



## The Model of Law Education to Achieve Progressive Law Enforcement

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### Abstrak

Pendidikan hukum di Indonesia cenderung menghasilkan lulusan yang berpikiran positivistik—yang mendorong para penegak hukum berpikir dan bertindak dengan cara legalitas hukum. Selain itu, hakim akan menjadi corong dari peraturan perundang-undangan, sehingga mereka tidak bisa memenuhi rasa keadilan masyarakat. Penelitian ini akan menganalisis aturan hukum terkait dengan pendidikan hukum di masyarakat. Hasil penelitian ini menunjukkan bahwa sistem hukum terkait dengan pendidikan hukum di masyarakat masih bernuansa positivisme yang berkesan represif dan tidak responsif. Kondisi ini berpengaruh terhadap corak penegakan hukum yang bersifat legal positivistik. Secara ideal ke depan pendidikan hukum mengintegrasikan pendekatan sosiologis dan prinsip-prinsip keadilan, sehingga penegak hukum yang dihasilkan dari pendidikan hukum menjadi berorientasi kepada keadilan substantif.

### Abstract

*The legal education in Indonesia tends to produce graduates who believe in legal positivism that encourages law enforcers to think and act in any legal formalistic way. In addition it places judges as the mouthpiece of the law who cannot express to make decisions that satisfy a sense of social justice and substantive justice. This article is based on the socio-juridical approach by underlying the analysis of the law and regulations which are related to the application of legal education in the community. The legal education is oriented to legal positivism that results in law enforcement with the understanding of law based on the abstract values, not on the values that live and thrive in society, so that the understanding of the law in a legal sense is more repressive, and not responsive. Law is understood as infunctional and unpragmatic thing, therefore understanding of law is the law that merely protects the elite group of citizens, in such a way that equality before the law and the rule of law don't work. Legal education in the future should be based on the sociological aspects of prioritizing the principles of social justice and the benefits for the community, instead of legal certainty only. Legal education will produce a responsive law enforcement that put substantive fairness and social justice as a legal purpose.*



## 1. Introduction

The law is no longer seen as an autonomous and independent thing, indeed it is interdependent with other areas in the community'. Llyotd said as cited by Raharjo (1983:16) that although much juristic ink has been used in an attempt to provide a universally acceptable definition of law, there is little sign of the objective cover having been attained (Ali, 2002:10). One of the ways to understand the meaning of the law is by the study of law itself. The way to study the law will obtain a detailed knowledge about the rules of applicable law (Huijbers, 1991:15).

The implementation of law study is conducted with education law through Law Faculty in each college. Educational implementation of the law can be done by the state and society. Community involvement in the world of education law shows the existence of the spirit for everyone to understand the law. In concert with the thesis Ronald Dworkin in *law's Empire that We live in and by the law*' then naturally everyone throughout his life needs and is required to learn and obtain education about the law (Gift, et.al., 2013:9).

Education law aimed to understand the theories of law and then can implement in the practice of the life of the community, especially to produce legal profession skilled in running their respective functions. Law education in Indonesia is conducted through two lines, namely theory and practice. In fact unsynchronization often happens between both of them; where education theory was considered as overmuch theoretically, on the contrary the practice of the law should be suspected of no longer follow or based on the theory (Gift, et.al., 2013:11).

In the solution to the problems in public, it often happens that the profession of the law is not based on the theory of law, but rather more to the direction of the law which lives and grows in the community, as the idea of sociological jurisprudence<sup>1</sup>. Many cases were finished legally without knowing pub-

lic social conditions, as in the case of cacao seeds theft in Banyumas (<https://infoindonesiakita.com/2009/11/17/dimejahijaukan-ambil-tiga-biji-kakao-senilai>), cases of teak theft in Madura, cases of sandal theft in Tangerang, and the like. By contrast, there were law enforcement efforts outside of the theory of law and the principles of applicable law, for example cases of pre judgments submitted by the suspects, case of reviewing filed by the public prosecutor, etc. Besides, in law enforcement it is often found the existence of mafia judgments which show that there are legal professions who work unprofessionally, break the professional ethics and even the law ([Http://www.hukumonline.com/berita/baca/lt54e1aae4befc3/hakim-lampau-ke-wenangan--putusan-praperadilan-bg-batal-demi-hukum](http://www.hukumonline.com/berita/baca/lt54e1aae4befc3/hakim-lampau-ke-wenangan--putusan-praperadilan-bg-batal-demi-hukum)). The final example, Judge of Constitutional Court Patrialis Akbar who was caught in the operation of fish hands by Corruption Eradication Commission (KPK). According to Prof Muktie, the growth of judicial mafia that occurred during the last few years involves those who have deep understanding about the law very well and well-educated as well. The growth of judicial mafia, he continued, also correlates with the direction of law education which is currently taught in various universities in Indonesia (<http://www.antaraneews.com/berita/550894/prof-muktie-ada-apa-dengan-pendidikan-hukum>).

Based on it, the problem of how the ideal education law model to realize progressive law enforcement occurs. This writing was based on judicial approach of sociological with emphasis on the analysis of the legislation related to the implementation of law education in public, which aims to achieve a more progressive law education.

## 2. Result of Research and Discussion

### 1. The implementation of legal education in Indonesia

Based on Article 1 Paragraph 1 Law Number 20 of 2008 on National Education System, education is a conscious and planned effort to realize the learning environment and the learning process so that the students actively develop their potential to have the

<sup>1</sup> The law which is accordance with the values of life and developed in the public (*living law*). This idea grew in America developed by Roscoe Pound, Eugen Ehrlich, Benjamin Cardozo,

strength of the response to religious, restraint, personality, intelligence, high moral standards, and skills which are necessary for themselves, community, and state.

According to the Indonesia Dictionary education means a process of conversion of the attitude and behavior of a person or group of people in the way to mature the human through the efforts of teaching and training the process, works and how to educate.

The most common definition according to Sudarwan Danim (2003:22) is that education is the process of humanization functions as expectation of the emergence of worth humanity. humanization is the process of humanise men by men. This process is seen successfully when the adult human born; it is true man laden with worth values. Adult human is a man who dares to do and is responsible for his deeds. Education is naturally a process of the development of the human personality to become a genuine adult human, smart, skillful and replete with spiritual values and humanity which is necessary for himself, community, and state. From philosophical approach, ontologically, education is an activity that exists and is located. This approach sees that the fact education is associated with the fact of the existence of education itself. The existence of education cannot be separated with the existence of men, therefore the fact of education concerns with the fact of men.

National education functions to develop the capacity and shape the characters and nation's civilisations of dignity in order to educate the life of the nation. It aims for the development of the potential learners in order to become men who believe and have the fear of the Lord as One True God, have strength morality, healthy, competitive, creative, independent, and become democratic and responsible citizens (Article 3 of Law Number 20/2008 on National Education System).

Educational Implementation of the law aims to produce graduates who have the knowledge of law and the knowledge of Indonesia law. In the educational curriculum, law is not differentiated between academic law education and profession law education,

except notary education. Law education, in fact, is directed to control the principles of law, the theory of law, the teachings of law, positive applicable law, and about law in the sense of the law. Each College hosting education law must arrange the curriculum.

The curriculum which occurred at the Faculty of Law is based on the Regulation of the Government of the Republic of Indonesia Number 17 Year 2010 about the Management and Educational Implementation as has been changed with the Regulation of the Government of the Republic of Indonesia Number 66 2010, National Education Minister Decree No. 232/U/2000 about Guidelines of the Arrangement of the Curriculum and Assessment of student learning results and the Decree of the Minister of National Education No. 045/U/2002 about the Core Curriculum in Higher Education.

The decree of the Minister of National Education No. 232/U/2000 states that the college curriculum consists of Core Curriculum that is valid nationally and institutional curriculum is determined by each college. Based on the Decree of the Minister of National Education No. 045/U/2002 higher education curriculum is competency based curriculum. Basically, the Law Facultas determined that graduates are expected to have the ability of understanding the principles of law, legal norms and have basic skills legal research; and apply the principles and legal norms in dealing with the problems of the law professionally.

Mochtar Kusumaatmadja intercedes an opinion that assumes the construction of legal profession in Indonesia until now should be done after graduated from the Faculty of Law. Learning professional skills can be held in practice, while education in college only aims to provide a basis of academic knowledge about the general law. He said it was not unreasonable for the reality shows that higher education graduates of law are at least faced with the following problems (Kusumaatmadja, 2002:21-25):

1. Education in the law obtained is often less relevant with the fact that found by the graduates.
2. Graduates do not feel prepared for the

work of the practical work that they must do, for example arrange the script of the covenant or the (drafting).

3. The graduates are not prepared to solve the problems faced by, even though the provision of knowledge to resolve it exists

The implementation of legal education in Indonesia was influenced by an existed legal system. According to Lawrence Meir Friedman (2007:30, 41-42) there are three element of legal system, namely: *Legal Structure*, *Substantive Legal*, and *Legal Culture*, which is toward on the European system or *Civil Law System*.

## 2. Criticism of the Indonesian Legal Education

The influence of Europe continental system or civil law system on law education in Indonesia, when viewed from the perspective of sociology, shows that the education law in Indonesia has not yet been able to reflect the needs of the community. In the era of globalisation, where created a unity of the world that is borderless between countries has been affecting almost all aspects of human life in various countries. *Global Term* becomes symbolism of two contradictory things: competitive pressure which is such strong; and the spirit of expansion to take advantage of market opportunities (Siregar, 2011:6). The development of society in globalization era arouses problems in society which must be finished. The law is one of means to end problems in the community. On the other hand, it must be able to function as a means of social engineering. Graduates of law education must have the power of legal problems solving, therefore he must be able to control the law and the knowledge of Indonesia law.

According to Hikmahanto Juwana, Indonesia law education has not yet been able to translate the purpose of law education; it is to produce graduates who have the knowledge of the law and the knowledge of Indonesia law, because it has some weakness, they are; lack the strength distinction between academic law education and profession law education, weakness in the semester

credit system, less sustained attention of supporting infrastructure, and a strong intervention curriculum maker (Juwana, 2005:8-16).

Regarding to law education that aims to understand the theories of law, it will surely produce the law profession which tend toward the theory of the specific law. The curriculum becomes a determining factor in terms of law education out put. There are around 80% education law curriculum which based the understanding of law theory on repetition or memorization. One of law theories that is developed in law education and very influential in the law profession is the theory of legal positivism.

Based on the ideas of the exponential positivism, seen from the form of the theory, positivism law theory sees that the law is the Law, viewed by the content the law is a command from the power; then there is the authority of the power who formed the laws. In this theory, justice is not the elements of law. Justice is seen as a regulative element, not constitutive elements. The law that does not meet the sense of justice is still called law, although it is the worse.

Indonesian legal system has received the influence of continental Europe system or civil law system which is thick with the theory of law positivism, a concept that is influenced by legisme. This can be seen in the provisions of Article 15 *Algemeen Bepalingen Van wetgeving* (AB), that is: Exception deviations that is determined by Indonesian and those who are identified with the people of Indonesia, habit is not law unless the law stated it. The influence of positivism theory basically has been ongoing since the days of the Dutch Indies when the Book of Civil Law (*Burgelijk wet Boek* or *code civil*) and the Book of Trademark Law Trademark (*Wet Boek Van Koophandle* or *code de commerce*) on 30 April 1847 in Stb. 1847 No. 23 were declared (Wignjosobroto, 1994:40).

At the time of the New Order, people were represented by The People Consultative Council (MPR), The House of Representatives (DPR), The House of Province Representative (DPRD Prov.), and The House of Regional Representatives (DPRD Kab.) as institutions that legalized government authority

or executive. Executives' role in the making of various rules and regulations are every tough (Muntaqo, 2008:152). By the program of de-regulation package and Prolegnas, until this reformation era is now with the emergence of Law No.12 2011 about the formation of Legislation, is the color of positivism law.

These books of law are parts of law education curriculum, which then becoming a guidance for legal professions in performing their duty. When law enforcement Officers, Judges, Prosecutors, Police and Advocates or other legal professions are going to solve the law problems then they will seek the law in a book of laws or regulations, either to formulate the events of law or to find solutions for it. For the legalist of positivist exaltation, the main priority in the settlement of law issues is the existence of legal certainty guarantee, not justice or utility.

In the view of law positivism, the courts and the law officer is the ministers minister of the king. They are considered (and they consider) as an instrument of a power who are easily manageable. The law institutions serve the country; they are an integral part of the country. *Legalist paradigm positivist exaltation*, as well as judges as the trumpet blasts of legislation must be removed from the legal practice in Indonesia (Nonet and Selznik, 2010:39).

Seen from the curriculum at the Faculty of Law, the law education in Indonesia tends toward the law positivism principle, first; put law enforcement officers to think and act legally formalistic, second; place judges as a funnel law; that could not be of expression to make a decision that meets the sense of social justice or substantive justice. Some of the criticism of the positivism theory are:

- 1) The doctrine of legal certainty as the son of legisme teachings which is defended by the followers of this theory, glorifying rationalism in the study of law and the practice of the judiciary is indeed the doctrine that is developed and supported by the adherents at an era when the democratisation process is taking place and with the ideals that the authority of the state must be limited and controlled by the law. The state

must be constructed as a 'law country' and not 'power' (Wignjosobroto, 2006:2). The infrastructure of the state of the law is yet another society is a citizen of (civil society), and not the people who know the false dichotomy kawula-Gusti. In the middle of the life of the community, every man must be acknowledged the same position before the law and the judges.

- 2) In fact, what the ideals espoused that "every citizen has the same position before the law and the authority" was not eternally realized. What has been given in the ideals and the concept of the normative is not always a description of what can be found in the real experience. According to the law concept every citizen of the community and citizens are considered the same position, but in the reality of life agreements occur between the parties do not always reflect the protection of balanced interests (Wignjosobroto, 2006:3).
- 3) In certain matters, law positivism could not provide solution. According to the Article 28 of Law Number 4 of 2004 then judges will find the law that live and grow in the community, it is not in the Law (positive law). As an example, the case of Children Adoption before the enactment of the Law on children protection, still subject to and apply customary law<sup>2</sup>. The provisions of Article 28 of the Law on the Subject of Justice and Jurisprudence is more inclined embraced on history Madzhab as the solution. As in Vonsavigny's famous book (Rasyidi, 1996:69) *Von Beruf Unserer Zeit fur Gesetzgebung und Rechtswissenschaft*-about tasks for the legislator and law science maker, said: *Das Recht wird nicht gemacht, est ist und wird mit dem*

2 Yurisprudence of the Supreme Court No.382 K/Pdt/1985 where the SUPREME COURT holds that a person who was taken care of since childhood then has a circumcision even after being an adult also given marriage by both parents who took care of him/her, from this fact it can be concluded that a person is an adopted child of their parents.

*volke*-Law is not created but it will grow and develop with the community. The main point is that in this world there are various nations on which each nation has *volkgeist*-the different soul of people either according to time or place. A reflection of the existence of the soul occurs on the culture and including the law. The law is very depending on the people soul and the contents of the law is determined by the association of human life from time to time. The law developed from a simple society in which the reflection occurs in the behavior of all individuals to a modern and complex society.

- 4) In the reformation era, this is not to say that the decisions of the judges contribute greatly for changes in Indonesian society (Dwi Putro, 2011:1). This is where modern law is located at the crossroads (Salman, 2004:147), since between justice had been decided and the law has been applied, there are huge differences. The area of justice is not exactly the same as the region of positive law. That emergency is performed when talking about the supremacy of law. What do we mean?. The supremacy of justice or the supremacy of law?. The intersection situation also raises the sense of understanding as ' the "formal justice system" or "legal Justice" in one party and "substancial justice " in other party. The law decisions which are required by community is the more responsive decisions of the judges as practiced in the theory of law of responsiveness developed by Nonet & Selnick, popularized by Satjipto Rahardjo as stated by Ali (2009:478-479). The Pound Roscou theories about social interests, is a more explicit effort to develop responsive law model. In this perspective, law should offer something better than the formal justice procedure (Nonet and Selznik, 2010:83-84).

### 3. The Model of Progressive Legal Education

According to Apeldoorn, every moment of human life is powered by law. The law does not only manifest in the judgment, but always manifest in the association of life. The society association of life that is the reincarnation of the law. The law is the society itself, human life itself (Apeldoorn, 1990:22). Law education must be built in accordance with the will of communities where the law will be established, conducted and or enforced. Educational implementation of law in Indonesia has not seen to meet the needs of the community which is very heterogeneous and has various problems and needs renewal. *During this thime, there are surfaced ideas that the need for reform in the law education sector occurs. Those ideas are (Najmudin, 2011):*

- a) There is an opinion regarding the construction of the legal profession in Indonesia, should be done after graduating so Law Degree (SH), because basically education in college only aims to provide a basis of academic knowledge about general law.
- b) It is no secret that law education obtained in college is less relevant, even did not come into direct contact with the reality in the workplace by the graduates.
- c) Graduates do not feel well-prepared for the practical work that they must do, for example: arrange the script of the covenant, legal drafting, and the like.
- d) The graduates are not prepared to solve the problems faced by, even though the provision of knowledge to resolve it existed.

Satjipto Rahardjo had triggered the progressive law education which is associated with the concept of progressive law. Progressive law education is expected to create progressive graduates. Characteristics of progressive law education is education that is creative, responsive, protagonist, queenly liberty, oriented to Indonesia and the needs of Indonesia. When this progressive law education is run, it is expected that Law Faculty is

able to produce graduates who always puts his conscience and justice in the law (Kompas 8 April 2004:19).

According to Woro Winandi, progressive law education does not just create formalistic and dogmatic law practitioners/executor of the *formalistic legal practitioners and dogmatic*, so that the need to include a conscience that includes mercy (*compassion*), attention/deep sympathy (*emphaty*), dedication and sincerity (Winandi, 2006:111).

More than that, law education graduates is expected to be able to apply the law and or develop the theory of law development which comes from the *Law as a tool of social engineering*. The law is an interdisciplinary curriculum, so that it cannot be seen from one sense only, that is the Laws. Law is located in the middle of community then it will not be apart from the human life in community. The law is the law according to the law of life (*living law*) and developing in public, as the theory that developed in America, seeded by Roscou Pond, Eugin Ehrlich, Benjamin Cardozo, etc, which is called *sociological jurisprudence*.

According to Soetandyo Wingjosoebroto as cited by Irianto, et.al., (2012:304), sociological term refers to a realism thought in law science (Holmes), who believes that although the law is something that is produced through a logical imperative process, but the life of the law has not been logic, it is (harmful socio-psychological) experience. Judges must be proactive in making the decision to settle the case by paying attention to the social realities, so the decision of the judges always meet people's sense of justice. And from this thought new doctrine in Sociological Jurisprudence about the Law is a tool of social engineering is born Irianto, et.al., 2012: 4).

The law was born from community *opinio necessitatis*. The Law emerged directly from the routine needs of society in their social life. This is what by Eugen Ehrlich called living law. Ehrlich mentions „alive law“ with the term *Rechtsnormen*, different with *Entscheidungsnormen* and *Rechtssatze*. *Rechtssatze* are the rules of the law that has been formulated in the form of legislation. *Entscheidungsnormen* is norms of the de-

cision which is a guideline for the court.

In the tradition of civil law, the role of the government and parliament is dominant in the formation of law for written legislation; and law positivism gives understanding on the judges that the law is merely to deal with the norms. So here the work of the law and the judges, which according to its doctrine required and hinted at neutral and could not show partiality, in fact often has backfired let to various gap that shows how that one get more while the others, which is generally the amount of mass thus, get less. Seen from the Pancasila view, it is obvious that for Indonesia nation, law functions as a tool that will deliver the nation of Indonesia toward a fair and prosperous society based on Pancasila. Besides, the fact that the nation is a nation that pluralist with United in Diversity (Bineka Tunggal Ika), there is the fact of the existence of pluralism law (Muntaqo, 2008:187).

The real character of the law that is actually needed by Indonesian nation is the law that can accommodate the nature of the plurality of people spread from Sabang to Merauke with various tribes of the nation with the authority of the traditional local. The main thing that must be done in the development of law is to do law harmonization, not perform unification and codification (Muntaqo, 2008:30). Based on the theory of *Sociological jurisprudence*, with the existence of legal pluralism, then the establishment of the law must be based on the values that grow and develop in these units of pluralist society, and based on the theory of *Instrumental<sup>3</sup>*, which clearly the law is used by the community in life (*functional law*) and not the law that was created based on the values which is a priori (abstract) established and practiced by the experts in the law and normative and positivists. The theory of the Pound, in 1970 was introduced in Indonesia by Mochtar Kusumaatmadja with the term of law as a tool of social engineering which is then known

<sup>3</sup> The law was formed, how the law achieves a particular purpose. Pragmatism: philosophymoment, which states that a proposition is true ideology /if it works satisfactorily. This means that the proposition is true if in the practice it has received consequences practically. The teachings of pragmatic law: which law is functional, that is practical.

as the theory of the Law Development (Ali, 2009:105).

The principles of law development theory are (Atmasasmita, 2012:65):

- (a) All people who are building are always characterized by change and the law is working in order to ensure that the change occurs in a regular way. Regular changes, according to Mochtar can be assisted by legislation or the decision of the court or a combination of both.
- (b) Good changes and order (or Order) is the purpose of the beginning of the community who is building, then the law becomes a facilitation (not a tool) that cannot be ignored in the development process.

Law education reorientation becomes a very important thing to do in order to future graduates of law education can be more progressive. Changes in the curriculum becomes the first step toward the ideals of progressive law education. If the recent curriculum during this this time is around 80% elective courses that the process of learning by memorizing, then it needs to be changed by dividing the 50 percent of law theories courses and associated with the positive law, and 50 percent of courses related to social and practical skills of law profession. The curriculum loads are made so that the law education of Indonesia will become a progressive legal education.

### 3. Conclusion

Based on the analysis and the discussions, sociologically law education in Indonesia does not meet the needs of the community because it is still toward on positivism ideologies. Therefore, there needs to be a fundamental change in law education curriculum of Indonesia becomes the model of progressive law education so that the graduates can uphold the law in a more progressive way.

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