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LAW ENFORCEMENT IN INDONESIA'S JUDICIARY PRACTICE: AN AXIOLOGY STUDY FROM KARL POPPER'S THOUGHT TO SATJIPTO RAHARDJO'S PROGRESSIVITY OF MEANING

***I Gede Agus Kurniawan**

Student of Doctoral Program at Faculty of Law Udayana University, Bali, Indonesia

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ABSTRACT

In Indonesia, legal certainty is still becoming the main concern of the judges as the law enforcers. Actually, the purpose of law is not merely on legal certainty but also how to reach justice and usefulness for the justice seekers. This article analyses the legal issues on the relevance of the dynamics of thoughts by Karl Popper and Satjipto Rahardjo in the context of law enforcement in Indonesia's judiciary practice and the development model of Indonesian judiciary practice based on Karl Popper's theory and Satjipto Rahardjo's progressivity of meaning. This article employs normative legal research. The results show that the dynamics of Karl Popper's thought and Satjipto Rahardjo's progressive legal concept are relevant to law enforcement in Indonesia's judiciary practice as well as for the future of judiciary practice in Indonesia, a holistic pre-understanding of law and legal theory as one layer of law for law enforcement is urgently needed.

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INTRODUCTION

Law enforcement in judiciary practice in Indonesia is still fragmented in the dogma which sets forth in the legislation provisions. Legal certainty dominates the minds of law enforcers. Moreover, the judges' thoughts are still limited to find solutions for the conflict, vague and/or empty norms. Meanwhile, the purpose of law is not merely on legal certainty but also how to reach justice and usefulness for the justice seekers.In practice, the finding is limited to who is wrong and who is right under the Laws. Discourses on law and criticism are often raised by observers. The law is not sufficient as a means of change as well as a means of realizing the substantive justice (Philippe Nonet & Philip Seznick, 2007,p.5). Satjipto Rahardjo critically argues that the judge is only subject to a dead skeleton called definite, finite and non-progressive Laws. In fact, human beings as social creatures, from the law perspective, are faced with various phenomena, ranging from the affairs of cultural civilization, social and economic changes to the development of highly sophisticated technology that is able to penetrate the boundaries of space. In this regard, it is appropriate that the law enforcers, especially the judges, to think critically in deciding a case in judiciary practice. This is to give the senses of justice and usefulness which of course does not rule out the legal certainty itself.The justice seekers need judgments that include: legal certainty (juridical), justice (philosophical), and usefulness (sociological) elements. The law enforcement needs law enforcers who have holistic understanding on the layers of jurisprudence, especially legal theory as the meta theory of dogmatic law itself. It is important for the law enforcers in solving the phenomena of legal issues in judiciary practice to underpin their studies with the relevant legal theories.In the development of human civilization, there are a lot of emerging theories including the phenomenal theories of law in their own time which later on demolished by a new theory that certainly needed by the community at that time. One of the phenomenal theories related to the discourse of truth in the context of science is the falsification theory by Karl Popper and the progressive law concept by Satjipto Rahardjo, an Indonesian scholar.Based on the above background, it becomes important to examine two main legal issues in this article, namely: the relevance of the dynamics of thoughts by Karl Popper and Satjipto Rahardjo in the context of law enforcement in

****Corresponding author:*** **I Gede Agus Kurniawan,**
Student of Doctoral Program at Faculty of Law Udayana University, Bali, Indonesia.

Indonesia's judiciary practice and the development model of Indonesian judiciary practice based on Karl Popper's theory and Satjipto Rahardjo's progressivity of meaning.

RESULT AND ANALYSIS

The Dynamic of Karl Popper's Thought With His Falsification Theories That Breaks the Absolute Truth Theories

In the course of human civilization, the theoretical thinking including legal theory continues to grow along with the development of philosophy, jurists, social and political sciences through the study of legal phenomena that developed in the life of society and state. Such situation coloured by the social cultural, politic, religious, economy and ideology nuances that developed in society.According to JJH Brugink, legal theory is a whole statement which are interrelated concerning the conceptual system of legal rules and legal decisions, and such system, for a significant part, is being positively constructed (JJH Brugink,1996,p.160). Brugink further argues that the definition of legal theory includes: a. a set of concepts and propositions that present a systematic view of legal phenomena; b. detailed inter-variable relationships to explain and predict the studied legal phenomena.

Over time, the need for the presence of middle discipline that bridges between legal philosophy and legal dogmatic was emerged. In Greek times, the philosophy of law was directly applicable to the field of science. However, in its development, the application of legal philosophy requires a middle discipline which is legal theory. So, legal theory is indispensable in legal dogmatic and especially in legal practice (JJH Brugink.,*Ibid*.,p.172).Karl Popper is one of the leading philosophers whose thoughts and ideas sharply criticize the idea of the Viennese circle (Alfred Ayer et al.,2003,p.5). He sees some of the weak points of the inductive method which being followed as a valid method of determining truth in the context of science. First, the followers of inductive method draw the laws (singular statements) into general on science that comes from experience and observation as well as empirical facts. Second, the theory or statements of the observational and experiential science are not scientific because they have not been tested and the falsifiability is also not tested so that many are misleading, both in historical, psychological, physic theory (Newton) and social science perspectives. This is where the fundamental problems were faced by Karl Popper in his day. As antithesis to the mistakes of the inductive method, Popper offers an idea with falsifiable and logic of reality tests in the hope that a theory is really from an empirical test of validity and free from prejudices as well as predictions (including personal prediction).

In general, the scientists /classical view are testing and verifying the truth through an inductive approach to test the truth of the hypothesis. But Karl Raymund Popper thought the opposite way, namely by testing the error (falsify), therefore his theory is known as the "Falsification Theory". In this context Popper argues that the truth and the process of science begins with observation, so that the result may become the existed truth will be rejected or falsify so that the theory of truth is rejected, on the contrary, if such theory resistance from falsification then the theory that implies the truth becomes strong and its truth is temporarily acceptable. The falsification theory of Karl Popper states that science develops in conjecture and refutation, the falsification in essence is about hypotheses that have not been proved wrong, if proven wrong then the truth will fall which means truth is scientifically not absolute, will continue to grow, trial and error. From Popper's theory, it can be understood that the truth is scientifically not something that is true or factual forever (finite), but the truth is acceptable for a while because the hypothesis has not been proved wrong. Truth is scientifically not true or factual but something that has not been proven wrong. It implies that the truth is scientifically not absolute.The works of Karl Popper's falsification theory is very relevant to be used in the framework of law enforcement in Indonesia. In line with the thought of Popper, science including the law, should continue to grow, flow and not "stagnant" to a certain place because society continues to grow. Therefore, the public also crave laws that grow, useful and fair.

The Dialectic of Satjipto Rahardjo's Thought with the Progressivity of Meaning through the Boundaries of "Manfor Law" Into "Law for Man"

There are many western legal philosophies that grow and develop in Western rather than Eastern traditions. The styles of thought of Socrates, Cicero and Kant colored our thinking. Because our legal system is influenced by Western philosophy (Satjipto Rahardjo (iii),2009,p.159). Satjipto Rahardjo with his clear thinking suggests that the truth seeking about the legal theory is not absolute in an America and/or Europe way, however, each nation has their own cultures and values that underlying their human civilization and the way of the law works. For example Japan, although classified as a developed country that also agrees with modern legal theory, but in reality Japan put forward the ways of thinking in law that penetrate the boundaries of the situation (transcendent), the Japanese nation can still run its law flexibly and it flows like water. With theory which later known as "The Japanese Twist", the law exists but it can be discussed (Satjipto Rahardjo(iv),2009,p.35).

The development of legal theory is so hegemonic so that the interpretation of it, the western law (Civil Code, for example) is strongly influenced on western philosophy that glorifies rationality and individuality. As with the law in general, it is always limited and influenced by the situation where it resides, so it is not surprising that there is often a discrepancy between *das sollen* and *das sein* (Ni Ketut Supasti Dharmawan,2011,p.10). Moreover we find that our legal culture cares for the legitimate character of the positive law that exists rather than the 'east substantial' character with its harmony (Agus Santoso,2014,p.95) that tries to reach peacefulness (Antonius Cahyadi and EFM Manulang, 2010,p.xvi).

In breaking down the absolute legislation construction of truth, Satjipto Rahardjo vigorously championed the concept of progressive law, namely that lawyers, including law enforcer in running the law, do not merely put forward the intellectual intelligence, but it is very important to use spiritual intelligence, ie do not stop their thoughts by finite that is bound by the existing standards, but with their spiritual intelligence which dare to liberate, break the existing rule and form a new one (rule making)(Satjipto Rahardjo(i),2006,p.18). Through perfect quality of spiritual intelligence, Satjipto Rahardjo put forward the breaking of the ideas of finite,

absolute truth that: "Man for Law" with the progressivity of meaning into "the Law for Man."

Such thoughts of Satjipto Rahardjo poured in a concept where law should bring happiness for its human being, the happiness of its society. Such concept of law is then known as the concept of progressive law. Law as a science with its dynamics must continue to move, speak of the truth, and indeed the law itself cannot stop. The law can only govern when the law is dynamic and progressive (*Ibid.* See also Anton F susanto, 2005,p.27).According to Satjipto Rahardjo, for the law to be progressive, the law must move and the law does not exist for itself but for something broader, which are the human dignity, happiness, welfare (Satjipto Rahardjo(i), 2007,p.154). By understanding Satjipto Rahardjo's thought with his concept of progressive law, it seems relevant to explore the model of legal pluralism as a form of difference when state law does not make its people happy. According to Keebet von Benda Beckmann (1997), it does not mean that the law of the state anytime, anywhere can always prevail dominantly (Keebet von Benda-Beckmann, 2005,p.27-29). Similar thought can also be observed from the thought of Van den Bergh (1986), J. Griffith (1986) and Woodman (1995).

Axiology Theory of Karl Popper and Satjipto Rahardjo in the Judiciary Practice in Indonesia

The early philosophers' way of thinking who cared deeply about human existence as a subject rather than an object is very important to be studied with an intelligence that not only focuses on human intellectual intuition, but, by borrowing the Satjipto Rahardjo's term, it must also be rooted in spiritual intelligence. They always anxiety in dealing with the problems faced by humans. Today, the phenomenon faced by humankind is very complex due to globalization is inevitable and with its liberalization feature demands the equalization between developed and developing countries through its "Non-Discrimination Principles". This is, where lawyers, especially law enforcers such as judges in searching the truth, should not only stop at legal certainty but should continuously dig deeper about the utility and meaning of justice for humans along with the development of globalization.

In line with the Satjipto Rahardjo's thought with his anxiety which ultimately leads to the concept of progressive law, Karl Popper with his falsification theory also suggests the truth is not absolute. Thus, the thought of anything goes from Feyerabend is deservedly get a place to the present study of law. It is further argued that scientists must do whatever is necessary to develop, especially in facing the uncertainties of scientific theories (Sri Rahayu Oktaberina and Niken Savitri, 2008, p.17).Law study in Indonesia is genealogically derived from the Continental European legal tradition or Civil Law (entered through the Dutch Colonial), developing under the shadow of positivism paradigm. This paradigm is actually derived from the philosophy of positivism August Comte (1798-18570). Positivism is a notion that requires that every thoughtful methodology to discover truth should treat reality as something that exists, as an object, to be released from any kind of metaphysical pre-conception which nature is subjective (Faisal,2015,p.107). In law, Werner Menski 2006, with his plurality-concius and plurality sensitive legal theories, does not recognize the uniformity of science and legal theory by a single standard, that is, by European standards or by Western science standards (Sri Rahayu Oktaberina and Niken Savitri, *Op.Cit*.,p. 37), although European and Western legal standards become the reference of many countries in the world. It is relevant to put forward the Fritjof Capra's opinion through "The Turning Point" which invites scientists to make various renewals in all fields of physics and beyond physics. Because according to Capra all science is on the verge of paradigmatic, there is a shift of the mechanistic view to the systemic view. The mystical of the eastern paradox of reality is that the products of the West are not always superior (Fritjop Capra,2000,p.40).Starting with the great ideas of the philosophers mentioned above, the law enforcer should behave in order to free themselves from the ideals of law of a quo-centric way. Furthermore, it takes an attitude of courage in order to broaden the progressive law map, that is: not only put forward rules but also behavior (Satjipto Rahardjo (ii),2007,p.142). Assessment of legal truth is not seen from the application of material and formal law, but from its meaningful and quality of 'justice' in the application (Faisal,*Ibid*).Progressive law tries to give solution in how to realize law that can create order, justice, happiness and prosperity of society. Conducting progressive law enforcement is not merely about upholding the norms of the rule, but the law that must be enforced is the values of justice that exists in the formal rules and values adopted in society. If the values of justice are always in the life of society, in the nation and in the life of the state, then undoubtedly, happiness and prosperity will be realized (The Progressive Law Consortium, 2013, p.162).

Development of Indonesia's Judiciary Practice Model Based on Progressive Legal Theory

In progressive law, in order for law to appear as genuine science, thus the understanding, cultivation and implementation of the law should be done holistically. To achieve these objectives the law must be accepted as a complete reality, without any reduction. The new needed paradigm is a constructive holistic paradigm.This holistic approach of law is a new approach which is different even contrary to the positivistic conventional approach. This approach is important because in the theoretical and practical level there has been a complex and multidimensional legal crisis on a local, national and global scale rooted in the hegemony of a positivist paradigm that rests on the analytical jurisprudence model. In the holistic legal construct, the purpose of scientific including jurisprudence is revealing the unity that underlies all of His created realms, jurisprudence can be categorized as genuinne science if all scientific activities can bring human orientation to God, pivot on God and intended to the pleasure of God Almighty. It is an attempt to obtain absolute truth that gives spiritual enlightenment, rooted in heart and mind, holding on to the view of the unity of nature (Satjipto Rahardjo(iii),2009,p.162-163). In this contect focuses on humanity. This paradigm can create law as a useful science. It is only with the pro humanity of jurisprudence can bring human being live in harmony with himself, with nature, and with God. Such a concept (even also known as Balinese philosophy) in Bali Indonesia is known as "*Tri Hita Karana*".

Indigenous people of Bali recognize the philosophy of which is consist of three elements namely: *Tri* means Three, *Hita* means prosperity, and *Karana* means cause, this philosophy became the foundation of balanced life and harmony in a unity of human relationship with God, human with society and human with nature (Dharmawan,Ni Ketut Supasti, doi: http://dx.doi.org/10.14710/dilrev.2.1.2017.%p,2017,p.28).The

legal substance which directly related to law enforcement in the practical world can be observed through Law No. 48 of 2009 on Judicial Power (hereinafter referred to as Indonesian Judicial Power Law). Article 1 of Law No. 48 of 2009 on Judicial Power provides that "Judicial power is the power of an independent state to run judiciary in order to enforce law and justice pursuant to *Pancasila*, for the implementation of the State of Law of the Republic of Indonesia." It is further stipulated in Article 10 of Indonesian Judicial Power Law that, "The court is prohibited from refusing to examine, hear and adjudicate a case filed under the plea that the law is absent or unclear, but obliged to examine and prosecute it." Furthermore, in Article 5 paragraph (1) of Indonesian Judicial Power Law states, "Judges and constitutional judges are obliged to explore, follow and understand the legal values and sense of justice living in society."Based on the aforementioned Law, it is clear that a holistic understanding of jurisprudence as well as legal theory as one layer of law is urgently needed by the for law enforcers. The process of understanding the theory of law in an adequate way will bring the law enforcers as human being who are conscientious and have spiritual intelligence in understanding the text of the law.

Law enforcement ultimately aims to provide a sense of justice for society as an effort to obtain truth that provide spiritual enlightenment, rooted in heart and mind, holding on to the view of the unity of nature and a broad attention on humanity. Satjipto Rahardjo with his leap of thought offers something monumental which is a progressive legal thinking. Starting from his proposition 'from Indonesia to Indonesia', his legal thinking always departs from the reality of Indonesia. This is very much the opposite of which the Judge is mouthpiece of Law as stated by Baron de Charles de Secondat Montesquieu (1689-1755): the judge as *la bouche de lalooi*, as the mouthpiece of the law. This is still very likely happen. Moreover, it is extremely said that: Judge does not need to think. This paradigm should be abolished from Indonesia because we want more responsive judges' rulings to be born (Achmad Ali,2009,p.478).According to Mahfud MD, progressive law is actually not a modern law but it is a classic law. Initially the court began with the classic law, in which the judge was given full authority to decide. At the beginning, the judges and courts did not have any guidance in deciding cases because there was no Law. So what is meant by progressive law is not modern law, but classic law which is needed in modern times because laws in the modern era caused many problems of justice and often manipulated (The Progressive Law Consortium,2013,p.8).The development of progressive law has been implemented in law enforcement in Indonesia. For the first time, the conceptual principle of progressive law is set forth in the Constitutional Court verdict in the case of Presidential election disputes, Candidate President SBY against Megawati where the opening statement was about progressive law. In this case, the Constitutional Court dared to enter into ways that are not regulated in Law.

In fact, the Constitutional Court dared to withdraw from the Law, provided that it could give confidence to judges and the public about the position of the case in the context of the fulfilment of justice.Furthermore, it is argued that, for progressive law, what is right according to Law is not solely of the wordings of the Law but the pulse of community life. Those are the real articles of justice. Laws are often made situational but justice is conditional. Situational means under certain circumstances while conditional is a condition that occurs when the case appears (*Ibid)*. With confidence and glory, the judge must make his own decision, so that the sense of justice is accepted by the community as a sense of justice, not the truth of what the law is saying. Thus, such thing is what is meant by progressive law.The state of law and the law is one thing, while how we use the law is another. By using the modern legal system does not guarantee that justice will automatically be given. It still depends on how law enforcers understand the law, use the law or not use the law. Here again the human factor or law enforcer performs a very strategic role.In order to support a dynamic and growing tasks of the law enforcers, Satjipto Rahardjo adds that a special level of legal education as human education as a push towards a better understanding of law in the context of Indonesia is needed by the legal enforcer (Satjipto Rahardjo(iii),*loc.cit*). The development of judiciary practice and law enforcement that pivots on humans as subjects will be accomplished when the quality of education of its law enforcers does not stop on the learning of legal dogma constructed in the form of Law but learning that beyond the transcendental dogmatic law which moves toward the study of legal theory even the relevant philosophy which is explored as the basis for law enforcement in judiciary practice.

Conclusion

The dynamics of Karl Popper's thought that science continues to move and there is nothing which is absolute as well as Satjipto Rahardjo's thought on his progressive legal concept are relevant to law enforcement in Indonesia's judiciary practice which must not stop at the application of definite and finite Laws and Regulations but also its law enforcers are obliged to deliberate the law of conscience, the law which is for human beings, although it must break down the existing order so that justice and benefit can be reached by the justice seeker in addition to the upholding of legal certainty. In the dynamics of today's society, jurisprudence including legal theory is constantly evolving. Satjipto Rahardjo states that a holistic understanding of jurisprudence as well as legal theory as one of legal layers for law enforcement is urgently needed in the context of law enforcement practices. The process of understanding of an adequate legal theory will bring law enforcers not merely as the mouthpiece of the law.

It is due to law enforcement ultimately aims to provide a sense of justice for the community. For the future of judiciary practice in Indonesia, a holistic pre-understanding of law and legal theory as one layer of law for law enforcement is urgently needed. For the realization of judiciary practice that can give a sense of justice for Indonesian people, in the future, the law enforcers are expected to conduct an assessment of the meaning of truth so it does not stop at the level of dogma (norms) contained in the formulation of legislation but continues to move to the legal theory and go through beyond the box thought. Assessment of legal theory such as progressive law theory based on happiness and benefit for humankind becomes important to be a base. Law enforcement that is pro-justice and dignity can only be carried and embodied by the dignified legal bearers as well.

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