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Legal and spatial ordering in Aceh, Indonesia: Inscribing the security of female bodies into law

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Abstract

This paper analyses the 2008 Expert Hearings during a legal reform of the registration of life events, including marriages and divorces, in the Indonesian province of Aceh. The reform aimed to promote the civil registration of marriages and divorces, but was in tension with the spatial entanglement of traditional law (*adat*) and the reinvigorated rule of Islamic law (*Sharia*) alongside the legacies of decades of civil war (1976 – 2005) and the devastation of the Indian Ocean tsunami in 2004. While the registration of marriages makes related rights and responsibilities enforceable, the Hearings brought to light that unregistered marriages can result in de facto polygamous marriages, often locally accepted according to village oral customs, without access to state benefits and eligibility to for post-divorce rights. Unregistered marriages are often more prone to domestic violence because of lack of redress and support. The paper argues that the contestation of legal inscription of bodies in the realm of marriages and divorces points to possibilities for an alternative co-production of law and space, which in the long run might increase women's independence from patriarchal structures. The paper contributes to a feminist legal geography by fleshing out the local-national scalar nature of plural legal orders that shape politics about the female body in post-colonial Muslim contexts.

Key words: legal feminist geography, customary law, Islamic law, domestic violence

Introduction

This paper examines the specific case of a legal reform process in Aceh, which took place in 2008. In Aceh's post-colonial Muslim context, decades of political violence and civil war (1976-2005) plus the utter destruction and loss of many lives caused by the Indian Ocean tsunami in 2004 created the need for a secure space of the family that could no longer be taken for granted. The legal reform, here on the registration of marriages and divorces, aimed to provide the legal basis for such demand, although it was confronted with challenges. The enactment of the Law of Government of Aceh in 2006, introduced as part of the peace process, prescribed that all laws must comply with Islamic law or *Sharia*, based on faith, morals and laws (Government of Aceh 2006, Art 125; Feener 2016). Officially *Sharia* had already been enacted in 1999 and informed customary law or *adat*. *Adat* hosts local rules that manage community life including marrying through public ceremonies without being registered. Increasingly, the codification of concerns of the *Sharia* in the legal realm such as family law was confronted with responding to positive law and *adat*. In addition, all reforms are subject to consultation with the Council of Islamic Scholars (Government of Aceh 2006, Art 125; Art 138), often not familiar or naturally opposing the emphasis of the rights and responsibilities of an individual body tied to the state apparatus, as propagated by positive law. And religious proponents were in favour of a localised management of marriages and divorces. These contentions crystallised in the Expert Hearings supporting the legal reform process.

I analyse a series of Hearings on the draft legislation for the registration of life course events in direct reference to the Law on Population Administration (23/2006) and the National Marriage Act (1/1974) taking place between March and June 2008.ⁱ These Hearings were

held to prepare the grounds for the Parliamentary debate in the Acehese provincial government to enact a provincial by-law for registering marriages and divorces.ⁱⁱ The Hearings problematize the politically contentious nature of the expansion of state law on provincial level into parallel legal, traditional and religious forms of kinship regulation prevailing on the local level, especially in relation to the rights of wives and the prevention of unregistered marriages. Such expansion of state law was challenged by the largely dysfunctional civil administration after the war. Although civil administration has returned, an entwinement of *adat* and *Sharia* based on local understandings and macro-political legacies of the *Sharia* served as guidance to regulate marital relationships focusing on moral, faith and law. At the village level, '*Sharia* and *adat* share the feature of reaffirming worlds of law without being legitimised by the state' (Bowen 2003, 16), while being constitutive to each other in the everyday. The constitutive nature of *adat* and *Sharia* crystallised as rules for family management, especially during the bitter war between the Free Aceh Movement and the Indonesian armed forces that ended only in 2005, and the 2004 Indian Ocean tsunami. Gendered norms such as heterosexuality, wifely obedience and fidelity to husbands are increasingly included in Acehese legislations to comply with a reading of *Sharia* (Bowen 2003; Grossmann 2016) focusing on morality.

The objective of this paper is to illustrate how the process of legal ordering, namely putting institutional responsibilities into provincial state law, clashes with the spatial entanglement of local *adat*, the reinvigorated rule of *Sharia* law and the legacies of decades of civil war and the devastations of the tsunami in Aceh. As Blomley (2008, 162) argues, 'legal ordering' (as part of legal reform) implies 'spatial ordering': law making has spatial implications even when it aspires to be universally and equally applied. Legal reforms of the registration of marriages and divorces in Aceh are a prime site at which to excavate such scalar dynamics.

The reform of family law was meant to exert control over the parallel legal orders prevailing on different scales of state rule – the villages with their own rule based on the entanglement of a localised reading of *adat/Sharia*, and (state) ‘positive law’ and *Sharia* as a state project at the provincial and national level.

I argue that the contest over the legal inscription of bodies in the realm of marriages and divorces serves to provide an alternative co-production of law and space (Blomley 2008, 158), which in the long run, might increase women’s independence from patriarchal structures. Significant in the case I study is the political intervention of a female women’s rights expert, who insisted that authorities tasked with the regulation of marriages need to have access to officially registered certificates of life events such as birth, life and marriage to testify the marriage, to keep the documents and thus make rights of and responsibilities in a marriage enforceable. The discussion about legal ordering is also concerned with the structural violence that results from socio-spatial arrangements in villages, and specifically in Aceh, such as discrimination and domestic violence. The paper thereby contributes to feminist legal geography by fleshing out the political agendas accompanying plural legal orders that shape politics on and about the female body (Hyndman 2004; Smith 2012; Braverman *et al.* 2014; Brickell *et al.* 2015; Brickell *et al.* 2016; Brickell *et al.* 2017; Mountz 2017) in a postcolonial Muslim context.

The paper proceeds as follows: I first explain why family law, and the sites of making family law, such as the Hearings that I analyse, are a particularly important arena in which the spatial implications of legal ordering and their gendered effects are becoming visible. In the two following sections, I explain the context for the legal reforms in my case study, highlighting the increasing prevalence of domestic violence based on findings by the

National Commission on Violence against Women – *Komnas Perempuan* (2006; 2013; 2016) and the decreasing power of *adat* in regulating families in post-war and post-tsunami Aceh. I briefly introduce the legal reforms of family law in Indonesia that are also binding for Aceh (Katz *et al.* 1975; Azra 2003; Cammack *et al.* 2007; Feener 2007; Mulia *et al.* 2007; Cammack *et al.* 2015). I then present an analysis of the Expert Hearings in Aceh, where spatial ordering of the by-law on the registration of life events, i.e. the spatial distribution of institutional responsibilities among different types of authorities (state, *adat*, *Sharia*) was discussed as one possibility to curtail the practice of unregistered marriages.

Family law – a prime site for analysing legal and spatial ordering in post-colonial Muslim contexts

The co-existence of Islamic law, civil law and *adat* is a challenge for any legal ordering or legal reform, especially in the realm of family law. These laws are often not constitutive to each other, which can result in jurisdictions being operational in parallel and uncoupled from each other at different administrative levels. In consequence, law-making tends to neglect how laws become operational and effective (Valverde 2008). De Sousa Santos has called this problematic ‘inter-legality’, which is ‘constituted by different legal spaces operating simultaneously on different scales and from different interpretive standpoints’ (De Sousa Santos 1987, 288; see also: Benda-Beckmann *et al.* 2014). Inter-legality particularly plays out in the realm of family law, since ‘family law in practice’ (Dennerlein 2001) means that legislation on the national level drastically deviates from the local level where family management is being operationalised.

De Sousa Santos reminds us that understanding the momentum of producing such legislation is hugely important: '[m]ore important than the identification of the different legal orders is the tracing of the complex and changing relations among them' (De Sousa Santos 1987, 288). The tracing of such complex and changing relationships can be exemplified in Expert Hearings on family law: here, women's rights are 'embedded in multidimensional and intricate webs of power relations between multiple national actors, and the consequences for women, in terms of claims on and access to legal rights, ... [are] mixed and even marginalizing in some cases' (Al-Sharmani 2013, 2). Here, legal ordering is concerned with the spatial ordering of such inter-legality based on the scaled dimension of legal plural orders and their implications on the legal inscription of female bodies.

Taking the scalar dimension of laws seriously in legal reforms entails considering whether laws are eventually adopted by communities. Valverde (2008) argues that legal reforms tend to carefully define who governs, but often neglect how law is implemented at the local level, especially in spatial contexts where the civil administration have been shut up due to the civil war. So how can a woman prove to whom she is married, when applying for a birth certificate and civil registration was not a requirement by positive law at the time? Although various additional laws have come into effect, such as retrospective marriage registration or the right to a birth certificate, access to these is not universal. Instead, Islamic jurisprudence allows Islamic leaders in Aceh not only to conduct marriages and regulate all disputes, but also to approve or spread ideas of morality. In reference to the rural context of Aceh, Bowen (2003, 36) writes 'the village acts as a political body with respect to disputes, enforcing generally correct behaviour through social suasion.' Such social suasion can be combined with gendered norms based on ideas of morality.

Feminist geographers (e. g. Mayer 2000) have shown that gendered norms influence not only gender relations and related policies on reproduction, but are shaped by conceptions of distinct male and female egos. While on the constitutional level there might be seemingly universal representations of gender relations (Yuval-Davis 1997), representations and interpretations buttressed by gendered norms rooted on the national and local level can promote inequality. In Indonesia, the New Order regime, effective between 1965 and 1999, anchored unequal gender relations in development concepts based on *State Ibuism* (state femininities) on the national level. *State Ibuism* builds on the “domestication of Indonesian women” as housewife and mother (Suryakusuma 2004, 166) and converges with *kodrat*. *Kodrat* assigns women a biological function responsible for the well-being and maintenance of the nation, given and sanctioned by Islam (Robinson 2008, 68f). In a predominantly Muslim society like in Aceh, such representations, gendered assumptions and related identities can be further reinforced by religious authorities involved in the reinvigoration of *Sharia* (Feener 2013). Here, the interpretation of the *Sharia* focuses on moral behaviour embedded in the apparatus of the *Sharia* police.

The argument that structural violence of governing bodies sparks or even mirrors intimate violence has attracted scholarly attention in geography (e. g. Pain *et al.* 2014; Pain 2015; Brickell 2016). The regulation of family life and its intimate relationships – commonly understood as a realm outside overt politics (Harker 2012; Harker *et al.* 2012; Sharma 2012) – can be related to the notion of care. Here care is meant to discipline wifely behaviour to perform a reproductive and obedient role in the domestic realm. Smith (2016) analysed how low-income residents in Cairo understood care as a corrective for inappropriately conceived behaviour in order to justify domestic violence in line with state logics. ‘Looking at where *women are*, and *where gender is* shows that war, terrorism and insecurity are as often in the

bedroom as on the battlefield, and as often in the family home as in the houses of the government' (Sjöberg *et al.* 2015, 358, italics in original). This takes on a special significance in settings following conflict and disaster in which the 'ties that bind' (Valentine 2008, 2097) are unsettled or destroyed on multiple scales and in diverse sites (Hyndman 2001; Hyndman 2004).

For a feminist legal geography, it is particularly important to understand how such legal/spatial ordering affects the security of the body (Hyndman 2004), since the security of the body is often put under pressure by geopolitical forces. The body is 'the site where the geopolitical is produced and known' (Smith, 2012: 1518). Here, the geopolitical is generated by the messiness of laws: positive laws are unspecific, while Islamic jurisprudence supports the governance of the political body of the village. Thus, the clash of such geopolitical forces implies processes where women's bodies function 'as scale and site upon which ideas, ideologies, and politics are performed and made meaningful' (Pratt *et al.* 2012; Mountz 2017, 4). Consequently, I consider the regulation of marriages not only 'as a critical manifestation of state power', but also as a 'site of power' (Blomley 2008, 156) where local traditions and expectations of gendered norms in communities interact with the macro-political legacies of *Sharia* (Smith 2012).

In legal hearings, the geopolitical force upon the security of bodies becomes scripted in laws. If these laws are unspecific or neglect the contexts in which they were written, they tend to marginalise those groups of society who are most vulnerable, most often with gendered effects (Al-Sharmani 2013). Brickell and Cuomo (2017) urge for an analysis of legal processes where individual rights and responsibilities of bodies are not only negotiated but also put into writing (Braverman *et al.* 2014). Such a project 'with its focus on the

intersections between the intimate and global, [...] expands not only the scale of analysis regarding the co-constitution of law, geopolitics and geo-economics, but exposes the range of violences mediated through the law' (Brickell *et al.* 2017, 14f). Cornwall (2013, ix) writes that the 'legal arena is both a site of oppression and in important means of social transformation'. My analysis illustrates both the 'range of violences mediated through law', and also the opportunities for social transformation. Before turning to the Expert Hearings, it is important to understand the forces emerging from and existent in the political body of the village in Aceh.

The political body of the village transformed by *Sharia*, civil war and domestic violence

In this section, I examine to what extent *adat* formerly provided a functioning (and allegedly just) system for the regulation of marital relationships. I then highlight how inter-legality in conjunction with a reinvigorated reading of the *Sharia* in Aceh (made all the more visible by the context of war and disaster) steadily undermined not only the rule of *adat*, but also created gendered effects such as domestic violence.

There are extensive anthropological accounts of kinship systems, marriage rituals, and domestic politics in Aceh drawing on research in the 1960s (Siegel 2000 [1969]) and 1970s (Tanner 1974; Jayawardena 1977a; Jayawardena 1977b). This research provides rich accounts of kinship in Aceh's Northern lowlands with a focus on uxori-local (matrifocal) marriage and inheritance schemes. Based on the observation that men make their earnings through seasonal work outside the village while women own and cultivate rice fields, Siegel (2000 [1969], 138) considered men 'powerless'. Women's 'understanding of the marriage

contract is that men have a place in the home only if they pay for it each day' (Siegel 2000 [1969], 176). This account of the marginal position of men has been partly questioned by Bowen (2003) based on his research in Gayo communities in the Acehese highlands between 1978 and 1994. There, marriages are conducted in two ways: either, a man of a village marries a bride from outside and they live in the home village of the groom; or, the man moves to the bride's village and lives in her parents' house, where she takes care of the rice fields. Both ideas aim to provide 'social continuity' (Bowen 2003, 36f) through kinship, closely related to land tenure of rice fields. Patri- and matri-focal inheritance schemes are tied to local economic forces, although there might be an increase of patri-focal arrangements in nowadays Aceh, as research respondents have indicated.

These kinship relations were affected by the bitter conflict between the Free Aceh Movement and the Indonesian armed forces during the civil war, as well as an increasingly common implementation of conservative *Sharia* interpretations. Siapno (2002, 36f) provides accounts of the increasing influence of Islam on restrictions on the clothing and mobility of women from the mid-90s onwards. While some consider *Sharia* as an 'unwanted gift' to Aceh from of the central government (Bowen 2003, 232), Drexler (2008, 164ff) describes the appreciation of *Sharia* among Acehese as a means to restore public order, although some are cautious that it might require obedience to Islam only. In Aceh, the underlying reading based on the morality of *Sharia* turned *adat* more and more into a disciplining rule, especially towards women.

With the end of the conflict between the Government of Indonesia and the separatist Free Aceh Movement in 2005, evidence of gross violence against women began to emerge. Rape as weapon of warfare, sexual slavery and sexual torture (Siapno 2002) occurred as part of

extraordinary levels of violence that contributed to widespread post-traumatic stress disorder (Good 2015), especially among female adolescents (Agustini *et al.* 2011). According to Siapno (2002, 37-38), military operations not only demolished the social fabric of Acehese communities, but also left women as the sole breadwinners and being exposed to increasing physical violence.

A study carried out by the national Commission on Violence Against Women-Komnas Perempuan (2006) brought to light that during the civil war 74% of all female respondents in camps for internally displaced people (IDP) had faced sexual violence, with women under the age of 28 representing the most affected group. The Report also shows that it was common among men to marry women against their will and then to divorce the wife for disobedience, as allowed in some readings of *adat*. The Report (2006, ii-iii) says that divorce in case of disobedience extended both the domination of the husband and the power of the community over the body of the woman and her sexuality. The Network of Women's Rights (*Jaringan Pemantau 231*, comprising 16 organisations) reported that between 2011 and 2012 after the end of the conflict, there had been about 561 cases where domestic violence was the most prevalent form of general violence (76%), followed by communal violence (26%) (Komnas Perempuan 2013).

The most recent monitoring report on gender-related violence in Indonesia by *Komnas Perempuan* (2016) shows a strong relationship between the entangled role of *adat/Sharia* and gender-related discrimination and violence. Among the women interviewed, 43% of the respondents mentioned that they had experienced domestic violence (50 out of 115 cases, Komnas Perempuan 2016: 6). More importantly, the Report relates acts of intimate violence

to unregistered marriages, where women do not dare to resist because they must rely on the application of the *adat/Sharia* to solve marital disputes.

The failure to address marital issues is, besides the role of civil war, partly due to the interaction between the entwinement of *adat/Sharia* and gendered norms. First, since the early 1960s, parts of *Sharia* had found their way into Aceh's provincial legislation, but the formal right for *Sharia* to organise religious and cultural life in Aceh was assigned by Provincial Law 44/1999. Regional Regulation (No. 5/2000) and several by-laws assured the state implementation of the *Sharia*, most notably the creation of the *Sharia* police (*Wilayatul Hisbah-WH*), the definition and practice of Muslim dress, and the banning of illicit relations outside marriage (*khalwat*). The end of civil war and the tsunami increased 'the reinvigoration of *Sharia* implementation with a focus on public morality as a means of social control' (Feener 2013, 56) and led to a greater diminution of the role of women (Siapno 2002; Immajati 2008; Afrianty 2016). The particular interpretation of the *Sharia* favoured in Aceh promotes gendered norms such as heterosexuality, wifely obedience and fidelity to husbands. Second, in line with *State Ibuism* and the concept of *kodrat* (Robinson, 2008: 10), it prescribes women as managers of the domestic sphere based on ideas of biological determinism.

Behavioural, gendered norms have been reinforced through public humiliations, especially of women, enacting a punitive reading of *Sharia*. Women are increasingly subject to practices of shaming (O'Shaughnessy 2008: 61) on the basis of *adat*. "Settling by *adat*" is a loose euphemism that, depending on the case and the location in which it occurs, can refer to anything from a stern lecture from village elders to forcing the couple to marry, as well as various forms of physical and emotional abuse' (Feener 2012, 176). Such application of *adat*

is justified by concepts of care for moral behaviour in the villages. Men's extramarital affairs are socially accepted to the point that they can become openly recognised. Most often, women feel abandoned, and their shame prevents them from seeking legal help (Nilan 2009, 877), although many local women's rights organisations are attempting to comprehensively address these problems.

In consequence, women address marital problems or ask for divorce less often than men.

An Acehenese civil rights activist explained the situation to me:

When a man justifies his request for divorce, he often argues that his wife cannot satisfy him [sexually] or that his wife is not smart enough to manage the household. He will not disclose domestic violence as reason for the divorce. If the wife files the divorce she will claim 'incompatibility', although among community workers, it is known that women often seek to be divorced on the grounds of their male partners' domestic violence towards them. Before 2004 women did not have the courage to seek the divorce, but since 2004 the divorce rates are climbing.ⁱⁱⁱ Some people connect such rise to the legislation on domestic violence [2004], which allows women now to sue their husbands in case of domestic violence. But above all, it is essential that women have the courage to address such issues. (Civil rights activist, Banda Aceh, Indonesia, 9 November 2010)

To sum up, the seemingly neutral regulatory construct of intimate relationships rests in the hands of the political body of the village. But it is not neutral in practice and some women experience bodily effects, such as domestic violence reinforced through the micro-regulation of religious authorities, especially in the light of a reinvigorated *Sharia*. Female-headed households are most affected by unregistered marriages and divorces because they cannot afford the expense of documentation and remain trapped in a vicious circle, without documentation of their life course events and without post-divorce rights. In the next

section, I highlight the national legislation aiming to regulate marital relations *de jure*, while at the same time, being incompatible with the political body of the village.

Scalar tensions hampering the registration of marriages and divorces in

Indonesia

Scalar tensions based on national laws pose potential challenges to the legal ordering that aims to operationalise the registration of life events. In Indonesia, the indirect reference to Islam ('Belief in one God', known as the Jakarta Charter) in the Constitution has resulted in contradictory laws and has produced separate parallel institutionalised responsibilities. The drafting process for the National Marriage Act in 1973 and its enactment in 1974 shows how the regulation of marriages symbolises a political attempt to embed Islam within civil law (Hanstein 2002, 136-59; Mulia *et al.* 2007; Cammack *et al.* 2015). The 1974 Act stipulates that Islamic courts oversee the practice of Muslim marriages and divorces across Indonesia including Aceh. Controversially, it prescribes that Muslim marriages need to be registered with the state (Office of Religious Affairs), while at the same time allowing 'a marriage [to be] valid if performed according to the religious law of the parties' (Lembaran Negara Republik Indonesia [Government of Indonesia] 1974 art. 2, 1-2). Registration is not necessary to effectuate the legality of the marriage: the religious act of the marriage *or* the administrative registration equally legally validate the marriage. This ambiguous jurisdiction explains why many marriages across Indonesia remain unregistered and are often turned into de-facto polygamous relationships as divorces are not being registered. Some scholars argue (e.g. Bedner *et al.* 2010) that the registration of marriages and divorces is an artificial add-on which interferes with the local settlement of marital conflicts.

Two connected but independent subsequent laws failed to alter the widely accepted social practice favouring religious marriage over civil registration. First, in 1989, the Indonesian Religious Courts Act (No. 7) strengthened not only the role of Islamic courts in the realms of divorce and inheritance matters, but also strengthened the wife's status in submitting the request for divorce in her residential area. Second, in 1991, Presidential Instruction (No. 1) enacted the Compilation of Islamic Law (*Kompilasi Hukum Islam* - KHI) as the sole frame of reference for addressing and solving familial issues like the regulation of marriage, divorce, inheritance and charitable foundations. The KHI, a codification of *fiqh* texts as authoritative manuals of Islamic law, gives priority to the religious act of marriage. With regard to marriage registration, the KHI states in Chapter 2, Article 5: 'To make a marriage orderly, in Islamic society every marriage must be registered' (Salim *et al.* 2003, 280). But to make it legal, a marriage must comply with the National Marriage Act, validated either through the religious act or administrative registration. Such 'dual validity' (Nurlaelawati 2013, 128) satisfies the claims of classical Muslim scholars that only the religious act is decisive, and registration is just an optional administrative requirement.

These two laws aimed to curb de-facto polygamy based on social practices: First, local religious authorities often do not require marriages or divorces to be registered, thus unregistered marriages are common social practice. Second, the National Marriage Act, although it did not outlaw polygamy, requires legal consent of the wife or wives and a proof of economic viability to be registered with the Religious Courts. At the same time, when a husband claims his wife does not satisfy his demands or does not fulfil her reproductive role, he can request a divorce, which is easily conducted in front of the local Islamic leader.

Such oral divorce is further bolstered by the bifurcation of administrative responsibilities of governmental agencies. The registration of Muslim marriages takes place in the Office for Religious Affairs and divorces take place in Religious Courts (in Aceh called *Sharia* Courts): but a divorce cannot be legalised if the marriage has never been registered. Given the contradictory regulations on marriages and the dysfunction of the governmental agencies, the local Islamic leader takes over a core function in overseeing marriages. The Office of Religious Affairs often issues marriage certificates without proof of previous divorce (Nurlaelawati 2010). The Religious Courts are, in principle, responsible for issuing divorce certificates, but are far away, involve expensive fees and travel costs to court; and as analysed in a Indonesian-wide report on the public service of Religious Courts (Sumner 2008, 23), they do not provide clear information for illiterate women. In turn, bribing the Office for Religious Affairs to testify a marriage or a divorce can often prove to be the cheaper solution because the Religious Court requires three costly hearings before the divorce is enacted (Nurlaelawati 2010, 193). In turn, post-divorce rights such as maintenance or alimony are infrequently claimed because additional hearings accrue additional fees (in India see i. e. Basu 2012; in Indonesia: Nurlaelawati 2016). Still, retrospective registration of a marriage is possible (National Marriage Act 1974, Article 7), and is required for the issue a child's birth certificate (compulsory since 2005), to file a claim for divorce or to bring a charge against a violent husband based on the national Law against Domestic Violence (No. 23/2004).

To sum up, national laws do not have a coherent stance on marriage registration, administrative responsibilities are not consistently exercised and retrospective registration is possible, but infrequent, as it is in many parts of Indonesia. In practice the rights and

responsibilities within a marriage are not put into writing and thus, often depend on oral accounts of the political body of the village.

Negotiating spatial ordering through legal ordering in Aceh's legal arena

In this section, I analyse the Expert Hearings on the registration of life course events to highlight how legal ordering based on the registration of life events clashes with the spatial ordering of the political body of the villages. The aim of the Hearings for which selected legal experts, most with an elite background, were invited to make presentations, was to gather opinions on the proposed by-law regulating the registration of life events in the province of Aceh. I focus on the draft legislation on the registration of life events, among them being the registration of marriages and divorces, which was later to be enacted as by-law No. 6/2008.^{iv} The Expert Hearings took place over 17 days between March and June 2008 and included consultation with representatives from the Office for Religious Affairs and the Civil Registration Office.

I focus on the registration of marriages and divorces as legislation to counter the consequences of unregistered life events, as argued for by civil rights activists. For these activists, taking women's security in intimate relationships seriously required the specification of the role of religious authorities, namely the local religious offices and their cooperation with local Islamic leaders in the by-law. However, civil rights activists criticised the male-dominated nature of legal arenas like the Expert Hearings, where the inter-legality of *adat/Sharia* seemingly justified the tacit acceptance of unregistered, de-facto polygamous marriages and divorces. One activist explained this situation to me:

We face a tremendous challenge: we female legal experts cannot tell them [civil servants, drafting teams] how to draft a law, because the laws must comply with the Law of Government of Aceh. It becomes an opportunity for Aceh to set its own rules, with the result that rules are very contradictory, even contradictory to the Constitution of Indonesia. Those involved in legal reforms emphasize neither diversity nor equality. Any advocacy is very difficult to do because you must approach persons who have their background in *Sharia* Islam. You must engage with the Council of Islamic Scholars, the State *Sharia* Agency and their drafting teams. And all legal regulations must comply with national laws. (Civil rights activist, 9 November 2010)

Despite these difficulties, the Expert Hearings also offered the conditions of possibility for advancing legal regulations beneficial to women's security in marital relationships. During the Hearings, the clarification of institutional responsibilities and tasks, such as cooperation between different organisational units of governmental agencies when registering life events, were debated. The discussions focussed on the roles and responsibilities of Muslim governmental institutions in registering marriages, on what qualifies as divorce and on keeping records of divorces. Because responsibilities for registering life course events are allocated according to Non-Muslim and Muslim affiliations, cooperation between the Office for Religious Affairs and *Sharia* Court (reporting to the Department of Religion) and the Civil Registration Office and the Civil Law Courts (reporting to the Ministry of Home Affairs) is burdened with extra complications. It is here that female activists intervened to sensitise civil servants and representatives of Muslim authorities to the detrimental effects of unregistered marriages and divorces.

Dr Rosmawardhani, the only female member of the Expert Group (*Tenaga Ahli Pansus*), argued from the start that the by-law should be as specific as possible about the registration of all kinds of life events. 'I think we are not just editors, but we are authors of a new by-

law. Once we have finished the new by-law, we have to look at other laws.’^v She urged the participants to put the procedures of the registration of life events in writing at the local level even though neither national laws nor *Sharia/adat* specify the need for this. The lack of specification then serves as an excuse for not registering life events at the provincial level. Dr Rosmawardhani reminded listeners at the Hearings three times (28 March, 1 April and 14 March) of the importance of such issues in the post-conflict and post-disaster context of Aceh. Her statement on 1 April provides an example:

The matter of the registration of life course events is, indeed, still very disorderly. The matter of registering [life course events such as birth, death, marriage, divorce] is still not perceived as problem [in public]. [...] And during in times of conflict, many [couples got] married in line with customary law and did not get registered anywhere because the sub-district Office for Religious Affairs was dysfunctional. And then after the tsunami, many marriage certificates were lost and had to be proven. The same refers to the problem of the foster parents who have not been registered after their assignment. In our by-law, we want to specify the responsibilities in a detailed way [to provide security to couples, parents and children].

Dr Rosmawardhani emphasised that neither of the two governmental agencies responsible for registering intimate relationships - the Civil Registration Office for Non-Muslims or the Office for Religious Affairs for Muslims - were functional during the conflict, and the tsunami led to further predicaments. The respective offices had not only failed to collect data on the life events of Acehnese citizens, but Acehnese citizens now lack the documents to testify their life course events. In consequence, whether a bride or groom at a wedding is single, a widow, divorced or a still-married woman, is not testified.

Various legal experts at the Hearings reiterated the need to explicitly define the responsibilities of the Office for Religious Affairs in registering marriages, but despite a proposal to increase salaries as an incentive to carry out the work of registering marriages in general, the representatives of the Office for Religious Affairs resisted any specification of their responsibilities in the draft by-law. Dr Rosmawardhani repeatedly argued for the need to define the tasks of the Office of Religious Affairs, so they know how to register life course events and how to administer these records, and she insisted that the Acehese by-law was just as important as any national law. She also commented on the specific context of Aceh that requires not only legal drafting of the specification of rules and institutional responsibilities of administrative bodies, but also entails consideration of the role of religious authorities and the widespread prevalence of wedding ceremonies as public enactments of legal marital status without being registered.

The Hearing on 8 May was particularly important for understanding the role of the Office for Religious Affairs because the spouses of a marriage are not only legally testified, but also rights and responsibilities in relation to a marriage can be claimed. A legal scholar at the Islamic University in Aceh outlined problems resulting from the prevalence of village-based wedding ceremonies:

In the last meeting, a person from the Office for Religious Affairs said that the average Muslim citizen is not registered and usually the wedding ceremony takes place in the mosque or in the prayer room. It still depends on the initiative of the respective officer of the Office for Religious Affairs to issue a marriage certificate.

(Dr Syahrizal, legal expert, Hearing on 8 May 2008)

This expert contended that registering Muslim marriages depends on the initiative of the Office for Religious Affairs. At the Hearing on 8 May, the representative of the Office for Religious Affairs claimed that the current legislation already sufficiently covered the filing of the copies of marriage certificates and that a detailed clarification of responsibilities was not needed. In contrast to the latter statement, during this Hearing which focused not only on the registration of marriages, but also on the data exchange between the Office for Religious Affairs and the *Sharia* Courts, Dr Rosmawardhani was exceptionally persistent on the need for marriage registration because the exchange of data about registrations is crucial to proving the legality of the marriage in case of a divorce request.

The Hearing then turned to the problem that a divorce cuts the legal ties between the partners in a marital relationship, and this would require a formalised process with written record keeping in order to separate it from the governance of *adat/Sharia*. The process of getting divorced (*cerai*) is linked to religious affiliation: *cerai gugat* refers to a divorce through a Non-Muslim court, whereas *cerai talak* happens in a *Sharia* Court. The main direction of this debate focused on the question of where the certified copies of the marriage certificate (*Kutipan Akta Nikah*) and the legal decision on the annulment of the marriages (*pembatalan perkawinan/pernikahan*) or the divorce (*percerain gugat/talak*) should be registered and physically stored; and how decisions should be kept track of through data exchange. Dr Rosmawardhani highlighted that for Muslims, marriages and reconciliations take place in the Office for Religious Affairs, whereas the request for divorce and the actual divorce itself are only handled by the *Sharia* Court, and the decision is then sent to the Office for Religious Affairs. This division of tasks had to be formalised in writing.

After these clarifications, the discussions focused on specifying the tasks of the Office of Religious Affairs with the intention to make state management more compatible with the local level. While previous debates had argued that the by-law should not be too specific about these responsibilities because the National Marriage Act itself was not specific, Dr. Rosmawardhani disagreed:

I want to clarify that the demand for divorce by the wife has to be sent to the Office for Religious Affairs on sub-district level, according to Law No. 7 [Religious Court Act 1989]. At the time of the conflict, there was no data exchange between the *Sharia* Court and the Office for Religious Affairs and moreover, there is no provision for funding to facilitate the data exchange. (Dr Rosmawardhani, 3 May 2008)

Her argument, which also hinted at Aceh's disaster and conflict context, was supported by another expert from the Acehnese government, M. Jafar. He confirmed that there had always been a problem that *Sharia* Courts did not send their decisions on divorces to the Office for Religious Affairs because of lack of funds. As a result of these arguments, the important matter of the mutual exchange of the copies of the registration of marriages and divorces was included in the by-law.

Subsequent discussion concentrated on the responsibility for filing and issuing the decision of the *Sharia* Court. The Director of the *Sharia* State Agency, Dr Rusydi, emphasised that the *Sharia* Court has to repeal the marriage certificate because marrying a new partner qualifies as de-facto polygamy if the first marriage is not annulled. Mr Mukhlis, a senior official from the Religious Affairs Office stated that 'If the marriage certificate is not repealed, [...] sexual intercourse with the new partner would appear to be adultery'. That statement was decisive because it pointed out the crucial responsibility of the Office for Religious Affairs to: firstly,

issue a certificate of a marriage; and secondly, to confirm a divorce and thereby repeal a previous marriage. Indirectly he also emphasised the importance of exchange of information on life course events between the different organisational units of governmental agencies. Mr. Mukhlis added that the current legislation would already sufficiently cover the filing of the copies of the marriage certificates.

In response to this suggestion, the Chair, Syamsul Bahri, asked,

I have a question to the Office for Religious Affairs [Mr. Mukhlis]: does the Office for Religious Affairs certify the evidence of a divorce and hand it out?

Mr. Mukhlis responded that the Office for Religious Affairs only kept the files testifying to the divorce, while the *Sharia* Court witnesses the divorce. The Office for Religious Affairs was responsible for issuing marriage certificates, but if such a certificate was not available, an unregistered marriage would still be possible. In this key moment, the Chairman urged that these tasks should be specified, namely that the *Sharia* Court must repeal the marriage certificate and that the *Sharia* Court and the Office for Religious Affairs must each keep copies.

On 3 June 2008, participants in the Hearing discussed what would qualify as divorce. Dr Rosmawardhani said:

The annulment of marriage implies the Act of the Court. The *Sharia* Court states that there has been a marriage which is now to be declared invalid.

To which the Chair replied:

This suggestion makes sense. We include Dr Rosmawardhani's suggested article and discard the previous version.

Dr Rosmawardhani's intervention was successful due to her insistence on the need to clarify the responsibilities of the Office for the Religious Affairs and the Courts and their work flows, and to specify these in the legislation. While the administrative responsibilities might have been put into writing, legal obligations, such as alimony in cases of divorce, remained untouched. As Dr Rosmawardhani emphasised in her tenth intervention during this Hearing on 8 May, the registration of life events, the record keeping and the exchange of data legitimises claims to post-divorce rights including alimony and maintenance:

The area and population of Aceh is large, so we should oblige the civil administration and Office for Religious Affairs to exchange data. Those who often seek divorce are women, but it is quite difficult to protect women if the husband does not take on his responsibilities [for alimony and maintenance] after the divorce.

In this statement, Dr Rosmawardhani emphasised the difficulty for local jurisdictions to keep track of husbands not paying alimony if they move away from their community. Filing divorce certificates enables women to claim divorce rights without being dependent on the oral records of Islamic leaders.

In the final Hearing on June 2008, the Chair of the Council of Religious Scholars in Aceh (MPU) Dr Muslim [sic] stated: 'I would like to say that I truly support the legal draft of this by-law, because the Council has endorsed a legal opinion (*fatwa*) about it.' This legal opinion, issued by the MPU in November 2006, was important because the government of Aceh has to accord with the *Sharia*.^{vi} Since Dr Muslim was aware of this kind of governing

power, he directly endorsed the registration of marriages: ‘We need clarification about the fact that the marriage has taken place and whether it is valid.’

In this section, I have shown that inter-legality was debated in the Expert Hearing as one reason that hampers a coherent and synchronised legislation being constitutive to the national and the local levels. Based on the interventions of civil servants and experts, especially one female legal expert, the implications of the current social practice of unregistered marriage and divorce were discussed between civil servants and legal experts in the light local Muslim authorities still operating independently from the national level. The Expert Hearings resulted in agreements to specify in the by-law the tasks and responsibilities of state organisations in order to reduce women’s legal insecurity in marital relations.

Conclusion

This paper has examined a process of legal ordering based on the analysis of Expert Hearings about the institutional responsibilities for the registration of marriages and divorces in Aceh. This process of legal ordering was in tension with spatial ordering based on traditional law (*adat*), the reinvigorated rule of the *Sharia* and the legacies of decades of civil war and the devastations of the 2004 tsunami in the Indonesian province of Aceh. Because administrative registration was not being implemented, marriages remain unregistered making re-marrying without divorce possible, while at the same time, ignoring the post-divorce rights of women. In consequence, the regulation of marriage depends on localised structures, namely Islamic leadership, its reading of *adat* and *Sharia* and the local Muslim registration offices. De facto polygamy is an accepted social practice, which is

further reinforced by macro-political legacies i.e. the National Marriage Act and the Compilation of Islamic Laws. Decades of conflict, as well as norms such as *State Ibusim* and *kodrat*, propagating women's domesticity, have weakened the social status of women. Violence, especially domestic violence, is a difficult matter for the whole community, since social relations are often so controlled by men, silencing the voices of women. Domestic violence often arises in unregistered marriages (Komnas Perempuan 2016), having dire consequences for women's well-being. In addition, female-headed households are most affected by legal insecurities and lack of access to state services such as birth certificates for their children.

I argued that the contest over the legal inscription of bodies here in the realm of marriages and divorces serves to provide an alternative co-production of law and space, which in the long run might increase women's independence from patriarchal structures. In so doing, the paper analysed how specifying the tasks of responsible governmental agencies along religious affiliation (Muslim and Non-Muslim) has been resisted, negotiated and eventually put in writing in a legislative draft to counter a 'family law in practice' (Dennerlein 2001) based on the political body of the village. Dr Rosmawardhani, as female legal expert, navigated the site of power where intimate relationships between men and women are negotiated and where consequently the well-being of both genders is at stake. These debates about the new legislation have two limitations: first, the legislation is unlikely to change the social practice in which marriages are considered legal when conducted as oral religious ceremonies. Second, the post-divorce rights of women are still not implemented and this especially affects child custody (Nurlaelawati, 2016).

To detach intimate relationships from the political body of the village implies co-operation with Islamic leaders: it is proposed to replace concepts of disciplining care based on gendered norms constituting appropriate behaviours for women with ideas of gender equality, but these might not be embraced immediately. Thus, the political body of the village will remain a far more complex and powerful actor shaping the 'village geopolitics' of intimate relationships. Physical violence against women is likely to continue. Civil registration as 'rule by law' therefore does not necessarily result in 'rule of law' (Brickell 2016), since 'law that affects women's lives is more likely to be in the administration of welfare benefits, the operation of the private law of maintenance, and the formulation of guidelines and decision-making at the level of bureaucratic operation' (Smart 2002, 24). Put differently, law *per se* does not serve as a moral guide to prevent violence against women, and a man's adultrous behaviour will not be changed by the purely administrative act of registration (Bedner and van Huis 2010). 'Texts are not enough' (Chouinard 1994, 162), but they can be the beginning of the promotion of security for female bodies.

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ⁱ I analyse verbatim transcripts of the hearings, which I contextualise in relation to semi-structured in-depth interviews undertaken in 2009 and 2010. In addition, in 2006 I was involved as an advisor of the German aid agency *Deutsche Gesellschaft für Technische Zusammenarbeit* to work on administrative reform of the district offices of civil registration office and made observations on the legal reforms through interviews and informal conversations. In my field work in 2009 and 2010, I conducted 52 interviews in Indonesian, English and German on women's rights in the province of Aceh, in the Indonesian capital Jakarta, and in Germany with national and international experts, Muslim participants (especially Islamic leaders), human rights activists, politicians and diplomats. Where possible, these interviews have been transcribed.

ⁱⁱ 'By-law' or 'regional regulation' (*qanun*) are synonymous terms. Throughout this paper, I refer to the term 'by-law'. In this case, the relevant by-law is specified as No. 6/2008 on population administration (*Qanun Aceh Nomor 6 Tahun 2008 tentang Penyelenggaraan Administrasi Kependudukan*).

ⁱⁱⁱ This observation has been reconfirmed in an interview with members of Mahkamah Syriat in Pidie, interview 17, 8 November 2010

^{iv} I obtained the digital copies of the verbatim transcripts in Indonesian from the parliamentary services of the Provincial Government of Aceh.

^v I have translated all quotes from Indonesian.

^{vi} *Fatwa MPU tentang Administrasi Kependudukan di NAD* (Al Idarah Al-Sukkaniyah) [Fatwa by the MPU on population administration], 29. Syawal 1427H/ 21.11.2006.