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## The Transition Of Legal Modernism Paradigm To Legal Postmodernism In The Digital Era

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**Abstrak:** Penulisan artikel ini dilatarbelakangi oleh pembentukan aturan hukum di Indonesia yang sebagian besar dipengaruhi oleh sistem hukum Eropa Kontinental yang sangat dekat dengan Positivisme Hukum. Positivisme hukum ini merupakan bagian modernisme hukum yang sangat identic dengan aturan yang tertulis, jelas dan tegas. Aturan yang demikian ini ternyata memiliki kelemahan di dalam mengatasi perkembangan peradaban manusia di era digital. Tujuan dari penulisan ini adalah untuk menawarkan sebuah perubahan paradigma hukum modern yakni hukum yang positivistik menjadi hukum yang lebih fleksibel dalam mengatasi perkembangan masyarakat. Metode yang digunakan di dalam penulisan ini adalah penelitian hukum normatif dengan pendekatan konseptual. Bahan hukum yang digunakan berupa bahan hukum primer dan bahan hukum sekunder

**Kata Kunci :** Modernisme, Post-Modernisme, Era Digital.

**Abstract:** The background of the writing of this article is the formation of the rule of law in Indonesia which is largely influenced by the Continental European legal system which is very close to Legal Positivism. Legal positivism is part of legal modernism which is very identical with written, clear and firm rules. This rule turns out to have a weakness in overcoming the development of human civilization in the digital era. The purpose of this paper is to offer a paradigm shift in modern law, namely positivist law to become a more flexible law in dealing with the development of society. The method used in this paper is normative legal research with a conceptual approach. The legal materials used are in the form of primary legal materials and secondary legal materials

Keywords: Modernism, Post-Modernism, Digital Era.

## INTRODUCTION

The civilization of human life has arrived at the modern civilization which requires everything to be fast, effective, and efficient. Modern is an identity that must be attached to all aspects of human life. Things that are outside the word modern are considered as things that are ancient, traditional and outdated. The development of human civilization can be observed from the development of science and technology which has caused changes in the political, economic, social and cultural fields. One of the fields that is growing rapidly in this modern era is the development of two fields of information technology (IT). This is marked by the emergence of the internet, which is scientifically referred to as cyberspace.<sup>1</sup>

The developments and advances in the field of information technology (IT) are very closely related to the phenomenon of globalization. Globalization as a process has actually been rolling in the last few decades, and all of them have made this world seem borderless. Cyberspace as a result of digitization is a product that can penetrate the boundaries of space and time. The presence of cyberspace in the reality of life in the modern world has undermined the territorial boundaries between countries. According to Howard, cyberspace is an imaginary space or virtual space that is artificial, where everyone does what is usually done in everyday social life in new ways.<sup>2</sup>

Cyberspace has manifested into a public space (publicsphere) as expressed by Hubermas. The internet has become a medium for public discussion that is open to every individual on various themes without any restrictions. Cyberspace has also diverted human activities that were originally carried out in the real world. The presence of email, weblog, chat, webcam to facebook and twitter, then the existence of e-learning, e-commerce, and e-banking are new media for activities that have been carried out physically.<sup>3</sup>

Changes in the pattern of human life that are influenced by technological advances have a positive impact on the conveniences offered by information technology. Community activities that previously had to be carried out conventionally and were more time-consuming are now becoming easier. For example, in the banking world, transferring funds to other people's accounts, several decades ago had to be done by going to the bank office and making transactions at the teller desk. Then the conventional method turned into an easier transfer through an automated teller machine (ATM), and now it's even easier by transferring via an e-banking application.

These revolutionary changes and developments do not always have a positive impact, because the work of technology is known to always have a double face. On the one hand, it

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<sup>1</sup> A.P Edi Atmaja, "Kedaulatan Negara di Ruang Maya: Kritik UU ITE Dalam Pemikiran Satjipto Rahardjo", *Jurnal Opinio Juris*, Vol. 16, Mei-September 2014, hlm. 50.

<sup>2</sup> Yasraf Amir Piliang, "Public Space dan Public Cyberspace: Ruang Publik dalam Era Informasi", <http://www.bogor.net/idkf/idkf-2/public-space-dan-public-cyberspace-ruang-publik-dalam-era> inf, diakses pada tanggal 15 November 2021.

<sup>3</sup> Iskandar Wibawa, "Era Digital (Pergeseran Paradigma dari Hukum Modern ke Post Modernisme)", *Jurnal Masalah-Masalah Hukum*, Vol. 45, No. 4, Oktober 2016, hlm. 286.

provides great benefits for human life, but on the other hand it also provides convenience, and even expands crime globally. Technological developments always have a direct or indirect impact, both in a positive and negative sense, and will greatly affect every attitude and mental attitude of every member of society..<sup>4</sup> From a criminological point of view, technology can be said to be a criminogenic factor, namely a factor that causes people's desire to do evil or facilitate the occurrence of crime.<sup>5</sup>

This article will discuss how the current and future laws must be formed to deal with problems in the development of cyberspace (digital era)?

## RESEARCH METHOD

Writing this journal applies the library method or normative legal research methods, namely research with presents a problem that will be discussed laterby using legal theories that are in accordance with the legislation.<sup>6</sup> The type of approachused is a statutory approach thatrefers to regulations, conceptual approaches related with legal principles, and a comparative approach by comparing the law of a country with the law other countries.<sup>7</sup> Collection of legal materials, the author uses a library technique. Analysis on this article uses a description technique on primary legal materials and secondary data that have been collected are then associated with theory and legal literature so that it can assist in writing this article.

## DISCUSSION

After independence, Indonesia has the determination to carry out development of national law based on the nation's personality through legal development. Broadly speaking, Indonesian law is directed to a written legal form.<sup>8</sup> he legal construction that has been in force so far is built from the notion of positivism which is formal in nature, physical action and capable of reaching national jurisdictions based on territorial boundaries. Currently, the legal meta-narrative will be tested for its ability to deal with information technology. Life has become increasingly widespread in its global formats, as if it offers a new alternative that not only overcomes aspects of life, including national legal life, but also brightens global life,

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<sup>4</sup> Andi Hamzah, 1992, *Aspek-Aspek Pidana di Bidang Komputer*, Sinar Grafika, Jakarta, hlm. 10.

<sup>5</sup> Abdul Wahid dan Mohammad Labib, 2005, *Kejahatan Mayantara (Cybercrime)*, Refika Aditama, Bandung, hlm. 59.

<sup>6</sup> Soerjono Soekanto dan Sri Mamudji, 2015, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, PT Grafindo Persada, Jakarta, p.13-14.

<sup>7</sup> Peter Mahmud Marzuki, 2013, *Penelitian Hukum Edisi Revisi*, Kencana Prenada Media Group, Jakarta, p. 133-166.

<sup>8</sup> Renny N.S. Koloay, "Perkembangan Hukum Indonesia Berkenaan dengan Teknologi Informasi dan Komunikasi, *Jurnal Hukum Unsrat*, Volume 22, Nomor 5, Januari 2018, hlm. 18.

even as if to spread localism everywhere.<sup>9</sup>

The development of law in Indonesia is clearly visible in the reality of legal life in Indonesia, which develops following the dynamics of the development of an increasingly modern society. These dynamics are also colored by the needs of the Indonesian people for changes in the way of law. This also became one of the agendas in the reforms that were rolled out in 1998, namely the enforcement of the rule of law. The enforcement of the rule of law has a goal to create an Indonesian society that is more just, prosperous and democratic. In order to achieve all the objectives of the rule of law, the law must be returned to its track, namely as a pillar of justice.

Law and social reality like two sides of a coin that cannot be separated. Both go hand in hand for certain purposes. So that it can be said, law without social reality is like walking in a vacuum without social reality direction and purpose. The same thing was said by Lawrence Friedman who picture that the legal system is not floating in a cultural void, free of space, time and social context, must reflect what is happening in society. In the long run, Friedman assumes the shape of society, like a glove whose concrete is the same as the shape of the hand somebody.<sup>10</sup>

And vice versa, social reality without law will chaos ensues. So it's not wrong if there is an adage "yam society" *ibi ius*", which means "where there is society, there is law". The law is present in the midst of people's lives, none other than and no is not a need of the community itself so that create a life of peace, order, and security. In other words law has a sacred duty to maintain social reality in society to remain intact. However, when the law is undergoing that task, it is not uncommon to cause friction with the layers in society.<sup>11</sup>

Talking about legal issues will of course always be related to enforcement process. The law can mainly be seen in its form through explicitly formulated rules. In the Legal rules or regulations contain actions that must be carried out, such as law enforcement.<sup>12</sup> It's not easy to explain, let alone try to combine justice and legal certainty in the area of practice, although in theory it is always emphasized the high position of justice in the process of finding the law (*rechtvinding*).<sup>13</sup> Realizing the rule of law and restoring the law as a pillar of justice is certainly not easy, and the reality is that the practice of law enforcement in our country is still often tinged with injustice. The law that is "sharp down, blunt up" is still an unavoidable phenomenon. In addition, the non-transparency of the judicial examination

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<sup>9</sup> Sutandyo Wignjosoebroto, 2008, *Hukum Dalam Masyarakat: Perkembangan dan Masalah*, Bayumedia Publishing, Malang, p. 244.

<sup>10</sup> Suparman Marzuki, "Sosiologi Hukum", Bahan Perkuliahan pada Program Pascasarjana Ilmu Hukum Universitas Islam Indonesia, Yogyakarta, 7 November 2015.

<sup>11</sup> M. Yasin Al Arif, *Penegakan Hukum dalam Perspektif Hukum Progresif*, Undang: Law Journal, Vol. 2, No. 1, 2019, p. 171.

<sup>12</sup> Satjipto Rahardjo, 2009, *Penegakan Hukum Suatu Tinjauan Sosiologis*, Genta Publishing, Yogyakarta, p.1.

<sup>13</sup> Liky Faizal, *Hukum yang Berkeadilan dalam Paradigma Post-Modernisme di Era Globalisasi*, Asas Journal: Law Journal of Economic Syaria, Vol 4, No, 2, 2012, p. 2.

process also adds to the irony of law enforcement in Indonesia, which is blind to the values of justice. Moving on from these conditions, it is not surprising that postmodernist thinkers criticize the thinking and legal practice of modern society.

One of the main criticisms raised by postmodernism thinking about law is that legal truth is not something certain, absolute, one, and objective, but relative, plural, consensual. This thinking is certainly paradoxical. On the one hand, the law wants to emphasize certainty. But on the other hand, in practice, law enforcement is not always certain. Justice as the highest goal of law is often distorted in the interests of certain groups. The court process is like a play, on the one hand the law must be positive, real, definite, absolute and objective, but on the other hand the law accommodates the inclusion of other principles outside the law (eg morals, culture and so on), subjective interpretations of advocates, prosecutors and judge. Then the law cannot be separated from its uncertain, relative, and no longer neutral character. The thoughts of these legal postmodernist thinkers provide a new challenge to reform the law through constructive criticism of the vision and practice of modern law.<sup>14</sup>

So far, in the reality of law enforcement in Indonesia, law enforcement is often found to be "pointed down and blunt up". Granny Minah (55 years), from Banyumas, for stealing three cocoa beans which cost not more than Rp. 10,000, based on Decision Number 247/Pid.B/2009/PN.PWT was sentenced to one month and 15 days in prison with a probationary period of three months.<sup>15</sup> AAL (15), a student of SMK 3, Palu, Central Sulawesi, is serving as a prisoner before the court, for being accused of stealing flip-flops belonging to Brigadier General Ahmad Rusdi Harahap, a member of Brimob Polda Sulteng.<sup>16</sup>

These cases at least illustrate the reality of law enforcement in this country. Rigid law enforcement, without paying attention to the value of justice in society, becomes a very important thing commonly seen. The law looks sharp when faced with small people, but otherwise would be blunt when faced with the elites.<sup>17</sup>

This is reflected in the enforcement of corruption cases that have caused trillions of losses to the country but were acquitted by His Majesty judge in court. For example, Tasiya Soemadi, Deputy Regent did not Cirebon, a defendant in a corruption case in the social assistance grants from the Cirebon Regency Government, West Java, for the 2009-2012 fiscal year who harmed the state up to Rp. 1.5 billion, was acquitted by the assembly Bandung

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<sup>14</sup> Urbanus Ura Weruin, "Postmodernisme dan Hukum Kritik Postmodernisme Hukum Terhadap Modernisme Hukum", *Jurnal Muara Ilmu Sosial, Humaniora dan Seni*, Volume 2, No. 1, April 2018, hlm. 240.

<sup>15</sup> <https://news.detik.com/berita/1244955/mencuri-3-buah-kakao-nenekminah-dihukum-1-bulan-15-hari>, "Mencuri 3 Buah Kakao Nenek Minah Dihukum 1 Tahun 15 Hari, 19/11/2009, accessed 19 May 2022.

<sup>16</sup> <https://nasional.kompas.com/read/2012/01/06/09445281/Kejamnya.Keadilan.Sandal.Jepit.?page=all>, "Kejamnya Keadilan 'Sandal Jepit'", 6/1/2012, accessed 19 May 2022.

<sup>17</sup> M. Yasin Al Arif, op.cit, p. 175.

corruption judge.<sup>18</sup> Data from Indonesia Corruption Watch (ICW) mentioned, in mid-2021 there were 22 acquittals handed down by the panel of judges in corruption cases.<sup>19</sup> In 2021, ICW revealed the majority of corruption case decisions is still relatively light, that is, based on the processing of decision at the District Court, High Court, and Supreme Court, obtained the average overall verdict of the defendant in corruption cases year 2021 for 2 years 5 months.<sup>20</sup>

Modern law that exists today is influenced by a series of past history that shows the relationship between law, society, and the development of a modern state. Legal modernity has the following characteristics:<sup>21</sup>

1. Have a written form;
2. The law applies to the entire territory of the State; and
3. Law is an instrument that is used consciously to reach the political decisions of the people.

Laws with characteristics that must be in written form are indeed a necessity of a modern state that is increasingly complex and multi-dimensional. The written law then prints the law which must be formal, rigid, inflexible, made by the competent authority and not at all related to the quality of legal certainty and justice. The validity of the law within the jurisdiction of the state shows that modern law is a national law based on the theory of state sovereignty over its territory. Lastly, law is not only an instrument of legitimacy, but also social engineering. The hope is that the law can meet the increasingly complex and diverse needs of modern society. The law does not automatically go hand in hand with the development of society and the technology that follows it.

The law that currently exists and applies in Indonesia, as previously explained, is motivated by the influence of colonialism which has a strong influence on the formation of law in Indonesia. The history and past social life of European nations with the dominance of a positivistic modern paradigm that resulted in the concept of the Rule of Law. As a result, the law is formal, procedural, applies nationally and the state dominates in reconstructing and applying the law. This situation continues to accompany the process of law making and enforcement in Indonesia, which has entered the digital era. Laws that are too formal, rigid, and inflexible, and apply nationally have difficulty accommodating the rapid development of information technology.

The law that has so far been formed with the roots and construction of the principles

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<sup>18</sup> <https://regional.kompas.com/read/2015/11/12/18270581/Wakil.Bupati.Cirebon.Divonis.Bebas.dalam.Perkara.Korupsi>, "Wakil Bupati Cirebon Divonis Bebas dalam Perkara Korupsi", accessed 19 May 2022.

<sup>19</sup> <https://news.detik.com/berita/d-3597773/icw-hingga-pertengahan-2017-ada-22-vonis-bebas-kasus-korupsi>, "ICW: Hingga Pertengahan 2021, Ada 22 Vonis Bebas Kasus Korupsi", accessed 19 May 2022.

<sup>20</sup> <https://nasional.kompas.com/read/2022/04/28/17302541/icw-tahun-2018-rata-rata-vonis-koruptor-2-tahun-5-bulan>, "ICW: Tahun 2021, Rata-rata Vonis Koruptor 2 Tahun 5 Bulan", accessed 19 May 2022.

<sup>21</sup> Satjipto Rahardjo, 1982, Ilmu Hukum, Citra Aditya Bakti, Bandung, hlm 213-214.

of legality, territorial principles and actions in a physical context. The law looks more pragmatic with the aim of as if to accommodate all problems in society or contains the political economy goals of the rulers, all of which are clearly temporary and local. The law as a substance aspect in law enforcement also cannot work optimally in tackling crime. The presence of the law on pornography, the law on information and electronic transactions, for example, which aims to tackle the spread of pornography, pornography and various forms of cybercrime, did not show positive results and was even counterproductive. Likewise, laws related to natural resources often show their impartiality to the community, but are inclined to the political economy interests of the rulers who collaborate with foreign capitalists. This phenomenon clearly describes laws that are only made by interested actors.

Law in a modern perspective has characters and doctrines that have been accepted as legal-metanarrative, currently experiencing helplessness when dealing with information technology, which is more likely to require micro-narrative diversity in interpreting the law. In this regard, Jean Francois Lyotard rejects the meta-narrative paradigm because in society there are diversity of differences, diversity of aspirations, beliefs and desires, it is necessary to emerge a new thought, namely postmodern which shows the existence of small narratives (micro-narrative) to solve problems. what's happening in society.<sup>22</sup>

Cyberspace which is often known as the virtual world, and the virtual world has characteristics, namely without boundaries, 24 hours online, Interactive, Hyperlink, No license, No censorship, and Efficiency.<sup>23</sup> All of these characters become a separate problem in the legal context, especially related to sharing civil relations and when a crime occurs.

The presence of cyberspace in the midst of modern human civilization has had an impact on human social life. Cybercommunity that is formed in cyberspace has moved human activities from what was originally in the physical world to the virtual world. This phenomenon clearly shows that technology influences people's behavior.<sup>24</sup> In addition, Sudarto explicitly stated that technological advances have an influence on crime patterns.<sup>25</sup> Barda Nawawi Arief explained more explicitly that cybercrime is one of the negative impacts of technological progress which has a very broad rhyme on all aspects of life in modern times.<sup>26</sup> The three statements indicate that the phenomenon of technological development is a factor that has changed the pattern of public relations that has been formed, including making it a means of crime.

The development of information technology in the last 2 (two) decades has occurred so rapidly. The flow of information so quickly can spread to all parts of the world. The

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<sup>22</sup> Iskandar Wibawa, *op.cit*, hlm. 287.

<sup>23</sup> Budi Agus Riswandi, 2003, *Hukum dan Internet di Indonesia*, UII Press, Yogyakarta, hlm. 15-21.

<sup>24</sup> Satjipto Rahardjo, 2009, *Penegakan Hukum: Suatu Tinjauan Sosiologis*, Genta Publishing, Yogyakarta, hlm. 146.

<sup>25</sup> Sudarto, 1983, *Hukum Pidana dan Perkembangan Masyarakat*, Sinar Baru, Bandung, hlm. 104.

<sup>26</sup> Barda Nawawi Arief, 2006, *Tindak Pidana Mayantara: Perkembangan Kajian Cyber Crime di Indonesia*, Raja Grafindo, Jakarta, hlm 1-2.

facilities/features offered by communication tools are increasingly diverse and increasingly sophisticated. Cell phones that were originally only able to receive calls and messages, have now turned into multimedia devices that offer convenience in people's daily lives. Such rapid changes of course also affect the pattern of human behavior, including in terms of interacting and socializing with each other in social life.

The economic aspect of society is also developing following the digitalization trend in this modern era. Buying and selling transactions, which were originally carried out using conventional methods, namely exchanging money and goods, have now become easier with the existence of e-commerce and digital banking services that make electronic trading transactions easier. Through these media, economic activity seems to be borderless and becomes simpler, faster and more efficient.

Apart from the positive impact in the form of convenience offered by these technological advances, on the other hand technological advances also cause their own problems. One of the problems that often occurs is in the field of Intellectual Property Rights (IPR) which is very difficult to protect by the state with its legal instruments. Ease of accessing information also opens up wide opportunities for violations of someone's work, ranging from piracy, copying intellectual property products without permission and so on.

Violations in the field of decency are also the impact of advances in information technology. Various forms of slander, defamation, and immoral acts are also rampant. The phenomenon of cyberporn, cybersex, and cyberprostitution has changed the modus operandi of decency crimes. Armed with technological advances, even adultery and prostitution are also spreading in cyberspace with offers of prostitution on the internet.

The overall impact of the advances in telematics technology is that it becomes a challenge how the law must adapt to the digital era that knows no national borders. Modern law must have a dimension of flexibility to be able to continue to adapt to the rapid development of technology. The law is required to protect the rights of its citizens in all activities in cyberspace, for example in the event of fraud in the field of e-commerce, guarantees and protection of Intellectual Property Rights (IPR) and avoids any misleading content. Seeing this context, the enactment of sectoral national laws in fact requires a global reorientation. This is because the internet is not only connected on a sectoral scale within a country, but throughout the world.

The powerlessness of modern law in solving these problems makes the virtual world considered a world without boundaries. Onno W. Purbo said that the internet is seen by most people, users, social observers as a world without boundaries, without rules, a world of freedom. This is the cause of various crimes and violations in cyberspace.<sup>27</sup> In general, the virtual world cannot be separated from the reality in the real world, because the person or corporation that is the subject of the law lives in the real world. Their existence in cyberspace cannot be separated from the activities they do in the real world.

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<sup>27</sup> Abdul Wahid dan Muhammad Labib, *Op.cit*, hlm. 33.

Cyberspace is a medium and cybercommunity is related to law. Barda Nawawi Arief said "the destruction and pollution of information in Mayantara", is part of environmental crime, which needs to be prevented and tackled.<sup>28</sup> These prevention and countermeasures when viewed from the point of view of criminal politics must be carried out with an integral/systemic approach, namely a penal approach (criminal law), a technology approach (techno prevention) because cybercrime is a form of hit-tech crime, a cultural/cultural approach, and a moral approach. /educational (especially decency offenses) and a global approach/international cooperation.<sup>29</sup>

Responding to the phenomenon of the powerlessness of modern law which is identical to legal positivism, it is necessary to begin with an understanding of legal positivism which is the pillar of the entry into force of modern law. The flow of positivism puts the rule of law as the only source of law, and legitimacy in carrying out law enforcement. Based on the basic assumptions of positivism, it can be seen clearly that positivism only touches on the formal aspects of the law, which gives the form that the law must be a law. This understanding certainly has weaknesses when faced with substantial legal aspects, in which it must contain justice which must be realized as the goal of the law.

Initially the presence of modern law was marked by the transition from natural law to positive law. This shift in legal thought was motivated by several phenomena that occurred at that time, for example the practice of slavery which was understood as a natural law. The arrival of legal positivism changed the paradigm that the practice of slavery is prohibited by law, because it is against human rights and free will which is a human right for everyone. Based on this paradigm shift, legal positivism manifests its action to protect the rights of these citizens with positive legal instruments.<sup>30</sup>

John Austin, a student of Jeremy Bentham as a modern legal thinker, stated that law in its true sense is law as it is applied. Law is nothing but what actually applies or is applied. That is positive law or legal positivism. Legal positivism in this context can be equated with legal legalism. Austin asserts his legal positivism with a statement that broadly states that a law is nothing but an order that obliges or requires a person or persons to act.

The basic idea of legal positivism that marks the entry into force of modern law is:<sup>31</sup>

- a. There is no law other than positive law, namely as law because it is determined by the authorities;
- b. There is no law other than written law, so that unwritten law cannot be qualified as law;
- c. There is no law other than the law (statutory), so what applies is the law (statute law).  
Outside the law there is no law;

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<sup>28</sup> Barda Nawawi Arief, 2003, *Kapita Selekta Hukum Pidana*, Citra Aditya Bakti, Bandung, hlm. 250.

<sup>29</sup> Barda Nawawi Arief, *Tindak Pidana Mayantara*, *Op.cit*, hlm. 183.

<sup>30</sup> Urbanus Ura Weruin, *Op.cit*, hlm. 243.

<sup>31</sup> Deni Setyo Bagus Yuherawan, 2014, *Dekonstruksi Asas Legalitas Hukum Pidana: Sejarah Asas Legalitas dan Pembaharuan Filosofis Hukum Pidana*, Setara Press, Malang, hlm. 238.

- d. Only dealing with issues of formal legal aspects rather than legal substance. In other words, more concerned with form (formality) than matter (substance);
- e. Law must be separated from matters of morality and justice.

The consequences of this basic idea have the following implications:

- a. The birth of the understanding of legism and legalistic thinking;
- b. Establishment of a statute law system;
- c. Emphasizes the formal aspects of the law; and
- d. Everything that is outside the written law and statutory regulations is considered non-law (meta juridical or lawless).

The journey of legal positivism which is motivated by historical aspects related to the realization of human rights turns out to have weaknesses that make it difficult to maintain. According to Satjipto Rahardjo, legal positivism had failed, because it was unable to provide guidance in the midst of lawsuits against social and moral beliefs at that time. Legal positivism also failed, because it was unable to provide assistance for the abuse of power and independence that occurred.

Technological developments and advances that have an impact on the rapid dynamics of change in modern society are a separate problem in the realm of law enforcement. Legal positivism cannot run smoothly without criticism. According to Hyronimus Rhiti<sup>32</sup>, "Modern law which emphasizes precision, rationality, differentiation, certainty, clarity and positivistic correspondence (between the words of the rules with the practical words that are addressed to the supposedly uncertain reality), is confined in a separate epic called "modern". The confinement is carried out by what is already widely known as "postmodern". This one is not the creation of historical space and time itself, but an ironic "continuation or after modern".

According to the history of its emergence, postmodern was first present in the realm of art and culture. However, since the end of the 20th century, the postmodern trend has penetrated the legal world. The entry of postmodernism into the realm of law is certainly motivated by the situation and conditions of modern law and its weaknesses that invite criticism. The main problem that became the origin of the emergence and development of postmodern law was that there was a resistance or antithesis to modern Western law and also the United States which was considered to be liberal-capitalist (free, individual, and market democracy) and the bad consequences it caused. This criticism of modern western law emphasizes the neglected legal certainty.

The critical legal studies movement of Roberto Mangabeira Unger and a group of US legal experts and feminist legal studies are cited as the "beginning" of postmodern law (in the realm of science and practice)..<sup>33</sup> Referred to as "postmodern in the field of law", because

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<sup>32</sup> Hyronimus Rhiti, 2019, *Hukum Progresif dan Postmodernisme*, Genta Publishing, Yogyakarta, hlm. 41.

<sup>33</sup> Ian Ward, 1998, *An Introduction to Critical Legal Theory*, Cavendish Publishing Limited, London, hlm. 156.

the flow or movement took a distance by positioning itself as being critical of modern legal patterns and models. In other words, this school wants to free itself from the grip of modern law. According to Hyronimus Rhiti<sup>34</sup>, "Against postmodernism, it is not found that movements, schools or studies (or what terms to use) are critical, as well as postmoderns, of course, building their own legal system, apart from only criticisms in the form of texts (writings) that are made, which gives the impression as an attacking "art" based on a psychic irritation towards the "establishment" of modern law. There is an impression (which could be wrong), that this critical legal study, was critical in its time and finished.

In connection with the establishment of modern law which in this case is identified with legal positivism, since its birth this positivism thought has found space in the legal system in various countries. Countries that closely embrace majority legal positivism are countries that adhere to the Continental European legal system (civil law system). These countries put the law as the basis and legitimacy of law enforcement by applying the rule of law written in the law as the only source of law.

Indonesia as a state that was colonized by the Netherlands that uses the Continental European legal system (civil law system) also inherits the legal system used by the Netherlands. Law enforcement in Indonesia is based on positive law legislation to resolve every case. The consequence of the legal character in Indonesia which is based on the Continental European legal system automatically follows the principle of legism which states that there is no law other than the law.

Criminal law in Indonesia also uses the principle of legality as one of the fundamental principles in enforcing the rule of criminal law. The application of the principle of legality which is influenced by positivism thoughts causes the enforcement of criminal law to be based on the existence of laws and regulations that must exist before the act is committed. This unconsciously creates a weakness, namely when an act that has not been determined by criminal law as a prohibited act has caused the victim to fall.

Regarding the weaknesses and limitations of the Legality Principle to provide protection for victims of crime, Nyoman Sarikat Putrajaya argues that the legality principle which essentially contains the *lex temporis delicti* principle only provides protection to individual perpetrators and does not provide protection to the community/community groups who are victims of criminal acts. , so that access to justice for victims, especially collective victims is hampered.<sup>35</sup>

Looking at the development of technology in the digital era which also causes the development of crime, of course it will cause new problems. The problem that arises is when the development of crime is not followed by the development of laws and regulations that follow the development of crime. As a result, the rule of law will be far behind and cannot

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<sup>34</sup> Hyronimus Rhiti, *Op.cit*, hlm. 42.

<sup>35</sup> Nyoman Sarikat Putrajaya, 2004, *Pemberlakuan Hukum Pidana Secara Retroaktif Sebagai Penyeimbang Asas Legalitas dan Aas Keadilan: Suatu Paradigma Dalam Ilmu Hukum Pidana*, Pidato Pengukuhan Guru Besar, Universitas Diponegoro Semarang, 7 Agustus 2004, hlm. 37.

serve the needs of the community, and the community will become victims of the powerlessness of this modern law.

Observing these problems, it is appropriate that the legal paradigm that emphasizes legal modernism which is identical to legal positivism should ideally be shifted by the legal post-modernism paradigm. The new paradigm promoted by post-modern will certainly be better if applied. The post-modernism paradigm places the constitution and laws and regulations as a frame in people's lives that will give the meaning that law enforcement is not just a text. Law enforcement which is just a text is interpreted as law enforcement based on the application of the sound of the law.

Post-modern thinking invites to give meaning to law from the perspective of the context in which the law is applied, namely to achieve the objectives of the law itself. The purpose of this law includes justice and expediency. These two legal aspects are things that are often overlooked when applying the rule of law just to pursue legal certainty.

In connection with the digital era that has been rolling, this legal post-modernism thinking should be able to bridge to obtain justice and benefits in the aspect of law enforcement. The rapid development of crime can be overcome if the principles in law enforcement are emphasized on the harmonization of interests in society. The main thing of these interests is that the law should be enforced solely for the protection of the interests of the community, of course, for victims of crime in this digital era. Understanding the law in context will be very necessary to solve problems in the midst of the hustle and bustle of the digital era which is full of dynamics.

## **KESIMPULAN**

The law that must be formed in the midst of the current progress of the times in this digital era is a law that does not only emphasize the formal aspects of the law. A good law to be applied in this day and age is a law that looks at aspects of the content or substance of the law that will correlate with the achievement of legal goals, especially justice and expediency. Law enforcement to overcome the problems caused by the advancement and development of crime in the digital era is to apply post-modernism thinking. Understanding the law does not only look at written laws and regulations, but is broader by looking at the context of law enforcement itself. Law enforcement must emphasize patterns of settlement of legal problems that consider aspects of protection for the community and of course victims of crime in this digital era.

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