



**Contested Land, Contesting Laws.  
A Context of Legal Pluralism and Industrialization in Indonesia**

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**Abstract:**

Along the history of mankind, it has been proven that human life cannot be separated from land. Land serves fundamental functions for human life such as the resource to fulfil the human needs, the place to settle and live, etc. Humans then develop notions and values about land along with the development of their civilization, and since the socio-cultural development varies over many contexts, the notions and values about land are also diverse according to the socio-cultural context where such notions and values develops; it includes the law regulating land matters. In Indonesia, where economic development is highly relied on industrialization, land is utilized as resource for industrialization and it is regulated and justified by the state laws. However, due to its socio-cultural plurality, not all Indonesian people submit themselves under the rule of state law. There are traditional communities of Indonesian people who still defend their traditional institutions and customary laws which have different notions and regulations about land from what regulated by the state laws. So, there is a state of legal plurality in Indonesian society, and this has an impact on land matters. Unfortunately, such plurality of law is less regarded by the government and this leads to land conflicts as one of the most frequent conflicts happening in Indonesia nowadays. This article will elaborate one case of said conflicts to show that land conflicts involving traditional communities in Indonesia have roots in legal pluralism as a social fact, and even further, it is a reflection of a political complexity in a culturally diverse country like Indonesia.

**Keywords:**

Land conflict, Legal pluralism, Industrialization, *Adat* community, Indonesia.

**1. INTRODUCTION**

What makes Indonesia to be so Indonesia? The most significant answer is its plurality. It is a fact that Indonesia is one of the most plural countries in the world. This country is full of plurality of tribes, languages, and cultures, which makes for the plurality of ways of life of the people in their society.

Long before the independent country called as Republic of Indonesia was established, the people of *Nusantara*<sup>1</sup> was a stateless society. They lived separately in many social groups

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<sup>1</sup>The term “*nusantara*” is an acronym of two words, which are: “*nusa*”, which means archipelago, and “*antara*” which means in between. So, the term “*nusantara*” literally means the archipelago which is in between (two oceans, which are the Indian Ocean and the Pacific Ocean). This term then has general

based on tribe, family, or particular territory. Thus, they lived in various cultures which include a variety of values and norms as the fundament of their way of life.

Such social structure has been changing since the colonization period when the Dutch ruled all peoples in *Nusantara* under a state governmental authority called the Netherland Indies. Since that time, the government of the Netherland Indies established a single system of law called Civil Law System. This legal system originally came from the Netherland as the legal system of all continental European countries, and it was then transplanted into the Netherland Indies as the Netherland's colony. According to such system of law, all the law is the state law, written and made by state's formal institution having a capacity to do so, and binding all citizen of such state (Apple without year; Suherman 2004, p. 68; Jamali 1993, p. 67). Thus, the people's conduct was expected to be ruled and regulated by the law of the state, uniform for all people.

After the independence on the 17th August 1945, the social structure as a state, built by the Dutch colonial government, was then continued as a completely independent country called the Republic of Indonesia; and this decision is followed by a legal consequence. As a (greatest) social organization, an establishment of a state will always require an establishment of particular law to regulate internal relations among the members of the organization. Such law must bind all the members. Thus, the Republic of Indonesia must also establish a legal system binding for the entire citizen as well as what implemented by the Netherland Indies, and continuing the legal system introduced and implemented by the Netherland Indies, which is the Civil Law System; this is a logical decision in such situation. So, by the establishment of the Republic of Indonesia as an independent nation state, the people's life in *Nusantara* remains to be ruled under a central authority, not by an alien nation but by their own self.

However, even though the political situation developed as described above, the socio-cultural situation did not work in line with what happened in political realm. Though the concept of state as a greatest social organization had been introduced and implemented for centuries by the Dutch and thus the life of all people were ruled under a central governmental authority with its state laws, such policy did not totally change the way of life of the colonized people in *Nusantara*. Instead of behaving according to what the Dutch demanded, the colonized people in *Nusantara* still lived according to their *adat*<sup>2</sup> based on their own norms and values. This situation then forced the government of the Netherland Indies to impose a policy of legal pluralism<sup>3</sup>, as regulated in article 131 and 163 of the *Indische Staatsregeling*<sup>4</sup>, in the realm of private law. According to such regulation, the law in private matter was differentiated in accordance with the race differentiation among the citizens, in which the Dutch Civil Code (the *Burgerlijk Wetboek*, usually abbreviated as BW) was used for the Europeans while the indigenous people<sup>5</sup> were let to use their *adat* law<sup>6</sup> (Jamali 1993, p. 24; Wignjosoebroto 1994, p. 129).

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meaning as the area of archipelago belonging to Indonesia (Kementerian Pendidikan Nasional, Kamus Besar Bahasa Indonesia, <http://bahasa.kemdiknas.go.id/kbbi/index.php>, accessed on September 29, 2012).

<sup>2</sup> The term "adat" originally comes from Arabic which means custom (Koesnoe 1992, p. 36; Hadikusuma 1992, p. 8). This term is then commonly used to name the genuine custom of Indonesian people.

<sup>3</sup> The term "legal pluralism" here is associated with what John Griffiths (1986, p. 5) called as "weak legal pluralism." The concept of legal pluralism will be elaborated further in the section 3 of this article.

<sup>4</sup> *Indische Staatsregeling* is a kind of constitution of the Netherland Indies that regulates all the fundamental matters in the Netherland Indies.

<sup>5</sup> The term "indigenous people", according to the ILO Convention on Indigenous and Tribal People (ILO Convention Number 169 of 1989) article 1, refers to the peoples in a country who are regarded as

A little bit different from what was implemented by the government of the Netherland Indies, the principle of Civil Law System as a legal system of unified, written, and state-made law is consistently implemented by the authority of the Republic of Indonesia, in which all people's conduct is ruled under the state's law even in the realm of private law. Though the Indonesian authority hasn't achieved a comprehensive work like the Dutch did with its *Burgerlijk Wetboek*, some fields of private matter have been regulated uniformly by Indonesian legislations, and one of such legislations is the Indonesian Legislation Number 5 of 1960 (*Undang-Undang tentang Pokok-Pokok Agraria*, usually abbreviated as UUPA) as the Indonesian law of land.

However, the fact that socio-cultural matters do not change as easy as the political realm does still remains. So, even though the state has established a legislation uniformly binding all citizen in particular field, the people's conduct in such field is factually not uniform as what is expected by the legislation, due to the plurality of cultural values factually existing in the society of Indonesia.

Such situation then often leads into conflict in Indonesian society, especially between those who already submit themselves to the state law and those who still defend their *adat* law. One example of this kind of cases will be described below.

## 2. CONFLICT OF LAND BETWEEN *SEDULUR SIKEP* COMMUNITY, THE GOVERNMENT, AND A CORPORATION REGARDING INDUSTRIAL ESTABLISHMENT IN CENTRAL JAVA

*Sedulur Sikep* community is a traditional community of the people believing and practicing the value of *Saminism* firstly introduced and disseminated by a person named Samin Surontiko at Blora, in Central Java (one of provinces in Indonesia), since 1890 (Benda and Castles 1969, p. 210). The members of this community spread along the area of *Kendeng* hills in Central and East Java which comprises the regency of Kudus, Pati, Blora, and Rembang in Central Java, and the regency of Bojonegoro and Ngawi in East Java (Benda and Casles 1969, p. 216-217). What makes this community notable is its history in fighting against the Dutch colonial government. As practiced by Samin Surontiko and his adherents, the members of this community rejected to pay the tax obliged by the government of the Netherland Indies (Benda and Castles 1969, p. 211). That is why the *Saminism* is often perceived as the traditional movement of Javanese people against the Dutch colonialism.

Nowadays, this community is well known due to their particular behaviour based on the value of *Saminism* which is quite different with what is practiced by the common people of Java. They have a religion that we can only find on them called *Agama Adam* (Benda and Castles 1969, p. 226; Widodo year unknown, p. 273-274). Another notable characteristic of this community is the fact that all of its members are farmers. Different

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indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

Thus, this term is appropriate to be used in the context of Indonesia during colonization period. However, the government of Indonesia does not ratify the ILO Convention 169.

<sup>6</sup> The term "adat law" can be defined simply as law deriving from *adat*. It is commonly used to name the customary law in traditional communities in Indonesia.

with the common people who become farmers by choice, the members of *Sedulur Sikep* works as farmers because the values of *Saminism* obliges them to do so and they are disallowed to work in another field. In land matters, this community perceives land as a communal property owned collectively, as reflected in following expression: “*lemah podo duwe, banyu podo duwe, kayu podo duwe*” which means land, water, and forest are owned collectively (Benda and Castles 1969, p. 223).

One group of this community exists at Sukolilo village, in the regency of Pati, Central Java, where in 2008 some areas in this village were proposed to be utilized as the new location of cement industrial area of *P.T. Semen Gresik*<sup>7</sup>, one of the biggest state-owned cement companies in Indonesia. Such proposal was then fully supported by the local government of Pati by issuing SIPD (*Surat Ijin Penambangan Daerah* / the letter of permit for local mining) (Kristianto 2009, p. 11). Perceived as a threat for their culture as farmers, the proposal of a new cement industry establishment in Sukolilo village was highly opposed by the community of *Sedulur Sikep*. All the members of this community rejected to sell their land to *P.T. Semen Gresik*. Furthermore, this community then actively encouraged all people in Sukolilo to reject the proposal. The encouragement was done because the plan to establish a new cement industrial area at Sukolilo village will not only threaten the culture of the people, but it will also potentially damage the environment of the *Kendeng* hills as the limestone hills planned to be exploited for the cement raw materials (Kurniawan 2010, p. 22). The encouragement was then quite successful, as shown by the establishment of a group to reject the plan of a cement industrial area establishment, called as JMPPK (*Jaringan Masyarakat Peduli Pegunungan Kendeng* / the network of people caring about the *Kendeng* hills). This group was led by Gunretno who is a member of *Sedulur Sikep* community at Sukolilo village (Kurniawan 2010, p. 23).

Instead of accommodating the aspiration of the people at the location proposed to be the cement industrial area, both the local government of Pati and the provincial government of Central Java had completely different perception regarding to the proposal of *P.T. Semen Gresik*. Such proposal was perceived very positively due to the (classical) reason that the establishment of cement industrial area at Pati will give huge revenue for the government (Kurniawan 2010, p. 24) of about 50 billion rupiah per year<sup>8</sup>. In accordance with the position of the local government of Pati, the provincial government of Central Java also supported any proposal of industrial and mining area establishments at Pati, regardless the opposition of people at such area, by issuing the Provincial Regulation of Central Java Number 6 of 2010 which declares the *Kendeng* hills at Sukolilo village as industrial and mining area. Therefore, the opposition against the proposal of cement industrial area establishment conducted by the *Sedulur Sikep* community and the people of Sukolilo village were perceived negatively by both authorities. This is showed by the statements given by Bibit Waluyo, who is the governor of Central Java, by saying that it would be a great loss for his government and especially for the local government of Pati if *P.T. Semen Gresik* cancels its plan due to the rejection of some people in Sukolilo (Kurniawan 2010, p. 25). Furthermore, the representative of the local government of Pati released a much harder statement by saying: “(For those who oppose the plan of cement industrial area establishment,) never try to bother a tiger!” (Kurniawan 2010, p. 24).

<sup>7</sup> Nowadays, this company has changed its name to be *P.T. Semen Indonesia*.

<sup>8</sup> According to the statement given by Desmon Hastiono, who is the 2<sup>nd</sup> Assistant of the Secretary of Local Government of Pati (Kurniawan 2010, p. 24).

Perceiving that the plan to establish its new cement industrial area at Sukolilo village may cost a serious negative risk due to the people's opposition against such plan which was getting stronger day by day, *P.T. Semen Gresik* was then reported cancelling its plan. However, according to the information I directly received during my visit to the *Sedulur Sikep* community at Sukolilo village at 2011, the proposal abandoned by *P.T. Semen Gresik* is then switched to be continued by the sub-corporation of *P.T. Indosemen*, which is another giant company of cement industry in Indonesia. Different from the plan of *P.T. Semen Gresik*, the proposed area for the cement industrial establishment is not located at Sukolilo village, but it is switched to Kayen village. Interestingly, there is no member of *Sedulur Sikep* community living in this village. However, the change could still be quite frustrating for the governmental authorities of Central Java because even though they have switched the plan of the cement industrial establishment into different location, they still encounter strong opposition from the people of Kayen village thanks to the effort done by Gunretno and his fellows who tirelessly keep encouraging people to reject any plan of cement industrial establishment, including with the people of Kayen village, and thus this conflict is still prolonged until nowadays.

According to my research on this conflict, one of the most significant factors serving as the background of this conflict is the difference of values and norms used by conflicting parties as the fundament and the guidance of their actions. This difference of values and norms derives from the socio-cultural plurality of Indonesian society. In the other words, this conflict happens due to the conflict of laws serving as the guidance of conduct of each party. In order to support this argument, I will explain through the descriptions in the section 4 and section 5 which elaborate the contrast normative notions regarding land matters between the *adat* law owned by the *Sedulur Sikep* community and the Indonesian Legislation Number 5 of 1960 (*Undang-Undang tentang Pokok-Pokok Agraria / UUPA*) as the Indonesian law of land. Since what I will describe is about a state of legal pluralism, I will firstly elaborate about what legal pluralism is in the section 3 below.

### 3. THE CONCEPT OF LEGAL PLURALISM

According to Sally Engle Merry (1988, p. 870), the term "legal pluralism" can generally be defined as a situation where two or more legal systems co-exist in the same social field. Given such definition, it is a broad concept whose so many scholars develop their versions. Thus, Merry then tried to classify the concept of legal pluralism into two groups.

First is what called as "classic legal pluralism." It is a concept usually used by scholars who conduct studies of colonial societies, which is a concept analysing the intersection between the indigenous law and the European law -as the law transplanted over those colonized societies by the European settlers- in which such intersection and inter-relation is usually embedded in an unequal relation (Merry 1988, p. 874).

The second one is what called as "new legal pluralism". It is a concept of legal pluralism in non-colonial societies, particularly in societies of advanced industrial countries like Europe and the U.S. (Merry 1988, p. 872). It conceptualizes a complex and interactive relationship between official and unofficial form of ordering, and sees not the mutual influences between two separates entities, but plural forms of ordering as participating in the same field (Merry 1988, p. 873). The new legal pluralism centers its conception on the rejection on perception that all law takes place in the court (Merry 1988, p. 874).

Similarly with Marry, John Griffiths, who is one of the most well-known scholars of legal pluralism, also classified two groups of legal pluralism concept. Griffiths called them as “weak legal pluralism” and “strong legal pluralism”.

According to Griffiths (1986, p. 5), “weak legal pluralism” is a concept which perceives law is pluralistic in this sense if the sovereign (implicitly) commands different bodies of law for different group of population. Griffiths took M.B. Hooker’s *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws* as the example of legal pluralism concept, which is the study of transplanted law which has focus on the incorporation of customary law or other sort of indigenous norms ‘within’ the state law regime (Tamanaha 1992, p. 20). Thus, when I mentioned the term “legal pluralism policy” (as implemented by the government of the Netherland Indies during colonization period in Indonesia) earlier in the section 1 above, it refers to this kind of concept.

Meanwhile “strong legal pluralism” is a concept of legal pluralism neither perceiving that all law is state law nor administrated by a single set of state legal institutions (Griffiths 1986, p. 5). According to this concept, law is therefore neither systematic nor uniform.

What makes Griffiths’ theory of legal pluralism becomes notable is because he emphasizes that it is only the strong legal pluralism which can be categorized as the real concept of legal pluralism. He argues so because he perceives weak legal pluralism as a concept built within the ideology of legal centralism.

Legal centralism is a concept that perceives law only as the law of the state which is uniform for all persons, exclusive of all other law, and administered by a single set of state institutions, thus the other kinds of normative order should be and in fact are hierarchically subordinate to the law and institutions of the state (Griffiths 1986, p. 3.). Griffiths (1986, p. 3) explained that according to legal centralist’s conception, law is an exclusive, systematic, and unified hierarchical order of normative propositions, which can be looked at either form the top downwards as depending from a sovereign of command, such as the conception of law developed by Jean Bodin and Thomas Hobbes, or from the bottom upwards as delivering their validity from ever more general layers of norms until one reaches some ultimate norms, such as the conception of law developed by Kelsen and Hart. Therefore, according to this concept, there is a strong connection between the idea of law and the idea of state as the fundamental unit of political organization (Griffiths 1986, p. 3.).

By citing Galanter, who said that law in modern society is plural rather than monolithic, that it is private as well as public in character and that the national (public, official) legal system is often a secondary rather than a primary locus of regulation, Griffiths (1986, p. 4) argues that legal centralism is so contradictory with what law actually is. Therefore, since legal pluralism is an empirical theory of law which describes law as a fact, Griffiths argues further that the objective of legal pluralism is to break the stranglehold of the idea of legal centralism instead having connection with such idea (Griffiths 1986, p. 3.).

Griffiths (1986, p. 14) argues further that in contrast with legal centralism as the lawyer’s view of law, the anthropologist defines law not in terms of the state but of ‘authority’ or ‘institutions’, and this is what Griffiths means as (strong) legal pluralism. Griffiths (1986, p. 15-37) takes some examples of such concept, which are: Leopold Pospisil’s theory of “legal levels”; Smith’s theory of “corporations”; Ehrlich’s theory of the “living law”; and Sally Moore’s theory of the “semi-autonomous social field”.

To sum up this elaboration, there are some points that can be taken to categorize what legal pluralism is, especially if it refers to what Griffiths classified as “strong legal pluralism”, which are:

First, law is not only associated with the state. Instead, law is also associated with any social group existing in society. As argued by Leopold Pospisil (1971, p. 99), a traditional notion perceiving law as mere the property of society as a whole has two problematic consequences. For societies having no comprehensive political organization, there will be a denial of the existence of law. Meanwhile for societies having a comprehensive political organization, the law will be perceived as a simple and pervasive legal system in which such perception ignores the fact that society is rather a patterned mosaic of subgroups that belong to certain, usually well-defined (or definable) types with different memberships, composition, and degree of inclusiveness, in which every such subgroups owes its existence in a large degree to a legal system which is its own that regulates the behavior of its members (Pospisil 1971, p. 99; 125). Furthermore, Eugen Ehrlich (cited Griffiths 1986, p. 26) also argues that if a man conducts himself according to law because this is made imperative by coercive power, the state is not the only association that exercises coercion. Instead, there are an untold number of associations in society that exercise coercion much more forcibly than the state.

Second, law is not limited as only the law of the state. Instead, law is all kind of regulation regulating any kind of social group or social field. As argued by Smith (cited Griffiths 1986, p. 18) in his theory of “corporations”, the social group (which is called by Smith as “corporation”) is the basic unit of social structure and the locus of political action, in which the individual’s membership in a social group is the original and fundamental source of his/her social rights and obligations. This argument is supported by Sally Moore (cited Griffiths 1986, p. 34) who argues that the social space between the state and a subject is not a normative vacuum, but it is full of social institutions with their own regulations. Therefore, as well as Smith and Moore, Ehrlich (cited Griffiths 1986, p. 25) also argues that the original and the basic form of law is not the law of the state (as manifests in the legislation and the decision of courts), but it exists in the inner order of the association of human beings.

From all description about the concept of legal pluralism above, there is an insight that any normative order established and maintained in any social institution must also be seen as law as well as we see the state law. Thus, if *Sedulur Sikep* community as a social institution takes a firm opposition against the plan of cement industrial establishment due to particular norms determining such position, according to legal pluralism perspective, it can be said that it is their law regulating them to do so.

How does such non-state law actually regulate this matter? It is elaborated in the section 4 below.

#### **4. “EARTH AS MOTHER”. THE REGULATION OF LAND MATTERS ACCORDING TO THE ADATLAW**

According to the description in the section 2 of this article, it obviously can be seen that the *Sedulur Sikep* community at Sukolilo village is the most militant party opposing the

plan of cement industrial area establishment. Thus, there must be a fundamental reason encouraging them to oppose such plan persistently.

According to the research I conducted on the *Sedulur Sikep* community at Sukolilo village, there are at least two fundamental values serving as the backgrounds of this community in opposing the plan of cement industrial area establishment.

The first one is the value related with the fact that the people of *Sedulur Sikep* are farmers, and they must defend the culture of farming. The question is, then, why farming? The people of *Sedulur Sikep* are well known as people who never lie in their life because they hold the principle of honesty very highly. According to such principle of honesty, the people of *Sedulur Sikep* are prohibited to enrich themselves by taking advantage from others. That's why they forbid themselves to work as merchant. Thus, the people of this community always avoid using money in their life, and if they factually use it, it is just to enable them to exchange their goods with another thing they need, and it is not to be saved to enrich them (Benda and Castles 1969, p. 47). So, according to these values, the only possible work that can be done to fulfil the daily needs without taking any advantage from other people is farming.

The second value, and the most important one, is the value which perceives land as “the mother”, and it is the value encouraging the people of *Sedulur Sikep* to oppose the plan of cement industry establishment according to reason to protect the environment. As explained by Gunretno, the *Sedulur Sikep* community perceives bumi (the earth) as “*ibu-mami*” (the mother or the mommy) which is the mother giving birth all mankind living on “her” and therefore all mankind as the children of the mother-earth will obviously rely their life on “her” (Kurniawan 2010, p. 24). Gunretno explained further:

As a mother who usually experiences some bad habits and bad behaviour of her children, the earth also usually suffers misconduct done by mankind, such as being used as the disposal of human waste. However, as the common characteristic of a mother, the earth still always gives its best for the mankind, and as a mother who always feeds her children, the earth gives many resources and plants used by humans as their food. Therefore, as what children usually do to their mother as their duty due to all the best things given by their mother to them, the humans are obliged to respect and protect the earth by keeping it from any kind of destructing conduct such as exploitation and mining activity (in Kurniawan 2010, p. 24)<sup>9</sup>.

The explanation given by Gunretno obviously gives a clear picture why the community of *Sedulur Sikep* are so persistent in opposing the plan of cement industrial establishment. They perceive such plan as a serious threat which can be really harmful for the environment and the earth, and thus, as the children of the “mother earth”, they feel responsible to reject this plan.

A notion about the earth or land as “mother” is actually the fundamental value of land regulation according to the *adat* law. According to Koesnoe (2000, p. 6), there is a mythology serving as the fundamental value which lies behind the norms of *adat* law regulating land matters, which is a notion that all creatures living on the earth are born as the result of the marriage between the sky as “the father” and the earth as “the mother”. Thus, according to this philosophical notion, there is a strong-metaphysical relationship between a man and the land where he or she belongs with its environment, as well as the

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<sup>9</sup> Translated from Javanese by the writer.

relationship between a man, the mother, and the brothers and sisters; and such intimate relationship will obviously entail a responsibility to love, help, and protect each other (Koesnoe 2000, p. 7). That is why, as the children of the “mother-earth”, the humans living on land are responsible of defending and protecting the preservation and the prosperity of the environment of the land where they belong, as the responsibility of the children to protect and defend the dignity of their mother and their family (Koesnoe 2000, p. 11). This is also the reason why there is no any harmful conduct to land and the environment allowed according to *adat* law.

Furthermore, according such philosophical notion, land with all its natural resources is not simply perceived as property or material goods that can be owned and enjoyed individually or even be exploited. Instead, it can only be enjoyed collectively along with the responsibility given by the nature to protect and defend its preservation (Koesnoe 2000, p. 22). Therefore, land, according to *adat* law, is a communal property owned by a community (of *adat* people<sup>10</sup>) collectively, and such collective ownership of land is called as *ulayat* (Koesnoe 2000, p. 22; Sudiyat 1981, p. 2; Wignjodipuro 1979, p. 248). The notion of *ulayat* as the collective right of land owned by a community of *adat* people then determines further the regulation of *adat* law about land ownership. Due to the existence of *ulayat*, a particular land area on the highest level is under the authority of the *adat* community living on such land, and thus such area is forbidden for any party who is not the member of such community (Koesnoe 2000, p. 39; Wignjodipuro 1979, p. 250). So, according to such regulation, those who can utilize the land with its resources are only the members of *adat* people community which has the authority of *ulayat* of such area, and thus the right to utilize the land can only be distributed among the members of said community. Therefore, according to *adat* law, it is forbidden for any member of *adat* community to sell their land to any outsider because principally the existence of *ulayat* always binds the community living on said land and such authority can never be given to another party (Wignjodipuro 1979, p. 250). Such regulation is in accordance with the notion of the eternal exclusive relation between a mother and her children which can never be intervened by another party.

So, according to all description above, it is clear that what guided the *Sedulur Sikep* community at Sukolilo village in opposing the plan of cement industry establishment is the *adat* law regulating them as a traditional community that still defends their particular *adat* values (*Saminism*). This kind of law is what Eugen Ehrlich called as “the living law”, which is the law factually regulating the daily life of the people though it is not made and enforced by the formal institution of the state (Griffiths 1986, p. 26).

However, if the people (of the *Sedulur Sikep* community) have their living law, then the government (of Indonesia) has the state law, and according to the Civil Law System as the legal system formally implemented by the state, this law is (claimed as) the strongest law and expected to bind all citizen without any exception.

How do the Indonesian positive laws regulate land matters? That will be elaborated in the following section.

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<sup>10</sup> The term “*adat* people” (*masyarakat adat*) is a common term used to name traditional communities of Indonesian people who still defend and practice their *adat* and *adat* laws. Compared with the provisions of ILO Convention 169 of 1989 about Indigenous People and Tribal People, such term equals with the term “tribal people.”

## 5. LAND AS THE AUTHORITY OF THE STATE. THE REGULATION OF LAND MATTERS ACCORDING TO THE INDONESIAN POSITIVE LAWS

In order to understand the way of working of the Indonesian positive laws, we have to know first that these positive laws are structured in a hierarchy in which the constitution serves as the fundamental law. Therefore, what we firstly have to look is the regulation of the Indonesian Constitution (*Undang-Undang Dasar 1945*, usually abbreviated as UUD 1945).

The fundament of land regulation according to the Indonesian positive laws can be found in the article 33 paragraph 3 of the UUD 1945. This article states that the earth, water, air, with all resources contained by them, are under the authority of the state for the biggest prosperity of the people.

Such regulation of the constitution is regulated further by the Indonesian Law of Land, which is the Indonesian Legislation Number 5 of 1960 (*Undang-Undang Nomor 5 Tahun 60 tentang Pokok-Pokok Agraria*, usually abbreviated as UUPA). According to the article 2 and article 4 of the UUPA, it is emphasized that the earth, water, air, with all resources contained by them, are under the authority of the state and therefore the state has the sole authority to award rights over land to the people, either individuals or corporation. So, according to this regulation, the state has the control over land ownership and land utilization, and therefore no one can obtain a right of land except if it is given by the state.

Based on the regulation of UUPA above, it is clear that on the perspective of the state law, the state has the highest authority over land and thus it also has the authority to determine the usage of a particular land area, whether it is for individual ownership of a person or for an industrial area. It is emphasized by the article 41 and 42 of the UUPA regulating about the right of land that can be given by state either to a person, a company, or even a foreign company to use the land and exploit its resource. So, according to the regulation of the Indonesian positive laws about land, such plan as proposed by *P.T. Semen Gresik* is fully legal, and therefore it is not a surprise if both the provincial government of Central Java and the local government of Pati fully support such proposal and insist that such plan should be actualized.

Regarding the existence of an *adat* or traditional community, the UUPA regulates it on the article 3 which states:

According to the article 1 and article 2, the implementation of *ulayat* right, or any other right which equals with it, as long as it still exists, has to be in accordance with state's and national's interest based on the national unity, and should not be contradictory with any legislation and regulation of the state.

So, according to the article 3 of UUPA above, it can be seen that the *ulayat* of an *adat* community on particular land area is allowed to exist, as long as the state has no interest on such area. So, if the state has an interest on it, the existence of *ulayat* can be disregarded.

## 6. CONTESTED LAND, CONTESTING LAWS, CONTESTING AUTHORITIES. A POLITICAL REFLECTION.

According to the description of the section 5 above, it is shown that the regulations of the Indonesian positive laws about land are completely constructed based on the sole perception of the state as the highest socio-political institution of the people. However, such construction is laid on a fictional perception that the social life of all people can be merged into a single centralistic institution called state, and thus the only one law regulating the people's conduct is only the state law. Meanwhile, the facts of social life are far from it. As what explained by Sally Falk Moore, the social space between the state and a subject is not a normative vacuum, but it is full of social institutions with their own regulation (cited Griffiths 1986, p. 34).

The conflict between *Sedulur Sikep* community, the government, and *P.T. Semen Gresik* regarding the plan of industrial establishment at Pati, Central Java, clearly shows that there are plurality of laws factually existing in society. According to this case, these laws are the *adat* law and the Indonesian positive laws about land matters, and each of them have their own institutions where said law is applied.

Thus, when there is a phenomenon of conflicting laws in this case, it also means that there is a phenomenon of conflicting institutions, in which these institutions are competing to exercise their authorities (and laws). So, through the analysis of legal pluralism, the case of land conflict elaborated in this article does not only show about a complexity of laws existing in a given social field (which is people in *Kendeng* hills at Sukolilo village, Pati, Central Java), but also a complexity of political situation.

It is true that since a social field is nothing but an arena of various social institutions coexisting, overlapping, and competing each other, an argument that society is full of complex political situation is not a new argument. However, the existing socio-cultural background will determine to what extent such political complexity may lead into a social conflict as what happens in this case or even into a political turmoil.

As what described in the section 1 of this article, prior colonization, Indonesian people lived as stateless society. They live separately in social groups based on tribe, family, or particular territory, in which these social groups are nothing but *adat* communities. Therefore, before the system of nation state is established and implemented over Indonesian people, the *adat* communities are the sole political institutions that have their own political authority over their members. Such political authority can be proven by the existence of *ulayat* as a notion of *adat* law regulating that a particular land area on the highest level is under the authority of the *adat* community living on such land. Now, when Republic of Indonesia as a nation state is already established, the existence of *adat* communities as a political institution having particular political authority is still defended by some groups of Indonesian people. This socio-cultural background will surely give more complex political situation than societies who are relatively more homogenous like western countries.

Such political complexity is getting far more complex when the state and the government of Indonesia establishes laws which are so politically centralistic like what described in the section 4. Instead of giving more room for any non-state institution such as an *adat* community to exercise its political authority in the same arena where the state also claims

its authority, the example described in the section 4 shows that the state laws of Indonesia tend to disregard and delimit any non-state authorities.

Actually, there is an article in the Indonesian Constitution regulating about the recognition of the existence of *adat* communities, which is the article 18B section 2 of the UUD 1945 which stipulates:

The state recognizes and respects the legal entities of *adat* with their traditional rights as long as they have been factually existing and their existence is in accordance with the development of society and the principle of the unitary state of Indonesia, as regulated by legislations.

However, such regulation is simply a limited recognition due to particular requirements that have to be met by an *adat* community in order to make its existence to be recognized. According to the article 18B section 2 of UUD 1945 above, these requirements are: First, such *adat* community has to be factually existing. Second, the existence of such *adat* community has to be in accordance with the development of society. Third, the existence of such *adat* community has to be in accordance with the principle of the unitary state of Indonesia. Fourth, the existence of such *adat* community has to be regulated by legislation.

Explaining about the regulation of the article 18B section 2 of UUD 1945 above, the Indonesian Constitutional Court (*Mahkamah Konstitusi*, usually abbreviated as MK) through its decision number 31/PUU-V/2007 stipulates that the requirement that an existence of *adat* community has to be in accordance with the principle of the unitary state of Indonesia means that the existence of such *adat* community must not threaten the state of Indonesia as a political and legal entity, and it leads into a consequence that any norm of *adat* law owned by such *adat* community must not contradict or violate any regulation of Indonesian legislations (Mahkamah Konstitusi Republik Indonesia 2007, p. 166).

So, according to the argument of Indonesian Constitutional Court above, the notion of limited recognition contained in the article 18B section 2 of UUD 1945 is apparent. This situation is certainly not in line with the majority aspiration of *adat* communities in Indonesia. It can be seen from the firm declaration given by the Alliance of *Adat* Communities of *Nusantara* (*Aliansi Masyarakat Adat Nusantara*, usually abbreviated as AMAN)<sup>11</sup> in its first congress in 1999 that says: “we will not recognize the state unless the state recognize us” (Anon. 2003, p. 1). Furthermore, this organization also demands certain capacities, which are (Anon. 2003, p. 1-2): rights to land, ownership and control of their land and natural resources, respect for custom and identity, self-governance through customary / *adat* institutions, recognition of *adat* law, self-determination, represent themselves through their own institutions, exercise their *adat* law, self-identification, and intellectual property.

According to the description above, it is quite apparent to be seen that there is a political contrast existing in Indonesian socio-cultural context, especially between the state and the *adat* communities. This political contrast is actually not a new issue, since it has been appearing since the establishment of nation state over Indonesian people. However, this

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<sup>11</sup> This is a civil society organization formed by and consisted of *adat* communities in Indonesia. It claims to have not less than 1992 *adat* communities in 2012 (AMAN without year).

situation also seems to be prolonged until nowadays. It forces the *adat* communities to keep intensifying their struggle for recognition of their existence and their rights, and as long as this political complexity is not dealt properly, the social conflict as shown by land conflict between *Sedulur Sikep* community, the government, and *P.T. Semen Gresik* elaborated in this article will remain prolonged as well.

## 7. CONCLUDING REMARKS

Indonesia is a post-colonized country, and as what commonly happens with the others post-colonized countries, the idea of nation state established after the independence with its state-legal system is nothing but a transplant of the system introduced during colonization.

As its particular characteristic, Indonesia is full of plurality of tribes, languages, and cultures, and this characteristic makes the transplant does not work as smooth as it does in the places where it originally comes from (the European countries). As the result, some troubles sometimes appear, such as social conflict as what showed by the case of land conflict between the *Sedulur Sikep* community, the government, and *P.T. Semen Gresik*.

Through legal pluralism analysis, it can be seen that the conflict is due to the conflict of laws owned and applied by each parties, especially between the *Sedulur Sikep* community as an *adat* institution applying their *adat* law and the government (and *P.T. Semen Gresik*) as the party applying the state law, in which both of these legal systems have contrast notions regarding land matters.

Furthermore, through legal pluralism analysis, it can also be seen that in regards to the cultural plurality existing in society, the conflict is actually a reflection of political competition between the traditional institutions (which is the *adat* communities) defending their traditional authorities and the state with its formal authority.

Since Indonesia is a culturally plural country, such political complexity needs more serious and careful approach than any other country which is less plural in order to deal with this political complexity appropriately. Therefore, a further study in socio-legal context about the best political and legal system that can facilitate and bridge such political contrast is urgently needed.

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