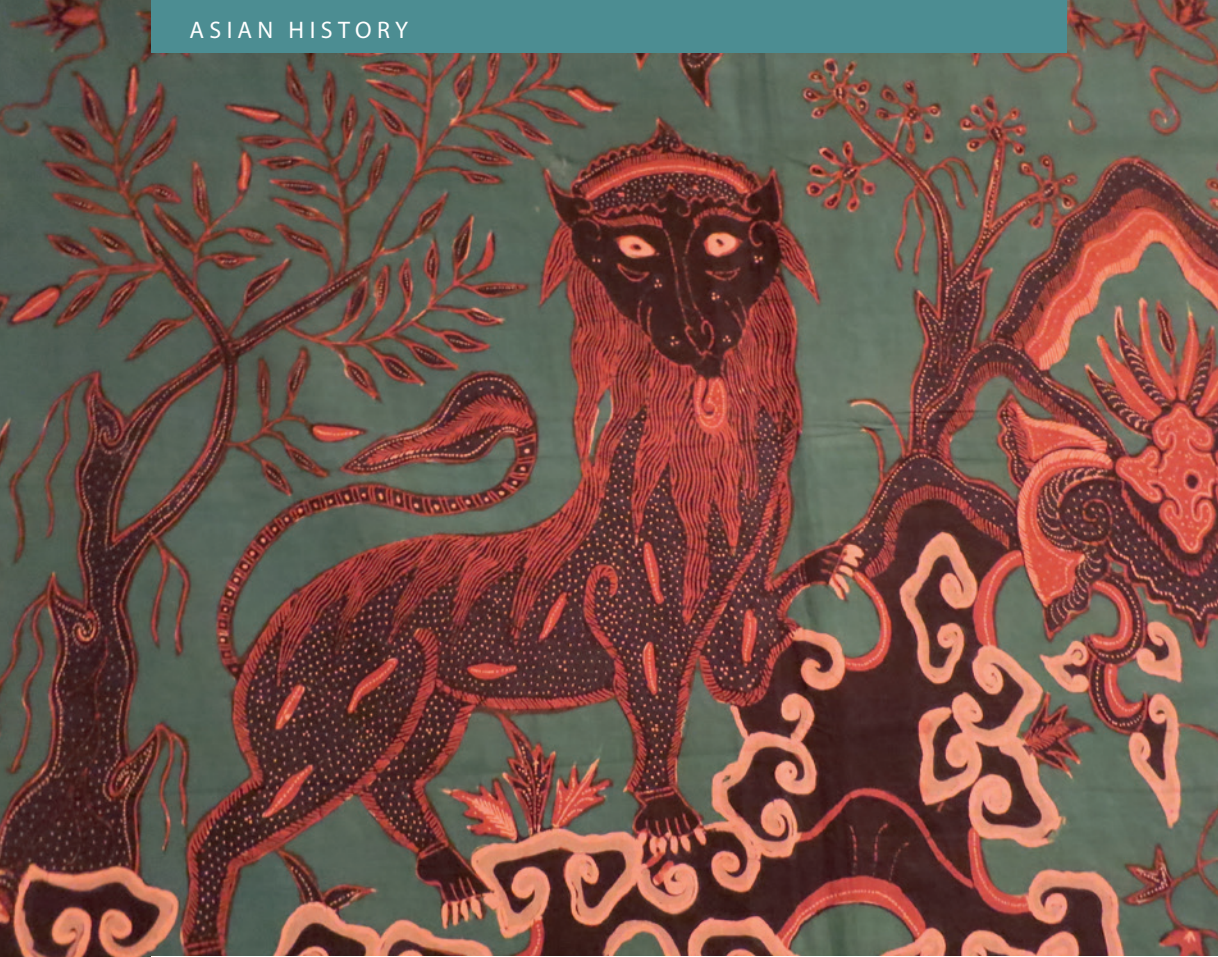


ASIAN HISTORY



Mason C. Hoadley

The Javanese Way of Law

Early Modern *Sloka* Phenomena

Amsterdam
University
Press

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The Javanese Way of Law

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To the Memory of Daniel S. Lev

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Preface

The present work has its roots in the author's research into the alterations in Java's legal institutions brought about by the expansion of Dutch East India Company political dominance on the island. For the late seventeenth and entire eighteenth centuries the character of the era's source material invited the application of an approach generally at odds with the historical tradition. As a type of 'history of the losers written by the winners', it views the displacement of indigenous legal institutions through the eyes of the same foreigners who were responsible for that change. Although reliance on primarily Dutch sources did not distract from tracing the process of colonial takeover, it lacks the depth necessary to understand more precisely what constituted pre-colonial Javanese law and how it functioned. With few notable exceptions, the foreigners were not interested in the legal system that they were transforming through the introduction of rules and regulations more congenial to Company norms and aims.

In turning to research based on indigenous sources it became clear that the subject was considerably different from that suggested by the sporadic references to Javanese law in Company records. The problem is not so much in the quantity of sources as their quality. Unsurprisingly, subjects adequately covered in the Dutch records are those of interest to Europeans. These include price, quantity, and availability of saleable tropical commodities, methods of producing them, political conditions of the natives to be encouraged or discouraged, often by armed intervention, and the like. This means that only a small amount of information concerning the interface between the alien company and local traditions has been recorded, and that tempered by considerations of furthering the former's goals. Little of it provides the necessary information for a deeper understanding of traditional Javanese law.

The present study rests almost exclusively on Javanese language sources from the time and place under discussion, that is, as near as possible under the circumstances. Autonomous sources from the 'Independent Kingdoms era' are supplemented by sporadic European observations only when appropriate to the narrative. It is felt that this provides a more Asian-centric approach by recognising that the basis of Javanese law does not necessarily tally with that of Europe. As a result, addressing Euro-centric questions to the sources provokes answers that may not fit with reality. John Crawford's observation quoted in Chapter 1 provides a telling example. Another would be to pose the question of how Javanese law differentiates civil from criminal justice. Yet it presupposes that the 'civil' and 'criminal' concepts are

translatable into Javanese reality, which they are not. A response to what (to local ways of thinking) are meaningless questions, will most likely be answered in kind.

The reverse side of the coin, i.e., what is important for traditional Java, may grate on European sensibilities. ‘Traditional Javanese law is proverbial? You must be joking!’. Yet such is literally the case. Many pre- or early-colonial Javanese texts deal at length with what is termed here the *sloka* phenomena consisting of *sloka* proper (roughly = proverbs), *aksara* (legal precepts), *sinalokan* (that made of a *sloka*), *prakara* (cases, instances), set in vignettes. As these have a special character within Javanese society, the challenge for scholarship is to discover the nature of that character and communicate it to a wider public, in a nutshell the purpose of this book.

Introduction

For those unfamiliar with the *sloka* phenomena as the epitome of early modern Javanese law some explanation is in order. Three points seem particularly relevant, namely the role of the *sloka* phenomena within traditional Javanese law, their contribution to placing the law they serve in time and space, and their potential as a tool for investigating legal systems.

Characteristic of the Javanese law least influenced by European impositions is the apparent lack of binding precedent. None of the modest number of documented legal contests – textual, didactic, or actual – resolved by local tribunals refer to preceding decisions under similar circumstances or specific paragraphs from standard legal titles. At first glance, this seems to indicate that traditional Javanese law lacked a concept of precedent, one ensuring that legal decisions in some manner take note of prior manners of handling equivalent affairs. In early modern Java, wisdom of the past as a form of precedent has been distilled into what are termed the *sloka* phenomena, namely *sloka* proper, *aksara*, *sinalokan*, and *prakara* commonly communicated in vignettes. The *sloka* phenomena are not merely adjuncts of law in an *ex post facto* manner implied by translation of *sloka/saloka* as ‘proverb’. They were much more. In tune with their Sanskrit predecessors, they constituted the essence of the law to be followed in specific instances.

A second characteristic touches on the historical context. *Sloka* phenomena not only dominate the period’s legal texts but also serve to place them in time and space. Expectations of textual continuity from Old Javanese law as preserved in texts filtered through the scribes of Bali are belied by the results of the present study. Absence of the *sloka* phenomena in what is known of the legal titles of Old Java/Bali effectively distances them from the contents of the younger Javanese law texts analysed here.¹ The latter embraces primarily eighteenth-century law prevailing in the Central Javanese kingdom of Mataram, one whose legal principles extended as far

1 In an earlier work the author has implicitly accepted the commonly held assumption that Javanese law of the pre-colonial period was an extension of the contents of texts preserved on Bali written in ‘middle’ or ‘old’ Javanese, Hoadley and Hooker, *The Agama*, under ‘Date’ p. 68ff. and ‘Provenance’ p. 73ff. Whether these texts – most of the manuscripts are younger than those employed in this study – reflect the legal heritage of, say, fourteenth-century Majapahit remains to be established, see Creese, ‘Old Javanese legal traditions’.

west as Priangan Regencies, Jakarta/Batavia, and even the kingdom of Banten on the island's western-most tip.²

Even the incorporation of Islamic themes into legal texts of the period left the *sloka* phenomena unchanged. Prominent examples are seen in the names/titles of Islamic-Javanese texts. These include the *Surya Alam*, from a mythological ruler of the Muslim Middle East, the 'Jimbun texts' as the *Undhang Senapati Jimbun* and *Jimbun Slokantara* after Senapati Jimbun (aka Radèn Patah) the semi-mythological vanquisher of the Hindu-Buddhist Majapahit empire of East Java and founder of the region's first Islamic kingdom of Demak in the late fifteenth century, as well as the *Arya Dilah*, after his trusted companion. Despite Islamic trappings, the texts rely upon the *sloka* phenomena as the primary vehicle of traditional Javanese law.³

Pre-eminence of the *sloka* phenomena in early modern Javanese law also raises the issue of its relation to *adat* (custom). That which would develop into the academic discipline of *adatrecht* (the study of *adat* law) grew out of rulings by the Dutch East Indies government in the middle of the nineteenth century. By governmental decree, all previous laws were invalidated and *adat* recognized as the legal norm for the island's inhabitants, that is in so far as they had not voluntarily or otherwise already been placed under the colony's European norms. Common sense argues that customary prescriptions had existed since the inception of legal process, yet it is first recorded for Java in the beginning of the twentieth century, mainly through the efforts of Cornelis van Vollenhoven and his disciples leading to the publication of *De Ontdekking van het Adatrecht* (The discovery of the *adat* law) in 1928. Short of some sort of unchanging *adat* defying normal historical developments, research into the past is limited to information contained in the extant legal titles. The fact that texts, as well as actual and didactic or normative legal cases were dominated by the *sloka* phenomena

2 Just how much of those principles found their way into East Javanese legal developments in, say, the kingdom of Balambangan, is not known due to a paucity of texts, which either are no longer extant or undiscovered.

3 As argued in the Chapter 8. 'Character', that the contents of the Independent Kingdoms' law differed sharply from traditions preserved on Bali-Lombok is only secondarily the result of the spread of Islam. Legal tracts brought to Java, as the *Muḥarar* and *Kitab Toepah*, are written in classic Arabic to which have been added translations or paraphrase in Javanese. Their Islamic form and content have thus been retained, even in Dutch translation as, for example, in the *Semarang Compendium* of 1750, van der Chijs, *Plakaatboek*, also discussed under the rubric 'Mogharaer Code' by Ball, *Indonesian Legal History*, pp. 68-70. See also Mahmood Kooria, 'The Dutch Mogharaer, Arabic *Muḥarar*, and Javanese Law Books'.

provides a window of access for reconstruction of the (more) traditional law of the island.

The sheer volume of references to custom within Javanese legal texts obligates one to consider them as a potentially rewarding field of research. In this respect, the present work's contribution lies in the obvious; the only way to reach the past earlier than the span of human memory is to consult sources that have survived, namely datable written texts. The existence of the *sloka* phenomena embodying contemporaneous local custom adds a retrospective dimension to sources otherwise limited by the living memory of its practitioners. Since the *sloka* phenomena are quoted, not created, by the transmitters of the tradition, they must pre-date them. Should one find a way to determine how much so, then we would have a research tool of considerable historical significance. That there is some belief in this direction is indicated by the tag 'Old Javanese' appended to *sloka* and *sloka*-like phrases in modern compilations of such terms. Basically, the term refers to language employed in order to differentiate it from present-day Javanese. However, because Old Javanese was used on the island throughout the period up to the fifteenth or sixteenth centuries, it can be interpreted as indicating that the phrases in question originate from a period pre-dating the sources used in this inquiry. Again, the postulate cannot simply be written off because the form and contents of the law used in the fourteenth century and earlier is far from clear. Looking in the opposite direction, the contemporary renaissance of interest in Javanese tradition, including the *sloka* phenomena, attests to their longevity in the eyes of contemporary Indonesians.

A final point touches on the intellectual debt owed to scholarly predecessors for the data made available by their work, despite that it was not always directed to the same end. A special place is held by C.F. Winter's prodigious collection of 'proverbs/maxims, adages, sayings, and other subjects' (*salokas, paribasans, wangsalans en andere onderwerpen*) found in *Javaansche Zamenspraken* (Javanese Dialogues), as does the observation of its editor, Salomon Keyzer, concerning the close relationship existing between such phrases and Javanese law in the Forward to the second edition of 1858. Other contributions include G.A.J. Hazeu's edition of the Cirebon law book, the *Pepakem Tjerbon*, and Mijnheer van der Hout's translation of the Kartasura *Surya Alam*. Regrettably, neither scholar followed up on these projects. A more modern debt is owed to Peter Suwarno for his comprehensive *Dictionary of Javanese Proverbs and Idiomatic Expressions*.

Present work

Focus of the present work can be summarised in four points. The first stems from the observation that the legal tradition of the Independent Kingdoms era is dominated by *sloka* phenomena contained in various *pepakem* and expressed in vignettes. Either as derivatives of or dependent upon *sloka* for their authority, *aksara*, *sinalokan*, and *prakara* are integral parts of that tradition. This is true if for no other reason than their sheer numbers. Of the fifteen-hundred phrases presented and explained in *Javaansche Zamenspraken*, most of them are directly connected with legal affairs. A typical connection is expressed as ‘this is a *sloka* [as contrasted to those of a *paribasa*, etc.] of one having legal suit concerning [its subject]’ It also reflects their dominance in the contents of titles identified as providing the main source of information for understanding Javanese law.

The second point is that Javanese law is highly fragmented. ‘Texts’ in the usual sense of the word implying equivalent contents as, for example, those of the *Babad Tanah Jawi* or equivalent literary works, are exceedingly rare. A given title only to a limited degree shares its contents with titles of the same name, be they from other manuscripts or even the same one. Here titles and textual traditions designate the contents of relevant sources which are similar, but by no means congruent. The similar part comes from the fact that most commonly titles are built around a recognisable core to which variations on that theme are appended.

The third point is that the *sloka* phenomena were functional as opposed to decorative. ‘Classic *sloka*’ define sovereign rights, obligations, and attributes. They also pre-date the textual tradition in that they are quoted, not created, by ministers, or in the case of the *Surya Alam*, the sovereign himself. *Aksara* provided legal categories of chastisement and instruments of resolving legal contests, *sinalokan* employed parts of *sloka* in order to authenticate cases, and *prakara* summarised them all. In those rare examples of case law preserved in the sources, *sloka* phenomena also define the nature of the affair as well as assess its seriousness.

The fourth point is whether the *sloka* phenomenon as defined here are antiquarian relics from a vaguely understood past or relevant concepts for the present. Anticipating the work’s conclusion, it can be noted that *aksara* and *sloka*, as well as the vignettes in which they are embedded, are alive and well and living in the Republic of Indonesia today. Thanks to modern media they are discussed and interpreted as never before. This contrasts with the modern (European) legal transplants, comprising by far the largest part of the Republic’s laws. These seem to lack acceptance as measured by their

failure in providing a guide to behaviour for the majority of Indonesians. How else does one explain the Republic's rampant corruption if not by conscious ignoring of the alien laws and rules inherited from the colonial government. In contrast, the message of traditional written texts in harmony with those of the *adat* have become increasingly important in present-day Indonesia with its concern over the apparent lack of public morality. This has reached the extent of reinterpreting age-old Javanese traditions within the context of modernising Islamic ones.

The work's organisation roughly follows the demarcation between vehicles of traditional law and its contents. Section I. 'Law, *Sloka*, and Sources' opens the work. Tradition and its expression are found in Chapter 1. 'Traditional Law. *Sloka* in *pepakem*', which is built around an early eighteenth-century Dutch source providing unique information on the composition of indigenous law. Of special interest is the *pepakem* genre or 'written law in general'. Chapter 2. '*Sloka* in Javanese titles' opens with a consideration of available Javanese source material before turning to an in-depth discussion of the individual *sloka* phenomenon and their relationship to specific titles. Subsequently the chapter turns to the contents of titles identified as key sources of information. Section II. '*Sloka* Phenomena in Vignettes', Chapters 3-7 – respectively '*Sloka*', '*Aksara*', '*Sinalokan*', '*Prakara*', 'Vignettes and Practice' – constitute the work's substantive contribution. They draw upon a range of titles for discussion of these key elements and hence provide the textual context of the *sloka* phenomena from which they take their significance.

Section III. 'Character, Apparent Demise, and Context' summarises the basics of traditional Javanese law (Chapter 8. 'Character') and relevant developments taking place after the period under scrutiny (Chapter 9. 'Context'). More specifically, the first half of Chapter 9 traces the fate of traditional law and particularly its formal disenfranchisement by the 'New Legislation' introduced by the Dutch East Indies government between 1846 and 1848. The radical step was facilitated by the legal vacuum during the Cultivation System era (1830-c.1870), a gap paralleled by the reformulation of law in the region which would become the Kingdom of the Netherlands. Despite such measures, sources of traditional law continued to be copied, edited, and revised, raising the possibility that the perceived cleft between banished and presumably forgotten Javanese written law and the living oral *adat* is overemphasized. The last half of the chapter documents the longevity of the *sloka* phenomena into the present as seen in modern references, both written and on the Internet, and even a tendency to merge with contemporary Islamic ideas of public morality. Section IV supplements the

presentation through discussion of the *Pepakem Tjerbon*, analysis of two dozen Classic *Sloka*, consideration of important titles not directly relevant to the present work, and presentation of diverse components only touched upon in the narrative.