

# Study of sociology of law in Indonesia

## Abstract

This article is the result of research which aims to explain the importance of study about sociology of law. The rapid development of society can lead to problems in life. The demands of a practical interest must be immediately fulfilled by human beings. Therefore, the development of sociology of law as a discipline of law that is closely related to real life in society becomes an urgent role. There are various problems in social relations that require the role of the law to solve them. Seeing how the law of life and development in society becomes important in the science of law, because law and society can not be separated. The research method used is literature study with philosophical approach. From the results of research shows that the study of sociology of law is very important to see and understand the law in real life in society. The method of generalized inductive reasoning becomes the sociology of law to gain an understanding of it and its practical value of use makes sociology of law a legal discipline that can follow the realities of the times.

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## Introduction

Law, based on sociology of law perspective, is not a neutral and void phenomenon, which seems to be the result of free analysis of the human rational mind but law is much germane to social issues. Legal aspects can be explained with social factors to explain the legal relation with the society and vice versa. Social factors can also be related to legal aid. Since law is made for society, law is much influenced by social interaction. Various society impacts become the major factors of what is written in law. Understanding law as part of society behavior is a theory of legal sociology that is based on social sciences.

The idea of law as an socio-reality that lives and develops in society as in legal sociology theory is still used as one of the legal disciplines in Indonesia. Indonesian diverse society that promotes the study of customary law supported by the theory of legal sociology makes it important and has a strategic role to capture the reality of law in Indonesia particularly in lower classes. Since there are some laws that do not conform to the existing legal realities in society, so that this becomes a legal issues. Often customary law or legal sociology theory resolves several legal cases, so this legal thought has significant benefits in supporting legal development in Indonesia.

Sociology of law perspective that understands law as a living and developing law in society can reveal what is apparently behind the behavior of society, so that it can be used to understand society law that has been ruled. It is used to get a complete picture of the correlation between particular purposes and all values held and believed by the society. Values and purposes are reflections or ideologies that are followed by society in all aspects of life such as political, economic, religious, social and cultural aspects that color and characterize for society. The object of legal study that lives and thrives in society such as studying the steady activities of certain communities especially the livestock traders, that is, the livestock traders always sell their goods only every once in a week in the same market. Another example is customary law, resolving social conflict through deliberations that are attended by formal officials and informal leaders such as *kiayi* or experts in society; how the deliberation process is conducted with formal and informal leaders in making decisions, and whether the

decisions that have been taken are binding and obeyed by the whole community.

The legal study actually emphasized more the role of sociology of law in drafting law based on society purposes. Although normative positivistic law persists, its existence is used to fulfill the sociology of law aspirations that cannot be formally realized in the national legal system. In this perspective, law is understood not only for the law, but also for the law for society. The thought of a transformative law that sees positivistic normative laws that must conform to social reality in society is a form of contemporary development of the sociology of law. It is such what Donal Black said that it is time for the people to see changes in law, how law is well regarded and interpreted in society. According to Black, there is a change to abandon the way of understanding the laws of the rule of law to the law of living and developing in society.<sup>1</sup>

## Research methods

This research is a research of library research, with philosophical approach, that is studying about sociology of law. Sources and types of data in this study derived from literature study materials, such as; books, journals and other scientific works related to the research. Library data collected through identification process match with the theme of research conducted in various libraries. The collected data is then analyzed descriptive interpretative to understand the data clearly about epistemology of legal empiricism, so that with it will get clear data.

## Sociology of law in Indonesia

Indonesian post-independence legal study in the period between 1945-1960 (the regime of Soekarno's old order government) has orientation towards customary law thought although the normative law of the Dutch colonial still exists to regulate general public affairs. The idea of customary law is characterized by symbolic expression and legal idiom whose identity towards the old-legal thought has been used by society as the basic characteristic of national law that has the spirit of Indonesian law authenticity. The spirit of independence affects the desire for the enactment of Indonesian national law derived from the culture of the nation itself. Customary law as Indonesian

native empirical reality is a fundamental attribute to create values that are believed to give jurisprudence identity according to social cultural values. Post-independence customary law thought was initiated by several jurists in Indonesia and became an important study to develop Indonesian law system. If it is studied deeper, customary law has the same perspective as law sociology in interpreting law as society behavior.

Djojodigono views customary law as an indigenous law sourced from within the country that has been practiced by Indonesians for hundred years. According to him, customary law is the legal heritage of the ancestors of the nation must be preserved by the future generations. Customary law as a manifestation of Indonesian law is formed based on unique characteristics and Indonesian society diversity. It is because each region has its own principles and tradition. Meanwhile, Soepomo highlights more in incorporating customary law values as the foundation of national law. In addition, this idea becomes a pioneer to adopt some customary laws from each region to be positive legal resource. Indonesian as a country consisting of various ethnic groups that have inhabited for years in some areas becomes an important concern in forming a general national law. Soepomo emphasized the importance of using the values exemplified in customary law to govern a diverse Indonesian society. Therefore, it is necessary that national law should cover laws that are acceptable and understandable by Indonesian native, since the Indonesian unity that is basically formed is the result of integration of all Indonesian natives or ethnic groups in Indonesia.<sup>2</sup> Soekanto, in his perspective, states that Indonesian legal ideology is based on community socio-cultural life. Customary law is a society law established in Indonesian society for a long time. It has an important role to study Indonesian law. Without learning customary law, one cannot identify and comprehend Indonesian native law. For this reason, customary law must be used as an authentic initial thought before discussing further Indonesian legal development. Positivist normative national law must provide a place for the development of customary law, so that people do not lose their own legal identity as in the Dutch colonial period.<sup>4</sup>

Customary law is similar as sociology of law. It cannot be avoided from society life because law is used to order the way in which a society behaves and it must be obeyed. Law is the rule of law for human beings. If one wants to understand the law, one must see how the law is practiced as a form of community behavior. Soerjono Soekanto claims that law must closely relate to society life. It is because law is made for the society. Its main purpose is also for the society, so the law must provide values that are useful in maintaining the existing system within the social scope of society to keep working in accordance with society purposes.<sup>5</sup> According to Soetandyo Wignjosoebroto, in developing Indonesian law, it needs a law that represents Indonesian native society life. This belief is based on the reason that the law used to regulate Indonesian society must be a law developed from the values from Indonesian homeland, not the foreign law that is obliged to regulate. Since many years ago, Indonesian society has regulated the law of the heritage of the nation's ancestors, but colonial law eliminated it. Law, seen as legislation, on the one hand provides benefits but on the other hand also causes many problems. It is considerably too rigid in understanding the law that must be in accordance with legislation. Satjipto Rahardjo, proposing strong criticism of a normative positivistic law, claims that law is not only a statutory law, but law is an attitude and behaviour of a steady and institutional society to preserve the values in life.<sup>6</sup> It is too narrow to interpret law as what has been written in legislation. Beyond the

written legislation, many rules of human life regulate how people socialize with others. According to Bernard L. Tanya, law is a study of humanity because it closely related to human life. Therefore, if one wants to understand the concept of law appropriately, one should know well how the society lives. Moreover, law represents the human life.<sup>7</sup>

Although the thought of customary law which was patterned in the sociology of law was halted during the transition of power of the Soekarno old-order government to Soeharto's new-order in the period between 1960-1970 by the insistence of positivistic normative legal thought, the transformation of customary law idea in Indonesia in 1970- 1990 reappeared surface with a modern design format. It means that customary law is seen as a law that is regulated and developed with its impacts in society, from years ago until now. It is because, as time goes by, customary law occurred in society at the stage of its development has changed and adjusted. Traditional values of customary law mingle and interact with new legal values, especially the development of modern law that is more likely to be normative positivistic. Law, besides understanding the social reality of society as a law, also understands the law that occurs due to the interaction of social behavior of society with the system of normative law positivistic in the form of legislation. Therefore, there is a about transformative law sociology development. It means that law is not only pure sociology but also positive norm legal system relation. In addition, this becomes an effort to transform law, viewed from philosophical theory, into the phenomenon of society because of the dominance of the normative legal system practice. The inability of the Indonesian nation to put forth a picture of the ideal law for Indonesian underpinned the transformation of modern law. Indonesian jurists study the ideas of sociology of modern transformative law.

Satjipto Rahardjo understands that the law is not just a statutory law. The reality of society is also a legal fact that cannot be ruled out by legislation. A good law, based on his perspective, is a law established by looking law ruled in society, not as law written in legal draft. Meanwhile, Mochtar Kusumaatmadja has another perspective, highlighting efforts to draft positive law (legislation) that inspires social willingness. According to him, law is drafted to protect social purposes, so that values in society are important in the formation of the law. Legislative political channels can do legal mechanisms, in accordance with the society aspiration willingness. Society that has their representatives in the legislature has the right to participate in legal drafting in line with social purposes. According to Sunaryati Hartono, positive law regulated by the country must be able to provide justice to society in real life practice. In legal practices, law is still considered impartial to society. Legislation regulated in very strict format needs to be transformed into the real reality of law in society. A judge, in giving his decision, must be sensitive to the social facts in society that is a reflection of society willingness. It should be realized that not all law and regulation are able to read and interpret legal issues.<sup>8</sup>

To understand the sense-based empirical truth, inductive reasoning method is used. Inductive reasoning method is started by stating legal statements with specific scope in formulating the legal argumentation and then it is ended by stating the general legal statements. Inductive reasoning method is one of scientific method that is usually used in qualitative research. In this method, truth value is obtained by conducting observation with human's senses as the instrument. As the result, an empirical truth can be clearly obtained. Inductive

reasoning is started from specific proposition of observation result and is ended by a new conclusion in form of general principles. Proposition in inductive reasoning is said to true if only it is obtained by drawing conclusion from the empirical proposition. It means that the general conclusion is drawn from certain empirical facts of the specific proposition. Inductive reasoning is closely related to the field study. Thus, there are two research steps in this type of study. The first step is conducting research in general. It includes the pre-field research, fieldwork research, and the data analysis. The second step is conducting cyclical research including the descriptive observation, domain analysis, focused observation, taxonomy analysis, selected observation, component analysis, and the theme or topic analysis. In this case, the main role of sense as the instrument is to obtain the crucial, sociology of law truth because the real truth in the society as the object can be obtained by using senses.

For example; it is a fact that taking the leftover of rice harvest result, corn harvest result, and soybean harvest result in field is allowed. Thus, it can be concluded that taking what is left in the field as harvest leftover is allowed.

According to inductive reasoning method, the conclusion that is drawn is perceived as the truthful, acceptable knowledge because it is in accordance with certain similar, repeated statements. Inductive reasoning method is significant since it tries to dig into source of knowledge from what is known into the unknown one. In this perception, the most truthful knowledge is the senses while minds have the right to only process the data obtained from the experience. This is in accordance with statement "All science consists of data and conclusion from these data". According to David Hume, experiences give more truthfulness instead of logical conclusion.

That is why experience is the one that give direct, exact information concerning the observed object of law based on its tempus and locus delicate, when and where the crime takes place. General conclusion that is drawn from inductive reasoning method plays an important role since by applying this method, various life aspects with different characteristics and facets can be reduced into several categories. Knowledge that has been collected is not a collection of facts, but it is more likely as the essence of those facts. From this statement, it can be said that knowledge does not tend to make reproduction or the duplicate of certain object but it emphasizes more on the basic structure that supports the form of certain facts. No matter how complete and thorough the statement is, it cannot prove the theory that sugar is sweet unless trying it for real. Knowledge is satisfied enough with the categorical element-related statement that sugar is sweet. This kind of statement is useful for human since it is functional for both practical and theoretical aspect.

To verify the validity of truth resulted from inductive reasoning method, the correspondence method is used. In this method, a statement is claimed as a true statement if only it has correspondence or correlation with factual, empirical object. Bertrand Russell stated that correspondence is an important way to determine the truth validity of knowledge from certain study in the field of sense-based epistemology. In the perception of realism, the truth is the trustworthiness of objective reality and the adjustment to the fact. Knowledge concerning facts and realities are in harmonized, equal position. In this case, something is perceived as a truth when it can be considered as a fact. In other word, it can be said that a truth is the adjustment between opinion and reality.

## Conclusion

It is not only legislation but also living law or law in society, called as sociology of law. The law is seen as a behavior in accordance with society. Sociology of law views law as social empirical reality in society and it is seen as an affect of the implementation of posit if law in society. Sociology of law shows the existence of a law that is practically practiced and a guide to everyday life in a society. The law is able to organize the system of life in accordance with what has been agreed together. Sociology of law plays an important role in society, although it is not drafted and written formally in legislation, because the law is basically formed as a way of life based on accepted social behavior. Empiricism is a part of non-doctrinal legal study. Law accepted in society should consider Indonesian plurality and diversity. The concept of legal study that based the law as a manifestation of the symbolic meaning of social actors is also often referred to as the empirical law. Sociology of law has significant benefits for society purposes because law should be in line with social behavior that has been agreed and accepted. Social behavior also influences legal drafting. This close relation between law and social reality leads sociology of law having characteristics related to cultures, norms, and social habit. Epistemology of sense-based legal studies with the object that perceive the law as something that lives and progresses in the society has several advantages. First, it is able to know and to understand what is meant by law in the society and what makes the people act and obey it. Secondly, it is able to know and to understand the social power and structural organization within the society to form a concept of system that is used to maintain people's safety. Lastly, it is able to describe and express the social aspects and social values that underpin the society in creating a law, obeying and applying it in their daily life.

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## Conflicts of interest

The author declares that there are no conflicts of interest.

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