

University of Miami Law Review

Volume 3 | Number 4

Article 24

6-1-1949

ADAT LAW IN INDONESIA. By B. ter Haar. New York: Institute of Pacific IR elations. 1948.

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Recommended Citation

Herman J. A. C. Arens, *ADAT LAW IN INDONESIA. By B. ter Haar. New York: Institute of Pacific IR elations. 1948.*, 3 U. Miami L. Rev. 657 (1949)

Available at: <https://repository.law.miami.edu/umlr/vol3/iss4/24>

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written and unwritten respectively, have a continuing role to play, perhaps someday as an example on a world scale.

The author taught for many years at Christ Church, Oxford. He published numerous noteworthy contributions to scholarship during his lifetime, but left the present book only in "substantially complete" form at the time of his death in 1947. He began work on this project as a contribution to scholarship and the mutual understanding of peoples on both sides of the Atlantic. The analytical method should certainly serve his stated end. The volume contains a bibliography and is adequately indexed.

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ADAT LAW IN INDONESIA. By B. ter Haar. New York: Institute of Pacific Relations, 1948. Pp. 255. \$4.00.

THE translation of one of Professor ter Haar's best works introduces to the Anglo-American readers a small but detailed compilation of the customary legal principles which are felt and to a great extent practiced by the 60 million native inhabitants of Indonesia. This group of islands with its volcano-bordered horizons, formerly named the Netherlands East Indies, forms, stretched out under the tropical sun and seasonal monsoonal rains, the connecting link between the two continents of Asia and Australia. Geologically, most of these islands are part of the mountainous chain running from the Himalayas through Burma into the South West Pacific; other islands are formed by myriads of the coral-polyp which since ages past have been building up the beautiful coral atolls from the world's deepest waters. While the temperature ranges from sub-zero on the Cartstenz' mountains of New Guinea to an average yearly temperature of 83° F. in the capital, Batavia, no cold and warm season is known, but only a wet and dry monsoon. Both the geographical and thermal equators run over these islands and the inhabitants have the opportunity to follow the sun twice through its zenith. Scholars of anthropology became famous by finding the world's oldest known remnants of human creatures, the *Pithecanthropus erectus* of Prof. E. Dubois near Trinil in Java and recently the *Homo Mojokertensis* of Dr. Von Koenigswald, popularly called the missing link in the Darwinian evolution theory. West-European travelers discovered and recognized the vast economic possibilities of these islands at an early stage. The first Dutch settled around 1600 A.D. The colonial governmental structure having passed on from Portuguese into Dutch hands, with a short interim period by the

English (Raffles) during the Napoleonic years (until 1816), was until the last war world-heralded. However, the many factors involved in the ever changing world-structure have brought lately not only much publicity but also much strain to the friendship between the many races living in this important raw material producing part of the world.

While the book, separate from any political division, divides the whole group of islands into 24 "law-areas," being distinct cultural geographical units with discernible changes in legal concepts with the neighboring law-areas, it should be remembered that next to the four main native languages (Malayan, Javanese, Sundanese, Madurese) many secondary ones are spoken in the different law-areas, together with an addition of other tongues due to the presence of foreign individuals from every part of the world. The title of the book introduces the Arabic word "Adat" which, according to the introduction, was adopted in the English language because no equivalent has yet been found (p. 4). It represents the living resultant of legal rules and popular practices brought over by civilized heritage and mixed with influence from the two main religions, Hinduism and Islam. In fact, Prof. ter Haar, a student of the famous adat law scholar, van Vollenhoven, recognized the enormous difficulty in translating the many adat-legal expressions of each law-area. He therefore practices clarification of the translation by using the original expression.

The material used is divided into 15 chapters preceded by an introduction in which E. A. Hoebel and A. A. Schiller explain some general data on each law-area, the place of the adat law in the legal system as enforced by the Netherlands Government, the religious influence and other encroachments upon the adat law, its constitutional basis and the rules under which each native, with respect to civil matters, voluntarily can choose that legal system by which he wants his case to be adjudged. Ter Haar describes the distinctive and congruent features of each law-area in the fields of social organization (pp. 49-80), real property and its related subjects (pp. 81-127), obligations (pp. 128-143), personal rights and domestic relations (pp. 147-193), inheritance practices (pp. 195-212) and criminal law (pp. 213-219).

Although the law-areas are very differently populated and the cultural level ranges from well educated to groups still living in the neolithic age, the social and communal life of the Indonesian revolves around autonomous groups. Each group consists of a number of individuals feeling themselves so united that benefits or injuries to one of them benefit or injure all. The communal possessions are jointly cared for; and each feels, as natural, strong ties with the soil they cultivate, which receives their dead and on which new generations are born. The sacred possessions are regarded as symbols or material embodiments of the vital energy, and magical potency of

the community. These ties with the soil are so strong that emigration from overpopulated (1800/sq. mile on Java) to sparsely populated areas (5/sq. mile in New Guinea) was extremely slow. Next to the autonomous character of the tribal unit, it is considered, as to its rights to land, water crops and sacred objects, a legal personality. Although many of the original historical facts are unknown, the communities seem to have originated either from territorial factors or kinship relations, while most times a resultant of both exists. The more important kinship relations can be divided according to patrilineal, matrilineal and bilateral descent. While a patrilineal organization looks to the descent from a one common male via the male line, the matrilineal is based on descent along a female line from a single female ancestor. Both are called unilateral organizations, while in the bilateral, a descent along the male line bears the same weight as along the female line. With respect to the territorial factors we find first the unit as an independent autonomous group, second a few groups together with a joint understanding as to common defense or to common enterprises but with no separate governing rules as to the uninhabited land in between the communities, and third some autonomous units have joined; and in this case the rules and regulations as to the land not belonging to each community, et cetera, are centrally issued. While other forms are known, one of these (in the Bataklands of Sumatra) has an interesting relationship consisting of clans which supply women (called hulahula) while other clans receive them (boru or beru). The relation is not mutual so another clan must close the ring of women-receiving and women-supplying clans. Because of this community concept, the rights of aliens are few; they either never become a member of the local clan or are accepted only after a prolonged stay.

The social classes are systematically graded from owners of agricultural lands to owners of compounds and landless persons as the lowest class. The princes form a class apart and as persons in their areas, together with the state paraphernalia and ornaments, are recognized as the concentration point of the magical potency of the princely state.

A certain area around each settlement belongs to the community, which can defend the communal rights against outsiders. The whole community benefits from the yield of this plot. The communal rights vary, however, as the individual members can, by their efforts, acquire certain rights in a small plot (assigned to them at the beginning of the season). The plots, however, will be alternatively assigned to other members. Neglect of one's assigned plot will decrease his rights and when he permits its usufruct to lapse through inactivity, the rights of the community are re-established. On their communal plots the members can only produce for the needs of the community and if the individual overproduces for the commercial market he will be regarded on the same level as an alien and the tribal rules as to

aliens will be applied to him. Each constituent has the right to hunt and gather wild produce on community land. He may acquire certain rights in wild property not yet acclaimed by others, but, having marked those claims, he must within proper time develop such claims by planting fruit or rubber trees; if not, the claim will fall back to its original state and may be claimed by others. If the group is living within a princely state, the community rights of disposal over land, water, stretches of sea, wild flora, bee trees, fruit, timber and wild animals are subject to invasion, arbitrary exercise of power and intensification by the prince or his officials. The princely sphere exercises its influence by accepting only products of great value like rhinoceros horns, ivory, etc. The prince possessing the title to all uninhabited property may expropriate communal cultivated fields for use as hunting grounds, etc. Because of the princely or governmental demands, the use of the remaining communal lands must be intensified until the access to this property resembles a reward instead of a basic right.

The following individual rights in land are mentioned:

1. The right of usufruct used by a stranger having obtained conditional permission to cultivate a communal plot for one season subject to renewal.
2. The rights of preference, *e.g.*, if one does not start reclamation of waste land within a proper time, another can force him to do so or give up the plot.
3. The right of exclusive option. A holder of this right has the option to buy the title of an offered piece of land before any other party.
4. The rights of an official to land income. Officials are permitted to utilize certain plots for their own maintenance put at their disposal during their tenure of office.
5. The right of utilization. Membership of a kin group, holding a right of user to certain real estate owns the derivative right of utilization to these fields.
6. The rights of pledging. Land may be pledged for a temporary bride-price which is redeemable upon payment.

Transfer of land may be accomplished in several ways, but no transfer is recognized if the chieftain has been by-passed. His is at all times the right of intermediary for all transactions including the marital ones. Some of the interesting customs with respect to obligations and transactions involving land show that there are intermediary agreements between a sale and a lease. Sharecropping is the deal, whereby the owner of land, not being able to do the work himself, allows another party to till the land, if part of the harvest will be turned over to the landowner. The future sharecropper must have a small gift accompanying his request for the favor of the landlord. To avoid the Islamic frown on lending for profit, some fictionary agree-

ments are made like an official transfer of land (without title) followed immediately by a sharecropping deal.

In general use is the idea of reciprocal aid within the village, regional community and kin groups, or the exchange of services, when needed, between families. This exchange of services is specially called for at events like marriages, births and funerals, also the tilling of fields, and the building of houses. The guest's contributions at some of those events are subject to scrupulously controlled "equivalence."

The marriage is of high importance in the small community. Together with the rules of exogamy and endogamy, the choice of mates is subject to the scrutiny of parents and especially the village chief. On the other hand the individual may add his wishes too. Although certain pressure will be exercised as regard to the faith followed, the individual has a free choice. The ordinary proposal is done by a "postillon d'amour" well versed in the use of flowery metaphors, who in some places will be rewarded for execution of a speedy engagement, as the girls have a free sexual license until they become engaged. In some areas the boy is allowed to speed up his wishes by climbing, with a valuable present, up on the house of the girl of his desires, and may stay until the girl has consented or bought him off with a forfeit of equal value. A pregnant girl may force a marriage by locking her swain within her house and publicly displaying gifts. Next to the feasted marriage, following the engagement, elopement is common in patrilineal clans. This is allowed to avoid the expensive obligations of a formal wedding, not always without the disapproval of the families. Marriage by abduction refers either to abduction against the woman's will or to absconding with a girl engaged to someone else. In this case, the absconder may be killed before he reaches his place of asylum, or must pay the usual price of a formal wedding and damages to the offended male. The change from unmarried to married status is a change of the equilibrium, which must be balanced by a transfer of the persons from one clan into the other. In Bali, moreover, the girl must be released from her domestic gods by payment of a bridal price.

Wherever a certain religion is accepted by people living under its own native law and customs, a tension in marriage law results. Because of the escapes which Islam and Christianity allow from the strict compulsion of family and community rules, these religions, even if they try to work within the frame of the adat law, cause many clashes. In this connection it may be mentioned that although the greater part of the Indonesians adhere to the Islamic religion, only four per cent practice polygamy (up to four wives is allowed by this religion). This low percentage possibly is due to economic reasons, as each wife requires a separate household. While the Moslem marriage allows for a compromise with the adat law, the Christian marriage has too many differences. Some of these differences are now statutorily regulated.

In the legal order of the small communities, a delict is to be considered as a unilateral disturbance of the social equilibrium. Each transgression brings a feeling of shame, hatred, a demand for satisfaction over the offended party which can be restored only by the payment of a fine either to the offended person or to the representative of the magic life-force of the community, the village chief. This chief regards these fines as a valuable source of his own income. No payment of the fine results in exclusion from the adat law which is comparable with excommunication. The fines are paid in money or livestock, depending upon the kind of seriousness of the delict committed. In the Toraja lands (Celebes) offenses by mouth result in a fine payable with chickens, by hand with goats, and an offense by the whole body must be paid with buffaloes. The delict of theft is balanced by payment of a few times the value of the property.

It is apparent that a mass of differences exist between adat law and the statutory penal code of the government, because the government as protector of public welfare and safety must consider many more factors than the small communities. It is known that many, penalized for a "crime passionnelle" with lifelong forced labor, never understood the punishment measured according to the Christian principles of Western Civilization adjudged according to a population with its own religion and its own legal customs. Since 1935 the village judge has been able to impose the legitimate adat procedures for all delicts which were not punishments according to the criminal codes in addition to those which were crimes under both systems including murder, theft, manslaughter and adultery. This process of better understanding and more recognition for which Prof. van Vollenhoven, Prof. ter Haar and other scholars have devoted their lives, has, since the original print of this book, been continued. The world is facing a rapid development of Indonesia's independence, after an interim period of Japanese legal system abhorred by every Indonesian: This book, timely translated, shows the enormous amount of differences existing between East and West, and the urgent need of either a total unification of the native adat law brought on par with the modern legal principles recognized by the major part of the world or acceptance of a legal code based on a legal system, applicable to the specific geographical and political circumstances, reconciled with the adat concepts.

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