

Indonesia as selaras and serasi – in communalism of rural society. This perspective views democracy in the sense of unity and consensus—namely ‘genuine democracy’, which is distinguished from western democracy with freedom and competition values (Hatta, 1975:51-2; Nasroen, 1971:52). The proponent of ‘the genuine democracy’ requires tradition applied as originally in the nation-state without change or modification.

VI. ISLAMIC LAW AND ADAT LAW

The Indonesian society identifies a legal tradition that evolved among various ethnics in Indonesia called *adat* law. The Indonesian Constitution recognizes and respects *adat* law along with its traditional customary rights as long as this remain in existence and is in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia (Art. 18: 2). Some special provinces such as Papua, West Papua, and Yogyakarta, apply *adat* law as the local or regional distinction. In addition, thousand villages in Indonesia apply *adat* law as a kind of recognizing and respecting to particularities and diversities of traditional communities in Indonesia.

Adat law exists in Indonesian national legal system in common with Islamic law and modern western law. Those legal systems represent three historical layers in Indonesia. *Adat* law is the oldest layer, which represents indigenous communities in Indonesian archipelago. Islamic law represents Muslim belief as the majority in Indonesia, which has grown since Islamic kingdoms were ruled in most Indonesian archipelago in 14th century. Meanwhile, modern-western law is the legacy of Dutch colonialism, particularly since 1840 when Netherlands Kingdom applied the first Netherlands Indie Constitution. Practically, most Indonesian apply more than one legal system, for example, most Moslems practice all of legal system because they act as part of indigenous, Moslem and modern community at the same time.

In correlation with Islam, there is a controversy about the relation between Islamic and *adat* law. Previously, Dutch legal scholars assumed that *adat* law represented Islamic law because Moslem was the most population in Indonesia. This paradigm was popularly called *receptio in complexu* theory, which argued that Islamic law was practiced effectively in local communities and it modified some *adat* law, particularly in family law, so that it was suitable with Islamic law (Lukito, 1998:44). On the contrary to the previous theory, the *receptie* argues that Indonesian living law is not Islamic law. Although several religions live in Indonesia, including Islam, *adat* law is still preserved and practiced among various local communities without any significant influences, particularly the influences from Islamic law (Lukito, 1998:43).

Approximately in 1900, when Indonesian nationalist movement arose, the legal policy of Dutch colonial administration in *adat* law (or *adatrechtpolitiek*) tended to support *adat* law to Islamic law. It means *receptie* theory had more influence to Dutch legal policy. Daniel Lev explained that the legal policy has not only legal purpose, but also political intention (Lev, 1985:64). The political intention of *adatrechtpolitiek* was illustrated in its struggle with Islamic law. It was articulated in Vollenhoven statement, who said, “destroying the *adat* law cannot smooth out the way to codification of our law, but only to create social disruption and Islam” (Lev, 1985:66).

The controversy between Islamic and *adat* law actually expressed the struggle concerning tradition among Indonesian founding fathers, which was articulated at the constitutional making process at BPUPKI. They, who supported the *receptie* theory, tended to separate the Indonesian tradition from Islamic one and refused Islamic tradition as a part of national identity. They viewed Islam as a foreign tradition so that Islamic tradition cannot be used as the reference to reconstruct the tradition. Soepomo—the main drafter in constitutional making—stated that Indonesia, based on its location, had different

characteristics with other countries such as Iraq, Iran, Egypt or Saudi Arabia that had Islamic characteristics or *Corpus Islamicum*. He insisted that Indonesia was not part of *Corpus Islamicum*, so that Islamic traditions cannot be used as the reference to reconstruct national identity (Kusuma, 2004:129).

On the contrary, they who viewed Islam and adat law tended to integrate Islamic traditions into national identity. They viewed that Moslems as the majority population had evolved Islamic tradition for centuries in Indonesia. Consequently, the reconstruction of tradition particularly had to refer to Islamic traditions. Ki Bagoes Hadikusumo—the prominent Islamic leader—showed this stance when he stated that Indonesia had to be established based on Islamic religion due to the fact that ninety percent of population in Indonesia were Moslems (Kusuma, 2004:147).

In relation with the reconstruction of tradition, they who supported receipt theory tended to keep particularly absolute model. The stressing to originality or genuine aspect of tradition made their stance more resistant against foreign influences. Consequently, they had a tendency to reconstruct the traditions as originally practiced by adat or indigenous communities.

On the contrary, they who supported receipt in complex theory had a tendency to hold reconstruction of tradition in particularly relative model. Because they viewed that Islam and adat law were integrated, their stance was more open-minded against some strange influences. Consequently, they tended to maintain traditions appropriately with modern structure. For instance, Mohammad Hatta—a prominent nationalist leader—argued that traditions had to be maintained as a basic to create a modern nation through adaptation and expanded with the modern time. Personally, Hatta came from Minangkabau, an important ethnic in Indonesia, which had strongly Islamic traditions. In Minangkabau, Islam and

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.