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

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The State Legal Pluralism

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

Propositions

1. The emergence of the state legal pluralism in Aceh, and generally in Indonesia, is the result of the state's approach to overcome (potential) disorder, retake and increase state control, and to manage the complexity of political situations.
2. State Shari'a is a product of secular reading of the Divine will (the abstract and universal Shari'a as found in the Quran and prophetic traditions) to extract actual concrete law for a certain spatial and temporal needs. This means that all bodies of law operated by the state in Aceh Province, including the shari'a law, are equal at an ethical level and that their differences are mainly found in their legal sources, their place in the state hierarchy and their actual enforcement.
3. The pluralism of penal law in Gayo does not lead to contestation, as does the pluralism of family law. They are in fact complementing each other in practice.
4. 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.
5. Two legal systems can be reconciled if they recognize a similar source of authority and are projected toward similar objectives, even if they are distinct regarding concepts and formulas. In Gayo's case, this legal reconciliation leads the different legal systems to complement one another and gives the village and state elites the power to govern morality and sexuality. This reflects the moral panic regulations in Indonesia both at the district and the national levels.
6. As a result of institutional recognition, adat has become more important than both Aceh Shari'a and national penal law for dealing with common criminal offenses in everyday life. This makes Adat the most determining legal system in dealing with, particularly, sexual offenses. It prevails over the *jinayah* of Aceh Shari'a and national penal law.
7. The legal pluralism gives greater benefits to the individual legal agents than the plaintiffs. The legal pluralism revives the old practice of forum shopping (moving case from one legal system to another for the interests of legal agencies or elites) and opens opportunities for the state legal agencies to practice legal differentiation (moving case from one legal system to another and giving different legal consequences to an identical case) to deliver fairness to those who were involved in the case. With this fact, legal pluralism can actually promote individual rights and respond to the sense of justice of those involved if it is carefully and attentively operated.
8. The formal jurisdiction and the development of the three legal systems not only depend on the formal legal jurisdiction that influences and limits other legal systems, but also on the ability of legal agencies to manipulate their limits. With their ability

and creativity to disrupt the formal hierarchical design of the legally plural system in Aceh, the jurisdiction between legal system becomes highly dynamic.

9. The more adat is recognized and supported by law and regulation the more autonomous it becomes from the state and the more harm it can inflict on the civil rights of individuals.
10. Doing research on legal anthropology without having formal educational and training background in legal studies is very puzzling and requiring extra efforts. Yet, it is an extra advantage as I am not constrained and framed to any legal perspectives. I was a freeman with an empty mind who was lucky to have legal scholars around.
11. PhD for me is very much about personal endeavors to deal with myself. The whole processes were about negotiating with myself and dealing with psychological challenges and expectations that have grown from it. Thus, the highest pride from my PhD long journey is not the accumulative knowledge gained from the PhD training but the ability to tolerate pain and suffering and laugh at them.