



TRIALECTICS OF ISLAMIC LAW, POSITIVE LAW, AND ADAT LAW: A CASE STUDY OF RELIGIOUS COURTS IN INDONESIA

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Abstract: This article discusses the legal trialectic in establishing the Religious Courts in Indonesia. Since its establishment in 1882, the Religious Courts have not fully represented Islamic law as its primary source. To trace this trialectic, the author uses Ebrahim Moosa's theoretical framework of "transculturation, counterpoints, social imaginary, networks, and legal orientalism." For this purpose, the author proposes two problem formulations. First, what is the process of trialectic attraction between Islamic law, positive law, and customary law in the establishment of the Religious Courts? Second, what is the extent of the influence of positive and customary law in limiting the role of Islamic law? The author offers two novelties, namely methodological novelty in Indonesian Islamic studies, by adopting Ebrahim Moosa's theory. Finally, the conclusive novelty is that the Religious Court is not derived from Islam but from the trialectic of three laws. The practical contribution of this study is to re-question the roles of religious courts in formalizing and implementing Islamic law in Indonesia, with the hope that religious courts will become a dialectical space where Islamic law continues to develop so that it can make a practical contribution to contemporary Indonesian society.

Keywords: religious court; Islamic law; positive law; Adat law; trialectics

Abstrak: Artikel ini mendiskusikan trialektika hukum dalam proses pembentukan Pengadilan Agama di Indonesia. Sejak didirikan pada 1882, Pengadilan Agama tidak sepenuhnya mewakili hukum Islam selaku sumber utamanya. Dalam rangka melacak trialektika ini, penulis menggunakan kerangka teori Ebrahim Moosa yang terdiri dari "transculturation, counterpoints, social imaginary, networks, and legal orientalism." Untuk itu, penulis mengajukan dua rumusan masalah. *Pertama*, bagaimana proses tarik-menarik trialektik antara hukum Islam, hukum positif dan hukum adat dalam pembentukan Pengadilan Agama? *Kedua*, sejauh mana pengaruh hukum positif dan hukum adat dalam membatasi peran hukum Islam? Untuk itu,

penulis menawarkan dua kebaruan, yaitu kebaruan metodologis dalam studi Islam Indonesia dengan mengadopsi teori Ebrahim Moosa. Terakhir, kebaruan konklusif bahwa Pengadilan Agama bukan bersumber dari Islam, tapi dari trialektika tiga hukum. Kontribusi praktis kajian ini adalah untuk kembali mempertanyakan ulang peran-peran pengadilan agama dalam memformalisasi dan menerapkan hukum Islam di Indonesia. Dengan harapan, pengadilan agama menjadi ruang dialektik dimana hukum Islam terus berkembang hingga dapat memberikan kontribusi praktis terhadap masyarakat kontempores Indonesia.

Kata Kunci: pengadilan agama; hukum positif; hukum Islam; hukum Adat; trialektika.



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INTRODUCTION

Studies regarding the trialectics of Islamic law, positive law, and customary law intersect with the themes of orientalism, colonialism, and legal history. The article covers two themes: legal entities and their relationship to orientalism and colonialism. Regarding the second theme, David S. Power's article represents it rigidly and rigorously. However, the studies in this article are located in Algeria and India,¹ The author examines the second theme in the Indonesian landscape.

The authors found several writings about Religious Courts concerning the second theme. First, Simon Butt's article examines the relationship between three entities; Islam, the state, and the religious court.² Second, the article by the same author examines three court stories concerning morality, religious blasphemy, and Islamic crimes.³ Third, Euis Nurlaelawati's book discusses legal practice in the Indonesian religious court and its relationship to modernization, tradition, and identity. This book focused on the legal practices of judges regarding the extent to which they refer to Kompilasi Hukum Islam.⁴

¹ David S. Powers, "Orientalism, Colonialism, and Legal History: The Attack on Muslim Family Endowments in Algeria and India," *Comparative Studies in Society and History* 31, no. 3 (July 1989): 535-71, <https://doi.org/10.1017/S0010417500016030>.

² Simon Butt, "Islam, the State and the Constitutional Court in Indonesia," *Washington International Law Journal* 19, no. 2 (2010).

³ Simon Butt, "Religious Conservatism, Islamic Criminal Law and the Judiciary in Indonesia: A Tale of Three Courts," *Jurnal Pluralisme Hukum Dan Hukum Tidak Resmi* 50, no. 3 (2018).

⁴ Euis Nurlaelawati, *Modernization, Tradition and Identity: Kompilasi Hukum Islam and the Practice of Law in Indonesian Religious Court* (Amsterdam: University of Amsterdam Press, 2010).

The religious court represents Islam as Indonesia's dominant current in religious and national life. However, studies on forming a court about the natural world of thought are rarely conducted. For this reason, the authors chose this institution to portray the dynamic of Indonesian Islam through it. In this way, the understanding of Islam and Indonesianness can only be separated from the historical trajectory that has shaped it now.

Reflecting on the literature above, the author needs more studies related to the dynamics of the Religious Court in terms of the attraction between the realms of thought. This article tries to record trialectics between Islamic, positive, and customary law in forming Religious Courts. Therefore, the authors propose two novelties, namely methodological novelties in the study of Indonesian Islam, by adopting Ebrahim Moosa's theory. Finally, the conclusive novelty is that the Religious Court does not originate from Islam but from the trialectis of the three laws.

This research will investigate the relationship between Dutch colonial behavior and the formalization of Islamic law in the Religious Courts in Indonesia, focusing on the background of the establishment of the Religious Courts, the formalization of Islamic law, and the influence of the theory of *receptive incomplexe*, *receptie* theory, and reverse *receptie*⁵ on the Religious Courts since its inauguration in 1882 until now. I argue that the Dutch, British, and Japanese colonization of Indonesia influenced the establishment of the Religious Courts, the formalization of Islamic law, and the role of the Religious Courts in Indonesian society. It cannot be denied that colonization in Indonesia had a significant impact. Therefore, in this research, I will use Ebrahim Moosa's theory in his article entitled "Colonialism and Islamic Law," which consists of "transculturation, counterpoints, social imaginary, networks, and legal orientalism." Moosa quotes al-Shaf'ie, saying the narrative about Islamic law is always one-way. In fact, according to him, colonizers who occupy an Islamic area will uproot the area's laws and replace them with European regulations. While there is nothing to blame for this phenomenon, it unfortunately leads to the loss and simplification of the power of Islamic law itself.⁶

⁵ S. Thalib, *Hukum Kewarisan Islam Di Indonesia (Edisi Revisi)* (Sinar Grafika, 2022), <https://books.google.co.id/books?id=F8l8EAAAQBAJ>.

⁶ Muhammad Masud, Armando Salvatore, and Martin Van Bruinessen, *Islam and Modernity: Key Issues and Debates* (Edinburgh University Press, 2009), <https://doi.org/10.1515/9780748637942>.

RELIGIOUS COURTS IN INDONESIA AS TRIALECTICS ENCOUNTER

During the colonial period in Indonesia, notably under the Dutch administration, the legal environment changed dramatically with the adoption of Western legal systems. The Dutch colonial government attempted to impose a legal framework based on European legal ideas on the different indigenous civilizations of the Indonesian archipelago. This practice frequently resulted in the marginalization or suppression of existing indigenous legal systems, including Islamic legal traditions. Furthermore, the colonial experience fostered Orientalist attitudes among European scholars and officials. As defined by intellectuals such as Edward Said, Orientalism refers to the Western study and portrayal of Eastern societies and cultures, generally through a superior and exotic lens. This Orientalist viewpoint affected European perceptions and interpretations of Islamic law and legal systems in Indonesia. Western experts frequently dismissed Islamic law as outdated, illogical, and incompatible with current legal ideas, which contributed to the marginalization of Islamic legal traditions inside the colonial legal system.

The interaction of colonialism and Orientalism influenced the formation of religious courts in Indonesia. While Islamic legal traditions persisted and functioned within indigenous communities, they frequently encountered problems and limits imposed by colonial authority and Western legal frameworks. This resulted in a complex legal landscape marked by legal pluralism, with Islamic and Western legal systems coexisting and interacting in various ways. Understanding the historical context of colonialism and Orientalism is critical for understanding the current dynamics of religious courts in Indonesia. Despite obtaining independence from colonial authority, Indonesia's legal system continues to contend with the legacies of colonialism and Orientalism, particularly the reconciliation of Islamic legal traditions with modern legal ideas and institutions.

TRANSCULTURATION IN THE FIRST PERIOD OF ISLAMIC LAW VIS A VIS ADAT LAW

Theoretically, there are three theories regarding implementing Islamic law in Indonesia: *receptie in complexu*, *receptie*, and *receptie a contrario*. Such theoretical mapping stems from the relationship between Islamic law and customary law. If traced further, Islamic law also has a debate with positive law. This sub-chapter will record how Islamic law struggles with customary and positive law. To analyze further, it will be diagnosed with transculturation. This theory requires the encounter of Dutch colonial and Indonesian Islamic society, where it becomes a

community concern and becomes globally interconnected from Dutch colonizers and colonized Indonesians. This led to the inevitable tug-of-war between *receptie incomplexu*, *receptie theory*, and reverse *receptive-as well as positive law*, Islamic law, and customary law. This is called the chaos of transculturation.⁷

However, transculturation requires acculturation, although the difference between the two is significant. Acculturation implies one-way cultural acquisition and a linear power arrangement: from the powerful to the powerless. However, when an existing culture is lost or uprooted by a successor culture (deculturation), it is often replaced by a new culture (neoculturation) derived from the process of transculturation in the latter scenario; the change is non-linear and unpredictable. Transculturation aptly applies to what happened to Islamic law in the colonies. Despite attempts to eliminate or replace Islamic law in the colonies, a new Islamic legal culture emerged. And, as much as the colonizers opposed the colonized law, they were forced to consent to the indigenous law even to the extent of accommodating it in the bureaucracy of the colonial metropolis in legislative activities and appellate processes.⁸

Before the arrival of the Dutch, Indonesia had already implemented Islamic religious courts. These courts operated in sultanates, such as the Mataram sultanate. Religious Courts in Indonesia have historical roots that cannot be separated from Orientalism and colonialism. Incredibly long before Indonesia's independent Religious Courts in Indonesia were born at the hands of colonizers, which now still affects the function of the religious courts themselves. But before Islam came and became part of Indonesia, there were already two kinds of courts, namely the Pradata Court and the Padu Court.⁹ The Pradata Court law was based on Hindu teachings and written in Papakem, while the Padu Court used unwritten material law based on community customs. In practice, the Pradata Court handled issues related to the king's authority. The Padu Court did not deal with matters of the king's authority community issues. However, these two courts ended when the king of

⁷ Siti Rohmah and Azka Rasyad Alfatdi, "From Living Law to National Law: Theoretical Reconstruction of Applying Islamic Law in Indonesia," *Peradaban Journal of Law and Society* 1, no. 1 (2022), <http://jurnal.peradabanpublishing.com/index.php/PJLS/article/view/19>.

⁸ Dinda Difia Madina, Zezen Zainul Ali, and Mega Puspita, "Aligning Islamic Law and Customary Law: Legal Dialectics in The Tradition of Forced Marriage in Jambi," *Justicia Islamica* 20, no. 1 (2023): 1-16.

⁹ Ari Wibowo, "Perkembangan Eksistensi Peradilan Agama di Indonesia Menuju ke Peradilan Satu Atap," *Almawarid*, (2007).

Mataram replaced them with the Surambi Court system, a legal system based on Islam to maintain the hegemony of the Mataram Kingdom.¹⁰

Interestingly, applying the Religious Courts as part of the mechanism for organizing the state experienced several ups and downs when Sultan Agung died and was replaced by Amangkurat I. Even during Amangkurat I, the Religious Court was closed and replaced again with the Pradata Court. But it did not last long, and the Religious Court was revived by publishing a book of Islamic law entitled "*Shirath al-Mustaqim*" written by Nurudin Ar-Raniri. The book became a reference for Indonesian judges until the Statute of Batavia was issued in 1642, which stated that the applicable law in Indonesia was Islamic. At this point, it is clear that there is colonialism towards the enactment or formalization of Islamic law in Indonesia. Interestingly, researchers of Islamic law and Orientalism Indonesia have given little attention to colonialism's law—the attitudes and paradigms underlying their research and interpretations—Concerning the impact of colonialism's elopement of Islamic law in Indonesia.¹¹

Therefore, the Religious Courts in Indonesia are not a novelty but have traversed a lengthy historical trajectory even before Islam's presence within society. However, this article delves explicitly into the influential Dutch Orientalist theories that shaped the formalization of Islamic law and its implementation in the Religious Courts of Indonesia. The author posits that Dutch Orientalists intervened in the formalization of Islamic law in the Religious Courts through two theories: the theory of receptive in the complex by Van den Berg and the concept of receptive by Snouck Hurgronje and C. van Vollenhoven. In the author's view, both theories resulted in the limited formalization of Islamic law, rendering it unable to be fully applied in Indonesian Religious Courts. The stagnation of the formalization of Islamic law in Indonesia is a significant issue for the continuity of law within the religious court system itself, primarily as Dutch colonialists and Orientalists pursued interests known as "*adatrechtpolitiek*," wherein they determined and placed Islamic law under the customary law system.¹²

The strength of the religious courts in Indonesia encouraged the Dutch to legalize Islam as a judicial base for several years. This reality inspired L.D.W. Van

¹⁰ Daniel S. Lev, "Colonial Law and the Genesis of the Indonesian State," *Indonesia*, no. 40 (1985): 57-74, <https://doi.org/10.2307/3350875>.

¹¹ Edward W. Said, *Orientalism*, Facsimile edition, Penguin Modern Classics (London: Penguin, 2003).

¹² I Ketut Ardhana and Ni Wayan Radita Novi Puspitasari, "Adat Law, Ethics, and Human Rights in Modern Indonesia," *Religions* 14, no. 4 (March 24, 2023): 443, <https://doi.org/10.3390/rel14040443>.

den Berg to initiate the theory of *receptie in complexu*, which means that Islamic law applied thoroughly to Muslims then.¹³ The influence of this theory lasted for quite a long time, starting from the issuance of Staatsblad No. 15 in 1882 until the 1930s. This theory drew opposition from van Vollenhoven and Snouck Hurgronje, advisors to the Dutch East Indies government. Hurgronje considered that the Islamic law that Indonesians applied had deviated from the benchmark of doctrinal validity. The law had blended with the customs in the archipelago. From this, Hurgronje came up with a counter-theory that also influenced the movement of religious courts in Indonesia, namely *receptie*. This theory means that Islamic law is validly applied as long as it follows customary law in Indonesia.¹⁴

Based on this theory, the Dutch government passed Staatsblad No. 53 of 1931, which contained three parts.¹⁵ First, the name of the court changed from *Priesterrad* to *Penghoeloegerecht*. Secondly, the landrad (district court) had the right to intervene in the property of indigenous citizens. Thirdly, the Balai Harta Peninggalan was established for indigenous citizens. The *Reseptie* theory further revised the previous regulation, resulting in the issuance of Staatsblad 1937 No. 116. In this later Staatsblad, the religious courts were only given jurisdiction over marriage and divorce matters. Land affairs, which had previously been under the authority of the religious courts, were now left to the state courts. In addition, the Religious Courts also had to seek recommendations from the District Courts to formalize their decisions. This latest Staatsblad degraded the Religious Courts from functioning as a judiciary to an institution with little role. Although the religious courts were downsized functionally and culturally, the community still trusted them considerably. Habibah Daud reported that in 1976 (39 years after the practice of the *Receptie* theory in question), of the 1081 cases that people submitted to the courts in Jakarta, only 47 people (4.35%) submitted inheritance cases to the District Court. In contrast, 1034 people (95.65%) filed cases with the Religious Courts.

The previous two theories – to borrow Kim Knott's typology – Knott's ideas. In response to these foreign products, Hazairin initiated the *receptio Exit* theory, a radical opposition to Vollenhoven-Hurgronje.¹⁶ Based on Hazairin's view, his theory

¹³ A Kumedu Ja'far, "Teori-Teori Pemberlakuan Hukum Islam Di Indonesia," *asas*, 2012.

¹⁴ Muhyidin Muhyidin, "Perkembangan Peradilan Agama di Indonesia," *Gema Keadilan* 7, no. 1 (February 13, 2020): 1-19, <https://doi.org/10.14710/gk.2020.7233>.

¹⁵ Christopher L. Colvin and Philip T. Fliers, "Going Dutch: How the Netherlands Escaped Its Golden Fetters, 1925-1936" (QMS Research Paper, 2021), <https://www.econstor.eu/handle/10419/271251>.

¹⁶ Edi Gunawan, "Pengaruh Teori Berlakunya Hukum Islam Terhadap Pelaksanaan Peradilan Agama Di Indonesia," *Jurnal Ilmiah Al-Syir'ah* 15, no. 2 (December 31, 2017), <https://doi.org/10.30984/as.v15i2.475>.

must be overturned, as it contradicts the 1945 Constitution and Pancasila. In *receptie exit*, the paradigm that Islamic law is in line with the laws and character of the Indonesian nation is precipitated. Conversely, the subordination of Islamic law under customary law is precisely the opposite of the law and character advance formally stated in the 1945 Constitution and Pancasila. As a continuation of *the receptie exit*, Sayuti Talib offers the *receptie a contrario*, which is the opposite of the *receptie theory*. If the first theory bases the validity of Islamic law on customary law, then the second theory bases the validity of customary law on Islamic law. The phenomenal practice of this theory is the Presidential Decree, dated July 5, 1959, on the Jakarta Charter, where Indonesia almost made Islamic law the official state law. This historical fact shows the dialectic of Islamic law with two laws at once, namely positive law and customary law. Concerning established law, if the Jakarta Charter is preserved, then the risk is that customary law will be eliminated because the benchmark for the validity of a law depends on Islamic law. The previous three theories (four theories) are within the dialectical framework of Islamic law and customary law. All three have yet to portray how Islamic law is vis a vis positive law. Therefore, in the last part of this sub-chapter, the author will narrate the journey of Islamic law concerning positive law. This phase has taken place since Indonesia's independence.

COUNTERPOINTS: ISLAMIC LAW AND POSITIVE LAW

One of the ways colonialism returned to the metropolis was that the legal and political systems of the Dutch colonizers had to accommodate Islamic law, often called Muhammad's law. Lawyers and administrators had received specialized legal training in Islamic law; the bureaucracy had to make adjustments in addition to providing translations of Islamic legal texts into Dutch and English. In forming their colonies, what they perceived as the center and periphery were constantly changing entities. However, often, the colonies served as a counterpoint to other regional colonial territories. In other words, the 'periphery' actually turned into the 'center' of their 'periphery'.¹⁷

Edward Said convincingly demonstrates that our existence in the modern world has profound transformative effects characterized by what he calls the counterculture or contrapuntal: 'No one today has only one thing.'¹⁸ The result of

¹⁷ Fernando Coronil, "New Introduction," in Fernando Ortiz, *Cuban Counterpoint: Tobacco and Sugar* (Durham: Duke University Press, 1995), ix-lvi.

¹⁸ Edward W. Said, *Culture and Imperialism* (New York: Random House, 1994).

imperialism, Said continued, is to 'consolidate' a mixture of cultures and identities on a global scale. "Survival is really about the relationship between things," he said. As such, "it is more fruitful and more difficult to think concretely and sympathetically, contrapuntally, about others than just about "us." In trying to understand contemporary developments in Muslim law and politics, it is crucial to be aware of the colonial legacy.¹⁹ Without wanting to mobilize the past in the service of the present, it is more beneficial to see contemporary contestations over Islamic law as part of the unfinished nature of the past, especially in the post-colony.²⁰

Hierarchically, Islamic law in Indonesian law has never outperformed in a positive direction. At best, the two are parallel but with different tasks and functions. On January 3, 1946, the Ministry of Religious Affairs was formed.²¹ This ministry is tasked with consolidating all Islam-related administration in the national landscape. This was further strengthened after the issuance of Law No. 2 of 1946 in which, for example, the administration of marriage, divorce, and reconciliation was included in the ministry's agent ministry' the same year, the Religious Courts and the High Islamic Court were established under the Rules of Transfer. On March 25, 1946, the government transferred all the affairs of the High Islamic Court and the Department of Justice to a large umbrella titled the Department of Religious Affairs. Islamic law challenged the Religious Courts to be abolished two years after inauguration, especially in this context. The first opposition came from Law No. 19/1948. The next attempt was Emergency Law No. 1 of 1951 concerning the Structure of Civil Judicial Powers.

On October 31, 1964, Law No. 19/1964 on the Basic Provisions of Judicial Power was passed. This law had four courts: the General Court, Religious Court, Military Court, and State Administrative Court. However, six years later, coinciding in 1970, Law No. 14 of 1970 concerning Basic Provisions of Judicial Power was issued. This was because the 1964 Law was no longer considered relevant to reality. Although, formally, the Religious Courts are mentioned in the above laws, they have yet to find their established form in performance. Only 19 years later, precisely with the enactment of Law No. 7 of 1989, the Religious Courts received a unique mandate they could carry out independently. This is because previously, the Religious Courts

¹⁹ Gayatri Cakravorty Spivak, *A Critique of Postcolonial Reason* (Cambridge dan London: Harvard University Press, 1999).

²⁰ Prathama Banerjee, "Re-Presenting Pasts: Santals in Nineteenth Century Bengal," in Partha Chatterjee and Anjan Ghosh (ed.), *History and the Present* (Delhi: Permanent Black, 2004), 242-73.

²¹ Nuzha Nuzha, "Menelusuri Perkembangan Peradilan Agama Di Indonesia," *QISTHOSIA : Jurnal Syariah dan Hukum* 1, no. 1 (June 15, 2020): 1-15, <https://doi.org/10.46870/jhki.v1i1.108>.

functioned under the command of the District Court as the executor of *verklaring*. In 1973, marriage as an integral part of the Religious Courts was transferred into the Marriage Bill. This transfer aimed to achieve two targets. First, to reduce the frequency of divorce and marriage in Indonesia, as in Islamic law, the minimum age for marriage is the age of *baligh*, where the average girl is nine years old, while the average boy is 15. Secondly, to homogenize marriage rules in Indonesia where, at the time, Pancasila was the sole principle of the New Order.

SOCIAL IMAGINARY IN ISLAMIC LAW AND POSITIVE LAW

Modernity and colonialism ushered in a new social imaginary in the latest natural law theories from the seventeenth century.²² Such new imaginaries nurtured by the insights of John Locke's idea of Locke's contract gradually pushed older theories of society to the margins. One of the theories of community that the colonial government sought to make aside was what Muslims referred to as governance, driven by a normative juridical-moral discourse known as Sharia or Fiqh. We know as Islamic law, especially after forming nation-states in Muslim societies, Sharia is the fulcrum of Muslim moral vision. It is also varied and shaped by a complex history of Muslim schisms and sects that spans centuries. And 'all history,' wrote George Orwell,²³ 'is a palimpsest' that is dusted off and rewritten precisely as often as necessary.' Like an aging 'parchment, the inlaid layers of modern Islamic law also personify the turbulent political struggles of various Muslim societies and communities vis-à-vis a plethora of conquering colonial powers. Simultaneously, it also reveals the simmering internal struggles over the meaning of norms and values. However, there is an additional theological dimension to Islamic law. Since norms and values are partly framed regarding divine or heteronomous authority, the contestation of moral truth has to be negotiated within the dynamic tension established between human norm production, on the one hand, and divine instruction, on the other. This contestation gave rise to very intense struggles and debates in the history of Muslim societies that resulted in a plurality of intra-Muslim norm systems. What adds to its poignancy is that this struggle over norms and values occurs in a fertile cultural territory.

The never-ending struggle of Islamic law vis a vis positive law represented by the Religious Courts vis a vis the State Courts at least led to the enactment of Law No. 1 of 1974. This law is an amendment to the Marriage Bill. The 1974 Law affirms

²² Charles Taylor, *Modern Social Imaginaries* (Durham NC dan London: Duke University Press, 2004).

²³ George Orwell, *Nineteen Eighty-Four* (New York: Plume/Harcourt Brace, 2003).

the sustainability of the Religious Courts but with a limited function. The Religious Courts, through this Act, tapered off on the matter of marriage, and even then, in terms of recommendations, it still depended on the General Court or District Court. At this point, Munawir Syadzali satirically dubbed the Religious Courts as the "Onion Fertilizer" Courts. The function of the Religious Courts was also strengthened by the issuance of Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law. Not stopping there, changes continue to occur regarding the position of the Religious Courts in the world of justice in Indonesia. In brief, Law No. 35 of 1999 amended Law No. 14 of 1970.

Furthermore, during the period of President Susilo Bambang Yudhoyono (SBY), the Religious Courts experienced an expansion of roles. If, in Law No. 7 of 1989, the Religious Courts were authorized over marriage, inheritance, wills, grants, wakaf, and alms among Muslims, then through Law No. 3 of 2006, the Religious Courts received an additional role in sharia economics. This 2006 Law is a follow-up to Law No. 7 of 1992, Law No. 10 of 1998, and Law No. 23 of 1999 on the National Banking System, all of which permit the operation of the Islamic Banking System. Even though it has a clear mandate, it is limited to being called the "Onion Fertilizer" Court, and the Religious Courts still reap counter-responses from various parties – for example, Frans Magniz Suseno, S. Wijoyo, and P.J. Suwarno. The response argues that the Religious Courts are the incarnation of the Jakarta Charter, whose existence has been abolished from the Constitution and Pancasila. In addition to the execution of its decisions being dependent on the General Courts, the role of the Religious Courts is also limited to marriage, inheritance, wills, and grants, as well as waqf and alms.²⁴

NETWORKS AND LEGAL ORIENTALISM: ISLAMIC LAW, POSITIVE LAW, AND ADAT LAW

What people now see as the globalized network of power and culture of Islamdom had been preceded centuries earlier by a certain continuity of Muslim societies sharing a vast 'oikumene.' A legal modality was integral to this Islamic oikumene, exemplified by the itinerant jurist and judge Abu Abd Allah Muhammad B. Abd Allah al-Luwayti al-Tanji, better known as Ibn Battuta (d. 1369 or 1377).²⁵ Ibn

²⁴ Ari Wibowo, "Perkembangan Eksistensi Peradilan Agama di Indonesia Menuju ke Peradilan Satu Atap," 2007.

²⁵ Marshall G.S. Hodgson, *The Venture of Islam: Conscience and History in a World Civilization, The Classical Age of Islam*, Paperback Edition (Chicago: The University of Chicago Press, 1977); Vincet J., "Ibn Battuta's Opportunism: The Networks and Loyalties of a Medieval Muslim Scholar," in Miriam Cooke and Bruce B.

Battuta's experience of a culturally contiguous and networked society is not an anomaly. If history and human life are regarded as performances of action, then society is also an 'ever-living, never-ending network of action.'²⁶ The roots of 'the network metaphor that defines Islamic civilization have not only survived but, thanks to European colonization of Muslim territories, acquired a new meaning quite different from its premodern example.'²⁷

Globalization gave new meaning to the old network: expanding integration and integration on a planetary scale. The ideological framework of globalization is liberalism, which supports free trade and the free movement of capital.²⁸ Post-colonies are networks of citizens of former colonies who have moved to the former metropolises of Europe and North America through myriad advanced communication technologies. Apart from a certain sense of unity and singularity, what is more, significant is the vibrant debate and contestation about the meaning of Muslim law and morality in the various global networks in both minority and majority Muslim contexts. One need only reflect on how the controversy over women wearing headscarves in public schools animates Muslims living in France, as it energizes those observing wearing headscarves in Turkey. Similarly, the suggestion of a possible role for Muslim family law is generating increasing anxiety in Canadian and British political circles while raising similar tensions in Egypt and Pakistan over governance and fidelity to Sharia norms in those countries.

At the heart of debates about Islamic law in colonial and postcolonial times are narratives relating to Sharia as a moral vision. In both, the displacement and adaptation of Islamic law is a desire to recover or reinvent a Muslim social imaginary of highly complex proportions, a reality often overlooked by modern historians of Islamic law. Attempts at reform and renovation of legal and social practices usually involve a certain reductionism, if not distortion of phenomena. Usually, social reformers, in their attempts to formulate reasons why a practice should be changed or altered, deduce the meaning and purpose of such a practice, denying its complexity and diverse functions. Social reformers engaged in reformulating and

Lawrence (ed.) *Muslim Networks: From Hajj to Hip Hop* (Chapel Hill: University of North Carolina Press, 1977), 31–50.

²⁶ Ira M. Lapidus, "Hierarchies and Networks: A Comparison of Chinese and Islamic Societies," in Frederick Wakeman Jr and Carolyn Grant (ed.), *Conflict and Control in Late Imperial China* (Berkeley and Los Angeles: University of California Press, 1975), 26–42.

²⁷ David Gilmartin, "A Networked Civilization," in Miriam Cooke and Bruce B. Lawrence (ed.) *Muslim Networks: From Hajj to Hip Hop* (Chapel Hill: University of North Carolina Press, 2005), 51–68.

²⁸ Frederick Cooper, *Colonialism in Question: Theory, Knowledge, History* (Berkeley and Los Angeles: University of California Press, 2005).

restating older practices and doctrines also attributed new moral economies to practices. The European tendency to reduce phenomena in Eastern legal and social practices gave rise to a new moral economy better known as Orientalism.

If 'legal orientalism' has ever had far-reaching and painful effects on the discursive and existential realm, it has been within the framework of Islam and customary law. And so far, very little of this Orientalism has been recognized or even received severe scholarly attention. It is possible to misread legal practice as a literary production, which, in his view, has only 'symbolic meaning.' He downplayed the interest of colonial officials in legal writing and translation. If what is said is wrong concerning the artifacts of Orientalism, then his description of Orientalism applies to European Orientalists as well as to specific traditionalist Muslim ways of thinking, especially those embraced by the ulama: "a style of thinking based on ontological premises and epistemological distinctions made between "East" and "West." Although some ulama often view orientalist scholars as people of questionable integrity, there is also significant overlap in Islamic legal approaches and methodologies between these two scholars.

Legal discourses and institutions are more than just symbolic; they are also sites that produce knowledge that distinguishes between colonized and colonizer subjects. Law provides the apparatus and means for enforcing these different types of knowledge. However, modern clerics and elites in colonized Muslim countries collaborated with colonizers to implement various models of Islamic law, which they felt were essential for the well-being of their communities. Such mutual shackling makes it more challenging to unearth the underground ways power functioned in colonial societies; the legacies of colonizers and colonized are intertwined.²⁹ Just as the occupied seek to be liberated from the political yoke of the colonizer, they are also shackled through the legal and economic systems to the colonizer's legs – a monochromatic map between the colonizer and the colonized – we must interrogate Islamic law in the colonial and postcolonial periods through the prism of transculturation. What legal discourse then reveals is a series of contrapuntal dependencies, a network of movements of people and ideas across time and space. This allows us to plan transitions in knowledge paradigms and social imaginaries more carefully and see the interweaving of legal, economic, and political systems more nuancedly.

²⁹ Amit Chaudhuri, "Two Giant Brothers," *Review of Books*, April 20, 2006, 27-30.

The two theories above find common ground in an area called Aceh. Aceh is a province at the western end of the Unitary State of the Republic of Indonesia (NKRI). Aceh was hit by two disasters: a natural disaster and a humanitarian disaster. The tsunami hit Aceh on December 26, 2004, killing more than 245,000 people. The tsunami drowned three cities: Banda Aceh, Meulaboh, and Calang. Long before that, Aceh was involved in a disintegrative conflict with the Republic of Indonesia. The province rebelled for independence as a separate country through the Free Aceh Movement (GAM).³⁰ This disaster further raised the awareness of religious communities to take responsibility. The combination of GAM and religious understanding following the disaster led to the granting of special autonomy to Aceh in the form of Law No. 18 of 2001 on Special Autonomy for the Special Province of Aceh. This 2001 law brought new developments for religious courts in Aceh. Articles 25-26 of the Law on the Province of Nangroe Aceh Darussalam establish the Syariah Court as an Islamic Sharia court.³¹

Regarding its relationship with the national judicial system, the Aceh court is a federal judiciary branch. However, the Acehese judiciary differs significantly from the national judiciary regarding its main tasks and functions. This is because religious courts play a central role in Aceh, unlike in other regions. The Sharia Court here is autonomous from external influences, so it is binding in the PNAD area and has been formally enshrined in the PNAD Qanun. In this context, the Syariah Court of Nangroe Aceh Darussalam has the authority to receive, examine, and decide cases related to criminal matters. Islamic criminal law is not applied in Indonesia and Muslim-majority countries in general. However, Aceh is an exception to this rule. Furthermore, the Syariah Court consists of two parts: 1) The Sagoe District and Banda City Sharia Courts as courts of first instance. 2) The Provincial Sharia Court is the court of appeal located in the provincial capital, Banda Aceh.

Law No. 18/2001 was a planned follow-up to Law No. 44/1999 on the Specialty of Aceh. This 1999 law guarantees the province of Aceh to implement Islamic law as a guideline not only in terms of law but also in organizing the education system and public life in general. Before Law No. 11/2006 was enacted, the 1999 Law authorized Aceh to administer the areas of *al-ahwal al-syakhshiyah* (civil law), *mu'amalah*, and *jinayah* (criminal law) based on Islamic Sharia. In addition

³⁰ S. Andal, *Awareness Of Tsunami Among Higher Secondary Students In Coastal Area Schools* (Archers & Elevators Publishing House, n.d.), accessed June 25, 2024.

³¹ Anita Afriani Sinulingga, Abdul Halim, and Putiviola Elian Nasir, "Bencana Dan Konflik: Pelajaran Dari Aceh Dan Sri Lanka," *Journal of Peace Research* 41, no. 3 (2020): 163-76.

to receiving clarity on the Islamic legal system, Aceh supports it through education. The paradigm carried out by Islamic education in Aceh is the Peace Education Program. The details are in the book *Peace Education Curriculum: Perspectives of Aceh Ulama*, a guidebook for the rate in Aceh in the future. The curriculum generally includes the ethics of human relationships with God, fellow humans, and the environment. Technically, the teaching is in the form of various games, humorous stories that contain messages, classic wisdom, illustrations, and so on. The manual was not only circulated within Nangroe Aceh Darussalam but spread to several regions in Indonesia. Furthermore, several Muslim-majority countries translated it into English or Arabic to guide pioneering and organizing the Islamic education system in their areas.³²

CONCLUSION

This study highlights the background to the establishment of the Religious Courts, the formalization of Islamic law, and the influence of *receptie incomplexu* theory, *receptie* theory, and *receptie a contrario* theory in the Religious Courts in Indonesia from 1882 until today. It was found that Dutch colonial behavior was closely related to the formalization of Islamic law in the Religious Courts. Dutch, British, and Japanese colonialism influenced the foundation, formalization, and function of Religious Courts in Indonesian society. Colonization had a significant impact on Indonesia. Using Ebrahim Moosa's theories, namely "transculturation, counterculture, social imagination, networks, and legal orientalism," this study found that first, transculturation involved the mixing of Indonesian and Dutch colonial Islamic communities, which triggered a struggle between Islamic legal theory and customary law; second, counterculture showed the influence of cultural transformation and global identity; third, colonization brought new natural law ideas from the seventeenth century that sought to shift Islamic normative moral-law discourse; fourth, Islamic globalization networks gave new meaning to old networks, supporting liberalism and free trade. Finally, Islamic law in the colonial and postcolonial periods is related to the moral vision of Sharia, where the adaptation of Islamic law reflects an attempt to restore or reinvent the complex Muslim social imagination.

³² David Smock, "Applying Islamic Principles in the Twenty-First Century: Nigeria, Iran, and Indonesia" (US Institute of Peace, 2005), <https://www.jstor.org/stable/resrep12313>.

REFERENCES

- Andal, S. *Awareness of Tsunami Among Higher Secondary Students In Coastal Area Schools*. Archers & Elevators Publishing House, n.d. Accessed June 25, 2024.
- Ardhana, I Ketut, and Ni Wayan Radita Novi Puspitasari. "Adat Law, Ethics, and Human Rights in Modern Indonesia." *Religions* 14, no. 4 (March 24, 2023): 443. <https://doi.org/10.3390/rel14040443>.
- Banerjee, Prathama. "Re-Presenting Pasts: Santals in Nineteenth Century Bengal." In *History and the Present*. Delhi: Permanent Black, 2004.
- Butt, Simon. "Islam, the State and the Constitutional Court in Indonesia." *Washington International Law Journal* 19, no. 2 (2010).
- — —. "Religious Conservatism, Islamic Criminal Law and the Judiciary in Indonesia: A Tale of Three Courts." *The Journal of Legal Pluralism and Unofficial Law* 50, no. 3 (2018).10.1080/07329113.2018.1532025.
- Chaudhuri, Amit. "Two Giant Brothers." *Review of Books*, April 20, 2006.
- Colvin, Christopher L., and Philip T. Fliers. "Going Dutch: How the Netherlands Escaped Its Golden Fetters, 1925-1936." QMS Research Paper, 2021. <https://www.econstor.eu/handle/10419/271251>.
- Cooper, Frederick. *Colonialism in Question: Theory, Knowledge, History*. Berkeley and Los Angeles: University of California Press, 2005.
- Coronil, Fernando. "New Introduction." In *Cuban Counterpoint: Tobacco and Sugar*. Durham: Duke University Press, 1995.
- Gilmartin, David. "A Networked Civilization." In *Muslim Networks: From Hajj to Hip Hop*. Chapel Hill: University of North Carolina Press, 2005.
- Gunawan, Edi. "Pengaruh Teori Berlakunya Hukum Islam Terhadap Pelaksanaan Peradilan Agama Di Indonesia." *Jurnal Ilmiah Al-Syir'ah* 15, no. 2 (December 31, 2017). <https://doi.org/10.30984/as.v15i2.475>.
- Hodgson, Marshall G.S. *The Venture of Islam: Conscience and History in a World Civilization, The Classical Age of Islam*. Paperback Edition. Chicago: The University of Chicago Press, 1977.
- J., Vincet. "Ibn Battuta's Opportunism: The Networks and Loyalties of a Medieval Muslim Scholar." In *Muslim Networks: From Hajj to Hip Hop*. Chapel Hill: University of North Carolina Press, 1977.
- Ja'far, A Kumedi. "Teori-Teori Pemberlakuan Hukum Islam Di Indonesia," *Asas*, 4 no. 2 (2012). <http://dx.doi.org/10.24042/asas.v4i2.1679>.
- Lapidus, Ira M. "Hierarchies and Networks: A Comparison of Chinese and Islamic Societies." In *Conflict and Control in Late Imperial China*. Berkeley and Los Angeles: University of California Press, 1975.
- Lev, Daniel S. "Colonial Law and the Genesis of the Indonesian State." *Indonesia*, no. 40 (1985): 57-74. <https://doi.org/10.2307/3350875>.

- Madina, Dinda Difia, Zezen Zainul Ali, and Mega Puspita. "Aligning Islamic Law and Customary Law: Legal Dialectics in The Tradition of Forced Marriage in Jambi." *Justicia Islamica* 20, no. 1 (2023): 1-16.
- Masud, Muhammad, Armando Salvatore, and Martin Van Bruinessen. *Islam and Modernity: Key Issues and Debates*. Edinburgh University Press, 2009. <https://doi.org/10.1515/9780748637942>.
- Muhyidin, Muhyidin. "Perkembangan Peradilan Agama di Indonesia." *Gema Keadilan* 7, no. 1 (February 13, 2020): 1-19. <https://doi.org/10.14710/gk.2020.7233>.
- Nurlaelawati, Euis. *Modernization, Tradition, and Identity: Kompilasi Hukum Islam and the Practice of Law in Indonesian Religious Court*. Amsterdam: University of Amsterdam Press, 2010.
- Nuzha, Nuzha. "Menelusuri Perkembangan Peradilan Agama Di Indonesia." *Qisthosia: Jurnal Syariah dan Hukum* 1, no. 1 (June 15, 2020): 1-15. <https://doi.org/10.46870/jhki.v1i1.108>.
- Orwell, George. *Nineteen Eighty-Four*. New York: Plume/Harcourt Brace, 2003.
- Powers, David S. "Orientalism, Colonialism, and Legal History: The Attack on Muslim Family Endowments in Algeria and India." *Comparative Studies in Society and History* 31, no. 3 (July 1989): 535-71. <https://doi.org/10.1017/S0010417500016030>.
- Rohmah, Siti, and Azka Rasyad Alfatdi. "From Living Law to National Law: Theoretical Reconstruction of Applying Islamic Law in Indonesia." *Peradaban Journal of Law and Society* 1, no. 1 (2022). <http://jurnal.peradabanpublishing.com/index.php/PJLS/article/view/19>.
- Said, Edward W. *Culture and Imperialism*. New York: Random House, 1994.
- — —. *Orientalism*. Facsimile edition. Penguin Modern Classics. London: Penguin, 2003.
- Sinulingga, Anita Afriani, Abdul Halim, and Putiviola Elian Nasir. "Bencana Dan Konflik: Pelajaran Dari Aceh Dan Sri Lanka." *Journal of Peace Research* 41, no. 3 (2020): 163-76.
- Smock, David. "Applying Islamic Principles in the Twenty-First Century: Nigeria, Iran, and Indonesia." US Institute of Peace, 2005. <https://www.jstor.org/stable/resrep12313>.
- Spivak, Gayatri Cakravorty. *A Critique of Postcolonial Reason*. Cambridge dan London: Harvard University Press, 1999.
- Taylor, Charles. *Modern Social Imaginaries*. Durham NC dan London: Duke University Press, 2004.
- Thalib, S. *Hukum Kewarisan Islam Di Indonesia (Edisi Revisi)*. Sinar Grafika, 2022. <https://books.google.co.id/books?id=F8l8EAAAQBAJ>.
- Wibowo, Ari. "Perkembangan Eksistensi Peradilan Agama di Indonesia Menuju ke Peradilan Satu Atap," *Al-Mawarid: Jurnal Hukum Islam*, 17, no. 3 (2007).

