



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).

Chapter IV

The Intersection of Adat and the State Shari'a

Introduction

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

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

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

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

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

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

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

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

Legalizing Gayo Adat Law

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

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

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

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

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

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

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

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

of endogamous marriage²¹ as means to protect themselves from threats to morality that come from external cultures and are channeled through mainstream media such as cable TV and smartphones.

Sumang

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

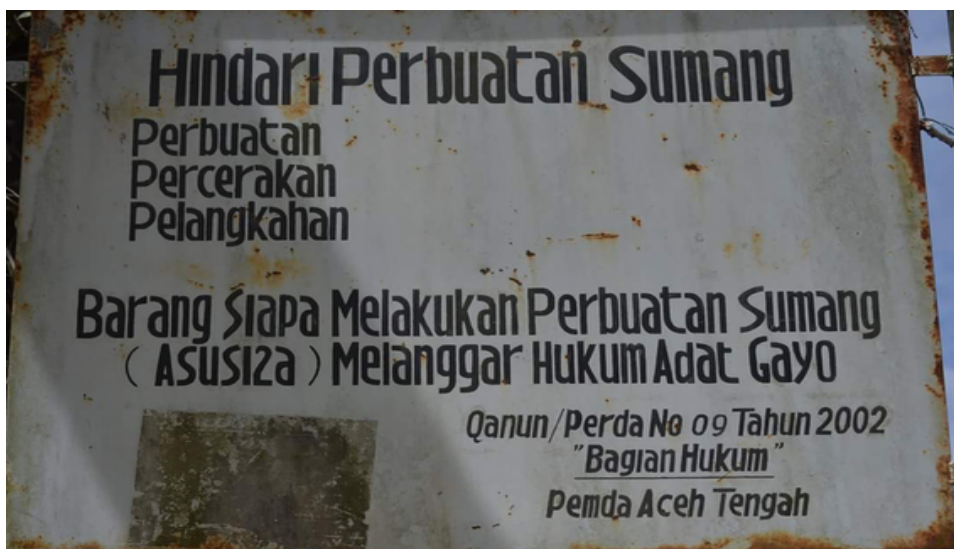
The Qanun on Gayo Adat Law defines the *sumang kenunulen* very differently, as "a mature man and woman who are not tied to husband and wife sit in hidden places." Many people whom I consulted about this specific norm disagreed with the definition. According to most of my informants, the legal definition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

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

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

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

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



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

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

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

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

Farak

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

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

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

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

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

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

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

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

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

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

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

The Practice of Farak

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**PUTUSAN PERADILAN ADAT
KAMPUNG LOT KALA**

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

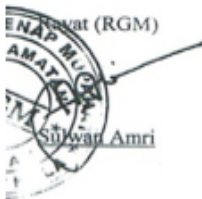
1. Nama [Redacted]
Tempat/Tgl Lahir [Redacted]
Pekerjaan [Redacted]
Alamat [Redacted]
---Selanjutnya disebut Pihak I (Pertama)---
2. Nama [Redacted]
Tempat/Tgl Lahir [Redacted]
Pekerjaan [Redacted]
Alamat [Redacted]
---Selanjutnya disebut Pihak II (Kedua)---

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

1. Menjatuhkan Sanksi kepada Pihak I dan Pihak II berupa :
 - *Gere Igenapi* :
 - a. Warga belah, masyarakat kampung Lot Kala, maupun Pemerintah Kampung Lot Kala tidak akan mengikuti/menghadiri acara pernikahan tersebut.
 - b. Pemerintah Kampung Lot Kala tidak akan mengeluarkan segala bentuk surat untuk persyaratan nikah.
 - *Parak* :
 - a. Diusir dari kampung Lot Kala dan tidak boleh lagi hadir di kampung Lot Kala baik sinte Murip maupun sinte Mate.
 - b. Pemerintah Kampung Lot Kala mengeluarkan Surat Pindah kepada Pihak I dan Pihak II ke kampung lain sesuai yang mereka kehendaki.
 - *Dene (Denda)* :
 - a. Mugelih Koro (Memotong se-ekor kerbau)
 - b. Oros urum belenye segenap dirie (Beras dan belanja secukupnya)
 - *Niro maaf*:
Permintaan maaf kepada masyarakat Kampung Lot Kala.
2. Jika Pihak I dan Pihak II dapat memenuhi sanksi adat tersebut diatas maka saat itu pula dia boleh pulang kembali ke kampung Lot Kala dan diadakan acara *dame* (perdamaian) dengan masyarakat Lot Kala dalam suatu acara perdamaian sekaligus memulihkan nama baik/ harkat martabat Pihak I dan Pihak II dan juga keluarganya.

Demikianlah Putusan ini kami perbuat dengan sebenarnya.

Majelis Peradilan Adat Kampung Lot Kala



Petue

Ismail



Sekretaris Majelis

Ihwan Sabri

Reje



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

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

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

25

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

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

Escaping from Farak

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

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

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

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

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

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

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

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

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

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

WH Kampong

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

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

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

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

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

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

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

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

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

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

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

The WH is indeed constrained by limitations in their budget and human resources. Some people also blame this fact on the removal of the WH from the DSI office²⁶ and its incorporation into the Municipal Police (Satpol PP, *Satuan Polisi Pamong Praja*) in 2008, as regulated in Article 244 of the Law on Governance of Aceh, which is the outcome of the peace agreement concluded in 2005 between the Free Aceh Movement (GAM, Gerakan Aceh Merdeka) and the Indonesian Armed Force (Indonesia, 2012b, 2012a; Feener, 2013, pp. 222–233, 2016, p. 13). This indeed caused a decrease in Aceh Shari'a enforcement: to surveil the entire 4,318,39 km² territory of Central Aceh, the WH had less than fifteen staff members. The founding of the WH Kampong was a response to this situation. WH and WH Kampong are not linked to each other and the latter reports to the district DSI office and the relevant adat officials. The unit is funded by the DSI.

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

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

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

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

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

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

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

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

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

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

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

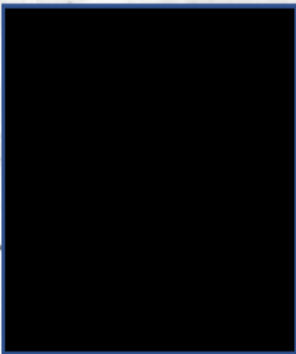
responsible to guard the village and its moral standard. They will also provide a share to the members of the WH Kampong, as an additional income to their poor salary. In addition, the DSI grants IDR, 1,000,000 to the village and the WH Kampong as a reward for each reported case that has been tried at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

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

SURAT PERNYATAAN

Kami yang bertanda tangan di bawah ini:

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



Menyatakan dengan sesungguhnya bahwa :

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

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

Pengawas Syari'at Islam

No	Nama	Tanda Tangan
1	<u>Karimuddin</u>	<u>[Signature]</u>
2	<u>Saprizal</u>	<u>[Signature]</u>
3	<u>Asuspida</u>	<u>[Signature]</u>
4	<u>Pujana</u>	<u>[Signature]</u>
5		
6		

Kampung Kala Buntang 14 Agustus 2012

Yang Membuat Pernyataan
Pihak Pertama (1)

[Signature]

Pihak Kedua (2)

[Signature]

Mengetahui
Kepala Kampung Kala Buntang

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

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

The Increase of Underage Marriage

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

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

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

Table I

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

Collected from Mahkamah Syar'iyah of Central Aceh

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

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

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

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

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

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

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

Debating Farak

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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

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

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