

Uncovering The Traces Of Freijer's Compendium: Historical Analysis And Its Role In Islamic Marriage Law In Indonesia

Nurwanti, Aulal Musyafiul Aliya Dewiz

¹State Islamic University Syarif Hidayatullah Jakarta|Ir. H. Djuanda Street No. 95 Ciputat, South Tangerang City 15412, Indonesia|wantinur315@gmail.com

²State Islamic University Syarif Hidayatullah Jakarta|Ir. H. Djuanda Street No. 95 Ciputat, South Tangerang City 15412, Indonesia|aulalmusyafiulaliyadewi@gmail.com

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Abstract: The purpose of this study is to identify the role of the Freijer Compendium on marriage law in Indonesia. This research method uses normative legal research (doctrinal), a library research aimed at written regulations. In this case, it focuses on the main source, namely the Freijer Compendium manuscript, as well as literature related to marriage law in Indonesia. The results show that the Freijer's Compendium influenced marriage law in Indonesia which is an integral part of fundamental human rights, because legal recognition and protection of the institution of marriage is essential in upholding the principles of equality and justice in society. Freijer's Compendium then shaped the general understanding of Islamic marriage and inheritance law in Indonesia and became the legal basis for the *Ordonnantie op het Huwelijk van Inlanders* (Bumiputera Marriage Ordinance) during the Dutch government which developed into the formation of Law No. 1 of 1974.

Keywords: Freijer's Compendium, Islamic Law, Marriage Law

Abstrak: Tujuan penelitian ini adalah untuk mengidentifikasi peran Compendium Freijer terhadap hukum perkawinan di Indonesia. Metode penelitian ini menggunakan penelitian hukum normatif (doktrinal) sebuah penelitian perpustakaan yang ditujukan pada peraturan-peraturan yang tertulis. Dalam hal ini berfokus pada sumber utama, yakni naskah Compendium Freijer, serta literatur terkait hukum pernikahan di Indonesia. Hasil penelitian menunjukkan bahwa Compendium Freijer berpengaruh terhadap hukum perkawinan di Indonesia yang merupakan bagian integral dari hak asasi manusia yang mendasar, karena pengakuan dan perlindungan hukum terhadap institusi perkawinan adalah hal esensial dalam menegakkan prinsip-prinsip kesetaraan dan keadilan dalam masyarakat. Compendium Freijer kemudian membentuk pemahaman umum tentang hukum perkawinan dan warisan Islam di Indonesia dan menjadi landasan hukum bagi *Ordonantie op het Huwelijk van Inlanders* (Ordonansi Perkawinan Bumiputera) pada masa pemerintah Belanda yang berkembang pada pembentukan Undang-undang No. 1 Tahun 1974.

Kata Kunci: *Compendium Freijer*, Hukum Islam, Hukum Perkawinan

Introduction

The history of the formation of Islamic law in Indonesia is known to have a long series of time until it is finally well formed until now. Islam itself is undoubtedly also an important component in the development of Islamic law in Indonesia considering that the majority of Indonesian people are Muslims. When reviewed, Islamic law itself can be said to have two definitions that can be seen in general, including Islamic law which is related to sharia with *nas* and *qat'i* components which are of course generally applicable. Then Islamic law with the existence of epistemology which is likely that each region can apply Islamic law

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differently.¹ In Indonesia, to know how the history of the development of Islamic law is inseparable from the beliefs of its people long before Islam entered. Before the entry of Islam, Indonesian people had animism and dynamism beliefs.

The birth of the kingdoms in the pre-Islamic era was also built on the basis of the beliefs they embraced, so the legal system that was enforced at that time can also be said to be the same. It can be seen that each kingdom in Indonesia at that time used customary law to regulate the community in its territory. Customary law itself can be said to be the traditional law of the community, but its style is open or can be interpreted as a law that can accept elements that come other than it but there are no elements contrary to the existing customs.² In its development when Islam entered, there was acculturation between customary law and Islamic law. Customary law which has an open style and Islam which is flexible makes the two harmoniously grow side by side.

The rapid spread of Islam around the 13th and 14th centuries turned out to be able to shift the existence of customary law that had grown first, even some kingdoms began to implement a government system with Islamic law so that in various aspects of activities such as the appointment of officials to the laws enacted were also based on Islamic teachings.³ Islam, which was slowly accepted in everyday life, made Islamic law in terms of worship, *muamalah* to *munakahat* also began to take root in the community. The post-colonial Dutch entry into Indonesia certainly created a new period for the development of Islamic law. Although Islamic law has been fully accepted by the community and at the beginning of the Dutch arrival at that time it still seemed not to interfere with the laws that apply in Indonesia.⁴ However, when the Dutch and the *Vereenigde Oost- Indische Compagnie* (VOC) took root to colonize, the Dutch East Indies Government wanted to strengthen its control and dominance over the colonized people by making various laws and regulations, including marriage law.

The Dutch government deliberately clashed between customary culture and Islamic teachings, even though the two should be united in nature and substance. They saw customary law and Islamic law as conflicting entities. Overall, the Dutch government favored the application of customary law over Islamic law. However, this support was not intended to defend the interests of the indigenous people, but rather as a political strategy to maintain their dominance over the colony. During the Dutch Colonial period, the application of customary law and Islamic law was deliberate to create friction between the two for the political interests of the Dutch government. Although this effort caused tension in the community, its essence could not separate Islamic teachings from customary culture because Islam can adapt to other cultures as long as it does not conflict with its substantial core principles.⁵

During the Dutch colonial period, there were two different policy approaches to the application of Islamic law, namely during the VOC period and the Dutch East Indies

¹Andi Herawati, "Perkembangan Hukum Islam di Indonesia (Belanda, Jepang, dan Indonesia Merdeka sampai Sekarang)," *Ash-Shahabah: Jurnal Pendidikan dan Studi Islam* 3, no 1, (2017): 50-57

²Dedi Sumanto, "Hukum Adat di Indonesia Perspektif Sosiologi dan Antropologi Hukum Islam," *Jurnal Ilmiah Syari'ah* 17, no 2, (2018): 182-190

³Jefik Zulfikar Hafidz, "Sejarah Hukum Islam di Indonesia: Dari Masa Kerajaan Islam sampai Indonesia Modern," *Tamaddun: Jurnal Sejarah dan Kebudayaan Islam* 9, no. 1, (2021): 166-184

⁴Zaelani, "Hukum Islam di Indonesia Pada Masa Penjajahan Belanda: Kebijakan Pemerintah Belanda, Teori *Receptie In Complexu*, Teori *Receptie* dan Teori *Receptio A Contrario* atau Teori *Receptio Exit*," *Komunike xi*, no. 1, (2019): 128-163.

⁵Moh. Ali, *Pandangan Hukum Islam Terhadap Tradisi Perkawinan Di Bawah Umur Di Desa Landak Kecamatan Tanah Merah Kabupaten Bangkalan Madura*. Prodi Ahwalus Syakhshiyah Jurusan Hukum Islam Fakultas Syariah dan Hukum UIN Sunan Ampel, 2014.

government. In the VOC era (1602-1880), precisely on 25 May 1670, Islamic law, especially in terms of Islamic civil law, was officially recognized positively through a resolution regulating the enactment of a collection of laws covering marriage law and inheritance law known as the Freijer's Compendium . This resolution was the first regulation to issue a compilation of Islamic law.⁶

Several studies that have conducted related research include Kartika Septiani Amiri with the title "Development and Problematics of Marriage Law in Indonesia"⁷ which produces the side of marriage regulation in Indonesia which goes through three periods with various problems and in its development marriage law has also gone through two periods, namely in the post-independence period and after the enactment of Marriage Law Number 1 of 1974. Then the research by Nafi' Mubarak entitled "History of Islamic Marriage Law in Indonesia"⁸ resulted in a periodization of the history of marriage law in Indonesia from the colonial period which was based on the theory of *receptio in complexu* and *receptie* theory until the birth of the Compilation of Islamic Law. Furthermore, research by Ahmad Rifai, Ibnu Sodiq, and Abdul Muntholib entitled "History of the Marriage Law on Opinions to Opposition from the Community and the House of Representatives 1973-1974"⁹ which describes the history of the marriage law to the oppositions that occurred in 1973-1974 where the opposition was present between factions that occurred when the marriage bill No. 1 of 1974 was passed because the bill contradicted many Islamic teachings, and this was also supported by some communities and Islamic organizations to revise the articles. Furthermore, research by Muhammad Ashsubli entitled "The Marriage Bill In The Plurality Of Agama Law (Judicial Review of the Article on Interfaith Marriage)"¹⁰ which resulted in the finding that interfaith marriages are not recognized in Indonesia because they are contrary to the law and divine principles. Citizens must also comply with laws and regulations, including rules related to marriage. Finally, Annisaa Firdayanti Surotenojo's research "Legal Consequences Of Different Religion Marriage Reviewed From Undang-Undang Number 1 Year 1974 About Marriage and Islamic Law"¹¹ which resulted in the status of interfaith marriages in Indonesia being considered gray because the Marriage Law does not explicitly prohibit it, but it is also not legally recognized. The legal consequences are still debated, especially regarding the beliefs of children.

Although previous research has made an important contribution to understanding Islamic marriage law. However, to complement this understanding, a new research entitled "Uncovering the Traces of Freijer's Compendium: Historical Analysis and Its Role in Islamic Marriage Law in Indonesia" aims to dig deeper into the Freijer Compendium as an Islamic marriage law in the Dutch East Indies during that period. The researcher seeks to present a

⁶ Moh Ali, "Perkawinan tanpa menunggu berakhirnya Idah bagi perempuan yang bercerai di bawah tangan perspektif konstruksi social: Studi Kasus di Desa Landak, Kecamatan Tanah Merah, Kabupaten Bangkalan, Madura" (masters, Universitas Islam Negeri Maulana Malik Ibrahim, 2017), <http://etheses.uin-malang.ac.id/10236/>.

⁷ Kartika Septiani Amiri "Perkembangan dan Problematika Hukum Perkawinan Di Indonesia" *Al-Mujtahid: Journal of Islamic Family Law* 1, No. 1 (2021): 50-58

⁸ Nafi' Mubarak "Sejarah Hukum Perkawinan Islam Di Indonesia" *AL-HUKAMA: The Indonesian Journal of Islamic Family Law* 2, no. 02, (2012)

⁹ Ahmad Rifai, Ibnu Sodiq, serta Abdul Muntholib "Sejarah Undang-Undang Perkawinan Atas Pendapat Hingga Pertentangan dari Masyarakat dan Dewan Perwakilan Rakyat Tahun 1973-1974" *Journal of Indonesian History* 4, no. 1 (2015)

¹⁰ Muhammad Ashsubli, "Undang-Undang Perkawinan Dalam Pluralitas Hukum Agama (Judicial Review Pasal Perkawinan Beda Agama)", *Jurnal Cita Hukum* 2, no. 2 (2015): 290-302

¹¹ Annisaa Firdayanti Surotenojo, "Akibat Hukum Perkawinan Beda Agama Ditinjau dari Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan dan Hukum Islam," *Lex Privatum* 6. no. 8. (2018): 192-202

new perspective that enriches our insight into how the regulation of Islamic marriage law in Indonesia has developed over time, including the fundamental historical influences of the colonial era.

Research Methods

This research applied a qualitative method by using a desk study technique to gather information. The focus is to reveal the periodic impact of colonialism on marriage law through the analysis of Freijer's Compendium. Peter Mahmud Marzuki, states that legal research is a process for finding legal rules, legal principles, and legal doctrines in order to answer the legal issues at hand.¹² In this case, the author uses normative legal research whose other name is doctrinal legal research which is also known as library research or document study because this research is conducted or aimed only at written regulations or other legal materials.¹³ In the context of the study "Revealing the Traces of Freijer's Compendium: Historical Analysis and Its Role in Islamic Marriage Law in Indonesia," this approach allows researchers to explore in depth how Islamic marriage law in Indonesia, especially during the Dutch East Indies, was formed and developed. Thus, normative legal research provides a strong foundation for understanding the role and historical impact of the Freijer Compendium in regulating Islamic marriage in Indonesia, as well as its legal implications in the social and cultural context at that time.

Results and Discussion

In Indonesia, the principle of the state is based on the sovereignty of law, not mere power, and the government is governed by a constitution that guarantees the absence of absolutism or unlimited power. Therefore, the Indonesian legal system includes three main sources: customary law, Western law, and Islamic law, all of which form the foundation of the Pancasila philosophy.¹⁴ Customary law in Indonesia has existed since ancient times, along with the existence of communities in the Indonesian archipelago. Thus, customary law continues to develop in line with the changes that occur in society.¹⁵

The development of law in Indonesia, both in the context of the present and the past, cannot be separated from the dynamics between adat and customary law. Customary rules, which are an integral part of our lives, have actually existed since ancient times, during the Pre-Hindu period. The customs that took root in this Pre-Hindu society, according to customary law experts, were Polynesian Malay customs. Later, Hinduism, Islam, and Christianity each contributed to the original culture, which has long been part of the Indonesian way of life as customary law. Thus, the current customary law is the result of acculturation between the customary rules of the Pre-Hindu era and the norms of life introduced by Hinduism, Islam, and Christianity.

The influence of history on Customary Law is reflected in various elements that come from outside the community itself. One of the most significant influences is from religion. Therefore, it is not surprising that in issues related to Customary Law, there are religious nuances, be it from Islam, Christianity, Hinduism, or Buddhism, in some community settings.

¹² Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2011, h. 35

¹³ Soerjono Soekanto, dan Sri Mamudji, *Penelitian Hukum Normatif*, Cetakan ke-8, PT. Raja Grafindo Persada, Jakarta, 2004, h. 14

¹⁴ A. Intan Cahyani, *Problematika Penerapan Hukum Produk Pemikiran Hukum Islam Sebelum dan Sesudah Lahirnya UU Nomor 7 Tahun 1989 (Cet.I; Makassar:Alauddin Universty Press)*, h. 19 - 25

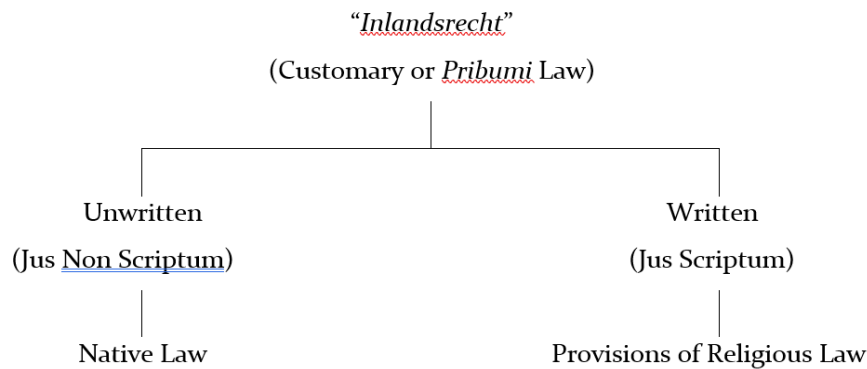
¹⁵ Muhammad Aiz, "Konstelasi Hukum Adat dan Hukum Islam di Masa Penjajahan Maslahah," no. 1, (2010): 65

When the Dutch imperialists came to Indonesia, the existence of adat as a legal instrument was already a long-standing concern. The unwritten law that develops in each community becomes a guideline for them in interacting and dealing with each other. Therefore, customary law becomes very important to regulate human behavior in their environment.

Customary Law (*adatrecht*)¹⁶ was used for the first time officially in a scholarly context to refer to the legal system governing indigenous groups (native Indonesians) and was not based on official regulations issued by the Dutch East Indies Government.

The term “Customary Law” or “*adatrecht*” was first coined by Snouck Hurgronje in 1839. However, the term was only officially included in the legal regulations in 1920 through Stbl. 1920 number 105 which relates to the Higher Education Act in the Netherlands.¹⁷ However, Van Dijk rejects the use of the term “customary law” as a translation for “*adat recht*” on the grounds that the two terms have different meanings. According to him, “customary law” refers to a set of legal rules that arise due to habit over a period of time, which is then accepted and desired by society. However, if one looks for the source of the origin of such rules, one will almost always find that they are derived from a particular practice in society, whether large or small in scope.¹⁸

According to Van Vaollenhoven indigenous law or “*Inlandsrecht*” consists of:¹⁹



However, the first debate that came into focus among Western academics was about the definition of adat and the origin of adat being considered as law. This definitional issue ultimately influenced the way they conceptualised adat, and also influenced the Dutch Government's policy towards power holders in the Dutch East Indies colony. It is clear that Dutch academics did not recognise adat as law from the beginning. They saw adat only as a type of custom within the structure of Indonesian society that had no legal consequences.

¹⁶ The term adat itself is actually a word taken from Arabic, which means habit. See Muhammad Aiz, *Konstelasi Hukum Adat dan Hukum Islam di Masa Penjajahan Maslahah*, Vol.1, No. 1, Juli 2010 h. 64, compare H. Munir Salim, “Adat Recht Sebagai Bukti Sejarah dalam Perkembangan Hukum Positif di Indonesia”, *Al Daulah* 4, no. 1, (2015): 18-19 “The term adat comes from Arabic, which when translated into Indonesian means ‘habit’. Adat or habit has permeated the Indonesian language, so that almost all regional languages in Indonesia have recognized and used the term. Adat or habit can be defined as follows: “A person's behavior that is continuously carried out in a certain way and followed by the outside community for a long time”.

¹⁷ Muhammad Aiz, “Konstelasi Hukum Adat dan Hukum Islam di Masa Penjajahan Maslahah” 1, no. 1, (2010): 65

¹⁸ H. Munir Salim, “Adat Recht Sebagai Bukti Sejarah dalam Perkembangan Hukum Positif di Indonesia”, *Al Daulah* 4, no. 1, (2015): 19

¹⁹ H. Munir Salim, “Adat Recht Sebagai Bukti Sejarah dalam Perkembangan Hukum Positif di Indonesia”, *Al Daulah* 4, no. 1, (2015): 24

Whereas, for indigenous people, adat is a binding norm that is maintained by the community to regulate people's daily lives.²⁰

The Dutch recognised Customary Law as one of the legitimate sources of law. In addition, their understanding of Customary Law was also a factor in the success of the Dutch colonisation of Indonesia over a long period. Here is why the Dutch paid so much attention to Customary Law in Indonesia;

1. Colonisation politics

Here, the Dutch colonialists had a major interest in maintaining their colonial mission. For this reason, the Royal Dutch government took steps by assigning a number of experts or scientists to specifically study the characteristics and culture of Indonesian society. Through this policy, the Dutch government was able to gain an in-depth understanding of customary law, which in turn was used to undermine indigenous peoples themselves. The divide and rule policy was one of the results of the research conducted by these experts or scientists. In addition, the Dutch government also utilised religious issues to cause conflict with adat. This can be seen in the theory put forward by Snouck Hurgronje and Van Vollenhoven, namely the Receptie theory which states that in Indonesia, Customary Law applies, while Islamic Law is only applied if it does not conflict with Customary Law. With the diversity of Customary Law in Indonesia, apart from being a cultural wealth, it was also used as a tool by the Dutch government to protect its colonies.

2. Cultural richness

As a country, Indonesia is one of the few countries rich in cultural diversity. Customary Law, as a result of the culture of each community, is certainly a valuable treasure if explored and utilised properly. This is one of the reasons why the Dutch Government is also trying to understand and permeate the existence of Customary Law.²¹

Background to the Formation of the Freijer's Compendium

From a psychological point of view, the majority of Indonesian people adhere to Islam, so the rules made often reflect the values of Islamic teachings. This restriction on the application of Islamic law is strongly influenced by historical factors that were started by the Dutch East Indies government and still continue to this day because there is no desire to apply Islamic law as a whole in Indonesia.

The presence of this cultural marriage occurred because the teachings of Islam, as a relatively new religion, always respected local customs wherever it developed. In fact, in its home region of the Arabian Peninsula, Islam adopted many local cultures that were in line with its teachings. This means that the teachings of Islam are not rigid and destructive of other cultures. The same thing happened in Indonesia, where this marriage between culture and teachings occurred naturally, resulting in many expressions in various regions that show that Islamic law is in line with and cannot be separated from Customary Law.²² The Dutch attempt to collect Islamic family law that had been applied in the community was completed in 1760, and was known as Compendium Freijer. Compendium Freijer was one of

²⁰ Rahmad Alamsyah, Imadah Thoyyibah, and Tri Novianti, "Pengaruh Teori Receptie Dalam Politik Hukum Kolonial Belanda Terhadap Hukum Islam Dan Hukum Adat Dalam Sejarah Hukum Indonesia," *PETITA* 3, no. 2 (2021): 343-62

²¹ Muhammad Aiz, "Konstelasi Hukum Adat dan Hukum Islam di Masa Penjajahan Maslahah 1, no. 1, (2010): 72

²² Muhammad Roy Purwanto, "Atmathurida dan Gianto, Hukum Islam Dan Hukum Adat Masa Kolonial: Sejarah Pergolakan Antara Hukum Islam Dan Hukum Adat Masa Kolonial Belanda", *An-Nur: Jurnal Studi Islam* 1, no. 2 (2005): 2

the efforts of the Dutch East Indies government at that time to codify the laws originating from the indigenous people.

The presence of Islamic law in the community whose strength was recognised by the colonial party, namely the *Vereenigde Oost Indische Compagnie* (VOC) commissioned D.W. Freijer to compile a legal code as a reference for dispute resolution involving the Islamic community it controlled, which we later knew as the Freijer's Compendium. These colonial policy actions were reflected in colonial legal products that made room for the application of Islamic law in society, although this was part of a compromise colonial strategy.

Freijer's Compendium is a law book that contains the rules of marriage law and inheritance law according to Islam.²³ The Dutch also made efforts to recognise and strengthen Islamic law in response to the fact that the indigenous people practised their own religion and religious law. This manifested itself in the form of a collection of legal materials that served as official guidelines for officials in handling the legal affairs of the indigenous people. The Freijer's Compendium compiled by D.W. Freijer was enacted in the *Resolutie der Indische Regering* on 25 May 1760. The legal material contained in the Freijer's Compendium was the first codification of Islamic law during the reign of the VOC.

Then Christian Snouck Hurgronje (1857-1936) issued the Receptio theory that Islamic law that was to be enacted was first recognised by customary law.²⁴ Behind the negative impacts of the Receptio theory, such as the potential to trigger disputes between Muslims who support adat and those who support sharia, as well as conflicts between different adat, there are also positive sides to this legal concept. One of them is the hope that Islamic law will become a living law, which is followed by its adherents so that it becomes an inherent part of society. Islamic law is expected to become a strong tradition and habit for its adherents, and in this context it is a process of adaptation and socialisation.²⁵

During the Dutch colonial period, there were at least two government policy approaches to the application of Islamic law, namely during the VOC period and the Dutch East Indies government. During the VOC era (1602-1880), on 25 May 1670, Islamic law, especially Islamic civil law, was positively²⁶ recognised, namely through a resolution that ratified a collection of laws containing marriage law and inheritance law known as the Freijer's Compendium.²⁷

Freijer's Compendium, which was the first coding of Family Law, was later reformed through a Decree of the Commissioner General on 3 August 1828 which was included in Stb. 1828 number 55. Gradually, the compendium was revoked, starting with the marriage law material in the 19th century, while the inheritance law was only revoked in 1913 by Royal Decree on 17 February 1914 contained in Stb. 1913 number 354. Thus, the history of the coding of Islamic marriage and inheritance law as positive law has ended, and henceforth its existence is only found in Article 131 (2) b *Indische Staatsregeling* (IS) which is a continuation of Article 75 *Regerings Reglement* (RR) 1954.²⁸

²³ Moh. Hatta, Perkembangan Legislasi Hukum Islam di Indonesia, dalam *Jurnal Al-Qānūn*, Vol. 11, No. 1, Juni 2008, 152

²⁴ A.Intan Cahyani, Problematika Penerapan Hukum Produk Pemikiran Hukum Islam sebelum dan sesudah lahirnya UU Nomor 7 Tahun 1989, h. 24

²⁵ Andi Ariani Hidayat, Implementasi Hukum Islam dalam Masyarakat Indonesia. *Bustanul Fuqaha: Jurnal Bidang Hukum Islamayat*, Qadriani Arifuddin, 2020, Vol 1 No 4 Desember. h 731

²⁶ Supomo-Jokosutomo, *Sejarah Politik Hukum Adat 1609-1848* (Jakarta: 1955), h. 8.

²⁷ Supomo-Jokosutomo, *Sejarah Politik Hukum Adat 1609-1848* (Jakarta: 1955), h. 8.

²⁸ Karimatul Ummah, Pengkanunan Hukum Islam di Indonesia (Kajian dalam Bidang Hukum Keluarga), *Jurnal Hukum*. No. 24 Vol 10. September 2003 h. 64-65

Freijer's Compendium A Legacy of Marriage Law Based on the Concept of Islamic Law

The history of the development of marriage law in Indonesia today cannot be separated from the influence of laws issued by the Dutch before, but it also cannot be denied that the laws that developed, especially in relation to marriage, were influenced by Islamic law. The history of the formation of the Freijer's Compendium began when the VOC began to officially form and occupy Indonesia. Meanwhile, in Indonesia before the Dutch came there was already a separate legal system which was the original law of the bumiputera community. Cornelis Van Vollenhoven, an expert on law, especially Dutch customs, in *Staatsrecht Overzee*, said that at the beginning of the arrival of the Dutch to the Indies islands (Indonesia) in 1596 there were already government institutions. At that time, Indonesia, which was formerly called the archipelago, did not have uniform regulations regarding legal matters.²⁹

When the VOC was founded on 22 March 1602, Islamic law that had developed in Indonesia was given its own space with the VOC granting freedom to implement Islamic law as widely as possible as long as it did not interfere with the VOC's interests in Indonesia. However, it turns out that the VOC initially had a desire to enforce Dutch law in Indonesia with the aim of facilitating their relations in trade activities with other countries, but this desire did not run smoothly because it received criticism from certain community groups. Therefore, the VOC felt reluctant to interfere with the applicable laws in Indonesia, and even then the VOC made other alternatives by enforcing the laws in each region differently, but they still had their deeds of incorporation and had powers called *octrooi* which included various rights and powers for the VOC. The *octrooi*, which were established by the *Staten Generaal* (a kind of Dutch parliament), had various rights, including the right to run the judiciary and the judiciary.³⁰

The VOC initially enforced the laws of its territory differently but still respected Islamic law, as seen from the use of the book *Muharrar* and *Pepakem Cirebon* published in 1768, and made by B.J.D. Clootwijk for Bone and Gowa. Then in the Palembang and Banten sultanates, Islamic law books on family law and inheritance were published. The kingdoms of Jepara, Demak, Gresik, Ngampel and Tuban followed. Before that, on 25 May 1760, the VOC ordered D.W. Freijer to compile a law that became known as the Freijer's Compendium, which was a law book to be used as a reference to resolve disputes among the natives who were Muslims, even this Compendium contained rules of marriage law and inheritance law according to Islam.³¹

This is evidenced by the Freijer's Compendium which contains a special section on marriage rules and is even written in the subheading '*Compendium dervoornaamste Mahomedaansche wetten en gewoonten nopens erfenissen, huwelijken en echtscheidingen* (Freijer's Compendium)' which means a summary of the most important Mahomedan (Muhammadan) laws and customs regarding inheritance, marriage and divorce (Freijer's Compendium). Freijer's Compendium itself is contained in the *Nederlandsch-Indisch*

²⁹ Wiwi Diana Sari, dkk, *Inventaris Arsip Wees- En Boedelkamers: Serie Ordonnantie, Resolutie, En Besluiten 1794 - 1937*, (Jakarta: Direktorat Pengolahan Deputi Bidang Konservasi Arsip Nasional Republik Indonesia, 2023), h. 17

³⁰ Wiwi Diana Sari, dkk, *Inventaris Arsip Wees- En Boedelkamers: Serie Ordonnantie, Resolutie, En Besluiten 1794 - 1937*, (Jakarta: Direktorat Pengolahan Deputi Bidang Konservasi Arsip Nasional Republik Indonesia, 2023), h. 17

³¹ Holan Riadi, "Pembaharuan Hukum Keluarga Islam Di Indonesia (Ditinjau dalam Undang-Undang No.1 Tahun 1974)," *SCHOLASTICA: Jurnal Pendidikan dan Kebudayaan* 3, no. 1, (2021): 24-3

Plakaatboek.³² The first title (*Eerste Titul*) contains the rules of inheritance which has around 63 articles while articles 64 to 102 are contained in the second title (*Tweede Titul*) observations by or concerning marital status (*Observatien by of omtrent den huwelyken staat*). Islamic points in the marriage section can also be seen in the article contained in the Freijer's Compendium which discusses the obligation to marry with parental consent considering that in Islam a woman when married is required to have a guardian from the father. This can be seen in Compendium Freijer article 64:

“*Wanneer iemand een vryagie wil beginnen, zo moet zulks mat volkomen consent van 's bruyds ouders geschieden.*” (If one wishes to solemnise a marriage, it must be done with the full consent of the bride's parents).

Furthermore, regarding maintenance, Islam itself also regulates the procedures for implementing household life. One of them is the rule regarding the husband's obligation to take care of and provide for his wife. In Islamic law the position of *nafkah* is mandatory, *nafkah* itself in *fiqh* terms is food, clothing, and shelter.³³ It turns out that the Freijer's Compendium also mentions maintenance in several articles, one of which is in article 79:

“*Getrouwde lieden ('t zy om reeden of niet) alleen met wederzyds behagen genegen zynde van elkander te scheyden, is de man verplicht zekere moeta-â ofte eenige contanten aan de vrouw te geeven, geschikt na mate de vrouw tot het bestaan der huyshouding het haar heeft gecontribueert.*” (People who are married (whether for reasons or not) are only inclined to separate for mutual pleasure, the man is obliged to give the woman a certain amount of money or a sum of cash, in accordance with the woman's ability to maintain domestic relations. contribute to it.)

Then the concept of Islam in Freijer's Compendium can also be clearly seen through several articles that mention the origin of the law as *volgens de wetten van Mahomet* 'according to the law of Muhammad'. For example, article 91 relates to maintenance and then article 100 when explaining polygamy.

The influence of Freijer's Compendium on the *Ordonantie op het Huwelijk van Inlanders* (Bumiputera Marriage Ordinance)

As the oldest law book in Indonesia, Freijer's Compendium can be said to not be valid for long but has a considerable influence on the *Ordonantie op het Huwelijk van Inlanders* (Bumiputera Marriage Ordinance). The transition from the VOC to the Dutch Government made Indonesia, which was then a Dutch colony, governed by the Queen represented by the Governor General together with the People's Council (*Volksraad*) and published the *Ordonantie*. The team of the Directorate of Processing of the Deputy for Archive Conservation of the National Archives of the Republic of Indonesia through its published book explains that *Ordonantie* is basically a statutory regulation formed by the Governor General (*Gouverneur Generaal*) together with the People's Council in Jakarta and applies to

³² Every regulation made by the VOC was announced, unfortunately the announcement (plaque) was not kept in the archives. When a regulation was announced, the announcement was removed so that it was no longer known which regulations were still valid and which were not. The VOC finally collected the announcements that had been posted, compiled them systematically and announced them in Batavia under the name *Bataviase Statuten-Statuta Batavia* (1642). A similar effort was made again in 1766 which resulted in the *Nieuwe Bataviase Statuten* (New Batavia Statutes) (Niemeijer, 2007: 93). This statute was later published in the *Nederlandsch-Indisch Plakaatboek* Volume I. The new edition (*Nieuwe Bataviase Statuten*) was published in the *Nederlandsch-Indisch Plakaatboek* Volume IX (Van der Chijs 1885; 1891). See Wiwi Diana Sari, dkk, *Inventaris Arsip Wees- En Boedelkamers: Serie Ordonnantie, Resolutie, En Besluiten 1794 - 1937*, (Jakarta: Direktorat Pengolahan Deputi Bidang Konservasi Arsip Nasional Republik Indonesia, 2023), h. 19

³³ Nandang Fathurrahman, “Perbandingan Kewajiban Nafkah Perspektif Hukum Islam dan Hukum Positif di Indonesia,” *Al-Ahwal Al-Syakhshiyyah: Jurnal Hukum Keluarga dan Peradilan Islam* 3, no. 2, (2022): 193-206

the territory of the Dutch East Indies. Ordonantie itself is also a statutory regulation to further implement the provisions of the Constitution applicable in the Dutch East Indies.³⁴

During the Dutch East Indies period, there were also a number of divisions of population groups, namely; First, the European group includes the Dutch themselves, native Europeans and the Japanese. Second, the Eastern Group includes Arabs, Indians, Pakistanis. Thirdly, the Bumiputera group were indigenous Indonesians (*pribumi/bumiputera*) or those who merged with the Bumiputera.³⁵ The Freijer's Compendium itself as the first official law passed by the VOC is known to have some influence on the Bumiputera Marriage Ordinance because in drafting the ordinance, the Dutch Government itself made the compendium a source of principles and legal practices related to Islamic marriage. Being a source of principles in the ordinance, it is not surprising that the Freijer's Compendium influenced several aspects, including:

1. Legal foundation

As Islam entered and became even stronger with the establishment of Islamic sultanates and kingdoms, it made some major changes to the legal foundations that prevailed at that time in Indonesia. Although the Islamic sultanates and kingdoms also made religious courts formally present such as the Qodi' court in Pontianak and also specifically in the Banjar Sultanate, the Penghulu in Java, and the Sharia Court in the Sumatra region, it should be remembered that at that time positive law was still not systematised and what was applied tended to be abstract taken from fiqh.³⁶

When the VOC came and increasingly controlled Indonesia, D.W. Freijer in 1760 was asked to compile a law which is currently known as Compendium Freijer. at that time Compendium Freijer was known to be a legal reference to solve a problem that occurred in Islamic society. The Freijer's Compendium can be said to have influenced the legal basis of the indigenous Islamic community, especially on the issue of marriage, which previously came from the content of fiqh doctrine. However, it is important to remember that Freijer's Compendium is a compendium of laws that have concepts from Islamic law. Freijer's Compendium was also very influential in replacing the authority of Islamic courts or Islamic judicial institutions that had previously been established by sultans who made fiqh the basis of law for their society.

When Freijer's Compendium influenced these established legal foundations, it was clear that as the source of the ordinance's principles, the legal basis of some provisions in the *Bumiputera* Ordinance was also influenced by Freijer's Compendium. For example, the regulations for the Bumiputera group apply customary law. However, in addition to customary law, there are several legal regulations specifically made by the Dutch government for the Bumiputera group, including the Marriage Ordinance of Christian Indonesians or HOI (*Huwelijke Ordonantie Christen Indonesiers, Staatsblad 1933 Number 74*) this was done because of confusion regarding marriage procedures between natives and Christians, considering that Christianity has significant differences with marriage according

³⁴ Wiwi Diana Sari, *Inventaris Arsip Wees- En Boedelkamers: Serie Ordonnantie, Resolutie, En Besluiten 1794 - 1937*, (Jakarta: Direktorat Pengolahan Deputi Bidang Konservasi Arsip Nasional Republik Indonesia, 2023), h. 15-16

³⁵ Erie Hariyanto, "Burgelijk Wetboek (Menelusuri Sejarah Hukum Pemberlakuannya di Indonesia)", *Al Ihkam* 4, no. 1, (2009): 142-152

³⁶ Mardani, "Kedudukan Hukum Islam Dalam Sistem Hukum Nasional", *Jurnal Hukum*, no. 2, (2009): 268 - 288

to Customary Law.³⁷ The influence of the Freijer's Compendium can be seen through the same article of the HOCI which prohibits marriage for people with special diseases.

2. Expanding the Scope of Islamic Law Drafting

Freijer's Compendium was originally only a marriage and inheritance law book used for the VOC Court in the East Indies. However, as the first legal compilation during the VOC era, it became a major influence on the expansion of coverage. For example, after the official enactment of the Freijer's Compendium through the plaque, the development of coverage was not only in the VOC courts in the East Indies. In addition, during the VOC period the legal regulations applied in each region in the archipelago were different. In coastal and inland areas and other areas included in the VOC's power were different.³⁸ For example, for the *Landraad* in Semarang in 1750 the VOC made a separate Compendium, it was also the case in the Makassar region that the VOC had authorised a special Compendium for the region.³⁹

Judging from the historical development of marriage law in Indonesia, that Freijer's Compendium turned out to make an expansion of coverage, especially in the Bumiputera marriage Ordinance. Freijer's Compendium, which is known to have been officially revoked on 3 August 1928, experienced developments during the transfer of power by the Dutch government in 1800. In 1815 the Dutch Government formed the Commissarissen Generaal as the right hand of the Dutch King. This also made the Freijer's Compendium, which initially only had limited validity and each region initially had its own compendium, undergo significant changes. One example is in 1823, the Dutch Government issued a resolution of the Governor General dated 3 June 1823 Number 12, inaugurating the Palembang City Religious Court headed by a penghulu.⁴⁰ In addition, the Freijer's Compendium underwent an update called *Besluit van den Commissaris Generaal* (Decree of the Commissioner General) dated 3 August 1828 contained in Stb. 1828 number 55. Then, the King of the Netherlands officially in 1882 also made Decree No. 24 dated 19 January 1882, which was contained in Stbl. 1882 No. 152. Broadly speaking, the decree contained the establishment of religious courts in Java and Madura, and this decree, according to Stbl. 1882 No. 153, took effect on 1 August 1882.⁴¹

Seeing the development of the law, the formalisation of Islamic law was first carried out by the VOC through the Freijer's Compendium and then underwent an update so that it caused an expansion of the use which was only carried out in the East Indies VOC Court as well as the law of each region having its own Compendium, which expanded with the establishment of a religious court covering the entire territory of the Dutch power under the legal umbrella passed by the Dutch Government.

3. Strengthening the Role of the Dutch Government

The Bumiputera Marriage Ordinance, which took Freijer's Compendium as its basis, strengthened the government's role in regulating Islamic marriage law. This can be seen in

³⁷ Syaiful Anwar dan Muhammad Yunus, "Perkawinan Beda Agama Antar Warga Negara Indonesia Di Indonesia Sebagai Diplomasi" *Mempromosikan ISID* 1, no. 1. (2020): 116-130.

³⁸ Wiwi Diana Sari, dkk, *Inventaris Arsip Wees- En Boedelkamers: Serie Ordonnantie, Resolutie, En Besluiten 1794 - 1937*, (Jakarta: Direktorat Pengolahan Deputi Bidang Konservasi Arsip Nasional Republik Indonesia, 2023), h. 19

³⁹ Kartika Septiani Amiri, "Perkembangan Dan Problematika Hukum Perkawinan Di Indonesia" *Al-Mujtahid: Journal of Islamic Family Law* 1, no. 1 (2021): 50-58

⁴⁰ Kartika Septiani Amiri, "Perkembangan Dan Problematika Hukum Perkawinan Di Indonesia" *Al-Mujtahid: Journal of Islamic Family Law* 1, no. 1 (2021): 50-58

⁴¹ Holan Riadi, "Pembaharuan Hukum Keluarga Islam Di Indonesia (Ditinjau dalam Undang-Undang No. 1 Tahun 1974)", *SCHOLASTICA: Jurnal Pendidikan dan Kebudayaan* 3, no. 1 (2021): 24-35

the provisions governing the registration of marriages and divorces, and the requirements or stipulations for *penghulu*. When viewed through the context of the Freijer's Compendium, there are articles that directly allude to marriage regulations, which clearly increases the role of the Dutch Government if before the VOC made this legal compendium the indigenous or *bumiputera* population, especially those who were Muslim, relied more on *fiqh* doctrine, then the presence of the VOC made the Freijer's Compendium a major influence from the aspect of strengthening their role (the Dutch government) on *Bumiputera* Marriage, this can be seen from the following evidence:

Firstly, the Freijer's Compendium clearly regulates the need for permission for a bride to marry to the Governor-General. This is recorded in article 71 of the Freijer's Compendium '*Die dan, door de mond van den gecommiteerde tot en over de inlandsche zaken, de vereyschte approbatie van den Hoog-Edelen Groot-Agtbaren heere Gouverneur Generaal komt te verzoeken.*' which means That then, through the mouth of the person committed to and concerning inland affairs, will receive the necessary approval from the Honourable Governor-General.⁴²

Secondly, the *Bumiputera* Marriage Ordinance does strengthen the role of the *penghulu*, but the Freijer's Compendium as the basis for the Ordinance has indeed established the role of the government from the beginning, even in the case of divorce, if it is concluded through article 81 to article 85, it explains how the process of separating a husband and wife must go through mediation first through the Dutch government which is specifically assigned to handle problems in the household concerned.

4. Harmonising Islamic Law and Local Customs

Through the Compendium Freijer which is still valid and becomes the basis for the *Bumiputera* Marriage Ordinance, it is indeed quite influential in the harmonisation of Islamic law and local customs, although the colonial government did not completely ignore the harmonisation of the two but the colonial government had the main control in regulating and formalising the laws governing indigenous marriages. It is interesting to conclude that before the Dutch, especially the VOC, came to colonise, Indonesia was known to have had Islamic law by the Islamic Kingdom covering marriage divorce, and inheritance which was valid in most areas.

Generally, Islamic law and local customs at that time were able to coexist. However, the doctrine related to the separation between religion and the state, law, and politics which is also applied in every positive legal rule inevitably makes the community more bound and also affects the existence of local customs in Islamic law that has been valid before.⁴³

At first the Freijer's Compendium made Islamic law experience the legality of positive enforcement, but in the early 19th century the end of VOC control by the Dutch Government became a turning point for Islamic law. The Dutch government began to override and even try to eliminate Islamic law and only enforce customary law. The Dutch government seemed to deliberately clash the two laws that were previously harmonious and united. This can be seen through the policy of Governor General Daendels, who in 1808 issued an ordinance for the coastal areas of the north coast of Java. The ordinance stated that the head of the mosque (*penghulu*) could only act as an advisor in a public court when the litigants were Muslims. This arrangement continued from year to year and was even

⁴² Van der Chijs, J. A., *Nederlandsch-Indisch Plakaatboek 1602-1811. Bd. VII 1755-1764.* o. O. 1885-1900, S. 392-407

⁴³ Uswatun Hasanah, "Strategi Pemberlakuan Syariat Islam (Studi Kritis Atas UU No. 1 Tahun 1974 Dalam Penerapannya Di Masyarakat)," *TAZKIYA: Jurnal Keislaman, Kemasyarakatan & Kebudayaan* 18, no. 2, (2017): 238-254

extended to the entire indigenous population, with the exception of Surabaya, Batavia and Semarang.⁴⁴

This effort to eliminate Islamic law continued until the Dutch government issued a regulation in Staatsblad 1937 Number 116. This regulation, which was the result of the efforts of the Ter Haar commission, contained several recommendations that were striking in getting rid of Islamic law. The recommendations included the revocation of the authority of the Religious Courts (*Raad Agama*) and the authority was transferred to the *Landraad* and even the Religious Courts were given a place under the supervision of the *Landraad*. It also provided that judgements of the Religious Courts could not be enforced without the executoir verklaring of the chairman of the *Landraad*. The Dutch East Indies government tried to implement only two legal systems, namely customary law for the *Bumiputera* group and western law for the European group.⁴⁵

The Dutch government, which favours customary law for the purpose of perpetuating politics and economics and overrides Islamic law, has certainly made an upheaval in the harmonisation between Islamic and Customary Law. Whereas during the enactment of the Freijer's Compendium, Islamic law and local customs were still united and lived harmoniously side by side.

5. Freijer's Compendium became the foundation for the enactment of Law No. 1 Year 1974 until now

As a book containing the first and oldest marriage law in the history of marriage law in Indonesia, Freijer's Compendium continued to develop during the Dutch administration and even its enforcement was confirmed after Indonesia's independence called Law No. 1 Year 1974 concerning marriage law. The Indonesian government in essence did not completely eliminate the Dutch marriage law as long as it did not oppose the norms. It can be seen from the beginning of the enactment of Law No. 22 of 1946 concerning marriage, divorce and reconciliation, but when the enactment of this law was still limited to the Java Madura region. Then its enforcement was expanded to the whole of Indonesia with Law No. 32 of 1954. Actually, the existence of the two laws is known to be a continuation of Stbl No. 198 of 1895 as well as a replacement for the *Huwelijks Ordonantie Stbl No. 467 of 1931* and *Vorstenlandse Huwelijks Ordonantie Stbl No. 98 of 1936*. Then came a step forward by the government as a form of effort and legal improvement related to marriage with the issuance and inauguration of Law No.1 of 1974 on 2 January 1974 which can be seen that this law is still valid today.⁴⁶

Conclusion

The current law in Indonesia cannot be separated from the influence of customary law, Western law, and Islamic law. The Dutch colonial presence in Indonesia has long been aware of the existence of customary law as a legal system that developed in the community. Unwritten customary law is the basis for social interaction and relationships between individuals in society. In addition, the existence of Islamic law also had a significant impact on the legal structure in Indonesia. In 1706, the Vereenigde Oost Indische Compagnie (VOC) took steps to recognize the power of Islamic law by asking D.W. Freijer to compile Compendium Freijer, a book of Islamic law that regulates marriage and inheritance in the

⁴⁴ Muhammad Roy Purwanto, Atmathurida dan Gianto, "Hukum Islam dan Hukum Adat Masa Kolonial: Sejarah Pergolakan Antara Hukum Islam dan Hukum Adat Masa Kolonial Belanda," *An-Nur: Jurnal Studi Islam* 1, no.2, (2005): 1-19

⁴⁵ Mardan, "Kedudukan Hukum Islam Dalam Sistem Hukum Nasional", *Jurnal Hukum*, no.2, (2009): 268 - 288

⁴⁶ Muhammad Ashsubli, "Undang-Undang Perkawinan dalam Pluralitas Hukum Agama (Judicial Review Pasal Perkawinan Beda Agama)", *Jurnal Cita Hukum* 2, no. 2 (2015): 291-292

community. The Compendium was later reformed in 1828, reflecting the colonial power's recognition of Islamic law. Although Freijer's Compendium had a limited validity period, its influence on indigenous marriage law in Indonesia was profound. During the transition from the VOC to the Dutch Government, Freijer's Compendium became a source of Islamic legal principles and practices related to marriage, which later influenced the drafting of the Bumiputera Marriage Ordinance. The Ordinance, which was issued by the Dutch Government, adopted several principles from the Freijer's Compendium, such as the legal basis, expansion of the scope of Islamic law, strengthening the role of the Dutch government, harmonization between Islamic law and local customs, and became the basis for the enactment of Law No. 1 of 1974. Thus, the Freijer's Compendium, as the oldest legal work in Indonesia, had a significant impact on the formation of the legal system of marriage in the colonial period.

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