

INITIATING ACCES TO JUSTICE FOR THE DISADVANTAGED AND WOMEN GROUPS (A SOCIO-LEGAL PERSPECTIVE)

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Summary:

Observing the failure of movements of legal development have been passed in the last two decades, this writing proposes “new” paradigm of legal development. It is *the Rule of Law Pro-Justice for People*. Its attributes are *firstly*, the program is integrated with development program in multi-sector, and closely connected to the effort of poverty eradication. *Secondly*, it is designed bottom up, and formulated by the partnership among respective parties who are knowledgeable in law issues with socio-legal perspective: epistemic community, government officials, and the CEO represent civil societies. *Thirdly*, the program is purposely addressed to the disadvantaged groups, and supported by public participation. This writing also submit a new “genre” for study of law, that is socio-legal studies. This approach can be identified from its characteristic. It challenges textual study in which the legal documents are critically analyzed to obtain meaning and understanding on how the subject of law (the poor, women) is projected by law. Subsequently, this approach doesn’t stop in studying text, it goes further to study how does law operate in daily life. It develops “new” approaches merged from legal research method as well as method of social sciences, like ethnography of law, socio-legal ethnography, qualitative socio-legal, and qualitative feminist.

Introduction

Have we ever asked the general public, disadvantaged and women groups, whether they are currently enjoying their basic rights to live according to human dignity? Four billion people in the world lives in poverty because they are ignored by the legal state, rule of law, and access to justice (CLEP, 2008). This reality shows the failure of legal development, and it even comes down to law itself contributes to the emergence of poverty and marginalization, because it does not provide space for them to channel their voices in the design schemes of justice for themselves and their society. Law also does not provide the disadvantaged groups to revive their sense of justice when there comes the time for them to feel the necessity of legal aid and assistance.

We ask the question what kind of legal development have existed so far? How are the disadvantaged groups, including women and children, projected and constructed in law when it comes to designing legislation and policy products?

How can the learning curve from the failures of the practice of legal development be explained in its interconnectivity with legal development in the academic world? It is time to emphasize legal discussions to see the problems of development and poverty in terms of interdisciplinary approach. In this sense it will be shown that the *socio-legal* approach will provide meaningful contributions towards mainstream legal studies by explaining the connection between law and many social phenomena.

**From the Movement on “*Law and Development*” and
“*the Rule of Law Orthodoxy*” towards
the *Rule of Law* with Justice for People**

Legal development in Indonesia has a relatively long history and is connected with global policies. The earliest model of legal development, was the Movement of “*Law and Development*” that was advocated in the 1960s. The movement was pioneered by donor institutions and legal scholars from the United States, with the aim to promote democracy and development for newly independent and developing states in Africa and Asia. In the eyes of the United States at the time, law in developing countries¹ seemed vague, unpredictable, and unfair. The legal institutions does not work efficiently, not accessible to most people and becomes a playing field for corruption and political intervention. The deficiency of law was seen to possess a threat towards the continuity and stability in economical development, individual rights protection, and prevented the chances of growth for a better political-democratic reform (Stephenson, 2006: 191)

Based on that situation the United States which already has a stable legal institution, wealth of experience in developing the legal system, felt that they could contribute their expertise and aid to promote a legal and development reform in developing countries. They tried to incorporate the social, economic, and political model of the West to the third-world countries. They believed that through legal aid (transplant) of the Western laws, therefore modernization and democracy can be grown in those countries.

However, this Law and Development model met failures in the sense that the modern and democratized legal structures never managed to be implemented in the target countries. For experts, especially the *socio-legal* scholars, this is not surprising, because the program was not fundamentally supported by sufficient knowledge on the roots of legal culture in developing countries. Thomas Carothers omits similar opinions in that the problem is not in the non-existence of knowledge (Carothers, 2006: 15-28). F. Benda-Beckmann, a legal expert that became a prominent figure in the studies of legal pluralism questions: “*What did lawyers understand about the development of the third world?*” (Benda-Beckman, F, 2006: 52-53). Stephenson elaborated a number of critics towards the legal

¹ The term “developing countries” in general refers to states with low BNP, receives aid from other states, and most have similar patterns of history, politics, econo-socio structure, administration and law system, and their position in the international world are similar (Otto, 2007)

development movement by quoting a number of experts. For instance in 1974, David Trubek and Marc Galanter, experts respected among people in *socio-legal studies* said : “*that the law and development movement was based on a flawed theory of law and society, and a flawed ideal of liberal legalism*”. Lawrence Friedman, whose theories on legal culture have been quoted countless times by Indonesian legal scholars noted that the promotion of legal reform in developing countries have lost “*any careful, thought out, explicit theory of law and society or law and development*”. James Gardner, an ex-excecutive of Ford Foundation gave his opinions on the legal building projects in the Latin America that “*these programs, though well-intentioned, amounted to legal imperialism.*” (Stephenson, 2006: 192)

Movement of the Rule of Law

After the failures of “*Law and Development*”, the law sector was not seen important and was dropped from theoretical discussions and development activities in the 1970s and early 1980s. The law sector came back on the map of development when there were new emerging waves of development with the focus on law, which started at the end of the cold war in mid 1980s and early 1990s (Benda-Beckmann, F, 2006: 53, Carothers, 2006). This phase marked the emergence of the movement of *the Rule of Law*² done in countries in Latin America, the former Sovyet Union, Sub-Saharan Africa, and Asia which includes the Middle-East. The movement of *the Rule of Law* aims to build a legal system that is in nature *business- and investment-friendly*.

Donor institutions and international development organizations believed that the program of *the Rule of Law* is a therapy to free the developing countries and post-communism countries from corruption, and is a stimulus to increase growth and foreign investment, and thus is a cure towards poverty. The assumption goes like this: *the Rule of Law* is crucial for economical and democratic development. If a country does not have *rule of law*, then that country would not be able to attract significant foreign investment, and by that would not be able to develop growth in finance and economy. These assumptions were elaborated as such; (1) If the courts have less access to legal materials, legal materials would need to be provided; (2) If the management of courts is dysfunctional, then there is a need to implement Western standards; (3) If the law of criminal procedure does not provide sufficient protection towards the convicteds, then the law should be amended; (4) If lalgal institutions can changed into Western models, then *rule of law* can be achieved (Carothers, 2006: 17-21)

Because the main objective of the development based on *the Rule of Law* is reform on the sector of business law, then many Asian countries, including Indonesia made and amended their business law instruments and modified their business law institutions. However, after more than 10 years running the program and spent more than one trillion US dollars, it seems that the program have yet to

² Carothers defined *the Rule of Law* as *a system in which the laws are public knowledge, are clear in meaning, and apply equally to everyone* (2006).

reap significant benefits. The effort to strengthen legal institutions has gone very slow. Training for judges, consultations and comparative studies among experts have not shown sufficient benefits compared to the funds spent. The court systems of Latin America is still behind and in Russia there is barely signs of legal reform (Carothers, 2006: 17-21).

The Rule of Law does not base itself on society's legal culture where the programs are concerned. It seems that these two are in a distant relationship. In this sense *rule of law* is often linked with "a desirable legal system"; while the legal cultures in other hands, is "what people (and legal professionals) think about law" or "those aspects of legal system we can't observe or measure" (Stephenson, 2006: 204). This shows that every nation provides a different meaning towards the *rule of law*, that cannot be detached from the context of social, politics, and legal culture of each respective nations.

The downfall of the basic assumptions within the movement of *the Rule of Law* is shown in the case of China. In the last 20 years, this state have shown opposite directions, foreign investments are booming, and this happens in a state that rejects the Western style's *Rule of Law*. There is a fundamental difference of opinion on the concept of *rule of law* among the United States and China. In the failed process of bilateral agreement it was apparent that the United States did not only want *the Rule of Law* only limits itself in economics, but also covering law, politics (issues of human rights) even the efforts to transform the legal structure. On the other hand China does not want *rule of law*, and stands by on its own interpretations about that concept as *rule by law* or *yifazhiguo* (a country ruled according to law). They do not want to define *rule of law* as *fazhi*, the literal translation of *Rechtsstaat* in the concept of "legal state" of the 19th century (Stephenson, 2006: 198)

China does not want it, as they are concerned that the effects will spread and totally change their whole system, which is already stable in the first place (Stephenson, 2006: 191-215). A study shows that there are indeed no relation between Western style *rule of law* and foreign investment (Carothers, 2006: 17). This is actually also shown by the phenomena when the global economical crisis hit major economical and formal sectors like how it is today, proved that informal and agricultural sectors emerged as the people's economical lifebuoy, not the macro level economies built by foreign investments.

A program that lies on the *the rule of law orthodoxy* (Golub, 2003) emphasizes too much on the structural formal and state institutions and modern business law sector, while the issues of social (poor) law remained outside the state's playground and is no accounted for. This program also concentrates too much on the problems of the court's institution. It was not sought out that law has a wide spectrum, not only the constitutional rulings on legislative and executive products (*law in the books*). Law is not identical only with some court bodies, legal enforcement institutions, and formal institutions.

The program of *the rule of law orthodoxy* minimizes the support from the civil society with its legal culture, and has not succeeded in building the legal capacity from poverty groups within the society. In an analysis, Golub provided comments on the basic assumption of the movement of *the Rule of Law*:

“...such assumptions overlook a fundamental fact: the central challenge for making the law a positive reality for the poor is not achieving formalistic institutional or legal reforms but spurring the actual implementation of existing law in a pro-poor manner....the orthodoxy emphasizes formal structures and ignores underlying realities” (Golub, 2005: 106).

Even Moog and Kauffman advises that it would be preferable for funds to be allocated for other needs such as education and health, legal aid for the poor, and overcoming the problems related with violence towards women (dalam Golub, 2005: 115)

The condition where the involved actors in the program design is not fully aware that the program is not supported and not rooted to the beneficiary society, is illustrated like *“a house without foundation”* by Stephen Golub (2006). Let us check what are the basics of the program of this *rule of law orthodoxy* as stated by Golub:

- Focus is directed at formal state institutions, especially the court
- The design of program developments institutionally is only conducted by legal profession that is represented by national law scholars, legal sector high officials, attorneys, foreign consultants and personnel from donor institutions
- Tendencies to define the programs limited to repairing the legal system in areas of courts, attorney, contract (business) issues, reform of law, institution and other processes in which legal scholars play an important role
- The role of civil society is very limited, or is invited to engage only as a legitimation of the existence of the program. Some NGOs were asked very little opinion on how to reform the legal system, and fund them to advocate reform.
- An overdependency on foreign experts, initiatives, and foreign models, especially the industrial society (Golub, 2006: 108-109)

In more practical manners the program translates to these following activities:

- Building or repairing the court buildings
- Requisition of *furniture, computer*, equipment and other materials
- Drafting new laws and regulations
- Conduct trainings for judges, attorneys, police, and other law scholars
- Applying a management and administration system for the courts' institution
- Supporting training and legal management for governmental institutions

- Establishing a lawyers' association
- Conducting international exchanges for judges, court administrators, and advocats (Golub, 2006: 109)

From the elaboration of the activities of legal development above it is seen that (design) of development in general is done via a *top down* and *state-centered* approach. Because of that there are many development activities that does not even touch the roots and basics of the elements of fairness and equality and justice for the society. The act to utilize a legal society never really happened.

The failure of legal development from the perspective of legal pluralism

The community also has mechanisms and capacities to create their own law and justice. In the everyday life state's laws are not the only reference that monopolize our lives. State institutions, including the courts, are not the only entities of justice. In everyday life, there are many other legal references that actually "work" more synergically, that roots on the legal culture of the society and is in close relation with law of religion, culture, customs, and other social convention. If we cannot classify these as "law" because it cannot fulfill the attributes of "formal" law in mainstream perspective, it might be preferable is we name it non-state laws or *hybrid law* or *unnamed law* (F.Benda-Beckmann, 1990, 2007).

The condition where there are co-existence between legal systems in an arena like this is what is classically known as legal pluralism (Griffith, 1986, Merry, 1988, Griffiths, 2005). At the beginning the legal pluralist identifies the existence of more than one legal systems in certain social arenas, for example in inheritance, marriage, natural resource management (land, water, forest), negotiation strategies, and dispute resolution. In identifying this, the experts view each law as one entity in which its limitations can be clearly drawn, most obvious that state law is on one hand and non-state law on the other.

Law and justice in society can go beyond the available rooms provided by the state. State law is officially knows from 1945, and after the establishment of that state, legal justice and instruments oftenly fails to reach down to the society due to reasons of culture, history, politics, and barriers of government beauracracies. In the social reality, legal pluralism really lives in the society (*the real living law*). This reality shows the crumbled understanding of the centralism of law that states that the only law is state law that applies the same for everyone, is exclusive and is run by a set of state institutions (Griffith, 1986)

The lack of sensitivity to see the reality of legal pluralism in the movements of *Law and Development* and *the Rule of Law Orthodoxy*, have caused such failure. Law and social justice mechanism that already exists is never explored and promoted. And the pre-existing law and social justice mechanism is indeed a big power to help the government in ensuring justice for the society. The stacks of disputes in the state courts, workload of judges, and other law enforcements

have become an overburden, and the corruption in the court institutions proves the limitation of the state's capacity in providing law and justice.

As an academic concept, the definition of legal pluralism constantly changes. The recent definition of legal pluralism is related with "dynamic law" in the wave of globalization. The narration of legal pluralism needs updated elaborations. In the global perspective it is shown that law from every corner of the world is moving into limitless territories. That is where exposure, interactions, meetings, contests, and adjusting with one another takes place among laws in the international, national, and local levels³. Which is why law takes a dynamic and continuous change. This sense creates *transnational* and *transnationalized law* as a consequence of the interaction and adjustment with one another, and the fulfillment of the need to cooperate among nations. The current situation at the beginnings of legal pluralism, the identifying phase, the *mapping of legal universe*, can no longer become acceptable. Substantially speaking, international, national, and local law can no longer be seen as a standalone entity with obvious and distinct limits that separates one another.

In the global perspective, legal pluralism can become more complex because of the existence of international and transnational law in certain social arenas, especially in the humanitarian and business affairs. Which is why the definition of legal pluralism continues to change.

"...it is mainly understood as the coexistence of state, international and transnational law, and analysis remain limited to the question of whether such transnational connection influence state law at the national level (Benda-Beckmann, F & K, Griffiths, 2005: 6).

Globalization can no longer be translated as "a one way journey from West to East" through the spread of the values and concept of democracy, human rights along with other instruments. Globalization is also the dissemination of values, concept, and law from corners of the earth to the other corners of the earth. Globalization is not only indicated by the borderless state but also by borderless law. Laws from certain places can penetrate to other places limitlessly. International and transnational law can go beyond territories of any state, even to the extent of any local areas into the grassroot levels. Or otherwise, it is not impossible that laws and local principles are adopted partially or fully becoming an international scale law (Merry, 2005). The example is the practice of modern law in developing *Alternative Dispute Resolution (ADR)*, in which the principles are taken from the nature of indigenous disputes, to accomplish a *win-win solution (compromise)* where everyone feels benefit and advantage (Nader and Todd, 1978). It is also possible that there is a mechanism to resolve dispute in local societies that is "borrowed" by other groups of society or called *borrowing modes of dispute resolution* (Benda-Beckmann, et al, 2005: 2).

³ Local in the sense : room and context of some social-politics.

In a wider usage of ADR, some results of research on people's choices on the legal aspects in relevance with disputes shows that there are tendencies to prefer resolution outside of the (state) courts. Labors in a factory in Chile in seeking justice prefers ways of mediation through the institution called *the Inspectorat* (a type of mediation institution), despite the fact that there is the setup of the *Labour Courts* (Ietswaart, 1982: 625-667). Contractual relations among state owned enterprises in socialist country Poland is handled arbitrarily by an institution named *Arbitracs* (Kurczewski dan Frieske, 1974). In the meantime, negotiation remains popular among corporate giants in the United States, eventhough they are legally tied to a contract that specifies in detail what are the consequences shall a dispute happen (Macaulay, 1963: 55-66). In relevance with disputes that involve parties that comes from different nations and background, but resides within the same proximity, in San Diego, United States, a *Community Mediation Center* was developed, in which their success rate of dispute resolution reaches a rate of 90 % (Rohrl, 1993: 132). These trends are also true in Japan, where their legal culture shows that even in the most modern business affairs, the dispute resolution that goes through state courts are avoided (MacNaughton, 2002, Chai-Itthipornwong, 2006).

Meanwhile situations in Indonesia is illustrated by Nancy Tanner by narating what happens in Minangkabau. Dispute resolutions is mostly done outside an actual court in the form of informal mediation, usually by a friend, tribe chief, village chief, and happens in village terraces, a Mosque's front yard, in the village centre, in a school yard, or even in a coffee hut. This kind of "court" is attended by a spontaneous meeting that involves people living in the village who are interested in the matter and the indogenous council. A more formal process is also done in front of kinship figures (Tanner, 1969: 24-25)

On the other hand, the meeting among several legal systems can also be shown through the existence of a national law that adopts the substantial on international treaties, especially in the humanitarian affairs. Interestingly, ideas on "justice" from corners of the world, locally, can be part of international law's instrument that can be composed together by state delegations, and create a binding power to those who ratify it. As an example is the CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), which came into force in 1979 and is currently ratified by approximately 180 countries. Maybe there is little documentation that can show what happened in the plenary sessions on the drafting of the convention. The ideas of drafting article 14 in of the CEDAW on the prohibition of discriminatin towards women in villages came from an Indonesian, Mrs. Suwarni Saljo along with a delegate from India who sat beside her. This shows that globalization is not only *centrifugal* but also *centripetal*. The norms of the political and local context can be adopted and serve as an instrument in international law.

In "Iglobalizatiion of law" it is possible to identify the mobility of actors and organizations that becomes the *agent* of traffic in the movement of the law. They

are what causes the laws to become active, among them are; migrants, expatriates, merchants, diplomats, International NGOs, *multi nasional corporation*, *epistemic community* (Wiber, 2005), individuals who conduct an inter-nation marriage, and they who interact with the outside world through the world wide web (internet).

The phenomena of legal pluralism should become a *sensitizing concept* for them who are involved in developing states. A mistargeted Law and Development program, due to the lack of sensitivity towards legal reality in the society, will cause a continuum of the current condition, as found by the Commission on Legal Empowerment (2008), that the abandonment of attention from the *rule of law* and *access to justice* causes worldwide poverty.

Towards the *Rule of Law Pro- Justice for People.*

With its various aspects, it does not mean that development of the *the Rule of Law* does not possess any meaning at all. Through the process of the learning curve from past failures, Indonesia in the past few years have shown serious efforts to utilize indigenous law with a participatory approach. For example, international institutions cooperates with state institutions (BAPPENAS) and the Indonesian experts, to start a program design of legal development with a different paradigm (Bappenas, 2008, 2009).

First, the program of utilizing law is integrated with developments in other sectors, and is directly related with the strategies to eliminate poverty. These sectors are; court reform, legal aid, governance, natural resources, labor, that is especially targeted at groups of poverty and marginalized; women, and children⁴.

Second, programs are especially aimed at marginalized groups (poor, women and children). *Third*, differ from the movement of previous legal developments, the approach used tends to avoid the *top-down* and *state-centered* system, programs are designed to engage civil societies and experts, for as much extent as possible in involving public participation through discussions and dialogs in some regions.

Why access to justice for the poor and women ?

Americans with a general and long tradition of legal history and politics, are usually proud of stating out the notion "*Justice for All*". In my opinion, in its current situation Indonesia still needs to shout out: "*Justice for disadvantaged group*", including poverty groups, women and children. How can we say *justice for all*, when in the community there is still major disparities among social classes, the rich and the poor. In this sense why are women in the marginalized group? Lots of trains of thought in women studies in the last decade has agreed on the existence of women as part of that group of disadvantaged people, not just because of their sexuality as women alone, but also in relation with race,

⁴ National Strategy for Access to justice will be published by Bappenas in the year 2009

class, colonialism, and naturism (Tong, 1998; Harding, 1987; Moore, 1998). The main explanation on this is because of the absence of women authority in relation to herself and the people around her, including husband, peers (indigenous authority) up until the elites within the government.

This absence of power avoids access for poor people and women to gain legal justice. For example, poor women are forced to leave the place where she was born without sufficient education and skill, and went to become domestic houseworkers in other countries. Because the work is in the domestic sector, they are not protected by labor laws in the host state. As a consequence, when they escape from the house where they work because they experienced violence, she become branded with the words *undocumented* and *illegal*, and if her photos get spread through the media, the local police will have the authority to apprehend her. Indonesian advocats will not be able to assist her, because it is not possible to practice in other countries because there are no licenses, while paying a foreign advocat can be quite costly. Things like this will of course call for political-diplomatic remedy.

The absence of access that is equal justice for everyone, irrelevant with upholding the principle of “*equality before the law*” in legal practice. In ideal the principle can be applied effectively if, every person has equal access to resource and justice. If a poor woman had to steal just a few candies in the supermarket so that her child can drink milk⁵, then based on the principle of *equality before the law* in the eyes of law, she should be sentenced to jail. In other example, members if an *indigenous community* can suddenly be seen as a forest poacher and receive sanctions, when he took forest products, while in fact this is something he has done for years in his own inherited land.

How can the principle of equality before the law be applied in this vague circumstances? They who are in a marginalized and disadvantaged position will most likely loose. It was never thought out that poverty and “the condition of marginalized” is due to the political and economical construction that is legislated through certain policies (law), that grows the disparity for poor people from justice and resources. Legal justice is indeed not identic to social justice (Shapland, 2008). An *affirmative* action is necessary, before we reach to the stance of “Justice for All”. Because of that, legal justice and social justice must always be worked upon so it grows closer, so that the principle of equality before the law can really become the spirit and soul that can be seen in legal practice.

How are (poor) women projected by law ?

The abandonment of women agenda and the fact that they are non-engaged in many policy making can be seen from some legal products, including court ‘s ruling. It is not that long ago, that Indonesia’s women movements was surprised by the Constitutional Court’s ruling No.22-24/PUU-VI/2008, dated 23 December 2008 on the *judicial review* towards UU No.10/2008 about general elections.

⁵ Tajuk KBR 68H Tuesday, 5 April 2005

This ruling builds obstacles the attempt of women to reach a fair quota in parliament, by non-activating article 214 UU Pemilu no.10/2008. The consideration of prioritizing major votes does seem fair in the eyes of democracy. However, that decision that seemed neutral and objective, indeed causes an unfair implication if applied to disadvantaged groups (women). This ruling becomes more of an obstacle towards affirmative action that aims to leverage disadvantaged groups. How would establishing legislation products to fill the needs of marginalized groups in parliament happen when they're not even represented sufficiently in the design process? Besides that, the judges seems to ignore that this effort relates to the principles of justice that is mandated through international law instruments such as the CEDAW convention. Judges also ignores that this effort relates to global womens' movement in corners of the world who has fought for their political rights since the turn of the century.

The abandonment towards women's experiences is also reflected in many *Peraturan Daerah* (local government regulations) and in the (local) government budgeting. After the decentralization era we have witnessed many regions experiencing both euphoria and confusion, they were caught up in the moment to find their identities by establishing local regulations that facilitated their effort in establishing self-identity (Jurnal Perempuan – Women Journal, 2004, Women Research Institute, 2005). Unfortunately in general those local government rulings does not regulate the substantial and condusive things, like increase of health, education, and social welfare so that they are saved from poverty and lack of knowledge/information.

The local regulations quality can be seen by the absence of an academic and analysis document on the impact of the application (*Regulatory Impact Analysis-RIA*). It is based on *cost and benefit analysis*, Human Rights standard, *good governance* including a “forceful measure” so that local governments follow procedures, and engaging the participation of poor and marginalized community groups. The local regulations do not only violates the principles of legal state procedure that “rulings underneath may not contradict the rulings above it”, but also against the sense of people justice.

The legal handicap in the local regulations is seen by the many amounts of the Bill that is annulled by the Ministry of Internal Affairs⁶. Among them are the local

⁶ Up until now there are up to 3.000 local government rulings or local regulations about tax and retribution in cities/subdistricts all over Indonesia that is indicated problematic or against the general agenda and higher constitutions. But, from that amount, only 973 have been annulled and 250 are in the process of annulment. About 700 Perda supervised by the Ministry of Internal Affairs. The Ministry sent out a letter numbered 188.34/1586/SJ dated 5 July 2006 on the Establishment of the Drafting and Local Legislation. Besides that, the Ministry is currently analysing 37 local regulation that has a Syariah colour, especially putting in the context of alignment with the higher constitutions, and other 30 local regulations which have expired, but not announced (Kompas.com, 16 Juli 2008)

regulation that contains many imagery politics, and is linked with how women sexuality is constructed. Women are domesticated through the prohibition of improperly clothing and veil. Those rules were made “attractively” to gain society interest, such as “the anti infidelity regulation”. The legitimation is that all women who go out at night times, is definitely not of good intentions and is potential towards acts of infidelity. They did not sought out that that it is the poorest women in the society that needs to be on the streets and public places to do their activities in the world of informal sectors at night. Women in the middle upper class that is riding in a car would certainly not be caught when they are out at night times.

The injustice to women are also reflected in the existing budget⁷, as found in some regions (Irianto, 2006). See the examples of the comparison of budget allocation for women agenda, to the agenda of executive and legislative officials in some regions.

No	Region	Funds allocated for women and children	Funds allocated for officials
1	Ciamis, 2004	Program to alleviate bad nutrition for Children Rp 10 million	Costs of holding Banquets over than Rp 4 billion
2	DI Yogyakarta, 2004 (DI Yogyakarta, 2001)	Women empowerment Rp 40, 616 (Rp 0,-)	Funds for duty carry out of DPRD (Local House of Representatives) Rp 98 million per person (Rp 9,7 billion)
3	Subang, 2004	Assisting women maternity with high risk in poor families Rp 10 million	Duty trips of DPRD Rp 2,3 billion
4	Kulon Progo, 2004	Clinic for Infant Rp 4 million	Construction of port of Karangwuni-Glagah Rp 135 billion

Source : processed from Warta Korupsi (Corruption News), Seri Perempuan dan Anggaran (Budget and Women series), Edition of 4th of October 2004, Yogyakarta : IDEA (Institute for Development and Economic Analysis)

Especially in the health sector it can be seen that the DI Yogyakarta allocation in the annual budget, is as below :

No	2004 Budget	Beneficiary	Amount
1	Health allocations for DPRD members	45 DPRD members	Rp 198.450.000,-
2	Increment of community health	Poor patients	Rp 64.409.700
3	Costs of local health care	Community esp. Children	Rp 62.394.000,-

⁷ Due to time constraint the data presented are old data, but at least can provide an existing illustration of things

4	Financial aid for infant with lack of nutrition	Infant with lack of nutrition	Rp 17.500.000,-
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Source : processed from Warta Korupsi (Corruption News), Seri Perempuan dan Anggaran (Budget and Women series), Edition of 4th of October 2004, Yogyakarta : IDEA (Institute for Development and Economic Analysis)

Imagine the health funds for 45 people of the DPRD (Local Parliament) members are so much more than the budget allocation for health for all the poor people (women and children) in the same area. While when we ask, who contributes the most to the budget? Actually the income of some regions are from sick people retribution (poor people, women, children). In some regions in 2004, even, the biggest income came from the health sector, in Bantul (Rp 10.3 billion), Yogyakarta (5.14 billion), Gunung Kidul (5.43 billion), Subang (14.055), and Kebumen in 2003 (3.5 billion).

Once again the condition above has shown that some law and policy has again picked sides to those with power (executive and legislative officials), and abandon the experience of those with no power who are women and children from the poorest groups of the society. This reality also shows that law who claims to be neutral and objective, indeed defends more to those who are in power.

Even so there are positive notes to write on the improvement in law in respect to the attempts in empowering women rights in Indonesia. For 10 years in the reformation era there were so many instruments that was legislated. This is of course the fruits of the women movement (individuals and organization), that blended into the civil society movement. Tirelessly, and through many strategies (lobby, advocacy, negotiation, becoming balcony fractions, and publication), they managed to awaken the members of the parliament that it's as important as other things as it is to see issues from the eyes of the disadvantaged groups of people. Democracy does grow in Indonesia, and that women movement is deeply involved, even deeper than in many other Asian countries. The result is no less than 10 instruments of law that ensures justice for women and children were born in the reformation era, be it a standalone Act or articles incorporated in other Act⁸.

⁸ Among them are ; UU No. 39/1999 on Human Rights, (Art. 45 states that women's rights are part of human rights), UU No. 23/2000 on Juvenile Court, Presidential Instruction No. 9/2000 on *gender mainstreaming* in national development, UU No. 12/2003 on general election, Art. 65 (1) regulates the quota for women in parliament, and UU General Election no 10/2008 that provides the bigger chance for women to take a seat in parliament both in the central and in the regions, UU No. 17/2006 on Citizenship, UU No. 13/2006 on witness protection, and UU No. 21/2007 on the Elimination of the Crime of Trafficking, UU no 12/2005 on the ratification of the Covenant of Civil Political Rights dan UU no. 13/2005 on the ratification of the Covenant for the Economic Social and Cultural Rights. Head of Police Force ruling no. 10/2007 on the formation of the Women and Children Aid Unit (PPA) from the level of regional police and up. In this sense it is emphasized that the Special Treatment Romm (RPK) should exist in every PPA unit, among them are UU No. 3/1997 on Children Protection, then the ratified international convention like

Besides that there were many judge rulings that were progressive in providing justice to women, especially in the field of inheritance. From 1961 until 1985, there were at least nine out of ten cases of inheritance in the communities of Batak, which was won by women in the Supreme Court. The indigenous law in the patrilineal system in Batak does not put women as having inheritance rights, causing women to touch base with the state's legal system (Irianto, 2005)

The advancements in the legal sector that happens today are actually continuities of women movement history in Indonesia that has existed far before independency, among them are through the first Women Congress on the 22nd of December 1928, and the submission of the motion of equality before the law to the Dutch Governor-General in the 1915, and the motion to demand political rights to vote in 1941 (Suryochondro, 1985). The movement continues and got attached in every phase of Indonesia's history up until the reformation era, in which the actualization of it was in the process of the birth of the legal instruments that ensures equality and justice for women and children.

With that the face of women in Indonesian law is very complex, there has been significant advancements that has shown the growth of democracy in Indonesia. However on the other hand, there are still many products of law and policies that has caused a loss for women and that *judicial review* should be applied on them.

How is the relationship between law and poverty?

The current definition and attribute to poverty gets too much linked with the aspects of economy especially measured from the income per capita levels, and the efforts to eliminate it is based on a macro approach (Bappenas, 2008). A misconception on poverty and poor people results in policies and programs that is also inaccurate. The efforts to eliminate poverty is done through a narrow mindset, limited on the "*instant*" approach and having programs that tends to be as charity. While a matter of fact is that the root of poverty is the absence of access for poor people to participate in self-determination in the decision making processes for the purposes of policy making in many aspects of life. There are nearly no complaint mechanism that is accessible to grassroot society. In general they have no idea on what law is nor do they have an adequate sense upon a law system, about law that protects their rights to have access to justice, and what laws protect their basic human rights.

CLEP (2008) also states that poverty is man made. Poor people get rejected from legal protection, institution and policies tied to economy, social and politics.

CEDAW Convention (through UU No. 7/1984), and the ratification of many international policies like the Beijing *platform* and Beijing Plus Five

Many poor people do not live with the protection of law. They do not have the chance to participate in legal policy making. They are not only ignored by the legal system, but often they become objects of the legal system. With that the scope of poverty should also acknowledge the lack of understanding and awareness upon law, the mechanism of legal aid and assistance when they need it, and access to political process of decision making in the levels of local government and central government. If poor people were to be involved in law, then they too could get legal protection, including legal aid. This is where seeing poverty from the perspective of law becomes ever more important.

Legal empowerment is the process through which the poor become protected and are enabled to use the law to advance their rights and their interest vis-a-vis the state and in the market. It involves the poor realizing their rights fully, and reaping the opportunities that flow from them through public support and their own efforts as well as the efforts of their supporters and wider networks. Legal empowerment takes place at the national and local levels. It is a country and context-based approach (CLEP Report, 2008: 11)

Utilizing law is utilizing its services, that is oftenly combined with the activities of state building with the objective so that the disadvantaged groups can increase their self control (Golub, 2006: 161).

To quote UNDP, the access to justice is defined as: *the ability of people from disadvantaged groups to prevent and overcome human poverty, through formal or informal institutions of justice, by seeking and obtaining a remedy for grievances in accordance with with human rights standards (UNDP 2008)*, Access to justice is not rights itself, but a key concept to enjoy other rights as a whole. Along with the Universal Declaration of Human Rights, the access to justice is fundamental to human rights (Art. 7 and 8), It is because first, acknowledging equal rights before the law and equal legal protection without discrimination (Art. 7,2). Second, providing rights for an effective remedy through national tribunals competent in relation with violations of basic human rights that is protected constitutionally (Art. 8). Legal empowerment based on access to justice should be accepted as a human rights (Andreassen and Marks, 2006).

By that then actually the coverage of the concept of legal empowerment and access to justice can be very wide. In this sense state building programs related to poverty, must be done synergically. The effort to eliminate poverty in any sector, education, health, economy, environment, supply of clean water and public facilities, must all be done in line with the utilizing of law. In short, not utilizing the law is not an option, and must be integrated with all programs related with state building. Utilizing the law here means the efforts ensuring the disadvantaged groups receive knowledge and understanding on justice. If they need legal aid, there must be guarantees of service and assistance.

Academic meets Practical needs

In an Indonesia context, there seems to be a need to translate the academic discussions to be more grounded for the advancements of the movement for civil society rights. Legal reform practitioner need analytical tools from the academic studies to conduct their activities, even to serve as a basis in designing an activity *platform*.

In the perspective of global law, it is indeed unrealistic to separate the sharp line between the state law and non-state law, an informal justice system to a formal justice system. However, there is a need to underline definition of Access to Justice by UNDP stated above that the providers of justice is not only formal, but also informal in nature⁹. Reality shows that the providers of justice are also institutions or forums that are initiated by civil societies.

In the legal sector for instance, besides no special Act on Legal Aid for the Poor¹⁰, it can also be seen that civil societies are in the front line. It must be mentioned here that there exist YLBHI (Indonesian Legal Aid Foundation) with 14 branches, PBHI (Indonesian Legal Aid Association) with 10 branches, and LBH APIK (Legal Aid Institution of Indonesian Women Association for Justice) with 12 branches in Indonesia. Besides that there are also NGO forums in small scales in the regions that relates to legal aid and assistance. They provide aid and assistance to those who seek justice, by self-resourcing. It is important to be noticed that in big cities these institutions are very active, but branches in local areas are facing problems to ensure their continuity due to limitations of fundings and human resources. It is clear here that there are so many who seek for justice in the poverty and women groups, but the available forums to provide legal aid is far from sufficient.

In this sense it must be said that the presence of LKBH (Legal Aid and Consultation Institution), that functions as a university based legal clinic, are spread throughout the country. Actually LKBH has the potential to provide prodeo legal services. Unfortunately, Act no 18 year 2003 on Advocats, especially Art. 31 that prohibits Advocats who are from (lecturers) the civil workers group to hold a practice, which affects the survivability of the LKBH. Besides apprenticeship in LKBH is used as a learning unit for legal practice is not something popular even among students in the law faculty itself¹¹. This phenomena is truly weird, and must be sought for solutions such as making student apprenticeship in LKBH as part of their civil dedication study program.

In social reality, it can be observed that members of society can create a mechanism for their own justice. Hedar Laujeng identified the need of indigenous criminal law, indigenous courts along with authority holders to resolve

⁹ Actually the terms "formal" and "informal" is not the most accurate categorizing, but what is meant in this context is the State (formal) and non-State (informal)

¹⁰ Except Government ruling no 83/2008 on the Prerequisites and Mechanism of free legal aid

¹¹ See <http://hukumonline.com/detail.asp?id=10930&cl=Berita>

dispute, in many areas of the country up until now (Laujeng, 2003). This fact is truly interesting, because even though the indigenous law is automatically disacknowledged by UU no. 14/1970 on the Essentials of Judge Authority, but cannot be ignored that forums still lives and actually fulfills the community's thirst for justice.

In a research done in 16 villages in three provinces (West Nusa Tenggara, East Jawa, and West Sumatra) (Suryadi et.all, 2002), it was found that there were many ways of dispute resolution that is done internally within a community, including those for cases of land and environment. Besides, there are local systems to handle cases that are deemed quite serious like corruption, which is identified in a World Bank research (2005).

The rise of the dispute of resources (especially land, forest) that leads to the emergence of many casualties in the history of land in Indonesia, has encouraged activists to do a utilizing of law on the indigenous communities and their law. The goal is so that the indigenous community has control on the authority of land in their area. Its interesting for example the program of HuMa¹², in the Seko subdistrict, North Luwu, South Sulawesi that conducts assistance for indigenous societies in Kalimantan in reclaiming their resource and environmental rights. This indigenous society is strengthened upon their knowledge of local law. In arguing with the timber company and the government, with their understanding of indigenous law, they won the case. There are also indigenous communities that tries to reconfigure their indigenous law, and up to the point where they submitted to the government to legislate is as regional regulations (Steny, 2005).

It is important to note that the experiences of LBH APIK Jakarta in building "legal assistance" among the survivor of domestic violence. The ordinary women initiated a working group, and help the victims of violence around them. In general they can handle it, because before that they were equipped with knowledge on the Domestic Violence Act no.23/2004, and they can even deliver victims to report to the police. Understanding on the shields of law and the reporting mechanism to court institutions is important to have for the assisting women. Even though in reality there is no assurance that state mechanism would be used, because the cases where the violence is not so serious can be proceed with alternative ways of conflict resolution.

Revitalizing activities for the sake of building awareness for women can be achieved through arts. Women National Commission for instance does campaigns on the issues of domestic violence and the legal instruments (Domestic Violence Act), among them are through the art of puppets in North Nusa Tenggara. The figures involved in the arts (puppet player) welcomed the idea and felt happy that they were involved with the dissemination of the

¹² The Association for Rejuvenation on Laws that are Community and Ecology based.

awareness of women's (human) rights. Drama art programs can be used as a facility to raise awareness on rights and justice for women who labor in factories, or the program to utilize law for women who are headed households (World Bank, 2006)

The emergence of civil society to revitalize the alternative dispute resolution strategies in their own community, can really be understood, remembering these facts:

- (1) The community's mechanism in dispute resolution and its legitimacy can be found in the society's cultural roots that is felt to provide a better sense of justice
- (2) The limitation of state's institutions abilities in resolving conflict and disputes that exists in societies. This can be shown by among them are an inefficient conflict management and the many stacks of cases in district courts that streams to the Supreme Court. However, this is also related with the tremendous burden of a judge, and the lack of facilities in conducting a proper trial. (Irianto.et.al, 2008)
- (3) The inability of the society to access the opportunities of justice through the district court due to lack of financial abilities, understanding and information, corruption in the structure of the state court institution, and the alienation from state institutions.

The initiative of civil society to hold their own justice forum in some extent, is good to be promoted. Because of that, research and analysis in a wide spectrum about law and its relation with community issues is very necessary. In the last few years, although not so wide, there were many information exchange and activities done between campus academicians with activists of legal reform NGOs, who advocate and provide legal assistance to societies. Some dialogs and research, some were documented, was the result.

Introducing Socio-Legal Studies: A New Genre in Indonesian Law Studies

The failure of "the Law and Development" and "The Rule of Law Orthodoxy" movement has shown that in a certain extent both in the theoretical and practical basis the mainstream of law studies has yet to answer the problem of justice for the marginalized people. There are a lot of society's complicated problem that can not be answered by textual and monodiscipline approach, and in such circumstances an indepth, basic, and enlightening may be pursued by interdisciplinary approach. Accordingly, allow me to present an approach that may explain the relation between law and society.

The Law has many faces, therefore, legal scholars have no single agreement upon its definition. In general the law has been defined as a set of *rules of conduct* that regulates and coerces the society, it also regulates how to settle dispute (Otto, 2007:14-15). In the limited definition, law is always correlated with

the law of the state (*legal centralism*). Nevertheless, legal anthropologist has perceive the law in a wider perspective that includes but not limited to the law of the state but also the law and norm system that works outside the state's system all together with all of its process and actors within it. Prof F & K Benda-Beckman have said:

The notion of law should not be limited to state, international and transnational law, but should be used to refer to all those objectified cognitive and normative conceptions for which validity for a certain social formation is authoritatively asserted. Law becomes manifest in many forms, and is comprised of a variety of social phenomena (2006: ix)

The most important thing from the above definition is that the law is not only consist of normative conception i.e: conduct that is forbidden and permissible, but also consist of cognitive conception. In the normative basis, "stealing", "murder", "corruption" is forbidden by the state-, religious-, or customary law. However, in the cognitive context the definition of murder and corruption may vary depending on the political and cultural context. The Maduranese or the Bugis who felt their pride has been disgraced and accordingly commit what is called as *carok* and *siri* do not feel that they are committing any crime especially murder. The same logic goes to corruption. Any law would forbid the crime of corruption due to the destructive nature of the crimes towards the welfare of the society. However, the cognition of corruption may vary in the society. Is corruption conducted by commonly may have the same definition meant by the legislation cognition?

The law may be studied either by the legal study, social sciences, or the combination of both. *Socio legal* studies is a legal study using the approach of study of law as well as social sciences.

Study of Law in the developing nations requires both approaches; legal approach and social science one as well. The approach and analysis in the study of law is required to know the content of the legislation and legal case. However, this approach does not help to give understanding of how does the law work in the daily basis and how does the relation between law and society or "how does the effectiveness of law and its relation with its ecological context." (Otto, 2007:11). Based on such reason it is needed to have a multidisciplinary approach which is the combination of various studies to analyze the law phenomenon which is not isolated from the social, political, economic, and cultural context where the law exist.

The first thing need to understand is, the socio legal studies is not identical with sociology of law, a study long known in Indonesia. The word "socio" does not refer to the terms of sociology or social science. The socio legal scholars mostly are housed in the law faculty. They are conducting limited contact with the sociology expert because this particular studies are not developed in the

department of sociology or other social science departments (Banakar and Travers, 2005). Basically the socio-legal studies is a study of law that uses the legal research method as well as social sciences method in a wider context.

Referring to Wheeler and Thomas (in Banakar, 2005) the socio-legal studies is an alternative approach to contest the doctrinal studies of law. The word “*socio*” in the socio-legal studies represent the interface with a context within which law exist. That is why when a socio legal researcher uses social theory for the purpose of analysis they oftenly does not meant to share attention to sociology or other social science but to share focus on law and the studies of law (Banakar & Travers, 2005). As a “new” school of thought this studies through various latest books and journal has describe theory, method, and topics that is more firm and become a sheer of attention for its studiers.

Banakar and Reza explained that in England the socio-legal studies is developing mainly by the needs of faculties of law to nourish and develop an interdisciplinary studies of law. It is perceived as a discipline or subdiscipline or an methodological approach that emerge in its relation or its opposing role to the law. This study has never been developed by any social scientist or sociologist. This can be seen in the syllabus on sociology or the tradition developed in the sociology department that almost never pay interest on the theoretical as well as practical in this particular definition (Banakar & Travers, 2005: 1-26).

There are three disciplines that is hardly to distiguish due to lack of understanding which is the socio-legal studies, sociology of law, and sociological jurisprudence. In this extent it is better not to misperceive the socio-legal studies with the sociology of law that is most developed in Western Europe or the school of of thought of Law and Society in America that adopted an disciplinary bond with the social sciences (Banakar & Travers, 2005). Socio-legal studies is different with sociology of law in which the intelectual root comes from sociology as a mainstream and shared purpose to construct a theoritical understanding of the legal system. This has been conducted by sociologist of law by placing law in a wide stuctural social structure.

Law, the prescription of law and the definition of law is not assumed or taken for granted but it is analyzed problematically and considered significant to study the emergence-, articulation,- and purpose (Banakar & Travers, 2005). Law as a social regulation mechanism an law as a profession and discipline has become the concern of sociology of law (Cotterell, 1996:6). It mainly concerns on how the law works in daily basis experience of society members (Wignosoebroto, 2002). The law mentioned is social norm that has been formalized as law in the form of legislation (the state law). The scope of study is mainly about the function of the law in society by observing the structure of law and its law enforcement. Several important concept to study is about the social control, socialization of law, stratification, law and social changes (Wignosoebroto, 2002:3-16). Since it mainly refers on sociology therefore the methodological concequences is the

usage of sociological methodology in which characterized by its tradition of quantitative research.

Sociological jurisprudence is one of the mainstream in the theory of law that is founded by Roscoe Pound and developed in America since 1930s. Referring to Soetandyo Wigjosoebroto (2002: 8-16) the terms of 'Sociological' refers to the realism in the field of study of law (Holmes), which is believed that eventhough law is something that is produced through a process that is logic imperatively accountable, nevertheless, the life of law has not been logic, it is a socio-psychological experience. The residing Judge must be proactive in making a verdict to settle dispute by taking account social facts into consideration. Thus, the verdict will fullfil the sense of justice of the society. From this process of thought emerge the new doctrine in the sociological jurisprudence that law is a tool of social engineering.

I would need to mention one more sub discipline of science which is anthropology of law which might be missperceive as socio-legal studies. Anthropology of law is a study on how law as part of a culture works in daily life. In its studies, the work of the law is elaborated throguh its relation with other aspect of culture which is economy, social, power relation, and could be religion. The most dominant approach in anthropology of law is the concept of legal pluralism explained in the previous part of this article.

Considering the wide scope of methodology that might be use as an entry point of socio-legal studies it is therefore not acceptable to reduct any socio-legal research as an empirical legal research. A scope of legal research that is usually associated with a field studies to discover how the law works and operates in the society. The method of socio-legal studies is beyond that. However, the socio-legal experts must pose a firm understanding upon legislation, instrument, and substantive law that is related with their field of studies an then critically analyze it.

The proximity of socio-legal studies with social science is apparent that it is in the same page of methodology. Method and research technique in social science is studied and used to collect data. Method in sociology and anthrhopology 'the mother of social science; is developed by socio-legal researcher. By sociological or anthropological approach the substance of law is more groundly elaborated. At this moment of time the several 'latest' approach such as discourse analysis, cultural studies, feminism, and postmodernis has gain a place in the socio-legal research. The issues studied is also varied such as the proces of law making, courtroom studies, non ligation dispute settlement mechanism, corruption, environmental law, and natural resources, the legal issues of labor, gender justice, etc.

Eventhough there are characteristic difference between sociology of law, sociological Jurisprudence, anthropology of law and also socio-legal studies,

nevertheless, there is a common understanding between those all school of thoughts that place it as an alternative legal studies. The common understanding is that it perceive the law in a wide society context with all of its methodological consequences. In this extent it is emphasized the importance of studying law with not perceiving law as an independent studies isolated from culture (way of thought, system of knowledge) and power relation among the legal drafter, law enforcer, parties, and society at large.

The Methodological Contribution of socio-legal studies to the Study of Law.

The character of a socio-legal research method can be identified through two following aspect. First, socio-legal studies conduct textual studies, article by article in the legislation and policy is analyzed critically and elaborated upon its meaning and implication to the subject of law (including the disadvantaged group and women). In this extent it should be explained what is the meaning of such articles and decide whether it is detrimental or beneficial upon certain group of society and in what way. Therefore, socio-legal studies must also deal with the root of the problem in study of law which is addressing constitution untill the lowest level of legislation.

Other than that studies upon verdict is highly important (Hammerslev, 2005). Based on the extensive experience, for instance, the Center of Women and Gender Studies of the University of Indonesia has develop courtroom studies (Irianto et.al 2004, Irianto & Nurccahyo, 2006, Irianto & Cahyadi, 2008). The methods implemented is to study courtroom cases based on the textual reading of the verdict and also the field data gained from observation and interviews of the parties involved in the case. The point is to search whether consideration of the verdict has been a breakthrough in legal findings (*rectsvinding*) which consider the fulfillment of sense of justice of the victims (women and disadvantaged group). The method is by constructing a case, identifying the disputing parties, the legal problem, the plea of the parties, the judge consideration in its verdict. The critical analysis question raised among other is how does the identity or the imagination of women including their sexual capacity and role is projected by the law? Whether the law reflect the reality of women including the violence suffered? Based on such experience and reality, whether the law protect women? Which women?

Second, socio-legal studies developed various 'new' method resulted from the breed of the method of law and social science, such as qualitative socio-legal research (Ziegert, 2005) and socio-legal ethnography (Flood, 2005). Thomas Scheffer use theory of actor network to describe the performance of judges and lawyers using micro-histories of legal discourse (Scheffer, 2005). Banakar and Seneviratne conducted studies that focusse on the use of text and dicourse analysis to study the performance of ombudsman (Banakar & Travers, 2005). Reza Banakar developed case study to do a research on legal culture (Banakar, 2005). Selly Merry, in one elequent writing describe the ethnography of an international tribunal in which the problems of social justice, human rights, and

women is promoted in elaboration agenda of various treaty, document, policy, and declaration that produce of what is called as transnational concensus bulding (Merry, 2005).

Generally the legal anthropologist developed ethnography of law to study forum of dispute settlement by community basis that is commonly use in a daily life. Samia Bano (2005) uses ethnography to study the use of unofficial legal bodies such as Shariah Councils in the South Asian immigrant women moslem community that lives in England. Or Anne Griffiths (2005) that uses field research in the Bakwena society in Africa to explain the experience of doing law in that society, to provide response on the concept of western law. Both uses the feminist qualitative approach to law.

Researcher who studies legal pluralism developed modern ethnography of law accordingly to the global issues that makes the legal pluralism approach even more closer in perceiving the phenomenon of variety of law (Benda-Beckman, et, all, 2005). Therefore it is important to study the actor that has become the melting pot of the legal system and caused the law to 'move', for instance, those who conducted inter-religious marriage (Glick-Schiller, 2005), immigrants (Nuijten, 2005, Zips, 2005) and the meeting of an epistemic community (Wiber, 2005). Methods developed by such interdisciplinary approach may explain wide scope of legal phenomenan and its relation to the power relation and the social, economic, and cultural context in the place of such law exist.

This has become important because up untill today there are a lot of Indonesian legal scholars that are searching of the "proper" legal research method as monodiscipline approach and not contaminated by social science. In this extent misunderstanding has oftenly happen even among legal scholars at large. Social science method is only identified with quantitative approach that deals with variables, measurement, hypothesis experiment through statistical measurement, problem of sampling and representation with tight procedures that is in the scope of positivism paradigm.¹³ Such perception may of course be misleading because research method in social science is only noticed partially which only lies in the scope of positivism paradigm. While there are other paradigms which are Interpretivism (Phenomenology, Constructivism) and Critical¹⁴(Sarantakos, 1997, Neuman, 1997).

It is mostly happened that a scholar is in mind that a study (social, law) is considered scientific if it thinks and performs as natural sciences. Every reality (including law) must be materialized, observed, and measured. Objectivity and neutrality become the principle that is highly preserved. Reseracher and object of

¹³ School of thought that perceive social science must perform as natural science in order to reach its scientific standard.

¹⁴ There are actually "new paradigm" which is post modernism which already developed and has become the ground of numerous post modernis theoris, nevertheless, there are several experts who shares opinion that such paradigm might yet to level the three previous paradigm (Sarantakos, 1997)

the study may be placed apart. The implementation of this principle in natural science that the objects are natural materials, in which a certain period of time barely change its character, this is considered as taken for granted. While in the natural science itself the absolute certainty may still be questioned, for example to measure temperature Celsius is not the only measurement but there are also Fahrenheit and Reamur.

When the natural science paradigm is used to study human being it would be problematic. May human be perceived as other natural materials? Human is creator of meaning, and are born as creatures of willingness, free, and dignified, not being bordered by principles beyond himself such as other natural materials. Human lives in the room of interpretation therefore the concept of self, reality, and science (including legal study) is also the result of interpretation. May a scholar or scientist share distance with his object of studies which is also human? May the legal phenomenon be perceived as natural materials? May law be materialized, measured through certainty? *Ubi Societas Ibi Ius*, wherever there are society there will be law, infamous pameo that shows that the existence of human is closely related to law, therefore, it is barely impossible to apart legal indications and human. It may be hard to measure on what is being thought or interpreted by human regarding law (normative and cognitive conception).

Indeed, the quantitative approach is acceptable to gain the general description, mapping, causal relation among variables. Nevertheless, this approach can not be used to gain in-depth understandings upon legal phenomenon studied. A force to keep on using such approach has proven to be failed in giving in-depth explanation upon human problem that is continuously doing law and practicing law in a daily basis.

The study of law in Indonesia is highly influenced by the legal positivism. Legal text is treated as given natural material, law is isolated from the society. Even though the handbook of modern legal study today may always emerge with 'new' thought such as critical legal theory, even feminist jurisprudence. Nevertheless, the mainstream of thought other than legal positivism only attracts the interest of limited law scholar.

Let us see other paradigm that may help more in explaining the legal phenomenon and its relation with human. The Interpretive paradigm and Critical has surprisingly become a wide home ground and dominant to all theoretical and methodological approach in social science and humaniora, and even in fact it has become the home ground to pure legal research method that based on textual analysis.

Interpretivism paradigm in relation to hermeneutics emphasizes textual examination (including legislation). Researcher has tried to find the meaning embedded in the text. When conducting studies upon text, researcher tried to absorb and enter the inner part of a certain view, which represent a holistic view.

Then researchers build an indepth understanding upon how such part of the text is corelated to each other in becoming unity. Mostly such meaning is rarely simple or obvious. Researcher may only understand the meaning if he/she conducts an detailed study of a certain text, conducting contemplation upon numerous messages in a text and search for the relation of the parts of the text (Neuman, 1997:68).

Critical paradigm that includes other critical theory such as feminist legal theory or feminist jurisprudence, to my opinion, has helped the mainstream of the legal research method with the question of the marginilized people and women in analyzing a certain legislation. Word by word, sentence by sentence, in the textual of legislation product is carefully observed and analyzed with various critical question. Wether the law is made as formalization of common will and society interest? Or the law is drafted as a tool to define power? Whose power? In what mean power may be exerted through the drafting of legislation? Furthermore, critical paradigm stands that law may be used as a tool to engineer and improve a certain condition.

The Need of Legal Academic Explanation in the Society Context.

As a matter of fact the needs of an alternative legal approach may be seen in the roots of law school in Indonesia even ever since the beginings of the establishment of higher education in law. Law School (*Rechtshogeschool*) is the first established in Batava in 1924 and ever since, the foundation of socio-legal discoures has been discovered. This may be seen in one of the thought of one of the founders of *Rechtshogeschool*, Paul Scholten (2005, 2nd print) which is also a former judge and lawyer that said that the law science has seek for the meaning the existing (*het bestaande*). However, such meaning may not be perceived without corelating law and historical materials and also society. The purity of law is preserved by the law scholar while in fact in the materials of law consist of impurity, therefore, to force such methods will only produce bloodless phantom (Scholten, 2005:13) or sceleton without muscle (Hoebel in Ihromi, 2001:194)

The argument of Scholten initially exists from his critics to the Kelsenian thought that perceive law as natural materials. The law is treated a soulless material isolated from the society and historical context (Cotterell, 1986, Scholten, 2005, 2nd print). There are distance between the object of study and researcher and such distances is highly preserved on the name of objectivity, neutrality, and value free.

According to Scholten, law is not only consist of legislation and regulation but also verdicts, law habit of people submitted to the law, treaties, will, and including torts conducted by people (Scholten, 2005:4). Law is not a given material. In my point of view, even legislation and regulation is product of political bargaining and it is hard to belive that law may be isolated from any political interest and power relation.

This is consistent with Cotterell in explaining the weakness of legal positivism. Treating legal data as mere legal relation, does not represent the dynamic of legal phenomenon. It also did not represent the reality of regulation in result of continuous changes, from the complex interaction of individual and group in the society. Legal positivism identified legal data as far as possible seeing the backstage process of legislation drafting and without considering the attitude and value of the legal drafter. As long as law is found, it is not felt necessary to understand the definition of justice and injustice, policy, efficiency, moral, and political significance of law (Cotterell, 1986:10-11). Not to mention discussing upon cultural perspective that is mainly discussed by legal anthropologist. Law is closely related to culture, the notion to interpret law as mere legislation is not realistic since law can be perceived as living anthropological document.

Thus, presenting alternative studies of law will enrich the doctrinal study of law. In Indonesia. Classically legal scholar that studies such alternative studies of law developed discipline in philosophy of law, sociology of law, anthropology of law, and customary law, and gendered perspective in law studies, in the past 20 years. However, there are not much that realized that most of them is also conducting socio-legal studies. They commit critical analysis upon legal text (document) whilst presenting the experience of the legal performance in a complicated constellation that correlates with the power relation in the society. They commit doctrinal studies and also empirical studies. In conducting such empirical studies, they are free to lend the method of wide range of social sciences method in sociology or modern anthropology, history, political science, women studies which the research method is continuously developing and leaving its classic method behind.

In today's world, the need of socio-legal studies has become wider even though in the legal academic world, the admission of such studies as a new 'genre' in the law studies is still limited.

Epilog

One of the purposes of education is to liberate people to think critically, developing analytical skills through various research and writings, and ability to explain various theoretical problems and society phenomenon. Academician must be able to perceive science as worship. He/she must place himself/herself involved and able to deal with humanity problem. Accordingly he/she must always ask, think critically, and strong willingness to change system, including injustice law, creating new law to create a better place for a dignified human being to live in.

Doctrinal law studies in faculties of law will be enriched if it provides more rooms for socio-legal studies. Let the interdisciplinary approach help to found and explain the relation of law and society. Thus, will breed professional legal scholar

that do not merely understand law but also a legal scholar that function widely for its understanding of the spirit of justice in his/her own society.

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