



Universiteit
Leiden

The Netherlands

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

Arfiansyah, A.

Citation

Arfiansyah, A. (2022, September 21). *State legal pluralism: the intersection of adat, jinayah, and national penal law in Gayo, Indonesia*. Retrieved from <https://hdl.handle.net/1887/3463689>

Version: Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/3463689>

Note: To cite this publication please use the final published version (if applicable).

State Legal Pluralism
The Intersection of Adat, Jinayah, and National Penal
Law in Gayo, Indonesia

Arfiansyah

Cover Design : Aminuddin Siregar

@2022 Arfiansyah. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronics, mechanical, photocopying, recording, or otherwise, without the permission in writing from the proprietor.

State Legal Pluralism
The Intersection of Adat, Jinayah, and National Penal Law in Gayo,
Indonesia

Proefschrift

ter verkrijging van
de graad van doctor aan de Universiteit Leiden,
op gezag van rector magnificus prof.dr.ir. H. Bijl,
volgens besluit van het college voor promoties
te verdedigen op woensdag 21 september 2022
klokke 13.45 uur

door
Arfiansyah

Promotores:

Prof. dr. A.W. Bedner

Prof. dr. L.P.H.M. Buskens

Promotiecommissie:

Prof. dr. N.J.G. Kaptein

Prof. dr. S. Irianto (Universitas Indonesia, Jakarta, Indonesië)

Dr. Jacqueline Vel

Dr. Stijn van Huis (Universitas Bina Nusantara, Jakarta, Indonesië)

ACKNOWLEDGEMENTS

I would not have been able to finish this dissertation without the continuous support and involvement of many truly amazing and generous people. After I finished my MA degree in Canada, my parents constantly asked me whether I would pursue a Ph.D. degree at another overseas university. This became the starting point of my eventual academic journey at Leiden University. No words can represent my deep gratitude and utmost appreciation to my parents for such a simple question. Then, my wife, Noralina, and sons, Kaisar Rawsyan Arfnor and Hakim Ruzhmaan Arfnor, have been my most fundamental support from the beginning of my doctoral program until I finished writing this dissertation. They understand that getting a Ph.D. is a matter of emotional struggle. They stepped back and delayed claiming their rights just to support me finish my education. Therefore, this dissertation and my Ph.D. degree are entirely dedicated to these wonderful people. They are the true Ph.D. scholars from whom I have learned and have been inspired.

Secondly, I am so grateful to have two humble teachers and mentors: Prof. Léon Buskens, an anthropologist of law and culture in Muslim society with a particular focus on Morocco, and Prof. Adriaan Bedner, who specializes in Indonesian law and society. Both have been integral parts of my PhD-journey. They have patiently dealt with my sloppiness and insecurity. And surely, their mentorship and enlightenment would not have been complete without the presence of others around me. I met wonderful people on and off the Leiden University campus. Without their assistance, I would have gone astray during my doctoral program, field research, and my stay in Leiden. Deni, Sofia, and their family in The Hague gave their home and hands, ensuring my long journey would start smoothly. Bang Edgar and his family, who hosted me for the first time in Leiden. From there, I met more and more great people with whom I share stories and moments of pain and joy. I am forever grateful to Julia Se, Nazaruddin, Sudarmoko, Wijayanto, Fachrizal Afandi, Hari Nugroho, Syahril Siddiq, Kang Kurniawan, Mariam Kaiser, Ade Jaya, Zamzam, Asep Maulana, Viktor, Mbak Fifi (Mubarika), Nurmaya, Santi Kouwagam, Teh Maya, Mbak Kay, Teh Raini, Yance Arizona, Kang Kusnandar, Ajeng, Mark van der Water, Bang Ucok (Aminuddin Siregar), Chahjono, Al Farabi, Muhammad Lathif Fauzi, Renzi, Taufik Hanafi, Ayu Swaningrum, and many other Indonesian Ph.D. students who shared thoughts and emotions and provided me with social and academic support systems through

various discussions and, surely, food. And, I thank Omar Khalifa who always carried the Acehnese style of support during my stay in Leiden. I also thank a lot of Indonesian families in the Netherlands; Teh Meira, Suryadi, Mas Tio, Om Marek, Kang Deni, and many others who have made my family and me feel at home. I am forever grateful to Magreet van Till, the coordinator of DIKTI-LPDP Ph.D. students, who has tirelessly followed my progress until the end of my Ph.D. program. She would not hesitate to remind me, facilitate my concerns, and help relieve me from stress and pressures.

During my fieldwork in Aceh province, I also met some great individuals. Without neglecting others' contributions, I am deeply in debt to Yusdarita, Hasanah Silang and Sadikin Gembel, Fakhruddin, Sapta, Khalisuddin, Ikhwan, Firmansyah, Win Wan Nur, Cek Hasan, Saifullah, Sahdansyah. I am certainly grateful to the following law enforcement officers, Sahdan Putra Jaya and Akbarsyah (i.e., public prosecutors), and judges and staff of the Mahkamah Syar'iyah of Central Aceh and Bener Meriah districts, Ibu Atun from the Central Aceh Police Station and her staff and colleagues from the Crime Unit. These people and others connected me to many other wonderfully-helpful individuals who assisted me to face difficulties during the fieldwork.

This dissertation would be impossible to complete without critical and harsh reviews as well as guidance and academic support from many scholars. Particularly, I would like to thank Prof. Alyasa Abubakar, Prof. Yusni Saby, Prof. Eka Srimulyani, Mahmood Kooria, Annemarie Samuel and Anton Stolwijk, David Kloos, Mies Grijns, Hoko Horii, Saleh Safi'ie, Reza Idria, Sehat Ihsan Shadiqin, Faishal Zakaria, and Saiful Mahdi.

And finally, I am endlessly grateful for the generous financial support provided by the Indonesian government through the Indonesia Endowment Fund for Education (LPDP) and the Ministry of Religious Affairs of the Republic of Indonesia. Last but not least, I am thankful to my home institution, the State Islamic University (UIN) of Ar-Raniry in Banda Aceh, for providing administrative support. Without the financial and administrative support from these institutions, my doctoral program would not even start.

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.

Musyawahah: 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'ah: Shari'ah Inspired Regional regulation; a term used by scholars to indicate a regional regulation that is inspired by Shari'ah 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 perceraan: 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.

Wilayahul 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.

Table of Content

ACKNOWLEDGEMENTS	i
Glossary.....	iii
Table of Content	ix

Chapter I

Introduction	1
State Legal Pluralism.....	4
The Emergence of State Legal Pluralism	5
State Legal Pluralism in Aceh: The <i>Jinayah</i> of Aceh's Sharia	7
<i>The Formalization of Adat</i>	11
Secularized Shari'a	16
Research on Gayo	21
<i>The Gayonese</i>	21
<i>Studies on Adat, Law, and Islam in Gayo</i>	22
Fieldwork: Researching My Own Yard.....	23
<i>Researching Legal Institutions in Gayo</i>	26
The Organization of the Book	30

Chapter II

The Village in Gayo: From Traditional to Modern.....	33
Introduction	33
Gayo Village Polities during the Colonial Era	35
Social Changes from <i>Belah</i> to Village	39
Changes in Village Polity	43
<i>The Gayo Village after the New Order</i>	47
The Election: Competition for the State Sources	49
<i>Modernizing the Election</i>	52
<i>The Impact of Democratic Election</i>	55
Conclusion	57

Chapter III

Temporary Uses and Changes of Adat	59
Introduction	59
Adat	59
Early Islamic Reform and Family Law	63
<i>Changes in Adat Family Law</i>	66
<i>The Court's Contribution to the Adat Transformation</i>	67
Inheritance Division	70
Changes in Adat Criminal Law: Qanun Kampong	74
Adat Institutions.....	82
Bhabinkamtibmas: The Government Approach to the Adat Institution.....	87
Forum Shopping	89
Conclusion.....	93

Chapter IV

The Intersection of Adat and the State Shari'a	95
Introduction.....	95
Legalizing Gayo Adat Law	97
<i>Sumang</i>	99
<i>Farak</i>	105
The Practice of Farak.....	108
<i>Escaping from Farak</i>	113
WH Kampong	115
<i>The Increase of Underage Marriage</i>	122
Debating Farak	125
Conclusion.....	127

Chapter V

Governing Sexuality: The Intersection of Adat, Jinayah of Aceh Shari'a and Indonesian National Penal Law	129
Introduction	129
Local Knowledge and Legal Practice.....	132
<i>Pedophilia</i>	135
Legal Differentiation: The dynamic interplay of state legal pluralism	140
Extramarital Sex.....	149
Conclusion.....	155

Chapter VI

Conclusion	157
<i>Three major findings</i>	158
Gayo Villages in Post-New Order Regime	161
The Contemporary Transformation and the Use of Adat.....	164
<i>Adat and State Shari'a: The Rise of Interlegality</i>	166
The Limits of the Law and the Creativity of Legal Institutions.....	172
Note for Further Investigation, Discussion and Lesson for Indonesia's Legal Project.....	176
References	180
Summary.....	198
Samenvatting.....	204
About the Author	211

