

tradition (or adat) cannot be separated due to tradition had to be evolved based on Islamic law (Kusuma, 2002).

VII. IDEAS ON THE RECONSTRUCTION OF TRADITION AMONG THE FOUNDING FATHERS

Ideas about the reconstruction of tradition in Indonesia have correlation with growth of nationalism of Indonesia, which has developed since the early 20th century and gained its formation around 1930s. Nationalism of Indonesia was transformed from ethno-nationalism or group-nationalism (*groep nationalisme*-Dutch) toward Indonesian-nationalism (*Indonesische nationalisme*-Dutch). Ethno-nationalism and group nationalism were began with the establishment of Boedi Oetomo on May 20th, 1908 and Sarekat Dagang Islam on February 16th, 1905 (Kartodirdjo, 1997:75-81). Boedi Oetomo was an organization established by Javanese aristocrats (*priyayi*) with the purpose of maintaining Javanese culture. Meanwhile, Sarekat Dagang Islam was an organization established by Islamic merchants with the purpose of protecting business among Moslem merchants from domination of Chinese and European traders (Rambe, 2008).

The Indonesian nationalism politically obtained its formation on October 28th, 1928 when the Indonesian youth leaders promulgated a political statement called Soempah Pemoeda. The Soempah Pemoeda contains three declarations that are “one country, one nation, one language namely Indonesia.” After this moment, the national movement transformed from ethno-nationalism to Indonesian-nationalism that had final goal: the independence of Indonesia (or *Indonesia merdeka*). The transformation of nationalism influenced development of reconstruction of tradition among the founding fathers when they engaged in constitutional creating process in BPUPKI and PPKI 1945.

Generally, there were two perspectives of the reconstruction of tradition that had been developed among the founding fathers. The first perspective insisted that the reconstruction of tradition had to emphasize on the originality of tradition and preserve the originality in the nation-state structure. The second perspective argued that the reconstruction of tradition had to emphasize on the universal values of tradition so that the traditions could be adapted in the modern nation state. Those perspectives created two models of reconstruction of tradition in the Indonesian constitutional law.

The first perspective was expressed in Soepomo who had main role in constitutional creating of the 1945 Constitution. Soepomo was a professor in Indonesian customary law or *adat* law whose background as Javanese aristocrat from Solo or the Kingdom of Kasunanan Surakarta—the center of Javanese culture in Central Java. As an expert in *adat* law, Soepomo had a tendency to support the *adat* law to be practiced in Indonesia. In his speech on May 31st 1945, Soepomo argued that every state had each peculiarity in related with his history and characteristics of each society. Consequently, the establishment of Indonesian state had to be adapted to the social structure of Indonesian society and accorded to the recent times, in accordance with—in 1945—the ideas of Indonesian state in the Great East Asia environment (Kusuma, 2004:125).

Soepomo put Western Europe and Eastern Europe as comparisons to show the peculiarity of each nation state. In his perspective, Western Europe emphasized individualism and liberalism principles as the basis of Western legal system. Those principles encouraged people in the Western Europe to look for various ways to grab power and property so that those spawned imperialism and exploitation system which created disorganized world. Soepomo insisted to refuse those principles in the establishment of Indonesian state, because Western people their self suffered humanity crisis due to individualism and liberalism. Meanwhile, Eastern Europe or Soviet Russia built his state based on dictator-proletariat

principle. Perhaps the principle was suitable to their social circumstances, but the principle contradicted to the original character of Indonesian society.

On the contrary to his argument before, Soepomo referred to German ideology: national-socialism; and explained:

[Germany] is based on totalitarian ideology; “das Ganze der politischen Einheit des Volkes” (integration theory). The principle of leader (Führung) as Kernbegriff ein totaler Führerstaat and also they use the principle of the blood and region equation (Blut and Boden Theorie) between leader and people ... the national-socialist [is] suitable with Eastern ideology. We know Asian state, namely Dai Nippon is based on the perpetual unity of soul and body between His Majesty Tennoo Heika, between the state and the whole Nippon people. Tennoo is the center of the spirit of whole people. State is based on the family system. Tennoo family namely “Koshitu” is the prime family. The principle of unity and familial (*kekeluargaan*) is very appropriate with character of Indonesian society (Kusuma, 2004:126).

Based on that argument, Soepomo then argued:

The spirituality structure of Indonesian people has characterization and aspires for the unity of life, the unity between *kawulo* (people who are protected) and *Gusti* (patron/protector) that is the unity between the inside and the outside world, between macro cosmos and micro cosmos, between people and their leaders. Every human as an individual, every group in the society and every society in human relations in the world are viewed to have each place and obligation (*dharma*) according to natural law and purposed to harmony materially and spiritually. Human as an individual does not separate from other individuals or from the outside world, even from the whole of creature; everything is mixture and interdependent.... This is a totalitarian idea, the idea of integration of Indonesian nation that manifested in the genuine constitutional structure (Kusuma, 2004:126).

Soepomo pointed out that the genuine constitutional structure can be found in the villages in Java, Sumatera, and entire Indonesian archipelago. In those villages, state officials were the leader who integrated spiritually with their people and they had obligation to maintain the unity and harmony in the society (Kusuma, 2004:126).

Therefore, Soepomo concluded that the establishment of Indonesian state had to be arranged based on the peculiarity of Indonesian characters, namely the idea of “*negara*

integralistik” (or integralistic state): where the state were united with all the people, the state were transcend all of individual and group in any sector. In the integralistic state, there was no dualism between state and individual; no contradiction between the state and the individual aspiration; no dualism between “Staat und staatsfreie Gesselschaft”; and consequently there was no necessary for human rights and freedom (*Grund und Freiheitsrechte*) of individual contra state (Kusuma, 2004:127).

However, Soepomo denied that the integralistic state would not recognize the existence of groups or individuals. Soepomo confirmed that the state recognize the existence of groups and individuals in society, but every group and individual had to be aware about their position as the organic part of society. They had obligation to maintain unity and harmony among every part (Kusuma, 2004: 127).

The concept of the integralistic state had consequences on three issues: the relation between state and religion, the system of government, and the relation between the state and the economy. In the first issue, the integralistic state refused the integration between state and religion. It meant the integralistic state was a secular state. However, the rejection was not based on secular principle, but more based on position of Indonesia as non-Islamic state. Conceptually, Soepomo recognized that in there was no separation between religion and state in Islamic belief. However, Soepomo denied Indonesia was part of Islamic countries or Corpus Islamicum like Egypt, Iraq, Iran, and Saudi Arabia. In his view, Indonesia was part of the Great Eastern Asia in companion with Japan, China, Philippine, Thailand, and Burma. Those countries were not Islamic states. As consequence, Soepomo denied the application of Islamic law or *sharia* in Indonesia. However, Soepomo refused that integralistic state was not religious. The integralistic state remained maintaining moral and ethics, which was suggested by Islam and other religions. Thus, Soepomo refused to apply Islamic law, but accepted Islamic values in the form of ethics (Kusuma, 204:129).

The Soepomo's paradigm demonstrated that although majority of population in Indonesia believe in Islam, geographically Indonesia was not Islamic country. For that reason, Islam was not the particular characteristics of Indonesian society. Islam was only a strange element in the Indonesian culture. The fact that Islam was the majority religion cannot be used as a basis for legitimizing Indonesia as an Islamic state. In his view, if Indonesia was established as an Islamic state based on the majority population, then Indonesia would unite with the majority. It was opposed with the unity of the national state. Besides, it would produce problems of "*minderheden*" (or minority group), that was problem of minority groups such as Christian, Buddhism, or Hinduism. Consequently, Indonesian state had to be separated from religion, particularly Islam, in order to maintain the unity of the national state (Kusuma, 2004:130).

The rejection of Soepomo against Islamic law essentially expressed his stance as a professor in *adat* law who supported the receptie theory—a theory that distinguished and separated *adat* law from Islamic law. Additionally, Soepomo had a background as a Javanese aristocrat (or *priyayi*) that culturally had a lack of respect to Islamic faith. Politically, the receptie theory cannot be separated with Dutch legal policy in reducing Islamic political influence in the Netherlands India. Based on that policy, Islam had to be separated from politics but at the same time Moslems were provided a privacy to do their Islamic worship freely (Lukito,). As the consequence, although Soepomo proposed to reconstruct traditions—that he called the genuine constitutional structure—in the national state, he denied Islam traditions to be reconstructed in constitutional structure of Indonesia. The genuine constitutional structure in his sense was only the *adat* law, not including the Islamic law.

In correlation to the system of government, Soepomo suggested to reject the Western democracy that practiced based on individualism. Rejecting Western democracy means rejecting parliamentary system and a system that considered every human being as nominal

numbers. Consequently, Indonesia had to ensure a system of government that continually united the soul to the people. It means Indonesia had to create a system of consultative body (*badan permusyawaratan*). The Head of State would interact continuously with the Consultative Body in order to know and to feel a sense of justice and ideals of the people. Soepomo said that the consultative system refers to adat law. In the genuine *adat* society, the Head of Village (*Kepala Desa*) organizes popular will; he gave the formation (*Gestaltung*) to sense of people justice. Soepomo related that character with the characteristics of messiah, which in Indonesia traditions was called *Ratu Adil*, who eagerly awaited by the people of Indonesia for a long time (Kusuma, 2004:132).

Finally, in the matter of relationship between the state and the economy, Soepomo proposed a state socialism that he believed to be a manifestation of the integralistic state. He described state socialism:

The vital corporations must be controlled by the State ... [such as] transportation, electricity, forestry. So does the land. Essentially, the state also controls all the land. The vital mining that important for the State must be controlled by the State. Seeing the nature of Indonesia as an agricultural society, the state must ensure the farm remains dominated by farmers.... In economy field, the state will be organized based on principle of brotherhood of family (*kekeluargaan*) ... Mutual help system, cooperative system must be practiced to be a basis of the economy of Indonesia (Kusuma, 2004:132).

Those opinions above pointed out that Soepomo were more emphasized on particularity of tradition as a part of Great Eastern tradition that distinguished diametrically with Western and Islamic traditions. However, Soepomo argued that several similar character between totalitarian state in Germany and Japanese (before World War II finished) and integralistic state in Indonesia. Germany was one of the most important countries in Western. Therefore, Soepomo actually did not reject completely Western traditions, but he refused the Western liberal democratic system only. In this context, Soepomo used totalitarian ideology to legitimize and point out that peculiarity of tradition in Indonesia was appropriate with the

modern times. In relation with Islam, Soepomo also did not deny Islamic religion in complete. He denied Islam in its form as Islamic state, but he accepted Islam as ethics. His rejection was based on geographic ground to show that Indonesia had peculiar tradition that distinct from Islamic tradition. However, Soepomo argued that the reconstruction of tradition in the modern state of Indonesia had to be based on the genuine constitutional structure of Indonesian society that he formulated as the integralistic state.

The second perspective was represented by Soekarno, Mohammad Hatta and Muhammad Yamin. Soekarno was a prominent nationalist leader and the first President of Indonesia whose background as Javanese aristocrat. Muhammad Hatta was the vice President of Indonesia who was famous as the founder of Indonesian economy system. Hatta and Yamin came from Minangkabau at West Sumatra, which well-known as one of region that produced many prominent national figures in Indonesia. Soekarno and Mohammad Hatta proclaimed the proclamation of Indonesia on August 17th 1945. They both represented the two major traditions in Indonesia—Javanese and Sumatra or non-Javanese—was known as “dwi tunggal” (*two in one*). Like Hatta, Muhammad Yamin also came from Minangkabau West Sumatra. He was actually a lawyer, but he was interested in history and written many books in history and literature.

Although Soekarno and Soepomo had the same background as Javanese aristocrats, Soekarno had more democratic view than Soepomo. On the contrary to Soepomo, Soekarno rejected Western democracy, but he did not accept totalitarian ideology. Consequently, Soekarno denied both Western European parliamentary and American presidential that he believed as instrument of capitalist. Soekarno suggested a *politiek economische democratie* or politic-economy democracy that is a politic-democracy with social justice (*socialerechtvaardigheid*), a democracy with prosperity, a socio-democracy. Soekarno related his concept with a belief of messianic or *Ratu Adil* amongst the people. He interpreted

messianic as an expectation about social justice. Therefore, Indonesia had to accept social justice principle, which guaranteed not only equality in political field, but also in economy field in the sense a general welfare. Thus, Indonesia had to institute a constitutional structure that represented democracy in both politic and economy (Kusuma, 2004:162-164).

Particularly, Soekarno proposed Pancasila—means “the five principles”, which was finally accepted by all of the founders as a fundament of the state. Soekarno called Pancasila as a *Weltanschauung* (or a world view) and a *philosophische grondslag* (or a fundamental philosophy). Pancasila contained five principles that are nationality of Indonesia, internationalism or humanism, consensus or democracy, social welfare, and monotheism. Then Soekarno squeezed Pancasila into three principles: socio-nationalism, socio-democracy, and monotheism. Finally, Pancasila pressed those principles into one principle that is the *gotong royong* or the mutual assistance. For Soekarno, the *gotong royong* was a dynamic collectivism that represented an authentic tradition of Indonesian people (Kusuma, 2004:165).

Related with Islam, Soekarno had an opinion that Moslems in Indonesia had to use *permusyawaratan* or deliberation process as the way to express their interests and aspirations in law or statutes. If Moslems wanted to practice Islamic law in Indonesia, they must effort in deliberation process in legislature so that every law created by legislature will reflect Islamic law. So do the Christian, Buddhists, or Hindus, they have to struggle by deliberation process in legislature to create law based on their interest (Kusuma, 2004:161).

Those descriptions above point out that Soekarno has inclusive and dynamic view concerning with traditions. He viewed that tradition had to be adjusted with the modern democracy. However, he denied liberal democracy and believed that he could only give equality in politic and created disparity in economy. Therefore, he proposed democracy with social justice that he considered as an authentic people aspiration.

Muhammad Hatta has a similar position with Soekarno. Hatta also opposed individualism and proposed collectivism as a basis of the state. He described collectivism as *gotong royong* (or mutual assistance) and *usaha bersama* (or common endeavor). However, Hatta disapproved of Soepomo about totalitarian or integrality state notion. He worried that Indonesia would develop into a totalitarian state as practiced in Russia and Germany. Hatta confirmed that collectivism gave people freedom and right to express his opinion. He defined that collectivism will create “the caring state” (or *negara pengurus*), not the repressive state (Kusuma, 2004:355).

Structurally, Hatta connected collectivism with the representation of collective bodies in the People’s Consultative Assembly (MPR). According to proposal of constitution, the MPR has three representations, which are the members of the House of Representatives (DPR), representatives of regional, and representatives of functional groups. Hatta confirmed that the representatives of functional groups are the manifestation of social collectivism (Kusuma, 2004:405).

In a paper in 1932, Hatta argued that the original democracy in Indonesia should refer to “demokrasi desa” (or village democracy). The original democracy should be revived, not in the old-fashioned, but in a more advanced in accordance with modern time. *Desa* democracy should be extended on a scale of the state and must be adapted to the development of civilization. Hatta identified three characters of genuine democracy that practiced in villages: First, the idea of assembly as a place for people or community to deliberate and make consensus based on collective interest. Actually, this is a basis of people representative government. Second, the idea of mass protests specifically a right to rebut any injustice law. The idea includes right and freedom to move and association. Third, the idea of cooperation, which is stored a basic for cooperative in economy. This means that people in Indonesia establish a rather large company based on common endeavor or joint venture principle.

Likewise, the control of land based on collectivism that mentioned as the right of *ulayat*. The right of *ulayat* is a collective right to control land tenure in village (Hatta, 1977:42-43).

Meanwhile Muhammad Yamin in his notes gave some opinion about traditions that sourced from Islamic law and adat law. He proposed deliberation (or *permusyawaratan*) as tradition of Islamic law and consensus (or *mufakat*) that he viewed as adat law. He also suggested representatives (or *perwakilan*) as a kind of adat law and wisdom (or *kebijaksanaan*) that he identified as rationalism (Kusuma, 2004:98). Particularly, he proposed a sharia government that represented in the authority of Supreme Court to review statute against the constitution, the recognized adat law, and Islamic law or sharia (Kusuma, 2004:98, 385).

Generally, Soekarno, Hatta, and Yamin have a similar position in their opinion about the reconstruction of tradition. They believe Indonesia had to be established based on the genuine tradition of Indonesian society, but the tradition should be adjusted with the modern democracy. However, democracy that was suitable with Indonesian tradition is democracy with social justice, a democracy based on collectivism, which is reflected in deliberation (*permusyawaratan*) and representative system. This concept is expressed in the fourth principle of Pancasila: “democratic life led by wisdom of thoughts in deliberation/representatives.”

There is a basic position for Soekarno, Hatta and Yamin to view tradition of Indonesian society having a rational character so that it could be adapted to modern democracy. Deliberation is a rationality process, so that deliberation gives a rational basis for democracy. There is no contradiction between tradition of deliberation in Indonesia and the modern democracy because both of them have rationality character. Likewise, the idea of social justice, which thought by Soekarno referred to the messianic or *Ratu Adil* as a myth that believed to realize a social justice, but the founders considered the idea of social justice

in a modern sense as a system of democracy to give equality in economy and general prosperity.

Soekarno, Hatta, and Yamin believed that the reconstruction of tradition had function to maintain a certainty for people to reach their purpose to realize social justice. Refers to Popper, there was a reason to reconstruct the tradition to maintain social regularity that created by tradition during centuries. In the other sense, there is a belief that solely western democracy cannot ensure Indonesia to get social justice, even Indonesia will fall into destruction. Therefore, the Indonesian founders chose to reconstruct the tradition into the constitution to ensure Indonesia could be realized social justice for all people.

Contestation between two paradigms—that are absolute and relative particular—in the constitutional creating finally result a compromise in a constitution: the 1945 Constitution. There are several points of the compromise that related with reconstruction of tradition. Generally, the founders accepted Pancasila as the basic of the state of Indonesia. Pancasila consists of five principles: monotheism, universal humanism, nationalism of Indonesia, deliberative and representative democracy, and social justice. The founders believed that Pancasila is a kind of reconstruction of tradition that has been adapted to modern state structure. The founders agreed to use republic as form of the state. It confirmed that the founders refused monarchy as an expression of feudalism. In contrast, they accepted republic as a continuity of democracy that practiced in villages (or *desa*).

Particularly, the founders accepted deliberation (or *permusyawaratan*) as a tradition that should be adjusted with the modern state. Deliberation should be practiced with rationalism or wisdom based on principle of people representatives. Deliberation is reflected structurally in the form of People's Consultative Assembly (MPR), which represents collectively all the people of Indonesia so that principally MPR conducts the completely popular sovereignty. MPR has authority to make a state planning guideline (GBHN) as

instrument of collectivism in economy to achieve social justice for all the people of Indonesia. Meanwhile, the founders enacted the constitutional provisions to preserve adat law and native structure that practiced in several regions and villages in the entire of Indonesia. Those included preservation of monarchy that until today practiced in Province of Yogyakarta and various native villages such as *desa* in Java, *nagari* in Minangkabau-West Sumatra, *gampong* in Aceh, *dusun* and *marga* in South Sumatra, *huta* and *kuria* in Tapanuli-North Sumatra (Kusuma, 2004: 359-370).

VIII. DEVELOPMENT OF THE RECONSTRUCTION OF TRADITION BEFORE THE CONSTITUTIONAL AMENDMENT

Practically, the ideas of reconstruction of tradition had created two authoritarian regimes that occurred during the Guided Democracy and the New Order eras. However, the same idea also created a democratic system during the parliamentary government. In fact, authoritarian regimes were evolved after the 1945 Constitution reappplied on 5 July 1959. Meanwhile, democratic regime was occurred under the Provisional Constitution during 1950s. Those facts made an understanding that the reconstruction of tradition in the 1945 Constitution was interpreted based on authoritarian sense. Moreover, democratic practice during the parliamentary era was also viewed as an expression of liberal democracy that contradicted with the genuine democracy of Indonesia.

The following section will describe development of the reconstruction of tradition that practiced in those regimes: the parliamentary democracy, the Guided Democracy, and the New Order.

Firstly, the parliamentary democracy was actually established since 14 November 1945 when the members of parliament made a convention that applied the parliamentary system under the 1945 Constitution which apply the presidential cabinet. After the