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## The Process of Decolonization on Islamic Law in Indonesia: A Historical Perspective

**ABSTRACT:** *The process of decolonization on Islamic law in Indonesia had a long history, namely from the Islamic kingdoms period, Dutch colonial government, to post-colonial period. This paper aimed at describing and explaining how the process of decolonization on history of Islamic law in Indonesia was. The historical method was employed to account for the facts of history. Based on the facts of history, the process of decolonization on Islamic law in Indonesia coincided with the development of Islam in Indonesia. The application of the Islamic law in Indonesia could not be separated from the roles of Islamic kingdoms in spreading out the teachings of Islam. The arrival of the Dutch colonial has predisposed the application of the Islamic law in Indonesia. The Dutch colonial government applied the theory of "Receptio in Complexu" and the theory of "Receptie" in the Islamic law in Indonesia. Both of these theories gave a very strong influence in the Dutch legal system in Indonesia. The Proclamation of Indonesian Independence was the starting point of the struggle for legal structure changes by performing the decolonization of law, including Islamic law decolonization through the emergence of the "Receptie Exit" theory. This theory attempted to waive the Islamic law from the influence of decolonization and to direct that the Islamic law in Indonesia was based on Pancasila and the Constitution of 1945. This decolonization was designated by the emergence of Islamic law in the perspective of Indonesianness in the form of the Compilation of Islamic Law in Indonesia.*

**KEY WORDS:** *Decolonization Process; Islamic Law; National Law System; Pancasila; Indonesia.*

### INTRODUCTION

After Islam entered and developed in the area of Sumatra and Java in Indonesia, the next phase was the growth of political power of Islam, which was marked by the birth of Islamic kingdoms or sultanates, such as Samudera Pasai, Demak kingdom, Jepara, Tuban, Gresik, and several other governments (Intajalle *et al.* 2012:12; and Nasution, 2012:2). The evidence that Islam developed in the kingdom of Samudera Pasai

of Sumatra, for example, was recorded by Ibn Batutah, when visiting to the kingdom in 1345. He wrote his admiration for the development of Islam under the leadership of Sultan Malik al-Zahir (cited in Intajalle *et al.* 2012).

To govern the life system in the territory, the Islamic law was enforced (Ambarly, 2002; and Sumarni, 2012). The application and implementation of the Islamic law in Indonesia have been started from the beginning of the 14<sup>th</sup> century, namely in the

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era of the kingdom of Samudera Pasai in Sumatera to the arrival of the Dutch colonial (Bahri, 2012:360). The arrival of Islam has also brought changes in the people of Aceh. The values of Islam began to be applied and implemented in the life of Aceh people, whose previous religion was Hindu (Lombard, 2006). Sultan Malik al-Shaleh of Samudera Pasai was an expert in the jurisprudence (*fiqh*) following Syafi'i's school. With the help of scholars from various foreign countries and from the *qadi* (judge), the first Sultan of this kingdom implemented the various decisions relating to the implementation of Islamic law in each area (Abdullah, 1987; and Ambarly, 2002).

One of Islamic law application and implementation evidences in the kingdom of Samudera Pasai could be easily found in the *Record of Trengganu* (Ismail, 2015). The application of Islamic law in Aceh also developed fast in the Sultanate of Iskandar Muda, 1607-1636 AD (*Anno Domini*), that applied the rules of Islam completely (*kaffah*) based on Syafi'i's school, consisting of the fields of worship: *ahwal as-syakshiyah* or family law; *jinyayah* or Islamic criminal law; *uqubah* or punishment; *murafa'ah* and *iqtishadiyah* or judicature; *dusturiyyah* or legislation; *akhlaqiyyah* or morality; and *'alaqah dauliyyah* or nationality (cf Lombard, 2006; and Ismail, 2015).

The arrival of the Dutch colonial has affected the Indonesian legal system, since VOC (*Vereenigde Oost-Indische Compagnie* or Dutch East India Company) has come and dominated Indonesia. VOC regulated the *Compendium* containing marriage and inheritance laws of Islam in 1706, of which they were used by the court in resolving a dispute among Muslims in the territory. The book was known as the *Compendium Freijer* (cited in Mardani, 2014:140). The legalisation of the Islamic law in the Dutch colonial period was recorded in the *Compendium der Voornamste Javaanche Wetten Naukeurig Getrokken Uit het Wetboek Mohammedaanche Mogharrer*. It is substantially contained the Islamic Criminal Law and Customary Law; and influenced the Islamic law in Indonesia until the time of independence (Ambarly,

2002; and Mardani, 2014).

At the time of independence (1945), the legal system and the legal structure in Indonesia experienced growth. This was confirmed by their efforts to establish the law of Indonesia in the form of law decolonization, including Islamic law.<sup>1</sup> The decolonization of the Islamic law was backdrop of the acceptance of the Islamic law as a persuasive source in the constitutional law that was interpreted as the new source of law for people if believed in the context of the Islamic law. The Jakarta Charter, as a result of court session of BPUPKI (*Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia* or Committee for Investigation and Preparing the Indonesian Independence), was a persuasive source for *grondwet-interpretatie* of the 1945 Constitution for fourteen years, since 22 June 1945 until 5 July 1959. The Islamic law became an authoritative source in the constitutional law, when the Jakarta Charter was included in the Decree of the President of the Republic of Indonesia on 5 July 1959 (Anshari, 1986; and Praja, 1991:xi).

The Indonesian independence from the Netherlands after World War II (1939-1945) provided a great influence on the implementation of the law, especially relating to *Statute Book of 1882 No.52* and *Statute Book of 1937 No.116*<sup>2</sup> of the Islamic court. In 1948, there was a regulation that governed the Religious Courts to merge to the Civil Courts, but its implementation could not be done, because of the revolution that occurred

<sup>1</sup>The term of "decolonization" borrows the interpretation given by Soetandyo Wignjosebroto (2014) that decolonization is a modification and adaptation process of the Dutch colonial law which focuses on modern national development through the perspective of Colonial Law to National Law. See, for further information, Soetandyo Wignjosebroto (2014:2).

<sup>2</sup>According to Zaini Ahmad Noeh & Abdul Basit Adnan (1983), *Statute Book of 1937 No.116* ads some articles of *Statute Book of 1882 No.52*; and the most important change was recorded in Article 2 item (1) reads: "The religious courts that only authorize to control, examine, and decide a legal dispute between Muslim husband and Muslim wife, and other cases such as marriage, divorce, and return as well as other divorce problems enacted by the religious judge stated the divorce and enacted that the conditions of divorce are applicable" (cited in Noeh & Adnan, 1983:37). This means that in such cases regarding the demand for money payment or delivery of property is fully the authority of the judge, but in the case of dowry and subsistence payment mandatory for a husband to a wife who is fully the authority of the Religious Court.

at that time (Noeh & Adnan, 1983). The existence of the religious court has just been implemented in 1957 (Cammack & Feener, 2012:16-17).<sup>3</sup> Thus, the decolonization of the Islamic Law in Indonesia has been performed through the process of history.

The process of history in the decolonization of the Islamic law in Indonesia is utmost importance to study, because the process of the Islamic law establishment which attempted to eliminate the influence of the Colonial could be seen from the historical perspective. This paper answers and describes the processes of history that occurred in the decolonization of the Islamic law in Indonesia.

In addition, this article also explains how the processes of Islamic law of pre-Colonial, Colonial, and post-Colonial period were. These could support the description of the decolonization process of the Islamic law. To describe the problem, the historical method consisting of *Heuristics*, Criticism, Interpretation, and Historiography was employed in this study (*cf* Sjamsuddin, 2007; and Sorensen, Sevaux & Glover, 2017).

## FINDINGS AND DISCUSSION

**The Islamic Law in the Pre-Colonial Period.** Islam entered to Indonesian archipelago in the 7<sup>th</sup> century AD or *Anno Domini*.<sup>4</sup> This argument was based on the observation that the Shafi'i's school, as an extraordinary school in Mecca, has had a great influence in Indonesia. In the 13<sup>th</sup> century AD, in the Indonesian archipelago, the political power of Islam has been built (HAMKA, 1976:138; and Gadjahnata & Swasono, 1986:12). The existence of Islam in the Indonesian archipelago could not be separated from the role of Arab nations

(Suryanegara, 1995:86).

Arab nations had an important role in world trade, especially for the countries around the Indian ocean and the Mediterranean sea (Nuh & Shahab, 1963:145; Yatim, 2011; and Hitti, 2013). The influence of trade, by Arab nations, has come to Ceylon since the 2<sup>nd</sup> century BC or Before Christ (Arnold, 1968:370). Arabs were the first foreign people coming to the Indonesian archipelago compared to those of coming from the Indian and Chinese (Burger & Atmosudirdjo, 1960:16).

A source taken from history of Chinese<sup>5</sup> stated that in the 7<sup>th</sup> century AD, there were Arab villages and Moslem merchants in the West Coast of Sumatra and in the North Coast of Java island. The majority of them dominated the East-West trade since the beginning century of AH (*Anno Hijriah*) or the 7<sup>th</sup> and 8<sup>th</sup> century AD (*Anno Domini*).<sup>6</sup>

Arab traders and Moslem merchants spread out Islam in the archipelago. The relationship with Arab nation was strengthened by the arrival of envoys from King Ta Cheh to Queen Sima in Kalingga. The King Ta Cheh, according to HAMKA (1976), was the King of Saudi of whom the King was also known as a Caliph, whose name is Muawiyah, the son of Abu Sufyan.<sup>7</sup> The Queen Sima was a Muslim ruler, who applied the Islamic canon law (HAMKA, 1976; Nurmila, Burhanudin & Dijk eds., 2010; and Sumarni, 2012).

The Islamic canon law, since the arrival of Islam to the Indonesian archipelago, was a living law, not only at the symbol level, but also at a practical level. It was not solely a sign indicating that the majority religion in Indonesia is the religion of Islam, but the Islamic canon law within which its reality in some areas had been considered

<sup>3</sup>The demand to establish the independent religious court seems to be started in 1951, through the existing rule at that time stating that a religious court will be established based on the government regulation. The regulation is the basis for the birth of legislation in 1957 in the establishment of Religious Court in Indonesia (*cf* Noeh & Adnan, 1983; and Cammack & Feener, 2012).

<sup>4</sup>This notion was proposed by HAMKA (Haji Abdul Malik Karim Amrullah) in his speech at the 8<sup>th</sup> Anniversary of PTKIN (State Islamic College) in Yogyakarta in 1958. His notion was commonly known as *Teori Mekah* (Theory of Mecca) of which this notion was different from West historians or Orientalists. See, for further information, HAMKA (1976).

<sup>5</sup>As cited in Yakub (2013:138), the official records and Chinese journal in 618 AD of Tang Dynasty period, which explicitly asserted that Islam had come to the Eastern area around the first century of AH (*Anno Hijriah*).

<sup>6</sup>For further information, pertaining the Chinese sources mentioned that in the 7<sup>th</sup> century AD, an Arab trader became a leader of a Muslim Arab settlement on the coast of Sumatra (called *Ta'shih*), see J.C. van Leur (1955); H.M. Vlekke (1961:83); T.W. Arnold (1968:370); HAMKA (1976); and Busman Edyar *et al.* eds. (2009:187).

<sup>7</sup>See also, the magazine of *Panji Masyarakat*, No.291, Tahun XXI. Jakarta: 15 Maret 1980, p.9.

a sacred tradition. Sociologically and culturally, the Islamic canon law was the law which was deeply rooted in the culture of the community, because of the ability in performing adaptive-transformative efforts (Sirajuddin, 2009:809).

The “transformative-adaptive” of the Islamic law could be seen in the society of Aceh of which the Islamic laws were strongly influenced by the customs of Aceh in Sumatera. This influence was designated by the adage: “*Hukom ngo sipheuet lagee*” (law and custom are like thing and its characteristics unseparatable). In this case, “law” was defined as the Islamic law taught by the Moslem scholars. This was shown by another proverb that says: “*Adata Meureuhom Tub, Bak Shia Ulema*” (cited in Ismuha, 1983:5; Abdullah, 1987; and Lombard, 2006).<sup>8</sup>

In this period, the Islamic law colored the life of the Indonesian nation. For example, the jurisprudence (*fiqh*) emanating from the Arabs could determine the actions of Muslims. Although *fiqh* has been recognized as a school that regulates the life of people at that time, it was not a main power in the social intercourse. The practices of suffism and spiritual fraternity became the main activities in the social intercourse (Suwirta, 2002). The leaders, or *sjujuch al-turuq*, got higher respect than both experts in dogmatics (*mutakallimun*) and Islamic jurists (Ali, 1969:5).

The Islamic law in Indonesia has been enacted and entrenched in the community prior to the arrival of the Dutch colonial. The Islamization of the Islamic law was originally conducted by Arab merchants through trades and marriages based on rules and values of Islam which was adjusted to the local culture (HAMKA, 1974:53). The Islamic law was also applied step by step without coercion and clash with the existing Indonesian culture and customs (Gani, 1983:27). The Islamic law was applied by the Kings in Indonesia by promoting scholars to solve the cases of civil, marriage, and family relationship (Ali, 1984:6).

The Islamic law, which was applied in periods of Muslim kingdoms, was the Islamic canon law. The literature used in

deciding punishment in the courts was the jurisprudence literature whose school was Shafi'i as was conducted in the Sultanate of Aceh (Rasyid, 2004:54). The Sultanate of Aceh under the leadership of Sultan Alaudin Riayat Shah, as mentioned in the book of *Bustan as-Salatin* (the Garden of the Kings), written by Nuruddin al-Raniri, really required people to implement the teachings of Islam (cited in Ismuha, 1983; Lombard, 2006; and Hamzah, Noor & Denisova, 2014). In the Sultanate of Aceh, the application of the Islamic law was performed by an Islamic institution called *Qadi* or *Cadi* (Islamic clergy). The distribution of the Islamic law was only applicable to the cases of religion and society (Ismuha, 1983; Abdullah, 1987; Rasyid, 2004; and Lombard, 2006).

In the Sultanate of Aceh, two law institutions were applied, namely pristine court and civil court. The former court focused on religious cases, consisting of public behavior that contradictory to the Islamic law, such as drinking alcohol, gambling, leaving prayer, and fasting. The latter court concerned social cases, such as marriage, divorce, and inheritance (Roibin, 2010:132-133).

The government of Aceh had a renowned *cadi* or *mufti* (Islamic clergy), *Sheikh* Abdoul Rouf Singkel, and a tremendous scholar, Nuruddin al-Raniri, who wrote the book entitled *Sirathal Mustaqim* (the Straight Path). Both of them lived during the reign of Sultan Iskandar Muda. The book of *Sirathal Mustaqim* was used as a guidance for teachers of religion and *cadi*. The school of Shafi'i grew fast in Aceh. There were many scholars of the Shafi'i's school stayed in Aceh. This could not be separated from the support and spirit of Sultan Iskandar Muda Makhkota Alam Shah and the previous Sultan that supported the scholars from wherever they came to spread out Islam through the Islamic propagation (Ismuha, 1983; Ambary, 2002; Rasyid, 2004; Lombard, 2006; Fathurahman, 2012; and Hamzah, Noor & Denisova, 2014).

The influence of the Islamic propagation spread quickly to various parts of the Indonesian archipelago in which this caused some Islamic kingdoms applied the Islamic law, such as the Sultanate of Malacca. In the Sultanate of Malacca, the Islamic rules were

<sup>8</sup>*Poteu Meureuhom* is interpreted as Sultan Iskandar Muda, a leader and a scholar that master all sciences of Islam.



recorded in the Act of Malacca containing royal regulation that affects almost all aspects of life in the kingdom. The rules were also written in the Law on Malacca Sea that more specifically regulated the security aspects of maritime trade in the kingdom in an effort to implement the Islamic law among the people of the kingdom (Andaya & Andaya, 1982; Bakar, 2010; and Yatim, 2011).

Furthermore, in the Act of Malacca, the regulations consists of rights and obligations of the king and the political elites in the kingdom; the legal provision of marriage, including the divorce law; the criminal law to create a religiosity in the kingdom area; and the trading law. Most of which were adopted from the Islamic law (Andaya & Andaya, 1982; and Bakar, 2010).

The Islamic laws were also held in the kingdom of Banjar in Kalimantan of which they were reflected from *ba'iat* that reads "*Patih Baraja'an Dika, Andika Badayan Sara*". It means that "I Obeyed the Lord Command, Because He Applied the Islamic Canon Law" (cited in Sjamsuddin, 1989; and Sumitro, 2005). Beside that, the growth and development of the Islamic law in Banjar kingdom could be proved by the establishment of *mufti* or *cadi* that, at the time, they were assigned to solve the cases of divorce, marriage, inheritance, and family laws (Sjamsuddin, 1989; Chalmers, 2006; and Sumitro, 2005:29).

The outstanding *mufti* was Syaikh Muhammad Arsyad al-Banjari, whose his *fikih* book entitled *Sabil al-Muhtadin li Tafaquh fi Amr ad-Din* was the interpretation of *Sirathal Mustaqim* book written by Nuruddin al-Raniri (Sjamsuddin, 1989; Fathurahman, 2012; and Hamzah, Noor & Denisova, 2014). In order to streamline the implementation of the Islamic law in the Sultanate of Banjar and in society, it is of great necessity to establish a special institution to accommodate the application problems of the Islamic law. Therefore, Syaikh Muhammad Arsyad al-Banjari gave advice to set up the court of canon law and office of *mufti* or *cadi* in the Sultanate (Wahid & Rumadi, 2001:121).

Those aforementioned Sultanates of both Aceh in Sumatera and Banjar in Kalimantan

promulgated the Islamic law as the positive law applied in the Sultanates areas. This promulgation strengthened its development practices in the Muslim community at that time. These facts were confirmed by the *fiqh* or jurisprudence literatures written by Islamic scholars in the 16th and 17th centuries as sources of the Islamic law (Ramulto, 1995; Noeh, 1996; and Sumarni, 2012).

The Islamic law was legally applied by the kings in Indonesia in the context of Islamic scholars' opinion (*ijtihad*), not in the context of the kingdom regulation. The scholars solved the problems that could not be solved by the kingdom regulations. They learned their opinion to the books of jurisprudence (*fiqh*). With this pattern, the schools of *Imams* Shafi'i, Hanafi, Maliki, and Hanbali grew fast in Indonesia today (Ali, 1980:189). The Islamic law system was applied together with the application of the customary law system.

The form of indigenous customs and traditions in government in Java was the policy of Mataram government, with the triad positions of the King as: *Hingkang Sinuhun* or the Ruler; *Senopati Hing Ngalogo* or Warlord, *Sayidin Patanagama* or Regulator of Religious Affairs; and *Kalipatulah ing Tanah Jawa* or as the Messenger Substitute in Java Island (cited in Noeh, 1996; Suwirta, 2002; Azra, 2006; and Ricklefs, 2008). Those positions were the development of theory proposed by Imam al-Mawardi as-Shafi'i in his book, *Al-Ahkam al-Sulthaniyyah*, which affirms that the state is an inseparable unity of leadership, called *al-immah*, who serves as the successor of the Prophetic role in maintaining the religion and arranging the world (cited in Sjadzali, 1993).

The Islamic law in Java, at the time, was dominated by Shafi'i's school, although in Indonesia, the books of *Fiqh Syafi'iyah* were not easily found in the teaching of Islam (Noeh, 1996; and Azra, 2006). This condition was seen from the use of books in Arabic, such as the books of *Nihayah* (the Final Word) and *Tuhfah* (the Gem), written by Al-Ramli (1596) and Ibn al-Haitami (1565). These two books were just a comment from the book of Imam Nawawi, namely *Minhaj al-Tahalibin* or Good Way and Path (*cf* Maarif, 1985:61; and Azmi, 1995).

In the Islamic kingdom in Java, the school of Safi'i was one source of the Islamic laws. The application of the Islamic law in the Islamic kingdoms in the Indonesian archipelago was held until the arrival of the Dutch colonial, whose arrival has influenced the history of the Islamic law (Ramulto, 1995; Noeh, 1996; Azra, 2006).

**The Islamic Law in the Dutch Colonial Period.** The history of Islamic law in the Dutch colonial period was divided into two periods. Firstly, the acceptance period of Islamic law completely (as a whole), which was called as *Receptio in Complexu* was only for Muslims. Secondly, the legal acceptance of Islamic law by the customary law, or the theory of *Receptie*, was the law applied in the reality of society (customary law) of which the Islamic law could be enforced, if it has been adapted to the customary law.<sup>9</sup> The journey of Islamic law in the Dutch colonial period was started from the arrival of the Dutch Trading Enterprise, they were called as VOC or *Vereenigde Oost-Indische Compagnie* (Sunny, 1991; Steenbrink, 2006; and Ricklefs, 2008).

VOC had influenced the Islamic laws since the Islamic kingdoms in the Indonesian archipelago applied them. In the Statute of Jakarta, VOC introduced the justice system in Indonesia. The court established by VOC was not only applied for the Dutch people, but also for Indonesian people. However, the efforts of VOC did not work and got a strong resistance from the people of Indonesia. Finally, VOC allowed Indonesian law institutions to be used as their law, such as the marriage law of Islam and the inheritance law of Islam. The Islamic family law, especially laws of marriage and inheritance, were still recognized. This recognition was recorded by VOC through the regulation of *Resolutie der Indies Regeering*, in May 25, 1760 (cf Sunny, 1991; Azra, 2006; Steenbrink, 2006; and Ricklefs, 2008).

To gain the sympathy of Indonesian Muslims, VOC commanded D.W. Freijer to write the Compendium, whose content was to collect the Islamic laws of marriage and inheritance, which were applied in the

courts to resolve disputes that occurred among Indonesian Muslims in the territory of VOC. This compendium, also known as Compendium of Freijer, was a basis for law in 1885 (cited in Mardani, 2014:140).

Through this regulation, the Dutch only recognized the application of Islamic family law (laws of marriage and inheritance) and replaced the authority of Islamic courts established by the King or Sultan with the Dutch judges assisted by the *cadi* of Islam. Beside that, it was also written in the book of *Muharrar* for courts of justice in Semarang, Central Java, containing Islamic-based Java laws. In Cirebon, West Java, the laws of ancient Javanese were published in *Pepakem* (Laws). In Goa and Bone, South Sulawesi, the laws of ancient were also published as that of in Cirebon. Thus, the Islamic laws in Indonesia were fully enforced from 1602 to 1800 AD (*Anno Domini*). The implementation of the Islamic law was valid until the end of the rule of VOC in 1799 (cf Sunny, 1991; Azra, 2006; Steenbrink, 2006; Ricklefs, 2008; and Mardani, 2014).

After the power of VOC ended, the Dutch colonial government replaced its authority in Indonesia. This caused the Islamic law experienced shift and erosion. For example, in 1848, the Dutch colonial government, in regulating the Islamic law in Indonesia, formed a Committee for the Codification of Islamic Law, chaired by Mr. C.J. Scholten van Oudh Aarlem. The purpose of establishing this Committee was to seek adjustment of the law in the Netherlands with the Indonesian law by the Dutch colonial government (Sunny, 1991; Azra, 2006; Steenbrink, 2006; Ricklefs, 2008; Tarpin, 2011; and Mardani, 2014).

The Dutch colonial government, in the attempt of the Islamic law implementation in Indonesia, replaced *Regeerings Reglement* (Government Act) with *Wet op de Staatsinrichting van Nederlands Indie* (Law of East India State). The effect of changing the *Regeerings Reglement* to *Wet op de Staatsinrichting van Nederlands Indie* led to the revocation of the Islamic law from the rule of the Dutch law through the *Statute Book*, No.212 Year 1929 (Sunny, 1991; Steenbrink, 2006; Tarpin, 2011; and Mardani, 2014).

<sup>9</sup>According to Ismail Sunny (1991:73-75), this theory was initiated by Dutch law expert, named Lodewijk Willem Christian van den Berg.

Thus, the law which was applicable in the society was the customary law, because the Islamic law was applicable if adapted to the customary law. The acceptance of the Islamic law by the customary law in the system of Dutch colonial law was known as *Receptie* theory, the theory proposed by Christian Snouck Hurgronje (1857-1936) and supported by Cornelis van Vollenhoven (1874-1933), Bertrand Ter Haar, and some of their students (Manan, 2006:11; Steenbrink, 2006; Tarpin, 2011; and Mardani, 2014).

The emergence of this *Receptie* theory was a basis for the Dutch to form a commission to review the Religious Court authority in Java and Madura. With the provision of a recommendation from the commission, *Statute Book*, No.116 Year 1937, whose content is the revocation of religious courts jurisdiction to deal with the cases of inheritance and the others was published and turned over to *Landraad* or District Court,<sup>10</sup> by the Dutch colonial government (Suny, 1991; Azizy, 2002:155; and Steenbrink, 2006).

The Dutch colonial government attempted to suppress the influence of Islam toward the people of Indonesia by applying *Receptie* theory. By using this *Receptie* theory, the law which was applicable in the society was the customary law. Meanwhile, the Islamic law was applicable if it has adapted the customary law. The law was recorded in a regulation of *Reglement op het van der Regeering Netherlands Indies*, truncated by the term RR (*Regeerings Reglement*), which was also contained in the *Statute Book of Netherlands*, 1854:129 or *Statute Book of East Indies*, 1885:2 (cf Thalib, 1976; Suny, 1991; Steenbrink, 2006; and Tarpin, 2011).

The *Statute Book of East Indies*, 1885:2, Article 75 RR, stated that the law of Islam for Indonesian Muslims has been affirmed.

<sup>10</sup>In this context, Ismail Suny (1991) remarked the reaction of Indonesian Muslim toward Dutch intervention in the Islamic law cases of which this was recorded in the books and newspapers at that time. Political goals of Dutch law was intended to strengthen the power interest in Indonesia. Therefore, when BPUPKI (*Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia* or Committee for Investigation and Preparing the Indonesian Independence) was established and convened in the Japanese occupation period (1942-1945), the opportunity was possible for the Islamic leaders to struggle for Islamic law application without customary law.

Further, this was recorded in items (3) and (4), as follows:

[...] by an Indonesian judge, the religious law (*godsdiensstige wette*) and customary law should be applied.

[...] the religious law, *instelling* and customary law are applied by the European judges in the higher courts if happened *hogerberoep* or request for an appeal hearing (cited in Thalib, 1976:44).

The legislation of the Dutch colonial against Islamic law in Indonesia was enforced until the Proclamation of Indonesian Independence on August 17, 1945 (Thalib, 1976; Suny, 1991; and Tarpin, 2011).

**The Islamic Law in the Post-Colonial Period.** The Proclamation of Indonesian Independence on August 17, 1945 was a new milestone for the people of Indonesia. As a sovereign state, Indonesia was trying to get rid of any colonial influence, or known as decolonization. The decolonization was held in various aspects, including the Islamic law decolonization (cf Thalib, 1976; Ichtijanto, 1991; Suny, 1991; Rafiq, 2001; and Tarpin, 2011).

The decolonization of Islamic law attempted to do a great change in interpreting and placing the Islamic law in Indonesia by setting aside the *Receptie* theory. The decolonization of Islamic law in Indonesia was applied after Indonesia's independence. By decolonizing, there appears a new theory putting the Islamic law as part of Indonesian society that was integrated to the teachings of Islam (Satriawan & Zuhuda, 2007; and Halim, 2013). Due to the proximity of the history that formed Indonesian Islam, the decolonization of the Islamic law coincided with its goal.

This theory was intended to provide new insight and understanding of the importance of Islam to be part of the development of national laws pursuant to *Pancasila* (five principles of Indonesia national ideology) and the 1945 Constitution.<sup>11</sup> This theory was also

<sup>11</sup>In Indonesia, the Islamic sharia and the state are two entities which have been involved in enduring struggle and tension to find the relation between Islamic sharia and the state, between secularization project and the state Islamization as well as society. This tension occurred in two different levels. Firstly, scholastic level or theoretic-idealistic level. The debate was commonly known in the end of 1930s between

termed as the *Receptie Exit Theory* proposed by Hazarin (cf Hazairin, 1985; Ichtijanto, 1991; Rafiq, 2001; Satriawan & Zulhuda, 2007; and Halim, 2013).

The basic thoughts of this theory were: (1) Theory of *Receptie* has not worked, was not applicable, and exited from the organization of Indonesia since Indonesian independence in 1945; (2) Pursuant to the 1945 Constitution, Item 1, that the Republic of Indonesia has the obligation to establish a national law based on the religious law; and (3) the existing religious law becomes Indonesian national law of which this was not only for the Islamic law, but also for other religious laws. The religious law was adopted to be civil law and the criminal law was adopted to be the Indonesian national law. That was the new Indonesian law, which was based on the *Pancasila* after the Proclamation of Indonesian Independence (cited in Hazairin, 1985; and Mardani, 2009:269).<sup>12</sup>

The proclamation of Indonesian independence brought some changes to the Islamic law whose development was hampered during the Dutch colonial period. This fact was demonstrated by the law enforcement agencies whose existence could not be ignored, namely the KUA (*Kantor Urusan Agama* or Office of Religious Affairs) and the BPA (*Badan Peradilan Agama* or Religious Courts Body). The KUA was placed as the executor for the validity of a marriage based on the applicable legal rules. The BPA was the key institution of the Islamic law implementation that pursuant to the legal rule (Ahmad, 1996; Rafiq, 2001; Hoesein,

2012; and Munir, 2014). These developments include the setting of marriage, a witness in the divorce, and special arrangements of Indonesian local wisdom telling about joint property ownership in a matrimony in Indonesia (Aulawi, 1996:57-61).

Indonesia as a nation and a country is so loyal to the Islamic law. Islam does not only understand the importance of the legal process to integrate with the community, but also convinces that the integrated process can be carried out and implemented through legislation as a positive law. In this context, Abdurrahman (1992) proposed three arguments to demonstrate the importance of the Islamic law for Indonesian people, as follows:

Firstly, factually Indonesian Muslims are not only as the majority community in Indonesia, but also the majority of Muslims in the world. This reality shows that the Islamic law can bind the rules of legal subjects if Muslims treat and implement its provision well. It means that if Muslims do not implement the Islamic law completely, the negative impact on the position of the Islamic law will experience some changes.

Secondly, although Indonesia is not an Islamic country, the Islamic law has the strategic position by promulgating *Pancasila* as the basis for the country and as the only one principle of life in Indonesia. The first principle of *Pancasila*, which is in harmony with the teachings of *Tawhid* (Oneness of God), as the main teachings of Islam and Islamic law, has provided the ideal basis to implement the Islamic law in a constitutional state based on *Pancasila*. This provision was also addressed by the 1945 Constitution in respect for Indonesian independence to worship pursuant to their religion or belief.

Thirdly, the Republic of Indonesia in terms of its development has put the Codification of National Law as one of the fields of study. In this case, the Islamic law could be one of the utmost importance to foster the national law. The Islamic law in this study can be one of important parts to build the national law (Abdurrahman, 1992:2-4).

This study aimed to show that the Islamic law is an important consideration

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Sukarno and Mohammad Natsir. Secondly, realistic-politic level or ideologic-empiric level. The polemic occurred when formulating post-colonial modern Indonesian Constitution that took place in sessions of BPUPKI (*Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia* or Committee for Investigation and Preparing the Indonesian Independence), May 28 - June 1, 1945 dan July 10-17, 1945; and in the sessions of the PPKI (*Panitia Persiapan Kemerdekaan Indonesia* or Preparatory Committee for Indonesian Independence) from August 18 to 22, 1945, in the context of construction and approval of the 1945 Constitution. See, for further information, Abdul Halim (2013:260).

<sup>12</sup>Another figure that opposed the Theory of *Receptie* was Sayuti Thalib (1985 and 1987). This theory shows that customary law is applicable if it does not resist with Islamic law. Through this theory, the soul of the Preamble to 1945 Constitution has defeated the Article 134, Item 2, *Indische Staats Regeling* (Thalib, 1985 and 1987).



in mapping the national law as a whole, because the Islamic law developed together with customary law. Even, the Islamic law emerged earlier than the Continental European Law (Netherlands) that affected the legal system in Indonesia (Abdurrahman, 1992). In Indonesia, another change that emerged after the independence was the birth of the KHI (*Kompilasi Hukum Islam* or Islamic Law Compilation) through Presidential Instruction No.1 of 1991, which became a reference in the resolution of disputes in the Religious Court relating to marriage, inheritance, and joint property (Abdurrahman, 1992; and Hooker, 2002:221).

The presence of the KHI was a series of national law history in expressing a variety of Indonesian Islamic community life, especially concerning on: (1) the existence of applicable legal norms that participated and regulated social interaction; (2) the actual normative dimension as a result of the functional explanation of Islamic teachings that encouraged the fulfillment of the demands of the law; (3) the structural response that produced the draft of KHI; and (4) the anticipation from Indonesian scholars toward those three points that agreed with KHI in terms of the written formulation of the Islamic law pursuant to the condition of law and society of Indonesia (Abdullah, 1994:62).

In the religious courts, there are 13 jurisprudence books of Shafi'i's school used as a source of material law to deal with the cases proposed to the Religious Courts.<sup>13</sup> The diversity of jurisprudence books as a source of law to settle the case in the Religious Court was potential to the possibility of verdict differences between the Religious Courts in one area with other areas for the same case. This was the reason to do unification of the Islamic law, especially in the area of family law (Abdurrahman, 1992; Ahmad, 1996; Hoesein, 2012; and Munir, 2014).

The compilation of Islamic law, which consisted of three books, tried to answer these problems. The KHI was drafted and formulated to substantially fill the need of

substantial law in the religious courts. The KHI enactment juridically showed that the Islamic laws, especially the marriage law, inheritance law, and legacy law, became the positive law was recorded in the national legal system. It became the basis for making a decision against cases proposed to the Religious Courts (Harahab & Omara, 2010:627).

The KHI was used as a reference and the basis for decision of Religious Court since the principle of the Islamic personalities was embraced by the Religious Courts. The personality principle relating to the submission to the authority of the Religious Courts was based on the recognition of a person claiming to be the followers of Islam (Muhibbin & Wahid, 2009:171). This principle showed that Muslims need to be given a direction in the form of the rule of law to keep their Islamic recognition, both through a formal legality and through the material legality based on legislation.

The KHI was an embodiment of a typical Indonesian Islamic law. This view could be seen from the elements of national legal systems (Karim ed., 2010), as follows: firstly, the ideal principle and KHI constitution are *Pancasila* and the Constitution of 1956. This provision was recorded in the Preamble of the Presidential Instruction and in the General Explanation of the Islamic Law Compilation, which was constructed as part of the national legal system.

Secondly, the KHI was legalized by a law instrument in the form of Presidential Instruction, implemented by Decree of the Minister of Religious Affairs, and was part of a series of valid laws and regulations. The existence of Presidential Instruction did not prejudice its legality and authority, because this contained needs for social conduct of Islam today and the future. The actual content of KHI was conceived by the people interest and awareness. The legalistic formality of KHI was shown to meet the needs of people by using the money sociological approach, by basing on the fact of the importance of a certain field arrangement, and by relying to the realism and functional theory (Ali *et al.*, 1999:38; and Karim ed., 2010:4).

<sup>13</sup>See, for example, "Circular of the Bureau of Religious Court, on February 18, 1958, No.B/1/735". *Unpublished Paper* woned by the Author.

Thirdly, the KHI was formulated from the Islamic law system which is based on the *Al-Qur'an* and *Al-Sunnah* as the tradition of the Prophet Muhammad SAW (*Salallahu Alaihi Wassalam* or peace be upon him). Fourthly, the actualization of KHI, based on the theological interpretation, was in the authority of courts in Religious Court. The basic pattern of inheritance (Book II) was a transition form of the inheritance proposed by *fuqoha* – Islamic jurists, by borrowing the phrase of Robert Redfield (1960) in the area of “great tradition” into the form of *Qanun* or Civil Rules (Redfield, 1960; Karim ed., 2010:5; and Hoesein, 2012).

## CONCLUSION

The Islamic law was different from the establishment and implementation efforts to the people of Indonesia. The process of decolonization on the Islamic law was a form of change and development that sought an approach to prepare, establish, and apply the rules relating to the interests of Muslims in Indonesia of which at the beginning its development was influenced by the theories of *Receptie in Complexu* and *Receptie*. Those theories were the references for Islamic law changes since the Indonesian independence.

However, the Islamic law was, then, based on the theory of *Receptie Exit*. The efforts of changes were made at the beginning of the Indonesian independence in 1940s, by promoting the *Pancasila* (five principles of Indonesia national ideology) and Constitution of 1945, as the basic principles for any changes happening in the independence era, because the development of the Islamic law was the same line as that of customary law and even it came before the law of Continental Europe (Netherlands) that affected the law system of Indonesia. This change continued to 1990s, marked by the emergence of KHI (*Kompilasi Hukum Islam* or Islamic Law Compilation) to fill the legal vacuum of court in Religious Courts that adjudicated civil cases of Islam.<sup>14</sup>

<sup>14</sup>**Statement:** I, hereby, declare that this article is my original academic work, it is not product of plagiarism, due to all sources used and cited in the analysis are showed clearly and available in the References. This article is also not submitted, reviewed, and published yet in other scholarly journals.

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