



**Adat and Islamic Law in Contemporary Aceh, Indonesia:  
Unequal Coexistence and Asymmetric Contestation<sup>1</sup>**

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**Abstract:** Discussions on adat and Islamic law in Muslim societies have been focusing on a tension between the two entities. By looking at adat and Islamic law being respectively applied in contemporary Aceh, this article offers a different approach by considering the unbalanced relationship between adat and Islamic law and thus argues that both have been unequally coexisting and asymmetrically contesting with one another. Based on a lengthy ethnographic fieldwork and recurring visits to Aceh, this study discusses the ways in which adat of Aceh has been reinvigorated along with the official implementation of Islamic law in the past two decades. It includes efforts: 1) to establish adat bureaucracy 2) to restore a cultural sovereignty of adat, 3) to retrieve adat rights to natural resources, and 4) to reinforce adat mechanism of dispute settlement. Despite all these efforts, however, adat appears to be subordinate and secondary.

**Keywords:** Adat, Islamic law, Aceh, territorial sovereignty, natural resources

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**Abstrak:** *Diskursus mengenai adat dan hukum Islam di masyarakat Muslim banyak berfokus pada pertentangan antar keduanya. Artikel berikut menawarkan sebuah pendekatan yang berbeda dengan mempertimbangkan ketimpangan relasi antara adat dan hukum Islam yang dilaksanakan di Aceh pada masa kontemporer. Penulis berargumen bahwa terdapat koeksistensi yang tidak ekual (unequal coexistence) dan kontestasi yang tidak simetris (asymmetrical contestation) antara adat dan hukum Islam di Aceh. Studi ini menggunakan pendekatan etnografi dengan metode studi lapangan (fieldwork) dan menyimpulkan bahwa ada beberapa upaya menyegarkan kembali adat di Aceh bersamaan dengan penerapan hukum Islam dalam dua dekade terakhir. Upaya tersebut mencakup: 1) pelembagaan birokrasi adat, 2) pengembalian kedaulatan kultural adat, 3) pemerolehan kembali hak-hak adat terkait sumber daya alam, dan 4) penguatan mekanisme adat dalam penyelesaian sengketa. Betapapun melalui upaya-upaya tersebut, adat tampaknya tersubordinasi dan sekunder terhadap hukum Islam.*

**Kata Kunci:** *Adat, Islamic law, Aceh, territorial sovereignty, natural resources*

## Introduction

The collapse of the Suharto regime in 1998 has ushered in a number of ways of (re)making and (re)shaping a new structure of governing Indonesia. The term reform or 'reformasi' came to the surface and was resonated throughout the country. It was intended not only to end the protracting bad governance practices such as corruption, collusion and nepotism (Korupsi Kolusi Nepotisme or KKN) during the New Order period (1968-1998), but also to (re)build a democratic political system for creating a just and a prosperous Indonesia. While a strong demand for more open political atmosphere was on the rise (such as the formation of new political parties and practical decentralization policies), other political aspirations emerged as well. This included calls from some religious leaders at different locations to have Islamic law being implemented nationally and regionally and petitions by indigenous leaders to have adat or custom being lawfully recognized in some aspects of local.

Adat in the contemporary Indonesian politics has been a means of strengthening ethnic and cultural identities after being weakened and suppressed during the Suharto period. As discussed by a number of contributors in a volume coedited by Davidson and Henley<sup>2</sup> adat was deployed, among others, to support a public campaign for ethnic solidarity groups, to restore a culturally symbolic

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<sup>2</sup> Henley David and Davidson Jamie. *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*. Taylor and Francis, 2007. doi:10.4324/9780203965498.

power (*kesultanan*), to empower land rights of adat community, and to gain wider authorities under the new decentralization system, including to strengthen the autonomy of indigenous sovereignty as well as to expand the influence of customary laws.

As far as the role of customary laws in current Indonesia legal system is concerned, each of adat communities, according to the amended Indonesia's Constitution<sup>3</sup>, have rights to apply those laws in their respective territories. Although the situation of legal pluralism has been evident in Indonesia since many centuries ago, in which more than one legal structure coexists, the amended constitutional provision has further deepened the multiplicity of applicable laws within different territories in Indonesia. While other provinces would have no parallel or less resemblances to the province of Aceh, such constitutional recognition enables the concurrent implementation of both adat and Islamic law in the region. While adat applies in Aceh based on constitutional stipulation, Islamic law has been mandated through a series of national laws.

This article discusses the revival of adat in the post-New Order Indonesia by looking at the relationship between adat and Islam or between customary and Islamic law in contemporary Aceh. Adat and Islamic law in Aceh were essentially and historically undistinguished at the outset. Yet, they both now have been revived as official entities, with each having been afforded its own socio-legal structure. As a local tradition as well as a living law as practiced within a society, adat continues to influence and direct the way the people respond to their social problems and resolve their legal issues accordingly. This article discusses what is the nature of relationship between adat and Islamic law by exploring the ongoing changes and the new expressions of adat under the current official implementation of Islamic law in Aceh.

Works on adat in Indonesia are abundant from different points of view and at various locations. According to Bowen, there are two distinct approaches of explaining custom or *adat* in Indonesia. The first one describes and compares social norms and practices identified with particular groups and regions in Indonesia. This task of studying *adat* has been accomplished by several scholars of anthropology such as Geertz,<sup>4</sup> Kipp and Kipp<sup>5</sup> and Bowen.<sup>6</sup> They all look for

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<sup>3</sup> The amended Indonesia's Constitution Article 18B(2): "recognizes and respects adat law communities and their traditional rights provided that they are still alive, accord with community developments and the principle of the Unitary State of the Republic of Indonesia, which is regulated by statute"

<sup>4</sup> Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology*, New York: Basic Books, 1983.

<sup>5</sup> Rita Smith Kipp and Richard D Kipp. *Beyond Samosir: Recent Studies of the Batak Peoples of Sumatra*. Ohio Univ Ctr for International Studies, 1983.

<sup>6</sup> John R. Bowen, *Sumatran Politics and Poetics: Gayo History, 1900-1989*. JSTOR, 1991.

an answer of what is custom with particular references to ‘ways of the ancestors’ or to a set of discursive processes that help restore, or return to, the local authenticity. The second involves describing the history and variation of how the expression of some aspects of custom has been used across the archipelago. While some studies focused on the contemporary role of adat in Indonesian political contexts<sup>78</sup>, other scholars discussed the legal expression of adat<sup>910</sup>.

As far as the relationship between adat and Islam in Indonesia is concerned, legal expression of both entities has been a focus of scholarly discussions since long time ago. This is not surprising since legal expression is a product of a new relationship between state authority and various communities at different places in everyday life, in which its expression is primarily found in the institutions that used it, rather than in its contents<sup>11</sup>.

In Aceh context, the legal expression of adat can be traced back to the earliest work written by the Dutch policy adviser Snouck Hurgronje<sup>12</sup>, *The Achehnese* (1906). His disciple, Van Vollenhoven, further developed the concept of *adatrecht* or adat law in his work<sup>13</sup> and made a classification of adat law for different regions in Indonesia<sup>14</sup>. This Dutch legacy of adat law continued to influence even in contemporary public settings<sup>1516</sup>. The concept of adat law served a variety of purposes of colonial legal administration and political interests including to provide the Indonesian natives with their own laws, to comprehend culture of particular ethnic group and, supposedly, to dissociate Islamic law from Indonesian Muslim natives<sup>17</sup>.

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<sup>7</sup> Renske Biezeveld, "The Many Roles of Adat in West Sumatra," In *The Revival of Tradition in Indonesian Politics*, 223-43: Routledge, 2007.

<sup>8</sup> Birgit Bräuchler, "Integration and Exclusion: Islam Adat in Central Moluccas," *Indonesia and the Malay World* 38, no. 110 (2010): 65-93.

<sup>9</sup> Daniel S. Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*, Vol. 12: Univ of California Press, 1972.

<sup>10</sup> Michael Barry Hooker, *Adat Law in Modern Indonesia*, Oxford University Press, USA, 1978.

<sup>11</sup> John R. Bowen, *Islam, Law and Equality in Indonesia: An Anthropology of Public Reasoning/John R. Bowen*. Islam, Law, & Equality in Indonesia, Cambridge: Cambridge University Press, 2003, p.48.

<sup>12</sup> Christian Snouck Hurgronje, *The Achehnese*, Vol. 1, Leiden: EJ Brill, 1906.

<sup>13</sup> Cornelis Van Vollenhoven, *Het Adat Recht Van Nederlandsch-Indië*. Vol. 2: EJ Brill, 1918.

<sup>14</sup> Cornelis Van Vollenhoven, JF Holleman, and HWJ Sonius. *Van Vollenhoven on Indonesian Adat Law*. Springer, 2013.

<sup>15</sup> B Ter Haar, *Adat Law in Indonesia*, Jakarta: Bhratara, 1962.

<sup>16</sup> Peter Burns, *The Leiden Legacy: Concepts of Law in Indonesia*, KITLV Press Leiden, 2004.

<sup>17</sup> Harry J. Benda, "Christiaan Snouck Hurgronje and the Foundations of Dutch Islamic Policy in Indonesia," *The Journal of Modern History* 30, no. 4 (1958): 338-47.

Abdullah's study<sup>18</sup> on Minangkabau was an excellent work that looked at the extent to which adat and Islam are in conflict position or otherwise. Confronting the most common assumption that both adat and Islam are constantly in conflict with one another<sup>19,20</sup>, his study reveals that such conflict of the two entities "should not be seen as the tension between two separate entities, but as one within the whole system itself" and also "should not be interpreted exclusively as the conflict between the actual and the ideal, but rather as a tension within social realities striving to achieve proximity with the ideal<sup>21</sup>".

Inspired by Abdullah's approach above, this study neither seek to validate the prevailing claim of the supposedly congruent relationship between adat and Islamic law, nor to look at the contradiction between elements of adat and Islamic law<sup>22</sup>. Rather, since now Aceh has been granted to officially implement sharia rules in a number of aspects, this article would like to inquire the extent to which adat would have equally played an extensive role in public life including the implementation of Islamic law in Aceh, and to what extent to adat has been empowered. For this purpose, the article ponders two issues: the first is how adat (norms, institutions and processes) has been restructured into an existing official format, and the second is how the interaction between adat and Islamic law has led to domination or subordination of one to another, especially under the current implementation of Islamic law in Aceh.

By examining the extent to which the present relationship between adat and Islamic law in Aceh has created a situation of domination or subordination in different forms of encounters, this study argues that both have been unequally coexisting and asymmetrically contesting with one another. Based on my lengthy ethnographic fieldwork in Aceh Besar district (2007-2008) and recurring visits thereafter in 2010 and 2011, it explores and seeks to answer the following questions: Why and in what ways adat has been reshaped and translated into contemporary social and political developments in Aceh? Why is it reconfigured only just in recent years and in such certain shapes? Under the current formal implementation of Islamic law in Aceh, what does the reconfiguration of adat results in? Has adat been able to survive mutually along with Islamic law in both state and society realms?

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<sup>18</sup> Taufik Abdullah, "Adat and Islam: An Examination of Conflict in Minangkabau" *Indonesia*, no. 2 (1966): 1-24.

<sup>19</sup> PE. Josselin de Jong, "Islam Versus Adat in Negri Sembilan (Malaya)," *Bijdragen tot de Taal-, Land-en Volkenkunde*, no. 1ste Afl (1960): 158-203.

<sup>20</sup> Christiaan Snouck Hurgronje, *The Achehmese*. Vol. 1, Leiden: EJ Brill, 1906.

<sup>21</sup> Taufik Abdullah, "Adat and Islam: An Examination of Conflict in Minangkabau," *Indonesia*, no. 2 (1966), p.23.

<sup>22</sup> Michael Barry Hooker, "Adat and Islam in Malaya," *BKI* 130, no. 1 (1974): 69-90. <https://doi.org/10.1163/22134379-90002707>.

### Historical Contexts

As a region deeply rooted in Islamic traditions going back several centuries, Aceh has a long pedigree and a clearer history of the implementation of Islamic law compared to other dominantly populated Muslims in the archipelago. As reported by European visitors who came to Aceh in the 17<sup>th</sup> century, Islamic punishments (*hudud*) had been imposed on thieves, drunkards and others who were convicted to having violated God's law<sup>2324</sup>. In fact, as pointed out by Boland, Aceh was determined to carry its distinct culture and identity into the newly founded Republic of Indonesia in 1945.

On the case of Islamic law and adat in Aceh, many Acehnese leaders believe that both are mutually inclusive; part and parcel of a single cultural identity. A very popular Acehnese aphorism (*hadih maja*) is often recalled in various formal (academic) events and informal religious occasions: "*agama ngon adat han jeut cre, lagee zat ngon sifeut*" (religion and *adat* cannot be separated, both are like the substance of a thing and its attribute). In their view, this aphorism confirms that adat and Islamic law are not in conflict but complimentary with one another. A number of Acehnese writers attempted to reconcile the two entities and presented examples of the synthesis between adat and Islamic law within Aceh social system<sup>252627</sup>. In fact, as argued by Kurdi<sup>28</sup>, adat has been Islamized from time to time through many ways along the history of Aceh.

For long time, a popular aphorism on the complex relationship between different elements within the past Acehnese society has been emphasized by leaders of Aceh. It says:

*Adat bak po teumeureuhom* (Adat is referred to the Sultan)

*Hukom bak Syiah Kuala* (Law is referred to the Supreme Judge)

*Qanun bak Putroe Phang* (Qanun is referred to the Queen Consort)

*Reusam bak Lakseumana* (Reusam is referred to the Admiral)

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<sup>23</sup> Anthony Reid, *Southeast Asia in the Age of Commerce, 1450-1680*. New Haven: Yale University Press, 1988.

<sup>24</sup> Anthony Reid, "Islamization and Christianization in Southeast Asia: The Critical Phase, 1550-1650," 151-79. Ithaca, NY: Ithaca, NY: Cornell University Press, 2018.

<sup>25</sup> Moehammad Hoesin, *Adat Atjeh: Dinas Pendidikan dan Kebudayaan, Propinsi Daerah Istimewa Atjeh*, Dinas Pendidikan dan Kebudayaan, Propinsi Daerah Istimewa Atjeh, 1970.

<sup>26</sup> Rusdi Sufi, Ramli A Dally, and Ridwan Azwad, *Adat Istiadat Masyarakat Aceh*, Dinas Kebudayaan Provinsi Nanggroe Aceh Darussalam, 2002.

<sup>27</sup> Teuku Mohd. Djuned, *Bunga Rampai Menuju Revitalisasi Hukum Adat Aceh*, Banda Aceh: Yayasan Rumpun Bambu, 2003.

<sup>28</sup> Muliadi Kurdi and Taslim HM Yasin, *Menelusuri Karakteristik Masyarakat Desa: Pendekatan Sosiologi Budaya Dalam Masyarakat Atjeh*, PeNA, 2005.

Taken together, this aphorism tells that different Aceh's elites were supporters of respective normative orders. Their unity would integrate all those normative orders. Likewise, should a conflict take place between these top leaders, a divergence among those socio-legal orders would come to the fore.

As far as Aceh's elites in the pre-modern history of Aceh is concerned, there were at least three major leaderships: (1) the Sultan at his court in Kutaraja; (2) the uleebalang (aristocrats), who were self-governing rulers and controlled most of the trade and collected taxes in their respective authorities; (3) the ulama (religious leaders/scholars), who were mostly based in Islamic dayah (learning institutions). When the Dutch initiated an attempt to defeat the Acehnese, they applied the familiar tactics of co-option and divide and rule. The Dutch befriended the uleebalang and protected them from the ulama by strengthening the uleebalang power in their territories. Simultaneously, the Dutch minimized the influence of the ulama in the society<sup>29</sup>. While the ulama led the struggle against the Dutch, the uleebalang joined to participate on the Dutch side in the battle against the ulama. As a result, there was a fault line within the Acehnese forces and a long conflict between the pro-Sultan (which included the ulama) and pro-uleebalang groups. When the Dutch successfully ousted the Sultan in 1903, the conflict between the remaining forces continued.

The conflict had ushered into a split within the existing convergence of adat and Islam in Aceh. While the ulama prioritized religion over the others, the uleebalang gave emphasis in adat. According to Morris<sup>30</sup>, the reason why the ulama took an antagonistic stance towards the uleebalang was because the latter's negligence of religion. Some of the uleebalang not only demonstrated their territorial particularism at the expense of religion, but also they were compromising particular religious' teachings. As the ulama and the uleebalang had been in tension, so both Islam and adat were pushing back.

The first years after Indonesia's independence (1945 onwards) saw the ulama controlling high political ranks in Aceh. The uleebalang who helped the Dutch were attacked and defeated in the 1948 Cumbok massacre. Now that the ulama were in power, their aim was to to apply as much Islamic legal orders as possible within Acehnese society. Indonesia's independence was, therefore, "seen by [the] ulama as an opportunity to restore the validity of Islamic law in the region"<sup>31</sup>. However, the ulama's focus on religion was not meant to result in the

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<sup>29</sup> Nazaruddin Sjamsuddin, *The Republican Revolt: A Study of the Acehnese Rebellion*, Singapore: Institute of Southeast Asian Studies, 1985.

<sup>30</sup> Eric Morris, "Aceh: Social Revolution and the Islamic Vision," In *Regional Dynamics of the Indonesian Revolution: Unity from Diversity*, edited by Audrey R. Kahin, 83-110. Honolulu: University of Hawaii Press, 1985, p.86.

<sup>31</sup> Nazaruddin Sjamsuddin, *The Republican Revolt: A Study of the Acehnese Rebellion*, Singapore: Institute of Southeast Asian Studies, 1985.

marginalization of adat. In fact, they sought to bring an equal balance to both Islam and adat in Aceh.

### **(Re)integration of Adat and Religion**

A strong attempt to bring a (re)integration of adat and religion took place during the New Order era (1966-1998). An organization called Lembaga Adat dan Kebudayaan Aceh (LAKA) or the Institute of Adat and Culture of Aceh was established in 1986. This organization was founded and led by Ali Hasjmy, a prominent Acehnese figure who formerly had been in different important positions as Governor of the province (1957-1964), Rector of Ar-Raniry Islamic State Institute (1976-1982) and Chairman of the Ulama Council (1982-1986). While serving as Chairman of LAKA, he reinvigorated and brought a number of adat rituals (such as *peusijek* ceremony), customary attire and traditional titles into public spheres. Notwithstanding all this was ritualistic and ceremonial for political and social reasons, adat of Aceh has been reawakened and strengthened.

Under the new leadership of Badruzzaman Ismail in the post-New Order era (1998-2002), LAKA was determined to be a means of converging adat and religion. Soon after the collapse of the New Order regime, based on Law 44/1999, Aceh was granted to apply a special autonomy in three areas: education, adat and religion including the strengthening role of ulama in formulating the regional policy. In 2002, LAKA changed its name to Majelis Adat Aceh (MAA) or the Adat Council of Aceh. This change was very much to adapt to Indonesia's new democratic political atmosphere and its decentralization program. Unlike LAKA which was only found at the provincial capital (Banda Aceh), the MAA now has district or municipal branches all over the province. Badruzzaman continued to chair this newly branded institution for three terms (2003-2018). Although Badruzzaman's position was renewed for the fourth term (2018-2023), his leadership was terminated by the acting governor of Aceh in early 2019. There was an allegedly political move behind his termination, however. The leadership position was taken by Saidan Nafi in 2019 serving as an acting chairman before Farid Wajdi Ibrahim in late 2020 was then elected to lead the MAA.

A new Qanun 8/2019 on the MAA was issued to amend its previous Qanun 3/2004 on the establishment of the MAA. Apparently, this new Qanun was enacted in order to synchronize the relationship between the MAA and a newly higher adat institution, which is *wali nanggroe*. Despite its special and autonomous position within the governance of Aceh, the institution of MAA and its chairman (according to Article 9 and 10 of the new Qanun) are now under the direction and have a responsibility to report to *wali nanggroe*. Prior to Indonesia's independence, it was the *uleebalang* (Aceh aristocrats) who controlled a regional



territory that consisted of several *mukim*<sup>32</sup> and reported to wali nanggroe. Instead of reviving the institution of uleebalang who controlled and led adat formalities, the Qanun seems to have assigned the MAA as a new successor to undertake what uleebalang is supposed to organize earlier. This begs a couple of questions: would the MAA be sufficient to represent all kinds of power and influence belong to the uleebalang in the past? Would current adat remain considered Aceh's genuine and accurate custom given the absence of uleebalang as adat guardian in the present time?

### **Empowering Adat**

Following the enactment of Law 11 of 2006 on the governance of Aceh, the special autonomy of Aceh on religion as well as on adat was finalized. In particular, several ideas have been put forward to enhance the position of adat in Aceh's public sphere. Legislative efforts were among the first means utilized to achieve such objectives. In 2008, two Qanun on adat were passed; one deals with the fostering of living with adat and adat rituals (Qanun 9 of 2008) and another focuses on adat institutions (Qanun 10 of 2008). Both Qanun were implementing regulations on adat as stipulated in Law 11 of 2006 on the Aceh governance. Those Qanun were seeking to incorporate adat norms and institutions in Aceh to play a key role in the governance processes and to enable stakeholders of adat making a maximum contribution to the development in Aceh in general and in the implementation of Islamic law in particular.

The way in which adat in Aceh has been restored and empowered can be seen thru four facets. The first is by making adat as an institutional part of bureaucracy in which the MAA becomes the main hub of adat structural network. The second is by founding the institution of wali nanggroe to restore adat's cultural sovereignty. The third is by retrieving initial rights of adat communities to have access to their natural resources. And the fourth is by reintroducing adat justice<sup>33</sup> (norms, processes and institutions) to settle disputes as well as social conflicts that happen between villagers in Aceh.

### **Bureaucratic Organism**

Aceh's social and political dynamics in the past two decades revealed an interesting fact about how a mediating agency of adat in Aceh has eventually turned out to be an adat institution itself. In fact, this institution has transformed itself to be a bureaucratic organism that coordinates various adat institutions in contemporary Aceh. According to the Qanun related to adat, the MAA has been

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<sup>32</sup> *Mukim* is a legal community unit comprising a number of villages.

<sup>33</sup> Term 'adat justice' is used here referring to Majelis Adat Aceh and UNDP (2008) *Guidelines on adat justice in Aceh: for adat justice that is fair and accountable*, Banda Aceh.

authorized to coordinate and govern eight adat institutions, which are mostly based and operated at the village levels. The eight institutions include: *Tuha peut* (village consultative council with four members), *Tuha lapan* (village consultative council with eight members), *Keujruen blang* (an elder who is responsible for rice field matters), *Panglima laot* (an elder who concerns with issues of fisheries and sea maritime), *Pawang glee* (an elder who protects forest and environment), *Peutua seneubok* (an elder who preserves land and farming), *Haria peukan* (an elder who manages traditional markets), and *Syahbanda* (an elder who controls wharves).

In addition to this authority, the MAA has been assigned to be responsible for promoting adat rituals in wedding as well as reconciliation process; educating people about adat through schools, seminars and workshops; disseminating information on adat through printed and electronic media; and establishing adat justice to resolve disputes among parties in the framework of the implementation of Islamic law. With all these tasks, the MAA through its branches at either district or sub-district levels has not only facilitated the revitalization of adat in many ways but also has standardized what kind of adat practice as well as of its institutions that would be acceptable in Aceh. In short, as a state body responsible for adat norms and its institutions, the MAA has turned itself into a hierarchical bureaucracy that manages and supervises all adat-related matters in the whole province.

The legislation of the Qanun on adat, however, was not necessarily translated into strengthening the MAA as a provincial body that governs adat. Its position is not as strong as the provincial Shariah bureaucracy or Dinas Syariat Islam (DSI), however.<sup>34</sup> Unlike the MAA, the DSI has more in term of financial resources and structural power. While in the past five years the MAA's budget was less than 15 billion rupiah in average, the DSI has more than 50 billion rupiah in the same period. As a part of the provincial governance structure that enforces the implementation of Islamic law, the DSI has its own legal taskforce known as *wilayatul hisbah*, which is under the coordination of the civilian police force (polisi pamong praja). Given this reality and as far as the bureaucratic position of both the DSI and the MAA is concerned, it is legitimate to say that adat has less influential role than Islamic law in contemporary public life of Aceh.

Despite the undermined position of the MAA *vis a-vis* the DSI in the current system of Aceh governance, adat has been reshaped and transformed into a part of the state structure. Most of its formats, processes and actors have been altered, or changed, to correspond to the required arrangement of bureaucracy.

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<sup>34</sup> For more discussions on the religious bureaucracy in Aceh, please see Arskal Salim and Marzi Afriko, "Aceh's Shariah Office: Bureaucratic Religious Authority and Social Development in Aceh," In *The New Santri*, 64-82: ISEAS Publishing, 2020.

Consequently, like many other state formal institutions, it is very likely that the elastic nature of adat would switch to the inflexible form and the rigid structure. It is relevant here to ask: would adat be still regarded as a set of traditional norms, rules and institutions when they diverge from their origins? Moore's study<sup>35</sup> in Kilimanjaro, Tanzania, considers that diverse forms and functions of custom, which are being (re)introduced or have been in use at this moment, are not necessarily a set of traditional rules handed down from generation to generation in verbatim form. Yet, they must be seen as negotiated elements in an ongoing social change and political order.

### ***Cultural Sovereignty***

The authority of the MAA on adat is even questionable given the fact that another a highly politically respected institution, *wali nanggroe*, was established in 2013. The Law 11 of 2006 proposed this institution to restore a cultural sovereignty of adat in Aceh. The Law stipulated that *wali nanggroe* is a customary leadership to unite the people and with the authority to develop and supervise the management of customary institutions, customs, the granting of degrees or titles and other customary ceremonies. All these tasks of *wali nanggroe* were previously mandated to the MAA.

The position of *wali nanggroe* is regulated by a qanun passed in 2012 and amended later in 2013. For the first time, Malik Mahmud, a former separatist leader, was appointed in December 2013 to act as the official *wali nanggroe*. Considered to be a protector of the Acehnese heritage both inside and outside the province, *wali nanggroe* has eliminated the important role and status of the MAA. The MAA was subordinated under the authority of *wali nanggroe* and it only has become "a functional council" (*majelis fungsional*) among other councils available within the structure.

The founding of the *wali nanggroe* institution in Aceh received criticisms from various parties. The central government represented by the Ministry of Home Affairs refused to validate the Qanun, thus denying the presence of the institution in the province. The Ministry listed 21 items included in the Qanun 8 of 2012 on the Institutionalization of the Wali Nanggroe which have to be clarified especially in the context of its overlapping authorities with political leadership at the provincial level. For some Acehnese leaders, the institution of *wali nanggroe* is merely cultural rather than political. A member of provincial legislature from the Islamic party (PKS) urged the central government not to suspect the *wali nanggroe* institution, because like many other Indonesian

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<sup>35</sup> Sally Falk Moore, *Social Facts and Fabrications: "Customary" Law on Kilimanjaro, 1880-1980*, Cambridge University Press, 1986.

provinces which have an adat institution, the wali nanggroe in Aceh is also an institution that mainly concerns with adat.

Has the presence of wali nanggroe empowered adat in Aceh? Many are in doubt to respond to this question with an affirmative tone. More than eight years now have passed since its establishment. People in Aceh are still looking for the best way to reconcile both respective tasks and functions of wali nanggroe and the MAA in order to strengthen the position of adat in Aceh. However, opinions circulated among younger generations have been pessimistic about the performance of wali nanggroe<sup>363738</sup>, thus diminishing the role and status of adat in Aceh. In fact, evidences to prove the significance of adat institution for the welfare of Acehnese society are insufficient<sup>39</sup>.

Parts of this problem have to do with the fact that a dual structure of adat institutions co-exist in Aceh. On the one hand, the MAA is an institution belongs to the provincial government in undertaking its special autonomy. On the other hand, the MAA is one of wali nanggroe apparatuses in fostering adat life in Aceh. This ambivalent position gets worse since the wali nanggroe authority does not actively direct or guide the MAA about which way it should go. After all, the institution of wali nanggroe prefers to attend only ceremonies that involve international visitors or incoming overseas investors instead of dealing with all kinds of adat formalities at the local level. Given this, the strategy to empower adat in Aceh, by way of the institutionalization of wali nanggroe, has not been able to achieve its ultimate goal. In fact, as the people who would operate the wali nanggroe institution have limited religious expertise, the gap between adat and religion in Aceh became wider.

### ***Rights to Natural Resources***

As is happening in other parts of Indonesia and as a result of legal and political reforms that led to decentralization and special autonomy laws granted to a number of Indonesian provinces (notably Aceh), there has been noticeable adat revivalism<sup>40</sup>. With this new policy in the post-centralized regime, adat has

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<sup>36</sup> Muhammad Aris Yunandar, "Pro Kontra Lembaga Wali Nanggroe dan Potensinya Terhadap Konflik Perpecahan Suku di Provinsi Aceh," Universitas Syah Kuala, 2013.

<sup>37</sup> Ahmad Afandi Sambo, "Persepsi Tokoh Adat Kota Subulussalam Terhadap Pembentukan Lembaga Wali Nanggroe," Undergraduate, Universitas Syah Kuala, 2015.

<sup>38</sup> Rahmadsyah, "Pro dan Kontra Lembaga Wali Nanggroe dalam Perspektif Tokoh Masyarakat di Kabupaten Aceh Tengah," MA, Universitas Syiah Kuala, 2016.

<sup>39</sup> Winda Zulkarnaini, "Studi Komparasi Peran Majelis Adat Aceh dengan Lembaga Wali Nanggroe," Universitas Syiah Kuala, 2015.

<sup>40</sup> Henley David and Davidson Jamie, *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*, Taylor and Francis, 2007. doi:10.4324/9780203965498.

become much more officially recognized and increasingly important in the daily lives of villagers<sup>41,42</sup>. The resurgence of adat, as noted by Bowen<sup>43</sup>, gives more emphasis to local norms in resolving disputes and governing natural resources. Land management issues especially that involve *hak ulayat* or community rights became a key and crucial topic of various disagreements between different parties. Villagers' demands for rights to access their own natural resources began to appear after being silenced for very long time during the New Order period (1966-1998). A case below illustrates how rights to natural resources have been resonated through events and conflict resolutions in different parts of Aceh. However, the extent to which the empowerment of adat has achieved its goal through this path remains unknown.

The case started when villagers of the sub-district Lhoknga in Aceh Besar district demanded to employ the adat norm of *hak ulayat* land to claim access to village's natural resources. According to Aceh's custom, this kind of land was known as *tanah mukim* or *tanah kullah* and the transfer of rights over it is subject to strict community control. At most, outsiders can obtain limited rights of use to this land only with the consent of the community and on the payment of 'recognition money', known as *hak tamong*<sup>44</sup>.

The local village leaders of Lhoknga disputed an international cement company, Lafarge, (established in early 1980s) over various issues including environmental pollution and socio-economic rights of the villagers. This environmental dispute was pending for many years until the collapse of Suharto authoritarian regime in 1998 and armed conflicts in Aceh came to an end in 2005. As many villagers did not have received any benefit as agreed and outlined earlier in 1980s, they claimed this payment of financial support. They also demanded more compensation including to create a rule that gives a priority to local villagers in company's personnel recruitment planning and to share one per cent of the company's annual profit with the villagers. For the company, all this villagers' demands are too much. In late 2007, the villagers organized a big protest

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<sup>41</sup> Leena Avonius, *Reforming Wetu Telu: Islam, Adat, and the Promises of Regionalism in Post-New Order Lombok*, Helsinki: Yliopistopaino, 2004.

<sup>42</sup> Seung-Won Song and Mustafa Mansur, "The Revival of Adat and the Articulation of the 'Kingdom Slot' in Loloda, North Halmahera, Indonesia," *Bijdragen tot de taal-, land-en volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia* 177, no. 2-3 (2021): 312-43.

<sup>43</sup> John R. Bowen, *7 Normative Pluralism in Indonesia: Regions, Religions, and Ethnicities*, Oxford: Oxford: Oxford University Press, 2005.

<sup>44</sup> Rusdi Sufi, *Hukum Adat Pertanahan: Pola Penguasaan Pemilikan dan Penggunaan Tanah Secara Adat Aceh Tempo Doeloe dan Masa Kini*, Banda Aceh: Pusat Data dan Informasi Aceh, 2002.

hindering employees of the company from coming to the factory to work for a couple of weeks.

At the initial stage of the dispute, some village elders and NGO activists represented the villagers who then formed a committee. However, the close engagement of NGO activists in the committee in resolving the dispute became less important at a later phase. This was partly because, through the support of printed as well as online social media, the activists tended to employ an open confrontation with the company.

NGO activists often used national and international media to voice their demands and to push the company. However, the local newspaper, *Serambi*, appears to echo the position of provincial government in an effort to maintain political stability and to foster investment climate in the province. Although the news coverage appeared to somehow push both parties to reach an agreement, many were suspicious that the local newspaper and the provincial government were in the same shoes with the company.

The dispute was finally resolved in 2009 when the parties successfully negotiated a written agreement that a sum amount of compensation to be yearly paid to the villagers through a corporate social responsibility (CSR) program. The success of this dispute settlement considerably thanked to an informal mediator, Anwar Ahmad, who was acting as a deputy of Head of Aceh Besar district and also used to be a working staff of the company in the past. The dispute settlement process might have gone an impasse should Anwar Ahmad in his multiple official and social roles did not engage in assisting and facilitating all the involved parties to arrive at a mutual arrangement.

The agreement was finally formulated in the form of Memorandum of Understanding signed by both parties and witnessed by government officials. Whether the settlement on this dispute would remain sustainable depends very much on the benefits received by the villagers from the company's annual compensation payment. For the villagers, the international company's fulfilment of their socioeconomic rights is a result of how their adat norms and institution work for them. It is worth noting here that religion plays insignificant role in the issue of access rights to natural resources. It is adat that becomes the main reference for the villagers in Aceh to resolve problems related to such particular issue. Nevertheless, the way this case is settled largely through a help of district government confirms the fact that adat mechanism remain subordinated to the formal structure of the state, thus strengthens a claim of the relatively weak status of adat entities in the contemporary public space in Aceh. In other words, a norm of adat can be a reference for dispute settlement, but its application mostly depends on a procedure set by the state.

### *Adat Justice*

The expanding authority of Aceh's sharia court in the post-conflict period (2006 onwards) does not necessarily deactivate other legal processes<sup>45</sup>. As far as legitimacy of adat justice or community based-legal settlement is concerned, a strong social and legal foundation underpins its existence in contemporary Aceh. Both Qanun no. 9/2008 and no. 10/2008 are the very foundation of the recognition of adat justice as a part of formal legal system in Aceh.<sup>46</sup> As stipulated by Article 14 (1) Qanun Aceh no. 9/2008, adat justice is upheld by three local institutions namely (1) *gampong* or village; 2) *mukim* or a unit of number of *gampong*; and (3) *panglima laot* or 'sea commander' who governs customary maritime issues. These three institutions have official legal standing to examine offences or deal with disputing matters under the jurisdiction of adat justice. Nevertheless, there have been some cases where the MAA also gets involved in examining and resolving disputes in a number of issues<sup>47</sup>

It has been stipulated in a number of qanun that the first step should be to settle disputes at the village level. This shows that dispute settlement based on adat should, in some ways, be given more priority than a formal legal mechanism at courtrooms. In other words, although disputing parties have the opportunity to choose a legal process at their own preference, the Aceh's legal system favours adat dispute settlement. In fact, the villagers often prefer to 'adat justice' partly because of their scepticism about the ability of the state apparatus to deal successfully with their various legal problems<sup>48</sup>. In addition, even though the 1991 state-endorsed Compilation of Islamic Law (KHI, *Kompilasi Hukum Islam*) has been the official reference for settling Islamic family disputes at Islamic state courts all over Indonesia<sup>49</sup>, village religious leaders in Aceh still rely on legal

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<sup>45</sup> Arskal Salim, *Contemporary Islamic Law in Indonesia*, Edinburgh University Press, 2015.

<sup>46</sup> A number of studies by Indonesian scholars have showed the increasing role of adat justice (Amalia et.al. 2018; Mansur et. al. 2020; Rahayu 2016, 2017; Nurdin 2018; Mansur et. al 2018) in examining cases including both private and penal ones (Amdani 2016; Mansur 2012; 2015).

<sup>47</sup> Rahmat Fitrah, "Efektifitas Penyelesaian Sengketa Warisan Melalui Majelis Adat Aceh (Studi Majelis Adat Aceh, Kecamatan Darussalam Kabupaten Aceh Besar)," MA, Universitas Sumatera Utara, 2016; Ucha Hadi Putri, "Peran Majelis Adat Aceh dalam Penyelesaian Sengketa Waris Terhadap Tanah di Kecamatan Tempuk Tengoh Kota Lhokseumawe," *JCH (Jurnal Cendekia Hukum)* 5, no. 1 (2019): 145-59; Siti Safur, "Kedudukan dan Peranan Majelis Adat Aceh dalam Penyelesaian Tindak Pidana Ringan," Undergraduate, Universitas Syah Kuala, 2020.

<sup>48</sup> R Michael Feener, *Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia*, OUP Oxford, 2013.

<sup>49</sup> Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, Vol. 4: Amsterdam University Press, 2010.

opinions of traditional *Shafi`i* jurisprudence as well as customary laws to resolve the family law cases.

The above description shows that the primary use of adat has been emphasized and even been prioritized in a number of situations. However, this principle is mostly ambiguous in practice. Quite the reverse, almost all Aceh's regulations (qanun) stipulate that when there is a conflict between adat and Islamic law, adat applies only when it does not contradict Islamic law. For this reason, despite its strong legal basis in some qanun, whether adat justice in Aceh has been empowered or otherwise remains a big question. To illustrate the vague position of adat justice, the following paragraphs discuss the *khalwat*<sup>50</sup> offence as a case study.

### The Case of Khalwat

The overlapping legal mechanism between adat justice and the sharia court on the khalwat offence derives from two conflicting provisions found in the Jinaya Qanun no. 6/2014. This Qanun suggests that the offence of khalwat is examined either by the adat justice or the sharia court. Article 23 (1) of this Qanun states that anyone who found guilty commits a khalwat offence would be punished by caning maximum ten times or a maximum fine of a hundred grams of gold or an imprisonment for a maximum of ten months. This is the court mechanism of applying punishments to khalwat offenders. Nonetheless, Article 24 of the same Qanun grants the adat justice an authority to examine a khalwat offence including to punish the offender. It says "the khalwat offence which is under the jurisdiction of adat justice is resolved according to provisions found in the (other) Qanun of the guidance of adat life and customs[,] and/or other related regulations on customs." This conflict of authority in adjudicating a khalwat offence was nevertheless denied by Azzubaili et.al<sup>51</sup> arguing that both adat justice and sharia court have their own respective jurisdictions. Unfortunately, this view is largely an expectation or a projection rather than a reality.

The relevant qanun on how adat justice runs and penalizes (khalwat) offenders was enacted earlier, namely Qanun no. 9/2008. While Article 13 (1)d of this Qanun stipulates that khalwat offence is under the jurisdiction of adat justice, Article 16 spells out each of penalties which can be applied to khalwat offenders including: "an advice; a warning; a statement of apology; a compensation (*sayam*); a ransom (*diyati*); a fine; a restitution; an exclusion by villagers; an eviction from the village; an elimination of adat title; and other form

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<sup>50</sup> *Khalwat* is a close proximity between male and female adults who have no marriage or kin relationship, in a place or situation where intimate contact is supposedly possible.

<sup>51</sup> Azzubaili, Taqwaddin Husen and Muzakkir Abubakar, "Harmonisasi Implementasi Qanun Khalwat dengan Qanun Pembinaan Kehidupan Adat dan Istiadat: Suatu Penelitian di Kabupaten Bireuen," *Jurnal Ilmu Hukum* 2, no. 4 (2014).



of penalties according to local practice.” A study by Yusrizal and Amalia<sup>52</sup> confirmed that village elders in different gampongs and in different time adjudicate and settle the offence of khalwat that took place in their respective territories. Among others, they sentenced the offenders to accept advice, to pay fine of a goat and two million rupiahs in cash, and, even, to get expelled from the village. However, it is apparent in practice that public humiliation becomes a village norm that sanctions the offender of khalwat. The offenders were often being bathed with murky water and being taken semi-nakedly through streets of the village. This kind of public humiliation continue to take places in the different areas in Aceh<sup>53</sup>. Above all, there were often cases in which the decision of adat justice compels a couple of khalwat offenders to get married<sup>54</sup>; this kind of verdict is not stated in the Qanun but has been widely practiced.

All this suggests that while, on the one hand, the sharia court would punish the khalwat offenders by certain number of lashes, on the other hand, adat justice run by village elders also examine the khalwat offence in their respective villages by imposing various sanctions (other than caning) to the offenders. This overlapping jurisdiction remains in practice until this article is being written, and thus, it often results in a question about the sense of justice. Which one could produce more justice and fairness: law of the court or law of the village? Would that be fair to punish the offenders of khalwat by simply giving them advice and warning or imposing certain amount of fine? What if the couple has committed an offence more than khalwat? It has been confirmed that the offence of khalwat often becomes a so wide-ranging term that includes khalwat itself, *ikhtilat*<sup>55</sup> and even *zina* (adultery), and, ironically, many people in Aceh villages do not want to distinguish between them when such kind of an offence takes place, and instead preferred all this kind of the offence to be settled by village elders<sup>56</sup>. Perhaps, as suggested by Mansur et.al<sup>57</sup>, a clarification in the qanun has to be made by defining the extent to which a khalwat offence is a part of the jurisdiction of adat

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<sup>52</sup> Yusrizal, Mukhlis and Nanda Amalia, "Adat Court Vs Syariah Court: Study of the Legal Culture of Aceh Communities Completing the Khalwat Cases," *International Journal of Recent Technology and Engineering (IJRTE)* 7, no. 6S5 (2019): 1367-70.

<sup>53</sup> Fakhrrurazi and Budi Juliandi, "Penerapan Hukum Islam di Aceh Tamiang: Berdamai dengan Syariat dalam Pluralitas Sanksi Khalwat," *Tahkim* 11, no. 1 (2017).

<sup>54</sup> Wahyu Fahrul Rizki, "Hukum Adat di Aceh: Dialektika Praktek Pernikahan dan Khalwat," *Ulûmuna: Jurnal Studi Keislaman* Vol.6, no. 1 (2020): 126-52.

<sup>55</sup> Intimate conduct by an unmarried couple in outdoor as well as outdoor locations.

<sup>56</sup> Yusrizal, Mukhlis and Nanda Amalia, "Adat Court Vs Syariah Court: Study of the Legal Culture of Aceh Communities Completing the Khalwat Cases," *International Journal of Recent Technology and Engineering (IJRTE)* 7, no. 6S5 (2019): 1367-70.

<sup>57</sup> Teuku Muttaqin Mansur, Sulaiman and Hasbi Ali, "Adat Court in Aceh, Indonesia: A Review of Law," *Jurnal Ilmiah Peuradeun* 8, no. 2 (2020): 423-42.

justice and what kind of a khalwat offence that must be investigated by officers of *wilayatul hisbah* (i.e. sharia police) before then examined by the sharia court.

Given this khalwat case, two inconsistent features of adat justice have emerged. Firstly, adat justice has created a puzzle in which either it seeks to offer more flexible and humane alternative sanctions to Islamic law or, rather it paves a way for allegedly incorrect and harsh customary punishments imposed on the offenders. And secondly, adat justice as stipulated in the current qanun has led to an ambiguity in the enforcement of sharia rules at villages. While village leaders have been authorized to implement these rules at their territories, it is a bit vague whether they do it autonomously and independent from the state court or such village-level mechanism is an instrumental part of Aceh's Islamic law administration in general.

### **Conclusion**

Have adat and religion in Aceh been either coexisting or contesting one another? The foregoing discussion shows that both entities are officially and politically acknowledged in Aceh's public sphere. They both are parts of the formal structure of Aceh governance. Many have thought that Islamic law unifies the Acehnese Muslim regardless where they live in different districts. On the contrary, adat is suspected to have compartmentalized people according to which community they belong to and which district of Aceh they live in. Whilst adat norms and institutions are lawfully endorsed to play a larger role within communities, their recognition and jurisdiction are quite limited owing to the fact that adat generally applies only to a particular territory and often has less legal certainty. Quite the reverse, Islamic law (institutions and regulations) has a stronger status and wider outreach in all districts of the province of Aceh.

In its current formal shape, adat has turned into a bureaucratic organism that successfully survives all political changes in more than two decades. Through its varied institutional manifestations, adat is supposed to control life of many Acehnese people especially those who live in the villages. Yet, other than in communal rights to natural resources, the extent to which adat has become a supreme entity remains a remote possibility only. Making adat adaptive to change by way of bureaucratizing it in fact has resulted in marginalizing the adat itself. While on the one hand, it gains an official status and becomes a legal reference, on the other hand, it loses its credential as a social norm that should apply without being formally enforced. In spite of its official status in Aceh's current regulations, adat is considered to have a lower position than Islamic law. The subordination of adat to Islamic law in the post-New Order Aceh becomes visible more than the ongoing claim of the congruent relationship between adat and Islamic law in Aceh. Apparently, an autonomous adat which is independent from the implementation of Islamic law was not something projected by many Muslim leaders in contemporary Aceh.

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