

## WOMEN AND SHARI'AH LAW: LESSONS FROM ACEH

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*'No injury to be imposed, nor any injury incurred  
when seeking to remove another injury.'*  
– God's Messenger Muhammad

**Abstract.** This study surveys the role of women in the development of *shari'ah* from the introduction of Islam to Aceh in the 12<sup>th</sup> century down to the modern era with the formal adoption of Islamic law by an Indonesian parliamentary Bill on Aceh's Special Status in 1999. After briefly exploring this history, we examine contemporary debates on the current implementation of Islamic law by means of five women of differing backgrounds in this Indonesian province. We review historical documents and existing literature as well as *qanuns* of Aceh (local regulations) which stipulate *shari'ah* requirements. We also interview the five women, including one whose husband and another who herself were subjected to *shari'ah* punishment. The results are complex reflecting the intricacy of contemporary understandings of the *shari'ah* and the issues surrounding rights of women in Islamic law. One voice represents her agreement to the *shari'ah* punishment of her husband on account of its positive outcome for her family. The other four are critical of the current implementation of the *shari'ah* in Aceh, yet are not opposed to it; these ladies argue for women-friendly *shari'ah*.

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<sup>1</sup> Initial draft of this paper was first presented at a conference on *Women Power in Islam: Feminist Orientations and Strategies for the 21<sup>st</sup> Century*, organized by Fredrich Ebert Stiftung in Cologne (Germany), 10--12 June 2008.

## Introduction

Aceh, Indonesia's westernmost province classed as a 'special territory', is known for its rich history, political independence and fierce resistance to domination by outsiders, including the Dutch colonials. Aceh traces its significant history to the introduction of Islam from the 12<sup>th</sup> century onward, and when its political leaders became a dominant power in the Southeast Asian region after the 15<sup>th</sup> century. During that era its '*ulama*, poets, and scholars made major contributions to the development of the Indonesian-Malay language and to Islamic religious scholarship that culturally unified the entire region. One of the outstanding characteristics of Aceh's history is marked by the partnership between its '*ulama* (Muslim scholar-authorities) and the *umara*' (political leaders). Another notable feature is its unique record of women leadership, including four successive '*ulama*-supported Sultanahs<sup>2</sup> ruling over Aceh for fifty-nine consecutive years from **1641–1699 CE**.<sup>3</sup> We must also mention the famous woman admiral Laksamana Keumalahayati controlling the Sultanate's sea security in the late 16<sup>th</sup>—early 17<sup>th</sup> century who designed maritime tactics to repulse outside encroachments from rival powers.<sup>4</sup>

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<sup>2</sup> Many '*ulama* supported the authority of these women rulers, but a few questioned their validity to rule a Muslim territory. The fact that the rule of these successive Sultanahs lasted more than a half century is an important achievement in Islamic history. Yet the doubts of their critics acquired enough weight leading to the deposition of Sultanah Kamalat al-Din in 1699 after her sitting on the throne for only 9 years, due to the *fatwa* issued by the chief Mufti of Mecca; see Azyumardi Azra, *The Origin of Islamic Reformism in Southeast Asia: Networks of Malay-Indonesian and Middle Eastern Ulama in the Seventeenth and Eighteenth Centuries* (Honolulu: University of Hawaii Press, 2004) p. 79. Despite this single incident, the majority of Acehnese men and women appear to overlook the reality that their last Sultanah was removed from power due to a religious proclamation, and thus they continue to project the positive image of Aceh having being commanded by a number of very capable women rulers.

<sup>3</sup> In addition to these four Sultanahs, Aceh's Islamic kingdom of Tamiang was ruled at one time by Queen Lindung Bulan (rg. 1353–1398), and the kingdom of Samudra Pasai by Queen Nahrasiyah Rawangsa Khadiyu (rg. 1400–1428). For more information consult A. Hasjmy, *59 Tahun Aceh Merdeka di bawah Pemerintahan Ratu* (Jakarta: Bulan Bintang, 1977) p. 24.

<sup>4</sup> This famous admiral Laksamana Keumalahayati safeguarded

Despite the fact that the last Sultanah was unseated by a *fatwa* issued by the 'ulama of Mecca who could not countenance the authority of a woman ruling in place of a man, the Acehnese today overlook this incident of external interference and they continue to invoke their golden history of female rulers. Such an impression is possible due partly to the fact that the *fatwa* had come from Mecca and not from local Acehnese 'ulama, and partly that Acehnese women continued to play a leading role in public and military life well into the 19<sup>th</sup> and 20<sup>th</sup> centuries. A number of famous women, including several from the circles of the 'ulama themselves, led the combat side by side with their male counterparts in the long bloody resistance against the Dutch colonial regime. Few outsiders are aware of the incredible fortitude and courage of these women, and the sufferings they bore as leaders of their people. Several of these women such as Cut Nyak Dhien and Cut Meutia have become elevated to the renowned status of national heroines of modern Indonesia, acknowledging their fame and determined struggle against foreign occupation and oppression. Due to these historical developments Islamic laws and cultural practices, coupled with the prominent role of women in society, retains a positive projection among the overwhelming majority of Acehnese people today.

This background information is an essential starting point, for in the view of most Acehnese the Islamic law or *shari'ah* remains an important part of their communal identity and was

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Aceh's sovereignty and protected its maritime trade with the use of force and diplomacy. Her diplomatic skills and naval combat talents impressed many foreigners frequenting Aceh at the time, thus spreading her reputation as far as Europe. Having earlier created female armed regiments (*pasukan inong bale*), she led the *pasukan* and male divisions against the Portuguese and the Dutch and triumphed over the fleets of Cornelis and Frans Houtemans in 1599, killing the former, as well as those of Van Caerden in 1601. Following this success, Keumalahayati was entrusted with the administration of Aceh's foreign policy and put in charge of protocol at the palace, while continuing to lead the nation's maritime forces.

never viewed as an impediment for women's active participation in society, especially when the interpretation of Islam is left to the Acehnese 'ulama themselves. This is not to imply that there were no Acehnese Muslim scholars with conservative patriarchal views, but rather to suggest that Islamic sensibility surpassed religious conservatism during most of Aceh's history. However, presently the situation has certainly changed due partly to the way Aceh was treated during the formation of the Indonesian modern state,<sup>5</sup> to the 'Suharto-nization' of Aceh,<sup>6</sup> and to the emergence of new conservatism promoted by the post-Tsunami transnational Islam groups<sup>7</sup> and the Partai Aceh,<sup>8</sup> and partly to the manner in which the

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<sup>5</sup> Aceh contributed tremendously to the formation of modern Indonesia. When the Dutch bombarded the country in their efforts to reclaim control over the young Republic shortly after it had proclaimed its independence on 17<sup>th</sup> August 1945, the Acehnese rallied in support of Indonesia and collected funds to buy the first two Indonesian DC-3 aircraft to repel Dutch air attacks. These two aircraft were also used to patrol the airspace of the newly independent state. The aircraft latter became a nucleus for both Indonesia's air force and the national airline Garuda Indonesia. When Aceh joined the Republic it did so with the hope that its autonomy with distinct religious and political rights would be respected by the central government in Jakarta. Instead of recognizing Aceh's special status, Jakarta violated its promises and Aceh lost its provincial status and was merged with North Sumatra, leading to neglect in every aspect of Acehnese social life thereafter.

<sup>6</sup> Suharto ruled Indonesia for over thirty years during which he centralized the political system and sought to unify cultures and practices encroaching upon local identities and various communities' social heritage. Golkarization of the Aceh 'ulama into the single party of Golkar, the sole ruling party of Suharto's Indonesia, made a serious impact on the 'ulama by compromising their long tradition of being sensitive and flexible in their religious worldview.

<sup>7</sup> These transnational Islamic groupings include *Hizb ut-Tahrir*, *Jama'ah Tabligh*, and *Wahhabis* that all arrived in Aceh recently to assist during the 2004 Tsunami, and have grown roots in the province. For a brief discussion on the role of these groups in the *shari'ah* debate in Aceh, consult Asna Husin, "Acehnese Women Struggle for Peace and Justice: Challenges and Opportunities," in *Islam and Civilisational Renewal*, vol. 6 no. 3, 2015.

<sup>8</sup> Partai Aceh, the local political party of the Aceh freedom rebels, was established in the aftermath of the 2005 Peace Agreement between Indonesia and the Aceh Freedom Movement and the adoption of the Law on Governing Aceh in 2006. Since then members of the Partai have successively won the governorship and many district elections allowing them to lead Aceh at both

*shari'ah* is currently being implemented. Our remarks will explore these developments by reviewing the status and implementation of the *shari'ah* throughout Acehnese history, and through identifying women's voices in the Islamization of Aceh. Then we shall focus on the current implementation of the *shari'ah*—its strengths and challenges—by listening to voices of five women who see the *shari'ah* and its implementation from their own differing viewpoints. This last section will provide us with lessons learned in the process of the implementation of Islamic law in Aceh that can enrich our understanding of the course the Acehnese are taking, and which may have relevance for parallel efforts in other Muslim societies.

### ***Shari'ah* In Acehnese History**

It is difficult to assess when the *shari'ah* was first introduced and applied in Aceh.<sup>9</sup> However, since law is an intrinsic ingredient of Islam and the existence of medieval Muslim societies, it is clear that religious law was taking root gradually as Islam slowly but effectively penetrated the souls of the people living in western Sumatra. When the earliest of Aceh's Islamic kingdoms of Peureulak (in East Aceh) and Samudra Pasai (in North Aceh)<sup>10</sup> came into existence in the 7<sup>th</sup> century H / 13<sup>th</sup> century CE, Islamic *shari'ah* law in the form of the Shafi'i legal rite was already an inherent component of the religious and cultural establishment. Ibn Battutah, the Muslim Moroccan traveler passing through Pasai on his trip to China in 1345—1346 CE, found that the ruler enjoyed holding discussions with learned persons and his court was

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provincial and district levels.

<sup>9</sup> For a brief yet comprehensive survey on the historical precedent of *shari'ah* in Aceh and its contemporary implementation see the report by International Crisis Group, "Islamic Law and Criminal Justice in Aceh" (31<sup>st</sup> July 2006).

<sup>10</sup> The gravestone of the Sultan Malik us-Salih, the first Muslim ruler of Samudra Pasai, is dated 1297 CE. The late Sultan married the princess of Peureulak after his conversion to Islam and fathered two sons: Malik uz-Zahir and Malik ul-Mansur. According to Ibn Battutah, who visited the kingdom in 1345 and 1346 on his way to China, Malik uz-Zahir (rg. 1298–1346) inherited the crown after the death of his father Malik us-Salih.

frequented by poets and men of learning.<sup>11</sup> He also mentioned that the ruler of Samudra Pasai and his subjects were followers of the Shaf'i school of law (*madhhab*). This is the first clear indication of the existence of Islamic law in Aceh, even though the degree of its adoption and implementation is hard to ascertain.

From the 17<sup>th</sup> century onwards, formal justice was executed by the *qadis* (judges or magistrates) who were appointed by the Sultan or by lesser local rulers. At the state level the chief *qadi* was appointed as the *Shaykh al-Islam* in the Sultanate, being a close confidant of the Sultan and exercising considerable legal and religious authority throughout the society. Shams ud-Din as-Sumatrani of Pasai (d. 1629) assumed this important position and advised the Sultan on religious, political and cultural matters, as well as acting on his behalf in diplomatic and international affairs.<sup>12</sup> Other important 17<sup>th</sup> century *Shaykh al-Islams* of Aceh that demand our attention were Nur ud-Din ar-Raniry (d. 1658) and Abd ur-Rauf as-Singkili (d. 1693).<sup>13</sup> Indeed, this position of *Shaykh al-Islam* functioned as the second highest position in the kingdom of Aceh—second only to the Sultan himself in authority

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<sup>11</sup> H. A. R. Gibb, *Ibn Battuta: Travels in Asia and Africa* (London: 1929) pp. 274, 302; Raden Abdulkadir Widjoatmodjo, "Islam in the Netherlands East Indies," in *The Far Eastern Quarterly*, 2 /1 (1942) pp. 48–57. See also Ross E. Dunn, *The Adventures of Ibn Battuta: A Muslim Traveler of the 14<sup>th</sup> Century* (Los Angeles: University of California Press, 1986) pp. 251, 257.

<sup>12</sup> See *The Hikayat Aceh*, edited by T. Iskandar, in Syed Muhammad Naquib al-Attas, *A Commentary on the Hujjat al-Siddiq of Nur al-Din al-Raniry* (Kuala Lumpur: Ministry of Culture of Malaysia, 1986) p. 6. In this study, we cannot enter into details concerning the life, career and teaching of these outstanding scholars, who maintained strong connections with Arabia, India, and probably Iran, and who did so much to cement the foundations of Islamic thought throughout the entire region of S.E. Asia.

<sup>13</sup> As-Singkili known as Syiah Kuala ('Shaykh of the River's Mouth', referring to his grave near an estuary of the river, or *kuala*, located outside Banda Aceh) was the most exalted of the Acehnese *'ulama* and *qadis*. He studied in Mecca between 1642–1661 and was a disciple of the leading Madinan commentator on Ibn 'Arabi, Ibrahim al-Kurani (d. 1690). Upon his return to Aceh he promoted the *Shattariyah* mystic Order founded by Ahmad al-Qushashi, and served the ruler of Aceh as her *Shaykh al-Islam*. He was a prolific writer who wrote in both Arabic and Jawi, and was the first to translate the Qur'an into the Malay language.

and influence. It is important to note that both ar-Raniry and as-Singkili served the first Sultanah of the Kingdom of Aceh Darussalam, Safiatuddin Syah (rg. 1641–1675) when Aceh was still at the peak of its power and influence as an international commercial maritime power maintaining relations with China and with Ottoman Turkey.

Though these two *qadis* equally shared a Sufi mystic orientation, with as-Singkili indebted to ideas of the great Andalusian Saint Muhyi d-Din Ibn 'Arabi (d. 638/1240 in Damascus),<sup>14</sup> ar-Raniry was more puritan in his Islamic approach. Yet both strongly supported the political authority of their women rulers. Ar-Raniry, a native of Ranir in the Gujarat (N.W. India), was appointed as *Shaykh al-Islam* shortly after his arrival in Aceh in 1637 when Aceh was ruled by Sultan Iskandar Thani (rg. 1637–1641), the son-in-law of the late most-powerful Sultan Iskandar Muda (rg. 1607–1637) and the husband of Iskandar's daughter Sultanah Safiatuddin. After the death of her husband, Safiatuddin patronized Ar-Raniry and supported his increased Islamization of Aceh through his numerous writings, teaching, and counseling of the court. Ar-Raniry supplied the most needed books in Malay on principles of religion, regulations of worship and laws on marriage, and was strongly determined to clean Aceh of extravagant pseudo-Sufi doctrines. He left Aceh in 1644 back to his native Ranir probably due to doctrinal differences between his views of proper Islam and those of indigenous religious Sufis who became more influential at her court.<sup>15</sup>

Shortly afterwards, Abd ur-Rauf as-Singkili was appointed by the Sultanah as the *Qadi Malik ul-Adil* at the court of Aceh,

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<sup>14</sup> The influential teachings of Ibn 'Arabi on 'Oneness of Existence' were first introduced into Aceh by Hamzah Fansuri half-a-century previously, and maintained by his disciple Shams ud-Din as-Sumatrani who projected the doctrine of the 'Perfect Man' (*al-Insan al-Kamil*) onto the powerful personality of Sultan Iskandar Muda himself. See the important work by Syed M. Naquib al-Attas, *The Mysticism of Hamzah Fansuri* (Kuala Lumpur: University of Malaya Press, 1970).

<sup>15</sup> Sayf ur-Rijal assumed the position of *Shaykh al-Islam* after the departure of ar-Raniry from Aceh. It is not clear whether Rijal had passed away before as-Singkili assumed this office, or if he was replaced by the latter while he was still alive; see Azra, *Origin of Islamic Reformism*, p. 77.

and for the next forty-eight years as *Mufti* he was patronized by four consecutive Sultanahs until the end of his life. Like Ar-Raniry before him, As-Singkili embarked on the further Islamization process of Aceh with the full support of the Sultanahs, transforming the older loose syncretic religious atmosphere into a more normative Sunni system. And like his predecessors he continued to advise these female rulers not only on religious and social aspects of their realm but also on the diplomatic, military and international affairs of Aceh's busy regional dynamics. There is no doubt that these three successive *Shaykhs al-Islam* mentioned above were among the most influential *qadis* and intellectuals in the history of Aceh. Two of them—for part of his career in the case of ar-Raniry, and throughout his residence in Aceh in the case of as-Singkili—were patronized by women rulers.

It is within this partnership of '*ulama* and *umara* that the Sultanahs' voices as women in the implementation of the *shari'ah* may be located. Although we do not have precise accounts of their specific responsibility in the implementation of the *shari'ah*, we do know that they, like other rulers before and after them, played a significant role in promoting justice. In spite of unceasing challenges from European colonials, Aceh under the sovereignty of its Queens gained economic prosperity and growth in maritime trade, strengthened its international perspective, improved its educational establishments, and consolidated its judicial system. Sultanah Safiatuddin patronized the production of several religious books, and one of them is still being read now in Islamic boarding schools across Aceh and probably in (formerly Acehnese) parts of Southeast Asia today.<sup>16</sup> All of the above matters are directly and indirectly related to the development and implementation of Islamic *shari'ah* law in Aceh.

Under the third Sultanah Zaqiatuddin Inayat Syah (rg. 1678–1688) further Islamization process took place. She wanted Acehnese youth to grow up devout in their Muslim faith in order to withstand the ever more numerous foreigners of different religious beliefs and cultural practices now flocking into Aceh.<sup>17</sup>

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<sup>16</sup> This book is *Masa'il al-Muhtadin li Ikhwan il-Muhtadin* by Teungku Syikh Dileupeu; see Hasjmy, *59 Tahun Aceh ...*, p. 117.

<sup>17</sup> Iljas Sutan Pamenan, *Rentjong Atjeh di Tangan Wanita: Zaman*



In addition, this Sultanah maintained the upkeep of mosques and continued to improve the education system, and she was possibly the first person to initiate the creation of the local *meunasah* (the village prayer and educational centers smaller than the mosque that exists throughout Aceh, as well as in Malaysia today). Ijas Sutan Pamenan recounts the wisdom, literary skills, and commendable concern of Sultanah Safiatuddin for the welfare and rights of her subjects.<sup>18</sup> The contemporary scholar Sher Banu Khan also relates this Queen's concern for her subjects' welfare and how she tried to hold a tight reign over her kingdom's treasury.<sup>19</sup> The deposing of the last Sultanah Kamalat Syah in 1699 brought to an end the formal involvement of women in the implementation of the *shari'ah* at the state level, but certain future women continued to play a significant role by means of education and *da'wah* (Islamic propagation of faith), among whom we should mention Teungku Fakinah who founded the Islamic boarding school of Dayah Lam Biran. Outside of *da'wah* and religious education, the voices of women in the propagation of *shari'ah* were no longer visible, and therefore a long gap exists between the deposition of the last Queen until the establishment of Dutch administrative control over Aceh in the late 19<sup>th</sup> century. The circumstances leading up to the adoption of the Indonesian law allowing Aceh to implement *shari'ah* in 1999 falls outside the purview of this paper.<sup>20</sup>

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*Pemerintahan Radja2 Putri Atjeh, 1641–1699* (Jakarta: 1959, self-published) on p. 96, in Jennifer Dudley, "Of Warrior Women ...," (internet article) p. 11.

<sup>18</sup> *Ibid.*, p. 72-73, in Jennifer, *ibid.*, p. 9.

<sup>19</sup> Sher Banu A. L. Khan, "The Jewel Affair: The Sultana, Her Orangkaya, and the Dutch Foreign Envoys," paper presented at the *Conference on Aceh and Indian Ocean Studies*, organized by The Rehabilitation and Reconstruction Agency of Aceh (BRR) and Asia Research Institute, Singapore, Banda Aceh, 24–27<sup>th</sup> February 2007.

<sup>20</sup> To fill this informational gap see the excellent report by International Crisis Group, "Islamic Law and Criminal Justice in Aceh" (31<sup>st</sup> July 2006); also the well informed work by R. Michael Feener, *Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia* (Oxford: Oxford University Press, 2014).

## Contemporary Debate over *Shari'ah*

The adoption of Islamic law through an Indonesian parliamentary Bill on Aceh's Special Status in 1999 marks the beginning of contemporary debate over the implementation of the *shari'ah*. It is necessary to observe that when Aceh joined the modern state of Indonesia, Acehnese leaders requested not only political and economic autonomy but also permission to maintain educational and religious independence. In the context of religion, they appealed for an authorization to implement the *shari'ah*. The sought-for *shari'ah* autonomy, along with certain other aspects, was originally promised by Jakarta but was never fulfilled until its adoption in 1999.<sup>21</sup>

This new direction can be perceived from three different viewpoints. First, *shari'ah* was a move to find a political solution to the Aceh conflict. Jakarta granted Islamic law to Aceh in the wishful hope that the Acehnese would stop demanding independence, thereby overlooking root causes of conflict whether in the form of political manipulation, human rights abuses or economic exploitation. It was also intended to serve as a counter balance to GAM's declaration of its intention to establish *shari'ah* law when Aceh became independent.<sup>22</sup> Secondly, the implementation of the *shari'ah* was hoped to eliminate severe social ills, since due to the prolonged conflict Aceh had become a theater for a variety of social vices: criminal extortion, flagrant prostitution (esp. with the prolonged presence of tens of thousands of Indonesian army troops), and widespread drug abuses. This hope for a moral panacea was intensified by the reality that Indonesia's national legal system had rarely delivered justice for the Acehnese.<sup>23</sup> Finally, the adoption

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<sup>21</sup> Injustice gave birth to prolonged conflicts between the Aceh Freedom Movement (Gerakan Aceh Merdeka: GAM) and Indonesian military occupation leading to bloodshed and severe human rights abuses perpetuating the suffering of Acehnese.

<sup>22</sup> Some also believed that successful implementation of the *shari'ah* would restore public trust in the central government; Al-Yasa Abubakar, *Syariat Islam di Provinsi Nanggroe Aceh Darussalam: Paradigma Kebijakan dan Kegiatan* (Banda Aceh: Dinas Syariat Islam, 2005) p. 129; see also ICG's Report, "Islamic Law ...," p. 4.

<sup>23</sup> ICG's Report, "Islamic Law ...," p. 1.

of the *shari'ah* by the Acehnese was seen to be a genuine religious objective supported by the majority of the population.

The Acehnese who view the implementation of the *shari'ah* in a positive light argue that because following Islamic principles and regulations is obligatory on every individual Muslim, the codification of those values into a system of law and the involvement of state apparatus in its implementation is a logical consequence of living in a Muslim society. In the context of the above three arguments, those Acehnese who subscribe to this third outlook of implementing *shari'ah* as a genuine religious objective find *shari'ah* to be a “lost dear child” or a “disappeared respected parent” who is finally recovered after a long search and struggle. While those who share the first view of a political motive, see *shari'ah* as an “unwanted gift” and resentfully feel they are now stuck with it and its intrusive demands; while those who adopt the second view of a moral orientation for removing social ills regard *shari'ah* as a long awaited remedy that nevertheless requires proper interpretation and wise implementation so as not to become abusive. In addition, there are some Acehnese who share all three viewpoints intermingled in varying ways. The voices of the women presented below represent all these different orientations and reminds us of the complex social reality which the current experiment in implementation of Islamic law in Aceh represents.

Before we meet these women on their own terms, a few words of definition may be helpful. Islamic religio-legal tradition views *shari'ah* to be a set of divinely regulated principles and teachings governing Muslim personal and collective existence, be it concerning *iman* (faith & conviction), *ibadah* (individual outward ritual-worship), *mu'amalah* (human communal duties & inter-personal requirements), legal procedures and penalties (*ahkam* & *hudud*), and *akhlaq* (ethics & conscience). In the context of contemporary Aceh, *shari'ah* has been legally and broadly defined as “Islamic teachings and guidance in all dimensions of life”<sup>24</sup> with the avowed intent being to implement it completely

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<sup>24</sup> National Law No. 44 (of 1999) of Indonesia. This Law stipulating the ‘Special Status’ of Aceh calls for implementation of *shari'ah* for Muslims as well as protection of inter-religious relations involving non-Muslims. (While the overwhelming majority of inhabitants are Sunni Muslim, there exist small

(*kaffah*).<sup>25</sup> Such an understanding of the *shari'ah* should have led to comprehensive provincial legislation along with local regulations (termed *qanun*) to inter-operate or accompany the 1999 National Law as well as other national laws recognizing Aceh's entitlement to implement the *shari'ah*.<sup>26</sup> This comprehensive understanding of law, coupled by fulfilling the *maqasid ash-shari'ah* (the higher societal-goals of Islamic law), could have provided and encouraged a positive enlightened outlook towards *shari'ah* within today's social realities.

Classical Muslim legal theory on *maqasid ash-shari'ah* is profound and complex but a simplified expression may be put thus: 'to advance justice while protecting the rights of the weak in order to seek God's favor (*rida Allah*), accomplishing this with sensitivity to changing social needs and human realities'.<sup>27</sup> One of the fundamental principles underlying this notion is the legal maxim of the Prophet Muhammad (S): "No injury to be imposed, nor any injury incurred when seeking to remove another injury /la darar wa la dirar... ." However, rather than focusing on this higher dynamic goal of *shari'ah*, the current Aceh implementation is being undertaken with stipulations criminalizing specific external societal behaviors such as the failure to wear stipulated Muslim clothing for both men and women or to perform Friday prayers for men as specified in *Qanun* No. 11/2002,<sup>28</sup> and *Qanuns* Nos. 12 & 13, and No. 14/2004 regulating *Khamar* (sale and consumption of liquor), *Maisir* (gambling) and *Khalwat* (secluded proximity

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minorities of Christians and Buddhists in Aceh.)

<sup>25</sup> For concise discussions of the *shari'ah*, consult Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford, UK: Oneworld Publications, 2008); Wael E. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009).

<sup>26</sup> 'Law on Governing Aceh' (LoGA) of 2006 gives further justification for Aceh to implement the *shari'ah*.

<sup>27</sup> Consult e.g., Wael B. Hallaq, *A History of Islamic Legal Theories* (Cambridge University Press, 1997), index, s.v. *maqasid al-shari'ah*.

<sup>28</sup> This *Qanun* on the implementation of Islamic law in the areas of faith, worship and dissemination of Islamic teaching is the *qanun* currently being used to penalize Muslim women who do not wear the headscarf according to approved standards.

between unrelated unmarried men and women).<sup>29</sup> However, there is also *Qanun* No. 7/2004 on the management of *zakat* (charitable alms) that sets up the *bayt ul-mal* (public treasury) and deals directly with issues of social justice & equity and attending to the requirements of the needy.<sup>30</sup> Nevertheless, the first four *qanuns* have remained the focus of both internal and external debate, and the following accounts of five Acehese women we shall now present also concentrate on these four provincial regulations.

### Five Women on *Shari'ah*

1) One of these women is 'Pocut' (pseudonym)<sup>31</sup> whose husband was punished by seven public canings in 2005<sup>32</sup> for *maisir*.<sup>33</sup> Pocut and her husband along with their children live in Aceh Tamiang. He works as a porter at the local bus station, while she works different jobs to help support their family, including washing dishes in the town's restaurants and selling sweets on special public holidays. The two together made about Rp. 60,000 (ca. five dollars US) a day prior to his being caught for his offence, but more than a half of his daily earnings of Rp. 30,000 were spent on his drinking and gambling. Her husband was introduced to these illicit practices through his friendship with other porters and bus drivers at the station. According to Pocut, his gambling habit was more serious than his drinking of liquor. They often quarreled over

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<sup>29</sup> The last three *qanuns* have since been combined, improved and enlarged creating a single *Qanun* No. 6/2014 on Islamic law offence (*hukum jinayat*) to include other issues such as illicit sexual intercourse (*zina*), rape, and sexual abuses making it more friendly towards women, but many of the stumbling issues raised by our female informants remain.

<sup>30</sup> The Aceh Parliament has also adopted two other *qanuns* in 2014 on *shari'ah* ruling which are *Qanun* No. 8/2014 on the principles of Islamic *shari'ah*, and *Qanun* No. 9/2014 on the development of *shari'ah* banking system in order to improve the overall implementation of Islamic law in Aceh.

<sup>31</sup> At their request, the names of four of our five women are concealed.

<sup>32</sup> For a comprehensive list of *shari'ah* offences and punishments in Aceh during the year 2005, see an inventory dated February 2006 produced by the Aceh Shari'ah Court /*Aceh Mahkamah Syariah* (document in our possession).

<sup>33</sup> Telephone interview with 'Pocut', 7<sup>th</sup> May 2008.

money and his illicit habits, yet he continued to commit “*pekerjaan terkutuk itu* [those damned acts].” Here is Pocut’s own account:

“My husband was a good man but his bad practice has turned him into a man of anger who cared nothing for his family. Since I love him and our young children, I dreamed for his repentance. But, nothing has stopped him from drinking and gambling.” She got discouraged over his behavior and a few times considered running away with her children. But, not knowing where to go and what to do, she stayed with him and suffered along with her children.

Pocut said that she derived strength from her young daughter of ten years who always advised her to be patient with “*ayah* [papa]”, and who was also able to gain sympathy from her classmates and friends due to the suffering she endured from the behavior of her father. The girl’s early maturity due to the circumstances she lived in proved to be the nucleus for a positive reaction by her friends toward her and her younger siblings when her father was later punished. The father loves his children, but his addiction to drinking and gambling had distanced him from them. He was caught while gambling with a number of his friends in the middle of the year, and was judged guilty in the *shari’ah* court leading to his punishment shortly thereafter. His wife and children together witnessed the caning along with the rest of the public.

“While at the time my children thought that the punishment was proper, I perceived it to be too light. My husband himself said that it was of little pain, but the embarrassment of being up on the stage witnessed by hundreds of people, including our own children!—not the pain—*that* put an end to his drinking and gambling habits! My husband *benar-benar bertaubat setelah itu* [really repented afterwards].”

For Pocut and her family the *shari’ah* punishment is positive, though she acknowledges that not everyone stops their bad practices after being punished. In fact, “I know one person who continued to gamble even after being sentenced. *Nyan hana lee ubat* [Acehnese: there is no more remedy for him].” The positive outcome of their experience is also coupled by the reality that their children were not traumatized after seeing their father

being punished in public, and their teachers and friends at school continued to show their sympathy, and shared the family happiness when they were informed that “*ayah kami benar-benar malu dan bertaubat setelah itu* [our father truly felt embarrassed and repented afterwards].”<sup>34</sup>

2) The impact of *shari'ah* offence and punishment is not always positive. Yeni (pseudonym), a young lady from Aceh Tengah who was found guilty of practicing *khalwat* with her male friend, is critical of *shari'ah* implementation and the *Wilayahul Hisbah* (WH, literally ‘administration of public order’), or the ‘vice-and-virtue patrol’, known locally as *polisi syariat* (*shari'ah* police).<sup>35</sup> She received two-years of college education and works in the private sector. Yeni was found in a house alone with her male friend by the community who then called the WH.<sup>36</sup> The virtue police and some community members forced open the door of the house and found the couple sitting together on a couch in the living room. They were fully dressed and acknowledged no improper act. They were interrogated by both several community leaders and members of the *shari'ah* police.

“I felt humiliated being interrogated in front of many eyes as if we were criminals. As far as I am concerned I have not done anything wrong to be subjected to this kind of treatment.” When I reminded her of the *shari'ah* ruling against *khalwat*, she raised her voice: “*Shari'ah* is only against women and the weak like me; have they caught *pejabat* [high ranking officers] or corruptors who plundered public money and law enforcers who violated our dignity?!” She related that the WH had been unkind and intimidating. “They forced you to acknowledge things you have not committed, and this WH makes us dislike the *shari'ah*.”

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<sup>34</sup> Though Pocut did not mention any other children being traumatized after seeing their parents sentenced in public, we do hear of such cases especially when the children are being ridiculed by their peers as children of gamblers or drunkards. However, no serious study has yet been conducted in order to gauge the impact of *shari'ah* punishment on both offenders and their families.

<sup>35</sup> WH was set up through Perda (now Qanun) No. 5/2000 on the Implementation of Islamic Law as a body to monitor and reenforce *shari'a*.

<sup>36</sup> Telephone interview with Yeni was conducted on 6 May 2008. Unfortunately, I am not able to cross-check Yeni's account with that of WH. Whatever presented here is based on her understanding of the incident.

Yeni quickly added: “Do not get me wrong: I am a Muslim but do not like the way they [WH and *shari'ah* watchdogs] get into our private life. My knowledge of Islam is limited, but I do know that the Prophet, peace be upon him, required four male witnesses in the case of adultery. He also criticized Umar [ibn al-Khattab] from peeking [*mengintip*] into the house of a Companion in order to uncover his illicit practices. But here in Aceh the guilt of violating Islamic law is often decided based on intrusive peeping and pure assumption.”

Yeni thus implies the irony of implementing *shari'ah* in Aceh and its distance from the example of the Prophet. When I said: “But, Yeni, you were alone with your friend in the house and that is *khalwat* and against the *shari'ah* regulation,” she replied: “Yes! But – didn't that Companion of the Prophet drink or probably womanize in his own house when the Prophet censured Umar for peeping intrusively into his private affairs?”<sup>37</sup>

Yeni's case was brought into the *shari'ah* court, and she with her male friend were both found guilty of *khalwat*, and sentenced to five strokes of the cane for herself and seven for her male friend.<sup>38</sup> The sentence was never executed. But in her own words: “The social punishment is more terrifying than the execution by the court.” She felt intimidated by others long after the court case itself, adding that “the hardest thing is to be seen as a cheap available woman.”

3) Yeni's unpleasant experience with *shari'ah* police is also echoed by our three other women informants, especially the one whose daily professional activity is to provide legal assistance to women who get in trouble with the law. Before meeting her, we will first recount the views of the female *shari'ah* judge Cutnyak

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<sup>37</sup> Impressed by her argument, I asked whether she knew of the Umar story long before her case occurred. Yeni candidly admits that she learned about Islam and the story long after she was punished in 2005.

<sup>38</sup> Yeni is unable to explain the reason that her male friend received more strokes of the cane than herself. Without referring to this specific case, a judge from the ‘*Shari'ah* Provincial Court’ predicts one of two reasons, or both combined together. One is related to gender: since he is a man he gets more strokes than the female, or he is considered to be a more active party in the offense by the fact that he is visiting the girl rather than the other way around.



(pseudonym).<sup>39</sup> Cutnyak has been working for different levels of *shari'ah* court for twenty-nine years, with the last nineteen years as a *shari'ah* judge. She is a devotee of the Islamic law who views its current implementation in Aceh as not meeting its *maqasid* of delivering justice. She provided a number of reasons which have led to this deficiency. First, there was no prior study and discussion as to how to implement the *shari'ah*, what content it entails and which of the various classical and contemporary views to be adopted. This shortcoming has led to the creation of weak *qanuns* and regulations. The second problem is the lack of socialization of the *shari'ah* rulings to of the public. Cutnyak thinks that most communities are not very aware of the regulations, therefore they cannot be forced upon people:

“In contrast to positive laws that can be forced upon people, certain *shari'ah* law is more personal and based on one's active desire and choice [*suka rela*]. Even when Islamic rulings have a collective implication, they cannot be forced on people without proper socialization and prior education.”

According to our judge, education is key for the *shari'ah* efforts, for it may potentially create conscious minds and enlightened souls that will implement Islamic laws freely without the need for outside pressure.

Cutnyak's third concern is related to the WH. She stressed that the members of the *wilayatul hisbah*, or the monitoring and enforcement body for the *shari'ah*, has not been properly recruited and trained. They also lack a clear mandate and adequate guidelines, often leaving them to the dictates of their own conscience or personal preferences, and this frequently leads them to overact when dealing with *shari'ah* offences. According to our judge, some conservative *'ulama* also pose a serious challenge to the implementation of *shari'ah*:

“They need to understand our contemporary reality and listen to voices of the people, so that the *'ulama* can respond to *shari'ah* challenges properly and adequately.

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<sup>39</sup> Interview with Cutnyak was conducted on 7<sup>th</sup> May 2008, and again by telephone on 2<sup>nd</sup> June 2008.

As the keepers of our tradition, the 'ulama have to also modernize themselves by reading different *kitab*s [Islamic books] that can enrich their horizon and strengthen their role as guardian of our values”

With all its problems, she depicts our present stage in the implementation of *shari'ah* as “*maju kena mundur kena* [to increase is painful and to decrease is also painful],” and therefore “we have to overcome our predicament by proper education in Islam and building and developing the true Muslim family in an effort to seek Allah's *rida*.” When asked about the strength of *shari'ah* implementation, Cutnyak lists a significant point: it has created a strong sense of awareness among parents to care for and pay attention to their children so that they do not fall into activities and adopt a lifestyle that can shame the family in the eyes of the community.

4) The next voice is that of a religion teacher in a public high school in Banda Aceh, whom we will call Sinyak (pseudonym).<sup>40</sup> Like the judge, our teacher is also a staunch advocate of *shari'ah* and similarly sees serious challenges in its current implementation in Aceh. She likens the problem of the implementation of the beautiful intent of God's law to a pure innocent child who has been dressed in ugly, shabby clothing:

“We love *shari'ah* as we love our own child; and when we see the child's ugly dress we do not discard the child but instead change the clothing. Likewise, we are aware of problems in our current implementation of Islamic law that need removing without abandoning *shari'ah* rulings.”

According to Sinyak, one of the chief problems is that the current implementation of *shari'ah* has been focused on punishment and *cambuk* (caning), creating an impression that *shari'ah* is a rule implemented through violence and force. Her second concern is related to the excessive emphasis of *shari'ah* implementation upon the dress code that criminalizes a great number of women, giving a secondary impression that the *shari'ah* is initiated primarily against women.

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<sup>40</sup> Interviews with Sinyak were conducted on 2<sup>nd</sup> May 2008, and again by telephone on 2<sup>nd</sup> June 2008.

A new practice of segregating boys and girls in certain schools, including her own, is also seen as problematic.<sup>41</sup> It reduces the spirit of competition among students and creates the unbalanced view of being either male or female oriented. The only positive result of such segregated class so far is that it has forced male students to do things— such as record keeping, administration tasks, and cleaning classrooms— that would otherwise fall on the shoulders of females. Now, male students become accustomed to doing “*pekerjaan perempuan* [female chores].”

Another issue raised by Sinyak concerns polygamy. She feels that the practice of polygamy is on the rise, though she admits: “I know of no study conducted to backup my assumption; but I do hear more reports of polygamy than before.” According to her, some Acehnese think that polygamy is a necessary part of *shari'ah*,<sup>42</sup> and a few may even believe that “practicing polygamy or permitting one’s husband to practice polygamy is a key to entering paradise.”<sup>43</sup> Sinyak maintains that polygamy is counterproductive for our community since it increases family violence, abuse of children, and encourages divorces. “In order for the *shari'ah* to succeed, we have to remove this entire problem as we discard the shabby dress of our pure beautiful child.”

5) We now come to our final account of Fatimahsyam who leads a nongovernmental organization that provides legal help to women who are in trouble with law,<sup>44</sup> including *shari'ah*

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<sup>41</sup> Banda Aceh is one of those districts that began to segregate male and female students in separate classes presumably based on *shari'ah* principles, although no specific ruling about it has yet been passed. Such practice is usually based merely on an instruction from the local office of education.

<sup>42</sup> While polygamy is allowed in classical Islamic law, it is never treated as an act of piety like other practices such as avoiding *khamar* or *maisir* are; rather it is generally viewed as a concession (*rukhsah*).

<sup>43</sup> The view that polygamy as an act of piety is new to Aceh, and the existing *shari'ah* rulings have not promoted such a view. However, *shari'ah* implementation seems to have given grounds for implanting such a view by conservative *ulama* and religious activists flocking to Aceh from other parts of Indonesia or from overseas in the aftermath of the Tsunami. I am not aware of any serious study undertaken on this issue.

<sup>44</sup> Fatimah is Executive Director of the *Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan*, or LBH Apik, based in

rulings. I know Fatimah as a fierce critic of Islamic law due to her close association with and support of many women accused of violating the *shari'ah*.<sup>45</sup> I began my interview with the provocative question of whether she is for or against Islamic law?<sup>46</sup> Her answer is unequivocal: "I am for *shari'ah* so long as it is fulfilling the Qur'anic message of *rahmatan lil alamin* [a mercy for the entire world]." She continues: "The truth is that Islamic law has been discriminatory not only against women, the poor and the weak, but also against the Acehnese." She explains that none of the non-Acehnese inhabitants or the police as well as military officers have been subjected to *shari'ah* rulings.

According to her the problem with Islamic law in Aceh is not only with regard to the way it is being implemented but also with regard to the context and the substance of the actual material law. She lists a number of deficiencies in substantial law, including inconsistency as it is codified and treated as a positive law, the absence of regulations that allow the accused to defend themselves, the lack of any mechanism that monitors law enforcement in their execution of Islamic law, and the absence of guidelines on the rights of the accused. In addition to the problem of substance of the material law, she also notes the lack of an adequate legal-guideline or legal-mechanism known as procedural law (*hukum acara*) regulating how existing rulings should best be implemented. Thus, in the actual rulings of the *shari'ah*-based law, a judge is forced to rely on the *hukum acara* derived from Indonesia's national or secular laws.

In Fatimah's understanding, the implementation of Islamic law itself is also very problematic. Rather than operating on the principle of the presumption of innocence of the accused until proven guilty by evidence, those who implement *shari'ah* rulings operate instead on the presumption of guilt. Furthermore, intimidation and abuse of accused women by the police and the WH is a severe

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Lhokseumawe in North Aceh.

<sup>45</sup> Fatimah is also now an active member of a new national political party of National Democrat, and in 2014 ran on its ballot for the Aceh Besar district parliament but lost the election.

<sup>46</sup> Telephone interview with Fatimahsyah conducted on 3<sup>rd</sup> June 2008.

problem in *shari'ah* implementation.<sup>47</sup> Political interests, coupled with social pressure, is yet another concern. (Fatimah mentioned a number of legal cases she had dealt with that in her view were definitely colored by political aspects, including one case involving an accusation of *khalwat* against two members of a political party by their fellow party member in order to demote an individual from the party leadership.)

In addition to punishment by the *shari'ah* court, women and men punished for wrong doing related to *shari'h* offence receive further social punishment from their community, such as banishment from their village or being fired from their work. In her understanding such communal social punishments occur because Islamic rulings do not specify or provide for the rehabilitation process of those who have been sentenced and punished for *shari'ah* offences. Finally, Fatimah mentioned the weak and unreliable mechanism employed to prove *khalwat* cases, and observes: “ironically, many have been found guilty based on such weak procedure.” With all of the above problems, Fatimah thinks that “to improve the situation ideally we have to begin from scratch: conducting a study on the proper implementation of *shari'ah*, and write an academic paper arguing and debating for the need of the *shari'ah*, and to create new *qanuns* rather than improving existing ones.” Fatimah feels that this is the only way out to establish *shari'ah*-based justice. (I should add that, in my own understanding, her points are very well taken: such informed discussion and debate is critical in order to create some kind of public consensus before laws are drafted; and these important steps were not conducted prior to the creation of the existing *Qanuns*.)

Our five women have indeed provided important accounts containing lessons for better understanding the implementation of *shari'ah* currently underway in Aceh. Their differing perspectives, reflecting the varied social and economic strata of society, complement and reinforce each other in several ways, while they also display contrasting viewpoints and approaches toward the

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<sup>47</sup> The national police, rather than the WH, are entrusted with investigation and interrogation of the offence before the case is sent to the *shari'ah* court. The national police can, however, request assistance from WH in their investigation.

possible benefits to be reaped and the real constraints imposed in attempting to revive Islamic law in Acehnese society today.

—TM