Is The Constitutional And Legal Recognition Of Traditional Community Laws Within The Multicultural Country Of Indonesia A Genuine Or Pseudo Recognition?

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Abstract

Indonesia is well known amongst Southeast Asian countries for it multi-cultural identity in terms of ethnicity, religion, race and social stratification. Indonesia embodies its motto of Unity in Diversity, which refers to the culturally rich configuration of Indonesia, containing cultural capital and cultural power. However, cultural diversity also yields conflict due to inter-ethnic and inter-religious disputes that have the potential to generate social disintegration and even threaten the fragmentation of Indonesia as a Nation State. In the eyes of legal anthropologists, sources of conflict are often based on discriminatory policies expressed within the State's law and legislation with regard to the recognition and protection of local communities across the country, namely 'adat' communities practising traditional, customary law, known as 'adat'. Thus, State laws enacted and enforced by the Government tend to dominate and marginalise, even ignore the rights of the local communities, particularly regarding access to and control over natural resources, which is otherwise governed by the adat law of the region. This paper attempts to offer an answer to the fundamental question of whether the 1945 Constitution recognises and protects the traditional communities and their adat laws by employing a legal anthropological approach, with the purpose of obtaining a better understanding of development of State law in a multicultural Nation and looking towards a more just and equitable Indonesian State law.

Key word: Traditional Community Laws, Recognition, Multicultural

I. INTRODUCTION

Indonesia is well known for it multi-cultural identity in terms of ethnicity, religion, race and social stratification. Indeed, an official motto of the State is "Unity in Diversity" (Bhinneka Tunggal Ika), referring to the empirical social and cultural diversity of Indonesia. Indonesian territory, which stretches from Sabang (North Sumatera) to Merauke (West Papua) is rich in both natural resources and cultural resources.[1] On the one hand, the diversity refers to a cultural configuration which reflects the very National identity of Indonesia. This cultural diversity provides Indonesia with both cultural capital and cultural power as well as generating a unique living dynamic for the Nation State of Indonesia. On the other hand, however, this cultural diversity also leads to conflict, especially of an inter-ethnic or inter-religious nature, with the potential for social disintegration. It is said that conflict is an unavoidable part of human interaction; conflict and tension are inherent in all kinds of society.[2] Hence, if such conflict cannot be managed wisely by the Government and collectively by all components of society in the Nation State, Indonesia faces social disintegration and fragmentation of the national identity and even of the Nation State.

Over the last four decades Indonesia has increasingly been faced with conflict based on cultural pluralism, such as has emerged in Aceh Province, Abepura and Timika of West Papua, Sampit and Palangkaraya of Central Kalimantan, Pasuruan and Situbondo of East Java, Mataram of West Lombok, Lampung of South Sumatera, Poso of Central Sulawesi, and Pontianak and Sambas of West Kalimantan. These conflicts all demonstrate elements of inter-ethnic conflict resulting from incongruence of values, norms and interests between ethnic communities in the multicultural country of Indonesia. It can further be observed that cases of laws governing tenure and management of natural resources have been increasing with the national development in various sectors,

[1] Joan Hardjono (ed), 1991. Indonesia, Resources, Ecology, and Environment, New York:Oxford University Press.

[2] Paul Bohannan (ed.). 1987, Law and Warfare, Studies in the Anthropology of Conflict, Austin and London: University of Texas Press; Laura Nader and Harry F. Tood Jr. (eds.). 1978. The Disputing Process-Law in Ten Societies, New York: Columbia University Press; James Spradley P. and David W. McCurdy. 1987, Conformity and Conflict, Reading in Cultural Anthropology, Boston and Toronto: Little, Brown and Company.

namely industry, agro-industry, transportation, transmigration, settlement and real-estate, as well as commerce and tourism.[3]

Conflicts over ownership and use of natural resources were primarily caused by both conflicting interests over the control and tenure of said natural resources, as well as differing perceptions on how to deal with the environmental and natural resource laws between the Government and the local people.[4] In this sense, the Government tends to enforce State law and regulations to control and manage natural resources in the name of national development, and the local traditional people, namely the adat communities, employ their own customary laws, called adat laws, to control and manage their environment and natural resources in the territories they depend on.

From the perspective of legal anthropology, the source of these conflicts is resultant of discriminative policy and treatment by the Government, expressed through the enactment of State laws and regulations in line with the recognition and protection of rights of the local adat communities regarding tenure and management of and access to natural resources. In this respect, State laws enacted and enforced by the Government have a tendency to dominate and marginalise the local values, traditions and religions as well as the customary adat laws of traditional communities. It is conventionally stated that the basic function of the law is to keep social order and protect legal order in maintaining the function of

[3] Sukri Abdurrachman. 2004, Konflik Pertanahan di Era Reformasi: Hukum Negara, Hukum Adat dan Tuntutan Rakyat (Conflict of Land Tenure in Reformation Era: State Law, Adat Law and Claiming of the People), Jakarta: Pusat Penelitian Kemasyarakatan dan Kebudayaan LIPI; Al Araf and Awan Puryadi. 2002, Perebutan Kuasa Tanah (The Contest of Land Tenure and Control), Yogyakarta: Lappera Pustaka Utama; Dianto Bachriadi et. al. (eds). 1997. Reformasi Agraria, Perubahan Politik, Sengketa, dan Agenda Pembaruan Agraria di Indonesia (Agrarian Reformation, Political Change, Conflicts and Agrarian Reform Agendas in Indonesia) , Jakarta: Repetto, Robert and Malcolm Gillis. 1988, Public Policies and the Misuse of Forest Resources, New York: Cambridge University Press; Konsorsium Pembaruan Agraria (KPA) dan Lembaga Penerbitan Fakultas Ekonomi Universitas Indonesia; Dianto Bachriadi, Dianto. 1998, Sengketa Agraria dan Perlunya Menegakkan Lembaga Peradilan yang Independen (Agrarian Disputes and the Needed for Enforcing the Independently Agrarian Court), Bandung: Kertas Posisi KPA 002/1998, Konsorsium Pembaruan Agraria (KPA): Charles V. Barber. 1989, "The State, The Environment, and Development:The Genesis and Transformation of Social Forestry Policy in New Order Indonesia", Berkeley: Unpublished Doctoral Desertation University of California; Benny K. Harman. 1995, Pluralisme Hukum Pertanahan dan Kumpulan Kasus Tanah (Pluralism in Indonesian Land Law and Compilation Land Tenure Cases), Jakarta: Yayasan Lembaga Bantuan Hukum (YLBHI); Endang Suhendar dan Ifdal Kasim. 1996, Tanah sebagai Komoditi, Kajian Kritis atas Kebijakan Pertanahan Orde Baru (Land as Economic Commodity, Critical Study of Land Tenure Policy in the New Order Era), Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM); Maria S. Sumardjono, 2008, Tanah dalam Perspektif Hak Ekonomi, sosial, dan Budaya (Land in the Perspective of Ecnomic, Social and Cultural Rights), Jakarta: Kompas Press; Iwan Tjitradjaja, Iwan. 1993, "Differential Acess to Resources and Conflict Resolution an A Forest Consession in Irian Jaya", in Ekonesia, A Journal of Indonesian Human Ecology Vol. 1 Mei 11993, Jakarta; Gunawan Wiradi, 2000, Reforma Agraria, Perjalanan Yang Belum Berakhir (The Unfinished Journey of Agrarian Reformation), Yogyakarta: Insist Press; Benedanto, Pax. 1999, Menggugat Ekspansi Industri Pertambangan di Indonesia (Reclaiming over Maining Industrial Expantion in Indonesia) , Bogor: Pustaka Latin.

[4] Anthony Allot and R. Woodman Gordon (eds). 1975, People's Law and State Law, Dodrecht-Holland: Foris Publication.

law as a tool for social control and the ordering of society.[5] In doing so, another function of the law is improved as an instrument of orderly change, namely social engineering.[6] In the development of complex society across the Nation State, such functions of law are questioned as to whether the role of State Law can also be improved as an instrument for maintaining and strengthening social integration within such a multicultural Nation State.

It is interesting to analyse such legal phenomena for the purpose of obtaining a better understanding of what causes the conflicts originally, either the inter-ethnic disputes or the question of the State's ideology and the policies of the Government as defined within the 1945 Constitution and State's law and regulations. This paper attempts to answer this fundamental question by employing a legal anthropology approach in order to find another atmosphere in building a better, more holistic understanding with regard to whether the 1945 Constitution defines a genuine or pseudo recognition and protection of adat communities and their traditions, especially concerning rights to and tenure of natural resources?

Ideology of the State in Recognising and Protecting Traditional Adat Communities: A Legal Anthropology Point of View

Anthropological studies with regard to the function of law as a system of social control within societies have primarily been conducted by anthropologists.[7] It is, therefore, recognised that anthropologists have offered more significant contribution to the development of the concept of law as an instrument of securing social control and legal order within the dynamic life of a society. Anthropologists have focused their study on the micro-processes of legal action and interaction. They have made the universal fact of legal pluralism a central element in understanding the workings of law in society, and they have self-consciously adopted comparative and historical approaches and drawn the necessary conceptual and theoretical conclusions from these choices.[8]

[5] Edwin W. Patterson, 1950. "Introduction", in The Legal Philosophies of Lask, Radbruch, and Dablin, translated by Kurt Wilk, Cambridge University Press.
[6] Lawrence M. Friedman, 1975. The Legal System, A Social Science Perspective, New York: Russell Sage Foundation.
[7] Donald Black. 1984. Toward a General Theory of Social Control, New York: Academic Press.
[8] John Griffiths. 1986, What is Legal Pluralism ?, in Journal of Legal Pluralism and Unofficial Law No. 24/1986, The Foundation for

In this respect, law has not been studied by anthropologists only as a product of the abstract logic of a group of people that mandate particular authorities, but also, indeed mainly, as a social behaviour of a society.[9] Hence, law has been studied as product of social interaction strongly influenced by other aspects of culture, including politics, economy, ideology, religion. In other words, law has been observed as an integral part of culture as a whole along with other elements of culture[10] and studied as a social process within society.[11] It is difficult to articulate a precise definition of law that effectively captures the multiple aspects and actions of the State. In this regards, Hart argued to use the concepts of rule and authority to bring law into focus in analysing the role of law in the State.[12] Law must be understood as generic, and the term used in a way that is general enough to embrace the whole spectrum of legal experience.[13] Thus, Moore later formulated law as a short term for a very complex aggregation of principles, norms, ideas, rules, practices and the agencies of legislation, administration, adjudication and enforcement further backed by political power and legitimacy.[14]

Law is a defining characteristic of the State and an object of efforts of the State to order and control its territory and the natural resources contained therein. It is therefore important to pay attention to the role of law as an ideology and to analyse how the State establishes and enforces the ideology.[15] In the case of Indonesia, it is clearly observable that law was developed and employed as an ideology to order and control the territory of Indonesia and the natural environment contained therein. This is clearly defined within the Preamble to the 1945 Constitution, which states: ".....to form a Government of the State of Indonesia that shall protect all the people of Indonesia and control the territory and natural resources contained therein, mainly for the purpose of

Journal of Legal Pluralism.

[9] Donald Black. 1984, Toward a General Theory of Social Control, New York: Academic Press; Donald Black and Maureen Mileski (eds). 1973, The Social Organization of Law, New York: Seminar Press: Roger Cotterel. 1995, Law's Community, Legal Theory in Sociological Perspective, Oxford: The Clarendon Press.

[10] Leopold Pospisil, 1971, Anthropology of Law, A Comparative Theory, New York: Harper & Row Publisher.

[11] Sally F. Moore, 1978, Law as Progress, An Anthropological Approach, London: Routhledge & Kegan Paul Ltd.

[12] H.L.A. Hart. 1960, The Concept of Law, Oxford: Oxford University Press.

[13] Phillip Selznick, 1969, Law, Society, and Industrial Justice, New York: Transaction Books.

[14] Sally F. Moore, 1978, Law as Progress, An Anthropological Approach, London: Routhledge & Kegan Paul Ltd.

[15] Charles V. Barber. 1989, "The State, The Environment, and Development:The Genesis and Transformation of Social Forestry Policy in New Order Indonesia", Berkeley: Unpublished Doctoral Desertation University of California.

improving prosperity and public welfare, educating the people and to participate toward the establishment of a world order based on freedom, perpetual peace and social justice."

Such Preamble naturally reflects the main goal of the establishment of the Unitary State of Indonesia, as well as outlining the kind of ideology that should be used as a foundation upon which to build the character of the country. This ideology is reaffirmed in Article 33 paragraph (3) of the Constitution, which states: "The earth and water and natural resources contained therein should be controlled by the State and shall be utilised for the greatest prosperity of the people". Key words of the ideology of the State in controlling and managing natural resources can be seen to be "...should be controlled by the State" and "shall be utilised for the greatest prosperity of the people".

In relation to the recognition and protection of the indigenous peoples of Indonesia, referred to as adat communities, that are spread across the country, Article 18B paragraph (2) of the 1945 Constitution defines that "the State recognises and respects the adat communities and their traditional rights as long as they remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia and shall be regulated by the law". In this sense, key words of the Article that should seriously be paid attention to are "..... as long as ....". It means that the 1945 Constitution defines an official restriction that the adat peoples will be recognised and respected by the State only as long as they fulfil certain conditions, namely that they are in existence, surviving and living in the civilised society, and are not in contradiction with the principle of the State, and that they shall be regulated by the law of the State.

Said conditions have been reconfirmed by the State's legal instruments that regulate the control over and management of natural resources within the territories of adat communities, such as Basic Agrarian Act No. 5 Year 1960 that deals with the tenure and use of land, Forestry Act No. 41 of 1999 pertaining to the control over and management of forest resources, Biological Diversity Conservation

Act No. 5 Year 1990, Spatial Use Act No. 24 of 1992, Water Resources Act No. 7 of 2004, Plantation Act No. 18 Year 2004, Fishery Act No. 31 of 2004, Coastal Zone and Small Islands Management Act No. 27 of 2007, Mineral Mining and Coal Act No. 4 Year 2009, and Human Environment Protection and Management Act No. 32 Year 2009. The conditions defined by the phrase "as long as" in the aforementioned Act with regard to the recognition and respect of the adat peoples clearly lead to restrictions on and neglect of the rights of adat communities to control, manage and utilise the natural resources they depend on for survival in the territory. Consequently, the traditional environmental wisdom reflected in the customary laws of these communities is automatically dominated and subordinated by the State's Acts over natural resources.[16]

Adat communities have been in existence for generations, living in peace within a given territory mostly in and around forest areas or coastal zones and small islands, controlling and managing their natural environment and the resources they depend on under the supervision of their own customary adat laws. This was the status quo for a long period of time before the independence of Indonesia on August 17, 1945. It shows that the ideology and character of State laws, in which the concept of "as long as" is attached as legal instrument to restrict the rights of the communities are in contradiction with the principle of *ad prima facie*. Which one is prior and posterior in existence in the territory of Indonesia, the traditional adat communities or the Nation State of Indonesia? It is generally recognised that adat people and communities in the country were naturally basic elements of the establishment of Unitary State of the Republic of Indonesia.

From the point of view of legal anthropology, such ideology has the consequence that the State law tends to dominate, marginalise, and even ignore the adat laws of these local communities that are still in existence within the country. While adat law was declared the only basic principle of the Basic Agrarian Act of 1960, the capacity and standing of such adat law requires

[16] I Nyoman Nurjaya. 2014. "Progressive Environmental Law of Indonesia: Global Principles of Stockholm and Rio Declations As Defined Within The 2009 Act on Human Environment Protection and Management", in The US-China Law Review Volume 11, Number 1, January 2014 (Serial Number 97), Illinois-USA: David Publishing Company, Illinois.

further clarification in the context of Indonesia's system of law. In this sense, as pointed out by Hart, the position of adat law within the State law could be seen as the rule of recognition.[17] The fundamental question then is whether this is genuine recognition or merely pseudo recognition? In my opinion, the recognition of adat law within State law is naturally only pseudo recognition, as defined by Hart, because of the restriction provided by the phrase "as long as" within the 1945 Constitution and the conditions within a number of Acts pertaining to the control over and tenure of natural resources that which bring about consequences whereby the legal standing and capacity of adat law is decreased both in the ideology and the legislation of the State's law. In other words, there is pseudo-constitutional and legal recognition of the adat rights regarding natural resources, including relevant adat law.[18]

What faces criticism in these legislations in relation to the State's ideology is the legal position and capacity, as well as the legal recognition, afforded to adat communities within the Nation State of Indonesia. On the one hand, adat communities and customary laws have been officially recognised by the 1945 Constitution and by legislation. On the other hand, the existence of adat communities has been restricted with the condition that they must be extant. This means that even though it is clearly stated that laws governing natural resources, with specific regard to the earth, water and air space and the natural resources contained therein, recognise adat law, the requirement that the adat communities be extant decreases their legal standing and capacity in the foundation of the State's ideology and legislation.

In other words, this restriction goes to prove that adat law has actually been subordinated to the State's natural resource laws at the level of ideology and legislation. What then can be concluded from this brief description of the legal plurality in the multicultural country of Indonesia? The answer seems to

[17] H.L.A. Hart. 1960, The Concept of Law, Oxford: Oxford University Press.

[18] I Nyoman Nurjaya. 2011. "Adat Community Lands Right As Defined Within the State Agrarian Law of Indonesia: Is It A Genuine or Pseudo Legal Recognition?", in The US-China Law Review Volume 8, Number 4, April 2011, Illinois-USA: David Publishing Company. I Nyoman Nurjaya. 2012. "State Law in Multicultural Country of Indonesia: Toward A Just and Equitable State in Legal Anthropology Point of View", in the US-China Law Review Volume 9, Number 1, Febroary 2012, Illinois-USA: David Publishing Company.

be clear: that the fundamental principle that adat law should form the basis of State law is so heavily restricted by the qualification, "as long as", written into the 1945 Constitution and legislation. We must doubt seriously whether it can in fact continue to give sufficient recognition. There is certainly little room for the view that the legislature has supported or underwritten adat law as the main source of natural resource laws, except to the extent that it does not conflict with the limits imposed upon it.[19] In line with the political aspects of national law as developed by the Government, this could be the so called political ignorance of the State in terms of the existence of adat peoples and communities, as well as their rights to tenure and utilisation of natural resources and the existing customary laws as legal entities in the national law system.

At the level of implementation and enforcement it can be witnessed in many cases that customary adat lawsnhave been neglected and ignored by State law in times of tension and conflict between Central and Regional Governments and local adat communities over the control over and tenure of natural resources in various regions of Indonesia. The Government can be observed to tend towards disregarding the rights of adat communities in term of their access to, control over and utilisation of resources. In fact, the traditional adat communities have proven powerless to meet the Government at times when their traditional rights regarding territory and the natural resources contained therein were neglected, ignored and undermined in the name of national development.[20] In this respect, John Bodley said that the people whose traditional rights regarding natural resources and culture were neglected and ignored in the name of development were naturally "victims of development". In his words Bodley states:

> "Government policies and attitudes are the basic causal factors determining the fate of tribal cultures, and that governments throughout the world are

[19] H.B Hooker. 1978, Adat Law in Modern Indonesia, Oxford: Oxford University Press.

[20] Michael R. Dove. 1981, Peranan Kebudayaan Tradisional Indonesia dalam Modernisasi (The Role of Traditional Culture in Modern Indonesia), Jakarta: Yayasan Obor Indonesia; Person, Gerard. 1991, "The Tension Between State Law and Local Culture", Unpublished Paper; I Nyoman Nurjaya (ed) (1993), Politik Hukum Pengusahaan Hutan di Indonesia (Politic of Law on Forestry Management of Indonesia), Jakarta: Wahana Lingkungan Hidup Indonesia (WALHI); Nancy L. Peluso, 1992, Rich Forest, Poor People: Resource Control and Resistance in Java, California: University of California Press; Sandra Moniaga, 1991, "Toward Community-based Forestry and Recognition of Adat Property Rights in the Outer Islands of Indonesia", unpublished paper; Maria W. Sumardjono, 2008, Tanah dalam Perspektif Hak Ekonomi, sosial, dan Budaya (Land in the Perspective of Ecnomic, Social and Cultural Rights), Jakarta: Kompas Press; Iwan Tjitradjaja, 1993, "Differential Acess to Resources and Conflict Resolution an A Forest Consession in Irian Jaya", in Ekonesia, A Journal of Indonesian Human Ecology Vol. 1 Mei 11993.

> concerned primarily with the increasingly efficient exploitation of the human and natural resources of the areas under their control. It is becoming increasingly apparent that civilisation's "progress" destroys the environment as well as other people and cultures."[21]

Hence, it is understandable that the national development implemented by the Government has faced serious difficulties and obstacles in regional parts of the country. It is because of the State's ideology of pseudo recognition of adat communities in addition to State legislation that ignores the existence and capacity of living customary laws in the daily lives of adat peoples. The State's ideology and legislation with regard to the recognition and protection of traditional adat communities and their customary laws were both inconsistent within the 1945 Constitution and saw uncertainty at the level of State law. In summary, when we observe the development of national law in the country, it can be said that State law has become an idiom for expression of power to control its territory and manage the natural resources contained therein and has systematically ignored and neglected the legal position and capacity of customary law as a naturally living law of traditional peoples in the country.[22] It has the consequence that the implementation and enforcement of control over and management of natural resources at the level of of legislation are mostly dominated by conflicts between Government and local adat communities, particularly over access to an tenure of natural resources. These conflicts reflect larger tension between the central and regional Government and the local people in most regions of Indonesia.

In order to obtain a better understanding of the law in its social and cultural context, our attention should be directed to the relationship between law and culture. In this respect, law is actually part of culture, and therefore law should be studied as an integral part of culture as a whole, and not regarded as an autonomous institution.[23] Consequently, when we are speaking about the establishment of State law, other aspects of culture such as economy, politics

[21] John Bodley, 1982, Victims of Progress, California: Mayfield Publishing Company.
[22] Starr, June and Jane F. Collier. 1989, History and Power in The Study of Law, New Direction in Legal Anthropology, Ithaca and London: Cornel University Press.
[23] Leopold Pospisil, 1971, Anthropology of Law, A Comparative Theory, New York: Harper & Row Publisher.

and ideology must also be taken into account. In fact, these aspects of culture powerfully influence the development of State law. That is why obstacles resulting from ideological, economical and political factors can be observed in the establishment of national law both at the level of law making as well as implementation and enforcement. Law can not be understood without regard for the realities of social life. Thus, if we wish to clarify the standing and the capacity of adat law within the total structure of Indonesia's legal system. I encourage the employment of a semi-autonomous social field as introduced by Moore.[24] Moore described society as a social arena in which a number social fields have rule-making capacities, generate rules, customs, internal symbols and the means to induce or coerce compliance, resulting in self-regulation or legal order. These principles, though, should be simultaneously set in a large social matrix which can, and does, effect and invade through its autonomy and means of legislation. Therefore, these social fields may be called semi-autonomous social fields within the complete structure of society.

The above theoretical framework is clearly significant in order to obtain a better understanding of such legal issues in the greater system of Indonesian law, particularly in understanding the ideology of the State and the standing and capacity of adat law as the naturally living law of the traditional communities of Indonesia.

II. DISCUSSION

From the point of view of legal anthropology, formal law is not the only type of legislation that is shaped and enforced by State law. In the daily life of communities, we also observe the existence of religious law, folk law, indigenous law or customary law as legal facts within human interaction, which also include self-regulation or inner-order mechanisms that play an essential role, mainly as tools for securing social order, legal order, and social control within society. Therefore, it is confirmed that law as a product of culture comprises folk law,

[24] Sally F. Moore, 1978, Law as Progress, An Anthropological Approach, London: Routhledge & Kegan Paul Ltd.

religious law, State law and self-regulation/inner-order mechanisms. This is the so called legal plurality within the dynamic life of society.[25] The anthropological study of law focuses its study on the interaction between the law and the social and cultural phenomena that occur in society, as well as the workings and functions of law as an instrument of social order and social control. Precisely, legal anthropology refers to the study of cultural aspects which relate to the legal phenomenon of social order and legal order within society. Hence, legal anthropology in the specific sense refers to the study of social and cultural processes in which the regulation of rights and obligations of the people are created, changed, manipulated, interpreted, and implemented by the people. In this respect, law as it functions for maintaining social control and order could be State law or other sorts of social control mechanisms that emerge and exist as living law within communities, namely adat law.

Legal anthropology also studies the phenomenon of legal pluralism within society. Accordingly, we should think of law as a social phenomenon pluralistically, as regulation exists in many forms in all kinds of relationship, some of which are quite tenuous, amongst the primary legal institutions of the centralised state. Legal anthropology has almost always worked with pluralist conceptions of law.[26] As such, a legal fact of a pluralistic nature generally refers to a situation of two or more systems of law interacting with each other and co-existing in a social field.[27] Friedman stated that law as a system, particularly in actual operation, is basically a complex organism in which structure, substance, and legal culture interact with one another. Legal culture refers to those parts of general culture, namely customs, opinions, norms and thought, that bend social forces toward or way from the law. Therefore, the law naturally expresses and defines the legal norms of the community.[28]

[25] Brian Tamanaha, 1992, "The Folly of the Concept of Legal Pluralism", paper presented at the International Congress the Commission on Folk Law and Legal Pluralism in Victoria University of Wellington, New Zealand; John Griffiths. 1986, What is Legal Pluralism ?, in Journal of Legal Pluralism and Unofficial Law No. 24/1986, The Foundation for Journal of Legal Pluralism.
[26] Roger Cotterel, 1995, Law's Community, Legal Theory in Sociological Perspective, Oxford: The Clarendon Press.
[27] M. B. Hooker. 1975, Legal Pluralism: Introduction to Colonial and Neo-Colonial Law, London: Oxford University Press.
[28] Lawrence M. Friedman, 1975, The Legal System, A Social Science Perspective, New York: Russell Sage Foundation.

Legal pluralism has conventionally considered to contradict with the ideology of legal centralism, whereby State law is the only official law put into effect over all people and natural resources within the territory of the State. This ideology of legal centralism tends to disregard adat communities and other kinds of legal system, such as folk law or customary law. That is why the recognition of adat rights regarding natural resources within the State law of Indonesia is defined as only pseudo-legal recognition and not as genuine-legal recognition. It has been outlined above that law from the perspective of anthropology must be studied as a basic system of social order and social control within society. Anthropologists have similarly concentrated on what they regard as law, typically the most formal and dramatic aspects of social control in tribal and other simple societies, although this often includes non-governmental as well as governmental processes. Furthermore, law has also played its role in the facilitation of human interaction as well as functioning as a social instrument for dispute settlement within the community. In the development of a politically organised society, namely the Nation State, the basic function of law has been increased and established as an instrument for social engineering in order to build a certain social condition, as intended by the State, and the Government in particular.[29]

As pointed out by Gustav Radbruch, all kinds of law are ideologically oriented firstly toward justice. A second element of the idea of law is expediency, suitability of purpose, and the third element of the idea of law is legal certainty, that is the law as an ordering of society must be one order over all members of society, and therefore it requires positive law.[30] In this regard, the basic question remains whether the function and role of the State law could also be oriented toward maintaining and strengthening social integration within a multicultural country such as Indonesia. It is a fact that Indonesia is a multicultural country with a pluralistic system of law, with State law on the one hand and customary law and religious law on the other hand. These co-existing laws simultaneously govern

[29] Darji Darmodiharjo and Arief Shidarta, Pokok-pokok Filsafat Hukum, Apa dan Bagaimana Filsafat Hukum Indonesia (Basic Legal Philosophy, What and How Indonesian Legal Philosophy), Gramedia Pustaka Utama, Jakarta, 1996.

[30] Edwin W. Patterson, "Introduction", in The Legal Philosophies of Lask, Radbruch, and Dablin, translated by Kurt Wilk, Cambridge University Press, 1950, i-xxxix.

all members of the various communities in the territory of Indonesia. Even so, it can clearly be observed that over the last four decades, the Government has tended to enforce the ideology of legal centralism in the development of national law. Consequently, a large number of State legal products, namely legislation and regulations, indicate this, such as the State's policy of legal unification and codification, as well as legal uniformity enacted by the Government. This is the so called rule-centred paradigm, which has the consequence of dominating, ignoring and marginalising adat law, which has in empirical fact proven to work much more effectively in the life of traditional communities in their regions.[31]

In this regard, such kinds of political law employed by the Government has intentionally functioned as an instrument of social control,[32] the servant of repressive power,[33] as well as the command of a sovereign backed by sanction.[34] It is a repressive instrumentalism in which law is bent to the will of the governing power. Therefore, from the point of view of legal anthropology, it could be said that the source of legal conflicts, which have increased in frequency in the last five decades, might primarily be based on the employment of the paradigm of legal centralism in the establishment of national law. On the contrary, the empirical legal fact refers to social and cultural pluralism in which local adat communities have the capacity to create and develop their customary laws in ordering society.

What should be carried out to establish an ideology and atmosphere of legal pluralism is to reformulate legal policy of State law to take into consideration the country's multicultural identity as a source of legal action in recognising and protecting traditional communities and the living adat laws across the country. The consequence will be that in the process of State law making, those values and principles of customary adat law must be accommodated, even integrated into the system of national law in the form of State legislation. Hence, the

[31] I Nyoman Nurjaya. 2012. "State Law in Multicultural Country of Indonesia: Toward A Just and Equitable State in Legal Anthropology Point of View", in the US-China Law Review Volume 9, Number 1, Febroary 2012, Illinois-USA: David Publishing Company.
[32] Donald Black, 1984. Toward a General Theory of Social Control, New York: Academic Press.
[33] Philippe Nonet and Philip Selznick, 1978. Law and Society in Transition, Toward Responsive Law, New York: Harper Colophon Books.
[34] Hilaire McCoubrey and Nigel D. White, 1996. Textbook on Jurisprudence, London: Blackstone Press Limited.

characteristic of State law as reformed by the Government will be a national law that successfully expresses the cultural diversity of Indonesia. In line with the types of law introduced by Nonet and Selznick,[35] this is known as responsive law, whereby the State law is more responsive to the cultural diversity and the particular needs of traditional adat communities. That is the reason why the paradigmatic function of State law as an instrument of social order and control, as well as a tool of social engineering, could also be directed to strengthen social integration of the Nation State toward a just and equitable State law for all people of Indonesia.

III. CONCLUSION

To end this discussion, let me quote John Griffiths on legal pluralism within universal societies:

> "The Ideology of legal centralism is that the 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. Those of other legal systems are in fact hierarchically subordinate to the law and institutions of the State. ..... 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 that can be predicted of any social group."[36]

REFERENCES

Allot, Anthony and R. Woodman Gordon (eds). 1975, People's Law and State Law, Dodrecht-Holland: Foris Publication.

Abdurrachman, Sukri. 2004, Konflik Pertanahan di Era Reformasi: Hukum Negara, Hukum Adat dan Tuntutan Rakyat (Conflict of Land Tenure in Reformation Era: State Law, Adat Law and Claiming of the People), Jakarta: Pusat Penelitian Kemasyarakatan dan Kebudayaan LIPI.

[35] Philippe Nonet and Philip Selznick, 1978. Law and Society in Transition, Toward Responsive Law, New York: Harper Colophon Books.

[36] John Griffiths, 1986, What is Legal Pluralism ?, in Journal of Legal Pluralism and Unofficial Law No. 24/1986, The Foundation for Journal of Legal Pluralism.

Araf, Al and Awan Puryadi. 2002, Perebutan Kuasa Tanah (The Contest of Land Tenure and Control), Yogyakarta: Lappera Pustaka Utama.

Bachriadi, Dianto, Erpan Faryadi, dan Bonnie Setiawan (eds). 1997, Reformasi Agraria, Perubahan Politik, Sengketa, dan Agenda Pembaruan Agraria di Indonesia (Agrarian Reformation, Political Change, Conflicts and Agrarian Reform Agendas in Indonesia) , Jakarta KPA & Lembaga Penerbitan FE-UI.

Bachriadi, Dianto (1998), Sengketa Agraria dan Perlunya Menegakkan Lembaga Peradilan yang Independen (Agrarian Disputes and the Needed for Enforcing the Independently Agrarian Court), Bndung: Kertas Posisi KPA 002/1998, Konsorsium Pembaruan Agraria (KPA).

Barber, Charles Victor. 1989, "The State, The Environment, and Development:The Genesis and Transformation of Social Forestry Policy in New Order Indonesia", Berkeley: Unpublished Doctoral Desertation University of California.

Black, Donald. 1984, Toward a General Theory of Social Control, New York: Academic Press.

--------- and Maureen Mileski (eds). 1973, The Social Organization of Law, New York: Seminar Press.

Benedanto, Pax. 1999, Menggugat Ekspansi Industri Pertambangan di Indonesia (Reclaiming over Maining Industrial Expantion in Indonesia) , Bogor: Pustaka Latin, Bogor.

Bodley, John H. 1982, Victims of Progress, California: Mayfield Publishing Company.

Bohannan, Paul (ed.), 1967. Law and Warfare, Studies in the Anthropology of Conflict, Austin and London: University of Texas Press.

Cotterel, Roger. 1995, Law's Community, Legal Theory in Sociological Perspective, Oxford: The Clarendon Press.

Dove, Michael R. 1981, Peranan Kebudayaan Tradisional Indonesia dalam Modernisasi (The Role of Traditional Culture in Modern Indonesia), Yayasan Obor Indonesia, Jakarta

Friedman, Lawrence M. 1975, The Legal System, A Social Science Perspective, New York: Russell Sage Foundation.

Griffiths, John. 1986, What is Legal Pluralism ?, in Journal of Legal Pluralism and Unofficial Law No. 24/1986, The Foundation for Journal of Legal Pluralism, pp. 1-56

Harman, Benny K. (1995), Pluralisme Hukum Pertanahan dan Kumpulan Kasus Tanah (Pluralism in Indonesian Land Law and Compilation Land Tenure Cases), Jakarta: YLBHI.

Hart, H.L.A. 1960, The Concept of Law, Oxford: Oxford University Press.

Hatfindo, 2004. "Final Report of the Study on Capacity Building for Decentralized Natural Resources Management", ADB TA 3523-INO, West Vancouver Canada: Hatfield Consultants Ltd.

Hoebel, E. Adamson. 1954, The Law of Primitive Man, Cambridge, Massachussetts.

Hooker, M.B. 1978, Adat Law in Modern Indonesia, Oxford University Press, USA.

Korten, D.C, "Community Based Resource Management", in Korten D.C. (Ed), Community Management: Asian Experience and Perspectives, Kumarian Press.

Llewellyn, Karl and E. Adamson Hoebel. 1941. The Law of Primitive Man, New York: Atheneum.

Moniaga, Sandra. 1999, "Toward Community-based Forestry and Recognition of Adat Property Rights in the Outer Islands of Indonesia", Unpublished paper.

Moore, Sally F. 1978, Law as Progress, An Anthropological Approach, London: Routhledge & Kegan Paul Ltd.

Nader, Laura and Harry F. Tood Jr. (eds.). 1978. The Disputing Process-Law in Ten Societies, New York: Columbia University Press.

Nonet, Philippe and Philip Selznick. 1978. Law and Society in Transition, Toward Responsive Law, New York: Harper Colophon Books.

Nurjaya, I Nyoman (ed). 1993, Politik Hukum Pengusahaan Hutan di Indonesia (Politic of Law on Forestry Management of Indonesia), Jakarta: Wahana Lingkungan Hidup Indonesia (WALHI).

Nurjaya, I Nyoman. 2005, Magersari: Dinamika Komunitas Petani-Pekerja Hutan dalam Perspektif Antropologi Hukum (Magersari: The Community Dinamic of Forest Labor and Peasant in the Perspective of Legal Anthropology) , Malang: UM Press.

Nurjaya, I Nyoman. 2007, Pengelolaan Sumber Daya Alam dalam Perspektif Antropologi Hukum (Natural Resources Management in Legal Anthropology Perspective), Jakarta: Prestasi Pustaka Publisher.

Nurjaya, I Nyoman. 2011. "Adat Community Lands Right As Defined Within the State Agrarian Law of Indonesia: Is It A Genuine or Pseudo Legal Recognition?", in The US-China Law Review Volume 8, Number 4, April 2011, Illinois-USA: David Publishing Company.

Nurjaya, I Nyoman. 2012. "State Law in Multicultural Country of Indonesia: Toward A Just and Equitable State in Legal Anthropology Point of View", in the US-China Law Review Volume 9, Number 1, Febroary 2012, Illinois-USA: David Publishing Company.

Nurjaya, I Nyoman. 2014. "Progressive Environmental Law of Indonesia: Global Principles of Stockholm and Rio Declations As Defined Within The 2009 Act on Human Environment Protection and Management", in The US-China Law Review Volume 11, Number 1, January 2014 (Serial Number 97), Illinois-USA: David Publishing Company, Illinois.

Peluso, Nancy L. 1992, Rich Forest, Poor People: Resource Control and Resistance in Java, University of California Press, USA.

Person, Gerard. 1991, "The Tension Between State Law and Local Culture", Unpublished Paper.

Pospisil, Leopold. 1971, Anthropology of Law, A Comparative Theory, New York: Harper & Row Publisher.

Repetto, Robert and Malcolm Gillis. 1988, Public Policies and the Misuse of Forest Resources, New York: Cambridge University Press.

Suhendar, Endang dan Ifdal Kasim. 1996, Tanah sebagai Komoditi, Kajian Kritis atas Kebijakan Pertanahan Orde Baru (Land as Economic Commodity, Critical Study of Land Tenure Policy in the New Order Era), Jakarta: ELSAM.

Selznick, P. 1969, Law, Society, and Industrial Justice, New York: Transaction Books,.

Snyder, F.G. 1981, "Anthropology, Dispute Process and Law: A Critical Introduction", dalam British Journal of Law and Society Vol. 8 No. 2 Winter, pp. 141 – 179.

Spradley, James P. and David W. McCurdy, Conformity and Conflict, Reading in Cultural Anthropology, Boston and Toronto: Little, Brown and Company.

Starr, June and Jane F. Collier. 1989, History and Power in The Study of Law, New Direction in Legal Anthropology, Ithaca and London: Cornel University Press.

Sumardjono, Maria S.W. 2008, Tanah dalam Perspektif Hak Ekonomi, sosial, dan Budaya (Land in the Perspective of Ecnomic, Social and Cultural Rights), Jakarta: Kompas Press.

Tamanaha, Brian. 1992, "The Folly of the Concept of Legal Pluralism", paper presented at the International Congress the Commission on Folk Law and Legal Pluralism, Victoria University of Wellington, New Zealand.

Tjitradjaja, Iwan. 1993, "Differential Acess to Resources and Conflict Resolution an A Forest Consession in Irian Jaya", in Ekonesia, A Journal of Indonesian Human Ecology Vol. 1 Mei 11993, pp. 58-69.

Wiradi, Gunawan. 2000, Reforma Agraria, Perjalanan Yang Belum Berakhir (The Unfinished Journey of Agrarian Reformation), Yogyakarta: Insist Press.