counterparts lies in the territorial structure underlying the socio-political constellation and leadership mechanism. The Gayonese do not have such a complex socio-political structure as the *Nagari* or *Marga*. Although some *belah*s share the same territory and are led by one *reje*, such as Lot Kala, Gunung-Bukit and Jongok, they live as an independent village community. In this structure, the *belah*s resemble small neighborhoods forming a village. Each *reje* of a *belah* acts as head of neighborhood

in his own territory. The *reje* of the village is elected through an open *musyawarah* (deliberation) process which involves all members of the community. The absence of hereditary claims in local leadership of Kebayakan allows the community to elect the most meritorious individual as their *reje*. This leadership organization is dissimilar to the *Wali Nagari* of Minangkabau, in which leadership is hereditary. It is also unlike the *Pasirah,* in which the leadership structure is one of a collegial nature, consisting of elderly led by a wise man among them in the adat institution (Galizia, 1996). As such, the open election and meritocracy in Gayo made the *reje* office more in line with the New Order village policy, which replaced *reje* with village heads (*Kepala Desa*).

The meaning of territory in Gayo was relatively flexible. One could inhabit another *belah* compound but remain part of one's *belah* of origin. In Kebayakan, for example, all three big communities – Gunung-Bukit, Jongok, and Lot Kala – lived side by side in a centralized compound surrounded by a large paddy field area. When a village compound was fully occupied, a person might move to another village or *belah* housing complex or further away to the paddy field area. This person was still considered part of his *belah* of origin and was registered as such by the State Population and Civil Registration Agency. As a result, a village could include residents of many different *belah*s who were not registered as residents of the village.

The *reje* was the central political figure to the Gayonese and to whom the members of the *belah* expressed their loyalty. The *reje* and his assistant took care of all the communal needs, such as dealing with important life events (birth, marriage and death) and rituals, even if the member lived in another *belah*'s territory. An example is Kala Lengkio village before its inhabitants cut their political and legal ties from Gunung *belah*. Their dwellings were part of Lot Kala territory, but because most of the members were part of Gunung *belah*, their political, legal, religious and cultural needs were managed by the village offices of Gunung *belah*. The Kala Lengkio members also expressed their loyalty to the *reje* from their *belah* of origin. For example, they would always conduct important prayers (Friday, Ramadhan, and *Eid Al-Fitr* prayers) in the mosque of the Gunung compound, although halfway to the mosque they passed another mosque located in Lot Kala *belah*, so much closer than the mosque of Gunung *Belah*. Deceased would also be buried in the graveyard of their *belah* of origin.[9]

The *belah*'s socio-political allegiance to the original *reje* drastically changed after the collapse of the New Order regime in 1998. Law 22/1999 on Regional

[9] Such obligations to a deceased ended around the 1980s as a result of the continuous islamization process in the area.

Governance promoted the creation of a new province, district/municipality, and villages, and the Aceh provincial government created five new districts in 2002. In the same year, the Central Aceh government started the preparations for creating new villages. In response many communities established new independent villages. The creation of new villages made that villages in Kebayakan sub-district overlapped far less with *belah* than before. It also moved the administration of adat law from the *belah* to the internal village where more than one *belah* and ethnic group reside together, and it changed the legal and political authority of *reje* from persons to territory. In Kebayakan, Lot Kala is an exception, as the six *belah*s have remained united as part of the Lot Kala community, administratively, culturally and politically. Thus, the *reje* of Lot Kala still rules more than one *belah.*

In 2004, after a preparation of about two years, five villages officially seceded. Gunung Bukit village, consisting of Central Bukit and Edge Bukit *belah*s, became Gunung village and Bukit village. Jongok village divided into Jongok Meluem and Jongok Bathin villages. These two *belah*s, Meluem and Bathin, were separated due to a deep discrepancy in socio-religious practices. Meluem *belah* members identify as modernist Muslims while Bathin consider themselves as traditionalists. Mendale village is inhabited by equal mixes of *belah*s from Gunung, Kala, and both *belah* of Jongok. Meanwhile, as mentioned, Kala Lengkio village is dominated by the Gunung *belah*. These two villages, Mendale and Kala Lengkio, were paddy fields areas with a small number of houses situated in the middle of the paddy field in Lot Kala village territory. They aspired to become new independent villages because they are situated quite far from their *belah* of origin and they did not want to be part of Lot Kala village either, which was closer. By creating a separate new village, they could manage their affairs independently.

Many new proposed villages did not meet the requirements. There should be at least 800 heads of household as regulated for Sumatra Island by Article 8 (3) of Law 6/2004 on Villages. Proposed villages such as Jongok Bathin, Kala Lengkio and Mendale villages, only had 200 heads of household or even fewer. Nevertheless, they succeeded by falsifying the number of inhabitants to reach the minimum requirement. According to the first *reje* of Jongok Bathin, Syech Junaidi, the official in charge at the state institution only relied on the documents and did not verify their validity.

Although the *reje* generally justified the creation of new villages by pointing at overpopulation, I observed that another reason was the possibility it created to get extra funding from the central government. Since 2015, the central government has promoted national developmental programs and disbursed huge development

funds through the Village Fund program (RRI, 2016; Portalsatu, 2017). The creation of more villages helped to extract more development funds from this program.

The creation of new villages also relates to local political elites' long-term plan to divide Central Aceh district into a municipality and a district – Takengen and Central Aceh – and to create a new province Aceh Lauser Antara (ALA). This province would consist of Central Aceh, Bener Meriah, Gayo Lues, Southeast Aceh, Singkel district, and Takengen municipality. These regions share anthropological characteristics and their inhabitants were classified as one adat group by Van Vollenhoven.

The creation of villages has moved the centrality of the original *belah* to the village community. During the application for the creation of new villages, the applicant must register the names of those who would like to be part of the community of the proposed village. Once the proposal is accepted, those who are registered then become official members of the new village. This reorganization of village membership promoted by the government suggests that the individual *belah* member has to cut the political tie from his *belah* of origin and shift his allegiance to the new *reje*.

The shift from *belah* to village has been followed by a shift of the juridical authority of *reje* from persons to the territory of the village. In the old system, as mentioned earlier, the *reje* was responsible for the political, cultural, legal, and religious needs of his members living in another *belah*'s territory. A member of a *belah* could not marry someone from the same *belah* even if they lived outside of the *belah* territory. If such a marriage happened, a *reje* could impose an adat punishment. With the reorganization of village and village membership, the *reje* has lost this authority and responsibility over persons living outside of the *belah* territory.

This shift has changed the application of adat law from persons to territory. Now, adat law can be enforced on village members whose cultural background is diverse. It cannot be enforced to *belah* members living in another village. The major example is the law on endogamous marriage, which is an adat law aspect still maintained today. In the past, as Snouck informs us, all *belah* members, scattered anywhere, were subject to this law. Now, parents of the wedding couple can agree on a wedding although the prospective bride and groom originate from the same *belah.* This legal development is problematic for those who originate from elsewhere, as now Javanese and those of other ethnic origin have become subject to the adat law as well. They can also be temporarily exiled (*farak*), as will be discussed in chapter IV.

The following section discusses the political changes that have followed the territorial changes of the Gayonese village. These have contributed to the increase in individualism in Gayonese society.

Changes in Village Polity

This section portrays the changes in village political structure, village elections, and how they have influenced the power relations between the *reje* and his subjects. These changes started to happen after the government reinforced traditional political structures and adat law. I will take the situation in colonial times, as documented by Snouck Hurgronje, as my point of departure, starting with an outline of the traditional structure of Gayonese villages.

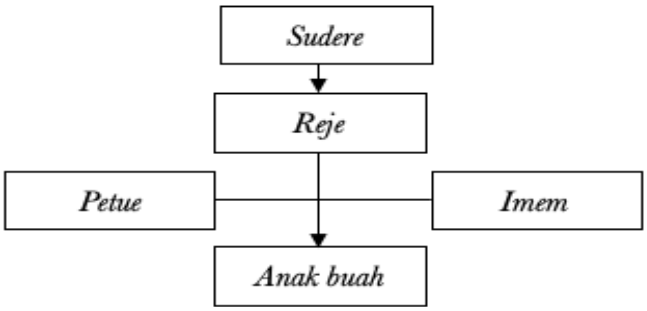
The Gayonese village consists of four offices, which is known as *Sarak Opat* (four [offices] in one [village]). According to Snouck, in his time, the *Sarak Opat* was led by a *reje* who ruled over all *adat* matters. The *reje* could also appoint a representative (*penghulu*) in other dwellings that had not separated from their original *belah*.

A *reje* was installed by his senior male kin in the patriarchal *belah*. He had to cooperate with them in governing communal affairs. He was assisted by two other offices: the assistant for the adat (*petue*) and the *imem*. *Petue* were also appointed by the *belah* members to assist the *reje*. The *imem* usually came from one family because fathers taught their sons. The *imem* oversaw *hukum* (Islamic law) and other religious affairs of the *belah*. Like the *reje's* authority, which was limited by his kin, the *imem's* authority was limited by the *reje.* The *anak buah* or the subjects of the *belah* constituted the last element (office) of the *Sara Kopat.* Although the people were subject to the political and legal authority of the other three institutions (*reje*, *imem* and *petue*), the senior kin member controlling the *reje*'s authority were also part of the *anak buah* (Snouck Hurgronje, 1996, pp. 66,71). This political structure positioned the *anak buah* as the ultimate authority in village politics.

The *imem* had most tasks of these four. An *imem* was always consulted about religious issues including unlawful sexual intercourse, which was (and still is) considered as the most shameful act in Gayo and against the teaching of Islam. The *imem* was also responsible for managing religious activities and rituals such as the celebration of the Prophet's birth, marriage, circumcision, birth and death rituals.

Petue (elderly) or the assistant for adat law affairs was supposed to be a wise and well-experienced individual. He was the legal officer at the village who defended adat law and worked as investigator of the cases tried in the village/adat tribunal. Although a legal officer, the *petue* could not impose punishments. These

had to be decided by all *Sarak Opat* offices through the adat tribunal. The *anak buah* were represented in the tribunal by the senior kin considered most knowledgeable. In some situations, youths of the community also appeared in the tribunal, when it dealt with particular cases concerning security and morality, e.g., sexual offenses. This pre-New Order village political organization may be best pictured in the following diagram.



Pre-New Order village structure of Gayonese

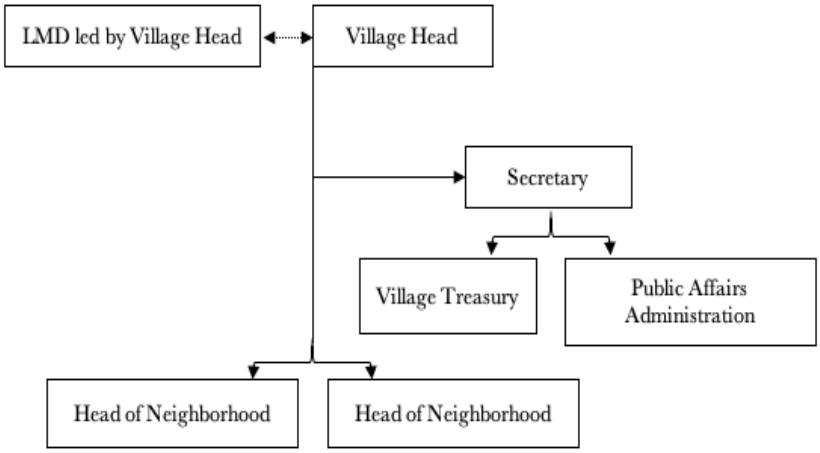
Changes in the *Sarak Opat* structure began after Suharto started his political and development programs by issuing Law 4/1974 on the Principles of Regional Government. This law centralized Indonesia's political system. The central government utilized all political institutions from the regional government to the village to implement central government policies and programs. It turned all regions into administrative units implementing its policies.

In 1974, Suharto abolished Aceh's status as a special province in matters of religion, education, and culture. He issued a statement that "the name of the Special Region of Aceh is only a name; the regulation that is valid in the Special Region of Aceh is the same with other regulations that are valid in other provinces. There is no uniqueness" (Djalil, 2006, pp. 165). This policy was part of the central government's development mantra that demanded the enforcement of one law for all. The policy ended all steps made by the Aceh government to implement Sharia law, develop an Islamic education system and promote adat law (Morris, 1983, pp. 270–283).

Five years later, Law 5/1979 on Village Government (*Pemerintahan Desa*) imposed the same structure on all political and administrative units at village level throughout Indonesia. According to Article 3, the village political institution consisted of the Head of Village (*Kepala Desa*) and Village Community Council (LMD, *Lembaga Masyarakat Desa*). These were supported by a secretary and head of neighborhood. For the sake of unity and uniformity, Suharto did not only abolish all traditional institutions and structures across the archipelago, but also

uniformed gender roles by introducing programs such as Guidance of Family Welfare (PKK, *Pendidikan Kesejahteraan Keluarga*). The program, according to many observers, was contrary to the nature and role of women in Aceh province because it domesticated women, who were used to play an active role in society and the economy (Sulaiman, 2006, pp. 174–177).

The new policy on the village forced the Gayonese to adapt the old structure of *Sarak Opat* into the new village structure. The *imem* office was removed from the formal village structure, *petue* and *anak buah* were merged and converted to LMD, an office whose members were limited to seven persons and who were led by the *Kepala Desa*. They acted as representatives of the village members. Officially, only the *reje* remained, but now with the uniform title of Village Head (*Kepala Desa*). The *Kepala Desa* was assisted by a secretary and three other administrative officials. As we will later see, some of the New Order village institutions have remained until today, even if the Aceh Government could have removed them under the special autonomy status. The structure of the village political institutions, as regulated by the Law 5/1979, is pictured in the following diagram.



Village structure under the New Order of Suharto

The New Order village structure granted the *Kepala Desa* the absolute power in the village. It controlled the LMD office, which by local tradition should be more authoritative than the *Kepala Desa*, and thus reflected the authoritarianism of Indonesia under Suharto at the national level.

In 1992, the Central Aceh government tried to undermine the New Order village structure by inserting the Gayonese traditional model into the state

structure. T.M Yoesoef Zainoel, Regent of Central Aceh reinstituted *Sarak Opat* when he issued Decree 045/12/SK/92 on Gayo Adat Institutions in Central Aceh District. Article 4 of the Decree stated that *Sarak Opat* is the organizational structure of every governance level: district, sub-district, and village (or town neighborhood). Article 5 detailed the political position at each level. It stated that at the district level the regent represents the *reje* while the Head of the Indonesian Ulama Council (MUI, *Majelis Ulama Indonesia*) of Central Aceh acts as an *imem*. The head of the Adat and Culture Council of Aceh (LAKA, *Lembaga Adat dan Kebudayaan Aceh*) of Central Aceh branch acts as *petue* while the house of Representatives of Central Aceh acts as, and represents the *rayat* as they participate in making decisions based on consensus. The same structure applied to the lower administrative levels of the sub-district and village.

According to Yusen Saleh and Mahmud Ibrahim, these articles found their legal foundation in the special status Aceh had been granted by the Old Order Regime of Sukarno in 1959.[10] However, according to them, the decree could not be implemented because changing the national terminology would be interpreted as challenging the central government. According to Mahmud Ibrahim the decree meant to accommodate the call from local people to preserve culture and tradition.

Despite all of its power, the New Order regime was unable to enforce its policy to the village level and in practice little changed. The clearest example is the crucial role the *imem* continued to play. He remained the second most important village official despite his removal from the formal structure of the village.

According to Hidayah Syah, who occupied the *imem* office of Jongok Bathin *belah* for more than twenty years, the *imem* office is a voluntary post. Aside from being linked to the village mosque, the *imem* deals with all religious and rituals events in the community. According to Syah, an *imem* is always prepared to solve communal issues and to be the first person for a consultation regarding domestic conflicts, inheritance, religious obligations like death and hajj, and offenses such as sexual deviances. In many parts of Gayo, the *imem* position is a life term or until the office holder moves to another village, unlike the village head who can be re-elected twice and thus serve a maximum of 18 years.

[10] To persuade Daud Beuereu'eh's group to end their rebellion demanding a separate Islamic state from Indonesia, the Prime Minister of Indonesia promulgated a Degree *No. 1/Misi/1959 tentang Perubahan Propinsi Aceh Menjadi Propinsi Daerah Istimewa Aceh*. The Decree allowed Aceh to officially develop its own religious, educational and cultural aspects (Sulaiman, 2006, pp. 132).

The Gayo Village after the New Order

The village political structure changed after the granting of special autonomy to Aceh in Law 44/1999 and Law 18/2001 on Special Autonomy for Aceh. These laws restored Aceh's special status in religion, culture, and education, as well as the role of *ulama* in local governance. This resulted in the creation of parallel government institutions from province to district to implement the special autonomy of Aceh. Among these is also the Aceh Adat Assembly (MAA, *Majelis Adat Aceh*).

The MAA has been designed to promote and coordinate the development of adat in Aceh. Among the regulations made by this institution is Regional Regulation (as from 2002 called Qanun) 7/2000 on Facilitating Adat Life (*Penyelenggaraan Kehidupan Adat*). This regulation and subsequent ones have restored and strengthened the task and authority of all traditional institutions in Aceh at the village level. As a result, to speak of adat institutions is to speak of village institutions.

As part of Aceh province, Central Aceh district government issued district Qanun 10/2002 on Gayo Adat Law, re-introducing the traditional political structure and some aspects of adat law. Unlike provincial and other district governments in Aceh province, which have separated Shari'a from adat in two different qanuns, Central Aceh integrated them into a single one. Later, in 2011, Central Aceh issued Qanun 4/2011 on Village Governance, which is a localized version of Aceh Province Qanun 9/2008 on Supervising the life of Adat and Customs (*Pembinaan Kehidupan Adat dan Adat Istiadat*), Qanun 10/2008 on Adat Institutions (*Lembaga Adat*) and Qanun 4/2009 on the Procedures for Selection and Dismissal of Village Heads in Aceh Province (*Tata Cara Pemilihan dan Pemberhentian Geucik di* Provinsi Aceh). Aside from giving authority to adat functionaries to run and control the adat/village tribunal, the district Qanun 4/2011 democratized village elections. It regulates that *reje* and *imem* have to be elected democratically following the national system on presidential or mayoral elections. It thus abolished the *musyarawah* system that had been used at the village level for decades. Moreover, *reje* and *imem* can now serve only two terms of five years.

Qanun 4/2011 more or less reintroduced the *Sara Kopat* structure in the Gayonese village. The *Sarak Opat* consists of four elements; *reje, imem, petue,* and *Rayat Genap Mupakat* (RGM) or representatives of the people, which replaces the old term of *anak buah* or *rayat*. However, the power relationship between the different offices does not follow the old system nor does it maintain the power relationship set up by the New Order. Based on the Qanun, a *reje* is no longer acting as the most powerful institution in the village, as designed by the

New Order, nor is it is controlled by the *sudere* as described by Snouck. Since all posts are elected either directly by all village members (*reje* and *imem* offices) or representatives of the neighborhood (for the *petue*), the *reje* is now equal to other offices with whom it must coordinate public affairs of the village. A *reje* has to consult with three other offices before taking any important decision. This situation is almost similar to the *reje's* limited power before the arrival of the Dutch, but in a more democratic system. The current structure of the village polity is shown in the following diagram of Lot Kala village.

This structure of Lot Kala village organization is based on Central Aceh Qanun No. 4/2011 on Governance of village

Although the *reje* is no longer superior to the *imem, petue, and* RGM, the office has a direct hierarchical relationship with other functionaries. This is shown by the solid line from the *reje* to his secretary (*Banta*). Below the *Banta* are assistants in the field of welfare, economic affairs, and general affairs. These offices were introduced by the New Order administration. Three other positions under the *Banta* are the Gayo traditional institutions monitoring the lake (*Pengulu Lot*), the river downstream (*Pengulu Kala*) and the river upstream (*Pengulu Mampak*). Their presence in a village structure can be adjusted to specific village needs and geographical situation. In addition, there are offices based on government programs, such as the official midwife (*biden*), Community Police (Bhabinkamtibmas, *Bintara Pembina Keamanan dan Ketertiban Masyarakat*) from the Police Department and the Non-commissioned Law Enforcement Officer of the Indonesian Military Forces (Babinsa, *Bintara Pembina Desa*). The last office is set up at sub-district level for monitoring security in several villages within jurisdiction of the sub-district.

This structure suggests that the revival and reapplication of traditional political structures is an improvement over traditional adat. The government has made adjustments to respond to the modern economic, political and administrative needs at this level. The following section discusses the change in village politics after the revival of adat. It looks at the change of elections, the move from *musyawarah* to democracy and the changes in the power relationship between the *reje* and his subjects, and the change in social relationship between the villagers from reciprocal to non-reciprocal.

The Election: Competition for the State Sources

One of the major changes in the village today compared to the New Order era is the intervention in village politics by the central government, represented by the district government. The government organizes the village administration, democratizes elections, distributes political power to many offices, gives regular financial support and legitimates the power of those operating the adat/village offices. In this manner the government transforms the village from traditional to modern and, at the same time, increases the government's control over village politics. These developments make the village apparatus or elites dependent on state resources.

The central government's developmental and social engineering projects at the village level and the democratic elections have contributed to the transformation of the social and political relationship between the village officials and the community, and between the village officials themselves. Both *reje* and *imem* are no longer respected as in the past, for they are now considered as professionals paid by the government to serve the community.

The government's developmental programs for the villages, the Village Fund program, the monthly regular income for *reje* and *imem*, the facilities, and other training with financial benefits, have loosened social cohesion and increased political competition. In 2014, the central government enacted Regulation 43/2014 on the Implementation of Regulation of Law 6/2014 (*Peraturan Pelaksanaan Undang-Undang No*. 6 *Tahun* 2014) which allows the government to allocate and transfer the government's developmental budget directly to the village through the Village Fund Program. This bottom up developmental approach is the realization of Jokowi's political campaign "developing from the edges" (Kemenkeu, 2017, pp. 24). In 2015 and 2016, President Jokowi's administration disbursed around IDR 67,37 trillion in total directly to the village's bank account to accelerate development in the peripheries. (Kemenkeu, 2017, pp. 20). This amount has increased over time (Abidin, 2018).

As the highest political authority in the village, the *reje* is the most authoritative figure to decide on the use of the Village Fund (Sumarna, 2015; Sumolang, 2017, pp. 31). Some *reje*s operate in quite an authoritarian manner in allocating the use of the fund and eliminate any potential threat to their control over it. According to Alpin, village fund coordinator of Pegasing sub-district of Central Aceh, since 2015-2017 more than ten *banta* (village secretaries), who assist in administering funds for villages, across Central Aceh district were reassigned to other state institutions, because of their opposition against the *reje's* strict control over the village fund.

Concurrently, the variety of financial support and facilities from the government and the new election system at the village now make the *imem* office a contested position. During the New Order, the *imem* office was the most "sacred" office, since the *imem* was regarded as religiously and morally superior to other village leaders. It was moreover a voluntary post and their moral quality was considered more important than their religious knowledge.

The same idea concerning the *imem* office is also found in other parts of Aceh province. Muhammad Sahlan, a lecturer at the Sociology of Religion department at the State Islamic University of Ar-Raniry, describes the heavy burden of being an *imem* as follows: "...removing the village head from the office is quite normal. And there are many. The removed village head is still accepted to stay in the village. But, removing the *imem* from the office is disgraceful. We have to conceal the removal from outsiders and the *imem* has to leave the village immediately." He added that only those who are considered as righteous, stable, and virtuous can be nominated for the office. Consequently, in the past few people registered to be nominated as *imem*. Today, however, this is different. Although the *imem's* monthly income is lower than the income of the *reje* and *banta,* the motorbike facility from the district government and other bonuses from the sub-district Office for Religious Affairs (KUA, *Kantor Urusan Agama*) and the State Agency for Shari'a (DSI, *Dinas Syariat Islam*), are quite attractive and thus have drawn more candidates.

However, state and local government intervention into village politics in Gayo, is not as deep as in some other places in Indonesia. District elites like in Sumberjaya and Way Tenong, for example, draw villages into higher level political competition to secure state resources. In doing so, the interests of political parties extends to the village, which creates new 'oligarchs' in the villages (Kusworo, 2014, pp. 78–99). In Gayo, the village has remained autonomous from district elites or higher political interests.

The following case of *imem* elections in Mendale village shows the competition for resources driving the pursuit of political office. In this case the former *imem*, Mussana, resigned because he was promoted to become Head of Academic Affairs of Gajah Puteh Islamic Institute of Central Aceh. To substitute Mussana, the *reje* proposed his younger brother, Muzakir, who was at the time serving as *petue*. Before he was appointed *petue* in 2011, Muzakir had already served as *imem*. The proposal to return Muzakir to the position of *imem* caused conflict in the village. Some suspected that the *reje* wanted to build a family dynasty in the village to secure all facilities from the government to his kin, as Amin had already appointed two of his brothers to be the heads of the two (out of four) neighborhoods in the village.

Some community members started a movement against the *reje*'s proposal. They proposed three candidates. Of these Saifullah was the strongest, but it appeared to be difficult to convince him to stand for election. After many appeals, Saifullah sought advice from Hidayat Syah, who had been *imem* in Jongok Bathin village for more than twenty years, and who finally convinced him to stand for election.

When I later interviewed him, Hidayat Syah said that Saifullah was actually not ready to become *imem*. He did not have much of a background in Islamic studies. Until the age of 15, Saifullah received basic Islamic instruction from his parents and an *imem* of a traditional Islamic boarding school in his village. With this educational background, Saifullah thought he was unfit for the office of *imem*. However, Hidayat Syah promised to train him to become a proper imam. "There is no better office for anyone than *imem*. The office controls our deeds and trains us in Islamic studies. It must be seen as a gift, not as a burden," Hidayat Syah recalled his advice to Saifullah.

One week before Saifullah and another candidate registered for the election, the *Reje* of Mendale village gathered the community in the village hall to evaluate the preparations for the election. Knowing no one had registered yet except for his brother, he suggested to appoint his brother by acclamation. But this proposal was rejected. The meeting demanded that the *Reje* respect the process and election schedule. On the election day, Saifullah won the election with 210 out of 290 votes.

Since the state started providing financial resources and facilities to the village, the village politics have been quite dynamic and lively. The *imem* office is now an attractive position for people as the facilities and funding from the government can provide extra resources for members of a deprived agricultural community like Mendale. Elections and appointments have thus become a new arena for village politics.

People can only influence this process directly through elections in the case of *reje* or *imem*. Other offices such as secretary and treasurer, which are key in managing village development and controlling the use of the Village Fund money, are appointed by the *reje* with the agreement of other officials. This procedure has enabled the *reje* of Mendale village to appoint three of his brothers to become *petue* and heads of neighborhoods in the village.

Modernizing the Election

The election procedure that brought Saifullah to the *imem* office was simple and straightforward. It was held inside the local mosque and attended by both male and female senior villagers. According to those who witnessed the process, the candidate sat facing the attendees. Everyone was asked to write his or her choice on a small piece of paper and then to fold and drop the paper into a ballot. Then, the committee picked the small folded papers and read each vote loudly to all the attendees while an assistant counted the votes.

Later, the election was modernized by adopting an election system similar to how governors or the president are elected, but Some villages have introduced such election mechanisms earlier. The villages of Sumber Jaya and Way Tenong sub-district in Lampung province, for example, have run democratic village head elections since 2003. In these villages the election design is somewhat formal, with an opening speech from the head of the sub-district before the start of the election. Moreover, the political cost was quite high. The practices of money politics at the village level was quite similar to those at higher levels, where candidates had to sell their belongings to support their campaigns (Kusworo, 2014, pp. 79–91). In some other villages in Jogyakarta, Riau, and East Java, the district government has intervened in the election by designing the qualifications of candidates so as to favor particular ones and requiring 'consultation' with candidates before the elections start (Salim *et al.*, 2017). Conversely, in other villages in Indonesia the most qualified candidates were facilitated by the Law 4/2006 to participate in village politics as this Law introduced a democratic system to reduce the political domination of the local oligarchy (Antlöv, Wetterberg and Dharmawan, 2016).

In Gayo, such political demand and intervention of district goverment or elites is relatively scarce. The participation of youths in the village election has had more influence in determining who gets to be elected, as shown in the previous and following cases.

In the first week of my second visit to Gayo in July 2017, I found that the youth of Mendale village, led by Iskandar Syah, had organized a *reje* election. Two candidates appeared in the election: M. Amin, the incumbent *reje*, and Syahrul.

Syahrul was not a popular candidate, as he had rarely been involved in village activities. However, he was seen by his supporters as the most potential candidate against the incumbent because of his involvement in the district government development projects outside the village. They expected Syahrul to bring developmental projects to Mendale.[11]

The details of the process are indeed no different from presidential or gubernatorial election. The elections were organized under the national jargon of "*luber* and *jurdil*." *Luber* stands for *langsung, umum, bebas, rahasia* (direct, public, free, and secret). *Jurdil* stands for *jujur dan adil* (honest and fair). Based on the jargon, Iskandar Syah and his team announced the new election procedure and who has the right to vote. Each voter would be given an invitation letter which must be shown at the registration desk during the election. Another measure was that the voter's finger should be inked to mark that (s)he had voted. They also set a minimum age to vote at 17.

Some elderly members advised the committee to make the election simple. There are only 191 households in Mendale village, and all inhabitants know each other well. However, Iskandar Syah, the head of the election committee, insisted that they should try a new system that could guarantee the participation of all community members. Aside from the wish to follow the procedure prescribed by the Village Law 6/2014, the Committee also wanted to make sure that everyone would be informed of the election and the result of the election.

In the old system of *musyawarah,* which was often conducted after noon, many people were not aware of the election, even if it had been announced publicly. Consequently, some people did not know who was their new *reje*. The youth commission therefore intended to turn the village head elections into a big event. It had to be a "*pesta demokrasi di desa* (celebration of democracy in the village), " said Iskandar Syah. He added that the Committee, consisting of only

[11] In other parts of Aceh, Syahrul's close relationship with the government and his capacity to lobby developmental projects from the executive and legislative members of the local House of Representative for the village are among important qualifications that can bring him to the head of the village office. The villagers are quite concerned with the quality of infrastructure, economic opportunity, job opportunities and other economical sources, which have now become the responsibility of the head of village in the post-Tsunami and conflict era (Kloos, 2018, pp. 100–103). I have observed the same situation in the Lelabu village of Bebesen subdistrict. At the time this research was conducted, the village was led by a young man who was around 34 years old. His cleverness in lobbying the government brought several development projects to the village, which satisfied his village members. Saifullah, the just elected *imem* of Mendale, has the same capacity. Before he was elected as an *imem*, he was busy with agricultural, forestry, and fishery projects in the village which he obtained through lobbying local politician and members of the Central Aceh House of Representative. These projects benefited many members of his village, both financially and agriculturally.

youth from the village, would lead the preparations, so it would not impose any burden on elderly who proposed the simple way. Eventually the committee's proposal was accepted by acclamation.

All the state officials from the sub-district of Kebayakan attended the election, which was held in front of the village mosque. The head of the sub-district, the head of the sub-district police station and the head of the parish community (*mukim*) attended the election as observers and witnesses. They represented the following district officials: the regent, the head of the police station, and the Adat office respectively.

The new election system made voters know each other even better. The Gayonese generally refer to each other by the name of their first child. For instance, if this child is called Rita, her parents will be referred to as *aman* or *inen* Rita (Rita's father or mother). It is improper to call someone by his or her original name. Many participants were confused when a man with a microphone standing in front of the designed entrance called the surname of the voters one by one. Some participants said they liked the procedure, because it allowed them to get to know each other's original names.

In this new election model, the committee provided the vote papers in the same format as in mayoral or presidential elections, in which pictures of the candidates were printed out and appeared on the papers. The voter who was called would receive the paper at the entrance where (s)he had to show the invitation letter from the community. The vote would be counted if a mark was made on the picture or the name of the candidate. The marking was conducted in a tiny room provided in the middle of the arena. After making the choice, the voters should fold the paper and drop it into a ballot box provided at the exit, whereupon they would have their fingers inked before leaving the location.

Based on the election slogan of '*Jurdil dan Luber*', the committee ensured that the counting of the votes was transparent and fair not only for the candidate, but also for the participants. After 14.00 PM, the committee, observed by sub district officials and attendees, started counting. Although many village members observed the process directly, the committee still assigned particular people as witnesses for each candidate, avoiding potential manipulation from the committee. After counting, the committee announced that M. Amin had won the election. He secured the office for another five years (2017-2022).

The new election model for the *reje* was a successful introduction, considering that it was the first election of that kind in the village. However, Bangka Wali, one of the committee members, admitted that such a system was actually unnecessary in a village like Mendale. Bangka added that the new election model was more

complicated and costly than the traditional election. Yet, he added, it is still important to upgrade the electing system for making sure that everyone gets involved and knows their new *reje* directly after the election. Bangka further thanked the Village Fund program. Although, the new election was expensive, as they had to buy boxes and other equipment, these expenses were covered by the program. Using the same fund, other villages such Lot Kala organized the same 'modern' election for the *imem*. It seems such elections are becoming a new standard for *reje* and *imem* election in Central Aceh, at least in urban and semi-urban area like Kebanyakan.

After the election, the committee has to submit the report to the district government for validation. This process is required before the government can start paying the monthly salary of the *reje*, *imem* and other village functionaries, as regulated by Qanun 5/2003 on Village Governance. The Qanun states that all village/adat functionaries are given a regular income from the district annual income. Since 2003, all officials receive a regular salary and some of them are given facilities by the government. A *reje* gets a regular income of IDR. 2,000,000/month and a "red flat" state motorbike. An *imem* now receives IDR. 650,000/month. Other officials, the head of the RGM, the head of neighborhood and the division undersecretary get the same amount of salary as the *imem*. The vice-RGM gets only IDR. 350,000/month, which is the lowest. These incomes will increase in the future. Aside from the salary, the *imem* and *Banta*[12] also get "a red flat" motorbike.

In summary, village functionaries are now government officials whose authorities are legitimated by the government, and whose income comes from the district government. Through various government regulations (Indonesian Laws and Qanuns), the central government and province have managed to replicate their political and governance system in the village in all of its aspects: elections, village governance structure, and progress reports of village development. The paradoxical result is that in the name of village autonomy the power of the central government over the village has actually increased.

The Impact of Democratic Election

Before the introduction of democratic elections, both *reje* and *imem* were directly appointed by the people through *musyawarah*. Many people in Kebayakan still believe that the *musyawarah* is a better procedure for appointing

[12] A village secretary appointed before 2013 is still a permanent civil servant (Regulation 45/2007 on Requirement and Procedure for Appointing Secretary of Village to State official). Village secretaries recruited after 2012 hold a non-permanent position, similar as the *reje* and other officials.

village leaders, because they can put pressure on a good and qualified person to lead them.

In the traditional election, a candidate's name was proposed by attendees during the *musyawarah*. According to all my respondents from the elderly group in Kebayakan, people would propose someone from the local member of the village because of his competence and personality. Sometimes, wealth was also considered as qualification as the people expected that the *reje* could pay the *zakat* (alms) for the villagers who were very poor. This happened for instance in Gunungbukit Kebayakan around 1980s. The candidate had the opportunity to reject or accept his candidacy. However, according to all my respondents in four different villages in Kebayakan, the candidate would seldom decline because of the pressure from the attendees.

A simple vote system was also practiced. If two names appeared during the *musyawarah*, the forum would vote by writing down each attendee's preference. The vote was to end the deadlock. In such situation, most of the attendees knew already who would be their next *reje* because the vote was mainly meant to honor the less qualified candidate and as a way to avoid tension in the *musyawarah*. Moreover, attendees of the *musyawarah* would be able to evaluate the candidate's qualifications because they knew one another well like a family since they were a small community.

The shift from *musyawarah* to the modern election has changed the village peoples' perspective and respect toward the *reje* and *imem*. Bangka Wali describes the change as follows: "...the current *reje* and *imem* are by political accident in their positions. They were chosen because of the sentiment of the voters, not because of rational considerations like in the *musyawarah* system. They are respected because of their current position. People cannot escape them because the citizen's need for the government. It is not related to their quality and personality. Only *musyawarah* can bring and force a qualified person to become *reje* or *imem*."

Moreover, the regular income that village functionaries earn changes the relation between them and village members, from reciprocal to nonreciprocal. During the New Order, the large majority of *reje* and *imem* were not paid by the government; only a small number of *reje* leading villages in urban areas received a salary. Today, both *reje* and *imem* are considered "workers," as they are paid to serve the community needs. They also get some bonus, training and government projects as extra income. As a consequence, *reje* and *imem* have less influence.

According to all my informants in Kebayakan as well as other parts in Takengen, the state's remuneration of the *reje* and *imem* have reduced the local people's participation in village development. Social cohesion and participation

have decreased and individualism has increased compared to the past. My interlocutors Aman Ilman, Aman Kusnaidi, dan Aman Sofyan, told me one day during a fishing trip around the lakeshore of Lot Tawar of Mendale village that, "…today people are more individualist. It is quite hard to invite people to provide mutual assistance (*Gotong Royong*) for the common good of the village. Everyone wants to be served as they think that this is what they (*reje* and other functionaries – A.) are paid for."

Conclusion

The village experience in Gayo suggests that the government could not influence the social field through state law unless the government recognized the whole body of adat operating in the community and unless it would involve the community in village development programs. This chapter shows that by doing so the government has been more effective in implementing its social engineering and modernization agenda, and in increasing control on the village.

Village rights to express their cultural ideas and preferences have been guaranteed through a series of policies on the village at the national and regional levels. In Gayo, as we have seen, the government has allowed the reintroduction of the template of the traditional political structure. The government controls this structure by having created a new power relationship between the offices and between the office and the people. The government has also changed the territorial basis for governance, shifting the *reje*'s political and legal authority from persons to territory.

This government's approach affects the social and political relations in the village. As a result, social cohesion and participation at the village level have decreased, where these values had always been the most important capital in the village and for which a village would earn a reputation. The new political developments have changed the relations in the community from more into less reciprocal

To draw an analogy, the transformation is like re-building a traditional house following the traditional structure but its cubicles, equipment, and appliances are arranged and installed in a modern way. In this traditional-modern building analogy of the village, *reje*, *imem* and other functionaries are appointed by the district government after they have been elected by village members. The village officials get support and legitimation from the government to preside over the adat tribunal to solve community issues on behalf of the state. In this manner they have become government's agents at the village level. The government's influence is even stronger and deeper now than during the New Order.

However, the government's control and influence in the village are limited to political and developmental aspects. In the legal sphere, the autonomy of the village is real and has even increased through the government's support. This is a consequence of the limits of the government in legal enforcement, and the hierarchy of the legal systems introduced by the government, which has reinforced the application of adat law. The government has even become dependent on adat institutions to compensate the government's limits in legal enforcement. I will discuss this development in the following chapters.

Chapter III
Temporary Uses and Changes of Adat

Introduction

The intersection of adat and state penal law relating to minor cases in this chapter starts the discussion of the intersection of the three penal law systems: adat, Aceh Shari'a and Indonesian national penal law. Here, I investigate the interest of formal and informal actors regarding adat and the effect of state recognition of adat on the authority of village elites, on the disputants, and on the state itself.

In this chapter, I argue that adat law of the Gayonese is a transformative collective idea, which contains several manifestations of religious teachings (some other adat in Indonesia also include religious teachings such as Christianity in the Toba Batak communities of North Sumatra (Bemmelen, 2012) or Hindu in Bali (Widnyana, 2013)). Adat is used to maintain social stability and continuity, as it cents on the village and extended family. It is a manifestation of religious teachings, which is also found in some other places in Indonesia like. By a transformative collective idea I mean that adat changes over time as a consequence of adaptation to external influences, whether religious campaigns, government projects, or secular norms. The outcome of the transformation varies from one place and time to another.

Adat law is also itself an instrument for social transformation, not only a source of law of limited importance. Transforming the content of adat affects the way the Gayonese live and the way they judge their actions and those of others. In the process of transformation, adat becomes an arena for contestation about how Gayonese should lead their life.

In this chapter, I also demonstrate the usefulness of adat for the government following adat's institutional recognition. The codification of adat has moved its jurisdiction from persons to territory, and has sharpened adat differences from one village to another. In addition, the formalization of adat penal law constrains the freedom of disputants to choose among the existing laws but provides an opportunity for state legal agencies to choose an appropriate law to suit their interests. As a result, the changes have not been very favorable for justice seekers.

Adat

The term adat (*êdêt* in Gayonese) is used and understood differently by diverse communities in Indonesia. The practice of adat encompasses all aspects of the life of a community. Adat can refer to a set of social practices and organization,

but also to a sense of appropriateness, habits, tradition and custom, art, and to a set of rules. Dutch anthropologists and colonial officers in the East Indies of the past preferred to use the word "adat" over "indigenous custom." "Indigenous custom," according to Van Vollenhoven, conveys a narrow understanding of adat as it excludes external elements, such as, religion (Vollenhoven, 1981, pp. 5). The Dutch also identified a legal aspect that was embodied in adat. They added the word "law" to it. This was meant to distinguish adat with legal consequences from mere social norms, and to stimulate Dutch officials to investigate and collect adat rules that could be applied by the colonial administration and in the colonial courts (Vollenhoven, 1981, pp. 4–5).

Dutch scholars, like Van Vollenhoven, Snouck Hurgronje and Ter Haar argued that adat law is separated and therefore independent from, religious law. Religious law, such as Shariah, is referred to independently by concepts such as *agama* (Javanese), *hukum* (Acehnese and Gayo), and *hukum agama* (Southern Sumatra) (Vollenhoven, 1981, pp. 4). Snouck Hurgronje was influential in proposing this argument. He has argued that Islamic law was applicable only when accepted in adat law, thus limiting its scope to family issues (marriage, inheritance and divorce) (Thalib, 1982, pp. 23). Snouck, Van Vollenhoven and Ter Haar thus rejected the theory proposed by their predecessor, Dutch professor Van Den Berg, who argued that for Muslims of the East Indies, with some deviations, Islamic law was the central reference (Thalib, 1982, pp. 15–18; Huis, 2015, pp. 39). Their thought has become the main reference in discussions about adat law and Islamic law until the present.

The concept proposed by these Dutch scholars is still reflected in the work of recent scholars who have carefully observed the development of adat. Bowen, for example, defines the adat of the Gayonese as distinct from Islamic law and state law. He defines adat of the Gayonese as "...certain ideas of collective social continuity, centered on the village and the descent line, that are to be distinguished from the rules of Islamic law, or the workings of the state. As they are represented and typified at such "metanormative" moments of contrast, adat norms highlight the values of maintaining links to the ancestor" (Bowen, 2003, pp. 44). The given definition is most probably grounded in the property system of the Gayonese and its link to ancestry underlying Gayo's adat on inheritance in contrast to the Islamic principle of individual ownership is based on the principle that a deceased transfers ownership to his/her living descendants. Bowen's definition of adat law is reflected in much of his work discussing adat law relating to family issues and his analysis of inheritance proceedings in the state religious courts. Bowen demonstrates that Gayonese Muslims always try to reconcile and select

among competing sets of values and norms. At the same time, he shows that Islam is central in the reconciliation from which the Gayonese take reference justifying their interests and producing legal reasonings. (Bowen, 1988, 1991, 2003, p. 30).

Other scholars consider adat as having an anti-Islam aspect. David Henley and Jamie Davidson, for example, have argued that the current revival of adat in Indonesia is concentrated in areas where Christianity or Hinduism blocks the progress of Islam or where pre-Islamic elements remain unusually important in the social life, such as in the Minangkabau community (Henley and Davidson, 2008, pp. 843–844). They further say that

> "...burgeoning Islamic revivalist (*dakwah*) movement and its attempt to promote the implementation of Shari'a (Islamic law) show some striking parallels with the adat revitalization... adat revivalism inevitably involves a strong anti-Islamic element" (Henley and Davidson, 2008, pp. 843–844) .

However, Aceh Province provides a completely different picture. In post-authoritarian Aceh, Sharia and adat have been formally revived through different regional regulations with the support of many inhabitants. In practice, supporters of Shari'a or adat have forged a system in which Shari'a and adat co-exist and complement each other. This development has made Aceh province unique in Indonesia, with both adat and Shari'a having become parts of the state legal system. In the coastal areas of Aceh province, adat has inspired local people to increase control over what they consider immoralities. In the name of Shari'a, and sometimes adat, people find justification to act violently toward those who break local norms . This work (see chapter IV) also finds a clear relationship between Islam or Shari'a with the current revival of adat in Gayo. Adat is important not only for the Gayonese to stress their identity, but it is also important for the government to support the enforcement of Aceh Shari'a and national law to increase social order and stability.

The current development of adat law and Shari'a in Aceh province, particularly in Gayo, has made clear to me that adat law of the Gayonese today is a mixture of many elements from Islam, state regulation, and other secular and international external norms such as protection of women and children. This mixture has also been observed by F. and K. von Benda-Beckmann in West Sumatra. Instead of putting adat as distinct from Islam and the State, they argue that the adat of the Minangkabau is a mixture of tradition, Islam, and the state. They call this mixture a hybrid law. This hybridity of adat and the state makes adat

more prominent for the Minangkabau (F and K Von Benda-Beckmann 2013, pp. 421–22). This concept of adat suits my own observations about adat law in Gayo today, which is a hybridity of many external elements that have been introduced by actors and institutions at the local, national and international level, and that directly influence the life of the Gayonese.

In Gayo, adat is important in two different ways. First, it is a repository of collective ideas. It is a source for, among others, local identity, social organization and legal order. Secondly, adat – and adat law in particular – is important for re-organizing, reconstructing and reinforcing social transformation. Adat law is an instrument of and, at the same time, an arena for social transformation, from before the introduction of Islam in Indonesia (Azra, 1994) to the present. Changing adat means changing social behavior and the way a community see themselves and others.

Therefore, speaking about adat today invariably involves speaking about the application of Islamic teachings. Instead of presenting adat as opposed to Islam, as Bowen did in his study on inheritance cases at the local religious court, I see the current situation as one where a different set of conflicting norms are reconciled and put together into adat law through continuous efforts to translate and adapt external norms into local language (vernacularization). Rather than a clash between Islamic law and adat law, I observe vernacularization of Islam into adat to support the practice and the objective of adat as a social check and guarantor of internal communal and extended family stability. Adat and Islam are continuously reinterpreted to make them fit one another.

However, the transformation of adat is not only limited to its incorporation of Islamic norms. Secular state policies and globalized ideas such as human rights, including women's rights and child protection, which are carried out by many international and national institutions also play a considerable role in transforming adat. The development of the understanding and the intensified campaign of promoting external (religious and state) norms have changed the substance and practice of adat to become more lenient or stricter in addressing certain social or legal situations.

The nature of adat today, as I observed it, makes the definition given by Bowen about Gayo adat not suitable for this work, as it is too far removed from the emic use of the term adat as became clear to me during my fieldwork. This has also to do with differences in Bowen's and my places of research and the topics we addressed – this work focuses on adat relating to penal law (minor cases and sexual offenses) by studying Gayonese in Kebayakan sub-district of Central Aceh and few

villages in Bener Meriah District; by contrast Bowen looked at adat family law in Isak villages of Central Aceh (Bowen, 2003, pp. 45).

In short, Gayo adat law today, as I have observed, is a transformative collective idea about rules that is related to Islamic teachings and state law and policy. It is administered in the extended family and/or village to ensure continuity and stability and its interpretation and application are strongly localized.

The following analysis will show how adat has incorporated more ideas from Islam, and how at the same time it has become more concerned with state legal preoccupations such as sense of justice, equality and mechanism for human rights protection. I will start by discussing the changes and the use of adat family law, in which Islam and state policies play important roles in the transformation. Then I present the changes and the use of adat criminal law, where social activists, with the support from international institutions, have contributed to changes. In the following discussion, I will also show that in the development of Islam, adat was a contested concept between the traditionalist and modernist Muslims in their campaigns about the proper way of being Muslim. Adat is important for these groups in two different ways. For the traditionalists, the construction of adat has to be sustained, filled and nuanced with Islamic teachings. While for the modernist with their religious purification campaigns, adat has to be completely replaced with new Islamic traditions.

Early Islamic Reform and Family Law

The coming of the Dutch to Gayo in 1902 intensified the process of contextualizing and vernacularizing Islamic norms into adat in the area. The Dutch introduced the cultivation of new crops as potatoes, cabbage, tea, and Arabica coffee, and constructed a road that connected the central part to the northern coast of Aceh. The construction of this infrastructure as well as the plantations required many laborers, mainly Javanese and Chinese, who were brought to Gayo from other parts of Indonesia. Many also came by their own, mainly the Minangkabau, for trading as well as for spreading Islamic reform and purification. These developments increased multi-cultural interaction (Bowen, 1991, pp. 76–79).

In the early 1910s, the Dutch started promoting colonial administration in Gayo by establishing schools. They initially built two *volksscholen* (popular schools) with three-year programs. By 1940, the Dutch had built another eleven *volksscholen* (Bowen, 1991, pp. 94; PaEni, 2003, pp. 187). They brought Tapanuli and Minangkabau teachers, most of them with a Muhammadiyah background, to teach basic reading skills and arithmetic. In the absence of regular control from

the Dutch, the Minangkabau teachers inserted Islamic reform agendas into the curriculum. (Bowen, 1991, pp. 97).

The Dutch sent a small number of pupils who had completed the *volksscholen* to the Dutch-funded schools in Pematang Siantar of North Sumatra and Koetaradja (Banda Aceh today) for further education. There, many of the Gayonese students became involved in nationalist movements. Once they returned they started replacing immigrant teachers at the schools (PaEni, 2003, pp. 187), and troubled the Dutch with their nationalism. The best-known figure of this group was Abdul Wahad who later became the first regent of the area in post-independence Indonesia (Bowen, 1991, pp. 94).

The Minangkabau immigrants and teachers also opened an alternative school in Gayo, with a seven-year program modeled after the *Hollandsch-Inlandsche School* (H.I.S). This school taught secular as well as religious subjects in Dutch and Malay (Bowen, 1991, pp. 97). By the end of 1935, the number of Gayonese pupils continued to rise and encouraged the Muhammadiyah-affiliated Minangkabau immigrants to open two other schools; the *Instituut voor Lager Onderwijs* (IVOORLO) and another H.I.S model one (PaEni, 2003, pp. 187). To avoid interference from the Dutch and to invite more Gayonese to come to these schools, the Minangkabau involved representatives from the Gayonese elites, who were allied to the Dutch, in their management. (PaEni, 2003, pp. 188).

Gayonese also started to go to other places in the Netherlands Indies to pursue education as a result of the cultural and knowledge exchanges between locals and immigrants. Among them were Ahmad Damanhuri (died 1942)[13], Abdul Jalil (died 1976)[14] and Abdurrahman Daudy (1911- ?) who created their own "religious circles" and intensified the islamization in Gayo. Damanhuri and Abdul Jalil created opposing groups of Islamic schools: the *kaum tue* (old group) and *kaum mude* (young group).

These two terms of *kaum tue* and *mude* probably appeared for the first time in Minangkabau at the beginning of the 1900s. The first did not question traditions, required pupils' obedience to the teacher, tended to be moderate toward and

[13] Ahmad Damanhuri built the traditional Islamic school of *Tarbiyah Islamiyah* (Islamic Education) in Jongok Bathin village of Kebanyakan sub-district today. In 1938, He was asked to lead the first modern school built by Gayonese, modeled after the Dutch and Minangkabau' schools. Before the return of Abdul Jalil, Damanhuri dominated socio-religious life in Gayo with his traditional Islamic thoughts (PaEni, 2003, pp. 184).

[14] Abdul Jalil studied in the modernist Islamic school of *Persatuan Islam* (Islamic Union) in Bandung. In 1937, Abdul Jalil and those who returned from Al Irshad, another religious school in Bandung, to Gayo founded a school named *Taman Pendidikan Islam* (Garden for Islamic Education). The school used Arabic as the main language of instruction (Bowen, 1991, pp. 99).

negotiating with adat, acknowledged individual ulama rights to produce *ijtihad*, were less concerned with *fiqh* (Islamic jurisprudence) than with *tarekat* (Sufi order), and adhered to the Shafiite school of law. The second group sought reform and purification of Islam from unlawful religious practices in adat, condemned Sufism, and used the *Akal* (intellect) to produce *ijtihad* (Abdullah, 1970, pp. 2, 34, 64–66).

Both groups were involved in politics. *Kaum tue* refused to cooperate with the government. Its members were small traders and peasants. By contrast, *kaum muda* tended to cooperate with authorities and promoted modernization in education. They developed a new method of teaching and curriculum that was a mixture of religious and secular lessons, established a grading system, and updated textbooks. This school was later known as the modernized *Madrasah* that became a model for other *Kaum Muda* Schools (Abdullah, 1970, pp. 11, 41-42,48, 66). Large numbers of Minangkabau who migrated to Gayo were part of the second group. Some of them worked at the Dutch schools, which indicates their cooperation with the authorities. Others built their own schools modelling the Dutch's H.I.S schools.

Aside from the *kaum tue* and *kaum mude*, there were also scholars who used art as a medium for their Islamic campaigns. In the 1930s, a group of local religious scholars, led by Tengku Yahye, invented a new genre of oral tradition, called *syaer* (*sya'ir* or *sha'ir*). Originally, the *syaer* was a means of teaching scripture and Quranic instruction. The teachings were delivered in a mosque in a steady rhythm, almost like a Malay genre. Tengku Yahye avoided discussing contentious topics with the community, as his main concern was introducing the Quran. Later, one of his students, Abdurrahman Daudy, used *syaer* to develop a social critique that caused religious debate with the community (Bowen, 1993, pp. 632–633).

In an interview, L.K. Ara, who himself is a well-known local and national poet, mentioned that Abdurrahman Daudy graduated from the *Volksschool* where he was closely in touch with Islamic reform ideas. He also went to the Islamic school of Gele Gantung of Kebayakan, where he learned *tafsir*, Arabic language, Hadith, and Arab-Malay script. According to Bowen, Abdurrahman Daudy studied religious education under the instruction of Abdul Jalil, who was the most vocal advocate of replacing Gayo adat with Islamic norms.

Abdurrahman Daudy took a more moderate approach than his teacher. Probably influenced by the traditional Islamic school of Gele Gantung, he chose to preserve Gayonese adat but argued that it should be modified and infused with religious teachings (Bowen, 1991, pp. 243). In 1937, he wrote a number of selected Quranic commentaries on 40 verses and 49 hadith. The work, titled Tafsir Gayo (the Gayonese Exegesis), was published in Cairo in 1938.

In my interview with Sirajuddin, a religious figure in Kebanyakan, and Ali Jadun, head of the Ulama Consultative Board (MPU, *Majelis Permusyawaratan Ulama*) of Central Aceh, Abdurrahman Daudy was presented as a prominent figure in the development of local literature. He wrote a local history and dozens of poems of Didong, another local oral tradition that is performed in a group and led by a *Ceh* (leader) who also acts as the main singer. Many *Ceh*'s sent their compositions to him for advice before performing them, which allowed Daudy to include his Islamic reform agenda into their works. After he finished the *Tafsir Gayo*, he asked many *Ceh's* to use part of the book in their performances. According to Asliyah, who is the most senior member of Jongok Bathin village and who was a student of Damanhuri, the *tafsir* was delivered at the mosque before the down prayer time of *Maghrib*. This helped to spread Daudy's social-religious critique to a wider and more diverse audience.

Changes in Adat Family Law

As discussed above, under Dutch colonial rule, local Muslim scholars established the foundation for the islamization of adat in Gayo. These efforts were continued after Indonesia became independent in 1945, transforming many aspects of adat in family matters. The transformation was eased by the oppressiveness of the Japanese army which occupied Sumatra in 1942. In the beginning, the Japanese were welcomed as liberators from the Dutch. However, they then required a total submission from the locals and offended their sensibilities more than the Dutch had ever done. Raping women as physiological attack on the Gayonese , forced labor and famine kept Gayonese away from practicing their beliefs and adat (Bowen, 1991, pp. 102–105). Pinan has observed that the Japanese occupation caused a huge decline of adat (Pinan, 2003, pp. 15–19).

In the very early period of Indonesian independence, some Muslim scholars considered the huge decline of adat from everyday life during the Japanese occupation as a great opportunity to create new Islamic and nationalist norms. Muslim scholars, both from the *tue* and the *mude* group, and nationalist figures, now started to share a common vision of creating a "modern Gayo." Although they had different ideas about this "modernity," Islamist groups of both *tue* and *mude* tried to replace adat, which was associated with religious backwardness, with Islamic traditions. In a meeting held in early 1946, Abdul Jalil called for the rejection of adat in its entirety and to replace it by Islam.

The nationalist group associated adat with the pro-Dutch policies of local lords and its leader, Abdul Wahab, insisted that adat was irrelevant to the new

republican social order. Nationalist groups tried to abolish adat practices and introduced new ideas from outside of Gayo. The nationalists promoted the wearing of Javanese style kebaya, and introduced opera and orchestral music as part of the preparation for independence. However, they were divided on what Islamic norms and traditions should replace the adat practices of that time (Bowen, 1991, pp. 111).

In any case, adat related to family matters such as marriage, dowry, and inheritance practices, gradually changed. In 1946, when Takengen became a government district, Muslim scholars introduced the *mahr* (Islamic marriage payment) to replace the former payment system that had been tied to the rank of the bride's father. Payments formerly made by parents of the bride and groom to their respective village leaders were also prohibited. However, local officials interpreted the "putting adat aside" in different ways, according to their understanding of adat and its relation to Islam and the Republic (Bowen, 1991, pp. 111). There is no further information on how this new marriage system was accepted and became the new norm of the Gayonese. I assume it was related to the massive Islamic movement in post- independence Indonesia, which was fully supported by the ulama affiliated with the Islamic resistance of Darul Islam.

Not all of this radical islamization of adat was accepted by local communities. When local officials tried to permit marriage within the same *belah,* some of the ruler's kin group and people protested by leaving their villages. This led to depopulation of and fractures within villages. Saleh Adri, who was assigned as a spokesman for the new district of Takengen worsened the situation. He traveled across the district proclaiming the "end of adat". Many villagers reacted angrily to his speech saying "...so we are to be like a goat?" implying that they would be like animals without the guidance of adat, as long as the alternative of a new adat had not been established (Bowen, 1991, pp. 112).

The Court's Contribution to the Adat Transformation

Among the main subjects of islamization was the inheritance division. Before the establishment of religious and public courts and the increase in coffee plantations in Gayo, a daughter could not claim any portion from inherited property. Neither had a divorced woman any rights over earned wealth. However, women gradually gained more rights after the establishment of the religious and public courts and the growing areal of coffee plantation.

Judges played an important role in transforming aspects of adat family law. In the early establishment of state religious and civil courts, judges of the religious court were mostly of Gayo origin. They were regarded as scholars in Islamic

studies. Because of their local origins, they were familiar with adat, social, and political dynamics and the demand of local Muslim scholars for the creation of a new society based on Islam. At the time, however, the judges were unsure whether to reaffirm property division based on either Islamic law or adat. This had also to do with the fact that their courts were established during the Acehnese ulama rebellion of Darul Islam against the Republic. The Darul Islam movement and the lack of popularity of the court made the decision to reaffirm property divisions based on either Islamic law or adat a contested political question. Judges, at that time, were worried about political retribution from the religious movement of Darul Islam if they did not apply Islamic law. At the same time, applying Islamic law triggered resistance from most Gayonese, and particularly from the village elites. However, reaffirming adat would contradict the mission of the religious courts (Bowen, 1988, pp. 281, 1998, 2000, pp. 107–112).

The force from ulama rebels and potential resistance from the adat elite drove the judges to opt for mediation. They avoided framing the case of "Islam versus adat". Instead, they brought the differing parties to a consensus outside the court, in which adat and Islamic law were mediated by judges, Muslim scholars and adat leaders. This consensus often concluded the inheritance case with equal shares between brothers and sisters. The new division practice gradually changed the old one, in which a daughter could not claim any portion from inheritance. Later, this became standard for Gayonese in dividing inheritance. Until the 1970s, judges kept confirming property divisions following the logic of the new invented adat. Even when a decision through consensus was brought to the religious court or a civil court for redistribution according to Islamic law, judges of both courts would refuse to invalidate past property divisions (Bowen, 1988, pp. 281, 1998, 2000, pp. 107–112).

Another important development was the introduction of *poroh* (jointly earned wealth that has to be divided equally after divorce), both at the religious and the civil courts. This development followed the expansion of coffee plantations (Bowen, 1988, pp. 281–282). Originally, joined property was not shared after a divorce. At that time, the shared property of husband and wife was usually a rice field. However, the rice fields were linked to the village and those who came to the village, according to the type of marriage, whether *matrilocal* or *patrilocal*, would not get any rights resulting from the improvement of the rice field by investing labor.

This adat law was replaced following the establishment of coffee estates in which a couple commonly had to clear land for the coffee plantation, located quite far from the village. Unlike rice fields, coffee estates' value increases over time. This

new economical source led judges to introduce *poroh*, which is a term adopted from the Acehnese that means "to clear a neglected rice field" (Bowen, 1988, pp. 278, 282–283).

Judges also started promoting bilateral inheritance, putting aside many earlier property distributions. Originally, a woman married patrilocally would not receive any inheritance, because she received the marriage goods from her parents, which was considered a form of inheritance. This made the eldest brother control the inherited land as he was the beneficiary of the local kinship system as the one in charge of family affairs after the death of the father. Judges of both religious and civil courts gradually eliminated the passing on of wealth based on marriage. Judges of the religious court introduced a division based on Islamic law, which strengthened the force of Islamic ideology in the village. Local Islamic jurists and Muslim scholars supported this new movement, arguing that his was the actual purpose of the adat (Bowen, 1988, pp. 282–284).

The islamization process since the conquest by the Dutch until the present has led many Gayonese today to consider their adat as an actualization of Islamic teachings. Many local publications, such as Mahmud Ibrahim's three-volume books on Shari'a and Adat (Ibrahim and Pinan, 2002, 2005, 2010), seminars and talk on Gayo adat today speak about the contextualizing of Islam into adat.[15]

[15] It is also important to note that Abdul Wahab (1909-1967), Saleh Adri (1915-1973), Abdul Jalil (death 1976) and Ilyas Leube (a central figure of the Darul Islam movement in Central Aceh; he is not discussed here) were the last most dominant figures of authority in Gayo. After their death until the present, no one has replaced their dominance in how to conduct all aspects of communal life. According to Alyasa Abubakar, the first head of the provincial agency for Shari'a and a Gayonese himself, Gayo has been lacking in leading ulamas. However, during my fieldwork I found that Ali Djadun (1925-2016) and Mahmud Ibrahim (1929-2017) were also quite dominant in religious and social discourse of the Gayonese, even if I often found that many disrespected them because of their close affiliation to the government.

There are also fewer Islamic boarding schools compared to the coastal regions of Aceh province. This has led to a lack of ulama regeneration in the region. Accordingly, Gayonese tend to find references in adat for their social and religious issues. In my interview with Mahmud Ibrahim, he said that aside of lacking regeneration, a large number of ulama today are less connected with the broader context of Islamic discourse and the debate from other parts of the Islamic world. This weakens their religious and social position in the community. According to Mahmud Ibrahim, this situation led him and other senior ulamas in the region to fuse Islamic teachings to the adat or defend adat practices with Islamic arguments. Mahmud Ibrahim and Aman Pinan, an adat practitioner, defended and justified the adat practices through publication of a three-volume book on adat and Shari'a. By publishing the book, Ibrahim and Pinan expected people would not consider adat as opposed with Islamic teachings. Adat, Ibrahim said, even "glorifies" and "lives" Islam in daily life. The most fundamental from all practices of the adat, according to Ibrahim, is that adat does not go against the most fundamental principle of Islam; the oneness of God. Other principles of Islam can be adjusted since they are related to the establishment of social relationships, organization and behavior, such as the *sumang* norm (discussed in following chapter) which has strongly developed and formulated Islamic ethics in the local context.

Speaking about adat today means speaking about the articulation of Islamic teachings. An equal inheritance sharing (1:1), is an example of adat that is not considered against Islamic tenets. Although it appears to defy the basic inheritance formula of Islamic law, it is considered as implementing principles of Islam on justice and unity of kinship.

The changing practice of inheritance division has also been driven by the government policy on land management. In 1960, the Indonesian government promoted land ownership and certification through the Basic Agrarian Law 5/1960. Since then, the land gradually lost its tie to village and ancestry. Land is owned by an individual, a traditional community (adat land or *hak ulayat*) or the state. The new formal division in land ownership gradually changed the objective of inheritance practice in Gayo adat. Previously, the inheritance practice aimed at maintaining the link to village ancestry, as described by Bowen. After the introduction of the new categories of land ownership, the inheritance division started to aim at maintaining kinship relations.

Thus, adat practices in Gayo function to maintain the continuity of the local community and the family. They do not only provide a sense of justice, but also a sense of security and social stability, which would not have been realized if standard Islamic law had been applied. To justify this practice, jurists also employ Islamic reasoning by interpreting the objective of Islam and the revelation of the Quran. I venture that the informal assistance of the judges, who negotiated with the Muslims scholars and adat leaders to islamize the inheritance practice in their informal decisions in the early years of the Islamic court before the 1970s, has considerably contributed to the new practice and aims of adat in the inheritance division today.

Inheritance Division

This section provides some empirical evidence of the changes of adat family law and the influence of islamization on inheritance division. In Gayo, as Bowen describes, the oldest brother would control all family property and make important decisions for the family after the death of the father. Achyar, living in Takengen of Central Aceh district, is an example of such a figure although he is not the oldest son. His siblings preferred him rather than the oldest, who is seen as having a lack of leadership capacity and a lot of internal family issues. Achyar's role has been decisive in maintaining the bond of three generations of his extended family. Along with controlling private property, his role obliges him to maintain stability and ensure the presence of general harmony to maintain kinship ties.

Achyar has had control over the property left by his father. His father passed away in 1994 from a stroke. He left 37,482.5 square meters of the coffee estate to his family, located in Bathin Baru village of Bener Meriah district. Several months after his father's decease, Achyar suggested to all his siblings to allow Marini, the youngest sister who took care of their father and stopped her education in order to do so, to take 6,750 m2 of the coffee estate. Achyar realized that it was supposed to be the sons' responsibility to take care of their father during his illness. Unfortunately, everyone was limited by their business as breadwinners and state officials. Therefore, they agreed that Marini deserved to get the land to support herself.

However, another sibling, Amrun, was envious of Marini because he thought he also took care of their father during his illness, that is, he took care of the entire coffee estate, replacing many old unproductive coffee trees with new ones. He approached his mother without informing his siblings and asked her for a same amount of land as Marini had received. According to Achyar, their mother most probably did not respond to this request. Amrun then secretly took a portion of the estate as large as Marini received. Achyar and his other siblings did not react to Amrun's act when they became aware of it.

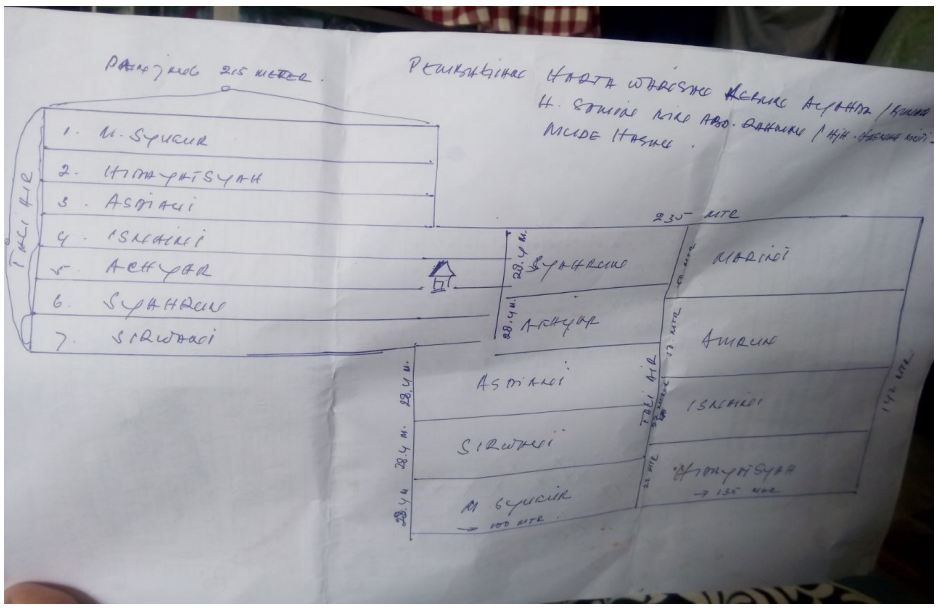
Although Achyar took on his father's role in the family, he did not divide the coffee plantation without his mother's consent. The latter, assisted by Marini and Amrun – who both were still unmarried and still lived in their mother's house – continued cultivating the coffee plantation. This served to support Syahrun, her youngest son, in completing his studies at Syiah Kuala University in Banda Aceh. In 2008, Syahrun got his diploma and the mother allowed the coffee plantation to be divided.

In the presence of their mother, Achyar presided over a family meeting with all the siblings present about the land division. He preferred a consensus to divide the land instead of arbitrarily employing Islamic law, which would benefit himself and his brother. Marini and Amrun were also present but could not get involved as they received their portion already. Achyar suggested to equally divide the plantation between brother and sister. Technically, Achyar added that the division would be conducted in a lottery. He argued that their father did not differentiate sons from daughters and he himself saw no reason for such differentiation, even as he was fully aware of the Islamic law formula suggesting that the son gets a larger portion than the daughter (2:1). Their mother chose to be silent, leaving it to her children to find a fair solution.

Hidayat Syah supported Achyar's proposal. He is one of Achyar's younger brothers and an imam of Jongok Bathin village. He was trained in Islamic studies

by his uncle, Saleh Adri, mentioned above. Hidayat Syah made the argument that Islam suggests maintaining brotherhood and mutual love; Islam does not suggest partition of groups and conflict. He further argued that the mission of Islam is to unite humankind, not to infuse it with harm, hatred and separation. According to Hidayat Syah, the unity of the family would be best achieved if they would reach a consensus rather than the standard division in Islamic law, which is too rigid and does not consider non-material aspects. Islamic law, according to him, would be the last resort if they were to face a deadlock.

Achyar's siblings agreed with Achyar's proposal after listening to Hidayat Syah's argument. They also agreed that the land would be divided in a lottery and that some portions of land would be smaller than other, taking into account their geographical location. Achyar asked his siblings to each pick a piece of paper from a glass. According to Hidayat Syah, any number they picked was a predestination from Allah; it was decided by Allah. As a result from the consensus, every sibling participating in the meeting got roughly 3.426 m2 of coffee plantation, so much less than Marini and Amrun who had each received 6.750 m2.



Land sketch of inheritance division of Achyar 's sibling

According to Achyar and Hidayat Syah, although there is a fixed formula in Islamic law to divide the inherited land, a consensus is the most basic legal procedure, before looking for other options in Islamic law. Achyar then quoted a verse of the Quran to support his argument:

"...and those who have responded to their lord and established prayer and whose affairs are [determined by] consultation among themselves, and from what We have provided them, they spend". [Quran 42:38]

The phrase "whose affairs are determined by consultation among themselves" of the verse was the source for their legal reasoning to reach consensus for the equal division. Moreover, according to Achyar and Hidayat Syah, the Islamic law formula does not consider the non-material aspects in inheritance division. These non-material aspects are more important. Such equal division is quite common in Central Aceh and Bener Meriah today. Sirajuddin, Head of the Adat Council of Bener Meriah says that he used to be acting as a witness in many family consensuses resulting in the equal sharing.

Islamic discourses provide many arguments to support Achyar and Hidayat Syah's proposal and argument. Muhammad Shahrur, for example, says that the fundamental principle in Islamic science of division is justice (*'adl*) and equality. The application of these principles may differ from one community to another depending on the sense of justice and freedom of the community (Shahrur, 2004, p. 336). According to him, Islam suggests advancing the bequeath rather than inheritance. It is not necessary to follow the rule of the fixed formula of inheritance division if a relative did not leave a will. Muslims are free to decide the method of inheritance division, if it helps to accommodate the sense of justice and equality (Shahrur, 2004, p. 335). In other words, the traditional Islamic rule of division is the ultimate resort when other means such as consensus fail to produce justice and equality (Shahrur, 2004, pp. 334–335).

Alyasa Abubakar, professor of Islamic Jurisprudence at the State Islamic University of Ar-Raniry and a Gayonese himself, gave the same explanation when I consulted him about Achyar's case. He said that an inheritance division based on Islamic law is not necessary as it only provides the last resort for a final solution. He further explained that the contextualization of Islam in local culture is very much influenced by the *ijtihad* of many ulamas since the period of the companions of the Prophet Muhammad. Ulamas have always been forced to solve issues which they do not find in classical Islamic texts and/or to make Islam acceptable to become a new faith of a non-Muslim community.

Some practices in Indonesia are good examples of the contextualization of Islam in local culture. One of the examples, according to Alyasa Abubakar, as I refer to his publication on *Metode Istislahiah: Pemamfaatan Ilmu Pengetahuan dalam Ushul Fiqh*, is the practice of inheritance in Minangkabau. Abubakar states that there are two kinds of inheritance for Minangkabau people. The first is Pusaka

Tinggi or Harta Tua which deals with property that is an integral part of the matriarchal system of the Minangkabau, linked to pre-Islamic society and maintained continuously until the present through adat. The property is managed by a group and needs to be maintained in its original condition. Sheikh Abd Karim Amrullah, a well-known scholar in Minangkabau, produced an *itjtihad* supporting the practice of the Pusaka Tinggi. According to Amrullah, the Pusaka Tinggi is a *musabbalah*. *Musabbalah* is a form of endowment in Islamic law in which the origin of the property and regulation of ownership are pre-Islamic. Based on that reasoning, the Pusako Tinggi cannot be inherited following the rule of Islamic law that stresses ownership. It has to be protected in the same way as a Muslim has to protect any donated property. The second form of inheritance is Pusaka Rendah. This property has to be inherited following the rule of Islamic law because it is wealth earned during the marriage (Abubakar, 2016, pp. 202).[16]

Achyar and Hidayat Syah did not claim similar freedom to justify their decision. However, their case reflects the everyday life of many Muslims in that, as devout followers of Islamic law and tradition, they tried to resolve the problem they encountered by referring to Islamic texts produced by ulamas. However, they encountered a situation that was not discussed in any Islamic text they were familiar with. They then tried to negotiate and establish a reason, which is still framed within an Islamic context, to escape from the standard procedure of Islamic law to accommodate their interest in uniting the kinship. In this way they did not think they deviated from Islamic teachings nor did others consider them using non-Islamic law. Achyar and his siblings even considered that they were applying part of the very basic forms and most fundamental teachings of Islam: unity and harmony that can be served through achieving a sense of fairness, justice and equality among them.

Changes in Adat Criminal Law: Qanun Kampong

We have seen the transformation of adat family law in the previous section. This section discusses the re-emergence, transformation and codification of adat related to public order and penal law. This development commenced in the post-

[16] In 1953, Amrullah's *itjtihad* became part of adat of Minangkabau through a great meeting called "*Rapat Empat Djinis Orang Alam Minangkabau* (A summit meeting of four groups of Minangkabau people). The four groups referred to were *Ninik Mamak*, who has the authority in adat matters, *alim-ulama* (Muslim scholars), *Cerdik Pandai* (public intellectuals) and *Manti-Dubalang* (ministries and chiefs) from all over the Minangkabau world. Hamka (Amrullah's son who later became a prominent Muslim Indonesian scholar), who joined the meeting, ended his testimony with "…this is what so called adat and *istiadat* (tradition) based on the saying "*bulat kata dimufakat* (a decision is reached from an agreement)." Those who offend it, would suffer curse from *kalamullah* (Allah's words) (Hamka, 1963, pp. 7–8).

conflict period when the Indonesian government granted Aceh province special autonomy in matters concerning culture, religion and education. As we have seen, this led to the revival of traditional political institutions and converted them into formal village institutions. Today, adat institutions are formal village institutions and codifications of adat law have been incorporated in village regulations.

The contemporary development of adat varies from one village to another, depending on the dominant actors and external powers that influence a community. As a result, some adat is progressive and heeds the global idea of human rights, particularly concerning women and children's rights, while some others go against human rights and other secular norms.

In this section, I discuss the "progressive adat law" by taking a case study from Rembele Village in Bener Meriah district. This village consists of roughly 60% Gayonese and 40% Javanese. The developments here were initiated by Yusdarita and Hasanah Silang, two women who have gradually developed into prominent figures in advocating women's and children's issues in Bener Meriah district. Their persistence and consistency in advocating women's and children's rights have made them into legal and social consultants for the newly elected regent of Bener Meriah district, Ahmadi.

In 2011 to 2012, Acehnese women activists noted that violence against women in Bener Meriah was the highest in Aceh Province and decided to do something about it (Uzia *et al.*, 2013, p. 14). Unlike other local activists who preferred to tackle the issue from legal and state policy approaches, Yusdarita and Silang opted to work closely with adat institutions, aiming at reforming the adat. They started their social work by advocating for victims of domestic violence. Then, they gradually expanded their concern to victims of sexual harassment until eventually they moved to transform and codify the adat law of Rembele Village. They also designed the Rembele village to be "a safe village" for the victims of sexual harassment in Bener Meriah district.

The case of Rembele village, is a good example how adat has become a battleground for actors who want to direct the community to a particular ideal. By deploying a discourse based on adat, Yusdarita and Hasanah successfully stimulated the community to produce a progressive adat on women's and children's issues. This adat was codified into the *Qanun Kampong* (village regulation), which was the first time this happened.

The *Qanun Kampung* comprises a mixture of secular, Islamic, and adat norms. The secular tradition has expanded the definition of domestic harassment as not limited to physical harassment, but also including psychological, economic and sexual harassment. The outcome illustrates the flexibility of adat to adjust to, and

accommodate, external influences that rely on Islam and global ideas about human rights, child protection and other secular norms, which has resulted in a hybrid law.

Before addressing the transformation of adat, I will briefly go back to the post-conflict situation of Aceh Province to introduce the social activism of Yusdarita and Silang. In 2005, many national and international organizations were involved in maintaining the peace in Aceh at the grassroots level. One of their strategies was to strengthen the capacity of adat institutions to serve justice for the community. Some social activists considered this development a chance to transform the community from patriarchal into one which includes room for women's and children's protection.

Yusdarita and Hanasah Silang did not attempt to transform adat instantaneously. Both often worked together in advocating the cause of harassed women and children in need of justice from the state and adat. Their belief that social transformation should be started from adat, drove them to cooperate with village leaders. Yusdarita is a cadre of the Women Volunteers for Humanity (RPUK, *Relawan Perempuan untuk Kemanusiaan*), which was founded in 1999 and headquartered in Banda Aceh. Meanwhile, Hasanah Silang is a lawyer by training-when this research was conducted, she was part of the local Independent Committee for Election (KIP, *Komisi Independen Pemilihan*) of Bener Meriah district. She was also part of nationwide legal assistance organization of Indonesian Women's Association for Justice (APIK, *Asosiasi Perempuan Indonesia untuk Keadilan*). Before returning to Bener Meriah district, she worked at the Legal Aid Organization (LBH, *Lembaga Bantuan Hukum*) of Banda Aceh. Yusdarita and Silang were also part of the Integrated Service Center for Women and Children Empowerment (P2TP2A, *Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Anak*) of Bener Meriah district.

Their cooperative approach often elicited criticism from their colleagues at P2TP2A[17] and from fellow activists. These argue that negotiating with adat officials is useless because of the patriarchal nature of adat, which discriminates women and children. This caused them considerable hardship, particularly Yusdarita. She was accused of being a witch and an agent of American liberalism, not only by adat authorities – as she often challenged adat – but also by some colleagues from

[17] P2TP2A is a government agency for women's and children's protection and empowerment. The members of the agency are mostly social activists who are concerned with women and children's issues. Most of them are not permanent officials. The organization is led by the wife of the active regent. Some consider the agency as a meeting point for women activists or a hub between the activists and the government to increase protection of women and children.

P2TP2A. However, over time, they established a reputation as reliable socio-legal consultants, mediators, and women's and children's advocates at the adat council, not only in their home villages but also at the Mukim Council of Simpang Tiga of Bener Meriah district.

Yusdarita and Silang started their social work by advocating for victims of domestic violence. According to them the most important part of the advocacy is to look after the abused wife. The court may protect the wife from the husband by sending him to jail, but this is only a temporary solution. During court trial or in prison, the husband will sell all properties, including the house and the coffee estate, which are generally registered under his name. Subsequently, the husband divorces his wife. The prospect of being a single parent without income often forces a wife to return to her husband although she has suffered and will suffer again.

To avoid this Yusdarita and Silang started appealing to an adat norm stipulating compensation (*tutup babah*, literarily meaning "to hold the tongue") for harassed victims. Traditionally, the *tutup babah* is not given for any abuse that has taken place, but serves as a legal basis for responding to future violence. It needs to be written down, with several witnesses present. It is meant to deliver a warning message to the husband that he will have to pay compensation if he commits violence again in the future. Yusdarita and Silang instead argued that compensation should be given already when the abuse had taken place. To reinforce their argument, they sometimes threatened the adat elites/village apparatus that they would expose the case in the media, which could ruin the village's reputation. This approach proved effective in convincing the village leadership.

The new *tutup babah* practice paves the way to empowering women economically. During the negotiation for the compensation, they force their husbands to transfer the ownership of some property such as portions of coffee plantations, houses or any valuables like gold. According to local women, domestic violence happens precisely because the wife and children are economically dependent on the husband. They are unlike professional women, such as civil servants, who have financial autonomy in the household, and who still have financial security after they get a divorce. By contrast, in a rural and agricultural society like Bener Meriah, a husband controls the entire family and all its property. Such control has to be constrained to give the wife more negotiating power in the household. This can only be achieved by distributing ownership of land, house or other valuable properties from the husband to the wife.

Yusdarita and Silang also used legal procedures to force the application of the new *tutup babah* interpretation. Occasionally, Silang would report a case to the police to exert more pressure on the husband and on adat leaders. After they achieved their goal, they would rescind the report, which is allowed if done within a certain period. According to them, this is effective not only to prevent the husband from committing more violence - as he fears to have to pay more compensation - but also to empower women economically. According to Yusdarita and Silang, until 2015, they have advocated more than 50 such cases ranging from domestic violence to sexual harassment.

From there on, Yusdarita and Silang expanded their concerns. Domestic violence is the only case in which they collaborated with an adat institution. For other cases, such as rape and pedophilia, they convinced adat leaders that these are beyond their authority and legal capacity and that the police should be involved. Sometimes, like in the pedophilia case I will discuss in chapter five, they also involved adat leaders in the investigation, when searching for the victims in the village and controlling the impact of the case on the community.

Sometimes the victims, women and girls, are stigmatized as "bad", since they are culturally alleged to have provoked the crime. This inspired Yusdarita to initiate a so-called "safe village."[18] To realize this, Yusdarita pushed her brothers, who at the time were the *reje* and *imem* of Rembele village, to codify a Qanun Kampong about women and children issues.

This was not an easy process. Yusdarita had to convince her brothers, who both were educated in the patriarchal tradition, about the importance of *Qanun Kampong* on this subject. She consulted with Ridwan Qari and Ali Jadun, who are the most respected ulama in Central Aceh and Bener Meriah district, to learn more about women's and children's issues from an Islamic perspective. Yusdarita found that Islam provides a wide array of arguments to confront patriarchal ideas. Moreover, these ulama represented a respected social class and thus could exercise pressure on village elites and adat authorities. Both scholars are considered as most knowledgeable on Islam, and highly respected among ulama both in Central Aceh and Bener Meriah district. Yusdarita often referred to them in the private discussions she conducted with her brothers on the subject.

Eventually Yusdarita succeeded in changing her brothers' perspective on gender and sexuality. In early 2010, she brought a pregnant ex-prostitute to her village and allowed the woman to cultivate part of her coffee estate. She also helped girls who were raped domestically to give birth in her house. Although

[18] The safe village is a temporary safe social environment for abused women and girls.

Yusdarita's brothers supported the presence of the ex-prostitute, many villagers still spoke of sexually abused women as "impure women" who did not deserve to be in the village. Many villagers, particularly women, were afraid that the "impure women" would continue their "adulterous" behaviour in the village.

To change the community's perspective, Yusdarita requested RUPK to facilitate a series of training workshops on women's and children's issues for all the village functionaries, including some women. RUPK responded positively and in the end Yusdarita also invited officials from the Mukim of Simpang Tiga and other villages. Funded by Unifem (later UNWomen), RPUK gave trainings in Banda Aceh and Bener Meriah district. The organization vernacularized and contextualized global ideas on human rights, gender equality, and women's and children's rights. They avoided the use of international terms that would be associated with western ideas such as "gender," "equality," "rights" and "feminist", to prevent rejection from trainees. Local people associate these terms with non-Muslim traditions that are incompatible with their Islamic culture. Instead, the RPUK framed invited speakers to discuss Indonesian law and policies on women and children's issues, a pro-women Islamic perspective about husbands' and wive's responsibilities in the household, and the adat mechanism in solving communal issues as mandated by the Aceh and the national government. With the support from international donors like UN Women, international ideas concerning equality, justice, and prevention of child marriage became more accepted than before, including at the local level.

Among the outcomes of the localized international idea by the activists was the enactment of *Qanun Kampong* of Rembele village in late 2010. It took more than five months to draft the qanun because Yusdarita and RPUK wanted to make sure that everyone in the village could be involved in the process, particularly the women. The first *Qanun Kampung* provided a mechanism of solving communal disputes and indicated the limits of adat institutions' authority in criminal cases such as rape, child abuse and major domestic violence. The Qanun also promoted gender equality in adat institutions and society generally, as well as equal treatment of sons and daughters in a household. It also expanded the category of harassment from only physical to psychological, economic, and sexual harassment.

The first Qanun also prohibited a family from limiting a daughter's access to education. This is part of a strategy to prevent early marriage in the village. According to Yusdarita, this is an important stipulation because many villagers, particularly the Javanese, tend to limit access of their minor daughters (below 18 years old) to education by arranging them to marry at an earlier age. Although by

law a married minor can still go to school, in practice parents and school management do not allow this. The married minor is forced to become a "mature" wife. Pressing parents to give their daughters access to education therefore helps in reducing underage marriage. The Qanun therefore provides for fines and even removal of parents from the community. In general, the Qanun prohibits the community to make any financial contribution or give any support to those who violate the Qanun. This means that the community is not allowed to assist in organizing or attending the wedding of an underage couple.

Islamic norms and Gayo adat are reflected in Qanun Kampung in dealing with public morality issues such as prohibiting an unmarried couple to be in a secluded place. The Qanun of the village also regulates that adat institutions can address *zina* cases, which challenges the Aceh Shari'a that governs *zina* and *khalwat* and demands that such cases are dealt with by the state justice system.

According to Sawani, a housewife from Rembele Village whom I interviewed, her village became a better environment for women and children after the training organized by the RPUK and the codification. Early marriage is now less common than before, as was also confirmed by the village head. The involvement of the community in controlling and monitoring the behavior of adolescents has increased. Before the codification, the villagers also had an unwritten agreement that if daughters within a nuclear family were involved in premarital sex, the parents would be punished instead of the daughters. Such premarital sex is seen as a result of parental carelessness. According to the head of the village, the punishment was given once to a Javanese widower who was ordered to clean the mosque and gutters of the entire village for one month.

For her achievement, Yusdarita was invited to become a member of the Mukim Council of Simpang Tiga of Bener Meriah district. She is the only female member of the council. She and Silang assisted this Mukim Council to codify adat law, but not as elaborate and strict as the Qanun Kampong of Rembele village because the Mukim is much larger, supervising eighteen villages. The Mukim's codified adat law only regulates the adat mechanism in solving conflicts involving residents from different villages, disputes over villages' boundaries, the obligation to include women in village consensus building and the obligation to protect victims' rights to access justices in the village.

In summary, in this case, adat has played a positive role in addressing social problems. According to Leila Juari, the executive director of RPUK, since the government has a lack of sources to support legal enforcement, adat institutions are crucial in providing justice and protection to the most vulnerable groups in the community. Adat is one of the most expedient ways to protect women and

children, as they are often harassed by those who are very close to them. There is no law and institution closer to both the victims and offenders than adat. Although cooperating with adat leaders and institutions in reform in this case was time consuming, it paved the way for better access to justice for women and children.

Juari adds that adat should be written down to make it accessible for those who seek justice through the adat institutions. Codifying the adat serves to prevent the domination of men, particularly the elderly, in the adat institution. In the old unwritten adat law, elderly and village elites tend to monopolize adat interpretation. Such a situation has been unfavorable for women and children. Juari argues that codification does not mean to limit the development and change the nature of adat from dynamic to static. Instead, when necessary, the villagers can and should evaluate and change the provisions of adat law in response to new demands and needs of those in the village.

How flexible adat is after its codification seems to depend on the capacity of the local actors and the pressure and the assistance from external groups to adapt it to a certain situation. It is very much like the case from Rembele Village. As long as there are progressive actors like Yusdarita with the support from RPUK and international organizations like UN Women, the progressiveness of the new adat can be maintained. However, this is likely to be different in villages lacking progressive actors.

Such progressive use of adat is not limited to Gayo. In other parts of Aceh Province, adat has also transformed from the old conception of unwritten law dominated by elderly male to an organized and written law that is accommodative toward women and children's needs for justice. Likewise, this transformation has been driven by the social activists affiliated with local organizations, such as RPUK and the Center for Community Research and Education (PKPM, *Pusat Kajian dan Pendidikan Masyarakat*), which are funded by larger national and international organizations such as UN Women, USAID, AUSAID, UNDP, Restorative Justice Working Group, and UNICEF. With (in)direct international supports, local organizations have vernacularized and contextualized global concepts of human rights, sexuality, equality, women's rights and child protection to become accepted and practiced in the small locality of a village.

In sum, the aforementioned cases suggest that adat law changes following the promotion of global ideas inspired by Islamic and secular norms such as equality, human rights and child protection. The vernacularization and contextualization of the norms and concepts depend very much on the reaction and capacity of the various actors at different political levels (international, national, and local), and most of all on the capacity of local actors to translate different sets of concepts and

norms into practices. Adat is thus very dynamic and changeable and becomes an arena for contestation among various actors who seek to drive a community in a particular direction.

After having discussed the development of adat in the family and public order, I move the discussion in the following section to the development of adat in penal law. Before the inclusion of the adat institutions into the state apparatus, adat penal law was gradually abolished by the government as part of the efforts to centralize the legal system. A large number of Gayo penal law principles, such as the death penalty for murder, were replaced by national penal law provisions. After the peace agreement between the Aceh Rebellion Movement and the Republic of Indonesia was signed, the state revived certain categories of adat penal law. This re-introduction has opened opportunities for state legal actors to apply forum shopping and legal differentiation.

Adat Institutions

During the transition from authoritarianism to democracy the government's approach to the legal order changed from legal centralism to one allowing for more legal pluralism. This resulted in the implementation of more than 500 regulations codifying adat across Indonesian country (Arizona, Malik and Ishimora, 2017). However, the development of adat codification in Aceh province is different than in most other parts of Indonesia. Just like in West Sumatra where public debates about adat were concerned with fitting the adat government system of Nagari into the ongoing agenda of nation-state building of Indonesia (F. and K. von Benda-Beckmann, 2012a), adat in Aceh is concerned with nurturing local identity and developing legal and political aspects of adat, including a system for justice administration as an alternative to the state.

The presence of international organizations in Aceh in early 2005 helped the Aceh government to modernize adat law, its procedures and its institutions. In 2007, UNDP, in collaboration with the World Bank, launched a USD 7,9 million initiative to improve access to justice in Aceh called Strengthening Access to Justice (SAJI). Both organizations collaborated with the National Planning Agency (BAPPENAS) and the Aceh Adat Council (MAA, *Majelis Adat Aceh*) to improve legal awareness and strengthen dispute resolution at the community level. The primary objective of the project was to build a stronger base for sustainable peace in Aceh by supporting development and assisting the poor in securing their rights and improving their livelihoods (UNDP, 2007). With the support of these international and national organizations, human rights values have become shared values among village officials. This is particularly seen when villages elites

debate about the rights of individual non-natives, and when they contemplate about the need to codify adat law, in particular, about the adat law and punishment for sexual offenses (discussed in the next chapter IV).

An important aspect of the SAJI program was assisting the Aceh government in creating Qanun 9/2008 on the Supervision of Adat and Adat *Istiadat* (customs) and Qanun 10/2008 on Adat Institutions. Through Qanun 10/2008, the Aceh government authorized traditional political institutions at the village to tackle 18 minor issues and offenses specified in Qanun 9/2008. These include household quarrels, family disputes about inheritance division, residential disputes, illicit relations, disputes over property rights, theft in family or minor theft, disputes over joint property of husband and wife, minor theft, theft of cattle or domesticated animals, offending adat regulations on farming and forestry, fishery disputes, disputes in the market, offenses of minors, small-scale forest fires harming an adat community, molestation, sedition, agitation, defamation, minor cases of environmental pollution, threat (depending on the type), and lastly, "other disputes that offend adat law and customs" (Article 13).

Offenders can be subject to one or more penalties as regulated in Article 16 of Qanun 9/2008. These include advice, admonition, apologizing, *sayam* (a compensation given to a victim suffering permanent disabilities or whose property is badly damaged), *diyat* (blood money), isolation from the community, removal from the village, revocation of adat title, and "other punishments that are regulated by local adat". The final clauses of both Articles 13 and 16 make adat law uncertain and give almost unlimited authority to the adat institution to address any behavior considered to be offending local adat practice and customs.

The Qanun furthermore restores all traditional political territories, hierarchies and institutions of all ethnic groups in Aceh. Aside from turning them into formal village institutions, the Qanun also designs adat institutions as autonomous institutions assisting the government in preserving public order. As an official alternative to the state judicial system, adat institutions are allowed to resolve communal issues and restore peace in any conflict within the group by enforcing adat law (Article 3&4 of Qanun 10/2008). According to Badruzzaman Ismail, head of MAA, designing adat or village institutions for justice administration is to demarcate the limits of the state legal system in maintaining public order.

All official village institutions in Aceh province today are revived adat political institutions. The institutions vary from one district to another, depending on the dominant cultural values in the area. In Gayo, as I discussed in the previous chapter, all four adat political institutions (*Reje, Imem, Petue,* and, *Rayat* known as

Sara Kopat office) are considered village institutions. Those who are elected or appointed to these positions are now financially supported by the government. Among their responsibilities is to deliver justice and promote equality and security in the community. In most cases, *reje* and *imem* are the most important institutions in delivering justice to conflicting parties in their jurisdiction. Depending on the type of cases, the *reje* or *imem* solve an issue collegially with other officials or personally in their house.

According to Syik Junaidi, *reje* of Jongok Bathin village, and Ichwan, secretary of Lot Kala village, cases proceed through the adat institutions in a hierarchical manner. In this process, all village functionaries act as mediators or arbitrators individually or collegially based on the request from at least one of the conflicting parties. It also depends on the type of case. The first to process a case is the head of neighborhood. If (s)he fails to end the dispute or to settle the offense, then the head of village will be involved – after a request of those involved. *Reje* and *imem* will be immediately involved in cases that affect local sensitivities or taint the image of the village, such as cases related to public morality and *zina* (see the following chapter).

To avoid a contestation of authority between the Police Department and village functionaries, the Aceh government involved the Regional Police Department of Aceh Province in drafting Qanun 9 & 10/2008. According to Badruzzaman Ismail, the involvement of the police in the legalization of the Qanun and the project as a whole has been crucial, because the police is the institution with the power to enforce state law. Without their cooperation any case at adat institutions can be taken over or its outcome can be overruled.

To ensure that the Qanun is effective in legal practice, the Aceh government also cooperated with the Provincial Police Department of Aceh province to further define the jurisdiction of adat institutions. Their joint agreement[19] contains 14 points, six of them being relevant to the division of the legal jurisdiction between adat institutions and the state legal system.

Point one of the joint agreement states that disputes or conflicts tackled at the village and mukim levels are minor cases as mentioned in Articles 13, 14 and 15 of Aceh Qanun 9/2008. They have to be solved at the village and mukim level or by another 'cultural' mechanism. Point two states that police officers have to provide the adat institution the opportunity to handle minor cases, as regulated by Qanun 9/2008. Point three states that an adat institution decides a dispute based on adat law and tradition. Point four states that the decision of adat institutions is final and

[19] The agreement has three different official numbers: No. 198/677/2011 recorded for the Governor office, 1054/MAA/XII/2011 for the MAA, and B/121/I/2012 for the Police Department.

binding. It cannot be appealed to a public court (state court) or any other court. Point five states that every decision produced by the adat institutions has to be written and signed by the head of the village and the council (of the village) as well as by the disputants. A copy of the decision has to be shared with the head of the sectoral police station, head of the sub-district, and the sub-district adat council. Point six states that an unsolved dispute at the village level has to be transferred to the mukim level. If the dispute remains unsolved, it is then allowed to be transferred to the state court.

In 2013, the Aceh Government clarified and strengthened the legal boundary by issuing Decree 60/2013 on dispute/conflict resolution for adat and *Istiadat* (tradition). The decree states that adat institutions can only handle minor cases that involve no threat to a person's life. The most explicit limit given by the decree is for theft. The adat institution can only handle cases of theft below IDR. 2,5 million.

In summary, on the one hand, the Qanun sets the legal boundary for the adat institution to preside over minor crimes that do not threaten life. On the other hand, the Qanun seems to grant larger authority for the adat system to enforce its norms and laws to any cases offending local sensitivity. It is unclear, however, who defines the sensitivity and to what degree it must be harmed to constitute an offence. In practice it appears to be the decision of individuals or groups with authority in the village. The impact of this uncertainty of adat jurisdiction and the widely "open texture of law" (Hart, 1994, pp. 128), allow adat to govern all sexual offenses even if these are not within the adat institutions' legally designed jurisdiction.

Before enforcing the Qanun, the MAA trained a large number of adat/village functionaries to run the new system of adat jurisdiction (the MAA was fully supported financially by The World Bank, UNDP and BAPPENAS). From 2007 to 2015, it trained 4,000 adat practitioners and village functionaries from all over Aceh province. Once again, the training focused on vernacularizing and contextualizing human rights. The MAA included into the training the principles of human rights, women's rights, the Indonesian national legal system, child protection, effective mediation, case handling, recording, and reporting disputes (UNDP, 2015). The MAA also published a guideline for accessing and running the adat judiciary to ensure that it guarantees justice, fairness, and accountability (MAA, 2008).

In Gayo, the adat elites and religious scholars openly promote the adat judicial system and suggest people to bring their disputes to the adat institutions. During

one of these training events, Ali Jadun, head of the local Ulama Consultative Board, for example, said that:

> "...bringing a dispute to adat, [either you] win or lose, you remain healthy. Would you bring the case to the state, even if you win, you lose half. Not to say if you lose, only bones remain [in you]..."

According to Ali Jadun, the adat process does not cost disputants, unlike the state court which is expensive. To win a dispute in a state court, someone should spend a lot of wealth. During my fieldwork in the Kebayakan sub-district, I observed that the adat functionaries occasionally charged the disputants for their services, but only small amounts. Ichwan, a village secretary of Lot Kala village, said that this money is used for drinks during the meeting or sometimes to support the *reje* and *imem*, since community members occasionally prefer to have a private consultation in their homes.

Now, how do these adat judicial institutions function? In my observation, the capacity of the village functionaries, mainly the *reje* and *imem,* determines the effectiveness of the adat process to deliver a fair outcome for disputants. In some cases, the incompetence of the *reje* is exploited by a plaintiff to extort compensation that goes beyond the physical injury the plaintiff suffered from and beyond the financial capacity of the defendant. It is a way to force the *reje* to give up the case and allow it to be transferred to the police. Such a situation also leads defendant to move his case to the state legal system. In some cases I observed, the plaintiff intentionally demanded a large compensation beyond the capacity of the defendant as a show of power asserting his status as the highest elite figure of the village.

For the adat institution, it is considered a failure if it cannot restore peace and harmony in the community. In the logic of the adat, bringing back harmony is the only aim adat has to pursue, which is achieved by leading the parties to a fair agreement to end the conflict. This means, for example, that a divorce will usually not be a solution offered by the adat, even if the wife insists, as this is not considered a harmonious outcome.

According to the law, the formalization of adat and the legal jurisdiction of the village should be respected by the police. Locals have to bring minor cases first to the adat institution, but if a plaintiff directly reports his case to the police, the police is obliged to return the case to the relevant adat institution. In practice, however, the police holds a key position in determining the type of law under

which a case will be processed, for whatever reason or interest they may have: state penal law or adat law.

Bhabinkamtibmas: The Government Approach to the Adat Institution

The significant role of adat tribunals as an alternative judicial system in Aceh was developed at the same time that the police was being transformed from a military into a more civilian organization after it was separated institutionally from the Indonesian Armed Forces in 2000. This development led to the creation of Community Police (Polmas, *Polisi Masyarakat*) in 2008. In 2015, a new structure was created under the Community Police, called Residential Police (Bhabinkamtibmas, *Bhayangkara Pembina Keamanaan dan Ketertiban Masyarakat*).

According to Badruzzaman, head of MAA, the Indonesian Police Department initiated the idea of creating the Bhabinkamtibmas in 2006. In that year, he and some colleagues from other provinces were invited by the national Police Department to visit Japan. They stayed in one village to observe Kōbans, a police officer who lives inside a community. In this way they he gets to know the local population really well and can provide security more effectively. In 2014, likely inspired by Kōbans, the national Police Department piloted the Bhabinkamtibmas unit in three provinces, including in Aceh, and expanded the pilot to the entire country one year later.

The national Police department assigned 62 thousand police officers to the task and posted them in villages across Indonesia (JPNN.com, 2015). Their basic duty is to maintain stability and prevent crime. The assignment requires social skills and creative problem solving skills. Some officers have succeeded in turning areas of high crime rates into places for teaching basic religious knowledge to adults and children. Some officers have been teaching English at elementary schools, while others have been involved in public service and have closely worked with youth (Humas Polres Sibolga, 2016; Tanjung, 2017; Tribrata, 2017).

The officers of the unit are also authorized by the Central Police Department to resolve disputes and watch how the Village Fund is used (*Dana Desa*) (Humas Polres Sibolga, 2016; Gorontalo, 2017; Kolut, 2017; Media, 2017a; Republika, 2017). Some police stations across Indonesia publish stories online of successful dispute resolution to increase their civilian image as a 'non-combat' unit of the state.

Many of these low-rank police officers in Central Aceh and Bener Meriah are Gayonese. Their understanding of the local people and territory give them an advantage in enforcing the law and providing security. It also makes them tolerant toward certain offenses, as they are influenced by social ties, kinship, and culture.

Many local police officers, in particular from the Traffic Unit, are regularly under pressure not to enforce the law to maintain their family and other social relationships. Their ethnicity and the sense of being Gayonese also drive them to favor Gayo adat law over state law. This leads them to allow adat institutions to handle crimes beyond their jurisdiction, such as *zina* and other sexual offenses. Moreover, the Bhabinkamtibmas is evaluated by the *reje*. If the *reje* is not happy with them, they will be transferred to other units or villages.

Being relocated to another unit means losing one of the most comfortable posts in the police department. According to Chief Brigadier (Bripka) Fahmi from the Polmas unit of Central Aceh, many police officers prefer to be in the Bhabinkamtibmas unit instead of other units, as they are given considerable freedom and are not chained to a desk. They work in a village, mingle with the community, and can do a side job such as starting a small plantation – which is common among senior officers.

In Gayo, and Aceh in general, a Bhabinkamtibmas officer can observe case proceedings held at the village office, mosque or hall. They are not authorized to be directly involved in a dispute nor to offer any resolution, except when they are requested to give legal advice. By standard, the officers and the police in general stay within the legal boundary designed by Qanun 9 and 10/2008, the joint agreement between the Aceh government and the Regional Police Department as well as the Governor's Decree of 2013. In practice Bhabinkabtimnas officers work closely with the village officials.

Although a Bhabinkamtibmas officer may not be aware that a case is directly reported to the Polsek or Polres, these police stations will contact and consult them and even return the case to the village if it is among the 18 minor cases regulated by the provincial government. Remarkably, certain cases that are officially outside the jurisdiction of the adat institutions, such as *zina*, are never taken to the police. Even Bhabinkamtibmas officers who are confronted with such cases keep them at the village level, as they share the common cultural values of the villagers and want to avoid problems with the *reje.*

The official recognition of adat law is appreciated by most Gayonese, even if its application limits their options to address a case under different legal systems. Disputants must bring minor cases to adat institutions. The police, who are crucial in bridging the divide between adat institutions and the state court, are legally obliged to defer to the adat institutions if cases fall within the latter's jurisdiction. Nonetheless, we see quite a bit of forum shopping, where different actors, particularly from local elites, try to utilize a dispute for their own interests. In this context of pluralism of penal law, the forum shopping is the privilege of legal

officials and local elites. The legal procedure of penal law seems to contribute to this situation, as the legal officials represent the state's interest against defendants, and the criminal procedure does not provide any space for private actors. This situation differs from the one in family law presented by Arskal and Shahar (Salim, 2015; Shahar, 2015), in which plaintiffs can choose between different laws that support their interest.

The idea of forum shopping was first presented and discussed in the context of Indonesia by Keebet von Benda-Beckmann. Through a case study of a dispute over a fishpond between an individual and a community in Minangkabau, Benda-Beckmann demonstrated how government and community actors were involved in shopping legal institutions, in this case the adat councils and the police station. The district head, after having received a complaint from the community, took advantage of the situation to reinforce his political influence in a village led by a political opponent. He recommended involving the police in the dispute. The head of police, who was new in the area, used the case to make a good impression on the adat leaders, showing that he was a person who respected the adat and not an authoritarian officer. He recommended the dispute to be dealt with in the "family way" and according to the local adat practices. However, the adat leader concerned was reluctant to get involved in the dispute and returned the case to the head of the neighborhood, who later was unsuccessful in ending the dispute. Such forum shopping, according to Benda-Beckmann, is the favorite pastime of many officials (Benda-Beckmann, 1981, pp. 127–134). The importance of such forum shopping as a tool for reinforcing the position of various actors has increased in Aceh following the establishment of new power constellations discussed above.

The following case study will show the re-emergence of forum shopping in the legal pluralism of penal law as promoted by state legal institutions.

Forum Shopping

Forum shopping, as presented by Beckman Benda above, is a practice that is only possible in a situation of legal pluralism where formal and informal legal agents and elites can choose between existing laws. The following case study shows how forum shopping practices are opened by state designed legal pluralism that works in favor of state legal agencies (in this case the police) and against the complainant, who is constrained by the designated legal arrangement.

Before starting the discussion I want to note first that not all cases that fail to be mediated by the adat officials and the Polsek office will be directly brought to the state court. The authority of the Polsek is limited by the authority of his

superintendents at the Polres. The Polres office will do further investigation and advance a case to the public prosecutor office who then brings the case to court.

The case went as follows. In July 2014, after the celebration of Eid Fitr, Aka (21 years old) and her brother Bensu (7 years old) visited their father, Ama, without permission from their mother, Ine, who had divorced Ama.[20] Their mother was angry with the two and slapped them in the face more than once after they came home. Aka would not accept such treatment; in anger she went to the Polsek station of Bebesen Sub-district and reported her mother for domestic violence. A police officer made a report, but advised her to reconsider whether she wanted to press charges.

The next day, Aka returned to the police station, urging the officers to detain her mother. Head of the Polsek, IPTU Muhadi MR then reported to the Head of Polres, AKBP Artanto. Muhadi was told to return the case to the village to be solved by adat institutions. According to Muhadi, his superior was worried of being cast in the spotlight by the public. He repeated his superiors' words: "How will the community view the police if we bring the mother to the courtroom just because she slapped her daughter? It would not be fair for the mother, who was perhaps too emotional at that time. It also would be a risk for the police amidst the reform that the institution has been conducting. The case has to go to the adat institution for the sake of everyone's virtuousness." Muhadi called the *reje* of Bebesen village, Idrusmadi, to handle the case. He also ordered Rizkan, the Bhabinkamtibmas officer to observe the case closely and report any progress.

However, Aka still demanded that the police continue with the case. Muhadi said that the case became more complicated because Aka now also involved her father. She was only prepared to cancel her report if her mother and father reunited. The police then requested the adat officials to visit Aka's father and to "comfort" her brokenhearted mother.

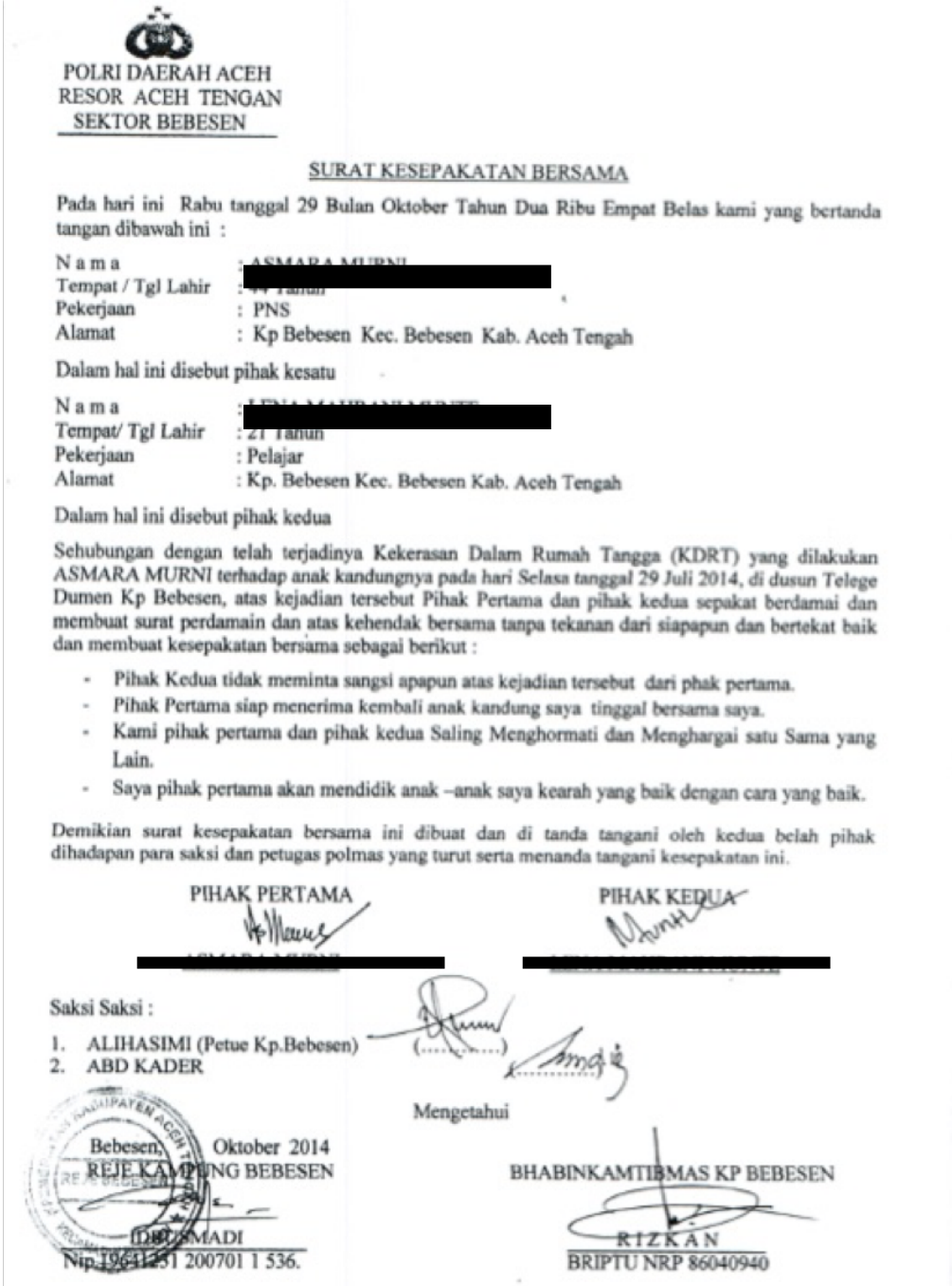
At the same time Aka was under pressure to withdraw her report, from the extended families of both her mother and her father and from village officials. However, she persisted and even managed to hire a lawyer from the local Legal Aid Organization (LBH, *Lembaga Bantuan Hukum*). The involvement of the lawyer put more pressure on the police to move the case to the public prosecutor.

The adat officials then invited siblings from both Aka's mother and father. The case now no longer was about daughter vs. mother but about ex-wife vs. ex-husband. This led to a reconciliation, which was concluded after the intervention of the regent of Central Aceh, Nasruddin – also a member of the extended family

[20] The figures' names are pseudonyms, upon the request of the police and village officials involved.

from Aka's father. The reconciliation was recorded by the adat officials and the police department in a written agreement between Aka and her mother. A peace ritual attended by police officers and a limited number of people was held. As part of the resolution, Ine agreed to let her children visit their father freely. Both ex-husband and ex-wife also agreed to start establishing better communication.

This case shows how government recognition of adat leads governance actors to choose the system they think is most suitable for resolving a dispute or offense. Even if "state legally" speaking they are entitled to a particular legal avenue, complainants are forced by the interests of the actors involved to follow another one. As a new legal institution in Aceh, adat thus serves the interests of the state's legal officers. The case of Aka and Ine show us how a dispute is not only solved through the process considered most effective, but also utilized to support the police department's interests in increasing its pro-civilian image before the community – a part of the agenda of internal reform within the Indonesian Police Department.



POLRI DAERAH ACEH
RESOR ACEH TENGAH
SEKTOR BEBESEN

SURAT KESEPAKATAN BERSAMA

Pada hari ini Rabu tanggal 29 Bulan Oktober Tahun Dua Ribu Empat Belas kami yang bertanda tangan dibawah ini :

Nama : ASMARA MURNI
Tempat / Tgl Lahir : 44 Tahun
Pekerjaan : PNS
Alamat : Kp Bebesen Kec. Bebesen Kab. Aceh Tengah

Dalam hal ini disebut pihak kesatu

Nama :
Tempat/ Tgl Lahir : 21 Tahun
Pekerjaan : Pelajar
Alamat : Kp. Bebesen Kec. Bebesen Kab. Aceh Tengah

Dalam hal ini disebut pihak kedua

Sehubungan dengan telah terjadinya Kekerasan Dalam Rumah Tangga (KDRT) yang dilakukan ASMARA MURNI terhadap anak kandungnya pada hari Selasa tanggal 29 Juli 2014, di dusun Telege Dumen Kp Bebesen, atas kejadian tersebut Pihak Pertama dan pihak kedua sepakat berdamai dan membuat surat perdamain dan atas kehendak bersama tanpa tekanan dari siapapun dan bertekat baik dan membuat kesepakatan bersama sebagai berikut :

- Pihak Kedua tidak meminta sangsi apapun atas kejadian tersebut dari phak pertama.
- Pihak Pertama siap menerima kembali anak kandung saya tinggal bersama saya.
- Kami pihak pertama dan pihak kedua Saling Menghormati dan Menghargai satu Sama yang Lain.
- Saya pihak pertama akan mendidik anak –anak saya kearah yang baik dengan cara yang baik.

Demikian surat kesepakatan bersama ini dibuat dan di tanda tangani oleh kedua belah pihak dihadapan para saksi dan petugas polmas yang turut serta menanda tangani kesepakatan ini.

PIHAK PERTAMA

PIHAK KEDUA

Saksi Saksi :

1. ALIHASIMI (Petue Kp.Bebesen) (.....)
2. ABD KADER .....

Mengetahui

Bebesen, Oktober 2014
REJE KAMPUNG BEBESEN

IDRIS MADI
Nip.19641231 200701 1 536.

BHABINKAMTIBMAS KP BEBESEN

RIZKAN
BRIPTU NRP 86040940

The peace agreement between Aka and Ine.

Conclusion

From the early 19th to the 21st century, the Gayonese people have passed through wars (against the Dutch and Japanese), armed conflicts (Ulama revolt and Free Aceh Movement against the Republic of Indonesia), and natural hazards (earthquakes and a tsunami). Aside from guns, soldiers, and humanitarian assistance, these man-made and natural disasters have brought civilians and organizations from different areas, cultures, norms, values and ideologies to the Gayo lands. They have inspired local people to adapt to the new encounters and situations by changing their adat. Adat, which has been an instrument for social transformation and engineering is continuously (re)defined, (re)constructed, (re)organized by the locals to set a new standard of social life and to introduce a new way of looking at themselves and others. In its transformation, adat appears to be a contested and negotiated space for government and non-government actors as well as religious and secular actors and institutions whose goal is to drive the society in certain directions. The involvement and intervention of these actors make adat comprise many different ideologies, norms and values derived from both Islam and secular ideologies. Adat law, as F. and K. von Benda-Beckmann describe, is thus a hybrid law.

These integrated external forces have transformed the function of adat. In family law, adat is used now to maintain the continuity of kinship. This legitimates actors to ignore the standard Islamic law or the scripturalist views on Islam by creative reasoning based on alternative Islamic arguments to justify a practice. Instead of seeing themselves (or others seeing them) as deviating from Islam, they believe they apply the basic principles of Islamic teachings.

Adat law is also used as an alternative judicial system to reinforce public order. In some cases, it is used to promote the position of vulnerable groups such as women and children, but in other localities the opposite has happened. This development of adat is in line with the shift away from state legal centralism towards state legal pluralism in Indonesia in the post-Suharto era. This shift to state designed legal pluralism privileges legal agents and elites with the opportunity to engage in forum shopping. Complainants do not enjoy such privilege, as their interest is represented by the state legal agencies. With the power they possess, the state legal agencies can choose between their own interests to move a case to another legal system or the interests of those involved in a case. The first practice is forum shopping while I categorize the latter as legal differentiation, a concept I will further discuss in chapter V.

Furthermore, the government also distributes power to adat institutions that has strengthened the position of village elites in the community. This is due to the

fact that the designed legal mechanism leads plaintiffs to bring their cases first to the adat institution. Plaintiffs may find ways to proceed their case to state courts, for instance by demanding high compensation from a defendant beyond the physical injury they have suffered and beyond the financial capacity of the defendant, but this is not common.

However, adat does not only support village elites or the police, but also the district government in its efforts to implement Shari'a in the region. The notion that adat is an actualization of Islamic teachings drives the district government to distribute power to the village officials to support the implementation of Aceh Shari'a penal law dealing with *zina* (premarital and extramarital sex) and public immorality. The following chapter will show how the introduction of the state Shari'a does not challenge the authority of adat institutions in monitoring public immorality acts and tackling *zina*. Conversely, it strengthens the authority of adat law. The following chapter discusses the complementarity of Aceh Shari'a and adat law, even if conceptually they contest one another.

Chapter IV
The Intersection of Adat and the State Shari'a

Introduction

In the previous chapter, through the examination of the interests of legal agents and the effects of the incorporation of adat within the state legal system, we have seen the development and use of adat in family and penal law along with the interplay of adat penal law and Indonesian national penal law relating to minor offenses. In this chapter, I will go more deeply into the same issues and look at the effects of the inclusion of adat within the state system on the power relations among legal agencies and actors dominating the intersection of legal systems.

In previous chapter, I discussed intersection of adat and national penal law. Here, I discuss the intersection of two kinds of Shari'a: Adat Shari'a and the State Shari'a in Aceh province, which I call Aceh Shari'a or *jinayah* interchangeably. Aceh Shari'a can be understood as the product of the intellectual labor of Acehnese scholars, politicians, and other actors who have interpreted the Divine Shari'a of Islam and incorporated the result into a regional regulation (Qanun). The Gayonese, as I mentioned earlier, consider adat as the manifestation of the abstract and universal of Shari'a as well. These two kinds of Shari'a intersect in regulating immoral acts and premarital sex.

Michael Feener points out that the Shari'a which has been incorporated into the regional law of Aceh Province, is only enforced to a limited extent due to the "secularization" (institutionalization and bureaucratization) of Shari'a in state institutions which suffer from limited authority, and limited human and financial resources (Feener, 2013, pp. 212–217, 2016, pp. 18–19). In Central Aceh, this situation has driven the district government to use Adat Shari'a (hereafter, I refer to this as adat) as an effective tool to enforce elements of Aceh Shari'a.

With two legal systems – adat and Aceh Shari'a – intersecting in the social field, the Aceh government has made use of legal pluralism to reinforce public order in the province. In this chapter, I will discuss a different form of legal pluralism than observed by Arskal Salim with regard to family law in Aceh. Salim argues that legal pluralism in post-conflict Aceh is the outcome of a broader political and legal transformation. Law, in that plural context, becomes a showground where separate legal orders, different legal subjects and norms compete and co-exist. According to Salim, the Aceh government's initiative to design village institutions to be the first in settling disputes allows the village apparatus to challenge higher level state law. The situation that thus arises is one of contestation between different legal systems (Salim, 2015).

With regard to the pluralism of penal law, which is the focus of this book, this research argues that although the village apparatus can challenge the higher level state law, it rather tries to negotiate legal differences and to utilize each legal system to support the other. This legal reconciliation leads the different legal systems to complement one another and gives the village and government elites the power to govern morality (defining and governing what is good and wrong or proper and improper conducts of people) and sexuality. Ironically, government actors in this manner strengthen the autonomy of adat institutions from the state, as they legitimize the actions of villages/adat elites in supporting the Aceh Shari'a project. Conversely, village/adat elites use the available state law to legitimize their actions. Barbara Oomen has observed a similar situation in South Africa where customary law is recognized by the government and the chiefs are given a large authority in land matters. Chiefs assert their authority by presenting themselves as the true representatives of local communities to the central government and at the same time serve as the main channel of communication for the government to these communities. Rather than competing, the chief and government reinforce each other (Oomen, 2005, pp. 9-12, 193-197). This book's (and Oomen's) findings go against Griffith's argument that state recognition over non-state legal systems would always constrain non-state law to the state's command (Griffiths, 1986).

In this chapter, I analyze the legal situation at the village level, where most of the premarital sex cases are tried; where the *farak* punishment (adat punishment for premarital sex committers) is enforced; and where WH Kampong or the Village Shari'a officers operate. I first discuss the local initiative to legalize adat law. I then discuss the culture of shame of the Gayonese, the type of crimes concerned and lastly, *farak*. I observe that the culture of shame appears to be the basis for social relations and social arrangements of the Gayonese. Comprehending this shame culture is important to understand the objective of governing morality and sexuality in Gayo and its impact on social relations and arrangements. In the next section, I focus on the *farak*, its practice and development. Finally, I discuss the strategic use of power leading to the creation of the WH Kampong unit, which embodies the legal reconciliation of two penal law systems.

By exploring the aforementioned aspects at the village level and the role of the government in strengthening the enforcement of adat law to support the implementation of Aceh Shari'a, this chapter also provides another perspective on the use of adat in the post-Suharto era. In observing the development of adat in Indonesia, scholars have argued that adat is used as a tool to preserve the imperiled culture and as a protection from external threats (immigrant, culture, and religion) (Erb, 2007), that it is used to re-assert the jeopardized ethnic identity,

securing land and other economic resources (Bedner and Huis, 2008; Henley and Davidson, 2008), that they assert political forces by reinventing adat as a political symbol (Klinken, 2007), and that they use adat as a political tool (Li, 2007). In addition to these findings, I argue in this chapter that, in the context of Gayo, adat is utilized mainly to protect morality. This morality, according to Gayonese, is threatened by, as they assume, globalized popular culture. Adat has thus become a tool for moral protection.

Legalizing Gayo Adat Law

In 2002, as a response to the special autonomy of Aceh Province, the Central Aceh government issued District Regulation (Qanun) 10/2002 on Gayo Adat Law. This regulation legalized particular adat elements to make them enforceable by the government. According to Ibn Hajar and Arifin Banta Cut, who were among the ten legal drafters of the Qanun, two factors inspired the legalization.

First, after Independence, the Indonesian government started to unify the diverse adat concepts and practices in Indonesia under the terms of Indonesian Adat and *Hukum Adat Indonesia* (Indonesian adat law). Both Hajar and Cut argue that these terms do not represent the similarities in the more than 500 ethnicities in Indonesia with different adat concepts and practices. Instead, they argue, the national adat was modelled after Javanese adat, which is different from the adat of many other ethnic groups. Banta Cut, strongly commented that "...we were not represented in that campaign".

According to Hajar and Cut, the Acehnese are known for their uniqueness in adat and history. Their pride in both makes them reluctant to be unified under Indonesian Adat, as they consider themselves as different from the other parts of Indonesia. To emphasize the distinct nature of Acehnese adat, the provincial legislators have codified the Acehnese' adat terminology and adat structures in various Qanuns. These adat terms should be adopted by other districts to regulate specific Qanun on local adat, even if this adat is different from the common Acehnese adat.

In this way Aceh in fact reproduced the Indonesian adat unification history. For example, the provincial law speaks of a "mukim", which consists of several villages, as a traditional polity of the Acehnese. However, such a polity does not exist in Gayo. In Gayo, the village is the only political territory. However, since the mukim has been promoted by the provincial government and currently made official by regional Qanun, mukim had to be adopted by Gayonese and other ethnic groups not sharing the Acehnese tradition in this matter. Hajar and Cut understand this attempt as an effort of the dominant culture (Acehnese) to

universalize its culture and ethnic identity. In addition to that, lately, the Aceh legislator also formalized Acehnese as the only language for the official anthem of the province, ignoring the diversity of languages in the province (acehportal.com, 2018; Beritakini.co, 2018; Serambi, 2018) Such effort is a reproduction of the New Order of Suharto Acehnese fought against for so many years. The provincial government negates the fact that Aceh province is a home for more than ten different ethnic groups. In line with Cut, Hajar says, "…we are all being acehnized, (*kami sudah diacehkan*). Gayo also has a rich culture and history. We have our own identity. And we have to show the differences in order to be recognized. Otherwise, we will be acehnized and considered by outsiders as Acehnese".

The second factor leading to the codification of Gayonese adat, according to Hajar and Cut, is that adat is more effective than the State Shari'a of Aceh Province in dealing with the increasing number of immoral acts and *zina* (premarital and extramarital sex). They add that although the Aceh Shari'a is based on the Quran and the prophet's tradition, it is not as strongly rooted as adat which is equipped with the best approach to handle *zina*. Gayonese believe that their adat takes references from the Quran and the prophet's tradition just as well. It also shares with Aceh Sharia the common purposes of governing public morality and *zina*.

Unlike other districts in Aceh province where adat has been codified in a Qanun separate from the Aceh Shari'a, the Central Aceh government legalized both adat and Shari'a in a single Qanun. The combination of Shari'a and adat in a single Qanun explicitly hints at the perceived compatibility of adat and Divine Shari'a. Article 6 of Qanun 10/2002 states that (1) recognized adat law, adat, and the tradition, which are living and developing in the Gayo society of Central Aceh, have to be well-maintained since the adat does not oppose Shari'a and (2) Shari'a provides guidance in practicing adat. As such, the Qanun reflects the hierarchical relationship of adat and the Divine Shari'a, in which the latter is considered as the main inspiration and source for adat.

Sumang (shame), *farak* (exiling the adat offenders), and prohibition of endogamous marriage practices are adat elements codified in the Qanun on Gayo adat law. The following section discusses the use of *sumang* and *farak* by the district Agency for Shari'a law and village institutions. The district government, supported by village officials, later utilized the *sumang* to support the implementation of Aceh Shari'a in the region. Meanwhile village officials use the Qanun on adat law to strengthen and reinforce *sumang*, *farak* and the prohibition

of endogamous marriage[21] as means to protect themselves from threats to morality that come from external cultures and are channeled through mainstream media such as cable TV and smartphones.

Sumang

Sumang or shame is a moral conception that rules Gayo social behavior. S*umang* is the foundation of moral beliefs which structure social relationship arrangements and actions. Changing the concept of shame would change the standard of morality and the social constructions built upon it. The elderly group in power in Gayo today fear such change and its implications. They try to defend the old morality standard and social order by enforcing adat norms that were observed when they were young. To do so, they use the state's power to reinforce the control of their society.

Gayo is not alone in enforcing shame as a form of social control and it is not the only community where shame is a fundamental element of the culture. Other social groups across the globe also deploy shame as a tool to enforce social control. According to Braithwaite, the pragmatic use of shame depends on the consensus and the type of societies such as whether they are governed by a majority or minority, whether they are heterogeneous or homogeneous, and whether they are urban or rural. In these different types of society, shame is deployed for different levels of sanctions (Braithwaite, 1989, pp. 95–96).

In her classical work on cooperation and competition among "primitive people", Margaret Mead argued that shame could both operate as an external and an internal sanction. Shame as an external sanction could be observed in a society with enormous sensitivity to the opinion of others such as North American Indians. In this cultural area, according to Mead, shaming opinions about others could even lead to suicide. Shame becomes internalized when it is strongly developed, through educational process in family and community, and it controls members of more individualistic, competitive, or cooperative communities (Mead, 1961, pp. 493–494).

In Indonesia, generally speaking, shame structures the morality (*kesusilaan*) of a community. It controls the actions of a member of a community by

[21] The prohibition on endogamous marriage in Gayo has been applied differently over time. Until the 1990s, the prohibition was valid within *belah* and for clan members wherever they resided; in or outside of belah's territory. After 2002, following the shift of *reje* authority and jurisdiction from both personal and territorial (village) to only territorial (village), the prohibition of endogamous marriage became enforceable only within the village. It is no longer applies to belah members scattered in different villages.

encouraging him/her to act following the *kesusilaan,* which is a constructed idea by the group. Hazairin discusses the function of shame in Indonesia as follows:

> "Morality is protected and nurtured by the shame, the absence of shame is virtually the same as the absence of morality '(*tidak berkesusilaan*),' 'rudeness (*tidak sopan*),' 'indecency (*tidak santun*),' 'loss of adat (lack of social propriety).' When the quality of shame is no longer attached to one's soul, the quality of self-respect and honor are also obliterated, until the reproach and praise leave no effect to such a dead soul…therefore, we conclude the impression that the adat is the accumulation of morality of a society, that the rules of adat are the rules of morality in which its truth is publicly confirmed within the society" (Hazairin, 1974, pp. 85).

According to Koesnoe, Hazairin has given the most comprehensive and accurate definition of Indonesian adat. He emphasized that the high sense of morality (*kesusilaan*) would lead to a sharp sense of shame. This is observed in daily life in which the feeling of shame and the fear from shaming others, or *siriq*[22] is the basis for the functioning of adat law. According to Koesnoe, the delicate feeling of *kesusilaan* is of utmost importance, and the feeling of shame is the entrance to reach the highest degree of *kesusilaan*. Conversely, being shamed is considered a devastating experience for both individual and community (Koesnoe, 1971, pp. A.8).

In Gayonese adat, there are four categories of shame or *sumang*: *sumang percerakan* (shame in conversation), *sumang pelangkahan* (shame in walking), *sumang penerahen* (shame in seeing), and *sumang kenununlen* (shame in sitting). The first is *sumang percerakan* (conversation). According to the Qanun on Gayo adat law, it means that a mature man and woman who are not tied by marriage or blood relation are having a conversation in an inappropriate place. Traditionally, at least until the late 1990s, this category concerned not only the place but also the duration of conversation. In other words, men and women were only allowed to have a conversation in an open space for a limited amount of time.

The *sumang percerakan* made dating rather difficult. Since a couple was prohibited from having a long conversation, they met in hidden places. Sometimes, during the night, a man would visit the woman's house and hide under her room floor. Those who got married before the 1980s were familiar with this practice, which they called "*merojok*" (prodding). In the past, the houses of the

[22] *Siriq* is a term of Bugis society to hint the meaning of shame, dignity, and honor. It is parallel to the word "*malu*" in standard Indonesian language (Idrus, 2016, pp. 42–43).

Gayonese were constructed on high wooden poles (*rumah panggung*), which allowed people to walk or sit under them. A man would go directly to the space under his girlfriend's room. They could then have a chat, whisper to each other, or hand over a note through a gap in the wooden floor. I have been told by the elderly that this was the standard practice, even although it was prohibited and therefore risky. Back then, according to the stories I have collected, couples did take this risk because they could not meet in daylight and the woman could not go outside of their village without companions. *Merojok* was one of the only ways for a man to meet his girlfriend even if it could end with him being beaten by local youths if these would catch him.

Ami, a woman of Chinese descent born in Isak, shared her memory with me about the practice in her natal village. She said that companions kept her safe and protected, and no man from the neighboring village dared to flirt with her. The village members were tied to each other like family. According to her, the tight practice of adat in the past made dating very strict and risky. Some parents, according to Ami, used to pretend that they didn't notice the man under their daughter's room but if they communicated for too long, the parent would clear their throat to remind the man. It was enough to scare him and make him leave.

According to Yusen Saleh, *sumang percerakan* is also observed in inter-age social communication. A Gayonese should communicate in an appropriate manner and be respectful, particularly of the senior villagers and family. Each community member had a particular cultural kinship title or term (*tutur*). The kinship was related to all *belah*/community members, as they considered themselves as blood extended family.

The kinship titles (or *tutur*) are still used in daily conversation. They organize the kinship and *belah* social structure. *Tutur* relates to the proper conduct and attitude that establishes the mode of speaking, body stances, marriage possibilities and cooperation. The structure of *tutur* follows the family's descent and is passed on to the next generation. For example, the son of a younger brother must call the son of his older brother, big brother (*abang*), following the generational structure of the father or mother, even if the child of the younger brother is older than the child of the older brother. This extends to the third and fourth generation. The *tutur* also applies to the non-blood external family group members or the *belah*. The most senior kin, or *belah* member, will be called by *tutur* terms as big brother, uncle, grandfather or even by those who are much older. For example, a child may be called grandpa by a far older man if he is from an earlier generation.[23]

[23] For a comprehensive kin term and structure see (Bowen, 1984, pp. 170–179).

No Gayonese currently knows exactly why some are referred to by a "higher" *tutur* than others. This is because of marriage patterns that have become more complex, migration, and reluctance to use the standard *tutur* among young Gayonese of the same age, in particular those who have lived temporarily outside of the region for education or work.

However, the practice of *tutur* constructing social relations can still be observed in a traditional village like Toweren, located in the western bay of Lake Lot Tawar. There are four *belahs* inhabiting the village: *belah* Wak, who are the first settlers originating from Isak, *belah* Gunung and *belah* Bukit which have come from Kebayakan. *Belah* Suku originated from Bintang in the eastern part of the Lake. Each *belah* has a territory that is considered a neighborhood of the Toweren village. The village is structured on *tutur* as a model of social relations not only within each *belah* but also across all four *belah*. In 2004, due to overpopulation, the four *belah* split into four villages, but the territorial changes have not transformed their social relation and the idea of a big family constructed around the *tutur*. The four villages are considered as four rooms in the "big house" of Toweren.

The second *sumang* is *sumang pelangkahan* (walking). In the old practice, this category observed the appropriateness of people's walk. One man or a group of men had to take another road if they came across a group of women from the opposite direction. A woman also could not walk out individually to the outskirts of the village, particularly to a forest garden or other unsafe places, without being accompanied by male relatives or a married mature woman from her *belah*. Ami told me that when she was a teenager in the 1970s, she safely went everywhere during the daytime, and at least two men from her village would accompany her upon request if she would like to go to the paddy field, to cultivate something from the woods or to visit a neighboring village. No man dared to reject a woman's request to accompany her, and they could never date her, because of the prohibition of endogamous marriage. If something illicit happened, the couple would be exiled (forced by adat law to leave the village temporarily to another place) and bring shame upon their families.

However, as already mentioned, the Qanun of Gayo Adat Law simply decrees that "and unmarried man and woman are prohibited from walking together." This narrows the broad understanding and practice of the norm into a strict and rigid definition with a much wider scope. It goes against the traditional concept of gender relationships in which a man is considered as a guard for the woman and must "walk with her" to protect her.

The third norm is *sumang penerahen* (seeing). According to the Qanun, this norm prohibits people from staring at others of the opposite gender in public.

However, many of my local informants incorporated into this category the dress code and appearance in public spaces to avoid men or women to be sexually attracted to each other. In traditional practices, the public spaces here included, among others, the river where people used to take a bath, or to go washing or fishing. In the past, the authority of this norm led people to separate the women's space from men's both in the river and the mosque. Near the mosque, always at the center of a village, Gayonese constructed two public baths. Some villages even separated mosques for men (*mersah rawan*; male mosque) and women (*mersah banan* or female mosque). Although public bathing was separated by gender, every adult had to cover their genitals during bathing. Normally, a man would dress in shorts and a woman would use a *sarong* to cover her body from breast to knee.

The last *sumang* category is *sumang kenunulen* (sitting). This *sumang* regulates the appropriate way of sitting and positioning oneself. This is observed, among others, during a family gathering, communal gathering or ritual feast in a village. The privileged ones will be offered the better seats and be first served. In old practice, until the late 1990s when dining tables were not so familiar, a family used to have regular meals together on the wooden floor, in a circle around the food. A father's position was always center. His food was served in separate bowls. Meanwhile, other family members shared food from other bowls. This practice is still maintained at the dining table today.

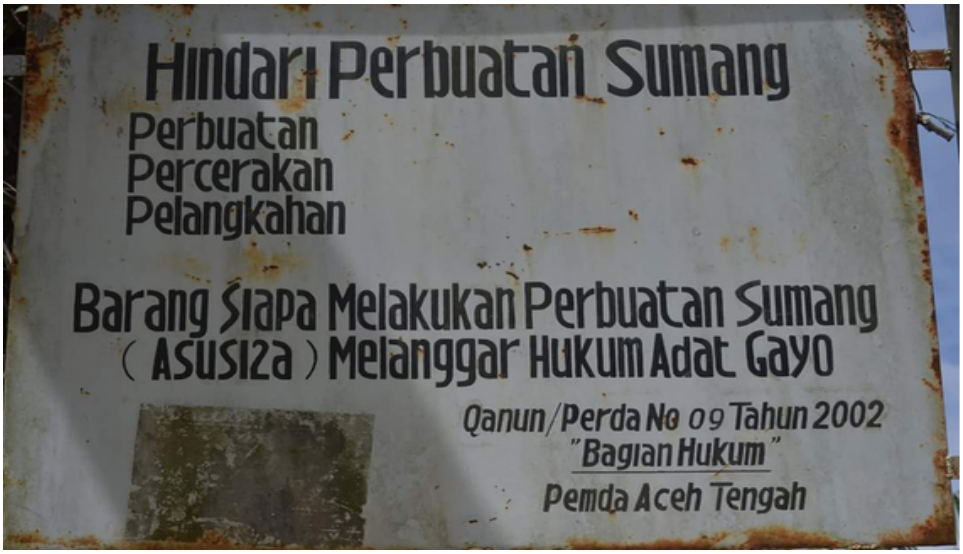
The Qanun on Gayo Adat Law defines the *sumang kenunulen* very differently, as "a mature man and woman who are not tied to husband and wife sit in hidden places." Many people whom I consulted about this specific norm disagreed with the definition. According to most of my informants, the legal definition of *sumang kenunulen*, as well as the other three *sumang* in the Qanun is misleading. The *sumang* defined in the Qanun do not represent the actual meaning, purpose, and practice of the traditional *sumang*. Marwan, a fisherman and a farmer living in the Lot Kala village of Kebayakan, gave an example. He said that to visit a widow's house, one should consider all kinds of *sumang*. One should consider how and when to go (*sumang pelangkahan* (walking)), with whom he should go there (a preventive action from people who could impose adat punishment for offending *sumang penerahen*), and where to sit in the house (*sumang kenululen*). When the visitor is blind to these aspects, people will start suspecting his or her morality.

The same situation defined as *sumang kenunulen* in the Qanun on Gayo Adat is called *khalwat* in Aceh Shari'a Qanun 13/2003. It defines *khalwat* as an act of two or more mature unmarried men and women being together in a secluded place. This definition was revised by Qanun 6/2014 on *Jinayah* (Islamic criminal law). Chapter I (23) states that *khalwat* is an act of two persons who are sexually

different, not *mahram* (of a close lineage) and not married, being in a secluded or hidden place which may lead them to *zina*.

All four *sumang*, according to Mahmud Ibrahim and Yusen Saleh, glorify the Quranic teachings on the prevention of *zina*: "...this is the way of our ancestors to protect their heredity, and at the same time to implement religious orders to avoid *zina,*" Yusen Saleh said, referring to a verse from the Quran: "And do not engage in unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way" (Quran 17:32).

Since local norms are thought to be inspired by Islamic teachings and share the common objective with the Aceh Sharia of preventing public immorality, local government utilizes adat to control public morality. The local belief that the adat is superior to the Aceh Shari'a, makes the village apparatus and adat elites hesitant to adopt a legal term from the Aceh Shari'a including the *khalwat* to suggest people to keep proper manners in public space, as can be seen from this billboard:



A billboard suggesting people to observe behaviors following the *sumang* norms

These norms, which relate to shame, honor, and dignity of an individual and a group, have been constructed to defend the community from internal and external threats. However, the local understanding and perception of, and the reaction towards shame are changing following the shift of the community from traditional to modern, from basic monogamy to accepting polygamy, and from a communitarian orientation to individualism. The elderly group holding the power today in Gayo fear that these changes will affect the local standards of morality and proper social structure. Their inability or unwillingness to adapt to the ongoing

change compels them to bring back the old norms through adat law to deal with what they consider a threat to morality. They blame the rapid development of digital technology, mainly the smartphone and TV connecting Gayo society to the globalized cultures so different from their own culture and beliefs.

However, the elderly elite show ambiguity. They are also permissive and even supportive toward their children and family to use such technology which allows them to connect to the same popular and global culture that they consider as moral threats. Nonetheless, when the common understanding of shame is challenged, the elderly group establish a culture of control by recalling the traditional norms of adat with the support of state power. It is a pragmatic solution to maintain the standard of morality, on which social structures and relationships are based.

Farak

Farak literally means exiling someone from his place of origin. It is the Gayonese adat punishment for those who disturb the social equilibrium. Originally, the offenders were banished for one year. Now the practice of *farak* has changed and is performed differently from one village to the other. *Farak* is not exclusively a punishment for those engaged in premarital sex, but this is the main offense to which it is applied. The origin of *farak* is not known. All Gayonese I asked just answered that *farak* has always been part of adat since they can remember. To me, it rather seems to be the adoption of Islamic penal law into adat.

The word *farak* itself is a specific adat legal term, which is not expressed in the everyday language of the Gayonese. The word may have been derived from the Arabic "*faraqa*" which means to disconnect something from its origin. The basic prescription of Islamic penal law on *zina* also suggests to exile offenders for one year, in addition to flogging. The Prophet Muhammad allegedly said: ...when an unmarried man commits adultery with an unmarried woman, they should receive 100 lashes and be exiled for a year. If they were married, they shall receive 100 lashes and be stoned to death... (Cook, 2003, pp. 451). On the basis of this text, all *fiqh* schools, except the Hanafite, agreed that 100 lashes should be followed by banishment for one year for those found guilty of harming the community's stability (Peters, 2005, pp. 60). Perhaps, in the early time of the introduction of Islam to Aceh, Muslim scholars did not introduce the flogging as part of Islamic law punishment for those who committed *zina*, but instead introduced exile. The punishment was applied on a regular basis that became part of the local tradition embedded in adat law. Neither was stoning adopted as punishment for penalizing those guilty of extramarital sex, but instead permanent exile – in which offenders

are considered dead. These legal conceptions from Islamic law have become part of the Gayo cultural system and have been crucial to maintain their social structure and internal harmony.

The Gayonese of the past developed specific legal procedures for the *farak*, which have been preserved until the present. Some villages have made adaptations. Traditionally, a couple coming from the same *belah* who committed zina are forced to conclude an endogamous marriage, followed by exile from the community to any place the offenders wish to go to. They also have to buy a young water buffalo. After one year, the buffalo will be big enough to serve at a feast for all the village members. The feast is a moment where offenders should ask for forgiveness and re-acceptance to again become part of the community. This is also a moment to restore the couple's and their family's honor. Nonetheless, they could not return to the village.

Exile in this cultural context means to re-moralize or to remind the offenders about morality they were neglecting when they were committing a crime. While the re-acceptance through particular rituals means to communicate the evil of the offenders' wrongdoing, it is also a reminder for the village members to avoid such offenses and to increase social control, and cooperation in assessing the crime committed. Braithwaite calls this process "reintegrative shaming" in which shaming is followed by efforts to reintegrate the offender back into the community through word and gesture of forgiveness, or ceremonies in which the village clears the offender as a deviant .

Practically, the Gayonese do not enforce *farak* to those engaged in premarital sex. Since premarital sex is considered a shameful wrongdoing, those who engage in it go out of their way to conceal it. However, when the woman gets pregnant, or fears being pregnant, she will confess her situation, usually to an aunt she is close to. The aunt will then speak on the girl's behalf with her mother or parents, who will then decide whether or not to force their daughter to a marriage. If they opt for forced marriage, the parents will only share the situation to the *imem* of the village who has the traditional authority to conclude such a marriage. Normally, forced marriage is considered as the only solution to maintain the honor of the family as well as to force the man committing premarital sex to take responsibility. The marriage also protects a woman from the stigma attached to those pregnant outside marriage. Equally important is that the marriage guarantees lineage for the baby, which is crucial in Islamic tradition and patriarchal society. The forced marriage shows that adat, using religious reasoning, is more concerned with the social implications from the act than the religious implication of framing offenders as sinners.

According to Zubaidah, who is the only female member of the state agency for Gayo Adat, the Gayo Adat Assembly (MAG, *Majelis Adat Gayo*) of Bener Meriah district, marrying premarital sex committers to each other is suggested by the Syafi'e and Hanafi schools of law. Socially, however, forcing the couple to a marriage is meant to give social protection to the woman. Zubaidah says that: "...the man cannot only enjoy reaching the earthly heaven (*surge deniye*) and then leave the woman without responsibility. They enjoyed it together and they have to take the consequences together, too." Yet, in her opinion, the marriage does not release them from the sin of *zina*, which has religious implications. The religious implication of becoming a sinner from *zina* affects the individual and can only be eliminated when he or she repents to God: "That is their business to God, but our social structure and other earthly matters such as inheritance and child custody have to be guaranteed and protected. These are matters for adat" says Zubaidah.

Normally, the forced *endogamous* marriage is organized noiselessly and without any festivity. Since endogamous marriage is prohibited, society will quickly assume that whoever gets married internally and silently must have been engaged in premarital sex. This situation often forces the married couple to live in permanent exile. Although they have been subject to all the adat punishments, the purpose of that exercise is only aimed at restoring their ancestral identity that ties them to their *belah*, social structure, and each core family's dignity. Their public repentance releases them from public shaming, stigma and other adat punishments that follow *farak* such as being prohibited from visiting their family freely during their exile.

Farak is considered more effective to tackle public immoral acts and premarital sex than Aceh Shari'a. According to all my informants, Aceh Shari'a does not legally separate premarital sex from extramarital sex, which means both are treated equally by the law. Before the introduction of the Qanun on *Jinayah*, *zina* was treated equally to *khalwat*. Meanwhile, traditional Islamic law distinguishes punishment for premarital sex from extramarital sex. Aside from the generalization of *zina*, Gayonese also hold that Aceh Shari'a is unjustly enforced. As they put it, the Shari'a has been sharpened toward the poor but dulled toward the rich [elite].

The legal conception of *zina* in Aceh Shari'a is challenged by the Gayonese adat. The adat distinguishes between two forms of *zina,* with different legal consequences. Premarital sex is associated with the "acts of youth going too far" (*perbuatan muda-mudi yang kelewatan*). This hints at the commonality of the practice and public acceptance, although it is still considered wrongdoing and prohibited. Meanwhile, extramarital sex is unacceptable because one is

considered betraying the contract of marriage that has religious, social and political significance. This explains why I observed that almost all premarital sex cases are addressed by the adat legal system and no cases are tried at the Mahkamah Syar'iyah.

The Practice of Farak

Not all villages in Central Aceh and Bener Meriah districts maintain the *farak*. The practice of such traditional punishment depends very much -–if not entirely –-on the level of urbanization of the society and village leadership. The practice is not observed in multicultural villages located right in the heart of the capital city of Central Aceh district or in villages dominated by migrant Javanese and Minangkabau. In Central Aceh, it is maintained by all the villages surrounding the Lake of Lot Tawar, upper stream villages like Linge, and those associated with the Uken or Lot communities. In Bener Meriah district, *farak* remains practiced in villages where Gayonese are the majority.

The practice of *farak* is different from one village to another. Some villages, like Jongok Meluem, which is less than one kilometer away from Lot Kala village, see the fine levied for not paying the water buffalo as an alternative form of exile. If offenders cannot pay the water buffalo, they will be immediately exiled from the village. By contrast, in Lot Kala village *farak* is a sequential punishment. Offenders have to be in exile for at least three months, originally even one year, before they are allowed to pay the fine. The strictest village is Linge, two hours by car from the capital city, where offenders have to be in exile for one year before they are allowed to pay the fine. This difference, or local discretion, in implementing the broad concept of Gayo adat law is called *resam*.

In Bener Meriah district, at least three communities consistently maintain the practice of *farak* and *jeret naru*: Kenawat, Tingkem and Hakim. As we have seen in the previous chapter, other villages, like Rembele, developed a new adat law and mechanism to control *zina*. After many years of not enforcing adat punishments, the Hakim community re-introduced *farak* in 2008 after the community forced a couple who had been engaged in premarital sex to have an endogamous marriage. The couple was then exiled from the community.

For a while, this case in Hakim led to much discussion among Gayonese in Bener Meriah. Since the late 1980s, there had been no penalty for endogamy in Hakim, even if the community still considered it shameful. At the time some expected that the practice of adat was evolving and being adapted to current developments, specifically to the increased level of migration while others argued that adat was being adapted to Islamic teachings, which do not prohibit endogamous marriage.

The latter interpretation of adat has a long history. Well-known Muslim scholar Saleh Adri, one of the leaders of the Ulama Revolt of Darul Islam in Central Aceh, campaigned for the creation of a Muslim community in Central Aceh after Indonesia became independent. In his mission to replace adat with Islamic norms, Adri traveled to villages calling for the replacement of adat with Islamic tradition. One of his campaigns was to allow endogamous marriage. However, the *Belah*'s rulers angrily protested this idea. They argued that allowing endogamy meant allowing the practice of *zina*. They strongly opposed endogamy by saying "we are not goats!", indicating that adat practice had to be maintained to organize and guarantee the continuity of their social structure and life. In the end, the campaign was unsuccessful (Bowen, 1991, pp. 112).

Today, several Islamic leaders and adat elites agree on the fusion of Islam and adat. As I discussed in the previous chapter, these religious leaders' turn to adat is a response to their earlier failure to replace the practice of adat with Islamic rules. Senior Muslim scholars now justify the practice of adat with Islamic reasoning based on the Quran and the prophet's tradition. A good example of this return to adat is the effort of Mahmud Ibrahim and Pinan, local Muslim scholars, as well as officials and members of the adat elite to make an inventory of all adat practices, including those no longer practiced today, and link them with Islamic legal reasoning (Ibrahim and Pinan, 2002, 2005, 2010).

The adoption of adat as an alternative law to Islamic law is also promoted by Alwin Alahad, a young man from Hakim *belah* living in Hakim Weh Ilang village, who is the leader of the Bener Meriah District branch of the fundamentalist Islamic organization Hizbut Tahrir Indonesia. For him, *farak* is not only a matter for adat, but a religious matter related to *zina*. Alwin regularly campaigns in Bener Meriah District for living under Islamic law within the Islamic political system of the Caliphate, which is the grand idea of Hizbut Tahrir campaigns across Indonesia and the world. His approach to *zina,* however, is more cultural.

A month after an offender of *zina* had been married internally by the village, Alwin planned to initiate a *mangan murum* (annual clan feast tradition).[24] In doing so, he approached all Hakim *belah* members who live scattered in three different districts; Bener Meriah, Central Aceh, and Gayo Lues. Some headmen welcomed the idea, while others were reluctant. But Alwin continued to push by arguing that "…religious teachings must be delivered and practiced first in the

[24] *Mangan murum* is an old gathering tradition that collects scattered clan members. Practically, it is similar to a potluck in the western tradition, where the invitees contribute to the feast or at least for their own meal.

internal family (*belah*), then in the larger community," as he said during my interview with him.

In 2009, the first *magang murum* was organized in Weh Ilang Village, where Alwin resides. It included all eleven *belah*.[3] As the organizer, Alwin delivered the first speech about the importance of the *farak* and *mangan murum* traditions. One of his points was that

> "...what happened to the couple [who had premarital sex and were forced into internal marriage] was shameful for us. It has to be avoided by now. Our ancestors did that by prohibiting endogamy and set *farak* or *jeret naru* as a penalty. They are the lowest degree of punishment for outlawing sexual intercourse. However, as Muslims, we have to follow the Quran's instruction. The Quran instructs us to lash those who are involved in *zina* with 100 lashes. As true Muslims, we have to do this. Do you agree?"

An old attendee then responded: "well, that is too harsh. We do not have the heart to implement that." "Well," Alwin responded, "we have the alternative in our culture, which is *farak* and *jerut naru*. They are the only options we have in our adat since there is no other alternative transmitted down to us."

Alwin explained the importance of the *mangang murum* tradition that dictates that all Hakim *belah* members from different areas get to know each other and treat one another like family. In this manner, Hakim *belah* members will know with whom they are prohibited from marrying. According to Alwin, since the *belah* reunion, no premarital sex cases have been observed anymore.

According to another interlocutor, Lewa, the practice of *Farak* took its original form in Hakim *belah*:

> "...in the past, Gayonese were not as many as today. This village (Jongok) was tiny. So, we knew each other very well. Because we were few, our ancestors agreed to be bonded as a *belah*. We did not originate from the same source. Some of us came from coastal Aceh and were Acehnese in origin. Just like your great grandpa" [here he pointed at Sapta, my research assistant]. "Because we were tied as brothers, every child around the *belah* was treated as our own child too. Our houses were their houses...to maintain this union, our ancestors agreed to prohibit endogamous marriage...during the colonial time, many youths from each *belah* opened paddy fields far into the jungle. They looked for a valley. Some of them opened new coffee estates following altitude signs that were put in place by the Dutch. Coffee estates were new in Gayo. There, they opened a

PUTUSAN PERADILAN ADAT
KAMPUNG LOT KALA

Sehubungan telah terjadinya perbuatan Pelanggaran Adat Kampung Lot Kala Kerje Sabi Diri (Nikah Se-kampung) oleh sepasang pemuda/pemudi Kampung Lot Kala, yaitu :

1. Nama : [redacted]
   Tempat/Tgl Lahir :
   Pekerjaan :
   Alamat :
   ----Selanjutnya disebut Pihak I (Pertama)---

2. Nama : [redacted]
   Tempat/Tgl Lahir :
   Pekerjaan :
   Alamat :
   ---Selanjutnya disebut Pihak II (Kedua)---

Maka pada hari ini Sabtu tanggal Sebelas bulan Januari tahun Dua Ribu Enam Belas, Majelis Peradilan Adat Kampung Lot Kala Kemukiman Kebayakan Kecamatan Kebayakan Kabupaten Aceh Tengah, memutuskan :

1. Menjatuhkan Sanksi kepada Pihak I dan Pihak II berupa :
   - *Gere Igenapi :*
     a. Warga belah, masyarakat kampung Lot Kala, maupun Pemerintah Kampung Lot Kala tidak akan mengikuti/menghadiri acara pernikahan tersebut.
     b. Pemerintah Kampung Lot Kala tidak akan mengeluarkan segala bentuk surat untuk persyaratan nikah.
   - *Parak :*
     a. Diusir dari kampung Lot Kala dan tidak boleh lagi hadir di kampung Lot Kala baik sinte Murip maupun sinte Mate.
     b. Pemerintah Kampung Lot Kala mengeluarkan Surat Pindah kepada Pihak I dan Pihak II ke kampung lain sesuai yang mereka kehendaki.
   - *Dene (Denda) :*
     a. Mugelih Koro (Memotong se-ekor kerbau)
     b. Oros urum belenye segenap dirie (Beras dan belanja secukupnya)
   - *Niro maaf:*
     Permintaan maaf kepada masyarakat Kampung Lot Kala.

2. Jika Pihak I dan Pihak II dapat memenuhi sanksi adat tersebut diatas maka saat itu pula dia boleh pulang kembali ke kampung Lot Kala dan diadakan acara *dame* (perdamaian) dengan masyarakat Lot Kala dalam suatu acara perdamaian sekaligus memulihkan nama baik/ harkat martabat Pihak I dan Pihak II dan juga keluarganya.

Demikianlah Putusan ini kami perbuat dengan sebenarnya.

Majelis Peradilan Adat Kampung Lot Kala

Rayat (RGM) — Petue — Reje

Siswan Amri — Ismail — Yusuf — Kurnia

Sekretaris Majelis

Ihwan Sabri

new settlement that turned out as a village. They named the new village with their original village's name with some additional words attached to it. That was how many villages' names are similar across the Gayo land to indicate that they came from the same *belah* origin. By doing so, they would know whom one can marry with…"

In a large number of villages in both Bener Meriah and Central Aceh district, the jurisdiction of *farak* changed following the territorial changes from *belah* to village and following the change of the community affiliation and ties from *belah* to village community. The *farak* is no longer applicable to non-village members, although they are from the same original *belah*. Presently, this limitation in the enforcement of *farak* is overcome by the WH Kampong, which I will discuss later. The Hakim community is an exception in this case, because the *farak* jurisdiction goes beyond the village territory as they set an agreement to expand the jurisdiction to all eleven villages in the three districts.

In Central Aceh, villages in the Kebayakan sub-district are among the places where *farak* is observed. In January 2014, a young couple from two different *belah* (the man was from *belah* Lot and the woman from *belah* Ciq) who were living in the same village of Lot Kala committed premarital sex and were forced to leave the village temporarily. The adat village institution, the *Sara Kopat*, did not agree to participate in the wedding because they considered it in violation of adat law. The *Sara Kopat* then imposed a punishment, as shown in the image of previous page (I provide a translation for the section of punishment in the footnote):[25]

[25]

1. Pronouncing sanctions to Party I and Party II in the form of:
   a. *Gere igenapi* ((village) will not complete (support))
      i. *Belah* (clan) member, Lot Kala village members, as well as apparatus of Lot Kala village will not participate in /attend the wedding
      ii. The administration of Lot Kala village will not issue any related documents to legalize the marriage
   b. *Parak* (*Farak* in the Qanun)
      i. The bridegroom will be expelled from Lot Kala Village and cannot be present at the village for attending any life events (*sinte morep*) or funerals (*sinte mate*).
      ii. The administration of Lot Kala village will issue a Letter of Moving for Party I and Party II to any village they like to domicile in.
   c. *Dene* (penalty)
      i. Submitting a water buffalo
      ii. Sufficient rice and funds
   d. *Niro Maaf* (making an apology / asking for forgiveness)

   Making an apology to / asking for forgiveness from the village community.
2. When Party I and Party II have fulfilled the mentioned *edet* sanctions, they will be allowed to return to Lot Kala Village and the reconciliation with Lot Kala village members will be facilitated through a reconciliation event to restore the name and dignity of Party I and Party II as well as their families.

The last point means that their bond as husband and wife will be socially recognized.

Escaping from Farak

Not all of those who engage in endogamous marriage are forced to leave the village. Sometimes, village governments do not enforce the *farak* intentionally, mostly to protect the woman, by manipulating the residential registration of a couple in question. This village government strategy to differentiate legal consequences for an identical offense is imitated by non-native members of the village, who wish to marry someone from the same village. They move their residential registration to another village prior to the marriage arrangement to avoid punishment. This is now possible because the meaning of *belah* and adat law have shifted from personal to territorial. The present section discusses two such cases.

In November 2014, an unmarried young woman and her mother came to the home of Saifullah, the *imem* of the Mendale village. The girl confessed that she had become pregnant, while her boyfriend, whose parents lived just three doors from her parent's house, seemed to have left her. In Gayo, such a pregnancy outside of marriage is considered not only shameful for the individual concerned or the family but also for the community. The girl and her mother asked Saifullah for law/justice (*muniro hokom*). *Muniro hokom* (asking for justice) is an adat legal procedure for a woman who wants to marry a man from the same or different *belah* or community with the assistance of the village institutions who have the authority to force a member of the community into such marriage or to speak on her behalf with other adat officials from where the man resides. Once this procedure has started, the village officials have the obligation to follow it through although they are aware that the request originates in *zina*.

The next day, the *imem* and the head of the neighborhood where the woman resided, visited both the woman's and the man's family for confirmation as well as to solve the issue. After difficult meetings with both sets of parents, the village officials agreed to force the man to marry the pregnant woman. However, according to his family, the man had gone to Jakarta three months ago searching for a job. The man's extended family and the woman tried their best to find him. They found out that he had already returned from Jakarta but rather than going home, he was staying at the house of a friend. His family, together with the *imem* and the head of the neighborhood then visited him, explaining the religious, moral and adat consequences of his deeds. They tried to convince him to marry the woman for the dignity of himself, the family, and the village.

Normally the couple would be subject to the *farak* penalty. However, Saifullah and the other village officials considered that enforcing *farak* would raise other potential issues for the woman, because the man had already behaved

irresponsibly prior to the marriage. They believed that he would do the same in exile. To avoid future problems for the woman and her child, Saifullah suggested to the woman's family to obtain an official letter of not being married (locally known as *Surat Perawan* [Statement of being Single]) from the village where she and her family had lived before moving to Mendale in 2012. Mendale village would issue the same statement for the man (*Surat Perjaka*). This letter of being single is required by the Ministry of Religious Affairs No.DJ. II/1142/2013 for those who have never been married and for a divorced person who wants to remarry. By manipulating the residential status in this manner, the village government could avoid pronouncing the *farak*.

After having completed the marriage administration, the couple were married without any festivities and with a very limited number of invitees. The village administration skipped the adat marriage procedure and performed the Islamic and state procedure for legitimation of the marriage. The villagers did not participate in preparing for the wedding, except the village officials and the direct neighborhood out of respect for the couple's parents and because of their social responsibility.

Manipulating residential status is not limited to cases where premarital sex took place. In fact, it is the only way to engage in an endogamous marriage. The difference is that in cases not involving pregnancies because of premarital sex the couple will manage independently without the assistance from village officials.

Many have protested against the application of *farak* to non-natives. However, generally people are forced to accept the norm or leave the village. Village officials use their authority as state and community representatives to this end but also utilize their position as gatekeepers to the state in the marriage process. They deploy the power of the law from the state and regional regulations which support the re-introduction of adat penal law even if they are aware that the enforcement of the adat law opposes higher law on the individual citizen's rights to reside anywhere in Indonesia.

Since offenders are dependent on communal assistance, none of them appeal their case to the state. Neither can the police intervene although the enforcement of the *farak* penalty goes beyond the legal boundary applying to adat officials. Aside from the fact that the majority of police officers share the common cultural values and norms of the village, it is also risky to intervene and go against an adat decision or communal consensus. The village government (consisting of adat officials) is an important partner for the police as the former seeks to increase social stability and security and the latter will not jeopardize this support. The

mutual interest of the village government and police reinforces the authority and the power of the former.

WH Kampong

This section discusses the utilization of adat by the district government to support the enforcement of the Aceh Shari'a project on controlling public morality and *zina*. The *reje* have argued that the *farak* cannot serve this purpose, as it applies specifically to cases concerning premarital sex and because its practice varies from one village to another. Therefore, the district government has opted to invoke the so-called *sumang* norm for the enforcement of Shari'a. The turn to adat for this purpose has to do with the financial and institutional limitations of the agency enforcing Aceh Shari'a. This approach reconciles two different legal systems – the state Shari'a of Aceh province and adat law – by creating a village Shari'a officer unit or *Wilayatul Hisbah Kampong* (WH Kampong). This unit is a prime example of interlegality, in which the legal provisions of two legal systems are blended and applied as a result of the assimilation of two legal systems, Aceh Shari'a and adat, to support the enforcement of penal law norms.

The use of adat and the creation of WH Kampong to deal with moral degradation in Gayo is a clear reflection of moral panic in Indonesia. Moral panic is a situation where society and government define any emerging condition, episode, person or group of persons as a threat to societal values and interest. Socially authorized experts will pronounce diagnoses and solutions to cope with the 'deterioration' as it becomes more visible (Cohen, 1980, p. 1). In Indonesia, the moral panic is often addressed to the emerging demand on the right of sexual freedom, including homosexuality (Wijaya, 2022) which is connected to modernization and spreads through the internet (Lim, 2013). Aside from using violence, authorities respond to this condition by politicizing and regulating morality, as for example the enactment of the Anti-Pornography law and attempts to criminalize LGBT people in the revised Indonesian penal law (Blackwood, 2007; Wijaya, 2022). Some community group like the Balinese, see the early marriage practice as the solution to control sexual desire of youth and to deal with liberal values promoted through westernized education, media propaganda, peer pressure (Horii, 2020).

In Gayo, local communities have responded to this moral panic by re-enforcing adat norms and the creation of WH Kampong, a specific monitoring unit funded by the district government. The creation of the WH Kampong was inspired by a premarital sex case in Lot Kala village. The case happened prior to my fieldwork in mid-2014. Ichwan, acting as the secretary of Lot Kala at the time we

met in October 2014, recalled it from his memory and the meeting note that he stored in the village office archives. The case occurred in late 2011. Bunga and Kumbang (fictitious names) were caught by some local youths of Lot Kala village while involved in extramarital sex. Bunga worked as a nurse at the local hospital and Kumbang was an ambulance driver for the same hospital. Bunga was married with a police officer. However, since early 2011, Bunga often brought Kumbang to her house when her husband had a night shift at the local central police department.

The presence of Kumbang in Bunga's house during these night shifts raised the suspicion of the villagers. As mentioned earlier, visiting a married woman's house without the presence of any guardian such as husband, son, or relatives is considered offending *sumang*. After careful observation, some local youths planned to catch the couple. They silently surrounded Bunga's house during one of Bunga's husband's night shifts, caught the two half-dressed, and dragged them to the village office.

All village officials were present at the office to conduct a trial as an adat tribunal. Bunga's husband was called in to attend the trial. After some discussion among the village officials and some respected village members, the tribunal concluded that the offenders would be fined IDR 1,5 million each to clean the village "floor" (land) (*Pembersih Lante*) which they had "smeared." The village also forced them to apologize publicly in the village mosque.

Kumbang went home immediately after making the public apology and paid the penalty in the mosque the next day but the situation with Bunga was more complex. Traditionally, extramarital sex offenders have to be sent off permanently from the village as they are subject to *jeret naru* punishment. This meant that Bunga would be expelled. However, it was a difficult decision for the village officials to pronounce this punishment considering that her husband accepted her back even if she had cheated on him. In the end, they decided not to expel her, but instead agreed that she would be closely monitored.

This triggered debate in the village. Many, particularly among the youth, argued that Bunga had to be expelled even though her husband had reaccepted her. In the following week, during a meeting for the preparation of an Islamic day event, an intense debate took place. Among those present was Saleh Sama'un, a respected village member who had just been appointed head of the local DSI (2011-2014). He argued that by law villagers could not expel anyone because citizens have the right to stay wherever they wish. Admittedly, the Qanun (of the Aceh Shari'a) states that both offenders have to be flogged in front of the public, but, according to Sama'un, this did not deter people from committing *zina*.. Therefore, during the

meeting Sama'un suggested that "…by adat, we can do anything we want to, and we are allowed to do so in the current situation. The government now supports the enforcement of adat law. Adat law is the possible solution to deter potential offenders and to remind the public about the consequences of the offense."

Then Sama'un proposed to establish a WH Kampong unit in villages around the Lake of Lot Tawar. During my meeting with him, he observed that adat is useful to conceal the limitations of the government in the enforcement of the Aceh Shari'a. To this end, he recruited a number of young village members, who are considered the cultural "fence of the village." I found that this use of adat to reinforce the implementation of sharia was endorsed by Alyasa Abubakar, the first Head of the Provincial Agency for Shari'a, who is a Gayonese himself and who stated that "adat punishment may be applied as a form of punishment for the violation of State Sharia" (Srimulyani, 2010, p. 334).

The Gayonese and Acehnese believe in the compatibility of adat with Shari'a. Not much is known yet about this co-application of adat and Aceh Shari'a in contemporary coastal Aceh, where it is also known to take place. Feener has provided some general information about the cooperation between the State Shari'a Police (WH, *Wilayatul Hisbah*) and adat institutions. He gives an example from Peureulak of East Aceh, where the state WH handed over 25 cases of *khalwat* to the adat officials. According to Feener, this indicates the inability of the WH to perform their primary duty. i.e. monitoring the implementation of Aceh Shari'a. At the same time, it reflects the perceived compatibility between adat and Shari'a in Aceh province (Feener, 2013, p. 245).

The WH is indeed constrained by limitations in their budget and human resources. Some people also blame this fact on the removal of the WH from the DSI office[26] and its incorporation into the Municipal Police (Satpol PP, *Satuan Polisi Pamong Praja*) in 2008, as regulated in Article 244 of the Law on Governance of Aceh, which is the outcome of the peace agreement concluded in 2005 between the Free Aceh Movement (GAM, Gerakan Aceh Merdeka) and the Indonesian Armed Force (Indonesia, 2012b, 2012a; Feener, 2013, pp. 222–233, 2016, p. 13). This indeed caused a decrease in Aceh Shari'a enforcement: to surveil the entire 4.318,39 km2 territory of Central Aceh, the WH had less than fifteen staff members The founding of the WH Kampong was a response to this situation. WH and WH Kampong are not linked to each other and the latter reports to the district DSI office and the relevant adat officials. The unit is funded by the DSI.

[26] For the pattern of WH activity after its inclusion into the Civil Investigator Agency see (Otto and Otto, 2015).

The WH Kampong members are the village youths around the popular tourism areas of Lake of Lot Tawar and Takengen city. The WH Kampong was not initially created in neighborhoods located in the very center of Takengen city, where dating – in a polite and respectful manner – is acceptable. Cafés, for example, are popular places for dating. By contrast, dating in quiet places in the forested tourism areas of Central Aceh is suspect.

The members of the WH Kampong are tightly selected and appointed by village officials. During my fieldwork I found them to be between 30-45 years of age and already married. According to some *reje* in Kebanyakan, marriage is the most important qualification for being a member of the WH Kampong as they will deal with moral and sexual offenses. Being married will prevent them from getting out of control during the investigation. The assumption is that unmarried members would potentially get involved in offenses themselves or use their power for fulfilling their own sexual desire or other interests. Firmansyah (40 years old) told me that once his team was offered sex by a beautiful woman who was caught committing premarital sex with her partner by the lake of Lot Tawar: "it was an opportunity, but my family and extended family soon appeared in my mind and guilt soon filled me", he said during our first meeting.

These selected youths are authorized by the DSI to raid offenders of Aceh Shari'a and adat norms. They are trained by higher state officials, including high-rank military and police officers. These are also needed to provide the WH Kampong protection if they get into trouble with military or police officers who are unhappy with their activities. Indeed, fights between military and police officers with the WH Kampong occasionally occur. This makes working at the WH Kampong a risky job, which is moreover poorly paid – only IDR. 150.000/month at the time. Firmansyah, one of the three WH Kampong members from Mendale village said the following about the current situation:

> "…the risk is too high, indeed. I often end up fighting with the army or police officers who ask to release their friends, relatives or whoever called them for help. Moreover, the DSI cannot give legal support if we are in trouble. Only a phone number of a high-ranking official from the armed force and police department, which have been shared with us, can be a help against the arrogance of such lower rank officers…"

Nevertheless, the WH Kampong members, in general, showed a high degree of determination. During my engagement with the WH Kampong, I found no religious reasons motivating their involvement in the unit but instead the wish to

restore the traditional adat morals. My first acquaintance with the members of the unit from Mendale village was on a Friday afternoon. Firman invited me to his coffee estate by the lake's coast. We sat in a hut built on the lakeshore enjoying the beauty of the lake, talking, and in so doing missed the Friday prayer. When Firman realized we had skipped the prayer, he showed no sign of feeling uncomfortable but offered me lunch with the other WH Kampong members. They prepared the lunch carefully, with ingredients they brought from home, which suggested to me that they had planned to skip the prayer.

Firman later told me that his motivation to join the WH Kampong was raised by the most shameful situation he ever experienced. One day, he was rowing a boat on the lake with his parents; they were heading to the coffee estate where we had our first meeting. Then, he saw a young couple at the lakeshore. The man had put his arm around the girl's shoulder, but his hand was under her shirt: "Looking at the couple, I was feeling embarrassed to my parents. I could not say anything but turned my face to the lake. I did not dare to look at the land until I passed the area. My parents were silent. I believe they also saw them but preferred to be quiet. Maybe they were also feeling embarrassed to me," said Firman.

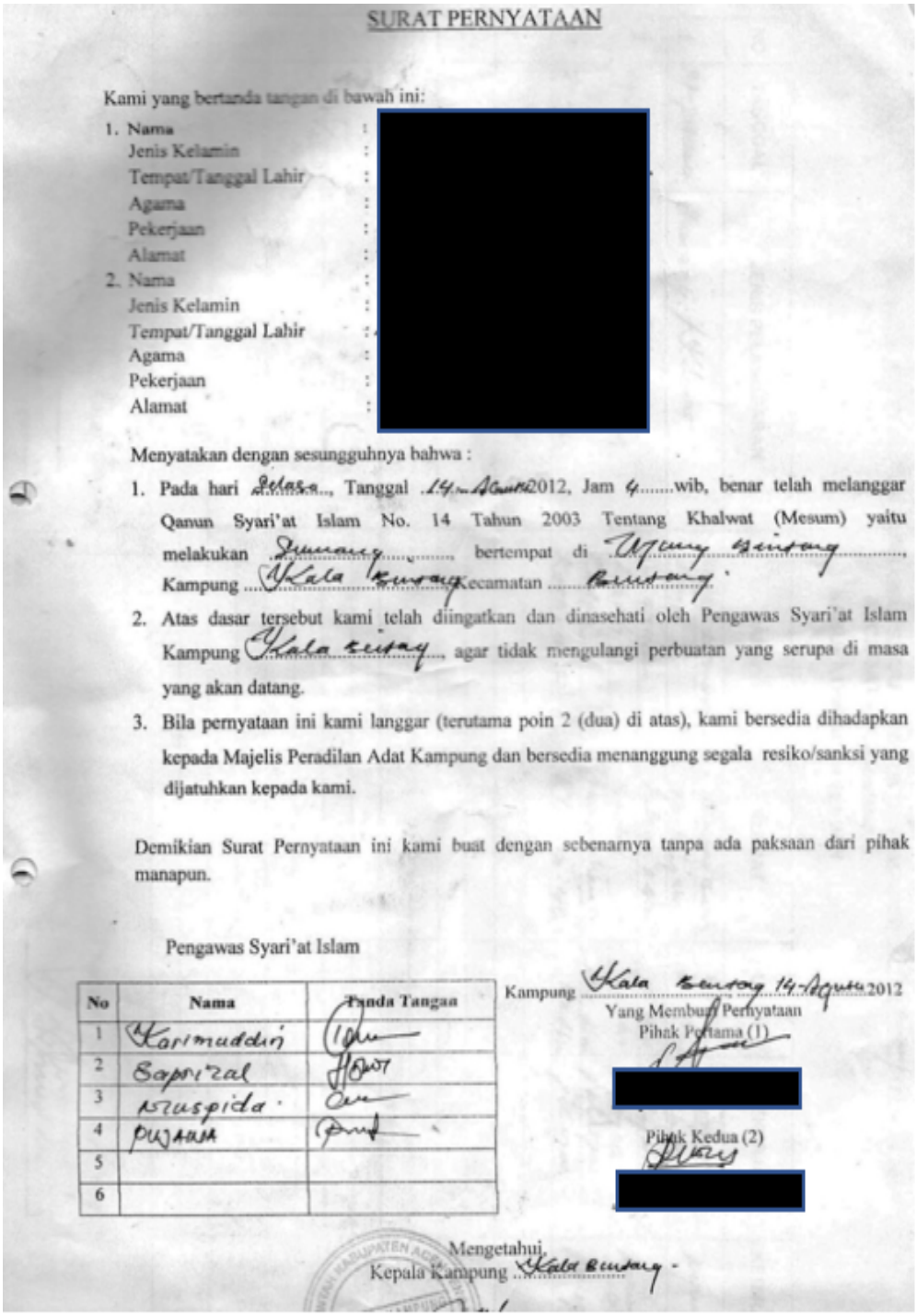
Initially, in 2011, the WH Kampong was formed in nine villages of five sub-districts around the lake of Lot Tawar. During this year, the DSI of Central Aceh received 24 reports of offenses relating to immoral acts. In 2012, the reporting drastically increased to 315 cases when the monitored areas were expanded and when the government also authorized adat institutions to address additional immoral acts and *zina* offenses. The 315 cases consisted of 282 minor cases and 33 major cases from 23 villages. By contrast, during the same period, the Mahkamah Syariah did not try any case relating to the offense of *khalwat/zina* under Aceh Shari'a.

According to Sarwani, head of the law division of the district DSI (2012-2015), dating in secluded places falls into the category of minor cases. When they have been caught, the offenders will be ordered to leave the place and/or are given a written warning. Engaging in *zina*, on the other hand, falls into the category of major offenses. Adat institutions process both. The adat tribunal has no right to detain offenders but it only releases them after the *reje* or his representative and the parents have arrived.

The DSI has standardized the fines, which are called *Pembasoh Lante* ("cleaning the floor", as we already know from the case of Kumbang and Bunga). A minor offence will be fined around IDR 300,000 to 500,000 for each person involved. The major category has a fine from IDR 1000,000 to 1,500,000. The village government will share the fine with the youths of the village, who are traditionally

responsible to guard the village and its moral standard. They will also provide a share to the members of the WH Kampong, as an additional income to their poor salary. In addition, the DSI grants IDR, 1,000,000 to the village and the WH Kampong as a reward for each reported case that has been tried at the adat tribunal.

In reality, the number of *khalwat/zina* cases was much higher than reported by the DSI. In 2012-2013 Mendale village alone processed more than 30 cases per month on average, both minor and major category ones. Hasan Basri, head of Buntul neighborhood, said that he might even process up to five cases a day. This was quite time-consuming, as sometimes he had to retain offenders at his home overnight until their parents came for them in the early morning. According to Basri he reported only a few of the cases he handled to the DSI and then changed the names of the suspects to protect their reputation. Some of the couples caught in fact were in a serious relationship and later on even invited him to their wedding.



SURAT PERNYATAAN

Kami yang bertanda tangan di bawah ini:

1. Nama :
   Jenis Kelamin :
   Tempat/Tanggal Lahir :
   Agama :
   Pekerjaan :
   Alamat :
2. Nama :
   Jenis Kelamin :
   Tempat/Tanggal Lahir :
   Agama :
   Pekerjaan :
   Alamat :

Menyatakan dengan sesungguhnya bahwa :

1. Pada hari Selasa.., Tanggal 14-Agustus 2012, Jam 4.....wib, benar telah melanggar Qanun Syari'at Islam No. 14 Tahun 2003 Tentang Khalwat (Mesum) yaitu melakukan Sumang ..... bertempat di Ujung Bintang ..... Kampung Kala Kenang Kecamatan Bintang .
2. Atas dasar tersebut kami telah diingatkan dan dinasehati oleh Pengawas Syari'at Islam Kampung Kala Kenang, agar tidak mengulangi perbuatan yang serupa di masa yang akan datang.
3. Bila pernyataan ini kami langgar (terutama poin 2 (dua) di atas), kami bersedia dihadapkan kepada Majelis Peradilan Adat Kampung dan bersedia menanggung segala resiko/sanksi yang dijatuhkan kepada kami.

Demikian Surat Pernyataan ini kami buat dengan sebenarnya tanpa ada paksaan dari pihak manapun.

Pengawas Syari'at Islam

No	Nama	Tanda Tangan
1	Karimuddin	
2	Saprizal	
3	Muspida	
4	PUJAWA	
5		
6		

Kampung Kala Kenang 14-Agustus 2012

Yang Membuat Pernyataan

Pihak Pertama (1)

Pihak Kedua (2)

Mengetahui,

Kepala Kampung Kala Kenang

This document was collected from the DSI of Central Aceh. The offenders are given a warning not to engage in khalwat again; if they do they agree to be taken to the adat tribunal. Most probably the offense is considered as violating sumang kenununlen, since the couple were caught dating in a secluded place in Ujung Bintang Village. The document clearly suggests the interlegality of state Shari'a and adat: the adat tribunal will try a case that is referred to by a term from Aceh Shari'a.

Nonetheless, the DSI office had not anticipated so many reported cases. They exceeded the budget allocated for the reward per case. Hence the DSI postponed a payment of IDR 15,000,000 to Mendale village. Firmansyah said the DSI initially suspected that the village was making up reports to receive the reward money, as Mendale reported more cases than other villages. He was furious about this allegation and shared his anger with a friend, a police officer. The latter then taught him how to collect evidence using a camera. The photos and videos henceforth supporting the reports from his unit of Mendale then forced the DSI to acknowledge the veracity of the cases.

The Increase of Underage Marriage

One of the consequences of the use of adat by the government to support the Aceh Shari'a project on public morality has been an increase in the number of underage marriages. During my fieldwork, I did not see any cases of premarital sex or *khalwat* being tried by the Mahkamah Syar'iyah. The reason is that the DSI officers made sure that such cases were not further processed by state agencies. Remarkably, some teenage couples wanting to get married in fact made sure that they were caught by the WH Kampong as they knew that this would enable them to obtain a 'forced' marriage under the *sumang* rules. In villages without WH Kampong units, teenagers used 'ordinary villagers' for the same purpose. In one of the four cases I collected, a minor used a friend's help to inform villagers that he was in his girlfriend's house. This situation would compel the local youths to drag the couple out of the house and thus ultimately into the bridal bed.

Many local officials hesitate to report such cases in order to avoid offenders from getting punished under Aceh Shari'a. They consider Aceh Shari'a unjust, not only in its enforcement of *zina* and public morality, but also in its formulation. The first qanun on *khalwat,* Qanun 14/2003, did not differentiate dating and premarital sex from extramarital sex. All these were categorized as *khalwat* and therefore equally punished. Later, the provincial government revised the classification of sexual offenses in Qanun 6/2014 on *Jinayah*. The Qanun differentiates sexual offenses into *khalwat*, *zina*, gay sex, lesbian sex, rape, and sexual abuse. However, while dating in a secluded place is now classified separately as *khalwat*, premarital and extramarital sex are still uniformly defined and categorized as *zina*. They are therefore treated equally by the state. This general nature of the *zina* category is one of the factors which have led to an increased role of adat law in handling premarital and extramarital sex, which treats them differently – and in accordance with the common local sense of justice.

Following the creation of the WH Kampong, the number of underage couples applying for marriage compensation to the Mahkamah Syar'iyah of Takengen increased from seven in 2010 to 22 in 2011. From 2011 to 2017, as shown in the following table, the judges granted 221 underage marriage applications from a total of 247. They rejected none, as the 26 they did not grant were withdrawn.

Table I

Year	Request	Consented	Denied
2009	2	2	0
2010	7	7	0
2011	22	21	0
2012	40	32	0
2013	48	42	0
2014	32	26	0
2015	42	42	0
2016	38	38	0
2017	25	25	0
Total	256	230	0

Collected from Mahkamah Syar'iyah of Central Aceh

Although other factors may have led to this increase as well, the establishment of the WH Kampong is most likely one of the leading causes of the growing trend of underage marriage in Central Aceh. In Central Aceh, as well as in Bener Meriah, young couples have always established romantic relationships without the knowledge of their parents. In order to get the *sumang* norm enforced upon them, they will do their dating in a place where an active WH Kampong unit patrols. Once they are caught by the WH Kampong and brought to the adat official, their parents, whose sensibility is strongly tied to local values and the *sumang* norm, will be embarrassed and try to lift the social and psychological burden of shame by arranging the early marriage.

As shown above, the judges at the Mahkamah Syar'iyah never reject a request for marriage dispensation. According to a judge at Mahkamah Syar'iyah of Central Aceh, their responsibility is to prevent *zina*. The judges refer in their decisions to the Islamic jurisprudential principle that "denying and preventing major damage is better than achieving the good." Preventing a couple from engaging in *zina*, which is considered the second most sinful deed in Islam (after denying the oneness of Allah), is better than rejecting a marriage proposal.

Religious judges in West Java, so in quite a different context, apply the same line of reasoning. Their fear of having people commit a sin is the most influential factor in deciding to grant a marriage dispensation (Grijns and Horii, 2018a, p. 458). In addition, judges at the Mahkamah Syar'iyah of Takengen emphasize the religious reasoning by saying that marriage is generally among the most recommended deeds, even though the couple is underage and economically dependent. The Takengen Court Chairman argued that: "…those who marry complete their faith; we cannot prevent people to complete their faith and follow the Prophet's tradition." The judges support their decision by reference to the Prophet Muhammad's marriage with his wife 'Aisyah. At the time of the wedding, 'Aisyah was 12 years old. The Prophet Muhammad's marriage is taken as a legal foundation for the judge's consent.

Applicants who withdraw the underage marriage proposal from the court normally speaking do continue with the marriage but do not register it. They delay the marriage registration until one of them, or both, have reached the legal age for marriage (19 for both man and woman according to the current revised marriage law of Indonesia). As a consequence, the couple has to redo their marriage in front of the Office of Religious Affairs at the sub-district or register their marriage at the circuit court conducted by the judges of Mahkamah Syar'iyah.

The increase in underage marriage caused by offending adat penal law shows that the enforcement of one legal system is influenced by the enforcement of the other. In this case, the enforcement of marriage law in Gayo is influenced by the enforcement of adat penal law, which seeks to restore stability within the community. The prohibition of endogamous marriage and the instigated "forced" marriage reinforce the mutual influence of family law and adat penal law. This phenomenon makes the government look powerless and unable to change the marriage practice in the face of religious and adat beliefs (cf. Cammack, Young, and Heaton 1996, p. 72).

As shown in the preceding table, reintroduction of adat has reversed the declining trend of underage marriage in Gayo. The development of, among others, individual autonomy, the expansion of education, a stronger social and legal status of Indonesian women and the consumer culture have all indirectly contributed to suppressing the number of underage marriages in Indonesia (Cammack, Young and Heaton, 1996). In Gayo, the government's actions have mobilized and institutionally reorganized the culture of shame by establishing the WH Kampong and reinforcing adat institutions. The basic mechanism of engaging in early marriage to avoid *zina* is a common phenomenon across Indonesia (see for instance van Bemmelen & Grijns 2019; Grijns & Horii 2018b). However, it is only in

Aceh that institutional measures have contributed to the increasing trend of early marriage.

Debating Farak

In 2013, the district government of Central Aceh abolished the WH Kampong unit after receiving complaints from the Municipal Police. The latter disagreed with the assignment of village youths to take over their duty in monitoring the enforcement of Aceh Shari'a, although they were aware of their limitations in staff and budget. They were mainly concerned that this would lead to vigilantism. Indeed, according to Sarwani, some offenders reported that they had been robbed by youths claiming to be part of WH Kampong. However, Sarwani held that such actions were never committed by genuine WH Kampong members. The victims of vigilantism always failed to identify the robber when they were shown a picture of the official WH Kampong members. Nonetheless, the district secretary decided to stop funding the WH Kampong unit. Henceforth the State WH unit at Municipal Police would take over the tasks of the WH *Kampong*.

Many *reje* complained to the DSI about the discontinuation of the WH Kampong. Villages from the upland, where the WH Kampong units had never been established, demanded that they obtain one. Without the unit the village no longer had a tool to monitor public immoral acts in their area, they argued.

Mid 2015, the district DSI invited the *reje* from around Takengen city and Lake of Lot Tawar to a meeting, to discuss the issue of immoral acts in public. These, they claimed, had increased in number after the abolishment of the WH Kampong. One of the solutions proposed was that the government should constitute the *farak* as a formal and legal punishment applicable in all villages, even in the area where Gayonese are a minority. By doing so, the *reje* tried to obtain more legal authority from the government.

At the meeting, it appeared that the *reje* were actually divided about this idea. The supporters of the proposal celebrated the effectiveness of *sumang* and *farak* to control public behavior and to prevent *zina* in their community. They also alluded to villages like Lot Kala, Jongok, villages around lake Tawar, and in the upland, where *farak* is practiced and considered effective to prevent *zina* and the like. According to them, adat law is much more effective to prevent immoral acts than Aceh Shari'a which they held to be unfairly implemented to the detriment of the poor. If the district government agreed with the proposal, the adat institution could codify the *farak* in a village regulation (Qanun Kampong).

Those who disagreed with the codification of *farak* argued that it was originally a punishment for those who engaged in an endogamous marriage

following an act of *zina*. This was possible in the past when the number of people was much smaller than today. But now, the Gayonese live side by side in one village with other ethnic groups such as the Javanese, Acehnese, Minangkabau and others who do not belong to the same culture or share the same worldview. Therefore, adat should be adjusted to the current situation.

They also pointed at the rights of individuals to live wherever they want. Ichwan, the secretary of Lot Kala who had been organizing a team for drafting the *Qanun Kampung*, said that his team has seriously discussed whether such punishment should be formally codified. Their conclusion had been that, although, as Gayonese, they still maintain the punishment informally "…we cannot force others to respect our culture, just as we do not want to be forced to respect and obey a culture we do not belong to. Introducing this punishment [*farak*] will limit one's movement. Does this not violate human rights?!" And "if we codify and enforce such law only to native villagers that would also be unfair. Everyone has to be subject to the same law, right?! So how can we prohibit our people (*urang diri*) from internal marriage while we allow other people (*jema len*) to do that in front of our nose?!" According to Ichwan, it is better to leave such punishment unwritten to maintain village stability and avoid protests from non-natives. The development of the *farak* should follow social development.[27]

In the end, Mahmud Ibrahim, who was serving as head of the Baitul Mal Agency of Central Aceh, suggested to reinstall the WH Kampong and use zakat to fund them temporarily. All *reje* attending the meeting agreed with this proposal.[28] With this financial support, the DSI then indeed reinstalled the WH Kampong (Central Aceh District Head Decree 451/551/2015). The Decree includes police and military officers as members of the WH Kampong. The number of units increased to 31 in five sub-districts, all of them in the area surrounding Lake Tawar and Takengen city.

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[27] After I finished my field research in 2017, no village formally included *farak* in their Qanun Kampung, while Qanun Kampung were formally adopted by only a very limited number of villages. Just like Ichwan from Lot Kala, many village governments are uncertain about the parts of adat law that should be codified and be binding on the diverse and multicultural community.

[28] Unlike in other parts of Aceh province, where zakat is collected and distributed by local imams, in Central Aceh zakat is collected by an imam who then transfers it to the Baitul Mal agency. Baitul Mal will distribute the zakat according to religious prescriptions to rightful recipients. The Agency also uses the zakat to support scholarships for local students who want to study outside the region, to build houses for the poor and to provide them with capital. Islamic law seems not to allow to distribute zakat to the WH Kampong. However, according to Mahmud Ibrahim this would be religiously and legally justified if the *reje* of the community who pays the zakat agrees. In such a case, he argues, the zakat is used to support the creation of an Islamic community and to protect it from evil.

However, the district government stopped giving rewards for each case processed at the adat tribunal. According to a DSI officer, as a result the DSI no longer received reports about Shari'a offenses from the villages. However, according to the *reje* of Mendale, Kala Lengkio, and Lot Kala the reason for this was not the abolition of the rewards, but the fact that the DSI did not do anything with these reports.

In 2017 WH Kampong were established in all villages in Central Aceh, as requested by the *reje*. However, the district government does not use the regional income to fund the WH Kampong but instead the Village Fund (*Dana Desa*) program. This is a central government fund meant to boost village development. The Regent of Central Aceh issued Decree 60/2017 to regulate the use of *Dana Desa* for the WH Kampong. As a result, the monthly salary of WH Kampong has slightly increased. The number of WH Kampong-members more than doubled, from three to five members for each village to ten. However, this increase does not mean that the capacity of the WH Kampong has increased as much, because the main cause is that *reje*, *imem*, *petue* and a police officer assigned to the village are now also WH Kampong members.

By using the fund from the central government, the district government lost its control over WH Kampong activities. The village only has the obligation to report on the use of the fund to the State Agency on Village Development, which does not deal with the enforcement of Aceh Shari'a. This is in line with Oomen's observation mentioned earlier that the more chiefs or village officials receive power and legitimacy from the (central) government, the stronger they become in the village. With regard to legal enforcement, this power removes the village government from state control.

Conclusion

The divine Shari'a of Islam has been incorporated into adat in many ways. The outcome of the incorporation can be observed in the culture of shame and *farak* as I have discussed in this chapter. Both shame and farak govern public morality, social appropriateness, and sexuality. They are central for Gayonese adat. Both relate to the local mechanisms to maintain internal stability, social ties, and structure while at the same time they are considered part of the application of Islamic teachings. Committing *zina* is not only considered breaking religious order but also as a fundamental threat to social stability and structure. Deeply embedded in the social organization, adat law provides a mechanism to not only punish the offender but also to restore the offender's position within the social structure, to protect the woman involved from stigma, and to guarantee the patriarchal lineage

for the unborn child. For the *zina* committer, undergoing the adat punishment is a way to reclaim their and their family's dignity and their offspring's position in the social structure. Although the Gayonese believe that the punishment is part of the Shari'a, they also believe that enforcement of the punishment does not clean the offenders from the sin. Its objective is to restore the social equilibrium.

The Aceh Shari'a's legal conception of *zina* is not based on the same social and cultural arrangements. It is more theological, to support the Aceh Muslim community's needs to live under God's order. Both state and adat authorities are also involved only to a limited extent in the enforcement of Aceh Shari'a and adat law respectively. The government is limited in human and financial resources as well as in authority in enforcing Aceh Shari'a. Likewise, the adat institutions lack the power to enforce adat law on village members with a migrant background.

The legal differences between adat and Aceh Shari'a and their limits are reconciled and overcome through the WH Kampong program. This program makes the two bodies of law complementary to each other. The government, which is the key actor in the legal reconciliation process has provided power and funding to adat institutions for enforcing adat law. As a consequence, it has increased the power of the village government vis-à-vis the village community.

The central government has also made the adat institutions more autonomous from the district government, by providing them with *Dana Desa*. In some fields adat institutions have used this autonomy in such a way that it even goes against central government projects, such as discouraging underage marriage. In this case the recognition of non-state law (adat) has reinforced the power of adat institutions and moved them further away from control by both the government and the local community.

The following chapter discusses the intersection of three legal systems of penal law: adat, *jinayah* (the Islamic penal law incorporated in Aceh Shari'a), and Indonesian national penal law. I will argue that this is an example once again of how the autonomy of the non-state legal system has increased after state recognition. The focus of the following chapter is to describe the dynamics of the three legal systems involved and how various actors in the legal sector (police, public prosecutor and paralegals/activists) creatively deal with the opportunities this offers them to realize their objectives.

Chapter V
Governing Sexuality: The Intersection of Adat, Jinayah of Aceh Shari'a and Indonesian National Penal Law

Introduction

In the two previous chapters, I have investigated the intersection of two legal systems: adat law with national penal law and adat law with the Aceh Shari'a law, respectively. As the last discussion in this book, in this chapter I investigate how all three legal systems interact, which actors play dominant roles in this, how that interaction or the implementation of legal pluralism affects those who are involved in a case and how that shapes and affects power relationship among them. I examine these issues by focusing on the responses of legal agents to sexual offenses: homosexuality, pedophilia, premarital sex and extramarital sex. These three legal systems give a different definition, regulation and punishment to the mentioned offenses. Unlike the previous chapter, this chapter looks closer at higher levels of government since the cases concerned reach the higher state legal institutions: police, public prosecutor, and the courtrooms of the Mahkamah Syar'iyah and the district court.

This chapter is divided into four sections. The first section discusses the Gayonese understanding of sexuality, the source of this understanding, and how it affects the case proceedings. The second section discusses the role of non-state legal agents, paralegals and activists in influencing the local understanding about sexuality, and intervening in cases that increase legal awareness and legal options of community members. The third section discusses the role of state legal agencies, police and public prosecutors, and non-state agencies. These agencies can shift a case from the legal system that is formally designed to handle an offense to another that is formally not allowed to but which offers advantages in resolving the issue.

The existence of three penal legal systems in one community enables legal actors to either practice legal differentiation, or move cases from one legal system to the other for the benefit of the plaintiff and or offenders. The aim of forum shopping is different from legal differentiation. Legal differentiation, as Bedner implies in his inaugural speech[29] is a practice where a legal actor and elites do not

[29] Legal differentiation refers to a process where a legal actor differentiates consequences for an identical act or attaches a different consequence to the same constellation of facts for one group of persons or an individual than for another, while taking into account the context and the characteristics of this person or group. The application of legal differentiation may avoid misuse of the law and miscarriages of justice. It can be an instrument to achieve and serve more justice for a group or individual in a highly multicolored and multicultural country like Indonesia. It may for

choose one legal system over another for their own interests, but instead pursue a reasonable solution to a dispute for plaintiff, defendant and or the community at large. This chapter shows how this practice is not limited to the courtroom and does not depend only on the capacity of judges and the civil registrar (cf. Bedner, 2017). Outside of the courtroom the possibility of legal differentiation depends on the capacity of other legal actors such as the police and the public prosecutor. The possibilities for legal differentiation are broadened when the government formally recognizes adat law and adat institutions, as the legal repertoires within these systems can be applied as well.

The final section of the chapter discusses the influence of communities in the interplay of the three penal law systems. Through the analysis of an extramarital sex case, this chapter shows how community leaders play a major role in handling sexual offenses in the name of adat. They decide which sexual offense should be brought to the higher legal institutions of the state and which offense should be handled internally by the adat tribunal.

It is important to note that legal actors play an active role here. They are not limited to their duties as legal enforcers of top-down policies and officers of the hierarchical structure of the government to enforce the Aceh Shari'a and national penal law. Legal agents are active and creative actors who play a key role in the dynamic interaction of the three legal systems. Their agency and creativity allow one to comprehend the legal pluralism from a subjective perspective as they exercise considerable influence on the operation of the law (Chiba, 1998). The legal agencies apply forum shopping, legal differentiation, eliminate jurisdiction, develop a hybrid or mixed form of law, or escape from structures dictating their actions when they find themselves in a problematic situation of a dispute (cf. F. and K. von Benda-Beckmann, 2006, p. 24), or in the situation where they have to accommodate many interests from different groups.

Having observed these legal phenomena through the work of government and non-state legal agencies, this chapter finds that in the end adat is the most determining legal system in dealing with sexual offenses. It prevails over the *jinayah* of Aceh Shari'a and national penal law. Usually the latter two legal systems only process cases after adat leaders have decided to move them there. Sometimes, they do this after having imposed an adat punishment on the offenders already, which doubles the punishment.

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example serve to distinguish between a theft committed out of poverty and one committed out of greed. However, legal differentiation also poses dangers as it may, among others, become an instrument for elites to escape from the state law or get away with a lighter punishment because of the discretion involved (Bedner, 2017).

Adat law categorizes sexual offenses into two categories: premarital sex and extra marital sex. This means that all cases of sexual offenses, such as pedophilia and rape, fall into these categories as well. Paralegals and activists from outside and inside the community play a crucial role in correcting and increasing local knowledge about sexuality and in involving other legal systems to evaluate an offense.

Of the state's legal institutions, the police plays the most prominent role in deciding which legal system is applied, based on their own interests (applying forum shopping), as well as those of the victim and of the offender (applying legal differentiation). This is particularly visible in cases involving juvenile offenders who committed a sexual offense. The police act as a bridge between adat law and the state legal systems. The public prosecutor subsequently decides in cases brought under the state legal system whether to use the *jinayah* of Aceh Shari'a or national penal law.

Generally, prosecutors prefer national penal law to indict an offender committing a particular sexual offense, even if the offense is formally supposed to be indicted using the *jinayah*. The main reason for this is that in their view the Mahkamah Syar'iyah lacks the ability to address these cases in an appropriate manner, in particular cases involving juvenile offenders and rape. The choice is also based on the fact that in some situations, Aceh Shari'a causes more harm than good for the victim.

Based on legal practice in Gayo, I argue in this chapter that having more penal legal systems operating in one community means having more legal options to tackle one case and thus to reinforce the role of law generally within in the community. The creativity of legal actors in observing the limits of a legal system and its effects on the victim, offender, and community, as well as their own interests and sympathies determine which law they choose. In so doing they do not hesitate to overrule the formal design of legal jurisdiction of the three legal systems. One result of this is that the outcome of legal plurality of penal law differs from one district to another. This situation is so pronounced in Aceh Province because of the province's special autonomy, which allows it to divert from the general principles of national law.

More surprising is that the state legal actors, like the police, actually benefit from the presence of the adat institutions as this offers them a choice to opt for the legal system they think is most likely to end a case. And adat institutions have also helped the police and public prosecutors to decrease their workload, particularly for minor offenses.

The choices of legal actors and the challenges from adat institutions to the *jinayah* and the national secular legal systems cause the formal arrangement of legal plurality to be applied differently across the province. Police and other legal actors often address cases in a creative manner, unforeseen by those who designed the system. Their sympathy to the victims, in rape cases, and suspected offenders, often juveniles, may lead them to avoid the *jinayah* law they are supposed to apply. The absence of a prison for juveniles at the district level may also lead the police to return a case to the adat tribunals.

The following sections discuss the role of government and non-state legal actors involved in the operation of state legal pluralism in Gayo. I start the discussion first by briefly explaining the development of local ideas about sexuality and their impact on legal practice. I then describe the involvement of legal actors starting with paralegals and activists, then the police, and finally public prosecutors in forum shopping and the application of legal differentiation.

Local Knowledge and Legal Practice

Social psychologists (e.g Ferguson and Bargh 2004; Fabrigar et al. 2006) have informed us that social knowledge, which is automatically active during perception, can influence social judgment. They also tell us that knowledge plays an essential role in directing attitude. In Gayo, adat shapes social behavior, establishes one's perception and attitude toward others, regarding social class, elderly, role models and social stereotypes. It also influences the local actions in dealing with sexual abuse and legal practice generally. At the same time, adat, as discussed in Chapter III, also changes when the community interacts with external groups who may change community perceptions, traditions, and legal practices.

A large number of Gayonese rely for their knowledge about sexuality on religion and adat, which both rely on the Divine Shari'a, as discussed in the previous chapter. Based on these sources, particularly, on the adat, a large number of Gayonese perceive that only heterosexual relations exist in their community. All sexual offenses are categorized as either premarital or extramarital heterosexual relations.

Pedophilia, as discussed later, falls into the premarital sex category, in which a mentally healthy man commits sexual intercourse with a child. Rape is a relatively new category as a sexual offense. It is defined as rape if a man forces a woman or girl to sexual intercourse against her will. However, marital rape is not categorized as rape; it is widely accepted as the result of the failure of a wife to fulfil her sexual obligations and therefore not against the law.

In all sexual offenses, a man is framed as the offender and a woman as the victim, but at the same time she is alleged to be the sole trigger to the offense. A woman is never perceived as an offender of any sexual offense, including pedophilia. This is because in the Gayonese male imagination, a woman is seen as sexually passive and submissive, which is part of the social construction of women as polite and dutiful. Those who are sexually expressive and active will be identified as flirty or even as prostitutes. Such women are believed to encounter difficulty in finding a mate. They are also often alleged to be the provocateur of the sexual offense because of improper conduct.

NGOs and the national government have introduced pedophilia in Gayo as a category of sexual offense, in an attempt to increase awareness among sexually abused women and children about their rights and to protect them from social punishment and stigma. Some NGOs also offer these victims legal support at the state courts (the Mahkamah Syar'iyah and the district court).

NGO activists and some government actors also try to improve general local knowledge about sexuality. This is not so easy because sexual categories such as gays and lesbians have not been traditionally part of the Gayonese imagination, or at least Gayonese like to believe that such desires and practices do not exist in Gayo – even if they are familiar with them from religious teachings. Gayonese's knowledge about homosexuality comes mainly from the Koran. As such, homosexuality is seen as something of the days of the prophet and of the current Western world. Accordingly, when Gayonese are exposed to homosexual behavior, they tend to either take violent action or deny what they saw.

In other parts of Aceh province, the response toward homosexuality is now different. Coastal Acehnese tended to be permissive towards *waria* (Indonesian common term for male-female transvestites) (Boellstorff 2005, p.9), who mainly worked as hairstylists. This did not change immediately after the introduction of the Aceh Shari'a and enforcement of *jinayah* law. But, after an increasing number of anti-LGBT campaigns in Jakarta, which reached Aceh via social media, this started to change. Acehnese started to harass *waria* as they were identified as gay.

Actually, such harassment of *waria* in coastal Aceh was initiated by state officials and police officers with the support of orthodox Islamic groups. For instance, in January 2017 in North Aceh district a group of police led by the head of the District Police station raided, harassed, and forced *waria* to change their clothing (inews, 2018; Merdeka, 2018). Two years before, the same had happened in West Aceh after LGBT became a national trending topic when a study on homosexuality in Jakarta by researchers from the University of Indonesia became

public (Detik, 2016; Prohaba, 2016; SerambinewsTV, 2016; Sindo, 2016; Timesindonesia, 2016).

As far as I could observe, most Gayonese still tolerate *waria* groups and do not associate them with homosexuality. Neither have there been any reports from local or national newspapers about harassment of *waria* in Central Aceh. Although they have been exposed to the same news in the same way as the coastal community, some Gayonese continue to deny the physical presence of homosexuality in their community. In their view, this is the result of their strong conviction that religion and adat prevent people from turning into homosexuals (lintasgayo.co, 2016). Gayonese, as I observed during this research, accepted the presence of *waria* and often invited them to wedding parties as a singer or fashion stylist. They did not identify *waria* as gay but as a normal men with a peculiar psychology. Some also believe that *waria* are stronger than ordinary males and for this reason should not be angered.

Given this state of affairs, it is unsurprising that Gayonese become confused when they physically encounter homosexuality. Because adat does not provide any references of how to deal with homosexual acts, the result is that those involved in such acts get away easier than those who commit heterosexual offenses, i.e., premarital and extramarital sex. I saw this in 2013 when WH Kampong members of Mendale village encountered gay and lesbian couples on two different occasions. The couples were caught in bushes around the lake of Lot Tawar. The WH Kampong officers did realize that they were dealing with homosexuality. However, they did not know what rule they had to apply. They then decided to report the cases to their *reje* and *imem*, but these could not solve the matter either. The *reje* then phoned Sarwani, head of the law division from the district Shari'a agency but neither could he think of any rule to apply, as the Aceh Sharia at that time did not yet officially criminalize homosexuality. Sarwani then left the case to the confused *reje*. The *reje* and his village government were certain that the acts were of a homosexual nature. However, because neither adat nor the Aceh Shari'a prohibited this, they then agreed to categorize the act as *khalwat* (literary defined an unmarried heterosexual couple being together in a secluded place), in their report to the local Aceh Shari'a agency. Rather than torturing, punishing and exposing them to the public, the *reje* and his apparatus gave them a written warning and immediately set them free. The documents involved have been included at the end of this chapter.

The legal response of the Gayonese toward homosexuality may be different now since homosexuality has been criminalized by the Aceh Shari'a. Those involved in homosexual acts can be punished to up to 100 lashes in front of the

public. In May 2017, a gay couple was punished for the first time under the *jinayah* law, in Banda Aceh. Local media reported that the couple was initially suspected, tightly monitored and then caught in the act by the community in a rented house. They were tortured by the community who then transferred them to the police for prosecution under the *jinayah* law. They each received 85 lashes in front of the public (Media, 2017b; Serambi, 2017b).

Pedophilia

Pedophilia offers another example of the effects of external legal changes and their enforcement on local knowledge and practice, by intervening in adat legal practice.

Pedophilia is not as such categorized as a crime in the *jinayah* law of Aceh Shari'a, but there are provisions on child sexual abuse, (article 57 Qanun 6/2014) and child rape (article 50 Qanun 6/2014). The national Law 23/2016, on Child Protection, also does not explicitly mention pedophilia. The different legal definitions influence the choice of legal agencies under which law to bring a case in order to protect the victims and deter offenders.

During my second fieldwork period, I closely observed how Hasanah and Yusdarita and other paralegal and local activists dealt with a case involving paedophilia. I would sometimes provide assistance to the victims and their parents such as driving them to a local hospital for collecting medical evidence and to the police station for investigation. This situation allowed me to interact closely with those involved, and particularly the victims' parents.

The pedophilia case concerned was revealed in late August 2017 in Tingkem village of Bener Meriah district. The case shocked the villagers and the political elites of Bener Meriah district as they discovered seventeen victims ranging from 4 to 17 years old. Most of them were still in elementary school. The victim aged 17 had been abused since she was 14 years old. Hasanah and Yusdarita believed there were more victims but they were reluctant to report to the authorities because of the shame and cultural stigma involved.

The offender had engaged in sexual abuse for more than five years. None of the villagers noticed the act because the victims did not dare to speak out as they were threatened to be killed. Nor did the villagers suspect that the offender committed such a crime due to the kinship system and social trust among the community. It is also common for older males and females to show affection and care for children. Therefore, the offender was thought to be merely showing warmth, care and kindheartedness to his victims.

The case was unveiled for the first time when Hasanah was consulted by her cousin Evi Sasterawati who was one of the victims' mothers. Hasanah was told that Evi's four year old daughter was sexually harassed by Bayak Mico, who lived in the same village with them and whose house was next to the only playground in the village. She had started an adat procedure to reach peace with compensation with Mico. Hasanah was shocked and urged Evi to stop the adat procedure. She also invited Evi's daughter to speak in private. Hasanah found that there were six other victims in the village. She told her cousin what the case was about and the consequence of letting the suspected offender free if the adat process would be continued.

Hasanah then called Yusdarita. Together they approached Nasriyan, *reje* of Tingkem Asli and Idham Watan, *reje* of Tingkem Bersatu village explaining the situation in their villages. These two villages had once been united and while they were separated in 2004, the villagers share common cultural values and social relationships. Together with the *reje*, they approached the six families, one by one, informing them of what had possibly happened to their daughters. They also asked permission from every parent to speak in private with their daughters. Hasanah was very well trained in approaching and comforting children, and she did the investigation with care while Yusdarita spoke with the parents. From the investigation, they obtained evidence that there were at least 17 victims. They convinced all parents that the case had to be reported to the police, instead of following an adat procedure, because this was an extraordinary crime.

They then reported the case to the police station of Bener Meriah district. Hasanah and Yusdarita then invited other individuals from paralegal and legal assistance organizations in North Aceh to assist them in investigating, advocating, providing emergency trauma healing, and accompanying the children during the investigation process. Hasanah stressed that their advocacies were humanitarian acts and that their services were free.

The matter soon became known by a large number of inhabitants of the two villages, which made the victims' parents feel ashamed. They started to look for revenge on Mico, the suspected perpetrator. However, Mico managed to escape. It took the police four days to find and arrest him in North Aceh district.

Since the adat does not traditionally include pedophilia as a crime the Gayonese understand all sexual intercourse outside of marriage as *zina*. In this case parents felt that they had failed to protect their daughters, but they were also disappointed in their children and blamed them for getting involved in premarital sex. Other village members felt the same and accused the parents of having been careless and irresponsible: "*urang tue sana ke pakea, ogoh, gere mudedek, murusak*

kampong" (what kind of parent they are, stupid, not educating, and damaging the village).

Before the exposure of the case, the communal ties in the two villages were relatively good. The villagers treated each other like family and indeed many still have a family tie to each other. However, the case fragmented them as soon as it came to light. Some families were kin to Mico's mother. They were shunned by the victims' parents and by those who had sympathy for the victims and their parents. Many community members who were neither related to the victims nor the offenders considered both sides as morally corrupt.

Two persons from the advocacy team shared the case with local newspapers, which triggered anger among the youths of the villages and among local politicians. The publicity impeded the teamwork of the paralegals and led the parents to feel deeply ashamed. Following the publication, two parents withdrew their report from the police station. Hasanah and Yusdarita then strategized to limit access to the victims and their families. They managed to prevent the victims and the parents from speaking with any strangers without their consent.

Ahmadi, a young regent of Bener Meriah District, then invited the parents and the advocacy team to a meeting on August 30, 2017, with all local leaders from the Communication Forum for District Leaders (Forkopimda, *Forum Komunikasi Pimpinan Daerah*). Aside from stressing the ethics of journalism and advocacy, the Regent guaranteed that the suspected offender would be prosecuted under both *jinayah* and the Child Protection Law. The head of the district public prosecutors and the head of the district Mahkamah Syar'iyah and district courts, who are part of the *Forkopimda* together with the head of the district police, the military and the Ulama Consultative Board (MPU), nodded their heads in agreement. Under the *jinayah,* child rapists can be flogged 150-200 lashes, fined from 1,500 to 2000 grams of pure gold or jailed up to 16 years and seven months – or receive a mixture of these punishments.

Responding to a complaint about Mico's mother, the young regent suggested expelling her from the village using adat law. According to the victims' parents, Mico's mother had not shown them any sympathy, nor had she made an apology on behalf of her son. She simply acted as if nothing had happened. In several meetings with the victims' parents, I also sensed an extremely strong will from some of the victims' fathers to take revenge on Mico. They intended to make Mico suffer as badly as they could, even if it would cause his death.

Similar to the complaint from Lot Kala village in their effort at regulating *farak* into a Qanun Kampong, the victims' parents complained that the human rights issues constrained the enforcement of adat law. The same frustration was

expressed in several village meetings. The village officials were worried that Mico's family would take legal action against them if their rights of staying in the village would be offended. To break through the constraint, the regent offered his assistance to sign an adat law order expelling Mico's mother from the village. He assumed that his position as a regent representing the government would make it easier to enforce the adat law. However, the village officials had not drafted the intended adat order yet, so at the time there was nothing for him to sign.

Noticing the cultural and social burden on victims and their parents, Hasanah and her colleague paralegals initiated a meeting with village officials and victims' parents. Hasanah tried to make the parents understand what the case was about. She shared her knowledge about pedophilia, who might suffer it, how to treat the perpetrator, what the relevant Gayo adat rules were and how Indonesian national law had developed with regard to pedophilia as compared with other countries. She stressed that although the case may appear as normal sexual intercourse, which physically constitutes it as *zina*, it is an extraordinary crime because an innocent victim who does not understand herself, her body, and genital parts yet is involved.

Focusing on the issue at hand Hasanah argued that some of the cases might look like *zina*, as they had been labelled by the head of the local ulama council during the meeting with *Forkopimda*, but the involvement of children in the act reinforced the degree of immorality attached to the offense. She added that the Gayonese tend to tolerate *zina* conducted by an unmarried man with an unmarried woman, in the sense that they will only force them to marry whereafter they are re-accepted as part of the community. However, Hasanah said, Gayonese do not accept a married person involved in a case of *zina*. "We see how we have perceived *zina* and treated the offenders so far, no need to tell the difference if an innocent girl is involved in the act. That is why I said that this case is an extraordinary crime, which is incomparable to the regular *zina*."

Hasanah explained the limitation of adat law in handling the case. According to her, adat law did not have any provision to handle offenses involving children. Adat only governed religiously mature men and women. If a child was involved, the community, based on the adat perspective, would "punish" the parents. However, this case, she argued, was beyond the adat conception about sexuality and the sexual offenses. Therefore, she claimed that it should be prosecuted based on state law.

She also stressed the importance of the role of law in punishing the suspected offender. According to her, to make the offender suffer from his deeds did not require seeking revenge, like killing or biting as some parents had wished. The best

revenge was by making the offender suffer during his lifetime, which could only be achieved by sending him to jail. Hasanah also stressed that expelling Mico's mother from the village was not a good solution because Mico's mother might have been involved in the offense, or at least have been aware of her son's crimes. Sending her off from the village would complicate the investigation process.

The police, in the end, did bring the case to the public prosecutor who registered it as No. reg-73/TPUL/11/2017. Instead of using *jinayah* law, Kardono, the public prosecutor opted for Indonesian national law, indicting Mico for violating article 81 (1) of the Child Protection Law, which carries a maximum prison sentence of 15 years. According to Kardono, the judges of the Mahkamah Syar'iyah are not yet trained to handle such juvenile cases, whereas such training is obligatory under Law 11/2012 on the Juvenile Court System. The prosecutor for this reason rejected the formal arrangement of legal pluralism, where this case formally should have been tried under *jinayah* law.

In 2018, the district court sent Mico to prison for 8 years and fined him almost IDR 900 million, which was a much lighter sentence than the activists had expected. However, had the case been tried under *jinayah* law then the sentence would have been much lighter still. According to Kardono, the reason was that strong evidence of genital penetration was missing.

The limits of the *jinayah* law in keeping an offender away from the community is reflected in the verdict of Mahkamah Syar'iyah of Bener Meriah No. 02/Pen.JN/2016/MS-STR. The judge considered the offender guilty of raping a 15 year old girl and punished him with 100 lashes in front of the public. The judge also ordered to have him jailed for 20 months (1,6 years). According to the judgment, the rape was considered as a form of *zina*, which falls under hudud, which carries a fixed punishment in Islamic penal law as prescribed in the Quran or hadiths. Therefore, it cannot be modified by the judge. The judge added imprisonment as a *ta'zir* punishment, considering that the *zina* was committed against the will of the victim. However, this was not enough for the victim to heal herself from trauma and escape the cultural stigma and social punishment of being an "evil girl" who had tempted the perpetrator.

Concerns about the limits and effects of Aceh Shari'a have increased in both state and non-state legal institutions. The Aceh Shari'a merely focuses on punishing the offenders based on the old Islamic legal texts, but neglects the plight of the victims. This is of particular importance because the application of Aceh Shari'a makes the community think that the offenders have passed through God's punishment, which makes it easier for offenders to return to their community, freed from sin and guilt.

External legal agents such as Hasanah and her colleague paralegals from P2TP2AK, APIK and RPuK played an important role in choosing which legal system was best suited to the interests of the victim. These groups put social and political pressure on local elites, the police and public prosecutors, who, fortunately, appear to share the same concerns. By choosing national secular penal law rather than the *jinayah*, these legal agencies could keep the offender away from the victim and the community as long as Indonesian penal law allows.

With such freedom of choice concerning the legal system, the dynamic of legal pluralism in Aceh province is not uniform from one district to another. It depends on the concerns of non-state and state legal agents which legal system is selected for a certain offense. Before a case reaches the police department, the legal dynamic may depend, as shown above, on the presence and creativity of activists. In the case discussed, they played a crucial role not only in influencing the legal choice of the villager officials and the police, but also in invalidating the role of adat law in handling a certain offense. So, they 'shopped forum' to secure what they thought was an appropriate punishment for the offense concerned.

However, in the end it is the state legal institutions involved in a case who determine where it goes. The following section looks at the process of choice of law by state legal actors. It will show how the key role is played by the police to determine whether a case is brought to the district court, a Mahkamah Syar'iyah, or whether it should be returned to the community to be solved through the adat mechanism. We will also see that the warnings of activists about the harm *jinayah* law may cause to women and children (Afrianty, 2015, pp. 127–133) have been heeded by police officers and public prosecutors.

Legal Differentiation: The dynamic interplay of state legal pluralism

Legal pluralism in penal law provides options for legal agencies to choose among existing laws either for their own interest or for the interest of those who involved in the case (victims, offender, village elites or the community). State legal agencies benefit most from the existence of the state-designed legal pluralism as they act on behalf of the state and represent the state's power. However, as highlighted again in this chapter, the state legal agencies play a passive role in dealing with sexual crimes in the sense that they only start investigating when a case is reported. This passivity provides a large space for adat institutions to intervene in cases concerning sexual offenses. However, once a case is moved to the state legal agency, the latter can move a case from one legal system to another, depending on the interest they are representing. In chapter three, I showed how the state legal agency and local elites practiced forum shopping, enabled by state-

designed legal pluralism, for their own interests. Here, I present how they practice legal differentiation; moving a case from one legal system to another to deliver fairness for victims, offenders, and or the community.

This means that the police and public prosecutors of Central Aceh and Bener Meriah take into account the effects of the application of *jinayah* law on the offenders and the victims of sexual abuses. In some situations, they then chose to ignore Aceh Shari'a, when they consider that this will not provide justice for the victims. This is usually the case in crimes involving victims of pedophilia and rape. On some occasions police officers also try to push the case back to the adat institution during the investigation.

State legal agencies have three reasons not to choose Aceh Shari'a. First, the judges of the Mahkamah Syar'iyah do not have the right qualifications to try juvenile cases, as we already saw in the case discussed above. Second, Aceh Shari'a causes greater harm to the victims as the perpetrator of a crime will be allowed to soon return to the village. And third, the *jinayah*'s punishment does not contribute to preventing recidivism for the same reason. This was confirmed by Police Commissioner Elviana, a police officer at the Women's and Children's Service of the Provincial Police department, whom I interviewed in her office in June 2015. She stated that many sexual offenses against girls are conducted by close relatives. Once the offenders have completed the *jinayah* punishment and are set free soon after having been flogged in front of the public, they come back to their home and can re-approach the victim. The reappearance of the offender increases the unhealed trauma and fear of the victim. According to her experience in trauma healing, Commissioner Elvina said it would take at least seven months to free the victim from fear and bring back her courage. It takes another two years to heal the girl psychologically, even if it will not return her to her psychological state from before the offense.

Elviana added that the cause of much women's misery in Aceh is the patriarchal culture, which has been solidified since the application of the Aceh Shari'a. The tendency of this culture is to blame a girl or woman for being flirtatious and thus driving a man to commit a sexual offense. Elviana gave the example of a case that occurred in Lembah Seulawah village of Aceh in 2015, where an elderly man raped his 14 year old granddaughter. After having been flogged and then released, the man returned to his village where his granddaughter also lived. He was re-accepted by the community as an ordinary free man, relieved from his sin by having suffered the religious punishment embodied in the Aceh Shari'a. At the same time the community accused the victim of having caused her grandfather to commit the offense. They even expelled her and her family from the village. This

girl's family was poor and had no place to go until the mother managed to find shelter from a local organization focused on the protection of women and children.

The community's treatment of the girl and her family triggered protests from various local organizations, as well as from the police and the head of the Mukim. They tried to mediate the case but to no avail until one day the head of the Mukim lost his temper in a meeting. He stood up and invited the women into the forum, asking the audience "if the woman does not deserve a living, then take your machete. Kill her right way here! Or give me your machete. And I will kill her on your behalf! That is better for her than that you treat her worse than an animal".

In Aceh, such an open challenge sometimes works to reverse a situation. The villagers, according to Elviana, did not expect the head of the Mukim to present such a strong and emotional speech, attacking their humaneness. They then reaccepted the girl and her family back to the village. A similar thing happened in Singkil, where a nine year old girl was raped by her neighbour, which even caused her to suffer from venereal diseases. Meanwhile, the man enjoyed freedom after he had been flogged and jailed for two months.

First Inspector of Police (Iptu) Sumiyatun shared the same thoughts about the limits of the *jinayah*. She was the head of the Women and Children Service unit of the District Police station of Central Aceh from 2012-2017 and then promoted to become head of the sectoral police of Kebayakan sub-district in early July 2017. According to her, she and colleagues from the same unit around Aceh province protested the *jinayah* for lacking a proper perspective on women and children. As she mentioned:

> "…what kind of Sharia is this. It even worsens the situation of women and children. The Shari'a only detains the offender for a few months after he has raped a victim. Then it returns him to his victim living in the same village. God did not create a woman and child to experience multiple sufferings (*penderitaan berlipat ganda*) from a man. To my understanding, Islam states that a man has to be a good protector for women and children. They cannot suffer from him…".

According to Sumiyatun, she and her colleagues around Aceh province prefer national law on child protection when they have to deal with cases involving juveniles and sexual violence. Subsequent to the cases of Lembah Seulawah and Singkil, they reconsidered which law best to apply and decided in favour of

Indonesian national law, for the sake of child protection. Once again in the words of Sumiyatun:

> "I often communicate with colleagues in Singkil and other parts of Aceh about choice of the legal system. Since Shari'a does not benefit the victims, we agree to ignore it for the sake of the victims' lives".

By contrast, some public prosecutors rather follow a formal legal interpretation, which may lead them to apply *jinayah* law. This applies in particular to those who are assigned to the Banda Aceh office, in the capital of Aceh Province, where there is much power contestation and where many prosecutors are employed who have been newly assigned to Aceh province from other parts of Indonesia. In the end, they have the last word in deciding which law to apply in these cases. According to Elviana, some public prosecutors ask the police to revise the case file and to refer to *jinayah* law. In such cases, the police have no choice but to fulfil the request because it is the public prosecutors who will represent the case in the courtroom.

The different ways in which public prosecutors interpret the Aceh Shari'a across Aceh province make the enforcement of *jinayah* law vary from one district to another. In some districts, public prosecutors follow the rule of *lex specialis derogat legi generali*. This means that all offenses regulated by the *jinayah* will be tried at the Mahkamah Syar'iyah. However, in other districts, including Central Aceh and Bener Meriah, they freely choose a legal system that suits their interests.

At the public prosecutor's office, the General Crime Unit (*Unit Pidana Umum*) is charged with prosecuting under *jinayah* law. One officer at this unit is specifically assigned this task. During my first fieldwork (mid-2014 to mid-2015), it was Akbarsyah who used to prosecute offenders of *jinayah* in Central Aceh district. He was not always successful in getting a conviction, however. In one of his *khalwat* cases, the offenders were suspected to be involved in premarital sex in a car at midnight. The judges rejected the indictment and found that the suspected offenders were innocent (01/Jn/2014/MS-Tkn). Akbarsyah also lost when he appealed the verdict to the Supreme Court in Jakarta. This was disappointing to him and potentially causing him problems as there is a rule within the public prosecution service that prosecutors have to get at least 2/3 of their indictments upheld in the courtroom. Although the loss did not affect his career, he repeatedly expressed his disappointment at the verdict in our meetings.

After Akbarsyah lost this case, he became more selective in prosecuting offenders of Aceh Shari'a. He stopped prosecuting premarital sex, but focused on

extramarital sex, gambling, and liquor offences. As from 2017 his successor Hermawansyah continued in the same way.

From the case register of the Mahkamah Syar'iyah it appears that the public prosecutors of Central Aceh make a particular categorization of offenses. Since the first trial in Central Aceh based on *jinayah* law, in 2014 until 2017, public prosecutors have dealt with four types of offenses: *khalwat*, *zina*, gambling and drinking. They use *jinayah* law in two situations. The first is if the offenses are victimless and only hurt local sensibility and public convenience. Such offenses are extramarital sex, drinking, gambling and liquor. These offenses are punished more harshly under Indonesia's legal system than under Aceh Shari'a. According to national Law 7/1974, gambling offenders can be jailed up to ten years or fined up to IDR. 25 million. In Central Aceh, I found that offenders of this law were commonly jailed for three months. The second situation is when offenses are not criminalized by Indonesian penal law, i.e. drinking and distributing liquor without a permit.

Since the enactment of the Qanun on *Jinayah* law in mid 2014, the Aceh Shari'a applies a stricter procedure to cases concerning *zina* than to those concerning other offenses, in line with the classical Islamic legal texts. These rules on *hudud* make it very difficult to obtain a conviction. If the fixed punishment of *hudud* for *zina* offenders cannot be enforced because not all the conditions are met, the judge may apply discretionary punishment (Peters, 2005, pp. 16, 53). The Aceh Shari'a follows the legal procedure of proving *zina* from the classical legal text, with some adjustment to a modern context. It requires eight pieces of evidence: four witnesses' statements who with their own eyes have seen the act, expert testimony, evidence, letters, electronic evidence, the offender's confession, and other information from the offender. The most salient kind of evidence is the testimony by four witnesses (article 181 and 182 Qanun 7/2013). If such evidence is unavailable, then the confession from an offender under an oath in the courtroom suffices. Such a confession also means that the offender agrees to receive the *hudud* punishment (Articles 37 and 38 Qanun 6/2014). A confession made in front of investigators or public prosecutor is invalid, even if it was made under oath.

Theoretically, if the judges fail to obtain four witnesses or a confession, they have to acquit the offenders. In none of the *zina* cases tried at the Mahkamah Syar'iyah of Central Aceh four witnesses or a confession were available, but in these cases the court then convicted the defendants for violating *khalwat.* This carries a much lighter sentence: flogging up to 10 lashes, paying 100 grams of pure gold, spending ten months in jail, or a mixture of these three (Article 23 Qanun 6/2014).

In these cases the primary indictment by the public prosecutors was committing *zina*, the second *khalwat.* The defendant usually cannot escape the latter indictment, as normally the public prosecutor can present witnesses who were involved in the raid conducted by the local community before the accused were handeded over to the police.

The difficulty of proving *zina* in *jinayah* law is reflected in the following two court rulings: *Penetapan* No. 02/JN/2016/MS-Tkn and *Putusan* No. 05/JN/2015/MS-Tkn.[30] The defendants in both cases were accused of extramarital sex. In both cases the defendants were caught by a group of locals, but only after and not in the act. This means that there were no four witnesses. However, the defendants in the first case confessed that they had committed *zina*. This meant they surrendered to the *hudud* punishment for *zina*, which is 100 lashes. Meanwhile, the defendants in the second case did not confess they committed *zina*, as they claimed they were engaged with one another in a non-registered marriage. However, this unregistered marriage was problematic, because the woman was also engaged in a registered marriage – with the man who was involved in the raid seizing the defendants in his home. Although this registered husband presented the marriage certificate in the courtroom and the woman could not prove that she had divorced, the judge did not conclude to *zina*, but instead convicted the defendants for *khalwat*. They were sentenced to nine lashes, reduced to seven to compensate for their detention during investigation and trial.

Although *jinayah* law criminalizes all sexual offenses, the Mahkamah Syar'iyah of Central Aceh has tried fewer sexual offenses than the district court. From 2014 to 2017, the number of cases brought to the Mahkamah Syar'iyah was also lower than the number solved or terminated by the district police. The Mahkamah Syar'iyah tried 17 cases of *zina* and *khalwat* while the district court of Central Aceh tried 49. This difference is presented in tables I and II below. Except for a sodomy case in 2016 and the sexual abuses committed by a juvenile that ended in termination of the investigation, all of these sexual offenses were punishable under both *jinayah* law and national penal law. And although formally the police have to bring all cases to the prosecutor, they often return them to adat officials.

Between 2014 and 2017, the police in Central Aceh terminated investigation in 26 cases for not being supported by adequate evidence. They also halted

[30] There are two kinds of verdicts: *penetapan* (court decree) and *putusan* (court judgement). A *penetapan* is made when the judge does not find four witnesses but obtains the defendant's confession in the courtroom. A *putusan* follows when the judge does not find four witnesses nor the defendant's confession in the courtroom but proves the defendants violated *khalwat.*

investigations in a case where the victims' family and suspected offenders reached an agreement through the adat tribunal, which was submitted to them by the *reje* and the parties involved in the form of a document signed by all parties involved somehow in the offense.

The Indonesian police has a stronger and more autonomous position in legal enforcement than the prosecution service, which has been described as a "postman", shuttling cases between the police and the court (Afandi, 2019). However, the legal pluralism in Aceh province gives the public prosecutors more autonomy than they enjoy in other parts of Indonesia because they get to decide under which law they want to prosecute a case.

The following tables show how the police and/or the public prosecutor decided which case should be processed by the Mahkamah Syar'iyah and which by the district court, as well as which cases were returned to the village. This demonstrates how the police and public prosecutor are bridges between the legal systems in the pluralism of penal law. They are central in managing the intersections between Aceh Shari'a, national penal law, and adat law.

Table II

Cases tried at District Court of Central Aceh (2014-2017)					
Cases		Year			
		2014	2015	2016	2017 (Jan- May)
Rape	Terminated**	1	1	0	1
	Adult Offender	1	2	1	0
	Juvenile	0	3	1	0
Child Sexual Abuse	Terminated**	8	7	5	0
	Adult Offender	8	2	9	6*
	Juvenile	0	5	1*	1
Sexual Abuse	Terminated**	1	1	1	0
	Adult Offender	0	2	1	7
	Juvenile	0	0	0	0
* One case of sodomy ** The case was terminated due to inadequate evidence or the reporter withdrew the report after presenting the police with a peace agreement between the victim and offenders, facilitated by the adat institution					

Collected from Criminal Unit of District Police Station of Central Aceh

Table III

Jinayah Offenses tried at Mahkamah Syar'iyah of Central Aceh (2014-2017)				
Case	Year			
	2014	2015	2016	2017 (January-August)
Khalwat	3*	10	2	0
Zina	0	1	1	0
Gambling	5	5	3	0
Drinking	0	6	1	0
* One case was appealed by public prosecutors to the Supreme Court in Jakarta. The appeal was rejected.				

Collected from Jinayah desk of Mahkamah Syar'iyah of Central Aceh

Sometimes the police return a case to the adat officials to prevent that a juvenile offender will end up in prison together with adult offenders. According to Sumiyatun, there is no juvenile prison in Central Aceh nor a good mechanism to return the juvenile offender to society. Considering these limits, returning the juvenile to the adat officials is a better option. Moreover, she added, large numbers of sexual offenses committed by juveniles are based on consensual sexual intercourse. According to Sumiyatun, their engagement in an unlawful sexual act only opposes the wishes of their parents and local norms. In her view, the offenders are curious about sexuality and should not be blamed for that; it is the fault of their parents who did not educate their children about sexuality and its effects.

From my interviews with various sources, police officers at the Crime Unit of Central Aceh, *reje* of several villages, and my involvement with the WH Kampong and the advocacy conducted by Yusdarita and Hasanah Silang, I gathered that sexual crimes involving juveniles commonly start with a romantic relationship between teenagers. From there on at some point they start to engage in premarital sex. When they find out, the unhappy parents of the girl usually report the boy to the police station. Later, with the involvement of the village/adat officials and sometimes with pressure from the state Shari'a Police (not to be confused with the WH Kampong discussed in the previous chapter) or from the lawyer of the offender, the parents of the couple will negotiate a settlement while the case is being investigated by the police. Usually, this negotiation ends with an early marriage and termination of the investigation. In a few cases parents successfully escape the adat mechanism by forcing the police and the prosecutor to advance the case to the courtroom as a means to avoid the forced marriage for the sake of

their daughter's education and future life. This success often comes at great cost, such as having to move from the village because of disrespect for the village office's authority, or being forced to have their daughter move to another district or even province to continue her education.

In this section, we have seen how much freedom legal agencies have in choosing among Aceh Shari'a, national penal law, and adat. Their choice is driven by the limits of each legal system and its effect on the victims, offenders and society. Their choices make the divisions between legal jurisdictions blurred, highly dynamic and sometimes absent. However, this does not mean that these three systems are competing, as is the case in family law in Aceh (Salim, 2010, pp. 2015). In the pluralism of penal law, the legal systems differ in their formulation and approach. Any chosen legal system in this pragmatic context is enforceable and uncontested. Each of them is a supplement or alternative for the other. Such a situation is the outcome of creative maneuvering of the legal agencies involved who face a complicated practical situation. They then try to negotiate, reconcile, and choose among the existing legal systems in a way that suits their interests, no matter whether this choice goes against the formal arrangement of legal pluralism in Aceh province.

The next section shows that in some situations, the choice made by state legal agencies is influenced by the power of a community. This situation is particularly seen in cases involving extramarital sex. Such cases hit the core of local sensibilities and potentially ruin the internal harmony and social arrangements of the community. Most of those reported for extramarital sex cases are caught subsequent to the act by a group of locals. After an adat punishment has been imposed upon them, the accused are handed over to the police who transfer the case to the public prosecutor. The public prosecutor prosecutes the offender under the *jinayah* law although Indonesian penal law is also available to examine the case. The prosecutor's choice for *jinayah* law is based on the fact that the *jinayah* law can best satisfy the community's feeling of justice since it leads to offenders being publicly flogged.[31]

[31] Flogging is also considered lighter and better punishment for offenders than being jailed for months or years. They only need to bear the whip of rattan but are set free as soon as the process is completed. Because of its lightness compared to Indonesian secular penal law, we see many non-Muslims offending the Jinayah bill of liquor and gambling punished under the jinayah law. Unlike Muslim Acehnese, non-Muslim can choose either to surrender to the Jinayah Law or national penal law. In all cases, the non-Muslim surrender voluntarily to Jinayah law. Because most of them are married, it would be hard for them to perform the rule of breadwinner or mother if they are being jailed, which is the punishment under the national penal law (BBC, 2016; G. Post, 2016; Ismail, 2016; Sindonews, 2018).

Extramarital Sex

As discussed in the previous chapter, Gayonese generally tolerate premarital sex offenses, although they break local norms of *sumang* and potentially disturb the traditional social arrangement. Normally, the Gayonese say that premarital sex is an unexpected outcome from "*pergaulan muda mudi*" (co-mingling young people). The expression hints at the ordinariness of the behaviour, even if it is not acceptable. There is also an adat legal procedure to force those involved in premarital sex to a marriage if the woman becomes pregnant and/or makes a confession to her parents and/or the local imam. In addition, the adat institution also provides a mechanism to readmit the offender as part of the community once the offenders have received the adat punishment. As discussed, premarital sex offenders will usually be forced to marry. If they are from the same community they will also suffer the *farak* punishment. However, if the offenders' parents, normally the girl's, do not agree with this adat solution, the case will be transferred to the district court with a notification letter from the village office that they have failed to resolve the case and recommend the state legal agency to follow up on it. The inability of the village office to resolve the case often has consequences for the victim's family. In some cases, the family has to move away from the village, as they lose their social capital in the village and/or the support from the village government because they are considered to have undermined the authority of adat law in the village.

The regular police officers and the Aceh Shari'a police of *Wilayatul Hisbah* hold similar ideas as the locals about the role of adat law in dealing with premarital sex. In some situations, the Aceh Shari'a police force the offenders to a marriage by threatening them with public shaming (i.e., flogging them under the *jinayah* law in front of the public). Advancing the case to the state court, according to the police, is too time-consuming. Moreover, these cases have always been traditionally addressed through the adat mechanism. As a consequence of the strong role of adat law in premarital sex, the Mahkamah Syar'iyah of Central Aceh has never dealt with such cases.

By contrast, Gayonese have no tolerance for extramarital sex offenses. Traditionally, Gayonese will ban the offenders permanently from the community. The punishment itself is called *jeret naru* (a long grave), which suggests that the offenders are considered dead. In the same way as *farak*, *jeret naru* is practiced differently from one place to another. This depends on the level of urbanization and the homogeneity of the community. Toweren Toa village, which will be discussed below, is an example of a homogeneous community, where the only immigrants are those who have come to marry into the village. Lot Kala, which was

discussed in the section on WH Kampong in the previous chapter is an example of a heterogenous community.

The different punishments for those involved in pre- and extramarital sex reflect the degree of immorality that can be accepted by the Gayonese. This morality is neither accommodated by the Aceh Shari'a on *zina*, which is solely based on classical Islamic legal texts, nor by national penal law, which is based on national judicial interpretation of adat.[32] The Aceh Shari'a categorizes both pre- and extramarital sex as *zina* and consequently the same punishments apply. By contrast, national penal law only defines extramarital sex as an offense when the first victim (husband or wife) reports the case. If proven, the offender can be jailed up to nine months (Article 284 (2) of the Penal Code). This lack of correspondence between law and local morality has led the Gayonese to ignore Aceh Shari'a and national penal law and to punish extramarital affairs by adat sanctions.

Because in extramarital sex cases the adat institution will first impose the *jeret naru* on the offenders and then transfer the case to the state legal system, the offenders may end up getting double punishment. An example is a case heard by the Mahkamah Syar'iyah of Takengon (04/JN/2015/MS-Tkn) against Bunge and Lebah, as I will call them here. In June 2015 they were sentenced to a punishment of nine lashes, which was reduced to six lashes because of the three months they had spent in jail during the investigation and trial.[33]

Bunge and Lebah were caught by the community of Toweren Toa on Friday before the sermon of the Friday prayer. There had long been suspicions against them. Bunge came to live in the village after she married Manok (also a fictive name). Bunge and Lebah were often seen together on Lebah's motorbike or walking. According to local informants, Manok had been told to remind his wife not to break the *sumang* norm. However, Manok ignored the advice because he trusted Lebah. Lebah came from North Sumatra and had worked for more than three years as a garden keeper for Bunge's father. He often paid visits to the village and then stayed the night at Manok's house.

At some point, Manok was hospitalized at the district hospital and Bunge left the key of the house with her neighbor. On Friday, at noon, Lebah came to the village to pick up the key. Not long after, Bunge came to the house. Suspicious neighbors sent a female villager (Emak) to check the house. She knocked on the front door but got no answer. The window was covered with a curtain, which is

[32] After independence, the Indonesian government developed the criminal law of the Dutch by including some aspects of adat criminal law or assumed to be part of the adat to engineer Indonesians' life based on one standard (Pompe, 1994).

[33] The case happened before the formal enforcement of the latest Jinayah law in October 2015.

uncommon during the daytime. She then went in through the back door, which was unlocked, and found Bunge half naked while someone else was in the bathroom taking a shower.

The Presence of Lebah in the house itself already broke the *sumang* norm, as I discussed in the previous chapter. Moreover, the way Bunge was dressed and Lebah's shower raised strong suspicions that they had been engaged in sexual intercourse. The news immediately spread through the entire village and Bunge and Lebah were arrested and surrendered to the police.

The next day, after the dawn prayer, all *reje* of villages around the valley, Toweren Toa, Toweren Antara, Toweren Uken and Toweren Waq[34] as well as other functionaries of each village, gathered in the mosque of Toweren Toa for a meeting concerning the issue. After having returned home and after the late-night prayer of Isha, each *reje* publicly announced through the speaker of each mosque, "…Bunge and Lebah are prohibited from putting their feet on this village's land. Whoever accepts them at their house for whatever reason will be given the same punishment. They will be expelled from the village as well."

Manok was under pressure from his siblings to divorce Bunga. In return, he would be given a portion of a coffee plantation and a house to restart his life, as he was not well off. However, Manok refused and wanted to have Bunge back. Manok's siblings were furious, as this meant that Manok too would be expelled from the village – which he was prepared to accept.

Extramarital sex cases and their punishment (*Jeret Naru*) were quite difficult to discover before Aceh Shari'a became operative. No cases can be found in the records of the District Court of Central Aceh. Presently, after the introduction of Aceh Shari'a, extramarital sex cases are no longer as concealed as they were before. This seems to be the case because *jinayah* law prescribes flogging for offenders, which is considered a proper way of shaming offenders in front of the public. As a result, I found several extramarital sex cases recorded at the local Mahkamah Syar'iyah.

The concern of the community about morality, village dignity and preserving social arrangements drives them to put pressure on the police department and

[34] The four villages involved all originate from one village, called Toweren. In 2004, this village was divided into four because of its increasing population. The last word of each village's name indicates the geographical position of the village: Toweren Uken (uphill), Toweren Toa (downhill), Toweren Antara (in between Uken and Toa). The original *belah* is now called Toweren Waq, named after the first group inhabiting the village. Although they are now divided, they still share a common history, culture, and adat practices. They are also still under the same social arrangement that keeps them united and strong. This can be clearly observed through the kin terms among them and whenever one of the new village members is in trouble because of a threat from an outsider.

public prosecutors to impose a sentence. These state legal agencies consider the punishment under Aceh Shari'a as the best way to satisfy the community. A good example is a case which occurred in 2016, when a *reje* was caught by members of his own community after having engaged in extramarital sex. The case was solved through adat, with the *reje* marrying the woman. As she was from the same community they were also banished, on the basis of a written agreement with the community (Lintasgayo.com, 2016b; Media, 2016b).

Soon thereafter, the news about the case spread more widely and many were anxious to see *jinayah* law enforced on a *reje*. However, because the adat officials did not transfer the case to the police, nothing happened (Lintasgayo.com, 2016a). This led to serious public protest (L. Post, 2016). Some commented on social media that the Aceh Shari'a enforcement was unjust, as it was enforced only on ordinary people and never on the elites. Members of the District House of Representative were asked to intervene but they too were powerless in the face of the community's refusal to report the case. As a result, the case ended where it started: with adat (Lintasgayo.com, 2016b; Media, 2016b).[35]

This case shows once again that after state recognition the Gayonese have become more autonomous in enforcing adat law and in preserving their social rules and structures. The adat elite in particular has gained power, as they are in charge of enforcing an important part of penal law. Aceh Shari'a and national penal law are only considered as an extra punishment, secondary to adat law.

This suggests that legal systems in the state legal pluralism governing one community may take different forms. They may appear hierarchical, in which state law remains the supreme law. However, they may also appear as legal systems complementing each other, as in the case of extramarital sex offenses. Here adat law and the Aceh Shari'a can be enforced together or become alternatives. These different forms of interaction depend on local legal actors' interest in a case and in promoting a particular legal system. In most cases the police and public prosecutor play a passive role. They only investigate an offense when a case is transferred to them. This has provided space to the community to revive self-regulating traditions and increase the role of adat law; state actors cannot intervene at their own initiative.

This autonomy of adat has certain consequences. Although to some extent the institutional recognition of adat has increased public participation in

[35] During my second fieldwork period, I asked Rudi Darmansyah, the public prosecutor officer in charge of Jinayah law at the public prosecutor's office of Central Aceh, whether anything had happened in this case. He told me that many people had come to ask him about the case, but that indeed the police could do nothing because the community never filed a report.

monitoring social order, legal enforcement and legal certainty, the lack of uniformity of adat punishment from one village to another may cause unequal treatment over one offense as there is no single legal standard.

It is important to also note that the dynamic enforcement of *farak* and *jeret naru* suggests an equal position of adat and Aceh Shari'a, as they are inspired by the same source: the Divine Shari'a. One might be inclined to think that the application of state Shari'a substitutes the application of adat law as it is supposed to represent the people's idea of justice based on Islam and its law. However, as this book shows, the Gayonese are not convinced of this. They think Aceh Shari'a is too limited in its conception of *zina* and how it should be punished. As a consequence, Aceh Shari'a can neither replace nor nuance adat law, it can only provide an additional punishment.

77 ONO

SURAT PERNYATAAN

Kami yang bertanda tangan di bawah ini:

1. Nama : [redacted]
   Jenis Kelamin : LAKI
   Tempat/Tanggal Lahir : [redacted]
   Agama :
   Pekerjaan :
   Alamat :
2. Nama :
   Jenis Kelamin : LAKI
   Tempat/Tanggal Lahir : [redacted]
   Agama :
   Pekerjaan :
   Alamat :

Menyatakan dengan sesungguhnya bahwa :

1. Pada hari Kamis, Tanggal 20-6-2013, Jam 13.30 wib, benar telah melanggar Qanun Syari'at Islam No. 14 Tahun 2003 Tentang Khalwat (Mesum) yaitu melakukan Mesum, bertempat di Dusun Lelaki, Kampung Mendale, Kecamatan Kebayakan
2. Atas dasar tersebut kami telah diingatkan dan dinasehati oleh Pengawas Syari'at Islam Kampung Mendale, agar tidak mengulangi perbuatan yang serupa di masa yang akan datang.
3. Bila pernyataan ini kami langgar (tersebut poin 2 (dua) di atas), kami bersedia dihadapkan kepada Majelis Peradilan Adat Kampung dan bersedia menanggung segala resiko/sanksi yang dijatuhkan kepada kami.

Demikian Surat Pernyataan ini kami buat dengan sebenarnya tanpa ada paksaan dari pihak manapun.

Pengawas Syari'at Islam

No	Nama	Tanda Tangan
1	FIRMAN	
2	HAMIDI	
3	BUDIMAN	
4	MINARO	
5	DARMAN	
6	SUHADA	

Kampung Mendale, 20-06-2013
Yang Membuat Pernyataan
Pihak Pertama (1)

[redacted]

Pihak Kedua (2)

[redacted]

Mengetahui,
Kampung MENDALE

REJE MENDALE

M. ANIN

LESBIAN

SURAT PERNYATAAN

Kami yang bertanda tangan di bawah ini:

1. Nama : [redacted]
   Jenis Kelamin : PEREMPUAN
   Tempat/Tangga Lahir : [redacted]
   Agama :
   Pekerjaan :
   Alamat :
2. Nama :
   Jenis Kelamin : PEREMPUAN
   Tempat/Tgl Lahir : [redacted]
   Agama :
   Pekerjaan :
   Alamat : [redacted]

Menyatakan dengan sesungguhnya bahwa :

1. Pada hari Selasa, Tanggal 11-6-2013, Jam 14.21 wib, benar telah melanggar Qanun Syari'at Islam No. 14 Tahun 2003 Tentang Khalwat (Mesum) yaitu melakukan MESUM, bertempat di pusun Lelaki, Kampung MENDALE, Kecamatan Kebayakan
2. Atas dasar tersebut kami telah diingatkan dan dinasehati oleh Pengawas Syari'at Islam Kampung MENDALE, agar tidak mengulangi perbuatan yang serupa di masa yang akan datang.
3. Bila pernyataan ini kami langgar (tersebut poin 2 (dua) di atas), kami bersedia dihadapkan kepada Majelis Peradilan Adat Kampung dan bersedia menanggung segala resiko/sanksi yang dijatuhkan kepada kami.

Demikian Surat Pernyataan ini kami buat dengan sebenarnya tanpa ada paksaan dari pihak manapun.

Pengawas Syari'at Islam

No	Nama	Tanda Tangan
1	FIRMAN	
2	BUDIMAN	
3	HAMIDA	
4		
5		
6		

Kampung MENDALE, 11-6-2013
Yang Membuat Pernyataan
Pihak Pertama (1)

[redacted]

Pihak Kedua (2)

[redacted]

Mengetahui,
Kampung Mendale

REJE MENDALE

M. ANIN

Conclusion

This chapter has demonstrated the role of state and non-state legal actors in managing the intersection of three legal systems in Gayo. Non-state legal actors play a crucial role in helping develop local knowledge on particular issues, like sexuality, which helps the community to choose among the three legal systems. These actors sometimes manage to break the legal boundary between adat, Aceh Shari'a and national penal law and move cases into another legal realm.

However, a more influential actor directing the use of the three legal systems is the police. They are the bridge between legal systems in the pluralism of penal law in Aceh, deciding which legal system suits best the victims', offenders' and their own interest. Public prosecutors also play an important role, as they decide whether to make an indictment on the basis of national penal law or Aceh Shari'a. However, it is the police that benefits most from the legal pluralism as it is the first state legal agency to be involved in a case and hence is both a gatekeeper and a bridge between the legal systems potentially involved.

Finally, the state recognition of adat law gives adat institutions a high degree of autonomy, which cannot be penetrated by other state legal agencies. However, it should also be clear that the legal pluralism in Aceh has been designed by the state and adat authority has been granted by the government. Village actors are to a large extent dependent on state policies and legal projects. They cannot completely escape from the authority of the state, even if the current arrangement of legal pluralism gives adat a high degree of autonomy. This makes adat a clear Semi-Autonomous Social Field. Generally speaking the community considers state law as something alien and external, and as something that does not support their needs (cf. Moore, 1973). In Gayo, this semi- autonomy of adat law increased after the government formally included the adat institutions as part of the government legal project to promote social order. The adat institutions use state formal recognition as a source of power to enforce their law and to legitimize their practices (cf. Wolf, 1990). This shows that state recognition of adat does not necessarily force adat to follow the state's commands, but may strengthen its autonomy and authority. The institutional recognition positioning adat as an semi-autonomous legal system makes the distinction between weak and strong legal pluralism (Griffiths, 1986) irrelevant for Aceh. Griffiths suggests that the state recognition of non-state legal systems subjects them to the commands of the state. He calls this situation weak legal pluralism. However, in Aceh the state recognition does not constrain the adat law to the state's design. It has strengthened the enforcement of adat law in such a manner that it sometimes goes beyond the jurisdiction the government designed for adat law. Instead of limiting

adat law, state recognition has been a source of power for adat institutions to revive the self-regulating mechanism of adat and to legitimize adat legal practices. Adat has become more autonomous from the influence of the government, so that state legal actors and politicians cannot intervene in the adat institutions' decisions.

The preference of state legal actors for not applying Aceh Shari'a when legally speaking it is applicable suggests that the Aceh government is unable to interpret, develop, codify and enforce the Divine Shari'a in such a way that it responds to the social needs in place. The limits of Aceh Shari'a, the autonomy of adat institutions and the ability of different actors to creatively navigate the legal pluralism based on their own interests disrupts the formal hierarchical design of the legally plural system in Aceh. The advantage is that when facing a complex legal situation, these actors can choose between three legal systems to provide justice for individuals, protect victims, bring back the dignity of a communal group, advance their own interest.

This does not mean that these three legal systems are contesting one another. The state, non-state legal actors and adat elites observe certain limits of each law and then shop the forums available or differentiate legal consequences for an identical case for the sake of those who are involved in the case. In some cases, the autonomy of each legal system leads to double punishment for offenders; whether or not this is justified, depends on the eye of the beholder.

Chapter VI
Conclusion

This book has discussed how the introduction of state-designed legal pluralism in penal law in Aceh started as a response to local protests against the central government. This state legal pluralism was established through the official recognition of adat law and the enactment of state Shari'a law in the province of Aceh in 2002, while national penal law remained in place.

The existence of state legal pluralism in Aceh would not have been possible if the authoritarian New Order government had not been replaced by a democratic system from 1998 onwards. Democratization shifted the Indonesian national government's approach from centralism to promoting regional autonomy, not only in Aceh, but also in other regions. The final step in this process was the Village Law (6/2014) which has enabled villages to adopt forms beyond the administrative village of the New Order regime and to revive and re-practice their culture, including adat law. However, Aceh province is the only region where a formal legal boundary between different legal systems was established.

This situation is not new. During colonial times the Dutch maintained a plural legal system based on race and social class (Hadikusuma, 1989, pp. 22–32; Haveman, 2002), yet there are clear differences. F. and K. von Benda-Beckmann call this transformation process the re-actualization or reinvention of older legal forms to match and legitimize the current and future administration of justice agenda (F. and K. von Benda-Beckmann, 2006, p. 8). An important consequence of the current practice of legal pluralism is the opportunity it offers legal actors not only to choose between existing legal systems in a way that suits their own interests (forum shopping) but also to choose a rule from a different legal system to achieve another legal outcome in cases concerning seemingly identical offenses as a strategy to deliver fairness to the plaintiff, defendant and or the community (legal differentiation).

By looking at the Mahkamah Syar'iyah, the secular court, and the adat tribunal, this research has studied how in Central Aceh (Gayo), the intersection of the three penal legal systems operates in practice in dealing with public morality and sexual offenses. I have also considered the roles of public prosecutors, police officers, officials of the district Shari'a agency, adat officials at the village level and WH Kampong. Legally speaking, all of them are state officials, and adat officials are therefore backed up by the government. Although they are elected by their village members, their power in solving communal issues and authority to force adat law derives in large part from this support. They are paid, trained and given particular

facilities by the provincial and district government. The same applies to WH Kampong, who are trained, given work incentives and the power to raid and detain offenders by the government.

Three major findings

This book presents three major findings. The first one deals with the relation between the village and higher levels of government. It is well-known that state policies often fail to change social arrangements because they are new and strange to the community who prefer their own (Moore, 1973, p. 723). This was the situation found in Gayo during the New Order. However, by recognizing customary rules and involving the village elites in the government developmental project, the new democratic regime has been much more successful in changing the Gayonese socio-politics and culture.

The second major finding relates to the development of adat concerning family and penal law. This research has found that these two fields develop in different ways. Adat family law has developed mainly as a result of changes in local communities' ideas about Islam, the influence of the Islamic court and the policy of land ownership introduced by the government. Under these external influences, Gayonese have reformulated their own adat legal rules concerning the family in ways that suit their sense of justice. The results are in accordance with the basic tenets of Islam but differ from the standard Islamic legal interpretations.

By contrast, the transformation of adat penal law happened only more recently and involved many actors from different political layers; local, national, and international organizations and activists. Initially, they aimed at maintaining the just achieved peace at the grassroots level in Aceh by using adat law and institutions. Later, some institutions and activists reconstructed the adat and promoted the codification of adat penal law. The arrangement and the outcome of the "adatized" mixture of norms differ from one village to another. Some villages have developed adat progressively. Instead of re-introducing the old norms, lawmakers, activists and local leaders in some places have developed new sets of norms influenced by local, regional, national and international practices and campaigns. These include religious, secular and liberal ideas such as human rights, gender equality and child protection. In other places in Gayo and Aceh in general, local elites have reintroduced old norms and traditions which give greater opportunity to elderly men to monopolize the adat. Both developments have been legitimated by the government.

Which of these two opposing legal developments has become prevalent depended on the presence and the creativity of state and non-state legal actors,

such as *reje*, activists and paralegals. It should also be noted that the continuous campaign on human rights in Aceh province has imposed limitations on village elites to enforce adat law based on old norms and traditions violating individual rights. On the other hand, it has also led village elites to codify adat law in order to force non-native village members, who adhere to different cultural system, to become subject to adat law, including the exile punishment that contradicts an individual's right to stay anywhere within the jurisdiction of the Indonesia.

The third finding concerns the state legal pluralism of penal law. This research has found that as a result of institutional recognition, adat has become more important than both Aceh Shari'a and national penal law for dealing with common criminal offenses in everyday life. This applies in particular to minor offenses, and, more specifically, to sexual offenses. The different objectives of adat and the other two legal systems provide room for forum shopping and legal differentiation, not only for community members but also for the police and the public prosecutor. The limits of Aceh Shari'a and national law, the injustice they may cause to the victim (in the case of Aceh Shari'a), and the negative effect they may have on a juvenile offender (in case of national penal law) reinforce the importance of adat for the community and state legal agencies.

On the other hand, activists and paralegals have challenged the undifferentiated adat approach of sexual offenses – adat simply categorizes any sexual offense as premarital or extramarital sex (which reflects the community's understanding about sexuality) – and the lack of legal knowledge of village/adat officials. This situation makes the interaction of the three penal systems highly dynamic and always open to new (re)interpretations, (re)organization, (re)positioning and interventions. Their legal boundaries have become flexible and negotiable despite the set of formal boundaries designed by the government to manage overlapping jurisdiction between them.

In fact, state legal agencies benefit from the support of adat to the enforcement of the state Shari'a project on morality and sexuality. On the other hand, adat has gained autonomy and is hard to control for the government. The rise of vigilante action against sexual offenders is an example of such uncontrollable outcomes from using adat for the state legal project.

The rise of vigilantism on behalf of the state can also be seen in the coastal part of Aceh province. As David Kloos has observed, vigilantism is conducted in the name of the enforcement of *shari'a* at the village level (Kloos, 2014). In Central Aceh, as I have found, it is conducted in the name of adat. For the police, on the one hand, adat contributes to decreasing their workload, but on the other it makes it harder for them to protect individuals citizens, particularly (suspected)

offenders. For the Shari'a agencies it matters that the adat institutions are helping them in achieving their mission, i.e. controlling and suppressing immoral acts in the community.

This book discussed the utilization of adat for the state Shari'a project in the creation of the WH Kampong and based on this case presented two more general conclusions. First, the presence of more than one penal system produces interlegality, in which the provision of one legal system is adopted by the other. This phenomenon takes many forms and is observable in countries where the demand to recognize indigenous law is high (Collier, 1998; Hoekema, 2005; Proulx, 2005; Simon Thomas, 2009). An example of such interlegality in Central Aceh is the report of WH Kampong to the district Shari'a agency, which mixed the provisions of Aceh Shari'a about *khalwat* and *zina* with the adat norms about *sumang* (shame). Secondly, the creation of WH Kampong suggests that two legal systems can be reconciled if both recognize a similar source of authority and aim at a similar objective, even if they are distinct as regards concepts and formulas. In this case, the commonality shared by state Shari'a and adat is their source of law and objective: the Divine Shari'a and controlling immorality.

This book argues that the pluralism of penal law in this case does not lead to contestation, as the pluralism of family law does (Salim, 2015), but instead that its nature is one of complementarity. An important cause of this difference is the legal procedure involved. In family law, as shown by many scholars (Irianto, 2004; Salim, 2010; Shahar, 2015), plaintiffs can directly file their case – with or without a lawyer. A judge's verdict or a communal consensus in the family can be contested in other judicial systems at the same level or before other authorities such as adat officials. In the penal law system, the contestation among legal systems exists only in how the laws formulate an offense and its punishability, not in how institutions contest each others' rulings.

Moreover, the interests of those reporting the crime or the interests of the victims are represented by state legal actors. Reporters and victims have no freedom to choose a legal system which best serves their wishes, but instead have to follow the hierarchical order of state legal pluralism. By contrast, state legal actors have the opportunity in case of certain offenses to choose among the three legal systems to apply legal differentiation in such a way: they select a particular legal system to obtain the legal consequences they desire. They observe the limits of each operating legal system and choose among laws to meet their own, the victims' or someone else's interest. For example, they can return a premarital sex case to the adat institution instead of pursuing it under State Shari'a or national penal law. The application of legal differentiation enables the police to satisfy the

sense of justice of those involved in the case, particularly when it concerns minors as offenders. At the same time the legal agency's own institutional interest may also be involved, such as realizing a reduction in workload and reinforcing the civil image of the police after they split away from the military in 2000.

Sometimes, the plural legal situation leads to problems. There are cases concerning extramarital sex offenses where two legal systems have been applied to the same offense at the same time. In the case of premarital sex offenses involving offenders from the same village, adat law has been applied where officially it is not applicable as the case concerned is within the legal competence of Mahkamah Syar'iyah. In these cases, the importance of social arrangements and support for the offenders prevents those involved from reporting such transgressions to the other legal systems. Such practical conjectures and the discretion of legal agencies blur and sometimes even undo the official design of the system. This shows how hard it is for the state to control adat. Adat has so far always managed to adapt to external forces and to produce new arrangements, which have kept it in place as the most important normative system for the community. Moreover, while state actors try to utilize adat for their political and legal interests, adat actors use the state to reinforce their power.

I will discuss these three findings in more detail in the following sections in an attempt to provide a comprehensive conclusion about the current development of state legal pluralism of penal law in Aceh province.

Gayo Villages in Post-New Order Regime

Unlike Minangkabau of West Sumatra and Rejang Lebong of South Sumatra, Gayo managed to maintain its village structure during the New Order. While the socio-political structure of society changed, traditions were less directly affected. The reason for this is that the Nagari of the Minangkabau and Marga of Rejang-Lebong were larger than the village structure of Gayo. During the New Order, they were broken up into many independent villages. This process disoriented the notions of social belonging and relationship, the cultural moorings and leaders' authority over law and politics. However, in Minangkabau adat retained its importance (Galizia, 1996; F. and K. von Benda-Beckmann, 2013, pp. 48, 149-152).

In Gayo, the territorial divisions consisted of *belah*, which were much smaller in size than the Nagari and Marga. In pre-colonial times Gayo knew kings, but these did not have authority over the entire *belah.* They could only rule in the *belah* where they resided, as their main royal duties were related to external affairs. Later the *belah* came under the less powerful *reje*. Although the traditional political structure changed during the New Order, the authority and the responsibility of

the *reje* and *imem* were maintained. Other traditional political posts, *petue* (*reje* assistant for adat) and *sudere* or *rayat* (the representative of the people), were still recognized but merged into the Village Community Body (LMD, *Lembaga Masyarakat Desa*).

Serious changes in village organization started after 1999, when the central government shifted from authoritarianism to democracy. The government gradually reorganized villages and granted them more autonomy in managing their affairs. This paved the way for reinstalling traditional socio-political structures and for the enforcement of adat law. Village autonomy became even more significant after the introduction of the Village Law in 2014. While the central government has managed to maintain some control over the implementation of developmental and political projects, this control does not extend to legal matters. Villages have become more autonomous in reinforcing adat law, as the central government promoted adat law to legitimize its position.

Another key development is that to boost village development, district governments have promoted the creation of new villages. This has led to a shift from the traditional *belah* village communities, where people from other ethnicities live next to the local *belah* members. It has also shifted the authority of *reje* and the jurisdiction of adat law from both personal and territorial to only territorial. These changes have forced all internal immigrants, both from other *belah*s and from outside Gayo, to follow the law of the local *belah*. Internal immigrants have become subject to *farak* punishment (temporal banishment from the village) for breaking the prohibition of endogamous marriage, just like local *belah* members. Since social security networks are highly important in Gayo, immigrants have no other option than accepting these changes. Reporting by immigrants to the police about the application of adat law makes no sense, as the later will ignore such complaints. Mostly of local origin, police officers adhere to adat norms as well. In new village territories, which do not belong to any *belah*, we also see that 'new' adat law has been constructed, following general principles of Gayo adat.

The promotion of new villages and the shift of jurisdiction have been followed by the introduction of democratic elections for *reje* and imam. This has reinforced their political and legal authority. They also receive a regular salary, training, extra income from specific activities, and other facilities. Such developments have made the village dependent on the government politically and financially. Consequently, the loyalty of the members has shifted from the *reje* of the *belah* to the *reje* and other officials of the village. Communal obedience and loyalty to village officials are based on the services the latter provide.

For the community, this development has an interesting consequence. Each adult member presently has the same political opportunity to elect and be elected. However, most do not consider this as the best way to select a village leader. In the old election system of *musyawarah* (communal deliberation), the community directly chose or 'forced' the most suitable candidate to become *reje* or imam. A simple democratic election served as a mean to respect the weakest candidate when there were two or more of them. The intimate knowledge attendees had of the personal and leadership qualities of each candidate usually resulted in the best qualified candidate taking office, even if reluctantly. This possibility has been ruled out by the current democratic system.

The old system also promoted the community's involvement in public services, since the *reje* and *imem* received no salary or other payments. As volunteers, they enjoyed much authority. This has changed by the shift from personal to territorial jurisdiction, the introduction of democratic elections and – most of all – the financial benefits connected to the office. The communal relationship has thus changed from reciprocal to nonreciprocal.

In all of Indonesia the government control over villages has also become stronger and deeper by assigning community policing officers of the Bhabinkabtimas to almost every village. The Bhabinkabtimas officer is the ultimate outpost of the state legal organization to deal with social order. They are involved in communal meetings and in ending communal disputes. In Gayo, or Aceh province in general, they are allowed to do so only after they take over a case for further investigation at the recommendation of *reje*. The Bhabinkamtibmas officers, who are mostly of local origin, are tied to adat and village consensus. Nonetheless, the presence of Bhabinkamtibmas officers in the village reflects the increasing government control over the village; these officers may be locally embedded, but first and foremost they are under the command of their superiors at the police station.

The outcomes of the policies conducted under the New Order and those developed since 1998 demonstrate that the government has been unable to penetrate the villages and transform their social arrangements (cf. Moore 1973, p. 723). Such penetration, in the end, succeeded by promoting mutual obligations between the state and adat institutions, by means of official recognition and involvement of the whole body of adat into the state project, providing financial support (salary, extra incomes and developmental funds to the village), and by introducing other political reform and developmental projects. These approaches, as shown in Gayo, have made the village politically and financially dependent on

the government. But unexpectedly, they have also made the village more independent of the state in legal matters.

Some scholars have discussed how the legal recognition of adat enables the adat elite or chiefs to oppress less privileged groups and to promote their political interests at the village level (Oomen, 2005; Bouchier, 2007; Ubink, 2008, 2009). In Gayo, as explained earlier, I have observed a different outcome, although we see that the government has lost some of its capacity to promote individual protection and rights. The question is whether the central government is very concerned about this, in particular in the case of sexual offenses.

The Contemporary Transformation and the Use of Adat

An essential development in the mutual obligations between the government and the village has been the state recognition of adat institutions, which allows the village elites to enforce adat law. This recognition was part of the special autonomy granted to Aceh, together with the recognition of Aceh Shari'a. This has made Aceh the only region in Indonesia with three penal legal systems: the State Shari'a, adat, and national penal law. While the development of Aceh Shari'a was initially challenged by the central government, the development of adat law went smoothly.

After the 2005 peace agreement, as an alternative dispute mechanism outside of the court system, adat became an important instrument to maintain peace and deliver justice at the grassroots level. National and international organizations, which were in Aceh for humanitarian assistance projects, engaged directly in the adat projects. Their main objectives were maintaining and developing peace in Aceh while the regional police department was involved in designing the legal boundary between adat, Aceh Shari'a and national penal law. The engagement of multi-layered political organizations resulted in formalizing adat as the first legal system to proceed complaints and tackle 18 minor offenses.

This new power distribution strengthened the position of village elites in the community, even though adat penal law is limited to 18 offenses. However, this limitation in practice is ineffective. Qanun 10/2008 allows the village elites to use adat to address any case offending local norms, except for crimes leading to loss of life. As shown earlier, adat has been used to prosecute premarital and extramarital sex offenses, which are not originally included in the adat jurisdiction.

As also indicated above, this development has limited the choice of those who want to report a crime because they have to follow the designated legal mechanism, whereas it opened up opportunities for official legal actors to engage in forum shopping. On the positive side, this development allows legal actors to apply legal differentiation, as they can submit cases to two or more legal systems

which attach different consequences to similar constellations of facts. In this manner legal actors have more opportunities to take into account the context of a case.

Aside from being important now for the police to control minor offenses, adat has become an equally important instrument for the government in order to support the enforcement of Aceh Shari'a at the villages. The local officials share the common notion with the public that adat is one of many forms of the Divine Shari'a. Moreover, some parts of adat have gradually transformed since the colonial period to become more Islamic, in particular, family law (Bowen, 1988, pp. 281–182, 2000, pp. 107–112). The provincial and the village government have different objectives in using adat. For the provincial government, the utilization of adat aims at promoting Aceh Shari'a. For the village government, supporting the state's legal projects reinforces their authority in the villages and enables them to directly intervene in and examine cases dealing with public morality and sexuality. This helps them to maintain social stability, and to give social protection to the women who have become pregnant as a result of unlawful sexual intercourse.

The abovementioned developments suggest that adat changes according to developments in the community and under the influence of external forces affecting community life. Indeed, this study shows that the transformed adat law both in its codified and in its uncodified form is a mixture of various norms from religious, secular, national and international projects and that it is an important instrument for those who wish to engage in 'social engineering'.

My thesis thus supports F. and K. von Benda-Beckmann's observation in the Minangkabau that adat law is a hybrid law, in which many norms are hybridized and "adatized" (F. and K. von Benda-Beckmann, 2013, pp. 421–22). One of the hybridized or "adatized" norms is the Divine Shari'a, which is developed in the continuous religious campaigns to create an Islamic community. This continuous interpretation of Divine Sharia for practical life in certain localities has promoted the understanding of adat as a form of contextualized Divine Shari'a. As a result of adapting the state's developmental projects, the function and the jurisdiction of adat also transform. Adat is practiced at and centered on the village. It operates and functions to maintain internal stability, as intended by the state. In family issues, adat is no longer associated with maintaining the link with the ancestors, as Bowen suggests. Instead, it operates now in the extended family and functions to maintain stability and harmony of its members. These changes took place since the transformation of the village by the state.

The instrumentality and pragmatism of the government in strengthening adat law are particularly visible in the use of adat to support Aceh Shari'a. This can be clarified from the use of the adat norm of *sumang* (shame), whose transgression can be punished by *farak* or *jeret naru*.

In Gayo, like in other parts of Indonesia, *sumang* or shame is the foundational norm of many social arrangements (Koesnoe, 1971, p. A.8; Hazairin, 1974, p. 85). Shame is constructed differently from one community to another but always functions to arrange internal stability, reproduction and continuity of a communal group (Mead, 1961, pp. 493–496). It is supported by different levels of punishment or sanction and it is closely connected with morality and sexual behavior. Changing the concept of shame and its authority changes the social structure and the way the community see themselves and others. For the Gayonese, this social control mechanism is considered as the actualization of the Divine Shari'a that – among others – forbids *zina*.

Zina, i.e., premarital and extramarital sex, is the worst violation of the *sumang* norm. Gayo adat gives different punishments to these two kinds of offenses. Premarital sex offenders will be ostracized temporarily and be re-admitted once the offenders fulfill the conditions imposed by adat (*farak*). Those involved in extramarital affairs are ostracized permanently and all their ties with the village are cut off (*jeret naru*).

In fact, the *farak* is not applied to all kinds of cases involving premarital sex, but only to those concerning an endogamous relation. The prohibition from practicing endogamy serves to maintain the internal stability of *belah* whose members in the past were few. What usually happens in the case of premarital sex in an endogamous relation is that one of the persons involved, mostly the girl who fears she is pregnant, makes a confession to one of her family members. The family then brings the situation to the *reje* or imam in order to force the other party to an endogamous marriage if the man is from the same *belah* or village. Both are then sent off from the community.

Exile is a process of reinstruction of morality and the re-acceptance through particular ritual means to communicate the evil of the offenders to the community and to remind the society about the danger of the offense. Braithwaite calls processes such as these "reintegrative shaming", as the shaming serves to pave the way for reintegrating the offender into a legal community through particular rituals (Braithwaite, 1989, pp. 100–101). However, in the case of endogamous marriage, the reintegration is only partial. Many offenders undergo the penalty only to restore their ancestral identity that ties them to their *belah*, social status,

and the honor of each core family. The completion of the ritual then releases them from other consequences of the offense such as being prohibited from visiting their parents.

Marrying offenders to one another is considered a religious punishment. In local Islamic understanding, this form of marriage is suggested by the classical Islamic legal text of the Shafi'e and Hanafi law schools. It has to do with a particular theological conception that, according to the local belief, Islam promises a virgin male to marry a virgin woman. By marrying offenders to each other, God cancels his promise for offenders to marry a virgin. Virginity in this context is a symbol of purity, virtue and morality, of both the male and the female. Offenders are considered not to have such qualifications, which makes them socially and culturally punishable.

The most essential part of local belief is that such a marriage does not release the offenders from the sin they have committed. Freeing oneself from the sin is a personal endeavor and commitment to God. However, the punishment, including the forced marriage, serves as a cultural mechanism to provide security for the woman and to guarantee the lineage for her child, which is a necessity in patriarchal society and Islam. Without a patriarchal lineage, a baby has no position in the social structure.

Sumang, farak and *jeret naru* rely on cultural understandings of Islamic sexuality but they are in most respects in line with broadly shared interpretations of Islamic law. The basic prescription of *jinayah* (Islamic penal law) on *zina* also suggests exile, in addition to flogging (Cook, 2003, pp. 451). All fiqh schools, except the Hanafite, agree that offenders should be banished in addition to 100 lashes (Peters, 2005, p. 60). Perhaps, when Islam arrived in Gayo, this punishment was embedded into the cultural system and the flogging was dropped. In the same way as *farak*, *jeret naru* might be a cultural interpretation of the Islamic penal law on extramarital sex. According to standard Islamic legal texts, those engaged in extramarital sex should be punished by stoning. *Jeret naru*, or permanent exile, in which offenders are considered dead (literarily *jeret naru* means long grave), is an interpretation of the death penalty, as the offenders' affiliation to their *belah* or village is ended. It is apparently the outcome from the assimilation of Islamic teachings in the very early time of arrival of Islam to the area.

These Islamic legal teachings have been "adatized" and are essential features of local social arrangements. In the old practice, *farak* could be applied to all *belah* members, as they were considered from "one mother" or "one origin". This rule was personal and applied beyond the *belah* territory. Presently, the practice has

become territorialized as *farak* is now only applied within the jurisdiction of the village.

Still, there are differences. In Bener Meriah, the old idea of *belah* has survived. The local *adat* still prohibits the scattered *belah* members from marrying each other, even if they live in a different village. In the villages of Lot Kala and Jongok Meluem, the *farak* is applied to village members whose *belah* or even ethnic background is diverse. This application is common in the Uken community living around the Lake of Lot Tawar and in the highlands. It is remarkable that the practice has persisted, as the members of the original *belah* are a minority. However, this minority elite finds legal support from the state law, which makes it difficult for the immigrants to challenge the norm. Moreover, police officers, to whom a complaint might be filed are not only under a legal obligation to respect the local practice, but also subscribe to the common norms themselves.

These different practices of *farak* demonstrate that adat law is different from one village to the other and that it is adapted under the influence of internal and external forces. The source is a more or less general, common idea of Gayo or Acehnese adat, but it allows for new local adat constructions or at least modifications.

An important feature of the current practice of *sumang* and *farak* is that the district government supports their application. State authorities consider them as instrumental for the enforcement of the state Shari'a's project on public morality and *zina*. They have distributed power to the village and thus reinforced the adat institutions' authority to address *zina* and other immoral acts. In some cases, the legal boundaries have been transgressed as a result of this situation. A good example is the creation of the Village Sharia Unit (*Wilayatul Hisbah Kampong* or WH Kampong) in 2011. This unit is staffed by local youths who have been authorized to take action against offenders of adat. State officials even allocate regular income for them and they are backed up by higher officials, particularly from the military and the police department. Ironically, it does not seem that those making up the WH Kampong are motivated by religious ideas, but rather by a romantic image of adat in the past when *sumang* commanded great authority.

The use of adat to support the State Shari'a and the creation of the WH Kampong suggest that, first, the presence of more than one penal legal system produces interlegality in which a legal provision of one system is adopted by the other. Interlegality seems to be a common phenomenon in Aceh. A good example

is the report submitted by WH Kampong to the district Shari'a agency in which they blend the norms of *sumang* and Aceh Shari'a.[36]

Second, the creation of WH Kampong shows how two or more legal systems which share similar sources of law and similar objectives in governing society can be reconciled. The interest of the state Shari'a agency is to govern public morality and to promote the enforcement of Aceh Shari'a, while the adat elites' interest is to reinforce adat norms to control social behavior. The incapability of the government in Aceh to enforce the state Shari'a combined with the wish on the part of adat institutions to reinforce public morality, which they consider to be threatened by global culture, has led to the creation of the WH Kampong, which straddles the systems and accommodates both interests.

Importantly, the district government lost its control over adat tribunals and the WH Kampong when the government shifted their funding from the district budget to the national budget for village development. As a result of this shift, adat institutions and WH Kampong are no longer supervised by the district government. Furthermore, adat tribunals and the WH Kampong no longer have to submit their reports to the district agency for Shari'a, but only report to the Agency for Village Empowerment at the district level on the use of the village fund for their activities. The Agency of Village Empowerment, the representative of the central government for village development, takes no interest in supervising the activities of the adat tribunal and WH Kampong nor in evaluating both institutions, since law and morality are not the main concern of the agency. This has allowed the WH Kampong to continue their surveillance and leaves the district government severely handicapped in following the progress of the enforcement of Aceh Shari'a and adat law at the village level.

The government has a decisive role in calibrating the composite system because its power validates the adat institutions' authority over the individual. Such reconciliation between national and adat law might also happen in other places in Indonesia, for instance, in Kalimantan. My assumption here is based on news media reporting that many major offenses are reconciled through the adat mechanism with a state official acting as a witness. A mixture between adat and state penal law indeed takes place in these regions and other peripheral regions where the penetration of the government is limited compared to urbanized areas such as in Java. It seems that in these peripheral regions, adat penal law is sometimes more powerful than the state law even in dealing with major offenses (Media, 2009, 2016a; JawaPos.com, 2017).

[36] See Chapter IV.

The legitimization of adat for social control has its consequences. In Gayo, the *reje* and parents of offenders of adat are bound by a social code in which shame is central and this sometimes leads them to force the offenders to marry. This has led to a sharp increase in the number of underage marriages in Central Aceh. Judges, who grant marriage compensation for a minor couple, share the common understanding about the necessity to marry those who are involved in premarital sex even if pregnancy has not been proven. Marriage, according to the judges, is an 'act to be recommended'. They follow the religiously inspired reasoning that this forced underage marriage serves to avoid further unlawful sexual intercourse. Marriage is considered as the safeguard of the Shari'a that legalizes (sexual) relationships and protects a couple from the sin of *zina*. In other words, marriage will keep them from further damaging interactions (*pergaulan yang merusak*) and allay their concern about sexual intercourse (cf. Fauzi, 2021, pp. 168, 179–180).

In recent years, the reemergence of adat law in Gayo has led the trend of a decreasing number of underage marriages to reverse. The same has happened in other parts of Indonesia where adat is dominant over state law (Grijns and Horii, 2018b; Bemmelen and Grijns, 2019). It indicates the inability of the government to change the marriage practice in the face of religious and adat convictions even if state policies do have an influence. For instance, as shown in this book, the prohibition of endogamous marriage and the forced marriage of minors lead those involved to 'strategize' their marriage arrangement. Minors who are forced to marry by adat penal law because of their involvement in premarital sex have to propose for marriage dispensation to judges or delay registering their marriage to the government until they reach the legal age for marriage (cf. van Bemmelen and Grijns, 2019).

While the enforcement of *farak* and forced marriage are affected by village institutions with the backing from the state, Gayonese have Aceh Shari'a as additional punishment of *jeret naru* for extramarital sex offenders. Before the introduction of Aceh Shari'a, *jeret naru* was not followed by any other punishment and its application was difficult because of the degree of shame it also brought on the community in the eyes of others. But now, extramarital sex offenders can be subjected to additional punishment under Aceh Sharia after having been sentenced to *jeret naru* in the village. Almost all sexual offenses punished under Aceh Shari'a indeed deal with extramarital sex – none of them concern other sexual offenses such as premarital sex, rape, or pedophilia, although such offenses are officially within the jurisdiction of Aceh Shari'a. The exposure of offenders in the courtroom and public punishment seems to have made it easier to follow the practice of *jeret naru* in the villages.

The preference of the communities concerned for Aceh Shari'a as an additional mechanism in these cases has put pressure on state legal agencies (police and public prosecutors) to prosecute offenders under Aceh Shari'a rather than national penal law. Public shaming by flogging in front of the public, which is the characteristic punishment under the *jinayah* law, is the only motive that drives a community to hand over offenders to the state. For the official agencies, flogging renders visible the legal enforcement by the state. However, by applying the *jinayah* law after *jeret naru*, an offender gets double punishment, which goes against a fundamental principle of national penal law.

We have seen from premarital and extramarital sex cases, that adat and Aceh Shari'a can supplement each other as long as they share common objectives and interests. Both are local interpretations and contextualizations of the Divine Shari'a. Adat (Shari'a) is a cultural interpretation of Divine Shari'a which is unwritten and developed on the basis of group and individual cases. By contrast, the Aceh version of Shari'a is a government interpretation of the Divine Shari'a constructed as a western legal framework. The source they share makes both of them the actualization of the Divine Will; however, they have been developed with different purposes, approaches, histories, and legal constructions. Yet, the commonality has made them instrumental for each other.

Thus, this book shares a common argument with other legal anthropologists that whatever form of Shari'a is practiced and observed, it does not represent a Divine Shari'a that is broad, unchallenged and timeless. The "earthly observable Shari'a" takes many different forms and is articulated in many cultural expressions as it is a product of various interpretations made in order to extract the actual meaning of the Divine Shari'a. It may be associated with the state, in which case it is referred to by different terms such as formal Shari'a, normative Islam, the State Islamic law (Berger, 1999; Bälz, 1999; F. and K. von Benda-Beckmann, 2013; Kloos, 2018) or Aceh Shari'a as used in this book. The local interpretations of the Divine Shari'a are adapted and embedded in many different cultural contexts and also referred to by different terms, such as informal Shari'a, folk Islamic law or, in this book, adat Shari'a.

This book has demonstrated that the state Shari'a of Aceh Province cannot replace the adat (Shari'a), which remains a considerable force in the community. Although the state Shari'a of Aceh derives from the interpretation of the Divine Shari'a, it cannot undo the Gayonese's bond to their local norms nor can it shift their legal orientation from adat to Aceh Shari'a. Aceh Shari'a is less effective, not only because it is a new legal system but also because it is limited in many aspects. As part of a secular positive law, produced through the secular reading of the

Divine Shari'a and legalized following the Western legal framework, Aceh Shari'a is limited in its institutions, budget, authority and legal formulation. Its "open texture of law" also leads to legal uncertainty. These limits make the state Shari'a in Aceh province less effective than the other two legal systems, adat and Indonesian penal law, in dealing with sexual offenses.

In general, the legal conception of the state Shari'a in Aceh focuses on moralizing the offenders by shaming them through public caning. It does not have any concern for the victims, usually women and children, who suffer a 'cultural punishment' on top of the harm already inflicted upon them by the perpetrator. These limits of Aceh Shari'a have become a concern for legal agencies (the police and public prosecutors) and for rights activists.

The Limits of the Law and the Creativity of Legal Institutions

All three penal law systems operating in Gayo – adat, Aceh Shari'a, and national penal law – have limitations in dealing with sexual offenses. As a legacy of the past, adat law and its institutions have a narrow conception of sexuality. Adat's categorization of sexuality is limited to premarital and extramarital sex. All sexual offenses not involving a married offender are treated as premarital sex. This includes pedophilia and other forms of sexual harassment. According to the standard adat law, premarital sex offenders must be married to each other as soon as possible. Rape has now become known to the Gayonese as a new category of sexual offenses, but it is not regulated in adat law. The Gayonese, furthermore, do not include domestic rape as a sexual offense, but consider it as a response to the failure of the wife to fulfill her sexual obligations to the husband.

Homosexuality is not specified as an offense, even if the Gayonese have long been familiar with this category since they have learned about it through the story of Sodom and Gomorrah, in their studies about Islam. However, the Gayonese have not found or received any religious instruction on how to deal with homosexuality, nor does adat law say anything about the punishment of such an offense. As a result, Gayonese tend to treat those engaged in homosexual acts less harshly than those in premarital or extramarital sex. However, this may well change following the intensity of the current anti-homosexuality campaign in Indonesia at the national level and after Aceh Sharia has criminalized homosexuality explicitly since October 2015.

Next to the limits discussed in the previous section, Aceh Shari'a is also limited in its legal enforcement. This is both because of a lack of institutional capacity and because of the legal definition of *zina.* Although Aceh has a special institution to monitor the enforcement of the law (Sharia Police of Wilayatul

Hisbah attached to the provincial police), it has a lack of staff, budget, and authority. The enforcement of Aceh Shari'a relies on national legal institutions, the police and the public prosecutors. They decide whether an offense should be brought either to the Mahkamah Syar'iyah or the secular district court.

The dependence of the Aceh government on national legal institutions indicates how much control the central government has over the enforcement of the state Shari'a in Aceh. Police and public prosecutors in Aceh are never censored by the central government for ignoring Aceh Shari'a and the regional government cannot prevent this. As a result, the central government has almost complete control over the enforcement of state Shari'a in Aceh Province.

Up like adat, Aceh Shari'a treats premarital sex and extramarital sex equally as zina. Aceh Shari'a punishes both with 100 lashes. Rape also partly falls into this category. The perpetrator is lashed 100 times for genital insertion, which is considered as an act of *zina*. In addition, the offender can be imprisoned for the absence of consent from the victim and the use of force, but this is based on national penal law. Aceh Shari'a does not consider the negative effects of the offense on the victims. In general, in cases of sexual offenses and rape in particular, the victims are blamed by the community for having seduced the offender. Consequently, victims are often discriminated against and isolated by the community, to the extent that some of them have to move their residency from the village.

Another issue is that judges of the Mahkamah Syar'iyah Court of Central Aceh and Bener Meriah district have not been trained to try juvenile cases as required by the Supreme Court. Judges define the age of minority based on various sources: Islamic legal texts and national penal law. For these reasons, public prosecutors prefer to bring cases involving juveniles to the district court where certified judges for juvenile case are available.

State and non-state legal agencies differ in the degree to which they take into account the negative implication of the Shari'a punishment to the victims' psychology and social life. Because usually they are the first to deal with such offenses, non-state agencies play an important role here by extending and adapting the adat perspective on sexuality and legal choice. In so doing, they often exceed the limits of the adat and deploy other legal systems to intervene in a case. Sometimes, they suggest the victim's family to escape the adat institution and Aceh Shari'a and to opt for national penal law instead. The presence of such actors in a community has a major influence on the development of adat and its interaction with other legal systems.

Sometimes, those involved themselves refuse the application of adat and directly file a report to the police station. A good example is the case I discussed in Chapter V where an underage couple from two different villages was involved in premarital sex. In this case, the parents of the girl involved were reluctant to marry their daughter because she would have to halt her school education.

Sometimes, although the police take over and start an investigation with the assistance from the *reje*, those involved still arrange an adat tribunal to achieve agreement between the boy's and the girl's families. The police will accept the resulting peace agreement and cancel or return the case to the village. The police have this option once a copy of the agreement is presented to them. This is one of the outcomes from the recognition of adat law as state penal law. Canceling the investigation is an expression of the police's sympathy to the juvenile offenders who would otherwise have to spend their lives with adult criminals in jail, at least during the months of investigation and all the dangers this entails. The offenders would also find it difficult to return to the community as they will be stigmatized as ex-criminals. However, canceling the investigation is also said to be a sign of respect for the adat law.

Just as to the community, adat also responds to the sense of justice of police officers by restoring the harmony of the community rather than involving the state legal systems, which leads to conflict. They also perceive that the sexual offense involving juveniles occurs due to a curiosity of both a boy and girl about sexuality during their puberty. These views allow adat to go beyond the formal legal boundary, in which it is not recognized to tackle sexual offenses.

As a result of such considerations, police and public prosecutors in Central Aceh only prosecute extramarital sex offenses using the *jinayah* law when they are under public pressure to inflict shame on the offender in front of the public. The police and public prosecutor prosecute other sexual offenses under national penal law instead, even though, formally, these offenses must be tried under Aceh Shari'a. This concerns rape, pedophilia, sexual abuse and sodomy. The reason is that under *jinayah*, rape and pedophilia are partly *hudud* (with a fixed penalty in which flogging is the only option) and partly *ta'zir* (penalties at the discretion of judge). This forces judges to convict the offender to a fixed number of lashes (*hudud*) while as an additional punishment they can only impose a short term in jail (*ta'zir*), usually three months which are already spent during the investigation and trial. This means that immediately after the trial and the imposition of the corporal punishment the offender returns to his community, where the victim also resides. This increases the trauma of the victim, in particular because in many cases the community accepts the returning offender but stigmatizes the victim.

Aware of such practices, the state legal agencies opt for prosecuting under the national penal law to keep the perpetrator away from the victim(s) and family as long as possible. Although neither does national penal have much concern for the victims' needs, at least it provides more opportunity for victims to heal from trauma. It also helps to save the victims from cultural stigma and to frame the offender as a criminal.

For victimless offenses, such as gambling and drinking, the state legal agencies will use Aceh Shari'a. For such offenses, the *jinayah* punishment is lighter than the punishment given by the national penal law. Under *jinayah* law, offenders can only be detained for up to three months for investigation and trial and they will normally be released immediately after having been flogged in front of the public. National penal law allows for imprisoning gambling offenders up to ten years or fine them up to IDR, 25 million. The illegal distribution of liquor carries a sentence of up to 20 years in prison. Even if in practice much lighter sentences are imposed, offenders will serve a three months prison sentence in addition to detention during investigation and trial. The different consequences for the identical offenses have become a reason for non-Muslim offenders to subject themselves voluntarily to the *jinayah* law of Aceh Shari'a, a right non-Muslims have. Moreover, there is less cultural stigma for such offenses than the sexual offenses, which are culturally and religiously considered much worse. In Gayo, this difference can also be seen through the size of the crowd attending the execution of the flogging sentence.

In short, in the case of Gayo state legal pluralism provides considerable freedom for legal agencies in constituting and choosing a legal system that suits not only their interests but also the victim's and the offender's. The interests of these actors are driving the dynamic of three legal systems enforced in one political community. They creatively observe, negotiate and arrange the normatively contesting legal systems in such a way that it provides a sense of justice to all those involved. Consequently, the legal boundaries become highly flexible and empirically negotiable.

To recall the concept of Triangle of Law (Buskens, 2000), the legal agencies are at the center of the triangle. Their creativity in applying legal differentiation to suit their own interest, the interest of the victim or the interest of the offender, creates the intersection between the three penal systems. Sometimes, they choose a legal system that is not supposed to be applied and ignore the one that formally speaking should be used. The application of legal differentiation depends on the capacity, awareness, and the interest of the legal agencies, both official and informal (Bedner, 2017). The creativity of legal agencies suggests that the formal

jurisdiction and the development of these legal systems not only depend on the formal legal jurisdiction that influences and limits other legal systems, but also on the ability of legal agencies to manipulate their limits.

Note for Further Investigation, Discussion and Lesson for Indonesia's Legal Project.

The state Shari'a in Aceh is still immature compared to national penal law. Although Aceh enforced *jinayah* during the time of the Sultanate, this stopped when the region became part of the Indonesian state. Attempts to reintroduce the *jinayah* failed until Aceh emerged from violent conflict and natural disaster. Therefore the state Shari'a has been codified and enforced very recently, unlike the national penal law which has been refined and adapted over decades. Evidently, Aceh Shari'a still shows limits in its legal conceptions, institutions, resources, the capacity of actors that influence its operation, and the role of law in the social field.

Still, some important 'progressive' developments have taken place. Local activists and state legal agencies have been critical towards the Shari'a and adat. This has continued beyond my formal fieldwork period for this book where local activist have attempted to eliminate articles discriminating women and children from Jinayah by influencing the government. The local debate about proper application of Aceh Shari'a is tense and embedded in national and global politics, legal debates and practices. Since the independence of Indonesia, in Aceh, Islam or its Shari'a plays an important role in the debates between progressives, who promote human rights, education, and economic and regional development, and conservative Muslims who dominate religious public spaces such as mosques, Islamic study circles, and Islamic boarding schools. The presence of the central government in all debates related to the Shari'a indicates that it also follows closely what happens in the enforcement of Aceh Shari'a. Although local officials and scholars as well as a large number of ordinary Acehnese claim that Aceh has been given freedom in their special autonomy to develop distinct legal and political features, the central government has always had the final word in their development and enforcement. In the end the Aceh government relies for enforcement on national legal agencies: police, public prosecutors and judges.

In 2015, activists affiliated with the Civil Society Network Caring About Shari'a (JMSPS, *Jaringan Masyarakat Sipil Peduli Syariat*) persuaded the provincial agency for Aceh Shari'a to integrate adat law into state Shari'a. This was part of a large project scheme called "the grand design" of the state Shari'a. This suggested that the purpose of the local Shari'a is not only legal, but rather to promote a better life in all of its aspects. This idea is also known as "Islamic governance", ironically

composed of aspects that are believed to be practiced mainly in Western countries, such as transparency, accountability, justice, and equality. One important way to achieve this would be to integrate adat law into the state Shari'a legal system (Serambi, 2017a).

Such integration may lead to new outcomes, such as a mixture of Aceh Shari'a and adat but alternatively also to a new situation of legal pluralism in which the interplay between adat and Aceh Shari'a leads to more conflict. This is likely to happen if adat will be repressed like it was during the New Order regime. However, it is very hard to make any predictions now because the "grand design" has not yet been officially published.

While some creative minds and actors have made efforts to improve law and promote development at the provincial level, unfortunately, discourses based on adat have been marginalized through the discursive dominance of the Aceh Shari'a. The development of adat has received far less attention from the media than the Shari'a, whose public floggings have more media appeal than the punishments based on adat. Given the relative importance of the two in practice, with adat punishments far more frequently imposed than Aceh Shari's ones, this is quite remarkable – as we have seen the communities in Gayo try to maintain their adat by any means and use it for addressing the feeling of 'moral panic'.

One thing I would like to highlight from all these developments is how the young and immature legal systems of Shari'a and Adat continue growing in different ways. Both legal systems are dynamic and continue evolving under the pressure of internal and external forces. There is much to be learned from Aceh for the study of Islam, law and development. Here, I offer some suggestions for further inquiries and contemplation.

The first is the application of state Shari'a in Aceh, which has been controversial and led many to assume that Indonesia was allowing the creation of an Islamic state within its borders, is nuanced and ambiguous. It includes surprising facts such as that non-Muslims violating drinking and gambling rules prefer flogging under Jinayah to serving time in prison under national penal law, despite the common opinion that flogging is in violation of human rights. The *Jinayah* allows the offenders to immediately return to their family and provide for them, unlike the secular penal law of Indonesia which will keep them in jail for months. Here the legal pluralism in Aceh has thus provided individuals a space that allows them to navigate between Aceh Shari'a and national secular penal law.[37]

[37] See chapter V for the caseload comparison between the Mahkamah Syar'iyah and District court.

The second concerns the legal pluralism of penal law. The relation of Aceh Shari'a with adat and national penal law is influenced by politics, economic development, culture and religion. With the three legal systems in place, legal certainty has been at risk because individual legal actors have much leeway to pursue their own interests and because law enforcement is hard to predict given the discretion police and prosecutors have.

However, the three legal systems, if they are carefully and attentively operated, can actually promote individual rights and respond to the sense of justice of those involved. The space of choice embedded in the legal pluralism allows individual state legal agents to freely navigate between legal systems to pursue their own interests or those of victims or offenders. The police officers and public prosecutors in Gayo have done this quite effectively in their attempts to diminish the harsh effects of the application of one of these three legal systems and to respond to the local sense of justice.

Interestingly, attempts to introduce legal pluralism of penal law have nuanced the debate at the national level as to how the government ought to respond to the diversity and multiculturality of the country, even if its position towards adat law remains ambiguous. This can be seen for instance in the 2015 draft for a new Indonesian Criminal Code (RUU KUHP). Article 2 of the proposed draft states that (1) It is not prejudiced to the validity of the living law in a society which determines that a person can be criminally convicted even though the action is not regulated by the law. (2) The living law as mentioned in clause (1) is valid since it is in accordance with Pancasila, human rights, and general legal principles acknowledged by the community. Although all agree with the proposal, how exactly adat law should be integrated into the state legal system has triggered vigorous debates among scholars, activists, and legal enforcers. Their main concern is how to allow legal pluralism to exist in Indonesia. How should it be arranged to avoid overlap and contestation?

Another issue concerning the RUU KUHP is the state's attempt to control *zina* and cohabitation (articles 417 and 419). Although they are crimes by complaint, many worry that this may allow everyone in the village on behalf of village, the parents or neighbor to file a report to the police to complain about the feelings of discomfort caused by the acts of those reported. This idea has been protested by many, as this would mean that the government would deeply intervene into the individual life of its citizens (Liputan6.com, 2013; Tempo.Co, 2013, 2015; Media, 2016c, 2018; Savitri, 2019). This could also promote moral policing in villages in which adat and religious teachings may become instrumental in controlling morality.

Despite some advantages of adat penal law for victims and offenders and some advantages of Aceh Shari'a for those prosecuted for gambling and drinking alcohol, the current practice of legal pluralism of penal law in Gayo also has some drawbacks. I particularly underline the danger that the more adat is recognized and supported by law and regulation the more autonomous it becomes from the state and the more harm it can inflict on the civil rights of individuals (cf. Bedner 2017). Or, as Bowen suggests, it can even lead to unguided chaos (Bowen, 2003, pp. 4). As shown particularly in chapter IV, all legal attempts by the government to use adat for its purposes are conversely utilized by the adat institutions to strengthen their own authority in the villages (cf. Wolf, 1990). This legal and political development is not limited to Gayo only. Scholars have pointed at relatively similar developments in other developing countries such as South Africa, Ghana, Ecuador and some American countries (Oomen, 2005; Ubink, 2008, 2009; Simon Thomas, 2009; Gabbert, 2011). In these countries, customary (adat) institutions have gained remarkable legal authority as an outcome of the state's legal and even constitutional recognitions of customary institution. The recognition results in a thick line demarcating the government from the community. Legal development in Gayo and Aceh has not gone that far, but it may well develop that way if the government keeps producing law for supporting and utilizing adat without considering the effect of law on individuals and on the national legal project of the state. In short, legal pluralism may promote justice and differentiation, but the state should always handle it with caution.

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Summary

The State Legal Pluralism
The Intersection of Adat, Jinayah, and National Penal Law in Gayo, Indonesia

This book discusses the dynamic intersection of three bodies of law; adat, Aceh Shari'a and national penal law, and the institutions applying them. This book focuses on how these address public morality and criminal offences of a sexual nature as they play out in the Gayonese community of Central Aceh, Indonesia. Data collection for this work was conducted in Gayo society in Central Aceh for one and half years (2014-2015 and 2017). I employed ethnographic methods to explore how the three penal systems interact, and which actors play a dominant role in managing their implementation. My research questions were the following: What is the interest of the state and non-state legal agents in implementing adat law? What effect does the state's implementation of adat penal law have on the offender, victim, village apparatus, the Aceh Shari'a police at the village, the normal police and public prosecutors? How does this implementation affect or shape the power relationships between them?

Chapter II found that state legal pluralism in Aceh started officially after the state recognized adat as part of its political and legal structure. This recognition was part of a resolution to end a long armed conflict between the Aceh rebel movement and the Indonesian government. At the national level, the Indonesian government also issued a number of regulations allowing all ethnic groups in Indonesia to re-apply their traditional political structures and recognize the enforcement of adat law in the village. This shifted Indonesia – at least in part – from a project of legal centralism to one of legal pluralism as applied before by the Dutch colonial government.

In Aceh, the traditional political structures and practices were recognized by the government, which gave them the authority to engage in all village governance aspects. They are now village government organizations validated and authorized by the state. In the case of Gayo, this development combined with modernization. The development projects of the state have changed Gayonese political practice, adapted their social arrangements, and the territorial basis for governance; shifted the adat head's political and legal authority from persons to territory, and made the relations in the community from more to less reciprocal. These changes happened recently after the introduction of democracy replaced the authoritarianism of the New Order regime. Before the introduction of democracy, Gayonese social arrangements had in fact not been much affected by the

authoritarianism, unlike those of their Sumatran neighbors of Minangkabau and Rejang-Lebong whose traditional social arrangements, which provided the basis for their social and political relations and cultural practices, were strongly affected.

Although the New Order successfully abolished the Gayo's traditional political structures in accordance with the national policy on villages, it did not completely change the social arrangements and the role and practices of each of the political offices. The *imam*, for example, retained his position as a fundamental part of the village organization, despite the fact that it was not recognized by the national government. After the start of democracy the (central) state introduced democratic election for the village head and the imam in Gayo, (in other districts in Aceh, the imam is appointed by the elected village head as his assistant in religious affairs) , provided salaries for all village officials and disbursed development funds to the village. This allowed the state to keep a considerable degree of control over village politics.

Interestingly, the increase in control of the state over villages is limited to political and developmental aspects. In the sphere of law, this chapter found a reverse outcome: here the state has become dependent on the village government following the delegation of power to village officials in judicial matters which are resolved on the basis of adat. Together with the resulting increase in local authority this has opened up opportunities for the village government to gain considerable autonomy from the state. These developments together with the limits of the state in legal enforcement and the hierarchy of the legal systems introduced by the state have reinforced the application of adat law, which is the domain of the village government. The increased authority of the village in legal aspects has moreover extended beyond the limits for eighteen minor offenses assigned formally by the state to the village jurisdiction. This can be clearly perceived where sexual offenses are concerned. The village government has often addressed sexual offenses that are supposed to be within the jurisdiction of Aceh Shari'a and national penal law.

Reflecting on the development and the current practices of adat in Gayo, both concerning family and penal law aspects, and on the impact of the state recognition of adat on the authority of the village government, Chapter III finds that adat law is a transformative collective idea used to maintain social stability and continuity, centered on the village and extended family. The transformative collective idea means that adat changes over time as a consequence of adaptation to external influences, whether they are religious campaigns, state projects, or secular norms promotion. The outcome of this transformation varies from one place and time to another due to a different response by the village government and the community to each particular situation. As religion has had an increasing

influence on adat, which is the outcome of a long and continuous contextualization and adaptation of the religion to social and cultural contexts, adat is now locally considered as an expression of religious (Islamic) teachings.

Nonetheless, for some actors adat law is still is an effective instrument for social transformation and social engineering. The significance of the adat for these purposes, makes it a contested concept and an arena for various actors to debate how Gayonese should lead their lives. Developing or transforming the content of adat directly affects how local people lead their lives and how they judge their own actions and those of others.

This change of adat is not a recent phenomenon. It has been driven by many developments, which go back to at least the second half of the 19th Century. The Gayonese have gone through wars (against the Dutch and Japanese), armed conflicts (Ulama revolt and Free Aceh Movement against the Republic of Indonesia), and natural hazards. All of these have brought in people and ideas from other places and the Gayo response, adaptation and reaction to them have led Gayonese to adapt their adat to these new encounters. Gayonese adat has been continuously (re)defined, (re)constructed, (re)organized by the locals to set new standards to social life and to introduce a new way of looking at themselves and others. Hence adat contains many different norms and values derived from both Islam and secular ideologies, thus confirming as the Von Benda-Beckmanns' typification of adat as a hybrid law.

In family law, adat is now used to maintain the continuity of kinship. Justifying their practices by creative religious legal reasoning, actors ignore the standard Islamic law or the scripturalist views on Islam. Even though external observers consider them to deviate from Islamic law, such as in the case of inheritance divided equally between brother and sister, they do not consider themselves betraying Islam. They believe they apply the basic principles of Islamic teachings and do not go against the basic theological concept of Islam, which is the oneness of God.

For the purpose of recognition of adat, the provincial government of Aceh codified some aspects of adat for all ethnic groups inhabiting Aceh province and suggested districts and villages to codify more aspects of adat following the codified general norms. These village codifications have sharpened adat differences from one village to another and eliminated the flexibility of adat. However, both state and non-state legal agents have used the opportunity to use adat for 'social engineering projects' and overcoming the limitations of legal enforcement by the state. In some cases, activists and paralegal have developed adat rules to protect vulnerable groups such as women and children. However,

such progressive developments did not occur in all places in Gayo as in many localities adat was developed in the opposite direction; i.e. repressive toward women and children.

Aside from allowing the village government to develop and use adat for their legal and political purposes, the practice of legal plurality gave also more options to state legal agencies to use legal differentiation in resolving cases by seeking out particular forums (legal institution) for prosecution or dispute resolution. This development was limited for disputants by the formal hierarchical order of legal pluralism as designed by Aceh province, in which adat is the first legal system disputants should use to resolve their case. On the other hand, the formalization of adat penal law has provided an opportunity to state legal agencies to choose an appropriate law to promote for instance the interests of the victim of a sexual crime..

It is not only central state, village level actors and private individuals who can use adat for their purposes. Being aware of the authority of adat, the district government has utilized adat in its efforts to enforce Aceh Shari'a in the region. The idea that adat is an actualization of Islamic teachings has led the government to grant power to the village apparatus in enforcing adat law related to crimes and offences concerning sexuality, in particular *zina* (premarital and extramarital sex) and public immorality. This new extra authority has increased the significance of adat law and reinforced the power of the village government.

Chapter IV has found that a culture of shame has been the fundamental element of adat law on which social relations and arrangements are based. In Gayo, adat has been used to stress and protect the morality from outside threats such as globalized popular culture that can now be accessed through cable TV and internet connections. Facing such threats to morality, the district government has not only relied on the instruments provided by Aceh Shari'a, but together with village officials (who are also adat leaders) they have developed adat as a tool for moral protection. Aceh Shari'a and adat are now complementary in providing moral protection.

Central to adat in this matter are the culture of shame and *farak* (temporal banishment from the community on account of illegal sexual intercourse). They rule public morality, social appropriateness, social interaction, and sexuality. Both strongly relate to the local mechanisms to maintain internal stability and social arrangements. Based on the importance of these aspects, which are considered part of the enforcement of Islamic teachings, Gayonese consider committing *zina* not only as merely breaking religious order but also as a fundamental threat to social stability and structure. This cultural system provides a mechanism to not

only punish the offender but also to restore the offender's place within the social arrangement, to protect the victim involved from stigma and to guarantee the patriarchal lineage for any children who are born as a result of sexual offences. For the perpetrators of *zina* undergoing an adat punishment is a way to reclaim their and their family's dignity as well as their offspring's position. The religious significance is less important than restoring the social arrangement. Although traditionally the Gayonese believe that the punishment is part of the Shari'a, they also believe that enforcement of the punishment does not free the offenders from the sin; it is up to the offenders to repent in order to get cleaned from the sin and restore their relation with God. The communal interest behind the adat punishment is to restore the social equilibrium.

The Aceh Shari'a's legal conception of *zina* is rather based on the theological objective to make sure that Aceh's Muslim community lives under God's order. This new form of interpretation of the Divine Shari'a has been arranged in such a way that the state faces considerable shortages in financial and human resources to support its enforcement. The limitation of adat is that it not enforceable on village members with a migrant background. The district government of Central Aceh has combined these two different legal systems to compensate their respective limitations in governing public morality. This has produced a system of interlegality, in which adat uses provisions of Aceh Shari'a to legitimize its enforcement against those who do not fall under its jurisdiction. The district government has delegated power to adat institutions at the village level to take over the state's legal jurisdiction and provided funding for the enforcement of adat law. This has reinforced the authority of the village government vis-à-vis the village community.

Using the *Dana Desa* disbursed by the central state, the district government has made the adat institutions even more autonomous. The recognition of non-state law (adat) has moved adat institutions further away from control by the district government and the local community. As a result, in some fields adat institutions' legal practices have gone against central state projects such as discouraging underage marriage.

Chapter V discusses how in addition to the adat law and Aceh Shari'a national penal law operates in the same field and dynamically interacts with both legal systems. These three legal systems have made use of each other to support their interest in public order. These three legal systems of penal law: adat, *jinayah* (the Islamic penal law incorporated in Aceh Shari'a), and Indonesian national penal law are creatively managed by legal agents (police, public prosecutor and paralegals/activists) to realize their interests.

Non-state legal actors play a significant role in developing local knowledge on sexuality and legal choice and how they are regulated in the three legal systems discussed. Sometimes, the non-state actors manage to break the formal legal boundary between adat, Aceh Shari'a and national penal law and move cases from one jurisdiction into another. However, this does not mean that these three legal systems have been contesting one another. Conversely, they have complemented and become alternatives to one another. The state, non-state legal actors and adat officials observe certain limits of each legal system and shop the forums available or apply legal differentiation. In some cases, legal actors have managed to make sure that one defendant received two (complementary) punishments from two different legal systems. While this may look like it goes against the principle of *ne bis in idem* in fact the punishments were each of a different nature and complementary (for instance a fine and a prohibition to return to the place where the victim of sexual abuse lived). Among the actors involved, the police was the most influential in directing the use of the three legal systems. They decided which legal system suited best for the victims', offenders' and their own interest. They were the bridge between legal systems in the pluralism of penal law in Aceh. Public prosecutors further decided whether to make an indictment on the basis of national penal law or on the basis of Aceh Shari'a.

These legal developments in Gayo suggest that state recognition of non-state law (adat law) as part of the state legal system may give a high degree of autonomy to adat institutions. This goes against the frequent claim that recognition of adat always leads to more control by the state. The reason is that state legal agencies cannot penetrate and make interventions in adat institution. In other words, it strengthens the Semi-Autonomous Social Field of the adat institutions. Similar situations have been described in other parts of the world. In her research on South Africa, Barbara Oomen showed that when the state recognizes non-state law (customary law) and gives chiefs the authority to control affairs on land management, the chiefs use such authority to assert their dominance and position themselves as the only true representatives of their communities to the central government. My findings are in line with this argument, contrary the argument by John Griffiths that, state recognition over non-state legal systems subjects non-state law to the state's comman

Samenvatting

Het juridische pluralisme van de staat
Het raakvlak van Adat, Jinayah en het nationale strafrecht in Gayo, Indonesië

Dit boek bespreekt de dynamische raakvlakken van drie rechtssystemen; adat, de Atjehse Shari'a en het nationale strafrecht, en de instellingen die deze toepassen. Dit boek richt zich op de manier waarop deze de publieke moraal en criminele misdrijven van seksuele aard behandelen, zoals die zich voordoen in de Gayo-gemeenschap van Centraal-Atjeh, Indonesië. De gegevens voor dit werk werden gedurende anderhalf jaar (2014-2015 en 2017) verzameld in de Gayo-samenleving in Centraal-Atjeh. Ik gebruikte etnografische methoden om te onderzoeken hoe de drie strafrechtelijke systemen op elkaar inwerken en welke actoren een dominante rol spelen bij hun implementatie. Mijn onderzoeksvragen waren de volgende: Wat is het belang van de staat en van niet-statelijke rechtshulpverleners bij het implementeren van adat-recht? Welk effect heeft de implementatie van het adat-strafrecht door de staat op de dader, het slachtoffer, de dorpsorganisatie, de Atjehse Shari'a-politie in het dorp, de gewone politie en de openbare aanklagers? Hoe beïnvloedt of vormt deze implementatie de machtsverhoudingen tussen hen?

In hoofdstuk II wordt aangetoond dat het rechtspluralisme van de staat in Atjeh officieel begon nadat de staat adat had erkend als onderdeel van de politieke en juridische structuur. Deze erkenning maakte deel uit van een resolutie om een einde te maken aan een langdurig gewapend conflict tussen de rebellenbeweging Atjeh en de Indonesische regering. Op nationaal niveau heeft de Indonesische regering ook een aantal voorschriften uitgevaardigd die alle etnische groepen in Indonesië in staat stellen hun traditionele politieke structuren opnieuw toe te passen en de handhaving van de adat-wet in het dorp te erkennen. Hierdoor verschoof Indonesië – althans gedeeltelijk – van een project van juridisch centralisme naar een project van rechtspluralisme zoals eerder toegepast door de Nederlandse koloniale overheid.

In Atjeh werden de traditionele politieke structuren en praktijken erkend door de regering, wat hen de bevoegdheid gaf om zich met alle aspecten van het dorpsbestuur bezig te houden. Het zijn nu dorpsoverheidsorganisaties die door de staat zijn gevalideerd en geautoriseerd. In het geval van Gayo ging deze ontwikkeling gepaard met modernisering. De ontwikkelingsprojecten van de staat hebben de politieke praktijk van Gayonese veranderd, hun sociale regelingen en

de territoriale basis voor bestuur aangepast; hebben de politieke en juridische autoriteit van het adat-hoofd van personen naar territorium verschoven en maakten de relaties in de gemeenschap van meer naar minder wederkerig. Deze veranderingen vonden plaats nadat de invoering van de democratie het autoritarisme van het New Order-regime had vervangen. Vóór de invoering van de democratie waren de sociale regelingen van Gayo in feite maar beperkt beïnvloed door het autoritarisme, in tegenstelling tot die van hun Sumatraanse buren van Minangkabau en Rejang-Lebong, wiens traditionele sociale regelingen die de basis vormden voor hun sociale en politieke relaties en culturele praktijken, sterk werden getroffen.

Hoewel de New Order met succes de traditionele politieke structuren van de Gayo heeft afgeschaft in overeenstemming met het nationale dorpsbeleid, veranderde het de sociale regelingen en de rol en praktijken van elk van de politieke ambten niet volledig. Zo behield de imam zijn positie als fundamenteel onderdeel van de dorpsorganisatie, ondanks het feit dat deze niet door de rijksoverheid werd erkend. Na het begin van de democratie voerde de (centrale) staat democratische verkiezing in voor het dorpshoofd en de imam in Gayo (in andere districten in Atjeh werd de imam door het gekozen dorpshoofd aangesteld als zijn assistent in religieuze zaken), voorzag in salarissen voor alle dorpsfunctionarissen en besteedde ontwikkelingsgelden aan het dorp. Hierdoor kon de staat een aanzienlijke mate van controle houden over de dorpspolitiek.

Interessant is dat de toename van de controle van de staat over dorpen beperkt is tot politieke en ontwikkelingsaspecten. Op het gebied van het recht toont dit hoofdstuk een omgekeerde uitkomst aan: hier is de staat afhankelijk geworden van het dorpsbestuur, door de delegatie aan dorpsambtenaren van bevoegdheden in justitiële zaken, die op basis van adat worden opgelost. Samen met de daaruit voortvloeiende toename van het lokale gezag heeft dit kansen gecreëerd voor het dorpsbestuur om een aanzienlijke autonomie ten opzichte van de staat te krijgen. Deze ontwikkelingen, samen met de beperkingen van de staat op het gebied van rechtshandhaving en de hiërarchie van de rechtsstelsels die door de staat zijn ingevoerd, hebben de toepassing van het adatrecht, dat het domein is van het dorpsbestuur, versterkt. Het toegenomen gezag van het dorp in juridische aspecten is bovendien verder gegaan dan de grenzen voor achttien kleine overtredingen die formeel door de staat aan de dorpsjurisdictie zijn toegewezen. Bij seksuele delicten is dit duidelijk waarneembaar. De dorpsregering heeft vaak seksuele misdrijven aangepakt die geacht worden onder de jurisdictie van de Atjehse Shari'a en het nationale strafrecht te vallen.

Reflecterend op de ontwikkeling en de huidige praktijken van adat in Gayo, zowel wat betreft familie- en strafrechtelijke aspecten, als op de impact van de staatserkenning van adat op het gezag van het dorpsbestuur, wordt in Hoofdstuk III geconstateerd dat de adat-wet een transformerend collectief idee is dat wordt gebruikt om sociale stabiliteit en continuïteit te behouden, gericht op het dorp en de uitgebreide familie. Het transformatieve collectieve idee betekent dat adat in de loop van de tijd verandert als gevolg van aanpassing aan externe invloeden, of het nu gaat om religieuze campagnes, staatsprojecten of seculiere bevordering van normen. Het resultaat van deze transformatie varieert per plaats en tijd vanwege verschillende reacties van dorpsbesturen en gemeenschappen op specifieke situaties. Aangezien religie een toenemende invloed heeft gehad op adat, wat het resultaat is van een lange en voortdurende contextualisering en aanpassing van de religie aan sociale en culturele contexten, wordt adat nu lokaal beschouwd als een uitdrukking van religieuze (islamitische) leerstellingen.

Niettemin is adat-recht voor sommige actoren nog steeds een effectief instrument voor sociale transformatie en *social engineering*. De betekenis van de adat voor deze doeleinden maakt het een omstreden concept en een arena voor verschillende actoren om te debatteren over hoe Gayo hun leven zouden moeten leiden. Het ontwikkelen of transformeren van de inhoud van adat heeft direct invloed op hoe lokale mensen hun leven leiden en hoe zij hun eigen handelen en dat van anderen beoordelen.

Deze verandering van adat is geen recent fenomeen. Het is gedreven door vele ontwikkelingen, die teruggaan tot ten minste de tweede helft van de 19e eeuw. De Gayo hebben oorlogen (tegen de Nederlanders en Japanners), gewapende conflicten (Ulama-opstand en Beweging van Vrij Atjeh tegen de Republiek Indonesië) en natuurrampen meegemaakt. Al deze zaken hebben mensen en ideeën uit andere plaatsen binnengebracht en de reactie, aanpassing en reactie van Gayo daarop hebben Gayo ertoe gebracht hun adat aan deze nieuwe ontmoetingen aan te passen. Het adat van de Gayo is voortdurend (opnieuw) gedefinieerd, (gere)construeerd, (gere)organiseerd door de lokale bevolking om nieuwe normen te stellen aan het sociale leven en om een nieuwe manier van kijken naar zichzelf en anderen te introduceren. Daarom bevat adat veel verschillende normen en waarden die zijn afgeleid van zowel de islam als seculiere ideologieën, wat de typering van adat door Von Benda-Beckmanns als een hybride wet bevestigt.

In het familierecht wordt adat nu gebruikt om de continuïteit van verwantschap te behouden. Door hun praktijken te rechtvaardigen door creatieve religieuze juridische redeneringen, negeren acteurs de standaard islamitische wet

of de schriftuurlijke opvattingen over de islam. Hoewel externe waarnemers van mening zijn dat ze afwijken van de islamitische wet, zoals in het geval van een erfenis die gelijkelijk wordt verdeeld tussen broer en zus, beschouwen ze zichzelf niet als in overtreding op de islam. Ze geloven dat ze de basisprincipes van de islamitische leer toepassen en niet ingaan tegen het theologische basisconcept van de islam, namelijk de eenheid van God.

Met het oog op de erkenning van adat heeft de provinciale regering van Atjeh enkele aspecten van adat gecodificeerd voor alle etnische groepen die in de provincie Atjeh wonen en heeft zij districten en dorpen voorgesteld om meer aspecten van adat te codificeren volgens de gecodificeerde algemene normen. Deze dorpscodificaties hebben de adat-verschillen van dorp tot dorp verscherpt en de flexibiliteit van adat geëlimineerd. Zowel staats- als niet-statelijke juridische agenten hebben echter van de gelegenheid gebruik gemaakt om adat te gebruiken voor 'social engineering-projecten' en het overwinnen van de beperkingen van rechtshandhaving door de staat. In sommige gevallen hebben activisten adat-regels ontwikkeld om kwetsbare groepen zoals vrouwen en kinderen te beschermen. Dergelijke progressieve ontwikkelingen deden zich echter niet op alle plaatsen in Gayo voor, aangezien in veel plaatsen adat zich in de tegenovergestelde richting ontwikkelde; d.w.z. repressief jegens vrouwen en kinderen.

Naast het toestaan aan dorpsoverheden om adat te ontwikkelen en te gebruiken voor hun juridische en politieke doeleinden, gaf de praktijk van rechtspluraliteit ook meer mogelijkheden voor juridische instanties van de staat om juridische differentiatie te gebruiken bij het oplossen van zaken door specifieke fora (juridische instellingen) te zoeken voor vervolging of geschillenbeslechting. Deze ontwikkeling werd voor disputanten beperkt door de formele hiërarchische orde van rechtspluralisme, zoals ontworpen door de provincie Atjeh, waarin adat het eerste rechtssysteem is dat disputanten zouden moeten gebruiken om hun zaak op te lossen. Aan de andere kant heeft de formalisering van het adat-strafrecht de mogelijkheid geboden aan staatsrechtelijke instanties om een passend recht te kiezen om bijvoorbeeld de belangen van het slachtoffer van een zedenmisdrijf te behartigen.

Niet alleen de centrale overheid, actoren op dorpsniveau en particulieren kunnen adat voor hun doeleinden gebruiken. De provinciale overheid is zich bewust van het gezag van adat en heeft adat gebruikt bij haar inspanningen om de handhaving van de Atjehse shari'a in de regio te handhaven. Het idee dat adat een actualisering van de islamitische leer is, heeft ertoe geleid dat de regering het dorpsapparaat de macht heeft gegeven om de adat-wet af te dwingen met

betrekking tot misdaden en misdrijven met betrekking tot seksualiteit, in het bijzonder zina (seks voor en buiten het huwelijk) en openbare immoraliteit. Deze nieuwe extra bevoegdheid heeft de betekenis van de adat-wet vergroot en de macht van het dorpsbestuur versterkt.

In hoofdstuk IV wordt ontdekt dat een cultuur van schaamte het fundamentele element is geweest van het adatrecht waarop sociale relaties en regelingen zijn gebaseerd. In Gayo is adat gebruikt om de moraliteit te benadrukken en te beschermen tegen bedreigingen van buitenaf, zoals de geglobaliseerde populaire cultuur die nu toegankelijk is via kabel-tv en internetverbindingen. Geconfronteerd met dergelijke bedreigingen voor de moraal, heeft de provinciale overheid niet alleen vertrouwd op de instrumenten van de Atjehse Shari'a, maar hebben ze samen met dorpsfunctionarissen (die ook adat-leiders zijn) adat ontwikkeld als een instrument voor morele bescherming. Atjehse Shari'a en adat zijn nu complementair in het bieden van morele bescherming.

Centraal hierbij staat de cultuur van schaamte en farak (tijdelijke verbanning uit de gemeenschap wegens illegale seksuele omgang). Ze beheersen de openbare moraal, sociale geschiktheid, sociale interactie en seksualiteit. Beide zijn sterk gerelateerd aan de lokale mechanismen om interne stabiliteit en sociale regelingen te handhaven. Gebaseerd op het belang van deze aspecten, die worden beschouwd als onderdeel van de handhaving van de islamitische leer, beschouwen Gayo het plegen van zina niet alleen als een schending van de religieuze orde, maar ook als een fundamentele bedreiging voor de sociale stabiliteit en structuur. Dit culturele systeem biedt een mechanisme om niet alleen de dader te straffen, maar ook om de plaats van de dader binnen de sociale regeling te herstellen, het betrokken slachtoffer te beschermen tegen stigmatisering en de patriarchale afstamming te garanderen van alle kinderen die worden geboren als gevolg van seksuele misdrijven. Voor de daders van zina is het ondergaan van een adat-straf een manier om hun waardigheid en die van hun familie terug te eisen, evenals de positie van hun nakomelingen. De religieuze betekenis is minder belangrijk dan het herstel van de sociale ordening. Hoewel de Gayo traditioneel geloven dat de straf deel uitmaakt van de Shari'a, geloven ze ook dat de uitvoering van de straf de overtreders niet van de zonde bevrijdt; het is aan de overtreders om zich te bekeren om gereinigd te worden van de zonde en hun relatie met God te herstellen. Het gemeenschappelijk belang achter de adat-straf is het herstel van het sociale evenwicht.

De juridische opvatting van zina door de Atjeh Shari'a is eerder gebaseerd op de theologische doelstelling om ervoor te zorgen dat de moslimgemeenschap van

Atjeh onder Gods bevel leeft. Deze nieuwe vorm van interpretatie van de Goddelijke Shari'a is zo geregeld dat de staat wordt geconfronteerd met aanzienlijke tekorten aan financiële en personele middelen om de handhaving ervan te ondersteunen. De beperking van adat is dat het niet afdwingbaar is voor dorpsgenoten met een migratieachtergrond. De lokale overheid van Centraal-Atjeh heeft deze twee verschillende rechtsstelsels gecombineerd om hun respectievelijke beperkingen op het gebied van de openbare zedelijkheid te compenseren. Dit heeft geleid tot een systeem van interlegaliteit, waarin adat bepalingen van de Atjehse Shari'a gebruikt om de handhaving ervan te legitimeren tegen degenen die niet onder zijn jurisdictie vallen. De lokale overheid heeft bevoegdheden gedelegeerd aan adat-instellingen op dorpsniveau om de juridische jurisdictie van de staat over te nemen en heeft financiering verstrekt voor de handhaving van de adat-wet. Dit heeft het gezag van het dorpsbestuur ten opzichte van de dorpsgemeenschap versterkt.

Met behulp van de Dana Desa die door de centrale staat wordt uitbetaald, heeft de lokale overheid de adat-instellingen nog autonomer gemaakt. Door de erkenning van niet-statelijk recht (adat) zijn adat-instellingen verder verwijderd van controle door de lokale overheid en de lokale gemeenschap. Als gevolg hiervan zijn de juridische praktijken van adat-instellingen op sommige gebieden in strijd met projecten van de centrale overheid, zoals het ontmoedigen van het huwelijk door minderjarigen.

Hoofdstuk V bespreekt hoe naast de adat-wet en de Atjeh Shari'a het nationale strafrecht op hetzelfde gebied opereert en dynamisch interageert met beide rechtsstelsels. Deze drie rechtsstelsels hebben van elkaar gebruik gemaakt om hun belang bij de openbare orde te behartigen. Deze drie rechtssystemen van het strafrecht: adat, jinayah (de islamitische strafwet opgenomen in Atjehse Shari'a) en het Indonesische nationale strafrecht worden op creatieve wijze beheerd door juridische agenten (politie, officier van justitie en paralegals/activisten) om hun belangen te realiseren.

Niet-statelijke juridische actoren spelen een belangrijke rol bij het ontwikkelen van lokale kennis over seksualiteit en rechtskeuze en hoe deze zijn gereguleerd in de drie besproken rechtsstelsels. Soms slagen de niet-statelijke actoren erin om de formele juridische grens tussen adat, Atjehse Shari'a en het nationale strafrecht te doorbreken en zaken van het ene rechtsgebied naar het andere te verplaatsen. Dit betekent echter niet dat deze drie rechtsstelsels elkaar betwisten. Omgekeerd zijn ze complementair en zijn ze alternatieven voor elkaar geworden. De staat, niet-statelijke juridische actoren en adat-functionarissen houden zich aan bepaalde grenzen van elk rechtssysteem en bekijken de

beschikbare fora of passen juridische differentiatie toe. In sommige gevallen zijn juridische actoren erin geslaagd om ervoor te zorgen dat één beklaagde twee (aanvullende) straffen kreeg uit twee verschillende rechtsstelsels. Dit lijkt misschien in strijd met het principe *ne bis in idem*, maar in feite waren de straffen elk van een andere aard en complementair (bijvoorbeeld een boete en een verbod om terug te keren naar de plaats waar het slachtoffer van seksueel misbruik woonde). Van de betrokken actoren was de politie de meest invloedrijk in het aansturen van het gebruik van de drie rechtsstelsels. Zij bepaalden welk rechtssysteem het beste past bij het belang van de slachtoffers, daders en hun eigen belang. Ze vormden de brug tussen rechtssystemen in het pluralisme van het strafrecht in Atjeh. De openbare aanklagers beslisten verder of ze een aanklacht moesten indienen op basis van het nationale strafrecht of op basis van de Sharia van Atjeh.

Deze juridische ontwikkelingen in Gayo suggereren dat de erkenning door de staat van niet-statelijk recht (adat-recht) als onderdeel van het staatsrechtelijke systeem een hoge mate van autonomie kan geven aan adat-instellingen. Dit druist in tegen de veelgehoorde bewering dat erkenning van adat altijd leidt tot meer controle door de staat. De reden is dat juridische instanties van de staat niet kunnen binnendringen en ingrijpen in een adat-instelling. Met andere woorden, het versterkt het *Semi-Autonomous Social Field* van de adat-instellingen. Soortgelijke situaties zijn beschreven in andere delen van de wereld. In haar onderzoek naar Zuid-Afrika toonde Barbara Oomen aan dat wanneer de staat niet-statelijk recht (gewoonterecht) erkent en hoofden de bevoegdheid geeft om zaken op het gebied van landbeheer te regelen, de hoofden die bevoegdheid gebruiken om hun dominantie te doen gelden en zichzelf te positioneren als de enige echte vertegenwoordigers van hun gemeenschappen bij de centrale overheid. Mijn bevindingen zijn in overeenstemming met dit argument, in tegenstelling tot het argument van John Griffiths dat de erkenning door de staat boven niet-statelijke rechtssystemen het niet-statelijke recht onderwerpt aan het bevel van de staat.

About the Author

Arfiansyah was born in Takengen, the capital of Central Aceh District, Indonesia. He obtained a bachelor's degree in Islamic philosophy and theology from the State Islamic University of Ar-Raniry in 2004. Then, he went to McGill University, Montreal, Canada in 2007 to pursue Master's degree in Islamic Studies with the sponsorship from the Canadian International Development Agency (CIDA). In late 2013, he obtained a scholarship from the Indonesian Endowment Fund for Education (LPDP) of the Indonesian Ministry of Finance. This scholarship enabled Arfiansyah to go to Leiden University for a Ph.D. degree in Legal Anthropology at the Leiden Institute for Area Studies (LIAS) of the Humanities Department and at the Van Vollenhoven Institute for Law, Governance and Society (VVI).

Arfiansyah was appointed as a junior lecturer (teaching assistant) in 2006 at the Islamic Studies and Philosophy Faculty of the State Islamic University of Ar-Raniry. In 2010, he was also delegated as the university representative to the International Center for Aceh and Indian Ocean Studies (ICAIOS), with which he is still affiliated until now.

Since 2012, Arfiansyah has been involved in many kinds of research, both individually and collaboratively. He has also been involved in many advocacy activities. His first research was with the Planning and Development Agency of Aceh Province in 2012. Since then, he has been involved in many applied and policy research projects for government planning and development programs. In 2019, he served as the Principal Investigator for a research project on Cultural Mitigation of Disaster and Hazard in Aceh, funded by the Ministry of Religious Affairs in Jakarta. In 2021, with the same source of funding, he acted again as the principal investigator to turn research-based findings into more practical modules for the religious counselors (*penyuluh agama*) of the Aceh province regional office and for teachers of Islamic junior high schools.

From 2020-2022, Arfiansyah was a principal investigator of a research and advocacy project on Family and Gender relations in the Aceh Community. In 2021, with a research team from the Geography, Planning and Environment Department of Radboud University in the Netherlands and ICAIOS in Aceh, funded by KNAW of the Netherlands. In 2022, he served as the Principal Investigator for a policy research project on Orphan Guardianship aiming at producing regional regulations on guardianship of orphans in Aceh Province.

Individually, Arfiansyah worked as a research officer for the ASEAN Institute for Peace and Reconciliation (AIPR) (2021-2022) and examined

humanitarian assistance, development, and peace-building in Aceh. From August 2022 to July 2023, he serves as a co-investigator to the director of the Nonviolent Peaceforce of the Philippines for a research project on Unarmed Civilian Protection (UCP) in Papua amidst violent conflict. This project is funded by Aberystwyth University, UK. In addition, Arfiansyah published several book chapters and journal articles.