*Unnes Law Journal*
ISSN: 2252-6536 (Print) 2722-4503 (Online)
Vol. 12 Issue 1 (2026) 401-436
DOI: https://doi.org/10.15294/ulj.v12i1.49651
Online since: October 30, 2026

# Colonial Law and Racism: Revealing the Hierarchy of Justice in the Colonial Period in Indonesian History

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## Abstract

This study examines how colonial law institutionalized racial hierarchy and structured unequal access to justice in the Dutch East Indies. Employing a qualitative legal-historical approach integrated with Critical Race Theory (CRT), the research analyzes colonial legal instruments, judicial arrangements, and historical scholarship to investigate the relationship between racial classification, legal pluralism, and institutional inequality. The analysis focuses on the *Regeringsreglement* (RR), *Indische Staatsregeling* (ISR), *Burgerlijk Wetboek* (BW), *Herzien Inlandsch Reglement* (HIR), *Wijkenstelsel*, *Passenstelsel*, and *Intergentiel Recht*. The findings demonstrate that colonial racial classification established differentiated legal statuses that shaped applicable law, judicial jurisdiction, procedural arrangements, and administrative regulation. These mechanisms operated as an interconnected institutional system through which racial hierarchy was legally organized and reproduced. Spatial restrictions further regulated residence and mobility, while inter-group

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law accommodated relationships across legally differentiated populations without dismantling the broader colonial hierarchy. The study also identifies normative and institutional continuities after Indonesian independence, while recognizing that inherited legal structures underwent significant constitutional and institutional transformations. By integrating legal-historical analysis with CRT, this article conceptualizes the colonial *hierarchy of justice* as an institutional architecture connecting racial classification, procedural differentiation, spatial governance, and inter-group legal relations. It contributes to scholarship on colonial legal pluralism by demonstrating how the recognition of legal diversity could coexist with unequal institutional authority, while highlighting the historical complexities and continuing challenges of legal decolonization in Indonesia.

**KEYWORDS** *Colonial Law; Racial Hierarchy; Dutch East Indies; Legal Pluralism; Hierarchy of Justice; Critical Race Theory*

# Introduction

The Dutch East Indies was a colony of the Netherlands, which ruled until 1942. Today, the Dutch East Indies has evolved into the Unitary State of the Republic of Indonesia (NKRI), a sovereign, independent state free from foreign colonial rule. Furthermore, the 1945 Constitution states that Indonesia is a state based on law.[1] The state and its citizens are subject to applicable laws. During the Dutch East Indies colonial period, laws were applied according to specific racial groups. Law is a rich source of norms because it documents the structure of the state. Law reflects the distribution of political, social, and economic benefits. Colonial law, which shaped the Indonesian state's genetic makeup, was primarily intended to facilitate exploitation. The pluralism of the Dutch East Indies and its indirect rule required that both Dutch and Indonesian societies be well-equipped with the institutions they needed to play their assigned roles. Still, the Indonesians had to be willing to submit to the Dutch.[2]

The Indonesian legal system was influenced by the racial hierarchy imposed by the Dutch colonial government. Racial injustice in colonial law

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[1] Eka An Aqimuddin, "Revisiting the History of Colonialism and International Law in Indonesia: The Legacies of G. J. Resink," Comparative Legal History 12, no. 2 (2024): 161–81, https://doi.org/10.1080/2049677X.2024.2419233.

[2] D. S. Lev, "Colonial Law and the Genesis of the Indonesian State," in In Law and Society in East Asia (Routledge, 1983).

created a discriminatory social structure in which an individual's rights and obligations were heavily influenced by the racial classifications created by colonialism.[3] This system strengthened social bonds and fostered community ties that persist to this day. This is important because it explains how colonial law functioned not only as an administrative tool but also as a mechanism of social control that weakened the racial dominance and economic power of colonial groups vis-à-vis other individuals and groups.[4] Social Hierarchy and Racial Identity were synonymous with the legal system in Indonesia during the colonial period.

The colonial legal system created racial boundaries that influenced how groups were treated legally and socially. Understanding this history helps explain persistent social inequalities in Indonesia. Colonial historical narratives often emphasize economic and political aspects, while legal aspects and racial justice receive less attention.[5] This study broadens the understanding of colonial history by examining law as a tool of social control. Understanding racial injustice in colonial law can provide the basis for more inclusive and equitable legal reforms in Indonesia.[6]

Racial discrimination was problematic in the legal system. The Dutch colonial government enacted laws that differentiated people by social status and race. Even after independence, this system maintained legal inequality. Inability to achieve egalitarian justice for indigenous people: Colonial law often prioritized the interests of European elites and certain groups, such as Indo-Eurasians (Eurasians) and Foreign Orientals (Chinese and Arabs). As a result, indigenous people often struggled to access a just legal system. Legal subjects differed under customary and colonial law. Although the Dutch colonial government recognized customary law, it remained subject to it. Meanwhile, colonial judicial institutions such as the Raad van Justitie and the

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[3] Maarten Manse, "The Plural Legacies of Legal Pluralism: Local Practices and Contestations of Customary Law in Late Colonial Indonesia," Legal Pluralism and Critical Social Analysis 56, no. 3 (2024): 328–48, https://doi.org/10.1080/27706869.2024.2377447.

[4] Sanne Ravensbergen, "Meetings and Minutes: Spaces of Lawmaking and Legal Translation in Colonial Indonesia," Journal of Southeast Asian Studies 54, no. 4 (2023): 736–59, https://doi.org/10.1017/S0022463423000711.

[5] Yannick Coenders, "Colonial Recursion: State Categories of Race and the Emergence of the 'Non-Western Allochthone,'" American Journal of Cultural Sociology 12, no. 4 (2024): 698–729, https://doi.org/10.1057/s41290-024-00214-y.

[6] Farabi Fakih, "Settler Cities in the Dutch Indies: Race, Class and the Emergence of Settler Colonialism," Journal of Southeast Asian Studies 54, no. 1 (2023): 132–53, https://doi.org/10.1017/S002246342300022X.

Landraad prioritized colonial interests, resulting in unequal legal treatment for indigenous people. Like the dualism of civil and criminal law, the modern justice system still inherits colonial law.

The history of legal views on race during the colonial period is crucial for understanding how the colonial legal system created and maintained social inequality. Previous studies have shown how the Dutch colonial government systematically established a racially based social hierarchy, which impacted all aspects of Indonesian society during the colonial period. The colonial government established a social stratification system that placed Europeans at the top, followed by Arabs, Indians, and Chinese, and indigenous people at the bottom. This hierarchy led to segregation in various aspects of life, such as employment, housing, and education, and reinforced systematic discrimination against indigenous communities.[7] However, the response of indigenous communities to, or their adaptation to, this hierarchical racial structure remains unclear. Racial justice in Indonesian colonial law provides important insights into how law was used as a tool of social control and racial domination. By understanding the legal hierarchy implemented during the colonial era, we can identify colonial legacies in the current legal system and encourage more inclusive legal decolonization efforts. Recent trends in this field demonstrate the growing breadth of academic approaches used to delve deeper into how colonial legal injustices shape social dynamics in Indonesia to this day.[8]

The study of colonial law and racism in the context of Indonesian history has undergone significant development in the past two decades. Recent research demonstrates that colonial law was not merely an administrative tool but a system consciously designed to sustain colonial power structures and create a social hierarchy anchored in racial categories. In this context, the primary focus of recent scholarship revolves around how the racial divisions of colonial populations into Europeans, Foreign Orientals, and Indigenous peoples were formalized in law and then systematically applied in judicial arrangements, civil rights, and access to justice.

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[7] Jan Breman and Honorary Fellow at the International Institute of Social History and Emeritus Professor of Comparative Sociology at the University of Amsterdam, Netherlands, "Colonialism and Its Racial Imprint," Journal of Social Issues in Southeast Asia 35, no. 3 (2020): 463–92, https://doi.org/10.1355/SJ35-3c.

[8] Franz Von Benda-Beckmann and Keebet Von Benda-Beckmann, "Islamic Law in a Plural Context:The Struggle over Inheritance Law in Colonial West Sumatra," Journal of the Economic and Social History of the Orient 55, nos. 4–5 (2012): 771–93, https://doi.org/10.1163/15685209-12341269.

Research in the field of constitutional law positions the 1925 Indische Staatsregeling (ISR) as the constitutional instrument that most clearly illustrates the configuration of colonial law. The ISR not only established a centralized, authoritarian colonial government but also regulated the racial classification of the population, which, in turn, determined the legal jurisdiction applicable to each group. Recent research emphasizes that the ISR is a clear example of how the law was used to institutionalize social inequality. This racial classification is not merely an administrative category, but rather a mechanism that influences the quality of legal protection and the type of justice to which a person has access.[9]

On the other hand, studies on legal pluralism demonstrate that the colonial legal hierarchy operated through jurisdictional divisions. European law was applied to Europeans, mixed law to Easterners, and customary or Islamic law to indigenous people. Recent research underscores that this pluralism was not a recognition of local legal diversity, but rather a colonial strategy to maintain social distance,[10] maintain power,[11] and prevent the formation of a unified legal structure.[12] Much recent research also reveals that customary law and religious courts were deliberately placed in a subordinate position, with limited scope for authority and always under the supervision of colonial authorities.

Beyond the historical context, contemporary studies also highlight the continuity of colonial racial logic in the post-independence Indonesian legal system. Research on citizenship law shows that categories such as "indigenous" and "non-indigenous" are a continuation of colonial racial classifications previously regulated in the Indonesian Constitution.[13] Although Indonesia implemented major reforms to its citizenship law in 2006, several studies have

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[9] Alison Fischer, "Colonialism, Context and Critical Thinking: First Steps Toward Decolonizing the Dutch Legal Curriculum," Utrecht Law Review 18, no. 1 (2022): 14–28, https://doi.org/10.36633/ulr.764.

[10] Maroni Maroni, "Problema Penggantian Hukum-Hukum Kolonial Dengan Hukum-Hukum Nasional Sebagai Politik Hukum," Dinamika Hukum 12 (n.d.): 85–96.

[11] Qodril R. Miftahul et al., "Evolusi Politik Hukum Nasional Dari Masa Kolonial Hindia Belanda Hingga Era Pasca Mode Baru," Asa 7, no. 2 (n.d.): 159, https://doi.org/https://doi.org/10.24127/hj.v7i2.2045.

[12] D. Santoso, "Politik Hukum Pemerintah Kolonial Terhadap Peradilan Agama.," Nizam 4, no. 1 (2014).

[13] Sally Engle Merry, "Legal Pluralism," Law & Society Review 22, no. 5 (1988): 869–96, https://doi.org/10.2307/3053638.

found that a hierarchical, race-based mindset continues to influence administrative practices and the legal bureaucracy across various sectors.[14]

A recent trend in the literature is the use of critical theory, particularly Critical Race Theory (CRT) and decolonial approaches, to re-read the phenomenon of colonial law. Research using this approach asserts that colonial law not only left a normative legacy but also shaped ways of thinking and legal culture that tend to favor dominant groups.[15] This critical approach seeks to demonstrate that legal reform efforts cannot be carried out without dismantling the racial framework inherited from colonialism.[16]

Based on these research developments, it can be concluded that the state of the art in several studies emphasizes the close relationship between law and colonial power structures. While several studies have addressed aspects of legal politics and colonial legal pluralism, there is still room for research that combines analysis of colonial legal archives with critical race theory. Research focusing on the hierarchy of justice and the empirical traces of colonial legal racism in contemporary Indonesian legal practice is an important contribution that still needs to be strengthened.

Research on racial justice in Indonesia's colonial legal system is crucial for uncovering the colonial legacy in the modern legal system. Many aspects of legal inequality inherited from the colonial era continue to influence legal policy in Indonesia, both in legal practice and in public perceptions of justice. This research also seeks to explain social hierarchy and racial identity. The colonial legal system created racial boundaries that influenced how groups were treated legally and socially. Understanding this history helps explain persistent social inequalities in Indonesia. Another important reason for this research is that it provides a new perspective on colonial history, as colonial narratives often emphasize economic and political aspects, while legal and racial justice aspects receive less attention. This study broadens the understanding of colonial history by viewing law as a tool of social control. This research can also support legal decolonization efforts; understanding racial injustice in colonial law can provide the basis for more inclusive and

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[14] Basuki Rahmat and Asep Nurjaman, "The Intersections of Politics, Law and Social Stratification in Indonesia," International Journal of Humanities, Social Sciences and Education 11, no. 10 (2024): 36–44, https://doi.org/10.20431/2349-0381.1110004.

[15] Carsten Stahn, "Reckoning with Colonial Injustice: International Law as Culprit and as Remedy?," Leiden Journal of International Law 33, no. 4 (2020): 823–35, https://doi.org/10.1017/S0922156520000370.

[16] S. Rifa'i D. et al., "Deconstructing Colonial Law Through Critical Race Theory in Indonesian Regulations," Jurnal Pelita Raya 1, no. 1 (n.d.): 46–60.

equitable legal reform in Indonesia. This latest study not only highlights colonial legal practices themselves but also how racial injustice in colonial law continues to influence the legal system and social policy in Indonesia.

Existing scholarship has established that colonial legal pluralism in the Dutch East Indies was closely intertwined with racial classification, differentiated jurisdiction, and unequal access to legal protection. Studies of colonial governance have demonstrated how European, Foreign Oriental, and Indigenous populations were incorporated into distinct legal categories, while scholarship on legal pluralism has examined the coexistence and hierarchical organization of European, customary, and religious legal systems. More recent decolonial and critical legal scholarship has further emphasized that colonial law cannot be understood as a politically neutral system of legal diversity, but must be situated within broader structures of colonial power.

Despite these contributions, three analytical gaps remain. First, studies of colonial legal pluralism have often examined racial classification, substantive law, judicial procedure, and spatial regulation as separate institutional domains, leaving insufficient attention to how these mechanisms operated as an interconnected architecture of racial governance. Second, although the racial differentiation embedded in colonial law has been widely acknowledged, fewer studies have systematically connected specific legal provisions and judicial arrangements to the reproduction of racialized access to justice. Third, the relationship between these colonial institutional structures and the continuing challenge of legal decolonization in post-independence Indonesia requires further critical examination.

This study addresses these gaps by combining legal-historical analysis with Critical Race Theory (CRT) to examine colonial law as an interconnected system of racial governance. Rather than treating the Burgerlijk Wetboek (BW), Regerings Reglement (RR), Indische Staatsregeling (ISR), Herzien Inlandsch Reglement (HIR), Wijkenstelsel, and Passenstelsel as isolated legal instruments, the study analyzes how they collectively structured legal status, judicial access, mobility, and socio-economic relations across racial categories. In doing so, the article conceptualizes the colonial "hierarchy of justice" as an institutional configuration in which racial classification determined not only which law applied to an individual, but also the courts, procedures, rights, and forms of legal protection available to different groups.

The research questions in this study are: 1) How did colonial legal codifications, particularly the Regerings Reglement (RR), Indische Staatsregeling (ISR), Burgerlijk Wetboek (BW), and Herzien Inlandsch Reglement (HIR), construct and institutionalize racial hierarchies in the

Dutch East Indies? 2) How did differentiated judicial procedures and spatial control policies, particularly the HIR, Wijkenstelsel, and Passenstelsel, interact to regulate access to justice, mobility, and socio-economic relations among different racial groups? And 3) To what extent did these colonial legal structures produce institutional legacies that continued to shape Indonesian legal culture and legal reform after independence?

This study employs a qualitative legal-historical approach combined with Critical Race Theory (CRT) to examine how colonial law constructed, institutionalized, and reproduced racial hierarchy in the Dutch East Indies. The historical method is employed through the interconnected stages of heuristics, source criticism, interpretation, and historiography.[17] Rather than treating these stages merely as procedural steps, the study combines historical source criticism with legal-textual analysis to reconstruct the historical context in which colonial legal rules were produced and to examine their institutional consequences. Such an approach is particularly important when dealing with historical legal sources, whose interpretation requires attention to provenance, institutional context, potential bias, and comparison with other contemporary sources.[18]

The primary-source corpus consists of colonial legal instruments regulating racial classification, civil status, judicial procedure, and spatial mobility. These include the *Regerings Reglement* (RR) of 1854, the *Indische Staatsregeling* (ISR), the *Burgerlijk Wetboek* (BW), the *Herzien Inlandsch Reglement* (HIR), and regulations associated with the *Wijkenstelsel* and *Passenstelsel*. Where relevant, the analysis also considers colonial regulations governing legal relations across population groups, including the *Regeling op de Gemengde Huwelijken* (Staatsblad 1898 No. 158)[19], as well as documented colonial judicial decisions and contemporary legal publications. Particular attention is given to colonial legal publications and case reporting because such materials provide important evidence of how colonial legal norms were interpreted and operationalized by judges, legal scholars, and administrators. As Koenig demonstrates, publications such as the *Indisch Tijdschrift van het Recht* constitute important sources for reconstructing the production,

[17] H. Sjamsuddin, Metodologi Sejarah (Ombak, 2012).

[18] Kipping, M., Wadhwani, R. D., & Bucheli, M. (2014). Analyzing and interpreting historical sources: A basic methodology. In M. Bucheli & R. D. Wadhwani (Eds.), Organizations in Time: History, Theory, Methods. Oxford University Press.

[19] Regeling Op de Gemengde Huwelijken (GHR), Pub. L. Nos. 1–2, 158 Staatsblad 1898.

interpretation, and institutional operation of law in the late colonial Dutch East Indies. [20]

Secondary sources consist of scholarly works on Dutch colonial law, legal pluralism, racial classification, colonial courts, and legal decolonization. Sources were selected purposively according to three criteria. First, the legal instrument or historical document had to explicitly or functionally differentiate legal status, jurisdiction, procedure, or mobility according to colonial population categories. Second, the source had to provide evidence of how formal legal differentiation affected access to rights, courts, property, movement, or legal protection. Third, the source had to contribute to explaining the relationship between legal differentiation and the broader structure of colonial governance.

Source criticism was conducted at both external and internal levels. External criticism examined the provenance, authorship, publication context, and authenticity of the sources, whereas internal criticism assessed their content, institutional position, and potential biases. Where possible, interpretations were triangulated across statutory regulations, judicial materials, contemporary legal publications, and secondary scholarship. This process is consistent with historical-source analysis that emphasizes source criticism, triangulation, and contextual interpretation as means of addressing the partiality and historically situated character of documentary evidence. [21]

Critical Race Theory functions in this study as an analytical framework rather than merely as a normative critique of colonial discrimination. CRT emphasizes that racism may operate through ordinary and institutionalized legal arrangements rather than solely through explicit individual prejudice, thereby directing attention to the relationship between race, law, and institutional power.[22] In this study, two interconnected analytical concepts are particularly important: structural racism and the racialization of legal institutions. Structural racism is used to examine how inequality was embedded in the institutional organization of law, courts, administrative

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[20] Koenig, M. (2024). The Indisch Tijdschrift van het Recht, 1915–1947: A critical reassessment of Dutch colonial legal sources. Bijdragen tot de Taal-, Land- en Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia, 180(1), 62–94.

[21] Kipping, M., Wadhwani, R. D., & Bucheli, M. (2014). Analyzing and interpreting historical sources: A basic methodology. In M. Bucheli & R. D. Wadhwani (Eds.), Organizations in Time: History, Theory, Methods. Oxford University Press.

[22] Delgado, R., & Stefancic, J. (2012). Critical Race Theory: An Introduction (2nd ed.). New York University Press.

authority, and spatial regulation. Racialization is employed to analyze how colonial legal categories transformed socially constructed racial distinctions into legally consequential statuses that determined applicable law, jurisdiction, procedural protection, and mobility.

The analytical procedure proceeds through four stages. First, relevant legal provisions and institutional arrangements are identified within the primary sources. Second, differences in legal status, jurisdiction, rights, and procedures among Europeans, Foreign Orientals, and Indigenous populations are comparatively examined. Third, these differences are interpreted through CRT to determine how formally differentiated legal arrangements produced or reproduced structural racial inequality. Finally, the findings are situated within the broader historical development of Indonesian law to assess institutional continuities and transformations between colonial legal structures and post-independence legal reform.

This methodological integration enables the study to move beyond a descriptive account of colonial legislation toward an analysis of colonial law as an institutional system of racial governance. By combining historical source criticism, legal-textual analysis, and CRT, the study examines how seemingly technical distinctions concerning legal status, jurisdiction, procedure, residence, and mobility collectively constituted an architecture through which racial hierarchy was legally organized and maintained.

# Racial Classification and the Legal Architecture of Colonial Inequality

Racial hierarchy in the Dutch East Indies was not merely a reflection of social differentiation; it was progressively transformed into a legally operative structure through colonial legislation. An important foundation of this structure was Article 109 of the *Regeringsreglement* (RR) of 1854, which established a fundamental distinction between Europeans (*Europeanen*) and Indigenous peoples (*Inlanders*) and determined the legal significance of persons who were formally equated with either category. Yoshida (2002) argues that Article 109 constituted a critical legal basis for the construction of "European" and "Inlander" as distinct colonial legal subjects, with consequences extending beyond private law into the administrative and social organization of colonial society. [23] The classification was therefore not simply

[23] Coppel, C. A. (1997). Revisiting Furnivall's 'Plural Society': Colonial Java as a Mestizo Society? Ethnic and Racial Studies, 20(3), 562–579; Yoshida, M. (2002). Colonialism

descriptive: it provided a legal framework through which differentiated rights and legal regimes could be institutionally organized.

The classificatory system subsequently became more elaborate. Chinese, Arabs, and other Asian populations had initially been legally associated with the Indigenous category rather than constituting an entirely separate third category. The amendment of Article 109 adopted in 1906 and implemented in 1920 established Foreign Orientals (*Vreemde Oosterlingen*) as a distinct legal category. This development was later consolidated in Article 163 of the *Indische Staatsregeling* (ISR), under which the colonial population was organized into three principal legal groups: Europeans, Foreign Orientals, and Indigenous peoples. The transition from the earlier binary structure of Article 109 RR to the more differentiated classification of Article 163 ISR demonstrates that racial categorization was not static; it developed alongside the changing administrative, economic, and political requirements of colonial governance. [24] More importantly, the categories acquired institutional significance because an individual's classification affected the body of law and legal institutions applicable to that person.

The legal consequences of this classification become clearer when Article 163 ISR is read together with Article 131 ISR. Whereas Article 163 defined the principal population categories, Article 131 provided the framework for determining the private-law regimes applicable to them. For Europeans, the colonial legislator was guided by the principle of concordance (*concordantiebeginsel*), under which private law in the Dutch East Indies was to correspond substantially with the private law applicable in the Netherlands. The concordance principle was embodied in Article 131(2)(a) ISR and provided the normative basis for the privileged institutional position of European private law within the colonial legal system. Consequently, European residents were principally governed by codified Western private law, whereas the legal position of Indigenous peoples was structured differently and continued to involve their respective *adat* norms. Article 131 and Article 163 therefore operated together: one classified colonial subjects, while the other connected those classifications to differentiated legal regimes.

The *Burgerlijk Wetboek voor Nederlandsch-Indië* (BW) provides a concrete illustration of this differentiated legal architecture. The colonial civil code, promulgated through Staatsblad 1847 No. 23 and brought into force in

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and the Rule of Law: The Creation of "European" and "Inlander" in the East Indies. Southeast Asian Studies, 40(2), 115–140

[24] Yoshida, M. (2002). Colonialism and the Rule of Law: The Creation of "European" and "Inlander" in the East Indies. Southeast Asian Studies, 40(2), 115–140.

1848, regulated central areas of private law, including persons, property, obligations, and inheritance. Its institutional position, however, cannot be understood independently of colonial population classification. The European population was principally governed by the Western civil-law regime, while Indigenous populations generally remained subject to their respective *adat* laws in private matters, subject to the regulatory mechanisms through which colonial legislation could modify the applicable regime. The resulting legal pluralism was therefore closely connected to legally defined population status rather than being based upon a uniform conception of legal citizenship.

This differentiation requires a more critical understanding of colonial legal pluralism. The continued operation of *adat* cannot simply be interpreted as evidence that the colonial state respected indigenous legal autonomy. Although *adat* norms continued to regulate important areas of Indigenous social and private life, their legal position existed within a broader colonial constitutional framework that classified the population and determined the institutional relationship between different normative orders. European law, *adat*, and other normative systems did not coexist within a politically neutral legal space. Their respective spheres of application were organized by a colonial state that retained the authority to classify legal subjects and determine the institutional conditions under which different bodies of law would be recognized and applied. In this sense, colonial legal pluralism simultaneously accommodated normative diversity and reproduced differentiated legal status.

The distinction is particularly significant when viewed through Critical Race Theory. CRT directs attention away from an understanding of racial inequality that depends exclusively on explicit discriminatory intent and toward the institutional arrangements through which racial differentiation becomes normalized within law. In the Dutch East Indies, racialized inequality could therefore operate through apparently technical legal rules concerning population status, applicable law, jurisdiction, and legal capacity. Once racial classification determined the normative system to which an individual was assigned, inequality no longer depended solely on individual acts of racial prejudice; it could be reproduced through the ordinary operation of colonial legal institutions.

The interaction between Articles 131 and 163 ISR consequently reveals a central feature of the colonial hierarchy of justice. Article 163 transformed social and racial distinctions into legally consequential population categories, while Article 131 linked those categories to differentiated normative regimes. The *concordantiebeginsel*, in turn, ensured a close institutional connection

between European subjects in the colony and the codified private-law system of the Netherlands. Together, these mechanisms produced what may be described as a racialized architecture of legal differentiation: a structure in which one's position within the colonial population order affected not merely social status but the legal framework through which civil relations, rights, and legal protection were organized.

This architecture also created practical problems that reveal the limits of treating colonial population groups as isolated legal communities. Economic transactions, property relations, employment arrangements, and family relations frequently crossed legally constructed racial boundaries. The existence of such relationships generated questions concerning which legal regime should apply when persons classified under different population categories entered into the same legal relationship. These problems subsequently contributed to the development of *Intergentiel Recht*, or inter-racial/inter-group law, which will be examined in a later section. Before turning to these cross-group relations, however, it is necessary to examine how racial classification also shaped access to colonial courts and procedural protection. The following section therefore analyzes the differentiated judicial structure and the procedural regimes through which the colonial hierarchy of justice was institutionally enforced.

## Procedural Injustice and Racialized Access to Justice

The racial classification embedded in the colonial legal order affected not only the substantive law applicable to different population groups but also the institutional pathways through which justice was administered. The Netherlands East Indies developed a plural judicial structure in which population classification was closely connected to differentiated courts and procedural regimes. As Lev, demonstrates, colonial judicial organization was characterized by legal pluralism: subjects of European law and subjects of Indigenous law were generally processed through distinct judicial hierarchies, although institutional connections existed between them. [25] For Indigenous litigants and defendants in Java and Madura, the *Landraad* constituted the principal court of first instance for important civil and criminal matters, whereas the *Raad van Justitie* occupied a central position within the European

[25] Lev, D. S. (1965). The politics of judicial development in Indonesia. Comparative Studies in Society and History, 7(2), 173–199.

judicial hierarchy and also exercised appellate or revisional jurisdiction over certain decisions originating from the Indigenous judicial system. Contemporary legal commentary similarly described the *Landraad* as the ordinary court for Indigenous persons in Java and Madura, while appeals from its decisions could, in specified circumstances, reach the *Raad van Justitie*.[26]

This differentiation was accompanied by distinct procedural codes. European courts, including the *Raad van Justitie*, operated principally under the *Reglement op de Burgerlijke Rechtsvordering* (Rv) in civil proceedings and the *Reglement op de Strafvordering* (R.Sv.) in criminal proceedings. By contrast, proceedings involving Indigenous populations in Java and Madura were principally governed by the *Inlandsch Reglement*, subsequently revised as the *Herzien Inlandsch Reglement* (HIR).[27] The distinction was therefore institutional as well as normative: population status could affect the court before which a person appeared and the procedural framework governing the adjudication of the case. The existence of different procedural regimes complicates any interpretation of colonial legal pluralism as a merely benign accommodation of normative diversity. Procedural pluralism was embedded within the same racialized architecture that differentiated colonial legal subjects.

A closer reading of the HIR is important because procedural inequality cannot be established simply by identifying isolated provisions and describing them as discriminatory. Article 118 HIR, for example, concerns relative jurisdiction in civil proceedings and principally determines the competent court according to the defendant's residence or other connecting factors. It does not, by itself, establish a racially discriminatory rule. Similarly, Article 173 HIR regulates judicial presumptions in civil evidence, permitting non-statutory presumptions to be considered when they are significant, precise, determinate, and mutually consistent. Article 310 belongs to a different procedural context: it concerns criminal evidence and defines *aanwijzingen* (indications) derived from acts, events, or circumstances that, in their relationship to one another and to the offence, may indicate both the commission of an offence and the person responsible. These provisions demonstrate the internal sophistication of the HIR, but their significance for racial hierarchy emerges only when they are situated within the broader

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[26] Scheuer, H. J. (1910). Hervormingen in de Indische rechtsbedeeling. Onze Eeuw, 10; Lev, D. S. (1965). The politics of judicial development in Indonesia. Comparative Studies in Society and History, 7(2), 173–199.

[27] Herzien Inlandsch Reglement (HIR). https://id.scribd.com/document/1022739878/Herzien-Inlandsch-Reglement-ocr?

institutional context in which the HIR itself constituted the procedural regime assigned principally to a legally differentiated population.

The central issue is therefore not that every procedural provision applicable to Indigenous litigants was inherently discriminatory. Rather, racial classification structured access to different procedural systems. This distinction is crucial. The Rv and R.Sv. were developed for courts serving the European legal order, while the HIR organized civil and criminal procedure within the Indigenous judicial structure. Colonial procedural inequality should consequently be examined at the level of institutional design: who was assigned to which court, which procedural code governed the proceedings, what forms of professional legal assistance were institutionally available, how prosecution was organized, and what avenues of review or appeal could be accessed. Such an approach reveals structural differentiation without requiring the unsupported assumption that every rule contained in the HIR necessarily disadvantaged Indigenous litigants.

The organization of legal assistance provides a concrete example. Colonial procedural sources indicate that the Indigenous criminal process did recognize legal assistance. Under Article 254 of the *Inlandsch Reglement*, an accused before the *Landraad* could be assisted by a *raadsman*, and such a representative was not necessarily required to be a professionally trained lawyer. The more institutionalized mechanism of assigned professional defence (*toegewezen verdediger*), however, was structured differently. Article 120 R.Sv. provided for assigned defence within criminal proceedings before the *Raad van Justitie*, whereas Article 250 (4) of the *Inlandsch Reglement* provided assigned defence in *Landraad* proceedings for cases carrying the death penalty. Contemporary analysis of colonial criminal procedure consequently observed that professional or expert defence counsel appeared only in a limited proportion of ordinary *Landraad* proceedings (Jonkers, as discussed in the colonial procedural literature). The distinction should not be interpreted as the complete absence of defence rights for Indigenous defendants; rather, it illustrates how the availability and professionalization of legal assistance differed across the colonial procedural regimes.

The prosecutorial structure further demonstrates this institutional differentiation. Lev notes that the European judicial hierarchy was supported by the *Openbaar Ministerie*, including legally trained *officieren van justitie*, while the prosecutorial organization associated with the Indigenous judicial system developed through the *djaksa*[28]. The positions were not institutionally

[28] Lev, "Colonial Law and the Genesis of the Indonesian State."

identical in professional status, authority, or relationship to the judiciary. Consequently, differentiated procedural justice was reproduced not only through statutory rules but also through the professional organization of the institutions responsible for investigation, prosecution, adjudication, and defence. The resulting hierarchy was therefore embedded in the administrative structure of colonial justice itself.

Preventive detention (*preventieve hechtenis*) provides another illustration of why the colonial procedural order must be analyzed comparatively rather than through a simple binary assumption that every European procedural rule was protective and every Indigenous rule was repressive. Both the R.Sv. and the *Inlandsch Reglement* contained provisions governing detention, and the colonial regulation of preventive detention changed over time. Moreover, certain proceedings before the *Landgerecht* did not permit preventive detention for minor offences within its jurisdiction. This complexity is analytically significant: racialized procedural inequality did not operate through a uniform pattern in which every procedural protection was categorically absent from Indigenous courts. Instead, it arose from the differentiated institutional allocation of courts, codes, professional assistance, prosecutorial arrangements, and procedural remedies. Such differentiation created unequal legal pathways even where individual provisions might appear formally neutral.

The criminal proceedings against Soekarno and other leaders of the *Partai Nasional Indonesia* (PNI) before the *Landraad* of Bandung in 1930 provide a documented example of how this judicial architecture operated in practice. Colonial archival records preserve the judgment of the *Landraad* in the case, which was also published through the *Indisch Tijdschrift van het Recht*. The *Indisch Verslag* for 1931 records that the prosecution involved Soekarno, Gatot Mangkoepradja, Maskoen, and Soepriadinata and that the decision of the *Landraad* of Bandung was subsequently subjected to revision before the *Raad van Justitie* in Batavia. The case therefore demonstrates the institutional relationship between an Indigenous first-instance court and a higher court situated within the European judicial hierarchy.

The PNI case must nevertheless be interpreted cautiously. It does not demonstrate that Indigenous defendants were categorically denied legal defence. Soekarno and his co-defendants were represented and were able to present extensive arguments before the court; Soekarno's own defence speech, later published as *Indonesië klaagt aan!* (*Indonesia Menggugat*), became one of the best-known documents associated with the proceedings. The significance of the case for the present analysis lies elsewhere. It illustrates how politically

consequential Indigenous defendants were processed through the *Landraad* and how review of the resulting judgment involved the *Raad van Justitie*. In other words, the case makes visible the differentiated institutional pathway that otherwise appears only abstractly in colonial procedural regulations.

The relationship between the *Landraad* and *Raad van Justitie* also reveals an important paradox in the colonial administration of justice. The two judicial structures were differentiated according to colonial legal status, yet they were not entirely autonomous. Decisions originating within the Indigenous judicial hierarchy could enter institutions associated with the European judicial system through appellate or revisional mechanisms. Colonial procedural pluralism therefore combined separation with hierarchical interconnection. The Indigenous legal subject was differentiated at the level of first-instance jurisdiction and procedural regime while remaining incorporated into a wider colonial judicial order whose institutional apex and professional authority were strongly shaped by European legal institutions.

From the perspective of Critical Race Theory, this arrangement demonstrates how racial inequality can become embedded in institutional structures without requiring every individual legal provision to contain explicitly racial language. The crucial mechanism was the prior classification of legal subjects. Once colonial law assigned individuals to legally differentiated population categories, those categories could influence the courts, procedural codes, prosecutorial institutions, and forms of legal assistance through which justice was administered. Racialization thus operated institutionally: race was converted into legal status, and legal status shaped procedural pathways.

This perspective also refines the concept of the colonial "hierarchy of justice" advanced in this study. The hierarchy did not consist simply of Europeans receiving legal protection while Indigenous populations received none. Such a formulation would obscure the complexity of colonial judicial practice and the procedural rights that existed within the HIR. Rather, the hierarchy consisted of differentiated institutional arrangements in which legal subjects classified through the colonial racial order encountered different courts, procedural regimes, and professional structures. Procedural inequality was therefore structural rather than reducible to a single discriminatory provision.

The procedural architecture examined here also interacted with administrative mechanisms operating beyond the courtroom. Colonial governance regulated where particular populations could reside, how they could move, and under what conditions they could participate in urban and economic life. The following section therefore moves from judicial procedure

to the spatial dimension of colonial legal control, examining how the *Wijkenstelsel* and *Passenstelsel* complemented legal classification and differentiated judicial institutions in reproducing racial and socio-economic hierarchy.

## Spatial Control and the Socio-Economic Reproduction of Racial Hierarchy

The racialized organization of colonial justice extended beyond the courtroom into the regulation of residence, mobility, and economic participation. While colonial legal classification determined the normative regimes and judicial institutions applicable to different population groups, spatial regulations influenced the geographical and social conditions under which those groups interacted. The *Wijkenstelsel* and *Passenstelsel* provide important examples of how colonial administrative law complemented the differentiated legal order by regulating the settlement and movement of particular populations, especially Chinese and other Foreign Oriental communities. These arrangements suggest that the colonial hierarchy of justice operated not only through unequal legal status and procedural differentiation but also through administrative mechanisms that shaped access to urban space, commercial networks, and social mobility.

The *Wijkenstelsel*, associated with colonial regulations including Staatsblad 1835 No. 37, formed part of a broader administrative framework for organizing residential settlement according to legally recognized population distinctions. In practice, the regulation of designated residential quarters was particularly significant for Chinese communities, whose presence in colonial towns was simultaneously connected to commercial activity and subjected to administrative supervision. The significance of this arrangement cannot be reduced to the physical separation of ethnic communities. Rather, residential differentiation provided colonial authorities with an institutional mechanism through which population identification, surveillance, and the regulation of everyday social interaction could be organized. As studies of colonial urban development demonstrate, ethnic distinctions were incorporated into the spatial organization of Indonesian cities, although actual residential patterns were more complex than a rigid model of complete racial separation.[29] would suggest (Colombijn and Barwegen, 2009; Raben, 2020).

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[29] Freek Colombijn and Martine Barwegen, "Racial Segregation in the (Post) Colonial City: The Case of Indonesia1," Urban Geography 30, no. 8 (2009): 838–56, https://doi.org/10.2747/0272-3638.30.8.838; Remco Raben, "Colonial Shorthand and

The *Passenstelsel* complemented residential regulation by subjecting certain forms of movement to administrative authorization. Regulations associated with the pass system, including those identified in Staatsblad 1816 No. 25 and Staatsblad 1866 No. 56, indicate the historical development of colonial controls over mobility. However, the existence of these regulations should not be interpreted as evidence that every member of a particular population category was continuously prohibited from travelling. The analytical issue concerns the differential administrative conditions under which movement could be authorized, monitored, or restricted. Where the ability to move depended upon official permission, mobility became connected to the discretionary authority of colonial administration rather than operating solely as an ordinary aspect of individual freedom.

The interaction between residential regulation and mobility control was particularly consequential for economic relations. Colonial urban economies depended upon commercial exchanges that frequently crossed the boundaries established by population classification. Chinese merchants, Indigenous producers, European enterprises, and other commercial actors participated in interconnected markets, despite their differentiated legal and administrative positions. Spatial regulation therefore operated within a fundamental contradiction: colonial economic activity required interaction across population groups, while colonial governance simultaneously sought to classify, supervise, and regulate those interactions. The resulting arrangement did not eliminate inter-group economic relations but subjected them to an unequal administrative framework.

This relationship requires distinguishing the intended regulatory functions of colonial policy from its demonstrable socio-economic consequences. Residential segregation and mobility restrictions could affect opportunities to establish commercial relationships, access markets, and participate in urban economic life. Nevertheless, the precise extent of these consequences varied according to locality, period, occupation, and the administrative implementation of particular regulations. Colonial cities were not socially homogeneous spaces, and legally differentiated populations did not necessarily remain confined within entirely separate economic environments. The historical significance of spatial regulation therefore lies less in the assumption of absolute segregation than in the colonial state's

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Historical Knowledge: Segregation and Localisation in a Dutch Colonial Society," Journal of Modern European History 18, no. 2 (2020): 177–93, https://doi.org/10.1177/1611894420910903.

capacity to make residence and movement objects of differentiated administrative control.

From the perspective of Critical Race Theory, these spatial arrangements illustrate how racialization operated through legal institutions that were not exclusively concerned with courts or formal rights. Structural racism may be reproduced through administrative decisions concerning where people are permitted to reside, under what conditions they may travel, and how their participation in economic activities is regulated. In the Dutch East Indies, population classification provided an institutional framework within which spatial differentiation could acquire legal and administrative consequences. The *Wijkenstelsel* and *Passenstelsel* thus reveal an additional dimension of colonial racial governance: the transformation of legally recognized population distinctions into differentiated conditions of everyday social and economic participation.

The relationship between spatial control and judicial differentiation also demonstrates why colonial legal inequality must be examined as an interconnected institutional system. Courts and procedural codes regulated the formal administration of justice, while residential and mobility regulations influenced the conditions under which colonial subjects participated in social and economic life. These mechanisms were distinct in their immediate legal functions, but they operated within the same broader colonial order of population classification and administrative authority. The resulting hierarchy was therefore not confined to judicial institutions; it extended into the regulation of social space and the organization of economic relationships.

This interpretation also qualifies the concept of colonial legal pluralism. The coexistence of differentiated legal regimes did not necessarily entail equivalent autonomy for the populations governed by them. Even where distinct communities retained particular legal practices or participated in cross-group economic relations, colonial authorities continued to exercise regulatory power over residence, mobility, and administrative identification. The colonial hierarchy of justice consequently involved more than the allocation of different bodies of substantive and procedural law. It also concerned the unequal institutional conditions under which legally classified populations could exercise social and economic agency.

The spatial dimension of colonial governance therefore reinforces the central argument of this study: racial hierarchy was reproduced through the interaction of legal classification, judicial organization, and administrative regulation. Yet the persistence of commercial, familial, and social relationships across population boundaries also exposed the practical limitations of a legal

system organized around differentiated racial categories. These cross-group relationships generated questions concerning the applicable law when individuals belonging to different legal populations entered into shared transactions or personal relationships. The following section examines how colonial law addressed these problems through *Intergentiel Recht* and why the regulation of inter-group relations revealed both the flexibility and the structural limits of colonial legal pluralism

## Inter-Racial Law and the Limits of Colonial Legal Pluralism

The differentiated legal architecture of the Dutch East Indies created a fundamental problem within colonial governance. Although colonial legislation classified Europeans, Foreign Orientals, and Indigenous peoples into distinct legal populations, social and economic relations frequently crossed these legally constructed boundaries. Commercial transactions, property relations, inheritance disputes, and marriages could involve individuals governed by different systems of private law. Such interactions raised questions that could not always be resolved through the straightforward application of a single population-based legal regime. The development of *Intergentiel Recht*, commonly understood as inter-group or inter-racial law, reflected the need to address these conflicts within a colonial legal order organized around differentiated legal status. Its significance lies in the contradiction between the administrative maintenance of separate legal populations and the practical necessity of regulating relationships between them.

The emergence of *Intergentiel Recht* must be understood within the broader structure of colonial legal pluralism. As discussed in the first section, Articles 131 and 163 of the *Indische Staatsregeling* established the relationship between population classification and the application of differentiated legal regimes. However, the existence of multiple legal systems within the same territory necessarily generated conflicts concerning which law should govern relationships involving persons subject to different normative orders. Inter-group law developed as a mechanism for resolving such questions, particularly where European civil law, Indigenous *adat*, and other legally recognized systems intersected. Kollewijn's scholarship on *Intergentiel Recht* subsequently emphasized the principle that different legal systems should not automatically be regarded as unequal in juridical value.[30] This principle was significant

[30] Kollewijn, R. D., Intergentiel Recht (van Hoeve, 1955).

because it challenged the assumption that European law should invariably prevail whenever different legal traditions came into contact.[31]

Nevertheless, the formal recognition of different legal systems did not eliminate the structural inequalities within which those systems operated. Lev (1983) demonstrates that the colonial legal order could accommodate rules for resolving disputes between persons belonging to different legal populations while maintaining the institutional distinction between European and Indigenous legal systems. In certain civil disputes involving parties from different groups, the applicable judicial forum could be determined by the defendant's legal position, while particular commercial transactions could bring Indigenous participants within the operation of European commercial law. Indigenous persons could also submit voluntarily, either wholly or for specified transactions, to European legal provisions. These mechanisms indicate that colonial legal boundaries were neither entirely rigid nor impermeable. Yet their flexibility operated within a framework in which colonial authorities retained the power to determine the circumstances under which different legal regimes applied.

The regulation of mixed marriages provides a particularly revealing illustration of this contradiction. The *Regeling op de Gemengde Huwelijken* (Staatsblad 1898 No. 158) established a general framework for marriages between persons subject to different laws in the Dutch East Indies. Article 1 defined mixed marriage in terms of differences in applicable law rather than exclusively through racial ancestry. This distinction is important because legal population status and racial identity did not always correspond in a simple or uniform manner. A marriage could therefore be legally classified as mixed because the spouses were subject to different normative systems, even though the relevant distinction was not necessarily reducible to biological or ethnic difference. The regulation consequently illustrates how colonial legal classification shaped the juridical recognition of intimate and familial relationships.

Article 2 of the 1898 regulation further established that a woman entering a mixed marriage would, during the marriage, follow the legal status of her husband in matters of public and private law. This provision demonstrates that the resolution of inter-group legal differences could involve the reallocation of legal status within the marital relationship. Rather than

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[31] G. J. Resink, "Conflictenrecht van de Nederlands-Indische Staat in Internationaalrechtelijke Zetting," Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia 115, no. 1 (1959): 1–39, https://doi.org/10.1163/22134379-90002244.

removing the significance of differentiated legal categories, the regulation provided a mechanism through which spouses could be incorporated into a legally defined marital status. The principle also reveals the intersection of gender hierarchy and colonial legal classification. The husband's legal position became decisive in determining the wife's legal status, indicating that the administration of legal plurality was shaped not only by distinctions among population groups but also by unequal relations within the family.

The mixed-marriage regulation therefore complicates any interpretation of colonial legal pluralism as an arrangement based solely on the coexistence of autonomous legal communities. On one level, the regulation acknowledged that relationships across legal populations were legitimate subjects of legal recognition. On another level, it required those relationships to be interpreted through rules established by the colonial state. The resulting arrangement did not necessarily prohibit inter-group marriage or require the automatic application of European law in every case. Instead, it incorporated cross-group relationships into a framework in which legal differences were recognized and managed through state-defined connecting principles. The limits of pluralism thus appeared in the distinction between recognizing multiple legal traditions and allowing the populations governed by those traditions to determine independently the legal consequences of their relationships.

Resink's examination of colonial conflict-of-laws doctrine provides an important qualification to the argument that inter-group law simply imposed European legal supremacy.[32] His analysis shows that the principle associated with mixed-marriage regulation could be understood within a broader juridical conception that treated different legal systems as formally eligible for application. The difficulty arose when a concrete dispute required a decision about which system would actually govern the relationship. Formal equality among normative orders did not, by itself, determine the practical outcome of a conflict-of-laws question. The decisive issue was how connecting factors, institutional interpretation, and the applicable conflict rules selected one legal system over another. This distinction is essential because it locates the potential reproduction of hierarchy within the mechanisms of legal selection and institutional authority rather than assuming that every inter-group legal rule necessarily privileged European law.

The relationship between formal legal equality and institutional inequality is especially significant when considered alongside the differentiated

[32] Resink, "Conflictenrecht van de Nederlands-Indische Staat in Internationaalrechtelijke Zetting."

judicial structure examined in the preceding sections. Inter-group legal relations did not operate independently of colonial courts, procedural rules, and administrative institutions. Even where a conflict-of-laws principle formally recognized the possible application of Indigenous or other non-European law, the interpretation and enforcement of that principle remained situated within the broader colonial judicial order. Legal plurality could therefore coexist with unequal institutional authority. The recognition of *adat* as a potentially applicable body of law did not necessarily imply equivalent control over the institutions responsible for interpreting, supervising, or enforcing that law.

This tension also appears in the colonial treatment of customary law. Research on late colonial legal pluralism demonstrates that *adat* was not simply a fixed body of Indigenous norms preserved unchanged by colonial administration. Colonial efforts to identify, classify, and formalize customary law interacted with local practices and contestations, producing legal arrangements that could differ substantially from administrative expectations.[33] Consequently, the legal systems brought into contact through *Intergentiel Recht* were themselves historically shaped by relations of power. The apparent coexistence of European law and Indigenous customary law should therefore not be understood as an encounter between entirely independent and internally homogeneous normative orders. Colonial institutions participated in defining the boundaries, recognition, and interpretation of the very legal traditions whose conflicts they subsequently sought to resolve.

From the perspective of Critical Race Theory, the significance of *Intergentiel Recht* lies in the relationship between formally neutral legal coordination and the reproduction of differentiated legal status. Conflict-of-laws rules may appear technical because they determine applicable law through juridical categories rather than explicitly asserting racial superiority. Yet, in the Dutch East Indies, these categories operated within an institutional environment structured by colonial population classification. The question of which law applied to a marriage, commercial transaction, or inheritance relationship could therefore depend upon legal statuses that had already been differentiated through colonial governance. Racialization was reproduced not necessarily through the explicit language of every conflict rule, but through

[33] Maarten Manse, "The Plural Legacies of Legal Pluralism: Local Practices and Contestations of Customary Law in Late Colonial Indonesia," Legal Pluralism and Critical Social Analysis 56, no. 3 (2024): 328–48, https://doi.org/10.1080/27706869.2024.2377447.

the continued juridical significance of population categories in determining the legal consequences of social relationships.

At the same time, applying CRT to inter-group law requires recognizing the historical complexity of colonial legal practice. The existence of mechanisms permitting cross-group transactions, the application of Indigenous law in certain disputes, and the theoretical recognition of equality among legal systems prevents a simplistic characterization of *Intergentiel Recht* as uniformly exclusionary. These mechanisms could provide practical means of resolving legal conflicts and recognizing relationships that crossed population boundaries. Their existence nevertheless did not dissolve the wider institutional structure of colonial inequality. The analytical distinction is therefore between the flexibility of particular legal rules and the distribution of authority within the legal system as a whole. A plural legal order could accommodate cross-group relationships while continuing to reproduce differentiated legal status through its institutions.

The limits of colonial legal pluralism consequently emerged from the relationship between normative accommodation and institutional control. *Intergentiel Recht* addressed the practical difficulties created by the coexistence of multiple legal systems, but it did so without fundamentally removing the colonial state's authority to classify populations and regulate the legal consequences of their interactions. The 1898 mixed-marriage regulation demonstrates how cross-group relationships could be legally recognized while remaining governed by rules that reflected differentiated status and gender hierarchy. Likewise, the application of conflict-of-laws principles in commercial and civil relationships illustrates how legal flexibility could coexist with the unequal organization of colonial judicial authority.

This analysis adds a further dimension to the concept of the colonial hierarchy of justice. The hierarchy was not maintained exclusively through the separation of legal populations, differentiated judicial procedures, or restrictions on residence and mobility. It was also reproduced through the institutional mechanisms used to manage relationships that crossed those divisions. Colonial legal pluralism was therefore characterized by a dual movement: it established differentiated legal communities while developing rules that enabled interaction among them. The existence of inter-group law revealed the practical limitations of racial separation, but its operation also demonstrated the capacity of colonial institutions to preserve the legal significance of racialized population categories within an increasingly interconnected society.

The historical importance of this contradiction extends beyond the colonial period. The coexistence of European-derived legislation, customary law, religious norms, and inter-group legal principles presented post-independence Indonesia with a complex legal inheritance. The challenge was not merely to replace colonial legal terminology but to reconsider the institutional arrangements through which legal diversity had been organized and administered. The following section therefore examines the continuities and transformations of colonial legal structures after independence and considers the extent to which legal decolonization has addressed the institutional foundations of the colonial hierarchy of justice.

## Colonial Legal Continuities and the Challenge of Decolonization

The proclamation of Indonesian independence in 1945 marked a fundamental transformation in the political legitimacy of the legal order established during Dutch colonial rule. However, political independence did not immediately result in the replacement of the legal institutions, procedural arrangements, and normative frameworks inherited from the colonial period. The newly independent Indonesian state faced the complex task of establishing a national legal system while maintaining institutional continuity and legal certainty. This tension between political transformation and legal inheritance constitutes an important dimension of the colonial hierarchy of justice examined in this study. Although the formal racial classifications that structured colonial legal governance were no longer consistent with the constitutional principles of an independent republic, several colonial legal instruments and institutional arrangements continued to influence the development of Indonesian law. The historical significance of this continuity lies not in the assumption that colonial racial discrimination remained unchanged, but in the ways inherited legal structures were retained, adapted, and reinterpreted within a fundamentally different political order.

The constitutional foundation for this continuity was provided by the Transitional Provisions of the 1945 Constitution, which permitted existing laws and regulations to remain applicable until replaced by new legislation. This arrangement reflected the practical necessity of preventing a legal vacuum during the transition from colonial administration to national sovereignty. Consequently, legal instruments originating in the colonial period continued to operate within the Indonesian legal system, although their constitutional basis and political legitimacy had changed. Lev (1983) emphasizes the

significance of colonial legal institutions in the formation of the Indonesian state, demonstrating that the relationship between colonial law and post-independence legal development cannot be understood exclusively through a narrative of institutional rupture. The Indonesian legal system emerged through a process in which inherited legal structures interacted with nationalist political aspirations, constitutional principles, and the institutional requirements of the new republic.

One of the clearest examples of normative continuity was the continued application of the *Burgerlijk Wetboek* (BW), which originated in the colonial civil-law system. As discussed in the first section, the BW had operated within a differentiated legal framework in which its application was closely connected to colonial population classification. Following independence, the continued use of the civil code did not necessarily reproduce the original racial foundations of its colonial application. Nevertheless, its retention demonstrates how a legal instrument developed within a racially differentiated colonial order could survive the political transformation that formally rejected that order. The distinction between the historical origins of legislation and its subsequent legal operation is therefore essential. Colonial legal continuity must be examined through the changing scope, interpretation, and institutional application of inherited rules rather than through the assumption that their original political functions remained entirely intact.

The continued influence of colonial procedural law provides another important illustration. The *Herzien Inlandsch Reglement* (HIR), previously associated with judicial proceedings involving Indigenous populations in Java and Madura, remained influential in Indonesian civil procedural practice after independence. Its continued application demonstrates how procedural arrangements originally developed within a differentiated colonial judicial structure could be incorporated into the national administration of justice. However, the transformation of its institutional context is equally significant. The HIR no longer operated as a procedural code assigned to a population classified as Indigenous within the colonial racial hierarchy. Instead, its provisions were retained and applied within the judicial framework of an independent state. This transformation indicates that the survival of colonial legal norms did not necessarily entail the preservation of their original racial jurisdictional boundaries.

The development of Indonesian criminal procedure further illustrates the distinction between continuity and legal transformation. The enactment of Law No. 8 of 1981 concerning the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, KUHAP) represented an important

effort to replace inherited colonial criminal procedural arrangements with a national procedural framework. This reform was significant because it established a more unified statutory basis for criminal proceedings and articulated procedural protections within the constitutional order of independent Indonesia. Nevertheless, the adoption of national legislation did not automatically resolve every institutional problem associated with access to justice, professional legal assistance, or the exercise of prosecutorial and judicial authority. The historical question is therefore not simply whether colonial procedural rules were formally replaced, but how far legal reform transformed the institutional practices through which justice was administered.

This distinction is particularly important when considering the historical development of judicial and prosecutorial institutions. As demonstrated in the second section, the colonial administration maintained differentiated judicial structures involving the *Landraad*, *Raad van Justitie*, *Openbaar Ministerie*, and *djaksa*. These institutions reflected the organization of colonial legal authority and the differentiation of legal populations. The post-independence judicial system did not preserve this racial division in its original form. Nevertheless, the development of national courts and prosecutorial institutions involved the reorganization of legal practices, professional roles, and administrative arrangements with historical connections to the colonial period. Lev's analysis of judicial development in Indonesia is particularly relevant because it situates institutional transformation within broader struggles over political authority, judicial independence, and the organization of legal power.[34] Such an interpretation suggests that legal decolonization involved not merely changing the formal identity of judicial institutions but redefining their relationship to state authority and the populations they served.

The challenge of legal decolonization also concerns the position of customary law within the national legal system. Under colonial governance, *adat* was recognized and administered within a legal framework that differentiated populations and allocated authority among European, Indigenous, and other normative systems. Following independence, customary law continued to occupy an important position in Indonesian legal development, but its political and constitutional significance changed. The recognition of *adat* could no longer be understood solely through the colonial classification of Indigenous legal subjects. Instead, it became connected to

[34] Lev, "Colonial Law and the Genesis of the Indonesian State."

debates concerning national legal identity, local legal traditions, and the relationship between legal unification and normative diversity. Studies of legal pluralism demonstrate that customary law has never been merely a passive collection of traditional norms; its interpretation and application have been shaped by historical processes of institutional recognition, local contestation, and political.[35]

The historical relationship between colonial legal pluralism and post-independence legal diversity therefore requires careful differentiation. The coexistence of multiple legal traditions is not inherently discriminatory, nor does the recognition of customary or religious law necessarily reproduce colonial racial hierarchy. The central issue concerns the institutional conditions under which different normative systems are recognized, interpreted, and applied. In the colonial period, these conditions were closely connected to racial classification and the unequal distribution of political authority. Within an independent constitutional state, the legitimacy of legal diversity must instead be evaluated in relation to equality before the law, constitutional rights, and the protection of citizens against arbitrary treatment. The transformation from colonial pluralism to national legal pluralism consequently involves a fundamental change in the principles through which legal differentiation is justified.

The constitutional principle of equality before the law provides an important normative basis for evaluating this transformation. Article 27(1) of the 1945 Constitution establishes the equal position of citizens before the law and government, while Article 28D(1), introduced through constitutional amendment, guarantees recognition, protection, and fair legal certainty as well as equal treatment before the law. These constitutional principles stand in fundamental contrast to the colonial legal architecture in which population classification determined the applicable legal regime and influenced access to judicial institutions. Nevertheless, constitutional equality should not be equated automatically with the elimination of every form of institutional inequality. The distinction between formal legal equality and substantive access to justice remains important for evaluating whether legal institutions provide effective protection across different social and economic circumstances.

From the perspective of Critical Race Theory, the transition from colonial law to national law raises a broader question concerning the

[35] Von Benda-Beckmann and Von Benda-Beckmann, "Islamic Law in a Plural Context"; Manse, "The Plural Legacies of Legal Pluralism," 2024.

relationship between formal legal reform and structural transformation. CRT emphasizes that institutional inequality cannot always be identified solely through explicitly discriminatory legal provisions. Legal systems may formally recognize equality while continuing to produce unequal outcomes through institutional practices, administrative discretion, or unequal access to legal resources. Applied to the Indonesian historical context, this perspective encourages critical examination of whether inherited legal structures were transformed in ways that altered their institutional effects. However, the existence of contemporary inequality cannot, by itself, establish a direct causal relationship with colonial racial classification. Demonstrating such continuity requires historically specific evidence connecting particular colonial institutions, subsequent legal reforms, and contemporary practices.

This methodological qualification is especially important for assessing the long-term consequences of the colonial hierarchy of justice. The present study establishes that colonial law organized legal status, judicial procedures, residence, mobility, and inter-group relations through differentiated institutional arrangements. It also identifies examples of legal instruments and institutional practices that survived, in modified forms, beyond independence. These findings support an argument concerning the historical influence of colonial legal structures on Indonesian legal development. They do not, however, establish that contemporary legal inequalities are simply unchanged manifestations of colonial racial discrimination. The relationship between colonial institutions and present-day legal practices is mediated by independence, constitutional reform, national legislation, changing political authority, and the continuing development of Indonesian society.

The significance of legal decolonization therefore extends beyond the formal repeal of colonial legislation. It involves critically examining the historical assumptions embedded in legal institutions, the distribution of authority within judicial and administrative systems, and the relationship between legal recognition and effective access to justice. Stahn, in discussing the broader problem of colonial injustice and legal responsibility, emphasizes the need to confront the historical role of law in sustaining colonial domination.[36] In the Indonesian context, such an approach requires attention to both the discriminatory foundations of colonial legal governance and the transformations introduced through national legal development. Decolonization should consequently be understood as an ongoing process of

[36] Carsten Stahn, "Reckoning with Colonial Injustice: International Law as Culprit and as Remedy?," Leiden Journal of International Law 33, no. 4 (2020): 823–35, https://doi.org/10.1017/S0922156520000370.

institutional evaluation rather than a single legislative event completed through political independence.

The preceding analysis demonstrates that the colonial hierarchy of justice operated through several interconnected mechanisms. Racial classification established differentiated legal subjects; judicial and procedural arrangements organized unequal institutional pathways; spatial regulations shaped residence and mobility; and inter-group law managed relationships that crossed legally constructed population boundaries. These mechanisms collectively constituted an institutional architecture through which colonial authority organized social relations and maintained differentiated legal status. The post-independence transformation of Indonesian law altered the constitutional legitimacy and formal organization of this architecture, yet the continued influence of selected colonial legal instruments demonstrates the complexity of replacing an inherited legal order.

The central challenge of legal decolonization is therefore not simply to eliminate every legal norm originating in the colonial period, but to ensure that inherited institutions and legal principles are evaluated and transformed in accordance with constitutional equality, legal accountability, and substantive justice. The historical analysis developed in this study suggests that understanding the colonial origins of legal differentiation is essential for identifying the institutional conditions under which inequality was originally produced. At the same time, meaningful assessment of contemporary legal inequality requires independent empirical investigation rather than an assumption of uninterrupted colonial continuity. By distinguishing normative survival, institutional transformation, and the possible reproduction of structural inequality, this study contributes to a more historically grounded understanding of legal decolonization and the continuing significance of colonial legal history for Indonesian justice.

# Conclusion

This study demonstrates that colonial law in the Dutch East Indies functioned not merely as an administrative framework for managing legal diversity but as an institutional mechanism through which racial hierarchy was constructed, maintained, and reproduced. The analysis of the *Regeringsreglement* (RR), *Indische Staatsregeling* (ISR), *Burgerlijk Wetboek* (BW), and colonial procedural regulations reveals that racial classification was embedded in the organization of legal status, applicable law, judicial jurisdiction, and procedural protection. In particular, Articles 131 and 163 of the ISR established an interconnected legal architecture in which population

classification determined the normative regimes governing different colonial subjects. Colonial legal inequality therefore operated not exclusively through explicitly discriminatory provisions but through institutional arrangements that transformed racial distinctions into legally consequential categories.

The findings further demonstrate that this hierarchy extended beyond substantive law into the administration of justice and the regulation of everyday social relations. Differentiated judicial institutions and procedural frameworks, particularly the *Landraad*, *Raad van Justitie*, and *Herzien Inlandsch Reglement* (HIR), established distinct pathways through which colonial subjects accessed legal protection. Meanwhile, the *Wijkenstelsel* and *Passenstelsel* complemented this judicial differentiation by regulating residence, mobility, and participation in social and economic life. The development of *Intergentiel Recht* exposed an important contradiction within colonial legal pluralism: although the colonial state maintained differentiated legal populations, interactions across these boundaries required mechanisms of legal coordination. Such mechanisms accommodated cross-group relationships without fundamentally dismantling the institutional authority through which colonial legal classifications were maintained.

The study also identifies a complex relationship between colonial legal structures and post-independence Indonesian legal development. Political independence transformed the constitutional foundations of legal authority and formally displaced the legitimacy of colonial racial classification. Nevertheless, the continued application and subsequent modification of selected colonial legal instruments illustrate the persistence of normative and institutional legacies. These continuities should not be interpreted as evidence that contemporary legal inequalities directly reproduce colonial racial discrimination in an unchanged form. Rather, they demonstrate that legal decolonization involves a historically mediated process of institutional transformation, constitutional reinterpretation, and legal reform.

By integrating legal-historical analysis with Critical Race Theory, this study contributes to the understanding of colonial legal pluralism as an interconnected architecture of racial governance rather than a neutral coexistence of different legal traditions. Its central contribution lies in conceptualizing the colonial *hierarchy of justice* as a system in which racial classification structured not only applicable legal norms but also judicial access, administrative regulation, and inter-group legal relations. This perspective highlights the importance of examining how formally differentiated legal institutions collectively reproduced structural inequality. Ultimately, the findings suggest that legal decolonization requires more than

the formal replacement of colonial legislation; it demands critical engagement with the historical foundations of legal authority, institutional accountability, and substantive equality. Further empirical research is necessary to establish how particular colonial institutional legacies have been transformed or reproduced within contemporary Indonesian legal practices.

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## Acknowledgment
None

## Funding Information
None

## Conflicting Interest Statement
The authors state that there is no conflict of interest in the publication of this article.

## Generative AI Statement
None