

De-Secularizing Legal Education in Indonesian Non-Islamic Law Schools: Examining The ‘Introduction to Jurisprudence’ Textbooks On The ‘Norm Classification’ Chapter

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Abstract

The Indonesian legal system is not secular, but the legal education in non-Islamic universities are secular. This article will highlight the ‘Introduction to Jurisprudence’ course (ITJ) at law undergraduate programs. More specifically, one chapter will be analyzed i.e. ‘Classification of Norms’ because it is an early fundamental chapter in ITJ which shapes the jurisprudential reasoning of the law students. This article uses a literature study to observe the most used textbooks for the (ITJ) course in the top law schools in Indonesia. It will be found that the approached used by these textbooks are secular and incompatible with the Indonesian non-secular legal system. Islamization of knowledge is needed to ‘de-secularize’ this ‘Classification of Norms’ chapter.

Keywords: Islamization of Knowledge, Jurisprudence, Norms, Legal Education, Indonesia

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Abstrak

Sistem hukum Indonesia tidaklah sekuler, tapi pendidikan hukum di universitas non-Islam justru sekuler. Artikel ini akan menyoroti mata kuliah 'Pengantar Ilmu Hukum' (PIH) yang diajarkan di program sarjana ilmu hukum. Lebih spesifik, satu bab akan dianalisa yaitu bab 'Klasifikasi Norma' karena ia merupakan bab awal PIH yang fundamental dalam membentuk logika pemahaman hukum bagi para mahasiswa. Artikel ini menggunakan studi literature untuk mengamati buku ajar PIH yang paling sering digunakan di beberapa fakultas hukum terbaik di Indonesia. Disimpulkan bahwa pendekatan buku-buku ajar ini bersifat sekuler dan tidak sesuai dengan system hukum Indonesia yang tidak sekuler. Islamisasi ilmu diperlukan untuk men-desekulerisasi bab 'Klasifikasi Norma' ini.

Kata Kunci: Islamisasi Ilmu, Ilmu Hukum, Norma, Pendidikan Hukum, Indonesia.

Introduction

The Indonesia people has a *religio-magis* character, in short meaning that they believe in an unseen world other than this physical one, affecting each other.¹ Highly religiously spiritual, and definitely not secular. However, Indonesia was colonized by the Dutch for around 350 years which has its mark and legacy to Indonesia today, *inter alia* the legal system. They made a unification of law (Dutch European Law) to be applied in the Dutch East Indies, gradually eroding the pre-existing *adat* and Islamic law systems.² After Indonesia's independence in 1945, to avoid legal vacuum, the Indonesian government through Presidential Regulation No. 2 of 1945 declared that all legal

¹ I Gede A. B. Wiranata, *Hukum Adat Di Indonesia: Perkembangannya Dari Masa Ke Masa*, (Bandung: Citra Aditya, 2005), pp. 62–63.

² Ramlah, 'Implikasi Pengaruh Politik Hukum Kolonial Belanda Terhadap Badan Peradilan Agama Di Indonesia', *Jurnal Kajian Hukum Islam*, 12 (2012), 43–64 (pp. 47–50).

bodies and regulations from the colonial era would still apply until replaced.

The newly established legal system of Indonesia is not a secular one. It accommodates the religious and traditional ways of the people. As Indonesia has a large Muslim majority, Islamic values are very essential to the people and it has influenced some areas of the legal system as well, and it is integral to the Islamic belief.³ Certainly lawyers of a Muslim majority nation which has integrated some areas of Islamic laws in its legal system should apply Islamic values or at least non-secular legal theories, right?

This article will explore the textbooks used in the introduction to jurisprudence (ITJ) course for undergraduate law programs of the major universities. Particularly, it will observe one of the fundamental early chapters which is the norms classification. While the idea of the chapter is to distinguish 'legal norms' from the other kinds of norms, but it will be found that 'religious norms' are one of those from which legal norms are distinguished from.

This chapter is a very fundamental one, as it contains a concept which shapes the basic understanding of law as way to understand the entire legal system. While the Indonesian society and legal system is not secular, is it not strange that the legal education is based on a secular foundation? To add more, is it not strange that not a single chapter is dedicated to teach anything Islamic in the entire law curriculum, except particular parts (such as Islamic banking, *Zakat*, and Marriage) which has been codified into the national law? After all, scholars of law –

³ Nirwan Syafrin, 'Konstruk Epistemologi Islam: Telaah Bidang Fiqih Dan Ushul Fiqih', in *Filsafat Ilmu: Perspektif Barat Dan Islam*, ed. by Adian Husaini and Dinar Dewi Kania, (Jakarta: Gema Insani Press, 2013), pp. 127–54 (pp. 130–33).

graduates of this education system—are the ones who apply, develop, and even contribute to making the law.⁴

This article finds that the way the ITJ textbooks explain ‘classification of norms’ are secular and incompatible with Islamic beliefs which is –to some extent—integral within the Indonesian legal system. To de-secularize the entire course would certainly require a greater research project. However, it is hoped that the de-secularization of the ‘classification of norms’ chapter would be a good start because it is a foundational chapter which shapes the basic concept and understanding of law in the minds of the students.

Theoretical Framework

a) Colonialism and Secularism

Colonialism has its dark spot in Indonesia’s history, so much that the first line of the preamble of Indonesia’s Constitution emphasizes that freedom from colonialism is the right of every nation. It shall be noted that colonialism is not merely physical and economic subjugation, but also in knowledge and thought.

The west –the Dutch being a major part of it—has a trend of believing that their values are the ‘cultural vanguard of mankind’ and represent ‘the most evolved of mankind’, so that anything different is considered as ‘backwards’.⁵ Many argued that it was through colonialism did the west subjugate the rest of the world by force, force-imposed their values, and that decolonization came together with neocolonialism.⁶ Some

⁴ L. J. von Apeldoorn, *Pengantar Ilmu Hukum (from Inleiding Tot de Studie van Het Nederlandse Recht*, (Jakarta: Pradnya Paramita, 2008), pp. 164–68.

⁵ Syed Muhammad Naquib Al-Attas, *Islam and Secularism*, (Kuala Lumpur: ISTAC, 1993), p. 25.

⁶ Wan Mohd Nor Wan Daud, *Islamization of Contemporary Knowledge and the Role of the University in the Context of De-Westernization and Decolonialization*, (Johor Baru: Penerbit UTM Press, 2013), pp. 6–7.

even argue that international law today is constructed in a process which is a repetition of the colonial past.⁷

Secularism is easily understood as 'separation between the church (religion) and the state', but in concept it means more, i.e. as C.A. van Peursen said: "... *deliverance first from religious, and then from metaphysical, control over human reason and language*".⁸ Secularists see humans (and their interactions with the world) merely materialistically and without any spirituality whatsoever.⁹ They disenchant religion, desacralize political authority, and deconsecrate values.¹⁰ Secularism is famously a product of western thought, raising out of their own dark experience with the Catholic Church. The imposition of secularism towards the Muslim world is part of the great struggles that scholars are dealing with by de-secularizing,¹¹ as is the effort that this research is doing.

b) Islam and Indonesia's Legal System

After centuries of Dutch colonialism eroding pre-existing legal traditions including *Adat* and Islamic Laws,¹² Indonesia's independence sought efforts to reintroduce and acknowledge those legal traditions. Until today, Islamic law remains to be a significant part of Indonesia's legal system.

To begin with, Indonesia's state ideology is 'The Pancasila' (five principles) as the source of all sources of law, its values may not be breached by any law,¹³ the five principles of Pancasila starts with '*Ketuhanan Yang Maha Esa*' or 'the belief in the oneness of God' as the first principle or *Sila*. It shall be

⁷ Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (New York: Cambridge University Press, 2004), p. 268.

⁸ Harvey Cox, *The Secular City: Secularization and Urbanization in Theological Perspective* (New Jersey: Princeton University Press, 2013), p. 2.

⁹ Al-Attas, *Islam and Secularism*, pp. 35–37, 92–93.

¹⁰ *Ibid.*, p. 18.

¹¹ See generally: Al-Attas, *Islam and Secularism*.

¹² Ramlah, *Implikasi Pengaruh Politik*, pp. 47–50.

¹³ Kurnisar, 'Pancasila Sumber Dari Segala Sumber Hukum', *Jurnal Ilmiah Ilmu Sosial*, 11 (2012), 244–53 (p. 251).

noted that this principle, while doctrinally (arguably in some contexts) believed by the other recognized faiths, is majorly a contribution of the Muslims.¹⁴ This could be seen from a few things, such as the aforementioned first *Sila* which is essentially *tawheed* i.e. the central teaching of Islam, but also the use of some words clearly representing concepts original from Islamic teachings such as *adab*.¹⁵ In fact, actually, this *Sila* used to be “*Ketuhanan, dengan kewajiban menjalankan syariat Islam bagi pemeluk-pemeluknya.*” or “*The belief in God, and an obligation to follow the Islamic Shari’ah for the Muslims*” in an initial draft of 22 June 1945 (Jakarta Charter), before then revised later into what we know now.¹⁶

Further, the Constitution makes it legally clear that Indonesia is not secular. After the Pancasila being mentioned in its preamble, Article 29(1) of the Constitution notes specifically that Indonesia is a nation based upon the belief in God. Even, Article 28J (2) provides that human rights can be limited under a number of conditions *inter alia* religious values.

As a further enumeration of Islamic values, we have numerous legislations passed which are specifically designed to apply some areas of Islamic law *inter alia* Islamic family law and Sharia economics law, and enforced by a special (Islamic) religious court as per Law No. 7 of 1989 concerning the Religious Court (which has been amended a number of times). This is aside from the special province of Aceh which has been given special authority to apply a greater extent of Sharia Law through Law No. 11 of 2006 concerning Aceh Governance (see especially Article 125[2]). Aceh is a special province and thus a

¹⁴ M. Saifullah Rohman, ‘Kandungan Nilai-Nilai Syariat Islam Dalam Pancasila’, *Jurnal Studi Agama Millah*, 13 (2013), 205–15 (pp. 209–11).

¹⁵ Adian Husaini, ‘Makna Adab Dalam Perspektif Pendidikan Islam’, *INSISTS* (Institute for the Study of Islamic Thought and Civilizations) <<https://insists.id/makna-adab-dalam-perspektif-pendidikan-islam-2/>> [accessed 15 February 2018].

¹⁶ Ismail Suny, ‘Hukum Islam Dalam Hukum Nasional’, *Jurnal Hukum & Pembangunan*, 17 (2017), 351–57 (p. 353).

special case, so it does not represent the whole Indonesian legal system.

There are also other laws which are not Islamic *per se*, but they are evidence of the importance of religion in general. One of the most recent great examples of this would be Article 156 of the Criminal Code, which criminalizes religious blasphemy. There are endless evidences on how Indonesia's legal system is not secular and therefore screams against secularism, too much to discuss here. It is not difficult to deduce that a secular legal education has no place in a non-secular legal system.

Customary law, known as *adat law*, is very important also in Indonesia. As Satjipto Rahardjo noted, the law of a nation is a reflection of the society of that nation.¹⁷ *Adat law* grew out of the visions and worldview of the Indonesian people which can be traced back to ancient history¹⁸. It has already been explained how Indonesian customary laws has a *religio-magis* character which is religious-spiritual by nature and sees this material world and the 'unseen world' as interconnected.¹⁹ Therefore, to some extent, one may see a strong inter-connection between religious (and Islamic) traditions and *adat* too.²⁰

Adat law is recognized in Indonesia's legal system to the extent that it does not contradict statutory regulations as per Article 18B (2) of the Constitution. The Temporary People's

¹⁷ Satjipto Rahardjo, 'Hukum Dalam Perspektif Sejarah Dan Perubahan Sosial', in *Perspektif Politik Hukum Nasional*, ed. by Artidjo Alkostar and M. Sholeh Amin (Jakarta: Rajawali, 1986), p. 127.

¹⁸ Marco Manarisip, 'Eksistensi Pidana Adat Dalam Hukum Nasional', *Lex Crimen*, 1 (2012), 24-40 (pp. 26-27).

¹⁹ Wiranata, pp. 62-63.

²⁰ They share an interesting relation of affecting each other, but sometimes conflicting each other. See: Wiranata, p. 72. See also generally: Fikria Najitama, 'Sejarah Pergumulan Hukum Islam Dan Budaya Serta Implikasinya Bagi Pembangunan Hukum Islam Khas Indonesia', *Al-Mawarid*, 17 (2007), 101-14.

Assembly (MPRS) issued Decree No. II/MPRS/1960, where in Attachment a Para. 402 it rules that *Adat law* shall be a guiding principle of the development of national law. *Adat law* affects a very broad range of law and its practice throughout Indonesia, including *inter alia* marriage, inheritance, and land.²¹

c) Research Method

This research is a theoretical one, questioning the nature of the law and the formulation of legal doctrines.²² As this research aims to observe the academic secularization through the ITJ textbooks, then the object of observation would be the ITJ textbooks used for the undergraduate ITJ courses conducted in law schools. Due to limitation of resources, we did not observe literally all ITJ textbooks in existence. Rather, we limited our scope to the most commonly used textbooks among the top universities in Indonesia based on the Ministry of Research and Higher Education rankings, among them are the oldest law schools and universities (e.g. Universitas Gadjah Mada). This is under the assumption that the most used books in the top universities are very likely to be also used in the lower ranking universities, or at least used as a substantive model for other textbooks, since the structure of the ITJ curriculum between law schools do not have significant differences. The books taken as sample are as follows:

- Achmad Ali, *Menguak Tabir Hukum*, 2nd Edition (Jakarta: Penerbit Kencana, 2015)
- Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Prenadamedia Group, 2008)

²¹ Lastuti Abubakar, 'Revitalisasi Hukum Adat Sebagai Sumber Hukum Dalam Membangun Sistem Hukum Indonesia', *Jurnal Dinamika Hukum*, 13 (2013), 319–31 (pp. 325–29); Dewi Wulansari, *Hukum Adat Indonesia: Suatu Pengantar* (Bandung: PT Refika Aditama, 2010), pp. 104–53.

²² Paul Chynoweth, 'Legal Research', in *Advanced Research Methods in the Built Environment*, ed. by Andrew Knight and Les Ruddock (West Sussex: Wiley-Blackwell, 2008), pp. 28–38 (pp. 28–38).

- Purnadi Purbacaraka, and Soerjono Soekanto, *Perihal Kaedah Hukum* (Bandung: Citra Aditya Bhakti, 1993)
- Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bhakti, 1991)
- Sudikno Mertokusumo, *Mengenal Hukum (Suatu Pengantar)*, 3rd edn (Yogyakarta: Liberty, 1991)

It will be from these five textbooks which our analysis will be mostly based upon. Although, perhaps in the future more large-scale researches need to be done observing all ITJ textbooks in Indonesia.

Other than that, relevant statutory regulations and literature will also be used.

Findings and Discussion

a) Norms classification: Singling Out Legal Norms

One of the very first materials discussed in the ITJ course, which also is the earliest courses in an undergraduate law degree, would be to classify norms and explain why 'legal norms' are distinct from other types of norms. The major textbooks²³ mostly have the same classifications:

- Legal norms,
- Ethical and/or moral norms,
- Politeness/customs, and
- religious norms (except Rahardjo)

From all four types of norms, Mertokusumo alike Purbacaraka and Soekanto classifies them again into two classes:²⁴

²³ Sudikno Mertokusumo, *Mengenal Hukum (Suatu Pengantar)*, 3rd edn (Yogyakarta: Liberty, 1991), pp. 5–12; Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Prenadamedia Group, 2008), pp. 79–83; Purnadi Purbacaraka and Soerjono Soekanto, *Perihal Kaedah Hukum* (Bandung: Citra Aditya Bhakti, 1993), pp. 12–19; Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bhakti, 1991), p. 26; Achmad Ali, *Menguak Tabir Hukum*, 2nd Editio (Jakarta: Penerbit Kencana, 2015), pp. 51–55.

²⁴ Sudikno Mertokusumo, *Mengenal Hukum....*, p. 5; Purnadi Purbacaraka and Soerjono Soekanto, *Perihal Kaedah Hukum....*, p. 12.

- intra-personal norms: religious and ethics norms;
- and inter-personal norms: politeness/customs and legal norms.

This is different to Marzuki who labels all of the norms as 'social norms' which may imply that neither are strictly intra-personal.²⁵ He specifically distinguished religious norms as different from moral norms by their source (religious norms are from God, morals are from the heart), and that moral laws is the foundation and must be reflected in the law.²⁶ On religious norms, Achmad Ali presents an argument non-existent in others: religious norms can rule interpersonal matters, and especially in Islam, religious norms can be developed into legal norms and apply worldly punishments.²⁷

Legal norms are portrayed as distinguished from the rest as they are set by a legitimate government or acknowledged by a community as a law, includes all aspects of human life, and has actual binding power and enforcement.²⁸ Further, these references do not only portray legal norms as a distinct but as a superior one. This superiority is based on a number of shortcomings of the other norms, which legal norms can answer.

Mertokusumo, for example, argues that the weakness of the other norms are: religious norms provides no rights (only obligations) and has no worldly sanctions, ethics norms only brings personal guilt to offenders, and social sanctions do not really stop impoliteness.²⁹ He further argues that the different norms cannot be separated and support each other, such as

²⁵ Marzuki, *Pengantar Ilmu Hukum ...*, p. 79.

²⁶ *Ibid.*, pp. 83–84.

²⁷ Achmad Ali, *Menguak Tabir Hukum ...*, p. 52.

²⁸ Mertokusumo, pp. 9–10; Marzuki, p. 79; Purbacaraka and Soekanto, p. 26; Ali, p. 55.

²⁹ Sudikno Mertokusumo, *Mengenal Hukum ...*, pp. 9–10.

how religious norms can be institutionalized through positive laws.³⁰

Purbacaraka and Soekanto also argues similarly, and mentions that legal norms are necessary to preserve peace and order –which the other norms cannot do.³¹ They then add that:³²

- law regulates all aspects of life, such as the registration of birth, marriage, and death, and
- the lack of law will make an inappropriate social life, such as how an alleged case of theft will raise suspicion towards certain persons, which would be against the politeness norm.

b) Islam: A Holistic Approach

A word, when translated from one language to another, may cause confusion due to the different definition the word brings in different languages –which may imply different worldviews and therefore meanings. The word ‘religion’ is a very good example. The Oxford Dictionary defines the ‘religion’ as “*The belief in and worship of a superhuman controlling power, especially a personal God or gods*”.³³ This restricts the word to include a mere theological concept, i.e. man-God relationship.

As said in The Holy Qur’an, 3: 19, Islam is a ‘*deen*’. The Arabic word ‘*al-deen*’, in English, simply translates to ‘religion’. The word ‘*al-deen*’, however, cannot be understood as a mere theological concept. From the word *al-deen*, with the root words *dal-yaa-nuun*, numerous meanings are derived *inter alia*:³⁴

³⁰ Ibid., p. 14.

³¹ Purnadi Purbacaraka and Soerjono Soekanto, *Perihal Kaedah Hukum ...*, pp. 18–19.

³² Ibid., p. 26.

³³ Dictionary Oxford, ‘Religion’, Oxford, 2017 <<https://en.oxforddictionaries.com/definition/religion>>.

³⁴ Edward William Lane, *An Arabic-English Lexicon: In Eight Parts*, (Beirut: Librairie du Liban, 1968), III, pp. 942–47. See also: Ahmad Mukhtar, *Mu’jam Al-Lughah Al-‘Arabiyyah Al-Mu’ashirah*, (Cairo: ‘Alam al-Kutub, 2008), p. 796.

'religion', 'a particular law/statute', 'a way/course/manner of conducting/acting', etc.

This is why then Al-Suhaym explains 'Islam' as "*submission, humbling oneself, and obeying commands and heeding prohibitions without objection, sincerely worshipping Allaah alone, believing what He tells us and having faith in Him.*"³⁵ The commands of Allah include so many things, such as a sophisticated system of ethics based on the Qur'an and Sunnah.³⁶

Even more, law is an integral part of and cannot be separated from Islam, as the Qur'an mentioned in many places such as 5: 44, 45, 47, and 50. The field of *fiqh* or Islamic law as well as *ushul al-fiqh* or Islamic jurisprudence is one of the most developed branch of Islamic knowledge since the earliest times until today.³⁷ It is important to note that Islamic law is nothing except what is derived from –and always refers to– the Qur'an and Sunnah.³⁸

Further, customary rules are very important in Islam. So much so that they are also considered as a source of Islamic law, as demanded by the Qur'an and Sunnah through the principle famously known as *al-'adaatu muhakkamah*³⁹ Customs are recognized in Islamic laws of course only to the extent that

³⁵ Muhammad bin 'Abd Allah Al-Suhaym, *Al-Islam Usuluuhu Mabaadi'uhu*, (KSA: Wizarah Al-Shu'un Al-Islamiyah wa al-Awqaf wa al-Da'wah wa al-Irshaad, 1421), p. 105.

³⁶ See generally: Muhammed Hâdimî, *Ethics of Islam*, (Istanbul: Hakikat Kitâbevi, 2001), xvii.

³⁷ Syafrin, pp. 130–33.

³⁸ Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, (Selangor: The Other Press, 2003), p. 20.

³⁹ Luqman Zakariyah, 'Custom and Society in Islamic Criminal Law: A Critical Appraisal of the Maxim "al-Adah Muhakkamah" (Custom Is Authoritative) and Its Sisters in Islamic Legal Procedures', *Arab Law Quarterly*, 26 (2012), 75–77 (pp. 76–82).

it does not contradict the Qur'an and Sunnah, and sometimes customs are used to explain the Qur'an and Sunnah.⁴⁰

The coverage of Islamic law is also very wide that it covers all aspects of life with no exception.⁴¹ It includes matters of prayer and purification, eating and drinking, clothing and adornment, hunting, marriage, sexual intercourse, war, governance, courts and legal system, international relations, business or other transactions, burial, social relation, and so much more.⁴² In them are rights as well as obligations, including very worldly criminal law punishments which can be administered by the Islamic ruler.⁴³

c) A Reality in Legal Education: Secularization

The textbooks reduce religious norms are understood to only speak of one's relation to God, only providing obligations which only have sanctions in the hereafter. In a nutshell, it means only one thing: religious norms have no bearing upon the 'here and now'. This is enforced when Marzuki mentioned that it is moral norms that should be the foundation of law, right after distinguishing it from religious norms,⁴⁴ as previously mentioned. Mertokusumo's statement that the norms cannot be separated, and that religious norms can be institutionalized by legal norms⁴⁵ do not help much. He

⁴⁰ Luqman Zakariyah, *Custom and Society...*, pp. 80–82.

⁴¹ Muhammad Qasim Zaman, *The Ulama in Contemporary Islam: Custodians of Change*, (New Jersey: Princeton University Press, 2002), p. 78.

⁴² See generally: Yusuf Al-Qardhawy, *The Lawful and the Prohibited in Islam*, 2nd Edition, (Cairo: Al-Falah Foundation, 2001); Wahbah al-Zuhayli, *Fiqh Islam Wal Adillatuhu*, (Jakarta: Gema Insani Press, 2011), VIII; Imam ibn Rushd, *The Distinguished Jurist's Primer*, trans. by Imran Ahsan Nyazee Khan (Reading: Garnet Publishing, 2000), I.

⁴³ See *inter alia* Imam Al-Mawardi, *Al-Ahkam As-Sultoniyyah: Hukum-Hukum Penyelenggaraan Negara Dalam Syariat Islam*, (Jakarta: Darul Falah, 2014), p. 23 and 52; Muslim Zainuddin, *Problematika Hukum Cambuk Di Aceh*, (Banda Aceh: Dinas Syariat Islam, 2012), p. 13.

⁴⁴ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum ...*, pp. 83–84.

⁴⁵ Sudikno Mertokusumo, *Mengenal Hukum...*, p. 14.

still made a clear distinction between them, and mentioned 'weakness' on the part of religious norms.

This is exactly the train of thought promoted by a secular worldview. They disenchant religion and desacralize political –and therefore legal – authority, reducing it in a way that religion has no visible relevance to the material world.⁴⁶ And they do so unfairly, at least it is so in the case of Islam. As per the previous subsection, it is clear that Islam integrates all the different norms as understood by the previously mentioned textbooks: religious, ethics, politeness/customs, and legal norms.

The work of Achmad Ali may be very distinct compared to the others. As previously mentioned, it explained the very special characteristic of Islamic law which can provide worldly punishments.⁴⁷ In this respect, Ali is the closest to proper. However, there are still problems. Ali still outlines his general explanation with the secular-based norms classification as the other scholars did. Further, he explains legal norms in the same way as others i.e. the people –via their authorities – are the sources of law.⁴⁸ He seems to have completely forgotten what he previously said about Islamic law, resulting in a concept of 'legal norms' once again distinct and apart from religious norms as well as other norms.

In the perspective of Islam, the manner of which the textbooks are distinguishing norms are very destructive. What is worse is that this secular way of thinking is taught at a very fundamental chapter in legal education in preparing law graduates to face Indonesia's non-secular legal system. This may cause fundamental discrepancies and loss of value in understanding, interpreting, and applying the laws.

⁴⁶ Al-Attas, *Islam and Secularism...*, pp. 18–19.

⁴⁷ Achmad Ali, *Menguak Tabir Hukum...*, p. 52.

⁴⁸ *Ibid.*, p. 55.

d) Potential Alternative Concepts

One thing that is very obvious is that the identifying characteristic of a legal norm –according to the ITJ textbooks– is the role of the government as sovereign who makes and enforces the law. This is a fruit of not only secularism but also the thought of a legal positivist.⁴⁹ The important role of the other norms in shaping legal norms, as what Mertokusumo and Marzuki mentioned, shows that it makes little sense to base any answer to the question of ‘what is law’ solely in a positivistic classification. To restrict law to what is set by a sovereign, while religious norms are specifically distinguished from legal norms, may be one of the main problems. Other legal schools, such as the Islamic and natural law, do not require sovereigns as element of law.⁵⁰

Perhaps lessons can be taken from the way Islam constructs things. It has been mentioned how Islam integrates all four types of norms in its teachings. Religious sources i.e. the Qur’an and Sunnah are always cross referred to as sources of ethics, law, and customs –while also cross referencing each other– so that it is clear that they are all truly integrated and inseparable. This is unlike Mertokusumo’s view which says that the norms are ‘inseparable’ but really meaning ‘different, distinct, and can be used to support each other’.

What can be done are at least two things? The first would be the deconstruction of the explanation used by the other textbooks. Meaning, that the chapter should begin by explaining how the commonly-used division of ‘four norms’ does not capture the true reality of how each of those norms operate, as explained previously.

⁴⁹ Raymond Wacks, *Philosophy of Law: A Very Short Introduction*, (New York: Oxford University Press, 2006), p. 28.

⁵⁰ Mark C. Murphy, ‘Natural Law Theory’, in *The Blackwell Guide to the Philosophy of Law and Legal Theory*, ed. by Martin P. Golding and William A. Edmundson (Oxford: Blackwell Publishing, 2005), p. 16; Nyazee, p. 20.

Then, after doing so, the second step is to provide an alternative build towards a better understanding of the different norms as to put everything in a better perspective. Probably, it should combine not just theory but some philosophy of law. This article proposes to reconstruct the chapter is the structure below:

1. To Begin by Explaining the Concept of 'Man'

It is intriguing how law puts man at its center, yet it is difficult to find textbooks of jurisprudence or philosophy of law which starts with a discussion on 'what is a man'. While this is most certainly a philosophical question, yet it is very difficult to discuss the laws one would impose towards a man without at least starting from a short introduction of 'man'.

As the Indonesian national anthem '*Indonesia Raya*' goes: "...*Bangunlah Jiwanya, bangunlah badannya...*" (... His soul awakens, [and] his body awakens...), man is not just a mere body but also a soul.⁵¹ Further, Al-Attas explains that the human soul has two levels: the 'lower soul' and the 'higher soul'. The 'lower soul' is more of an 'animalistic soul', while the 'higher soul' refers to a more 'rational soul' which means to know and obey God.⁵²

Probably some may argue that the aforementioned concept of 'rational' by Al-Attas is a very Islam-biased one, and they may be correct. However, the main idea is how Al-Attas explained how the 'higher soul' should be more superior and dominant than the 'lower soul'. The concept of 'more superior than the animalistic instinct' may possibly explain morality, originating from the better-self of a man.⁵³

⁵¹ Al-Attas, *Islam and Secularism*, p. 139.

⁵² *Ibid.*, pp. 140–41.

⁵³ For a further discussion on this matter, see: Syed Muhammad Naquib Al-Attas, *Prolegomena to the Metaphysics of Islam: An Exposition of the Fundamental Elements of the Worldview of Islam*, (Kuala Lumpur: Institute for the Study of Islamic Thought and Civilizations, 1995), pp. 41–90, 143–76. *Prolegomena* 41-90, 143-176

This is a good foundation to start speaking of the Ethic/Moral Norms which, by the ITJ textbooks, are described as 'norms that come from the heart'.

2. To Continue from Man to the Concept of 'Society'

Humans instinctively live in groups, forming societies. Social interaction will produce customs which are acts conducted repeatedly within that society. In the terms known to the Indonesian legal education, an act conducted repeatedly within a society and is considered good is known as 'adat'.

This word (i.e. 'adat') is borrowed from the Arabic language, which means a habitual practice –whether by the individual or collectively within a group— which is considered good and accepted. Certainly the context of this article would speak of the 'collectively within a group' meaning to the term. In *ushul al-fiqh* there is a term similar to 'adat' which is '*urf*'. The word '*urf*' also means a repetitive behavior which is acceptable and good, but this term applies not to individual behavior but only to groups.⁵⁴

This, then, can be a good foundation from which to start discussing Social Norms or Politeness.

Further, one should note that the word '*urf*' in the Arabic language shares the same root word with *ma'rifat* which means 'knowledge of what is good and bad'. It also shares the same root with *Al-A'raf* which means 'the highest place' (in terms of degree).⁵⁵ By this, one can find the very close relationship between Social Norms or Norms of Politeness with the previous Ethics/Moral Norms –the latter coming from the 'higher soul'.

⁵⁴ Ibn Manzhur, *Lisan Al-Arab*, (Beirut: Dar al-Shadir, 1414), IX, p. 242. See also: Ayman Shabana, *Custom in Islamic Law and Legal Theory: The Development of the Concepts of 'Urf and 'Adah in the Islamic Legal Tradition*, (New York: Palgrave Macmillan, 2010), p. 50.

⁵⁵ Ibn Manzhur, *Lisan Al-Arab* ...IX.

3. Within a Society, Leadership is Inevitable

From leadership, a government is born. This is where 'legal norms' will appear as understood by the legal positivists i.e. 'command of the sovereign'.

However, one must note at least two things:

First, it should be understood that the 'legal norm' in this context refers only to the government enacted laws, or *qanun* in Islamic law terms. Truly, law is much broader than what the positivists say i.e. only 'commands of the sovereign'.⁵⁶ Natural law sees that law is what is right (or rational), which comes from nature.⁵⁷ Islamic law, understood as *fiqh*, sees that law is the rules pertaining conduct which are taken from or derived from the Al-Qur'an and Sunnah.⁵⁸ This is not yet speaking of '*adat*', which is claimed by Austin not to be law until it is enforced by a judge or government.⁵⁹ Although, as the Indonesian example shows, Austin's claim is incorrect as '*adat*' or customary laws have in themselves become sources of law.⁶⁰

Second, it shall be noted that a government which is born from and lives with its society, which means that this government should be a reflection of the 'man' and 'society' it governs. Therefore, the government – society – man should all be integrated in the same line of values. This is, after all, the Indonesian way. It has been mentioned before how important *adat law* is in Indonesia. *Adat* is a major part of Indonesia's legal culture, contributes heavily to national development, and is an important means of social control.⁶¹

4. The Top of the Pyramid: *Deen*

The end goal of a society is to achieve some sort of ideal model. The term for an ideal society used in Islam –which is

⁵⁶ Raymond Wacks, *Philosophy of Law...*, p. 28.

⁵⁷ Mark C. Murphy, 'Natural Law Theory' ..., p. 16.

⁵⁸ Imran Ahsan Khan Nyazee, *Islamic Jurisprudence...*, p. 20.

⁵⁹ Antony Anghie, *Imperialism, Sovereignty, and...*, p. 46.

⁶⁰ Sudikno Mertokusumo, *Mengenal Hukum ...*, pp. 84–85.

⁶¹ Dewi Wulansari, *Hukum Adat Indonesia...*, chap. 7.

also used in Indonesia—is ‘*masyarakat madani*’ or a Madani society. Some writers such as Nurcholis Madjid translate ‘Madani society’ as ‘civil society’, the latter being term to mean a social order within an ideal civilization with indicators of idealness by Western standards: tolerance, democracy, and a ‘nation state’. However, this is incorrect because a ‘civil society’ in Western terms do not include a holistic concept of man and society.⁶²

‘Madaani’ refers to ‘the people of Madinah’ (at the time of Prophet Muhammad),⁶³ while the word ‘Madinah’ itself actually means ‘city’, but the intriguing part is that semantically this word is derived from the word ‘*deen*’. This means that the concept of ‘city’, ‘society’, ‘government’, puts ‘*deen*’ at its core.⁶⁴ It has been explained previously how the word ‘*deen*’ is not the same as ‘religion’ in Western terms, while it is this Western term which is manifested in the Religious Norm concept used in all ITJ textbooks. By this it should also be clear how Madani society is not the same as ‘civil society’.

Holistically, it can be seen now how *deen* ties up everything. On the level of ‘man’, *deen* is the center of the ‘higher soul’.⁶⁵ It is also the center of society and governance, and all are bonded together as one integral unit.

Surely, in Islam the only *deen* known is *deen al-Islam*. However, if understood more broadly from its language, *deen* can be the philosophy of life one believes to be the highest i.e. the ideology of law, bad-good, customs, or ‘way of life’. As mentioned before, the establishment of a man, society, and government, must all be within one line of values. And, in the

⁶² Syed Farid Alatas, ‘Ideology and Utopia in the Discourse on Civil Society in Indonesia and Malaysia’, in *Islam and Politics in Southeast Asia*, ed. by Johan Saravanamuttu, (New York: Routledge, 2010), p. 173.

⁶³ Ibn Manzhur, *Lisan Al-Arab*, (Beirut: Dar al-Shadir, 1414), XIII, p. 403.

⁶⁴ Abu al-Husayn Ahmad bin Faris, *Mu’jam Al-Maqayis Fi Al-Lughah*, (Beirut: Dar al-Fikr, 1979), II, p. 372; Syed Muhammad Naquib Al-Attas, *Islam: Faham Agama Dan Asas Akhlak*, (Kuala Lumpur: ABIM, 1977), pp. 3–9.

⁶⁵ Al-Attas, *Islam and Secularism...*, p. 141.

Indonesian context, the first part of the Pancasila is The Oneness of God.

Conclusions and Recommendations

a) Conclusions

It is clear that the ITJ course major textbooks are not starting off their materials very well. A very early and fundamental chapter which shapes the basic understanding of law, i.e. norms classification, brings a secular way of thinking. The way that these chapters classify different types of norms reduce the meaning of religion as understood both in Islam as well as the Indonesian legal system. The idea that law graduates are given a secular foundation of legal thinking, while the Indonesian legal system is not secular, is as preposterous as it is illogical.

b) Recommendations

The first recommendation is to construct a better way to explain the nature of law and legal norms in a way that it does not conform to secular ways of thinking, and to accommodate the integrated nature between law and religion as understood in Islam as well as recognized in the Indonesian legal system. The effects to other religions should be studied as well.

The second recommendation is to explore the other chapters of the ITJ textbooks, to find other chapters and aspects of legal education that are heavily influenced or even wholly adopted from a secular train of thought. Afterwards, these chapters and aspects must be replaced by more appropriate ones.

The third and long-term recommendation is to write new textbooks for ITJ courses which are more in conformity with Islamic teachings as well as the Indonesian legal system.

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