



## LOCAL LAW WISDOM IN ATTACHING RADICALISM IN THE NAME OF RELIGION

I Putu Gelgel  
Universitas Warmadewa  
[putugel@gmail.com](mailto:putugel@gmail.com)

Published: 06/10/2021

Gelgel, I. P. (2021). Local Law Wisdom in Attaching Radicalism in the Name of Religion. *Journal Equity of Law and Governance*, 1(2), 95-100.

**ABSTRACT-** Harmony between religious communities in Indonesia is now experiencing many problems, many conflicts occur which are actually triggered by religious issues by carrying religious flags and shouting sacred words they carry out actions that are very far from the behavior of a religious person. In handling cases of violence in the name of religion are almost all opinions say that law enforcers are seen as very weak and indecisive. If law enforcement officials remain weak and slow. It is very possible that cases of violence in the name of religion will spread to other areas. Local Law Wisdom has the potential and can contribute to anticipating religious violence in the midst of the current dynamics of socio-cultural change, policy steps in the development of national law need to be designed by Interpreting the Functions and Wisdom of Local Law in anticipating radicalism in the name of religion. Transforming Wisdom Local Law into Legislations related to Religious Issues, integrating, and adapting Local Law Wisdom in resolving Inter-religious Conflicts, and revitalizing Local Law Wisdom in maintaining security, order, and Inter-religious Harmony.

**Keywords;** Local Law Wisdom and Radicalism in the Name of Religion

### I. INTRODUCTION

Indonesia was once used as an example or model in the life of inter-religious harmony on this earth by the international community. However, now many conflicts occur precisely triggered by religious issues by carrying religious flags and shouting sacred words, they take very serious actions. They burn houses, holy places/worships, and even kill other people in the name of religion. After burning, destroying, and killing, they laughed happily and felt proud because they considered themselves as heroes in upholding their religious teachings and believed with their actions. They would go to heaven because God was blessed. Even though, we know that no religion justifies killing is this act appropriate for someone who claims to be a religious person? Does religion teach its people to commit acts of violence with the excuse of defending God?

Regarding acts of violence in the name of religion, Gus Dur in (Wahid & Ikeda, 2010) said that everyone did not have to defend God because God did not need to be defended, God could defend himself. However, the irony is each party (including their religious leaders) often blames each other, and not looking for the source of the problem. Likewise, the state (government) has not been able to control and protect the freedom of its citizens in religious freedom. The perpetrators of violent acts in the name of religion have not been fully processed through legal channels. So, there is an impression that law enforcement on violence in the name of religion is very weak.

The international community now considers that Indonesia is no longer a model for religious harmony, Indonesia is considered uncomfortable in inter-religious life. The question is, can we allow acts of violence in the name of religion that are increasingly widespread? can we allow them to grow and develop in a country that carries the ideology of Pancasila? Our country is a country which upholds diversity, upholds pluralism. Why are there still children of this nation who don't like diversity? This question should be our reflection and study together.

It is not easy to decipher the causes of the weakness of the law in overcoming violence in the name of religion because it is so cumulative and varied that it forms a network of problems that cannot be resolved. However, this condition certainly cannot be left unchecked, a solution must be found. We must find out what factors are causing the weakness of law enforcement in overcoming violent acts in the name of religion. Besides national law (read modern law) our nation still has traditional law which lives and develops in society, namely Customary Law. It is not impossible that in traditional law we find hidden gems that can contribute to overcoming violence in the name of religion in the midst of socio-cultural dynamics.

## **II. Weak Law Enforcement in Overcoming Radicalism in the Name of Religion**

In the midst of the frenzy of cases of legal mafia, judicial mafia, tax mafia and fraud scandals in various banks. Our country and nation were shocked and shocked by the religious violence which occurred in Cikeusik and Temanggung. In handling these cases, almost all opinions say that law enforcers are seen as very weak and indecisive. If the government (law enforcement officers) remains weak and slow. It is very possible that cases of violence in the name of religion will spread to other areas. In addition, this fact will be able to open up opportunities for other groups to carry out the same violence.

Lately, conflicts and acts of radicalism in the name of religion are increasingly widespread. The graphic of violence in the name of religion is increasing significantly. Starting from the Bali Bombings, Marriot Bombings, Kuningan Bombings to the Suicide Bombings at the Cirebon Mapolresta Mosque Friday, April 15, 2011. Research conducted by the Center for Religion and Cross-culture Studies at Gajah Mada University found that during 2010, there were 20 cases of blasphemy in various regions in Indonesia. However, the perpetrators of violent acts have never been prosecuted. This indicates that the law enforcement process in relation to violent acts in the name of religion is indeed very weak.

In the midst of the dynamics of socio-cultural changes in the lives of Indonesian people in general. The law (especially law enforcement) is still far from ideal. This discourse has become an open secret. Almost all day, the Indonesian legal scene continues to be criticized as the worst law in the world, confusing, annoying, untrustworthy and so on. The decision of the South Jakarta District Court on the Gaius case, is almost all public opinion voiced the same reaction, namely; bitterness, disappointment, despair, helplessness, and anger. This can happen because the dynamics of legal development cannot be separated from political interests. Quite a lot we see in the legal process can not be separated from political influence. For example, the Century Bank case, the Gayus case was strongly influenced by the political constellation in this country. The judiciary which should be at the forefront of enforcing the law and creating justice indiscriminately, turns out to only serve a handful of people who are considered close to power. Therefore, it is natural for the public to think that our law is powerless, the law is used as nothing more than a sweetener.

The inability or weakness of law enforcement for violence in the name of religion is inseparable from the failure of the legal positivism paradigm applied in Indonesia. In the midst of the socio-cultural dynamics of Indonesian society today. The implementation of the positivism doctrine which says that the law is objective, the law is certain and the law is neutral needs to be questioned. It is because in practice, the law is not objective, not certain, and not at all neutral. In this connection, (Raharjo, 2000) said that the law is more qualified plus-minus. The law or legal regulations are not able to complete the draft accurately and thoroughly by working alone. There is hardly any evidence to support absolute legal capacity. This means that not all issues can be left to formal law alone, the law or the state

does not hold a monopoly. Empirically, it is proven that the law that is too positivistic which is very formal-legalistic fails to produce a substantial justice. However, it is only able to produce procedural justice. Therefore, it is time for us to ask and change the positivistic paradigm which is very formal and legalistic with a more realistic paradigm that is in accordance with the socio-cultural structure of the Indonesian nation.

### **III. Potential Wisdom of Local Law in Anticipating Radicalism in the Name of Religion**

When the government is indecisive and the inability of modern law to solve the problem of religious violence in the midst of the dynamics of the socio-cultural life of today's society, the people's calls and demands for legal reform are a must. It is because the legal products and their enforcement have moved away from the values of our nation's wisdom.

It has been mentioned earlier that law enforcement against violence in the name of religion is still very weak. However, this condition certainly cannot be left unchecked and solution must be found. We must find out what factors are causing the weakness of law enforcement in overcoming violent acts in the name of religion. Besides national law (read modern law) our nation still has local legal wisdom which lives and develops in society. It is not impossible that in the traditional law we find hidden gems that can contribute to overcoming violence in the name of religion. We use this as the starting point for our departure in organizing, repairing, and rebuilding the ruins of the legal building which has been destroyed. From this point we build, we make assumptions, reviewing, and prioritizing the needs needed for the benefit of our future legal development. So that it can be clearly determined what mission is to be carried out in the development of the law in the future. What kind of law is desired (vision) so that the results achieved are in accordance with the objectives namely the law should make us happy. The ultimate goal of a state of law is to make the lives of the people and this nation obtain justice, prosperity, and happiness.

Therefore, legal development must be a policy. It is prepared based on the needs of the community itself based on the socio-cultural dynamics of the community. The legal order that operates in society is basically the embodiment of the ideals of the law adopted in the community concerned into the apparatus of various positive legal rules, legal institutions, and the behavior of the government bureaucracy and citizens. The need is not a momentary need but a total, comprehensive and systemic need. Therefore, the legal development policy must be a policy scheme that involves the participation of the community, from various groups and groups and becomes a guideline for the mandate holder to realize it.

(Friedman, 1975) said that whether or not the law functions in managing development is largely determined by the three components of the legal system, namely; the material of legislation (legal substance), law enforcement (legal structure), and also legal awareness (legal culture). As a system, the law must be observed in the perspective of totality which among the parts of the system is a unified pattern that covers each other. The three components in the legal system basically determine and influence each other.

Legal substance consists of primary law and secondary law. The primary law is the law of behavior. While secondary law is the law of how to enforce the primary law. The legal structure is a foundation and a real element of a legal system. Structure can also be said to be a permanent framework or an institutional framework of the legal system. Meanwhile, legal culture can be in the form of habits, views, ways of thinking and behaving. All of which can form social forces which move in their own way to approach (obey) the law or otherwise move away from (violate) the law (Friedman, 1975).

In relation to this issue of legal function, (Parsons, 1977) with his Structural Functional theory says that normative structures (values, norms, collectivities, and roles) are closely related to other functional sub-systems (patterns, community, politics/state and economy). Values are related to pattern maintenance. Norms are identified as structural components of social communities, collectivities are related to politics/state, and roles are elements related to the economy. According to him, every social system has four coercive functions. This means that every system must face and must successfully solve problems; adaptation, goal attainment, integration, and maintenance of patterns/values. Adaptation is a function of the organism's behavior, achievement of goals is a function of personality.

Integration is a function of social systems, and pattern maintenance is a cultural function. At the level of the social system, the function of adaptation is related to the economy, achievement of goals is related to government/politics, integration is related to law, and patterned maintenance is related to the family. This means that the adaptation function generates a response to the needs and the environment to achieve a goal. Integration is very important in regulating relations between subsystems in a bond of cooperation and solidarity to achieve goals guided by the pattern of values which exist in the system. It means that the law in carrying out its functions is also influenced by various other fields of life, such as politics, economics, and culture.

Another opinion about the effective functioning of the law, (Ehrlich & Moll, 1936), the leader of the Sociological Jurisprudence school, said that the emphasis of legal development lies not in legislation nor in court decisions nor in legal science but in society. In fact, the regulations which are followed in people's lives are real living laws, the law has a much wider scope than the norms created and applied by government institutions. This means that the law will be effective if the law reflects the values that live in society. Furthermore, Ehrlich emphasized that the living law namely the law that actually lives in society continues to evolve. It is always exceeding the rigid and immovable state law. So, Ehrlich's message was state law should be in accordance with or in harmony with the values that live in society.

(Arief, 1998) also said that a study of the legal system which lives in society is very urgent to be carried out in the current national law reform. It is because the national legal system in addition to be able to support national development and the needs of international relations. It must be sourced and not ignore legal values and aspirations that live and develop in society. In conducting a study of the values and aspirations that live in society, anthropological, sociological and philosophical studies are needed. It is hoped that the lost pearls of traditional cultural wisdom that still live in society will be found.

Departing from the theoretical framework above, so that the law can function and can provide justice, happiness, and welfare to the community. The three components of the legal system, both substance, structure, and legal culture should be built in harmony with the law which lives and develops in Indonesian society which are actually still being lived and implemented in their daily lives. The law will be able to function and succeed if the legal provisions can accommodate the values and legal norms that live and develop in society. Empirical facts show that local legal norms in people's lives throughout the archipelago have enormous potential in the development of national law, both in the development of legal substance, legal structure, and legal culture. The potential for wisdom of local law often exceeds the role and capacity of formal law/government. In resolving disputes, the people of this archipelago have the potential for local wisdom that should be revitalized. Balinese people, for example, as well as other communities in Indonesia (Dayak Kaharingan, Tengger, Batak, Javanese, etc.) like the attitude of living in harmony and peace. Each individual must make every effort to maintain harmony and avoid conflict. Its philosophical foundation is Tri Hita Karana. Literally Tri Hita Karana comes from the words Tri, Hita and Karana. Tri means three, hita means prosperous, good, happy, sustainable, and karana means cause. So, Tri Hita Karana means three elements which are the cause of the growth of harmony, goodness and prosperity. This concept contains three elements, namely; the element of God Almighty, the human element, and the natural element. These three elements must have a harmonious and reciprocal relationship, so that prosperity and happiness in life will be achieved. These three elements cannot be separated from each other, and constitute a system.

Another teaching related to the value of harmony and humanity is Tat Twam Asi which is a teaching that views the universe as a subject and object of life personified like humans. Nature and its contents are essentially the same as humans, all of them are creations of the Almighty God. Basically, this conception teaches that social life for every human being is absolutely necessary. Therefore, the essence of living in society means being willing to sacrifice some of their freedom. It is because one person's freedom will be limited by the freedom of others. This limitation of freedom is manifested by norms or a number of rules as guidelines for social life. Sacrifice is something that is required by

religion. In this case, this form of sacrifice is to respect and serve every creature as God's creation. Tat Twam Asi is a reflection of universal love between people. Tat Twam Asi also means he is me. This expression means that hurting others means hurting yourself, helping others means helping yourself.

In traditional community life, conflict resolution using formal justice mechanisms is not the best dispute resolution mechanism. The limitations of the judiciary in responding to the aspirations of the community and only emphasizing procedures that only resolve conflicts in a quasi-conflict manner have not been able to resolve actual disputes. The best dispute resolution is when the dispute is resolved between those who are in dispute peacefully and in a family manner facilitated by traditional leaders. This peaceful and familial settlement usually consists of an apology from the wrongdoer to the other party who was harmed.

In order for Local Law Wisdom to contribute in anticipating religious violence in the midst of the current dynamics of socio-cultural change, policy steps in the development of national law need to be designed by;

1. Reinterpreting the Functions and Wisdom of Local Law in Anticipating Radicalism in the Name of Religion.

Local laws that live and develop in traditional societies need to be reinterpreted their functions and meanings in anticipating violence in the name of religion. It is because in reality, people still have wisdom in enforcing the rules that apply in their respective territories fairly and with conscience. Law enforcement in traditional community life is carried out in wise and wise ways, far from attitudes of dishonesty, injustice, arrogance, and violence. So that the attitude of law enforcers in Hindu society has always been a role model and respected by the community. Through reinterpreting the function and meaning of Local Law Wisdom. It will be possible to find the values of wisdom that should be raised in anticipating various cases of violence in the name of religion in the country.

2. Transforming Local Legal Wisdom into Legislation Related to Religious Issues.

This transformation is important because local laws are very effective and functional in maintaining the peace and tranquility of people's lives because they are very well obeyed and sometimes exceeding their compliance with state law. This effectiveness and functionality can be implemented because local legal norms always prioritize justice, harmony, and peace.

3. Reintegration and adaptation of local legal wisdom in resolving conflicts between religious people

The integration and adaptation of local wisdom is very important, because the resolution of disputes or conflicts in local communities is carried out in a peaceful and familial manner but still maintains the sense of justice and propriety of the community. So that disputes can be resolved properly, harmoniously, peacefully, without leaving any inner wounds or grudges for the disputing parties. Meanwhile, dispute resolution through district courts sometimes cannot fully fulfill the sense of justice and propriety. Besides the judicial process is too long and expensive. The best dispute resolution is when the dispute is resolved between the disputing parties can be carried out quickly, peacefully, family, but still based on certainty, truth, justice, and propriety can be implemented.

4. Revitalization of Local Legal Wisdom in maintaining security, order and harmony between religious communities

Local communities in maintaining security use a persuasive and educative approach. Traditional security officers (such as Pecalang in Bali) are required to abstain from acts of violence, arrogance and other repressive attitudes. On the other hand, they are required to appear sympathetic and wise so that they are respected and become role models for the community. In this way, public safety can be maintained.



Therefore, it is very important to revitalize the revitalization or utilization of local legal wisdom in maintaining peace and security, including maintaining inter-religious harmony.

#### **IV. CONCLUSION**

Recent acts of radicalism in the name of religion continue to occur. While the perpetrators are free from legal entanglements. This indicates that the powerlessness or weakness of the National Law (Modern Law) in overcoming violence in the name of the religion. In anticipating the spread of violence in the name of religion, it is necessary to initiate, study, and develop local laws that live and develop in Indonesian society. The law should be built in line with the social structure of our own nation and society. Philosophically, the norms of legal responsibility have similarities between local law and the values aspired by national law based on Pancasila, namely the realization of the values of justice, benefit, welfare, and happiness for the entire Indonesian nation.

#### **REFERENCES**

- Arief, B. N. (1998). *Some Aspects of Law Enforcement Policy and Criminal Law Development*. Citra Aditya Bakti.
- Ehrlich, E., & Moll, W. L. (1936). *Fundamental principles of the sociology of law*. Harvard University Press.
- Friedman, L. (1975). *The Legal System*. Russel Sage Foundation.
- Parsons, T. (1977). *The Present Status of "Structural-Functional" Theory in Sociology*. Free Press.
- Raharjo, S. (2000). *Ilmu Hukum*. PT. Citra Aditya Bakti.
- Wahid, K. A., & Ikeda, D. (2010). *Dialog Peradaban untuk Toleransi dan Perdamaian*. Gramedia Pustaka Utama.