DEVELOPMENT OF AN IDEAL MODEL BASED ON POSITIVISM AND ITS IMPLICATION TOWARDS LEGAL SCIENCE AND LAW ENFORCEMENT

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Abstract

The development of legal science and law enforcement is one of the main issues in many countries. The focus of this writing is positivism and its implication towards legal science and law enforcement. Two problems are proposed in this writing there are the implication of positivism towards legal science and law enforcement and the development of legal science and law enforcement ideally. To analyze the problems, socio-legal concept and approach are applied. The analysis found that there is an implication of positivism towards legal science and law enforcement. The implication is more negative than positive. Legal science has turned into a practical science with scientific object limited to legal regulation (lege, lex), while law enforcement has turned into being formalistic and legalistic in nature, and no longer a search of justice and expediency. From the findings, it is concluded with a recommendation of an ideal model of legal science and enforcement, which is called integration/harmonization model. To achieve this ideal model, a change of mindset from mere formalistic-legalistic positivism into a new mindset of integration/harmonization of idealism, positivism, and sociological schools of thought is required.

Keywords: *Positivism; Implication; Legal Science; Law Enforcement; Integration Model*

1. Introduction

Positivism is a school of thought developed in Continental Europe, particularly France, with its two renowned exponents, Henri Saint-Simon (1760 – 1825) and August Comte (1798 – 1857). In legal science, positivism develops as a legal science with a label of positivism in jurisprudence and is also known as legism in jurisprudence. Legal science with a legism philosophy emphasizes the role of *lege/lex* (law) to settle a case in a court.[1] In the United States, it is called mechanistic jurisprudence, while in Austria, it is introduced as *die Reine Rechtslehre* by Hans Kelsen.[2]

Positivism requires that every methodology that is contemplated to seek for truth must treat reality as something that is existing, as an objective that must be set free from all subjective metaphysical preconceptions. Since the 16th and 17th century, positivism claimed itself as a school of thought with a more scientific truth, and not merely a rationalization.[3] Law as an *ius*

[1] A. Dhall, "On the Philosophy and Legal Theory of Human Rights in Light of Quantum Holism," *Wold Futures* 66, no. 1 (2010): 1–25.
[2] S. Wignjosoebroto, *Pergeseran Paradigma Dalam Kajian-Kajian Sosial Dan Hukum* (Malang: Setara Press, 2013).
[3] S. Wignjosoebroto, *Hukum: Metode dan Dinamika Masalahnya* (Jakarta: ELSAM-HUMA, 2002).

has underwent positivization as *lege* or *lex*, to ensure clear distinction between what is considered as law and what is not.[4]

Positivism entered Anglo Saxon countries differently, when compared to the way it entered Continental European countries. In Anglo Saxon countries, law positivization developed through *in concreto* court decision, resulting in that the legal tradition in these countries be administered and were pragmatically made dynamic by professional lawyers. Unlike in Continental European countries, it was more feasible in Anglo Saxon countries to develop variations of other legal school of thought, which were then embodied in practices such as legal realism, sociological or functional jurisprudence.[5]

In Continental European countries – whose legal system is commonly referred to as The Civil Law System, including in Indonesia – legal school of thought was controlled more by academic jurists who engrossed themselves in positivism jurisprudence doctrine as a pure teaching on law enforcement, while the law itself is a positive law (*lege* or *constitutum*) resulted from positivization.

Positivism requires explicit segregation between law and moral, as adhered by idealism school of thought (including the law of nature). Positivism separated between law that is applied and law that must be applied, or between *das Sein* and *das Sollen.* There is an element of positivism called legism, which conceptualizes law as identical to a legal regulation.[6] Positivism existed to challenge the theory of the law of nature.

Onthological aspect of positivism is law as a legislation, and the epistemological aspect is deductive doctrinal,while the pursued axiological aspect is legal assurance. The effort to achieve legal assurance is not complete without legality principle as its "core". Examples of its application in criminal law are no punishment without law, no punishment without crime, no crime without punishment (*nulla poena sine lege, nulla poena sine crimine, nullum crimen sine poena*). Legal validation is the focus, and validation can be conducted by norm of law, not meta-law, therefore the legal science and enforcementof this legal validity is always based on positive law.[7]

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4 Wignjosoebroto, *Pergeseran Paradigma Dalam Kajian-Kajian Sosial dan Hukum*.

5 F. B. Cross, "The New Legal Realism and Statutory Interpretation," *The Theory and Practice of Legislation* 1, No. 1 (2013): 129–149.

6 Wignjosoebroto, *Pergeseran Paradigma Dalam Kajian-Kajian Sosial Dan Hukum*.

7 J. Hage, *What Is Legal Validity? Lessons from Soft Law. Legal Validity and Soft Law* (London: Springer, 2018).

Positivism has its own implication towards legal science and enforcement. In the field of law, positivism created legal positivism such as analytical legal positivism.[8] Legal scientists conceptualized law as a legislative regulation (positive law/*ius constitutum*), where such regulation is the only object of legal science. Such concept has its own implication towards law enforcement in Indonesia.

It is assumed that positivism may lead legal science into abandoning the values of justice and expediency, which in return will cause law enforcement to no longer be a pursuit of justice and expediency.[9] It can already be seen in the way many legal cases are settled in Indonesia, and it is an irony in Indonesia's law enforcement. On one hand, positivism is harshly criticized because of its many weaknesses. On the other hand, positivism has deeply rooted as the only school of thought in legal science and enforcement.

It is interesting to analyze the implication of positivism towards legal science and law enforcement. Several arguments have been proposed, one of which stated that the approach of mere positivism will always be related to the applicable positive law, hence the analysis or settlement is still related to positive law. The analysis will stop only at positive law, leading some to consider that this view is not a discipline. The next argument stated that positivism should not be the only one applied in legal science and law enforcement. In addition to positivism, there were other schools of thought. Two of them are discussed in this writing, namely idealism and sociological schools of thought.[10] Even in the West, where positivism originated, within social sciences since the 19th century, positivism alone has beendeemed as insufficient to understand human and the society.

The concern that positivism will implicate legal science and law enforcement encouraged the writer to propose an Ideal Model of Legal Science and Law Enforcement. The ideal model is integration/harmonization of idealism, positivism, and sociological schools of thought. Further, it is this model that will be proposed as the basis for legal science and law enforcement in Indonesia.[11]

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8 T. Spaak, "Legal Positivism, Conventionalism, and The Normativity of Law," *Jurisprudence: An International Journal of Legal and Political Thought* 9, No. 2 (2017): 1–26.

9 M. R. Demiray, "Natural Law Theory, Legal Positivism, and the Normativity of Law," *The European Legacy: Toward New Paradigms* 20, No. 8 (2015): 807–826.

10 Y. Hames, J. B. ; Ekern, *Legal Research, Analysis, and Writing* (London: Cengage Learning, 2014).

11 S. ; T. Triwahyuningsih Zuliyah, "Moral Aspect in the Law Enforcement in Indonesia: Prophetic Perspective," in *In Annual Civic Education Conference (ACEC 2018) Moral Vol. 251 Advances in Social Science, Education and Humanities Research*, 2018, 602–606.

The ideal model is not new at all, particularly when it is related to a view proposed. His view highlighted the importance of integration of disciplines. Similar thing was also proposed by Satjipto Rahardjo who stated the importance of understanding law integrally, not merely as an institution of regulations, but also an institution of justice and social affairs. The ideal model of legal science and law enforcement must be developed and materialized, so that legal science in Indonesia can be a genuine science, while law enforcement can be an authentic pursuit of justice, assurance, and expediency for the society where the law is enforced.

Based on the thought, this writing is intended to analyze two main problems. First, positivism and its implication towards legal science and law enforcement. Second, an analysis on the projection to develop an ideal model of legal science and law enforcement. The analysis of the second problem resulted in a model of integration/harmonization of idealism, positivism, and sociological schools of thought. This model will be proposed as the basis for legal science and law enforcement in Indonesia.

2. Discussion

2.1. Positivism: Its Implication Towards Legal Science and Law Enforcement in Indonesia

The analysis of the following subchapter is intended as an analysis of the implications of positivism towards legal science. It is based on three basic aspects of positivism, namely onthology, epistemology, and axiology. The analysis is important because the three basic aspects can be applied to differentiate which knowledge is labeled as a discipline and which one is not. Axiological aspects describes the studied object, epistemological aspect describes the way to obtain knowledge, while onthological aspects describes the purpose, and value at stake.

The emergence of positivism as a dominant mainstream begun in the revival of human rational. Positivism conceptualizes law merely as a legislation (*lege, lex, ius constitutum*). In other words, positivism views law more as documents or regulation emphasizing rule and logic.[12] Positivism emphasizes positivistic way of thinking, which is basically a scientific way of thinking. The latter is a non-teleological way of thinking, that every social occurrence is understood as a clear consequence of a cause. From their non-teleological way of thinking, positivists were unfamiliar to concepts such as 'rule of man,' 'rule of human being,' or 'rule of

[12] S Rahardjo, *Membedah Hukum Progresif* (Jakarta: Kompas, 2007).

other being.' In its scientific method, positivism adheres to monism, which believes that there is only one method to produce a definite and straightforward conclusion. [13]

Non-teleological way of thinking and monism scientific method then expanded to social thought, including legal science. This is seen in Hart's five principles of Law positivism, namely: (1) to describe the idea of law as a commond of a superior (as favoured in the explanations of law by, e.g, Austinand Bentham; (2) to describe the view that there is no necessary link between law and morals;(3) to name the idea of analysis of legal concept;(4) to denote the concepts of a legal system as a closed logical system; (5) to denote the theory that moral judgements can not be derived from rational argument as such.[14] There is an onthological aspect of positivism here, which is law as a positive norm in legislative system, and that there is no need for moral consideration, thus the epistemological aspect is deductive doctrinal. As to axiological aspect to be pursued is legal assurance.

The effort to achieve legal assurance is not complete without legality principle as its "core". Examples of its application in criminal law are, no punishment without law, no punishment without crime, no crime without punishment (*nulla poena sine lege, nulla poena sine crimine, nullum crimen sine poena*). Retroactive prohibition and analogy were the focus in legal positivism traditional way of thinking.

The presence of positivism in legal science resulted in the emergence of positivistic legal science, or is known as dogmatic legalscience. Meijer stated that legal dogmatics are administration or formulation of legal rules or principles scientifically, only with the help of logics (not only the process, but also the result), without empirical knowledge.

In Indonesia, such positivistic and dogmatic legalscience has been deeply rooted as the only model of legal science. Positivism made clear distinctions between law and moral, law that is applied and law that must be applied, as well as *das Sein* and *das Sollen*. Positivism claims that law is the command of the law givers, even an element of law positivism known as *legism* identifies law as legal regulation.

A law positivism exponent, John Austin, for example, clearly stated that law is the command of the sovereign ruler or power within a country. The only source of law is the sovereign power within a country. Law is a set of rules to conduct common act, imposed by politically superior group to politically inferior group. The command is considered to be existing

[13] Wignjosoebroto, *Pergeseran Paradigma Dalam Kajian-Kajian Sosial Dan Hukum*.
[14] L.B. Curzon, *Jurisprudence, Estover (2nd Ed)* (London: Cavendish Publishing Limited, 1998).

when there's certain *persoon* (persons) imposing the command. John Austin searched for the basics for universal law, which is the same for every legal system.

Similar to John Austin, Hans Kelsen, another positivism exponent, stated that the life cycle of law is a *konskretisierung* or *individualiserung* process, which is a positivization process involving a progress from abstract norm or common law norm (*Generellen Rechtsnorm*) to concrete norm or specific norm (*Individuellen Rechtsnorm*).[15] The most abstract norm is called *Grundnorm* (basic norm), followed by gradually more concrete norms.

Various types of legal science existed throughout history. In Continental Europe during the 19th century, legal scientists proposed their ideas and concepts about law, which coincided with public desire of protection to human rights. During this century, law was conceptualized as a convention or positive norm within the life of the society.[16] This concepts was initiated by John Austin and Hans Kelsen as the exponents of positivism.

Basically, there are more than one school of thought in legal field in Indonesia , thus it was not only limited to positivism. The presence of more than one school of thought provoked people to think that legal science (and profession) is divided into parallel paradigms, but are all functioning. On the extreme side, it is said that there is no consensus yet on the fundamental concepts of legalscience in Indonesia, unlike in physics, for example.

This is the source of awareness among users of scientific method to study human life in the society. George Ritzer, for example, always realized and acknowledged that there was a double paradigms, meaning that more than one paradigm can be used at the same time. In sociology, for example, social facts, definitions, or acts can be used.[17] There are four sub-disciplines to be used insocial science, namely (1) positivistic; (2) post-positivistic; (3) critical theory; and (4) constructivistic.

The diverse views of schools of thought in this writing is employed to analyze their implication towards law enforcement in Indonesia. The findings function as evaluation and reconstruction to formulate an ideal model of legal science and law enforcement in Indonesia. From the various schools of thought, legal scientists in Indonesia are strongly attached to positivism which has been deeply rooted in law enforcement in Indonesia. This explains why it

[15] S. L. Paulson, "Hans Kelsen on Legal Interpretation, Legal Cognition, and Legal Science Science," *Jurisprudence: An International Journal of Legal and Political Thought* 10, no. 2 (2019): 1–34.

[16] R. Cotterrell, *Law, Culture and Society: Legal Ideas in The Mirror of Social Theory* (London: Routdledge, 2017).

[17] G. Ritzer, *Sociology: A Multiple Paradigm Science, Translated by Alimandan* (Jakarta: Raja Grafindo Persada, 1992).

is still dominating, inspite of the views in Indonesia that see positivism as having many weaknesses.

The tradition of the settlement of positivism-based legal science in Indonesia has its own implication towards legal science (and law enforcement), which is more negative than positive. For example, legal science further fall under tedious practical knowledge, causing the studies of legal science to be in accessible. Indeed, it seemed as though the studies of law can be separated from studies on justice and expediency for the society where the law applies. An even worse implication is that justice is viewed as something metajuridic in nature, causing it to be excluded from studies of legal science. Law as the object of legal science is reduced and limited into legislation or merely *lege* or *lex*, and is separated from the values of justice and expediency.

Positivistic legal science then becomes text-centric in nature and limited the model of text interpretation, so it is highly dominated by legal positivistic way of thinking.[18] When the object of legal science is only legal regulation, *lege* or *lex,* it actually causes legal science to be different from other science that is universal in nature. Legal regulation, *lege*, or *lex*, can change, be changed, develop, and be revoked from its establishment by an authority. This caused the object of legal science to be beyond the legal science it self. This explained why these many types of legal science were questioned, while some even said that this legal science was not a genuine science.[19] Hugo de Groot and Rangers Hora Siccama, for example, rejected the view that law teaching or legal dogmatics is a science. They argued that dogmatic legal science is an art which is based on science and knowledge about the ever-developing societal relationship. Logeman also stated that systematic legal science (legal dogmatics) is not science. Rather, it is an experience.[20]

In its development, positivism claimed itself as a concept of which the truth is more scientific in nature, and not the result of rationalization.[21] Legal science in Indonesia is getting pulled off from the country's main principles, Pancasila, which should have been the guidance in developing it. Legal science has moved away from the spirit of dedication of justice and expediency to the society. The truth of positivism rationality has sacrificed the society's values of justice and expediency.

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[18] Mukhidin, "Hukum Progresif Sebagai Solusi Hukum Yang Mensejahterahterakan Rakyat," *Jurnal Pembaharuan Hukum* 1, No. 3 (2014).
[19] I. Augsberg, "Reading Law: On Law as a Textual Phenomenon," *Law & Literature* 22, No. 3 (2010): 37–41.
[20] Wignjosoebroto, *Pergeseran Paradigma Dalam Kajian-Kajian Sosial Dan Hukum*.
[21] Ibid.

Basically, the exponents of positivism have long realized that positivism has numerous weaknesses, which resulted in many internal criticism to positivism. Salmon, for example, tried to correct a view proposed by Austin, an exponent of positivism, which was considered as flawed.[22] In spite of the internal criticism, positivism was not able to fix its basic weakness, which was the separation of law from the values of justice and social reality.

Legal positivism only studies law from its external aspect, which is the one existing in the reality of social life, with no regard to values and norms such as justice, truth, wisdom, and other matters as the basis for the law. In its development, positivism brought forth legism, a concept that views law as being identical to or is the same as legal regulation, thus legal science is considered as the science of legal regulation. Legal science contained itself with legal regulation as the object. Legal science according to L.J. Van Apeldorn regards a judge as *la bouche de la loi*, or *subsumptie automat*.

The domination of positivism in Indonesia brought implication towards legal science in its onthological, epistemological, and axiological aspects, as well as to law enforcement. This domination is seen in the highly positivistic law enforcement which views law as a legislation with its epistemological aspect that is deductive doctrinal in nature and law assurance as the pursued axiological aspect.

Highly positivistic law enforcement is comparable to certain type of law enforcement which is based on a concept called *begriffjurisprudenz*. This concept emphasizes comprehensions (*begriff*) in the legal regulation, hence it abandons the values of justice and empirical reality in the society. There are many cases in Indonesia which proved the aforementioned truth, such as the case of stealing of cocoa with a nominal value of Rp 2,100 (two thousand one hundred rupiah), stealing of a T-shirt with a nominal value of Rp 10,000 (ten thousand rupiah), trading protected animal.[23]

Begriffjurisprudenz or positivistic law enforcement regards law enforcement officers such as police, prosecutor, judge, and advocate as *subsumtie automaat*. They are seen as an automatic machine, as a media to voice the legal regulation (*la bouche de la loi*). There is no examination of the legal regulationand no new thing is created, because creating something new is a legislative monopoly. There are many examples of law enforcement that indicate such positivistic way of things. Among them are law enforcement to a teacher who was charged with an objectionable action for shaving one of his students' hair, a case in 2010 involving an

[22] Mukhidin, "Hukum Progresif Sebagai Solusi Hukum Yang Mensejahterahterakan Rakyat."
[23] Tanuredjo, "Elegi Penegakan Hukum Kisah Sum Kuning, Prita, Hingga Janda Pahlawan," *Kompas*, 2012.

Elementary School teacher in Banyuwangi, and a case in 2016 involving a teacher who pinched her students. The last two cases were charged with violating Article 80 paragraph (1) of Law No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection Act. Law enforcement to the teachers were relentless, emphasizing only on the routine is highly submissive to legislation. For the sake of procedure, law enforcement officers relied only on the legislation and abandoned justice and legal expediency.

According to Montesquieu, judges of the people were merely a media to voice the text of the legal regulations. If the text is considered as soulless and inhumane, the judges are not allowed to amend it, both in terms of their power and adherence.

The weakness of positivism-derived law enforcement, which only prioritizes legal assurance, can actually be eliminated by an ideal model of law enforcement called an Ideal Model of Integration/Harmonization: Idealism, Positivism, and Sociological Schools of Thought. Sociology itself can be compared with legal realism school of thought, which were developed in the United States. Legal realism, is a study of law (legal science) which deliberately relates law to the existing real world. Some exponents of legal realism viewed legal realism as an important element in sociological approach.[24] Legal realism rejects the view of law as a closed system as is adhered by positivism. Legal realism (as is sociological approach) rejects the absoluteness and origin which are full of pretense, then turns into facts, actions, and powers as factors influencing the law.[25] In its development, legal realism also rejects positivism view which considers law as complete and clear in regulating every prevailing problem. Legal realism also rejects positivism view about justice which is regarded as already included in law.

There are three ways to free one self by rule-breaking:[26] First, employing spiritual quotient to wake up from legal misfortune, which teaches us to be courageous in rule-breaking and not letting ourselves be trapped in old ways, and not running old and traditional law that is harmful to the sense of justice. Second, a pursuit for a deeper meaning that must be the new benchmark in running the law and becoming a nation with law. Each involved party in the process of law enforcement is encouraged to trust their conscience on the deeper meaning of law. Third, law should be enforced not only on the foundation of logics, but also feeling, concern, and compassion to the powerless.

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[24] J. Frank, "Some Realism about Legislation," *The Theory and Practice of Legislation* 1, no. 1 (2013): 173–187.
[25] B. Tripkovic, "Judicial Comparativism and Legal Positivism Judicial Comparativism and Legal Positivism," *Transnational Legal Theory* 4, no. 2 (2014): 285–313.
[26] Rahardjo, *Membedah Hukum Progresif*.

2.2. Ideal Model of Legal Science and Law Enforcement in Indonesia

2.2.1. Ideal Model of Legal Science: Integration/Harmonization of Idealism, Positivism, and Sociological School of Thought

In legal science (and law enforcement), it is actually not required to have an absolute design as the standard in conceptualizing law. This lack of standard motivates the writer in formulating an ideal model of legal science in Indonesia. The model integrates/harmonizes important schools of thought such as idealism, positivism, and sociology. When this model is achieved, legal science in Indonesia can be accurately called a genuine science. It is called so because this legal science puts law as the object of the study (onthological aspect) as a whole, meaning law as an institution of justice, assurance, as well as a social institution.[27]

The ideal model of legal science in Indonesia can be actualized by integrating/harmonizing idealism, positivism, and sociological schools of thought. In this ideal model, it is required for legal scientists to be aware not to prioritize certain school of thought in legal science that they are developing. The awareness urged for a change, a move from the domination of positivism to the absence of domination, while also integrating/harmonizing two other schools of thought, i.e. idealism and sociology.

The change rejects domination of positivism, hence there will be a new mindset to integrate/harmonize idealism, positivism, and sociological schools of thought. Further, legal science in Indonesia must not be trapped under the absoluteness of positivism. Ideally, legal science must be a genuine science which places law as the object of the study as a whole or complete. The word 'complete' refers to the concept of law that is not only as rules to achieve assurance, but also as expression of values of justice and expediency for the society where the law applies.

Law as a complete, whole concept is based on the assumption that there is no jealousy and competition of statuses among communities of legal scientists. The communities are more open to greet each other constructively, not destructively. Insisting only on positivism will cause crucial problems.

Based on the idea to discover legal science as a genuine science to enlighten the society, it is important to formulate an ideal model of legal science, namely the integration/harmonization model. The importance of this ideal model is partly caused by the domination of positivism with its many weaknesses. Positivism relies on the prevailing rules and procedures. It is expected that

[27] K. A. Ehrlich, E ; Ziegert, *Fundamental Principles of the Sociology of Law* (London: Routdledge, 2017).

the ideal model of legal science which is based on integration/harmonization to be able to resolve the weaknesses in law enforcement in Indonesia.

2.2.2. Ideal Model of Law Enforcement in Indonesia: Projection of Development in the Future

Observation on law enforcement in Indonesia up to the present time has encouraged the need to project an ideal model of law enforcement. The ideal model is a model of law enforcement based on integration/harmonization of idealism, positivism, and sociological schools of thought. It is expected that this integration/harmonization is the ideal model in the future for the basis of law enforcement in Indonesia.

This ideal model can be juxtaposed with a model proposed. The idea of progressive law was initially based on the concern of the minimum contribution of legal science in Indonesia in enlightening the nation to move away from crisis, including legal crisis. The model of progressive law employs the paradigm of people. The acceptance of people paradigm results in progressive law to pay attention to factors of behavior and experience which, in Holmes' terms, is logics of rules improved by logics of experience.[28]

There are two important determinations in the enforcement of progressive law. First, determination among the whole law enforcement officers which include judge, attorney, police, and advocate. They need to discuss and come into the same perception. This cannot be done by those insisting on positivistic liberal law. Second, determination about the objectives to achieve. Law enforcement must move away from formulation of words into a pursuit of social meaning.[29]

It can be said that the ideal model of law enforcement based on integration/harmonization shares the same characteristic with the model of progressive law. It can be seen in how both view law in its complete and broad dimension to achieve justice and expediency, not a dimension which consists merely of rules, procedures to achieve assurance. The ideal model of law enforcement which integrates/harmonizes idealism, positivism, and sociological schools of thought can eliminate, if not remove, the domination of positivism.

The ideal model of law enforcement which integrates/harmonizes idealism, positivism, and sociological schools of thought is a necessity. Law enforcement must produce something that can function maximally, not simply a formality or a legal procedure. Through this model, law enforcement officers can achieve creativity in pursuing justice and expediency.

[28] Rahardjo, *Membedah Hukum Progresif*.
[29] Ibid.

There is some interesting progresses in law enforcement in Indonesia, although it does not involve the ideal model of integration/harmonization. The first progress is in the establishment of the Supreme Court Regulation (*Peraturan Mahkamah Agung*/Perma) No. 2 of 2012 on the Settlement of Limit on Minor Offences and Amount of Penalty in Indonesian Criminal Code. The Supreme Court Regulation must be appreciated in terms of its law enforcement. In spite of the pros and cons it generates, the regulation must be considered as a logical breakthrough in the pursuit of justice in the society, particularly in settling minor offences. Perma No. 2/2012 can be seen as an achievement of restorative justice and as a sign of the need to accelerate the revision to the Criminal Code and Civil Code, which needs to be adjusted to fit with the development in the society. The Perma regulates an increase of penalty value or damage value, in particular increase in penalty value stated in Article 364 (minor theft), Article 379 (minor embezzlement), Article 384, 407, and 482 of the Civil Code which stated Rp 250 (two hundred fifty rupiah) into Rp 2,500,000 (two million five hundred thousand rupiah), or experiencing an increase of 10,000 (ten thousand) fold.

Another progress is in the creativity of the Constitutional Court in some of its phenomenal verdicts, particularly to solve legal deadlocks. In reality, there are some of its verdicts that cause a change in role of the Constitutional Court, from negative legislator to positive legislator. Judges of the Constitutional Court have showed courage and have succeeded in adopting a new paradigm, leaving the old paradigm that is formalistic-legalistic positivism and moving on to a progressive post-positivism. It is expected that the ideal model of law enforcement which integrates/harmonizes idealism, positivism, and sociological schools of thought will eliminate law demoralization which makes a separation between law and moral, as well as between law and people's needs.

Law enforcement can be maximally conducted to fulfill substantive justice, and not just a pursuit of assurance. In case of a deadlock, rule-breaking can be conducted to avoid being trapped in procedural matters, by integrating/harmonizing idealism, positivism, and sociological schools of thought.

3. Conclusions

Positivism has its own implication towards legal science, which is more negative than positive. The negative one is that legal science cannot be labeled as a genuine science. It is even categorized as practical jurisprudence, tedious practical science. Legal science has become legal

dogmatics with positive law as the object. Its scientists work only by accepting normative texts called positive law, and the way to apply the law is only limited to concrete problems.

In legal science, the only standard is justice expediency, hence the ideal model of legal science in Indonesia is an integration/harmonization of idealism which conceptualizes law as justice, positivism which views law as a procedure to achieve law assurance, and sociology which conceptualizes law as a reliable and empirical reality, proposed as an ideal model to turn legal science into genuine science as well as to be the basis for law enforcement.

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