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LEGAL PLURALISM: CONCEPT, THEORETICAL DIALECTICS, AND ITS EXISTENCE IN INDONESIA

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Abstract: Legal pluralism is the coexistence of multiple legal systems within a society, including state law, customary law, and religious law. In Indonesia, this concept is deeply rooted in its colonial history and cultural diversity, leading to unique legal practices. This study explores how legal pluralism functions in Indonesia and the challenges of aligning state law with non-state legal systems. It aims to analyze the different forms of legal pluralism, identify key challenges in integrating these systems, and propose strategies to improve justice and legal certainty. Using a qualitative research method, the study examines legal pluralism across various Indonesian regions. It highlights two perspectives: juridical legal pluralism (recognition of customary law by the state) and empirical legal pluralism (the reality of individuals being subject to multiple legal systems). The findings suggest that, while legal pluralism reflects Indonesia's complexity and offers opportunities for inclusive governance, it also creates challenges, such as legal uncertainty and inequality. A coordinated legal approach that respects local cultures and upholds justice is essential for enhancing social cohesion and improving legal outcomes.

Pluralisme hukum adalah keberadaan berbagai sistem hukum dalam suatu masyarakat, termasuk hukum negara, hukum adat, dan hukum agama. Di Indonesia, konsep ini berakar kuat dalam sejarah kolonial dan keragaman budayanya, yang mengarah pada praktik hukum yang unik. Studi ini mengeksplorasi bagaimana pluralisme hukum berfungsi di Indonesia dan tantangan dalam menyelaraskan hukum negara dengan sistem hukum non-negara. Tujuannya adalah untuk menganalisis berbagai bentuk pluralisme hukum, mengidentifikasi tantangan utama dalam mengintegrasikan sistem ini, dan mengusulkan strategi untuk meningkatkan keadilan dan kepastian hukum. Dengan menggunakan metode penelitian kualitatif, studi ini mengkaji pluralisme hukum di berbagai wilayah Indonesia. Studi ini menyoroti dua perspektif: pluralisme hukum yuridis (pengakuan hukum adat oleh negara) dan pluralisme hukum empiris (realitas individu yang tunduk pada berbagai sistem hukum). Temuan penelitian menunjukkan bahwa, meskipun pluralisme hukum mencerminkan

kompleksitas Indonesia dan menawarkan peluang untuk tata kelola yang inklusif, pluralisme hukum juga menciptakan tantangan, seperti ketidakpastian hukum dan ketidaksetaraan. Pendekatan hukum terkoordinasi yang menghormati budaya lokal dan menegakkan keadilan sangat penting untuk meningkatkan kohesi sosial dan meningkatkan hasil hukum.

Keywords: *legal pluralisme; customary law; legal harmonization*.

INTRODUCTION

Legal pluralism in Indonesia is recognized by the 1945 Constitution, particularly Article 18B(2), which acknowledges the existence of customary law communities and their rights (Tegnan and Isra 2017). This recognition establishes a pluralistic legal system that encompasses state law, customary law, and Islamic law (Djawas et al. 2024). The Constitutional Court plays a crucial role in recognizing indigenous rights, although it faces challenges due to the lack of specific legislation (Rudy, Perdana, and Wijaya 2021). Recognition of customary law communities depends on four conditions: continued existence, dynamic adaptability, alignment with national integration principles, and regulation by law (Rai Yuliartini, Sudika Mangku, and Sari Adnyani 2021). While legal pluralism aims to harmonize different legal systems, challenges persist in strengthening Indonesia's legal framework, including the influence of Western law, neglect of customary and Islamic law, and issues such as corruption and regulatory inconsistencies (Tegnan and Isra 2017).

The recognition of customary law communities in Indonesia's Constitution is highly significant as it affirms the existence of diverse legal systems within the country. Setiawan emphasizes that customary law has been integrated into various aspects of Indonesian law, including agrarian law and customary courts, demonstrating the state's commitment to preserving local identity and wisdom while fostering harmony between customary law and national law (Setiawan 2024). This integration is essential to ensure that the legal rights of these communities are respected and protected amidst modernization and legal reforms.

The concept of legal pluralism in Indonesia, particularly concerning Article 18B(2) of the 1945 Constitution, raises important questions about the criteria for recognizing customary law communities. This article states that the state acknowledges and respects customary law communities as long as they "still exist" and "are in accordance with societal development" as well as the principles of the Unitary State of the Republic of Indonesia. However, the ambiguity of terms such as "still exist" and "not contrary to the principles of NKRI" leads to diverse interpretations and applications of customary law.

The phrase "still exist" is highly debated because it lacks a clear definition within the constitutional framework. According to Risyat et al., interpretations of this term can vary significantly, leading to inconsistencies in the recognition and treatment of customary law communities (Risyat, Muliani, and Redhani 2022). This ambiguity may result in some communities being deemed "existent" based on certain criteria while others are overlooked,

creating disparities in legal recognition and rights. Additionally, the requirement that customary law must align with societal development adds further complexity, as social norms and values continuously evolve, which may not always be reflected in existing customary practices (Rai Yuliartini, Sudika Mangku, and Sari Adnyani 2021).

Furthermore, the dynamic nature of legal pluralism in Indonesia is illustrated through various case studies. For instance, Wardatun's ethnographic research highlights negotiations over marriage payments within the Sasak community in Mataram, demonstrating how different legal frameworks interact and coexist without dominance over one another (Wardatun 2019). This reflects a broader trend in Indonesia, where customary law is not merely a relic of the past but actively engages with contemporary legal practices, as seen in collaborative governance efforts in Kampar Regency aimed at recognizing communal customary land rights comprehensively (Febrina et al. 2021).

While some scholars view legal pluralism as a way to challenge legal centralism and highlight neglected customary laws, others argue that legal pluralism is not a theory but rather a research perspective that enhances awareness of legal plurality and the interconnection between legal systems (Shahar and Yefet 2024). This concept has significant policy implications, particularly in developing countries where non-state judicial systems often handle a substantial portion of disputes (Swenson 2018a). However, its implementation can be problematic, as seen in Indonesia, where legal pluralism has not effectively addressed the complexities of its legal system. Consequently, some researchers propose alternative approaches, such as legal syncretism or the theory of unity in diversity, to better address the challenges faced by legal systems in developing nations.

The recognition of customary law in Indonesia faces challenges due to unclear criteria and diverse interpretations. The Indonesian Constitutional Court struggles to accept cases related to customary rights due to the absence of specific legislation defining the existence of indigenous communities (Rudy, Perdana, and Wijaya 2021). Law No. 6 of 2014 on Villages grants customary villages the authority to resolve customary disputes, aligning with the theory of responsive law, which emphasizes laws emerging from social needs (Winarsih 2017). However, conflicts arise between national agrarian law, customary law, and regional regulations, particularly in the management of agricultural land mortgages within the Minangkabau community in West Sumatra (Nurdin and Tegnan 2019). These contradictions create confusion among the public and judiciary, ultimately undermining legal certainty. To address this issue, stronger decentralization efforts are needed, allowing regional regulations to handle local-specific issues while promoting legal unification at the national level.

Furthermore, the requirement that customary law must not contradict the principles of the Unitary State of the Republic of Indonesia introduces an element of subjectivity in the recognition process. Damanik discusses how this requirement can be interpreted variably, potentially excluding certain customary practices that, while essential to community identity, may be deemed incompatible with national interests (Damanik 2023). This situation creates tensions between preserving indigenous rights and implementing a centralized legal

framework that prioritizes national unity over local customs. The legal framework concerning customary law is further complicated by the absence of specific regulations outlining the criteria for determining whether a customary law community is "still alive." As highlighted by Yuliartini et al., the lack of normative guidelines can hinder the effective recognition of customary rights, particularly in the tourism sector, where the intersection between customary practices and national regulations is crucial (Rai Yuliartini, Sudika Mangku, and Sari Adnyani 2021). The need for a clearer legal definition and criteria is supported by other experts, who argue that without explicit norms, the recognition of customary law communities will remain ambiguous and susceptible to misinterpretation (Buana 2023).

One of the primary challenges arises from the inherent tension between customary land rights and the provisions of the Basic Agrarian Law (UUPA). Setyawan and Israhadi discuss how communal land institutions are recognized as legal entities under the UUPA, yet conflicts frequently occur between indigenous communities advocating for their land rights and large investors granted concessions for resource exploitation (Setyawan and Israhadi 2021). This situation illustrates a critical gap in the legal framework, where the recognition of indigenous rights is often weakened by the dominant authority of national agrarian policies.

The legal issues examined in this study highlight several significant challenges. First, the ambiguity of the criteria for "still alive" and "not contradicting NKRI principles" in recognizing customary law communities can lead to diverse interpretations, potentially creating inconsistencies in the recognition of indigenous rights across different regions. Second, there is a gap in the harmonization of legal norms, particularly regarding customary land regulations that often conflict with the Basic Agrarian Law (UUPA), resulting in legal disputes between national and customary law. Third, while the application of Islamic law in certain civil matters, such as marriage and inheritance, is recognized under the jurisdiction of Religious Courts, the boundaries of this jurisdiction are not always clear, especially in cases involving multiple legal systems. Moreover, the potential injustice in the application of different legal frameworks across different regions could lead to discrimination or legal uncertainty for communities entitled to equal justice. Additionally, the lack of dispute resolution mechanisms that provide clear legal hierarchy or choice-of-law guidelines often exacerbates the situation, hindering the effective and fair resolution of disputes. Lastly, the compatibility of legal pluralism with international human rights principles remains a significant challenge, particularly in ensuring equal rights, including for women and minority groups, who are often marginalized within prevailing legal systems.

However, the implementation of legal pluralism in Indonesia is not without challenges. The fundamental differences between state law, which tends to be uniform, and customary and religious laws, which are diverse, often lead to normative conflicts. Theoretical controversies also arise regarding the legitimacy of legal pluralism and its impact on the rule of law. Some scholars argue that legal pluralism can enhance access to justice that aligns with local values, while others highlight the potential legal fragmentation that may weaken legal certainty.

This article aims to explore the concept of legal pluralism from both theoretical and practical perspectives in Indonesia. Through this discussion, the article will analyze how legal pluralism influences legal policymaking, social dynamics, and the justice system. Additionally, the importance of harmonizing various legal systems will be emphasized to provide a foundation for developing more inclusive and just policies

RESEARCH METHOD

The research method employed in the study "Legal Pluralism: Theoretical Dialectics and Its Existence in Indonesia" is the normative juridical method, which focuses on the analysis of law as a normative system applicable in society. This study adopts the statute approach, which aims to examine various positive legal provisions governing legal pluralism in Indonesia, including the constitution, statutory regulations, and relevant court decisions. Additionally, this research utilizes the conceptual approach, which seeks to understand and analyze fundamental concepts in legal pluralism, both from theoretical and applicative perspectives (Wiratraman and Putro 2019), by referring to the thoughts of legal scholars and various academic literature discussing the interaction between state law, customary law, and religious law in Indonesia. By integrating these two approaches, this study aims to gain a deeper understanding of the dynamics of legal pluralism, the challenges in harmonizing different legal systems, and their implications for the national legal system and the development of more inclusive legal policies.

RESULT AND DISCUSSION

Concept of Legal Pluralism

The concept of legal pluralism refers to the coexistence of multiple legal systems within a single socio-political space, manifesting in various forms and structures. This phenomenon is particularly relevant in contexts where state law interacts with customary law, religious law, or indigenous law, creating a complex legal landscape. Legal pluralism can be categorized into two main types: strong legal pluralism and weak legal pluralism. Strong legal pluralism occurs when different legal systems operate autonomously without one being subordinate to another. Conversely, weak legal pluralism arises when the existence of non-state legal systems depends on recognition and enforcement by state law (Flambonita 2021). Furthermore, the implications of legal pluralism extend beyond mere coexistence; they also influence governance and social justice. Understanding the dynamics of legal pluralism is crucial for effective governance, particularly in multicultural societies where various legal norms shape social behavior and expectations (Al-Hakim 2023). The interaction between these legal systems can either strengthen or weaken social cohesion, depending on how they are managed and integrated into the broader legal framework.

The concept of legal pluralism plays a crucial role in modern legal sociology and anthropology, as it examines the existence of multiple legal systems within a single socio-

political context. This framework is essential for understanding how different normative orders interact and influence social behaviour, governance, and individual rights. Legal pluralism is especially relevant in societies where state law coexists with customary law, religious law, or indigenous law, reflecting the complexity of legal interactions in culturally diverse environments.

Legal pluralism can be classified into strong and weak forms. Strong legal pluralism asserts that different legal systems function independently and coexist without one being superior to the other. In contrast, weak legal pluralism suggests that the legitimacy of non-state legal systems depends on recognition by state law (Kitamura 2023; Priban 2015). This distinction is crucial in analyzing power dynamics between different legal orders and their impact on individual access to justice and legal recognition.

The definition of legal pluralism, as proposed by Sally Engle Merry, emphasizes the presence of two or more legal systems within the same social domain. This perspective highlights the importance of recognizing not only state law but also laws derived from local customs, religious practices, and social conventions (J. Pasaribu and Sirait 2018). The interaction between these legal systems can lead to conflicts, especially when ambiguity arises regarding which legal norms should take precedence in specific situations (Kitamura 2023). Merry's work has significantly contributed to the study of legal pluralism by stressing that pluralism encompasses both formal legal systems and normative orders that govern associations and social institutions (Krisch 2021).

This understanding allows for a deeper analysis of how pluralism operates in multicultural societies, where legal norms may conflict or complement each other (Griffiths 2015). Merry underscores the importance of examining the interaction between different legal orders and their impact on social behavior (Al-Hakim 2023). Griffiths (1986) distinguishes between juridical legal pluralism, which refers to the recognition of customary law or other legal systems by the state, and empirical legal pluralism, which reflects the reality where individuals' behavior is regulated by more than one set of legal norms simultaneously. The concept of legal pluralism encompasses two interrelated but distinct meanings, which are crucial for understanding its application in legal analysis as well as in social scientific descriptions.

The first meaning relates to legal analysis, where legal pluralism is seen as the existence of multiple legal systems within a single jurisdiction. This perspective emphasizes the recognition of various normative orders, such as state law, customary law, and religious law, and how they interact within a legal framework (Canfield 2023; Krisch 2021). This form of legal pluralism often examines how these systems coexist, compete, or cooperate, as well as their implications for governance and legal authority (Shinde 2023). Conversely, the second meaning of legal pluralism is rooted in social scientific descriptions and empirical theories. From this perspective, legal pluralism is understood as an empirical condition in which individuals or groups navigate multiple, sometimes conflicting, legal norms in their daily lives. The focus is on the lived experiences of actors who must reconcile behavioral expectations

emerging from different legal systems (Kastner 2020; Griffiths 2015). For example, in many non-Western jurisdictions, individuals may be subject to both state law and local customary practices, creating a complex legal dynamic that affects their behavior and access to justice (Priban 2015).

The distinction between these two meanings is essential because it highlights the multi-layered nature of legal pluralism. Legal theorists can analyze the structural aspects of plural legal systems, while social scientists can explore the practical implications of these systems for individuals and communities. This dual approach enables a more comprehensive understanding of how legal pluralism operates in various contexts, encompassing both theoretical frameworks and empirical realities (Benda-Beckmann and Turner 2018; Chalmers 2017). Juridical legal pluralism refers to a framework in which formal legal systems, usually represented by the state, recognize and accommodate diverse legal traditions and cultural norms within the population. This concept allows for different legal rules and procedures to exist, specifically designed for particular groups, such as indigenous communities, ethnic and religious groups, and local economic sectors. In this way, juridical legal pluralism acknowledges that a singular legal order can still function effectively while respecting the unique legal traditions and norms of diverse populations (Griffiths 2015).

The recognition of juridical legal pluralism holds significant importance as it provides mechanisms to integrate customary and religious law into the formal legal framework. This integration can enhance access to justice for marginalized groups by enabling them to engage with the legal system in a manner that is relevant and sensitive to their specific needs (J. Pasaribu and Sirait 2018). For instance, in many jurisdictions, indigenous communities have customary laws governing marriage, land use, and conflict resolution. By formally recognizing these laws, the state can facilitate a more inclusive legal environment that respects cultural identity while maintaining overall legal coherence (Ezzy et al. 2020). Furthermore, the implications of juridical legal pluralism extend to the governance of multicultural societies. This concept encourages a more nuanced understanding of law, moving beyond a state-centered perspective, and allowing for a more comprehensive approach to legal governance by incorporating multiple normative orders (Al-Hakim 2023). Such recognition can strengthen social cohesion and conflict resolution by fostering dialogue between different legal systems and promoting mutual respect among diverse groups (Gebeye 2019).

Within the context of juridical legal pluralism, this concept emphasizes that while multiple legal rules apply to different actors and situations, each actor is generally subject to only one specific legal rule for a given situation. This framework enables the coexistence of various legal norms tailored to different groups, such as indigenous communities, ethnic groups, and religious groups, while still maintaining a coherent legal structure within the state framework (Kitamura 2023; J. Pasaribu and Sirait 2018).

Juridical legal pluralism recognizes that formal legal systems can adapt to cultural diversity by providing specific legal rules and procedures for different groups. For example, in Indonesia, the legal system accommodates customary law alongside national law, allowing

local communities to resolve disputes according to their traditions while still adhering to the broader legal framework established by the state (J. Pasaribu and Sirait 2018). This approach not only respects cultural identity but also enhances access to justice for marginalized groups by enabling them to interact with the legal system in a manner that aligns with their norms and values (Flambonita 2021).

Empirical Legal Pluralism

Empirical legal pluralism refers to a social condition in which individuals or groups are subject to multiple, potentially conflicting, legal norms, leading to differing expectations of behavior. This situation often arises when regulations governing a particular economic activity differ from those enforced by state law, creating complexities in legal compliance and social interaction (Flambonita 2021; J Pasaribu and Sirait 2018). Within this framework, individuals may have to navigate multiple legal systems simultaneously, each with its own rules and expectations. For example, in communities that recognize both state law and customary law, a business operating in such an area may be required to adhere to local trade practices based on customs while still complying with national regulations (Ando 2023). This duality can create confusion and uncertainty, as individuals must reconcile different legal obligations in their daily activities.

Furthermore, the dynamics of empirical legal pluralism have significant implications for governance and social cohesion. Policymakers and legal practitioners must recognize these complex interactions to develop an effective legal framework that promotes justice and equality (Swenson 2018a). Understanding the nuances of legal pluralism can help formulate strategies to bridge the gaps between different legal systems, facilitate cooperation, and reduce conflicts among them (Von Gunten, Volpert-Esmond, and Bartholow 2017). Therefore, managing legal pluralism requires an approach that integrates multiple interconnected legal perspectives.

The implications of empirical legal pluralism extend beyond the mere existence of various legal norms; they also influence individual behavior and the functioning of social institutions. When individuals face conflicting legal expectations, they may engage in strategic behavior by choosing to comply with the legal framework that benefits them the most, often disregarding others (Al-Hakim 2023). This phenomenon highlights the importance of a deep understanding of how legal pluralism operates in practice, as it affects access to justice, social cohesion, and the overall effectiveness of legal governance (Krisch 2021). Merry emphasizes that legal pluralism is not only about the existence of multiple legal systems but also about how these systems shape individual actions and societal norms, which can lead to confusion when legal expectations clash (Griffiths 2015).

In line with this, recognizing empirical legal pluralism is crucial for policymakers and legal practitioners. By understanding the complexity of legal interactions in diverse communities, they can develop a more effective legal framework that accommodates various normative orders and promotes equitable access to justice (Al-Hakim 2023). This approach

not only enhances the legitimacy of legal systems but also fosters social inclusion and respect for cultural diversity (Krisch 2021).

Historically, legal pluralism has been a significant academic concept since its introduction into socio-legal discourse in the 1970s, gaining attention and recognition across various fields of study. The concept acknowledges the coexistence of multiple legal systems within a single social context, reflecting the complexity of governance in multicultural societies. Its development has been marked by various interpretations and applications that have enriched discussions on law and its relationship with society.

One fundamental aspect of legal pluralism is the recognition of the autonomy of different legal systems. Flambonita et al. describe strong legal pluralism as a condition in which multiple legal systems operate independently without being subordinate to state law (Flambonita 2021). This perspective is crucial for understanding how customary and informal legal systems coexist with formal legal frameworks, particularly in Indonesia, where diverse legal traditions are highly prominent. The recognition of these autonomous systems challenges the assumption of a singular legal authority and underscores the need for a more inclusive approach. Additionally, the dynamics of legal pluralism are further complicated by the realities of social and religious diversity. Masyithoh and Suteki emphasize that legal pluralism must address the challenges posed by diversity and potential conflicts among different religious and cultural groups (Masyithoh and Suteki 2019). This issue is particularly relevant in contexts where legal systems may clash, leading to tensions that require careful management to promote social cohesion and justice. The ability to navigate these complexities is essential for policymakers and legal practitioners in creating legal frameworks that respect and integrate diverse legal norms.

Finally, the emergence of global legal pluralism has significantly transformed the landscape of legal studies. Kitamura notes that legal pluralism now encompasses not only local and national legal systems but also international norms and practices (Kitamura 2023). This shift reflects a broader understanding of how legal pluralism operates in an interconnected world, where legal systems interact and influence each other across national boundaries. This understanding is crucial in addressing contemporary transnational issues, such as human rights and environmental law.

History and Development of the Concept of Legal Pluralism

Legal pluralism has been a fundamental aspect of human society, particularly as social complexity has increased. However, the recognition of legal pluralism as a phenomenon worthy of scientific attention only developed with the emergence of modern nation-states. This development was accompanied by the idea that the state is the primary source of law, often considered to override other forms of regulation, such as customary law or religious law (J Pasaribu and Sirait 2018; Griffiths 2015). At the same time, contributions from scholars such as Griffiths and Merry have played a crucial role in shaping discourse on legal pluralism. Griffiths' work, for instance, highlights the importance of recognizing the diversity of legal

orders and the implications for understanding law as a social phenomenon. Merry expanded on this idea by exploring how legal pluralism challenges the dominance of state law and emphasizes the various ways individuals interact with legal systems (Merry 2020). These insights underscore the importance of adopting a pluralistic perspective in legal studies, which can reveal the complexities of law in practice.

As this understanding evolved, the concept of legal pluralism acknowledged that multiple legal systems could coexist within a single political entity. This diversity typically manifests in the form of state law, customary law, and religious law, each governing different aspects of social life and providing normative frameworks for various societal groups (Al-Hakim 2023). For example, in many indigenous communities, customary law governs social relations and conflict resolution, while state law is more broadly applied to issues such as land rights and criminal law (Sudjito and Hariyanti 2018). This duality illustrates how legal pluralism operates in practice, allowing diverse legal norms to reflect the social and cultural realities of different communities.

The theory of pluralism concerning sources of positive law, also advocated by Eugen Ehrlich, emphasizes the existence of various autonomous centers in the creation of law within society. This perspective challenges the traditional view that the state is the sole source of law. Instead, various institutions such as labor unions, churches, and decentralized public services play a crucial role in shaping and enforcing legal norms. Ehrlich's concept of "living law" asserts that law is a social phenomenon shaped by societal interactions and cultural contexts, rather than merely a product of state authority (Hermawan 2022).

Ehrlich's critique of legal positivism highlights the limitations of a perspective that considers law solely as a product of state authority. He argues that the true essence of law lies in the normative order that emerges from daily social interactions and societal institutions. This view aligns with broader legal pluralism discourse, which recognizes the coexistence of multiple legal systems within a single society, each with its own sources of authority and legitimacy. For instance, the legal norms practiced in indigenous communities often differ significantly from those imposed by the state, reflecting distinct cultural values and social practices. This pluralism is not merely theoretical but also has practical implications for how law is interpreted and enforced in various contexts, particularly in regions with weak or contested state authority.

Furthermore, this pluralist approach has significant impacts on various domains, including social order and the administration of justice. In many societies, customary law and traditional practices play a crucial role in conflict resolution and social governance, often operating alongside or even in opposition to formal legal systems. This duality raises questions about the legitimacy and effectiveness of legal authority, particularly when state law fails to reflect the lived experiences of individuals within these communities. Therefore, recognizing alternative sources of law is essential in understanding the complexities of legal interactions in multicultural and multi-legal societies.

The theory of legal pluralism also highlights the dynamic nature of legal systems, which continue to be shaped by social changes and cultural evolution. As communities adapt to new social realities, the legal norms that govern them also evolve, reflecting ongoing negotiations of values and power relations within society. This approach is especially relevant in contemporary discussions on globalization, where traditional legal frameworks are often challenged by transnational legal orders and informal governance structures. The interaction between formal and informal legal systems illustrates the need for a more nuanced understanding of law, beyond the dichotomy of state and non-state authority.

At this point, it can be concluded that legal pluralism is not merely a theoretical construct but a reality experienced by many individuals. For instance, in places where state law is considered illegitimate or ineffective, communities often turn to alternative legal frameworks that better reflect their values and social norms. This phenomenon is evident in customary legal systems, where customary law is recognized as a legitimate source of authority, often directly conflicting with the legal norms imposed by the state (Klafki 2018). Recognition of these alternative legal orders is crucial in creating a more inclusive and just legal landscape that respects the rights and identities of diverse communities.

Moreover, the theory of legal pluralism also motivates a reassessment of the role of academics and legal practitioners in shaping legal discourse. By acknowledging the diversity of legal sources and the importance of social context, legal professionals can better understand the complexities of law in practice. This approach encourages a more interdisciplinary perspective, drawing insights from sociology, anthropology, and political science to enrich legal analysis and policymaking (Priban 2015). A comprehensive understanding of the law can lead to more effective legal solutions in meeting the needs of diverse populations and advancing social justice.

The emergence of modern nation-states was a pivotal moment in the formation of legal pluralism discourse. During this period, as states sought to assert their authority and unify diverse populations under a single legal framework, customary and religious laws were often marginalized or disregarded (Griffiths 2015). This led to the perception that state law was the only legitimate form of law, overlooking the significance of other normative systems that had historically governed social behavior (Swenson 2018a). However, the recognition of legal pluralism challenges this view, highlighting the need for legal systems to adapt to the realities of cultural diversity and the coexistence of multiple legal orders (Urinboyev 2024).

Furthermore, the implications of recognizing legal pluralism extend to governance and social justice. By acknowledging the legitimacy of various legal systems, states can create a more inclusive legal framework that respects the rights and traditions of diverse communities (Turner and Arslan 2014). This recognition is particularly crucial in multicultural societies, where interactions between different legal norms can significantly impact individuals' access to justice and their ability to navigate legal processes (Benda-Beckmann and Turner 2018).

In the context of Western European expansion and colonization, legal pluralism gained particular attention, especially concerning the concept of "Westphalian law." This concept,

which emerged alongside the rise of modern nation-states, considered the state as the ultimate source of law, asserting its authority over all other forms of regulation, including customary and religious laws (Douda et al. 2014; Papeş, Cuzin, and Gaubert 2015). As Western European powers expanded their territories through colonization, they encountered various legal systems and cultural practices that functioned independently of state law. The application of the Westphalian model often led to the marginalization of customary law, as colonial powers sought to impose their legal authority as the legitimate framework in newly controlled territories (Casanova 2018; Havrdová et al. 2015).

Recognizing legal pluralism in a colonial context is crucial for understanding the dynamics of power and governance during the colonial era. Scholars argue that the interaction between colonial legal systems and customary law was not merely a matter of legal imposition but also a process of negotiation and adaptation (Balogun 2017; Bradbury et al. 2015). For example, colonial authorities often allowed certain customary practices to persist as long as they did not contradict state law, creating a hybrid legal landscape where both systems influenced each other (Cauwelier et al. 2017).

Legal pluralism is not only relevant for historical analysis but also shapes contemporary discussions on governance and social justice in postcolonial societies. The legacy of colonial legal systems continues to influence the relationship between state law and customary law, raising questions about the legitimacy and recognition of non-state legal systems within modern legal frameworks (Velasco-Villa et al. 2017; Rigoni 2018). Colonial law often incorporated pre-existing legal and customary elements from the societies it governed, selectively recognizing certain practices while rejecting others as "contrary" to morality and public order. This selective incorporation became a hallmark of colonial legal pluralism, where dominant state law intersected with local norms that were permitted to survive (Mseba 2015).

The colonial legal legacy continues to shape how customary law is perceived and integrated into modern legal systems, raising questions about justice, equality, and recognition of cultural diversity (Eck 2021). Following World War II and the decline of Western colonialism, anthropology gradually shifted away from its colonial focus, leading to renewed interest in the concept of legal pluralism. This shift marked a significant transition in the study of law within society, where legal pluralism emerged as a central theme advocating for new approaches that emphasize the diversity of legal systems and the importance of recognizing non-state legal orders alongside formal state law (Kitamura 2023; Benda-Beckmann and Turner 2018).

The gradual emancipation of anthropology from its colonial framework enabled deeper exploration of how law, customs, and local practices coexist with state law, often leading to conflicts and negotiations between these systems (Al-Hakim 2023). The focus on legal pluralism highlights the dynamic interaction between law and social, cultural, and historical contexts while challenging the notion that state law is the sole legitimate authority (Benda-Beckmann and Turner 2018). By recognizing the legitimacy of multiple legal orders,

researchers and policymakers can more effectively address the needs and rights of marginalized communities, creating a more inclusive legal environment (O'Brien 2021). This perspective is particularly relevant in postcolonial countries, where the legacy of colonial legal systems continues to shape contemporary legal landscapes (J Pasaribu and Sirait 2018).

Theoretical Dialectics in Legal Pluralism

The juridical conception of legal pluralism refers to a legal arrangement that recognizes the existence of multiple legal systems within a single jurisdiction. Although there are some disagreements among scholars, this concept is widely accepted in legal studies. Legal pluralism allows the integration of customary and local legal systems alongside formal state law. This concept also acknowledges the role of the state in recognizing and legitimizing existing legal orders while maintaining the supremacy of state law as the primary legal framework (Eisenberg 2021). Furthermore, legal pluralism recognizes the existence of customary laws from ethnic groups or indigenous communities that coexist with state law. The acceptance of this model reflects a broader understanding of law that transcends the traditional view of singular legal authority. In multicultural societies, legal pluralism acknowledges the complexity of governance involving diverse normative systems (Shinde 2023). However, colonial history demonstrates how legal pluralism often involved the imposition of colonial law over customary legal systems. Colonial authorities selectively recognized certain customary practices while rejecting others, exacerbating inequalities (Swenson 2018a)(Chalmers 2017). In the postcolonial context, there has been a shift towards a more equitable recognition of various legal systems, particularly in terms of the rights of marginalized communities and the importance of integrating local customs into the formal legal framework (O'Brien 2021)(Larcom and Swanson 2015).

As the discourse on legal pluralism evolves, discussions now extend to global legal pluralism. This considers the interaction between local legal systems and international legal norms while recognizing legal pluralism as a fundamental aspect that reflects the diverse ways law operates across cultures (Wolkmer 2023)(Harahap 2019). From this perspective, legal pluralism is not only present in colonial or postcolonial societies but also encompasses legal systems worldwide (Benda-Beckmann and Turner 2018)(Webber et al. 2020).

Additionally, debates on legal pluralism also raise issues related to the relationship between law and the state. One major discussion is whether law can exist independently of the state or whether state law and other legal systems are distinct entities. This view challenges the traditional understanding of legal authority, particularly when examined from an empirical perspective without normative assumptions (Hertogh 2015). While state law is often considered the primary legal authority, many societies are also governed by customary, religious, and informal legal systems, creating a complex legal network (Dagan, Kreitner, and Kricheli-Katz 2018). This raises questions about whether non-state legal systems can be considered legitimate "law" or if they belong to a separate category (Griffiths 2015).

Practical challenges of legal pluralism arise when individuals are subject to conflicting legal expectations. For instance, in many postcolonial societies, individuals may be governed by both state and customary law simultaneously, often creating conflicts between the two. This complexity necessitates a deeper understanding of how law operates in practice rather than relying solely on theory (Wang et al. 2020).

The debate on legal pluralism also encompasses broader theoretical perspectives in legal theory and sociology. Some scholars advocate for a more integrated approach that acknowledges the relationship between empirical observation and theoretical construction. This approach argues that empirical research can provide deeper insights to enrich legal theory, enabling a more holistic understanding of legal pluralism in contemporary societies (Baxter et al. 2020). Thus, the empirical approach invites an investigation into how law operates in specific social contexts and the implications of legal pluralism on governance, social justice, and individual rights (Griffiths 2015). This perspective enhances the study of legal pluralism and offers valuable insights for addressing legal challenges in diverse cultural contexts.

Recent theoretical debates have shifted from defining law to examining the analytical value of legal pluralism. Specifically, global legal pluralism presents challenges to traditional views on governance but can be reconciled with democracy through territorial principles that allow overlapping jurisdictions (Jurkevics 2022). This opens up considerations for applying legal pluralism in unitary states, as seen in China, which, despite having a centralized government, exhibits state legal pluralism with various legal orders related to land ownership (Ho 2022). This perspective highlights the ongoing complexity and evolution of legal pluralism.

On the other hand, legal pluralism is also considered essential in democratic societies because it reflects the diversity of norms and practices within a population. However, this diversity often creates tensions, especially when non-state legal systems, such as religious law, conflict with secular state law. For example, the interaction between Islamic law and secular civil law presents significant challenges, as both legal systems may claim contradictory legitimacy over specific legal matters (Husain 2024). This complicates public perceptions of legal pluralism, with negative media portrayals of legal systems like Sharia courts creating uncertainty (Sandberg 2024).

The theoretical framework of legal pluralism also distinguishes between "weak" and "strong" legal pluralism. Weak legal pluralism refers to the state's recognition of other legal systems, whereas strong legal pluralism emphasizes the autonomy of non-state legal systems. This distinction is crucial for assessing the boundaries of legal pluralism and how these legal systems interact and coexist. The emergence of global legal pluralism since the 1990s has expanded these perspectives, shifting attention from local legal practices to a broader understanding of how international norms interact with local customs (Kitamura 2023).

Moreover, legal pluralism is often viewed in relation to social justice and equality. Critics argue that legal pluralism can exacerbate inequalities, especially when marginalized groups are

subject to non-state legal systems that may not protect their rights (Gohar 2014). Conversely, some argue that legal pluralism can empower communities by allowing them to engage with legal systems more suited to their social and cultural contexts (Merry 2020). This perspective underscores the need for a careful understanding of legal pluralism, recognizing both its potential benefits and challenges.

In practice, legal pluralism in Indonesia presents challenges in harmonizing various legal systems within a pluralistic society. While legal pluralism is implemented to accommodate diversity, research indicates that this approach is still insufficient in resolving legal challenges. The theory of legal syncretism, or unity in diversity, has been proposed as a solution to address imbalances in the legal systems of developing countries (Isra & Tegnan, 2021). This view opens debates on the effectiveness of legal pluralism in achieving justice, avoiding discrimination, and providing legal certainty.

One major challenge in implementing legal pluralism is the inconsistent application of customary law, influenced by varying interpretations across different regions. Customary law that coexists with national law often depends on local interpretations, which can lead to disparities in legal outcomes (Setiawan 2024). This inconsistency results in injustice, particularly in regions that prioritize national law over customary law (Aunuh 2024). The subjective nature of customary law interpretation also increases the risk of discrimination, depending on local political dynamics, further exacerbating legal uncertainty for affected communities.

The interaction between customary and national law often leads to conflicts that intensify legal uncertainty, particularly for vulnerable groups such as the Dayak community, who face challenges within the customary criminal justice system when dealing with state law (Pone 2024). Such conflicts place communities in a more vulnerable position when state law is prioritized over customary norms. This imbalance can undermine the legitimacy of the legal system in the eyes of local communities (J Pasaribu and Sirait 2018). Therefore, legal pluralism must simultaneously recognize both customary and state law to ensure justice for all citizens.

However, discrepancies between these legal systems often exacerbate uncertainty. Flambonita highlights the importance of clear guidelines for resolving conflicts between legal systems, as without an integrated framework, communities face significant challenges in navigating existing legal complexities (Flambonita 2021). This hinders access to justice and raises concerns about unfavorable outcomes due to varying interpretations.

The application of Islamic law in Indonesia also presents unique complexities, particularly in matters of marriage and inheritance. Islamic law has been integrated into the national legal system but often leads to conflicts and ambiguities, especially concerning local interpretations and the presence of competing customary laws (Karimullah 2022). Religious courts play a crucial role in adjudicating Islamic legal matters, yet their jurisdiction frequently overlaps with general courts, raising questions about consistency and clarity in legal decisions, particularly when Islamic law intersects with national legal principles.

Theoretical Dialectics in Legal Pluralism

The existence of legal pluralism in Indonesia faces significant challenges in achieving legal harmonization among various existing systems. In a federal system, for instance, cooperation among federations through uniform law conferences and intergovernmental executive collaborations can enhance efficiency in harmonizing state laws (Klafki 2018). In Indonesia, the implementation of Islamic Sharia in Aceh demonstrates success in harmonizing state law, customary law, and Islamic law within the framework of legal pluralism (Djawas et al. 2024). This underscores the importance of contextually appropriate approaches in advancing national judicial development, as exemplified by post-conflict situations involving non-state justice networks (Swenson 2018b). In the European Union context, traditional comparative legal methods prove insufficient to explain differences in legal reception, necessitating a multi-layered comparative approach informed by culture to understand hybrid legal dynamics (Mulder 2017).

The primary challenge in legal harmonization lies in conflicts between state law and non-state law, which often result in inconsistencies and tensions. Legal pluralism acknowledges the coexistence of multiple legal systems within a single jurisdiction, including state law, customary law, and religious law. However, the presence of diverse legal systems frequently triggers conflicts, as observed in postcolonial African societies facing tensions between preserving minority cultures and protecting women's rights, with Ethiopian courts often oppressing women despite national laws supporting gender equality (Najwan 2013). Legal pluralism also offers opportunities to advance human rights through local government engagement that challenges international norms. Furthermore, in climate justice contexts, legal pluralism plays a crucial role in translating transnational concepts into more locally relevant frameworks.

Fundamental differences in principles and values between state and non-state laws exacerbate the challenges of harmonization. In Indonesia, for instance, the interaction between the national Criminal Code and local Sharia law often creates difficulties in achieving legal coherence. Aceh's Qanun No. 6/2014 on Jinayat Law frequently conflicts with national law, creating an ambiguous legal landscape (Siregar 2023). Additionally, various interpretations of Sharia law add complexity to legal harmonization in Indonesia (Suadi 2023). This phenomenon is further compounded by individual legal awareness, which influences the effectiveness of harmonization. As highlighted by Ershov, the erosion of law by non-law can set legal precedents that undermine the stability of the legal system (V 2018).

An essential aspect of harmonization challenges is understanding the interaction between public and private legal domains in governance. Efrat argues that private law often intersects with state law, necessitating a more careful approach to managing this complexity (Efrat 2015). This leads to the need for a collaborative framework that considers the rights and interests of all stakeholders, including those who rely on non-state legal systems for dispute resolution. However, legal harmonization can also be hindered by political and social factors. For example, in Bosnia and Herzegovina, the plurality of legal systems and divided

jurisdictions complicates legal harmonization with European Union standards (Mitrović and Raosavljević 2020). Therefore, recognizing the historical and cultural contexts of these legal systems is crucial to facilitating better integration.

Legal pluralism and hybrid governance are two critical areas in discussing the interaction between state and non-state legal norms, with the potential to be mutually reinforcing (Reyntjens 2016). Culturally expert-based approaches can bridge the gap between culture and law. In land certification practices, for instance, tensions arise between gender discourse and legal pluralism, creating hybrid constructions between positive law and customary practices (Baaz, Lilja, and Östlund 2017). Although legal pluralism is often used as a foundation for legal analysis, its effectiveness in addressing legal challenges in developing countries, including Indonesia, is frequently questioned. Alternatively, legal syncretism or the theory of unity in diversity (Bhinneka Tunggal Ika) could serve as a more suitable solution.

The existence of multiple legal systems within a single jurisdiction requires effective management to achieve social justice and recognition of diverse norms. Al-Hakim emphasizes that understanding the dynamics of legal pluralism is crucial in governing multicultural societies (Al-Hakim 2023). Recognizing legal pluralism can create space for interaction among various legal orders without compromising their identities. For example, McKerracher highlights the importance of external recognition of customary law within the state legal framework to build legitimacy and respect for indigenous legal systems (McKerracher 2022).

However, hybrid legal pluralism often results in complex relationships between state and non-state law. Benda-Beckmann and Turner assert that the development of legal pluralism is significantly influenced by political and economic changes that shape its meaning and application (Benda-Beckmann and Turner 2020). Thus, creating a framework that facilitates cooperation among various legal systems remains a major challenge, particularly when considering the rights of more vulnerable individuals. In Ghana, for instance, customary law functions as a local governance agent that fills gaps in the formal legal system (Kwarkye 2021). However, challenges persist in ensuring that customary law aligns with human rights standards.

The concept of harmonization is also crucial in addressing the challenges of legal pluralism, as Mugarura asserts the importance of a coordinated legal framework to address issues requiring cross-system legal approaches (Mugarura 2018). Thus, to achieve a fairer and more equitable legal system, it is necessary to develop a legal framework that accommodates legal pluralism while maintaining international standards. In the Indonesian context, the application of Islamic law involving customary communities and state law often results in legal inequality and uncertainty, especially in Aceh, where the implementation of Islamic law through Qanun Jinayat potentially leads to discrimination against non-Muslims or those who do not adhere to certain interpretations of Islamic law.

Moreover, the diversity of Islamic legal interpretations, particularly in inheritance law, exacerbates legal uncertainty. The absence of a unified legal framework for inheritance matters, which integrates Islamic law, customary law, and civil law, creates confusion and

disputes among heirs. Although Islamic law offers flexibility for local contextualization, this flexibility can generate differing interpretations that do not always align with justice and equality principles. Therefore, clear dispute resolution mechanisms and standardized regulations are crucial in addressing Indonesia's legal pluralism challenges.

Recognition of legal pluralism must also align with respect for international human rights. In this regard, "reasonable accommodation" is an approach to ensuring that while different legal systems coexist, the fundamental rights of every individual remain protected. This approach emphasizes the importance of dialogue between local and international legal systems to create a more inclusive framework that respects principles of equality and non-discrimination. This recognition provides a foundation for encouraging legal reforms that respect cultural diversity and human rights principles (Cantillo Pushaina 2022).

CONCLUSION

Legal pluralism is a concept that highlights the coexistence of multiple legal systems within a society, such as state law, customary law, and religious law. Legal pluralism presents opportunities for creating a more inclusive and contextual legal governance but also brings challenges, particularly in harmonizing differing legal norms. Conflicts between legal systems often result in legal uncertainty and inequality, as seen in the implementation of Islamic Sharia in Aceh through Qanun Jinayat. In legal pluralism theory, balancing the needs of formal law with social realities is essential through approaches that respect local cultures and traditions without compromising justice and human rights principles. Dialogue among different legal norms and the development of a coordinated legal framework can help create more equitable justice. The reasonable accommodation approach also provides a foundation for integrating legal pluralism more harmoniously, ensuring individual rights are respected, and fostering stronger legal legitimacy. If well-managed, legal pluralism can serve as an essential instrument for strengthening social justice and cohesion in multicultural societies. [*W*]

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