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Legal Wisdom in Indonesian Legal System: Toward Progressive Law Enforcement

Muhammad Ridwan Hidayat^{1*}, Suteki Suteki², Jean Claude Geoffrey Mahoro³

^{1,2} Universitas Diponegoro, Indonesia

³ University of Pécs, Hungary

*Correspondence email: ridhuanhidayat69@gmail.com

Abstract: *This study aims to analyze the state of society that began without a system, or what is called the condition of disorder, which is unstable (social melee) so that the state of law, when it comes to people's lives, must also follow the unstable pattern (legal melee). The method used is normative philosophical, which leads to the basis of discourse (Conceptual). This study also explains some of the gaps in previous similar studies by presenting some novelty of analysis, such as (1) an explanation of how legal wisdom is an important concept for progressive law enforcement, (2) the national legal system (conventional) with legalistic positivistic substance remains an open formulation towards legal progressiveness in Indonesia. The exposure of the construction of a legal system continuously undergoing development is an issue that must always get a balance for new legal discoveries so that the developing law always follows the development of society. The results of this study revealed that the existing legal products also naturally show how the law plays a role. Then, with the existence of legal products, one area that gets regulation against it must be more organized than areas that legal arrangements have not been regulated by law. It can be concluded that today's Indonesian legislation is a portrait that shows the problem of existing regulations. It has become natural to revive and develop with a more structured of legal enforcement.*

Keywords: *Legal Wisdom; Legal System; Progressive Law*

Abstrak: Penelitian ini bertujuan untuk menganalisis keadaan masyarakat yang berawal tanpa sistem, atau disebut dengan kondisi disorder yaitu sesuatu yang cair (*social melee*) sehingga keadaan hukum, ketika memang datang kepada kehidupan masyarakat juga harus mengikuti pola cairnya (*legal melee*). Metode pada penelitian ini adalah normatif filosofis, yang mengarah kepada basis wacana (*Conceptual*). Penelitian ini juga memberikan pemaparan atas beberapa gap dari beberapa ilmiah serupa sebelumnya dengan memaparkan beberapa kebaruan analisis, seperti; (1) pemaparan tentang bagaimana kebijaksanaan hukum yang merupakan sebetuk konsep yang penting untuk penegakan hukum secara progresif, (2) sistem hukum nasional (konvensional) dengan substansi positivistik legalistik tetap menjadi rumusan yang terbuka menuju progresifitas hukum di Indonesia. Pemaparan konstruksi sistem hukum yang selalu mengalami perkembangan menjadi isu yang harus selalu mendapatkan pertimbangan atas penemuan-penemuan hukum baru agar hukum yang berkembang selalu sesuai dengan berkembangnya masyarakat. Hasil

penelitian ini mengungkapkan bahwa produk hukum yang ada sudah sewajarnya juga menunjukkan bagaimana hukum berperan, dengan adanya produk hukum satu daerah yang mendapat pengaturan terhadapnya harus lebih tertata dari daerah yang memang belum tersentuh pengaturan hukum. Kesimpulan dari penelitian ini menunjukkan bahwa perundangan Indonesia hari ini adalah satu potret yang menunjukkan adanya problem tentang regulasi yang ada dan sudah menjadi satu kewajiban untuk dilakukan pembaharuan, pengembangan, dengan pola pengembangan hukum yang lebih terstruktur.

Kata Kunci: Kebijakan hukum, sistem hukum, Hukum Progresif

INTRODUCTION

The attention of the State toward the society in law becomes the unity of the functions and roles of a state. It does not just happen, and of course, there are a lot of considerations and calculations involved in choosing the form and sovereignty. It is relevant for the State of law to have an orderly and hierarchical law. However, society, which is constantly changing, forces the law to be dynamic and constantly changing as well to be able to oversee the life of the State, which is also well organized by law. Satjipto Raharjo shows how the State, law and society are involved. Orientation towards the law is made to be implemented, and it strongly rejects that something can be called law if it is never implemented.¹

The reason is that the rules that become the basis of society in their relationships, both in religious norms, moral norms, norms of decency and also legal norms that have a context of goodness, which indeed leads to good deeds in order to avoid sanctions, both sanctions against sin for violating religious norms, sanctions against shame in society and legal sanctions from the government if they violate legal norms. However, designing a good legal society also requires a good legal system, so, of course, a good legal arrangement is needed, really touches the state of society, and is thick with law at the proper level. Meanwhile, the law to be regulated must touch the level of legal science as an effort to discover (construct) social reality, legal philosophy to explore in the form of legal philosophy and legal theory, which generally functions as an effort to process other laws or a legal object to be arranged in such a way with its techniques, especially for the sake of law. In this case, the context of legal discussion will permanently be attached to the science of law itself. Further, Satjipto Rahardjo explains that in the science of law, the object is the law itself, which is by the provisions of the applicable legal system, so in the science of law, to examine the correct law, one must see how legal facts live in society.²

Ideally, the integration of legal creation makes legal science, legal theory, and legal philosophy an optional approach and must also be united into one cohesion. In the idea of consilience, the relationship between legal science, legal theory and legal philosophy cannot be divided or selected. However, the three of them must be gradations of one area with

¹ Satjipto Rahardjo, *Law Enforcement* (Yogyakarta: Genta Publishing, 2009), 1.

² Bernard A Sidharta, *Refleksi Tentang Struktur Ilmu Hukum* (Bandung: PT. Mandar Maju, 2002).

other areas that must be intact and always united.³

Furthermore, this ideal pattern should be an important part of creating order that can complement the implementation and maximization of law as an important part of society, especially in written law (legislative system). The reason that Indonesia and all its multiculturalism, makes the law more likely to assume a chaos system, putting the situation of a particular area in order with all its regularity even though there is no specific legislation governing the rules. However, there are also specific areas with all binding laws. However, there are still irregularities in implementing community life, although this irregular situation will eventually return to a form of order with the strange attractor.⁴

The law, known for its coercive efforts, focuses not only on binding prohibitions and sanctions for violations but also on more than that. Concerning those statements, it will also become the state's ideal if viewed from the view of modern law, which outlines how the law will not only be a controller of public order but also as an instrument to drive changes to society in the desired direction. In other cases, the law is intended as social engineering whose primary goal is to create public welfare and civilization.⁵

Then, understanding the social situation from a legal Chaos Theory point of view seems to lead to using a problem-solving approach, which means a substantial legal science method to end the condition of chaos in the legal system. So that the solution to legal problems will naturally appear in the law itself (rediscovery), it is at this level that a non-linear pattern of legal conditions emerges.⁶

This is not entirely to blame for the ineffectiveness of existing laws and regulations in Indonesia. However, precisely with this situation, Indonesian law must live and always be oriented towards improvement, with more positioning of the Indonesian legal system oriented to philosophical values, of course, so that the existing laws and regulations in Indonesia are indeed able to embrace society and social life organized by the law.

Efforts to move towards maximizing the law to be more effective in making new laws that will be good in their application in the future is a goal that is not just like that. This study contains how the acuity of legal science, legal theory, and legal philosophy can well provide significant changes to the making and development of law in Indonesia so that it can at least reduce the existence of laws but not able to properly oversee the course of social life as the view of legal chaos theory.

Furthermore, S.J Stahl provides ideas related to the characteristics of the rule of law (*rechstaat*), namely (1) Recognition of Human Rights, (2) Separation of state power, (3) Government against legislation, (4) The existence of an administrative court. Government

³ Anthon F Susanto, *Hukum Dari Concilience Menuju Paragidma Hukum Konstruktif Transgresif* (Bandung: Refika Aditama, 2007).

⁴ Susanto.Amir Syarifudin and Indah Febriani, "Chaos Legal Theory and Legal Systems," *Hasanudin Law Review* 1 (2015): 296.

⁵ Susanto, <i>Hukum Dari Concilience Menuju Paragidma Hukum Konstruktif Transgresif</i>.Agus Riwanto, "Realizing Just Law Progressively from a Pancasila Perspective," *Al Ahkam Journal* 30 (2017): 137.

⁶ Susanto, <i>Hukum Dari Concilience Menuju Paragidma Hukum Konstruktif Transgresif</i>.Sudjito, "Chaos Theory of Law: Explanation of Order and Irregularity in Law," *Journal of Mimbar Hukum* 18 (2006): 162.

against legislation about the rule of law cannot be completely united, especially with the *adegium* which means that weak laws are not laws (*apices juris non sunt jura*). Of course, laws that have binding force and are obeyed are laws that have been promulgated. According to the theory of legislation in Jeremi Bentham, applying law and social control is an engineering that directly or indirectly becomes the primary formation of legislation.⁷

METHOD

The approach in this study used a normative philosophical approach that leads to a discourse base (Conceptual). It is carried out based on the main legal material by examining theories, concepts, legal principles, laws, and regulations related to this study. This approach is also known as the literature approach, namely by studying books and other documents related to this study. The characteristics of the conceptual analysis approach (in the field of law) are mainly when the rule of law cannot be used as a basis for research construction. As an example, if in statutory regulation, there is no specification of the object of legal study and only covers its generality, which is certainly not appropriate if used as a foothold for building legal arguments, which is certainly a great hope to contribute to legal discovery and legal reform in Indonesia, especially in relation to the development of progressive law. The approach to normative legal study is very varied. However, this study only focuses on the conceptual approach, which pays attention to the concepts and doctrines that develop in legal science.⁸

DISCUSSION

The Legal Theories towards Progressive Law Enforcement

This journal uses three theories in an effort to approach legal wisdom in the Indonesian legal system. Legal chaos theory, progressive law, and legal system theory are appropriate approaches to solving the above problems further.

Legal Chaos theory is like most researchers who develop and use legal chaos theory. The placement of cosmology and physics backgrounds certainly participates in the explanation as well, even so in legal chaos theory, which incidentally refers to a situation where there is a system inconsistency and an order caused by it. Amir Syarifudin and Indah Febriani, in their study, explained simply related to legal chaos theory, referring to a situation where there is a system disorder. However, it also causes an order. However, the view of some circumstances inspired Charles Sampford, who later coined the theory of legal chaos or legal Chaos theory, where the core of this theory is divided into three things as follow;

1. Social relations, such as legal relations, are formed based on power relations
2. The parties who create a relationship do not have equal or balanced power,
3. At the time of implementing the relationship, each is based on their subjective

⁷ Jeremy Bentham, *Legislative Theory* (Bandung: Nusamedia, 2010), 12–13.

⁸ Susanto, <i>Hukum Dari Concilience Menuju Paragidma Hukum Konstruktif Transgresif</i>. Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2010), 95.

opinions.

Those three things cause chaos, but chaos is basically a freedom-based relationship pattern that crosses the boundaries of order, but only if the strange attractor succeeds in restoring chaos so as to create harmony between order and freedom. Then peace, which is the goal of law, will also be achieved.⁹

The legal system theory becomes very familiar with the opinion of Lawrence M. Friedman, who divides the legal system into three parts, namely the legal structure, legal substance, and legal culture. These three parts cannot be completely separated, referring to how the legal structure in relation to positive law will take part in the structure or organ of a legal mechanism, both as a maker, implementer, and guardian of the running of the law. The legal substance is the subject of every law created both through legal structures and community habits. At the same time, legal culture at this level can be interpreted as values, thoughts, and norms that live in a social society.¹⁰

The legal construction that should be the foundation in designing the legal system is also often not considered. Even though Radbruch has made a legal engineering design in the form of justice, expediency, and legal certainty, this design is not triangular, but justice and expediency are on one side while certainty is on the other. The expected engineering is equal treatment from justice, but why must it go hand in hand with expediency? Expediency tends to be full of inequality and is enjoyed individually. This is why the two sides of justice and benefit must be on the same side, which then the state guarantees through general legal certainty (laws and regulations).¹¹

As stated by Suteki, there are at least three functions of law: social control (controlling), dispute settlement (resolving cases), and social change (changing or engineering according to the times). It becomes urgent to study these functions because each country has a different regulatory pattern, which, in this case, each country will adjust to its morals, ethics, and religion. It is certainly a necessity for a legal system to become a state tool in the context of implementing social engineering.¹²

Progressive legal theory, progressive law introduced by Satjipto Rahardjo, is based on the basic assumption that law is for humans. Because Satjipto Rahardjo was concerned about the low contribution of legal science in Indonesia in overcoming the crisis, including the crisis in the legal field itself, he proposed problem-solving with the idea of progressive law. This view seems to want to show that it also has a view of the behaviour of law enforcers who think legalistic positivistic. However, the value of integrity is also part of the progressive legal

⁹ Syarifudin and Febriani, "Chaos Legal Theory and Legal Systems," 296.

¹⁰ Hans Kelsen, *Pure Legal Theory* (Bandung: Nusamedia, 2011), 3.

¹¹ E. Fernando M Manullang, "Misinterpretation of Gustav Radbruch's Ideas Regarding the Doctrine of Validity in the Formation of Laws," *Law Journal* 5, no. 2 (2022): 459–60.

¹² Susanto, <i>Hukum Dari Concilience Menuju Paragidma Hukum Konstruktif Transgresif</i>. Suteki, "Poverty Alleviation Strategy Through the Use of Law as a Tool of Social Engineering (Law as a Tool of Social Engineering) (Case Study of Poverty Alleviation Through Management of Amil Zakat Agency (BAZ) in Central Java)," 2024, http://eprints.undip.ac.id/5380/1/ABSTRAK_suteki%2C_mmh3.09.pdf.

perspective.¹³

Progressive law is defined as changing quickly, which causes a fundamental reversal in legal theory and practice and various breakthroughs. Liberation is based on the principle that the law is for humans and not the other way around, and the law does not exist for itself but for something broader, namely for human dignity, happiness, welfare, and glory, and not only based on the law.¹⁴

In the process of law creation, Sri Soemantri explained that in an effort to uphold the rule of law, there are legal politics, which, of course, include business carried out by the state in the context of legal development. However, of course, this legal and political effort needs to be given certain limits. In the work in the form of Indonesian Constitutional Law, Sri Soemantri explained the argumentation of legal politics that had received restrictions. In his opinion, Padmo Wahyono explained the definition of legal politics as a basic policy that determines the direction, form, and content of the law to be formed. At least the restrictions on legal politics are divided into three parts, namely (a) basic policy, (b) direction, form, and content of the law, and (c) the meaning of "*akan dibentuk*".¹⁵

Jeremy Bentham argues that a theory of legislation reviews the general philosophy of law and moral philosophy, which in Bentham is known as utilitarianism. A legislative effort should affirm that the ideals of law and government should aim for the greatest happiness of the community or society. Bentham's idea is certainly one that transcends his time, but this legal construct will grow and develop in the future.¹⁶

The idea that became Bentham's point is certainly not just an arrogance to disobey a law, but this is included in the theory of legislation. Bentham stated that in legislative efforts before the law is enacted, philosophical values, both legal philosophy and moral philosophy, are also included to provide control over efforts to achieve the ideals of law and government.

The legislative process becomes an important step in terms of enactment. Of course, the social spirit of society, administrative components, and all aspects related to the enactment of a particular law undergo concrete steps and efforts to make this complexity into a law that will be enacted and will be applied by many people.

Obedience to the legal system and laws and regulations becomes a parameter of whether the state is successful or not in running its legal wheels. The realization of the goal of law in the form of justice becomes the result of the contestation of values in society, not something not something that comes suddenly.¹⁷ The growing conditions also make legal

¹³ Firman Tri Wahyuno, "Analysis of Rejection of Claims for Losses in the Merger of Corruption Cases of Juliari P. Batubara (Progressive Legal Theory Perspective)," *Lex Renaissance* 7, no. 4 (2022): 828.

¹⁴ Oka Cahyadi Wiguna Wiguna, "Progressive Legal Thinking for Legal Protection and Welfare of Customary Law Communities," *Constitutional Journal* 18, no. 1 (2021): 128.

¹⁵ Sri Soemantri, *Indonesian Constitutional Law* (Bandung: Rosdakarya, 2014), 123.

¹⁶ Susanto, "Hukum Dari Concilience Menuju Paradigma Hukum Konstruktif Transgresif." Bentham, *Theory of Legislation*, 1–3.

¹⁷ Susanto, "Hukum Dari Concilience Menuju Paradigma Hukum Konstruktif Transgresif." Eko Mukminto and Awaludin Marwan, "Progressive Legal Pluralism: Providing Space for Justice for Others," *Legal Issues* 4, no. 1 (2019): 16.

culture a concern in the development of law; thus, legal culture will be an idea of value that has become a collective identity of diverse communities in social life.¹⁸

The Legal System of Indonesia in Its Inconsistencies

Anthon F. Susanto, in the introduction to his work "*Ilmu Hukum Non Sistematis*", quotes Alfred Whitehead's explanation of the bad influence of the dynamics of modern times, first, making researchers ignore and distance themselves from the object of their environment. Second, separating an object from other elements that affect it, thus seeing everything as a mere mechanical system. Even in the introduction, Satjipto Rahardjo's quote also agrees with this condition, which views the era of legal positivism as being dominant, so it is not surprising. However, two models should be provided to design a balanced legal positivism model: juridical positivism and sociological positivism. Juridical positivism sees normative texts that are detached from their social reality so that law is not conceptualized as an abstract meta-judicial moral principle about how the essence of justice is, but to ensure legal certainty or what can be declared as law what cannot be declared as law. In contrast, sociological positivism can understand how law is understood as a concrete abstraction of social reality that places empirical phenomena into its study.¹⁹

Anthon also quoted from Sampford in his book "*Dekontruksi Hukum*", offering an idea by providing an explanation that society basically runs life without a system, or what is called a disorder condition, which is unstable (social melee) so that the state of law, when it comes to community life, must also follow the unstable pattern (legal melee). This statement is also in line with that delivered by Satjipto Rahardjo; the utilization of law as a means of social engineering indeed cannot be separated from the understanding that law is an instrument used to achieve clear goals.²⁰

Moreover, even Suteki explains how progressive law is both in theoretical studies and in practice, which shows how progressive law will not only be exhausted in theoretical discussions but has also begun to live and fuse in the practice of law in Indonesia.²¹

This pattern of sociological positivism in the future should be a reference in the formation of law, at least social facts that become legal studies, especially if it is able to design the life of legal costs and benefits in it, which, of course, in addition to social facts and the life of the law is not just a mere law, but also from the formation of laws that can be of benefit to society, but also benefits to the state. Other than that, Diani Sadiawati outlines at least four classifications that are the main problem regarding regulatory issues in Indonesia, namely first, regulatory conflicts; this means that there are many laws and regulations whose contents or substance are clearly contradictory to several other

¹⁸ Susanto, <i>Hukum Dari Concilience Menuju Paragidma Hukum Konstruktif Transgresif</i>.Belinda Pudjilianto and Erni Handayani, "Application of Legal Pluralism in Society," *Diponegoro Law Journal* 11, no. 2 (2022).

¹⁹ Anthon F Susanto, *Non-Systematic Legal Science, Philosophical Foundations for the Development of Indonesian Legal Science* (Yogyakarta: Genta Publishing, 2010), 2–5.

²⁰ Susanto.

²¹ Susanto, <i>Hukum Dari Concilience Menuju Paragidma Hukum Konstruktif Transgresif</i>.Suteki, *The Future of Progressive Law* (Yogyakarta: Thafa Media, 2015), 8.

regulations. Second, the inconsistency of regulations, the inconsistency of regulations means that there are several articles of legislation that are inconsistent with the existing laws and regulations below them or their derivative arrangements. Third, in multiple interpretations of regulations, the vagueness of the formulation is often used as the dominant reason, both the object of the formulation and the grammar that is regulated, so that it causes much misinterpretation of the law. The fourth is not operative; in defining the uncooperative of this legislative product, Diani Sadiawati explains how active legislation should have the ability and usefulness to solve legal problems in society and create justice and legal certainty as well. However, this form of uncooperativeness arises because there are still some laws that are in force but do not have the power of exemplary implementation.²²

Besides, FX. Adji Sumekto, with modern legal criticism, is also not far from efforts to perfect the concept of law towards its ideals, which should direct the law not only to ensure certainty so that behaviour is fixed and predictability is guaranteed but also must play a role in directing people's lives to realize specific patterns of behaviour. Hans Kelsen also indicates that legal positivism is a final thing in the aspect of moral talk and also values when a positive law is formed. Therefore, there is a famous quote from Hans Kelsen: the law is obeyed not because it is considered good or just but because it has been written and passed by the authorities. It is what Hans Kelsen introduced as pure legal theory.²³

The legislative system has also regulated how the law should be formed in detail, but in practice, there are still irregularities in the form of legislation and even in its implementation, until finally, it is still a problem to this day. It also received a lot of attention, one of which is Jimly Asshidiqie, who then divides it into two main causes of this acute problem of regulation.²⁴

- a. The nomenclature and content of laws and regulations are still not organized.
One cause of this is that many government institutions are still not authorized to issue regulating regulations (*regeling*) but instead produce many legal products that are *regeling* in nature.
- b. The dispersion of the authority to form legislation.
From the perspective of the effectiveness of State institutions in receiving the managerial division of authority in the formation of systemic legislation

According to H.O. Nielsen, the affirmation of the level of effectiveness or not of state institutions as the gate in making legislation is determined by how the arrangement of the working relationship system with related state institutions²⁵. This statement is also supported by Henry Fayol, who asserts that authority that is not centralized will pose a risk of conflict in

²² Susanto, <i>Hukum Dari Concilience Menuju Paragidma Hukum Konstruktif Transgresif</i>.Diani Sadiawati, *National Strategy for Regulatory Reform* (Jakarta: Ministry of National Planning and Development, 2015), 39.

²³ FX. Adji Sumekto, "Tracing the Roots of Hans Kelsen's Thoughts About Stufenbeauautoeorie in a Normative-Philosophical Approach," *Progressive Law Journal* 7, no. 1 (2019): 2.

²⁴ Jimly Asshidiqie, *Indonesian Constitution & Constitutionalism* (Jakarta: Sinar Grafa, 2010), 325.

²⁵ HO Nielsen et al., "How Different Institutional Arrangements Promote Integrated River Basin Management," *Land Use Policy* 30, no. 1 (2013): 359.

implementing future legislation. In addition, Meidiana quotes what Bagir Manan thinks, stating that the reason for the existence of the rule of law is to realize the protection of human rights and prevent arbitrariness.²⁶

The circumstances show how the inconsistency of the legislation well leads to how the law, in general, is applied. The problem of legislation does not just appear; there must also be irregularities in applying the law correctly. These descriptions prove how Satjipto Rahardjo defines legal progressivity, which, of course, before arriving at the amount of sociological positivism, there was already so much homework for the Indonesian legal system to perfect its juridical positivism system.²⁷

The Role of Morals and Legal Wisdom in Progressive Law Enforcement

Bambang Sutyoso argues that legal discovery has been since the birth of the law and continues to be pursued towards a state of law that benefits many people, can create public order, and certainly has certainty value.²⁸ Bambang also quotes from Wiarda (*Drie typen van Rechtsvinding*); Wiarda classifies legal discovery into three, namely autonomous legal discovery, heteronomous legal discovery and mixed legal discovery, while according to Van Eikema Hommes, who distinguishes legal discovery into *typisch logicitisch* and *juridisch material*. Then, from those divisions, autonomous legal discovery has in common with *juridisch material*, and heteronomous legal discovery is the same as *typisch logicitisch*, the following further elaboration as follows;

a. Heteronomous legal discovery (*typisch Logitech*)

This legal discovery is considered a technical and cognitive event where the law is the primary reference, so the legal driver has no room to be creative outside of these factors; one of them is the attitude of judges who become not independent because they must obey the legislation. Heteronomous legal discovery is a legal discovery that is influenced by factors outside the legal discovery itself, including laws that include government, economic and political systems. This tendency makes the law seem to be the only law, and legal certainty is obtained only when the legal driver is under the law.

b. Autonomous legal discovery (*materiel juridisch*)

In autonomous legal discovery, judges are no longer seen as the mouthpiece of the law but as independent lawmakers, giving shape to the content of the law based on the needs of community development. Autonomous legal discovery originates from conscience and is not influenced by factors outside of itself.

Based on the development process, the two systems of autonomous and heteronomous legal discovery influence each other and do not have a sharp boundary,

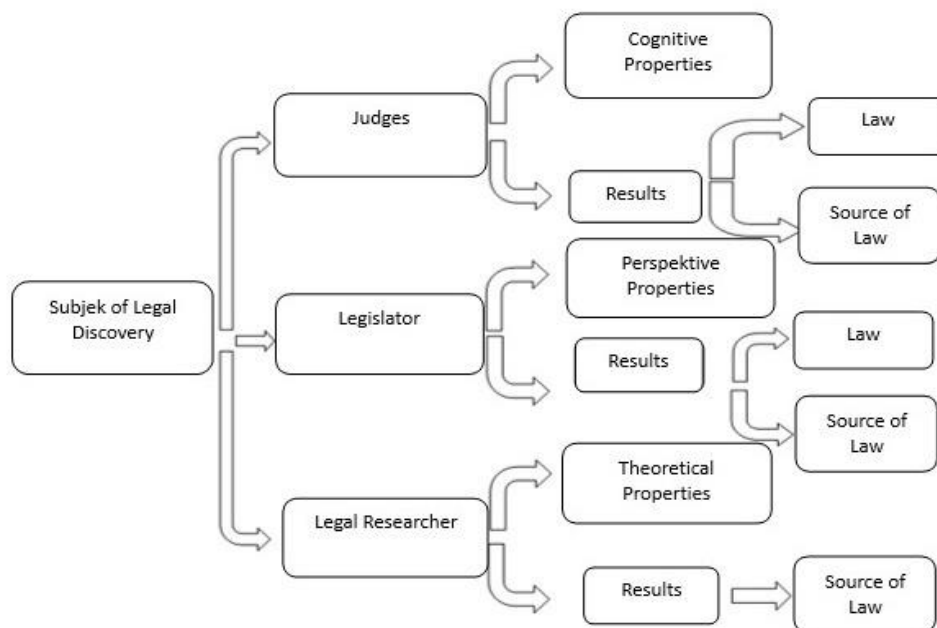
²⁶ Meidiana, "Integration of Review of Legislative Regulations by the Constitutional Court," *UU: Law Journal* 2, no. 2 (2019): 387.

²⁷ Satjipto Rahardjo, *Legal Studies* (Bandung: Citra Aditya Bakti, 2000), 38.

²⁸ Susanto, <i>Hukum Dari Concilience Menuju Paragidma Hukum Konstruktif Transgresif</i>. Bambang Sutyoso, *Legal Discovery Methods* (Yogyakarta: UII Press, 2006), 38.

which results in a mixed legal discovery system.²⁹ The subject or perpetrator of legal discovery is an expansive area of legal work by individuals, such as legal scientists or researchers, law enforcers such as judges, prosecutors, police and advocates, and even companies that can actually also be included in legal discovery efforts. However, in the discourse of legal discovery, the tendency of efforts by lawmakers and legal researchers, judges in this case, are not the central tendency, but judges have a dual role, not merely applying the rule of law but also discovering the law at the same time.³⁰

Judges in their efforts to discover law have a complete and broader perspective, apart from having a reference to legal regulations, judges also look at the details of events generally experienced by society. However, concrete events or conflicts that occur in society do not completely form the basis for legal discovery by legislators. Law, because of different legal discovery points of view and forms of representation as a legislative working system. Likewise with legal researchers, who use theory as a sharpening force for legal discovery efforts, Bambang Sutiyo further designed it as a chart of legal discoveries by subject:



The subject of legal discovery becomes a major and primary influence on the implementation of the content of the law. The law, in such a process of formation, certainly has an orderly purpose that is expected to create a pattern of order in the life of the state. So, legal wisdom becomes very important because it influences legal discovery and its implementation.

The legal policy in question is a moral effort regarding the discovery of law so that the result in the form of law becomes a law that has the value of justice in it in the implementation of the law (judges) with its wisdom also has a role in striving for the wisdom

²⁹ Sutiyo, *Metode Penemuan Hukum*.
³⁰ Sutiyo.

of the value that society also has expectations for it.

Judges must decide a case based on various considerations that are acceptable to all parties and do not deviate from existing legal principles. Then, what is called legal reasoning, the process of making decisions in a case by a judge, is the thinking process of a judge himself based on his intellectual abilities in concretizing existing legal norms against a legal event that occurs.³¹

In fact, with regard to criminal law, for example, the judge's forgiveness efforts become a milestone of legal wisdom (through law enforcement) with empirical fact-finding efforts regarding the development of problems and needs of society and the state. The foundation is then formed based on considerations of worldview and awareness of legal certainty, which is then poured into the regulation of criminal law (*KUHP*); of course, the relevant elements must also be based on legal policy as well by the shaper of the regulation.³²

Basically, the judge's wisdom is sometimes tested or more at stake, as in the decision against Richard Eliezer, a contributor to a premeditated murder who submitted to the majlis as a justice collaborator. The judge gave a decision based on his consideration and wisdom, not only based on the article on murder or even premeditated murder. However, not many similar cases have successfully applied the same consideration.³³

Judges, in carrying out their duties, examine efforts for legal certainty, of course. However, with respect for the rights of citizens, judges exceed their duties to find and form laws, even though the evaluation that comes to the fore is a form of legal uncertainty. The judge's decision indeed uses an idealistic approach to modern law to ensure the substance of justice because the law is not only seen from its narrow perspective as a system of *an sich* rules.³⁴

It becomes possible by looking at H.L.A. Hart's conclusions from the views of Bentham and Austin, which are grouped into five points of legal positivism, as follows;³⁵

- a. Positive law is a commandment by people
- b. There is no nexus between law and morality.
- c. The analysis of the study and meaning of law has historical, sociological, and critical differences based on morality, social goals, and a number of other functions.
- d. A closed logical system, decision-making is based on established rules and still requires logical reasoning
- e. There are moral decisions, which are decided based on rational arguments and

³¹ Miftahul Qodri, "The 'Red Thread' of Legal Reasoning, Legal Arguments and Law Enforcement," *Progressive Law Journal* 7, no. 2 (2019): 188–89.

³² Susanto, <i>Hukum Dari Concilience Menuju Paragidma Hukum Konstruktif Transgresif</i>. Sahat Marisi Hasibuan, "Rechterlinjke Pardon Formulation Policy in Criminal Law Reform," *Progressive Law Journal* 9, no. 2 (2021): 120.

³³ Aprillia Krisdayanti, "Perlindungan Hukum Bagi Justice Collaborator Dalam Pengungkapan Tindak Pidana Berencana," *Lex Renaissance* 7, no. 4 (2022): 808.

³⁴ Ratno Lukito, "Compare but Not To Compare: Kajian Perbandingan Hukum Di Indonesia," *Undang: Jurnal Hukum* 5, no. 2 (2022): 264–65.

³⁵ HLA Hart, *Legal Concepts* (Bandung: Nusa Media, 2011), 81.

evidence, not just factual decisions.

Hart tries to place Bentham and Austin's thoughts on the absence of separation between law and morality because when law and morality are separated, it automatically supports formalism in the adjudication process that only looks at the law. However, Bentham and Austin recognize that judges often use moral considerations when deciding cases.³⁶

Furthermore, Satjipto Rahardjo agrees that law enforcement has started since its formulation, so the life of legal wisdom must have begun to grow in the body of the law even since its formulation. Law formulators (legislative) are also an essential entity in this effort. Its involvement in law enforcement already exists in the process of formulating legal values, legal rules, and even legal objectives up to the spirit of the law, which will be the main ingredient of further law enforcement. An institutional culture that has the spirit of wisdom for the realization of an excellent Indonesian legal system becomes a culture that must be maintained without the need for talks to maintain it.³⁷

As legal subjects, judges, researchers, and, of course, lawmakers must have moral considerations in terms of creating and applying the law. The old stigma that gives the term that with this written system, it is felt that law enforcers (judges) will only be the mouthpiece of the law, some then suggest that there will be much rigidity in the implementation of this written law, seeing that one of the objectives of the law is also intended to achieve order and public welfare, it will not be accessible if the law is completed only in this written-based state. Then, criticisms of positive law emerged, one of which was progressive law.

The concepts of morality (wisdom) and community involvement are also often associated with progressive law, one of which is restorative justice. This tendency is on the pedestal of community involvement, joint dialogue, responsibility, apology, compensation, and moral learning so that the formulation of restorative justice makes the complexity of legal formulation shift more to the formulation of wisdom.³⁸

The failure of legal formulation and drafting of laws and regulations is certainly a calculation of the foundation that has been designed to collapse. Suteki, quoting from Kutub Suwondo, has also validated this concern, stating that there are three factors that influence the failure of legal formulators in the goal of law enforcement, as follows,³⁹

- a. The misguided ambition of law-makers who eventually forgot the main interests of the law and society, forgetting aspects of justice and respect for human dignity, so that they tend to seek personal gain.
- b. The absence of reliable role models, this period began with the stepping down of Soeharto, which resulted in local leaders seeming to lose their way, one of which was the emergence of demands that were contrary to the will of the authorities, while the

³⁶ Petrus CKL Bello, *Law and Morality* (Erlangga: Jakarta, 2012), 18–19.

³⁷ Satjipto Raharjo, *Law Enforcement A Sociological Review* (Yogyakarta: Genta Publishing, 2009), 29.

³⁸ Ribut Hari Wibowo, "Restorative Justice Approach in Terminating Prosecution Based on Restorative Justice," *Progressive Law Journal* 9, no. 2 (2021): 150.

³⁹ Suteki, *Legal Design in Social Space* (Yogyakarta: Thafa Media, 2013), 157–58.

people's trust in the authorities had begun to fade.

- c. The diminishing legitimacy of representative forums, as law-making institutions (legislative) and judicial bodies (judicial) had begun to conflict with executive authority.

The situation that often becomes a competition for each state institution becomes a homework assignment that should be resolved at the same time as elevating public trust and still upholding the values of dignity and wisdom by not making the people an object to achieve the interests of each institution, especially personal interests. Justice, which is an idea that has always been debated, has an important position in society and the state. Basically, justice does not only concern the person of an individual but also relates to other people, society, and the state, whether it is a fair attitude towards the state or a state that provides justice to its citizens.⁴⁰

However, law enforcement has indeed begun since the law is in the process of legislation up to its application and enforcement, so that legal drivers, both lawmakers, judges, and legal researchers must be able to control themselves in legal discovery efforts, especially in their influence on the news. The law certainly has its value to each subject, not only depending on public satisfaction surveys. However, the level of public satisfaction is indeed an indicator of the success of legal activists in the process of legal discovery.⁴¹

The legislative process actually makes the law more of a binding form, a set of rules/orders, prohibitions, and sanctions for violators. Many factors influence legal products that tend to be repressive (oppressive) rather than responsive. Indeed, the legislative process also makes law a complex entity that touches the plurality of society from every phase and dimension, so even though the law is a product of legislation, the consideration for its birth must also be based on the moral values of those who formulated it.⁴²

Legal unity that influences each other should be an option to resolve many of these problems. Of course, maximizing the function of each existing element so that the development of law in the future is not only a filler and complement to the state agenda but also to how the community can adequately receive the benefits of law. The synchronization of legal science, legal theory, and legal philosophy, which at the level of juridical positivism has yet to receive strategic space, ideally needs to be used as an element in legal development also in the future. The legal system is a set of rules that contain unity to be understood through a system.⁴³ Satjipto Rahardjo's response to this condition is that, in fact, the law is not a building entirely of rational, logical order but that humans are interested in and also want to see how the law is always in a consciousness that wants to be organized.⁴⁴

⁴⁰ Zakki Adhityati and Achmad, "Tracing Justice in Polygamy Regulation: A Study of the Philosophy of Justice of Aristotle, Thomas Aquinas, and John Rawls," *UU: Law Journal* 2, no. 2 (2019): 413.

⁴¹ Sonora Gokma Pardede and Febby Mutiara Nelson, "The Influence of Trial By the Press on Criminal Law Enforcement in Indonesia," *Journal of Litigation* 24, no. 2 (2023): 179.

⁴² Abdul Latif Mahfudz, "Factors that Influence Legal Politics in the Formation of Laws," *Journal of Legal Certainty and Justice* 1, no. 1 (2019): 43.

⁴³ Rahardjo, *Legal Studies*, 48.

⁴⁴ Rahardjo.

It is also the case with the pattern of the formation of a law that becomes the main reference in the formation of law so that state policies will be born in accordance with the pattern that has been planned to achieve a good rule of law. In addition, the politics of legislation which is also a form of the national plan, is intended to create a common perception of all development actors, especially in the field of law in the face of various strategic and global issues that quickly need to be anticipated so that legal enforcement and certainty continue to run on an ongoing basis which is expected to produce legal policies/materials that are in accordance with the aspirations of the community and have effective selling power in society and can be a means of realizing changes in the social field, either in the medium or long term.

These legal development plan has the potential for the emergence of legal and political inconsistencies in the making of laws and regulations; in addition to the many issues that develop, progress sometimes goes beyond what has been planned. This is undoubtedly good if every change of political organs in power has innovations that are constantly developing. However, it would be unfortunate if the previous planning pattern that has yet to be perfectly implemented reaps the results more or less and turns towards another policy direction.⁴⁵

Then, referring to the level of future legal development, especially in the development of legislation, this *chaos* condition is not one thing that must be a frightening specter because, with the availability of legal science studies, legal theory, and legal philosophy, it is worthy of being a correction material for the Indonesian legal system to be more open in accepting other elements for the development of a more organized law of course. In some circumstances, chaos should also not be feared and avoided. This *chaos* situation has a possibility, an opportunity that will undoubtedly arise. If it can be developed, it will become an order if all parties have a sense of *chaos*. From taking the wisdom of chaos, the task of thinkers and scientists is to capture new opportunities and possibilities that arise from the *chaotic situation*.⁴⁶

The principle is that the law in a country has one basic principle that becomes the basis for the permissibility of something to be allowed or prohibited to be done, namely the principle of legality. This principle also becomes a reference for every behaviour of society in the state, meaning that with the enactment of a particular thing, either permissible or impermissible, then it is the law. Even the thirst for a long search for substantive justice through progressive law is slightly alleviated by Satjipto Rahardjo's great thought. The law must be seen as a rule or legislation that remains value-laden. It has an impact on the view of law as a value-laden rule so that wise efforts in law enforcement will substantially be close to its realization.⁴⁷

⁴⁵ Satjipto Rahardjo, *Law and Social Change* (Bandung: Alumni Publishers, 1979), 161.

⁴⁶ Susanto, *Non-Systematic Legal Science, Philosophical Foundations for the Development of Indonesian Legal Science*, 27.

⁴⁷ Cahya Wulandari, "The Position of Morality in Legal Science," *Progressive Law Journal* 8, no. 1 (2020).

CONCLUSION

In conclusion, it can be stated that Indonesian legislation today is a portrait that shows how problems regarding existing regulations have become a natural thing to do renewal and development, with a more structured of legal enforcement. Efforts to form, implement, apply, discover, interpret, study, and teach law must require practical approaches. The chaotic demonstration of the legal system in Indonesia, which tends not to reach a good point, must immediately unravel its many problems and update it with better laws. Progressive law that grows as the legal ideals of society must be further strengthened, both theoretically and philosophically, and progressive law as a legal science. It is undoubtedly a mandatory requirement for legal planning and law-making, the application of better laws, and more oriented toward justice and benefits for many people. Existing legal products also naturally show how the law plays a role. With the existence of legal products, one area that gets arrangements against it must be more organized than areas that legal beings have not touched. However, if the opposite still happens, the theory of legal chaos is still the answer to the inconsistency of the legal system in Indonesia.

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