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

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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.

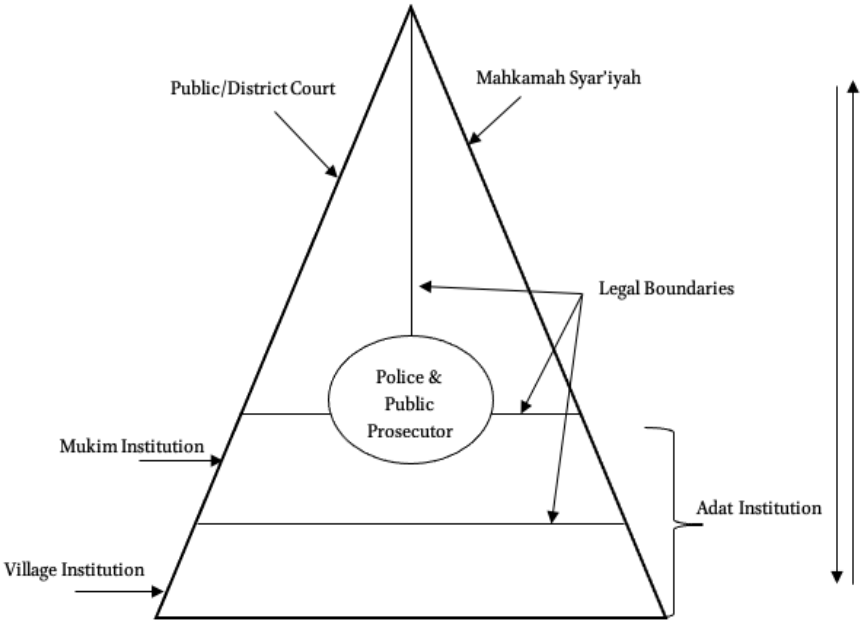
Qanun 10/2008 gives institutional recognition to adat institutions as part of the state (these adat institutions are all village institutions). This Qanun reintroduces adat terms for political institutions and re-arranges relevant traditional political structures and territories in line with the current 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.

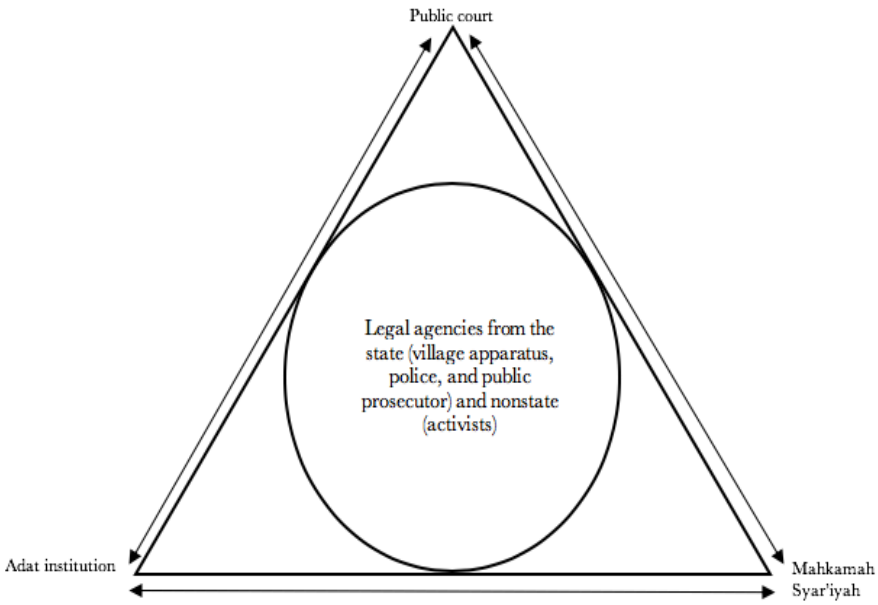
As I will show in this book, each of these actors can complement or become an alternative to the other. This is different from Arskal Salim's observation on the legal pluralism of family law in Aceh. Salim argues that the legal pluralism in family law in Aceh is a 'showground' where separate legal orders,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