ISSN:1582-2559

GENERAL MANAGEMENT

Legal Studies and Authentic Paradigm: An Idea for Reforming National Laws

Wendra YUNALDI[1*], Irwan[2], Romi SAPUTRA[3], Yenny FITRI Z[4]

[1,2,3,4]Universitas Muhammadiyah Sumatera Barat, Indonesia
Email: wendrayunaldi78@gmail.com[1], portalbangsainstitute@gmail.com[2], romisaputra@umsb.ac.id[3], yennyfitri@rocketmail.com[4]
*Corresponding Author

Received: 19.03.2022 Accepted: 03.06.2022 Published: 01.10.2022 DOI: 10.47750/QAS/23.190.27

Abstract

Legal studies continue to develop dynamically following the social developments of society. With various perspectives emerging about law lag because it needs to be legalized through legislation, this has resulted in an accumulation of legal problems that cannot be resolved by legislation, in addition to overlapping legal products. After more than 75 years of independence, the idea of reforming Indonesian law seems to have received less response from legal experts. Thus, the law tends to legitimize power, without initiating efforts to create a society that is aware of the law, resulting in the law being passive and unresponsive based on the spirit and ideals of the law in accordance with the national character. Positioning the law as a civilization is certainly based on the ideals, views, values, and character of the social order so that it can place the law as an embodiment of the awareness and character of the Indonesian nation. With the interests of legal scientific orientation in various higher education institutions in the future, it is necessary to consider legal scholarship with authentic character with an Indonesian spirit. The problem of legal passivity must be resolved so that in the future the law will be at the forefront of guiding the order of life to be more civilized and dignified.

Keywords: *Legal Studies, Authentic Paradigm, National Law Reform*

Introduction

The discussion on the renewal of legal studies is one of the important studies in shaping the future of law based on humanism, civility, and embodying the spirit of the nation. Moreover, Kusumaatdmadja emphasized that reorientation is more important than just renewal because reorientation has interests that are to be addressed more broadly and fundamentally for the sake of the nation (Latipulhayat, 2014; A. Kamaruddin, 2012). The law that will be given in creating a legal society is clearly inseparable from the law produced (Tamanaha, 2011), both by the state and the community that have values as a form of local wisdom and local genius.

Legal studies as a part of the humanities, with their own paradigm, form a systematic knowledge structure so that they can provide a clear and coherent understanding of various humanitarian issues (Falk, 1975). Legal studies can be categorized as an inherent science with social behavior in various forms (Deflem, 2008), including the law relating to basic human needs, state responsibility, community welfare, and other aspects related to development.

Legal studies is an important aspect of the sustainability of the law, both in the world of education and in law enforcement consisting of judges, prosecutors, police, and advocates. The scientific process at law colleges seeks the growth of law through scientific creativity and knowledge. It aims to test the truth and things attached to the law so that the law appears in a dynamic and new form so that it can answer the needs of the community. Through the formation of a paradigm in the legal scientific process, scientific findings are then tested for truth by legal activists (Fischer et al., 2006). Legal products and legal inventions through universities have different "das sollen" and "das sein". Practical activities carried out by stakeholders of the legal profession are better able to answer legal needs compared to the educational process carried out at universities.

There is a legal dilemma today, where legal education and its outputs, which are expected to provide legal enlightenment and legal certainty to the public, both have problems in maintaining legal honor. The legal mafia, corruption, transaction of articles and decisions, conspiracy between judges and advocates, police and prosecutors, and various other issues degrading the dignity and worth of the law indicate the failure of legal education. According to Zoelva, there is a legal studies issue raising big cases related to the perpetrators who are law educated and at the same time work as law enforcers, both judges, prosecutors, advocates, and other institutions (Zoelva, 2021).

Based on these problems, it is important to state what the actual scientific and professional character must be owned by legal educational institutions and individuals engaged in the legal field. Because, with legal pluralism developing in Indonesia and the character of the Pancasilaist nation, the demand for legal knowledge to be "at home" with its culture is expected to be an important part of legal paradigm based on values that live in the midst of society (Manullang, 2015).

In the context of ideas, the authors find out that the issue of the character of legal scholarship for the future in Indonesia is very important. Valuable legal studies in accordance with the ideals of the Indonesian nation which embed its original identity

as a philosophical view will determine its characteristics in order to regulate the life of the Indonesian people, in a pluralistic social system.

The main problem actually lies in the lack of seriousness in formulating an idea or legal paradigm with authenticness and original characters from the culture (create, think, intention) of the community, so that law is truly a product of national identity. However, to create a legal civilization, in the realization of its new identity, is a formidable challenge.

Research Method

In order to answer the problems raised in the background and to account for the findings produced, the right method is very decisive. C.F.G. Halim et al., stated that the study method is a definite starting point in the hope of providing a path that must be performed in order to produce reliable and valid conclusions (Halim et al., 2019). his study related to philosophy, ideas, and thoughts, where the normative legal study method examining legal principles, legal systematics, and legal dogmas was more feasible because of the wide range of aspects discussed.

In the normative law study method, the approach used is dogmatic, basic, and conceptual. This approach is used to direct the relationship between principles and doctrines to be correlated with the law in society. By using legal sources consisting of primary sources such as legal opinions or customary law. Meanwhile, secondary sources consist of books, journals, and so on. The various legal sources were then analyzed using deductive logic. It was expected to be able to read the views, opinions, and concepts put forward so that a new concept or thought is formed as a bargaining tool in finding answers to the main problems in this study.

Results and Discussion

Philosophy of Law and Its Development

In the historical development of legal thought, new directions for the development of philosophy have always emerged from self-critical awareness of emerging theories. The dynamics of self-criticism are dynamic enough to develop so that they are able to show their form in various forms of thinking characteristics with their own basis, style, and model. This dialectical pattern occurs almost everywhere where philosophers develop their legal analysis. Based on the development of legal thought in the Greek era to the modern era, it has shown a character of legal philosophical thought with a distinctive paradigm in the identity of legal scholarship. Thus, philosophical activities are a form of creativity of the mind in responding to ideas and phenomena to be formulated in a single rule of holistic thought.

TYPE	RATIONALE	CHARACTERISTIC
Irrational Natural Law	Truth based on scripture and reason	Law is obtained from scripture and reason
Rational Natural Law	The law appears in accordance with human nature, where the power of God is legally binding	Different instincts need to be bond in one rule
Sociological Positivism	The law is an order from the ruler	Laws made by God for humans Laws made by humans for humans
Juridical Positivism	The law is independent of non-juridical elements	Law as a necessity for rational society
Utilitarianism	The law must give happiness	Law as a tool of public order
Historical School (Historische Rechtsschule)	Law is adapted to local conditions and everyone must respect customary law	The law creates a sense of justice that lies in the soul of the nation
Sociological Jurisprudence (Functional Anthropological)	Law is something living in society	The law is subject to certain social interests
Legal Realism	Law is a product of the judiciary	Law as a social force and a tool of social control.
Freirechtslehre	Judge as the creator of law	Appropriate solutions for concrete events
Islamic law	Law as a form of command in the scriptures and hadiths developed with human reason	The law covers spiritual, individual, social, and their combinations.

Table 1. Comparative of Philosophy of Law

Quoted from Prof. Dr. Sukarno Aburaera, S.H. Prof. Dr. Muhadar, S.H.,M.H. Maskun, S.H.,LL.M, Filsafat Hukum : Teori dan Praktek

Based on the development of dialectical and critical legal thought, legal studies are not merely a symptom of reasoning apart from social facts as a resource in creating law in accordance with human interests.

Based on the table above, the law as a symptom of theological awareness, rational and objective continuously auto-criticizes following the direction of legal interests. From a theological awareness, it turns to factual awareness, and continues to benefit awareness, and then returns to the main goal of society (Mursal et al., 2021). Even though the realism and freerechtlehre philosophies try to structure the law in the form of objectification outside of human consciousness, namely the decisions of judges and court institutions, the legal philosophy of realism and freerechtlehre has also found a place in several countries such as Germany and America (Atmadja, 2018).

From various forms of philosophy of legal thought, Islamic law with its rationale and characteristics is the realm of legal

studies supported by factual awareness imbued with sacred and profane spirits and prioritizing the role of humans as elements of further formation so that the law is implemented to realize human interests (Tajdin, 2017). Even if countries implement Islam as a national religion and ideology, Islamic law will almost certainly become the norm and source of law to regulate the order of social life in various fields of life. In particular, Werner Menski mentioned that Islamic law is clearly a philosophy of natural law; not in the form of legal positivism (Menski, 2006).

The difference in the basic thinking and characteristics of legal philosophy is an attempt to place the law as a human objective symptom formed from the awareness of reason, soul, and social community. Therefore, the law must still be subordinated to the main goal itself, namely order, justice, and happiness.

The development of legal ideas is also progressing well in Indonesia. This is evidenced by various ideas that want to create their own paradigm related to the urgency of law as a social reality in the midst of a pluralistic Indonesian society and as an independent nation-state. This idea has been discussed for quite some time in various studies related to Pancasila law, progressive law, responsive law, transcendental law, and also renewable ideas that try to formulate a new model in understanding the legal position as the subject of one of the institutions of public life.

In an article, Romli Atmasasmita mapped the development of the Indonesian legal system from the colonial period to the present which is divided into four, namely the repressive colonial law model, the development law model, the progressive legal model, and the integrative legal model (Romli Artasasmita, 2012). Figures such as Muchtar Kusumaatmadja, Satjipto Rahardjo, and Romli himself as initiators of legal models need to be considered for law enthusiasts in order to discuss Indonesian law.

The philosophical ideas and models in understanding law in Indonesia as carried out by these figures are certainly quite reasonable after the long history of the development of legal thought both in the context of Indonesia itself and as a result of developments from abroad. According to Romli, the impact of the integrative legal model on the field of legal education is very real because the paradigm built is to create law not only as a medium to build intelligence and intellectuality but also to build humanity caring for the problems of legal uncertainty, injustice, and social vulnerability in Indonesia (Romli Artasasmita, 2012).

Philosophical studies of various phenomena in the universe and social phenomena, and in particular the law are never finished. The complexity of the reality of humanity is even increasing to answer the problem. This is because the discovery of truth cannot only be analyzed through a partial technical approach. With an in-depth philosophical study, various problems can be seen comprehensively and horizontally reaching all sides of human life. This is what several legal experts have been doing for decades so that the need for law is not just a legal technical problem.

Concept of legal studies

Legal studies are the science of regulations having a kind of unity understood through a system (Voegelin, 1945; Asshiddiqie & Safa'at, 2006). Legal studies cover and discuss all matters relating to law (Collin, 2004; Blackwell, 2008). With the breadth of the issues covered, it is difficult to give clear limits to the important scope of legal studies. The absence of boundaries in legal studies does not mean that this science develops without direction. Since with an orientation towards the behavior and culture of society as a unit, it is integrated with its social phenomena and ideals, it is almost certain that legal studies have become an important part of the human sciences covering all human life itself. Titik Triwulan Tutik stated that:

Legal studies are included in the group of practical sciences, however, like medical science, legal studies occupy a special position in the classification of science, not because it has a long history, but also because of its characteristics as a normative science and its direct impact on human life and society brought about by its characteristics and problems (Tutik, 2013).

Quite clearly, this scientific perspective has formed various thoughts among legal studies experts to produce legal studies models such as continental Europe, Anglo Saxons, socialists, and Islam. Therefore, legal studies have a distinctive character because it is normative, practical, and prescriptive (Harun, 2019). Unlike other sciences, the truth is focused on realistic and empirical factual arguments. Many experts find it difficult to place the position of legal studies in the nature of science as it is generally because it is normative rather than empirical.

Apart from the position of legal studies, practically, the application of legal studies in various fields of life looks more objective and rational. Legal studies are able to provide answers to the problem of social relations between individuals and individuals and individuals with bodies or organizations. Legal studies with a prescriptive are "forced" to provide answers to the problems faced by humans by technically carried out by law enforcers, such as judges, police, prosecutors, and advocates.

The four elements of law enforcement, judges, police, prosecutors, and advocates have a major role in concretizing legal materials according to their respective functions. These four elements of law enforcement have professional responsibilities in implementing and enforcing the law, both materially and formally. Through them, the law and its derivations manifest in an active and grounded construction as awareness of the truth. In their hands, the responsibility to declare the law in accordance with the ideals of the nation will carry the altar of justice to the community.

Theoretical thoughts developed in the study of legal studies, both legal philosophy, legal theory, and legal dogmatics lead to legal practice, which is related to two main aspects, namely law formation and law enforcement (Lumbard, 1965; Sudiarawan et al., 2020). These two important aspects, law formation, and law enforcement are the spirit of the formation of the identity of a state of law which is the ideal goal of the Indonesian nation. In an ideal state of law, law formation and enforcement are mutually correlated so that they can become a bridge to answer the need for law.

In the development of legal education, with a new level of globalization accompanied by changes in the need for legal education, legal education is no longer solely a path to build a career, more than that, legal education has become part of the interest to meet market needs. The trend of legal education initially started from the desire to uphold justice, democracy, and provide advice to protect the weak and victims of wrong government policies, in the end, legal education has entered the realm of capitalization in order to fulfill the necessities of life in an honorable and luxurious way. The law then plays a role in

following the development of society (het rect hinkt achter de feiten aan) (Hiariej, 2019).

Globalization and modernization have forced law as a productive economic tool to generate wealth. This condition arises not necessarily because of market demands alone, but is also supported by the Decree of the Minister of Education through the compiled curriculum, where there are three important reasons why a total change to the legal education system must be made (Anwar, 2011), namely: 1) the increasingly fierce competition of domestic and foreign universities, therefore university graduates must compete in the global world, 2) there is a change in the orientation of education which no longer produces intelligent human beings with knowledge, but can also apply it in the life of a more cultured society, and 3) there is a change in needs in the world of work that require more dominant soft skills than hard skills.

The reasons constructed by the Ministry of Education certainly have an impact on changing the paradigm of legal education which has been very strong in maintaining the social orientation of civilization. The perception that has been respected so far is that "the law is born by the community" and will be an effective tool for making changes in society. In a more conceptual language as stated by Kusumaatmadja where the law is a tool of social engineering (Lathif, 2017). This means that the idea of law as a tool for social reform requires the law to develop not to follow the tendency to conflict with the interests of the community itself. Mochtar Kusumaatmadja reminded that changes need to maintain continuity between new values and old ones. “ sakali aia gadang, sakali tapian baranjak, walaupun baranjak, dilapiak saalai juo” (Dimyati & Wardiono, 2012).

That legal studies are directed and adapted to the interests and provisions of national legal development (Shanmugam, 2012). The main effort to be carried out is to assist legal education reform activities aimed at producing graduates who meet the needs of a developing community and possess skills, creativity, a sense of responsibility, dedication to the public interest, law enforcement, and justice.

A statement that is more appropriate to describe the ongoing phenomenon in the world of legal studies education today is the uprooting of legal morality values in the legal education process that takes place in law colleges. The great demand to make law one of the foundations of national development, as well as the great demand for universities to provide law graduates who are able to fill market needs, this doctrine is then idealized to create legal studies capable of responding to the needs of globalization and at the same time providing productive manpower and capable of answering legal problems in the field of development.

The identity of legal scholarship has been mixed in such a way, for which later law universities have made various significant changes related to the teaching curriculum given to law students. Even for that, the legal education curriculum then makes various professional programs to support the presence of quality legal products. However, the main problem actually lies not in the curriculum and learning methods alone, the more crucial thing that has been neglected to this day is the problem of positioning legal studies as an object.

Legal studies are trapped as a science tool that does not have the soul to determine the provisions and various regulations governing humans. The rationality of legal studies lies in the fact that it was born by humans, humans as legal subjects so that the derivation process of the law will place the position of legal studies solely as a tool to regulate society. The tendency to use the law as a "tool" according to Romli Atmasasmita "has resulted in the condition of structuring the lives of the Indonesian people through the law which is proven to be far from the ideals of the founders of the Republic of Indonesia as mandated in the Preamble to the 1945 Constitution". (Romli Artasasmita, 2012). To strengthen his argument, Romli then quoted the opinion of Satjipto Rahardjo:

…quoting Podgorecki and Olati, law is no longer a means of reforming society but has turned into "dark-engineering". If "dark-engineering" by the power holders is allowed to run without prevention, it will lead to social skepticism, social prejudice, and social resistance to the function and role of law as a means of community reform (Romli Artasasmita, 2012).

Seeing the role of legal studies in the practice of legislation and its application in various legal institutions, both by legislators, namely the legislature and law enforcers, such as judges, prosecutors, police, and advocates, as well as various steps and policies taken by legislators and law enforcement creates anomalous conditions, related to the direction and ideals of the reform era. Laws produced through legislation are all instances and their enforcement is solely for the sake of fulfilling the will of the laws and regulations.

Although social changes and the basis of legal studies continue to develop, as well as the strong influence of these scientific changes on the field of the legal profession, the various legal scientific paradigms that some legal reformers have tried to put forward, such as Mochtar Kusumaatmadja, Satjipto Rahardjo, Romli Atmasasmita, and so on have led to to a legal model built on the foundation of Indonesian civilization.

Authentic Paradigm and National Law Reform Ideas

The legal ideals of a nation are born from the long experience of adapting and configuring the values adopted by the community so as to form a legal system introduced by the community as an order to protect society from chaos. The crystallized values then become standard and are established into norms that are obeyed as a goal. The law requires order so that people can live a normal life without any sense of despair over the possibilities of chaos in a cultured society.

Community culture is the highest guideline in regulating all life behaviors together. That value overshadows and overshadows every individual who is in it and outside their territory. Cultural values are not only attached to concrete behavior within the scope of the community, which is limited in one territory but also goes beyond the behavior that arises in the local social circle. These cultural conceptions have taken root even though they are outside the territory of the original culture because they have been rooted in their souls (Gauvain et al., 2011).

This behavior continues to develop following the history of the development of the civilization of the archipelago under the era of the kingdom. Various pieces of evidence show: 1) In 1000, during the Hindu era, King Dharmawangsa of East Java with a book called Civacasana; 2) In 1331-1364, Gajah Mada Patih Majapahit made a book called the Book of Gajah Mada; 3) In 1413-1430, Kanaka Patih Majapahit made the book of Adigama; 4) In 1350, in Bali the Kutaramanava law book was found.

The term adatrecth was put forward by Snouck Hugronje

(Syamsudin, 2017), which then by C.van Vollenhoven formulated 19 indigenous communities, including Aceh, Gayo Land, Nias, Minangkabau, Mentawai, South Sumatra, Bengkulu, Palembang, Jambi, Malay, Bangka Belitung, Sulawesi, Java, Bali and so on as a reference in strengthening the scientific basis of customary law based on the ideals of the nation which in fact are authentic values based on the special character of Indonesia (Bedner & Arizona, 2019). The methodological approach used by the Dutch experts was not to form let alone provide legal formulations, they were no more successful in seeing, discovering, and seeing firsthand the sustainability of the legal order of life in society. Aceh as the study area of Snouck Hugronjie became the forerunner of the term "custom" itself (Burhanudin, 2014).

As for the special character and order in the implementation of the law, have has the following concept:

No	Figure	Concept of Customary Law
1	Covernelis van Vollenhoven	Positive Behavior Sanctions
2	Ter Haar	Decisions from Authorized Leaders Implementation of legal actions Act spontaneously Legal decisions Sanctions
3	Mr. J.H.P. Bellefroit	Living law Respected and obeyed Applicable
4	Soepomo	Living law Obeyed and supported by the people Faith in the law Have the power of law
5	Soeroyo Wignyodipuro	Norms Emerges from a sense of justice Rules of conduct Obeyed and respected Sanctions
6	Prof. Mr. F.D. Holleman	Living law Can be forced Obeyed and respected Sanctions
7	Prof. Dr. J. H.A. Logemaan	Not absolute as a decision law The norms of living together Rules of conduct Followed by all citizens Applies in the association of living together
8	L.W.C. van den Berg	Same with religious law Adopted by a group of people
9	Vandjile	Codified law Native Indonesian people
10	Snouck Hugronjie	Laws applying to society
11	M. M. Djojodigoeno	Laws are not based on regulations
12	Prof. Dr. Hazairin	Deposition of decency Recognition of the truth by the community
13	Prof. Bushar Muhammad	Regulate behavior Have living values Believed and embraced Defended by the community There are sanctions for violations Applicability of the decision of the customary ruler Authoritative
14	Prof. Kusumadi Pudjosewojo	1. Rules of conduct 2. Custom is law
15	Prof. Hilman Hadikusuma	Rules of human behavior Family rules Social rules State rules Religious

Table 2: Processed based on definitions and understanding formulated by legal experts quoted from various sources

The methodological definitive formulation of the legal experts above is clear enough to provide an overview of the form and essence of the law that lives in society. However, the lack of interest and concern for these values is a result of the wrong perspective in using an approach to customary law in the perspective of social science. M. Syamsudin stated that :

The concept of customary law developed and presented by the West using a social science approach is perceived as inadequate for the legal needs of the Indonesian people which are based on and rooted in Indonesian cultural values. A group of legal scholars from Indonesia emerged, who tried to combine the two concepts in accordance with the worldview they believed to produce the concept of customary law with a national character (Muhammad Syamsudin, 1996).

In fact, the tendency of national-style law leads to the formation of formal labeling of law as a unit attached to the national interest. Indirectly this undermines the diversity of the legal order as a wealth that cannot be constructed in a single formulation.

Based on the development of Indonesian law, the strong influence of foreign law, and the great inclination of legal experts and legislators (legislature) to use materials and norms of the global world to respond to market needs - which at the same time - increasingly castrates normative potentials. local legal wisdom and intelligence.

The notion of a state of the law with the spirit of constitutionality actually provides equal opportunities for laws formed by law to be born in the community. Many phenomena of written law formed by the state override the unwritten law of the nation which has been practiced long before this country was born. Hidayat stated that if there is "competition" between the law and customary law or other laws, then the first one gets "priority" (Hidayat, 2017).

Based on the "positive" legal character with the understanding of positivism developed by Henri Saint Simon, Auguste Comte and John Austin based on the view that law comes from the highest power in a country and law is an order from sovereign political power in a country (Borison, 2016), the law eventually became awareness of ultra-humanis (Cain & Fink, 2010). law eventually became an ultra-humanist consciousness. So that valid laws are norms and various regulations made by the state, other than that, those norms and regulations are not valid.

Indonesia, which had just declared its state in 1945, with a society that had been formed long before independence was declared, living law based on the spirit of the nation (volksgeist) emerged naturally in the customary law of every nation. It can be concluded that all laws were originally formed in a way, although not entirely correct, such as customary rules, language was formed, developed through customs and beliefs of the people, then the science of law; so everywhere by internal forces that work secretly, not through the arbitrary will of the legislators (Purbacaraka, 2017). This also applies in the legal order that develops in the archipelago community in various customary law environments, ranging from Sabang to Merauke.

The problem then is in the development of legal scientific studies at universities and their practice in state life, by looking at the law solely from the perspective of legal written and making laws and regulations as valid norms, resulting in the neglect of legal norms adopted. and inspired by the community, which in the end closed the space for public legal awareness as something that was respected, obeyed, and adhered to, turned into an autonomous and repressive law (Teubner, 1983).

Even though the written law contains the following characteristics: 1) it is easy for people to know, 2) get the same access to the law, 3) provide certainty, 4) there are many facilities available for the development of legal regulations or legislation. However, Satjiopto criticized the characteristics inherent in this written law as a form that cannot at the same time be equated with increasing the quality of justice (Aulia, 2018). In this section, Satjipto Rahardjo then asserts through his thesis that science is for real, not the other way around. If reality is for science, then that reality will be manipulated so that it fits with existing science and theory (Aulia, 2018).

It is very appropriate to conclude the struggle between idealism to build a legal spirit based on the ideals of the nation's law with the urgency of creating law graduates who can fill this market need, as a form of death of creativity and legal thought. The death of creativity occurs because legal education institutions are imprisoned by state power to produce products that are ready to support the conception and ideology of state law. Meanwhile, death thinks because the law no longer carries the interests of the people who gave birth to it and the strong tendency to copy and paste foreign legal products into our national legal system.

The spirit of Pancasila law, renewal, progressiveness, responsiveness, transcendence, and various other paradigms that are starting to grow to answer the anxiety of Indonesian legal experts do not have the ability to color the pure core of legal education and its development in the practice of the legal profession. The vortex of legal education pressure, even though systemic reorientation efforts have been carried out, but reorientation is not able to enter into a substantial and strategic area. The proof is, when systemic reform efforts have been made to legal education, problems with the immorality of law graduates, in courts, prosecutors, police, and even lawyers continue to occur. Not only at the level of legal practitioners, even in state institutions, such as the DPR, the Executive, and the Legislature, in accordance with their respective functions and duties, the ideals of law as an element of change continue to experience degradation and strong political pressure.

In a legal climate for democracy, the law is nothing more than a means of legitimizing the interests of power. In the legal climate for politics, politics becomes the commander of the law, as well as the law for development, the law then becomes the legitimacy for the growth of capitalism. And lastly, when law synergizes with culture, the law becomes a tool to suppress the socio-cultural and religious values of the community.

Based on these problems, there is tremendous difficulty in formulating and at the same time configuring what kind of legal ideals will be the most appropriate guidelines and strategies in framing the nation's legal ideals. This difficulty is not only supported by the attractiveness of Western law which almost dominates the logic of the thinking of legal educators in universities, but also the low morale and courage of legal intellectuals, both in state institutions and those working individually. to make a sharp critique of the ongoing error.

It is interesting to cite a customary fatwa emphasizing the character of the community law (living law) which is based on the national soul (volkgheist) from Minangkabau traditional philosophy (Munir et al., 2016).

Sakali aia gadang (sekali air besar)
Sakali tapian barubah (sekali pula pinggiran sungai berobah)

Sakali tahun baralieh (sekali tahun berganti)
Sakali musim bakisa (sekali pula waktu berobah)
Nan elok dipakai (yang baik dipakai)
Nan buruak dibuang (yang jelek dibuang)
Usang-usang dipabaharui (yang usang diperbaharui)
Lapuak-lapuak dikadjangi (yang rusak di perbaiki)
Adat dipakai baru (adat dilaksanakan menjadi baru)
Kain dipakai using (pakaian digunakan menjadi bekas)

There are four foundations of thinking that can be captured from the adat fatwa above: 1) the law has changed, 2) the good has been taken, 3) the old one has been renewed, and 4) the custom will be applied more recently. This conclusion emphasizes that it does not mean that the legal principles or values of the community are not able to answer the needs of contemporary law and it is also not that the law is not alive and fails to control the behavior of its people in the present situation. The character of the law accommodates change, as well as the tendency to apply the good with the principle of always renewing, then the law of society will remain new or not out of date.

Based on the world view of customary law above, to formulate the construction of a paradigm shift in customary law, it cannot only be done by using a legal pluralism approach. Since what happened later on the state policy to accommodate the laws that are still being applied by the community is nothing more than a form of by the grace of state law (kindness of the state). Therefore, it is necessary to reform the approach and model used, at least the negative view so far on customary law can be changed.

In the authentic legal paradigm, it is necessary to position customary law and its various value orders within the framework of an authentic world view, within a philosophical building :

In legal ontology: customary law is a value order that grows and is born from the full awareness of the community about the importance of maintaining and preserving their lives in an orderly and responsible manner. Because the state is a form of the extended family system, customary law is the pillar of the legal structure, even at the altar of differences from one another.

In legal axiology: customary law has symbols, attitudes, and actions, as well as embedded beliefs. And as for the content and value of customary law 1) the value of the philosophy of life, 2) the value of clarity of rights, 3) the sovereignty of each person, 4) the nature of togetherness (communal), 5) belief in God, 6) authority, 7) morality 8) tolerance , 9) harmony, 10) an order that is obeyed and accepted objectively 12) clear and legitimate leadership, 13) equality, 14) everyone has the right to justice, 15) accepts the common good and rejects every bad and damage, 16) everyone bears the consequences for his actions that harm the interests of people.

In legal ideology: the ideological order of customary law is built on magical, religious, communal, concrete, direct, and cosmopolis constructions.

In legal epistemology: the truth for customary law rests on the teachings of the cosmology of natural law with local humans through the belief that nature is a medium for realizing human welfare and glory, which therefore needs to be built in harmony with nature and humans. With the harmony of nature with humans, then the law becomes a symbol of protecting the rights and obligations of everyone. Every truth is goodness and goodness must be a source of thinking and knowledge for the legal community.

In legal teleology: the meaning of law for customary law communities is as morality that distinguishes humans who think from creatures who don't think. While the purpose of the law is intended to create harmony, balance, justice, and the fulfillment of the rights of everyone to get their share in the community.

In the teaching of legal science, customary law contains a communal understanding (togetherness) which is charged to each person to behave in a pleasant manner and not harm the interests of others. Because every action that harms other people will create a space for conflict and damage to the legal system of togetherness.

In legal logic: the logic of customary law is built with a dynamic value order, can change, and can also be adjusted to the times. So that the implementation of the law is carried out properly, then it is carried out through the institutionalization of the system so that everyone can get justice without any impartial decisions, and for that, these decisions then become the norm for everyone who lives in the social sphere. Through the formation of legal truth, customary law is rooted in religious magical values, habits that are mutually agreed upon, maintained through oral and permanent practice. And with that truth, absolute, relative, dynamic, and open aspects are sorted out, thus, customary law can still meet people's expectations.

The formulation of the philosophy of customary law above, of course, is very flexible in accordance with the formulation and rules of each custom that applies in various places. However, the strengths and weaknesses possessed by customary law are certainly potential for efforts to renew our thoughts on the position of customary law as a potential law in order to answer the community's needs for legal certainty and laws that are of the same spirit as them. As for the form of the framework of the authentic paradigm based on the scope of the legal philosophy, the framework of the model of authentic legal thought can be described as follows:

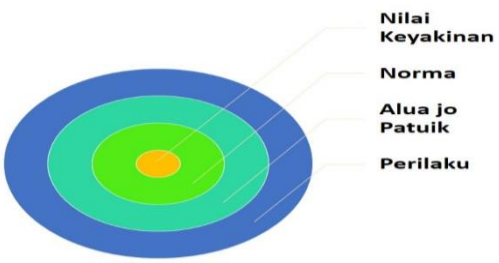

Figure 1: Philosophical Basis of Authentic Legal Science

The basis of authentic legal scholarship rests on the core part of the awareness of the social system, namely belief values. The value of belief is built from logical, emotional, mystical, and leadership awareness. This element of belief values then expands into norms of agreed and respected social behavior as common rules in maintaining the order of social life. In order for these rules to be solid, they are further expanded as laws that are understood collectively in a social community. This concentric circle quite clearly shows the radiating nature of authentic law that grows and lives in society.

In the description of the nature of authentic legal scholarship below, it further emphasizes the nature of authentic law.

Figure 2 : Authentic Legal Scientific Characteristics

Authentic law is composed of objects, perspectives and understanding of the truth contained in society which is then formed in a systematic series, as described in the following figure:

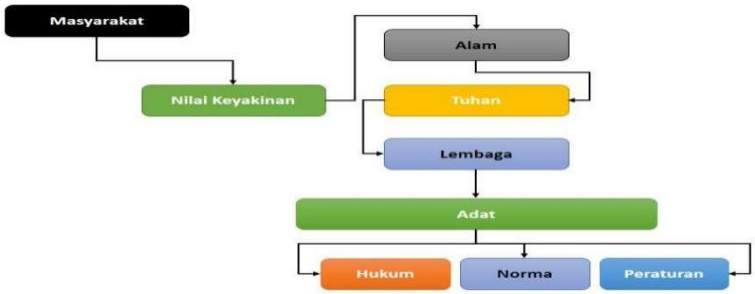

Figure 3 : Authentic Legal Characteristics

Based on the authentic character of law as seen in the picture above, the existence of law with the perspective of the soul, values and teachings adopted by the community is quite clearly different from various forms of philosophy or legal paradigm such as historical school and sociological jurisprudence paradigm..

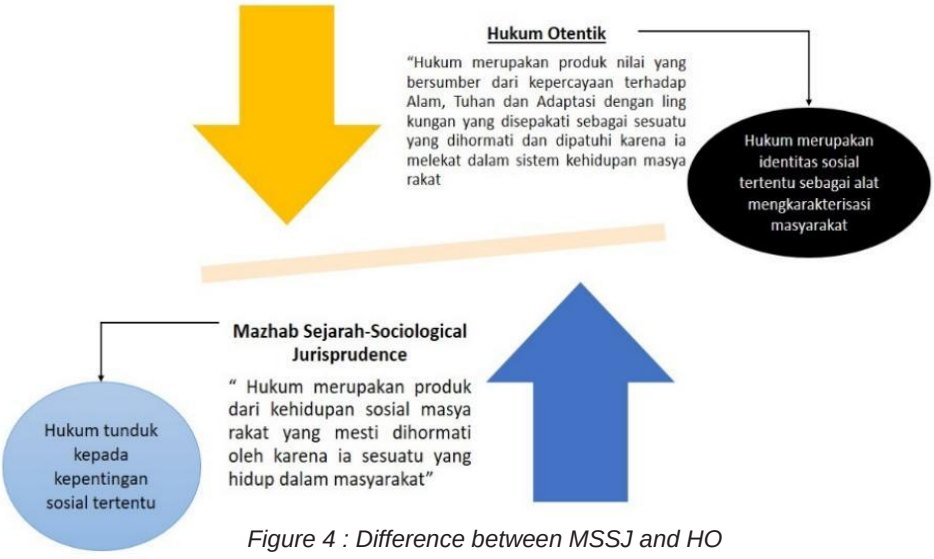

Figure 4 : Difference between MSSJ and HO

According to the author, after trying to distinguish the paradigmatic idea between the schools of history and sociological jurisprudence with authentic law, it is very necessary to make strategic steps to encourage a change in the legal paradigm today which tends to ignore efforts to identify social communities so that the character of a society is formed through law. Some of the steps for the update are:

Opening the widest possible space at the university level and legal institutions to follow up on customary law as "customary positive" law that is in accordance with the needs of each indigenous people.

Starting to recognize and label Indonesian law with customary law, even though there is a process of assimilation, hybrid and cross-cultural acculturation in Indonesia.

Opening opportunities for the development of knowledge of customary law as a living postmodern law and able to answer the needs of the community.

Conceptualization of the rule of law into a "state of customary law" as a characteristic of the rule of law in Indonesia.

Selecting, sorting, and separating value aspects, procedural aspects, and practical aspects in state life so that permanent, changing, and adaptive laws are formed..

Strengthening the character of customary law as authentic law that has the adaptive ability to respond to the needs of the community for justice without changing its substance, of course, requires a clear grand design so that the legal identity of the Indonesian nation, apart from being different from the laws of other countries, is also to emphasize that Indonesian law is independent and free from foreign legal imperialism. This potential certainly needs to be continuously tested in order to get the right formula to fill the effort to develop a national legal system that is truly in accordance with the ideals and soul of the Indonesian nation.

Conclusion

Building the character of legal studies based on the authentic paradigm is the next step to answer the needs of the Indonesian people for a legal system based on the ideals and character of the nation itself. Higher education as a crater for education and legal discovery must of course be able to become agents of change in moving the process of changing the legal paradigm. With various symptoms of affirmation of the spirit of the law and legal imperialism that occur secretly, this condition certainly cannot be tolerated, because, by dropping the values and morality of law as a transaction tool, the law as the pillar of civilization will weaken and can endanger the foundation of the Unitary State of the Republic of Indonesia.

Authentic law is an attempt to place the law as a social identity with the character of society in a norm-based on a divine view, adaptive and characterized. Authentic law does not merely see the law as a social product, let alone a social phenomenon, but the law is the identity of humanity in the social environment of society itself which forms the character of its civilization.

The face of the Republic of Indonesia is largely determined by the legal form it adheres to. By paying attention to the authentic legal paradigm as a law that is no less monumental than the results of the logical investigations of jurists, Europeans, and Westerners, there is a good necessity that the power of the law which becomes a social or customary identity has great potential to bind this nation in a solid and dignified formula. Since the law is not just a social symbol, but as a characteristic that distinguishes it from the legal culture and culture of other communities.

References

[1] A. Kamaruddin, S. (2012). Character Education and Students Social Behavior. Journal of Education and Learning (EduLearn), 6(4), 223. https://doi.org/10.11591/edulearn.v6i4.166.

[2] Anwar, K. (2011). Pendidikan Hukum Di Era Transisi Dalam Negara Demokrasi Menuju Indonesia Baru. Masalah-Masalah Hukum, 40(2), 236–245. https://doi.org/10.14710/mmh.40.2.2011.236-245

[3] Asshiddiqie, J., & Safa'at, M. A. (2006). Teori Hans Kelsen Tentang Hukum. In Mahkamah Konstitusi RI. Mahkamah Konstitusi RI.

[4] Atmadja, D. G. (2018). Influential Flows of Legal Philosophy to Jurists Thoughts. Sosiological Jurisprudence, 1(2), 113–122. https://doi.org/10.22225/scj.1.2.727.113-122

[5] Aulia, M. Z. (2018). Hukum Progresif dari Satjipto Rahardjo. Undang: Jurnal Hukum, 1(1), 159–185. https://doi.org/10.22437/ujh.1.1.159-185.

[6] Bedner, A., & Arizona, Y. (2019). Adat in Indonesian Land Law: A Promise for the Future or a Dead End? The Asia Pacific Journal of Anthropology, 20(5), 416–434. https://doi.org/10.1080/14442213.2019.1670246.

[7] Blackwell, A. H. (2008). The Essential Law Dictionary. Sphinx® Publishing. http://www.ucm.eblib.com/EBLWeb/patron?target=patron&extendedid=P_360338_0&

[8] Borison, M. S. (2016). Towards A New Industrial Organization: A Glance at The Political Economy of Claude Henri De Rouvroy, Comte de Saint-Simon. International Scientific Journal "Innovations in Discrete Productions," IV(1), 39–41.

[9] Burhanudin, J. (2015). The Dutch Colonial Policy on Islam: Reading the Intellectual Journey of Snouck Hurgronje. Al-Jami'ah: Journal of Islamic Studies, 52(1), 25. https://doi.org/10.14421/ajis.2014.521.25-58.

[10] Cain, J., & Cain, J. L. (2010). Legal and Ethical Issues Regarding Social Media and Pharmacy Education. American Journal of Pharmaceutical Education, 74(10), 184. https://doi.org/10.5688/aj7410184.

[11] Collin, P. H. (2004). Dictionary of Law (Issue 4). Bloomsbury Publishing.

[12] Deflem, M. (2008). Sociology of Law. Cambridge University Press.

[13] Dimyati, K., & Wardiono, K. (2012). Tipologi Pemikiran Hukum: Sebuah Eksemplar Pemikiran Mochtar Kusumaatmadja. Digest Epistema Berkala Isu Hukum Dan Keadilan Eko-Sosial, 2, 7–14.

[14] Falk, R. (1975). A New Paradigm for International Legal Studies: Prospects and Proposals. The Yale Law Journal, 84(5), 969–1021. https://doi.org/10.2307/795434

[15] Fischer, F., Miller, G. J., & Sidney, M. S. (2006). Handbook of public policy Analysis Theory, Politics, and Methods. In CRC Press. CRC Press Taylor &

Francis Group. https://doi.org/10.4135/9781848608054

[16] Gauvain, M., Beebe, H., & Zhao, S. (2011). Applying the cultural approach to cognitive development. Journal of Cognition and Development, 12(2), 121–133. https://doi.org/10.1080/15248372.2011.563481

[17] Halim, Y., Sudewo, F., & Justian, J. (2019). Transformative-Participatory Legal Research Method for Harmonizing The Existence of The Living Law in Indonesia. Jurnal Media Hukum, 26(2), 146–157. https://doi.org/10.18196/jmh.20190130

[18] Harun, M. (2019). Philosophical Study of Hans Kelsen's Thoughts on Law and Satjipto Rahardjo's Ideas on Progressive Law. Walisongo Law Review (Walrev), 1(2), 195–220. https://doi.org/10.21580/walrev.2019.2.2.4815

[19] Hiariej, E. O. S. (2019). United Nations Convention Against Corruption dalam Sistem Hukum Indonesia. Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada, 31(1), 112–125. https://doi.org/10.22146/jmh.43968

[20] Hidayat, E. (2017). Kompilasi Hukum Islam dalam Tata Hukum Nasional. ASAS Jurnal Hukum Ekonomi Syariah, 9(2), 190–200. https://doi.org/10.24042/asas.v9i2.3278

[21] Latipulhayat, Atif. (2014). Mochtar Kusumaatmadja. Padjadjaran Jurnal Ilmu Hukum, 1(3), 626–642. https://doi.org/https://doi.org/10.22304/pjih.v1n3.a12

[22] Lathif, N. (2017). Teori Hukum Sebagai Sarana Alat Untuk Memperbaharui Atau Merekayasa Masyarakat. Palar | Pakuan Law Review, 3(1), 73–94. https://doi.org/10.33751/palar.v3i1.402

[23] Lumbard, J. E. (1965). The Citizen's Role in Law Enforcement. The Journal of Criminal Law, Criminology, and Police Science, 56(1), 67–72. https://doi.org/10.2307/1140598

[24] Manullang, F. M. (2015). The Purpose of Law, Pancasila and Legality According To Ernst Utrecht: a Critical Reflection. Indonesia Law Review, 5(2), 187–207. https://doi.org/10.15742/ilrev.v5n2.141

[25] Menski, W. (2006). Comparative law in a global context: The legal systems of Asia and Africa. In Cambridge University Press (Issue 2). Cambridge University Press.

[26] Munir, M., Mustansyir, R., Supartiningsih, & Saerah, A. R. (2016). Rumah Gadang & Lingkungan. Lima Media.

[27] Mursal, M., Ritonga, M., Sartika, F., Lahmi, A., Nurdianto, T., & Alam, L. (2021). The contribution of Amil Zakat, Infaq and Shadaqah Muhammadiyah (LAZISMU) institutions in handling the impact of Covid-19. Journal of Sustainable Finance and Investment, 0(0), 1–7. https://doi.org/10.1080/20430795.2021.1886550

[28] Purbacaraka, P. W. (2017). Sekilas Tentang Analisis Teori Sejarah Hukum F.K Von Savigny Terhadap Rencana Pembuatan Undang-Undang Perbankan Syariah Di Indonesia (Suatu Pendahuluan). Jurnal Hukum & Pembangunan, 36(4), 499–513. https://doi.org/10.21143/jhp.vol36.no4.1475

[29] Romli Artasasmita. (2012). Tiga Paradigma Hukum Dalam Pembangunan Nasional. Jurnal Hukum Prioris, 3(1), 1–26. https://trijurnal.lemlit.trisakti.ac.id/prioris/article/view/354/325

[30] Shanmugam, K. (2012). The rule of law in Singapore. Singapore Journal of Legal Studies, 12, 357–365. https://doi.org/10.2139/ssrn.2255270

[31] Sudiarawan, K. A., Tanaya, P. E., & Hermanto, B. (2020). Discover the Legal Concept in the Sociological Study. Substantive Justice International Journal of Law, 3(1), 94–108. https://doi.org/http://dx.doi.org/10.33096/sjijl.v3i1.69

[32] Syamsudin, M. (2017). Reorientation of Approaches in Indonesian Customary Law Studies. Journal of Indonesian Adat Law (JIAL), 1(1), 1–33. https://doi.org/10.46816/jial.v1i1.15

[33] Syamsudin, Muhammad. (1996). Perkembangan Konsep Hukum Adat dari Konsepsi Barat ke Konsepsi Nasional (Sebuah Tinjauan Historis). Jurnal Hukum IUS QUIA IUSTUM, 3(5), 70–80. https://doi.org/10.20885/iustum.vol3.iss5.art9

[34] Tajdin, M. (2017). Natural law and Shari'a, A Quest for the Universal in Particular. International Journal of Business, Economics and Law, 14(5), 1–8. https://doi.org/10.4337/9781788110044.00031

[35] Tamanaha, B. Z. (2011). The primacy of society and the failures of law and development. Cornell International Law Journal, 44(2), 209–248.

[36] Teubner, G. (1983). Substantive and Reflexive Elements in Modern Law. Law and Society Review, 17(2), 239–285. https://doi.org/10.4324/9781351126670-4

[37] Tutik, T. T. (2013). Ilmu Hukum: Hakekat Keilmuannya Ditinjau Dari Sudut Filsafat Ilmu Dan Teori Ilmu Hukum. Jurnal Hukum & Pembangunan, 43(2), 223–246. https://doi.org/10.21143/jhp.vol44.no2.22

[38] Voegelin, E. H. (1945). General Theory of Law and State. By Hans Kelsen. Translated by Wedberg (20th Century Legal Philosophy Series: Volume I) Harvard University Press, Cambridge, 1945. Pp. xxxiii, 516.$6.00.; The Pure Theory of Law, by William Ebenstein. University of Wisconsi. Louisiana Law Review, 6(3), 489–492. https://doi.org/10.2307/2193216

[39] Zoelva, H. (2021). The Threat of Judicial Mafia in Indonesia in Discrediting the Principle of the Rule of Law. International Journal of Criminology and Sociology, 10(5), 839–844. https://doi.org/10.6000/1929-4409.2021.10.99