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CHANGING TRENDS IN THE STUDY OF SHARIA IN INDONESIA
An Account on Relevant Bibliographies

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Abstract: The study of Sharia in a Muslim country, like Indonesia, has been experiencing a significant change in terms of approaches, methods, and object of study. This article deals with the continuities and changes in the study of Islamic law in Indonesia. Based on my bibliographical study, it emphasizes that the study of Sharia in Indonesia has changed in response to the changing social and political surroundings, which I categorize into three phases. First, during colonialism, the relationship between Islam and local customs has become an important subject of intense debate among scholars. Second, an upturn occurred in the mid-1950s, as the study of Sharia was no longer oriented to examine the debates on the relationship between Islam and local practices. Instead, Islam is seen as a set of interpretative resources and practices. This approach continued to develop until the 1970s. Third, along with the codification of Islamic family law, the study of Sharia has been given to the dynamics of Islamic law in courtrooms, examining the position of women and the role of judges, and in state policies both at provincial and district levels.

Keywords: Sharia, local practices, position of women, role of judges.

Introduction

Sharia, commonly referred to as Islamic law, is considered not only the people's interpretation of the sacred texts and their manifestation in everyday practices but also, in the long run, a notion produced by an interaction between native cultures and local power relations. In Indonesia, as a 'new state', it is barely possible to neglect the fact that there has been a shift in the study of Sharia. The first development gives significant attention to unadulterated Islamic doctrines as found

in the Islamic texts. Later on, it focuses on the socio-cultural aspect of the implementation of Sharia in society. This shift has considerably influenced the subsequent studies in the field. This shifting approach should be seen in the framework of the development of the sociological study of Islamic law and society in the Western scholarship, which started to emerge at the end of the eighteenth century, in conjunction with colonialism.[1]

The same trend occurs in another country, like Egypt. Baudouin Dupret, who takes Egyptian family law as a case of study, conversely offers criticism over the concept of Islamic law. He argued that Islamic law is not only found in the diverse legacies of Sharia and *fiqh* books, but is related to what people, particularly Muslims, think of Islamic law. However, in practice, a 'genealogical continuity' is established to connect them. Social scientists often occupy a normative stance that the authority to define Islamic law is attached to and has to be maintained by Islamic theologians and scholars. This is to preserve their interference in making definitions. According to him, the task of social researchers is not to make a claim over whether or not people's conception and practices are in compliance with the pristine Islamic teachings but to describe how they conceptualize Islamic law.[2]

This article deals with the continuities and changes in the anthropological study of Islamic law in Indonesia. Instead of examining an enormous number of pieces of literature available from the nineteenth century colonial period to the early twenty-first century Indonesia, this article limits its sources produced and published in more or less the past two decades. The discussions in this paper are organized chronologically and divided into four sequential sections. Section 1 addresses the historical context of the topic discussed. It starts with a short overview of the invention of the anthropological study of Islamic law and society, which emerged in the nineteenth-century colonial period. Section 2 describes how traditions and social processes are incorporated in the shaping of Islamic law. It contains a discourse on what is and is not really Islamic.

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[1] Léon Buskens and Baudouin Dupret, *The Invention of Islamic Law: A History of Western Studies of Islamic Normativity and Their Spread in the Orient*, ed. by Jean-Claude Vatin and François Pouillion (Leiden: Brill, 2014), p. 31.

[2] Baudouin Dupret, 'What is Islamic law? A Praxiological Answer and an Egyptian Case Study', *Theory, Culture & Society*, vol. 24, 2 (2007): pp. 79–100.

Section 3, serving as the main discussion of this article, includes two sub-subjects. The first sub-subject discusses a central issue of the dynamics of legal development in a developing country, persistently connected with the issue of legal pluralism and the interplay between Shariʿa, custom, and state. The second one is concerned with the state-guided implementation of Islamic legal reform on marriage and divorce in religious courtrooms within the increasing number of women petitioning for divorce. Section 4 examines the contemporary development of Islamic law in the context of the transformation of political, legal and social dimensions in the post Suharto era.

Colonialism and the Making of the Study of Islamic Law in the Indies

Within a long development of the incorporation of Sharia in Indonesians' everyday life for over seven centuries, the relation between Islam, including Islamic legal, and native customs (*adat,* Arabic: *ʻāda*) has been becoming an important subject of intense debates among scholars. Among the first Dutch scholars who were specialized in writing about Islamic law in the Netherlands Indies were Salomo Keijzer (1823-1868) and his student, L.W.C. van den Berg (1845-1927). They claimed Islamic law, in a pure sense, to be the basic knowledge of the study of legal practices, and, hence, urged the importance of having deep comprehension on the subject. Without this, it is difficult to understand deviations, changes and modifications in the practice of Islamic law in society. Van den Berg stated that indigenous laws in Java and Madura were deviations from Islamic law.

The 1853 Keijzer's work titled *Handboek voor het Mohammedaansche regt* was of important sources to be used as handbook in the training for colonial civil servants in the Delft Institute.[3] His ideas on *adat*, an apologetic term to justify abuses such as threatening the locals, taking belongings by force and girl gratification committed by Dutch civil servants, provoked controversial polemics amongst civil servants in the Archipelago. The Dutch government, defending a standpoint that Javanese society was not truly Islamic, thereafter disregarded his arguments. The subject of Islamic law was then overlooked in the 1863 Dutch Council of state's discussion on the establishment of a faculty

[3] Buskens and Dupret, *The Invention of Islamic Law*, p. 34.

of Indian Studies at Leiden University.[4] Civil servants' conception, largely guided by the European notion of jurisprudence, which perceived norms existing in society subordinate to local practices, distorted the pluralistic spirit of Sharia, allegedly translated into a narrow-minded legal term.[5]

Such a vis-à-vis relation of Sharia and customs found its decisive adjustment from the notion of internationalization, associated with the resurgence of Islamic movement, pan-Islamism, in the Middle East. This movement boosted the increasing spirit of *jihād*, anti-West-colonialism, amongst Muslim. Karel Frederick Holle (1826-1896), appointed as Honorary Adviser on Native Affairs in 1871, suggested the Dutch government not to ignore the returned *ḥajj* from Mecca. They were suspicious of spreading the idea of religious-based resistance against the Dutch.[6] Subsequently, Christiaan Snouck Hurgronje (1857-1936), who replaced the honoured position of Holle (1889 to 1906), however, had an opposing view. Snouck, who had had experience interacting with the Jawa community during his short living in Mecca in 1885, acquired the peaceful notion of Islam.[7]

After arriving in the Indies and visiting some places in Java, Snouck Hurgronje spent a few months in Aceh. In his two-volume work on Aceh, *The Achehnese*, Snouck Hurgronje believed local Islamic customs could be linked with local traditions.[8] There is no need in such a way to put them in a confronted position. During his seven-month-living in Aceh, he found something peculiar: how Islamic precept for which ulama' of the Archipelago search in Mecca did not entirely affect their daily practices. Given this fact, he argued that customary norms played significant roles in Muslim society in the

[4] Kees van Dijk, "The Study of Islam and Adat in Java," in *The Java that Never Was: Academic Theories and Political Practices*, ed. by Hans Antlöv and Jörgen Hellman (Münster: Lit, 2005), pp. 133–4.

[5] Léon Buskens, "Sharia and the Colonial State," in *The Ashgate Research Companion to Islamic Law*, ed. by Rudolph Peters and Peri Bearman (Surrey, England: Ashgate, 2014), p. 212.

[6] Michael Laffan, "Islamic Nationhood and Colonial Indonesia: The Umma Below the Winds, " *Middle Eastern Studies* (London: Taylor & Francis, 2003), p. 82.

[7] Jajat Burhanudin, "Islamic Knowledge, Authority, and Political Power: The 'Ulama in Colonial Indonesia," (PhD Dissertation. Leiden University, 2007); "The Dutch Colonial Policy on Islam: Reading the Intellectual Journey of Snouck Hurgronje," *Al-Jami'ah: Journal of Islamic Studies* 52, 1 (2014): pp. 25–58.

[8] Christiaan Snouck Hurgronje, *The Achehnese* (Leiden: E.J. Brill, 1906).

Indies. This prevented the Muslim to be considered bad for undertaking sort of deviations and modifications beyond the normative doctrines. What Snouck Hurgronje had done was essential in making the distance of Islam and *adat* closer.

In light of his idea on customs, the concept of *adat-recht* (*adat* law) was then discovered by his Dutch fellow, inaugurated as a professor of *adat* law at Leiden University in 1901, Cornelis van Vollenhoven (1874-1933). Given the fact that the native people of the Indies are Muslim, Snouck Hurgronje approaches *adat* law encompasses norms of customary laws, princely decrees and Islamic laws that have been an integral part of people's practices. Not only did his idea less significantly affect civil servants, it also received negative receptions from orthodox and nationalist Muslims in Indonesia who impose an understanding that Islamic law must have the highest supremacy over competing norms. His theory was considered subjugating Islamic law into *adat* law. It goes without saying, the contribution of Snouck Hurgronje's ethnographical study of Islamic law in Indonesia, for the interests of either the past colonial administration or nowadays scholarship, deserves admiration.[9]

Traditions, Social Processes and the Shaping of Islamic Law

Literatures on legal system and customs in the early of twentieth century were greatly dominated by Dutch scholars. In the years prior to and during of World War II, precisely between 1910 and 1943, the dissemination of the concept of *adat* law into an international scholarship was seriously attempted. More than 40 volumes of *Adatrechtbundels*, a journal on *adat* law, were published in that period. However, after Indonesia proclaimed its independence in 1945, ethnological studies by Dutch scholars experienced a fundamental change in which geopolitical factors played significant roles. For quite a lot longer, only has little attention been given to Islamic legal and society dynamics in the newly built nation. Nonetheless, the colonial authorities reified the knowledge of Islamic legal discourses in the Indies, inventing the distinction of endogenous custom and exogenous Islam.[10]

[9] Léon Buskens and Jean Kommers, "Dutch Colonial Anthropology in Indonesia," *Asian Journal of Social Science* 35 (2007): pp. 352–369.

[10] Robert W. Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (Princeton: Princeton University Press, 2000), p. 6.

An upturn in the studies on Islam or Muslim in Indonesia, and Southeast Asia in general, resurged in the mid-1950s. Scholars from the United states' universities began the post-colonial anthropological study of Islam in Indonesia in light of the flourishing discourses on theories of anthropology of religion in their country. The area of study was no longer oriented to specifically examine the unending debates on the unstable relationship between Islam and local practices. In the early 1950s, Clifford Geertz did his fieldwork on how culture shaped the image of Java, in the town named Mojokuto. His work, entitled *The Religion of Java*, has been obvious to evidence that Islam and religion, in general, comprises an implicit set of theoretical assumptions concerning how a religion in a complex religious tradition is represented.[11]

Geertz's interpretive culture approach fascinated later scholars as it transcended the sharp division of culture and social system.[12] And among other religious practices, ritual or *selametan* in Javanese culture is not only a pattern of meaning. It is also a form of social interaction.[13] Despite the low scholarly attention to Islam in Java after the independence of Indonesia, the study of Geertz has directed the subsequent scholarly attitude towards religions in Java, underpinning the Javanese religion is syncretic, encompassing elements from animism and Hindu-Buddhism in the past. At the same time, the influence of Islam is superficial. Mark Woodward has underscored that Geertz's categorization of Javanese people (*abangan*, *priyayi*, and *priyayi*) was interfered with by the practical dichotomy of normative piety and Sufi mysticism.[14] Little attention was paid to the role of Islamic law in Javanese society, even when the subjects were related to family and marriage, like Hildred Geertz's work on *The Javanese Family*. In contrast, Islamic marriage law was, and is still, in practice amongst society.[15]

[11] Clifford Geertz, *The Religion of Java* (Illinois: The Free Press, 1960).

[12] Clifford Geertz, "Religion as a Cultural System," in *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973): pp. 87–125; Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973); Clifford Geertz, "Culture and Social Change: The Indonesian Case," *Man* 19, 4 (1984): pp. 511–32.

[13] Clifford Geertz, "Ritual and Social Change: A Javanese Example," *American Anthropologist* 59, 1 (1957): pp. 32–54.

[14] Mark R. Woodward, *Islam in Java: Normative Piety and Mysticism in the Sultanate of Yogyakarta* (Tucson: University of Arizona Press, 1989).

[15] Hildred Geertz, *The Javanese Family: A Study of Kinship and Socialization* (New York: The Free Press of Glencoe, 1961).

The recent generation of scholars who usually work across disciplines has challenged the older distinction of local practices and normative texts. From the anthropological point of view, Islam is, and has necessarily to be, seen as a set of interpretative resources and practices. In the latter development, over the mid-1970s, *adat* societies in some of the Indonesian areas attracted anthropologists, political scientists and historians to undertake further inquiries. John Bowen has thrown light on rituals (prayers, worships and sacrifices) in the Gayo highlands of northern Sumatra.[16] Moreover, Bowen underlined the importance of scriptural commentaries and local narratives, such as the stories of Adam and Eve's children, the murder of Abel by Cain, to investigate how Gayo people make use of these texts in the case of conflicts amongst siblings.[17] As anthropology usually looks deeply at preferred local aspects in rituals or narratives to build links with other practices elsewhere, Bowen also made a comparison of the tradition of celebrating the feast of sacrifice (*'īd al-aḍḥā*) in Gayo and Morocco.[18] Reading his earlier study of Islamic prayers (*ṣalāt*), it confirms how worship and public rituals not only construct Muslim identity. Instead, they became objects of dispute and generated distinguished social meanings.[19]

Disputes in post-colonial Muslim societies have been of important subject amidst legal anthropologists. Certain communities remain confident and secured using traditional mechanisms (customary law and social organization) to handle disputes. Meanwhile, they are challenged with the Islamic legal authority and the new vigorous pressure from state organizations sustaining the concept of state sovereignty and citizenship. It is most likely that the fusion of the last two different legal sources caused conflict and tension and led to legal and political dissonance.[20] The notion of Islamic law emphasizes an

[16] John R. Bowen, *Muslims Through Discourse: Religion and Ritual in Gayo Society* (Princeton: Princeton University Press, 1993).

[17] John R. Bowen, "Elaborating Scriptures: Cain and Abel in Gayo Society," *Man* 27, 3 (1992): pp. 495–516.

[18] John R. Bowen, "On Scriptural Essentialism and Ritual Variation: Muslim Sacrifice in Sumatra and Morocco," *American Ethnologist* 19, 4 (1992): pp. 656–71.

[19] John R. Bowen, "Salat in Indonesia: The Social Meanings of an Islamic Ritual," *Man* 24, 4 (1989): pp. 600–19.

[20] Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Honolulu: University of Hawai'i Press, 2008), pp. 25–6.

exclusive divine sovereignty and claims revelation to be the basic foundation. In contrast, the concept of nation-state tends to monopolize the law-making process through the doctrine of positivism.[21] The first is represented by the ulama' while the latter by legislative. The legislation took over the task of the classical *fiqh* tradition to administer the modern state. Regardless of this dissonance, at a more practical level, the three different legal bodies coexist and relate to each other in an Islamic triangle, encompassing changing relations between them.[22] At this juncture, these plural norms are complicatedly blended in a so-called hybrid legal form.[23]

Legal aspects in public debates about Islam and social changes in Indonesia indicate that Islam, as a source of norms and laws, challenges the unadulterated concepts of marriage, divorce, inheritance, and family. Islam also needs an own reshaping in its response to the context of such concepts. In so doing, a law-and-society scholar has to be engaged in *ijtihād*, thinking outside the madhhab, and the reinterpretation of Islamic norms, thanks to the development of Islamic legal theories, as well as the incorporation of *adat* into law.[24] Muslim jurists in the pre-classical period have developed a variety of ways in order to incorporate customs into Islamic law, ranging from simply taking certain practices in *sunna* or *ijmā* ', appealing to judicial preference (*istiḥsān*), to making legal fictions (*ḥiyal*).[25]

From this point, recent trend in anthropology has placed an emphasis of religious texts and the knowledge of history of Islamic jurisprudence as an inseparable element of the study of anthropology

[21] Mark Cammack, "Islam, Nationalism and the State in Suharto's Indonesia," *Wisconsin International Law Journal* 17 (1999): pp. 27–63.

[22] Léon Buskens, "An Islamic Triangle: Changing Relationships between Sharia, State Law, and Local Customs, " in *ISIM Newsletter* 5 (Leiden: Institute for the Study of Islam in the Modern World, 2000), p. 8.

[23] Franz Von Benda-Beckmann and Keebet Von Benda-Beckmann, "Islamic law in a plural context: The struggle over inheritance law in colonial West Sumatra, " *Journal of the Economic and Social History of the Orient* 55, 4/5 (2012), p. 774.

[24] John R. Bowen, *Shari`a, State, and Social Norms in France and Indonesia* (ISIM Paper No. 3. Leiden: Institute for the Study of Islam in the Modern World, 2001).

[25] Gideon Libson, "On the Development of Custom as a Source of Law in Islamic Law: Al-Rujū ilā al-ʿUrfi aḥadu al-Qawāʿidi al-khamsi allatī Yatabannā ʿalayhā al-Fiqhu, " *Islamic Law and Society* 4, 2 (1997): pp. 131–55.

of Islamic law. [26] Theoretically speaking, this direction is referred to as 'new anthropology of Islam' which insists the works of analysis, attained in two levels: grappling with resources and texts and shaping practices in eloquent ways. Based upon textual traditions and local practicalities, two analytical strategies can be applied. The first, focusing inward, is done by broadening understanding of more individual intentions, emotions, and histories. The second, opening outward, deals with movements, significances, and changes in religious practices.[27]

The adaptation of Islamic law to local values and constraints has led to vigorous debates which created diversity in the Indonesian public sphere. The social processes engaged in the making of the 1991 Kompilasi Hukum Islam (KHI), an Islamic family code whose materials derived from classical *fiqh* treatises and were tailored to Indonesian local context, have generated, maintained, and changed the relationship of Islam, *adat*, and state, both legally and politically. The KHI was a product of negotiations undergone by the state to cope with increasingly demands for the formal implementation of Islamic family law in society.[28] Other Muslim countries, Iran and Morocco for instance, also share the same experience.[29] A distinctive example representing the negotiations of legal orders is the concept of *hiba* (transmission of wealth) with restriction to a maximum of one-third of the whole property.[30]

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[26] John R. Bowen, "'Religion in the Proper Sense of the Word": Law and Civil Society in Islamicist Discourse," *Anthropology Today* 12, 4 (1996): pp. 12–4.

[27] John R. Bowen, *A New Anthropology of Islam* (Cambridge: Cambridge University Press, 2012), pp. 3–4.

[28] Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010), 89.

[29] Ziba Mir-Hosseini, "How the Door of Ijtihad was Opened and Closed: A Comparative Analysis of Recent Family Law Reforms in Iran and Morocco, " *Washington and Lee Law Review* 64, 4 (2007): pp. 1499–511; Léon Buskens, "Recent Debates on Family Law Reform in Morocco: Islamic Law as Politics in an Emerging Public Sphere, " *Islamic Law and Society* 10, 1 (2003): pp. 70–131.

[30] John R. Bowen, "'You May not Give it Away": How Social Norms Shape Islamic Law in Contemporary Indonesian Jurisprudence, " *Islamic Law and Society* 5, 3 (1998): pp. 382–408.

The Tripartite Relation of *Adat*-Islam-State: Legal Pluralism

Almost a half of century, legal pluralism has been noticeably a predominant approach in the study of law and society. This newly-developed understanding of law emphasizes the multiplicity of legal basis and institutions that co-determine the structure, norms and interpretations of law, whose many of which are monopolized by the state. The idea of legal pluralism emerged to balance the dominating notion of state-centric and monolithic conceptions of law. Through this approach, scholars try to understand how compound relations in Islamic law relate to one another. In terms of law in book, it usually questions not only what method, but what legal sources scholars consult with to address problems of Islamic law in society. While in the context of law in action, the approach tries to analyze the conflicts and negotiations between society, local leaders, courts and other tribunals. Despite the fact that the debate on the conceptualization of legal pluralism draws no definitive conclusion, a special prevalent feature of legal pluralism is the presence of two or more legal orders and legal institutions that work together in the realm of supposedly uniform legal system in a single nation state.[31]

The discussion on the tripartite relations between statutory, Islamic, and customary laws commonly emerges in Muslim-majority colonies. The contestations and disputes over the aforementioned three more frequently occur in a country like Indonesia which embraces the parallel system of courts. This development has always been an interesting subject of debates. In almost all regions, both civil and religious tribunals exist and work on their own judiciary. Each society, in which the tripartite relations are present, has its own particular mechanism to reconcile different sets of norms and finds various ways to manage contradictions. In the post-colonial period, inheritance, land, and property issues seemed to be the most heated subject. These cases likewise occurred in Minangkabau, West Sumatra and Aceh societies as well as in some industrialized areas in Java in terms of land conflict.

The focus of the study of plurality within state legal systems has shifted to the study of the relations between state law and non-state

[31] M.B. Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws* (Oxford: Clarendon Press, 1975).

law.[32] A struggle over inheritance law in Minangkabau in West Sumatra is one of interesting examples of legal pluralism that exists in Muslim societies. The constellation of legal pluralism in Minangkabau includes the salient contradiction between Islam and the *adat* of matrilineal heritage. *Adat pusako* was the *adat* of matrilineal heritage in Minangkabau social organization that regulated kinship, inheritance of property and succession to office within the *nagari*, the lowest-level traditional administrative unit. The Dutch colonial policy tended to emphasize this *adat* rule, requiring the agreement of the matrilineal heirs for donations of self-acquired property to the children. On the contrary, the adoption of Islam into Minangkabau society was accompanied by attempts to proclaim the superiority of Islamic law which subsequently led to conflicts and negotiations.[33]

As commonly known, Islamic inheritance law determines the share of each heir in clear-cut terms and imposed limits on the right of the dead, the property owner, to dispose his property. The rules are intended to break up the concentrated wealth in the society and distributed it in an equitable way amongst a large number of family members. This norm seems to contradict the Minangkabau norm of *adat pusako* whose distribution is determined based upon the matrimonial kinship system. Despite the achieved consensus of that *pusako* property is inherited according to *adat* while self-acquired property based upon Islamic law, inheritance has been persistently the crucial point in defining who is or is not legally qualified to inherit property.[34]

The contestation of religious and customary norms often caused disputes, in which various institutions are participating in dealing with. Each institution has its own legitimacy and jurisdictions which sometimes overlap. The jurisdiction is dependent upon which aspect of the disputes is emphasized. These local institutions could be either

[32] Paolo Sartori and Ido Shahar, "Legal Pluralism in Muslim-Majority Colonies: Mapping the Terrain," *Journal of the Economic and Social History of the Orient* 55, 4/5 (2012): pp. 637–63.

[33] Keebet Von Benda-Beckmann, *The Broken Stairways to Consensus: Village Justice and State Courts in Minangkabau* (Dordrecht: Foris Publications, 1984).

[34] Franz Von Benda-Beckmann and Keebet Von Benda-Beckmann, "The Dynamics of Change and Continuity in Plural Legal Orders, " *Journal of Legal Pluralism and Unofficial Law* 38, 53–54 (2006): pp. 1–44; Von Benda-Beckmann and Von Benda-Beckmann, "Islamic law in a plural context: The struggle over inheritance law in colonial West Sumatra."

state, including village council, office of religious affairs, courts, police, and prosecutor, or non-state which is *adat* institution. From the side of disputants, with the variety of institutions, people in disputes have more choices to determine which institution they prefer to in order to achieve an outcome that meets their purposes, regardless of the nebulous hopes they might have. This process is called 'forum shopping'. However, not only did the disputants shop the forum for the sake of individual interests, the functionaries of these institutions also used the processing of disputes to gain political advantages. In the process of shopping disputes, 'shopping forum,' the functionaries occasionally acquire and manipulate the disputes.[35]

The contemporary Minangkabau witnessed the resurgence of the *nagari*, upon it had been dismissed by the New Order government in 1979 and replaced with a new *desa* (village) system. The position of the *nagari* is fundamental since it has relation to the management of *tanah ulayat*. *Tanah ulayat* is a land under the Minangkabau customary law which belongs to the *nagari* community members, usually used for social purposes, and thus private ownership of this property is impermissible. The basic idea of the return to the *nagari* structure nonetheless means a reimagining of the beautiful past of *nagari* which is often referred to an unspecified pre-colonial scene, or otherwise to the mid of 1970s, the last time in which the *nagari* values had strong standpoint.[36]

Besides Minangkabau, Aceh is another example of the ways in which co-existing plural legal system is contested. The continuities and changes in Aceh's legal structure are very much affected by the social and political transformations that have occurred over the past decades. Salim argued that the arrival of international aid agencies in the post-tsunami rehabilitation is the turning point of all the transformations which have led Aceh to emerge beyond international isolation and yielded legal changes.[37] Making this background as the starting point,

[35] Keebet Von Benda-Beckmann, "Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau Village in West Sumatra," *Journal of legal Pluralism* 13, 19 (1981): pp. 117–59.

[36] Franz Von Benda-Beckmann and Keebet Von Benda-Beckmann, *Political and Legal Transformations of an Indonesian Polity: The Nagari from Colonisation to Decentralisation* (Cambridge: Cambridge University Press, 2013), p. 7.

[37] Arskal Salim, *Contemporary Islamic Law in Indonesia: Shari'ah and Legal Pluralism* (Edinburgh: Edinburgh University Press, 2015).

the array of discussions of his book is a bit complex. Salim presented a multifaceted analysis of the diverse patterns of legal reasoning and disputes engaged by various actor, agencies, and institutions from the village level to national level in many different issues, including rights to land, power relations and gender relationships in family. On the one hand, in terms of family matters, the Shariʿa court still plays pivotal roles amongst Acehnese. However, this state-Islamic legal institution has been challenged by unclear jurisdiction. Granted a wider authority on financial and property disputes and Islamic penal laws (*jināya*), it has to deal with criminal matters whose jurisdiction remain under the civil court.

Women in Judicial Practices and Legal Discourses

The 1974 Marriage Law and the KHI have been supposedly seen by legal scholars and practitioners as a success story of how Indonesia deals with the legal reform, encompassing the transformation of Islamic law into national law. One of many important aspects of reform of family matters is divorce law. Without permission from religious courts (*pengadilan agama*), divorces can never be possible and have no legal validity. A husband has to go to courts if he demands to pronounce a divorce, so does a wife if she seeks a divorce through numerous procedures *khulʿ* (woman initiative for a divorce by returning her dowry or conceding other financial obligations) or *faskh* (annulment). They have to convince judges that one or more reasons are evident. In the last two decades, the number of divorces brought to religious courts by women has been increasing.

The dynamic of judicial practices in religious courts has been of interesting subject for researchers with expertise in Islamic law and law in general. Various issues and cases relating to family matters lead them to investigate how legal norms legislated by the state are interpreted, practiced and negotiated by legal actors, be it judges, litigants and lawyers. Facts in court hearings, judges' decision, and reports of the courts serve as important sources for analysis. In a country adopting civil-law legal system, the relation between judges, Islamic laws in classical scriptures and state laws has always been an intense debate. The questions frequently raised is the extent to which a judge is bound within state laws, refers to normative understanding of classical *fiqh* books, or applies its authority to adopt norms in changing local practicalities.

Concerned more on the marriage law making in the early 1970s, Cammack argues that despite the failure to impose the obligatory enforcement of Sharia for the adherents of Islam, Muslim successfully held out traditional Islamic norms against the preceding legislative efforts to change the substance of Islamic marriage law.[38] Irrespective of these political debates, Indonesia has provided a challenging case for those who scrutinize Islam in practice. As the result of two-decade ethnographical work in the Aceh highland area, Bowen uncovered peculiar inheritance and land problems in the area.[39] The female Gayo heirs were caught in three fires, namely a system of local *adat,* Islamic norms and kinship and family system, working altogether in the legal institutions, religious or public one.

I do like the way Bowen described the complex position of Indonesian judges in dealing with legal disputes over land and property, formulated in this following sentence: "[b]ut judges on Islamic and civil courts alike have tried to balance claims made in the name of Islam against those made in the name of *adat*…"[40] Different norms coexist and maintain their own public reasoning; therefore, conflict of law is unavoidable. The cases in either public or religious courts in the Isak community show that the desired resolution was not obtained by defeating neither *adat* nor Islamic law. Instead, judges translated cultural ideas of fairness and agreement, namely social consensus, to justify gender equality.

Through the marriage law, it is apparent that the state has an ample interest in regulating marriage and controlling the family as the basic vital institution. This situation has appealed O'Shaughnessy, being trained as a historian, to study divorce cases in Indonesia from 1974 to 2005 based on court reports, printed sources, and oral history.[41] She tried to relate encountering elements in the application of marriage law which include the efforts, or even control, undertaken by the state to structure gender and power relations in its own legislation and the position of women. Through the use of state law and court system,

[38] Mark Cammack, "Islamic Law in Indonesia's New Order," *International and Comparative Law Quarterly* 38, 1 (1989): pp. 53–73.

[39] John R. Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003).

[40] Ibid., p. 6.

[41] Kate O'Shaughnessy, *Gender, State and Social Power in Contemporary Indonesia: Divorce and Marriage Law* (London and New York: Routledge, 2009).

O'Shaughnessy came to a conclusion that women struggle to achieve a level of personal benefits. In so doing, women have constructed three different responses to state, religion, and culture-based gender ideologies: acquiescence, co-optation, and resistance.

The reform of Islamic family law that resulted in the KHI still left complicated problems of methodology and Islamic character. Nurlaelawati addressed public debates on the reforms made in the KHI and how the KHI is practiced by judges in present-day courts. As far as the debates are concerned, the KHI has been contested by modernists and traditionalists.[42] The former encouraged the modernization of the legal rationale beneath the KHI so as to meet social changes, while the latter discouraged the reform as it has employed methodologies, incorporating *adat* norms, which are considered to breach the settled Islamic roots. In the judicial practice, modern ideas within the KHI were not completely accepted by judges. Instead, they consulted with the legal doctrines written in the classical books, believed to secure Islamic characters. This situation has accordingly created legal uncertainty.

Still in relation to the application of Muslim family law within state religious courts, the study undertaken by van Huis presented an intriguing point of view in the sense that it applied interdisciplinary approaches, integrating not only the historical trajectory of the continuities and changes within religious courts and marriage law but also a broader ethnographical inquiry questioning roles of the courts in divorce cases.[43] The basic question proposed in the study was the extent to which Islamic courts are subject to realize women's intents for divorce and to maintain women's post-divorce rights. To sharpen its research analysis, he employed a number of key concepts. With regard to the institutional history of Islamic court, legal history of family law and present-day roles of Islamic courts, he combined the approaches of socio-legal and law, governance, and development. These approaches are very much linked to the notion of judicial tradition, where the development of Islam-based laws is situated in the framework of tradition.

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[42] Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*.

[43] Stijn van Huis, "Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba," (PhD Dissertation. Leiden University, 2015).

For a woman, going to court, which is tricky and costly, means echoing her private matters public. Nurlaelawati dealt with a variety of reasons why women increasingly use Islamic courts as well as scrutinizing their attitude towards divorce and divorce law by looking at arguments, stories and narratives presented in the court hearings.[44] She concluded that in courts women use many ways in order to convince judges, usually by demonstrating negative conducts committed by men. In almost all cases judges are inclined to grant divorce in resolving marital disputes.

The study of Islamic legal in Indonesia largely has tendency of tracking the development of legal institutions, legislations and legal practices in court rooms. In addition to Islamic law at local practices, Feener has used conversations and legal thoughts of Muslim intellectuals as a source of analysis.[45] Young generations of scholars and activists have created new conceptions and interpretations through making creative readings of Islamic sources and Western academic writings in their responses to social-political complexities. His study depicts a broader understanding of Islam and local conception of the Muslim community rather than law in its formal sense.

Sharia, Decentralization and the Representation on Media

In the *reformasi* era, following the downfall of the Suharto's new order in 1998, the Indonesian government attempted to bring about political, legal and social changes in response to the people's calls for greater individual freedom, democracy, and justice. At the same time, with regard to strong voices from local people for more regional autonomy and a greater recognition of *adat* mechanism, the central government drew a national policy imposing regional autonomy and decentralization. Through this new policy, provinces and districts have the rights to introduce regional regulations as long as they do not confront national legal substances and orders. A number of regulations do not refer to national laws, but also base their legitimacy on religious

[44] Euis Nurlaelawati, "Muslim Women in Indonesian Religious Courts: Reform, Strategies, and Pronouncement of Divorce," *Islamic Law & Society* 20, 3 (2013): pp. 242–71.

[45] R. Michael Feener, *Muslim Legal Thought in Modern Indonesia* (Cambridge: Cambridge University Press, 2007); Muhammad Ansor and Yaser Amri, "Being Christians In The Acehnese Way: Illiberal Citizenship and Womens Agency in the Islamic Public Sphere," *Journal of Indonesian Islam* 14, 1 (2020).

doctrines and local customs. Rather than devoted to true religious spirit, the enforcement of so-called Sharia-based bylaws to a certain degree represents Islamic political aspiration.[46]

These political cum legal changes in present-day Indonesia have been a central concern among scholars. The recent development in Aceh in the last few years deserves a particular mention, among other reasons, because the state-directed formal enforcement of Sharia law has always been connected to political meanings. Along with the developments in this special autonomous province of Aceh, there have been, and are, challenges over the relation between secular sovereign state power and local religious movement. In addition, the formal implementation of Islamic law upon the devastating 2004 tsunami and the decades of violent conflict between the Free Aceh Movement (Gerakan Aceh Merdeka, GAM) and the central government to a certain extent has created an identity, characterized by a long history of fights against repression.

Feener's study on Islamic legal system in contemporary Aceh is concerned particularly with the ways in which the implementation of Islamic law can necessarily be placed, in a more optimistic stance, as projects for future-oriented social transformation. Therefore, it avoids a viewpoint that regards the Shariatization, indebted to Ichwan's terminology,[47] in Aceh as a set of standards to asses perceived 'crises of modernity' or as the political interests of a number of local elites vis-à-vis the domination of the central state power. Feener paid attention to the agendas of institutional formations encouraged by proponents of Islamic law in relation to a broad range of non-Muslim modernist projects. Instead of putting the recent trend of Sharia implementation in the frame of law and politics, his study demonstrates that the intersection of law, moral authority and state power is noticeable in the modern global order.

In addition to the social transformation orientation, Feener relates dynamics in contemporary Aceh in a broader agenda for social reconstruction. In this respect, he discovers how the role of Islam and

[46] Robin Bush, "Regional Sharia Regulations in Indonesia: Anomaly or Symptom?" in *Expressing Islam: Religious Life and Politics in Indonesia*, ed. by Greg Fealy and Sally White (Singapore: Institute of Southeast Asian Studies, 2008): pp. 174–91.

[47] Moch Nur Ichwan, "Official Ulema and the Politics of Re-Islamization: The Majelis Permusyawaratan Ulama, Sharīʿatization and Contested Authority in Post-New Order Aceh," *Journal of Islamic Studies* 22, 2 (2011): pp. 183–214.

official state structures in Aceh has been of debate among ordinary Aceh people on contemporary media. So far, the ideas of Sharia have been in large part co-opted by elitist discourse. In so doing, he analyses a popular means of communication yet frequently-ignored source, short text messages sent to the editors of a local printed newspaper. This material presents a remarkable example of the complexity and contestation of popular discourses on Islamic law and society beyond the circle of specialist spokesmen.[48] Furthermore, examining the interlinks of political autonomy, Shariʿa law and women in contemporary Aceh, Milallos looks at the 'revival' in contemporary Aceh in the notion of gender dominance and order, which have brought about significant consequences for women's lives.[49] She argues that historical precedents and current socio-political developments in Aceh cannot be seen simply as manifestations of Islamic revival and the radicalization of Islam. She makes use of articles published in a locally printed newspaper, Serambi, a locally published newspaper, as a source of analysis to assess the extent to which Sharia has designated the direction of Acehnese women's lives.

Conclusion

In Indonesian context, the study of Sharia has been developing, projecting unending debates on the idea of what Islamic law is. The developing trends in the study were to respond to changing social and political surroundings. It is unavoidable because Islamic law in the very institutional and legal meanings has experienced diverse situations and challenges, as the upshot of the social and political transformations in the past decades. The modern concept of legislation and codification introduced by the Western legal tradition has led to reforms in Islamic marriage and divorce laws. On the one hand, these reforms not only contested the tripartite relation between statutory, Islamic, and customary laws, but brought about significant changes in society. On the other hand, social political processes also significantly contribute to the formation of Islamic law. The relation between Islamic law and other norms and processes is constructed in a interdependent way, in which each gives and receives mutual impacts.

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[48] R. Michael Feener, "Hand, Heart and Handphone: State Shari'a in the Age of the SMS," *Contemporary Islam* 7, 1 (2013): pp. 15–32.

[49] Ma Theresa R. Milallos, "Muslim Veil as Politics: Political Autonomy, Women and Syariah Islam in Aceh," *Contemporary Islam* 1, 3 (2007): pp. 289–301.

The initial anthropological study of Islamic law and society in the colonial period introduced the distinctive notions of Islamic legal and *adat*, despite the efforts undertaken by Snouck Hurgronje to put them in a non-confronted position. After the 1945 independence, the subsequent study brought a new predominant element, the state authority, to the source of analysis. In the 1970s, in light of the flourishing discussion on legal pluralism, the spectrum of debates was expanded to include the contestations and negotiations in the tripartite relations of Islam, *adat*, and state. In this respect, the matrimonial kinship system in Minangkabau and the inheritance and property disputes in rural Aceh have been a central concern amongst scholars. Later on, with regards to the legal reform on family laws in 1974 and the formal recognition of religious judicature in 1989, numerous studies have been devoted to looking at debates amongst Indonesian intellectual and political elites surrounding the reform. Scholars also have paid attention to the extent to which the state-directed-reform has considerable impacts on society, largely in divorce matters. In this point, judicial practices in religious courts have been of interesting subject of study. After the collapse of the New Order, dramatic political and legal transformations took place and resulted in regional autonomy and decentralization. Given these changes, the study of Islamic law and society has been very much given to the dynamics of Islamic law at provincial and district levels and their relations to political meanings.[]

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