

ATENEO LAW JOURNAL

LAW AND COURTS OF JUSTICE IN OLD JACARTA

*Dr. R. Sukanto **

What is meant by old Jakarta?

If in this writing I should speak about old Jakarta, I am referring to Jakarta when it was called respectively Sunda Calapa, Jayakarta and Batavia and surroundings—Batavia in the period of the East India Company, in the period of governor-general Daendels and in the period of English government (Raffles).

When Jakarta was still called Sunda Calapa, it was one of the Harbours of the kingdom of Pajajaran on the sea of Java. In 1500 this kingdom had as borders the river Tjitarum (east), Tjikandi (west), in the South the Mountains Dejeuhluhur and the place Pamotan (near Nasukambangan) and in the North the Java Sea. Another harbour on the Java Sea was Banten. Sunda Calapa and Banten were governed by representatives of the kingdom of Pajajaran.

We know that in Pajajaran was the Hindu tradition; we also know that the capital of the kingdom, namely Pakuan, was established because persons of high position moved from East Java to the West. Finally we know also that the persons who moved to West Java probably brought with them lawbooks from East Java to the West. About the year 1000 Dharmawangsa (East Java) had a lawbook drawn

The late Professor R. Sukanto was of the University of Indonesia Djakarta, Indonesia. He read this paper before the International Conference of Historian which was held at the Ateneo de Manila, College of Law, on November 25 to 30, 1960. The same paper was published in the September issue of the *Newsletter of the Philippine Historical Association*.

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up named Cawisasana. Gadjahmada, prime minister of Mojopait (1331-1364) gave his name to the lawbook.

These books contained the old indigenous law. This means that the original law was maintained, naturally influenced by Hinduism.

My opinion is that in the period of the kingdom of the Pajajaran the law as the indigenous law influenced by Hinduism and that this law was used in the courts of justice.

In 1527 Sunda Calapa was conquered by the person who was called by the Portuguese Falateham.

He was the man from Pasei (North Sumatra), and had left that place because the Portuguese had conquered it in 1521. He made a journey to Mecca and remained there for two or three years. When he came back to Pasel from Mecca, he left that place immediately and went to Japara and Demak (Central Java). The result of his work — teaching the Islam religion — was so excellent that he could marry the sister of the Prince of Denak, Prince Trngono.

Then Falateham came to Banten and Sunda Calapa, and captured the two places belonging to Pajajaran, the latter in 1527. In that year the name Sunda Calapa was changed into Joyacarta, meaning: the last victory, the full victory on persons embracing the Hindu religion like Pajajaran, and after having attacked the Portuguese who came back in 1527, when they intended to build a fortress based on the treaty of 21st August 1522 between Pajajaran and the Portuguese.

What code of law was then used in Jayacarta?

We cannot deny that the Islamic religion changed the situation. Hinduism, which had influenced the indigenous law had to make place for Islam. But it is also true that the indigenous law remained and could not be abolished. It is also true that up to the present Islam has always influenced our law, but that religion has never been able to wipe out the Indonesian indigenous law.

Thus in the period of Jayacarta the Indigenous law, influenced by Islam, was used (also in the courts).

In 1596 the first Dutch came to Jayacarta.

In 1602 the "Vernigde Oost-Indische Compagnie" (East Indian Company) was established. It was a trading company and the central place was in East Indonesia (Ambon). As the position of Ambon was too far away from the gateway between West and East or East and West, the V. O. C. tried to find a place on the Malay Peninsula or on the island of Java.

In 1603 the Company got permission to build a lodge in Banten, but because the place was unhealthy, and the V. O. C. was also afraid of an attack from the side of Banten, they tried to find another place. The place was Jayacarta. The Prince of Jayacarta allowed the V. O. C. to build a lodge on the east side of the river Tjiliwung. In 1621 the building was furnished; the name was "Nassau". A second lodge named "Mauritius" was finished in 1617.

The English were jealous of the permit given to the Dutch and also tried to build a lodge in Jayacarta. The Pangeran of Jayacarta had no objection. Thus an English lodge was built on the other side of the Tjiwilung opposite the Dutch lodges (1618).

In 1618 Jan Pieterzoon Coen was appointed governor-general. The presence of the English lodge was a continual threat to Coen. Therefore on the 23rd December 1618 he attacked the English, which resulted in a victory for the Dutch. It would seem that he received the post of governor-general in East Indonesia on 23rd March 1619. As soon as possible Coen sailed back to Jayacarta (2nd April 1619) and arrived on 23rd May 1619.

With 1000 men he attacked Jayacarta and conquered the place on 30th May 1619. He drove away all the inhabitants of Jayacarta and burned and destroyed the place.

The name Jayacarta was changed into Batavia.

However, the inhabitants of Batavia ran away.

Those who remained were for example: the Dutch, the Chinese, the Japanese, the Moor (moslem from Kalinga). To fill Batavia again, the Company transplanted:

- a. persons from Banda (1621); the name Banda quarter is known;
- b. persons from Bali (1667); the quarter Bali is also known;
- c. persons from Bone, the so-called Bugis quarter is not foreign to us;
- d. persons from Makasar; the makasar quarter is in Djatinegara;
- e. persons from the islands of Sumbawa and Bima.

What kind of law was used in the period of the Company in Batavia and surroundings?

According to Coen, to be subject to the Company meant changing the judicature for that Company; this meant that essentially all people in Batavia and surroundings — also the Indonesians — were under the law of the Company, i.e., European-Dutch law or Roman

law. However, for small private cases and matters in connection with religion the law of the Company was not used.

In Batavia there was a court of justice.

The East Indian Company went bankrupt on 31st December 1799. The successors were, first "De Battafsche Republiek", and after the subjection of the Netherlands by France, "het koninkrijk Holland" under king Lodewijk Napoleon. To the post of governor-general was appointed Marshall Herman Willem Daendels, who assumed his work on 14th January 1808.

Because France was in a state of war with England, the instruction was that the first place Daendels had to pay attention to the defence of the archipelago. Except for the military courts of justice, Daendels was not interested in civil law and courts. Therefore, there were no important alterations regarding law and courts; the situation remained like the period of the Company.

Daendels ruled with an iron dictator's hand.

When the "Hooge Raad van Justie" (High Court of Justice) protested because Daendels had decided to hang five persons while the affair was still under investigation of that court he abolished the court.

At the beginning of his administration he reduced the competence of the council of the "Dutch East Indies." This body became only an advisory body.

He tried to strengthen the treasury of the State by selling many plots of land in Java.

He also tried to fight corruption, but the man himself was corrupt. When he took by force "langoed Buitenzorg" (the state of Buitenzorg) he sold it to the government at a profit of "900.00 gulden".

The relations with the Sultan of Jogjacarta were very unsatisfactory; he tried to abolish the customs in the place (kraton).

Because of the many accusations, governor-general Daendels had to leave his post; his place was taken by governor-general Jan Willem Janssens (16 May 1811).

Janssens was not fortunate.

Nearly three months after his arrival, the English anchored in Batavia. Janssens could not defend the town and removed his headquarters to Semarang. Serondol (place of defence) was attacked and Janssens had to surrender unconditionally to lieutenant-general Samuel Auchmutty.

For what reason did the English come to Indonesia?

We know that France (also the kingdom of Holland) and Britain were at war.

Lord Minto, governor-general in India (Calcutta) was informed that Daendels was busy to strengthen the defence in Indonesia. Although an expedition was very expensive, strategically it was necessary to destroy all equipment of war, namely the fortress, the battleships, etc. in the archipelago. Further it was necessary to punish the Dutch in Indonesia, so that the expedition was a sort of punitive expedition.

And so Lord Minto conquered Indonesia.

With him came also Raffles. On 11th September 1811 he was appointed to the post of lieutenant-governor of the Archipelago by Lord Minto

Raffles formed a board (committee, commission) to investigate the social life of the Indonesians in Java. The president was Makenzie.

While the result of that inquiry was pending, provisional alterations were made in the field of law.

Alterations in the organization of the courts for the Europeans as well as for the Indonesians are to be found in the proclamation of 21st January 1812.

The basis of the organization was; "The separation as much as possible of the Judicial from the police powers." Therefore there were two bodies side by side: the judicature and the magistracy. This was the organization in England where Raffles had taken it from. The magistracy was a police-court. The system of the courts for the Europeans in the town of Batavia and surroundings in Semarang and Surabaya also applied to the Indonesians. Courts of Justice were found respectively in Batavia (for Batavia and surroundings), in Semarang and in Surabaya. The court of justice in Batavia acted also as the Supreme Court of Justice for the courts in Semarang and Surabaya. Besides the bodies of the judicature, there were magistracy courts for police matters in the towns above. The courts of justice had juries, in accordance with the British practice. The law used by the courts and the magistracy for European as well as for Indonesians was in general European Law.

Our conclusion is that:

(1) In the period of Pajajaran the indigenous law influence by the parts of Hinduism, on the whole called adat-law was used (also in the courts) in Sunda Calapa,

(2) The indigenous law, but now influenced by parts of Islam, on the whole also called adat-law, was used (also in the courts) in **Jayacarta**;

(3) In the period of the East Indian Company, the company forced the use of the law and the courts of the Company also for Indonesians in **Batavia and surroundings**. The law was: the law of the Company or the Dutch law, or the old Dutch law and Roman law.

However, for small private cases and matters in connection with the religion the law of the Company was not used.

(4) During the period of Daendels Western law and Western courts were also used for all the inhabitants including Indonesians in **Batavia and surroundings**. For small private cases and matters in connection with religion Western laws were not used.

(5) In the period of Raffles Western courts were used for all the inhabitants including Indonesians in **Batavia and surroundings**.

The law and the system of the courts were influenced by what was used in England. In the court of Justice in Batavia there was a jury. It would seem that small private cases and matters in connection with religion were judged by Western courts too.

HISTORY OF THE DECLARATION OF HUMAN RIGHTS IN THE CONTEXT OF INTERNATIONAL ADMINISTRATION**

*Prof. Carlos P. Ramos **

Ladies and Gentlemen:

You honor me indeed by having invited me to come and join you in this symposium to speak on the "History of the Declaration of Human Rights". The subject of human rights is somewhat very dear to me. This is so because of my personal involvement in the efforts of the United Nations to promote and advance the observance, recognition and protection of human rights of peoples throughout the world. It was from 1948 to 1952 when I had the privilege of working as an international civil servant at the Secretariat of the United Nations Headquarters in New York. This was the period which represented a high peak of activities of the United Nations in advancing the field of human rights. My job at the Human Rights Division of the Secretariat during this period gave me the opportunity of a close, at times intimate, look at the workings of the administrative, parliamentary and to some extent the political processes of the United Nations in this field.

You are probably well aware by now that the fundamental international document that relates to the observance of human rights is the Universal Declaration of Human Rights that was adopted by the General Assembly of the United Nations held in Paris, on the 10th of December 1948. This Universal Declaration is perhaps the most significant document on human rights that implements concretely the United Nations Charter adopted at San Francisco in 1945. This Charter establishes the promotion and advancement of human rights and fundamental freedoms as one of the main pillars that supports the international Organization. This is evidenced by the prominence given to human rights in the preamble, and by the specifications on

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** Delivered by Director Carlos P. Ramos before the UNESCO/PHILIPPINES sponsored symposium on Teachings on Human Rights at the P. Gomez Elementary School, October 20, 1960.