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**Development of Legal Studies In Indonesia**

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**ABSTRACT**

This article is research result that describes development of the epistemology of law in Indonesia, relationship of epistemology in law, and the concept of convergence of epistemology in law. The research method used is a literature study with a philosophical approach. The research results draw; epistemology of law based on empirical reality by inductive approach like sociology of law; epistemology of law based on rational sense by deductive approach like positivistic normative law; epistemology of law based on moral-ethics and conscience by using awareness and intuitional approach; epistemology of law based on Al-Quran like God's law. These results show a correlation independent, parallel and linear in the epistemology of law. This correlation claims the certain truth and causes law used for certain purposes. Based on this reason, it needs convergence of epistemology in law that unites the law truth, so that law can be comprehended by various perspectives. This article concludes that the diversity truth of law perspectives in Indonesia leads to the bad one correlation and domination of law truth. This drawback should be overcome by employing the concept of convergence of epistemology in law that can understand the law are more integrated, comprehensive and wise.

**Keywords:** Development, Legal Studies, Indonesia

**INTRODUCTION**

The development of legal studies in Indonesia cannot be separated from Indonesian's history. Basically, legal studies is a disciplines that studies the laws officially applied in this country for all the time being, started from the colonialism era, post-independence era, old order era, new order era, until today's reformation era. In the legal there is method to get the truth. As sociology of law that uses empiric based inductive reasoning to see the reality of law in the society; normative positivism that uses rational based deductive reasoning to understand the written law in the legislation; moral-ethical and conscience to understand the law in human's awareness and intuitional; and prophetic law that is based on the revelation to understand the God's law stated in the Al-Quran. Each of those legal thought has its own strengths and weaknesses in which occasionally in the society those thoughts claim its own truth as the real truth. As the result, this concern creates endless, confusing epistemology of law in Indonesia.<sup>(1)</sup>

The condition of these legal thoughts is not merely blameworthiness, even it is almost impossible to be changed by the new concept of law and set aside the old ones as what is expected by the idealist in Indonesia. Those legal thoughts had become the law in Indonesia and had been studied as a part of legal studies. However, the current situation shows that there is a concern towards the legal

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<sup>1</sup> Ibrahim A. Hukum Progresif; Solusi Atas Keterpurukan Hukum Indonesia. Jurnal Hukum Progresif. Universitas Diponegoro Semarang. 2006; 2 (1): 3321-3334

studies in Indonesia. If this condition keeps happening, it may disturb the development of legal thoughts and creates serious problem or law interference since the truth of legal studies is comprehended partially. In such situation is that law and legal studies is debated, tested, and possibly manipulated by some irresponsible people. Unfortunately, the perception about the understanding of law and legal studies can be flexibly adjusted based on certain intention.<sup>(2)</sup> This is due to the convergence of the legal thought that is available and the different epistemology that is involved in getting the truth. Therefore, this concern may create a terrible effect in the legal practice of Indonesia unless a wise solution is provided. Following is one of the cases about the effect.

Actually, there are several cases concerning the improper adjustment of legal thought. Some of them are the case of Minah who stole some cocoa fruits, the case of Asiani who stole a piece of wood, the case of Hamdani who stole a pair of slipper, and the case of Manisih, Rustono, Sri, and Juwono who stole the leftover of cotton harvest. In the other hand, there are several cases such as the case of Akbar Tanjung, the former chairman of the House of Representative of the Republic of Indonesia, who is released after corrupting the Bureau of Logistic fund, the case of Joko S. Candra who is released from his Bank Bali scandal, and the case of Nanyala Mataliti who is released after corrupting the fund of the head of East Java Provincial department. They are considered above suspicion concerning the corruption laws. From the legal policy point of view, the bailout case of Century Bank that is done by the government is considered could not be detrimental for the country. In the opposite, there are number of real legal acts in the society, such as uncontrolled demonstration and anarchy actions that leads to other crimes like devastation, pillage, and sexual harassment. Moreover, there are also cases like beating a thief to death in Tanah Abang market Jakarta, an action of vigilante towards someone who is accused having witchcraft power, brawl among society groups that kills the victim, and other criminal acts that are happening in society.

The cases mentioned before showed that there are still some problems in understanding the epistemology of legal studies as a way to to get the truth in law. The convergence of the legal thought with its base of theory, concept, reasoning method, and application has dominated the creation of legal studies' power with its own characteristics in deciding the truth. This current condition of legal studies is interesting to be analyzed by using ontology, epistemology and axiology of legal studies available in Indonesia. Those legal studies must have different bases, purposes, and results, so the validity of legal studies' truth may also have different perception. Thus, a good, wise solution is required in this concern so that it will not cause a more terrible concern in understanding the law in Indonesia.<sup>(3)</sup>

Even though there is a convergence in legal studies in Indonesia, the most dominant type is legal studies of normative positivism that is based on the rational by using deductive reasoning. Rational is used to separate the premise from the legal conclusions.<sup>(4)</sup> Moreover, this is also due to the learning process given to the students majoring in legal studies focuses more on the output as professional

<sup>2</sup> Rifai E. Peran Hakim Dalam Penemuan Hukum dan Menciptakan Hukum Pada Era Reformasi. *Jurnal Ilmu Hukum Praevia*. Universitas Lambung Mangkurat. Kalimantan. 2010; 4 (1): P. 168

<sup>3</sup> Barus Z. Analisis Filosofis Tentang Peta Konseptual Penelitian Hukum Normatif Dan Penelitian Hukum Sosiologis. *Jurnal Dinamika Hukum*. Universitas Padjadjaran Bandung. 2013; 13 (2): P. 321-325

<sup>4</sup> Posner AR. *The Problems of Jurisprudence*. Cambridge: Harvard University Press; 1990. P. 12

legal staffs.<sup>(5)</sup> In other words, it can be said that the education of legal studies in Indonesia only focuses more on producing 'hard worker' since they are only taught the legal studies that have been already set in the legislation. They don't have enough scientific reasoning towards the legal studies. This paradigm, then, influences the epistemology of legal studies as a logical thinking that is still dominated by rational professional truth instead of scientific truth.<sup>(6)</sup>

Talking about the truth of legal studies is the same as talking about the epistemology of legal studies because basically epistemology discusses about the essence, existence and scope of knowledge, source of knowledge, methodology of getting the knowledge, means of getting the knowledge, and validity test of the knowledge.<sup>(7)</sup> Epistemology is a branch of philosophy that specifically studies how knowledge is properly got through the senses, mind, conscience, revelation. The problem concerning this matter is when human cannot apply the epistemology properly as when the problem of epistemology arises in Indonesia since it is patially and separately got. As the result, the truth resulted from this legal studies' epistemology is incomplete, incomprehensible truth. Therefore, a new concept of legal studies' epistemology that can offer alternative solution is strongly needed. This new concept is by using convergence of epistemology of legal studies in Indonesia. This concept tries to unite all the truths resulted from all the epistemology, so this concern is urgent and interesting to study. Furthermore, it has relevance to the unstable situation of epistemology of legal studies that is currently happening in Indonesia.

## RESEARCH METHODS

The reserach object is epistemology of legal studies in Indonesia. Therefor, the reserach purpose is to describe the epistemology of legal studies in Indonesia and pattern of relationship between epistemology of legal studies and concept of convergence. The theoretical frameworks that are used in this study are the theory of law<sup>(8)</sup> and legal thought from Dimiyati that is also supported by current legal thought available in Indonesia.<sup>(9)</sup> The data are the epistemology of legal studies, particularly the legal thou the in Indonesia in form of dissertations, inauguration speeches, articles, journals, papers, and other related textbooks. Collecting the data by using library research with philosophy approach provided information, information, give verification, correction, completion, and further detail explanation.<sup>(10)</sup> The data analysis is started by analyzing all the data related to epistemology of legal studies available in Indonesia such as sociology of law, legal of normative-positivism, legal of moral-ethical and conscience, and legal of prophetic. After that, the data is analytically analyzed, described, and then interpreted so that the data are accurate. The next step is formulating the main problems of the study that are the epistemology of legal studies in Indonesia and pattern of relationship

<sup>5</sup> Rompis T. Kajian Sosiologi Hukum Tentang Menurunnya Kepercayaan Masyarakat Terhadap Hukum dan Aparat Penegak Hukum Di Sulawesi Utara. *Jurnal Lex Crimen*. 2015; 4 (8): P. 195

<sup>6</sup> Dimiyati K. & Wardiono K. 2007. Pola Pemikiran Hukum Responsif; Sebuah Studi Atas Proses Pembangunan Ilmu Hukum Indonesia. *Jurnal Ilmu Hukum*. Universitas Muhammadiyah Surakarta. 2007; 10 (1): P. 184-186

<sup>7</sup> Edward P. *The Encyclopedia of Philosophy*. New York: Macmilan Publishing. Co, Inc. Free Press; 1990. P. 162

<sup>8</sup> Dimiyati K. *Teorisasi Hukum; Studi Tentang Perkembangan Pemikiran Hukum di Indonesia*. Yogyakarta: Genta Publishing; 2010. P. 92

<sup>9</sup> Dimiyati K. *Pemikiran Hukum; Kontruksi Epistemologis Berbasis Budaya Hukum Indonesia*. Yogyakarta: Genta Publishing; 2014. P. 261-263

<sup>10</sup> Bakker A & Zubair AC. *Metodologi Penelitian Filsafat*. Yogyakarta: Kanisius; 1990. P. 173

between epistemology of legal studies and concept of convergence. Theory of law and legal thought are applied as the theoretical framework in order to ease the researcher in analysing the data.

The process of analyzing the data is started by analyzing the raw data. Next, the separated epistemology of legal studies are reconstructed and abstracted by clarifying and categorizing them based on the senses, rational, moral-ethical and conscience, and revelation (Al-Quran). From this point, the relationship pattern of legal studies' epistemology that may occur such as conflict, independence, dialogue, integration, unification, and harmonization can be briefly described. Once the analyzed data are completely gathered, an alternative concept concerning convergence of epistemology of legal studies is formulated. All of the research processes are in accordance with the framework theory used that is theory of law and legal thought. Therefore, the results concluded in this study can be verified. Besides, the reflection of all explanations toward the epistemology of legal studies and the alternative convergence concept can be reflected.

## RESULT AND DISCUSSION

### A. The epistemology of law in Indonesia

During post-independence era (1945-1960) or during the old order era, the law that were applied Indonesia is customary law-oriented, even though the Dutch's normative law was still exist. It was proved by the symbolic expression and ideology of law with entity of using the thought of customary law as the characteristic of national law, so it still had its originality. In this case, the spirit of independence becomes the biggest reason that influenced the establishment of national law sourced from its custom. The customary law as the empirical reality of indigeneous of Indonesia became the fundamental base that creates values. These values are believed to give proper governance law accordingly with national's original identity. This kind of customary law were proposed by some jurists in Indonesia, such as Djojodigono, Soepomo, and Soekanto, who emphasized the Indonesia ideology of law as it was created from customary law.<sup>(11)(12)(13)</sup> Customary law is a kind of laws that exists and extends in every area of Indonesia. Broadly speaking, the typologies of customary law that exists in Indonesia are hundreds in number, but each of them is share the mutual respect under the republic of Indonesia. When law is viewed from the social reality point of view, law is as the same as sociology. This legal thought that perceives a law as the social empiric in the society is the representative of sociology of law. Therefore, the epistemology that is used to get the truth is by using inductive reasoning which based on the empiric observation trough senses. Nowadays, this senses-based epistemology of legal studies available in sociology of law has become a discipline in legal studies. Besides, it is also one of references in learning legal studies in Indonesia.

During the transition era from the old order to the new order in 1960-1970, law in Indonesia is oriented to legal formalism instead of normative sociology. It is proved by the legal thought showing a characteristic that emphasizes its principles more on rigid form regulated on the postulate. This

<sup>11</sup> Djojodigono. *Adat Law in Indonesia*. Jakarta: Yayasan Pembangunan; 1950. P. 53

<sup>12</sup> Soepomo. 1948. *Sejarah Hukum Adat, Dari Zaman Kompeni Hingga Tahun 1848*. Jakarta: Pradnya Paramita; 1948. P. 173

<sup>13</sup> Soekanto. *Meninjau Hukum Adat Indonesia. Suatu Pengantar Untuk Mempelajari Hukum Adat*. Jakarta: Raja Grafindo Persada; 1966. P. 143

legal formalism thought is studied by numbers of jurists in Indonesia such as Kartohadiprodo, Hardjito Notopuro, and Djoko Sutono.<sup>(14)(15)(16)</sup> Legal formalism is oriented more on adjusting the law with the reality that develops by the time. Law, in Austin point of view, is a mean to regulate the state that is developed by the authorized organization so that the function of law as the state regulation can be achieved.<sup>(17)</sup> In developing a trusted law, several formal-procedural mechanisms as what is regulated in the legislation should be accomplished.<sup>(18)</sup>

Besides, only the authorized state institution can develop it in order to create a positive, trusted written law. Legal formalism thought is similar to legal positivism thought in which it emphasizes its principles more on rigid form regulated on the postulate. Legal thought that views law as the abstraction of on behalf reality in written legislation is the representatives of legal positivism thought.<sup>(19)</sup> Therefore, the epistemology approach that is used to get and understand the truth is by using inductive-deductive reasoning. It means that the result taken from the inductive senses-based observation is integrated into deductive inference. Thus, the deductive reasoning based on logic rational is the main focus in epistemology of positivism legal thought.<sup>(20)</sup> Legal positivism thought now has become a discipline in legal studies. Besides, it is also one of references in learning legal studies in Indonesia.

For the new order period in 1970-1990, the legal in Indonesia is oriented to modern legal thought. It is proved by the tendency of legal thought to be more reformed. It means that this kind of legal thought is not only in form of sociology, normative, and positivism, but also this legal has transformed the law into the society phenomenon philosophically. This transformation is due to the state's incapability in developing a complete concept about the legal in Indonesia. However, some jurists in Indonesia such as Satjipto Rahardjo (1999) & (2000), Mochtar Kusumaatmadja and Sunaryati Hartono have conducted studies about this transformed modern legal thought.<sup>(21)(22)(23)</sup> Actually, this reformed legal thought is influenced by critical legal studies and legal reform proposed by Alan Hunt, Charles Sampford, Donald Black, and J.W. Harris.<sup>(24)(25)(26)(27)</sup> This reformed thought is

<sup>14</sup> Kartohadiprodo S. *Membina Kehidupan Politik Berlandaskan UUD 1945*. Bandung: Alumni; 1955. P. 34

<sup>15</sup> Notopuro H. *Ikhtisar Pola Pembinaan Hukum Nasional*. Jakarta: Ghalia Indonesia; 1978. P. 183

<sup>16</sup> Sutono D. *Hukum Tata Negara*. Jakarta: Ghalia Indonesia; 1982. P. 77

<sup>17</sup> Zafer. *Jurisprudence an Outline*. Kuala Lumpur: International Law Book Services; 1994. P. 67

<sup>18</sup> Hart HLA. *The Concept of Law*. London: Oxford University Press; 1972. P. 73-75

<sup>19</sup> Chand H. *Modern Jurisprudence*. Selangor Darul Ehsan Malaysia: International Law Book Services; 1994. P. 67-68

<sup>20</sup> Wardiono K. & Dimiyati K. *Basis Epistemologi Paradigma Rasional Dalam Ilmu Hukum; Sebuah Diskripsi Tentang Asumsi Dasar Teori Hukum Murni Hans Kelsen*. *Jurnal Dinamika Hukum*. Universitas Padjadjaran Bandung. 2014; 14 (3): P. 173

<sup>21</sup> Rahardjo S. *Pendekatan dan Pengkajian Sosiologis Terhadap Hukum*. *Jurnal Ilmu Hukum*. Universitas Muhammadiyah Surakarta. 1999; 2 (1): P. 271-289

<sup>22</sup> Kusumaatmadja M. *Hukum, Masyarakat, dan Pembinaan Hukum Nasional, Suatu Uraian Tentang Landasan Pikir, Poladan Mekanisme Pembaharuan Hukum di Indonesia*. Bandung: Universitas Padjadjaran; 1976. P. 93

<sup>23</sup> Hartono S. *Peranan Peradilan dalam Rangka Pembinaan dan Pembaharuan Hukum Nasional*. Bandung: Universitas Padjadjaran; 1975. P. 231

<sup>24</sup> Hunt A. *Exploration in Law and Society*. New York: Routledge; 1993. P. 165

<sup>25</sup> Sampford C. *The Dis Order of Law, Critique of Legal Theory*. Oxford: Basil Blackwell; 1989. P. 59

<sup>26</sup> Black D. *op. cit*, P. 71

<sup>27</sup> Harris JW. *Law and Legal Structure An Inquiry into the Concepts Legal Rule and Legal System*. Oxford: Clarendon Press; 1982. P. 95

aimed to adjust the normative positivism legal thought with the social reality of current legal happening in the society.<sup>(28)</sup>

Besides, it tries to emphasize more on the role of sociology of law to perform citizen-friendly law. In this case, normative-positivism legal is still there, but it is only performed to make the sociology aspects complete since they cannot be represented formally in the legislation. In reformed legal thought point of view, a legal is studied not only for standing in its own, but also to provide proper legal for the society. The reformed legal thought that views an adjustment between normative-positivism legal thought and the social reality of current legal happening in the society represents the contemporary development of sociology of law. In consequence, deductive-inductive reasoning becomes the method of epistemology for knowing the truth. It means that the rational thought resulted in normative-positivism legal thought have to be able to be transformed into the social reality happening in the society. That is why the epistemology of reformed legal thought basically emphasizes more on the senses-based inductive reasoning. Therefore, this type of legal thought becomes a discipline in legal studies as well as one of references in learning legal studies in Indonesia.

In 1990-1998 during the pre-reform period, the legal authorized in Indonesia oriented into the development of legislation. It is based on the strengthening the ideology principles of *Pancasila* and the 1945 constitution of Republic Indonesia. This can be seen from the ideals of constitution that is to resolve and reorganize the statehood due to worldwide economic crisis. In this case, law is used as normative-positivism formal system to resolve the real state of Indonesia. Law enforcement that reflects the principles of normative-positivism legal thought becomes an important concern to meet the demands of empirical realities of the sociology of law. This situation is developed in society by the impulse of modern legal thought that transforms into an improving law. A Legal state for developing country such as Indonesia can be applied by adopting the concept of Philippe Nonet and Philip Selznick.<sup>(29)</sup>

Due to this fundamental role of law in a country, so there is an attempt to reaffirm the jargon of "Indonesian is a legal state". It means that the law becomes the basis of all life order concerning law in Indonesia.<sup>(30)</sup> The understanding of this law is actually almost similar to the modern law of transformative thinking that sees normative-positivism legal thought must be in accordance with the real society. However, because the legal system that is adopted by Indonesia as a former Dutch colony is a civil law system that understands the law as a written legislation, the epistemological method used to understand the truth is inductive-deductive reasoning. It means that the result of inductive sensory observation is incorporated into deductive reasoning inference. Therefore, at this time, the epistemology of law is basically preferred to the method of deductive reasoning based on the rational logical reason. Therefore, this type of legal thought becomes a discipline in legal studies as well as one of references in learning legal studies in Indonesia.

During the reform period, from 1998 until now, legal studies had a positive impact on the development of a more democratic state of administration. However, in the other hand, there is also

<sup>28</sup> Black D. *The Behavior of Law*. New York: Academic Press; 1976. P. 83

<sup>29</sup> Nonet P. & Selznick P. *Law and Society in Transition. Toward Responsive Law*. New York: Harper Colophon Books; 1978. P. 69-71

<sup>30</sup> Dimiyati K. *op. cit.* P. 73

moral-ethical degradation in the legal studies.<sup>(31)</sup> This is due to the legal studies is only understood as a particular interest which is suspended legally, formally in its procedural. This make the legal seems firm our side, but actually it is spoilt inside by the distortion of systematic importance in formal law. Many law enforcement officials and officers in Indonesia are involved in legal cases, such as mafia, corruption, drugs abuse and many other cases. The opaque portraits of legal morals in Indonesia are similar to those suggested by Francis Fukuyama about "*moral miniaturization*".<sup>(32)</sup> The ethics as a manifestation of the behavior of law enforcement and bureaucracy officers get serious attention from the public amid the efforts of law reform in Indonesia.<sup>(33)</sup>

The legal mores as in the theorizing of natural law presented by Friedman have served the various functions of the law and made important contributions to the development of laws that have universal human values.<sup>(34)(35)</sup> Natural law is basically a rule of harmonious relation between man, nature and God, so the law regulates human behavior that reflects good values or is called moral-ethics. Because the law of nature comes from God, the law is the command of God written in the holy book of religion, so that in understanding God's law is still dogmatic. The legal moral-ethical understanding is actually still based on normative positivistic law with the epistemological method of inductive-deductive reasoning, although in it there is the concept of abstraction from the psychological, moral and ethical elements, but in law enforcement applications must use the legal system written in the legislation. While written legislation in Indonesia is made by the political body of the house of representatives with its certain political interests.

In current reform era, the law that should be used to improve the state is precisely the impression of law is used as a tool to legalize certain interests. Indonesia's unpreparedness in the face of reforms has led to the social power of society that has a certain political interest, it is also the influence of the strongness of globalization and the development of the era that is not followed by the social skills of society.<sup>(36)</sup> Consequently a multi-dimensional crisis destroys the entire value of life, not just corrupt and cunning officials, but the underworld also experiences apathy, skepticism and pragmatism in its social life. Under these conditions of life there is only a favorable interest, other than that it does not matter. The law at this stage becomes completely lost from the spirit, which is only a material being played by intellectual actors with an interest.<sup>(37)</sup> When the law is used only as a means to an end, the value of the law ceases to exist, as the example<sup>(38)</sup> of the legal cases previously explained. It is hard to

<sup>31</sup> Rahardjo S. Pokok-Pokok Pikiran Moralitas dan Format Pemerintahan yang Bersih dan Bertanggungjawab. National Conference on Moralitas dalam Format Indonesia Baru. Universitas Muhammadiyah Surakarta; 1998.

<sup>32</sup> Fukuyama F. The Great Disruption: Human Nature and the Reconstruction of Social Order. Profile Books. 1999. P. 59

<sup>33</sup> Asshiddiqie J. Agenda Pembangunan Hukum Nasional di Abad Globalisasi. Jakarta: Balai Pustaka; 1998. P. 89-90

<sup>34</sup> Friedmann W. Legal Theory. London: Stevens and Sons Limited; 1953. P. 131

<sup>35</sup> Entreves, AP, D. Natural Law An Introduction to Legal Philosophy. London: Hutchinson's University Library; 1952. P. 141-142

<sup>36</sup> Santos BDS. Toward A New Common Sense, Law, Science and Politics in the Paradigmatic Transition. New York: Routledge; 1995. P. 84-86

<sup>37</sup> Dimiyati K. op. cit. P. 69

<sup>38</sup> Sinha SP. Jurisprudence Legal Philosophy in A Nutshell. St. Paul. Minn: West Publishing Co; 1993. P. 76

imagine that the law in Indonesia has experienced a very disappointing situation, not only reducing the truth of the sense-based law and reason, but the law has also lost its conscience.

Under these circumstances the law not only loses its ethics in practice, but it becomes tyrannical. The law becomes cunning full of deceit, so legal studies are not only incapable of doing well, but the law itself creates ignorance. Understanding of the conscience in law has indeed been enacted in Indonesia law, but the method of epistemology of reasoning that can be used to understand this truth is still not scientifically explained. The intuition-based conscience flows naturally to every human as a gift from God as well as the source of wisdom beyond the truth and reasonable human senses. Actually, there are some judges in Indonesia who use the conscience in deciding cases, as well as using logical and sensory reasoning. For example is the supremecourt judge ArtijoAlkhostar, he often decides the cases of corruption more than what prosecutor demands, because corruption acts committed by the public servants officials have left bad image to the society. Besides, Judge Bisma Siregar often decides the case submitted to him in accordance with his feelings since naturally humans have feelings and conscience. However, such legal practitioners are not commonly found in Indonesia.

Inability of sense-intelegenceconscience-based legal study epistemology to overcome the problems described above is responded by religion-based social study. Therefore, there is an idea of religion-based science study, including Al-Quranbased legal study. Religion-based social study in Indonesia is proposed by Kuntowijoyo. He is inspired by the worlds' Islamic transformatives philosopher such as al-Fariqi and Naquib Al-Lattas. Based on Kuntowijoyo's view of religion-based social study, it attracts Indonesian legal study scholars to use the same concept, religion-based legal study such as prophetic legal study. From this reason, it leads to Al-Quran based prophetic legal study as the epistemology base to search the truth.

Indonesia prophetic legal study in Indonesia is proposed by Koesnoe, and Absori.<sup>(39)(40)</sup> Spiritual dimension in social and legal study (closely related to capitalism) is also introduced by Max Weber through "*Protestant Etichs*".<sup>(41)</sup> The point is hard-working is a must to reach spiritual prosperity. Having Al-Quran as a basis to search the truths of law is not an easy effort and it challenges. It is different from Islamic positive laws that is formally used and ruled in the legislatif. In the Al-Quran based prophetic laws, not all texts there can be understood and accepted. Not only sense-empirical dimension and intelligent-reasonal-logic but also spiritual dimension is so necessary to have. Therefore, Al-Quran based epistemology is also difficult to describe the true meaning. In line with prophetic law, there is also transcendental legal philosophy, from its sources, that becomes a part of prophetic law. There are three elements; Humanization, liberation and transcendence.

Transcedental philosophy describes an experience, event, object or idea that is extremely special and unusual and cannot be understood in ordinary ways by humans. As proposed by Indonesia law scholars, Bernard Arief Sidartha, it is stated that transcendental law is not in human sense. Therefore, the description does not indicate a law dimension beyond scientific research. Nevertheless, it does

<sup>39</sup> Syamsudin, at.el. Ilmu Hukum Profetik. Yogyakarta: Fakultas Hukum Universitas Islam Indonesia Yogyakarta; 2013. P. 104

<sup>40</sup> Absori, at. el. Hukum Profetik; Kritik Terhadap Paradigma Hukum Non-Sistematik. Yogyakarta: Genta Publishing; 2015. P. 127-129

<sup>41</sup> Weber. M. The Protestan Ethik and The Spirit of Capitalism. London: Translated by Talcott Parsons; 1992. P. 66



not state where the truths are, whether in conscience or in the Al-Quran. However, according to Absori, in the transcendental law, there is a tendency to understand the truth based on religiosity bases (God is the Creator). Having spiritual intelligence base as stated by Donah Zohar and Ian Marshall in transcendental legal philosophy can also be categorized as a religion-based law philosophy.<sup>(42)</sup> It is also claimed as a concept of epistemology approach to have the truths of law. Religion-based transcendental law philosophy nowadays is proposed by Indonesia scholars, one of them is Absori.<sup>(43)</sup> If it is analyzed, it emphasizes to divine reason such as rational and irrational legal study theories of philosophy. Until now, transcendental law philosophy still becomes a phenomenon in the field of legal study because epistemology base used to have the truths is not strongly accepted to answer analytical and critical questions.

### **B. Relationship to the epistemology of law**

From the above description illustrates the diversity in praxis of the legal studies in Indonesia. Each legal thought has advantages and disadvantages in offering solutions to legal problems, even it is not rare between each legal thought do not established a good relationship pattern, because mutual claims of truth owned. The truth which is the achievement in the diverse epistemology of legal studies will also be varied and complex in accordance with existing legal thoughts. The consequences of these situations and conditions do not close the possibility of causing various patterns of epistemological relationships of inappropriate law, as in the social sciences that study human life can not be separated from certain values of the sustainability, According to the social sciences there can be no science that is completely neutral if it does not want to be said "the doctrine of irresponsible hypocrisy,<sup>(44)</sup> so in such circumstances the conflict is always in tandem with human civilization.<sup>(45)</sup> The development of the age and globalization that increase the tension of human life competition and the constant competition will be a conflict that the solution has not been found yet. As in the epistemology of legal studies that occurs due to the pattern of bad relationships.

The pattern of the parallel relationship in the epistemology of legal studies, the pattern of relationships that explain each epistemology of the legal studies based on the senses, reason, conscience and revelation runs independently without any relation and contact between one another in human reasoning. The value of benefit that will be obtained, both theoretical and practical of the parallel legal epistemology relationship pattern is very small. This relationship pattern assumes that in the study of jurisprudence there is a diversity of epistemology of legal studies, but each one stands alone and does not dialogue and communicate with each other. In this pattern of independent relationships, the epistemology of legal studies is specialized by the characteristic and their respective characters, thus tending to retain what has been attached. This pattern of epistemological relationships of legal studies also takes place in Indonesia. Positivist normative legal thought to understand the rational truth of law in legislation will never meet the sociology of law that understands the truth of the law in accordance with the reality of society also will never meet

<sup>42</sup> Zohar D. & Marshall L. *Spiritual Intelligence The Ultimate Intelligence*. London: Bloomsbury; 2000. P. 59

<sup>43</sup> Absori. *Pemikiran Hukum Transidental dalam Konteks Pengembangan Ilmu Hukum Indonesia*. National Conference on Transedensi Hukum; Prospek & Implementasi. Universitas Muhammadiyah Surakarta; 2017.

<sup>44</sup> Medley LM. *Sociology For The Seventies*. New York: John Wiley; 1968. P. 18

<sup>45</sup> Huntington SP. *The Clash of Civilizations and the Remaking of Word Order*. New York: Simon & Schuster; 1996. P. 87

with the epistemology of the legal studies based on conscience and revelation. The legal truth becomes the perception of understanding of each epistemology of jurisprudence, although on the other hand it can cause problems. As long as the righteousness of the law is done correctly in accordance with the method used, it is assumed that the truth is true and does not seek to see the interconnectedness of the other.

The relation of legal studies' epistemology is linear patterns that explain the assumption that one of several epistemologies of law will be the preferred as a primadonna. A legal researcher will ignore the epistemology of other legal studies because he/she favored one of several existing epistemologies of jurisprudence. The legal epistemology that is chosen considered becomes the most ideal and final. This will lead a person to a deadlock in reasoning to obtain the truth, which is usually expressed in exaggerated and exclusivistic truth-claims. Scrambling and claiming the truth in the epistemology of legal studies eventually become a phenomenon in legal studies in Indonesia.

Moreover, the legal studies that have been drawn in the legal praxis space, then the object of law can be seen from various viewpoints that enable each of them to understand the truth that deems the most valid, because the pull in the world of legal practice more nuanced to certain interests. Therefore, it is not surprising that today the epistemology of jurisprudence is difficult to achieve its wisdom due to the strong influence of the tendency of interests of intent and purpose behind the law. Not infrequently we see the truth of a legal object supported by epistemology of jurisprudence that is contrary to what should, like the example of the above legal case (corrupt officials who are protected because it is considered not against the law and the poor are punished for stealing worthless objects). This pattern of epistemological relationship of linear law is happening up to now in Indonesia, it is suspected from the dominance of truth of normative normative law in almost all fields of life. All legal truths are based on conclusions drawn from the deductive syllogistic reasoning contained in the legislation. The law is said to be true if the minor premise is in conformity with the major premise (axiom) contained in the written laws and regulations issued by the state as a positive law.

### C. The convergence of epistemology in law

Mutual understanding can be regarded as criticism of analytical interpretation towards the methodology of legal studies.<sup>(46)</sup> Besides it becomes one of the elements in the concept of convergence epistemology of legal studies that is supported by other legal thought. Convergence epistemology of legal studies tries to catch up the law backwardness from the reality of the social society which rapidly increases, as stated by David M. Trubec.<sup>(47)</sup> With various combinations and fusions, then, an understanding leading to the unity of the epistemology based on the senses, mind, conscience and revelation can be drawn. The concept of mutual understanding is started by explaining two things, namely the relationship of mutual understanding epistemology excess-deficient legal science and the relationship of mutual giving-receiving excess-deficiency epistemology of legal studies.

<sup>46</sup> Marmor A. Interpretation and Legal Theory. Oregon: Hart Publishing; 2005. P. 127

<sup>47</sup> Trubec DM. Toward a Social Theory of Law An Essay on Study of Law and Development. The Yale Law Journal. 1972; 82 (1): 99-112.

The epistemology of sense based legal studies has the advantages which can observe the object directly (empirical). It can be used to repair the epistemology deficiencies of sense-based legal studies which are abstract in logical idea. Besides it can improve the epistemology deficiency of the conscience-based legal studies which has intuition and feeling and improve the epistemology deficiency of the revelation-based legal studies theologically difficult to explain. The epistemology of the mind-based legal studies has the advantages to think rationally, logically towards imaterial abstract. It can be used to improve the epistemology deficiency of the mind-based legal studies in which it is limited in term of empirical material. Besides it improves the epistemology deficiency of the conscience-based legal studies which has intuition and feeling and improves the epistemology deficiency of the revelation based legal studies theologically difficult to explain.

The epistemology of the conscience-based legal studies has the advantages to touch the feeling and intuition. It can be used to improve the epistemology deficiency of the sense-based legal studies which is limited in the empirical material. It also improves the epistemology deficiency of the sense-based legal studies which has abstract logical idea and improves the lack of the epistemology of the legal studies based on the revelation in which it is difficult to explain theologically.

The epistemology of the revelation-based legal studies has a spiritual theological advantage namely dimensioning to God. It can be used to improve the epistemological deficiencies of sensory-based legal studies that are limited to the empirical material. It also revises the abstract epistemology of reason-based the legal studies in the idea of logic and the deficiencies epistemology of the legal studies based on the conscience that is intuition and feeling. The motion process that continuously to understand the epistemology of the legal studies is part of the concept of epistemology convergence of the legal studies at the premises to cope with the epistemological relationship patterns of inappropriate legal studies. This concept is based on the problem of the epistemology of legal studies that has never reached an agreement for the truth. Each epistemology of the legal studies claims their own truth.

Therefore, it is necessary to unify the thought of epistemology construction of legal studies in the concept of convergence epistemology to overcome all the differences. To achieve that convergence, a series processes involving senses, reasoning, conscience and revelation is needed as the basic epistemological of legal studies. In this process, the same point of the agreement that is in accordance with the legal studies issues can be accomplished. Each of epistemology cannot stand by itself. When certain epistemology only claim its truth, solves the problem on its own and step asides from other's contribution, then sooner or later this self-sufficiency will turn into fanaticism particularity (narrowmindedness). Therefore, cooperation, sharing respect, interdependence, mutual correction and interconnectivity should be developed by all types of epistemology to be able to understand the complexity of life and resolve the problems.

The epistemology unification efforts of the legal studies through a process of continuous motion with the complexity and evolving legal issues in society in the modern era requires a global and complete and comprehensive thinking. The process of continuous motion in the epistemology of legal studies perhaps is more favourable to answer today's legal issues that grow rapidly, contemporarily. It takes a long process to get to maturity to be wise in understanding the truth of the legal studies. There are three principles of epistemology in the motion process of the human social

life as suggested by Peter Berger.<sup>(48)</sup> They are externalization, objectivation and internalization by applying those principles and getting feedback and criticism from others, the rigidity, mistakes, inaccuracies and anomalies that exist in each epistemology of legal studies can be reduced and resolved. In the process of continuous motion, there is no finality and exclusivity as the cause of dead lock in which it tends to cause disharmony and does not allow the emergence of new possibilities that perhaps is more helpful and appropriate to address the legal issues that develops in the society.

At the stage of mutual understanding and the process of motion continuously, the process cannot be said as it is done. It remains the task in the epistemology of legal studies that must be resolved. It is the core that unifies all epistemology of legal studies, so that the resulted truth is acceptable to all parties. This core of epistemology is the main concept of convergence in the epistemology of the legal studies. It is used to establish a new different thought from the previous legal concept because the perspective, the methodology and the process of final settlement offered are presumably broaden to include all existing ideas as well as to deliver a prototype epistemology of legal studies to be more complete and comprehensive. The core of the epistemology of legal studies probably suit Mehdi Golshani thought that emphasizes the importance of science, philosophy and religion in one unified concept to address the existing problems.<sup>(49)</sup>

The core of the epistemology of legal studies is based on the view that legal studies is in the diversity of legal systems, so the connection with each other are unavoidable, especially in the modern era of globalization. It is impossible that the legal is close its eye. To address this, the epistemology of legal studies must have wise, up-to-date thought. It means that the thought is proper to defend the identity, and understand the positive changes. The advantages and shortcomings that exist in the epistemology of the legal studies is part of a process that still needs an effort to repair. Moreover, it still contains a mystery toward the people to always seek the best. In Al-Quran chapter 23, verse 78, it is stated that God endowed human potential of the senses, mind and heart in order to be used properly to obtain the truth of science, including the science of legal studies.

The convergence epistemology of legal studies is the concept of unifying the truth. Thus, it is important to know, understand and use it as the historical reality of human life and its development in order to provide a better future.<sup>(50)</sup> The concept of epistemology convergence seems very ambitious, as if it to conquer all the differences in understanding the truth of legal studies in Indonesia, but the main point is actually first, it is an attempt to be wise as all legal studies in Indonesia's diverse, and second, to find the more comprehensive truth. There are three aspects to introduce the concept of the epistemology in legal studies. They are first, ontologically. The relationship of thought in the legal studies becomes more open and liquid, although there is hallmark and character in each of it. The second is epistemology. This concept is a response to the difficulties and confusion in understanding the truth of legal studies. The last is in axiological way. This concept

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<sup>48</sup> Berger P. & Luckmann T. *The Social Construction of Reality*. New York: Anchor Books; 1967. P. 159

<sup>49</sup> Golshani M. *Science and the Sacred; Sacred Science vs Secular Science*, International Conference on Religion and Science in the Post-Colonial World. Yogyakarta: Gajah Mada University; 2003. P. 102

<sup>50</sup> Polkinghorne D. *Methodology For the Human Sciences*. Albany: State University of New York Press; 1983. P. 99

is going to offer a more complete view of the renewal, comprehensive and thoughtful in addressing legal issues in Indonesia.

## CONCLUSION

The process of the national history and all its development has already given an impact towards the legal thought in Indonesia as well as to find the truth. In Indonesia, there is a diversity of the legal thought which also becomes the part of the discipline of the legal studies. Each of them has the epistemology method to get the truth of legal studies. Sociology of law uses inductive reasoning based on the empiric observation to see the truth in the society. Normative positivism legal thought uses deductive reasoning based on the rational to draw the legal validity of the legislation. Moral-ethical based legal studies uses conscience to understand the legal truth through feeling and intuition. Finally, prophetic-transcendental legal studies are based on prophetic revelation (Al-Quran) to understand the truth of God's law.

The convergence of legal thought that exists may raise some inappropriate relationship patterns in the legal studies, such as the relationship patterns in the parallel epistemology of the legal studies in understanding the truth of the legal studies in only one way and never has any kind of connection with each other. The truth of the legal studies runs straightly in accordance with the flow of the procedure. Although according to the other understanding it is not correct, as long as it is in accordance with the flow of procedure then it is considered correct. The nature of the legal independence is really firm, each of its unable to interfere the other. The pattern of the linear epistemology relationship in the law are existing as the domination and claim for the legal truth because there is only one epistemology in the legal studies which considered as the most correct and the others are less important. This pattern tries to attract some of the epistemology in the legal studies into one single epistemology, so the epistemology in the legal studies which favoured will dominate the truth as in the practice of normative positivism legal thought that become mainstream in the law enforcement in Indonesia.

Based on the problems in the epistemology of the legal studies, it is needed a wise concept to see, understand and use the truth of legal studies in order to make the law truly become the right instrument to overcome the existing problems. With the concept of the epistemology convergence of the legal studies in Indonesia, it will be able to provide a wise solution, because all the perception and understanding about the truth of each epistemology of the legal studies can fit into a single unit in a meeting point of the legal truth. The concept of epistemology convergence in the legal studies tries to open and melt the pattern of the independent relationship and mutually dominating the truth of the legal studies. With this concept, the truth of the law is not considered coming from one single legal thought, but it is extracted from the whole epistemology of legal studies in Indonesia. Thus, this concept results the more complete and comprehensive legal truth.

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