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## THE DUTCH COLONIAL ECONOMIC'S POLICY ON NATIVES LAND PROPERTY OF INDONESIA

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**Abstract:** This paper analyzes the historical shifts of land property rights in Indonesia's archipelago and how new land laws were formed, especially during the Dutch colonization era. After the Netherlands East Indies (NEI) established in the 18<sup>th</sup> century and proclaimed itself as a sovereign landlord over the East Indies (Indonesia), the role of indigenous law (*adat* law) and its rights to lands have diminished by a new form of law namely the European law system (the civil code). By adopting the European civil code, the colonial Dutch declared all uncertified lands and all forests' resources were the Dutch colonial State's property and to be managed by the colonial authority [State's domain]. For Adat peoples, these rights belong to them, either as individuals or as groups, and it had been recognized by their customary law (*adat* law) legally, which they have had since their ancestors inhabited within the land, territories, and resources. Further significant impact toward the *adat* rights to land, when the Agrarian Act (*agrarisch wet*) applied in 1870 by the colonial government, had severely impacted towards the land right of indigenous peoples in Indonesia, by which most of them had lost their *adat* property right to lands and forest resources. In contrast, the Dutch colonial State was gained millions of guildens for economic profit from the expropriation of the native land and from unpaid native slaves who worked in the Dutch plantation sectors.

**Keywords:** Dutch Colonial, Economic Policy, Land Property of Indonesia

**Abstrak:** Artikel ini bertujuan untuk menganalisis sejarah perubahan hak milik tanah di kepulauan Indonesia, dan bagaimana hukum tentang agraria dibentuk, khususnya pada zaman penjajahan Belanda. Setelah kolonial Hindia Belanda memproklamirkan berdirinya the Netherland East Indies (NEI) pada abad ke 18, dan menyatakan diri sebagai negara yang berdaulat atas seluruh wilayah Hindia Timur (Indonesia), telah menyebabkan peran hak kolektif atas tanah adat dihapus dengan adanya system hukum Eropa (Hukum Sipil). Penerapan system hukum sipil oleh penjajah Belanda yang menyatakan bahwa tanah-tanah yang tidak mempunyai legalitas (sertifikat), serta wilayah hutan beserta kekayaannya merupakan properti negara dan dikelola oleh institusi negara (State domain). Sebaliknya, bagi masyarakat adat, kekayaan tersebut merupakan milik adat, baik secara individu maupun kelompok. Hal ini telah diakui berdasarkan hukum adat, dimana wilayah (tanah adat) beserta kekayaan di dalamnya merupakan warisan dari leluhurnya. Lebih jauh, pengaruh penerapan system hukum agrarian/sipil Eropa telah menyebabkan dampak negative terhadap kepemilikan tanah adat, dimana hak-hak milik (komunal) mereka menjadi hilang. Sebaliknya, kolonial Belanda memperoleh keuntungan ekonomi jutaan gulden dari kegiatan eksploitasi dan kompensasi dari hak konsesi, serta dari perbudakaan rakyat diperusahaan-perusahaan perkebunan milik kolonial Belanda.

**Kata Kunci:** Kolonial Belanda, Kebijakan Ekonomi, Tanah Milik Indonesia

## Introduction

The Dutch royal established the Netherland East-Indies State [NES] in the Indonesia archipelago after the VOC (Vereenigde Oost-Indische Compagnie)<sup>1</sup> collapsed. The NES adopted the ‘the Concordance principle,’ which means that the civil and commercial law applied in East-Indies had to be the same legal system implemented in the Netherlands’ motherlands.<sup>2</sup> This legal system refers to the positivism law system (the Napoleonic codes) or the Roman-Dutch law system.

Following this policy, In 1847, the NES passed several derivative laws, including *Reglement op de Rechterlijke Organisastie en Het Beleid der Justitite* (Regulation of Judiciary and the Policy of Justice), *Algemene Bapalingen van Wetgeving* (General Provisions of Legislation), *Burgerlijk Wetboek* (Civil Law), and *Wetboek van Koophandel* (Commercial Code). These laws preceded the colonial-made-constitution called *regeringsreglement*, commonly abbreviated as R.R and passed by the Netherlands parliament in 1848. The R.R served to be a basic law for the Dutch colonial State in the Netherland East-Indies (Indonesia) territorial.<sup>3</sup> This legal system’s idea was to implement the codification of all legal systems on the one hand and protect their economic interest within the colony territory on the other.

In fact, prior to the passage of the R.R., colony inhabitants shared various laws based on race, religion, and culture, and the main feature of the legal system in the NES was a dualistic character, Europeans and *inlander*. This legal system is also well known as a legal pluralism approach.<sup>4</sup>

Accordingly, the legal pluralism system had acknowledged the diversity of the legal system. All Europeans and European – descent peoples who lived in the NES had to be ruled under the European continental legal system. In contrast, Indonesian native peoples shall refer to their customary law, and foreign oriental, such as Chinese, Arab, and Indian, who inhabited the Dutch East Indies territory also ruled under their own legal system.<sup>5</sup>

Nevertheless, in the context of economic and investment policy, all legal systems should be based on the European legal system. Some legal scholars believed that the adoption of European civil and commercial codes would be easy for the Dutch colonial regime to expropriate indigenous land, aiming to boost the Dutch colonial economic interests.<sup>6</sup>

1 During the first period of almost 200 years (1600-1800), The Dutch through United East India Company (Vereenigde Oost-Indische Compagnie, VOC) was primarily interested in mercantile activities and had no desire to conquer territories and establish empire in the land. Its objective was trade within the indigenous peoples of ‘Indonesia’ and Southeast Asia. The VOC had applied the law only to themselves, not to the indigenous population, and they neither interfere with indigenous law nor changes in the structure of society. See: Herman Slaats, ‘The imposition and radiation of Dutch law in Indonesia’, in J. de Moor (ed.), *Our laws, their lands: land laws and land use in modern colonial societies* (1994), 101.

2 Gary F.Bell, ‘Codification and Decodification: The State of the Civil and Commercial Codes in Indonesia’, *Codification in East Asia: Selected Papers from the 2nd IACL Thematic Conference* (Springer Science & Business Media 2014), 45.

3 PM Marzuki, *An Introduction To Indonesian Law* (Setara Press 2011), 3.

4 PS Berman, *The Oxford Handbook of Global Legal Pluralism* (Oxford University Press 2020); Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (Routledge 2013); Ratno Lukito, ‘Shariah and the Politics of Pluralism in Indonesia: Understanding State’s Rational Approach to Adat and Islamic Law’ (2019) 4 *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* 14 <<http://petita.ar-raniry.ac.id/index.php/petita/article/view/8>>.

5 S Beck, *Indonesia and the Dutch 1800-1950*, in: *South Asia, 1800-1950* (World Peace Communications 2008); Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (n 4); J. Taylor, *Indonesia: Peoples and Histories* (Yale University Press 2003).

6 Anonymous, *Dutch Colonies and Colonial Policy: (Extracted from The British and Foreign Review, Or European Quarterly Journal)* (Richard and John ETaylor Printing 1841); DJ Balk, G.L., Dijk, F.

Moreover, the implementation of the European legal system would annihilate the role of adat law, especially to the customary land property and forest resources. Bedner claimed that the Dutch colonial legacy even remains in the post-independence of Indonesia.<sup>7</sup>

Indeed, the European civil and commercial codes had constrained the right of indigenous people in Indonesia to own their ancestral land and forest resources. In addition, the law had become a new basis of the legal system in the NES that aimed to exploit indigenous and its land resources and foster foreign investment in the colonial land of Indonesia. Moreover, the Dutch colonial applied two economic policy approaches: a cultivation system and a political ethics approach. These economic and agriculture policies had eliminated the right to land property rights of the indigenous people in Indonesia.<sup>8</sup>

Prior to the Dutch colonial regime occupying the territory, the concept of land rights was very complex, dynamic, and distinctive from one island to another.<sup>9</sup> At the village level, land rights and land management were governed by its own native or *adat* institutions through the elders' council or other types of native institutions. Overall, each village possessed its collective work. Similar to the land property rights. Land, water, and building were jointly taken care of by all natives in the village, and each village's communal needs could be provided by the mutual assistance of the people within the borders.<sup>10</sup> In short, the village was a small self-supporting community living as one close-knit family—the basic unit within the larger familial community structure, the village as a whole. However, as more land was brought under *sawah* (wet rice farm) cultivation, neighboring villages became increasingly necessary to combine their efforts and share the available water supply and labor.<sup>11</sup>

During the colonization period, the Dutch colonial government claimed that all lands, either cultivated lands or uncultivated lands, including forest lands, belonged to the State unless the indigenous people can prove to them based on legal documents (Weber et al., 2003). The Dutch East-Indies argued that this principle was referred to as the Javanese land doctrine, in which prior-the colonial invaded the territory, all lands considered belongs to the king. Thus, once the ruler changed to the Dutch colonial, the territory or the land was immediately run under colonial authority.

The article aims to provide a historical perspective on the Indonesian native land rights during the colonization era and analyze how was the Dutch colonial regime had diminished the native rights to their lands and forest.

In conducting this analysis, the author will first discuss the basic understanding of adat law theories and land tenure history in the *adat* law system. Understanding *adat* means a historical perspective of *adat* law is essential to understand how was the history of the land tenure system of *adat* and the right to communal land and forest property.

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van, Kortlang, *Archives of the Dutch East India Company (VOC) and the Local Institutions in Batavia (Jakarta): Arsip-Arsip Verenigde Oostindische Compagnie (VOC) Dan Lembaga-Lembaga Pemerintahan Kota Batavia (Jakarta) = De Archieven van de Verenigde Oostindische Compagnie* (2007).

7 Adriaan Bedner and Yance Arizona, 'Adat in Indonesian Land Law: A Promise for the Future or a Dead End?' (2019) 20 *The Asia Pacific Journal of Anthropology* 416 <<https://www.tandfonline.com/doi/full/10.1080/14442213.2019.1670246>>; Sulaiman, 'Mereposisi Cara Pandang Hukum Negara Terhadap Hukum Adat Di Indonesia' (2017) Volume 2 *Petita : Jurnal Kajian Ilmu Hukum dan Syariah*.

8 Cornelis Fasseur, 'The Cultivation System' in R.E. Elson (ed), *The Politics of Colonial Exploitation* (Cornell University Press 1992).

9 N.C. van Setten van der Meer, *Sawah Cultivation in Ancient Java: Aspects of Development during the Indo-Javanese Period 5th to 15th Century* (Australian National University Press 1979).

10 *ibid.*

11 *ibid.*, 55.

The third part will discuss the shifted legal system on land tenure system during the colonial regime in the East-Indies [Indonesia] territory. Since the unification of law was introduced in the 18<sup>th</sup> century, the Dutch did not recognize the native legal system's role in economic and investment policy. Thus, any problem regarding land and forest resources management had been ruled under the Dutch law system. Finally, the conclusion will summary all parts of this paper, along with the recommendations.

### Understanding Native [Adat] legal system to Land Rights

Initially, the Indonesian native or *adat* legal system is a complex of rights and obligations which ties together three things – history, law, and land.<sup>12</sup> This linkage represents the historical inheritances rather than government artifacts. It means the *adat* legal system is a crucial law domain, which aims to rule its society and land rights.<sup>13</sup>

Like many other legal concepts, the *adat* legal system has many meanings. It tends to be partly a specific body of native inherited tradition, custom, religion, and linking to lands, territories, and resources. Land property and natural resources preoccupations of the Dutch colonial society resulted from the comprehensive and multiverse function of the peoples that contain local characteristics and cultural identities throughout the archipelago.

Ter Haar pointed out that the Indonesian natives land ownership mainly classified into two types of rights, first called '*eigendomsrecht*' (right of ownership) and second called as '*beschikkingsrecht*' (right of avail). The *Eigendomsrecht* is the right of private or individual ownership to lands, and the Dutch colonial state had recognized legally this right to be owned by those who can proof of it legality. Whereas the *beschikkingsrecht* is a communal right or a sharing right among indigenous people, and they have benefited from the areas by cultivating of any sources from the land, but not to own the land or unilaterally to claim it individually.<sup>14</sup> Von Benda-Beckmann named this right as '*hak ulayat*,' which is the right to the land of all peoples in the whole village territory, and ruled under the *adat* institutions or *adat* socio-political system.<sup>15</sup>

Similarly, in his book "*Een adatwetboekje voor heel Indie*" (translated: Indonesia), Van Vollenhoven also asserts that '*hak ulayat*' is merely recognized as the social-political right of the *adat* society, and it is not allowed to be sold for any reason.<sup>16</sup> This communal 'property' land is neither found in the civil code (*burgelijk wetboek*) nor within Lordship law (*recht van heerschappij*), mostly found in the European legal system. In contrast, this collective right to land exists throughout the Indonesian archipelago and is considered the highest right above the land of the native society. In some cases, this right also belongs to such a tribe or belongs to people living in one village or living in different villages (*dorpenbond*) in one county. Ter Haar classified the characteristics of customary land as follows.<sup>17</sup>

12 AD Tyson, *Decentralization and Adat Revivalism in Indonesia: The Politics of Becoming Indigenous, Rethinking Southeast Asia* (Routledge 2010).

13 Daniel Fitzpatrick, 'Land, Custom, and the State in Post-Suharto Indonesia: A Foreign Lawyer's Perspective' in D Davidson, J., Henley (ed), *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism* (Routledge 2007).

14 Bernhard Ter Haar, *Asas-Asas Dan Susunan Hukum Adat (Beginselen En Stelsel Van Het Adatrecht)* (Pradnja Paramita 1960); Daniel Fitzpatrick (n 13).

15 Franz von Benda-Beckmann and Keebet von Benda-Beckmann, 'Myths and Stereotypes about Adat Law: A Reassessment of Van Vollenhoven in the Light of Current Struggles over Adat Law in Indonesia' (2011) 167 *Bijdragen tot de taal-, land- en volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 177 <[https://brill.com/view/journals/bki/167/2-3/article-p167\\_1.xml](https://brill.com/view/journals/bki/167/2-3/article-p167_1.xml)>.

16 C van Vollenhoven, *Suatu Kitab Hukum Adat Untuk Seluruh Hindia-Belanda, Seri Terjemahan Karangan-Karangan Belanda* (Bhratara 1972).

17 Bernhard Ter Haar (n 14).

1. Customary land can be used by every indigenous community member in the traditional territory, but it cannot be owned individually.
2. Outsiders (*vreemden*, meaning people who are not members of the indigenous society, for example, people from other villages) still can use the land (*genotrecht*) as long as they obtain permission from customary elders or *adat* chief
3. Outsiders also must pay compensation, either a sum of money to *adat* chief if they want to manage the land or t
4. Indigenous peoples are responsible for stifling acts against customary law, both those carried out either by individuals from the indigenous group or by outsiders.
5. Customary rights are not permitted to be traded (*vervreemding*) except for the interests of the indigenous people, such as establishing a place of worship.

Initially, the communal property rights to land (*hak ulayat*) are not only in the area of agriculture and forest areas but also include rivers, lakes, valleys, swamps, and seas within the territory of the indigenous peoples. Meanwhile, these rights' borders between one indigenous community and others are determined based on natural signs, such as large trees, creeks, stakes, or even fences. However, in some areas with large areas, such as wilderness areas or forests, the boundaries are often vague and often cause conflict.

Moreover, the Indonesian native law also acknowledged that the people are given the right to "own" land from the forest areas. This right is called the right to virgin lands. The right to occupy virgin land stemmed from everyone's effort to clearing the forest or uncultivated land. Cleared virgin land was known as *bakalan* (to clear, to begin). In Aceh traditional society, this land is called *uteun tuhan* [the God's forest]. It means every human has rights to occupy, while it was still empty of ownership [terra-nullius]. This right is applied to a single individual or single-family when they had cleared new ground. Similarly, if several farmers clear the virgin land together to establish land farms, it led to all members' joint ownership. Likewise, If the entire population of a village worked together to establish fields for every community member's mutual benefit, the land was held in *collection ownership* as village *sawah*.<sup>18</sup>

Nevertheless, occupying virgin land shall be followed by some conditions [depend on their traditional legal systems]. Overall, the condition is based on (a) the people clear the forest land (land-clearing) that aimed to plant with something that has economic values, such as rice, coffee, coconut, and others, (b) the rice-farm under the customary land is accompanied by boundaries, (c) the right to own the land after *adat* chief approved and it must be followed by *adat* ceremony (*ontginningsrecht*) to show to other people that land had been occupied.<sup>19</sup>

Nonetheless, if the land is no longer managed and becomes a forest area again, then that right will return to customary property right (*beschikkingsrecht*), and other people have the right to propose having that plot through re-clearing the land as the previous person did. It means, if the land is planted with trees such as coconuts, and other crops for an extended period of production, even though the management has been neglected for a specific period, they still have the right to the land, called the prior-right (*voorkeursrecht*), and can be inherited to their heirs for continued usage.

As stated above, different native has a distinct traditional legal system on land property rights. For example, in West Sumatera (Minangkabau), land rights are primarily managed

18 N.C. van Setten van der Meer (n 9), 66-67.

19 A Fauzi Ridwan, *Hukum Tanah Adat: Multi Disiplin Pembudayaan Pancasila* (Dewaruci Press 1982); Muhammad Ridwansyah, 'Tindak Pidana Kerusakan Lingkungan Dalam Undang-Undang Nomor 32 Tahun 2009 Dan Tinjauan Fiqh Al-Bi'ah' (2016) 1 Petita 15.

by *adat* institutions and based on *adat* provisions. The inheritance of rights to lands are divided into several types, including (a) *Tanah ulayat nagari*, (b) *Tanah ulayat suku*, (c) *tanah ulayat pusako tinggi*, (d) *tanah ulayat pusako rendah*.<sup>20</sup> It can be seen that rights to land in Minangkabau are undivided, in which all members of the people within the *adat* have an equal right to use and utilize the land and its resources to support their livelihood, especially through the agriculture sector. Except for *tanah pusako rendah*, where the right to the land belongs individually and permitted to sell to other parties. However, the *tanah pusako rendah* rights is still under the control of “mother” and will be inherited to the girls within the family or all women lines generation, instead of man-line. This inheritance system is called a matrilineal descent system.<sup>21</sup>

In Aceh, the customary right to land (*hak ulayat*) is determined by *geuchik* (village chief) or *imum mukim* (*adat* chief).<sup>22</sup> According to IDLO,<sup>23</sup> there are some characters of *hak ulayat* in Aceh province, including:

- a) *tanoh rimba* (uncultivated forest land),
- b) *tanoh uteun* (forest land with a specific type of vegetations),
- c) *tanoh tamah* (forest land cultivated for dryland agriculture on which wood coppices grow and can be used for fuelwood or shrubs),
- d) *tanoh padang* (land with timber types or grassland area that is often used for animal grazing).
- e) *Tanoh paya*, low land covered by a permanent source of water, were mainly located to a beach
- f) *Sarah*, fertile lowland located at the shallow river stream
- g) *Sawang*, land located at the mouth of a river
- h) *Tanoh jeued* that is mud carried by the river flow created surface.

However, the right to access a communal land property in Aceh is more flexible and claimed inclusively to the native living in such *adat* territory. It means outsiders of the *adat* territory are allowed to use or utilize the lands or forest resources - but still under *adat* authorities' permission, such as *Keuchik* or *Imum Mukim*.

In West Java, the *adat* law system divides the rights to the land property into two categories. *First*, called free property rights, and *second*, named bound property rights. For the first character, everyone has the authority to act as fully entitled to the land. Meanwhile, the second type is also known as the collective rights to land, in which peoples only have to use but cannot own the land.<sup>24</sup> Besides, the collective rights to lands are classified into several types, namely:

- a) *Tanah Norowito*, a joint-owned land aimed at agriculture, and peoples within the village are allowed to plant and cultivate.
- b) *Tanah Titisara* is village-owned land that is usually rented out, agreed by residents, and used for village maintenance costs like to repair bridges, roads, mosques, and

20 Rinel Fitlayeni, 'Konflik Tanah Ulayat Antara Kaum Caniago Di Nagari Kasang Dengan Badang Pertanahan Nasional Padang Pariaman' (2015) 2 Jurnal Ilmu Social Mamangan STKIP PGRI Sumbar 151-157; Sajuti Thalib, *Hubungan Tanah Adat Dengan Hukum Agraria Di Minangkabau* (Bina Aksara 1985), 4.

21 W. King, V.T., Wilder, *The Modern Anthropology of South-East Asia: An Introduction*. Psychology Press (Psychology Press 2003).

22 Sanusi M.Syarif, 'Mukim Atau Kemukiman' *Serambi Indonesia* (Banda Aceh, 2013).

23 IDLO, *Customary Right to Land*. International Development Law Organization (International Development Law Organization 2008).

24 Ilyas Ismail, 'Kajian Terhadap Hak Milik Atas Tanah Berdasarkan Hukum Adat' (2012) 56 Jurnal Ilmu Hukum 1.

- other public purposes
- c) *Tanah Bengkok*, is a village-owned land intended for village officials whose results considered salary as long as they hold the position;
  - d) *Tanah Pusaka* is a communal land of a clan whose members only have the right to utilize it.

In central Java, the structure of agrarian society in the early history of Javanese (Indonesia) was influenced by the Indian kingship system that classified the people into several structures of sovereignty or social status. The villagers were considered the working class, whereas the king and his officials categorized the bourgeois class. As the working class, the villagers worked in the rice field to produce the rice for their livelihood and supply for the *kraton* (kingdom) and other the royal family and the empire's trading interest.<sup>25</sup>

In contrast, the villagers looked to the kingdom for protection and assistance. They believed that the king is a representation of God on the earth. Accordingly, the peoples shall obey any ruler's statement and codes to protect all peoples from natural disasters and other threats to the kingdom. Consequently, the king received people's loyalty and service. Rama said as quoted by van Setten van den Meer:

“You the King are like a great mountain, and your subjects are the trees upon it. It is the balance of harmony between the highest and the lowest that maintains prosperity and happiness”.<sup>26</sup>

Thus, based on the description above, the Indonesian native rights to land property contain communalistic and magical-religious principles. The communalistic means all customary law communities have an equal right to use or cultivate the land concerned. Whereas, the magical religious nature of communal rights exists because the *ulayat* rights are common land, and is believed to have “supernatural” and is a legacy of ancestors from the indigenous customary community groups concerned, and must be used for the common good as the previous and the next generation.

## **The Dutch Colonial's Economic Policy on Land Property in the East-Indies [Indonesia] Territory**

### ***The Dutch Colonial Policy to Land Taxes***

The Dutch colonial had occupied some part of Indonesia (especially in Java and Moluccas) for approximately 350 years, and most of the interest was initially in business and commercial aspects. The colonialization began with the establishment of VOC in 1602 until it collapsed in 1799. The VOC was one of the most significant trading companies in the 17th and 18th world and had monopolized all business sectors, including agriculture, plantation, trade, and shipping within the Indonesia territory.<sup>27</sup>

After the VOC collapsed, the Dutch royal family took over the VOC power and established the NES with Batavia (Jakarta) as the capital. The new form of government was ruled based on a conservative approach and “cooperate” with a feudalism system that had existed, especially in Java island.<sup>28</sup> The Dutch had control over the native kings (*koning*) or the native chief (*volkschoofd*), or regional lords (*landshoofd*) within their colony territory. The native chiefs were asked by the colonial Dutch to acknowledge the NES as the new “landlord” by signed the short-declaration (*Korte verklaring*), which briefly and consistently set out

25 KN Chaudhuri, *Asia Before Europe: Economy and Civilisation of the Indian Ocean from the Rise of Islam to 1750* (CUP Archive 1990).

26 N.C. van Setten van der Meer (n 9), 98.

27 Balk, G.L., Dijk, F. van, Kortlang (n 6).

28 Taylor (n 5), 109.

the local authorities' obligations and loyalty to the colonial authorities.<sup>29</sup> Therefore, the kings or the chiefs of 'native states' were deliberately maintained to become the central administrative tool through which the Dutch extracted profits.<sup>30</sup> Otherwise, the native chiefs would be alleged as the State's enemy or their position simply replaced with others.<sup>31</sup>

At that time, the Dutch intensified their rule by turning from the former indirect rule of the VOC towards the direct rule, especially in Java island, the core of the colony. However, the fall of the Netherlands to the French Empire had changed the colonial administration in Indonesia.

In 1806, Herman Willem Daendels had appointed by King Lodewijk Napoleon as the Governor-General. Daendels implemented a land taxes system (*landrente or landelijk stelsel*) by authorizing village heads to be tax collectors. A new authoritarian emerges, where the village head became a representative of the Netherlands, and they can forcibly take the land of someone who does not pay taxes or does not have agricultural produce to other people who want to do so. The Dutch carried out this policy based on a claim that the Dutch-owned all land in the Dutch territory, and they had the power to rent it out (*verpachten*) to anyone who could pay rent and taxes from these lands.<sup>32</sup>

Nevertheless, after Java fell to a British East India Company in 1811, the colonial land turned to the British empire, and Sir Thomas Stamford Raffles was appointed as the governor-general. Raffles ended the Daendels initiated slavery, land taxes, and liberalized land tenure, and extended trade. Raffles also implemented the liberal economic policy and stopped the compulsory cultivation system in Java islands and Madura. Unfortunately, the British's power in Java was lost after the Napoleonic war and after the Anglo-Dutch treaty in 1814 was signed. Following this treaty, the Dutch regained their colony's total control in Java and other archipelago parts. The treaty, also known as the London Convention, noted to ban the slave trade by Dutch citizens, and ships for the slave trade were no longer permitted in British ports.<sup>33</sup>

### ***The Dutch Colonial Monopoly on all Agriculture Products***

In 1816, king Willem I appointed Baron van der Capellen as the new governor-general in the NES. Capellen was continued to protect the coffee plantation monopoly and was not allowed the private European companies to purchase the product with the planters. He also canceled the land contract introduced by Raffles and forcing the native chiefs to pay back the advances they had received by further exploiting the cultivators.<sup>34</sup>

The adoption of a monopoly system in economic and agriculture products or unfair trading practices became the most profitable for the Dutch colonial regime. The State had monopolized the selling at the auction of the East Indies' cash crops, cultivated by the Indonesian peasant that was then shipped straight to the Netherlands.<sup>35</sup>

29 Cornelis Fasseur, 'Cornerstone and Stumbling Block: Racial Classification and the Late Colonial State in Indonesia' in Robert Cribb (ed), *The Late Colonial State in Indonesia: Political and Economic Foundations of the Netherlands Indies* (KITLV Press 1994), 124.

30 John M. Brownlee, 'Colonial Knowledge and Indigenous Power in the Dutch East Indies' [1998] *Southeast Asian Studies* 2.

31 Christian Snouck Hurgronje, *The Achehnese* (EJ Brill 1906).

32 Beck (n 5).

33 H Weber, R., Kreisel, W., Faust, 'Colonial Interventions on the Cultural Landscape of Central Sulawesi by "Ethical Policy": The Impact of the Dutch Rule in Palu and Kulawi Valley, 1905—1942.' (2003) 31 *Asian Journal of Social Science* 398.

34 Beck (n 5).

35 E Erikson, *Between Monopoly and Free Trade: The English East India Company, 1600–1757* (Princeton University Press 2016), 150.

The Indonesian native agriculture and manufactured products, such as woolen and cotton, were the significant profit for the Dutch colonial state.<sup>36</sup> It was also supported by the enormous of free laborers who support producing all necessary exported value products to the European market. This monopolical practice was not a new model in occupying the resources but had been conducted by the VOC for hundreds of years during its control of trades in the Indonesian archipelago.

In contrast, the native became dying and malnutrition. This policy had led to a revolt of native people and was led by Prince Diponegoro, a leading member of the Javanese aristocracy. The rebel knew as the Java war from 1825 to 1830 and was very costly as 8,000 Europeans and 7,000 Javanese soldiers were killed; more than 200,000 Javanese died, and the Dutch spent five million guilders per year on the war's expenses.<sup>37</sup>

### ***Forced Cultivation System (Cultuurstelsel) in Agriculture and Plantation Sectors.***

In the aftermath of the Java-war, which had severely exhausted the Dutch finances, Van den Bosch, a Dutch colonial governor-general [1830-34], and colonial minister from 1834-1840, introduced a new economic policy, namely *cultuurstelsel* (forced cultivation system), which began in 1830 until 1870.<sup>38</sup> This policy aimed to boost the colonial State's economic revenue and support the motherland's finances after losing its treasury due to war against France and Spain. Johannes van den Bosch's policy had forced local peoples to plant in all existing agricultural lands and open new lands to cultivate crops for export, such as coffee, cane sugar, tobacco, tea, pepper, and other products.<sup>39</sup> After the native peasant cultivated and harvest, all products were confiscated by the colonial or purchase at low prices.<sup>40</sup> The natives were also obligated to pay land tax, which was about 40% of the main crop.<sup>41</sup> Those who have no land, they had forced to work for the Dutch plantation without any compensation.<sup>42</sup>

The *cultuurstelsel* also strictly prohibited the Indonesian peasants from using their land to cultivate crops intended for their sustenance.<sup>43</sup> In contrast, the native forcibly insisted on cultivating export-valued products, which favors the European market. This economic's policy also was in direct conflict with the life and welfare of the Indonesian people. Fasseur argued that the native was so abusively exploited and racial discriminated and forcibly as slaves to their Dutch colonial masters. He said that:

"Combined with all sorts of compulsory services, emphasized the seemingly unbridgeable gap which existed between Europeans and "natives". Let us quote J.C.Baud, one of the architects of this new colonial policy: "language, colour, religion, morals, origin, historical memories, everything is different between the Dutch and the Javanese. We are the rulers, they are the ruled".<sup>44</sup>

The slavery system for boosting the colonial profit had been gradually objected by some Dutch scholars. By 1870, the decision to discontinue the system was agreed to while private

36 C. Filho, *Monopolies and Underdevelopment: From Colonial Past to Global Reality* (Edward Elgar Publishing 2015), 75.

37 Beck (n 5); JC Phillips, A., Sharman, *International Order in Diversity: War, Trade and Rule in the Indian Ocean* (Cambridge University Press 2015), 186-187.

38 DC)Foreign Area Division, A.U. (Washington, D.C.). *Foreign Areas Studies, Studies, A.U. (Washington, Area Handbook for Indonesia* (US Government Printing Office 1965), 46.

39 *ibid.*

40 Cornelis Fasseur (n 8).

41 MC Ricklefs, *A History of Modern Indonesia Since C.1200* (Macmillan International Higher Education 2008), 156.

42 NA Klaveren, *The Dutch Colonial System in the East Indies* (Springer 2013), 116.

43 Cornelis Fasseur (n 8).

44 Cornelis Fasseur (n 29), 33.

initiatives were phased in. by the early 1900s, an increasing number of influential people in the Indies, including the former governor-general A.W.F. Idenburg and J.P. Graaf van Limburg Stirum, strongly began to call for justice. In 1920, a commission was appointed to investigate the *culturstelsel* policy, which was diminished the welfare of the native peoples.<sup>45</sup>

The political movement against cultivation systems emerged after the flourish of the liberal revolution of 1848 in Europe. The abuses in government exploitation under the program of *tanam paksa* (Indonesia) and the subsequent criticism by humanitarians such as van Höevell and Multatuli made the liberals aware that new methods for the exploitation of the East Indies should be introduced, and the development of its inhabitants was to be found.<sup>46</sup>

In contrast to the conservatives who maintained that the central role of government in economic life was necessary to protect the natives against the overpowering influence of private capital, the liberals argued that the doctrine of free enterprise and its beneficial laws of unrestrained capital and labor market promised in Indonesia an increase in the sagging production and an improvement in the welfare of the natives. They maintained both conditions to the Dutch population's advantage in the colonial lands and the motherlands.<sup>47</sup>

However, the flow of capital into the structure of government monopolies by private investors did not result in the expected increase in per capita productivity. Javanese free labor did not respond to the liberal image of economic man, and the declining welfare of the population convince many that the Javanese values were not susceptible to 'universal' economic laws. Moreover, private capital proved to be in partnership with the government in activities considered against the Indonesians' interests and had its primary consideration the profit of its particular interests.<sup>48</sup>

In short, this policy made the Netherlands one of the world's wealthiest countries during the time. By adopting two significant economic policies, the first was monopolized all agriculture products, and the second was implementing the *Cultuurstelsel* (culture system), which its ruthless implementation in agriculture in 1830 at Java and Madura. This enormously lucrative system was based on the principle that only the Dutch government owned the land, and the indigenous Indonesian peasants were merely allowed to lease it exclusively for the cultivation of those cash crops deemed profitable for export by the Dutch.

### ***The Liberalisation of the Economic Platform in the NEI***

Under the influence of the European liberal-democratic revolutionary actions in 1848, the Netherlands moved toward liberal political reforms in adopting the twelve proposals of Thorbecke for changing the Constitution,<sup>49</sup> which was accomplished on November 3<sup>rd</sup>.

45 R Blaney, E., Ockerse, *Our Childhood in the Former Colonial Dutch East Indies: Recollections Before and During Our Wartime Internment by the Japanese* (Xlibris Corporation 2011), 65.

46 C Eatock, 'Resisting the Ascendancy of an Emboldened Colonialism, in: Howard-Wagner' in I Howard-Wagner, D., Bargh, M., Altamirano-Jiménez (ed), *The Neoliberal State, Recognition and Indigenous Rights, New Paternalism to New Imaginings* (ANU Press 2018); EJM Schmutzer, *Dutch Colonial Policy and the Search for Identity in Indonesia: 1920 - 1931* (Brill Archive 1977).

47 Schmutzer (n 46).

48 Division, A.U. (Washington, D.C.). Foreign Areas Studies, Studies, A.U. (Washington (n 38).

49 The revision of the Dutch Constitution, in 1848, was the most important revision in Dutch constitutional history. It abolished all political privileges of the classes (which had been revived in 1814) and the owners of feudal properties (art.123). the Second Chamber of Parliament, the provincial councils, and the municipal councils were to be elected by popular vote in the future, and to be restricted only by a tax criterion (art.76, 123, 139). The important principle of freedom of education (art.194) and

1848. In a few months, through King William II's activity, it was possible to tear down the oligarchy privilege and give the country a government change that allowed the Dutch commonalty to become an important political influence in domestic and colonial affairs.<sup>50</sup>

However, the common approach, around 1902, of such neo-liberals as A.W.F. Idenburg, van Deventer, Kielstra, and Fock to the economic and moral development of the NEI was still the doctrine that "the economic motive is the stimulus to welfare," added to the conviction of the need for, and the desirability of, state intervention for this purpose.<sup>51</sup> Van Deventer expressed this approach when he wrote: "the government of Netherlands should make contributions in recognition of former benefits and emphasize the development of material wealth rather than human welfare. It should consider what could be done for, rather than with, the Javanese. It should realize that there is no concept of what the Javanese could do for himself."<sup>52</sup>

The neo-liberals and, in particular, their leading spokesman Dr. C.Th. van Deventer argued, moreover, that the Netherlands should recognize a debt of honor for the many millions it had received in the previous period of exploitation of the resources of the Indies. As the population has grown faster than its resources, food, and cattle, it is time for the Netherlands to give a helping hand to the natives with a new liberal policy of "benevolent individualism."<sup>53</sup> This policy emphasized the need to protect native rights and promote moral and material development, in contrast to the previous exploitation policy.

To Deventer, education and social and political emancipation of the native should, in the circumstances, become the primary purpose of government. He also advocated the creation of an autonomous Chamber for India for the better protection of those native rights against the power of capitalist penetration of the dependency. His suggestion, however, was met with the violent objection that "nothing would better serve to alienate homeland and colony."<sup>54</sup>

Under these circumstances, the liberal leader van Deventer published a study in the periodical "de Gids" (August 1899) called honor-bound to restore the "surplus millions" which it had received from its colony and to recognize, at least in principle, its debt (about 832 million guilders). The restored funds should be used, he said, for educational facilities and economic development in the NEI. By that time, the revenue surplus from the dependency had stopped flowing into the home treasury, and money was even needed overseas to support the war effort in Atjeh (1873-1900).

### ***The State's Claim over Land, Territories, and Resources [Domein Verklaring Principle]***

The adoption of "Domain Verklarings," or the Declaration of State's domain over all lands, territories, and resources in the NEI occupied territory, was aimed to support the liberal economic policy and political ethics system. The doctrine was firstly adopted in Java and Madura island in the early year of 1870 (mentioned in article 1 of Agrarisch Besluit,

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the abolishment of the right of place (art.170) indicated a changed relationship between the state and the church. Refer to, C.W. van der Pot, *Handboek van Het Nederlandsche Staatsrecht* (NV Uitgevers-Maatschppij WEJ Tjeenk Willink 1848), 75-76.

50 B Landheer, *The Netherlands East Indies Comes of Age* (The Netherlands Information Bureau 1970); P van der Eng, 'After 200 Years, Why Is Indonesian's Cadastral System Still Incomplete?' in K McCarthy, J.F. Robinson (ed), *Land and Development in Indonesia: Searching for the People's Sovereignty* (ISEAS-Yusof Ishak Institute 2016).

51 M Oudenampsen, *The Rise of the Dutch New Right: An Intellectual History of the Rightward Shift in Dutch Politics* (Routledge 2020).

52 Schmutzer (n 46).

53 *ibid.*

54 *ibid.*

No.118). Nonetheless, this doctrine also finally applied to the lands outside of Java island and was actively implemented in 1875. Overall it doctrine declared that “all lands without having a proof of its legality [eigendomrecht] are owned by the State [State domain].”

The adoption of “*domein verklaring*” that stipulated that land not held in ownership or under ownership-like rights – *woete gronden*, wastelands – was deemed to be the domain of the State.<sup>55</sup> This model of State’s claim over the lands was initiated by Utrecht law scholars. The Utrecht lawyers argued that the only private rights to land resembling Dutch notions of ownership were recognized under the Domain Declaration. It means the concept of “*hak ulayat*” or *beschikkingsrechten* of the villages, as proposed by Leiden scholars, was not conformed to private ownership criteria.

Since colonial legal logic prescribed that each piece of land has an owner, Utrecht scholars such as G.J Nolst Trenite (1927), Izak A. Nederburgh (1934), and Eduard H.s’Jacob (1945) argued that it was ‘inevitable’ that the State became the owner of such resource. Whereas *A beschikkingsrecht* of villages, if it existed at all, would have to be regarded as a public right of villages government, which would have been absorbed by the new, overriding public rights emanating from the State’s sovereignty. Any public right exercised by village governments over village territories remained subject to the State’s rights.<sup>56</sup>

By contrast, Van Vollenhoven and his followers argued that most of Utrecht’s scholars misunderstood the interpretations of native rights to lands (*beschikkingsrecht*). Van Vollenhoven disapprovingly noted: “the administration only supports those rights that fit well into our categories. The rest are imagined claims or rights which only exist in the imagination of the population.” By categorizing the Native land under the civil legal system, it will be easier for the Dutch colonial regime to legally justified of the State’s rights to own the lands. In many regions of the occupied territory, the Dutch colonial regimes legally expropriated native lands and provided *erfpacht* or concession rights to Dutch companies and other foreign investors.<sup>57</sup>

The *erfpacht* right is the most expansive right to own or use the land because the holders have authority over the *eigendom* right to land and can be burden with hypothec rights. The Agrarian Wet 1870 also recognized the native people’s right to land on the one hand and provided the rights for private legal entities [investors] to land concession rights for another hand. The colonial regime also enacted the *Koninklij besluit*, or also known as *agrarisch besluit*. This provision stated that:

“*Behoudens opvolging van de tweede en derde bepaling der voormelde wet, blijft het beginsel gehnhaafd, dat alle grond, waarop niet door anderen regt van eigendom wordt bewezen domein van de Staat is.*” [without prejudice to the validity of the provisions in Article 3 Agrarisch wet, the principle remains to be maintained, that all land which other parties cannot prove to be eigendom rights, is domein or belongs to the State).”

Since the adoption of this provision, indigenous people as the lands’ traditional holders have lost their legality to protect their land property. On the contrary, the Dutch had massively allowed and provided grants and permitted investors to occupy the native traditional lands, territories, and resources without their Prior and Free-Informed Consent [PFIC] or with adequate compensation.<sup>58</sup>

55 Benda-Beckmann and Benda-Beckmann (n 15), 179.

56 Bedner and Arizona (n 7).

57 Cornelis van Vollenhove, *Historical Atlas of Indonesia*. Routledge (Routledge 2013).

58 Halkis, *Revitalisasi Hak Ulayat: Tantangan Dan Peluang* (Yayasan Pusaka Riau 2006), 16.

The Agrarian Acts of 1870 marked another critical phase in expanding the Dutch colonial regime over customary property land rights. Although purporting to protect *adat* rights, the self-serving provisions of the Act decreed that all land not under constant cultivation, including fallow swidden lands and customary protected forest and hunting lands, thenceforth became the “free” domain of the State.<sup>59</sup>

Similarly, the 1874 administrative decree (the so-called ‘secret statute’) declared all virgin lands in the directly administered Sumatera territories to belong to the colonial government as part of its domain. The State was still constrained in regulating such a doctrine and focused its efforts on the regimented rural command economy reflected in Javanese and Sumatran plantation development. Nevertheless, the Agrarian Acts created a legal justification for the official disregard and disenfranchisement of thousands of Indonesian rural communities whose extensive fallow farming system formed the legal basis of indigenous land tenures.

Finally, the Dutch claim as the new landlord over the East-Indies territory had adversely impacted the rights of native Indonesian people to hold their ancestral land or collective right to lands property. Although the Vollenhoven recommendations to the Dutch authority, which stated that the force for westernization over the indigenous legal system would cause danger to the customary practice of the native, especially related to the land management.<sup>60</sup> In fact, this practice had remained in the land tenure system in the post-independence of Indonesia

### Conclusion

The Dutch colonial economic’s policy during the colonization in the East-Indies [Indonesia] territory had an adverse effect on the indigenous collective rights to lands. The Dutch was a trading partner of the Indonesian native kingdoms. However, the Dutch conquered the kingdom and occupied all territories and their natural resources. The conquest of the native kingdoms was motivated by the economy’s interest. The Dutch were very greedy and established a colonial State in the Indonesian archipelago with abundant natural resources. The first economic’s policy was monopolized the trading sector and domestic markets and obligated the tax on indigenous lands. In the second phase, the Dutch forced the native to plant and cultivate the specific agricultural product that contains a high value for the European market or the products-based exports. The State also obtained abundant laborforces, and the workers worked unpaid. They were enslaved to be employed on the Dutch companies’ plantations. The third phase or the predominant problem occurred after the colonial State adopted the agrarisch wet and the agrarisch besluit, which applied the ‘domain verklaring,’ or the State domain doctrine. This doctrine had expropriated the native lands’ properties, particularly rights to communal or collective land rights [hak ulayat]. In other words, the State’s policy, which stated that any lands that cannot be proven of its legality based on the civil code or the Dutch legal system, are owned by the State. In contrast, most customary land legality refers to communal recognition based on the customary law, rather than having land titles, as stated in the Dutch civil law system. Finally, the concept of ‘*domain verklaring*’ adopted during the Dutch liberal administration practically remains and has become a legacy in the modern Indonesia land tenure system.

59 NA Klaveren, *The Dutch Colonial System in the East Indies* (Springer 2013).

60 Greg and Virginia Hooker Fealy (ed), ‘Voices of Islam in Southeast Asia: A Contemporary Sourcebook’ (ISEAS 2006).

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