

Research Article

Law and Social Culture

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Abstract

This article was preliminary written in order to understand and explain the subject matter of legal culture in relation to the Acehese society which is experiencing globalized rationalisation process. The descriptive explanatory understanding is based on agency-structure Giddens's frame of reference.

It is stated that based on some experiences of Acehese community as a part of nation and state as Indonesian shows that in the rational social transformation framework, agency-structure the mutual interaction relationship between law culture and traditional-social culture may enable to influence and redefine each other. At a time the society rationally produce consensus of legal culture that protect all differences, but at some other time the legal culture may determine all living rules for the community to avoid discrimination.

It seems to be impossible to admit that the colors of cultural value system in a developing country like Indonesia, which is still agrarian, tends to be different from cultural colors of the developed nation which is more industrialized. But, it does not mean that social culture can not experience some changes as a consequence of the objectivation of legal culture. Effort to defend local culture is an indication of a specialized ethnic group not to defend societal culture that is not conducive to the democratic global life as a characteristic of an open society.

The more socialistic local cultural transformation (communal natural tradition) toward legal culture which highly supportive of the presence of human rights (individualism artificially modern) that needs integrity of togetherness, nation, and globalized open-mindedness. The culture of local community which is traditionally charismatic in certain aspects tends to show inferiority by the community members toward legal culture that increasingly rise to rationality and universalism.

Keywords: *Social culture, law culture, agency, structure.*

Introduction

This article was a preliminary written in order to achieve at explanatory understanding the subject matter of legal culture in relation to the Acehese society which is experiencing globalization rational process. The descriptive explaining will be based on agency-structure frame of reference.

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At one end the Acehnese society tends to go back to the local cultural mechanism foundation based on custom-value system which is religious communalism. While at the other end they have developed successfully globalized culture by creating Law No. 11, 2006 on Aceh Government.¹

But, their social culture tends to rise group interests based on the small scale homogeneous solidarity has moved towards law culture that support the heterogeneous solidarity and to a broad scale of interest. The social culture here is understood as communal ideas, attitudes, values, beliefs, expectations and opinions about people themselves in the community.

It is impossible to deny that development of various cultural value systems of the community to be different from cultural value systems of the developed or urban communities. But, with commitment of the elites who have capability with more rational knowledge will enable the formation of structuration in both different cultures. At a time the social culture will dominate laws while at other time they will rely on law culture in their association amongst communities and states. Efforts to defend local culture is indication of specialty and personalization of ethnic groups not to defend social culture uncondusive to democratic and globalized life which challenge the open society.

The concept of legal culture can be grasped on Friedman's variety of characterizations at his most extensive theoretical discussion. He refers the legal culture to public knowledge of and attitudes and behaviour patterns toward the legal system' (1975:193). Legal cultures can also be understood as a 'bodies of *custom* organically related to the culture as a whole' (1975:194). Then, legal culture is a part of culture generally: it means 'those parts of general culture—customs, opinion, ways of doing and thinking—that bend social forces toward or away from the law and in particular ways' (1975:15). So, the emphasis of legal culture on clusters both of ideas and of behaviour patterns, closely related. In his later formulations, however, legal culture appears only as ideational; the behavioural elements appear to have been discarded. Further, legal culture consists of 'attitudes, values, and opinions held in society, with regard to law, the legal system, and its various parts' (1977:76), 'ideas, attitudes, values, and beliefs that people hold about the legal system' (1986:17) or 'ideas, attitudes, expectations and opinions about law, held by people in some given society' (1990:213; 1985a:31; and see 1994:118).²

Objective and Frame of Reference

The focus of this writing deals with the relationship of legal culture and social culture in the Acehnese global context, universal human rights and international law. At one end, the society is assumed to be a subject (*agency*), whether it is consciously or unconsciously, has created unanimously a cultural agreement, community culture, as an object (*structure*). At the other end, community cultural-value system as a product of thinking process, action, and human feeling individually or communally which later experience an objectivation process of the society to fulfill their general needs: local, national, and global. In this respect there is a tendency for a deterministic relationship between culture as a product (*structure*) and the society as a creator of culture (*agency*). This means that the socio-cultural value system as a product of the unanimous

agreement in the form of law (*regulator*) as an objectivity will later determine behavioral patterns of community culture (*idea of guiding*) as a subjectivity.

Experiences have shown that imperialism of objectivities over the subject (*structure determines agency*) is a general phenomenon that have taken place at all levels of living together. This kind of phenomenon has been taking place in the world of local society (*adat* cultural law), national (*positive cultural law*), and in the global level (*international legal culture* based on universal human rights law). But, however, Indonesian society (*agency*), during the reformation era, 1998, found a variety of supports and spirits to fight against the power of culture of the New Order (*authoritarian and centralized structures*) which has become tradition in the sectors of national and state life. Later, the spirit of decentralized culture became a rational choice for Indonesian, the agency have fought to give a new kind of culture and form for the socialized power in the nation state life. Structuration Theory, to some extent, is conducive to describe a mutual relationship and intertwine between *agency* and *structures* in relation to social and legal culture as a constitution of Acehnese society.

Cultural Dualism

Although there are certain tendency toward some points that Indonesia as a nation as an *imagined community*,³ but as a modern nation state in the scientific socio-cultural discourses, it is a choice for social integration mechanism (*bhinneka tunggal ika*=diversity in unity) which can give alternative solution for possible threat and national disintegration problems that may bring along new cultural imperialism. The existence of Indonesian as a nation-state is mostly determined by the management quality of the variety and conflict potency among the ethnic groups, religion, race, and other vertical or horizontal groups as reflected in variability of cultural value systems of the nation. However, each community or ethnic group generally tend to depend on their cultural value system each as a thinking guide, attitudinal acts, and even feeling of each other. Further, several Indonesian communities has been legitimated as the special province or preferential region by the spirit of decentralization in managing its region either provincial or district/municipality levels. The communities, letsay Acehnese community in this case tends to internalize and institutionalize its cultural-value system as “comprehensive doctrine”,⁴ namely a belief system which has been constructed as a final meaning by the community.

The topic of ‘legal culture and social culture’ are the two sides of a coin, in the sense ‘wherever there is a society there is a law’. In this regard, however, law has many senses. The word ‘law’ has a number of meanings and connotations such as the typology of local (*adat*) law, national, and international: types of substantive law, formal law, and others. In such a frame of reference there is a tendency to introduce a new phenomenon: the ‘local law with the charismatic traditional culture’ and national positive law with legal-rational culture’. In this respect, it might happen that there will be a pull and draw and interweaving between social culture (agency: individual and communal) and legal culture (structure: local, national, and international) in Indonesia, especially among the Aceh communities where legal cultures: local tradition, positive national laws, Islamic law, and even international law were going into effect.

Local Cultural Dimention

Lately, the Acehnese society tends to refer back to their original identity based on their local culture, that is, *adat-istiadat* value system which has been crystalized to become norms and principles on decency, ethics, and *adat* law as a result of the integration with religious and spiritual values. A part of the internalization and externalization process of the Acehnese local cultural values as shown by the citizen has the implication on establishing and implementation of the Law No. 11 of the Year of 2006 on Aceh Government (UUPA).⁵ The Culture of local communities tend to develop a political relationship relying on the primordial groups and other emotional interests will threat the culture of law which has united them all rationally for the interest of Indonesian people, especially for the Indonesian Acehnese society member.

Actually this arena of local and national political contest and interest could be enabling "overlapping consensus" as Rawlsian outlet in order to avoid absolutisation of political identity based on local culture with its "comprehensive doctrine".⁶ Local culture which tends to raise short term groups' interest and mechanic solidarity (homogeneity) and full of emotional approach may destroy national legal culture which is more supportive of organic solidarity (heterogeneity) and a long term general public interest.

Local and Global Relation Discussion

An international legal construction is different from the structure of national and local laws. It means that it is quite possible that the coverage of structural norms (covenant) of international law will exceed the universality of national and local laws of a nation state or a certain society. For an example, an international law on 'International Covenant on economic, social, and Cultural Rights' which as be ratified in Indonesia.⁵ Under Law No. 11 of 2005 on ratification of such an international law there are a number of considerations: (1) Basic Human Rights as basic rights which by nature given to any individual which is universal and lasting. Therefore, this basic human rights should be protected, honored, defended, and can not be neglected, lessened, or robbed by anyone. (2) Further, Indonesia as a part of international world society honors, appreciates, and highly support the principles and aims of the United Nation Charter and the Declaration of Human Rights.

At point c of its consideration the said Law it is stated that the General Assembly of the UNO in its assembly on December 16, 1966 ratified the International Covenant on economic, social, and cultural rights. Further, the international law instruments as mentioned at point c, is considered not against the ideology of *Pancasila* and state philosophy the 1945 Constitutions of the Republic of Indonesia. It was assumed that as a suitable matter for the characteristics of State Republic of Indonesia as a law state which highly respect human dignities. Beside that, Indonesia also guarantees equal position of all citizen in front of law and continually promotes and guarantees and protects human rights in all aspects of social life as citizens.⁷

Thus, the considerations (all elements used as considerations by the law makers) on Law of International Human Rights has been recognized as Ecosob Law among the Indonesian communities. However, this Eccosob Law has its own history and embedded cultural values in relation to other societies and nations,

especially international communities who have contributed for the process of creating various rules, covenants and International Charter of Basic Human Rights.⁸

The understanding of Human Rights concept as an embedded natural basic rights on an individual is universal in nature and lasting, and therefore, they have to be protected, honored, and defended and can not be neglected, especially not to be seized by anyone. It is an explanation which needs a certain measure or accurate empirical proofs among the communities among the developing nations.⁹ Among Indonesian society, especially in developing Acehese community,¹⁰ where socio-cultural values are still tied up with the traditional agrarian and feudalistic values so that spirit of freedom and individual and common self-reliance are not conducive enough with the Human Rights concepts that have been highly developed rationally among the industrial countries.

Cultural value system among Indonesian society, in this case Acehese community who already became victims of tsunami waves (2004) originated from the social construction based on the religious communalism spirit. This spirit is based on the mechanic solidarity (Durkheim),¹¹ where individuals are assumed not to have no self-existence like those self-reliance people who free to think and act. They tend to become more like robots or puppets that only follow communal mind set that has been taking place long traditionally in reference to Durkheim's social typology.¹² This is to show that in the traditional Acehese community, especially those who live along the coast, and therefore a greater part of them became the tsunami victims. They were rural communities whose cultural values are naturally embedded in themselves.¹³

Furthermore is that the local community cultural condition has been isolated from writing tradition they have not thought about the importance of information and communication with the writing world. Although a part of the observed community have electronic medias (television, radio, and or hand phone) and some newspapers sent to the village program they have not dominantly appreciated the communication in writing. They tend to rely on their memory power, natural memory, exchanging information aurally, and compromised with each other to send messages in their environment. They rely on face to face communication and use the aural tradition among themselves and other people visiting their villages.¹⁴ In such a condition they tend to be mobilized by others who has the capability as an orator or other individuals who has the ability as a rhetoric. Information gathered from some field observations has become an input for the observer on the relationship between the international law culture and local communities. The history, origin, and the background of the birth of Ecosob Law has basic differences from the history, origin, and place where the law is applied. Thus, there are differences between social culture where the Ecosob was produced and culture of the target community where the Law was embodied. Such differentiated of social culture brings a consequence on socio-cultural transformation which has an indication of rational choice and ideological biases where the Ecosob Law was created.

The description above shows how the characteristics of international cultural law applied among different local and national communities and socio-cultural values. The difference of socio-cultural values come along with

implication on effective success of such law to reach the aims to fulfill the economic, social, and cultural rights of the society.

Conclusion

It can now be concluded that based on some experiences of Acehnese community as a part of nation and state as Indonesian shows that in the relational social transformation framework, agency-structure the mutual interaction relationship between law culture and societal culture may enable to influence and redefine each other. At a time the society rationally produce consensus of law culture that protect all differences, but at some other time the law culture may determine all living rules for the community to avoid discrimination.

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References

1. It is stated in Chapter XXXI on Culture, article 221 paragraph (1) that “The Government, Aceh Government, and district/municipality governments shall protect, develop, and promote Acehnese culture and arts based on Islamic values. While paragraph (2) stated that “in implementing the provisions referred to in paragraph (1), the Government, Aceh Government, and district/municipality government shall involve the community and social institutions.
2. See Friedman, L.M. (1975). *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation. (1975); *Law and Society: An Introduction* (Englewood Cliffs NJ: Prentice-Hall, 1977); ‘Book Review’, 6 *British Journal of Law and Society* 127–9. Friedman, L.M. (1985a), *Total Justice* (Boston: Beacon Press, 1979); *A History of American Law* 2nd edn (New York: Simon and Schuster, 1985b); ‘Legal Culture and the Welfare State’, in G. Teubner (ed.); *Dilemmas of Law in the Welfare State* pp. 13–27 (Berlin: de Gruyter, 1986); *The Republic of Choice: Law, Authority, and Culture* (Cambridge MA: Harvard University Press, 1990); ‘Is There a Modern Legal Culture?’.
3. *Ratio Juris* 1994:117–31; ‘The Concept of Legal Culture: A Reply’, in D. Nelken (ed.) *Comparing Legal Cultures* pp. 33–9 (Aldershot: Dartmouth, 1997); *Legal Theory*, 5th edn (New York: Columbia University Press, 1967), in Cotterrell, Roger. *Law, Culture, and Society: Legal Ideas in the Mirror of*

Social Theory, ASHGATE, Printed and Bound in Great Britain by TJ International Ltd, Patstow, Cornwall, 2006.

4. Imagined communities is a concept coined by Benedict Anderson. He believes that a nation is a community socially constructed, imagined by people who perceived themselves as a part of that group. In his book *Imagined Communities* (1983) he explains the concept in depth. See: <http://en.wikipedia.org/wiki/Community> downloaded on Sept 14, 2011.
5. It is assumed that reasonable persons affirm only reasonable comprehensive doctrines. There are three main features of a definition of such doctrines. One is that a reasonable doctrine is an exercise of practical reason: it covers the major religious, philosophical, and moral aspects of human life in a more or less consistent and coherent manner. It organizes and characterizes recognized values so that they are compatible with one another and express an intelligible view of the world. Each doctrine will do this in ways that distinguish it from other doctrines, for example, by giving certain values a particular primacy and weight. In singling out which values to count as especially significant and how to balance them when they conflict, a reasonable comprehensive doctrine is also an exercise of practical reason. See John Rawls, *Political Liberalism*, Columbia Classics, New York, 2011:59-60.
6. In case of the implementation of the UUPA in the institutionalization of the Lembaga Wali Nanggro (LWN) and election of the Governor independent of political parties, for instance, has raised social controversy among the Aceh society. A part of community want to reintroduce the long past Acehese experience such as enacting the law-like customs applied during the sultanate of Aceh into the LWN. Just in the same way there has been a conflict of interest between the power elites in Aceh on the election of the non-partisan Governor as it seen in the form of conflict and the irrational resolution proposal.
7. Cultural belief systems which is having a final meaning. See Rawls, John. "conception and doctrine" in *Political Liberalism*, Columbia Classics, New York, 2011:168.
8. Based on all of the considerations, Indonesia needs to create a Law on the Ratification of International Covenant on Economic, Social, and Cultural Rights. See; Law no. 11/2005.
9. The Declaration of Universal Human Rights (UHR) introduced by the industrial-modern Western Nations was an achievement of rational modern societies which is different from other developing nations. How the UHR are translated and applied in the less developed countries which have no experience in the process of rationalization and secularization in the way developed nations have done is a problem in the establishment and application of the laws of UHR in Indonesian society which is now experiencing a transitional process.
10. In the developing societies like Indonesia, the Universal Human Rights are normatively respected and supported highly, but, practically they as citizens are debating these rights related to the conduciveness of their cultures. Therefore, their law culture based on UHR developed in the Western civilization is very difficult to apply in the Eastern communities since the stages of their thought development, based on Comtean theoretical approach, each state nation is different from others. In many things, the Western communities, have arrived at the stage of positive-rational thought while the developing nations are still wading in the theological stage.
11. However, lately these developing nations are preparing themselves to develop a variety of programs to rehabilitate and reconstruct their economy, social, and culture. Programs in civil and political life are

being considered by developing a cooperation with other concerned parties.

12. A certain community based on their homogeneous relationships among them (insiders) to the extent it possible develop some cultural measure used to behave against other parties (outsiders) in their relationships with others and state organizations.
13. Emile Durkheim developed a social typology based on the community law system found in the social solidarity. He considered that in the mechanical solidarity the community tends to use repressive laws while in the organic solidarity they tend to use restitutive laws. The community with the mechanical solidarity tends to follow principles common among rural communities stressing more on the homogeneous values, primary relations, and often dependent upon space and limited time which have not experienced in the process of change in distance like those modern people (urban community).
14. Results of observation and field works show that the members of community used as the subject of these case studies tend to be homogeneous, they still respect and support highly charismatic religious leader such as found in the theological stage community (Comte).
15. The term 'culture' embraces a too indefinite and disparate range of phenomena. Law and culture can be understood by relational perspective. Law sometime existing in the culture, and at the other time it has been creating and shaping the culture. Law and culture are also linked in debates about law as 'constitutive'. For example, both feminism and critical race theory (CRT) have emphasized law's power to shape the meaning of social relationships and social institutions and, indeed, to define personal identity. This is not just a matter of defining legal personality (the juridical nature of the subject or citizen) for the purposes of regulation. Law sometimes also shapes expectations, responsibilities and constraints attaching to social statuses which thereby help to create the cultural meaning of those statuses. Much discussion (not restricted to feminism and CRT) stresses law's constitutive power – its capacity to create the meaning by which people understand the social environment in which they live, and their place in it. See Cotterrell, Roger. *Law, Culture, and Society: Legal Ideas in the Mirror of Social Theory*, ASHGATE, Printed and Bound in Great Britain by TJ International Ltd, Patstow, Cornwall, 2006: 97-99.