

# sociolegal

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## THE URGENCY OF SOCIOLEGAL ANALYSIS STUDIES TO SEE THE AUTHENTICITY OF LAW IN INDONESIA

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**Abstrak:** Artikel ini adalah hasil penelitian yang bertujuan untuk menjelaskan pentingnya studi tentang sociolegal. Perkembangan masyarakat yang pesat dapat menyebabkan masalah dalam kehidupan. Tuntutan kepentingan praktis harus segera dipenuhi oleh manusia. Oleh karena itu, pengembangan sociolegal sebagai disiplin ilmu hukum yang erat kaitannya dengan kehidupan nyata dalam masyarakat menjadi peran yang mendesak. Ada berbagai masalah dalam hubungan sosial yang membutuhkan peran hukum untuk menyelesaikannya. Melihat bagaimana perkembangan hukum dan pembangunan dalam masyarakat menjadi penting dalam ilmu hukum, karena hukum dan masyarakat tidak dapat dipisahkan. Metode penelitian yang digunakan adalah studi pustaka dengan pendekatan filosofis. Dari hasil penelitian menunjukkan bahwa kajian sosiologi hukum sangat penting untuk melihat dan memahami hukum dalam kehidupan nyata di masyarakat. Metode penalaran generalisir induktif membuat sociolegal untuk mendapatkan pemahaman tentang itu dan nilai praktis penggunaannya membuat sosiologi hukum merupakan disiplin hukum yang dapat mengikuti realitas zaman.

**Kata Kunci:** Analisis, Studi, Sociolegal, Indonesia

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

**Keywords:** Analysis, Studies, Sociolegal, Indonesia

## INTRODUCTION

Sociolegal is a branch of sociology studies. As part of the branch of sociology studies, the sociolegal of course will focus much on legal matters as manifested as part of experience in everyday life. This is different from studies of law (pure), called jurisprudence in English or *reine Rechtslehre* in German, the sociolegal does not want to limit its studies to normative matters of legislation including systematics and doctrines-the underlying doctrine. In other words, sociolegal will study and give an idea of the life of the law as it exists and manifest in the midst of society and will not be satisfied if only studying the law as written rules in its abstract conditions in the laws.

Law, based on sociolegal perspective, is not a neutral and void phenomenon, which seems to be the result of free analysis of the human rational mind but law is much germane to social issues. Legal aspects can be explained with social factors to explain the legal relation with the society and vice versa. Social factors can also be related to legal aid. Since law is made for society, law is much influenced by social interaction. Various society impacts become the major factors of what is written in law. Understanding law as part of society behavior is a theory of sociolegal that is based on social sciences.<sup>1</sup>

The idea of law as an socio-reality that lives and develops in society as in sociolegal theory is still used as one of the legal disciplines in Indonesia. Indonesia diverse society that promotes the study of customary law supported by the theory of sociolegal makes it important and has a strategic role to capture the reality of law in Indonesia particularly in lower classes. Customary law is a habit carried out by everyday people which becomes a rule to be followed together.<sup>2</sup> Since there are some laws that do not conform to the existing legal realities in society, so that this becomes a legal issues. Often customary law or sociolegal theory resolves several legal cases,

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<sup>1</sup> Yogi Prasetyo, "Legal Truth," *Jurnal Legal Standing*, vol. 1, no. 1, (2017), 8.

<sup>2</sup> Dewi Iriani, "Fiqh sebagai Alat Kontrol Sosial dan Sistem Supremasi Penegakan Hukum," *Jurnal Justicia Islamica*, vol. 8, no. 1, (2011), 139.

so this legal thought has significant benefits in supporting legal development in Indonesia. It is as stated by Stefan Talmon.<sup>3</sup> With sociolegal studies can see the real problems that occur in the community, such as the application of Islamic law, customary law and positive law in Acehese<sup>4</sup> society.<sup>4</sup>

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

The legal study actually emphasized more the role of sociolegal in drafting law based on society purposes. Although normative positivistic law persists, its existence is used to fulfill<sup>15</sup> the sociolegal aspirations that can not be formally realized in the national legal system. In this perspective, law is understood not only for the law, but also for the law for society. The thought of a transformative law that sees positivistic normative laws that must conform to social

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<sup>3</sup> Stefan Talmon, "Determining Customary International Law: The ICJ's Methodology between Induction, Deduction and Assertion," *The European Journal of International Law*, 26, (2015), 417-441.

<sup>4</sup> Aida Hayani, "Social Problems of Modern Society<sup>29</sup> Applying Islamic law in Aceh (Tracing the Past Culture Society Aceh in the manuscript)," *Justicia Islamica*, vol. 15, no. 2, (2018), 161.

reality in society is a form of contemporary development of the sociolegal. It is such what Donal Black said that it is time for the people to see changes in law, how law is well regarded and interpreted in society. According to Black, there is a change to abandon the way of understanding the laws of the rule of law to the law of living and developing in society.<sup>5</sup>

In this study using a type of library research. The approach used in this study is a legal philosophy that can provide information, verification, correction, supplementation and explanation in more detail. The reserach object is sociolegal studies in Indonesia (legal as a form of community behavior). Collecting the data by using library research, such as; books, articles, journals and other scientific works related to the research. Data analysis is done in three ways. First, descriptive analysis to provide a comprehensive and real picture of the legal as a form of community behavior. Second, evaluative analysis to justify the assessment of legal facts. Third, prescriptive analysis is to provide arguments against legal facts regarding right or wrong and what should be according to sociolegal. The collected data is then analyzed to understand the data clearly about sociolegal studies in Indonesia, so that with it will get clear data.

#### ANALYSIS OF SOCIOLEGAL STUDIES IN INDONESIA

The object of empirical law-based epistemology studies as seen in the view of sociolegal concerning law that lives and develops in the community can reveal what is evident behind people's behavior, so that it can be used to understand the law as it is that lives in it. This is useful to get a complete picture of the relationship between interests and all the values that are practiced and practiced by the community. Values and interests are a mirror of the values that are seen to be true adopted by the community in all aspects of life such as political, economic, religious, social and cultural aspects that give color and characteristics to a community's life. The object of the study of law that lives and develops in society can be a legal reality that

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<sup>5</sup> Donald Black, *Sociological Justice*, (New York: Oxford. University Press, 1989), 3-4.

occurs. The legal reality that occurs shows a relationship that affects each other, because the law is used to shape the system of society. Besides that, it can also see the pattern of legal developments in traditionally patterned societies towards a more modern society.

The social reality of society as a legal object can be observed directly by the senses, such as; history, customs, consideration of benefits and standards of living agreed upon in shared life. Legal development is an empirical process of historical events that takes place under the influence of social change and public opinion about what should be used as a habit. The judge must use his senses to observe the social conditions of the community and all problems that occur. The law in this case will continue to appear to follow and adapt to the times and changes that occur in society, so that the value of social legal uses in meeting the interests of the community is highly preferred (the final cause of it is the welfare of society). Therefore, the legal object that will be captured empirically by the senses is the facts of people's behavior that are always changing and changing. The process of changing the law will continue to keep up with the development of society, because the values that support the legal basis basically depend on the recognition and mutual agreement in the community. Sociologically, that the common will to make choices is the main requirement that cannot be separated from living together in a community.

Sociolegal has proximity to the social sciences. This can be seen from the realm of methodology. The methods and techniques of research in social science are studied and used to collect data. Methods in the social sciences are the mothers of sociolegal which were further developed by legal researchers. Precisely with the approach of the social sciences, the substance of the law can be explained more fundamentally and in accordance with the real conditions in the field. At present some of the latest approaches, such as discourse analysis, cultural studies, feminism and the flow of postmodernism have their place in sociolegal research. The issues studied are also very diverse, such as the legal formation process,

courtroom studies, settlement of off-court disputes, corruption, environmental and natural resource legal issues, legal issues concerning labor and justice, gender, poverty, crime and other social problems. All legal issues are basically born from the results of human actions, meaning that it shows that the study of sociolegal has proximity to various problems of human life. Social reality that occurs is a result of human actions which eventually become a social phenomenon that is recognized by the whole community, as the formation of customary law. Sociolegal studies are useful for looking at legal issues in the community and for finding solutions to these problems. This is like the criminalization of siri marriage in Madura which can actually be solved through socio-cultural and religious explanations.<sup>6</sup>

To understand the sociolegal that has the object of community behavior at an early stage, it is carried out by the process of data mining in the field. Data whose legal object is in the form of community behavior can be obtained through three methods or techniques, namely; interviews, questionnaires and observations. Interviews are activities that are intended to conduct question and answer directly between reviewers or people who have an interest in obtaining empirical truths with speakers or respondents who are informants to get the desired knowledge. Interview techniques have an important role in efforts to obtain real truth in the field. Through interviews, information will be obtained directly with the legal object being studied. Questionnaires or questionnaires are data collection techniques that are carried out by spreading or dividing a number of lists of questions that have been made to the speakers. The questionnaire method can be used to assist the law in exploring and obtaining legal data in the field, so the questionnaire is one method that is very useful in the field of law. Observation is an activity of digging data from objects that are empirical in nature, often referred to as observation techniques, namely the process of activities to

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<sup>6</sup> Titis Thoriquttyas, "Nikah Sirri And 32 Responses From Religious Court: Taking Sides between Acceptation and Refutation," *Justicia Islamica*, vol. 14, no. 2, (2017), 191.

collect data by observing the phenomena of a particular society in a certain time. In observation techniques must be carried out directly like interview techniques, but in the observation technique does not require question and answer activities with the resource person intensively, because it has been represented by the observation process carried out. Therefore in the observation technique there are several important notes to be used as data as a result of observation.<sup>7</sup>

The reality or special legal facts that occur in the social life of the community will increasingly increase and become general legal facts, so from there it can provide legal knowledge that can be generalized to the truth. This is reinforced by the nature of humans who have a tendency to imitate something that already exists and make conformity with the reality that occurs increasingly greater. The view of legal realism that rejects the use of rational logic strictly in obtaining legal truth would be the basis for expressing these same principles. Empirical experience in society gives more truth to a strong object of law compared to conclusions that result from logical reasoning and causality that cannot be used to determine subsequent legal events based on legal events that have occurred, so that empirical experience is seen as a law capable of providing information the direct and definite object observed is in accordance with *tempus* and *locus*. Sociolegal has the same view with the principle of realism by focusing on objects of sensory things (*is/sein*) rather than objects that should be (*ought/sollen*).

According to Kudzaifah Dimiyati who took the theory from Donald Black suggested about the need to see the changes that occur in law, how the law is seen and interpreted and how the law is carried out in people's lives. According to him, understanding and sociolegal analysis are increasingly moving forward to dissect the practices, processes and institutions that exist in society. In his mind the law cannot only be seen as a rational and abstract building, but the law has a broad dimension, including what is seen as a full social

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<sup>7</sup> Yogi Prasetyo, "Konvergensi Epistemologi Berkeadaban: Telaah Dialektik Pemikiran Ilmu Hukum," *Disertasi*, Universitas Muhammadiyah Surakarta, 2018.



<sup>8</sup> picture which means entering various diverse human and social dimensions into it. Like in a judicial process called "case" for example, it is not only seen as a legal case solely, but has a sociological aspect. Understanding the sociolegal suggests that the case is also seen as having a social structure, so that it can be studied on "the sociology of a case". Sociolegal examines the legal reality that occurs in society, this is like seeing how the phenomenon of siri marriage in the community is related to the impact and influence.<sup>8</sup>

Sociolegal has proximity to the study of customary law because it puts the truth on things based on empirical experience rather than legal truths obtained through rational logic. Sociolegal doubts the dominant role of logic in the law which only draws conclusions about the meanings that have been perceived to be certainly good which can be obtained through legal reasoning and logical conceptual foundations in legislation. Sociolegal in finding legal truths prioritizes investigation of legal possibilities (study of probabilities) and predicts results (to predict outcomes) on the influence of non-logical elements such as personality and prejudice, rather than the sound of the rule text legislation and legal logic. Sociolegal looks more at how the law works in society (how the rules of law work) and directs its attention to the last things on the results and legal consequences of formal legal procedures. Applicative use values make sociolegal tend to examine the laws that already exist in society, such as customary law that is used by people in Indonesia. In essence the investigation of sociolegal is the main and basic stage in a plan to establish law, because sociolegal is a study that seeks to take a real portrait of the existing law.

The characteristics of legal thinking referred to here are a study of the typology of thought of Indonesian jurists who also do not rule out the possibility of being influenced by legal theories. The thought put forward by the legal experts is an inseparable thought from the existing socio-cultural reality of law in Indonesia. Therefore the legal

<sup>12</sup> Eko Setiawan, "Fenomena Nikah Siri Dalam Perspektif Sosiologi Hukum," *Justicia Islamica*, vol. 13, no. 1, (2016), 135.

thinking is not merely discussing legal issues relating to legal aspects in a normative manner in mere statutory regulations, but also related to the analysis, response and reflection of their thoughts on legal issues and the conceptualization of law in perspective sociolegal. Sociolegal as a legal and social study can be used to explain new or lay legal problems that arise in the community. This is like explaining how insurance law practices in Indonesian society.<sup>9</sup> Thought that looks more at law as an empirical reality that lives and develops in society. For example, their thinking can be seen from how to view customary law as a rule that guides the lives of people in several regions in Indonesia.

Sociolegal which views law as a structure of values that lives and develops in society. The system structure gained the meaning given by the people to it and the Indonesian legal system today is carried out by the Indonesian people, not by the legal inheritance of the Dutch colonizers. This is very important for Indonesian customary law because, in contrast to written law, customary law is far more easily influenced by the ideals of the Indonesian people who have long been a habit of everyday life. In the absence of legislation from the elites forming the law, customary law tends to be left to the judge in deciding cases. However, it should be borne in mind that the Indonesian legal system is based strictly on positivistic law, so the judge is more guided by legislation than the social values that exist in society. The social reality that lives and develops in society in the context of legal proof has a very strategic role. The truth of the actual law will only be seen from the practice of the life of its people, not a legal system that seems idealistic at the normative level, but bad in practice in the field, or in other words it is only good on paper. Sociolegal studies can be used to measure/analyze the effectiveness of legal policies in the community. This is like analyzing how effective the PPA-PKH program is in Ponorogo.<sup>10</sup>

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<sup>9</sup> Khusniati Rofiah, "Membincang Praktik Asuransi di Indonesia, Telaah Sosiologi Hukum," *Justitia Islamica*, vol. 10, no. 1, (2013), 135.

<sup>10</sup> Ridho Rokamah, "Efektifitas Program PPA-PKH di Ponorogo (Tinjauan Yuridis Sosiologis)," *Justitia Islamica*, vol. 12, no. 1, (2015), 53.

The significance of sociolegal is clearly felt by many parties, apart from its contribution to the social sciences, but also because the study of legal sociology is needed to be able to improve the performance of legal systems. Legal experts cannot move alone to drive legal systems towards effective implementation, legal certainty and social justice. The need for interdisciplinary research in the study of law and legal processes has been around for a long time. Many people are no stranger to the legation of the well-known study of customary law by Cornelis Van Vollenhoven in Indonesian society which also involved great scientists, such as Soepomo and Hazairin. However, not many know that one of the first research reports requested by Thomas Raffles when he served as Lieutenant General of the Dutch East Indies in 1811 was concerning customary law and the legal system. The need for such studies has actually never faded and now such needs also come from legislators, academics, activists and many others. That is, that sociology of law is a study that has a very strategic influence in understanding and determining the lives of Indonesian people. So that the sign of the study of sociolegal is difficult that the authorities will map and carry out control management in the life of this very pluralistic society in Indonesia. Customary law and customs are part of unwritten law which is also recognized by Pancasila as a source of law for the people of Indonesia.<sup>11</sup>

In the sociolegal study of the history of the development of human thought which reveals the relationship between thinking about culture, law and state, shows the existence of interrelated developments between philosophy, ideological teachings, state teachings and the teachings of the law. This is because the main source is a human who thinks about himself, his community, his aspirations, which among others are contained in ideology, state teachings and the teachings of the law. The legal process must be seen from all the dimensions that surround it, because everything is a

reality forming the law. Even the legal positivistic system that dominates the legal system in Indonesia is a phenomenon that can be studied sociologically from the aspect of human behavior as an empirical reality in its life in forming and implementing law. Of course in the legal system there is a major legal subject (human) that has a big influence in the law and this clearly shows the sociolegal aspects of the law that can still be studied more deeply. <sup>9</sup>

Sociolegal which views law as a structure of values that lives and develops in society. The system structure gained the meaning given by the people to it and the Indonesian legal system today is carried out by the Indonesian people, not by the legal inheritance of the Dutch colonizers. This is very important for Indonesian customary law because, in contrast to written law, customary law is far more easily influenced by the ideals of the Indonesian people who have long been a habit of everyday life. In the absence of legislation from the elites forming the law, customary law tends to be left to the judge in deciding cases. However, it should be borne in mind that the Indonesian legal system is based strictly on positivistic law, so the judge is more guided by legislation than the social values that exist in society. The social reality that lives and develops in society in the context of legal proof has a very strategic role. The truth of the actual law will only be seen from the practice of the life of its people, not a legal system that seems idealistic at the normative level, but bad in practice in the field, or in other words it is only good on paper. <sup>28</sup>

This is where the heavy duty and responsibility of sociolegal in order to find the law and the development of legal principles with Indonesian characteristics, because the social conditions of the Indonesian society are very diverse and the law that is ingrained is used in the legal system Dutch colonial heritage. However, of course this challenge does not make the death of sociolegal ideas that can be initiated from the study of customary law. Thus, developing Indonesian law cannot be separated from the development of a law that has a structure of values that develops in Indonesian society. If it follows the basic foundation of the Pancasila ideology and the UUD

1945 Constitution which places the law above mankind, even above the legislator itself, then the law should be based on the entire human life of Indonesia. Characteristics and characteristics of Indonesian society become social realities that are naturally used as guidelines in life. Each region carries out its rules according to its customary law. This can be seen from all aspects of life in everyday people's behavior. Starting from how they carry out activities related to human birth to activities related to human death, all are reflected in the social life of the Indonesian people.<sup>12</sup>

The colonial legal order in several fields of state life has been radically replaced by a new legal order since the establishment of the Republic of Indonesia, this can be seen in the legal field regarding the structure and system of government and the law regarding legislation. Besides that, the dualism of the justice system that had previously disappeared and was replaced by the state judicial unitary system for all population groups. This has become a number of facts about changes in law in Indonesia, but it occurs in the highest legal order which has not been able to touch on how social reality in the existing community can be legitimized into an official legal regulation and has the legal force to be formally implemented. This is like how the problems of customary law that have not become a positive law apply. Even customary law in certain circumstances must be subject to or excluded due to the application of positivistic law.

Customary law is a custom of the community that is obeyed (or must be obeyed) for the orderliness of society in its community. State law is a rule that is built and designed by state officials and obeyed (or must be obeyed) in order to orderly state life. In the reality of history, even though the local community can develop into (part of) the state community, it often happens that people's law can still be sustainable and survive to meet local needs without being disturbed or disturbing (even often enriching) state law. Such a thing should be

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<sup>12</sup> Yogi Prasetyo, "Integrating Education Of The Religious Base To Straighten The Minds Of The State Of Indonesia," *Journal of Advances in Social Science and Humanities*, vol. 4, no. 6, (2018), 1-3.

a synergy of national laws that help each other to achieve common goals, without excluding other roles. As in the old days in the Javanese kingdom, it was recognized that the village had a way, whereas the country was governed by means that the local community and the big country were upright based on and according to their respective regulations. Formerly in the Javanese kingdom, the way the village was treated and enforced by the village officials, which if not successful would be forwarded to a court called "*bale padu*". Whereas the state order will be dealt with and enforced by the retainer of the king "*adyaksa*" which if not finished with good results will be forwarded to a court called the "*pradata bale*". Each of these legal structures works in accordance with their position in people's lives.

Customary law, as the law in the community in general actually has its strength in the form of reality as a pattern of behavior (pattern of actual behavior). The modifier of the law and also its conversion into a pattern to regulate behavior (pattern for behavior) will eliminate its dynamic strength. Actually, thinkers and customary law experts who have succeeded in modernizing customary law are only in terms of the forum and its functions, but still give up modernization (in the sense of updating values) the substance of the experience of the community itself. However, what the leaders have pioneered to make customary law function in the Indonesian context according to the realism flow is less successful, because the legislative process in the country is still difficult to make customary law as the main source of law, there is even a tendency to be ignored. The process of forming the law does not provide a place for the existence of legal reality in the community, which is more important is the value<sup>20</sup> of interests that are considered ideal for the political elite. In this legal system it is difficult to be able to understand the fact that customary law as an authentic law is born from people's lives.

Characteristics of sociolegal thinking can be seen at the time of post-independence Indonesia which shows a model of legal thinking that prioritizes commitment to customary law. In the context of legal

politics, formalistic thinking shows concern for an orientation that tends to sustain an imagined legal order, such as the realization of a national legal system, symbolic expressions and legal idioms that entities lead to customary law as characteristics of national law. Therefore legal thinkers at that time represented by Soepomo and Soekanto emphasized ideologization or politicization which led to the symbolism of customary law as a sociological study of law. This can be seen from the opinion of Soepomo who argued that the revolution against the west was not merely a struggle to achieve political independence. Such a method is a social and economic revolution caused by a nation that has determined as much as possible to put Indonesia's fate in its own hands. With the end of colonial rule, Indonesia was then faced with the problem of changing and renewing the national legal system, which meant breaking down the system of past colonial society and creating new measures based on the national needs of the Indonesian people, adjusted to the conditions of modern life with still pay attention to the laws that live and develop in the community.

Indonesian post-independence legal study in the period between 1945-1960 (the regime of Soekarno's old order government) has orientation towards customary law thought although the normative law of the Dutch colonial still exists to regulate general public affairs. The idea of customary law is characterized by symbolic expression and legal idiom whose identity towards the old-legal thought has been used by society as the basic characteristic of national law that has the spirit of Indonesian law authenticity. The spirit of independence affects the desire for the enactment of Indonesian national law derived from the culture of the nation itself. Customary law as Indonesian native empirical reality is a fundamental attribute to create values that are believed to give jurisprudence identity according to social cultural values. Post-independence customary law thought was initiated by several jurists in Indonesia and became an important study to develop Indonesian law system. If it is studied deeper, customary law has the same

perspective as law sociology in interpreting law as society behavior. It is as stated by Menachem Mautner in "Three Approaches To Law And Culture".<sup>13</sup>

The strength of this spirit has created resistance to the dominance of the colonial law of the Dutch colonialists which is considered to weaken the potential of national law. As a result, there was an affirmation of legal ideology which led to customary law as an embryo of national law as a step to replace or at least reduce the law left by colonial Dutch colonialists. This can be seen from the view of Soepomo, that customary law is a living law and the unwritten law in the future will still call attention from the authorities, judges and legal experts who follow the development of the legal system in Indonesia, because also in the codification system there are new things that are not or have not been regulated by written regulations, customary law will have a function as a law recognized by its legality as long as there is no regulation by law makers and the state must recognize the needs of the new law.<sup>14</sup>

Soepomo since 1945, has had the view that there must be a national law that has an Indonesian personality and therefore must be based on customary law without turning a blind eye to legal retrieval from the international community, which does not conflict with Pancasila and the UUD 1945 Constitution. This is reflected in his statement. According to him, the need to foster Indonesian governance, based on nationality, humanity or internationalism, democracy and social justice, gave the Indonesian national leaders the task to rediscover cultural traditions and values that apply to community organizations in the field of ordinary people. This means that there is a need for a sociolegal study of law to see the laws that live and develop in the community in order to explore and find laws that are actually suitable for the people of Indonesia.<sup>15</sup>

<sup>13</sup> Menachem Mautner, "Three Approaches To Law And Culture," *Cornell Law Review*, vol 96, (2011), 867.

<sup>14</sup> Soepomo, *Sejarah Hukum Adat, Dari Zaman Kompeni Hingga Tahun 1848*, (Jakarta: Pradnya Purnama, 1984), 28.

<sup>15</sup> S.R. Nur, *Membina Hukum Adat Menjadi Penghayatan Pancasila Di Bidang Hukum Adat*, (Bandung: Eresco, 1995), 191.



With the existence of such conditions, it is necessary to renew the legal system in Indonesia based on authentic law, namely customary law. This can be seen from the writings of Soepomo which justify Karl Mannheim's statement "Man and Society in Age of Construction", that in the era of revolution it was a fact, that old things and new things were mixed in (even in so-called revolutionary) periods of the old and the new are blended). Therefore in order to fully understand the progress of the legal system renewal process that in the era of revolution is Indonesia, it is necessary to know the existing legal system (customary law). Knowing the old legal system can be analyzed, how far the system affects the development of new laws.<sup>16</sup> Placing the study of customary law in the investigation of sociolegal will be able to avoid the detrimental traits in law, meaning that customary law is put in a position as a law that lives and develops in the community as well as the law that can change according to the times. does not abandon its localistic value.

Soepomo believes that by breaking away from the shackles of western legal constraints, Indonesia is able to make internal improvements through the strengthening of Indonesia's own legal culture. According to Soepomo to make changes that are adapted to the times, the state and society of Indonesia needs a new legal system that meets all legal needs, which arise from the life of the development of the era. Therefore, Soepomo questioned the position of customary law, how far the law was used for the needs of modern law in the future.<sup>17</sup> In this case, a sociolegal study is needed related to existing customary law and legal developments in the social life of the community, because customary law is part of the social reality reflected in the lives of its people. So that the change in law is still an integrated part of customary law.

There is a basic question that requires attention; whether the atmosphere of an independent Indonesia does not force us to review the question of customary law, codification and legal unification.

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<sup>7</sup> Soepomo, *Sejarah Hukum Adat, Dari Zaman Kompeni Hingga Tahun 1848*, 13.

<sup>17</sup> Soepomo, *Kedudukan Hukum Adat di Kemudian Hari*, (Jakarta: Pustaka Rakyat, 1951), 4.

Soepomo said that with the establishment of Indonesia as a independent country and with the return of state sovereignty to the Indonesian nation, our nation could determine<sup>2</sup> its destiny according to its own volition and be able to determine the form and nature of the new legal system in Indonesia. The question now is no longer how to guarantee the judiciary against the Indonesian people, which is the same as the judiciary for the European nation, but how to hold a trial for an Indonesian nation that is a sovereign nation. This is related to changes in the position of the Indonesian people, so it is no longer the main European law, it is no longer a concordance with the laws that apply in the Netherlands will be the center of attention of the Indonesian government, and vice versa, how will Indonesian law be in the future. As a sovereign country, our country can determine that each person of any nation from any country, who resides within the territory of Indonesia, will submit to the Indonesian legal system. In view of this, for the honor of the Indonesian state in the international world, Indonesia must have a legal system whose quality is parallel to the legal system of other civilized countries. It would be nice if the country of Indonesia could have a unity of modern civil law for all groups of citizens of any nation, a legal system that fulfills all streams that are able to keep up with the development of the world.<sup>18</sup>

The thought of Soepomo implicitly implies a very strong obsession to create an Indonesian legal system. However, on the other side of the arguments of legal thought, it appears that Soepomo must ultimately accommodate modern legal schools that developed in<sup>7</sup> the world, with idioms and Western legal terminology. His effort to construct the ideal type of Indonesian legal system, although it must be respected, was confronted with a conceptualization that was not entirely derived from the customary law in Indonesia. His high enthusiasm for releasing Indonesia from the confines of colonial law and the strength of self-identification in seeking Indonesian legal formulas made Soepomo seem to think with a double standard

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<sup>18</sup> Soepomo, *Kedudukan Hukum Adat di Kemudian Hari*, 5.

(ambiguous) or wanted to place the position of customary law as a basis and value in interpreting and forming national law. This situation is a portrait of legal reality in Indonesia that cannot be eliminated and at the same time shows the life of law in a sociolegal sense, namely a legal development in all kinds of dimensions of people's lives.

Djojodigono views customary law as an indigenous law sourced from within the country that has been practiced by Indonesians for hundred years. According to him, customary law is the legal heritage of the ancestors of the nation must be preserved by the future generations. Customary law as a manifestation of Indonesian law is formed based on unique characteristics and Indonesian society diversity. It is because each region has its own principles and tradition.<sup>19</sup> Meanwhile, Soepomo highlights more in incorporating customary law values as the foundation of national law. In addition, this idea becomes a pioneer to adopt some customary laws from each region to be positive legal resource. Indonesian as a country consisting of various ethnic groups that have inhabited for years in some areas becomes an important concern in forming a general national law. Soepomo emphasized the importance of using the values exemplified in customary law to govern a diverse Indonesian society. Therefore, it is necessary that national law should cover laws that are acceptable and understandable by Indonesian native, since the Indonesian unity that is basically formed is the result of integration of all Indonesian natives or ethnic groups in Indonesia.<sup>20</sup> Soekanto, in his perspective, states that Indonesian legal ideology is based on community socio-cultural life. Customary law is a society law established in Indonesian society for a long time. It has an important role to study Indonesian law. Without learning customary law, one cannot identify and comprehend Indonesian native law. For this reason, customary law must be used as an authentic initial thought before discussing further Indonesian legal

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<sup>19</sup> Djojodigono (6), *Adat Law in Indonesia*, (Jakarta: Yayasan Pembangunan, 1950), 12-15.

<sup>20</sup> Soepomo, *Sejarah Hukum Adat, Dari Zaman Kompeni Hingga Tahun 1848*, 3-5.

development. Positivist normative national law must provide a place for the development of customary law, so that people do not lose their own legal identity as in the Dutch colonial period.<sup>21</sup>

Customary law is similar as sociolegal. It cannot be avoided from society life because law is used to order the way in which a society behaves and it must be obeyed. Law is the rule of law for human beings. If one wants to understand the law, one must see how the law is practiced as a form of community behavior. Soekanto claims that law must closely relate to society life. It is because law is made for the society. Its main purpose is also for the society, so the law must provide values that are useful in maintaining the existing system within the social scope of society to keep working in accordance with society purposes.<sup>22</sup> According to Soetandyo, in developing Indonesian law, it needs a law that represents Indonesian native society life. This belief is based on the reason that the law used to regulate Indonesian society must be a law developed from the values from Indonesian homeland, not the foreign law that is obliged to regulate. Since many years ago, Indonesian society has regulated the law of the heritage of the nation's ancestors, but colonial law eliminated it. Law, seen as legislation, on the one hand provides benefits but on the other hand also causes many problems. It is considerably too rigid in understanding the law that must be in accordance with legislation. Satjipto Rahardjo, proposing strong criticism of a normative positivistic law, claims that law is not only a statutory law, but law is an attitude and behavior of a steady and institutional society to preserve the values in life.<sup>23</sup> It is too narrow to interpret law as what has been written in legislation. Beyond the written legislation, many rules of human life regulate how people socialize with others. According to Bernard L. Tanya, law is a study of humanity because it closely related to human life. Therefore, if one

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<sup>21</sup> Soekanto, *Meninjau Hukum Adat Indonesia. Suatu Pengantar Untuk Mempelajari Hukum Adat*, (Jakarta: Raja Grafindo Persada, 1966), 6-7.

<sup>22</sup> Soetandyo Soekanto, *Pokok-Pokok Sosiologi Hukum*, (Jakarta: Raja Grafindo Persada, 2005), 184.

<sup>23</sup> Satjipto Rahardjo, *Sosiologi Hukum: Perkembangan Metode dan Pilihan Masalah*, (Surakarta: Muhammadiyah University Press, 2002), 9-10.

wants to understand the concept of law appropriately, one should know well how the society lives. Moreover, law represents the human life.<sup>24</sup>

In looking at the study of sociolegal that describes the legal reality that lives and develops in Indonesia, it is also conveyed by Soekanto's thoughts. According to him, Indonesian people are people who live in the atmosphere of their own Indonesian customs. As a system of genuine Indonesian people, the Indonesian state does not need to explore and find its own customary law, because customary law basically exists and is used in people's daily lives. What must be done is to have an attitude of willingness and courage to disclose the existing customary law to know, understand and realize that Indonesian customary law is an Indonesian law originating from the values of people's lives. Social reality in the community is an empirical evidence that there is a law in Indonesia that is in accordance with the characteristics and characteristics of each region, because Indonesia is a multicultural country with differences.

Soekanto is a legal thinker in Indonesia who sees more law in people's lives. Customary law that has long been used by the Indonesian people is seen as a part of the system of sociology of law studies that will continue to experience self changes to adapt to the times. Therefore, Soekanto's perspective on customary law is more on realistic rules in society. According to him, Indonesian people are Indonesians who live in the atmosphere of their own Indonesian customs. Customary law must be disclosed, to know, understand and realize that our customary law is a law that cannot be ignored in the legal system. Customary law attracts the attention of smart people whose degree is not lower compared to foreign laws of other countries. Customary law must be studied in a sociolegal manner so that the award is appropriate, not by ourselves, but also by other nations. It is possible that the understanding of customary law must

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<sup>24</sup> Bernard L. Tanya, "Beban Budaya Lokal Menghadapi Hukum Negara: Analisis Budaya atas Kesulitan Sosio-Kultural Orang Sabu Menghadapi Regulasi Negara," *Disertasi*, Universitas Diponegoro, 2000.

have existed since a long time ago, but that understanding has not been fully understood by other nations.<sup>25</sup>

According to Soekanto customary law must be studied and found (ontdekt), therefore there is no need to highlight the good or bad of customary law. The perspective of Soekanto in the field of customary law, basically is to make significant efforts towards legal thinking and orientation which emphasizes the substantial manifestation of the values of Indonesian legal culture. It needs to be realized, that the existence and articulation of the values of customary law extracted from the Indonesian cultural treasures that are intrinsic are more important and very adequate to develop legal thinking in order to obtain the same treatment with modern law developed in other countries. According to him, customs are rules that are not only known, recognized and respected, but also obeyed. Customs have strong ties and influence in people's lives. The power of binding, depends on the people who support these customs, especially from the feeling of justice. It would be difficult to imagine that customs, even though they were kept continuously, would naturally bring about legal certainty. A certainty can be produced by rules that have a stronger binding power, which regulates the present and future order of life. Because rules are needed which firmly determine the rights and obligations of citizens, if possible, be strengthened by sanctions, if the rule is violated. These are all covered by customary law, especially those containing orders, prohibitions and permits in them.<sup>26</sup>

Although the thought of customary law which was patterned in the sociolegal was halted during the transition of power of the Soekarno old-order government to Soeharto's new-order in the period between 1960-1970 by the insistence of positivistic normative legal thought, the transformation of customary law idea in Indonesia in 1970- 1990 reappeared surface with a modern design format. It means that customary law is seen as a law that is regulated and

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<sup>25</sup> Soekanto, *Meninjau Hukum Adat Indonesia*, 7

<sup>26</sup> *Ibid.*, 14.

developed with its impacts in society, from years ago until now. It is because, as time goes by, customary law occurred in society at the stage of its development has changed and adjusted. Traditional values of customary law mingle and interact with new legal values, especially the development of modern law that is more likely to be normative positivistic. Law, besides understanding the social reality of society as a law, also understands the law that occurs due to the interaction of social behavior of society with the system of normative law positivistic in the form of legislation. Therefore, there is a about transformative law sociology development. It means that law is not only pure sociology but also positive norm legal system relation. In addition, this becomes an effort to transform law, viewed from philosophical theory, into the phenomenon of society because of the dominance of the normative normative legal system practice. The inability of the Indonesian nation to put forth a picture of the ideal law for Indonesian underpinned the transformation of modern law. Indonesian jurists study the ideas of sociology of modern transformative law.

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

in society. A judge, in giving his decision, must be sensitive to the social facts in society that is a reflection of society willingness. It should be realized that not all law and regulation are able to read and interpret legal issues.<sup>27</sup>

To understand the sense-based empirical truth, inductive reasoning method is used. Inductive reasoning method is started by stating legal statements with specific scope in formulating the legal argumentation and then it is ended by stating the general legal statements. Inductive reasoning method is one of scientific method that is usually used in qualitative research. In this method, truth value is obtained by conducting observation with human's senses as the instrument. As the result, an empirical truth can be clearly obtained. Inductive reasoning is started from specific proposition of observation result and is ended by a new conclusion in form of general principles. Proposition in inductive reasoning is said to true if only it is obtained by drawing conclusion from the empirical proposition. It means that the general conclusion is drawn from certain empirical facts of the specific proposition. Inductive reasoning is closely related to the field study. Thus, there are two research steps in this type of study. The first step is conducting research in general. It includes the pre-field research, fieldwork research, and the data analysis.<sup>12</sup> The second step is conducting cyclical research including the descriptive observation, domain analysis, focused observation, taxonomy analysis, selected observation, component analysis, and the theme or topic analysis. In this case, the main role of sense as the instrument is to obtain the crucial, sociolegal truth because the real truth in the society as the object can be obtained by using senses. It is as stated by Marta M. Chlistunoff in "Expert Testimony and the Quest for Reliability: The Case for a Methodology Questionnaire".<sup>28</sup>

For example; it is a fact that taking the leftover of rice harvest result, corn harvest result, and soybean harvest result in field is

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<sup>27</sup> Sunaryati Hartono, *Peranan Peradilan dalam Rangka Pembinaan dan Pembaharuan Hukum Nasional*, (1341 lung: Universitas Padjadjaran, 1975), 4-5.

<sup>28</sup> Marta M. Chlistunoff, "Expert Testimony and the Quest for Reliability: The Case for a Methodology Questionnaire," *Texas Law Review*, vol. 94, (2016), 1073-1078.



allowed. Thus, it can be concluded that taking what is left in the field as harvest leftover is allowed.

According to inductive reasoning method, the conclusion that is drawn is perceived as the truthful, acceptable knowledge because it is in accordance with certain similar, repeated statements. Inductive reasoning method is significant since it tries to dig into source of knowledge from what is known into the unknown one. In this perception, the most truthful knowledge is the senses while minds have the right to only process the data obtained from the experience. This is in accordance with statement "all science consists of data and conclusion from these data". According to David Hume, experiences give more truthfulness instead of logical conclusion. That is why experience is the one that give direct, exact information concerning the observed object of law based on its tempus and locus delicti, when and where the crime takes place. General conclusion that is drawn from inductive reasoning method plays an important role since by applying this method, various life aspects with different characteristics and facets can be reduced into several categories. Knowledge that has been collected is not a collection of facts, but it is more likely as the essence of those facts. From this statement, it can be said that knowledge does not tend to make reproduction or the duplicate of certain object but it emphasizes more on the basic structure that supports the form of certain facts. No matter how complete and thorough the statement is, it cannot prove the theory that sugar is sweet unless trying it for real. Knowledge is satisfied enough with the categorical element-related statement that sugar is sweet. This kind of statement is useful for human since it is functional for both practical and theoretical aspect. Legal study actually emphasized more the role sociolegal in drafting law based on society purposes. It is as stated by Christina L. Boyd "In Defense Of Empirical Legal Studies".<sup>29</sup> Sociolegal study is almost the same as the

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<sup>29</sup> <sup>14</sup> Christina L. Boyd, "In Defense Of Empirical Legal Studies," *Buffalo Law Review*, vol. 63, (2015), 363-365.

method of field study research in the community, such as seeing community economic empowerment in Sambas Kalbar with zakat.<sup>30</sup>

To verify the validity of truth resulted from inductive reasoning method, the correspondence method is used. In this method, a statement is claimed as a true statement if only it has correspondence or correlation with factual, empirical object. Bertrand Russell stated that correspondence is an important way to determine the truth validity of knowledge from certain study in the field of sense-based epistemology. In the perception of realism, the truth is the trustworthiness of objective reality and the adjustment to the fact. Human behavior with its characteristics includes verbal behavior as well as real behavior, including the result of behavior having characteristics such as physical relics, written materials and data on the results of a simulation of the real object of the law in society. It is as stated by Gary Lawson in "Reflections Of An Empirical Reader".<sup>31</sup> Knowledge concerning facts and realities are in harmonized, equal position. In this case, something is perceived as a truth when it can be considered as a fact. In other word, it can be said that a truth is the adjustment between opinion and reality.

## CONCLUSION

It is not only legislation but also living law or law in society, called as sociolegal. The law is seen as a behavior in accordance with society. Sociolegal views law as social empirical reality in society and it is seen as an affect of the implementation of positif law in society. Sociolegal shows the existence of a law that is practically practiced and a guide to everyday life in a society. The law is able to organize the system of life in accordance with what has been agreed together. Sociolegal plays an important role in society, although it is not drafted and written formally in legislation, because the law is basically formed as a way of life based on accepted social behavior.

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<sup>30</sup> Rahmah Yulisa Kalbarini and Tika Widiastuti, "Zakat dan Kebudayaan Menenun di Sambas Kalimantan Barat," *Jurnal Justicia Islamica*, vol. 13, no. 2, (2016), 231.

<sup>31</sup> Gary Lawson, "Reflections Of An Empirical Reader (Could Fleming Be Right This Time)," *Boston University Law Review*, vol. 96, (2016), 1458-1459.

Empiricism is a part of non-doctrinal legal study. Law accepted in society should consider Indonesian plurality and diversity. The concept of legal study that based the law as a manifestation of the symbolic meaning of social actors is also often referred to as the empirical law. Sociolegal has significant benefits for society purposes because law should be in line with social behavior that has been agreed and accepted. Social behavior also influences legal drafting. This close relation between law and social reality leads sociolegal having characteristics related to cultures, norms, and social habit. Epistemology of sociolegal studies with the object that perceive the law as something that lives and progresses in the society has several advantages. *First*, it is able to know and to understand what is meant by law in the society and what makes the people act and obey it. *Secondly*, it is able to know and to understand the social power and structural organization within the society to form a concept of system that is used to maintain people's safety. Lastly, it is able to describe and express the social aspects and social values that underpin the society in creating a law, obeying and applying it in their daily life

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