CONSTRUCTING STATE LAW AMID LOCAL LAWS: A SHIFT IN THE PARADIGM OF LEGAL TRANSFORMATION

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ABSTRACT

Objective: Constructing state law amid local laws is a new phenomenon; the challenge is creating a free-problem situation when the two systems meet. It seems impossible for the two to be allies and support each other. When they do meet, their relationship is just a compromise. The research object is a shift in the paradigm of law transformation related to constructing state law amid local law.

Method: We employed a juridical normative with different treatments where the law is not the foundation but the theories, concepts, norms, and beliefs of scholars based on the orientation of the analysis objects.

Results: Findings confirm that state law (positive law or law) is designed following the legism or positivism paradigm or belief. As such, legal transformation in its embodiment is oriented towards legal unity (positive law-state law). Hence, norms or values that do not originate from authorized lawmakers are undesirable to achieve a single uniform model (one legal model for all). In turn, the attempt to privilege the ideal law as the only law that is appropriate and valid and which is believed to be able to be the answer to every problem has yet to be fulfilled. Undoubtedly, state law, declared exclusive, is not only not objective, but becomes weak. The result is the rejection of community values as a strengthening substance, failing to meet expectations. Finally, the people consider state law a disturbance to the peace of life and a form of injustice and burden. Its presence does not create unity and collaboration that strengthens and supports one another but raises enmity.

Conclusion: The construction of state law amid local law always refers to legal positivism, which positions the singleness of law in a positive (formal) form of law. State law is seen as the only law recognized as valid because it originates from the state, while another law is not recognized. With this standard trend (perspective), a paradigm shift in the construction of state law occurs so that when legal transformation or legal change occurs, society experiences a shock of new values.

Keywords: constructing state law, local law, paradigm shift, legal transformation.

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CONSTRUINDO A LEI ESTADUAL EM MEIO ÀS LEIS LOCAIS: UMA MUDANÇA NO PARADIGMA DA TRANSFORMAÇÃO JURÍDICA

RESUMO

Objetivo: Construir a lei estadual entre as leis locais é um fenômeno novo; o desafio é criar uma situação de livre problema quando os dois sistemas se encontram. Parece impossível para os dois serem aliados e se apoiarem. Quando eles se encontram, seu relacionamento é apenas um compromisso. O objeto da pesquisa é uma mudança no paradigma da transformação da lei relacionada à construção da lei estadual em meio à lei local.

Método: Empregamos um normativo jurídico com diferentes tratamentos onde a lei não é o fundamento, mas as teorias, conceitos, normas e crenças dos estudiosos com base na orientação dos objetos de análise.

Resultados: As descobertas confirmam que a lei estadual (lei positiva ou lei) é projetada seguindo o legismo ou o paradigma ou crença positivista. Como tal, a transformação jurídica em sua personificação é orientada para a unidade jurídica (lei-estado positiva). Assim, normas ou valores que não têm origem em legisladores autorizados são indesejáveis para se alcançar um modelo uniforme único (um modelo jurídico para todos). Por sua vez, a tentativa de privilegiar a lei ideal como a única lei que é apropriada e válida e que se acredita ser capaz de ser a resposta para cada problema ainda precisa ser cumprida. Sem dúvida, a lei estadual, declarada exclusiva, não só não é objetiva, como se torna fraca. O resultado é a rejeição dos valores comunitários como uma substância fortalecedora, não atendendo às expectativas. Por fim, o povo considera a lei estatal uma perturbação da paz de vida e uma forma de injustiça e fardo. A sua presença não cria unidade e colaboração que se fortalecem e apoiam mutuamente, mas que suscitam inimizade.

Conclusão: A construção da lei estadual em meio à lei local sempre se refere ao positivismo jurídico, que posiciona a singularidade da lei em uma forma positiva (formal) de lei. A lei estadual é vista como a única lei reconhecida como válida porque é originária do Estado, enquanto outra lei não é reconhecida. Com essa tendência padrão (perspectiva), ocorre uma mudança de paradigma na construção da lei estadual para que, quando ocorrer a transformação jurídica ou a mudança jurídica, a sociedade experimente um choque de novos valores

Palavras-chave: construção do direito estadual, direito local, mudança de paradigma, transformação jurídica.

1 INTRODUCTION

Law is one of the fundamental needs of humans. It represents the social construct created to present certainty and clarity of norms as a guide for living together. Related to this purpose, a topic of discussion has emerged recently regarding the existence and encounter of norms of existing laws materialized into two, written and unwritten. Unwritten law (local law or customary law) exists by itself in a time not exactly known; what is known is that it existed long before the state and its written law (positive law) existed or were created. This point then presents an important, determining, and crucial illustration especially related to how the state responds and treats unwritten law after it is established and starts its law development. As a new phase in the life and organization
of the state and its people, constitutionally, the design of its law is nationwide and written. The design is believed to offer hopes, directions, and guidance to develop a life for all based on principles, values, and norms that are worth living as a single legal guideline (originating from the authorities) for positive goals arranged according to the civility of the nation (state) to ensure order, certainty, and peace of life in a new relationship based on justice.

It must be admitted that, based on this national ideal, development has been started, and some major changes have resulted, not only at norm or value levels but also in procedures or mechanisms and the new institution as the implementers. In addition to those important changes, conflicts arise amid state and local law encounters. It emphasizes the uncertainty of an answer equal to the idealization of state law that was once declared exclusive. Why so is what we need to investigate further. What is clear is that our law is now experiencing a great dynamic, from a theoretical point of view and a practical one (Ivanov et al., 2021). This is how this reality is understood, not only as a test to what is perceived valid (legal) based on positive law but also as an emphasis on encouragement or an invitation to rethink, out of the comfort zone of the dogmatic space to fight against the deadlock with other views that can channel or balance between expectations and reality related to justice.

We tend to respond to such encouragement or invitation with standards we have known for so long; we rely on what is common or acceptable: law enforcement and its enforcers. The two are seen as the center of the problems; in other words, if it is not society that is problematic, then it is the officials. From a political point of view that demands the structure of power, such a perspective may be fine, but it is not so from the point of view of legal interests. Because of such a way, in the end, it will return to the same path, a dead end. Ironically, these methods are still being maintained, even if they do not provide the right answer. In addition, the general belief that laws have a close relationship with society is not attractive to be used as a basic framework for rethinking existing laws.

Indeed, most people often ignore this because they are obsessed with looking into the instrumentalist notion of law, which is positive, as a reliable means of social engineering. In other words, it is a concept of social rules that are free, sophisticated, complete, which are constantly changing, and whose ability is dependable in controlling the civility of society and preventing the community from performing anti-social actions.
that are contrary to the social order through pressures (coercive-repressive mobilization). As a result of perspective, today, there has been a decrease in people’s belief in positive law, with doubts increasing from the offers of ideal truth, which supposedly guarantees justice because many facts have proven their incompatibility.

The question is what has gone wrong that the reconciling function, which harmonizes the different interests within the instrumentalist framework of social engineering in the political power of the state, which simultaneously transforms law as a means of control or social engineering, cannot always work properly, even when various units of people have been integrated into the territory of the state (nation) as a single unit armed with what is called complete, rational, and sophisticated law. Under such circumstances, it should be easy to achieve a standard of living together in the new legal system imposed through written categorical efforts in the form of laws and complete institutions and organizations. Still, in reality, this is not the case. The next question is, what has gone wrong and must be corrected in the construction of state law so that its presence amid local law is no longer a problem but a solution (Borichev et al., 2022).

Reflecting on the facts above, our analysis includes the paradigm of state law and its shift in the legal transformation to examine the response to local law and to explain the source of the problem as an ideal point of reference for constructing a state law structure that can accommodate and harmonize common interests.

2 THEORETICAL FRAMEWORK

The construction of state law amid local laws represents a complex and evolving area of legal scholarship. This literature review provides an overview of the existing research and theoretical perspectives surrounding this phenomenon, highlighting key themes and insights that inform the theoretical framework of this paper.

1. Legal Pluralism and the Coexistence of Multiple Legal Orders: The concept of legal pluralism has long been a subject of scholarly inquiry. Legal pluralism recognizes the coexistence of multiple legal orders within a jurisdiction, including state law and local laws. Scholars have examined the theoretical underpinnings of legal pluralism and its implications for legal systems, governance, and social dynamics. They have explored the tension between state law's authority and the diverse legal practices and norms found at the local level.
2. The Proliferation of Local Laws: One key area of focus within the literature is the emergence and proliferation of local laws. Researchers have explored the factors that contribute to the development of local laws, such as cultural traditions, historical legacies, indigenous legal systems, and decentralized governance structures. They have analyzed how local laws are constructed, enforced, and adapted, often reflecting the specific needs and values of local communities.

3. Interplay and Adaptation between State Law and Local Laws: The interaction and adaptation between state law and local laws have been a subject of investigation. Scholars have examined the mechanisms through which state law accommodates or conflicts with local laws, such as recognition, incorporation, or contestation. They have explored the processes of legal borrowing, hybridization, and the creation of legal frameworks that navigate the complexities of multiple legal orders.

4. Power Dynamics and Governance: The literature has extensively addressed the power dynamics and governance implications of constructing state law amid local laws. Scholars have examined the relationship between centralized state authorities and local communities or subnational entities. They have analyzed the challenges and opportunities presented by the balance between uniformity and diversity, exploring the impact on governance structures, democracy, and social justice.

5. Transformative Potential of Local Laws: Another area of inquiry revolves around the transformative potential of local laws. Researchers have explored how local laws can address social inequalities, foster inclusivity, and respond to the specific needs of marginalized communities. They have examined case studies and examples to understand the role of local laws in social change and the promotion of grassroots participation in legal decision-making.
The existing literature provides a foundation for understanding the complex dynamics of constructing state law amid local laws. However, further research is needed to explore specific contexts, case studies, and comparative analyses that shed light on the shifting paradigm of legal transformation and its implications for legal systems and governance. The theoretical framework presented in this paper aims to contribute to this ongoing scholarly discussion.

3 METHODOLOGY

We employed a juridical normative with different treatments where the law is not the foundation; the foundation consists of the theories, concepts, norms, and beliefs of scholars based on the orientation of the analysis objects. Such an approach aimed to understand better the rigidity of the foundation of the state law that plays a crucial role in the development of law. As such, we focused more on approaching community norms to explain the fundamental thoughts not captured or mapped perfectly in the idealization of formal law as positive law according to the demands of the school of thought that guides it.

We used secondary legal materials from relevant legal and non-legal literature. Meanwhile, the analysis focused on legal schools of thought as a channel for translating new law-making ideas to trace the origins of discrepancies between the construction of state law and community law as the legal subjects of such statutory regulations.

4 RESULTS AND DISCUSSION

4.1 A PARADIGM SHIFT IN THE CONSTRUCTION OF STATE LAW AND LEGAL TRANSFORMATION

It has become a general belief that the law is closely related to the ideas, aims, and objectives to which it is applied. No less this kind of situation was widely demonstrated during the colonial period, in which there was legal transformation through legal construction, which resulted from a paradigm shift concerning the process of changing legal values, which were initially dominated by local legal matters (customary or adat) and then shifted to values overwhelmed by modern legal thought (positivism). In other words, the process of legal transformation with its new values began to take place intensively since colonialism. The very long colonial period of Western culture impacted social, economic, and political affairs and led to further legal values based on Western
culture. A starting point for a new phase that marks the difference in the values and attitudes of the (local) community with the values of the Western heritage.

The transformation or the construction of the value or view of the new law that enables the achievement of a positive (written) legal system and which sponsors the formation of laws (positive law) in the construction of state law as a new awareness, previously was only about renewal, but it has now required to make changes. Since the Indonesian independence, the state law in its movement through legal development still inherits or continues to imitate the patterns created by the colonial government. Many colonial policies and patterns still emerged during the independence era in a legal system that was formed to continue implementing traditions based on the fundamental logic of positivism, which tended to ignore facts. Hence, various obstacles had to be faced. Therefore, “impressions and ideas” (Putro, 2011) need to be harmonized or integrated to meet common expectations. However, the impression or what is obtained from external reality must not always be followed completely (as is) just because it is guided by arguments to respect or protect, even though argumentatively, it is not beneficial. In such a framework, what is actually meant is how this matter can be considered according to appropriateness to minimize or prevent the tendency for deviation or neglect, which is deliberately carried out without justifiable reasons so that the will does not deviate again.

The inability to understand reality through the elaboration of legal construction will result in mistakes in understanding the new national awareness, which is very elitist, namely understanding the prerequisites for legal legitimacy in entering a new social system or a prerequisite that does not multiply the imagination of state law domination as an all-encompassing system (both in form and meaning for all groups) that undermines local arrangements, but on the contrary, respects to foster confidence in the national legal design.

4.2 THE RESPONSE OF STATE LAW TO LOCAL LAW

Indonesian society, as is characteristic of Asian Mon Soon societies in general, is a *settlet* (Iwantoro, 1989) society because they are not easily separated from their original structure. That is why, in this context, value transformation by changes in perspective due to the influence of certain (foreign) legal schools cannot take place suddenly and haphazardly. Likewise, it is impossible to do it extremely or firmly to annihilate or completely separate traditional (local) values for the sole sake of standing on modern
values or thinking. However, the right method and process are necessary to replace or change something that has been around for a long time with something completely new. Therefore, the process of legal transformation through state law construction must be carried out or elaborated appropriately by considering the existence of indigenous peoples who are guided by (local) customary law. As such, the legal transformation concerns the enactment of modern values within the framework of legal functions that enable harmony (compatibility, suitability) of interest relations to ensure harmony is vital.

It is not easy, but to do it in a shortcut or radical way by destructing the long-existing social systems is even more impossible. The social systems, in essence, are the product of culture, the most suitable ones indeed, accepted and embraced by the people and have passed the test of time. Along with that, amid national or state law construction, reality should still be valued as a supporting element because it is a measure of the success of the embodiment of national law. Thus, the construction of law must not only follow mathematical logic or a formula based solely on rational mechanisms and is uniform in nature, but it must also consider the perception of the corresponding collective values so that the established relationship in society will appear to be based on harmony. This value system builds each other up, does not negate each other, and compartmentalizes. So far, law construction has tended to be like the latter, starting from a framework that directs people to follow only the pretensions of state law which are considered higher than other systems.

In the absence of initiative and willingness to awaken the potential for collective values that live in local communities, juridically, it leads to the feeling of injustice, being hurt, and disrespected, which creates problems and conflicts. In positivism, it often happens. In this case, an important message was revealed regarding the paradigm dispute from the aspect of legal positivism with its formalistic perspective seeing law as merely a formal text (statute) built based on ideas, forming ratios, with legal realism, which does not make laws law as a standard, but a fact. Thus, this should be an awareness that positivism is only one approach (not the only one) in conceptualizing law. This shows that thoughts about the law cannot always be interpreted narrowly and singly in a law system whose substance is completely free from reality. The phenomenon of law as a reality generally extends beyond state law with positivism, and this transcendence can only be answered with an approach that focuses on plurality awareness (Menski, 2014).

This does not mean to reject the paradigm of Western law or modern law to let
people with their local law remain in their traditionalism, but rather so that it can encourage and revive awareness of thinking, how to build sound law or legal systems to bring justice closer to the legal system (Dimyati, 2010). In fact, this kind of awareness teaches or reminds us that complex realities cannot be explained by thinking about a rigid legal system in a pluralistic society; such simplification represents reluctance to clarify or resolve complex problems and expectation that those problems will be solved by themselves using such patterns or thinking. In other words, people keep believing that what is expected will happen and everything will be fine.

Often, we are deceived and believe that the law is merely a collection of rules and all of it is made by a group of people who have the authority to do so, without realizing that such a belief is the same as returning to a logocentric dead end. Law is said as law if it is said or recognized by the competent authority. Attitudes and views that exalt the authorities too much often become the source of problems. The idea of official law (state law), even though it is monolithic and comprehensive and truly a system, is not an empirical description but part of an ahistorical ideology. Therefore, although formally, the formal legal order has a monopoly on legality and has the power to use coercion legally, it does not mean that it automatically has a monopoly on truth and social significance (Tanya, 2010). This is because the formal, rational, and institutional labels in the normative system with nuances of domination are only oriented towards prioritizing a monolithic authority: “one subject (starting from the state), one meaning (according to the state concept), one action (what the state wants) and one result (according to the target country)” (Tanya, 2010).

In this regard, law should be understood from a broad perspective based on an awareness that law is a set of regulations whose innate nature remains a symptom of plural diversity (Menski, 2014). In this regard, Morrison said, “With this context, we will be led into an intellectual labyrinth, where law can be made in several ways and emerge from quite different sources...” (Menski, 2014). However, Kees Waaldijk mentions that it is agreed that law is also an object of knowledge that never stagnates. The problem is the tendency to treat law like a stiff or rigid ideology that tends to be esoteric, not opening up to cooperate but isolating or negating each other. With an understanding of positive law only from a formalistic perspective, it is difficult to see law as a whole. Likewise, if you look at the law only from the empirical side, it cannot explain positive systems or norms because it will only arrive at the description of symptoms (Putro, 2011). Therefore, the
two should greet each other, work together, complement each other, a not negate each other.

Furthermore, if a claim to truth only considers one perspective, it will be vulnerable and easily become a tyranny. Strictly speaking, although law is always something particular, not only a general phenomenon, it is also culture-specific because its manifestations depend on socio-cultural backgrounds that differ from one place to another (Menski, 2014). That is why, according to Summers, no single legal theory shall be allowed to dominate in the absence of a globally agreed legal definition, but only a theoretical model that can include and link all approaches (Menski, 2014), namely construction that focuses on plurality. So even though law is autonomous, its autonomy is not in the sense that it is independent in its formal sense, but only in its own regulatory system. Its autonomous nature is only to the extent where it can produce and implement its own system of norms. Likewise, with community law, its autonomy is not in the sense that it is independent in its formal sense, but only in the regulatory system it has within the state, namely only up to the level where it can generate and implement its own system of norms.

The emergence of this awareness cannot be separated from the phenomenon that has recently appeared—another perspective that changes views that are too oriented towards the legal perspective as an instrument of social engineering. This perspective encourages us to see that the relationship between law and society is of equal interaction units. The law must no longer be considered an independent variable, unrelated to other elements—both are dependent variables, having a mutually forming relationship. Thus, law is no longer merely a forming factor that influences society but also a factor shaped or influenced by society. Consequently, the two must be linked mutually. If the scope of the law is only meant to be interpreted narrowly to cut diversity within a set of regulations, that will not help the role of law. Or if the scope of the law is only in a narrow definition and can only be read as a single rule (uniform content), then efforts to reach universality will not be achieved. The pursuit of universality itself requires a broad legal definition and interactive plurality (Menski, 2014).

What is often imagined and upheld is only law as a set of regulations promulgated by those in power, the formal authorities. It appears here that modern legal theory prefers to formulate legal development programs that differ from what society has had. Modern legal theory prefers to review the notion of “law”, that law is not properly interpreted as
law if it also includes law resulting from natural processes (local law); law is the one that is deliberately made by the authorities based on ideas and ratio. The construction of law is not just for implementing programs to serve the interests of the community but rather programs implemented to meet the needs or interests of the state. Therefore, it cannot be said that it is a true legal construction program if it only benefits the smallest part of the state and burdens the largest part.

With this kind of rationale, what often happens is that the constructed law only labels it “for the people” while, in essence, it is not. This is where the problem becomes complex. Maybe people only want to see the issue of “in the name of” that from a political point of view that demands the power structure, thus ignoring the legal aspect. In fact, from a legal point of view, it is important to express the will of the people to strengthen the law, but oddly enough, this is often ignored. Such a tendency, that is, to deny social facts in the form of the people’s general will, is often seen in the description of state law by not placing or not positing that will through legislation. In fact, one of the essential things in the design of the law to embody justice is how the people’s expectations are converted to increase legal legitimacy; the common practice, however, is the other way around in which the will is eliminated, yet believing that legal legitimacy will be obtained. That is, by continuing to think that laws designed by the state can be a medium that brings different interests together, as well as being able to generate trust in the community to make it a life support that cannot be replaced by any order, even without converting community values, is an unreasonable hope. It is because community values are important, influential factors for the process and goals that will give meaning to the expected orderly life.

But unfortunately, the call for the need to decipher a text that fits Western ideas according to the will of a positivist country is more of a priority. At the same time, answering people’s questions, as a dedication to justice that originates from society as the take-off point of legal health, receives less attention. As a result, the negative impression of the law as unfair or a lack of appreciation by the community is not uncommon.

4.3 DEMANDS TO UNDERSTAND REALITY AS ANSWERS: STEPS TO REARRANGE THE LEGAL CONSTRUCTION

Amid an uncertain situation as an oddity of concerns over the existence of formal (state) law, there really is no way to recover negative views on it other than improving
relations by rearranging the old legal structures. This means that, for this relationship to be good, the pattern and institutionalization of actions need to be directed or based on real values to support the function of law in its implementation so that it will minimize anxiety, frustration, pressure, conflict, and imbalance as a syndrome of change. How far and wide is the arrangement through the process of transforming ideas into reality in the institutionalization process through internalization and externalization so that intersubjective reality at the collective level will be formed as a collective behavior that reflects the awareness of each community as citizens is the point where the government (state) seems to be facing a dilemma to step. Therefore, they must deal with values and norms that have settled as legal habits. At the crossroad where there is a demand to determine direction on the one hand and the need for a concrete picture of the future to peacefully control the course of collective life within society on the other hand, there is a kind of demand for an equilibrium between various forces, other than those that exist ideally (thought, imagined) as well as what actually exists. People’s behavior is institutionalized so that they can accept the view of state law as part of a new way of life with limited freedom so that it is controlled, not wild, but orderly and just; not as Hobbes said, “Homo Homini Lupus”, then innovation is needed. The state as a creative subject must be wise in responding, not by suppressing for having the power, but by giving space to pluralistic differences that respect the value system and local knowledge of the people they rule. In other words, the state must ensure all parties have a place in the legal construction made. Therefore, it is not enough to say that law development is limited to how to create detailed, clear, systematic regulations but is how the people for whom local laws are created are respected and live to feel respected in the substance of the law.

It has become common knowledge that most of the construction of our legal structures so far refers more to the assumptions of the classical paradigm, legal positivism, an inherited paradigm that is said to have rational-objective, impartial, clear characteristics and capable of providing an established and comfortable situation. In fact, by only focusing on rational arrangements that seem to guarantee a sense of justice and certainty but ignoring reality, the legal system tends to form false consciousness amid confusion and the uncertainty between facts and expectations in law enforcement. Evidence of the failure of this kind of practice can be seen not only from our own experiences as a nation once colonized but also from the experiences of various other countries, especially in Africa and Asia, most of which were formerly colonialized by the
European countries, whose law are based on legal positivism (Wignjosoebroto. 2013).

Therefore, the construction of state law amid local law is at allying and compromising idealism and reality, not merely to realize idealism as ideals that originate from ratios and are always seen as the most perfect or correct one. Shifting or ignoring reality has been proven to fail to bring the positive law to an ideal position to be obeyed with pure awareness (free of coercion). In fact, based on the records of failures that occurred in European colonial countries in Africa and Asia and what we have experienced, this should be a reference to change our excessive belief in the paradigm that so exalts rationality and idealism above everything that suddenly as if this would be the only way justice, truth, usefulness, and certainty be achieved and could be accounted for (because they meet reasonable requirements, can be detected, and can be identified) in a sensory manner according to logical procedures in law (legislation). Maybe this is true because the conditions are fulfilled procedurally, but it does not necessarily give the expected sense of justice according to the people’s will. The life of our society has already been very hierarchically structured in the domination of power, causing the law to only reflect the value of justice in its contexts full of contingencies (right-wrong) or winning-losing and not both happy, as is always done by local law (customary or adat).

That is why, amid a rather confusing empirical reality, it is very appropriate to choose the direction of obedience between norms that have been normalized as positive laws that must be obeyed (to avoid sanctions) and those that have not been normalized as positive laws, but which are felt to have more moral substance (society), yet to be considered to update the existing positive norms. This fact shows how state law is faced with obstacles in building a common perception through a legal transformation; it should be a turning point in awareness that the construction of state law is not just for the law to exist but how for the law to live and function as a necessity in the process of life (without coercion).

The demands to change irrelevant legal regulations do not only come from ordinary people but also from scholars with their own paradigms. In essence, the incessant demand shows that the concept of law can no longer be interpreted singly and uniformly amid a legal reality with multiple aspects and dimensions. Because of that, it is only appropriate that theoretical and practical legal bearers can open themselves to explore various approaches. A broad perspective in law will push legal discipline towards a more accommodative appearance, responsive to societal values and changes that continue to
occur so that it will be well received.

In this context, we also have to realize that a state represents groups of diverse people. It was born (exists) not from a society with no norms, principles, or values; a state was born from a group or groups of people with their life attributes. In other words, long before a state was formed, local communities existed with all their life attributes (culture, habits, law, economic systems, and all) from one generation to the next. Thus, in this perspective, when a state is formed, it does not mean that all attributes of the local communities then extinct or be eliminated; they indeed must be taken care of to avoid attitudes or deliberate actions that totally turn their backs on this historical reality. Because such deliberate actions do not help strengthen state law through awareness that is always expected to be born from within other than false awareness due to coercion or repression from the authority. Such an attitude is like trying to sow seeds on a thin layer of soil on rocks regardless of the conditions (land reality); the seeds may grow, yet without having strong roots. The final results are obviously not as good as expected. Likewise with formal (positive) law, if it is forced into effect amid local communities with strong cultural and customary values or when the formulation is solely based on the logic of legal positivism that tends to deny the reality of local law, then it will not be easy to implement the law properly.

Therefore, with this wisdom, it is necessary to make it a way of thinking to produce sound laws so that if conflicts occur afterward, they can be easily overcome or restored without having to take repressive measures in any form to uphold positive law. The purpose of all this is not so that anything belonging to the community must always be encouraged or accommodated without sound judgment, but it is more about considering what belongs to the community and paying attention to it. It must be done because local (traditional) communities already have values or norms deeply rooted in their lives. In other words, our state laws built on the foundation of legal positivism can differ from those applied by Western countries. If legal positivism is implemented for the sake of unity in the sense of positive law or it must have a positive status in that it has been affirmatively (positively) ratified as law in the form of statutory products, it is fine. However, this singleness in the form of legislation must guarantee pluralism (diversity), not uniformity (uniformed); if singleness means uniformity, then the only word to narrate is the creation of injustice in the name of justice.

To prevent this, state law and local law must be in a determinant degree that
requires each other to complement because one cannot be forced to replace or merge the two into one. Because of that, a harmonious blend of the two must always be carried out within the limits that allow for that; both need to be placed back according to their predetermined meaning. They must not be negated according to the will of the authorities. Indeed, this is not easy, but it is too risky to avoid doing this because it is not easy; the uniqueness of local law must not be simply ignored in the name of general regulations or state law. That is why a relatively accommodative (moderate) choice in such a context is to provide space that respects local regulations (local laws) as long as they are still functional in managing the order of their citizens. Only by such wise actions can harmony be felt.

5 CONCLUSIONS

The construction of state law amid local law always refers to legal positivism, which positions the singleness of law in a positive (formal) form of law. State law is seen as the only law recognized as valid because it originates from the state, while another law is not recognized. With this standard trend (perspective), a paradigm shift in the construction of state law occurs so that when legal transformation or legal change occurs, society experiences a shock of new values. As a result, it is not only difficult for them (local people) to accept but also reluctant to obey amid indecision and confusion between positive-normative ones (constructed by the state or government) and norms that have been known from the start (local laws). Such a dilemma leads to psychological pressure, disturbance in the peace of life, a burden, and injustice.

We do need positive law, but it must reflect or accommodate local values to strengthen the law, not one that is exclusively detached from reality or negates local law because it weakens the law. Therefore, it is wrong to assume that when the state becomes a legal power organization, everything previously existing in society must be abolished, or its values or norms must be nullified. However, we never hope that the presence of the law will cause problems but rather gives better reinforcement to values and norms that are not perfectly mapped in conceptions. That is, state law must be a channel in legal construction where all interests are considered; the one cannot replace the other in its role, even though the one is very rational according to the modern formulation of the educated authorities.
REFERENCES


