The sociology of law in the context of islamic legal scholarship in Indonesia

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Abstract

This article examines the sociology of law in the context of Islamic legal scholarship in Indonesia. As a method, the sociology of law has basically been employed by Islamic legal scholars in Indonesia. However, the study of Islamic law is generally under the discipline of Islamic studies. In fact, although Islamic studies in Indonesia has recently utilised social sciences methods, the popularity of this approach is low compared to normative and textual types of Islamic legal studies. In addition, the trend of positivism which has been a general feature of Islamic legal studies has significantly contributed to this situation. In the light of this context, this article offers a view that the adoption of the sociology of law in the context of Islamic legal studies scholarship in Indonesia will serve as an alternative. It is expected that Islamic legal studies will be more multidisciplinary in nature and be based on more tacit social realities in substance.

Keywords: *Sociology of law, Islamic law, multi-disciplines, positivism.*

Introduction

This article examines the sociology of law as a research method in law and its application in the context of Islamic legal scholarship in Indonesia. It preliminarily elaborates a brief history of the sociology of law, its fundamental features, and how it operates in the context of a certain society. To date, the term Islamic legal sociology has indeed been frequently used by many scholars in Indonesia. Nevertheless, its comprehensive definition and how it operates in Islamic legal studies have not yet been addressed and posed numerous fundamental issues.

It is of importance to briefly discuss fundamental concepts of the sociology of law and the relationship between law, jurisprudence or the science of law, and sociology. The elaboration of these all three is a sine qua non prior to discussing the relevance of the sociology of law as a method in legal studies and how it is adopted by legal scholars in Indonesia.

Law, Sociology, and the Science of Law

The relationship between law and society is an interestingly intriguing subject to study. In a loosely basic sense, society is a group of distinct individuals. Each distinct individual also has distinct behaviours, impulses, basic needs, values, principles, and views. Bearing this in mind, therefore, each individual will behave and act accordingly–following their tendencies, impulses, basic needs, values, principles, and views. Factors underlying the emergence of those differences possibly come from the diversity of their social backgrounds, e.g., social classes, genders, and races. In such a situation, on the other hand, an individual in the group will constantly interact with other individuals. During this interaction, conflict of interests and differences in behaviours and views on principles are inevitable. Hence, it seems natural that it will potentially trigger social conflicts if not managed properly. So as to prevent such a conflict, the law is, therefore, set as a mechanism to manage or control interaction among individuals or groups of individuals in the society. According to Soerjono Soekanto (1988:

2), the law will always be essential in all societies, both traditional and modern ones, despite the disobedience of the society to rules of law.

In addition, a group of individuals or communities naturally will set behavioural agreements that are commonly referred to as customs or conventions. These customs become the binding norms of society that later become law. Nevertheless, an ordinary custom cannot be referred to as law unless it has particular provisos. Gilissen and Gorle (1991: 24-25) list four required provisos for certain customs to be referred to as law: a) the customs must not be individual but rather be shared amongst community members and become part of the community system; b) the customs must concern the norms of dos and don'ts; c) the customs must have binding force, due to its repeated conducts, and thus giving the impression amongst community members that such customs have become natural and normal standards; and d) the customs will be referred to as law insofar as that they are strengthened by the authorities–in other words, the authority's interference is a sine qua non for certain customs to be referred to as law.

Nevertheless, in regard to the fourth proviso, it should necessarily be highlighted that in the discourse of the sociology of law, the relationship between law and authority remains considerably debatable. Besides customs, the law can also manifest in many forms, e.g., written decrees, court rulings, and social institutions' decisions (Soekanto, 1988: 3). Likewise, Talcott Parsons (1962: 58-9) also formulates four necessary conditions for a regulatory system to function as a regulator of social interaction. These conditions are: a) the regulatory system must be able to be the basis for "legitimacy" to achieve or even impose uniformity; b) it must solve any interpretation issues–in other words, it must resolve all different interpretations; c) it must impose sanctions for any deviations or disobedience that occur; and d) it must have jurisdiction to dictate under which circumstances a regulation or a set of complex regulations applies.

Above all, the law has one fundamental legal nature, that is "blind" to all differences occurring at the level of society so as to function comprehensively as an instrument of balance and an archetype of justice (Kerruish, 1991: 1). What then is law? A number of postulates offer different definitions as to what law is. Roger Cotterrell (1992: 46) defines law as a social category of rules in which processes and institutions of creation, interpretation, and enforcement are that of the clearest, authentic, and formal. Based on this definition, the law also refers to social doctrines and rules as interpreted and enforced by state agents in a politically highly organised society. In line with it, Max Weber formulated a classic definition of law. For him, the law is a more organised system of sanctions to avoid actions that lead to the destruction of the social order (Butch, 1992: 5). Hence, law plays various roles in society. Kerruish (1991) elaborates the function of law in society in three contexts, namely law as a system of rules, law as a sine qua non for wisdom, and law as integrity. Law can also serve as an instrument of social change, as a mechanism for integration among various groups in society (Cotterrell, 1992), and as a means of social control.

By considering all these, law principally is, inevitably speaking, a social phenomenon on the one hand (Anleu, 2000: 1) and a social reality comprising values, conventions, and patterns of behaviours related to basic human needs on the other hand (Soekanto, 1988: 4). Defining law as a social phenomenon implicitly indicates the presence of natural factors in law formation. It means that as a social phenomenon, the law can be described as a phenomenon that takes place naturally and evolutionarily along with the development that occurs in society. However, the law is not merely a natural phenomenon *per se*. To some extent, it could be true that law has a natural dimension. Regardless of such a natural dimension, the law is rather a product of human construction, whether it is a social, political, or cultural one (Rahardjo, 2003: 26). Affirming this, George Gurvitch (1947) also writes: "social reality of law is not anywise data obtained through intuition, nor is it a perception born of human senses, but rather a logical construction separated from social reality as an all-encompassing phenomenon."

Since the law is always closely related to society, it is not excessive to say that law principally has other dimensions other than that of law *per se*. On that basis, ergo, a number of academic disciplines emerge from studying law as an integral part of a society, e.g., legal anthropology that seeks to map the relationship between law and culture in a society, legal sociology that studies how social behaviours in society affect the law. The close

relationship between law and society can be seen from legal transformations in society over time. Satjipto Rahardjo (2003), for instance, states that legal transformations always follow social changes in society. Furthermore, society is a legal subject-cum-object, a legal focus-cum-locus; hence, the law is in principle a sociological phenomenon. Eugen Ehrlich asserts that at present and at other times, whenever possible, the central attraction of legal development does not lie in legislation, juristic science, nor in juridical decisions, but in society proper (cited by Burtch, 1992). Besides these two disciplines, there is also another discipline or at least an approach that attempts to map the relationship between law and politics. Donald Black, an American legal sociologist, for example, writes that the relationship between law and politics is extremely close. For him, the law is nothing but an instrument used by the government to exercise social control. Since the law is a social phenomenon, it is fundamentally plausible for social sciences, such as sociology, to share an interest with other sciences in studying and understanding law better. Therefore, the birth of a new discipline commonly known as the sociology of law is inseparable from the dynamics of law and society. However, in its theoretical development, it did not appear in an instant. Instead, it endured myriads of theoretical and methodological controversies.

In academic discourse or epistemology, sociology and law have been part of separately independent disciplines. Sociology is an established discipline with a number of eminent scientists pioneering, developing, evaluating, and ultimately reconstructing new theories in sociology. Whilst new theories continue to evolve, classical ones developed by prominent sociologists, such as August Comte, Emile Durkheim, Max Weber, Talcott Parsons, and Karl Marx, to name a few, are still relevant and echo their relevance to address and describe the current situation of contemporary society. Surely, not all the theories are relevant, but all those key sociologists have outlined fundamental principles that help contemporary society to understand its dynamics concerning various areas of social life. Sociology, thus, is a discipline with a remarkably wide scope, and due to such an immense scope, it is very unlikely to give a satisfying definition that anyone can agree on regarding what the essence of sociology truly is. Nonetheless, one fundamental matter related to sociology is that this discipline studies humans in society in general and social phenomena in specific (Cuff and Payne, 1981). Another postulate explicates that sociology is related to human society. The issues studied include human behaviours and actions in various social contexts, social interactions, social realities and organisations, and social changes and development (Harambalos, 1998: 3).

Similar to sociology, the law is also an independent discipline. Generally, the study of law as an independent discipline is often referred to as "jurisprudence" or "science of law" in the context of Indonesia. Roscoe Pound (1951) defines the science of law as "*a science of social engineering having to do with that part of whole field which may be achieved by ordering of human relations through the action of politically organised society.*" Jurisprudence, on the other hand, according to *Oxford English Dictionary,* has two definitions at the same time: 1) the general theory of law and doctrines accumulated, and 2) the expert knowledge of the legal profession in a given legal system. Referring to these definitions, the science of law also studies human society as sociology. Despite studying society as sociology and other social sciences in general, the science of law cannot necessarily easily be integrated into other social sciences or sociology. As a brief illustration, let us take a look at how legal studies are institutionalised in universities. The faculties of law at various universities are typically separated from those of social sciences. Such a reality cannot be seen as a mere coincidence, but it must be seen from the perspective of methodological aspect. According to Gurvitch (1947), as it comes to debates on the relationship between sociology and law, there is one group that tends to avoid conflicts between the two. This is because both have unequivocal definitions and scopes on their respective study areas and methods. One of the specificities often associated with sociology and law is that the former bases its methods on *an explanatory point of view* while the latter relies more on *a normative point of view*. We will discuss this further in the following sections.

Sociology of Law

As briefly mentioned above, sociology is an independent discipline separated from the science of law or jurisprudence. If the two are integrated, there will be numerous consequences. The first question that should certainly be addressed is whether the sociology of law is the integration of sociology and the science of law or jurisprudence. However the answer is–be it "yes" or "no", it will equally have theoretical and methodological

implications about how the sociology of law is supposed to be developed and used in understanding/studying legal phenomena in society.

As a discipline, the sociology of law remains a subject of debate. Regarding the history of the development of the sociology of law, it is important to cite Javier Treviño (2001). According to Treviño, the term "sociology of law" was first coined by the Italian legal philosopher Dionisio Anzilotti in 1892 and Eugen Ehrlich in 1913 through their book *Fundamental Principles of the Sociology of Law*. However, the popularity of the sociology of law began emerging among American legal sociologists in the 1950s due to several publications in the field of sociology of law, e.g., works of Eugen Ehrlich, Nicholas S Timasheff, and George Gurvitch.

Among sociologists, this branch of science is considered not part of sociology, for it is deemed to reduce objective social facts to facts that are no longer entirely objective through *value judgement* inherent in the principles of the sociology of law. Conversely, among legal or jurisprudential experts, this discipline is not considered part of the science of law or jurisprudence either since it perceives legal phenomena as social facts that are considered rather vague.

The sociology of law principally was born in response to the dominance of logical normativism in legal studies. The legal studies developed by logical normativism are none other than a combination of legal positivism and dogmatic rationalism. This school considers law nothing but a pure norm, and therefore methods other than normative and formalistic ones are considered invalid for legal assessment (Gurvitch, 1947: 5).

Georges Gurvith (1947), one of the pioneers of the contemporary sociology of law, suggests that there is a conviction among sociologists and legal experts that sociology and law are two disciplines that are seemingly unlikely to integrate one another since they both stand on two different principles. The main concern of sociologists is on *quid facti*, i.e., what is real and happens in society; meanwhile, that of legal experts is primarily on *quid juris*, i.e., what is in accordance with normative legal rules. This perspective is often referred to as the exclusivist view. Exclusivism on both sides is actually dominated by a "normative" view perceiving a discipline has to be independent, separate in its entirety, and disconnected from other disciplines. W.T. Murphy is one among these exclusivists stating that the science of law cannot be categorised as social sciences, for both have different epistemological approaches. According to Murphy, the science of law relies entirely on judge decisions to look at 'facts' and precedents to solve current disputes, while social sciences rely on 'positivity', i.e., knowledge formation through empirical research and statistical analysis (cited in Anleu, 2000). As criticism of this exclusivist tendency, Judge Benjamin Cardozo sees this kind of attitude as the origin of all injustice. He wrote, "the origin of injustice is the tyranny over concepts" (cited in Gurvitch, 1947: 2).

In fact, the law can indeed be studied not solely from the legal aspect *per se*. Milavonovic, for example, divides the method of legal studies into two possibilities, namely that of jurisprudence and of the sociology of law. The first method usually begins with the definition of law and the rule of law, as both are stated by the state. Subsequently, it assumes that legal decision-making is a rational act and that legal processes are legitimate and virtually essential to the social order. Ergo, conflicts occurring in society can be overcome by an abstract application of legal principles to "factual situations" (Burtch, 1992: 4). Meanwhile, the second method (the sociology of law) differs from the first one in which it rather emphasises the social aspect of legal control. The difference between these two methods also lies in the preference of study themes. This method often prioritises themes such as dimensions of violence and coercion through law. According to Burtch, these two approaches, albeit different, cannot be considered completely separate, for in academic studies, there is always an overlap between theory, research, and practice (Burtch, 1992: 5).

With regard to the normative approach to law, Carlen (1976: 2-3) states that this approach can be divided into three types, namely: *correctional approach*, *socio-technicist approach*, and *ironising-expositionalist approach*. The first approach, according to Carlen, is widely found in government-funded legal studies that are commonly conducted in the name of distributive justice. This approach aims to exercise logic adjustment regarding law and its procedures so that its material manifestations can be more adaptive and relevant to its jurisprudential claims and connotations. On the other hand, the second approach more likely emphasises the enforcement of the theoretical reputation of a certain sub-discipline in the study of legal sociology. In contrast to these

two approaches, the third approach, according to Carlen, has somewhat implicit methods and objectives. Furthermore, it even often confounds epistemology with politics. As a result, this approach is often embodied in epistemological anarchism, relative normativism, and political nihilism.

With regard to this, Gurvitch gives a fairly broad account of the mainstream tendencies in jurisprudence and then draws a conclusion as to why the sociology of law is necessary as a middle ground. According to Gurvitch, analytical jurisprudence manifests itself in two forms, a narrow version closely related to "legal positivism" and a broader version that "identifies law with the totality of rules and principles applied by courts in legal decision-making" (1947: 3). As a supporter of the sociological approach in legal studies, Gurvitch criticises the tendency of analytical jurisprudence in some critical points.

Firstly, analytical jurisprudence and legal positivism move in a vicious circle–the existence of a state as the creator of the law is considered the sole source of law, and the state becomes a sector that must be upheld above all social reality.

Secondly, logical normativism refers to "what should be pure" and removes itself by substituting the aspect of *a priori* in "what should be" with that of comprehensible empiricism that cannot be categorised as categorical imperatives.

Thirdly, these two tendencies are simply taken for granted as the essence of immutable law, which is the procedure of technical systematisation used in various *zeitgeists* and contains the reduction of various rules of law to unify the various sources of law established beforehand.

Finally, there are very popular facts about the origin and continuity of the rule of law that is completely separate from the state (independent)–the state has little or even absolutely no interference in implementing law for centuries (Gurvitch, 1947: 5-6).

In point of fact, sociology and jurisprudence are indisputable. Gurvitch tends to reconcile between the two. By quoting a number of classical notions, he seeks to convince that legal studies could also be conducted with non-legal approaches, or sociological approaches in particular. For example, he cites a French judge-cum-sociologist Maurice Hauriou who believes that *"a little sociology leads away from the law but much sociology leads back to it."* Furthermore, he also restates Judge O.W. Holmes's statement that the quintessence of legal life in society is not logic, but rather an experience, which Gurvitch later affirms as "a real experience of social existence that should not be underestimated by juridical processes" (Gurvitch, 1947: 2). Gurvitch also comes to a substantial conclusion that the conflict between sociology and law that leads to the impossibility of a sociological approach in legal studies is the result of the narrowness and misconception of objects and methods on both sides of the disciplines, namely sociology and law (Gurvitch, 1947: 3).

Basically, law and sociology roughly have the same object of study. Both relate to social relations, values, social rules, obligations, and expectations born as a result of certain social positions and roles in society due to the interaction between individuals and society (Anleu, 2000: 2). Cotterrell (1992) also states the same thing that both sociology and law are related to a whole series of significant forms of social relations. Moreover, both also strive to understand social phenomena as part of, or potentially part of, a social structure. Both sociology and law are equally related to norms and rules regulating appropriate actions for a group of people in a given situation. Sociology and law are also related to the essence of legitimate authority, social control mechanisms, civil rights issues, the establishment of power, and the relationship between public and private spaces (Vago, 1988: 2-3).

With this discourse in mind, the sociology of law is a meeting point connecting two rigid dichotomies between sociology and law. The sociology of law, thus, appears to be an alternative method of looking at law and society. In the sociology of law, society and law are not merely seen as static, black-and-white entities. They are dynamic entities and do not always bring a uniform colour. Therefore, in many ways, the sociology of law was born as a critique of normativism and positivism tendencies in law, although it is often perceived as a threat to the two established disciplines. In response to criticism stating that the sociology of law is a potential threat to the discipline of sociology and law, George Gurvitch argues that the sociology of law is not anywise opposed to autonomous technical law, but rather to John Austin's analytical legal school that has been preceded by Hobbes

and Bentham through their emphasis on "legal positivism" and "normative logic". Further, Gurvitch continues, the sociology of law is not a threat to sociology in general, but rather to "naturalism, positivism, behaviourism, and formalism" in specific (Gurvitch, 1947: 3).

So as to clarify what is meant by the sociology of law, it is necessary to cite a number of definitions proposed by a number of theoreticians. Among these evolving definitions, George Gurvitch's definition is perhaps the most comprehensive among the other definitions. According to Gurvitch (1947: 48), the sociology of law is *"part of the sociology of human spirit which studies the full social reality of law, beginning with its tangible and externally observable expressions, in effective collective behaviour... and in material basis..."* Further, *"the sociology of law interprets these behaviours and material manifestations of law according to an internal meaning which, while inspiring and penetrating them, are at the same time in part transformed by them..."*

Based on this definition, it can be seen that Gurvitch's emphasis relies on "the whole social reality of law", which begins with observations of expressions that can be seen externally. Nevertheless, the sociology of law also believes that what is revealed in external expressions is a manifestation of the internal meaning that develops in society. Thus, the sociology of law also attempts to interpret legal behaviours and their material manifestations in line with their internal meanings. To understand in detail regarding the basic principles and salient features of the sociology of law, it is of importance to explain a number of establishing schools in legal theory and various patterns of the sociology of law developed by sociologists. This section elaborates a number of theories in the sociology of law, both classical and contemporary ones, as well as underlines the basic principles of the sociology of law and their implementations in contemporary society.

Theory and Principles in the Sociology of Law

Based on various references discussing the sociology of law, this paper will discuss a number of developing theories in this discipline. It should be emphasised here that each author often has different versions. In such a difference, one that cannot be avoided is the overlap between one category and another. Generally, the authors and reviewers of the theory use different names for the same concept. George Gurvitch traces the development of the sociology of law to very early periods. In a chronological context, he divides the sociology of law into two important periods, i.e., the period of the forerunners and the period of the founders of the sociology of law. The second category is further subdivided into two main categories, the founders of the sociology of law in Europe and in America.

According to Gurvitch, the sociological approach in legal studies has begun since the early days of the development of historical or ethnographic studies related to law. Among the predecessors of the sociology of law, there are names such as Aristotle, Hobbes, Spinoza and Montesquieu. According to Gurvitch, Aristotle has achieved a comprehensive view of the fundamental problems of this discipline, namely the micro sociology of law, the differential sociology of law, and the genetic sociology of law. Between Aristotle and Montesquieu lies the development of experimental sciences in the modern era.

Subsequent developments in the sociology of law were developed by figures who were often classed as classical sociologists such as Durkheim, Weber and Marx (Burtch, 1992; Walton, 1976). Weber talks a lot about the law. One of Weber's main principles in the sociology of law is related to rules. Weber distinguishes the rule of law from other normative systems. He writes: "an order will be able to be referred to as law if compliance with it is enforced by the possibility that the deviant action will be subject to physical or psychological sanctions aiming at imposing compliance or at punishing insubordination." Weber also talks a lot about authority. Laws can only be enforced by those with authority. In regard to this, Weber divides three pure types of legitimate authority, namely legal authority, traditional authority, and charismatic authority (Weber in Campbell and Wiles, 1979: 55-56).

Besides Weber, Durkheim also makes an equally important contribution to the early development of the sociology of law. Durkheim describes the law as a real symbol for social solidarity. Furthermore, Durkheim also distinguishes what he calls "mechanical solidarity" and "organic solidarity". Mechanical solidarity relates to the violation of the law in the form of crime. According to Durkheim, "...the only common character of all evils is that they contain ... actions that are universally unacceptable to the members of each society..." (Durkheim in Campbell and Wiles, 1979: 77).

If these names are the founders of the sociology of law in Europe, a number of names also appear as the founders of this discipline in the United States. Among them include O.W. Holmes, Roscoe Pond, and Benjamin Cordozo. Holmes was a judge and close friend of the American philosopher William James. Holmes rejects analytical and historical schools in jurisprudence and stresses the importance of judges to shift their work tendencies to empirical studies of living societies and actual social realities as carried out by social sciences, especially sociology (Gurviich, 1947: 123). As Gurvitch quotes, Holmes writes: "If your subject is law, then the path is open to anthropology, the science of man, political economy, the theory of legislation and ethics..."

In addition to Holmes, in America, the Roscoe Pound also plays an important role in establishing the tradition of the sociology of law. According to Gurvitch, Pound's legal sociological thinking, which is a key figure in the "sociological jurisprudence" school, is shaped by his opposition to sociological problems (problems of social control and social interests), philosophical problems (pragmatism and experimental theory of values), problems of legal history (various measures for stability and flexibility in court types), and problems of American court works (elements of administrative discretion in court proceedings).

Beyond these names, a number of authors also seek to describe the variety of theories that develop in the sociology of law. Of course, this limited space is insufficient to present all theories in depth. Therefore, here only a number of theoretical theories or classifications will be mentioned to facilitate understanding of the map of the theories in the sociology of law.

One of the well-known theories is called system theory or often also referred to as structural functionalism theory–Durkheim and Talcott Parsons are in this theory. System theory is a theory pioneered by Talcott Parsons, which was then continued by Luhman (Anleu, 2000). So as to understand the legal position in Parsons's theory, it is essential to reveal the relationship between the normative structure of values, norms, collectivity, adaptation, goal achievement, integration, and continuity of patterns (Cotterrell, 192: 84). The main theories in sociology are also presented to construct a theoretical mapping of the sociology of law. Apart from the system theory or structural functionalism, Anleu (2000: 40-76) divides contemporary legal theory into "Juridical Theory" embraced by Habermas, "Legal and Disciplinary Theory" by Michel Foucault, "Neo-Marxist Theory", "Critical Legal Theory", "Feminist Legal Theory", and "Flow of Legal Pluralism".

Besides categorising theories, other authors also classify them. For example, William M Evan (1962) classifies theories in the sociology of law into several categories, *viz.* "Behaviouralist Theory" embraced by Donald Black, "Jurisprudential Theory" believed by Phillipe Numet, "Functionalist Theory" popularised by Talcott Parsons, Roscoe Pound, and Thomas A Cowan, "Conflict Theory" represented by Hans Kelsen and Austin T Turk (Anleu calls it "Neo-Marxist Theory"), "Socialization Theory" associated with names such as Jone Louin Tapp and Felice J Levine, and "System Theory" referring to James P Nanyo.

These two categories by Anleu and Evan are just examples of how theoretical classification and categorisation in the sociology of law is not done singularly and easily. Anleu and Evan use different names to refer to the same thing, e.g., what Evan means by "conflict theory" is referred to as "neo-Marxist theory" by Anleu. It is also interesting to observe the position of functionalist theory. Talcott Parsons is included as a proponent of functionalist theory by Evan, while Anleu regards him as part of system theory. The depiction of system theory by Anleu and the inclusion of Parsons in the theory actually indicate that system theory and functionalist theory are the same. However, in his category, Evan distinguishes between functionalism theory and system theory.

On this basis, it is rather difficult to describe basic features or general principles used in the sociology of law. As an illustration, I would like to quote again Gurvitch, who describes the sociology of law as *the concrete situation of the real life of law at a given moment and a given milieu*" (Gurvitch, 1947: 10). In addition, according to Hunt (1976: 29), one of the hallmarks of modern sociology of law is its strong tendency to adopt an empirical study orientation. Furthermore, Hunt identifies that this kind of tendency is born from the sociological movement in legal studies as a whole and from the influence of the specific features of American sociology of law. However, lately, there has been a movement against the tendency of empiricism in the sociology of law, especially in America and Britain. During this movement, a critical theory in the sociology of law was born. In Anleu's note

(2000: 63), critical theory was born in the late 1970s, although basically, its intellectual predecessors were in the tradition of "legal realism".

William M Evan (1962) identifies five approaches often used in legal studies from a sociological perspective, namely *role analysis*, *organisational analysis*, *normative analysis*, *institutional analysis*, and *methodological analysis*. It indicates that the sociology of law examines law through these aspects thoroughly. Role analysis is an approach emphasising the role played by the implementers of the legal system, such as judges, prosecutors, advocates, and the police. Talcott Parsons suggests that the legal profession is part of the social control mechanism (1962). However, the emphasis on the role of law enforcement has made this approach flawed. As identified by Evan (1962), the role analysis approach in the sociology of law has weaknesses in the form of the absence of an analysis of the legal status for the normative and organisational components of legal institutions.

With regard to legal institutions, it is often said by legal sociologists that legal institutions are of importance in determining whether the rule of law can be called law. As mentioned in the previous sections, in a society where individuals and groups reside, there are always rules that control their social behaviours. Nevertheless, not all rules can be called law unless they are in the context of a single institution. An institution in its social sense is a group of people united by a common goal and have material and technical means in an effort to achieve that goal or at least rationalise such effort in that direction. They support the system of values, ethics and beliefs justifying those goals (Bohannan in Evan, 1962: 3-11).

According to Bohannan, social institutions must be distinguished from legal ones. Legal institutions have functions that other institutions do not have, such as the function of mediating or resolving conflicts. In Bohannan's formulation, a legal institution is an institution through which the community resolves conflicts and tensions that arise among fellow members of the community.

In contrast to jurisprudence studies emphasising themselves on the normative and textual aspects of law, the themes developed in the sociology of law rather focus on factual and empirical issues in society, such as law and the social system of society, similarities and dissimilarities of various models of the legal system, dualism of legal system, law and power, law and cultural values, legal certainty and comparability, and the role of law in changing society (Soekanto, 1988: 13-21).

The Indonesian Islamic Context

Among Islamic legal researchers in Indonesia, the term sociology of law has been widely known. However, as far as I observed, the sociology of law has not really become an alternative method for Islamic legal studies in Indonesia. It is true that over the past decade, many centres for Islamic studies in Indonesia have undergone significant changes in the context of institutional reform. A number of institutions that were originally called the State Islamic Institute (IAIN) have been transformed into State Islamic Universities (UIN). One of its consequences is the emergence of non-Islamic faculties in these universities. Fundamentally and ideally, this reality is expected to open a bridge for integrating Islamic studies and social sciences so that Islamic studies can move from the normative axis towards a more empirical and historical one. However, to what extent does it contribute to the development of more empirical and sociological Islamic studies still takes a long time to figure out the answer.

In general, however, Islamic legal studies in Indonesian Islamic universities that still rely heavily on text studies align with what Amin Abdullah (1996 and 2006) refers to as "normativity". Meanwhile, what the sociology of law offers, i.e., a concrete reading of legal phenomena in society so as to get a more thorough depiction of the dynamics of law in society, can be referred to as a form of emphasis on what Amin Abdullah calls "history". Furthermore, Amin Abdullah believes that religious life is actually a dialectic between "normative" and "historical", with no exception in Islamic legal studies.

Recognising this approach in understanding the Islamic law that is very close to the tendency of legal positivism, Amin Abdullah during his tenure as the chairman of the Muhammadiyah's Council of Religious Affairs in 1995-2000 sought to make methodological breakthroughs and apply this theoretical project to the

Muhammadiyah institution. Nonetheless, it failed. The proposal to adopt an approach with a rather "historical" dimension in Muhammadiyah's view of Islamic law gained considerable resistance. Amin Abdullah, in a private conversation with the author in 2006, once revealed that the root of the problem leading to the resistance was the ongoing development–and it was very dominant—of a "black-and-white" attitude in understanding Islam. Furthermore, Abdullah mentioned that such a pattern was the main feature among Islamic legal researchers in Indonesia. Based on this case, from the perspective of the sociology of law, it seems not excessive to say that at that time, Muhammadiyah experienced tension between those who adhered to *legal positivism* and those who sought to present a sociological-interpretive approach in understanding Islamic law. Another assumption is related to anti-Western sentiments that develop in most Muslims in Indonesia.

In the context of Islamic legal studies in Indonesia, anti-Western sentiment is often brought up in the form of antipathy in adopting a number of theories that are considered Western. The sociology of law could certainly be included in this category. The fundamental mistake in this way of thinking is to equate everything that comes from the West as destructive, useless, and endangering the Muslim faith. It contains two errors at once, i.e., being stuck in what is often referred to as the *fallacy of generalisation* and inequality of argumentation. The first mistake has been explained, while the second one is to answer the scientific methodology with faith argumentation, which is less academic. It is undeniable that such possibilities cannot be underestimated, for knowledge is also inseparable from the originator's ideology. However, suppose the formulations of knowledge are useful and can be adopted as a tool in understanding our own society better, it should not be rejected for presumably vague reasons.

As a term, the sociology of law is often discussed in the context of Islamic legal studies in Indonesia. For example, the term "the sociology of Islamic law" is frequently used as a book title, a research method or a course taught at various faculties or Sharia majors at various (Islamic) universities in Indonesia. However, the popularity of this term is not followed by a solid methodological framework of what is meant by the sociology of Islamic law. The sociology of Islamic law, in my impression, tends to manifest itself as the study of Islamic law through the use of sociology as a pattern and approach, not yet as an established framework of methods and theories. For example, the study of the dynamics of Islamic law in Indonesia is then analysed using a sociological approach, or precisely by presenting the names of renowned sociologists so that it creates legitimacy as if the study of Islamic law had become sociological. In other words, the topic of Islamic law as a subject of study stands as a separate entity, and the adopted theories of sociology stand across the other path. Consequently, what emerges seems like a mosaic of paintings where one part with another are glued together yet do not actually have methodological and theoretical coherence.

This does not mean that in Indonesia, the sociology of law is not used as an approach and method. A number of Islamic legal researchers in the archipelago have indeed used this approach in their numerous studies, e.g., M. Atho' Muhdzar (Indonesia) and Noor Aisha Abdul Rahman (Singapore). Beyond the Islamic legal studies, a number of jurists in Indonesia have also applied the sociology of law as a rigorous method and approach–e.g., Soerjono Soekanto and Satjipto Rahardjo. However, after their death, new names have not yet emerged in the field of legal sociology, let alone in the field of Islamic law. As an academic trend, this approach has not been yet popular enough–or rather has not been used appropriately, albeit frequently been buzzed–among Islamic legal researchers in the archipelago.

Regardless, suppose we believe in the prophecy of Treviño (2001) that the sociology of law has a fairly good future, the same hope can also be attached to the Islamic legal studies in Indonesia. Treviño believes in the bright future of the sociology of religion on the basis of three reasons. Firstly, theories of the sociology of law are constantly being developed, as what Donald Black did through his project of developing a meta-theoretical paradigm for this discipline. This paradigm, referred to by Black as "the pure sociology of law", conceptualises law as a social phenomenon, not a phenomenon of a group of people. Secondly, based on his personal experience, Treviño said that he conducted a comparative study of nine textbooks or reading materials related to law and society or sociology published in the United States, Canada and the United Kingdom. In conclusion, Treviño writes, most of these textbooks and reading materials use the sociology of law as their approach. Thirdly, the

release of a number of scientific publications in the field of legal sociology, in the long run, will have a positive impact on the development of the sociology of law in society.

Conclusion

The sociology of law is principally a methodological breakthrough to overcome the problems of legal studies that are too positivistic. Although initially, it was challenging to find a place for this discipline in the context of established disciplines, such as sociology and law, the sociology of law slowly shows its significance as an alternative method in studying law. Since it is derived from sociology, the use of theoretical categories, classifications, and jargons from sociology is inevitable. The sociology of law seeks to provide a more factual study of law in the sense of describing the phenomenon of law truly as a social reality. As a theory, it continues to evolve and often sparks off a debate among internal legal sociology researchers.

As a method of study and research, it offers a more purposeful approach. However, in the context of Islamic legal studies in Indonesia, this approach has not been yet popular enough. It is true that the term "the sociology of Islamic law" has been frequently introduced. Nevertheless, it remains superficially operated at mere jargon and nomenclatures and has not been manifested in an established theoretical framework. As a result, apart from the discourse and alternative methods offered, the sociology of law still has not been widely used as an analytical tool among Islamic legal scholars in Indonesia.

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