LEGAL POLITICAL THOUGHT OF CHRISTIAAN SNOUCK HURGRONJE IN INDONESIA LEGAL SYSTEM DEVELOPMENT

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ABSTRACT

This study aims to explore the legal political thought Christiaan Snouck during an adviser to the Government official in the Dutch East Indies archipelago. The method used is the postpositivism of qualitative methods because the results of the study were addressed in the aspect of meaning rather than a generalization, with the approach of the history of law, sociology of law and political law. The problem studied is what is the rationale Christiaan Snouck contained in the pattern formation of the legal system Indonseia? Which type of law including these thoughts? Is the concept of thought is still used in law in Indonesia?The results of this study are; The first law of political thought Christiaan Snouck in the Dutch East Indies colony was based on aspects of the social basis of society Indies. Second, the type of legal thought Christiaan Snouck Indies including the type of repressive laws and elitist due to colonial interests. Third, the trail of thought Christiaan Snouck in Indonesia still have until now mainly on aspects of the concept and theory of law, namely the concept and theory of political law and customary law, which has been left out is the political aspect of colonial.

Key words: Thought, social based, legal political, type of law, trail of thought.

Introduction

When introducing *Ambtelijke Advizen van C. Snouck Hurgronje* (Nasihat-nashat C. Snouck Hurgronje semasa Kepegawaiannya), Van Koningsveld P. SJ., expected that the book would inspire schoolars for conducting research and carrying out scientific studies (Gobee, E., pages XIII and XVIII). At this present paper, fulfilling Van Koningsveld expectation, the author carried out scientific study by tracing the political point of views of Christiaan Snouck Hurgonje (CSH) on laws during his service as the colonial advisor of the Dutch Colonial goverment in East Indy (Indonesia). He was appointed as the colonial advisor based on the Dutch Royal Decree No. 6 issued on January 11, 1899 stating that CSH was the political advisor for the native and Arabic affairs, giving counsel to the Head of Judicial Department, Head of Homeland Department, the Local Goverment, and all levels of Governmental officers on the occupied land, especially for Sumatra and Java from 1889 to 1936 (Gobee. E., pages: 14-15).

CSH was a writter and professor of Malayan socio-culture at te University of Leiden, Netherland, whose point of views on had been throughly studied by Joseph Scacht when he was in the Netherland (Lewis, Bernard, No.23).

CSH showed his fruitful work in Sumatra, espcially Acheh when he successfully studied the social base of law politics in the region and offer a solutin on how the colonial goverment should impelement laws to govern the local people. Before CSH arrived in Aceh, the Dutch traders coming with their ship Vereenigde Oost Indische Compagnie (VOD) had been there in 1596 doing business with the local people. The VOC let the local people govern themselves with their own laws so that during the VOC time *Resultie der Indische Regeering* May 25, 1760 was implemented (Amrullah Ahmad, page 193). When the VOC ended thier occupation in 1830, the Dutch Colonial goverment took over the power and implemented the unification of law policy, in which the law adopted for the Dutch people was also applied for the native people. The politic of the unification of law was implemented based on *Priciple Concordantie* as published in article 131 *Wet op de Statsinrichting van Nederlands Indie,* known as *Indische Staatsregeling (I.S.).*

On September 18, 1811 the Netherland goverment handed in Java, Palebang, and Makasar to the Brittish goverment. However, on August 13, 1814 the Brittish colonialist returned those occupied land bact to the Dutch goverment. The Dutch colonial goverment formed a govemetmental office in Bogor, known as *Algemene Secretarie* to govern all the occupien land in the Indian archipellago. Based on the Dutch Royal decree Staatblad No.152 and 1882, the Dutch colonial goverment established the Deparment of Justice in 1870 and Department of Religion (Raad Agama) in 1882 (Philipus M. Hadjon, pages: 11-12).

The above mentioned was part of the politics of law orchestrated by the Dutch colonial goverment. In facr, politics needed a strategy, which was the ability to recruit and mobilize all available resourses to achieve the deterimated objective. A strategy was closedly related to ability to think analitically and conceptually. In regard to the politic of law, the strategy in question had to give a direction on how the goal would be achieved (Akhmad Muslih, page 157). The CSH political point of views during the occupation had attracted the attention of the native people, especially when CSH introduced the *Receptie* theory, stating that Islamic laws would be adopted provided that the laws had been absorbed in the custom laws.

From the explanatioan above should emerge specific issues on law needed further examination intensively, like phylosophical aspect of law, theoritical aspect of law politics, and the dogma of laws. The phylosophical aspect of laws was related to the

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principle of law implementation. The theoritical aspect of laws might discuss *Receptie* theory and *Beslissingerler* theory. Furthermore, for the political aspect of law we might discuss the implementation of the norm of law for governing the daily life of people. Considering all of those had been mentioned, a critical question could be raised: what was the base of the politics of law, what type of the law, and was the trail of CSH thought on the politics of law still existed in Indonesia? Those questions and problems were evaluated by using Pospositivism method, starting from the qualitative method, as the result being achieved was the meaning, not generelazation. The author adopted the history and sociology of law approaches in this study to understand the substance systematical aspect of law. This study was analyzed by using an interpretative method by which a very solid conclusion would be presented.

Results And Discussions

1. The Basic of CSH Thought on the Law Politics in Dutch East Indies

In general, the basic of CHS thought on the politics of law in Dutch East Indies might be examined by tracing his work when he was studying the social base of Achenese community in Sumatra and that of Javanese society in Central Java.

(a). Social Base of Achenese Community in Sumatra

In order to get clear picture on the Achenese socio-culture, CSH got involved actively in the daily life of Achenese people while doing his research (Gobee, E., pages: 53-54). He found that Achenese were very religous, interested in language and literature, loved to share their wealth, and led by religous leaders called *Ulama*. The Ulama were mastered in and upheld the Qur'an and Islamic laws. In addition, CSH also found that the Achenese hated the Colonialist, mainly because the Dutch were the Ignorance (*Kafir*) and because the Dutch Company (VOC) were interested only in making fortune for themselves without taking into account the wealth of the local people (Achenese). The Achenese considered that the Dutch Company was very cruel, gold miners, did not respect the local people because of these the Achenese prefer to be governed by the Brittish when it came to politics. In short, the Achenese were not in favor to the Dutch politacally.

In Acheh, CSH were also conducting some researches on the local goverment (*Kasultanan Aceh*), from which he learned about the structure of the local goverment, the power structure, and the relationship between the people and the Sultan, such as the rights and the obligations of the people toward the goverment. He also learned that the Sultanate of Aceh was established in 1507 AD with Ali Mughayat Syah as the first Sultan, who implemented politics of Islam as the base of his administration (Gobee, E., pages: 53-63). Furthermore, CSH also noted that the Achenese were highly upheld Islamic teaching even though some of them, espcecially the low level of the beaurocrate some of whom adopting western bad attiudes, like doing bribery and cruel behaviors (Gobee, E., page: 103).

Having a clear picture on Achenese people and the statecraft of the Acheh Sultanate, CSH formulated recipes on how the Dutch Colonialist might defeat Acheh people. CHS advised the Ducth Coloniast to bring the Sultan of Acheh to the table to have official agreement, like the one having established between the Achenese and the Deucth Company (VOC) or a political agreement between the Dutch Colonialist and the Kings of Java (Achmad Roestandi, page 1). Considering the social theory related to a certain norm adopted by the people (Achenese), CSH found that the law substances and law systematics adopted by Achenese people were indeed part of the Ducth colonial law systems. For example, the people of Acheh implemented the substances of religous values(Islam) as their daily life norms, in which the norms got the full support of the Sultanate of Aceh, reflecting the constitutional values of Aceh Sultanate.

(b). The Social Base of Javanese Communty in Java

Driving by the Dutch Colonialist interest, controling Java politcally, CHS was aslo conducting research to study the socio-culture bases of Javanese people, focusing on the people living in West Java cities, suach Batavia, Priangan, Cirebon, and in Central Java cities such as Tegal, Pekalongan, Banyumas, and Bagelen.

Based on his study, CSH concluded that the Javanese people embracing Islam loved *tassawuf*, a mystical aspect of Islam, called *klenik*, very much to the extent that they might do litle bit too much when performing their reliogious duties.Indeed, CSH found that *klenik* played important rolesin the Javanese society. Moreover, among the Javanese living customs, there were two of thems having important impacts on social life and laws, which were marriage and heritage. *Klenik* had its own social instrument called "Kiyayi" or Musim Clerk, a tittle similar to the "village priest" in Christianity, and islamic school named Pesantren (similar to Sunday school) in which the Muslim Clerk passed all Islamic teachings to their pupils (Gobee, E., page 23). Completing his research, CSH went to East Java and ended his journey in Madura (Gobee, E., pages: 6-7).

Based on the Javanese socio-culture, CSH gave his advice to the Dutch Colonialist in Java to impelement alaw policy in governing the Javanese people, epspecially for the marriage and inheritance. These laws were good for the Javanese only, not for the people living in Sumatra island.

In line with the social theory, there would be the substances and sysmatica of the norm adopted by the Javanese people, like the Kejawen, treated as the daily life norm governing the life of Javanese people. For example, when Javanese people got married they used Javanese custom on

In line with the social theory; therefore, one might find the substances and the systematics of the norms practised by the Javanese people on their daily life, such as maariage, which should be carried out on certain way according to the Javanese custom or *Kejawen* (*adat Jawa*). Javanese people were adhered to the Javanese custom, espicially when getting married or splitting the inheritance when their parents dead. CSH pointed out that the most important thing in the Javanese custom were the law of marriage and the law of inheritance in addition to the Javanese adherent to the Islamic mystic (Goobe, E., page 23). The law of marriage leading to the implementaion of the law of inheritance, in which the boys would inherit two part of the parents wealth

while the girl was only one part. Those norms reflected the substance and the systematic of the Javenese custom, which were totally different from those adopted and implementedby the people living in Sumatra island.

Based on the cultural aspects and community customs, CSH determined the politics of the law in which the people were categorized into certain groups according to the laws applied to them. For example, custom laws (hukum adat) for the native, while Islamic laws were implemented only when those laws had been absorbed by the custom laws. This kind of implementation was known as Receptie theory, which was then presented in the form of the politics of the law.

CHS proposed that for different types of social base should be applied different kind of laws. In his letter to the First Secretary of the Dutch Colonialist, dated on March 24, 1891, he wrote that the same type of laws should be implemented in Java and Madura, while different one should be implemented in Sumatra, because the social bases for those people living in Sumatra was different from those living in Java and Madura (Gobee, R., page 23). Therefore, the model of the norm of laws should be differentiated based upon the social bases of the people or the internal spiritual condition of the people, without which introducing laws to govern those people would produced social instability. In this regard, SCH put sepcial attention on the social base of the occupied people before implementing any laws to govern them.

2. The Type of Laws of CSH on the Political Law in East Indy

A type of law was closedly related to the politics of law, because laws were a product of political process. The politics of law, on the other hand, was a political process its prime object was a law, in which there was a desire to materilize or implement a certain norm of law (Abdoel Dhamali, page 17). The politics of law needed a strategy, like the ability to recruit and mobilize the available resoures in onder for them to control the situation, to achieve the designated objective. A strategy was inseparable with the ability to produce a holistic conseptual thought on a certain issue to offer a direction for reaching the purpose.

As an advisor for the Dutch Colonialist goverment, CSH focused all his efforts on establishing the colonialist power in the archipellago by introducing a certain law created based on the social bases of the people living in Java, Madura, and Sumatra. In response to the King letter (Surat Tuan Raja) No. 629 on March 20, 1891, he wrote to the Dutch Coloniast goverment, March 21, 1891, as followed:

"*...please do not make the same mistake having been done by the previous administration who impelemted a certain law to the occupied people wihout having any complete knowledge on their social bases,because such laws would be in effective...*" (Gobee, E., pages: 6-7).

In CSH concept, the Dutch Colonial goverment should not implement laws to all people living in the archipellgo, because those people had their own social base, which govern their lives. So, he proposed to implement different laws for the Sumatran and Javaneseas well as Madurese.

CSH tought on the politics of law become powerfull because he got the full support from the Dutch Colonialist, as the politics of law adopted by the Royal Dutch Goverment when suspended the Religous Justice System in Java and Madura by Staatsblad No. 153 in 1931, strengthened by Staatsblad No. 116 in 1937. The Royal Dutch Goverment had succesfully implemented law norms based on people category, in which people living in the colonial land were divided into four categories each of which had its own law. The first category was the European, to whom Burgerlijk Wetboek (Publicate on April 30, 1847 Staatsblad No.23) was implemented. The second group was the Chinese adopted Burgelijk Wetbook based on Ordonasi March 29, 1897 (Staatsblad 1897-129 jis 1897-81, 24-557, 25-92). The third group was the Arab and East Asia who were governed by Staatsblad 1924-556 based on Ordonansi December 9, 1924. And, the final group was the Christian Dutchmen ruled by Ordonansi Februari 15, 1933 Huwelijk Ordonantie Christen Indonesier, Java, Minahasa en Ambonia (H.0.C.I). For the native people, they were governed by their own custom laws, in accordance with the Receptie theory.

By adopting CSH idea of the politics of laws, the Colonial goverment had implemented the reppressive type of laws even though there were other type of laws as introduced by Phillipe nonet and Philip Zelznick, such as Autonomous Law and Responsive Laws, in addition to the Refressive (Phillipe Nonet, page 18).

As well known that Autonomous Laws was the type of law its goal was to legitimaize a political policy adopted by the ruling party while Repressive Law was the type of law adopted by the ruling party to control people in order to stabilize the social order. The Repressive law seemed to be repressive because the implementation of the law was totlly controlled by the goverment. Responsive law was a type of law which was established based on the need of the society, which allow the judicial system to work in such away that the people got their appreciation, chace to participate, and more demorcatics.

Based on the type of laws introduced by Phillipe Nonet and Phillipe Zelznick, it was clear that the type lf law adopted by CSH was a Refressive law, which was introduced and implemented based on the colonial interest. However, if we took a close look to the work on CSH, we might find that he was not only introducing Receptie Theory, bu he also formulated Beslissingenleer theory to strengthen his politics of law in the judicial system.Furthermore, the Judge Ruling theory was adopted in 1930 to foster the custom laws. Therefore, CSH idea on the theory of laws and their practical aspects were implemented funsionally and sratgically in such away that it become so significant when impelented at the colonial lands. If the custom law get appeared becuase of the Judge verdict, then it become the laws and could be forced to be implemented. As a result, there was a fungsional interconnection betwen Receptie theory and Beslissingeler theory during the Dutch colonial period.

Even though the CSH type of law was refressive, it was very effective due to the full support from the Colonial goverment. It suggested that in order for any law to worr effectively it depended not only on the substance of the law itself, but also on the support of the ruling party, as stated by John Austin in his book when wrote the impeletaion of the law was depended on the goverment (Dedi Supriayadi, page 211), which meant that the politics of law required a someone having strong figure and a strategic political of view.

3. The CHS Legacy on the Political Law in the Dutch East Indy

The CSH trail of thougt in Indonesia could be traced back through the history of Indonesian law from the Dutch colonial goverment to the recent days, especially when CSH was appointed as the advisor for the Dutch Colonial goverment from 1889 to 1936. CSH wanted to implement Islamic laws only if the law had been abdsorbed by the local people in their daily life or by the custom laws, known as Recipie theory. In addition to that, CSH also introduced another regime in adopting the Islamic laws, which was based on the judge verdict at the first level of judiciary system.

The Receptie theory proposed by CSH got a very good attention from local Islamic scholars, such as Hazairin from Sumatra, offering an alternative theory called Receptie Exit theory, because he believed that Receptio theory was no longger valid after Indonesia got her independence. Receptie theory was origanlly developed by Sayuti Thalib known as Receptie a contratio, stating that Muslim people adopted Islamic laws while the custom laws could be adopted by Muslim people only if the custom laws was in concert with the Islamic teachings. Following the Receptie theory, a new thougt emerged proposing the need of contextual interpretaion of the Quran (Dedi Supriyadi, pages 310-318). In this respect, the author thought that the Receptie in Complexu theory by Lodwwijk Williem Christian can der Berg implementing Islamic laws for the Muslim people was indeed accepted; however, an critical question could be addressed for evaluating whether Islamic laws had really been absorbed into the custom laws. In other words, had all Muslim living in Indonesia been intentionally practising Islamic teaching? Unfortunately, no data was recorded on this subject.

The trail of CSH thought on the politics of law had been recorded when the Dutch Colonial goverment adopted his policy on the politics of law from the occupation to the time when Indonesians preparing for their independence. When the Indonesian preparing their independence day, the Dutch Colonial goverment was no longer in power, after being defeated by the Japanese. It should be therefore noted that the formation of Indonesian judiciary system and laws were stared under the Japanese occupation period when the Badan Penyelidik Usaha Kemerdakaan Indonesia (BPUPKI) on March 1, 1945.

One of the founding father's dreams for Independent Indonesia was to have Indonesian own law systems,which was extracted from the living custom of the Indonesians. Since the Dutch occupation, the Indonesian youth had actually showed a strong desire to have their own laws to govern the people of Indonesia, which might be adopted from the customary law (Satjipto Rahardjo, page 172), even though those kind of laws (custom laws) was not yet to fulfill the need of ideal law system for the independent Indonesian. To compensate the loss, the Founding Father had introduced Article II of the Transition Regulation of te Indonesian Constitution (Pasal II Aturan Peralihan Undang-Undang Dasar Negara Republik Indonesia 1945), stating: "All the govermental institutions and regulations exist were still effective until there was a new regulation issued."

Considering the Article II of the Transition Regulation, it could be stated that the trail of CSH thought still existed when the Indonesians proclaimed their independence, so was the the Civil Law System. The Indonesian law systems could be separated from the history of law system prior to the independence day, because of which the trail of CSH thought could be traced in the Indonesian law systems, part of the reason was that because during the occupation the laws implemented in the Netherland home country was also implemented in the occupied land, especially after the Netherland goverment adopted the politics of Unification of the laws (Akhmad Muslih, page 78).

The Indonesian independence cut off all the CSH politics of laws in such away that CSH theory was no longger valid, because since then the only laws exist and adopted in Indonesia was the one the law based on the Indonesian contituion (UUD 1945), with the exception of those which was not regulated as mentioned in the Article II of UUD 1945. So, the trail of CSH thought was not completely cut off, at least at the theoritical level.

In general, the trail of CSH thought did not stop on Receptie theory, because this theory could ony be effective with the full support of the authority, such as the verdict of the judiaciary system. Owing to those, working with Cornelis van Vollenhoven and Barend ter Haar Bzn, CSH created a new apporach by introducing Beslissinegrler, which basically explaining that the custom laws would materilize in the form of verdicts issued by the people informal leaders (*fungsionaris adat*)so that the custom laws got their respect from the people (Bushar Muhammad, Pages: 8-9). This theory of judge verdict was very powerfull and effective when people get involved in a conflict, especially when the judge of the Religous Judicial System (*Pengadilan Agama*) examined and made a verdict on some cases related to religious teachings, such as divorce or inheritance.

If examining closedly, one might found the leftover of the trail of CSH thought, like *Uitvoerbaar bij voorraad* theory. This theory gave a full support to all verdict issued by the judge during the judiciary process in the court. It was actually an effective way of cutting of the judiciary process, as the verdict was issued due to the strong-undeniable evidence (Achmad Roestandi, page 83). If the convict had proposed an appeal to the higher court, there would have been no support from the court, because the verdict was issued based on a very strong-undeaniable evidences.

In recent days, it would be hard to find the trail of CSH thought on Receptie theory and his politics of law as almost no schoolar followed his footstep, because in oder for the theory to be effective it needs the full support from the authorities, which meant at that time was the Dutch colonialist, because Indonesian schoolars had negative views on the colonialism, as mentioned in the

constitution (UUD 1945) stating every nation had the right for their freedom because of which all kind of colonialims had to be wipe out from the face of the earth because it violated the very basic priciple of humanity and justice.

However, Cornelis van Vollenhoven and Barrend ter Haar Bzn supported the CSH view on the implementation of custom law in Indonesia. In fact, the view had been absorbed in the theory of Indonesian custom law and followed by the Indonesian schoolars ever since. It therefore was safe to say that the CSH view on politics of law continued to flow and followd by Indonesian schoolars till today. The author called the political view of CSH on law as "ism" because the view was followed and adopted by some schoolars emerging afterward. The science of law would never be separated from the previous theory of law, because las sciences developed from an old theory toward the newer one according to its time frame and socio-cultural context. In accordance with that, the trail of CSH thought on the politics of law, supported by Cornelis van Vollenhoven and Barrend ter Haar Bzn were partially still exist in Indonesia, because the view was conceptual, theoritical, strategic, and practical so that it was adopted by many schollar in Indonesia.

Conclusions

1. The political thought of Christiaan Snouck Hurgronje in the Dutch East Indy was characterized by the social base of the people, in which he mentioned that the social base of Sumatran people was different from that of Javanese, because of which they should be governed by different systems of law. Moreover, Christiaan Snouck Hurgronje along with other schoolars formulated Recceptie theory, Beslissinegrler theory, and Utivoerbaar bij voorraad theory.
2. The type of law introduced by Christiaan Snouck Hurgronje for the occupied people in the Dutch East Indy was Refressive and Elitical laws.
3. The trail of Christiaan Snouck Hurgronje thought was still exist today, especially on theoritical aspect of the law politics, such as the politic of laws requiring a strong political figure who had authority, phylosophical views, conceptual, theoritical, and strategic. CSH point of views on law politics was still exist today and adopted by some Indonesian schoolars

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