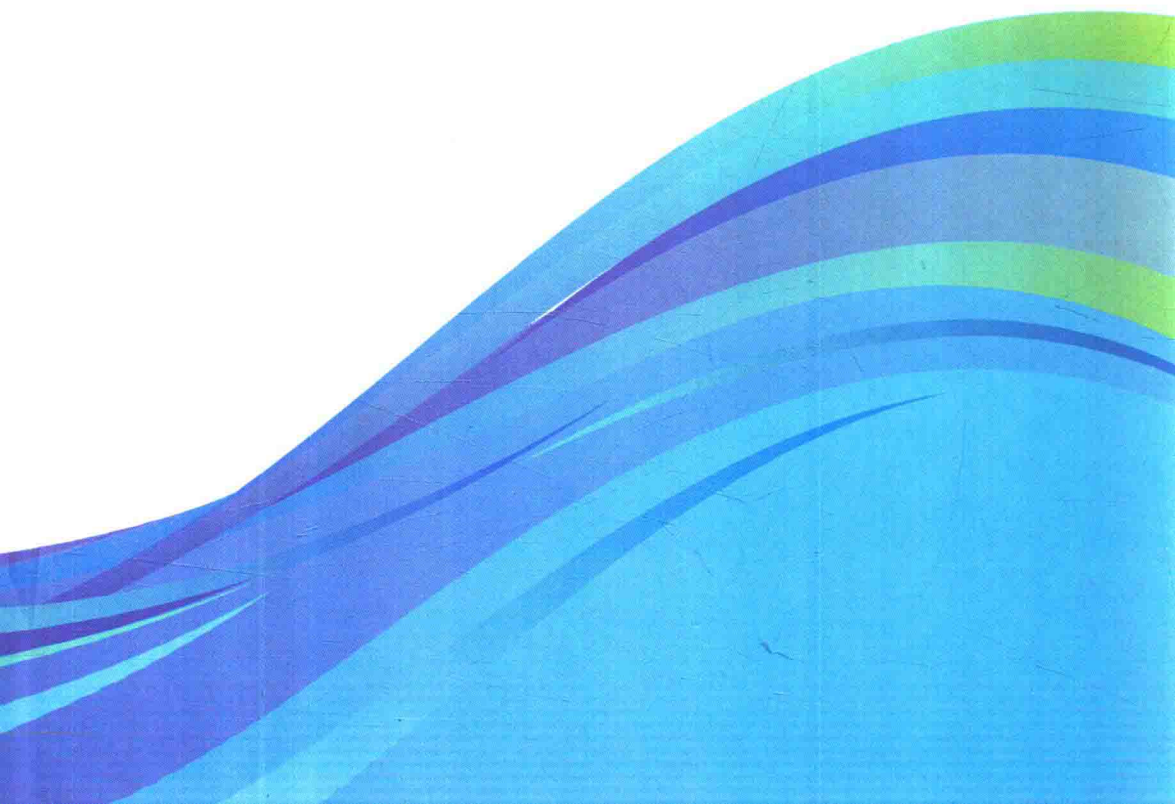


Exploring Muslim Contexts

Contemporary Islamic Law in Indonesia

Sharia and Legal Pluralism

Arskal Salim



CONTEMPORARY ISLAMIC LAW IN INDONESIA

Sharia and Legal Pluralism

ARSKAL SALIM

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To my beloved parents Abdul Muin Salim and Arhamy Dapping

The opinions expressed in this volume are those of the author and do not necessarily reflect those of the Aga Khan University, Institute for the Study of Muslim Civilisations

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CONTEMPORARY ISLAMIC LAW IN INDONESIA

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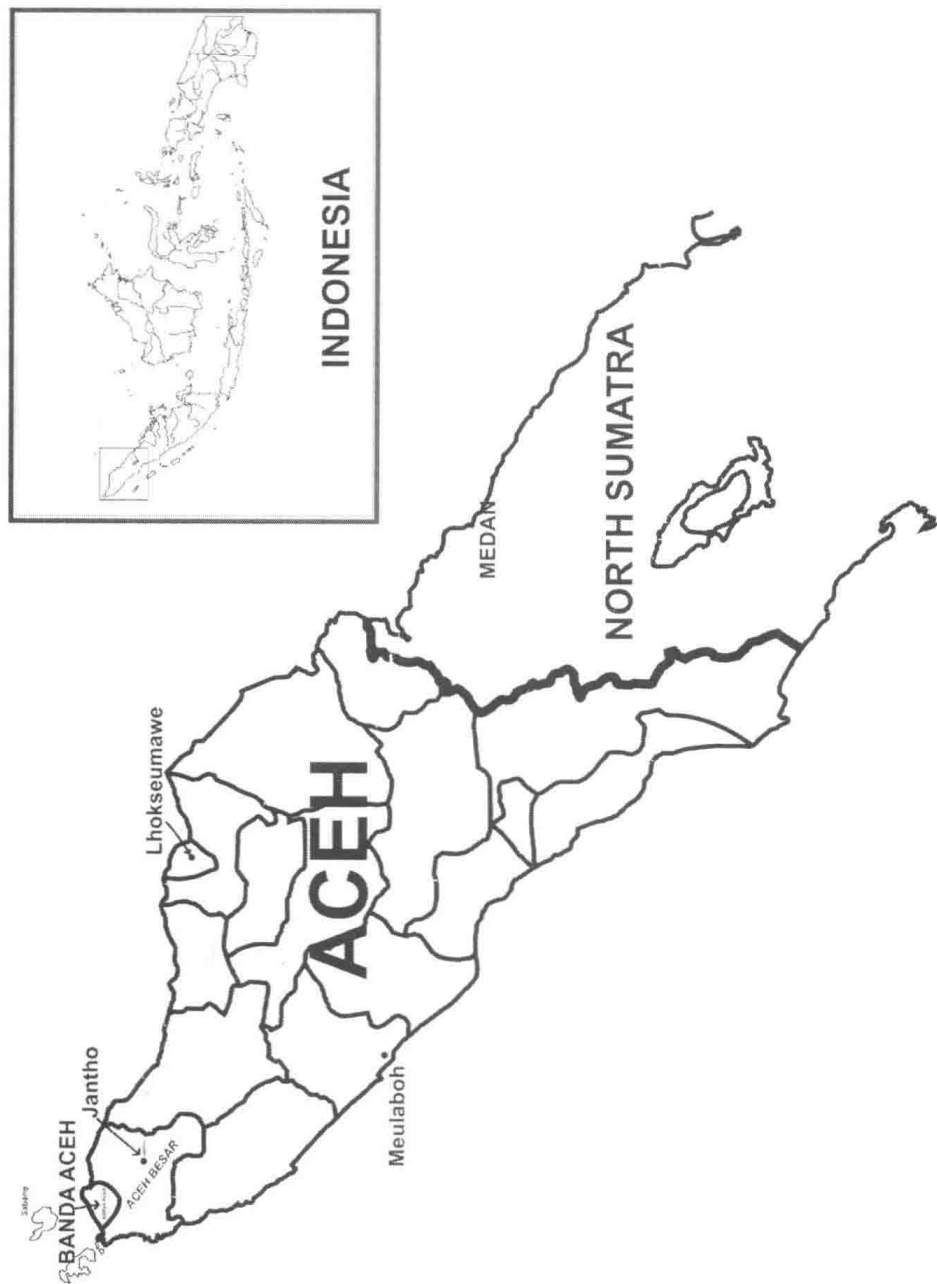
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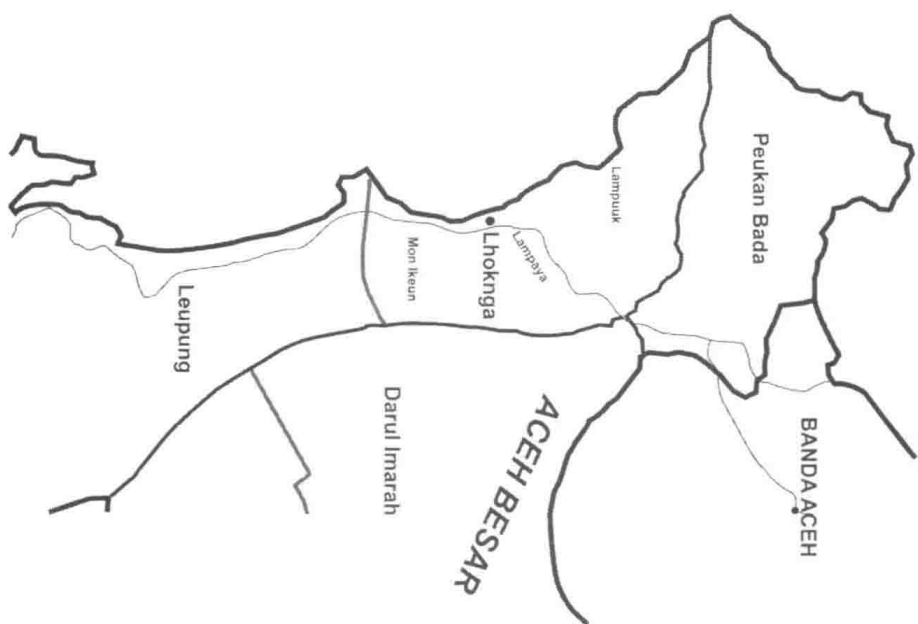
1. An earlier draft of Chapter 2 appeared in the form of an article: 'Dynamic Legal Pluralism in Indonesia: Contested Plural Legal Orders of Contemporary Aceh', *Journal of Legal Pluralism* 61 (2010): 1–30.
2. Some sections in Chapter 5 have been published in: 'Politics, Criminal Justice and Islamisation in Aceh', *Islam, Syari'ah and Governance Background Paper Series* (2009), 3, University of Melbourne, Australia.
3. Several paragraphs in Part One of this book were fragments of an article: 'Shari'a from Below in Aceh (1930s–1960s): Islamic Identity and the Right to Self-determination with Comparative Reference to the Moro Islamic Liberation Front (MILF)', *Indonesia and Malay World* 32 (2004): 80–96.

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Note: In this book specialist non-English terms are italicised at first instance only.



Map 1 Aceh, Indonesia



Map 2 Research sites in Aceh

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Introduction

The tsunami and the recovery effort have rearranged
the lives and political organization of people,
bringing about changes in cultural practices and settlement patterns,
the end of secessionist conflict and a fledging peace process,
as well as allowing new political voices and power-based relationships to
emerge.

Grigorovich (2009: 155)

I went to Aceh, Indonesia, for the first time when I was a PhD student. I was looking at the way in which a programme of Islamisation of the law was being introduced by the government (by incorporating certain aspects of sharia religious law into regional regulations, known locally as *qanun*) and implemented in this province. For many years, travel to this part of Indonesia, which is located at the northern tip of the island of Sumatra, was restricted. Since 1976, Aceh had been an area of prolonged conflict between the Indonesian military and the Aceh independence movement (GAM). While this had begun with heavy armed fighting and killings in several specific districts, from 1999 onwards there was escalation of the conflict and clashes occurred in almost every district, including the capital of the province, Banda Aceh.¹

It was late May 2004 when I first stepped on Aceh's soil. The 'military emergency' status in Aceh had ended just a couple of weeks before and had changed to 'civil emergency'. The Garuda Indonesia airplane that flew me from Jakarta landed at noon, and, along with other passengers, I walked into the terminal building. At the entrance doors of the Blang Bintang airport building, I was

stunned to see so many soldiers standing around with weapons in their hands. They may have just been doing their job, yet, as a native Indonesian originally from a different island (South Sulawesi) and having often travelled to a number of cities in Indonesia without ever encountering this type of situation, I quickly felt that there was something different in and about Aceh and I realised that this province was not comparable to the others. During this first experience of visiting Aceh (for almost a week) I was overwhelmed with anxieties and fears. Five months later, I returned to Aceh during the Ramadan fasting month (October 2004), two months before the Boxing Day tsunami. This time, although I became used to seeing the same scene, I still experienced the same feelings as before.

In June 2005, six months after the devastating earthquake and tsunami disaster, I returned to Aceh. This was not a pre-planned PhD fieldtrip, because all my PhD research fieldwork had been completed in 2004. My PhD supervisor, Professor Tim Lindsey of Melbourne University, encouraged me to visit Aceh once again to investigate the extent to which the post-tsunami conditions had affected the Islamisation of law in the region. It was a coincidence that at the time of my return to Aceh, the punishment by caning of a number of offenders was about to take place. From the beginning of the process of introducing sharia law, the inclusion of the caning penalty into Aceh's regional regulation has sparked debate among lawyers and jurist scholars in Indonesia, and has attracted severe criticism from the wider international community. Despite this, on 25 June 2005, after the Friday prayer, the first implementation of this punishment – the caning of more than twenty offenders (most of whom were charged with violating the qanun on gambling) – eventually took place in the district of Bireun (four hours' drive from the capital of the province). With the assistance of a local youth organisation based in Banda Aceh, I was able to videotape the first 'Islamic' punishment² officially imposed in a territorial part of the secular republic of Indonesia:

LEGAL CHANGES

The swift and dramatic changes in the legal systems of Indonesia in general, and of Aceh in particular, have taken place in less than ten years. In 1999, following the collapse of the authoritarian Suharto regime in May 1998, Aceh was awarded autonomous status, with special privileges in some social, legal and cultural spheres. Two years later, the implementation of sharia in Aceh was officially declared and a distinctive court (*Mahkamah Syar'iyah*) was established to examine offenders against Islamic criminal law. In 2002 and 2003, relevant institutions, rules and punishments were stipulated in regional regulations (known locally as qanun) and passed by the provincial legislature. Although

legislation on Islamic punishments were introduced in 2002, the legislature did not immediately instigate rigorous implementation of sharia in the region. In October 2002, the chairman of the Aceh *ulama* council (MPU) declared that Muslims who violated Islamic rules stipulated in the qanun would be lashed. By early 2004, the *Syar'iyah* Court had sentenced some offenders to the caning penalty. However, up to the time when Aceh was hit by the earthquake and tsunami in December 2004, not a single person had been punished this way. It was only six months after this disaster that the punishment of public caning finally took place.

Was the earthquake and tsunami disaster a crucial factor that made possible and promoted the implementation of the caning penalty? As I have pointed out elsewhere (Salim 2008: 163–4), many people in Aceh considered this calamity a spiritual test or even a punishment from God. In the first months following the disaster, religious sermons delivered on many occasions and at various places centred on this matter. In fact, every evening, at the time of the after-sunset prayer, the *Wilayatul Hisbah* (religious enforcement officers) marched from one mosque to another to echo and spread this message to the participants in the prayer. It was believed that through this disaster, God had communicated with the Acehnese, advising them to stop committing sinful deeds, to reconcile with each other and comply with sharia rules. It was further understood that the tsunami was God's message to the government to enforce sharia in the province in earnest.³

Some people, however, were unconvinced that the tsunami was God's punishment for the Acehnese. To these people, the protracted armed conflicts in Aceh from 1976 onwards, which had caused the deaths of many innocent people, as well as mental and physical wounds, had already been punishment enough. In their view, the large-scale earthquake that led to the disastrous tsunami was merely tectonic activity under the earth, which they regarded as *sunnatullah* (a natural process). For them, this had nothing to do with whether or not sharia was implemented in Aceh. In fact, the argument continued, as Aceh is located in a geologically unstable area, where earthquakes often occur, there is no guarantee that a future tsunami will not hit Aceh even if sharia were applied fully. For them, the disaster is one thing and the implementation of sharia is another, separate thing,⁴ and, in short, the disaster was not an escalating factor for the implementation of sharia in Aceh. Nevertheless, in my view, it would be hasty to say that the disaster had no significance in the various legal and political transformations in Aceh.

Perhaps the most far-reaching change that the disaster brought about in Aceh was the acceleration of the peace process. On 15 August 2005, eight months after the disaster, through the support of the international mediator, the Crisis Management Initiative (led by Martti Ahtisaari, the former president