

## ***"Justitia Semper Reformanda Est": A Philosophical Reflection on the Law and Its Change***

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### **ABSTRACT**

*The theme of the law and its changes is still being discussed in the academic community. The fact that law requires social society as its habitat makes it difficult to maintain the status quo. The social community always changes according to the era and place where it makes the laws also voluntarily or is forced to make adjustments to its habitat. The article will discuss how the law cannot always be consistent because it is influenced by the social conditions in which the law lives, how the process of change occurs, and what factors influence the inconsistency of the law, in a philosophical reflection. By using a literature research approach, this research aims to explore two main questions, namely: does law change society or vice versa? and; what factors are most influential in encouraging legal change? This study reflects that jurists from various views seem to agree on one thing, that the law is changing and they only provide different criteria and procedures. This reflection culminates with a statement that the law is always changing, and it reforms itself all the time.*

**Keywords:** *Legal Change; Philosophical; Reflection*

## **I. INTRODUCTION**

The law is not riding the wind but is based on human social activities. The nature of the law which is attachment to human social activity makes it not a completely independent subject, but a dependent variable. When human social activities experience changes, the law moves to follow these changes, and when human social activities experience extinction, the law returns to its absence. This is a normal process of the life of a system that we know as "the law".

Reflecting on von Savigny's statement that law is always in a state of "always growing"<sup>1</sup> makes the law never consistent as it aspires to, except in terms of inconsistency. Change is always consistent with inconsistency. It is in line with Oliver Wendell Holmes' assertion that law is fully consistent only when it stops growing,<sup>2</sup> and the law never stops growing. According to Judith Shklar, in the view of legalism the law itself aspires to conservatism, one institutional stability in its ideas, and depends on what already exists and is determined and accepted. However, when constitutional and social changes are unavoidable, the judiciary adapts itself to the new order.<sup>3</sup> This statement of Shklar is in line with what Holmes described as the ideal of the consistency of law, the ideal that was never achieved. In any case, the noble ideals and the ideas of law are like wisdom that philosophers release into the air. It is the duty of judges and legal actors to land them on earth. Like an aeroplane, the landing process must adapt to the conditions of the runway, once it fails to adjust, and then the plane is just the wreckage.

Ideas that are considered good by society are then accepted, legitimized and carried out continuously consistently and culturally. This process is called society consensus. The result of this consensus process, if it is legitimized by the authorities will form an order, known as the legal order. As an order, adjustments as a form of social adaptation process are not so wild and independent, but they still have limitations.

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<sup>1</sup> Savigny, Friedrich Carl von. *Private International Law, and the Retrospective Operation of Statutes: A Treatise on the Conflict of Laws, and the Limits of Their Operation in Respect of Place and Time*. Edinburgh, T&T Clark, 1880, p. 36.

<sup>2</sup> Jr, Oliver Wendell Holmes. *The Common Law*. Cambridge, Massachusetts dan London, The Belknap Press of Harvard University Press, 2009, p. 35.

<sup>3</sup> Shklar, Judith N. *Legalism: An Essay on Law, Morals and Politics*. Cambridge, Massachusetts, Harvard University Press, 1964, p. 10.

Shklar, argues that the limit to such adaptation is not to be found in judicial attitudes but within society itself, where there is no consensus allowing the judiciary to appear neutral. When consensus emerges, as it has several times, adjustments are easier.<sup>4</sup> This Shklar's view illustrates that Pound's theory of "law as a tool of social engineering" cannot fully work when the process of transfer of knowledge from the law has failed to run. It is often the community that becomes the driving force for changes to the idea of law through consensuses.

In an extreme way, by agreeing with Protagoras, Hägerström states that it is undeniable the law is a condition of human culture that prevails and without which humans cannot become the winner of power over other species.<sup>5</sup> Hägerström's opinion indicates his view that ideas of law as a reflection of culture are always based on certain intentions. Hägerström rejects the positivist view that the concept of law can be found in the narrative of statutes, arguing that they are just empty words. It is further explained that the concept of law can only be found in social reality.

One of the social realities that we cannot avoid today is the era of globalization which is enhanced by digitalization. The era that began with the development of transportation technology and the rapid development of digital communication technology, has destroyed geographical boundaries and even countries have had a major impact on legal changes. This can explain what was stated by Franz and Keebet von Benda-Beckmann about global legal pluralism which is mostly produced and reproduced in the transnational social field.<sup>6</sup> According to Sulistyowati Irianto, this movement of the law is caused by actors who are individuals and organizations who are very mobile. The mobility of these actors is an important part of the process of globalization and glocalization and becomes the agent for legal change.<sup>7</sup> These thoughts on legal pluralism are the antithesis of the idea of legal centralism which arose through codification and unification policies, a policy that was an inherent part of the

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<sup>4</sup> *Ibid.*

<sup>5</sup> Hägerström, Axel. *Inquiries into the Nature of Law and Morals*. Uppsala, Almqvist & Wiksell, 1953, p. 262.

<sup>6</sup> Benda-Beckmann, Franz von and Keebet von Benda-Beckmann. *Transnasionalisation of Law, Globalisation and Legal Pluralism: a Legal Antropological Perspective*. In Sulistyowati Irianto, *Hukum yang Bergerak: Tinjauan Antropologi Hukum*. Jakarta, Yayasan Obor Indonesia, 2009, p. 22.

<sup>7</sup> Irianto, Sulistyowati. *Pluralisme Hukum dalam Perspektif Global*. In Irianto, Sulistyowati. *Hukum yang Bergerak: Tinjauan Antropologi Hukum*. Jakarta, Yayasan Obor Indonesia, 2009, p. 40.

philosophy of positivism and the ideals of liberals who had a great influence on the development of colonial politics in the 20th Century.<sup>8</sup>

The approach used in this research is literature research to search for material to enrich references related to the two main questions in this research, namely: does the law change society or vice versa? and, what factors are most influential in encouraging legal change? which is then elaborated into a legal reflection about the law and its changes. This article is a philosophical reflection that discusses how the law cannot always be consistent because it is influenced by the social conditions in which the law lives, how the process of change occurs, and what factors influence the inconsistency of the law. By referring to the debate around legal issues and their changes, this reflection will be presented as a critical analysis related to the issue.

## **II. DISCUSSION**

### **1. Beginning with Ideas, the Concept of Law is the Consensus on Some Place and Some Time**

Philosophically, law at the beginning of creation starts from ideas about an ideal condition of human life. A condition where the realization of justice, order, balance, welfare, beauty, peace, and other values are good for human life. These ideas form the concepts that influence people's views about what and how the law is.

Pound claims that there are at least twelve different conceptions of what law is. Twelve different conceptions that he elaborated on, among others: (a) Law is regarded as the idea of divinely ordained rules or a set of rules to govern human action.<sup>9</sup> (b) Law is considered to be an old customary tradition that has been proven to be accepted by God or The Gods and therefore indicates how human beings can walk safely.<sup>10</sup> (c) The law was thought to be the wisdom recorded from ancient sages who had studied the safe

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<sup>8</sup> Wignjosoebroto, Soetandyo. *Dari Hukum Kolonial ke Hukum Nasional*. Jakarta, 2014, p. 34.

<sup>9</sup> Pound provides examples of this conception in the Laws of Mosaic and the Laws of Hammurabi. See: Pound, Roscoe. *An Introduction to the Philosophy of Law*. Connecticut, Yale University Press, 1922, p. 60.

<sup>10</sup> Pound explains that in this conception law is the body of traditional or recorded rules in which custom is preserved and expressed. The law guarantees the general safety that requires humans to do only certain things and to do them only in a way that has been shown by old custom to at least not displease God or the Gods. See: *ibid*, p. 61.

way or the divinely approved course for human behaviour.<sup>11</sup> (d) Law is considered as a system of philosophically discovered principles that reveal the nature of things, for which, humans must adapt their behaviour.<sup>12</sup> (e) In the hands of philosophers, the law is regarded as a body of guarantees and declarations of an immutable and unchanging moral code. (f) Law is considered as a body of human agreement in a politically organized society regarding their relationship with one another. This is the democratic version of the identification of law with the rule of law hence its enforcement through state or city decrees or proclamations.<sup>13</sup> (g) Law is considered a reflection of the divine reason that governs the universe. The law determines the "necessity" that reason addresses to humans as moral beings as distinct from the "must" that is assigned to everything inhuman.<sup>14</sup> (h) Law is considered as an institution of command from a sovereign authority in a government about how humans should act, which ultimately rests on the basis behind the authority.<sup>15</sup> (i) Law is considered as a system of views, which is found by human experience to realize freedom for as many individuals as possible in a consistent manner and guarantee free will for others.<sup>16</sup> (j) Law is considered to be a system of principles discovered philosophically and developed in detail by jurists which measure the external life of human beings by reason or harmonize their desires.<sup>17</sup> (k) Law is considered as a set of rules imposed on humans in

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<sup>11</sup> Pound explains that in this conception the traditional customs of decision-making and habits of action, have been reduced to writing them into primitive code. Pound exemplified this conception with Athenian law in the 4th Century BC. See: *ibid*, pp. 61-62.

<sup>12</sup> Pound further explains by giving an example to the Roman Juristconsult idea of political theory where the law was the commandment of the Roman people, but reconciled with them by understanding the traditions and noted the wisdom and commandments of the people only as a declaration or reflection of philosophically determined principles to be measured, shaped and interpreted. See: *ibid*, p. 62.

<sup>13</sup> Pound's explanation for this is that it is quite possible that in a theory such as this, philosophical ideas will support political ideas and the moral obligation inherent in a promise that will be invoked to show why human beings should keep the agreements made by their Assembly of People. See: *ibid*, p. 63.

<sup>14</sup> Related to this conception, Pound gave an example of the conception of Thomas Aquinas as the basis for the conception that emerged during the period of the Middle Ages. See: *ibid*, p. 63.

<sup>15</sup> It was further explained that the view of this conception was according to the Republican Roman jurists, that the Teachings of Justinian could state that the will of the emperor had the force of law. This conception also underpinned the authority of the French Empire in the 16th and 17th centuries and was compatible with the state of parliamentary supremacy in England after 1688 and became orthodox English legal theory. This conception eventually gave birth to the American Revolution and the French Revolution. See: *ibid*, p. 64.

<sup>16</sup> Pound explains further, in this conception it is assumed that the human experience in which legal principles are found is determined inescapably and is not a matter of conscious human effort. See: *ibid*, p. 65.

<sup>17</sup> Pound further explained that this conception only developed in the XIX century, two centuries after people left the theory of natural law. See: *ibid*, p. 65-66.

society by the dominant class temporarily in development, and whether we realize it or not, this is done for the benefit of the dominant class itself.<sup>18</sup> (l) Law consists of economic or social legal precepts, which are discovered through observations, and are expressed in teachings compiled through human experience about what works best for the establishment of justice.<sup>19</sup>

From the twelve different conceptions described by Pound, it can be seen that the law at certain times was seen in different concepts. The inconsistency of these views also affects the inconsistency of the substance of the law itself. When a perspective on law in a society and at that time changes, then the substance of the law or even the whole system will change. Changes in perspective will always be linear with social changes in society.

Furthermore, Joseph Raz stated that when we try to clarify what a legal system is theoretically, legal theories are not intended to define the meaning of the terms used by legislators, judges, or legal practitioners. Legal theory is used to form a concept in understanding the nature of the law itself.<sup>20</sup> Raz commented on the opinions of three legal philosophers, namely Austin, Kelsen, and Hart. According to Raz, Austin's opinion that law is part of the legal system if and only if it is enforced directly or indirectly by the authorities of that system or Kelsen's opinion that law is part of the legal system if and only if the basic norms of the system authorize it, or also Hart opinion that law is part of the legal system if and only if it must be recognized according to the system's recognition rules. According to Raz, these three philosophers have neglected the material unity of the legal system, they do not think that the unity of a system depends on the content or spirit of the law or tradition and practice as the most important part of the legal institution. Instead, Austin, Kelsen, and Hart hoped to formulate statements that would enable them to determine whether or not one law belongs to another in the same legal system.<sup>21</sup>

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<sup>18</sup> For Pound, this conception was heavily influenced by the economic outlook that developed at that time. the development of this conception is also marked by a period of struggle between social classes and their existence. See: *ibid*, p. 66.

<sup>19</sup> Pound further explained that this theory was raised at the end of the XIX century, when humans began to look for a physical or biological basis that was found through observation, to replace the metaphysical basis that was found through philosophical reflection. See: *ibid*, pp. 67-68.

<sup>20</sup> Raz, Joseph. "The Identity of Legal Systems." *California Law Review*, Vol. 59, No. 3, 1971, pp. 795-815, <https://doi.org/10.2307/3479604>.

<sup>21</sup> *Ibid*, p. 796.

In addition to Raz's comments on Austin, Kelsen and Hart's opinions, Raz's own opinion also received comments from Tamanaha. Tamanaha argues that Raz's claim that law provides a general framework for the implementation of all aspects of social life and becomes the highest guardian in society,<sup>22</sup> is unacceptable in the context of colonialism, including in the post-colonial era.<sup>23</sup> Likewise, Raz's claim that the legal system is an open system,<sup>24</sup> there are other opinions. In contrast to Raz, Sudikno Mertokusumo stated that basically, the law is an open system because it is influenced by cultural, political, economic, historical, and other factors, but within the legal system, there are open systems and closed systems.<sup>25</sup> Furthermore, Mertokusumo explained that the legal system becomes open because it has a reciprocal relationship with its environment. Objects and subjects that are not part of the legal system also influence elements within the legal system. Meanwhile, the system is also said to be closed because, in the legal system, there are also limited parts such as restrictions on absolute rights.<sup>26</sup>

We can see and feel that a legal system is not implemented and lived only depending on statutory regulations. A legal system is the complexity of legal life with morality as its witness.<sup>27</sup> At least we can see the elements of a legal system as values, principles, and norms implemented in the legal culture by legal entities. In real terms, the elements of the legal system are reflected in regulations and traditions in legal practice.<sup>28</sup>

The changes in perspective that change the face of law continue to develop from time to time. Satjipto Rahardjo stated that the consistency of the method of law did not run smoothly like what happened hundreds of years ago in the Roman Age, by giving an example from Scholten's opinion about the differences in the way of law in the XIX and XX Century, where the way of law in the XIX Century tended to treat the law as a

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<sup>22</sup> Raz, Joseph. *The Authority of Law*. New York, Oxford University Press, 1979, p. 120.

<sup>23</sup> Tamanaha, Brian Z. *A Realistic Theory of Law*. Cambridge, Cambridge University Press, 2017, p. 103.

<sup>24</sup> Raz, Joseph. *The Authority of Law, Op.Cit.*, p. 119.

<sup>25</sup> Mertokusumo, Sudikno. *Penemuan Hukum: Sebuah Pengantar*. Yogyakarta, Cahaya Atma Pustaka, 2014, p. 29.

<sup>26</sup> *Ibid.*

<sup>27</sup> Holmes stated that "law is the witness and external deposit of our moral life". See: Jr, Oliver Wendell Holme. "The Path of the Law." *Harvard Law Review*, Vol. 475, 1897, p. 6, <https://doi.org/10.2307/1322028>.

<sup>28</sup> In the legal system of the Latin Rite Roman Church as the initial reference for the French Civil Code, tradition has an equal position with doctrine or magisterium and statutory regulations.

mathematical unit that is worked on based solely on logic, compared to 20th Century thinking and legal methods that emphasize empirical factors.<sup>29</sup>

Rahardjo expressed his opinion that the main reference for the way of law is society, not on concepts, doctrines, or systems and also the rationale of law.<sup>30</sup> This statement is in line with what Hägerström states as "social reality".<sup>31</sup> Rahardjo further explained that the science of law follows society so that any construction product regarding law that is produced, at all times will experience a kind of referendum by the community as its users. It was further stated that there is no autonomous and absolute legal scholarship, but it is always open and tested by the community in matters related to its usefulness.<sup>32</sup> This view of usefulness is what underlies what Rahardjo terms as 'Progressive Law' which departs from a humanitarian perspective, regarding good human nature and the nature of compassion and concern for others. These characteristics are important capital in building the legal life in society.<sup>33</sup>

We can refer to the progressive nature of this law in the decision in the case of "RE", a police officer who shot his colleague on the orders of his superior who had the rank of General. Instead of giving the death penalty, the South Jakarta District Court sentenced the policeman to one and a half years in prison. In his considerations, the judge gave appreciation to the police for having the courage to reveal the facts about the General's role. In this case, we can see that the judge is not just a speaker of law, but also a speaker of justice.<sup>34</sup>

If referring to the legal objectives related to "usefulness" which is always tested by society, then we can reflect that society has always experienced changes in the meaning of "usefulness" in certain periods of history. What is interpreted as useful in a period may not be useful in another period. A simple example, the closest we can see is the rules for limiting human activity outside the home during the peak of the spread of the coronavirus disease<sup>19</sup>. These restrictions can be considered very useful in

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<sup>29</sup> Rahardjo gave an example of Holmes's view as a way of thinking in the 20th Century which emphasized more on judge's decisions based on experiences. See: Rahardjo, Satjipto. *Ilmu Hukum di Tengah Arus Perubahan*. Surya Pena Gemilang, 2016, p. 10.

<sup>30</sup> *Ibid.*

<sup>31</sup> Hägerström, Axel, *Op.Cit.*

<sup>32</sup> Rahardjo, Satjipto, *Op.Cit.*

<sup>33</sup> Rahardjo, Satjipto. "Hukum Progresif: Hukum yang Membebaskan." *Jurnal Hukum Progresif*, Vol. 1, No. 1, 2011, pp. 1-24, <https://doi.org/10.14710/hp.1.1.1-24>.

<sup>34</sup> South Jakarta District Court Decision No: 798/Pid.B/2022/PN.Jkt.Sel.



preventing the spread of the virus, the basic goal is to maintain the survival of the human species and prevent it from becoming extinct. But on the contrary, in the period after the end of the spread of the coronavirus disease 19, the benefits of these rules were no longer felt, even against their main goal. The human species could become extinct if they didn't go out and work.

We can make a reflection on the opinions of the jurists. It can be seen that after the renaissance, the idea of an absolute status quo began to be abandoned. Jurists from various schools of thought, especially conservatives, even though requiring certain strict criteria, have begun to accept that there is no law that does not change. Consistency of law is an ideal in “virtual” space and change is a fact in real space.

In any case, the ideas about the law in a society will always be linear with ideas about how they interpret life and how to live. The idea which later becomes the concept will be agreed upon as a joint consensus after being reasoned with, implemented and legitimized as law by the community. This social process is in line with what Bellefroid means as *ius constituendum* which is then legitimized by the authorities to become *ius constitutum* as part of *rechtspolitiek*.<sup>35</sup> Once the consensus on the law and the view of the law has changed then the law will also change. Therefore, when we talk about law, we are also talking about a place and a time.

## **2. Is it the Law that Changes Society or Vice versa?**

The debate about change then shifts from the question of whether it changes or not to the question of whether the law changes (engineering) society or it is the community that engineering the law. The debates exist even among people within the same school of thought with logical and multidisciplinary arguments. One opinion can be seen from Max Weber. Like his opinion about the significance of socio-cultural changes in architectural, artistic, and economic changes, he argues that this significance also applies to their relationship with the law. Weber argues that, against highly

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<sup>35</sup>Bellefroid, J.H.P. *Inleiding tot de Rechtswetenschap in Nederland*. Nijmegen-Utrecht, Dekker & Van De Vegt NV, 1956.

normative regulations, even the norms themselves can undergo fundamental revolutionary changes, even to the formal identity of legal norms that still exist.<sup>36</sup>

Weber's view is that the notion of the law that does not change when social changes experience is a "fantasy about the future". According to him, this significance can make some rules in the law change, and in many cases, even completely disappear. He even insinuates that the discussion of "*de lege ferenda*"<sup>37</sup> is right to be ignored by materialistic conceptions of history because its main proposition is "change" which is indeed inevitable in its significance with the institution of the law<sup>38</sup>. Weber's opinion shows a different position from what Pound stated where the law acts as a societal engineer. If law and society are explained as two variables that have a symbiotic relationship, then Weber's opinion shows that society is the independent variable, while the law is the dependent variable.

Emile Durkheim has a different opinion. This is seen in his comments on Rousseau's social contract theory. According to Durkheim, the change from a "nature state" to a "civil state" is a very extraordinary change. However, this condition resulted in the transformation of the order from what was *de facto* to the *de jure* order and the birth of morality. The words obligations and rights meant nothing before society was formed, because at first man only looked to himself, but then he was forced to act according to different principles. Above it, there is something that must be reckoned with, namely obligations to each other and the law. "Virtue is the conformity of individual desires with the general will".<sup>39</sup> Here Durkheim sees a relationship that besides having to be simultaneous between individuals in society but also continuous with legal institutions as a coercive force to guarantee the existence of these obligations and rights. Meanwhile, Jeremy Bentham views this disregard for social context as a form of procedural crime.<sup>40</sup> Here, Durkheim differs from Bentham, who saw a

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<sup>36</sup> Weber, Max. *The Methodology of Social Sciences*. Glencoe Illinois, The Free Press, 1949, p. 83.

<sup>37</sup> Or also another term as a derivative of *Lex Ferenda*, which means "by looking at the law of the future". This expression is generally used in the context of proposals for amendments to legislation, especially in the academic literature, both in the Common Law system and in the Civil Law system.

<sup>38</sup> Weber, Max, *Op.Cit.*

<sup>39</sup> Dukheim, Emile. *Montesqieu and Rousseau: Forerunners of Sociology*. Ann Arbor Paperbacks, The University of Michigan Press, 1965, pp. 102-103.

<sup>40</sup> Twining, William. "Alternative to What? Theories of Litigation, Procedure and Dispute Settlement in Anglo-American Jurisprudence: Some Neglected Classics." *The Modern Law Review*, Vol. 56, No. 3, 1993, p. 383, <https://doi.org/10.1111/j.1468-2230.1993.tb02679.x>.

conformity of desires between legal and social institutions, or with Rousseau, who saw the general will as a conformity of the desires among individuals, but more than that, Durkheim required simultaneity and continuity of an agreement between individual, social and legal institutions. In other words, the general desire is not only what the individual wants in a consensus, but also in reverse, the individual's desire is what has become the consensus of the general will towards him. The same thing applies to the will of legal institutions. The will of the legal institution must be a reflection of the will of the public and individuals and vice versa.

There are different views on how the present gives way to changes in the future between Durkheim, Weber, and Marx. Each of them assumes another logic of development and pattern of social change. Edward Royce explained that Marx played an important role in the process of economic development in shaping the course of history. Unlike Marx, who prioritized economic power, Durkheim prioritized cultural power. According to Royce, just as the emergence of modernity for Marx released the productive forces of society, so for Durkheim modernity also released particular collective sentiments and ideals. For Durkheim, modern society is driven by a collective need for justice and a collective belief in the sanctity of the individual. Durkheim believed that strong moral impulses had pushed society towards a more rational and humane social order.<sup>41</sup>

In contrast to Marx and Durkheim who were optimistic and viewed social change as a continuity between the present and the future, Weber argued that the evolution of modern society understood as a process of rationalization, did not explicitly imply human progress. For Weber, the modern world is a new world that is qualitatively different from the pre-modern world. According to him, it does not bring us moral certainty, peace, justice, or happiness nor does it free us from the uncomfortable realities of modern life.<sup>42</sup>

Meagher and Silverstein, as well as Unger, saw the relationship between law and society as reciprocal. In general, the law facilitates social interaction. The law functions to resolve conflicts and disputes, seek to restore balance in social systems when

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<sup>41</sup> Royce, Edward. *Classical Social Theory and Modern Society: Marx, Durkheim, Weber, Rowman & Littlefield*. Lanham – Boulder – New York – London, 2015, pp. 162-163.

<sup>42</sup> *Ibid.*

imbalances occur, provides a level of predictability and certainty for transactions and business activities, guide social action with rationality and efficiency, and teach people what is right and wrong according to established normative standards in force, as well as to help maintain historical continuity. However, according to them, it must also be recognized that just as the law facilitates social interaction, so does social interaction and social power that work on individuals through the process of "regulation" in facilitating the effectiveness and relevance of the law in society.<sup>43</sup> This view is almost in line with Durkheim's view, although it also cannot be said to be the same.

By looking at another dimension, David Nelken states that the law does not only belong to a place but also to time. The laws from the past to previous social and economic orders, from tradition and historically to the present, can lead to the future, acting as an index of social political, and economic change as a manifestation of what society wants to happen and what society wants to become.<sup>44</sup> Nelken agrees with the results of Sztompka's research<sup>45</sup> which examines the emergence, avoidance, and normative innovation with the conclusion that legal change depends on the forces of other social changes such as social movements, revolutions, evolution, or one big figure as the dominant individual. According to Nelken, Sztompka assumes that law only appears in the last phase of social change.<sup>46</sup>

We can see the power of social change as meant by Sztompka in many events and many institutions. One of the most historic institutions is the Roman Catholic Church. After Luther's reform in 1517,<sup>47</sup> the Ecclesia Romana institution, which had a strong influence on the culture of codification of modern law, both in the Civil Law system and in the Common Law system, which was known to be very conservative began to soften. The institution that gave birth to the great thinkers such as Augustine

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<sup>43</sup> Meagher, Robert F and David Silverstein. *Law and Social Change*. In Meagher, Robert F. *Law and Social Change: Indo-American Reflection*. State Mutual Book & Periodical Service. Ltd, 1988, p. 5.

<sup>44</sup> Nelken, David. *Toward Sociology of Legal Adaptation*. In Nelken, David and Johannes Fest. *Adapting Legal Cultures, Onati International Series in Law and Society*. Oxford - Portland Oregon, Hart Publishing, 2001, p. 14.

<sup>45</sup> Sztompka, Piotr. *The Sociology of Social Change*. Oxford, Blackwell, 1993.

<sup>46</sup> Nelken, David, *Op.Cit.*, p. 22.

<sup>47</sup> Luther, Martin. Priest and Professor of Moral Theology at the University of Wittenberg Germany, protested the leaders of the Roman Pontifical institution with ninety-five theses in 1517.

Hippo (also known as Saint Augustine)<sup>48</sup> and Thomas Aquinas has begun to accept change as a necessity, long before Luther's Reformation. A statement that is believed to be Augustine's statement is "*Ecclesia semper reformanda est*",<sup>49</sup> which illustrates that the change will last forever.

Ecclesia, as well as the law, along with social change, has changed, even though maybe not fundamentally. The same context also occurs in other forms where the law lives in it, such as republics and monarchies. We can see that the law may be able to change society immediately and forcefully, but over a longer period, it is the community that changes the law. The law will not survive as the law if it loses its legitimacy from its changing society.

Changes in the direction and ways of law can also be reflected in changes in certain symbols or logos that reflect the new direction of the philosophy of law. For example, we look at the change in the symbol of justice on the logo of the Ministry of Justice of the Republic of Indonesia. The image of a goddess with a blindfold and a scale which was originally a symbol of justice on the logo of the Department of Justice was replaced in 1960 with a picture of a banyan tree accompanied by the word "pengayoman", a word that implies protection and help.<sup>50</sup> According to Daniel S Lev, the change of symbol illustrates the enthusiasm of Indonesian leaders to return to their own legal traditions which are different from those of Europe. One can see the spirit of accelerating the legal transformation from what was inherited by the Dutch colonialists to their own laws.<sup>51</sup> This symbol change gives the impression that there is social change in society.

The changes in the form of social and state institutions are very significant in changing the legal order, for example, can be seen in changing from a customary system

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<sup>48</sup> Augustine's thoughts influenced the thinking of many later jurists, one of whom was Jean Jacques Rousseau. Varga, states that: "Saint Augustine presents his ideas in a manner that we classically owe to Jean Jacques Rousseau, and undertakes to let everything out of himself by describing, naming and even conceptualizing what is inherent in him". See: Varga, Csaba. *The Paradigm of Legal Thinking*, Budapest, Szent István Tarsulát, 2012, p. 87.

<sup>49</sup> Mahlmann, Theodor: "*Ecclesia semper reformanda*". *Eine historische Aufarbeitung. Neue Bearbeitung*. In Johansson, Torbjörn, et al. *Hermeneutica Sacra. Studien zur Auslegung der Heiligen Schrift im 16. und 17. Jahrhundert*. Berlin - New York, 2010.

<sup>50</sup> Lev, Daniel S. *Hukum dan Politik di Indonesia: Kesinambungan dan Perubahan*. Jakarta, LP3ES, 2014, p. 72.

<sup>51</sup> *Ibid.*

to a monarchy, a monarchy to a republic, a republic with a dictatorship to a democratic republic, and so on. The change in rulers also had a significant impact. An example can be seen in changes in pre and post-colonial law in a country. Apart from that, one that can also have an impact on changes in the law is a change in the perspective of an institution in viewing itself, and how its position is with other institutions. We can trace from historical facts that of all the factors that cause significant change, they are always triggered by things that have changed in society.

Whether it's a social movement, revolution, evolution, or the emergence of a major figure that triggers change, it can make a significant legal change only if the change is logically accepted by a society which then gives legitimacy to it. It is social that has the most important influence on legal changes. The law can only change society only if society accepts it logically and legitimizes it. Even though in certain extreme circumstances the law can use coercion to force society to change, this is not a normal situation. In the end, the logical legitimacy of the law is what makes the law survive as law.<sup>52</sup>

### **3. Challenges of Technological Progress and Legal Robots**

The advancement of Artificial Intelligence-based technology has become a challenge in itself and a hot topic of conversation in the academic world today. A major disruption is when robots starting to be considered to replace humans in carrying out legal work, a mechanical system that we know as Artificial Intelligence.

What if a robotic system has been able to produce legal opinions reliably and precisely? What if a judge's decision is based on an analysis based on Artificial Intelligence? At one time we will be in a situation where people will evaluate a judge's

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<sup>52</sup> For discussions in this topic, see: McGinnis, John O. and Russell G. Pearce. "The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services." *Fordham Law Review*, Vol. 86, No. 2, 2014, pp. 3041-3066; Coglianesi, Cary and David Lehr. "Regulating by Robot: Administrative Decision Making in the Machine-Learning Era." *Georgetown Law Journal*, 2017, pp. 1147-1223; Markovic, Milan. "Rise of the Robot Lawyers?" *Arizona Law Review*, Vol. 61, No. 2, 2019, pp. 325-350; Crootof, Rebecca. "'Cyborg Justice' and the Risk of Technological-Legal Lock-In." *Columbia Law Review Forum*, Vol. 119, 2019, pp. 233-251; and Yu, Peter K. "Artificial Intelligence, the Law-Machine Interface, and Fair Use Automation." *Alabama Law Review*, Vol. 72, 2020, pp. 187-238.

decision whether it is a decision regarding procedural matters as well as substantive decisions by questioning whether the decision was based on traditional reasoning or through a computer program.<sup>53</sup>

The presence of Artificial Intelligence in the world of law is no longer fiction or just an illusion, but a fact that shortly, we will come face to face with it. The discussion regarding the presence of Artificial Intelligence has become a topic of discussion in the latest legal academic world. Several scholars such as Dana Remus and Frank Levi,<sup>54</sup> Eugene Volokh,<sup>55</sup> Tim Wu,<sup>56</sup> Emily Berman,<sup>57</sup> and Frank Pasquale<sup>58</sup> have taken this topic seriously. Casey and Niblett as extremely called it "self-driving laws".<sup>59</sup>

Replacing judges with Artificial Intelligence based on three main benefits: efficiency, consistency, and access to justice as proponents of using Artificial Intelligence in the law suggest, would require drastic changes to the law and it is not clear yet whether those changes will make the law is better or vice versa.<sup>60</sup> This of course requires logical legitimacy from society to accept whether this mechanical system is acceptable for use or not.

In my opinion, the main challenge of using Artificial Intelligence in doing legal work is ethical issues. In the end, it is the logic of society that will determine whether this system is in line with the ethical system that is also developing in society and is ethically acceptable before it gives legitimacy. This change has to go hand in hand with society's change in how they view this ethically.

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<sup>53</sup> Surden, Harry. "Machine Learning and Law." *Washington Law Review*, Vol. 89, No. 1, 2014, pp. 87-115.

<sup>54</sup> Remus, Dana and Frank Levy. "Can Robots be Lawyers? Computers, Lawyers, and the Practice of Law." *ABA Law Practice Divisio*, Vol. 59, 2016, pp. 1-75, <https://dx.doi.org/10.2139/ssrn.2701092>.

<sup>55</sup> Volokh, Eugene. "Chief Justice Robots." *Duke Law Journal*, Vol. 68, No. 6, 2019, pp. 1135-1192.

<sup>56</sup> Wu, Tim. "Will Artificial Intelligence Eat The Law? The Rise of Hybrid Social-Ordering Systems." *Columbia Law Review*, Vol. 119, 2019, pp. 2001-2028, <https://doi.org/10.2139/ssrn.3492846>.

<sup>57</sup> Berman, Emily. "Individualized Suspicion in the Age of Big Data." *Lowa Law Review*, Vol. 105, No. 2, 2020, pp. 463-506.

<sup>58</sup> Pasquale, Frank. "A Rule of Persons, Not Machines: The Limits of Legal Automation." *George Washington Law Review*, Vol. 87, No. 1, 2019, pp. 1-55.

<sup>59</sup> Casey, Anthony J. and Anthony Niblett. "Self-Driving Laws." *Chicago Law Journal*, Vol. 66, No. 4, 2016, pp. 429-442, <https://doi.org/10.3138/UTLJ.4006>.

<sup>60</sup> Michaels, Andrew C. "Artificial Intelligence, Legal Change, and Separation of Powers." *University of Cincinnati Law Review*, Vol. 88, No. 4, 2020, pp. 1083-1103.

#### **4. The Effect of Legal Pluralism in Encouraging the Changes**

One of the factors that have a lot of influence on legal changes is legal pluralism. Views on what and how legal pluralism also differ between several legal scientists groups. The classical group emphasizes normative pluralism. This group sees legal pluralism from the perspective of the dichotomy between legal systems. In contrast, the more moderate group sees legal pluralism in its operational perspective, how the legal systems meet each other and how the law moves.

The classical group describes legal pluralism as a condition where in the same geography, different systems live and operate, two or more systems. MDA Freeman describes legal pluralism in this classical view as an everyday experience that can be found in our social interactions where there are two or more legal systems, networks or others that also exist in the same geographical space.<sup>61</sup> Similar statements were also made by William Twining<sup>62</sup> and also Denis Galligan.<sup>63</sup>

This classical view often appears in debates between positivist groups and their anti-positivist opposition who criticize legal pluralism. According to Twining, this is due to the perspective gap between the two groups which adopt different points of view in answering the questions, where one side is based on normativity and the other is based on social facts. According to him, critics of legal pluralism may admit that legal relations are not limited to the boundaries of the state, nation or other bound society, but they still reject the idea of "non-state law".<sup>64</sup> Meanwhile, Griffiths vulgarly criticized legal centralism which made the law uniform for everyone and made state law be as the only law, resulting that the law becoming a subordinate of the state.<sup>65</sup> Griffiths' view assumes that legal centralism makes law regulated and subject to the state and not the state governed by law.

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<sup>61</sup> Freeman, M.D.A. *Lloyd's Introduction to Jurisprudence*. London, Thomson Reuters, 2008, p. 1541.

<sup>62</sup> Twining, William. *Globalization and Legal Theory*. London, Edinburgh & Dublin, Butterworths, 2000, ch. 9.

<sup>63</sup> Galligan, Denis. *J. Law in Modern Society*. New York, Oxford University Press, 2007, p. 83.

<sup>64</sup> Twining, William. "Normative Legal Pluralism: A Global Perspective." *Duke Journal of Comparative and International Law*, Vol. 20, No. 3, pp. 473-518.

<sup>65</sup> Griffiths, John. "What is Legal Pluralism?" *Journal of Legal Pluralism*, No. 26, 1986, p. 12, <https://doi.org/10.1080/07329113.1986.10756387>.



In line with that, Leopold Pospisil made an assertion that challenged the feasibility of seeing the relationship between law and society as an interaction between the individual and the state. Pospisil argues that society consists of a collection of "sub-groups" with their own legal system so that law does not only belong to the community or the nation as a whole.<sup>66</sup> The law should not be viewed as an interaction between an individual and the state alone, on the contrary, they also live together with their sub-systems within groups that are smaller than the state.

The moderate view of legal pluralism is far more operational in viewing the conditions of pluralism that occur. Even so, they still agree on the normative view of legal pluralism. Paul Schiff Berman stated that pluralism is a condition where there are two or more legal norms that apply in society that must be negotiated to be harmonized in a hybrid legal space.<sup>67</sup> The word "harmonized" meant by Berman is not intended as a unification of law as a system but in its operations.

The discussion of legal pluralism also continues to develop in different paradigms, one of which involves elements of globalization. This new paradigm is a paradigm that examines the sources of legal formation from a historical standpoint.<sup>68</sup> Regarding the phenomenon of globalization, Sulistyowati Irianto argues that narratives about legal pluralism have undergone redefinition, as has occurred in many theoretical thoughts and methodological implications, in various other branches of social science which require new explanations because of this phenomenon. Furthermore, Irianto explained that in this redefinition, it can be seen that laws from various parts of the world have moved into various areas without boundaries, where there is contact with each other, interaction, and a contestation, and mutual adoption between international law, national law, and also local law which is a space and context in a particular socio-political.<sup>69</sup>

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<sup>66</sup> Pospisil, Leopold. *Anthropology of Law, A Comparative Study*. New York, Harper & Row Publishers, 1971, ch. 4.

<sup>67</sup> Berman, Paul Schiff. "Federalism and International Law Through the Lens of Legal Pluralism." *Missouri Law Review*, Vol. 73, 2008, pp. 1149-1184.

<sup>68</sup> Ratuanak, Andreas M.D., et al. "Customary Law or State Law: The Settlement of Marine Resource Disputes in the Kei Islands Community." *The Indonesian Journal of Socio-Legal Studies*, Vol, 2, No.1, 2022, pp. 1-21.

<sup>69</sup> Irianto, Sulistyowati. *Pluralisme Hukum dalam Perspektif Global*. In Irianto, Sulistyowati *Hukum yang Bergerak: Tinjauan Antropologi Hukum*. Jakarta: Yayasan Obor Indonesia. 2009.

As explained by Keebet von Benda-Beckmann, the process of globalization of law is marked by the influence of international law, especially in the field of human rights, on laws in various countries. The many humanitarian problems in various countries have caused their delegations to hold meetings at world bodies to formulate common legal protections. After the joint legal instrument becomes international law, it is then disseminated to many countries and adopted through ratification. In this way, international law in the field of human rights becomes a binding law for global citizens. Global values in the field of humanity are shared values that are respected. In this case, universal values also meet with customary law values in these countries so that new legal norms are born, that's how legal pluralism works.<sup>70</sup>

In recent years, the notion of 'global law' has gained extraordinary relevance in legal theory as a means of removing political boundaries and the formal boundaries of state law in theorizing contemporary legal transformation.<sup>71</sup> Regarding the field of global law, Sally Engle Merry stated the need to pay attention to aspects of temporality to understand the global legal order.<sup>72</sup> At least to some extent, Roger Cotterrell believes that the state is no longer at the center of the contemporary legal world. International law and related international organizations have expanded their scope and proliferated beyond the control of any particular state; Transnational law develops across national boundaries.<sup>73</sup>

In this global perspective, it seems difficult to map law into firm dichotomies. Sulistyowati Irianto explained that we can no longer draw clear boundaries in this global perspective, to distinguish between one legal entity and another. According to her, it will be difficult to draw clear boundaries between international, transnational,

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<sup>70</sup> Benda-Beckmann, Keebet von. "Globalisation and Legal Pluralism." *International Law Forum du droit international*, Vol. 4, No. 1, 2002, pp. 19–25, <https://doi.org/10.1023/A:1014975002140>.

<sup>71</sup> Frydman, Benoît and William Twining. "A symposium on global law, legal pluralism and legal indicators." *The Journal of Legal Pluralism and Unofficial Law*, Vol. 47, No. 1, 2015, pp. 1-8, <https://doi.org/10.1080/07329113.2015.1030210>.

<sup>72</sup> Merry, Sally Engle. "Global legal pluralism and the temporality of soft law." *The Journal of Legal Pluralism and Unofficial Law*, Vol. 46, No. 1, 2014, pp. 108-122, <https://doi.org/10.1080/07329113.2014.882103>.

<sup>73</sup> Cotterrell, Roger. "Still Afraid of Legal Pluralism? Encountering Santi Romano." *Law & Social Inquiry*, Vol. 45, No. 2, 2020, pp. 539-558, <https://doi.org/10.1017/lsi.2019.24>.

national, and local law. Because of the different sources of the law in their interactions meet and contest each other, reproduce, and adopt one another widely.<sup>74</sup>

More advanced than what was discussed by previous experts, today's globalization and glocalization cannot only be seen from physical movements alone, but more powerful than that are non-physical movements. Technological developments have made a person be a part of a community without even shifting his body or physical position, what we later know as a "virtual society". People can interact, become friends, work partners, make legal contracts, and even become predators and prey without touching and getting acquainted physically, in an "official" community. This has made changed people's thinking about how they view the law and how the law should work.

The notion of legal centralization and consistency has become an obsolete notion. Today's law will find it difficult to survive in its "rigid" nature as its excellent initial idea, amid its flexible habitat. The creation of a virtual space that frees the world from geographic and jurisdictional boundaries has even created a new jurisdiction that is anonymous or named later has emphasized the flexibility of today's law. It is this nature that makes the law tend to change.

In any case, the law will always change, from the most extreme form of change, or simply an adaptation in some part of its implementation. The law will always be seen in a context that contains boundaries, be it space, time, ideal ideas, and so on, and the law renews itself according to these boundaries. When the boundaries change, the law will change too. The law is not a story with an end, which begins with chaos and sorrow and then ends happily with order, like a prince on a horse in a fairy tale who goes through many obstacles and finally marries a princess, then they are happy forever. There is no "happy ending" (or sad ending) in the law because the law is dynamic and endless. At one time, the law may have a bad impact on society, and people will try their best to change the law in ways that they know and acknowledge. That is the life cycle of the law. The law will only stop growing when society stops growing, and society never stops growing.

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<sup>74</sup> Irianto, Sulistyowati. *Pluralisme Hukum dalam Perspektif Global*, *Op.Cit.*, p. 40.

### **III. CONCLUSION**

Legal change can occur only if the change is logically accepted by a society which then gives legitimacy to it. It is the society that has the most important influence on legal change. The Laws can only change society only if society accepts them logically and legitimizes them. One of the factors that have the most impact on current legal changes is the rapid transportation and information technology that drives globalization and glocalization. The transformation of technology that has changed physical meetings to digital has given a new social face which has also changed the face of the law. Spaces that were previously unknown and defined have formed a "new social" in which law also lives. We can see that jurists from various views seem to agree on one thing, that the law changes, and they only provide different criteria and procedures. If we eliminate Augustine's statement about this change in the *Ecclesia Romana* from institutions, dogmas, and traditions as well as other things outside the law so that only the law is left, then we can formulate a statement that is more specific as an extraction from the debates of the expert becomes a maxim namely: "*Justitia Semper Reformanda est*", --The law will reform itself all of the time--. By understanding the ever-changing nature of law, it is recommended that lawmakers and also law enforcers, be able to make and implement laws according to their context, which is in line with social changes in their habitat. In this way, we can hope that good and contextual law can become a driving force for change in society towards a better life.

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