Women's Rights Activists and the Drafting Process of the Islamic Criminal Law Code (*Qanun Jinayat*)

Kristina Großmann

The contested process of drafting a comprehensive code of Islamic Criminal Law (*Qanun Jinayat*) has played a prominent role in the project of Shari'a social engineering, as well as Aceh's political, socio-cultural and legal transformation more broadly (Feener 2013, see also Jauhola 2013).¹ Between 2005 and 2008, a broad alliance of activists, state actors, academics, and religious scholars promoted a just and future-oriented vision of Islamic law, to be implemented under the framework of Special Autonomy in post-tsunami/post-conflict Aceh. One part of this group was comprised of local Muslim women's rights activists, who demanded a just and 'gender-sensitive' Islamic Criminal Law and the full equity of women and men in the public and private spheres. Their demands were based on female Islamic scholars' new exegeses of the Qur'an and hadith.² They were able to exert influence within the ongoing negotiations of the drafting process of Islamic legislation in Aceh by participating in amendment groups and expert meetings aimed at drafting the *Qanun Jinayat*. Some of their demands, such as the inclusion of language mandating adherence to international conventions concerning human and women's rights, as well as provisions dealing with sexual harassment and rape, were successfully accommodated during the early stages of the drafting process. However, this process experienced a set-back on 14 September 2009, when the Acehese provincial parliament (DPRA) passed a version of the *Qanun Jinayat* bill that side-lined the inclusion of many of the aforementioned demands by women's rights activists, and added new provisions reflecting Islamist interests, including the criminalization of homosexuality and a penalty of death by stoning (*rajam*) for convicted adulterers.

-
- 1 I wish to thank Michael Feener, David Kloos and Annemarie Samuels for their helpful comments and sustained support on earlier drafts of this chapter. Additionally I am grateful to Antje Missbach, Gunnar Stange, Roman Patock and Susanne Schröter, who provided me with valuable information and constructive comments on the topic.
 - 2 Although some male activists work on issues of women's rights, I focus on female activists since they are the most prominent people working on those issues in Aceh.

This chapter discusses the experiences of women's rights activists with drafting the *Qanun Jinayat*, with a focus on the aims, strategies, modes of participation, successes, frustrations, and failures of women's rights activists in the process. In particular, it will follow the experience of Khairani Arifin, one of the key people representing civil society actors concerned with issues of women's and human rights in the state implementation of Islamic law in Aceh. In doing so, I will use the term 'scopes of acting' rather than a concept of agency here, as the latter is heavily loaded by decades of discussions focusing on the power and 'resistance' of marginalized persons or groups. The concept of agency has been criticized for its western-centric view of actors as individualistic, intentional agents, and is not necessarily applicable in other cultural contexts (Comaroff and Comaroff 1992, 36; Mahmood 2005). It has also received criticism for providing romanticized and cultural relativistic descriptions of female subjectivities and realms of power within social and religious practice, for its lack of contextualization and its promotion of explicitly feminist agendas (Bangstad 2011, 18). Intending to avoid these connotations, I use the term 'scopes of acting,' more as an analytic tool than as a concept of resistance or individual power. In this sense, I define 'scopes of acting' by referring to Ahearn's definition of agency as the culturally mediated capacity to act (Ahearn 2001, 112), and I include realms of politics, history and the understanding of the multifocality of power.³

The drafting process of the *Qanun Jinayat* has a long and complex history, which began in 2003, soon after the implementation of provincial Shari'a legislation, or *qanun*, in the framework of Aceh's contemporary Islamic legal system (see Feener, this volume). To mark the significant points of this process, I will concentrate on the three versions drafted from 2006 onwards: A) the first draft *Qanun Jinayat* (2007), B) the redrafted (*Rancangan*) *Qanun Jinayat* (2008) and C) the *Qanun Jinayat* (2009). I will analyse the last draft in greater detail, contextualizing and thickly describing the passing of this particular formulation of the bill by the provincial parliament DPRA.⁴ By concentrating on the scopes of acting of female Muslim women's rights activists, I point out a remarkable but scarcely researched phenomenon: the participation of women, who are neither part of the state apparatus nor of the religious elite, in the drafting process of Islamic legislation. Through this empirical approach, I seek to complement

3 For an extended discussion of the concept 'scopes of acting' as extension of agency, see Großmann (2013).

4 The research results presented in this chapter are based on three periods of fieldwork, carried out in 2009, 2010, and 2011, with a duration of eleven months in total, in Banda Aceh and Lhokseumawe (North Aceh).

studies of Islamic law in contemporary Aceh by showing that the implementation of Shari'a has not only been shaped by state actors but also by non-state actors, both women and men alike.

Controversies over the Implementation of Islamic Law

Discussions of why Islamic law has come to be implemented in contemporary Aceh comprise at least four tightly interwoven lines of argument. The first is found in the history of Islam in Aceh.⁵ This is closely linked to the second argument, namely the centrality of Islam, and the importance attached to Islamic law, in the construction of an Acehnese ethnic identity.⁶ The third argument stems from the hope to end the secessionist conflict and restore trust in the central government.⁷ Finally, there was the intention of social transformation through Islamic law, which has taken on new dimensions after the catastrophe of the tsunami (Feener 2013).

The implementation of Islamic law in contemporary Aceh was connected to the hope that it would facilitate broader goals of peace, reconstruction and reconciliation. This hope was strengthened by the suggestion that Indonesia's national legal system had rarely delivered justice for the Acehnese. However, the initial expectation of Shari'a as a panacea, which would eliminate political, economic and social problems and produce an egalitarian society, was soon

-
- 5 Supporters of this argument point to the historical existence of institutions associated with the implementation of Islamic law under the pre-modern sultanate, such as the office of *qadi* (Husein 2008; Ismail 2008; Lindsey et al. 2007).
 - 6 Because of its long history as a Muslim sultanate, a population renowned for its piety and the important social and political role of *ulama*, many Acehnese claim to possess a distinctive Islamic identity, which is tightly connected to the implementation of the state Shari'a (Salim 2004). Therefore, supporters of the introduction of Islamic criminal law justify its re-implementation as something that Aceh had always sought and fought for. Critically examining the notion of a homogeneous, resilient and self-conscious Acehnese identity, Edward Aspinall points out that the complex process of building "the" Acehnese distinctive identity, which includes Islam as a the main point of reference, was a product of the colonial encounter (Aspinall 2009).
 - 7 Although the decision to grant autonomy to Aceh in 1999, including provisions for the state implementation of Shari'a, was driven by the aim to support a political solution to the Aceh conflict, it did not actually lead to the end of the armed conflict. See Miller (2009) for further information about the widespread implications of the legislation on decentralization and special autonomy for conflict resolution (cf. Feener, this volume; Miller and Feener 2010).

tempered.⁸ Furthermore, the state implementation of Islamic law seems to have given rise to its own issues of justice and equity. Public canings have been conducted in Aceh since 2005. On 10 June 2005, the governor issued a decree that delineates the process and method of caning. The first caning was executed on 24 June 2005 in Bireuen. Eighteen persons were sentenced for violating the prohibition on gambling and were lashed in public between four and eight times. My own gender-specific examination of executions of canings between the years 2005 and 2011 show that men were caned more often and received more lashes than women, because in most cases this kind of punishment is handed out after violations of the laws on gambling and alcohol consumption, which are committed mostly by men (Großmann 2013, 108 ff.).

During the first caning mentioned above, opening addresses were delivered by the president of the Supreme Court of Indonesia (Mahkamah Agung Republik Indonesia; read by the president of the provincial Islamic court, Mahkamah Syariah), by the highest attorney in Indonesia (Kepala Kejaksaan Agung Republik Indonesia; read by the highest attorney in Aceh), and by the national chief of police (Kepala Kepolisian Republik Indonesia; read by the provincial chief of police). All speeches emphasized the important symbolic effect of caning (Abubakar 2007, 1). Until now, canings have been carried out publicly in front of mosques, mostly after the Friday prayer, where onlookers can take pictures and videos that are frequently published online.

Although the success of the attempt at creating a new legal order and restoring the confidence in the legal system has been less than impressive, the state implementation of Islamic law has a significant impact on some aspects of social life, including the activities of women in urban public spaces (Feener, this volume). In 2009, the WH (Wilayatul Hisbah, 'Shari'a Police') reported 2689 cases regarding breaches of the Islamic dress requirements that are stipulated in Qanun No. 11/2002 (Human Rights Watch 2010, 22). In this category, the overwhelming majority of the cases concerned women.⁹ Methods to enforce the Islamic dress code include public shaming and large-scale raids (*razia*) that target mostly young Muslim women riding motorbikes on the street. During some of these raids, hundreds of women were stopped, instructed about the right way to dress modestly, and required to present identification and to have their personal information recorded by WH officers.¹⁰ Beyond these provincial laws

8 For more information about the Shari'a as a 'panacea,' see Husein (2008, 4).

9 Interview with Effendi, Head of the WH, Banda Aceh, 18 February 2010.

10 Human Rights Watch (2010, 53) and personal interviews with women who were checked in controls in Banda Aceh, March 2009 and February 2012.

that disproportionately impact the lives of women, there are also some district-level Shari'a by-laws such as the prohibition for women to wear trousers and other tight clothing implemented in 2009 by the Head of the West Aceh district, Ramli Mansur. He authorized the WH to stop women wearing trousers, confiscate 'inappropriate dress' immediately, and hand out skirts to wear instead. For this purpose, the district government allegedly ordered 20,000 skirts (Kurniawati 2010).

Most women I spoke to during my stay in Aceh neither wore an Islamic headscarf (*jilbab*) nor followed modest clothing before the implementation of the new requirements for 'modest Muslim dress' as set forth in Aceh's Shari'a legislation.¹¹ One female school teacher told me that she dressed with knee-length skirts and short-sleeved blouses while teaching and never wore a *jilbab*. Other women told me about their meetings at the public beaches in North Aceh, where they wore bathing suits and sometimes bikinis. If women—prior to the official requirements for 'modest Muslim dress'—decided to wear the *jilbab*, it was to express their piety. However, meanings ascribed to the headscarf as an expression of personal religiosity changed with the compulsion to wear an Islamic headscarf in public spaces. Thus, among some groups and individuals the headscarf has become a more contested symbol.

Yet, the control of female Islamic dress did not start with the introduction of the legal foundation of Islamic dress requirements that are stipulated in Qanun No. 11/2002 and the attempts by the WH to enforce it. Even before the state Islamic legal system was established, vigilante groups were taking unofficial measures to impose more stringent conceptions of Shari'a morality. In April 1999, violent attacks occurred against women, who, in the eyes of the attackers, were not dressed according to Islamic dress requirements. Within so-called large-scale 'headscarf raids' (*razia jilbab*), groups of men forced women to dress according to their understanding of an Islamic dress code, even though there was no legal obligation to wear 'Islamic dress.' Women were stopped on the streets and in some cases physically attacked, after which they got their—allegedly too tight—trousers cut or their heads shaven in case they were

11 Here I refer not only to women's rights activists, but also to women whom I spoke to during the 11 months of my fieldwork. During my stay in Aceh, I lived with three local families of activists, joined women's rights activists in their daily work (for example in seminars, meetings and public events), and conducted participant observation in several workshops, trainings and discussions, as well as internal meetings of civil society organizations. When I refer to 'women' here, I therefore mean activists, members of their families, friends, participants of seminars, workshops and trainings and women I met during public events.

not wearing a headscarf.¹² Much speculation took place about the identity of the attackers. The activist Cut Nurdin, who interviewed several victims of the 1999 *razia jilbab*, told me that some perpetrators had said that they belonged to the Free Aceh Movement (GAM), while some others said they belonged to Islamic groups. Rumour had it that the perpetrators were disguised members of the Indonesian military who claimed to be GAM, in order to defame the separatists and to destabilize the situation, thus justifying military interventions.¹³ The important point here is not so much the identity of the group members, but the fact that within the *razia jilbab* men could—with the tacit acquiescence of significant segments of society—attack women who did not dress according to their expressed understanding of Islamic dress code. Cut Nurdin stated in her interview with me, that the *razia jilbab* was the beginning of forced veiling for women by men in Acehnese history, which has also been pointed out by Jacqueline Siapno (2002, 37). After the implementation of the legal foundation for the WH in 2002, the latter not only conducted official ‘raids’ (*razia*), but at times even turned a blind eye toward vigilantism.¹⁴

Most women I spoke with explained that the *jilbab* had ceased to be a voluntary expression of personal piety, and had instead for them become a symbol of male dominance and patriarchal state power. The understandings and perceptions of Islam have changed insofar that modes and contents of religious beliefs and Islamic conduct, and therefore also standards of ‘modest Muslim dress’ and Islamic head-covering for women, are no longer viewed primarily as a private affair, but have been politicized. Moreover, women have been instrumentalized in the pursuit of the interests of politicians, military and religious authorities. This is comparable with the processes of technocratic religious reform in neighbouring Malaysia, to which resistance is constrained by a range of factors (Feener, this volume; Peletz 2002, 232 ff.). It could thus be argued that the obligation of the Islamic dress code, especially the compulsion to wear a *jilbab* for women, which is rigidly enforced through state sanctions and through pressures from local communities and family members, increases the vulnerability of women and limits their mobility as well as their self-confidence in public spaces.

12 See, e.g., “Razia Jilbab: Sejumlah Wanita Dipangkas,” *Serambi Indonesia*, 18 September 1999; “Hentikan Kekerasan dalam Razia Jilbab,” *Serambi Indonesia*, 5 May 1999; “Tentara Liar Merazia Wanita di Aceh Utara,” *Harian Suara Bangsa*, 29 April 1999; Cf. Bowen (2003, 232); and Siapno (2002, 36 ff.).

13 Cut Nurdin, personal interview, 24 February 2009, Banda Aceh.

14 In other cases, however, the WH actually took action to take people beaten by village vigilantes into protective custody. See Otto and Otto (this volume).

Against the background of restrictions on women's public dress and comportment, there is a small number of Muslim women who almost never wear the *jilbab* in Aceh. They circumvent the obligation to veil in as many situations as possible. However, in their handbags they always carry a *jilbab* that they can put around their neck or over their head when necessary, for instance when controls of the WH occur, people on the street make comments, or when the risk of their behaviour being judged negatively is too high. To justify the transgression of requirements for women to wear the headscarf, some have developed situation-specific applicable lines of argument. To mention a few examples, external influences such as the weather, or the presence of Western people are sometimes successful justifications of non-compliance. The persuasiveness of their arguments and, accordingly, the self-confidence and the courage of women play an important role.

A number of recent studies have emphasized aspects of empowerment and signification in processes of identity-formation of women who wear Islamic dress.¹⁵ These works complement examinations in which the *jilbab* is presented primarily as a symbol of male dominance.¹⁶ The development of formal legislation and measures for the state enforcement of standards for modest Muslim dress have significantly changed local understandings of the *jilbab* and its public symbolism in Aceh. Since 1999, some women have come to feel compelled to wear a headscarf in Aceh because they experienced physical or verbal abuse for not doing so. Even those who have not experienced any repressive measures directly now feel exposed without a headscarf in public and therefore vulnerable.

Compared to earlier periods, when it was mostly women themselves who decided the timing and form of donning the *jilbab*, the power of definition of Islamic dress has changed to their disadvantage. Since 1999, state institutions have increasingly defined and in some cases violently enforced the format of the Islamic dress code for individual Muslim women. Moreover, with the implementation of the legal basis for Islamic dress requirements that are stipulated in Qanun No. 11/2002, state employees are authorized to define and control the dress of women in public and therefore the female body. Groups that were already marginalized in the public sphere, such as women, the poor, as well

15 For information about veiling in Indonesia as a symbol of Islamic modernity, national resistance and identity-building, see, e.g., Brenner (1996); Lindquist (2004); Parker (2007; 2008); Smith-Hefner (2007).

16 See, e.g., Chandranigum (2007); Feillard (1999); Kamaruzzaman (2004, 2005); Munir (2004); Nordin (2002) for critiques of the inclining discrimination and constraints of women in public spaces as justified by Islam.

as people who did not comply with popular understandings of Shari'a morality, such as artists and musicians, have also become targets of vigilante justice (Idria, this volume; Jauhola 2013).¹⁷ Therefore, the seemingly positive peace and democratization processes in Aceh have also been accompanied by considerable restrictions on women and members of other marginalized groups in public spaces. Similar developments have also been observed in the democratization processes of other Muslim-majority countries, as noted by Claudia Derichs (2008).

The use of force, both by the state and by vigilantes, has sparked criticism of Aceh's state Shari'a project from various sectors.¹⁸ International, national, and local human and women's rights activists have criticized the way in which the implementation of Islamic law has resulted in the creation of multiple injustices by ignoring women's concerns and promoting male-dominated policies.¹⁹ However, attempts to critically discuss topics that are related to Shari'a potentially result in dangerous accusations of heresy, defamation and exclusion. Thus, most Acehnese human and women's rights activists do not articulate demands for the abolishment of Islamic law in Aceh. In fact, most are convinced that, if Shari'a were to be implemented properly, in ways that emphasized justice, welfare and gender-sensitivity, it would actually improve Aceh's economic, political, and socio-cultural conditions (see also Afrianty, this volume).

17 Cf. Nur Ichwan (2007, 208 ff.); Salim (2003, 224 ff.; 2009, 5 ff.) for further information on the problematic state implementation of Shari'a laws in Indonesia.

18 The disappointment with the implementation of Islamic law also becomes clear from the results of the SMS polling with almost 800 participants on the implementation of Islamic law in Aceh, which was conducted by the Acehnese civil society organization Yayasan Insan Cita Madani (YICM) in 2007. Results of the poll showed that only 36% replied that they know and understand enough regarding the conceptualization of the Shari'a. 81% stated that the Shari'a does not meet their needs and hopes, and 82% pointed out that in their view governmental performance has not improved after the state implementation of Islamic law. Since 2004, YICM has focused its activity on issues of state Shari'a in Acehnese society. Efforts involved inviting all members of the community to take part in focus group discussions, workshops and training sessions on issues that affect their communities (Interview with a program manager of YICM, 18 December 2008, Banda Aceh).

19 Cf. Crisis Management Initiative (2006); Gender Working Group (2007); Kamaruzzaman (2004; 2008, 143); Komnas Perempuan (2005; 2007, 30 ff.); Munir (2004); Nordin (2002).

Women's Rights Activists in the Drafting Process of Islamic Criminal Law

Legal anthropologists understand law as a textual, institutional, and discursive product.²⁰ Legal codes are not treated simply as written documents but as “performances of values and authority,” created in a particular time and place and aimed at specific audiences (Hussin 2007, 789). Indonesia is known for its range of interpretations of Islamic law existing within the broader framework of the nation-state (Feener and Cammack 2007). In the study of Indonesia's post-New Order era as well as Aceh's transformation process, the concept of ‘dynamic legal pluralism’ is becoming increasingly popular.²¹ This concept helps to clarify the constant reconstruction and hybridization processes in which different actors negotiate the terms of Islamic law.²²

The expert groups involved in the drafting process in Aceh, although dominated by male religious scholars, are open to Muslim women's rights activists in certain circumstances. Pieterella van Doorn-Harder has described a similar phenomenon, concerning the engagement of female scholars, teachers or activists in reinterpretations of *fiqh* texts on modern women's issues, amongst circles connected to the Nahdlatul Ulama (NU) and the Muhammadiyah, the two largest Islamic organizations in Indonesia (van Doorn-Harder 2006; 2007). She points out that in Indonesia “the reinterpretation of the Qur'an and the body of jurisprudence (*fiqh*) concerning certain topics is not limited [...] to an elite group of male scholars” (van Doorn-Harder 2007, 27). Michael Feener has also described the increasing involvement of women's rights activists with a NU or Muhammadiyah background in the development of gender justice agendas in Indonesian society (Feener 2007, 184 ff.).

In the Acehnese context of drafting Islamic Criminal Law, one of these actors is the women's rights activist Khairani Arifin.²³ She was general secretary of the civil society organization Relawan Perempuan untuk Kemanusiaan (Women

20 Franz and Keebet von Benda-Beckmann (2006, 13) argue that law is a “generic term that comprises a variety of social phenomena [...] at different levels of social organisation.”

21 For a more detailed examination of legal pluralism, see von Benda-Beckmann (2006, 14 ff.).

22 See Arskal Salim (2007) for a deeper analysis of the process of dynamic legal pluralism concerning the position and influence of Aceh's Shari'a Courts.

23 The following information regarding Khairani Arifin is based on personal interviews with her on 19 May 2011, 3 November 2010, and 14 December 2009 in Banda Aceh and the unpublished report by Khairani Arifin (n.d.) *Hasil Penelitian: Perspektif Kesetaraan dan Keadilan Qanun Kompilasi Hukum Jinayah*.

Volunteers for Humanity/RPuK) from 2001 until 2009. Khairani Arifin graduated with a master's degree in Islamic law from Syiah Kuala University in Banda Aceh and currently holds a position as a lecturer there. Although her academic degree forms the basis of her knowledge in jurisprudence, it is neither the crucial factor for her expertise on topics about women and Islam, nor a justification for her participation in legal drafting. She gained the technical knowledge that justified her participation in these discussions mainly through seminars and discussions with Acehese religious scholars. Acehese women's rights activists started to work on Islamic legal issues after an increase in violent assaults on women, ostensibly justified by the Shari'a, from 1999 onwards.²⁴

Women's rights activists participated in seminars in which they were trained in topics concerning gender, Islam and legal issues that were mostly financed by national and Western donors. The Fahmina Institute in Cirebon or the International Women's Rights Action Watch Asia Pacific in Kuala Lumpur are prominent places in which women's rights activists are trained in topics concerning women, Islam and the implementation of CEDAW (Convention on the Elimination of All Forms of Discrimination against Women). In addition, women's rights activists organized seminars in Aceh and were strategic in their choice of speakers to invite. As Suraiya Kamaruzzaman, co-founder of the NGO Flower Aceh, describes:

First we invited female activists of other NGOs; then we invited male activists from other NGOs; in a next step we invited female religious scholars and then we were ready to invite male ulama to have discussions with them.²⁵

In that way, women's rights activists in Aceh achieved several objectives. They further educated themselves, autodidactically, in the fields of Qur'anic exegesis and *ijtihad* (independent legal reasoning). More importantly, the seminars provided a protected space in which both activists and Islamic scholars (ulama) could temporarily bracket some of their mutual prejudices and engage in substantial dialogue. Step by step, activists overcame their lack of self-confidence

24 For more information about the increase of discrimination and violence against women that is justified with reference to the Shari'a, see Duguay (2008); Gender Working Group (2007); Human Rights Watch (2010); Kamaruzzaman (2004); Komnas Perempuan (2007); and UNIFEM (2008).

25 Suraiya Kamaruzzaman, personal interview, 19 May 2011, Banda Aceh. For more on Flower Aceh, see Afrianty (this volume).

and started to have critical discussions with male ulama. Moreover activists enhanced their recognition as actors in the drafting process of Islamic legislation in Aceh amongst ulamas, enabling potential further cooperation. Additionally, the ulama who were invited in their seminars opened up possibilities for exclusive meetings with other religious scholars. Once activists gained access to these spaces, the reception of their arguments was positive. As Suraiya Kamaruzzaman points out: "The problem is not that ulama are not willing to listen to our arguments, but that we have few opportunities to speak with them."²⁶

Khairani Arifin's main overarching aim in the implementation of Islamic law is to improve justice and to contribute to the solution of Aceh's complex social and political problems. She and her colleagues argue that the Islamic legal system should in this sense be 'gender-sensitive' and future-oriented, include human as well as women's rights, guarantee equality before the law, and represent the interests of all citizens. The ideas and strategies formulated by these Acehnese activists show similarities to the approach of so-called 'Islamic feminists,' who aim to enhance the social status of women by reinterpreting parts of the Qur'an and the hadiths in a 'gender-sensitive' way.

Proponents of this transnational theological and political project, including members of the Malaysian based organization Sisters in Islam, fight for democracy, women's rights and tolerance in the Muslim world by advancing a holistic, historically embedded, and 'gender-sensitive' exegesis of the Qur'an (Schröter 2010). Acehnese activists appropriate aims and strategies of these global discourses on Islamic feminism through processes of translating, transferring or modifying non-local norms, values or laws in local contexts. One reason for the need for appropriation is the urge to explicitly dissociate themselves from Western paradigms, in order not to be branded as heretical or perceived as tools of 'Christian' or 'Western' interests financed from abroad. Such insults and allegations against women's rights activists being *kafir* (infidels) have sometimes provoked defensiveness and exclusion, as I will describe in the section below about the passing of *Qanun Jinayat* in 2009.

Most activists I spoke with are also very much aware of possible problems that may arise if they focus too much on international discourses about gender and Islam, instead of the needs of local women at the grassroots level. Issues that are important for members of international women's movements might not necessarily be the same as those of ordinary women in Aceh. Problems with representation can thus emerge, and they could face challenges

26 Suraiya Kamaruzzaman, personal interview, 19 May 2011, Banda Aceh.

with implementing their agendas due to the lack of support from local communities.²⁷

Cooperation between Women's Rights Activists and the State Shari'a Agency

One crucial factor of Khairani Arifin's participation in the drafting process of Islamic legislation was the personal contact and cooperation with Alyasa Abubakar, the founding director of the State Shari'a Agency (Dinas Syariat Islam/DSI).²⁸ Since the beginning of 2000, he has been one of the leading academics at the State Institute of Islamic Studies (IAIN, presently UIN) Ar-Raniry, Banda Aceh, in the field of advocacy for and consultation about the formalization of Islamic law. In 2002 he assumed control of the newly established State Shari'a Agency and became, by virtue of his position, responsible for and personally committed to the (re)drafting of the three contested pieces of Islamic legislation (*qanun*) Nos. 12, 13, 14/2003 into one unified Shari'a criminal code, which was to be referred to as the '*Qanun Jinayat*'.²⁹ Khairani Arifin's and Alyasa Abubakar's conception of the aim and normative framework of Aceh's state Shari'a system is similar to the extent that both of them seek to make Aceh a more just society and to improve its social and political system. Despite these

-
- 27 The importance of the local dimension in the work of Muslim women's and human rights activists, particularly in developing awareness of global discourses and agendas into the culture of local Islamic schools (*pesantren*) is emphasized by Michael Feener (2007, 186 ff.). Pieternella van Doorn-Harder (2006, 35) describes the aim of Muslim scholars and activists as "to translate feminist thinking into an Indonesian model acceptable to mainstream Muslim believers" within their effort to fuse their early grassroots work with academic thinking about women and Islam from the Middle East, Pakistan, India and Malaysia.
- 28 Alyasa Abubakar was born in Takengon, and studied Islamic law at Al-Azhar University in Egypt. He has published extensively on Islamic law and inheritance law. For more on his role in Aceh's state Shari'a system, see Feener (2013, 205 *et passim*).
- 29 On 15 July 2003, the governor signed, after their passing through the DPRA, Qanun No. 12/2003, which deals with the consumption and sale of alcoholic beverages (*minuman khamar dan sejenisnnya*), Qanun No. 13/2003, which deals with gambling (*maisir or perjudian*) and Qanun No. 14/2003, which deals with the illicit relationships and interactions between unmarried men and women (*khalwat or mesum*) (Feener, this volume). The punishment of infringing these laws ranges from three to forty strokes of the cane (*uqubat cambuk*) in public, imprisonment or fines, depending on the nature of the crime, but also on the interpretation of the law enforcers.

convergences on the normative level, their demands concerning the practical implementation of Islamic law differ widely. In particular, they promote different definitions of offences and punishments, as I will discuss in more detail below.

However, on the basis of their shared interest in developing a just and future-oriented Islamic legal system, Khairani Arifin and Alyasa Abubakar established a practical working relationship. Toward this end, state Shari'a officials and Muslim women's rights activists discussed the role and status of women in Islam and in Acehese society, including specific considerations of issues such as sexual harassment, rape and child protection under Islamic law. Activists emphasized the openness of Alyasa Abubakar in listening to their comments and criticism of B) the redrafted *Rancangan Qanun Jinayat* in 2008. In their personal meetings, he openly supported aspects of gender equality. On the other hand, he did not proactively argue in favour of their aims, particularly when he imagined that they might be controversial. Alyasa Abubakar tried to keep the balance between the interests of human and women's rights activists on the one hand and conservative ulama of rural *dayah* on the other. In fact, however, he never publicly disagreed or argued with Islamic religious authorities that took a different stance.³⁰

As mentioned earlier, the implementation of the state Shari'a in Aceh has been controversial since its inception. The content of Qanun Nos. 12, 13, and 14/2003 on gambling, alcohol and illicit relations between the sexes (*khalwat*) was publicly contested before the tsunami occurred and revisions have been proposed several times since. It was in this context that Khairani Arifin and Alyasa Abubakar, in cooperation with the members of several human and women's rights networks,³¹ initiated a number of seminars and workshops to formulate recommendations concerning the redrafting. At this point, the three *qanun* mentioned above were still separate by-laws.

30 The way in which disputes are avoided can also be illustrated by the answer of the former MPU (Ulama Council) chairman Muslim Ibrahim to the question of the former director of the women's rights organization Balai Syura, on whether he would submit a request to the MPU to pass a fatwa concerning the legitimacy of women to take leading positions. He explained to her that he could not directly ask the members of the MPU because this would immediately cause them to be defensive. His opinion was that Balai Syura should release an article in a daily newspaper concerning that issue, so that he would have an opportunity to suggest a discussion on that topic (Activists, FGD, 22 March 2011, Banda Aceh).

31 For example JPuK (Jaringan Perempuan untuk Kebijakan) or JMSPS (Jaringan Masyarakat Sipil Peduli Syariah), which is formed by 16 local civil society organizations.

By 2005, momentum had been built for a thorough revision of these three *qanun*. At that time, activists, intellectuals, academics, religious scholars, official representatives of state Islamic institutions, and politicians published comments and suggested amendments to reword, systematize, and consolidate the three *qanun*. The fragile political and socio-cultural situation after the tsunami, the end of the secessionist war, and the enactment of the Law on the Governing of Aceh (LoGA) in 2006 induced the formulation of a broad spectrum of demands. These ranged from critiques of an overly rigid implementation of Islamic law (for example, that the canings violate national laws and international conventions), to calls for the strengthening and expanding of the state Shari'a system, by introducing more severe physical punishments, including amputation.

Personal Contacts: Access to the First Draft *Qanun Jinayat* (2007)

In May 2007, then Governor Irwandi Yusuf ordered the State Shari'a Agency to draft a unified Islamic Criminal Law Code (*Qanun Jinayat*) that should replace the three existing separate *qanun* on gambling, alcohol, and *khalwat*. Each of the three *qanun* consists of two parts: one in which the criminal offence is defined and another, often repetitive, part that goes into the specifics of the criminal procedure in greater detail (*Qanun Hukum Acara Jinayat*). Alyasa Abubakar pointed out that the main reason for the syntheses was to avoid repetition in the descriptive parts of the procedures (Abubakar 2007, 3 ff.).

Irwandi Yusuf then formed an expert committee (Tim Perumus Qanun), which was composed mostly of professors and lecturers from the IAIN in Banda Aceh and members of the Council of Ulama (Majelis Permusyawaratan Ulama, MPU), to prepare the A) first draft *Qanun Jinayat* (2007). The State Shari'a Agency handed the draft to the provincial Bureau of Legal Affairs (Biro Hukum).³² Women's rights activists Samsidar³³ and Khairani Arifin had a good relationship with the former head of the Biro Hukum, Hamid Zein, through whom they got access to the draft. When they read it, they were shocked. It was obviously prepared in a hurry, for many paragraphs showed internal inconsis-

32 The Biro Hukum, established in 2007, is a provincial office that deals with litigations and legal disputes. The office is also responsible for preparing, reviewing and rewording the *qanun* for submission to the parliament.

33 Samsidar was special rapporteur for Aceh of the national organization Komnas Perempuan in 2006.

tencies and were not in compliance with national laws and international conventions. For example, the draft stated that caning children was legitimate. Samsidar asked Hamid Zein to amend the A) first draft *Qanun Jinayat* (2007) again. In reaction to his answer that the Biro Hukum had no financial resources left for any redrafting, Samsidar acquired funds from the international organization UNIFEM to employ the Acehese human rights organization Yayasan Insan Cita Madani (YICM), and its director Roy Valefi, to initiate a further process of reviewing the A) first draft *Qanun Jinayat* (2007).³⁴ "This organization was brave enough to critically examine the implementation of Shari'a and to discuss it with members of the MPU," Samsidar stated.³⁵

The Redrafted *Rancangan Qanun Jinayat*: Participation in the Amendment Group and Expert Meetings

The participation of civil society organizations in the drafting process of *qanun* is legally mandatory according to the procedural law 3/2007.³⁶ To critically review the A) first draft *Qanun Jinayat* (2007) and to ensure the accommodation of the concerns of human and women's rights activists, a 'revision team' (*Tim Revisi*) was assembled. This team was formed through consultation between Governor Irwandi Yusuf, Biro Hukum, and the Acehese rights organization YICM. This group included leading IAIN academics, such as Prof. Dr. Alyasa Abubakar and Prof. Dr. Syahrizal Abbas, the head of the MPU, Prof. Dr. Muslim Ibrahim and the Islamic scholar and human rights activist Teungku Danial,³⁷ as well as women's rights activists Ria Fitri and Khairani Arifin. On the one hand, the activists criticized the composition of the group, because women comprised only 33 per cent of representatives, thus not in proportion to their share of the general population. On the other hand, Khairani Arifin stated that in practice the numerical under-representation of women was com-

34 Samsidar, personal interview, 12 March 2009, Banda Aceh.

35 Samsidar, personal interview, 12 February 2011, Banda Aceh.

36 This law states that, within the drafting process of every *qanun* public participation (*ruang partisipasi publik*) has to be assured. Civil society organizations have the right to give oral and written recommendations through seminars, focus group discussions and public hearings. The contents of these statements have to be included in the substance of the draft-*qanun* or at least be recognized by the legislative or executive within seven days.

37 At the time of writing Teungku Danial was lecturer at the Malikussaleh University in Lhokseumawe and involved in the progressive Islamic organization Rabitah Taliban.

pensated by their frequent presence at meetings.³⁸ Nonetheless, the activists who participated had little specific expertise in Islamic theology or knowledge of *fiqh*, and this made it difficult for them, certainly at the beginning, to engage in substantial discussions.³⁹ However, the members of the group were very committed, and Khairani Arifin and Alyasa Abubakar in particular worked closely together and published several texts in which they formulated their critiques concerning the current implementation of the Shari'a, suggesting a just and future-oriented Islamic Criminal Law and proposing amendments.

At the same time and in addition to the discussions of the 'revision team,' three so-called 'expert meetings' took place, which were initiated by different institutions. These meetings were attended by representatives of civil society groups, religious institutions, state offices and academic committees and members of the specific group for the *qanun* drafting team (*Tim Perumus Qanun*) of the State Shari'a Agency (DSI). The *Tim Perumus Qanun* convened the first expert meeting, which included representatives from human and women's rights organizations. As the activists had very little expertise, the meeting was more like a seminar in which the participants questioned the representatives of the DSI, resulting in hardly any controversial discussion. The second expert meeting, also initiated by the *Tim Perumus Qanun*, was composed of representatives of the government, parliament, academics, activists, ulama and *adat* leaders. This meeting was characterized by a vibrant discussion and critical questions. The third expert meeting, initiated by the women's rights organization Balai Syura and UNIFEM, was composed of members of the *Tim Perumus Qanun* and activists who were trained in the field of the implementation of the CEDAW (Convention on the Elimination of All Forms of Discrimination against Women). In this meeting, significant points concerning the compatibility of human rights and the draft of the *Qanun Jinayat* were introduced, discussed and recommendations were submitted to the governor and to Biro Hukum. Subsequently, Biro Hukum reviewed A) the first draft *Qanun Jinayat* in 2007, and B) the revised draft *Rancangan Qanun Jinayat* at the end of 2008.⁴⁰

38 Prof. Dr. Alyasa Abubakar attended 90 % of the meetings, Khairani Arifin 80 %, Ria Fitri 50 %, Tgk. Danial 35 %, Prof. Dr. Syahrizal and Prof. Dr. Muslim Ibrahim only about 25 %.

39 Interview with Khairani Arifin, 25 February 2010, Banda Aceh.

40 The revised draft was termed *Rancangan Qanun tentang Kompilasi Hukum Jinayah Aceh Tahun 2008* or in abbreviated form *Rancangan Qanun Jinayat*.

The Role of Western Donors in the Drafting Process

The 2004 tsunami was followed by one of the largest humanitarian interventions in history. Well-endowed international and non-governmental organizations implemented emergency and reconstruction aid programs with massive material, personal and ideological effort. Although foreign aid interventions were criticized as ineffective,⁴¹ the internationalization after the tsunami brought immense support to the financial, structural and personnel assets of Acehese and national human and women's rights organizations and thereby increased their bargaining power. At the same time, the rapid internationalization of Aceh that came after the tsunami evoked forces of Islamic 'revitalization' that were less sympathetic, or even opposed, to the concerns of women's rights activists,⁴² as they strengthened the demand for what was perceived as a distinctly Acehese, and thus strongly 'Islamic,' model of political, socio-cultural and moral order. Conservative Muslims characterized funding from Western sources as infiltration from 'outside'—although they did not do so equally with reference to support from Islamist groups from the Middle East (Feener 2007, 184 ff.). Particular segments of the Acehese political and religious elite also asserted Acehese autonomy concerning sensitive topics, such as religious matters, thereby keeping Western advisers and development programs at a distance from the implementation of Islamic law.⁴³

Although the international community was formally excluded from negotiations concerning the Islamic legal system, representatives of the EU, for example, in personal conversations with members of the executive and the leg-

41 For example, some critics argued that reconstruction programs deepened existing socio-economic cleavages, prevented an effective and fast reconstruction because of the lack of coordination, reduced participatory efforts from the Acehese through paternalistic approaches, and disrupted middle and long term development through the separation of emergency and development aid (Pennels 2008; Soelaksono 2009; Völz 2005; and personal interviews with activists). For more information about critical perspectives on the reconstruction efforts after the tsunami, see various contributions in Daly, Feener, and Reid (2012).

42 Public presence and the perceived paternalistic approaches of Western aid institutions after the tsunami were interpreted by many men and women in Aceh as a threat. Some of these fears were framed within conspiracy narratives, focused on alleged attempts by predatory neo-liberal interests and fundamentalist Christian groups to take advantage of the Acehese at a point at which they were most vulnerable.

43 For example, the German Technical Cooperation (GTZ), which met with the governor as part of its good governance program, was excluded from discussions about two issues: state Shari'a and the *wali nanggroe* (the symbolic 'head of state').

islative pressed the point that Islamic law should not violate international conventions. John Penny, the envoy of the EU, pointed out to local politicians that the rigid implementation of Islamic Criminal Law, including public canings, would result in negative publicity that could hinder the peace and democratization processes and discourage future foreign investment in Aceh.⁴⁴ This argument was not only prominent on the international level but also within the national discourse of Aceh's reconstruction process. For example, Kuntoro Mangkusubroto, the head of the former reconstruction office BRR, expressed the fear that Aceh's economy would be weakened through the implementation of Shari'a.⁴⁵

Members of the Acehnese government, in other words, were under pressure from Western consultants to include local and national human and women's rights organizations in the drafting process. The involvement of the Acehnese human rights organization Yayasan Insan Cita Madani (YICM), funded by UNIFEM, was one response to this. On the national level, the National Commission on Violence against Women, Komnas Perempuan, was one of the few women's rights organizations sufficiently capable, well-funded and legitimized to cooperate with state officials and Islamic religious leaders in the drafting process of the *Qanun Jinayat*.⁴⁶

Contents of the *Rancangan Qanun Jinayat* (2008)

The B) *Rancangan Qanun Jinayat* (2008) included four pages of explanatory notes (*penjelasan*) that defined the philosophical and ideological foundation and the 'contextual' model of interpreting Islamic law advocated by the head of the State Shari'a Agency, Alyasa Abubakar. These explanations provide a theoretical basis for Aceh's Islamic legal system. Khairani Arifin was successful in having a preamble, stipulating adherence to human (including women's) rights conventions included in the draft. However, the substance of these rights was not sufficiently integrated in the more specific points of the legislation.

Other demands of women's rights activists that were successfully accommodated included the addition of provisions deterring sexual harassment and rape

44 John Penny, envoy of the EU in Aceh, personal interview, 24 March 24 2011, Banda Aceh.

45 "Sangat Menyakitkan Kalau Syari'at Islam Jadi Alasan Hambat Investor," *Waspada Online*, 1 October 2007 (Accessed 20 October 2012).

46 Komnas Perempuan published several reports, comments and recommendations on the Islamic legal drafting process in Aceh (Komnas Perempuan 2005 and 2007).

(but only outside of marriage) in the B) *Rancangan Qanun Jinayat* (2008). Furthermore, DNA evidence was acknowledged as one possible form of proof in the case of rape (as in the Indonesian national compilation of criminal law/*Kompilasi Undang Undang Hukum Pidana*). Another success was the enhancement of the protection of children through the definition of criminal responsibility from the age of 18, and an aggravation of the penalties in cases of crimes against children. Women's rights activists were, however, unsuccessful in their attempts to abolish corporal punishment, such as caning, generally, as well as their demand to exclude *khalwat* as a criminal offense.

Various points of criticism from both activists and religious scholars that were addressed in the B) *Rancangan Qanun Jinayat* (2008) dealt with issues of determining penalties (for example, one stroke of the cane is equal to 20 grams of gold and one month in prison) and with the role and legitimization of the WH, which was more precisely defined. Furthermore, the total number of Shari'a criminal offenses covered under Aceh's legislation was to be increased from three to seven in the new draft. These acts now included *zina* (fornication), *qadzaf* (accusation of *zina* without providing sufficient proof, including four witnesses), and *ikhtilath* (physical affection and/or sexual intimacy between an unmarried couple). These extensions were demanded by Alyasa Abubakar, who argued that *zina* and *ikhtilath* are directly connected to *khalwat* (Abubakar 2007, 9).

Khairani Arifin was more critical, and demanded to exclude *khalwat* from the Islamic Criminal Law altogether, but she also agreed that, if *khalwat* was included, *zina* and *ikhtilath* should be included as well. The classification of a homosexual relationship as a crime is mentioned in the B) the *Rancangan Qanun Jinayat* (2008), but not precisely described. Knowing that some ulama supported the introduction of the death penalty by stoning as the severest penalty, Khairani Arifin and Alyasa Abubakar initiated the inclusion of a provision determining that the death penalty should not be codified in this draft and that the maximum punishment in the case of a *hudud* offense should be 100 strokes of the cane in the case of *zina* (fornication).⁴⁷ The content of the B) *Rancangan Qanun Jinayat* (2008) shows many amendments that went considerably beyond the provisions of the three existing *qanun* covering gambling, alcohol, and *khalwat*. This included the definition of new crimes to be covered by Aceh's Shari'a legislation, as well as the formal introduction of new penalties. The proposed changes occasioned much heated debate, and were criticized by

47 *Hudud* refers to the class of punishments that are fixed for a limited number of crimes as defined under Islamic law.

a number of different parties. The local legislature consequently refused to pass the bill in 2008, and sent it back for further redrafting.⁴⁸

Re-drafting the *Qanun Jinayat*

During the next stage of re-drafting that began in 2009, two legal expert teams, one composed by the legislative and one by the executive, were established. The first group appointed by Governor Irwandi Yusuf included Alyasa Abubakar, Syahrizal Abbas, the two women's right activists Khairani Arifin and Samsidar and a conservative Islamic scholar as an additional representative of the State Shari'a Agency. According to some activists, this scholar followed a literalist interpretation of the Qur'an and demanded a more rigid implementation of Islamic criminal law. Therefore, his perspective and aims were diametrically opposed to those of Khairani Arifin and Samsidar on a number of major issues. Furthermore, he promoted his stance quite aggressively, which made it very difficult for activists to cooperate with him. The activists were under the impression that the governor was pressured by the conservative members of the MPU into appointing this conservative Islamic scholar to the committee in order to prevent progressive voices from dominating the team.⁴⁹

This strategy was successful, insofar as Samsidar left the expert team. The reasons were, firstly, that she felt intimidated and insulted by the conservative scholars on the team and, secondly, that she did not want to be responsible for the team's decisions, as there no longer was any consensus among the members.⁵⁰ Certain conservative religious leaders regularly insulted women's rights activists, or accused them of being lesbians or *kafirs* (infidels) (see Jauhola 2013). Progressive Islamic scholars were also attacked or became victims of defamation. In the end, Khairani Arifin was the only activist left in the expert team. As a result, many of the amendments demanded by women's rights activists, for example the abolishment of corporal punishment, were not accommodated in the revised version of B) the *Rancangan Qanun Jinayat* in 2008. Still, the bill did not yet, at this point, contain the death penalty through stoning (*rajam*).

48 See IDLO (2008) for more information about the revision of the *Qanun*.

49 Interview with activists, 19 May 19 2011, Banda Aceh.

50 Interview with Samsidar, 12 May 2011, Banda Aceh.

Dominance by Proponents of Stoning in the Parliamentary Session

The redrafted version was submitted to the local legislature and discussed in three sessions. In the first, members of the DPRA debated with experts on the general philosophical bases of the proposed law, while in the second session they discussed the legal principles of the Islamic criminal law. The third session, in which the final 2009 draft of the c) *Qanun Jinayat* was discussed, was held on 14 October 2009. Khairani Arifin explained that before this session, there had been other meetings on the aims and contents of the final draft, to which she was not invited. One crucial point of debate in these meetings was the issue of the introduction of the death penalty through stoning (*rajam*) in the case of adultery.

One of these meetings was initiated by the Aceh Justice Resource Center (AJRC) and took place on 9 October 2009 with leaders of the 'Special Committee' (*Pansus*—consisting of academics, religious leaders and intellectuals) in order to discuss sensitive future content of the draft, including *rajam*. According to Arskal Salim, participants in this meeting criticized the potential addition of the stoning penalty, but most of them did not, out of principle, reject it (Salim 2009, 15). Rusjid Ali Muhammad, a professor of Islamic law at the IAIN in Banda Aceh, argued that "in any case, much would have to be done before it could be applied, including improving knowledge of Islam in the Acehnese community generally."⁵¹

The third parliamentary session was held on 14 September 2009, two weeks before the end of the term for many outgoing legislators, who had then just lost local parliamentary elections. In that session, the definition of provisions newly introduced into the bill including, for example, the criminalization of homosexuality and new penalties such as stoning, were formally discussed. Alyasa Abubakar and Syahrizal Abbas did not participate in this meeting. Khairani Arifin, however, did attend the session in which the final 2009 version of the *Qanun Jinayat* was passed, and described the discussion there as follows:

There was very little consideration of building consensus in this session. At the beginning I could still successfully promote the inclusion of the compliance to national laws and international conventions, like the CEDAW, in the preamble. In the subsequent discussion I argued for the abolishment of corporal punishment. I said it would not be in compliance

51 Quoted in Salim (2009, 15).

with the international conventions to which the legislature had agreed just minutes earlier. But I got little consent and support from the other participants. The discussion of the fifth paragraph of the draft *Qanun Jinayat* about *zina* (fornication) and the option of stoning as a penalty became very emotional and controversial. Subsequently, the speeches of religious leaders and members of the Islamist parties PKS and PPP, who promoted the inclusion of stoning, changed the mood and successively even members of the Golkar party and the representatives of the provincial police supported the inclusion of stoning in the *Qanun Jinayat*. As I realized that I could not prevent that step, I left the session. I called the governor, Irwandi Yusuf, and announced my withdrawal from the expert team.⁵²

Khairani Arifin's anger and disappointment about this DPRA session resulted from the aggressive and uncompromising attitude and behaviour of rhetorically well-trained politicians and Islamic authorities who supported stoning (*rajam*). They dominated the session and succeeded in winning the support of members of the legislature, who were still unsure about the inclusion of *rajam*. Moreover, the majority of the legislators in the session seemed unqualified and unprofessional, in the sense that they were sensitive to the manipulation of proponents of *rajam*, who, at this very significant moment in time, did not refrain from politicizing Islam for their own interests.

Khairani Arifin pointed out that she was unable to counter this dominance, as she was the only person of the former alliance who had promoted a more moderate vision of the Shari'a present at the session. Although she was able to ensure the accommodation of her demands in the beginning of the session, resulting in the inclusion of the international conventions in the preamble of the final 2009 text of the *Qanun Jinayat*, in the subsequent discussion about the inclusion of *rajam* she felt that her arguments were no longer heard and she could not successfully argue against its inclusion. It was this realization that led Khairani Arifin to leave the session in despair after stoning was included in the law, and to withdraw from her position in the 'revision team.'

The paradoxical final version of the c) *Qanun Jinayat* that was passed by the DPRA in 2009 includes provisions stipulating adherence to international conventions, such as the CEDAW, the Convention against torture and other cruel, inhuman or degrading treatment or punishment, the Universal Decla-

52 Khairani Arifin, personal interview, 19 May 2011.

ration of Human Rights, and the national convention on the protection of children in its preamble. However, this compliance with international conventions lacked integration in the substantive legal text, as strikingly evident by the inclusion of the penalty of death by stoning and the definition of homosexual relationship as a crime. The final version of the text of the c) *Qanun Jinayat* may therefore be regarded as a juxtaposition of different formulations and regulations that are legally incompatible. The intended harmonization of local law, national law, and international conventions has not been achieved.

The passing of the *Qanun Jinayat* by the legislature in 2009 was a shock for many human and women's rights activists. Many members of the human and women's rights network JMSPS (Jaringan Masyarakat Sipil Peduli Syariah) rallied in front of the DPRA building, demanding the implementation of the *Qanun Jinayat* to be postponed in order to do further redrafting. Their main point of criticism was the inclusion of the *rajam* penalty. The new criminalization of homosexuality was hardly mentioned. It was not only the human rights organizations that spoke out against the death penalty for adultery; then Governor, Irwandi Yusuf also criticized the bill and refused to sign it. He rejected the introduction of death by stoning and demanded the Shari'a to deal with more urgent problems faced by the Acehnese society, such as poverty and unemployment. He also feared national and international reactions if the law were to be put into effect (Karni 2009).

According to the national Law on the Governing of Aceh (UU 11/2006), when a bill passed by the legislature is not signed by the governor within 30 days, it automatically becomes law and can be enacted through publication in the law gazette (*Lembaran Daerah Aceh*). However, this happens only if the *qanun* is mutually agreed upon by the DPRA and the governor, which was not the case when the final text of the c) *Qanun Jinayat* was passed in 2009. As long as it is not signed by the governor and not published in the law gazette, it remains effectively a dead letter.

Political Dimensions in the Passing of the *Qanun Jinayat* (2009)

The passing of the *Qanun Jinayat* can be explained, to a large extent, in terms of politics. The Aceh Peace Monitoring Update (APMU) of 2009, published by the Center for Peace and Conflict Resolution studies at Syiah Kuala University in Banda Aceh, argued that the passing of the *Qanun Jinayat* was a political move of the former outgoing parliament legislators, indicating a peak of tensions between these legislators on the one hand and the executive branch and the

incoming parliament members on the other.⁵³ The former parliament (DPRA) was dominated by members of non-religious national parties and it aimed to weaken the new incoming legislature, which was to be dominated by members of the non-religious local party Partai Aceh as well as Governor Irwandi Yusuf (Center for Peace and Conflict Resolution Studies 2009, 5 ff.).

According to this line of argument, the contestation over the implementation of more severe *hudud* penalties is a manifestation of political power struggles. This is supported by the fact that the majority of the members of the former DPRA voted for the inclusion of *rajam*, even though this step was not backed by the majority of leading religious scholars in Aceh. Although most ulama supported the introduction of *rajam*, they criticized the fact that legislators of a secular parliament designed such laws and passed them in a rush without consulting religious scholars (Center for Peace and Conflict Resolution Studies 2009, 6).

The emphasis on the political dimension of the passing of the *Qanun Jinayat* in 2009 should, however, not lead to an underestimation of the demand and willingness to extend and strengthen Islamic Criminal Law in Aceh, which is widespread amongst members of the Acehnese religious and political elite. The implementation of the full range of *hudud* penalties has been discussed since 1999, even if it has not been fully implemented, and the punishment of caning applies only to transgressions of *syi'ar* (Islamic conduct) or violations of the prohibition of *khamar*, *maisir*, and *khalwat*.

In 2007, Moch. Nur Ichwan emphasized that many religious scholars and intellectuals in Aceh saw harsh punishments as a violation of national law and international conventions. However, he also pointed out that this would not prevent the authorization of harsher punishments in the future (Nur Ichwan 2007, 211 ff.). His prediction turned out to be right. As the passing of the *Qanun Jinayat* shows, in certain circumstances, key persons who strongly demand the fast and total implementation of Shari'a, including all kinds of *hudud* punishments, are able to push through their agenda, at least on the level of formal legislation. Although they might be a minority, as Nur Ichwan points out, they have successfully asserted the power to either circumvent, silence, or defeat oppositional voices.

Before the signing of peace in August 2005, most GAM representatives had also emphasized the political dimension in the formalization of the state Shar-

53 The APMU is supported by the World Bank and The Asia Foundation. It is a continuation of the Aceh Conflict Monitoring Updates that were published by the World Bank from August 2005 through February 2009.

i'a and called it an 'unwanted gift' from the central government (cf. Missbach, this volume). However, in spite of their influential role in the provincial legislature from 2009 onwards, ex-GAM intellectuals, government members and members of the political wing of the ex-GAM, Partai Aceh, undertook no serious steps to prevent the criticized implementation of the Shari'a. Partai Aceh dominates the newly elected parliament as they gained 48% of the votes in the 2009 parliamentary election, and therefore 33 of the 69 seats in the DPRA. Therefore the rejection and subsequent redrafting of the c) *Qanun Jinayat* (2009) would have been a relatively straightforward process, were it not for the fact that, for a long time, the issue was not placed on the agenda for parliamentary discussion. The executive and legislative branches have long avoided further treatment of the sensitive topic of Islamic criminal law in Aceh, leaving it off the list of 'urgent topics' to be discussed in the DPRA.

Limits of the State in Drafting an Islamic Criminal Law

Muslim women's rights activists, as non-state actors who are neither part of the state apparatus nor of the religious elite, were able to participate in the drafting process of Islamic legislation in Aceh to enhance their aim of creating a just and 'gender-sensitive' Islamic legal system. The amendment teams and legal expert groups, which were formed by civil society organizations and the governor to be the driving force within the process of drafting the *Qanun Jinayat*, although dominated by male religious scholars, were open to women's rights activists in certain circumstances. Within the formulation process of the *Qanun Jinayat*, activists, who were until then not allowed to enter the exclusive and technical realm of Muslim jurisprudence (*fiqh*), were able to gain access to, and participate in, the process, at least in the earlier stages. This was due to the internationalization of Aceh after the tsunami, as women's rights groups were able to benefit from emancipative objectives of international organizations and received both material and non-material support in order to increase their capacities.

Through personal contacts between activists and state actors, such as the head of the Biro Hukum, women's rights activists had access to relevant information about the drafting process and the content of A) the first draft *Qanun Jinayat* in 2007. They were therefore able to push forward the further reviewing of the contested draft. The affirmative cooperation with Islamic scholars and state Shari'a officials, especially with Alyasa Abubakar, strengthened their position and ability to submit recommendations expressing their aims of a more 'gender-sensitive' vision of the Shari'a to the governor and the Biro Hukum.

Limits of Muslim Female Women's Rights Activists' Scopes of Acting

In contrast to the earlier drafting process of the *Qanun Jinayat*, however, its further reviewing and the passing by the provincial legislature in 2009 was not an inclusive and open matter. The new composition of the expert team caused significant changes in the dynamics of team member interactions, which added to the ascendance of more reactionary voices on the committee. The leading figures of this more conservative faction then went on to intimidate and insult women's rights activists on the committee, causing them to withdraw. Moreover, during the 2009 legislative session in which a version of the *Qanun Jinayat* was passed, the lobbying of proponents of the implementation of the death penalty by stoning dominated the debates among members of the legislature, and these issues were driven to the fore more by political than by legal concerns. The final version of the c) *Qanun Jinayat* passed in 2009 includes the death penalty by stoning and makes homosexual relations a criminal offense. This, despite the fact that the women's rights activists had successfully demanded the inclusion of provisions stipulating adherence to international conventions in the preamble as well as the ensuring of child protection, and the inclusion of rape and sexual harassment as a criminal act.

To summarize the scope of acting of Muslim women's rights activists within the drafting process of the Islamic Criminal Law in Aceh, I argue that they have successfully decelerated the coming about of a potentially harsh Islamic Criminal Law until 2009. Additionally, Muslim women's rights activists could make the *Qanun Jinayat* seemingly unworkable by including provisions stipulating adherence to international conventions in the legal texts which are incompatible with the inclusions of the death penalty by stoning and homosexual relations as a criminal offense.

The passing of the *Qanun Jinayat* indicates a turning point for the alliance promoting a vision of Islamic law sensitive to the concerns of gender justice and human rights. As a result of the passing of a version of the bill that included provisions for stoning and other 'hard-line' positions, most activists became frustrated and have either retreated or ignored the further developments of the *Qanun Jinayat*. Religious scholars who were previously active in the legal expert teams have returned to the academic sphere.⁵⁴ Currently, the activists

54 At the time of writing, Alyasa Abubakar was the director of the postgraduate school at the IAIN and Syahrizal Abbas was the director for international affairs, vice president of the university and member of the academic senate of the IAIN.

Khairani Arifin and Samsidar do not work in programs dealing with Islamic legislation.⁵⁵ At present, there are only a few individual activists who actively observe the further process of the *Qanun Jinayat*. Khairani Arifin hopes that if there is a further re-drafting process initiated at some point, the alliance will be reactivated, and reconfigured to include more supporters of a vision of Islamic law that addresses the needs and concerns of Muslim women in Aceh.

References

- Abubakar, Alyasa. 2007. *Beberapa Catatan Akademik atas Rancangan Perubahan Qanun Provinsi Nomor 12,13 dan 14 Tahun 2003 dan Penggabungannya Menjadi Satu Qanun*. Unpublished report.
- Arifin, Khairani. (n.d.) *Hasil Penelitian: Perspektif Kesetaraan dan Keadilan Qanun Kompilasi Hukum Jinayah*. Unpublished report.
- Aspinall, Edward. 2009. *Islam and Nation: Separatist Rebellion in Aceh, Indonesia*. Stanford: Stanford University Press.
- Ahearn, Laura M. 2001. "Language and Agency." *Annual Review of Anthropology* 30:109–137.
- Bangstad, Sindre. 2011. "Saba Mahmood and Anthropological Feminism After Virtue." *Theory, Culture, Society* 28(3):28–54.
- Benda-Beckmann, Franz von, and Keebet von Benda-Beckmann. 2006. "The Dynamics of Change and Continuity in Plural Legal Orders." *The Journal of Legal Pluralism and Unofficial Law* 53–54:1–44.
- Bowen, John. 2003. *Islam, Law, and Equality in Indonesia. An Anthropology of Public Reasoning*. Cambridge: Cambridge University Press.
- Brenner, Suzanne. 1996. "Reconstructing Self and Society: Javanese Muslim Women and 'the Veil'." *American Ethnologist* 23(4):673–697.
- Candraningrum, Dewi. 2007. "Unquestioned Gender Lens in Contemporary Indonesian Shari'a Ordinances (Perda Syari'ah)." *Al-Jāmi'ah Journal of Islamic Studies* 45(2): 289–320.
- Center for Peace and Conflict Resolution Studies. 2009. *Aceh Peace Monitoring Update*, 1 July–31 August 2009. Banda Aceh: Syiah Kuala University. <http://www.conflictanddevelopment.org>. (Accessed 5 May 2010).

55 At the time of writing, Khairani Arifin worked as program director for political participation of women and community development at the Australian organization Logica. Samsidar was a 'Gender Specialist' supporting the Aceh Police Reform funded by the International Organization for Migration (IOM), Indonesia.

- Crisis Management Initiative (CMI). 2006. *The Aceh Peace Process*. http://www.cmi.fi/files/Aceh_involvement_of_women.pdf (Accessed April 4, 2007).
- Comaroff, Jean, and John Comaroff. 1992. *Ethnography and the Historical Imagination*. Boulder: Westview Press.
- Daly, Patrick, R. Michael Feener and Anthony Reid, eds. 2012. *From the Ground Up: Perspectives on Post-Tsunami and Post-Conflict Aceh*. Singapore: ISEAS Press.
- Derichs, Claudia. 2008. "Frauen als Akteurinnen politischen Wandels in islamischen Transformationsstaaten." In *Mehrheit am Rande? Geschlechterverhältnisse, globale Ungleichheiten und transnationale Handlungsansätze*, edited by Heike Brabandt, Bettina Roß and Susanne Zwingli, 217–232. Wiesbaden: Verlag für Sozialwissenschaften.
- Doorn-Harder, Pieternella van. 2006. *Women Shaping Islam: Reading the Qur'an in Indonesia*. Urbana and Chicago: University of Illinois Press.
- . 2007. "Reconsidering Authority: Indonesian Fiqh Texts about Women." In *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, edited by R. Michael Feener and Mark E. Cammack, 27–43. Cambridge, Mass.: Harvard University Press.
- Duguay, Philip. 2008. "The Struggle for Women's Rights in Nanggroe Aceh Darussalam Province: A Look at History and Emerging Legislation." *Singapore Law Review* 26:1–30.
- Feener, R. Michael. 2007. *Muslim Legal Thought in Modern Indonesia*. Cambridge: Cambridge University Press.
- . 2013. *Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia*. Oxford: Oxford University Press.
- Feener, R. Michael, and Mark E. Cammack, eds. 2007. *Islamic Law in Contemporary Indonesia: Ideas and Institutions*. Cambridge, Mass.: Harvard University Press.
- Feillard, Andrée. 1999. "The Veil and Polygamy: Current Debates on Woman and Islam in Indonesia." *Moussons* 1:5–28.
- Gender Working Group. 2007. *Evaluation on Woman in Aceh in 2006*. http://www.aceh-eye.org/data_files/english_format/analysis/analysis_others/analysis_others_2007_03_08.pdf (Accessed 22 April 2007).
- Großmann, Kristina. 2013. *Gender, Islam, Aktivismus: Handlungsräume muslimischer Aktivistinnen nach dem Tsunami in Aceh*. Berlin: Regiospectra.
- Human Rights Watch. 2010. *Policing Morality: Abuses in the Application of Sharia in Aceh, Indonesia*. New York: Human Rights Watch. <http://www.hrw.org/sites/default/files/reports/indonesia1210WebVersionToPost.pdf> (Accessed 21 August 2012).
- Husein, Mustabsyirah M. 2008. "Memahami Peran Politik Perempuan dalam Syariah Islam: Sebuah Wacana untuk Kebangkitan Perempuan Aceh." In *Perempuan Aceh Bicara*, edited by Sri Lestari Wahyuningroem, Zubaidah Djohar and Sarah Fortuna, 3–14. Bangkok: UNIFEM.

- Hussin, Iza R. 2007. "The Pursuit of the Perak Regalia: Islam, Law, and the Politics of Authority in the Colonial State." *Law & Social Inquiry* 32(3):759–788.
- . 2008. "The Politics of Islamic Law: Local Elites, Colonial Authority and the Making of the Muslim State." PhD diss., University of Washington.
- International Development Law Organization (IDLO). 2008. *Review on the Revisions being made to the Three Qanun on Jinayah*. http://www.aceh-eye.org/data_files/english_format/issues/issues_women/women_2008_11_01.pdf (Accessed 13 February 2009).
- Ismail, Nurjannah. 2008. "Penerapan Syari'at Islam dan Kehidupan Perempuan di Aceh." In *Perempuan Aceh Bicara*, edited by Sri Lestari Wahyuningroem, Zubaidah Djohar, and Sarah Fortuna, 23–34. Bangkok: UNIFEM.
- Jauhola, Marjaana. 2013. *Post-Tsunami Reconstruction in Indonesia: Negotiating Normativity through Gender Mainstreaming Initiatives in Aceh*. London and New York: Routledge.
- Kamaruzzaman, Suraiya. 2004. "Women and Syariah in Aceh." *Inside Indonesia* 79. <http://www.insideindonesia.org/edition-79-jul-sep-2004/women-and-syariah-in-aceh-2607223> (Accessed 8 February 2010).
- . 2005. "Women's Position, Role and Rights in Aceh. Women under Armed Conflict, under Syariah Law and After Tsunami." <http://www.susanne-schroeter.de/pdf/suraiya.ppt>
- . 2008. "Gerakan Perempuan di Aceh Pasca Tsunami: Sejauhmana Tantangan dan Peluang?" In *Perempuan Aceh Bicara*, edited by Sri Lestari Wahyuningroem, Zubaidah Djohar, and Sarah Fortuna, 139–151. Bangkok: UNIFEM.
- Karni, Asrori S. 2009. "Al Yasa' Abubakar Tolak Hukum Rajam. Rajam Setitik Ganjal Qanun Sepasang." *Laporan Khusus, Gatra Nomor 52/XV 11 November 2009*. <http://www.gatra.com/2009-11-02/majalah/beli.php?pil=23&id=131839> (Accessed 16 May 2011).
- Komnas Perempuan. 2005. *Kertas Kebijakan Materi Dialog Kebijakan Komnas Perempuan tentang Pelaksanaan Syariat Islam di Aceh, Draft 111/10 Oktober 2005*. Jakarta: Komnas Perempuan. <http://www.komnasperempuan.or.id/wp-content/uploads/2009/01/analisis-terhadap-qanun-nangroe-aceh-darussalam.pdf> (Accessed 23 November 2011).
- . 2007. *Experiences of Acehnese Women: Seeking and Accessing Justice from One Era to the Next*. Jakarta: Komnas Perempuan.
- Kurniawati, Dewi. 2010. "West Aceh District Chief Says Shariah Law Needed or There Will Be Hell to Pay." *Jakarta Globe*, 18 August.
- Lindsey, Tim, and M.B. Hooker, with Ross Clarke and Jeremy Kingsley. 2007. "Shari'a Revival in Aceh." In *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, edited by R. Michael Feener and Mark E. Cammack, 216–254. Cambridge, Mass.: Harvard University Press.
- Lindquist, Johan. 2004. "Veils and Ecstasy: Negotiating Shame in the Indonesian Borderlands." *Ethnos* 69(4):487–508.

- Mahmood, Saba. 2005. *Politics of Piety: The Islamic Revival and the Feminist Subject*. Princeton/New York: Princeton University Press.
- Miller, Michelle A. 2009. *Rebellion and Reform in Indonesia: Jakarta's Security and Autonomy Policies in Aceh*. London and New York: Routledge.
- Miller, Michelle A., and R. Michael Feener. 2010. "Emergency and Islamic law in Aceh." In *Emergency Powers in Asia: Exploring the Limits of Legality*, edited by Victor V. Ramraj and Arun K. Thiruvengadam, 213–236. Cambridge: Cambridge University Press.
- Munir, Lily Z. 2004. *Islam, Gender and Formal Shari'a in Indonesia*. <http://www.law.emory.edu/IHR/worlddocs/lilyz.doc> (Accessed 7 June 2007).
- Nordin, Edriana. 2002. "Customary Institutions, Syariah Law and the Marginalisation of Indonesian Woman." In *Woman in Indonesia: Gender, Equity and Development*, edited by Kathryn Robinson and Bessell Sharon, 179–186. Singapore: ISEAS Press.
- Nur Ichwan, Moch. 2007. "The Politics of Shari'iatization: Central Government and Regional Discourses of Shari'a Implementation in Aceh." In *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, edited by R. Michael Feener and Mark E. Cammack, 193–215. Cambridge, Mass.: Harvard University Press.
- Parker, Lyn. 2007. "Of Faith and Feminism: Imagining Discursive Feminist Space for Muslim Women." *Outskirts: Feminisms along the Edge* 17(1).
- . 2008. "To Cover the Aurat: Veiling, Sexual Morality and Agency among the Muslim Minangkabau, Indonesia." *Intersections: Gender and Sexuality in Asia and the Pacific* 16, 1–76.
- Peletz, Michael G. 2002. *Islamic Modern: Religious Courts and Cultural Politics in Malaysia*. Princeton/Oxford: Princeton University Press.
- Pennells, L. 2008. Mission Report: "Gender Outcomes & Reflections—Aceh." Office of the Resident Coordinator/Humanitarian Coordinator—OCHA—Indonesia. Jakarta.
- Salim, Arskal. 2003. "Epilogue: Shari'a in Indonesia's Current Transition." In *Shari'a and Politics in Modern Indonesia*, edited by Arskal Salim and Azyumadi Azra, 213–234. Singapore: ISEAS Press.
- . 2004. "'Shari'a From Below' in Aceh (1930–1960): Islamic Identity and the Right to Self-Determination with Comparative Reference to the Moro Islamic Liberation Front (MILF)." *Indonesia and Malay World* 32(92):80–99.
- . 2007. "Dynamic Legal Pluralism in Modern Indonesia: The State and the Sharia (Court) in the Changing Constellations of Aceh." Paper presented at the First International Conference of Aceh and Indian Ocean Studies, Banda Aceh, Indonesia, 24–27 February.
- . 2009. *Politics, Criminal Justice and Islamisation in Aceh*. Islam, Syari'ah and Governance Background Paper Series, University of Melbourne. <http://www.lindseyfederation.law.unimelb.edu.au> (Accessed 2 February 2011).
- Schröter, Susanne. 2010. "Feministische Re-Interpretationen des Qur'an und der Sunna. Entwürfe für eine geschlechtergerechte Ordnung in der islamischen Welt." In *Frau,*

Gender, Queer: Gendertheoretische Ansätze in der Religionswissenschaft, edited by Susanne Lanwerd and Márcia Elisa Moser, 46–54. Würzburg: Verlag Königshausen und Neumann GmbH.

Siapno, Jaqueline A. 2002. *Gender, Islam, Nationalism and the State in Aceh: the Paradox of Power, Co-optation, and Resistance*. London: RoutledgeCurzon.

Soelaksono. 2009. *NGO and Donor Coordination To Speeds up Reconstruction and Avoid NGO Competition*. <http://www.disaster-response.cc> (Accessed 9 February 2010).

Smith-Hefner, Nancy. 2007. "Javanese Women and the Veil in Post-Soeharto Indonesia." *The Journal of Asian Studies* 66(2):389–420.

UNIFEM. 2008. *Perempuan Aceh Bicara*. Bangkok: UNIFEM

Völz, Carsten. 2005. "Humanitarian Coordination in Indonesia: An NGO Viewpoint." In *Forced Migration Review. Tsunami: Learning from the Humanitarian Response*, 26–27. <http://www.fmreview.org/FMRpdfs/Tsunami/11.pdf> (Accessed 2 February 2012).