

Domination of Colonial Law¹ in The Middle of Indonesian Moslem Society

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I. BACKGROUND OF THE PROBLEMS

This short article intends to explain the major problems faced by Indonesia since been colonized by a foreign nation (in this case mainly the Netherlands) for three and a half centuries with all its consequences, namely the existence of foreign law until now in Indonesia, including the influence of European culture in the life of people who are predominantly muslim with the traditions and culture of course different from the tradition and culture of the colonial. Circumstances should be terminated immediately it can certainly be felt by everyone that upholds and respects the religious laws adopted by the muslim majority of Indonesia's population. After 70 years of Indonesian independent, largely of colonial law is still exist in the entire territory of Indonesia. Indonesian people seemed no longer care about these issues, or at least only a small part of Indonesian society are seriously thinking about it. And for a great nation like Indonesia should the laws of society are in accordance with the community's culture, and culture is a culture that is supposed to be created/built on the majority religion in this country embraced the religion of Islam. So, it can be said that the law should be the law of Indonesia are built on the teachings and culture of Islam, but the reality showed that the laws of the Dutch Law such as '*Wetboek van Strafrecht*', '*Burgerlijk Wetboek*' and '*Wetboek van Koophandel*' are still apply today.

Attempts to change the system of foreign law into the legal system of Indonesia that have been performed since Indonesia's independence, and when it's already generated a lot of products of national law in several areas of law, but these efforts have not been felt since the codification of the law in most areas of civil, criminal and commercial still using colonial law, but to the three areas of the law was also stipulated in Islamic Law, even the law says Islamic Law is derived from the Holy Qur'an and the Sunnah of Prophet Muhammad, who has set up a complete all the needs of humanity not only for muslims but also applies to all people in the worlds. Normativity Islamic Law is probably not entirely practiced by its followers. It means that if there are parts of Islamic Law is not practiced, can not be generalized that the followers do not practice Islamic Law.

Similarly can not be concluded that the so-called Islamic Law is what is being practiced by the adherents. The conclusion that we can take is that the Islamic community certainly practice the values of Islamic Law, no matter how many its quantity, without any association with the customary law as in "*Receptie Theory*". It is very wrong when people think that the muslim community in Indonesia did not practice Islamic Law in everyday life. Therefore if people want to study law and society in Indonesia can not be separated from the study of Islamic Law. Religious communities such as the Indonesian nation would be easier to run a tradition when the tradition contains the values of religion. National Law can not be separated from the traditions that contains the value of this religion and be more pervasive.¹ Although Islam as the foundation of state is still being debated,² but as known before the Dutch came to Indonesia, Islamic Law has its roots in Indonesia and alongside customary Law. But until now there has been all areas of Islamic Law stipulated in the law, only several Laws relating to Islamic values like Act Number 1 of 1974 on Marriage, Act Number 7 of 1989 on Religious Courts, while another product is Compilation of Islamic Law on the basis of Presidential Instruction Number 1 of 1991.³ There is something were not right when saying why we still use colonial law, while all of our citizens against colonialism ?

¹ A.Qodri Azizy, *Eklektisme Hukum Nasional, Kompetisi antara Hukum Islam dan Hukum Umum* (Yogyakarta : Gama Media, 2004),p.184-185.

² Islam as the foundation of state still debatable today, although there is only some people support it but ever formulated in "Jakarta Charter, as the first principle is God with the obligation to apply Shari'a for its followers. But there were the suggestions of the representatives of the east Indonesia that met with Muhammad Hatta, finally Islamic people change the formulation of the first principle with "Believe in one supreme God" although in the "Dekrit Presiden 5 juli 1959" said that Jakarta Charter is the soul of UUD 1945 and became unseparable part of UUD 1945. According to Ridwan Saidi as noted by Adian Husaini, he said that Islamic Law is a Living law in the middle of muslim society, without UUD 1945 or without state Islamic people will apply islamic Law and has been governed in "Dekrit Presiden 5 Juli 1959 based on the President Decision Number 150 of 1959 and replaced in "Iembaran Negara Nomor 75 Tahun 1959 (Adian Husaini, *Pancasila Bukan Untuk Menindas Hak konstitusional Umat Islam*, Jakarta : Gema Insani Press, 2009),p.53-54.

³ Compilation of islamic Law is origin from Indonesia and its source is the Holy Qur'an, Sunnah of The Prophet, 38 of Fiqh Books, interview with Islamic experts Jurisprudence and comparative study to some Islamic State like Marocco Mesir and Turkey (Muhyar Fanani, *membumikan Hukum langit, nasionalisasi Hukum Islam dan Islamisasi Hukum Nsional-Yogyakarta* : tiara Wacana, 2008),p.114.

¹Colonial Law here means the Dutch Law, because still exist today in Indonesia, especially like "Burgerlijk Wetboek (Civil Law), *Wetboek Van Strafrecht* (Criminal Law), and *Wetboek van Koophandel* (Commercial Law)

II. THE MAIN PROBLEMS.

There are three main subject in this article will be discussed systematically as follows:

1. From The Colonial Law To National Law.
2. Modern Imperialism and its Relation to the Dutch Policy to Islam, Arabian and the Javanese Kingdom, and
3. Theosophy Movement and its Influence in Indonesia.

The purposes of this article is the discovery of the factors that led to Colonial Law still applies in Indonesia today, so it can immediately be formulated steps to be taken by the Government, with all of the citizens of Indonesia in efforts to achieve the product in accordance with national law aspirations of their peoples who are predominantly muslim. This writing is based on Library Research using historical approaches. By following the view of Ibnu Khaldun that : “*by studying the past history of a nation/society will be equipped to face the future life.*”⁴ Social facts that occurred in the history of Indonesia will be very useful in revealing the problem of state, formulate their own national laws in accordance with the aspirations of the people and the majority religion followed in Indonesia.

Minhaji, in his book “*Social History in Islamic Study*” said that the Islamic understanding of the present and the future can be better understood with a better understanding of the Islamic religion in the past, and therefore, an understanding of Islam is linked with the past, the present and the future, the use of an historical approach is unavoidable.⁵ The necessity of data analysis conducted in this paper qualitatively.⁶

III. DEBATE/DISCUSSION

1. From Colonial Law To National Law.

Essentially, the application of national law today is the result of hard work of Dutch Colonial government conducted a thorough plan and professional strategy. The arrival of western imperialism (European) in Asean countries including Indonesia is not only for sheer economic necessity, but there is a greater purpose, namely the rule of law and western civilization in colonial countries, According to Soetandyo,⁷

the process of introducing and development of a foreign law system into/in a system of life and governance are otohthon indigenous law. The Legal system⁸ here means a system of European Law (particularly the Netherlands are rooted in the traditions of Indo Germany Law and Roman Christianity. While indigenous legal system which “*otohton*” is the livelihood of indigeous people and the rule of law in Indonesia (especially, Java).⁹

Colonial Legal developments in Indonesia occurred between AD 1840-1940 before the arrival of Japan, and also when Indonesia achieved Independence on August, 17 1945. This period starts from the realization of the colonial policies of the new connection with the beginning of real triumph of Liberal ideas in governments policy in the Netherlands. The change was marked by the first succesful enactment of the Constitution of New Holland (Grondwet) in the year 1848, which was followed by a new regulations on governance policies to manage the colonies were at that time still known as the Dutch Indies was “*Het Reglement op Het Beleid van der Regering Netherlands Indies*, better known as Regering Reglement of 1854. In the decade that the rules were influential in the Dutch Government began to let out his opinion on the new policy in this periode field of law and legislation for the Dutch East Indies colony that became known as the “*Law policies outlined consciously (Bewuste Rechtspolitiek).*”¹⁰ In the period of 1860-1890 emerge problems known as “*Foreign Legal Transplants*” that European Law to be applied in a non-European colonies. In this period shall apply the principle of concordance and the principle of unity of law (*eenheidsbeginsel*), while the period of 1890-1940 was the period of the notion of “*Ethical Policy*”, the efforts of its realization and the collapse of the de facto colonial rule at the beginning of the start of the Pacific War. In this period selected way to consider the existence of religious norms and institutions and customs are still adhered to the indigenous people, regardless of religion or believe in applying European Law in order to meet the legal requirements in the Dutch East Indies. But the ideal of law enforcement for the entire class of people and for the rule of law must be codified and not released it. In 1904, Kuyper Cabinet propose a draft law to realize the unification of the

⁴ According to Ibnu Khaldun science laid down in every civilization and in individuals. Science can be achieve in read and study about something happened in the past. An accident bring us to understand the beginning of something,how the situation and condition create a change, how a state enlarge its territory, how a state became welfare the world so interested to make a long journey, untill lose from the world (Ibnu Khaldun Opinions that noted by Syarifuddin Jurdi in his book Islamic Sociology, the Elaboration of Ibnu Khaldun Thinking (Yogyakarta : Teras, 2008),p.21

⁵ Minhaji, Social History in Islamic study, Theory, Method and Implementation (Yogyakarta: Sunan Kalijaga Press, 2010),p.63.

⁶ Qualitative data mainly words or statements and not numeral, but words more useful than numeral, see at Nasution, Research Method of Qualitative Naturalistic (Bandung : Tarsito, 1996),p.128.

⁷ Soetandyo W. From Colonial Law towards National Law, dynamic political social in Law Development in Indonesia (jakarta : Raja Grafindo Persada, 1995),p.1-2.

⁸ The Legal System in short, is a ship that sails the seas of social force. And the concept of legal culture is crucial to an understanding of legal development. By local culture, we mean the ideas, attitudes, values and beliefs that people hold about the legal system. See Gunther Teubner, Dilemmas of Law in the Welfare State (New York: Walter de Gruyter, 1986),p.17.

⁹ Besides has a legal system, indigenous people also has a system of thought, called “*Javanism*”, and as a system of thought, javanism is singularly elaborate containing a cosmology, a mythology, a set of essentially mystical conceptions, etc.that give rise to a particular javanese anthropology, that is a system of ideas about the nature of man and society that in it turns informs javanese ethics, tradition and style. For short, javanism provide a general universe of meaning as an integrated body of knowledge that serves to interpret life as it is and as it appears to be. Please read more at Niels Murder, Individual and Society in Java, A Cultural Analysis (Yogyakarta : Gajah Mada University Press, 1994),p.1.

¹⁰ Ibid.,p.8.

Civil Code for the entire group of people of Dutch east Indies based on European Law (except for Family law, inheritance law, land law, the Law of waqf and village government). Furthermore, in 1915 the Dutch had unified Criminal Law (*Staatsblaad*.1915 Number 732 junto *Staatsblaad*.1917 Number 497 and number 645) and entered into force on January 1, 1918. Then in 1923 attempted unification of Civil Law for all population groups Dutch east Indies, but Cowan's plan failed. This failure, by Soetandyo is the services of legal ethnography expert from the University of Leiden, a particularist persistent and consistent that is Cornelis Van Vollenhoven. Indeed Van Vollenhoven not reject the idea of unification, he only objected when legal resident of the majority indogenous people who have neglected to pave the way for the implementation of European Law.¹¹

Aqib Suminto in his book *“Islamic Policy of Dutch Indies”* says:

With the victory of religious parties in general elections in 1901, it transformed the face of politics in the Netherland. Liberal party has controled polities for fifty years of losing power while religious groups grew stronger and took the government to the principles of christianity. Monarch's annual speech in September 1901 which describes the Christian soul, states have an ethical obligation and moral responsibility to the people of the Dutch East Indies, which provide more aid to the spread of christianity. The formation of the Cabinet of Abraham Kuyper in 1901 which is a coalition of Christian parties strengthening christian principles in Dutch politics. Support for the christianization of the Dutch East Indies strengthened in line with the proclaimed of political indebtedness.¹²

Based on the informations above, the transplantation of Colonial law was originally executed in the colony wisely, considering the colonies there were already have a society who have their own laws, both Islamic Law and Customary Law (most of which are also based on islamic Law and slightly mixed with the laws of Hinduism and Buddhism). This is the policy of legal transplants with full of awareness. The ethical policy referred to above is actually all done in order to improve the welfare of the population and the spread of Christianity, or in more strategic terms is *“Ver nederlandse”* (make someone to be Dutch people) for indogenous people, especially the elite.¹³

In the periode between the years 1940-1990 which is a post-colonial period was preceded by a series of crises and upheavals leading to the transitional situation. This period marked by historical events and the collapse of colonial rule, which was followed by the process of decolonization. Governance and the development of Indonesia's legal system during this period can be divided into three main stages of

development, first, the development during the transition period (1940-1950), second, Physical development during the post revolution government of President Soekarno (1950-1966) and third, the development of *“New Order Era”* (1966-1990), throughout this period, the development of the law of Indonesia (no longer Dutch east Indies) be started by the national policy as outlined by the nationals leaders of Indonesia. Basically and firstly national leaders are trying to build Indonesian law to break away from the ideas of colonial law, but is not easy. This period start with the believe that the substance of the law that had been colonized people will be raised and fully developed into a national legal substance, but which in reality ended with the recognition that the process was not as simple as its strategic model in doctrine. According Soetandyo, of his research for 4 months in the library of Leiden, difficulties have arisen not only because of the diversity of the people that the laws are generally not defined explicitly, but also because the management system as a modern legal system has already created entirely as a colonial legacy that will not be easy, just overhauled or replaced in a short time. Soetandyo also said that the entire development of the legal system in Indonesia has been build and structured definitely based on the previous principles before the collapse of colonial power, that is the supremacy of law which unified and codified and also the implementation of justice based on the principles of impartiality and professionally pursued.¹⁴

2. Modern Imperialism and its Relation to Dutch Policy on Islam, Arabian and The Javanese Kingdom.

Many scientists say that modern imperialism is a continuation of the Crusades. Although failed to realized their plans but left the ambition on the Europeans to dominate the islamic World. After the Crusades, Europeans leader think hard to find the best way to attack the islamic World. The desire to dominate the Islamic World is never lost from their memory since they entered the Islamic World in the first Crusades and since they see the property assets of the Islamic World. For the muslims, the Crusades were religiously motivated war, so that in the name of religion. Many people still believe that the Crusades is not over until today, but only in difference shape. The failure of the Crusades make European Countries must learn of it and make perfect plan, so finally imperialism cast religious zeal of planning but still protect the purpose and meaning. Failure to realize their ambition due to internal conflict among the European Countries until the late 18th century. They eventually agreed to split the Islamic World between them, so the British colonized India, Egypt, Iraq, Yordan. Frech invaded Syria and lebanon. In Southeast Asia the British Colonized Malaysia and Singapore and the Dutch colonized Indonesia.

Muhammad Sayyid Al-Wakil in his book *“Faces of the Ummayad Islamic World until Modern Imperialism said : “the ultimate goal is to is to conquer Islam that is a strength of liberation and resistance against the enemy. They have to*

¹¹ Ibid.p.10.

¹² Aqib Suminto, *Islamic Policy of the Dutch East Indies*, “Het Kantoor voor Inlandsche Zaken “ (Jakarta: LP3ES, 1985),p.20-21.

¹³ Soetandyo, *Op.cit*,p.11.

¹⁴ Soetandyo, *Ibid.*,p.13-14.

make big plan so as to make the muslim silent and allowed them to reside in the country, that's who want to be pursued by the imperialist countries of Europe, but in fact the muslims never silent and see foreign power into the country, eventhough they put a million reasons".¹⁵

In another part of his book *Al-Wakil* says that in order to achieve their targets using the following steps:¹⁶

- a. Creating doubts about Islam, Islamic Structure and its ability to pursue advances in science and technology that has achieved European nations that have been distanced from the religious life;
- b. Secularization and make the islamic Government far from Islamic Shari'a ;
- c. Education dichotomy between religious education and general education leading to internal conflicts within one family and a widening in the nation;
- d. Importance of public education and its graduate placed in strategic position but on the contrary for religious education, in order to leave a bad precedent in the community;
- e. Spread the moral decay in society;
- f. Set up schools to educate generations of their style;
- g. Opening the hospitals and shelters to treat the patient and accomodating people who can not afford, from which they do the conspiracy;
- h. Providing scholarships to young muslims to study in their country and this means a chance for them to destroy the Islamic personality.

In carrying out these efforts most modern Imperialism leader declared to Islam, as practiced by Napoleon Bonaparte, Frenc military leader in Egypt in the year 1798. Bonaparte tried to calm the Egyptian people by saying that he worship, respect for the religion of Islam. The prophet Muhammad and the Holy Qur'an. This was done in order to avoid the fierce resistance as experience in the Crusades for bringing the name of Religion.¹⁷

It is clear that modern imperialism goal is domination by colonial to Islamic world, destroying the religious life of muslims in colonial countries that western civilization is superior to Islamic civilizatio. And the most important thing is the enacment of colonial law in colonial countries. It can be interpreted that the main enemy to be destroyed is the power of Islam. When the Dutch colonized Indonesia for three and a half centuries, it is clear that the Dutch set up systematic ways to destroy the religious life of the muslim majority in Indonesia. The Netherlands imposed a law that dose not fit with the personality of the Indonesian nation and contrary with indonesian custom. Thus the efforts taken by the Dutch is to approach the leaders of the political elite, the nobility, they

were western educated, schooled with substantial scholarships to European countries (mainly Duch) , so hopefully when they return to Indonesia will be significant influence to the political life of Indonesia. For this purpose the Dutch had prepared the people tust and one of the well known and was instrumental in carrying out their duties was Snouck Hurgronje. For Snouck the enemy of colonialism is not Islam as a religion, but Islam as a political doctrine. In this cae Snouck said: *"....I've never had any objections to the religious elements of this institute (Islam), only its political influence in my opinion, deplorable. And as a Dutchmen especially, I feel a strong need to warn against this"*.

In the field of pure religion or worship, the colonial government was basically giving freedom to muslims to carry out their religion as long as they do not interfere with the power of the Dutch Government. In the social field the government uses custom in a way to encourage people to approach the Dutch, even helping people to be on the road, but in the constitution field, the government should refrain from any effort that would bring people to fanaticism and Pan Islamism¹⁸ Political separation like this by Keemkamp called *"Splittingsstheorie"* because essentially Islam is not so much separating into three areas.

Hamid Al-Gadri in his book *"C.Snouck Hurgronje, the Dutch Politc Against Islam and Arabian"* say that :

"Dutch policy toward political Islam is based on the analysis and the concept of is quite mature. Islam is the enemy of the Netherlands and therefore they think Islam is synonymous with the Arabs, the Arabs are their enemies anyway. Snouck has receipt against Islam, Indonesia must free from the influence of Islam and Arab. This goal is achieved by making difficulties to Indonesian to go to Mecca (for the pilgrimme) and try to stop the immigration of Arabs to Indonesia from Hadramaut, but more important than the two business above is that by encouraging Indonesian to the western school and keep them away from "madrasah"(school founded by the Arabs). This policy made a wide gap between the product of Islamic school groups and the Western education were seriously enough in the past. Not impossible that less sympathetic attitude from the nationalist political movements in the past (whose leaders comprised of western educated) are due to this Snouck politics".¹⁹

Snouck never stop from his action, in the view of Van Koningsveld, Snouck involved in colonial politics and that he

¹⁵ Muhammad sayyid Al-Wakil, *The Faces of The Islamic World from Bani Ummayad until Modern Imperialism* (Jakarta, Pustaka Al-Kautsar, 2005).p.308.

¹⁶ *Ibid.*p.310-311.

¹⁷ *Ibid.*p.306-307.

¹⁸ Politic of association and the use of adat had aim make close relation between the Dutch and Indonesia throughout culture, where the education fields are the main object. With this association Indonesia can use the Dutch Culture without leave out the Indonesian culture. Association is not the same with unification, because unification based on the natural process but the supporter of association refuse the use of force.

¹⁹ Facing the fanatisism and Pan Islamism, the Dutch send their "people" in Mecca, because the pilgrimage was very dangerous for Colonial needs. The Indonesians must be investigate about what can they do there and its impact in Indonesia. So the Dutch really very hate the Arabs because of their action in spreading Islam in Indonesia and the Dutch worried about Pan Islamism movement that is the unity ofIslamic people in the world

has a political function. Related to this function Snouck trip to Mecca, he married with muslim woman. From the archive documents found information that Snouck was assigned to investigate the movements of leading pilgrims from the Dutch East Indies²⁰ He changed his name to Abdul Ghaffar. What Snouck do by masquerading as Islam is he same that carried out by Napoleon Bonaparte, as we have discussed before. Snouck hatred against Islam contained in the philosophy of colonialism, namely that Indonesia through the transition into the modern world, which is not patterned Islam and is not control by custom. He aspires Indonesia western style progress rate adjustment will be determined by the Dutch.²¹ What is the meaning of “not patterned islam and is not control by custom ?

According to Daniel S. Lev , It means that the difference between Islam and indigenous reinforced by the Colonial Government in legislative policy. The view of colonial government about law and society in Indonesia shows no respect for the Islamic religion. If there is a clash between Islam and the indigenous, dutch government always sides with indigenous groups.²²

The attitude of the Dutch Government for customary we can trace in the provisions of Article 15 of “*Algemeine Bepalingen van Wetgeving voor Indonesie (AB)*” which states:

“.....is not customary law, unless the government law states that”. So, it means that the customary is not the law for the Dutch government, and shall be considered legal if the law has been set in the colonial government official (written law).²³

From what we have observed the problems above, the conclusion is the occupation by the colonial government, not just the physical and economic colonization but including law and civilization., and as the dominant in Indonesia as it is Islamic Law and customary law, then the two branches of the law is subject to the political domination of colonial government.²⁴

²⁰ Hamid Al-Gadri, C.Snouck Hurgronje, the Dutch Policy Against Islam and the Arabs (Jakarta : Sinar Harapan, 1984),p.197.

²¹ Aqib Suminto, Op.cit.,p.44.

²² Ibid.p.43.

²³ According to Satjipto Rahardjo's analysis Article 15 AB shows the “Dogmatic Method” as the character of the West law. In the history of law the law at the first time arise from the relation between people in a society, that is “Customary Law” (Roberto Mangabeira Unger said as Interactional Law or Customary Law) and then change into norms formulated as public and positive rules. Since that time the state need to safe and justification for that new order. So like a process of selection and only the norms that has been formulated positively as a law. See at Satjipto Rahardjo, Sosiologi Hukum, Perkembangan Metode Dan Pilihan masalah (Yogyakarta : Genta Publishing, 2010),p.4-5.

²⁴ Snouck's opinion that islamic law is for indigenous people as long as the Adat recht receive it. This theory followed by C.Van Vollenhoven and Ter Haar and have big influence for society especially for the student of Indonesian Law High School, so Prof.Hazairin said that this theory is “The Devil theory”, see at Irfan S.Awwas, Trilogi kepemimpinan Negara Islam Indonesia, Mengungkap Perjuangan Umat Islam Dan Pengkhiatanan Kaum Nasionalis Sekuler (Yogyakarta : Uswah Press, 2008),p.138.

Other evidence that shows how the colonial policy of the government is trying to destroy the existing order of society that has been established is what is done by the colonial government in the field of the customary of the Javanese Kingdom and also on education.

Daendels is a famous name in its sole issue “*Daendels Communique on Ceremonies and Polite Social Behaviour*” on July, 28th 1808. This initiative is intended to change the relationship between the colonial government with the Javanese Kingdom. The first step taken was evident in his correspondence with Nicolaus Engelhard, the abolition of the office of governor and Director of the Northeast Coast of Java were carried out by Daendels in Semarang on May 13th, 1808, so it opens the way for direct contact between the governor general and the resident in Javanese Kingdom. This communique eliminates some of the rituals before it was done by the residents to the King and by Daendels considered demeaning the Dutch. This communique gives the resident some special rights as the vice of Governor and the government of the Kingdom in Den Haag. The residents now have title “Ambassador”. They are no longer open the cap again as it approached the King but the King stood when meet the Residents and as soon as possible give a seat to the left of the Throne King, so they seat side by side with the King. The other articles governing military escort in the form of heavily armed soldiers riding during an official visit to the Palace and was no longer expected to stop their cart when meet the King Cart in the street.²⁵

Colonial Government policy in the field of education and Islam carried out by placing “Islam” as a rival that must be faced. Western education is formulated as a factor that will destroy the strength of Islam in Indonesia. At the end of the 19th century Snouck very optimistic that Islam will not be able to compete with western education. Islamic religion is rated as frozen and obstructions of progress, so it must be balanced by increasing the level of advancement of indigenous people. In the muslim perspective the colonial government is often accused of being a christian government. A colonial government policy that very hard for muslims is “teacher ordinance”. The first ordinance at 1905 giving obligation to every Islamic religion teachers to request and obtain permission before carrying out his duties as a teacher, while the second ordinance in 1925 only requires religious teacher to report. The two ordinances is a control media for the colonial government to monitor the behaviour of teachers and Islamic missionaries in Indonesia. The revolt by farmer in banten at 1888 as rates as driven by the pilgrims and Islamic religious teachers. So, in practice, teachers ordinance can be used to suppress the Islamic religion, linked to public order and security. List of teachers who teach should also be known by the colonial government.²⁶ This teacher Ordinance get loud

²⁵ Peter Carey, Kuasa Ramalan, Pangeran Diponegoro Dan Akhir Tatanan Lama Di Jawa 1785-1855 (Jakarta : KPG bekerjasama dengan KITLV (Koninklijk Instituut voor taal, Land en Volkenkunde, 2012),p.193-194.

²⁶ Aqib Suminto, Op.cit.,p.25.

reaction in west Sumatera. The actor is Haji Rasul. On August, 18th, 1928 he held a big meeting in the high hill which was attended by 800 people scholars and religious teachers, and 200 representatives of 115 muslim organizations in Minangkabau. The speech of Haji Rasul had mastered the hearing and agreed to send delegates to the governor-general to refuse the implementation of The Teacher Ordinance in West Sumatera. Governor general replied that the Dutch Government has not intend to carry out the Teacher Ordinance in Minangkabau. From the Dutch themselves are also no strong reaction given by Van der Plass in 1934, he said that the list of teachers that there is absolutely no point, he saw the side effects of this ordinance and view it as the greatest obstacle to productive work in the Dutch East Indies. The desire of people of Indonesia to acquire western education is also developed increasingly. The weak ability of the colonial government to overcome this case lead to the emergence of indigenous private school which became known as “*Wild School*”, but because the management and curriculum of this school is not deemed eligible determined by the government, then a high school degree is not recognized in official offices. Though some private schools has been proved good enough, such as those established by Muhammadiyah. The birth of Wild School Ordinance is intended to conduct surveillance, that everyone who wanted to establish educational institutions must inform in writing to the Head of Local Area by mentioning the way of teaching and the teaching. Finally Muhammadiyah in cooperation and collaboration with “Taman Siswa”, Budi Utomo, PNI, Partindo and Isteri Sedar oppose this ordinance. This reaction forced the colonial government to review the Ordinance that was half a year old yet. In mid-February 1933 the Ordinance was declared to be withdrawn. Since then many school that are considered wild developed and the quality increasing fastly.²⁷

3. Theosophy Movement and Its Influence in Indonesia.

The first interesting question here is what is the relationship between Theosophy and Law in Indonesia, especially Islamic law? Or, in other words why Theosophy became the main object of this article? Here's some information that may provide to answer the problem.

Zionist movement called as “Freemasonry”²⁸ found in London by Jewish immigrants in 1717. While in America,

since it was founded in 1733 freemason has spread to the country, so George Washington, Thomas F Jefferson, and Benjamin Franklin are the actor of Freemason too. The principle of Freemasonry is “*Liberty, Equality and fraternity*”. The mission is “To remove the separator between people”, and is considered one the separation between humans is “religion”, so many people say that all religions are equal. Secular humanism is one of the doctrine of Freemason, so don't be surprised if the ideology of Secular humanism globalized by “*Universal Declaration of Human Rights*”. Therefore the declaration set out on the 10th of December 1948 is not based on a particular religion, and a number of the article such as article 16 and 18 (on freedom of marriage and freedom of religious move) against the teachings of Islam. Islamic societies proposes alternative ideas in “*Cairo Declaration*” which retains its religious factors in marriage and religious freedom issues.²⁹ The teachings and mission of religious neutrality certainly interesting for many people, but Islamic society who understand the teaching of their religion believe that the real brotherhood and the best brotherhood is the brotherhood that is built on a foundation of faith (See The holy Qur'an, Surah al-hujurat verse 10 and al-Mujadalah verse 22).

Chairman of the Dutch East Indies Theosofische Vereeniging, D. Van Hinloopen Labberton in Theosofi magazine Month in December 1912 said:

*“Human progress is with religion or not? I think if someone embrace religion without reasons and if someone embrace religion without the true religion of knowledge, impossible to advance his mind, whatever religion, because the character of religion is we love someone else each other, care to help someone, So, the True religion is in the heart or in mind”*³⁰.

Disclaim of a faith is very misleading, because in the view of Islam, faith is the determined aspect of the validity of the charity. In Islam, faith is the recognition and justification. This means, that the teachings of Freemasonry/Vrijmetselarij every people whatever his religion will be floated faith, called as “*Floatism*”. In this way the muslim will be weak in the faith, and do not follow their religion properly, and as a result, the Islamic Law will not get a place of honor in the life of the nation, and this is the purpose of the Jewish people in the

²⁷ The rising of Muhammadiyah in 1912 and Muhammadiyah's school was open at that time is can't be separated from KH. Ahmad Dahlan (the real name is Muhammad Darwis, he was born in Yogyakarta in 1868, as his private efforts, when he was 23 years old, he went to Mecca to pilgrims and stayed there in along time. Then, after he came back to Yogyakarta he convey secretly some books through Tuban Beach like the “Al-Manaar” and Al-Urwatul Wutsqo”, and he studied the books and finally he found Muhammadiyah. See Artawijaya, Jaringan Yahudi Internasional Di Nusantara (Jakarta: Pustaka Al-Kautsar, 2010), p.58-59.

²⁸ Jews as a group of people spread out to the entire of the world, the “falasha” is the Jews that move to Africa, Russian Jews is the Jews who move to Bukhara, and apart of them move to India and some European country. Founded in 1717 in London and only 50 years after that found in Indonesia (the Dutch East Indies) as one of their branch. In the Statuta (Basic Foundation), Vrijmetselarij, the other name of Freemason, this organization

will bring people and humanity in the degree of thinking and life science high in “Loge” (house for Members to meet and activity, Javanese people called it “Loji”). At the first time Indonesian people hostile this organization, because in “loge” they often make ceremonies to call “Satan”. Colonel Olcott one of the Vrijmetselarij actor acknowledge that in the Dutch East Indies they often receive attack. Then the Zionism Headquarter in English make decision to move the centre of their movement, not in English but in India. See, Ridwan Saidi and Rizki Ridyasmara, Fakta Dan Data Yahudi Di Indonesia, Dulu Dan Kini (Jakarta: Khalifa, 2009), p.4-5.

²⁹ Artawijaya, Gerakan Theosofi Di Indonesia, Menelusuri jejak Aliran Kebatanaan Yahudi Sejak masa Hindia Belanda Hingga Era Reformasi (Jakarta: Pustaka Al-Kautsar, 2010), p.xii-xiv.

³⁰ Ibid.p.xviii.

conduct of occupation, especially in low-predominantly muslim in Southeast Asia

The colonial government in Indonesia has also been doing this systematically. They instill the teaching in the Indonesian nationalist leaders, elites and religious palace and nobility³¹, so hopefully if they are interested in and acceptance of this doctrine, of course the people of Indonesia will follow. In the course of of teaching Theosophy can be easily absorbed and accepted many people in Indonesia, because there are similarities with the teaching of Javanese syncretism.³² The teaching of theosophy is done precede by the “*Ethical Policy*”, which among other things has a program providing scholarships and sending the leaders of Indonesia to study abroad, especially in The University of Leiden, so expect the thinking of these figures will change when returning to their homeland, and this is what called a combination of east and west.

At the first time, Ethical Movement was announced by Queen Wilhelmina in 1901. This movement is called a new style of colonial politics that elevates morality for the nation that colonized to get their rights in full, including economic and spiritual needs. The opening of western education at that time showed that the colonial government hopefully Indonesian people actually like western civilization,³³ then in the field of law, they are trying to abolish the system of law that is inconsistent with the Dutch policy and replace it with the invaders secular legal system. Snouck, Van Vollenhoven and Ter Haar are the three figures of orientalist³⁴ who actively work to remove the Islamic Law in Indonesia.³⁵

Some Indonesian figures who joined the Theosophy movement among others are Prof.Supomo, Muhammad Yamin, Dr.Rajiman Wedyodiningrat. Supomo and Muhammad yamin got a scholarship from an organization called as “*Dienaren van Indie*” driven by freemasonry. While Rajiman is a private physician in the Surakarta Palace,

because with his vast knowledge, he became a confidant of the palace., and had accompanied the Prince Aryo Kusumo Yudo met with queen Wilhelmina in 1923 in the Netherlands. Prince Aryo Kusumo was the first Indonesian who studied at the university of Leiden.³⁶

As for the other figures close to the colonial government is R.A.Kartini. Snouck hurgronje is admired by Kartini and is considered an expert of Islamic Law. He contacted Mrs.JH.Abendanon and advised her to make close relationship with Kartini. When Abendanon in her official visit to east Java, she had come to Kartini’s house in jepara. Kartini want to study in the Dutch School in Netherlands, but her family did not give permit, so finally Kartini often corresponded to Mrs. Abendanon. Van Kol, the member of the Netherlands Parliament asked Kartini to write the article about woman in order read by Dutch people, including published her book “*Duisternis Door Tot Licht*” in 1911 translated by Armijn Pane with “*Light After dark*” (or in Javanese language is “*Habis Gelap Terbitlah Terang*”)³⁷

From the above description shows that the influence of of the Theosophy movement profound effect of the minds of the people of Indonesia at that time, including the national figures, though with a high spirit of nationalism despite The President Sukarno also interested in Theosophy teaching, but eventually disperse Theosophy movement in Indonesia.

D. Closing.

Some of the descriptions that have been discussed above are valuable lesson from the long history of the struggle of the Indonesia nation. History provides lesson for a nation to be able to take the values of good and leave the bad values. The struggle of national heroes and Founding Fathers we shall honor with all its shortcomings and advantages. After all this time Indonesia has established a great country not only in population, but also in its role in international relations. What is needed now is all of the Indonesian fill the spirit of independence and moral nation building.

If our national law (Indonesian Law) is still mixed with the colonial law, then this means that we have an obligation to continue development in the field of law. It is said to continue as the heroes and leaders of the movement we’ve done fundamental changes in the production of our national law. In this reform era people have the right to speak, to advise on the development of the law. The reform era has a different way of looking at the law. We can now explore the sources of law in its broadest sense. The laws of religion are also a source of law or even the main source of law and is to be undertaken in order to fill and replace the colonial law. Not only for the majority of muslims alone, but people of other religions in Indonesia also have the same right to take charge of national law and the teachings of their religion, and this is clearly guaranteed in the basic Law of the Republic of

³¹ Wertheim wrote, during two ages VOC spread their power in abig part of the Indonesia Island, the situation in Indonesia determined by the Tri Lateral relation between the three of strongest group that is the family of the Javanese king, the Dutch /colonial government and Islamic missionaries. (Hamid Al-Gadri, Op.cit,p.80).

³² If Theosophy own a password “There is no Religion Higher than Truth”, so in the Javanese Teachings has a concept of “the perfect people” (**ingsun sejati** in javanese language) and “The Perfect of life” (**kasampurnaning urip**-in javanese lanuage)that is in conformity with the Theosophy doctrine that propose the ideas of secular humanism and eliminate the religious values. Theosophy teach people about the unity of human beings and God through God Values extant as universal morality values, or in javanese languages is “**Manunggaling Kawula Gusti**”

³³ To act as counter balance to the modern education founded by Islamic organization, the colonial government spread the Netherland teacher to teach indonesian young people with the system of European education in order close to European culture. The Dutch school found in Indonesia among others are Holland Indlandsche School (HIS) in 1914 and European Lagere School (ELS). See at M.Abdul Karim, Islam dan Kemerdekaan Indonesia (Yogyakarta : Sumbangsih Press, 2005),p.9.

³⁴ Orientalism is a western style for dominating, restructuring and having authority over the orient.

³⁵ Artawijaya, Op.cit.,p.102-103.

³⁶ Ibid.,p.176.

³⁷ Ibid.p.218-220.

Indonesia (Undang-Undang Dasar 1945). Basically the majority of muslims in Indonesia understand how to respect other religions. Remember the third Principle of “Panca Sila/Five Principle” is The Unity of Indonesia. This principle gives priority obligation to us (all of the Indonesian). Precisely as the majority of people, muslims should be encouraged to engage in dialogue and open tolerance with another faith by upholding Aqidah. What is needed for a muslim are to keep the truth strongly and realize the meaning of life gradually. It is interesting to examine the messages of Professor Kasman Singodimejo, a muslim intellectual, Muhammadiyah leaders, warlords, Mujahid who gorged out out of jail who wrote the message to us as follows:

“A muslim must fight on, no matter how the situation is more difficult than ever. The difficulties were not absolve a muslim to fight on, even he had to fight more persistent than the past with a certain strategy and tactics are more appropriate. Experience you have had a lesson that should be plenty to give wisdom and benefits, do not feel discouraged and do not have to feel the struggle fails, just have not come to the objectives and purposes.³⁸

Thus, for us, every muslim engaged in the field of law, let us do the nationalization of Islamic Law and the Islamization of National law. So, the national law applicable to muslim in Indonesia are national laws in accordance with the values of Islam based on the Qur'an and the Sunnah of Prophet Muhammad Saw. Muhyar Fanani in his book “Membumikan Hukum langit”/How to Implement Islamic Law says that: “*The establishment of Islamic Law into positive law is unavoidable. Making islamic law as a source of legislation is a necessity. Legal basis can be found in Law No.10 of 2004 on the establishment Regulation Legislation, article 53 states:”The right to provide input orally or in writing or discussion in preparing draft laws and draft regulations.*

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³⁸ As Noted by Adian Husaini in his book “Pancasila Bukan Untuk Menindas hak Konstitusional Umat Islam (Jakarta : Gema Insani Press, 2009),p.233-234