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Ratno Lukito

Law and Politics in Post Independence Indonesia: A Case Study of Religious and *Adat* Courts

Abstrak: *Salah satu pertanyaan penting yang muncul setelah Indonesia merdeka adalah: hukum apa yang akan dipakai di Indonesia? Perdebatan panjangpun muncul ke permukaan, melibatkan berbagai macam kelompok dan pandangan. Secara garis besar, seperti yang dijabarkan oleh penulis artikel ini, perdebatan tersebut bisa dibagi menjadi dua blok besar: blok pertama antara pendukung pluralisme dengan pendukung uniformisme, dan blok kedua antara nasionalis sekuler dengan Muslim.*

Isu utama yang diperdebatkan di blok pertama adalah perlu tidaknya penyeragaman hukum di seluruh Indonesia. Para uniformis menjawab positif pandangan ini. Bagai mereka, semua orang Indonesia, lepas dari perbedaan suku dan agama, harus dikenakan hukum yang sama. Adanya cita-cita untuk mewujudkan negara kesatuan Indonesia, ditambah dengan kehendak untuk melepaskan diri dari pengaruh kolonial dan untuk memodernisasi masyarakat Indonesia, semakin menguatkan para pendukung penyeragaman hukum ini. Tanpa adanya kesatuan hukum, demikian mereka berargumen, kesatuan Indonesia tidak akan tercapai. Namun demikian, pendapat ini ditantang oleh pendukung pluralisme. Mereka berargumen bahwa pada kenyataannya masyarakat Indonesia sangat pluralistik, dan karena itu satu-satunya hukum yang bisa dipakai oleh masyarakat adalah hukum yang pluralistik, dimana hukum-hukum lokal dibiarkan berfungsi. Karena hukum lokal yang banyak berlaku di Indonesia adalah hukum adat, tidak heran kalau pendukung utama aliran ini adalah kelompok adat. Bagi mereka, hukum adat adalah simbol kebanggan, bahkan jati diri, masyarakat Indonesia yang harus dipelihara.

Satu hal patut dicatat. Dibalik perdebatan ini ada kepentingan politik yang kuat. Unifikasi hukum, terutama bagi orang-orang di luar Jawa, berarti menguatnya kontrol pusat dan tercabutnya kekuasaan dari masyarakat lokal pendukung adat. Dengan kata lain, hukum adat adalah simbol perlawanan masyarakat lokal terhadap sentralisasi kekuasaan.

Perdebatan di blok kedua, antara nasionalis sekuler dengan kelompok Islam, terkonsentrasi pada eksistensi pengadilan agama di Indonesia. Persoalan-persoalan seperti apa wewenang pengadilan agama, dan bagaimana ia berhubungan dengan pengadilan umum menjadi bahan perdebatan panjang antara kedua kelompok di atas. Sementara kalangan nasionalis sekuler berusaha membatasi wewenang pengadilan agama dan menempatkannya di bawah pengadilan umum, kelompak Islam berusaha menjadikannya berdiri sendiri dan memiliki fungsi yang luas. Berpindah-pindahnya posisi pengadilan agama dalam konstalasi hukum nasional bisa dijadikan petunjuk bagaimana kedua kelompok itu saling tarik-manarik.

Berbagai alasan dikemukakan pendukung hukum nasional dan Islam dalam mempertahankan posisinya. Tapi diantara isu yang paling penting adalah ada tidaknya kaitan antara berfungsinya peradilan agama dengan usaha mendirikan agama Islam. Walaupun kelompok Islam menegaskan bahwa tuntutan mereka untuk memperkuat pengadilan agama semata-mata karena ada beberapa persoalan agama (seperti nikah, talak, waris dan wakaf) yang memerlukan penanganan khusus (yaitu oleh pengadilan agama), sampai tahun 1989, ketika pengadilan agama diperdebatkan kembali di DPR, kekhawatiran terhadap munculnya negara Islam masih cukup kuat. Seperti halnya dalam perdebatan antara kelompok pluralis dengan uniformis, warna politik dalam perdebatan di blok kedua ini cukup kental.

Munculnya Orde Baru menandai reorientasi baru perdebatan hukum. Hukum, yang tadinya didiskusikan dalam kerangka nasionalisme atau revolusi, dimasukkan ke dalam orientasi politik pembangunan. Untuk menghindari konflik (yang akhirnya akan mengganggu jalannya pembangunan), Orde Baru mengambil jalan tengah. Sejauh menyangkut uniformis dengan pluralis, Orde Baru menolak untuk mengadopsi salah satu dari dua kutub yang bertentangan itu. Yang dilakukan adalah menyeleksi hukum. Hukum, baik adat maupun peninggalan pemerintah kolonial, yang dipandang cocok tetap dipertahankan. Walau demikian dalam perkembangan berikutnya para ahli hukum pemerintah Orde Baru lebih dominan dalam perumusan hukum nasional. Hukum adat, karena semakin menciutnya jumlah ahli hukum ini, tersisih.

Berbeda dengan kelompok adat, posisi kelompok Islam nampak mengalami penguatan. Kecenderungan Orde Baru, dengan alasannya sendiri, untuk mendekati Islam mempengaruhi status peradilan agama yang sejak awal menjadi ajang pertarungan antara kelompok nasionalis sekuler dengan kelompok Islam. Sejak tahun 1989 pengadilan agama, bukan hanya wewenangnya diperluas, posisinyapun diperkuat. Status pengadilan agama sekarang sejajar dengan status pengadilan umum.

Ratno Lukito

Law and Politics in Post Independence Indonesia: A Case Study of Religious and *Adat* Courts

خلاصة: إن احدى الأسئلة الهامة التى نشأت بعد استقلال اندونيسيا هي ما هو القانون المتبع فى اندونيسيا المستقلة؟ و لم يلبث أن أثار السؤال ما لا نهاية له من الجدل الواسع تتورط فيه الجماعات مع وجهات نظر مختلفة، ويمكن تصنيف الطوائف المشاركة فى الجدل - كما فصل القول فيه صاحب هذه المقالة- إلى طائفتين عموما حيث يقف فى صف الطائفة الأولى أتباع المنهج التعددي واصحاب المنهج الاتساقى من ناحية وفى صف الطائفة الثانية يقف القوميون العلمانيون والمسلمون من ناحية أخرى.

والقضية التى كانت مثار جدل عند الطائفة الأولى هي ضرورة توحيد النظام التشريعى باندونيسيا وعدمها، فيرى أصحاب المنهج الاتساقي بالايجاب إذ يرون أن الاندونيسيين جميعا بصرف النظر عن قبيلتهم ودينهم يجب أن يعاملوا

يجب أن يكونوا جميعا متساوين أمام القانون بصرف النظر غن قبيلتهم ودينهم؛ لقد زاد من ثبات أصحاب المهج الاتساقي على موقفهم الأمل المعقود فى تحقيق دولة اندونيسية موحدة بالاضافة إلى الرغبة فى التخلص من آثار الاستعمار، وكذلك ضرورة بذل الجهود من أجل تحديث المجتمع

الاندونيسي، وحجتهم فى ذلك أنه بدون الوحدة القانونية فلا أمام فى وحدة اندونيسيا؛ وأما أصحاب المنهج التعددي فقد عارضوا هذا وقالوا إن من طبيعة الشعب الاندونيسي أن تتسم بالتعددية، ولذلك فإن النظام التشريعي الذى ينبغى تطبيقه فى اندونيسيا يجب أن يكون تعدديا بحيث يترك القوانين المحلية معمولا بها. ونظرا لأن القوانين المحلية تغلب عليها الأحكام العرفية فلا غرابة أن يكون المؤيدون لهذا المنهج من أنصار الأحكام العرفية ويصرحون أن الأحكام العرفية رمز لمفارخ الشعب بل تعبير عن حقيقته الذاتية فمن الضروري المحافظة عليها.

والذى تجدر الإشارة إليه أن ما يكمن وراء هذا الجدل هو فى الحقيقة مصلحة سياسية ملحة. فالوحدة القانونية تعنى القدرة على مزيد من التحكم على أولئك الذين يقطنون المناطق خارج جاوه وانسلاخ السلطة من المجتمع المحلي المؤيد للأحكام العرفية؛ وبعبارة أخرى تمثل الأحكام العرفية رمزا لمقاومة المجتمع المحلي ضد السلطة المركزية المطلقة.

وأما الجدل القائم على الجانب الآخر والذى كان بين العلمانيين والمسلمين فقد دار حول وجود المحاكم الشرعية وأهميته فى اندونيسيا. ولقد كانت اختصاصات المحاكم الشرعية وكيف تكون العلاقة بينها وبين المحاكم العامة من الموضوعات الرئيسية التى احتدم النقاش حولها، فبينما حاول القوميون العلمانيون الحد من اختصاصات المحكمة الشرعية ووضعها دون مستوى المحكمة العامة جاهد الاسلاميون أن يجعلوها مستقلة ولها من الاختصاصات أوسعها. ولربما كانت كثرة تحويل مكانة المحاكم الشرعية إشارة إلى أي مدى وصل التنافس بين الجانبين.

وهناك عدة حجج قدمها كل من القوميين العلمانيين والاسلاميين للدفاع عن موقفهم، والكل ينطلق من التساؤل عما إذا كانت هناك علاقة بين الإقرار بمشروعية المحاكم الشرعية وقضية الجهاد من أجل إقامة دولة اسلامية أم لا؟

وعلى الرغم من أن الاسلاميين يؤكدون على أن مطالبتهم لإقرار المحاكم الشرعية كانت مجرد التزام ديني بحت، لأن هناك عدة قضايا مثل النكاح والطلاق والميراث لا يمكن أن تتولاها المحكمة العامة، فإنه حتى سنة ١٩٨٩م عندما أثير موضوع المحاكم الشرعية مرة أخرى في مجلس الشعب مازالت المخاوف حول إقامة الدولة الاسلامية قوية. وكما كان عليه الأمر في الجدل القائم بين أصحاب المنهج الاتساقي والتعددي فإن المصلحة السياسية التي تقف وراء احتدام النقاش عند هؤلاء على أشده أيضا.

على أن فترة نظام الحكم الجديد تأتي باتجاه جديد في معالجة موضوع القانون. فإذا كانت المناقشة حول القانون تتم سابقا، وبالأخص في أوائل استقلال البلاد، في إطار القومية أو الثورية فإنها في عهد نظام الحكم الجديد تتم في إطار الاتجاه السياسي للتنمية الوطنية؛ واجتنابا للصراع الذي يمكن أن يشكل عقبة أمام تقدم التنمية اتخذت الحكومة طريقا وسطا. فاختارت من القوانين سواء كانت عرفية أم بقايا عهد الاستعمار ما تراه مناسبة لتحتفظ بها؛ ومع ذلك وفي تطور لاحق انحسرت فلول القوانين العرفية نظرا لأن فقهاء نظام الحكم الجديد هم الذين يمسكون زمام الأمور في وضع السياسات التشريعية ولأن فقهاء الأحكام العرفية في تناقص مستمر.

وعلى العكس من ذلك كان وضع الاسلاميين يشهد تحسنا ملموسا، فإن اتجاه نظام الحكم الجديد، بمبرراته الخاصة إلى التقرب إلى الاسلام قد أثر إيجابيا على مكانة المحاكم الشرعية، هذه القضية التي كانت منذ البداية مثار جدل واسع بين فريق القومين العلمانيين وبين الاسلاميين المشار إليها سابقا. وابتداء من سنة ١٩٨٩م لم تكن اختصاصات المحاكم الشرعية موسعة فحسب بل تم التأكيد على مكانتها أيضا فصارت في مستوى يوازي مكانة المحاكم العامة.

Introduction

The shift from colonial to sovereign status did not bring any direct or pervasive changes to bear on the stature of law in the young Republic of Indonesia. By the time the proclamation of independence was issued on August 17, 1945, law in Indonesia had essentially changed little since the Japanese occupation of Java.[1] As most of the nation's elite were, in the early days of independence, people who had dominated Indonesian politics during the colonial era, the revolutionary ideas of grass-roots movements had not yet penetrated common legal parlance. This elite did not constitute a radical, social element interested in the reformulation of the former colonial state apparatus. On the contrary, they were quite content to fall back on the familiar. Strategies for social revolution, or even social change were hardly mentioned formally within the legal sector at this time.[2] Symptomatic of this situation was the Transitional Provision in Article 2 of the 1945 Constitution which stipulates that "All existing institutions and regulations of the state shall continue to function so long as new ones have not been set up in conformity with this Constitution."[3] Hence, to avoid creating a legal vacuum, the new government was forced to reintroduce many laws inherited from the colonial era. An example of this is the *Wetboek van Strafrecht* measures, enacted in 1915, which continued to regulate criminal law in Indonesia, except in those regions outside of Java where native courts remained operative. In the latter, only a few articles of laws inherited from the Dutch were applied through the provisions of Law No. 80 of 1932.[4]

This paper will address the development of Indonesian law in the post-independence era. In the following pages, I aim to demonstrate that changes in the country's political climate affected both the Islamic and *adat* (customary) courts, in spite of the inflexibility with which both legal traditions had weathered the political upheavals of the first half of the century. To this end, the place of both *adat* and religious courts in post-independence Indonesia will be analyzed in light of this political change. Two major avenues of investigation will be discussed. The first explains the debate between "pluralist" and "uniformist" groups regarding legal development in the young Republic of Indonesia, while the second discusses contentions between the so-called "secular nationalists" and "Muslims". The discussion provided in these sections is intended to provide a basis for understanding the legal controversies which unavoidably arose as a result of the shift from a colonial to a national legal philosophy.

Legal Issues in Independent Indonesia

Consisting of thousands islands, the Indonesian archipelago is inhabited by various ethnic, social, religious and cultural groups, each of which retains unique customs and ways of life.[5] Embracing this pluralism, the Republic of Indonesia has coined the official motto: *"Bhinneka Tunggal Ika"*, or "Unity in diversity." That diversity is evident in the legal dualism which exists within the unified state. In the immediate post-colonial era, several groups of laws survived the transition from the Dutch colonial government: (1) laws governing all inhabitants, e.g. the Law on Industrial Property and Patents; (2) customary laws which applied to indigenous Indonesians; (3) Islamic law applicable to all Indonesian Muslims; (4) laws tailored to specific communities in Indonesia, such as the Marriage Law for Christian Indonesians; and (5) the *Burgelijk Wetboek* and the *Wetboek van Koophandel* measures, originally applied to Europeans only, but later extended to cover the Chinese. Certain provisions in the latter, however, had also been declared to apply to native Indonesians.[6]

In the wake of the demise of colonial power and the assertion of national sovereignty, the new Indonesian leaders were inclined to view law as an essentially "rational-legal" organ of the state. Limited reforms to the system of law were, naturally, aimed at diminishing the vagaries of colonial law as much as possible. A new legal policy was to be constructed to replace colonial legal policy.[7] However, the legal pluralism of the country rendered the zeal for legal reformation somewhat premature. Legal controversies unavoidably arose between contending camps: the "pluralist" versus "uniformist" groups on the one hand; and the "secular nationalist" versus "Muslim" groups on the other. In the former, debate centered on the notion of the unification of law and of pluralism within the law in relation to *adat* law, while in the latter the focus of discussion was Islamic law. These groupings will be analyzed in detail in the following pages.

Pluralism versus Uniformism

The concept of statehood is usually associated with the promulgation of uniform regulations for the governance of all citizens, irrespective of their ethnicity, religion or social status. While Indonesia's early leaders may not have been inclined towards radical political or social innovation, they were, nonetheless, committed to the unification of the country. For many leaders, this could only be achieved through a unification of law. In this manner, Indonesia would, it was

reasoned, hasten to modernize. In fact, intertwined with the express need to modernize Indonesia, was the added desire on the part of national leaders, to exercise the spirit of colonial law. With "equality before the law" as its motto, the new state refrained from overturning the decision by the Japanese colonial authority to abolish the dualist composition of the legal courts. The dualism of the judicial structure, which had differentiated the European from the native, had been replaced by a single three-instance hierarchy of courts using a procedural code for all Indonesians.[8] The bureaucracy, the courts, and the offices of prosecution all came to be staffed with Indonesian officials. Thus, in theory, the colonial yoke of authority had been broken.

In spite of this advance, the total abolition of colonial law and its substitution with a uniform legal code was to prove a formidable task in a heterogeneous country like Indonesia. Extant laws were so intermingled with religious beliefs and culturally specific in nature as to render these attempts futile. In addition, the instability of the immediate post-colonial political climate led the republic's leaders to focus their attention on national unity rather than on institutional innovation.[9] As a consequence, the unification of law in the early years of independence proved to be unworkable. Different categories of law continued to be applied to different classes of residents, a fact that betokened the tenacity of legal pluralism as inherited from the Dutch colonial administration.

The unification of the law was, in fact, the first issue raised by the new republican leaders who were preoccupied with the notion of erasing colonial law. Instead, they proposed the promotion and development of indigenous law as the substance of future national law. What in fact occurred was that all theoretical strategies to unify the law in Indonesia were frustrated in practical application. The ensuing difficulties were a consequence, not only of the plurality of ingrained religious and cultural values, but also of the fact that the modern judicial system as defined by the colonial apparatus, had taken root in Indonesian society.[10] That aside, indigenous legal culture as propounded by Indonesian jurists at that time, was at odds with the notion of constructing "the same law for all." This is hardly surprising given the fact that these jurists studied under Dutch teachers, and were sufficiently impressed by the Dutch understanding of law to preserve its tenets.[11] Thus, while they may have presented themselves as exponents of Islamic or *adat* law, their vision of national law rarely

transcended the bounds of colonial philosophy.

Retaining the skeleton of the former legal system was in fact also an imperative if the young republic were to avoid creating a legal vacuum in which conflicting social groups might advance competing political and legal doctrines. This explains why the Transitional Provision of the 1945 Constitution, which put faith in the pluralism of law, was a matter of necessity. As Lev points out, this "was not merely a matter of convenience... nor was it simply because no one had any ideas"; rather "...the colonial law provided an available and appropriate framework", and this law "...was a...secular neutrality between conflicting religious and social groups, ... that also kept the existing dominant elite in control of national institutions."[12]

However, as the revolution provided national impetus to the dismantling of colonial power in all its forms, the idea of a unified national law was endorsed in earnest. In some regions, this was marked by a grassroots mobilization to undermine local elites through the adoption of national institutions. The momentum from this movement facilitated the first real steps towards the unification of the law.

As one might expect, the decolonialization and nationalization of law in Indonesia had direct consequences for the institution of *adat* law. Outside Java especially, the demolition of customary courts proceeded gradually but persistently, as social mobilization fostered the expansion of national institutions.[13] Every effort was made to replace judicial institutions that rested on local power with a unified state judicial system. The reorganization of the judicial institution can be characterized as a political strategy aimed at unifying the young, pluralist country under the umbrella of a centralized power. In the judicial sphere, this gave rise to the central government's unfortunate compulsion to simplify the judicial system and, moreover, to eradicate all courts backed by village power. This was in contrast to Java where the administrative apparatus was relatively accustomed to the notion of unification. Beyond Java, the political climate was such that the notion of unification proved problematic.[14] In Sumatra, for example, the nationalization of the courts and the displacement of the sultanates' authority, from which the authoritative basis of customary law was derived, led to violent uprisings.

The intentions of the government regarding the unification of law, as a means to national unification, were made clear with the promulgation of Law No. 7 on February 27, 1947. This article stipulated that the organization and powers of the Supreme Court

(*Mahkamah Agung*) and Chief Public Prosecutor (*Kejaksaan Agung*) were declared retrograde as of August 17, 1945. The clarification of this law amply reflected the government's conviction that a unified court system was a prelude to a unified state. At a later date, on August 29, 1947, Law No. 23 was promulgated expressly abolishing the customary courts of the former self-governing areas of Java and Sumatra.[15] Lev notes that the clarification of this law served as strong validation for the policy of unification, and quotes the law to this effect:

> The Government of the Republic of Indonesia is not all merely the successor of the Netherlands-Indies Administration...The Republic of Indonesia is a State which we, the whole Indonesian people, have established together as a united and sovereign State. Its Government consists of our own people...The justice established throughout our State for all citizens (including those living in special regions [i.e., the former self-governing areas]) is justice "in the name of the Republic of Indonesia." Nor is that justice limited by the existence of various regions, and it would not be appropriate to divide it up into so many "sferen van rechtspraak" [areas of independent administration of justice, as in the colony]. From the beginning it has been the responsibility of the central Government to administer justice, as intended by Article 24 of the Constitution.[16]

Further modifications to judicial unification were marked by the enactment of a new law in June 1948. Due to the Dutch army's reassumption of power in the country, this law never came into effect, but the idea of a unified court system had taken root.[17] Most significantly, Law No. 19 of 1948 recognized only three spheres of government justice, i.e., general, administrative, and military. With general justice, there were only three judicial levels: the *Pengadilan Negeri* (court of first instance), *Pengadilan Tinggi* (appeals court), and *Mahkamah Agung* (supreme court).[18] Surprisingly, one finds no mention of either *adat* or religious courts in these provisions. Such an omission betrays the ineptitude of the new Indonesian legal architects in grasping the complexity of the inherited conflict between the exponents of *adat* and Islamic law.

With regard to *adat* courts, Article 10 of the 1948 law stipulates that the resident legal authority in a region be allowed to continue mediating certain conflicts and crimes covered under the "living law of society." In Lev's view, the vague language which denotes the institution of customary law as a "living law of society" and not as "*adat* laws" implies "a number of worries beginning to burden justice officials and also some emerging political conflicts."[19] On the one

hand, this legitimized the abolition of *adat* laws, and yet on the other it also created more problems than the simple recognition of these laws would have done. Gradually, but persistently, every venue of opportunity to marginalize the *adat* courts was taken by justice officials. In fact, the so-called "living law of society" also camouflaged "an increasingly tense issue between those who controlled the new national government and the forces of Islam."[20] The on-going conflict between one group of people who favored the Dutch concept of *receptie*, in which Islamic law could be recognized only to the extent that it was absorbed by *adat* law, and another group who acknowledged Islamic law as a living law in society, was, at least for the moment, muted. In view of the fact that the term "living law of society" could be taken to mean either Islamic or *adat* law, the government took the initiative by conceding this status to both Islamic and *adat* law, in the hope that this would remove a source of conflict.

This situation remained in effect until the emergence of the United Republic of Indonesia (*Republik Indonesia Serikat*) in 1949.[21] On August 17, 1950, the United Republic of Indonesia came to an end. This marked the return of the country to its earlier form as the Republic of Indonesia, as first proclaimed in August 1945. With sovereignty, the effort to extend the jurisdiction of national institutions was intensified across Indonesia.[22] The dilemma of whether it would be the idea of unification, embodying the spirit of the national struggle, or that of realism-pluralism, was decided by ideological and political considerations which paved the way for the victory of the unificationists. Unification of law was in fact understood not only as a social or juridical argument, but also as the other side of the same coin of centralized political power, while *adat* law, which was pluralistic in nature,[23] symbolized the preservation of local autonomy; indeed, it was this symbolism that unavoidably rendered *adat* law somewhat suspect.[24] As may be imagined, the issue of unification during this period had wide ramifications. The dispute now erupted beyond the issue of unification of law *vis-à-vis* pluralism of law *per se*, to include contending arguments in favor of the centralization of state power *vis-à-vis* its decentralization.[25] Thus, law was now interwoven with politics.

Since the 1950's, Indonesian leaders have faced the challenge of building a coherent legal system in a pluralistic country without extinguishing the diverse ethnic, cultural and social practices of its society. The emergence of the uniformists on the one hand and the plu-

ralists on the other was, therefore, a natural outcome of efforts at unifying the law. The former group, represented by those who strove for the modernization of Indonesia, argued that the country should adapt itself to models of "modern" nationhood if development and growth were to be encouraged. This could only be done if "...a clearly articulated legal system which as far as possible reflected the unity of Indonesia"[26] were put into place. Hence, *adat* law, a symbol of local autonomy for them, was perceived as "backward" and anti-modern.[27] The pluralists, on the other hand, maintained that the only practical law for a society like Indonesia was a pluralistic one. Proponents of *adat* law could not countenance the alteration of social conditions by the mere process of creating laws because, on a functional level, law had to accommodate itself to social conditions. More importantly, they argued, one cannot begin to unify the law when social conditions foster its fragmentation.[28] For this group, *adat* law continued to be regarded as a symbol of national pride which underscored the identity of indigenous Indonesian society and which deserved to be preserved. These two arguments monopolized the discussion on law in Indonesia until the end of the 1950's; indeed, as Ball states "the nature of legal developments in independent Indonesia has been largely determined by opinions (of the Indonesian lawyers) on the role of 'adat' law."[29]

Later developments did indeed facilitate what seemed to be the imminent recognition of *adat* law. Amid new outbursts of conflict between Indonesians and the Dutch concerning the liberation of West Irian, the zeal for demolishing all colonial vestiges from Indonesia gained momentum. In the legal arena, the notion of preserving *adat* law as a symbol of the spirit of indigenous values became suddenly credible. This shift was marked by a change in the official symbol of the Indonesian legal system. Lady Justice (*dewi yustisia*), a European symbol of justice, was replaced in 1960 by the Banyan Tree (*pohon beringin*), which in Javanese culture represents guardianship.[30] In the same year, a decree of the Provisional People's Assembly (*Ketetapan Majelis Permusyawaratan Rakyat Sementara*), No. II/MPRS/1960, explicitly identified *adat* law as a source for the development and elaboration of law in Indonesia.[31] This provision seemed to weaken the mandate of the movement for legal unification. Nonetheless, for the exponents of *adat* law, the battle was far from won.

The decree recognizing *adat* law is not, upon careful reading, unequivocal; it is stated therein that *adat* law should "not hamper the

development of a just and prosperous society."[32] An ambiguous phrase, indeed, unavoidably invites competing interpretations and proclamations from leading scholars. Mohammad Koesnoe,[33] for instance, refuses to acknowledge any such fetters upon *adat* law.[34] As its leading exponent, he argues that the conditions imposed upon *adat* law are irrelevant as the conditions are themselves an expression of the imperative character of the law. *Adat* law, he continues, is a dynamic law that develops in conjunction with the development of society.[35] The logical underpinnings of that condition are therefore invalidated. In his conception, *adat* law would serve as the basis of national law not in its substantive sense, but in its principles, postulates, and basic values. The counter argument, characterizing *adat* law as backward and uncertain, could therefore only result from a misreading of the law.[36] Other scholars, who did not challenge the decree openly, advanced arguments against the pro-*adat* group. Simorangkir, for example, argued that *adat* laws hampered the modernization of society since, as an unwritten law, *adat* law engendered legal uncertainty.[37]

Whatever the pros and cons of the arguments for or against the inclusion of *adat* law in Indonesian public life, the ambivalence of national leaders on the question of plurality *vis-à-vis* uniformity of law could not be disguised. On a basic level, they accepted notions of legal unification in keeping with the spirit of Indonesian nationalism, but remained skeptical as to whether *adat* laws could simply be brushed aside. In actuality, the dilemma facing the new national leaders was essentially the same as that faced by colonial policy makers a half centuries earlier,[38] when arguments between liberals and conservatives or universalists and particularists were the order of the day.[39] The status of law remained unchanged in spite of the vigor with which a national law as derived from indigenous Indonesian values was pursued. Indeed, changing the symbols of national law, as in the shift from *dewi yustisia* to the *pohon beringin*, proved easier than changing the substance of the law itself.[40]

The enthusiasm with which national leaders greeted the reconstruction of the law as promoted in the Decree No. II/MPRS/1960 could be seen in the enactment of the Basic Law on Agrarian Affairs in 1960. This law amply reflects the difficulties encountered by leading legal scholars attempting to construct a truly "nationally oriented law" as stipulated by the Decree. Theoretically, this law substituted the colonial law pertaining to agrarian matters contained in the

Burgelijk Wetboek (book II) with *adat* law; this appeared to be a step towards diminishing the role of colonial law, in that the law clearly stated that it would take Indonesian *adat* law as its source. Yet, the law, in practice, preserved many colonial rules since rights found in the *Burgelijk Wetboek* could also be found in the new law. One also finds no mention of land rights based on *adat* law, i.e., *hak ulayat*, as all land was now subject to the imperatives of national security and unity.[41] As a consequence, Gautama stated at the time, "the western principles are adopted 'silently'... by the legislators," adapting to modern principles and operating within a modern western model of agrarian reform such as that "the new statute means that the reception of western law will continue in Indonesia..."[42]

Further developments were marked by a shift in government from Soekarno to the "New Order" administration of 1966. With this shift in the political landscape, legal patterns also changed. If the law had previously been "the law of revolution", law in the new era assumed a fresh role as "the law of development";[43] law as a vehicle to rapid development. Furthermore, as the word "development" in the New Order era had the connotation of economic progress, national law was increasingly perceived as a means to that end. At this juncture, the articulation of laws functioned as a tool of social engineering, an idea that quickly gained popularity. This idea was, in fact, first set forth by Mochtar Kusumaatmadja,[44] who argued for the need to combine sociological considerations with the study of law in developing countries in an effort to alleviate their socio-economic problems.[45]

Kusumaatmadja assumed a neutral posture with respect to whether the law should be uniform or pluralist in nature, for in spite of perceiving the role of *adat* law as incompatible with the requirements of economic development, he also questioned the benefits of imported Western law, which he felt at the time had had "little effect on the modernization process as a whole."[46] He concluded that hasty decisions concerning the development of law in Indonesia should be avoided, i.e., that the government of the day should continue the colonial legal tradition or simply make use of *adat* law in national law. The distinction should be made between the areas of law in which innovations could be made and those areas in which they could not. He was of the opinion that the areas most intimately connected with the cultural and spiritual life of the people should be left undisturbed, while in other neutral areas regulated by the social intercourse of modern imperatives the government could benefit from imported

legal concepts.[47] He proposed what might be termed a selective unification of the law.

It was Kusumaatmadja's legal model which most contributed to the law's new role as a vehicle of modernization in the New Order era.[48] His concept of a selective unification of the law was adopted as government policy on law in modern Indonesia. Backed by the executive power, Kusumaatmadja's ideas carried enough weight to dampen the debate between pluralists and uniformists. As the main concern of the New Order was improving the economy,[49] legal institutions were accordingly geared towards the accommodation of economic development. As a consequence, the government was forced to become more vigilant in those areas where native values played a persistent role in law making. Otherwise the wrong decision could undeniably impede the national program itself.

What is important to note about this new policy is that the law had now actually become a governmental tool of social control. With law fully in the hands of the government, the appeals of pro-*adat* groups, who argued that law should not come from above (state power), but should, rather, spring forth from society,[50] went unheard. The pluralist group therefore lost its philosophical arguments. To make matters worse, the unfortunate position of *adat* law had been exacerbated by a shortage of qualified scholars who could have provided fresh ideas on the role of *adat* in the modern era of Indonesia.[51] So when the government reopened the debate on national law making, exponents of *adat* law could no longer compete with their counterparts, the exponents of national law. At this stage, as law emerged as an organ of the government apparatus of the New Order, *adat* law began to fade.

Secular Nationalist *vs.* Muslim

In contrast with *adat* law, which had been weakened by the process of unification of the law, the position of Islamic law in the country did not seem to have been affected in any way. While *adat* was, by its nature, powerful only locally,[52] Islam was powerful nationally.[53] As a result, the centralization of power had little influence on the status of Islamic law.

In his analysis of the nexus between politics and religion in Islam, Allan Christelow argues that the point of maximum stress between the two is located in the office of the *qadi*, "a state-appointed religious judge."[54] This is true of the accommodations reached between

the state and Islam since the emergence of the nation-state in Islamic countries, the latter phenomenon a result of their encounter with Western values through the colonization process. In Indonesia, these accommodations can be discerned in the case of the religious courts. Since independence, the evolution of the court systems has reflected the encounter between nationalist groups, who represent state power, and Muslim groups.

In the early days of independence, the courts continued to function in their juridical capacities, as the colonial courts had done, while all efforts to extend their jurisdiction were frustrated.[55] This may have been the result of a failure to reorganize the system. The courts, which had been administered by the Ministry of Justice during the Japanese occupation, came under the jurisdiction of the Ministry of Religion in 1946.[56] Surprisingly, only two years later, the government promulgated Law No. 19,[57] which decreed that religious courts would be amalgamated under regular courts. Cases involving Muslim litigants which required resolution under Islamic law, would be decided by a Muslim judge. However, since this law was never actually put into effect by the Indonesian government, based on the Transitional Provision of the 1945 Constitution, the existence of the religious courts continued to exist in the form stipulated in *Staatsblad* 1882 No. 152, especially in Java and Madura.[58] What is important to note is that this policy represents an early official attitude toward the inherited political conflict between secular nationalists and Muslims. Although the 1948 law was never implemented, the spirit and letter of this law had the effect of subordinating Muslims to the former. This situation was exacerbated with the abolition of the Sultanate Courts outside Java and Madura in 1951, which created confusion over the settlement of religious disputes.

Yet, six years later, through the issuance of government regulation (*Peraturan Pemerintah*) No. 45/1957, the confusion over religious disputes outside Java and Madura was resolved by the government's reestablishment of religious courts for those areas. In effect, this regulation provided religious courts with more extensive jurisdiction than the courts in Java, Madura or South Kalimantan. Until this time the pluralism of religious law continued to define the religious courts in terms of their structure, procedure and even their designation which varied between the three regions: (1) in Java and Madura, the courts were called *Pengadilan Agama* and the appeals court *Mahkamah Islam Tinggi*; (2) in Banjarmasin (South Kalimantan),

the *Kerapatan Qadi* or *Pengadilan Qadi* had *Kerapatan Qadi Besar* or *Pengadilan Qadi Tinggi* for its appellate; and (3) for the rest of Indonesia, the courts were called *Mahkamah Syar'iyah*, while appeals courts were called *Mahkamah Syar'iyah Propinsi*. The courts in the first two regions continued to apply laws inherited from the Dutch, while the government, through the regulation of 1957, acquired jurisdiction over courts in the rest of Indonesia.[59]

Later developments in the religious court system were not without difficulties. The notion of a "reception theory", inherited from the Dutch, influenced many Indonesian legal experts and led to their antagonism towards the existence of religious courts. The most prominent among these experts was Dr. Raden Soepomo, a nationalist adviser to the Justice Department, who seemed very antagonistic to Islam and who exercised great influence in the preparations for the introduction of the 1945 Constitution.[60] The fact that most officials in the Department of Justice and civil courts were graduates of Dutch law schools, which de-emphasized Islamic law in their curriculum, compounded the problem. Most of them were acquainted with Islamic law only from their study of the Shafi'ite school as applied by Indonesian Muslim traditionalists. They neglected, however, to familiarize themselves with the basic tenets of Islam.[61] Consequently, they felt estranged both from Islam and from Muslims who expressed a desire to practice Islamic law.

The problem was also worsened by the fact that the Muslim judges who ran the religious courts were traditionalists whose knowledge of Islamic law was confined to the classical Shafi'ite school, and officers whose judicial knowledge was very limited. This unavoidably created a huge gap between judges or legal experts educated under the Dutch, who possessed a very westernized understanding of law, and Muslim judges trained along traditional lines in Islamic educational institutions.[62] These circumstances only widened the gulf between the nationalist and Muslim groups.

This polarization came to a head in 1970 with the promulgation of Law No. 14. As a substitute for Law No. 19 of 1964, it affirmed and bolstered the standing of religious courts in Indonesia's New Order. Article 10 of the 1970 Law states that judicial power was to be exercised by courts of justice in the spheres of religious, military and administrative law. This law therefore ensured that the religious courts would operate within the judicial system and, indirectly, granted religious courts a status equal to that of the other two courts operating

in the country.

At the practical level, however, the principle of equality among the three judicial bodies remained unrealized. Colonial regulations, stipulating that all decisions of the religious courts were to be ratified by regular courts before being officially implemented, even if decided by the High Court of Appeal, still survived. The "fiat of execution" (*executoire verklaring*) was only required if the disputants did not voluntarily abide by the court's decision. This trend was then reinforced by the Marriage Law (Law No. 1 of 1974), viewed mainly as a concession to Islamic law, stipulating that all religious court decisions were to be approved by its counterpart, the regular court. This change from specific approval to a general imperative obviously denotes the subordination of religious courts to regular courts.[63] Thus, while Islamic law had received formal recognition, nationalist lawyers continued to regard the judicial institution of religious law with disdain. Many Muslim writers opposed this "fiat of execution" by arguing that it was contradictory to the general norms of the Basic Judiciary Law.[64] The subordinate status of the religious courts, however, continued to underline the uneasy tension between nationalists and Muslims in the early years of the New Order.

The debate among Indonesian politicians and legal experts over the existence of the religious courts continued unabated into the 1980s. This situation was indicative of the bias that existed against the position of Islam in the state. The religious courts themselves, wracked by poor administrative and work procedures, did little to improve their own image. Even Hazairin, recognized as the most outspoken critic of reception theory,[65] had at one time expressed his disagreement with the courts.[66]

Hazairin's attitude was typical of many Muslims who, while counting Islamic law as an important source of the Indonesian law-making process, were of the opinion that the practice of Islamic law was not dependent upon the existence of religious courts. Islamic law, they argued, could simply be applied in the regular courts. Other Muslims, however, argued that the religious courts were indispensable for the application of Islamic law, and warned against the danger of allowing the regular courts and their secular-trained lawyers to meddle in sacred law.[67]

In spite of these impediments, however, the religious courts were partially successful in fulfilling their role as problem-solvers in marriage disputes. For villagers in particular, the religious courts per-

formed a vital role in this area, offering as they did consultation services. Given judicial norms in the secular decision-making process, people could not expect to find such services in an ordinary civil court. Islamic judges on the other hand have traditionally played an advisory role in cases of marriage and divorce, particularly in areas where there was no advisory committee on marriages and settlement of divorces (*Badan Penasehat Perkawinan dan Penyelesaian Perceraian = BP4*).[68]

Against the background depicted above, the Indonesian government, to the surprise of many observers, issued on December 29, 1989, Law No. 7 on Religious Courts, initiating the most recent changes to religious courts as an institution. The modernist Muslim ideal of promoting religious courts in conjunction with a modern judicial system was realized with the passage of this law. In contrast to the court system devised by the Dutch, this new law gives all religious courts throughout Indonesia a uniform name, i.e., *Pengadilan Agama* (Religious Court), and *Pengadilan Tinggi Agama* (Higher Religious Court) for the courts of appeal. More importantly, the jurisdiction of the courts was expanded to include all cases of Muslim family law, namely marriage, divorce, repudiation, inheritance, bequest, gift (*hibah*) and endowment. Additionally, the religious courts now share an equal status with that of the regular courts, so that the *executoire verklaring* is no longer warranted.

Much has been written about the most recent Islamic developments in Indonesia. Most of the literature suggest that there has been a reapprochement between the state and Islam in Indonesia since the second half of the 1980s. New legal statutes, such as the Basic Law on Education, the Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law, and broad government support for Muslim intellectual organizations such as ICMI (*Ikatan Cendekiawan Muslim Indonesia*) have made clear the intention of the New Order regime under Soeharto to address the needs of Muslim society. This development would seem to mark a turning point in the relationship between nationalists and Muslims, wherein they no longer see each other as enemies, but as full partners in the New Order's efforts at nation building.[69]

The regime's softened attitude towards Islam surprised many observers, given the fact that the voice of the non-Muslim factions in Indonesian political discourse was still heard well into the late of 1980s; this was illustrated during the debate over the law on religious

courts in the House of Representatives (*Dewan Perwakilan Rakyat*). Non-Muslim and nationalist groups expressed a great opposition to the draft of the Religious Courts Act of 1989.[70] Interestingly, they suspected this step of being a prelude to Muslim efforts to revive the Jakarta Charter. In their view, the enactment of Law No. 1 of 1989 was a signal that Indonesian Muslim elements were intent on building an Islamic state.

Their suspicions seem unfounded in light of the fact that Muslim idealists promoting the notion of a state based on Islamic ideology have consistently been defeated by accommodationist Muslims over the past decade. For other Muslims the notion of an Islamic state, whatever that may mean, has been discarded. This fact, coupled with the adoption by all political parties and mass organizations of the principles of Pancasila as their sole ideological basis, has led more Muslim leaders to question the relevance of the debate for the Republic of Indonesia. The discussion no longer revolves around the pros and cons of building an Islamic state, but rather focuses on the ways in which Islamic values are to be integrated into national ideology. As one Islamic leader put it after 1965, "...we do not talk any more about an Islamic State but at best about an Islamic society."[71] In other words, Islam may have declined as a political force, but its cultural strength continues to exert potent influence on contemporary Indonesian politics. This condition appears to have stimulated the enactment of the latest series of laws on religious courts. These now retain an independent status in the Indonesian judicial system. As long as they continue to fulfill the requirements of any modern court, their status, in relation to other judicial bodies in Indonesia, cannot be undermined.

Conclusion

The emergence of a new pattern of legal policy-making in the country has unavoidably invited heated debate and sometimes resentment among certain Indonesian groups, over the question of instituting both *adat* and religious courts. Critics of this policy argue that such courts might eventually come to be affiliated with local powers beyond the formal political powers of the central government. It is in this way that the climate that featured the banishment of the *adat* courts as its final result can be understood. Religious courts, on the other hand, did not seem to have been affected by the process of unification of the law in the country. Although political upheaval

in the early days of independence tended to weaken the role of the courts in the Indonesian judiciary system, the practical benefit of the courts at the grassroots level of Muslim society helped to maintain its stature. This might also be due to the fact that the institution's political power is more national in its extent and more powerful in its endurance as it is backed by religious values. As a result, the centralization of power had little influence on the status of the religious courts. The resilience of the religious courts in Indonesia's changing political climate, especially since the second half of the 1980s, is also the result of the accommodations reached between the state and Islam in the heyday of the encounter between nationalist groups, who represent state power, and Muslim groups.

Therefore, although the nation's changing political constellations have had an unavoidable influence on the position of the two court systems, with the banishment of the *adat* courts being one of the results of these changes, the political role played by the religious court system seems unable to be impeded. While the *adat* courts were *willy-nilly* dampened from their natural growth, religious courts have maintained their position, and have even strengthened in conjunction with the rise of the domination of central power and its accommodation of Islam.

Endnotes

1. R. Subekti, *Law in Indonesia* (Jakarta: Yayasan Proklamasi, Center for Strategic and International Studies, 1982), p. 6.
2. Daniel S. Lev, "Judicial Unification in Post Colonial Indonesia," *Indonesia* 16 (October 1973): 13.
3. This English version is taken from Subekti, *Law in Indonesia*, p. 6.
4. Subekti, *Law in Indonesia*, p. 7.
5. Gouwgioksiong, "The Marriage Laws of Indonesia with Special Reference to Mixed Marriages," *Rabels Zeitschrift* 28 (1964): 711-31.
6. Subekti, *Law in Indonesia*, pp. 6-7.
7. On using the word "new" vs. "old" in the debate over legal politic of Indonesia see Sajuti Thalib, *Politik Hukum Baru* (Bandung: Binacipta, 1987), pp. 52-53.
8. Lev, "Judicial Institutions," p. 257.
9. See Lev, "Judicial Unification," p. 13.
10. Wignjosoebroto, *Dari Hukum Kolonial ke Hukum Nasional* (Jakarta: Raja Grafindo Persada, 1994), pp. 176-87.
11. See Lev, "Judicial Institutions," pp. 261-63.
12. Lev, "Judicial Unification," p. 14.
13. Wignjosoebroto, *Dari Hukum*, pp. 192-93; see also a brief explanation of this in Lev, "Judicial Unification," pp. 15-37.
14. See Lev, "Judicial Unification," pp. 14-18.
15. Koesnodiprodjo, *Himpunan Undang2, Peraturan2, Penetapan2 Pemerintah Republik Indonesia*, as cited in Lev, "Judicial Unification," pp. 19-20.
16. As taken from Lev, "Judicial Unification," p. 20 (the interpolation in square brackets are Lev's).
17. Lev, "Judicial Unification," p. 20.
18. See Articles 6 and 7 of the law. This judicial hierarchy is still in place today.
19. Lev, "Judicial Unification," p. 21.
20. Lev, "Judicial Unification," p. 22.
21. This was the result of the Round Table conference (*Konferensi Meja Bundar*) between Indonesia and the Netherlands, held on December 27, 1949.
22. Lev, "Judicial Unification," pp. 22-23.
23. On the pluralistic nature of *adat* law see M. M. Djojodigeono, *Adat Law in Indonesia* (Jakarta: Djambatan, 1952).
24. Lev, "Judicial Unification," pp. 23-24.
25. See Wignjosoebroto, *Dari Hukum Kolonial ke Hukum Nasional*, pp. 202-23.
26. S. Takdir Alisjahbana, *Indonesia: Social and Cultural Revolution* (Kuala Lumpur: Oxford University Press, 1966), p. 67.
27. Lev, "Judicial Unification," p. 23; see also his "Judicial Institutions," p. 255; see in addition his "Colonial Law and the Genesis of the Indonesian State," *Indonesia* 40 (October 1985): 69-74.
28. See this argument in Djojodigoeno, *Adat Law in Indonesia*, pp. 5 ff.
29. John Ball, *Indonesian Law Commentary and Teaching Materials* (Sydney: Faculty of Law, University of Sydney, 1985), p. 202. See also his *The Struggle for National Law in Indonesia* (Sydney: Faculty of Law, University of Sydney, 1986) in some related issues.
30. See Wignjoseobroto, *Dari Hukum*, pp. 210-11.
31. The Provisional People's Assembly Decree No. II/MPRS/1960, Enclosure A, paragraph 402 explains the national politics of law as follows:

a) The principle of the construction of national law shall be in accordance with the state direction and based on *adat* law which does not hamper the development of a just and prosperous society.
b) In an effort to homogenize law, extant legal practice in Indonesian society must be considered.
c) In the process of perfecting marriage and inheritance laws, religious and *adat* factors should be considered.

See R. Soerojo Wignjodipoero, *Kedudukan Serta Perkembangan Hukum Adat Setelah Kemerdekaan* (Jakarta: Gunung Agung, 1982), pp. 24-30; also Soerjono Soekanto, *Kedudukan dan Peranan Hukum Adat di Indonesia* (Jakarta: Kurnia Esa, 1987), pp. 73-74.

32. See the Decree No. II/MPRS/1960 paragraph 402 point (a) in note 31 above.
33. He is one of leading scholars on *adat*, and is a graduate of Leiden university.
34. See Mohammad Koesnoe, "Hukum *Adat* dan Pembangunan Hukum Nasional," *Hukum dan Keadilan* year 2, no. 3 (March/April 1970): 32-43. Also his "Menetapkan Hukum Dari *Adat*," *Hukum Nasional* year 2, no. 3 (January-March 1969): 3-11.
35. Koesnoe, "Hukum *Adat*," pp. 40-41.
36. Koesnoe, "Hukum *Adat*," pp. 36-37.
37. B. Simorangkir, "*Adat* Versus Emansipasi," *Sinar Harapan*, August 10, 1968.
38. Wignjosoebroto, *Dari Hukum*, pp. 209-10.
39. See A. D. A. de Kat Angelino, *Colonial Policy*, tr. G. J. Renier (The Hague: M. Nijhoff, 1955) vol. 2, pp. 171-93.
40. See Daniel S. Lev, "The Lady and the Banyan Tree: Civil Law Change in Indonesia," *American Journal of Comparative Law* 14 (1965): 282-307.
41. See Wignjosoebroto, *Dari Hukum*, pp. 212-13.
42. Soedarto Gautama, "Law Reform in Indonesia," *Rabels Zeitschrift* 26 (1961): 535-53.
43. See Wignjosoebroto, *Dari Hukum*, pp. 224-27.
44. He was a professor of international law at the University of Padjadjaran, Bandung, serving from 1974-1978 as minister of justice and after that as minister of foreign affairs.
45. Mochtar Kusumaatmadja, "The Role of Law in Development: The Need for Reform of Legal Education in Developing Countries," in the *Role of Law in Asian Society*, vol. II, *Papers for Special Congress Session in 28th International Congress of Orientalists (1973)* as cited from Wignjosoebroto, *Dari Hukum*, p. 231.
46. Kusumaatmadja, "The Role of Law," p. 4.
47. Kusumaatmadja, "The Role of Law," p. 8.
48. See for example Sajuti Thalib, *Politik Hukum Baru*, pp. 65-67; C. F. G. Sunaryati Hartono, *Politik Hukum Menuju Satu Sistem Hukum Nasional* (Bandung: Penerbit Alumni, 1991), pp. 1-2.
49. Wignjosoebroto, *Dari Hukum*, pp. 233-35.
50. See for example the argument asserted by the exponent of *adat* law that law should not appeared in contravene with the feeling of justice of the society in Halimah A., *Kebhinnekaan dan Sifat-Sifat Khas Masyarakat Hukum Adat Indonesia* (Padang: Laboratorium PMP/IKN FPIPS Institute Keguruan Ilmu Pendidikan Padang, 1987), p. 4.
51. Wignjosoebroto, *Dari Hukum*, pp. 240-41.
52. Theoretically, *adat* was weakened on a national level because it was divided by

van Vollenhoven into 19 distinct areas based on shared custom or culture

53. Lev, "Judicial Unification," p. 22.
54. See Allan Christelow, *Muslim Law Courts and the French Colonial State in Algeria* (New Jersey: Princeton University Press, 1985), p. 262.
55. See Lev, *Islamic Courts in Indonesia* (Berkeley: University of California Press, 1972), pp. 62 ff.
56. This was based on Government Decree No. 5/S.D. promulgated on March 25, 1946. Furthermore, based on the Second Announcement of the Ministry of Religious Affairs (Maklumat Menteri Agama II) all judges of the religious courts came under the organization of the Department of Religious Affairs. See *Kitab Himpunan Perundang-undangan R.I.*, vol. I: *Siaran Pemerintah tanggal 15 Juli 1960*, p. 1697 as cited in B. Bastian Tafal, "Pengadilan Agama," *Hukum Nasional* year 2, no. 7 (1976): 96.
57. See a case of the same law concerning the institution of *adat* law on page 80.
58. Zain Ahmad Noeh and Abdul Basit Adnan, *Sejarah Singkat Pengadilan Agama* (Surabaya: PT. Bina Ilmu, 1983), p. 54.
59. Eddy Damian and Robert N. Hornick, "Indonesia's Formal Legal System: An Introduction," *The American Journal of Comparative Law* 20 (1972): 517-18.
60. Deliar Noer, *The Administration of Islam in Indonesia* (Ithaca, N. Y.: Cornell Modern Indonesia Project, Southeast Asia Program, Cornell University, 1978), p. 45.
61. Noer, *The Administration of Islam*, pp. 45-46.
62. Lev, "Judicial Institutions," p. 297; Noer, *The Administration*, pp. 46-47.
63. Nur Ahmad Fadhil Lubis, "Institutionalization and the Unification of Islamic Courts Under the New Order," *Studia Islamika* 2/1 (1995): 22-26.
64. See for example T. Jafizham, "Peranan Pengadilan Agama dalam Pelaksanaan Undang-Undang Perkawinan," in *Kenang-Kenangan Seabad Peradilan Agama* (Jakarta: Departemen Agama, 1985), pp. 170-72; and H. Dahlan Ranuwihardjo," Peranan Badan Peradilan Agama dalam Mewujudkan Cita-Cita Negara Hukum," in *Kenang-Kenangan*, pp. 201-12.
65. See Hazairin, *Hukum Kekeluargaan Nasional* (Jakarta: Tintamas Indonesia, 1982), pp. 7-10, wherein he calls the reception theory a "teori iblis" ("theory of the devil").
66. See Lev, *Islamic Courts*, p. 88.
67. Noer, *Administration of Islam*, pp. 48-49.
68. Noer, *Administration of Islam*, p. 50.
69. Lubis, "Institutionalization," pp. 34-35.
70. See Ismail Saleh, "Wawasan Pembangunan Hukum Nasional," *Kompas*, June 1 and 2, 1989, as quoted in Lubis, "Institutionalization," p. 47. This article appeared during the heated debate in the Parliament as well as in public over the bill proposing reform of the Religious Courts. See also Zuffran Sabrie, ed., *Peradilan Agama Dalam Wadah Negara Pancasila: Dialog Tentang RUUPA* (Jakarta: Pustaka Antara, 1990), pp. 124-31.
71. See B. J. Boland, *The Struggle of Islam in Modern Indonesia* (The Hague: Nijhoff, 1982), p. 159.

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