

CHAPTER I

INTRODUCTION

1.1 Background

Indonesia is a nation characterized by its vast population and a rich tapestry of cultural heritages. Nestled in the heart of Southeast Asia, Indonesia emerges as a majestic archipelagic State, a constellation of islands that stretch across the azure expanse of two major oceans: the Pacific Ocean to the north and east, and the Indian Ocean to the south and west. This sprawling nation, an intricate mosaic of land and sea, boasts more than 17,500 islands¹ arrayed along the equator.

The aforementioned geographical spread has led to the development of isolated communities over centuries, each evolving its own unique cultural and linguistic characteristics. The island geography has fostered a great deal of diversity, as communities separated by water have historically had limited interaction with each other.

Journeying from the geographical aspect, Indonesia is the fourth most populous country in the world², being home to over 270 million people³ which

¹ John David Legge et al., "Indonesia: History, Flag, Map, Capital, Language, Religion, & Facts," in *Encyclopedia Britannica* (Britannica, November 22, 2023), <https://www.britannica.com/place/Indonesia>.

² Rindang Krisnawati, "10 Negara Dengan Penduduk Terbanyak di Dunia 2022-2023," *detikEdu*, September 6, 2023, <https://www.detik.com/edu/detikpedia/d-6917020/10-negara-dengan-penduduk-terbanyak-di-dunia-2022-2023>.

³ Badan Pusat Statistik, "Sensus Penduduk 2020," Web Sensus BPS, accessed November 11, 2023, <https://sensus.bps.go.id/main/index/sp2020>.

comprises more than 600 ethnic groups⁴ and sub-ethnic groups with the fifteen largest being the Javanese, Sundanese, Malay, Batak, Madurese, Betawi, Minangkabau, Buginese, Bantenese, Banjarnese, Balinese, Acehnese, Dayak, Sasak and Chinese⁵.

The figure below illustrates the ethnic composition taken from the coded raw data set of the Indonesia 2010 population census by Statistics Indonesia, recognized locally as BPS or the Central Bureau of Statistics (*Badan Pusat Statistik*)⁶.

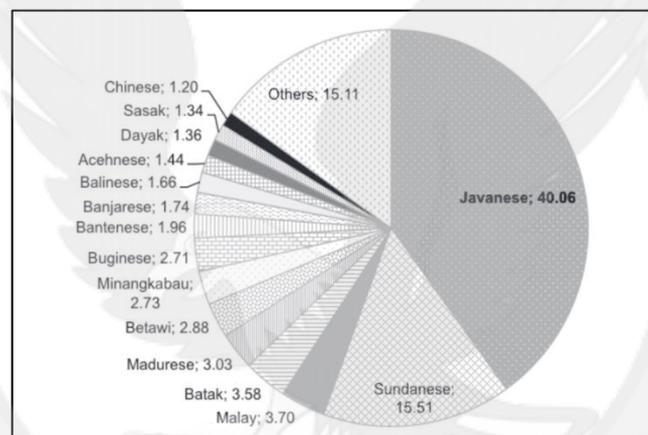


Figure 1.1 Indonesia's Ethnic Composition

In addition to ethnicity, the element of language and religion will always follow as an inseparable part. Despite having the unifying language of the State being Indonesian language (*Bahasa Indonesia*)⁷, the richness of ethnic groups spread across the islands will naturally form diversity of local languages spoken – the Language Development and Book Agency (*Badan Pengembangan*

⁴ Aris Ananta et al., “Appendix 1,” in *Demography of Indonesia's Ethnicity* (Singapore: ISEAS, Institute of Southeast Asian Studies, 2015), 309-356.

⁵ *Ibid.*, 131-211.

⁶ *Ibid.*, 80.

⁷ Article 36 of the 1945 Constitution of the Republic of Indonesia (“**1945 Constitution**”)

Bahasa dan Perbukuan) under the Ministry of Education, Culture, Research, and Technology (*Kementerian Pendidikan, Kebudayaan, Riset, dan Teknologi/Kemendikbudristek*) identified and validated the existence of 718 languages spoken not including dialects and sub-dialects in 2.560 regions across Indonesia from 1991 to 2019⁸.

On religious beliefs, Indonesia guarantees its citizens the freedom of religion⁹, however to some extent it still puts limitations of what religion to choose from through the issuance of Presidential Decree No. 1/PNPS/1965 on the Prevention of Abuse and/or Defamation of Religion which was later adopted into Law No. 1/PNPS/1965 through the enactment of Law No. 5 of 1969 regarding Statement on Various Presidential Decrees and Presidential Regulations as Laws¹⁰. This is evident in the Elucidation of Article 1 of Law No. 1/PNPS/1965, the government mentioned only six “official” religions that is acknowledged before the law, namely Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism with the consideration being that these are the most commonly adhered to among Indonesian citizens.

The accompanying explanation of the same Article also clarified that other religions, such as Judaism, Zoroastrianism, Shintoism, and Taoism, are not prohibited in Indonesia. They are subject to the same guarantee offered by

⁸ Badan Pengembangan Bahasa dan Perbukuan, “Pemetaan Bahasa Di Indonesia,” *Kementerian Pendidikan, Kebudayaan, Riset, Dan Teknologi (Kemendikbud Ristek)*, n.d., <https://petabahasa.kemdikbud.go.id/>.

⁹ Chapter XI, Article 29 of the 1945 Constitution

¹⁰ Annex IIA of Law No. 5 of 1969 regarding Statement on Various Presidential Decrees and Presidential Regulations as Laws

Article 29 paragraph (2) of the 1945 Constitution as long as they do not violate the provisions of the law.

It is to be noted, however, that Indonesia is also home to various traditional beliefs and practices. Among these are *Kebatinan* and *Subud*, prevalent in the Javanese culture¹¹; *Sunda Wiwitan*, practiced by the Baduy people in Banten province¹²; the *Madrais* or *Cigugur* religion in West Java's Kuningan regency; *Kaharingan*, followed by the Dayak people of Kalimantan; *Aluk To Dolo* of the Toraja people in Sulawesi¹³; and *Wetu Telu* among the Sasak people of Lombok. Towards these traditional beliefs or what the Elucidation labels as '*kebatinan*' (i.e., spiritual organization/mystical sect), it is mentioned that the Government strives to guide them towards a healthy outlook and towards the belief in the One Supreme God – this is in harmony with the stipulation of Article 29 paragraph (1) of the 1945 Constitution and the embodiment of Pancasila's first precept (*sila*), namely "Belief in the One and Only God".

On the recognition of beliefs in Indonesia, the reality is that religion is a determining factor of Indonesian citizen's legal identity since it is necessary to be stated on the Indonesian identity card/*Kartu Tanda Penduduk* ("**KTP**"). The implication of this is that Indonesian citizens must choose to identify with one

¹¹ Cecilia Ilona, "Aliran Kebatinan di Pulau Jawa dan Pendekatan Iman Kristen," *Missio Ecclesiae* 2, no. 1 (April 29, 2013): 26–38, <https://doi.org/10.52157/me.v2i1.24>.

¹² Ahmad Mutaqin, "Spiritualitas Agama Lokal (Studi Ajaran Sunda Wiwitan Aliran Madrais di Cigugur Kuningan Jawa Barat)," *Al-Adyan* 8, no. 1 (2013): 89–102, <https://doi.org/10.24042/ajsla.v8i1.528>.

¹³ Roni Ismail, "Ritual Kematian dalam Agama Asli Toraja 'Aluk To Dolo' (Studi Atas Upacara Kematian Rambu Solok)," *Religi: Jurnal Studi Agama-Agama* 15, no. 1 (April 30, 2019): 87–106, <https://doi.org/10.14421/rejusta.2019.1501-06>.

of the six officially recognized religions mentioned earlier for official documentation – in cases whereby they are a follower of one of the unrecognized religions, they would have to align and identify with one of the acknowledged religions¹⁴ to be recognized before the law, or choose to have the religion column empty.

It is not until 2017 through the Constitutional Court Decision No. 97/PUU-XIV/2016 that followers of unrecognized religions can choose to have '*penghayat kepercayaan*' (followers of spiritual beliefs; typically individuals who practice indigenous, local, or traditional belief systems) stated in their KTP¹⁵. As one of the State's philosophical foundation value is the belief in God¹⁶, atheism remains legally unrecognized.

Transitioning the focus from Indonesia's cultural mosaic, it is important and imperative that an exploration of its legal landscape be conducted in the latter. This necessity is underscored by the Latin legal maxim "*ubi societas, ibi ius*" containing the meaning that 'where there is society, there is law', highlighting how law is intricately interwoven with every aspect of society, including Indonesia. Law is not an isolated entity but a fundamental aspect that intertwines with the nation's cultural, social, and religious fabric. It transcends

¹⁴ Bilal Ramadhan, "Untuk Urus KTP, Penganut Baha'i Harus Pilih Salah Satu Agama Resmi," *Republika Online*, August 13, 2014, <https://republika.co.id/berita/nasional/politik/14/08/13/na8gnt-untuk-urus-ktp-penganut-bahai-harus-pilih-salah-satu-agama-resmi>.

¹⁵ Mahkamah Konstitusi Republik Indonesia, "Penghayat Kepercayaan Masuk Kolom Agama Dalam KK Dan KTP," November 7, 2017, <https://www.mkri.id/index.php?page=web.Berita&id=14105>.

¹⁶ The first precept (*sila*) of Pancasila – "The belief in One and Only God".

traditional boundaries, shaping and being shaped by the nation's diverse cultural and social dynamics.

Article 1 paragraph (3) of the 1945 Constitution which mentioned that “Indonesia is a State based on the Rule of Law”, serves as the cornerstone of Indonesia's legal system that ideally adheres to the rule of law, making it a *rechtsstaat* that has two functions in general. First, restricting arbitrary exertion of State power by encompassing various legal tools and institutional measures aimed at safeguarding individuals from the power of the State (i.e., this also means preventing a State from becoming *machstaat*). Additionally, it ensures the protection of citizens' rights to property and personal security against infringements by others¹⁷.

In other words, the principle of the rule of law signifies that both government authorities and citizens are subject to, and typically adhere to the law¹⁸, in line with the legal maxim “*lex rex*” (i.e., the law is king) asserting the supremacy of law and its application to all.

With regard to its legal landscape, Indonesia has historically been a melting pot of indigenous customs, colonial influences, and modern legal practices.

¹⁷ Adriaan W. Bedner, “Suatu Pendekatan Elementer terhadap Negara Hukum,” in *Kajian sosio-legal*, Edisi pertama (Denpasar, Bali: Pustaka Larasan bekerja sama dengan Universitas Indonesia, Universitas Leiden, Universitas Groningen, 2012), 45–80.

¹⁸ Brian Z. Tamanaha, “The Rule of Law and Legal Pluralism in Development,” in *Legal Pluralism and Development: Scholars and Practitioners in Dialogue*, ed. Brian Z. Tamanaha, Caroline Sage, and Michael Woolcock (Cambridge: Cambridge University Press, 2012), 34–49, <https://doi.org/10.1017/CBO9781139094597.005>.

This amalgamation has given rise to a unique form of legal pluralism, where multiple legal forms coexist¹⁹ and interact.

Legal pluralism in Indonesia is signified by the simultaneous operation of traditional customary laws (*adat*), religious law (i.e., Islamic law of *Sharia*), and Western-influenced statutory law, each with its own jurisdictional and cultural sphere without diminishing the significance or position of the other in society²⁰. The interaction of these legal systems showcases the dynamic nature of Indonesian law and contributes to the country's legal and cultural diversity.

This pluralistic legal landscape is not only a testament to the country's rich history and cultural legacy but also poses significant challenges that require careful navigation and understanding, mainly in the question of harmonizing or consolidating these norm systems, maintaining a balance between "*jus publicum*" (public law) and "*jus privatum*" (private law).

The existence of multiple legal systems often result in complications, especially when laws within a community group are applied in certain transactions or during conflicts, causing confusion about which law applies to a particular individual and how one can determine which law is applicable to them.²¹ This is particularly evident in areas such as family law and property

¹⁹ Brian Z. Tamanaha, *Op.Cit.*, 35.

²⁰ Sulistyowati Irianto, "Sejarah dan Perkembangan Pemikiran Pluralisme Hukum dan Konsekuensi Metodologisnya," *Jurnal Hukum & Pembangunan* 33, no. 4 (June 22, 2017): 492, <https://doi.org/10.21143/jhp.vol33.no4.1425>.

²¹ "Pluralisme Hukum Harus Diakui," *Hukumonline.com*, July 2, 2009, <https://www.hukumonline.com/berita/a/pluralisme-hukum-harus-diakui-hol15089/>.

rights, where the intersection of national law with religious and customary laws is prominent.

Law in itself encompasses more than just normative aspects, such as what is forbidden and permitted, rather it also includes cognitive elements. An example is that while the theft, homicide and corruption are universally prohibited across various systems like state law, religious law, and traditional customs, the understanding and interpretation of the action to be considered as theft, homicide and corruption can differ based on the political and cultural backdrop.²²

In devising resolutions to legal issues, the examination of the law has conventionally gravitated towards two primary approaches: the normative and the empirical. The normative perspective is concerned with prescriptive notions, focusing on what the law ought to embody. It delves into the realms of values, principles, and ethics, engaging in theoretical discourse about justice, rights, duties, and moral judgments.²³ In contrast, the empirical anchors itself in the realm of observable data and tangible facts, scrutinizing the practical functionality of laws, their societal impacts, and the behavioral responses of individuals and institutions to legal frameworks. This methodology employs

²² Sulistyowati Irianto, "Memperkenalkan Kajian Sosio-Legal dan Implikasi Metodologisnya," in *Kajian sosio-legal*, Edisi pertama (Denpasar, Bali: Pustaka Larasan bekerja sama dengan Universitas Indonesia, Universitas Leiden, Universitas Groningen, 2012), 2.

²³ Depri Liber Sonata, "Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas dari Metode Meneliti Hukum," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 8, no. 1 (November 5, 2015), <https://doi.org/10.25041/fiatjustisia.v8no1.283>, 25.

statistical analysis, detailed case studies, and other empirical research methods to deduce conclusions about legal phenomena.²⁴

Nevertheless, despite their respective merits, there still exist limitations in encapsulating the complex interrelationship between law and society. The normative approach, while rich in idealistic concepts of justice and legal philosophy, often remains aloof from the pragmatic intricacies and the lived realities of legal implementation. The empirical method, grounded in practical observation, can occasionally overlook the intricate socio-cultural dimensions that underpin and shape legal phenomena.

The complex involvement and connection in reality between the juridical (state law) and meta-juridical elements (external elements of law) such as human values, ethical principles, religious beliefs, moral standards, and social factors²⁵ call for a contemporary way of examining the law. This is where socio-legal analysis emerges as a viable solution.

Socio-legal analysis in research bridges the gap between normative ideals and empirical realities. It recognizes that law is not just a set of rules or an abstract concept but a social phenomenon that exists within a cultural, economic, and political context. Socio-legal analysis seeks to understand the interplay between law and society, examining how legal systems are influenced by and, in turn, influence societal norms, values, and structures. By incorporating

²⁴ Depri Liber Sonata, *Op.Cit.*, 27.

²⁵ Endri Endri, "INDONESIAN LEGAL PLURALISM FOR STATE ADMINISTRATIVE JUDGES: BETWEEN CHALLENGES AND OPPORTUNITIES," *Jurnal Hukum Peratun* 3, no. 1 (February 28, 2020): 19–34, <https://doi.org/10.25216/peratun.312020.19-34>.

methodologies and theories from sociology, anthropology, psychology, and other social sciences, socio-legal studies offer a more holistic view of law. This approach allows for a deeper understanding of legal issues, considering factors such as power dynamics, social inequalities, cultural beliefs, and historical contexts. It opens up possibilities for innovative and interdisciplinary²⁶ research that can address complex legal issues more effectively and inclusively.

Socio-legal analysis delves into how legal principles are applied in real-life scenarios, how they influence and are influenced by social behaviors, cultural norms, and societal dynamics. This approach acknowledges that law cannot be fully comprehended or effectively applied in isolation from the societal context in which it operates. By integrating sociological perspectives and empirical research methods, socio-legal analysis offers a more comprehensive and nuanced understanding of the law, especially in pluralistic societies like Indonesia where the interplay of formal legal systems and socio-cultural elements is particularly intricate.

With the urgency for relevance of the law within a pluralistic society against the reality of legal scholarship still adhering to merely a textual way (i.e., purely normative) of thinking towards examining the law, the Author is intrigued to research on the issue at hand choosing the title ***“SOCIO-LEGAL ANALYSIS***

²⁶ Reza Banakar and Max Travers, “Introduction to Theory and Method in Socio-Legal Research,” in *Theory and Method in Socio-Legal Research*, Onati International Series in Law and Society (Oxford and Portland, Oregon: Hart Publishing, 2005), <https://papers.ssrn.com/abstract=1511112>, x.

AS A RELEVANT TOOL FOR ANALYZING LEGAL ISSUES IN INDONESIA'S PLURALISTIC LEGAL SOCIETY”.

1.2 Formulation of Issues

In light of the background and topic, the Author has mapped out key issues to be discussed in this thesis, including:

1. How is the legal pluralism landscape in Indonesia?
2. How does socio-legal analysis contribute in examining issues in a pluralistic legal society?

1.3 Research Purposes

The Author’s objective of writing this thesis is to answer the aforementioned issues brought forth:

1. To know how the current legal pluralism landscape is in Indonesia.
2. To know how socio-legal analysis contribute in examining issues in a pluralistic legal society.

1.4 Research Benefits

The Author hopes that the findings of this research can provide both theoretical and practical benefits as follows:

1.4.1 Theoretical Benefits

Theoretically, the Author aims to reveal the current condition of legal pluralism in Indonesia, and how the purely normative method of legal research in Indonesia needs to shift towards implementing socio-legal analysis to effectively comprehend issues in a pluralistic legal society.

1.4.2 Practical Benefits

Practically, the Author hopes to provide input for the legislators of this country by offering an understanding of how legal issues are influenced by the diverse socio-cultural dynamics in Indonesia. Through integrating sociological perspectives with legal analysis, lawmakers and policymakers can gain deeper insights into the real-world impact of laws and regulations on various communities. Further, the Author also hopes to identify the gap between the theoretical aspects of laws and their practical implications, which in turn will promote legislative drafting and policymaking that are more attuned to the diverse needs and values of Indonesia's pluralistic society – the product of which, are laws that are more inclusive, equitable and effective for a diverse country like Indonesia. Other than legislators, this research can also extend to encourage judges in Courts to start considering societal context in their decision to better facilitate justice.

Additionally, the Author hopes that this research will be beneficial in socializing to the public and various legal-related professionals on this contemporary method of legal research and possibly foster collaboration with other fields so that legal innovation may occur, and the law maintains its relevance in society, no more merely textual and 'left behind'. For legal scholars and educators, the findings in this research aim to enrich legal curricula by integrating societal contexts into the legal theories taught in classrooms and the need to teach socio-legal analysis so as to produce

scholars who are more responsive towards the provisions around them and relevant in their assessment of the law in society.

1.5 Framework of Writing

This thesis is arranged into five chapters to provide a comprehensible narrative as to the topic of discussion.

CHAPTER I: INTRODUCTION

This chapter introduces the topic in an overview, beginning from the background, identifying the key issues of the research, the purpose of the research and the research benefits.

CHAPTER II: LITERATURE REVIEW

The literature review will contain theoretical framework and conceptual framework. The Author will elaborate on the theories, historical context, and principles that apply to the issues discussed in Chapter I. Additionally, the conceptual framework will be determined to set the boundaries for the extent to which this research is conducted.

CHAPTER III: RESEARCH METHOD

This chapter will elaborate on the method in which research is conducted, what type of data collection and analysis is done, and what kind of approach the Author is using in this

research. In this case, the Author uses a normative research method to obtain qualitative analysis.

CHAPTER IV: DISCUSSION AND ANALYSIS

Chapter four will discuss the research problem and its solutions. Thus, the issues that have been revealed in the background can be dissected. As a result, each regulation, fact, and legal data related to the problem and reality of legal pluralism landscape in Indonesia and the need for socio-legal analysis as the relevant tool for examining the law and issues in a pluralistic legal society can find clarity.

CHAPTER V: CLOSING

The closing chapter will be of two sub-chapters, the first will be dedicated to concluding the findings of the research, providing the summarized answer to the research questions and the second sub-chapter will provide recommendation on the issue at hand.