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THE INFLUENCE OF DUTCH COLONIAL LEGAL POLICY ON CUSTOMARY LAW AND ISLAMIC LAW IN INDONESIA

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Abstract

The Dutch colonial period, spanning nearly three and a half centuries, fundamentally shaped Indonesia's legal landscape by imposing a secular legal system derived from European, particularly Dutch, law. This study examines how Dutch colonial legal policy created conflict between Customary Law (Hukum Adat) and Islamic Law (Hukum Islam) in Indonesia, the major legal theories applied during the colonial era, and the influence of those theories on Indonesian legal development. Using a normative juridical research approach, this study analyzes primary and secondary legal sources, including colonial legislation, judicial decisions, and academic literature. The findings reveal that the colonial administration deliberately deployed the Receptie Theory, advanced by Van Vollenhoven and Snouck Hurgronje, to subordinate Islamic Law to Customary Law, undermining the pre-colonial harmony between the two systems. This "split bamboo" strategy (teori belah bambu) was a calculated divide-and-rule policy. The study concludes that although colonial intervention severely disrupted Islamic Law, post-independence Indonesian scholars, particularly Hazairin, successfully rebutted the Receptie Theory and reasserted the primacy of Islamic Law through the Receptio a Contrario theory.

Keywords: *Dutch Colonial Legal Policy, Islamic Law, Customary Law, Receptie Theory, Legal Pluralism*

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A. Introduction

The impact of the Dutch colonial legal and political framework on the evolution of Indonesia's contemporary legal system can be tracked to the colonial era, which spanned almost three and a half centuries, beginning in the 16th century and continuing into the early 20th century. Throughout this time. the Dutch enforced a secular legal system based on European especially Dutch, legal principles, while neglecting local customs and religious beliefs. This colonial legal framework served as a mechanism to maintain and extend Dutch authority throughout Indonesia [1].

Indonesia has a variety of legal systems due to its exceptional cultural diversity. Prior to gaining independence, Indonesia concurrently adopted three legal systems: Western Law (Hukum Barat), Islamic Law (Hukum Islam), and Customary Law (Hukum Adat). This condition began when the Dutch East Indies seized control of the archipelago [2]. However, Islam itself accepts 'urf (custom) as a legal source, highlighting the important function of local customs in governing community issues. The intentional tension established between these two legal frameworks is referred to as the "split bamboo" theory (teori belah bambu), a colonial invention aimed at positioning Islamic Law in opposition to Customary Law in order to allow for the implementation of the Colonial Legal System in Indonesia [3].

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Islamic law and customary law coexisted peacefully in Indonesian society before to the Dutch arrival. The Acehnese proverb "hukum ngen adat hantom cre, lagee zat ngon sipeut" beautifully captures the interconnectedness of the two systems: Islamic law and customary law are inseparable, just as substance and attribute are [4]. Only when the Dutch introduced their own legal system and attempted to enforce it on the colonial populace did the conflict between these two systems emerge.

This article examines three central questions: (1) Why did conflict arise between Customary Law and Islamic Law in Indonesia? (2) What are the major theories applicable to Customary Law and Islamic Law? (3) How do these theories influence contemporary Indonesian law? By addressing these questions, this study aims to illuminate the enduring legacy of colonial legal policy on Indonesia's plural legal landscape and to trace the intellectual resistance mounted by Indonesian legal scholars in defense of Islamic Law.

B. Research Methodology

Using a normative juridical research technique, this study looks at doctrinal literature, legislative documents, and legal norms that are pertinent to the interaction between Indonesian Islamic law, Dutch colonial legal policy, and customary law [5]. Three types of legal materials were included in the data that were gathered through library research. Colonial laws such as the Regeeringsreglement (RR) of 1885, Indische Staatsregeling (IS), Staatsblad 1882 No. 152, Staatsblad 1906 No. 364, Staatsblad 1907 No. 204, and Staatsblad 1937 No. 116 comprise the primary legal materials. Scholarly commentary, journal articles, and legal textbooks are examples of secondary legal materials. Legal dictionaries and encyclopedias are examples of tertiary legal materials. To determine how colonialism affected Indonesian legal pluralism, the gathered data were qualitatively examined using grammatical, systematic, historical, and teleological legal interpretation techniques.

C. Discussion and Analysis

1. Conflict Between Customary Law and Islamic Law in Indonesia

As stated by Ratno Lukito, the examination of Customary Law in an academic context started in the period of the VOC (1602-1800), with contributions from intellectuals like Maroond (1754-1836), Raffles (1781-1826), Crawford (1783-1868), and Muntinghe (1773-1827). With the rising demands for legal reforms under the governance of the Dutch East Indies, discussions became more vigorous regarding which legal system was best suited for the local populace. These academic exchanges focused on the rivalry between Customary Law and Islamic Law [6].

The concept developed by Lodewijk Willem Christian Van den Berg (1845-1927)-known as the Receptio in Complexu theory-asserted that Islamic Law was entirely relevant and applicable to Muslim societies, regardless of any practical discrepancies. This assertion was based on the acknowledgment that Indonesian indigenous people were subject to Islamic Law as per the Regeeringsreglement of 1885, with additional backing from the Compendium Freijer of 1706, which regulated matters of Islamic marriage and inheritance [7].

Nevertheless, the perspectives of Van Vollenhoven and ter Haar led to the emergence of the political concept referred to as "split bamboo" (politik belah bambu) which was aimed at Customary Law and Islamic Law. The colonial approach of endorsing Customary Law was closely linked to the strategy of divide-and-rule (devide et impera): Customary Law would contribute to the disunity of ethnic groups,

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whereas Islamic Law could potentially bring them together as one. It is thus clear that the Dutch favored Customary Law rather than Islamic Law [8].

These factors led to the creation of Articles 131 and 163 of the Indische Staatsregeling (I. S.), which categorized the inhabitants of the Dutch East Indies into three legal groups: European individuals were subject to Dutch law; Foreign Orientals (mainly Chinese and Indians) were governed by their own customs via Customary Law; and indigenous Indonesians (Bumiputra) adhered to the customary rules of their respective ethnicities. Additionally, there were specific regulations for Christian Bumiputra. To further colonial aims, the Dutch promoted the significance of Customary Law by revitalizing customs and supporting adat leaders, while they simultaneously marginalized Islamic Law, distancing communities from Islamic principles and undermining the influence of ulama. This approach was in line with the recommendations of Snouck Hurgronje, who maintained that Dutch dominance in Aceh relied on exploiting the tensions between religious allegiance (ulama) and traditional allegiance (uleebalang) [9].

Snouck Hurgronje's approach to Islamic Law and its adherents included three areas: (1) in the area of religion, the colonial administration was to provide Muslims with complete and sincere liberty to observe their beliefs; (2) within the social dimension, the administration was to honor the traditions and practices of the population while supporting individuals who pursued advancements that coincided with colonial goals; and (3) with regard to politics, the administration was to hinder the emergence of Pan-Islamism that might incite opposition to Dutch dominance [10].

Islamic Law ceased to be acknowledged as a valid legal system unless it was accepted by Customary Law. This implies that, in practice, Customary Law was the dominant legal framework. This perspective is referred to as the Receptie theory, which Hazairin notably termed the "devil's theory. " In an effort by the Dutch colonizers to diminish the influence of Islamic Law in Indonesia, this theory was employed to modify Van den Berg's Receptio in Complexu through Staatsblad 1937 No. 116. This legislation restricted the Religious Courts' authority exclusively to matters related to marriage, removing their power regarding inheritance claims on the basis that such power had not been fully assimilated into Customary Law [11].

Dutch scholars tended not to recognize the existence or influence of Islamic Law within Customary Law. By deeming the Islamic influence as insignificant, they placed it in a subordinate position to Customary Law -in the analogy of "splitting bamboo": one part is elevated while the other is pressed down. While both were recognized as forms of law, Customary Law was celebrated, whereas Islamic Law was marginalized [12].

This process occurred in two stages. The initial stage, which took place during the time of the VOC, saw Islamic Law remaining recognized within the active legal framework due to the VOC's main objective being the extraction of resources from the colonized lands. The subsequent stage emerged after the VOC's dominance ended, when the Dutch colonial authorities started to have a direct influence on Islamic Law and Customary Law, especially after the implementation of Staatsblad 1906 No. 364 and Staatsblad 1907 No. 204 in the Dutch East Indies [13].

2. Legal Theories Applicable to Customary Law and Islamic Law

2.1 The Receptio in Complexu Theory

The Receptio in Complexu concept was utilized by the VOC through the Regeeringsreglement of 1885. Solomon Keyzer, a Dutch legal theorist who lived from 1823 to 1868, acknowledged the presence and

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relevance of Islamic Law, asserting that it guided the populace of Java, known today as Indonesia. This viewpoint was supported by Lodewijk Willem Christian Van den Berg, who lived from 1845 to 1927, asserting that Islamic Law was fully relevant to Muslim populations since they accepted Islam, despite any variations in how it was practiced. Van den Berg's commitment to preserving Islamic Law was based on the idea that legal frameworks correspond to the religious beliefs of individuals. He ultimately deduced that Indonesian society had thoroughly integrated Islamic Law into its everyday experiences, which is why it is referred to as Receptio in Complexu [14].

Van den Berg was the final Dutch academic to officially recognize the presence of Islamic Law within Indonesian culture. His viewpoint was based on two historical foundations. To begin with, since the time of the VOC, Islamic civil law had been recognized by the Regeeringsreglement of 1885. Additionally, before the arrival of the VOC, numerous Islamic kingdoms had flourished throughout the archipelago, implementing Islamic Law-largely adhering to the Shafi'i school of legal thought. Some of these kingdoms were Samudera Pasai, Aceh Darussalam, Demak, Cirebon, Mataram, Banten, Ternate, South Kalimantan, Kutai, among others. Within these regions, Islamic Law was enforced through religious legal bodies known by various titles in different areas, including Kerapatan Qadhi, Hakim Syara', and Pengadilan Surambi [15].

2.2 The Receptie Theory

The Receptie theory asserts that Islamic Law is applicable to Indonesian Muslims solely if it has been accepted by their Customary Law beforehand. This concept was initiated by Christian Snouck Hurgronje and Cornelis van Vollenhoven, who lived from 1857 to 1936. The theory emerged due to doubts and critiques from Dutch authorities concerning the current rules governing Islamic matters. These critiques were expanded upon by B. ter Haar and significantly represented a change in the thinking of colonial administrators, especially in relation to civil and family legislation in the Dutch East Indies [16].

The Receptio in Complexu theory is directly at odds with this notion. The Receptie argument holds that Muslims are only subject to Islamic law to the extent that their Customary Law has accepted or absorbed it. Therefore, the application of Islamic law is determined by customary law [17]. The Wet Op De Staat Snrichting Van Nederlands Indie—the Indische Staat Regeering (IS)—enacted in 1929 provided Snouck Hurgronje with a constitutional foundation for this theory. Article 134 paragraph (2) of the IS says: "In civil matters between Muslims, these shall be settled by the Islamic religious judge if their customary law so requires and insofar as not otherwise determined by ordinance."
In practice, the genuine aim of the Dutch colonial administration was to weaken and hinder the enforcement of Islamic Law. This was accomplished by completely removing Hudud and Qisas penalties from the criminal justice system and by gradually limiting the areas covered by Islamic marriage and inheritance regulations [18].

2.3 The Receptio a Contrario Theory

The Indonesian legal expert Hazairin vehemently contested and harshly condemned the Receptie theory, arguing that Islamic law in Indonesia is founded on the Quran and Hadith rather than Customary Law. Because the Receptie thesis was intended to make Islamic law inapplicable to Indonesian Muslims, Hazairin vehemently opposed it, referring to it as the "devil's theory" (teori iblis) [19]. Hazairin maintained the supremacy of Islamic law in his counter-theory, the Receptio a Contrario, which states that customary law is only enforceable to the extent that it does not conflict with Islamic

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law. An important turning point in Indonesia's post-independence reassertion of Islamic law was this intellectual counteroffensive.

3. Analysis of the Influence of These Theories on Indonesian Law

The evolution of Islamic Law illustrates that a significant variety has arisen over an extended timeframe, reflecting both specialized and limited theories. This variety indicates the vibrant and rapid development of Islamic Law through the ages and its crucial contribution to the formation of social life in Indonesia, including during the colonial era. Islamic Law became closely linked with traditional practices, as conveyed in the Acehnese phrase "hukum ngen adat hantom cre, lagee zat ngon sipeut"-indicating that Islamic Law and Customary Law are inseparable, much like essence and characteristic cannot be divided. Syahrizal Abbas characterizes this connection as two facets of the same entity, which cannot be separated [20].

The development of both Islamic Law and Customary Law underwent transformation after the Dutch arrived in Indonesia. At first, the Dutch aimed to trade and obtain spices; however, they soon transitioned to a strategy focused on conquest and domination, with the VOC serving as the corporate tool of colonial authority. During the early period up to the close of the 19th century, the Dutch actually provided a relatively positive stance towards Islamic Law by implementing Staatsblad No. 152 in 1882, which governed and acknowledged the presence of Religious Courts in Java and Madura. This approach aligned with the Receptio in Complexu theory, which considered Indonesian Muslims as having fully embraced Islamic Law as a cohesive framework, placing it on equal footing with other legal systems [21].

The Receptie argument, which proposed that Muslims' own Customary Law was the law that applied to them and that Islamic Law only applied if it was received by Customary Law, was the turning point that signaled a crisis for Islamic law. This approach, which was promoted by Van Vollenhoven and Snouck Hurgronje, purposefully created tension between Islamic law and customary law in order to make them antagonistic and undermine their formerly cordial connection. Consequently, customary law was elevated while Islamic law was suppressed, a phenomena known in colonial legal politics as the "split bamboo" idea [22].

The split bamboo theory was profoundly damaging to Islamic Law and to Indonesian Muslims. According to this argument, Muslims were essentially prohibited from fulfilling their religious duties. Islamic law became rigid and ineffective within its own country once it was removed from the Dutch East Indies' legal system. With the help of leaders of customary law, the Dutch implemented these rules to weaken the power of ulama and their adherents [23].

The Receptie idea was rejected after Indonesia gained its independence. Hazairin bluntly asserted that Snouck Hurgronje's Receptie hypothesis was a "devil's theory" that had to be disregarded. According to him, Islamic law is superior to both Western and customary law, and customary law is only legitimate when it complies with Islamic law [24]. In the post-colonial era, this philosophical position paved the way for the emergence of a really Indonesian jurisprudence, where Islamic law is acknowledged as an independent source of law rather than a product of customary practice [25].

D. Conclusion

The turmoil affecting Islamic Law in colonial Indonesia was primarily instigated by the Receptie theory, often referred to as the "split bamboo" theory. According to this concept, Islamic Law ceased to be

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acknowledged as legitimate unless it was accepted by Customary Law, essentially positioning Customary Law as the active legal framework. The Receptie theory, which was initiated by Van Vollenhoven and Snouck Hurgronje and further developed by Van den Berg, considerably undermined the authority of Islamic Law. By utilizing this theory, the colonial administration effectively excised Islamic Law from the legal framework of the Dutch East Indies with the intent of diminishing the influence of the ulama and their adherents, while appointing customary law leaders as tools of that oppression.

This program purposefully created hostility between Islamic law and customary law so that they would clash rather than work together, disrupting their formerly cordial relationship and leading society to choose customary law over Islamic law. The most significant intellectual countermove in the history of Indonesian legal thought on this topic is Hazairin's brave answer, which calls the Receptie theory a "devil's theory" and asserts the dominance of Islamic law through the Receptio a Contrario argument. According to Hazairin's legacy, Islamic law is superior to both Western and Customary law, and the other systems are only legitimate inasmuch as they do not conflict with Islamic law.

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