

INNOVATION BASED ON BALINESE LOCAL GENIUS SHIFTING ALTERNATIVE LEGAL CONCEPT: TOWARDS INDONESIA DEVELOPMENT ACCELERATION

I Dewa Made Suartha, Udayana University

I Dewa Agung Gede Mahardika Martha, Warmadewa University

Bagus Hermanto, Udayana University

ABSTRACT

Roscoe Pound revealed that the fundamental task of law is conducting a social engineering framework. This argument was agreed by Mochtar Kusumaatmadja with proposing law as an instrument of society development that inseparable with national legal policy making process during New Order in Indonesia. Based on these arguments, Satjipto Rahardjo revealed that law science is not a human intellectual idea, however it comes, flows, and based on the fact that law is in society dynamics. Law is effectively works if three of legal system elements are develops following the accommodation and harmonization of local genius values that exists in our society, in this context, Balinese local genius including Tri Hita Karana value that internalized within national and international legal order. This article is conducted with normative legal research, based on statutory law approach, legal conceptual approach, and legal philosophical approach. This article is generating new insight concerning alternative legal concept to propose legal development acceleration in Indonesia. In this context, Balinese local genius has harmonious and comprehensive values that in line with legal needs to ensure future national legal development acceleration in Indonesia.

Keywords: Pound Social Engineering Theory, Legal Development Theory, Alternative Legal Concept, Balinese Local Genius.

INTRODUCTION

Roscoe Pound as the one of the most well-known legal philosopher propose a new insight in law studies that law is responsible as a tool of society development based on law function and role in society, with his theory “*law as a tool of social engineering*” (Rasjidi & Sidharta, 2011). Pound revealed that the main task of law is develops a social engineering. His publication is trying to strengthening social engineering task in harmonizing social interest articulation, that results law to develop (Tamanaha, 2020). However, Pound approach still does not changes, while his interest in several recent publications was changed (Friedmann, 1990).

Roscoe Pound insight encourages influencing newer generations of legal philosophers, including Mochtar Kusumaatmadja, as the one of the most philosopher and architect of national legal politic during New Order in Indonesia (Rideng et al., 2020), with his thought concerning an instrument of social development or society development (Kusumaatmadja, 2015).

Based on this condition, Satjipto Rahardjo (2017), one of the most well-known Professor of Law in Indonesia, revealed that law science is not a human intellectual idea only, however, this instrument was develops and guided based on society dynamics. Based on this problem, a human (philosopher) seeking a new approach to solving this problem, portrait and realize into an alternative legal concept, that called as a language game (Wiratmadinata et al., 2020).

This insight until certain degree still containing the legal truth, however, it cannot explain comprehensively of law as multi-character and multi-dimension studies. Law is cannot explain just from one perspective only, the law insight from conception degree resulting multi perspectives and multi arguments of law. Law in concrete context is useful to conduct insights and conceptions that practically being problem solving framework (Harding, 2019).

Hence, the modern law theory became weakening and it cannot follows legal development needs in Indonesia. It is reflected with doubt about the Indonesia's legal system (Budiarta, 2019), there are gaps between law in textual with law in context reflected with disparities of law enforcement, corrupt and misadministration in law making process, unprofessional and unethical legal apparatus still sounding in Indonesia (Maroni et al., 2019).

This article is shifting a new insight to tackling all obstacles that faced to implementing acceleration of Indonesia's legal development. There is need to digging and re-conceptualize a new legal concept that sourced from Indonesia's local genius values in realizing future development. It cause there is no doubt any valuable local genius values that still exists would be help Indonesia to implementing acceleration of national legal development. In this context, there are two main legal issues that identified and analyzed in this article, firstly, legal framework, strengths, and weaknesses of Pound's Social Engineering Theory and Kusumaatmadja's Legal Development Theory, and secondly, Balinese local genius values as a new insight to shifting future legal development acceleration in Indonesia.

Local Genius Concept: An Overview

Based on etymological perspective, wisdom is defines as the individual ability to use their thought and mind in response fact, situation, and object. Local is defines as interaction space in which events or situations occur (Kartawinata, 2011). In this context, local wisdom substantially is a value and norm that applies in a society and is believed to be true and used as a reference in acting and responding, so that the potential for noble cultural values can be empowered.

Based on linguistic understanding, local wisdom is placed as a local idea that is wise, full of wisdom, high value, embedded, and followed in the heart of society. Anthropologically, local wisdom is also known as local knowledge or local intelligence which forms the basis of cultural identity. The behavior that is general in nature, applies widely in society, is hereditary in nature, and becomes a value that is still upheld, in order to teach or to traditionalize the existing truth. In this context, local genius becomes the embodiment of endurance and the power to grow is manifested through a view of life, knowledge, and various strategies of local community life which are used to answer various problems in life and preserve culture. This is the key point of local wisdom, that its existence is the answer to survive and grow culture in a sustainable manner (Yuliatin et al., 2021).

Local genius is distinguished from traditional genius. Local genius emphasizes the regional context, place, or locality of the wisdom/genius, so that local genius is much broader

than traditional genius, considering that local genius contains new genius or contemporary genius. Thus, local genius includes traditional genius or old genius (originating from previous generations) and contemporary genius or current genius (derived from experiences related to the environment and other societies (Gelgel, 2017).

In this context, local genius cannot be separated from the noble values of the nation. In principle, local genius is the result of the intelligence of a society which is then used as a means of intelligence (Warman et al., 2018). Thus, the existing local genius shall be strengthened by taking an inventory, documenting, and study research. These three things are encouraging local genius that is relevant to be used in national development, including legal development, to be socialized, strengthened, and internalized in the national development process.

The Legal Framework, Strengths, and Weaknesses of Pound's Social Engineering Theory and Kusumaatmadja's Legal Development Theory

Pound's social engineering theory (oriented with interest approach)

Roscoe Pound is trying to describe and reframing that law has main task to be tool of social engineering with arranging legal formula and legal classification of social interests. Pound dividing legal interests into three main interests that protected by law are public/common interests, social interests, and individual interests (Greenberg, 2013). The important public/common interests is national interest within national state as legal bodies that defending their interest, and the national interest as a guardian of social interests. The individual interests are divided into three interests, are individual interest, household relationship interest, and substance interest (Pound, 1934).

Roscoe Pound revealed that there are six important social relationship, *inter alia*, firstly, social interest in public/common order including law and order, health, and transaction or income interest, secondly, political and economic institutions safety interest that recognized for a whole as legal norms, third, social and moral society interests related with social protection from moral decadency, for example, prevent from corruption or morality decadency; fourth, social interest in protecting social resources as demands related with social life of society; fifth, social interest to implement public development; and sixth, social interest within individual interest related with demand of social life in civilized society, with aims to pursue every single person life based on common norms, for example, legal protection of freedom of expression, rights to works and doing their business (Chan, 2014).

In further, Pound explains that civilized society values are not a single strict definition from time and social experiences, but it related with definition from a civilized society from certain period and society (Suartha et al., 2020). Pound summarized legal frameworks of civilized society, *inter alia*, firstly, in a civilized society, every person is hopeful there is none interference from another people; secondly, every person is could hopeful that he/she could dominating with useful purposes that they invented, used for themselves, self-created, and gained within social and economic exists order; thirdly, every person is could hopeful that every person in their socialized community acting based on good faith; and fourth, every person is could hopeful that they shall to prevent any things that are not expected or will cause accidents for another people (Pound, 1959).

In this context, Roscoe Pound showing a transformation from all disputes in social demands context, and this transformation is expressed by using interests catalog which has been compiled in detail, including individual interest, public/common interest, and social interest.

In modern history, many academicians defines law is seen from “*status quo*” only, however, law should be determines from nature to oppressive in obsession into security and order approach (Garoupa, 1997), and it would be worsened as the result of undemocratic and authoritative power. This postulate shift a new sense in law studies and introduce law shall to accommodate social interest dynamics as a self-determination will manifestation from undemocratic and unjust condition that reflected a dialectic beginning of opposition movement from radical forces. A change is considered not as a solution, and therefore, the changes initiated through a juridical mechanism are deemed not to provide change guarantees. The distrust of the law has been internalized in everyone who proposing a social change, although this point of view is not entire correctly (Postell, 2012). According to the legal functionality doctrine, law is defines as double-edged instrument. On the one hand it can be a oppressive law but on the other hand it can be a law that pursuing or facilitate a framework of future change. In this context, many academicians conclude that Roscoe Pound arguments placing that law as a tool of social engineering (Antlöv et al., 2010).

Roscoe Pound defines law as a tool of social engineering based on US society condition that faced disparities and racial segregation between white people and black/colored people. Pound believes that disparities could be solved with empower law as an instrument, and judicial jurisprudent would be effective solution for social recovery (Pound, 1912). It has similarities with economist paradigm that believes welfare would be distributed with trickledown effect, all of development and investment would be distributed and all of manpower, business, and informal sector would be received this distribution (Trubek, 1972). Based on this economist paradigm, there is a social reparation economically, however, the change would be never achieved if pyramidal social structure does not changing to be horizontal social structure.

In Indonesia (including another third world countries), if Roscoe Pound theory related with law as a tool of social engineering was implemented, it doubted driven real condition effectively, cause by positivism doctrine that still influenced legal philosopher in Indonesia (also another third world countries). Law is defines as a manifestation of state/government and legislature tool, and shall to be compliance, because justice value is reflected in the state/government legal product (Crouch, 2013). Law placed as a tool of social change, and it has been developed and practiced in Indonesia by Mochtar Kusumaatmadja with his theory “*law as a tool of social development*” that combining legal positivism jurisprudence, sociological jurisprudence, and pragmatic legal realism, and this theory was implemented into legal political in Indonesia during New Order era.

Legal Development Theory (Oriented With Purpose Approach)

Mochtar Kusumaatmadja, the Minister of Justice during Development Cabinet II (Kabinet Pembangunan II), proposed the Legal Development Theory started from the Science Institution of Indonesia (Lembaga Ilmu Pengetahuan Indonesia/LIPI) seminary at 1969 and 1971, then it was developed in Indonesia Legal Society (Masyarakat Hukum Indonesia/MAHINDO) seminary at 1972, and finally publicly known and recognized as a legal theory after National Legal Empowerment Bodies (Badan Pembinaan Hukum Nasional/BPHN)

and LIPI seminary at 1976 that published in book with title Legal Concepts in Development with new insight concerning Legal Development Theory (Katz & Katz, 1976).

This theory inspired with society paradigm polarization towards meaning and function of law in society. This idea aims to placing meaning and function in appropriate and adequate ways with identifying meaning and function of law based on reasoning. It cannot be separated with empowerment of law as a tool of social engineering that needed by developing countries more than developed industrial countries with their established legal mechanism to conditioning society changes (Wang-Dufil, 2019). While, Kusumaatmadja's theory was inspired by Pound theory, his theory was developed and broader than Pound theory that developed in US, caused by, firstly, Kusumaatmadja's theory is pursuing statutory law role in legal reform process in Indonesia, while jurisprudent has role and legal binding, that's different with US condition, Pound's theory pursuing reform role by Judicial decision or jurisprudent especially Supreme Court decision; secondly, Kusumaatmadja's theory describe that commonly, the people based on their sensitivity to reality, they are disagreed mechanistic application of law as a tool of social engineering, this application placing law as a tool that similarly with legalism practice that used during East Indies era; thirdly, the legal conception as a tool of development is influenced with cultural philosophy approach by Northrop and policy oriented approach by Laswell and Mac Dougal; and fourth, legal arrangements as a tool of reform is based on Indonesia nation and society experiences that stipulate within statutory law (Kusumaatmadja, 2015).

Mochtar Kusumaatmadja revealed that law as an instrument of society reform is related with law and order approach that cannot be separable with development efforts, and law placed as a norms or legal rules with aims to regulate common interest to the ideal development. Law is used within change process that needed by people, and this changes was implemented with law and order approach. The legal development theory propose law as an instrument to solving national problem, and the law placing as an instrument of social reform besides traditional purpose as an instrument of ensuring certainty and order (Bedner, 2013).

Balinese Local Genius Values Reflection to Propose New Legal Concept and it Roles in the Future Legal Development Acceleration in Indonesia

Modern law was unable to tackling legal problematic in Indonesia, including unsuccessful to develop law as an instrument of development and legal political system in Indonesia (Yusa et al., 2020). This condition shift a new insight to pursue new legal concept or alternative legal concept, based on local genius and culture values with sources from living law and develop within Indonesia people, and became a national legal system identity.

Many legal philosopher and academician raise a doubt about modern law strengths, commonly called as a dumb culture (Chua, 2014), and cultural deconstruction was propose to promote Eastern approach than Western approach into legal development. There is a need to promote an innovation based on local genius to accelerating Indonesia's legal development based on social structure of Indonesia society.

In fact, Indonesia has rich local genius that develops and exists in all of ethnicity in Indonesia, those all has huge potential in legal development, both in legal substance, legal structure, and legal culture development (Henley & Davidson, 2008). For instance, Balinese local genius effectively and has important role as ideological values within nature and culture preservice and protection (Gelgel, 2017). The effectiveness of local genius role is reflected

with success and ability of “*Desa Adat, Subak Prajuru, Awig-awig*” that sources from Hindu values “*inter alia*” Tri Hita Karana, “*Desa Kala Patra, Karma Phala, Tat Twam Asi, and Desa Adat*”. This successful fact shows Desa Adat ability to develop legal enforcement more than formal legal institution role.

In this case, Balinese local wisdom is very comprehensive in being a creative answer to geographic, political, historical, and situational problem that are faced in local and a broader scale (Astara et al., 2020). The Balinese local wisdom contains the attitudes, views, and abilities of a community in managing their spiritual and physical environment based on “*Tri Hita Karana, Desa Kala Patra, Karma Phala, Tat Twam Asi, and other philosophies*” (Suartha et al., 2020). All of these local Balinese wisdoms can also be used to encourage national law development that characterized by resilience and community growth power which are concretized in the formulation, enforcement, and creating new concept/theory of law.

A number of Balinese local genius become a philosophy of life, science, and various effective life strategies to answer various problems of national legal needs, especially as legal framework to propose Indonesia’s alternative legal concept/theory. This is in line with Article 18B paragraph (2), Article 28I paragraph (2), and Article 32 paragraph (1)-(2) the 1945 Indonesia Constitution which opens the discourses and implementation space for accommodating local wisdom to maintain, improve, and develop harmonious laws, harmonious, balanced, and comprehensive legal framework (Desai et al., 2014), including alternative legal concept based on local genius.

In this context, local genius resides in local culture and develops into laws that grow and develop in the community through their “*adat law/customary law*”, in Bali called as awig-awig and pararem, and become a key point and important source in accelerating national law development within alternative legal concept/theory based on Balinese local genius that are pro-people and implemented Indonesia’s national vision.

The effectiveness of law as revealed by Eugen Ehrlich, the main philosopher of Sociological Jurisprudence school, he explains that the stressing point of law development is not in statutory law (Nelken, 1984), judicial decision/jurisprudent, or legal science, however it came from real living law stressed within society (Tuori, 2013). The legal rules that follows and obeyed in society life is a real living law, that broader than norms that enacted, stipulated, and implemented by government institutions. Law is effective if law is in line with living law and inner order of society that reflected living values in society. Ehrlich also explains that living law should be accommodated in national legal development and the legislature prohibited to passing a law contrary with living values that still exists and recognizes by society. Soetandyo Wignjosoebroto that in line with Eugen Ehrlich, states that law that contrary with values that develops in society is unsupported, and offended by the people. While the state law is operates with sanctions as norms operator with coercive measurement by government, the state law is not brought beneficial for public interest, and state law is to be ignored (Wiratmadinata et al., 2020).

Bedner revealed that the research concerning living legal system in society is urgent and effectively shift acceleration of national legal development. The national legal system is supporting national development and international common interest; it should be accommodate living law and develops social aspiration and values (Bedner, 2013). His argument was in line with Final Report of 4th National Legal Seminary in 1979 that stressing national legal system, that, firstly, national legal system shall articulate legal compliance and needs of Indonesia peoples; secondly, in further, national legal system should be written, with respect to the

existence of unwritten law, because unwritten law defines as a part of national legal system; and thirdly, national law shall develops into unification model based on common legal consciousness (Hartono, 1991).

If law is pursue to be effectively works and obeyed by the people, it shall to develop with accommodate social structure and local genius that life and exists in society. Law is effectively works if stipulated norms in that law reflected local genius, especially legal norms values that still live and exists in society (Kameo & Prasetyo, 2021), and it would be shift to participate in national legal development stars from their house. Based on legal reality in Indonesia, it means that law is not effective shift sustainable legal development, causes by disharmonize of law with living values within local genius values in society.

The law as social instrument has important role to harmonize and to synchronize all of legal system elements with accommodation of local genius that still recognized and exists within international and national legal development framework.

CONCLUSION

First, Pound's social engineering theory stressing believes that law has function as a tool of social change is unsuitable with Indonesia legal system, because there are a lot of differences of social structure between Indonesia and US. Pound's social engineering theory was inspired a new insight is Legal Development Theory that promote by Mochtar Kusumaatmadja. This theory is implemented into national legal political during New Order era, Kusumaatmadja theory was implemented into national legal political during new era. However, this theory has unsuccessful history especially as an instrument of national legal development arrangement, and shift law as a tool of government/state instrument with coercive measurement and contrary with living values of Indonesia society.

Second, the modern law inability to be effective instrument to tackling any legal problems in Indonesia shift full consideration and implementation of local genius values into Indonesia legal development. It aims to conduct a new alternative legal concept based on local genius that still recognized and develops in adat community, with final results to create accommodate, harmonize, and continuous Indonesia legal development.

ACKNOWLEDGEMENT

The acknowledgment was given to the Mr. Ario Hadi for his support to assist the technical, adequate materials, and his suggestion for improving of this article. The acknowledgment also given to the Department of Procedural Law and Department of Constitutional Law, Faculty of Law Udayana University for their support and valuable suggestion until this article arranged and published. Finally, the acknowledgment also given to the anonymous reviewer that giving valuable review and suggestion to improving of our article based on the journal process in Journal Legal, Ethical, and Regulatory Issues.

REFERENCES

- Antlöv, H., Brinkerhoff, D.W., & Rapp, E. (2010). Civil society capacity building for democratic reform: Experience and lessons from Indonesia. *Voluntas*, 21(3), 417-439.

- Astara, I.W.W., Budiarta, I.N.P., & Wesna, P.A.S. (2020). Legal politic of tourism village management based on local wisdom value of pancasila's legal ideals. *International Journal of Entrepreneurship*, 24(5), 1-12.
- Bedner, A. (2013). Indonesian legal scholarship and jurisprudence as an obstacle for transplanting legal institutions. *Hague Journal on the Rule of Law*, 5(2), 253-273.
- Budiarta, I.N.P. (2019). The existence of pancasila as a basic rule toward the dispute settlement of complaint offence through penal mediation outside the court of Indonesia. *Journal of Legal, Ethical and Regulatory Issues*, 22(2), 1-5.
- Chan, S.F.X. (2014). What's the law got to do with corruption in Indonesia a case study for systems theory? *Global Jurist*, 14(1-3), 67-99.
- Chua, L.J. (2014). Charting socio-legal scholarship on Southeast Asia: Key themes and future directions. *Asian Journal of Comparative Law*, 9(1), 5-27.
- Crouch, M. (2013). Asian legal transplants and rule of law reform: National human rights commission in Myanmar and Indonesia. *Hague Journal on the Rule of Law*, 5(2), 146-177.
- Desai, D., Wagner, R., & Woolcock, M. (2014). The missing middle: Reconfiguring rule of law reform as if politics and process mattered. *Hague Journal on the Rule of Law*, 6(2), 230-253.
- Friedmann, W. (1990). *Theory and philosophy of ideological philosophical law and the problem of justice, composition II*. Rajawali, Jakarta.
- Garoupa, N. (1997). The theory of optimal law enforcement. *Journal of Economic Surveys*, 11(3), 267-295.
- Gelgel, I.P. (2017). Revitalization and transformation of Balinese society local wisdom in the legal development. *International Research Journal of Management, IT and Social Sciences*, 4(2), 8-26.
- Greenberg, M. (2013). The moral impact theory of law. *The Yale Law Journal*, 123(5), 1288-1342.
- Harding, A. (2019). Constitutionalism and development: A mismatch or a dream-team? *Law and Development Review*, 12(3), 647-668.
- Hartono, S. (1991). *Legal politics towards one national legal system*. Alumni, Bandung.
- Henley, D., & Davidson, J.S. (2008). In the name of adat: Regional perspectives on reform, tradition, and democracy in Indonesia. *Modern Asian Studies*, 42(4), 815-852.
- Kameo, J., & Prasetyo, T. (2021). Pancasila as the first and foremost source of laws: A dignified justice philosophy. *Journal of Legal, Ethical and Regulatory Issues*, 24(1), 1-8.
- Kartawinata, A.M. (2011). *Local wisdom book in the midst of modernization, first printing, center for research and cultural development agency for the development of cultural resources and tourism ministry of culture and tourism of the republic of Indonesia*. Jakarta.
- Katz, J.S., & Katz, R.S. (1976). Law reform in post-sukarno Indonesia. *International Lawyer*, 10(2), 335-342.
- Kusumaatmadja, M. (2015). *Introduction to international law*. Alumni, Bandung.
- Maroni, M., Sitepu, S., & Ariani, N.D. (2019). Humanistic law enforcement as the application of the value of justice, expediency and legal certainty based on Pancasila. *Journal of Legal, Ethical and Regulatory Issues*, 22(4), 1-6.
- Nelken, D. (1984). Law in action or living law? Back to the beginning in sociology of law. *Legal Studies*, 4(2), 157-174.
- Postell, J. (2012). The anti-new deal progressive: Roscoe pound's alternative administrative state. *Review of Politics*, 74(1), 53-85.
- Pound, R. (1912). Theories of law. *Yale Law Journal*, 22(2), 114-150.
- Pound, R. (1934). Law and the science of law in recent theories. *Yale Law Journal*, 43(4), 525-536.
- Pound, R. (1959). *An introduction to the philosophy of law*. Yale University Press, New Haven, Connecticut, US.
- Rahardjo, S. (2017). *Other sides of law in Indonesia*. Pradnya Paramita, Jakarta.
- Rasjidi, L., & Sidharta, B.A. (2011). *Law development in the framework of national development*. Bina Cipta, Bandung.
- Rideng, I.W., Budiarta, I.N.P., & Sukandia, I.N. (2020). The development of bali tourism through cultural and local wisdom of customary village. *International Journal of Entrepreneurship*, 24(5), 1-6.
- Suartha, I.D.M., Puspitosari, H., & Hermanto, B. (2020). Reconstruction communal rights registration in encouraging Indonesia environmental protection. *International Journal of Advanced Science and Technology*, 29(3), 1277-1293.
- Suartha, I.D.M., Martha, I.D.A.G., & Puspitosari, H., (2020). The synchronization of Bali local genius value and the state legal value. *International Journal of Advanced Science and Technology*, 29(4), 1717 - 1725.
- Tamanaha, B.Z. (2020). Sociological jurisprudence past and present. *Law & Social Inquiry*, 45(2), 493-520.

- Trubek, D.M. (1972). Toward a social theory of law: An essay on the study of law and development. *Yale Law Journal*, 82(1), 1-50.
- Tuori, K. (2013). The disputed roots of legal pluralism. *Law, Culture, and the Humanities*, 9(2), 330-351.
- Wang-Dufil, C. (2019). Book review: Ruling before the law: The politics of legal regimes in China and Indonesia. *Journal of East Asian Studies*, 19(1), 136-137.
- Warman, K., Isra, S., & Tegnan, H. (2018), Enhancing legal pluralism: The role of adat and Islamic laws within the Indonesian legal system *Journal of Legal, Ethical and Regulatory Issues*, 21(3), 1-9.
- Wiratmadinata, W., Rani, F.A., Purnama, E., & Djalil, H. (2020). Construction of legal paradigm of pancasila: A conceptual perspective. *Journal of Legal, Ethical and Regulatory Issues*, 23(1), 1-6.
- Yuliatin, Y., Husni, L., Hirsanuddin, H., & Kaharudin, K. (2021). Character education based on local wisdom in pancasila perspective. *Journal of Legal, Ethical and Regulatory Issues*, 24(1), 1-11.
- Yusa, I.G., Hermanto, B., & Aryani, N.M. (2020). No-spouse employment and the problem of the constitutional court of Indonesia. *Journal of Advanced Research in Law and Economics*, 11(47), 214-226.