

The Effect of Receptie Theory on Legal Concept of “*Adat Barenti Lako Syara’, Syara Barenti Lako Kitabullah*”

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ABSTRACT

Receptie theory of Snouck Hurgonje's thought requires that Islam be valid if it has been perceived by customary law. The perception of a starting point between Islamic law and customary law was mediated by Syahrial Abbas with his split bamboo theory. However, the concept of "*Adat Barenti Lako Syara’, Syara Barenti Lako Kitabullah*" requires that customary law be valid or accepted if it has been validated by Islamic law. Employing a normative method and a philosophical approach, this paper examined the effect of the receptie theory on the legal concept of "*Barenti Lako Syara’, Syara Barenti Lako Kitabullah*". This paper concluded that the receptie theory could not influence the legal concept of "*Adat Barenti Lako Syara’, Syara Barenti Lako Kitabullah*" because customary law can be applied if it has been verified by Islamic law.

Keywords: Receptie, Custom, Syara'

INTRODUCTION

The discussion about the position of Islamic law in law continues to be an interesting topic, especially among transcendental philosophers. Thomas Aquinas put morals (religion) above the law, John Austin put law and morals (religion) separately, Hart positioned morals (religion) as a minimum requirement for the formation of laws to try to get rid of Austin's classic legal positivism rigor, and Von Savigny positioned morality (religion) as part of the law itself. Besides, Tamanaha places legal relations with society in a tripartite relationship: (a) custom/consent, (b) morality and reason, and (c) positive law (Tamanaha, 2006, p. 4)

Hart reveals between law and morality. First, how to distinguish between moral ideas in justice and justice in law; Second, how to distinguish between the moral code and the rule of law from all other social rules; And third, various kinds of components that explain that law and morality still have a relationship (Hamdani, 2016, p. 64). On the other hand, the view of the prophetic paradigm is based on the epistemological assumption that relative morality is the result of the creation and will of absolute reality, and the norms of morality, namely reality, should be created by the will of the authorities through a messenger, with epistemological values/ethos in the form of a combination of community reality and revelatory values (Dimiyati, Absori, Wardiono, and Hamdani, 2017).

Von Savigny placed religion as a part of the law, apart from customs, traditions, and culture. Von Savigny's thought was that "the law must be seen as an incarnation of the soul or spirit of a nation. There is always a relationship between law and the personality of a nation" (volkgeist) (Wahid and Sulistyono, 1997, p. 7). Volkgeist is manifested in the form of language, customs, culture, habits, traditions, and community beliefs. According to Herder, volkgeist is a manifestation of the spirit of society and at the same time becomes the life of that community ("Friedrich Von Savigny", 2015, p. 199). One of the sources of Savigny's volkgeist is that morals are part of the law itself. Von Savigny does not limit the meaning of "habit", which is made into law, whether it is limited by good or bad habits so that the morality that Savigny means depends on the habits of the society itself. For example, the practice of slavery is universal in society. The practice of slavery is the will of the authorities, not the will of society universally. However, in the Muslim community's view, there are limits to every custom that applies in society, both the boundaries between good and bad and the boundaries between halal and haram. Likewise, the view based on the legal concept of "*adat barenti lako syara*", *syara barenti lako Kitabullah*" means that custom or becoming law can be accepted when the Kitabullah and As-sunnah have validated it.

Christian Snouck is very extreme in saying that Islamic law can only be enforced if accepted by customary law (Syahrizal, p. 145). This theory aims to prevent indigenous people from holding strong Islamic teachings and law to be easily influenced by Western culture.

Syahrizal Abbas, with his split bamboo theory, tries to mediate disputes between customary law and Islamic law, with the view that customary law and Islamic law are like a coin that cannot be separated from one another. Both have the same role and are parallel to

complement each other without losing their respective identities. Customary law accepts Islamic law as the highest level and perfection of the customary law system, while Islamic law also accepts customary law in its legislative process (Irmawati, 2017, p. 170).

The problem to be discussed in this paper is the effect of the receptie theory on the legal concept of "*Barenti Lako Syara', Syara Barenti Lako Kitabullah*".

RESEARCH METHODS

In this study, the author used a philosophical approach by exploring the philosophical basis of legal science, by connecting law science with the legal concept of "*Barenti Lako Syara', Syara Barenti Lako Kitabullah*". It was intended to refute the basic philosophy of legal science development pioneered by Christian Snouck, which stated that Islamic law could be enforced if accepted by customary law.

RESULTS AND DISCUSSION

A. Basic Arguments for Receptie Theory in Influencing Islamic Law in Indonesia

Snouck, based on the Gujarat theory pioneered by Pijnepel, said that the origin of the area that brought Islam to the archipelago was from Gujarat. For reasons, first, the lack of facts explaining the role of the Arabs in the spread of Islam to the archipelago. Second, trade relations between Indonesia and India have been well established for a long time. Third, the oldest inscriptions about Islam found in Sumatra provide an overview of the trade relations between Sumatra and Gujarat (Muhammad Rana, 18).

On another view, the receptie's theoretical basis influences Islamic law on the grounds of political interests with the aim so that the Islamic community does not practice its teachings, which is, of course, barren of Islamic law. "The existence of this theory is more politically inclined than scientific discovery. This theory is intended to reduce the loyalty of native Muslims in adhering to their Islamic teachings" (Tobroni, 2009, p. 200). This condition strengthens the influence of the application of Islamic law. There are "two problems that have a major impact on the application of Islamic law in Indonesia. First, because of the entry of Western law and because it intersects with customary law, while second, because of the political and cultural influence of society (Norcahyono, 2019, p. 31).

The strong influence of the Receptive theory has the potential to raise awareness of the Indonesian people of delegitimizing colonial rule. Seeing this awareness, the Dutch used customary law to block the speed of Islamic law. To stop the continuation of this theory, "in principle, this theory has been dammed through the publication of the Preamble to the 1945 Constitution and Article 29 of its body. Based on the Preamble, it has been stated that filling out this independence in a non-physical way also requires religious teaching instruments in building its law. Furthermore, article 29 states that the state guarantees human rights for everyone to practice their religious teachings, both in terms of worship and law" (Tobroni, 2009, pp. 206-207).

B. The Influence of Receptie Theory of “*Adat Barenti Lako Syara’, Syara Barenti Lako Kitabullah*”

1. The Philosophy of *Adat Barenti Lako Syara’ Syara’ Barenti Lako Kitabullah*

Sumbawa Regency is located on the island of Sumbawa, West Nusa Tenggara. The number of indigenous people (ethnic Samawa) amounted to 68.66%, and the rest came from the Mbojo, Sasak, Balinese, Bugis, Makassar, Minang, Sumba, and Arabic tribes (Iskandar, 2013, p. 1). The guidelines for *tau* and *tana’ samawa* are “*Adat Barenti Lako Syara’, Syara’ Barenti Lako Kitabullah*”. The philosophy of “*Adat Barenti Lako Syara’, Syara’ Barenti Lako Kitabullah*” is a value as a basis for behavior in the *tau* to *tana’* of Samawa community. The primary foothold in acting and behaving in *tau samawa Adat Barenti Lako Syara’, Syara’ Barenti Lako Kitabullah* has gone through a series of historical processes of society to find community agreement as a way of life, the laws that apply to the *tau samawa* community.

The meeting point in history has been shown since Islam was known by the Sumbawa people, namely the meeting of harmony between customary law and Islam's concept to become a law consisting of values and norms in Sumbawa society. At the meeting point, there is customary acceptance verified by Islamic concept; custom indicators can be accepted if they do not contradict Islamic concepts. The agreement resulting from the meeting point becomes natural law or is often called *sunnatullah*.

The meeting of harmony between customs and religion is a spiritual collaboration between the truth of local wisdom (customs) and religious truth or a

collaboration between "ratio" and "revelation". In the philosophy context, the meeting of harmony is part of the epistemology in philosophy. The study of philosophy by looking at customs, which is society's legal behavior, is part of "studying the philosophical issues that arise from the existence and practice of law" (Dworkin, 2007, p. ix).

Ontologically, the strong philosophical values in "*Adat Barenti Lako Syara', Syara' Barenti Lako Kitabullah*" are the truths recognized by *tau samawa*. Epistemologically, it can be seen from the tolerant, open, and moderate Sumbawa society due to the meeting of harmony and synchronization with the existence of customs and sharia, which is recognized by *tau samawa* as a complementary truth, mutually reinforcing, and mutually supporting.

2. The Influence of Receptie Theory in "*Adat Barenti Lako Syara', Syara' Barenti Ko Kitabullah*"

Examining the basic arguments of the receptie theory in influencing Islamic law based on the philosophy of the legal concept of "*Adat Barenti Lako Syara', Syara' Barenti Lako Kitabullah*" can be seen from the power of this theory, which cannot influence the legal concept of "*Adat Barenti Lako Syara', Syara' Barenti Lako Kitabullah*" because this legal concept requires that custom only take effect if it has been verified by Islamic law.

Not being able to influence the legal concept of "*Adat Barenti Lako Syara', Syara' Barenti Lako Kitabullah*" by the receptie theory does not mean that Islamic law cannot accept customary law, but there are specific conditions required by Islamic law so that customary law can be accepted. It is crucial to understand that "custom is a social variable with the authority of Islamic law. Sahih custom is a custom that is repeatedly practiced, accepted by many people, does not conflict with religion, courtesy, and noble culture" (Mustafa, 2019, p. 267). The perception that Islamic law has a starting point with custom is Snouck's concern. "There is a misunderstanding related to the statement that Islamic law, in this case, sharia, rejects the existence of local values (customary law) in a community within specific geographical boundaries. This paradigm is, of course, wrong considering that some of the teachings in Islam are in fact the adoption, adaptation, reform, and innovation

of the traditions, customs, or customary laws of the Arab nation itself" (Hakim, 2017, p. 34). The adoption and adaptation can be seen in the Sumbawa people guided by the legal concept of "*Adat Barenti Lako Syara', Syara' Barenti Lako Kitabullah*," as a basis for acting and behaving. The formation of "*Adat Barenti Lako Syara', Syara' Barenti Lako Kitabullah*," as a way of life (customary law) is the result of a meeting between customs and religion in harmony with the meeting between "ratio" and "revelation".

The legal concept of "*Adat Barenti Lako Syara', Syara' Barenti Lako Kitabullah*" has become the principle for *tau samawa*. Law in this principle is interpreted as an accumulation of morals, ethics, customs, beliefs, and habits. The morals that become law include *saling satingi* (mutual respect), *saling pedi* (mutual compassion), *saling sakiki* (mutual strengthening), *saling satotang* (mutual reminding), *saling sadu* (mutual trust), *saling tulung* (mutual assistance), and *saling beme* (mutual protection) (Zulkarnaen, 2011, pp. 20-21). The acceptance of morals, ethics, customs, and habits into law after being verified by religion, in this case, Islam, is expressed by Idrus Abdullah, a Sumbawa figure, that if there is a conflict between religion and customs, then customs must be changed and accommodated into principles of Islamic teachings (Abdullah, p. 5).

Examining the effect of the receipt theory on the legal concept of "*Adat Barenti Lako Syara', Syara' Barenti Lako Kitabullah*" shows no effect. Islamic law sees that in "customs", there are morals that become cultural identities, and in "syara", there are moral values that become spiritual identities; thus, meeting the two becomes law for *tau samawa*. The word "*barenti lako*" means "to make the basis, foothold" so that the moral indicators in law depend on whether or not customary law is accepted by syara". Likewise, the moral indicators in "syara" depend on whether or not the moral syara' is accepted in the Kitabullah. Syara' becomes a verification tool for morals in the *tau samawa* customary law, and the Kitabullah becomes a detector for the morals in syara".

CONCLUSION

Examining the influence of the receipt theory of Snouck Hurgonje's thought, which requires Islam to be applicable if it has been perceived by customary law on the legal concept of "*Adat Barenti Lako Syara', Syara' Barenti Lako Kitabullah*" can be seen in the form of

absorption from Receptie theory and the legal concept "*Adat Barenti Lako Syara', Syara' Barenti Lako Kitabullah*". The adopted form of receptive theory is customary law as a validator of whether an Islamic law is valid. It means that Islamic law can only apply if it has been verified by customary law. On the other hand, the legal concept of "*Adat Barenti Lako Syara', Syara' Barenti Lako Kitabullah*" makes Islamic law a validator through Kitabullah regarding whether or not customary law is applicable. However, Islamic law is not incapable of accepting customary law, as Snouck worries. Islamic law views that in "custom", there is a moral which becomes a cultural identity, and in "syara", there is a moral value that becomes a spiritual identity; thus, the meeting of the two becomes law for the *tau Samawa*. The perception of a starting point between Islamic law and customary law was mediated by Syahrial Abbas with his split bamboo theory.

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