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Ideal Concept In The Implementation Of Legal Philosophy In The Perspective Of Sociological Jurisprudence In Indonesia

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Abstract: The philosophical thought of law in a new paradigm that identifies reason as the primary source of law, emphasizing rationality and humanism in the development of modern law. This emphasizes the inseparability of law from social life and the formation of legal values within communities, shaping norms that guide social behavior and reflect the essence of law. The discussion extends to studying indigenous communities, especially in Kalimantan, where customary law arises from experiential actions, recognized and regulated by the Indonesian constitution, acknowledging the existence of written and unwritten laws within the framework of customary law. The research method used is normative juridical with a conceptual approach based on these issues. The research findings indicate that the conception of legal philosophy studies related to Sociological Jurisprudence becomes important because it enables law to become an instrument that promotes social justice and equality, recognizing that law must reflect respected social values and be executed within society based on the thoughts of Hugo Grotius regarding justice, equality, and human rights, grounded in rationality and humanism, emphasizing the need to treat individuals with respect and consider the welfare of society. The implementation of Hugo Grotius's thought in Indonesia has made a significant contribution to a paradigm shift in legal construction, particularly related to Sociological Jurisprudence. Grotius emphasizes the importance of rational law that does not solely rely on dogma or religious beliefs. His views on justice based on reason and human rights as an integral part of natural law have shaped a modern legal perspective that prioritizes justice and equality. Grotius's thoughts are highly relevant, especially in efforts to build a fair legal system based on morality.

Keywords: Conception, Implementation, Legal Philosophy, Sociological Jurisprudence

INTRODUCTION

The figure of Hugo Grotius and his thoughts regarding natural law. In the study of legal philosophy, Grotius is recognized as a thinker from the rational natural law tradition. His thoughts on law are intriguing, given his presence during the transition period from the Middle Ages and the tendency for shifts or changes in knowledge during that time. The role of reason and the increasingly prominent ability for logical thinking during that era

influenced the model of legal development advocated by Grotius, making it more rational, humanistic, and secular.¹ In legal thought discourse, Hugo Grotius is recognized as one of the influential figures in the development of world law, especially in the context of international law. Grotius possessed unique talent and a different perspective on the law within the social-historical context around him, leading him to an intriguing discovery. Grotius stated that the primary source of law is human reason, not God. In this context, including the secularization of natural law, is attributed to him.²

Based on Hugo's progressive philosophy that introduces a new paradigm where the source of law is human reason, this paper emerges with the presence of a new paradigm in providing rationality and humanism, especially the values of law in the modern legal development model. Based on the humanistic nature of Hugo's thinking above, it must be agreed that social life in society cannot be separated from the aspect of law. Social life within society contains legal values within it. These legal values then become actions that are considered good by society and are subsequently turned into principles in social activities. These values then form norms that serve as guidelines for behavior. Thus, the behavior of society will later reflect its laws. Based on this, it is evident that law inherently exists in the midst of society's life and forms naturally.

Based on the legal perspective above, in order to provide a concrete study regarding the existence of indigenous communities, especially in Kalimantan, as a manifestation of reality that has become a necessity in community life, this is due to the initial existence of law resulting from experiences and/or actions that later form legal customs.³ Legally, the existence of customary law communities is recognized and regulated by Article 18B of the Constitution of the Republic of Indonesia Year 1945, which states (1) The State acknowledges and respects special or extraordinary local government units that are regulated by law. (2) The State acknowledges and respects the legal community units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated by law.⁴

Based on human actions and experiences, written law and unwritten law emerge. Typically, unwritten law applies to indigenous communities that base their behavior on customs, which is why Indonesia is the only country that recognizes customary law as a legal product. Meanwhile, written law takes the form of legal regulations that serve as the basis for society to undertake legal actions, including the application of law to indigenous communities.

METHOD

This research method is used to provide a systematic and structured study in analyzing and examining the issues of the ideal conception in implementing legal philosophy thoughts from the perspective of sociological jurisprudence in Indonesia. The approach used in this research is normative juridical, referring to legal rules or principles that are relevant to the issues. The legal approach used in this research is conceptual, referring to a review to gather thoughts and views of relevant legal experts or scholars regarding the topic by comparing the ideal concept of legal philosophy studies from the perspective of Sociological Jurisprudence

¹ Aulia Rahmat, "Rasionalisasi Hukum Alam oleh Hugo Grotius: Dari Humanisasi Menuju Sekularisasi", *Undang: Jurnal Hukum* 2, No. 2 (2019): 435

² Aulia Rahmat, Rasionalisasi Hukum Alam oleh Hugo Grotius: Dari Humanisasi Menuju Sekularisasi, (2019):435

³ Arliman, Laurensius, "Hukum Adat Di Indonesia Dalam Pandangan Para Ahli dan Konsep Pemberlakuannya Di Indonesia". *Jurnal Selat* 5, No. 2, (2018): 181

⁴ Jamin, Mohammad. *Peradilan Adat; Pergeseran Politik Hukum, Perspektif Undang-Undang Otonomi Khusus Papua*. (Yogyakarta: Graha Ilmu, 2014):18

in Indonesia with the thoughts of the philosopher Hugo Grotius as one of the foundations in addressing these issues.

RESULTS AND DISCUSSION

The Ideal Concept of Legal Philosophy Study in the Perspective of Sociological Jurisprudence in Indonesia

The rational and humanistic thought advocated by Hugo Grotius is oriented towards justice, equality, and the protection of human rights. His humanistic thinking emphasizes the importance of treating individuals with respect and considering the well-being of society.⁵ Based on that, Hugo Grotius's thoughts on justice in law contain several key elements that underline the importance of the concept of justice in the legal system. For Grotius, justice in law must be based on principles of objective justice. This means that justice should not depend on subjective views or preferences of individuals or specific groups. Instead, justice should be based on objective and universal principles that can be applied equally to all individuals. Grotius emphasized that "The law must apply equally to all individuals, regardless of social status, ethnicity, religion, or other backgrounds."⁶ This means that there should be no special treatment or discrimination against any particular group. All individuals, without exception, have the right to be treated fairly and equally under the law.

Grotius's thoughts emphasize that " *The principles of justice must be universal. This means that the concepts of justice that apply in one society or culture should also apply in other societies and cultures. Justice should not vary too much across different social or cultural contexts. Grotius believed that the law should serve as a tool to protect individuals from the abuse of power by rulers or government institutions. Justice in the law also means that individuals have the right to resist injustice and violations of their rights. Grotius' concept of justice includes the idea of equality under the law.*"⁷ This means that every individual, regardless of their social status or wealth, should have equal access to justice. The law should create a balance between various interests in society.

The idea of equality in Hugo Grotius's legal thought is that "*The key principle emphasizes the importance of granting equal rights to all individuals under the law. Equality in the law means that all individuals, regardless of factors such as gender, race, religion, ethnicity, social status, or other backgrounds, have the same rights. This includes basic rights such as the right to life, the right to personal freedom, the right to legal protection, and the right to justice. Equality in the law plays a crucial role in protecting individual rights. This principle ensures that individual rights are recognized and respected by the law, and individuals have equal access to legal protection.*"⁸ This means that everyone has the right to fight against injustice and violations of their rights. Equality also means that the law should apply equally to all individuals. This avoids any preferential treatment or privileges given to specific groups. The law must operate consistently and fairly for all citizens.

Based on Hugo Grotius's thoughts on justice and equality in law, it reflects a viewpoint that prioritizes fair and equal social principles. Grotius considers justice as a central value in law. For him, the law must reflect objective and universal principles of justice. This means that the law should apply equally to everyone, regardless of social status, ethnicity, or other backgrounds. This view emphasizes that every individual has the right to be treated fairly and equally under the law. This perspective aligns with the Sociological Jurisprudence approach,

⁵ Simarmata, Rikardo, Pengakuan Hukum terhadap Masyarakat Adat di Indonesia, (Jakarta: UNDP, 2006): 39

⁶ Martine Julia van Ittersum, "The Long Goodbye: Hugo Grotius' Justification of Dutch Expansion Overseas, 1615-1645", *History of European Ideas* 36, No. 4, (2010): 389

⁷ Randy E. Barnett, "A Law Professor's Guide to Natural Law and Natural Rights", *Harvard Journal of Law and Public Policy* 20, No. 3, (1997): 657.

⁸ Steven Forde, "Hugo Grotius on Ethics and War", *The American Political Science Review* 92, No. 3, (1998): 639

which sees the law as a tool to achieve social justice. Sociological Jurisprudence understands that law is not just about positive norms in legislation but also about how the law affects the daily lives of individuals and society as a whole. This means that the law should be used to create fairer conditions in society.

Grotius promotes the idea of equality in law. This means that all individuals, without exception, have the same rights under the law. This view rejects discrimination and inequality in the legal system. Equality in law means that individual rights must be recognized and respected equally, and there should be no preferential treatment or discrimination. Sociological Jurisprudence takes a similar approach by recognizing the importance of understanding how the law affects various groups in society. By understanding the broader impact of the law, Sociological Jurisprudence ensures that the law not only creates formal equality in legal norms but also substantial equality in societal life.⁹

The approach of Sociological Jurisprudence effectively bridges the justice and equality advocated by Grotius with an understanding of how law plays a role in shaping society. This allows the law to not only be a set of rules that govern but also an instrument to achieve broader social goals, such as creating social justice and equality in society.¹⁰ Hugo Grotius's thought on equality is inseparable from the aspect of human rights protection in law, reflecting his concern for the basic rights of individuals that must be respected and protected in every legal system. Therefore, Grotius's thought strongly emphasizes the importance of protecting human rights in law. For him, the fundamental rights of every individual must be respected and guaranteed by the law. This includes rights such as freedom, the right to life, property rights, and other fundamental rights. This thinking aligns with the values inherent in the concept of human rights, which recognize that every individual has inherent rights that must be respected by the state and legal institutions.

The view regarding the Sociological Jurisprudence approach sees that law should reflect the living and respected social values in society. In the context of human rights, Sociological Jurisprudence allows the law to adapt to social developments and understand how individual rights are applied in real life. By engaging with field data and understanding social realities, Sociological Jurisprudence can ensure that the law genuinely protects human rights and creates conditions that support individual well-being.¹¹ Hugo Grotius's thought on the importance of respecting individuals in law reflects his concern for fair treatment and respect for every member of society. Considering that Grotius's thought emphasizes respecting individuals in law by viewing that the law must treat individuals fairly and respect their rights. This concept is a manifestation of his humanistic view that emphasizes the importance of treating every individual with respect and justice. The Sociological Jurisprudence approach sees law as more than just positive norms in the legal system. In this regard, law is seen as a tool that has a real impact on individuals in society. Sociological Jurisprudence considers how the law affects individuals in their daily lives, as well as how its implementation can impact their well-being and rights.¹² Therefore, this approach helps ensure that the law not only complies with its normative aspects but also considers the social impact and individuals under it.

In line with Sociological Jurisprudence as a legal approach that mediates the tension between legal positivism and historical jurisprudence. While legal positivism considers law as positive norms in the legal system and disregards field data, legal realism actually requires

⁹ Aulia Rahmat, *Rasionalisasi Hukum Alam oleh Hugo Grotius: Dari Humanisasi Menuju Sekularisasi*, (2019): 441

¹⁰ Aulia Rahmat, *Rasionalisasi Hukum Alam oleh Hugo Grotius: Dari Humanisasi Menuju Sekularisasi*, (2019): 443

¹¹ Atip Latipulhayat, "Grotius", *Padjadjaran Jurnal Ilmu Hukum* 4, No.1, (2007), hlm. 211.

¹² Atip Latipulhayat, *Grotius*, (2007): 211

field data as it views law as a structured pattern of social behavior.¹³ Sociological Jurisprudence regards positive norms in the legal system as a reference but not as genuine law, rather as mere guidelines to resolve a specific case. This approach involves a separation between law and morality as a consequence of viewing law as positive norms in the legal system. At the same time, it does not separate law from facts, so positive norms do not become the primary reference in the legal system, but rather values or realities that are lived and practiced in society.¹⁴

The Ideal Concept of Legal Philosophy in the Perspective of Legal Sociology According to Max Weber is that *"It is about how law and the legal system become significant factors in shaping social behavior in a particular society"*. Max Weber *"regarded law as a system of rules organized by legal experts and possessing possibilities or 'opportunities' that can shape social behavior."*¹⁵ lebih lanjut, Weber berpendapat bahwa *"In a particular society, there is a coherent legal system applied by legal experts. This legal system plays a crucial role in regulating social behavior and providing boundaries and rules for the conduct of individuals in that society. In Weber's view, the law is not just a set of regulations but also a key factor in shaping a specific type of society"*.¹⁶

Based on the understanding above, Weber's approach to using the interpretive method (Verstehen) means that we need to understand the meaning and purpose behind individual actions in society. This helps us understand how law and the legal system influence social behavior. This method is also beneficial in creating peace and cooperation between legal sociology and legal philosophy. In this context, Weber considers that understanding the meaning and purpose behind law and the legal system is key to understanding the role of law in shaping social behavior. This helps connect aspects of legal philosophy with an understanding of how law functions in society from a legal sociology perspective.

This is different from Erlich's conception of Legal Sociology, which emphasizes the importance of going beyond the systematization of traditional legal science as a starting point in legal sociology. Erlich argues that *"If the sociology of law restricts itself to the systematic study of legal science, it will fail to understand its true purpose. The true goal of the sociology of law is to comprehend the integral nature of the legal reality, which goes beyond the framework of 'abstract legal principles' or rules regarding disputes"*. Based on that perspective, Erlich's view is that legal sociology must go beyond just examining legal regulations and formal legal structures. It must delve deeper to understand the actual impact of law in social life and society. This includes understanding how law affects social interactions, conflicts, human behavior, and overall social dynamics.

Erlich states that legal sociology "emphasizes the importance of understanding the law as a living and integral entity within society. This means that the sociology of law must pay attention to how the law is applied in everyday life, how society internalizes legal norms, and how the law plays a role in resolving disputes and upholding social justice." In other words, Erlich reminds us that legal sociology should view law as a dynamic and complex social phenomenon. It's not just about written legal norms but also about how law interacts with social reality. This aligns with the true purpose of legal sociology, which is to understand the reality of law in all its complexity that transcends the framework of "abstract legal principles" or more formal rules of dispute resolution.

¹³ Simarmata, Rikardo, Pengakuan Hukum terhadap Masyarakat Adat di Indonesia, (2006): 66

¹⁴ Otje Salman, *Filsafat Hukum (Perkembangan dan Dinamika Masalah)*, (Bandung: Refika Aditama, 2009): 72

¹⁵ John R. Bowen, *Islam, Law and Equality in Indonesia: An Antropology of Public Reasoning*, (Cambridge: University Press, 2003): 74

¹⁶ John R. Bowen, *Islam, Law and Equality in Indonesia: An Antropology of Public Reasoning*, (2003): 74

Implementation of Legal Philosophy from the Perspective of Sociological Jurisprudence in Indonesia

The implementation of Hugo Grotius' thought as a figure with significant influence on the development of international law, particularly in Indonesia, has been notable. Grotius' rational and humanistic ideas have contributed significantly to the shift in legal paradigms in Indonesia's legal framework. His thoughts cannot be separated from the aspects of Sociological Jurisprudence. Therefore, Hugo Grotius' ideas "have had a significant impact on the development of modern legal thought and a new paradigm regarding the sources of law based on reason."¹⁷

Grotius is known as one of the founders of modern international law and a central figure in the natural law movement. His view is that law must have a rational basis that can be understood by humans. This means that law should not be merely dogmatic or based solely on religious beliefs. Instead, law must have reasons and justifications that can be explained rationally. Grotius believes that law should be understood and justified through rational thought. This signifies a shift from traditional views that rely more on religious authority or customary norms as legal sources. Grotius emphasizes the importance of critical thinking and rational analysis in formulating law. One implication of this view is that law based on human reason can have a universal character. This means that rational legal principles can apply to all individuals, regardless of religion, culture, or other backgrounds. This helps create a stronger foundation for equality and justice in law.

Therefore, the existence of Reason-Based Justice is fundamental because it leads to rational principles of justice that individuals can accept. This demonstrates how Grotius' thinking helps shape modern legal views that prioritize justice as a core principle. Grotius' introduction of natural law also implies implications for human rights. According to him, human rights are an integral part of natural law. This means that every individual has inherent and inalienable rights that must be recognized and respected by society and government. Grotius views human rights as a result of rational thought and human reason.¹⁸

This means that these rights are not merely concepts given by the government or positive law, but they arise from a universal understanding of principles of justice and morality that can be understood by human reason. Hugo Grotius's thoughts on the humanistic nature and legal values inherent in social life contain several key concepts relevant to the relationship between law and society. Grotius believed that in social life, there are inherent legal values. This implies that in everyday interactions, humans consciously or unconsciously adhere to legal principles that serve as guidelines for behavior. Therefore, the legal values inherent in social life become norms or guides for behavior. These norms regulate how individuals and groups should behave in various situations. This concept states that the collective behavior of society reflects its laws. In other words, how individuals and groups act in daily life reflects the legal values present in that society. If a society has strong norms against corruption, then corrupt actions will be condemned and avoided by the majority of society members. Grotius's thinking shows that law is an integral part of social life. Law is not something separate or external to society; instead, law is formed by the values, norms, and behaviors present in society. This refers to the view that law cannot be understood or effectively implemented if it is disconnected from the reality of social life.

Based on the above thoughts of Hugo Grotius, to provide a comprehensive study in the Sociological Jurisprudence approach, this paper will discuss Morality of law according to

¹⁷ Meirav Jones, "Philo Judaeus and Hugo Grotius's Modern Natural Law", *Journal of the History of Ideas* 74, No. 3, (2013): 340.

¹⁸ Aulia Rahmat, *Rasionalisasi Hukum Alam oleh Hugo Grotius: Dari Humanisasi Menuju Sekularisasi*, (2019): 452

Fuller, who states that¹⁹“These principles he described as an “internal morality” of law. They are “internal” because they are implicit in the concept of law. They can be described as “morality” because they set up standards for evaluating official conduct. Fuller’s response is far from convincing. We ought to say, he intimates, that a system which purports to be one of law has these procedural purposes. This device, it is said, would keep lawmakers conscious of the demands of legality.”²⁰ Fuller said that the relation of ends and means was an interactive conception. He wrote that “order itself will do us no good unless it is good for something and “justice itself is impossible without order. This is all very well in theory but in practice does this happen, in particular does it happen outside systems inside”.²¹

Based on Fuller's morality of law above, it can be understood that the principles are depicted as the "internal morality" of law, which is "internal" because it is implicit in the concept of law. This can be described as "morality" because it establishes standards for evaluating official behavior. Fuller's response is far from convincing. He explains that a system claiming to be a legal system has procedural goals. These devices, he said, would keep lawmakers aware of the demands of legality. Fuller states that the relationship between goals and means is interactive. He writes that "orderliness itself would be of no use to society unless it served something and 'justice itself cannot occur without orderliness. Therefore, in practice, implementation is required even if it goes beyond the system it self.”²²

The Sociological Jurisprudence approach and the thinking about the "internal morality" of law explained by Fuller are related to the understanding of how law and morality are interconnected. Sociological Jurisprudence is a legal approach that sees law as a product of society and recognizes that social values and norms that live in society influence the law. In this case, law is not only seen as a positive norm in the legal system, but also as an institutionalized pattern of social behavior. This means that in practice, law and morality are interrelated and influence each other in forming legal norms.²³

Fuller's opinion about the "internal morality" of law illustrates that there are moral values embedded in the concept of law itself. This means that law not only functions as a set of rules of a technical or procedural nature, but also reflects standards of morality that guide official behavior. Fuller argues that legal systems should pay attention to the demands of this morality and should have procedural goals that reflect this morality.²⁴

Fuller believed that moral values were embedded in the concept of law itself. In other words, law is not just a set of technical or procedural rules, but also reflects standards of morality that should guide official behavior and actions. Therefore, Fuller emphasized that the legal system must pay attention to and consider these moral values when formulating, implementing, and evaluating the law.²⁵

This means that when laws are enacted or legal decisions are made, the aspect of morality must be acknowledged and integrated into consideration. Procedural goals in the legal system should reflect the embedded morality in the concept of law. In other words, the legal process should be designed to achieve outcomes that align with the moral values recognized in society.

¹⁹ M.D.A. Freeman, FBA, *Lloyd's Introduction To Jurisprudence Ninth Edition*, (London: Thomson Reuters (Legal) Limited, 2014): 269

²⁰ M.D.A. Freeman, FBA, *Lloyd's Introduction To Jurisprudence Ninth Edition*, (2014): 270

²¹ M.D.A. Freeman, FBA, *Lloyd's Introduction To Jurisprudence Ninth Edition*, (2014): 271

²² Renaldi Faturachman, Dava Muhammad Rizki, Salman Al Faridzi “Dimensi Moralitas Terhadap Hukum” *IBLAM Law Review* 02 No. 03, (2022): 9

²³ Muhammad Rusydi, “Hukum dan Moral: Mengulik Ulang Perdebatan Positivisme Hukum dan Teori Hukum Kodrat HLM.L.A Hart & Lon F. Fuller” *JA: Jurnal Al-Wasath* 2, No.1, (2021): 3

²⁴ Muhammad Rusydi, *Hukum dan Moral: Mengulik Ulang Perdebatan Positivisme Hukum dan Teori Hukum Kodrat HLM.L.A Hart & Lon F. Fuller*, (2021): 3

²⁵ Muhammad Rusydi, *Hukum dan Moral: Mengulik Ulang Perdebatan Positivisme Hukum dan Teori Hukum Kodrat HLM.L.A Hart & Lon F. Fuller*, (2021): 3-4

The moral values embedded in the concept of law reflect moral standards that individuals and parties involved in the legal system must adhere to. This includes basic principles such as justice, integrity, honesty, and ethics. With moral values in law, the legal system is expected to guide official behavior and governmental actions. This means that when making legal decisions, lawmakers, judges, and other legal officials should consider these moral values as part of their deliberations. The law should reflect and align with the morality embraced by the society governed by that law. In this regard, existing laws should be accepted by society because they are consistent with their moral views.

Based on Hugo's emphasis on justice and equality in the philosophy of law and Fuller's views on the morality of law, a concrete application can be provided, especially within the scope of indigenous communities showing progressiveness in the legal system when dealing with child offenders. This system involves institutions specifically handling child investigations, prosecutions, juvenile courts, and juvenile correctional services. The main principle in the juvenile justice system is to prioritize the welfare of children, considering children as the nation's potential and future generations whose rights need to be guaranteed.

Indigenous juvenile justice as a manifestation of progressiveness aims to meet the legal needs of children using customary law as a legal product of their community life. Therefore, the existence of specialized indigenous juvenile justice is an effort to realize a national legal system that encompasses the development of legal substance, both written and unwritten laws, improving legal order for efficiency and optimal benefits for children in Indonesia's juvenile justice system, and engaging all components of society in supporting the development of a just legal system based on the moral values of Pancasila.

CONCLUSION

The conception of legal philosophy study from the perspective of Sociological Jurisprudence in Indonesia reflects Hugo Grotius' views on justice, equality, and the protection of human rights. Grotius' humanistic thoughts and orientation towards principles of objective justice and equality play a significant role in shaping the understanding of law in Indonesia. This includes the importance of law as a tool for achieving social justice, equality, and the protection of individual rights. Furthermore, this perspective also considers aspects of Sociological Jurisprudence that understand the social impact and legal practices in the daily lives of individuals and society. All of this illustrates an effort to bridge formal legal norms with a broader social reality, making law not only a set of rules but also an instrument to achieve larger social goals.

The implementation of Hugo Grotius' thoughts in the context of legal thinking in Indonesia, especially through the lens of Sociological Jurisprudence, has had a significant impact on the development of modern legal thought and a new paradigm regarding the sources of law based on reason. Additionally, the Sociological Jurisprudence approach and thoughts on the "internal morality" of law according to Fuller also hold relevance in the Indonesian legal context. This perspective depicts that moral values are embedded within the concept of law itself and should guide official behavior. In practice, the implementation of these thoughts in juvenile justice in Indonesia, particularly through specialized indigenous juvenile justice, is a manifestation of progressiveness within the legal system.

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