# ISLAMIC LEGAL THOUGHT AND PRACTICES OF

# SEVENTEENTH CENTURY ACEH: TREATING THE OTHERS

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# TABLE OF CONTENTS

**Abstract**

This study examines the legal thought and practices of Aceh at its arguably golden age, namely the seventeenth century. It does not only analyze the legal texts, but more importantly it attempts to elucidate its founding worldview, underlying philosophy, and the guiding ethical, moral and cultural system, that better inform readers of the legal thought and practices of the Malayo-Aceh. The study draws its elucidation primarily from the indigenous sources, which are recorded in the oral and written traditions. In a society that prized orality, Aceh recorded its history and traditions in ways unique to such a nature—the many *hikayat*s, folk-tales, proverbs, poems, and the other kinds of expression within the literature genre. It also examines the indigenous historical sources, published and unpublished, as well as European and other sources. Such an approach provides an enriched understanding of the purported tension and conflict between Sharī'ah and Adat, the Adat Worldview of the Malayo-Aceh, and its ethical system. Understanding the political and economic context of the seventeenth century Aceh provides a spatial and temporal background to the study, as well as an idea of power and Otherness. In examining the legal texts, two primary texts are studied—*Adat Aceh* of the royal decrees (*sarakata*) type, and *Mir'āt al-Ṭullāb* by al-Sinkīlī of the Islamic legal (*fiqhī*) type, compared with another two texts of the same types. And in examining these legal texts, the study focuses on the treating of the Others—the foreign and indigenous Others. In sum, the above investigations inform us of the idea of Power, Authority and the Others to the Acehnese of the seventeenth century, and the idea of diversity and plurality that is integral to the Malayo-Islamic worldview of Aceh.

**Précis**

Cette étude examine la pensée et les pratiques juridiques d'Aceh, à ce qui est considéré son âge d'or, c'est-à-dire au XVIIe siècle. Elle n'analysera pas seulement les textes légaux mais, surtout, elle tentera de préciser sa vision du monde fondatrice, fondement de la philosophie, et le système de référence éthique, moral et culturel, qui informeront davantage les lecteurs sur la pensée et les pratiques juridiques du monde malayo-acehais. L'étude tire ses enseignements essentiellement des sources indigènes qui proviennent des traditions orales et écrites. Dans une société qui privilégia l'oral, Aceh a enregistré son histoire et ses traditions de différentes façons dont la nature est unique – beaucoup d'*hikayats*, de contes populaires, de proverbes, de poèmes et tous les autres moyens d'expressions littéraires. Elle examine également les sources historiques indigènes, publiées ou pas, et les sources européennes ou autres. Une telle approche propose une compréhension enrichie des prétendus tension et conflit entre la *charia* et l'*adat*, la vision de monde de l'*adat* malayo-acehais, et son système éthique. La compréhension du contexte politique et économique du XVIIe siècle à Aceh fournit un cadre spatial et temporel à l'étude ainsi qu'une idée du pouvoir et de l'Autre. Parmi les textes passés au crible, deux fondamentaux ont été étudiés – *Adat Aceh*, sorte de décrêts royaux (*sarakata*), et *Mir'āt al-Ṭullāb* d'al-Sinkīlī, qui se rapporte à la loi islamique (*fiqhī*) – en comparaison avec deux autres textes du même type. En examinant ces textes légaux, l'étude se penche sur le traitement des Autres : les étrangers et les autres indigènes. En résumé, les enquêtes décrites ci-dessus nous informe sur l'idée de Pouvoir, l'Autorité et les Autres pour les Acehais du XVIIe siècle, ainsi que sur l'idée de diversité et de pluralité qui fait partie intégrante de la vision du monde malayo-islamique à Aceh.

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**Notes on transliteration and dates**

The Arabic transliteration follows the system of Library of Congress.

The Malay transliteration, where it is cited from its *Jawi* version, follows the Arabic transliteration; and where it is cited from its Romanized version, no diacritic symbols are used, and it follows the source unless otherwise stated. For example, the word *hukum* is a Malay word written in latin letters without the diacritic symbol, and this is retained, as opposed to *ḥukm* in Arabic when cited; *adat* is written as such in Malay, instead of *'ādah* in Arabic. Similarly the word *Sharī'at*, when cited from the Jawi version I retain its Arabic transliteration, when the Malay word is referred I use the standard version in Modern Malay: *syari'at* (without diacritic symbols); otherwise, by default the Arabic *Sharī'ah* is used. However, in earlier Malay spelling system, this may be written as shariat, or shari'at. This will be cited as written in the referred sources without change.

By default, dates refer to the Christian calendar (AD). When the *hijri* dates are used, they are mentioned first followed by AD separated by an oblique. For example, in Raja Ali Haji (d. 1873), the date refers is AD; and in al-Ghazzālī (d. 505/1111); the first refers to the *hijri* date, and the second to the AD.

## ISLAMIC LEGAL THOUGHT AND PRACTICES OF SEVENTEENTH CENTURY ACEH: TREATING THE OTHERS

## INTRODUCTION

### Why the Study?

Seventeenth-century Aceh invoked an "aura" unique to its nature, one that demands to be understood on its own terms. By imposing its "nature" (or its own aura) on others, colonial imperialism had only destroyed the beauty and aura of "natural things." As Walter Benjamin (1935) once emphasized, "to pry an object from its shell, to destroy its aura, is the mark of a perception whose 'sense of the universal equality of things' has increased to such a degree that it extracts it even from a unique object by means of reproduction."[1] Although Benjamin was speaking of mass mechanical reproduction of art works, this truism is never less so in the European treatment of its "object"—Aceh's social, political, cultural, and legal life—by burdening on others the European 'sense of the universal equality of things', in this case Aceh. Therefore, the objective of this study is to reconstruct Aceh's legal life from its "own shell", and on its own terms, through its worldview, value and ethical systems. This I draw from indigenuous sources, many of which remain untranslated into European languages, or are left unpublished in the form of manuscripts and lose papers, or are hidden in Aceh's cultural and literary works and oral traditions. I ask the questions: what characterized Aceh's legal thought and practices? To what extent did Islamic law and/or other sources fashion its legal thought and practices? With the purpose of focusing on legal data, and for all intents and purposes, here I lay special emphasis on legal treatment of the "Others" (the non-Muslims). More importantly I analyze the Acehnese conception of and their relation with the "Others." And because understanding the legal thought and practice cannot be done independent of its social, political, cultural, and intellectual contexts, I examine its social and cultural life,

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[1] Walter Benjamin, "The Work of Art in the Age of Mechanical Reproduction," in Walter Benjamin, *Illuminations*, Harry Zohn (trans.), Hannah Arendt (ed. & intro.), 4th impr. (London: Fontana/Collins, 1982), 225. This article was first published in 1935 in German.

and importantly, the geo-political and economic importance of Aceh during the period of study.

**Significance and Contribution of the Study**

I suggest that a study of the seventeenth-century legal history of Aceh, and by extension its socio-political and cultural-intellectual history, is not altogether fuzzy and hazy. On the contrary, by first understanding its life "from its shell," and from its sources unique to its nature, one could better appreciate its history. Owing to the scarcity and ambiguity of legal sources, or the "irrationality" of legal life, as the Europeans are accustomed to, pre-modern Aceh legal study did not receive the desired attention. Accentuating the difficulties, Wilkinson started his report *Papers on Malay Subjects* by stressing,

> Of all the branches of Malay research the study of jurisprudence is the one that presents the greatest difficulties. Malay laws were never committed to writing; they were constantly overridden by autocratic chiefs and unjust judges; they varied in each State; they did not harmonise with the doctrines of Islam that they professed to follow; they were often expressed in metaphors or proverbs that seem to baffle interpretation.[2]

Prior to Wilkinson, the renowned Dutch scholar Hurgronje, made the following lament,

> Accustomed to the idea that all law should be suitably drawn in writing, he [the European] is apt to be overjoyed at coming on the track of a collection of written ordinances, especially in a place characterized by such hopeless confusion as the Achehnese states. So when he perceives that there is now little or no actual observance of these laws, he rushes to the conclusion that at an earlier period order and unity preceded the present misrule. The very contrary of this can be proved to be the case as far as Acheh is concerned.[3]

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[2] R. J. Wilkinson, *Papers on Malay Subjects. Law, Pt. 1. Introductory Sketch* (Kuala Lumpur: Printed at the F.M.S. Govt Press, 1908), 1. Wilkinson was the English Resident in Negeri Sembilan, Malaysia, from 1910-1911.

[3] C. Snouck Hurgronje, *The Achehnese*, trans. W.S. O'Sullivan, 2 vols. (Leyden, London: E. J. Brill; Luzac & co., 1906), 1:10.

M.B. Hooker acknowledged the difficulties in studying pre-modern Malay legal history due to the physical state of the legal sources, their accounts, descriptions, as well as the rationalizations. This, however, must not fetter any academic and scientific research of Malay legal history. Hooker suggested treating all the four aspects, without which any description is deemed seriously deficient, namely the definition (of what is Southeast Asia, of SEAsian texts and classical laws, of what law is to this region), the sources, the historiography and redefinitions, and the diffusion of law in the region.[4] In an almost similar challenge to analyzing early Middle Eastern history, Chamberlain, in his *Knowledge and Social Practice in Medieval Damascus, 1190-1350* suggested three possible strategies. First, to sift through the standard sources; secondly to tabulate the quantifiable information in the biographical dictionaries as adopted by Gilbert for high medieval Damascus and Petry for late medieval Cairo; and thirdly to intensively exploit the few surviving original documents.[5] Here, I would further suggest that we must not restrict our sources to written historical sources. In a society that prized orality, Aceh recorded its history and traditions in ways unique to such a nature—to wit the many *hikayat*s, folk-tales, proverbs, poems, and the other kinds of expression within the literature genre. Such expressions are readily available, transmitted generation to generation and expressed deep-seated meanings and embedded values of the Acehnese society. Examination and analysis of this genre is wanting. In this study I endeavor to fill up this lacuna.

Although this study outwardly seems to aim at reconstructing Aceh's legal, as well as its geo-political life during the said period, it endeavors to serve as a window to understanding Muslim Acehnese relation with, and their perception of the "Others": the non-Muslims. I therefore attempt to analyze how Acehnese—the rulers and people— conceived of the notion of power and authority, vis-à-vis themselves and the "Others," in what ways they maintained and sustained this power, and how they conceived of their

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[4] M. B. Hooker, "Introduction: The South-East Asian Law Texts: Materials and Definitions," in *The Laws of South-East Asia Volume 1: The Pre-Modern Texts*, ed. M. B. Hooker (Singapore: Butterworth & Co. (Asia) Pte Ltd, 1986), 1, and 2ff.

[5] Michael Chamberlain, *Knowledge and Social Practice in Medieval Damascus, 1190-1350*, Cambridge studies in Islamic civilization (Cambridge; New York: Cambridge University Press, 1994), 12-13.

interactions with the non-Muslims. Seventeenth-century Aceh was an arena for international competition, domination, and struggle for power and control.[6] Trade has long played an important role in the region, shaped the nature of relationships, and justified Europe's continued presence. Aceh's strengthening of relation with the Ottoman Empire at this time was not unexpected under such threatening circumstance.

The Seventeenth Century was especially important because it was considered as Aceh's political, economical, cultural and intellectual golden age, under the rulership of the great Sultan Iskandar Muda (r. 1607-1636), succeeded by Sultan Iskandar Thānī (r. 1636-1641), and subsequently by the four Queens of Aceh (r. 1641-1698), and during which time the four great scholars of Aceh, the Shaykh al-Islām and the Qāḍī al-Malik al-'Ādil (the office of chief Judge), lived.[7]

## Methodology and Sources

My study consists of two major parts. The first part deals with theoretical problems, and the second analyzes historical, cultural, and legal data. Nonetheless, the two parts are not independent of each other. My examination is interwoven with theoretical and abstract problems as well as the historical data and cultural manifestation expressed in different concrete forms. I apply historical and legal anthropological questions (history-anthropology). To be sure, such an inter-disciplinary approach defies any strict demarcated line between history and anthropology. In furthering the methodological analysis, I also refer to the Acehnese literature genre found in numerous

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[6] Indians and Arabs continued to stay in Aceh since the thirteenth century. The great Chinese Admiral Cheng Ho was already in Aceh in 1404 with hundreds of huge ships from China, and they remained present in Aceh thereafter (although Chinese did experience oscillation of bad-relations in the seventeenth and eighteenth centuries). As early as the first quarter of the sixteenth century, Portuguese were already engaged, not only in trade but also in battles vying for domination of the region. The French Verrazane and Pierre Caunay's first trip to Sumatra between 1525-1528 marked the beginning of a French presence. Soon after, the Dutch (in 1584, the first two Dutch ships Leeuw and Leeuwin arrived in Aceh under the command of Cornelis de Houtman), and the English (following the formation of the East India Company [EIC] in 1599, four British ships left London; in 1602 two ships stopped at Aceh and another two at Banten, under the command of James Lancaster) joined the vying.

[7] Shaykh Ḥamzah Fanṣūri, (d. ca. 1599); Shaykh 'Abd al-Ṣamad al-Samaṭrā'ī (ca. 1574-1629); Shaykh Nūr al-Dīn al-Rānīrī (lived in Aceh between 1636-1644); and Shaykh 'Abd al-Ra'ūf al-Sinkīlī (1614-1692).

*Hikayat*, *pantun* (quatrain), *syair* and *puisi* (poems), *peribahasa* and *bidalan* (proverbs). For it is here they preserved and memorialized their values, thoughts and inner selves. I must admit that such an endeavor is not without risks. However, it is worth the attempt in order to break the impasse in examining early Aceh legal history as alluded above. After all, no serious attempt to discover new lands rests without risks.

What will be of interest to legal historians and anthropologists is the question of structure and process, as well as theory and practice: law as imposed coded texts, and law in practice as a negotiated process (law as a process). Some legal anthropologists have probed into such questions, and many others have studied specific ethnological groups.[8] However, similar studies on Aceh in the period under study are clearly lacking. The infamous tension between Sharī'ah and Adat will be revisited. Instead of two competing forces as espoused by Dutch scholars, such as Hurgronje (d. 1936) and van Vollenhoven's (d. 1933) primacy of *Adat* over Sharī'ah, or van den Berg's primacy of Sharī'ah over *Adat* (1882), both Sharī'ah and *Adat* ought to be seen as complementary, needing each other to render the "law" tenable and applicable. A study of the legal texts and practices will shed light on this complementary and negotiated interactions and interpretation of each other. The oft-repeated Acehnese maxim, to cite an example, "*hukom ngon adat han jeuet cre, lage dat ngon sipheuet*" (The Ḥukm [Islamic law] and *Adat* are inseparable as God's Essence and Attributes), is bountifully found in various expressions and metaphors from the time of Iskandar Muda to the present Acehnese literature. Hurgronje himself acknowledged and reported the saying (owing to its popularity and commonality). However he qualified it with 'greatest of all is nevertheless the *adat*.' This qualification, nonetheless, was left unjustified.

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[8] These anthropologists include Lloyd A. Fallers (*Law Without Precedent*, Chicago, 1969), Sally Falk Moore (*Law as Process*, London, 1978), Philip Abrams (*Historical Sociology*, New York, 1982), and Sally Humphreys (*The Discourse of Law*, New York, 1985). Others have studied specific ethnological groups, such as the African tribes (Fallers, Gulliver, and Gluckman), Moroccan society (Rosen and Eickleman), Northern India (Bernard S. Cohn), Kayseri, Cyprus, Cairo (Jennings, Tucker, and Powers), Ottoman Bursa (Haim Gerber), Sumatran communities of Gayo (John Bowen) and Minangkabau (Benda-Beckmann); especially important and relevant are Clifford Geertz's works (his theoretical as well as his ethnographical studies of Morocco and Java).

Students of literature and literary criticism will be interested in the questions of how such literary expressions could sufficiently reflect realities, and what is the relation between the world of words and its reference to the real world (referentiality of literary arts)? Syed Muhammad Naquib al-Attas' works of the Aceh's ṣūfi poets, amongst others, and A. Teeuw's preliminary study of Indonesian literature[9] provide compelling impetus for further research. Understanding Malay's worldview and epistemology, its cultural meanings and value system that had shaped Malay identity and its subconscious world, forms an integral part of this study.[10]

Owing to the importance of this theoretical lens, I begin this work by discussing the purported conflict and tension in the legal life of the Acehnese, or the dissonance between ideals and realities, and theory and practice. The first chapter argues that norms and practices are not a matter of conflictual relationship, but instead a creative symbiosis and complementary relationship springing off and serving the same metaphysical and ethical systems; similarly the Sharī'ah-Adat relationship. However, in order to appreciate such a relationship, one must understand what and how Sharī'ah and *Adat* are conceived of and perceived by the Acehnese/Malay worldview. Here I discuss the polysemous term *adat* and related legal terms.

In Chapter Two I discuss the socio-political and socio-economic milieu of Aceh in the seventeenth century. While it was a period considered as Aceh's golden age politically, economically, culturally and intellectually, it also witnessed one of the most heightened periods of economic and political tensions. On one front, Aceh was facing the imminent threat of the European powers, vying for control and monopoly of the region's resources, albeit of different degree and intensity: the Portuguese, Dutch, English, French, and Danes. Acehnese were also cognizant of the civilizing and religious zeal that came together with European economic and political interests. On the other front, Aceh was consolidating and expanding its power around the region, particularly in the face of

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[9] Presented at the 5th Conference of the International Association of Historians of Asia in 1974.

[10] Here I draw inspiration from al-Attas' seminal lecture in 1972, *Islam Dalam Sejarah dan Kebudayaan Melayu* (Islam in Malay History and Culture), and his *Preliminary Statement on a General Theory of the Islamization of the Malay-Indonesian Archipelago* (1969), as well as the works of Anthony Johns and the Andayas.

foreign onslaught. It is worth noting that Aceh saw itself as part of the greater Islamic Ummah, and continued to strengthen its relations with the central lands of Islam, in particular the Ottomans. Understanding the power structure and institutions is in order. This chapter includes the discussion on Acehnese political structures, court officials, and institutions. Sultanate is a key concept in the Acehnese worldview and ethical system. The Sultan stands in the center of this political structure. He or she represents the Divine power and the Shadow of God on earth. He symbolizes the unity of the people. Nonetheless, one could not stress enough the influential role of the religious authority (*'ulamā'*) and the Sultan's ministers (*uleebalang*). It was these groups who appointed or dismissed the sultans. This dynamism of power structure in Aceh must not be understated.

Chapter three focuses on Acehnese legal life. But analyzing its legal life must be preceded by a comprehension of its legal worldview. It is through its own lens and from its own shell that one could appropriately investigate Aceh's legal life, just so that one does not destroy the 'beauty and aura of its natural things.' I argue that the Acehnese worldview is a Malayo-Islamic worldview. It draws its origin from and retains its Malayness, but significantly affected by the Islamization process. This we observe in its conception of Sultan, a pivotal idea in the Malay worldview, affected by the Islamization process that started very early in Aceh. The Acehnese sultan differs significantly from the early Malay *raja* depicted as the god-king (*mahadewa* or *maharaja*), and endowed with sacral power. A sultan is an important constituent to the Malay cosmic order, but to the Acehnese he is not a god-king who stands above temporal power. Elaboration of this concept of power and rulership as seen from indigenous sources is central in understanding the legal life of the Aceh people. Key to understanding the legal life is appreciating key concepts in Aceh's legal thinking and decision-making, such as the idea of *gotong-royong* (co-bearing of burdens and mutual cooperation), *mufakat* (consensus) through the process of *musyawarah* (communal discussion and collective deliberation) in forming the dual concept of *musyawarah-mufakat*, and the Aceh way of conflict resolution.

Through the aforementioned lenses and theoretical framework, I examine the legal texts of Aceh of the seventeenth century, its historical data and narratives in order to

reconstruct first the socio-political, socio-economic, and cultural-intellectual milieu, and secondly the legal life of the seventeenth century. The second part of Chapter Three deals with the legal texts. Here I examine two main texts, i.e. the *Adat Aceh*, a collection of royal decrees and instructions primarily of Sultan Iskandar Muda, and secondly the *Mir'āt al-Ṭullāb* of 'Abd al-Ra'ūf al-Sinkīlī (d. 1693), the Shaykh al-Islām of the four Queens of Aceh. The importance of *Mir'āt* rests in the fact that it is the first known Islamic legal text (*fiqh*) on *mu'āmalāt* (sales), *munākaḥāt* (marriage), and *jināyāt* (injuries, criminal laws) in the Malay Archipelago, written by a religious scholar whose mission was to harmonize and reconcile the earlier polemic between the *wujūdiyyah* of Fanṣūrī-al-Sumaṭrānī and the orthodoxy of al-Rānīrī, and regain the religious stability in Aceh. For all intents and purposes, my examination concentrates on the treatment of the Others. In investigating these primary texts, I also examine contemporaneous texts such as the *Tāj al-Salāṭīn*, the *Undang-undang Melaka* (The Malacca Codes), considered to be one of the earliest Malay legal codes (fifteenth-eighteenth centuries), established in Aceh during the reign of Sultan Jamāl al-'Ālam Badr al-Munīr (r. 1703-1726), and other smaller legal tracts of the milieu under study. Glossing similar texts of the succeeding century helps demonstrate the sustainability and continuity or otherwise of some of the legal thought and practices. I therefore cross-examine the eighteenth-century text, *Safīnat al-Ḥukkām* of Shaykh Jalāl al-Dīn al-Tarussānī (d. 1760). And prior to examining the texts, I briefly introduced the contexts of these texts, namely the authors, patrons, and motivations for the composition of these texts. This helps us better appreciate the texts under study.

In summing up and in concluding the investigation, Chapter Four attempts a synthesis of all the above by discussing the nature of Muslim and non-Muslim relations in Aceh during its "formative" period, the Malay-Muslim's perspective of the "Others", and his construction of power and authority, and the manner by which this power and authority administers these plural and diverse Others. Here I argue that this treatment of the Others was not a static concept. Its dynamism was conditioned by the economic, political and religious exigencies of the time, although in general the others were treated positively, save occasional hard policies towards them. In addition, the indigenous Others and the foreign Others were not perceived as equals and therefore were treated unequally.

Seventeenth-century Aceh marked a pluralist legal environment, peculiar to the region in general. The Chapters are broadly divided as follows:

Chapter One:      The Theoretical Framing: Adat and Sharī'ah: Conflict and Tension?

Chapter Two:      The Political and Economic Context of Aceh

Chapter Three:    The Legal Life of Aceh, Legal Worldview, Legal Texts and Practices: Treating the Others.

Chapter Four:     Conclusion: Others, Power and Authority

**Sources**

Generally, the sources are divided into two major types: Malay (indigenous) and European sources. And within each type, two further categories are made: Early and Later sources. The former refers to the pre-colonial period (nineteenth century and earlier), while the latter refers to the colonial and post-colonial period (twentieth century and on).[11] Malay literary sources include the *Hikayat*, the Malay *sha'ir* (poems), *pantuns* (quatrain), *peribahasa* (proverbs) and *perumpamaan* (metaphors and parables).[12] Apart from these literary works, reference to royal edicts (*sarakata*), and the Aceh's equivalent of Persian Mirror of Princes are also used. Needless to say, legal sources such as the *fiqh* texts, the *Undang-undang* (legal digests) and *Adat Resam* (Royal Tradition and Protocols) form the primary source in this study. In Aceh's Islamic literature, the demarcating line between *'Aqīdah, Fiqh,* and *Taṣawwuf* was never drawn.[13] For this reason, some texts on *'Aqīdah* and *Taṣawwuf*, preceding, contemporaneous, and

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[11] Reference to Chinese, Indian, Arabic, and American sources will also be made where relevant.

[12] To this poetic culture Swettenham made an interesting observation: "The real Malay is a short…well-built man, with…bright intelligent eyes. His disposition is generally kindly; his manners are polite and easy. Never cringing, he is reserved with strangers and suspicious, though he does not show it….He is a good talker, speaks in parables, quotes proverbs and wise saws, has a strong sense of humour, and is very fond of a good joke. He takes an interest in the affairs of his neighbours and is consequently a gossip. He is a Muhammadan and a fatalist but he is also very superstitious." Frank Athelstane Swettenham, *Malay Sketches*, (London: John Lane, the Bodley Head, 1895), 2-3.

[13] This is a critical point in understanding the Malay's worldview.

succeeding the above texts will also be consulted. These include those of al-Rānīrī, al-Sinkīlī, Fanṣūrī, and Shaykh Aḥmad al-Faṭānī, as well as the *Adat Aceh*, and *Surat Keterangan Shaykh Jalaluddin*.[14] Secondary sources on the above texts are consulted, as well as the works of modern Malay-Indonesian scholars.[15]

European sources include travelers' memoirs and records,[16] the chronicles of Christian missionaries (Franciscan, Augustinians and Jesuits), and equally important the captives' accounts, such as the Portuguese Casper de Costa (sixteenth century), and the Dutch brothers Houtman (seventeenth century). The EIC and VOC records, colonial archives in British India Office, Leiden, and Jakarta National Archives, were also consulted, in addition to the unpublished Malay manuscripts (letters and correspondences between Malay rulers, the Europeans, and the Ottoman Empire, as well as traders' letters). I shall also refer to European secondary sources, particularly those by Snouck Hurgronje, R. J. Wilkinson, Denys Lombard, and Jorje Santos Alves.

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[14] A Malay-Minangkabau text, written by Fakih Saghir Jalaluddin on or before 1829, after the coming of the Christian Missionary to Western Sumatra. It reflected the tension and conflict between locals and the Christian missionary (*Kaum Paderi*). Sheikh Jalaluddin appeared to be on the moderate side who sought to find middle way, instead of resorting to violent confrontation.

[15] For instance, the Acehnese Hasbi Ash Shiddieqy (d. 1975), the Sumatran Hazairin (d. 1975), Teuku Iskandar, Ali Hasjmy, and Taufik Abdullah who are all of Aceh origin. It is worth mentioning that not insignificant numbers of papers written by local and regional scholars are found pertinent and insightful. These are papers presented in conferences, meetings, seminars, and workshops that escaped researchers' due attention.

[16] Such as the French Tome Pirés and Beaulieu, Portuguese official and unofficial accounts of the *Estado da Índia*, and Travels of Fernão Mendes Pinto (1537-1539), Francisco Vieira de Figueiredo, and Luís Francisco Coutinho (seventeenth century), and Carlos Manuel da Silveira (nineteenth century). British travelers too recorded their accounts, eg. Francis Drake (sixteenth century), and James Lancaster (seventeenth century).

# CHAPTER ONE

# ADAT AND SHARĪ'AH: CONFLICT AND TENSION?

The conundrum as to whether the normative law in Aceh was truly practiced in real life has intrigued many scholars of Aceh legal life. The received wisdom has had us believe that these laws were mere normative statements and barely had any real life application. On the one hand, the sultans ruled and administered the laws arbitrarily, following their whimsical inclinations, and on the other hand, the customary law (*adat* law) was the main reference and source to mitigate and resolve problems.

Hurgronje stands at one extreme in asserting that actual laws in Muslim countries were never in accordance with the doctrinal teachings of Islam. The ideal state, in which doctrines and practices existed in consonance, was only during the time of the Prophet. The actual practice for centuries past, as he describes it, in all Muslim countries, presented the most striking contrast with the teaching of Islam. He further explicates:

> "History as narrated by "the faithful" teaches us that the ideal state lasted for thirty years after Mohammad's death, but that ever since that time the whole Moslim community has moved upon a downward slope of hopeless retrogression. Shortly after this secularization of the community had taken place, the devout began to attribute to the Prophet the prediction that his righteous successors would hold sway for no more than thirty years after his death; that then despotic rulers would come to power, and that unrighteousness and tyranny would continually increase till near the end of the world, when there would appear a ruler inspired of God (the Mahdi) who should fill the whole earth with righteousness, even as it is now filled

with unrighteousness."[17]

As in other Muslim countries, Hurgronje asserts, the same stood true in Aceh. In his usual scornful way of describing Aceh, he argues that the ideal vision of an independent judge who need not have to conform to temporal authorities but only to the Divine rule remained, at best, an ideal that was never even approximately attained.[18] According to Hurgronje, the office of Chief *Qāḍī*—known in Aceh as *Qāḍī Malik al-ʿĀdil*—was rather self-created, as a form of self-glorification to the office the person held. The person in that office "painted an idealized picture of the importance of that position as it was at the time of its first establishment, some two and a half centuries ago, and furbished this up as representing the actual state of things at the present day…In making this appointment it was of course never intended to apply this law in its full extent. Such a scheme could have been realized in no Mohammedan country in the world within the last twelve centuries. The whole political system of the port-town even at the zenith of its prosperity was in conflict with the law of Islam."[19] Royal decrees (*sarakata*) that one read and learned about had hardly passed from document to reality. And similarly all other legal codes in which people took great pride did not reflect but dimly Acehnese practices.[20] In short, the drift of *The Achehnese* is that nothing in Acehnese history deserves any praise and exaltation, and that no systematic administration of the country could be expected. The documents that one finds on and from the royal courts, their edicts and legal codes, barely had any influence on the actual practices of the Acehnese. Acehnese, as

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[17] Hurgronje, *The Achehnese*, 2: 323-24.

[18] Ibid., 1:94.

[19] Ibid., 1:97

[20] See ibid., 1:4ff.

individuals or as a community, were always faced with two opposing value and behavioral systems—a schizophrenic as it were. Never mind what the Acehnese claimed of the relations between *hukum* (the Islamic law) and *adat*, the fact of the matter is that the latter had always had the upper hand. In their relations with fellow members of the community, it had always been *adat* that governed them, whereas in their relationship with the Divine, it was the religion that governed them, although elements of *adat* still crept into some of these religious rituals. As a consequence, two sources of authority emerged: the secular authority manifested in the *ulubalang* and the *bendahara* (the ministers), as well as the *penghulu* (chieftains), on the one hand; and the religious authority represented by the *'ulamā'*, and *qāḍī* (the judge) on the other hand. As to the sultans, it was about navigating and oscillating between these sources of power and authority to protect their interests. Siegel would have the following statement to conclude the attitude of the Dutch and of Hurgronje to the Acehnese:

> "The strength of Dutch writing on Atjeh stems from its antagonism to its subject. It denies Atjehnese claims for themselves by establishing what is 'really' the case. It is remarkable that Snouck had no praise for anything Atjehnese aside from a small segment of its literature. His writing on politics was devoted to showing that Atjehnese reverence for their sultan had nothing to do with the real distribution of power, which was held by the chieftains. His studies of Islam were aimed at showing that Atjehnese, who prided themselves on their religion, were poor Muslims, more likely to follow custom than to obey the central prescriptions of their faith."[21]

One finds similar skeptical expression in the British report of the Malay law.

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[21] James T. Siegel, *Shadow and Sound: The Historical Thought of a Sumatran People* (Chicago: University of Chicago Press, 1979), 14.

Wilkinson[22] began his report about Malay law in the following fashion:

> "Of all the branches of Malay research the study of jurisprudence is the one that presents the greatest difficulties. Malay laws were never committed to writing; they were constantly overridden by autocratic chiefs and unjust judges; they varied in each State; they did not harmonise with the doctrines of Islam that they professed to follow; they were often expressed in metaphors or proverbs that seem to baffle interpretation."[23]

The Malays had never accepted Islamic law in total, if so, only in a very restricted way. Only in purely religious matters did they consider Islam. "[W]hen it came to the serious business of life—such as contract, sale, slave-right, land-tenure, debt and succession to titles and real property—the chiefs continued to observe their own *adat* or customary law. They were probably right to do so; an abrupt transition from one legal system to another leads to innumerable cases of injustice. Law should be coincident with what may be called national common sense."[24] And had it not been the British who

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[22] Richard James Wilkinson (1867-1941) was the British Resident at Negeri Sembilan between 1910-1911, and Colonial Secretary in Singapore from 1911 to 1916. However, his significant contribution in Malaya started even before his appointment as the Resident, and was chiefly in the domain of education. He held the office of Superintendent of Education in Penang, and later in 1903, as the School's Inspector for the Federated Malay States. He was the brain behind the establishment of the Malay residential school that was later known as the Malay College, or Kuala Kangsar College, in Kuala Kangsar, Perak, in 1905. This college was established amidst the concern that no Malays were involved in the public administration for the running of the state. By 1915 the college was already producing Malay officers—primarily children of the royal family—and Malay nobility, to serve the public service alongside the Europeans. Wilkinson initiated the reprinting of classical Malay tales, and authored one of the most authoritative Malay-English dictionaries in 1901 & 1902. *Papers of Malay Subjects* were a series of reports written as manuals and textbooks to instruct British officials about Malaya. Wilkinson proposed the project, in his capacity as Deputy to Ernest Birch, Resident of Perak, and led the project as author and editor. The first series being on Law was published in 1908. See R.O. Winstedt, "Obituary—Richard James Wilkinson," *Journal of the Malayan Branch of the Royal Asiatic Society*, 20(1), 1947: 143–44, and J.M. Gullick, "Richard James Wilkinson (1867-1941): A Man of Parts." *Journal of the Malaysian Branch of the Royal Asiatic Society*, 74(1), 2001: 19-42.

[23] Wilkinson, *Papers on Malay subjects. Law, Pt. 1. Introductory sketch*, 1.

[24] Ibid., 48.

stepped in to check, Malaya, Wilkinson quipped, would have been ruled by Islamic law.[25]

Preceding Wilkinson, Sir Stamford Raffles (d. 1826) had expressed to Lord Minto this "constant struggle between the adherents of the old Malay usages and the Hajis, and the other religious persons, who are desirous of introducing the laws of the Arabs, in order to increase their own consequence…The Moslem religion has hitherto taken only a very partial and superficial root in many of the Eastern islands."[26] And considering the potential intervention of the Arabs and "votaries of Islam," Raffles advised Lord Minto that "it will be absolutely necessary for us to interfere at all events."[27]

Coulson argues in the same spirit. Although he was referring chiefly to the Moroccan society and drew examples from the Sharī'ah-Berber conflict, he also makes references to other African societies, Indian and Javanese, suggesting the same conflct in other Muslim societies. The ideals of Sharī'ah were never fully translated into real practice; and it is the Sharī'ah's rigidity and idealism that supported such practices, idealism that is out of touch of real and practical economics and politics. Peoples who converted to Islam were only superficially islamicized, because "their natural inclination, while accepting the religion of Islam, was to preserve, in their legal relationships, their own customary practices and long-standing traditions, and this tendency was merely confirmed and strengthened by the rigidity of the Sharī'a provisions."[28] To understand the role of customary law is to recognize the gulf between Sharī'ah doctrine and actual

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[25] Ibid., 49.

[26] Sophia Raffles, *Memoir of the life and public services of Sir Thomas Stamford Raffles, particularly in the Government of Java 1811-1816, Bencoolen, and its dependencies, 1817-1824; with details of the commerce and resources of the Eastern Archipelago, and selection from his correspondence*, New edition (Abridged), 2 vols. (London: James Duncan, 1835), 1:98-99

[27] Ibid., 100.

[28] N. J. Coulson, "Muslim Custom and Case-Law," *Die Welt des Islams* 6, no. 1 (1959), 17.

Muslim legal practices.[29]

Now, at this juncture, let me discuss the alleged conflict and tension in the Adat-Sharīʿah for its close relation with the theory-practice conflict. My treatment and interpretation of these problems will follow soon after.

When one speaks about concepts and ideas, language inevitably becomes a necessary problem one that is aggravated when one engages in comparative studies across cultures. The task of a researcher is to identify the meanings attached to a certain concept, idea or term, as understood by the indigenous user under study, instead of imposing their own understanding and meanings. In spite of their differences, both Gluckman and Bohannan agree that some native terms do not have their equivalent in English, and in such cases native terms must continue to be used after they have been explained in English.[30] Bohannan maintains that English vocabulary is developed to convey English ideas of law and is unfit to describe the folk systems of other peoples. In order to understand a people's legal systems, one must articulate these people's terms and categories, and then uses these native terms rather than using English equivalents. Fundamentally, Bohannan argues, "English legal terms are so inextricably bound up with the content of English law that they cannot be used effectively to describe another system."[31] According to Bohannan, "culture and social action become organized into sensible chunks or schemes that form sensible connected wholes of one sort or another. This folk organization of actions, beliefs, tools, and ideas is to be found, a living reality,

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[29] Ibid., 23.

[30] Sally Falk Moore, "Comparative Studies: Introduction," in Laura Nader, ed. *Law in Culture and Society* (Berkeley: University of California Press, 1997), 341.

[31] Moore, in ibid., 341. Although Gluckman agrees in principle with Bohannan, he however thinks that where English can be used without too many qualifiers one should preferably use English.

*both* in the language *and* in the institutions of the society. It is precisely in this system of categories, as it is preserved in the language and recurrent social behavior, that the ethnographer must report."[32]

Equally confusing and misleading is when a term or concept means too many things to too many people. The need to clarify these terms as understood by the users within their own culture and worldview cannot be stressed enough. If defining all terms by way of *ḥadd* is excruciating, if not impossible, identifying definitive attributes and distinctive characteristics of a term is necessary.[33] Clarifying the meanings of these key concepts in the Malay world is of paramount importance in order to understand the impact of Islamization on the Malay Archipelago, for Islamization was brought about primarily through the Islamization of the Malay language.[34] This much can we say about

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[32] Paul Bohannan, *Social Anthropology* (New York: Holt, Rinehart and Winston, 1963), 9-10; the emphases are Bohannan's. Perception, Bohannan argues, is what a social scientist must deal with, and reality must be perceived before it can enter into the social world; and through language one understands the perception. On perception and language, see 32ff.

[33] Muslim thinkers make a distinction between *al-taʿrīf bi-al-ḥadd* and *al-taʿrīf bi-al-rasm*. While the former suggests a definition that sets all limits and defines categories within the divisions of genus and specific difference, the latter defines thing by its attributes, distinctive characters or indication. The *taʿrīf* of *al-ʿilm* (knowledge) is an example of a concept that cannot possibly be defined by way of *ḥadd*. Muslim scholars such as al-Imām al-Ḥaramayn al-Juwaynī (d. 478/1085), al-Ghazzālī (d. 505/1111), Fakhr al-Dīn al-Rāzī (d. 606/1209) and al-Āmidī (d. 631/1233) acknowledge that knowledge cannot be verbally defined because it is too difficult and complicated for simple definition. It can be defined only through disjunction (*qismah*) and example (*mithāl*). However, al-Ḥillī (d. 726/1325) holds otherwise. See Muhammad ʿAlī al-Tahānawī,. *Kashshāf Iṣṭilāḥāt al-Funūn wa al-ʿUlūm*. Introduced, supervised and revised by Dr Taufiq al-ʿAjam; edited by Dr. ʿAlī Dakhrūj, 2 vols. (Beirut: Maktabah Lubnān Nāshirūn, 1996), 2: 1220a; cf. Franz Rosenthal, *Knowledge Triumphant: The Concept of Knowledge in Medieval Islam* (Leiden: E.J.Brill, 1970), 49f.

[34] Syed Muhammad Naquib al-Attas is a pioneering scholar in arguing that Islamization of the Malay Archipelago took place essentially through the Islamization of the language. His original ideas on the Islamization of the Malay Archipelago can be found, among other places, in his "A General Theory of the Islamization of the Malay-Indonesian Archipelago," a paper presented at the IVth International Association of Historians of Asia (IAHA) in Kuala Lumpur, Malaysia, in 1968. This paper, with the same title retained, was then published in Sartono Kartodirjo, ed., *Profiles of Malay Culture* (Yogyakarta: Ministry of Education and Culture, 1976), 73-84; *Preliminary Statement of a General Theory of the Islamization of the Malay Archipelago* (Kuala Lumpur: Dewan Bahasa and Pustaka, 1969); *Islam Dalam Sejarah dan Kebudayaan Melayu* [Islam in Malay History and Culture], his inaugural address as a Professor of Malay Language and Literature at the Institute of Malay Language, Literature and Culture, National University of Malaysia (UKM), Kuala Lumpur, 1972, fourth reprint edition, Petaling Jaya,

the problem of language and its importance particularly in discussing the Islamization of the archipelago.

The terms Sharī'ah, *adat*, *adatrecht* (adat law) as introduced by Hurgronje and later developed into a science by Van Vollenhoven, and followed by other Dutch scholars, and "law" when used unqualifiedly, have caused serious confusions. These terms do conjure up differing and often conflicting meanings in the minds of researchers and readers. It behooves me to discuss, albeit briefly, these terms, and what I think they mean to the Malay legal minds. Let me begin with the notion of law, as it is the immediate term understood by English readers and researchers and, not infrequently, in order to express a certain legal tradition our treatment and understanding of the world's legal traditions are shaped by this English word.

Generally speaking, law in the modern sense suggests the idea of uniformity, certainty and non-arbitrariness,[35] codified statutes, rules, regulations and sanctions. Law is identified with a corpus of abstract and explicit rules, associated with instruments of sanctions based on the repressive use of force, having the objective to protect order and to return rights to the rightful owners, as a means of "social control through the systematic

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Malaysia: ABIM, 1990; "On Islamization: The Case of the Malay-Indonesian Archipelago," in his *Islam and Secularism*. Kuala Lumpur: ABIM, 1978, second impression with a new preface, Kuala Lumpur: International Institute of Islamic Thought and Civilization (ISTAC), 1993. In al-Attas' most recent publication, he examines and reassesses some of the conventional historical evidence and provides new proof to the problem of Islamization of the Malay-Indonesian Archipelago in his *Historical Fact and Fiction* (Johor Bahru, Malaysia: UTM, 2011).

[35] As the maxim goes, "law favoreth truth, faith, and certainty," (Wingate's Maxim, p. 673); and as Lord Hardwicke said, "certainty is the mother of repose, and therefore the law aims at certainty"; In John George Phillimore, *Principles and Maxims of Jurisprudence* (New Jersey: The Lawbook Exchange Ltd, 2001), 326-27, originally published in London: J.W. Parker, 1856. It is this "certainty," "standards" and "uniformity" that is absent in the "oriental regime" as Pound postulates, "[t]he administration of justice according to law means administration according to some standard, more or less fixed, which individuals may ascertain in advance of controversy and by which all are reasonably certain of receiving like treatment." (Roscoe Pound, *Introduction to the Study of Law* (n.p., 1912), 2); and if the will of the king is "left to act freely in individual cases, without rule or standard, no will, either of king or of people, is sufficiently set and constant to insure a uniform administration of justice. Law and caprice are incompatible." (Ibid., 3.)

application of the force of politically organized society,"[36] whose sources are the states or

governments as legislators.[37] Judges, as the administrators and executors of these laws,

are guided by the rules and regulations, by the acts, statutes and codes, by the principles

of these laws,[38] or by judicial precedents.[39] When one speaks of law and legal system in

this sense one cannot but imagine courtrooms and judges presiding over cases in these

courts. And if law is a means towards the administration of justice[40] law should embody

the above conditions and ideas. It is with this ideational framework that many European

scholars investigate the Malay world. And it is this framework that has caused

misunderstandings about the Malay legal system, and for that matter other chthonic legal

traditions. These legal systems are not infrequently described using subtly perjorative

terms like 'aboriginals,' 'natives,' 'indigenous peoples,' or 'folk laws' and, in the case of

the Malay world, *adatlaw* (*adatrecht*), as opposed to the legal tradition Europeans are

accustomed to. These are not just imprecise and problematic. They exude colonial

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[36] Roscoe Pound, as cited in A. R. Radcliffe-Brown, *Structure and Function in Primitive Society, Essays and Addresses* (Glencoe, Illinois: The Free Press, 1952), 212. Radcliffe-Brown further argues, "[t]he obligations imposed on individuals in societies where there are no legal sanctions will be regarded as matters of custom and convention but not of law; in this sense some simple societies have no law, although all have customs which are supported by sanctions." (ibid).

[37] Law in a stricter abstract sense is "the aggregate of those rules and principles enforced and sanctioned by the governing power in a community, and according to which it regulates, limits, and protects the conduct of members of the community. In the abstract sense, it includes the decisions of courts." Walter A Shumaker and George Foster Longsdorf, *The Cyclopedic Dictionary of Law* (St Paul, Minn.: Keefe-Davidson Law Book Co., 1901), 532b-533a. Governing power or political society refers not just to one form of government, such as a democratic government. It can take different forms of political or governing power, such as a monarchy, despotism, and other forms.

[38] According to the Civil Law tradition.

[39] As established by the Common Law tradition; see Black's Law Dictionary, q.v. "Common Law", and H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, 2nd ed. (Oxford; New York: Oxford University Press, 2004); ibid., 224-25.

[40] Pound, *Introduction to the Study of Law*, 1; science of law, Pound asserts, is science of justice.

overtones.[41] Because law is conceptualized in the above-mentioned way, and because Malay legal life is examined by this framework, absence of law, arbitrariness and casuistry, tensions between theory and practice, and fissure between Sharī'ah and *adat*, are common predicates of European scholars when discussing Malay legal life. And because Malay "laws" were not enacted by any legislative authority, they could not properly be called "codes" or "law", but only "digests."[42] In the ensuing paragraphs I shall discuss the terms Malays use to express their own legal meanings.

My objective here is neither to define Sharī'ah nor to enter into the debate of what Sharī'ah is.[43] What is relevant here is to illustrate what Sharī'ah is NOT to the Malays, and what other terms are used by the early Malays to mean "law." To do so, reference to early usage of the term Sharī'ah is necessary. The mystic and poet Hamzah Fanṣūrī[44] of Barus,[45] arguably the most illustrious early Malay thinker, says in one of his poems,

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[41] For a brief discussion on these problematic designations and related sources see Glenn, *Legal Traditions of the World*, 59-61.

[42] Wilkinson asserts, "[t]he first duty of the student is therefore to clearly understand the composite nature of Malay law. He must not look for uniformity where no uniformity can possibly exist. Above all, he must not allow himself to be blinded by any European preference for written or recorded laws. He should not take the so called 'codes' (*undang-undang*) too seriously. When he reads about the 'Malacca Code,' or the 'Malay Maritime Code' or about the 'Laws of Bencoolen and Palembang,' he has to remember that these so called 'codes' were never actually enacted by any legislative authority; they are only digests of Malay law" (Wilkinson, *Papers on Malay Subjects. Law, Pt. 1. Introductory Sketch*, 3.

[43] For an erudite and penetrative examination of *Sharī'ah*, see Wael B. Hallaq, "What is Sharī'a?," in *Yearbook of Islamic and Middle Eastern Law, 2005-2006*, ed. Eugune Cotran and Martin Lau (Leiden: Brill, 2007), 151-180; and on Sharī'ah at its formative period see idem, *Sharī'a: Theory, Practice, Transformations* (Cambridge, New York: Cambridge University Press, 2009), 27-71.

[44] His birth and terminal dates have not been ascertained. Several dates are given, but none can claim accuracy. However, it is safe to assert that he flourished in the second half of the 16th century. Al-Attas holds that Fanṣūrī was most likely dead before 1607; see Syed Muhammad Naguib al-Attas, *The Mysticism of Ḥamzah Fanṣūrī* (Kuala Lumpur: University of Malaya Press, 1970), 12; cf. G.W.J. Drewes and L. F. Brakel, *The Poems of Hamzah Fansuri, edited with an introduction, a translation, and commentaries, accompanied by the Javanese translations of two of his prose works*, Bibliotheca Indonesica (Dordrecht, The Netherlands, Cinnaminson, N.J.: Foris Publications, 1986).

[45] A port-city on the western coast of North Sumatra, also known in early Arabic sources as *Fanṣūr*. Al-Attas argues that although Fanṣūrī is of Malay origin (of Barus), he was in fact born in Shahr Nawī in Siam, formerly known as Ayutia; see al-Attas, *The Mysticism of Ḥamzah Fanṣūrī*, 3-8.

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|---|---|
| *Sharī'at itu ambilkan qandil* | Take the Law for your lamp |
| *Supaya engkau menjadi khalīl* | So that you may grow dear to God |
| *Karena ia datang daripada Rabbun Jalīl* | For it originated with the glorious Lord |
| *Menyatakan Allah dan hakikat sabīl* | And tells us about God and the true path |
| | |
| *Sharī'atnya itu terlalu ghālib* | God's Law is paramount |
| *Min al-Mashāriq ilā 'l-maghārib* | From the East to the West |
| *Kafir dan mushrik sekalian tā'ib* | The infidels and the polytheists all are repentant |
| *Daripada mulutnya dā'im munkirnya ghā'ib*[4] | Denial forever disappears from their lips |
| | |
| *Jika telah kau turut sharī'atnya* | Once you are following Muhammad's Law |
| *Mangka kau dapat asal ṭarīqatnya* | You have grasped the principle of his 'Path' |
| *Ingat-ingat akan ḥaqīqatnya* | Be constantly aware of his 'Reality' |
| *Supaya tahu akan ma'rifatnya.*[46] | So that you may attain his 'Knowledge' |

Evidently here Drewes and Brakel translated Sharī'ah as Law. If Law is meant here as rules, regulations, and statutes the way the English-speaking world understands the word, then both Drewes and Brakel have inaccurately understood Sharī'ah. Hamzah Fanṣūrī calls for adherence to the Sharī'ah, for it comes from the Divine, and as a *Way* to Him; and this is not just through the laws, but also through a spiritual journey—the spiritual and ethical ways. Sharī'ah does not regulate relations simply between one individual and others (as the word law connotes), but also within one's own self and with God, in one's pilgrimage towards attaining the *ma'rifat Allāh*. Sharī'ah is not restricted to legal commandments, but includes also ethical injunctions and practices. How Sharī'ah is

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[46] Drewes and Brakel, *The Poems of Hamzah Fansuri*, 44-47. The accompanying English translation is due to Drewes and Brakel.

distinguished from *ḥaqīqah* is not by way of contrast, or speaking of different realities; instead they are aspects of the same reality and truth: Sharī'ah is the established and the exterior, and *ḥaqīqah* the ambiguous and the interior aspect of the same reality, and true *ṣūfīs* have attested to these aspects; for the reality of the *ḥaqīqah* is based upon the established truth of the former.[47] In their comments both Drewes and Brakel acknowledge that Sharī'ah, *ṭarīqah, ḥaqīqah* and *ma'rifah* are the four stages of the mystic path; the first is not concerned only with relations with others, but also with one's self; these Sharī'ah practices include prayers and fasting, and all other pious acts, and this is evident in Fanṣūrī's ensuing quatrains,

| | |
|---|---|
| *Sharī'at yang ẓāhir akan aqwālnya* | The wording of the Law is his words |
| *Sembahyang puasa ṭarīqat af'ālnya* | Ritual prayer and fasting the way of his works |
| *Menapikan wujūd ḥakīkat aḥwālnya* | Denial of his own being the essence of his 'states' |
| *Ma'rifat yang wāṣil bāṭin a'mālnya* | Uniting knowledge the heart of his pious deeds |
| | |
| *Sharī'atnya itu ambilkan suluh* | Take this his way for your torch |
| *Supaya santosa sekalian tubuh* | So that you may enjoy security all over |
| *Napsu dan Setan yogya kau bunuh* | Slay self and the devil |
| *Pada jalan 'āshiq keduanya musuh*[48] | Both of them enemies on the road of the mystic |

Here and elsewhere in his poems, such as his *Asrār al-'Ārifīn*, and *Sharāb al-'Āshiqīn*, Fanṣūrī discusses the four mystical stages: *Shari'ah, Ṭarīqat, Ḥaqīqat*, and *Ma'rifat*. Sharī'ah, Fanṣūrī explains, is the sayings of the Prophet that enjoin us to do

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[47] See Syed Muhammad Naguib al-Attas, *A Commentary on the Ḥujjat al-Ṣiddīq of Nūr al-Dīn al-Rānīrī* (Kuala Lumpur: Ministry of Culture, Malaysia, 1986), 183, 455-56; and idem, *The Mysticism of Ḥamzah Fanṣūrī*, 180-82.

[48] Drewes and Brakel, *The Poems of Hamzah Fansuri*, 90-91

what is good and forbid us from what is bad.[49] It is likened to a fence, *ṭarīqah* is the house, and the *ḥaqīqah* is the contents—when the house is not fenced, the contents will be stolen;[50] for Sharīʿah is not distinct from the *ṭarīqah*, and *ṭarīqah* is not distinct from the *ḥaqīqah*, and the *ḥaqīqah* is not distinct from *maʿrifah*; like a ship, whose keel is the Sharīʿah, its planks the *ṭarīqah*, its merchandise the *ḥaqīqah*, and its gain the *maʿrifah*.[51]

In Malay classical text Sharīʿah is invariably used in the context of the mystical stages leading to the gnosis (*maʿrifah*), in which scholars speak about *sharīʿah, ṭarīqah, ḥaqīqah* and *maʿrifah*. Sharīʿah does not refer to law, or rules and regulations, whether of nations, members of the community (civil law, criminal law), nor about sanctions primarily. It refers to the *religion as a path in life through the established roads*, and this involves the inter- as well as intra-personal life of a Muslim: in his relation with God the Creator, with fellow creations or the created (nature, animals and other human beings), and with his self. In some instances Sharīʿah refers to Islam itself (*sharīʿat agama Islam*). In *Tāj al-Salāṭīn* (composed 1603), rulers are repeatedly advised to observe the *sharīʿat* (teachings of Islam). *Hikayat Merong Mahawangsa* (ca. 1821) speaks about a certain Shaykh Abdullah of Yemen who converted the people of Kedah and its ministers to the path of *Sharʿ*, i.e. Islam.

> *Shaykh Abdullah anak Yamani membawa segala orang isi negeri Kedah itu kepada jalan sharaʿ dan sharīʿat agama Islam dengan raja menterinya sekali hingga*

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[49] Fanṣūrī, *Sharab al-ʿĀshiqīn* in al-Attas, *The Mysticism of Ḥamzah Fanṣūrī*, 301.

[50] Ibid., 299.

[51] Ibid., 300.

*sampai ke negeri timur dan barat termasyhur serta adil murah rajanya.*[52]

> Shaykh Abdullah of Yemen originally guided everyone in Kedah to the path of the religion of Islam, including its king and ministers, to the east and west, until its [reputation] became well known, and its king [known for] being just and generous.

When Malays want to refer to the legal aspects of Sharī'ah, this is usually accompanied by *hukum* as in *'hukum sharī'at'*, or *'hukum sharī'at agama Islam.'*[53] In a poem (composed 1868) ascribed to the renowned Malay scholar Raja Ali Haji (d. 1873), a ship's captain came to a judge-cum-mufti (*qāḍī muftī*) seeking redress of his problem that had been ill-attended to by a *syahbandar*. The captain felt he had been unjustly punished. Upon hearing his appeal, and acknowledging the unjust sentence, the judge asked the captain to join him in meeting the *syahbandar* to redress the matter. In a state of anger, the judge did not want his fury to rein in his judgment; he therefore wanted to visit the *syahbandar* with a copy (*ṣūrah*) of the law according to Sharī'ah (*hukum syariat*),

| | |
|---|---|
| *Datuk berkhabar awal mulanya* | *hingga sampai pada akhirnya* |
| *kadi dan mufti menjawab katanya* | *Perintah menteri bukan jalannya* |
| *Tetapi hatinya panas dan marah* | *Jadi perkataan tiada berarah* |
| *Nanti aku kepadanya ziarah* | *hukum syariat aku bersurah*[54] |

| | |
|---|---|
| The captain relates from beginning | till the end of the story |
| The judge-mufti responds saying | the minister ordered the wrong way |
| But his heart was in anger and fury | and words are no longer guided |
| I will therefore pay him a visit | with a copy of the law according to Sharī'at |

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[52] *Hikayat Merong Mahawangsa*, composed circa 1821, is a historical account about the kings of Kedah; see Siti Hawa Hj. Salleh, *Hikayat Merong Mahawangsa* (Kuala Lumpur: Penerbit Universiti Malaya, 1991), 104. The English translation is mine.

[53] See for example *Surat al-Anbiya* (composed 1700s), Hamdan Hassan, *Surat al-Anbiya'* (Kuala Lumpur: Dewan Bahasan dan Pustaka, 1992), 167; also Hj. Salleh, *Hikayat Merong Mahawangsa*, 111.

[54] Jan van der Putten, "Versified *a wai* verified: *Syair awai* by Raja Ali Haji," *Indonesia and the Malay World* 25, no. 72 (1997), 115. The English translation is mine.

In *Bo' Sangaji Kai*,[55] in speaking about goods, decouvert items and dispatches carried by ships, liability and damages, sharing of profits and losses, one is asked to observe the *hukum syari'at* (laws according to Sharī'ah).[56]

The above demonstrates that in expressing the idea of law (rules, regulations, sanctions, and social controls), the Malay language uses *hukum*, which is then annexed to sources from which the *hukum* (law) derives; hence *hukum syarī'at, hukum kanun, hukum adat,* and *hukum resam*; and to express the European notion of law, *undang-undang* is used.

The word *undang-undang* (to mean law) seems to be of later usage (ie., the colonial period), for one does not find the word *undang-undang* used prior to the 19th century. It is mostly used only in the 19th century and onwards, and its usage grew rapidly in connection with the European people and in the 20th century, instead of *hukum*. Mention of *undang-undang* in *Sejarah Melayu* (The Malay Annals; composed after 1612, and its manuscript dated 1808), was oddly made just once. In an early 18th century text, *Hikayat Patani*, the word *undang-undang* was used not by the author, but by the copyist in its colophon, dated 1839, in which he erroneously named the text *Undang-undang Patani*; similarly in the 1760's text of *Bo' Sangaji Kai*. In a 1787 text of *Perjanjian Banjar-Belanda*, the word *undang-undang* was used to refer to the law of the Dutch (*undang-undang kompeni*). When referred to twice in *Adat Raja Melayu* (1779), it was not meant

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[55] *Bo' Sangaji Kai* is an archival collection that pertains to the history of the Sultanate of Bima, and its genealogies, correspondence, contracts, laws and so forth. Written between 1645-1898, as a result of the Islamization process, from 1647 and after, the Sultan Abū al-Khayr Sirāj al-Dīn decreed that *Bo'* be kept in Malay and written in Jawi script. Bima is a port-city on the eastern part of Sumbawa (West Nusa Tenggara)—a flourishing port that connected trade between Malacca and Makassar and Ternate, and further east.

[56] Henri Chambert-Loir and Siti Maryam R. Salahuddin, *Bo' Sangaji Kai: Catatan Kerajaan Bima* (Jakarta: École française d'Extrême-Orient, Yayasan Obor Indonesia, 1999), 106.

as law, but mere ceremonies as observed by the royal courts.[57] It is not improbable that

this too is of a later edition (all its manuscripts are dated to the 19ᵗʰ century). Even in

*Undang-undang Melaka* the term *undang-undang* was never used in its original

composition. One finds the term only in the Johore version of *Undang-undang Melaka*,

which is the youngest version (published at the end of the 18ᵗʰ century).[58] This too, I

suspect, is of a later addition or an edition of the copyist. The fact that *Undang-undang*

*Melaka* is a hybrid text, and that adaptation and changes to the content and language had

taken place in the different versions of the *undang-undang*, and that additions were made,

is well recognized.[59] Marsden (d. 1836) seems to see this subtle difference. In his

Dictionary, he translates *undang* as laws and statutes and he alludes to the difference in

the example, *seperti adat hukum Islam dan undang-undang negeri*: according to the

Mohammaden form of justice and the laws of the country.[60] A similar meaning is clearly

signified in the first Malay monolingual dictionary *Kamus Pengetahuan Bahasa* (mid 19ᵗʰ

century) by Raja Ali Haji, in which *undang-undang* is defined as sets of rules, regulations,

and sanctions established by the ruling authority (*kerajaan*), having been agreed upon by

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[57] In one of these, the text says "*adat undang-undang raja,*" where I think *undang-undang* is redundant. It could most likely be the copyist's addition.

[58] See Yock Fang Liaw, *Undang-undang Melaka: The Laws of Melaka* (The Hague: Nijhoff, 1976), 38.

[59] See idem, *Undang-undang Melaka dan Undang-undang Laut* (Kuala Lumpur: Yayasan Karyawan, 2003), xxi.

[60] William Marsden, *A Dictionary of the Malayan Language in Two Parts Malayan and English and English and Malayan* (London: 1812), Dictionary, 19a. In 1801 James Howison published his *A Dictionary of the Malay Tongue*, but this was poorly done (with incorrect spellings and pronunciations). Marsden's surpassed Howison's dictionary in many ways, and until a century later, when Wilkinson published his Malay Dictionary, Marsden's was the most reliable dictionary, translated even into Dutch and French. In all the early Malay-English dictionaries (Crawfurd, 1852; Shellabear, 1902; and Wilkinson, 1901-02) *undang-undang* is used to express the European term law or statute, whereas other Malay terms such as *adat, hukum,* and *sharī'at* are explained in several meanings. *Kanun* was the nearest to expressing the meaning *undang-undang*. In his *History of Sumatra*, Marsden acknowledges that no word in Sumatra that properly and strictly signifies law, nor any person or class of persons invested with the legislative power; see idem, *The History of Sumatra*, 2nd ed. (London: 1784), 182.

men who were knowledgeable and wise, as well as pious.[61]

As mentioned earlier, to express the idea of "law" as rules, regulations and sanctions, Malays use the word *hukum*, which is then annexed to the source of the *hukum*. When these laws are derived from the Divine guidance it is called *ḥukum syariat*; and when they derive from *adat* it is called *ḥukum adat* (the legal aspect of adat). *Ḥukum qānūn* (spelled in Malay *kanun*) are laws derived from rulers' decrees or official practices extra-Sharī'ah. It is probable that *kanun* as a term and concept is derived from Ottoman legal experience. Aceh-Ottoman relations started early during the founding period of the Sultanate of Aceh—notably the period of 'Alī Mughāyat Shāh (r. ca. 1514-1530).[62] Such a forging of relations with the then most powerful Islamic Sultanate, the Ottoman, was unsurprising and inevitable, in light of the appearance of the Portuguese and the beginning of European interests in the region. As a matter of fact, the annexation of the other city-ports into the greater Sultanate of Aceh was indeed a strategy to solidify and consolidate the power and strength of the region. The fall of Malacca in 1511 to the hands of the Portuguese provided a strong impetus to the urgency and importance to consolidate that strength. Thereafter, numerous exchanges of envoys and missionaries took place between the Acehnese and the Ottomans, and the Acehnese might well have drawn inspiration from the Ottomans as a result. Prior to the 19th centuries, we do not see

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[61] *"Undang-undang: yaitu aturan dan hukuman yang ditentukan oleh masing-masing kerajaan yang memelihara segala rakyat-rakyat daripada aniaya setengahnya serta menentukan hukuman orang yang berbuat salah melalui peraturan undang-undang yakni perintah yang sudah teratur dengan mufakat antara segala orang yang berilmu dan orang yang bijak-bijak serta orang yang suci hatinya maka bernamalah undang-undang adanya."* Raja Ali Haji Riau, *Kitab Pengetahuan Bahasa iaitu kamus loghat Melayu-Johor-Pahang-Riau-Lingga* (Kuala Lumpur: Khazanah Fathaniyah, 1996), 155.

[62] al-Rānirī in his *Bustān* would ascribe the founding of Aceh to Sultan 'Alā' al-Dīn Ri'āyat Shāh (r. 1537-1571) who first forged this relation. On this early relation as reported in early sources see Anthony Reid, "Sixteenth Century Turkish Influence in Western Indonesia," *Journal of Southeast Asian History* 10, no. 3 (1969); cf. Juynboll & Voorhoeve in EI[2], q.v. "Atjeh," section on History.

texts employing the term *kanun*, except in *Undang-Undang Melaka*. The *Undang-Undang Melaka* proper was compiled in the middle of the 15th century.[63] However, the earliest extant manuscript is not earlier than 1676.[64] Being a hybrid text, insertion and addition is most expected and as a term and concept, it is not improbable that *kanun* is of later addition. *Kanun* laws were not necessarily administered diametrically with the Sharī'ah. Instead, they accord extra stress to some situations in meeting the general public order and social functions; and often these laws are mentioned together with *hukum syariat* indicative of their complementary roles—for law administrators—with *hukum syariat* on one hand, and as discretionary and supplemental set of laws on the other hand.[65] *Kanun* laws were administered by the secular officials (the ministers and syahbandars), as clearly indicated in the *Undang-Undang Melaka*, while the Shari'ah laws were entrusted to the *qāḍīs*.[66] *Kanun* was accepted as an integral part of the legal

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[63] See Richard Olof Winstedt, "The Date of the Malacca Legal Codes," *Journal of the Royal Asiatic Society of Great Britain and Ireland*, no. 1-2 (1953); cf. Liaw, *Undang-undang Melaka*, 38.

[64] After having studied *UUM* for his dissertation, which was later published in 1976, Liaw discovered an earlier and better version in the Vatican library (Vat. Ind. IV, Raf. 74 & 33). This was then published in 2003. See idem, *Undang-undang Melaka dan Undang-undang Laut*, xx-xxvi.

[65] The text would say that such and such is the *hukum* according to the *adat* and/or *kanun*, but the *hukum* according to the sharī'at or God (*hukum Allāh*) is such and such—e.g., is the punishment for the murder of a slave and for theft. Having mentioned the punishment according to *kanun*, the text then goes to say "*adapun pada hukum Allah Ta'ala, orang mencuri itu tiada harus dibunuh melainkan dikudung tangannya juga*"—(But according to God's law, one who steals shall not be killed, but one's hand be cut off). Such a standard statement is replete in *UUM*.

[66] This division is pointed out by Raja Ali Haji in his poem *Awai*.

| | |
|---|---|
| *Hukum syariat diputuskan kadi* | *Kemudian bertanya kepada suami* |
| *Akan istrimu dipakai lagi* | *berilah khabar kepada kami* |
| *Jika bicara talak dan 'iddah* | *kepada imam kuserahkan sudah* |
| *Adapun hukum kanun dan 'adah* | *kepada menteri pula berpindah.* |

(That the Sharī'ah law is decided by the *qāḍī*, having investigated the husband and wife and having listened to both parties, the matter of *talāq* and *'iddah* is left to the *imām* (*qāḍī*), while matters pertaining to *hukum kanun* and *adat* are delegated to the minister). In Putten, "Versified *a wai* verified: *Syair awai* by Raja Ali

culture. That said, one does not find the idea of *kanun* in the jurists' texts—an omission that is instructive of the jurists' unfavorable position towards *hukum kanun,* but not suggestive of their objections towards such elements that are extra to the Sharī'ah.[67] *Undang-Undang Melaka* already contained certain rules and practices customarily known (by way of *adat*), or enacted by the rulers (*sarakata*, *resam*, or *kanun*). The Islamic section of *UUM* came to be added later.[68]

## What is Adat?

Much of the confusion pertaining to *adat* is in part due to the changing meaning brought about by the European legal experience. Languages are not insusceptible to semantic changes and such changes are brought about by the "vicissitudes of history and society, and of relative and subjective interpretations in their linguistic symbols.[69]" When the Europeans set foot in the Malay world, *adat* was conceived in different ways, particularly in the administering and ordering of the communities; and when they needed to communicate and explain the Malay world to their lords, in terms of the Malay's

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Haji", 117. [The English translation is mine.] Although this poem is dated the later part of the 19th century, it does point to the practice until that time, or at least that it is a known tradition; cf. 15th century text of *Undang-undang Melaka;* for the Malay text and English translation see Liaw, *Undang-undang Melaka.*, 61-64, 68-69, 72-73, and passim; as well as in the customary saying, "*Penghulu biasa menghukumkan adat, Alim biasa menghukumkan shara'.*" (The village chief administers the *hukum adat*, and the religious man administers the *hukum shara'*.")

[67] For a discussion on the function of *Qānūn* in the Ottoman legal system see Haim Gerber, *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective* (Albany: State University of New York Press, 1994), 61-66; and as a form of *siyāsah shar'iyyah* or the imperatives of the Circle of Justice see Hallaq, *Sharī'a: Theory, Practice, Transformations*, 214-16

[68] Liaw, *Undang-undang Melaka*, 38.

[69] Syed Muhammad Naquib Al-Attas, *The Concept of Education in Islām: A Framework for an Islamic Philosophy of Education*, 2nd impression ed. (Kuala Lumpur: International Institute of Islamic Thought and Civilization, ISTAC, 1991), 2.

ordering of their societies, Europeans could not find terms of equivalent meanings. *Adat*, to some, meant all laws whose source is neither European nor Islamic; to others it meant the unwritten laws, customary practices, or any laws whose source is not the "political authority," whether that be the sultans or states, in the modern sense. Hurgronje, who introduced the term *adatrecht* (adat-law), stresses only customary practices that have legal consequences. To be sure, the preoccupation has been with the legal aspect of *adat*. While acknowledging that certain *adat* practices bear legal implications, limiting *adat* to this aspect is failing to see the wood for the trees. Our interest here is to understand how *adat* was understood by early Malays from their own sources.

We should not pretend that one can offer a sharp and concise definition of *adat*. Beyond being simply a technical term within a specific science, *adat*, in its diversity and complexity, has turned to be a science itself. Early Malay texts do not provide specific definitions for the term. This absence is instructive of its common usage, and of how it was commonly understood by Malay minds, needing no definition or explanation, its meaning being understood intuitively. A quick statistical analysis of the term in early Malay texts (before the 19th century) reveals the frequency with which *adat* is used—as frequent as key terms like Islam, *akhirat*, *raja*, *hakikat* and *ma'rifat*,[70] and even more than a term such as *ilmu*.[71] This statistic is not in any way indicative of the order of importance; nevertheless it gives a certain impression of the commonality of these terms.

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[70] Both *hakikat* and *ma'rifat* were primarily used in ṣūfī texts such as Fanṣūrī's poems and his prose pieces.

[71] These terms are, on average, repeated 267 times between them. This statistic is based on the Malay Concordance Project by the Australian National University available at http://mcp.anu.edu.au

Statistics aside, arriving at some general sense of the meanings of *adat* is possible through readings of these texts.

### Three Layers of Meaning of Adat

The polysemous term *adat* in its diversity is not a concept that cannot be fathomed. One can imagine it as layers of meanings of the same reality. While it can refer to rules and regulations to order the society, and while it does infer sanctions in some instances, and while it in other instances refers to royal customs and practices, these are not meanings standing by themselves unrelated.

One can think of *adat* in three layers of meanings, from the innermost esoteric meaning (worldview) to the outmost and exoteric meaning (concerning objective behaviors and practices). The first layer is the *Adat* worldview rooted in the Malay conception of life, realities and truth; the second is the socio-ethical aspect derived from the worldview; and the third is the practices in ordering and administering relations with others, in resolving conflicts and settling problems, and in the decision-making processes. The distinction between the inner and outer aspect of a reality is a common conception among the Malays—one which is comparable to the idea of esoteric and exoteric meanings in Islam (*al-ẓāhir wa al-bāṭin*). The division of stages in a ṣūfī's journey towards God, for instance, as expounded by early Malay ṣūfīs is evidence of this idea of reality (as explained above: *sharīʿah-ṭarīqah-ḥaqīqah-maʿrifah*), and in their idea of the nature of man and the human soul.[72]

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[72] Apart from the typical ṣūfī discourse on the dual aspect of realities propounded by Fanṣūrī, al-Sumaṭrānī, and al-Sinkīlī, spell practitioners amongst the Gayo people based their practices on this notion of dualism of creation: the inner and outer reality. Bowen explains this in terms of a continuum from the

*Adat as a Worldview*

*Adat* (with a capital "A") should be seen as the overarching notion and the metaphysical idea, and not just one of the sources of the law. Although the etymological derivation is from Arabic word *'ādah*,[73] *Adat* in Malay has metamorphosed to form a distinct meaning peculiar to the Malay worldview. In fact, it is not an exaggeration to call the Malay worldview *Adat*, or the World of *Adat*: a vision of realities and the path of life; it is the mold from which other concepts are formed, or the sea to which rivers flow. It is this metaphysical and esoteric meaning of *Adat* that the Malays refer to when they say that *Adat* is, among other expressions, "*tak lekang dek panas, tak lapuk dek hujan*" (uncracked by the sun, unworn by the rain); "*dianjak layu, dicabut mati*," (transplanted it withers, uprooted dies); "*biar mati anak, jangan mati Adat*," (let the children die, but not the *Adat*), and when the Acehnese say, "*mate aneuk, meupat jeurat. Gadoh adat, pat ta mita*" (loss of a child can be found its place, for the loss of *Adat* how can it be sought or replaced?).[74] The Arabic origin of the word might deceive one into understanding *Adat* as simply customary practices and behaviors; and in the modern western sense it is seen as sets of rules and sanctions customarily and traditionally known to the people, and, as in

most spiritual to the most tangible. See John Richard Bowen, *Muslims through Discourse: Religion and Ritual in Gayo Society* (Princeton, N.J.: Princeton University Press, 1993), 106ff.

[73] In Arabic, *'Ādah* and *'Urf* are used to signify the same thing, albeit with slight differentiation made by some jurists: see Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyyah al-Kuwayt, *al-Mawsū'ah al-Fiqhiyyah*, 45 vols. (Kuwait: Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyyah, 1990), 30:54a.

[74] Iskandar Muda was reported to cite this saying when asked the reason behind his sentence to death of his own adored son Meurah Peupok, who was found guilty of adultery. Failing to act on his son's doing would lead to people's contempt of the law and *adat*. See H. M. Zainuddin, *Singa Atjeh: Biographi Seri Sulthan Iskandar Muda* (Medan: Pustakan Iskandar Muda, 1957), 182.

other customary law, it is unwritten. To reduce *adat* to its outer meaning is to strip it from its essence and soul, and to destroy its "aura," as Walter Benjamin has it. And when *Adat* is conceived as mere customs and habits, it is detached from its metaphysical sense, its system of thought and values. To this, Geertz remarks,

> "The mischief done by the word 'custom' in anthropology, where it reduced thought to habit, is perhaps only exceeded by that which it has done in legal history, where it reduced thought to practice. And when, as in the study of adat, the two mischiefs have been combined, the result has been to generate a view of the workings of popular justice perhaps best characterized as conventionalistic: usage is all. As adat was 'custom,' it was, for the legist-ethnographers who gave their attention to it, by definition at best quasi-legal, a set of traditional rules traditionally applied to traditional problems."[75]

In his explication of the aspects of *adat*, the Indonesian *adat* scholar, Koesnoe, describes both the specific and concrete behaviors, as well as the overarching notion of *Adat*; and in conclusion he conceives of *Adat* as "the whole body of teachings and their observance, which governs the way of life of the Indonesian people and which has emerged from the people's conception of man and world. It is the 'path of life' of and for the people arising from its sense of ethics."[76] I will speak with regard to this view of the world when discussing the Malay legal world view in Chapter Three.

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[75] Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983), 208.

[76] Moh Koesnoe, *Pengantar kedalam Hukum Adat Indonesia/Introduction into Indonesian Adat Law* (Nijmegen1971), B8. Another Indonesian adat scholar of Minangkabau origin, Dt Rajo Panghulu, argued that etymologically *adat* is not Arabic, but instead a Sanskrit word, *adato*: *a* means not, and *dato* means material. *Adat* therefore means something immaterial—things pertain to the sacred and spiritual perfection first and foremost, and the secular and material only secondarily. Both spiritual and secular were not separated. However, as a result of material affluence, and conflicts centered on economy and politics, the spiritual meaning was forgotten. The influence of Hinduism and Buddhism in part contributed to the above state; see M. Rasjid Manggis Dt Radjo Panghoeloe, *Minangkabau: Sedjarah Ringkas dan Adatnja* (Padang: Sridharma, 1971), 85-87. Benda-Beckmann did not reject this view outright, but considered it

It is right to say that local customs and behaviors are taken as one of the sources, just as the Islamic norms are regarded as another, although the word *adat* could be used interchangeably to refer to both levels—the inner level, as well as the level of practices. Reducing the meaning of *adat* to customary behaviors, rules and sanctions or "legal practices" has caused the perennial problem of a dichotomy between *adat* and Islamic law. *Adat*, to the Malays, is a specific worldview, a vision of realities, and a path of life. This worldview includes the people's notions of what are customarily accepted behaviors, as well as ideas and practices of Islamic origin and influence. The Malays understood that specific rituals and behaviors could and had been changing, and this is well accepted in their vision of realities. And it is this *Adat* that says, "*Adat bersendikan hukum; hukum bersendikan Kitab Allah; Syara' mengata, adat menurut*." (*Adat* hinges on religious law; and religious law on the Book of God; Sharī'ah dictates, *Adat* follows). Taufik Abdullah, the Minangkabau *Adat* scholar, has the following to say:

> "Adat is usually defined as that local custom which regulates the interaction of the members of a society, and by this definition we would expect adat in Minangkabau to be a system in opposition to the sjariah, the Islamic law. It is that, but, because the concept of adat in Minangkabau society is ambiguous, it is also more. On the one hand adat does refer to the local custom; on the other it is conceived as the whole structural system of the society, of which local custom is only a component. Adat in this second sense is supposed to form the entire value system, the basis of

plausible. See Franz von Benda-Beckmann, *Property in Social Continuity: Continuity and Change in the Maintenance of Property Relationships through Time in Minangkabu, West Sumatra* (The Hague: Martinus Nijhoff, 1979), 114.

all ethical and legal judgment, as well as the source of social expectation."[77]


### *Adat as an Ethical System*

In ordering people's inter-relationships between themselves as members of a community, and in transactional relationships such as trade, contracts, and in all common interests, they are all guided by the *Adat* with the ultimate aim of securing a peaceful and orderly rhythm of life (*hidup yang tertib tenteram*). "The force or impulse which brings about such a condition on the Adat community is due to this very 'Adat' itself. There is hardly any sphere of life where Adat does not penetrate. Therefore, in a traditional community there is no aspect of life which is not under its sway."[78] This "delicate feeling of harmony" (*kehalusan rasa harmoni*) among its members led "to a strong effort of the community members to maintain accurately the execution of the prevailing ethical code,"[79] and hence their utmost protection of the acute feeling of shame (*rasa malu yang tajam*), and the fear of being disgraced, for "losing face [*jatuh wirang*] is an event or a situation which is strongly felt as a most upsetting experience by the traditional community…Thus, the traditional way of upbringing stresses the cultivation of this sensitivity."[80]

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[77] Taufik Abdullah, "Adat and Islam: An examination of conflict in Minangkabau," *Indonesia* 2(1966), 1.

[78] Koesnoe, *Pengantar Hukum Adat Indonesia*, B7. See Hazairin's inaugural speech (1952) in which he talked in length the relation of ethics, law, and *adat*, in S.H. Hazairin, *Tujuh Serangkai tentang Hukum*, 4th ed. (Jakarta: PT Bina Aksara, 1985), particularly 109ff for the discussion on *Adat*.

[79] Koesnoe, *Pengantar Hukum Adat Indonesia*, B7.

[80] Ibid., B8.

In another sense, Koesnoe conceives of *adat* as a set of ethical values, founded on the *Adat* worldview. Here one finds not the laws, but the legal sensibilities as identified by Geertz.[81] Koesnoe was actually inspired by his predecessor—the Indonesian *adat* scholar, Hazairin (d. 1975). At his inaugural speech as a Professor of Law in 1952, Hazairin talked passionately about Ethics and Law (*Kesusilaan dan Hukum*). Having talked about the essence and importance of ethics, he concluded that *Adat* is, as a matter of fact, a sediment of ethics in the community; that the principles and manners of *Adat* are the principle and manners of ethics whose truth had been acknowledged and accepted by the people in that particular community, and that these manners and principles are needed by the community for the well-being and prosperity of living as a community.[82]

### *Adat as Proper Behaviors and Practices*

If one considers *sunnah* as "setting or fashioning a mode of conduct as an example that others would follow,"[83] *adat* exudes a similar meaning. In his counsel, Rānīrī enjoins rulers to set an example of exemplary conduct (*meng**adat**kan dengan **adat** yang baik*) so that it will remain until the Day of Judgment. Here, Raniri cites the well-known ḥadīth, and translates *sanna sunnatan ḥasanatan* as *meng**adat**kan suatu **adat** yang*

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[81] See Geertz, *Local Knowledge*, 184ff.

[82] "*adat itu adalah renapan [read enapan] kesusilaan dalam masyarakat, yaitu bahawa kaidah-kaidah adat itu berupakan kaidah-kaidah kesusilaan yang kebenarannya telah mendapat pengakuan umum dalam masyarakat itu; bahwa kaidah-kaidah tersebut dibutuhkan oleh masyarakat guna kesejahteraan hidup bersama…*" Hazairin, *Tujuh Serangkai tentang Hukum*, 107

[83] Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 46.

*kebajikan*.[84] Koesnoe acknowledges that, to some, *adat* means a certain behavior constantly observed and practiced by significant numbers of people in a society. Due to the consistent and extant practices, these behaviors become established customs and habits (*kebiasaan*), and hence *adat kebiasaan*.[85] It is at this level of *adat* that one discusses the aspect of law, for while some behaviors are observed voluntarily and willingly, there are instances where force needs to be exercised in order to protect the overall well being and harmony of the society. "This is to preserve and to protect the *adat* which is intricately bound up with the quiet and order of the society as a whole." Here lies the discourse on law (*hukum*), *adatrecht* or adat law, or that aspect of *adat* having "legal implications" that Hurgronje alluded to. For this reason, the question according to Koesnoe is not whether *adat* law exists, but rather whether there is in *Adat* an aspect of law[86]; and to be sure, the law is essentially founded on ethics[87], and is not independent of ethical foundations, as Hazairin asserts that the whole of the legal field is directly or indirectly related to ethics; and thus in a perfect legal system there is nothing incompatible or inconsistent with its ethical system.[88]

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[84] The ḥadith says, "*man sanna sunnatan ḥasanatan falahu ajruhā wa ajr man 'amila bihā…*" al-Rānīrī translates it as "*barangsiapa mengadatkan suatu adat yang kebajikan maka adalah baginya pahala yang diadatkannya itu dan adalah pula baginya seperti pahala yang ada pada orang yang mengamalkan dengan dia…,*" Nuruddin Ar-Raniri, *Bustan al-Salatin. Bab Ketiga, Kisah Raja-Raja yang Adil, Siri Warisan Sastera Klasik (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2008), 20.*

[85] Koesnoe, *Pengantar Hukum Adat Indonesia*, A7/B6-7.

[86] Ibid., B9. According to Hazairin, while the *adat* that relies on personal volition and ethical drive is important, that alone is insufficient to protect the general interests of the society. Here we find the legal aspect of *adat* as threats to infractions and sanctions for violations through the use of force; see Hazairin, *Tujuh Serangkai tentang Hukum*, 107-108.

[87] Hazairin, *Tujuh Serangkai tentang Hukum*, 108.

[88] "*[S]eluruh lapangan hukum mempunyai hubungan dengan kesusilaan, langsung ataupun tidak langsung. Dengan demikian maka dalam sistim hukum yang sempurna tiadalah ada tempatnya bagi sesuatu yang tidak selaras atau yang bertentangan dengan kesusilaan.*" Ibid., 109.

Because Malay-Indonesian communities are not monolithic, one acknowledges that each "*adat* circle" has certain peculiarities specific to its context and culture.[89] Diversity and plurality are most evident in the practices, customary behaviors, rules and regulations as well as sanctions. To this meaning one finds a typical saying like the Lombok proverb, "*Lain tutug lain cacak, lain gubug lain adat. Palin paku dalam bara, lain dato lain cara.*" (A different loom a different weaving stick, a different hamlet a different *adat*. A different leader a different manner), or the Acehnese saying, "*Laen krueng laen lingkok, laen lhok laen buaya,*" or its Malay equivalent, "*lain sungai lain teluk, lain lubuk lain buaya,*" (Different rivers flow to different gulfs, and different pits have different crocodiles).[90]

### *Adat: Common Knowledge*

To a disconcerted mind such a polysemous concept and multi-layered meanings are perplexing to fathom—a confusion exacerbated by the absence of written *adat*. But it is not so to the common Malay mind. The conspicuous absence of written *adat* does not in anyway infer its absence from the mind of the people, nor its arbitrariness in the practices of the people. On the contrary, because it is common local knowledge, the need to document it is not felt at all; and because it is common knowledge, members of the society do not dispute decisions made, for these values are inherent in their worldview.

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[89] This is more so in the realm of law. Following Vollenhoven's idea of adat-circle, Haar has divided the Indonesian adat law-areas into nineteen areas; see Barend ter Haar, *Adat Law in Indonesia* (Jakarta: Bhratara, 1962), 7.

[90] Such sayings are conspicuous and well-known in the *Adat* world. They signify the idea of plurality and diversity, of the different *adat*s as a result of different contexts, social realities, and people's customs and habits.

These *adat* values are transmitted through proverbs, allegories, poems, stories, and words of wise sages immortalized in the memories of the young and old—men and women, learned and unlearned—and even in the memories of the illiterate. The illiterate may not be able to read, nor have had the opportunity to receive proper instruction. Nonetheless they are not ignorant of the *adat*, of the sense of justice and propriety, and of the ethical system: the "what is appropriate" and "what is the consequence" of their infractions. Needless to say, some elderly people are better informed than others, just as some members of the society (the *adat* functionaries) are entrusted with the authority to exercise and apply any sanctions or "adjustment", instead of leaving a matter to the hands of every member of their society. Hallaq elegantly describes this oral tradition, being a hallmark of the adat system, in his words:

> "Orality had and still has — even in 'simple' societies of the present — a function. Orality requires communal participation in, and understanding of, customary law. Knowledge in this environment ceases to lie with a specialized class of people, such as *faqīhs* or modern lawyers. Instead, it is knowledge of common behavior, perceived as such in relative terms by those upon whom it is incumbent to conduct themselves in a particular way. All in all, legal knowledge of this sort does not reside with an elite as much as it is diffused in the community, although some, especially the elders, may know it better than others."[91]

In the usual Malay *adat* way, this is expressed in some proverbial sayings, such as, "*perbilangan pada nang tua-tua, perkhabaran pada nang kechil-kechil*," (the old men know the tradition, the young men hear the report), and "*berlukis berlambaga; berturas berteladan; nang di-ucha di-pakai; nang di-pesar di-biasakan; turun-memerun daripada nenek moyang; di-anjak layu; di-chabut mati*." (The pattern becomes the mold; the

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[91] Hallaq, *Sharī'a: Theory, Practice, Transformations*, 392.

example becomes the type; precept passes into usage; practice passes into custom; the custom is handed down by our forefathers generation to generation: transplanted it withers; uprooted, dies.)[92]

That said, numerous works on *adat*—the exoteric as well as the esoteric aspects of it—are still extant. The texts under study are some examples of these extant works of the legal aspect of the *Adat*, which must be read together with other sources dealing with the exoteric aspect as a backdrop to understanding the legal aspect.

Because *adat* law is orally transmitted the language is not framed in exact terms, but this "ambiguity" can be advantageous. It allows administrators of justice to maneuver and interpret the spirit of the laws, instead of the letter of the law, in resolving conflicts and problems; and all of these function within a "moral society" whose ethos, sense of justice, and worldview are embedded not on paper but in the hearts and minds of people. They feel, speak, and sense this ethos and these ethical values; it is not about protecting their personal and private interest, but instead a continued harmonious living with others.

**Adat-Sharī'ah Creative Symbiosis**

This then begs the question. In this World of *Adat* or in this ethical system of *Adat* where does Islam or Sharī'ah stand? Are they conflicting and contending worldviews in

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[92] Joseph Minattur, "The Nature of Malay Customary Law," *Malay Law Review* 6, no. 2 (1964), 331; see passim for more of such proverbial and allegorical sayings on the legal aspect of the *Adat*. See also A. Caldecott, "Jelebu Customary Songs and Sayings," *Journal of the Straits Branch of the Royal Asiatic Society* 78(1918), passim. Although the number is steadily diminishing, there still exist elderly *adat* experts (*tua-tua adat*) who have inherited the tradition and knowledge from generation to generation, and who help interpret the *adat*.

the Malayo-Indonesian world? To many European scholars, Islam had been depicted as standing at the theoretical level with little, if any, influence on practical, everyday life, such that, as far as Islam in the Malay world was concerned, there had existed a huge chasm between theory and practice, and correspondingly there had existed a similar chasm between *Adat* and Sharī'ah; such that any attempt to bridge this unbridgeable chasm was deemed to be futile. If, as it is said, knowledge is knowledge of relations, it is necessary here to understand the relationship between *Adat* and Sharī'ah. But the understanding of this relationship is not possible without understanding the essence of *Adat* and Sharī'ah. In the above discussion I have explained what *Adat* is, and alluded to Sharī'ah. Here, I shall discuss the relations between the two concepts.

The Orientalists' treatment of Adat-Sharī'ah has invariably focused on the direction of influence, and a win-lose relationship between *Adat* and Sharī'ah. In 1882 van den Berg published his translation of key Islamic legal texts (such as Nawāwī's *Minhāj al-Ṭālibīn*). Van den Berg was inclined to view Sharī'ah as, instead, the paradigmatic law of the archipelago. This view was however short-lived and superceded by the subsequent view led by Hurgronje. Integral to Hurgronje's theory on the chasm between doctrinal teachings and real practices of the Acehnese is his separation between *Adat* and the Sharī'ah. Considered one of his most penetrating views, and one that witnessed its pervasive effect in Islamo-Malay studies, Hurgronje holds that the former reigns supreme above the latter. Further than that, both *adat* and Sharī'ah are not only diachronic, but also antagonistic towards one another. In another graphic depiction, he imagines the Islamic law or *hukum* as the obedient servant to the mistress: the *adat*. The

relationship between both the "servant" and its "mistress" is marked by a severe tension and conflict. In Hurgronje's words,

> "So far we have learnt of the indissoluble union and indispensable cooperation of hukom or religious law with *adat*, the custom of the country, as being the very basis of life in Acheh. At the same time we have constantly remarked how the *adat* assumes the part of the mistress and the hukom that of her obedient slave. The hukom however revenges herself for her subordination whenever she sees the chance; her representatives are always on the look-out for an opportunity to escape from this servile position."[93]

Although Hurgronje acknowledges that *hukum* (Islamic law) and *adat* are as inseparable as God's Essence and His Attributes, nevertheless the greatest of all is the *adat*. The Dutch van Vollenhoven (d. 1933) soon elevated this into a dedicated science, and such a view gave rise to the standard Dutch "reception theory" that prized the position that Islamic law is only valid to the extent that it is received into the customary practices of local communities. Earlier I have also pointed to Wilkinson's bewilderment about Islamic and Malay law in his *Papers on Malay Law* (1908).

Notwithstanding the above, within the local leaders a different orientation emerged. Despite being under the supervision of another Dutch "receptionist," B. ter Haar, Hazairin, among others, took a different course. The latter argues for the supremacy of the Sharīʿah instead, and the contemporary view has subsequently taken on a nuanced position. Feener and Cammack argue that the way to study Islamic law in Indonesia is not to assume that Islamic law has a stable essence of which its regional expressions are mere corruptions. Rather, one should consider it as MacIntyre's

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[93] Hurgronje, *The Achehnese*, 1:153.

"tradition," whose coherence and diversity are reshaped over time through dialogue and debate.[94] Elsewhere Feener emphasizes that over the last century, Indonesian Muslim thinkers have cultivated remarkable capacities for innovative work by integrating diverse strands of modern Muslim thought from around the world with ideas developed in the West and elsewhere by non-Muslim thinkers.[95] Such an integrative, innovative and dynamic capacity is not only true of today's Indonesia but also of the same region in the past through the works of prominent 'ulamā' such as Nūr al-Dīn al-Rānīrī (d. 1658), 'Abd al-Ra'ūf al-Sinkīlī (d. 1693), and Muḥammad Arshad al-Banjarī (d. 1812). To this distinctive feature of the seventeenth and eighteenth centuries Azra has ably demonstrated that the intense and vigorous connections between the region and the central lands of Islam through such cosmopolitan networks of Malay-Indonesian 'ulamā' did not produce 'ulamā' who simply copied and regurgitated what they studied in the Ḥaramayn, but adapted and "vernacularized" it for the local context.[96]

The relation between *Adat* and Sharī'ah must not be seen as a relation between two sources vying for space in public life, or competing for a position of authority, in the manner of litigants standing before a judge, or lawyers representing their clients, with an aim, typical of modern legal system, of wanting to win over the others. In contradistinction, in *Adat* and Sharī'ah's way of adjudication, it is not a manner of a win-

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[94] See R. Michael Feener and Mark E. Cammack, eds., *Islamic Law in Contemporary Indonesia: Ideas and Institutions* (Cambrigde, MA: Harvard University Press, 2007), 2-5.

[95] See R. Michael Feener, *Muslim Legal Thought in Modern Indonesia* (Cambridge: Cambridge University Press, 2007), 225-6. For a summarized discussion of the book, see Feener, "Muslim Legal Thought in Modern Indonesia: Introduction and Overview," in Feener and Cammack, *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, 13-26.

[96] See Azyumardi Azra, *The Origins of Islamic Reformism in Southeast Asia: Networks of Malay-Indonesian and Middle Eastern 'Ulamā' in the Seventeenth and Eighteenth Centuries* (Honolulu: University of Hawai'i Press, 2004).

lose relationship. By way of creative symbiosis, *Adat* and Sharī'ah relate to each other. Each acknowledges the role of the other, to produce a harmonious life—a relationship described by the famous Acehnese adage, "*Hukom ngon adat lage han jeuet cre, lage dhat ngon sipheuet*"—*Hukum* and adat are inseparable just as God's Essence (*Dhāt*) and Attributes (*Ṣifāt*). A great many of such popular sayings can be found in Aceh, Minangkabau and many other parts and, in regard to such sayings, Hurgronje is not uninformed. What remained ambivalent in his case is the relationship between *Adat* and Sharī'ah. In the legal system of *adat* the question is not about which source has precedence or is positioned as higher than the others, but, on the one hand, how they interact with each other and, on the other hand, how they interact with society. For, if customary practices are products of long time interactions of practices and behaviors in the society, Islamic laws are Divine norms in their respective interactions.

In the case of Aceh, the ideal-real dichotomy need not mean conflict and tension—an insoluble paradox as it were—nor is it a case of what is a norm and what is a violation and a divergence from that norm; nor is it a case of a schizophrenic self. Such "divergences" are cases of "exceptions" that form part of the overall system; in that at a particular point, one has the option to choose from equally legitimate alternatives in solving a certain problem, in harmony with the greater goal of the society. It is hardly surprising that, historically speaking, one does not find polemical debates of "*Adat-Sharī'ah*" between the 'ulamā' and *adat* functionaries, apart from the ṣūfī-metaphysical

polemic of *wujūdiyyah* between Rānīri and Fanṣūrī (in early 17th century), and the later

*Padri movement* (early 19th century) in West Sumatra.[97]

In the Minangkabau world, both *Adat* and Sharī'ah are the twin pillars of the society, each in its own way necessary and justifiable; and the intermittent eruption of social conflict had never in anyway destroyed these twin pillars.[98] To the Minang people, according to Taufik Abdullah, this "conflict" is not only recognized, but even institutionalized within the social system.[99] As a matter of fact, such an institutional conflict, when it exists, "is consciously recognized and regarded as essential to the achievement of social integration. Within this context it can be tentatively assumed that the coming of Islam to Minangkabau did not change the nature of such conflict but rather added new aspects to it."[100] In his words, Taufik Abdullah asserts:

"The Minangkabau attitude toward *adat* is based on the juxtaposition of the

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[97] Even the Padri movement was not primarily motivated by ideological conflict between *Adat* and Sharī'ah, as much as it was fused by the socio-political motivation: moral decadence, malfunction of the *adat* functionaries and religious leaders, and later exacerbated by Dutch intrusion; see Muhammad Radjab, *Perang Paderi di Sumatra Barat: 1803-1838* (Jakarta: Perpustakaan Perguruan Kementerian, 1954), 3-19. Numerous other works and allusion have been made to this dichotomy as seen from an Islamic revivalism perspective, or as social change, or political conflict, or conflict powered by the economic change, and not simply as an *Adat-Sharī'ah* legal or ethical tension and conflict. See Christine Dobbin, "Islamic Revivalism in Minangkabau at the Turn of the Nineteenth Century," *Modern Asian Studies* 8, no. 3 (1974), particularly 328ff; elsewhere Dobbin argues that the first Islamic reformers and the Padri movement owed their origin to the need to cope with the new commercial prosperity as the result of the century commercial expansion, idem, "Economic Change in Minangkabau as a Factor in the Rise of the Padri Movement," *Indonesia* 23(1977), 32; cf. Radjab, *Perang Paderi di Sumatra Barat: 1803-1838*, and Howard M. Federspiel, *Sultans, Shamans, and Saints: Islam and Muslims in Southeast Asia* (Honolulu: University of Hawai'i Press, 2007), 103-105, and 131-32. Azra considers it as Islamic renewal, instead of the more popular Islamic reformism, whose beginning had its root from the early seventeenth century; see Azra, *Origins of Islamic Reformism*, 109-111, 144-47.

[98] See William R. Roff, "Islam Obscured? Some Reflections on Studies of Islam and Society in Southeast Asia," *Archipel* 29 (1985), 11.

[99] Abdullah, "Adat and Islam: An Examination of Conflict in Minangkabau", 3.

[100] Ibid., 8.

imperative continuity of the system — *tak lakang dipaneh, tak lapuak dihudjan* — and the recognition of the importance of change — *sakali aia gadang, sakali tapian barubah* ('when flood comes, the bathing place moves). Thus it is implicit in *adat* that it should be always renewed and adjusted to the situation — *usang-usang dipabaru, lapuak dipakadjang* — while a permanent tension within the system itself is created by the need to reconcile the basic value with the changing situation. To handle this contradiction the system is arranged in such a way that its unavoidable revaluation can be smoothly undertaken, *adat* being divided into several categories, in which the permanent and the changing elements, the general principles and the local variants, are given their proper place."[101]

Taufik Abdullah concludes:

"An operational conceptual scheme should be able to do justice to all relevant phenomena and it should be applicable to historical development. Within this context the concept of adat-Islam conflict should be re-examined, and it should be seen from a different angle. The application of the formalistic approach of Snouck Hurgronje, making a clear separation between religious doctrine, which regulates man's relationship with the transcendental being, and adat, which is supposed to govern his social relationships, gives a misleading picture of Minangkabau society. This kind of conflict, as I have argued, should not be seen as the tension between two separate entities, but as one within the whole system itself. The so-called adat-Islam dilemma is only one aspect of internal conflict in the whole social pattern. The contradiction, then, 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. The concept of conflict can be very useful as an operational tool to analyze social development and the course of social change, but to limit it to a particular aspect is to do injustice to phenomena outside this narrow sphere."[102]

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[101] Ibid., 10.

[102] Ibid., 23-24.

I concur with Taufik Abdullah's conclusion, and I would argue that such a relationship is not peculiar to the Minangkabau world. Nevertheless, I would argue further that although the relationship between *Adat* and Sharīʿah is variably seen as conflictual or dialectical, an alternative view is to see this relationship in terms of creative symbiosis and dynamic partnership. This is expressed in numerous proverbial sayings and adages immortalized in the Malay vocabularies, some of which were referred to on several occasions above.

Muslims strive to formulate their personal and social experience in ways congruent with the terms of their religious culture and ideals. And because experience does not automatically conform to the ideals, or readily exhibit such congruence, Muslims aspire to moderate their social behaviors in approximating to that ideal form. Islamic social theories or Islamic normative prescriptions are not a sociological blueprint of Muslim societies, or social histories of the Muslim societies. Instead, they are their social ideals and ethical guides for the societies. In solving problems of their own times, societies are constantly involved in a dialogical and dialectical relation with these ideals and norms (in a process of *ijtihād*), and in interpreting and reinterpreting the ideals and norms (*tafsīr* and *ta'wīl*). In the process, over time, revised social ideals and norms emerge. These revised ideals and norms do not necessarily obliterate or overwrite the previous ones, but they add content to the creative dossier of knowledge and provide guides for Muslim societies in addressing their problems within the context of their specific time and space. When Gellner asserted that Islam is the blueprint of a social order and that it holds a set of rules, eternal and divinely ordained,[103] he is not inaccurate

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[103] Ernest Gellner, *Muslim Society* (Cambridge; New York: Cambridge University Press, 1981), 1.

insofar as the Qur'an is concerned. However, Islamic traditions do not solely refer to the Qur'ān as a source of their knowledge development. The voluminous works available in writing—the model as Gellner puts it, unlike his assertion—are not "independent of the will of men, which defines the proper ordering of society."[104] Taking Islamic law as a case in point, the juriconsults (*muftis* and *mujtahids*) as well as the judges (*qāḍīs*), when they needed to exercise their independent opinion, did not solely refer to the Qur'ān as a source for legal rulings. They would turn to various established legal authorities in Islamic legal thought. Apart from the Qur'ān and the Prophetic tradition (*sunnah*), they also turned to opinions and works on substantive law (*furū'*), treatises dealing with legal formularies (*wathā'iq*), and earlier fatwas. Even the *sunnah* (pl. *sunan*, traditions) did not gain its exclusive meaning as Prophetic *sunnah* until after the first century of Islam. *Sunnah* in Islamic law in its early meaning included all exemplary conducts of individuals. For *sunnah* is an ancient Arab concept that connotes the "setting or fashioning a mode of conduct as an example that others would follow", and "in a general sense, therefore, *sunan* were not legally binding narratives, but subjective notions of justice that were put to various uses and discursive strategies."[105] Therefore, Islamic law is not just sets of rules set by the Qur'ān and Prophetic *sunnah*, but also a repertoire of early practices considered just and right, and discretionary opinions (*ra'y*). For the early judges and legal specialists in Islam adherence to the Qur'ān, *sunnah* and opinions "was not even a conscious methodological act; considered opinion, the Qur'ān and the *sunan* had so thoroughly permeated the ethos according to which judges operated and legally

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[104] Ibid., 1.

[105] Hallaq, *The Origins and Evolution of Islamic Law*, 46, also 46-52 and 69-74 on the rise of Prophetic authority.

minded scholars lived that they had become paradigmatic."[106] In the same sense, the Achenese 'ulamā' creatively interacted with their Islamic traditions available to them at that time. Their early traditions and practices (*sunan)* were not thrown out of the tradition, but these *sunan* as well as the available Islamic traditions served as a repertoire of knowledge in solving the problems of their time—one that brought about the creative symbiosis and dynamic partnership.

Seen from the metaphysical plane, ṣūfīsm has undoubtedly left an indelible mark in the Malay worldview; and when one grasps this background, one does not find the tension and conflict as perplexingly bizarre. The primary concern in this case is not on the outer aspect of the reality (not to say that this is insignificant), but instead on the essence of reality, the inner meanings of things.[107]

At the practical level of legal practices, Muslim jurists acknowledge the role and function of *'urf* or *'ādah* in the making of the laws[108]—as the maxim goes, *'al-'ādah muḥakkimah* (Custom is a determining factor), *al-ma'lūm bi al-'urf ka al-mashrūṭ bi al-*

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[106] Ibid., 77.

[107] On the influence of ṣūfīsm and its introduction to the Malay world, see Syed Muhammad Naguib Al-Attas, *Some Aspects of Sufism as Understood and Practised among the Malays* (Singapore: Malaysian Sociological Research Institute, 1963) and al-Attas' latest publication Syed Muhammad Naquib Al-Attas, *Historical Fact and Fiction* (Johor Bahru: Universiti Teknologi Malaysia Press, 2011). Al-Attas argues that it was the Ṣūfīs, missionaries and Arabs who first brought Islam to the Malay Archipelago, as opposed to the theory that asserts it was brought by Indians who were mainly traders and merchants and not experts on Islam.

[108] See al-Kuwayt, *al-Mawsū'ah al-Fiqhiyyah*, 30:53ff; Ibn 'Ābidīn, *Nashr al-'Urf* in Muḥammad Amīn Ibn Ābidīn, *Majmū'at Rasā'il Ibn 'Ābidīn*, 2 vols. (n.p., 1970), 2:114ff; and Aḥmad Fahmī Abū Sinnah, *al-'Urf wa al-'Ādah fī Ra'y al-Fuqahā': 'Arḍ Naẓariyyah fī al-Tashrī' al-Islāmī* (Cairo: Maṭba'at al-Azhar, 1947). Although early Muslim jurists had discussed *'urf* in length, it is not listed as one of the main sources of Islamic law. For this discussion and assessment, see Gideon Libson, "On the Development of Custom as a Source of Law in Islamic Law," *Islamic Law and Society* 4, no. 2 (1997) and Wael B. Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 215-32.

*naṣṣ* (what is known through custom is equivalent to that which is stipulated by the clear texts of revelation) and, as Ibn ʿĀbidīn has it, *al-ʿurf fī al-sharʿ lahū iʿtibār, lidhā ʿalayhi al-ḥukm qad yudār*[109] (custom according to Sharīʿah is considered, and therefore upon it a legal position bears), and the Malay maxim, *adat bersendi hukum, hukum bersendi Kitāb Allāh; kuat adat tak gaduh hukum, kuat hukum tak gaduh adat* (*Adat* hinges on religious law, and religious law on the Book of God. If *adat* is strong, *hukum* is not disputed, and if *hukum* is strong, *adat* is not disputed.) Here one observes the legal plurality and diversity; and the Malay jurists and ʿulamāʾ were not heedless of such a discussion. For example, *adat* recognizes the right of an adopted child to succeed to his adoptive parents' estate, while Islamic law does not allocate a portion to an adopted child from the estate. This, however, is not a definitive position. Jurists and *adat* functionaries would seek what is right and proper (*patut*) at the time and place, and would even resort to different instruments to resolve the problems when they arise. Another case in point is the distinction made between *harta pusaka* (ancestral or inherited property) and *harta pencarian* (acquired property) in the Minangkabau conception of estate property. The Islamic law of inheritance (*farāʾiḍ*) might be seen as a threat to the *harta pusaka*, and indeed several attempts were made to subject *harta pusaka* to *farāʾiḍ*. But such attempts did not bear fruit. Legists (*adat* experts as well as the ʿulamāʾ) agreed that these are two kinds of property, and are subjected to different rules: *harta pusaka* is subjected to *adat*, whereas *harta pencaharian* is subjected to *farāʾiḍ*. Although this resolution was not watertight and strictly held at all times, the concept and strategies must not be underestimated. And such "negotiation" and "adaptation" continued as a characteristic in

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[109] *Nashr al-ʿUrf* in Ibn ʿĀbidīn, *Majmūʿat Rasāʾil Ibn ʿĀbidīn*, 2:114

Malay legal thought. The European and Islamic laws are contributive participants in the legal oscillation, and these participants "have provided alternative frames of reference toward which the 'agents of objectification' could orient themselves in their efforts to create new conceptions within *adat*."[110]

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[110] Benda-Beckmann, *Property in Social Continuity: Continuity and Change in the Maintenance of Property Relationships through Time in Minangkabu, West Sumatra*, 326. Here Benda-Beckmann presented ethnographical data of the changes that took place in Minangkabau's conception of property, factors that contributed to these changes, and what these changes mean in relation to the Minangkabau social system. Although ethnographically this study is about Minangkabau, and relates to the postcolonial period, the characteristics and the frame of mind are not essentially dissimilar from Malay legal thought elsewhere.

# CHAPTER TWO

# POLITICAL AND ECONOMIC CONTEXT

In this Chapter I shall not attempt to reconstruct the socio-political and socio-economic structure of the Acehnese society of the seventeenth century. Numerous others have contributed to this area of research, such as Hurgronje's *The Achehnese* (1906), Schrieke's *Indonesian Sociological Studies* (1957), Denys Lombard's *Le Sultanat d'Atjeh au temps d'Iskandar Muda* (1967), Ito's "The World of the Adat Aceh," a great many of Reid's articles and monographs and, not least, Amirul Hadi's *Islam and State in Sumatra* (2004). Several other Doctorate dissertations have been dedicated to Aceh's trade history and its international relations with the Europeans, such as DasGupta's "Acheh in Indonesian Trade and Politics: 1600-1641" (Cornell University, 1962), the most recent being Mitrasing's "The Age of Aceh and the Evolution of Kingship, 1599 - 1641" (Leiden University, 2011). Drawing their findings from both early and later indigenous sources, as well as European sources, these works have provided considerable information about the socio-political and socio-economic situation of the time. References to these sources will be made and discussed. I must also emphasize that serious efforts have been made in this study to refer to significant but often overlooked indigenous sources that offer insiders' perspectives on their own histories. In addition, I shall also use a number of unpublished papers by contemporary indigenous scholars and historians. Because these are not written in European languages, they have often been neglected. The renowned Acehnese scholar, Ali Hasjmy, in his defense for primarily relying on old Malay manuscripts, instead of relying on western and Arabic sources,

argued that even western scholars generally relied on old Malay manuscripts they collected from this region, augmented by Arab and western travelogues and witnesses. This implies that reliance on the Malay manuscripts does not at all reduce the historical value of these sources.[111] And because this study focuses on the seventeenth century, reference to the foundational century or earlier is made only insofar as this offers a backdrop to understanding the periods under study.[112]

**Early History**

The West-Middle East-Far East relations did not start with the advent of Europeans in the Far East region. Arabs were not ignorant about the Far East lands. Trade between the Arab world and the Far East, which includes China, was established well before the advent of Islam and it is not to be unexpected that these Arabs would already have been talking and sharing information about this part of the world when they met at the *sūq* in Mecca and along the Western coast of Arabian Peninsula.[113] The Prophet knew about the *Ṣīn* (China), and therefore asked Muslims to seek knowledge as far as China, and following the conquest of Persia by the Arabs, they held complete monopoly of the overseas trade between the East and the West. "The Arabs involved themselves not only

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[111] See Ali Hasjmy, "Adakah Kerajaan Islam Perlak Yang Pertama Dalam Jenisnya Di Asia Tenggara." [Is the Islamic Kingdom of Perlak the First of its Kind in Southeast Asia?] Paper presented at the Seminar Sejarah Masuk dan Berkembangnya Islam di Aceh dan Nusantara, Aceh Timur, [Seminar on the History of the Coming and Spread of Islam in Aceh and the Nusantara, East Aceh] 1980, 1. This does not suggest that Hasjmy did not refer to foreign sources in writing his papers. It does, however, imply that his main sources are indigenous Malay classical sources; many are still in manuscript form and unpublished.

[112] More historical and archeological evidence is being revealed through recent studies into the ancient and early history of Aceh, which is not the concern of the current study.

[113] Allusion to this can be found in the Qur'ān, in which the Qur'ān speaks about *kāfūr*, or the camphor. The Arabs knew about camphor, its use and qualities; and camphor is a native plant in China, Japan, as well as in the Malay Archipelago, where the Malay called it *kapor* and have used it till now for burial purposes. See *Encyclopedia of the Qur'ān*, q.v. "Camphor"; and the best quality of camphor comes from Barus, or Fanṣūr as it was known to the Arabs—a coastal city of Northeast Sumatra; see Al-Attas, *Historical Fact and Fiction*, 2-3.

in trade, but after the rise of Islam they traveled widely in India, China, and the Far East, and provided geographical, political and social, religious and cultural reports of the lands they visited as well as navigational information on how to get there."[114] They were also the link between the Malay Archipelago and the various parts of Asia, Middle East, and through it to the lands of the North.[115] It was through the Arabs that Europe (even as early as the Greek period) enjoyed commodities from the Far East, and through this interaction Europeans learnt not just about Malay commodities but also acquired some knowledge about its peoples.[116]

**Aceh's Political and Military Power**

After the establishment of the first Islamic kingdom in Perlak in 840,[117] several other

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[114] Ibid., 2.

[115] Ibid.; see also Anthony Reid, "An 'Age of Commerce' in Southeast Asian History," *Modern Asian Studies* 24, no. 1 (1990), 5. The historian Thomas Arnold contends that the Arabs were the early Muslims who came to the region. "At the beginning of the seventh century of the Christian era, the trade with China, through Ceylon, received a great impulse, so that in the middle of the eighth century Arab traders were to be found in great numbers in Canton; while from the tenth to the fifteenth century, until the arrival of the Portuguese, they were undisputed masters of the trade with the East. We may therefore conjecture with tolerable certainty that they must have established their commercial settlements on some of the islands of the Malay Archipelago, as they did elsewhere, at a very early period." Thomas Walker Arnold, *The Preaching of Islam: A History of the Propagation of the Muslim Faith*, 2nd ed. (London: Constable & Company Ltd, 1913), 363-64.

[116] See Thomas Braddell, "On the history of Acheen," *The Journal of The Indian Archipelago and Eastern Asia* 5(1851), 18.

[117] Ali Hasjmy based his dating on an old manuscript *Iẓhār al-Ḥaqq* by Shaykh Ishak Makarani al-Pāsī, Ali Hasjmy, "Sejarah Pemerintahan Selama Berdiri Kerajaan-kerajaan Islam di Aceh" (paper presented at the Seminar Sejarah Masuk dan Berkembangnya Islam di Daerah Istimewa Aceh, Banda Aceh, Aceh, 1978), 3. Chinese sources indicated that during the Tang period (671), Arab settlements ruled by Arab kings had already been found on the Western coast of Sumatra; see Groeneveldt's *Notes on the Malay Archipelago and Malacca Compiled from Chinese Sources*, cited in Al-Attas, *Historical Fact and Fiction*, 3. The first proper Muslim kingdom in Sumatra was founded probably during the eighth and ninth centuries; from the early sources, al-Attas asserts that it was "due to the process of Islamization that the name *Sumatra*, from *Semutra*, gradually came into use for the whole island. The native inhabitants, after becoming Muslims, took the name *Semutra* to memorialize the story of the founding of Pasai as the original Muslim kingdom where Islam took root to finally encompass the island. For the argument on the origin of the name *Sumatra*, and the early arrival of Islam through the Arabs, see ibid., 1-41. Based on oriental and western sources, Aboebakar Aceh concludes that we do not know of places other than Perlak

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Islamic kingdoms ensued: Samudra-Pasai (1042), Tamiang (1184), and Aceh (1205).[118] However, the then Aceh Dār al-Kamāl was not a strong contending power, possessing as it did insignificant political force to reckon with. Djajadiningrat even considers Aceh as an insignificant entity prior to 1500[119]—a place whose history rests in the dark.[120] In fact, cities like Samudra-Pasai and Pidie were better known and frequented by foreigners than Aceh.[121] Djajadiningrat's assertion, if limited to the port town of Aceh, or the Aceh Besar (known to Europeans as Aceh Proper or *Groot-Atjeh*), is not unjustified. However, this could not be said of the current geographical size of Aceh.[122] It is reasonably justified to consider that the Greater Aceh, known as Aceh Dār al-Salām, began to emerge as a dominating power when it unified with Lamuri (Mahkota Alam) at the end of the fifteenth century. With his ascent to power, Sultan 'Alī Mughāyat Shāh (r. circa 1514-1530) quickly unified the smaller kingdoms, Daya (1520), Pidie (1521) and Pasai (1524), Batak (1539), and Aru (1539 and regained in 1564), to establish the Greater Aceh Dār al-

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and Pasai whence Islam started; see his examination of the evidence in H. Aboebakar Aceh, *Sekitar Masuknya Islam di Indonesia*, 4th ed. (Solo, Indonesia: CV. Ramadhani, 1985), 13-20.

[118] Hasjmy, "Sejarah Pemerintahan Selama Berdiri Kerajaan-kerajaan Islam di Aceh." 3; cf. Raden Hoesein Djajadiningrat, *Kesultanan Aceh: Suatu Pembahasan Tentang Sejarah Kesultanan Aceh Berdasarkan Bahan-bahan yang Terdapat dalam Karya Melayu* [Critisch overzicht van de in Maleische werken vervatte gegevens over de geschiedenis van het Soeltanaat van Atjeh], trans. Teuku Hamid (Aceh: Departemen Pendidikan dan Kebudyaan, 1982), 9ff., who questions the reliability of these sources.

[119] Idem, *Kesultanan Aceh*, 20.

[120] Ibid., 9f.

[121] Braddell would have 1521 as the beginning point of the Sultanate of Aceh. Prior to this year, Aceh was just a province under the Pedir kingdom; see Braddell, "On the History of Acheen," 17.

[122] For assessment of Djajadiningrat's assertion, see Said's first edition of *Aceh Sepanjang Abad*, Mohammad Said, *Atjeh Sepanjang Abad*, 1st ed., 2 vols. (Medan: Mohammad Said, 1961), 13-14. Said also cited the Dutch J.L. Moens' nuanced views, who argued that even if Aceh is considered insignificant prior to the 1500, this is true only in the political domain, and not in the economic domain in which Aceh stood as an important link for Asia-Europe trade.

Salām,[123] a united *kerajaan* (kingdom), rightly to be called a Sultanate, under whose sovereignty local rulers and lords (*raja*, *meugat, meurah,* and *uleebalang*) submitted their loyalty and allegiance; consequently the area witnessed the rise of the most powerful sultanate in the archipelago, whose ruler is called the Sultan. This he found necessary in the face of Portuguese expansionist campaigns that were taking place, of which Sultan 'Alī Mughāyat Shāh was not uninformed, in the Red Sea, Persian Gulf, Indian Sea, and a failed attempt to conquer Mecca, the holiest city of the Muslims. And now the Portuguese had arrived in the Malay waters, and had recently conquered Malacca in 1511[124], and Pasai in 1521, which necessitated Sultan 'Alī Mughāyat Shāh chasing the Portuguese away from Pasai in 1524, and from Aru which was a Portuguese vassal, and annexing both Pasai and Aru to Greater Aceh. When the Dutch arrived in West Sumatra in 1600 (Minangkabau), the coastal area was under the control of the Acehnese merchants.[125] This unifying policy, described by others as expansionist policy, was to continue until the height of the Acehnese Sultanate during the reign of the Great Sultan Iskandar Muda (r. 1607-1636). By the end of the sixteenth century, Aceh's domination, either by occupation or alliance, was already extended along the western coast to include Singkil, Barus (*Fanṣūr*), and down to Tiku, Pariaman, Padang and the southern part of Indrapura. Padang was the seat of one of the Acehnese kings and tension and competition for power and control along the western coast was at its most intense during the time of Sultan

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[123] The *Bustan* began its chronology of Acehnese Sultans with 'Alī Mughāyat Shāh, suggesting that the history of Aceh Dār al-Salām began with his kingdom; Juynboll and Voorhoeve hold that 'Alī Mughāyat Shāh was the real founder of Aceh; see EI², q.v. "Atjeh."

[124] See Zakaria Ahmad, *Sekitar Keradjaan Atjeh dalam tahun 1520-1675* (Medan: Monora, 1972), 26-27, and 36-37.

[125] The Dutch however had ousted the Acehnese in the second half of the 17th century. But not until after the 19th century did the Dutch manage to control the Padang Highlands.

Iskandar Muda. This Sultan's tough policies towards the foreigners are understandably justified. Along the eastern coast, Aceh's domination includes Deli, Rokan, Rupat, and Siak. Aceh's campaign was expectedly extended to the eastern part of the Straits that included Perak, Kedah, Pahang and Johor. In describing the military might of Iskandar Muda, Faria de Souza reported that in 1615, in one of his expeditions, more than 500 ships set sail, and more than 100 ships were larger than any of the European ships; and that the number of men engaged in this expedition would have reached 60,000.[126] Aceh witnessed its most extended, expanded and unrivaled power during the reign of Iskandar Muda who consolidated his suzerainty in the region. In short, Aceh at this period was as described by Marsden, "the only kingdom of Sumatra, that ever arrived to such a degree of political consequence in the world, as to occasion its transactions becoming the subject of general history…when by its power the Portuguese were expelled from the island, and its princes received embassies from all the great potentates of Europe."[127] However, by the middle of the seventeenth century (in 1641, during the reign of the first Queen of Aceh) Acehnese hegemony over a significant number of these places was rapidly declining, and by the end of the century Aceh was already at its base of political and military might.[128]

**Aceh-Ottoman Relations**

In speaking about Acehnese political and military power in the region, one simply

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[126] Braddell, "On the History of Acheen," 19. Notwithstanding the possible exaggeration, Iskandar's military power was indisputable, in whatever manner one wishes to describe it.

[127] Marsden, *The History of Sumatra*, 311.

[128] On this decline, see Luthfi Auni, "The Decline of the Islamic Empire of Aceh (1641-1699)" (McGill University, 1993).

cannot ignore the strategic importance and intent arising from Aceh-Ottoman relations. As a rising Islamic power in the Far East, consolidating relations with the most powerful Islamic sultanate of that time—the Ottoman Caliphate—was deemed necessary for religious, cultural, political, economic, and military reasons. Here, however, I shall only briefly allude to these strategic relations.

Aceh-Ottoman relations were started early, during the founding period of the Sultanate of Aceh, notably the period of 'Alī Mughāyat Shāh (r. ca. 1514-1530). In the light of the Portuguese onslaught and the beginning of European interest in the region, the Acehnese Sultan could not but consolidate his power. As a matter of fact, the annexation of the other city-ports into the greater Sultanate of Aceh was indeed a strategy to solidify and consolidate power and strength of the region and the fall of Malacca in 1511 into the hands of the Portuguese added a strong impetus to the urgency and importance of consolidating that strength. The images of conquista of the 15th and 16th centuries were looming over Acehnese courts and, until the middle of the 16th century, Portuguese and Spanish conquistadors were still active in their missions. Through their envoys and missionaries to the seat of the Ottoman caliphate in particular, and to the Arab countries in general, it should not be unexpected that Acehnese leaders would be well informed of Portuguese political, military, and economic expansion. It was only expedient that Aceh sought to establish the relations with the central Islamic lands. These relations were manifested in the form of political and military alliances, trade and commerce and, inevitably, religious and cultural exchanges. To these relations I will allude in discussing the different aspects of exchanges in the different domains: political, military, religious, cultural, and legal.

**Economic Importance and an International Emporium.**

Greater Aceh stood on the golden mines and thriving ports of that time and place. To the Indians, it was known as the Island of Gold (*Suvarnadvipa*). Pidie (Pedir)[129] once dominated the mouth of the channel, and was regarded as important and rich. As a trading place, merchants from all nations traded in Pidie.[130] Consequent to the fall of Malacca and Pidie's constant wars, Pasai had become the alternative port and was becoming prosperous, with many Arabs, Turks, Persians, Gujaratees, Javanese, Siamese and others who together ensured a thriving trade,[131] and when annexed to Greater Aceh, Pasai[132] was still a thriving and prosperous port. The economy of Aceh posed serious concerns to the Portuguese in particular, this being during the time when Portugal envisioned a control over the resources and spice trades of the region.   In consequence Aceh's domination of the eastern coast of Sumatra led to further friction with the Portuguese. In describing the economic importance of Aceh Jorge de Lamos, the Viceregal Secretary at Goa, wrote in his *Cercos de Malacca* (1585):

> "Sumatra is such a wonderful thing, and contains such great riches, that I dare to
> affirm (according to what many experienced old men related, whom I overheard

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[129] Conquered in 1521 by 'Alī Mughāyat Shāh, the founding ruler of the Greater Aceh.

[130] Tomé Pires and Francisco Rodrigues, *The Suma Oriental of Tome Pires; An Account of the East, from the Red Sea to Japan, Written in Malacca and India in 1512-1515; and, The book of Francisco Rodrigues; Rutter of a Voyage in the Red Sea Nautical Rules, Almanack and Maps, Written and Drawn in the East Before 1515*, trans. Armando Cortesåo, 2 vols. (London: Hakluyt Society, 1944), 1:139; cf. Marsden, *The History of Sumatra*, 320.

[131] Pires and Rodrigues, *Suma Oriental*, 1:142f; Reid, "An 'Age of Commerce' in Southeast Asian History," 4, 6.

[132] Conquered in 1524 by 'Alī Mughāyat Shāh.

when they were conversing with the viceroy of India) that it could well be considered as the equal of England, of which the scriptures speak so highly."[133]

Lamos also claimed that,

"[T]he conquest of Atjeh would give the Spanish-Portuguese Crown the economic resources wherewith to destroy not only 'the Heresiarchs and their followers', but to recover all Christian territory lost to the Muslims (including Jerusalem), and to overthrow the Ottoman Empire."[134]

When the Muslim traders felt that they were not accorded equitable treatment by the Portuguese in Malacca, they shifted their trading bases across to Aceh and this exodus further contributed to the burgeoning of trade and commerce in Aceh. All major trading cities, including those that were Arab, from Egypt, Turkey, Abyssinia, China, India, and other Javanese and Malay cities, came to Aceh to trade. "Turkish ships from Egypt went to Achin, and the Achinese ships sailed on the Red Sea."[135] As the French François Pyrard (d. 1621) succinctly has it in his account:

"All those who go to the Indies and other places beyond the Cape of Good Hope, when they desire to go to Sumatra they only say that they are going to Achin, for that town and port conveys the whole name and reputation of the island, as is done on Java Major with Bantam, so that talk is only of these two kings."[136]

In the age of the European merchant adventures, in their search for new green pastures, Aceh in particular, and the Malay Archipelago in general, offered picturesque

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[133] In C.R. Boxer, "A Note on Portuguese Reactions to the Revival of the Red Sea Spice Trade and the Rise of Atjeh, 1540-1600," *Journal of Southeast Asian History* 10, no. 3 (1969), 424.

[134] Ibid., 424. Lamos' exaggeration is not unnoticed here in his desperate attempt to persuade the Crown to attack Aceh.

[135] B. J. O. Schrieke, *Indonesian Sociological Studies: Selected Writings*, vol. 1, Selected studies on Indonesia (The Hague: W. van Hoeve, 1955), 43.

[136] In ibid., 43-44.

and tempting stages for these Europeans, or a "place in the sun," as it were. To no surprise fleets of Europeans ships, with public as well as private traders and merchants, started to throng to the Malay seas, and in particular Acehnese ports. Following the early arrival of the Portuguese, the Archipelago saw the first French trip to Sumatra by Verrazane and Pierre Caunay, who left Honfleur in 1526 and arrived in Aceh in 1527[137]. Under the command of the Dutch Cornelis de Houtman, two Dutch ships, Leeuw and Leeuwin, arrived in Aceh in 1599. Subsequent to the establishment of the British East India Company (EIC) in London in 1600, four British ships, under the command of James Lancaster, set sail to Sumatra. Two ships stopped at Aceh and the other two at Bantam. The Dutch East India Company or *Vereenigde Oost-Indische Compagnie* (VOC), formed in 1602, followed suit, vying for shares of profits in the region.[138] With the return of French voyagers from East Asia an enthusiasm among the French merchants to trade in East India emerged too. In 1604 Henry IV founded the company *La Compagnie française des Indes orientales* modeled after the British and Dutch companies.[139] A century on, at the time of the Acehnese Queen, Dampier (1651-1715) described Aceh in

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[137] It is also reported that two French ships - *Le Pensée* and *Le Sacre* - under the command of the Parmentière brothers, left the port of Dieppe (northwest France) in 1529 and arrived around the islands of Pini and Batu, and Tiku (Western Sumatra) to buy peppers; Denys Lombard, "Kunjungan Laksmana Perancis de Beaulieu ke Aceh Pada Tahun 1621," (n.d), 1. P. Crignon, a member of this expedition, wrote about this voyage, published in 1883 by Schefer, *Le discours de la navigation de Jean et Raoul Parmentièr de Dieppe: Voyage à Sumatra en 1529*; see also Donald F. Lach, *Asia in the Making of Europe*, vol. 1 (Chicago: University of Chicago Press, 1965), 177-78.

[138] Little is mentioned about a French consortium of merchants formed in Saint-Malo, Brittany, in 1601, that sent an expedition to the archipelago, and arrived in Aceh on July 17, 1602; and in 1604 a member of this expedition, François Martin de Vitré, published his memoir, *La Description du premier voyage fait aux Indes orientales par les Français en l'an 1603*. See also Lombard, "Kunjungan Laksmana Perancis de Beaulieu ke Aceh Pada Tahun 1621," 1.

[139] For a brief history of these initiatives and the company see Aniruddha Ray, "French Colonial Policy in Seventeenth Century Madagascar: François Martin's Account," *Archipel* 17(1979), 82-85. In the early stage, the French did not demonstrate the enthusiasm showed by the Portuguese, Dutch, and British. On this, see, Anthony Reid, "The French in Sumatra and the Malay World, 1760-1890," *BKI* 129, no. ii/iii (1973), 195-238; revised and republished as "The French Connection" in ibid., 151-193.

1688 not just as the Gold Mines, but also as resort to merchant-strangers: Portuguese, Dutch, English, Chinese, Gujaratees, and many others,[140] and the road is seldom without ten or fifteen sails of ships of several nations that brought all sort of vendible commodities.[141] Thomas Bowrey, who hosted Dampier when the latter first visited Aceh, and who was more experienced in Aceh, Phuket, Kedah and Borneo between 1669-1688, rated Aceh far above any other port at the northern end of Malacca Strait.[142] For this and other reasons, Reid would have this period called "the age of commerce," in which Malay was the main language of trade throughout Southeast Asia.[143] Notwithstanding the declining political and economic power of the Acehnese Sultanate following the 'age of commerce,' until the year 1784, Aceh was still considered as the "greatest political power on the island." The American professor James Warren Gould, who was also an American diplomat in Medan during the 1950s, says,

> "In 1784 Aceh was the greatest political power on the island. It alone among the states had excluded the European forts, those inevitable precursors of difficulties. Europeans could remember when Acehnese naval power had defeated the Portuguese, but even Aceh 's power was declining."

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[140] Dampier in idem, *Witnesses to Sumatra: A Travellers' Anthology* (Kuala Lumpur; New York: Oxford University Press, 1995), 107-08.

[141] Dampier in ibid., 110; cf. Thomas Bowrey, *A Geographical Account of Countries Round the Bay of Bengal, 1669-1679* (Cambridge,: Hakluyt society, 1905), 287-88.

[142] D. K. Bassett, *The British in South-East Asia During the Seventeenth and Eighteenth Centuries* (Hull: Centre for South-East Asian Studies, University of Hull, 1990), 21.

[143] Reid, "An 'Age of Commerce' in Southeast Asian History."; for an extended discussion see idem, *Southeast Asia in the Age of Commerce, 1450-1680*, 2 vols. (New Haven: Yale University Press, 1988).

**Political Tensions and Conflicts**

Having set the political and economic background of Aceh, one can easily anticipate the political and military tensions to prevail at that time. On the one hand, Aceh was preempting the European onslaught, and, on the other hand, it had to face internal and regional competition for resources and monopoly of these resources.[144] Aceh's immediate and first challenge was to confront the Portuguese onslaught. One acknowledges the fact that the "foreign Others" who were present in Aceh included peoples of different nations: Chinese, Indians, Arabs, Turks, Siamese, Javanese, as well as Europeans. Nonetheless, in speaking about political tensions, my attention here is drawn to the Europeans, or those described by the indigenous texts as the *Orang Peranggi* (Fr. *Franc*; Ar. *Ifranjī)*. As used in Arabic *Ifranjī*,[145] *Peranggi* refers generally to the Europeans.[146] When the non-Europeans came to Aceh and the Malay Archipelago in general, they came primarily as traders, whose primary interest was commercial profit. To be sure, they did not aim to monopolize the resources, much less to conquer, control and seize political power. This is unlike the Europeans (with varying degrees of political interest). The political (and military) tensions are therefore more evident in the Aceh-European relations. In addition to the political agenda, the religious mission the

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[144] It is worth mentioning here that the objective of Malay warfare is not as much to expand geographical territory as to amass human resources, as a symbol of one's power and prowess (as the King's slaves, armies of men, and servants of the kingdom). It is through the control of human resources (and thence their loyalties) one possesses control over the other resources. See on warfare in Reid, *Southeast Asia in the Age of Commerce, 1450-1680*, 17, 122-23.

[145] *Ifranjī,* the Arabic for Franks, originally refered to the inhabitants of the empire of Charlemagne, and was later extended to Europeans in general. In medieval times it was not normally applied to the Spanish Christians, the Slavs, or the Vikings but otherwise was used fairly broadly with reference to continental Europe and the British Isles. The land of the Franks was called *ifrandja; EI², s.v.* "Ifrandj."

[146] See Denys Lombard, *Le Sultanat d'Atjéh au temps d'Iskandar Muda 1607-1636* (Paris: École Française d'Extrême-Orient, 1967), 118ff.

Europeans invariably projected naturally caused suspicions on the part of the Acehnese people.

*Aceh-Portuguese*

One of the motivations to unify smaller towns, and strategic ports like Pidie and Pasai under Greater Aceh was to respond to the Portuguese threatening presence in the region. "Unlike Pidie and Pasai, Aceh never sought to foster cordial relations with the Portuguese, viewing them as political and economic competitors and even religious enemies."[147] When the Portuguese first appeared in the waters of the Straits of Malacca under the command of Diogo Lopes de Sequeira in 1509 they were cordially received by both Aceh and Malacca, in spite of these ships being militarily equipped. They were allowed to load and unload goods and commodities, as Pires himself alluded.[148] However, the Sultan of Malacca was suspicious of their intentions, and ordered them to be placed under captivity.[149] Braddell reported that,

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[147] Amirul Hadi, *Islam and State in Sumatra: A Study of Seventeenth-century Aceh* (Leiden; Boston: Brill, 2004), 21-22. A similar attitude was projected by the Portuguese, and a Portuguese anti-Muslim stance was not unknown. In Schrieke's words, "[a]fter the conquest of Malacca in 1511, the Portuguese in keeping with their principles directed their efforts against the Mohammedans there as well, as D'Albuquerque was quick to have announced the Hindu king of Siam. Closer relations were sought with non-Mohammedan regions such as Sunda (1522) and Panarukan, while within Malacca Hindu traders were given favoured treatment. In the case of the Mohammedans in the town, the Portuguese preferred to do as much injury as possible." Schrieke, *Indonesian Sociological Studies: Selected Writings*, 1, 42; see also Claude Guillot, Hasan Muarif Ambary, and Jacques Dumarçay, *The Sultanate of Banten*, trans. Susan Crossley (Jakarta: Gramedia Book Pub. Division, 1990), 17, 20.

[148] See also Marsden, *The History of Sumatra*, 321. Marsden relates that Diogo de Sequeira stopped at Pidie and was welcomed by the Sultan's deputies with refreshments and assurance of friendship and alliance. He was received at Pasai in the same manner.

[149] Mohammad Said, *Aceh Sepanjang Abad*, 2nd ed., 2 vols. (Medan: Percetakan dan Penerbitan Waspada, 1981), 1:158; first edition published by the author himself in 1961, p. 89. Tome Pires has a different version of the event. He reported that the other Arab, Persian, Bengalee and Gujaratee merchants conspired to instigate Sultan Mahmud saying that the Portuguese were robbing and spying on Malacca. After consulting his ministers, they all agreed, except for two, that the Portuguese should be killed. In what must be seen as a predictable European way, Sultan Mahmud was depicted as the power-sucker, who went

"The first Europeans, at the commencement of the 16th century, were received with open arms, and so long as they continued to conduct themselves with moderation, and kept in check their rapacious disposition, the Malays treated them with affectionate good will; but when the monstrous thirst for gold, which disgraced that period of European history, excited them to encroach on this kindness, the Malays in self-defence were obliged to contract their friendship and resist all advances made towards a closer connection."[150]

The first military engagement between Aceh and the Portuguese broke out in about 1519, when the Acehnese attacked a Portuguese ship that had veered off course and killed many of its crew.[151] Considering Malacca's first experience, and eventually the fall of Malacca in 1511, the Acehnese understandably adopted a wary and suspicious stance towards the Portuguese. Following 'Alī Mughāyat Shāh's political and military policies, his successors adopted a pre-emptive stance by launching attacks on the Portuguese in Malacca, the first being in 1537, led unsuccessfully by Sultan 'Alā' al-Dīn Ri'ayat Shāh al-Qahhār (r. 1537- ca. 1571).[152] And all other attempts by the succeeding Sultans, including the siege led by the greatest Sultan of Aceh, Iskandar Muda in 1629, failed to yield positive results, until the Dutch, aided by the Sultan of Aceh, occupied Malacca in

against all wise advice of his just ministers and officials, and the Portuguese were the victims of such greed and injustice. See Pires and Rodrigues, *Suma Oriental*, 2:254-59.

[150] Braddell, "On the history of Acheen." 15. In another description, Arnold Wright quaintly writes, "Tragedy and comedy mingled their elements in what was in essence one of the most romantic dramas of the world's history. Men started out to build up a commercial connexion, and they ended in laying the foundations of a dominion over alien peoples more wonderful than that of Rome in her palmiest days." Arnold Wright, *Early English Adventurers in the East*, 2nd ed. (New York: E.P. Dutton & Co., 1917), 5.

[151] And for the subsequent confrontations in 1521, 1527 and 1528, see Hadi, *Islam and State in Sumatra*, 22. Acehnese-Portuguese military confrontations were not restricted within the Malay sea and shores, but extended to the Indian Ocean, Arab Sea, and the Red Sea. For these confrontations see Boxer, "A Note on Portuguese Reactions to the Revival of the Red Sea Spice Trade and the Rise of Atjeh, 1540-1600," 417ff.

[152] Subsequent attempts to wrest Malacca from the Portuguese by Sultan al-Qahhār in 1547 and 1568 were also unsuccessful.

1641,[153] then the British in 1795. Taking a guarded position does not mean that Aceh invariably took a hostile position towards the Portuguese, and for that matter towards other foreigners. The exigencies of the time dictated the policy the Ruler adopted; and these should be analyzed and assessed accordingly, though this is not the purpose of the current study. At the closing of the 16th century, Portuguese were still allowed to disembark on Acehnese soil, and welcomed to the Royal court. The *Hikayat Aceh* related a story of two Portuguese envoys who sought audience with Sultan ʻAlāʾ al-Dīn Riʻāyat Shāh (r. 1588-1604) with all their royal gifts from Portugal, to negotiate for a right in the city of Biram. The envoy was warmly welcomed; however, the Sultan turned down the request.[154] In another incident, the Viceroy of India, Dom Pedro de Silva, worried over the growing influence of the Dutch, sent an envoy on September 1638 to the newly enthroned Sultan Iskandar Thani, with the hope of forging an alliance against the Dutch. The mission was intercepted by the Dutch at *l'île des exilés* (Pulau Waih), and a serious combat took place between the two. The Portuguese envoy, nonetheless, was able to pass through and made his way to Aceh, albeit with serious injuries. Nevertheless, the Sultan ordered that he be taken captive and killed. And from then on, according to Lombard, there was no further effort to approach the Acehnese Rulers until the fall of Malacca to

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[153] In a letter dated August 1, 1639, the Englishmen Thomas Ivy and Thomas Morris at Masulipatam (East coast of India) wrote to Andrew Cogan at Golconda (in the present Hyderabad), who planned to send EIC ships to Malacca, not to send them, because such an act means "to send the Companyes shipps into the lyons clawes, wee meeane with [sic] our competitours the Dutch, who hath with the Kinge of Acheen beeseiged Mallacca by land and sea, soe that there cannot a boate escape them; and they would desire noe better purchase [i.e. prize] then to meet with any of our shipps laden with provisions for the releife of their proclaimed enemyes…" See William Foster, *The English Factories in India, 1637-1641: A Calendar of Documents in the India Office, British Museum, and Public Record Onffice*, vol. 6 (Oxford: The Clarendon press, 1912), 145, also 217 and 298; and following the Dutch conquest of Malacca, they declared their contract with the King of Aceh, ibid., 302.

[154] Teuku Iskandar, *Hikayat Aceh*, ed. Ahmad Hassan  (Kuala Lumpur: Yayasan Karyawan, 2001), para 162ff.

the Dutch in 1641,

> *"Il n'y aura, a notre connaissance, pas d'autre tentative de rapprochement, avant la chute de Malaka, qui survint, comme on le sait en 1641."*[155]

*Aceh-Dutch*

The Portuguese presence in the region was not only a threat to the indigenous political and economic power, but also to the other contending European interests who were present there. The Dutch were the first to engage with the Portuguese and following the formation of the Dutch United East India Company or the VOC (**Vereenigde Oost-Indische Compagnie**) in 1602, a powerful fleet of eleven ships under the command of Cornelis Matelieff de Jonge in 1605 was sent out to the Malacca waters to trounce the Portuguese. The Dutch commanders were quick to forge strategic alliances with Aceh and Johor in the face of an imminent threat from the Portuguese, but although the Dutch were able to cause serious casualties, they were unable to seize Malacca.[156] Nonetheless, one must not be oblivious to the earlier encounters between the Portuguese, Dutch and Acehnese. Like other earlier foreigners, the Dutch were initially warmly welcomed,[157] before trouble set in and the Sultan had to deal with the situation accordingly.[158] As it is

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[155] See Lombard, *Le Sultanat d'Atjéh*, 97-98, 233-34.

[156] See Ingrid Saroda Mitrasing, "The Age of Aceh and the Evolution of Kingship, 1599 - 1641" (Leiden University, 2011), 97-98.

[157] The English pilot, John Davis, helmed the ship to Aceh. He related the warm welcome accorded to the Dutch envoy. Here he also alluded to one of the causes to the Sultan's wrath against the Dutch. See *The Voyages and Works of John Davis* in Reid, *Witnesses to Sumatra*, 17ff; cf. Mitrasing, "The Age of Aceh and the Evolution of Kingship, 1599 - 1641." 74.

[158] Houtman's ordeal, in which Cornelis was killed and Frederick was taken captive, during which time he was purportedly forced to become Muslim, will be dealt with in the following chapter.

said, there are no permanent friends, but only permanent interests, and in spite of the earlier unfriendly encounters between Aceh and Dutch traders, both Aceh and the Netherlands entered into treaties and alliances against the Portuguese, since Aceh and the Netherlands shared a common interest in denying the Portuguese their desired monopoly of the region. To this aim, Prince Mauritz van Nassau (Maurice of Nassau) wrote a letter on December 11, 1600[159] to Sultan 'Alā' al-Dīn Ri'āyat Shāh, seeking to forge a strategic alliance between the Netherlands and Aceh. This letter was carried by one of the four Dutch ships in their return envoy to Aceh. In return for allowing the Dutch to trade in Aceh, the Dutch would offer all necessary protection against the Portuguese. To reciprocate, the Sultan of Aceh sent his ambassadors to the Netherlands in 1602 carrying the Prince's letter with the Royal Seal as a show of honor.[160] As with other relations, the Aceh-Dutch relationship too remained dynamic and subject to the political, military and economic exigencies of the time. Although militarily the Acehnese were continuously engaged with the Portuguese on the eastern shore of the Strait of Malacca, until the eventual fall of Portuguese Malacca to the Dutch in 1641, commercially they continued to engage the Portuguese in trade relations on the western shore of the Strait. By the middle of the seventeenth century, Portuguese influence and control of the region was rapidly receding, with the Dutch expeditiously asserting their dominance, in their stead. Just as with Aceh-Portugal relations, a dynamic relationship was observed between Aceh and the Netherlands. Notwithstanding the ups-and-downs of Aceh-Dutch relations, and

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[159] The letter reached Aceh on August 23, 1601.

[160] About this letter and its content (in Spanish) see Lombard, *Le Sultanat d'Atjéh*, 239-41. For an analysis of Aceh-European relations, and this letter in particular, from an international relations perspective, see Mitrasing, "The age of Aceh and the evolution of kingship, 1599 - 1641." 69ff.

the few skirmishes, Aceh-Dutch relations could, in general, be classed as cordial, at least until the middle of the seventeenth century.[161] Soon enough, though, the British joined in the political equation and in the power struggles around the Malay Archipelago, particularly with the growing suspicion towards the Dutch[162]; and one notices a general inclination towards the British as allies to the Acehnese rulers, particularly the Queens of Aceh.

*Aceh-Anglo*

With the fading influence of the Portuguese, particularly after the fall of Malacca to the Dutch, the European power-struggles in the region were left to the Dutch and the British. However, unlike the Dutch, the early British traders were not as keen to compete for political power as to break the trade monopoly by any of the European missions, in spite of the fact that both the Netherlands and England were allies fighting against their common enemy, the Portuguese. Hence, the British explorers did not engage in the contest to conquer Malacca.[163] Their mission remained focused on commercial objectives, and they refrained from intervening in local politics and power struggles. It is not improbable that due to the British political stance in the region, the Sultans of Aceh (at the end of the sixteenth and till end of the seventeenth centuries) were more congenial to them. The British objectives and the favorable treatment they received from the Sultans

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[161] This was soon to change. The fall of Malacca to the Dutch could be considered as the marker for Dutch rising power in the region that in turn would have a serious impact on Aceh's political, military and economic sovereignty in the ensuing decades and centuries.

[162] Before the period of the first Queen, there were already instances in which Iskandar Thani felt humiliated by the Dutch, for instance, when the Dutch entered into a treaty with Johor, which was still under Aceh's sovereignty, without his prior knowledge. This and others added to the building up of distrust and suspicion on the part of the Acehnese rulers.

[163] The British conquered Malacca from the Dutch only in 1795.

of Aceh did not but raise concerns to the Dutch who wanted to jealously protect their interests in the region. Shafaat Khan describes this Anglo-Dutch rivalry as follows:

> "They [the Dutch] found the English Navy indispensable for their operations in the East, but they were not ready to allow them freedom of trade with the natives. The monopoly which they had so laboriously built up would, in their opinion, have been absolutely useless if other European nations had been allowed to trade with their allies. Their main object was the establishment of a monopoly of all the spices in the East, and the consequent exaction of high prices from the buyers in Europe. Competition would destroy all prospects of the realization of this desire. Hence, the bitter rivalry between the two Protestant nations in the East."[164]

The first British mission to Aceh and the region is invariably attributed to Sir James Lancaster who led four British ships following the founding of the British East India Company (EIC) in 1600. In June 1602, carrying a royal letter from the Queen of England, Lancaster arrived in Aceh with two ships, while the other two ships sailed to Banten. However, the role of the English pilot, John Davis, in laying the ground for the British missions should not be understated. Davis was the pilot employed by the Dutch on Houtmans' unsuccessful mission to Aceh in 1598. He was then made the pilot of Lancaster's ship to Aceh. Learning from Houtman's experience, and drawing from his early experience with the Acehnese, Davis must have been a great asset to the successful British missions.

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[164] Shafaat Ahmad Khan, *The East India Trade in the XVIIth Century in its Political and Economic Aspects* (Oxford; London: Oxford University Press; Humphrey Milford, 1923), 21. See also ibid., 21-22 for instances of Dutch harassment of British factories in almost all key ports in the region. In Khan's words, "at whichever of these islands the English went, they were 'beaten away by superior force,' and 'the natives threatened with the loss of their heads, if they dealt with the English.' It is not too much to say that every factory in the East India Islands was a scene of bitter strife between the two nations." Ibid., 22.

The Queen's letter clearly indicated that she was well-informed of the situation in Aceh, and of what would interest the Sultan, whom she called 'our loving brother.' She expressly indicated England's animosity towards their common enemy, the Portuguese,

"who only, and none else of these regions, have frequented those your and the other kingdomes of the East, not suffering that the other nations should doe it; pretending themselves to be monarchs and absolute lords of all these kingdomes and provinces as their owne conquest and inheritance, as appeareth by their loftie title in their writings; the contrarie wherof hath very lately appeared unto us, and that Your Highnesse and your royall familie, fathers and grandfathers, have, by the grace of God and their valour, knowne not only to defend your owne kingdomes, but also to give warres unto the Portugais in the lands which they possesse, as namely in Malaca, in the yeere of the humane redemption 1575, under the conduct of your valiant captaine Ragamacota, with their great losse and the perpetuall honour of Your Highnesse crowne and kingdome."[165]

Further negotiations took place between Lancaster and Acehnese senior courtiers, which included the Grand Mufti of the time, Shaykh Shams al-Dīn al-Sumaṭrāni.[166] The outcome was a pleasant one, and significantly favorable to the British traders.[167] Unlike the agreement between Prince Maurice of Nassau and the Sultan of Aceh, this Anglo-

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[165] James Lancaster, *The Voyages of Sir James Lancaster to the East Indies* (London: Hakluyt Society, 1877), 79. For the full text of the letter, 78-80. For the full text of the Sultan's reply to the Queen, translated from Arabic to English, see 95-97.

[166] Lancaster described him as a man of great esteem to the Sultan, very wise and temperate; see ibid., 81.

[167] The license granted to the Englishmen, as summarized by Lancaster, included free entry and trade, custom free, assistance with the English vessels, goods and men from wrack in any danger, liberty of testament to bequeath their goods to whom they please, stability of bargains and orders for payment by the Acehnese, jurisdiction to execute justice on their own men, and justice against injuries caused by natives; see ibid., 83-84. However, with respect to legal jurisdiction, the Englishmen were not given special privileges, but instead be judged according to Acehnese law. See the English translation of the Malay text of the agreement in Lombard, *Le Sultanat d'Atjéh*, 244-45.

Aceh agreement did not include any offer for military protection or assistance required on the part of the Queen of England. With the ascension of Iskandar Muda (r. 1607-1636) to the throne, the British deemed it necessary that the 1602 agreement be upheld. For this purpose, Captain Thomas Best was sent to Aceh in 1612. When Best arrived in Aceh in 1613, like his predecessors, he was accorded a royal procession and banquet by Sultan Iskandar Muda. Although in general Sultan Iskandar still maintained good relations with the British, he did not find it obligatory to reinstate all the articles of the Privileges of 1602. As Lombard observes, the treaty was more of a diplomatic than a legal text, unilaterally and temporarily granted to the British.[168] By surrendering to Iskandar Muda the Portuguese vessel and the goods that Best had captured on his way to Aceh, he hoped that the Sultan would recede. Notwithstanding, to Best's dismay, Iskandar held on to his position, and only awarded him, as a tribute to his contribution and friendly stance, the title of *Orangkaya Puteh*.[169] This position was to stay until the end of Iskandar Muda's reign, the assertive policies and characteristics of which were described by European sources as cruel[170] and tyrannous.[171] And Iskandar Muda was in good stead to hold to that

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[168] Idem, *Le Sultanat d'Atjéh*, 244.

[169] *Orangkaya* is a title conferred by the Rulers to dignitaries whose performance is deemed outstanding. It denotes dignity, and is not an administrative title. *Puteh* (white) refers to Europeans. Apart from Thomas Best, Beaulieu (1621) was also conferred the title; Keeling (1616): *Orangkaya Suci Hati* (*Orangkaya with Pure Heart*); J. de Meere (1640): *Orangkaya Panjang*; J. Harmansz (1644): *Orangkaya Puteh Kapitan Raja*. On these titles in the *Adat Aceh* see Takeshi Ito, "The world of the Adat Aceh a historical study of the Sultanate of Aceh" (PhD, Australian National University, 1984), 80-81 and the relevant footnotes.

[170] Beaulieu would describe Iskandar Muda's traits and policies as more "a spectacle of his cruelty than anything else…" In Reid, *Witnesses to Sumatra*, 80.

[171] Bowrey who was in Aceh in the 1670s had him as "the cruelest tyrant that many ages afforded," and went on to list down many of such alleged acts of cruelty and tyranny; Bowrey, *A Geographical Account of Countries round the Bay of Bengal, 1669-1679*, 296ff. Unlike these European early sources, Lombard is not willing to describe Iskandar as immoral, drunken, or cruel; if anything, Lombard would portray him as having an unstable character or suffering a nervous disorder (*détraquement nerveux*); see

position due to the political and military might that he had developed over time.

However, after the demise of Iskandar Muda, Aceh was rapidly losing its control over many parts of the Western and Eastern shores of Sumatra to the Dutch, and this included the Western shores of the Malayan Peninsula. The fall of Malacca in 1641, and later Perak, signaled the imminent Dutch threat, with regard to which Sulṭānah Tāj al-'Ālam was not oblivious of the precarious state of affairs. Aceh was rapidly losing its hold of its vassal states along the Western and Eastern shores of Sumatra and in the face of Dutch expansion, the Queen of Aceh found it necessary to include the British in the power equation, and to forge an alliance with them. Dutch blockades escalated and the triangular rivalry (Dutch-Aceh-Anglo) heightened. The British presence and their alliances with the Queens of Aceh helped mitigate aggressive Dutch expansion or any attempt to wage war against Aceh, and any war against Aceh would only bring benefit to the British.[172]

Consequently, British traders—private as well as from the EIC—began to participate in a significant way in Aceh. When the British lost Banten to the Dutch in 1682, they had to search for alternative ports, and diverted their attention to the Malay waters, instead of the Javanese seas. Thomas Bowrey was already in Aceh when the first Queen of Aceh

Lombard, *Le Sultanat d'Atjéh*, 174. With regard to Iskandar Muda's assertive policies and legal systems, particularly as seen from indigenous sources, I will discuss these in Chapter Three.

[172] As Sher Banu Khan observes from Dutch sources, "Whilst the sentiment in the Acehnese court favoured peace and accommodation with the VOC, this feeling was not reciprocated in the VOC camp. One issue stood out in the 1653 and 1654 reports of the Generale Missiven - how best to respond to the humiliations and losses the Company had suffered, i.e. to go to war or not go to war with Aceh." Sher Banu A.L. Khan, "Rule Behind the Silk Curtain: The Sultanahs of Aceh 1641-1699" (Queen Mary, University of London, 2009), 132; and the British element clearly influenced Dutch strategies and policies; see ibid., 133-34.

died in 1675[173] and British private merchants were already trading in Aceh by this year. In addition the unfavorable situation in Siam for the Englishmen during the third quarter of the seventeenth century contributed to the flight of these traders to Aceh. When Dampier arrived in Aceh in 1688, entertained by Thomas Bowrey at his house, Dampier observed British traders, and mentioned two Englishmen who had converted to Islam living in Aceh.[174]

## Political Structure and Court Officials

In general, one can speak of three levels of government: the Central Administration known as the *Dalam* (Royal Enclosure), under the direct control of the Sultan; the regions under the *Panglima*, deputized to administer what is known as the *Sagi*; and the territories under the *Uleebalang* administering what are called the *Muqim*.[175] The extent of the centralized power or otherwise hinges on the power and political exigencies of the different period of the sultanate. Political power during the end of the sixteenth century and early seventeenth century, particularly during the thirty years of Iskandar Muda's reign (1607-1636) was centered in the royal court and the *orangkaya* was part of the central court officialdom.

However, with the decline of the Aceh Sultanate beginning from the rule of the first Queen of Aceh (1641), the center of power shifted away from the central court. The

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[173] Bassett, *The British in South-East Asia during the Seventeenth and Eighteenth centuries*, 12.

[174] See ibid., 18.

[175] See Ito, "The World of the Adat Aceh." 82ff; cf., Ali Hasjmy, *Iskandar Muda Meukuta Alam* (Jakarta: Penerbit Bulan Bintang, 1975), 74-75, and idem, *Kebudayaan Aceh dalam Sejarah* (Jakarta: Penerbit Beuna, 1983), 77. Hasjmy in these works based his enumeration on an early text in his private collection, *Qānūn Āshī* or *Qānūn Meukuta Alam*, started by Sultan al-Qahhār (r. ca. 1537-1571), and completed by Iskandar Muda (r. 1607-1636), and hence the attribution to him as *Qānūn Meukuta Alam*.

demise of the powerful Iskandar Muda (1636) motivated the rise of diffused powers in the outlying uplands of Aceh: the *uleebalangs*—a different aristocracy that was vying for political space and authority. As a result, three *Sagis* (Aceh. *Sagòë*: corners) were formed, each led by a *Panglima Sagi*, the chief *uleebalang* of the *sagi*.

*Sagi* is a confederation of *muqims* (districts or parishes) headed by a *Panglima*.[176] And under each *sagi* are different numbers of *muqims*, hence the *Muqim XXII*, *Muqim XXVI*, and *Muqim XXV*.[177] To be sure, the three *Sagis* were not of equal strength and commanded different power and authority. *Panglima Polem* of the *Sagi XXII* was considered as the most powerful between the three *Panglimas Sagi*.

*Appointment of the Sultan*

The Sultan[178] is the supreme authority and the legitimate ruler to whom loyalty and allegiance are given by the subjects. He claims authority not only by virtue of the secular justifications (political, economic, and cultural), but more importantly the religious justification: as the Vicegerent of God, (*khalīfah*) and shadow of God on earth (*ẓill Allāh fī al-'ālam* or *al-arḍ*).[179] The title "sultan" itself reflects the Islamic character of the authority[180] and he stands as a symbol of unity for the people. While birthright qualifies a

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[176] Ito, however, holds the view that *sagi* is the confederation of the *Nanggròë* (district or country). Aceh in the seventeenth century is composed of four socio-political units: *gampong* (village), *muqim* (district), *nanggroe* and *sagi*, (Ito, "The World of the Adat Aceh" 57-60).

[177] Hurgronje, *The Achehnese*, 1:89-90.

[178] Also called in Aceh *Raja* or *Poteu* (our lord).

[179] For the claims and legitimacy of political and religious authorities of the Acehnese sultans, see Hadi, *Islam and State in Sumatra*, 37-65. On the importance of a sultan/raja in the Malay worldview see Chapter Three of the current study.

[180] The origin of the title sultan is not entirely clear, although early Malay coins and texts did refer to the sultan as the supreme ruler, as early as the 14th century Pasai gold coinage found with the inscription

person to assume the role and function of a sultan, it alone is not a defining condition; his charisma and qualities are[181], as we will see in the ensuing paragraphs.

Any attempt to clarify the processes and procedures by which a ruler was appointed is at best circumstantial. It is even more so, Hadi argues, in the case of Aceh of the sixteenth and seventeenth centuries, which is even less structured than in other Malay sultanates. "However, this very obscurity surrounding the rules governing succession ensured that Acehnese approaches to the issue were flexible and pragmatic. Moreover, at their core an Islamic moral paradigm is found."[182] My attempt here is not to ask *how* a sultan was appointed. The question I seek to answer here is, when the aforementioned conditions are met (by right of birth,[183] and the charisma and qualities), *who* has the right to appoint, or dismiss when these conditions are absent, and when the sultan is no longer serving the purpose and function for which he was appointed?[184]

Two groups of court functionaries played a defining role in the appointment of a sultan: the *orangkayas* and the *'ulamā.'* Any appointment to the office could only be made with their consent.

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*al-Sulṭān al-ʿĀdil*, see ibid., 50; text of *Hikayat Pasai* (14th century); *Undang-undang Melaka* (15th century); *Hikayat Inderaputra* (16th century); *Tāj al-Salāṭīn, Hikayat Aceh, Cerita Kutai, Bustān al-Salāṭīn, Adat Aceh*, and *Sejarah Melayu* (17th century); *Bo' Sangaji Kai*, and *Misa Melayu* (18th century).

[181] On the sources of the ruler's authority and charisma, see ibid., 39-43.

[182] Ibid., 65. In this book, Hadi attempts to propose the "how" of the succession of rulers in Aceh; see 65-93.

[183] The appointment of the Queens adds to the intriguing problem of birthright and the process by which a ruler is appointed. While we know that the first queen is the daughter of Iskandar Muda, little can be gleaned from reliable sources about the lineage of the subsequent Queens; and later in the 18th century, this genealogical continuity becomes blurred.

[184] The period of the reign of a sultan is an indication of the appropriateness (*kelayakan*) of the sultan to hold office. Some sultans lasted only a few months—a period indicative of their lack of qualities; see Hadi, *Islam and State in Sumatra*, 62.

When Sultan al-Qahhār died in 1571, Aceh witnessed one of the most perilous of leadership crises and struggles for power, and this marked the darkest moment of the sixteenth-century court politics. Al-Qahhār's son, Sultan Ḥusayn (r. 1571-1579) was enthroned, to the envy and resentment of his brothers.[185] Although Sultan Ḥusayn was described in *Bustān* as wise, gentle, revered by his people and the *'ulama'*, and compassionate towards the poor and needy,[186] his brothers, Sultan Ghori and Sultan Mughal were unhappy and envious. They conspired (*pekerjaan yang makhfī*)[187] to mount attacks with the aim of removing Sultan Ḥusayn,[188] albeit unsuccessfully.[189] Sultan Husayn died in 1579. Between 1579 and 1588 five successive sultans ruled Aceh, the youngest being a four-month old son of Sultan Husayn.[190] This was the period that saw the rising influence of the *orangkayas,* wherein no sultan could be appointed without their consent. And it is with such a parlous state of leadership that the *orangkayas*, forming a homogenous social class, and in a show of solidarity, appointed the elderly Sultan 'Ala' al-Dīn Ri'āyat Shāh al-Mukammil to the throne.[191] Al-Mukammil was reputed to be a powerful sultan, second only to Iskandar Muda, who was able to bring

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[185] "*maka cemburu Sultan Ghori dan Sultan Mughal akan saudaranya*." Iskandar, *Hikayat Aceh*., 25.

[186] Nur al-Din Raniri, *Bustanu's-Salatin, bab II, fasal 13* (Kuala Lumpur: Dewan Bahasa dan Pustaka, Kementerian Pelajaran Malaysia, 1966), 32.

[187] Iskandar, *Hikayat Aceh*, 25.

[188] On this planned siege see ibid., 25-30

[189] Sultan Mughal himself was killed in this failed attempt. Ibid., 30.

[190] Raniri, *Bustan*, 32.

[191] Iskandar, *Hikayat Aceh*. 35-36; *Hikayat Aceh* speaks of the reason for favoring the elderly al-Mukammil over younger sultan, "*kerana tuanku raja yang tuha lagi telah lanjut penglihat dan luas bicara pada memicarakan sesuatu bicara…*" [And because His Highness is man of age, forsight and wisdom in dealing with matters…]; cf. Lombard, *Le Sultanat d'Atjéh*, 57.

back Aceh's glory.

The *'ulamā'* are the other key to appointing or dismissing the sultan. Some examples will help illustrate the idea, as derived from early Malay sources. In the case of Sultan Sri Alam (r. 1579), the *'ulamā'* together with the *orangkayas* overthrew him (*kita ma'zulkan*: let us dismiss him), for he is seen to be extravagant and lavish,[192] bad-tempered (*amarah*) and weak (*tiada tahu memerentahkan kerajaan*).[193] It is not however clear if they instructed the killing of Sultan Sri Alam, and how he was killed. Nonetheless, the sources do indicate that the *orangkayas* and *'ulamā'* appointed Sultan Zayn al-'Ābidīn (r. 1579) as the successor. The Malay sources are silent on the "how," but quite apparent with regard to the "who." The enthronement of Sultan al-Mukammil cited above, was not without strong promotion and consent of both the *orangkayas* and *'ulamā'*, particularly the *qāḍī*. The role of the senior courtiers and *'ulamā'* of the court in appointing the ruler could be gleaned from Iskandar Muda's designation of Iskandar Thani as his successor. In his dying moments, Iskandar Muda summoned to his audience his senior court officials: the Chief Qāḍī, Shaykh Shams al-Dīn al-Sumaṭrānī, the Prime Minister, and all his *Uleebalang* and designated his son-in-law, Sultan Mughal (Iskandar Thani) to the throne after his death.[194] These senior officials acknowledged and concurred with the will and Iskandar Muda here acknowledged that these were the people who held the right to appoint to the throne the ruler of their people.[195] Later, in the middle of the seventeenth-

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[192] *Hikayat* speaks about the conference of *orangkaya/hulubalang*, *qāḍī* and 'ulama,' and other senior courtiers, that eventually led to the dismissal of Sultan Sri Alam, Iskandar, *Hikayat Aceh*, 30-31.

[193] Raniri, *Bustan*, 33.

[194] According to *Bustan*, based on a spiritual inspiration from God, Iskandar Muda designated Sultan Mughal to succeed him on the throne; see ibid., 43.

[195] Ibid., 42-43; see also Hadi, *Islam and State in Sumatra*, 88.

century, it was with the strong approval of the Shaykh al-Islam-Chief Qāḍī al-Rānirī and followed by al-Sinkīlī who held a similar office that Queens were allowed to rule Aceh for almost 60 years. And it was in the absence of an influential *'ālim* like al-Sinkīlī (d. 1693), and with a fatwa from Mecca that female rulership was disallowed, causing the dethronement of the last Queen of Aceh, Sulṭanah Kamālat Shāh in 1699.

**Senior Court Officials**

There were two groups of social categories in Aceh: the *Orangkaya* or the *Uleebalang* and the *'Ulamā'*. Both formed the social elites of the society, as well as the senior court officials. By virtue of their social, political, and religious status, members of these groups were the ones empowered to appoint or dismiss sultans, as has been explained above. Under each of these social categories, one finds the different administrative functions and roles, such as the *Menteri*, *Uleebalang*,[196] *Panglima*, *Shahbandar, Kerkun* and others, that fall under the former category; and the *Shaykh al-Islām, Qāḍī Malik al-'Adl, Qāḍī, Faqīh*, and *Imām* for the latter's category, although it is not unexpected that certain persons can fall into both the categories.[197] The first category made up the "secular administration," while the second category played the all-important religious roles and functions. I shall first deal with the first category.

*Orangkaya.*

Literally, *orang* means person, and *kaya* means wealthy. Undoubtedly, the

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[196] Known in Malay as *Hulubalang* and sometimes written as *Ulubalang*. Here, I will use the Acehnese orthography frequently found in Acehnese sources.

[197] Of the three *sagis*, the *uleebalang* of the XXV *Mukim* and the XXVI *Mukim*, Hurgronje reported at his time that they were called *Panglima Setia Shaykh 'Ulamā'*, and *Panglima Imām Muda* respectively, suggesting that these offices were previously held by *uleebalangs* who were also religiously qualified and learned elders. See Hurgronje, *The Achehnese*, 1:137.

*orangkayas* are the wealthy lords of the people due to their social, economic and political status in the country. Nonetheless, this social power and privilege that an *orangkaya* held was not primarily due to his wealth, as the word *kaya* denotes, but more importantly his *daya* (Fr. Noble), *raya* (Fr. Puissant) and his "prestige."[198] And *Orangkaya* was used rather to denote social rank and dignity, rather than official title or designation.[199]

When gleaned from earlier sources, indigenous as well as European sources, one cannot but discern the vital role played by the *orangkaya*. Their roles in deciding the issue of succession, shaping the political and economic strategies and policies of the country, resolving disputes and conflicts, managing the ports and courts, and in negotiating with foreign parties within and without Aceh (as royal envoys to foreign countries), are too glaringly evident to be ignored. As Reid remarks, "the many seventeenth century sources on Atjehnese government refer only to *orang kaya* as officials and members of the royal council, on whom fell the onus of deciding or endorsing the oft-disputed succession. These *orang kaya* appear to have been connected with the court through commerce or official function, or at least to have owned land close to the capital,"[200] and as Lombard observes, all sources point to the fact that at the height of social elites were some officials belonging to a special category of privilege, i.e. *Orangkaya*.[201]

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[198] Lombard, *Le Sultanat d'Atjéh*, 56-7.

[199] Ito, "The World of the Adat Aceh," 81.

[200] Reid's Introduction to John Anderson, *Acheen and the Ports on the North and East Coasts of Sumatra*, Oxford in Asia Historical Reprints (London: Oxford University Press, 1971), xii.

[201] "*Toutes nos sources sont d'accord pour l'admettre, au sommet de l'échelle sociale, se trouvait une catégorie de privilégiés: les oraŋ kaya…*" Lombard, *Le Sultanat d'Atjéh*, 56, also 69.

However, these roles and influences cannot be overstated or exaggerated, to the extent that the affairs of the country and the real politics of the government are essentialized to these orangkayas with regard to different functions, and without respect to the power of the sultans themselves, as well as the *'ulamā'*, and the collective roles of the different functionaries within the Royal Councils. At this juncture, it is appropriate to identify the key administrative roles played by these *orangkayas*.

*Uleebalang*.

*Uleebalangs* (Malay: *Hulubalang*) are the senior members of the elites. Within the royal court, they assume different offices, such as the Prime Minister who carries the title *Sri Maharaja Lela*, the Chief of the *Uleebalang*, akin to the Minister for Home Affairs, called *Sri Maharaja Mangkubumi*, the *Shahbandars* (Chiefs of the port), the *Kerkuns* (secretaries), and the *Laksmanas* (admiral, military commanders).[202] Outside the royal court, there were the *Panglima Sagis* (Chiefs of the *Sagis*), *Imeum Mukim* (Chief of the *Muqim*) and *Keuchik* (Head of the *gampongs* or villages).[203] Europeans sources have often emphasized the defining role of the *orangkayas* or *uleebalang*s in Aceh, and insisted that the real source of power, and the true political power rested in the *uleebalangs*, and not in the sultans nor the *'ulamā'*. The *uleebalangs* would disregard edicts and religious advice from the sultans, without a concern for legitimacy, or so goes

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[202] For a listing of these offices and titles during the time of Iskandar Muda and the queen Tāj al-'Ālam see *Adat Atjeh: Reproduced in Facsimile from a Manuscript in the India Office Library*, Verhandelingen van het koninklijk instituut voor taal-, land-, en volkenkunde ('S.Gravenhage: Martinus Nijhoff, 1958), 104-113.

[203] See K.F.H. Van Langen, *Susunan Pemerintahan Aceh Semasa Kesultanan* [De Inrichting van het Atjehsche Staatsbestuur onder het Sultanaat], trans. Aboe Bakar (Banda Aceh: Pusat Dokumentasi dan Informasi Aceh, 1986), 11-12. The *keuchik* borrows his authority from the *uleebalang* of the *sagi*. Hurgronje, *The Achehnese*, 1:64-65.

the claim.[204] The political power of these *uleebalangs* was at its peak, particularly after the demise of the powerful Sultan Iskandar Muda (d. 1637), and during the reign of the Queens. It was argued that these *uleebalangs* installed lady rulers so that they would maintain control of the court as well as the *sagis* and all other parts of Aceh under such weak female rulers, just as they had installed infants to the throne.[205] Reid observes that "after Iskandar's death and that of his immediate successor, the leading chiefs insured themselves against a recurrence of tyranny from the centre by placing four female rulers on the throne in succession. During this period (1641-99), the Sultanate was reduced to a symbol, its status recognized by all Atjehnese while its effective control was limited to the port and capital."[206]

It is acknowledged that the *orangkaya uleebalangs* were influential members of the elderly community (*orang tuha*) revered by the people, owing to their long history and influence that pre-dated the Sultanate of the Greater Aceh. Realizing these historical and socio-political realities, the sultans of the sixteenth and seventeenth centuries,

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[204] As Juynboll and Voorhoeve have it, "the interior of the country possessed little interest for the princes. Even when the empire was flourishing (in the 2nd half of the 16th century, and particularly during the 1st half of the 17th) the authority of the Sultan was confined to the immediate vicinity of the capital." Juynboll and Voorhoeve, "Atjeh," EI², 1:741a. Juynboll and Voorhoeve are obviously reiterating Hurgronje's assertion of the want of power on the part of the sultans to control the government of the interior even during the most flourishing period of their rule; and that the Iskandar Muda's Adat Meukota (his royal edicts) was confined within very narrow limits; even in the limited territorial space that these sultans ruled they had little authority. See Hurgronje, *The Achehnese*, 1:120-121. Because of this belief that real power actually rested in the *uleebalangs* Hurgronje dedicated a great many pages to talking about them. As Siegel describes Hurgronje's project in his *The Achehnese*, "his writing on politics was devoted to showing that Atjehnese reverence for their sultan had nothing to do with the real distribution of power, which was held by the chieftains. His studies of Islam were aimed at showing that Atjehnese, who prided themselves on their religion, were poor Muslims, more likely to follow custom than to obey the central prescriptions of their faith." Siegel, *Shadow and sound: The Historical Thought of a Sumatran People*, 14. Like Hurgronje, Siegel suggests that the important figure in the people's lives is the *uleebalang*. The power he wielded is not as much due to his office as his capacity to mobilize kinsmen and supporters as a consequence of his control of revenue and the market; ibid., 10.

[205] See Hurgronje, *The Achehnese*, 1:90.

[206] Reid, "Sixteenth Century Turkish Influence in Western Indonesia," 4.

however powerful, could not have simply ignored this fact, but instead harnessed the potentials to protect the interests of the sultanate, and in the face of the relentless barrage of foreign interest looming over its horizon. As Lombard observes that, "*Ce prestige dont ils jouissent, cette supériorité qui leur est tacitement reconnue, le Sultan se doit d'en tenir compte; il sait les apprécier et les gratifie de charges diverses, civiles ou militaires.*"[207] This, however, must not cloud our judgment on the complexity of the power relations. To essentialize the political power to the *orangkayas* and *uleebalangs* is to reduce the complexity of human relations to a single source. If at any point in the past, the *uleebalangs* were seen as more powerful, it does not follow that they were so at all times, resulting in the conclusion that the real political power rests in them. Just as in any leadership, where the center (the sultan in this instance) is weak, others are expected to exert more power. Even within the *muqims'* power structure, Hurgronje acknowledges that under a powerful *uleebalang*, the *imeum* (chief of the *muqims*) is not much more than a go-between; and under a weak *uleebalang* the *imeum* could supplant his own chief, defy the former's order, and refuse to supply men to the *panglima*.[208] Surely, Hurgronje has not concluded that the real political power rests in the *imeum* instead of the *uleebalangs*. Hurgronje witnessed the Aceh of the late nineteenth and early twentieth centuries and attempted to back-project the experience of his own time to the earlier centuries. Having had to negotiate and come to grips with the clamorous *uleebalangs*, who insisted on extra dues and charges, and who exercised their vested powers to protect their interests, it is not unexpected that early foreigners, like Beaulieu, Dampier, Mundy,

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[207] Lombard, *Le Sultanat d'Atjéh*, 57.

[208] Hurgronje, *The Achehnese*, 1:87.

and others, would have depicted these *uleebalangs* as ruthless, manipulators, and too powerful, having even more power than the sultans. Yet, as Van Langen observes, the initial purpose of appointing the *Panglima Sagi* was not to run these countries independently of the central government, but rather to ensure that orders from the central government were executed and, in times of war, the *Panglima* (which also means commander) is able to muster his men.[209] To this aim, and in order to administer the functions and roles of the *uleebalangs* and particularly those of the *sagis*, policies and protocols governing this office were detailed in what is known as the *Adat Meukota Alam*.[210]

**Secular Administration**

The exact jurisdictions of these offices and their functions are not entirely clear in early Malay nor in European sources. Nonetheless, these sources do cite these officials when dealing with certain problems and in discharging certain court responsibilities, internally and externally. One can only infer some of these roles and responsibilities. Moreover, their functions, place in the hierarchy of the court administration, and political

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[209] See K.F.H. Van Langen, *De Inrichthing van het Atjehsche Staatsbestuur onder het sultanaat* ('S-Gravenhage: Martinus Nijhoff, 1888), 12; idem, *Susunan Pemerintahan Aceh*, 14-15.

[210] *Adat Meukuta Alam* (sometimes called *Adat Poteu Meureuhom* or *Qānūn Āshī*) is a collection of royal edicts (*sarakata*) started by Sultan al-Qahhār, and significantly completed by and ascribed to Sultan Iskandar Muda, who was also known in Aceh as Meukuta Alam or *Poteu Meureuhom*. Van Langen describes it as a code (*wetboek*) or even better constitution (*grondwet*) for the administration of the sultanate. However, edicts of later Sultan and Sultanah were also added to this collection, particularly the section on the *uleebalangs* and the *panglima sagi* that originated from the Queen Sulṭānah Nur al-'Ālam (r. 1675-1677). See Van Langen, *Susunan Pemerintahan Aceh*, 15-16; idem, *De Inrichthing*, 13. The text of *Adat Meukuta Alam* is annexed in ibid., 56-67; Hasjmy uses the text *Qānūn Meukuta Alam* compiled by Di Meulek of his personal collection in discussing Iskandar Muda's administrative system; about *Qānūn Meukuta Alam* see Hasjmy, *Iskandar Muda Meukuta Alam*, 70, and idem, *Kebudayaan Aceh dalam Sejarah*, 345-47. See also my discussion on the use and nature of *qānūn* in Aceh in Chapter 1.

influence differ from one sultan to another.[211] My task in this respect is not to stipulate these jurisdictions and responsibilities. Suffice it to introduce here some of these key functionaries as an indication of a certain form of administrative and governmental systems.

The Prime Minister carries the title *Perdana Menteri Orangkaya Maharaja Seri Maharaja*[212], and is aided by several ministers (*wazīr*). In his capacity, the Prime Minister was primarily concerned with administering the ministers and internal affairs. Consequently, the Prime Minister was seldom mentioned by European sources due to the want of interactions between him and the foreigners.[213] Some of the ministers include the *Wazīr Badl a-Muluk*, akin to the Minister for Foreign Affairs, *Wazīr Kun Diraja*, who administers the *Dalam Dār al-Dunyā* (Minister for Home Affairs),[214] *Menteri Rama Setia* administers the taxes, and *Seri Maharaja Gurah* (Minister for Forestry).[215]

The *Kerkuns,*[216] secretaries to the court, were headed by the *Penghulu Kerkun* (Chief Secretary) carrying the title *Raja Setia Muda*, aided by two senior secretaries,

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[211] Ito, "The World of the Adat Aceh." 82ff; cf. Hasjmy, *Kebudayaan Aceh dalam Sejarah*, 68ff.

[212] Raniri, *Bustan*, eg., 37, 38, 42, passim. The title carries his official designation and social status. In *Adat Aceh*, the title *Mangkubumi* is added to the above. See *Adat Atjeh: Reproduced in Facsimile from a Manuscript in the India Office Library*, 104. In *Hikayat Aceh*, the title *Wazīr al-Aʿẓam* is used, Iskandar, *Hikayat Aceh*, 96, 103, passim.

[213] Ito, "The World of the Adat Aceh." 89-90. That said, as mentioned above, this jurisdiction, roles and functions changed with the change of the sultans. For example, during the time of Iskandar Thani (r. 1636-1641), the *Laksmana* also carried the same title of the Prime Minister. *Adat Aceh* mentions *Orangkaya Laksmana Seri Perdana Menteri*; *Adat Atjeh: Reproduced in Facsimile from a Manuscript in the India Office Library*, 104a.

[214] In the time of Iskandar Muda, this minister acted as the *Shahbandar* of Aceh Darussalam. See Hasjmy, *Iskandar Muda Meukuta Alam*, 74.

[215] See ibid., 74. For European sources that made references to some of these court officials see Ito, "The World of the Adat Aceh," 87.

[216] Corcoun, corcon, or curcon in European sources.

*Kerkun Kātib al-Mulūk Sri Indrasura* and *Kerkun Sri Indramuda*.[217] Apart from duties as royal scribes in the court, *kerkuns* were also members of the port authorities to record trades and goods indicating the importance of the office, and the size of the council for port administration.[218]

Another key person in the political structure was the *Orangkaya Laksmana*. As the name suggests, the *Laksmana* was the Chief Commander of the Navy, and as the Chief Commander, he was responsible for ensuring the safety and peace of the Acehnese waters and ports. In so doing, he interacted with foreign trades and envoys,[219] and hence was better known to Europeans. But in other instances the *Laksmana* was also responsible for the land army. Citing *Qanūn Meukuta Alam*, Hasjmy mentions *Orangkaya Laksmana Amīr al-Ḥarb* (Minister for Defense) who led the military, naval and land armies, and other military officials. During the reign of al-Mukammil (d. 1604), a female *Laksmana*, Mala Hayati, was appointed as the sea admiral (*Laksmana Laut*). She was also the Head of Protocols in the royal court responsible for arranging meetings with foreign envoys and was the *Laksmana* who received Sir James Lancaster in 1602.[220] At the time of Iskandar Muda, the *Laksmana* was one of the most powerful court functionaries, whose jurisdiction extended beyond military function to include commerce, administration of the port, presiding over the court of the customhouse, as gatekeeper to

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[217] *Adat Atjeh: Reproduced in Facsimile from a Manuscript in the India Office Library*, 49a; cf., Hurgronje, *The Achehnese*, 124-25; H. M. Zainuddin, *Tarich Atjeh dan Nusantara* (Medan: Pustaka Iskandar Muda, 1961), 317, citing *Qānūn Meukuta Alam*, Hasjmy cites the title *Rama Seutia Kerkun Kātib al-Mulk*; Hasjmy, *Iskandar Muda Meukuta Alam*, 71. See also Ito, "The World of the Adat Aceh," 278.

[218] Ito, "The World of the Adat Aceh." 277-78

[219] Ibid., 88-90; Hasjmy, *Iskandar Muda Meukuta Alam*, 77-78.

[220] For the Acehnese military department see Hasjmy, *Iskandar Muda Meukuta Alam*, 92-99;

the port, and principal negotiator on behalf of Iskandar Muda.[221]

Working closely with the *Laksmana* were the *Shahbandars*. As the name implies (in Persian *Shāh* means ruler or head; and *bandar* means port), the *Shahbandars* were primarily responsible for the ordering and administering of the port. While the *Laksmana* acted as the center's policy representative, the *Shahbandars* were the executive officials. The Head of the *Shahbandars* was called *Panglima Bandar* (Chief of Port), under whose leadership were four *Shahbandars* with specific duties.[222]

**Religious Administration**

The second group is the religious corps: the *'ulamā'*. At the crown of this group is the *Shaykh al-Islām* and the *Qāḍī al-Malik al-'Ādil* (Chief Justice).[223] To be sure, this

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[221] Ito, "The World of the Adat Aceh." 281-82.

[222] The Senior Shahbandar *Nakhuda Mu'tabar Khan*, the *Shahbandars Sayf al-Mulūk* and *Seri Rama Setia*, who were in charge of the weighing, and the *Shahbandar Mu'izz al-Mulūk*, who was responsible for the exporting of horses. It is worth nothing that the Shahbandars were not always Acehnese; see ibid., 288, 293, 300.

[223] Little is known of the origin of this office prior to the seventeenth century. Early indigenous and European sources do point to certain personnel acting as a *qāḍī* and *Qāḍī al-Malik al-'Ādil*, and that there were certain institutions or offices administering law and order. See ibid., 155-56. *Hikayat Aceh* made a mention of a certain *Shaykh al-Islām* ordered by Sultan al-Mukammil to read a letter from the Portuguese envoy. It is most likely that the *Shaykh al-Islām* here refers to Shaykh Shams al-Dīn al-Sumaṭrānī. See Iskandar, *Hikayat Aceh*, 68. Although a Shaykh al-Islām could also be the *Qāḍī al-Malik al-'Ādil*, *Bustan* seems to suggest that both offices are not necessarily identical. In *Bustan*, it was related that Iskandar Muda summoned to his audience Shaykh Shams al-Dīn, the Qāḍī al-Malik al-Ādil, the Prime Minister, and all the *uleebalangs*. Raniri, *Bustan*, 42. I am inclined to think that where a Shaykh al-Islām was appointed, he would also hold the office of Chief Justice. Early Malay sources make numerous references to the office of *qāḍī*, instead of the *Shaykh al-Islām*. It may be reconciled that the title *Shaykh al-Islām* was reserved for a preeminent scholar at one point of time, such as Shams al-Dīn, al-Rānīlī, and al-Sinkīlī, who in their capacity would also assume the highest position of the *qāḍīship* and *muftīship*. Hence, *Bustan* was referring to the same person when it mentioned Shams al-Dīn and *Qāḍī al-Malik al-'Ādil*. *Hikayat Aceh* relates a certain *faqīh Raja Indera Purba* who was promoted to *Qāḍī al-Malik al-'Ādil* after having successfully tutored Iskandar Muda when the latter was only thirteen years old (circa late 1580s to early 1590s); Iskandar, *Hikayat Aceh*, 79-80; and on Iskandar's date of birth see idem, "A Document Concerning the Birth of Iskandar Muda," *Archipel* 20 (1980). Considering this early period of al-Mukammil's reign and the fact that Shams al-Dīn's active role was known only in the seventeenth century, I tend to believe that *Hikayat* was referring to a period before Shams al-Dīn's appointment to the office. A certain Shaykh Jamāl al-Dīn was mentioned in a European source who is thought to have assumed the role after al-Sumaṭrānī before al-Rānīrī (see Takeshi Ito, "Why did Nuruddin ar-Raniri leave Aceh in 1054 A.H.?," *BKI* 134(1978),

office was the highest office of the court functionaries second only to the Sultan.[224] As the principal counselor to the Sultan, the *Shaykh al-Islām* was invariably called by the Sultan to advise particularly on matters pertaining to the *Sharī'ah*.[225] Our sources indicate that he was also assigned to represent the Sultan in negotiating with foreign envoys. The renowned Shaykh Shams al-Dīn al-Sumaṭrānī (d. 1630) who served as the *Shaykh al-Islām* and *Qāḍī al-Malik al-'Ādil* to al-Mukammil (r. ca. 1588-1604), Sultan Muda (r. 1604-1607), and Iskandar Muda (r. 1607-1636), was assigned as the chief negotiator with Sir James Lancaster in 1602. Al-Sumaṭranī was also involved in trying and debating with Frederick Houtman when the latter was taken prisoner in 1600. This *Qāḍī al-Malik al-'Ādil* was the Chief of the *Balai Gading* (akin to the modern Cabinet) during Iskandar Muda's reign that comprised seven *'ulamā'* and eight *uleebalangs*.[226] After al-Sumaṭrānī's death, Nūr al-Dīn al-Rānīrī assumed the office (during the period 1637-1645), serving Sultan Iskandar Thānī (r. 1636-1641) and Sulṭanah Tāj al-'Ālam Ṣafiyyat al-Dīn Shāh (r. 1641-1675).[227] This was followed by Shaykh Sayf al-Rijāl who served between 1644-1653. Probably the greatest and most influential Shaykh al-Islām and *Qāḍī al-Malik al-'Ādil* of the century was Shaykh 'Abd al-Ra'ūf al-Sinkīlī who served in office

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490, and idem, "The World of the Adat Aceh," 254-55; cf. Hadi, *Islam and state in Sumatra*, 153). This remains conjectural and speculative. Had he been of such eminence he would have been mentioned in Malay sources. If any, he might have been deputized or acting as the *qāḍī* prior to the arrival of al-Rānīrī. For a discussion about this office, see ibid., 148-161.

[224] Hasjmy, *Iskandar Muda Meukuta Alam*, 71; idem, *Kebudayaan Aceh dalam Sejarah*, 79.

[225] In Chapter 1 I have discussed the place of Islam and *Sharī'ah* in the Malay Worldview, and the relationship between *Adat* and *Sharī'ah*. It is therefore not surprising that the *Shaykh al-Islām* held the highest position in the court and was the closest counselor to the Sultan, and that his role is not limited to the ritual and spiritual aspects of the Sultanate.

[226] Hasjmy, *Kebudayaan Aceh dalam Sejarah*, 197.

[227] Al-Rānīrī left office in 1645 on the instigation of Shaykh Sayf al-Rijāl of Minangkabau origin who then assumed office after al-Rānīrī.

between 1661-1695, during the period of all the four queens.[228] Unlike al-Rānīrī, al-Sinkīlī was acknowledged for his moderate views and equanimity, and in the declining and precarious political climate of the last three queens, in particular the last queen Sulṭānah Kamālat Shāh (r. 1688-1699), al-Sinkīlī was believed to be the real administrator to the Sulṭānah, and the mastermind behind the scenes.[229] Another unique trait of this office, unlike the other secular offices, is that it was not hierarchical, nor restricted to Acehnese. Both al-Rānīrī and Sayf al-Rijāl were not Acehnese by birth. Yet another important characteristic of the office is that it epitomized the unity between (secular) political administration and religion.[230]

The Acehnese religious corps comprised the *qāḍīs, muftīs, faqīhs,* and local *imams* (Ac. *Imeum*). Four principal *Qāḍīs* or *Muftīs* assisted the *Qāḍī al-Malik al-ʿĀdil*.[231] Each of these *qāḍīs* represented one of the four *madhhabs* (Islamic legal schools), and the *Qāḍī al-Malik* was expected to be learned in the four *madhhabs*. As the Chief Justice, he presided over the Council of Justice or what is akin to a Council of Representatives (*Majlis Mahkamah Rakyat*).[232] Quite apart from providing religious and spiritual guidance, they also served as justices in the different courts of justice, at central as well as provincial or local levels.[233] This includes solemnization or dissolution of

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[228] For the list of these *Qāḍī al-Malik al-ʿĀdil* see Ito, "The World of the Adat Aceh," 161-64.

[229] Hasjmy, *Kebudayaan Aceh dalam Sejarah*, 204.

[230] Hadi, *Islam and State in Sumatra*, 160.

[231] Hasjmy, *Iskandar Muda Meukuta Alam*, 71.

[232] Ibid., 73.

[233] Beaulieu mentioned two levels of judiciary: central (city) and local courts (province or country-district, wherein the *orangkaya* administers justice to the inhabitants; see Augustin de Beaulieu, "The Expedition of Commodore Beaulieu to the East Indies," in *Navigatum atque Itinerantium Bibliotheca, or A Complete Collection of Voyages*, ed. John Harris (London, 1764), 744a.

marriages, distribution of inheritance according to the *Sharī'ah*, dealing with criminal infringements, conflict and dispute resolution, and protection of the *adat*, social harmony and continuity. Mirrored after the structure of the *Dalam*, *qāḍīs* and *muftis* were appointed under the *Panglima* and *uleebalang* at the *sagi* and *muqim* respectively. These religious personnel were always available to provide religious and spiritual guidance, education, and legal advice, and were certainly not independent of the political changes. Needless to say, their quality, depth of knowledge, power and influence varied from one to another, and from one period to another.[234] Early Malay sources spoke of the presence of *'ulamā'* in Aceh, and the influx of *'ulamā'* from other Islamic lands, as part of the blossoming of knowledge transmission and thriving networks of *'ulamā'*.

Little information can be drawn from European sources with respect to this religious leadership and these offices. Beaulieu is considered one of the most lucid and meticulous reporters about Aceh in the seventeenth century, if not the most lucid. Notwithstanding this, he provides little information about this office, if compared to the *orangkayas* and the *uleebalangs* (the secular administration). Such an attitude reflects a propensity to want to over-emphasize the power of the *orangkayas* and *uleebalangs*, and to lay prominence on the economic and political history and on the separation of Acehnese religious and spiritual life from the secular life.[235]

**Government institutions**

Although a *balai* literally means a hall of audience or a town hall, and indeed this

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[234] See Ito, "The World of the Adat Aceh," 165-66.

[235] The Shaykh al-Islam Shams al-Dīn is the most mentioned member of the religious elite partly due to his role as Iskandar Muda's closest aide in negotiating and dealing with European envoys and traders. See also ibid., 159.

was the meaning used in some instances, *balai* was also the term used to express designated councils that house a specific class of nobility, government officials, and ministerial matters, with a senior member of the court functionaries presiding over these *balai*. It is this administrative function that concerns us here.

It is worth noting that these Councils were formed with a view to providing a space for consultation and to arriving at a consensus of opinion (*mufakat*)[236]—a cardinal principle in the Malay worldview.[237] As Di Meuluk's *Qānūn Meukuta Alam* (hereafter cited as *Qānūn*) has it enshrined,

> "*Bahwa tiap-tiap raja, sekalian wazir, hulubalang dan sekalian panglima, yaitu yang ada pangkatnya dan martabatnya dan jabatannya, maka janganlah pekerjaannya aniaya dhalim dan Khianat kepada rakyat, janganlah diberi sakit hati rakyat, dan jangan mengharap banyak senjatanya dan kuat laskarnya dengan kerasnya menindih rakyat dan bermusuh dengan rakyat. Maka jikalau ada demikian, sudah terang pemerintahnya tidak kuat dan tidak aman, goyang selamanya. Maka tiap-tiap raja negeri hendaklah bersatu dengan rakyat yang amat kuat dan bulat serta mencari belaian kasih sayang rakyat negeri semuanya, istimewa kepada alim-ulama, maka bertambah-tambah kuat raja dan pemerintah, sebab karena raja dengan rakyatnya itu seperti jasad dengan ruh…*"[238]

"[That it is incumbent upon] every ruler, minister, *uleebalang* and *panglima*, by virtue of their rank, status, and office, not to cause oppression and injustice, nor be disloyal to the subjects, nor to cause harm and unhappiness to the subjects; and that their arms and military might should not be used to oppress and fight against the

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[236] Ahmad, *Sekitar Keradjaan Atjeh*, 131.

[237] I have alluded to this idea of *mufakat* in Chapter One and will elaborate further in discussing the Malayo-Islamic worldview in Chapter Three.

[238] In Hasjmy, *Kebudayaan Aceh dalam Sejarah*, 71. The English translation that follows is my own.

subjects. For, when this happens, surely it demonstrates their weakness [not their strength] and instability. Every ruler must stay united with the subjects who are strong and cohesive, and should seek the subjects' compassion towards them [rulers], particularly to the *'ulamā'*; thereafter the ruler becomes stronger, for a ruler and his subjects is like the body and its soul…"

And in the same text of *Qānūn Meukuta Alam*, it is proclaimed,

> "*Bahwasanya raja sekali-kali tidak boleh bercerai dengan rakyat, yaitu misal umpamanya daging dengan darah, tulang dengan urat, bulu dengan kulit, hati dengan jantung dan akal dengan pikir. Maka demikianlah raja dengan rakyat, yaitu seperti jasad, jika satu urat tersalah atau satu tulang tersalah atau patah, niscaya susahlah jasad menanggung sakitnya, maka demikianlah raja dengan sekalian rakyat; sebab adalah asal raja itu dari pada rakyat dan dengan pilihan rakyat jua, dan bukan asal rakyat daripada raja, akan tetapi adalah raja buat mengurus rakyat dan sekalian perintah negeri…*"[239]

> "Ruler and subject are definitely inseparable, like flesh and blood, bones and veins, hair and skin, liver and heart, and intellect and thought; like a single body, if a vein goes wrong, or a bone breaks, verily the whole body will feel the pain, so it is with the ruler and his subject. For, the ruler finds his root only in the subject, and by virtue of the subject, and not the otherwise; and the purpose of the ruler is to administer [justly] the subject and the country…"

In the ensuing paragraphs, I shall only enlist some of these *balai* (hereafter cited as Council, unless otherwise stated) and their functions in a cursory manner.

*Balairung Sari*. This Council is headed by the Sultan himself, and consists of the

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[239] Ibid., 71.

four senior *uleebalangs* (*Hulubalang Empat*) and seven senior *'ulamā'*. Considered as the Supreme Council of the Sultanate it is legislative in nature.[240] It is reported that when Iskandar Muda wanted to re-establish the connection with the Ottoman Empire, he summoned to his *Balairung* his senior ministers, *'ulamā'*, and *uleebalang* seeking their counsel.[241]

*Balai Majlis Mahkamah Rakyat*. Headed by the *Qāḍī al-Malik al-'Ādil*, it consists of 73 representatives of the 73 *muqims*.[242] The Council functions like a House of Representatives. Here, the *Qāḍī* discusses disputes, conflicts, and matters concerning the people, according to both the *Sharī'ah and Adat*, with the aim of arriving at amicable decisions through consensus.[243]

*Balai Gading*.[244] A Council of Ministers, presided over by the *Perdana Menteri*

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[240] Hasjmy, *Iskandar Muda Meukuta Alam*, 73; idem, *Kebudayaan Aceh dalam Sejarah*, 77; Said, *Aceh Sepanjang Abad*, 1:421; Ahmad, *Sekitar Keradjaan Atjeh*, 92, 131, This is most probably the Grand Council of the Nation Anderson talks about where senior officials met to discuss, among others, the appointment or dismissal of sultans. Anderson cites numerous occasions of such conferences; John Anderson, *Acheen and the Ports on the North and East Coasts of Sumatra: With Incidental Notices of the Trade in the Eastern Seas and the Aggressions of the Dutch* (London: W.H. Allen, 1840), 25, passim; cf. Marsden, *The History of Sumatra*, 315-16.

[241] See Zainuddin, *Tarich Atjeh dan Nusantara*, 273. Hurgronje mentions *balè rōm* within the *Dalam*, wherein senior *panglima, uleebalang*, and *'ulamā'* engaged in debate that lasted weeks on the appointment of a sultan, albeit in his usual scornful insinuation, and where the sultan would gather with his ministers and *'ulamā'*. See Hurgronje, *The Achehnese*, 1:139-40.

[242] Hasjmy, *Iskandar Muda Meukuta Alam*, 73; idem, *Kebudayaan Aceh dalam Sejarah*, 78; by the time of Sulṭānah Tāj al-'Ālam, the representatives included some female chiefs of *muqims*; see Said, *Aceh Sepanjang Abad*, 1:421; Ahmad, *Sekitar Keradjaan Atjeh*, 92, 94, 97.

[243] Cf. Hurgronje, *The Achehnese*, 1:161-63.

[244] *Gading* is a Malay word to mean elephant's trunk. In Aceh the elephant is a symbol of power and strength, and the Acehnese were extremely fond of elephants, and prided themselves on their elephants, which were used for wars, ceremonial and state rituals; see, for example Lombard, *Le Sultanat d'Atjéh*, 88-89, passim. Elephants were also used to receive foreign dignitaries and in state processions. During the time of Iskandar Muda, exports of elephants were embargoed, and specific laws (*Adat Gajah*) were stipulated, and a *Panglima Gajah* (Chief of the Elephants) was appointed. This Council symbolized such power and aggrandizement, and members of the Council included the Ministers for Foreign Affairs and Defense.

(Prime Minister). According to *Qānūn*, its members include the Eight Ministers (*Hulubalang Delapan*) and the Seven *'Ulamā'* (*'Ulamā' Tujuh*).[245]

*Balai Laksmana*. Under the command of the *Orangkaya Laksmana Amīr al-Ḥarb*, this Defense Council was responsible for the military administration of both land and sea. *Qānūn* listed the numerous military titles and ranks.[246] Military training made up one key aspect of the council's activities. In doing so, the sultanate endeavored to strengthen its relationship with the Ottoman Empire,[247] which included the provision of military assistance and training. Such diplomatic and military relations started in the early decades of the sixteenth century, and were recorded by *Bustan*.[248] The Ottoman tutors had left indelible marks even after their departure; as Reid observes, "Atjehnese military tactics, military engineering, and artillery were famous long after their Turkish tutors had departed."[249] Military commanders at the provincial level, called *Pang,* under the supervision of the respective *uleebalangs*, were also responsible for training the inhabitants, and Acehnese women were equally active in military activities. During al-

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[245] Hasjmy, *Kebudayaan Aceh dalam Sejarah*, 77-8. Citing Hamka who based on an old text of *Qānūn al-Āshī*, Zakaria Ahmad says that *Balai Gading* consisted of 22 eminent *'ulamā'* (Ahmad, *Sekitar Keradjaan Atjeh*, 92, 93, 103), and that Shams al-Dīn al-Sumaṭrānī used to preside over this Council (ibid., 117). In her dissertation, Sher Banu Khan also cited Hamka's copy, and cites an old manuscript she found, *Peta Acheh dan Susunan Kabinet Pemerintahan Aceh* (A Map of Aceh and the Organization of its Administration), that listed similar councils, but with varying numbers of members of the councils (A.L. Khan, "Rule Behind the Silk Curtain," 223, 265). The varying number is not unusual. In matters of grave importance, the Council might have added more *'ulamā'* to the conference. Notwithstanding the numbers, the types of the Councils remained consistent in the different texts.

[246] Hasjmy, *Iskandar Muda Meukuta Alam*, 92.

[247] Classical Malay texts used the term *Rūm* to refer to the Ottomans.

[248] Raniri, *Bustan*, 31-2. For this lasting relationship between Aceh and Ottoman Sultanates see Reid, "Sixteenth Century Turkish Influence in Western Indonesia."

[249] Reid, "Sixteenth Century Turkish Influence in Western Indonesia." 410. On Acehnese military, and its training see Hasjmy, *Iskandar Muda Meukuta Alam*, 93-98, and Ahmad, *Sekitar Keradjaan Atjeh*, 133-35.

Mukammil's reign, a female *Laksmana* was appointed, and a women's military corps, *Kemala Cahaya,* was established during Iskandar Muda's reign. Stocktaking, and the maintenance and repair of fleet and artillery, were also entrusted to this Council.

*Balai Furḍah*. An important Council of the sultanate is the *Balai Furdah*, the Council responsible for administering port taxes and regulations, trade and commercial affairs, as well as economic development. Because of its importance, one could find a long enumeration of the officials and departments associated with this Council that included, among others, the *Shahbandars*, Port Chief (*Panglima Bandar*), Chief of secretaries (*Penghulu Kerkun*), Chief of the Royal Seal (*cap*), and the treasurer (*Bendahara*), to whom *Adat Aceh* dedicated a part on "*jamāʿah yang di balai furḍah*" (Officials of *Balai Furdah*)[250], and detailed administrative policies and regulations (*adat*).[251]

*Balai Majlis Mahkamah*[252] was the Council of Justice presided over by a minister called *Seri Raja Panglima Wazīr Mīzān*, and aided by ten legal scholars (*fuqahāʾ*).[253] Its jurisdiction encompassed legal matters and personnel, safeguarding of the appropriate application of the law (*sharīʿah, adat, reusam,* and *qānūn*), and, as the *Qānūn* stipulated, was to administer and supervise all matters pertaining to justice, at the central as well as

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[250] *Adat Atjeh: Reproduced in Facsimile from a Manuscript in the India Office Library*, 111b-113a.

[251] Ibid., 116ff. In his exceptional study, Ito has two chapters (five and six) dedicated to analyzing the administration of the port, trade and taxation; Ito, "The World of the Adat Aceh."

[252] It appears to me that the words *ḥākim* and its cognate *maḥkamah* to mean judge and court respectively are relatively recent in early Malayo-Islamic history, most likely of later variation of the early texts. To this, I shall revert in discussing Acehnese legal worldview in the following chapter.

[253] Hasjmy, *Kebudayaan Aceh dalam Sejarah*, 78.

provincial levels.[254] Although this Council was headed by the *Wazīr Mīzān* (Minister of Justice), the *Shaykh al-Islām-cum-Qāḍī al-Malik al-ʿĀdil* held the highest authority in legal matters, second only to the sovereign, and functioned as the Chief Justice. Other legal personnel included the four *Muftis*, *Qāḍī Panglima Sagi* (the head of justice at *sagi level*), *Qāḍī Mukim*, and *Imeum* (who, in his capacity, provided support to the *qāḍī* at the village level).[255]

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[254] "*Mengurus tiap-tiap perkara dan memeriksa segala perkara kehakiman negeri dan sekalian perkara negeri seluruhnya umumiyah,*" in ibid., 95.

[255] See ibid., 95-6.

# CHAPTER THREE

# THE LEGAL LIFE OF ACEH

## 1. Legal Worldview

*Worldview Defined*

A worldview is, to use Kant's term, an "architectonically" whole perspective; a mental framework or lens, through which one sees and interprets realities and everything that one perceives. Without first assuming a worldview of some sort one cannot possibly evaluate a problem nor interpret realities. All our knowledge belongs to a possible system. To this idea of an architectonic idea having a systematic unity, Kant writes,

> "By architectonic I understand the art of constructing systems. As systematical unity is that which raises common knowledge to the dignity of a science…it is easy to see that architectonic is the doctrine of what is really scientific in our knowledge, and forms therefore a necessary part of the doctrine of method…[our knowledge] must become a system…By system I mean the unity of various kinds of knowledge under one idea. This is the concept given by reason of the form of the whole, in which concept both the extent of its manifold contents and the place belonging to each part are determined *a priori*. This scientific concept of reason contains, therefore, the end and also the form of the whole which is congruent with it. The unity of the end to which all parts relate and through the idea of which they are related to each other, enables us to miss any part, if we possess a knowledge of the rest, and prevents any arbitrary addition or vagueness of perfection of which the limits could not be determined *a priori*….like an animal body, the growth of which does not add any new member, but, without changing their proportion, renders each stronger and more efficient for its purposes. The idea requires for its realisation a *schema*, that is an essential variety, and an order of its parts, which are determined *a priori*, according to the principles inherent in its aim.

A schema, which is not designed according to an idea, that is, according to the principal aim of reason, but empirically only, in accordance with accidental aims…gives technical unity; but the schema which originates from an idea only (where reason dictates the aims *a priori* and does not wait for them in experience) supplies architectonical unity."[256]

Just as any scientific knowledge is possible only within a certain conceptual framework, or a coherent system of ideas in an architectonic whole, so it is with human behaviors. These behaviors spring from, operate within, and are traceable to a worldview. In the human attempt to grasp the universe, realities, and meanings of things, a worldview functions as the lens or perspective from which an individual views everything. In Alparslan's word,

"[A] worldview is an architectonic whole, in which notions, ideas and beliefs are so interconnected that together they form a network of organized concepts. This network forms a coherent mental structure *naturally*, thanks to the constitution of our mind. For our mind, whether knowingly or unknowingly, consciously or unconsciously, cannot accept contradictions, if it perceives them as contradictions. That is why the mind uses its inherent principles, such as the principle of contradiction, argumentation, association and so on, to form the impressions that it receives from the outside world into a coherent unity, as a result of which arises a worldview. It is clear, therefore, that a worldview is not *necessarily constructed* by the individual, but rather it arises in the mind of the individual *necessarily*."[257]

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[256] Immanuel Kant, *Critique of Pure Reason*, trans. F. Max Müller (New York, London: MacMillan, 1896), 667-68.

[257] Alparslan Açikgenc, *Islamic Science: Towards a Definition* (Kuala Lumpur: International Institute of Islamic Thought and Civilization (ISTAC), 1996), 13. See also Alparslan's exposition of the function of worldviews, 20-31.

Concluding his exposition of the nature, function and the rise of worldviews, Alparslan defines worldview as "that vision of reality and truth, which, as an architectonic mental unity, acts as the non-observable foundation of all human conduct, including scientific and technological activities."[258]

*Islamic Worldview*

Having defined worldview in general, it behooves me to define the Islamic worldview. If a worldview is a vision of reality and truth, an architectonic whole of systematic unity, that forms the foundation of all human conduct, scientific, technological, moral and ethical activities, the Islamic worldview is that vision of reality and truth that is founded on and flows from the Qur'ān and the Sunnah, as the "criterion of true Islamicity."[259] However, one acknowledges that there are various interpretations to the Qur'ān and Sunnah. This diversity in interpretation, achieved within the Islamic scientific method, "within the bounds of cognitive restraint deliberated by a knowing community conscious of its identity,"[260] nonetheless does not affect the essence nor disrupt the systemic whole of concepts and ideas within the worldview. The worldview admits of such diversity: diversity in unity and unity in diversity, as it were. As al-Attas puts it,

> "Even though diversity and change can and do indeed occur within the ambience of this worldview, such as the diversity in the schools of jurisprudence,

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[258] Ibid., 29.

[259] Fazlur Rahman, *Islam & Modernity: Transformation of an Intellectual Tradition*, Publications of the Center for Middle Eastern Studies (Chicago: University of Chicago Press, 1982), 22-3. See also Nasr's elucidation of the essence of Islamic science and civilization, and on what distinctly made this science and civilization Islamic in Seyyed Hossein Nasr, *Science and Civilization in Islam*, 2nd ed. (Lahore: Suhail Academy, 1987), 21-29.

[260] Syed Muhammad Naquib Al-Attas, *Prolegomena to the Metaphysics of Islām: An Exposition of the Fundamental Elements of the Worldview of Islām* (Kuala Lumpur: International Institute of Islamic Thought and Civilization (ISTAC), 1995), 37.

theology, philosophy and metaphysics, and in the traditions, cultures and languages; and the change in meeting the tides of changing fortune in the course of history, yet the diversity and the change have never affected the character and role of these fundamental elements themselves, so that what is projected as a worldview by the super system remains intact."[261]

Considering the above, Alparslan asserts the idea of Islamicity as "that idea, doctrine, disposition, behavior, or discipline (in the sense of science) is Islamic, only if it is developed out of or proceeds directly out of the Islamic worldview which is inclusive of *various* interpretations as well within its own context."[262]

In defining a worldview, the "lens" we speak about, or the perspective we refer to is not limited to seeing the physical world of man in his historical, social, political, cultural, scientific and civilizational existence. It includes all realities: the unseen and manifest, spirit and body, natural and supernatural, metaphysical and physical realms, sensible and supra-sensible experience, private and public domains.[263] And this lens or perspective is not one that is based only on empirical experience or philosophical speculation, but also on spiritual certainty attained through Revelation and Divine knowledge.[264] It is therefore a vision of reality (*ḥaqīqah*) and truth (*ḥaqq*), "that appears

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[261] Ibid., 37.

[262] Açikgenc, *Islamic Science*, 8.

[263] On *Tawhidic* Worldview, see Ali Shari'ati, "The World-View of Tauhid," in Ali Shari'ati, *On the Sociology of Islam: Lectures by Ali Shari'ati*, trans. Hamid Algar (Berkeley: Mizan Press, 1979), 82-87.

[264] In their epistemology, early Muslim thinkers spoke about the three channels of knowledge (*asbāb al-'ilm*), by which means the soul arrives at knowledge, viz. the sense (*al-ḥawās*), intellect (*al-'aql*), and true report (*al-khabar al-ṣādiq*), such as the tenth or eleventh century *Ikhwān al-Ṣafā* (Brethren of Purity), Ibn Ḥazm (d. 1064), and Abū Ḥafṣ 'Umar al-Nasafī (d. 1142); see Mian Mohammad Sharif, ed. *A History of Muslim Philosophy. With Short Accounts of Other Disciplines and the Modern Renaissance in Muslim Lands*, 2 vols. (Wiesbaden: Harrassowitz, 1963), 1:292, al-Nasafī, "al-'Aqā'id," in *Majmū' Muhimmāt al-Mutūn* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1994), 19; and in Taftāzānī's

before our mind's eye revealing what existence is all about; for it is the world of existence in its totality that Islām is projecting."[265] This vision of reality and truth is not a worldview formed through cultural and historical processes, nor merely as a result of philosophical speculations and scientific discovery, nor one that undergoes dialectical process, in ever shifting centers, a shift of ideologies and principles, or a shift in paradigm as Kuhn has it;[266] and when this paradigm changes, the world itself changes with it, and the mind sees new and different things, as if one has been transported to another planet where familiar objects are seen in a different light and are joined by unfamiliar ones as well.[267] This vision of reality and truth is not a worldview whose center to things, to presence and to beings is absent, as propounded by Derrida[268]; nor like the flowing river and constant flux of Heraclitus.[269] On the contrary, the Islamic vision of truth and reality is a worldview whose Truth, al-Attas stresses, is permanent and unchanging; and whose vision of Reality affirms 'being,' rather than 'becoming' or 'coming-into-being,' for the Object of its vision is clear, established, permanent and

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commentary in *Min Majmū'ah al-Ḥawāshī al-Bahiyyah 'alā Sharḥ al-'Aqā'id al-Nasafiyyah*, 1:67; cf. Syed Muhammad Naquib Al-Attas, *The Oldest Known Malay Manuscript: A 16ᵗʰ Century Malay Translation of the 'Aqā'id of Al-Nasafī* (Kuala Lumpur: University of Malaya, 1988), 66-67. The Ṣūfīs would also include *ilhām* (intuition) as a fourth channel, such as al-Ghazzālī (d. 1111); see Abū Ḥāmid Muḥammad al-Ghazzālī, *Iḥyā' 'Ulūm al-Dīn*, 6 vols. (Damascus: Dār Qutaybah, 1992), 4:619; cf. al-Baghdādī, Abū Manṣūr 'Abd al-Qāhir ibn Ṭāhir, *Kitāb Uṣūl al-Dīn*, 3rd ed. (Beirut: Dār al-Kutub al-'Ilmiyyah, 1981), 15; A. J. Wensinck, *The Muslim Creed, Its Genesis and Historical Development* (London: Cambridge University Press, 1932), 259-60, Anwar Chejne, *Ibn Hazm* (Chicago: Kazi Publications Inc., 1982), 63ff.

[265] Al-Attas, *Prolegomena*, 2.

[266] Thomas S. Kuhn, *The Structure of Scientific Revolutions* (Chicago; London: University of Chicago Press, 1968; repr., 6th).

[267] Ibid., 110.

[268] See Jacques Derrida, "Structure, Sign and Play in the Discourse of the Human Sciences" in *The Structuralist Controversy: The Languages of Criticism and the Sciences of Man*, edited by Richard Macksey & Eugenio Donato (Baltimore: John Hopkins University Press, 1972), 247ff.

[269] A pre-Socratic Greek philosopher (d. ca. 475 BC) whose famous adage says, "man does not step in the same river twice."

unchanging. The affirmation is absolute because it springs from the certainty of revealed knowledge. This is not only religiously possible, but also objectively through metaphysical and ontological reality, as well as subjectively through intuitive and psychological experience of that reality.[270] As such, this worldview "projects a view of reality and truth that encompasses existence and life altogether in total perspective whose fundamental elements are permanently established."[271] These permanently established fundamental elements include the nature of God; of Revelation; of creation; of the nature of man; of knowledge; of freedom, values and virtues; of ethics and justice; and of happiness.[272]

The unity of the Islamic worldview (*tawhidic worldview*), by its essential nature, admits of dual aspects of reality (*ḥaqīqah*): the *ẓāhir* and the *bāṭin*, the inner and outer, esoteric and exoteric, the sacred and profane, *dunyā* and *ākhirah*, the seen and the unseen. This dual aspect of reality, however, does not concede the dichotomy of these realities. Even when the inner aspect of reality is considered as the ultimate and final significance, it does not admit of a separation from the outer aspect of it, nor an indifferent attitude towards the exoteric or the *dunyā* (wordly) aspect of the reality. In the same sense, Sharī'ah considers the private and public life, private and public law, as inseparable. Sharī'ah encompasses one's relation with God, as well as one's relation with fellow created beings (whether human, animal, or objects in nature) and the Islamic influence on

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[270] Al-Attas, "Islam: The Concept of Religion and The Foundation of Ethics and Morality," in Al-Attas, *Prolegomena*, 75; see also idem., "Islam and the Philosophy of Science," in ibid., 125, and on *ḥaqq* that refers to both reality and truth, see ibid., 126-32, and cf. idem "The Degrees of Existence," in ibid., 282ff; cf. Nasr, *Science and Civilization in Islam*, 21-29.

[271] Al-Attas, *Prolegomena*, 5.

[272] For a succinct yet coherent exposition of these fundamental elements, see ibid., 5-39.

the Malay mind is significantly pronounced in this aspect, notably the worldview. And the Malay worldview admits of the dual nature of realities, and the inseparable aspects of realities. This is evident in the Malay linguistic world that admits concepts such as *dunia dan akhirat* (the World and the Hereafter), *zahir dan batin* (exoteric and esoteric) *Awal dan Akhir* (the First and the Last), and *tersurat dan tersirat* (the manifest and the hidden). It is now apt that I discuss the Malayo-Islamic worldview, and by Malayo-Islamic worldview, I mean the Malay worldview that has assimilated Islamic worldview and formed a worldview distinct from its past.

*Malayo-Islamic Worldview*

To begin with, it is important to state *a priori* the positions this current study embraces: that by the sixteenth and seventeenth centuries, Malayo-Islamic civilization had reached its maturity; that the Islamic worldview had become an integral and organic part of the Malay worldview; and that Acehnese civilization should be considered as part of the Malayo-Islamic civilization.[273] Discussing these issues, important as they are, will

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[273] In asserting the Malayness of Aceh, and for that matter places other than the current Malayan Peninsula, I am cognizant of the opposing claim. Early British colonial scholars, like Winstedt and Wilkinson, were influential in setting certain boundaries of Malayness, or what Maier would call 'Malayistic,' by focusing on the natives of the Peninsula; see Hendrik M. J. Maier, *In the Center of Authority: The Malay Hikayat Merong Mahawangsa* (Ithaca, N.Y.: Cornell University, 1988). This work is based on Maier's PhD's dissertation (Leiden, 1985); Milner too contests the notion of Malays that includes the earlier peoples in the vast area of the Archipelago; instead he prefers discussing 'Malayness' rather than 'the Malays'; see A.C. Milner, "Islam and Malay Kingship." *Journal of the Royal Asiatic Society of Great Britain and Ireland*, No. 1 (1981): 46-70, and idem. *The Malays* (Sussex: Wiley-Blackwell, 2011). The entry "Kesultanan Melayu" (the Malay Sultanate) in *Ensiklopedia Sejarah dan Kebudayaan Melayu* (The Encyclopedia of Malay History and Culture) (Kuala Lumpur: DBP, 1995) ignores everything other than the Malayan Peninsula states—clearly for nationalistic reasons. Andaya, however, holds a contending view. For, the story of the Malays, for whom Andaya insists on using the term Melayu, is well documented, and the name Melayu was already recorded in Chinese sources in the seventh century. And in assessing the Malayness of Aceh, Andaya asserts, "Aceh's example, like that of Melaka before it, became a model of proper Malay behaviour and institutions which were already being emulated on the west coast and the northern half of east-coast Sumatra, as well as in Perak and Kedah on the Peninsula. Had Aceh maintained its dominance over Johor, it would have offered the Malay world a different model from that which we now identify as being authentically Malay." See Leonard Y. Andaya, "The Seventeenth-Century Acehnese

risk compromising the focus of this study but it should suffice to allude here to earlier

discourses on the question of the Islamization of the Malay Archipelago.[274] The position

this study holds is that which indigenous historians, like Prof H. Aboebakar Aceh, Prof

Hamka, and Prof Ali Hasjmy, hold, and particularly that of Prof Syed Muhammad

Naquib al-Attas. This latter has cogently developed a coherent historical and

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Model of Malay Society," in *Reading Asia: New Research in Asian Studies*, ed. Frans Hüsken and Dick van der Meij (Surrey: Curzon Press, 2001), 83-4; cf., idem, "Aceh's Contribution to Standards of Malayness," *Archipel* 61(2001). See also idem, "The Search for the 'Origins' of Melayu." *Journal of Southeast Asian Studies* 32, no. 3 (2001): 315-30. On some of these views, see Timothy P. Barnard, ed. *Contesting Malayness: Malay Identity Across Boundaries* (Singapore: Singapore University Press, 2004). On Malay civilization as Islamic civilization and the origin of Melayu see also Al-Attas, *Historical Fact and Fiction*, xv-xvii.

[274] Key theorists to the question of Islamization of the Malay archipelago, and the Islamic influence on the Malay peoples, are as follows: Hurgronje in many of his works, particularly his magnum opus, *The Achehnese,* originally published in Dutch in two volumes in 1893-1894, translated into English by W.S. O'Sullivan, 1906; and his "De verbreiding van den Islam: inzonderheid in den Oost-Indischen archipel," in *Nederland en da Islam*, Leiden: Brill, 1911; T.W. Arnold, "The Spread of Islam in the Malay Archipelago," in his *The Preaching of Islam: A History of the Propagation of the Faith,* first published in 1896, revised and enlarged in second edition, London, 1913; Hamka. *Adat Minangkabau Menghadapi Revolusi.* (Minangkabau Adat Facing Revolutionary Changes), first published in 1946, 2nd ed. Jakarta: Firma Tekad, 1963; B.J.O. Schrieke, "Javanese Trade and the Rise of Islam in the Archipelago," in his *Indonesian Sociological Studies*, The Hague: Van Hoeve, 1955, 1:7-36; and idem., "The Penetration of Islam in the Archipelago," in his *Indonesian Sociological Studies*, The Hague: Van Hoeve, 1957, 2:230-46; C.C. Berg, "The Islamisation of Java." *Studia Islamica*, 1955, IV: 111-42; S.Q. Fatimi, *Islam Comes to Malaysia*, Singapore: Malaysian Sociological Research Institute, 1963; C.D. Majul, "Theories on the Introduction and Expansion of Islam in Malaysia." *Silliman Journal*, 1964, XI: 335-98; S.M.N. al-Attas, *Preliminary Statement on a General Theory of the Islamization of the Malay-Indonesian Archipelago*, Kuala Lumpur: Dewan Bahasa & Pustaka, 1967); and al-Attas' seminal lecture at his inaugural speech, "Islam dalam Sejarah dan Kebudayaan Melayu (Islam in Malay History and Culture), National University of Malaysia, 1972; G.W.J. Drewes, "New Light on the Coming of Islam to Southeast Asia?." *BKI,* 1968, 124: 433-59; H. Aboebakar Aceh, *Sekitar Masuknya Islam di Indonesia* (On the Advent of Islam to Indonesia), Solo: CV. Ramadhani, 1971; Anthony H. Johns, "Islam in Southeast Asia: Reflections and New Directions," *Indonesia,* Ithaca, 1975, 19: 33-55; idem, "Islam in Southeast Asia: Problems of Perspective," in C.D. Cowan & O.W. Wolters (eds.), *Southeast Asian History and Historiography: Essays Presented to D.G.E. Hall,* Ithaca, N.Y.: Cornell University Press, 1976, 303-20; Ali Hasjmy, "Sejarah Masuk dan Berkembangnya Islam di Indonesia," (History of the Coming and Spread of Islam in Indonesia), in *Kumpulan Prasaran pada Seminar di Aceh*. Medan: al-Maarif, 1981; N.A. Baloch, *Advent of Islam in Indonesia*, Islamabad: National Institute of Historical and Cultural Research, 1980; M.B. Hooker, "Introduction: The Translation of Islam into South-east Asia," in M.B. Hooker (ed.), *Islam in Southeast Asia*. Leiden: Brill, 1983, 1-22; S.O. Robson, "Java at the Crossroads: Aspects of Javanese Cultural History in the 14th and 15th centuries." *BKI*, 1981, 137: 259-92; and in the most recent study, S.M.N. al-Attas, *Historical Fact and Fiction*, Kuala Lumpur: Centre for Advanced Studies on Islam and Civilization, Universiti Teknologi Malaysia, 2011. I have discussed some of these views in Chapter One.

philosophical analysis and synthesis to the question of the Islamization of the Archipelago and Islamic influence on Malay worldview.[275]

Islam had set foot in Sumatra as early as the ninth century, and progressively impacted, changed and formed the Malay worldview from that time on, over many centuries. When reference is made to Sultan ʿAlī Mughāyat Shāh (r. ca. 1514-1530), credited as the founder of Sultanate of Aceh, this does not suggest that Islam began with him. This honor has been attributed to him as added glory to his founding of the Aceh Dār al-Salām, "and that he rather effected a revival of, or imparted a fresh impulse to, the religious life of his subjects than gave to them their first knowledge of the faith of the Prophet. For Islam had certainly set firm foot in Sumatra long before his time."[276] In his periodization of the Islamization process of the Malay Archipelago that started in Aceh, al-Attas divides the periods into three phases, with the first phase, circa. 1200-1400. In this phase, jurisprudence (*fiqh*) played the major role. Theological and metaphysical concepts were still vague in the minds of the Malays. Al-Attas describes this phase as the conversion of the 'body.' The second phase, circa. 1400-1700, is a continuation of the first phase. However, philosophical mysticism and metaphysics, as well as rational theology, began to take center stage; metaphysical concepts and rational theological arguments based on an Islamic worldview were expounded, and the old, pre-Islamic, worldview was Islamized. At this point, the writings of the *Ṣūfis* and *Mutakallimūn*

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[275] For al-Attas' view on the Islamization of the Malay world see S.M.N. al-Attas, *Preliminary Statement on a General Theory of the Islamization of the Malay-Indonesian Archipelago*, (Kuala Lumpur: Dewan Bahasa & Pustaka, 1967); and al-Attas' seminal lecture at his inaugural speech, "Islam dalam Sejarah dan Kebudayaan Melayu (Islam in Malay History and Culture), National University of Malaysia, 1972, and most recently his *Historical Fact and Fiction*, (Kuala Lumpur: Centre for Advanced Studies on Islam and Civilization, Universiti Teknologi Malaysia, 2011).

[276] Arnold, *The Preaching of Islam: A History of the Propagation of the Muslim Faith*, 367.

played the dominant role. It is the period of the conversion of the 'spirit.'[277] The third

phase, from 1700 onwards, is the continuation of phase one, and the consummation of

phase two. This phase saw the cultural influences brought about by the coming of the

West.[278] Through this long period of time, Malays were progressively Islamized, leading

to the conversion of the body and soul. Phase two was exceptionally important in the

Islamization of the Malay worldview. By an Islamization of the worldview, al-Attas

means, in his words,

> "[T]he liberation of man first from magical, mythological, animistic, national-
> cultural tradition opposed to Islam, and then from secular control over his reason and
> his language. The man of Islam is he whose reason and language are no longer
> controlled by magic, mythology, animism, his own national and cultural traditions
> opposed to Islam and secularism. He is liberated from both the magical and the
> secular worldviews. We have defined the nature of Islamization as a liberating
> process. It is liberating because since man is both physical being and spirit, the
> liberation refers to his spirit, for man as such is the real man to whom all conscious
> and significant actions ultimately refer. The liberation of his spirit or soul bears
> direct influence upon his physical being or body in that it brings about peace and
> harmony within himself in his manifestation as a human being, and also between
> him as such and nature….We have also defined islamization as involving first the
> islamization of language, and this fact is demonstrated by the Holy Qur'ān itself
> when it was first revealed among the Arabs. Language, thought and reason are
> closely interconnected and are indeed interdependent in projecting to man his

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[277] In his *Bustān*, al-Rānīrī referred to a number of these scholars from Arabia and India who came
to teach and discussed difficult theological and metaphysical concepts in the sixteenth century, such as,
Shaykh Nūr al-Dīn Muḥammad Azharī of Egypt, who came from Mecca to teach logic; Shaykh Abū al-
Khayr and Shaykh Muḥammad Yamanī who were engaged in a debate on the concept of *al-A'yān al-
Thābitah* (Fixed Essences); and Shaykh Muḥammad Jaylānī of Ranir, Gujerat, who taught logic, rhetoric,
sufism, jurisprudence and principles of jurisprudence. He too was involved in the debate on *al-A'yān al-
Thābitah*. He left Aceh for Mecca when he was unable to resolve questions pertaining to the problem, and
later returned to Aceh for the second time to resolve the problem.

[278] Muhammad Naguib Al-Attas, *Preliminary Statement on a General Theory of the Islamization
of the Malay-Indonesian Archipelago* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1969), 29-30.

worldview or vision of reality. Thus the islamization of language brings about the islamization of thought and reason…"[279]

Key to understanding the Malayo-Islamic worldview is a careful study of the Malay language and its semantic world—something that is often ignored by historians. It is here that the influence of an Islamic worldview is most decisive and significant. The New Malay was brought about by the emergence of Islamic discourse and an assimilation of the Islamic worldview into the concept of the "New Malay." These key Malay terms, unknown before Islam, embodied fundamental Islamic concepts and ideas, and highly sophisticated logical and rational terms; and these are terms that pertain to the higher level of human rational faculty, profound metaphysical and religious meanings, cosmology and human psychology, such as *'ālam, dunya, ākhirat, ḥaqq, sharī'at, ḥaqīqat, ṭarīqat, ada-wujūd-mawjūd, rūḥ-arwāḥ, diri-al-nafs, hendak-irādat, 'aqal, shuhūd, baqā', fanā', jism, ḥikmat, fiqih, taṣawwuf, 'ilmu, ẓāhir, bāṭin, ṣalāt*, and numerous others.[280] Quite apart from it being the lingua franca for international trade and commerce and the records of courts, it was more important that the new Malay was the literary and scientific language of the Archipelago that "gave this heterogeneous region

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[279] Syed Muhammad Naquib Al-Attas, *Islam and Secularism* (Kuala Lumpur: International Institute of Islamic Thought and Civilization (ISTAC), 1993), 44-45.

[280] Within a single Malay work one could discern many of these key terms; for example, in the sixteenth century Hamzah Fanṣūrī's mystical poems. See al-Attas, *The Mysticism of Ḥamzah Fanṣūrī*, on Key words in Hamzah's Mystical System a Semantic Analysis, 142-75; and on Semantic Vocabulary in Hamzah's Mystical System, 527-542. Another case in point is the seventeenth century al-Rānīrī's *Ḥujjat al-Ṣiddīq li daf' al-Zindīq*. For a glossary of these technical terms used in *Ḥujjat al-Ṣiddīq* see Muhammad Naguib Al-Attas, *A Commentary on the Ḥujjat al-Ṣiddīq of Nūr Al-Dīn Al-Rānīrī* (Kuala Lumpur: Ministry of Culture, Malaysia, 1986), 483-504.

not merely an outward aspect of unity, but more profoundly an inward unity of souls bound together in religion."[281]

Earlier, in Chapter One of this study, I mentioned three levels of the Adat worldview. It is at the metaphysical level that it has been Islamized and permanently established, and to which I have referred in the foregoing paragraphs. In the ensuing paragraphs, I shall discuss some of the ethical and moral concepts and values understood by the Aceh people within the family of Malay peoples.

*Place of Sultan in Acehnese Worldview*

Based on the first indigenous source—the *Hikayat Pasai* (a fourteenth century text)—the title sultan that refers to a Malay ruler appears to have been in use in the thirteenth century. Here, *Hikayat Raja Pasai* mentions the name Sulṭān al-Malik al-Ṣāliḥ (d. 1297), whose pre-Islamic name was Merah Silu, and who was arguably the first Muslim ruler of Samudra-Pasai.[282] Similarly in the fourteenth century, the Malay text *Sulālat al-Salāṭīn* or more popularly known as *Sejarah Melayu* (The Malay Annals) makes reference to the Sulṭān al-Malik al-Ṣāliḥ, as well as to the rulers of Malacca as the

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[281] Al-Attas, *Historical Fact and Fiction*, xvi. The creation of the Malay script invariably called the *jāwī* script, which al-Attas would coin as the *Malayo-Arabic* script, before the post-colonial adoption of Latin script, is not without profound significance. For this discussion and examination of historical evidence see ibid., 135-47.

[282] Merah Silu (or Meurah Silu) is invariably and popularly credited as the first Muslim ruler who established the Samudra-Pasai in 1267. However, al-Attas argues that this position was taken by many Western and Oriental historians conveniently. Al-Attas holds that the first Muslim ruler was Sulṭān Muḥammad, who was named in *Hikayat Raja Pasai* as the *Faqīr*. Sulṭān Muḥammad was of Arab descent, and was brought to Sumatra from *Mengiri* in Northeastern India by Arab missionaries probably in the eighth or ninth century. See ibid., 17-20; for the examination of the historical evidence, see 1ff; and for the discussion on the fictitious figure of Merah Silu, identified posthumously as the Sulṭān Malik Salih, the first Muslim ruler of Samudra-Pasai, see 23ff.

Sultans.[283] A personal title used to refer to rulers in the ninth and tenth centuries[284] in the mainlands of Muslim world was not conventionally *Sulṭān*, but *Malik* or *Shāh*,[285] while in the Malay Archipelago *Raja* was used to refer to the rulers.

The *raja* (king/ruler) is considered an important constituent to the cosmic order that ensures the harmonization and equilibrium of the order, and such a position is destined by the Creator Himself. Nonetheless, this much Acehnese worldview stands in common with the early Malay notion of *kerajaan* (kingship). In the pre-Islamic Malay worldview, derived from the *mahadewa* or the *maharaja* (the god-king) of the Hindus, by virtue of his supernatural origin and Divine Preordination, the *raja* is endowed with sacral energy or power (*daulat*, *sakti* or *andeka*) that makes him a focus and a custodian of the social order.[286] "His subjects…are linked to him in a kind of sacral marriage. It is this inseparable unity between the ruler, as an agent of creative cosmic forces manifested on the social level in justice (*'adalat*), and his loyal subjects that guarantees, in the

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[283] On *Sejarah Melayu*, its dates, recensions and versions see Abdullah bin Abdul Kadir al-Munshī (ed.), *Sejarah Melayu*, Singapore, 1842; Munshi's version was then republished in roman script by T.D. Situmorang & A. Teeuw, *Sedjarah Melaju, Menurut Terbitan Abdullah bin Abdulkadir Munsji*, Jakarta, Amsterdam, 1952; W. Shellabear (ed.), *Sejarah Melayu* (Malay Annals), Singapore, American Mission Press, 1896; Richard Olof Winstedt, "The Malay Annals or Sejarah Melayu," *Journal of the Malayan Branch of Royal Asiatic Society* XVI, no. 3 (1938); R. Roolvink, "The Variant Versions of the Malay Annals," *Bijdragen tot de Taal-, Land- en Volkenkunde*, 123:3 (1967): 301-324; see Vladimir Braginsky, *The Heritage of Traditional Malay Literature: A Historical Survey of Genres, Writings and Literary Views*, Verhandelingen van het Koninklijk Instituut voor Taal-, Land- en Volkenkunde, Singapore, Institute of Southeast Asian Studies, 2004, 92-103 on the dates and recension, and 186-98 on its content; Abdul Rahman Haji Ismail and Haron Daud, eds., *Sulalat-us-Salatin (Sejarah Melayu): Cerakinan Sejarah, Budaya, dan Bahasa*, Pulau Pinang: Penerbit Universiti Sains Malaysia, 2008.

[284] If we take the position that the first Muslim rule in Samudra-Pasai was in the ninth or tenth century.

[285] The title *Sulṭān* was widely used from the eleventh century mainly by the Saljūks, with whom *Sulṭān* became a regular sovereign title. And by the thirteenth century on, the Islamic literature was already using the title *Sulṭān* indicating the most absolute political independence; see EI[2], s.v. "Sulṭān."

[286] On this Hindu origin and the pre-Islamic *daulat*, see Muhammad Yusoff Hashim, *The Malay Sultanate of Malacca: A Study of Various Aspects of Malacca in the 15th and 16th Centuries in Malaysian History*, trans. Muzaffar Tate (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1992), 107-08.

interpretation of the hikayat's author, the state's political success and prosperity until such time as the Will of Allah should put an end to its very existence."[287] *Daulat* renders the *raja* his indisputable authority and sovereignty. Although personal qualities (such as charisma, strength, and knowledge) form elements of this *daulat*, its fundamental source, however, is the sacral, spiritual and divine energy endowed to the *raja*.[288] Because of this personal *daulat* divinely inherent in him, sovereignty rests in the person and physical presence of the *raja* on the throne. Sovereignty is not enshrined in geographical positions — the lands the *raja* rules — but in his personality and physical presence. A kingdom is established only where the *raja* is present.[289] The person represents 'the source of both order and prosperity in society,' and was regarded as 'the centre of patterned or formulaic behaviour.'[290] For this reason, treason (*derhaka*) is considered as the biggest crime, whose punishment is death of the traitor and his family, as well as the uprooting of his house and land, which are to be thrown to the sea, as a way to cleansing the evil and ill-fate of the traitor. Otherwise, a misery and ill-fortune, known as *tulah*, will befall the traitor and his family. The *Sejarah Melayu* recorded some of these instances, such as those inflicted on Sang Rajuna Tapa (the Minister of Majapahit-Palembang king

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[287] Braginsky, *Heritage*, 474.

[288] On *daulat* see Muhammad Yusoff Hashim, "Daulat." *Ensiklopedia Sejarah dan Kebudayaan Melayu* (Encyclopedia of Malay History and Culture) (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1994), 1:602a-604b; cf., B.W. Andaya, "Malacca." EI², 6:210. The pre-Islamic term was the Sanksrit *sakti* or classical Malay *andeka*, which was later called *daulat*. Both Hashim and Andaya attributed the origin of daulat to the Arabic word *dawlah*. If *daulat* refers to the manner *sakti* and *andeka* were conceived of, I see no semantic relation between *dawlah* and *sakti* or *andeka*. The Arabic term of a state "*dawlah*" does not support such a meaning. I am inclined to think that *daulat* refers to the Malay political government (state), but only secondarily the element of *sakti* and *andeka* were attached to it, or the term *daulat* (state) was confused with pre-Islamic *sakti* and *andeka*. The similarity between *daulat* and *dawlah* should also not easily lead us to thinking that they are etymologically related.

[289] Hashim, *Malay Sultanate of Malacca*, 116.

[290] See Shelly Elizabeth Errington, "A Study of Genre: Meaning and Form in the Malay Hikayat Hang Tuah" (Cornell University, 1975), 15, 63; cf., Hashim, *Malay Sultanate of Malacca*, 117.

Parameswara in Singapore) and the infamous Hang Kasturi (in another version, Hang Jebat) of Malacca.[291] Resulting from his lofty kingly position and the severe consequence to any attempt to betray the *raja*, the contemporary Malaysian historian Prof Muhammad Yusoff Hashim asserts,

> "[T]he position of the ruler was truly lofty and exalted in his system of government to the extent that his word of command had the force of law, his mere gesture likely to be taken as an order to be carried out, and whose actions and character were beyond reproach. He could override laws that existed in his administration. In fact, the ruler was the law. Therefore, king and kingdom (or the State/government) were synonymous, for figuratively speaking, the ruler was perceived as a shady tree where his subjects could take shelter. The respect of the ordinary people for their ruler was so high that the Sejarah Melayu states that, '…it was the custom of the Malay subject that he would never seek to find fault with the wishes of his master (the king).'"[292]

This said, such a concept is unknown in the Acehnese political worldview.[293] Unlike in Malacca,[294] whose Malayness is derived chiefly from the Srivijaya's pre-

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[291] On *derhaka* (treason) in early Malay political system see Ayob Yamin, "Derhaka." *Ensiklopedia Sejarah dan Kebudayaan Melayu*, 1:609b-610b; Hashim, *Malay Sultanate of Malacca*, 212-14; B.W. Andaya, "Malacca." EI[2], 6:210. According to Errington, unlike the English meaning of treason, *derhaka* is purely behavioral, which does not imply that the grounds for disloyalty were right or wrong, bad or good motives. It simply means "to go against the expressed wishes of the ruler or to withdraw from his service…to cut oneself off from the flow of royal beneficence." 73, and see passim, particularly Chapter Three and Four. For a contesting view to the popular reading of the Malay *daulat* and *derhaka* see Charles Bartlett Walls, "Legacy of the Fathers: Testamentary Admonitions and the Thematic Structure of Sejarah Melayu" (Yale University, 1974), 97ff, and on the allegedly acts of treason on the part of Bendahara Sri Maharaja, see 46ff; on the frequency of Malay treason, see also James C. Scott, "Freedom and Freehold: Space, People and State Simplification in Southeast Asia," in *Asian Freedoms: The Idea of Freedom in East and Southeast Asia*, ed. David Kelly and Anthony Reid (Cambridge: Cambridge University Press, 1998), 50-51.

[292] Hashim, *Malay Sultanate of Malacca*, 117; "*adat hamba Melayu itu tiada dapat menyalahi kehendak tuannya*."

[293] Unlike Sejarah Melayu and Hikayat Hang Tuah, no such hikayat is celebrated in the Acehnese literature. Amirul Hadi concurred that daulat or deelat used in Aceh does not conjure up the image of Malaccan "*daulat*" or "*tulah*" the way *andeka* or *sakti* does. Private correspondence on Nov 14, 2011.

Islamic tradition in its early period, the concept of a ruler held by the Acehnese had been influenced by the Islamic worldview since very early in its history (the ninth or tenth century). These long centuries of gradual Islamic assimilation to the Acehnese worldview have undoubtedly molded its notion of a sultan, distinct from that of the Malaccan Malay and the Mataram Javanese. In addition, information about the concept of a king and royal authority in Aceh prior to Islam is almost unknown. The Islamic influence seems to have obliterated pre-Islamic Aceh's concept of royal authority. Islam had obviously made a deep impact on the Acehnese Malay and uprooted its pre-Islamic elements more than anywhere else, in part due to the early Islamic proliferation, and in part due to the intensity of Islamic learning and missionary activity in Acehnese port-cities patronized by the courts, and in part due to these port-cities being the centers of international trade that invited traders and missionaries from Islamic lands, as well as from India and Persia.[295]

Kingship is the gravitating force in the Malay cultural and political worldview. As the center of gravity, it holds the community together, and ensures the harmony within the plurality and diversity of the community. Human society is viewed as the microcosm of the larger creation, the cosmos and the creation as a whole. Like the cosmos, in which all parts are designed to function in certain ways, and tied to a central element (gravity in

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[294] The defected Malay King of Palembang, a Srivijayan vassal, Parameswara, fled to Singapore, Muar-Johor, and later to Malacca. He lived in Malacca for twelve years before he founded the Islamic kingdom of Malacca in 1404. He withdrew to Singapore, Muar and Malacca as a king, with his ministers, and established in these places his kingdom. Popular belief has it that he converted to Islam after the founding of Malacca. Al-Attas argues that he converted to Islam before 1404, i.e. before the founding of Malacca, between the years 1378-1390; see Al-Attas, *Historical Fact and Fiction*, 59ff.

[295] For a comparative study between Aceh, Malacca and Mataram with regard to Islamic influence and the significant role of Islam in the governing of these places, see Hadi, *Islam and State in Sumatra*, 232-40.

the case of the earth), societies, in spite of their plurality and diversity, are tied to that central element: the ruler. A just ruler is an expression of God's Will and Might on earth. In introducing a sultan, the Hikayat Aceh would begin with the following formulaic statement,

> "*Kata sahibul-hikayat, ya'ni kata yg menceritakan hikayat ini: Maka apakala Allah SWT hendak menyatakan 'azamat-Nya dan kibria'-Nya kepada segala isi 'alam dunia ini maka dijadikan-Nya seorang hamba-Nya yang pilihan-Nya raja dalam sebuah negeri. Dan apakala Allah SWT hendak menyatakan kenyataan 'ilmu-Nya dan kekerasan iradat-Nya dan kudrat-Nya yang kadim itu kepada segala isi 'alam dunia ini pada mengembalikan asal raja kepada kerajaan jua, maka dijadikan-Nya Sultan 'Ala al-Din…..*"[296]

> (So says the narrator of the *hikayat*: When Allāh, the Glorious and Most Exalted, wishes to reveal His Power and Greatness to the inhabitants of the world, He makes His chosen servant a ruler (*raja*) in a certain country; and when Allāh wishes to reveal His Eternal Knowledge, Will, and Power to the inhabitants of the world, and in restoring the rightful ruler to the [rightful] kingdom, He then makes Sultan 'Alā al-Dīn…)

The sultan is the vicegerent of God (*khalīfat Allāh*), and the shadow of God on earth (*ẓill Allāh fī al-'ālam/al-'arḍ*).[297] Such a predicate does not accord the sultan a status of a god-king as in the *maharaja* or *mahadewa* of the Hindus, and endowed with

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[296] Iskandar, *Hikayat Aceh*, 33; and one finds several similar expressions here in precluding an event or birth of a ruler.

[297] We find the expression that the *raja* (king) is the *ẓill Allāh* in as early as the fourteenth-century text of *Hikayat Raja Pasai*, and *Hikayat Bayan Budiman*. Although *Bayan Budiman* is of Persian origin, the idea is not uniquely Persian. It could be found in Islamic literature and in ḥadīth collections. On *Hikayat Bayan Budiman*, see R.O. Winstedt (ed.), *Hikayat Bayan Budiman*, (Kuala Lumpur: Oxford University Press, 1966). A similar expression could be found in *Tāj al-Salāṭīn* and particularly in *Bustan* and *Sejarah Melayu*.

magical power and sacral energy (*sakti* or *andeka*). And when *daulat* is mentioned in Acehnese texts, it referred only to the sultan's authority, legitimacy, sovereignty, power, or knowledge, and not the *magical power* or *sacral energy* as conceived of in pre-Islamic Malay.[298] The mythical and heavenly origin of a sultan, and the origin of Puteri Bongsu, as depicted in *Hikayat Aceh,* are metaphorical expressions, in the usual Malay way.[299] Lineage is therefore important. Sultans come from dignified and pure origin. These great Sultans of Aceh, apart from their "heavenly origin," descended from Alexander the Great, and tracing the genealogy of sultans to this formidable Macedonian king is not unusual in classical Malay writing. In the case of the Sultanate of Malacca, this genealogy is well developed, unlike in Acehnese royal history. In the case of the latter, only a brief allusion is made. This is because such a concept is not well developed in Acehnese history, and the idea that a sacred origin of the ruler is fundamental has little influence on the way rulers were perceived. Sultans were seen like any human beings, possessing both merit and vices. They survived and succeeded or failed and were dismissed by their own merit. As Hadi asserts, "the claims to impeccable pedigrees and personal sacredness represent more of a concession to popular myth and tradition than to a well-rooted Acehnese political philosophy."[300] Hadi's conclusion is not inaccurate altogether. Nonetheless, it does not suggest that genealogical merit has little influence in the Acehnese conception of kingship. What it means is that great Sultans descended from impeccable origins. This

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[298] Some of these texts include *Hikayat Amir Hamzah* and *Hikayat Raja Pasai* (14th century), poems of Hamzah Fansuri (16th century), *Tāj al-Salāṭīn*, *Hikayat Aceh,* and *Bustan al-Salāṭīn* (17th century).

[299] *Hikayat Aceh* speaks about the genealogy of Acehnese rulers down to Iskandar Muda. It speaks of a nymph who came out of a bamboo, and a nymph who descended from the heaven (Puteri Bongsu). In Malay literary work, a tree (*shajarah*) and the bamboo connotes the idea of origin; and similarly the heaven. The stories illustrate the pure and dignified origin of the rulers.

[300] Hadi, *Islam and State in Sumatra*, 78.

is, on the one hand, important in lending legitimacy to a sultan. And on the other hand, that pure origin does not make them infallible and sacrosanct. Their past does not make their future. They are judged by their own acts and qualities.

As the vicegerent of God, and the shadow of God, the sultan is entrusted with protecting the religion and emulating the Prophet and his righteous caliphs and companions. In discharging this trust and function, he is aided by his *'ulamā'* and ministers. While undivided loyalty to the king is expected from every court official, minister, *uleebalang* and all the subjects, and while treason (*derhaka*) is considered a grave crime for it will disrupt the harmonious order and equilibrium, court officials should aid and counsel the rulers in upholding justice, and the ruler should listen to wise ministers and *'ulamā'*. The *Sejarah Melayu* recorded a dying ruler's advice to his Crown Prince and children, to serve God and to obey Him and the Prophet, to do justice and service to his people, and to listen to the wise ministers, because just rulers and the Prophet are like two jewels of a single ring.[301] *Hikayat Aceh* narrated numerous occasions in which the ruler consulted his advisors. In situations when sultans failed to dispense the function entrusted upon them, the learned people of the community could dethrone them (*makzulkan*). Similarly in *Bustān al-Salāṭīn* rulers are reminded to uphold justice; and that followers, kings' counsellors in particular, should not simply submit unequivocally. In one of the most important parts of *Bustan*, "*wa bayān sayr al-khulafā' wa al-salāṭīn al-'ādilīn wa al-wuzarā' al-'āqilīn"* (The Conduct of Just Rulers and Mindful Ministers), after having listed a host of arguments and proofs on the necessity of remaining loyal to the kings, al-Rānirī followed his arguments with a host of arguments and proofs that one

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[301] Winstedt, "The Malay Annals or Sejarah Melayu." 144

must not follow the ruler blindly. When rulers commit erroneous and unjust behavior one should be patient and attempt to resolve the unwarranted situation, while remaining loyal to the rulers. Al-Rānirī says,

"*Tiadalah daripada beberapa dalil dan hadith dan kata segala ulama dan hukama, bahawa mengikut kata raja itu fardu pada barang yang disuruhkannya melainkan pada suruhan yang tiada berlaku pada syarak.*"[302]

(According to proofs from the ḥadīth and the sayings of men of knowledge and wisdom, to obey the ruler in his commands is obligatory, except on matters that go against the Sharī‘ah.)

"*Kata setengah sahabat Rasulullah SAW apabila ada raja itu adil akan rakyatnya, adalah syukur atas segala rakyatnya dan adalah pahala bagi segala raja-raja itu, dan jika ada segala raja itu aniaya atas rakyatnya adalah sabar atas segala rakyatnya dan adalah dosa atas segala raja itu. Dan apabila dititahkan raja akan segala rakyatnya berbuat maksiat maka tiada harus bagi segala rakyat itu mengikut dia itu kerana sabda Nabi SAW, lā ṭā‘ata li makhlūqin fī ma‘ṣiyat al-Khāliq, ertinya: Tiada harus mengikut bagi segala makhluk pada berbuat durhaka akan yg menjadikan dia.*"[303]

(Some companions of the Prophet said that when a ruler is just towards his subjects they should show gratitude, and that rewards be to all the just rulers. And when a ruler is unjust towards his subjects, they should demonstrate patience and indulgence, and sins be on the unjust rulers. And when a ruler commands the subjects to do an act which is sinful, it is not incumbent upon the subject to act on such deed, because the Prophet has said that 'one should not obey the created [in his commands] that which defies the Creator.')

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[302] Ar-Raniri, *Bustan al-Salatin*, 7.

[303] Ibid., 8.

A noble and lofty origin of a sultan, and his charisma laid the bases of authority for the sultan. They justified their bid for a legitimate authority. However, this claim for authority was made legitimate through religious justifications and institutions. This is evident in the early Malay texts, such as the *Tāj al-Salāṭīn, Ḥikāyat Aceh, Adat Aceh,* and *Bustān al-Salāṭīn* that invariably began their exposés by seeking the source of the authority in religious arguments and justifications. Even the fourteenth-century popular tales of *Hikayat Bayan Budiman* (The Tales of the Wise Parrot), contained numerous religious ethical instructions.[304] To this purpose, the religious scholars (*'ulamā'*), whose highest authority was the Shaykh al-Islam or the *Qāḍī al-Malik al-'Ādil*, played a key role. It is not unexpected to learn that he was second only to the Sultan, and that the Sultan was surrounded by the *'ulamā'*.[305] This congregation of religious scholars and ministers aids the Sultan, the center of gravity, in discharging his roles as the ruler of his peoples, by way of *mufakat* (collective agreement): a key element in the Malay ethos.

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[304] *Hikayat Bayan Budiman* is the Malay version of the Persian tales (originating from Sanskrit literature), meant to instruct through entertainment, and used not only to teach the children of the nobilities and court officials, but also to instruct these officials. These tales "represent a genuine encyclopedia of everyday life and state wisdom." Braginsky, *Heritage*, 418.

[305] In his deliberation on the dynamic roles and interdependent functions of both rulers and scholars of the early Islamic governance, necessary to the acquisition of their respective legitimacy, Hallaq asserts, "whereas the earliest caliphs could acquire legitimacy by virtue of their own knowledge of the law; it later became necessary to supplement the caliphal office with jurists who routinely sat in royal courts and who, in effect, constituted the legitimacy that the caliphs (and later all sultans and emirs) needed. In these royal-juristic assemblies, not only were matters of religion, law and literature discussed, but scholarly disputations were held between major jurists. Almost every caliph of the eighth, ninth and tenth centuries was known to have befriended the legists, and later emirs and sultans did much the same." (Wael B. Hallaq, *An Introduction to Islamic law* (Cambridge; New York: Cambridge University Press, 2009), 44. The same is observed in the Acehnese political governance.

*Gotong-Royong, Musyawarah-Mufakat*

*Mufakat,*[306] a collective consensus and accordance, constitutes one of the cardinal principles of the Malay worldview and legal philosophy, arrived at through the process of *musyawarah* (council, communal discussion, collective deliberation);[307] and hence the coining of the oft-repeated principle *musyawarah-mufakat*—the two sides of the same coin. And this principle springs from the Malay ethos of *gotong royong* (the co-bearing of burdens, mutual cooperation).[308] Andaya observes that, "despite the [Malaccan] king's theoretical sanctity and total authority, there were checks against arbitrary rule. It was customary for all state decisions to be based on *muafakat* or consultation between the ruler and his ministers. The interaction between the two is well expressed by the *Sejarah Melayu*, which compares the ruler to the fire and the ministers to the firewood 'and fire needs wood to produce a flame.'"[309] Such a practice is encapsulated in the Malay *adat* saying, in speaking about the role of a ruler,

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[306] *Muafakat*, in modern Malay, or *mupakat* in earlier Indonesian texts (Ar. *muwāfaqah*)

[307] In modern Malay *mesyuarat* is used to refer to a meeting or council. This, however, brings to mind a modern conception of a meeting (specific agenda, minutes, and decision through majority vote).

[308] Translating these indigenous terms such as *gotong-royong* (mutual cooperation), *musyawarah* (council)*,* and *mufakat* (agreement, consensus) risks stripping these terms of their meanings as conceived by the indigenous peoples. One has to bear in mind that these translated terms are tentative and preliminary, pending to a detailed cultural analysis of these terms, which is beyond the scope of this study. It is with this caveat we use the translated terms. For some ethnographical studies of the Indonesian peoples' *musyawarah-mufakat* and *gotong royong* model of conflict resolution, see articles in Koentjaraningrat, ed. *Villages in Indonesia* (Ithaca, N.Y.: Cornell University Press, 1967); on Javanese villages, see idem, *Some Sociol-Anthropological Observations on Gotong Rojong Practices in Two Villages of Central Java*, trans. Claire Holt, Modern Indonesia Project, Southeast Asia Program (Ithaca, NY: Cornell University, 1961); Martha G. Logsdon, "Traditional Decision Making in Urban Neighborhoods," *Indonesia* 26 (1978); John Richard Bowen, "On the Political Construction of Tradition: Gotong Royong in Indonesia," *The Journal of Asian Studies* 45, no. 3 (1986); the Bataks in Geert van den Steenhoven, "Musjawarah in Karo-Land," *Law & Society Review* 7, no. 4 (1973); and the Gayo people in John Richard Bowen, "Consensus and Suspicion: Judicial Reasoning and Social Change in an Indonesian Society 1960-1994," *Law & Society Review* 34, no. 1 (2000).

[309] EI², s.v. "Malacca."

*Rumahnya tempat beradat*

*Tempat berunding bermuafakat*

*Tempat berhenti jauh dan dekat*[310]


His court is house of *adat*

A house for council and *muafakat*

A place where far and near find respite


One cannot emphasize enough the importance of this principle in the ideals and practices of the Archipelago, the extent of which could be found even in modern post-colonial practices.[311] Never mind if Sukarno, the first President of independent Indonesia, was perceived as politicizing the communal spirit to muster support, and manipulating the ethos to pull together the diversity as the unifying ethos for his founding of the Five Principles of Independent Indonesia (the *Pancasila*). So let it be, if Sukarno was only talking a "language of maneuver and compromise" within his so-called *Nasakom-*

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[310] Tenas Effendy, *Pemimpin Dalam Ungkapan Melayu* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2000), 6.

[311] In the modern project of codifying the *adat* (*adat law*, *adatrecht*), the principle of *musyawarah-mufakat* was acknowledged as one of its foundations. The spirit of *Adat*, that includes the principle of *musyawarah-mufakat*, was expressly manifested in the forming of the modern Indonesian nationalism and spirit. This was encapsulated in what was known as the Indonesian Youth Oath of 1928 (*Sumpah Pemuda 1928*), formed at a national congress that gathered the different ethnic groups of Indonesia. *Musyawarah-Mufakat* also formed a basis for the 1945 Constitution of independent Indonesia, and one of the Five Pillars of modern Indonesia known as the *Pancasila*. On *adat* and the Indonesian national spirit, see H. Moh Koesnoe, *Hukum Adat Sebagai Suatu Model Hukum: Bagian I (Historis)* (Bandung: Mandar Maju, 1992), 4ff; and for the text of *Sumpah Pemuda 1928*, see ibid., 151; and its English translation in Moh. Koesnoe, *Report Concerning a Research of Adat Law on the Islands of Bali and Lombok, 1971-1973*, Publikaties over volksrecht (Nijmegen: Institute of Folk Law, Faculty of Law, Catholic University, 1977), 127.

politique.[312] If anything, this is a clear acknowledgement of the rootedness of the *musyawarah-mufakat* principle in the peoples.[313]

The Indonesian socio-anthropologist Koentjaraningrat has aptly described *gotong-royong* as "a sociocultural ethos that underlies the value system, mores, and folkways of a society. In such communities, sacrifice for the common benefit seems to be valued highly, individualism seems to be regarded with disapproval, the rights of the individual are not greatly emphasized, and the spirit of cooperation forms the basis of social interaction."[314] In the spirit of *gotong-royong,* people are constantly involved in consultation and discussion. Here one must be reminded that *musyawarah* (consultation and discussion) need not always lead to unanimous agreement. *Mufakat* does not imply unanimity, nor suggest the notion of 'majority rules.' The objective of the *musyawarah* is not to arrive at a majority voice, nor to outwit the other, but to arrive at an amicable agreement (*mufakat*) in maintaining the social harmony and equilibrium—a social and natural accordance so to speak. Even the minority should not begin his defense as an underdog fighting its way to the majority voice. This implies that any party is expected to readjust its respective views and to form what Koentjaraningrat calls a "new conceptual synthesis," and when a

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[312] *Nasakom* is an acronym of *Nasionalisme* (nationalism), *Agama* (religion), and *Komunisme* (Communism) expounded by Sukarno during the Guided Democracy period. See Benedict Anderson, "The Idea of Power in Javanese Culture," in Claire Holt, ed. *Culture and Politics in Indonesia* (Ithaca N.Y.: Cornell University Press, 1972), 15.

[313] In 1945, before the Investigating Committee for the Preparation of Independence (*Panitia Persiapan Kemerdekaan Indonesia*), Sukarno made his historic speech outlining the Five Principles of a Free Indonesia, which included the principle of *Musyawarah-Mufakat*; and he even argued that the one fundamental principle upon which all the other principles rest is that "genuine Indonesian term, the term '*gotong rajong*' (mutual cooperation). The State of Indonesia which we are to establish should be a state of mutual co-operation." See George McTurnan Kahin, *Nationalism and Revolution in Indonesia*, Studies on Southeast Asia (Ithaca, N.Y.: Southeast Asia Program Publications, Southeast Asia Program, Cornell University, 2003), 122-27.

[314] Koentjaraningrat, "The Village in Indonesia Today," in Koentjaraningrat, *Villages in Indonesia*, 396.

decision is made, even contrary to one's initial position, one shall not continue to "make noise," nor seek to re-open the debate, as the Malay proverb signifies: *rumah dah siap, pahat masih berbunyi* (after the house is completed, the sound of the chisel is [still] heard).[315] "*Musjawarah* and *mupakat*, however, imply the existence of personalities who, by virtue of their leadership, are able to bring together the contrasting viewpoints or who have enough imagination to arrive at a synthesis integrating the contrasting viewpoints into a new conception."[316] And in describing this traditional decision-making process, Logsdon asserts, "the compromise involved here is frequently viewed differently from that needed to build a coalition in the majority-rule systems. The basic assumption is that there is a common interest in society—rather than competing interests—which all sides will learn to recognize through discussion. There are no 'losers' in this form of decision making, which results in the good of the whole rather than the good of the greater number."[317]

In a closely-knit community, a village is one's home, and the community is one's extended family. Conflicts and problems are causes of disorder and imbalance to the harmonious living, and are potential destroyers of the social and spiritual infrastructure of the community. Resolving conflicts is like rebuilding a damaged house or a broken

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[315] Bowen discusses cases brought before the Islamic courts in the 1950s and 1960s of Gayo society. In these cases plaintiffs argued that inheritance should be divided according to Islamic inheritance law, while the defendants argued that the wealth was already divided according to the *adat* norms, by way of *musyawarah-mufakat*, and in the presence of the plaintiffs. Upon hearing the cases and testimonies, the Islamic judges ruled that the division was valid, and that "we should not keep redividing wealth," and therefore rejected the suit. Similar cases were brought before the State courts, and similar positions were made by state judges; see Bowen, "Consensus and Suspicion: Judicial Reasoning and Social Change in an Indonesian Society 1960-1994,"106-08. Although these are modern cases, they reflect the continued ethos and system of *musyawara-mufakat* and the proverb *rumah dah siap pahat masih berbunyi*.

[316] Koentjaraningrat, *Villages in Indonesia*, 397.

[317] Logsdon, "Traditional decision making in urban neighborhoods," 95.

bridge. And in resolving conflicts, visionary community leaders and the elders (*orang tuha*) seek to preserve the just order of things; and this is done through the *musyawarah-mufakat* process. Where there is disagreement and discord, these must be expressed clearly and resolved amicably before a decision is made. This *mufakat* is gained, as Geertz describes, "by talking everything through, in hard cases over and over again and in a grand variety of contexts, in a set and settled manner. Law here is truly the sententious science—a flow of admonitory proverbs, moral slogans, stereotyped Polonious speeches, recitations from one or another sort of didactic literature, and fixed metaphors of vice and virtue, all delivered in a manner designed at once to soothe and persuade."[318] This is likened to constructing a house, where builders are involved in erecting many parts of the house, and where the noisy sounds of the striking of nails are expected and necessary. When these are all over and done, members of the house will want to move on in their lives in peace and harmony. One does not envisage a situation when its parts are already assembled and the house is already constructed, and another attempts to erect pillars and hit nails. In this context, the Malay proverb cited above is apposite—*rumah sudah siap, pahat masih berbunyi*.

The following example illustrates the importance of *mufakat*. Although of relatively recent time, it reveals a continuity of past practices, reflecting the way of *adat*. One of the most contentious issues between the *adat* functionaries and the *'ulamā'* in Minangkabau was (and still is) about the distribution of *harto pusako* (inherited property, *harta pusaka* in modern Malay) and *harto pencaharian* (self-acquired property, *harta sepencarian* in modern Malay). At a congress in May 1953 that sought to resolve the

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[318] Geertz, *Local Knowledge*, 212.

distribution of *harto pusako* and *harto pencaharian* between *adat* and Islamic law, key *adat* functionaries of the society—namely the *panghulu* (head of the matrilineal descent group) and *ninik-mamak* (*adat* elders, group head), *alim-ulama* (religious scholars), *cerdik-pandai* (experts), and *manti-dubalang* (judicial official, military and police officer)—gathered for two days and two nights. After an extended and tedious discussion (*musyawarah*), the congress resolved, by *mufakat*, that *harto pusako* be distributed according to the customary *adat*, and *harto pencaharian* be distributed according to Sharī'ah. Following the resolution, the renowned religious scholar, HAMKA, (d. 1981), who was a *ninik-mamak* (he carried the title Dato Indomo), publicly stated:

> "*Dengan ini saya Dr. Haji Abdul Malik Karim Amrullah (HAMKA), gelar Dato Indomo, memberikan kesaksian bahawa saya turut hadir dan turut mempertimbangkan dan turut memutuskan di dalam Rapat Empat Jenis orang Alam Minangkabau…bahawa keputusan kerapatan itu adalah sah menurut peraturan Adat Minangkabau, sebab dihadiri oleh orang empat jenis…dan telah dihimbaukan di labuh nan golong [gadang?] di pasar nan ramai, yang kecil tahu yang gedang pandai, sehingga murai tak berkicau dan ayam tidak berkokok lagi, dan dihadiri pula oleh Kepala Daerah Propinsi Sumatera Tengah…bahawa inilah yang dinamai Adat Istiadat berdasar kepada pepatah 'bulat kata dimupakat,' sehingga kalau dilanggar akan dimakan kutuk Kalamullah.*"[319]

> (I, Dr. Haji Abdul Malik Karim Amrullah (HAMKA), carrying the title Dato Indomo, hereby testify that I have attended and considered [all arguments], and thereafter jointly participated in the decision making of the Council of Four Functionaries of the World of Minangkabau…[hereby testify] that the decision arrived at in the council is valid and in accordance with the practice of Adat

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[319] Hamka, *Adat Minangkabau Menghadapi Revolusi*, 2nd ed. (Jakarta: Firma Tekad, 1963), 7-8. In writing the text, I have changed the original spelling system to the current spelling standard, without any change in the words.

Minangkabau, for it was attended by the Four Functionaries…,[320] as well as the District Head of the Province of Central Sumatra, and that its [decision] has been disseminated in the great roads and packed markets, [so much so] the children learn and the adults comprehend, so that the magpie ceases its whistling and the cock its crowing. This is the way of Adat based on the dictum *bulat kata dimupakat* (consensus by way of *mufakat*). Consequently, an infringement will only cause the wrath of God.)

Clearly, the statement expresses the Adat way of resolving a conflict, where all key *adat* functionaries engaged in the *musyawarah*, with the aim of arriving at a decision by way of *mufakat* (consensus). Subsequently, the decision is pronounced and disseminated widely; and each and every one is informed of the *adat* position, so that *murai tidak lagi berkicau dan ayam tidak lagi berkokok* (the noisy magpie ceases its whistling, and the cock its crowing).

Malays express the idea of agreement and accordance in the idea of *bulat* (round or whole) in phrases such as "*bulat suara*," or "*bulat kehendak*", "*bulat kata hati*," or "*bulat tekad*" i.e. "Roundness/wholeness of voice, or of will, or of conscience, and of resolution." The Gayo people express the same idea in sayinga such as *bulet lagu umut, tirus lagu gelas* (round like the heart/trunk of a tree, thin and flexible like a fishing rod).[321] In this *kebulatan* (roundness/wholeness), each member is a part of a harmonious

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[320] Here, Hamka mentioned the four functionaries, *panghulu* and *ninik-mamak*, *alim-ulama*, *cerdik-pandai*, and *manti-dubalang*, whose different villages of Minangkabau are cited.

[321] The saying stresses the idea of unity and wholeness in the image of the trunk (*umut*) which is the heart of a tree, and source of its strength; yet retains its flexibility in the thinness and elasticity of the fishing rod that is not easily breakable; a consensus characterized by its strength and flexibility without breaking its unity, and is still able to "reel in big fish." I thank Prof Wan Mohd Nor Wan Daud for confirming my reading and offering his insight into the proverb. (Private correspondence, Nov 23, 2011.) For the proverb see Abdullah Faridan et al., *Ungkapan Tradisional Sebagai Informasi Kebudayaan Daerah*, Proyek Inventarisasi dan Dokumentasi Kebudayan Daerah (Banda Aceh: Departemen Pendidikan dan

chain of voices and wills (round chain), that ensures the social harmony (*rukun*); even when members hold conflicting views, they do not stand on opposing sides, competing against each other, but instead together they form a complete circle, in spite of the conflicting views, for the greater interest of the society. Such is what is known in the Adat worldview as the *adat kebulatan* (the *adat* of wholeness). Koentjaraningrat describes the idea of *mufakat* as not necessarily an "agreement," but instead a "roundness of the will"—in his words, "agreement presupposes the presence of two or more parties which oppose each other on behalf of certain interests. 'Roundness of the will' of everyone presupposes that participants are not mutually opposite, but that, as parts of the whole, they wish to lead that whole to a certain goal. Besides, agreement presupposes a result of give-and-take: it is a phase in which, after a struggle of interests, the so-called commutative justice is obtained. With 'roundness of will,' there is no such struggle of conflicting interests: it is the result of an exchange of views for the sake of contributing to the interest of the community."[322] In the Malay Adat legal worldview, the greater goal in conflict resolution is to restore social harmony and balance, and not supremacy of one interest over the other; a vision of a just order of things. Geertz explains this vision as,

> "[B]eing one in which a quiet hum of agreement prevails in the outer realms of life and a fixed tranquility of mind in the inner finds a whole range of behavioral, institutional, and imaginative expressions. A cloud of negligent near-synonyms-*patut* ('proper'), *pantas* ('suitable'), *layak* ('seemly'), *cocok* ('fitting'), *biasa* ('normal'), *lara*s ('harmonious'), *tepat* ('apt'), *halus* ('smooth'), *luwes* ('supple'), *enak* ('pleasant'), each running off along semantic gradients of their own

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Kebudayaan, 1983), 102. This is a collection of local traditional wisdoms and sayings of the peoples of Aceh and Gayo commissioned as part of an Indonesian national inventory and documentation project to preserve local cultures and traditions.

[322] In Steenhoven, "Musjawarah in Karo-Land." 717, n. 16.

to provide the discriminant overtones (*laras* is a musical term; *enak* is a gustatory one)-envelops the discourse of everyday life in a softening moral haze. An enormous inventory of highly specific and often quite intricate institutions for effecting cooperation in work, politics, and personal relationships alike, vaguely gathered under culturally charged and fairly well indefinable value-images-*rukun* ('mutual adjustment'), *gotong royong* ('joint bearing of burdens'), *tolong-menolong* ('reciprocal assistance')-governs social interaction with a force as sovereign as it is subdued. And popular ritual life everywhere in the region is studded with prosy symbols of the deep interfusion of things: rice marriages, village cleansings, communal meals. 'Ought,' here, the if/then vision of general coherence, is neither the universal execution of absolute command nor the punctilious performance of cosmic duty; it is the noiseless perfection of communal accord."[323]

And this idea of *mufakat* is registered in numerous Malay-Indonesian proverbial sayings, such as:

> *Adat bersendi hukum*
>
> *Hukum bersendi kitabu'llah,*
>
> *Kuat adat, ta'gadoh hukum,*
>
> *Kuat hukum, ta'gadoh adat,*
>
> *Ibu hukum muafakat,*
>
> *Ibu adat muafakat.*

> *Adat* hinges on religious law,
>
> Religious law on the word of God,
>
> If *adat* is strong, religion is not upset,
>
> If religion is strong, *adat* is not upset,
>
> Religious law is the offspring of *muafakat* (covenant)

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[323] Geertz, *Local Knowledge*, 210-11.

Adat law is also the offspring of *muafakat* (covenant)[324]

And in a Malay quartet,

*Batang kelapa dipotong-potong,*

*Tiap satu tidak disukat;*

*Bulat air kerana pembetung,*

*Bulat manusia kerana muafakat.*[325]

[For,] the roundness of water is due to the [round] conduit

[For,] the roundness of man's [will] is due to *muafakat.*[326]

To the Malay mind, *mufakat* invokes God's blessings and grace, and hence the Malay saying, *muafakat membawa berkat* (*mufakat* brings about God's blessing), and the Acehnese adage, *pakat keuramat, pariek laknat* (*mufakat* is a blessing, and division is a curse), and in the *adat perpatih*, *sepakat pangkal selamat, sengketa pangkal celaka* (*mufakat* is cause for peace, and division is cause for destruction).

The importance of *musyawarah-mufakat* also rests in rendering *adat* its dynamic nature. Although *adat* practices must be protected, their adaptive nature to changes is well acknowledged. And these changes are done through the process of *musyawarah-*

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[324] English translation is Hooker's with minor adjustment on my part. See M. B. Hooker, "Adat and Islam in Malaya," *Bijdragen tot de taal-, land- en volkenkunde van Nederlandsch-Indië* 130(1974), 76.

[325] Dewan Bahasa dan Pustaka, *Kurik Kundi Merah Saga: Kumpulan Pantun Lisan Melayu*, 2nd ed. (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2005; repr., 2009), stanza 4536, 574.

[326] In my translation of the Malay *pantun* (quartet), I have ignored the first couplet that serves as a precursor or shade to the intended meaning. This first couple is called *pembayang maksud* or the precursor to the meaning, and the second couplet the intended meaning, or *maksud pantun*.

*mufakat*, as enshrined in the saying, '*hilang adat tegal mufakat*' (when an *adat* disappears (due to changes), it is effected by *mufakat*).[327] The following *adat* sayings encapsulate this idea succinctly,

> *kelebehan umat dengan muafakat,*
>
> *kelebehan Nabi dengan makjizat;*
>
> *Bulat ayer karna pematong,*
>
> *Bulat manusia karna muafakat.*

> *Tetekala kechil bernama muafakat,*
>
> *Tetekala besar bernama adat:*
>
> *Si-raja adat ka-pada muafakat.*
>
> *Ayer melurut dengan bandar-nya,*
>
> *Benar melurut dengan pakat-nya,*
>
> *Negeri bertumboh dengan adat-nya.*

> *Muafakat lalu di-dalam gelap,*
>
> *Adat lalu di-tengah terang.*
>
> *Hilang adat karna muafakat.*

> *Hidup di-kandong adat,*
>
> *Mati di-kandong bumi.*[328]

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[327] On *adat* and change through the process of *musyawarah-mufakat*, and that *mufakat* draws its power from the notion of truth itself, see Taufik Abdullah, "Modernization in the Minangkabau World," in Holt, *Culture and Politics in Indonesia*, 190-93, and passim.

[328] In Caldecott, "Jelebu Customary Songs and Sayings," 22-24; English translation is based on Caldecott's, with significant editing by me. I have also retained the old Malay spelling system as adopted by Caldecott, minus the diacritical symbols; and retained the word *mufakat* untranslated.

The greatness of the people lies in the *mufakat*

(As) the greatness of the Prophet in the *muʻjizat* (miracles)

As a bamboo conduit makes a round jet of water,

So does a *mufakat* that rounds people (to one mind).


What started as people's *mufakat*,

Grows to become *adat*;

And ruler's *adat* is based on *mufakat* (with common people).

Just as water proceeds along water-ways,

Truth proceeds from *pakat* (i.e. *mufakat*),

A country grows with its *adat* (established practices)[329]


*Mufakat* proceeds in the dark,

*Adat* walks in the light.

*Adat* is changed by consensus.


In life we are lapped in custom,

In death we are lapped in the earth.

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[329] I am thankful to Prof Wan Mohd Nor Wan Daud for his views, suggested readings and translation for this part of the saying. However, full responsibility remains mine. Caldecott's English translation goes,

> "What in the beginning are covenants
>
> Grow up into customs:
>
> Custom is lord over covenants.
>
> Water proceeds along water-ways,
>
> Sanction proceeds from covenant;
>
> A country grows up wlth its customs."

*Communalism and Individualism*

The *gotong-royong* ethos arises in communities that lay high value on communal benefits and societal interests. Kinship is the smallest unit of the society and individuals are only parts of the main body. It does not follow that an individual does not possess a specific identity. Individuals in the society form the bigger identity, the family, kin, tribe and community. Like parts that make the whole body, when a part of a body hurts, the whole body suffers. Individuality is not effaced, but is placed within the whole systemic relation of a collective existence, collective individuality and collective responsibility that forms a community. In acknowledging the individuality of individuals, it recognizes the diversity and plurality within a community. The task is then not to eliminate differences, nor eradicate conflicts, but to place the differences within a proper order (*layak, patut, tata susila*). Because the community acknowledges the individuality and diversity, it consistently emphasizes harmony (*rukun*), balance, peace, propriety (*patut*), consensus and union of wills (*mufakat*). It places collective interests above personal ones. The language of such a community is not about individual rights, as much as communal and societal well-being and interest, and a continuous harmonious living of the society. In the event of any infringement, the family or the kin holds the collective responsibility for the individuals; and in some instances a punishment is inflicted not on an individual only, but on the family; and in some other instances, the responsibility is placed on the family to restore the just order by taking action on the individual. A disgrace committed is a disgrace brought on the family and the community as a whole, as the Malay proverb says:

*mencoreng arang ke muka* or the Acehnese *siliet adang bak muka gob*[330] (a face smudged with charcoal). The face is not an individual's face, but the kin's face. Consequently, this blackened face needs to be cleansed. This is done invariably by expulsion from the community. For an individual, his life is within (with and in) the community. To leave or be left by the community is to die or to be killed. To be excommunicated by the community is to live homelessly, or to roam like a wandering ghost and a stray dog, for this individual has no more a 'proper place' in the community.[331] (I shall illustrate this further in speaking about sanctions in the Malay community).

*Malu (Shame)*

*Malu* in Malay does not only refer to the idea of shyness, although it is one of its meanings; nor simply a fear of being shamed, viz., "an enormous sensitivity to the opinion of others,"[332] or "hypersensitiveness to what other people are thinking about one."[333] But beyond the emotional, psychological and socio-behavioral levels, *malu* in Malay designates an ethical idea: of what is just (*'ādil*), what is right (*ḥaqq*), and what is appropriate (*patut, layak*).[334] To this latter meaning, it does not only operate as an external sanction (shaming) in the presence of others, as Margaret Mead would describe a shame culture, as opposed to a guilt culture. "In societies in which the individual is

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[330] Hasyim M.K., *Peribahasa Aceh* (Banda Aceh: Dinas Pendidikan dan Kebudayaan, 1977), 3.

[331] This idea is extended even beyond the worldly life. Among the Malays, it is believed that when a pernicious person dies, the soul will not be accepted in the spiritual world, and the evil soul thus becomes a wandering ghost in the living world, until the soul is forgiven.

[332] Margaret Mead, ed. *Cooperation and Competition Among Primitive Peoples* (New York: McGraw-Hill, 1937; reprint, Fifth), 494.

[333] Michael Godfrey Swift, *Malay Peasant Society in Jelebu* (London; New York: Athlone Press; Humanities Press, 1965), 110. In describing the Jelebu's culture, Swift makes repeated references to *malu* (shame) as a possible deterrent to certain behaviors; see passim.

[334] See Geertz, *Local Knowledge*, 210-11.

controlled by fear of being shamed, he is safe if no one knows of his misdeed; he can dismiss his misbehavior from his mind…but the individual who feels guilt must repent and *aton*e for his *sin*."[335] Nonetheless, Mead does acknowledge that shame could operate as an internal sanction when one internalizes the norms and values of the society in the absence of external force. And "once these are established within the character of the individual they operate automatically."[336] To the Malay mind, *malu* is caused by an unjust behavior or wrong act towards one's self and God; hence the idea of *menzalimi diri sendiri* (to be unjust to one's self) and *rasa malu pada diri sendiri* (to feel shame on one's self). The presence of "others" means not only of other selves, but could also be imaginary others, or ethical (and religious) ideas and norms. *Malu* acts as one's conscience or ethical compass that restrains one from committing an act that causes shame, to one's self, as well as disgrace and disrespect to others, family, kin, and community. It is the gate that protects the ethical values. Hazairin notes,

> "*Kesusilaan itu dilindungi dan terpelihara oleh malu, sehingga 'tidak bermalu' sama artinya dengan 'tidak berkesusilaan,' 'tidak sopan,' 'tidak santun,' 'tidak beradat,' oleh karena dimana mampan malu telah hilang dari jiwa, maka mampan bangga pun akan lenyap pula sehingga celaan dan pujian tidak akan mempunyai kemampanan lagi atas jiwa yang mati sedemikian itu.*"[337]

> (Ethical values are protected and sustained by the sense of *malu* (shame), the absence thereof is tantamount to the absence of ethical values, indecency, uncivilized, loss of *adat* (i.e. lack of social propriety); and when the quality of *malu*

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[335] Mead, *Cooperation and Competition Among Primitive Peoples*, 494. In discussing the nature of cooperative and competitive societies, and the difference between shame and guilt cultures, Mead identifies sanctions, internal or external, as one of the identifiers; see 493-95.

[336] Ibid., 493.

[337] Hazairin in his inaugural speech (Pidato Plantikan), 1952, in Hazairin, *Tujuh Serangkai Tentang Hukum*, 107.

(shame, dignity) is no longer attached in one's soul, the quality of self-respect and honor is also effaced, until public censure and praise leaves no effect on such dead souls.)

Loss of one's honor and self-dignity (*harga diri and maruah*) is loss of one's *malu* (reputation). Sultan al-Mukammil (r. 1588-1604) of Aceh was enraged (*amarah*) and felt deeply humiliated (*jadi malu, memberi aib*) before his subjects and the Portuguese envoy who challenged the Acehnese, in return for an island in Aceh, to a race with a Portuguese horse. The Sultan's horse was defeated and his horse chief tumbled down with the horse unconscious on the earth and unable to break the Portuguese horse. However, the young Iskandar Muda came forward to redeem and regain the Acehnese pride and dignity when he defeated the Portuguese and broke the horse.[338]

Avoidance of *malu* is of paramount importance in the Malay worldview. For, this is likened to having a pig skin glued to one's face, and concurrently on his community's face.[339] This is simply unbearable to a Malay self. Even death is preferred over having to live on with "a pig skin glued to one's face,"[340] a disgrace greater than anything one could conceive of. Malays express this meaning in a saying *biar putih tulang, jangan putih*

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[338] Here, Hikayat Aceh graphically and vividly illustrated the humiliating event and how the young Iskandar Muda came to salvage Acehnese pride and honor (Iskandar, *Hikayat Aceh*., 68-73). Similar humiliating events are also related in the *Sejarah Melayu* (Malay Annals). At a time when no one could defeat Hang Kasturi, Sultan Mansur of Malacca thought of Hang Tuah, his Laksmana whom he ordered to be deposed (and who was wrongly convicted). However, Hang Tuah's life was spared by the Bendahara, and he was then recalled to subdue Hang Kasturi, which he did. By doing so, Hang Tuah, the hero, has redeemed the Sultan's pride and dignity (*menghapuskan kemaluan*) as the sovereign; see Winstedt, "The Malay Annals or Sejarah Melayu.", 112-14.

[339] Pigs are seen by Malay with extreme abhorrence, and are simply unbearable and unthought of; and therefore death is even preferred over having to live on with "a pig skin on one's face."

[340] The Aceh proverb says, *Lagèe taböh kulét bui bak muka*.

*mata* (better white bones than white eyes).[341] And therefore, shaming others is a serious infringement. Leaders are exhorted not to shame their subjects. *Sejarah Melayu* (The Malay Annals) narrated the agreement between the King Tri Sri Buana with his Chief Minister Demang Lebar Daun that the former shall not cause disgrace (*difaḍihatkan*)[342] to the latter's descendant, and that the latter's descendent shall not betray (*derhaka*) the former's descendant. Following this agreement, the narrator commented,

> "*Itu-Iah sebab-nya maka di-anugerahkan Allah subhanahu wa ta'ala ka-pada segala raja-raja Melayu, tiada penah memberi 'aib pada segala hamba Melayu; jikalau sa-bagaimana sa-kali pun besar dosa-nya, tiada di-ikat-nya dan di-gantong-nya dan di-fadhihatkan-nya dengan kata yang jahat. ]ikalau ada saorang raja memberi 'aib (sa-orang hamba Melayu) itu 'alamat negeri-nya akan di-binasakan Allah subhanahu wa-ta'ala.*"[343]

> [And that is why it has been granted by Almighty God to Malay rulers that they shall never put their subjects to shame, and that those subjects however gravely they offend shall never be bound or hanged or disgraced with evil words. If any ruler puts a single one of his subjects to shame, that shall be a sign that his kingdom will be destroyed by Almighty God. Similarly it has been granted by Almighty God to Malay subjects that they shall never be disloyal or treacherous to their rulers, even if their rulers behave in an evil way or inflict injustice upon them.][344]

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[341] The Acehnese equivalent *nibak putéh mata, gèt puteh tuleueng, mubantai ateueng, meukaleueng tanoh*. In Malay, *daripada berputih mata baik putih tulang; berbantal pematang, berkulang tanah* (better white bones (i.e. dead) than white eyes (i.e. in shame and disgrace). And in another similar expression, *daripada hidup bercermin bangkai lebih baik mati berkalang tanah* (rather than seeing one's living corpse in the mirror, dying buried in the earth is far better).

[342] From Arabic *faḍīḥah* which means exposing one's shame. *Aib* (Ar. *'Ayb*) is also used in Malay to denote the Malay *malu*.

[343] Winstedt, "The Malay Annals or Sejarah Melayu," 57. I have retained the original Malay spelling as used by Winstedt, without the diacritic symbols.

[344] The translation is Walker's; see J.H. Walker, "Autonomy, Diversity, and Dissent: Conceptions of Power and Sources of Action in the *Sejarah Melayu* (Raffles MS 18)," *Theory and Society* 33 (2004), 220. For a discussion of this agreement in the context of Malacca's idea of kingship see Walls, "Legacy of the Fathers.", 57-58; cf., Walker, "Autonomy, Diversity, and Dissent," 218-222.

*Conflict Resolution, Decision Making and Sanctions*

In the Malay *Adat* cosmology, everything is created and accorded its right order (*tertib*; Ar. *tartīb:* order) within the whole scheme of things. Even in matters pertaining to human relations, these roles, functions, and relations are stipulated and measured by the *adat*. This idea is expressed in casual terms understood by members of the community, such as *cupak yang asli* (the natural measurement),[345] and the Malay proverb, *kalau secupak tidak boleh jadi segantang* (a *cupak* cannot be a *gantang*),[346] or *sakal mana boleh jadi secupak* (a *kal* cannot be a *cupak*), for it breaks the right order of things. It suggests a just order of common sense. Numerous other maxims couched in terms and ideas wont to their intelligence and cosmos were developed in such a "natural" community, such as *kambing mengembek, kerbau menguak, ayam berkokok, murai berkicau* (goats bleat, buffaloes bellow, cocks crow, magpies twitter); and in speaking about the roles and functions, *penghulu menghukumkan adat, alim menghukumkan shara', hulubalang menjarah, juara melepas* (the penghulu administers *adat*, the religious scholar administers *shara'*, the warrior raids [the enemy], the trainer lets fly the fighting-cock). These and others express the idea of a just order, harmonious social life, and natural equilibrium.

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[345] *Cupak*, *kal*, and *gantang* are measurement units known to the Malay peoples particularly for weighing rice. A *kal* is smaller than *cupak*. *Cupak* is a quart of *gantang*. A *gantang* is about 4.54 litres. *Cupak yang asli* denotes the idea of an established *adat*; and hence the Malay proverb *cupak sudah tertegak, sari sudah terkembang* (the *adat* has long been established, the flower has long blossomed), and *membawa cupak negeri orang* (to use one's *adat* in foreign land).

[346] Close to the English proverb, "you cannot make a silk purse out of a sow's ear."

When this order is infringed, it does not only affect the harmonious relationship between peoples, but also the spiritual balance of the cosmos. Consequently, a prompt restoration and adjustment of this order and balance is deemed necessary. The ultimate aim in *Adat* is to secure a peaceful and orderly rhythm of life (*hidup yang tertib tenteram*), where conflict arises between people, restoration of the just order and a continued harmonious social life becomes the common goal for all. This "delicate feeling of harmony" (*kehalusan rasa harmoni*) among its members led "to a strong effort of the community members to maintain accurately the execution of the prevailing ethical code,"[347] and hence their utmost protection of the acute feeling of shame (*rasa malu yang tajam*), and the fear of being disgraced, for "losing face [*jatuh wirang*] is an event or a situation which is strongly felt as a most upsetting experience by the traditional community… Thus, the traditional way of upbringing stresses the cultivation of this sensitivity."[348] To this same meaning, Hallaq observes,

> "In *adat*, the extended family was held responsible for its individual members; the cause of social harmony in these units could be served neither by mutilation nor by imprisonment. While moral punishment was an effective means to control infractions, the more serious concern lay in compensating the victim in such a way as to restore him — wherever possible — together with his social unit, to the position in which they stood before the conflict. Indeed, the creation of harmony and peace was the *raison d'etre* of *adat*, expressed in the maxim '*Adat sentosa di-dalam negeri.*'"[349]

The *gotong-royong* ethos and the *musyawarah-mufakat* model founded the basis for conflict resolution. Guided by the cooperative spirit and common goal of preserving

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[347] Koesnoe, *Adat Law on the Islands of Bali and Lombok*, B7.

[348] Ibid., B8.

[349] Hallaq, *Sharī'a: Theory, Practice, Transformations*, 385-86.

harmony in the public interest, the demand of personal and particular interests is mitigated. Winning or losing is not a goal, as much as restoration of the just order: an ethical view that springs from the delicate feeling of harmony. *Adat* views victory and defeat as, *menang berkecundang; kalah berketundukan; seraya berjabat tangan* (Victory—a defeated foe; defeat—a bowed head; agreement—a joining of hands). When a conflict arises relevant parties should decisively and amicably resolve the conflict so as to avoid continued bitterness and prolongation of the conflict, and allow all parties to continue with their social life peacefully and harmoniously. This spirit is expressed in the following proverbial sayings:

> *Ular dipalu biar mati*
> *Kayu pemalu jangan patah*
> *Tempat pemalu jangan lembang*

> *Ibarat menarik rambut dalam tepung*
> *Tepung jangan terserak*
> *Rambut jangan putus*[350]

> When struck, let the snake die
> [But] let not the stick be broken
> [And] the ground dented.

> Like pulling a hair out of the flour
> The flour is not spilled
> [And] the hair is not broken.

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[350] Cf. Abdullah Faridan et.al, *Ungkapan Tradisional Sebagai Informasi Kebudayaan Daerah*, 87.

As in many traditional societies, conflict is not to be avoided, much less suppressed. As a matter of fact, it is a fact of life and a necessary problem in the evolution and maturing of human societies and institutions. A society whose world is characterized as plural and diverse, and whose predilection is not in effacing the plurality and diversity, but rather in maintaining the balance and natural equilibrium, negotiating and restoring this balance is a second nature. What constrained members of such a society were not rules and sanctions exercised by a central authority, but moral commitments, social relations and reciprocal obligations as stressed by Malinowski.[351] In an extended family, a kinship system and communal life, unlike the modern individualized social system, members of the society are engaged in a multi-tiered relationship. These ties—not necessarily legal contractual ties as much as social and moral ties—presuppose a great degree of 'reliability,' 'trust,' and 'balance,' which is the very idea of a just person (*insan yang adil*, *insan beradab*).[352]

In resolving conflict and in making a decision the *adat* way, it is not fixated on one way of solving a problem or redressing a situation. *Adat* maintains the overarching metaphysical and ethical system, understands the societal way of living, or what is

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[351] Malinowski studied the Melanesian community, in particular its fishermen community. Here, he spoke about reciprocity as a binding force, and reciprocity as the basis of social structure; see Bronislaw Malinowski, *Crime and Custom in Savage Society* (New Jersey: Rowman and Allanheld, 1959; repr., 1985), 22ff, and 46ff. Koentjaraningrat has also observed in the types of *gotong rojong* works that not all are done spontaneously or voluntarily; but some are based on mutuality and reciprocity of obligations. See Koentjaraningrat, *On Gotong Rojong*, 37ff.

[352] On justice and reciprocity, Rosen writes, "three forces converge around this aspect of justice as reciprocity: the idea of the individual as a freely contracting agent who best enacts the capacities with which God has imbued him by using his reason to create situations of permissible advantage; the idea of community of believers, which derives its legitimacy from those very networks of embedded dependencies through which individual effort is given social utility; and the idea of the state as an entity which is not itself possessed of justice but which serves best when it seeks to regulate reciprocity in ways that do not contravene the scope accorded the individual and the community." Lawrence Rosen, *The Justice of Islam: Comparative Perspectives on Islamic Law and Society* (New York: Oxford University Press, 2000), 156.

important to them, and maneuvers between various options within the context of time, space and human agency. What is distinguishable in the West as procedural and substantive law is unrecognized in *adat*. A just decision is not one that is simply located in a particular set of codified rules or simply by way of *stare decisi*. A whole range of interpretations of *Adat* and Islamic ethical system, principles and general rules are involved, taking into account the context of time and space, arrived at through a sententious deliberation leading to a consensus. And as Benda-Beckmann observes in his studies, "this process is not, and cannot be, reproduced in the court, which results in the process of decision making and rule interpretation being quite different, often leading to different results as well."[353] However, this is not the way law is envisaged by Europeans. Legal ideology negates time and space,[354] one that claims validity here and there, now and in the future. This has everything to do with the way "legal reality" is conceived, in which a distinction is made between "ought" and "is," between ideal and practice—in what may be seen as the "gap approach." As Benda-Beckmann has succinctly put it, "real law is only that law which corresponds, in terms of behavior and sanctioning decision making, to the ideal of the rules. Thus this reality is construed by its relation to the normative claims of the legal system. It is measured in terms of a smaller or greater disparity between the actual behavior of people and the normative claims of law with respect to this behavior. Through this reduction of the reality of legal rules, other forms

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[353] Benda-Beckmann, "Symbiosis of Law," in Wolfgang J. Mommsen and Jaap de Moor, eds., *European Expansion and Law: The Encounter of European and Indigenous Law in 19th- and 20th-century Africa and Asia* (Oxford; New York: BERG Publishers, Inc., 1992), 312.

[354] See Benda-Beckmann, "Symbiosis of Law," in ibid., 308

of their empirical existence, for instance in the knowledge of populations, are obfuscated and are presumed on the basis of normative assertions."[355]

Legal meanings were constantly being reproduced by the officials dealing with *adat*. This does not mean that these meanings are not founded on a worldview and an ethical system. Applications of these laws were constantly subjected to interpretation and reinterpretation within the overall legal worldview of the society. Islam, to the Acehnese, was considered primarily as a belief and metaphysical system; a spiritual and ethical compass in their life. It is in these domains that Aceh laid emphasis, and not the legal domain (*fiqh*). This should not be understood as suggesting that the Acehnese separated the worldly and physical world from the spiritual and metaphysical world of Islam. In their understanding, this former aspect of Islam is a domain that warrants human agency in applying and interpreting the principles to their daily lives.

A problem is resolved not only by situating its ethical location or position, but by situating it within the acceptable social realities of the time. It is not just what is right (*benar*) and just (*adil*), but what is appropriate (*patut*) and acceptable or apt (*tepat*) in the context of the current social relations. Individuals are governed by social relations and reciprocity more than norms and institutions, and constraints exercised by a central authority. "[T]he whole effort of *adat* adjudication (and, despite some claims to the contrary, it is adjudication) is to translate a definitional conception of justice as spiritual harmony, a sort of universal calm, into a decisionary one of it as consensual procedure, publicly exhibited social agreement. Judgment, here…is less a question of sorting claims

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[355] Ibid., 303.

than of normalizing conduct."[356] And as Koenoe succinctly characterized it, "*adat adalah tatanan hidup rakjat Indonesia jang bersumber pada rasa susilanja.*" (*Adat* is the order of life of the Indonesian people that is founded on his sense of propriety.)[357]

Sanctions in Malay legal life, as in other pre-modern societies, are not limited to physical sanctions and punishments, as expected by European law. Psychological and emotional sanctions could prove to be more devastating and impeding to the Malay selves than physical pain. Psychological sanctions include being ostracized by the community (in a closely-knit society, such ostracism is likened to a death penalty), being ashamed and ridiculed (*dimalukan, difaḍiḥatkan, diaibkan*) with name-calling, and being exposed to other members of the community.

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[356] Geertz, *Local Knowledge*, 210

[357] Koesnoe, *Introduction into Indonesian Adat Law*, A9, with my adjustment to the English translation; cf. ibid., 210, fn. 69.

# 2. Acehnese Legal Texts

In the foregoing sections, I have briefly elucidated the Acehnese legal worldview and life. I began by asserting that the Acehnese legal worldview is characteristically a Malayo-Islamic worldview. I then discussed several elements that characterize this legal worldview and life. In what follows, I will analyze two primary Acehnese texts of the seventeenth century, specifically *Adat Aceh* and *Mir'āt al-Ṭullāb* of 'Abd al-Ra'ūf al-Sinkīlī. In analyzing these texts I will also refer to some texts that were contemporaneous with these—such as the *Undang-Undang Melaka* and the *Adat Meukota Alam*, as well as an eighteenth-century text, *Safīnat al-Ḥukkām* by al-Tarussāni. This cross-analysis will help clarify the legal norms and practices of the period under study. Understanding a context is a constitutive element of understanding a text, and this context includes the authors of the texts, the motivations behind the composition of these texts, and the promulgation of the texts that will inform us of their importance and potency. For this reason, I find it relevant to introduce, albeit briefly, the texts and the authors before analyzing the legal contents of these texts. And in analyzing the legal contents, special attention will be given to the treatment of non-Muslims in these texts.

## *Adat Aceh*: Introducing the text

In its present form, *Adat Aceh* was compiled around 1810 as necessary background information for the British in drawing up the Anglo-Acehnese commercial

treaty.[358] Its importance rests not only in comprehending its legal systems, but is equally valuable in discerning the social, cultural and political life of Aceh in the seventeenth and early eighteenth centuries, together with other indigenous sources like *Tāj al-Salāṭīn*, *Hikayat Aceh,* and *Bustān al-Salāṭīn*. Drewes and Voorhoeve edited, introduced and published, in facsimile (in Jawi script), the 1815 version of the manuscript belonging to the India Office Library, London.[359] Drawing from *Adat Aceh*, Lombard published his *Le Sultanate d'Atjèh,*[360] Ito his doctoral dissertation[361] "World of Adat Aceh", and Ali Hasjmy his *Iskandar Muda Meukota Alam*.[362] Before its current form *Adat Aceh,* as sets of royal decrees (*sarakata*), was compiled in three stages: firstly, from 1607 at the start of Iskandar Muda's reign; secondly, during the reign of Iskandar Muda's daughter, the Sulṭānah Ṣafiyyat al-Dīn (r. 1641-1675); and thirdly between 1708 and 1709. A few other *sarakatas* were then added in the early nineteenth century.[363]

The current form of *Adat Aceh* comprises four parts. The first, *Perintah Segala Raja-Raja* (Guidance and Rules of Government for Rulers); the second, *Silsilah Raja-Raja di Bandar Aceh* (Geneology of the Rulers of Aceh); the third, *Adat Majlis Raja-Raja* (Courts Etiquettes and Rituals); and fourthly, *Dustur Segala Kapal Yang Berniaga*

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[358] Ito, "The World of the Adat Aceh.", 2.

[359] On the origin of this manuscript and the other four copies, see *Adat Atjeh: Reproduced in Facsimile from a Manuscript in the India Office Library*, 7ff. Based on the copy Drewes and Voorhoeve published, Anzib Lamnyong transliterated the text (1971), but it was published only in 1976 by Pusat Latihan Penelitian Ilmu-Ilmu Sosial, Aceh, and later Ramli Harun and Cut Rahma M.A. Gani (Jakarta: Departemen Pendidikan dan Kebudayaan), 1985.

[360] Lombard, *Le Sultanat d'Atjéh*.

[361] Ito, "The World of the Adat Aceh."

[362] Hasjmy, *Iskandar Muda Meukuta Alam*.

[363] On the dating of some of the *adats,* see *Adat Atjeh: Reproduced in Facsimile from a Manuscript in the India Office Library*, 16ff; cf. Lombard, *Le Sultanat d'Atjéh*, 74ff; and Ito, "The World of the Adat Aceh," 8.

(Regulations on Port Duties and Customs). The third and fourth part of *Adat Aceh* are considered, by Western scholars, as the most important parts. Understandably, this is due to the effect of these regulations on their interests (trade and commerce).[364] However, the internal ordering and governance of Aceh, as in the first part, is no less important to the legal life of Aceh.

One begs the question: could *Adat Aceh* be considered as the governing laws of Aceh,[365] or are they mere customary practices, etiquettes, regulations, or royal edicts with or without legal implications?[366] The modern distinction of laws and regulations is hardly known in the legal concepts of Aceh. When a royal etiquette is set, or a royal decree is pronounced, and when a set of rules and regulations endorsed by the ruler is decreed, it is only expected that they be obeyed like a law. A breach of these royal etiquettes and regulations is regarded as a serious offense: a show of impropriety and defiance towards the authority, and one that brings about royal wrath.[367] Drewes cited an instance in 1615 when the merchant Rijser of the Dutch factory in Aceh was thrown before the elephants and trampled down because he brought to Aceh's shore a Dutch official before the arrival of the Sultan's officials to give the permission to go ashore.[368] And in another instance in

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[364] See *Adat Atjeh: Reproduced in Facsimile from a Manuscript in the India Office Library*; and Ito follows such order of importance and categories, see Ito, "The World of the Adat Aceh," 2f, 273.

[365] Lombard asks if Adat Aceh could be considered a collection of laws (*fr. ordonances*); Lombard, *Le Sultanat d'Atjéh*, 74.

[366] Lombard, for instance, considers the third part, notably the *Adat Majlis Raja-Raja* not as customs and regulations as often translated into English, but more accurately Orderly Practices of Royal Ceremonies, for they are all about ceremonies; "*Ordre des Cérémonies Royales; Il s'agit en Effet Surtout d'un Cérémonial,*" ibid., 76.

[367] See the above discussion on the position of the Sultan within Acehnese worldview.

[368] *Adat Atjeh: Reproduced in Facsimile from a Manuscript in the India Office Library*, 24, fn. 5.

1638, de Castro, a Portuguese envoy to Iskandar Thani, was detained because he failed to mount the elephant sent by the *Dalam* to convey him in stately procession to the court.[369]

### *Adat Aceh*: Analysis

The first part of *Adat Aceh* deals with the art of governance for rulers. It stipulates the rules and obligations on the part of the rulers. For the success of a ruler is founded on the extent of prosperity of his peoples and countries. God's mercy (*rahmat*) is bestowed upon a ruler who is honored, revered, and obeyed by his people.[370] Here, *Adat Aceh* makes no distinction between Muslim and non-Muslim subjects. They all deserve just treatment and protection by the Sultan.[371]

### *Port Regulations*

*Adat Aceh* concentrates on regulating and administering the ports, trade and commercial affairs, and accordingly regulating foreign affairs and relations. Part Three and particularly Part Four of *Adat Aceh* are dedicated to these matters. They are therefore considered the most important parts of *Adat Aceh* to the Europeans, chiefly because the third part introduces court officials and bureaucracy these foreigners must be acquainted with, and the fourth part, the rules, regulations and duties at the port they must abide by.

Sultan Iskandar Muda was perfectly cognizant of the foreign interests, but was not unjustly discriminatory against the non-Muslims. While the coming of Europeans was deemed necessary to Aceh's economy, this must not be at the expense of the sultanate's

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[369] Ibid., 27, fn. 6; cf. Ito, "The World of the Adat Aceh.", 182.

[370] *Adat Atjeh: Reproduced in Facsimile from a Manuscript in the India Office Library*, 4b-5a.

[371] Who these non-Muslim (the Others) in Aceh are will be discussed in Chapter Four.

sovereignty, and particularly its religious and cultural identity. At all cost, this sovereignty and religious and cultural identity must be protected and preserved. Iskandar Muda was known for his zeal not just to expand his territorial controls but also to promote the Islamic faith and he deemed it necessary to manage and control this situation. To this aim, he decreed that all ports be closed to foreign ships for trade. All foreign ships must only enter through Bandar Aceh, failure to do so subjecting the offender to severe punishment.[372] This policy allowed the court to regulate, control and check on the foreign influx through rigorous procedures and high duties. It appears that Iskandar Muda was primarily concerned with the Europeans, and therefore the decree began by specifically listing the ships from England, France, Holland, Portugal, and Denmark, although this policy was not specifically for European ships.[373] Nevertheless, this did not warrant Iskandar Muda discriminating against the Europeans. All ships—European as well as non-European—were subjected to port regulations and duties. The different requirements and duties levied on these ships were not due to them being owned by Muslims or non-Muslims, but depended on the origin of the ships, and the commodities these places produced. That being the case, for the different stamp duties[374] Gujarati, Indian, and European ships had to pay an amount different from those ships from Malabar, Kedah,

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[372] *Adat Atjeh: Reproduced in Facsimile from a Manuscript in the India Office Library*, 113b-114 and 116a-b. Nonetheless, it must be said that Iskandar Muda in a real sense was not the first to introduce such a policy. During the reign of 'Alā al-Dīn, all foreign ships must first obtain the permission of the court to trade in any of Aceh's vassal states. Already in 1602, when the English captain James Lancaster wanted to procure pepper from Pariaman, whose price was more favorable, he sent out his ship *Susan* under the command of Henry Middleton to Aceh to obtain court permission from 'Alā al-Dīn's secretaries. Similarly Beaulieu in 1620 to permit him to trade in Tiku; see Lombard, *Le Sultanat d'Atjéh*, 101-02.

[373] *Adat Atjeh: Reproduced in Facsimile from a Manuscript in the India Office Library*.

[374] Such as *lapik cap, cap megat*, and *cap Bujang Dalam* introduced by the Port Council (*Balai Furḍah*).

Perak and Singapore.[375] When reference is made to Christian ship (*kapal Nasrani*) this is not intended to be a religious identification, but rather refers to the European ships (*kapal orang putih*).[376] To be sure, not all ships from Malabar or Coromandel coast would be owned by Muslims. The *adat* stipulates that the captain of a Muslim ship, after having obtained the landing stamp, must provide his cargo-list and the ship's key to the *megat* (the port official) on board the ship. The *megat* will then deposit these items at the court. When the captain wants to unload his goods, he goes to the Head of Security (*Penghulu Kawal*) for the key with the stipulated fees to the different offices for the services rendered.[377] This same procedure applies to Europeans ships if they carry other merchants on board; otherwise it does not apply.[378] It appears from this and other regulations that non-Muslims were not discriminated against for their religious affiliations. Another form of tax—called *'ushur dalam bandar* (port-tithes)[379]—is levied from all ships, regardless of the type of ship and its origin. After concluding their trades merchants are required to report their accounts to the port office where the trade capital and the sales are computed according to the stipulated formula, and the tax is levied accordingly. European ships pay six *tahil* and four *mas*. Non-European ships, Muslim and Hindu ships pay five *tahil* and

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[375] *Adat Atjeh: Reproduced in Facsimile from a Manuscript in the India Office Library*, 119b ff. When the amount due for the same duties was compared, the ships from Gujarat and Europe paid the same amount, but higher than ships from Malabar, Kedah, Perak and Singapore.

[376] Ibid., 116b-117a.

[377] European sources describe the payments made to the different officials for the different services as presents and perceive this practice as corruption. These sources fail to acknowledge that these are compensation and payment made in return of services rendered, or taxes for goods and services just like in any commercial system. The difference is that these payments are made in kind directly to the officials, because they do not draw a salary from the courts for their services.

[378] *Adat Atjeh: Reproduced in Facsimile from a Manuscript in the India Office Library*, 125a-126a; cf. Ito, "The World of the Adat Aceh.", 307-08.

[379] The term *'ushr* (tithe) should not be taken literally, for the rates are not necessarily one-tenth of a hundred; see *Adat Atjeh: Reproduced in Facsimile from a Manuscript in the India Office Library*, 28.

four *mas*. European ships pay slightly more because they are exempt from anchorage.[380]

Clearly here, the different rates are not based on religious identity, but on the type and origin of the ships.

In a situation whereby a foreign captain or merchant of all nations (*sekalian bangsa*) dies in Aceh, an officer of the Port Office (*bujang furḍah*) will guard the house and take possession of the deceased's list and key. Three officials from the court, together with the Secretary of the Port Office (*kerukun furḍah*), will then come to draw up an inventory of the estate. The values are then estimated and calculated. For each ten *tahil* one *tahil* is levied. However, under Sultan Jamāl al-'Ālam Badr al-Munīr (r. 1703-1726), this was changed and the duties were fixed at a total of 83 *tahil* and 12 *mas* distributed among the named officials.[381] Beaulieu reports that in the event a foreigner dies, the ruler is the heir to the estates. However, Beaulieu informs us that the English and Dutch, having their factories in Aceh, as well as the French, are exempted from this practice, "by the King's concession."[382] If Beaulieu's report stands, it is unlikely that it is a matter of "law" or a general regulation. However, I find no other reference to support his assertion; neither did Beaulieu cite any incident in which the estates of a deceased foreigner were taken into the possession by the ruler. Indeed the contrary is indicated in the fact that the

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[380] Ibid., 152a-153a.

[381] Ibid., 166b-168a

[382] Beaulieu, "The Expedition of Commodore Beaulieu to the East Indies.", 746b. In a decree declared by Sultan 'Alā al-Dīn in 1602, the Sultan instructed the people that, "if anyone of the English people shall die, and while he is sick unto death shall give an order to anyone to send his possessions and the possessions of the people whom (which?) he has brought, and shall order them to be delivered to his relatives and to the owners of the possessions, ye shall hold his will valid. And if anyone of the English people shall die, his property shall go to some English merchant, or to some other merchant; the property shall be determined as belonging to the person, his associate in trade and buying and selling; ye shall give judgment according to the law of the country. And if any Englishman go to law, their charges being one against the other or against some other person, ye shall give judgment according to the laws of the people of the country." In Lombard, *Le Sultanat d'Atjéh*, 245.

*adat* pertaining to the tax imposed on these estates was in practice until the time of Sultan Jamāl al-ʿĀlam as mentioned above.

*Adat Aceh* assigns certain authorities to certain types and sizes of ships[383] and their captains when they enter the port of Aceh. Traders who come from Malabar and Diwa, and crews of a sloop that enters the Acehnese river whose captain is a Muslim are placed under the authority of the Chief Guard Office (*Penghulu Kawal*). A junk whose captain is a Muslim is placed under the Head of Junks (*Penghulu Jung*): Seri Muda Indera. For both these types of ships (these are smaller ones), they pay the officials according to their means (*adatnya bagai babatnya*). Whereas a *baluk*[384] is under the office of the Head of Baluk (*Penghulu Baluk*), and four *mas* is charged for each member of the *baluk*. And a Deli boat (*perahu Deli*) is assigned to *Panglima Deli Orangkaya Raja Lela Makota*.[385] Reading this *adat* within the overall scheme of the *Adat Aceh* suggests that the mention of a Muslim captain is not a condition or a determining factor. What really matters is the type of boat and its origin. Each type of boat is assigned to a specific official with specific duties. The question then arises: "What does it suggest when *Adat Aceh* remains silent about non-Muslim captains or ships here?" It is absurd to think that non-Muslim captains were not allowed to board the boats. Neither does *Adat Aceh* stipulate here different duties for the non-Muslims. These non-Muslims—to be exact, the Europeans—surely must have boarded the boats when their big ships were not able to enter Aceh's rivers. They did this either by using their own boats (a sloop, or junk or

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[383] This refers to the landing boats, for the River of Aceh was too shallow for large ships. Merchants and their goods are ferried to the shore on smaller boats.

[384] A type of boat.

[385] *Adat Atjeh: Reproduced in Facsimile from a Manuscript in the India Office Library*, 168a-b.

*baluk* or *sampan*), or by using the local boats, or those of the Indians. And the above procedures and duties apply depending on the size of the boats, regardless of whether they are Muslim or non-Muslim.

The Sultan jealously protects the country's economy and its cultural and political interests and the strict observance of port regulations, including the obtaining of the *cap* (permission) prior to going ashore, is instructive of this zeal. A Dutch trader was thrown before the elephants and trampled down because he did not first obtain the permission for another Dutch official to come ashore. Rules regulating the port administration are scrupulously laid out and strictly adhered to.[386] When a foreign ship harbors at the port, two royal guardsmen (*Bujang Dalam*) must be present on board the ship; and another two (one from the port authority and another from the military guards) plying between the ship and the shore on the *sampan*. Detailed fees are stipulated for all of these "services" (*adat mengawal*: guardsmen fee). The reason is however unclear as to why this on-board patrol requirement was imposed on Muslim and Malabari ships, but not on European ships.[387] Nonetheless, the requirement that a European merchant must obtain a permission (*cap*) before going ashore is strictly observed. And the court insists that when these foreigners come on shore and are called to audience to the court, they ride on the court's elephants (official vehicles) to the court. And when this is breached, a severe punishment will be incurred, as was the case of the Portuguese envoy, de Castro.[388]

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[386] Ibid., 24, fn. 5.

[387] Ibid., 134b-135a.

[388] Ibid., 27, fn. 6.

All foreign envoys shall be attended by the Shahbandar, and each will be accorded the appropriate treatment depending on his official position or mission (*taraf utusan*). Official foreign envoys who carry letters for the Sultan shall be accorded stately treatment hosted by the Shahbandar at Royal Port Office (*Balai Furḍah*);[389] otherwise they are hosted in the lower house. This envoy possessing a letter for the ruler will be led by royal procession to the court on royal elephants and following royal procedures.[390]

In *Adat Aceh* one notices references made to Muslim ships or captains, Christian (*Nasrani*) ships, and to Indians (*Keling*), Europeans (*orang putih*), and Hindus. These descriptions do not suggest discriminatory treatment nor procedural distinctions that are based on religious identity or religious persuasion as Ito describes it.[391] I have pointed out above that none of the regulations (*adat*) was motivated by religious persuasion. Ito suggests that in the general procedures two distinctions are made. The first pertains to the application of these procedures on Muslim and non-Muslim ships. The second concerns the different levies charged to the ships according to their origins and sizes.[392] In response, I argue as follows. Firstly, any difference in rates of charges and taxes is certainly not unexpected, and is a natural and equitable process. Secondly, distinction made between Muslims and non-Muslims in *Adat Aceh* is insignificant quantitatively and qualitatively. The occasion where a Muslim ship or captain is mentioned is hardly discernible, and bears no significance. This goes to say that in all other occasions no distinction based on

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[389] Ibid., 146a-b.

[390] Ibid.146b-147a. Note the unfortunate event of the Portuguese envoy De Castro above. On these royal procedures and attendant duties see ibid., 146b-148b.

[391] Ito, "The World of the Adat Aceh," 308.

[392] Ibid., 305.

"religious persuasion" is made. Thirdly, a proper reading of this "distinction" when made indicates that it does not intend to define the categories based on religion, but rather on origin, size of ships, and types of goods and commodities. Ito himself offers the qualifier that the different application of procedures is more specifically between Indian and European ships; and the different charges are due to the origin and size of the ship. And to clarify Ito's suggestion, this variance is not due to the merchants, but rather the merchandize.[393] In discussing the taxes due for the different stamps, Ito testifies that "these dues are assessed according to the ship's nationality, religion not being relevant in this case."[394] I venture to say that this truism is not just on stamp duties but on all other duties and procedures. When these regulations (*adat*) and general procedures are put together within a bigger context one discerns that history and familiarity conditioned the different treatment and procedures. Ito admits to this in asserting that, "the general procedures, in their description as a whole, deal primarily with the Indian ships and merchants, and treat European ships as having secondary importance. This suggests that Indian merchants had long had a very significant part to play in the Aceh trade, which in turn implies a rather earlier origin of the system itself."[395] Historically the Muslims (read: Arabs), the Indians (*keling*), and Chinese had come and traded in Aceh long before the Europeans. The Acehnese were therefore familiar with and accustomed to these merchants, as compared to the Europeans. Nevertheless, the Acehnese too were cognizant of the European expansionist mission, commercially and culturally, and they naturally

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[393] See ibid., 305.

[394] Ibid., 311. Ito also cites Europeans sources like Beaulieu who said that the dues were determined by the size of the ships; see ibid., 312; for Beaulieu's report see Beaulieu, "The Expedition of Commodore Beaulieu to the East Indies," 746b.

[395] Ito, "The World of the Adat Aceh," 305.

adopted an open but wary and cautious policy towards the Europeans. The early traders, notably the Arab Muslims, Indians, and Chinese did not arrive on an expansionist mission, nor intend to exercise control and monopoly of the lands they came to, unlike the Europeans whose agenda was later proven: to control, monopolize, and colonize the region.

In addition, one does not find European sources lamenting nor protesting that they were discriminated against due to their religious belief, as compared to the comments of other merchants. Neither do these sources labor on the different taxes and tedious procedures and regulations of the ports. It is most likely that the Europeans did not find them "discriminatory," nor "disturbing" to warrant special pages in their usually detailed memoirs and reports. On this fact that little information is available in European sources, Ito reflects, "this may be partly because they regarded the procedures as of minor importance. When the English or Dutch had a factory in Aceh, the factors, who were naturally familiar with local practices and requirements, were in charge of fulfilling the requirements for departing ships, and no doubt kept an account of the various dues involved in their factory's account books. Unfortunately no such documents have survived."[396]

I now move to discussing Sinkīlī's *Mir'āt al-Ṭullāb*.

## *Mir'āt al-Ṭullāb*: The Author

A brief introduction to the author of the text under study is appropriate. It helps understand the mind at work and the context of the text. Little is known of the early life

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[396] Ibid., 320.

of ʿAbd al-Raʾūf b. ʿAlī al-Fanṣūrī al-Sinkīlī[397], posthumously known as Sheikh or Teungku di Kuala.[398] One can only speculate and approximate his year of birth to the first quarter of the seventeenth century.[399] After having studied under his father, who himself was a religious scholar and whose school (Ac. *Dayah*) attracted many students, al-Sinkīlī travelled to the port city Fanṣūr (Barus), Pasai, Gersik, and Banda Aceh Dar al-Salām before he left Aceh for Arabia in 1642, where he remained for nineteen years. Al-Sinkīlī's formative period (1615-1642) must have shaped his orientation and the intellectual persuasion that ensued.

Intellectually, at his hometown, Singkel and Fanṣūr, he must have already learned Hamzah Fanṣūrī's *wujūdiyyah* from local scholars. This was then augmented by his further study under al-Sumaṭrānī, a *wujūdiyyah* proponent. At Aceh Dār al-Salām, he witnessed the Fanṣūrī-al-Rānīrī polemic of *wujūdiyyah*, although one finds no substantive

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[397] Invariably written in Malay (and Western) sources as Singkili, Singkil or Singkel, referring to the village Singkel, north of Fanṣūr (Barus), the southwestern coastal region of Aceh. ʿAbd al-Raʾūf attributes himself as al-Fanṣūrī. Fanṣūr or Barus was an important port of Aceh, and a center of economic and intellectual activities. It was a meeting point for the Malays and Muslims from India and Arabia.

[398] Also written in modern Aceh Syiah Kuala. *Kuala* is a river mouth, referring to the place where al-Sinkīlī taught and was buried, at the mouth of Aceh River.

[399] Voorhooeve had it as circa 1620; see Voorhoeve, EI², s.v. "ʿAbd al-Raʾūf b. ʿAlī al-Djāwī al-Fanṣūrī al-Sinkīlī."; cf. al-Attas, *The Mysticism of Ḥamzah Fanṣūrī*, 134-35, fn. 72; Ahmad, *Sekitar Keradjaan Atjeh*, 122. Rinkes dated it around 1615; see D.A. Rinkes, *Abdoerraoef van Singkel*, (Heerenveen, 1909), 26. Rinkes' study was the first comprehensive European study of al-Sinkīlī, under Hurgronje's supervision. Rinkes' dating since then has become the most used date; cf. Anthony Johns, "Daḳāʾiḳ al-Ḥurūf by ʿAbd al-Raʾuf of Singkel," *Journal of the Royal Asiatic Society of Great Britain and Ireland* 1/2 (1955), and Peter G. Riddell, "Abdurrauf Singkili." Encyclopaedia of Islam, THREE. Edited by: Gudrun Krämer; Denis Matringe; John Nawas; Everett Rowson. Brill, 2011. Brill Online. McGill University. 22 December 2011 <http://www.brillonline.nl/subscriber/entry?entry=ei3_COM-0149>). Hasjmy provided a significantly earlier date: 1593. His dating allows him to assert that al-Sinkīlī studied with Hamzah Fanṣūri. (See Hasjmy, *Kebudayaan Aceh dalam Sejarah*, 202). However, Hasjmy's dating and his ensuing assertion could hardly be substantiated. If al-Sinkīlī's date of birth is taken as 1615 (the earliest estimated date), it is not possible that he studied under Hamzah Fanṣūrī, who would have died before 1607. However, the likelihood of al-Sinkīlī having studied under the Shaykh al-Islām of Iskandar Muda, Shams al-Dīn al-Sumaṭrānī (d. 1630) is very plausible.

indication that a personal contact between al-Rānīrī and al-Sinkīlī took place.[400] It was at the height of this polemic that he left Aceh for Arabia. He certainly carried the debated questions raised during that period of *wujūdiyyah* controversies with him to Arabia, and sought answers to these questions from his masters.[401] In the preface to his *Ithāf al-Dhakī*, Ibrāhīm al-Kūrānī (d. 1690), al-Sinkīlī's master teacher after al-Qushāshī (d. 1071/1661), alluded to these questions brought before him from people of Java (the Malays).[402]

Politically, during his energetic youth days, he witnessed the vying for political and economic power and hegemony—notably the European expansion on the one hand, and the other Malay cities to the east of Aceh on the other hand (the period of Iskandar Muda and Iskandar Thani).

Culturally, he experienced and lived through the active interactions between peoples of different cultures (Arabs, Indians, Turks, Chinese, Japanese, Europeans, Armenians) and religions (Muslims, Hindus, Buddhists, Animists, Christians, and Jews)[403] in Fanṣūr, Pasai, and Aceh. Al-Sinkīlī himself is likely of a mixed origin: Arab-

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[400] Azra, *Origins of Islamic Reformism*, 71. H.M. Zainuddin states that al-Sinkīlī was a student of al-Rānīrī. He further asserts that during the controversy of appointing a female ruler, an appointment opposed mainly by the religious scholars, al-Rānīrī was abducted and his body was then found at the Aceh river; and it was al-Sinkīlī's intervention that resolved the controversy that led to the enthronement of Taj al-'Ālam as the first Queen of Aceh; see Zainuddin, *Tarich Atjeh dan Nusantara*, 1:406. This report is hardly substantiated by historical evidence. Al-Rānīrī served as the Qāḍī al-Malik al-'Ādil during the Sultanah's period indicating that he was not opposed to the appointment; neither was there any evidence with regard to al-Rānīrī's killing in Aceh (for such a serious event that involved a high official in the court after the sultan, it could not have simply been ignored in people's memory), nor to the young al-Sinkīlī's intervention to mitigate the controversy between the *'ulama'*. Al-Rānīrī died in his hometown of Rānīr in 1658.

[401] See Peter G. Riddell, *Islam and the Malay-Indonesian World: Transmission and Responses* (London: Hurst & Co., 2001), 127-28.

[402] See Anthony Johns, "Islam in Southeast Asia: Reflections and New Directions," *Indonesia* 19 (1975), 51-52.

[403] Although little information is available about the presence of Jews, their early participation in the commercial race in Aceh is most likely. For example, Goitein reports a letter from a Jewish merchant

Malay[404] or Persian-Malay[405] and Azra does not reject the possibility of al-Sinkīlī's non-Malay origin.[406]

Sinkīlī's main predilection was the harmonization between Sharī'ah and *taṣawwuf*, between *ilm ẓāhir* and *bāṭin*. In the aftermath of a major religious intellectual turmoil between the Fanṣūri's *wujūdiyyah* and al-Rānirī, his bent to address those problems is not unexpected. Prior to his return, Sayf al-Rijāl, a *wujūdiyya*h advocate, was holding the highest religious office. Sinkīlī returned[407] to mitigate these problems. His works while in Aceh are suggestive of this mission.

### *Mir'āt al-Ṭullāb*: Introducing the text

The fact that numerous manuscripts of *Mir'at al-Ṭullāb* are extant is testimony to the popularity of the text in the region. In Indonesia alone, copies are available in the

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writing from Barus to his relatives; see S. D. Goitein, *Jews and Arabs: Their Contacts Through the Ages*, 3d rev. ed., Schocken paperbacks on Judaica (New York: Schocken Books, 1974), 228-29. The English captain James Lancaster had an English Jew as an interpreter in the former's negotiations with the Acehnese officials, a Jew whom Lancaster described as speaking "that [Arabic] language, which stood him in good stead at that time," because Arabic and Portuguese languages were understood by court officials; see Lancaster, *Voyages of James Lancaster*, 81; cf. Lombard, *Le Sultanat d'Atjéh*, 119, fn. 5. See also Reid, "An 'Age of Commerce' in Southeast Asian History," 4ff.

[404] According to Daly, al-Sinkīlī's father was an Arab who came to Barus and married a local lady. He then moved to Singkel to teach during which time 'Abd al-Ra'ūf was born; see Peunoh Daly, *Hukum Perkawinan Islam: Suatu Studi Perbandingan dalam Kalangan Ahlus-Sunnah dan Negara-Negara Islam* (Jakarta: Bulan Bintang, 1988), 15.

[405] Hasjmy contends that al-Sinkīlī's ancestors came from Persia to Pasai at the end of thirteenth century, before settling in Fanṣūr; and that al-Sinkīlī's father was the brother of Hamzah Fanṣūri; in Azra, *Origins of Islamic Reformism*, 71; and according to Hasjmy, Fanṣūr is not exactly Barus. Pansur is a village near Singkel, the birth town of 'Abd al-Ra'ūf, which was then called Fanṣūr by the Arabs; in Ahmad, *Sekitar Keradjaan Atjeh*, 110-11.

[406] Azra, *Origins of Islamic Reformism*, 71.

[407] It is not improbable that he was asked to return home to help resolve or mitigate the problem. Sinkīlī was not uninformed of the Wujūdiyyah, for he studied under Shams al-Dīn al-Sumaṭrānī before he left Aceh for Mecca. During his stay in Arabia, he must have discussed some of the problems with his teacher al-Kurānī who later wrote a treatise in response to these problems. He was the best candidate for the task: being a son of the land, with an impressive record of tutelage under luminous scholars of Arabia, one cannot think of anyone better.

National Musuem of Indonesia, National Library of Indonesia, Syiah Kuala University (Unsyiah) and Ar-Raniri State Islamic Institute (IAIN Ar-Raniri) of Banda Aceh, as well as in the private collections of Teungku Nyak Sarung, Prof Dr Abu Bakar Aceh, Prof Dr Ali Hasjmy, and Dayah Tanoh Abee, Aceh. Copies were made in Java, Sulawesi (Gorontalo), and Singapore.[408] While attending his religious and legal training in Aceh (*Sekolah Guru dan Hakim Agama*) in 1952, Daly was informed by his teacher Teungku Shaykh Muhammad Samman[409] that *Mir'at* had been widely used in pesantren, dayah, and by '*ulamā'* and judges. It was scribed and copied repeatedly, in parts or in full. However, fearing that these copies would be confiscated and destroyed by the Dutch, the indigenous people fled to the hinterlands and the jungles carrying with them their copies, which they hid or buried under the earth. As a result, many of these copies were lost or destroyed.[410]

*Mir'āt* was also used as the base text for many other texts of the region. Almost a century after its completion, *Mir'āt* was still the primary reference for '*ulamā'* as well as rulers. In 1740, Jalāl al-Dīn al-Tarusānī (fl. ca. 1750) was requested by the reigning ruler Sultan 'Alā' al-Dīn Johan Shah (r. 1735-1760) to compile a legal text. In preparing the text, he referred to al-Sinkīlī's *Mir'āt*. Because *Mir'āt* contained detail and complicated rulings, al-Tarusānī wanted to compile one that would be shorter and easier for students,

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[408] In his studies, Daly compares thirteen copies available in the said places. See Daly, *Hukum Perkawinan Islam*, 3, 5, 43-44; and for descriptions on these copies, 46-69.

[409] Teungku Shaykh Muhammad Samman was a religious scholar and a *qāḍī* in Banda Aceh during the Dutch colonial period until the Indonesian revolution. He spent a significant number of years studying in Mecca and Madinah. He read and commented on *Mir'āt* to his students See ibid., 69, n. 5.

[410] Ibid., 41-2.

and hence his *Safīnat al-Ḥukkām*.[411] In the mid-nineteenth century, one finds the Maguindanao Muslims' legal text *Luwaran* (Selection), whose correspondence with the *Mir'āt* could be gleaned.[412] Beyond the archipelago, it was also used as the main text for Dutch legal scholars wishing to study the legal system of the Archipelago, taught by A. Meursinge at the Royal Academy, Delft, and partially translated into Dutch.[413] Notwithstanding this fact, al-Sinkīlī's *tafsīr* (*Tarjumān al-Mustafīd*) seems to have captured the interest of Western modern scholars and researchers more than his *Mir'āt*; and only a handful of studies by Malay-Indonesian researchers are dedicated to *Mir'āt*.

Upon his return to Aceh in 1661, al-Sinkīlī was appointed as the Shaykh al-Islam and the *Qāḍī al-Malik al-'Adl* (Chief Qāḍī). The reigning ruler Tāj al-'Ālam Ṣafiyyat al-Dīn (r. 1641-1675) had wanted to provide judges with a legal reference that was based on Shāfi'iyyah and in the Malay (Jāwī) language. She then asked al-Sinkīlī to compile such a work. Al-Sinkīlī's long absence from the Malay world and prolonged stay in Arabia had affected his Malay language, and this resulted in his hesitance at undertaking the task. But he could not simply refuse the royal request. With the assistance of two pious friends who were conversant in Malay, al-Sinkīlī regained the language and thereafter his confidence in it. He set out to write the legal text, based for the most part on Abū Yaḥyā Zakariyyā al-Anṣārī's (d. 926/1520) *Fatḥ al-Wahhāb bi Sharḥ Minhāj al-Ṭullāb*,[414] as

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[411] Jalaluddin al-Tarūsānī, *Safīnat al-Ḥukkām fī Takhlīṣ al-Khaṣṣām*, ed. Alyasa Abu Bakar (Aceh: IAIN Ar-Raniry Darussalam, 2001), 2-3. This text will be further analyzed in the coming sections.

[412] M. B. Hooker, *Islamic Law in South-East Asia* (Singapore, Oxford, New York: Oxford University Press, 1984), 32, also 20ff for a brief introduction to *Luwaran*.

[413] See S. Kayser "De spiegel voor leergierige wetgeleerden.", *BKL*, 1864, 211-26; cf. Daly, *Hukum Perkawinan Islam*, 56-59. Copies of Mir'āt could also be found in Leiden.

[414] Zakariyyā al-Anṣārī is considered one of the major sources in the scholarly network of Malay-Middle Eastern 'ulamā'; see Azra, *Origins of Islamic Reformism*, 35-7, 79, and passim; and on al-Sinkīlī's Arabian networks, 72-77; cf. Daly, *Hukum Perkawinan Islam*, 18-20. On Zakariyyā al-Anṣāri, see Najm al-

well as other standard texts of Shāfiʿiyyah, such as *Fatḥ al-Jawwād* and *Tuḥfat al-Muḥtāj* of Ibn Ḥajar al-Haytamī (d. 973/1565), *Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj* of Shams al-Dīn Muḥammad b. Aḥmad al-Ramlī (d. 1004/1595), and al-Bayḍāwī's (d. 685/1287) *Anwār al-Tanzīl* widely known as *Tafsīr al-Bayḍāwī*. Al-Sinkīlī cited, among others, Muḥammad b. Aḥmad al-Shirbīnī (d. 977/1570), the author of a widely used Shāfiʿiyyah text in the Malay world, *al-Iqnāʿ*, and Abū Ḥafṣ al-Balqīnī (d. 805/1402)[415]; and the earlier generation of Shāfiʿiyyah like al-Baghawī (d. 510/1117) and al-Māwardī (d. 450/1058); and certainly al-Nawawī (d. 676/1277). Al-Sinkīlī named his work *Mirʾāt al-Ṭullāb fī Tashīl Maʿrifat Aḥkām al-Sharīʿah li al-Malik al-Wahhāb*,[416] and completed it in 1074/1663.

Books of *fiqh* are usually divided into quarters (*al-rubʿ*): *ʿIbādāt* (rituals and devotionals), *muʿāmalāt* (sales), *munākaḥāt* (marriage), and *jināyāt* (injuries, criminal

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Dīn Muḥammad b. Muḥammad al-Ghazzī, *al-Kawākib al-Sāʾirah bi Aʿyān al-Miʾah al-ʿĀshirah*, vol. 1 (Beirut: Dār al-Kutub al-'Ilmiyyah), 1:198ff.

[415] All these authors had in one way or another commented on Nawawī's (d. 676/1277) *Minhāj*.

[416] Al-Sinkīlī writes, "*fa'innahā (Ṣafiyyat al-Dīn) qad sa'alatnī min shiddat ḥirṣihā fi al-dīn an aktuba lahā mā yaḥtāj ilayhi man tawallā fī amr al-qaḍā' min al-aḥkām al-sharʿiyyah al-muʿtamadah ʿinda al-ʿulamāʾ al-shāfiʿiyyah bi-lisān al-Jāwiyyah al-Sumaṭariyyah wa kuntu astathqil dhālika li-qillat faṣāḥatī fī dhālika al-lisān bi-ṭūl ghurbatī wa iqāmatī fī al-diyār al-Yamaniyyah wa Makkah wa al-Madīnah sharrafahumā Allāh bi-sharafi sayyidi al-bariyyah thumma manna Allāh ʿalayya bi al-akhawayn lī al-ṣāliḥayn al-fāḍilayn al-faṣīḥayn fī dhālika al-lisān…fa shakartu Allāh ʿalā dhālika fa lammā manna ʿalayya bi-himā fa istakhartuhū fī ijābat dhālika al-suʾāl li ṭāʿatin lahā…wa ajabtuhā ilā dhālika fa katabtu hādhā al-kitāb…wa kānat al-ʿumdah fīmā katabtuhū ʿalā mafhūm Fatḥ al-Wahhāb illā fīmā nabbahtu ʿalayhi fī al-kitāb…wa sammaytuhū bi Mirʾāt al-Ṭullāb fī Tashīl Maʿrifat Aḥkām al-Sharīʿah li al-Malik al-Wahhāb.*" In the usual classical Malay manner, the author writes his introduction in Arabic, followed by its Malay translation. Here, I have ignored the Malay translation; Abd al-Raʾūf b. ʿAlī al-Fanṣūrī al-Sinkīlī, *Mirʾāt al-Ṭullāb* (n.p., n.d.), 4-5. The copy used here is Teungku Nyak Sarung's version, the printed version of *Mirʾāt* (536pp.) Date and place of publication are unknown. The colophon states that the unnamed copyist completed the copying in Rajab of 1184/1770 in India on his way to Mecca for *ḥajj*. For information and description of this copy, see Daly, *Hukum Perkawinan Islam*, 48-54. Copies of this version were lost during the tsunami that hit Aceh in 2004. I acquired this copy in 2009 from the personal collection of Dr Syahrizal of IAIN Ar-Raniri, stained as a result of the tsunami, but readable. Hereafter, reference of *Mirʾāt* is made to this copy.

laws). Typically a standard Shāfiʻite book is organized in this order.[417] In the case of a Malay book of *fiqh*, prior to *Mir'āt,* works on other than the quarter on ʻibādat are either unknown or not extant. Al-Rānīrī wrote *Ṣirāṭ al-Mustaqīm* some two decades earlier than *Mir'āt,*[418] but dealt only with *ʻibādah*[419]. Al-Sinkīlī complements al-Rānīrī by dealing with the other three quarters, notably the *muʻāmalāt, munākaḥāt,* and *jināyāt* in this order. The *muʻāmalāt* occupies a significant portion of *Mir'āt* (43%), in terms of the number of pages, followed by the *munākaḥāt* (30%), and then the *Jināyat* (25%).[420] When compared with the Egyptian Shāfiʻite ʻAbd al-Wahhāb al-Shaʻrānī's (d. 973/1565) *al-Mizān al-Kubrā*, his *Jināyāt* appears to draw greater attention (18%), as compared to *Muʻāmālat* (14%), and *Munākaḥāt* (10%).[421]

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[417] To each quarter belongs a staggering variety of subjects, called *Kitāb* (book). Under *ʻibādāt* one finds the books of Purity (*Ṭahārah*), Prayer (*Ṣalāh*), Fasting (*Ṣawm*), and Pilgrimage (*Ḥajj*). Under the *muʻāmalah*, a broad list of subjects is subsumed, such as sales, transfer, guaranty, partnership, agency, loans, lease, and gifts. Under the *munākaḥāt* one finds laws pertaining to, for instance, marriage, dowry, dissolutions of marriage, and custody. And subsumed under *jināyāt* are subjects related to torts, blood money, theft, robbery, sanctions, and laws rising from wars. Typically, matters pertaining to judicial process, judge and judgeship (*al-qaḍā'*), and on suits and evidence (*al-daʻwā*) are discussed under this latter quarter. On these divisions and contents of substantive legal works see Hallaq, *Sharīʻa: theory, practice, transformations*, 551-555. Al-Sinkīlī follows the same division and content treatment.

[418] al-Rānīrī began writing *Ṣirāt* in 1044/1643; Nūr al-Dīn al-Rānīrī, *Ṣirāṭ al-Mustaqīm, in the margin of Muḥammad Arshad al-Banjarī, Sabīl al-Muhtadīn*, 2 vols. (Singapore: al-Ḥaramayn, n.d.), 1:4; and completed it in 1054/1644, ibid., 2:267.

[419] Like *Mir'āt*, *Ṣirāt* refers to standard Shāfiʻiyyah's sources, such as Nawawī's *Minhāj*, Zakariyyā al-Anṣārī's *Fatḥ al-Wahhāb*, Ibn Ḥajr al-Haytamī's *Hidāyat al-Muḥtāj*, Ibn al-Naqīb's (d. 769/1368) *ʻUmdat al-Sālik*, and Yūsuf b. Ibrāhīm al-Ardabīlī's (d. 779/1378) *al-Anwār li Aʻmāl al-Abrār*; see ibid., 5.

[420] A quantitative and qualitative analysis of the depth of *Mir'āt*'s treatment of the different subject matters, compared and contrasted with other *fiqh* works of early Malay scholars, is left for future research. Such analysis could offer some suggestions as to the concerns and pre-occupations of the time.

[421] *Ibādāt* takes 48% of *al-Mīzān*. These percentages are taken from Hallaq's calculation representing the percentage of space al-Shaʻrānī allocated to the different subjects and topics. I computed the percentages of the different books (subjects) under the four quarters; see Hallaq, *Sharīʻa: Theory, Practice, Transformations*, 552-55. Could it mean that the Acehneses then were chiefly concerned with the *muʻāmalāt* aspect than the *Jināyāt* of Islamic law? While a tentative quantitative and qualitative reading may point to such opinion, it requires further analytical studies of the fiqh works of that time. We will come to analyzing an eighteenth-century text *Safīnat al-Ḥukkām* in subsequent sections.

That the purpose of *Mir'āt* was to be a guide for judges is evident. Firstly, the Sulṭānah Tāj al-'Ālam's expressed intention in commissioning al-Sinkīlī to compile the text was to meet the needs of the judges (*mā yaḥtāj ilayhi man tawallā fī amr al-qaḍā' min al-aḥkām al-Shar'iyyah…*).[422] Secondly, al-Sinkīlī begins this work with a discussion on the roles, responsibilities and functions of judges, and with providing the judges with admonitions, before he goes into the subject-matters and specific problems:[423] moving from sales and transanctions (*Mu'āmalāt*) to marriage and related matters (*Munākahāt*), to criminal laws and sanctions (*Jināyāt*), he concludes with the judicial processes, suits and testimonies. Thirdly, after having discussed a variety of problems (*mas'alah*) under a certain subject (*Kitāb* or *Maṭlab* as not infrequently used in Malay texts), al-Sinkīlī makes a formulaic remark (indicating that he is moving to the next subject, or indicating a short pause to a lengthy set of problems), "*dan demikian lagi setengah daripada segala hukum yang sayugianya diketahui oleh qāḍī akan dia itu…*" (and thus were some of the laws that a judge must know…). Fourthly, in numerous instances al-Sinkīlī resorts to discussing hypothetical problems as a strategy to explain the legal reasoning important for judges in resolving the problems and disputes brought before them.

Nonetheless, although the primary motivation was to instruct judges, *Mir'at* was not meant solely for courts and judges. It was written as teaching material for students as well. For this purpose, al-Sinkīlī makes use of heuristic techniques: the dialectical and Socratic methods. Some problems he raises were hypothetical and meant as intellectual exercise. These problems were found in classical Arabic texts. Students and judges are

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[422] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 4.

[423] Ibid., 5-7.

expected to learn not just the substantive laws, but also the legal reasoning, and thereafter apply them in solving their problems.

### *Mir'āt al-Ṭullāb*: Analysis

In analyzing *Mir'āt* I shall categorize the views into two broad concepts underlying Sinkīlī's views. These concepts are *kafā'ah* (equality and parity) and *wilāyah* (authority). I begin with a brief discussion of these two concepts, followed by laws governed by these two principles.

### *Kafā'ah*.

In Islam diversity is not just acknowledged but celebrated. The Qur'ān says, "and if your Lord had willed, He could have made mankind one community; but they will not cease to differ."[424] Nevertheless, acknowledging and celebrating diversity does not necessarily translate into treating the diverse peoples and communities equally, particularly when it comes to Others. Even when Prophet Muḥammad says that in Islam there is latitude (*fusḥah*) and tolerance (*samḥah*),[425] Muslims throughout history were neither consensual nor uniform in interpreting the extent of this laxity and tolerance. *Kafā'ah* suggests equality and parity of two parties in contracts, insofar as both parties are considered equals. However, under Islamic law Muslims and non-Muslims are not equal. *Kafā'ah* is based on certain social distinctions and inequalities. In the matter of the law of retaliation (*al-qiṣāṣ*) for instance, the blood of a Muslim is not equivalent to a non-

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[424] al-Qur'ān, Hūd (11): 118.

[425] The Prophetic text says, "let the Jews know that in our religion there is latitude; [for] I was sent with the tolerant *ḥanīfiyyah*." (*li'ta'lama yahūd anna fī dīninā fusḥatan; innī ursiltu bi-ḥanafiyyah samḥah*. Ahmad ibn Ḥanbal, *Musnad*, 6:116.

Muslim: a Muslim who commits a homicide is not punishable by death for killing a non-Muslim, and the amount of a Muslim's blood-money (*diyah*) is not equivalent to a non-Muslim's. Although *qiṣāṣ* conjures up the idea of equality, this is insofar as both parties are equals. Muslims and non-Muslims are unequals. By his rejection of truth (*kufr*), a non-Muslim has himself lowered his standing.[426] And because Muslims and non-Muslims are unequals, they are treated unequally. *Kafā'ah* in the matter of *qiṣāṣ* is defined by the Shāfi'ites as equality in religion between the murderer and the slain, apart from equality in social status (inequality between a free and a slave), and protection (inequality between a *ḥarbī* and a *dhimmī* and *musta'min*).[427] If a Muslim woman is given in marriage to a non-Muslim man, this brings about a situation in which the wife is considered superior by virtue of her Islam, and which leads to an unacceptable inequality or incongruity. Such a situation is unacceptable. Muslims are not equal to non-Muslims, and equality in religion (*kafā'ah*) is a condition in a marriage.[428] This inequality of religions stems essentially from the conviction that Islam is the final and the perfected religion,[429] and therefore the superior religion,[430] and whose path (*shara'*) abrogates the earlier Abrahamic religions.

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[426] The Mālikī Ibn al-'Arabī narrated a debate he witnessed between al-Zawzanī, a Ḥanafī, and al-Maqdisī, a Shāfi'ī, in Jerusalem on the question whether a Muslim should be killed for killing a *kāfir*. Al-Zawzanī argued that the Muslim should be killed as a matter of *qiṣāṣ*, as stated by the Qur'ānic verse on *qiṣāṣ* (al-Qur'ān, 2:178). Al-Maqdisī retorted saying that *qiṣāṣ* conditions an equality between the parties, and equality is absent between a Muslim and a *kāfir*, because infidelity (*al-kufr*) has lowered one's dignity and reduced one's status (*fa-sharaṭa al-musāwāh fī al-mujāzāh, wa lā musāwāh bayn al-Muslim wa al-kāfir, fa inna al-kufr ḥaṭṭa manzilatahu wa waḍa'a martabatahu*); see Abū al-'Abbās Ibn Ḥajr al-Haytamī, *Fatḥ al-Jawwād bi Sharḥ al-Irshād*, 2 vols. (Cairo: Dār Iḥyā' al-Kutub al-'Arabiyah, n.d.), 1:90.

[427] See *al-Mawsū'ah al-Fiqhiyyah*, s.v. "*Kafā'ah*."

[428] Ibid.

[429] The Qur'ān says, "This day have I perfected your religion for you and completed My favor unto you, and have chosen for you as religion al-Islam."; al-Mā'idah (5): 3.

[430] The oft-repeated tradition to substantiate this position is the statement, "Islam is exalted and nothing is exalted above it." (*al-Islām ya'lū wa lā yu'lā*); Bukhāri, *Ṣaḥīḥ, Kitāb al-Janā'iz, Bāb idhā aslama al-ṣabiy fa māta...*; in another version, it says, "*al-Islām ya'lū wa lā yu'lā 'alayhi*."; see Abū al-'Ulā Muḥammad 'Abd al-Raḥmān al-Mubārakfūrī, *Tuḥfat al-Aḥwadhī bi Sharḥ Jāmi' al-Tirmidhī*, ed. 'Abd al-

This conviction of a Muslim's superiority above others is also embedded in another key concept: *wilāyah*.

*Wilāyah*

Depending on the question one asks, *wilāyah* connotes different meanings. In the context of our current discussion, *wilāyah* is distinguished from *ṣūfī*'s *wilāyah* that suggests the notion of sainthood and sanctity stemming from its meaning of friendship and closeness to God.[431] Our interest in this section is its legal and political meanings as used by Muslim jurists (*fuqahā'*)—meanings that suggest the idea of power and authority, the authority to exercise power over others (*tanfīdh al-qawl 'alā al-ghayr*)[432], and the power to exercise authority (*sulṭah 'alā ilzām al-ghayr*), and consequently of one being superior above the other. As in the case of *kafā'ah*, the oft-repeated statement that "Islam is exalted and nothing is exalted above it" is harnessed to establish that Muslims are always superior over the others. The Qur'ānic verse "Let not the believers (*al-Mu'minūn*) take the disbelievers (*al-Kāfirīn*) for their friends in preference to the believers…"[433] is also used to argue for the case. To this meaning, Ibn Taymiyyah argues that all forms of *wilāyāt* aim to ensure that Islam remains superior and that the Word of God the exalted

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Wahhāb 'Abd al-Laṭīf, 10 vols. (Cairo: Dār al-Fikr, n.d.), 6:288; and Abū 'Abd al-Raḥmān Sharaf al-Ḥaq al-'Aẓīm Ābādī, *'Awn al-Ma'būd 'alā Sharḥ Sunan Abī Dāwūd* (Beirut: Dār Ibn Ḥazm, 2005), hadith no. 2909, 1313.

[431] On this mystical meaning of "friends of God" or the saints (*Awliyā' Allāh*), see EI[2], s.v. "Walī."

[432] 'Alī b. Muḥammad al-Jurjānī, *Kitāb al-Ta'rīfāt* (Beirut: Maktabat Lubnān, 1985), 275; cf. *al-Mawsū'ah al-Fiqhiyyah*, s.v. "Wilāyah."

[433] al-Qur'ān, Āl 'Imrān (3):28. Pickthall and A.J. Arberry translate *awliyā'* as friends; Abdullah Yusuf Ali has it as friends or helpers; the Royal Aal al-Bayt Institute uses patrons. According to Asad, *awliyā'* means allies, and that it does not only indicate political but also moral alliances; see his interpretation and note to the Qur'ān, al-Nisā' (4):139 in his *The Message of the Qur'ān*.

and most supreme (*anna jamī'a al-wilāyāt fī al-Islām maqṣūduhā an yakūna al-dīn kulluhu li-Allāh wa an takūna kalimat Allāh hiya al-'ulyā*).[434]

The view that Islam (and Muslims) should remain in a special position, and that *wilāyah* should be for Muslims, can be found in numerous laws that involve the Others, such as the inter-marriage law, inheritance law, and criminal law; a classic case in point is in the rules of testimony (*al-shahādah*) in the Muslim law of evidence involving non-Muslims. *Shahādah* is regarded as the most evincive of all forms of evidence (*al-bayyinah*).[435] Although most jurists admit non-Muslims as witnesses against their co-religionists, they however do not admit their testimony against a Muslim.[436] To argue for this position, the Shāfi'ite al-Nawawī cited a ḥadith that states that the testimony of a member of one religion against a member of another religion is not permitted, except Muslims, who are persons of rectitude (*'udūl*) [whose rectitude ensures a just testimony] against themselves and others. For, if one's perjurious testimony against a human being renders his testimony invalid, more so when one is untrue and perjurious against God (for not accepting Islam). ("*Lā tajūz shahādat ahl dīnin 'alā ahl dīnin ākhar illā al-Muslimīn fa-innahum 'udūlun 'alā anfusihim wa 'alā ghayrihim, wa li-annahā idhā lam tuqbal shahādat man yashhad bi-al-zūr 'alā al-ādamī, fa-li'an lā tuqbal shahādat man shahida*

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[434] Aḥmad b. 'Abd al-Ḥalīm Ibn Taymiyyah, *al-Ḥisbah fī al-Islām* (Beirut: Dār al-Kutub al-'Ilmiyyah, n.d.), 6.

[435] Hallaq, *Sharī'a: Theory, Practice, Transformations*, 348; Galal H. El-Nahal, *The Judicial Administration of Ottoman Egypt in the Seventeenth Century* (Minneapolis: Bibliotheca Islamica, 1979), 18.

[436] Muslim jurists distinguish between charging (*taḥammul*) and discharging (*adā'*) testimony. While almost anyone can take in the data of the testimony (*taḥammul al-shahādah*), including slaves, minors and non-Muslims, not everyone can discharge the data and information (*adā' al-shahādah*) before the judge. See *al-Mawsū'ah al-Fiqhiyyah*, 26:220. In discharging a testimony Shāfi'ites require that the witness be, among others, a major (*bāligh*), free (*ḥurr*), Muslim, sane (*'āqil*), and a person of rectitude (*'adl*); see al-Nawawī, *Majmū'*, 20:226f.

*bi-al-zūr 'alā Allāh ta'ālā awlā*).[437] Reasons for the impermissibility are based on epistemic, ethical, and political (*wilāyah*) grounds. I argue that the Revealed texts on this issue are not explicit and conclusive (*qaṭʿī*); and that epistemic and ethical grounds summoned to justify the position are only secondary. Primarily, the fact that non-Muslims are not admitted to testify against Muslims is due to political grounds (*wilāyah*)[438].

*Sinkīlī's Faithful Rendering of Shāfiʿites Standard Texts*

In writing *Mir'āt al-Ṭullāb*, Sinkīlī follows closely the standard Shāfiʿite *fiqh* texts (*al-mutūn al-fiqhiyyah*). His approach in following these texts seems to suggest that *Mir'āt*, being the first Malay text in matters pertaining to other than the rituals (*'ibādāt*), aims to be a sort of normative text drawn from the standard sources—one that serves as a guide for whosoever is assuming the position of a judge in a situation where judgment is based on the thinking of Shāfiʿite jurists. It is not inaccurate to argue that Sinkīlī's *Mir'āt* is almost a rendering of a standard Arabic text in Malay. In giving his examples and cases, Sinkīlī uses examples relevant to the central land of Islam—the land of the Arabs—and as cited in Arabic texts, like Nawawī's *Minhāj*, and al-Anṣārī's *Fatḥ al-Wahhāb*, those examples being most unlikely to take place in Aceh.[439] A similar approach is observed in his Malay rendering of the Qur'ānic commentaries in his *Tarjumān al-Mustafīd*,

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[437] Abū Zakariyyā Yaḥyā b. Sharaf al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 12 vols. (Cairo: Maṭbaʿat al-Taḍāmun, 1344/1925), 20:226.

[438] The case of a non-Muslim's testimony will be alluded to again in Chapter four.

[439] As an example, in speaking about the rule of *kafā'ah* in marriage, one of the conditions is equality in the lineage. Here Sinkīlī gives an example of the superiority of Arabs over non-Arabs (*'ajam*); of the Quraysh above others; and of the superiority of *Banū Hāshim* and *Banū al-Muṭṭalib*, all of which has little relevance with the Malays in Aceh. See al-Sinkīlī, *Mir'āt al-Ṭullāb*, 256-57.

considered as the first complete Qur'ānic commentary in Malay, in which al-Sinkīlī relies heavily on al-Jalālayn. [440] To this, Riddell observes "that the progressive verse commentary of Tarjumān al-Mustafīd is almost totally based upon it (*Tafsīr al-Jalālayn*), so much so that we are led to conclude that 'Abd al-Ra'ūf's intention was to make a rendering of it in full, apart from certain omissions."[441]

*Muslims and non-Muslims are Unequals*

One of the conditions for the retaliation law (*al-qiṣāṣ*) to take place, according to the Shāfi'ites, is the condition of equality (*mukāfa'ah* or *kafā'ah*) in religion and social class at the time of the crime. Therefore, if a Muslim commits a pre-meditated murder (*al-qatl bi al-'amd*) on a non-Muslim, even a *dhimmī*, the Muslim shall not, in retaliation, be killed; nor shall a free man be killed for killing a slave. This is because Muslims and non-Muslims are unequal. A *murtad* shall be killed for a premeditated murder on a *dhimmī*. Like a *kāfir ḥarbī*, a *murtad*'s life is unprotected (*muhdar al-damm*), punishable by death, whereas the *dhimmī* is protected. A *murtad* and a *dhimmī* are unequals.[442] If a

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[440] 'Abd al-Ra'ūf b. 'Alī al-Fanṣūrī al-Sinkīlī, *Tarjumān al-Mustafīd*, 4th ed. (Singapore: Maktabat wa Maṭba'at Sulaymān Mar'ī, 1951); see Peter Riddell, *Transferring a Tradition: 'Abd al-Ra'ūf al-Singkilī's Rendering into Malay of the Jalālayn Commentary*, Monograph series (Berkeley, CA: University of California, Centers for South and Southeast Asia Studies, 1990), 60-65. *Tarjumān* is popularly described as the Malay rendering of al-Bayḍāwī's *Anwār al-Tanzīl wa Asrār al-Ta'wīl*. However, in the above study, Riddell has convincingly argued that references and citations from al-Bayḍāwī are rare. Instead, it is rightly a rendering of *Tafsīr al-Jalālayn,* a commentary compiled by the two Jalāl al-Dīn, notably Jalāl al-Dīn Muḥammad b. Aḥmad al-Maḥallī (d. 1459), and Jalāl al-Dīn 'Abd al-Raḥmān b. Abī Bakr al-Suyūṭī (d. 1505), both of whom are Shāfi'ites.

[441] Riddell, *Transferring a Tradition*, 64.

[442] al-Sinkīlī, *Mir'āt al-Ṭullāb*., 404-405; cf. Abū Yaḥyā Zakariyyā al-Anṣārī, *Fatḥ al-Wahhāb bi Sharḥ Manhaj al-Ṭullāb*, 2 vols. (Beirut: Dār al-Fikr, 2008), 2:156-57. It is worth noting here that the Ḥanafites consider both Muslims and non-Muslims as equals in respect to their lives (*fa al-mu'tabar fīhi (al-qiṣāṣ) al-musāwāh fī al-ḥayāt*); hence a Muslim shall be killed for slaying a non-Muslim, just as a major shall be killed for killing a minor; see Shams al-Dīn al-Sarakhsī, *Kitāb al-Mabsūṭ*, 30 vols. (Beirut: Dār al-Ma'rifah, n.d.), 20:131; also Abū al-Ḥasan 'Alī b. Muḥammad al-Māwardī, *al-Aḥkām al-Sulṭāniyyah wa al-Wilāyāt al-Dīniyyah*, ed. Aḥmad Mubārak al-Baghdādī (Kuwait: Maktabat Dār Ibn Qutaybah, 1989), 303, 304.

Muslim injures a *ḥarbī* or *murtad*, who later becomes Muslim and dies from the injury, no *qiṣāṣ* shall take place. What is considered is the time of the act,[443] but he is entitled to a full blood-money (*diyah kāmilah).*[444] And if a Muslim injures a Muslim, who later turns *murtad* and dies as a result of that injury, the Muslim shall not be killed. However, the kin of the deceased could seek *qiṣāṣ* for the injury, not the death.[445] Similarly, if an injured *dhimmī* becomes Muslim and dies as a result of the injury, the Muslim who commits the injury shall not be killed, but have a *diyyah kāmilah* imposed on him.[446] All these cases clearly point to the principle that non-Muslims are not equal to Muslims, and that Muslims are superior to the non-Muslims.

To examine this further, let us look at family law. In the life of a family, the man is considered as the leader. He is expected to be superior above the wife, socially and religiously; and he is expected to measure up to the social status of the wife, and not vice versa. A Muslim woman given in marriage to a non-Muslim man goes against the idea of *kafā'ah* in marriage, as has been pointed out above. Therefore, while a Muslim man is allowed to marry a non-Muslim woman, a *kitābiyyah*, the opposite relationship is not permitted. *Mir'āt al-Ṭullāb* faithfully follows the rule.[447] In the matter of inheritance, a non-Muslim, *kitābī* or non-*kitābī,* shall not succeed to the estate of a Muslim, and vice versa; and although non-Muslims do inherit among themselves regardless of their

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[443] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 409. According to Nawawī, in this case, the *diyat mukhaffafah* (a minor blood-money) of a Muslim is imposed. See Abū Zakariyyā Yaḥyā b. Sharaf al-Nawawī, *Minhāj al-Ṭālibīn wa 'Umdat al-Muftīn* (Beirut: Dār al-Minhāj li al-Nashr wa al-Tawzī', 2005), 474.

[444] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 410.

[445] Ibid., 410; cf. al-Nawawī, *Minhāj*, 474.

[446] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 410.

[447] Ibid., 269-70.

religions, a *ḥarbī* and non-*ḥarbī* do not.[448] Sinkīlī defines *ḥarbī* as one against whom Muslims are waging war whether in Muslim lands or in their own lands. In the former situation it is an obligation on every individual Muslim (*farḍ ʿayn*) to fight them; whereas in the latter situation, it is a collective obligation (*farḍ kifāyah*).[449] If *ḥarbī* is a legal-political categorization that defines this group's relationship with the Muslims,[450] *kitābī* is a socio-religious categorization that defines the group's religious beliefs.[451] How then does Sinkīlī define a *kitābī* or *ahl al-kitāb*?

*Who is a Kitābiyyah?*

While a Muslim male is allowed to marry a *kitābiyyah*, taking a position faithful to the standard Shāfiʿite view, al-Sinkīlī limits it only to the uncorrupted *kitābiyah* (*kitābiyyah khālisah*). Therefore, a *majūsiyyah* who is considered to some jurists as having some form of divine book (*shubhat al-kitāb*) is not considered as *kitābiyyah*; similarly one whose lineage is of a mixed marriage (*kitābī* and idolater).[452] *Kitābiyyah* does not include adherents of the scrolls of the Prophets *Dāwūd, Shīth, Idrīs,* and *Ibrāhīm.* A *kitābiyyah* could be of two types: an ethnic Israelite, notably the descendant of Prophet *Yaʿqūb,* and a non-Israelite. An ethnic Israelite *kitābiyyah* is one whose

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[448] Ibid., 208-09, 522-23; cf. al-Anṣārī, *Fatḥ al-Wahhāb*, 2:11.

[449] al-Sinkīlī, *Mirʾāt al-Ṭullāb*, 467.

[450] Other groups include the *dhimmīs, mustaʾmin, ahl al-ʿahd, ahl al-amān*. Members of these groups are under the protection of the Muslims. Sinkīlī describes them as those protected by Muslims against any form of aggression, and this protection is invoked in one of three ways: a protection treaty (*ʿahd amān*), poll tax (*jizyah*), and peace treaty (*ʿahd hudnah*); ibid., 473. A *ḥarbī* then is a non-Muslim, who could be a *kitābī* or Sabian or a member of any other religious group, who does not enter into the *dhimmī* contract, or does not enjoy protection from the Muslims. See al-Mawsūʿah al-Fiqhiyyah, s.v. "ahl al-ḥarb."

[451] Other religious groups include the Zoroastrians (*Majūsī*), Samaritans (*al-Sāmirī*), Sabians (*al-Ṣābiʾ*), idolaters (*wathanī*) and such.

[452] al-Sinkīlī, *Mirʾāt al-Ṭullāb*, 269; cf. al-Anṣārī, *Fatḥ al-Wahhāb*, 2:54, and al-Nawawī, *Minhāj*, 385.

lineage had accepted Judaism and Christianity before it was altered, or before the advent

of Islam. A non-Israelite *kitābiyah* is one whose lineage had converted even after the

corruption but who did not adhere to the corrupted teachings. Only when these conditions

are met could both Israelite and non-Israelite *kitābiyah* be given in marriage to a Muslim

male.[453] However, the time of these alterations and corruptions is entirely unclear in

Shāfi'ite texts. This problem is not discussed in these texts probably due to its

insignificance as a result of the surviving few, and a condition caused by the advent of

Islam, the Perfected Religion, and the Final Revelation to the Seal of the Prophets. For

the Shāfi'ites generally rejected the validity of pre-Islamic laws (*shar' man qablanā*).[454]

As to the Samaritan (*Sāmiriyyah*), an off-shoot of a Jewish group, and the Sabian

(*Ṣābi'iyyah*), an off-shoot group of the Christians, they shall be treated as Jewish and

Christian *kitābiyyah* only if they adhere to fundamental beliefs and laws of both Judaism

and Christianity respectively, and differ in matters of substantive laws; otherwise Muslim

males are not permitted to marry them.[455] And these are the People of the Book (*Ahl al-*

*Kitāb*), who pay their poll tax (*jizyah*), and abide by Muslim laws (including the

*ḥudūd*),[456] who shall be protected (*ahl al-dhimmah*)[457] from any harm that might come

from Muslims and non-Muslims in the Muslim lands.[458]

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[453] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 270; cf. al-Anṣārī, *Fatḥ al-Wahhāb*, 2:54 and al-Nawawī, *Minhāj*, 386.

[454] See al-Kuwayt, *al-Mawsū'ah al-Fiqhiyyah*, 26:17-19; al-Ghazzali categorizes this pre-Islamic source as one of the erroneous sources (*al-uṣūl al-mawhūmah*), see Abū Ḥāmid Muḥammad al-Ghazzālī, *al-Mustaṣfā min 'Ilm al-Uṣūl*, 2 vols. (Cairo: al-Maṭba'ah al-Amīriyyah, 1322 A.H.), 1:245-60; and 'Alī b. Muḥammad al-Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, ed. 'Abd al-Razzāq 'Afīfī, 4 vols. (Riyadh: Dār al-Ṣumay'ī li al-Nashr wa al-Tawzī', 2003), 4:169–82; see also Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiqh* (Cambridge: Cambridge University Press, 1997; repr., 2003), 115-16.

[455] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 270; cf. al-Anṣārī, *Fatḥ al-Wahhāb*, 2:55.

[456] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 448.

*Superiority of Islam Above All*

One important legal and political concept pertaining to Muslim and non-Muslim relations is *wilāyah*, in that Muslims should remain superior above others, and that Islam is exalted and nothing is exalted above it. Here too Sinkīlī holds dearly to the doctrine. In the aforementioned paragraphs I have alluded to some of these laws with regard to laws of retaliation and evidence. In what follows, I shall highlight more of these laws in Sinkilī's *Mir'āt*.

*Imāmah*

*Imāmah* is indeed considered as the highest office of *wilāyah*. Here *imāmah*—rulership or leadership—refers essentially to the supreme leadership (*al-imāmah al-'uẓmā* or *al-kubrā*), in contradistinction to the minor leadership (*al-imāmah al-sughrā*) which often, although not exclusively, refers to leadership in prayer. Seen as a symbol of continued unity of the Muslim peoples, Muslim scholars—philosophers, theologians, and jurists—dedicated extensive books and chapters to *imāmah*. The *Imām* or *Khalīfah* (Caliph) is representing and succeeding the Prophet as the universal leader to the Muslim community. As al-Iṣfahānī (d. 1348) has it, "*al-imāmah* is considered as the succession to the Prophet by one of the individuals in establishing the laws of the Sharī'ah and in protecting the religion's territory in such a manner that obeying [the *imām*] is made

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[457] Although Sinkīlī discusses *ahl al-Dhimmah* and *al-jizyah*, the contract of *dhimmah* and the ensuing payment of *al-jizyah* were not practiced in Aceh. This will be discussed in Chapter Four in speaking of the indigenous Others in Aceh.

[458] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 474-75. It is worth noting that the definition of *Ahl al-Kitāb* and consequently the *Ahl al-Dhimmah* is by no means agreed upon by Muslim jurists. They all stand along a continuum, between the most restrictive to the most liberal. For this discussion, see Yohanan Friedmann, *Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition* (Cambridge: Cambridge University Press, 2003), 59ff. Here, emphasis is laid on the Shāfi'ite views.

obligatory upon the *ummah*;"[459] the *imām*'s primary task is to protect the religion (*ḥirāsat al-Dīn*) and to govern the worldly affairs (*siyāsat al-dunyā*) guided by the Sharī'ah.[460] Sinkīlī stresses that the appointment of a ruler (*imām*) is obligatory.[461] Because the primary task of the *imām* is to protect the Religion (Islam) in accordance with the Sharī'ah, and because the *imām* is a representative and successor to the Prophet, and thus holding the highest form of authority (*wilāyah*), this position cannot be assumed by other than a male Muslim. In addition to the qualities required to assume this office of the *imām*, such as being one of the Quraysh lineage and possessing bravery, the *imām* must also satisfy the conditions to being a *qāḍī*.[462] In short, a non-Muslim cannot hold the office of *imāmah*.

*Qāḍīship*

Another form of *wilāyah* is the *qāḍīship*. The *qāḍī* is vested with the authority to exercise power (*wilāyah*) and impose the Islamic laws (*ilzām man lahu ilzām bi ḥukm al-shar'*),[463] and to demonstrate [the power of] the law of Sharī'ah in [resolving] conflict

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[459] "*Al-Imāmah 'ibāratun 'an khilāfat shakhṣin min al-ashkhāṣ li al-Rasūl 'alayh al-salām fī iqāmat al-qawānīn al-shar'iyyah wa ḥifẓ ḥawzat al-millah, 'alā wajhin yajibu ittibā'uhu 'alā kāffat al-ummah*." Al-Iṣfahānī, Abū Thanā' Shams al-Dīn, *Maṭāli' al-Anẓār 'alā Matn Ṭawāli' al-Anwār* (Cairo: Dār al-Kutubī, 2008), 228; also in al-Iṣfahānī's *Maṭāli' al-Anẓār*, a commentary on al-Bayḍāwī's *Ṭawāli' al-Anwār* edited and translated into English by Edwin Elliott Calverley and James W. Pollock as *Nature, Man and God in Medieval Islam: 'Abd Allah Baydawi's Text Tawali' al-Anwar min Matali' al-Anzar, along with Mahmud Isfahani's Commentary, Matali' al-Anzar, Sharh Tawali' al-Anwar*, (Leiden: Brill, 2001), 1090-91. However, the English translation above is mine. Al-Ījī in his *Kitāb al-Mawāqif* gives a similar definition of *al-Imāmah*; see 'Abd al-Raḥmān Aḥmad al-Ījī, *al-Mawāqif fī 'Ilm al-Kalām* (Beirut: 'Ālam al-Kutub, n.d.), 395. For a discussion of this and other definitions, see Muḥammad Ḍiyā' al-Dīn al-Rīs, *al-Naẓariyyāt al-Siyāsiyah al-Islāmiyah*, 7th ed. (Cairo: Maktabat Dār al-Turāth, n.d.), 122-23.

[460] al-Māwardī, *al-Āḥkām al-Sulṭāniyyah*, 3; Ibn Khaldūn, *al-Muqaddimah*, 4th ed. (Mecca: Dār al-Bāz li al-Nashr wa al-Tawzī', 1978), 191.

[461] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 445.

[462] Ibid., 445; cf. al-Nawawī, *Minhāj*, 500, and al-Anṣārī, *Fatḥ al-Wahhāb*, 2:187.

[463] Sulaymān al-Jamal, *Ḥāshiyah al-Jamal 'alā Sharḥ al-Manhaj*, 5 vols. (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, n.d), 5:334.

(*izhār ḥukm al-Shar' fī al-wāqi'ah fī man yajib 'alayh imḍā'uhu*).[464]Unlike *fatwā* and *riwāyat al-khabar* (transmission of report), *qaḍā'* and *shahādah* (testimony) bear certain authority to exercise power on others (*ilzām al-ghayr*), notably the *wilāyah*.

In discharging this *wilāyah*, Islam is considered a primary condition for one to assume the position of a judge.[465] A non-Muslim should not possess the *wilāyah* over a Muslim (*fa lā yuwallī kāfir 'alā muslimīn*), for God says, "And never will God grant to the unbelievers a way (to triumphs) over the believers," and there is no greater path (to triumphs) than in judgeship.[466] If the most qualified person is not available to assume this office, the ruler (*imām*) could appoint a less qualified person, even if he is a *fāsiq* (a sinner who does not meet the legal requirement in righteousness), or a child, or a female, as judge. However, they must be Muslims.[467]

*Shahādah* (Testimony)

*Shahādah* is one of the ways by which one's right is restored and protected in the court of justice. The concept of *wilāyah* is most evident in the *shahādah* for the judges, and the witnesses are the parties with assigned power (*wilāyah*) and therefore considered as politically superior.[468] In the aforementioned paragraphs, I have briefly indicated the Shāfi'ite's views with regard to the testimony of non-Muslims. Here I focus on Sinkīlī's rendition.

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[464] Shams al-Dīn Muḥammad b. al-Khaṭīb al-Shirbīnī, *Mughnī al-Muḥtāj ilā Ma'rifat Ma'ānī Alfāẓ al-Minhāj*, 4 vols. (Beirut: Dār al-Ma'rifah, 1997), 4:497.

[465] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 6; cf. al-Nawawī, *Minhāj*, 557; al-Anṣārī, *Fatḥ al-Wahhāb*, 2:257.

[466] al-Shirbīnī, *Mughnī*, 4:501.

[467] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 6.

[468] I will examine further in Chapter Four the idea of *wilāyah* in the *shahādah*.

In *Mir'āt*'s Chapter on Witness, Sinkīlī holds that a witness must be a free Muslim, *mukallaf*, righteous (*'ādil*), a person of integrity (*murū'ah*) and not liable to suspicion (*tuhmah*).[469] However, Sinkīlī does not elaborate further as to whether the witness must be a Muslim in all cases or in some cases. Could a non-Muslim testify for and against his co-religionists or other religionists? Or can a non-Muslim testify for a Muslim? In his commentary of the verse that is often used to argue for the impermissibility of a non-Muslim's testimony, "And call to witness, from among your men, two witnesses,"[470] Sinkīlī does not elucidate further. He simply says, "you call to witness concerning your debt two male witnesses among your men," (*dipersaksikan oleh kamu hutang itu akan dua orang saksi daripada laki-laki kamu…*)[471] He does not explain the meaning of "among your men"; he simply translates the verse. According to the Shāfi'ites, a non-Muslim is not qualified to testify for or against other than his co-religionists. Therefore, a Christian cannot testify for or against a Zoroastrian, and vice versa. Only a Muslim is admitted to testify against a non-Muslim.[472]

In the law of marriage, Sinkīlī argues, two male Muslim witnesses whose Islam must not be doubted are required for a valid marriage. A male whose Islam is unknown cannot be a witness; and if a marriage is solemnized and witnessed by an unknown

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[469] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 501.

[470] al-Qur'ān, 2:282.

[471] al-Sinkīlī, *Tarjumān al-Mustafīd*, 49.

[472] al-Nawawī, *Majmū'*, 20:226.

religious identity, the marriage is deemed invalid,[473] as opposed to a Muslim male whose righteousness (*'adālah*) is concealed.[474]

With regard to the *walī* for marriage, if a male Muslim marries a *kitābiyyah*, a non-Muslim can be her *walī* if he qualifies as being righteous by the standard of his religion, but with two male Muslim witnesses.[475] However, a non-Muslim cannot be a *walī* to a female Muslim.[476]

*Farā'iḍ* (Inheritance) and *Waṣiyyah* (Will).

In the matter of inheritance, both equality (*kafā'ah*) and superiority (*wilāyah*) of religion are the guiding doctrines. Obviously, Muslims and non-Muslims cannot succeed to each other's estate,[477] for lack of equality (*kafā'ah*) and the superiority (*wilāyah*) of the Muslim. However, non-Muslims, regardless of their religion—Christians, Jews, Zorostrians, atheist—do succeed each other[478] because they are equals (non-Muslims), and considered as one religion (*millah wāḥidah*).[479] Nonetheless, if one is *kāfir ḥarbī* and another non-*ḥarbī*, they do not succeed each other, just as a *murtad* does not succeed

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[473] "*dan tiada sah nikah itu dengan dua orang saksi yang tertutup Islamnya dan merdekanya yakni tiada diketahui Islam dan merdeka keduanya.*" [and a marriage is not valid with two witnesses whose Islam and freedom are concealed, meaning the Islam and freedom of both witnesses are unknown]; al-Sinkīlī, *Mir'āt al-Ṭullāb*, 245.

[474] Ibid., 245.

[475] al-Nawawī, *Majmū'*, 16:202.

[476] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 252; al-Anṣārī, *Fatḥ al-Wahhāb*, 2:45.

[477] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 208; cf. al-Anṣārī, *Fatḥ al-Wahhāb*, 2:11, and al-Nawawī, *Minhāj*, 344.

[478] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 208.

[479] al-Anṣārī, *Fatḥ al-Wahhāb*, 11.

from or to others.[480] This is due to enmity or absence of clientage and affinity (*muwālāh*).[481]

In the matter of *waṣiyyah* (will), because it is a gift (*tabarruʿ*) out of one's free will and volition of one's property, equality and superiority become less relevant. One who is legally responsible and of an age of majority (*mukallaf*) is free (*ḥurr*) to grant part of his estate willingly (*ikhtiyār*) to whomsoever is in a legal position to own it (*ahlan li al-milk*) as long as it does not cause a sinful act (*fī ʿadam al-maʿṣiyah*).[482] Therefore a *ḥarbī* is admitted to grant a will to a non-*ḥarbī*. That said, a Muslim is not admitted to grant this to a non-Muslim, not as a result of *kafāʾah* nor *wilāyah*, but for fear that it may be used by the non-Muslim for unacceptable acts, such as the construction of a church. However, if it is used to build a mosque the will is valid.[483]

*Ḥaḍānah* (Child Custody)

One of the justifications for the permissibility of a male Muslim to marry a female *kitābiyyah*, but not for a female Muslim to be given in marriage to a male non-Muslim, is *wilāyah*. In the former case, although the potential mother is not a Muslim, *wilāyah* rests still in the hand of the Muslim father, unlike in the latter case. The Muslim husband possesses the power and authority to determine the education and instruction the child

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[480] al-Sinkīlī, *Mirʾāt al-Ṭullāb*, 208-09.

[481] al-Anṣārī, *Fatḥ al-Wahhāb*, 11; al-Nawawī, *Majmuʿ*, 16:57.

[482] al-Sinkīlī, *Mirʾāt al-Ṭullāb*, 216. al-Nawawī asserts that a will that does not bring one closer to God, such as a will to construct a church, or one that equips enemies of war with weapons, is invalid; al-Nawawī, *Majmūʿ*, 15: 413-14.

[483] al-Anṣārī, *Fatḥ al-Wahhāb*, 2:16; cf. Ibid., 2:16. In *Majmūʿ*, al-Nawawī argues that making a will in favor of a *dhimmī* is valid. If charity in favor of a *dhimmī* is valid, so is *waṣiyyah*. However, it is not permitted to be granted to a *ḥarbī*; see al-Nawawī, *Majmūʿ*, 15: 416-17, 508.

gets. However, if the marriage is dissolved, the locus of *wilāyah* will determine the right of custody, because custody is a *wilāyah*. For this reason, a non-Muslim cannot hold the right of custody to a Muslim child.[484] Although a mother enjoys the prerogative of caring and having the custody of the child (*ḥaḍānah*),[485] when she is separated from her Muslim husband—the father of the child—she loses this prerogative. Similar to this is the case of a foundling (Ar. *laqīṭ* or Malay—*kanak-kanak terbuang*). Because the right of custody is *wilāyah* (*li-anna ḥaqq al-ḥaḍānah wilāyah*), and a non-Muslim is not qualified to possess a *wilāyah* over a Muslim (*laysa min ahlihā*), he is not permitted to take custody of a Muslim foundling. A non-Muslim is only authorized as custodian to a non-Muslim foundling.[486]

Both *Adat Aceh* and *Mir'āt al-Ṭullāb* are considered key legal texts of seventeenth-century Aceh. While the former forms what could be considered as the court regulations and positive laws, or royal decrees on many secular matters for administrators, the latter provides the normative texts (*fiqh* texts) for judges. It is appropriate here in our analysis to provide, albeit briefly, two supplemental texts—both eighteenth century texts of their respective genres. By way of comparison and through understanding them, these texts help indicate to us the continuity and dynamism of this legal thought. The *Undang-Undang Melaka* (Malacca Digest) and *Safīnat al-Ḥukkām* by Shaykh Jalāl al-Dīn al-Tarussanī are two important texts that point to such continuity.

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[484] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 394; cf. al-Anṣārī, *Fatḥ al-Wahhāb*, 2:150. According to the Hanafites, the mother enjoys the right of custody regardless of her religion (Christian, Jews or Zoroastrian), because custody is associated with caring and affection that are natural to mothers regardless of religion; see al-Sarakhsī, *Kitāb al-Mabsūṭ*, 5:210.

[485] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 393; cf. al-Anṣārī, *Fatḥ al-Wahhāb*, 2:149.

[486] al-Sinkīlī, *Mir'āt al-Ṭullāb*, 193; cf. al-Anṣārī, *Fatḥ al-Wahhāb*, 1:317, al-Nawawī, *Majmū'*, 15:294.

*Undang-undang Melaka*

**Introducing the Text**

Arguably one of the oldest extant Southeast Asian legal texts, *Undang-undang Melaka* (hereinafter cited as UUM) originated in Malacca as a collection of royal decrees of Sultan Muhammad Shah (r. 1424-1444) and Sultan Muzaffar Shah (r. 1446-1459).[487] It was then adapted and adopted in various parts of the region: Kedah, Pahang, Riau, Pontianak, Patani, Aceh, and Brunei. The large number of manuscripts available in different personal and library collections only indicates the importance of UUM.[488] In its current hybrid form, UUM can be divided into seven groups: (1) *Undang-undang Melaka* proper; (2) the Acehnese version; (3) the Patani version; (4) the "long" version; (5) the Muslim and Johore Laws version; (6) the "short" version; and (7) the fragmentary ones.[489] The content of the Acehnese version is parallel to the edited published version containing forty-four *fasal* (chapters). Its colophon indicates that these laws were compiled on 3 Jamādā al-Awwal 1202h (10 February 1788) during the reign of Sultan Jamāl al-'Ālam Badr al-Munīr. However, Sultan Badr al-Munīr reigned from 1703 to

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[487] Liaw Yock Fang's studies on *Undang-undang Melaka* remains still the front runner; and new discoveries are still being made. He successfully defended his doctorate on UUM at Leiden in 1976, which was then published by KITLV in the same year. Liaw made a critical edition of the copies and translated into English its text. Upon his discovery of a better version of UUM and *Undang-undang Laut* (The Maritime Laws) at *Biblioteca Vaticana* (Vat. Ind. IV), Liaw published his *Undang-undang Melaka dan Undang-undang Laut*, Kuala Lumpur: Yayasan Karyawan, 2003. His count of the available copies has since increased to more than 50. In his later article "Naskah Undang-undang Melaka: Suatu Tinjauan," (Copies of *Undang-undang Melaka*: A Survey) he acknowledges that after the 2003 publication, two new copies were found which have not been studied; Yock Fang Liaw, "Naskah Undang-undang Melaka: Suatu Tinjauan," *Sari: Jurnal Alam dan Tamadun Melayu* 25(2007), 93-94. For previous studies and publications on UUM, see idem,, *Undang-undang Melaka.*, 2-6, and cf. idem, *Undang-undang Melaka dan Undang-undang Laut*, xvii-xxiv.

[488] In the 1976 edition of his work, Liaw maintains that there are no less than forty-four manuscripts. In the 2003 edition he cited more than fifty. Here Liaw discusses these different copies.

[489] Liaw, *Undang-undang Melaka*, 9; idem, *Undang-undang Melaka dan Undang-undang Laut*, xxv. In idem, "Naskah Undang-undang Melaka: Suatu Tinjauan.", 86, Liaw mentions six, instead of seven.

1726 so the date could possibly be the date of copying.[490] Unlike the two earlier texts I discussed here—namely *Adat Aceh* and *Mir'āt al-Ṭullāb*, and unlike my subsequent text *Safīnat al-Ḥukkām*, no indication has been found that UUM was commissioned by an Acehnese ruler. The Acehnese version only says that it was compiled during the reign of Sultan Jamāl al-ʿĀlam, but not commissioned by him. Being one of the earliest, and a popular, legal text, it is not unexpected that it became a prototype of a sort or a reference to others. Thus, UUM might not enjoy a royal force in the same way as *Adat Aceh*, *Mir'āt*, and *Safīnat*.

Liaw divides the hybrid version into six texts: (1) UUM proper; (2) part of the Maritime laws; (3) Muslim marriage law; (4) Muslim law of sales and procedures; (5) the *Undang-undang Negeri*; and (6) the *Undang-undang Johore*. What matters most to us here are the first four parts, as these are the parts included in the Acehnese version (until *fasal* 43.1), that ended with *tammat al-kalam* (The End); and in these four chapters the evolution and progressive influence of Islamic laws can be gleaned. In the UUM proper (*fasal* 1-23.1), the earliest part of UUM, one observes that *adat* practices are still prevalent. Nonetheless one also spots the influence of Islamic law, which could be of later addition. In discussing the political systems as drawn from the Malay Annals (*Sejarah Melayu*) and the Acehnese sources such as *Hikayat Aceh* and *Taj al-Salatin*, I have already alluded that Islam and its influence developed earlier in Aceh as compared to Malacca. It should be noted that the speed and extent of Islamic influence varied from one place to another. In the UUM proper, the earlier *adat* practices were not obliterated altogether. What was done was to add to these practices the Islamic laws, as options for

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[490] Idem, *Undang-undang Melaka*, 11.

law administrators. Though not as much as in the family law, the criminal laws were still predominantly pre-Islamic practices. It is at this third level of the meaning of *adat* (practical laws) that we see diversity at its highest level. For example, the law of killing a paramour, as in *fasal* 5.3, states that if he runs away to another's compound, he is pardoned. The same *fasal* also states that, according to the law of God, he who kills shall be killed,

> *"Adapun jikalau membunuh madunya, maka ia lari ke dalam kampung orang, maka diikutinya oleh empunya madu itu, maka berkelahi ia dengan yang empunya kampung itu, maka jikalau ia melawan, maka terbunuh yang mengikut itu, mati saja tiada dengan hukum lagi. Itulah 'adatnya negeri, tetapi pada hukum Allah, yang membunuh itu dibunuh juga hukumnya, karena menurut dalil Qur'ān an menurut amr bi al-ma'ruf wa nahy 'an al-munkar."*[491]

(Concerning the killing of a paramour: if he (a paramour) runs into someone's compound and is pursued by the husband, whereby the latter is involved in a fight with the owner of the compound: If he (the owner of the compound) resists him and the pursuer is killed, the latter simply dies and there shall be no litigation. This is the *adat* of the country. But according to the law of God, he who kills shall also be killed, in accordance with the Qur'ān and in pursuance of (its teaching) of "doing goodness, and forbidding sins.")[492]

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[491] Ibid., 70. In the part of Islamic criminal law, the killing of a killer in the manner of retaliation is clearly stated; see UUM *fasal* 39, ibid., 158.

[492] Translation is based on Liaw's with my edition.

Similar options between *adat* and the Islamic laws can be found elsewhere, in the matter of rape (*fasal* 12.2-3), theft (7.2, 11.4), law of retaliation (8.2-4), law-suits (14.1-2), homicide (18.4),[493] and some contractual matters such as the matter of loans (15.7).

The Maritime Law is the shortest (23.3-5; 24.1-2; 29), followed by the Muslim Marriage Law (25-28), and the Muslim Law of Sale and Procedure (30-42, 43.1). It is clear that the Muslim laws are of later addition. Unlike in the UUM proper, *adat* practices are not evident here. Liaw argues that these Muslim laws are translations of Shāfiʿī law, or are based on the Arabic text and its commentary, probably of Abū Shujāʿ's *al-Taqrīb* or its commentary *Fatḥ al-Qarīb* by al-Ghazzī or *Ḥāshiyah ʿalā al-Fatḥ al-Qarīb*.[494] To argue that it is based on Shāfiʿī is not incorrect. However, asserting that it is translation from a certain Shāfiʿī author is highly speculative, because those are standard views easily found in all major Shāfiʿī texts. Because the compiler(s) seemed to be highly selective in choosing the subjects, the question one seeks to understand is how and why these parts have been selected or included in the texts, and this is a question which Liaw does not address. We do not know the origin and when this was introduced into the UUM. Nevertheless, Liaw holds that, "this section of Islamic law had certainly entered the *Undang-undang Melaka* before a copy of the *Undang-undang Melaka* was brought to Acheh where it became the Achehnese version of the *Undang-undang Melaka*," and that this section "demonstrates clearly that Muslim law was once the widely practiced law in the country. A kind of manual of Muslim law came into existence and this was referred to frequently by *kadi* or judges who were called upon to settle disputes among the local

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[493] See Liaw, *Undang-undang Melaka*, 31-32.

[494] Ibid., 33, 35.

population. Otherwise there would have been no point in copying the text time and again."[495]

## *Safīnat al-Ḥukkām fī Takhlīṣ al-Khaṣṣām*

### *Introducing the Author*

The author, Shaykh Jalāl al-Dīn al-Tarūsānī[496] b. Kamāl al-Dīn,[497] came from a family of jurists and judges. His father and grandfather, Shaykh Kamāl al-Dīn[498] and Shaykh Baginda Khaṭīb[499] were both jurists and judges of their time; and his son Shaykh Jamāl al-Dīn was the author of a *fiqh* treatise *Hidāyat al-'Awām*, the first of nine epistles in a Malay collection named *Jam' Jawāmi' al-Muṣannafāt* (A Collection of Collections of Works).[500] Al-Tarūsānī is attributed to the grandfather's name, Baginda Khaṭīb al-Tarūsānī, which was then attributed to Jalāl al-Dīn too. Nonetheless, the location of Negeri Tarūsān (City of Tarūsān)[501] is unknown. Alyasa Abu Bakar speculates that Tarusan is a name of a small town in the Western Sumatra province that no longer exists;

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[495] Ibid., 35-36.

[496] Hasjmy has it Tursani, instead of Tarūsānī; Ali Hasjmy, "Naskhah-Naskhah Tua Menyimpan Alam Fikiran Melayu Lama: Sebuah Studi Tentang Safinatul Hukkam," in *Cendekia Kesusasteraan Melayu Tradisional*, ed. Siti Hawa Haji Salleh (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1987), 266.

[497] al-Tarūsānī, *Safīnat al-Ḥukkām*, 2; cf. Hasjmy, *Kebudayaan Aceh dalam Sejarah*, 233, 381-82.

[498] Lived until the reign of Sultan 'Alā' al-Dīn Aḥmad Shāh (r. 1727-1735); Alyasa Abu Bakar's introduction in al-Tarūsānī, *Safīnat al-Ḥukkām*, vii.

[499] Lived until the reign of Sultan Jamāl al-'Ālam Badr al-Munīr (r. 1703-1726); ibid., vii.

[500] al-Shaykh Ismā'īl b. 'Abd al-Muṭṭalib al-Āshī, ed., *Jam' Jawāmi' al-Muṣannafāt* (Aceh: Putar Aceh Jaya, n.d.). It is a collection of Malay treatise on *fiqh* and *taṣawwuf*, which also includes al-Sinkīlī's *al-Mawā'iẓ al-Badī'ah*. *Hidāyat al-'Awām* was composed by Shaykh Jamāl al-Dīn as commissioned by Sultan 'Alā' al-Dīn Aḥmad Shāh; ibid., 3.

[501] al-Tarūsānī, *Safīnat al-Ḥukkām*, 2.

furthermore, the name Baginda is typically Western Sumatran, and not an Acehnese name.[502]

From the available sources we learn that Shaykh Jalāl al-Dīn lived during the period of Sultan 'Alā' al-Dīn Aḥmad Shāh (r. 1727-1735) and Sultan 'Alā' al-Dīn Johan Shāh (r. 1735-1760).[503] However, his years of birth and death are unknown.[504] Little else is known about Shaykh Jalāl al-Dīn al-Tarūsānī.

*Introducing the Text*

Like *Mir'āt al-Ṭullāb* commissioned by the Sulṭānah, *Safīnat al-Ḥukkām* was composed under the royal commission of Sultan 'Alā' al-Dīn Johan Shāh (r. 1735-1760) in 1740. Al-Tarūsānī writes: "In the year of one thousand, one hundred and fifty three of the exalted *hijrah* and time, peace and blessings be upon its owner, on the fourth day of Muharram the Blessed month, on the blessed Friday, the great Sultan 'Alā' al-Dīn Johan Shāh son of Sultan 'Alā' al-Dīn Aḥmad Shāh commissioned me to compile a compendium in explaining [the laws of] suits and evidence in resolving conflict."[505]

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[502] Ibid., vii. In the modern Sumatra, Tarusan is a registered town of the Western Sumatra Province, to the south of Padang; cf. Suryadi, "Syair Sunur: Autobiografi Seorang Dagang Minangkabau (Poem of Sunur: An Autobiography of a Minangkabau Wayfarer)," *Sari: Jurnal Alam dan Tamadun Melayu* 23(2005), 85; I could not confirm if this registered town is the same Tarusan mentioned in the pre-modern text.

[503] Hasjmy states that Jalāl al-Dīn served as the Qāḍī al-Malik al-'Adl during the reign of these two Sultans. This is nonetheless unsupported and unsubstantiated. And according to Hasjmy, Jalāl al-Dīn studied first under his father before moving to India and Mecca. Hasjmy, "Naskhah-Naskhah Tua Menyimpan Alam Fikiran Melayu Lama: Sebuah Studi Tentang Safinatul Hukkam.", 266.

[504] Koesnoes mistakenly cited the year 1630 as the year the book was composed, suggesting that Jalāl al-Dīn is contemporaneous with al-Rānīrī and al-Sinkīlī. This is most unlikely. See Koesnoe, *Hukum Adat*, 40.

[505] "*lammā kānat sanat mi'ah wa thalāthah wa khamsīn ba'da al-alf min al-hijrah al-'ulyā wa al-dahr 'alā ṣāḥibihā afḍal al-ṣalāh wa al-salām fī tārīkh arba'ah min al-Shahr al-Mubārak min al-Muḥarram yawm al-Jumu'ah ḥamalanī al-Sulṭān al-A'ẓam wa al-Khāqān al-Malik al-afkham al-Sulṭān*

Although *Safīnat* might not be as extensive and as widely disseminated as *Mir'āt*, it is nevertheless one of the better known legal texts, albeit insufficiently studied. Its manuscripts are kept in Aceh's three major centers of classical Malay works, notably the Aceh State Museum,[506] Museum of Ali Hasjmy,[507] and *Dayah Tanoh Abee*.[508]

Similar to *Mir'āt*, Jalāl al-Dīn composed *Safīnat* in acceding to the royal request to provide a succinct legal guide for judges, administrators, and students. Sinkīlī's *Mir'āt* was not unknown. As a matter of fact, Jalāl al-Dīn makes reference to *Mir'āt* in composing his work. However, Jalāl al-Dīn justifies his work by saying that *Mir'āt*'s detailed and lengthy treatment poses a difficulty and an inhibition to students to memorize and study (*wa lākinnahu [Kitāb Mir'āt] kabīrun 'ajaza al-ṭālib 'an ḥifẓihā…*)[509]

*Legal Methodology and Theories of Safīnat*

Loyal to the tradition, Jalāl al-Dīn informs us that he refers to Shāfi'ite jurists, such as al-Māwardī (d. 450/1058), al-Rūyānī (d. 502//1108), Ibn Ṣalāḥ (d. 643/1245),[510] and Shāfi'ite standard texts, such as al-Ghazzālī (d. 505/1111)'s *Iḥyā'*, al-Nawawī (d.

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*'Alā' al-Dīn Jūhan Shāh ibn al-Marḥūm al-Sulṭān 'Alā' al-Dīn Aḥmad Shāh ḥafiẓahumā Allāh Ta'ālā an ajma' lahu risālatan mukhtaṣaratan fi bayān al-da'āwī wa al-shahādah fī takhlīṣ al-mukhāṣamah."* al-Tarūsānī, *Safīnat al-Ḥukkām*, 2. This date (1150/1737) clearly indicates Koesnoe's mistake in citing 1630 as the year the book was composed.

[506] For a picture of the manuscript, see AR Nurdin, "The Manuscript Collection of the Aceh Museum," *Indonesia and the Malay World* 40, no. 116 (2012), 109.

[507] Hasjmy obtained a copy of the manuscript from another Acehnese historian M. Yunus Jamil in 1974; Hasjmy, "Naskhah-Naskhah Tua Menyimpan Alam Fikiran Melayu Lama: Sebuah Studi Tentang Safinatul Hukkam.", 266.

[508] al-Tarūsānī, *Safīnat al-Ḥukkām*, vi.

[509] Ibid., 2.

[510] See for example ibid., 23-24.

676/1278 )'s *Majmūʿ* and his other works, al-Maḥallī (d. 864/ 1459)'s *Sharḥ Jamʿ al-Jawāmiʿ,* al-Suyūṭī (d. 911/1505)'s *al-Ashbāh wa al-Naẓā'ir,* Zakariyā al-Anṣārī (926/1520)'s *Fatḥ al-Wahhāb,* Ibn Hajr al-Haytami (d. 973/1565)'s *Tuḥfah* and *Fatḥ al-Jawwād,* ʿAbd al-Wahhāb al-Shaʿrānī (d. 973/1565)'s *Mīzān al-Kubrā,* and al-Ramlī (d. 1004/1595)'s *Nihāyat al-Muḥtāj.*[511] Jalāl al-Dīn speaks in high esteem of ʿAbd al-Wahhāb al-Shaʿrāwi [al-Shaʿrānī], in the usual way a *ṣūfī* student speaks of his *ṣūfī* master, "*kata sayyiduna wa qudwatuna ilā Allāh taʿāla Sayyidī al-Shaykh ʿAbdul Wahhāb Syuʿrawi, raḍiya Allāh ʿanhu…*" [Our master and exemplar (in our path) to God the Exalted my (revered) master Sheikh Abdul Wahhab Syuʿrawi…][512]

In spite of his Shāfiʿite inclination, public interest (*maṣlaḥah*) and resolving the problems of the time are given higher priority by Jalāl al-Dīn. To meet these objectives, a *qāḍī* must not be fixated on his *madhhabic* view when it does not serve the public interest nor solve the problem nor resolve the conflict brought before him. His knowledge of other *madhhab*s should provide him with wider options, for they are all *ahl al-sunnah wa al-Jamāʿah* and are guided by the same Sharīʿah.[513] Jalāl al-Din cites Abd al-Wahhāb al-Shaʿrānī who reportedly rails against one who is stuck in his *madhhab*'s view that is not to the interest or betterment (*maslahat*) of the people. Citing al-Shaʿrānī,

> "*aku benci akan orang yg tetap ia pada madhhab bapaknya dan shaykhnya pada suatu hukum serta diketahuinya hukum itu tiada maslahat pada bagi ummat*

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[511] Ibid., 3.

[512] Ibid., 122

[513] Ibid., 120. He also asserts that where there is no injunction nor evidence from Sharīʿah, a judge should take account of the *adat* and *resam* of the country. Ibid., 8.

*Muhammad pada masanya, lagi dapat ia berpindah kepada yang lain daripada
madhhab bapaknya dan shaykhnya…*"[514]

(I abhor one who insists on a certain law of his father's and master's *madhhab*
which is not to the interest (*maṣlaḥah*) of the *Ummah* of Muḥammad at his time,
[for] he could move to other than his father's and master's madhhab…)

To this aim and in forwarding the public interest, Jalāl al-Dīn discusses not only
the legal views of the Shāfi'ites, but also the other three *madhhabs* as options before the
judge in meeting the objective of the Islamic law, viz, protection of public interest and
resolving conflicts, true to the name of his book *Safīnat al-Ḥukkām fi Takhlīṣ al-Khasām*
(The Craft of Judges in Resolving Conflict). In discussing many legal problems he
discusses the other *madhhabic* views as well as those of other jurists, and in certain cases
he prefers the view of other *madhhab* over that of the Shāfi'ite *madhhab*.[515] In his
detailed elaboration of the different aspects of the law, Sinkīlī did not do what Jalāl al-
Dīn does in *Safīnat al-Ḥukkām*.

The primary concern of *Safīnat* is on the matter of the judge and judgeship, and
there are two parts to it: the procedural laws (testimony and evidence, law-suits), and the
substantive laws. For the latter Jalāl al-Dīn discusses the parts of *mu'āmalah*, such as
sales, rent, gift, agency, and guarantee; parts of *munākaḥāt*, such as marriage, divorce,
maintenance and guardianship; parts of criminal law (*jināyāt*); as well as the inheritance
law, which is not discussed in *Mir'āt*. In this sense, *Safīnat* complements *Mir'āt*. In
addition to discussing what is not included in *Mir'āt*, *Safīnat* localizes and contextualizes

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[514] Ibid., 122.

[515] Eg., according to the Shāfi'ites, one cannot appoint as a guardian to one's children an executor
in the presence of one's father's father (*al-jadd*) where he is capable and who is by Sharī'ah the lawful
guardian to these children (see al-Anṣārī, *Fatḥ al-Wahhāb*, 2:24-25). However, Jalāl al-Dīn asserts that one
can choose the Ḥanafī view that allows such an appointment. al-Tarūsānī, *Safīnat al-Ḥukkām*, 168.

the laws, in which Jalāl al-Dīn converts the currency values to Acehnese currency—something that is not done by Sinkīlī; for instance, the value of the *diyyāt* is converted to local Acehnese values.[516]

Another complementary role *Safīnat* plays is that it includes a discussion, albeit briefly, on legal theories and maxims. As a preamble Jalāl al-Dīn begins with two introductory chapters (*muqaddimah*) to his subsequent chapters. The first *muqaddimah* discusses some legal terms; and the second *muqaddimah* reminds judges of the magnitude of the responsibility, as well as some legal maxims. This might well be the first known Malay text that deals specifically with *uṣūl al-fiqh* (the legal principles and theories).

The first *muqaddimah* defines the legal norms, notably the five legal values: *wājib* (obligatory), *sunnah* (recommended), *mubāḥ* (ml. *harus*, permissible), *makrūh* (reprehensible), *ḥarām* (prohibited); and the legal validity of certain acts: *ṣaḥīḥ* (valid), and *bāṭil* (null and void).[517] Jalāl al-Dīn continues to introduce several other legal terms of different taxonomies, which includes the *al-ḥukm al-waḍ'ī*'s (declaratory law) concepts of *māni'* (impediment), *sharṭ* (condition), *sabab* (cause), *lāzim* (binding); and the legal argument of *qiyās* (analogical deduction), *'illāh* (ratio legs) and its different types.[518] Particularly relevant is Jalāl al-Dīn's discussion of the legal sources which, apart

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[516] Ibid., 271-72.

[517] Although Jalāl al-Dīn includes *fāsid* (invalid) as part of the meaning of *bāṭil*, he does not explain the legal difference between both. Obviously, he intends to briefly define these key legal terms without going into details and subtleties of these terms. This we see in the ensuing terms too.

[518] al-Tarūsānī, *Safīnat al-Ḥukkām*, 4-6.

from Sharī'ah and *ijmā'*, includes *adat* (*hukum adat*). Distinction is made here between *adat, resam,* and *'urf.*

In the first instance, when Jalāl al-Dīn speaks about *hukum shara'* (Sharī'ah law), *hukum adat* (adat law), and *hukum 'aql* (rational law), he speaks about an epistemological concept, namely that of channels of knowledge. *Hukum Shara'* means the five legal values, in that we arrive at this knowledge through Sharī'ah. Whereas *hukum adat* informs us of certain knowledge we derive intuitively and naturally (natural law), that the cause and effect remain in the past and will continue in the future, such as the knowledge that fire burns and hurts one who touches it, and that a sharp object cuts and harms one, and that food nourishes the taker, and that light brightens the dark, and so on. Reason is another channel of knowledge (*hukum aqal*), through which one speaks of the modality of proposition such as *wājib* (necessary) and *mustaḥīl* (impossible), and *jā'iz* (possible).[519]

In another instance, when Jalāl al-Dīn speaks about *hukum shara', hukum adat* or *'urf* he means the sources of laws. Shara' here is defined as the Divine Will, ordained by God in His Commands (Ar. *Amr;* Ml. *Perintah*) and His Prohibitions (Ar. *Nahy*; Ml. *Larangan*). Jalāl al-Dīn points to the subtle difference between *adat, 'urf,* and *resam* perceived by the Malays, although sometimes he uses *adat* and *'urf* interchangeably (in speaking about the principle of contradiction between Sharī'ah and *'urf*). In a general sense *adat* refers to the natural law, or what is also known in Aceh and Minangkabau as

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[519] Ibid., 6-7.

*adat nan sebenarnya adat*.[520] The use of the term *adat* is more prevalent than *'urf* in the Malay thought, for *adat* has an abstract cultural meaning that transcends legal categories, unlike *'urf* (or *uruf* in Malay).[521] As a legal concept, *'urf* is more used than *adat*. *'Urf* refers generally to the concept as discussed in Islamic legal texts. *'Urf* are practices accepted and acknowledged by Islamic legal scholars (*'ulamā'*) and confirmed by the wise elders (*yaitu sekalian pekerjaan yang telah ditetapkan oleh segala ulama pada memerintahkan sekalian Islam dan kabul-lah segala budiman menerima dia*.)[522] On the other hand, *resam* suggests practices, behaviors and regulations approved by a country's leaders and elders, ubiquitous among members of the community and that require no debate nor contestation (*yaitu bekas yang berlaku hukumnya pada sekalian isi negeri, tiada berkehendak kepada bicara lagi, sebab kerana zahirnya dan masyhurnya*).[523] It is thus important that a judge possesses the knowledge not just of Sharī'ah, but also the *adat*, *'urf,* and *resam*. Jalāl al-Dīn emphasizes,

> "*Maka seyogianya bahwa diketahui oleh hakim yang taklid itu segala uruf dan adat dan resam negeri, supaya dapatlah ia menyelesaikan perbantahan segala*

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[520] Four types of *adat* were identified. *Adat nan sebenarnya teradat* refers to practices considered eternal and identical to natural law; *adat istiadat* refers to the ceremonial and traditional rules governing social relations; *adat nan teradat* refers to practices taken as *adat* developed fortuitously or by imitation; and *adat nan diadatkan*, that which is made *adat* optionally observed, depending on the village's practices and court decisions; see Christine Dobbin, "The Exercise of Authority in Minangkabau in the Late Eighteenth Century," in Anthony Reid and Lance Castles, eds., *Pre-colonial state systems in Southeast Asia: the Malay Peninsula, Sumatra, Bali-Lombok, South Celebes*, Monographs of the Malaysian Branch, Royal Asiatic society (Kuala Lumpur: Council of the Malaysian Branch of the Royal Asiatic Society, 1975), 88. Koesnoe speaks of two archetypical adat: *adat sabana adat,* which corresponds to the first type above, and *adat pusaka* or *usang*. This corresponds to the other three types. See Koesnoe, *Hukum Adat*, 43-44.

[521] The Indonesian *adat* scholar Koesnoe argues that the fact that the term *adat* is more popular than *'urf* is due to historical reasons. *Adat* had its connection to an earlier Hindu term *adhi* as opposed to the new term *'urf*. See Koesnoe, *Hukum Adat*, 38, fn. x.

[522] al-Tarūsānī, *Safīnat al-Ḥukkām*, 8; see also Jalāl al-Dīn's discussion on *'Urf* and Sharī'ah, 150ff.

[523] Ibid., 8. This is similar to the fourth type of *adat* as indicated above, i.e. *adat nan teradat*. See also Koesnoe's discussion on the difference between *adat* and *resam*, Koesnoe, *Hukum Adat*, 38-9.

*Islam karena ketiganya itu tiadalah dapat tanggal daripada mereka itu sekali-kali.*
*Lagi ditetapkan oleh Syara' akan dia dengan hukum pada jenis yang tiada*
*dalamnya dilarangkan Allah dalamnya dan Rasulullah.*"[524]

(It is therefore incumbent upon the judge to know all the *'uruf*, *adat*, and *resam* of
the country, so that he could resolve the disputes raised by Muslims; for the three
cannot be separated at all; as well as knowledge of what has been and has not been
set by Sharī'ah and the Prophet.)

Early texts alluded to community's ethical and legal sources: *hukum, adat,* and
*resam*. I have discussed the term Sharī'ah, *hukum, adat* and *qanūn* in Chapter One.
*Resam* is another source mentioned in early literature.[525] Initially *adat* and *resam* were
cited independently. Only later were both terms used together and hence a joint word
*adat-resam* was coined. *Adat* in general points to the idea of natural law, as well as good
behaviors, customs and practices that exist in people's consciousness, and are entrenched
in the inner and deeper selves of the people. One simply knows what's appropriate
(*layak*) and what is not. On the other hand, *resam* suggests that these behaviors and
practices are not a mere ethical compass in peoples' consciousness, but they are binding;
for they are decreed by the rulers and the powers-that-be. In UUM, *adat* refers to
practices known and adopted by the countries (*adat negeri-negeri*), unlike the *hukum*
*Allah* (God laws) whose source is the Sharī'ah.

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[524] al-Tarūsānī, *Safīnat al-Ḥukkām*, 8.

[525] In a seventeenth to nineteenth-century text of Bo' Sangaji Kai of Bima, mention is made of four
sources of law: *sharī'ah, adat, 'aql,* and *resam*. "*hukum ini adalah setengahnya mufakat dengan syariat
dan setengah dengan akhlak karena perkataan ini mengikut adat, yaitu dihimpunkan atas empat bagi,
pertama-tama syariat, kedua adat, ketiga akal, keempat resam.*" (Some laws are agreed upon by means of
*sharī'ah*, and some by norms and good practices (*akhlak*) according to the *adat*, and these [laws] are
founded upon four [sources]; the first is *sharī'ah*, second *adat*, third reason (*'aql*), and fourth *resam*.)
Chambert-Loir and Salahuddin, *Bo' Sangaji Kai: Catatan Kerajaan Bima*, 94.

At the point of writing this work I am not aware of other early classical Malay texts that discuss Islamic legal principles (*uṣūl al-fiqh*), legal theories and legal maxims as Jalāl al-Dīn does. Jalāl al-Dīn's discussion of the relations and differences between Sharīʿah or Sharīʿah based laws (*hukum shara'*), *adat* and *adat*-based laws (*hukum adat*), *'urf*, and *resam*-based laws (*hukum adat-resam*), and his attempt to reconcile Sharīʿah and *adat* or *'urf*—a discussion in which he acknowledges its complication[526]—is indeed a novel attempt.

*Non-Muslims in UUM and Safīnat al-Ḥukkām*

*The Safīnat* is intended to be a compendious legal manual. As is to be expected little explanation or rationalization is provided. When Jalāl al-Dīn sees it necessary to explain the *'illah* (ratio legis) he does it tersely. Nonetheless, the two principles of *kafā'ah* and *wilāyah* as discussed above could be gleaned from *Safīnat al-Ḥukkām*. Because UUM was compiled as royal decrees, rules and regulations, but not as a legal textbook for legal students, no discussion on legal reasoning could be found in it.

According to *Safīnat*, a *qāḍī* must be a male Muslim, free, *mukallaf* (a legally competent person), upright and just (*'ādil*), and a *mujtahid*. However, in the absence of a competent and qualified person, as a matter of necessity (*ḍarūrah*), someone less competent could be appointed, such as a *fāsiq* (a sinner) and even a *bāghī* (a rebel), and a ruler can accord him the *wilāyah* (authority) to adjudicate.[527] Although Jalāl al-Dīn does

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[526] al-Tarūsānī, *Safīnat al-Ḥukkām*, 149.

[527] Ibid., 20. A *bāghī* can assume the *wilāyah* as judge as well as a witness, al-Anṣārī, *Fatḥ al-Wahhāb*, 2:185. See also al-Tarūsānī, *Safīnat al-Ḥukkām*, 277. A *bāghī* is not just any rebel, but one who challenges the authority of the ruler, even when his particular creed is rationally comprehensible (*ta'wīl*

not clearly say that a female can be a judge, he is most likely to admit a female judge when necessary (*ḍarūrah*) because he has allowed a female to be a ruler in order that religion and the Divine laws are upheld.[528] In all such cases, they must be Muslims. In the matter of testimony (*shahādah*), *Safīnat* introduces the essential elements (*arkān*) of a testimony, one of which is the witness. Islam is a condition to admit one as a witness. Non-Muslims are not permitted to testify even among them: "*Maka tiadalah diterima saksi kafir jikalau samanya kafir sekalipun.*" (The testimony of a non-Muslim is not accepted even among them.)[529] Like Sinkīlī and other Shāfiʿites, Jalāl al-Dīn argues that Muslims are superior to non-Muslims.[530] Notwithstanding his flexibility of moving from one *madhhab* to another—a *qāḍī* could and should exercise his *ijtihād* to adopt the view of another *madhhab* with the aim of resolving the conflict and preserving the public interest (*maṣlaḥah*)— in the case of testimony Jalāl al-Dīn does not discuss any other *madhhab*'s views that permit the testimony of non-Muslims among them, for there is no necessity for such a resort. Nevertheless, with regard to a *waṣiyyah* (will) made during a journey (*safr*), he cites the views of the three *madhhabs* who render the testimony of a non-Muslim as invalid—that is, except for Ibn Ḥanbal who considers it valid.[531] Similarly,

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ṣāʾigh), and therefore he is distinguished from a common criminal or highway robber; see al-Anṣārī, *Fatḥ al-Wahhāb*, 2:185, and Hallaq, *Sharīʿa: Theory, Practice, Transformations*, 318.

[528] al-Tarūsānī, *Safīnat al-Ḥukkām*, 19. In allowing a female ruler, Jalāl al-Dīn demonstrates his independent view, albeit an unpopular one, different from the standard texts and the mainstream opinion. Just four decades earlier, the last Acehnese Sultanah had been dethroned (1699) as a result of a fatwa from Mecca invalidating a female ruler. Jalāl al-Dīn was under no pressure to permit a female ruler; see Hasjmy, "Naskhah-Naskhah Tua Menyimpan Alam Fikiran Melayu Lama: Sebuah Studi Tentang Safinatul Hukkam.", 274-75.

[529] al-Tarūsānī, *Safīnat al-Ḥukkām*, 38.

[530] Ibid., 21.

[531] Ibid., 130.

in witnessing a marriage of a Muslim to a *kitābiyyah*,[532] according to Shāfiʿī, Mālikī, and Ḥanbalī, two male Muslims must be the witnesses. Here, Jalāl al-Dīn mentions the view of Ḥanafī that admits two *dhimmīs* as witnesses.[533] In UUM four male witnesses are required to render a marriage valid, although it does admit two witnesses if four are not available.[534] Here it does not explicitly set Islam as a condition.

"*Adapun orang yang boleh menjadi syaksi itu orang yang salih dan laki-laki yang adil lagi akil mursyid dengan merdehika….Adapun akan kahwin itu tiada harus bersyaksi kepada ʿabdi atau orang yang fasik atau perempuan atas qawl aẓhar, adapun artinya pada maʾna nyata. Itulah syaksi hukumnya.*"[535]

(To serve as a witness, a person must be pious, a male of good character, sane and of age, and a free man…With regard to marriage (contract), one should not cite as a witness a slave, a person who is fasik or a woman, according to a *qawl aẓhar*, i.e. a clear doctrine. Such are the rules governing witnesses.)[536]

However, elsewhere in discussing the chapter on testimony (*fasal* 37), UUM sets Islam as one of the conditions in admitting someone as a witness,

"*Syaksi tiada dikabulkan melainkan berhimpun pada syaksi itu lima perkara. Pertama Islam, kedua baligh, ketiga ʿakil, keempat ʿadal, kelima hendaklah menjauhi daripada dosa yang besar dan dosa yang kecil, dan baik kelakuannya dan jangan ia penggusar dan memeliharakan lakunya dan namanya.*"[537]

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[532] Jalāl al-Dīn mentions three groups, namely the Christians, Jews and Sabians, as *Kitābiyyah*, without mentioning the Samaritans (*al-Sāmirī*). Although UUM states that a male can marry a *kitābiyyah*, but not an idol worshiper (*wathanī*), it does not elaborate who a *kitābiyyah* is; Liaw, *Undang-undang Melaka.*, *fasal* 28.2, 132.

[533] al-Tarūsānī, *Safīnat al-Ḥukkām*, 234.

[534] UUM, *fasal* 26; Liaw, *Undang-undang Melaka*, 128.

[535] Ibid., 128

[536] Ibid., 129.

[537] Ibid., 150.

(A witness's testimony is unacceptable unless he combines five qualities: first, (he is) a Muslim; second, (he is) of age; third, (he is) sane; fourth, (he is) of good character; (and) fifth, (he) should avoid both great sins and small sins and be of blameless behaviour and (furthermore), he should not be hot-tempered and should (always) behave (properly) and guard his reputation.)[538]

The law of retaliation (*qiṣāṣ*) is founded on the principle of equality and comparability. A soul for a soul, an eye for an eye, a nose for a nose and an ear for an ear. Muslims and non-Muslims are not equal. A *kāfir ḥarbī* is not equal to a *dhimmī*. And a slave is not equal to a free man. The standard law of retaliation (*qiṣāṣ*) applies in *Safīnat*, in which a *kāfir ḥārbī* and *murtad* are not protected.[539] When killed by a Muslim or a *dhimmī* no *qiṣāṣ* is admitted, for their blood is unprotected (*muhdar al-damm*). A *dhimmī* is subject to protection and to the law (*multazim al-ḥukm*); and *qiṣāṣ* applies to them. However, a Muslim should not be killed in retaliation for killing a *dhimmī*, but the *dhimmī* is entitled to a *diyat*.[540] Nonetheless, the value of a *dhimmī's diyat* is not equivalent to a Muslim's (one third of a Muslim's *diyah*). While UUM proper includes criminal laws and the law of retaliation, it has nothing to say about non-Muslims in this respect. *Adat* practices are more prevalent in criminal and civil matters, whereas Islamic law is more dominant in matters of marriage. However, in the Islamic law part of UUM

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[538] Ibid., 151

[539] As in other Islamic legal texts, in the chapter on *murtad* (*fasal* 36) UUM sets that a *murtad* be killed after having given the chance to repent three times, and that he should not be bathed and no prayer be read, and should not be buried in a Muslim graveyard; ibid., 149-51.

[540] al-Tarūsānī, *Safīnat al-Ḥukkām*, 269-70; on the *diyah*, 271-72.

(*fasal* 39), UUM states that a Muslim should not be killed for killing a *kāfir*, and that the Islamic law of retaliation applies to a Jew who kills a Christian or a *kāfir Majūs*.[541]

A foundling can only be under the custody of a Muslim.[542] And if a child whose parents are unknown is found by a Muslim or captured by a Muslim, the child is considered a Muslim.[543]

A *ḥarbī*'s conversion to Islam is accepted even under duress or compulsion (*ikrāh*), unlike the *dhimmī* and *al-musta'man*.[544] In the former case, the conversion is valid because they are not protected and Islam is *wājib al-i'tiqād*; whereas in the latter case, *dhimmīs* and *musta'man* are protected: their lives, wealth, and beliefs. They therefore must not be forced to change their beliefs. Shāfi'ī makes a distinction between a *ḥarbī* and *dhimmī*, whereas Hanafī does not draw such a distinction. A *ḥarbī* and a *dhimmī* are the same in this matter (*wa law ukriha naṣrāniyyun 'alā al-Islām fa aslama kāna musliman li wujūd ḥaqīqat al-Islām ma'a al-ikrāh…wa al-dhimmī fī hādhā wa al-ḥarbī sawā'un 'indanā.*)[545]

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[541] Liaw, *Undang-undang Melaka*, 158.

[542] al-Tarūsānī, *Safīnat al-Ḥukkām*, 216

[543] Ibid., 286-87.

[544] Ibid., 170; cf. al-Nawawī, *Majmū'*, 9:159

[545] al-Sarakhsī, *Kitāb al-Mabsūṭ*, 24:84.

**CHAPTER FOUR**

**CONCLUSION: OTHERS, POWER AND AUTHORITY**

## The Muslim's Others

A complex notion of Otherness cannot possibly be dealt with in a concluding chapter, and so I shall not attempt to discuss the various theories on Otherness. Nonetheless, I shall discuss here the legal attitudes in dealing with Others as propounded in the Islamic legal system, and in particular the legal system that obtained in Aceh during the seventeenth and eighteenth centuries.

I have earlier discussed two principles underlying Islamic legal thought in dealing with Others—namely *kafā'ah* (equality) and *wilāyah* (political authority and superiority). Treating the Other discriminately, or perceiving the Other as unequal is not peculiar to Islam and similar notions are to be found in Christianity and Judaism. Just as a *kāfir* is not legally and religiously equal to a Muslim, heathens are not equals to Christians, just as gentiles are not equals to the Jews. When non-Jews were the idolaters and therefore could not be equals to the Jews, Christians and Muslims are theologically non-idolaters. But because of the problem of the Christian trinitarian notion of God, and the rejection by Muslims of the validity of the Torah as authentic revelation, both these problems caused Christians and Muslims to be treated, in many respects, as idolaters because they rejected two of the most basic principles of Judaism: the unity of God and the authority of Jewish scripture. For this reason, Christians and Muslims are unequals to the Jews, and are

therefore treated unequally.[546] Even when the Christian powers were subdued under the rule of Muslims, and the Jews became inferior under the Christians and, later, under the Muslims, each of these religions remained convinced of its superiority. As Grunebaum observes,

> "The spiritual leaders of each bloc [Islam, Greek Christendom and Latin Christendom] were very sure of the vitality and value of their civilization. They were mildly interested in, perhaps even appreciative or envious of, the neighbor's achievement; but there was no wish to change with him, to imitate him, or to remodel essentials on the basis of his superior performance. Each civilization was convinced of its spiritual superiority, of possessing the unadulterated truth, of contributing, by and large, the best adjustment to the business of living ever made. Curiosity with all the unspoken self-assurance it implies was probably the dominant trait in medieval intercultural relations. Even the outsider's superiority in one field or another did not shake in any way the quiet conviction that one's own world was that of the elect and that, whatever its weaknesses, it was the best and, at any rate, the only one where life was worth living."[547]

Nonetheless, one must make a distinction between discriminatory treatment and differentiation as social identification or social stratification, and unjust treatment of the Other. For discrimination does not necessarily entail injustice, and seeing the Other as unequal does not necessarily follow that these Others will be treated unjustly. In governing a diverse and plural polity, the Others are invariably treated discriminately and unequally, which is the very idea of the othering. This is as true in classical and pre-

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[546] I thank Prof Reuven Firestone for highlighting this point (in personal correspondence dated May 29, 2012).

[547] Gustave Edmund Grunebaum, *Medieval Islam: A Study in Cultural Orientation* (Chicago: University of Chicago Press, 1953), 6-7.

modern polities as in today's modern polity that prides itself as democratic and as an upholder of equality and freedom.[548]

One can perceive of two, fundamentally opposing groups of peoples in the Islamic worldview—namely the *Mu'min* (the believer) and the *Kāfir* (the unbeliever)—but the exact terms to refer to these people are not always decisively unambiguous. In Islamic terms, *kāfir* and *mushrik* are spiritual and theological categories defining one's spiritual state before God. But *kāfir* is not only an unbeliever. It refers also to an ungrateful believer; for ingratitude forms a semantic core of *kufr* and the essence of the ethical meaning of *kufr*.[549] The Qur'ān uses the word *kufr* to mean various ideas,[550] whereas *ahl al-dhimmah*, *ahl al-amān*, *ahl al-hudnah*, and *ahl al-ḥarb* are socio-political and legal categories defining legal status and rights of members of these categories within the Islamic legal system. Earlier, I have explained the three layers of meaning of Adat. The same three layers of meaning could be employed to construe the socio-political and legal-cultural practices. These three layers are, firstly, the worldview and metaphysical domain, secondly the ethical-moral domain, and thirdly the legal-cultural domain. To illustrate this concept I will discuss the idea of a *kāfir* within these three layers of meaning.

Metaphysically, a *kāfir* is an *insān* or *ins* (a man) equal to any other men. He is both the soul and body, although he is primarily a spiritual being. *Insān* is, as the Ikhwān

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[548] See Anver Emon, *Religious Pluralism and Islamic Law: Dhimmīs and Others in the Empire of Law* (Oxford: Oxford University Press, 2012).

[549] Toshihiko Izutsu, *Ethico-Religious Concepts in the Qurān* (Montreal: McGill-Queen's University Press, 2002), 119-120.

[550] Izutsu's analysis of the term *kufr* in the Qur'ān remains as the best reference. See ibid., 119ff; cf. EI², s.v. "Kāfir."

al-Ṣafā describes, "the name of man…applied to this soul which inhabits this body: both together are the two parts of man; he is their total, the union formed of the two together. But one of the two parts, the soul, is the more noble; it is like the pulp, and the other, the body is like the rind . . . The soul is like the tree, the body like the fruit."[551] He is the man whom God created from sounding clay and molded into shape, and into whom God breathed of His Divine spirit.[552] To these souls God addressed and made them testify that He is their Lord.[553] When God addresses *al-insān* or *al-nās* (men), or when *ins* is mentioned, God addresses humanity as a whole—both Muslims and non-Muslims.

Ethically, arising from this Divine origin of man, God has honored every child of Adam, Muslim and non-Muslim alike; and He extended His Mercy to them all, and conferred on them special favors above His other creation.[554] Here, no qualitative distinction is made between the human souls. Therefore, an unjust killing of a human soul, a killing to spread mischief on earth, is as if one has killed the whole humanity.[555] A human soul is placed in high veneration and given unadulterated respect. In its primordial

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[551] In EI², s.v. "Insān," 12:1238a.

[552] The Qur'ān says, "Behold! your Lord said to the angels: 'I am about to create man, from sounding clay from mud moulded into shape. When I have fashioned him (in due proportion) and breathed into him of My spirit, fall you down in obeisance unto him." al-Qur'ān, al-Hijr (15): 28-29.

[553] "When your Lord drew forth from the children of Adam—from their loins – their descendants, and made them testify concerning themselves, (saying): 'Am I not your Lord (who cherishes and sustains you)?' They said: 'Yea! We do testify!' (This), lest you should say on the Day of Judgment: 'Of this we were never mindful." al-Qur'ān, al-A'rāf (7): 172.

[554] "We have honored the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favors, above a great part of our creation." al-Qur'ān, al-Isrā' (17): 70.

[555] In relating the story of the two sons of Adam—Hābīl (Abel) and Qābīl (Cain)—the Qur'ān ordains that, "On that account, We ordained for the Children of Israel that if any one slew a person—unless it be for murder or for spreading mischief in the land—it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people. Then although there came to them Our Messengers with clear signs, yet, even after that, many of them continued to commit excesses in the land." al-Qur'ān, al-Mā'idah (5): 32.

state, the soul longs to return to its original source. It is only the sins and dross of the body that prevent the soul from attaining its end. Man then forgets. He forgets his Covenant with God. For that, man is called *insān* from the word *nisyān* that means forgetfulness. As narrated from Ibn 'Abbās the *ṣaḥābī* (companion), the foremost scholar of *tafsīr*, "man is called *insān* because he receives the alliance of God and then forgets (*fa nasiya*)."[556] As human beings progressed and procreated, and as human cultures evolved, human congregation began to form complex life, entangled in intricate relationship, vying for resources, and human cultures developed. The human animal is indeed a social and political being.

It is at the cultural and legal domain, the third layer, that one observes the most diverse and plural aspect of human lives. At this stage, the notion of *wilāyah* as indicated above, was developed as a socio-political tool in human legal and cultural relationships. Here, the Other is seen as unequal and considered as inferior. A case in point in Islamic legal practice is the testimony of the non-Muslim (*shahādat al-kāfir*) before a court of justice. Upon analysis the *shahādah* typifies this notion that legal practices are not altogether apolitical. This I will examine in the following paragraphs.

*Kāfir*'s *Shahādah* (Testimony) in the Works of *Fuqahā'*

Muslim jurists and judges had long held that *dhimmīs*, and non-Muslims in general, are not qualified to testify in cases against Muslim litigants. I argue that the Revealed texts on this issue are not explicit, much less conclusive (*qaṭ'ī*), and that epistemic and ethical justifications—immanent in the meaning of *shahādah*—are not the

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[556] "*Innamā summiya al-insān insānan li'annahu 'ahida ilayhi fanasiya.*" Ibn Manẓūr, *Lisān al-'Arab*, Revised and Edited version, 2nd ed., 18 vols. (Beirut: Dār Ṣādir, 2003), 1:170a.

only justifications to disallowing non-Muslims to testify. In dealing with the Others, political justification (*wilāyah*) plays a greater role, as we could deduce from the arguments put forward by the *fuqahā'* we will see later. Important meanings are attached to the word *shahādah*. Primary of such meanings are the idea of having and giving of information (*al-khabr* and *al-ikhbār*), beholding of something with one's eye (*al-mu'āyanah*), presence (*al-ḥuḍūr*), and rendering of decisive knowledge (*al-khabr* and *al-'ilm al-qāṭi'*).[557] It therefore signifies clarity and certainty of knowledge of that which is witnessed, as clear as the light of sun, in the mind of the bearer; and testifying or declaring of this clear and certain knowledge on the part of the bearer (*al-shāhid*). Because it involves a bearer, and not just the knowledge, validating the credibility of the bearer gains significance. *Shahādah* in the court of justice takes on similar significance, in which such testimony is given before the judge, and to some jurists the testimony must be explicitly expressed in "I bear witness" (*ashad*).[558]

*Shahādah* is one of the ways by which one's right is restored and protected in the court of justice. It works for or against the litigants. While litigants could prove their case by other means, *shahādah* is considered as the most important institution in the judicial system,[559] and the credibility of one's evidence and oath will be subjected to the testimony of witnesses. Litigants are the parties with interests before the court. However,

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[557] See Ibn Manẓūr, *Lisān al-'Arab*; al-Jawharī, *al-Ṣiḥāḥ*; al-Zubaydī, *Tāj al-'Arūs*; and E. W. Lane Arabic-English Lexicon, s.v. "sh-h-d." The English "witness" too signifies knowledge and sharp perception; *wit* means knowledge, and *witen* in old English shared its meaning with German *wissen*, and the Sanksrit *veda*, to mean knowledge, and the Latin *videre*, to see.

[558] See Kuwait's *al-Mawsū'ah al-Fiqhiyyah*, s.v. "shahādah."

[559] Galal H. El-Nahal, *The Judicial Administration of Ottoman Egypt in the Seventeenth Century* (Minneapolis & Chicago: Bibliotheca Islamica, 1979), 18.

the judge and witnesses are the party with assigned powers (*wilāyah*), and are "politically" superior. Here I examine the testimony of the eyewitness.[560]

In dismissing a *kāfir*'s testimony against a Muslim, it was argued that he does not satisfy the condition of *'adālah*. He is one considered as *fāsiq*, the most characterized by *fisq* (*afsaq al-fussāq*), and of the lowest ranks (*akhass al-fussāq*). A non-Muslim is neither one of "your men" (*min rijālikum*),[561] nor is he "among you endued with justice" (*dhaway 'adl minkum*),[562] nor one of those you approve (*min man tarḍawn*).[563] A *kāfir* is considered as a witness of falsehood (*shāhid al-zūr*) of a higher order for not believing in God; and a liar (*al-kadhdhāb*). It should be added that the witness of a Muslim who lies is not accepted, much less one who lies to God.[564] It is, however, instructive to note al-Shāfi'ī's argument that the non-admittance of a *kāfir*'s testimony is chiefly due to the Qur'anic injunction (*al-'amr*), and not to *'adālah*. This reasoning is similar to the

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[560] Muslim courts acknowledge four types of witnesses. These are, first, *al-'udūl* who are the staff of the court, the ones who observe and notarize the evidence, and function as assistants to the judge. Second, *al-'udūl* who are not part of the court staff, but who are members of the community known for their integrity and trustworthiness and of their irreproachable character, are brought forth to the court to testify to the integrity of the eyewitnesses. Third are the *al-muṣliḥūn* or the *al-muslimūn*—people without formal status who attend trials voluntarily, intervene and mediate differences between litigants, particularly in cases that could not be prosecuted. And fourth, the witnesses who testify as eyewitnesses for or against litigants. These witnesses could be the notables or common people, whether Muslim or Non-Muslim, and whether male or female; see ibid., 18-24.

[561] As in the Quranic verse of al-Baqarah (2): 282.

[562] The Qur'ān, al-Ṭalāq (65): 2.

[563] The Qur'ān, al-Baqarah (2): 282

[564] See Abū Isḥāq Ibrāhīm ibn 'Alī ibn Yūsuf al-Fayrūzabādī al-Shirāzī, *al-Muhadhdhab fī Fiqh al-Imām al-Shāfi'ī*, 3 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 1995), 3:473; Shams al-Dīn Muḥammad b. al-'Abbās al-Ramlī, *Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj*, 8 vols. (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1938), 8:277; Muḥammad b. Ibrāhīm b. al-Mundhir al-Naysābūrī, *al-Iqnā'* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1997), 428; 'Abd al-Salām b. Sa'īd Suḥnūn, *al-Mudawwanah al-Kubrā*, vol. 6 (Baghdad: Maktabat al-Muthannā, 1970), 19; Abū al-Walīd Muḥammad b. Aḥmad Ibn-Rushd, *al-Muqaddimāt al-Mumahhidāt* vol. 2 (Beirut: Dār al-Gharb al-Islāmī, 1988), 285; Abū 'Abd Allāh Muḥammad ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *al-Ṭuruq al-Ḥukmiyyah fī al-Siyāsah al-Shar'iyyah* (Cairo: al-Mu'assasah al-'Arabiyyah li al-Ṭibā'ah wa al-Nashr, 1961), 206f, 224f; idem, *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*, 4 vols. (Cairo: Maṭba'at al-Sa'ādah, 1955), 1:118f; *al-Mawsū'ah al-Fiqhiyyah*, s.v. "Shahādah"; al-Marāghī, op.cit., 94.

rejection of the testimony of a minor and a slave. A *kāfir*'s testimony, notwithstanding his credibility from being a false witness, is not admitted because of the ***condition*** set by the Qur'anic injunction; hence, if he becomes Muslim, his testimony is immediately accepted because he now fulfills the condition.[565] Al-Suyūṭī (d. 911/1505), a Shāfiʿite, was cognizant of such position to deduce that *shahādah* is more likely a matter of *taʿabbud*.[566]

Two primary concepts in *shahādah*, as the term itself signifies, are first, certainty of knowledge and clarity in the mind of the witness of the thing witnessed (*al-mashhūd bihī*),[567] and secondly, the trustworthiness of the bearer of knowledge, the *shāhid* (the witness); hence the conditions of *al-ʿadālah* and *al-murūʾah*. Undoubtedly the certainty of the knowledge (the epistemic reason) and the trustworthiness of the bearer (the ethical reason) are essential considerations for the Muslim jurists in admitting a testimony. Nonetheless, in treating the Others, it appears from my examination of the arguments that political reason carries greater weight in the impermissibility of a *kāfir*'s testimony. This I will discuss in the ensuing paragraphs.

*Epistemic Justification*

*Shahādah* presupposes certitude in knowledge of the seen and of what is being witnessed (*al-mashhūd bihi*). Arrival at this knowledge is religious-neutral. One arrives at

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[565] "*wa fī al-kāfir wa in kāna maʾmūnan ʿalā shahādat al-zūr fī annahū laysa min al-sharṭ alladhī **umirnā** bi qubūlihi, fa idhā ṣārū ilā al-sharṭ alladhī **umirnā** bi qubūlihi qabilnāhum..wa kāna ka man lam yashhad illā fī tilka al-ḥāl.*" (the emphasis is mine). Al-Shāfiʿī, *al-Umm* 8 vols. (Beirut: *Dār al-Kutub al-ʿIlmiyyah*, 1993), 7:87-8.

[566] "*Bāb al-shahādah māʾilun ilā al-taʿabbud.*" Jalāl al-Dīn ʿAbd al-Raḥmān Suyūṭī, *al-Ashbāh wa al-Naẓāʾir fī Qawāʿid wa Furūʿ Fiqh al-Shāfiʿīyyah* (Cairo: ʿĪsā al-Bābī al-Ḥalabī, 1964), 521.

[567] Ibn Rushd stresses that only certain knowledge which is beyond any doubt renders the testimony valid "*wa la taṣiḥḥ al-shahādah illā bi mā yaʿlam wa yaqṭaʿ ʿalā maʿrifatih.*" (Ibn-Rushd, *al-Muqaddimāt al-Mumahhidāt*, 2:271). He further elucidates the ways by which one arrives at such knowledge, see ibid., 2:271ff.

such knowledge unimpaired by one's belief system. Muslim epistemologists agree that the human soul is endowed with faculties to arrive at knowledge through what are known as channels of knowledge.[568] The agreed channels are three: the senses, reason, and true reports.[569] For example, Ibn Rushd (d. 520/1126) asserts that a valid testimony must be based on sure knowledge, and knowledge is arrived at through four ways: (1) reason (*al-'aql*) on its own, (2) reason aided by the five senses, (3) reports by way of *tawātur*, and (4) deductive reasoning.[570] Just as with the case of a Muslim, a non-Muslim could equally arrive at knowledge through the above means, and, by virtue of which, he would be equally qualified to testify. On an epistemic account, a non-Muslim is equal to a Muslim, whose testimony is indeed accepted in Sharī'ah courts. The Prophet accepted the testimony of the Jews in the case of adultery between two Jewish man and woman, and

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[568] This is known as *asbāb al-'ilm* (channels or causes of knowledge) in classical Muslim literature. See, for example, al-Baghdādī, Abū Manṣūr 'Abd al-Qāhir ibn Ṭāhir, *Kitāb Uṣūl al-Dīn*, 3rd ed. (Beirut: Dār al-Kutub al-'Ilmiyyah, 1981); Al-Nasafī, *al-'Aqā'id*, in *Majmū' Muhimmāt al-Mutūn*, 1st ed. (Beirut: Dār al-Kutub al-'Ilmiyyah, 1994), 19ff; for an erudite discussion of classical Muslim scholars on channels of knowledge see Sa'd al-Dīn al-Taftāzānī *Sharḥ al-'Aqā'id al-Nasafiyyah*. English transl. and intro. by Earl Edgar Elder, *A Commentary of the Creed of Islam* (New York: Columbia University Press, 1950), Chap. 2, 15-27; also A. J. Wensinck, *The Muslim Creed: Its Genesis and Historical Development*, 2nd ed. (New Delhi: Oriental Books Reprint Corporation, 1979), 255-64; see also Syed Muhammad Naquib al-Attas, *A Commentary on the Ḥujjat al-Ṣiddīq of Nūr al-Dīn al-Rānirī* (Kuala Lumpur: Ministry of Culture, 1986), 31f; idem., *The Oldest Known Malay Manuscript: A 16th Century Malay Translation of the 'Aqā'id of al-Nasafī*. (Kuala Lumpur: University of Malaya, 1988), 53f.

[569] Knowledge, in Islamic epistemology, is not, however, entirely a property of the human mind, and that the sciences derived from it are not solely the products of human reason unaided, and sense experience processing an objectivity that precludes value judgment, but that knowledge and sciences need guidance and verification from the statements and general conclusions of revealed Truth. In a different realm of sciences, intuitive knowledge, to the *ṣūfīs*, is considered the highest level of knowledge. Philosophers, *mutakallimūn* and *ṣūfīs* differ on whether *ilhām* (intuition) is considered a valid channel of knowledge. To the *ṣūfīs*, intuition is a valid channel of knowledge. I have in another occasion discussed in greater detail the debates of Muslims on channels of knowledge in Mohammad Hannan Hassan, "The Concept of Higher learning in Medieval Islam and its Relation with al-Ijāzah" (International Institute of Islamic Thoughts and Civlization: M.A., 2003). For a succinct discussion of Islamic philosophy of science, see Syed Muhammad Naquib al-Attas, *Prolegomena to The Metaphysics of Islam: An Exposition of the Fundamental Elements of The Worldview of Islam* (Kuala Lumpur: International Institute of Islamic Thought and Civilization, 1995), particularly the chapters "Islam and the Philosophy of Science," 111-42, and "The Intuition of Existence," 177-215.

[570] Ibn-Rushd, *al-Muqaddimāt al-Mumahhidāt*, 2:271-74.

ordered the stoning of both of them.[571] Notwithstanding the differences, some jurists have accepted the testimony of non-Muslims in cases among themselves. Ibn Qayyim al-Jawziyyah (751/1350) reported the views of scholars like al-Nāfiʻ (d. 117/735), al-Shaʻbī (d. 103-110/721-728), Shurayḥ (d. *c*. 83/701) and Ibrāhīm al-Nakhaʻī (d. *c*. 96/714), and a few others who allowed the testimony of non-Muslims among them.[572] Mālik ibn Anas (d. 179/795) accepted the testimony of a non-Muslim doctor against a Muslim.[573] Muslim courts in Ottoman Egypt in the seventeenth century,[574] the Anatolian Kayseri,[575] Cyprus in the sixteenth and seventeenth centuries,[576] and Damascus in the eighteenth and nineteenth centuries[577] all indicated that non-Muslims were equally active participants as witnesses in Ottoman Muslim courts. All these adduce to the fact that non-Muslims are not unqualified on the ground of knowledge; otherwise they would not have been accepted as witness in any legal case.

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[571] See Ibn Qayyim al-Jawziyyah, *Iʻlām al-Muwaqqiʻīn*,1:98; idem., *al-Ṭuruq al-Ḥukmiyyah*, 209.

[572] Ibid., 208; cf. *al-Mawsūʻah al-Fiqhiyyah al-Kuwaytiyyah*, 26:222b-223a, and 7:133a-b; and Ṣubḥī Maḥmaṣānī, *al-Mujtahidūn fī al-Qaḍāʼ: Mukhtārāt min Aqḍiyyat al-Salaf* (Beirut: Dār al-ʻIlm li al-Malāyīn, 1980), 59-60.

[573] Ibn Qayyim al-Jawziyyah, *al-Ṭuruq al-Ḥukmiyyah*, 209.

[574] El-Nahal, *The Judicial Administration of Ottoman Egypt in the Seventeenth Century,*19 and passim.

[575] Ronald Carlton Jennings, "The Judicial Registers (Serʻi Mahkeme Sicilleri) of Kayseri (1590-1630) as a Source for Ottoman History" (University of California: Ph.D, 1972), passim; idem., *Studies on Ottoman Social History in the Sixteenth and Seventeenth Centuries: Women, Zimmis and Sharia Courts in Kayseri, Cyprus and Trabzon* (Istanbul: The ISIS Press, 1999), 347-412.

[576] Idem, *Christians and Muslims in Ottoman Cyprus and the Mediterranean World, 1571-1640* (New York & London: New York University Press, 1993), 132-68.

[577] Najwa al-Qattan, "Dhimmis in the Muslim Court: Documenting Justice in Ottoman Damascus 1775-1860" (Harvard University: Ph.D, June, 1996); and idem., "Dhimmis in the Muslim Court: Legal Autonomy and Religious Discrimination," *International Journal of Middle East Studies* 31, no. 3 (Aug., 1999), 429-44.

*Ethical Justification*

Islamic law lays great importance on the integrity and trustworthiness of the bearer of the knowledge, i.e. the witness. The witness must be of irreproachable character (*al-'adālah*). A question remains, however: is integrity and moral uprightness an exclusive character of a Muslim? No religion could rightly be considered as a religion if it did not insist on moral uprightness and noble personal qualities. All religions aim at the nourishment of the moral self, at providing moral guidance and direction, and at developing virtuous, righteous and veracious individuals. Judaism, Christianity and Islam are teachings of the same spring or source. The Prophet himself acknowledged that even in pre-Islamic times (*al-Jāhiliyyah*) there were morally upright individuals[578] and an indication of his reliance on and acceptance of the trustworthiness and reliability of non-Muslims is his appointment of a non-Muslim as his guide during his migration (*hijrah*) to Madīnah.[579] The hostility of other non-Muslims against him did not prevent him from placing his trust in a non-Muslim to guide him safely to Madīnah. The Prophet also appointed non-Muslims in positions of military intelligence and as spies against Mecca.[580] Such appointment in a highly sensitive position is but instructive of his trust in non-Muslims as long as they are competent, trustworthy and reliable. In fact, a report by a spy to a leader is like a witness to a judge, requiring as it does strong and accurate knowledge,

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[578] The Prophet says, "People are made of basic qualities (*al-nās ma'ādin*) and that the noble amongst them in *Jāhiliyyah* is the noble amongst them in Islām."

[579] See Ibn Kathīr, *al-Sīrah al-Nabawiyyah* (Beirut: Dār Iḥyā al-Turāth al-'Arabī, n.d.), 2:246; cf. Ibn Qayyim al-Jawziyyah, *al-Ṭuruq al-Ḥukmiyyah,* 205.

[580] See 'Abd al-Karīm al-Zaydān, *Aḥkām al-Dhimmiyīn wa al-Musta'minīn fī Dār al-Islām*, 2 ed. (Baghdad: Maktabah al-Quds, 1976), 80.

precision and clarity, as well as a high level of reliability and trustworthiness.[581]

Historical notices indicated that non-Muslims were appointed to hold governmental offices.[582] Although it was reported from 'Umar ibn al-Khaṭṭāb that he disproved of the appointment of non-Muslims to public office, this should be seen as circumstantial and not as a general ruling.[583] A non-Muslim, according to al-Māwardī (d. 450/1058), could be appointed to the executive ministerial office (*wizārat al-tanfīdh*).[584] These offices necessitate some level of competency, integrity and trustworthiness; and the executive ministers are witnesses to the *sulṭān*.[585] As indicated above, the testimony of non-Muslims is admitted in all situations other than in a case against a Muslim and the very admission of their testimony in these cases is indicative of an ethical standing that qualifies their testimony in the courts. Jurists agree that upon accepting Islam one's testimony is immediately accepted in court but it is inconceivable that one's integrity and trustworthiness (*'adālah* and *murū'ah*) change over night; from that of a person whose integrity is suspect, or a person who stands at the lowest rank of *fisq*, to become a person who could now be entrusted, whose truthfulness is non-suspect, simply after declaring the words of *shahādah* (conversion to Islam). While Islam cleanses one's sins and past acts,

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[581] These reports are considered *riwāyah*. Some *fuqahā'* make a distinction between *riwāyah* and *al-shahādah*. See Abū al-'Abbās Aḥmad b. Idrīs al-Ṣanhājī al-Qarāfī, *al-Furūq wa Anwār al-Burūq fī Anwā' al-Furūq*, 4 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 1998), 1:12ff; and Ibn Qayyim's argument against, in his *al-Ṭuruq al-Ḥukmiyyah*, 148ff, 195, and passim; also Mohammed Fadel, "Two Women, One Man: Knowledge, Power, and Gender in Medieval Sunni Legal Thought," *International Journal of Middle East Studies* 29, no. 2 (1997), 187-90, 196-99.

[582] See al-Zaydān, *Aḥkām al-Dhimmiyīn*, 77-82; see also A. S. Tritton, *The Caliphs and Their Non-Muslim Subjects: A Critical Study of the Covenant of 'Umar* (London: Frank Cass and Company Limited, 1970), 18-36.

[583] al-Zaydān, *Aḥkām al-Dhimmiyīn*, 81 n 1.

[584] Abu al-Ḥasan 'Alī ibn Muḥammad ibn Ḥabīb al-Māwardī, *al-Aḥkām al-Sulṭāniyyah fī al-Wilāyāt al-Dīniyyah*, 2nd ed. (Beirut: Dār al-Kitāb al-'Arabī, 1994), 68.

[585] Al-Māwardī mentions seven qualities necessary in the executive minister (*wazīr al-tanfīdh*), which includes *amānah* (trustworthiness) and *ṣidq* (truthfulness). By allowing a *dhimmī* to be appointed as a *wazīr*, he therefore acknowledged that a *dhimmī* could be trustworthy and truthful. See ibid., 66-8.

it does not however mean that it turns an unethical man to an ethical man overnight. *'Adālah* is acquired by habituation and is defined as a *malakah* that is firmly established in one's self—a disposition that inhibits one from continuously committing immoral acts that tarnish one's integrity;[586] it does not suggest, however, that one does not perform immoral acts at all, but rather that one is an ethical being whose uprightness, truthfulness and integrity are known and evident from repeated practice and are not affected by small lapses and falls, and whose uprightness is the predominant quality in one's self.[587] For the same reason, jurists who accepted the testimony of a liar or a slanderer require not only a declaration of remorse and repentance (*tawbah*), but also "a cleansing period" (*muddah al-istibrā'*)—usually of a year—to allow the nourishing of the character, and to repeatedly and evidently demonstrate an upright and moral character, before his testimony is accepted in the courts.[588] The words *'adl*, *murū'ah* and *akhlāq* themselves signify consistency, firmness and rootedness of a character in one's self. *'Adl* connotes the state of equilibrium, settling down, firmness and consistency (*ittizān* and *istiqāmah*);[589] *murū'ah* signifies that abstinence from things unlawful and immoral are an inherent part of the person (*mar'*) and that a person will abstain from doing immoral acts

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[586] See Suyūṭī, *al-Ashbāh wa al-naẓā'ir,* 413. See also al-Ramlī, *Nihāyat al-Muḥtāj*, 8:283.

[587] See Abū 'Abd Allāh Muḥammad ibn Idrīs Shāfi'ī, *al-Umm*, 8 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 1993), 7:94ff; al-Shirāzī, *al-Muhadhdhab*, 3:437-8; al-Ramlī, *Nihāyat al-Muḥtāj,* 8:278ff; Ibn Qayyim al-Jawziyyah, *al-Ṭuruq al-Ḥukmiyyah*, 205-6.

[588] Some jurists set six months as the period. See Abū Ḥāmid Muḥammad ibn Muḥammad ibn Muḥammad al-Ghazzālī, *al-Wasīṭ fī al-Madhdhab*, 4 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 2001), 4:333-4; al-Ramlī, *Nihāyat al-Muḥtāj*, 8:291. Abū Isḥāq Ibrāhīm ibn 'Alī ibn Yūsuf al-Fayrūz'abādī al-Shirāzī, *al-Tanbīḥ fī al-Fiqh al-Shāfi'ī* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1995), 361; and al-Shirāzī, *al-Muhadhdhab,* 3:449. Lane cited from *Jāmi' al-Ṣaghīr* that *al-Istibrā'* "is an expression denoting the seeking, or seeking in a leisurely and repeatedly, to obtain knowledge of a thing, until one knows it; considering it with the endeavour to obtain a clear knowledge of it; taking, in doing so, the course prescribed by prudence, precaution, or good judgment." Edward William Lane, *An Arabic-English Lexicon*, 8 vols. (Beirut: Librairie Du Liban, 1968), 1:179a; see also Ibn Qayyim's discussion of the views of jurists and their justifications in al-Jawziyyah, *I'lām al-Muwaqqi'īn*, 122-28.

[589] See Ibn-Manẓūr, *Lisān al-'Arab* (Beirut: Dār al-Jīl & Dār Lisān al-'Arab, 1988), s.v. "'a-d-l."

secretly as he would not do openly;[590] and *khulq* (pl. *akhlāq*) suggests that the character forms part of one's natural disposition (*fiṭrah*) and creation (*al-ṭabīʿah allatī yukhlaq bihā al-insān*).[591] Such ethical being describes the state of a soul regardless of its religious belief, and every soul is potentially upright and just (*ʿudūl*). For God the Creator has said, "By the soul, and the proportion and order given to it; and its enlightenment as to its wrong and right; truly he succeeds that purifies it; and he fails that corrupts it."[592] I have thus far argued that *ʿadālah* is an ethical disposition and a character firmly established in one's soul, that does not change by mere conversion to Islam; and that it is a quality of the soul, regardless of its beliefs and religions. The impermissibility of a non-Muslim as a witness testifying against a Muslim litigant therefore could not be on the basis of an ethical account alone; for the non-Muslims are—whether potentially or actually—equally upright and just (*ʿudūl*) like Muslim witnesses; and because the testimony of the non-Muslims had indeed been accepted and counted for, save one situation (as an eyewitness in a case against a Muslim). The consideration of jurists must therefore be primarily with something other than just epistemic and ethical considerations, which is my next point of argument.

*Political Justification (al-Wilāyah)*

In judicial proceedings, the litigants are the parties with vested interests, whose rights are disputed and contested, and who seek justice to be returned to the rightful party. The judge and witnesses are, however, the parties vested with powers of assigning the rights

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[590] See ibid., 5:459a; and Lane, *An Arabic-English Lexicon*, s.v. "m-r-ʾ."

[591] Ibn-Manẓūr, *Lisān al-ʿArab*, s.v. "kh-l-q."

[592] Al-Qurʾān, *al-Shams* (91): 7-10.

to the rightful party, and by so doing resolving conflicts and maintaining social order and harmony. The knowledge and truthfulness of a witness provides a "truthful" account of what "actually" transpired between the litigants; the judge, by virtue of his understanding of the truthful and actual account of the case by the witness, forms in his mind his version of the legal reality, and thereafter truthfully and justly determines the outcome of the disputes, appropriates the rights, and resolves the conflict.[593] When a judge passes his sentence, the verdict is effectual, binding and obligatory on all contesting parties and on the society as a whole.[594] Such is not mere legal obligation, but most importantly a moral and religious obligation, violation of which is equivalent to disobeying God and the Prophet.[595] Both the judge and witness possess the epistemological, ethical and political powers, and, for this reason, jurists considered *al-qaḍā'* (judgeship) and *al-shahādah* (witness) as forms of political powers (*wilāyah*).[596] Fadel rightly observes that, "[f]or post-11th-century jurists (*fuqahā'*), the acceptance of testimony or its rejection by a judge was not simply a problem of credibility; it was also intimately connected to issues of social status, such as a witness's religion and whether the witness was free or slave."[597] He further argues,

"[A]lthough the judicial process requires specialized knowledge of the judge and

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[593] See Fadel, "Two Women, One Man." 187-8. In the judicial procedures, the power of the witness does not rest only in describing the actual case, as an eyewitness, but also in validating other participating elements, such as in testifying the qualification of eyewitnesses, and notarizing evidences.

[594] By which members of the society must treat the verdict as effectual, and must not inhibit the execution of the verdict, failing which he/she is considered as violating the court's verdict on a property or a right (contempt of court). The society must accept the verdict with respect and honor.

[595] Ibn-Rushd, *al-Muqaddimāt al-Mumahhidāt* 2: 254-5. Hence, the ramification is not mere legal and worldly, but spiritual and religious too.

[596] Ibid., 2:258-9; al-Zaydān, *Aḥkām al-Dhimmiyīn,* 577f, 595ff; and *al-Mawsūʿah al-Fiqhiyyah,* q.v. "*ahl al-Dhimmah*." 7:133a.

[597] Fadel, "Two Women, One Man." 187-8.

the witnesses for its operation, it is also an intersection of knowledge and power…Therefore, the role of the witness and the judge can be understood only when the political context of their functions within the judicial process is afforded the same attention that has traditionally been given to their roles as "objective" providers of specialized information to the process."[598]

I can only surmise from my investigation of the Quranic and prophetic texts (*dalīl naqlī*) upon which the legal position stand with regard to the testimony of *dhimmīs* (and for that matter the testimony of all other non-Muslims) against a Muslim that these texts are not conclusive; nor are they explicit. Surprisingly (or unsurprisingly), in spite of its importance I could hardly find any authentic *ḥadīth* that is decisive of the matter. It is not all about one's knowledge and ethical quality. One cannot but observe the intersection of, and negotiation between, knowledge and power. One, however, should not be dismissive towards this intersection and negotiation, for it simply tells of the situation whilst making no appraisal of it. Law, in its making and application, is more than a reflection of received wisdom or a technology of dispute settlement; neither is law simply reflective of social realities. Law is constructive of them.[599] For this reason, it invokes intense passions, as Geertz put it, toward it in the same way that religion, science, and different ideologies draw toward themselves. Because what is at risk, Geertz argues, is not just agreement as to how fact is to be found and law instituted.

"If that were all there was to the problem it could be well enough negotiated: a little moral witnessing here, a little status legislating there; some verdicts designed to quiet village disharmonies, some fictions concocted to enable commercial banking.

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[598] Ibid., 188.

[599] See Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983), particularly the chapter "Local Knowledge: Fact and Law in Comparative Perspective," 167-234; on the constructional role of law, see 230-31.

Hardly anyone, even a marriage closer or a probate judge, is ready to die for pure procedure. What is at risk, or felt to be, are the conceptions of fact and law themselves and the relations they bear the one to the other—the sense, without which human beings can hardly live at all, much less adjudicate anything, that truth, vice, falsehood, and virtue are real, distinguishable, and appropriately aligned."[600]

At the end of the day, law and the court, at each particular time and place, must ensure social harmony, continuity and intactness of social life, and avoidance of discordance; which is not to mean the abolition of any conflict but, rather, the creation of a tenable social justice.[601]

The judge's comprehension of the conflicts at hand, and henceforth his issuance of verdicts and his resolution of the conflicts, is guided by the witnesses's testimony.[602] The judge's verdict certainly bears political consequences, by which I mean it is binding on the disputants (the litigants) and also on the society. It demands respect and observance of the verdicts. Beyond simply managing conflicts, a judge is mindful of the greater ends in protecting public interests (*al-maṣlahah al-'āmmah*) and upholding the objectives of Sharī'ah (*al-Maqāṣid al-Shar'iyyah*). The *fuqahā'* and *quḍāh* were cognizant of these ends and the spirit of *'aṣabiyyah* is central in the early Arab/Muslim societies. *'Aṣabiyyah* must not be confused with *ta'aṣṣub* that signifies fanaticism. Intrinsic to, and organic in, the concept is the notion of social solidarity, group feeling

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[600] Ibid., 230-31.

[601] The discussion on personal versus societal rights, justice at inner (personal and spiritual) and outer (societal) level, and human agency in the making and application of laws, is strenuous and perilous, however necessary it is.

[602] Although *shahādah* is regarded as one of the most important means in the judicial process, a judge will also consider other means in his treatment of a case.

and cohesion;[603] the "glue and thread" or "cement" that bind the fabric and bricks of the society together. What is this glue or cement? It is the tribe, kinship, kingship, religion, or a chemistry of all these. But Islam is no doubt a crucial element in the social chemistry. Islam is always regarded as superior and above all. Jurists, therefore, do not permit the appointment of a non-Muslim judge over Muslim cases; nor for that matter the witness of a non-Muslim against Muslims, primarily due to the notion of *wilāyah*. Non-Muslims could not possibly exercise higher power and authority (*ghalabah wa sulṭān*) over Muslims. A Muslim who may be the losing party in the dispute where the plaintiff's witness is a non-Muslim, will likely resent and disrespect the verdict; and such resentment and disrespect may likely be extended to the other members of the society, of the tribe and community. A losing party, al-Qarāfī (d. 684/1285) argues on the condition of having more than one witness, holds a grudge (*'adāwah bāṭiniyyah*) towards the witness who testified against him. In order to avoid the possible hostility and the grudge, another witness is required.[604] By the same argument al-Qarāfī justifies the distinction jurists made between male and female witnesses, for witnessing involves the exercise of authority (*sulṭān*) and power (*istīlā'*) over the one whom the witness testifies against. The

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[603] *'Aṣabiyyah* is a key concept discussed by Ibn Khaldūn in his magnum opus *al-Muqaddimah*; see Ibn Khaldun, *al-Muqaddimah* (Mecca: Dār al-Bāz, 1978); its English translation by Franz Rosenthal, *The Muqaddimah: An Introduction to History*, 3 vols. (New York: Bollingen Foundation Inc., 1958); *'aṣabiyyah* is regarded as the basis of interpretation of history, human relations, and state formations. *Walā', mulk, sulṭān, ijtimā'* (political powers and authorities) are related terms organic to his notion of *'aṣabiyyah*, and its systemic relations with religion and royal authority. Ibn Khaldūn has attracted intensive and extensive studies in the West and East that it is impossible to cite, select and recommend references in this footnote. However, reference to earlier studies would help by way of introduction. Following de Slane's translation of al-Muqaddimah (Paris, 1868), then von Kremer's study (1878), Taha Hussein (Paris, 1917) wrote a critical study of Ibn Khaldun's social philosophy. In the 1930s a few studies were published: Bouthoul, Schmidt, Rosenthal and Ayad, antecedent to H.A.R. Gibb's, that set out the groundwork for later studies. See H.A.R. Gibb . "The Islamic Background of Ibn Khaldūn's Political Theory," *Bulletin of the School of Oriental Studies*, 7, no. 1. (1933): 23-31.

[604] al-Qarāfī, *al-Furūq,* 1:15.

feeling of being over-powered by a female compounded the matter.[605] On the same

account, the witnessing of a non-Muslim against a Muslim, however implicitly expressed

in the texts of jurists, applies, and the sentiment of a non-Muslim being inferior to a

Muslim appears occasionally in Ibn Qayyim. Non-Muslims possess the authority and

power over and among themselves, and therefore they could judge and be witnesses

against each other. This admission is neither a matter of honor (*takrīm*), nor authority,

nor value (*aqdār*), but as a prevention of injustices, and appropriation of rights among

them.[606] In breadth and depth, and with penetrative readings of the texts, Ibn Qayyim

argues for the equal validity and value of the testimony of a female[607] and slave;[608] and in

equal breadth and depth he discusses the views of jurists and argues for the non-Muslims'

testimony among them;[609] and on the validity of a non-Muslim's witness in the case of a

will during travel (*waṣiyyah ḥīna al-safar*).[610] On all of these accounts, Ibn al-Qayyim

was close to concluding that a non-Muslim too could testify against a Muslim. He

however falls short of extending the same arguments to the testimony of a non-Muslim.

Even so Ibn Qayyim argues that there is no justification in the witness of an immoral

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[605] Ibid., 1:16. See also Fadel, "Two Women, One Man." 192. It is important to understand the psyche and emotional structures of a society, its norms, customs and cultures (*al-ʿurf wa al-ʿādah*), the local knowledge as Geertz calls it, within which law operates; not to judge, nor impose, nor transpose one's reality on others, but to acknowledge different realities and historical dynamics. Laws are constructive of social realities. Speaking of the West, Geertz remarks, "when we were alternately self-absorbed and impassioned to shape others to our view of how life should be lived. It hardly has any now when…we are faced with defining ourselves neither by distancing others as counterpoles nor by drawing them close as facsimiles but by locating ourselves among them." (Geertz, *Local Knowledge,* 186).

[606] "*wa laysa fī hādhā takrīm lahum, wa lā rafʿ li aqdārihim…*" Ibn Qayyim al-Jawziyyah, *al-Ṭuruq al-Ḥukmiyyah*, 212; the word *aqdār* suggests authoritativeness, social position, and that it is predestined and decreed.

[607] Ibid., 175-89, and passim.

[608] Ibid., 193-99, and passim.

[609] Ibid., 206-10.

[610] Ibid., 210-23.

person (*fāsiq*) who is known for truthfulness being rejected (*falā wajha li radd shahādatihi*), citing as an argument the example we have already mentioned of the appointment by the Prophet of a non-Muslim guide during his migration to Madinah.[611] The furthest he went was the admission of a non-Muslim witness due to necessity (*al-ḥājah*),[612] and in a situation of *ḍarūrah*; for since the admission in the case of a will is due to *ḍarūrah*, the same should therefore be applicable to other than *al-safar* (travel).[613] *Wilāyah* has been repeatedly argued in jurists' texts for the impermissibility of the testimony of a non-Muslim against a Muslim. Other than this, non-Muslims enjoy all other rights in the judicial procedures in Islamic courts.

**The Other to the Acehnese**

*The Indigenous Others*

The Acehnese's Others include two main groups: foreigners and the indigenous. This latter group includes the peoples of Gayo, Alas, Batak, and many other smaller hinterland tribes.[614] These are primarily animists who follow the beliefs and practices of

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[611] Ibid., 205.

[612] The vile of *kufr* is said does not prevent their testimony against a Muslim for necessity; ibid., 212.

[613] Ibid., 223-25.

[614] Peoples of Gayo, Alas, Batak, Nias and few others are considered as originating from the Proto-Malays. It is thought that when the Deutoro-Malays arrived and began to populate the coastal cities the Bataks and others kept apart and moved further into the hinterlands. However, some remained in Aceh. During the reign of Sultan 'Alā' al-Dīn al-Qahhār (r. 1537-1571) these tribes were identified and recognized as *adat* or *gotong-royong* groups governed by their respective *adats*. The Bataks were identified as the *suku Leh Ratue* (or Suku Tiga Ratus or the Three Hundred Tribe), for whom Van Langen identified the VI Mukim as their dwelling place. See Said, *Aceh Sepanjang Abad*, 7-8. *Hikayat Raja-Raja Pasai* related that Gayo (*gayur* or *kayoi* which means, in one Acehnese dialect, to flee) are the people who did not wish to convert to Islam and fled to the hinterland. See Russel Jones, ed. *Hikayat Raja Pasai* (Kuala Lumpur: Yayasan Karyawan & Penerbit Fajar Bakti, 1999), 17. And on the origin and early history of Gayo, see John Richard Bowen, "The History and Structure of Gayo Society: Variations and Change in the Highlands of Aceh" (University of Chicago, 1984), 46ff.

their ancestors. As for the Bataks, they only began their conversion to Christianity in the nineteenth century.[615] And because these peoples populated the hinterlands, rarely did they affect the central authority and the main port cities, the center of power struggles and tensions. Far from being monolithic communities, they were left to their respective *adat* systems governing their affairs. As the Acehnese saying goes, "*Laen krueng lane lingkok, laen lhok laen buaya*," or its Malay equivalent, "*lain sungai lain teluk, lain lubuk lain buaya*," (Different rivers flows to different gulfs, and different pits have different crocodiles). And until recently, one could still trace such local practices in the Karo-land of the Batak people, where cases are adjudicated at village level, or at the Karo courts that follow their *adat*, or what is known as the *runggun adat*.[616] This diversity is more prominent in the realm of legal practices. In discussing this diversity of *adats*, Vollenhoven coined the term "adat-circle." He was followed by Haar who identified nineteen *adat* law-areas in Indonesia.[617]

To the Acehnese, the co-existence of different *adats* within the same polity is not anomalous, for such diversity is an integral feature of the Adat Worldview. Hence, the legal and political contract in administering the Others under the governing authority like the contract of the *dhimmīs* ('*aqd al-dhimmah*) is unknown in Aceh. A *dhimmah* is a contract of protection which the Other enters into with the ruling authority, and that permits one to peacefully live in the Muslim lands and to freely observe one's religious

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[615] European intrusion into the lands of the Bataks in the hinterlands came rather late in the nineteenth century, in part due to their apprehension of the horrendous cannibalism often associated with the Bataks, but primarily due to the European orientation toward the sea and coastal polities. See Leonard Y. Andaya, "The Trans-Sumatra Trade and the Ethnicization of the Batak," *Bijdragen tot de Taal-, Land-en Volkenkunde (BKI)* 158, no. 3 (2002): 367-68.

[616] Steenhoven, "Musjawarah in Karo-Land."

[617] See Haar, *Adat Law in Indonesia*, 7ff.

practices and beliefs under the legal and political protection of the ruling authority. In return, the *dhimmīs* are obligated to live by the rules of the Muslim authority, subjected to Islamic legal jurisdiction, required not to expose the interest and suzerainty of the Muslim authority to jeopardy, and to pay *jizyah* to the Muslim authority.[618] However, such a contract in governing and administering the (indigenous) Others was not known in Aceh. While the Muslim ruling authority does admit of the presence of the diverse and plural Others within its jurisdiction, this diversity and plurality is not governed by a certain legal contract between them and the rulers. Instead, such a diversity and plurality is considered as an integral part to the Adat Worldview that permits the co-existence of diverse *adat* groups, and that these *adat* groups are left to govern their own communities, while remaining loyal to the sultan.

The people of Batak, for example, are organized into a federation of communities of kins called *bius* or *paguyuban* that form the socio-political and socio-legal unit of the people. The chiefs of *adats* who are also the heads of the *bius* represent their people in the Council of *Bius* that functions as the supreme authority of the people of Batak. The council mediates and resolves conflicts and makes important decisions on public affairs, all guided by their *adat* known as *adat bius* or *adat si Raja Batak*.[619] The Bataks were left to govern and administer their own affairs according to their *adat* with no intervention from the Sultans of Aceh. Islamic influence is least observed in the *adat* of the people of Batak, understandably due to its remoteness from the central land of Aceh and its late

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[618] See al-Kuwayt, *al-Mawsūʿah al-Fiqhiyyah*, s.v. "ahl al-dhimmah," 7:120ff; al-Sinkīlī, *Mirʿāt al-Ṭullāb*, 474-75.

[619] See Sitor Situmorang, *Toba Na Sae: Sejarah Lembaga Sosial Politik Abad XIII-XX*, 2nd ed. (Jakarta: Komunitas Bambu, 2009), xiii, 12-15; cf. Lance Castles, "Statelessness and Stateforming Tendencies Among the Batak Before Colonial Rule," in Reid and Castles, *Pre-Colonial State Systems in Southeast Asia*, 67-69.

conversion to Islam. As to the people of Gayo, although they too were governed by their own *adat*, the influence of Islam was more discerned and noted. This is in part due to their proximity to the central lands of Aceh and their early receptiveness to Islam.[620]

*The Foreign Others*

The primary interest of this study is with treating the foreign Others—notably the Europeans. It was specifically the European Others whom the Acehnese most dealt with, in their dealings and interactions in the port cities. It is here one witnesses power-relations and authority-assertion. It is also here that the notion of *kafā'ah* and *wilāyah* is most prominent in guiding the Acehnese treatment of their Others.

Islamization, as I have discussed earlier, centers in the realm of metaphysics or worldview; and in many senses in the realm of ethics. However, as we move away from this center, diversities become more pronounced and conspicuous. Moral standards change. Cultural and legal ideas and practices evolve together with the evolving morality and varying local knowledges. Practical politics were the mainstay policies and legal norms. In dealing with the European Others, the Acehnese had as their primary objective the interest in protecting their religion, their sovereignty, their territories, and their resources. Prior to the advent of the Europeans in the region, the Acehnese were already dealing with the Chinese, Indians and Arabs. However, unlike the European Others, these Others did not envision the monopolization and control of the resources. Nor did they

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[620] Bowen discusses some of these *adat* (*edet* in Gayo) that are still practiced and that are not strictly Islamic or that are variants of Islamic law in matters of marriage and inheritance of the Gayo society. See Bowen, "The History and Structure of Gayo Society: Variations and Change in the Highlands of Aceh." See also idem, "Consensus and Suspicion: Judicial Reasoning and Social Change in an Indonesian Society 1960-1994."

carry an expansionist agenda. Whereas the agenda of the Europeans in the region was an extension of their establishment of colonial empires in different parts of the world that had begun in the early sixteenth century, and reached its height in the nineteenth century, with the mission of securing the monopoly of trade and resources in the archipelago, and a hegemony over its peoples.[621] European companies were founded not only by businessmen and investors, but were also strongly sponsored by the kings and governments of the countries in which they had been founded.

In addition, this mission was conceived of as a civilizational project: a mission to bring the light of civilizations and Christianity to the native savages, namely the non-Europeans. To be sure, for the Portuguese, this was an extension of the Crusades to the Middle East and thereafter to the Far East. As the renowned Dutch scholar Schrieke writes,

> "Religious zeal, nourished in the tradition of the Crusades and the remembrance of the bitter struggle with the Moors in the Iberian Peninsula, certainly continued to be an essential motivation…The religious element remained a factor of significance in Spanish politics in later times as well. For the inhabitants of the [Iberian] peninsula a Mohammaden was a 'Moor', an object of abhorrence."[622]

European ships that came to the Malay Archipelago did not include only traders and businessmen, but also Christian missionaries and priests. As Mommsen describes it,

> "One of the justifications of colonial expansion and rule always had been that the colonial power had a cultural mission; civilization and its values ought to be

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[621] On this expansion, encounters, and impact on the non-European laws in many parts of the world, see Mommsen and Moor, *European Expansion and Law*. These political struggles between the Acehnese and the Others—the foreign Others in particular—have been discussed in Chapter Two of this study.

[622] Schrieke, *Indonesian Sociological Studies: Selected Writings*, 1, 1:38.

brought to the peoples in these distant, undeveloped regions, along with it, if ever possible, the Christian religion, whereas superstition and inhumane practices had to be eliminated."[623]

The religious duties of the Dutch East India Company or *Vereenigde Oost-Indische Compagnie* (VOC) were clearly formulated by the highest authority in the Netherlands in the early seventeenth century. Although it started as a trading company, it soon developed into a colonizing and missionary institution.[624]

Europeans who travelled and settled in distant lands perceived themselves as "superior", and "unequal" to the natives, who were considered as pagans, the lesser breeds without the law, or whose law was perceived like the knowledge of a local medicine man when compared to European scientific knowledge of medicine.[625] And therefore, when they ruled these lands, Europeans were not subjected to indigenous laws. Instead, the laws applicable to them were of their origins (English law to the Englishmen,

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[623] Mommsen and Moor, *European Expansion and Law*, 8. The Presence of Christian colonies in the Malay Archipelago prior to the Portuguese arrival in 1511 is still very far from confirmed. Evidence adducing a Christian presence in Barus or Fansur, Aceh, and Kedah (West coast of the Malaysian Peninsula) is at best circumstantial and speculative. To a view by some Indonesian writers that Christians had arrived in the seventh century and established a community in Northern Sumatra, the historian of Christians and churches in Indonesia Adolf Heuken retorts, "this opinion can not be based on solid facts for the seventh until the ninth centuries." Adolf Heuken, "Christianity in Pre-Colonial Indonesia," in Jan S. Aritonang and Karel A. Steenbrink, *A History of Christianity in Indonesia*, Studies in Christian mission, (Leiden: Brill, 2008), 6. We could admit of the possible Christian presence at the coastal cities of Sumatra and the Western coast of Malaya by virtue of the traders who came from India and Persia (Nestorians). Nonetheless, their impact and influence were hardly felt, and arguments and proofs in this area are wanting. Al-Attas rejected Schrieke's theory that Christianity made a great impact on the archipelago that in turn resulted in the accelerating of the dissemination of Islam in the Malay Archipelago. Islam, al-Attas argued, did not consider Christianity as a serious contender; and that "it is well known that it was only in the 12th/19th century onwards that Christianity made any impact at all in the Archipelago." Al-Attas, *Preliminary Statement on a General Theory of the Islamization of the Malay-Indonesian Archipelago*, 31.

[624] See Karel Steenbrink, "The Arrival of Protestantism and the Consolidation of Christianity in the Moluccas 1605-1800," in Aritonang and Steenbrink, *A History of Christianity in Indonesia*, 99ff. Bibles were also translated into Malay by VOC officials or the accompanying priests in the seventeenth century.

[625] See C. Fasseur, "Colonial Dilemma: Van Vollenhoven and the Struggle Between Adat Law and Western Law in Indonesia" in Mommsen and Moor, *European Expansion and Law*, 243. Hurgronje's usual scornful way of describing Aceh, its people and legal system, in his *The Achehnese* was nothing but reflective of such an attitude and perception towards the indigenous people.

French to the Frenchmen, and Dutch to the Dutchmen), and they were to be adjudicated only according to their respective laws. Two concurrent laws were operative: one for the Europeans and another for the indigenous, and within the indigenous there exist many customary laws (*adats*). Nonetheless, when conflicts arose, as was the case in Dutch Indonesia, it was Dutch law that prevailed.[626]

As early as the second decade of the sixteenth century, Acehnese were already engaged in military encounters with the Portuguese, either in the waters off Aceh or in the Indian Ocean.[627] The Acehnese were indeed the toughest contenders to the Portuguese and the other Europeans.

Clarifying the above context is important in our attempt to understand Acehnese policies and legal practices. I have earlier in Chapter Two discussed the political and economic context of the period under study, and the tensions between the Acehnese and the Europeans coming to the region. While the Acehnese were guided by the Islamic worldview and ethical values, in governing the country and administering the laws, political expediencies generally prevailed in drawing up their political, economic and legal policies. It can well be said that practicality and pragmatism governed their legal practices.

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[626] See C. Fasseur, "Colonial Dilemma: Van Vollenhoven and the Struggle Between Adat Law and Western Law in Indonesia," in ibid., 237-38. I have also indicated in Chapter Two that during the early stage of Aceh-Dutch relations, the latter were allowed to settle disputes according to their law particularly on religious matters; but where there were conflicts in trade and debt involving both the Acehnese and Dutch, the Sultan shall decide. These were provided for in the Aceh-Dutch treaty of 1607.

[627] In 1526 An Acehnese ship enroute to Jeddah was intercepted and plundered by the Portuguese in the Indian Ocean.

There is no evidence that the legal concepts as deliberated in standard *fiqh* texts such as the *ahl al-Dhimmah*, *ahl al-amān,* or *musta'man* were practiced in Aceh. The indigenous Others were left to be governed by their respective *adat*; and the foreigner (European) Others were subjected to current treaties between them and the Sultans of Aceh. Reported incidents of the manner in which Europeans were treated are indicative of the political nature, and one of the earliest reports could very well be the treatment of the Houtman brothers.

*The Case of the Houtman Brothers*

These brothers led the Dutch envoy that arrived in Aceh in 1599. Cornelis, the elder, was killed and Frederick was taken captive,[628] remaining in captivity for two years. These were two historically significant years for Houtman, during which time he learned Malay and learned of its people in Aceh (and later wrote a Malay dictionary), and engaged in dialogs with Malay-Muslim scholars. It is reported that he was offered a high post in the Achenese kingdom, freedom and a wife, under the condition that he would cooperate with the Sultan and convert to Islam.[629] Houtman refused to become Muslim and was ordered to remain captive for two years, before Aceh-Dutch relations improved and he was brought home in 1601. Returning home in August of that year, it was there that Houtman wrote his memoir *Cort Verhael*[630] and reported on his ordeal, the threat of a forced conversion to Islam while in captivity becoming one of the main sources on this

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[628] See Chapter Two on this Acehnese attack on a Dutch ship that resulted in the killing of Cornelis, and the capture of Frederick.

[629] Karel A. Steenbrink, "Jesus and the Holy Spirit in the Writings of Nūr al-Dīn al-Rānirī," *Islam and Chrisiam-Muslim Relations* 1, no. 2 (1990): 202.

[630] Published by W.S. Unger, *De oudste reizen van de Zeeuwen naar Oost-Indie, 1598-1604*, De Haag, Nijhoff, 1948, 64-111.

curious incident.[631] It is however unclear from European sources whether he was ordered to be killed due to his refusal to accept Islam, or for his other "political crime" that subjected him to the threat of execution. In spite of Portuguese instigation of the Acehnese people against them,[632] the Dutch were warmly welcomed by the Acehnese and were allowed to purchase and upload peppers. The Sultan wanted to put to test Dutch intentions and asked if he could use Dutch ships to carry his army to Malacca. The Dutch were hesitant to do so, which brought the wrath of the Sultan. One day, the Dutch invited Acehnese officials to board their ships. This invitation was well-received by the Acehnese, though in a circumspect manner. However, when they were on board, the Dutch tried to intoxicate them through alcholic drinks. As a result, a fight broke out, and consequently the elder Houtman was killed. At this time, the younger Houtman and a few others were on shore,[633] and the Sultan ordered them to be taken captive. The elder Houtman had also been known for his zeal to preach republicanism to the Sultan, "*refusing the authoritie of a King, relating the government of Aristocratie*,"[634] and been seen as arrogant—something that offended the Sultan. Guyon le Fort, who was arrested together with Frederick Houtman, betrayed his agreement with the Sultan to surrender

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[631] See the partial English translation in Reid, *Witnesses to Sumatra*., 44-49; the partial French translation in Lombard, *Le Sultanat d'Atjéh*., 235-39; see also discussion about the dialog between Houtman and the Acehnese scholar in Steenbrink, "Jesus and the Holy Spirit in the Writings of Nūr al-Dīn al-Rānirī.", 202.

[632] To this instigation Prince Mauritz van Nassau alluded, in his letter to the Sultan 'Alā' al-Dīn Ri'āyat Shāh (r. 1589-1604) in 1600 following the return of some Dutchmen from the mission in which Cornelis de Houtman was killed and Fredrick de Houtman was taken captive. See the letter, written in Spanish, in Lombard, *Le Sultanat d'Atjéh*., 240. While one acknowledges that Portuguese instigation against the Dutch did take place, essentializing Aceh's shifting attitude against the Dutch to Portuguese conspiracy remains problematic. In a highly tense political and military situation, it is not unexpected that parties would attempt to win over the Sultan's trust, and create mistrust against others. The Sultan could not have simply reacted to such instigations from the different parties. The evidence to support this particular story remains circumstantial.

[633] See Said, *Aceh Sepanjang Abad*, 1:210-11.

[634] Davis in Reid, *Witnesses to Sumatra*, 19.

one of the Dutch ships in return for the release of the captives, and instead fled without return to Aceh. Considering all the above, the Sultan was ready to execute the younger Houtman. However, a way to save his life was to invite him to Islam, and to engage in a dialogue.[635] Why then were others not forced to accept Islam? The story was only on him (Houtman), when plenty more individuals came to Aceh, freely, without any coercion to accept Islam.[636] In addition, not all Dutchmen were taken captives. Some were allowed to return home, and took with them positive reports about Aceh that prompted Prince *Maurits van Nassau* to write a sanguine letter to the Sultan of Aceh in 1600. As a matter of fact, in the Aceh-Dutch treaty of 1607, it was provided that if a Dutch citizen were to come to the Sultan for help or conversion, he would be turned over to the Dutch authorities. Houtman's desire to sensationalize and glorify his stories is not remote.

The tendency of missionaries to relate stories like Houtman's as stories of martyrs and pious Christians who held strong to their Christian beliefs in spite of force and duress to convert to Islam is not unnoticed. A similar narration can be found in the story of Pierre Berthelot, considered as a saint and a great martyr to the missionary world. Berthelot, also called *Père Denis de la Nativité*,[637] was part of a delegation sent by the Portuguese Viceroy in Goa to Aceh in September 1638 in a bid to win over Sultan Iskandar Thani's friendship, following Dutch advancement in the archipelago. This Portuguese delegation was led by Francesco de Soza de Castro. However, the Portuguese

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[635] See ibid., 43-4.

[636] In speaking about the purported forced conversion to Islam, one must not also ignore the historical fact that some indigenous Muslims were forced to convert to Christianity by the Europeans when they held the power, albeit such forced conversion was criticized. See Karel Steenbrink, "The Arrival of Protestantism and the Consolidation of Christianity in the Moluccas 1605-1800," in Aritonang and Steenbrink, *A History of Christianity in Indonesia*, 127.

[637] Lombard, *Le Sultanat d'Atjéh*, 97.

ships were fettered by the Dutch defense at the mouth of the Aceh river, and were put under heavy attack by the Dutch defense. As a result, Berthelot, Castro and many others were severely wounded and incapacitated. Nonetheless, the Portuguese still managed to reach the shore, and were picked up by the Acehnese. However, before they reached the royal court, the Sultan ordered them to be executed, due to their refusal to convert to Islam. The source of this story was de Castro, who survived and was bailed out by his family and returned to Goa.[638] To this and other similar stories, Lombard writes,

> *"L'histoire des martyrs d'Atjéh devait connaitre un assez grand succès dans le monde chrétien ; elle alla jusqu'a Rome oü 1'on ouvrit un dossier en vue de leur béatification. Un des amis du père Berthelot, qui 1'avait connu à Goa et avait contribué à sa conversion, le R. P. Philippe de la Trés Sainte Trinité, rédigea, en latin, un récit hagiographique de 1'aventure, oü il publiait certaines des pièces qui avaient été versées au dossier. Ce récit parut dès 1652, en traduction française, à Lyon, sous le titre de Voyage d'Orient."[639]*

In reading the above incident one must not be oblivious to the treaty that was current between Aceh and Holland, in which it was agreed that neither Dutch nor Acehnese would enter into a peace treaty with the Spanish (or the Portuguese), and that the Dutch would do their utmost to help Aceh wreck Portuguese and Spanish power; and that if one of the parties (Aceh or the Dutch) would be at war, the other would only be obliged to help for the purposes of defense.[640] In this sense the Sultan of Aceh was honoring the treaty between him and the Dutch. This and other, similar positions or policies were not a

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[638] See ibid., 97-98, 233-34.

[639] Ibid., 234. See the French translation of de Castro's letter to the Reverend of Camres (Père Générale des Carmes) in ibid., 234-35.

[640] For the text of the Aceh-Dutch treaty see J.K.J de Jonge, "*De Opkomst van het Nederlandsch Gezag in Oost-Indie 1565-1610*, (De Haag: Nijhoff, Amsterdam: Muller, 1865), 223-25. I thank Prof van Puten for providing me with the English translation of the Aceh-Dutch treaty of 1607.

matter of law of the country in dealing with Others. Neither Acehnese *adat* nor Acehnese Islamic legal texts stipulate such a position in treating the Others. On the contrary, the nature of the Acehnese legal system admits of legal pluralism. Just as the Acehnese Others were left to their respective *adat, rumpun,* and the *gotong-royong* way of self governing, the European Others were also left to theirs, unless it involved the interests of the Acehnese people or those of the Acehnese sovereign.

It must be said here that diversity and plurality are integral ingredients to the Acehnese cultural and legal worldview. As the historian of Southeast Asia, Anthony Reid, observes,

 "[T]he initial stage of Islamic expansion was marked by intense interaction and syncreticism, with conquest playing only a necessary but minor role in eliminating the dynasties that held out against Islam. The most sacred sites of Hindu-Buddhist scholarship and meditation accepted Sufi mystical masters as fellow-seekers, and were in many cases gradually taken over by them. The smaller Muslim port kingdoms of Indonesia, moreover, were not successors to the imperial idea of ruling over many kings and peoples of different faiths. Kings made the adjustment to Islam gradually and syncretically."[641]

For a short period of time a hard line approach to Islam received political endorsement and support. In his capacity as the Chief Judge to Sultan Iskandar Thānī (r. 1636-1641), al-Rānīrī imposed strict implementation of Islamic law, excluded Chinese traders from Aceh because of their pork-eating, executed captives who refused to accept Islam, allowed the use of pages from Bible as cleaning materials, ostracized the *wujūdiyyah* proponents, burnt the books of Sheikh Hamzah Fanṣūri and Sheikh Shams al-Dīn al-

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[641] Anthony Reid, "Introduction: Muslims and Power in Plural Asia," in Anthony Reid and Michael Gilsenan, eds., *Islamic Legitimacy in a Plural Asia*, Routledge contemporary Asia series (London; New York: Routledge, 2007), 7-8.

Sumaṭrānī—the leaders of the *wujūdiyyah* in Aceh—and executed their strong followers for apostasy.[642] However, this approach was shortlived, and a strong resistance against such a strict adoption of Islam and uniformity came from within. Al-Rānīrī lost his political support with the demise of Sultan Iskandar Thānī and consequently left Aceh for his hometown Gujarat. Al-Rānīrī was then succeeded by a *wujūdiyyah* proponent Sheikh Sayf al-Rijāl before the return of Sheikh ʻAbd al-Ra'ūf al-Sinkīlī in 1661 when he was appointed as the Shaykh al-Islam and the Chief Judge. Al-Sinkīlī's moderate approach, and his refusal to condemn either the *wujūdiyyah* or al-Rānīrī's orthodoxy had earned him a lasting reverence and love of the peoples in Aceh and the region.[643] Once again Reid asserts that "a consensus may be said to have developed in Aceh that pluralism was essential; Christians, Chinese and diverse types of Muslim were admitted to the port (as had always been the case in the other great Muslim trading centres, Banten and Makasar); and the state desire for uniformity should not be taken to such extremes."[644]

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[642] See ibid., 8.

[643] See the section on Religious Administration in Chapter Two, and also Chapter Three, in introducing al-Sinkīlī.

[644] Reid and Gilsenan, *Islamic Legitimacy in a Plural Asia*, 8.

**Summary and Conclusion**


I have argued that the Acehnese Malayo-Islamic legal thought must be understood on its own terms and seen from its own worldview, and through its ethical and cultural system. Key to appreciating these concepts and values that bespeak that worldview, and that ethical and cultural system, is a clarification of its key legal terms, such as *Adat*, *Sharī'ah*, *hukum*, *resam*, *kanun*, and *undang-undang*, as contrasted to European legal terms and categories. Drawing from the indigenous (Malay and Acehnese) early sources, I have clarified and redefined these key concepts (investigating the object from within its own shell). The purported tension and conflict between the Sharī'ah and Malay *adat*, the chasm between theory and practice or the ideal-real dichotomy, the 'absence of law,' and the legal arbitrariness (a state ruled by the rulers' whims and fancies or the peoples' irrational *adats*) as often described by early Europeans was primarily a consequent of imposing European legal and cultural worldviews and categories or the 'prying of the object from its shell' that led to such a confusion. The Adat Worldview can be seen as layers of meanings: the metaphysical, ethical-moral, and legal-cultural domains. Such a worldview provides its people a sense of stability and dynamism, permanence and mutability, and rootedness and adaptability. It is in the legal-cultural domain that one sees diversity and plurality, dynamism and adaptability of the Acehnese legal thought and practices, a feature that is integral to its worldview—a world of Adat—and a function of a creative symbiosis between Islam and Adat. For the above reason, I began this study in Chapter One by clarifying these key concepts and re-examining the conundrum—a way

of clarifying and refocusing the lens to studying the legal thoughts and practices of the Aceh people in the seventeenth century.

Chapter Two demonstrates that since its early history Aceh bears significant political and economical importance. This is due to its geographical location—a gateway to the Far East as well as to the rich natural resources, spices, and thriving ports and trades—to the Indians it was called the Island of the Gold. Having the Others (Indians, Arabs, Chinese) amidst them from the time of its early history was nothing but a natural part of an idea of diversity and plurality so enmeshed in the Acehnese culture. However, the advent of Europeans vying for resources and monopoly of these resources and trade routes precipitated a different relationship with the Others. The earlier Others (Indians, Arabs, and Chinese) did not hold the agenda of controlling and monopolising the resources, unlike the Europeans. This latter carried a 'civilising,' expansionist and colonial agenda, that consequently gave rise to tension and conflict between the Acehnese and the Europeans. In light of the European expansion and the missionaries who came with them, the Sultans of Aceh had to consolidate their political and military might, and this was achieved through annexing the smaller cities and towns, particularly the coastal areas and ports under the rule of the *Dalam* (central palace of the Sultans of Aceh), the Aceh Dār al-Salām, as well as the attempt to annex the other Malay coastal cities and kingdoms along the Malayan Peninsula, such as Johore, Malacca, Pahang, Perak and Kedah, some successfully and at other times unsuccessfully. These power struggles and assertion of authorities set the stage and defined the strategies in dealing with the Others, and consequently the policies, rules, laws, and nature of governance.

But policies, rules, laws and governance are only meaningful and binding with the appointment of an authority well respected, recognised and sanctioned by the people. In Aceh (and in the Malay World), the Sultan holds such a position—the unifying authoritative figure of the people. Although the Sultan represents the highest authority, by way of religious and secular justification, two institutions of the people—the social and political elites of the people—form an integral part of this power and authority structure. They were the appointing authority of the sultan: these are the *orangkayas* and the *'ulamā'*, the ones who appoint and dismiss the sultans. These *orangkayas* and *'ulamā'* held different court offices and administrative roles and functions, such as being ministers, judges and arbitrators, secretaries, admirals, commanders, and tax and port officials. Legal matters were administered at two levels: at the central (*Dalam*) and at the territories (*Sagis*) levels. The *Dalam* deals with matters, legal and political, that involve foreign Others, whereas the *Sagis* deal with community matters, according to the *adat* system, which include the indigenous Others who were left to be governed by their *adats*.

Understanding the power structures and the authorities who administer the laws and policies is important. More important, however, is to understand the legal thought and philosophy, and the ethical and cultural ideas underpinning these legal practices and the governing policies, and this should be understood from within its own shell. I have explained the three layers of meanings: from the inner core that provides the sense of permanence and stability to the outer part that endows the meaning with a sense of dynamism and adaptability; from the thoughts to practices; from the meta-cognition or mental modes to behaviors and practices. To the people of Aceh, at the center of this worldview, or in the inner part of their meanings, is an Islamized Malay worldview: a

Malayo-Islamic Worldview—the Malay worldview that has assimilated the Islamic worldview and formed a worldview distinct from its own past. In addition to the sense of permanence and stability that this Malayo-Islamic worldview establishes, it also provides appropriate space for diversity and plurality, and space too for dynamism and adaptability. Diversity and plurality indeed are the appropriate terms with which to describe the legal life of the Aceh people; a worldview that accommodates the *adats* with all their colors and shades, a worldview that is expressed in the "New Malay" language that "gave this heterogeneous region," as al-Attas describes it, "not merely an outward aspect of unity, but more profoundly an inward unity of souls bound together in religion."[645] Such diversity and plurality is founded on cardinal principles of *muyawarah-mufakat* based on the spirit of *gotong-royong*, and the ethical concept of *malu* (shame), *adat kebulatan* (the *adat* of wholeness/roundness) that guide the peoples' way of conflict resolution, restoration and adjustment of the balance and order of things; all with the aim of ensuring a harmonious living (*rukun*), a sense of propriety (*layak*) and an equilibrium of order (*tertib*). For, in the Malay Adat legal worldview, the greater goal in conflict resolution is to restore social harmony and balance, and not to achieve a supremacy of one interest over another. It is a vision of a just order of things. Hence, this *adat* way of conflict resolution is not fixated on a certain set of codified laws, rules and regulations. Guided by the overarching metaphysical and ethical principles, and societal values, discerning of the society way of living, the *adat* way maneuvers between various options within the context of time, space and human agency, unlike the European way of conflict resolution—one based on problem solving, and retribution.

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[645] Al-Attas, *Historical Fact and Fiction*, xvi.

It is through this lens, and from this shell, that we look at the legal thought and practices of Aceh in the seventeenth century. These thoughts are encapsulated, in this current study, in the royal decrees of the sultans of Aceh—namely the *Adat Aceh*, *Undang-undang Melaka*, and *Adat Meukota Alam*, as well as in the Islamic normative text (books of *fiqh*)—*Mir'āt al-Ṭullāb* and *Safīnat al-Ḥukkām*. Our examination of these legal as well as the historical texts indicate that in dealing with the Others, and in consonance with the Malay *Adat* World, the Others were welcomed with all their diversity and plurality. The indigenous Others were left to be governed by their respective *adats*. And because they chiefly populated the hinterlands outside the *Dalam* (Central Court), they were not of grave concern to the *Dalam*. As to the foreign Others, they were welcomed to live and engage in trades in Aceh. In fact, they were allowed to use their laws in resolving their specific conflicts and problems, unless the situation were one in which Acehnese were parties to the conflicts. While *Adat Aceh* makes reference to the Others—notably the non-Muslims and the foreign Muslims—upon scrutiny of these texts one learns that the differentiation of taxes, rules and regulations was not due to the religious identities and persuasions of these Others. In the case of taxes imposed on the ships, crews and the commodities, they were made based on the type, size, and origins of the ships and the commodities.

In the final analysis, while one admits that Acehnese were guided by the Islamic worldview and ethical values, in governing the country and administering the laws political expediencies generally prevailed in drawing up their political, economic and legal policies. It can well be said that practicality and pragmatism governed their legal

practices. Such is by no means a case of dissonance between ideal and reality, theories and practice, Islam and *adat*; nor a case of tension and conflict in the legal thought of the peoples of Aceh, for the nature of their legal Worldview admits of such diversity and adaptability. The *fiqh* texts served as normative reference to the administrators of the laws—the rulers, chief judge, the judges, and the *orangkayas* (the social elites). But they negotiate and maneuver between the texts to realise the social objectives of the continuous harmonious living and maintenance of order in accordance to their legal sensibilities and objectives. Notwithstanding the view that Islam and Muslims are superior over the non-Muslims (the principle of *wilāyah*), and in spite of the fact that Muslims and non-Muslims are not equal (the principle of *kafā'ah*) as I have elaborated and given examples from the *fiqh* texts of al-Sinkīlī (*Mir'āt al-Ṭullāb*) and al-Tarusānī (*Safīnat al-Ḥukkām*), these Others continued to enjoy the protection of their interests, insofar as they did not infringe on the interests of the Acehnese sovereignty or the political superiority of the Muslims (*wilāyah*). In dealing with the European Others, the Acehnese had as their primary objective the interest in protecting their religion, their sovereignty, their territories, and their resources. The harsh policies against the Europeans and stringent rules on them were motivated primarily by political necessity and considerations, and the uncompromising and austere treatment of the Europeans was due to the realisation on the part of the rulers of Aceh of the civilizing, missionary, and colonial motives that the Europeans carry with them. This was later proven true when the political power and authority of the kingdom of Aceh, and the other parts of the Archipelago were fading, weakened by internal struggle as well as unceasing external (European) onslaught; the Europeans saved no effort to control the region and

monopolise the resources. The Anglo-Dutch agreement on borders of mutual spheres of influence in 1824 pre-empted the division of the Archipelago to the British and the Dutch, although Aceh was designated as outside of both spheres. And Aceh was the toughest contender to the Europeans, and was the last to be included under a European administration (the Dutch) in the first decade of the twentieth century after five centuries of attempts. This ushers in the legal reform or modernization, so to speak, in which the *adats* were subjected to the European way of legal ordering and rationality, namely the codification of the plural and diverse *adats*, that subsequently gave rise to the science of *adatrecht*. The extent of the success (or failure) of this project, and the degree of "reform" this project has made to the legal life of Aceh and the Archipelago in general, are left to other studies to investigate and appraise.

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