

The Dutch *Mogharaer*, Arabic *Muḥarrar*, and Javanese Law Books: A VOC Experiment with Muslim Law in Java, 1747–1767

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This article examines the claims of Dutch East India Company (VOC) officials in the mid-eighteenth century regarding the Islamic source of a legal code prepared for the local population in Semarang, northeast Java. Although the VOC had encountered local legal cultures in Indonesia since the mid-seventeenth century, it preferred to circumvent those in favour of European laws whenever possible. But in the eighteenth century, VOC officials addressed indigenous legal systems more directly when the company sought possibilities for direct control. This resulted in the production of many codes on the legal status of Muslim and Chinese subjects of Indonesia. In the process of codification, some officials claimed to have consulted Islamic legal texts and Muslim jurists. One criminal code that came out of the effort supposedly took its rulings accurately from the *Mugharrar*, which is possibly the *Muḥarrar* written by the Islamic jurist ‘Abd al-Karīm al-Rāfi‘ī (d. 1226). I argue that this assertion is baseless, and demonstrate that the very pretense is part of a larger colonial project that sought legitimacy from the indigenous subjects at a time of political and economic crises.

Keywords: Islamic law, Javanese, Semarang, VOC, the *Muḥarrar*.

While formulating an “indigenous” legal code to administer Javanese subjects in the eighteenth century, the officials of the Dutch East India Company (VOC) claimed to have utilised an Islamic legal text called *Muḥarrar*. The *Muḥarrar*, written by ‘Abd al-Karīm al-Rāfi‘ī (d. 1226), is an intellectual predecessor and base-text of *Minhāj al-ṭālibīn* (henceforth *Minhāj*) by Yaḥyā al-Nawawī (d. 1277), a text central to the Islamic legal discourses among the jurists of the Shāfi‘ī school of Islamic law since the late thirteenth century and a turning point in the history of the school by contributing to its textual *longue durée*. In this article, I examine to what extent the VOC officials’ claim with regard to the text is verifiable; to what extent the legal code differs from the

original text; why the imperial power chose this particular text while there were many others in the Islamic (Sunnī-Shāfiʿī) world; and how this “authentic” Islamic legal corpus functioned as a colonial agent for the European imperial legal administration in Semarang at the northeast coast of Java.

Since the seventeenth century, VOC officials had encountered the local legal cultures of the Malay world. But they preferred to forego those in favour of European laws whenever possible. In the eighteenth century, however, they had to address the issue more directly when the VOC sought means of direct or indirect rule. This led to the production of many codes for Muslim or Chinese subjects. Some officers identified or codified customary laws and some collected the Javanese written variants, whereas a few others endeavoured to bring out compendia of Islamic law by consulting local Islamic jurists. In Semarang, the last group arguably consulted Shāfiʿī legal texts with the help of local scholars in the course of their codifications, and the *Muḥarrar* was their major reference, as the very title of the *Mogharaer Code* claims. But I will demonstrate that there is little to no resemblance between the code and its assumed original in Arabic, and I argue that the very claim is part of a larger colonial project that sought legitimacy with its Javanese subjects at a time of political and economic crises. Not only the claim, but the very code was rooted in the “political economy of legalistic discovery” in which the colonial entities drafted laws and legal codes to cater for their immediate political and economic motivations in colonised lands.

A Century between Two Centuries

Numerous studies on the VOC and its legal administration focus on its glorious period in the seventeenth century. Similarly, the literature on colonial law is focused largely on the nineteenth century. But neither the eighteenth-century VOC nor eighteenth-century colonial legalism has received wide attention. In a similar vein, the legal interactions of the VOC with Islam is another neglected area, although the VOC is one of the earliest imperial-colonial institutions in the world to govern such a predominantly Islamic spectrum as the Malay Archipelago from around 1600 to 1800. This article is an attempt to engage with these two gaps in the historiography: eighteenth-century colonial law and the VOC’s interactions with Islamic law.

Recent works on the entanglements of the VOC with Islam include the noted monograph by Kerry Ward, but discussions on the nuances of Islamic law have been negligible.¹ Legal historians of the Dutch East Indies or colonial Indonesia including M. B. Hooker and John Ball have made passing references to the theme in their discussions of the VOC’s codifications and legislations.² The encyclopaedic studies by Van der Chijs and De Haan uncovered wider possibilities for writing a legal history of the VOC through their compilations of the company’s legal documents. A few scholars like A. A. de Vries, H. A. Idema, and F. W. Stapel did analyse the VOC’s legal policies during its existence across two centuries.³ One of the main thrusts of the earlier Dutch studies was on the seventeenth century, and the scholars explored the

VOC's legal experiments in foreign lands in the context of the Golden Age in the homeland. The year 1700 stood as the end of an era, beyond which seemed less interesting to the scholars if one was not doing a general survey. An exception to this trend is J. van Kan, who extensively explored the terrains of the eighteenth century. With a focus on the circulation of ideas and texts, he examined the legalistic formulations of VOC communications with multiple layers of European and Indonesian communities, customs, and practices. In a way, he furthered the overarching studies of De Haan and Van der Chijs on the early modern legal systems by emphasising the role of the eighteenth century. F. W. Stapel, one of his contemporaries, also made a similar attempt. Both Van Kan's and Stapel's works inform this article, although neither of them is of help on the VOC's engagements with Islamic law.

Once we come to the historiography of colonial legal projects, we realise that the majority of works have focused on the nineteenth and early twentieth centuries, when colonialism was at its peak. The increasing discussions on legal dualism or pluralism show us how different colonial empires administered, interpreted, dominated, negated, and internalised a number of legal structures. The eighteenth century, however, remains understudied—mainly because the colonial expansion is comparatively marginal in a global scale. But once we look into the VOC's politico-legal engagements, we immediately notice how the frameworks of law played a crucial role in the making of a colonial state, similar to nineteenth-century scenarios. John Comaroff has focused on specific areas to study the cultural worlds of any colonial legal system and those are equally applicable to the eighteenth-century VOC's legal politics.⁴ Here I take up four of his suggestions: analytic, semantic, and discursive frames of reference; law as “constitutive of colonialism, tout court”; the use of colonies as laboratories for legal experiments; and the complex relations among colonisers “often negotiated in the space of law.” These areas are entangled with such significant questions as what sorts of legal texts were cast as authentic sources of law; to what extent did the newly established regional court of Semarang call for an unprecedented legal politics; and how and why was the Islamic-Javanese intermixture chosen as an experimentation site for criminal law. Addressing these queries, I investigate the interactive lines between the VOC and Islamic law in the eighteenth century, in which a particular “proxy” legal tradition was cast as an authentic and confident source of law targeting the indigenous subjects.

Making of the Dutch *Mogharaer*

From the early seventeenth century onward, VOC officials tried to engage with local legal systems for a number of different reasons, especially after the introduction of *landraden* (regional courts) at, for example, Ambon in 1616.⁵ A direct encounter with so-called Islamic law happened in the middle of the eighteenth century at Semarang, a city that had been the capital of Dutch investments in northeast Java since 1705. In 1743 and 1746, the Dutch acquired more power and territories in the area, leading them to reorganise their political and legal administrations. In addition to the

Council of Justice at Semarang, a *landraad* was established on 30 November 1747. The former dealt with cases between Europeans and Javanese or Javanese and foreigners, whereas the latter was exclusively aimed at the Javanese who were not subjects of Mataram rulers. The *landraad* was to be presided over by the governor with seven *bupatis* (regents) as constituent members. Three *bupatis* were permanent members, and the other four were to be appointed by the governor for two to three years. The court also had both a European and a Javanese secretary. Criminal cases were its prime concern, but it also dealt with civil cases. It was decided to follow Javanese laws in legal procedures as long as they were “tolerable to us”—a requirement that led the Dutch officials to formally encounter the Javanese-Islamic laws. Hence, a compendium of Javanese laws was to be arranged and approved by the High Government.⁶

On 22 December 1747, the government instructed the Semarang administration to consult Muslim ‘priests’ and other experts in order to compile the compendium. A week later, on 31 December, the then governor-general at Batavia, Gustaaf Willem van Imhoff (1705–1750), explained to the directors of the VOC at Amsterdam his intentions in preparing a small corpus of Javanese laws and customs.⁷ He wrote that he wanted to avoid injustice and inconveniences if the Javanese were ruled by different laws than “their own” after they had come under VOC’s jurisdiction. He did not make any reference to its Islamic context or the ongoing efforts on the VOC’s side to consult Muslim scholars. He only noted that it was a short text on criminal legal issues.⁸

Taking more than two years, the compendium was thus prepared and submitted by the governor of northeast Java to the government on 10 April 1750.⁹ The government approved it on 31 December 1750 after removing “some absurdities and obscurities” (*eenige absurditeiten en duijsterheden*) in the draft, and sent one hundred and fifty printed copies to the *landraad* of Semarang on 31 July 1751.¹⁰ Meanwhile, between 1747 and 1751, there were a few more resolutions and instructions from Batavia that changed the organisational and jurisdictional frameworks of the *landraad*: the permanent *bupati* were reduced to two (the ones from Semarang and Pekalongan); the presiding governor was invested with more power to convene the court when and only when he thought appropriate; all criminal sentences, and not only death sentences, were to be approved by the government in Batavia; and apart from each European and Javanese secretary, a fiscal was also appointed as the “officer and safeguard of justice.”¹¹ The fiscal, whose duties in bringing criminals before justice and ensuring the execution of law were similar to the duties of *muḥtasib* in the Roman-Islamic legal cultures, was also required to have proficient knowledge of the newly-drafted compendium of Islamic-Javanese laws.¹² The *jaksa*, the judge and prosecutor in the Javanese legal tradition, came under the fiscal and was required to report all major crimes to the fiscal and regents, even though he could “settle small disputes and quarrels according to the existing customs and norms as well as according to justice and fairness” (Article XVIII). The compendium, widely known as the *Mogharaer Code* or *Semarang Compendium*, had a long title.¹³ It was written in Dutch, and

because of that its copies were printed only on one side of the page, giving space to provide translations on facing pages. Accordingly, we do have a handwritten translation in old Javanese, which indicates its use and targeted audience.¹⁴ Another VOC Islamic legal code, the *Freijer Compendium*, was printed both in Dutch and in *jawi* (Malay written in Arabic script) in two separate columns on a single page.¹⁵

The compendium's prime contents were criminal law, as adjudicating crimes was a crucial aspect of the VOC's rule in the region. Yet it also contained articles on marriage and inheritance, as well as instructions and orders to the *landraad*, its fiscal, the secretaries, and the *jaksa*. In total, it contained eighteen articles subdivided into multiple sections. The longest one (Article VI) contains fifty-seven sections related to murder and bodily injuries, whereas many articles do not have any sections and contain only one or two rules. The compendium's headings are: I. Blasphemy; II. Lese-majesty; III. Duty and service; IV. Robbery; V. Desecration of graves; VI. Murder and manslaughter; VII. Adultery; VIII. Marriage; IX. Thievery; X. Counterfeiting; XI. Testimony; XII. Will; XIII. Buying and selling; XIV. Debtors; XV. *Landraad* of Semarang; XVI. Rules for fiscal of the *landraad*; XVII. Instructions for the sworn scribe and Javanese secretary; XVIII. Order for the respective *jaksa* of the lands and districts under the control of the Respectable Company. The code has occasional articles related to treason, sedition, and disobedience to the authorities (see, for example, Article II and Article X) as well as to the priests/ulama (Article IV), and it persuades the subjects towards obedience, duty, and service (Article III).

We do not know to what extent this code was strictly followed in the proceedings of the *landraad* at Semarang or the sub-courts in its northeastern coastal regencies. We can assume that it was the basic reference point for the presiding judges, as they were instructed in the mid-eighteenth century by the colonial government, and it contained orders for officials and members of the *landraad*. It also was a legal framework for the fiscal to act upon while investigating crimes and executing judgements. By the end of the century, the code seemingly became irrelevant and the judges disregarded it in the judicial proceedings. During the transition of power from the Dutch to the English in the early nineteenth century, Head of Eastern Javanese Districts Van Middelkoop informed the new British governor-general Thomas Stamford Raffles that very few people had a copy of the compendium and that there had been deviations from it. Instead, Van Middelkoop suggests that the Javanese followed different legal texts such as *Kitab Tophaar* or *Hoena Hadjar* [*Kitab Tuhfa* of Ibn Ḥajar?].¹⁶ Some other texts he mentions (*Tatjoe Salatin*, *Bostan Salatin*, and *Galela Domina*) are neither legal texts nor strictly "Javanese," but are chronicles and stories from South Asian, Persian, Arabic, or Acehnese contexts.¹⁷ This suggests that the code had become less appealing to the legal administration in eastern Java. Yet it had not disappeared completely, as two pieces of evidence demonstrate.¹⁸ First, when Governor-General H. Willem Daendels (1762–1818) attempted to reform the legal administration of Java, he encountered the Javanese legal codes, especially at Semarang, and it was possibly this code itself. Second, a few years later, Raffles himself wrote about the compendium in his *History of Java*:

In the Eastern districts of the island, the Javans seem always, in criminal matters, to have enjoyed their own laws, founded on ancient custom and the precepts of the *Koran*. Of these laws the Council of Batavia caused abstracts to be printed, for the guidance of the great *landraad* or high court at *Semarang*, to which all the Javans in the European provinces, from *Lasari* to *Banyuwangi*, were amenable.¹⁹

Daendels started to abolish the capital and corporal punishments used by the regional courts, a move that must have even further reduced the appeal of the code.²⁰ Through a regulation passed on 11 February 1814, all the native laws “abhorrent to the criminal jurisdiction of any enlightened nation” were replaced with more “beneficial and humane,” “liberal and enlightened” judicial codes, as Raffles claims.²¹ This definitely pushed the code into oblivion, until it was later reprinted around 1850 as part of academic and juridical explorations into the past.²²

Dutch *Mogharaer* versus Arabic *Muḥarrar*

The full title of the *Semarang Compendium* or *Mogharaer Code* is preserved in a few eighteenth-century manuscript-copies and three nineteenth-century reprints. They all state that the code is “drawn accurately from the Muhammadan law book *Mogharaer*” (*nauwkeurig getrokken uit het Mohammedaansche wetboek Mogharaer*). Dutch colonial officers such as Van Middelkoop kept more or less the same notion but in a different tone, asserting that the code was taken from the “Javanese” legal texts called *Mogharaar* and *Moghalie*, “which are themselves taken from the Quran with the addition of provisions enacted by the Javanese monarchs and High Priests (*sic*) in accordance with the local conditions in Java.”²³ M. Hisyam, an Indonesian scholar, has recently identified it with the Shāfiʿī law book *Muḥarrar* of Rāfiʿī and attributes it as “well known in Java.”²⁴

As someone interested in the Islamic legal textual history and the circulation of Shāfiʿī law books across the Indian Ocean rim, I am concerned with the question of whether or not this *Mogharaer* is actually “accurately” taken from any known Islamic text, such as the *Muḥarrar* of Rāfiʿī. If we delineate the less-clear notions on its title and prime source as expressed in later colonial writings as well as in recent studies, we find four basic arguments. It is based on (1) the Arabic-Islamic legal text *Muḥarrar* by Rāfiʿī; (2) a certain Islamic law book titled *Muḥarrar* whose author is not mentioned; (3) a Javanese-Islamic law book called *Mogharaer*; or (4) the Javanese-Islamic legal corpus in which *Mogharaer* and *Moghalie* are included.²⁵ I shall discuss the last two possibilities later, and start with the first two.

To take the second possibility first, there are three renowned texts titled *Muḥarrar* in the Islamic legal tradition: one is written by Rāfiʿī and the other is by Majd al-Dīn ʿAbd al-Salām Ibn Taymiyya (d. 1254), a Ḥanbalī jurist and grandfather of the celebrated Islamic scholar Taqīyy al-Dīn Ibn Taymiyya (d. 1328).²⁶ Both of these texts are directly related to Islamic law, whereas the third text is a collection of Prophetic traditions (*ḥadīths*) from a legal perspective by Ibn ʿAbd al-Hādī (d. 1343), a student of Taqīyy al-Dīn Ibn Taymiyya.²⁷ These last two *Muḥarrar* texts deal with the

Ḥanbalī school of Islamic law, and it is only a very distant possibility that the Muslims in the Malay archipelago followed these two texts in their prime juridical engagements in the eighteenth century, because the Javanese Muslims, and the Malay Muslims in general, predominantly followed Shāfiʿism from the late sixteenth century. The most likely source then is the text by Rāfiʿī, as it is a Shāfiʿī text known widely in Shāfiʿī scholarly circles as the textual predecessor of the *Minhāj*.

Javanese scholars thus most likely would have helped the Semarang administration compile a new code by referring to the prominent text of their legal school. However, the *Muḥarrar* was used less in Shāfiʿī legal circles since the end of the thirteenth century, after the appearance of its textual successor, the *Minhāj*, which then began to dominate the stage. The *Muḥarrar* was a prime text among the Shāfiʿīs as it gave a new dimension to legal thought by codifying the multiple viewpoints of the school and by identifying the most valid legal opinion, but the *Minhāj* would subsequently invalidate many of them, as it raised many severe criticisms on the rulings of the *Muḥarrar*. Furthermore, the *Minhāj* was written just three or four decades after the *Muḥarrar*'s release, which did not give commentators or abridgers much time to critically engage with it. The *Muḥarrar* acquired only two commentaries and three abridgements, which is far fewer than the hundreds of commentaries the *Minhāj* attained. Once the *Minhāj* came out, the *Muḥarrar* lost its prominence in the educational institutions and legal circles in which it enjoyed a short-lived fame. Though rarely read, referred to, or circulated, the *Muḥarrar* was bound by repeated acknowledgements now and then as a legalist foremother of the *Minhāj*.

It would be surprising to see the Javanese fuqahā going back to such a dated text to codify “their laws” for the new context. This is not to say that the *Muḥarrar* was a completely forgotten text, however, indeed it was circulated among the Shāfiʿī clusters across space and time in manuscript and printed versions, and was circulated in different parts of the Malay world too through a number of manuscripts.²⁸ Even so, it never was a major source for legalist extractions, references, or curricula. We have some patchy references for its possible use as a source of law, as for example we see in a manuscript from Java dated 1844 CE,²⁹ a multidisciplinary compendium on Islamic law, mysticism, and eschatology that gives many Arabic texts as its references. One among those is *Mukarar*, which could be the *Muḥarrar*. Yet we do not have any strong evidences for the *Muḥarrar* being used as the major source of law in the Shāfiʿī world after the fourteenth century. Hence, it would be too injudicious to think that the Javanese Shāfiʿīs did actually use it as their source to compile a new compendium. Rather it was the *Minhāj* and its textual progenies that served this function, and Van Middelkoop's account about the “*Kitab Tophaar* or *Hoena Hadjar*” would make more sense if we could understand it as the *Kitab Tuhfa* of Ibn Ḥajar al-Haytamī (d. 1566), a most noted commentary on the *Minhāj* titled *Tuhfat al-Muhtāj*, written in 1551.³⁰

Secondly, if we take the form and contents of the *Mogharaer Code* into account along with the *Muḥarrars* of Rāfiʿī, Ibn Taymiyya, and Ibn ‘Abd al-Hādī, those also bestow on us further problems. With regard to the form, its “architectonic style” does

not relate to any known Islamic law books, rather only to a Western legal code. If we compare its rulings with the *Muḥarrars* of Rāfiʿī, Ibn Taymiyya, and Ibn ʿAbd al-Hādī, it is clear that it stays far from the other three texts. The code’s major portions relating to criminal laws not only contradict the rulings provided by the *Muḥarrars*, but also pose serious methodological issues in the way rulings are extracted from, founded on, or ruled out of it. For example, in the first article, the code says to cut off the tongue of a blasphemer if he or she does not refrain from the blasphemy after three requests, whereas the *Muḥarrars* do not provide tongue-chopping as a punishment at all.³¹ Regarding rebellions against the authorities, the *Muḥarrars* of Rāfiʿī and Ibn Taymiyya provide a whole list of procedures that the ruler/state should undertake as means of negotiation and to avoid war.³² They also put forward preconditions that the ruler be a mature, male, independent, investigative, brave, commanding Muslim, and only rebellions against such a qualified ruler would be bound by legal rulings. The code avoids all such prerequisites and procedures of negotiation. Instead, it comes up with the rulings of death, amputation, confiscation, and exile as punishment for rebels, depending on the depth of the disobedience and agitation, which again are not found in the *Muḥarrars*.³³

These are only a few examples from the beginning of the *Mogharaer Code* and similar outright contradictions can be found throughout the text. It is therefore likely that the Dutch *Mogharaer* is not based on the *Muḥarrars* of Rāfiʿī, Ibn Taymiyya, and Ibn ʿAbd al-Hādī, and probably not even on any known legal text of Islam. Dutch legal scholar Van Vollenhoven, although he identified it elsewhere as an extract “from a tract on Muslim law,”³⁴ had called it a mixture of Javanese and Islamic provisions, with “more native” components than Islamic ones.³⁵

The Dutch *Mogharaer* versus Javanese Law Books

If the *Mogharaer Code* is not taken from an Islamic law book, then would it be drawn from Javanese legal corpuses or unwritten customary laws? This leads me to the other two aforementioned possibilities: either it is based on a Javanese-Islamic law book called *Mogharaer*, or on a Javanese-Islamic legal corpus in which *Mogharaer* and *Moghalie* are utilised. Neither possibility holds for a number of reasons. In the first case, Van Middelkoop’s report to Raffles names a few “Javanese legal” texts which the local people supposedly referred to, and we do not see a text called *Mogharaer* among those. Secondly, none of the many catalogues of Javanese and Malay manuscripts preserved in the Indonesian, Malaysian, and European collections mention a Javanese law book titled *Mogharaer*.³⁶ There is the possibility that the manuscript(s) may not have survived, but this seems unlikely since the catalogues of private and public libraries established in eighteenth-century Indonesia also fail to mention such a text, even though those provide many other legal texts from Java.³⁷

The second possibility, that it is drawn from an anonymous Javanese-Islamic legal text that utilised the *Mogharaer* and *Moghalie*, is hard to either substantiate or reject. There were law books in Javanese which utilised a number of Arabic texts such as the

Muharrar and its indirect commentary, the *Mahallī* by Jalāl al-Dīn Muḥammad bin Aḥmad al-Maḥallī (1389–1459), as we see in the case of Leiden MSS. Or. 1815.³⁸ It is quite possible that the Muslim scholars might have consulted them while preparing the code. The foundational problem with this option, however, is that it does not hold to the code's claim that it is "drawn accurately from the Muhammadan law book *Mogharaer*." The same issue arises with another potential assumption: that the code is based on some unwritten customary laws of the Javanese on the advice of local informants, possibly *penghulus*, *jaksas*, and/or *bupatis*. F. de Haan rejects such a possibility, however, saying that this "bloody code" sounds more Islamic than Javanese, once it is compared with other local customary laws of Priangan and Cirebon.³⁹

If the *Mogharaer Code* is neither Islamic nor based on written Javanese texts, what is it? Seeking answers to this question leads us to some other interesting aspects. Although De Haan's identification of the code as more Islamic than Javanese is not sustained on the basis of my aforesaid explanations, he provides an illuminating suggestion: that the code was compiled by certain Dutch officials who were "unfamiliar" (*onbekend*) with the Javanese people and their laws, and who considered the Javanese more Islamic than they actually were.⁴⁰

Imperial "Discoveries" of Indigenous Laws

It becomes evident while reading the *Mogharaer Code* closely that instead of following any known texts of indigenous or Islamic laws, VOC officials chose to "discover" a new legal code that befit their administrative, economic, and colonial purposes. From the late seventeenth century onward there were attempts among VOC officials to identify indigenous legal systems. A well-known earlier example is Rijckloff van Goens' (1619–1682) account of *Pradata* court in Mataram in the 1650s, and he was followed by Jan Dirk van Clootwijk in Sulawesi in the 1750s and Pieter Cornelis Hasselaer in Cirebon in 1768.⁴¹ On the other hand, Islamic law was also familiar to the Dutch officials, as there was an information network among Dutch orientalist in the Netherlands and VOC entrepreneurs in the East Indies catering to each other's needs.⁴² Furthermore, Dutch orientalist Adrian Reland's calls for an "objective" study of Islam, along with many other participant scholars in the Arabic Republic of Letters, had recently gained attention all over Europe, motivating many more people to engage with the Islamic texts than ever before.⁴³ In the wake of all these encounters with indigenous legal systems on the one hand and with Islam on the other, the *construction* of an unfamiliar legal code by the VOC was not merely a selfless pursuit of justice for the ruled. Rather it was rooted in a phenomenon that I prefer to call the "political economy of legalistic discovery."

What was the purpose of a codification that was not rooted in existing legal texts of Islam or Java? From various correspondence between VOC officials during the drafting of the code, we understand that they wanted to consult Muslim jurists.⁴⁴ We do not have sources on the proceedings of these consultations, which would have been enlightening. Whether or not the actual exchanges did happen, the urge for consultation

marks the colonial need to convince indigenous subjects that they were not bringing anything alien to them; instead they were “coming down” to them by following their systems and practices and helping them codify what they practised as law. This is precisely what Van Imhoff’s letter to the VOC directors in Amsterdam explicates when he says that through this code he wants to avoid injustice and inconveniences happening to the Javanese if they are ruled by a different law than their own.⁴⁵

After the multi-layered processes of codification, the VOC created the text of the code in consultation with local informants, yet it did not take everything that must have been suggested as law. It took only what its officials thought to be “tolerable” to them (*voor so verre by ons tollerabel zyn*).⁴⁶ While we find many “barbarous” and “inhumane” punishments (as Raffles put it six decades later) in this “bloody code,” one might wonder what the standards of their tolerance were. One of the first things the British did once they took over Java was to abolish practices (in continuation of Daendels’ efforts) that the VOC officials tolerated and executed until the early nineteenth century.⁴⁷ An early correspondence dated 31 December 1750 informs us that the higher authorities approved the code after removing some absurdities and obscurities, as I mentioned above. One might wonder about those incomprehensibilities in the draft: whether those were only language corrections or did they have to do with the judgements themselves. All these questions are somehow related to the colonial logic behind the very construction of such a code.

An obvious answer lies in the political and economic motivations behind and within the code, as it was essentially a colonial tool in the guise of Islamic/Javanese law. In the particular context of its production it simultaneously addressed three purposes in its pronouncement of judgements: governmentality, dispossession, and decimation. All three contributed to the colonial project. The first and final parts of the code, for example, shed light on the political intentions behind its devising. The articles related to administration, disobedience, instructions to officers, and so on, combined with an assumed “indigenous” criminal legal tract, explicate a double-layered search for legitimacy from an institution that sought its fortunes in an unfamiliar terrain. The severe punishments prescribed for those who disobeyed the superior officials definitely tell us the code’s position as an instrument of subjugation and governmentality.

The region came under VOC control immediately after the Java War of 1741–43 that led to the fall of the Mataram Sultanate and the rise of two different kingdoms in Surakarta and Yogyakarta. Throughout the 1740s and 1750s, the VOC administration in Batavia and Semarang encountered a series of political and economic threats from several groups (most importantly Mangkubumi and his supporters) in Java, as M. C. Ricklefs has demonstrated in great detail on the basis of several Dutch and Javanese sources.⁴⁸ Its deep troubles began with its “defence of a dynasty which it did not trust, in pursuit of stability which it could not achieve, in the hope of profit which failed to materialise.”⁴⁹ The increasing wars, rebellions, and massacres in the 1740s and 1750s, which cost enormous funds and lives for both the VOC and the local kingdoms and communities, must have motivated the colonial administration to utilise all

possible provisions of the “indigenous” customs and regulations to maintain law and order, to assert their supremacy, to avoid insurgences within their main domain in Semarang, and to maintain a powerful governmental structure and mechanism.

Dispossession was one punishment repeatedly suggested by the *Mogharaer Code* for many crimes: confiscation of property and imposition of fines. Be the crime blasphemy, murder, theft, abuse, or disobedience, the code often asks the judge to seize properties of the criminal entirely or partly. While confiscation is not a constant punishment in Javanese customary law or in Islamic law, it appears repeatedly in this code, which was devised in a colonial land and targeted the indigenous subjects. It makes perfect sense if we see the colonisers’ foundational motivation as acquisition of wealth rather than provision of justice. This should be read along with the recurrent monetary penalisation, also not a recommended punishment in Shāfi‘ī laws. In the particular context of the mid-eighteenth century, when the VOC was facing an economic crisis in the region, such monetary penalties must have seemed like a straw for a drowning man. This contextual influence must have been an important catalyst for its gradual irrelevance in the changing courses of time when the colonial government got far better mechanisms to procure wealth and administer subjects.

What makes the code bloody are its several judgements that lead to decimation of bodies through horrific amputations and capital punishments. By way of example, I mentioned above how the *Mogharaer Code* proposes chopping off a tongue as a punishment for blasphemy (Article I.1) while the *Muharrars* do not suggest such a punishment for this crime. Instead, those texts recommend death as the punishment if the blasphemers do not deplore their grievances. The code, in this case, reduces the punishment, yet it maintains a gruesome one. This punitive transition from large scale to small scale is not at all based on any “well-intended civilising” mission to lessen the intense ghastliness of a bloody legal tradition (whether or not it belonged to Java or Islam), for it does not eliminate capital punishment entirely. On the contrary, it does recommend it in the very next article, with regard to activities against authorities. That very article represents a nodal point in which the code brings together all the three issues of governmentality, dispossession, and decimation in a judgement. It reads: “Any person who attempts murderously to harm the legitimate sovereign or authority or tries to perpetrate an evil act against them in any way whatsoever, shall be sentenced to death and shall be strangled. In order to deter others, his head shall be placed on a stake, and his dead body shall be torn in pieces, and given to the birds of prey; all his property shall be confiscated.” (Article II.1). The brutality of this punishment very much resonates with the penal practices common in the eighteenth-century Netherlands and Europe in general. Mutilation of dead bodies through horrendous measures, exposure of corpses at stake or gallows, and chopping or piercing of the tongue were some of the existing punishments in Europe, whereas we do not see such penalties in Islamic legal text that the code claims to have depended on.⁵⁰

Beyond political subjugation and economic appropriation utilising the legal systems, the claim of the code to Javanese and Islamic sources needs more attention. It might seem to be a classic case of legal hybridity or legal pluralism if the code offered

an example of two legal traditions coming together through the hands of Europeans, or Javanese laws being discussed along with Islamic legal texts. But that offer lacks promise once we realise that the code is neither Islamic nor Javanese in the strict sense of the terms. Such a claim is an attempt to legitimise colonial interventions in the region and a search for approval from the subjects, who arguably followed Javanese and/or Islamic laws. Naming an Islamic text and claiming to adhere to Javanese law had currency in the market of legitimacy. By asserting Javanese and Islamic identities simultaneously in the title and bringing out necessary regulations, its creators could function within the traditional system under the cover of upholding a heritage that did or did not exist differently. The code's initial article on apostasy and blasphemy on the one hand and the article concerned with sacrilege against the priests on the other hand are markers of this penetrative contrivance with its double-ended assertion of power at the expense of existing legal structure and its machineries, which were forced to transform or to be complicit, cooperative, and silent. Although these rulings against apostasy and in favour of the priests might have helped the *landraad* function as a continuation of the existing institutions and notions of justice and religion, the overall power was certainly invested within the Dutch officials who presided over the court and controlled its very existence.

The imperial construction of this legal code thus is part of a series of political attempts to “discover” the “authentic” and “indigenous” laws of colonial subjects. It reverberates very much with Comaroff's view of the colonies as laboratories for the production of new forms of law, principles, institutions, rules, and rulers. In the case of the *Mogharaer Code* it did not succeed in the long run for a number of reasons; mainly because of the harsh and bloody sentences it proposed and the changed socio-political and economic contexts of its production. But the enterprise did succeed when it came to a civil law code prepared immediately afterwards: *Compendium der voor-naamste Mohomedansche wetten*, known as *Compendium Freijer* after its compiler, Diederik Willem Freijer, Commissioner for Native Affairs.⁵¹ It deals with marriage, divorce, and inheritance. Its advantage, and also disadvantage, was that it was written mainly based on contributions from the ulama and *penghulu*, who claimed their contributions were based on Islamic legal texts.⁵² A comparative examination of its contents with the Shāfiʿī legal texts enables us to delineate the influences of the Shāfiʿī scholars' rulings in it, yet with a Javanese blend unlike the *Mogharaer Code*. In the following years, it was received well by VOC officials and their native mediators not only in Java, but also beyond, as it was sent from Batavia to Ceylon on 2 September 1770 to be implemented among Sri Lankan Muslims.

Conclusions

Unlike the familiar nineteenth- and twentieth-century patterns of colonial legal politics that translated any known indigenous or religious legal text into the colonisers' language or imported European legal codes into the colonies, the VOC's experiments

with Indonesian legal cultures in the eighteenth century demonstrate an imperial attempt to construct a robust colonial law while claiming an indigenous and religious authenticity. The *Mogharaer Code* they drafted in Dutch does not stand with the well-known Shāfiī legal text the *Muḥarrar* of Rāfiī nor the Ḥanbalī texts of the same title by Ibn Taymiyya and Ibn ‘Abd al-Hādī, nor does it resonate with the Javanese law texts, and it is unlikely that a Javanese law book existed entitled *Mogharaer*. Hence, the VOC’s attempts to claim authenticity for the legal code it constructed is clearly an endeavour to place itself in the local legal tradition and heritage without calling forth further furore or resistance from the Javanese subjects. The time was shortly after the fall of the Mataram Sultanate after a series of wars led by the Javanese and Chinese communities against the Dutch; any obvious rupture in traditional customs and laws would have incited further rebellions. VOC officials tried their best to convince the people around them that they were only following the existing legal system. Yet they could not get away from their economic and political motivations. Through this “political economy of legalistic discovery” they utilised any possible provisions to assert the imperial inevitabilities of governmentality, dispossession, and decimation, as is clear from the *Mogharaer Code*’s emphases on property confiscations, financial penalisations, and gruesome punishments. Whether the Javanese could and did act rationally by defying this “new” legal code or modifying their existing traditions through their own agencies in such legal venues as the *landraad* is something that requires further research, looking particularly at the Javanese source materials. In the long run, however, the code did not succeed and did not have a long life, probably owing to its cruel judgements and to the changing perceptions against harsh punishments in European and imperial-colonial legal systems. Other “discoveries” such as the *Freijer Code* achieved a wider life by proposing hybrid laws for civil cases. After the dismissal of the VOC and during the British colonial interregnum in the East Indies, the Dutch colonial apparatus became more involved in legal mechanisms through various measures and institutional instruments. Naturally this jurisprudential drive nurtured a huge interest among both the political administrators as much as among the legal scholars, leading to more “discoveries.”

Against all odds, these discovered laws can still theoretically be identified as Islamic, if we follow Shahab Ahmed’s recent suggestion on what constitutes “Islamic.” He has convincingly argued that as long as individuals make meaning for themselves through their particular acts or beliefs “by hermeneutical engagement with the Con-Text of Revelation of Islam,” it can be considered Islamic even if the individual is non-Islamic.⁵³ In that framework, the code can be treated as an Islamic legal code, for it was created by the Dutch colonial power in Java in their attempts to give meaning to their pursuits to administer colonial subjects through an engagement with the perceived traditions of Islam and its law. The only issue with this line of argument is that the code as such is not rooted in the long textual tradition of Islamic law known until then, as it aspires to in its title. If one aspires to ignore this long textual past, it can be considered Islamic in its own right: as a precedent to the several Islamic legal hybrid codes prepared by the European colonial regimes in the following decades and centuries.

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Notes

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- 1 Ward, *Networks of Empire*; Steenbrink, *Dutch Colonialism*; Woodward, *Java, Indonesia and Islam*.
 - 2 Hooker, *Legal History*; Ball, *Indonesian Legal History*.
 - 3 de Vries, “Indische Rechterlijke”; Idema, “Overzicht”; Stapel, “Bijdragen.”
 - 4 Comaroff, “Colonialism.”
 - 5 Ball, *Indonesian Legal History*, 63–4.
 - 6 van der Chijs, *Plakaatboek*, vol. 5, 525–6; Stapel, “Bijdragen,” 307; Kern, “Javaansche rechtsbedeeling,” 410; Ball, *Indonesian Legal History*, 68; Hisyam, *Three Fires*, 50–1.
 - 7 NA 2864, Origineele missive, 494r.–495v.
 - 8 Ibid; cf. Stapel, “Bijdragen,” 307–8; Kern, “Javaansche rechtsbedeeling,” 410.
 - 9 I was unable to locate any proceedings of the meetings in the resolutions, daily reports (*daghregisters*), and letters of the Semarang office or the related archives for the Netherlands and Indonesia.
 - 10 de Haan, *Priangan*, vol. 4, 684.
 - 11 van der Chijs, *Plakaatboek*, vol. 6, 14–37.
 - 12 In Islamic legal administrations, the *muḥtasib* is an executive level between the offices of *qāḍī* and court magistrate. Primarily a supervisor of bazaars and trade, the *muḥtasib* was in charge of enforcing public morality and overseeing the public welfare. For more details, see Stilt, *Islamic Law in Action*.
 - 13 *Compendium der voornaamste Javasche Wetten, naeuwkeurig getrocken uyt het Mametaansche Wet-boek Mogharraer, en, so veel mogelyk met het Goddelyk-Natuurlyk- en Burger- Regt sodanig samengebracht, dat daarna, ongekenkt de Javasche Gewoontens en Gebruykelykheden, den Semarangsen Landraad over de Onderdaanen van 's Comps: Landen en Districten Regt en Justitie soude kunnen oeffenen, en de Crimineele Zaken, so wel als de Civile behandelen*. For the full original text and translation of the code, see Kooria, “Early Dutch Encounters with Islamic Law”.
 - 14 NA, Compendium: Appendix, unpaginated.
 - 15 *Compendium der voornaamste civile Wetten*. Available at NA, Een exemplaar der Mahometaanse wetten, 268–79.
 - 16 Ball, *Indonesian Legal History*, 70; de Haan, *Priangan*, vol. 4, 685.
 - 17 *Tatjoe Salatin* mentioned here is the *Tāj al-salātīn* by Bukhārī Jawharī (fl. early seventeenth century); *Bostan Salatin* refers to *Bustān al-salātīn* by Nūr al-Dīn al-Ranīrī (d. 1658). Both these Malay works were written in the early seventeenth century in Aceh. The third text,

- Galela Domina*, refers to a text of Indian origin known in the Arabic and Persian literature as *Katila wa Dimna*. All these texts belong to the genre of Mirror for Princes.
- 18 Also see Sanne Ravensbergen's article in this issue.
 - 19 Raffles, *History of Java*, vol. 1, 315.
 - 20 van der Chijs, *Plakaatboek*, vol. 15, 652; de Haan, *Priangan*, vol. 4, 851–2.
 - 21 Raffles, *History of Java*, vol. 1, 321. The British Regulation passed in 1814 is given in *History*, vol. 2, Appendix D.
 - 22 den Tex and van Hall, *Nederlandsche jaarboeken*, vol. 4, no. 3, 353 ff; van der Chijs, *Plakaatboek*, vol. 6, 14–37; “Javaansch-Mahomedaansch Regt,” 361–94.
 - 23 de Haan, *Priangan*, vol. 4, 685.
 - 24 Hisyam, *Three Fires*, 50, fn.
 - 25 de Haan, *Priangan*, vol. 4, 685; Hisyam, *Three Fires*, 50; Ball, *Indonesian Legal History*, 70.
 - 26 Ibn Taymiyya, *Muḥarrar*; Rāfiṭ, *Muḥarrar*.
 - 27 Ibn ‘Abd al-Hādī, *Muḥarrar*. The text is known in the Islamic tradition by such various full names as *Muḥarrar fī al-ḥādīth*, *Muḥarrar fī al-aḥkām*, and *Muḥarrar fī aḥādīth al-aḥkām*. This text has recently been translated to Bahasa Indonesia.
 - 28 For example, a few manuscript-copies from different parts of Indonesia are now kept in the Special Collections of Leiden University Library. There is only one complete manuscript (Or. 2290, copy from Yogyakarta, 225 ff.). All other copies are either incomplete (such as Or. 3051, with some marginal notes in Javanese, 158 ff.) or partial disconnected excerpts (as in Or. 5720 ff. 62r–80r and ff. 81v–185r.) or quotations (as in Or. 2126, which also quotes from *Ghāyat al-Ikhtisār* by Abu Shujā’).
 - 29 Leiden MSS. Or. 1815, dated 1772 AJ or 1844 CE.
 - 30 A Semarang scholar, Adimanggolo, translated this text partly into Javanese at the request of John Crawfurd in the early nineteenth century. This is kept in the British Library (Add.12290) as *Serat Kitab Tupah*. The cover image of this *Itinerario* special issue is the opening page of this manuscript. In the mid-nineteenth century, Dutch scholar Salomon Keyzer translated it into Dutch. See Keyzer, *Kitab Toehpah*.
 - 31 Instead those say to kill the blasphemer—see Rāfiṭ, *Muḥarrar*, 426; Ibn Taymiyya, *Muḥarrar*, vol. 2, 401; Ibn ‘Abd al-Hādī, *Muḥarrar*, 401–2. This “loosening” of punishment could be understood as an influence of European interventions against capital punishment, but in the following article on treason and disobedience, it does prescribe death as punishment.
 - 32 Rāfiṭ, *Muḥarrar*, 422–3; Ibn Taymiyya, *Muḥarrar*, vol. 2, 399–400. The ḥādīths Ibn ‘Abd al-Hādī brought on this are rather meagre and inexplicit, see his *Muḥarrar*, 401.
 - 33 NA, Compendium, Article II.
 - 34 Vollenhoven, *Ontdekking*, 9.
 - 35 Vollenhoven, *Adatrecht*, vol. 1, 16, 125.
 - 36 For example, see Ricklefs et al., *Indonesian Manuscripts*; Pigeaud, *Literature of Java*; Girardet, *Descriptive Catalogue*.
 - 37 The ones I could consult so far are Van der Chijs, *Catalogus* and *Eerste vervolg catalogus*. In addition to these, a detailed list of legal texts in Batavia under the VOC prepared by Van Kan also fails to mention *Mogharaer*—see his *De rechtsgeleerde boekenschat*.
 - 38 The original title of the *Maḥallī* is *Kanz al-rāghibīn*, but it was widely known among the Shāfiṭ scholars in its author's name. It is a commentary on the *Minhāj*.
 - 39 de Haan, *Priangan*, vol. 4, 684–5; cf. Hazeu, “Tjeribonsch Wetboek.”
 - 40 de Haan, *Priangan*, vol. 4, 685.
 - 41 Ball, *Indonesian Legal History*.
 - 42 Steenbrink, *Dutch Colonialism*, 25–75.
 - 43 On this, see Bevilacqua, *Republic of Arabic Letters*.
 - 44 Stapel, “Bijdragen,” 308.

- 45 NA 2864, Origineele missive: 494r.–495v.
- 46 van der Chijs, *Plakaatboek*, vol. 5, 525.
- 47 See the proclamation of the British governor general of India, Gilbert Elliot-Murray-Kynynmound, on 11 September 1811. It says that although the Dutch laws will remain in force in Java provisionally, “neither torture nor mutilation shall take part of any sentence to be pronounced against criminals.” Raffles, *History of Java*, Appendix D.
- 48 Ricklefs, *History of Modern Indonesia*, 105–39; idem, “The Crisis of 1740–1.”
- 49 Ricklefs, “The Crisis of 1740–1,” 269.
- 50 Pieter Spiereburg, *Spectacle of Suffering*, chapters 3 and 5; Foucault, *Discipline and Punish*, 3–6.
- 51 The complete text of the compendium can be found at van der Chijs, *Plakaatboek*, vol. 6, 395–407.
- 52 Supomo and Djokosuton, *Sedjarah Politik*, vol. 1, 35.
- 53 Ahmed, *What Is Islam?* 445–52.