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THE HISTORY OF INDONESIAN LEGAL SYSTEM IN THE DUTCH COLONIALIZATION ERA AND THE IMPACT ON ITS DEVELOPMENT

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Article

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Abstract

Indonesia, a country with a rich cultural and political history, has been influenced by various external factors throughout its existence, including Dutch colonialism. The impact of this era on the Indonesian legal system is evident in the legal structures and traditions that were put in place during this time. This research paper aims to provide a comprehensive analysis of the Indonesian legal system in the Dutch colonialization era and its development until Reformation era.. The analysis will cover the influence of local religious and cultural traditions, as well as the changes that have occurred in the Indonesian legal system since the end of the Dutch colonialization era. This research will include historical and legal perspectives, providing a nuanced understanding of the Indonesian legal system and its development during this time period. The aim of this research is to shed light on the various influences that have shaped the Indonesian legal system and to provide insights into the challenges faced and opportunities presented in the context of Dutch colonialism.

1. INTRODUCTION

Indonesia is a country with a complex and varied legal system that has been shaped by a multitude of historical, cultural, and political factors over time. One of the most significant influences on the Indonesian legal system was the Dutch colonialization era, which lasted for over three centuries and had a profound impact on the legal structures and traditions of the country.

In this paper, we will explore the impact that the Dutch colonialization era had on the Indonesian legal system, from the legal structures put in place during this era to the changes that have occurred since the end of Dutch colonization. We will analyze the influence of local religious and cultural traditions and how they were incorporated into the legal system, as well as the changes that occurred as Indonesia transitioned from Dutch to self-rule. Ultimately, the aim of this paper is to provide a comprehensive understanding of the Indonesian legal system and its development during the Dutch colonialization era, shedding light on the various influences that have shaped it over time.

2. RESEARCH METHODS

The research used "Normative Juridical Legal Research" in accordance with Soerjono Soekanto's opinion that legal research is carried out by examining secondary materials or library materials or library legal research, through searching for books, laws, literature, and other legal materials.[1]

3. DISCUSSION

3.1 The Visitation from VOC and Pluralism

From the beginning, the Dutch East India Company (VOC) decided to respect local laws except when commercial interests were at stake. What they cannot respect, because of their ambitions, are local economic and political relationships, which have always been the fundamental source of local law.

During colonial development in the 19th century, the key decision, as Furnivall observes, was to exploit agricultural products as quickly as possible. This in itself is nothing unusual, although the Dutch have carried it out with surprising determination. What is unusual is the

[1] Soerjono soekanto, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, (RajaGrafindo Persada,Jakarta, 2011, hal.12)

way in which the laws are used to achieve their ends. In all colonies, effective exploitation included ethnic specialization and pluralism, but few, if any, created an institutional and legal configuration of pluralism as precise as in the Dutch East Indies.[2] The clear interests of the VOC and later colonial authorities in economic exploitation called for a clear delineation between exploiters and exploited. Indirect governance is a low-cost way to achieve this, but implementing it requires complex policy and institutional adjustments.

In addition, the serious debates on questions of legal policy that took place from the 1790s to the 1820s prompted the victors to put forward their views within a specific legal framework.[3] These debates were fundamental enough to be revived throughout the century after each political crisis led to major legal reforms. The basic question was whether to establish a unified or separate colonial society: legally, one law for all population groups or one plural law for some groups.

The first view, inspired by liberal ideas and the example of the British in India, tended towards the creation of a kind of liberal state. Second, linked to the rapid return of colonization and marked by a clear distinction between European and Indonesian identities which hardly favored the latter. It was said to be the establishment of establish not a State but an administrative system. This second view prevails and because the argument is formulated in legal terms, its results are legally reinforced.

During the early colonial period of self-determination, the law did no more than was necessary. During the period of liberal constitutionalism in the second half of the 19th century, pluralistic legal premises, then taken for granted, were elaborated.

Practically everything within the legal system, as it evolved, followed from these premises, though increasingly indistinctly. As the standard legal histories of the Netherlands-Indies have it, taking after the establishing work of the 1810s and 1820s, much influenced by developments under the VOC, Daendels and Raffles, codes, judicial reorganization. As the result of a wave of liberalism coming from Holland.

Once more in the early 1900s, during the Ethical period, legal reforms were set in motion. Seen from the ground of Indonesian society, however, most of these changes were just

[2] An extensive description and commentary on the formal legal order in Carpentier-Alting, J. H. Grondslagen der Rechtsbedeeling in Nederlandsch-Indie, 2nd rev. ed. (The Hague: Martinus Nijhoff, 1926).

[3] Ball, John. Indonesian Legal History 1602-1848 (Sydney: Oughtershaw Press, 1982), Chapter 4.

refinements of the design set up prior. They were important for the Dutch community, and at times made a contrast to Indonesians (e.g., the vervreemdingsverbod of 1870, which forbade alienation of Indonesian-held land) but never did they more than externally challenge the elemental distinctions of colonial economic, social, and political pluralism. As a rule, they ended up reinforcing these refinements in more sophisticated and subtle ways.

Indian pluralism and indirect rule required that the Dutch and Indonesian communities be well equipped with the institutions they needed to carry out their assigned roles, but the Indonesian side had to make it easy submit to the Dutch side.This means that two bureaucracies, each dependent on the other, comprise two equally interconnected judicial systems. The Dutch high administration is the most complex.One part was independently responsible for foreign trade, colonial policy and the internal affairs of the Dutch community, which after 1848 was given the rights and obligations enjoyed by Dutch citizens, and the other part, Binnenlands Bestuur, responsible for leading the Indonesian Side. Indonesian administration in Java consisted of locally developed pangreh praja, organized by kabupaten and principalities, and finally outside Java, local bureaucratic instruments were also co-opted and reworked. The Dutch and Indonesian bureaucracies are organizationally and ethnically distinct, but structurally linked in an intimate hierarchy.

With the important difference that ethnic boundaries are crossed in only one direction, there was a similar relationship in the justice system. On the Dutch side, there is a judicial hierarchy consisting of the first instance Residentiegerecht, the appellate Raad van Justitie and the Sup The latter two courts were composed of qualified lawyers who were increasingly linked in terms of education, tradition, tradition, style and jurisprudence with the native rechtsstaat of the Netherlands. Their jurisdiction extends to disputes relating to all domestic and foreign commercial activities, civil relations within the European community and of course crimes committed by Europeans cause. Raden van Justitie, who eventually had six across Indonesia, also heard appeals from the highest courts available to Indonesians, clearly demonstrating where authority lies in this relationship. (From the Raden van Justitie further appeals were possible to the Hof, as the Supreme Court was familiarly known.) In criminal matters, the Dutch prosecutor's office (Openbaar Ministerie) is composed of qualified lawyers. The lawyers (officeren van justitie) is headed in Batavia by a prosecutor. Procureur-Generaal, who also assumed responsibility for the colonial police.

The Indonesian side of the government's judicial system has been truncated, as the top judges are Dutch and appeals have escaped European courts. There are three government courts for Indonesians: District Court for petty cases; the regency court to ask more important questions; and finally the Landraad on each kabupaten seat. In Landraad, important criminal and civil cases took place between Indonesians and those who assimilated to Indonesian status. Ultimately, all the presidents of the Landraad were trained lawyers, but until the 1920s they were all equally Dutch, which in effect constituted an element of direct rule. Partly determined by the absence of trained Indonesian jurists (although in the 19th century, Landraad judges were often local administrators with no legal training), the use of The Dutch Judiciary aims to ensure fair justice and government control over local conflicts. During the 1920s and 1930s, Indonesian lawyers actually became Landraad's presidents, although they never had a majority.[4]

All other Landraden officials were Indonesians: the secretary, a Penghulu Muslims as advisors, many of Kabupaten's office appraisers, bupati (ex-officio) themselves, former advisor to Landraad and the untrained jaksa, or prosecutor, sits next to the judge as an assistant in criminal proceedings. Unlike the Dutch courts, Landraden are relatively informal cases, partly reflecting Dutch views on Indonesian legal customs and social needs. All these courts were created by the colonial government. Other judicial institutions that preceded government justice existed for Indonesians: traditional courts (adat), mainly outside Java, and Islamic courts in Java and elsewhere. [5]Until the late 19th century, the government generally left them alone. Subsequently, however, although seemingly autonomous, adat and Islamic justice were in fact increasingly subject to regulation and control. Final decision-making power rested with the Dutch judiciary, just as all local political orders ultimately depended on the colonial government.

Opposition to the plural judicial system has never disappeared, but it has never been great. If inertia cannot sustain this complex arrangement, then pluralistic ideologies and interests will add sufficient protection. Only Landgerecht, founded in 1914, had general jurisdiction over all

[4] 28 In 1939, of a total of 75 Landraad chairmen in the colony, 47 were Dutch and 28 Indonesian. Regeerings Almanak voor Nederlandsch-Indie 1939/11.

[5] On adat courts, B. ter Haar, Adat Law in Indonesia (New York: IPR, 1948), The introduction by Hoebel and Schiller; on Islamic courts, S. Lev, Daniel. Islamic Courts in Indonesia (Berkeley: University of California Press, 1972).

population groups, but it only dealt with minor crimes. It is nothing more than a symbolic concession to liberal egalitarian ambitions, which otherwise makes no sense. In fact, the unification of the courts would be a big blow, without much impact on economic interests, then it would be quite possible to defend oneself in any type of judicial organization-most judges, all notaries and private lawyers were Dutch until the mid-1920s but their racial, social and political status within the institution of land.

These issues is clearly expressed in the substantive law that underlies the individual courts. The law of plurality clearly distinguishes practically and symbolically, although never completely, the different ethnic communities in India. In the 1840s, when another proposal was made to apply Dutch law to everyone, there was opposition: different courts could not apply the law in the same way. Such arguments obscure the issue. More precisely, if the law was the same for everyone, separate courts would make no sense. Different courts ensured different laws, which was essential in the Indian colonial system for at least three reasons. First, it's only fair; and otherwise those who deny their own laws may rebel. Second, it maintains the political aspects of different communities. Third, separate legal regimes have helped differentiate the economic roles of large population groups. Access to Dutch law implies equal opportunity to engage in any type of trade, which makes no sense in an agricultural system and even less in a liberal era. Even if in defense of the "everyone benefits" principle the question of fairness is mentioned most often, there are good reasons to think that economic and political considerations are more relevant.[6]

The "to each his own law" does not work simply, but for some reason it was clear and logical reasons. The complexities of colonial pluralism caused equal levels of legal complexity. The basic principle is that adat law is for Indonesians and those classified as indigenous, and Dutch law is for Europeans and those classified as European. However, expressed in this way, the emphasis is on the substantive law, which usually receives more attention; but more significant differences can be found in procedural law, which critically defines the relationship between haves and have-nots. European subjects have two procedural codes, one for civil cases (Burgelijk Rechtsvordering) and one for criminal cases (Straf-vordering). From the 1850s,

[6] Legal unification was viewed as a minor concern, possibly an obfuscation, but a more significant objection was its potential cost and time commitment, as judges and administrators would need to study law more seriously. Ball, Indonesian Legal History, page 206 and 213-214.

these codes incorporated provisions, including guarantees of individual rights, of the Dutch codes.

For Indonesians, a single code is sufficient for civil and criminal matters, defining the procedures of the pangreh praja as well as those of the Landraden and lower courts. This is the Indisch Regulations, promulgated in 1848, revised in 1926 and revised in 1941 as the Herziene Indisch Regulations (Indonesisch), hereinafter referred to as H.I.R. Less complex and detailed than the procedural rules for Europeans, to meet the “simpler” needs and standards of Indonesians, H.I.R. also provides fewer protections against the government.[7] For example, the arrest, detention, and conviction of an Indonesian under the direction of H.I.R. as a Dutch subject under Strafvordering. A few examples will illustrate how the law regulated various ethnic relations in the colony. On the one hand, the Indonesian community cannot be considered a solid bloc. Church lobbyists want Indonesian Christians to be integrated into Dutch legal status, but as this risks opening a giant Pandora's box, converts must accept their own system of marriage, but no more than that. For the Indonesian elite, alliance with the colonial government was necessary to gain indirect power and therefore required special attention.

The Javanese upper aristocracy, including all bupatis, Indonesia's highest-ranking civil servants and advisors to the central bureaucracy, as well as high-ranking Indonesian military officers, are exempt from H.I.R. criminal proceedings and there is a "privileged forum" in the Dutch courts, which maintains procedural rules for Dutch subjects. Indeed, if the Indonesian elite had assimilated socially into the fashions, styles, and habits of the Dutch community, the law had also assimilated them politically. Additionally, not everyone in the colonies was Dutch or Indonesian. The Chinese, economically important and useful but otherwise unpopular, would be linked economically to Dutch interests while remaining at arm's length in every way.

[7] The argument for simpler procedures in Indonesia was more sympathetic than it was, as procedural law mainly aimed to provide Indonesians with fewer guarantees and protections than the Dutch. During the nineteenth century, few officials in Indonesian affairs were trained lawyers, and the availability of more trained lawyers improved procedural law for Indonesians. The main reason for simplifying procedures was to provide Indonesians with fewer means of protection against the government. Governor-General Rochussen objected to the introduction of Dutch procedural law in the late 1840s, fearing it would allow Indonesians too many rights, independence, and control, potentially distressing the government.
(Ball, Indonesian Legal History, page 214.)
The authority of colonial and indigenous administrations was never questioned due to the distinct procedural law between Indonesians and Europeans, which justified the establishment of separate courts.

There are also Arabs, Indians and Japanese. The position of these groups – ethnic Chinese and other "foreign Orientals" – is problematic, their legal classification inelegant. Although in most cases they are considered "natives", they engage in the same commercial traffic activities, although often in disorderly vehicles and on the streets small, like Dutch businessmen. As a result, they are treated like Indonesians in criminal law but like Europeans in commercial law. The Japanese were an exception only because of Japan's growing power. Under pressure from Tokyo, they were fully assimilated into European legal status. Ethnic Chinese sought similar symbolic social and political equality, but neither they nor China had the influence to wrest it from the colonial government. Whatever one may say about this legal maze, it accurately reflects the economic and political arrangements shaped by Dutch power from the 18th century onwards. But the picture presented above is unvarnished, without the ideological patina that developed with the colony and its legal basis. As in any legal system, fundamental colonial interests were increasingly obscured by the rhetoric of many debates (especially with the onset of the liberal era and the emergence of large number of lawyers) about which law is for whom, the complexities of conflict theory. The nature of equality between plural legal orders, and much more. Once set in motion, the cogs of the legal system turn their own logic, often quite truthfully in terms of legal logic, to legitimize and justify a less satisfying reality underneath.[8]

The treatment of local customary (adat) law in Indonesia's colonial history is a complex and ambiguous topic. [9]In the Netherlands-Indies, customary law was problematic, and the analysis of adatrechtpolitiek often isolates it from the rest of colonial policy. The main issue is whether

[8] Colonial administrators and apologists initially believed that plural legal orders were separate but equal. This led to logical consequences, such as Dutch plaintiffs having to sue Indonesians in the Landraad. However, the application of adat law depended on the nature of the dispute, as certain commercial processes were governed only by Dutch law. Indonesians could either submit voluntarily to Dutch law in whole or in part, and those engaging in commerce were assumed to have partially submitted to Dutch law. As the new adat law policy developed in the twentieth century, the assertion of equality between adat law and Dutch law became more insistent, influencing the development of intergentiel recht, an intellectual edifice containing rules for resolving conflicts between different law-groups. Its creator was a jurist R. D. Kollewijn's collection of essays from the late 1920s through the early 1950s.
(Kollewijn, R. D. Intergentiel Recht (The Hague and Bandung: van Hoeve, 1955)).
The Indonesian legal system, despite its emphasis on equality, faced challenges due to colonial racial stratification and the belief that legal equality was not the real order. Dutch law was considered more equal than other law due to Dutch authority, and judges had similar authority to heed their conscience. The principles of interethnic law survived into independence, alongside plural law itself, highlighting the need for a more balanced approach to legal equality in Indonesia.
(Siong, Gouw Giok. Hukum Antar Golongan (Jakarta: Penerbitan Universitas, 1959))

[9]Burns, Peter. The Myth of Adat (Australia: James Cook University, May 1982).

to respect local law or whether Europeans should have gradually overridden it in favor of modernization or allowed people to live by their own law. In colonial Indonesia, both cases were made, often honestly or disingenuously. However, the choice made for most Indonesians was not legal but political and economic, which the law helped obscure.

3.2 Customary Law

Local law is easily divorced from its own economic and political environment, as law, legal process, and political authority are inseparable. In the colonies, local authority was unhinged from local interests and attached to colonial power. Customary law inevitably lost integrity, becoming folk-law, important as the repository of kinship organization and values but with little capacity for internal evolution and elaboration as conditions changed.

The adat law of Indonesia, which has been known for nearly a century, is fundamentally a Dutch creation. This does not mean that substantive adat rules are other than Indonesian in origin, but that the understanding of adat, the myth of adat, and the relationship between adat and state authority are the result of Dutch work. Cornelis van Vollenhoven's drama of adat law policy highlights the extent to which adat law was removed from Indonesian hands.[10]

Vollenhoven, a renowned Dutch legal thinker, was a complex and idealistic figure who incorporated the paradoxical implications of law in a plural society. Despite his knowledge of adat law, he only briefly visited the colony, and may not have fully understood the social and political tensions of the racial mix there. Despite his admiration for Indonesian cultures, most of his students ignored his vision. Vollenhoven's commitment to a world of different but equal cultures led him to view the modern state as a threat to local history, imagination, and law. He became directly involved with issues of Indonesian legal policy due to a renewed debate over legal unification for all population groups in the Ethical era.[11]

The Ministry of Colonies in The Hague proposed a unified civil code for Indonesia, with two strands of opinion supporting the project: a liberal view that Indonesians should be drawn into the modern world of commerce and civil relations, and a harder-nosed view that unified Dutch law would make for more efficiency and smoother commerce. This could have been due to the development of interest in creating a more autonomous colonial state, which an

[10]A scholar in Leiden determined the fate of legal traditions of Javanese, Bataks, and Minangkabau, among others, under a circumstances that were not made public at the time.

[11] Holleman, J. F. ed., Van Vollenhoven on Indonesian Adat Law (The Hague: Nijhoff, 1981).

integrated legal system and unified law would be advantageous attributes. Vilkenhoven responded with a blistering attack, arguing that there should be "no lawyer's law for the Indies," as it was not their (the Indonesians') law, no unified code that would supersede the many local customary law regimes of distinct cultures. Instead, the colonial administration must devote serious attention to understanding local law and preserving its integrity. After a few years of debate, Parliament adopted Vollenhoven's adatrechtpolitiek, which promoted new understandings of adat law, new research, the training of Dutch and Indonesian adat law scholars, and even new adat law institutions.

However, Vollenhoven's ideas did not lead to policies fundamentally different from those of the previous two centuries. They were only better informed and committed to a fuller cultural understanding of adat than most colonial administrators had bothered to develop. It was clear from experience that the policy of respecting adat had not helped Indonesians much, but rather focused on what "helping" Indonesians meant. Politically, the critical implication of Vollenhoven's adatrechtpolitiek was that it bore no critical implications for colonial administration and political structure. The colonial bureaucracy and interests associated with it favored his position, which they recognized as one of no fundamental change.

The adatrechtpolitiek, a reform in Indonesian law, was influenced by conservative political and social interests rather than ethical principles. Adat diversity was a key justification for the administrative state in a plural society, and the policy was grounded in conservative political and social interests. Adat law activists, who were admirable ethnographers but poor policy makers, demonstrated the conservative nature of the adatrechtpolitiek. Vollenhoven and others aimed to demonstrate that adat was relatively free of external influences, but they could not easily make a case for change. In some areas, like the Batak lands and Lampung, the policy led to the revival of adat courts, with authority over them vesting in conservative local elites supported by the Binnenlands Bestuur. The adatrechtpolitiek had a distinct political edge, evident in its treatment of Islam. Vollenhoven argued that the destruction of adat law would lead to social chaos and Islam. Scholars spent intellectual energy proving that Islam had made few inroads into adat, which transformed adat into a conservative legitimating symbol of local authorities. Islamic institutions were contained and subordinated by a reception theory that made Shariah rules valid only to the extent they had been assimilated by adat. This was not an

endogenous outcome of Indonesian social and political processes but rather colonial policy, usually in collaboration with Indonesian allies.

Adat law, a legal system in Indonesia, was initially believed to be best preserved in closed communities. However, studies from the 1920s and 1930s often overlooked the Dutch presence in these communities, including administrative authority, economic enterprise, commercial power, social influence, and cultural example. The adat law was not a closed community, and its development was influenced by Dutch authority. This was evident in the establishment of adat courts by the colonial administration, review of adat decisions by the Landraden, and the presence of Dutch officials at court sessions. Dutch scholars and Indonesian scholars trained by Dutch teachers also conducted research on adat. However, the adat research violated the principle that adat law lived in local tradition, as it was written in books, which Dutch and Indonesian judges used as codes.

Indonesians with education and leisure to think about adat divided on the issue. Government officials, administrators, scholars, and judges favored the adatrechtpolitiek, while private lawyers and intellectuals were less favorable.[12] Higher-status Indonesians increasingly considered themselves free of adat, believing they belonged to backward villages rather than modern urban centers. Locals in villages took the initiative to obliterate adat courts and authorities during the revolution, sometimes demanding the "national" institutions of the new state, to their regret.[13]

3.3 Private Lawyers in Indonesia and the Colonial Legal System

The dual legal system in Indonesia was consistent due to the ethnic division of labor. Dutch officials could penetrate the Indonesian side, but not vice versa. Few officials crossed between the two sides, with only one Indonesian judge moving to a Raad van Justitie and none ever to the Hof.17 [14]Indonesian officials included pangreh praja officials, jaksa, Islamic penghulu, clerks, and legally trained Indonesian Landrechters. Private legal professions, such as notaries, bush-lawyers (pokrol-bambu), and advocates, were unique and interesting.

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[12] Alisjahbana, Takdir. Indonesia in the Modern World (New Delhi: Congress for Cultural Freedom, 1961), page 100-109, "Confusion in Legal Thinking."

[13] S. Lev, Daniel. Judicial Unification in Post-Colonial Indonesia - Indonesia 16 (s.n, October 1973).

[14] Furnivall, J. S. Netherlands-India: A Study of Plural Economy (New York: Macmillan, 1944), p. 296. to the Raad van Justitie of Batavia. He later became Indonesia's first Supreme Court chairman.

The Notaries, the key private lawyers in civil law systems, were primarily Dutch and rarely extended their services beyond the European community. They were insulated from the Indonesian side of the legal system, and pokrol-bambu, untrained lawyers of varied origins, were entirely on the Indonesian side.[15] They were banned from European courts due to a rule requiring trained counsel. However, in Indonesian courts, anyone could serve as counsel. Pokrol-bambu needed rudimentary Dutch, understanding of colonial institutions, and personal confidence. They survived because they could not be prevented, as people could not always represent themselves. Similar figures emerged in all colonies. In Indonesia, they were hated by trained advocates, judges, and the pangreh praja, who saw them as trouble-makers, cheats, and pettifoggers who encouraged disputes and litigation. However, they were also seen as evidence that the administration was not adequate to their needs. Pokrol-bambu's work made a mockery of claims by officialdom to govern a satisfied population, demonstrating that private legal initiatives were not adequate.

Indonesian lawyers faced challenges in private practice due to the colonial administration's discouragement and Dutch advocates' opposition. Legal training for Indonesians was introduced in 1908, with a full course law faculty opened in 1924. Most Indonesian lawyers joined government services, but a rising number chose to enter the private profession after the first office opened in 1923.[16] Indonesian advocates were among the few who knew both sides of the colonial legal universe critically and practiced mainly in European courts and the Landraden, where many had clerk experience before taking their degrees. They preferred the Hof and the Raden van Justitie over the other two.

Indonesian advocates in the Landraden were primarily nationalists, and during the revolution, few advocated for Indonesian independence. However, liberal European legal institutions were favored by these advocates, who saw old Indonesia as unsustainable. They were dissatisfied with local institutions, bureaucracy, and educated Indonesians who chose careers in bureaucracy. The differences between the Dutch and Indonesian sides of the colonial

[15] On pokrol-bambu, S. Lev, Daniel. Bush-Lawyers in Indonesia: Stratification, Represen tation, and Brokerage (Berkeley: Law and Society Program Working Paper no. 1, 1973).

[16] S. Lev, Daniel. "The Origins of the Indonesian Advocacy," (Indonesia, April 1976). The actual number of practicing Indonesian advocates was never very large, but their influence in a small elite was considerable. In 1942 there were 194 professional advocates in Indonesia (down from a peak of 203 in 1939), of whom 122 were Dutch, 36 ethnic Indonesian, and 36 ethnic Chinese.

legal system were clear: legal equality, personal rights, challengeable authority, and knowable written law, while the privileged authority of officialdom was more emphasized.

The vision of private lawyers, borrowed from Europe, was of an independent Indonesia where law superseded discretion, personal ability superseded privilege, and society was not superseded by the state. This vision was borrowed unashamedly from Europe and was compelling, as it aimed to create a society where law superseded discretion, personal ability superseded privilege, and society was not superseded by the state

3.4 Independence

Indonesia faced two legal traditions after independence: a European-influenced state and a colonial legal system based on the Netherlands-Indies. The Indonesian side emerged, retaining the legal instruments and political assumptions of the colony's plural society. The failure to demystify the colonial heritage contributed to the ease with which old forms were adopted. Legal systems often carry over concepts and structures from one age as myths, transforming matters of interest and power into principles and habits. New groups entering politics may challenge these systems, but insiders to the heritage usually do not unless they have developed a compelling ideologically logical alternative. Even reformers often fail to challenge ideas whose origins were in serving the interests of the power that wrote them into law.

Post-1945 Indonesian law remained almost identical to 1941, indicating a lack of a new ideology or consensus on state, society, and economy. The criminal code, civil and commercial codes, and adat law applied to most Indonesians remained unchanged, with only minor changes. The criminal code was nearly pristine,[17] while civil and commercial codes applied to Europeans, ethnic Chinese, and partial others. The courts continued to use the same codes and adat laws without new statutory instructions or policy direction, and conflicts rules were used when litigants or issues were mixed.

The retention of old law in Indonesia was not a matter of oversight, as it was explicitly stipulated in the first constitution of 1945 and the succeeding two of 1949 and 1950. This led to the law frequently contradicting constitutional provisions, such as human rights. The

[17] The criminal code and other criminal provisions were amended in Law 1/1946, in Koesnodiprodjo, Himpunan Undang-Undang, Peraturan, Penetapan, Pemerintah Republik Indonesia, vol. 1946 (Jakarta: Seno, 1951), page 1-7.

effective constitution of Indonesia consisted of statutory law, legal principles, and institutions inherited directly from the colony. Preparatory committees established during the Japanese occupation had proposals for significant changes of legal principle, but these were rejected largely due to arguments by adat law scholar Supomo, whose conservative views were deeply rooted in the colonial Indonesian side establishment.[18] Supomo's victory, supported by Soekarno, can be attributed to a predilection among Javanese political leaders in the revolutionary heartland for the assumptions that governed the Indonesian side, which had not come up with anything new except for a radical change in state leadership.

Plural substantive law, which provided the ideological blueprint of colonial pluralism, was left in place without much thought due to two main reasons. Firstly, unifying the law required a difficult choice between codes and adat, which were considered too primitive for a modern state.[19] Secondly, officials in the new state, particularly public lawyers, took plural law and plural society for granted as the only working model they knew.

After 1950, there was protest about the continued force of "colonial" law, but it had become Indonesian law, solidly grounded in interests well served by it. Judicial readings of adat law and codes began to change, but not the basic classifications of population groups. More than traces of these classifications remain in modern Indonesian legal and political ideology, not only among those who make policy and apply the law but also among those to whom it is applied. Ethnic Chinese remain "Foreign Orientals" more than citizens, and the law consistently helps those interests. Christians of all ethnic groups remain legally distinct, separated for special treatment, suggesting higher status and contributing to their continued segregation from the majority Muslim population.

Adat law in Indonesia symbolized the colony's racial criterion over ethnic Chinese law, which is written in civil and commercial codes.[20] However, the succession of ethnic Indonesian

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[18] Yamin, Muh. Naskah Persiapan Undang-Undang Dasar 1945 (Jakarta: Prapanca, 1959) and Proklamasi dan Konstitusi (Jakarta: Djambatan, 1951).

[19] Most lawyers and legal scholars believed Indonesia would eventually create a new legal system based on modern codes, while a few adat scholars, including Professor Djojodigoeno of Gadjah Mada University, argued for adat law as the base.
(Djojodigoeno. Reorientasi Hukum dan Hukum Adat (Yogyakarta: Penerbitan Universitas, 1961)).

[20] In the 1960s, the Supreme Court (Mahkamah Agung) began to interpret codes and special legislation as a record of ethnic Chinese adat law, allowing judges more flexibility in interpreting changes in the law.
(S. Lev, Daniel. The Lady and the Banyan Tree: Civil Law Change in Indonesia. (American Journal of Comparative Law 14, 2 (1965)).

political leadership led to the disappearance of racial and caste overtones in the relationship between the state and ethnic Indonesian society. Racial domination can easily mutate into class domination, as the legal system was logically suitable for either. As Indonesian political and social elites no longer feel legally bound by adat law, it has become symbolic of lower class, mainly rural Indonesians.

The Japanese military administration unified the judicial system, eliminating European courts and retaining the pangreh praja for the same purpose as the colony. This led to the H.I.R. and scrapping Dutch civil and criminal procedural codes. These innovations did not predetermine the events during the revolution. The early Republic was hardly bound by these innovations, and the politics of the revolution favored institutional continuity, which the occupation initiatives had in effect anteceded. The Binnenlands Bestuur, with Indonesian personnel, was merged into the pangreh praja, now the pamong praja, and the European judicial apparatus was permanently shorn off. This left the Indonesian side of the colonial legal establishment intact, administered by conservative elements shaped by the colonial regime.

The pamong praja was a crucial institution in Indonesia that influenced the preservation of colonial regime norms. It was crucial for mobilizing and controlling the people during the revolution. The pamong praja's survival was uncertain, as it embodied local bureaucratic domination. Officials from the pamong praja entered the central bureaucracy, judiciary, prosecution, and police, which were short of trained staff after the revolution. The pamong praja's procedures were not "legal" but patrimonial, discretionary, and authoritarian, remaining the usual experience of the state for most Indonesians after the revolution.[21]

The tension between the pamong praja and postrevolutionary parliamentary system led to the disintegration of the parliamentary system. With the support of the army, the pamong praja survived Law 1/1957,[22] subordinating it to elected local government. As political parties weakened, Guided Democracy and the New Order were genetically linked to the structure of the colonial state.

The judiciary in the Landraden, similar to the pamong praja, had a normative understanding of its role that did not allow for much institutional autonomy or disagreement with state action.

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[21] Anderson, Benedict R. O'G. Java in a Time of Revolution (Ithaca: Cornell University Press, 1972), pp. 112.

[22] Law Number 1 of 1957 concerning the Principles of Regional Government (The Republic of Indonesia State Gazette Year 1957 Number 6, Annotation 1143). This law has been repealed.

Despite this, Landraden judges were closer to the Raden van Justitie than jaksa, and had strong legal education. Some judges attempted to expand the judiciary's influence when liberal parliamentary values seemed supportive, but were unsuccessful due to the collapse of the parliamentary order and the lack of ideological support for greater institutional prominence. Despite this, the judiciary fell into line with the terms of state established under Guided Democracy and the New Order.

Judicial institutions were less important politically, as they were on the colonial Indonesian side. Private lawyers wanted the Republic to adopt European codes of procedure as the base of the judicial system, but were overruled in the interest of practicality. Landraden courts were the highest courts for Indonesians, giving them a slight nationalist edge. The only available judges with experience were Landraad judges, who preferred the courts with which they were already acquainted.

The new prosecution derived from the prewar jaksa, of whom the H.I.R. demanded so little that their indictments were subject to review and approval by first instance judges.[23] The independent state was not merely similar to the colonial state, but the same state. The argument suggests that not everything in Indonesian politics is traced back to colonial origins, but rather cultural interpretations that reach back to a far past. Both Soekarno's assertion of an unadulterated Indonesian tradition and his assertion of an unadulterated Indonesian tradition are elusive due to their attempts to skirt around the colonial history through which old ideologies had to pass.[24] Although colonialism could not eradicate fundamental values in Java, it filtered and shaped them, imposing new institutional forms of authority with their own ideological inferences. The question remains whether old Javanese patrimonialism has more influence than new colonial patrimonialism, or if the latter can be mistaken for the former. Soekarno's Minister of Justice, Sahardjo, referred to old Java for the banyan tree as a symbol of justice, but his

[23] The 1941 H.I.R. revision introduced a new prosecutorial parquet for Indonesia, modeled on the Openbaar Ministerie. However, it was not developed before the Japanese army arrived. The reform was implemented during the revolution and practiced after 1950. However, the procedural rules for jaksa were less rigorous.

[24] The Mahkamah Agung first chairman, Kusumaatmadja, defended the court's independence and authority. However, his successor, Wirjono Prodjodikoro, embraced political leadership. Suprapto, Chief Public Prosecutor until 1959, defended the institution's autonomy against political use. Under Guided Democracy, his successors transformed the public prosecution into a political instrument with a high capacity for corruption. The court's autonomy was eventually challenged by political leaders.

institutions for pengayoman (succor, protection) were the pamong praja and pengadilan negeri, whose law was the H.I.R.

The New Order in Indonesia has been compared to the colonial era, partly due to Soekarno's misleading references to old Java and the regime's resemblance to the colony. The New Order has also faced Islamic and populist challenges in ways reminiscent of colonial style. Despite their differences, both Guided Democracy and the New Order share an institutional pattern similar to the Indonesian side of colonial rule. Legally, both regimes used and supplemented the repressive instruments of the criminal code, such as the Haatzaai Artiklen, which punish the "spreading of hatred" against political leaders, state officials, or ethnic groups. These legal provisions have been retained, implying the same understanding of political prerogative as they originated.

Opposition to the Indonesian state is largely rooted in the same sources as fifty or sixty years ago, with professional advocates being the most vocal critics. They are anti-plural law and pro-limited state, deeply rooted in European values. They have long advocated for legal and political reforms, similar to European procedural codes. Some of these reforms have been achieved, such as Law 14/1970[25] and Law 8/1981.[26] Support for these reforms comes from a growing middle class, who is ambivalent about imposing limits on state power. The parliamentary system was seen as promising, and some of these changes have been implemented.[27] The army's power significantly influences change, but colonial administrative and legal traditions persist in the independent state's institutions and ideology, ensuring a legacy of colonial influence.

4. Conclusion

On the legal structures and traditions of the country. During this time period, the legal system was significantly shaped by the influence of Dutch colonizers, and various legal structures were put in place to reflect Dutch law and customs. These structures remain in place to this day, and continue to shape the legal system. on the legal structures and traditions of the country. During this time period, the legal system was significantly shaped by the influence of

[25] Law Number 14 of 1970 concerning Basic Provisions of Judicial Power (The Republic of Indonesia State Gazette Year 1970 Number 12, annotation number is unknown). This law has been repealed.

[26] Law (UU) Number 8 of 1981 concerning Criminal Procedure Law (The Republic of Indonesia State Gazette Year 1981 Number 76 Annotation 3209). This law has been repealed.

[27] S. Lev, Daniel. "Judicial Authority and the Quest for an Indonesian Rechtsstaat," Law and Society Review 13, p.1 (s.n, Fall 1978).

Dutch colonizers, and various legal structures were put in place to reflect Dutch law and customs. These structures remain in place to this day, and continue to shape the legal system.

In addition to the influence of Dutch law and customs, the Indonesian legal system was also influenced by local religious and cultural traditions. These traditions were incorporated into the legal system, and continue to impact the way the Indonesian legal system operates today. As the Indonesian legal system continues to evolve and seek reform, it is important to recognize and grapple with the impact of colonialism on the system, and the ways in which that impact continues to shape the system even today.

Looking forward, the Indonesian legal system will continue to be influenced by various factors, including economic development, globalization, and technological advancements. As such, it is important for the legal system to remain adaptable and responsive to the needs and realities of the Indonesian people. By continually learning from the past, while also looking towards the future, the Indonesian legal system can remain a strong and resilient institution that serves the needs and interests of the Indonesian people.

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