



Perspective of Legal Culture and Legal Pluralism in the Ahmadiyah Group in Indonesia

Sri Damayanti

Sunan Gunung Jati State Islamic University, Bandung, Indonesia
sridamayanti@gmail.com

Ricky Ridwan Firmansyah

Sunan Gunung Jati State Islamic University, Bandung, Indonesia
rickyridwanfirmansyah@gmail.com

Afieq Mufty Djunaedy

Sunan Gunung Jati State Islamic University, Bandung, Indonesia
afieqdjunaedy@gmail.com

Received: 3 Juli 2024 | Accepted: 11 Agustus 2024 | Published: 31 Desember 2024

Abstract

Law is a reflection of the system of cultural values in society so there is a merger between law and culture known as legal culture. A country may use not only one legal system known as legal pluralism. According to Griffiths, there are two types of legal pluralism, namely strong legal pluralism and weak legal pluralism. In Indonesia, there are three legal systems, namely civil law, customary law, and Islamic law, all of which are mutually sustainable. The case that befell the Ahmadiyah group is an example of how the application of these three legal systems in Indonesia on the one hand its existence is guaranteed by the constitution but on the other hand there are other laws that reject the existence of this Ahmadiyah group. This research aims to analyze the existence of Ahmadiyah group in Indonesia from the aspect of legal culture and legal pluralism. This research uses qualitative methods and data collection using literature study techniques by reviewing literature sources related to the research. The finding of this research is the discrimination against the Ahmadiyah group because they are considered heretical. Therefore, it is important to realize legal pluralism well in Indonesia based on three applicable legal systems and efforts are needed to strengthen an inclusive and tolerant legal culture through human rights education, interfaith dialogue, and strict legal protection.

Keywords: *Ahmadiyya, Legal Culture, Legal Pluralism*

1. INTRODUCTION

In the development of legal and cultural studies, law is seen as a benefit of the community's education system, which clarifies the new concept of "legal culture" as a combination of legal and cultural variables. The term 'legal culture' was first known as a result of social pressures that affect the function of law in society, in terms of community values and attitudes related to the legal system. In addition, the relationship between law and culture gave rise to the term "legal culture". According to Ronnie Nitibaskara (Shodiq, 2023), as a new researcher in the field of legal studies, the subject of legal studies still shows its strengths and weaknesses. Many people still have difficulty defining this concept. However, this is a statement and has some long-term implications for social interaction, especially in the form of economic relations between individuals in different economic subsystems.

Cultural law consisting of Values, Views and Attitudes with Community Relations will greatly influence the Law that is ultimately created. It can be said that if the modern legal system is successful, kijagaran will emerge due to the emergence of various styles, such as the lack of information about the law that society wants to know and the difference between what society believes and what they practice (McMurray, 2015).



According to Koentjaraningrat in (Shodiq, 2023), the relationship between law and society is described in the system of regulating human behavior. Every area of law, which includes norms, laws, and individual laws, contributes to the system of cultural values of society. On the other hand, as Von Savigny pointed out, law is the result of the general public's understanding of law (*volkgeist*). Any law is believed to originate from customs and beliefs, and may not arise from lawmaking (Rhodes, 2004).

Legal pluralism is often interpreted as the existence of various legal systems that apply simultaneously in a society. This does not only include positive law, but also includes the legal behavior of individuals or groups living in society. Understanding legal pluralism requires a multidimensional approach, which includes normative, empirical, and philosophical aspects, to create a just and inclusive legal system (Pudjilianto & Handayani, 2022). The relationship between the three main components of the legal system in a pluralistic society is described by Werner Menski's idea of the "Legal Triangle of Legal Pluralism". Natural law, state positivism, and the socio-legal approach are three important interrelated components that Menski proposed to be studied in order to understand the dynamics of legal diversity.

According to Griffiths (1986), legal pluralism consists of two types, namely strong legal pluralism and weak legal pluralism. Strong legal pluralism occurs when various legal systems can coexist independently and autonomously, without relying on one legal system, especially state law. In this context, the existing legal systems live side by side without any domination, giving individuals or groups the freedom to choose between these legal systems or even combine them in everyday life or conflict resolution. In contrast, weak legal pluralism occurs when various legal systems depend on state law, where state law functions as a superior and dominant legal system. In this condition, individuals or groups are often forced to use state law because of pressure or necessity, not because of free choice. Griffiths argues that strong legal pluralism reflects an equal relationship between legal systems, while weak legal pluralism shows the dominance of state law over other legal systems.

In line with the concept of legal culture and legal pluralism in Indonesia, there is a case of the Ahmadiyah group, which is a sect of Islamic teachings. Ahmadiyah first entered Indonesia in the early 20th century, and within a few decades, they began to establish mosques and organizations in various regions. There are two main sects within Ahmadiyah, namely Ahmadiyah Qadian and Ahmadiyah Lahore, which have different views on prophecy, but both are considered heretical by most mainstream scholars in Indonesia (Bahmid, 2023). In 2005, the Indonesian Ulema Council (MUI) issued a fatwa stating that Ahmadiyah is a heretical and misleading teaching. This fatwa triggered increased tensions between Ahmadiyah and other Islamic groups and the wider community.

The case of Ahmadiyah in Indonesia reflects the major challenges in maintaining religious harmony, especially in a pluralistic society like Indonesia (Wahab, 2019). Ahmadiyah is a movement that began in India in the late 19th century and has different views from mainstream Islam, one of which is related to the concept of prophecy. In Indonesia, Ahmadiyah has experienced discrimination, persecution, and physical violence. This case is a critical point because it is directly related to the rights to freedom of religion as regulated in the constitution, although it sometimes clashes with the perception of the majority community about religious teachings.

2. METHOD

Qualitative research method is the method used in this study. The approach with qualitative techniques is a process to deeply understand a phenomenon or social problem that occurs in society (Creswell, 1998). In qualitative research, research in the form of research that is interpreted descriptively focuses more on the process and meaning, guided by a theoretical basis so that the research is in accordance with the facts in the field (Suardi, 2019). Qualitative method is an approach to explore deep understanding of social phenomena or issues that arise in society (Murdiyanto, 2020). This approach is in line with research on legal culture and legal pluralism in Indonesia which is a social problem.



The data collection method was collected using a literature study or literature study methodology. This strategy, which is often known as library research, critically examines literature sources related to the research to be written (Assyakurrohim et al., 2023). According to Sutopo (2002), literature study is "the process of collecting data taken from previously published research to support the research to be conducted. The literature study approach specializes in searching for data collected from various written sources, including journal articles, books, presentations, news, and other literature sources with appropriate topics and themes to support the development of scientific papers.

3. RESULTS AND DISCUSSION

Legal Culture

Legal culture includes opinions, habits, mindsets, and actions of law enforcers and the community. The law will lose its effectiveness if it is not equipped with legal culture. As stated by Lawrence M. Friedman, "without legal culture, the legal system will only be like dead fish lying in a basket, not live fish swimming in the ocean." In the structure of the legal system, legal culture is described as an element that drives the legal machine and regulates how it works. The legal structure is likened to a machine that produces products, the substance of the law is the product, and legal culture is the factor that determines and controls the operation of the machine. Friedman divides legal culture into two, namely:

1. Internal legal culture includes the attitudes, habits, and thoughts of judges, lawyers, and law enforcers.
2. External legal culture includes the legal culture of society at large.

Daniel S. Lev explains that the legal system focuses on procedures, while legal culture consists of two main components:

1. Procedural legal values, namely all efforts to regulate society and manage conflict.
2. Substantive legal values, namely a collection of fundamental assumptions about the distribution and use of resources in society, most importantly related to society's views on justice and injustice.

Koentjaraningrat in his research explains the relationship between law and culture reflected in the human behavior system in the form of norms, laws, and rules that refer to the cultural value system of society. This cultural value system consists of ideas that are believed by most people to be very valuable things in life. These cultural values act as the main guidelines for human behavior, including in the legal system. Every society develops a series of ideal cultural patterns that are reinforced by cultural restrictions. These ideal patterns contain obligations that are recognized by society to be carried out in certain situations and are often referred to as norms.

In general, human behavior in the daily lives of the general public can be summarized in three forms of behavior. (Shodiq, 2023) In Hilman Hadikusuma's classification of the three forms of human behavior, the first is the parish/community community, the evaluation method of members of this community is quite low, so that their understanding of the law is limited to their immediate environment. Society tends to still survive by maintaining traditional law. The legal rules that have been changed are amulets that cannot be changed, and for those who deviate from or obey the ancestral norms mentioned above, they will receive a supernatural curse.

Second, the subject culture (submission), and in a society with this subject culture, members of society may have paid attention to the performance of higher authorities and have a general sense of justice. However, the contribution of the subject community is still very weak or even non-existent, either because their knowledge, expertise, and connections are still limited to a narrow circle or because they are afraid of hidden threats from the authorities. The tendency of this community's views on new legal



issues does exist, but they have an attitude of accepting and rejecting. However, the behavior shown is not active and does not openly tend to be passive, but rather because the attitude and behavior of the community is obedient and only follows what is regulated directly or indirectly by the authorities.

Third, the culture of participation. In a society that has a participatory culture, members of society think and act differently, some are enslaved by culture, but many feel they have the right and obligation to participate because they feel they are already part of public legal life. In this society, public law sees all people as equal in the eyes of the law in terms of their rights and obligations. They want to be part of activities that respond to legal input and output, they participate in the evaluation of all legal and judicial cases, and they feel they are part of legal life that relates to the public interest, their families and their own interests.

Legal Pluralism

Werner Menski's idea of legal pluralism emphasizes that there is no single most relevant method for dealing with legal issues in the era of globalization. According to Menski, the approach to law should involve the following three approaches:

1. Normative Legal Approach. This approach views law statically, focusing on existing statutory texts and rules as something definite and undisputed. Although it provides certainty and order, this approach is often criticized as being limited and rigid. Non-legal social scientists consider this approach to overemphasize the objectivity and authority of law without considering the broader social context.
2. Empirical Legal Approach. This approach focuses on field research, namely looking at how the law is applied and practiced in society. Soerjono Soekanto and Sri Mamudji call this approach empirical legal research that involves collecting primary data. In this way, the law is seen in its social context, reflecting how legal rules are applied in the real life of society.
3. Philosophical Legal Approach. This approach uses a philosophical perspective to understand the law. The goal is to explore the nature of law, its origins, and the principles behind the existence of the law. Thus, this approach emphasizes in-depth investigation of the basic concepts that form the foundation of law.

By combining these three approaches, Menski proposed legal pluralism as a more holistic and flexible way to understand law, especially in the face of the complex dynamics of globalization. In 2006 Werner Menski transformed several approaches into the three approaches that have been described in the following model:

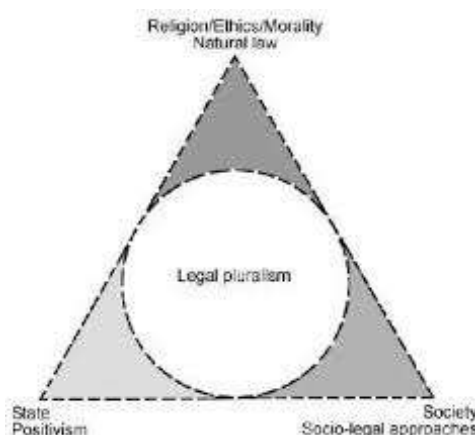


Figure 1 Approach Theory Chart by Werner Menski (Pudjilianto, B., & Handayani, E., 2022).

The three parts Menski, explains a scheme from which the two laws of Pluralism mentioned above are derived, starting with the rules contained in social life, because social life is where law remains relevant. A recent study in the field of law emphasizes that there is no community outside the law, while in state



law cultural and geographical elements are not involved in the legal system.

According to Griffiths (1986), there are two types of legal pluralism, namely strong legal pluralism and weak legal pluralism. Strong legal pluralism occurs when various legal systems can coexist independently and autonomously without relying on one legal system, especially state law. In this context, various legal systems live in parallel without any domination. Individuals or groups in the area have the freedom to choose between existing legal systems, even combining them in everyday life or in resolving conflicts.

Weak legal pluralism occurs when the existence of various legal systems depends on state law. Thus, state law usually has the highest or dominant position. As a result, individuals or groups are forced to use this legal system, sometimes due to pressure or necessity, and not because of free choice. In Griffiths' view, strong legal pluralism reflects a situation where various legal systems can live together as equals, while weak legal pluralism tends to indicate the dominance of state law over other systems.

Type of Society

According to Emile Durkheim, the relationship between law and society can be conceptualized in two types of societies. The first is a society with mechanical solidarity, based on the nature of solidarity among its members, where law performs a repressive function to maintain this solidarity; the second is a society with organic solidarity, based on the individuality and freedom of its members, where law performs a reformist role, acting only to maintain the continuity of social life.

In addition, Hart provides a view on two types of society, namely a society based on primary rules of obligation, where in this type the society only consists of small communities. Life in this society is based on kinship relations. In this society, there is no need for formal rules, allowing for no differentiation or specialization of law enforcement. Then there is a type of society based on secondary rules of obligation, in this society it is characterized by the character of a modern society. so that there needs to be a differentiation and institutionalization of law enforcement to direct patterns of legal enforcement on bureaucratic elements.

The Ahmadiyah Case in Indonesia

The case of Ahmadiyah in Indonesia reflects the great challenge in maintaining religious harmony, especially in a pluralistic society like Indonesia (Wahab, 2019). Ahmadiyah is a movement that emerged in the 19th century in India and has different views from mainstream Islam, one of which is related to the concept of prophecy. In Indonesia, Ahmadiyah has experienced discrimination, persecution, and physical violence. This case is a critical point because it is directly related to the rights to freedom of religion regulated in the constitution, although it sometimes clashes with the perception of the majority community about religious teachings.

In Indonesia, the emergence of this group was in the early 20th century and within a few decades, they began to establish mosques and organizations in various regions. There are two main sects in Ahmadiyah, namely Ahmadiyah Qadian and Ahmadiyah Lahore, which have different views on prophethood, but both are considered heretical by most mainstream scholars in Indonesia (Bahmid, 2023). The Indonesian Ulema Council (MUI) issued a fatwa in 2005 with the contents of the fatwa stating that the Ahmadiyah sect is a misleading teaching. This fatwa has triggered increasing tensions between Ahmadiyah and other Islamic groups and the wider community.

The Indonesian Constitution (UUD 1945) regulates the right to freedom of religion in Articles 28E and 29, in which the state guarantees every citizen the freedom to worship according to their respective beliefs. However, Ahmadiyah often faces difficulties because their teachings are considered to be contrary to the teachings of Islam recognized by the majority of Muslims in Indonesia. Then the government issued a Joint Decree (SKB) in 2008 by three ministers consisting of the Minister of



Religious Affairs, the Minister of Home Affairs and the Attorney General which restricted Ahmadiyah activities. This SKB instructed the Ahmadiyah community to stop spreading their teachings and to regulate so that their activities do not create conflict in society. Although the SKB does not directly ban Ahmadiyah, its implementation in the field is often interpreted as a restriction on religious freedom for Ahmadiyah. There are many incidents where community groups who commit violence against Ahmadiyah are not dealt with firmly by security forces. This gives rise to the perception of tolerance or even indirect support for discrimination against Ahmadiyah.

One of the most well-known cases of violence against Ahmadiyah is the Cikeusik incident, in which three Ahmadiyah members were killed by a mob. A widely circulated video of the incident showed brutal violence and became an international spotlight. This incident sparked criticism from various human rights organizations both domestically and internationally who criticized the government's weak protection of minority communities. In several areas such as Lombok, West Java, and Sumatra, places of worship and homes of Ahmadiyah members have been burned or vandalized by groups of people opposing their existence (Bahmid, 2023). In certain areas, Ahmadiyah members were forced to flee due to the inability of the authorities to guarantee their safety. Some of them have been living in shelters for years due to the unclear legal protection they receive.

The incident resulted in members of the Ahmadiyah community often living in fear of violence and discrimination. The trauma of physical violence and expulsion has left many Ahmadiyahs feeling marginalized from society. Many Ahmadiyahs experience discrimination in employment, education, and public services. They are often isolated or treated unfairly in social interactions. Many Ahmadiyahs choose to hide their beliefs or live in restricted communities to avoid conflict.

The establishment of the MUI and other community organizations is often seen as a representation of the voice of the Muslim majority in Indonesia, which has a major influence in policy-making related to the Ahmadiyah. The government is often in a difficult position between respecting minority rights and maintaining social stability by accommodating the demands of the majority. Several international organizations including Human Rights Watch and Amnesty International have witnessed and criticized the Indonesian government's policies regarding the Ahmadiyah, highlighting the human rights violations experienced by this community. International pressure has led to demands for the Indonesian government to ensure that the rights of the Ahmadiyah community are protected in accordance with global human rights standards. Several parties have urged the Indonesian government to review the Joint Decree of the Three Ministers and issue more inclusive policies to protect religious freedom for all its citizens, including the Ahmadiyah.

The government needs to conduct more comprehensive human rights education programs for its citizens, civil servants, and law enforcement officers to prevent discrimination and persecution of minority communities. The government and civil society organizations need to facilitate interfaith dialogue to foster deeper understanding between the majority and minority communities, such as the Ahmadiyah, in order to create tolerance in community life. The law must be strictly enforced against anyone who commits violence or discrimination against the Ahmadiyah, to show that violence cannot be justified in any context. The government needs to review discriminatory regulations, such as the Joint Decree of the Three Ministers, to ensure that every policy is in line with the constitution that protects the right to freedom of religion.

Critical Analysis

The combination of values, attitudes and norms that shape the way society interacts with the law is called legal culture. In the context of legal culture, law is not just a set of formal rules, but also reflects the values of the culture that has become one with society and lives in it. A figure named Lawrence M. Friedman emphasized how legal culture influences the application of hukum whether it is accepted or not by society. And regulates the behavior of society towards the law and its institutions. The relationship between law and culture can be seen in human norms and behavior, as stated by



Koentjaraningrat. Law is considered a manifestation of the collective consciousness of society (volkgeist) which is manifested in customs and beliefs. However, this raises questions about the extent to which laws set by the state can synergize with local cultural values that may conflict.

Hilman Hadikusuma groups legal culture into three types:

1. Parochial Culture: People tend to be stuck in tradition and resist change. In this context, law is seen as something rigid and difficult to accept innovation.
2. Subjective Culture: People are aware of the existence of laws but do not have the power to express their rejection of laws that are considered unjust. This powerlessness can lead to ineffective law enforcement.
3. Participatory Culture: People actively participate in the law, with awareness of their rights and obligations. However, not all individuals have the same understanding, which can cause conflict within the community.

Legal pluralism in Indonesia illustrates the existence of a diversity of legal norms that coexist, such as state law, customary law, and religious law. This creates complexity in law enforcement, especially when these three norms conflict with each other. Although legal pluralism provides space for diversity, there is criticism that the lack of clear boundaries and attention to aspects of justice can give rise to injustice, especially for minority groups.

The case of the Ahmadiyah in Indonesia is a clear example of how legal culture can conflict with human rights. Although the constitution guarantees freedom of religion, the application of the law and societal attitudes often do not support the rights of this community. The discrimination and violence experienced by the Ahmadiyah reflect the failure of the legal system to protect minority groups, where state laws are more often influenced by the social norms of the majority.

The implication of this analysis is the need to strengthen an inclusive and tolerant legal culture. Some recommendations include:

1. Legal Education: Increasing understanding of human rights among law enforcers and the public to prevent discrimination.
2. Interfaith Dialogue: Facilitating dialogue to increase tolerance between majority and minority groups.
3. Legal Protection: Ensuring that there is follow-up action and firmness in the event of human rights violations and discrimination by law enforcers.
4. Recognition of Customary Law: Providing space for customary law in the national legal system as part of legal pluralism that respects cultural diversity.

By understanding and appreciating the existing legal culture, it is hoped that the legal system can function more effectively in ensuring justice for all levels of society. This analysis confirms that legal culture is not only an important element in social interaction, but also a foundation for fair and inclusive legal pluralism in Indonesia.

CONCLUSION

Legal culture plays a crucial role in shaping the interaction of society with the legal system in Indonesia. Although the constitution guarantees the right to freedom of religion, the reality faced by minority groups, such as the Ahmadiyah, shows a mismatch between formally recognized legal values and legal practices applied in the field.

Discrimination and violence against this community reflect serious challenges in realizing just legal



pluralism. Therefore, efforts are needed to strengthen an inclusive and tolerant legal culture through human rights education, interfaith dialogue, and firm legal protection. By respecting cultural diversity and existing legal norms, the legal system in Indonesia can function more effectively in ensuring justice for all levels of society, as well as creating a harmonious environment for all citizens.

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