

Plularisme Private Law / Civil Law in Indonesia

Aloysius R. Entah

Professor, Lecturer in business law, Master of Law Program Postgraduate
Merdeka University Malang, East Java, Indonesia

Abstract

Private Legal Pluralism / Civil Law in Indonesia, not in spite of pluralism, pluralism, diversity, diversity of Indonesia. Private Legal Pluralism / Civil Law in Indonesia is demanding needs of the legal community to organize a mutual interest in the community. There has been going on for centuries, ranging from prehistoric times, ancient times, the Dutch colonial period, the Japanese until the independence of the date August 17, 1945. The dynamics of the historical development of the nation followed the development of applicable law and in particular private law / civil law applicable to each class of residents or citizens.

Keywords: Pluralism, the existence of private law / civil law in force and the development of Indonesian law.

A. Introduction

Indonesian nations is a pluralistic nation, pluralistic, diverse, or *bhineka tunggal ika*. This is reflected, of the existence of 17 000 islands, hundreds of tribes that *memiliki* languages, customs and cultures are different. Nation Nusantara - Indonesia is a nation that has an old civilization. These include written by Arisyo Santos a geologist and physicist of Brasilia in his book "Atlantis, the Lost Continent, Finally Found" (1997) and written by Stephen Oppenheimer of Oxford University Englan in his book "Eden Iu the East" (1988). In diversity or diversity of the nation's archipelago - Indonesia, there is a need for public law and private law to regulate different interests especially in private law in accordance with diversity or diversity of the community.

B. Existence Of Private Law / Civil Law

The existence or presence of Private Law / Civil Law originated from the division of the law according to its contents by the Roman jurists before medieval times that "Domitius Ulpianus", who was killed in 228. Domitius Ulpianus divide the *Ius Publicum* Roman Law (Public Law, Public Law, *Publicrecht*) and *Ius Privatum* (Private Law / Civil Law, Private Law, *Privatrecht*, *Burgerlijkrecht*). *Ius Publicum* State concerned with Roman or regulate the relationship between the individual with the State, while *Ius Privatum* set interest among individuals or regulate the relationship between individuals.

The division of public law and private law / civil law adopted by countries that embrace Continental European legal systems or the Civil Law system, such as France, the Netherlands, Belgium, Germany, Italy and most countries in the world, including Indonesia. Meanwhile, countries that embrace Anglo-Saxon system is based on English Common Law and Case Law United States, does not recognize the division of public law (Public Law) and Private Law / Civil Law (Private Law)

In the development, there is a difference of opinion among legal experts about the division of public law and private law / civil law. J.A. Loeff, Van Apeldoorn, Holland (Netherlands) and Bierling, Thorn (Germany), including the group that found the division between public law and private law / civil law is a fundamental division. While Meijers and Bellefroid, including the group that found the division of public law and private law / civil law is not a fundamental division. Even Hans Kelsen with *Stuven* teorinya is a lawyer who left the division of public law and private law, because according to him all the norms derived from the highest norm *Grundnorm*.

Thus, the actual public law with private law / civil law can not be separated, can only be distinguished. In the public law, the interests of the private also passively stuck in it. In contrast to private law, public interest / public also can not be released at all.

Regarding the use of the term private law / civil law, here I should note that the translation or *mengindonesiakan* term *Ius Privatum* (latin), Private Law (England), *Privatrecht* (Netherlands), a private legal terms easier to catch the meaning of the term civil law. However, the term is rarely used in private law legislation and not be a term used in the community. While the term or translation is the widely used term civil law. The term civil of civil law is actually not easy to grasp its meaning than the term private of private law. The term comes from the civil ancient Javanese language "Pradata" (pronounced "Pradoto"). In the dictionary of ancient Javanese Indonesia bouquet P.J. Zoetmulder, described Pradata = Bright, clear (Explanation, *uarian*, stories, views, opinions), view or sense light, announcements, notices, stories, descriptions, information. Slamet Mulyono in complete dictionary Basa Jawa, Pradata = Civil, Civil Court. While in the Thesaurus Indonesian by Eko Endarmoko, described the word Civil (Java) means: 1) Beware, beware, remember, meticulous, cautious, 2) care, counting, *mendulikan*, watching, ignoring, ignore ,

In the occasion as participants Upgrading Dutch-Indonesia Cooperation Law at the Faculty of Law,

University of Diponegoro in 1988, personally I never asked civil law term to Prof. DR. Sudikno Mertokusumo, SH He explained that the term civil in civil law, he remembered the first time used Prof. Mr. DR. M. Djodjodigono and derived from ancient Javanese language "Pradata" which means a dispute.

According to Prof. Mr. DR. R. Soetojo Prawirohanidjojo civil term derived from the ancient Javanese language "Pradata" which means the court. The word "Pradata" which means the courts used to resolve the case environment Mataram Kingdom and to the appellate court called "Pradata Supreme" which is directly led by King.

In this case the terms of civil law has become a term could be misguided for a same meaning as the term private law (*Ius Privatum*, Private Law, *Privatrecht*, *Burgerlijkrecht*).

C. Pruralisme Private Law / Civil Law

1. History Of Civilization Summaries Nusantara - Indonesia

Talking about the Pluralism Private Law / Civil Law Indonesia, not in spite of pluralism, pluralism, diversity, diversity of Indonesia. Indonesia consists of 17,000 islands and 550 more large tribes, has a wealth of cultural pluralism, customs, the local language, art, religion and belief in God, the Exalted Almighty, and so forth, is an asset that still exist in the history of human civilization.

The history of civilization Indonesia, can be drawn from the initial phase of prehistoric human life, namely Kala Pleistocene lasted roughly between 3 million to about 10,000 years ago. We should be proud because today a number of western scientists claim that early human civilization and the civilized world is Indonesia. Statements and at the same beliefs western scientists can we read the book of Geologists and Physicists Nuclear Brazil Professor Arsyo Santos in his book "Atlantis-The Lost Continent Finally Found" (1997) or Indonesia turned out to be the cradle of world civilization and books Professor Stephen Oppenheimer of Oxford University England about "Eden in the East" (1998) or Heaven in the East.

Atlantis lost previously considered a myth, first coined by the Greek philosopher Plato (427-347 BC), in his book "Critias and Timaeus". Mentioned by Plato that there are early pradaban called continent of Atlantis; the population was considered as a god, extraterrestrials, or superior nation; the continent then lost, sinking slowly because of a series of disasters, including earthquakes.

After doing research for 30 years and found the evidence convincing, Prof. Arsyo Santos, Ph.D. ensure to the world that the site of Atlantis is Indonesia.

The characteristics of Atlantis that Plato noted in the dialogue titled two Critias and Timaeus, surprisingly well suited to the geographical condition of Indonesia. Atlantis is a tropical country abundant mineral and biological richness. But then, all the luxury it was gone, swept away the enormous disaster that separates Java and Sumatra, sinking more than half of the archipelago. The volcano Krakatoa be a source of global catastrophe (estimated to occur 11,600 years ago). He broke raises a series of terrifying earthquake and tsunami, a hundred times greater than the disaster in Aceh in 2004, the top end to the Ice Age. Prof Arsyo Santos, Ph.D. also reveals the fact that Atlantis is a science and discovery humans first appeared (culture farming, language, Metallurgy, astronomy, art, etc.) as well as civilizations thereafter (Greek, Egyptian, Mayan, Aztec, Inca, etc.) actually in wake up by the Indonesian nation.

While the book Eden in the East, Stephen Oppenheimer radically change our previous view of prehistory.

One of them, at the end of the Ice Age, the flood mentioned in the holy book is really happening and immerse Southeast Asian continental shelf forever. That's what causes the spread of population and flourishing cultures Neolithicum in China, India, Mesopotamia, Egypt, and the Eastern Mediterranean.

After the sinking of Atlantis there are remnants of islands that became the archipelago Indonesia. In the history books around 2000 BC (4000 years ago) berdatanganlah the peoples of South Asia to the region of the archipelago-which was followed by the entry of civilization / Hinduism (800SM) and civilization / Buddhism Early AD that stood kingdoms Hindu-century Buddhist 2M until centuries 15M such as: United Salakanegara, the Kingdom Tarumanegara, United Kendan / Galuh, the Kingdom of Sunda, the Kingdom Kawali and the Kingdom of Pajajaran in West Java, the kingdom of Kalinga, the Earth Kingdom Sambara, the Earth Kingdom of Mataram in Central Java, the Kingdom Mamenang, Janggala, Kadiri Kingdom, Tumapelsingosari kingdom, the kingdom of Majapahit in East Java, the kingdom of Sriwijaya in South Sumatra and the Kingdom of Kutai in East Kalimantan. Then about a century civilization 13M / Islam entered the archipelago-through Chinese merchants, Gujarat and Persia. Meanwhile, traders from Yemen (South Arabia) new entry 18M century. Catholic Christian civilization entered the archipelago in recent 16M century through Portuguese merchants and the Netherlands.

Regarding the name of the archipelago nation-can be traced from the history in the kingdom-the kingdom of Srivijaya (Century VII - XIII century) which in 1006 conquered the kingdom of Srivijaya Malay kingdom in the Malay Peninsula and the kingdom of Srivijaya finally managed to master the entire archipelago-including the Malay Peninsula. 1006 is the beginning of the archipelago nation's history-and December 13 is

celebrated as the Day of the archipelago. Date December 13, 2006 the Republic of Indonesia country commemorate 1,000 years of the archipelago. Almost simultaneously with the collapse of the Majapahit kingdom of Srivijaya empire was born (1293-1518).

Majapahit region was the forerunner to the territory of the Republic of Indonesia. Unity of the archipelago-expressed in the oath Palapa faith professed in 1331 by the Supreme Patih Majapahit, Gajah Mada. He vowed to unite the archipelago-under Majapahit. Oath reads: "Seagrass huwus lost archipelago, iSun amukti palapa", which means "once it had defeated the entire archipelago-then I enjoyed the fruit palapa".

Along the collapse of the Majapahit kingdom born Islamic kingdoms 16-18 century beginning with the first King of Demak kingdom Raden Fatah (DJIM Boen) which is one of the sons of King UB V with Cempa daughter who grew up in Palembang. Then the end of the 16th century berdatanganlah merchants from Europe to the archipelago-through Portuguese merchants and the Netherlands that was born of Dutch rule in three phases, namely the VOC from 1602 to 1800, kekuasaan East Asia / English from 1800 to 1816 and the Dutch East Indies from 1816 to 1942. In the reign of the Dutch East Indies officially in the archipelago-became one of the provinces called the Dutch royal province of the Dutch East Indies (Nederlands Indie). In the Dutch colonial period began early 17th century until the end of the Japanese occupation in 1945, mentioning the community or State-Nusantara Nusantara-along with the noble values of the nation or the social and cultural values of the nation drowning in a situation of occupation. By the Dutch colonialists called the Society Archipelago colony / Country archipelago-with the colonies of the Dutch East Indies (Nederlands Indie).

The name "Nusantara" drowned by the influx of European explorers and traders, who later founded the Trade Union VOC 1602. European explorers gave the name of the islands in Southeast Asia under the name "Indian" or Indies (Indische Archipel, Indian Archipelago, or East Indies (Oost Indie), East Indies, Indies Orientalists). In the Dutch colonial period (1816-1942), the name of the Dutch province of the kingdom are "Nerdelansh Indie" or "Hinida Netherlands". And the Japanese occupation period (1942-1945) under the name "To-Indo" or "East Indies".

Regarding the term "Indonesia" for the first time discovered by an English ethnologist named James Richadson Logan in 1850 in earth sciences. Twelve years later in 1862 the term "Indonesia" was used by the British named Maxwell in his article titled "The Island of Indonesia" or Indonesian archipelago. Indonesia increasingly popular term when a German ethnologist named Adolf Bastian uses the term Indonesia in 1884 in the works etnologinya.

Actually, the word "Indonesia" is derived from the Latin word "Indus" means the Indian and the Greek word "nesos" which means island. In old Javanese, Indonesia known as "archipelago" of the word Nusa (island) and between. So Nusantara-meaning series of islands. Name politically Indonesia was first used as the name of youth associations or students who study in the Netherlands under the name "Association of Indonesia", 1908. Embryo name Youth Congress II in Jakarta, Indonesia in 1928 used the term in relation to national unity. The Youth Congress on October 28, 1928 resulted in the Youth Pledge in which listed the name of Indonesia. Indonesian term officially used as the name of our country on August 17, 1945 with the proclamation of Indonesian independence.

Resistance for the sake of resistance against the Dutch colonizers had done up to give birth May 20, 1908 National Awakening and Youth Pledge statement of October 28, 1928 which in its original wording reads as follows: "First, we poeta and poetri Indonesia mengakoe bertoempah Satoe blood, soil Indonesia; Second, we poeta and poetri Indonesia mengakoe which Satoe nation, the nation of Indonesia; Third, we poeta and poetri Indonesia mendjoendjoeng Persatoean language, Indonesian".

During the Japanese occupation 1942-1945, name-Indonesian archipelago using the name "To-Indo" or "East Indies". Finally, when the position of the Japanese crash in World War II, the founding figures of the Indonesian nation formed Administering Agency Preparation for Indonesian Independence (BPUPKI) which later became the Indonesian Independence Preparatory Committee (PPKI) which is the incarnation representative of all the people of Indonesia and through Soekarno-Hatta proclaimed Indonesia's independence on August 17, 1945, and on the next day of August 18, 1945 PPKI ratify the 1945 Constitution, the President and Vice President.

2. The law in force in the archipelago - Indonesia

Regarding the applicable law to regulate the common life including private law / civil law, from the phase of the prehistoric to the early phases of the ancient Indonesia or in phase of Western civilization similar to the early Middle Ages, people's lives march to the customs or which became known as "customary law" introduced by Snouch Hourgronye (1893) in his book "De Atjehers" (people Atjeh). Adatrecht term is used also by Van Vollen Hoeven in his book "Het Indigenoos-recht van Nederlandsch Indie" (Customary Law Indies), also Ter Haar and legal experts premises.

In ancient times Indonesia phase (initial M - 1500m born-kingdoms large and small, among others there is the great kingdom of Srivijaya, Majapahit and Mataram.

At the time of the kingdom of Srivijaya and Majapahit, which lasted from the 7th Century s / d the late

15th century was born the "State of the archipelago". Sriwijaya collapsed in 1377 and the year 1478. The area Majapahit Majapahit was the forerunner to the territory of the Republic of Indonesia (NKRI). Unity revealed in the Nusantara region Palapa faith professed vows in 1331 by the Supreme Patih Majapahit, Gajah Mada. He vowed to unite the archipelago under Majapahit, oath reads "Lost Huwus Seagrass archipelago, iSun amukti Palapa", which means if it has been subdued throughout the archipelago did I enjoy the fruit Palapa. 2006 Indonesian archipelago commemorate 1,000 years (1006-2006)

Along with the birth of the kingdoms in the archipelago, the phase of the ancient Indonesia respectively arrival and developing Hinduism, Buddhism, Islam, Christian / Catholic, in addition to native beliefs in God, the Exalted Almighty.

Thus, the law as a guideline to regulate the common life in society, in addition to customs or customary law, also apply religious values and rules of each kingdom. Dealing with such matters, in the heyday of Majapahit discovered manuscript consists of 275 chapters and by Prof. DR. Slamet Mulyana recorded with the title "Legislation Majapahit", which contains a sort of "codification" Majapahit law.

After ancient times, the history of Indonesia entered a period of growth of Islamic kingdoms (1500-1800). At the same time Indonesia (Nusantara) the arrival of Portuguese merchants and the Netherlands in the late 16th century and later founded the Dutch Trade Union V.O.C. (Vereenigde Ostindische Compagnie early 17th century (1602). The period of Dutch rule of Indonesia, can be divided into three phases, namely:

- a. The reigning V.O.C. (1600-1800)
- b. Masa East Indies and England (1800-1816)
- c. The period of the Dutch East Indies (1816-1942)

In 1619 V.O.C. under the leadership of Governor General Jan Pieter Zoon Coen seized Jakarta. Since the Dutch rule in Indonesia embed / Archipelago. V.O.C. has two properties, namely as "Ruler of Commerce" and as "the Administration". Where it is based on "the right Oktroi" he gets from Staten Generaal (of Representatives) Netherlands, where V.O.C. can trade itself, can set up strongholds, and may have an agreement with the kings in Indonesia / Archipelago.

Furthermore, to maintain public order, the police action and Justice, V.O.C. entitled to appoint a "Officier van Justitie" (employees prosecutor justice), which also acted as a judge in a civil case and a criminal case. In carrying out the actions of the judiciary, V.O.C. must adapt to the Law of Justice and delivered to the Fleet Admiral who comes from the Netherlands.

Attitude V.O.C. the original court is as follows;

- a. He was always precarious, because V.O.C. is not concerned with the original court.
- b. V.O.C. do not like to bother the original court, even as it is considered good, but because did not want much burdened administrative jobs;
- c. Against the original buildings, V.O.C. being on the art of "Opportunities Politiek" means only depending on their needs;
- d. V.O.C. just have a criminal case settlement, because it requires the public tranquility in society. Where it can be seen in Cirebon Pepakem;
- e. Against the civil law, both in Jakarta and in the regions V.O.C. let alone the entry into force of customary law.

Attitude V.O.C. the customary laws of civil viewable Law V.O.C. named "Statuten Van Batavia" (1642), which reads (translation) = Thus the law of inheritance for the Indonesian people must be treated that customary law is not the law of the Netherlands. V.O.C. forced to do so because the people of Jakarta still hold in resolving the case inheritance under customary law.

On December 31, 1799 V.O.C. disbanded; all of the assets taken over by "Bataafsche Republiek" that leave assets pasiva £ 10 million and £ 126 million. For government and possessions V.O.C. in Indonesia handed over its control to "Raad der Aziatische bezittingen en Etablissementen" (The Treasure of the Council and placements in Asia) which is abbreviated "Aziatische raad". The governing body began work on 1 January 1800. Then Bataafsche Czech made "Koninkrijk Holland" by King Louis Napoleon, King raised Mr. Herman Willem Daendels became Governor General "East Indies" (1808-1811).

Although Daendels seemed disappointed to the deficiencies found in customary law (criminal), but he was reluctant to replace them with European law. Therefore he chose the middle road in use by European law. He was wearing the customary law if it is not contrary to the fundamentals of justice and decency. On May 16, 1811 the Government of Holland replacing Yan Daendels with Governor General Willem Yanssen. Later replaced by Raffles (1811 - 1816) under the British rule. Raffles respect customary law (Civil Code) due to take the example of the implementation of the British rule in India.

After the end of the war the British - Dutch, then berdasarkan "Conventie London" On August 13, 1814 all the colonies British-occupied except the "Cape of Good Hope (Kaap de Goede Hoop), Demarary, esse quebo and Berbice" returned to the Netherlands. Conventie London then to implement it raised 3 Commissioner

General, Mr. C.Th. Elout, G.A.P. PH. Baron van der Capellen and A.A. Buykes.

The Netherlands is one country that once colonized by the French between 1806 - 1813. After independence in 1813, it is based on Article 100 of the Constitution of the Netherlands in 1814, formed a committee in charge of making plans codification Dutch law. This committee is known by Mr. J. W. Kemper (1776 - 1824), who in 1816 delivered a plan codified in the King of Holland. The new Dutch law codification was inaugurated in 1838, because in the year 1830 to 1838 there was war between the Netherlands and Belgium which caused the separation of the two countries.

On the basis of the principle of "Concordantie" (a principle that passing a law of a State in another State), the Dutch law is treated to the colonies of the Dutch East Indies / Indonesia starting on May 1, 1848, namely;

1. The General Bepalingan Wetgeving van voor Nederlandssch Indie = A.B. (Provisions - general provision of law in Indonesia)
2. Burgelijk Wetboek (BW = Book of the Law of Civil Law)
3. Wetboek Van Koophandel (WVK = Book of the Law of Commercial Law)
4. Reglement op de Rechterlijke Organisatie en het beleid der Justitie (R.O = Regulatory Organization of Courts and Policy Justisi)

Article 6, 7, 8, 10 A.B. set of population groups / citizens and Articles 9, 11 A.B. set of laws (civil) that apply to each segment of the population.

Article 6: Population group consisting of;

- a. Group Indonesia (Bumi Putra) and equated
- b. Group Europe and equated

Article 7: Group classes are equated with Europe

1. All Christians, also including those Indonesian Christians
2. Everyone from whatever source that is not included into the formulation of the next chapter (chapter 8)

Article 8: Group which equated to Indonesia

- a) The Arans
- b) Moors
- c) Chinese
- d) All the people who are Muslims or non-religious

Article 10: The Governor General is entitled to hold a deviation from the rules set out above this, sepenjang the people of Indonesia (Bumi Putra Christian)

Article 9: civil law and commercial law applicable to the European groups and identified with Europe, the applicable laws of Europe (BW and WVK).

Article 11: the group is not European in principle apply customary law, unless they:

- a) voluntarily obey the rules of civil and commercial law applicable to the class of European law.
- b) because of their legal needs require it, subject to the civil law and commercial law class European law.
- c) the need for enhanced legal because they need it, subject to other laws.

Applicability of articles of division segment of the population and the applicable law as mentioned above, is politically Indies colonial government indirectly has a policy of "divide et impera" or divisive political segment of the population / citizens in Indonesia / Archipelago.

In 1854 A.B. Reggerings replaced Reglement (R.R). Distribution of population groups and civil law in force, essentially the same as the provisions A.B. Then with S. 1855 - 179 East regulates foreign groups, where they apply for civil law applicable to groups of Europe, except the provisions of the law of marriage and inheritance laws applicable law (adat) they each. Thus, the colonial government Indies divide segments of the population and civil law in force in the European groups, group Foreign Easterners, class Bumi Putra.

Furthermore, in the context of legal politics Indies colonial government issued several regulations, among others:

- a. S 1917-12 that arranged for groups Bumi Putra can voluntarily subjecting themselves to civil law class of Europe; good for all, for its part, to certain acts or conduct voluntary submission.
- b. S. 1917 - 129 set up for groups of Chinese Foreign Orientals apply the provisions of civil law in Europe, with the exception of the provisions of sections 2 and 3 of Chapter IV of unity book BW governing marriage ceremonies before their customary laws apply. In S 1917 - 129 also regulates the provisions on adoption or adoption for the Chinese Foreign Eastern group for the BW is not set on the adoption of a child or adoption. While the Chinese customary law / China recognize adoptions or adoption.
- c. 1920 R.R. refurbished (new R.R.). Article 109 regulates the distribution segment of the population consists of groups of Europe, the Eastern faction and faction Foreign Bumi Putra. Article 75 set the civil provisions that apply to each segment of the population. Furthermore, Article 109 R.R. Article 163 is set equal to I.S. and article 75 is set equal to Article 131 I.S.

- d. S. 1924 - 556 are arranged for groups not Chinese Foreign Easterners (such as Arabic, India, Pakistan, etc.) apply the provisions of European civil law, unless the laws of marriage and inheritance laws. But for those applicable legal provisions testamentary inheritance BW in the second book, because in their customary law does not recognize the legal provisions testamentary inheritance or testament grant.
- e. In 1926 R.R replaced I.S. (Indische Staatsregeling). Article 163 I.S. (Same with Article 109 R.R) regulates the population group that is European class, class and faction Foreign Eastern Bumi Putra. While Article 131 I.S. (Together with Article 75 R.R.) regulates the civil law that apply to each segment of the population, which in essence, as follows:
 - 1) For the class of the applicable European civil law in Europe.
 - 2) For the Group applies the Chinese Foreign Eastern Europe with the exception of civil law in accordance S. 1917-129
 - 3) For non-Chinese foreign Asian Group applies the law regarding to Europe with the exception of S. 1924-556
 - 4) For the class of Bumi Putra Indigenous applicable civil law, with the exception accordance S. 1917-12.

Regulations that are specifically made for class Bumi Putra, for example

- a. Christian Marriage Ordinance Indonesia, S. 1933-74
- b. Ordinance on These share of Indonesia (IMA), S. 1939-569 jo. 717
- c. Ordonasni of the Society of Indonesia, S. 1939 - 570 jo. 717

The legal description of the circuit (Civil) applicable at the time of the Dutch East Indies has been a tug of war invaders legal political interests Indies to enact laws of the Netherlands in the colonies and political interests that want to maintain the customary law customary law.

Some scholars who wish to maintain the existence of customary law, among others: C. Van Vollen Hoeven, Ter Haar, Supomo, Soekamto, Djodjodigoeno, Hazairin, M. Koesno, Imam Sudiyat and Bachelor of Indonesia.

Furthermore, during the Japanese occupation (1942 - 1945); Japan imposed transitional provisions of Article 3 of Law Dai Nipon 1942 (in Japan in 2602) that says, "All Governmental agencies and their power, law and constitution of the Government of the first, still recognized for a while, as long as not contrary to Rule Government Bala Japanese Army". Thus the distribution segment of the population / citizens under section 163 I.S. and Law (civil) applicable pursuant to Article 131 I.S., S.1917 - 12 S.1917-129, S.1924-556's regulations and other regulations to the contrary in the Act Dai Nipon / Bala Japanese Army No. 1 1942 (2602) remain in force.

3. Construction Law after Independence of Indonesia August 17, 1945

After the proclamation of independence on 17 August 1945, the Preparatory Committee for Indonesian Independence (PPKI) that are mirror images representative of the whole people of Indonesia, on August 18, 1945 set 1945 as well as set the President and Vice President Soekarno - Hatta. Indonesia, which adopts a unitary state (Republic of Indonesia) and shaped the Republic is a constitutional state based on Pancasila. As a newly independent state of law, persoalanya is about what laws apply, including private law / civil law. In accordance with the provisions of Article II transitional rules of the 1945 Constitution stipulated that "All state agencies and regulations remain in effect throughout 1945 dngan not contradictory". Thus, specifically regarding the applicable law, the legislation heritage Dutch law shall remain valid to the extent not held a new and not contrary to the 1945 Constitution.

Regarding population groups / citizens and civil law that applies in itself still using Article 163 I.S. and Article 131 I.S., and S. 1917-12, S. 1917-129, S. 1924-556 and other Staatblad-Gazette. In 1958 the set of Law No. 62 on citizenship, which divides citizens into foreigners (WNA) and the Indonesian citizen (citizen). Distinguished citizen with a genuine citizen and citizen descent.

In fact, until 1966 the distribution segment of the population / citizens under section 163 I.S. still be running that was finally issued Instruction No. Presidium Ampera Cabinet 31 / U / IN / 12/1966 dated December 27, 1966 which instructs:

To: 1. Minister of Justice of the Republic of Indonesia; 2. Civil Registry (Burgerlijke Stand) throughout Indonesia;

To:

- a. Pending the issuance of the Civil Registry Act which is national, not using the classifications of the Indonesian population under articles 131 and 163 I.S. ("EROPEANEN", VREEMDEOOSTERLINGEN "IN LANDERS"). the civil registry (B.S.) throughout Indonesia.
- b. For the next Civil Registry office in Indonesia terhuka for the entire population of Indonesia and only between Indonesian citizens and foreigners.
- c. The provisions of the numbers 1 and 2 above Without prejudice to the provisions regarding marriage, inheritance and the provisions of other civil law.

d. The Minister of Justice and Minister of the Interior set further implementation and these instructions in their respective environments.

After the amendment to the Constitution 1945 (1999 - 2002) no longer distinguishes between Indonesian citizen (citizen) original and offspring. When this has enacted the Citizenship Law No. 12 of 2006 and Law on Civil Registration No. 27, 2006.

Back to previous descriptions about Indonesia as a State of Law which is based on Pancasila, in accordance with pluralism, pluralism, diversity, community diversity -bangsa Indonesia, the Indonesian legal system embraces "mixed system" (Mixed System) is a mixture of the Civil Law system / Continental Europe, the system Customary law / Customary law and Religion legal system. Of the Civil Law legal materials written and Indonesia adopts a system of codification of customary law system / customary Law Indonesia recognizes the unwritten laws, and of religious law recognizes and respects the laws of each religion and belief in God, the Exalted Almighty.

Pluralism private law / civil law applicable Indonesia at this time, according to the source material and formal sources of law, namely:

1. The private law / civil law provisions BW and the Netherlands especially with regard WVK I.S. Article 163, Article 131 I.S., S. 1917-12, S. 1917-129, 1924-556 S., with a note of article 163 I.S. regarding the distribution segment of the population should be adjusted to the provisions of Law No. 12 of 2006 on citizenship and Law No. 27 of 2006 concerning Population Administration.
 - a. Regarding the position of BW and WVK by the Supreme Court in a circular No. 3/1963 dated August 14, 1963 at its core is no longer valid assume among other clauses of the BW article 108, 110, 284 (3), 1238, 1460, 1579, 1603X, 1862.
 - b. For information, since 1947 in the Netherlands has been compiled book of law Private Law / Civil new (Nieuw Burgerlijk Wetboek) consisting of nine books and is a combination of B.W. and W.V.K. old refurbished
 - c. The private law / civil law customary that can be divided into two groups which, according to its structure, which is based on an affinity (genelogi) and are based on regional or territorial environment. In this case there are three basic kinds of affinity:
 - a) Consanguinity according to the line of the father (patrilineal) such as the Batak, Nias, the people of Sumba, Flores.
 - b) Consanguinity according to the maternal line (matrilineal) eg Minangkabau family, and
 - c) Consanguinity according to the maternal line and along the line of the father (parental arrangements), such as Javanese, Sundanese, Aceh, Bali, Kalimantan. To determine the rights and obligations of a person, then the family of the father is synonymous with the family of the mother.

While the alliance is based on the environmental law area (territorial), there is a difference between the arrangement of alliances laws in the various regions of the Indonesian archipelago. Due to the differences in the arrangement of it, then there are also differences between customs regulations that apply in different areas. The composition of the area that the outlines of the pattern and nature of customary law is uniform, by Van Vollen Hoeven called Rechts Kring in Indonesian: Circle of law or legal environment.

In his Adat Recht I, Van Vollen Hoeven divide the whole region of Indonesia in 19 circles ie the legal environment;

- I. Aceh
- II. Tanah Gayo - along Batak Alas and Nias
- III. Minangkabau region along Mentawai
- IV. South Sumatra
- V. Maluku
- VI. Bangka and Belitung
- VII. Kalimantan (Land Dayak)
- VIII. Minahasa
- IX. gorontalo
- Toraja Region X.
- XI. South Sulawesi
- XII. Ternate Islands
- XIII. Maluku, Ambon
- XIV. Irian
- XV. Timor Islands
- XVI. Bali and Lombok (with Sumbawa Barat)
- XVII. Central and East Java (along with Madura)
- XVIII. Autonomous regions (Surakarta and Yogyakarta)
- XIX. West Java

3. The law of private / religious civil law with due regard to the content of private law / civil law as follows
 - a) Regarding marriage laws, taking into account the transitional provisions of article 66 of Law No. 1 of 1974 on Marriage, valid laws of marriage each marriage laws of religion and belief in God, the Exalted Almighty all the things that have not been regulated in Law No. 1 of 1974 and implementing regulations.
 - b) Regarding inheritance law, the applicable provisions of the law of inheritance of each segment of the population / citizens and each religion and belief in God, the Exalted Almighty. For example for Moslems can use to Islamic law or Customary Inheritance law, for the Hindu (Bali) can use the provisions of the Hindu inheritance law or customary law of inheritance.
4. The legislation that has been set after the Indonesian Independence on August 17, 1945. Particularly in the field of private law / civil law has many laws and regulations that have been established, including the public-private, inter alia:
 - a. Law No. 62 of 1958 on Citizenship, which has been replaced by Act No. 12 of 2006.
 - b. Law No. 5 of 1960, provisions Agrarian yangn often known as the Basic Agrarian Law (BAL)
 - c. Law No. 1 of 1974 on Marriage
 - d. Law No. 1 of 1995 on limited liability company which has been amended by Law No. 40 of 2007
 - e. Law No. 4 of 1986 on Mortgage Land and objects that exist on the land
 - f. Banking Law
 - g. UU field of Labour / Employment
 - h. UU field of Intellectual Property Rights
 - i. And others

D. Conclusion

Speaking of pluralism, like it or not can not escape globalization. Pluralism is a consequence of the process of modernization and globalization. Man's choice of lifestyle, ideology, moral norm, the more open outlook on life. In such a situation of one party demanded tolerance and respect for differences, from the other party also demanded the ability to determine his choice.

So too is the issue of legal pluralism in a global perspective, debate and discussion has spawned new ideas about legal pluralism sharper and meaningful in analyzing the phenomenon of law in society in various parts of the world. How globalization in the economic, political, cultural, historical context can explain globalization (and glocalization) in the field of law ?.

In the era of free trade is an exchange of money, goods and services through a variety of business activities on a large scale. Advances in information technology have enabled the rapid events. Free market policy "initiated" especially by the developed countries (rich and powerful). It seems that not only the powerful Western countries, but also countries in Asia such as Japan and China being the power of the new world. This activity has led us to become a citizen huge world market. Almost all goods and services from wherever it can be found in many of the world.

On the other hand, in the world of law reform movement or advocacy movements of indigenous peoples, legal pluralism can not be separated from the recognition of indigenous peoples' advocacy. Initially, the term set forth in order to defend the lands of indigenous peoples who were forcibly taken by the State or private actors. The activities of NGOs and a handful of academics campus began to criticize the laws of the State which is used to legitimize the forcible taking, as well as showing that the areas inhabited and managed by indigenous peoples is not a lawless region. Instead indigenous peoples have laws governing the acquisition and management of land. Later, the term pluralism land law created specifically to justify the fact that in addition governed by the laws of the State, control and management of land in Indonesia is also governed by customary law.

This history provides a foundation for community social activists to interpret the law as the diversity of legal pluralism. More narrowly, legal pluralism seen when the State recognizes the existence of indigenous or other local laws. With the sentence on the contrary, if the state or the government recognizes customary law, legal pluralism has taken place.

The direction of development of law in Indonesia after the reform, even earlier, had anticipated the question of legal pluralism and globalization, including pembagunan law in order to free trade. On the other hand also consider legal pluralism and glocalization.

In the National Development Program (PROPENAS) Development Programme law include: Establishment of legislation, empowering the Institute of Justice and Law Enforcement Institutions other, Completion cases of corruption and human rights violations, Increased awareness of Law and Legal Culture Development.

In the National Medium Term Development Plan 2009-2014 2004-2009 sustainable development program laws, among others, the issue of revamping the legal and political system, highlighting the problems: the substance of the law, the legal structure and legal culture. From the above issues, gave birth to the policy direction: reorganize the legal substance, to reform the legal structure and improve the legal culture.

Framework revamping legal and political system with problems of substance of the law, the legal structure and

legal culture, have adopted the concept of Lawrence Meir Friedman terkenal with 3 elements of the legal system (Three Elements of Legal System), namely: Structure (Structure), substance (Substance), Culture Legal (Legal Culture).

So far the program development of the law still faced problems: overlapping and inconsistent laws and regulations, implementation of the law is hampered its implementing regulations, the absence of an extradition treaty and Mutual Legal Assistance, (MLA), the lack of interdependence of legal institutions, institutional accountability law, human resources the legal field, the onset of degradation of the environment legal culture of society, decreased awareness of legal rights and obligations of society.

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