

# The Superiority of Customary Law over Islamic Law in the Settlement of Inheritance: Reflections on Snouck Hurgronje's Reception Theory

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## Article History:

Received: May 24, 2021	Accepted: October 29, 2021
Revised: October 01, 2021	

## Abstract

*In colonial history in the Dutch East Indies, customary law was superior to Islamic law. By utilizing the historical approach of social thought, this article aims at exploring how and why customary inheritance law was more applicable than Islamic inheritance law. After observing the practice in several areas, including in Surambi Masjid, Snouck Hurgronje found that customary law dominated people's lives. In turn, this idea was implemented in Dutch legal regulations that weakened the roles of penghulu of the Religious Courts in resolving family and inheritance issues that required approval from the District Court judges. In addition, the penghulu's decision was not valid if it was not in line with customary law. Based on Hurgronje's advice, the competence of the Religious Court at inheritance was transferred to the District Court. He considered that inheritance was under the state's authority, and at the same time, it had not been fully accepted by customary law.*

**Keywords:** Snouck Hurgronje, Reception Theory, Religious Courts, Inheritance Settlement

# **Superioritas Hukum Adat atas Hukum Islam terhadap Eksistensi Waris: Refleksi Teori Resepsi Snouck Hurgronje**

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## **Abstrak**

Dalam sejarah kolonial di Hindia Belanda, Hukum Adat pernah menjadi superior dari Hukum Islam di mana ini merupakan hasil pemikiran Snouck Hurgronje yang terkenal dengan Teori Resepsinya. Pendekatan sejarah pemikiran sosial digunakan untuk menyelidiki mengapa dan bagaimana konsep tersebut terjadi. Tulisan ini menyimpulkan bahwa sebelum hadirnya Hurgronje, pemberlakuan hukum bagi masyarakat mengikuti hukum agamanya masing-masing, termasuk penyelesaian waris di Pengadilan Agama. Seiring berjalannya waktu kolonial mulai intervensi masalah pembagian harta bahwa meskipun kewarisan bagi muslim diselesaikan di Pengadilan Agama dengan hukum Islam, namun putusnya harus dikukuhkan oleh Pengadilan Negeri. Kedatangan Hurgronje membawa perubahan setelah memperdalam pengetahuan Islam dan Adat, di mana adat lebih mendominasi dalam pergumulan masyarakat, sehingga ia mencetuskan bahwa hukum Islam baru bisa diimplementasikan ketika diresepsi oleh hukum adat. pada gilirannya gagasan tersebut dilanjutkan penerusnya dengan dialihkannya bidang kewarisan Peradilan Agama ke Pengadilan Negeri. Baginya, waris merupakan bidang sosial kemasyarakatan yang merupakan kewenangan negara, sekaligus belum diterima secara penuh oleh hukum adat. Pemikiran Hurgronje adalah buah karyanya sebagai penasehat pertama di *Indlandsche Zaken* yang tidak bisa terlepas dari luasnya pengetahuan Islam dan lokalnya serta beberapa pengalamannya dalam menyelesaikan persoalan Haji di Mekkah dan perang Aceh.

**Kata Kunci:** *Pemikiran Snouck Hurgronje, Pengadilan Agama, Kewarisan*

## INTRODUCTION

A legal norm, such as a law or the like, will not be understood if one only reads its articles, without studying how the articles were produced, its explanations, and the soul and spirit when the manuscript or article was written.<sup>1</sup> Likewise, in its formulation, legal norms are also influenced by demands, needs, conditions, and situations where and to whom the law will be applied. In the development of the legal system in Indonesia, during the Dutch colonial rule, they still recognized the old legal systems, both Islamic law, and customary law. This was confirmed by Carel Frederik Winter (1799-1859), Salomon Keyzer (1823-1868), L.W.C. van den Berg (1815-1927) that the law applied to Muslims was Islamic law. Not only recognizing the legal systems practiced in Indonesia, but the Dutch also recognized the existence of Religious Courts which existed long before the Portuguese and Dutch handled marital, inheritance, and waqf disputes.<sup>2</sup>

The existence of Religious Courts run in society, but over time the Dutch interfered with Religious Courts, especially those related to administration. For example, it determined the delegation of authority in resolving certain civil cases to the ulama and penghulu.<sup>3</sup> In the Batavia Statute of 1642, it was stated that Islamic law must be used for the inheritance of indigenous people who were Muslim. This was recognized and enforced by the Resolutie der Indiesche Regeering on May 25, 1670, which was Islamic marriage and inheritance laws. Due to this development, the Dutch tried to

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<sup>1</sup> Zaini Ahmad Noeh, *Sejarah Singkat Pengadilan Agama Islam Di Indonesia [A Brief History of Islamic Religious Courts in Indonesia]* (Surabaya: PT. Bina Ilmu, 1983), 13.

<sup>2</sup> Deliar Noer, *Administrasi Islam Di Indonesia [Islamic Administration in Indonesia]* (Jakarta: CV. Rajawali, 1983), 66.

<sup>3</sup> R. Tresna, *Peradilan Di Indonesia Dari Abad Ke Abad [Courts in Indonesia from Century to Century]* (Jakarta: Pradnya Paramita, 1978), 101.

compile a compilation as a guide for court judges to be applied in areas where the majority was Muslim, such as Cirebon, Semarang and Makassar.<sup>4</sup> In 1760, Governor-General Jacob Mossel (1750-1761) compiled the *Compendium Freijer* on marriage, divorce and inheritance for *landraad* (city council) in Semarang. This collection was extracted from the *Book of Mugharar* (*Compendium der Voornaamste Javaansche Wetten nauwkeurig getrokken uit het Mohammedaansche Wetboek Mogharaer*). Likewise, to meet the needs of the Court in Cirebon (West Java) the *Cirbonsche Rechtboek* (*Papakem Cirebon*) was arranged in 1768. For Bone and Goa (South Sulawesi), the Governor of Sulawesi (1725-1755) issued the *Compendium Indiansche Wetten bij de Hoven van Bone en Goa*.<sup>5</sup>

The VOC's neutrality towards Islamic law ended in 1798 because the Dutch government dissolved the VOC due to corruption so that the wheels of power in the trading area were carried out entirely by the Dutch East Indies Government. In fact, the Dutch intervention in Islam had not been seen at that time because the Dutch's knowledge or understanding of Islam was still weak, even they were worried and afraid that rebellions would repeat.<sup>6</sup> In 1808, Islamic law began to be interfered with by the colonial authorities. Governor-General Daendaels (1808-1811) made an ordinance specifically for the northern coast of Java that the head of the mosque (*penghulu*) must act as an advisor in the general court when the

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<sup>4</sup> Alaidin Koto et al., *Sejarah Peradilan Islam [History of Islamic Courts]* (Jakarta: PT. Rajagrafindo Persada, 2011), 215.

<sup>5</sup> M. Atho Mudzhar, *Fatwa-Fatwa Majelis Ulama Indonesia: Sebuah Studi Tentang Pemikiran Hukum Islam Di Indonesia [Fatwas of the Indonesian Ulema Council: A Study of Islamic Legal Thought in Indonesia]* (Jakarta: INIS, 1993), 33.

<sup>6</sup> Aqib Suminto, *Politik Islam Hindia Belanda [Dutch East Indies Islamic Politics]* (Jakarta: LP3ES, 1996), 9.

parties in dispute were Muslims.<sup>7</sup> In 1820, through the Regent's Instruction (Regenten Instructie), Staatsblad 1820 No. 22 article 13 states that "the Regent must ensure that the priest (ulama) can carry out his duties in terms of marriage, distribution of property, and the like following the habits and customs of the Javanese people".<sup>8</sup> But then, in 1824, the exclusion of residents in many cities and the function of the penghulu as the translator of Islamic law were officially abolished.<sup>9</sup>

Because there had been a different opinion on function of penghulu in 1834, in 1835 the Governor-General issued Staatsblad No. 56 which was a revision of the provisions of the 1820 instruction, that "...in a dispute among the Javanese regarding marriage, distribution of property, and similar disputes, the penghulu must decide the disputes according to Islamic law, while the payment arising from the decision must be brought to the General Court". With the birth of 1835 Staatsblad above, even though the decision used Islamic law, the decision of the religious court only had binding power when the district court had confirmed in the form of executioire verklaring.<sup>10</sup>

The 1855 Staatsblad concerning Reglement op het Beleid der Regering van Nederlandsch Indië (RR) articles 75 and 78 RR read: "Indigenous judges must enact religious laws (godsdiensstige wetten) and indigenous peoples' customs (adat)." This article was an official

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<sup>7</sup> Daniel S. Lev, *Peradilan Agama Islam Di Indonesia: Suatu Studi Landasan Politik Lembaga-Lembaga Hukum [Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions]*, trans. Zaini Ahmad Noeh (Jakarta: PT. Intermasa, 1986), 24.

<sup>8</sup> Noeh, *Sejarah Singkat Pengadilan Agama Islam Di Indonesia [A Brief History of Islamic Religious Courts in Indonesia]*, 30–31.

<sup>9</sup> Ratno Lukito, *Pergumulan Antara Hukum Islam Dan Adat Di Indonesia [The Struggle Between Islamic and Customary Law in Indonesia]* (Jakarta: INIS, 1998), 31.

<sup>10</sup> Oyo Sunaryo Mukhlas, *Perkembangan Peradilan Islam: Dari Kahin Di Jazirah Arab Ke Peradilan Agama Di Indonesia [The Development of Islamic Courts: From Kahin in the Arabian Peninsula to Religious Courts in Indonesia]* (Bogor: Ghalia Indonesia, 2011), 136.

description of the colonial government's recognition, as well as introducing the existence of Islamic law and customs that had been practised in the lives of the natives. Meanwhile, article 78 paragraph (2) of the RR reads: "When a civil case occurs between Indonesian fellows or those who are equated with them, then they are subject to the decision of the religious judge or the head of their community according to the religious law or their older stipulations." This ordinance describes explicitly that Islamic law had a strong power to be implemented by indigenous people, although customary provisions also applied.

On January 19, 1882, based on the suggestion of L.W.C van den Berg, King William III issued Decree No. 24 in the 1882 Staatsblad No. 152 concerning the establishment of religious courts in Java and Madura, in Dutch it reads: *Bepaling betreffende de priesterraden op Java en Madoera*, while for areas outside Java and Madura cases were left to customary regulations and *swapraja* (autonomous area). The decision was made to administer Islamic law through the Religious Court.<sup>11</sup> The 1882 Staatsblad No. 152 was the brainchild of L.W.C. van den Berg which is popular with "the theory of *receptio in complexu*", where the law for Indonesians was to follow their religions, those who were Hindus followed Hindu law, those who were Muslims followed Islamic law and Christians did so.<sup>12</sup> Thus, the presence of Islamic courts gradually received more attention from the colonial government, while at the same time placing judges to be more free and flexible in handling Muslim family laws.<sup>13</sup>

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<sup>11</sup> Lukito, *Pergumulan Antara Hukum Islam Dan Adat Di Indonesia [The Struggle Between Islamic and Customary Law in Indonesia]*, 32.

<sup>12</sup> Noeh, *Sejarah Singkat Pengadilan Agama Islam Di Indonesia [A Brief History of Islamic Religious Courts in Indonesia]*, 34.

<sup>13</sup> Mukhlas, *Perkembangan Peradilan Islam: Dari Kahin Di Jazirah Arab Ke Peradilan Agama Di Indonesia [The Development of Islamic Courts: From Kahin in the Arabian Peninsula to Religious Courts in Indonesia]*, 134.

In its development, Snouck Hurgronje arrived in Indonesia in 1889<sup>14</sup> after studying Indology and Islamology in Mecca for seven months (February-August 1885). Disguising as a Muslim named Abdul Gaffar<sup>15</sup>, he mingled with the Indonesian Muslim community in Mecca by learning many aspects about Islam. From his research, he concluded that the pilgrims were not enemies to be fought because they were nothing but performing rituals. Therefore, Hurgronje suggested the government free Muslims from carrying out religious teachings without any interference. But those who carried out propaganda against the Dutch colonial government had to be taken seriously. In other words, the opponent of colonialism was not Islam as a religion, but Islam as a political doctrine.

Emphasizing the above statement, Islam as religion and Islam as politics, Hurgronje detailed his advice into three groups.<sup>16</sup> First, in matters relating to religious rituals, the people must be given the freedom to perform them as long as it did not cause trouble for the Dutch government. Second, fields of *muamalah*, such as the existence of the institution of marriage, divorce, inheritance, *waqf* and so on, must be maintained. However, considering these social institutions were backward, the natives were hoped to take Western institutions with the hope that they could gradually experience the process of modernization. Third, in the field of Islamic politics, the slightest tolerance would not be given in activities that could spread pan-

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<sup>14</sup> B.J. Boland, *Pergumulan Islam Di Indonesia 1945-1970 [The Struggle of Islam in Modern Indonesia]*, ed. Djohan Effendi, trans. Syafrudin Bahar (Jakarta: Grafiti Pers, 1985), 16.

<sup>15</sup> Bernard H.M. Vlekke, *Nusantara: A History of Indonesia* (Leiden: W. Van Hoeve, 1965), 324.

<sup>16</sup> Suminto, *Politik Islam Hindia Belanda [Dutch East Indies Islamic Politics]*, 12–14.

Islamism or things that could cause resistance and rebellion against the Dutch government.<sup>17</sup>

Regarding Hurgronje's second view, he stated confidently that the role of Islam would not be able to bring Indonesia towards modernization so that the influence of Islam in society could be gradually paralyzed by introducing a Western cultural system.<sup>18</sup> To implement his thought, he introduced the *receptie* theory as opposed to van den Berg's theory of *receptie* in complex. The theory illustrates that Islamic law applies as law if it has been accepted by customary law. He supposed that Islamic law had not been crystallized in society yet. Conversely, customary law was more grounded and could be easily accepted by the community. To formulate more deeply about the politics of the indigenous people, the Dutch established the Office of Indigenous Affairs (*Kantoor voor Indlandsche Zaken*).

The implementation of Hurgronje's theory spread to several articles of legislation of the Dutch East Indies government, such as the amendment to article 134 IS 1925 (article 7B RR) which reads: "If there is a dispute between Muslim fellows or residents who are equated with them, the head of religion or their customary head will take decide the dispute according to the law of his religion or original custom", was revised and became the 1929 Staatsblad No. 221 which reads "a civil case between Muslim fellows will be resolved by a religious judge if the situation has been accepted by their customary law as long as it is not determined otherwise by the

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<sup>17</sup> Alfian, *Muhammadiyah: The Political Behaviour of a Muslim Modernist Organisation under Dutch Colonialism* (Yogyakarta: Gadjah Mada University Press, 1989), 22–25.

<sup>18</sup> Harry J. Benda, *Bulan Sabit Dan Matahari Terbit: Islam Indonesia Pada Masa Pendudukan Jepang [The Crescent and the Rising Sun: Indonesian Islam under the Japanese Occupation 1942-1945]*, ed. Alfian, trans. Daniel Dhakidae, Cet. 1 (Jakarta, Indonesia: Pustaka Jaya, 1980), 47.

ordinance.”<sup>19</sup> Thus, the most recent change was to withdraw Islamic law from the environment of the Dutch East Indies legal system so that Islamic law no longer legally applied in Indonesia, unless customary law was accepted.<sup>20</sup> Islamic law no longer had an independent position because Islamic law was only considered valid as law if the conditions had been fulfilled that the norms of Islamic law must first be accepted by customary law, and did not conflict with the statutory provisions of the Dutch East Indies government.<sup>21</sup>

On January 31, 1931, in the 1931 *Staatsblad* No. 53 the Dutch reduced the authority of the Religious Courts by transferring inheritance rules to the District Courts. But the 1931 *Staatsblad* No. 53 had not been implemented yet because the Dutch colonial government did not have an adequate budget and there was a violent protest from Indonesian Muslims.<sup>22</sup> For example, the

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<sup>19</sup> Mukhlas, *Perkembangan Peradilan Islam: Dari Kahin Di Jazirah Arab Ke Peradilan Agama Di Indonesia [The Development of Islamic Courts: From Kahin in the Arabian Peninsula to Religious Courts in Indonesia]*, 131–35.

<sup>20</sup> Khoirun Niam, “The Discourse of Muslim Intellectuals and `ulama in Indonesia: A Historical Overview,” *Journal of Indonesian Islam* 4, no. 2 (2010): 287–316, <https://doi.org/10.15642/JIIS.2010.4.2.287-316>; Lina Kushidayati, “The Development of Islamic Law in Indonesia,” *QIJIS (Qudus International Journal of Islamic Studies)* 1, no. 2 (2014): 163–80, <https://doi.org/10.21043/qijis.v1i2.185>.

<sup>21</sup> Harry J. Benda, “Christiaan Snouck Hurgronje and the Foundations of Dutch Islamic Policy in Indonesia,” *The Journal of Modern History* 30, no. 4 (1958): 338–47, <https://doi.org/10.1086/238264>; Harry J. Benda, “The Pattern of Administrative Reforms in the Closing Years of Dutch Rule in Indonesia,” *The Journal of Asian Studies* 25, no. 4 (1966): 589–605, <https://doi.org/10.2307/2051493>; Samuel Bazzi, Gabriel Koehler-Derrick, and Benjamin Marx, “The Institutional Foundations of Religious Politics: Evidence from Indonesia,” *The Quarterly Journal of Economics* 135, no. 2 (2020): 845–911, <https://doi.org/10.1093/qje/qjz038>.

<sup>22</sup> Taufiq Hamami, *Mengenal Lebih Dekat: Kedudukan Dan Eksistensi Peradilan Agama Dalam Sistem Tata Hukum Di Indonesia [Get to Know More Closely: The Position and Existence of Religious Courts in the Legal System in Indonesia]* (Bandung, Indonesia: Alumni, 2003), 20; Abdul Ghofur Anshori, *Peradilan Agama Di Indonesia Pasca UU No. 3 Tahun 2006: Sejarah, Kedudukan, Dan Kewenangan [Religious Courts in Indonesia After Law No. 3 of 2006: History, Position and Authority]* (Yogyakarta, Indonesia: UII Press, 2007), 15; Sumadi Matrais, “Kemandirian Peradilan Agama Dalam Perspektif Undang-Undang Peradilan Agama [Independence of the Religious Courts in the

Indonesian Islamic Syarikat Party (PSII) at its congress in Bandung in July 1937 emphasized that all matters relating to Islam should be left to Islam itself, and the Conference of Islamic World Branch of Dutch East Indies (*Muktamar Alam Islamy Far'ul Hindias Syarqiyah/MAIFHS*) in its congress in Pekalongan in 1937 even proposed an open question to the government: on what legal basis did the colonial government interfere the affairs of the Islamic religion where in the past it had declared itself neutral towards religion. Finally, the proposal was implemented when the Dutch Colonial issued a new ordinance in the 1937 *Staatsblad* No. 116 which came into force on April 1, 1937, in the case of the reduction of authority of the Religious Courts regarding inheritance competence under article 2a paragraph (1) the 1937 *Staatsblad* No. 116. Efforts to reduce the validity of inheritance law through the transfer of the authority of the Religious Court (the 1937 *Staatsblad* No. 116) to the District Court because the Western view regarding marriage and inheritance was under the state's authority, not religion. In addition, inheritance law had not been fully accepted by customary law.<sup>23</sup>

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Perspective of the Law on Religious Courts],” *Jurnal Hukum IUS QUIA IUSTUM* 15, no. 1 (2008): 121–44, <https://doi.org/10.20885/iustum.vol15.iss1.art6>.

<sup>23</sup> A. Basiq Djalil, *Peradilan Agama di Indonesia [Religious Courts in Indonesia]* (Jakarta, Indonesia: Prenada Media, 2010), 57–59; Abdullah Tri Wahyudi, “Kewenangan Absolut Peradilan Agama Di Indonesia Pada Masa Kolonial Belanda Hingga Masa Pasca Reformasi [The Absolute Authority of the Religious Courts in Indonesia from the Dutch Colonial Period to the Post-Reformation Period],” *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 7, no. 2 (2016): 285–304, <https://doi.org/10.21043/yudisia.v7i2.2156>; Andi Intan Cahyani, “Peradilan Agama Sebagai Penegak Hukum Islam Di Indonesia [Religious Courts as Enforcer of Islamic Law in Indonesia],” *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 6, no. 1 (2019): 119–32, <https://doi.org/10.24252/al-qadau.v6i1.9483>.

## **RESEARCH METHOD**

Using a social history approach, this paper examines how the process of inheritance was transferred from the Religious Courts to the District Courts. This article is library research, where the collection of data comes from various books, journals and discussions that are relevant to this research. After the data was collected, data reduction and data presentation were carried out to sort out the data. After being analyzed with an inductive pattern, the data was presented. This means that the problems presented in the introduction are then presented systematically in the discussion to conclude. This article, which examines the history of Snouck Hurgronje's social thought, not only examines his personal scientific and career developments in solving the problems faced in the Dutch East Indies but also describes the creation of the Reception Theory which was then implemented in the articles of various regulation.

## **RESULTS AND DISCUSSION**

### **Snouck Hurgronje's Contribution After His Study in Mecca and Aceh**

Christian Snouck Hurgronje (1857-1936) obtained his doctorate in Oriental Cultures and Languages at a young age. His legacy on Islamic studies in Indonesia cannot be forgotten. Born on February 8, 1857, in Oosterhout, the Netherlands, he was the son of a Calvinist priest who started his academic career in theology. After completing his theological examination, he turned to semantic philology in 1878. During his studies, he also received intensive lessons from the Arabic expert de Goeje (1836-1909), then studied historical criticism from Kuenen (1828-1891), and jurisprudence from the phenomenal German orientalist Theodor Noldeke (1836-1930). Apart from these experts, a book which influenced Hurgronje was *Handleiding tot de*

*kennis van de Mohammedaansche wet volgens de leer der sjafi'itische school of Theodorus Willem Juynboll (1866-1948).*<sup>24</sup>

For six months, from August 1884 to February 1885, Hurgronje spent his time in Mecca before an official order recalled him, shortly before the pilgrimage began in September. In Mecca, Hurgronje presented himself as a Muslim student named Abd. Ghafur and joined the circle of students of Sheikh Ahmad Zayni Dahlan (1817-1886) who was a great scholar of the time in Mecca. Later, he published his *Het Mekaansche Fest* on the history and social realities of Mecca based on his observations and written and oral sources taught by Sheikh Dahlan. The second chapter of the book deals with the living conditions of Indonesians in Mecca, especially about a small colony of Aceh, which can be seen as a starting point for his further studies of Aceh.<sup>25</sup>

In the Holy Land, Hurgronje investigated the circumstances and attitudes of Indonesian pilgrims and settlers to keep them away from having unwanted relationships and activities, especially regarding freedom in politics and religion.<sup>26</sup> In other words, the suspicion of the Dutch government by sending Snouck to Mecca was because Mecca was not only a place to perform the pilgrimage but also a place to exchange ideas and socialize with other pilgrims from around the world. Through the pilgrimage, the horizons or

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<sup>24</sup> G.F. Pijper, *Beberapa Studi Tentang Sejarah Islam Di Indonesia 1900-1950 [Studien over de Geschiedenis van de Islam in Indonesia 1900-1950]*, trans. Tudjimah and Jessy Agusdin (Jakarta, Indonesia: UI Press, 1984), 7–8.

<sup>25</sup> Dietrich Jung, “Islam as a Problem’: Dutch Religious Politics in the East Indies,” *Review of Religious Research* 51, no. 3 (2010): 288–301; Auliya Ridwan, “Colonial Politics of Power and Cultural Identity Development of Islamic Education Vis-À-Vis European Education in The Netherlands East Indies Periods,” *Marâji’: Jurnal Studi Keislaman* 2, no. 2 (2016): 227–47; Muchamad Ali Safa’at, “Islam and the State in Indonesia from a Legal Perspective,” *Multiple Secularities*, 2019, <https://www.multiple-secularities.de/publications/companion/islam-and-the-state-in-indonesia-from-a-legal-perspective/>.

<sup>26</sup> Noer, *Administrasi Islam Di Indonesia [Islamic Administration in Indonesia]*, 11.

knowledge of Indonesian Muslims could at least develop and from which could lead to rebellion. Hence, the Dutch government had a strong reason to monopolize the hajj management.<sup>27</sup> In fact, behind Hurgonje's success in studying Islam in the Hijaz was also inseparable from the role of colonial bureaucratic informants, such as Aboe Bakar (1854-1914), Hasan Moestapa from Garut (1852-1940) and Sayyid Uthman from Batavia (1822-1914)<sup>28</sup>, in communicating their local knowledge through letters they sent to. Due to the furore caused by the French Consul, Hurgonje stayed only for seven months in Mecca and had to leave the city before his research was completed. His *Het Mekaansche Fest*, consisting of two volumes, describes the life of slavery, kinship, and religious teachings.

Long before Hurgronje's research in Mecca, in 1859, the colonial government once limited and strictly controlled the number of pilgrims who were considered fanatical because the Dutch were worried about the possibility of the rebellion caused by the people who just returned from the pilgrimage.<sup>29</sup> Before that year, the Dutch did not limit the number of pilgrims to Mecca. The strict control imposed by the colonial regime required the pilgrims to purchase departure documents which were priced too high as a deterrent to

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<sup>27</sup> Noer, 120–22.

<sup>28</sup> Georg Stauth, "Slave Trade, Multiculturalism and Islam in Colonial Singapore: A Sociological Note on Christian Snouck Hurgronje's 1891 Article on Slave Trade in Singapore," *Southeast Asian Journal of Social Science* 20, no. 1 (1992): 67–79; Michael F. Laffan, "Writing from the Colonial Margin: The Letters of Aboe Bakar Djajadiningrat to Christiaan Snouck Hurgronje," *Indonesia and the Malay World* 31, no. 91 (2003): 356–80, <https://doi.org/10.1080/1363981042000188646>; Jajat Burhanudin, "Islam Dan Kolonialisme: Sayyid Usman Dan Islam Di Indonesia Masa Penjajahan [Islam and Colonialism: Sayyid Usman and Islam in Colonial Indonesia]," *Studia Islamika* 22, no. 1 (2015): 185–208, <https://doi.org/10.15408/sdi.v1i1.1391>; Jajang A. Rohmana, "Persahabatan Penjajah Dan Bangsa Jajahan Di Hindia Belanda: C. Snouck Hurgronje Dan Haji Hasan Mustapa [Friendship of Colonizers and Colonies in the Dutch East Indies: C. Snouck Hurgronje and Haji Hasan Mustapa]," *Afkaruna: Indonesian Interdisciplinary Journal of Islamic Studies* 12, no. 2 (2016): 144–68, <https://doi.org/10.18196/afkaruna.v12i2.2788>.

<sup>29</sup> Suminto, *Politik Islam Hindia Belanda [Dutch East Indies Islamic Politics]*, 10.

make it difficult for them to go to Mecca. Even violators who did not have the permit, but were still able to do hajj, were required to pay double upon their arrival from Mecca.<sup>30</sup> Hurgronje suggested the Dutch government end this policy, not to interfere with Indonesians' religious affairs which were against individual rights which were guaranteed by the Dutch constitution.<sup>31</sup>

With this background, Snouck Hurgronje was appointed to become advisor in the newly formed Office for Arab and Indigenous Affairs in Batavia. He held this position from 1889 to 1906. Besides having in-depth knowledge of Indonesian Islam which he gained from when he settled in Mecca, Hurgronje steered Dutch policies on Islam to a path that can be said to be successful. This was evidenced when the government sent Hurgronje to Aceh to study the role of Islam in the ongoing war there, which in turn could be used to conquer Aceh.<sup>32</sup> The implementation of this task was in line with the war that cost a lot of money and killed many people for sixteen years. However, historians such as Leuser emphasize that it proves

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<sup>30</sup> Alwi Shihab, *Membendung Arus: Respons Gerakan Muhammadiyah Terhadap Penetrasi Misi Kristen Di Indonesia [Damping the Tide: The Response of the Muhammadiyah Movement to the Penetration of Christian Missions in Indonesia]* (Bandung, Indonesia: Mizan, 1998), 68.

<sup>31</sup> Montgomery McFate, "A Military Anthropologist Looks at Islamic Insurgency in Aceh," *Orbis* 62, no. 4 (2018): 632–54, <https://doi.org/10.1016/j.orbis.2018.08.007>; Montgomery McFate, "Useful Knowledge: Snouck Hurgronje and Islamic Insurgency in Aceh," *Orbis* 63, no. 3 (2019): 416–39, <https://doi.org/10.1016/j.orbis.2019.05.005>; Ajid Thohir et al., "The Struggle of Freemasonry and Islamic Ideology in the Twentieth Century during Colonialization in Indonesia," *Heliyon* 7, no. 10 (2021): e08237, <https://doi.org/10.1016/j.heliyon.2021.e08237>.

<sup>32</sup> Benda, "Christiaan Snouck Hurgronje and the Foundations of Dutch Islamic Policy in Indonesia"; Jajang A. Rohmana, "Colonial Informants and the Acehese-Dutch War: Haji Hasan Mustapa's Response to Teuku Umar's Collaboration with the Dutch Authorities in the East Indies," *Indonesia and the Malay World* 49, no. 143 (2021): 63–81, <https://doi.org/10.1080/13639811.2021.1855022>.

that the Dutch-Aceh War did not actually end in 1913, as many historians suggest, but continued throughout the colonial period.<sup>33</sup>

As in Mecca, he became an indigenous citizen and remained there from July 1891 to February 1892 in Aceh by observing the lives of the Acehnese. During his stay there, he collected material related to Aceh's culture, religion, language, politics, and economic relations, which his investigations were published in two books. Hurgonje's arrival resulted in ending the Aceh War in a relatively short time, as well as producing his second book *De Atjehers* which formulated the politics of separation between *adat* represented by *ulebalangs* and religion represented by *ulama*, so that they could be manipulated as a strategy of conquest.<sup>34</sup> Among Hurgonje's advice to the Dutch government after visiting Mecca was that Islam as a religion did not harm the state, but Islam as a political ideology was dangerous. To that end, the Dutch had to consolidate political control, provide economic reconstruction, improve education and assimilate the local population into Dutch society by referring to *De Atjehers*.<sup>35</sup>

In the introduction to *De Atjehers*, Hurgonje strongly criticized the previous colonial policies that led to many rebellions, so he who understood the context of Aceh could bring it into a civilized

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<sup>33</sup> Matthew Minarchek, "Creating Environmental Subjects: Conservation as Counter-Insurgency in Aceh, Indonesia, 1925–1940," *Political Geography* 81 (2020): 102189, <https://doi.org/10.1016/j.polgeo.2020.102189>; Petra Groen, "Colonial Warfare and Military Ethics in the Netherlands East Indies, 1816–1941," *Journal of Genocide Research* 14, no. 3–4 (2012): 277–96, <https://doi.org/10.1080/14623528.2012.719365>.

<sup>34</sup> Christiaan Snouck Hurgronje, *Islam Di Hindia Belanda [Islam in Nederlands-Indie]*, trans. S. Gunawan (Jakarta, Indonesia: Bhratara Karya Aksara, 1983), 3–4; Edwin Wieringa, "The Dream of the King and the Holy War against the Dutch: The 'Kôteubah' of the Acehnese Epic, 'Hikayat Prang Gômpeuni,'" *Bulletin of the School of Oriental and African Studies, University of London* 61, no. 2 (1998): 298–308.

<sup>35</sup> McFate, "Useful Knowledge"; Arnout H. C. van der Meer, "Rituals and Power: Cross-Cultural Exchange and the Contestation of Colonial Hegemony in Indonesia," in *Cross-Cultural Exchange and the Colonial Imaginary*, ed. H. Hazel Hahn, Global Encounters via Southeast Asia (NUS Press, 2019), 75–104, <https://doi.org/10.2307/j.ctv136c5w0.8>.

community. He began to reform all forms of resistance mobilized by local *ulama* by leading them into an advanced society, whose first step was to win the war in Aceh. Hurgronje adjusted his policy recommendations in accordance with social and political facts on the ground, by which the Dutch were able to reduce violence and end the Aceh war. His political strategy was essentially built on the intrinsically secular assumption of modernity. Through the lens of a linear modernization process, Hurgronje conceptualized the relationship between religion and modernity as the more modern a society becomes, the less religious it is. Based on this assumption, his suggestion to separate religious and political spaces was an important step in modernizing the colony. After being relegated to a non-political space and competing with the secular knowledge propagated by the new education system, Islam was increasingly losing its social relevance.<sup>36</sup>

*De Atjehers*, like *Het Mekaansche Fest*, was the result of Hurgronje's project to know Islam within the framework of the colonial agenda. In *De Atjehers* Hurgronje provides an extensive discussion on various topics related to the Acehnese. The first volume is dedicated to describing the socio-political and cultural life of the Acehnese. He outlines, for example, the structure of society, forms of government and administration of the court, and the nature of their social life in which *adat* played a regulatory function. In the second volume, he focuses on intellectual traditions and religious life, Islamic learning and science, literature, and Acehnese religious beliefs and practices.<sup>37</sup>

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<sup>36</sup> Jung, "Islam as a Problem"; Fachrizal A. Halim, "Contestation of the Oath Procedure in Colonial Indonesia's Islamic Court," *Indonesia and the Malay World* 41, no. 119 (2013): 14–28, <https://doi.org/10.1080/13639811.2012.750098>.

<sup>37</sup> Elsbeth Locher-Scholten, "Dutch Expansion in the Indonesian Archipelago around 1900 and the Imperialism Debate," *Journal of Southeast Asian Studies* 25, no. 1 (1994): 91–111; Jajat Burhanudin, "The Dutch Colonial Policy on Islam: Reading the

As in Java, Hurgronje again observed how little Islamic doctrine the Acehnese sought in Mecca influenced their daily life. This point led Hurgronje to what has been noted as the supremacy of *adat* over sharia. In Aceh, a region where the doctrine of *jihad* had taken root more deeply over the centuries, Islam had little influence on the governance of Acehnese social and political affairs. For him, although the *ulama* educated in *adat* doctrine (customary law) and Islamic law they should take their place side by side in a good state, where the majority of people's life was governed by *adat*. Therefore, Islam would not be able to influence their life.<sup>38</sup>

From that fact, Hurgronje firmly believed that *adat* and Islam were two distinct and separate domains, in terms of cultural, social and political fields. *Adat*-Islamic relations showed tension and conflict, as evidenced in the social and political relations prevailing at the time between *uleebalang* and *ulama*, holders of *adat* and sharia, respectively. This difference, which later became the legacy of orientalist studies of Islam in Southeast Asia, had strong political consequences. The Islamic colonial project, led by Hurgronje, was based on the assumption of the existence of these two separate entities in the East Indies. Hurgronje then recommended to the colonial government to side with the *uleebalang*, respecting them so that they accepted the Dutch authority. Hurgronje's recommendation received broad support. The Dutch military expedition under the

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Intellectual Journey of Snouck Hurgronje," *Al-Jami'ah: Journal of Islamic Studies* 52, no. 1 (2014): 25–58, <https://doi.org/10.14421/ajis.2014.521.25-58>; David Kloos, "A Crazy State: Violence, Psychiatry, and Colonialism in Aceh, Indonesia, ca. 1910-1942," *Bijdragen Tot de Taal-, Land- En Volkenkunde* 170, no. 1 (2014): 25–65.

<sup>38</sup> G. W. J. Drewes, "Snouck Hurgronje and the Study of Islam," *Bijdragen Tot de Taal-, Land- En Volkenkunde* 113, no. 1 (1957): 1–15; Rahmad Alamsyah, Imadah Thoyyibah, and Tri Novianti, "Pengaruh Teori Receptie Dalam Politik Hukum Kolonial Belanda Terhadap Hukum Islam Dan Hukum Adat Dalam Sejarah Hukum Indonesia [The Influence of Receptie Theory in Dutch Colonial Legal Politics on Islamic Law and Customary Law in the History of Indonesian Law]," *PETITA* 3, no. 2 (2021): 343–62, <https://doi.org/10.33373/pta.v3i2.3875>.

command of van Heutsz was successful. The *uleebalang* signed a short declaration (*korte verklaring*), drafted by Snouck Hurgronje, pledging that they would submit to the Dutch East Indies and would comply with all of its instructions.<sup>39</sup>

### **Snouck Hurgronje's Islamic Politics in the *Kantoor voor Inlandsche Zaken***

*Kantoor voor Inlandsche Zaken* was tasked to advise the colonial government against indigenous issues, and since most of the natives were Muslim, Islamic issues naturally became the office's main area of concern. The success of Islamic politics was a key factor to ensure the position of the colonial government because it was understandable that the *Kantoor voor Inlandsche Zaken* was not only seen as the main organization that regulated Islamic political issues but was even the core of the administration of the Dutch East Indies government to determine its policies.<sup>40</sup> Concerning the organization of the Religious Courts, this office provided its considerations regarding the relationship between Islamic law and customary law. When a marriage was carried out in the Islamic way, the inheritance was usually divided according to Islamic law and the management authority was in the hands of the Religious Courts. Likewise, when marriage was carried out according to customary law, the inheritance was also based on it.

When a conflict occurred between the Dutch and the local population, the Netherlands decided to change its focus by trying to establish close relations with *kyai*, *ulama* and other Islamic religious leaders. So, on January 11, 1899, *Kantoor voor Inlandsche Zaken* was

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<sup>39</sup> Burhanudin, "The Dutch Colonial Policy on Islam"; Humar Sidik, "Christiaan Snouck Hurgronje Dalam Dinamika Islam Di Aceh Pada Masa Kolonial Belanda [christiaan Snouck Hurgronje in the Dynamics of Islam in Aceh in the Dutch Colony Time]," *Jurnal Artefak* 7, no. 1 (2020): 31–42, <https://doi.org/10.25157/ja.v7i1.3282>.

<sup>40</sup> Suminto, *Politik Islam Hindia Belanda [Dutch East Indies Islamic Politics]*, 110.

changed to *Adviseur voor Inlandsche en Arabische Zaken*. In 1918, *Kantoor voor Inlandsche Zaken* was again renamed *Bureau van den Regeeringscommisaris voor Inlandsche en Arabische Zaken*. In 1920, two additional advisors, Dr. Hoesein Djajadiningrat (1920-1925) and Dr. B.J.O Schrieke (1920-1924) were appointed to support the advisors. Their appointment was probably due to tensions between the Islamic and nationalist movements at the time. In 1922, the name of the office was changed again to *Het Bureau Van Den Wd. Adviseur Voor Inlandsche Zaken*. It remained so until 1929. In 1929 Ch. O. Van der Plas (1929-1931), the most famous additional advisor of the *Kantoor voor Inlandsche Zaken*, was appointed. There were tensions about placing the *Kantoor voor Inlandsche Zaken* under the control of colonial officials, but in the end, the plan was not implemented and the office remained independent. From 1930, the name changed again to *Het Kantoor voor Inlandsche Zaken*.<sup>41</sup> The name was applied until 1942 until the Japanese army entered from which the name was changed to the *Shumubu* Office led by KH. Hasyim Asy'ari. After the establishment of the government of the Republic of Indonesia in 1945, the Department of Religion was formed where the employees were workers who during the colonial era received education and experience in the *Kantoor voor Inlandse Zaken*.<sup>42</sup> Overall, the name change from first established in 1899 to 1942 did not change its duties and functions.

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<sup>41</sup> Rini Rusyeni, "Fragmented Voices: The Personal Archives of the Advisors of Inlandsche Zaken, 1899-1942" (Master thesis, Leiden, The Netherlands, Leiden University, 2017), <https://hdl.handle.net/1887/49426>.

<sup>42</sup> Pijper, *Beberapa Studi Tentang Sejarah Islam Di Indonesia 1900-1950 [Studien over de Geschiedenis van de Islam in Indonesia 1900-1950]*, 9; Yüksel Sezgin and Mirjam Künkler, "Regulation of 'Religion' and the 'Religious': The Politics of Judicialization and Bureaucratization in India and Indonesia," *Comparative Studies in Society and History* 56, no. 2 (2014): 448-78; Martin Van Bruinessen, "Comparing the Governance of Islam in Turkey and Indonesia," The RSIS Working Paper Series (S. Rajaratnam School of International Studies, 2018), JSTOR, <http://www.jstor.org/stable/resrep19924>.

In this regard, the role played by Snouck Hurgronje was very important. He was a prominent Dutch scholar who dedicated his intellectual capacity to the colonial rule, providing insights to the Dutch government in the formulation of Dutch colonial policies on Islam.<sup>43</sup> To handle this task, he was assisted by Indonesians such as Raden Aboe Bakar<sup>44</sup> and Hasan Moestapa<sup>45</sup> who assisted him in Mecca, the Acehnese Teungko Noerdin<sup>46</sup>, and the Sundanese Atma Djoemena as the keys for Hurgronje to gain local knowledge about Islam. They played the role of genuine informants who gave Hurgronje certain facilities to have access to the inner side of Islam and Muslim's life in the Dutch East Indies.<sup>47</sup> Hurgronje did more than to influence the Islamic policies of the colonial government. In a true sense, he created them and his successors implemented them.<sup>48</sup>

Snouck Hurgronje was the first and most influential adviser to the *Kantoor voor Inlandsche Zaken*. He established the basis of Islamic policy for the Office. He was also the figure who chose the adviser of the *Kantoor voor Inlandsche Zaken* in the period 1906-1937. The second adviser who was also influential was Godard Arend Hazeu (1907-1913 and 1917-1920) who experienced many conflicts with other

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<sup>43</sup> Burhanudin, "The Dutch Colonial Policy on Islam"; Robert Van Niel, "Christiaan Snouck Hurgronje: In Memory of the Centennial of His Birth," *The Journal of Asian Studies* 16, no. 4 (1957): 591–94, <https://doi.org/10.2307/2941641>; Pieter Sjoerd van Koningsveld, "Conversion of European Intellectuals to Islam: The Case of Christiaan Snouck Hurgronje Alias 'Abd al-Ghaffar,'" in *Muslims in Interwar Europe*, ed. Bekim Agai, Umar Ryad, and Mehdi Sajid, A Transcultural Historical Perspective (Brill, 2016), 88–104, <http://www.jstor.org/stable/10.1163/j.ctt1w8h1hd.8>.

<sup>44</sup> Michael Laffan, "Raden Aboe Bakar An Introductory Note Concerning Snouck Hurgronje's Informant in Jeddah (1884-1912)," *Bijdragen Tot de Taal-, Land- En Volkenkunde* 155, no. 4 (1999): 517–42.

<sup>45</sup> Hadji Hasan Moestapa and R.A. Kern, *Over de Gewoonten En Gebruiken Der Soendaneezen*, vol. 5 (Leiden, The Netherlands: Brill, 1946), <http://www.jstor.org/stable/10.1163/j.ctvbnm4jv>.

<sup>46</sup> James T. Siegel, "Si Meuseukin's Wedding," *Indonesia*, no. 22 (1976): 1–8, <https://doi.org/10.2307/3350974>.

<sup>47</sup> Burhanudin, "The Dutch Colonial Policy on Islam."

<sup>48</sup> McFate, "Useful Knowledge."

colonial officials. The third adviser Dr. D.A. Rinkes (1913-1916) also followed his predecessors in running Islamic affairs for the *Kantoor voor Inlandsche Zaken*. He is best known for his advice on the rise of Sarekat Islam in 1912. R.A. Kern was appointed the fourth adviser after Hazeu's resignation (1921-1926), except for 1923. He was an advisor from the *Binnenlandsch Bestuur Department*. E. Gobeë (1923 and 1927-1937) was appointed the fifth adviser who was also from the *Binnenlandsch Bestuur Department*. The final advisor was G.F. Pijper (1937-1942) who had a specialization in the translation of native languages.<sup>49</sup>

With Hurgronje in the government as the first adviser to the *Kantoor voor Inlandsche Zaken*, a new path between colonial rule and Islam was configured. Having more knowledge about Islam based on his experience in Mecca, he used Islam to control Muslims in the colony. He adopted the politics of association to link Muslims and the government. One of his recommendations was to separate religion and politics. He urged the government to monitor *kyai*, *ulama* and Islamic organizations involved in politics and to be friendly to those who were not involved in Islamic politics. Hurgronje tried to distinguish clearly between the ideals and values of Islam and Islam as a political basis. He also suggested that the government should use *adat* institutions to control the indigenous population. Through them, these natives were able to form the traditionally strongest barrier against Islam. Finally, he advised the government to be involved in educating the indigenous population, starting from the nation's upper classes by orienting the western system. Hurgronje argued that Western education was the most convincing way to reduce and ultimately defeat the influence of Islam in Indonesia. These three pieces of advice became the basic

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<sup>49</sup> Rusyeni, "Fragmented Voices."

foundation for the *Kantoor voor Inlandsche Zaken* officials in carrying out their duties.<sup>50</sup>

For Hurgronje, the enemy of colonialism was not Islam as a religion, but Islam as a political doctrine. He did not turn a blind eye to the fact that Islam often posed a danger to the Dutch rule. Facing such a field, Hurgronje distinguished Islam in the sense of "worship" with Islam as a "social and political force". In this case, he divided the problem of Islam into three categories, namely: first, the field of pure religion or worship; second, the social sector<sup>51</sup>; and third, the political field; where each field demanded a different alternative solution. This recipe came to be known as Political Islam (*Islam politiek*), or the colonial government's policy in dealing with Islamic issues in Indonesia. Furthermore, in his lecture in the NIBA (*Nederlandsch-Indische Bestuursacademie*) in 1911, Snouck Hurgronje gave several explanations regarding his Islamic politics: (1) regarding religious dogma and the commandments of pure religious law, the government should be neutral; (2) the issue of marriage and inheritance in Islam should be respected; (3) no form of pan-Islamism should be accepted by European powers.<sup>52</sup>

From this policy, in mid-1937, the colonial government announced the idea of transferring the authority to regulate inheritance from the Religious Courts to the District Courts. This

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<sup>50</sup> Rusyeni.

<sup>51</sup> This politics of separation is called by Kernkamp as *Splittingsstheorie*. For him, the issue of marriage and inheritance according to Western understanding belongs to the second category, but because Muslims view this part as so important, in practice it is considered to be in the first part. Pradjarta Dirdjosanjoto, *Memelihara Umat: Kiai Pesantren-Kiai Langgar Di Jawa [Caring for the People: Kiai in Pesantren and Langgar in Java]* (Yogyakarta, Indonesia: LKiS, 1999), 47; Justus M. van der Kroef, "The Role of Islam in Indonesian Nationalism and Politics," *The Western Political Quarterly* 11, no. 1 (1958): 33–54, <https://doi.org/10.2307/443571>; W. J. Kernkamp, "Regeering En Islam," in *Daar Werd Wat Groots Verricht. Nederlandsch-Indie in de XXste Eeuw* (Amsterdam, the Netherlands: Elsevier, 1941), 192–93.

<sup>52</sup> Suminto, *Politik Islam Hindia Belanda [Dutch East Indies Islamic Politics]*, 11–13.

news aroused anger among Muslims. Reaction to the transfer of inheritance arrangements also came from the *penghulu*, with the establishment of the *penghulu* association in Solo on May 16, 1937, in which this organization expressed objections to the transfer of inheritance issues from the Religious Courts to the District Courts, arguing that Islamic matters could not be decided by the changing customary law.<sup>53</sup> In addition to the *penghulu* organization, the decision of the PSII congress in Bandung in July 1937 also emphasized that all matters relating to Islam should be left to Islam itself. Moreover, this decision explained that if the government still considered it necessary to intervene, it had to appoint members of the Religious Courts from people who were truly experts in Islam. If not, the inheritance law which was transferred from the Religious Courts to the District Courts must be returned.<sup>54</sup> On the contrary, for the Dutch, the reduction of authority of the religious courts was not a serious problem.<sup>55</sup>

### **Behind the Implementation of Customary Law on Waris on Hukum Islam**

Starting from Hugronje's Reception theory: that in a civil case between Muslim fellows, the case will be resolved by a religious judge if the situation has been accepted by their customary law and as long as it is not determined by another ordinance. In its implementation, the inheritance competence of Religious Courts was transferred to the District Courts. This policy did not come by itself but through an in-depth study conducted by Hugronje by collecting

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<sup>53</sup> Suminto, 31.

<sup>54</sup> Suminto, 32.

<sup>55</sup> Christiaan Snouck Hurgronje, *Kumpulan Karangan Snouck Hurgronje VIII: Tulisan-Tulisan Tentang Islam Di Hindia Belanda (Jajaran Pertama) [Verspreide Geschriften (Gesammelte Schriften)]*, trans. Soedarsono Soekarno (Jakarta, Indonesia: INIS, 1993), 42.

materials, compiling and codifying customs carefully from various ethnic groups in the archipelago, and immersing himself in society.<sup>56</sup> So, Islamic wisdom offered by Hurgronje was born logically from his immersion in Indonesian society where customary law was more dominant than Islamic law.

Minangkabau and Aceh showed that the life of matrilineal customs was more developed than the patrilineal or mixed. For example, women were prohibited to move to another house after they married, houses were inherited to women, and husbands were required to live in their wives' houses and so on. For Hurgronje, both the matrilineal and the patrilineal customs must be protected as long as they could adapt to the development of society. The matrilineal inheritance law was already in effect before Islamic law was enacted in the area. Likewise, most prohibitions in marriage, especially in Aceh, came from customary laws and a few were from Islamic law. For this reason, it was not recommended to follow the wishes of the ulama (religious representatives) to abolish or leave customs because they were stronger than Islam. Afterwards, the Dutch organized customary law by referring its definition and usage to Dutch law.<sup>57</sup>

Moreover, property in the distribution of inheritance in Minangkabau was divided into two categories: from the ancestors and their works. Ancestral property, usually land, houses, etc., should not be inherited by anyone outside the mother's family. This semi-sacred property could not be sold or pledged except in extreme emergencies, such as for the marriage of unmarried/virgin girls, paying funerals, redeeming debts, repairing traditional houses. All of

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<sup>56</sup> Benda, *Bulan Sabit Dan Matahari Terbit: Islam Indonesia Pada Masa Pendudukan Jepang [The Crescent and the Rising Sun: Indonesian Islam under the Japanese Occupation 1942-1945]*, 93.

<sup>57</sup> Christiaan Snouck Hurgronje, *Kumpulan Karangan Snouck Hurgronje VIII: Tulisan-Tulisan Tentang Islam Di Hindia Belanda (Jajaran Pertama) [Verspreide Geschriften (Gesammelte Schriften)]*, 17.

these could only be done by consensus of all adult family members and in consultation with the *penghulu*. The heir had the right to use it but did not have the right to inherit it or be passed on to his children. The real problem as far as inheritance was concerned was the issue of self-acquired property, usually called low inheritance. The question is whether one needed to make a grant to pass the property on to one's children. According to *adat*, if he did not make a grant, then his mother's family had legal rights to the property. But according to *sharia*, the priority should be given to the child himself, and thus grants were not necessary or prohibited from inheriting a property that was not following religious law. So, the division of self-owned property was completely dependent on the will of the owner, even without a will from the deceased, the children of the sister or other members of the mother's family did not have the right to claim the property.<sup>58</sup>

Ethics and law are a unit to determine the meaning of religious teachings and their implementation. For example, Islamic inheritance law which is regulated in detail should be implemented in an Islamic society, but some areas carry out inheritance laws according to local conditions and old habits. Similarly, the Muslims in Malabar also enforce the law of inheritance in a matriarchal manner, although they also know the basic rules and other religious rituals from their sources.<sup>59</sup> This is different from the case of marriage and inheritance which are submitted to the Islamic Emirate, the council of scholars. Regarding the position of customary law, it is still considered important because its influence is stronger than Islamic law itself.<sup>60</sup>

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<sup>58</sup> Taufik Abdullah, "Adat and Islam: An Examination of Conflict in Minangkabau," *Indonesia*, no. 2 (1966): 1–24, <https://doi.org/10.2307/3350753>.

<sup>59</sup> Christiaan Snouck Hurgronje, *Kumpulan Karangan Snouck Hurgronje VIII: Tulisan-Tulisan Tentang Islam Di Hindia Belanda (Jajaran Pertama) [Verspreide Geschriften (Gesammelte Schriften)]*, 16.

<sup>60</sup> Christiaan Snouck Hurgronje, 17–18.

In other words, the *qadi* and its staff carry out justice according to Islamic law, but in practice, the decision is limited to legal powers that are not dared to be exceeded because it will touch on family and inheritance issues that have been going on, so customs and a sense of justice are the basis for their decisions.<sup>61</sup>

By realistically assessing Indonesian society, Hurgronje went on to show that Indonesians, like other Muslims, were not solely loyal to their religion. He recognized the importance of *adat*, or *adat* law and the limits imposed on the influence of Islam on the social and legal life of its adherents in Indonesia. In this case, Indonesian Muslims, as he puts it, were only in rank and not in the type of Muslim fellows in the Middle East. Wherever and whenever, Islamic law must conform itself with the customs and habits, as well as the political realities, which govern the lives of its adherents. Thus, no matter how much power is exercised by independent Islamic judges or religious teachers, in worldly and political matters the Indonesian people remain subject to the guidance of their *adat* and remain obedient to traditional political authorities.<sup>62</sup> The dualism between *adat* and religious law within traditional boundaries was rarely given a precise formulation, before the enactment of the 1929 *Staatsblad* No. 221 and the 1937 *Staatsblad* No. 116. The regulation weakened the *penghulu* of the religious court who was deemed competent to decide matters of family and inheritance law requiring the approval of state judges in the indigenous courts. In addition, the decision to use Islamic law had no effect if it was not following customary law.<sup>63</sup>

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<sup>61</sup> Christiaan Snouck Hurgronje, 81.

<sup>62</sup> Benda, *Bulan Sabit Dan Matahari Terbit: Islam Indonesia Pada Masa Pendudukan Jepang [The Crescent and the Rising Sun: Indonesian Islam under the Japanese Occupation 1942-1945]*, 42.

<sup>63</sup> Benda, 113.

## CONCLUSION

The enactment of the law in the Dutch East Indies had long referred to their respective religions, Hindus followed Hindu teachings, Muslims used Islamic law, Christians used Christian law, and so on. However, after Hurgronje arrived in the Dutch East Indies as a colonial adviser, he observed the supremacy of *adat* over sharia. In Aceh and Minangkabau communities, for example, although *uleebalang* and ulama lived side by side with their communities, the majority of their lives were governed predominantly by customary law rather than Islamic law. For example, matrilineal inheritance had indeed been applied in that place, where most of the people applied traditional inheritance procedures, while the minority was guided by Islamic law. Some areas carried out their inheritance laws according to local conditions and old customs even though they were Muslim. Muslims in Malabar, for example, also applied matriarchal inheritance. Even on the issue of inheritance handed over to Surambi Masjid, the decision was based on customary law and a sense of justice so as not to offend existing customs. So, customary law was more down to earth and was often accepted by the community. Islamic law could be applied when it had been approved by customary law. Over time, the implementation of this concept was legislated in the 1929 *Staatsblad* No. 221, which in 1937 transferred the inheritance competence of the Religious Court to the District Court. Besides, inheritance was not part of the authority of religion, it was also not fully accepted by customary law.

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