Socio-Legal Studies: Methodical Implications of Legal Development in Indonesia

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ARTICLE INFO	ABSTRACT
	The purpose of the study is to analyze the position of socio-legal studies in legal studies, to analyze their intersection with similar studies, and to analyze their methodical implications for the development of law in Indonesia. By merging doctrinal legal approaches and empirical legal approaches, socio-legal studies appear to offer a large field for legal scholars using a variety of methods. In the study of legal phenomena that are not isolated by social, political, economic, or cultural circumstances, socio-legal studies place concepts and theories based on an interdisciplinary approach that combines disciplines. The sociology of law, which primarily draws its intellectual inspiration from mainstream sociology and views law as a vehicle for social governance, a profession, and a discipline, is distinct from socio-legal studies. Legal discourse, which is a common occurrence in everyday life, is a major subject of legal sociology. Additionally, Socio-Legal Studies differ from Sociological Jurisprudence, which emphasizes realism viewpoints in the field of law.

A. Introduction

The anomaly between normative law and legal sociology has its respective strengths over state law. Hanisah Binte Abdullah Sani shows that the power of normative law is built systematically and the settlement of problems without the need for deliberation is sufficiently guided by written legal aspects that have been mutually agreed upon. The same thing was stated by Mohammad Jamin, the tendency of law to always be tied to the normative aspects of various components so that the orientation of the science of law looks static.[1] Development of the law must make careful consideration. Tomáš Ledvinka explained that socio-legal can at times provide narrow space if it focuses too much on trans-local or limited trans-local origins from legal anthropology.[2] The legal implications of limited trans-local sources have the potential to impact other layers of trans-local law in society so that the fulfillment of the legal development needs of the community is not optimal according to the expectations of a pluralistic society.

Based on the study of the scholars revealed the polemic of normative and socio-legal law. Sulaiman reports that the science of law provides space for scientific disciplines as an approach to comprehensively studying legal systems and concepts.[3] Sulaiman reports that the science of law provides space for scientific disciplines as an approach to comprehensively studying legal systems and concepts.[4] Tom L. Boekenstein & Gerard-René de Groot show that the existence of normative law on the other hand has a vital role, including as a form of protection for the sovereignty and security of the state.[5] Some of these studies show that polemic legal studies and normative law focus on discussing these two legal concepts.

Thus, the purpose of the study is to reveal the characteristics and development of law based on the concept of legal studies and the position of legal studies in the legal structure in Indonesia. The question of the research is what is the position of legal studies and methodical intersections between legal science and legal

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[1] Mohammad Jamin, "Hukum Adalah Disiplin Ilmu Sui Generis : Kajian Perspektif Filsafat Ilmu," *Journal of Law, Society, and Islamic Civilization* 5, no. 2 (2021): 123=143.

[2] Tomáš Ledvinka, "The Disenchantment of the Lore of Law: Jacob Grimm's Legal Anthropology before Anthropology," *Journal of Legal Pluralism and Unofficial Law* 52, no. 2 (2020): 203–26, https://doi.org/10.1080/07329113.2020.1755577.

[3] Safrin Salam, "Rekonstruksi Paradigma Filsafat Ilmu: Studi Kritis Terhadap Ilmu Hukum Sebagai Ilmu," *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan* 18, no. 2 (2020): 45–67, https://doi.org/10.30863/ekspose.v18i2.511.

[4] Sulaiman Sulaiman, "Paradigma Dalam Penelitian Hukum," *Kanun Jurnal Ilmu Hukum* 20, no. 2 (2018): 1–18, https://doi.org/10.24815/kanun.v20i2.10076.

[5] Stergios Aidinlis, "Defining the 'Legal': Two Conceptions of Legal Consciousness and Legal Alienation in Administrative Justice Research," *Journal of Social Welfare and Family Law* 41, no. 4 (2019): 495–513, https://doi.org/10.1080/09649069.2019.1663024.

development in Indonesia? The emergence of the current of thought of integrating normative law and legal studies is a legal concept that can take place contextually and flexibly towards legal issues based on the sociological condition of society.

The emergence of legal studies is a critique of normative law or legal positivism which often causes dehumanization. The emergence of the problem of dehumanization is caused by focusing on written aspects and ignoring social consequences, causing injustice to the social environment. Injustice takes place because normative law ignores contextual approaches to the social structure of society. Simarmata revealed two main factors, namely a. Development of the legal system and the doctrines that underlie it does not allow the law to effect social change or provide substantive justice, b. contamination of legal institutions because they function as instruments of power, making it difficult to realize the legal order as promised by the supporters of legal positivism. This situation is considered inseparable from the dogmatic nature of law which distances itself from the touch of social aspects.[6]

B. Findings and Discussion
1. Polemic on Normative Law and Legal Studies

The debate on the study of law with a socio-legal approach is still experiencing developments in that the science of law is seen from its social aspect. Muhammad Helmy Hakim pointed out that legal positivism shifted to a legal sociology approach (socio-legal) to connect and respond to community needs regarding the existence of law.[7] The report shows that law can adjust to the level of community needs and the existence of law is not static as understood by positivist legal scholars.

Despite the existence of non-doctrinal law, several law faculties in Indonesia reject socio-legal research with epistemological arguments that place the science of law as sui generis. Judging by the development of legal civilization, most countries have recognized the existence of a sociology of law to respond to the needs of the community and legal justice.[8] Because of the law, legal research that is based on positive legal aspects is not strong enough to give wider attention to the position of

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[6] Rikardo Simarmata, "Socio-Legal Studies Dan Gerakan Pembaharuan Hukum," *Digest Law, Society & Development* 1, no. 2 (2007): 12–32.

[7] Muhammad Helmy Hakim, "Pergeseran Orientasi Penelitian Hukum: Dari Doktrinal Ke Sosio-Legal," *Syariah Jurnal Hukum Dan Pemikiran* 16, no. 2 (2017): 12–23, https://doi.org/10.18592/sy.v16i2.1031.

[8] Victor Imanuel W. Nalle, "The Relevance Of Socio-Legal Studies In Legal Science," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 27, no. 1 (2015): 45–56, https://doi.org/10.22146/jmh.15905.

the law itself, so the law can not only be seen from the aspect of the text (written) but includes forms of change in the community environment that can become a reference for changing the law itself.

There have been many legal changes after the post-colonial era where the legal system changed to become normative based on written norms so that it requires consideration from a jurisdictional perspective by the character of the country, culture, politics, and society of a country.[9] Changes in the legal system leave empirical anomalies and are emphasized on written legal concepts so that these changes have an impact on injustice and conformity to community needs regarding the law.

Ronny H. Soemitro pointed out that the power of law does not only lie in its normative aspect but requires power from outside the law as an approach. The law cannot be limited by normative factors, but the level of flexibility and openness to other disciplines is important to be presented in the legal system, including the socio-political system as a supporting variable to answer the legal needs of society. [10]

Therefore, criticism of legal positivism with the emergence of the Sociological Jurisprudence school developed by Eugen Ehrlich and Roscoe Pound founded by Emile Durkheim, Max Weber, and Karl Marx with the idea of legal sociology. This was shown by Ehrlich and Pound by opposing supporters of positivism who said that law is a set of norms that are solid, logical, and autonomous from political, economic, and cultural influences. The two legal studies thinkers revealed that law cannot be separated from the influence of non-legal and legal factors. The ideal law that lives in society or living law.[11]

The implication of the social science approach developed by Eugen Ehrlich and Roscoe Pound[12] is the antithesis of the positivist philosophy pioneered by Auguste Comte (1789-1857). This movement is a transformative thought known as Sociological Jurisprudence, in its development thoughts emerged that opposed the flow of Positivism with the birth of the Realist Jurisprudence School after Sociological Jurisprudence opened up space for resistance to positivism thought.[13]

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[9] Sani, "State Law and Legal Pluralism: Towards an Appraisal."

[10] Muhaimin, *Metode Penelitian Hukum*, 1st ed. (Mataram (NBT): Mataram Uniervisty Press, 2020). 23

[11] Syofyan Hadi, "HUKUM POSITIF DAN THE LIVING LAW (Eksistensi Dan Keberlakuannya Dalam Masyarakat)," *DiH: Jurnal Ilmu Hukum* 16, no. 26 (2018): 259–66, https://doi.org/10.30996/dih.v0i0.1588. lihat juga Simarmata, "Socio-Legal Studies Dan Gerakan Pembaharuan Hukum.".

[12] Roscoe Pound, "The Scope and Purpose of Sociological Jurisprudence. [Concluded.] III. Sociological Jurisprudence," *Harvard Law Review* 25, no. 6 (1912): 123–34, https://doi.org/10.2307/1324775.

[13] G. Edward White, "From Sociological Jurisprudence to Realism: Jurisprudence and Social Change in Early Twentieth-Century America," *Virginia Law Review* 56, no. 6 (1972): 999, https://doi.org/https://doi.org/10.2307/1072084.

The legal studies thought wave that criticized the domination of positivism took place in the 1960s and 1970s in America. Criticism of the positivism flow spreads as a social movement to demand changes in society and the sociology of law approach becomes a tool of criticism and/or a scalpel to laws that apply normatively. The criticism and movement that White revealed as a political and social historical journey was dominated by American intellectuals as the spirit of the progressive legal movement.[14]

The emergence of the idea of legal studies which integrates legal science with social science is a period of awakening. This period of revival began with the foundations of the ideas of Durkheim, Weber, and Marx in the 19th century. The orientation of the development of the legal approach, their studies both describe the close relationship between law and social structure and describe the relationship between legal change and more social change.

2. Socio-Legal Studies in an Interdisciplinary Approach

The concept of socio-legal studies contextually adopts an interdisciplinary approach. The interdisciplinary approach does not place the components of society as mere objects but rather acts as subjects so that the relationship between law and society is closely related and cannot be separated. Sulistyowati Irianto revealed that the legal phenomenon is tied to the socio-political, economic, and cultural context.[15] Sergius Aidinlis revealed that the true concept of law needs recognition of conceptual differences to bridge the theoretical and methodological gaps regarding the existence of normative law and the sociology of law as a form of awareness and progress of the law.[16]

Sulistyowati Irianto revealed that legal studies is an alternative approach and places legal doctrine as an object. Legal studies look at the contextual aspects of normative law by starting from other disciplines.[17] Attempts were made by Sulistyowati Irianto[18] to try to explain the relationship between law and legal studies, but the influence of normative law has not been able to escape from the domination of the written law approach so disciplines other than the law itself are placed as

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[14] White.

[15]Sulistyowati Irianto et al., *Kajian Sosio-Legal (Seri Unsur-Unsur Penyusun Bangunan Negara Hukum)*, *Kajian Sosio-Legal*, 1st ed. (Jakarta: Denpasar Pustaka, 2012), http://ikuswahyono.lecture.ub.ac.id/files/2015/10/bbrl-socio-legal-studies-final.pdf.

[16] Aidinlis, "Defining the 'Legal': Two Conceptions of Legal Consciousness and Legal Alienation in Administrative Justice Research."

[17] Irianto et al., *Kajian Sosio-Legal (Seri Unsur-Unsur Penyusun Bangunan Negara Hukum)*.

[18] Irianto et al.

alternatives. There is doubt that legal studies can be used from time to time either from law enforcement or the formation of the law itself.

In the legal studies approach, the law is not only in its normative aspect but the purpose of the law is to provide a living space for social spaces. This legal study shows that there is a relationship between each subject (written law and public law) to be related. Therefore, the consequences of legal studies on the influence of societal phenomena can provide legal changes from a normative perspective, including making legal interpretations that are based on social and/or sociological aspects.

Simarmata's legal studies confirm that the sociology of law approach remains part of the science of law in a universal sense so that the two groups of laws are interpreted as dogmatic law and empirical law. Even though Salvatore Caserta revealed, legal studies prioritize rationality and respond to the dynamics of society, it is still difficult to separate the tendency and strength of normative law from the roots of thinking about the existence of law itself.

Table 1. The Classification of Legal Knowledge by Legal Scholars

Name	Opinion	Orientation
Peter Mahmud Marzuki	Normative legal research" is a process to find legal principles, legal principles, and legal doctrine to answer the legal problems faced. Done to generate arguments, theories, or new concepts as recipes for solving the problems encountered.	The ideal law lies in the normative (written) aspect and does not recognize other disciplinary approaches outside of the law
Soerjono Soekanto	Linking law with real human behavior so that the scope of empirical legal research is the degree of effectiveness of the law. The extent to which the law applies in the reality of life. Connection. Empirical legal research is not only aimed at citizens but also at law enforcers and facilities that are expected to support the implementation of a regulation.	Law is important for social integration so the tendency is oriented toward aspects of the reciprocal relationship between law and society

Lawrence M. Friedman	The legal study found three main indicators that are important to pay attention to, including: a. Legal Substance b. legal structure c. Legal Culture These three indicators are exceptions that can be made in the application of the law and in the formation of the law itself.	Living law applies flexibly and normative law has its own space as well as legal studies.

Seeing the differences in legal approaches that have become a polemic is that the legal studies approach provides critical possibilities for legal developments and legal standing by their objectives. Linking these two approaches and the position of law that applies openly can provide answers regarding legal issues and social problems by opening a critical space for the existence of law. Legal discussions will develop to address legal issues with the emergence of other disciplines as scalpels.[19] Therefore, legal discussions do not end with normative consequences, but there is a space between normative law and legal studies.

3. Socio-Legal, Sociology of Law, Sociology of Jurisprudence

The development of legal studies has opened up space for legal development and placed other scientific disciplines as an approach. Approaches often used such as discourse analysis, culture, feminism, postmodernism, and other scientific disciplines have had space in the development of legal studies research. The emergence of new approaches in the science of legal development in which legal issues can take place in religion to answer legal vacuums such as the process of making laws, dispute resolution, and legal discovery (jurisprudence) by courts. [20]

Even so, legal transformation is within the scope of sociological studies among scholars, limiting this is related to its scope. One of the divisions made, among others, is to distinguish legal studies, legal sociology, and the sociology of jurisprudence. The division is carried out by experts because different interpretations often occur and cause misunderstandings even though they have the same goal and are oriented to the social aspects of society. The reason stated by Sulistyowati Irianto is based on American legal thought which prioritizes a disciplinary approach with single approaches, namely social sciences.[21]

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[19] Simarmata, "Socio-Legal Studies Dan Gerakan Pembaharuan Hukum."

[20] Irianto et al., *Kajian Sosio-Legal (Seri Unsur-Unsur Penyusun Bangunan Negara Hukum)*.

[21] Irianto et al.

The division of thought in legal studies, legal sociology, and legal jurisprudence is different from the aspect of their findings, but the currents of thought are still based on the sociological system. But the basic goal of thinking is to construct a legal system and/or build a progressive law.[22] Legal construction to be able to adjust that focuses on contextual problems with the application of law so that the legal consequences of both normative and legal studies unite without leaving written legal factors and applying the concept of legal sociology to overcome inequality and enactment of pure positivism law.

Tracing the flow of Sociological jurisprudence law developed by Roscoe Pound in the 1930s. Soetandyo Wignjosoebroto revealed that the strength of sociology is based on realism with the belief that although law is something produced through a process that can be accounted for logically imperative, legal life has experience (socio-psychological). So that law enforcement in the courts to resolve cases can fulfill people's sense of justice.[23]

Thus the comparison of sociology-oriented legal schools, Reza Banakar, maps out three legal thoughts, namely Socio-Legal, Sociology of Law, and Sociology of Jurisprudence.

Table 2. Sociology of Law, Sociology of Jurisprudence, Socio-Legal

	Legal Sociology	**Sociology of Jurisprudence**	**Socio-Legal**
Position	Social Sciences	Discipline (Philosophy) of Law	Legal Discipline (Interdisciplinary)
Substance	Symptoms and Social Events	Legal Value	Impact of Legal Policy
Approach	Empirical-Descriptive	Juridical and Empirical	*Socio-Legal*
Focus	External Context (Society)	Text and Context Dialectics (Formal Institutions and Society)	Text and Context Critique (Impact of Legal Policy)
alignment	minority group	Public Interest in Court	Community Interests Affected by Legal Policy

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[22] Simarmata, "Socio-Legal Studies Dan Gerakan Pembaharuan Hukum."

[23] Soetandyo Wignjosoebroto, *Hukum: Paradigma, Metode Dan Masalah* (Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM), 2002). p. 56.

Even though there are differences in legal thinking that depart from a sociological approach, it is only limited to the contextual area and the use of instruments. Differences arise due to subject factors including local wisdom, juridical consequences, and the use of multidisciplinary and interdisciplinary approaches. Because legal studies are based on sociological factors, a wealth of legal studies can develop and can become an alternative in legal matters, including law enforcement.

In the construction of legal studies, Tamanaha introduces instruments into two main parts of legal studies, namely a) Instruments of empirical science with legal objects such as Legal Semiotics which consists of Semantics, Syntactics, and Legal Pragmatics. b) The instruments of empirical legal science consist of Legal Sociology, Legal History, Legal Anthropology, Legal Psychology, and Legal Politics (the relationship between politics and law). [24]

4. Implications of Socio-Legal Studies on Legal Development in Indonesia

Bernard Arief Sidharta shows that the development of legal studies thinking has implications for theoretical and practical aspects. Theoretically, the purpose of the law is part of the space of criticism or legal epistemology to question legal sources critically. The purpose of legal practice is a form of legal use and benefit including law formation, legal discovery, and legal aid. The substance of legal studies declares that the law has the values of flexibility and law that lives and develops according to the times and needs.

The Study on the Development of Legal Thought in Indonesia 1945-1990 is the result of the idea to develop and build law from a sociological aspect in the practical realm both in law formation and law enforcement. This thinking shows that legal values have aspects of flexibility and at any time the law can adapt to sociological conditions. Thus the application of legal studies to normative law has its own space as well as the approach to legal studies.

However, Khudzaifah Dimyati's report limited her study to the period 1945 to 1990. Dimyati revealed three legal thoughts that developed in the 1945-1960 period by Djokosoetono, Hazairin, and Djojodigoeno, the 1960-1970 period by Satjipto Rahardjo, Mochtar Kusumaatmadja and Sunaryati Hartono and the 1970-1990 period. The first period has two important characteristics, namely thinkers who focus on normative aspects, the second period, has a strong commitment to customary law, the third period, and is categorized by transformative thinkers.[25]

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[24] Brian Z. Tamanaha, *Realistic Socio-Legal Theory: Pragmatism and a Social Theory of Law* (New York: Oxford University, 1999), p. 342, https://doi.org/https://doi.org/10.1093/acprof:oso/9780198298250.001.0001.

[25] Simarmata, "Socio-Legal Studies Dan Gerakan Pembaharuan Hukum."

Dimyati found the strong influence of the empirical approach in legal thinking in the third period. Law is not only applied as a normative phenomenon but has been placed in its social context. This approach also questions formal-positivistic logic which is considered to fail to explain abnormal situations such as chaos and turmoil. The positivistic theory is considered only able to explain the normal situation. In that situation, a radical change in legal thinking in Indonesia is needed. An Indonesian legal theory is needed that is capable of not only providing an overview of Indonesian law but also explaining the legal situation in society as a whole. Such a legal theory can only be built if legal dogmatics opens itself to social studies of law. [26]

If Dimyati's research is continued into the period after 1990, there is a tendency for the academic community to develop to pursue socio-legal studies. There are at least two things that have driven this trend, namely the 1998 reform wave and the harmonious relationship between academics and social activists. Even though there has been legal reform in the field of state institutions, it has not had an impact on solving concrete legal problems. Illegal levies are still running as usual, law enforcement officials are still carrying out the practice of buying and selling cases, big-time corruptors are still untouched, and certain groups of people are allowed to commit violence against other groups. In addition, many non-governmental organizations use academics in programs that require advocacy work. Many academics have established study centers or non-governmental organizations, receiving support from donors who need a social approach to legal issues. [27]

C. Conclusion

Socio-legal studies seem to provide a wide space for legal researchers with various methods by combining doctrinal legal approaches and empirical legal approaches. Socio-legal studies place concepts and theories based on an interdisciplinary approach which is a combination of disciplines in studying legal phenomena, which are not isolated by social, political, economic, and cultural contexts. Socio-legal studies are different from the sociology of law whose intellectual seeds mainly come from mainstream sociology where law is seen as a mechanism for social regulation, a profession, and a discipline. Legal sociology focuses a lot on legal discourse which is part of the experience in everyday people's lives. Socio-Legal Studies is also different from Sociological Jurisprudence which refers more to realist thinking in the science of law which believes that law is something that is produced through a process that can be accounted for in imperative logic. The similarities between the three, however, have placed them within the realm

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[26] Simarmata.
[27] Simarmata.

of "alternative law studies". This similarity positions law in a broad societal context with various methodological implications.

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