

SOUTHEAST ASIAN CONTRIBUTION TO THE DEVELOPMENT OF THE RULES OF WARFARE

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THE ORIGIN OF INTERNATIONAL LAW



Is there any connection or even an influence between “Indonesian/Nusantara legal customs” and the formation of international law?

THE SPANISH ORIGIN

School of Salamanca:
Francisco de Vitoria, Francisco
Suarez and Balthazar Ayala

THE DUTCH ORIGIN

Hugo Grotius (d. 1645).

- *On the Law of War and Peace (De Jure Belli Ac Pacis)*.
- *Free Seas (Mare Liberum)*.
- *The Law of Prize and Booty (De Jure Praedae)*.

ST. CATARINA CASE



Note: International law and colonialism and its current critics: TWAIL.

Book on Bandung AAC Conference:

Bandung, Global History, and International Law (Cambridge 2017) – where are Indonesian scholars?

BRIEF HISTORICAL BACKGROUND

- Portuguese and Dutch competition in “East Indies” since the 16th century.
- Dutch struggle to gain independence from Spain (1568-1648).
- Sovereign Sultanates from Ternate to Aceh.
- Nusantara as part of the Dutch jurisdiction.

BRIEF CASE AND FACTS

- February 1603, a Portuguese cargo ship, St. Catarina, was seized and captured by the Johor Sultan (Alau’ddin Ri’ayat Shah III) in coalition with Jacob van Heemskerck (VOC).
- Lucrative booty worth 3.5 million Gulden.
- Legal dispute and controversy in Europe.



ST. CATARINA CASE



Legal defense (apology) by Hugo Grotius under the commission of VOC and the Dutch authority.

TO PROOF THE PORTUGUESE CULPABILITY AND TO WIN EUROPEAN PUBLIC OPINION

- The hostility of the Portuguese in East Indies.
- The capture of St. Catalina is legitimate and just.
- The reconstruction of the previous Dutch voyage in the East Indies.

FORMATION OF LEGAL PRINCIPLES

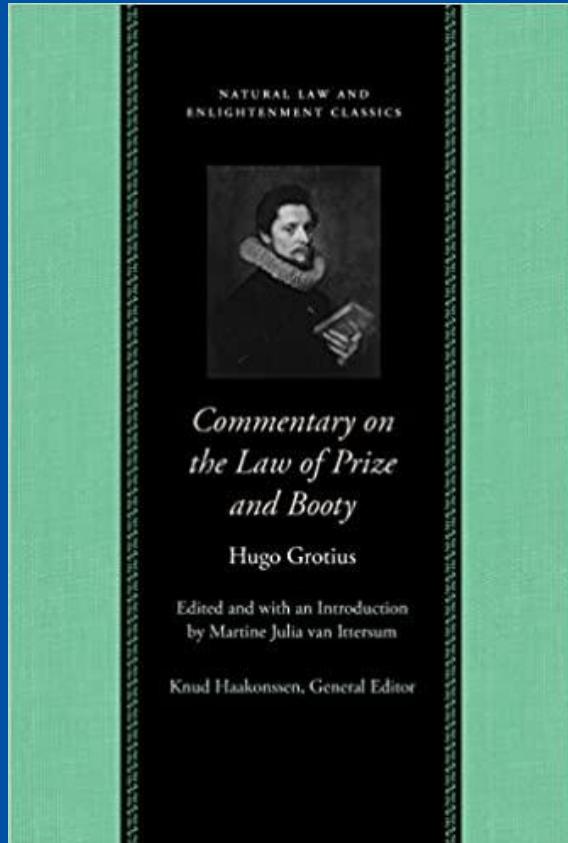
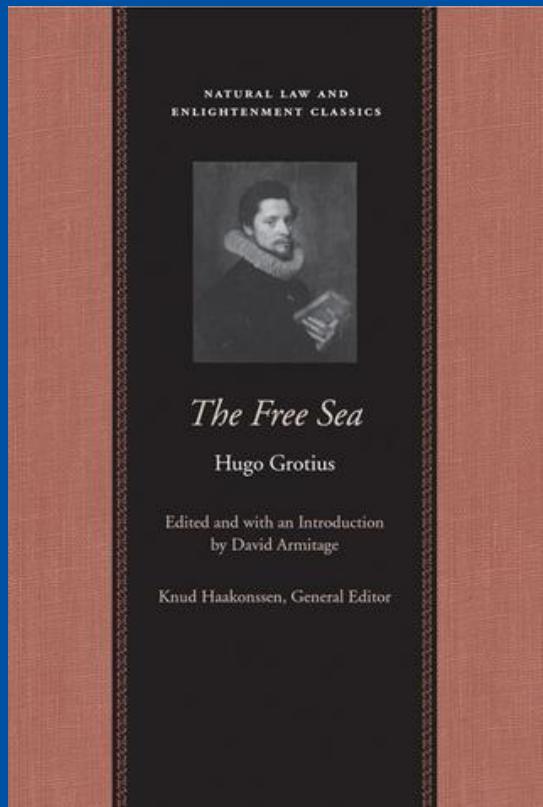
- What is just war and the right of self defense. The idea of universal law of just war. The idea of individual rights.
- The establishment of a Dutch empire of trade in the East and West Indies.
- Argument for the Dutch independence from Spain.



GROTIUS AND THE EAST INDIES

The Free Sea.

Commentary on the Law of Prize and Booty.

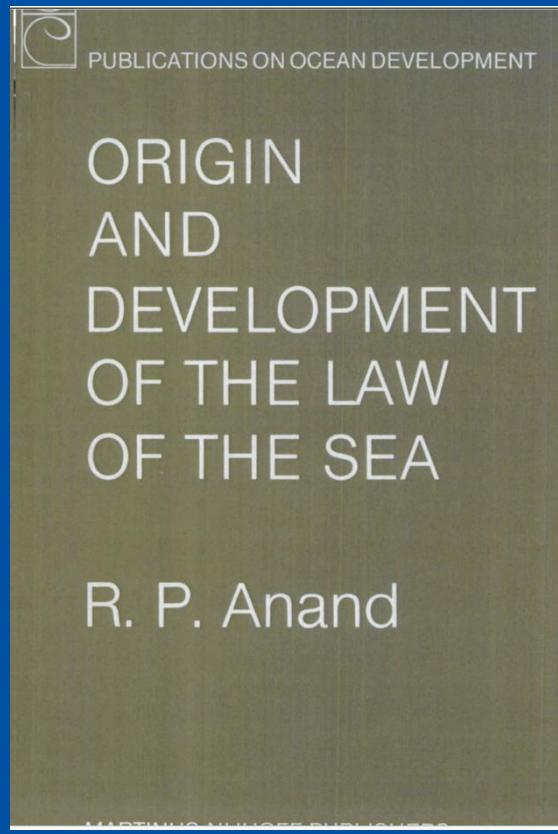
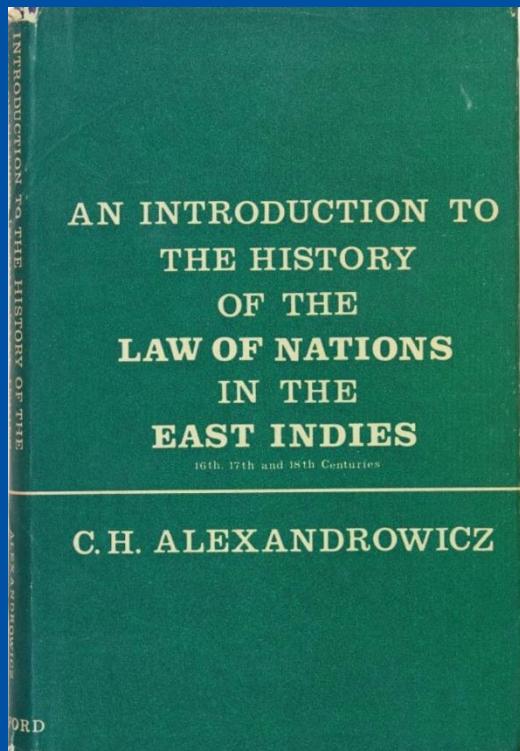


BRIEF OF HIS BOOKS

- Legal principles in the first 9 chapters of The Law of Prize and Booty.
- The right of possession by the Portuguese is illegitimate because East Indies was not ***terra nullius***. They were the sovereign, although were non-Christian.
- Elaboration of the sovereign entities in the East Indies (Sultanates ect). The right of non-Christian sovereign.
- Right of commerce and navigation. The foundational idea of "free trade"

GROTIUS AND THE EAST INDIES

The possible influence of the East Indies custom of diplomacy and other legal practices into his legal formulation.



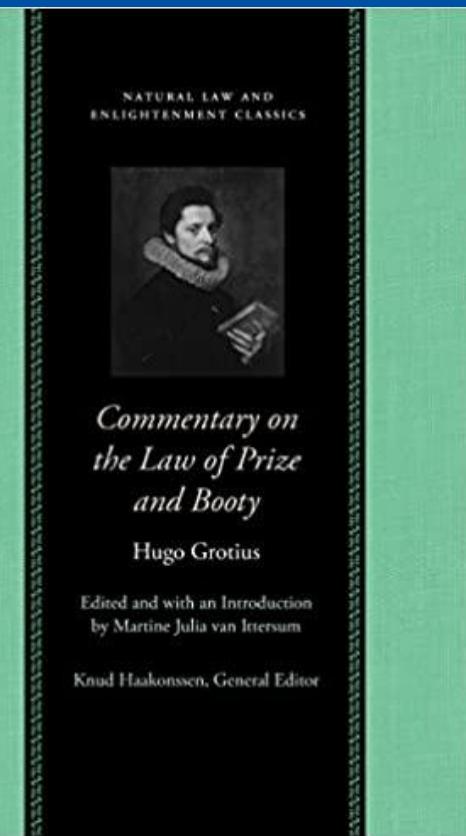
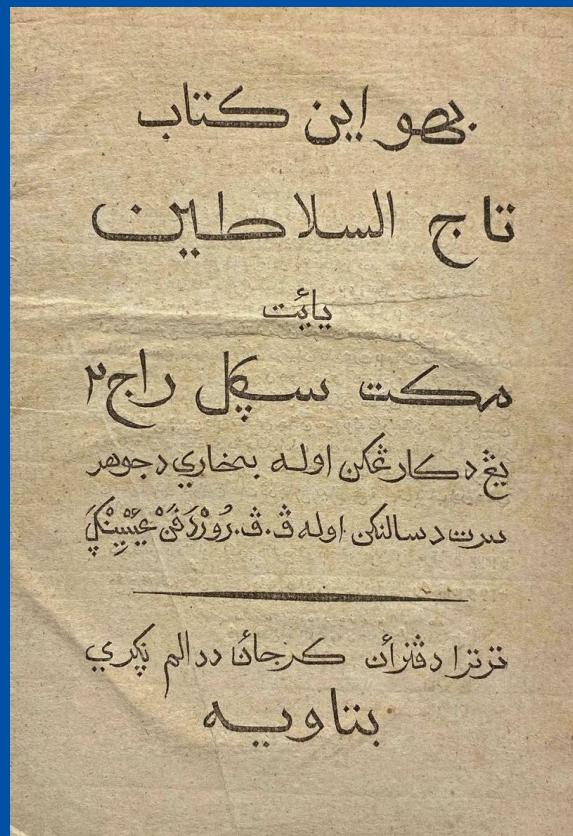
THE ARGUMENTS OF PROVINCIALIZING GROTIUS

“it is possible to assume that Grotius in formulating his doctrine of the freedom of the sea found himself encouraged by what he learned from the study of Asian maritime custom.”
(Charles H Alexandrowicz (1967) *An Introduction to the History of the Law of Nations in the East Indies*).

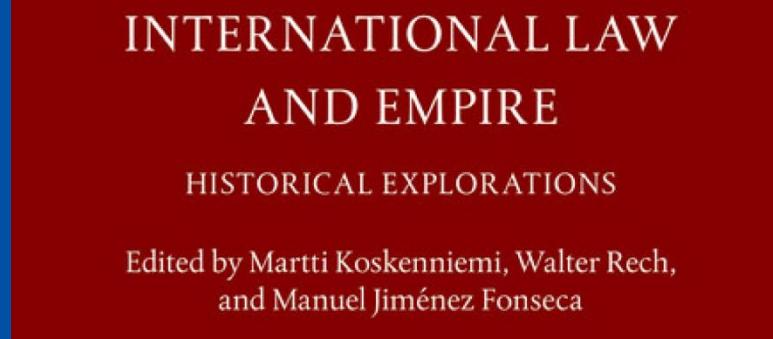
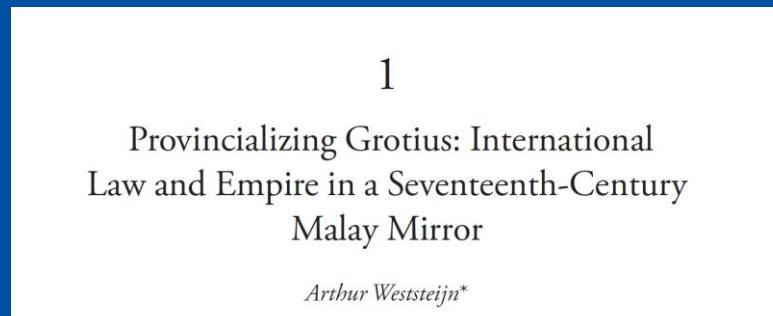
Ram Prakash Anand (1983), *Origin and Development of the Law of the Sea: History of International Law Revisited*

GROTIUS AND TAJUS SALATIN

How to combine the study of Islamic manuscripts in Indonesia and integrate it into the global history. This is a good research model.



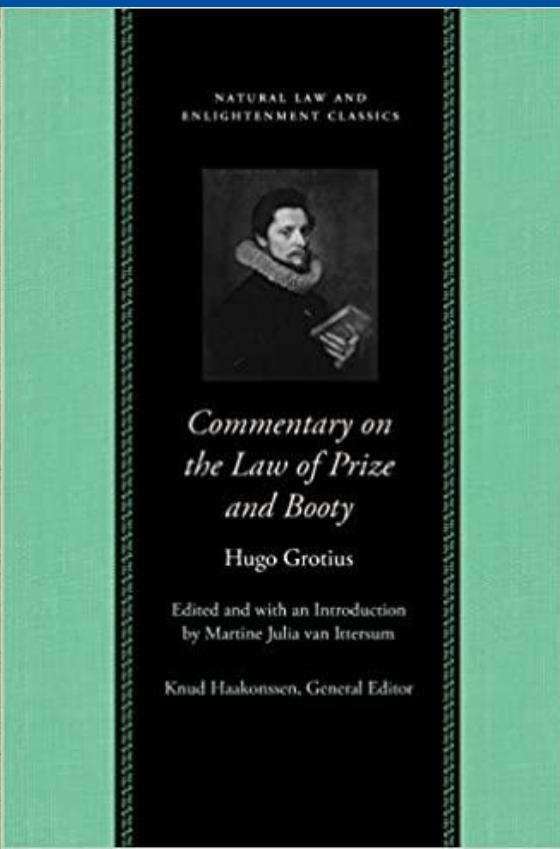
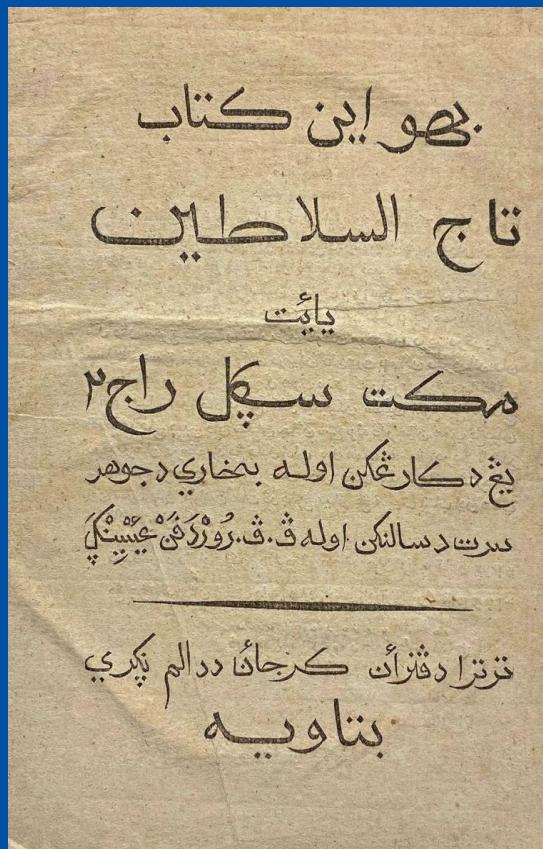
THE ARGUMENTS OF PROVINCIALIZING GROTIUS



Bukhari al-Jauhari (1603) composed the book as an advice for 'Alauddin Ri'ayat Syah, the Sultan of Aceh of his time.

GROTIUS AND TAJUS SALATIN

The common concern.



THE COMMON CONCERN OF THE BOOKS:

- The idea of sovereignty.
- The notion of a harmony between.
- The Rulers and the ruled.
- The importance of trust, equity, and obligation.
- The sanctity of treaty.
- Theological justification to have cooperation with non-believers (non-muslims and non-Christians).

"It is argued that crucial aspects of Grotius' theory were also dominant features of political thought in the Malay region, with mutually cherished notions of trust and contractual obligations."

SOME THOUGHTS ON ISLAM & IHL IN SE ASIA

- Wars between Kingdoms and Sultanates in Nusantara. Mongol invasion of Java in 1293 CE, with 30,000 soldiers and the rise of Majapahit (which was defeated by Raden Wijaya). Perang Bubat (Bubat War between Padjadjaran and Majapahit 1357 CE).
- Need more elaboration on substantive aspects of the classical SE Asian manuscripts. Post-preservation.
- The elaborations on fiqh focused on rituals like prayers (why? Important to elaborate on the evolution of Indonesian Ulama's perspective on the Dutch colonization. Why some ulamas became 'collaborators' and how this impact on their fiqh's discourses. Ulama saw the Dutch-Indies relation in terms of trade?).

SOME THOUGHTS ON ISLAM & IHL IN SE ASIA

- Fatwa jihad of KH. Hasyim Asy'ari.
- Focus on Tafsir al-Azhar and Al-Misbah (There should be enough materials to write on their interpretation of jihad verses).
- Darus Salam vis a vis Dar al-Islam.
- SE Ulama's opinion in conflict zone (Mindanao)/contemporary militants.
- Need a collaboration between legal scholars, historians, and manuscript experts.