

## ARTICLE

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# Indonesian Customary Law and European Colonialism: A Comparative Analysis on Adat Law

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*This paper argues that what Van Vollenhoven did in dealing with adat law was in fact part and parcel of the colonial policy to exploit the colony for the benefit of the Dutch and had nothing to do with being 'a good Samaritan' by saving 'the other' legal culture. What he did also was mainly triggered by what I refer to as cultural anxiety. His campaign to promote adat law was intensified by his fear of the rise of Islamic identity that would be used as a rebellious ideology by the people of Indonesia to fight against the Dutch. Furthermore, I argue that Van Vollenhoven's intellectual background, heavily influenced by European legal romanticism, had intensified his advocacy to promote adat law in Indonesia.*

### Keywords

Adat Law, Colonialism, NEI, Unification, Codification, Legal Pluralism, Romanticism, Culturalist, Legal Positivism

## I. Introduction

My first encounter with the complexity of the term 'adat mediated through Islamic

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jurisprudence. As I was a student at *pesantren* (Islamic boarding school), studying Islamic jurisprudence was mandatory. For anyone who has learned this subject, the term '*adat*' must be very familiar. It is one of the many sources of Islamic law. The ultimate source of law in Islam, no doubt, is Al-Qur'an, a holy text from which Muslim jurists extract laws. Because Al-Quran does not contain any concrete rule and contains mainly general principles of value and morality, however the possibility for other sources of law to rise is open. Along with *ijtihad* (rational reasoning) and *ijma* (consensus), *adat* stands in Islamic jurisprudence as an important source of law so long as it does not contradict the primary source (Al-Qur'an). In this last regard, there is a common saying that: '*al- 'adah muhakamah*' (*adat* could become law).<sup>1</sup> The whole complexity of learning Islamic jurisprudence would, for me, later prove to be very important to the studies of *adat* in an Indonesian law context.

Analyzing *adat* law (*adatrecht/hukum adat*—in this paper the author will use the term '*adat law*' instead of its Dutch term '*adatrecht*') is not an easy task. Not only do we have to deal with a massive and long intellectual tradition made both by jurists and social scientists, but also should we account for a range of diverse systems of *adat* law. If we take a classification of *adat* laws, for example, made by Cornelis Van Vollenhoven, we have to deal with nineteen areas of law or 'jural communities'<sup>2</sup> such as *adat* Aceh, Minangkabau, Central and East Java, Sundanese (West Java), Minahasa, Moluccas, etc.<sup>3</sup> Under these circumstances and in my opinion, if we strictly hold comparative legal and 'intellectual policy,' no single scholar, even if he is an Indonesian, can be an expert of *adat* law. He or she must be an expert of a particular *adat* law like, e.g., *adat* law of Aceh, Moluccas or Java. The reason being that no one can speak nineteen languages and understand all social and cultural aspects embedded in it. In this regard, I want to say that *adat* is a part of me and not 'the other.' However, it has also simultaneously become part of 'the other'.

*Adat* law is a kind of "Indonesian customary law." However, the matter is not as clear and distinct as that. *Adat* in Indonesian context always comes with an attribution; it can be *adat* Sunda, *adat* Jawa, *adat* Aceh, *adat* Minangkabau, *adat* Sulawesi, etc. There is no such thing called '*adat* Indonesia.' The reason is because not only was *adat* as a legal discipline established by Dutch scholars long before Indonesia was created as a nation-state, but also because these *adats* essentially always take part in and integrate with

<sup>1</sup> For details on the principle of Islamic Jurisprudence, see MD. HASHIM KAMALI, PRINCIPLE OF ISLAMIC JURISPRUDENCE (1991).

<sup>2</sup> This was a term translated from Dutch term '*rechtsgemeenschappen*.' J. F. Holleman uses this term in his translation of Van Vollenhoven's works. See VAN VOLLENHOVEN ON INDONESIAN ADAT LAW (J. F. Holleman ed., J. F. Holleman et al. trans., 1981).

<sup>3</sup> Cornelis Van Vollenhoven, *The Law Area*, *supra* note 2, at 41-53.