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LEGAL PLURALISM AND COMMUNITY CHANGES: A REVIEW OF LEGAL PLURALISM INTEGRATION SYSTEM

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Abstract

The system of Eastern nations' people lives is characteristic of Eastern cultures. Indonesia is a nation that also reflects these characteristics, in social and legal systems. Pre-colonization, the Indonesian people has been living in a pluralistic legal system, both in religious or custom-characterized systems. Until now, the both characteristic being a living law system inherited in history. The presence of colonization changed the model and the basic characteristics of the nation into a modern society with the west-styled colonial legal system. These western-modern systems continued post-independence and became the main pillar of development to change people lives. Therein the basic problem of the national legal system, that is legal pluralistic of society to be helpless in front of the hegemonic system of state law. Community changes in legal pluralism can occur if the contribution of living law systems (religion and customs) extends, without being sub-system or supporting or complementary of state law system. Hegemonic dominance of state law must continue to loosened, so that a free space of contribution for nation culture-based people legal system increasingly wider. Therefore, the legal pluralism integration system is important to establish in the national life. The paradigm of this system is a legal pluralism and its operation is integration of living law system with state law within the spirit and scope of legal pluralism. Thus, the purpose of this article are to analyze and determine the extent of relevance the concept of legal pluralism in the national development process concerned with a diversity of Indonesian culture.

Keywords**: **development; legal pluralism; living law; legal system integration

Abstrak

Sistem kehidupan orang bangsa timur merupakan ciri dari budaya timur. Indonesia merupakan bangsa yang juga merefleksikan karakteristik ini, baik didalam sistem sosial dan hukumnya. Sebelum memasuki masa kolonialisme, masyarakat Indonesia telah hidup di dalam sistem hukum yang plural, baik dari aspek agama atau budayanya. Hingga saat inipun, kedua karakteristik tersebut menjadi sistem hukum yang hidup yang diwariskan oleh sejarah. Terjadinya kolonisasi mengubah bentuk dan karakteristik dasar negara menjadi masyarakat modern dengan sistem hukum gaya kolonial barat. Sistem modern-barat ini berlanjut hingga pasca kemerdekaan dan menjadi pilar utama dalam pembangunan untuk mengubah kehidupan masyarakat. Terdapat permasalahan dasar dalam sistem hukum nasional, yakni bahwa pluralisme hukum di dalam masyarakat menjadi tidak berdaya dihadapan hegemoni sistem hukum negara. Perubahan masyarakat ditengah pluralisme hukum dapat terjadi jika sistem hukum yang hidup (agama dan budaya) berkontribusi

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secara luas, dan bukan menjadi sub-sistem atau pendukung atau pelengkap dari sistem hukum negara. Dominasi hegemoni hukum negara harus terus direnggangkan sehingga terdapat ruang yang lebih bebas agar kontribusi bagi negara yang berbasis budaya sistem hukum masyarakat dapat meningkat lebih luas. Oleh karena itu, integrasi sistem hukum plural menjadi penting untuk membangun kehidupan berbangsa. Paradigma dari sistem ini adalah bahwa pluralisme hukum dan pengoperasiannya adalah terjadinya integrasi antara sistem hukum yang hidup dengan hukum negara dalam semangat dan lingkup pluralisme hukum. Tujuan dari tulisan ini adalah untuk menganalisa dan menentukan sejauh mana relevansi konsep pluralisme hukum dalam proses pembangunan nasional dan kaitannya dengan keragaman budaya Indonesia.

Kata Kunci: pembangunan; pluralisme hukum; hukum yang hidup; integrasi sistem hukum

I. Introduction

In fact, the human life contained diversity. This phenomenon is a natural reality and its existence cannot be denied. The life of human society is a platform for the growth of a variety of ideas, activities, values, patterns and life systems of human existence itself. In reflecting his nature as a rational being and his dimension as individual and social, we find the history of human life filled with descriptions of various types of societal forms. The reality of this diversity occurred throughout the history, from ancient times until today, from the Western to the East.

Religion, ethnicity, race, language, culture, government and legal systems are some of the many categories of diversity is generally known and experienced. If adopt the context of Indonesia, for the category of ethnic, as statistics data, there are 1131[6] ethnics in Indonesia. Of course, it is also consequence on differences in language, belief values, patterns and life systems. This will bring us to the understanding that the differences that cause diversity in the life of the Indonesian people, it something that is inevitable.

Managing differences in diversity in this country is a challenge for the state and society. As a state and a nation which proceeds in the national development, the reality of this pluralistic society in a certain dimension can only be a threat, but also as an opportunity for strengthening the community development process.

With regard to the national legal system in relation to the diversity of local legal systems in various regions in Indonesia, this is a fundamental problem throughout the history of the republic. One side of the existence of local laws in both religious and cultural character of the local community has been there and become main part of the community before this republic stand. On the other hand, there is a legacy of the legal system instilled by the colonialists throughout over three centuries occupying the local archipelago nations.

While the existence of the country post-independence, a legal system that accommodated as the law that applies is the legal system with European law character. Although it also makes the elements of local law (Islamic[7] and custom[8]) as its sub-

6 In SP 2010 there are 1331 ethnic categories. A number of 1331 categories is code for the name of ethnic. In collaboration with BPS with the Institute of Southeast Asian Studies (ISEAS) in 2013 resulted in 633 group of large ethnic, see: Aris Ananta, et.al. 2015. *Demography of Indonesia's Ethnicity*. Singapore: Institute of Southeast Asian Studies. p. 54.

7 In the context of the history of Archipelago, and also found during the Islamic kingdoms. The positive laws in the kingdoms are Shari'a law. Sentenced in court is using Shafi'i school of fiqh. Ibn Batutah, Muslim nomads in 16th century, records this historical fact. He mentions a visit to an Islamic kingdom in Sumatra coast, apply the school of Shafi'ifiqh, people are happy to jihad and war, but have tawadhu is high. This phenomenon lasts long enough until the reign of the Dutch colonial government then abolished shari'a and replaced with Dutch law. Shari'a law is limited to fields of family such as marriage, divorce, ruju' and like. The application of Shari'a law in this country has a very strong historical roots, even preceded the Europe legal history itself. See: Nur Rohim Yunus. 2015. Penerapan Syariat Islam Terhadap Peraturan Daerah dalam Sistem Hukum Nasional Indonesia. *HUNAFA: Jurnal Studia Islamika*. 12(2): 251-279.

8 Van Votlenhoven divides Indonesia into 19

system, but the dominance of nature and characteristics of European positive law is so strong. In practice the state law that is treated positively raises "inequality" in the process of justice. Due to the dominance of the positive law of the country, then eliminate the role of values and legal systems are alive and recognized in the community life of a nation.

As more progressive the republican governments to plan and implement the national development, by making the positive law of state as an instrument in the implementation of community development for the sake of a change in desire, conflict of interest of state and society will are many encountered as problems and tended to hamper the development process. In such cases, political power is rarely used as an instrument to control the development process, and the implication is the neglect of the interests of society.

In relation to the local legal system, the public is increasingly losing its locality system, especially customary law in the constellation of national law. Though, customary for the community is a major part of its culture.[9] Development held by the state, in its goal ideally is for the welfare and prosperity of society. Assumptions ideals of the development goals is often the argument by the state to maximize legal instrument as a tool to ensure the course and the achievement of development results, leading to excesses, which then lives values the people are often ignored. This resulted in the emergence of community resistance to the development process.

The collision of two law systems occurred, mainly because the base of culture in Indonesian society is traditional legal systems, values and norms patterned unwritten, so that when the application of the legal system in writing by the state, becomes unavoidable the collision of legal awareness. On other hand, the country to bring the spirit of modern legal awareness and one other hand the community is still very strong with its traditional legal[10] consciousness. In this position, paradigmatically occurred fundamental problems associated with the country's legal system patterned modern on the basis of community life that is traditional culture in its local law.

Under these conditions, awareness of legal pluralism becomes urgent. Especially in a pluralistic society due to the diversity of legal systems in local traditional nature, where the state is also being aggressively in the process of building a modern national life. Changes in the development of society desired by the state as much as possible not actually cause loss of cultural characteristics of society itself. Because this would lead to the nation irony typical patterned in a culture that has a personality.

The view of legal pluralism appears to have the relevant values for the state

customary law fields (*rechtsringe*). One is outlines, uniform style and nature of customary law is called *rechtskring*. Each field of customary law is divided again in several parts called as law kukuban (*rechtsgouw*). See more: Van Vollenhoven in Bambang Danu Nugroho. 2015. *Hukum Adat: Hak Menguasai Negara Atas Sumber Daya Alam Kehutanan dan Perlindungan terhadap Masyarakat Hukum Adat*. Bandung: Refika Aditama. p. 74-75.

9 As said Soerjono Soekanto, that culture produces norms, values and norms which are normative structure as a *design for living*, which means that culture is also a "*blue print of behavior*" that provides guidelines and benchmarks conduct of peoples. Likewise, Koentjaraningrat mention that each society, both very complex and very simple, having activities that serve in the field of social control, see further: C. Dewi Wulansari. 2010. *Hukum Adat Indonesia*. Bandung: Refika Aditama. p. 12-13.

10 Suryaman Mustari Pida, explained that the legal awareness of indigenous or customary peoples is reflected in the form of customary law or concretized in customary law, in a society with social and cultural structure simple. And there is a tendency that the customary law arise from the peoples who live in the system, differs from the positive law written in which most came from the Netherlands, as foreign law for peoples in the culture of these simple, see further: Suryaman Mustari Pide. 2014. *Hukum Adat Dahulu, Kini dan Akan Datang*. Jakarta: Kencana. p. 152.

to encourage a change and progress of society. By not making local law systems as a complementary or sub-ordinate the statelaw system, but gave legality and political freedoms for such local law systems, as an expression space of its legal system, thus becoming a supporting and supporting of development in the region of legal system is growing and develop.

Thus, if legal pluralism can operate well, then the elements of national culture in the whole country will be active and take on a more significant role in the development process of society. This paper is intended to analyze and determine the extent of relevance the concept of legal pluralism in the national development process concerned with a diversity of Indonesian culture.

II. Method

This paper is a *conceptual paper*, prepared by first determining the issues to be studied. Especially, the problematic of state law system in relation to the local legal or community culture-based legal in the process of national development. Then, the relevant data to the issues collected, especially primary data, because the characteristic of this study is a library research. The data were then analyzed as the principal variables in question to obtain the appropriate data need to be analyzed further in the discussion.

Analysis methods to the content or indicators used are a qualitative approach. This approach is generally considered to carry out analysis using a wide lens, patterns finder inter-relation and between concepts. This approach explores the concept and categories with theoretical purpose, because the theory as orientation to be tested, and this analytic method tended to generalized and abstraction[11].

11 Julia Brannen. 2005. *Memandu Metode Penelitian Kualitatif dan Kuantitatif*. Jogyakarta: Pustaka Pelajar, p. 11-13.

III. Analysis and Discussions

A. Legal Pluralism

The presence of pluralism idea is encouraged by 2 (two) requirements, the needs of practice and academic, at least the categories outlined by John Griffith. *Firstly*, the practical needs, legal pluralism was present to explain the phenomenon of legal diversity after many countries liberate themselves from colonialism and inherited the legal system from the colonial state, in addition to the legal system of the people who have been there. *Secondly*, the academic needs, as a critical response to the view of *legal centralism*, a view that "*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"*[12].

The presence of pluralism concept seems to be a consequence of the reality post-decolonization. Colonization penetrated most of the East nations with distinctive culture with value system, and its own law, since the 15th century until the early 19th century, and its history to carve a new life for the people occupying the post-independence, because people must live in a living law system that is a mixture between colonial heritages with cultural heritage.

Here, according to John Griffith, the presence of legal pluralism is important as a framework of ideas to explain the phenomenon of legal multi-system that was born post-colonialism. At the same time, it also as a critical response to the solid group to hold *legal centralism*[13].

12 Sulistyowati Irianto. 2011. *Pluralisme Hukum Sebagai Suatu Konsep Dan Pendekatan Teoretis Dalam Perspektif Global*, available from: https://Asslesi.Wordpress.Com/2011/07/11. (Accessed June 23, 2015).

13 According to Griffiths, legal centralism interprets the law as the "state law" that applies uniformly to all persons within the jurisdiction of the country. Thus, there is only one law in force in a country, is state law. Laws can only be established by state agencies specially assigned to it. Although there are other legal norms, legal centralism put

Where there is only one law that applies to the citizens that is law produced and run by state power, while other laws such as custom, religion and tradition should be under the control of state law.

An understanding of legal pluralism is also having roots of the terminology of pluralism[14] itself. When referring to the root of the word of *pluralism* (in English), the *plural* meaning diverse, and *ism* meaning understand, then *pluralism* as a diverse understanding or various understanding. Or for example the meaning of pluralism in Indonesian dictionary which refers to the situation of a pluralistic society (concerned with social and political systems)[15]. With the addition of the word "*legal*" in the pluralism into *legal pluralism*, then generally this term implies a diversity of understanding of the rules or the legal system in society.

The characteristic in legal pluralism according to SulistyowatiIriantois marked by 2 (two) legal systems alive, that is state law and people law. For most legal scholars, the reality of the other legal systems in addition to the state law is still difficult to accept. Whereas in the daily reality it cannot be denied the presence of other legal systems rather that the state law. Through view of legal pluralism, it can be observed how all of the legal system "operates" together in everyday life. It means, in what context the people choose a particular legal ruling, and in what context choose other rule of law or a combination of several laws, in daily life or dispute resolution.[16]

The existence of legal prularism in Indonesia can be clearly observed when there is an interaction between its legal systems. This interaction can be either conflictive as well as acomodative in the nature.[17] This can be exemplified by, for example, the enactment of islamic law in Indonesia proven by the existence of religious courts (*Pengadilan Agama*),[18] or the fact that the acquisition of land can be proven only by a certificate of land issued by the village head or the chief of the tribe, and how the resolution or decree issued by the Kerapatan Adat Nagari (KAN) in West Sumatra imitate of those issued by the government. [19]

The views of Griffiths distinguish legal pluralism in 2 (two) categories, namely strong and weak. Strong legal pluralism is the fact of legal pluralism order contained in all (groups) of people. All the existing legal system is seen as standing in the community, there is no hierarchy that shows the legal system is one higher than other. While, the weak

the state law is above other rule of law, such as customary law, religious law, and habits. Other rules of law are deemed to have weaker holding capacity and shall be subject to state law, see: Benda-Beckmann P. K. Benda-Beckmann and Anne Griffiths. 2005. *Mobile People Mobile Law. Expanding Legal Relations in a Contracting World*. USA: Ashgate, p. 71.

14 In some literature the term of *pluralism* formulated in three meanings, namely (1) in heterogeneous society, the relative absence of assimilation and its consequences; (2) the doctrine (often termed cultural pluralism) that the society benefits when it is made up of a number of interdependent ethnic groups each of the which maintains a degree of autonomy; (3) The idea that socio-cultural systems may be conceptualized as groupings of sub-systems that are interdependent, although often somewhat autonous. In the Encyclopedia of Americana (22.971: 258), calling pluralism as a value, that the world consists of various objects, thing or situation, see further: Goult, Soekanto and Taneko in E. Sundari. 2010. Hukum yang Netral Bagi Masyarakat Plural: Studi pada Situasi di Indonesia. Bandung: Karya Putra Darwadi, p.36.

15 See: Wikipedia. 2016. *Pluralisme*. Available from: https://id.wikipedia.org/wiki/pluralisme (accessed August 24, 2016).

16 Sulistyowati Irianto*, op.cit*.

17 Rikardo Simarmata. 2013. Pluralisme Hukum dan Isu-Isu yang Menyertainya. available from: http://huma.or.id/wp-content/uploads/2013/08/Pluralisme%20Hukum%20dan%20Isu-isu%20yang%20Menyertainya_HUMA_final1.pdf. (accessed on August 24, 2016).

18 The application of islamic law in Indonesia has deepen even further in the practice of Aceh with the existence of Sharia Court (Mahkamah Syar'iah) which has the jurisdiction in examining misconduct in the area See: Arskal Salim. 2009. Dynamic Legal Pluralism in Indonesia: The Shift in Plural Legal Orders of Contemporary Aceh. *Presented at the First International Conference on Aceh and Indian Ocean Studies*. Banda Aceh. 24–26 February 2007.

19 *Ibid.*

legal pluralism is another form of legal centralism as though acknowledging the existence of legal pluralism, but remain to hold the sovereignty of state law, other laws are united in a hierarchical under state law[20].

Two main categories of legal pluralism theories from Griffiths are still very relevant to view the phenomenon of law in this country. Strong and weak categories can be sort of an indicator to determine the level of acceptance of state law on the laws that grow and do not come from the state but from the cultural community. Perhaps there is an observer to judge theories of legal pluralism of Griffiths, that it is eligible to be abandoned because of such incessant changes in the world community in a global context.

This means that now, the fight is legal systems between countries globally, and it may not be relevant again for fight the local customary law system with national law, due to the hegemony of the discourse of global law is more massive than the discussion on national law. So that, the theory of legal pluralism of Griffiths became little meaning for use in a global context, except get updates back to the adjustment on globalism. But, it is not in this paper. In fact, the problem of pluralistic society, especially in the field of law is the critical intersection between modern law system (state law) to the traditional law system (people culture law), both in terms of value, paradigms, systems and patterns. So that, the analysis of strong or weak the legal plurality in a pluralistic society is necessary in the context of ideal purpose of legal pluralism itself that is co-exist in a mutually reinforcing constellation of legal plurality systems, without ruled out one another.

B. Development and Community Change; the Paralyze of *Living Law* in Modern-State Law

As a country that has not been included in the level of developed countries, then we still predicated as developing countries[21], as a developing country[22] certainly all efforts, all the potentials and capabilities deployed in a planned, measured, systematic within the framework of rational and objective for purposes the ideal of development. In general, the development aims to create change in the fields of public life. Many experts debate about what the meaning of desired change in the development. But it agreed strongly is the realization of modern society. Development experienced in the framework of modernization is many experienced by developing countries, including this republic. Modernization if public life as an early choice of developing country and since the beginning has

20 Compare this distinction with Anne Griffiths called as "*juristic*" or "*classic*". An example on view weak legal pluralism is a concept proposed by Hooker: "*the term legal pluralism refers to the situation in which two or more laws interact*" (Hooker, 1975: 3). While acknowledging the diversity of legal systems, but it still emphasizes the conflict between what is referred to as *municipal law* as the dominant system (state law), with the *servient law* that inferior such as customs/habit and religious law. While, the strong legal pluralism by Anne Griffiths called as *"strong", "deep", or "new" legal pluralism*, (Griffiths, 2005) which says that all living laws in the social arena is equal its conduct, no guarantee that law position is higher than others.

21 According to Soetomo, in general, countries in the 1950s are classified as developing countries and ex-colonies. The majority of independence after World War II ended. The long colonization process is believed to have influenced the development of social, cultural, economic and political that somehow as a colonized people must have experienced various obstacles in its internal dynamics and development. See Soetomo. (2008). *Strategi-strategi Pembangunan Masyarakat*. Yogyakarta: Pustaka Pelajar, p. 1.

22 According to Hettne, development theory is first developed to handle the conceptual and methodological of underdevelopment problem of some region post-World War II. This development theory comes from trial and error in understanding the problem of underdevelopment from the perspective of developed countries, although then gradually gained more and more universal quality, See in: A. Mappadjantji Amien. (2003). *Kemandirian Lokal: Perspektif Sains Baru terhadap Organisasi*, *Pembangunan dan Pendidikan*. Makassar: Lembaga Penerbitan Unhas, p. 143.

become a matter of endlessly until now. Also, its implication for the development of national legal system.

Almost all underdeveloped countries or developing countries always make modernization as the main purpose of development, whether done consciously in the form of state policies as well as a natural part as a development goal itself. According to Mappadjantjithat, the paradigm of modernization is rooted in the assumption that poverty and underdevelopment by differences in economic conditions, political, social and cultural between rich and poor nations, therefore needed a changes to the culture and internal structure of society that took place in cultural and structural transformation of traditional feature to modern society, through a gradual imitative process and planned[23]. Therefore, developing countries have made the advanced and modern Western countries as a model in its development objectives.[24]

So it looks towards societal changes desired by national development more strongly oriented to economic progress by systematically changing the values, institutional structure and behavior so that it can be a modern society as well as Western countries that have already become a developed country. Thus, the development will be considered successful.

And in fact, modern society which is the final achievement of the national development processarises serious effects for developing nations based on traditional culture, because the meaning of modernization should abandon the traditional and replace the paradigms, values, patterns, models as well as new system and modern. And many criticisms[25] for modernization project in the developing countries, such as Indonesia, due to the implication of the death of characteristics, the traditional life-based society personality.

In the context of development in Indonesia, laws are based on the people culture as a *living law* having some sort of paralysis due to the rapid modernization of the legal system through the program and national development works in the fields of law.

With increasingly modern society as the impact of changes that occur due to national development at this time, causing anxiety endless and many party who feel that the people changes which this occurs precisely at the same time arises catastrophic, namely the loss of characteristics originality and nation personality are eastern typical and based on religious culture, traditional values, ethics and its traditional morality.

C. Changes in Legal Pluralism Framework

Modernization shadowing the development process of developing countries, ultimately misguided into the national development of law. Which is evident in the development of law in developing countries are also modernize the entire legal system, substance, structure or its culture. This is no exception in the development of our national law.

If we refer to the context of Indonesia, notes and historical facts tell us that

23 *Ibid.*

24 Yunus, A., Reumi, F., & Irwansyah. 2015. "Recognition of the Customary Court: A Review of Decentralization in Papua as Special Autonomy". *Journal of Research in Humanities and Social Science*, *3*(7): 57-69.

25 Modernization as development model grows rapidly as the success of the second world country. Third world countries were also not spared by the touch of the Western-style modernization. Various aid programs and developed countries to the developing world in the name of social and humanitarian increasing in number (to support modernization). However, the failure of development as modernization in third world countries became a serious question to be answered. Some social scientists attack on the modernization of this failure. Modernization is considered no different as a new style of colonialism, even the scientists mentioned as a weasel in sheep clothing, see: Sofyan Alizar Sam. 2014. "Kegagalan Modernisasi Pembangunan di Indonesia: sebuah Perspektif". *Uniera Journal*, 3(1).

the legal system of this republic post-independence, in political consensus using the legal system with positivism paradigm or can also be referred as *the modern legal system*. The most prominent feature is the entire law applicable to the public must pass through the country gate as holders of political power society. This means that can be called as law is all rules are made by the state in written and executed in institutional format which has also been determined by specific rules, which made by the state.

The concept of modern law in view of Max Weber has the following characteristics: (1) the rule of law have a common normative quality and more abstract; (2) the modern law is positive law, the result of a decision taken consciously, (3) the modern law is reinforced by coercive powers of a state; (4) the modern law is systematic, its rules, principles, concepts and distinct doctrines; (5) the modern law is secular, its substance is separate as the consideration of religion and ethical[26].

Its reality is a legal provision that formal-rational, it is articulated through positive law.[27] The emergence of modern legal system, according to Satjipto Rahardjo, a response to the new economic production system (capitalist), because the old system can no longer serve developments of impact the capitalist economic system. Thus, it is undeniable that the modern legal system is a construction derived from social order of Western Europe people during the development of capitalism throughout the 19th century. In the context of social, relationships and actions of the government to its citizens are based on the rules and procedures that are impersonal and impartial. Here, comes the concept of the rule of law. Thus, it cannot be denied that the concept of the rule of law has a specific *social source* in the capitalist society in Europe in the nineteenth century[28].

The state is the center of legal establishment, through political elements such as executive, legislature and judiciary. There is no other social or civic institutions can produce the rule of law for the people. In this case, includes non-functioning of other social institution in the applicable legal system, such as customary and religious institutions. Within the framework of pluralism, this fact shows the stagnation of the legal system, because the state monopolizes the performance of legal system, while the living law in the people with the system and its institution is meaningless. But, the existence of system outside the country, just as a complementary element that must supports the country's legal system. Hence, only the profitable parts of the state system are taken while that considered as system interfere are ignored, if possible eliminated.

If viewed of systems thinking, should national legal system that introduced by the state is not just ignore the existence of the people cultural, so that the legal system is built it does not hurt, because after all the living laws in the people as natural and woke up in the span of a long history of culture of the people, will collide with a system that is constructed without providing living space for that, because the system is built it is isolate, and will have an impact on the state of *chaos*.

As taught by *Chaos* theory, if the law is regarded as a system, then some relevant factors: (a) the basic elements of a system; (b) the division of system; (c) consistency; (d) system completeness; and (e) basic

26 See: Max Weber in Nasarudin Umar. 2014. "Konsep Hukum Modern: Suatu Perspektif Keindonesiaan, Integrasi Sistem Hukum Agama Dan Sistem Hukum Nasional". *Jurnal Walisongo*, 22 (1).

27 Hamzah, H. 2016. Legal Policy of Legislation in the Field of Natural Resources in Indonesia. *Hasanuddin Law Review*, *1*(1): 108-121.

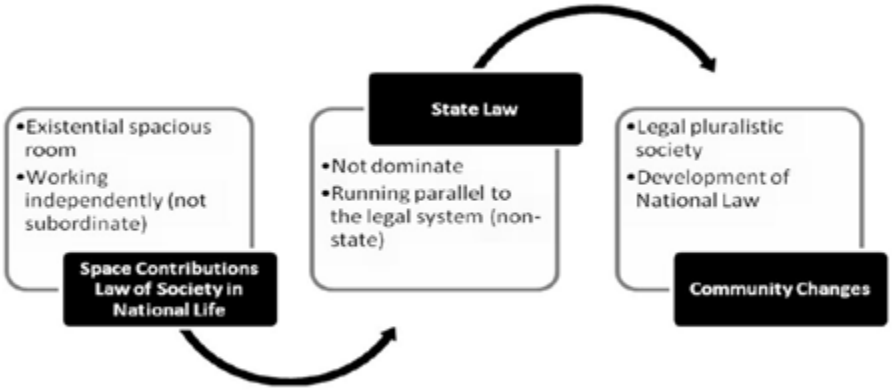
28 See: FX. Adji Samekto. 2013. "Relasi Hukum Dengan Kekuasaan: Melihat Hukum Dalam Perspektif Realitas". *Jurnal Dinamika Hukum,* 13 (1).

notions[29]. People culture in its form either of customary and religious law should be the basic elements of the legal system, by doing the division of system in a balanced way without there being the sub-ordinate with each other, and consistently operate the system to maintain the integrity of the overall system.

Thus, the legal pluralism become real and achieves goals ideally in the society. Nevertheless, pre-definition the legal pluralism requires the point of equilibrium the implementation of state and civic laws based on the culture of nation. The existence of other civic laws (customs and religion) is empowered in the system. Indeed, the presence of laws based on the community culture as a basic element in the national law system, not just a complementary element or auxiliary to the state law system, this is the sense in society change in the context of legal pluralism. That people with its own legal system has become a major and fundamental part of the state law system.

This civic law system ultimately will contribute to systemic, fundamental and sustainable to the direction of nation's future that desired together as outlined in the constitution.

Within the framework of a strong legal pluralism, always provided a great spatial for the existence of laws that are based on non-state public institution to live with other legal systems within the country or within the scope of the nation. In free spatial, at the same time the domination spatial of the state narrowed and changed in adaptive and responsive to the values, patterns, and a system of fundamental law in the society, to give freedom to contribute independently in the development process of national life collectively together with any other system, based on the basic direction of the state constitution. Thus, the community change towards legal pluralistic will be more meaningful firmer and brighter. This can be seen in the schematic flow of community change in the legal pluralism following:



Scheme 1. Flow of community changes in legal pluralism

29 Five of these factors explain that the basic elements are forming element of the system, the division of system means having section, consistent means nothing to the contrary, completeness means that every part of complementary and basic sense means that there is clarity of concepts to differentiate with other systems, see: Purndi Purwacaraka and Soerjono Soekanto in Amir Syarifuddin and Indah Febriani. 2015. "Sistem Hukum dan Teori Chaos". *Hasanuddin Law Review*, 1(2): 300.

If contribution of the people law system based on local culture is widening, due to the changing of political-law opinion of state to the hard point of strong legal pluralism, the greater will be adjacent parallel to the people law (which powerless) with state law (which loosened its dominance) in sustaining the development direction of national life in various areas of public life.

D. Build a Legal Pluralism Integration System

The function of legal pluralism is distinguished between the pluralism of legal system and the pluralism of law rule. Therefore, in addition to the Western legal system adopted into the national legal system today as one of the colonial heritage that must be in order in substance, structure and culture. So needed a study for realignment various legal systems notwithstanding various legal systems, especially legal systems that live and exist as a reality that is defended in public life. The development of legal system is an effort to integrate various legal systems that are arranged in an order of harmonious legal system for the country and its citizens[30].

The basic framework of legal pluralism lies in the extent to which a legal system built by modern countries especially developing countries such as Indonesia, are able to collect a variety of integrated community based legal system so that it becomes part of the basic cultural or become key elements and building systems. This is important because it could not be so in such a state law that already dominant, simply ignore the presence of a law of local people of all nationalities layers so rooted in the history and culture of the people in a vulnerable long, and is still maintained.

Except for efforts to systematically turn off the existence of legal systems in the community because mismatch of styles and character with the state system is already dominant and modern, as the collision of paradigm between modern law established by the state with the traditional law reality in the public culture of the nation.

Eugen Ehrlich[31] recalled the importance of respect for life, liberty, and property of every person not just the norm for decisions and policies of the state, but it has really become a living law[32]. Hence, its presence cannot be eliminated simply by the presence of modern-style system. Giving life to a cultural-based legal system is a form of respect for the constitutional against the historical culture of the society where the country stands.

In the practice of Indonesia constitutional, it is clear the constitution of the republic granted constitutional rights to people together with the values and living systems that contain traditional wisdom of the national culture. In the constitution that clearly laid out the basic constitutional rights in the description of Article 18B paragraph 1, that the state recognizes and respects the indigenous peoples and their traditional rights as long as they live, and in accordance with the development of society and the principle of the unitary state of Indonesia, which is set in the Act. Article 281, paragraph 3, that cultural identities and rights of traditional communities be respected as the times and civilization. And

30 See: Frans Reumi. 2014. "Akulturasi Hukum Cermin Pluralisme Hukum; Perspektif Antropologi Hukum". *Jurnal Hukum Dan Masyarakat,* 13(2).

31 Eugen Ehrlich known for his concept of *living law*. Viewing the law as a living in the community and with regard to civic functions. Mentioning that the source of law was only two, namely the *legal history* and *jurisprudence* and *living law*. His views on *living law* contradicts to the normative-dogmatic view (applied by the state), as well as distinguishing the *positive law* that became the spirit of modern law that were built by the state, See: Achmad Ali. (2009). *Menguak Tabir Hukum (Legal Theory) dan Theory Peradilan (Judicial prudence)*. Jakarta: Kencana, p.102.

32 See: Frans Reumi, *Op.Cit.*

article 32, paragraph 1 that the state promotesthe Indonesia national culture amid the civilization of the world, with freedom of the public in maintaining and developing cultural values[33].

The existence of constitutional guarantees by the state, this is already a basic potency for strong legal pluralism in this republic. That the constitution had been put on the basics for existential rights for the culture of the nation people, including in this case the legal systems. This constitutional guarantee also means that there is an opportunity for the country to loosen its dominance in terms of design of the legal system for citizens. The state has given the opportunity to further widen the contribution independently, and responsible to the legal systems based culture to become an important part in the development process of national life.

Therefore, our national legal system should be integration between the various legal systems that exist in the culture of community and nations. The integration between the various legal systems has real ideas or concepts that naturally constitute social conditions in the republic. Fact about plurality of value, systems and lifestyles for various nations in this archipelago, which also is the jurisdiction of the country's unity, is fundamental to an integrated legal system building.

If the system is not integrated, then the conflict of values, paradigms and system will become latent, and forever will be the potential that would make the system the state dominant becomes ineffective its implementation. With a legal system that this integrative basic character will unravel long conflict between West-centric modern law with East traditional law.

It is also suitable to the theory of integrative law that introduced by Romli Atmasasmita, that one function of integrative system law is regulate and resolve the conflict, in addition to maintain and preserve the order. Even law Westernization (into the West) is regarded historically as the source of conflict because its presence has degrades Easternization (into the East) law. And should the modernization of law is not receive a full foreign legal system, but must be adapted to the living law. During this time, there is a fatal mistake in view of the function of law as a means for renewal because in fact the concept was misused a means of coercion to the people or termed as *dark engineering*[34].

With the integration of the existing legal system, both modern system "established" and nation culture-styled system (religion and custom) "weakened", by ensuring each system contributes to certainty, expediency and legal justice for the people, the nation and countries, the dynamism of national life will be more healthy for the building of the legal system is built on a solid foundation, the plurality of public law, both rooted in the national culture, and which has become a modern legal practice of this republic.

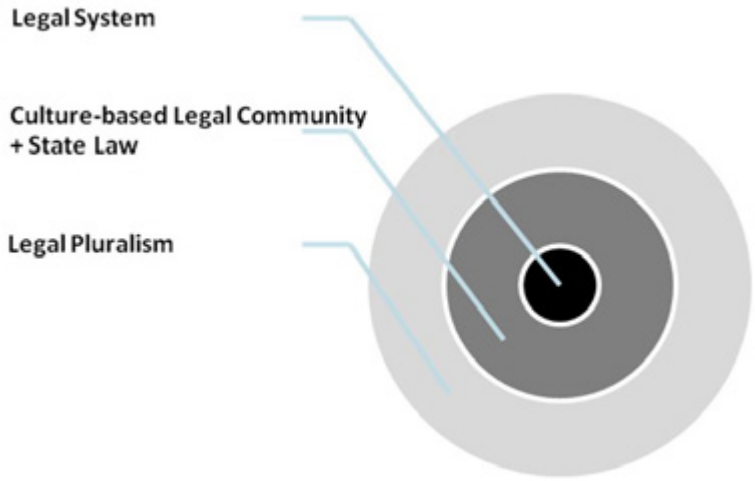
Thus, the function of integrative law that changing the values in the society toward new value which reflects legal certainty, usefulness and fairness, and maintain and keep it dynamic. And its

33 See: Permata Press Team. 2011. *UUD NRI 1945 Amandemen I,II,III Dan IV, Pasal 18b, Pasal 281, Ayat 3 Dan Pasal 32 Ayat 1*. Jakarta: Permata Press.

34 Integrative-legal theory accommodates part of the concepts of development law and progressive law. Integrative law has its own characteristic. There are 2 (two), namely: *First*, emphasizing the use of values developed in the community to create and enforce the law. Not that allergy to the outside world (the West for example), but actually every society has values that continue to live (*the living law*). Those values can be changed to the new value that can reflect the rule of law, expediency and fairness, and maintain and keep it dynamically. *Second*, the settlement of legal issues, particularly the conflict, aimed at *out of court settlement* in accordance with the *living law*. See Romli Atmasasmita in Suyuti. "Arah Kebijakan Pembentukan Hukum ke Depan (Pendekatan Teori Hukum Pembangunan, Teori Hukum Progresif dan Teori Hukum Integratif)". *Law Science Journal*. 13(2).

objective as that establish order, peace and harmony of life in society, as affirmed by Romli Atmasasmita[35], will be more evident in peoples' lives because the system will create a natural balance with a loss of discrimination and domination by a system over other systems. Therefore, a description of law system integration with legal pluralism paradigm can be simply shown in the following scheme:

This scheme shows that the core (innermost) is the center of legal pluralism integration system. The middle circle is a legal system that constructed by (whether with) liquation or work together in alignment; that the legal systems belonging occupy the contribution space of each system based on the extent of coverage of each well (the middle circle), as the basic of building systems. The middle circle is the reality of the legal systems that work in peoples' lives that are integrated naturally-rational to realize the legal pluralism integration system (core/innermost/legal system) in the national life. While the great circle (outer) are ideal, paradigms and logical framework of legal pluralism as a philosophy umbrella of the whole legal pluralism integration system. The outer circle is also description of system that covered by the spirit or solid pluralism soul.



Scheme 2. Legal pluralism integration system

The system is built on the expectation in the possibility of depletion dichotomy of Western and Eastern law, modern and traditional laws or other terms that are diametrically often interchangeable face to face in opposition without a common ground, which only consequence on the necessity of one of the two disappeared so that there is other system survives. In fact the traditional systems so dimmed, while the more modern system so hegemonic. The system is built on the ideal framework so that these dichotomies increasingly find meeting point so that these two systems can work together in an integrative system, without one or both of them is missing.

IV. Conclusion

Historical fact in this republic shows our society is characterized by a pluralistic society. Diversity of ethnics that inhabit the whole archipelago also reflects the diversity of values, systems and patterns of community life. Community life merges with the bases of their culture, especially in matters of religion and customs. Indonesian people are known as religious and customary societies, because these two dimensions is most affect their lives

35 *Ibid.*

before the times of colonialism arrived. May said that religion and customs are two important factors in determining the personality of this nation. Although, then the influence of social, political, and colonial legal are significantly to form the structure of new life of modern-style people.

This is as basic problem faced by this nation, namely managing a plural society in a series of systems that able to respond the needs of national, community and state. So that, operational system does not causes negative effects to the national life itself. Plurality legal system as part of the problems, it is also to this time unanswered. The dominance of the state law system causes wide disparity between the culture-based legal system and a legal system that introduced by a state in modern legal systems. The diversity of community legal system (religion and custom) is not accommodated both in the modern system built by state power. As a result, more go away the basic characteristics of the national life that built by the state law system.

Legal pluralism as a framework or paradigm is necessary firmer or stronger in managing the plurality of legal systems in Indonesia. Legal systems are based on the people culture as a living law (religion and custom) should be the fundamental basis of building a pluralistic legal system in the law in the country. If the system state is dominant and in practice to eliminate value systematically and legal system structural of *living law,* then building a legal system that is dominant it never runs ideal and natural, because its system base (religion and custom) is not accommodated fully in the main system, but only as a supplement to complement the main system. So its existence in the main system is only as a sub-support system and not as a fundamental basis of the system.

Thus, build a *Legal Pluralism Integration System* became urgent it means in the context of Indonesia of our pluralism life with the legal systems, *Legal Pluralism Integration System* is an idea or law system framework that makes legal pluralism as system paradigm, with a civic legal system based on culture and state law as the basic elements of system. Today, the integration of law systems is fully in national life (without dichotomy between the main and supporting, between the ruling and the ruled, high and low, between modern and old products and types of other dichotomy) will establish the fundamental building of personality and characteristics of the nation and state, as well as be a major driver of future change toward more equitable, benefit, certainty, and welfare by the state constitution.

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