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

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

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Local Knowledge and Legal Practice

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

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

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

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

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

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

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

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

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

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

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

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

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

Pedophilia

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Legal Differentiation: The dynamic interplay of state legal pluralism

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Table II

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

Collected from Criminal Unit of District Police Station of Central Aceh

Table III

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

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

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

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

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

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

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

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

Extramarital Sex

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

77 ONO

SURAT PERNYATAAN

Kami yang bertanda tangan di bawah ini:

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

Menyatakan dengan sesungguhnya bahwa :

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

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

Pengawas Syari'at Islam

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

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

[redacted]

Pihak Kedua (2)

[redacted]

Mengetahui,
Kampung MENDALE

REJE MENDALE

M. ANIN

LESBIAN

SURAT PERNYATAAN

Kami yang bertanda tangan di bawah ini:

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

Menyatakan dengan sesungguhnya bahwa :

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

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

Pengawas Syari'at Islam

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

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

[redacted]

Pihak Kedua (2)

[redacted]

Mengetahui,
Kampung Mendale

REJE MENDALE

M. ANIN

Conclusion

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

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

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

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

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

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