

## Legacy of the Anglo-Dutch Treaty 1824: Tracing its Impacts on the Present Time Indonesia and Malaysia's Society and Legal Systems

### *Warisan Perjanjian Anglo-Belanda 1824: Menelusuri Dampaknya pada Masyarakat dan Sistem Hukum Indonesia dan Malaysia Saat Ini*

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#### ABSTRACT

The Anglo-Dutch Treaty of 1824 is a pivotal historical milestone, delineating territorial boundaries and shaping the trajectories of British and Dutch colonial empires in Southeast Asia. Beyond its geopolitical implications, this treaty exerted profound and enduring social effects on the indigenous populations of Indonesia and Malaysia. This article endeavors to elucidate the nuanced social consequences of the treaty, emphasizing its role in molding the fabric of societal life and legal frameworks in these two nations. Through a comprehensive analysis of the treaty's stipulations, subsequent legal evolutions, and their ramifications on local communities, this study aims to unravel the intricate tapestry of influence that emanated from colonial decisions. Specifically, we delve into how the Anglo-Dutch Treaty of 1824 was pivotal in shaping the formation and development of social structures and legal systems in Indonesia and Malaysia. By scrutinizing the long-term effects on indigenous societies, this research contributes to a deeper understanding of the enduring impact of colonial legacies on the contemporary legal landscape of these nations. This article offers valuable insights into the lasting repercussions of a historical agreement that extended beyond mere territorial delineation. By exploring the intricate interplay between the treaty's provisions and the subsequent socio-legal developments, we gain a nuanced understanding of the enduring ramifications of colonial decisions on the present-day legal frameworks in Indonesia and Malaysia.

**Keyword:** Anglo-Dutch Treaty, Indonesia, Legal System, Malaysia

#### ABSTRAK

Perjanjian Anglo-Belanda tahun 1824 menjadi tonggak sejarah yang sangat penting, menetapkan batas-batas wilayah dan membentuk jalur-jalur kekaisaran kolonial Inggris dan Belanda di Asia Tenggara. Di luar implikasi geopolitiknya, perjanjian ini memberikan dampak sosial yang mendalam dan berkelanjutan pada penduduk asli Indonesia dan Malaysia. Artikel ini berusaha menjelaskan konsekuensi sosial yang rumit dari perjanjian tersebut, dengan menekankan perannya dalam membentuk struktur kehidupan masyarakat dan kerangka hukum di kedua negara ini. Melalui analisis komprehensif terhadap ketentuan perjanjian, perkembangan hukum berikutnya, dan dampaknya pada masyarakat lokal, penelitian ini bertujuan mengurai kerangka pengaruh yang berasal dari keputusan kolonial. Secara khusus, menyelami bagaimana Perjanjian Anglo-Belanda tahun 1824 memainkan peran penting dalam membentuk pembentukan dan perkembangan struktur sosial serta sistem hukum di Indonesia dan Malaysia. Dengan memeriksa efek jangka panjang pada masyarakat pribumi, penelitian ini memberikan kontribusi pada pemahaman yang lebih dalam tentang dampak abadi



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dari warisan kolonial terhadap lanskap hukum kontemporer kedua negara ini. Artikel ini memberikan wawasan berharga tentang dampak berkelanjutan dari suatu kesepakatan sejarah yang melampaui sekadar penentuan batas wilayah. Dengan mengeksplorasi interaksi rumit antara ketentuan perjanjian dan perkembangan sosio-legal berikutnya, kita memperoleh pemahaman yang lebih mendalam tentang dampak berkelanjutan keputusan kolonial terhadap kerangka hukum saat ini di Indonesia dan Malaysia.

**Keyword:** Indonesia, Malaysia, Perjanjian Anglo-Belanda, Sistem Hukum

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## 1. Introduction

The Anglo-Dutch Treaty of 1824 holds significant historical importance as it delineated territorial boundaries and shaped British and Dutch colonial influence in Southeast Asia. However, its impact extends beyond geopolitics to influence Indonesia and Malaysia's social fabric and legal systems. Specifically, this research focuses on the treaty's role in shaping the formation and evolution of both countries' social structures and legal systems.

The treaty's historical implications continue to affect the social life and legal frameworks of Indonesia and Malaysia today, including Indonesia's civil law system and Malaysia's common law system. Additionally, customary law, rooted in local traditions, and Islamic law, influenced by religious principles, played vital roles in governing societal norms and behaviours in the Nusantara region. These legal systems regulated interpersonal relations and shaped broader social structures and governance mechanisms. By examining the long-term effects on indigenous societies, this research contributes to a deeper understanding of the enduring impact of colonial legacies on the contemporary legal landscape of Indonesia and Malaysia.

The historical trajectories of Indonesia and Malaysia have been intertwined for centuries, with both nations sharing significant similarities in terms of societal makeup and historical timelines (Liow, 2005). Despite the parallel development of these Southeast Asian countries, a distinct point in the past marked their separation, even though they once engaged in various communal activities. This research, with its urgent examination of the historical landscape, reveals a pivotal moment when European colonial powers began exerting influence over both territories. Various nations vied for control, and at a particular juncture, the Dutch from the Netherlands and the English from Great Britain became prominent actors in this colonial narrative, sparking curiosity about the events that led to this significant historical moment.

## 2. Method

This research is a normative legal study employing a historical legal approach, specifically focusing on the implications of the Anglo-Dutch Treaty of 1824 up to the present day. Additionally, a comparative law approach is utilized, with Indonesia and Malaysia as the primary subjects of investigation. As this research also talks mainly about society, it could also be recognized as socio-legal research. Secondary data, in the form of laws and regulations, is utilized for this study. The research is centred around a literature review coupled with qualitative data analysis.

## 3. Result and Discussion

### 3.1. A brief overview of the Anglo-Dutch Treaty 1824

Indonesia and Malaysia, given their shared historical experiences, faced a significant juncture where external forces played a defining role (Chong, 2012). European powers' colonization of these territories, mainly the Dutch and the English, profoundly shaped the course of their histories. During this period, the Dutch and the English implemented their respective colonial policies, impacting the socio-cultural fabric and political structures of Indonesia and Malaysia in the present time (Gouda, 2008). The consequences of this colonial era continue to reverberate in the contemporary landscapes of both nations, influencing their political dynamics, cultural identities, and economic structures. In essence, the shared history of Indonesia and Malaysia took a decisive turn when European powers, notably the Dutch and the English, left an indelible mark through colonization (D'Haen & Krus, 2000). This historical juncture serves as a crucial point of reference for understanding the complexities and interconnectedness of the two nations, shedding light on the enduring legacies of their colonial pasts in shaping the present-day realities of Indonesia and Malaysia.

In the nineteenth century, both nations signed The Anglo-Dutch Treaty of 1824, commonly known as the Treaty of London or *Verdrag van Londen* in Dutch, a pivotal international agreement between the United Kingdom and the Netherlands (Irwin, 1955). Signed on March 17, 1824, in London, this treaty emerged as a

crucial diplomatic development following the execution of the Anglo-Dutch Treaty of 1814. The signing ceremony occurred where both nations sought to navigate and resolve persistent disputes arising from the earlier treaty. This diplomatic accord was orchestrated to tackle the challenges and disagreements stemming from the prior Anglo-Dutch Treaty of 1814. It marked a concerted effort by the signatories to address the intricacies that had unfolded in the execution of the previous agreement. The negotiations leading up to the 1824 treaty were likely intricate, with representatives from the United Kingdom and the Netherlands engaging in diplomatic dialogues to reach a consensus and establish a foundation for improved bilateral relations (Yazid, 2014).

The Anglo-Dutch Treaty of 1824, therefore, was significant, not only in its immediate context but also in shaping the trajectory of Anglo-Dutch relations. It laid the groundwork for a renewed understanding between the two nations, emphasizing the importance of diplomatic collaboration in resolving disputes and fostering peaceful coexistence. The careful delineation of terms in the treaty was aimed to provide a clear framework for future interactions and collaborations. It set the stage for a more stable and harmonious relationship between the Netherlands and the United Kingdom.

At that time, representing the Dutch side were Hendrik Fagel and Anton Reinhard Falck, individuals entrusted with the responsibility of signing the treaty on behalf of their nation. On the British side, the signatories were George Canning and Charles Williams-Wynn. These individuals played instrumental roles in shaping the terms and conditions of the treaty, embodying the diplomatic prowess and strategic acumen required to navigate the intricacies of international relations during that period. The Anglo-Dutch Treaty of 1824 was crafted to resolve numerous issues stemming from British control of Dutch colonies during the Napoleonic Wars (Moore & Nierop, 2017). Additionally, it sought to address long-standing disputes over trading rights in the Spice Islands, which had persisted between the two nations for centuries. This comprehensive treaty addressed a wide array of concerns, including territorial disputes and trade rights, but notably lacked clear limitations on expansion in Maritime Southeast Asia for the British or the Dutch.

The establishment of Singapore on the Malay Peninsula in 1819 by Sir Stamford Raffles heightened tensions between the British and the Dutch (Wright, 1950). The Dutch argued that the treaty signed between Raffles and the Sultan of Johor, which facilitated the establishment of Singapore, was invalid. They claimed that the Sultanate of Johor fell under Dutch influence. The fate of Dutch trading rights in British India and former Dutch possessions in the region also fuelled tensions between Calcutta and Batavia. As pressure from British merchants with interests in the Far East mounted, negotiations to clarify the situation in Southeast Asia began in 1820. Negotiations between George Canning and Hendrik Fagel commenced on July 20, 1820, with the Dutch staunchly advocating for the British abandonment of Singapore. Eradication of piracy. However, talks were suspended in August 1820. Initially, discussions focused on less contentious issues such as free navigation rights and 1823, coinciding with the British recognition of the commercial value of Singapore.

The resumed negotiations in December 1823 centred on delineating clear spheres of influence in the region (Rush, 2018). Recognizing the unstoppable growth of Singapore, the Dutch proposed abandoning their claims north of the Strait of Malacca and their Indian colonies in exchange for confirmation of their claims south of the strait, including the British colony of Bencoolen or Bengkulu (Tarling, 1957). After the final treaty was signed on March 17, 1824, by Fagel and Canning – the treaty's ratification occurred on April 30, 1824, by the United Kingdom and on June 2, 1824, by the Netherlands. The exchange of ratifications took place in London on June 8, 1824, solidifying the terms of the Anglo-Dutch Treaty of 1824 (Tarling, 1957).

### *3.2. Legal transformations: Pre and post-treaty*

Multiple legal frameworks are a common feature in both historical and past territories of Indonesia and Malaysia, commonly referred to as legal pluralism. Before colonial rule, Indonesia's legal system exhibited this pluralism, with various laws governing different segments of society. The legal system included customary law, rooted in the community's kinship structures across the archipelago, and Islamic law, which governed those practicing Islam. This diversity included customary law and Islamic law. Customary law was based on the kinship system of communities spread across the archipelago, while Islamic law applied to those who adhered to Islam. Indonesia (or the Nusantara region) already had a legal system before Dutch colonialization. As Utrecht explained, upon the arrival of the Dutch, Indonesia had its original legal system, distinct from Dutch law (Sasongko, 2013). The legal policy pursued by the Dutch government aimed to implement several principles such as codification, concordance, unification, dualism, and legal pluralism.

Initially, using these legal principles served the interests of the Dutch in suppressing the people. However, as time progressed, the law was not only used as a means of oppression but also for profit. This period saw the emergence of mercantilism, where the law became a tool for those in power (Sasongko, 2013).

Moreover, in Indonesia, Islamic law and customary law form integral components of the national legal framework alongside various other legal systems, each contributing distinct meanings and functions (Konoras, 2016). However, both Islamic law and customary law exhibit a distinct division as separate and independent legal systems. Consequently, they operate autonomously, maintaining their own distinct identities. The ongoing evolution of both legal systems indicates which one remains sustainable and experiences diminishing relevance or even a reduction in its role over time (Konoras, 2016). Due to the nature of Indonesia's geography, which consisted of many kingdoms, it would be a complex task to pinpoint exactly when the Dutch exerted full control over the archipelago. However, clear evidence and records showed the Dutch's intervention in the local legal system in which they introduced their laws.

The first European legal principle introduced in Indonesia by the Dutch was the Royal Decree of May 16, 1847 – a few years after the officially signed Anglo-Dutch Treaty of 1824 (Penders, 1962). This Royal Decree had introduced several European civil laws into Indonesia, namely the *Reglement op de Rechterlijke Organisatie en Het Beleid der Justitie* (Regulation of Judiciary and the Policy of Justice), also abbreviated as 'R.O.', *Algemene Bepalingen van Wetgeving* (General Provisions of Legislations), abbreviated as 'A.B.', *Burgerlijk Wetboek* (Civil Code), also known as 'B.W.', *Wetboek van Koophandel* (Commercial Code), abbreviated as 'W.V.K', and *Bepalingen Betrekkelijk de Onvermogen, Misdrijven, Begaan ter Gelegenheid van Faillissement en bij Kennelijk, Mitsgaders bij Surseance van Betaling* (Provisions on Crimes relating to Bankruptcy and Insolvency). By then, there was also *Wetboek van Strafrecht* (Criminal Code), also known as 'W.v.S'. By virtue of State Gazette No. 23 of 1847, these laws came into force in the then Dutch East Indies (also known as Netherlands-India). The development of European civil law was then followed by the introduction of the *Regeringsreglement* in 1848, which served as the colonial-made constitution for the Netherlands-India. The *Regeringsreglement* was replaced with the *Nederlandsch-Indische Staatsregeling* in 1926 and mostly updated the classification of the subjects of the Dutch East-Indies (Westra, 1934).

The *Nederlandsch-Indische Staatsregeling* remained as the Constitution of Indonesia under Dutch Colonial Rule until Indonesia's independence on 17th August 1945, when President Soekarno proclaimed independence from the Dutch and the *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (the 1945 Constitution of the Republic of Indonesia) was adopted as the constitution, the supreme law of Indonesia to this day. However, despite being independent for more than seventy years, just like many former colonies, Indonesia retained the civil legal system adopted by its former colonial master (Lev, 2000). It is important to note that despite the legal system being retained, the legal instruments are mostly amended and repealed over time by Indonesian legislators, signalling increasing departure from the Dutch legal legacy.

The Dutch introduced the colonial legal institution through the introduction of the *Raad van Justitie* (Supreme Court), *Residentiegerecht*, and *Hooggerechtshof*. It is important to note that while the Dutch introduced these European-style courts, the only subjects of these courts were the Europeans. Native Indonesians were subject to the *Districtsgerecht*, *Regentschapsgerecht*, *Landraad*, and *Rechtspraak ter Politierol* as the Dutch mooted these courts for their colonial subjects. It is also evident that the Dutch practiced segregation in its administration of justice, as the classes of persons, whether European or non-European, were subjected to different courts despite the legislation being applied equally to everyone. The 1945 Constitution abolished the Dutch colonial court system. Today, the Indonesian judiciary has departed far from its colonial days. While it still retains the inquisitorial role of the courts in proceedings, which is an element of the civil legal system, the court system in Indonesia now applies equally to everyone and is a three-tier system.

Afterward, the first introduction of the colonial legal institution in Malaysia was the introduction of the Court of Judicature in Prince of Wales Island, Malacca, and Singapore (Ramalingam, Sabaruddin, & Dhanapal, 2018). This was brought forth due to the introduction of the Second Royal Charter of Justice in 1826 – two years after the Anglo-Dutch Treaty of 1824. The English-style judiciary in Malaysia continued to receive its update when, in 1855, the Third Royal Charter of Justice was introduced in the Straits Settlements, reorganizing the court systems. In 1867, the administration of the Straits Settlements was transferred from

India to the Colonial Office in London. The transfer was significant as, in 1868, by Ordinance 5, the Court of Judicature of Prince of Wales Island, Malacca, and Singapore was abolished and replaced with the Supreme Court of the Straits Settlements. In 1878, a Court of Appeal was even introduced in the Straits Settlements to cater to the increasing demand for appeal cases. Henceforth, from then on, the judiciary in the Straits Settlements formed the basis of the modern Malaysian judiciary that we can see today (Ibrahim, 1976).

The laws that governed Malaysia prior to the arrival of the British were governed by Sultanates whose legal systems were based on customary law and Islamic law (S. S. S. Ahmad, 2012). These customary laws were based on the *Adat Temenggung* or the *Adat Perpatih*, which the latter is only practiced in Negeri Sembilan and the district of Naning in Melaka (Wook et al., 2020). The arrival of Islam in the region has caused a fusion of the laws into codified legislations, such as the *Hukum Kanun Melaka*, *Undang-Undang 99 Perak* and the *Undang-Undang Tubuh Kerajaan Johor* (Latif, 2017). East Malaysia, which comprises the states of Sabah and Sarawak, was governed by the Sultanates of Brunei and Sulu, respectively (Latif, 2017).

English common law refers to the Laws of England that are unwritten and have been practised in England since the Middle Ages (Caenegem, 1988). The uniqueness of this system is that it is unwritten and somewhat customary in nature. Laws practised in the common law system are generally derived from the English common law courts, where the decisions reached by the judges are to become law, in line with the Latin *Maxim of Stare Decisis*, which means to settle by things decided (Knight & Epstein, 1996). Unwritten law means that the laws derived from the judicial decisions are not codified into legislation, yet they have the same legal effect which is legally binding in the English territories. This system's primary advantage is its flexibility as the execution of justice is fluid in accordance with the current circumstances, and not as rigid as its civil counterpart where laws generally are codified and need to be enacted by legislators.

Another existing English Law is the Principles of Equity (D. A. M. Ahmad, 1991). Equity, in the literal sense, means fairness. The Principles of Equity were introduced in Medieval England when the Common Laws failed to achieve justice for the aggrieved parties, and, hence, the cases were brought before the English Courts of Equity. It is important to note that the English Common Law and Equity do not replace one another, but they coexist and complement each other to achieve justice. In West Malaysia, the historical entities were the Straits Settlements, Federated Malay States, and Unfederated Malay States. The Straits Settlements comprise Penang, Malacca and Singapore. The Federated Malay States comprise Selangor, Perak, Negeri Sembilan and Pahang. The Unfederated Malay States comprise Kedah, Perlis, Kelantan, Terengganu, and Johor. East Malaysia, comprising Sarawak and Sabah, was governed by the Rajah Brooke Dynasty from England for Sarawak and by the British North Borneo Company under British rule.

The first arrival of British Colonial influence in Malaysia was in 1786, when the Island of Penang (Pulau Pinang) was ceded to the British East India Company from the Sultanate of Kedah (Gin, 2015). When the British first acquired Penang, the British administrators faced difficulties exercising law and justice as the legal system practiced in Penang was alien to the British colonists. Hence, they introduced the First Royal Charter of Justice in 1807 in Penang, effectively importing the English Common Law into Penang and modern-day Malaysia. The effect of the First Royal Charter of Justice was that it merely introduced the English Common Law into Penang to fill in the lacunae (absence) of law so far as it fits the local circumstances. The Second Royal Charter of Justice was introduced in 1826, introducing English Common Law into the newly acquired territories of Malacca, Singapore, and Penang for the second time. These three territories are known as The Straits Settlements under British rule. Singapore was acquired in 1819 when Sir Stamford Raffles signed a treaty with the Sultanate of Johor, while Malacca was acquired as a result of the 1824 Anglo-Dutch Treaty.

The Second Royal Charter of Justice also marked the first time English Common Law was introduced in Malaysia after the signing of the Anglo-Dutch Treaty of 1824. English Common Law continued to develop in Malaysia when 1855 the Third Royal Charter of Justice was introduced to the Straits Settlements. Among the purposes of this move was to solve the problem of the justice administration and establish a proper legal system. Following the introduction of the Third Royal Charter of Justice in the Straits Settlements, the legal system of modern-day Malaysia can slowly be seen. 'Recorders' (Judges) were appointed to each of the three states of the Straits Settlements. Previously, a single Recorder was appointed on behalf of all the states in the Straits Settlements, whom many lay judges assisted. It caused a backlog in cases, thus delaying and denying justice. The 'Recorder of Singapore' office was then elevated to the office of 'Chief Justice of Singapore,'

and the ‘Recorder of Penang’ was elevated to the ‘Judge of Penang.’ The Attorney General and Solicitor General were later appointed to help administrate justice in the Straits Settlements. Courts were formally established in the Straits Settlements and were divided into two separate jurisdictions, namely for Penang and the other for Malacca and Singapore. In 1868, the courts were further developed as the Court of Judicature of Prince of Wales Island (Penang), Malacca, and Singapore were abolished and replaced by a supreme and centralized court, the Supreme Court of the Straits Settlements. In 1873, the judiciary of the Straits Settlements received a systematic update to its administrative structure when the posts of Chief Justice, Judge of Penang, Senior Puisne Judge, and Junior Puisne Judge were introduced to supervise the administration of justice. For the introduction of English Common Law in the Federated Malay States, the Civil Law Enactment 1937 (FMS No 3) was introduced, which also introduced the Civil Law in the Federated Malay States. For the Unfederated Malay States, the Civil Law Enactment of 1951 effectively introduced English Common Law and Civil Law to the states. In Sarawak, English Common Law was introduced via the Law of Sarawak Ordinance 1928, while in Sabah, the Civil Law Ordinance 1938 introduced the English Common Law and Civil Law there.

In 1948, the Federation of Malaya was established combining the Straits Settlements (except Singapore), Federated and Unfederated Malay States into one single federated entity. Following this, in 1956 the Civil Law Act 1956 was introduced, uniforming the introduction of the modern-day English Common Law, Principles of Equity and Civil Law into the Federation. On September 16, 1963, the Federation of Malaysia was formed, comprising the former Federation of Malaya, State of Singapore, State of Sarawak and the British Crown Colony of North Borneo (Sabah), and amendments were made to the provisions of the Civil Law Act 1956 that formally incorporated the application of the English Laws in the Federation. As for Sarawak and Sabah, an additional type of English law which is the Statutes of General Application also applies, but its effect is only restricted to the two states, on which the applications differ, respectively. Singapore was ceded from Malaysia on the August 9, 1965, but still maintains somewhat a similar application of English law ever since. In a nutshell, it can be deduced that the current Malaysian Legal System was born as a result of years of updates to the English Law itself, on which, upon the nation’s independence and merger into Malaysia, the legal system is strongly based on the English Common Law albeit it departs further away day by day from the application by its original colonial master.

### *3.3. Assimilation vs. preservation: The dilemma of local legal traditions in Nusantara*

The issues opened in Indonesia and Malaysia, both nestled within the Nusantara archipelago (as an archipelago situated in particular parts of Southeast Asia – namely in the context of past territories of Indonesia and Malaysia), exhibit striking parallels in their historical narratives. Central to this shared heritage is the retention and integration of traditional practices from their ancestral territories. Notably, customary law and Islamic legal principles played pivotal roles in shaping societal norms prior to the establishment of distinct legal frameworks—the civil law system in Indonesia and the common law system in Malaysia. The imprint of colonial powers, namely the Netherlands and England, further molded the social fabric of each nation. Indonesia and Malaysia have rich and diverse cultural heritages predating their colonial histories. Within this context, customary law, rooted in local traditions and practices, and Islamic law, influenced by the religion’s principles, played vital roles in governing societal norms and behaviours. These legal systems regulated interpersonal relations and shaped broader social structures and governance mechanisms.

However, significant changes occurred with the colonial rule of the Dutch in Indonesia and the British in Malaysia. The introduction of European legal systems, characterized by civil law in Indonesia and common law in Malaysia, marked a departure from the traditional legal frameworks. Despite this shift, customary law and Islamic law elements persisted, albeit often marginalized or subordinated to colonial legal structures. The colonial influence extended beyond legal frameworks to impact various aspects of social life. Economic systems, political institutions, and cultural practices transformed under colonial rule, with positive and negative consequences. While the colonial powers introduced infrastructure and administrative systems, they also exploited local resources and labour, leading to social inequalities and cultural disruptions. By then, the historical trajectories of Indonesia and Malaysia, shaped by colonial legacies, highlighted the complex interplay between indigenous traditions and external influences. The enduring presence of customary law and Islamic law amidst colonial legal systems underscores the resilience of local cultures and the ongoing negotiation of identities in the contemporary landscape of both nations.

Since the first time the Dutch anchored in Batavia (now Jakarta) in 1596, Indonesia did not even exist, and they were more likely known as "orang-orang Nusantara" (Nusantara people). Nusantara consisted of many kingdoms and sultanates, each with different cultural and ideological characteristics. The multicultural nature of the Nusantara people was both a gift and a curse. The Dutch exploited this multiculturalism through their company, *Vereenigde Oostindische Compagnie* (VOC), to conquer the Nusantara people using the "*divide et impera*" tactic. This tactic proved effective because the VOC did not need to waste their military resources to defeat other kingdoms. The main objective of this tactic was to provoke other kingdoms by offering rewards such as land, weapons, and wealth if they agreed to start a war with a targeted kingdom (Putra, 2014). Over a hundred years, every kingdom in Nusantara gradually weakened, and the influence of the VOC grew stronger, allowing them to monopolize the market.

In its inception, customary law was upheld and exclusively applicable to the indigenous population (Bumiputera). With the existence of this multicultural environment, there was considerable difficulty in enforcing the European-style legal system in Nusantara. In 1824, after the Anglo-Dutch treaty, exactly in 1838, the Dutch government prevailed with some new legislation, as mentioned earlier (Penders, 1962). The Dutch government undertook the codification of laws, thereby superseding customary law. Even though this legislation applied to indigenous peoples, the Nusantara people were not concerned and prioritized using their customs in the meantime. Therefore, the Dutch government disregarded customs and continued using the applicable law generally to assimilate the European-style law, also known as the civil law system.

The legal system somehow does not fit with the heterogeneous culture of Nusantara people back then. Locals prefer their customary law or Islamic law in the case of a sultanate. Throughout history, both Indonesia and Malaysia have had the same legal systems in the customary law and Islamic law (Shamsul, 2023). One example of the unsuitability of the civil law system with the beliefs of the locals can be seen through the inheritance system. It is related to the amount of the inheritance share and rights. According to the civil law system, it is stated that all children and spouses are heirs and have a right to inheritance. The inheritance is divided equally among all children and spouses. This type of inheritance clashes with the culture of the Nusantara people, who were still using their own customary law. There are cultures that use patrilineal, matrilineal, and parental systems (Judiasih & Fakhriah, 2018). Each system has different mechanisms for sharing inheritance among heirs. The patrilineal system gives an heir only to a son, while the matrilineal system gives an heir only to a daughter. The parental system is more likely to give equal rights to sons and daughters, but in some cases, the amount of shares differs depending on their customs' provisions (Aprilianti & Kasmawati, 2022). Some cultures also use the Shariah system, which gives inheritance to sons, daughters, spouses, and other close family members such as fathers, mothers, and brothers. In the case of having more than one wife, each wife also has a right, as polygamy is not recognized, and only the first wife has the right to inherit.

Christian Snouck Hurgronje observed this phenomenon and researched the socio-legal culture in Nusantara (Armayanto, Suntoro, Basyari, & Zain, 2023). Snouck was a Dutch scholar of Oriental cultures and languages and an advisor on native affairs to the Dutch East Indies colonial government (Doel, 2022). He noted that the first people to use the term "*adatrecht*" to address customary law in Nusantara were in 1893 (Aprilianti & Kasmawati, 2022). *Adatrecht* is an unwritten law preserved by the habits and moral standards of certain tribes. This law needed to align with the written law prevailing at that time to increase acceptance by the locals. Over time, the Dutch government became concerned about the differences in Nusantara's cultural legal systems. Van der Vinne stated that it was anomalous to impose European law in the Dutch East Indies, where a substantial portion of the population adhered to Islam and firmly upheld their local customs and traditions. Finally, in 1926, the Dutch House of Representatives agreed to preserve the diversity of the East Indies population by maintaining customary law as the applicable legal system in the Dutch East Indies territory. This agreement was enshrined in Article 131, paragraph 2b of the *Nederlandsch-Indische Staatsregeling*, which states: "For the indigenous population, the Eastern Foreigners, regulations of law based on their religions and customs apply. Thus, the legal foundation for the applicability of customary law in the Dutch East Indies was established (Hisyam, 2008)." In 1927, the Dutch government began to reject *adatrecht* (customary law unification) and initiated implementing Van Vollenhoven's concept, advocating for the systematic recording of customary law, preceded by thorough research (Vollenhoven, Holleman, & Sonius, 2013). The objective was to advance legal development and assist judges in adjudicating cases in accordance with customary law.

The preservation of customary law coupled with the classification based on racial distinctions has not merely engendered legal uncertainty but has laid the groundwork for pervasive and entrenched systemic legal disparities. This intricate web of legal complexities has significantly obscured the once fundamental principle of equality before the law (Schuck, 1992). The discernible incongruities in the treatment meted out to the Bumiputera community by both the government and the judiciary underscore a profound divergence from the purported ideals of legal uniformity. On the social front, the application of customary law within the community is a realm of relative freedom. However, the intersectionality with regulations promulgated by the Dutch government introduces a stark dichotomy. Land taxes, wielded as instruments of fiscal policy, exhibit a glaring disproportionality, with the burden disproportionately borne by the Bumiputera populace. This fiscal imbalance stands as a testament to the broader systemic economic inequities.

Moreover, the curtailment of numerous rights traditionally vested in the Bumiputera community exacerbates the already complex tapestry of legal disparities. The arbitrary withdrawal of privileges, ranging from autonomy to land cultivation to access to education, amplifies Bumiputera's socio-economic challenges. This orchestrated erosion of rights not only perpetuates an unequal legal landscape but also engenders a palpable sense of marginalization and disenfranchisement within the Bumiputera community. In essence, the intertwining threads of legal, fiscal, and social imbalances collectively contribute to a narrative of systemic inequality, echoing far beyond the realms of jurisprudence.

#### *3.4. Indonesia and Malaysia's legal systems in the present time*

Nowadays, the legal system that applied in Indonesia includes the Dutch legal system in the form of European legal system (civil law system). Moreover, there are also indigenous legal system (customary law), and Islamic legal system (Islamic law) (Lev, 2000). Before Indonesia was colonized by the Dutch, the law used to resolve each settlement what happens in society is using customary law. Before the Dutch colonized Indonesia, disputes in the society were settled using customary law. At that time, customary law was enforced by almost the entire community society in Indonesia. Every region has one regulation regarding customary law differ between one area to another. Customary law was adhered to by society at that time because it contained religious, moral, and traditions as well as high cultural values. According to Van Vollenhoven, Customary law in Indonesia is "largely non-statutory law is customary law and part of Islamic law" (Vollenhoven et al., 2013). Law customs also include laws based on the judge's decisions, which contain the principles of law in the environment where he decides a matter. Customary law is deeply rooted in traditional culture. Customary law is a living law because it incarnates the people's natural legal feelings. Customary law is a system of rules that apply in the life of Indonesian society, which originates from customs that generations of society have respected as a tradition in Indonesia. Before the Dutch came to the Nusantara, the position of customary law was a positive law applied as a law that was real and obeyed by the people at that time Nusantara (Sukendar, 2021).

Malaysia's legal system is considered special because it incorporates elements from the European legal system (civil law system), the indigenous legal system (customary law), and the Islamic legal system (Islamic law). This results in a unique blend of legal principles and practices not found in many other countries (Sartori & Shahar, 2012). Additionally, the recognition of Islamic law in Malaysia adds another layer of complexity to the legal system, as Sharia principles and rules must be integrated with the common law in certain areas, such as family and personal law matters. This combination of legal traditions makes Malaysia's legal system unique and distinct from those of other countries. The system is a hybrid system that combines elements of the common law system and Islamic law. It is based on the Federal Constitution, which is the supreme law of the land, and federal and state courts are responsible for interpreting and applying the laws. The judiciary is independent, and the highest court is the Federal Court, followed by the Court of Appeal, the High Court, and the Sessions Court. The Federal Constitution protects individual rights and freedoms, such as freedom of speech, religion, and assembly. Islamic law is also recognized and applied in Malaysia, particularly in personal and family law matters for Muslim citizens. The country has a parallel system of Islamic courts, and Muslim citizens may choose to have their cases heard by these courts. The Malaysian legal system also recognizes the customary laws of Malaysia's various ethnic groups, and these laws may be applied in cases involving land and property rights, inheritance, and other cultural practices. Overall, the Malaysian legal system is unique due to its blend of common law, Islamic law, and customary law and its adaptation to the cultural and historical context of the country.



The law was not created solely to organize, but more than that to create prosperity and justice in society. So, the law continues to follow developments that occur in public. Empirically, law is seen as part of a social phenomenon. At first, there was no hesitation regarding the state's ability to be autonomous and regulates and organizes people's lives. The law becomes a tool in the hands of power to make what you want to come true. The legal state that is being developed is not absolute *rechtsstaat*, but democratic *rechtsstaat* (rule of law democratic). Consequence of the rule of law democracy is the supremacy of the constitution as a form of implementation of democracy. A workable democracy can function and maintain national political stability and create an effective, strong, and accountable society where social sorting is very high. Socrates stated that the essence of law is justice. Law functions to serve the needs of justice in society. The law refers to a rule of living in accordance with the ideals of living together, namely justice. Plato proclaimed an order in which only the public interest takes priority, namely the participation of all people in the idea of justice. More precisely, he proclaimed a country where justice would be achieved perfectly. Justice will be realized through political activity, and those who give birth to legal products are indeed biased on the values of justice itself. Regardless of the working process, legal institutions must work independently to provide certainty and legal protection. The basis for the formation of the law itself, which is carried out by political institutions as well, must contain the principles of establishing the law fairly.

Indonesia and Malaysia share a plethora of common grounds, such as common histories, common languages, common customs, common religion, and common geography, with the peoples sharing a strong bond of kinship (Milne, 2019). However, despite all these common grounds, there were times when these neighbouring countries found themselves at odds with each other, such as during the period of *Konfrontasi* (1963 - 1966) when President Soekarno mooted for the policy of *Ganyang Malaysia* (literally, 'Crush Malaysia') (Irshanto, Yulifar, & Sjamsuddin, 2020). It shows how, despite Malaysia and Indonesia having so much in common, both countries are distinct in their own ways, the same applies to their legal legacies.

For the similar aspects in legal legacies for both countries, firstly, the current legal system practiced in both nations was introduced by their European colonial masters for the purpose of administering justice, according to European standards. Malaysia was introduced to the English common law system, while Indonesia was introduced to the Dutch civil law system. Perhaps the existing legal systems in the predecessor of both countries did not meet the standards of the European imperialists, and it was difficult for them to execute their administration without introducing their own legal systems into their colonies. The second aspect of similarities for both countries' legal legacies is the nature of the laws introduced by their respective colonial masters. Both countries have an ambiguous legal system, ambiguous in that it is unclear whether the laws are secular or Islamic/theocratic.

For Malaysia, the Federal Constitution, the supreme law of the land, was originally intended to be secular. However, due to staunch and persistent persuasion by the Malay rulers and the ruling federal government at the time it was tabled in 1956 by the Reid Commission, Article 3 was hastily inserted into the Federal Constitution, and Clause (1) of Article 3 provides Islam as the official religion of the federation. Interestingly, by virtue of Article 160 (2) of the Federal Constitution, Islamic Law is not recognized as an official source of law in Malaysia. Instead, the Administration of Islamic Laws is delegated to state legislatures to enact so far as it does not contradict the Federal Constitution. The same applies to the Indonesian context. Originally, the first *sila* of the Indonesian Pancasila (the official foundational philosophy of Indonesia), which can be found in the Jakarta Charter (*Piagam Jakarta*) was '*Kepercayaan kepada Tuhan yang maha-Esa dengan kewajiban menjalankan syariat Islam bagi pemeluknya*' (Believe in almighty God and the obligation to abide by the Islamic Sharia for Muslims). However, the last seven words were deleted and currently it only covers '*Kepercayaan kepada Tuhan yang maha-Esa*' (Believe in almighty God). This clearly indicates the ambiguity of Indonesian law as the laws are neither secular nor Islamic/theocratic. The same applies to its Malaysian counterpart.

As for the different aspects of the legal legacies of both countries, the first difference is the legal system itself (Nedzel, 2010). Indonesia practices a civil legal system which emphasizes the importance of codified laws and ignores the rigid doctrine of *stare decisis*. It signifies that Indonesian judges have more discretion to decide cases based on their interpretation of the facts and law, as well as the more inquisitorial role of the judges when handling cases. As for Malaysia, it practices the common law system that emphasizes the harmony between codified laws and case laws. The doctrine of *stare decisis* reigns supreme, and judges may not decide on cases arbitrarily as they are bound by precedents. The role of judges when handling cases is

more passive in nature, as lawyers from both spectrums fiercely present their cases which favour their clients, while the judge acts as a referee. This is also known as an adversarial system.

Another different aspect of the legal legacies is the perspective of jurisprudence. Indonesia adheres to the positivist school of thought, as this is a distinct feature of the Dutch civil law system. Laws reign supreme and ought to be followed under this doctrine, although they might produce unfair results. Conversely, Malaysia adheres to the Principles of Equity inherited from the English common law. Under the Principle of Equity, naturalist and sociologist schools of thought reign supreme compared to the positivist school of thought, as laws are meant to produce equitable results, not rigid and unfair ones.

For legal positivism, interestingly, Malaysian courts are still adhering to the old English legal positivism practice, albeit such principle is no longer practised in England. Malaysian courts treat the law as *lex*, not *jus* and *recht* (Faruqi, 2018). This means that despite how undesirable the law is, if it is enacted according to the correct procedures and guidelines underlined by the constitution, parent law, and judicial precedents, courts are not bound to strike out such laws. The role of the judiciary is to interpret laws, not to make them, as it is the privilege of the parliament or state legislatures to make laws. Despite this positivist stance, Malaysian judges are slowly departing from judicial passivism, although at a slower pace. It is important to note, however, that this is one of the only few remaining aspects of the Malaysian legal system that still adheres to positivism.

In the present context, both nations face future legal needs shaped by their unique historical and cultural contexts. As they strive for justice and prosperity, they must balance traditional values with contemporary demands. These differing perspectives on the differences in legal systems that the Anglo-Dutch Treaty influenced highlight the need for ongoing dialogue and adaptation to meet the evolving needs of their societies. Ultimately, the pursuit of justice and the rule of law remains paramount, guiding both nations toward a future where legal systems serve as instruments of fairness and societal progress.

#### 4. Conclusion

The Anglo-Dutch Treaty of 1824 was an agreement between Great Britain and the Netherlands, which was signed on March 17, 1824 to resolve disputes from the Anglo-Dutch Treaty of 1814. The agreement sought to resolve tensions that arose due to the British establishment in Singapore in 1819 and Dutch claims to the Sultanate of Johor. Negotiations began in 1820 and initially centred on non-controversial issues. However, in 1823, discussions turned towards establishing a clear area of influence in Southeast Asia. The growth of Singapore led to a territorial exchange, with the British giving up Bencoolen and the Dutch giving up Malacca. The treaty was ratified by both countries in 1824. The treaty's terms were comprehensive, ensuring trade rights for subjects of both countries in regions such as British India, Ceylon, and Indonesia, Singapore, and modern Malaysia. The treaty also included regulations against piracy, provisions about not making exclusive treaties with Eastern states, and established guidelines for establishing new offices in the East Indies.

Certain territorial exchanges were made: the Netherlands gave up its establishment in the subcontinent India and the city and fort of Malacca, while England handed over Fort Marlborough in Bencoolen and its territory in Sumatra. Both countries also withdrew their rejection of the occupation of certain islands. The implications of the Anglo-Dutch Agreement in 1824 had long-term impacts. This agreement delimited two areas: Malaya, under British rule, and the Dutch East Indies. These territories later developed into modern Malaysia, Singapore, and Indonesia. The agreement also marked a change in British policy in the region, emphasizing free trade and the influence of individual traders over its territories and spheres of influence, thus paving the way for the rise of Singapore as a leading free port. The interactions between these nations have altered history and highlighted the commonalities of formerly united peoples now divided into separate states. They underscore the opportunity for us to leverage these shared experiences to strengthen law enforcement through principles of tolerance and unity in the region, thereby gaining moral advantages.

In both Indonesia and Malaysia, a blend of customary and Islamic legal systems is employed. However, colonial influence introduced European legal systems, with Indonesia, under Dutch rule, primarily adopting a civil law system, while Malaysia, influenced by the English, adopted common law. The Dutch introduced the first European legal principle in Indonesia through the Royal Decree of May 16, 1847, 23 years after the signing of the Anglo-Dutch Treaty in 1824.

Similarly, in Malaysia, the first colonial legal institution, the Court of Judicature in Prince of Wales Island, Malacca, and Singapore, was established with the introduction of the Second Royal Charter of Justice in 1826, two years after the Anglo-Dutch Treaty. Despite these legal introductions, the heterogeneous culture of the Nusantara people did not align well with the imposed legal systems, as locals often preferred customary or Islamic law, particularly in sultanates. Throughout history, both Indonesia and Malaysia have maintained similar legal systems regarding customary and Islamic laws. Presently, both countries uphold unique legal systems despite their shared historical background. The legal separation delineated by treaties primarily pertains to legal frameworks, although there are implications for law enforcement in the region.

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