# LEGAL PLURALISM AND STRENGTHENING
# THE STATE NATION IN INDONESIA

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## ABSTRACT

*Indonesia is a multicultural country, including the diversity of legal systems prevailing in the society. There some laws that applicable in Indonesia, such as customary law, religious law, as well as regulatory mechanisms (self-regulation) in public life. However, if we observed carefully the legal development paradigm adopted by the government in the past three decades in the law is likely to be a legal centralism, through the implementation of political unification and codification of laws for all the people in the territory of the state (rule-centered paradigm). The implication, tend to displace state law, neglect, and dominates the existence of other legal systems, which empirically lived and operated by citizens (living law), because it is aware of the law functioned as governmental social control, or as the servant of repressive power, or as the command of a sovereign backed by sanction. In this paper will addressed the legal pluralism in Indonesian legal system and it is implication to the strengthening of the nation.*

*Keywords: Legal Pluralism, Nation State, Law Development, legal paradigm.*

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## INTRODUCTION

Indonesia has a vast territory stretching from Sabang to Merauke. Indonesia is rich in natural resources, like a strand of pearls emeralds on the equator, as well as cultural resources that various types. Theoretically, cultural diversity (*multicultural*) is a configuration of culture that reflects the identity of the nation, and is empirically into blocks of the unitary state of Indonesia. In addition, cultural diversity is also a cultural capital and cultural power which drives the dynamics of the life of the nation. However, from the other side of the cultural diversity also holds the potential conflicts that could threaten national integration, because of the conflict between cultures in the form of inter-ethnic conflict, inter-religious, inter-racial and class are very sensitive and prone to lead to conditions that lead to the disintegration nation. Within the last two decades, the potential cases that triggering the conflict are likely to further increase in the quality and quantity as well.

For example, conflicts in Aceh, Abepura and Timika (Papua), Ambon (Maluku), Sampit (Central Kalimantan), Pontianak-Sanggau-Sambas (West Kalimantan), Pasuruan-Situbondo (East Java), Mataram (NTB), Lampung (Sumatra), Poso (Central Sulawesi), and others is a reflection of the inter-ethnic conflict, between religious communities and/or between groups that occurred in many areas of Indonesia. It is quite possible that the conflict is not managed, interpreted, resolved, peacefully, and wisely by the government together with all components of the nation will eroded the unity of this nation. In general, violent and conflict are triggered by the strong tendency of primordial identities and groups.

In anthropological views, social conflict is an integral phenomenon (inherent) of human life, especially in the multicultural society. It can not be avoided or ignored in public life. However, the important thing to do is how the conflict is managed, controlled and resolved peacefully and wisely so as not to cause social disintegration in the life of the nation.

Legal anthropological perspective, suggests that the phenomenon of conflict are the result of a conflict of values, norms conflict, and/or conflict of interest of the ethnic communities, religious, or class in society. However, the conflicts that occur can also be sourced from the issue of discrimination and abuse of government regulation on the lives of people in the area, regardless, displacing, and even values. Another cause is the legal norms folk including the religious and legal traditions and wisdom of the people in the area through the dominance of the enactment and enforcement of state law.

Conventionally said that the goal of the law is to create justice, usefulness, and legal certainty. Whereas, the purpose of law is to maintain social order in the community, so the function of law is emphasized as an instrument of social control. However, along with the demands of the development of society itself, especially in an increasingly complex society, the role of law then directed and level as a means to carry out social engineering, or to make social changes using instruments law to achieve certain social conditions as desired by the State. The question arises then whether the objectives, functions and role of law as an instrument can be upgraded to maintain and strengthen national integration in multicultural societies patterned?. This article seeks to discuss the relation between legal pluralism and political identity in the context of strengthening the "nation state" in Indonesia. Another is analyze on the escalation of violent conflict weather it is a threat to the process of nation-building in Indonesia.

## NATION STATE AND MULTICULTURAL AWARENESS

The concept of *'negara-bangsa'* or nation-states are the components that make up the national identity or nationality. The combination of the two ideas of the (nation) and the (state) embodied in a concept known as the nation state with a larger sense than just a country in terms of state. According to Dean A. Minix and Sandra M. Hawley in (Cited in Alfian, 1978:8), nation-state is a nation that has a political structure as the terms of territorial borders, legitimate government, the recognition of foreign and so on. This definition refers to the concept of nation state is an understanding of the state in the modern sense of the word.

The nation state is the concept of the modern state. As defined above, a country is said to have been qualified as a modern state if at least meet the basic requirements. In addition, to regional and population factors is the capital of a nation before it became a state. Meanwhile, to be a nation state then the conditions are the existence of territorial boundaries, legitimate government, and recognition from other countries. Indonesia as a nation state has the third factor (Noer, 1983:17).

According to Article 1 of the Constitution 1945 explained, the Unitary State of Indonesia is, in the form of the Republic. This form of government is the antithesis of the monarchy with the head of government is not a king and the electoral system as a democracy entity. In addition, the Constitution 1945 also contains provisions concerning the completeness elements of Indonesia such as the legislative, the executive, the judiciary, local government, and so on.

Furthermore, Indonesia is known as a country with multicultural, multi-ethnic, religious, and race. The motto of 'Bhinneka Tunggal Ika' or Unity in Diversity is the mirror of the nation. In addition, the 'Bhinneka Tunggal Ika' is a social and cultural realities that frame the lives of Indonesian people.

In the treasure of postmodernism, there are differences in perception of multiculturalism. According to Adian (Danusiri, 2002:1-2), understanding of multiculturalism can be divided into several levels. *First*, the popular understanding, as more easily find Chinese restaurants, Hoka-Hoka Bento, Mc Donald, Salero Bagindo, in an area previously relatively homogeneous. *Second*, the political of understanding, cultural pluralism tends to cause many social issues that require certain policies. *Third*, academic understanding, that relies on the development philosophy of postmodernism and cultural studies.

The discourse of multiculturalism developed closely related to the rejection of hegemony and cultural uniformity was considered to be universal, regardless of the context of the village or "desa" (the place), "kala" (time) and "patra" (space). Hegemony occurs when there is a certain group pushing the value system and worldview as they apply in the public sphere and the private (Danusiri, 2002:vii). Thus, multiculturalism is a recognition of cultural pluralism that fosters awareness to strive for minority groups as the uniqueness of their identity (Haryatmoko, 2002:11).

A more complete understanding expressed by Lawrence Blum (Cited in Syamsul Arifin, 2005:12) said that multiculturalism is an ideology, appreciation and assessment of one's culture, and a respect and curiosity about the ethnic culture of others. It includes an assessment of the cultures of others, not in the sense of agreeing all aspects of these cultures, but rather trying to see how certain cultures can express a value for its own members.

Multiculturalism is an ideology that recognizes and magnify differences in equality both individually and culturally. Multiculturalism is a reality that requires and necessitates pluralism as public schools. This ideology allows the establishment of democracy and prevent any form of autoritarianism. Capital base in an open society is the interrelatedness of trust as social capital and not clog exchanges which acts on various aspects of each other that leads to justice (Rozi, 2003:8).

The concept of multiculturalism is in line with the concepts of democracy and human rights as a cultural process in order to establish the attitudes and behavior of mutual respect, tolerance and harmony based on the principle of equality. Understanding and insight into the development of multiculturalism in society would itself build a society that is more open and aware of the importance of liberty, equality and justice as well as the differences in the core of life together in a national community (Saefudin, 2004:41).

The reform movement is a momentum for Indonesia to make changes to all aspects of life including the view of Indonesia to the identity of the nation. Cultural diversity has become a reality that characterizes the life of the community. Cultural homogeneity has been erased by the easy movement of people and mobilizing information in the era of globalization. In fact, the existence of Indonesia is a multicultural country. The influence of globalization and development of information, imaging and virtualization along with various social effects resulting in humanitarian discourse has influenced political thought and culture life. Political discourse is no longer merely talking about the political system, political structure or a political actor, but now focuses on elements outside the political development itself. Three central issues discussed in contemporary politics, including geopolitical, political space and political time (Piliang, 2004:1-3).

The emergence of a global phenomenon with stronger sentiment paradox and local identity as a form of cultural resistance. This, on the one hand, has given hope for the growth of democracy at the local level, but on the other hand if the understanding, education and experience have honed political democracy, it could lead to a blurring of politics and democracy.

The strengthening of primordial, vandalism and paternalism put in a position of local political monism. In this situation, then the regional autonomy means for separation while direct elections to vehicle appearance petty kings in the area. Domination and

hegemony is no longer positioned binary between central and local government, but instead decentralized to the local level. While relations religious groups, ethnic, race, and social estrangement clan began to experience with one another. The emergence of selfishness attitude, felt "most", the most powerful, the most meritorious and so it creats a feeling of antipathy between and among groups with one another.

Formulation of the ideology of multiculturalism as a social glue and construction as well as the reality of nationality should be done as a way out of the entrapment problems that increasingly absurd. *First*, multicultural approach to raising awareness about new pluralism and differences between one another. *Second*, pluralism can provide public space for all the community to actualize themselves and to express themselves without the presence of anxiety and depression. *Third*, the growth of open society that provides opportunities for the establishment of democracy. *Fourth*, political multiculturalism is not only placed in the sense of political formulations Machiavelian, but more than it should be positioned as *phronesis*, namely how to organize a constellation to live together in an ethical manner. *Fifth*, the political constellation is has expanded its range of policy areas, not only in society or political community alone, but there has been a public relations and interaction with the economy and civil society. *Sixth*, multiculturalism approach puts political community as a space for every individual in carrying out the rights and obligations for the realization of justice guaranteed by the constitution, such as the right of association, the right to an opinion, right to follow conscience, and the right to worship according to his belief. People who live in a political community are fellow citizens within the same state regardless of race, ethnicity, and religion. Relations with the country people are consociationality. *Seventh*, the political logic of multiculturalism no longer emphasizes the diversity of interests and identities, political logic reject essentialism and cultural stereotifikasi.

Multiculturalism approach in strengthening political base just does not keep with the central region, but further strengthen the ties of mutual or reciprocal relationship of mutual benefit and mutual need. These relationships can strengthen cohesion and national integration as the motto of 'Unity in Diversity' or 'Bhineka Tunggal Ika'. This is where the true meaning of Indonesia's, which is a string of brindle differences in unity and unity in diversity. The value of unity and oneness requires individual and collective consciousness.

## LEGAL PLURALISM AND NATIONAL INTEGRATION

The law serves as a facilitation of interaction between people to achieve regularity in social life. Discourse theory of law states that the rule of law has (i) power behavior philosophically, that is, in accordance with the ideals of law that reflects the value of justice in society, (ii) power behavior sociologically, in a sense, as a norm accepted and recognized in accordance with the value of values that live in the community, and (iii) legally empowered behavior, in the sense of having a hierarchy according to the legal regulations.

In addition, the rule of law has basically two fundamental properties, namely regulatory nature and coercive. Legal rules governing the conduct of the public to create an atmosphere of regularity, order and peace in a common life. Meanwhile, the nature of the force of a rule of law is reflected in the application of sanctions through the repressive law enforcement officers for any person who violated (Griffiths, 1986:5).

It also means that, from the perspective of anthropology[1], the source of the conflict is precisely the emergence of the phenomenon of the development paradigm of law issues adopted by the government and the legislature, that is, the development paradigm of law is patterned centralism law. Such a case, it is not in accordance with the facts of law diversity in multicultural societies. Therefore, to achieve an integrated society culturally, the fad paradigm legal centralism should be replaced with a fad paradigm of legal pluralism. To achieve this goal, attempts to do is to build a government policy that gives recognition and protection of the whole and true to the legal systems in addition to state law, such as customary law and religious law, including local regulatory mechanisms which empirically to live and thrive in the community.

The implication, values, legal principles, institutions and legal traditions of the people must be accommodated and integrated into the national legal system, and then the concrete is poured into the regulatory aspects that touch people's lives (both the individual or communal). Characteristics law should be developed to foster and strengthen the integration of a multicultural nation is law is patterned responsive, or the laws that are responsive and accommodating to the legal system of the people as a reflection of the values, principles, norms, institutions and legal traditions that live and thrive in the community.

Description of the previous sections show that the law in the perspective of anthropology is a cultural activity that functions other than as an instrument for maintaining social order, a means of social control, as well as a tool for social engineering in the community. Studied law as an integral part of the culture as a whole, not as a social institution is autonomous or separate from cultural aspects, such as political, economic, religious systems, kinship, social structure, and ideology.

Therefore, to understand the position and the legal capacity of the fabric of society, then must first fully understand the social and cultural life of the community. In addition, to gain a thorough understanding of the functions and role of law in a multicultural society is patterned, then, the issue of the development paradigm adopted by the national law, it should also be a part of the association studied comprehensively. Over the past three decades, the government has tended toward the development

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[1] Anthropologist have focussed upon micro processes of legal action and interaction, they have made the universal fact of legal pluralism a central element in the understanding of the working of law in society, and they have self-consciously adopted a comparative and historical approach and drawn the necessary conceptual and theoritical conclusion from this choice (Griffiths, 1986: 2).

paradigm of law is patterned centralism law, so the product tends to ignore national laws, displacing, and even mematisurikan legal systems other than state law empirically live and thrive in society.

In Indonesia the term integration is often equated with the term integration or assimilation, but the two terms are different. Integration means the integration of cultural, social integration, and social pluralism. While integration can mean assimilation and amalgamation. Integration of culture means the adjustment between two or more cultures about how elements of culture their different or contradictory, to be formed into a system of cultural harmony. How, is by diffusion, where new cultural elements absorbed into a culture that is in conflict with certain elements of traditional culture. How to handle the conflict is through modification and coordination of cultural elements of new and old. This is referred to as the Social Integration (Poespowardojo, 1989:14).

Social integration is the integration of groups of different origin, being a large group in a way to eliminate the differences and individual identity. In this sense, social integration is synonymous with assimilation or integration. The difference is that with the integration of social groups that have united it, still has a culture different from one another, due to the loyalty of the native groups that have different cultures. While the community groups who have diffuse it, the difference is no longer (Suryadinata, 1999:48).

Cultural pluralism is heterogenis approach or cultural diversity, a culture of tribes and minority groups are allowed to retain their identity in a society. While assimilation is complete intermingling between groups or individuals, each home has a distinct culture and identity, into a new group with a common culture and identity (Apter, 1993:17). While the meaning of National Integration is the union of the different parts of a whole society into a more complete or integrate small communities into a nation in number. Moreover, it can also mean that national integration is the ability of government or state to implement its power increased in all regions (Mahfud, MD. 1993:71).

The problem of national integration in Indonesia is complex and multidimensional. For this to happen, it needs justice policy implemented by the government regardless of race, ethnicity, religion, language and so on. Actually efforts to build justice, unity and national unity is part of an effort to build and maintain political stability in addition to other measures such as the amount of government involvement in determining the composition and mechanism of parliament.

Thus, national integration efforts with a solid strategy needs to be done in order to realize the desired integration of the Indonesian nation. Development efforts and fostering national integration is necessary because virtually no other national integration shows the strength of unity and national unity desired (Mahfud, MD, 1993:70). At the end of national unity is to better ensure the realization of a just, prosperous, safe and secure. If we look at the cases that occurred in Aceh, Ambon, West Kalimantan, Lampung and Papua lately is a reflection of national integration not realize we had wanted all along.

## CONCLUSION

From the perspective of legal anthropology, legal pluralism phenomena is a fact of legal life in a multicultural society. Therefore, to enhance the purpose, function, and role in a multicultural society, in order to maintain and strengthen national integration should start from efforts to reform the ideology of legal centralism patterned development into an ideology that emphasizes the development of the law of legal pluralism legal characteristics responsive and accommodating to the values, the principles of law, and legal traditions are alive and growing in a multicultural society. This is due to the fact the law of life in Indonesia de facto multicultural society is not only manifest in the form of legislation created by the state, but also the law embodied in the form of local rules derived from social customs and traditions, religious law, including the self-regulating mechanisms is empirically also have a purpose, function and serves as a means to maintain social order, supervision, and as a means of social control in a multicultural society is patterned.

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