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POSITIVISTIC LEGAL DIALECTICS - POSITIVISTIC POST (Comparative Study of Law Towards Legal Reform)

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Abstract

According to the post-positivist figures, basically post-positivists exist to dissect the mistakes made by positivists. Positive law based on objective, empirical and rational nature and supported by systematic, procedural and formal models has become a strong mainstream in Indonesia. The main stream makes legal science feel narrow and underdeveloped. This creates legal problems in society. On the other hand, there are new ideas that carry post-positivism in the field of law with a subjective, abstract and irrational paradigm and supported by theology and God. To overcome the legal problems mentioned above, a comparative dialectic of law between positivistic and post-positivistic law is needed so that it can form a new paradigm in law with an objective-subjective, empirical-abstract, rational-irrational nature and supported by wise systematic, procedural and formal patterns..

***Keywords**: Legal Dialectic, positivistic, post positivistic.*

Abstrak

Menurut pandangan tokoh-tokoh Post Positivistik bahwa pada dasarnya post positivistik hadir untuk membedah kesalahan-kesalahan yang dilakukan Positivistik. Hukum positivistik yang berbasis pada sifat objektif, empiris dan rasional serta didukung dengan model sistematis, prosedural dan formal telah menjadi main-stream kuat di Indonesia. Main-stream tersebut menimbulkan ilmu hukum terasa sempit dan kurang berkembangan. Sehingga menimbulkan problematika hukum di masyarakat. Dipihak lain mulai terdapat pemikiran-pemikiran baru yang mengusung post positivistik di bidang hukum dengan paradigma yang bersifat subjektif, abstrak dan irasional serta didukung teologi dan Ketuhanan. Untuk mengatasi problema hukum tersebut diatas perlu dialektik comparative hukum antara positivistik dan post positivistik sehingga dapat membentuk paradigma baru dalam hukum dengan sifat yang objektif-subjektif, empiris-abstrak, rasional-irasional serta didukung pola-pola sistematis, prosedural dan formal yang bijaksana..

Kata Kunci: Dialektika Hukum, positivistik , post positivistik .

PRELIMINARY

Philosophy of science as a scientific discipline with a philosophical study whose object is science; can be said to be the parent of various scientific disciplines. If philosophy is said to be the mother of knowledge, because it is from philosophy that various scientific fields emerge and develop; Then the philosophy of science can also be used as a means to develop various scientific disciplines.

The study of philosophy of science that introduces the concepts of the realm of ontology, epistemology and axiology can be used for analytical frameworks in every problem and various scientific disciplines. From these three concepts, a scientific discipline can develop. Especially in the realm of epistemology, it can provide a framework for scientists and researchers to develop a scientific discipline.

The development of theories and paradigms in all scientific disciplines is inseparable from the epistemology that develops in the philosophy of science. The study of legal science or the study of law, is also inseparable from the large framework of paradigm development in the philosophy of science. For example, the formation of a positivistic paradigm in law which is now gradually leading to a shift to post-positivism.

Positivism since the 18th-19th century in the West, also gave a great influence to the study of law. Legal thought becomes legal positivistic, namely law that is separate from morality; laws that are officially implemented through State legislation; which became known as the theory of legism since the time of Napoleon. The creation of a complete and comprehensive legal material, called codification, has become a model that has been followed by many countries since then until today. This is the big influence of the positivistic paradigm in the field of law and legal studies.

Under the influence of this positivistic paradigm, the law rests on formal legal certainty. At first, this was considered the right solution, where when faced with legal problems, judges could directly refer to the existing law book or codification of law. These thoughts were in line with the development of the law at that time, so that the understanding of positive law occurred. Juridical positivism assumes that the legal system only applies because the law gets its positive form from an authorized agency.

The positivistic concept of law went through various changes, causing a change in the study of legal conceptions in modern analytical law [1]. The collapse of the Indonesian kingdom as a result of colonialism by the Dutch had made a shift in the order of people's lives from the traditional, simple life order and the requirements for natural values and human closeness with the almighty essence to a more realistic life order in responding to world life. This is marked by the existence of written laws and used as a basis in carrying out the life of the Dutch colonial government. Written law is the main stream of the civil law system adopted by the Netherlands. Where the legal system refers to the law is written legislation. Such as the Criminal Code, the Civil Code, the Criminal Procedure Code and the Civil Code. From the legal practice carried out during the Dutch colonial period, it made a positivistic typology of understanding legal science. This can be seen from the systematic, procedural and formal nature of the civil law system.

After independence in 1945, the law in Indonesia is more about strengthening national identity, so that the legal character used is more inclined to customary law that lives and develops in society[2]. In order to show the existence of the sovereignty of the newly independent Indonesian state, all thoughts on state administration are taken from thoughts that have an Indonesian character. At this time, the law is more about exploring the legal ideals that exist in society. This means that the practice of law is carried out in order to strengthen the sense of nationalism. Although still in the administration of the state still uses the laws of the Dutch

[1] W Friedmann, *Teori dan Filasafat Hukum : Telaah kritis atas teori-teori hukum* (Jakarta: Rajawali Press, 1990).

[2] Aidul Fitriciada Azhari, *Rekontruksi Tradisi Bernegara dalam UUD 1945* (Yogyakarta: Genta Publising, 2014).

colonial heritage. So that at this time it describes the typology of understanding legal science in the learning process to dialectic positivistic and post positivistic.

The old order period since the issuance of the Presidential Decree on July 5 1959, the law in Indonesia has undergone a main-stream change and is leaning towards written legal certainty, which is marked by the need for a set of laws and regulations to regulate constitutional life, including managing state institutions that are still not yet established. complete post-independence 1945.

Laws that develop tend to be written laws with an emphasis on systematic aspects and formal procedures contained in the form of statutory regulations. Moreover, Indonesia's political atmosphere at that time was harsh with nuances of conflict and power struggles. Situations like this result in a positivistic typology of legal understanding.

The new order as a replacement for the old order, in which the new order can hold state power for a maximum of 32 years has frozen the law and created a status quo against the law in order to maintain the continuity of its power. There were hardly any changes to the law in the New Order government, because the law was considered sacred and became taboo when tampering with established laws. So that the response from the people who want changes to the law to make it more democratic is not achieved. The New Order prioritized development and the economy rather than matters related to state administration. Legal silence like this hindered the development of legal science in Indonesia from 1966-2008. So that the typology of understanding legal science at that time did not develop and was still the same as the old order era, namely the typology of understanding positivistic law.

The reformation period began in 2008 until now, as a replacement for the new order which is expected by the people as a more democratic period and bring changes to the real order of life of the Indonesian people. But the reality is not so, the reformation period which is more open and democratic tends to move towards freedom. This means that all existing interests can enter and take a role in determining the direction of the nation's life. Including laws that are produced from reform products whose contents are conditional with certain interests. Many Indonesian laws and regulations are made to legalize certain interests, such as laws on natural resources, banking, elections, employment and others. Even the state constitution of the 1945 Constitution after the reformation has been amended and replaced in accordance with the political interests of power. From this description, it shows that the typology of understanding of the legal science of the reform era is very much dominated by positivists.

The development of modern law as a consequence of the change in form towards a modern state has become the inevitable current of globalization. Knowledge. Modern knowledge has influenced the formation of a modern state and a modern state demands a modern mainstream of legal science to organize the life of the state. Modern law, which is based on objectivity, empiricism and rationality, becomes a systematic, procedural and formal order. Modern legal science that has developed so far can be understood as a positivistic form. From the development of positivistic modern law that is happening in Indonesia today, it shows the typology of a positivistic understanding of legal science.

From the process of the history of the Indonesian nation until now, there are contradictory nuances in the typology of understanding legal science. That is a form of discrepancy between the understanding of legal science in the sense of an outwardly supported positivistic level with an understanding of legal science in the sense of an inner level supported by post positivists. This discrepancy can be said to be an imbalance between the human body and mind. So that the consequences and impacts in the world of legal science is an understanding that is not complete and complete or far from perfection. Whereas in understanding science, including legal science in this case, it must be complete and intact, not only at the outward level, but also at the inner level.

On the other hand, there is the development of legal science that wants to break this contradictory, narrow and limited understanding of legal science. Such as progressive legal thought by Satjipto Rahardjo, thoughts on legal science based on Pancasila, holistic legal thought, integral legal thought, transcendental legal thought, prophetic legal thought, hermeneutics, and several other legal ideas that are different and try to provide solutions to legal

problems in society as a result of this contradictory understanding of legal science. Although the new ideas about legal science are still little used and have not been able to change the mainstream understanding of legal science in Indonesia in a frontal and massive manner, new ideas about understanding legal science continue to be developed by several law faculties in Indonesia in order to provide alternatives and improve the correct concept of understanding legal science in Indonesia.

The impact of the contradictory understanding of legal science that is at the outward level supported by positivists with legal science at the inner level supported by post-positivistics has become a legal problem in society. The dominance of positivistic jurisprudence minimizes the role of post positivistic jurisprudence, so that the result is an imbalance in the understanding of legal science. The understanding of legal science that only prioritizes systematic, empirical and logical objective, procedural and formal truths contained in mere text writing and does not try to explore the hidden meaning behind the written text will eliminate the true essence of the text.

This contradiction is a qualitative fact of legal problems in Indonesia. As contained in the legal understanding and case law examples about the first; “democracy” which is understood as the election with the most votes, second; "state of law" which is understood as state of law, third; "legality" which is understood by law is what is only contained in written regulations, fourth; "The legal case for the release of Budi Gunawan, the candidate for the National Police Chief at that time, was from the snares of corruption", fifth; “Asiani grandmother was convicted of stealing teak wood belonging to Perhutani” and there are still many legal and case understandings that are not appropriate. While quantitative facts are contained in every judge's decision that is handed down which is only based on the textual writing contained in the legislation. Examples of developing legal facts show legal problems that arise as a result of contradictory legal understandings.

This fact shows that the law has no influence on human thoughts, attitudes and actions. So that there is an inverse relationship, namely the higher human knowledge, including the science of law, the greater the possibility of violations that will occur. Things like this become a serious problem in studying law, because it is very dangerous when legal knowledge that is supposed to have a good impact on humans is actually used to commit crimes[3].

However, it should be noted that reform has opened up opportunities for all interests to transact according to their interests. It is this interest transaction that gives rise to pragmatic legal thought. That is understand that an action is in accordance with the law if it is mutually agreed upon and stated in positive written law by the state. The direction of the Indonesian legal system which tends to be positivistic, which bases the law on written regulations, is also the basis for these state apparatuses to act[4].

The knowledge obtained by the human ratio has its limits, so that science will not be able to overcome all the problems that exist in this world, especially problems that have been scripted in such a way in the living system as if it is beyond human ability[5].

Modern legal science that is included in the civil law of the Indonesian legal system has also made a positive contribution in building professional life. Because professionals need formal systems and procedures to understand the law objectively, empirically and rationally. In regulating this complex administrative life, legal certainty is needed in the form of written legislation. Positive written legislation is a form of modern legal science in the civil law system.

In fact, Islam is also based on systematic positivistic mainstream and formal procedures in understanding the religious teachings contained in the Qur'an and al-Hadith objectively, empirically and rationally while still basing on the most important basis, namely monotheism. Islam is a religion that is not only at the level of understanding the inner level, but also at the level of understanding the outer level. So that the teachings of Islam teach the balance of outer and inner life. From the outer and inner balance at the highest level, it is able to guide humans on the right path to the salvation of the world and the hereafter.

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[3] Edi Rifai, “Peran Hakim dalam penemuan hokum dan menciptakan hokum pada Era Reformasi” (2010) 4:1 J Ilmu Huk Previa Fak Huk UNILA.

[4] Anis Ibrahim, “Progresif : Solusi atas keterpurukan Hukum di Indonesia” (2006) 2:1 J Huk Progresif UNDIP.

[5] Arief Sidharta, *Apakah Filsafat dan Filsafat Ilmu itu* (Bandung: Pustaka Sutra, 2008).

It is not wise when we eliminate the modern legal system in the civil law system in Indonesia. Because it has become a legal reality globally experienced by all nations in the world. In today's international relations, modern science is required, including law. So that modern legal science is still feasible to be maintained and even increased even higher in order to provide benefits for life. But the thing to note. What is important is that modern jurisprudence must not close itself off from the science of law which develops understanding at the inner level, in order to create a balance.

The balance here is the achievement of the height of inner and outer intelligence in understanding the science of law. Not just a balance without the support of achieving the highest quality. Because basically humans are the most perfect creatures created by God. Perfection is manifested in the physical condition of the five senses that can be used to see empirical reality, a mind that can think to reach the idealized level of desire and a heart that can be used to feel deeply about something received from the five senses and reason as well as a combination of all the abilities that humans have to get closer to God who has created them.

Positivistic modern law science through objectivity, empiricism and rational basis as a form of mastery over legal science which is at the level of birth must be found in a point of equilibrium comparison with post-positivistic jurisprudence which is based on the heart and revelation of God as a form of mastery over existing legal science. at the inner level. Therefore, there is a need for a legal dialectic that will examine efforts to balance at the top of the highest level between legal science at the outer level supported by positivism and legal science at the inner level supported by post positivistics. law in Indonesia.

This thinking is a concept of legal reform in the sense that this thought does not position itself in a place that is against each other, but rather on a comparison to find new thoughts, so that a complete and wise understanding of legal science is obtained. It can be said that this thought goes from the thesis to the anti-thesis so that it produces a synthesis. The thesis here is that legal science is born which is supported by positivistic modern law that is objective, empirical and rational with a systematic model, as well as formal procedural. The anti-thesis here is the science of inner law which is supported by post-positivistic jurisprudence which is irrational hidden in the heart, theology and divinity. The synthesis here is legal civility, which is a high level of legal intelligence at the level of legal science the birth level supported by positivistic modern law and the high level of legal intelligence at the inner level supported by post positivistic legal science. From the description above, the formulation of the problem is made as follows:

1. What is the positivistic legal paradigm?
2. What is the post-positivistic legal paradigm?
3. What is the concept of legal reform?

DISCUSSION

1 The Positivism Law Paradigm

The civil law system in the Indonesian legal world is an unavoidable reality. The legal system inherited from the Dutch colonialism has been ingrained in the life of this nation. The essence of the civil law system is rechtstaat, which is a concept in legal thought where the exercise of government power is limited by law. The thought of the civil law system emphasizes the existence of legal certainty. Where the law can be a tool that has the certainty to provide clear scope and boundaries for legal subjects, so that legal subjects will act in accordance with what has been determined, the determination of the actions of legal subjects is formulated in the form of law. The principle of legal certainty provides high legality in carrying out the rule of law, where legality is a core value, human rights, in the sense of "nullum crimen, nulla poena sine lege" is no crime, no punishment without law[6].

The positivistic science of law pioneered by Hart, Austin and Hans Kelsen was influenced by Augut Comte's thoughts on the positivization of science. August Comte's

[6] Crisan Julia, "The Principles of Legality 'Nullum Crimen, nulla poena sine lege'and their role," *Eff Newsl* (2010).

thinking is a scientific thought based on accepted empirical experience. The positivization of science that places itself as the highest level in the development of human science after passing through the theological and metaphysical phases.

Hart's thought of law is a system of primary and secondary rules. The primary rule relates to the action that must be performed or should not be done, while the secondary rules are related to the formation, interpretation, application and change of the primary rules[7].

Austin's thinking about the science of law is a positive science of law that is autonomous, encompassing itself. According to Austin, the science of law deals with positive law that is accepted without regard to good or bad. The science of law is used to analyze the real elements of the modern legal system[8].

The thought of legal science according to Hans Kelsen is to describe the law as it is and should be supported by norms as an interpretation scheme. Norms become standards of conformity with the law. Law is a level in the order that is arranged hierarchically like a pyramid[9].

Hart's thoughts were then forwarded by Marc Galenter with an analysis of the concept of a positivistic modern legal system which is characterized by the characteristics of the law; uniform, transactional, universal, hierarchical, bureaucratic, rational, professional, procedural, formal. The modern legal system cannot be separated from the influence of the modern state that has hit western countries.

Also as stated by Weber in the concept of rational law with legal characteristics; normative, positive, political product, systematic, secular. Weber's concept of formal rational law relates to the concept of western capitalism which demands the existence of a normative order with a degree of certainty that can be calculated accurately.

The positivistic modern legal system reflects logic-empiricism by understanding law rationally and law as an objective reality in society. The positivistic modern legal system gives dominance to the role of humans in exploring rationality and objective reality, as well as detaching from the role of God. The legal system of logic-empiricism is illustrated by the concept of aufklarung which prioritizes human freedom with figures such as Thomas Hobbes, John Locke, Montesquieu and Rousseau.

The positivistic modern legal system that overrides the role of God eventually causes problems in the legal world. Human freedom with its ratio and reality. Human life becomes dry and loses its meaning, because modern positivistic jurisprudence cannot touch the spiritual inner level. Immanuel Kant with the concept of idealism tries not to limit it to logic-empiricism, but also sees ethics and theology of God. Likewise with Hegel who does not limit himself to empirical logic, but also looks at history, state, religion and God. As seen from the research and writings of Prof. Dr. Khudzaifah Dimyati, professor of law at the Muhammadiyah University of Surakarta.

2. Post-Positive Law Paradigm

Thoughts about law that can be used as an alternative and new model in law in Indonesia must continue to be carried out. The desire to move from positivistic modern legal thought to post-positivistic legal thought began to be felt in the Indonesian legal world. The longing for peace of the soul, inner heart, religious values and God is a strong influencing factor. The thought that has the paradigm of reform in the science of law is intended as a post positivistic legal thought. Post positivistic jurisprudence strives to present concepts that are different and different from modern positivistic jurisprudence. The ongoing dialectic between positivistic and post-positivistic thinking needs to be done in order to find the right formulation to answer the problems of legal science in Indonesia.

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[7] HLAHart, *The Concep of Law* (London: Oxford University Press, 1972).
[8] Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Cipta Aditya Bakti, 1996).
[9] Hans Kelsens, *Pengantar Teori Hukum*, translated by Siwi Purwandari (Bandung: Nusa Media, 2008).

Long before post-positivistic legal thought emerged, Thomas Aquines distinguished four kinds of law, first; Lex Aeterna (eternal law) law is the ratio of God or divine reason that cannot be grasped by the five human senses, secondly; Lex Livina (God's law) specific instructions from God about how humans should live their lives listed in the scriptures, third: Lex Naturalis (natural laws) the most basic general instructions, for example what is good must be done, while what is bad must be abandoned. This law is the incarnation of Iex Aeterna into the human Ratio, the fourth; Lex Positivist (state law) the application of Iex naturalis in human life in the world is poured in the form of positive law of a country[10].

Thoughts on mental health or legal psychology written in international journals are worthy of consideration for legal thought. Legal mental health is related to the legal meaning contained in human thought. So that legal mental health is also the result of new thinking in the world of legal science[11].

Thoughts that are in line with legal mental health can affect social life in society. Law as an instrument to regulate society has a spirit that makes the law live and develop, thus creating the social life of the community in accordance with what the law wants. From the opinion of foreign researchers mentioned above, it shows the law as a movement of society that is controlled by a good legal mentality. Legal law empiricism as a form of legal understanding at the outward level which is strongly influenced by legal mentality which is legal understanding at the inner legal level.

Samuel Von Pufendorf argues that law is a rule that comes from pure reason. Pure thoughts are only obtained by humans who serve God kaffah. Laws are mainly made consciously by the state and are aimed at certain goals. Progressive legal thought by Stjipto Raharjo tries to present the law that is more in its ability to fulfill the community's sense of justice. Progressive law dismantles positivistic legal habits that do not give law a strong character. By looking at the empirical reality and the logical meaning of the essence in the legislation and the values of God, the progressive paradigm as a law that is more attractive, but still have a conscience.

The holistic paradigm pioneered by Fritjof Tjapra also influenced the thinking of legal science in Indonesia. There are several legal studies that use holistic concepts to analyze and methodologically. Like the research conducted by Theresia Anita Christiani on the holistic legal paradigm written in the journal Pro Justitia. According to him, the holistic legal paradigm begins with Tjapra's writing "turning point" or as a period of inability to see life as a whole, thus causing a crisis of intellectual, moral and spiritual dimensions[12].

Humans cannot focus on objects that are separated from their environment and let these objects unite with their environment. Life is a large network, so that each part can be studied, but each cannot be studied and understood in isolation. According to Theresia, the holistic legal paradigm seeks to see the symptoms in society as legal phenomena without leaving the reality of people's lives, so that the resulting legal picture becomes intact[13].

Holistic thinking is similar to comparative study of law thinking, although the end of the resulting study will be concave in different domains, but there are the same basic principles, which aims to find a formulation that is considered good in the development of law. Comparative law to make legal changes to achieve legal success has been written by many international researchers, such as Sjef Van Erp who researched a comparative law that is useful for forming good law in accordance with the will of the law itself. According to

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[10] Hyronimus Rhity, *Filsafat Hukum* (Yogyakarta: Universitas Atma Jaya, 2011).
[11] Bernadette McSherry & Penelope Weller, "Rethinkin Right-based Mental Health Laws" (2014) Camb Univ Press.
[12] Fritjof Tjapra, *The Turning Point: Terjemahan titik balik Peradapan* (Yogyakarta: Penerbit Jejak, 2007).
[13] Theresia Anita Christiani, "Studi Hukum Berdasarkan Perkembangan Paradigma Pemikiran Hukum menuju metode Holistik" (2008) 26 J Huk Justitia.

him, the law must change according to the times, so that legal changes will still have a good impact on the law[14].

Pancasila as a legal paradigm in Indonesia was pioneered by Prof. Dr. Noto Nagoro. According to him, Pancasila has an important meaning for the formation of national law. Pancasila as the philosophy of life for the Indonesian people is the reality of the authenticity of Indonesian law. Next Prof. Dr. Sudjito wrote the main ideas about Pancasila as the philosophical basis and the paradigm of legal science, according to which he thought that Pancasila could be the paradigm of Indonesian legal science because Pancasila contained interrelated, influencing, hierarchical and intact precepts. The first precept describes the science of law which is based on divine values. The second precept describes the science of law that places humans as God's creatures who have perfection.

The third precept describes the science of law that upholds the unity of the nation. The fourth precept describes a democratic and wise legal science based on the principle of deliberation and consensus. The fifth precept describes the science of law that is just for all Indonesian people. Legal integration as a legal paradigm in its development experiences unavoidable contact with various fields of life. Law in its development must integrate with other fields, such as religion (Islam) which has been integrated into law into another thought in law[15].

Integral paradigm like Josep's thought above is the same as that of M. Natsir from Indonesia. M. Natsir's integral concept seeks to unite science with religion (Islam), birth with mind, world with hereafter. So that humans will interpret life in the world as an inseparable part of life hereafter. Laying the foundation of science as a human charity in the world which consequently has an impact on the life of the hereafter. With the integral concept of science, it becomes wise, because with the integral concept, educated humans will accept various similarities and differences which then seek a middle way based on religious values[16].

Kuntowijoyo uses the concept of humanization, liberation and transcendence to use the prophetic concept to discuss social science in general [17]. The prophetic pioneered by Kuntowijoyo resembles the concept of integration of science and religion by Amin Abdullah, the concept of Islamization of science according to Naquib al-Attas and Ismail Raji al Faruqi. Profession later also became a paradigm of legal science in Indonesia, such as research on prophetics as an epistemological paradigm of legal science in Indonesia by Kelik Wardiono in his doctoral program in law at the University of Muhammadiyah Surakarta. With the concept of humanization, liberation and transcendence of legal science, it is built in order to find an epistemology of legal science that is able to answer the problems law in Indonesia. Humanization is an attempt to re-elevate human dignity through God's way. Liberation is a legal science that has. prophetic responsibility to free man from evil. Transcendence is a form of jurisprudence that contains the basic elements of faith in Allah[18].

The transcendental law paradigm was also written by Prof. Dr. Absori, a professor of law at the Muhammadiyah University of Surakarta. According to him, transcendental law is an integration of knowledge and values in various views. Transcendental is not only at the divine level, but based on the truth obtained by contemplation, reasoning, developing discourse. Transcendental jurisprudence is not solely for the sake of legal science, but for virtue, benefiting the wider community with the pleasure of Allah[19].

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[14] Sjef Van Erp, "New Development in Succession Law, Nederlandse Vereniging Voor Rechtsvergelijking-Nederlands Comparative Law Association" (2007) 11:3 Electron J Comp Law.
[15] Joseph EDafid, *Legal Comparability and Cultural Identity : The Case of legal Reasoning in Jewish and Islamic Tradition* (Elektronic Journal of Comparative Law, 2010).
[16] M Natsir, *Berdamai dengan Sejarah,* (Jakarta: Republikan, 2008).
[17] Kuntowijoyo, *Paradigma Islam : Interprestasi untuk Aksi* (Bandung: Mizan, 1991).
[18] Khudzaimah Dimyati, *Pemikiran Hukum: Kontruksi Epistemologi Berbasis Budaya Hukum Indonesia* (Yogyakarta: Genta Publising, 2014).
[19] Absori, *andout Silabi Filsafat Ilmu* (2016).

Hermeneutics according to Bernard L. Tanya will be an approach to the development of legal science in Indonesia. The dialectic of science continues to endlessly influence human thinking to seek a truth. The hermeneutic paradigm is a concept to understand the meaning of a text as well as in interpreting the contents of a text if the meaning is not clear. A written text whose meaning must be captured based on the linguistic relationships that exist in the text, or the relationship between the text and the psychological situation of the author, as well as in relation to the context in which the text was created[20].

The thought of modern positivistic legal science can be understood as an unavoidable legal fact, even though it incised legal problems in society. Various thoughts that try to dismantle these thoughts began to emerge, as a form of developing legal science in Indonesia towards post-positivistic. These thoughts are interesting to be dialectically so as to give rise to the paradigm of epistemological reform of legal science in Indonesia. The dialectic of positivistic modern legal thought with post-positivistic legal science is the researcher's approach in planning to synthesize it in the theme of "civilization paradigm"

3. Legal Reform Concept

Change is always happening. Shifting models and lifestyles. This dynamic then has an impact on the nature of human thought which is not static. The consequence of changing the nature of human thought is social change. In short, we can state that paradigm shifts in every aspect of people's lives and nature always occur. And we must interpret this dynamic as an undeniable grace. This paradigm shift also occurs in legal reality. The laws that were used centuries ago in Rome are certainly different from the laws that are now used in the same place. Even the law used in country A is different from the law used in country B. The difference is always rolling. At a certain point, there is a possibility that the law used in country A is adopted by country B and maybe the opposite will happen. The laws that were once used in Rome also have the potential to be reused in the same place although they will definitely be packaged in a different way. All of these dynamics are, of course, nothing but happening because there are the most basic changes that underlie these changes. The most fundamental changes occur in the realm of human thought.

The concept of legal reform in Indonesia is a legal research that will examine positivistic law and post-positivistic law in order to achieve a level of intelligence both externally in the concept of positivistic law and spiritual in nature as in the post-positivistic legal concept. using the thought of science according to the Islamic scholar Imam al-Ghazali in his book entitled "Ihya' Ulumiddin" and has been translated into Indonesian by Moh Zuhri. The rationale of the researcher using Imam al-Ghazali's thinking in his book "Ihya 'Ulumiddin" is a result of continuous dialectical contemplation without stopping to pour out thoughts in order to find ideas for the paradigm of legal civilization which is believed to be able to answer the problems of legal science in Indonesia.

According to Imam al-Ghazali's thought, human science is basically divided into two, namely "outward" science and "inner" science. What is meant by external science is knowledge that related to the charity of the limbs, while the science of the mind is the science that deals with the charity of the heart and which runs on the limbs, whether custom or worship.

Imam al-Ghazali's thoughts are taken from the verses of the Qur'an and Hadith that relate to the priority of innate knowledge for human beings, as found in QS Ali 'Imran: 18 which means: “Allah declares that there is no god but He, who upholds justice. The angels and the people of knowledge also state that. "In the Qur'an it has been mentioned about the influence of innate knowledge for human beings. With the knowledge possessed, then Allah will give the glory of rank to human beings

Abudin Nata wrote in his journal that the method to achieve knowledge for a Muslim must be according to Islamic rules. So that humans understand their responsibilities as souls

[20] Bernard LTanya, *Pengembangan Epistimologi IlmunHukum* (Universitas Muhammadiyah Surakarta, 2016).

who have made a promise in the Primordial Covenant with Allah SWT as a monotheistic soul. Whatever the human profession, the bond of promise he always applies in every activity[21]. Science in Islam cannot be separated from the element of God, because science according to the concept of Islam comes from God. So from there it can be understood that a good human being is a human who uses his knowledge for good in this world and the hereafter.

In the journal Tsaqofah Gontor, Heppy Susanto writes about a science that does not only talk about worldly sciences, but also the hereafter. Because in the world of science, in addition to containing knowledge that is rational, it also contains knowledge that is irrational, but its existence can be felt by humans, especially related to the absolute power of God whose truth is unquestionable and disputed[22].

Maya Indah in the journal Muaddib wrote about the integral concept based on human religion, getting more comprehensive input about all the knowledge that exists in this world and also coupled with religion as a basis. application development, so that the goals of science do not deviate and exceed the limits of its essence[23].

Allah SWT said: "And seek what Allah has bestowed on you (happiness) of the hereafter, and do not forget your happiness from worldly pleasures" (QS. Al-Qoshosh: 77). Because God is almighty over all and God who has absolute truth, as explained by Nurul Iman in her journal[24].

In al-Hadith it is also mentioned about the superiority of science for human beings, such as the Hadith narrated by Abu Hurairah which states that the Prophet Muhammad SAW once said: “human beings are mines like gold and silver mines. Their chosen people in the time of ignorance were their chosen people in the time of Islam when they were clever ”. Hadith Muslim narration from the Hadith of Abu Hurairah who stated that the Prophet Muhammad SAW once said:”

In addition to using the ideas of Imam al-Ghazali which are mostly taken from the Koran and al-Hadith, the author also uses the thoughts of M. Quraish Shihab. The rationale of the researcher's reasoning for using M. Quraish Shihab's thinking is a discovery of the suitability of balanced scientific thinking. This means that researchers who already have ideas about the paradigm of legal science civilization which is a high level of inner and outer intelligence can be supported and equipped with the thoughts of M. Quraish Shihab who has thoughts about the primacy of balance between the ratio and the human heart.

M. Quraish Shihab in several of his books published by Lentera Hati has studied the virtues of reason and heart. According to him, Islam as the religion of the end times came to the world to perfect the human mind and heart through science. Islam is a religion that upholds the human mind and heart, because with the human mind and heart it is distinguished and at the same time makes the most perfect creature compared to other creatures created by Allah. In the Islamic view between the mind and the heart must go together and influence each other[25].

Law according to Flavius in his journal, as a form of science based on religion will lead to beautiful things that prevent mistakes. So that with this concept humans will become wise[26]. As exemplified by the Prophet Muhammad SAW. The goodness of fiddunya wal hereafter for mankind is the main task of the Prophet Muhammad SAW as the messenger of

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21 Abuddin Nata, “Revitalisasi Pendidikan Karakter untuk Mencetak Generasi Unggul” (2013) 1:1 J Didakt Religia Pasca Sarj STAIN Kediri.
22 Happy Susanto, “Kritisisme sejarah teologi barat”, (2011) 7:2 J Tsaqofah ISID Gontor.
23 Maya Indah, “Kelemahan Hukum Modern, Suatu Diseminasi Hukum Tradisional dalam Citra Hukum Indonesia” (2008) 103:37 J Masal-Masal Huk Fak Huk UNDIP.
24 Nurul Iman, “Tahsin dan Taqbih dalam legislasi hukum Islam” (2014) 4:1 J Muaddib Unmuh Ponorogo.
25 MQuraish Shihab, *Yang Tersembunya* (Ciputat: Lentera Hati, 2000).
26 Andries Floris Flavius, “Identitas Jamaah Ahmadiyah Indonesia dalam Kontek Multikultural” (2014) 26:2 J Hum UGM.

Allah. Prophet Muhammad SAW taught about how humans get the goodness of life not only in this world, but also the goodness of the hereafter.

Many international journals have also written about Islam. So that Islam becomes a study that attracts foreign scientists to study. Even Ken Blore in his research entitled "A Space for Feminism in Islamic Law? A Theoretical Exploration of Islamic Feminism" says Islam is a legal solution[27].

CONCLUSION

From the description above, the following conclusions can be drawn:

1. The positivistic legal paradigm is objective, empirical and rational and supported by systematic, procedural and formal models
2. The post-positivistic legal paradigm is subjective, abstract and irrational and supported by theology and God.
3. The concept of legal formation and renewal obtained from a continuous comparative study between positivistic and post-positivistic which produces a new legal paradigm with an objective-subjective, empirical-abstract, rational-irrational nature and is supported by a wise model in a systematic, procedural and formal manner.

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[27] Kent Blore, "A Space For Feminism in Islamic Law" (2010) Theor Explor Islam Fem Law J Murdoch Univ Electron J Law.

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