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## Legal Orientalism and Occidentalism Approaches in Collaborative Establishment of Law in Indonesia

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### **Abstract**

The development of orientalism and accidentalism in law has colored the legal system in a country, especially in Indonesia. This can be seen from several schools of law that live and develop in society, especially Islamic societies in the eastern world and secular societies in the western world. In the Western legal perspective, the schools of natural law, the schools of positivism, the schools of utilitarianism, the schools of sociological jurisprudence, the schools of legal realism, the schools of critical law, and the schools of postmodernism have developed. Meanwhile, the development of the Eastern schools of law cannot be separated from the thoughts of the Imams of 4 schools, namely the Imam Hanafi School, the Maliki School, the Imam Shafi'i School and the Imam Hanbali School. It is necessary to understand first how the thoughts of both the Eastern legal schools and the Western legal schools of thought. When viewed based on geographic data and the spread of religion (theological), which includes the Western world includes the continents of Europe and America who adhere to Christianity and Greece. The Eastern world includes the continents of Asia and Africa, the majority of which are Muslims, Buddhists, Hindus and Confucians. Orientalism and legal accidentalism were finally adopted as a source of law in Indonesia in the formation of its law. The purpose of this article is to analyze the extent of the collaboration of orientalism and legal accidentalism in the formation of law in Indonesia, and to analyze the harmonization of the two laws in the Indonesian legal system. The type of study in writing this article is a qualitative study with a literary and historical approach, then analyzed deductively.

**Keywords:** *Legal Orientalism; Occidentalism Approaches*

### **Introduction**

The western exploration of the eastern region became one of the signs of the birth of Orientalism, which initially had a goal of economic interests that did not have an academic perspective. In the view of science, the exploration of orientalism has an important goal to know the eastern world from the social, political, cultural, and economic aspects. Edward Said in his book states, "Efforts to recognize and understand the East are strengthened by the West's efforts to educate the Eastern world, with the assumption that the Eastern world still relies on Western civilization". However, it turns out that orientalism has become a movement of imperialism and colonialism against the Eastern world.

In its history, Islam has two main sources, namely the Qur'an and hadith, not only theological doctrines but Islam also gave birth to civilization. Islamic civilization which is not only in the form of thought, but also in the form of architecture to this day. During the heyday of Islam, there was a transformation of knowledge from various civilizations (Greek, Persian, etc.) so that they were able to establish schools, libraries, etc. to develop the knowledge that has developed to date.<sup>1</sup> This is what makes orientalist explorers to deepen and study Islamic civilization and culture, as well as other civilizations and cultures in Asia and Africa.

But on the other hand it also encourages scientists from the eastern world to study the western world or known as occidentalism. Occidentalism's origins date back to the birth of the Eastern civilization represented by the Islamic tradition for more than fourteen centuries. Occidentalism's origins can be traced through the relationship between Islam and the Greco-Roman past excluding this region. of Christian Judaism it is the European conscience that expresses itself and becomes part of the West both geographically, historically and civilly. While the eastern civilization represented by Islam, further its origin is the ancient eastern civilization, Egypt, Kan'an, Assyria, Babylonia, India, and Greece.<sup>2</sup>

In the study of law, orientalists really devoted a lot of effort to the modernization of Islamic law. They denounce the science of fiqh as an ancient and static way of teaching. They called for reform of the basic teachings of Islam. According to them, Sharia is not standard because human life is undergoing development and modernization. In fact, their goal is to separate religion from real life. Gibb said, "The pure result of this teaching movement and westernization movement is the success of releasing Islamic society from religious rule without being felt in general by Islamic society itself. This point alone is already a precious gem for any effective westernization movement in the Islamic world." Orientalists believe that laws or regulations do not fall within the meaning of religion. Therefore, it means that the state should not be subject to religion. As a result, many things are beyond the reach of Islamic teachings, such as economics, society, and politics. Among their other mistakes was the provocation to abolish the caliphate. "Secularists and nationalists in their minds certainly agree to abolish the caliphate," Gibb said.<sup>3</sup>

Their goal, of course, is to separate religion from political law. Orientalist Wilfred Smith questioned the modernization of Islamic teachings by comparing Sheikh Muhammad bin Abdil Wahhab Rahimallahu Ta'ala with Jamaludin Al Afghanistan. According to him, Muhammad bin Abdil Wahhab Rahimallahu Ta'ala spread ancient Islamic teachings, while Al Afghanistan combined Islamic personality and Western views. According to him, Al Afghani is a modern person. In fact, Al-Afghanistan is involved in the Masonic movement. Investigations also revealed that he was a student of Mazindaroni, a subsidiary of the Rafidhah Shia branch. On the other hand, Sheikh Muhammad bin Abdil Wahhab Rahimallahu Ta'ala was a mujaddid who tried to restore pure Islamic values. This is Orientalism's attack on Islam. Surprisingly some Islamic thinkers follow this eastern approach and thus they blaspheme the teachings of Islam such as Ahmad Amin, Thaha Husain, Abu Rayyah. The majority of Eastern thought is a dangerous thing for Islam. A Muslim who reads oriental books must have correct and adequate knowledge of the true Islam so as not to fall into deceptive kuffar thinking.<sup>4</sup>

Some academics have discoursed on Occidentalism as opposed to Orientalism, which is an antithesis of historical nature, in order to confront the study of Orientalism which is considered subjective, one-sided and far-fetched. So when these two things are juxtaposed, it is as if there was a civil war between the West and the East which Samuel P. Huntington later called the clash of civilizations.<sup>5</sup>

<sup>1</sup> Hasan Hanafi, *Orientalisme di Tinjau Menurut Kacamata Al Qur'an dan Hadist* (Jakarta: Ensikloperdi Islam, 2000), 9.

<sup>2</sup> Hasan Hanafi, 57.

<sup>3</sup> Afrizal Woyla Saputra Zaini, "ORIENTALISME DALAM BIDANG HUKUM ISLAM," *Afrizal WS Zaini* (blog), 2 Januari 2012, <https://afrizalwszaini.wordpress.com/2012/01/03/orientalisme-dalam-bidang-hukum-Islam-2/>.

<sup>4</sup> Afrizal Woyla Saputra Zaini.

<sup>5</sup> "Daya dalam memformulasikan oksidentalisme agak sedikit berbeda dengan yang lain yaitu: Pertama, oksidentalisme dipandang sebagai suatu mode pemikiran yang dibangun berdasarkan suatu epistemologi dan ontologi tertentu yang menancapkan perbedaan yang jelas antara Timur dan Barat. Kedua, oksidentalisme mungkin bisa juga dilihat sebagai istilah

Occidentalism (al-Istighrab) is the opposite of orientalism (al-Istisyraq).<sup>6</sup> Judging from the etymology, accidentalism comes from the word occident which means "direction of the sunset". This word comes from Latin, occidens from the word occido or occedo, and occidere, which means to go down. Occidentalism has a mission to unravel and neutralize historical distortions between East and West. Occidentalism tries to put Western civilization back in its geographical proportions.<sup>7</sup> Thus, the roots of legal accidentalism can be traced in the relation of Islamic law to Greek law. When Islamic law has the status of a reviewer, it is able to make Greek law the object of study. Then there is a true dialectic between the ego and the other, the ego as the subject of the study and the others as the object being studied.<sup>8</sup>

The development of Orientalism and Occidentalism also penetrated the law. For example, the development of the 4 schools of thought in the eastern world, which gave birth to legal ideas that are oriented towards feminism, religious moderation, socio-legal studies, and others that greatly influence the formation of law in the eastern world. The results of Occidentalism have also influenced madhhabs in the western world, such as the birth of post-modernism schools, the modern thought of Islamic law from Jasser Auda, Muhammad Sharrur, and others. The results of this originalist legal thought and accidentalist legal thought later colored legal products in Indonesia.

Some of the legal regulations that are influenced by orientalism and legal accidentalism, there are more than 14 regulatory products, namely Law Number 50 of 2009 concerning Religious Courts, Presidential Instruction Number 1 of 1990 concerning Compilation of Islamic Law, Law Number 1 of 1974 jo. Law Number 16 of 2019 concerning Marriage, Law Number 7 of 1992 jo. Law Number 10 of 1998 on Banking which later created Law Number 21 of 2008 concerning Sharia Banking, Law Number 42 of 2004 concerning Waqf, Presidential Instruction Number 11 of 2008 concerning Compilation of Sharia Economic Law, Law on the Implementation of Hajj, Zakat Management Act, Aceh Government Act, and many more. From these regulations, it can be seen that there is a codification and harmonization between western and eastern law, as well as from orientalist and accidentalist thought. It is also a must, because of the changing factors of society and the growing legal needs.

From this background, it is formulated in two basic questions, namely how the collaboration of orientalism and legal accidentalism in the formation of law in Indonesia, and how the harmonization of the two realms of legal science in the formation of law in Indonesia.

### Concepts of Orientalism and Occidentalism

The origin of the word orientalism comes from "oriens" which means the rising of the sun (rising of the sun), the eastern part of the world (eastern part of the world); the sky whence comes the sun (the sky from which the sun comes); the east (east).<sup>9</sup> So orientalism is a term that represents the way of thinking and epistemology (origin and source of knowledge) of Western thinkers about the Eastern world.

akademik yang merujuk kepada seperangkat lembaga, disiplin ilmu, dan berbagai aktivitas, yang biasanya terbatas pada perguruan-perguruan tinggi Timur yang berkepentingan dengan kajian tentang masyarakat dan kebudayaan Barat. Ketiga, oksidentalisme dapat dilihat sebagai lembaga berbadan hukum yang berkepentingan dengan masyarakat Barat." Lihat Burhanuddin Daya, *Pergumulan Timur Menyikapi Barat; Dasar-Dasar Oksidentalisme* (Yogyakarta: Suka Press, 2008), 83–86.

<sup>6</sup> Hassan Hanafi, *Oksidentalisme; Sikap Kita Terhadap Tradisi Barat*, terj. M. Najib Buchori (Jakarta: Paramadina, 2000), 25–34.

<sup>7</sup> "Nama Hassan Hanafi mulai mencuat di forum internasional ketika dia memperkenalkan apa yang disebutnya 'Kiri Islam'. Nama 'Kiri Islam' juga menjadi nama jurnal yang diterbitkan pada tahun 1981, al-yasar al-Islami; kitabati fi al-nahdhah al-Islamiyah. Lihat Hassan Hanafi, *Oksidentalisme; Sikap Kita Dalam Menyikapi Tradisi Barat*, (Jakarta: Paramadina, 2000), xi. Mengenai bagaimana konsep 'Kiri Islam' menurut Hassan Hanafi sudah ada buku khusus yang menjelaskan tentang itu". Lihat Kazuo Shimogaki, *Kiri Islam Antara Modernism Dan Postmodernisme; Telaah Kritis Pemikiran Hassan Hanafi*, terj. M. Imam Riz dan M. Jadul Maula (Yogyakarta: LKiS, 2004).

<sup>8</sup> Kazuo Shimogaki, *Kiri Islam Antara Modernism Dan Postmodernisme; Telaah Kritis Pemikiran Hassan Hanafi*, 59–60.

<sup>9</sup> Ahmad Bunyan Wahib, *Oksidentalisme dalam Hukum Islam: Kajian Hukum Islam dalam Tradisi Barat* (Yogyakarta: Magnum Pustaka Utama, 2018), 3.

The study of orientalism covers the fields of science, social sciences, humanities such as the study of history, law, art, literature, geography, and culture in the Eastern world. Thus, the point of discussion of orientalism is in epistemology and culture, not studying in the field of geography.<sup>10</sup>

Occidentalism from English, "occident", which means to the west. Occidentalism comes from the word "Occident" which means West and "Ism" which means understand.<sup>11</sup> So, Occidentalism can be defined as the study of the West in all its aspects. Occidentalism is the opposite of orientalism, but it does not aim to dominate and dominate the western world like orientalism. The emergence of this term is intended for Hasan Hanafi as a response to the rise of westernization/eurocentrism and the assessment of the orientalist who view the Eastern world in an unbalanced position.<sup>12</sup>

The western exploration of the eastern region became one of the signs of the birth of orientalism which had the initial goal of economic interests in a dominant perspective. From the perspective of knowledge, this exploration has an important purpose to know about the east in broad terms such as social, political, cultural, and economic. The rest, orientalism actually became a movement of imperialism and colonialism against the Eastern world.

In its history, Islam has two main sources, namely the Qur'an and hadith, not only theological doctrines but Islam also gave birth to civilization. Islamic civilization which is not only in the form of thought, but also in the form of architecture to this day. During the heyday of Islam, there was a transformation of knowledge from various civilizations (Greek, Persian, and so on) so that they were able to establish schools, libraries and so on to develop the knowledge that has developed to date.<sup>13</sup> This is the point of admiration for the west to study Islam. The treasures of Islamic civilization are still maintained even though their civilization is better than the West which uses technology and science as its expertise in researching and re-identifying the Islamic world, so that Western scientists who are experts in Eastern world civilizations appear, especially those who focus on studying Islamic laws based on the Imam Madzhab who known as orientalist.

Earlier Islamic scholars not only left the tradition of thought for civilization, but also in the form of architecture that still stands today. In the 13th century, the West experienced a dark age so that Muslims received their attention. Westerners learn about Islamic science and develop it. In the 19th century, Western people came back to Islam after 6 centuries had passed by bringing the science and technology they had developed.<sup>14</sup>

Therefore, tracing occidentalism by tracing the relationship between Islamic civilization and Greek civilization. This occurs through several stages as follows:<sup>15</sup>

1. Translation through textual, is the initial stage carried out by translating the original Greek books as they are, as a form of attention in philosophical terms.
2. Contextual translation, this stage has prioritized meaning rather than text as a manifestation of the desire to pay attention to the language of translation.

<sup>10</sup> Ahmad Bunyan Wahib, *Orientalisme dalam Hukum Islam: Kajian Hukum Islam dalam Tradisi Barat*.

<sup>11</sup> "Orientalisme dan Oksidentalisme (Menenal Pemikiran Timur dan Barat)," *Aqidah dan Filsafat Islam* (blog), 5 Oktober 2020, <http://afi.unida.gontor.ac.id/2020/10/05/orientalisme-dan-oksidentalisme-mengenal-pemikiran-timur-dan-barat/>.

<sup>12</sup> Hasan Hanafi, *Oksidentalisme; Sikap Kita Terhadap Tradisi Barat*, 13–16.

<sup>13</sup> Hasan Hanafi, *Orientalisme di Tinjau Menurut Kacamata Al Qur'an dan Hadist* (Jakarta: Ensikloperdi Islam, 2000), 9.

<sup>14</sup> Ridho Al-Hamdi, *EPISTEMOLOGI OKSIDENTALISME: Membongkar Mitos Superioritas Barat, Membangun Kesetaraan Peradaban* (Yogyakarta: Penerbit Samudra Biru, 2019), 44.

<sup>15</sup> "Orientalisme dan Oksidentalisme (Menenal Pemikiran Timur dan Barat)."



3. Giving of annotations, explaining and elaborating on Greek texts in the form of certain explanatory notes.
4. Summarization is the stage where the specific study deepens according to the core of the theme.
5. Composing, Muslim scholars began to pour their creativity in various branches of science.
6. Criticism, apart from composing and writing books, Muslim scholars began to criticize works from within and without.
7. Rejecting, the lengthy process of the Occidentalism approach creates an attitude of rejecting the rejection of foreign traditions, on the basis that Islamic teachings are sufficient.

According to Hasan Hanafi, in its history this Occidentalism has emerged since the 12th century, not only in modern times. The study of Western sciences made Occidentalism emerge and develop. With a passive attitude in dealing with and studying western science and culture, scholars are richer in existing knowledge and philosophy, so that Hanafi can conclude 2 phases of Greek transformation into Islam in outline: "The first phase, Muslims took over Greek thought textually and contextual process carried out by the translation process. The second phase, Muslims are critical of Greek thought."<sup>16</sup>

### **The History of Collaboration between Orientalism and Occidentalism in Law**

Western legal scientists have made many contributions in developing and introducing Islamic laws to the Western world. This is what then creates collaboration in the legal system in Western countries, so that the results of their thoughts also greatly influence the formation of rules in their country. Eastern culture is considered by the West to have exotic values so that it encourages the West to study and explore scientifically, whether it be texts, philological studies of Islamic law, to orientation to get to know Islam and Eastern culture more closely.<sup>17</sup>

There are several motivations that make orientalists interested in studying and exploring the East and Islam in particular, namely: "First, religious motivation in the 19th century AD was a period of missionary activity. The establishment of the University of Cordova in Spain, marked the development of Islam. The existence of the University of Cordova is able to attract priests and monks to study there because it has the power of scientific progress. One of them is a priest who studied eastern and Islamic studies at the University of Cordoba "Adelard of Bath" an Englishman who studied in the French city and then to Andalusia. The aim of Adelard of Bath is to find out how the ethics of Christianity are adopted by Islam in everyday life. In addition, there is also a desire for revenge against the success of Islam which has controlled parts of Europe. Religious motivation was born with the aim of missionary activities where orientalists tried to portray a negative attitude towards Islam by writing things that distorted Islamic teachings."<sup>18</sup>

Second, the advancement of technology and science in the Western world, makes them motivated by politics and imperialism. They were also inspired by Napoleon Bonaparte who had already made an expedition and were encouraged to continue on the next expedition. The West is interested in exploiting the East, which is rich in natural resources such as oil and gas.

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<sup>16</sup> "Orientalisme dan Oksidentalisme (Menenal Pemikiran Timur dan Barat)."

<sup>17</sup> "Polemik Hukum Islam dalam Pandangan Orientalisme Joseph Schact," *JurnalPost* (blog), 12 Juli 2021, <https://jurnalpost.com/polemik-hukum-Islam-dalam-pandangan-orientalisme-joseph-schact/23223/>.

<sup>18</sup> Rahman Ambo Masse, "KAJIAN HUKUM ISLAM PERSPEKTIF ORIENTALISME," *Jurnal DIKTUM : Syariah dan Hukum* Vol 12, no. 1 (2014): 100, <https://doi.org/10.28988/diktum.v12i1.198>.

Third, there is a high curiosity from the West towards the East and the teachings of Islam so that it raises scientific motivation in a systematic and methodological way. The orientalism that did this step was orientalism originating from Germany. Some researchers think that German orientalists tend to study the East and Islam objectively, they study Arabic culture, customs, and language.<sup>19</sup>

According to some researchers, they argue that the purpose of the study of Islam carried out by German orientalism is for religious missions, as other orientalists do, because the beginning of the relationship between the German people and the Islamic world was during the Crusades. Islamic studies carried out by orientalists were carried out in the first half of the 18th century AD. Among the scientific works produced by orientalists in the field of religion, such as the book "Mu'jam al-Mufahras li al-Fadzil Al-Hadith".<sup>20</sup>

The Eastern world and Islam began to be viewed positively and positively by the West between the years 1120-1291 AD. Islamic scholars also began to make counter studies of the Western world that were able to produce an understanding of information about traditions, culture and study methods, so that the potential for dialogue between the two civilizations was potential. (Islam and Christianity) can continue to be intensified to create a peaceful world civilization.

One approach that is often used by orientalists in studying the Koran and Sunnah is the first, the philological approach (historical text) and the second, the historical approach. First, the philological approach (text-historical). This approach is also often used by Western thinkers when studying the Bible. Therefore, some Islamic writers who analyze in depth orientalist studies conclude that the textual criticism method arises because Western writers feel disappointed because they are unable to reveal the history of the authenticity of the Bible.<sup>21</sup>

Philological methods in general must include the following steps: a) Research on the value of the manuscript, b) Research on the form of a written work, c) Research on the source of the work. The description of the method is how to collect original reference sources or manuscripts in various versions, examine their authenticity and authority, and make critical editions of them.<sup>22</sup> This method has been used by the caliph Abu Bakr when he recorded the Al-Quran, namely collecting all the texts written in various scattered versions, then examining their authenticity and authority, then confronted with the memorization of Hafidz's companions to be further written in usmani rasm (Quraish dialect).<sup>23</sup> At the same time the texts written in various versions were burned.

Second, the historical approach (history of religion) is an attempt to trace the origin and growth of religious ideas and institutions through the period of their historical development and to assess the role of power faced by religion throughout that period.<sup>24</sup> The historical criticism method aims to select and distinguish between history and legend, between fiction and fact, between myth and reality. This approach is used by orientalists in studying the Koran.<sup>25</sup>

In the creed of Muslims, the Qur'an was revealed by Allah SWT to the Prophet Muhammad through the intermediary of the angel Gabriel so that the above view is not in line with Islam. The value of the Qur'an is created from outside the space of history, and is also not the result of the previous scriptures studied by the Prophet Muhammad. This approach has been widely used by Western scholars from the mid-19th century AD to the present, although the volume and level of authenticity is getting better.

<sup>19</sup> Rahman Ambo Masse, 100–101.

<sup>20</sup> Rahman Ambo Masse, 101.

<sup>21</sup> Arif Syamsuddin, *Orientalis dan Diabolisme Pemikiran* (Jakarta: Gema Insani, 2008), 193.

<sup>22</sup> Arif Syamsuddin, 55–56.

<sup>23</sup> Rahman Ambo Masse, "KAJIAN HUKUM ISLAM PERSPEKTIF ORIENTALISME," 102.

<sup>24</sup> Moh. Natsir Mahmud, *Orientalisme: al-Qur'an di Mata Barat, Sebuah Studi Evaluatif* (Semarang: Dina Utama, 2002), 21.

<sup>25</sup> Moh. Natsir Mahmud, 56.

A famous orientalist figure Joseph Schacht, is an orientalist figure in the field of fiqh, he also wrote works in other fields such as the history of science, theology, and philosophy in the Islamic world. The study carried out by Schacht is very thorough and thorough in presenting the results of scientific studies on various schools of fiqh and the problems that arise around fiqh universally by avoiding excessive and neutral behavior in writing about fiqh unlike other orientalists.<sup>26</sup>

One of the results of a study by Joseph Schacht is a novel entitled "An Introduction to Islamic Law" which in Indonesia is known as "Introduction to Islamic Law". Schacht's understanding of Islamic law is presented in this book. Schacht in his study which is historical-sociological in character seeks to cover many aspects of Islamic law, not only that, Schacht in his study also uses a theoretical review and instant gaze by looking at the application and historical interaction process of Islamic law.<sup>27</sup>

After the acculturation of culture between Islam and the west, Western civilization began to rise and develop. This transformation was marked by the beginning of the crusades and the development of Islam in Europe, especially Spain and Italy. This resulted in the jealousy of some Christian priests and Western scientists who made them try to translate and study Islam and Arabic.<sup>28</sup>

The emergence of the Ottoman Empire strengthened good relations between the West and Islam, so that time was known as the century of romanticism. This process occurred because of the softening of the Ottoman foreign policy towards the West, after previously the western perception of Islam was very uruk, which is considered the "religion of the sword" as a result of the Crusades, but behind the suspicions and bad perceptions, the West has a deep curiosity about Islam and the world to the East.<sup>29</sup>

Occidentalism is a school that tries to know more about Western culture and all things related to the West. Epistemologically, Occidentalism seeks to end the hegemony of Orientalism and restore the status of the East from just an object being studied to being a subject of study. Occidentalism can be a field of science that can be taught in higher education institutions by spawning researchers who study and explore civilization with their own eyes.

Like the study of orientalism which has been well institutionalized and organized. To achieve this goal, methodological stability and in-depth knowledge of Islam and classical Islamic treasures are needed, which are full of sources of information that can be adapted to the present. So that does not mean that studying the West must always use Western information about Islam, but be selective on issues developed through its orientalism project which has developed earlier and has been well organized. The same thing was also expressed by Edward W. Said, that before having dialogue with the West, we must know more deeply the complexities of the West (Europe and America) as a community with all the events, interests, pressures, and history of conflicts in it.<sup>30</sup>

### **Collaboration and Harmonization of Orientalism and Occidentalism on Law in the Formation of Law in Indonesia**

The development of science, culture, social, politics and law has been born since the time of the Prophet and the Apostle. However, the development of Orientalism and Occidentalism began to develop rapidly after World War I where the West began to deepen the culture, social politics and law of the East. But the people of the Eastern world do not just remain silent, continue to do it in their own way, maintain and even develop knowledge from the west in their own way. This is what gave birth to the methods and objectives of each view in order to strengthen the basis of each nation.

<sup>26</sup> Abdurrahman Badawi, *Ensiklopedi Tokoh Orientalis* (Yogyakarta: LKiS, 2003), 272-274.

<sup>27</sup> Joseph Schacht, *Pengantar Hukum Islam* (Jakarta: Nuansa, 2010), 6.

<sup>28</sup> Muhammad Fauzan Januri, *Dialog Pemikiran Timur dan Barat*, Cet I (Bandung: Pustaka Setia, 2011), 33.

<sup>29</sup> Rahman Ambo Masse, "KAJIAN HUKUM ISLAM PERSPEKTIF ORIENTALISME," 103.

<sup>30</sup> Muhammad Fauzan Januri, *Dialog Pemikiran Timur dan Barat*, 39.



One of the branches of Orientalism and Occidentalism that is growing rapidly is in the study and study of western law by easterners (legal accidentalism) and the study of eastern law by westerners (legal orientalism). Indonesia as a country that has been colonized, especially by the Dutch, has many legal experts who in their legal development also study the culture and customs of the Eastern people, in this case the Indonesian people, whose majority culture and customs are still thick with eastern philosophies and the majority of the population is Muslim.

So this greatly affects the formation of law for the colonial country, so that the rules that are pure from the Netherlands cannot be fully and absolutely applied in Indonesia. So the study of orientalism is needed to make rules that are appropriate for the Indonesian people at that time. So in this case, collaboration and harmonization are needed to realize a rule that is in accordance with society, culture, religion, social, in Indonesia. Dutch legal experts to create law in Indonesia really need studies of legal orientalism and legal accidentalism, because if they are wrong in applying the law, it will have an impact on prolonged legal conflicts.

During the VOC namely in 1642 the "Statute of Batavia" was issued and it was renewed again in 1766 under the name "Nieuwe Bataviase Statuten" (New Batavia Statute), which the main purpose of this regulation was more to trade, not to regulate aspects of public life in general. The VOC still allowed the people to use their own laws (customary law, religious law). There is no will to create legal unification.

The field of law began to receive attention, after the collapse of the VOC in the early 1800s until the creation of law in 1842 in the Netherlands. Dutch legal politics leads to: - codification is influenced by the notion of legism, where this understanding is strongly influenced by orientalist jurists. There was a will that led to the legal unification of the Dutch legal system, which rested heavily on France, to be able to determine the legal system that was enforced in the Dutch East Indies (Indonesia).

The development of the legal politics of the Dutch government in Batavia began in 1840 until 1860, where the Dutch had the spirit to codify law in Indonesia. The need for legal orientalist and legal accidentalists to formulate and codify the laws that apply in Indonesia. Then from 1860 to 1900 there was a conflict of interest or controversy due to legal unification from an operational perspective in the Dutch East Indies. Then in 1900-1942, due to the influence of ethical politics, there were efforts to respect indigenous culture or customs, so that efforts to unification and codification of law could be maintained, and it was proven that there were several Dutch legal legacies which are still valid in Indonesia.

From 1847 to 1942 it was recorded that 3 (three) main regulations had been in effect alternately, namely: Algemene Bepaling van Wetgeving voor Indonesia or abbreviated "AB", Stb. 1847/23 (1848-1854), Regerings Reglement (RR), Stb. 1854/2. (1855-1926) and Indische Staatsregeling (IS), Stb. 1925/415, came into effect January 1, 1926 until 1942, when Dutch colonialism ended.

Then several results of codification and harmonization as an effort to harmonize Dutch law with customary and religious law in Indonesia (in the legal orientalism approach), namely the 1840s period, gave birth to Algemene Bepalingen van Wetgeving, Burgerlijk Wetboek (Civil Code), and Wetboek van Koophandel (KUH Dagang). ) and Reglement op de Burgerlijke Rechtsverordering (RV = civil procedure regulations). The product of the codification and harmonization of laws in 1860-1900, namely 1870: Agrarische Wet (Agrarian Law), 1866: the Criminal Code for Europe, and 1872: the Criminal Code for non-Europeans The Criminal Code was finally unified in 1918. Some of these regulations are still in effect and underwent renewal and adjustment after Indonesia's independence.

From the history of the unification and codification of Dutch law that was enforced in Indonesia, some of them are still valid today, showing that orientalist and legal accidentalist ideas are very much needed to make or shape law in Indonesia. So the ideas of legal orientalism and legal accidentalism in Indonesia are actually not new, because since Indonesia has not been independent, the ideas of legal orientalist and legal accidentalists are very much needed for the creation of law in Indonesia.

Therefore, legal sources in Indonesia are also strongly influenced by orientalism and legal accidentalism. The collaboration between the two has colored many legal regulations in Indonesia. Some of the legal rules that are influenced by orientalism and legal accidentalism, there are more than 14 regulatory products, namely the Marriage Law, the Religious Courts Law, the Compilation of Islamic Law, the Banking Law, then the Sharia Banking Law, the Law on Implementation Hajj, the Waqf Law, the Zakat Management Act, the Compilation of Sharia Economic Law, the Aceh Government Law, and many more. In addition, there are several important bills, which if examined more deeply and specifically, there is collaboration and harmonization of experts on orientalism and legal accidentalism,

The PKS Bill was initiated in 2012, then based on the 2016 Prolegnas, it was compiled and formed starting in 2016, but the fact is that until 2021 or 5 years after its formation it has not been ratified. The formulation and definition of the PKS Bill were heavily influenced by orientalist and accidentalist legal experts in Indonesia, so this is what creates obstacles, where the main obstacle in discussing the Draft Law on the Elimination of Sexual Violence (RUU PKS) is the clash of ideologies and perspectives on the bill. This problem can be solved by dialogue. Both sides want to honor women and protect children from people who violate norms, customs, and laws. So that an in-depth study is needed of the collaboration in the formation of this bill, namely by harmonization to avoid conflicts in terms of religion, customs, and politics.

Then the second is the Civil Procedure Code. We know that the civil procedural law that we use up to now is the result of the codification of Dutch law which was applied in Indonesia, and has been unified after Indonesia's independence with several articles that have been abolished. Therefore, it is deemed necessary to carry out reforms in the field of civil procedural law, namely by drafting the Civil Procedure Law Bill. The plan for the formation of the Civil Procedure Law Bill has been included in the 2015 Prolegnas, and the priority Prolegnas in 2021. If one examines the articles in the sub-chapters, their substance in depth will be able to see the thoughts of orientalist and accidentalist legal experts, and this will have an impact on the new civil procedural law system if later this bill is ratified by the President.

### **Closing**

Orientalism and legal accidentalism have developed and been used in the formation of law in Indonesia since the Dutch colonial era. The tradition of establishing the rule of law with legal originalism and accidentalism has been maintained until now as an effort to collaborate and harmonize law in Indonesia. If examined further, there are many legal regulations in Indonesia that collaborate between orientalism and legal accidentalism, but in order to be in harmony and can be applied, harmonization is necessary. These regulations include the Marriage Law, Sharia Banking Law, Aceh Governance Law, and many others, even several bills, namely the PKS Bill and the Civil Procedure Law.

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