

## The Current of Postmodern Legal Theory and its Relevance in The Development of National Law in Indonesia

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### ABSTRACT

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This article examines the current of postmodern legal theory and its relevance in the context of Indonesian law. Legal postmodernism was born as a critique of the failure of modernism projects that were considered too rigid, schematic, and ignored the complexity of social reality. Postmodern legal theory is influenced by deconstructivism, relativism, and pluralism, and is significantly influenced by the school of legal realism and Critical Legal Studies. The main characteristics of postmodern legal theory include the rejection of absolute truth, criticism of grand narratives, recognition of plurality of values, and attempts to legitimize laws that are biased in political and economic interests. In Indonesia, postmodern thought has influenced the development of law through various manifestations such as feminist legal theory and progressive law. However, the implementation of postmodern legal theory in Indonesia requires contextualization by considering the cultural values and religious norms of the Indonesian people. This study concludes that postmodern legal theory is a form of critical and dynamic theoretical reflection, which can be used to understand, study, and apply law in Indonesia, which is complex and pluralistic, noting the need for caution in deconstructing the law to remain relevant to the local context of Indonesia.

**Keywords:** Postmodern Legal Theory, Postmodernism, National Law, Development, Indonesia

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### 1. INTRODUCTION

Etymologically, postmodernism is divided into two words, "post" and "modern". The word "post" in *Webste's Dictionary Library* is a prefix, meaning "later or after". If we unite it into "postmodern", it will mean a correction to modernity itself by trying to answer the unanswered questions in modern times that arise because of modernity itself [1].<sup>1</sup>

Postmodern first appeared in France around 1970. At first postmodern was born in an architectural environment. When postmodern began to enter the realm of philosophy, post in modern times was not intended as a period or time but rather as a concept that wanted to transcend all modern things. This postmodern is a criticism of the reality of modernity that is considered to have failed in continuing the project of enlightenment. The main study of postmodern is the rejection of the great narratives that have emerged in the modern world. As it developed, this postmodern thought began to affect various fields of life, including in the fields of philosophy and scientific disciplines.

The philosophers who greatly influenced postmodern development were Michel Foucault, Jean-Francois Lyotard, and Jacques Derrida. Lyotard provides thoughts on the role of narrative in human culture, and in particular on how it has changed and has left modernity and entered the postmodern era. He argues that modern philosophy legitimizes the claims of the truth of their thinking on a logical and empirical basis, but rather on the basis of accepted stories (or *meta-narratives*) about knowledge and the world or with what is terminologized as *language games*. Lyotard assumes that in the wake of the collapse of modern *meta-narratives*, society has developed a new

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<sup>1</sup> Afid Burhanuddin, 2013, "History of Postmodern Philosophy" (A Review Based on the Philosophy of Science), URL: <https://afidburhanuddin.wordpress.com/2013/09/23/sejarah-filsafat-post-modern/>, accessed on January 1, 2026.

*language game* so that one cannot claim an absolute truth in the ever-changing development of the world [2].<sup>2</sup>

Next is Foucault where he uses a postmodern philosophical approach using a historical perspective, he thinks about how knowledge is defined and changed due to the practice of power. While postmodernism also has a very close relationship with several disciplines, the most visible are those related to the scope of sociology [3].<sup>3</sup>

Another of his thoughts, Derrida, provides an understanding of deconstruction through an approach to postmodern philosophy as a form of textual criticism. He criticized Western philosophy which gave special treatment to the concepts of *presence and "logos"*, which are opposed to *absences* and *marking* or writing [4].<sup>4</sup>

The birth and development of postmodern legal theory has had an impact on the following fields of law:<sup>5</sup>

1. Legal authority is superior to positive law;
2. The theory of "enlightened" truth must be changed to a "systemic" truth
3. There is no uniformity of values in a culture. Culture is multiplicity and heterogeneous;
4. Legal methodology must change to an actionable methodology;
5. Changing the criteria of rationality from a universal nature to a perspective rationality;
6. The legal justice sought is "creative" justice, which is justice in an active society where social, technological, economic and ethical standards are constantly changing;
7. Reformulation and reorientation of formal categories to be transformed into functional categories;
8. Build a judicial process that can respect plurality.

In addition, almost all basic scientific constructions that have been established in the modern era, both in the fields of sociology, psychology, anthropology, history, and even in the natural sciences that have been considered standard and commonly referred to as *grand theories* have been re-questioned by the postmodernist line of thought. This happens because the *grand theory* is considered too schematic and oversimplifies the real problem and is considered to close the emergence of other theories that may be much more helpful in understanding reality and problem solving. So, the claim of a standard, standard, inviolable theory is what Postmodern thinkers oppose. The protagonists of Postmodern thought do not believe in the validity of the "construction" of the "standard" scientific edifice, the "standard" that has been compiled by the modernist generation. He sees that standard as too rigid and too schematic to be unsuitable for looking at a much more complicated reality.

## 2. METHODS

This research uses normative legal research methods (*Normative Legal Research*) with a qualitative approach. Normative legal research is research that is carried out by examining literature materials or secondary data as basic materials to be researched by conducting a search of regulations

<sup>2</sup> Bambang Sugiharto, 2016, *Postmodernism: Challenges for Philosophy*, Cet. 11, Kanisius Publishers, Yogyakarta, p. 27-28.

<sup>3</sup> *Ibid*, p. 31.

<sup>4</sup> *Ibid*, p.47.

<sup>5</sup> Harun Hadiwijono, 1980, *Sari Sejarah Filosof Barat 2*, Kanisius Publisher, Yogyakarta, p.110.

and literature related to the problem being researched [5].<sup>6</sup> The normative legal research method was chosen because this research focuses on theoretical analysis of the concept and development of postmodern legal theory and its relevance in the Indonesian legal system.

This research also uses types and sources of legal materials consisting of primary, secondary, and tertiary legal materials. Primary legal materials, in the form of relevant laws and regulations, include: Law Number 7 of 2017 concerning General Elections, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System; 2) secondary legal materials, in the form of textbooks, scientific journals, and academic articles that discuss postmodern legal theory, legal philosophy, and the development of critical legal thought; 3) tertiary legal materials, in the form of legal dictionaries, encyclopedias, and credible internet sources to support conceptual understanding.

The collection of legal materials in this study is carried out through library research by collecting, reading, and recording and processing research materials relevant to the research topic [6].<sup>7</sup> A search was carried out on literature both in print and electronic form that discusses postmodern legal theory, schools of critical legal thought, and legal developments in Indonesia.

### 3. RESULTS AND DISCUSSION

#### 3.1 Currents of Thought in the Development of Postmodern Legal Theory

##### 1. Development of Postmodern Legal Theory as a Reaction to Modern Legal Theory

Every change in human thinking patterns is correlated with changes in the development of needs in each era. As explained earlier, Postmodernism was born out of the failure and obsolescence of the ideals of the modern age. The Modern Age with some of its thoughts and ideals is no longer worthy of being used as a reference, it is no longer worthy of being fought for in its entirety but must be adjusted to the things that are felt now, namely which are not found in the spirit of modernization.

As mentioned earlier, that Postmodernism is considered a response to modernism. Essentially, modernism and postmodernism have differences in the way they approach life. Modernism represented a wide range of cultural movements in the late 19th and early 20th centuries so it encompassed reform movements in art, reading, music, architecture, and the applied arts. This movement is also characterized by efforts to involve science and technology into every aspect of life. Modernism brought reforms in all areas of life including philosophy, commerce, art, and literature with the help of technology. In contrast to Postmodernism (meaning after modernism), it refers to a state that does not have a central hierarchy, is ambiguous, and diverse.<sup>8</sup>

Modernism is based on the use of reason and logical mind to acquire knowledge. On the other hand, postmodernism opposes the use of logical thinking. Thinking during the postmodernism era was based on an unscientific basis and an irrational thought process in reaction to modernism. The hierarchical and organized nature and determination of science and technology marked modernism. In contrast, postmodernism is based on anarchism, non-totalitarianism, and uncertainty. The approach of modernism is objective, theoretical, and analytical; While the postmodernism approach is based on subjectivity. Another fundamental difference between modernism and postmodernism is that modernist thought revolves around the search for abstract truths in life, while postmodernist thinkers believe that there is no universal truth. Modernism tries to establish a coherent worldview while postmodernism seeks to eliminate the distinction between high and low status. Modernist thinking believes in learning from past experiences and trusting texts that tell the past. On the other hand, postmodernist thought opposes every truth in a text that tells of the past and renders it useless in the present.

<sup>6</sup> Soerjono Soekanto and Sri Mamudji, 2001, *Normative Law Research: A Brief Review* of Raja Grafindo Persada, Jakarta, p. 13

<sup>7</sup> Soerjono Soekanto, 1986, *Introduction to Legal Research*, UI Press, Jakarta, p. 52.

<sup>8</sup> Anonymous, 2026, "Difference Between Modernism and Postmodernism", URL: <https://www.amazine.co/22336/perbedaan-antara-modernisme-dan-postmodernisme/>, accessed on January 1, 2026.

## 2. The Influence of Deconstructivism, Relativism, and Pluralism

In an effort to map the area of Postmodernism, there are three basic phenomena that are the backbone of the postmodernist thought movement which is termed as the "fundamental structural characteristics of Postmodernism thought", namely: Deconstructivism, Relativism, and Pluralism. The three fundamental structural characteristics of Postmodernism thought have a comparison of differences in thought with each other that can be described under this discussion.

First, Deconstructivism in which the postmodernism era wants to see a social phenomenon, a religious phenomenon, reality as it is, without having to be confined by basic assumptions or standard theories and standards created during the modernist period. Therefore, the construction of buildings or scientific buildings that have been painstakingly built by the modernist generation want to be changed, improved, and perfected by postmodernist thinkers. This term is known as "*deconstructionism*", which is an attempt to re-question established theories that have been built by the modernist mindset, to then seek and formulate theories that are more relevant in understanding the reality of society, the reality of religion, and the reality of nature that is developing today.<sup>9</sup>

Second, Relativism, which is a manifestation of Postmodernism thought in terms of cultural realities (values, religious beliefs, traditions, culture and others) is reflected in the theories developed by the discipline of anthropology. In the view of anthropologists, no culture is the same and built on each other. Cultural values are obviously very diverse according to historical, geographical, demographic backgrounds and so on. From this it appears that cultural values are relative, in the sense that one culture cannot be equated with another. This is in accordance with the postmodernism line of thought, namely that the area of culture, language, way of thinking and religion is highly determined by the values and customs of each one. From this it is clear that the thinkers of Postmodernism consider that everything is *relative* and should not be absolute, because it must take into account existing situations and conditions.<sup>10</sup>

Third, namely the accumulation of the characteristics of Postmodernism thought, namely pluralism. The era of pluralism has actually been known by many nations since ancient times, but the picture of the era of pluralism at that time has not been understood as much as it is now, the era of cultural pluralism is increasingly lived and understood by many people wherever they are. The existence of cultural plurality such as: religion, race, economy, social, ethnicity, education, science, nation, state, and politics is a reality.<sup>11</sup>

The perspective of postmodernism legal theory makes the reality of pluralism the basis for understanding the truth. La affirms that whatever we consider to be true and the way we say the truth, depends very much on the reality of pluralism in our society. Based on this assumption, the postmodernists stopped the modernists' efforts to search for absolute, universal and permanent truth. They focus on "what is considered right in a particular pluralistic society or community". They affirm that the truth of the basic rules is for the welfare of all the diverse societies in which we are. With this emphasis, postmodern societies tend to be a communal, not individual, society.

## 3.2 The Influence of Legal Realism and *Critical Legal Studies* in Postmodern Legal Theory

### 1. The Influence of Legal Realism

The school of legal realism interprets the essence of law as a manifestation of the symbolic meanings of social actors as seen in their interactions<sup>12</sup>. The realists' legal interpretation shows that it is oriented closer to various disciplines, such as sociology, anthropology, psychology and economics than to the nuances of philosophy. By investigating social factors based on this approach, it is possible to synchronize between what the law wants and the facts of social life in the hope that

<sup>9</sup> Amin Abdullah, 2004, *Kalam Philosophy in the Era of Postmodernism*, Pustaka Siswa, Yogyakarta, p. 99.

<sup>10</sup> *Ibid*, p. 103.

<sup>11</sup> *Ibid*, p. 104.

<sup>12</sup> I Dewa Gede Atmadja, 2013, *Philosophy of Law: Thematic and Historical Dimensions*, Setara Press, Malang, p.14.

the law can work effectively.<sup>13</sup> Legal realism is a school that does not agree with the existence of precedents (the existence of a bond between the judge's decision and the judge's previous decision in dealing with similar issues). It does not use the law formally, but uses the behavior of social actors that actually occur to judge a case. So that this school automatically does not believe in the existence of legal certainty that only concerns the ideal of the law.

Understanding legal realism views the law as an advocate views the law. For an advocate, the most important thing in looking at the law is how to predict the outcome of a legal process and what the future of the legal rule will be. Therefore, in order to accurately predict the outcome of a legal decision, an advocate must also consider past legal decisions to then predict future decisions. Legal realism considers itself as a "movement" rather than a school or school, because many studies are conducted to bring law and society closer together.

## 2. The Influence of the Critical Legal Studies Stream

Since the end of the modern legal era. The development of thought in the school of law is considered to have reached its peak after legal realism made many observations on social rules that are of concern in the structure of society. Departing from social thought and turmoil, *critical legal studies* is influenced by three pillars, namely: the new leftist teachings of the Frankfurt school, postmodern legal theory, and the school of legal realism. The teachings affirmed through *critical legal studies* are dominated by criticism of thinking that glorifies objectivism, formalism and positivism.

This school of *critical legal studies* has several common characteristics as quoted by Munir Fuady from the opinion of Peter Fitzpatrick:<sup>14</sup>

- a. This school of *critical legal studies* criticizes the law that applies in fact in favor of politics and is not neutral at all.
- b. This school of *critical legal studies* criticizes laws that are loaded and dominant with certain ideologies,
- c. This school of *critical legal studies* has a great commitment to individual freedom with certain limitations, therefore this school has a lot to do with the emancipation of humanity.
- d. This teaching of *critical legal studies* lacks trust in abstract forms of truth and truly objective knowledge. Therefore, the teachings of *critical legal studies* strongly reject the teachings in the school of positivism,
- e. This school of *critical legal studies* rejects the distinction between theory and practice, and also rejects the distinction between facts and values, which are characteristic of liberal thought. Thus, this school rejects the possibility of pure theory, but emphasizes more on theories that have the power to influence practical social transformation.

Because the school of *critical legal studies* is influenced by the new leftist teachings of the Frankfurt school, this school conducts a study of distrust of the rules and regulations made by the state. The legislature drafted laws influenced by two interests between the relationship of power and the economy. In later legislation, the legal language was deliberately created that was "biased", and could be interpreted based on the interests of the rulers. The judge interprets the articles based on his own will. Because for *critical legal studies*, it is difficult for a judge to be separated from political and psychological influences and symptoms when making a decision in a case in court

From a theoretical point of view, this school of *critical legal studies* is more of a critique of objectivism and formalism. The mistake of objectivism, putting too much trust in the applicable legal material, namely in the form of laws, cases, and legal ideals that are acceptable to the community can maintain the human relations of the community. In fact, what happened was that the law was

<sup>13</sup> Darji Darmodiharjo, and Shidarta, 2002, *Principles of Legal Philosophy: What and How of Indonesian Legal Philosophy*, Gramedia Pustaka, Jakarta, p. 136.

<sup>14</sup> Munir Fuady, 2003, *Critical Legal Flow: The Paradigm of Legal Helplessness*, PT Citra Aditya Bakti, Bandung, p. 5.

manipulated for the benefit of the economy and the ruler alone, because it was proven that the law was born only to suppress minority groups and create divisions in solidarity in the community. The next view promoted by legal formalism is that doctrines are created through methods of analysis that are strictly and sterile from political influence. However, in the process of applying the law, it is difficult to avoid the element of "creativity". When law and doctrine are influenced by creativity, the basis on which it is based is much more controversial and the implications are very limited. The theory of *critical legal studies* describes the differences, showing the relationship between another constitutional discourse and another general discourse. The theory of *critical legal studies* is interested in a constitutional discourse that dominates, strengthens, and unifies discourses in terms of other rules.

### 3.3 The Relevance of Postmodern Legal Theory in Indonesia

The idea of postmodern legal theory for the legal community in Indonesia itself is still considered new. This transition to postmodern thinking has hit Indonesia, especially in the field of law. The transition stage developed from modernism to postmodernism. It can be understood that the law in Indonesia is in a transition period marked by the struggle of legal and political forces that try to dominate both domestically and internationally.

The use of methods offered by postmodern legal theory helps in providing an understanding of the state of legal development in Indonesia. This is emphasized by the opinion of Ifdal Kasim as sourced from the view of Roberto Mangabeira Unger who stated:

Legal studies of postmodern legal theories such as *critical legal studies*, I think are very relevant for us to use in analyzing legal processes in Indonesia, in analyzing the processes of formation and application as well as to analyze a legal doctrine and how it has functioned to legitimize a certain social system or policy. I think it is indeed necessary to have an analysis that can reveal the *hidden political intentions* behind the various concepts, doctrines and legal processes here.<sup>15</sup>

Usage Postmodern legal theory to analyze the law in Indonesia can be done on the development of the law today. It is also necessary to note that when using the Postmodern legal theory in analyzing the legal situation in Indonesia, it is still necessary to pay attention to certain factors that are distinctive and may only exist in Indonesia, such as the factors of cultural values of the Indonesian people.

First, it is associated with the development of law in Indonesia: For example, with regard to the legalization of same-sex marriage, it will certainly be difficult to conduct a critical study in the application of postmodern legal theory to the possibility of forming laws and regulations that legalize same-sex marriage (homosexual or lesbian) in Indonesia. In contrast to Western countries that generally legalize same-sex marriage with the principles of freedom and liberalism, the obstacle to such studies in Indonesia certainly lies in the beliefs of the Indonesian people who generally still consider that homosexual and lesbian behavior is contrary to moral and religious values. Thus, in using this method of postmodern legal theory, contextualization considerations are needed in the development of the legal issue in question.

From the description of the previous discussion, it can be examined that one of the essences of the view of postmodern legal theory is to look critically at existing law as a product of political power, both in the sense of superior and inferior political power. In addition, because postmodern legal theory is a political product, it will always be partial, not neutral, and not objective. This kind of law in the concept of postmodern legal theory thinking certainly cannot be taken for granted, so there must be an effort to put the law back to its true essence, which is not just the fulfillment and protection of the needs of the strongest groups. This effort is carried out by delegitimizing existing legal norms or doctrines.<sup>16</sup>

<sup>15</sup> Ifdal Kasim, "Considering 'Critical Legal Studies' in Legal Studies in Indonesia", *Journal of Transformative Social Sciences*, Edition 6, Year 2000, Jakarta. (Ifdal Kasim makes this writing as a translation of the work of the author Roberto Mangabeira Unger, 1986 *The Critical Legal Studies Movement*, Cambridge Harvard University Press, p. 20)

<sup>16</sup> Adji Samekto, 2005, *Critical Legal Studies, Criticism of Modern Law*, Citra Aditya Bhakti, Bandung, p. 80.

A close example of this method of delegitimization is in "feminist legal theory". This theory is considered to be part of the conception of postmodern legal theory that is influenced by the school of *critical legal studies* and has received a lot of attention in this era of globalization around the world, including by feminist activists in Indonesia today. In this theory, as the name implies, it is considered that the law is masculine (male) and always prioritizes the interests of men as the superior party so that the female side is positioned as the inferior party. Feminist legal theory then tries to legitimize the rules that degrade women's position in the law, it is observed that there are very many legal rules that are not in favor of women. It can be seen that these rules are made unilaterally by the most powerful group, the men. From that, the proponents of feminist theory delegitimize the existing law to accommodate women's rights in the legal field.<sup>17</sup>

In addition, it is associated with legal developments in Indonesia, at the time of the enactment of Law Number 3 of 1999 concerning Elections (the latest amendment is Law Number 7 of 2023 concerning Elections), containing provisions on women's quotas in candidacy as members of parliament, which is considered a law that meets the interests of women and represents women's needs. However, this theory by feminist legal theory is interpreted differently by considering it as a regulation that contains implicit gender bias, in addition to being a construction of a model of male dominance and proving that there are very limited choices for women. As is known, Article 65 paragraph (1) of the Election Law, states that there is a quota obtained by women in elections. At the time of the formation of the regulation, many urges and demands came from women's institutions or groups to include an article on women's quotas in the regulation, considering the importance of women's experiences and voices appreciated through (members) of parliament.

Another study is departing from progressive legal theory adhering to the conception of postmodern legal development in Indonesia. In Indonesia, which adheres to positivism, it turns out that it cannot apply this school absolutely. The legal theory that opposes the absolute applicability of positivism is the Progressive Legal Theory. This legal theory was popularized by Prof. Satjipto Rahardjo, a lawyer from Diponegoro University. The emergence of the progressive legal paradigm, according to Prof. Satjipto Rahardjo, is based on the reason that positive laws that govern social life are not comprehensive, namely there are still many mistakes in their making, even defective after they are promulgated.

Sajipto Rahardjo thinks that progressive interpretation understands the legal process as a process of liberation from an ancient concept that can no longer be used to serve today's life.<sup>18</sup> It is further explained that progressive law and progressive interpretation adhere to the paradigm of "law for man", so that law guides and serves society thus requires a balance between "static and dynamic" between "regulation and open road". For this reason, the law cannot always look back but to the present and the future, that is the essence of progressive law and progressive legal interpretation.

Progressive legal theory thinking can be seen in the establishment of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). Treating children and adults cannot be equated in criminal law enforcement. In Article 1 number 7 of the SPPA Law, it is stated that diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal court. Diversion is a renewal in the juvenile criminal justice system. A transfer that involves a transfer from the judicial process to community service assistance when carried out on a formal and informal basis in several stages of law enforcement. Such service practices need to be prioritized to avoid negative consequences in the administration of juvenile justice, because children's involvement in the judicial process has actually undergone a stigmatization process.

<sup>17</sup> Niken Savitri, 2008, *Women's Human Rights Critique of Feminist Legal Theory Against the Criminal Code*, Refika Aditama, Jakarta, p. 27

<sup>18</sup> Satjipto Rahardjo, 2009, *Progressive Law A Synthesis of Indonesian Law*, Genta Publishing, Yogyakarta, p. 128.

## CONCLUSION

1. Postmodern Legal Theory and its relationship with various backgrounds of thought currents that can be identified based on this review that postmodern legal theory is a form of theoretical reflection or renewal of legal theory that is critical and dynamic in nature. Postmodern legal theory strives continuously to seek a novelty, experimentation, and revolution of life, which opposes and rejects any form of totality or narrative thought derived from the development of modernized thought. This is because the attention of postmodernism legal theory is very much influenced by the recognition of pluralistic individuals (pluralistic society/communities) as the subject of the main will in social reality.
2. The thought of postmodern legal theory has greatly influenced the thinking of legal experts in Indonesia. Postmodern legal theory ideas are used to understand, study, construct, and apply law in Indonesia, which is complex and wants legal authority to be superior to conventional law in its application today. This is manifested in the form of theoretical analysis of the legal order, values, and legal ratios, which can be used by jurists, judges, and lawmakers.

## SUGGESTIONS

Regarding the implementation of the concept of postmodern legal thought, jurists, judges, and lawmakers need to be careful in deconstructing the law to pay attention to the contextualization of the law in question. This is because legal problems or gaps can always occur along with rapid changes in time and social realities that develop in society. It is hoped that the advantages of postmodern legal theory can be implemented in a relevant way in Indonesia in solving legal problems and studying the development of existing legal dynamics.

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