LEGAL PLURALISM
IN THE CONTEXT OF SOCIAL MOVEMENT

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Legal pluralism, whether directly or indirectly, has become a part of local political identity, which plays a role in giving rise to the working of social system. This can be seen from how community with the social system positions its resistance against the interpretation of state power over the domain of local power both in terms of vie for environmental resources and access to local politics.

What becomes the centre of attention in capturing the reality is the idea to revitalise the study of legal pluralism, especially to provide it with a context of social movement. This idea is actually aimed more at an endeavour to use legal pluralism within the social movement model in order to achieve change and strengthened guarantee or protection of human rights and social justice. What is often sidelined, if not forgotten, is to shed light upon the superiority of the state's central and monopolistic role with its interpretation of power and its imperialism of formal laws.

There are four parts that will be elaborated here with regards to the above mentioned choice of title and thoughts in the introduction: *first*, a mapping of situation and meaning of 'pluralism' in the context of legal social movement; *second*, an analysis of the mainstream legal discourse that is developing; *third*, a study of the use of legal pluralism as a strategic tool in responding to social conflict and social change; and *fourth*, a critical review on the space and opportunities for, as well as the danger of, legal pluralism itself.

The Context of Legal Social Movement

The fall of Soeharto's authoritarian-military regime in 1998, which was accompanied with structural bankruptcy of the role of the state that had been preceded with an extraordinary economic and political crisis gave birth to

restructurisation in various sectors. This restructurisation, which was often attached to the term 'reformation,' also entered the domain of legal system. It began with the state's legal products, starting from the Constitution through the first to fourth amendment of the 1945 Constitution of the Republic of Indonesia (known as UUD 1945) to revision of various legislations that were deemed problematic, especially with regards to the portion of political power centralism and dominance of the central government over regional government, with the support of legislations that changed the election system towards a gradual and more democratic manner. The judicial system was not missed as an object of reformation, starting from the judicial power, general court, state administration court, the establishment of Constitutional Court, to the establishment of other specific courts. New state institutions were also established to keep pace with the politics of change. For instance, the establishment of Commission for Corruption Eradication (KPK), Ombudsman of the Republic of Indonesia (ORI), UKP4, Anti-Legal Mafia Task Force, National Drugs Agency (BNN), and many others. In short, both new courts and state institutions under the power of the executive experienced a rapid inflation.

Such political constellation created structural shifts that were quite significant at the state level. In no more than eight years of administration after 1998, even impeachment of the president was no longer a sacred thing as it had been the case in the era of the New Order regime. The waves of democratisation of state institutions, coupled with the demand for good and responsible exercise of power of the administration or *good governance*, became a political icon that was unceasingly promoted by political elites in the parliament as well as in the bureaucracy. In short, a situation of *aufklärung* (enlightenment) that had never happened before in the tumultuous stage of legal politics was then taking place. Previously, when it had happened at all, it was only a situational ripple that could not be detached from the rituality of election politics, which was often dubbed as the democracy party of the people of Indonesia. Ironically, in its further development, the democratisation process itself underwent many deviations from the ideal hope that the reform desired. In the context of the locals, there is an abundance of cases of elimination of customary communities, peasants, coastal communities, and communities that had their own distinctive social and cultural systems. A case pertaining to customary communities, for example, is what happens to the community of Kulawi Moma with regards to their customary land and forests with the size of approximately 8,600 hectares, the rights to which were eroded by the claim of stipulation of Lore Lindu National Park (TNLL). The situation was further aggravated when the state facilitated the presence of P.T. Hasfarm-Napu, which possesses Land Use Title concession, not to mention the threat of policy plan of the District of Pasir (2003) that refuses to recognize *ulayat* or customary lands in its Regional Regulation Bill.

A similar thing happens to peasants that practice local wisdom in managing agriculture and the forest of Siti Soro in Gambaranyar Village, Sub-District of

Nglegok, District of Blitar. They have to face the claims of Perhutani and other plantations over their *ulayat* lands and community crops. It is also the case with the land of community forest in the Hamlet of Sendi, Pacet Village, District of Mojokerto, which is faced with Perhutani's claims. The lands in the two last cases had been reclaimed by peasants in East Java, but the state subsequently refused to recognise them as community land. Mining exploitation, land opening for palm oil plantation, and natural resources exploitation take place everywhere as though cannot be controlled, both in the interest of environmental protection as well as protection of the rights of communities at the local level.

The state, with its interpretation of power, is conducting elimination and denying the rights of communities to land and natural resources. Such elimination and denial do not only take the form of legal conflict, which involves a set of state's interpretations pit against the interpretations of local communities of the law. More extremely, the interpretations are also attached in a formal manner to legal languages ('official' or 'formal') through institutions and centralistic procedures and the use of violence circuit to uphold the language of power. If needed, the state reproduces ideological violence as mentioned by Louis Althusser (1971) or hegemonies discourses and structures as proposed by Antonio Gramsci (1971). Therefore, in bringing up the conception of legal pluralism, practices on the ground suggest a situation of violence and oppression in which the state is always in a superior position to maintain its political power. Moreover, the forces at work do not only bring on the state's superiority, but also strengthen local political and economic interests that often trump over the state's formal structure. The power relation gives birth to predatory elites who are not only strong in terms of position but also take prey on all forms of natural resources richness, trump over the government's position, and get rid of social-cultural communities so effortlessly.

Such factor has directly been a great impediment to and has been limiting the establishment of local laws or the effort to revitalise them, including in relation to the maintenance of social and cultural systems that live inside communities. The state's dominant discourse on the interpretation of law does not only seep in through the way it controls power to serve its own arbitrary interests but has also forced its way to the domain of legal education, which is more and more bent to legitimising the dominant stream. Moreover, support from the state and large national and transnational capital owner groups offers intellectuals with irresistible candy that manages to get them 'bought' and eventually bandwagon with the big stream. In such situation, not only the character of neo-liberalism becomes stronger in the bases of political and economic control, the character of legal formalisation has also penetrated the world of higher education.

The aforementioned character of formalisation can be seen in the construction of the concept of 'legal pluralism.' Legal pluralism is often perceived as something that corrodes the element of legal certainty, defies the state's official legal products,

puts the arrangement of formal institutions to solve problems in disarray, and in its most extreme form, erodes the state's legal system that bases itself on the rule of law. Criticisms on legal pluralism are often put in the context of the practicality of managing social relations, in which the laws of the state are viewed to be more capable of solving problems and standing above all parties as a meeting ground of all differences.

With those criticisms shot at legal pluralism, gradually studies in that direction are 'starting to be left behind' and only few people still put their interest in them, especially in the context of modernisation and the stream of globalisation that desire *everything legalised* (everything made legal or is based on the prevailing laws). The signs can be read from the removal of anthropology of law from the curriculum of legal higher education in several faculties of law in Indonesia or at least its dropping of importance by making it an optional subject rather than a mandatory one for the students of law. [1]

On the other hand, especially among policy makers, legal pluralism is perceived as something that brings difficulties in forming laws to regulate certain local communities and even often goes against the interests of political elites sitting both in the parliament and the bureaucracy. It is the more so if in the process of forming the law (the state law), local communities are not asked to co-formulate or at least involved in a participatory manner.

Particular people, customary communities, or local communities that have and maintain their laws or daily practices actually have their own legal dimension or social norms or folk law so that they often sternly reject rules made by the government. As a simple example, customary communities in the various hinterlands of Papua, Sulawesi, or Kalimantan are those who maintain customary lands in relation to a site to build social, economic, and even religious life. However, the government's policy often ignores it. For example, the implementation of land certification program has triggered conflict pertaining to land legalisation, which appears as if as the source is only from the state law. It is also the case with the determination of forest boundaries, territorial claim, or opening of land for plantation and mining inside the territory of communities, which clearly undermine local legal system that actually also has a 'legalisation' model albeit informal, unlike the state's legal system. Inevitably, conflict of legalisation is occurring more and more harshly after the government issues concessions of timber extraction, Industrial Plantation Forest, Land Use Title, and other rights that penetrate and trump over customary lands.

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[1] The problem of the status (to not call it fate) of the subject of anthropology of law has been specifically discussed between a number of lecturers (and former lecturers) of the subject and HuMa in Jakarta (Workshop on the Revitalization of Social Science Thinking Approach on Law, Jakarta 4-5 March 2005). Most of them stated that the current problem with the subject is the lack of interest, not only on the part of the students of law, but also of its lecturers. This is because the mainstream study and science development of the law is oriented more on providing market share in the field.

However, amidst such situation, there are at least two problems that are often revealed and rise to the surface for legal observers or community law facilitators when responding to it, namely: *first*, difficulty to explain the ongoing process from the perspective of legal concept outside the dominant state law. In other words, there is difficulty to bring up and give a space or opportunity for local law to serve as an alternative answer to such interpretation of situation. *Second*, legal pluralism is understood in a vulgar manner and oversimplified to simply mean anti-state law. The latter is a traditional view, which sets a diametric trap with regards to the applicability of state and non-state law. A more comprehensive understanding views the relation between state law and law that does not originate from the state as mutually influencing and intersecting; in practice it is not as extreme as what is depicted by many quarters arguing that the two laws are mutually exclusive and can run on their own.

Serving as an example is the state law that is not always obeyed by communities because they have their own law. Or in the language of Wignyosoebroto (2013), the state law loses its social significance. This does not mean that the communities automatically deny the existence of the state law. Rather, they only let the state law (textually) be, instead of working against it, by practicing other laws. Because of such relation, the laws actually shape each other's character (see for example the formulation of Village Regulation of Cibuluh Village in West Java with regards to Management of Forest Resources, which shows a local character but still uses state law as a part of it).

Nevertheless, conflict of laws that prevail over a territory often ends up with local laws being defeated, weakened, and even paralysed through the process of state authorisation, which has the authority to sanctify all its policies. Viewed from this angle, the concept of legal pluralism in the context of the existence of and effort to revitalise local laws actually becomes relevant to build an order of social life that is more just and democratic, especially in putting the efforts to resolve conflicting situations in the path of non-state law, whether in its relation with the state law or other local laws. Moreover, in relation to the direction of social movement developed by communities, it is very important to bring up the issue of legal pluralism as an alternative perspective in ordering the political relation of the state and communities as well as economic relation that democratises management of natural resources in certain areas. It becomes clearer that the political transition of regional autonomy has more or less influenced the process of such ordering within a more serious debate regarding legal pluralism and an effort to better respect and protect human rights.

The Dominant Legal Discourse

What is meant by the dominant legal discourse? [2] The term is used to make it easy to translate the presence of a *dominant* condition and situation with regards to the use of laws, which source is taken primarily from the state, or which are resulted from the state's formal institutions. Another meaning suggests that the dominant legal discourse puts the state's position over the state's monopolistic interpretation through legislations to encourage legal centralism process.

Along with the development of the world order and technology, which makes it easier for people to interact with each other, accompanied with growing interdependence between one state and another, the law also follows the world order model. It means that the law follows the transnational path in the context of globalisation. Transnationalisation of law of this kind has resulted in a new pattern of regionalisation of law that has become inevitable, international agreements in any sector becoming much easier to make, and virtual transactions becoming very common with the use of technology that is no longer limited by state boundaries.

From the above explanation, we can see that the *dominant* legal discourse also shows some characters, namely structural character as seen in the positioning of the state as the central being and the source of law making; and also transnational character, which no longer knows state boundaries. Besides these two types of dominant laws, there is also another type of dominant law that influences and serves as the meeting ground between the former two, which can no longer be called a character, but has become an ideology that penetrates the two dominant legal discourses. It is the ideology of liberal capitalism in the dominant legal discourse that is now crowding the pattern of the world economic and political imperialism; of course by using a quite effective instrument and is used to reproduce its working processes through (positive) law!

Why is the ideology of liberal capitalism thriving as the dominant legal discourse in the current context? If we follow what Godoy offered in one discussion, there are three periodisations with regards to the process of law mainstreaming, which is formed as a part of legal discourse, especially applicable for "colonised" nations. *First*, is a period he labeled as colonisation, as seen in the history of Portugal in Mozambique and Brazil or occupation of Spain in Mexico and the Philippines. Second, almost similar to the former is a period he called power imperialism, for example in the case of Britain in India and South Africa. And third is a period that he called globalisation, which formed power empires such as the operation of transnational corporations, international financial institutions, or countries that play a central role in international institutions (especially the United

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[2] Dominant in this sense is defined in the Big Dictionary of Indonesian Language (1991) as a very determining character stemming from strong influential power or the condition of always standing out. In the context of this article, dominance means the most influential or dominating in terms of legal thinking or practice.

States), which actual role is not unlike the period of colonisation and imperialism. Godoy linked mainstreaming of legal discourse to the situation of colonialism, imperialism, and globalisation as the determining factors.[3]

The focus of this article is aimed at the world order model in the era of globalisation, which greatly influences the working of laws in the *dominant* legal discourse. As mentioned before, the dominant legal discourse that is based on the ideology of liberal capitalism has served as the meeting ground between structural and transnational character. Such structural and transnational character serve as an effective instrument for the working of globalisation so that discussing globalisation in this context is actually discussing its ideology that is based on liberal capitalism.

On the ground, we could easily find how the dominant legal discourse works. For example, in the case of privatisation and commercialisation promoted by Law No 7 Year 2004 concerning Water Resources, it is not sufficient for us to analyse it only as a product of political elites sitting in the parliament and the government. It is because non-state institutions (non-state actors) such as transnational private water companies and international financial institutions[4] were involved in pushing the privatisation and commercialisation project forward. It is also the case with the birth of Law No. 18 Year 2004 concerning Plantation and the issuance of Government Regulation in lieu of Law (Perpu) No. 1 Year 2004[5], which was quite controversial because it allowed mining activities inside protected forest area, which are clearly legal products resulted from the intersection of state's and capital owners' interests in the context of today's *dominant* legal discourse.

It is apparent that the laws pose a serious threat for local laws that have been applied all along in the management of water resources, forest, ancestor lands, and other natural resources. The threat pertains not only to the problem of legal textuality battle, but also to the erosion of the rights to live belonging to customary communities, peasants, or local community groups that maintain their own social and cultural systems over natural resources.

In the study of legal pluralism, it appears that it now becomes less relevant to merely put the discourse of state law in contradiction to local (non-state) law because the players that play a role in influencing the laws that make them dominant legal discourse have not only structural and transnational character but also adopted

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[3] Godoy, Arnold Moraes, *Globalization, State Law and Legal Pluralism in Brazil*, paper for Panel 7: Law, Theory, and Justice, the XIVth International Congress, August, 26-29, 2004, Fredericton, New Brunswick, Canada.

[4] This can be seen in the debt programs, among others from the Asian Development Bank and the World Bank in water issue, both for programs of empowerment of water resources agencies and improvement of water/irrigation infrastructure. For a more complete account, please check http://donorair.bappenas.go.id/projectlocation.php; Jubille South, *World Bank and ADB's Role in Privatizing in Asia*, paper (2004); R. Herlambang Perdana, *Air, dari Soal Kucuran Utang hingga Arus Besar Kapitalisme Global*, Introductory Material for a Discussion on Pusham Unair, December 2003 (www.huma.or.id), and, *"Sambong" and Legal Conflict of Water Rights: Portrait the Clash Between State Law vs. Folk Law over Water Management in Madiun Disctrict*, paper for Panel IV: Legal Constructions of Nature, the XIVth International Congress, Ausgust, 26-29, 2004, Fredericton, New Brunswick, Canada.

[5] Government Regulation in lieu of Law No. 1 Year 2004 has been amended by Law Number 19 Year 2004.

the ideology of liberal capitalism. The next question should be: has the ideology of the dominant legal discourse also penetrated (read: possessed) local laws, rendering them no longer 'sterile' from the ideology?

The answer is simple, which is that it is not an impossibility for the ideology to penetrate local laws. Because on the ground, we can also find the culture of commercialisation with regards to control and ownership of natural resources that has never been present before. More investigation needs to be done to determine whether local laws with such culture really do allow or actually prohibit such practices to occur. (See an example of cases in which lands that have been reclaimed or reoccupied by peasant communities, customary communities, or other local communities without court process were in turn sold or leased to other parties).

With the current liberal political system linked to the development of the dominant legal discourse that is based on the ideology of liberal capitalism, the actors that are involved in the mainstreaming process can no longer be called state (law) *an sich*. This is due to the fact that the current local political system that is transitioning towards regional autonomy does not automatically translate into democratisation at the local level or guarantee of strengthened local participation. We are blatantly witnessing the process of co-optation of local actors into the formal system of political power, which does not bring political elites closer to the people but, on the contrary, move them even further away from local communities and the problems they face. Therefore, besides the ideology of liberal capitalism that is promoted in responding to the globalisation, the dominant legal discourse developing today cannot be delinked from the political system that promotes the trap of co-optation of its actors into the formal system of political power.

Legal Pluralism: An Alternative Approach

As has been elaborated before, amidst cultural modernisation in the era of globalisation, the law becomes an effective instrument to back up the needs of social, economic, and political interactions within it. Effectiveness as a jargon in the discourse of good governance is very potent in influencing the way the state thinks in ordering its political relation with the people in any sector. This is what in turn causes the writing of laws that are enforced (positive law) that have a distinctive character of being made through the formal mechanism of the state's structure and taking the form of written law. [6] The presence of such normative rules are deemed increasingly

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[6] Soetandyo Wignyosoebroto explained that the formalistic aspect prioritizes strict and clear procedures. Handled by the experts makes the law known only to a number of people who specifically learn about it. As it is means that the law only captures events that can be sensed and ignores the non-sensual battle that stands behind it. Being written traps the law into becoming mere letters on a paper detached from the social framework behind it. See Soetandyo Wignyosoebroto, *Hukum, Paradigm, Metode dan Dinamika Masalahnya, Elsam dan HuMa*, Jakarta, 2002 pp. 63-66.

needed and having an important value in establishing such relations, which include all interested parties.

Within such context, the state plays a central role in making legislations or writing written laws. From the perspective of politics, the role of making legislations is legitimate because the makers (both those sitting in the parliament and those in the executive) are also chosen through a formal mechanism. It is because of this factor that they have the authority to exercise political mandate from the people.

What often becomes problematic is the exercise of authority within the state that brings certain consequences, including the enforcement of state law against communities. These consequences are more visible when the state adopts a positivistic view and places the state law in a superior position compared to existing local laws that are seen as inferior laws, which is also called "relative" pluralism (Vanderlinden 1989), "weak" pluralism (J. Griffiths 1986), and "state law" legal pluralism (Woodman 1995:9).[7] This view was born because legal positivism was very dominant with the character of law that is formalised, institutional, and defined, and which is resulted from the process of exercise of the state's authority and action (centralism); on the other hand, there is no other paradigm that is capable of offering guarantee for the status quo in a strict and lucid manner as offered by legal positivism. Many state laws even weaken or dilute local laws. It was in such situation that legal conflict that pits the dominance of the state law against the heterogeneity of local law was born.

Indonesia is a country that houses a plurality of social-cultural systems that continue to maintain their own traditions, customs, or *adat* and also maintain their own distinctive normative dimension, which cannot be generalised or homogenised with the presence of the state law, even when its formulation results from a most democratic formal mechanism. Homogenisation of local governments, which occurred when Law No. 5 Year`1974 concerning Regional Government and Law No. 5 Year 1979 concerning Village Government were issued has directly and indirectly destroyed local orders. Legal unification in that context has forced local communities to collide with a system that does not always fit with the local soul or characteristics. In other words, the folk law, which is a product born from the people, managed and maintained by the people in their own way is actually not always manifested in a written form. This has to do with social relations, in which the folk law becomes a manifestation of the soul of the community.[8]

Therefore, it is not astonishing that the positivism view gives rise to social contradictions, especially if applied in a situation and space where communities maintain their own law to solve their own problems. It is a certainty that if the frigidity of the positivism view is maintained, we will be heading to a dead end. Positivism

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[7] Keebet von Benda Beckmann, "Legal Pluralism" or "Pluralisme Hukum", in *Tai Culture, International Review on Tai Cultural Studies*, Vol VI No 1 and 2, SEACOM, Berlin, 2001,

[8] Karl von Savigny in Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum*, RajaGrafindo Persada, Jakarta, 1999 pp. 33-34

itself will trigger conflicts during its enforcement, especially when there is a case of power abuse in which the law is misused as a repression tool against local laws and the communities that exercise them.

It is in such situation that the approach of legal pluralism becomes relevant in complementing the analysis to solve problems occurring in local communities. The critical legal pluralism approach views (local) law not only as a reality or social reality. [9] More than that, the approach believes in the process of generating or forming the law so that it sees a relation (read: interests) between a legal product and its formulators. The formulation of folk law (or local law),[10] which is based on the soul and experience of social interaction at the local level is of course psychologically and culturally closer to community compared to the laws of the state, in the formulation process of which they are not involved. Legal pluralism, borrowing Berman's term, is an old norm that is very obvious, not something that the scholars have to dig out. [11]

Serving as an example, enforcement of customary sanctions through customary/local court is felt psychologically and culturally more correct for local communities in solving their problems. [12] In this context, local laws have the character of being more practical and emancipatory because they ensure local community's participation, which is directly exercised by customary leader or local-informal leader, also because the process can be easily and directly watched by local communities, giving them stronger binding power compared to the exercise of state laws.

It is very important to bring back the conception of legal pluralism, not only because local laws are needed in the context of certain cases, but also because the conception is required to support and respond to legal-social movement in order to dismantle the rule-centred paradigm order or in order to situate the movement (or studies) of legal pluralism as an effort to respect, protect, and fulfil human rights. The conception of legal pluralism in such context is not only restorative in nature, but also serves as a transformative concept that encourages the process to promote the rights of customary communities to become more substantial.

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[9] Kleinhans, Martha-Marie & Roderick A. MacDonald, *What's Critical Legal Pluralism?*, Canadian Journal of Law, Volume 12 No. 2, 1997, pp. 25-46

[10] Keebet in one of his writings wrote definitions of *costumary law, indigeneous law, 'adat' law, folk law, and local law* and analyzed them in comparison. In the end, he chose using the term local law as the most correct definition because it views the law as being inside a local territory without regarding its origin. See Keebet von Benda Beckmann, *Op cit*, p. 20.

[11] Berman, Schiff Paul, 2009, The New Legal Pluralism, Annu. Rev. Law Soc. Sci. 2009. 5:225–42, p. 227.

[12] As an example, in Papua, in a territory with the government system of *Ondoafi*, customary court is held by *Ondoafi* (in Sentani by *Ondofolo*). He is assisted by *Takai*, which is the second line position, which function is to supervise, maintain, and enforce customary law. In West Sumatera, in the administration of Nagari, they have a better knowledge of sanctions of customary verdict such as *gabuak dampe* (exiled to the extent of the custom); *miang dikiki* (for a heavier trespassion), etc. For a more complete account see Aliansi Masyarakat Adat Nusantara, *Sistem Peradilan Adat dan Lokal di Indonesia: Peluang dan Tantangan*, Partnership for Governance Reform-AMAN, 2003, pp. 17-62.

From a conceptual angle, legal pluralism demonstrate at least two things: *first*, offering a more objective account of reality, meaning that it sheds light on the reality that there are other laws besides the state law, which have a comparable influence among communities, even much bigger in the cases pertaining to customary law. *Second*, providing a larger living space for the exercise of community laws. Legal pluralism answers the need of local communities to practice their own laws without having to depend themselves on the laws of the state. Therefore, the state must understand and give more room to accommodate the plurality of local law mechanisms in solving their own problems, including be firm in respecting their existence as laws that are practiced among communities.

Legal Social Movement

The concept of legal pluralism gave rise to various responses from various legal movements, especially at the local level, which have been systematically repressed for so long by the state law. In general, there are three responses coming from various legal social movements: *First*, legal pluralism becomes a concept to support the movement of non-state law or sometimes is seen as anti-state law. This movement is visible in their statements that often rebuff the state law right away. It views the state law as a mere problem that must be wholly rejected.

Second, it becomes an approach to revitalise local laws using the instrument of the state law, such as the Constitution, legislations, regional regulation, head of district decision letter, et cetera. The use of instruments of the state law is widespread in many places, especially in promoting the recognition of the rights of customary communities. For example, the Regional Regulation of Ulayat Land in West Sumatera, Governor Regulation of Customary Land in Central Kalimantan, Decision Letter on the Recognition of Customary Community in Luwu, Regional Regulation on Baduy Community and so on.

Third, it is used to exercise local laws without the need of recognition from the state law. This response arose in the form of indifference towards the existence of the state law. For example, many communities do not care about the status of state forest area and choose to continue living inside the area based on their own laws.

As responses to the concept of legal pluralism, these must be further scrutinised so that the critical nature of the movement can be maintained both at the conceptual and practical level.

An action response that legal pluralism is a concept that supports the non-state movement is actually no longer in line with the current idea of legal pluralism. A certain law cannot be free from the influence or interaction with other laws in its surrounding environment. [13] Therefore, this response tends to be political in nature

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[13] Sally Falk Moore, *Law As Process: An Anthropological Approach*, Published Routledge & Kegan Paul, 1978, London, pp 54-81.

because it is more a “fight” against land grabbing that is done based on the state law rather than an action response to the concept of legal pluralism.

The next response is promoting local laws to be formally recognised by the state law. This response, in Griffiths’ category, is a form of capitulation to the state law. Nevertheless, in the perspective of the current legal pluralism, interaction between laws is hybrid in nature. One law can be a mix of several legal ideas (Berman, 2010). In this case, an effort to borrow the format of another law cannot be automatically seen as capitulation. Rather, it can be seen as a strategy to ensure the survival of a certain law, to strengthen it so that it can co-exist with and complement other laws. Therefore, the choice to formalise local laws using the format of the state law is more a strategy to defend legal pluralism itself.

The third response is a movement that priorities the exercise of local law without the need to be dependent on the state’s recognition. This response is widespread in so many places. In Griffiths’ category, this response is called strong legal pluralism. [14] At the movement level itself, the reality underlines the autonomy of customary community in managing its own social and political affairs. That way, the state does not get to regulate on whether local law is “legitimate” or not. However, such autonomy is only possible in a strong community with adequate political awareness. With regards to this, an explanation of the sustainability of this response is borne by various works of political education and adequate understanding of legal pluralism as a concept as well as a demand. In this condition, legal pluralism is not equivalent with anti-state law. Rather, it positions itself as being equal with the state law so that the presence of Constitution, legislations, Regional Regulations, and other regulations has no authority to erase the presence of local laws. However, in some cases, geographical distance is very influential. Distance and proximity determine the intensity of interaction as well as intervention of the state law. The situation will be different if the state apparatus and other actors influence the behaviour of communities in an intensive manner. Intensive influence can make communities borrow or even use other laws. Franz Benda-Beckmann found that independence and existence of a certain law is influenced by social mobility of its communities as well as the intensity of influence from other actors whether at the local, national, or global level. [15]

Progressiveness of Legal Pluralism: A Challenge for Social Movement

It is the authors’ intention to put the thoughts regarding progressiveness of legal pluralism at the end of the article due to the progressive spirit to develop legal

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[14] John Griffiths, loc cit.

[15] Benda-Beckmann, Franz and Benda-Beckmann, Keebet, eds, 2005, Mobile People Mobile Law, Max Planck Institute for Social Anthropology, Germany and Anne Griffiths, University of Edinburgh, UK

studies that are not *only* based on the state (law) as the main source. There is a misconception in the field of legal studies that sees progressiveness as being attached to modernisation, following the development of and is conforming to the "market" appetite. In the study of legal philosophy, the law has three sides that are closely connected and together constitute the law itself, namely certainty, justice, and benefit.

If only one side is prioritised, the law is felt to be lacking and will never be able to function optimally. The study of legal pluralism follows the same rule; it must be able to capture the existence of local laws plurality from the three perspectives. The risk that is most likely to be encountered when applying the analysis from the perspective of the three sides of the law is that we will find that the concepts of certainty, justice, and benefit themselves also exist in plurality.

Here is the intricacy of legal pluralism approach, in which it always uses analysis of systems first (social-cultural, economic, political system etc) in an in-depth manner to understand how local law is formed and is exercised on the ground or to look at its resistance against laws outside their own system.

Critical legal pluralism actually not only looks closely at the dominant power of the state law, both to counter and resist it. It is also not too shallow to conclude that the state and its apparatus are the centre while across it, a periphery or non-centre is regulated and judged in conformity to it. It also does not allow itself to be trapped in a "single" understanding in each social domain; even strong legal pluralism demands that every legal institution determines its territory and claim its supremacy. [16]

The progressiveness of legal pluralism meant here is the intelligence in looking closely at the dominant power of the state laws and non-state laws, or an analysis of non-state laws that are facilitated by the state laws both in countering, resisting, or even utilising them in the process. It no longer only reads the relation of battle between the centre and regional/local, but also studies the role of the transnational that is more and more intimate in the current world order. It is expected to be able to get a deeper understanding of the situation and legal subjects that are seen to be plural in terms of identity. This study is aware of the problems in the enforcement and discourse of the dominant law, in which the dangers it creates will destroy local social and cultural systems. However, dangers are also present when legal pluralism is applied based only on quantitative plurality.

The progressiveness of legal pluralism is expected to discuss not only the reality of plurality, but also how to respect plurality in the communities as an effort to create more synergy to promote social change that is more just. From this angle, how can we view legal pluralism in relation to social transformation (a more just social change)?

In the context of the exercise of local laws, an expansion of legal pluralism studies needs to be brought back or revitalised in the context of the current global

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[16] M. King (1993) in Kleinhans, Martha-Marie & Roderick A. MacDonald, *loc cit.*

world order. There are several arguments that are important to understand in elaborating on the question: *first*, the law that is formed nowadays are more bent to serving the interests of the market (market liberalisation) than to protecting local communities, which are often cast as obstructing investment or disturbing the climate of capital development in the business world. It is then not surprising if the liberal development paradigm seeps in into the dominant legal discourse that also responds to market liberalisation, so that all forms of prioritisation or limitation are seen as a threat by pro-market proponents. The law is pushed in the direction that facilitates global interest to deregulate or liberate the market play while the public functions that become the responsibility of the state are eroded inch by inch and dismantled by the power of large capitals.

Second, there is a great battle between the power of the market that controls the state's role on one hand and the political role of the state to bring prosperity to the people. It seems that the cross-border market power, which runs smoothly at the international level followed by the big stream of world order paradigm that desires expansion of cooperation between the state and multinational institutions (corporations as well as financial institutions) puts actors of political power in a position to "cheat" with the market play that provides more economic room. Therefore, it does not bring too much astonishment that the role of the state displayed by political elites is not sufficiently sensitive and resistant of market traps.

Taking the example once more, privatisation of water resources, which stems from the guarantee of water commercialisation system contained in Law No. 7 Year 2004 concerning Water Resources, is a portrait of the working of power relations and laws that facilitate such relations. In this context, the law and the ongoing battle are not talking about how to guarantee local systems (laws) that have been practiced for ten or hundreds of years and how it will eliminate its social role in the form of erosion of the simplest form of people's sovereignty. The destruction brought by legal liberalisation characterised by its pro-market inclination coupled with the support of the state's political power has threatened the law from two angles: substantially, pertaining to legal products and the structure of bureaucracy that forms and exercise the law. Amidst such situation, in which the state's products and structure have positioned themselves in an area that creates conflict with the folk law, then various forms of legal negation and local social systems, sooner or later, will give birth to complex (latent) conflict of generation in the coming future.

Therefore, the objective of bringing back the study of legal pluralism is to push in the direction of transformation of justice for communities, especially for local communities (customary communities, peasants, fisher folk communities, or coastal communities) that for generations still strongly hold onto their social systems; and this is becoming more urgent to do. Social system that is still maintained can be seen in the system of local management of irrigation, such as the institution of *Mitra Caik* in Sunda, *Sambong* in Madiun, the role of *Jogo Tirto* in the villages in Java, the

role of *Subak* in Bali, and so forth, which are still strongly keeping the relation between water resources and the social environment. The analysis of legal pluralism on results is also needed as an indicator of how to position it within the social movement, meaning that analysis that uses legal pluralism approach is not only opposing the normative institution of the state law as the measure of normativeness. Furthermore, the approach is also used in order to build a social order that is more just, based on the rights and the life of local communities in maintaining their existence.

With the above indicator of result in the framework of legal pluralism analysis, the model of tension in pitting local law against the state law will no more be encountered because no matter what local communities do live inside certain state territory in which it is impossible to avoid both formal and non-formal relations with the instruments of statehood. It is with this in-depth legal pluralism framework of analysis, all forms of legislation process or the formulation of laws and regulations (the state formal laws) can be pushed to respect, protect, and fulfil the rights of local communities. Included in this is willingness of and guarantee from the state to provide an alternative room for a more effective resolution of conflicts besides the alternative mechanisms owned by local communities themselves, such as by promoting and revitalising customary courts or other local mechanisms that had been destroyed by the state law system.

Social movement within the above mentioned context must develop tradition of critical thinking towards all forms of legislations that negate local laws and the rights of local communities both at the level of policy advocacy, litigation, and community defence in state courts. Besides, social movement must also provide critical law training or education, organise or make aware of the important meaning of legal pluralism approach as a more comprehensive way to solve problems that cannot be solved merely by using the state law. Of course, this model of social movement has special rules that are very important and must be conducted with great care. Rules that must be understood in this context is that the effort to reform, defend, and develop analysis and movement must be really based on the real needs of local communities and involve directly communities in its undertaking. In such social movement, dominance of an individual's subjective view that is not based on the real needs of local communities is entirely not allowed although he or she is a scholar or intellectual. Because the consistency to develop participation process (including in the framework of analysis and determination of action strategy) must be formulated and determined together.

With such position, the folk or local law must be strengthened as a part of efforts to transform values of justice and human rights in a broader sense, which includes environment protection as a part of local community life. The working of pluralism of local law and the role of institutions that maintain local social and political systems do not need to be meshed in the debate of ethnocentrism. Because

such debate only results in the creation of (new) authoritarian power at the local level and plunges itself to the pond of positivism of local law that could destroy the essence of democratisation and substantive justice that are to be achieved. But with the progressiveness of legal pluralism that is based on the objective of transformative values of justice and human rights, its role becomes very important in developing a broader social-legal study and movement. Here lies the momentum for the role of and challenge to the development of legal pluralism study in the social movement in the middle of strong pressure from (state) law or the dominant legal discourse, which orientation has shifted in favour of the interests of market liberalisation.

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