

MULTI CULTURE AND ITS IMPLICATIONS TOWARD VARIOUS SOCIAL CONFLICTS IN INDONESIA

Johni Najwan,²⁷⁷ Darmawan Sutawidjaya,²⁷⁸ Hendra Yospin²⁷⁹

ABSTRACT

Theoretically, multi culture is a potential culture that can reflect a national identity. While historically, multi culture is a component that is essential in the establishment of the Republic of Indonesia. In addition, multi culture can also be a cultural capital and a cultural power that drive the dynamics of the nation's life. However, on the other hand, multi culture also has the potential to give rise to a conflict that could threaten national integration because the conflict between cultures can lead to clashes among ethnic groups, religion, and races which are very sensitive and vulnerable. This condition can surely harm the nation's integration. It may occur if the conflict is not controlled and resolved wisely. In the last two decades, various social conflicts caused by multi-culture is increasing, in terms of both quality and quantity. Various social conflicts such as in Aceh, Timika (Papua), Ambon (Maluku), Pontianak (West Kalimantan), Sampit-Mataram (NTB), Poso (Central Sulawesi) and Mesuji (Lampung) are examples of cases of social conflicts caused by ethnic and religious clashes, and/or between races that occurred in various regions in Indonesia. Thus, social conflict is an inevitable thing in our social life. Therefore, one thing that needs to be done is how the conflicts can be controlled and resolved peacefully and wisely, so they do not cause social disintegration in the life of society, nation and state.

Keywords: *Multi culture, implication, social conflict, Indonesia.*

A. Background

Indonesia is a multi cultural country along with multi-culture, multi ethnic, religious, racial, and multi class society.²⁸⁰ The slogan "Bhinneka Tunggal Ika" (Unity in Diversity) in "de facto" reflects the nation's multi culture, in the unity of The Republic of Indonesia. Its territorial area lies from Sabang to Merauke, embodying invaluable natural resources, well known as a country with string of emeralds on the equator covered with various kinds of multi-faceted cultural resources.²⁸¹ Thus, Indonesia's motto 'Unity in diversity' clearly reflects the multi-cultural nation of The Republic of Indonesia.

On one side, theoretically, multi-culture is having potential to reflect national identity. Historically, multi-culture has been able to become one of the decisive elements in the establishment of the Republic of Indonesia. In addition, multi culture also becomes the cultural capital and the cultural power that drives the dynamics of the nation's life.

However, on the other hand, multi culture also has the potential to give rise to social conflicts that could threaten national integration because the conflicts between cultures can lead to clashes among ethnic groups, religions, and races which are very sensitive and vulnerable in society. This condition can surely harm the nation's integration. They may occur if the conflicts are not controlled and resolved wisely by the government together with all components of the nation.

From the perspective of anthropology, a conflict is a social phenomenon that cannot be separated from human life, especially in the form of multi-cultural society.²⁸² In addition, the conflict is inevitable in our social

²⁷⁷ Professor of Comparative Law at The Law Faculty of The University Jambi. Email: johni.najwan@yahoo.co.id.

²⁷⁸ Doctoral Student of Law at The Law Faculty of The University Jambi. Email: darmawanbuce@yahoo.co.id.

²⁷⁹ Doctoral Student of Law at The Law Faculty of The University Jambi. Email: hendra_ukm@yahoo.com.

²⁸⁰ The second paragraph of the General Explanation of Act Number 40 of 2008 on the Elimination of Racial and Ethnic Discrimination and also compare with the first paragraph of the General Explanation of Act Number 7 of 2012 on Social Conflict Management.

²⁸¹ Koentjaraningrat, *Humans and Culture in Indonesia*, Djambatan, Jakarta, 2010, p. 367. See also *Civics for Students Book*, published by the National Resilience Institute in cooperation with the Directorate General of Higher Education, Ministry of Education. Scholastic Press, Jakarta, 2012, p. 13.

²⁸² Compare with the second paragraph of the General Explanation of Act Number 40 of 2008 on the Elimination of Racial and Ethnic Discriminations.

life. Therefore, one thing that needs to be done is how the conflicts are controlled and resolved peacefully and wisely, so they are not causing social disintegration in public life.²⁸³

In the last two decades, various social conflicts caused by multi-culture have been significantly increasing, in terms of both quality and quantity. Various social conflicts such as those in Aceh, Timika (Papua), Ambon (Maluku), Pontianak (West Kalimantan), Sampit-Mataram (NTB), Poso (Central Sulawesi) and Mesuji (Lampung) are examples of cases of social conflicts caused by ethnic and religious clashes, and / or between races that occurred in various regions in Indonesia.

From the perspective of legal anthropology, the phenomenon of social conflicts can arise because of conflict of values, norm conflict of norms and/or conflict of interest between ethnic communities, religious and community groups. In addition, conflicts can also occur because of discrimination of laws and the central government actions towards local communities by ignoring, eliminating and weakening the values and norms of customary law, including religious norms and traditions of the local community through domination and enforcement of state law.²⁸⁴ Though People Consultative Assembly of The Republic of Indonesia (MPR-RI) through the second amendment of the 1945 Constitution has mandated in Article 18B paragraph (2) that: "The State recognizes and respects the legal unity of traditional society with all the traditional rights as long as they are still alive and are in accordance with the development of society and the principles of the Republic Indonesia, which is regulated by law".²⁸⁵

Accordingly, the conventional goal is to maintain the law and social order in society, so that the function of law is more emphasized as an instrument of social control. However, in a more complex and modern society, the purpose of law has been expanded as a tool to build up a social life (social engineering). Therefore, the law should be constructed as an integral part of the culture as a whole, not as a distinct social institution that is autonomous or separated from the other aspects of cultures such as: political, economic, religious systems, kinship and social structure.

B. Problems

Based on the description in the introduction above, the problems in this paper are:

1. How important is the function of the law as a system of social control in the community?
2. What are the alternative solutions for social conflicts in Indonesia?

This paper tries to give an answer to the above problems by using the approach of legal anthropology.

C. Law As A Social Monitoring System

Research on law as a system of social control has been carried out by anthropologists.²⁸⁶ Anthropologists have contributed heavily in the development of legal concepts implemented in the community, as proposed by Donald Black:

Anthropologist have focused upon micro processes of legal action and interaction, they have made the universal fact of legal pluralism, a central element in the understanding of the working of law in society, and they have self-consciously adopted a comparative and historical approach and drawn the necessary conceptual and theoretical conclusion from this choice.²⁸⁷

²⁸³Paul Bohannon (ed), *Law and warfare, studies in the anthropology of conflict*, University of Texas Press, 2007, p. 67; James P. Spradley and David W. McCurdy, *Conformity and conflict, reading in cultural anthropology*, Little, Brown and Company, 2007, p. 11.

²⁸⁴In the history of human life, racial and ethnic discrimination has resulted in unrest, disunity and physical violence, mental, and social, which are all violation of human rights. Therefore, to overcome this, the International Convention on the Elimination of All Forms of Racial Discrimination has been made and approved by the United Nations through the UN General Assembly Resolution Number 2106 A (XX) on December 21, 2005. Indonesia as a member of the United Nations has ratified the convention by Act Number 29 of 1999 on the Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination 1965. In addition to ratifying the convention, Indonesia also has enacted the Act Number 39 of 1999 on Human Rights.

²⁸⁵Second amendment of the 1945 Constitution.

²⁸⁶Donald Black, *The Behavior of Law*, Academic Press, 2006, p. 10; Donald Black, *Toward a general theory of social control*, Academic Press, 2013, p. 34.

²⁸⁷John Griffiths, 'What is legal pluralism' 2006, 12 *Journal of Legal Pluralism and Unofficial Law*, p. 2.

In this context, the anthropologists studied law as a social behavior.²⁸⁸ Law is studied as an integral part of the culture as a whole. In addition, law is seen as a product of social interaction which is influenced by aspects of other cultures, such as politics, economics, religion and others.²⁸⁹ The law is also considered as a social process in social life.²⁹⁰

Law, from the perspective of anthropology, is not only created by state law, but also includes local regulations that come from the habits of the people, including self-regulation mechanism that serves as an instrument of social regulations in the community (living law).

Therefore, the study of the anthropology of law known as legal anthropology, is basically examining the interrelationship between law and social phenomena within society, how the law works in society and how the law play a role as a means of social control in the community. Anthropological studies of the law focus on human culture related to legal phenomenon in its function as an instrument for maintaining social order and also as a means of social control.²⁹¹ Thus, legal anthropology in particular is aimed at studying social processes, especially regarding the rights and obligations of citizens which are created, altered, manipulated, interpreted, and implemented by the community.²⁹²

From one side, law in a narrow concept, is learned as a system of social control in the form of laws and regulations made by the government. Therefore, law enforcement by: police, prosecutors, judges and others are aiming to maintain social order. However, from the perspective of legal anthropology, cultural products known as social laws, are not only recognized as social laws, but are also persistent in every form of social community. Therefore, besides as the implementation of state regulation, law is also the implementation of social control mechanisms in the form of legal norms of the people (folk law).

Legal norms which work in a society, methodologically, can be understood from either personal or communal decisions, in a social concept, can be given rights to provide sanctions or punishment to anyone who are against law. Therefore, the study of law in the society can be done in three ways, namely.²⁹³

1. Researching abstract norms which can be seen from the knowledge of chair of indigenous or customary people, community leaders, or authority that is authorized to make legal decisions. This method is known as ideological method;
2. Examining every real action of community members in everyday life practice when interacting each other in the society through the use of descriptive method; and
3. Reviewing the cases that ever occurred or that are persistent in the community through a trouble-cases method.

The fact that some cases were selected and examined fairly is the main rule to understand the law in society. The data obtained from the study of those cases are very convincing because they can reveal much information about the legal force in society. Llewellyn and Hoebel said: "The trouble-cases, sought out and examined with care, are thus the safest main road into the discovery of law. Their data are most on certain. Their yield is richest. They are the most revealing."²⁹⁴

The discussion of those cases is basically aimed to reveal their backgrounds, the regulations used to resolve disputes, the resolution mechanisms and the punishment meted out to the guilty party. Thus, it can reveal the application of legal principles, performed procedures and cultural values that support the dispute resolution process. Disputes which are studied to understand the laws that exist in the community include variety of cases that can be analyzed from the beginning until they are resolved, and decisions documents which are obtained from the community leader or from other cases which are still hypothetical.²⁹⁵

²⁸⁸E.A. Hoebel, *The law of primitive man, a study in comparative legal dynamics*, Atheneum, 2014, p. 15; Donald Black and Maureen Milieski, *The social organization of law*, Seminar Press, 2007, p. 78; Sally F. Moore, *Law as process*, 2008; Roger Cotterel, *Law's community, legal theory in sociological perspective*, Clarendo Press, 2005.

²⁸⁹Leopold Pospisil, *Anthropology of law, a comparative study*, Harper & Row Publishers, 2011.

²⁹⁰Sally F. Moore, *Law as process*.

²⁹¹Leopold Pospisil, *Anthropology of law, a comparative study*, p. x.

²⁹²F. Von Benda Beckmann, *Between kinship and the state*, Foris Publication, 2008, p. 10.

²⁹³E.A. Hoebel, *The law of primitive man, a study in comparative legal dynamics*, 2013, p. 29.

²⁹⁴Llewellyn K.N. and E.A. Hoebel, *The Cheyenne way, conflict and case law in primitive jurisprudence*, Norman, 2014, p. 29.

²⁹⁵Laura Nader and Harry F. Tood Jr. (ed.), *The disputing process-law in ten societies*,

Research on those various cases is a way that is often used as a method to examine existing laws within a society in a legal anthropology investigation. This is due to the law which is not merely as a product of an individual or group of individuals. Law is also not created from a distinct organization separated from other cultures. Infact, law is a product of a social reality in the system of people's lives. Therefore, the law appears as a particular fact or a statement which emphasizes social behavior. Dispute settlement is a real statement of the law applied in the community.²⁹⁶

Thus, the case study now becomes a special rule in the anthropological study of law in society. However, in certain situations researchers find it very difficult to see cases that can be analyzed and generalized as a statement of law in a society, so as with the study of the interaction between individuals or groups in society who live peacefully.

The study of people's behavior that lives in peace may also be used as a vehicle for investigating social norms that are applied in a society. The behavior of people in their everyday life that proceeds normally without any dispute can also explain the legal principles contained behind it. Habits of life of the community in special events which is showing voluntary adherence to social norm are actually a concrete cases of people who live without dispute. The behavior of people who show adherence to social rules, if it is examined and observed carefully, can be an analytical instrument that can be used to explain the principles and rules of law governing the behavior of people. Method examining the social principles and norms, as described above, is referred to as a case study rules without dispute or *trouble-less case method*.²⁹⁷

Beside reviewing those cases in the community, legal anthropology also give attention to the phenomenon of legal pluralism in the community. Roger Cotterel explains: "We should think of law as a social phenomenon pluralistically, as regulation of many kinds of existing in a variety of relationships, some of the quite tenuous, with the primary legal institutions of the centralized state. Legal anthropology has almost always worked with pluralist conceptions of law".²⁹⁸

Thus, from the perspective of legal anthropology, it can be explained that the true law applied in the community is in the form of state law as well as religious law and customary law. Law also exists in its own regulatory mechanisms that significantly serves as an instrument of social control in the community.²⁹⁹ This means that the state law is not the only law that exists in community. If the law is defined as an instrument of culture that serves to maintain social order or as a social control, then in addition to the law of the country there are also other legal systems such as customary law (living law), religious law and also all forms of ruling mechanisms in society. Legal situation in this is referred to as a fact of legal pluralism under the study of legal anthropology.

Legal pluralism is generally used to describe a situation of two or more systems of law which are side by side in effect in the social life or to explain the existence of two or more social control systems in the community.³⁰⁰ Legal pluralism can also be used to describe a situation of two or more legal systems that inter act each other in social life³⁰¹ or a situation in which legal systems that work side by side in activities and relationships within the community.³⁰²

The doctrine of legal pluralism, generally, does not go in line with the ideology of legal centralism. Ideology of legal centralism is defined as an ideology that requires the only law which is the state law for all

Columbia University Press, p. 8.

²⁹⁶E.A. Hoebel, *The law of primitive man, a study in comparative legal dynamics*, p. 5.

²⁹⁷J.F. Holleman, Trouble cases and trouble less cases in the study of customary law and legal reform dalam K. Von Benda-Beckmann and F. Strijbosch (eds), *Anthropology of law in the Netherlands*, Foris Publication, 1986, p. 119.

²⁹⁸Roger Cotterel, *Law's community, legal theory in sociological perspective*, p. 306.

²⁹⁹Francis G. Snyder, 'Anthropology, dispute process and law, a critical introduction' [1981] 8/2 *British Journal of Law & Society* p. 178; K. von Benda-Beckmann and F. Strijbosch (eds), *Between kinship and the state, social security and law in developing countries*; Joep Spiertz and Melanie G. Wiber (eds), *The rule of law in natural resource management*, VUGA Uitgeverij B.V.' s-Gravenhage, 2006.

³⁰⁰John Griffiths, 'What is legal pluralism' (2012) *Journal of Legal Pluralism and Unofficial Law* 24.

³⁰¹M.B. Hooker, *Legal Pluralism: Introduction to colonial and neo colonial law*, Oxford University Press, 2012, p. 27.

³⁰²F. Von Benda Beckhmann, 'Social security, natural resources and legal complexity', *Paper The International Seminar/Workshop on Legal Complexity, Natural Resource Management and Social Security/Insecurity in Indonesia*, Padang 6-9 September 2009, p. 5.

citizens by ignoring the existence of other legal systems, such as religious law, customary law and also all forms of ruling mechanisms in community. In this context, Griffiths asserts:

The ideology of legal centralism, law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions. To the extent that other, lesser normative orderings, such as the church, the family, the voluntary association and the economic organization exist, they ought to be and in fact are hierarchically subordinate to the law and institutions of the state.³⁰³

Thus, the paradigm of legal centralism has a tendency to ignore the social and cultural diversities in the community, including local legal norms which are really used and complied with by the community. In fact, such a kind of law is even more obeyed than the laws made by the state. Therefore, the existence of legal centralism paradigm in a multi-cultural community is just an illusion. Griffiths also said: "Legal pluralism is the fact. Legal centralism is a myth, an ideal, a claim, an illusion. Legal pluralism is the name of a social state of affairs and it is a characteristic which can be predicted of a social group".³⁰⁴

The above description shows that the principle of law is in the community itself. To fully understand the law in society, then it must be studied as an inseparable element of other cultural aspects, such as the political system, economic system, organization or social structure, government and religious systems. As confirmed by Hoebel: "We must have a look at society and culture at large in order to find the place of law within the total structure. We must have some idea of how society works before we can have a full conception of what law is and how it works".³⁰⁵

Therefore, the law as a system studied as a cultural product basically has three important elements, namely:

1. The legal structure includes legal institutions such as the police, prosecutors, judges and prison institutions;
2. The substantive law which covers all legal products in the form of regulations and legislation; and
3. The legal culture of society such as the values, ideas, perceptions, opinions, attitudes, beliefs and behaviors, including social expectations towards the law.³⁰⁶

From the perspective of legal anthropology, every form of society has a legal structure, substantive law and its own legal culture. Whether the substantive law and legal structures are adhered or not, or the law can be enforced effectively or not, is dependent on the customs, traditions or legal culture of the people.

The study of law as a system is attempting to explain how the law is implemented in society, or how the legal systems in the context of legal pluralism interact in a certain field of social life. Of the three law sub-systems, legal culture is being a part of social forces that determines the effectiveness of the law enforcement in society. Furthermore, the legal culture gives an opportunity to the elements of the legal structure and the substantive law to strengthen the legal system. Thus, in reviewing those three inseparable elements of law, it can be understood as how the legal situation can be enforced as a system in society.

D. Alternative Social Conflict Resolutions in Indonesia

The above description has proved that law from the perspective of anthropology is seen as a system of social control that keeps the order in society. Thus, Donald Black states: "Anthropologist have similarly concentrated on what they regards as law-typically the most formal and dramatic aspects of social control in the tribal and other simple societies although this often includes non-governmental as well as governmental process".³⁰⁷

Law in its function as a tool of social control is one of the means of supervision in the community. Along with the demands of the development of the society itself, especially in an increasingly complex society, the role of law is then increased again as an instrument for planning social life or to make social changes using legal instruments to achieve the desired social situation.³⁰⁸ The law also simplifies the interaction between

³⁰³John Griffiths, 'What is legal pluralism, p. 12.

³⁰⁴*Ibid.*

³⁰⁵E.A. Hoebel, *The law of primitive man, a study in comparative legal dynamics*, p. 5.

³⁰⁶Lawrence M. Friedman, *The legal system, a social science perspective*, Rusel Sage Foundation, 2012, p. 13.

³⁰⁷Donald Black, *Toward a general theory of social control, Op. Cit.*, p. 35.

³⁰⁸Satjipto Rahardjo, *Legal Science, Bandung, Alumni*, 2012, p. 67; Dardji Darmodiharjo and

human beings to achieve peace in their social life. In the discourse of legal science, it is explained that the purposes of law are basically intended to achieve three objectives, namely:

1. To achieve Justice,
2. Benefits, and
3. Legal certainty in social life

Therefore, it is explained in legal theory that the rule of law has a philosophical role which is in accordance with the purpose of law that reflects the values of justice in society. The law also serves as a sociology which can be accepted and recognized as the norms in accordance with the values of life in society. In addition, the law also functions as a structure which has a legal basis according to the hierarchy of legislation.

Law basically has two main characteristics: regulatory and coercive. What is governed by law is the behavior of the community to create an orderly, safe and peaceful condition. While the coercive characteristic of law is reflected in the application of punishment for any person who violated it. The problem that arises is, can law be used as an instrument to maintain and strengthen social integration in the form of multi-cultural society?

Indonesia is a multi cultural country with its multi law system applied in the society. This is due to the presence of customary law, religious law and also other ruling mechanisms. However, when it is deeply examined, then the legal development paradigm which was attended by the government in the past three decades had a tendency to be legal centralism through the implementation of political unification and codification of the law for all citizens in the territory of the Republic of Indonesia. The result is, law of the country has an inclination to remove, to ignore, and to dominate the presence of other legal systems, because being consciously or not, the law serves as the *governmental social control*³⁰⁹ or as *the servant of repressive power*³¹⁰ or as *the command of a sovereign backed by sanction*.³¹¹

This means that, from the perspective of anthropology, the source of the existence of social conflict phenomena has been caused by the paradigm of legal development which is used by the government and legal institutions; that is the paradigm of legal development made the form of legal centralism. This is not in accordance with the nature of life in a diverse multicultural society in which various ethnics with each own regulatory systems are at hand. Therefore, to achieve a level of culturally integrated society, the application of legal centralism is best replaced by the application of legal pluralism paradigm.

To achieve these objectives, the action needed to be done is to build a system of government that provides recognition and protection toward other legal systems beside state law, such as customary law and religious law, including local regulatory mechanisms that exist in the community (living law). The implication, the values, principles of public law institutions and habits should be adapted and integrated into the national legal system which is then placed concretely into legislation that touches all aspects of social life, either individual or communal in nature.

Overall, the kind of law that should be developed to foster and strengthen the integration of multi-cultural nation is a responsive law. Responsive law that affects the society's legal system reflects the values, principles, norms, institutions, and traditions that work well in the community. This is in accordance with what has been stated by Philippe Nonet and Philip Selznick: "Responsive law presupposes a society that has the political capacity to face its problems, establish its priorities, and make the necessary commitments".³¹²

Thus, to understand the position and function of law in society, then the social and cultural life of the community must be well understood, as Hoebel argues: "We must have a look at society and culture at large in order to find the place of law within the total structure. We have some idea of how society works before we can have a full conception of what law is and how it works".³¹³

E. Conclusion

Based on the above discussion, it can be concluded that:

1. The function of law, beside as a means to maintain social order and social control, it also serves as an instrument for planning social life in society. Therefore, law is studied as an integral part of the culture as a

Shidarta, *Principles of Legal Philosophy, What and How the Philosophy of Law Indonesian*, Jakarta, Gramedia Pustaka Utama, 2006, p. 15.

³⁰⁹Donal Black, *The behaviour of law. Loc. Cit.*

³¹⁰Philippe Nonet and Philip Selznick, *Law and society in transition, toward responsive law*, Harper Colophon Books, 2008, p. 27.

³¹¹Mc. Coubrey and Nigel D. White, *Textbook on jurisprudence*, Blackstone Press Limited, 2012.

³¹²Philippe Nonet and Philip Selznick, *Op. Cit.*, p. 113

³¹³E.A. Hoebel, *The law of primitive man, a study in comparative legal dynamics*, p. 5.

whole, not as a distinct social institution that is autonomous or separated from the other aspects of cultures such as political, economic, religious systems, kinship and social structure.

2. As an alternative to resolve social conflicts in Indonesia, it is necessary to have a deeper understanding of the functions and roles of law in multi-cultural society. Thus, the issue of the paradigm of national law applied by the government must be studied comprehensively, because during the last three decades, the government has a tendency to embrace the paradigm of legal centralism. As a consequence, the national legal products also tend to ignore, eliminate even weaken the legal system that has been empirically live and thrive in the community (the living law).

F. Suggestions

To end this paper, the author offer two suggestions as follows:

1. To improve the purpose, function and role of law in a multi-cultural society and to maintain and strengthen national integration, the shift of the legal centralism paradigm toward legal pluralism paradigm should be started so it can be expected to have a considerable impact on the values, principles, social institution and legal tradition within a multicultural society.
2. In addition, every citizen should have equal responsibility in the prevention and mitigation of the social conflicts in Indonesia.

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