

The Contribution of L.W.C. Van Den Berg's Thoughts in Dutch Colonial Legal Politics on The Development of Religious Courts in Indonesia

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Abstract. The purpose of this paper is to explore the contributions of L.W.C. Van Den Berg in Dutch colonial legal politics on the development of religious courts through the theory of reception in complexu. The focus of this research are: what are the contributions of Van Den Berg in the development of religious justice in Indonesia? Why did the Dutch colonial government accept this idea? Was it to protect the colonized people or protect their power? This type of research is a library research by focusing on sources of information originating from legal politics books, articles, journals and literature that are relevant and in sync with the object of this research. The results show that Van Den Berg had contributed to the development of religious courts in Indonesia through the receptie in complexu theory which stated that the law that applies to Muslims is Islamic law. This theory emerged after the Dutch colonial saw the reality of the application of Islamic law to society. As an implementation of this theory, Islamic law legislation was made known as the Compendium Freije. Religious courts were given the authority to carry out their legal jurisdiction according to and based on Islamic law. With this theory, the existence of the Netherlands could be accepted by the people of the Nusantara

Keywords: Van Den Berg, Politics of law, Reception in complexu, religious court

Introduction

Islamic law in Indonesia was only known after the spread of Islam in the country. Regarding when Islam entered Indonesia, historians have got different opinions on this matter. Some estimate that it occurred in the first century Hijri, or the seventh century AD, some conclude that it occurred in the seventh century Hijri or more or less in the thirteenth century AD.¹

¹ Muhammad Hasan al-Aydrus, *Penyebaran Islam Di Asia Tenggara* (Jakarta: Lentera, 1996), 41.

Although historians have different opinions about when Islam entered Indonesia, they agree that the application of Islamic law in Indonesia has been carried out completely since the entry of Islam into Indonesia, and the people have accepted the law well.² The existence of Islamic law in Indonesia today actually has a very important history. Its genealogical roots can be seen far back, namely when Islam first entered the archipelago, starting from the Samudera Pasai kingdom in Aceh, the Mataram kingdom in Java, the Banjar kingdom in Kalimantan, and the Islamic kingdom in Makassar, as well as Islamic kingdoms in several other archipelago regions.³

According to Bushar Muhammad⁴, The Dutch colonialists before coming to the archipelago thought that the archipelago was still a wilderness, full of animals, with primitive people without any legal rules in it, but what they saw was not the case. They witnessed the fact that in the area which they later called the Dutch East Indies, there was already an applicable law, namely Islamic law, in addition to customary law (adatrecht). Islamic law has even become a law that is obeyed by Muslims in the archipelago and has become state law in Islamic kingdoms⁵.

According to the Colonial, Islamic law, which was basically open to outside elements, was seen as a barrier to European law. Whereas Islam itself recognizes "urf" as a source of law because it was aware of the fact that customs had played an important role in regulating the life of the community. The clash of the two legal systems was known as the colonial bamboo split law theory, which was made by the colonial so that there was a conflict between Islamic law and customary law so that there was a gap to enforce the colonial legal system in Indonesia.⁶

² Andi Herawati, "Perkembangan Hukum Islam Di Indonesia (Belanda, Jepang, Dan Indonesia Merdeka Sampai Sekarang)," *Ash-Shahabah* 3, no. 1 (2017): 49-58.

³ Fitra Mulyawan and Dora Tiara, "Karakteristik Hukum Islam pada Zaman Penjajahan Belanda dan Jepang," *UNES Law Review* 3, no. 2 (2020): 113-25, doi:10.31933/unesrev.v3i2.151.

⁴ Suparman Usman, *Hukum Islam: Asas-Asas Dan Pengantar Studi Hukum Islam Dan Tata Hukum Indonesia* (Jakarta: Gaya Media Pratama, 2001), 107.

⁵ Busthanul Arifin, *Budaya Hukum Itu Telah Mati* (Jakarta: Kongres Umat Islam, 1998), 2.

⁶ Rahmad Alamsyah, Imadah Thoyyibah, and Tri Novianti, "Pengaruh Teori Receptie Dalam Politik Hukum Kolonial Belanda Terhadap Hukum Islam Dan Hukum

Furthermore, the development of Dutch colonialism, which at the same time brought the Christian religion they professed, made the Indonesian people, who were predominantly Muslim, fought against them, which happened to be a period of Islamic revival at that time, so that the resistance between Muslims and the Dutch colonialists was identical with inter-religious resistance. Along with the increasingly swift issues of legal modernization that the Dutch East Indies government issued, prompting the emergence of various discussions and speculations about "what law is appropriate to apply to indigenous peoples", the discussions of these experts were believed to revolve around the dominance between Islam law and customary law⁷.

Based on this background, a theory related to the relationship between religion and state law was born. One of the well-known theories was *reception in complexu* which was popularized by L.W.C. Van Den Berg, in which the application of this theory also affected the application of Islamic law and its application in religious courts in Indonesia. The research questions are: what are Van Den Berg's contributions to the development of religious justice in Indonesia? Why did the Dutch colonial government accept this idea? Is it to protect the colonized people or protect their power?

This research is a type of library research. This study focuses more on sources of information originating from legal politics books, articles, journals and literature that are relevant and in sync with the object of this research study. The research approach is an analytical tool used to interpret the data that has been selected and processed necessary for the realization of a predetermined research orientation. Approach is the whole element that is understood to approach a field of science and understand knowledge that is organized, round, looking for targets studied by the science⁸.

Adat Dalam Sejarah Hukum Indonesia," *PETITA* 3, no. 2 (2021): 343–62, doi:10.33373/pta.v3i2.3875.

⁷ Murdan Murdan, "Pluralisme Hukum (Adat dan Islam) di Indonesia," *Mahkamah: Jurnal Kajian Hukum Islam* 1, no. 1 (2016): 48–60, doi:10.24235/mahkamah.v1i1.573.

⁸Gie Lian, *Ilmu Politik Suatu Pembahasan Tentang Pengertian, Kedudukan, Lingkup Metodologi* (Yogyakarta: Gadjah Mada University Press, 1982), 4.

Results and Discussion

Van Den Berg's Thoughts: The Theory of Receptie in Complexu

The early entry of Islam into the archipelago has become a hot topic of discussion among activists and historical observers from various circles. However, one thing is certain, Islam and the people of the Archipelago are like two sides of an inseparable coin. The large-scale conversion of the people of the archipelago to Islam gave Islam an important position in social politics. Islamic law was automatically applied in the Islamic kingdoms that existed at that time.

The application of Islamic law in the archipelago to the Islamic community was also recognized by Dutch legal and cultural experts, that since 1800 AD, Islam had been a religion that was highly respected by its adherents, and every social problem that arises always refers to the teachings of Islamic law, whether in the problems of worship, politics, economics, and other issues, including in the field of justice. Seeing this reality, the first thing the Dutch colonialists did at the beginning of their arrival in the archipelago was to allow the implementation of Islamic law for its adherents as a whole. One of the Dutch legal experts who initiated it was L.W.C. Van Den Berg⁹.

L.W.C. Van Den Berg (1845-1927) was an expert in Islamic law and customary law who lived in Indonesia from 1870-1887. His thinking that said that for Muslims Islamic law was fully applicable, because they had embraced their religion even though in practice there were deviations, gave birth to a theory known as the theory of *reception in complexu*.¹⁰

For Muslims, Islamic law was fully applicable, because they had embraced Islam even though there were deviations in its implementation. This is based on Islamic law that had been applied to native Indonesians based on the *Regeerring Reglement*, dan *Compendium freijer* in 1706 concerning Islamic Marriage and Inheritance Law¹¹.

⁹ Abdul Manan, *Aneka Masalah Hukum Perdata Islam* (Jakarta: Kencana, 2006), 292.

¹⁰ Murdan, "Pluralisme Hukum (Adat dan Islam) di Indonesia," 51.

¹¹ Ahmad Rosyadi and Rais Ahmad, *Formalisasi Syari'at Islam Dalam Perspektif Tata Hukum Indonesia* (Bogor: Ghalia Indonesia, 2006), 73-74.

Van Den Berg's efforts in defending Islamic law among the Islamic community were actually based on the legal principle of following one's religion. Therefore, he concluded that the Indonesian people had accepted and enforced Islamic law as a whole in their practice of life.¹² This thought developed because before the Dutch came to Indonesia, with the VOC trade mission here, there were many Islamic kingdoms that enforced Islamic law. The ideology adopted (legal system) was generally based on the Imam Shafi'i school of thought. These kingdoms had implemented the norms of Islamic law and the people had enforced them. These kingdoms included the Samudra Pasai Kingdom, the Aceh Darussalam Kingdom, the Demak Sultanate, Cirebon, Mataram, Banten, Ternate, South Kalimantan, Kutai and others. In these kingdom, Islamic law was enforced through the Religious Courts Institution with different levels and names according to their respective regions such as Kerapatan Qadhi, Hakim Syara' dan Surambi Courts.¹³

According to Van Den Berg, *receptio in complexu* by Hindus is from Hindu law, by Muslims is from Islamic law, by Christians is from Christian law. As long as it is not otherwise proven according to this teaching, indigenous laws follow their religion, because if you follow a religion, you must also follow the laws of those religions faithfully. With this theory, Van Den Berg had divided the validity of the law according to the religion adopted. For Muslims apply Islamic law, while for non-Muslims apply their law.

Van den Berg's view emphasizes the fact that Muslims and Islamic law cannot be separated, and from this relationship emerges what is known as the principle of Islamic personality. Van Den Berg's opinion was based on several facts at that time:

1. Religious life was a characteristic of the people of Nusantara, where religion could not be separated from people's daily lives.
2. Belief in each religion binded so strongly, that all forms of social institutions were influenced by it.

¹² Syahrizal, *Hukum Adat Dan Hukum Islam Di Indonesia, Refleksi Terhadap Beberapa Integrasi Hukum Dalam Bidang Kewarisan Di Aceh* (Aceh: Nadya Foundation, 2004), 129-31.

¹³ Ibid.

3. Van Den Berg's tendency towards the application of religious law suggested that the European influence brought by the Dutch colonials regarding the separation between world affairs and religion did not get fertile ground at that time. The fact that Islam was the majority religion had led Van Den Berg to the opinion that the law that applied in Indonesian society was Islamic law¹⁴.

Under the influence of the theory of *receptio in complexu*, the colonial government at that time recognized the laws that had been in effect since the establishment of the Islamic kingdoms in the archipelago, such as Islamic family law and formulated them in legal regulations that were applied to all adherents of Islam.

The Implementation of Islamic Law Post Receptie in Complexu Theory in the Religious Courts

Basically, the existence of religious courts had existed since Islam entered Indonesia, Muslims in Indonesia had implemented religious rules based on the fiqh they understand, while during the colonial period, the implementation of religious courts was left to the King/Sultan to run them in their respective kingdoms. The implementation of Islamic law carried out by several Islamic kingdoms proved the existence of the religious courts as an independent institution and could not be separated from the system of government in the territory of the kingdom. During the reign of the Dutch East Indies, the Religious Courts developed in the regions under different conditions, whether it is in name, in authority, and in structure. There were several names for the Religious Courts at that time, such as: Ulama Meeting, Religious Raad., Islamic Court, Syara' Court, Priesteraa, Padri Court, Godsdiertige Rechtspark, Godsdiertnst Beatme, Mohammedansche Godsdiertnst Beatme, Kerapatan Qadi, Hof Voor Islamietische Zaaken, Great Kerapatan Qadi, High Islamic Court and so on.¹⁵

¹⁴ Chtijanto, "Pengadilan Agama Sebagai Wadah Perjuangan Mengisi Kemerdekaan Bangsa," in *Kenang-Kenangan Seabad Pengadilan Agama* (Jakarta: Dirbinbapera Dep. Agama RI, 1985), 117.

¹⁵ Muhammad Sukri, "Sejarah Peradilan Agama Di Indonesia (Pendekatan Yuridis)," *Jurnal Ilmiah Al-Syir'ah* 10, no. 2 (2016), doi:10.30984/as.v10i2.252.

From the existing literature, another note was that before this religious court was inaugurated, the colonial government had recognized the existence and operation of religious courts in the Islamic Nusantara community, but it had not been legally recognized. Among others are:

1. In September 1808 there was an instruction from the Dutch East Indies government to the Regents which read: "There will be no interference in the religious affairs of the Javanese, while their religious leaders are left to decide certain cases in the marriage sector and inheritance on the condition that there will be no misuse, and an appeal can be filed with the appellate judge."
2. In 1820 through Stbl No. 22 Article 13 stipulates that the Regent is obligated to pay attention to matters of the Islamic religion and to ensure that religious leaders can carry out their duties in accordance with Javanese customs, such as in matters of marriage, distribution of inheritance, and the like. From the term "Regent" in the above provisions it can be concluded that Religious Courts have existed throughout the island of Java.
3. In 1823, through the resolution of the Governor-General dated June 3, 1823 No. 12 was inaugurated by the Religious Courts in the city of Palembang, chaired by Prince Penghulu, while an appeal could be submitted to the Sultan. The authority of the Palembang Religious Court includes: marriage, divorce, distribution of assets, to whom the child is handed over if the parents divorce, what are the rights of each parent to the child, inheritance and will, guardianship, and other cases.
4. In 1835, through the Resolution dated December 7, 1835 contained in Stbl 1835 No. 58, the Dutch East Indies government at that time issued an explanation regarding Article 13 Stbl 1820 No. 20 with the following content: "In the event of a dispute between the Javanese and one another regarding matters of marriage, distribution of property and similar disputes, which must be decided by Islamic law, then the religious leaders give a decision, but the claim for receive payments arising from the decisions of religious leaders must be brought to the

ordinary courts.”¹⁶.

In formal juridical terms, the religious courts became an institution or as a judicial body related to the state system for the first time born in Indonesia (Java Madura) on August 1, 1882. This birth was based on a decision of the King of the Netherlands (*Koninklijk Besluit*) namely King Willem III dated January 19, 1882 number 24 contained in Staatsblad 1882 number 152, which stipulated a regulation on religious courts with the name "*Priesterraden*" for Java and Madura. In Dutch it is called "*Bepaling betreffende de Priestraden op Java en Madoera*," or abbreviated as "*Priesterraden*" (*Raad Religion*). This decision of the King of the Netherlands was declared effective from August 1, 1882 as contained in Staatsblad 1882 number 153. Thus, it can be said that the date of birth of the religious courts in Indonesia was August 1, 1882.¹⁷

It's just that the authority of the religious court was not clearly defined in Staatblad 1882 No. 152. Therefore, the court itself determined the cases which it considered to fall within its sphere of authority, namely matters relating to marriage, all types of divorce, dowry, legal maintenance or not of guardianship children, inheritance, hihah, sadaqah, and baitul mal danwakaf. Thus, it could clearly be said that the core authority of the Religious Courts at that time was matters relating to Islamic marriage and inheritance law.

The determination of the environment of authority which was carried out by the Religious Courts itself was a continuation of judicial practice in the Muslim community, since the days of the VOC and previous Islamic kingdoms. The establishment of a religious court with Siaatshlad 1882 No. 152 was the legal acknowledgment of the existing, growing and developing lawn in in society at that time¹⁸.

¹⁶ Munawir Sjadzali, "Landasan Pemikiran Politik Hukum Islam Dalam Rangka Menentukan Peradilan Agama Di Indonesia," in *Hukum Islam Di Indonesia: Pemikiran Dan Praktek* (Bandung: Remaja Rosdakarya, 1994), 43.

¹⁷ Taufik Abdullah and Sharon Siddique, *Tradisi Dan Kebangkitan Islam Di Asia Tenggara* (Jakarta: LP3ES, 1988), 216.

¹⁸ Muhammad Daud Ali, *Hukum Islam: Pengantar Ilmu Hukum Dan Tata Hukum Islam Di Indonesia* (Jakarta: Raja Grafindo Persada, 2004), 217.

The birth of Staatsblad 1882 number 152 could not be separated from the thoughts of Van Den Berg with his *receptive in complexu* theory. Even according to Mukhtar Zarkasyi, Van Den Berg was the drafter of Staatsblad 1882 number 152 with a background and rationale based on historical reality, sociological reality and then given juridical legitimacy by the Dutch government for the establishment of a religious court in Indonesia¹⁹. The concept of *receptio in complexu* theory then brings fresh air to the implementation of Islamic law in Indonesia. Juhaya S. Praja supported the *receptio in complexu* theory to be used as a reference for the Dutch East Indies in structuring laws for Muslims so that Islamic law was fully enforced against Muslims. Article 75 Regeering Reglement (RR) in 1855 states "by Indonesian judges, it is necessary to apply a Religious Law (*godsdienswetten*)"²⁰.

The real form of the implementation of the theory of *reception in complexu* can be seen in the various rules that were born during the Dutch colonial period. Islamic family law was recognized and applied in the form of the *Resolutie der Indische Regeering* regulation dated May 25, 1760, which was a collection of Islamic marriage law and inheritance law known as the *compendium freijer*. *Compendium freije* was a form of Islamic law legislation during the Dutch colonial period because it was drafted with the involvement of the penghulu and religious scholars. The *Compendium*, which is the realization of the demands for legal justice for the indigenous Muslim community, was announced to apply to the indigenous people in the fortified area of Jakarta (Betawi) in 1760²¹.

In addition, the implementation of Islamic law which has been running since the days of the sultanate by the colonial government was confirmed as a legal basis in the Dutch East Indies Constitution, known as the Regeering Reglement (RR) of 1855. Article 75 of the RR states:

¹⁹ Mukhtar Zarkasyi, *Peradilan Agama Di Indonesia, Sejarah Perkembangan Lembaga Dan Proses Pembentukan Undang-Undanganya* (Jakarta: Direktorat Jenderal Kelembagaan Agama Islam, 2001), 12-13.

²⁰ Murdan, "Pluralisme Hukum (Adat dan Islam) di Indonesia," 50.

²¹ Muhammad Daud Ali, "Kedudukan Hukum Islam Dalam Sistem Hukum Indonesia," in *Tradisi Dan Kebangkitan Islam Di Asia Tenggara* (Jakarta: LP3ES, 1989), 212.

“The Indonesian judges should treat religious laws (godsdiensstige), even in article 78 it is further emphasized: In the event of a civil case between Indonesians, or with those who are equated with them, then they submit to the decision of the religious judge or the head of the community. They are according to religious laws (godsdiensstige wetten) or their old provisions”²².

Based on this fact, Van Den Berg actually had contributed to the indigenous people, especially those who were Muslim, because he had formulated the existence of Islamic law with the theory of “*receptio in complexu*”, which meant that the applicable law in Indonesia was according to the religion adopted in the local area. He was also instrumental in the publication of the Staatsblaad (Stbl. 1882 No. 152) which recognized the authority of the fields of the Religious Courts with different names in each place, to carry out their legal jurisdictions in accordance with and based on Islamic law.

Conclusion

L.W.C Van Den Berg's thoughts on enforcing the law for its adherents were outlined through the theory of *receptio in complexu*, i.e. Islamic law applied for Muslims, while their own law applied for non-Muslims. Van den Berg's view emphasized the fact that Muslims and Islamic law could not be separated. The implementation of *receptio in complexu* theory could be seen in various rules. There was Islamic law legislation during the Dutch Colonial period with the subject of marriage law and Islamic inheritance law, compiled by involving the penghulu (leaders) and ulama (scholars) known as the *Compendium Freije*. Van Den Berg's thoughts contributed to the existence of a stronger religious court with the issuance of Staatsblad 1882 number 152 which recognized the authority of the Religious Courts to carry out their legal jurisdiction in accordance with and based on Islamic law. With this theory, the existence of the Netherlands can be accepted by the people of Nusantara.

²² Ismail Suny, “Kedudukan Hukum Islam Dalam Sistem Ketatanegaraan Indonesia,” in *Prospek Hukum Islam Kerangka Pembangunan Hukum Nasional Di Indonesia : Sebuah Kenangan 65 Tahun Prof. Dr. H. Busthanul Arifin, SH* (Jakarta: PP IKAHA, 1994), 7.

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