

A JUDGES' ROLE IN PURSUING JUSTICE: OLIVER WENDELL HOLMES' SOCIOLOGICAL JURISPRUDENCE PERSPECTIVE

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ABSTRACT

Judges, deemed God's agents for law enforcement globally, are the focus of this study, which analyzes their pivotal role in establishing justice within society. This examination adopts Oliver Wendell Holmes' Sociological Jurisprudence theory, advocating the perception of law as a mirror reflecting societal values and norms. Holmes emphasizes that judges must comprehend the social and economic context to apply the law effectively. Their interpretation should align with societal objectives, ensuring legal decisions resonate with contemporary societal realities. Judges must possess the acumen to adapt to societal shifts and discern the social implications of their rulings. This research delves into how Holmes' ideologies influence law enforcement, human rights protection, and the prevention of legal transgressions. Additionally, it traces Holmes' theories in the context of the Indonesian Judicial Power Act. Employing a juridical normative approach with a philosophical foundation, this study demonstrates the vital role of judges in upholding societal values of justice, corroborating Holmes' Sociological Jurisprudence theory. By considering the societal context, judges contribute to the development of a legal system that is equitable and responsive to societal transformations. This investigation also validates Holmes' theories' integration within the Indonesian Judicial Power Act.

A. INTRODUCTION

The development of a society is a complex and dynamic process that continues throughout the history of human civilization. In this process, a society undergoes social, economic, cultural, and political changes that directly affect the system of values that exists within it. When a society becomes a state, it gives power to the state.¹ This is because society is the core of a nation, and its primary purpose is to improve the well-being of its people by meeting basic needs and upholding the principles of justice.² One important aspect of the development of a society is the values of justice that form the foundation of the legal system and social justice. Justice is the underlying principle of the governance of a fair society, and these values play a key role in shaping the social and legal structure of a community. As a society develops, values are often evolved to reflect changes in social

1 Ahmad Fadlil Sumadi., Hukum dan Keadilan Sosial dalam Perspektif Hukum Ketatanegaraan, *Jurnal Konstitusi*, Vol. 12, No. 4, 2015

2 Dara Pustika Sukma., Perkembangan Hukum Di Indonesia Dan Korelasinya Dengan Sosiologi Hukum, *Jurnal Inovasi Penelitian*, Vol. 3, No. 12, 2023

norms, human rights demands, and the needs and aspirations of developing societies.

In its development, societies have faced diverse challenges, such as conflict, technological change, globalization, urbanization, and demographic change. These challenges often raise critical questions about how societies can uphold the values of justice in this ever-changing context. These questions also raise the importance of the role of institutions such as the judiciary in ensuring that such values remain relevant and enforced. Because basically, law enforcement in statehood life is carried out by the government (executive organs) and by the courts (judicial organ).³ At the same time, legal theories, such as the Sociological Jurisprudence theory presented by Oliver Wendell Holmes, have provided valuable insights into the role of judges in digging justice in developing societies. Basically, sociological jurisprudence wants to reflect the balance between written law and living law, which means recognizing the importance of society in lawmaking.⁴ Holmes argued that the law should reflect the social realities and values that live in society. In this context, research into the role of judges in applying the values of justice in society is becoming increasingly relevant and important. This research can help to understand how social developments affect the concept of justice, as well as how judges play an important role in refining and adapting such values in a changing legal framework. This research also has important relevance in the context of the Law on the Power of Justice in Indonesia, where in this study will be traced to the existence of Holmes' thinking mentioned in the Law of Justice of Indonesia.

Therefore, this study aims to analyze the role of judges in the context of excavating the values of justice in society, mainly by adopting the theoretical view of Sociological Jurisprudence that understands the law as a reflection of social values that are then traced to the existence of such thought in the Law of the Power of Justice of Indonesia.

B. RESEARCH METHODS

This research used a normative legal research approach. Whether library studies or relevant literature obtained from primary, secondary, and tertiary law sources are the primary sources in the research.

C. RESULTS AND DISCUSSION

1. An Overview Of Oliver Wendell Holmes And His Thoughts On Sociological Jurisprudence

Oliver Wendell Holmes' background is a key element in understanding his role and thinking in American history. Born on March 8, 1841 in Boston, Massachusetts, he came from a respectable family, with his father, Oliver Wendell Holmes Sr., a famous doctor, professor,

3 Anna Triningsih., Pengadilan Sebagai Lembaga Penegakan Hukum (Perspektif Civil Law Dan Common Law), *Jurnal Konstitusi*, Vol. 12, No. 1, 2015

4 Dominikus Rato, Fendy Setyawan, and Koko Roby Yahya., Aliran Hukum Sociological Jurisprudence Dalam Persepektif Filsafat Hukum, *Jurnal Insan Pendidikan Dan Sosial Humaniora*, Vol. 1, No. 1, 2023

and poet. His family held a strong influence in the intellectual and cultural spheres. Holmes graduated from prestigious schools, including Harvard College and Harvard Law School.⁵ Military experience in the American Civil War also influenced his thinking about conflict, the law of war, and the importance of the constitution. After the war, Holmes began his legal career, working as a lawyer, a law lecturer, and was later appointed as a judge at the Massachusetts Supreme Judicial Court. In 1902, he reached the peak of his law career when he was appointed to the Supreme Court of the United States, where he played an important role in the development of American legal thinking.⁶ Holmes is known for his brave thinking and breakthroughs in jurisprudence, including his realistic view of the law and his contribution to the understanding of "Sociological Jurisprudence." In his tenure at the Supreme Court, he achieved fame as a liberal judge who tended to protect individual rights and civil rights. His contribution to important decisions, such as the "Clear and Present Danger" doctrine in the *Schenck v. United States* case, has left a strong mark in the history of the United States Constitution.⁷ His entire background reflects a key role in the development of modern law and legal thinking in the United States.

Oliver Wendell Holmes' thinking of Sociological Jurisprudence, which is also closely related to the thinking of legal realism, is one of the most important concepts in the history of legal thought.⁸ Holmes highlights the difference between the positive law and what he calls "living law." Written law is the law that is listed in laws and regulations, which serves to provide the structure and order of law. Holmes did not ignore the importance of written law, and he acknowledged the need for the legal certainty provided by such law. The rule of law is not the focal point of a weighty decision. And besides, the real truth is not in the law, but in the reality of life. This is the point of defeat of the judge's freedom theory that Holmes put forward.⁹

However, Holmes also argues that written law cannot be detached from existing social realities. He observed that social values and norms changed over time, and therefore, the law must also be dynamic and adaptive. This is what Holmes calls a "living law," an understanding of the law that involves recognition of the vital role of society in shaping the law and changing social norms. Sociological Jurisprudence Holmes emphasizes that judges as law enforcement officers must understand the social context in which law is applied. They have to dig the values and

5 Edward White., *Oliver Wendell Holmes, Jr.*, Routledge, The Supreme Court Justices, 1994

6 Sheldon Novick., *Honorable Justice: The Life of Oliver Wendell Holmes*, Plunkett Lake Press, 2019

7 Susan Dudley Gold., *Clear and Present Danger: Schenck V. United States*, LLC, Cavendish Square Publishing, 2014.

8 Titon Slamet Kurnia., Menguji Ketangguhan Realisme: Kritik Terhadap Putusan Mahkamah Konstitusi Nomor 14/PUU-XI/2013 Pasca Pemilu Serentak 2019, *Jurnal Konstitusi*, Vol. 19, No. 1, 2022

9 Yoyon M. Darusman and Bambang Wiyono., *Teori Dan Sejarah Perkembangan Hukum*, Pamulang, Unpam Press, 2019

social norms that affect the legal cases they face. In this case, the judge not only applies the law mechanically, but also plays a role in shaping and interpreting the law according to the needs of the society at the time. Sociological Jurisprudence emphasizes a legal view that shows a very careful compromise between two key elements. First, there is a recognition of the importance of written law, which plays a role in legal certainty. Written law provides the framework and rules necessary to ensure that the legal system has a clear foundation. On the other hand, Sociological Jurisprudence also respects the concept of living law, which emphasizes that the law can not only be seen as a set of rules that exist in the law, but also as a result of the influence and active participation of the public in the process of lawmaking. This concept recognizes that the law must not only follow social changes and social values, but must also enable public participation in the legal process. Thus, Sociological Jurisprudence creates a careful balance between the need for legal certainty and the role of the public in the legal process.¹⁰

This approach has some important implications. First, it emphasizes that the law should not be seen as something static or rigid. Rather, the law must adapt to social change and growing values in society. Second, this approach sees the law as a tool for achieving social justice, not just as a means order. It describes the role of judges in serving the interests of the public and achieving justice in legal decision-making. Holmes' thinking of Sociological Jurisprudence has provided an important foundation in the development of modern understanding of law. It has also influenced the role of judges balance between performing the functions of legal certainty and ensuring that law reflects the values of justice in a changing society. This concept has become an integral part of the development of law and the justice system in modern society. Basically, the Sociological Jurisprudence states that a good law is a law that is in line with the law that applies in society. This stream clearly separates the positive law, that is, the law contained in the law, from the law applied in public life. The emergence of this stream was the result of a process of debate between the stream of legal positivism, which emphasized more on written rules, and the historical stream, which stressed more on historical developments and social aspects of law. In its attempt to strike a balance, Sociological Jurisprudence seeks to understand that law not only depends on the texts of law, but must also reflect social developments and the needs of society. This stream emphasizes that the law should be responsive to the changing dynamics of society.¹¹

10 Marsudi Dedi Putra., Kontribusi Aliran Sociological Jurisprudence Terhadap Pembangunan Sistem Hukum Indonesia, *Likhitaprajna, Jurnal Ilmiah*, Vol. 16, No. 2;

11 Nadir And Win Yuli Wardani., Percikan Pemikiran Tiga Aliran Hukum: Sejarah Hukum, Sociological Jurisprudence, Dan Legal Realisme Dalam Khasanah Hukum Indonesia, *Jurnal Yustitia*, Vol. 20, No. 1, 2019

2. The Importance Of Applying Sociological Jurisprudence

Sociological Jurisprudence is one of the currents in jurisprudence that describes law as an entity that is not separate from society, but as a result of the influence of values and social realities that exist in society.¹² Therefore, this stream states that in order for the law to be respected and enforced, the law must not be contrary to the values of society. According to the current sociological jurisprudence, a good law must be a law that corresponds to the law that lives in society. This stream clearly separates the positive law from the law that exists in society (the living law).¹³ In other words, the law must reflect and support the values of society in order to be effective and acceptable to individuals and groups in society. The concept was first introduced by Oliver Wendell Holmes Jr., a famous judge and legal thinker from the United States in the early 20th century. The Sociological Jurisprudence approach sees law as a developing phenomenon in a social context. The application of Sociological Jurisprudence to the legal system has the utmost importance. It allows the law to be more relevant, responsive, and fair in the face of changes in society. Here are some more comprehensive points on the importance of the application of Sociological Jurisprudence:

a. Contextual justice

Sociological Jurisprudence recognizes that law must take social change and values of society into account. It ensures that legal decisions are not only based on a hard legal basis, but also reflect the social context and a greater sense of justice. It becomes relevant in assessing complex legal situations, such as cases involving human rights issues, women's rights, and emerging social issues.

b. Responsive to Change

Society and social values are constantly evolving. Sociological Jurisprudence allows the law to change and evolve with these changes. This is crucial because it provides flexibility in responding to the new challenges that may arise in society, be it in technology, ethics, or other things.

c. Protection of Human Rights

In the context of human rights, the Sociological Jurisprudence ensures that the law not only focuses on the fulfilment of fundamental rights, but also takes into account developments in the understanding of the human rights. It could help better protect individual rights, including the rights of minority groups that may be marginalized in society.

d. Increasing Social Justice

The application of Sociological Jurisprudence can help create a fairer legal system by considering the social implications of legal decisions. It allows the law to play an active role in helping to

12 Nabilah Apriani And Nur Shofa Hanafiah., Telaah Eksistensi Hukum Adat Pada Hukum Positif Indonesia Dalam Perspektif Aliran Sociological, *Rewang Rencang: Jurnal Hukum Lex Generalis*, Vol. 3, No. 3, 2022

13 Hotma P. Sibuea And Waty Suwarty Haryono., Hukum Indonesia Dewasa Ini Ditinjau Dari Aliran Filsafat Hukum, *Jurnal Esensi Hukum*, Vol. 2, No. 1, 2020

overcome social inequality and injustice, helping to create more equitable societies.

e. Realization of Responsive Law

Laws based on the principles of Sociological Jurisprudence are more likely to respond to the needs and aspirations of the society. For example, in the context of technology and the Internet, Sociological Jurisprudence allows the law to adapt quickly to address issues such as privacy and data security that are rapidly evolving.

f. Adjustment of Justice Values to Positive Law

The principles of Sociological Jurisprudence have been integrated into the positive law of many countries. It shows that this concept is important in the development of modern legal systems. It also reflects the awareness of the need for more adaptive laws in responding to changing societies.

By applying Sociological Jurisprudence, the legal system can fulfil its basic objectives of achieving justice, protecting individual rights, and shaping better societies. This allows the law to play a more active role in the formation and improvement of society in accordance with the development of the times. The application of Sociological Jurisprudence in Indonesia has great significance in the development of law and the judicial system. This concept has become important because it helps the law to better understand and respond to the social diversity that exists in Indonesia, which covers a wide range of cultures, religions, and ethnicities. In addition, Sociological Jurisprudence also plays a role in the protection of human rights by enabling law to be more responsive to changes in understanding and protecting human rights. Recognition of local values and traditions is also an important aspect, given the cultural diversity that Indonesia has. In addition, the concept helps in creating laws that support sustainable social and economic development, as well as in addressing issues of persistent social inequality and injustice. The application of Sociological Jurisprudence also allows the law to adapt to ongoing social change, thus remaining relevant and effective. In the framework of Sociological Jurisprudence, there is a view that law should not be seen as a tool of coercive and monopoly power, which can lead to conflict and resistance. Rather, the law should be seen as a reflection of a set of values that have long existed in society. In this way, the law will be more likely to be accepted and respected by the people themselves, because it reflects the values that have been adhered to. This will make the law more effective in performing its functions and retain its authority in the eyes of the people. With this approach, the law becomes more than just rules enforced; the law reflects the values and norms that live in society, and it can help create a more harmonious and more accepted legal system for citizens.¹⁴ Thus, this concept creates harmony between

14 Wempy Setyabudi Hernowo, Zaid, and M. Aufar Saputra Pratama Erawan., Peran Sociological Jurisprudence Dalam Menciptakan Keefektivitasan Hukum Melalui Living Law, *Legalitas: Jurnal Hukum*, Vol. 13, No. 1, 2021

law and social reality, ensuring that law is not only a formal rule, but also reflects the needs and aspirations of Indonesian society.

3. The Sociological Jurisprudence In The Law Of Judicial Power

Sociological Jurisprudence in the Law of the Judiciary refers to an approach in the legal setting that takes into account social factors and the reality of society in the judicial system. The Indonesian Law on the Power of the Judiciary is regulated by the Law No. 48 of 2009 on the power of the judiciary. In the framework of the Law of the Judiciary, Sociological Jurisprudence defines how law is applied and interpreted by judges, as well as how the role of the judiciary should reflect and accommodate the development and needs of society. This approach reflects the understanding that the law cannot be separated from the social context and the society that uses it. Therefore, when judges make decisions, they must consider the social implications, values, and developing norms in society. Thus, the Sociological Jurisprudence in the Law of Judicial Power helps maintain greater justice and is responsive to developments in society. It also indicates that the judiciary must be open to social dynamics and able to adapt to changes in society. It aims to ensure that justice can deliver better justice and meet the demands of an ever-changing society. In the context of the Law of the Rule of Justice, Sociological Jurisprudence is the foundation for understanding and applying the law that is more in line with the social realities and values that exist in society. Every society has a living law that has evolved and grown since society was formed. The living law is born of the social coexistence that is materially practiced continuously and then the society obeyed it on the basis of moral duty, not by coercive of the sovereign. The living law can come from customs, religions, and so on. That is why it is a misguided view that states that in traditional societies there are no rules of conduct called laws.¹⁵ Then from that, the living law exists in Indonesian society. So, it's necessary to reaffirm the protection of that thing. This is closely related to Sociological Jurisprudence as discussed earlier.

As to the existence of Sociological Jurisprudence in the Law of the Judiciary in Indonesia, it will be found in article 5, paragraph (1) of the Law No. 48 of 2009 on the judiciary, which affirms that "Judges and Constitutional Judges are obliged to dig, follow, and understand the values of law and the sense of justice that exists in society." Article 5 paragraph 1 of the Justice Law is a provision that reflects the theoretical principles underlying the justice system in a State. Below, the researchers will provide additional theoretical explanations that may be contained in the article:

a. Division of power (Separation of Powers)

This article reflects the basic principle of the division of power in government. This theory is found in classical political thought,

15 Syofyan Hadi., *Hukum Positif Dan The Living Law (Eksistensi Dan Keberlakuannya Dalam Masyarakat)*, *Dih Jurnal Ilmu Hukum*, Vol. 13, No. 26, 2017

especially by Montesquieu, who emphasized that state power should be divided between three branches of government: executive, legislative, and judicial. This division is aimed at preventing abuse of power and maintaining a balance of power between the branches.

b. Independence of the Judiciary (Judicial Independence)

The independence of the judiciary is an important theoretical principle that emphasizes that the judicial system must operate independently and free from executive or legislative interference.

c. Principles of Law and Justice

This article reflects the principles of law and justice in the judicial system. These principles include the protection of human rights, justice in judicial processes, the principle that the law must be enforced, and the fair treatment of all individuals under the law.

In practice, Article 5 (1) of Law No. 48 of 2009 on the Power of the Judiciary is the basis for the functioning of the judiciary in a State. It ensures that theoretical principles such as the division of power, the independence of the judiciary, law and justice can be implemented effectively. Thus, Sociological Jurisprudence has been embedded in the Law No. 48 of 2009 on the Power of the Judiciary.

D. CONCLUSION

Judges have an important role to play in digging up the values of justice in society, by focusing on the sociological theoretical jurisprudence perspective introduced by Oliver Wendell Holmes. Some important points that can be concluded include how important the judge's view is in understanding the relationship between law and society. Holmes stressed that judges should see the law as a tool that can be used to wider social goals. In this framework, judges are also expected to understand the social and economic contexts that affect the enforcement of the law. It helps judges make decisions that are more relevant to social reality and foster justice in society. The influence of Sociological Jurisprudence theory is also visible in law enforcement, protection of human rights, and efforts to prevent violations of the law. It creates a strong foundation for the development of a more equitable legal system capable of responding to changes in society.

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