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Editorial Foreword IJSLs Volume 3 Number 1

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Editorial Foreword IJSLS Vol. 3 No. 1

Bahasa Indonesia

Kata Pengantar

Pembahasan tentang keberadaan ilmu hukum adat sebagai mata kuliah wajib di hampir semua fakultas hukum di Indonesia mendapat perhatian cukup penting dalam diskusi *socio-legal studies*. Sartika Intaning Pradhani melakukan kritik tajam terhadap pendekatan positivisme hukum yang umumnya digunakan dalam pengajaran ilmu hukum adat arus utama. Hal ini semakin mengokohkan hegemoni positivisme hukum dalam kurikulum hukum di Indonesia, bahkan di ranah ketika para mahasiswa hukum membahas hukum di luar negara yaitu hukum adat.

Karakter positivisme hukum ditandai oleh pemisahan tegas antara eksistensi hukum dan substansinya. Tidak dipentingkan apakah substansi hukum itu adil, bijak, dan implikasinya seperti apa. Alasan ini tidak menggoyahkan eksistensi hukum, yang harus tetap berdiri tegak tidak tergoyahkan, walaupun selalu berhadapan dengan masyarakat dan rasa keadilan yang terus berubah. Globalisasi hukum yang dapat diamati hari ini adalah suatu kenyataan tentang terjadinya pertemuan antar sistem hukum. Hukum internasional, khususnya dalam bidang kemanusiaan, sangat mempengaruhi hukum nasional di banyak negara melalui ratifikasi atau adopsi. Pendekatan positivisme hukum memosisikan hukum sebagai fakta, dasar argumentasi, berupa perintah, dan keputusan. Hukum distandarkan sebagai otoritas resmi yang diakui melalui produk legislatif dan putusan judicial. Hukum dipandang sebagai materi yang *given* dan dilepaskan dari konteks.

Romantisme masa lalu dalam memandang hukum adat sering terjebak menjadi glorifikasi terhadap norma hukum yang seolah diam, tidak bergerak, dan diterima sebagai pasti baik dan adil tanpa kritikal. Konsekuensi metodologis dari pandangan inilah yang dikritisi oleh Sartika Intaning Pradhani. Mempelajari hukum adat dengan metode doktrinal bagaikan memotret saja hukum yang tidak bergerak tentang norma yang membolehkan dan melarang suatu perbuatan. Hal ini tentu saja bertentangan dengan pandangan ilmu hukum adat sendiri yang mengatakan bahwa hukum adat dipelajari sebagai hukum yang selalu berubah. Namun pengajaran ilmu hukum adat kurang memberi tempat terhadap penjelasan yang lebih mendasar bagaimana hukum adat berubah, apa yang berubah, dan apa yang tidak berubah.

Metode penelitian doktriner yang ketat dalam ilmu hukum adat tidak memberi kesempatan para peneliti untuk mengenali perubahan hukum yang terjadi dalam bentangan



yang luas seiring dengan perubahan masyarakat. Misalnya, perubahan yang menyangkut kontestasi antar hukum dan yurisdiksi pengadilan dalam sengketa waris, perceraian, perkawinan, dan pengangkatan anak dalam ranah hukum keluarga; juga perubahan yang terjadi dalam hukum agraria dan pengelolaan sumberdaya alam akibat konflik yang tidak pernah terselesaikan di Indonesia. Pendekatan hukum adat normatif juga tidak dapat melihat perubahan hukum akibat tuntutan rasa keadilan perempuan dan anak dari kelompok masyarakat adat yang rentan. Perubahan hukum itu sebagiannya didorong oleh keberadaan organisasi atau gerakan masyarakat sipil yang memperjuangkan masyarakat adat di Indonesia dan menjadi kelompok penekan. Pendeknya, pendekatan doktriner dalam hukum adat tidak mampu melihat bagaimana hukum adalah ruang perjuangan yang sangat berkelindan dengan struktur sosial, budaya, ekonomi politik di segala arah dari tingkat komunitas sampai tingkat negara.

Di antara gerakan masyarakat sipil adalah gerakan perempuan yang sangat berupaya memperdengarkan suara perempuan yang hampir tidak terdengar dari kelas bawah. Topik ini ditulis oleh Titi Kartika Hendrastiti dan Siti Kusujarti berdasarkan penelitian di tiga desa di provinsi Bengkulu, Sumatra. Melalui pendekatan ekologi feminis dan paradigma paska kolonial, mereka mempersoalkan akses keadilan lingkungan bagi para perempuan yang berhadapan dengan bencana dan perubahan iklim. Suara perempuan yang senyap berusaha digemakan menjadi narasi perempuan yang kuat. Penelitian ini menghasilkan temuan-temuan penting tentang keseharian hidup perempuan yang merefleksikan pengetahuan dan respon mereka terhadap bencana dan perubahan iklim. Perempuan memiliki kesadaran lingkungan, mampu bertahan dan beradaptasi terhadap perubahan. Dengan demikian, sebenarnya perempuan memperlihatkan kapasitasnya dalam menciptakan hukum sendiri ketika negara tidak hadir. Perempuan membuat pengaturan sendiri tentang tata kelola lingkungan yang paling memenuhi rasa keadilan setempat. Penelitian dengan perspektif ekologi feminis sangat dibutuhkan dilakukan di banyak tempat lain di Indonesia, mengingat akibat perubahan iklim sudah sangat mengancam dan tidak pernah menjadi pengetahuan dan kesadaran publik yang luas.

Cerita legenda tentang Panglima Laot yang dikenal sebagai pahlawan di kalangan nelayan Aceh masih hidup sampai hari ini. Demikianlah hasil penelitian yang dilakukan oleh Heru Susetyo, Satrio Febriyanto, Shaubi Laidinar, Wahyumi Ilahidayah, Muhammad Febriansyah, dan Nadila Mahilaveda. Periode kepemimpinan kesultanan Aceh di bawah Sultan Iskandar Muda adalah masa di mana Panglima Laot hidup. Tokoh ini dianggap lahir dari haribaan budaya Aceh sendiri. Ia dianggap berjasa karena sudah mengkoordinasi para nelayan dalam rangka



menjaga keamanan laut di wilayahnya masing-masing, sambil juga mengkonservasi lingkungan alam laut di Aceh.

Penelitian dari Abdul Munif Ashri bercerita tentang kontestasi antar aktor dalam merespon kebijakan negara terkait penyelesaian sengketa non-yudisial terhadap pelanggaran berat hak asasi manusia di masa lalu. Indonesia adalah negara yang memiliki periode gelap akibat terjadinya tragedi kemanusiaan dengan jumlah korban yang besar, kualitas kejahatan dan kengerian yang dalam. Kasus pelanggaran berat hak asasi manusia ini menjadi hutang sejarah yang tidak pernah diselesaikan sebagai akibat tidak adanya pengakuan, dan terlebih, permohonan maaf dari negara terhadap korban rakyatnya sendiri. Situasi ini mengakibatkan para korban tidak pernah sampai pada akses keadilan. Suara mereka tenggelam dalam hingar bingarnya kontestasi suara dari berbagai kelompok kepentingan lain yang mempertahankan kepentingan sendiri dan *status quo*. Di antaranya adalah yang dilakukan atas nama stabilitas dan persatuan nasional yang palsu.

Baru dalam pemerintahan Jokowi, diterbitkan Keputusan Presiden No. 17 Tahun 2022 yang menawarkan mekanisme penyelesaian non-yudisial. Negara mengakui terjadinya peristiwa pelanggaran berat hak asasi manusia masa lalu, tetapi tanpa permohonan maaf. Instrumen hukum ini mendapat kritik tajam dan penolakan, terutama dari korban dan berbagai organisasi masyarakat sipil yang memperjuangkan hak asasi manusia. Mereka menganggap instrumen hukum ini hanya sebagai upaya cuci tangan negara untuk melepaskan tanggung jawabnya. Temuan penelitian ini menunjukkan kurang berhasilnya upaya menguak kebenaran sejarah secara transparan dan akuntabel, yang memberi penyembuhan bagi korban kejahatan kemanusiaan di masa lalu yang dilakukan oleh aktor-aktor negara.

Tulisan terakhir adalah dari Iqbal Saujan, Ahamed Sarjoon Razick, Hayathu Mohamed Ahamed Hilmy, dan Mohamed Haniffa Mohamed Nairoos, yang menulis tentang kesadaran hak intelektual di kalangan mahasiswa strata satu di beberapa universitas di Srilangka. Sebagaimana di banyak negara Asia lain, pelanggaran hak cipta secara masif terus terjadi, khususnya berupa pembajakan terhadap buku, jurnal dan berbagai bahan bacaan lain sumber pengetahuan yang banyak dipakai untuk kepentingan pendidikan di sekolah dan universitas. Sekalipun sudah ada berbagai instrumen hukum yang berisi perlindungan hak cipta, tetapi dalam praktiknya pembajakan buku dan bacaan masih terus terjadi dan memberi dampak kerugian ekonomi kepada pengarang dan penerbit. Belum lagi dampak disinsentif terhadap munculnya pengarang generasi muda di masa depan. Oleh karenanya penelitian ini menjadi sangat penting karena berfokus pada seberapa jauh kesadaran para mahasiswa *undergrade*



terhadap adanya pelanggaran hak cipta di Srilanka. Mereka melakukan penelitian dengan menyebarkan kuesioner dalam beberapa tahapan. Hasilnya menunjukkan bahwa sebagian besar mahasiswa tidak paham dan tidak menyadari telah terjadinya pelanggaran hak cipta yang massif –sekalipun mereka memahami bahwa pelanggaran hak cipta adalah tindakan terlarang dalam agama mereka baik Islam, Hindu, Budha, maupun Kristen. Nampaknya ada distorsi pemahaman hukum agama ketika berhadapan dengan praktik, khususnya dalam hal perlindungan hak cipta bagi para pengarang dan penerbit. Padahal, perlindungan hak cipta seharusnya menjadi tanggung jawab semua pihak, karena yang dilindungi adalah para pengarang buku, sebagian besarnya adalah para ilmuwan dan budayawan, yang menuliskan sumber pengetahuan yang sangat dibutuhkan masyarakat dan peradaban hari ini.

Edisi kali ini merupakan suatu perjalanan yang memperlihatkan tentang hukum dan praktik hukum di Indonesia –juga Srilanka–, yang sangat beragam. Hal ini semakin mengokohkan pentingnya pendekatan interdisiplin dalam studi hukum. Dengan demikian kita mendapatkan pembelajaran tentang pengetahuan hukum dan refleksi pengalaman dalam masyarakat yang begitu beragam dan penuh tantangan.

Jakarta, Oktober 2023

Sulistyowati Irianto

Editor in chief



English

Foreword

The debate surrounding the compulsory inclusion of customary law as a teaching subject in nearly all Indonesian law faculties has garnered considerable attention in socio-legal studies. Sartika Intaning Pradhani has strongly criticised the legal positivism approach typically employed in teaching mainstream customary law, solidifying legal positivism's hegemony in the Indonesian legal curriculum even when students learn law beyond the state, such as customary law.

The doctrine of legal positivism is defined by a rigid division between the existence of law and its content, irrespective of its fairness, wisdom, or practical consequences. This principle does not undermine the legitimacy of the law, which must remain steadfast and resolute despite constantly grappling with societal changes and evolving concepts of justice. Though the current phenomenon of legal globalisation is a result of the convergence of different legal systems, International law, particularly in the field of humanitarianism, has significantly influenced the national legislation of numerous countries, either through ratification or adoption. According to the legal positivism approach, the law is regarded as a fact that serves as the foundation of argumentation in the form of orders and decisions. It is standardised as official authority recognised through legislative products and judicial decisions, treated as a given material that is detached from context. It is standardised as official authority recognised through legislative products and judicial decisions, treated as a given material that is detached from context. Technical terms will be explained upon first usage.

The romanticism of the past often leads to the glorification of customary laws as fixed and unchanging norms that are unquestionably good and just, without critical analysis. Sartika Intaning Pradhani criticises the methodological consequences of this view. Studying customary law through doctrinal methods is akin to taking a snapshot of the law's immobile norms on what is permitted and prohibited. This is clearly at odds with the view of customary law itself, which holds that customary law is always changing. However, the teaching of customary law does not sufficiently address the fundamental explanation of how customary law changes, what changes, and what remains unchanged.

The strict doctrinal research method in customary law does not give researchers the opportunity to recognize changes in law that occur over a wide range of time alongside changes in society. For instance, changes related to disputes between laws and court jurisdiction in



inheritance, divorce, marriage, and child adoption in the realm of family law. Also, changes have occurred in agrarian law and natural resource management due to unresolved conflicts in Indonesia. Some legal changes are driven by the presence of civil society organizations or movements advocating for indigenous communities in Indonesia and serving as pressure groups. In short, the doctrinal approach in customary law fails to acknowledge how law is a battle field intertwined with social, cultural, and socio-political structures at all levels, from the community to the national level.

Among the civil society movements, the women's movement is striving to amplify the voices of women from lower classes who are often unheard. This topic was authored by Titiek Kartika Hendrastiti and Siti Kusujarti based on research conducted in three villages in the Bengkulu province of Sumatra. Employing feminist ecological and post-colonial paradigms, they raise concerns regarding environmental justice access for women facing disasters and climate change. The hushed voices of women are trying to be amplified into a narrative of powerful women. This study has yielded significant findings about the daily lives of women, reflecting their knowledge and responses to disasters and climate change. Women possess environmental awareness and are capable of enduring and adapting to change. Consequently, women reveal their capacity to create their own laws when the state is absent. Women create their own arrangements for managing the environment that best meet local needs. Research from an ecofeminist perspective is greatly needed in many other areas of Indonesia, given the dire threats caused by climate change, which are not widely known or acknowledged by the public.

The legend of Panglima Laot, known as a hero among Acehnese fishermen, still endures to this day, according to research conducted by Satrio Febriyanto, Shaubi Laidinar, Wahyumi Ilahidayah, Muhammad Febriansyah, and Nadila Mahilaveda. Panglima Laot lived during the reign of Sultan Iskandar Muda of the Aceh Sultanate. He is considered to have emerged from Aceh's cultural heritage. It is considered commendable for effectively coordinating the local fishermen to safeguard the maritime security of their respective areas while simultaneously conserving the marine environment in Aceh.

Abdul Munif Ashri's research explores the contestation between actors in responding to state policies regarding non-judicial settlement of gross human rights violations in the past. Indonesia has experienced a dark period due to the occurrence of humanitarian tragedies resulting in a huge number of casualties, heinous crimes, and terror. The grave violation of human rights remains an unresolved historical debt owed to the victims of the state's own



people, who have not been acknowledged or apologized to. Consequently, the victims have never had access to justice. Amidst the clamour of voices from various other interest groups that seek to maintain their own interests and the status quo, their voices are muted. Some of these acts are performed in the name of stability and a false sense of national unity.

In a new development under Jokowi's administration, Presidential Decree 17/2022 has been issued, offering a non-judicial recourse for settling grievances. The state acknowledges past gross violations of human rights, but without offering an apology. The legal instrument has faced sharp criticism and rejection, especially from victims and various civil society organizations promoting human rights. They consider this legal instrument merely an attempt by the state to absolve itself of responsibility. The research findings indicate a lack of success in revealing historical truth transparently and accountably, which could provide healing for victims of past human rights abuses committed by state actors.

The latest contribution is from Iqbal Saujan, Ahamed Sarjoon Razick, Hayathu Mohamed Ahamed Hilmy, and Mohamed Haniffa Mohamed Nairoos, discussing the awareness of intellectual property rights among undergraduate students in several universities in Sri Lanka. As in many other Asian countries, widespread violations of copyright continue to occur, particularly in the form of piracy of books, journals, and other educational materials commonly used in schools and universities. Despite various legal instruments containing copyright protection, in practice, book and reading piracy persists, resulting in economic losses for authors and publishers. The future emergence of young authors may be compromised without incentives. Therefore, this study focuses on the extent of undergraduate students' awareness of copyright infringement in Sri Lanka. The researchers distributed a questionnaire in several stages. The results indicate that the majority of students are unaware of the massive violations of copyright. Although they acknowledge that copyright infringement is forbidden in their respective religions, including Islam, Hinduism, Buddhism, and Christianity, there appears to be a distortion in the religious understanding of the law when it comes to practices, particularly in protecting the rights of authors and publishers. Copyright protection ought to be the responsibility of all parties involved since it safeguards book authors, mostly scientists and intellectuals, who write crucial sources of knowledge required by society and civilization today.

This edition takes readers on a journey exploring the law and the legend of Panglima Laot, known as a hero among Acehnese fishermen, still endures to this day, according to research conducted by Satrio Febriyanto, Shaubi Laidinar, Wahyumi Ilahidayah, Muhammad Febriansyah, dan Nadila Mahilaveda. Panglima Laot lived during the reign of Sultan Iskandar



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This edition takes readers on a journey exploring the law and legal practices in Indonesia and Sri Lanka, which are incredibly diverse. This highlights the importance of an interdisciplinary approach in legal studies, that is, socio-legal research. Therefore, we gain insight into legal knowledge and reflect on experiences within such varied and challenging societies. gal practices in Indonesia and Sri Lanka, which are incredibly diverse. This highlights the importance of an interdisciplinary approach in legal studies, that is socio-legal research. Therefore, we gain insight into legal knowledge and reflect on experiences within such varied and challenging societies.

Jakarta, October 2023

Sulistyowati Irianto

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