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0521824826 - Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning

John R. Bowen

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Islam, Law, and Equality in Indonesia

In Indonesia, the world's largest Muslim-majority country, Muslims struggle to reconcile radically different sets of social norms and laws, including those derived from Islam, local social norms, and contemporary ideas about gender equality and rule of law. In this new study, John Bowen explores this struggle, through archival and ethnographic research in villages and courtrooms of Aceh province, Sumatra, and through interviews with national religious and legal figures. He analyzes the social frameworks for disputes about land, inheritance, marriage, divorce, Islamic history, and, more broadly, about the relationships between the state and Islam, and between Muslims and non-Muslims. The book speaks to debates carried out in all societies about how people can live together with their deep differences in values and ways of life. It will be welcomed by scholars and students across the social sciences, particularly those interested in anthropology, cultural sociology, and political theory.

JOHN R. BOWEN is Dunbar-Van Cleve Professor in Arts and Sciences, Professor of Anthropology, and Chair of the Program in Social Thought and Analysis at Washington University in St. Louis. He is the author of *Sumatran Politics and Poetics* (1991), *Muslims through Discourse* (1993), *Religions through Practice* (2nd edition 2001), and the co-editor of *Critical Comparisons in Politics and Culture* (Cambridge University Press, 1999).

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“Westerners seldom appreciate the array of competing religious and social norms among which Muslims must navigate. Bowen skillfully demonstrates that for these Indonesians the quest for meaning among alternative legal and practical values is at the very heart of the tension between local practice and universal faith. His cogent examples and superb eye for their surround bring home with great poignancy and insight, both for Indonesia and the broader Muslim world, the ‘principled reflections’ that inform the lives of Muslims in the present day.”

Lawrence Rosen, William Nelson Cromwell Professor of Anthropology, Princeton University and Adjunct Professor of Law, Columbia Law School

“*Islam, Law and Equality in Indonesia* is an engaging, rich work, a work of many parts, many levels, and great subtlety. It is at once about Islamic public spheres, about the contradictions of everyday village life in Sumatra, about the relationship between the state and religion, about gender and inequality in Southeast Asia, about the negotiation of difference in a bewilderingly complex, normatively diverse world. But, above all, it is about the way in which the law – increasingly, across the globe – is deployed to manage the unmanageable, to resolve the unresolvable, to deal with the incommensurable. As this suggests, you are about to read a study whose ethnographic depth is matched by the breadth of its theoretical reach.”

John Comaroff, Harold H. Swift Distinguished Service Professor of Anthropology, University of Chicago, and Senior Research Fellow, American Bar Foundation

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Acknowledgments

This volume is the third (or the fourth, if you count my dissertation) in which I have drawn on my fieldwork in the Gayo highlands of Aceh province, Indonesia. It is, therefore, to my many Gayo friends that I owe the first words of thanks. Since 1978, they have helped me to see a good number of problems from their perspective. Time and again I have returned to the highlands to situate and reconsider broad issues of religious variation, cultural change, and, as in this volume, the complexities of law, Islam, and social equality, from a vantage point I have come to know very well. Such is the ethnographic approach. Many in the highlands are mentioned in chapter 1, but I must here repeat my gratitude to Abang Evi, my lifelong companion in exploring things Gayo, and to his family.

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Most scholars depend for their livelihood on institutional support, and I have been most fortunate to have taught and thought at Washington University since 1985. I doubt that any university provides a more encouraging atmosphere for intellectual and pedagogical innovation than does my own. I owe a special debt to Bill Van Cleve and Georgia Dunbar Van Cleve for their support of my professional life. The National Science Foundation provided initial research support in 1994. In 1995–96, the Center for Advanced Study in Palo Alto (with funding provided by the National Science Foundation) gave me the opportunity to think about how to turn massive field notes into something readable. Two French institutions then provided further occasions to write, read, and discuss. In 1999, the Maison Asie-Pacifique in Marseille, and in particular Charles Macdonald, allowed me to present findings to an excellent group of area specialists and ethnologists. In 2001, the Centre d'Etudes et de Recherches Internationales in Paris provided another such opportunity and allowed me to begin comparative work on France. Christophe Jaffrelot made that visit possible, as did the initial encouragements of Fariba Adelhah, Gilles Kepel, and Riva Kastoryano. I continue to enjoy delightful, productive collaborations with those colleagues and with many others in Paris with an interest in Indonesia, including Andrée Feillard, Romain Bertrand, Daniel Sabbagh, Hichem Elarafa, Dhaou Meskine, Ahmad Jaballah, and Hakim El Ghissassi.

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Glossary

Important terms that recur in the text from Indonesian (I), Arabic (Ar), Gayo (G), Dutch (D), or Acehnese (Ach) languages are listed; derivations are given only if some speakers are aware of the word's origin, or when the word exists in both Indonesian and Arabic Islamic lexica. Indonesian words commonly used by Gayo speakers are listed only as Indonesian. Terms that only appear once or twice in the text, and always with translations, are not included.

adat (I<Ar *ʿāda*): rules and practices of social life, a culturally appropriate sense of propriety, tradition and custom (see also *ēdēt*).

adatrecht (D), hukum adat (I), adat law: sets of rules and procedures pertaining to social and political life characteristic of a particular geographical area in the Dutch East Indies and, subsequently, Indonesia, and having legal value.

adil (I): just, as in *keadilan*, “justice.”

ahlul kitab (I<Ar *ahl al-kitāb*): “people of the book,” a category generally applied to Christians and Jews to indicate the history of revelation and worship they share with Muslims, but sometimes extended to other religious groups.

angkap nasab (G): a uxrilocal marriage arrangement whereby the couple is obliged to remain in the wife's village to care for her parents.

bangsa (I): nation, people, sometimes combining both senses.

bupati (I): head of a district (*kabupaten*).

camat (I): head of a subdistrict (*kecamatan*), below a *bupati*.

cerai (I): divorce; in legal proceedings further subdivided into *cerai talaq*, divorce suits brought by the husband, and *cerai gugat* (*gugat* = challenge, litigate), divorce suits brought by the wife.

dakwah (I<Ar *daʿwa*): “call,” instruction to other Muslims about religion, practiced by *dāʿi*.

Dewan Dakwah Islamiyah Indonesia (DDII): Indonesian Islamic Dakwah Council, an organization dedicated to promoting awareness among Muslims of the basics of their religion and of the value of maintaining distinctions and boundaries between religious groups.

ëdët (G): Gayo traditions, practices, fundamental social norms; also, the official enforcing those norms.

farâ'id (I<Ar): the fixed shares allocated to heirs; *'ilm al-farâ'id*: the knowledge of how to allocate shares, the “science of shares.” The Gayo cognate *pera'il* or *pera'id* is used in the same sense, or to designate a woman who receives a fixed share.

faskh (Ar)*, *fasakh (I)*, *pasakh (G): a form of divorce, or more precisely annulment of a marriage, in practice nearly always initiated by the wife.

fatwa (I<Ar fatwâ; Ar. pl. fatâwa): legal opinions provided by Islamic scholars or jurists.

fiqh (I<Ar): jurisprudential interpretation.

Gerakan Aceh Merdeka (GAM) (I): Aceh Liberation Movement, rebels fighting Indonesian troops in Aceh province.

hak (I,G<Ar): right; *hak milik*, an individual right in property; *hak ulayat*, rights to land held in the name of a community; *hak asasi (manusia)*, basic human rights.

hakam (I<Ar): mediator, appointed by judges to mediate a divorce.

hakim (I<Ar): judge.

halal (I<Ar halâl): permitted.

haram (I<Ar harâm): forbidden.

harta (I): wealth, estate; *harta bersama*, communal or marital property (acquired by a couple during a marriage); *harta bawaan*, “brought property,” preexisting wealth contributed by one party to the marriage (= *G erta*).

hiba, hibah (I,G<Ar): a gift given according to rules of Islamic law; *hibah wasiat*, “bequest gift,” a term combining two different modes of transferring wealth used in Gayo, Minangkabau, and some other Indonesian societies (see *wasiat*).

hukum (I,G<Ar): law in general (*hukum negara*, positive law); regularities in the social or natural world (as in *hukum akal*, “the law of reason”); Islamic law as opposed to adat; the religious value of any action; the legal consequences of an act. (Note that a number of Indonesian words pertaining to law derive from the same Arabic trilateral root *hkm*: *hak, hakam, hakim, hukum*.)

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***ijma'* (I<Ar *ijmâ'*):** consensus over a matter of legal interpretation among knowledgeable Muslims.

***ijtihad* (I<Ar):** (re)interpretation by individuals of Islamic sources.

***'illa* (Ar):** the reason (for the revelation of a verse of the Qur'ân).

Inpres, Instruksi Presiden: an executive order.

Institut Agama Islam Negeri (IAIN): State Islamic Institute.

***jabab* (I<Ar):** Islamic dress for women, usually consisting of a loose dress and headcovering.

***ju'elën* (G):** virilocal marriage form, lit. “sold”; also referred to as *ango*, “brought.”

Kantor Urusan Agama (KUA): Office of Religious Affairs.

***kaum muda (mudë)* (I,G):** “young group,” modernist religious reformers inspired by the Salafiyah movement of the late nineteenth and early twentieth centuries, opposed to the *kaum tua*, the “old group,” who advocated continuing to adhere to teachings of the Shâfi'î legal school predominant in Indonesia.

Kompilasi Hukum Islam di Indonesia: Compilation of Islamic Law in Indonesia.

***madhhab* (I<Ar):** legal school or tradition.

***mahar* (I,G<Ar *mahr*):** a gift made directly from the groom to the bride, required for a marriage to be valid in Islam.

Majelis Ulama Indonesia (MUI): Council of Indonesian Ulama, with national, provincial, and local bodies.

***manat* (G):** a request or a legacy.

***masyarakat adat* (I):** “adat society,” people living under local social norms.

***milik* (I<Ar):** (individual) ownership.

Muhammadiyah: the second largest Islamic association in Indonesia, after NU (but the most influential association on Sumatra), generally advocating reinterpretations of established religious practices and the heritage of the Salafiya modernist movement.

***musyawarah* (I):** deliberation, a process of reaching consensus, a meeting held to resolve a dispute; *musyawarah mufakat* (G. *mupakat*), “consensus through consultation/deliberation,” a platform of the Indonesian state ideology, the Pancasila.

Nahdlatul Ulama (NU): the largest of Indonesia's Islamic organizations, based on Java, and in particular in Javanese religious schools (*pasantrens*), and generally following Shâfi'î teachings.

niët (G<Ar *nîya*; I *niat*): intent or intention.

nikah (I<Ar): marriage.

pematang, umë pematang (G): land designated by parents for the child or children who care for them in old age; literally the land lying between main rice plots, suggesting its insignificance.

pemohon (I): the plaintiff in a lawsuit, literally "requesters"; defendants are *termohon*, "those requested."

pengadilan (I): court, judicial procedure; *Pengadilan Agama*, religious court (formerly, in Aceh, *Mahkamah Syariah*, Shari'a Tribunal); *Pengadilan Negeri*, civil court.

perdata (I): civil cases.

pesaka (G): inherited wealth (= I *pusaka*).

Piagam Jakarta: Jakarta Charter, a draft preamble to the 1945 Constitution written by nine of the authors of the Constitution, and containing a phrase obliging the state to enforce Islamic law for Muslims.

pidana (I): criminal cases.

poh roh (G<Ach): wealth jointly created by a husband and wife, from an Acehnese phrase meaning "to work fallow [land]."

qadi (I,G<Ar *qâdî*): judge; religious official.

qiyâs (I<Ar): an analogy in Islamic reasoning.

shari'a (I,G<Ar *sharî'a*): the path or way pointed out by God and His Messengers for all humans; the norms and rules that guide a Muslim on that path; a body of positive laws putatively reflecting those norms and rules.

siyasah shari'a (Ar): shari'a policy, government laws and actions based on, or designed to promote, shari'a.

syiqoq (I<Ar): irreconcilable differences, as grounds for divorce; the procedure leading to such a divorce, involving the appointment of mediators.

talaq (I<Ar): repudiation of a wife by her husband; a form of divorce; *ikrar talaq*, the husband's pronouncement of the divorce formula.

ta'lik talaq (I<Ar): a deferred or conditional talaq agreed to at marriage, and usually declared to have occurred by a judge.

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***taqlīd* (I,G<Ar):** to follow a madhhab (legal tradition), rather than engaging in *ijtihād*.

***tengku* (G):** a man learned in religious matters.

***teniron* (G):** “requested” goods, asked for by the bride’s family, most of which is passed on to the bride (thus as “indirect dowry”).

***ulama* (I,G<Ar):** Muslim scholars of Islam; jurists (as used in Indonesia).

***umma(h)* (I<Ar):** the worldwide Muslim community.

***wali* (I,G<Ar):** guardian.

***waqf* (I<Ar):** endowment or trust.

***warisan* (I,G<Ar):** inheritance; *pewaris*, the person leaving an estate; *ahli waris*, heir; *ahli waris pengganti*, “substitute heir,” a relative who inherits by taking the place of a linking relative (usually a grandchild taking the place of his or her predeceased parent).

***wasiat* (I<Ar *wasīyya*):** bequest; *wasīyya wājibah*, an “obligatory bequest,” a mechanism designed to provide an estate share for relatives whose link of entitlement to the deceased had been broken by the death of a linking relative.