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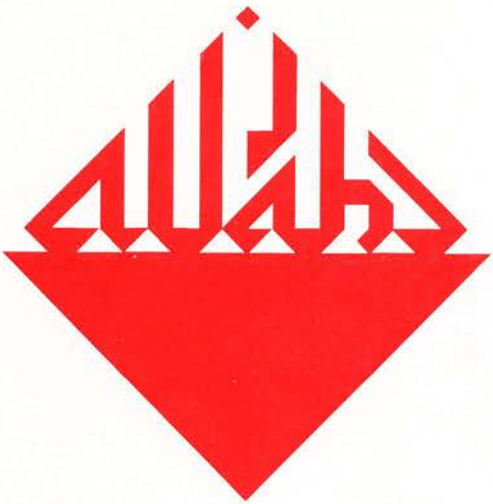

THE ROLE OF ISLAMIC STUDENT GROUPS
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THE CASE OF *PANGULU* IN JAVA
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Muhamad Hisyam

Islam and Dutch Colonial Administration: The Case of *Pangulu* in Java

Abstraksi: Pangulu, *juga sering disebut* Pangulon, *merupakan institusi Islam di Jawa yang secara tradisional telah ada, tepatnya ketika agama ini secara formal telah terintegrasi ke dalam kehidupan kenegaraan di akhir abad ke-15. Lembaga ini dipimpin seorang* pangulu, *atau dalam bahasa Indonesia penghulu.* Pangulu *merupakan pelembagaan konsep* qadi *dalam fikih Islam, meskipun dalam praktiknya otoritas* pangulu *lebih luas dari* qadi. *Sejalan dengan konsep fikih, otoritas* pangulu *didasarkan atas* tauliyah *kepala negara.*

Sejak kedatangan Belanda di akhir abad ke-16, dan secara gradual menguasai Jawa, lembaga tradisional keagamaan ini tetap eksis, dan kedudukan pangulu *tetap independen dari kekuasaan pemerintah jajahan, meskipun, kebijaksanaan umum pemerintahan dalam bidang hukum berusaha menerapkan hukum dan peradilan Eropa. Alasan mempertahankan independensi* pangulu *dari campur tangan kolonial adalah bahwa lembaga ini berkaitan dengan Islam, di mana pemerintah kolonial memang bersikap independen. Akan tetapi, mempertimbangkan fakta bahwa* pangulu *ternyata berpengaruh kuat terhadap pelaksanaan tertib hukum di masyarakat, maka pada 1882 pemerintah kolonial Belanda melakukan reorganisasi kelembagaan* pangulu. *Selain itu, reorganisasi juga dilakukan karena terdapat kekacauan administrasi, terutama menyusul pendirian lembaga peradilan* Lanraad *oleh Belanda.*

Reorganisasi di atas sekaligus memasukkan pangulu *dan lembaga* pangulon *ke dalam administrasi kolonial, dan mengubah pengadilan* pangulu *menjadi* Priesteraad *atau Pengadilan Pendeta. Pendirian* Priesteraad *kemudian ternyata mengundang kontroversi. Hal ini terutama berkenaan dengan fakta bahwa dalam Islam tidak ada lembaga kependetaan, dan juga dengan* tauliyah *pangulu. Soal yang pertama selesai begitu saja dengan diterjemah-*

kannya Priesteraad menjadi Raad Agama (Pengadilan Agama). Soal yang kedua lebih alot karena menyangkut perpindahan tauliyah pangulu dari penguasa pribumi yang Muslim ke penguasa kolonial Belanda yang dianggap kafir. Namun begitu, kontroversi ini pun segera berakhir, karena doktrin fikih sendiri ternyata membolehkannya.

Keputusan Kerajaan (Koninklijk Besluit) yang menjadi dasar berdirinya Raad Agama tidak menjelaskan batas-batas wewenang pengadilan ini. Mahkamah dengan hakim jamak juga menjadi masalah, sebab sebelumnya pangulu adalah hakim tunggal. Lebih dari itu, inkorporasi lembaga pangulu ke dalam administrasi kolonial tidak disertai dengan pemberian anggaran belanja oleh pemerintah kolonial, baik untuk operasi kantor pangadilan maupun untuk gaji pangulu dan pegawai-pegawainya. Dengan demikian, Raad Agama berdiri di atas dua pijakan berbeda: administrasi kolonial dan kebiasaan pribumi. Maka, inkorporasi yang dijanjikan untuk tujuan memperbaiki kondisi lembaga pangulu, dalam kenyataannya, hanyalah menjadi sarana kontrol pemerintah.

Bersamaan dengan itu, muncul pula pergerakan modern Islam yang kritis terhadap keberadaan Raad Agama ini. Kritik terhadap kepincangan Raad Agama, baik yang datang dari lingkungan dalam pangulu sendiri maupun dari organisasi pergerakan modern Islam, mendapat tanggapan positif dari pemerintah. Atas rekomendasi sebuah komisi perbaikan Raad Agama yang dibentuk pemerintah pada 1922, Raad Agama akan dihapus dan diubah menjadi Penghoeloe Gereecht atau Mahkamah Penghulu, di mana pangulu akan menjadi hakim tunggal dan pemerintah akan menggaji mereka dan membiayai operasi kantor ini. Di samping itu, Hof voor Islamitische Zaken atau Mahkamah Islam Tinggi sebagai pengadilan banding juga akan didirikan. Tetapi rekomendasi yang telah diordonansikan pada 1931 ini tidak dapat dijalankan karena alasan krisis ekonomi. Hanya Mahkamah Islam Tinggi saja yang dijalankan.

Sementara perbaikan lembaga pangulu tidak dapat berjalan, berkembang studi hukum adat yang berpengaruh sangat kuat terhadap kebijakan pemerintah kolonial. Berkat pengaruh studi inilah pada 1937, ketika para pengulu masih mengharap Poenghulu-Gerecht dapat diwujudkan, yang terjadi justru pengurangan wewenang pangulu untuk mengadili perkara waris umat Islam. Kewenangan tersebut sejak 1937 dipindahkan kepada Landraad, dan hukum adat dijadikan landasan bagi pembagian waris. Para pangulu tentu saja sangat kecewa terhadap perubahan ini. Maka mereka berjuang melalui organisasi yang didirikan, Perhimpunan Penghulu dan Pegawainya, meski usaha itu tidak pernah berbuah bahkan sampai kekuasaan Belanda berakhir di Indonesia pada 1942.

Muhamad Hisyam

Islam and Dutch Colonial Administration: The Case of *Pangulu* in Java

خلاصة: يعد البانجولو (pangulu)، وقد يقال عنه بانجولون (pangulon)، من المؤسسات الإسلامية بجاوة الموجودة قديما وبالتحديد عندما دخل الإسلام رسميا فى الحياة السياسية فى أواخر القرن الخامس عشر للميلاد، وكان يرأس المؤسسة رجل هو البانجولو أو باللغة الإندونيسية الحديثة بينجهولو (penghulu)، وقد نشأ ذلك من مفهوم القاضى فى الفقه الإسلامى، على الرغم من أنه على مستوى الممارسة العملية يكون للبانجولو سلطات أكثر وأوسع من القاضى، ومتمشيا مع الشروط الفقهية يتولى البانجولو منصبه بتفويض من رئيس الدولة.

وفيما بعد مجئ الهولنديين فى أواخر القرن السادس عشر للميلاد وفرضوا بالتدريج سيطرتهم على جاوه كلها لم تزل هذه المؤسسة تحتفظ بمكانتها مستقلة عن الحكومة الاستعمارية على الرغم من السياسات العامة التى تفرضها الحكومة فى مجال التشريع تحاول أن تطبق النظام الأوربى، وكان الباعث لبقاء هذه المؤسسة محتفظة باستقلاليتها كونها مرتبطا بالإسلام، إذ حاولت الحكومة الاستعمارية أن تتخذ موقفا محايدا تجاهه. بيد أنه نظرا لهذه الحقيقة وهى أن البانجولو له أثر كبير على المحافظة على احترام القانون لدى المجتمع فقد قامت الحكومة الاستعمارية سنة ١٨٨٢ م بإعادة نظام المؤسسة، علاوة على الفوضى الإدارى الموجود على أثر قيام هولندا بإنشاء مؤسسة المحكمة (Lanraad).

وكانت هذه الخطوة تفضى بالمؤسسة فى نفس الوقت إلى الوقوع تحت الإدارة الاستعمارية وتحويلها إلى محكمة الرهبان، وقد أثار ذلك جدلا واسع النطاق، مفاده أنه

لا يعرف الإسلام ولا يقر بالرهبنة وأنه لابد للبانجولو التولية من رئيس الدولة، وانتهى الجدل حول القضية الأولى فور تحويل اسم محكمة الرهبان إلى المحكمة الشرعية، وليس الأمر بتلك السهولة فيما يتعلق بالقضية الثانية وهى قضية التولية، إذ لا يصح تحويل التعيين من الحاكم المسلم إلى الحاكم الهولندى الكافر، ومع ذلك فقد انتهى النقاش حول هذا الموضوع بناء على ما ورد فى الفقه الإسلامى من جوازه.

ولم يحدد القرار الملكى الهولندى الذى تم إنشاء المحكمة الشرعية بمقتضاه اختصاصات هذه المحكمة، وقد نشأت مشكلة أخرى تتعلق بالنظام الجماعى للقضاء أعنى المجموعة من القضاة فقد كان النظام القضائى قائما على القاضى الوحيد، علاوة على أن دمج مؤسسة البانجولو فى الإدارة الاستعمارية لم يتعلق دعما ماليا من الميزانية التى تعدها الحكومة الاستعمارية، سواء كان لدعم أعمال الإدارة أم لتوفير رواتب للبانجولو والموظفين لديه، وعلى ذلك فقد قامت الحكومة الشرعية على دعامتين مختلفتين: الإدارة الاستعمارية والتقاليد المحلية، وبالتالى فإن دمج المؤسسة الذى كان الغرض منه تحسين أدائها الإدارى صار مجرد وسيلة للتحكم من جانب الاستعمار.

وفيما سار الأمر على ذلك ظهرت أيضا حركات التحديد الإسلامية التى كانت توجه نقدا لاذعا للمحكمة الشرعية، أبدت الحكومة الاستعمارية تجاهه موقفا إيجابيا، إذ كان موجها للانحراف الذى يقع فيه البانجولو نفسه أم رجال الحركات التجديدية الإسلامية، وبناء على التوصية من لجنة تحسين أداء المحكمة الشرعية المشكلة سنة ١٩٢٢ م تقرر حذف المحكمة الشرعية واستبدالها بمحكمة البانجولو حيث يكون البانجولو قاضيها الوحيد مع ضرورة قيام الحكومة بتوفير ميزانية لإدارتها وزواتب الموظفين، وذلك فى الوقت الذى تُقرر فيه أيضا إنشاء محكمة شرعية عليا لتكون محكمة النقض، بيد أن التوصية بهذا الموضوع تم تقنينه سنة ١٩٣١ م لم يتم تطبيقه نتيجة الأزمة الاقتصادية، وكانت المحكمة الشرعية العليا هى القائمة.

ومع أن تحسين أداء المؤسسة البانجولو لم يتحقق انتشرت الدراسات الخاصة بأحكام العرف والعادات التى كان لها أثر كبير فى سياسات الحكومة الاستعمارية، وبفضل هذه الدراسات فى سنة ١٩٣٧ م وفى الوقت الذى مازال الأمل فيه معقودا على قيام المحكمة البانجولو ظهر على عكس ذلك بحيث تم التقليل من اختصاصات البانجولو وإقصائها عن البت فى قضايا الميراث. وقد أبدى هؤلاء البانجولو بالطبع استياءهم وأنشأوا جمعية لهم هى اتحاد البانجولو وموظفيه من أجل الحصول على حقوقهم، وإن كانت جهودهم فى ذلك لم تكن مثمرة على الإطلاق حتى جلاء هولنداء ونهاية استعمارها على إندونيسيا سنة ١٩٤٢ م.

Fadlullah one of the *fiqh* (Islamic law) writers of Bukhara (d.927 AH./1521 AD.), states that the *qâḍî* (judge) plays a vital role in the administration of the state and the life of community, besides in the transmission of Islamic tradition.[1] His role is and was very significant, and therefore the appointment of the *qâḍî* is the first obligation that should be considered by every government.[2]

In Islam the right to judge was originally vested in the hand of the head of state or *imâm* (Prophet, Caliphs, *wâlîs*). Consequently, the authority of the *qâdî* is based on the delegation of authority and official appointment by the *imâm* (*tauliya*). Without such an appointment, the *qâḍî* has no legitimate authority.

In the Javanese tradition, *qâḍî* was called *pangulu*, or sometimes *pengulu*, meaning head or leader of a religion. This position was established at the beginning of the formation of Islamic states in Java. As in the tradition of Islam, a *pangulu* was appointed by the *imâm*, which was often the sultan. In Java, however, the tasks of the *pangulu* were not strictly limited to the judicial field, but also concerned religious affairs in general.

As far as the *tauliya* is concerned, a problem arose when the Dutch came to Java and gradually dominated the state administration on the whole of the island. The problem related to the validity of the *tauliya* associated with the Dutch, particularly after 1882 when the Dutch ruler established the *Priesterraad*, or priest council, also known as the *Raad Agama*. They demanded that the *pangulu* be appointed by the Dutch ruler, namely the Resident. It was recognized that the Dutch were non-Muslims, while the majority of the ruled people, the Javanese were Muslims. The debate on the validity of the Dutch *tauliya* was soon ended, however, since in fact *fiqh* law allowes it. According to *fiqh* law, the appointment of a tyrannical ruler is valid, even if the ruler is *kâfir* (an infidel), as long as the *qâḍî* can execute the law in the light of moral justice.

This article examines the interaction between Islam and the Dutch East-Indies administration in Java from its formation in the early eighteenth century to the end of Dutch administration in 1942, with respect to religious courts and the role of the *pangulu*. I argue that the interaction between colonial government and the *pangulu* institution rested on the hypothetical proposition that both the colonial ruler and the religious courts needed each other. On one hand, the Dutch viewed that the religious courts should be maintained in order to reduce the possibility of an eruption of an undesirable situa-

tion, such as a rebellion. On the other hand, for the *pangulu*, it was felt that the institution might be lost in the absence of official appointment by the ruling authority.

The General Policy of the Dutch East Indies

In the context of judicial affairs, the general policy of the Dutch East Indies government tended to employ the principle of linking Dutch and indigenous law. In matters of religious law, however, the government wished to make an exception. The *pangulu* continued to hold sway in the Islamic courts, and no other formal indigenous courts were established to serve the Javanese population. Stb. v.N.I. 1829, No. 98 decreed that the *pangulu* together with *jaksa* (public prosecutor), would continue in their function as advisors to the *Residentschapraden* (Residency judges) and *Landraden* in all law suits.[3] Thus, the Dutch policy in this respect continued to follow the same course as that taken under British rule. There was some adjustments in the 1830s, however, when the *pangulu* courts in Java were made subordinate to the colonial *Landraden*, which alone could issue orders to execute contested decisions (*executoire verklaring*).

Broadly speaking, during the nineteenth century, many Dutch officials, whether they were in the Netherlands or in the East Indies, favoured reducing the influence of Islam, hoping that in this way the loyalty of indigenous people to the Dutch authority could be maintained and even expanded. Their aspiration to diminish the influence of Islam was revealed in various ways, including the encouragement of Christianization. This fits into the mental framework prevailing in Europe at that time in which Christianity was held to be superior to Islam. There was a belief that the syncretic tendencies of Indonesian Muslims would make in easier for them to be converted to Christianity.[4]

Inseparable from the efforts by the Dutch to intensify their influence in Indonesian society was the idea that the law should be brought, as much as possible, nearer to the European view, which requires that each law be filed and written down. In the second half of the nineteenth century, the Dutch colonial government appeared to embark on a new course in the field of law, under which the law of the indigenous population had to make way for a European legal system. This course, which was filed under the label "*de bewuste rechtpolitiek*" or the conscious legal policy, was based on the value judgement that European law was much better than the law existed

in Indonesia. In this context, the Dutch government in 1854 installed a commission and appointed S. van Oud Haarlem, Ll.M. to chair it. His main assignment was to formulate a constitution giving special consideration to tackling a situation of state emergency in the Netherlands East Indies. In a memorandum addressed to the Dutch government, Van Oud Haarlem cautioned that the government should consider the possibility of the occurrence of undesirable situations, such as rebellions, were Islamic law to be violated or offence given to the Muslim population. He recommended that they be allowed to keep their own law and usages.[5] This line of thought is reflected in Article 75 of the *Regeerings Reglement* of 1855 that was drafted by the commission. Article 75 states that the government should uphold the rules of Islam in the law, customs, and usages to be applied in lawsuits among the indigenous population, in as far as the law of Islam and its customs and usages did not contradict the common principles of fairness and justice.[6]

This seemed quite clear that the attitude of the Dutch colonial government towards the *pangulu* court continued to vacillate until the closing decades of the nineteenth century. While they recognized the institution of *pangulu*, they still wanted to transpose its authority to a new type of court. Despite wrestling with this dilemma, the Dutch made no attempt to interfere with the organization of Islamic courts in Java and Madura until the 1880s, by which time the colonial authority was more adequately informed about Javanese Islam and *adat*.

There were no clear government regulations in this respect. In fact, the Islamic court performed its function following the time-honoured path established by its traditional character without any involvement on the part of the colonial government. The role of the government was limited to admitting *pangulu* to the established Dutch courts as advisors since they regarded them as experts on Islamic law. Actually, this position caused the *pangulu* to be given a high rank, because they sat in two court institutions, namely as heads of Islamic courts and as advisors to the *Landraad*. The problem was that the dual function of the *pangulu* actually obscured their real status. In various regulations issued during the first half of the nineteenth century, in which the function of the *pangulu* in the native judiciary court system was touched upon, its position remained weak. In 1820, the Governor-General issued a regulation setting out the responsibilities of the *bupati*. This regulation stated that the *bupati* had to

supervise all Islamic affairs, but had to allow the "priests" of Islam an independent position in the administering of matters pertaining to marriage and inheritance following the Javanese convention.[7]

A clearer regulation on this point was issued fifteen year later in 1835. This regulation stipulated that if disputes arose among the Javanese concerning cases pertaining to family, marriage, and inheritance, in which judgement had to be passed in accordance with the law of Islam, such cases should be dealt with by a Muslim "priest" who would have the right of judgement. It stipulated, however, that the civil effects arising from this decision, i.e. execution and/or payment as a consequence of the decision, whould be handled by the Landraad in order to ensure its proper implementation.[8] This regulation obviously eroded the independence of the indigenous Muslims in the execution of their judicial and legal duties. It undertsandable that the Dutch colonial government did not want its interests to be jeopardized by violating the right of indigenous people to perform their duties and observe their laws in accordance with their own principles, but it is also clear that it wished to exercise its own power. The problem was how to allow indigenous people to perform their religious duties and observe their beliefs which could eventually prove dangerous and threaten its authority. This indicates that the policy of the Dutch Colonial Government was not inspired by the interests of the *inlanders*, but by its interest in the perpetuation of its own authority.

Consequently, the ambivalent nature of the Dutch towards the Islamic courts and "*pangulu*-ship" at that time generated perpetual bureaucratic confusion. There was, for example, a decision by the Governor-General in which he revoked a sentence given by the *pangulu* of Lebak (West Java) in 1866. This resulted in a lively discussion, not only among the Muslim leaders, but also among the Dutch. The authority of the *pangulu* was called into question by the case. In 1863, the *pangulu* of Lebak had delivered a judgement in a land ownership case, in which a farmer in Lebak had pawned his land and died before he had paid back the loan. His heirs wished to take the land back and were prepared to repay the loan, but the land holder refused to surrender the land. The *Landraad* of Lebak refused to give permission to execute the verdict of the *Pangulu* Court in this case (*executoire verklaring*) and declared that the *Pangulu* Court had no authority to try that case. An appeal was made to the Attorney General and the Governor-General, and these authorities, as mentioned

above, confirmed the decision of the *Landraad*.[9]

Such instances show that the authority of the *Pangulu* Court continued to be a contentious issue. The peace of mind of the Director of Justice was disturbed by the complications and uncertainties surrounding the function of the *Pangulu* Court. In 1870, the *Hooggerechtshof van Nederlandsch Indië* (The Supreme Court of the Netherlands Indies) issued a regulation, by which the *Landraad* was not permitted to decide whether or not a case fell under the authority of the *Pangulu* Court. It was indeed difficult to exercise control over this court, since there was no regulation concerning its organization, so that theoretically any three *ulama* could join together to establish a religious court.[10]

Priesterraad: Incorporating the *Pangulu* in the Dutch Colonial Administration

Confronting the above confusing situation, the government perceived the necessity to improve the functioning and to systematize the organization of the *Pangulu* Court. The greatest stumbling-block, however, was that no one was sure about what procedure should be followed in issuing such a regulation. All the Residents in Java and Madura were asked for their considerations and suggestions. Likewise the opinions of the Director of Justice, the Director of the Internal Affairs (*Binnenlandsch Bestuur*) and the Advisor for Eastern Languages and Mohammedan Law (*Adviseurs voor Oostersche Talen en het Mohammedansche Regt*): L.W.C. van den Berg and his assistant, K.F. Holle, were solicited in the attempts to formulate the recommendations. It is startling that five of them wished to abolish the *Pangulu* Court, and seven wished to defend it. The Governor General then submitted the problem to the Council of the Netherlands Indies (*Raad van Nederlandsch Indië*), and reported the matter in full to the Minister of Colonies.[11]

Taking the missive and the proposal of the Minister of Colonies as points of departure, King Willem III finally issued a Royal Decree, No. 24, dated January 19 1882, by which the Islamic court was definitely established in Java and Madura. The decree that was proclaimed in Stb. v. NI. 1882, no. 152, contained the rules for reorganizing and restructuring the Islamic Court in Java and Madura, which was designated as the *Priesterraad* (priest council). A *Priesterraad*, the decree stated, would be established in every Regency (*kabupaten*) in Java and Madura in which a *Landraad* had been established. The area of

jurisdiction of the *Priesterraad* would correspond to that of the *Landraad*. The *Priesterraad* would be presided over by a *pangulu* who was appointed by the *Landraad* and assisted by at least three and at most eight Islamic experts who were appointed members of the *Priesterraad* by the Governor General.[12]

Problem arose because the Stb. 1882 no. 152, in which the establishment of *Priesterraad* was announced, did not clearly regulate the authority of the court and the competence of the *pangulu*. Consequently, the *Priesterraad* itself defined its authority following the previous convention which had assigned to it cases relating to marriage, divorce, bride price, custody, *nafkah* (money given to wife or divorced wife for household expenses), inheritance, *hibah* (grants), *sedekah* (alms), *bait ul-mal* (religious treasury), and *wakaf* (property donated for religious or community use).[13]

The establishment of the Priesterraad as an official Islamic court signified that the Dutch Colonial government had officially recognized and confirmed an indigenous institution which had already enjoyed a long existence. The goal of this reorganization was to improve the state of Islamic court and the status of the *pangulu*. The Department of Internal Affairs was made responsible for supervising the *pangulu* in their judicial capacity, both in the Islamic court and in their advisorship to the *Landraden*. However, the *Priesterraden* which had been established alongside the *Landraden*, with the same *kabupaten*-wide jurisdiction, were not fully independent, since their decisions had to be confirmed by the *Landraden* before they were executed.

In reality, the name of the "new court", *Priesterraad*, later provoked a lively discussion. Snouck Hurgronje, who held the advisorship for Islamic law (*Adviseur voor Islamitische Recht*), criticized the term of "priester", and was also scathingly critical of the formation, the system, and administration of the councils. In a brief report in 1890,[14] Snouck Hurgronje enumerated a number of Dutch misconceptions of and misunderstandings about Islamic religious and social structure in the relevant area. Referring to the term *geestelijke rechtspraak*, or "clerical court", he mentioned that this was only valid if it meant that all the decisions of the court were made in accordance with religious law, but not if it meant that the verdicts were enforced by the clergy. There were no priests nor any official clergymen in Islam, and that which externally resembled sacraments in Christianity was in reality something quite different in Islam. The same criticism could

be leveled as pastoral care. In Islam, care of the souls of others is the obligation of every Muslim, i.e., to their families, relatives, friends and others. Thus for Snouck Hurgronje, there is no priesthood in Islam, and those people called *imam* and *ketib* are the leaders of the prayers, namely men who can be properly chosen from among the believers, either temporarily or permanently; Anyone who knows Arabic and is skillful in preaching or reciting the sermon in Arabic can be chosen as *ketib*; Anyone who has a good voice can be chosen to summon the believers with the *adzân*. In short, in Islam there is no permanent body of rules by which the church is organized as in Christianity.[15]

Turning his attention to the second article of the Stb. 1882, no. 152, which covered the formation of the court, Snouck Hurgronje criticized it for not being in accordance with the law of Islam. According to the law of Islam, a *qâḍî* or *hâkim* (judge) usually passes judgement on a case as an individual. The Islamic *qâḍî* is traditionally a single judge. A judicial system requiring a panel of judges is quite unusual in Islam. This article required the *Priesterraad* to serve in a collective (many-headed) court system. Snouck Hurgronje remarked: "The court with collective judges has again been wrongly imagined to be a characteristic of Muslim law in this Archipelago."[16]

A close observation of the workings of the *pangulu* court plainly reveals that it actually did not operate as a council, but that the *pangulu*, who was surrounded by his assistants, took the lead. The official head of the court was called *hakim, hukum, pangulu*, or *surambi* by the indigenous Muslims. The *surambi* is also the name of the place where the court sat. Unquestionably, when the *pangulu* faced a complicated problem, he might consult a *kiyai* or *ulama*, but the decision was always taken by the *pangulu* himself. An uninitiated and unprepared European observer could interpret this fact wrongly, and be given the impression that the *pangulu* court was a many-headed court (collegial), and consisted of a board of priests. The reason for this misconception lies in the fact that the *pangulu* courts, assisted as they were by a number of mosque officials, appeared to be similar to the European courts, while the priestly character of the court was suggested by the place of the court session, which was the *surambi*, or veranda of the mosque. Indeed, the population themselves sometimes called the *pangulu* court *Raad Agama*, but this name was influenced by the Dutch; among the indigenous people, *pangulu*, *hakim*, *hukum*, and *surambi* were more familiar names.[17] *Raad*, which literally means

council, meant a court of justice for the indigenous people. Therefore, the term *Raad Agama* should be understood as a religious court.

The *pangulu* was the chief of the mosque administrators, head of the Islamic court, and in addition to this he also had other duties. He was appointed by the king or local aristocratic authority. He had no spiritual power or spiritual authority, unlike of priests in Christianity, because in Islam there is no concept of priestly office. With this understanding the *pangulu* and his subordinate religious officers should be seen like other indigenous heads, such as the *bupati* and the head of a district (*wedono*), or the head of a *desa* (*lurah*), who were officials (*beambten*) serving within the Muslim legal structure.[18]

Under a hail of fire, Mr. L.W.C. van Den Berg, as "the man behind the Stb. 1882 No. 152", defended his position. In one of his letters to the *Minister van Colonien* (Minister of Colonies), Van Den Berg accused his opponent, Snouck Hurgronje, of placing himself in the position of a devout Muslim, while he had proposed a law for the sake of government interests in maintaining the order of Islam.[19]

Snouck Hurgronje's harsh criticism of the *Priesterraad* did not affect any significant change in the Dutch policy on this subject. The Stb. 1882/152, which was intended to improve the system and administration of the court, did establish the *Raad Agama*, but, in Snouck Hurgronje's opinion, it not succeed in improving the role of this court. The Islamic court went on functioning as it had always done. The government took no steps to improve the education of the *pangulu* and no special training was provided to prepare candidates the role of *pangulu*. The working conditions of the *pangulu* continued to be far from advantageous. The *Pangulu* and their subordinate officers were still not salaried. They derived their income from the emoluments of their job, such as the legal fees (*ongkos perkara*), *ipkah*, *usur*, *zakat*, and *zakat fitrah*. These kinds of income were administered by the *pangulu* in each mosque as a mosque fund (*kas masjid*). The *pangulu* and his officials received a salary from this fund commensurate with their place in the official hierarchy and their respective responsibilities. In fact, the tariff of the legal fees was not fixed by the government. Consequently, it varied from place to place. In 1891 the Governor-General ordered the Residents (local government) to issue instructions for the regulation of the tariff and the administration of the mosque funds. Despite this move, the tariff continued to be heterogenous because the regulation failed to stipulate a certain amount as a permanent tariff. This situation gave rise to the abuse of

funds, stemming in part from the weakness of government control, but in part because of the extortion exacted by the *bupati*. The situation was exacerbated because certain legal fees, such as those asked for marriage and divorce and *usur*, were sometimes considered too high leading to trouble among the people.[20] The inaptness of the *Priesterraad* administration consequently undermined the credibility of the *pangulu*. This problem was accentuated by the rise of the nationalist movement at the beginning of twentieth century. This awakened critical reactions towards every impropriety detected in social and political behaviour, of which the causes could be traced back to the colonial administration. Consequently, the high tariff for *pangulu* services and the misuse of mosque funds was stigmatized as corruption by both the Dutch and nationalist movements/groups.[21]

In short, both the Dutch colonial government and the nationalist Muslim movements felt dissatisfied with the institution of the *Priesterraad* and the "*pangulu*-ship". Among the Dutch, the disappointment was caused by the corruption and parlous condition of the *Priesterraad*, in the same vein as this been criticized by Snouck Hurgronje. Among the nationalist Muslim movements, the disappointment was caused by the existence of a *Raad* which served the fundamental affairs of the Muslim population, but was not only controlled by non Muslims but it was also in the hands of less skilled persons. This consideration stimulated the government to improve the organization of the *Priesterraad*. By the government decree of January 12, 1922, No.4, a committee of advice for the reconsideration of *Priesterraad* Court was instituted. The membership of the committee, which consisted of eight persons,[22] presumably was meant to represent the wide range of persons and institutions having an interest in the matter, namely the native heads, *pangulu*, Islamic organizations, and the government. Despite such a relatively wide casting of the net, the composition of the committee was such that the *pangulu*, both from an educational as well as social status point of view, were inferior to the other members. It could be predicted that they would be seriously hamstrung in communicating their interests and suggestions whenever they were in the presence of their fellow members who were professors and high ranking *priyayi*. Therefore, although the formation of this committee was likely to please Islamic groups, it was in fact designed only to serve government interests.[23] The Committee devoted four years on its task, and finally proposed a new regulation, under which the incorrect designation of *Priesterraad*

would be changed and replaced by a new name, *Panghoeloe-Gerecht* (*Pangulu* Court).

The committee's report served as the basis for the ordinance of January 31, 1931, by which the *Panghoeloe-Gerecht* was to be established. Besides instituting the *Panghoeloe-Gerecht*, this regulation also provided for the establishment of the *Hof Voor Islamitische Zaken*, or the Islamic Supreme Court as an appeal court for the *Panghoeloe-Gerecht*. Under the term of this regulation, *Panghoeloe-Gerecht* would consist of a *pangulu* as a single judge, assisted by not more than two *bijzitters* (assessors) and a *griffier* (clerk). It transpired that this law was gladly accepted, not only by the *pangulu* themselves, but also by Muslim organizations, since it also stipulated that the *pangulu* assessors, and clerks would be salaried by the government. This was a goal which had not been expected to materialize by the *pangulu* and the other court officials, athough it was long hoped that it would establish an appeals court, something that had been demanded for more than two decades by Islamic organizations.[24] Unfortunately, the constrained condition of government finance at that time meant that the law could not be put into effect—a victim of the prevailing economic malaise.

The Structural Implication of the Incorporation

As an administrative service, the *Raad Agama* developed considerably during the period of 1882-1942, namely through a tranlation from an instituion with an accent on the old style "*pangulu*-ship", to one in which the accent had shifted to the new function and revised composition of the *Raad*. Prior to 1882, the colonial administration put the pangulu to work in court, which it had established itself i.e. the *Landraad*, as advisor, but it did not interfere in the internal structure of the *pangulon* administration. Before the establishment of the *Raad Agama*, the nature of the *pangulon* was linked to a purely native administration, whereas after 1882 its function was transformed into that of a quasi-colonial bureaucracy. This transformation can be described as follows: a shift from individual to collectives responsibilities, from a traditional to a modern (ie. bureaucracy organized according to Western standards) and, from a purely indigenous to a quasi-colonial administrative institution. This transformation required not only an adjustment of the substance of administration but also change in the system of recruitment and promotion procedures.

Within the whole administrative structure, the *pangulu*, as head

of *Raad Agama* and an adviser of the *Landraad*, held a significant position, as a mediator between the colonial administration and its native counterpart. This position made the *pangulu* a "bridge" between the Muslim community and both the colonial and the native administration (*pangreh praja*).

Such a position was only one among those of the various indigenous functionaries, which over the course of time became more deeply involved in the Dutch colonial administration. It has already been mentioned in the previous section that the *pangulu*, along with the *jaksa* and *bupati*, played a role in the Dutch colonial legal system since the early development of the Dutch administration in Indonesia. In the Daendels' period, there had been a *Landgeregt* court, of which the *bupati* was a member and the *pangulu* an advisor. These roles had been extended during the British Interregnum. Under the Dutch colonial administration this advisorship of the *pangulu* was extended by giving them an extra task, namely taking the oath of witnesses during the trial processes.

Taking this into account, when the *Raad Agama* was set up in 1882, the *pangulu* had already carried out a number of functions. Being quite unequivocal in organizing the administration of the colony, the Dutch maintained a division between political and religious affairs. This means that their role in religious affairs was restricted to preservation and to supervision. To this end, the sultan, the *bupati* and other native leaders were utilized.[25] Religion, that is Islam, remained the preserve of the population except when law and order were at stake. In this context, the *pangulu*, as native functionary, took care of religious affairs in the native administration. In every Regency and in every district there was one principal mosque. The director of this mosque was the *pangulu* who was in charge of all Islamic affairs, whether this pertained to the daily and Friday prayers, or the civil administration and court of the Muslims. As earlier, the *pangulu*, who were recognized by the colonial government as experts on indigenous law, had also been incorporated into the colonial administration of court of justice. In this construction the position of *pangulu* rested on two pillars, the *Binnenlandsche Bestuur* (the Dutch internal administration), and the *Inlandsche Bestuur* (the native administration). Within construction in the past there had been two kinds of *pangulu*; *pangulu Landraad* and the *pangulu masjid* (*pangulu kaum* or sometimes, *pangulu hakim*). With the establishment of the *Raad Agama*, the *pangulu Landraad* was promoted to a new position,

that of head of the *Raad Agama*, while the *pangulu masjid* became his advisor. Prior to the establishment of the *Raad Agama*, in the eyes of many people, the prestige of that *pangulu masjid* was higher than that of *pangulu Landraad*, since the former was head of a mosque and the judge in the religious court, while the latter was only an advisor and oath taker (*tukang sumpah*), and not all of his recommendations were taken into account by the judge.[26]

In fact, combining the two functions, that is of *pangulu Landraad* and *pangulu masjid* into one person seems to have been the rule, although there were exceptions to it. It seems likely that, should a *pangulu masjid* be appointed advisor to the *Landraad*, the *bupati* had to appoint a successor to administer the mosque and take care marriage administration. This was what happened in Semarang at the end of the nineteenth century. In this case, the *pangulu masjid* became the subordinate of *pangulu Landraad*. However, there was no clear pattern in this practice, and, in fact, the status of *pangulu Landraad* was regarded as higher than that of *pangulu masjid* throughout Java and Madura.

The official hierarchy of *pangulu* in their advisory function corresponded to their rank in the civil administration. These functions were: *hoofd pangulu* and his assistant, *adjunct hoofd pangulu*, adviser to the *Landraad* in the capital of the Residencies; *pangulu* and his assistant, *adjunct pangulu*, advisor to the *Landraad* in the capital of the Regencies.[27] Among those people, all of them were usually referred to as *pangulu Landraad*. They were appointed to these positions by the Governor-General or Resident and their salaries were paid from the government treasury.[28] Quite apart from the inconsistencies in the appointment of this advisory official, the amount of their salary throughout Java and Maduara was also not standardized.[29] By the end of the nineteenth century, the positions of *adjunct hoofd pangulu* and *adjunct pangulu* were gradually abolished, excepted for those in Batavia, Priangan, and Surabaya. The decision of whether or not the abolition should be enforced depended on the policy of the individual Residents.[30]

By the beginning of the twentieth century, almost all the *pangulu* who served the colonial government were chosen from among the *pangulu masjid* or *pangulu kaum*, the head of *Priesterraad* not excluded. Thus a *pangulu* sometimes had multiple functions, serving in all offices that related to the religious affairs and the courts of law. In 1918, this procedure was standardized. In other words, the unification of

the functions of *pangulu Landraad*, *pangulu Priesterraad*, and *pangulu masjid* usurped the function of *pangulu masjid* as a separate position. It also signaled that a "secularization" in the function of *pangulu* had taken place. The *pangulu* was no longer always an *imam* of the mosque. The latter function could be performed by the *ketib* or any of the other subordinate mosque officials. In other words, it would be fair to say that with this transformation, the process of "*priyayi-nization*" of the highest rank of *pangulu* had been completed. As was been explained previously, the *pangulu* had originated from the *santri* circle and now they entered the *priyayi* circle.

The *Adat* Law and the Authority of *Pangulu*

Now is the proper moment to return to the law of 1931 (Stb. 1931/53), by which the *Penghoeloe-Gerecht* was to be established but could not be put into effect because of the prevailing economic malaise. This failure to enforce of Stb. 1931/53 presented a "heaven-sent" opportunity to the new emerging forces: "the *adat* law movement", which had been led by C. van Vollenhoven since the beginning of the century. In the legal history of Indonesia, he is recognized as the founding father of the *adat recht* (*adat* law). The emergence of the *adat* law study was actually inspired by the efforts of the Dutch government to have a group of scholars work on the indigenous law system, so that law enforcement would have a better chance of success. The cynosure of this effort was the land law in which the Dutch government had a very particular interest, since clarification of this matter would ineluctably determine the rights to land use that could be exerted by the Dutch private companies during the 1870s when they were offered the opportunity to replace the former system of state exploitation.[31] This attempt failed because the Dutch parliament rejected the Land Use Bill, with the rider that investigations into the matter be launched by collecting data in field. In 1900, the Minister for the Colonies, J.T. Cremer, wished to codify a number of the local customary rights to land in the non-Christian population areas, but it was never implemented.[32] In 1904, P.J. Idenburg, then the Minister for the Colonies, introduced a bill which would make it possible to codify substantive private law for all population groups in Indonesia on the basis of the Dutch Civil Code. The result would replace the customary law with the European law under which the fate of the Indonesian Christians could be definitely assured. Indonesian Muslims would also be expected to obey to the new set of laws.

J.W.H.M. van Idsinga proposed an amendment to this bill, arguing that putting Dutch law into practice would only be possible were it to be regarded as necessary by indigenous population. The amendment was accepted owing to the "protest" lodged by Van Vollenhoven published in the *De XXe Eeuw* of March 1905, under the title "*Geen Juristenrecht voor de Inlander*" (No Lawyer's Law for the Indonesians). In a detailed argument, Vollenhoven stated that any connection between the Indonesian legal situation and Idenburg's bill was purely specious. Consequently, Idenburg's bill was considerably modified in favour of indigenous law and gazetted in 1906, although never put into effect.[33]

The failure of the efforts of the Dutch government with respect to implementing European law in Indonesia, a scheme which was promoted by their own legal scholars, engendered the awareness that there were unwritten laws which were observed by the indigenous inhabitants. In government circles at that time, there was a growing tendency to codify all laws in order to ensure proper law enforcement for all citizens. The dilemma then facing them was that Dutch law could not be enforced, whereas the alternative customary law was fraught by a high degree of local variety and was sometimes contradictory. An awarness of this evinced a special approach towards legal study on Indonesia, which later became known as the *adat recht* (customary law) school. This school was strengthen at Leiden University where Van Vollenhoven taught his students in the 1920s and 1930s. The word *adat*, in a sense, was adopted by Van Vollenhoven and had been used by Snouck Hurgronje in *De Atjehers*.[34] Although the word originates from the Arabic *'âdah*, and thus has an Islamic connotation, in fact its purport is not entirely in accordance with the teaching of Islam. In Van Vollenhoven's interpretation, *adat recht* consisted of two parts: indigenous custom and section of Islamic law.[35] Therefore, not all Islamic elements were part of *adat*, and not all elements of *adat* were in conformity with Islam. That was why the substance of Islam and *adat* were different, and were theoretically separable.[36]

The theoretical view of the *adat recht* had political implications, since this school had a profound influence on government policies during the 1920s and the 1930s in Indonesia. One of the most crucial views which triggered off a degree of social unrest was the theoretical concept of *receptie*. This concept has its foundation in art. 134: 2 of IS 1919 (*Wet op de Indische Staatsinrichting*/Dutch Indies Constitution)

which expounded views which were in contradiction to these previously constituted by Solomon Keizer and L.W.C. Van Den Berg of *receptio in complexu*.[37] According to the latter theory, the law of society follows religion. This means that the law that is practiced among Muslims is the law of Islam. Similarly among Hindus, Buddhists, and Christians, it is the law of their respective religion which they follow. The theory of *receptie* on the other hand clashed with Islamic thought, because, according to the Qur'an, the law of Islam must be applied immediately when a person converts to Islam.

The *receptie* theory was originally developed by C. Snouck Hurgronje as an outcome of his investigation of Acehnese society. His books, *De Atjehers* and *Gajoland*, in which he describes the Aceh *adat*, concluded that the effective law applied in this locality was not the law of Islam, but *adat*.[38] Undeniably, *adat* had been penetrated by the law of Islam, but the law of Islam only assumed a legal form after it had been accepted as *adat* law. This theory was espoused by Van Vollenhoven, and systematically developed at Leiden University in collaboration with his students, such as Ter Haar, Supomo and the others, and then put into effect by their followers and students of the *Rechtshoogeschool* in Batavia.

The efforts exerted by the Leiden School eventually exerted a deep influence on the decision makers in the Netherlands Indies. In 1927 Van Vollenhoven's ideas were accepted by the Netherlands Indies government. From that time up to the invasion by Japanese soldiers in 1942, and the subsequent occupation of Indonesia, Dutch policy was marked by what Supomo called a systematic step backwards in an effort to create a dynamic dualism[39] or an enlightened dualism.[40] The aim of this policy was not simply the maintenance of *adat* law for the natives. It went hand in hand with an official study and detailed description *adat* systems leading to an eventual codification.[41] In other words, the maintenance of the *adat* law run parallel to a systematic initiative to investigate and codify the *adat* law officially.

This *adat* law policy was of course unacceptable to Muslim groups. The analysis offered by the reformist Muslim group was that the policys purpose was not only to guard thr colonial government against the erosion of *adat* from within, but also to protect it from aggressive attempts to dethrone it from the side of Islam. Indubitably this was a period in which the expansion of Islamic reformist movements had brought pressure to bear on the indigenous cultural elements, including *adat*, because these were considered not to correspond to the stan-

dards demanded by Islamic purity. It is understandable that the Dutch were afraid of any further expansion of the Islamic reformation since it threatened to bolster efforts to improve intellectual life, further the emancipation of society, and even forge affiliations among the ethnic groups in Indonesia. This latter realization was perceived as a tool by which to unite the "nation". There could even be more stormy passages because the concept of egalitarianism in Islam in certain instances could weaken the hold of feudalism with which *adat* law was strongly bound.

It does not take any great stretch of the imagination to see that the attitude of Islamic groups would tend to be anti-*adat* law. Many Muslims were well aware that the strengthening of *adat* would inhibit the propagation of Islam, and, simultaneously, it would also undermine the influence of Islam. Among the group of devout Muslims, *adat* was viewed as an impermanent, but nonetheless dynamic matter. The direction in which *adat* was supposed to move was one of gradual adaptation to Islam. This view stemmed from the conviction that one major characteristic of the Islamic struggle was to change all deviant cultural elements, moulding them into conformity with Islamic belief. Certainly, Islam would oppose every attempt that could obscure its tenet. In the corpus of *adat*, there were the *adat* rules that were downright contradictory to Islam, and there were those that were in accordance with it. Confronted with the former scenario, unquestionably it was an obligation of all Muslims to strive to transform such deviant elements to those which were more in accordance with Islam. Those pertaining to the latter could be preserved.

One of the most significant steps taken by Muslim groups in relation to *adat* law was a motion that was issued by the twentieth Congress of the Sarekat Islam in 1934. This motion was in fact not meant to be restricted to government policy, it was addressed the Indonesian Muslim community in general. The reason behind it was the fact that the discrepancy between *adat* and Islam was not simply a split between the government and Muslims, it represented differences between traditional conservative adherence to belief and reformist Muslim movements. One outcome of this development was that the cleavage between *santri* (devout Muslims) and *abangan* (nominal Muslims) clearly emerged during this time.

This school of thought envisaged three types of *adat*, namely *adat* that was related to and ordered the household and the family life, *adat* that was bound up with and set the rules for social and eco-

nomic relationships outside the family, and that which were regarded by the colonial authority as a common law or system of ethics and were considered to be material law or the practicing of rules, both of civil and criminal laws.[42]

Turning to the first two types of *adat*, the idea was that those elements that were in contradiction to Islam would gradually be changed into rules that were in conformity with that religion. The groups reserved their fiercest criticism of the *adat* of the third category, which they attacked on numerous fronts criticizing the way in which its rules deviated from those of Islam. In many places where *adat* law was expected to be observed, it seemed to have no clear legal source. Conformity left much to be desired as rules varied from place to place. The nomenclature applied to this kind of law also varied confusingly. The terminology used to signify *adat* law was bewildering in its variety. Some examples are: *instellingen en gebruiken* (institutions and practices); *godsdienstige wetten* (religious laws); *de instellingen des volks* (popular institution); *volksinstellingen en gebruiken* (popular institution and practices); *de inheemsche wetten* (native laws); *inlandsche recht* (indigenous law); *de inlandsche zeden en gebruiken* (the indigenous conventions and practices); *de plaatselijke landsinstellingen en gebruiken* (local land institutions and practices); *het plaatselijk gebruik* (local custom) and many more of this ilk. These terms indicate that the law givers themselves were not in a position to articulate unequivocally which parts of these laws (which usually were called *adat* by the population) should be recognized as true law and thus followed by the population. The whole confusion was exacerbated according to Agus Salim—one of the nasionalist Muslim leader—because the people who had to obey *adat* law did not understand it and, when pressed, did not even always recognize it as a source of law.[43]

Under these circumstances Salim argued that for government policy to conserve *adat* law was not only opposed formally by Islamic groups, but also passively by the people themselves. The same attitude was also indicated by the aspirations of the reformist movement which advocated the emendation of improper elements of *adat* that were regarded as running contrary to progress. In his concluding remark on the motion, Agus Salim stated:

> "Owing to political change, the colonial government wishes to strengthen *adat* and *adat* law, and for this to be a basis of a political power. Adat is now no longer controlled by its true heirs. The government does not give the people the freedom to contrive their own *adat*."[44]

Why did the reformist movement oppose the government's *adat* law policy? The reason is clear. The reformist movement wished to promote those changes that would foster progress and improve the lives of the population. In their eyes, the *adat* law policy would preserve the status quo and reject change. Was this justified? B. Ter Haar, one of the Dutch *adat* law specialists, argued that "*adat* law, like other cultural elements, has its own internal dynamic impelling it to change its contents and its performances corresponding to the fluctuations of the social life. The judicial officials played a significant role in the workings of this dynamic. They were not simply passive by standers whose job was to work with which already existed. They were also expected to contribute to its development as a consequence of their daily task as judge confronted by the people who sought justice in the courts. Seen in this role, they were more than simply officials of the court, they were also agents of the *adat* law changes."[45]

Ter Haar's argument on the dynamic element of the *adat* law policy did not remove the objections of the reformist movement. The crucial point for the reformist movement was that the changes should not be instigated by outsiders, but should follow a natural course presenting the wishes of the population, the heirs of the *adat* law. Its members regarded what Ter Haar noted as nothing short of colonial interference. Natsir, one of the leaders of the reformist movement, argued that the transformation of law should not be based on the *adat* law, since not only was it dubious and uncertain, most significantly it had never been codified like other laws. The interference of the colonial government that was exposed by such policies as those regarding *adat* law could not engender the populations progress, all it could do was to make them bristle with objections.[46]

The most crucial problem that arose from the decision to put *adat* law into effect was the removal of the authority to judge inheritance cases from the *Raad Agama* to *Landraad*. In 1937, the colonial government issued a new regulation,[47] stipulating that inheritance cases concerning Muslims would be tried by the *Landraad*, on the basis of *adat* law. This decision meant that in one blow the *pangulu* were not only deprived of the most significant part of their job, the constitutional basis on which to argue that Muslims should adhere to Islamic law in these matters was pulled out from under their feet. The law was issued on April 1, 1937, and soon after it was proclaimed. *Pangulu* throughout Java and Madura held a congress in Solo on May 16, 1937 at which they registered their protest against the government, and

during which they set up a *pangulu* association to safeguard their interests. This association was named as *Perhimpoenan Penghoeloe dan Poenggawainja* (PPDP) and its foundation fulfilled a need that had been felt since the beginning of this century.[48] In a missive addressed to the Governor-General composed by the congress, the PPDP demanded the government abolish law of 1937 No. 116. It was the first time in the history of the relationship between the *pangulu* and the Dutch East Indies government that the *pangulu* made a direct attack on government policy. The abolition, the organization argued, was valid on the basis of four points, namely:[49]

1. Concerning the *adat* law:

   "*Adat* law is an inconsistent law, and it is subject to change depending on the influential forces in society, whereas Islamic law is a fixed and unchangeable law, and is never at odds with the Qur'ân and hadith. Islamic law can not be adjusted to *adat* and other rules. Muslims who have to submit the adjudication of their inheritance cases to a lawsuit based on *adat* law, which can be in conflict with Islamic law, are forced into a position of being renegades in regards to their own religion."
2. Concerning the job, income, and authority of *pangulu*:

   "Owing to an enactment of the Stb. 1937 no. 116, the *Raad Agama* has never been improved and even has had to endure a 75% financial loss or more of its normal income. The result is that the *Raad Agama* may dwindle into an insignificant court, and the cut in income of the *Raad Agama* is tantamount to excising its 'soul'."
3. Concerning status of the *pangulu*:

   "The *pangulu* had enjoyed well-earned recognition among the population as religious leaders, and the substance of Stb. 1937 no. 116 affects the function of *pangulu*, thus, the enactment should also be regarded as a problem of religion."
4. Concerning the relationship between inheritance law and Islamic law:

   "Dividing an inheritance among Muslims following the *farâ'id* (inheritance law) has already enjoyed a long history in this country, because it was part of implementation of the *sharî'a*. Consequently, if it has to be replaced by *adat* law this amounts to a change in religion."

These points of concern were seriously questioned by the *pangulu*, and in effect led to the fact that they, as a group who had never disparaged the workings of the colonial government—were now seri-

ously offended. Beside submitting such written complaints, the PPDP also held a special meeting with the Governor-General in Batavia to explain the negative implications of the removal of authority to judge inheritance cases of Muslims from the *Raad Agama* to the *Landraad*. To strengthen their argument, they adduced a strange decision brought down by the *Landraad* of Bandung, in which an inheritance was awarded to an adopted son, bypassing the nephews and nieces of the deceased. The PPDP argued that such a decision was recognized neither in *adat* nor in Islamic law.[50]

Such objections were not only lodged by the PPDP; many other Muslim organizations joined in the chorus of censure. The Al-Islam congress in 1939,[51] as well as the congress of *Majlis Ala Indonesia* (MIAI) in 1940, issued similar motions, impugning Stb. 1937 no. 116, and demanding that the government rescind it.

In reality, the implementation of the Stb. 1937 no. 116 did absolutely nothing to heighten any sense of justice. All it could be said to have done was to grant political privilege to the adherents of the *adat* law policy, who were found mostly among anti-Islamic groups in Java. There was no indication that the *Landraden* were a more appropriate body to deal with such matters than the *Raad Agama*. Daniel S. Lev, says:

> "So far as the inheritance problem of the 1930's is concerned, there is no evidence to indicate that the *landraden* were any more legitimate than the Islamic courts, or that they were in fact capable of applying law that was more indigenous, so to speak, than were Islamic Court. Apart from the point that many Javanese Muslim did more or less accept Islamic rules out of religious obligation—as in any society some rules are accepted merely because the system is legitimate—it is equally important that the *landraden* were more foreign to Javanese culture than the Islamic court."[52]

After the authority to judge inheritance cases was removed from the *Raad Agama* to the *Landraad*, the *Raad Agama* did not relinquish its status as a place in which to consult about the cases of inheritance among Javanese Muslims. In certain places, many more such cases were even brought before the *Raad Agama* rather than the *Landraad*.[53] This tendency continued long after the end of the Dutch authority, and endured until 1989, when the Religious Court Law (*Undang-Undang Peradilang Agama*) was established, and the authority to judge the inheritance cases was moved back to the Islamic Court. In Jakarta, for instance, in 1976, there were 1081 inheritance cases brought before the courts, 96% were handled in the Religious Court, in contrast

to only 4% before the General Court.[54] The role of the Islamic Court in this matter is at the level of a *fatwa* (legal opinion), which is binding on the seeker of justice. This *fatwa* is normally valid as a basis for the decision for dividing inheritance either in the General Court or by a public notary when issuing an official document pertaining to land and other properties.[55]

It is understandable that *pangulu* viewed the law of 1937 as a fundamental setback. They summed up this situation in a sarcastic phrase saying that while modernization had the country in its grip Muslims would have to follow the law of Blambangan,[56] a fourteenth century Hinduized kingdom in East Java.

Endnotes

1. A.K.S. Lambton, *State and Government in Medieval Islam, An Introduction to the Study of Islamic Political Theory*, The Jurist, Oxford University Press, 1981, p. 190.
2. Saletore, "Ulama" in Sartono Kartodirdjo (ed.), *Elite dalam Perspektif Sejarah*, LP3ES, Jakarta, 1981, p. 144.
3. H.L.E. de Waal, *De invloed der kolonisatie op het inlandsche recht in Nederlandsh Oost Indië*, Harlem, G. van Den Berg, 1880, p. 50.
4. H. J. Benda, *The Crescent and The Rising Sun*, W. van Hoeve, The Hague, Bandung, 1958, p. 19.
5. See Mohammad Daud Ali, SH, *Kedudukan Hukum Islam dalam Sistem Hukum Indonesia*, Yayasan Risalah, Jakarta, 1984. p. 14.
6. *Ibid.*
7. ARNAS, Bt. 19 Mei 1820, No. 1. See also Karel A. Steenbrink, *Beberapa Aspek Tentang Islam di Indonesia Abad ke 19*, Jakarta, Bulan Bintang, 1984, p. 216.
8. Stb.v NI, 1835, no. 58. See also Steenbrink, *op-cit.* p. 217.
9. *ibid.* p. 219.
10. *Ibid.*
11. ARNAS, Bt. 2 Juni 1882, no. 11. See also Steenbrink, *op-cit.* p. 220.
12. ARNAS Bt. 2 Juni 1882, no. 11. See also *ibid.*, p. 220-221.
13. See Notosusanto, *Organisasi dan Jurisprudensi Peradilan Agama di Indonesia*, B.P. Gadjahmada, Jogjakarta, 1963, p. 10.
14. This report was published in *Adatrechtbundel I* 1910, under the title: "Rapport van Dr. Snouck Hurgronje Over de Mohammedansche Godsdienstige Rechtspraak, Met Name Op Java", p.201 - 224. This report is also published in *Verspreide Geschrieften van C. Snouck Hurgronje*, Deel IV, 'sGravenhage, Martinus Nijhoff, 1924.
15. See *ibid.* p. 204-205.
16. *Ibid.* p. 210.
17. *Ibid.* p. 211.
18. *Ibid.* p. 210.
19. ARNAS, Ag. a/1891.
20. See for instance E. Gobée and C. Adriaanse (eds.), *Ambtelijke Adviezen van C. Snouck Hurgronje 1889-1936*, vol. I, Martinus Nijhoff, 's-Gravenhage, 1957, p. 743.
21. By the 1920s, criticism in the press of the *pangulu* function was found in a variety of both vernacular and Dutch language newspapers publications.
22. See ARA. Mr 445/1027. See also *Verslag van de Commissie van advies nopens de voorgenomen herziening van de Priesterraad-Rechtspraak*, (1926).
23. cf. Daniel S Lev, *Islamic Court in Indonesia*, University of California Press, Berkeley, Los Angeles, London, 1972, p. 17-18.
24. Demands for establishing Raad Ulama had been submitted since the first congress of the Sarekat Islam and a number of al-Islam Congresses and other conferences of Islamic associations. In the report of the Committee of Advice Con-

cerning the Revision of the Priesterraad Court, consideration was also given to the written proposal of Hadji Hadikoesoemo, in which he had strongly stressed the necessity for founding a *Raad Ulama*. See also *Verslag Moehammadijah di Hindia Timoer*, (Th. X, Januari - December 1923), diterbitkan oleh Pengoeroes Besar Moehammadijah di Djokjakarta, Djawa, p. 45.

25. See R.H. Kleyn, *Het Gewestelijk Bestuur op Java*, P. Somerwil, Leiden, 1889, p. 265.
26. E. Gobée and C. Adriaanse (eds.), *op-cit.* p.763-764.
27. Kleyn, *op-cit.*, p. 265.
28. Stb. v NI., 1867, no. 168.
29. See Report of Mullemeister, in ARA. Mr. 492/1896.
30. The Resident Rembang for instance, abolished the *adjunct hoofd pangulu* of Pati in 1896. See ARA, Mr. 492/1896.
31. Supomo, *Bab-Bab Tentang Hukum Adat*, Pradnya Paramita, Jakarta, cet. ke 12, 1989, p. 5.
32. *Ibid.*
33. *Ibid*, p. 6-7. See also the introduction of H.W.J. Sonius to the English translation of Van Vollenhoven work, *Van Vollenhoven on Indonesian Adat Law*, edited by J.F. Holleman, The Hague- Martinus Nijhof, 1981, p. xxxiii-xxxiv.
34. See C. Van Vollenhoven, *Adatrecht van Nederlandsch-Indië*, deel I, E.J. Brill, Leiden, 1918, p. 8.
35. *Ibid.*, p. 9.
36. *Ibid.*
37. See Supomo and Djokosutono, *Sedjarah Politik Hukum Adat*, Djilid 2, Djambatan, Djakarta, p. 82.
38. Van Vollenhoven, *Het Adatrecht van Nederlandsch-Indië*, deel I, E.J. Brill, Leiden, 1918, p. 8.
39. Supomo and Djokosutono, *Bab-Bab Tentang Hukum Adat*, p. 8-9.
40. B. Ter Haar, *Adat Law in Indonesia*, Institute of Pacific Relation, New York, 1948, p. 13.
41. *Ibid.*
42. Congress (Madjlis Tahkim) XX Partai Sarekat Islam in Banjarnegara, 20 to 26 May, 1934. This was the last congress that Tjokroaminoto attended since he passed away after this congress. See *Djedjak Langkah Hadji A. Salim*, Djakarta, Tintamas, 1954. p. 176-189.
43. *Ibid.*, p. 184-185.
44. *Ibid.*, p. 188.
45. B. Ter Haar BZN, *Verzamelde Geschriften*, Deel I, (1950), p. 479/480.
46. *Pandji Islam*, Juni-Djuli 1939. See M. Natsir, *Capita Selekta*, Bulan Bintang, Djakarta, Tjetakan ketiga, 1973, p.179.
47. Stbld. 1937, No.116.
48. In 1914 an appeal for establishing a *pangulu* association was voiced. See *Oetoesan Hindia*, Th. II, No. 17, 26 Januari 1914.
49. See copy of the missive of PPDP, dated 11 September 1937, in ARNAS, Tzg.Ag.

2646/1938, and KITLV, H. 1085, 65. This missive also published in the PPDP journal, *Damai*, No.1, Th. ke I, Januari 1938, p. 12-14.

50. See the report of this audience in *Damai*, No.2 Th. I, Februari 1938, p. 37-41.
51. See *Islam Raja*, No.3, Th.I, 20 Mei 1939, p. 27-28.
52. D.S. Lev, *op-cit.*, p. 26.
53. *Ibid.*, p. 199-200.
54. Mohamad Daud Ali, *Kedudukan Hukum Islam dalam Sistem Hukum Indonesia*, 1984, p. 25.
55. *Ibid.*
55. *Damai*, No.7, I, July 1938, p.154. Cf., Daniel S. Lev, p. 24.

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