

# **A REFLECTION ON THE APPLICATION OF CRITICAL THEORY PERSPECTIVE ON LEGAL ANTHROPOLOGY RESEARCH IN BETAWI MUSLIM COMMUNITY<sup>1</sup>**

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## **Abstrak**

Pluralisme hukum sebagai salah satu produk dari modernisasi telah membuka wawasan masyarakat bahwa ada sistem hukum lain di luar tertib sosial yang telah berlaku di masyarakat. Sistem hukum yang plural akan mengkondisikan norma, nilai, dan aturan dari masing-masing sistem hukum tersebut untuk saling berinteraksi. Dengan kondisi tersebut masyarakat “dipaksa” untuk “memikir ulang” konsep-konsep validitas dan *justifikasi* atas nilai-nilai dan norma-norma yang ada sebelumnya dengan nilai dan norma yang berasal dari luar. Dengan berbekal *lifeworld*/dunia kehidupan (interaksi antara budaya dan ajaran suatu agama) ketika berhadapan dengan sistem (sistem hukum nasional), bagaimanakah masyarakat melihat dan menempatkan diri mereka dalam upaya mencari penyelesaian konflik yang valid sekaligus *menjustifikasinya* dengan sistem hukum yang plural? Melalui paradigma teori tindakan komunikatif (*communicative action*) yang diancang oleh Jürgen Habermas, makalah ini mengkaji hal-hal sebagai berikut: apakah sistem hukum yang diikuti oleh masyarakat? Mengapa mereka memilih untuk tunduk pada sistem hukum tersebut? dan, Apa yang mempengaruhi perilaku hukum masyarakat yang hidup dalam kondisi sistem hukum yang plural? Pada tataran yang lebih luas, kajian antropologi hukum tidak hanya memberikan pemahaman dan penjelasan mengenai perilaku hukum suatu masyarakat, bagaimana konsep tentang hukum terbentuk, maupun tentang ada tidaknya batasan-batasan antara satu sistem hukum dengan sistem hukum yang lain dalam pluralisme hukum, tetapi juga

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<sup>1</sup> The origin of this paper bound on my master thesis in legal anthropology, which was started in the beginning of 2005 and completed in August 2006. The research itself was conducted in Betawi Muslim community of Srengseng Sawah, Jakarta Selatan.

memberikan gambaran mengenai karakteristik masyarakat yang bersangkutan dan relasi antara individu dan masyarakat.

Keywords: Legal Anthropology, Critical Theory, Legal Pluralism, Communicative Action, Lifeworld, System, Conflict/Dispute Resolution, Muslim Community, Popular Islam

## **I. Introduction**

The processes of modernity mark by the advent of a nation-state, the enactment of a constitution and its constitutional law (the Indonesian legal system), among others, quickly threatened the common use of local laws by a great variety of cultures. In the Betawi context, presumably, its folk law is threatened by the Indonesian legal system in such ways: being Indonesian citizen the Betawi are the subject of national law, moreover, people are being forced to conform to national law while at the same time their custom upholds the value of consensus; it means that the mechanism of societal arrangement in Betawi community, such as the legal settlement in interpersonal conflict, is done in a dialectical manner not under such coercive power of the state. Consequently, the people find themselves in the presence of competing norms. They learn that another normative system—the state law—exists alongside their own and in fact possesses coercive power, since it is imposed by the state. In this kind of situation, people soon learn to decide and act based on their discursive interaction with others. How then this Muslim community deploys its own mechanism in conflict resolution. It is in this context that I decided to study the practice of conflict/dispute resolution among the Betawi of Srengseng Sawah, one Muslim community in Indonesia.

This study looks into how dynamic relations of legal systems (the Indonesian law) and the blending of local values and Islamic teachings influence societal arrangements, such as the legal settlement of interpersonal conflicts. Its specific objectives are to identify the construction of the Betawi's idea of law by looking at the dynamics of the interaction between local values and Islamic teachings and their discourse on state laws, if any; determine the implications of acculturation between local values and Islamic teachings for conflict resolution; and describe the Betawi's practice of conflict resolution. However, it is not in this context that this study will evaluate the work

of law. This study does not examine how the law is enforced; rather, it describes how people articulate their idea of law.

In dealing with the issue of legal discourse among the Betawi of Srengseng Sawah, it is important to seek theories that can explain satisfactorily the people's interactive behavior during the process of settling a conflict. One of these is Habermas's theory of communicative action, which can help in understanding the intrinsic feature of action taken by conflicting parties in settling their conflict; and, to some extent, to observe the practical discourse of conflict resolution among the people.

## II. Theoretical Perspective

This article highlights the application of Habermas's theory of communicative action. As a consequence of the process of modernity, Habermas observes a dialectical relationship between system and lifeworld (1987, 155). Habermas (1991, 252) contends, system and lifeworld are "two aspects of social integration, which must be considered analytically distinct. Lifeworld is the immediate milieu of the individual social actor (private and public sphere), while system refers to the market economy and the state apparatus<sup>2</sup>. Habermas's aim in further dividing system and lifeworld, the one into economy and state administration and the other into private and public spheres, is to provide for an understanding of advanced capitalism that takes into account the increasing complexities of welfare state democracies<sup>3</sup>. According to Tuori<sup>4</sup> "Habermas based this distinction on the differentiation of social action into communicative and strategic action, as well as on the corresponding differentiation of the social and the systemic integration of society. Habermas' diagnosis of the problems plaguing contemporary society is known as the thesis of the colonization of the life-world." However, Tuori further argues that Habermas theory of communicative action could not give convincing answer to the question how lifeworld could protect itself against the imperialism of the system.

The discourse theory of Habermas looks at law as an instrument of social integration through which people learn how to settle differences in a rational manner and, in doing so, how to be fair to others. Encouraging the use of new moralities toward the respect of

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<sup>2</sup> <http://www.mala.bc.ca/~soules/media301/habermas.htm>

<sup>3</sup> <http://habermasians.blogspot.com/2004/12/lifeworldsystem-distinction-in.html>

<sup>4</sup> [http://www.holbergprisen.no/HP\\_prisen/e\\_HP\\_2005\\_vinner.htm](http://www.holbergprisen.no/HP_prisen/e_HP_2005_vinner.htm)

pluralism, this is supposed to work well in strengthening national ties and the state law. Rational discourse or communicative action serves to harmonize the interplay of customary and religious laws and lessen the expected tensions. It constitutes a practical discourse<sup>5</sup> of conflict resolution where each party recognizes what norms to follow, negotiates these norms in an open discussion with other parties, and comes up with a decision that the consequences and side effects are acceptable to all parties for the satisfaction of everyone's interests (ibid., 312).

Communicative rationality, argues Habermas (1996 cited in Huttunen and Heikkinen 1998, 311), results in the rationalization and differentiation of worldviews, which he categorizes into the social world and the subjective world. People rationalize their action because they are conscious of differentiating statements concerning the two worlds.

According to Habermas (1979, 185-187), rationality can be understood as a dialectic process between individuals (observed and observer) based on standards of knowledge whose truthfulness and validity can be challenged and open to evaluation. Therefore, to rationalize action requires mutual knowledge. It is in these terms that the process of settling conflict among the Betawi in the contemporary situation is considered as communicative action.

Habermas (1996, 4 cited in Huttunen and Heikkinen 1998) further asserts:

In seeking to reach an understanding, the participants pursue their illocutionary goals without reservations, that they tie their agreement to the intersubjective recognition of criticizable validity claims, and that they are ready to take on the obligations resulting from consensus and relevant for further interaction. These aspects of validity that under gird speech are also imparted to the forms of life reproduced through communicative action. Communicative rationality is expressed in a decentered complex of pervasive, transcendently enabling structural conditions, but it is not a subjective capacity that would tell actors what they ought to do.

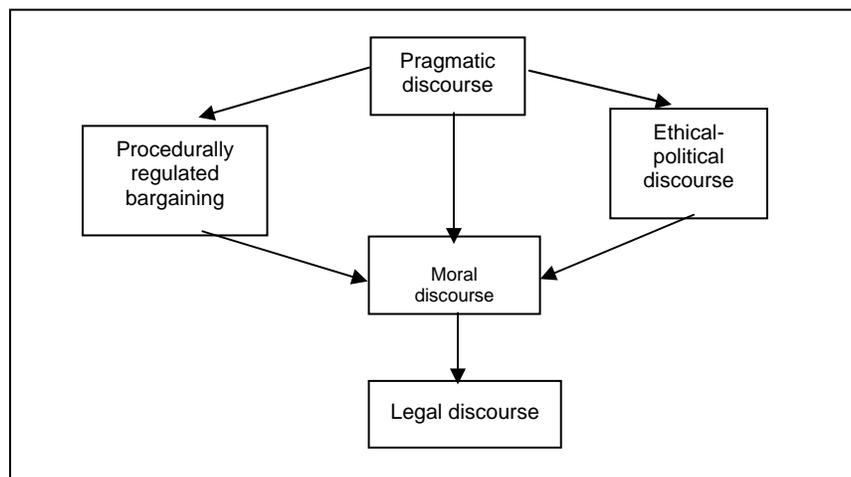
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<sup>5</sup>Practical discourse is a procedure not for generating justified norms but for testing the validity of norms that are being proposed and hypothetically considered for adoption. This means that practical discourses depend on content brought to them from outside (Habermas 1995, 103).

Valid norms are those “that meet (or could meet) the approval of all affected in their capacity as participants in a practical discourse” (Habermas 1995, 66).<sup>6</sup> The required commitment of all individuals is to the discourse of the whole community, not to a part of it or even to a committee. By this, Habermas means that in enacting laws or norms, the community as a whole holds a discourse or speaks a language shared by all. This also means that the community has negotiated all validity claims and obtained, by consensus, acceptance of the law or norm thus agreed upon.

How legal discourse is constituted can be seen in Habermas’s model of ideal rational political-will formation (see figure 1).

Figure 1  
A Process Model Of Ideal Rational Political-Will Formation



Source: Habermas (1996, 168 cited in Huttunen and Heikkinen 1998).

<sup>6</sup>Validity can be claimed in three respects (ibid., 312): (1) a claim that refers to the subjective world is valid if it is true (*wahrheit*, or truth), if it corresponds to reality; (2) a claim that refers to the subjective world is valid if it is honest (*wahrhaftigkeit*, or truthfulness), if it has an authentic relationship with the subjective world; (3) a claim that refers to the social world is valid if it does not contradict commonly agreed social norms (*richtigkeit*, or rightness), if it deals with the practical discourse.

The motivation to settle conflict is considered to be in the phase of pragmatic discourse, where conflicting parties are preparing their possible plans of action and, at the same time, estimating the consequences of such action. Since the study's premise is that the Betawi hold various normative systems, it is logical to assume that during the settlement process, there will be conflict of interests and values among the opposing parties.

Given the diversity of interests and values, the process continues with what Habermas defines as the procedurally regulated bargaining phase and ethical-political discourse phase. In the bargaining phase, the conflicting parties trade their interests fairly out of concern for a satisfactory settlement. At the ethical-political discourse level, everyone involved in the discussion is choosing, engaging, and accepting values that are worthy of united effort.

After the problem is settled, the process moves to the moral discourse level. Here, an action norm that evolved from the previous two levels has to be tested again. The purpose is to confirm that the action norm does not conflict with the demand of generalizable interest (Huttunen and Heikkinen 1998, 317). Further the author argues the process moves to legal discourse where parties other than the conflicting parties—such as legal experts—are present in order to justify norms that are compatible with the existing legal system (ibid.).

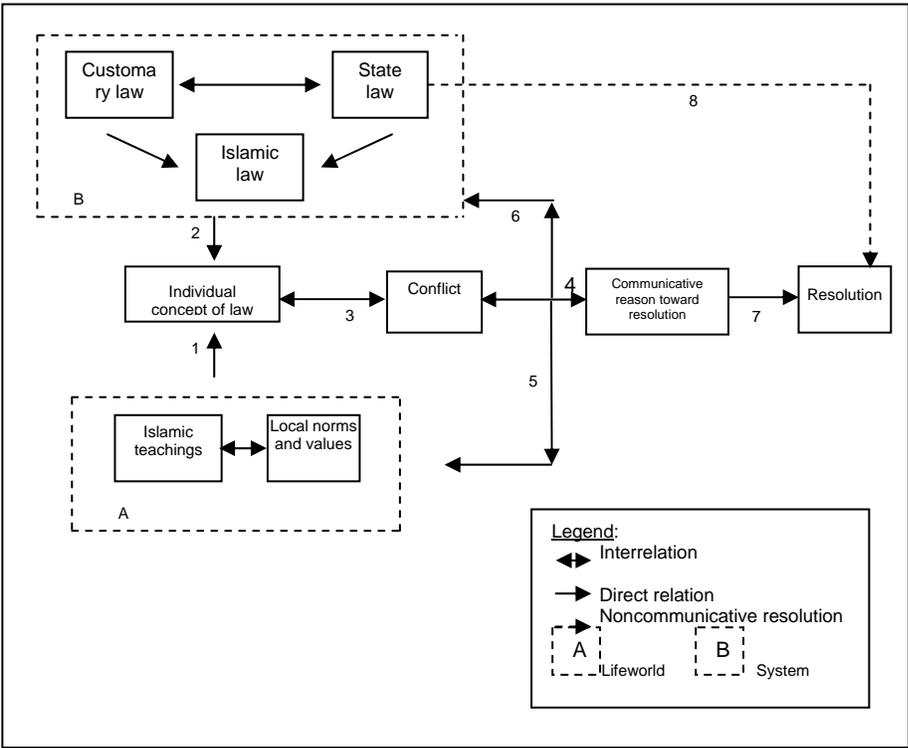
The lifeworld referred to by Habermas can be observed in the following explanations. As an ethnic group, presumably, the Betawi follow the cultural norms in dealing with the affairs of life, such as interpersonal conflicts. At the same time, the Betawi, as a Muslim community, adhere to Islamic teachings—which are based on the scriptural dogma of Islam—taking these as part of their cultural beliefs. These two elements of local values and cultural beliefs constitute Habermas's category of lifeworld. Here, the people develop their meaning of law, or their emic perspective of law, in which they understand all forms of the legal system as part of their lifeworld.

The Indonesian state law, Islamic law, and customary law comprise a system, based on Habermas's category. To relate it to Habermas's discourse analysis, the study identifies the Indonesian legal system as a "foreign culture" that has been brought to them from the outside. What makes this legal system interesting is that it recognizes the western-influenced state law and, at the same time, the law derived from the people's lifeworld (customary law). This can be seen, for

instance, in the creation of the religious court, which is an attempt of the Indonesian legal system to modify Islamic law into a state-administered law. The Indonesian legal system, considered as a system external to the people, is understood differently at the local level, however.

Owing to the different perspectives of the law between the community and the state, how do people apply their understanding of their lifeworld, given the state-administered legal system in the context of conflict resolution?

Figure 2  
Analytical Framework



The analytical framework of the study, as shown in figure 2, illustrates the Betawi's practical discourse of conflict resolution. This study assumes that when a Betawi is in a conflict situation, he or she uses communicative action to arrive at a satisfying resolution. The

dialectic process of this mode of action was observed using the analytical framework. Box A represents the lifeworld (interaction between local values and Islamic teachings) while Box B represents the Indonesian legal system (interaction among state law, Islamic law, and customary law). Arrows 1 and 2 stand for the interaction of system and lifeworld in the Betawi's concept of law.

Throughout these interactions or conflict (arrow 3), the Betawi attempt to settle the conflict by negotiating their own interests in a process of communicative action (arrow 4). At this level, they observe their lifeworld (arrow 5), employ their knowledge of the law, and search through the available procedures provided by the Indonesian legal system (arrow 6). This process of communicative action will result in a resolution based on consensus (arrow 7). It is important to note that in some cases, such as criminal cases, no communicative action to resolve the case can take place, given the coercive power of the state to enforce the state public law (arrow 8).

### III. Methods

The study is an ethnographic study about the practice of conflict resolution among the Betawi Muslim of Srengseng Sawah. The study uses the case study method focusing on the Betawi practice of conflict resolution. The data derived from the cases are gathered through qualitative research method and subject to narrative analysis and are presented in descriptive form. To understand the legal behavior of an individual when settling a conflict, the study employs a combination of normative and processual analyses. Normative analysis orients the researcher to observe the way parties in a conflict perceive and use norms as a basis for negotiation in the course of conflict (Rouland 1994, 41). Processual analysis orients the researcher to observe how norms or rules are applied, ignored, or violated (ibid.).

Owing to the lack of statistical data on local disputes, this study presents actual cases.<sup>7</sup> The cases below were studied during the data-

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<sup>7</sup>To protect the identity of the informants, they are assigned fictitious names in this study. After each case description, the researcher identifies the type of settlement being used and the supporting behavior approved by each legal system.

gathering period from August to December 2005, and the following cases description is based largely on interviews with the informants.

## **IV. Findings**

### **IV.1 The Research Setting**

Given their cultural-geographical conditions, contemporary religious life, government administration, social activities, and socioeconomic and demographic characteristics, the Betawi of Srengseng Sawah can be considered as an ethnic melting pot, consisting of the local Betawi, newcomer Betawi, and newcomers from other ethnic groups. It can be said then that the process of negotiation within the Betawi culture is still taking place.

### **IV.2. The Cases**

#### **IV.2.1. The criminal case**

The drug user's case has two parts. One story completes the other. The first story was told by Jul, a former RW head; and the second by Dulah, an RT head.

##### **Story 1: The drug user's case**

Jali, a teenager around 15 years old, is known in the community to be a quiet, ordinary boy. One day, the district police came to his house to arrest him for suspected drug use. Accompanied by the RT head, they also raided the house looking for evidence (in this case, marijuana). This procedure was legal, since the police had a warrant of arrest issued by the municipal court to show to the family. The police claimed they found an evidence so they had to bring Jali to the district police post for further investigation.

Some moments after that, Mat, Jali's father, told Jul about the raid and the arrest of his son. He wanted to have his son released but did not know how. Jul advised him to go to the police post to ask about the procedure for release. He accompanied Mat to the police post because he felt it was his duty as a member of the community, especially being a former leader.

At the police post, Jul spoke on Mat's behalf. The police explained to them that Jali's status was still that of a suspect but not yet of the accused or defendant. This meant that the case was still under investigation. Jul asked how the boy could be released. If Jali would be set free temporarily while the police were doing their investigation, Jul offered to watch over the boy and to act as his guarantor.

The police informed them that Jali could be released upon payment of a bail amounting to one million rupiah. They told the police they would collect the money first and then return to the police post to release Jali.

On their way home, Jul told Mat not to worry about the money because he would lend him the needed amount. He also said he would help look for other options, like finding a "connection" within the police force. Jul thought that having a connection would be favorable for the case, at least in negotiating the amount of the bail. He asked Mat to go home while he looked for a connection. His efforts yielded results on the fourth night, when he spoke with a colonel in the police force. He narrated to the officer Mat's plea to have Jali released from jail and his lack of money to pay the bail. The colonel promised he would ask the police officer if it was possible to reduce the bail. Although the colonel assured Jul that there would be a "discount," the final amount was yet to be decided. He told Jul to go to the police post the next morning with the payment.

The next day, Jul brought the money, along with Mat, to the police post. They approached the officer's desk and were welcomed by the same officer from the previous day. Jul informed the officer that they already had the money, but before giving it, he mentioned the colonel's name. The officer said that the colonel had indeed called the post before they arrived. He added that Jul had to pay only half of the bail amount, and then they would release Jali. Jul and Mat were glad at what they had heard. After Jul paid the bail, amounting to Rp 500,000, the officer issued them a receipt and asked them to fill out a form. Upon completing the form, Jul and Mat waited for Jali at the lobby.

Days after Jali was discharged, Jul ran into Mat somewhere in the neighborhood and asked how Jali had been coping after the incident. He requested Mat to tell Jali to come by his house, as he wanted to have a conversation with the boy. Jul

waited for days, but Jali never showed up. When he went to Mat's house to find out why, he learned that Mat had told Jali of Jul's desire to speak with him. Mat also did not know why Jali never went to Jul. He told Jul that after the incident, Jali became quieter. If not in school, Jali spent most of his time in his room.

In story 1, the conflict is between the state (through the law enforcers) and Jali, which arose from police suspicion that Jali was using drugs and thus violated the state law. From the state's point of view, social life is governed by rules and conformity to these rules constitutes normal behavior. Any action that is in violation of these rules (considered as pathological behavior) generates conflict between the state and the wrongdoer. The trouble created by Jali's alleged offense also had an effect at the micro level (community life), since the whole community was put to shame owing to the violation committed by one of its members. And even after he was released from the police post, Jali appeared to still be in trouble with the community, as represented by Jul, after ignoring the RW head's invitation to a dialogue.

The nature of the case is under the domain of public law, especially state criminal law. Believed to be a drug user, Jali was suspected to have violated Undang-Undang Psikotropika (UUP), or the state drug law. Consequently, the police enforced legal procedures as stated in Undang-Undang Hukum Acara Pidana (KUHAP), or the procedure of criminal law. As I observed, the police actions during the raid followed the process of the state legal system, such as giving an official statement to the parents of Jali to explain the legal basis of the raid, having the RT head in tow, issuing a warrant of arrest, and arresting Jali.

On the part of Mat and Jul, their efforts to have Jali released from jail were in accordance with the procedures provided for under the KUHAP. Some of their actions, however, were no longer under KUHAP rules, such as utilizing Jul's social network to establish a connection with the district police. Jul was convinced that having a connection with a higher-ranking police officer would be advantageous to their negotiation for Jali's release. The reduction of the amount of bail payment proved Jul's contention.

For the district police, Jali's case was settled upon releasing him from jail, but for the community, Jul saw the need for follow-up action. He was afraid that the case would cause unrest within the community, so as a former RW head,<sup>8</sup> he requested Jali to come to his house for an informal talk. Jul wanted to show the people that Jali was under his supervision and guidance, thinking that this would prevent Jali from being "exiled" by the community. It was at this point that Jul (as the local leader) considered Jali's trouble with the district police as a conflict between the community and Jali. The boy, however, did not give in to Jul's request, and there was nothing that Jul could do to alleviate the disturbance in the community that had been caused by Jali's arrest.

It may be noted here that I was not able to observe Jali's behavior before and after the case. There were no available data which could explain Jali's failure to drop by Jul's house or why he became more quiet after the arrest. I assume that either Jali had been given a social sanction, which led to his current behavior, or the parents of his friends in the community had forbidden their children from befriending Jali after the arrest.

Another important observation pertains to the process of arriving at the legal decision that was never completed in this story. If Jul and Jali's family did not pay the bail to release Jali from the district police post, the case would probably be filed at the municipal civil court (Pengadilan Negeri Jakarta Selatan) and Jali would be either convicted for drug use or cleared from the accusation. The intervention to bail out Jali influenced the way the case proceeded. Until I arrived in the village, the case was under investigation by the district police.

The conflict between the police and Jali was settled under civil law procedures, as indicated by the use of monetary settlement to release Jali from the district police post. However, the settlement itself is temporary, since the case is still being investigated by the district police. The mediation of the community leader in the case was expected, since Jali's misbehavior was a violation of customs, resulting in a conflict between the community and Jali.

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<sup>8</sup>The state (village government level) recognizes the tasks and authority of an RW head as the same as those of a community leader.

The second part of Jali's case provides another insight on how the case had affected community life.

**Story 2: The drug user's case**

One day after Jali was released from the district police post, Dulah dropped by Mat's place, asking about updates on Jali's case. Mat told Dulah that Jali had been discharged after the payment of bail, but the police would still keep watch over him until the investigation was over. Dulah then asked Mat to call Jali so he could meet the boy.

With Jali sitting next to his parents, Dulah spoke to the boy in two ways. First, as if he were Jali's father, Dulah just asked him to be a good boy and to obey his parents. He reminded Jali that parents make sacrifices for their children so children have a moral obligation to show gratitude to their parents through obedience. Dulah also reminded Jali that as a Muslim, to go against one's parents is a form of ingratitude, and that this behavior is punishable by an inevitable supernatural sanction.

Second, as the RT head, Dulah requested Jali to be a good member of the community, to respect the community norms and values, and to participate in maintaining peace and order. Again, he reminded the boy that a Muslim has to respect his or her community. By committing a breach of norms and values, Jali disrespected the community as a whole. Dulah further pointed out that instead of helping maintain peace and order, Jali's action brought harm and shame to the community. Jali thus had to show his remorse by consenting to community norms, and avoiding such forms of misbehavior.

In response, Jali said that he would obey his parents and that he would no longer put the community to shame. Before leaving, Dulah informed Jali's parents that he would be making regular visits to their home to monitor the boy.

In this story, the conflict is between the community and Jali. Although it is clear that Dulah considered Jali's case as a breach of two legal systems—state law and customary law (community norms and values)—he did not attempt a further involvement in the conflict between the state and Jali. He was present only during the raid at Jali's house because, as RT head or government representative in the village, it was his obligation to enforce the state law in the community. The

writer, however, was unable to find out the reason for his absence during the procedure after Jali's arrest.

Dulah considered Jali's release as a sign that his offense against the state law had already been settled. However, similar to the reaction of Jul in story 1, Dulah knew the effect of Jali's case on the community. Violation of the state law by any member of the community humiliates the community and upsets communal harmony. Accusing Jali of breaking the custom of maintaining peace and order in the community, Dulah saw the need to speak with the boy to alleviate the unrest his arrest had caused. He gave the boy a harangue on Islamic teachings to remind him of his Muslim obligations. This is necessary because the community itself is characterized as, first, a community of Srengseng Sawah, which means that its structure relies on shared norms and values; and second, as an *umat Islam* (Muslim community) founded on a common faith (*iman*). Failure to comply with Islamic teachings is considered as disrespectful to the entire community. Dulah reiterated to Jali that this would result in either a supernatural punishment or a social sanction. As an RT head, he was obliged to do this to ensure harmonious and close relationships among people in the neighborhood.

It is apparent that two legal procedures were followed in this story. One is the civil law procedure, which the police applied in arresting Jali. This involved Jul, being the RT head. The other is the customary law procedure based on Islamic teachings, which Jul employed when he confronted Jali about his misbehavior toward the community.

#### **IV.2.2. The scandalous display of affection**

The people of Srengseng Sawah saw a consistent influx of visitors after the establishment of a tourist spot in the area. To ensure that there would be no violation of local norms and values, community leaders instructed the community to watch over the visitors' activities and anticipate any violation of local norms and values, especially since outsiders are not familiar with these.

The case below shows how the people handled the transgression of moral values by outsiders, as narrated by Dulah, the RT head, during an interview with me.

### **Story 3: the scandalous display of affection**

A couple visited Situ Babakan Lake. Clearly, they were outsiders because nobody in the community knew them. The local youngsters noted the couple's tendency to display physical intimacy in public, so they agreed to watch over the couple discreetly.

Some time during the day, these youngsters were walking near the banks of the lake and saw the couple having sexual intercourse. They shouted, calling the attention of the other people in the community. Soon a crowd arrived in the area, demanding punishment for the couple.

Dulah, who lives nearby, came to handle the situation, afraid that the scandal would cause social unrest and the group of youngsters would do something out of the boundaries of the law. Dulah asked the crowd to calm down and promised to deal with this scandal. He assured the people that the accused, having broken the local norms, would be punished as long as the people would not do any action not permitted by state law.

Dulah then asked some men in the community to secure the accused in a house nearby. Then he held an ad hoc committee session to handle the case. Being the RT head, Dulah presided at the session. First, he gave a brief background on the incident to explain why there was a need for such a session. He asked the young witnesses to explain their claim. The leader of the group spoke, saying that they had been suspicious of the couple since they arrived in the area and agreed to watch over the couple. Hours after that, they caught the couple having sex by the lake. Hearing this, the crowd cursed and demanded in a loud voice to punish the couple for offending the community.

Dulah asked the crowd what kind of punishment would be appropriate for the couple. Most of the people believed the offense was commensurate to the strip-off punishment. Only a few people did not agree, seeing this type of punishment as barbaric. Considering the preference of the majority, Dulah made the decision to impose the strip-off punishment. This was final. The couple was asked to remove their clothing and parade around the community area. They vowed to never return to the village. Then they were allowed to go. Nobody was permitted to bring up this case again, since the breach had been remedied by the execution of punishment.

The nature of the case is under the domain of public law, especially the state criminal law. According to Undang-Undang Hukum Pidana (KUHP), or criminal law, moral transgression is a crime and the violators shall be punished. Thus, the case was supposed to be settled through criminal law procedures (KUHAP). But instead of reporting the case to the district police post, the people of Srengseng Sawah enforced their customary law to settle it. They agreed not to bring the case out of their village.

At the session, the RT head, who was presiding, persuaded the people not to take any action outside the law. What ensued was a deliberative discussion where the head of the session let the assembly make the decision on how to settle the case. The influence of Islamic teaching is manifested here, as the head of the session asked the complainants/plaintiffs (the group of youngsters) to state their accusation, their supporting arguments, and evidence. In Islam, if one accuses another of conducting an immoral attitude (lewdness), the plaintiffs are required to bring in four reliable witnesses. If they fail to provide the evidence, they have to withdraw their complaint. This also means the plaintiffs have committed slander against the accused, which is considered as a sin in Islam.

Looking at the story, two legal systems seem to have been applied. The ad hoc committee session was conducted under the procedure of Sharia (Islamic law), while the mode of punishment was based on ancestral practice. Islamic teachings greatly influenced the ad hoc committee in deciding on the kind of punishment for the couple.

#### **IV.2.3. The domestic affair case**

Of several domestic affair cases told to me, only two were considered for this study. The first was told by the ustadzah Nundun, while the second was narrated by Jul, the former RW head.

##### **Story 4: The jealousy case**

Several months ago, a woman who was around 30 years old visited Nundun. Crying, she told Nundun that her marriage was in trouble and requested the ustadzah to teach her a particular *doa* (prayer) and to give her *air* (blessed water) to restore the harmony in her marriage.

Her husband did not trust her, and was accusing her of having a relationship with another man. The woman explained that she did have a lot of friends, both men and women, because she needed to maintain good relationships with her colleagues in her workplace. Her husband was unemployed, having been fired from his previous job two years earlier. So the woman was the one working for the family. She claimed that their married life was happier when her husband was still working.

The couple do not have a child yet. According to the woman, they have been trying to conceive, but to no avail. Saddened by her situation, she told Nundun that what she wanted at that time was to save her marriage.

Nundun advised the woman to be patient, to pray to Allah to help her, and to keep her faith in Allah because He knows what is best for His creations. Nundun also taught her the doa to be recited after the prayer (*shalat*). She asked the woman to give the air to her husband, and to tell her husband to see Nundun alone during his free time. After that, the woman went home.

Days after the woman's visit, her husband came by Nundun's place. He already understood why the ustadzah had asked him to come. He explained why he became jealous, saying that he did not like his wife to be so friendly with men whom he did not know. He also admitted to be embarrassed by the fact that he did not have a job. He said he had been looking for a job, but no company would hire him. He was feeling desperate about his situation.

Nundun told the man that a Muslim should be patient and have faith that Allah would always protect His good creations. As long as a Muslim tries to achieve His goal and always remembers to pray to Him, Allah would always protect him or her. Nundun also taught the man the doa, but did not give him the water. After that, he went home.

Months have passed and the couple, now seemingly happy, still visit Nundun. The woman is already four months pregnant. She and her husband are grateful to Nundun for helping them save their marriage.

In this story, the case was within the domain of scriptural law, specifically Islamic marriage law. Had the couple wanted to bring the case out of the private domain, they would follow the procedure under

the Islamic legal system recognized by the state and file the case at the municipal religious court. However, instead of doing this, the complainant (the wife) sought assistance from an ustadzah, who then took on the role of mediator.

This mode of settlement is a mixture of Islamic law and customary law. The mediator applied a great deal of Islamic teachings in the way she persuaded and counseled the couple. Interesting to note is the use of spells, with the request of the woman to be taught and given a particular *doa* (prayer) and *air* (blessed water) to save her marriage. However, unlike the Islamic practice in which the presence of all parties concerned is required during the settlement process, in this case, the husband and wife attended the sessions with the ustadzah separately. The influence of culture on the modes of conflict resolution was intense in this story.

#### **Story 5: The divorce case**

When Jul was still the RW head, a woman visited him, asking for a letter of endorsement from the community and village officials to file for a divorce at the religious court. She then spoke about her marriage issues, and expressed her desire to be divorced from her husband, accusing him of having a sexual relationship with another woman.

Jul asked the woman about her husband's attitude. She admitted that her husband remained kind to her, and that she never experienced any abuse from him throughout their married life. She felt some changes in her husband, however, suspecting that he no longer loved her. Jul then probed about their financial condition. The woman said that nothing had changed, except the passion between her and her husband.

After hearing the problem, Jul asked the woman to try and solve their problem first. He told her that the Betawi people shun divorce, and that Allah does not like His creations to be divorced. He advised her to be cautious in accusing her husband, as she could be charged with slander—considered as a sin in Islam—if she was mistaken. Jul refused to issue endorsement letter at that time but promised the woman that he would help her save her marriage. He assured the woman that he would talk to her husband about her feelings and her speculations. The woman was silent as she listened to Jul's advice. Before she left, Jul reminded the woman to ask her husband to see him.

Days after the woman's visit, her husband came to Jul's house. Jul then informed him about his wife's suspicion, and her feeling that he had been neglecting her. The man just kept silent. He did not respond to any of Jul's questions. Jul said that if his wife's accusations were not true, then he should just tell her so. He also advised the man to be more attentive to his wife if he wanted to save his marriage. Not long after that, the man went home.

Until the end of Jul's term as RW head, the couple did not come to his house again. Jul believes they have resolved their issues. They still live under the same roof. Jul, in fact, met the couple just recently, and they seemed to have no problem.

Similar to the fourth story, the nature of the case is within the domain of the municipal religious court. The wife wanted to file a divorce from her husband, so she sought a letter of endorsement from the RW head, which was a requirement of the municipal religious court.

However, instead of giving the woman an endorsement letter, the RW head tried to forge an amicable settlement between the couple. As an RW head, his duty then was to maintain a harmonious and close relationship among people in the neighborhood. Had the woman filed her case at the municipal religious court, it was possible that the court would grant her petition for divorce. To some extent, this outcome would adversely affect Jul's community. Being a community leader and a Muslim, he did not want that to happen. To avoid the potential unrest in the community, Jul mediated in the case even if the complainant had not asked him to. The mode of settlement undertaken by Jul is similar to that carried out by the *ustadzah* in the fourth story. What makes it different is the intersection of rules from Islamic teachings, customary law, and state law. As described above, the cases were resolved by applying customary laws that are greatly influenced by Islamic teachings.

#### **IV.2.5. The discord between neighbors**

##### **Story 6: The ruined garden**

Rokayah, a member of the community, had a disturbed relationship with her immediate neighbor. A year ago, she sold a small portion of her land located right next to her house. This area did not include a portion of the pathway going

toward the land. Not long after the sale was closed, the buyer, Kerta, started to build their own house on the land. He asked permission from Rokayah to let the truck carrying the construction materials use her pathway to get to his lot. Rokayah, out of good will to her neighbor, agreed. However, in the process, Rokayah's garden was damaged. Kerta promised to fix this. Rokayah waited until after the construction and Kerta and his family's transfer to the new house, but he did not show any attempt to keep his promise, or at least explain his lack of action. Rokayah, instead of confronting Kerta about this, consulted an ustadzah who then advised her to be patient and give in to Allah's will. Rokayah ended up repairing her garden.

Rokayah could have brought her grievance to the municipal court, since this was a private case that was subject to public laws, yet she chose to seek the advice of a religious teacher. Obviously, she did not want to bring her issues to the public domain and preferred to adhere to Islamic teachings in resolving her conflict.

The mode of settlement involved a dyadic relation between the two parties. The resolution itself is interesting to note, for this was undertaken by Rokayah without the involvement of Kerta. The influence of Islamic teachings on the local people's ways of handling daily conflicts is reflected in this case.

Looking back at stories 1 through 6, the writer believed that the mode of conflict resolution is influenced by the interplay among rules from Islamic teachings, customary law, and state law. Then again, the degree of the interplay of those legal systems differs from one case to another.

## **V. Analysis**

Using Habermas's model of ideal rational political-will-formation, the writer analyzed the people's behavior as the cases progressed, that is, from the time the case was established until it was settled. The Betawi of Srengseng Sawah perceive conflict as an inconvenient situation caused by a disparity between expectation (constructed based on their knowledge of norms derived from different legal systems) and factual event (conflict of interest). Given their community value of keeping a balance between different interests in

order to achieve communal harmony, they believe that resolution of conflict requires individual immediate action.

The rationale for consenting to any particular legal system in solving conflict is based on the dynamic interaction between the Betawi's lifeworld (interaction between local values and Islamic teachings) and system (Indonesian legal system). When in a conflict, ideally, the Betawi custom encourages the people to arrive at a settlement without confronting the other party. Emphasis is placed on the communal interest, which is to maintain social harmony. To uphold the communal interest, the individual is subordinated to the community. This is similar to Mulder's observation that the structure of society has influenced the Javanese mechanism for reducing social unrest. At the same time, as members of a Muslim community, the Betawi adhere to Islamic teachings in going about their social relationships.

As people are faced with competing norms, they become aware of the distinction between their facticity (social facts embodied in the law or norm) and validity or legitimacy (Habermas 1996 cited in Huttunen and Heikkinen 1998). Simply stated, the pluralism of legal systems has provided the people with more options to resolve conflict. Although to some extent the justified norms within the three legal systems are unquestionable, people start to evaluate the validity of their options.

This behavior is an influence of customary law, which by virtue of its source of recognition "is not caused by some power of strong individual or institution to it but rather to individual recognition of the benefit of behaving in accordance with other individual's expectations (Benson 1990, 27). This pragmatic behavior developed the people's capability to consent to commonly shared norms that have become a collective agreement. At some length, collective agreement binds those affected by it (Fuller 1964 cited in Benson 1990, 26), but, to refer to Bowen (2003, 254), only power is able to shape the outcome of conflict resolution, either in the form of threat (from the policeman, the RT or RW head) or rhetoric (through a harangue on Islamic teachings from the local leaders). Power may develop from a casual conversation to a greater degree of convincing others to consent to mutual interest. This explains the emergence of the role of local leaders (the RT or RW head and the religious Islamic teacher) in conflict resolution.

Perhaps the best way to understand the rationale of the pragmatic behavior of the people during the process of conflict resolution is to put it at the level of the interplay between the lifeworld (interaction between local values and Islamic teachings) and the Indonesian legal system. The interface of the lifeworld and the norms of the three legal systems is their source of knowledge that enables them to participate actively in the process of conflict resolution. Thus, they are able to rationalize their action and strategize it in order to attain a win-win resolution. To illustrate, a Muslim who is involved in a conflict observes the ideal behavior, which is to go back to his or her *fitra* and, at the same time, observe his or her position in the order of things in the social and subjective world (Habermas 1996 cited in Huttunen and Heikkinen 1998, 311). Looking at the Muslim practice of conflict resolution, it can be said that ideas, norms, and interests shape the people's actions.

One consequence of the observance of pragmatic behavior is the Betawi's infrequent use of civil litigation to settle conflict. As showed in findings section, most cases, whether public or private, were resolved through mediation. This does not mean, however, that they do not utilize the state law in solving their conflicts. Perhaps they want to avoid hiring a lawyer, since this means more expenses. Moreover, the setting of the court, which entails face-to-face confrontation, to some extent, contradicts with their culture. Culture has a strong influence on the people's tendency to avoid confrontation. Although the customs encourage the immediate resolution of the conflict, it demands, at the same time, people's adherence to maintaining communal harmony. The people validate their behavior toward the justified norms by using a combination of customary law and Sharia. State law is avoided, since it involves litigation procedures in a court. This practice can be observed in both private cases (stories 4, 5, and 6) and public cases (story 3).

Looking at their manner of conflict resolution, the Betawi of Srengseng Sawah have developed particular concepts of law. Here, the discourse of law is considered as part of social control (Black 1976,2) or, to refer to Habermas (1998), "...as social mediation between facticity and validity." The people's observance of the law is influenced by four major factors: their condition as Muslims; the value of maintaining communal harmony, which is manifested in one's expected behavior during conflict resolution; the value of reciprocity and consensus; and personal reasons conditioned by the first three factors.

These are important elements that configure the community legal discourse in the absence of a substantive agreement among the people. This implies a dynamic understanding of law and the fluidity of legal concepts at the local level.

The use of social control in all case studies meets Black's categories or styles of social control (1976, 4). The remedial style, which places emphasis on ameliorating a bad situation and not on winning or losing, is manifested in the settlement of private cases (stories 4, 5, and 6), and. As prescribed by custom, a Muslim during conflict should maintain pious behavior. He or she is encouraged to respect the offending party by giving the person a chance to air his or her argument. Clearly, customary law favors consensus in resolving conflict. Only when the resolution is accepted by the two parties involved can the personal sense of justice be attained.

The accusatory style of social control applies, although partly, in the settlement of public cases (stories 1, 2, and 3). The moderate application of this style, that is, only to the penal type, is related to the value of maintaining balance to achieve communal harmony. One who has violated community norms and values is forced to accept the corresponding penalty decided by the community. The compensatory style, in which the offending party is an active participant in identifying the corrective action to restore or create a new status quo, is not typically applied by the Betawi of Srengseng Sawah.

The practice of social control in conflict resolution by the Betawi of Srengseng Sawah reflects the character of a relatively nonaggressive community. Presumably, the lifeworld has a significant influence on the way people apply the Indonesian legal system in conflict resolution. This is supplemented by the nature of internal relations within the community, where the individual is subordinated to the community. Furthermore, being Indonesian citizens, the Betawi of Srengseng Sawah are theoretically subordinated to the state, as manifested in the presence of the state's law enforcers in the community.

Looking at the Betawi practice of conflict resolution, it can be inferred that the lifeworld is developed through communicative action. The interaction between the legal system (as an external factor) and lifeworld (as the internal factor) is dynamic, where the integration of the Indonesian legal system into the lifeworld takes place at the same time

that the people redefine the system based on their lifeworld. Thus, it cannot be said whether the enactment of the Indonesian legal system in the Betawi's lifeworld is entirely negative or positive. Inasmuch, the thesis about system's colonialisation to the lifeworld cannot be proven in this study. The dialectical relationship between the two elements implies the capacity of the local people to negotiate power relations with the state. The avoidance of consenting totally to state law can be seen as their attempt to reduce the coercive power of the state over the community.

## **VI. Concluding Remarks**

### **Boundary among the three legal systems?**

The case of the Betawi of Srengseng Sawah shows a difficulty in identifying the application of a single legal system within a legal pluralistic condition. In Indonesia, the legal pluralistic condition has been an indispensable part of the macro-legal system and facilitates the dynamic interaction between fact and norm within the discourse of law.

Presumably, in the Srengseng Sawah context, people do not consider the three legal systems as plural or even complementary. Instead, they view it as a single entity which consists of several types. Consequently, no particular legal system has a dominant role over the others. To borrow from Bowen, "What formally appear as distinct sets of norms . . . in practice shape and reshape each other" (2003, 257). Among the Betawi, the interaction among the three legal systems is dynamic and responsive to the current social condition.

From the cases presented, it can be inferred that the Betawi's practical discourse of conflict resolution is one of "encompassing pluralism." It is transnational, being part of a worldwide umat Islam; national, as the Betawi share the barest elements of citizenship with their fellow Muslim Indonesians; and local, since the Betawi customs are distinct from those of other ethnic groups in Indonesia.<sup>9</sup>

With respect to pluralism, Habermas's (1996 cited in Huttunen and Heikkinen 1998) discourse theory has satisfactorily explained how people perceive the law (in many figures) as an instrument of social

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<sup>9</sup>Slight modification of the theory of Bowen (2003, 254).

integration in which they learn how to settle differences in a rational manner and how to be fair to others. Habermas's theory of communicative action helps in understanding the coexistence of system and lifeworld in the Betawi of Srengseng Sawah community. To some extent, it also helps in comprehending the interaction within the lifeworld itself.

### **The evolution of customary law and its diverse interface with the Sharia**

The interaction among the three legal systems is dynamic and responsive to the current social condition. The Betawi tend to resolve the conflict by rationalizing the use of customary law (particularly the value of communal harmony) and, at the same time, by being pragmatic to their situation as followers of Islam (Muslims). This phenomenon can be observed in the cases, except story 1: the harangue given by the RT head to the offending party during their meeting; the conduct of an ad hoc committee session to settle the moral transgression committed by the couple; the request for religious elements, such as doa and air, to save one's marriage; the quasi-meeting to reconcile a couple who are about to divorce; the sharing of disturbed feelings with a religious teacher; and the avoidance of face-to-face confrontation.

The cases also show the intersection of customary law and Islamic legal tradition. In story 5, the local leader (the authority) cautioned the woman (plaintiff) about accusing her husband (the offending party) of having an affair without enough evidence, as this is against Islamic law. Moreover, he advised the woman to give her husband a chance to explain his position. This is consistent with the value of protecting communal harmony in customary law. In addition, local customs promote close social and religious relationships, especially within the nuclear family, and consider divorce as a taboo. Islam permits divorce on certain conditions but does not encourage it.

Another angle of such intersection can be seen in the preference of the Betawi to resolve private or domestic conflicts through separate meetings of the mediating authority with the plaintiff and the offending party. The purpose of these "quasi-meetings", since these are held at different times and perhaps in different places, is to uphold the local custom of avoiding confrontation to maintain communal harmony. The

intersection with Islamic legal tradition emerges in the requirement of evidence to support one's accusations against another.

In story 3, the intersection of customs and Islamic legal tradition was apparent in the discussion of the assembly on the mode of punishment to be given the scandalous couple. The preference to have the interest of the community represented in the process of conflict resolution implies the Islamic value of strengthening the unity of the community. Stripping off clothes and then parading naked in the community as a form of punishment are considered by the Betawi as commensurate to the scandal committed by the couple, just as stoning to death and lashing are accepted forms of punishment in several Middle East countries.

Looking at the thread of the cases, it can be said that, among the Betawi of Srengseng Sawah, customs, particularly through the value of reciprocity, provide the people with a basic reference for negotiating other legal systems. Either in public or private cases, the first party studies the justified norms by locating himself or herself in the context of his or her belief and religion, validating it with customary law, and developing a pragmatic behavior in which state law becomes dispensable, to arrive at a satisfying resolution (compromise). In the practices of the Betawi, rigorous efforts to apply Sharia in resolving a conflict will allow the evolution of customary law within the community.

Within the macro context, the changes in Indonesia's political system brought about by the fall of the New Order may have influenced the people's concept of law and how they implement it in daily life. According to Bowen,

. . . Adat's residual purchase in the local courts may turn out to have been the foundation for a more internally varied legal system in twenty-first century Indonesia. As districts and provinces [in Indonesia] attempt to rebuild political life around new ideas of autonomy and local control, they could draw on the histories of legal interpretation in their local courts . . . (2003, 257)

Moreover, with the advent of the conservative Wahhabi or Salafi (an Islamic reformist movement which maintains that legal decisions must be based exclusively on the Qur'an and the Sunnah) influences in the past few years, one can detect elsewhere in Jakarta,

West Java, and Nangroe Aceh Darussalam (then Aceh), Sumatra, to mention a few, a greater push toward a more strict application of Islamic law. Accordingly, the reformist ulama preaches openly against the use of “adat” and related customary laws and wants to ban these from the regular discourse that surrounds any conflict resolution. How far this will impact community legal discourse and settlement behavior, no one can tell, yet. But the dilemmas this tension between religion and culture are creating remain an area for further research. It would be interesting to know how such an evolution takes place. What this does to traditional culture and its legal ways should be of interest to future researchers.

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