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THE POLITICS OF SHARI'ATIZATION: CENTRAL GOVERNMENTAL AND REGIONAL DISCOURSES OF SHARI'A IMPLEMENTATION IN ACEH

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*Adat bak Poteumeuweuhom,
Hukom bak Syiah Kuala,
Qanun bak Putro Phang,
Reusam bak Laksamana.¹*

Introduction

One consequence of the greater political openness that followed the resignation of Indonesia's long-time dictator Suharto in 1998 was the demand in several localities for implementation of Shari'a.² The region that has experienced the greatest change is Aceh where the provincial government has been granted broad authority to establish Shari'a Courts (*Mahkamah Syariah*), to implement Shari'a legislation, and to have its own Shari'a police and enforcement mechanisms (*wilayatul hisbah*).³ The Department of Religion officially inaugurated the new system on March 4, 2003, a date chosen to coincide with the Islamic New Year (Muharram 1, 1423 AH). On that date the existing Religious Courts (*Pengadilan Agama*) in Aceh were transformed into Shari'a Courts and vested with new powers in the fields of Islamic belief (*aqida*), religious practice (*ibadat*), and symbolism (Ind. *syiar* < Ar. *shī'ār*).

This chapter examines the significance of the discourse on implementation of a "comprehensive Shari'a" (*Syariat Islam Yang Kaffah*) for Acehnese society. It will be argued that in the first years of the twenty-first century Shari'a discourse has come to serve as a "master signifier" in Aceh, and that other social signifiers, such as politics, law, education, and the economy increasingly refer to and are defined by reference to the Shari'a.⁴ The chapter focuses on the discourse on the establishment of Shari'a Courts and implementation of Islamic law at two levels within the government—at the

level of the central government in Jakarta and at the provincial level in Aceh.⁵ The discourse of the religious establishment in Aceh will also be considered. The analysis will seek to go beyond official accounts of the process to grasp the power relations between central and regional governments on the one hand and between the regional government and the local religious establishment on the other. I will argue that the regional government has attempted to position itself in the middle between the central government and the religious establishment, and that this has enabled the regional government to play the two sides off against each other. Thus, instead of seeing Shari'a in Aceh purely in terms of a legal discourse, I will emphasize its political dimensions as well.

The Aceh problem and the politics of the "religious approach"

The Indonesian government's plans for implementation of Shari'a in Aceh cannot be divorced from the long history of political turbulence in the region and the attempts by successive Indonesian governments to impose a military-security solution to the problem. Aceh has been perceived as a problem by central government authorities since the Dutch colonial era. During the New Order regime of President Suharto (1965–1998) thousands of Indonesian troops were sent to Aceh to suppress the separatist Free Aceh Movement (*Gerakan Aceh Merdeka*, GAM).⁶ The region was then designated as a special "military operation zone" (DOM), and fighting between GAM and the Indonesian military resulted in the death of many innocent civilians. Human rights abuses by the Indonesian military drew criticism from both national and international communities.

The regime's repressive actions in Aceh became increasingly unpopular following Suharto's resignation and the declaration of a new era of *Reformasi* (reform) in 1998. The transitional administration of B.J. Habibie, which held power from May 1998 to October 1999, made no significant effort to address the problem. The subsequent governments led by Abdurrahman Wahid and Megawati Sukarnoputri changed the policy on Aceh from an exclusive reliance on military force to more comprehensive strategies. One aspect of this new policy was a "religious approach" that included allowing Aceh to establish Shari'a Courts and to implement Shari'a.

On April 11, 2001, President Abdurrahman Wahid issued Presidential Instruction No. 4/2001 on the Special Treatment of the Situation in Aceh.⁷ Six months later, on October 11, Megawati, who had since replaced Wahid, issued a repeat of this order as Presidential Instruction No. 7/2001.⁸ Both

presidential instructions describe the problems in Aceh in terms of “social discontent” (*ketidakpuasan masyarakat*) and an “armed separatist movement” (*gerakan separatis bersenjata*). In addition to their common definition of the problem, both presidential instructions also employ the same framework in describing the solution to Acehnese separatism. In both instructions the centrality of the discourse of *Negara Kesatuan Republik Indonesia* (NKRI, Unitary State of the Republic of Indonesia) is emphasized. Both the separatist issue and the problem of social discontent are to be addressed in a “wise, accurate, comprehensive, and integrated manner.” It is also stated that these issues are to be accorded “special treatment” (*penanggulangan secara khusus*), although what is meant by “special treatment” is not made clear.

Furthermore, the instructions express pessimism about the chances of achieving a resolution through the use of “persuasion and dialogue” in negotiations with the armed separatist movement, regardless of whether those negotiations are carried out within Indonesia or in another country under the auspices of a third party. They also emphasize that “security and order” are at stake and that social disharmony could disturb the effectiveness of both governance and the development process. Both instructions—approved by cabinet meetings, the Council of People’s Representatives (*Dewan Perwakilan Rakyat*, DPR), and the Supreme Advisory Council (*Dewan Perwakilan Agung*, DPA)—suggest the need for more comprehensive steps in the fields of politics, economics, law, social order, security, and information and communications.⁹

Notably, religion is not specifically mentioned in the instructions as a problem. This is perhaps because GAM did not rely on religion (Islam) as the basis or ideological motivation for its actions, and the formation of an Islamic state was not part of its formal platform. GAM aimed to create a secular, monarchical state in Aceh, not a religious republic. The presidential instructions, however, instruct the Minister of Religion “to promote the initiative for creating security through a religious approach.” It is now clear that the use of a religious approach, to be defined and implemented by the Department of Religion, was intended as a means of ensuring security for Indonesian national interests. (See Diagram 1)

As the conflict between GAM and the government escalated in the first half of 2002, President Megawati issued Presidential Instruction No. 1/2002 on the Enhancement of the Special Treatment of the Situation in Aceh.¹⁰ As with the previous instructions, this instruction mandates use of a religious approach as one of the steps to be taken to create security in Aceh. The reference to religion in the instruction, which speaks of “maintaining the unity of the Republic of Indonesia through [the] *religious approach*”

(emphasis added), suggests that the Department of Religion's program for Aceh was to serve as a means of discouraging separatist efforts and preserving Aceh as part of a unified Indonesia.

Although a religious approach was central to the government's plans for resolving the conflict with Aceh, precisely what this was to entail was not clear. During the New Order, the term "religious approach" was usually associated with gatherings for religious instruction (*pengajian*), religious ceremonies, meetings (*silaturahmi*) between religious scholars and government officials, public prayers (*doa bersama*), and *safari Ramadan*, in which government officials travelled from one mosque to another during the month of Ramadan to participate in *tarāwīḥ* prayers. But these were not the activities envisaged by the instructions, since such measures had been in use in Aceh long before the instructions were issued. The meaning of this apparently critical phrase became clear only after the enactment on August 9, 2001 of Law No. 18/2001 on Special Autonomy for the Privileged Province of Aceh as the Nanggroe Aceh Darussalam.¹¹ That statute provided for establishment of the Shari'a Courts and the implementation of Shari'a in the Province.

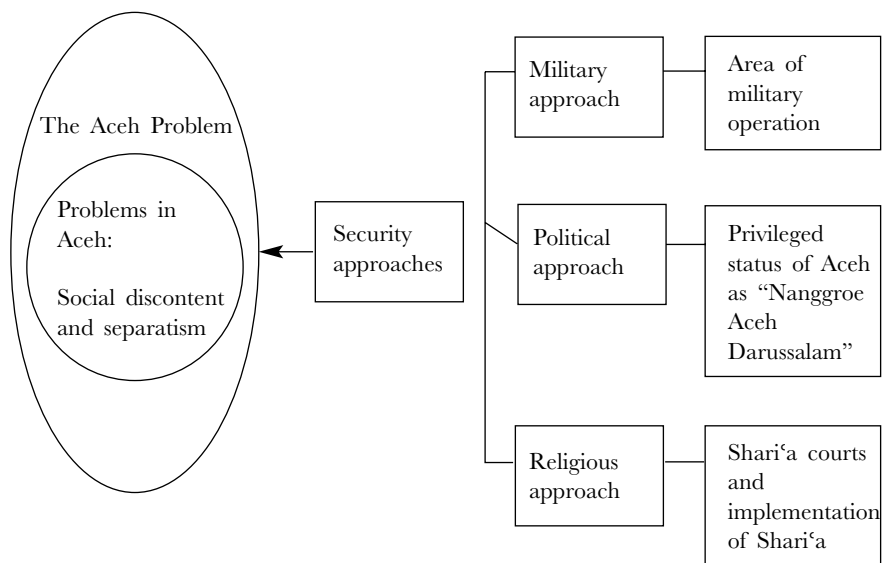


Diagram 1. The central government's approaches in dealing with the "Aceh Problem"

Islamic law in Aceh in the pre-Reformasi era

The discourses on the newly established Shari'a Courts that emanate from the central government in Jakarta and the regional government in Banda Aceh appeal to different aspects of Acehnese history. Central government envisions the new Shari'a Courts as a modified version of the region's pre-existing Religious Courts (*Pengadilan Agama*), which are part of the Indonesian national legal system.¹² Legislation enacted by the regional government in the form of *Qanuns* refers to earlier parts of the nation's legal tradition. These *Qanuns* imagine the roots of the current courts in Islamic tribunals recognized in 1946 (which bore the title "Mahkamah Syariah") and are viewed as having an "absolute authority" (*Qanun* Nos. 10 and 11/2002). The state legislation also indicates that the implementation of Shari'a is not new for the Acehnese, arguing that Shari'a was part of the legal and judicial system of the pre-colonial Acehnese sultanates.¹³

Prior to Dutch colonization Shari'a Courts exercised a broad jurisdiction in Aceh. During the period of colonial rule, the Dutch administration had direct control in only some areas (such as Aceh Besar, South Aceh (Singkil), and Sabang). Regions not under direct Dutch control were governed indirectly based on the *Plakat Panjang* (Dutch East India Company, *Vereenigde Oost-Indische Compagnie*, VOC) charter.¹⁴ After independence, the operation of the Islamic tribunals in Aceh was initially based on local authority. On August 1, 1946 the Acehnese religious establishment, represented by the Association of Acehnese 'Ulamā' (*Persatuan 'Ulamā' Seluruh Aceh*, PUSA)¹⁵ under the guidance of Muhammad Daud Beureueh, established Shari'a Courts throughout Aceh. These courts dealt not only with family law (marriage, divorce, inheritance) but also with *waqf* (religious endowments), bequests (*hiba*), and the public treasury (*bayt al-māl*). In December of 1947 the Acehnese People's Representative Assembly (*Dewan Perwakilan Rakyat*) gave formal legal recognition to the Shari'a Courts with the promulgation of Decree No. 35/1947 (Lev 1972, 80–1). Aceh's leaders demanded that the Department of Religion in Jakarta grant legal recognition to the Shari'a Courts. While these demands ultimately led to the payment of salaries to judges in Aceh, the Department of Religion rejected the demand for legal recognition of the Acehnese courts on the grounds that the Acehnese Shari'a Courts did not have sufficient basis in Indonesian law. According to at least one writer, the Department's reluctance to embrace the Acehnese courts was based at least in part on a concern that the judges who staffed the courts did not share the nationalist views of Jakarta (Lev 1972, 83).

In 1953 Daud Beureueh led a revolt against the central government under the banner of Darul Islam. Needless to say, this complicated efforts to obtain central government recognition of the Shari'a Courts. Nevertheless, as a result of enormous pressure from Acehneese religious and political leaders, working in collaboration with a small number of officials in the Department of Religion's Bureau of Religious Justice, the Acehneese Shari'a Courts were formally established through Government Regulation No. 29/1957. This Regulation, which dealt specifically with Aceh, was subsequently confirmed and superceded by Regulation No. 45/1957 on *Pengadilan Agama/Mahkamah Syariah*, which served as the legal basis for all Islamic tribunals outside of Java and Madura (Lev 1972, 83–4, 89).¹⁶

Daud Beureueh was not inclined to trust Jakarta. He demanded an explicit and substantive statement on the implementation of Shari'a in Aceh. After long, hard negotiations, Colonel Jasin (in his capacity of regional martial law administrator) issued an official decision on April 7, 1962 that provided for "the orderly and proper implementation of elements of Shari'a for adherents of Islam in the Special Region of Aceh with consideration being given to extant national statutes and regulations."¹⁷ The statement also stipulated that further regulations concerning the meaning and intent of the decision would become the responsibility of the Acehneese provincial government. Beureueh then called off the revolt. Colonel Jasin's decision proved to be meaningless, however. The statement itself was qualified, providing only that some "elements" (*unsur-unsur*) of Shari'a were to be implemented. More importantly, there was no explicit devolution of power to Aceh from the central government. Jakarta's promises of Shari'a for Aceh in the 1960s were not carried out, but lived on in Acehneese memory. In response to Jasin's decision, Beureueh issued a statement expressing his own vision of the applicability of Shari'a to all aspects of human life.¹⁸ This vision survived and was later embraced by the religious establishment in Aceh nearly four decades later in the *Reformasi* era.

Meanwhile, the Acehneese Shari'a Courts were integrated into the Indonesian national legal system. Law No. 14/1970 on Judicial Authority placed the Acehneese Mahkamah Syariah under the administrative rubric of the national system of Religious Courts (*Pengadilan Agama*). With the passage of the Religious Judicature Act in 1989, the Acehneese courts were renamed *Pengadilan Agama* to bring them into conformity with the rest of the Islamic judiciary (Law No. 7/1989). The 1989 Act also limited the jurisdiction of the courts in Aceh to matters of marriage, divorce, and inheritance in line with the other nationally established Religious Courts.¹⁹

The Law of Nanggroe Aceh Darussalam

The enactment of Law No. 18/2001 granting special autonomy for Aceh (hereafter, Law on Nanggroe Aceh Darussalam or "Law on NAD") should be viewed in light of the history of Aceh and the efforts of the Wahid and Megawati governments to address the situation inherited from the Suharto era. The elucidation of the law attributes the social discontent in Aceh and Acehese separatism to the centralized policies of previous regimes and the resulting injustices to the Acehese people.²⁰ Instead of characterizing the Acehese as "rebellious," the Law describes them in a positive and heroic way, and as the embodiment of Indonesian nationalist ideals:

One special characteristic manifest in the history of the struggle of the people of Aceh is the great resilience and fighting spirit derived from their worldview and sense of community infused with Islamic ideals, so much so that the region of Aceh has become an inspiration for those striving to achieve and preserve the independence of the Republic of Indonesia.²¹

The Acehese character that makes the region a model for Indonesian nationalism becomes a reason for granting Aceh privileged autonomy and permitting the region to bear the name "Nanggroe Aceh Darussalam." The Indonesian form of the Qur'anic phrase *dār al-salām* (literally, "the abode of peace") is attached to Aceh to represent its strong Islamic culture. Peace, however, has historically been hard to come by in the region.

A comparison of the treatments of Islamic law and the Shari'a Courts in the initial draft and in the final versions of the Law on Nanggroe Aceh Darussalam reveals several important differences.²² First, the draft of the Law begins with the phrase: "With the blessing of God (*Allah*) the Most Powerful," whereas the revised text begins with: "With the blessing of the One and Only God (*Tuhan*)."²³ The former seems to be more "Islamic" by its use of Allah rather than the general Indonesian-language term for God found in the preamble to most Indonesian legislation. Second, it is surprising that there is no mention of either the Shari'a Courts or Islamic law in the draft. The draft also makes no reference to "Religious Courts" although they were already established in Aceh prior to this legislation. The word *mahkamah* is used in its secular sense to refer to *Mahkamah Tinggi* (High Courts) and *Mahkamah Rendah* (Low Courts), which are envisaged as exercising jurisdiction over all legal matters, including those under the jurisdiction of Islamic Religious Courts. The only specific mention of Islamic law in the draft is contained in Article 12, which states:

1. The judicial power in Nanggroe shall be exercised by an independent and impartial judiciary.
2. The judiciary referred to in subsection (1) has jurisdiction over all civil, criminal, administrative, religious, and customary matters, as well as other matters in the Nanggroe that are regulated in the Qanuns based on Shari'a.

In contrast to the draft, the Shari'a Courts have a prominent place in the final Act. The Shari'a itself and the Shari'a Courts are central features of Chapter XII of the Law on NAD, and that chapter has become the basis for further executive branch regulation of Islamic law in Aceh.

It bears mention that both the draft and the Act use the term *qanun* (including the variant spelling, *kanun*) in a secular rather than a religious sense. In the draft *qanun* is defined as "legislation (*peraturan perundang-undangan*) that regulates the affairs of the Nanggroe" and that is "formulated by the Wali Nanggroe and the People's Council of Aceh (*Dewan Rakyat Aceh*)."²³ The definition in the statute is to the same effect: *qanun* is defined as "regional regulations (*peraturan daerah, perda*) intended for the implementation of the Law on Special Autonomy for the Privileged Province of Aceh as the Nanggroe Aceh Darussalam." In both texts the term *qanun* is no more than an Arabicized label for regional regulations that serves to cast them in a more "Islamic" hue. It appears then that with respect to Islamic law the central government actually gave more than the regional government requested. As we shall see, however, a new dynamic gradually emerged after the Law on NAD had been enacted. Responding to demands from the Acehnese religious establishment, the regional government came to find itself asking for more than the central government had offered.

From Religious Courts to Shari'a Courts

In March 2003 President Megawati Sukarnoputri issued Presidential Decision No. 11/2003 implementing the provisions of the Law on NAD relating to the Shari'a Courts.²³ The Decision effectuates the transformation of the existing Religious Courts to the new institution of Shari'a Courts.²⁴ The issues covered in the Decision include the name, territorial jurisdiction, and powers of the courts, as well as the status of the employees, infrastructure, and financial resources. The most important difference between the Religious Courts and the new Shari'a Courts is the broadening of the Courts' powers. Sofyan Saleh, Chair of the Religious High Court for Aceh, described the change as involving the addition of authority over public and criminal law to the Courts' existing jurisdiction over family law.²⁵ The Decision also

extends the Courts' powers beyond the strictly legal to include "matters of worship" (*ibādāt*) and "Islamic symbolism" (*syiār*). Article 3:1 of the Decision states:

The powers and authority (*kekuasaan dan kewenangan*) of the Mahkamah Syariah and Provincial Mahkamah Syariah consist of the powers and authority of the Religious Courts and Religious High Court, *augmented with further powers and authority related to social life in the fields of worship (ibādāt) and Islamic symbolism (syiār)* as shall be provided for in the Qanun. (Emphasis added)

Several features of this Decision are noteworthy. First, it is apparent that the Decision was issued as a transitional measure and without sufficient prior preparation. This is clear from the initial "Considerations" for the Decision where it is vaguely suggested that implementation of the Decision will be carried out in stages because critical regulations had not been finalized. Secondly, the Decision fails to clarify what is meant by "Shari'a." Nor does the Decision indicate the extent to which the Qanuns mentioned in the Decision are intended to serve as codifications of the Shari'a. This ambiguity has become a primary locus of struggle as the central government, the regional government, and the local religious establishment have all attempted to impose their preferred view of the scope of the Courts' powers.

Finally, other actions by the Indonesian government during the same time frame undermined the goals of the Decision. The Presidential Decision on the Shari'a Courts was part of the government's strategy for gaining the trust and sympathy of the Acehnese people. Shortly after the Decision was issued, however, the government began escalating its military rhetoric, and two months later President Megawati formally declared a State of Emergency in Aceh.²⁶

There is a significant disconnect between the discourses on Shari'a for Aceh at the level of the central government and locally in Aceh. For the central government, Shari'a is principally a matter of changing the name of the courts. The grant of new powers to the courts over worship and symbolism seems to be based on an assumption that the matters over which the courts have been given authority are already practiced as part of Acehnese daily life. Because the courts' new powers relate to enforcement of norms that are already followed, those powers are, as a practical matter, insignificant. The Acehnese regional government and the local religious establishment view the steps taken by the central government very differently. For them it is not simply a matter of a change in terminology but involves the addition of significant new powers.

Shari'a Courts as part of the national judicial system

The creation of the Shari'a Courts with authority over worship and symbolism replayed some of the same conversations that had occurred at the time of the enactment of the Religious Judicature Act (Law No. 7/1989). As was then the case, nationalists, non-Muslims, and progressive/liberal Muslims criticized the policy of state enforcement of religious laws both in newspapers and other public fora and inside the legislature. On both occasions the objections to the policies focused on three points: 1) the creation of special courts for discrete segments of the population is contrary to the principle of legal uniformity; 2) the enforcement of Islamic law would revive the "Jakarta Charter," a reference to language contained in an early draft of the 1945 Constitution obligating the state to implement Shari'a for Muslims; and 3) the enforcement of Islamic doctrine would lead to the establishment of an Islamic state. Related to these points, a question was also raised as to the position of Shari'a Courts within the national legal and judicial systems, which are officially described as based on the non-sectarian national ideology of Pancasila rather than on Islam.

The relationship between the Shari'a Courts and the rest of the Indonesian legal system has proven to be a major point of disagreement between Jakarta and Aceh. Indonesia's Basic Law on the Judiciary (Law No. 14/1970) provides for a unified national judiciary consisting of four systems of courts operating under a single Supreme Court. The four court systems that comprise the judiciary are the Civil Courts, Religious Courts, Military Courts, and Administrative Courts. The Supreme Court administers the four court systems and also has ultimate authority over the law that is applied in each system through its power to decide appeals in cassation.

As discussed above, the Shari'a Courts were created as part of a law that purported to grant a degree of autonomy to the provincial government in Aceh. The Law on NAD, however, conceives of the courts and the law as part of the national legal and judicial system. This has been a non-negotiable point for the central government, and the language of the statute is unequivocal. Article 25 states that "the Shari'a Courts (*Pengadilan Syariah Islam*) in the Nanggroe Aceh Darussalam Province are part of the national judicial system," and that the authority of the Courts "is based on Shari'a in the framework of the national legal system, as shall be regulated by the Qanun of the Nanggroe Aceh Darussalam Province." Moreover, it is the Supreme Court that has the authority to resolve questions relating to the scope of the Shari'a Courts' powers (Article 27). As an additional measure to ensure that the Shari'a Courts conform to the national judicial system, the Supreme Court, along with the Departments of Religion,

Home Affairs, and Justice and Human Rights, established a “support team” (*tim asistensi*) to formulate the organization and competence standards of the Shari'a Courts.²⁷

The Shari'a Courts and “comprehensive Shari'a”

The Law on NAD was enacted in August 2001 during the Presidency of Megawati Sukarnoputri. Prior to the passage of the special autonomy law, however, the regional government in Aceh initiated the application of Shari'a through the promulgation of Regional Regulation (*Peraturan Daerah, Perda*) No. 5/2000 on the Implementation of Islamic Shari'a (the “Regional Regulation”).²⁸ Issued on July 25, 2000, during the Abdurrahman Wahid presidency, this Regulation designates the Qur'ān and the Prophetic tradition as the highest legal authorities in the Province—above the 1945 Constitution—and requires the regional government to develop, guide, and monitor the implementation of Shari'a (Article 3). It also declares that individual Muslims are obliged to obey and practice Shari'a in its totality (*kaffah*) and in a precise and orderly manner in their daily lives (Article 4). The Regulation specifies punishments (Chap. V) including imprisonment, fines, and *adat* sanctions (Article 19) for violations, but *hudūd* penalties are not specifically mentioned.

Following the enactment of the Law on NAD and the issuance of the Presidential Instruction on Shari'a Courts in 2002, the Acehese authorities undertook a revision of the Regulation to conform to the new framework. The Shari'a Office (*Dinas Syariat Islam*), the regional government office charged with producing Shari'a regulations, drafted legislation (*qanun*) on Shari'a Courts and the implementation of Shari'a in the fields of creed, worship, and symbolism. The drafts were circulated in academic circles, such as the Faculties of Law and Economics at Syah Kuala University, the Faculty of Shari'a at the IAIN Ar-Raniry, and among Islamic NGOs, including Forka (*Forum Kereta*, the Aceh CARE Forum) and Yayasan Ukhuwa. The regional legislative assembly discussed the drafts in September of 2002. During these discussions representatives of the regional assembly consulted with the Supreme Court, the Minister of Justice and Human Rights, and the Minister of Religion in Jakarta. The regional assembly completed its deliberations in early October. The draft was ratified (*disahkan*) by the Council of People's Representatives (*Dewan Perwakilan Rakyat*, DPR) on October 14, 2002, and enacted (*diundangkan*) by the President on January 6, 2003.

Shortly after approval by the DPR, a team of regional government

officials met with representatives of the central government to discuss establishment of the Shari'a Courts. Five points were agreed on at this meeting: (1) Shari'a in Aceh was to be implemented in a comprehensive way (*kaffah*); (2) Shari'a should be implemented gradually; (3) investigation and prosecution in the Shari'a Courts were to be in the hands of police and attorneys; (4) there was a need for the formation of a central government working group on Shari'a Courts coordinated by the Department of Home Affairs that would be headed by a general secretary and include representatives from the Indonesian police and Supreme Court, as well as the Departments of Home Affairs, Justice and Human Rights, Religion, the Supreme Court, and the Indonesian Police; and (5) the formal creation of Shari'a Courts would occur on or before 1 Muharram 1424 A.H. (March 4, 2003).²⁹

The discourse on implementation of Shari'a in Aceh has given rise to a social and religious ideal of "comprehensive (*kaffah*) implementation of Shari'a" or "comprehensive Shari'a" that has assumed the status of master signifier in Acehnese society. The Shari'a Courts and Shari'a have been promoted by the Acehnese religious establishment, but they have also been "socialized" (*disosialisasi*) by local governments from the village level to the provincial government in Banda Aceh.³⁰ This socialization process includes a mixture of publicity, education, indoctrination, and enforcement with a goal of enlisting public support and putting the policy into effect. Local authorities throughout the province have mounted socialization campaigns through the formation of special bodies such as the "Team for the Socialization of Shari'a" created in the district of Singkil in May 2002. As explained by the Singkil Team, these campaigns often target non-Muslims as well as Muslims to avoid misunderstandings among non-Muslims and to allay fears that the implementation of Shari'a will threaten their continuing to live peacefully in the region (*Serambi Indonesia*, May 28, 2002).

Institutions within Aceh engaged in the implementation of Shari'a have promoted an interpretation of Shari'a in line with contemporary normative conceptions of Sunni orthodoxy. The Shari'a Office, the government office with direct responsibility for Shari'a regulations, has worked closely with the religious establishment represented principally by the *Majelis Perpusyawaratan Ulama* (MPU, Consultative Assembly of Ulama). Other social, religious, and political groups that have been involved in Shari'a development and enforcement include the Mosque-Based Muslim Youth Organization (*Badan Komunikasi Pemuda Remaja Masjid Indonesia*, BKPRMI), the local State Institute of Islamic Studies (IAIN Ar-Raniry), *Badan Kontak Majelis Taklim* (The Contact Board for the Council of Elders, BKMT), and several national

Islamic political parties, including the Crescent Moon and Star Party (*Partai Bintang Bulan*, PBB), the United Development Party (*Partai Persatuan Pembangunan*, PPP), and the Justice and Prosperity Party (*Partai Keadilan Sejahtera*, PKS).³¹ These institutions have assumed the role of society-based “watchdogs” of the regional government’s efforts at implementation of comprehensive Shari’a.

The former Governor of Aceh, Abdullah Puteh, issued several major pieces of legislation on Shari’a and its implementation. Two pieces were issued on October 14, one on Shari’a Courts (*Pengadilan Syariah Islam*) (Qanun No. 10/2002),³² and one on the implementation of the Islamic creed (*‘aqīda*), worship (*‘ibādāt*), and symbolism (*syiar*) (Qanun No. 11/2002).³³ An additional three Qanuns on intoxicants (*khamr*) (Qanun No. 12/2003), gambling (*maysir*) (Qanun No. 13/2003), and improper relations between the sexes (*khalwat*, Ar. *khalwa*) (Qanun No. 14) were issued on July 16, 2003.³⁴

Islamic creed, worship, and symbolism

The current legal basis for realization of the “comprehensive Shari’a” is contained in Qanun No. 11/2002. This Qanun provides for implementation of Shari’a in three areas: creed, worship, and symbolism. The regulation of these subjects in the Qanun will be dealt with below. It bears mention, however, that these comprise only a part of the vision of comprehensive Shari’a contemplated by Qanun 11/2002. Article 1:6 anticipates the promulgation of further regulations in the future, providing for the enforcement of “Islamic teachings concerning all aspects of life.”

State enforcement of Islamic doctrine inevitably presents thorny political and religious questions. Apart from the status of non-Muslims, which will be discussed later, problems arise as to which concept of creed, worship, and symbolism are to be implemented, and according to which theological and legal schools of Islam. Qanun No. 11/2002 defines creed (*‘aqīda*) in an exclusive and normative way: “*Aqīda* is Islamic *‘aqīda* according to the *Ahl al-Sunna wa l-Jama’a* [Sunnis]” (Article 1:7). Other theological schools, such as the Shi’a, Mu’tazila, and Ahmadiyya, are all lumped into the basket of “deviant beliefs and currents” and not allowed to exist in Aceh (Arts. 4, 5, and 6).³⁵ It seems likely that other non-orthodox liberal-progressive strains of Islamic thought will be relegated to the same category.

Qanun No. 11/2002 requires individual Muslims (Article 5:1), families (Article 4:2), social institutions, and local Acehnese government offices (Article 4:1) to protect and build up the creed. Individuals are “forbidden to disseminate deviant beliefs and currents [of thought]” (Article 5:2).

Violation of this prohibition is punishable by “a discretionary punishment (*taʿzīr*) of two years in jail or 12 strokes of the cane applied in a public caning” (Article 20:1). Religious conversion and blasphemy are also prohibited: “It is forbidden for any individual to convert deliberately from the [Islamic] creed and/or to condemn and/or blaspheme Islamic religion” (Article 5:3). The authority to determine which beliefs or currents deviate from Islamic orthodoxy is assigned to the *Majelis Perpusyawaratan Ulama* (MPU) (Article 6). When requested by the Shariʿa Courts, the MPU is required to provide fatwas on issues of creed. These pronouncements are then binding on the court. Qanun No. 11 does not specify punishments for religious conversion and blasphemy. It is stated that those matters are to be regulated in future regulations (Article 20:2).

The regulation of worship in Qanun No. 11/2002 is limited in scope—worship is defined as prayer (*ṣalāt*) and fasting during Ramadan (Article 1:8)—but it nevertheless has the potential for enormous impact on public life. Government offices and social institutions are required to provide facilities for and to create an environment conducive to worship (Article 7:1). Parents are obliged to guide the worship of their children and all family members (Article 7:2). Attendance at Friday congregational prayers is mandatory for all Muslim males who do not have a legally recognized excuse (*udzur syarʿi*). Government offices and social and educational institutions are obligated to suspend activities that interfere with congregational prayers (Article 8:1–2), to provide space and other facilities for Friday prayers, and to actively encourage individuals to pray. Neighborhood (*gampong*) leaders are responsible for mobilizing residents for congregational prayers and mass religious gatherings (*pengajian agama*). Operators of public transportation facilities are required to provide facilities for obligatory prayers and to allow passengers to perform the prayers (Article 9:1–3).

The provisions of Qanun No. 11/2002 concerning the Ramadan fast forbid both business enterprises and individuals from actions that create opportunities for violating or avoiding the fast. The Qanun does not explicitly require Muslims to fast, but states that any Muslim who does not have a “legally recognized Shariʿa excuse” is forbidden to eat and drink publicly in the daytime during Ramadan. It also encourages performance of the special prayer during Ramadan known as *tarāwīḥ* and other practices that are recommended (*sunna*) during Ramadan (Article 10:1–3).

Qanun No. 11/2002 defines *syiār* as “all activities containing worship-related values for supporting and glorifying the implementation of Islamic tenets” (Article 1:5). *Syiar* is not, however, limited to “activities.” In other parts of the Qanun it refers to Islamic symbols such as the Malay-Arabic

script (*jawi*), the Muslim calendar and “Islamic dress.” The Qanun enjoins provincial and local government as well as social institutions to commemorate Islamic festivals.³⁶ It is also suggested that government offices, private institutions, and individuals use Malay-Arabic script in addition to Roman script, and use both the Muslim and Western calendars in official letters. In certain official documents, the use of the Muslim calendar is mandatory (Article 12:1–4).

Article 13:1 of Qanun No. 11/2002 requires that “Every Muslim must dress in Islamic clothing.” Islamic clothing (*busana Islami*) in this context includes the *jilbab* for women and clothing that covers at least that part of the body from navel to knee for men. Government offices, educational institutions, businesses, and other social institutions are made responsible for making the use of “Islamic dress” customary in their surroundings. These regulations on religious practice and orthodoxy have had the result of extending the power of the state over the personal life of Acehnese men and women. Prayer, fasting, and wearing the *jilbab* are no longer private choices, but rather subject to government regulation and official enforcement.

Intoxicants, gambling, and unchaperoned activities

Qanun No. 12/2003 defines intoxicants (*khamr*) as all kinds of drinks that are destructive to health, consciousness, and clear thinking. It prohibits not only the drinks themselves but also “all activities related to *khamr* and the like.” The catalogue of banned *khamr*-related activities is exhaustive, including “producing, preparing, selling, pouring, distributing, carrying away, storing, hoarding, trading, offering, and promoting” (Article 6). The prohibition applies broadly to hotels, restaurants, cafés, and bars, as well as foreign institutions and the premises of foreign companies or those with foreign employees (Articles 7 and 8). Punishments for violations of this regulation have also been specified: anyone who drinks an intoxicant is threatened with the *hudūd* punishment of 40 strokes with a cane.³⁷ Individuals or institutions found to have performed activities related to *khamr* are subject to discretionary punishments, namely, imprisonment (maximum one year, minimum three months), and/or fines (maximum Rp. 75 million, minimum Rp. 25 million) (Article 26).

Qanun No. 13/2003 prohibits all forms of gambling (*maysir*) and associated activities. In this legislation *maysir* is defined as “betting activities and/or actions between two or more individuals or parties in which the winner receives some payment.” Every individual and institution is prohibited

to provide the means for or facilitate gambling (Articles 5–8). The punishment for gambling is either the discretionary punishment of caning (six to 12 times) in public, or fines of Rp. 15–35 million (Article 23).

Khalwat, as prohibited by Qanun No. 14/2003, is defined as “actions involving two or more non-marriageable and non-married, mature (*mukallaf*) men and women in isolated places.” Persons who engage in *khalwat* are threatened with the discretionary punishment of caning (maximum nine times, minimum three times) and/or fines of Rp. 2.5–10 million (Article 22:1). The regulation also prohibits individuals and institutions from facilitating or protecting activities leading to *khalwat* (Articles 5–7). Those who facilitate or protect *khalwat* are punishable with imprisonment (two to six months), and/or fines of Rp. 5–15 million (Article 22:2). As with the other legislative measures, enforcement of this *qanun* is overseen by the Wilayatul Hisbah.

Wilayatul Hisbah and Shari’a police

Oversight of Shari’a enforcement is assigned to the Wilayatul Hisbah, which is under the administrative authority of the Shari’a Office and tasked with “protecting public order and morality and providing expeditious resolution of minor offences.” (Muhammad 2003, 102) According to the Qanun, Wilayatul Hisbah offices are to be established at the provincial, municipal, village, and even lower administrative levels (Qanun No. 11/2002, Article 14:1). The Wilayatul Hisbah does not have judicial authority. It may, however, issue warnings to those who commit minor infractions, such as unveiling for women or wearing too short trousers for men. If necessary, Wilayatul Hisbah may bring the offender before an investigating officer (*pejabat penyidik*). Investigating officers include Shari’a police and certain civil servants who have been granted specific authority to investigate such matters (Article 15:1). Current regulations require the appointment of about 2,500 Shari’a police officers whose duties are to include serving as investigating officers for the Shari’a Courts and overseeing the implementation of Shari’a generally.³⁸

Women and non-Muslims

One of the most significant impacts of the implementation of the Shari’a in Aceh has been the formal obligation for women to wear the *jilbab*, and

"jilbabization" has become a central issue in the implementation of the comprehensive Shari'a. Local police officers have distributed *jilbab* headscarves to unveiled women on the street as part of the campaign to "socialize" Shari'a and "enhance the image (*citra*) of women."³⁹

The Shari'a apparatus has used the enforcement of rules regarding Islamic dress to hegemonize both the meaning of *jilbab* and the definition of female gender. According to Teungku Lembong Misbah, head of the Wilayatul Hisbah of the Shari'a Office, the *jilbab* should cover all parts of a woman's body considered to be "shameful" (*aurat*), should be loose, not transparent and not show the shape of the body. Tight fitting sports clothing, for example, is not allowed. Beyond these requirements the form of the *jilbab* is flexible.⁴⁰

Professor Al Yasa' Abu Bakar, the head of the Shari'a Office, has stated that the purpose of covering the *aurat* is to honor women and protect their dignity, as well as to symbolize their Islamic identity. Women who cover their *aurat* are considered to be good and respectable women.⁴¹ It is the responsibility of the Wilayatul Hisbah to "aggressively prosecute" (*razia*) women who do not wear the appropriate *jilbab*. Though much less stringently enforced, the Wilayatul Hisbah are also charged to ensure that clothing worn by men fits the criteria for Islamic dress.⁴²

The implementation of Shari'a in Aceh does not restrict women to household activities, as is the case in some other countries where "Islamic law" is enforced. Aceh has a long history of women's involvement in the public sphere. Four of Aceh's rulers in the seventeenth century were women (*sultana*). Aceh also has a history of local Muslim heroines such as Tjut Nja' Dien and Tjut Nja' Meutia who fought against Dutch colonialism. In 2003 the Governor of Aceh, Abdullah Puteh, issued an assurance that the implementation of the Shari'a "would not reduce the rights and freedoms of women to education, work, protection, political involvement, and participation in public life. Women are allowed to become legislators and civil servants."⁴³

The regional government has taken the position that the implementation of Shari'a does not apply to non-Muslims. Governor Puteh has stated that Shari'a requires that "non-Muslims be respected, honored, protected, given the freedom to express their religious tenets, to worship peacefully, and to build places of worship according to their needs."⁴⁴ It is undeniable, however, that the implementation of Shari'a has affected the lives of Aceh's non-Muslim communities. Most Acehnese believe that all Acehnese people are Muslims, and that most of the non-Muslims in the region are "immigrants."⁴⁵ As mentioned earlier, the socialization of Shari'a has been

directed at non-Muslim citizens as well as Muslims in order to reassure them and avoid misunderstanding (*Serambi Indonesia*, May 28, 2002). While in principle the religious freedom of the minority is to be respected (Muhammad 2003, 63), non-Muslims, like other citizens, are obliged formally at least to respect Islamic worship practices according to existing Shari'a legislation in Aceh (Qanun No. 11/2002, Article 11).

The Acehne regional government has avoided describing the region's non-Muslims as a protected community (*ahl al-dhimma*), and this is probably deliberate. The Islamic legal concept of *ahl al-dhimma* is very sensitive, and its use might be understood to mean that there exists a "protected, dominated minority" and a "protecting, ruling majority" and that the former is obliged to pay poll tax (*jizya*) to the latter. Although the government has refrained from describing non-Muslims as *ahl al-dhimma*, the concept of poll tax is being discussed in some Islamic scholarly circles in the region.⁴⁶

How far will implementation of "comprehensive Shari'a" proceed in Aceh?

The understanding of Shari'a reflected in central government discourse differs from the understanding that exists in Aceh. For the central government, the Shari'a to be implemented in Aceh consists of matters currently applied in the rest of Indonesia, that is, Islamic family law, with the addition of creed, worship and symbolism. The impression, moreover, is that the addition of authority over these three areas to the powers of the Shari'a Courts will entail little if any coercion or public enforcement, since the new powers assigned to the Courts relate to matters that are already practiced spontaneously by Acehne Muslims.

The regulatory *qanuns* promulgated in Aceh have translated the central government discourse into the concept of comprehensive Shari'a. "Shari'a is Islamic guidance in all aspects of life" (*Syariat Islam adalah tuntunan ajaran Islam dalam semua aspek kehidupan*). As this statement makes clear, Shari'a is not to be "partially" implemented (*unsur-unsur syariat Islam*), as was stipulated by the 1962 decision of Aceh's martial law administration and in the 1989 Religious Judicature Act, but its implementation is to be "comprehensive" (*kaffah*). It is also clear that the implementation of Islamic legal doctrines in Aceh differs from that which occurs in the rest of Indonesia.

Over the course of these developments the idea of the "comprehensive Shari'a" (*syariat Islam yang kaffah*) has become a master signifier in public discourses about law and society in Aceh. By this I mean that it is not

only part of religious establishment discourse, but has also become part of regional government discourses, from provincial to village levels. This has significant implications for the Islamization of both the private and the public spheres. As said above, the use of Arabic script (*jawi*) alongside Roman script for the names of shops, markets, and government offices, the inclusion of *basmallah* in Arabic in official letters, the use of the Islamic calendar, and the “jilbabization” of the region’s women are only some examples of the effects of implementation of Shari’a in the field of Islamic symbolism. All elements of Acehese society have been mobilized to support the Shari’atization programs. Furthermore, all legislation produced in Aceh, including those concerning secular matters, are to not contradict the government’s conception of Shari’a.

To measure the extent of the implementation of “comprehensive Shari’a” in Aceh, it is useful here to adopt David E. Price’s categorization of its reach into five legal spheres:

1. Issues of personal status, such as marriage and divorce;
2. The regulations of economic matters, such as banking and business practices;
3. Prescribed religious practices, such as restrictions on women’s clothing, alcohol, and other practices that are considered against Islam;
4. The use of Islamic criminal law and punishment;
5. The use of Islam as a guide for governance. (Price 1999, 145)

Unlike the implementation of Shari’a in Indonesia in general, which is mostly restricted to the first and second of these levels,⁴⁷ the implementation of Shari’a in Aceh has also extended to the third level and partly to the fourth level. As in other regions, the law concerning marriage, divorce, inheritance, and *waqf* has long been under the jurisdiction of the Religious Courts. During the Reformasi period, *zakāt* institutions and Shari’a banks were established in Aceh.⁴⁸ In 2002, for instance, the Bank Pembangunan Daerah established four Shari’a banks in Banda Aceh, Lhokseumawe, Langsa, and Meulaboh.⁴⁹ As discussed above, the state apparatus in Aceh has become involved in imposing religious duties on Muslim citizens.

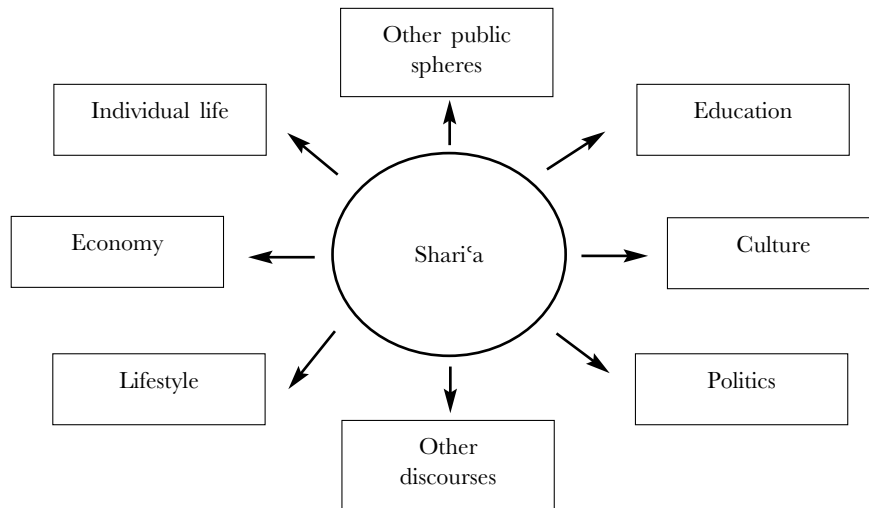


Diagram 2. The Shari'a as "Master Signifier" in contemporary Aceh

Despite the prevailing rhetoric of "comprehensiveness" (*kaffah*), however, implementation of Islamic penal law has so far been partial and tentative. The *qanuns* provide for discretionary punishments (caning, fines, and imprisonment) and "light *hudūd*" (caning for consumption of intoxicants and narcotics).⁵⁰ Harsh penalties in the form of amputations, stoning, and retaliation (*qiṣāṣ*) are not yet authorized.⁵¹ There are several possible reasons for delay in their implementation. First, these punishments are seen by many as violating positive national law. Secondly, there are concerns that harsh penal sanctions might contribute to "unexpected," pejorative images of Islamic law. This concern is evident in a statement by Governor Puteh at the time of the inauguration of the Shari'a Courts, who said that the implementation of Shari'a by the Court would proceed "moderately and gradually." Puteh also said that the government had no desire to violate human rights or gender justice with the implementation of Shari'a, which is sometimes associated with controversial punishments and religious radicalism.⁵²

This does not mean, however, that the harsher penalties will not be authorized in the future. The elucidation of Article 49:c of Qanun No. 10/2002 states that the sanctions to be adopted for violations of the criminal law (*jināya*) include: (1) *hudūd*, (2) *qiṣāṣ/diyya*, and (3) *ta'zīr*. Applying a "gradualist" approach, it is stated that *hudūd* for apostasy and blasphemy will "be regulated in separate legislation" (Qanun 10/2002, Article 20:2).

Gradualism is also to be used with *qiṣāṣ*. To date, however, these penalties are not part of comprehensive Shari'a in Aceh.

The comprehensive implementation of Shari'a in Aceh is based on the legal principle of *lex specialis derogat lex generalis*.⁵³ Under this principle, the more specific regulations for Aceh take precedence over the generally applicable law that applies elsewhere in Indonesia. At the same time, however, it is also stipulated that the Shari'a implemented in Aceh is in the framework of Indonesian national law. In this context, the Supreme Court is authorized to examine the substance of the *qanun*. The status of Acehnese Shari'a law as both comprehensive and at the same time part of the national legal system has resulted in considerable uncertainty and ambiguity (Qanun No. 10/2002, Article 1:2). First, although the Qur'ān and *ḥadīth* are not explicitly mentioned in the above two Qanuns as the basic principles of the Shari'a Courts, they are mentioned along with "secular," national legal authorities as references or sources for Qanun Nos. 10/2002, 11/2002, 12/2003, 13/2003, and 14/2003. Second, the status and loyalties of Shari'a Court judges and other personnel is ambiguous. In addition to being Muslim, judges and other personnel of the Shari'a Court must be civil servants and loyal to the Pancasila and the 1945 Constitution (Qanun No. 10, Articles 12:1; 13:1; 14). The oath of office prescribed for Shari'a Court judges states: "*Wallahi* [by God, I am taking an oath] that I will be loyal to the Shari'a, the Pancasila and the 1945 Constitution, and to all other laws and regulations prevailing in Nanggroe Aceh Darussalam" (Qanun No. 10/2002, Article 16:1). Third, since June of 2004 the Shari'a Courts have been under the exclusive control of the secular Supreme Court.⁵⁴ This is a change from the situation that had prevailed prior to 2004 in which the administrative regulation of the Shari'a Court was under the authority of the Department of Religion and the Governor (Qanun No. 10/2002, Article 5:1 and 2). Finally, the protocol status of the judges is regulated by the Governor's Decree (Qanun No. 10, Article 24:1).

As a practical matter, the Shari'a Courts began functioning only in October 2004 when the government issued Law 4/2004 on the transfer of commercial and criminal cases from the Civil Courts to the Shari'a Courts. Prior to the enactment of that law, most litigation in Aceh continued to be dealt with in the Civil Courts, and the docket of the Shari'a Courts was limited to matters that had previously been under the jurisdiction of the Religious Courts. The passage of the legislation paved the way for exercise of the Courts' new powers, and on October 11, 2004 the Chief Justice of the Supreme Court, Bagir Manan, formally inaugurated the Shari'a Court. Through these measures, the Shari'a Courts have begun in earnest to take up their new charges with regard to implementing Shari'a in Aceh.

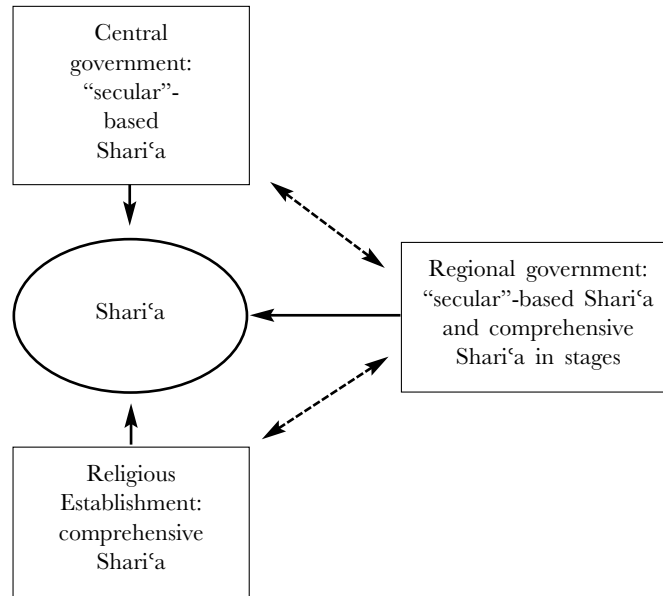


Diagram 3. Shari'a contested in Aceh

Concluding remarks

The establishment of the Shari'a Courts and the implementation of a particular conception of Shari'a in Aceh cannot be dissociated from the central government's efforts to develop a "religious approach" to resolve the status of Aceh within Indonesia. The adoption of this approach was in some sense intended to advance the agenda of protecting the unity of Indonesia against the separatist aims of GAM, which was waging an armed struggle to establish a secular monarchical Acehese state. The government's encouragement of programs for the implementation of Shari'a was calculated to convince the people of Aceh of the seriousness of the central government's intention to deal with the crisis in a peaceful way through responding positively to Acehese demands. This approach, together with military and political initiatives, has apparently proven successful. Nevertheless, Aceh's experimentation with the implementation of Shari'a under secular law on a regional level is seen by many as a pilot project that could possibly be followed by other regions of Indonesia.

The ideal of comprehensive Shari'a has thus become a master signifier that has hegemonized both public and private life in Aceh. As shown above,

however, the implementation of this ideal has so far been less than complete. Nevertheless, the goal of comprehensive implementation could be achieved in two steps: completing the implementation of the fixed (*hadd*) punishments and of retaliation, and using Islam as a comprehensive guide for governance. The central Indonesian government regards both of these steps to be contradictory to the national legal system and the *Pancasila* ideology, which is why comprehensive Shari'a has not been fully implemented in Aceh. All of these developments reflect the limits of the politics of Shari'atization exercised by both central and regional government in Aceh.