The Challenges for Teaching Comparative Law and Socio-Legal Studies at Indonesia’s Law Schools

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... comparative lawyers and socio-legal scholars collaborated actively in the second half of the twentieth century around two principal subject: the study of legal institutions other than those of Europe, North America, and Latin America on the one hand, and the study of ‘legal pluralism’ on the other.
The Rapprochement (*keterkaitan*): a new conversation has begun to emerge between socio-legal scholars and comparative lawyers. Socio-legal studies has seen a tremendous growth of interest in international and transnational subjects. On the other hand, comparative law has engaged more with empirical studies and with social theory (Annelise Riles, 2006, p. 12).

- Globalisation of the Legal Profession
- Law and Development/Rule of Law/ Harmonisation Projects
- National and Local Effects of Global Legal Forms
- New Debates about Legal Pluralism
- Legal Transplant
- Legal Culture
Key question

to what extent of legal research methodologies are used to improve legal science and social change in Indonesia, and whether it has been taught critically in responding to contextual legal cases and its approaches?

case study: comparative law and socio-legal studies

OUTLINE

1. Introduction
2. Socio-Legal Studies in Two Empires
3. Scholars, Research and Its Teaching? Socio-legal in legal education
4. Teaching Comparative Law in Indonesia: Socio-Legal Challenges
5. Concluding Remarks
Socio-Legal and Comparative Law
Research and Teaching

- The tradition of socio-legal studies in comparative law has an eminent pedigree (Riles 2006), the indispensable methodological characteristic of all comparative studies - revealing law’s embeddedness (Banakar 2009)
- Socio-Legal work aims to take seriously historical contingency and is inherently comparative across issue areas and different levels of governance (Halliday and Carruthers, 2007; Halliday, 2009) - show the influence of different global actors in contests over meaning in making and applying transnational norms (Nelken 2013: 138-139)

**ARGUMENT:** The absence of socio-legal approach would be easily ignoring the deeper level of comparative law, while at the same time, the absence of combining theory and method between socio-legal and comparative law would reduce exploration of the social complexities and nuances of people’s expectations when dealing with institutions, including the informal justice system which is quite significant in Indonesia’s legal pluralism context.
• Socio-legal is study of social phenomenon of law, and it is not part of the jurisprudence. Hence, socio-legal research is not part of legal research.

• The term of ‘data’ in legal study is prohibited, never used

• Legal research is normative research, “not empirical research”
‘permanent hostility’ - law student would be easily failed due to its different approach

highly rigid, dichotomous, and split only whether to use normative or empirical legal research methods.

research methods like ‘ideology’ or even like ‘religious belief’

Research finds,

myths, ignorant, adjustment (research method is applicable for Chapter I), poor analysis, nothing new, easily transplanting rules

…. in practice, since legal scholars often presence at court or judicial processes, doctrinal perspective become dominant, even hegemonic!

Two Empires

‘normative-juridical’ v. ‘empirical-juridical’
(Widodo D. Putro & HP. Wiratraman, 2015)
Teaching **Comparative Law** in Indonesia

**Socio-Legal Challenges**

- The **context of ‘modern law’** - disciplining plural legal system, (neo-)institutionalism, transplanting law/institutions (case study: Ombudsman, special courts, legal reform under the flag of Good Governance, access to justice projects, etc.)

- Without considering social significance, the impact is merely addressing legal system which focusing on **legalism perspectives**.

- Socio-legal approach is strongly rejected at law schools, then the **difficulties** are lack of the use of socio-legal as an approach in applying comparative law as a method.
• ‘purifying law’ from social sciences affect to comparative law studies/teaching

• comparative law teaching at law schools is more taught on comparative rules rather than its application in particular social-political settings, or socio-cultural context => that is not about right or wrong, but it is more about precise analysis of law and arguing law from various corners of views.

• … denying socio-legal would lead wider misunderstanding, even useless for legal practice as well as for developing science of law.

• ‘reductionism model’ of teaching.

Concluding Remarks
Recommended for further reading


Wiratraman, H.P. 2015. “Indonesia’s Encounter with ‘Modern’ International Legal System and its Impact toward the Indonesian Legal System”, *paper for DILA International Conference: Asian Perspectives on the Role and Impact of Non-State Actors in International Law, From Westphalia to World Community. Session 1: Indonesia’s Encounter with the Modern International Legal System, Faculty of Law, Hasanuddin University, Makassar, 16-17 October 2015*.