

STATES AND LOCAL LEGAL CULTURES IN MEDIEVAL ISLAM

A Comparative Study of Akbar's Mughal Rule and Sultan Agung's Mataram in 16th and 17th Century¹

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Abstract

This study seeks to expand the horizon of existing literatures on the dialectic of religion, legal culture and local dynamics by comparing two great Muslim rulers in two different parts of the world in the first Islamic millennium: Mughal Emperor Akbar and Mataram's Sultan Agung. It specifically aims to analyze historical accounts on the dynamic relations between Islamic norms and local culture with corresponding results of distinctive ways of ruling by these two great rulers. While both rulers Akbar and Sultan Agung shared similar concerns in political imagination, their difference was particularly shown in the representation of religion in the courts' political and legal culture, with the latter was heavily determined by different challenges they faced during their rule. This paper argues that a comparative overview of these two great figures, who ruled in different parts of the world and at rather successive periods, would be beneficial for the studies of religion-culture relations in flagging the

¹ This article is an elaboration of our previous research on "Dialectic of Religion and Culture: A Comparison of Emperor Akbar's Spiritualism *Din-i-Ilahi* and Sultan Agung's *Manunggaling Kawula Gusti* that we conducted with Prof. Syed Inayet Ali Zaidi, an Indian Historian from Jamia Millia Islamia University India in 2014-2015 funded by Ministry of Religious Affairs (MORA) Indonesia. I wish to thank him for sharing his valuable knowledge and ideas and Muhammad Kashif from Gift Gujranwala University, Pakistan and anonymous reviewers for their helpful comments.

variation and extent of manifestation of Islamic global norms in local legal cultures which heavily determined by their corresponding local dynamics. As a literary or library research, it uses eclectic, blended, with qualitative method in content analysis.

[Studi ini berupaya memperluas horison literatur-literatur yang ada tentang dialektika agama, budaya hukum dan dinamika lokal dengan membandingkan dua penguasa besar Muslim di dua belahan dunia yang berbeda pada millennia Islam pertama yaitu Raja Akbar dari Dinasti Mughal dan Sultan Agung Kerajaan Mataram. Secara spesifik, studi ini bertujuan untuk menganalisa catatan-catatan historis relasi dinamis antara norma Islam dengan budaya lokal dengan hasil temuan yang menunjukkan cara berkuasa/memerintah yang berbeda diantara dua penguasa tersebut. Sementara keduanya (Akbar dan Agung) memiliki kemiripan dalam imajinasi politik, di sisi lain, perbedaan mereka ditunjukkan dalam hal representasi agama dalam budaya hukum dan politik terutama ditentukan oleh perbedaan tantangan yang mereka hadapi ketika mereka berkuasa. Studi ini membuktikan bahwa dengan membandingkan dua figur yang memerintah di belahan dunia yang berbeda pada masa yang berurutan, akan memberikan manfaat terhadap studi relasi agama dan budaya dalam mewarnai variasi dan lingkup manifestasi norma-norma global Islam dalam budaya hukum lokal yang banyak ditentukan oleh dinamika lokal yang bersesuaian. Sebagai penelitian kepustakaan (literer), studi ini menggunakan pendekatan eklektik dengan metode kualitatif dalam analisis ini (content analysis).]

Keywords: Emperor Akbar, Sultan Agung, Islamic state, Islam and pre-Islam local culture relations, local legal culture

A. Introduction

The birth of Islam and its following territorial expansion beyond Arabic communities, coincided with the fall of the Dark Middle Ages in the West, have brought considerable changes to the global economy, politics as well as culture. With more than tripled the size of Christendom at its height, the growing Islamic forces served to contain Europe and forced the latter to rely on its own resources to meet its needs. In its colonies and territories ruled under its influence, Islam brought new

political norms where spiritual goals were highlighted along with material and realist objectives. The spread of Islam also allowed the unprecedented emergence of a more diverse interaction between cultures through both force and non-force means. Through Islam, many local communities were brought in interaction with the wider Muslim world at a very impressive level.²

The fact that many local communities predated the spread of Islam led questions with regards to the forms of encounters where the dialogue between cultures were forged, contested and put in place. It is particularly intriguing to ask, while local political organizations (whatever they might be) already preexisted Islam along with their distinct norms and cultures, to what extent Islam and its norms have influenced the existing practice; to what extent Islam had been institutionalized and in what forms it had happened; what factors had left to that institutionalization and what kind of expectations laid behind this introduction and what kind of benefits they derived from this so-called Islamization. Considering the fact that Islamic force put under its influence vast geographical regions, another question might be followed such as to what extent the Islamic influence varied between regions and their correspondent determinant factors.

Those questions have particularly emerged following the establishment of our research collaboration with New Delhi's *Jamia Millia Islamia* (State Islamic University) in 2015. Having to find common research interests between our university and our Indian counterpart, Islamization by Islamic courts was found as an important issue shared by researchers from both institutions as it brought dynamics in the relations between Islam and pre-Islam culture and among their proponents. We were particularly interested to compare Islamization and the state's promotion of it, under the leadership of two great rulers, who live in rather successive period: Emperor Akbar (1560-1605) of Mughal dynasty and Sultan Agung of Mataram (1613-1645). Emperor Akbar and Sultan Agung are two leading figures in Islamic kingdoms history that had great contributions as well as similarities in the fields of religion, culture, literature, art, architecture, and politics. Their ruling period, which fell under the period of first Islamic millennium, might give us significant

² AC Milner, "Islam and the Muslim State", in *Islam in South-East Asia*, ed. by M.B. Hooker (Leiden: Brill, 1988).

information about the dynamics of Islam-local culture relations as well as the local legal formation.

Despite this possibly important information from this intellectual endeavor to compare the two regions, it is quite astonishing that such a study comparing how Islamization took place and later influenced the formation of local Islamic legal culture in 16th-17th century has been largely ignored by the writers and scholars even at present. Therefore, this comparative study of Akbar and Sultan Agung period is very important to describe the dynamic interactions between the existing social environment and Islamic norms have affected the formation of Islamic state and its legal culture. Hopefully, this study will give a new dimension on the dynamics of application of Islamic law in the Islamic kingdoms in the medieval period.

As a literary or library research, this research uses eclectic, blended, with qualitative method. Eclectic means the choice of techniques is dependent on the needs of the research. Although this should be true for almost all social research, it is particularly so with qualitative research in that the appropriate method or techniques is often identified and adopted during the research. Qualitative research is also multi-modal. The researcher may adopt a variety of research techniques, or a combination of such (blended), as long as they are justified by the needs.

This study is a comparative description and analytical method combined with the study of written document (content analysis). It will describe and compare the socio-religio-political settings of Akbar's and Agung's period. With regard to that historical approach, containing philosophical thought, it cannot be obtained by one method only. History and human thoughts are so complicated and having a lot of dimensions. Hence, this study uses historical approach. The history of Akbar the Great as the third Emperor in Mughal Dynasty and that of Sultan Agung Hanyakrakusuma as the Great King in Mataram Kingdom are quite significant to be researched with historical approach.

The data gathered in the research will be qualitative. They consist of primary and secondary data. The primary data are derived from the manuscripts and archives. The secondary data are gathered from books, journals and other publications which are related to the subject.

B. The Spread of Islam and Indian Subcontinent-archipelago Interaction

There have been several theories suggesting different origins of early Islamic proselytizers in the archipelago. Supported by many early orientalist such as Snouck Hurgronje, the oldest and widely accepted theory suggests that Islam was first brought to the archipelago by Indian traders in 1200 at the earliest. Using the evidence of style similarity of gravestones in Java and Sumatra with those of Gujarat, the latter was mentioned as the more precise location where the first Islamic proselytizers came from.³ Mainly based on native narratives, both written and oral tradition, another theory suggests that the early proselytizers were Arabs. Reaching the archipelago from China, India or even direct from Arab, Arabs with title of Sayyid or Sharif were said to have converted local rulers. Arabs or their descendants were also said to constitute the group of early proselytizers known as *walisanga*.⁴

In addition to the debate about origins of early Islamic proselytizers, observers on the spread of Islam in the archipelago had also arguments about the social class of these proselytizers. Early observers suggest that it was the merchants who carried out the proselytization while they traded with native communities. Meanwhile, more recent observers argue that trade itself was seldom believed as the bearers of religion. Instead, they argue that it was the Sufi trade guild these merchants were associated to which had become a more prominent factor in the proselytization.⁵ This Sufi approach, which stresses more on personal development, combined with the growing Muslim cosmopolitan global culture were believed to be stimulating factors which led local rulers in the archipelago to embrace Islam.

Regardless of the differences among the observers on the spread of Islam, it is commonly agreed that Indian subcontinent was the place

³ The other locations mentioned as likely origins of these first proselytizers are Malabar and Coromandel coasts in the Indian subcontinent, based on the similarities found in the schools of Islamic law in the archipelago and those two coasts, Isma'īl Ḥāmid, "A Survey of Theories on The Introduction of Islām in The Malay Archipelago", *Islamic Studies*, vol. 21, no. 3 (1982), pp. 89–100.

⁴ Ḥāmid, "A Survey of Theories on The Introduction of Islām in The Malay Archipelago".

⁵ *Ibid.*

where the early proselytizers came from or (at least some of them) had transited to before their arrival in the archipelago, mostly due to the fact that it had been an important hub for global trade at the time. Whether it was on Islam or any other norms/value systems, through trade significant engagement must have been built between native communities and the subcontinent leading some observers to argue that the latter significantly influenced the former cultural development, as Winstedt's statement quoted by Steenbrink:

We may accept that until the nineteenth century the Malay people received everything from India: their religion, their political system, astrology, medicine, literature, art and technical skills.⁶

Considering the intense trade relations between the archipelago and the Indian subcontinent, and successive period they lived in, it is quite likely that Sultan Agung was informed about the figure of Akbar Emperor either from the Indian/foreign merchants or from his literary works. Based on this assumed knowledge, we argue that Sultan Agung was likely influenced by the works of Emperor Akbar which led to some similarities found in their political imagination and compassion in art and literary works. Based on the previous research we conducted⁷, we were convinced that Sultan Agung's views are mostly influenced by Akbar's through transmission of Indian knowledge, manuscripts and literatures for example Akbar Nama, Ain-i-Akbari and dissemination of Akbar's ideas brought by Indian traders and sufis at 16th and 17th centuries. In addition, what Mughal emperors achieved in general, and what Akbar did in particular, had a big impact to other Islamic kingdoms. It means it became global discourse which gave great contribution on the development and growth of religious thought in surrounding countries.⁸

⁶ K.A. Steenbrink, "Indian Teachers and Their Indonesian Pupils: On Intellectual Relations between India and Indonesia, 1600-1800", in *India and Indonesia during the Ancient Regime* (Leiden: E.J. Brill, 1988), p. 130.

⁷ In 2014, authors conducted an international collaborative research (Wahid Hasyim University and Jamia Millia Islamia University, India) on *Dialectic of Religion and Culture: A Comparative Study on Emperor Akbar's and Sultan Agung's Spiritualism*.

⁸ Mudzakkir Ali, Noor Achmad, and Nanang Nurcholis, *Dialectic of Religion and Culture: A Comparison of Emperor Akbar's Spiritualism "Din-i-Ilahi" in Dabistan-i-Mazahib and Sultan Agung Hanyokrokusumo's "Manunggaling Kawula Gusti" in Serat Sastra Gendhing* (Semarang: Wahid Hasyim University Press, 2016).

Despite these similarities, there are also differences between the two, particularly on their adoption and practice of Islamic norms in legal structure. As we shall describe more in details in the following sections, while the adoption of Islamic norms in local legal framework later structured a new idea or new political, social and cultural ideas, the adoption itself was subject to the dynamics of social-political environment the rulers had been facing.

C. Mughal Empire under Emperor Akbar

Emperor Akbar was the third ruler in the dynasty of Mughal. Although the ruling dynasty officially avoided the use of the term to represent them until at least Akbar, ‘Mughal’ had been a popular term to refer to “broadly signified peoples of Central Asian regions, speaking the Mongol languages and dialects”, and, to particularly Westerners, refer to “circumcised man.”⁹ Having failed to conquer their homeland Ferghana and particularly Samarkand in the north, Emperor Babur founded the Mughal dynasty by slowly shifted their orientation to Hindustan by 1526.¹⁰

Abu al-Fath Jalal al-Din Muhammad, later better known as Akbar, who inherited the throne at the age of thirteen, brought up in comparatively liberal and plural surroundings. His father (Emperor Humayun), was a Mughal Sunni and his mother Hamida Banu Begum was the daughter of a Persian Shia Scholar, Mir Baba Dost or Ali Akbar Jami. They brought a group of unorthodox teachers in their circle to educate Akbar. Akbar’s noble tutor, Abdul Latif, was a Shii who was liberal in his religious understanding. He taught him the principles of peace or peace with all or the universal. Another teacher, Mulla Pir Muhammad was also very liberal minded. Bairam Khan, a Shii acted as Akbar’s guardian in his early years as a young ruler and later functioned as regent of the State, was also a Shii who had undoubtedly influenced him in his attitude towards the people.

Living at the turn of the first Islamic millennium, Akbar was also exposed to the ideas of Milleniarism (*mahdawi* movement) increasingly

⁹ Harbans Mukhia, *The Mughals of India* (Malden, MA; Oxford: Blackwell Pub., 2004), pp. 2–4.

¹⁰ Jos J.L. Gommans, *Mughal Warfare: Indian Frontiers and Highroads to Empire, 1500-1700* (London: Routledge, 2002), p. 23,

popular in Gujarat, a territory he conquered later at the last quarter of the 16th century.¹¹ These ideational and temporal contexts brought him in contact with Sheikh Mubarak, said to have been follower or at least sympathizer of *mahdawi*,¹² along with his two sons Faizi and Abu al-Fazl.¹³ During his rule, many of his court members were Sufi adherents and leaders, a functional as well as hereditary character of Mughal Empire¹⁴ which concurrently shaped his interest in sufi practices and heterodox understanding of Islamic teaching. This environment grew even more plural as more Hindu states conquered to be part of his growing imperium. At the end of Akbar's rule, the size of Mughal territories grew twice bigger than his predecessors.

Apart from being the patron of the finest Mughal art and cultural development, Akbar was also believed to have thoroughly considered necessary political actions to ensure his empire survival. Believed as an attempt to anticipate his growingly unstable regime as a result of the plurality of his court members, Akbar was said to represent himself as a universal ruler where he expressed his concerns as the protector of all religious believers.¹⁵ Parts of this attempt were his official genealogy account which traced his lineage to Adam, instead of stopping only at Muhammad,¹⁶ and his new approach to universal peace (*sulh-i kull*) which will be elaborated more in details in the next section.

¹¹ Stuart Cary Welch, "Akbar and His Times", in *Anvari's Divan: A Pocket Book for Akbar*, ed. by Annemarie Schimmel and Stuart Cary Welch (New York: Metropolitan Museum of Art, 1983), pp. 28–9.

¹² A. Azfar Moin, *The Millennial Sovereign: Sacred Kingship and Sainthood in Islam* (New York: Columbia University Press, 2012), p. 290; Stephen P. Blake, *Time in Early Modern Islam: Calendar, Ceremony, and Chronology in the Safavid, Mughal, and Ottoman Empires* (Cambridge: Cambridge University Press, 2013), p. 156.

¹³ Faizi and Abu al-Fazl were two of the so-called "nine jewels" considered as Akbar's inner circles. This group was comprised of artists and intellectuals from whom Akbar gained and exchanged his knowledge particularly on arts and culture.

¹⁴ Richard Foltz, "The Central Asian Naqshbandi Connections of the Mughal Emperors", *Journal of Islamic Studies*, vol. 7, no. 2 (1996), pp. 229–39.

¹⁵ Another political move he introduced was his policy of balance of nobles where no single ethnics occupy more than 25 percent of nobility. See, Stuart Cary Welch, "Akbar and His Times".

¹⁶ Mukhia, *The Mughals of India*, p. 42.

D. Javanese Court under Sultan Agung

Raden Mas Rangsang, or later better known in his Javanese title Sultan Agung, was crowned as the third ruler of Islamic Mataram dynasty in 1613.¹⁷ He was considered *Agung* (the great) partly for his success in bringing major Javanese territories under his rule, far greater than the kingdom had originated as an independent village under his great grandfather Ki Ageng Pemanahan. Through marriage alliances as well as forced conquer he succeeded to control Cirebon in the west, Surabaya in the east, and Blambangan in remote eastern Java by 1639.¹⁸ Sultan Agung utilized political concept of *keagung-binataran* which meant that Mataram Kingdom was a unity, whole, uncompetitive and un-separated.¹⁹

It was recorded that he used different royal titles to signify his rule. In 1624, an indigenous title “Susuhunan” was adopted and symbolized a spiritual leader as the title resembles those of the legendary propagators of Islam in Java in 14th century.²⁰ The title “Sultan” itself was only in use in 1641, after he sent emissaries to the ruler of Makkah, who later granted him a new title “Sultan Abdullah Muhammad Maulana Matarani”.²¹ This title Sultan adoption was said not only marked the ultimate shift of his cosmic paradigm at later period of his rule (from indigenously-centered to Islamic cosmopolitan), but also raised questions about his orthodox approaches to the way he organized his court.

The adoption of that more globally accepted Islamic title²² signified

¹⁷ Some source suggested that he was the fourth ruler after Adipati Martapura, who ruled only for a day. Due to his incapacity to rule, Adipati Martapura was later dethroned.

¹⁸ Theodore G. Th Pigeaud and Hermanus Johannes de Graaf, *Islamic States in Java 1500-1700* (The Hague: Nijhoff, 1976).

¹⁹ HY Agus Murdiyastomo, “State and The Statecraft of The Centrals of Government Mataram Islam Kingdom in Java”, *International Journal of Social Studies*, vol. 12, no. 2 (2016).

²⁰ *Ibid.*

²¹ Howard M. Federspiel, *Sultans, Shamans, and Saints: Islam and Muslims in Southeast Asia* (Honolulu: University of Hawai'i Press, 2007), p. 54.

²² The use of Sultan title in Mataram was not an exception at the time. Few years earlier (1638), Banten ruler had also been granted a title Sultan by the Makkah ruler. Ricklefs noted that this Islamising wave of Javanese court was parallel to what had been happening at the time in the archipelago, see Merle C. Ricklefs, “Islamising Java : The Long Shadow of Sultan Agung”, *Archipel*, vol. 56, no. 1 (1998), pp. 469–82.

Sultan Agung as an enthusiast ruler in bringing more Islamic elements in Mataram court at unprecedented level. Despite of being self-proclaimed Muslims, previous Javanese rulers had showed fewer adherences to Islamic law and their adherences, if any, would be exercised in a liberal manner in which they were rested on “the ruler’s discretionary power of adopting the law to the circumstances of society”.²³ This ruler-focused system did not evaporate; instead it was enhanced by the growing Muslim political thoughts, particularly related with the leadership and the mystical notion of the “Perfect Man”.²⁴ This coincided with the turbulent time Sultan Agung faced in the latter half of his rule.

Following his failure to capture Batavia in 1628-1629, he was encountered with many insurgencies, one of which centered around the grave Sunan Tembayat (currently under the district of Klaten) with the support from religiously minded villagers in 1630. Upon his success in defeating the insurgent, he carried out a pilgrimage to the tomb of Sunan Tembayat in 1633, “which marked an intensification of his religious feeling.”²⁵ Not only he erected a gate in the tomb site to immortalize his tribute to the saint that would pacify potential insurgencies in the future, he introduced a new Javanese calendar adopting Islamic lunar system in the same year. This growing piety laid a background against his later successful attempts to bring under his control Cirebon in the west and Blambangan Panarukan in the remote east, and more reforms he introduced in the court, as we shall describe more in details in the next section. Borrowing Ricklefs’ term, the shift of direction in synthesizing Java-Islam in Javanese court under Sultan Agung was driven by his patronage interests, piety and supernatural authority.²⁶

E. Emperor Akbar and Sultan Agung: Their Legal Frameworks Compared

Islamic law or shariah which is the basis of the Islamic government and society, is considered divine by Muslims, and is, according to them, eternal and immutable. It is supreme over all persons and causes. Due

²³ Milner, “Islam and the Muslim State”, p. 29.

²⁴ Milner, “Islam and the Muslim State”.

²⁵ Pigeaud and Graaf, *Islamic states in Java 1500-1700*, p. 45.

²⁶ Ricklefs, “Islamising Java”.

to this fact, Emperor Akbar of Mughal Dynasty and Sultan Agung Hanyakrakusuma of Mataram Kingdom apparently accepted the supremacy of the shariah law over the state, at least in theory. However, the discretionary power of a Muslim ruler was also acknowledged.²⁷ In practice, Akbar was not only the head of the state but also the commander in chief of the military forces as well as the head of the judicial authority in the country.²⁸ Like Akbar's, the concept of *ratu-binthara* consisting of *wahyu nubunwah*, *wahyu hukumah*, and *wahyu wilayah* placed Sultan Agung, not only as the king but also as the representative of God (*wahyu nubunwah*), judge (*wahyu hukumah*), and guardian for the people (*wahyu wilayah*).²⁹

Islamic law is usually divided into two broad heads: *tashrī'i* (religious matters) and *ghair-tashrī'i* ('secular' matters). The purely religious portion of law is applicable to Muslims, where as the 'secular' laws apply to Muslims and non-Muslims alike. The political histories of the Mughal Dynasty and Mataram Kingdom and their administrative and quasi-religious institutions have attracted the attention of a large number of scholars and excellent works have been written on the subject. But comparatively little attention has been paid to the comparative study of the Islamic legal system under Akbar and Sultan Agung.

Generally, in the period of Emperor Akbar and Sultan Agung, the law was divided for all practical purposes into two broad categories: religious and political. The Mughal and Mataram ruler placed the matters relating to religious obligations, marriage, divorce, inheritance, pious endowment, etc., under the jurisdiction of religious authorities (*qazis*, *muftis* or *sadrs*) and respected their opinion and decisions in these matters. In political affairs however, they considered themselves sole interpreter of laws and blocked any interference from the *ulama* and jurists. In this sphere the judgment of the *qazis* and jurists were not only set aside by the Emperors, they were sometimes also relieved of their job assignments

²⁷ Abd Al-Kādir Badā'ūnī, *Muntakhab-ut-Tawārīkh*, trans. by W.H. Lowe (Calcutta: Asiatic Society of Bengal, 1924), p. 270.

²⁸ S.C. Raychoudhary, *History of Medieval India* (1000 to 1707 A.D) (New Delhi: Surjeet Publications, 1980), p. 105.

²⁹ B.J.O. Schrieke, *Indonesian Sociological Studies*. Part 2 (The Hague: W. van Hoeve, 1957), p. 105.

if they did not conform to the policies of the rulers, or refused to serve their interests.

To deal with the administrative problems, the Mughal rulers promulgated new regulations paying little regard to the consistency of their edicts with the ideals of Islam or sanction from the shariah. An enunciation of the source material and the set of rules, criteria and administrative manuals make it abundantly clear that there existed four kinds of legal codes and set of regulations to serve as guides in the legal framework of the empire: first, Canon Laws. There were laws that concerned civil matters of the Muslim community. It was applied to the Muslims in such matters as inheritance, succession, marital rights, guardianship, etc.

Second, Law of the land or common Law. It signified the laws that governed the system of taxation, commercial transaction and regulated customs, transit duties, barter, exchange, sale and contract. The common law also dealt with the offences involving maintenance of internal peace and order or with the criminal acts recognized by age-old human society, such as adultery, murder, theft, robbery, etc. the Law of the land was common to all subjects of the state.

Third, State Law (*Zawabit* or *Qawanin-i Shahi*). This consisted of regulations enacted by the state and executive decrees issued by the Emperors from time to time regulating how to conduct the state affairs and governance of the court. The coverage of the state law commonly included wide-range issues, comprehending all those aspects for which no legal precedent was available or the existing law was not effective to cope with the new administrative problems. Fourth, Customary Law (*qamin-i urf* or *adat*). The fourth set of the Mughal law comprised the local customs, traditions and the prevalent practices. The customs sanctioned by traditions usually recognized as an important source of law. The Mughal court acted at varying levels to this law, ranging from tacit acceptance to the formal enforcement of custom and local traditions adding to the complexity of the legal framework in operation in the empire. The customary law, in fact, served as an expedient instrument for the Muslim rulers in tackling the administrative problems. It also provided them with a legal ground for justifying their enactments in temporal matters.

While Sultan Agung (1613-1645) was the first Mataram ruler to introduce to the kingdom significant elements of shariah justice, replacing much of Indian-Javanese judiciary with Islamic legal experts.³⁰ Borrowing Ariyanti's statement, Mataram Kingdom under Sultan Agung paid due attention to Islamic legal system in the center kingdom replacing gradually the law which based on Hindu's or Budha's teaching. The law implemented by 'aristocrate' was taken over by the *ulama* who applied Islamic law.³¹ He actively promoted Islam as state policy, and that only occurred in the last decade of his long reign. His law code was developed at that time; it was an attempt to combine local custom and Muslim law.³² He integrated Islamic law into the court system; the so-called *jaksa*³³ courts.

He introduced a legal institution named *Peradilan Surambi*. The *Peradilan Surambi* was actually an Islamic version of the *Peradilan Pradata*. Before the Mataram Kingdom converted to Islam, there had been two court systems: the *Peradilan Pradata* and the *Peradilan Padu*. The *Peradilan Pradata* dealt with issues falling under the authority of the king or regulated in Hindu law, while *Peradilan Padu* dealt with problems that did not pertain to the authority of the king, and was based on unwritten law or *adat*.³⁴

When the Mataram kingdom converted to Islam and became a Mataram Sultanate, precisely when Sultan Agung came to power as ruler of this Sultanate in 1613, the court was reformed by placing Muslims in the *Peradilan Pradata*. However, the Sultan did not abolish the system entirely, but instead adopted the institutional structure and inculcated Islamic values into it. In the process of its development, the *Peradilan Pradata* became the *Peradilan Surambi* which dealt with issues on the basis of Islamic law. Its name was derived from the fact that instead of

³⁰ John Ball, *Indonesian Legal History, 1602-1848* (Sydney: Oughtershaw Press, 1982), pp. 37-47.

³¹ Yulida Ariyanti, *Punishment Conception in Islamic Criminal Law System and Indonesian Criminal Law System: A Comprative Study*, Ph.D. Dissertation (Aligarh: Aligarh Muslim University, 1997).

³² Federspiel, *Sultans, Shamans, and Saints*, p. 55.

³³ *Jaksa* is Sanskrit for prosecutor.

³⁴ Idri, "Religious Court in Indonesia: History and Prospect", *Journal of Indonesian Islam*, vol. 3, no. 2 (2009), pp. 297-313.

hearing cases in the palace, the Sultan changed the venue of the court to the front of the mosque or *Surambi* (verandah).³⁵ The leadership of the courts, even though principally in the hands of the sultan, moved to the *penghulu* (headman), who was assisted by several Muslim scholars (*ulama*) from various Islamic schools as members of the board. Besides his function as a judge of the *Peradilan Surambi*, the *penghulu* assumed the responsibility of being the spiritual advisor to the ruler. This gave the clear message that the legal sovereignty still remained in the hands of the ruler: the *penghulu* was acting on the ruler's behalf. This may have been the theory, but it is reported that the Sultan almost never made decisions which contradicted that of the *penghulu*.

In Mataram under the reign of Sultan Agung, the venue of the courts was changed from the sultan's palace to the veranda of the grand mosque (*surambi*). Eventually, the chief of the grand mosque (*penghulu*) presided over the Islamic courts in all the regencies of the Mataram Sultanate.³⁶ Because of the perceived resemblance between *penghulus* and Catholic priests, the Dutch called those *surambi* courts 'priest councils' (*priesterraden*).

The chief *penghulu* was the highest authority in religious affairs in a regency under the indigenous regent, serving as both the chief Islamic judge of the Islamic court and the head of the Islamic bureaucracy. This bureaucracy ran from the chief *penghulu* and other *penghulus* at the regency level, to the *naib* at the sub-district level, and *kaum* (in West Java *ami*) in the villages. All these functionaries could advise the local population in marital and divorce affairs, but only a *penghulu* could act as a judge.³⁷ In their judicial role, the *penghulus* decided family law and inheritance cases and advised in criminal cases within the *jaksa* court, presided over by the sultan or his representative. According to Azra, the practice of Islamic *budud* punishments, like the cutting off of thieves' hands, and

³⁵ Euis Nurlaelawati, *Modernization Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010), p. 42.

³⁶ Nur Ahmad Fadhil Lubis, *Islamic Justice in Transition: A Socio-Legal Study of the Agama Court Judges in Indonesia*, Ph.D. Dissertation (Los Angeles: University of California, 1994), pp. 58–9.

³⁷ Muhamad Hisyam, *Caught between Three Fires: The Javanese Pangulu Under the Dutch Colonial Administration, 1882-1942* (Jakarta: INIS, 2001), pp. 35–6.

the sanctions of retaliation (*qisās*) and blood money (*diyyat*) were practiced by the early Islam in Indonesia³⁸ particularly during the reign of Sultan Agung, but how often we do not know.

It should be noted here that from the short explanation above, we can underline that both Akbar and Agung actively propagated Islam as state policy and implemented Islamic law (*shariah*) in conjunction with local customary law (*adat*) comprised the local customs, traditions and the prevalent practices though they were slightly different in its understanding and interpretation.

It must be admitted, however, that the implementation of Islamic law (*shariah*) ultimately depends much on the attachment of the Muslim rulers to *shariah* and their interpretation on Islam itself. In addition, Islamic law developed within the region and was practiced in certain socio-cultural-political situations. It is undeniably that Akbar was the most unorthodox compared to the other Mughal rulers. He believed in proportionality of punishment. In stating the ideal for determining forms of punishment, according to Radhika Singha quoted from *Mirat-ul-Akbar* by Raja Ram Mohan Roy, Akbar said they should vary according to the rank and status of the offender:

In short, punishment is the most important affair of sovereignty and hence it should be made with sedateness and understanding...Further, punishment of everyone should be befitting his condition . . . a severe glance at a man of lofty nature is equivalent to killing him, while a kick is of no avail to a man of low nature.³⁹

From the statement above, we can understand the important thing behind the principle of Akbar's proportionality concept that the punishment should fit the crime. It also shows his flexibility and moderation towards those who did guilty and his contextual understanding on Islamic law.

Akbar also understood the importance of local support to the government. The open-minded innovations of the Mughal emperor Akbar broke with traditional patterns of Islamic political thought in an

³⁸ Arskal Salim and Azyumardi Azra, *Shari'a and Politics in Modern Indonesia* (Singapore: Institute of Southeast Asian Studies, 2003), p. 4.

³⁹ Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (New York: Oxford University Press, 1998), p. 11.

attempt to build a single political community that granted India's Hindu population religious toleration and equal status with their *Sunni* and *Shi'i* Muslim neighbors. He also tried to reconcile Muslim sectarian groups with one another. Akbar's views were expounded in the Regulations of Akbar (*A'in-i-Akbari*), which were compiled by his adviser Abu al-Fadl (1551-1602). Claiming infallible monarchical authority and according himself power as *insan al-kamil*, Akbar combined the role of king with that of spiritual teacher. Proclaiming himself the highest authority in matters of religious law as well as secular law, he set aside key stipulations of the shariah and embraced religious tolerance and political authority.⁴⁰

During his reign, for example, Akbar introduced revolutionary change in his policy with regard to the status of Hindus in the state. He repealed the discriminatory laws against the non-Muslims so as to create one common-citizenship and establish one uniform system of justice for all. This was done gradually, and it took nearly twenty years or more to complete the process. The first law, repealed in 1562, was with regard to the making of prisoners of war and their conversion and those of their families into slave and Muslims. In 1563, the Hindu pilgrim tax was abolished, and 1564 saw the abolition of the most discriminatory tax, namely, the *jizya*.⁴¹ He followed this by enunciating the principle of *sulh-i-kul*; universal tolerance and an undertaking to respect the rights of all peoples, irrespective of religion or creed.⁴²

He issued ordinances declaring marriages between Hindus and Muslims lawful without the requirements for Hindus to renounce their faith as a prerequisite for such a union. Having regard to the religious sensibilities of Hindus, the slaughter of cows was prohibited. Many Hindus, in particular Rajputs, were employed and indeed elevated to high offices,⁴³ for example Todar Mal became his finance minister, and among

⁴⁰ Gerhard Bowering et al. (eds.), *The Princeton Encyclopedia of Islamic Political Thought* (Princeton, N.J.: Princeton University Press, 2013), p. xiv.

⁴¹ *Jizya* refers to a per capita yearly tax historically levied by Islamic states on certain non Muslim subject (*dhimmis*) permanently residing in Muslim lands under Islamic law, see, M.A. Abdel Haleem, *Understanding the Qur'an: Themes and Style* (London; New York: I.B. Tauris, 2001), p. 70.

⁴² Anver M. Emon, Mark S. Ellis, and Benjamin Glahn (eds.), *Islamic Law and International Human Rights Law* (Oxford: Oxford University Press, 2012), p. 374.

⁴³ Emon, Ellis, and Glahn (eds.), *Islamic Law and International Human Rights Law*.

the provincial governors at various times were Man Singh, Bhagwan Das, and Rai Singh. In 1594-1594, Akbar appointed twelve provincial finance ministers; eight of them were Hindus.⁴⁴

Akbar accorded recognition to Hinduism and other religions in the land with the rights of legitimate propaganda and proselytism.⁴⁵ He issued an ordinance permitting non-Muslims to build churches, synagogues, idol-temples, and fire-temples without let or hindrance⁴⁶ and even established a temple in 1565.⁴⁷ It was laid down at the same time that there should be no interference with anyone on account of his religion and that all were free to follow any religion they liked.⁴⁸ The repeal of other Islamic law followed, and one by one all social, religious and legal disabilities imposed by the Islamic law on the Hindus were repealed.⁴⁹

Akbar gave official encouragement to the spirit of tolerance by the religious discussion which he sponsored in his *Ibadat Khana* (Hall of Worship).⁵⁰ Muslim theologians and scholars, as well as Sufi mystics, came and expounded their teachings. But Akbar's spirit of inquisitiveness reached beyond the fold of Islam. Hindu and Jain scholars of all shades of opinion explained their views to the emperor; three Portuguese Jesuits expounded the Christian doctrine; and *Parsis* were also brought to present the Zoroastrian teachings. Akbar and his successor further encouraged freedom of thought by ordering the preparation of Persian translations

⁴⁴ Donald Eugene Smith, *India as a Secular State*. (Princeton, N.J: Princeton University Press, 1963), p. 64.

⁴⁵ Majumdar, Ramesh Chandra, *The History and Culture of the Indian People*, vol. 7 (Bombay: Bhāratiya Vidya Bhavan, 2002), p. 539.

⁴⁶ Zāhir ud-Dīn Muḥammad Babur, *Tuzuk-i-Baburi (Memoirs of Babur)*, trans. by Annette Susannah Beveridge (New Delhi: Oriental Books Reprint Corp., 1979), p. 419.

⁴⁷ ‘Abd Allāh Aḥmad Na‘īm, *Islam and the Secular State: Negotiating the Future of Sharia* (Cambridge, MA: Harvard University Press, 2008), p. 145.

⁴⁸ Badā‘ūnī, *Muntakhab-ut-Tawārīkh*, p. 391.

⁴⁹ Ashirbadi Lal Srivastava, *A Short History of Akbar the Great (1542-1605)* (Agra: Shiva Lal Agarwala, 1963), pp. 267–8.

⁵⁰ Ibadat Khana (house of worship) was a meeting house built in 1575 by the Mughal Emperor Akbar at Fatehpur Sikri to gather spiritual leaders of different religious grounds so as to conduct a discussion on the teachings of the respective religious leaders, see, Sailendra Nath Sen, *Textbook of Medieval Indian History* (India: Primus Books, 2013), p. 171.

of such Hindu religious books as the *Atharvaveda*, the *Mahabharata*, the *Ramayana* and others. Out of Akbar's own religious quest came his syncretistic Divine Faith, which incorporated elements of Sufi, Shi'a, Zoroastrian, and Hindu doctrine.⁵¹

Meanwhile, Sultan Agung was often associated as a strict adherent to shariah. In *Babad Pagedhongan*, he was described as regularly attending the mosque on Fridays, and performing Friday prayer at Mecca (*baitullah*).⁵² As suggested by *Babad Tanah Jawi*, his ability to perform the prayers each Friday in Mecca, he was given the title of *Prabu Pandita* (king-priest).⁵³ It is in line with what the *Pengulu* of Yogyakarta explained that Sultan Agung was a *wali wudhar* as mentioned in *Babad Dipanegara*:

*Nabi Ngisa nenem kang mungkasi Kangjeng Nabi Mukhamad. Punika ing Jawi pan upamine wali kang wudhar, iku mapan inggih Sinuwun Giri kalawan eyang paduka Kangjeng Sultan Agung.*⁵⁴

Isa is the sixth prophet and Muhammad is the last. It is like *wali wudhar* in Java. It seems to be Sunan Giri and Sultan Agung.

The meaning of this term as a *wali* who had two offices for God had given him the power to administer justice. As example from Javanese history the *Pengulu* cited Sunan Giri, the great *wali* of east Java who had founded the influential dynasty of priest-king of Giri, and Sultan Agung, both of whom he asserted had held a double office and were beloved of God. This "double office" seems to refer to them in their capacities as *wali's*, spiritual men beloved of God, and executors of Islamic Law with temporal powers.⁵⁵ Thus Dipanegara later mentioned Sultan Agung as a "spiritual man who did as I did travelling around everywhere" and as a great Islamic ruler who had established the five pillars of Islam. In his

⁵¹ Smith, *India as a Secular State.*, pp. 64–5.

⁵² R. Ng Wignyawirya, *Babad Pagedhongan* (Semarang: Dahara Prize, 1991), p. 15.

⁵³ W.L. Olthof, *Babad Tanah Jawi: Mulai dari Nabi Adam sampai tahun 1647*, trans. by HR Sumarsono, A. Yogaswara, and Aning Floberita (Yogyakarta: Narasi, 2008), p. 122.

⁵⁴ Ambaristi and Marduwiyota (trans.), *Babad Dipanegara, ing Nagari Ngayogyakarta Adiningrat* (Jakarta: Departemen Pendidikan dan Kebudayaan, Proyek Penerbitan Buku Sastra Indonesia dan Daerah, 1983), pp. 181–2.

⁵⁵ P.B.R. Carey, *The Cultural Ecology of Early Nineteenth Century Java*, Occasional Papers, no. 24 (Singapore: Institute of Southeast Asian Studies, 1974), pp. 17–8.

Babad Dipanegara, he stated:

*Kangjeng Sultan Agung iku Ratu kang wus sampurna Islame, sebab kang wus anetepi rukun kang lima iku.*⁵⁶

Sultan Agung was the king who had embraced Islam perfectly. Because he had performed the five pillars of Islam

Hendrick de Haan, the Dutch East India Company (VOC) emissary, reported that Sultan Agung regularly attended Friday prayers and he reportedly wore a white *kuluk* and he was surrounded by men with long beards.⁵⁷ He was also as a faithful observer of the Muslim fast.⁵⁸

Sultan Agung tried to pursue his agenda of *Islamising* Java through institutionalizing the celebration of the *Id al-Fitr* and the *Mawlid al-Nabi* (the Prophet Birthday) as court ceremonies,⁵⁹ possibly with an intention to require his administrators to present to show their loyalty.⁶⁰ He took care to strengthen Islam in his territory by ordering Islamic scholars to establish mosques and *pesantrens* in every town under in his Sultanate.⁶¹

It must be assumed that Sultan Agung wanted to pursue a positively religious policy, and that, unlike his predecessors he adopted a strict Muslim attitude. Sultan Agung persuaded and forced captured Dutch soldiers to convert to Islam,⁶² even he offered his Dutch prisoners the choice of circumcision or death. One of them, Antonie Paolo, died a martyr to his Christian faith in 1642.⁶³

⁵⁶ *Ibid.*, p. 17.

⁵⁷ *Kuluk* is typically white headgear that signifies a piety, see Ricklefs, “Islamising Java”, p. 471.

⁵⁸ Nicholas Tarling, *The Cambridge History of Southeast Asia*, vol. II (Cambridge: Cambridge University Press, 1993), p. 197.

⁵⁹ Azyumardi Azra, *Islam in the Indonesian World: An Account of Institutional Formation* (Bandung, Indonesia: Mizan, 2006), p. 71.

⁶⁰ Federspiel, *Sultans, Shamans, and Saints*, p. 73.

⁶¹ Hoesein Djajadiningrat, “Islam in Indonesia”, in *Islam The Straight Path: Islam Interpreted by Muslims*, ed. by Kenneth W. Morgan (New York: Ronald Press Co., 1958), p. 3.

⁶² Hermanus Johannes de Graaf, *Puncak Kekuasaan Mataram: Politik Ekspansi Sultan Agung* (Jakarta: Grafitipers, 1986), pp. 102–30.

⁶³ P.M. Holt, Ann K.S. Lambton, and Bernard Lewis (eds.), *The Cambridge History of Islam*, vol. II (Cambridge: Cambridge University Press, 1970), pp. 148–9.

With regards to his policy of upholding shariah, in *Babad Sultan Agung*, it was mentioned that Agung gave a punishment of *qisas* to Pranacitra, a young rich merchant and Roro Mendut, a beautiful slave given to the aged general Wiraguna who successfully conquered the city of Pati as reward, because of committing adultery (*zina*). He ordered to impose *kisas* with a *keris* in the twin buckeye.⁶⁴ Another example of capital punishment enforced by Sultan Agung was the execution of Shaykh Among Raga for spreading the teachings of heretical mystical doctrine.⁶⁵

The latter example of Sultan Agung's strict enforcement of shariah seemed to be inspired by the Islamic propagation of his predecessors including Demak sultanate and nine saints (*walisanga*). They were also known of enforcing Islamic orthodoxy through their execution of Syekh Siti Jenar who was charged for perverting Islamic theology through his mystical doctrine.⁶⁶ While there was some similarity between Sultan Agung and his predecessors in promoting Islamic orthodoxy, it was only under Sultan Agung's reign that the orthodoxy became more institutionalized which further strengthened the power of the court.

F. Concluding Remarks

The above paragraphs describe how the Mughal Emperor Akbar and Sultan Agung of Mataram shared the views on the important value of the Islamic norms in running their courts. Living at the first millennial of Islamic history, they both witnessed the growth of Islamic power at unprecedented level with more and more territories brought under the Islamic influence. Growing global role of Islam as a model of modernity made it attractive for both rulers to embrace Islamic norms as it provided them with two incentives: (1) an enhancement to their struggle of power through building a bigger alliance with like-minded communities, and (2) while capitalizing their existing modalities

⁶⁴ Soenarko H. Poespito (tran.), *Babad Sultan Agung* (Jakarta: Departemen Pendidikan dan Kebudayaan, 1980), p. 54.

⁶⁵ S. Subardi, *The Book of Cabolèk: A Critical Edition with Introduction, Translation and Notes* (The Hague: Martinus Nijhoff, 1975), pp. 36–40.

⁶⁶ Martin van Bruinessen, "Saints, Politicians and Sufi Bureaucrats: Mysticism and Politics in Indonesia's New Order", in *Sufism and the "Modern" in Islam*, ed. by Julia Day Howell and Martin Van Bruinessen (London: I.B. Tauris and Co Ltd, 2007), p. 107.

by constructing the notion of ‘perfect man’ (*insān kamīl*) whose ruling function was to connect the worldly with the divine.

While, Islam and its legal norms had undoubtedly influenced both rulers, they employed Islamic law (shariah) at different forms and at varying levels during their reigns. Having ruled more heterogeneous territories where Hindus was a major part, Emperor Akbar introduced more heterodox legal policies which paid respects to the dynamics of Muslim-non Muslim relations. Meanwhile, having encountered insurgencies and resistance among fellow Muslims, Sultan Agung introduced more orthodox application of Islamic norms and even institutionalized them in a more complex court system possibly to minimize any grounds for future insurgencies.

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