

## **Problems of Law Enforcement and Ideas of Paradigm Prophetic in Indonesia**

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### **Abstract**

Law enforcement portraits in Indonesia have not provided encouraging results. The reforms of 1998 in all aspects of the state including law have not always proceeded as planned. The fact that law continues to be legalistic-positivist is a major problem of law enforcement in Indonesia that never succeeded. Therefore, the reconstruction of such thinking model must first be done. As the law is not an independent entity separate from its association with other entities, however, the law is part of the life of society that can not be released away from social entities, politics and so on. The idea of prophetic paradigm is the right solution for the improvement of the Indonesian legal system. The prophetic paradigm is a set of theories that not only describe and transform social phenomena, nor simply change a thing for change, but more than that, it is expected to lead to change on the basis of ethical and prophetic ideals. Where in the basis of the conception of humanization, liberation, and transcendence as stated in the letter of Ali Imron: 110. The prophetic paradigm differs greatly from the positivist paradigm. The transcendence base, humanization orientation and liberation embedded in law enforcement will encourage its existence to always be total in making legal findings (*ijtihad al hukmi*) objective to be applied to a case. By making the paradigm of prophetic law as the base of law enforce-

ment value in Indonesia, it is expected that law can really give a sense of justice to society which so far only limited to wishful thinking.

**Keywords:** Law Enforcement, Ideas, Paradigm, Prophetic

## **A. Introduction**

The paper is motivated by the empirical reality of law enforcement in Indonesia. The 1945 Constitution of the Republic of Indonesia mandates that Indonesia is a constitutional state<sup>1</sup>, which implies that the nation of Indonesia will make law as the frontline in the life of nation, state, and society. The purposes expressed in the opening of the 1945 Constitution are to protect the entire nation of Indonesia, promote the common prosperity, educate the life of the nation, and participate in implementing the world order.<sup>2</sup> However, the reality is extremely different from the goals, where instead of prospering the Indonesian people the law actually bind the people in injustice. Therefore, the law enforcement in Indonesia is extensively still far from ideal. The constellation is a public secret and can be read almost instantly in the mass media.<sup>3</sup>

Law is a very important aspect for society. Without the existence of law, there will be no order of society that is orderly and harmonious. This orderly and harmonious order of society can be realized if law can create justice.<sup>4</sup> Justice in this respect includes to protect individual and collective rights, give something to the right, impose the same on the same issue, and impose differently on something different.<sup>5</sup>

Law and justice are like a coin that can not be separated from one another. Often the law is symbolized by the Goddess Themis

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1 Article 1 (2) 1945 Constitution of the Republic of Indonesia.

2 The Fourth Paragraph of Preamble of 1945 Constitution of the Republic of Indonesia.

3 Satjipto Rahardjo, *Sosiologi Hukum*, first imprint, Yogyakarta: Genta Publishing, 2010, p. 64.

4 Janedjri M Gaffar. *Penegakan Hukum dan Keadilan*. In <http://www.Ahmadheryawan.com>, downloaded on December 30 2017.

5 See Mahrus Ali (ed), *Membumikan Hukum Progresif*, Cetakan Pertama, Yogyakarta: Aswaja Press, 2013, p. 1.

carrying scales.<sup>6</sup> It means that the function of law is to uphold justice. However, often in practice law enforcement is found that it does not reflect justice. Sometimes law enforcement is also faced with opposition to justice and legal certainty. Ideally, legal certainty is in line with justice, since both are the objectives of the law but in practice we sometimes have to choose one of them.<sup>7</sup>

The deterioration of law or injustice in law enforcement can be seen from the many existing realities. In recent years, courts that are representatives of law enforcement have been judged to give decisions that do not reflect justice. The failure of the courts to realize these goals has resulted in increasing mistrust and swift flow of public opposition to this institution. Ultimately it impacts on the vigilante that often occurs in the life of society. Cases such as Marsinah, Udin journalist, Tanah Keret in Papua, Nenek Minah, Janda Pahlawan, Nenek Saodah, and others. Most scholars and societies perceive that decisions strongly do not reflect substantive justice, despite legal certainty.<sup>8</sup>

Still, it would be different if people who are entangled with legal cases are those who have a position as legislative and executive. It is recent in our memories about the senior politician of Golkar party Akbar Tandjung, who was found guilty in state court and high court but declared free at appeal. In addition, recently the son of one of the ministers and the president of the president Hatta Rajasa who did not undergo any legal process for accidents caused by his actions. The face of this law does not favor the interests of the small community even the law increasingly oppresses the small community. Oliver Goldsmith says, *law grinds the poor, the rich governs the law*.<sup>9</sup>

The condition of law enforcement, which is not encouraging, entirely can be blamed not only on law enforcement officers, police, prosecutors and judges but also on the system or positivism school

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6 *Jurnal Konstitusi*, Volume 10 No. 1, Maret 2013, p. 71.

7 Mahrus Ali, *Op.Cit.* p. 1-2.

8 Zudan Arif Fakrullah, *Penegaka Hukum sebagai Peluang Menciptakan Keadilan*, *Jurnal Jurisprudence*, Vol. 2, No. 1, Maret 2005. Surakarta: Muhammadiyah University of Surakarta, p. 23-24.

9 See Oliver Goldsmith, *The Traveller*, 1766, p. 386.

used by our country, which makes law enforcement officers only as mouthpieces of law that are rigid and have no freedom. The legal truth is only what is authorized by the authorities without the social, cultural, and political conditions of the community concerned. It is also because of a legal education model that only designs its curriculum to encourage the production of lawyers with horse-ridden or identic or statutory laws (wet).<sup>10</sup>

Therefore, the reconstruction of law enforcement is absolutely necessary in the state of this critical country. If not treated immediately or if treated with an unhealthy dose, the critical law will soon die. Amid enforcement conditions as above, the paradigm of prophetic law is born which offers a different legal concept than before, where the emphasis on the paradigm of prophetic law is humanism, liberation and transcendence. In this article, the writer addressed two main questions:

1. Why is the Indonesian legal system difficult to give justice to the community?
2. What is the concept of prophetic law in the reconstruction of the Indonesian legal system?

## **B. The Dominance of the Positivism School as Injustice Beginning**

The historical development of science shows, among other things, that the relationship between science and religion (belief system) is not always harmonious and even contradicted. The antagonism between the two as represented by each of its supporters has affected the lives of many people for a long time, sometimes even now it is still heard.<sup>11</sup>

The irreconcilable conflicts between religion and science have resulted in a very sharp separation between religion and science and

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10 Jawahir Thontowi, *Menuju Ilmu Hukum Berkeadilan*, Speech on Inauguration of professor in Law Science, on Desember 20th 2011, p. 84.

11 M. Syamsudin (ed), *Ilmu Hukum Profetik; Gagasan Awal, Landasan Kefilsafatan dan Kemungkinan Pengembangannya di Era Postmodern*, first imprint, Yogyakarta: FH UII Press, 2013, p. 1.

other secular things of religious and state life. This is precisely the cause of the epistemological crisis of science and moral problems in the modern western world today. Moreover after Hugo Gratius (April 10, 1583 - August 28, 1645) says "*etiamsi daremus non esse Deum*" means, in thinking of the Natural Law, regard it as if God does not exist.<sup>12</sup>

The conflict was found to have been won by scientists and soon after it a new chapter emerged in the western world of the Renaissance which has spawned a modern age of Western Europe with the rapid development of science and technology.

In the mid-19th century in continental Europe, especially in France developed a new philosophy called positivism philosophy. This philosophy was taught by two famous exponents, Hendri Saint-Simon (1760-1825) and Aguste Comte (1798-1857). In England this type of philosophy was developed by Herbert Spencer. Positivism is a concept that requires that every thought-provoked methodology to find truth should treat reality as something that exists, as an object which must be released from any macaic metaphysical pre-conception of its subjective nature.<sup>13</sup>

According to Aguste Comte, **what society can reduce in definitive and scientific propositions**. Comte makes a science classification constantly leading to the simplicity and generality of the subject matter (Mathematics), astronomy, physics, chemistry, biology, and sociology. Every branch of science born must rely on previous branches of science, so in his view sociology is the culmination of all that science. In Comte's view every branch of science is something that is exact, certain, and in that case the problem is to describe itself from a problem environment to another matter in the order proposed by it. Within that framework, it is natural for the Comte when the complex phenomenon of the life of society is the last to be naturally worked.<sup>14</sup>

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12 Jawahir Thontowi, *Op.Cit.* p. 83.

13 Scott Gardon, *The History and Philosophy of Social Science*, London: Toutdige, 1991, p. 301.

14 M. Koesnoe, *The Critical to Law Science*, paper delivered before the lecturers

For Comte, every branch of science in the past was worked through three stages: the theological stage, the metaphysical stage, and the positivist stage. At the theological stage it is shown by the fact that all events within the branch of science concerned are solved by arguing that it is God's will.<sup>15</sup> In the metaphysical stage the solution is sought by way of metaphysical abstraction, for example the fact that stars move in a circle. It is explained that the circle is the perfect motion. In the positivist stage it is proved that every problem is solved scientifically positive through a careful observation of events, hypotheses and it is verified through experiments, then explained with conformities subject to causal law (causality).<sup>16</sup>

This positivist thinking ultimately also affects the world of law, especially the assumption and approach that the science of law must also be a positive legal science, as referred to by Comte. This means that the subject of law as a human society issue must also be resolved by observing the events of the community carefully, then composing hypotheses and conducting verification through experiments as well as only to the conclusions explaining with certainty according to the law of cause and effect. Law is only what can be clearly observed and can be perceived by the senses.<sup>17</sup>

Applied to the idea of law, positivism also requires the release of meta-judicial thinking about the law as embraced by the exponents of natural law. Therefore every legal norm must exist within its objective nature as positive norms, affirmed as a concrete contractual agreement between citizens (or their representatives). The law is no longer conceived as the abstract meta-judicial moral principles of the nature of justice, but *ius* which has been positivised as *lege* or *lex*, in order to establish certainty about what is law and what, even normative, must be expressed as things that are not legal.<sup>18</sup> The two

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and students of Law Faculty of Islamic University of Indonesia (UII), Yogyakarta, p 3-4.

15 In West, this Theory Has Been Developed by Thomas Aquinas in His Doctrine: *lex aeterna, lex divina-positiva, lex naturalis, dan lex positiva*.

16 M. Syamsudin (Ed.), *Op.Cit.*, p. 87.

17 *Ibid.*

18 Soetandyo Wignjosobroto, *Hukum Paradigma, Metode dan Dinamika*

great figures in this positivist school of law are Jhon Austin and Hans Kelsen.

### **1. Jhon Austin**

For juridical positivists of Jhon Austin's version, the law is only caught as a juridical rule, more specifically its juridical form. Regarding the content or material of law, it is not a matter of importance and is a non-judicial field studied by other disciplines.<sup>19</sup> Legal science deals only with the fact that there is the rule of law created by the state, and therefore must be obeyed. If you do not obey, be ready to accept sanctions. It does not matter why people obey the law that contains the command and the prohibition, that they obey for fear, or out of respect, or feel compelled to be the same. Most importantly, the fact is that some people obey the rules made by the ruler. Thus, Austin replaces the ideal of justice traditionally seen as the ultimate subject of all laws with the orders of a ruler (in the form of a formal rule).<sup>20</sup>

The Austin Jhon's ism does have its own background, which is somewhat recklessly applying the positivistic ways of August Comte and the empiricism of David Hume. As if consistent with the Comte and Hume's thesis, juridical-positivism wishes to capture the rule of law as a sensual fact, as an empirical fact. Consequently he cares only about the aspects that the senses can capture. The law is forced to be captured by the sensual senses. Since the sensual capture is a collection of rules, the rule is factually made by a legitimate ruler, and its enforceability can be enforced, then according to this ism, the law is no more than a pile of formal rules of the state.<sup>21</sup>

That is why, for Austin, the rule of law is real and valid, not because it has a basis in social life (counter Comte and Spencer), not because it comes from the soul of the nation (counter Von Savigny),

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Masalahnya. Jakarta: Huma, 2002, p. 96.

19 Wolfgang Friedman, *Legal Theory*, 1975. In Surya Prakash Sinha, *Jurisprudence Legal Philosophy in A Nutshell*, Minnesota: West Publishing, 1993.

20 Theo Huijbers, *Filsafat Hukum dalam Lintasan Sejarah*, Yogyakarta: Yayasan Kanisius, 1984, p. 109.

21 Bernard L. Tanya, dkk., *Teori Hukum; Strategi Tertib Manusia Lintas Ruang dan Generasi*, Yogyakarta: Genta Publishing, 2013, p. 108.

not because of the mirror of justice and logos (contra Socrates cs.), but because the law gets its positive form from the authorized institution.<sup>22</sup> Thus, to be regarded as the law according to Austin, the following elements are required: the existence of a ruler (sovereignty), a command, duty to oblige, sanctions for those who disobey.<sup>23</sup> Logically, if for this ism the important thing in law is its juridical form, not the quality of its content.

The positivism and its influence in the life of the state, immediately seek the positivization of social norms (*ius*) to be the norm of legislation (to be *lege*). Legal positivization is a top priority in any legal development in modern emerging countries and calls for unity or integration. Legal positivization also always results as a legal nationalization process in order to improve the capacity of states and governments to monopolize formal social contracts through the enactment or utilization of positive laws.<sup>24</sup>

## **2. Hans Kelsen**

Hans Kelsen is known for his pure legal theory, as a theory, it is primarily meant to know and explain its purpose. This theory seeks to answer the question of what the law is and how it exists, not how it ought to exist. It is the science of law (jurisprudence), not legal politics

It is called a pure legal theory because it only explains the law and seeks to clear the object of explanation of all things that are not related to the law. The goal is to clean the law of foreign elements. This is the methodological basis of that theory.<sup>25</sup>

Such an approach seems to be the right thing to do. However, from a glimpse of the traditional jurisprudence developed in the nineteenth and twentieth centuries, it is clear that it is so far removed

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22 *Ibid.*

23 S. Prakash Sinha, *Op.Cit.*

24 Niklas Luhman, *A Sociological Theory of Law*, London: Routledge & Kegan Paul, 1985, p. 103.

25 Hans Kelsen, *Pure Teori of Law*, Berkely: University California Press, 1978, p. 1.

from the proposition of purity; uncritically the law has been mixed with elements of psychology, sociology, ethics and political theory. The mix is understandable because this last field deals with the subject matter which is closely related to the law. Pure legal theory limits the notion of law in those fields, not because it ignores or dismisses the connection, but because it avoids confusing the various disciplines of different methodologies (syncretism methodology) that obscures the essence of jurisprudence and abolishes the limits established on it by its nature of subject matter.<sup>26</sup>

The essence of this pure legal theory is that law must be released from other elements, whether moral, religious, social or political elements in order that legal certainty can still be guaranteed and does not cause obscurity for apparatus and society in upholding the law.

### **C. Law Does Not Bring Justice (A Positivism Criticism)**

Law, when dealing with the natural and social life that develops, must be able to be applied non-stagnantly and also must be flexible to follow the situation and conditions needed in order to always be able to organize and create just results. Therefore, the interpretive work is not merely reading the rules by using regulatory logic, but also reading the reality or what is happening in society.

One of the causes of stagnancy that occurs in the legal world is that it still stumbles to a single paradigm of positivism that is no longer functional as an analysis and control that combine with live table of real human characteristics in a dynamic context and multi interests both on the process and on legal events, so that law is only understood in a very narrow sense, that is only interpreted as a law, while values outside the law are not interpreted as a law. Meanwhile Holmes has reminded us in advance that the law is not written in constitution but in human experience. More extremely Karl Von Savigny says that true law is not what is in constitution but who live in society.<sup>27</sup> It is in the framework of criticism of the positivism.

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<sup>26</sup> *Ibid.*, p.2.

<sup>27</sup> See Satjipto Rahardjo, *Pokok-Pokok Sosiologi sebagai Penunjang Studi Hukum*, Bandung: Penerbit Alumni, 1978.

Law is a part of human creativity used to uphold human dignity. Human beings do not indulge in the alphabets and semicolons contained in the Law as the result of the manifestation of reason, but the law that draws on the human interest to uphold human values. Law is not only ratio product, but part of intuition. Rthe relevance with the basic value of nationality is to realize the concept of civilized justice, such as the second principle of Pancasila. Therefore the law is for humans not the other way around.<sup>28</sup>

The legal Positivism is strongly opposed by the Sociological Jurisprudence. Sociological Jurisprudence is the one in legal philosophy that among others was pioneered by Eugen Ehrlich. According to him, the central point of legal development does not lie in lawmakers, nor lies in the judges' decisions, but on society itself. Basically, the legal norm always comes from social reality, based on the belief in the values that live in society. Sanctions derived from the authorities to defend the law are not essential but merely complementary.<sup>29</sup>

In accordance with the above opinion, according to Eugen Ehrlich, the most important source of law is not the will of the authorities, but the habit. Therefore, in this case Eugen Ehrlich has the same standpoint as Von Savigny about its historical school influenced by Montesquieu,<sup>30</sup> but he uses a more realistic term that is the legal realities that live in society. According to the realism legal science figure F.S.Cohen, functional law science formulates the meanings, rules and institutions. Laws in terms are judges' rulings or acts of other State powers and as the field of Sociology jurisprudence of judgments in terms of human behavior influenced by law. The movement of realism in law equips the Sociological Idealism, because the movement of idealism limits its observation of its enforcement, its enactment and its duties as a result of natural law, while the Sociologists and Sociologism like Pound, Cardozo, Geny, Heck direct their attention

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28 Satjipto Rahardjo, *Membedah Hukum Progresif*, Jakarta: Kompas, 2006.

29 <http://www.fatahilla.blogspot.com>, accessed, on 06 January 2015.

30 Lili Rasjidi, *Dasar-dasar Filsafat Hukum*, seventh edition, Bandung: PT. Citra Aditya Bakti, 1996, p. 68-69.

to the purpose of law (The Ends Of Law).<sup>31</sup>

Indonesia is a big country rich in culture and customs that extends from Sabang to Merauke. Each region has a different social life as well as the existing norms. Norms that exist are in the form of customary law that is still alive in the midst of society. This has existed before the the Dutch colonized Indonesia and applied positivism in the world of law. With the Unification and Positivism, the law closes the space for customary law and the laws of other habits that live in society to be applicable in the midst of society, so that the local wisdom of living law is squeezed by the laws made by the authorities, so that the resistance to the law and judgment in Indonesia to this day still occur because the law is crystallized in law and the court decision is very far from the values of justice prevailing in the community.

Society develops very quickly, so to compensate for its development the law must always follow the development of society. The existing law should be a guide and solution to all problems that occur at that time whereas in the legal positivism is embodied in a complex procedure, so to conduct a legal reform is always left behind by the development of society. As a result, the existing law is not able to answer the challenges of the times.

According to Friedmann, law as a system consists of sub-systems of mutual movement that can not be separated and influenced by one another. The sub-systems consist of: Llegal Substance, namely concerning the content of the norm / rule of law; Legal Structure, namely concerning legal facilities and infrastructure, including legal apparatus resources; and Legal Culture, concerning the conscious and law-abiding cultural behavior, both government and society. A good legal culture will take shape when all parties are genuinely involved in participating fully in the legal process, so that everyone will truly feel the law. Because of the enormous role of the legal culture, it can mask the weaknesses of legal substance and legal structure.

Thus, according to Friedman the law has a very wide scope, not limited to the textual form of legislation. In the functioning of law in

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31 <http://sengiernesst.wordpress.com/2014/10/05/mazhab-positivisme-hukum/>, accessed on 06 January 2015.

the community it not only requires mere law but also requires other things such as community culture, law enforcement officials and facilities and infrastructure. Here we can see that the positivism seeks to imprison the law solely in textual terms.

In the dimension of the tradition of positivistic paradigm, the behavior of law enforcers in Indonesia who are not able to move emancipatory and progressive is revealed, but they merely become instrumentalist tools, mouthpieces of law and hammer knockers from the article texts formulated in space power arena. Social justice is then measured only from rigid and dogmatic chapter sounds. Meanwhile the breakthroughs of legal discovery that are responsive and progressive are suspended animation. Laws that live in society are marginalized and even erased. Worse, in the midst of the sacred paradigm of the sanctity of the logical chapter texts, law enforcement agencies in Indonesia have been accustomed to the practice of buying and selling chapters to enrich them.

In essence, the positivism paradigm assuming that law is a formal rule created by the ruler can not bring prosperity to society. Instead of prospering the society which is indeed one of the main objectives of the law, the positivism makes rigid laws. In addition, law enforcement officers only act in accordance with what is written in the constitution, so that in practice many problems appear. There must be something wrong with the application of our constitution, which has been a grip in enforcing the law. Once acknowledged and proved by various studies from both the scientists of law sociology and other social sciences that the positivism is no longer relevant to answer various legal issues, then the question is what kind of law is appropriate to solve law problems increasingly to be more complex.

To explain the question above, there have been many theories developed by jurists. Philip Nonet and Philip Scjelnick issued a responsive law, Roberto M Unger developed a critical law, Satjipto Rahardjo developed Progressive Law, Brawijaya University of Malang initiated the Science of Religion, and FH UII developed Profetic Law. It is this prophetic law which the authors will discuss in this paper, because it seems to be in the midst of the law problem. Also because

the real condition of Indonesian nation is very plural, prophetic law is one of the right answers.

#### **D. Paradigm of Prophetic Law; Liberating Law**

Prophetic law in language can be interpreted as a prophetic-oriented law (prophetic mission). Prophetic mission for the author is always related to the three main approaches, namely: liberation, humanization, and transcendence. However, the prophecy referred to here is not rigid, in the sense that all religions can transform their prophetic mission, even though the mission of prophecy can actually be said to be universal. In addition, the paradigm used must be dynamic, meaning it requires contextualization in the meaning of holly and hadith (for Islam), so that friction or clash between followers of religion can be avoided.

Being a prime view in law is that law is created to bring benefit to people and it is not independent and out of social reality. Therefore, if a time comes the circumstances in which the law does not bring justice to man, it is not the man who is forced to adjust to the existing rules but the the law that must be corrected or the way of human law treatment is less precise. From this the author tries to relate it to prophetic law as an alternative or solution to the law of human beings, and beyond that the law has failed to bring justice.

The prophetic law was chosen because according to the author law enforcement in Indonesia requires not only a regulation that guarantees the existence of certainty (*contra* positivist), more than that the law should contain values and morals so that the impact felt by the community is really in accordance with its human nature. Therefore, as a law that adheres to "revelation" and "prophetic" doctrine, prophetic law is the right solution for the current legal crisis in Indonesia. In addition to needing good law, law enforcement also requires good man, and good government who hold firmly to their religious values

In the context of cases for the above marginalized group, Satjip-to Rahardjo has said that if a policeman or prosecutor works with

conscience, it will result in different verdicts from those of apparatus who simply work only on the book rule or spelling texts.<sup>32</sup> Therefore Satjipto argues that what is needed by law enforcers today is that people who are able to use their brains and conscience in the work, although the physical aspect should not be ignored. Conditions of conscience arise such as the form of patience, self-control, and so forth<sup>33</sup> so that law enforcement is able to explore the aspects of justice and humanity to the legal cases it handles. Hence, the prophetic law paradigm is once again a highly relevant solution.

The prophetic word comes from the English word 'prophet'. According to the Oxford Dictionary 'prophetic' is (1) "Of, pertaining or proper to a prophet or prophecy"; "Having the character or function of a prophet"; (2) "Characterized by, containing, or of the nature of prophecy; predictive ". Thus, the prophetic meaning is to have characteristics like prophets', or to be predictive, to foresee. We can translate prophetic here into 'prophethood', but is there any prophetic social science? Is there a science of prophetic law?

Kuntowijoyo has written that "The origins of the mind of Prophetic Social Science can be found in the writings of Muhammad Iqbal and Roger Garaudy"<sup>34</sup>. Muhammad Iqbal is an Islamic thinker, while Roger Garaudy is a French philosopher who converted to Islam. Kuntowijoyo took the ideas of two thinkers to develop what he thought of as the prophetic sciences, more particularly the prophetic social sciences, because Kuntowijoyo was a historian and a social scientist. However, in the next development, this prophetic science not talks about not only social problems but also other sciences such as law science, because the scope of prophetic is very large. As a set of legal concepts related to each other that form a frame of thought, the author calls it by the term of prophetic paradigm.

Please note first that the basis of this prophetic paradigm is Is-

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32 Satjipto Rahardjo, "Berhukum dengan Nurani," *Kompas*, 8 June 2009.

33 Satjipto Rahardjo, *Sosiologi Hukum : Esai-Esai Terpilih*, Yogyakarta: Genta Publishing, 2010, p. 115.

34 Kuntowijoyo, *Ilmu: Epistemologi, Metodologi dan Etika*, first imprint, Yogyakarta: Tiara Wacana., 2004, p. 90.

lam. Islam is simply interpreted as a whole set of symbols based on symbols derived from the Qur'an and the sunna of Prophet Muhammad s.a.w. as the messenger of Allah s.w.t. explaining and manifesting various things in the Qur'an.<sup>35</sup> However, the teachings contained in the Qur'an are not applied arrogantly but plainly interpreted contextually and adapted to the current conditions or in contemporary terms it is known as transformation.

For example, as a paradigm based on Al-qur'an and sunnah rasul, of course the system of doctrine built must be based on two important things, namely the pillars of faith and pillars of Islam. However, the pillars of Faith and the pillars of Islam must first be transformed to be relevant to the social conditions of the community. Pillars of faith are the basis of belief, the basis of which consists of two kinds: the basis of cognition (mind) and the basis of affection (feeling).<sup>36</sup>

Pillars of faith consist of six things, if transformed more or less as follows: first, faith in God, the faith is nothing but "relation", it means to build a relationship with God and the most appropriate relationship is devotion. In the context of the prophetic paradigm, God is here transformed into knowledge, for God is the source of knowledge. To believe in God in a prophetic context is to believe in knowledge itself. Second, faith to angels means building relationships with angels, and the right relationship is friendship because angels are friends for faithful men. Third, believing in the book means building relations with the book, and the right relationship is the reading because the book is something to read. Fourth, to believe in the prophet is to build relationships with prophets and the right relationship is college and friendship. This means that a Muslim sees the Prophet as a teacher who gives knowledge as well as friends as the relationship between Muhammad and his Companions. Fifth, to believe in the Day of Judgment is to establish a relationship with the Day of Judgment, the right relationship is the prevention, because doomsday in this context can be interpreted as destruction. The sixth, to believe in destiny is to build relationships with destiny, and the right relation-

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35 M. Syamsudin (ed), *Op.Cit.*, p. 47.

36 *Ibid.* p. 48.

ship is acceptance. This means that a Muslim sees destiny as something inevitable and the right relationship is to accept it. Destiny in the context of scholarship can be interpreted as a law of nature.<sup>37</sup>

In the context of the above thought, the author is interested to examine the significance of the prophetic paradigm in law enforcement in Indonesia. The prophetic paradigm as Kuntowijoyo thinks is based on three things, namely humanization (*amar ma'ruf*), liberation (*nahi mungkar*) and transcendence (*faith*). These three bases are a prerequisite for the presence of human choice, in which if contextualized in law enforcement in Indonesia, moral responsive and progressive law enforcers will exist to fix the crisis of law enforcement taking place. Prophetic conception is a marker that in Islam contains prophetic values that can be used as a reference in directing the change of society, namely humanization, liberation and transcendence derived from the Qur'an letter of Ali Imron verse 110 which reads "Ye are the best people, evolved for mankind, enjoining what is right (humanization), forbidding what is wrong (liberation), and believing in Allah (transcendence)"

Kuntowijoyo terminologically explains one by one. First, humanization which is the constructive meaning of word "*amar ma'ruf*" originally meaning to encourage or uphold virtue. The command of *Amar Ma'ruf* is intended to elevate the dimensions and the positive potential (*ma'ruf*) of every human being, which is an impulse of emancipation to the light (*nur*) of the divine guidance in attaining the level of *fitrah*. *Fitrah* is a state in which man earns his position as a noble being in accordance with his human nature.<sup>38</sup> Meanwhile in Islamic language the meaning is to humanize human and eliminate material, dependency, violence and hatred from human.<sup>39</sup> The concept of

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37 Heddy Shry Ahimsa-Putra, "Diskusi Berseri Membangun Paradigma Ilmu Hukum Profetik" issued by Pusat Studi Hukum (Center for Legal Studies), Faculty of Law, Universitas Islam Indonesia (PSH FH-UII) Yogyakarta, 18 November 2011.

38 Kuntowijoyo, *Paradigma Islam : Interpretasi Untuk Aksi*, Bandung: Mizan, 1991, p. 229.

39 Kuntowijoyo, *Muslim Tanpa Masjid : Esai-Esai Agama, Budaya dan Politik dalam Bingkai Strukturalisme Transedental*, Bandung: Mizan, 2001, p. 364-365.

Kuntowijoyo's humanization is rooted in theocentric humanism,<sup>40</sup> in contrast to the philosophy of western humanism which in fact was born in post renaissance which principally declares its opposition to religious philosophy for the sake of human dignity (anthropocentric humanism).<sup>41</sup>

Second, liberation which is the constructive meaning of the word "*nahi mungkar*" means to prohibit or oppose any destructive crime, begin to prevent friends from consuming drugs, to ban brawl, to eradicate gambling, to remove loan sharks/ money lenders, to defend the fate of workers, and to eradicate corruption.<sup>42</sup> In the meaning of Islamic scholarship, it means liberation from ignorance, poverty, and or oppression. Theoretically the concept of liberation is strongly influenced by the spirit of liberation theology born out of Catholic thinking in Latin America using Marxist analysis tools as the concept of liberation. Religion under the auspices of liberation theology will emerge as a moral and social force for liberative and emancipatory work,<sup>43</sup> but in the context of Islamic scholarship, Kuntowijoyo does not take Marx's "ideology". For Kuntowijoyo, ideology is a myth. Kuntowijoyo's interpretation of liberation is based on the values of transcendence which then lead to the presence of prophetic responsibilities to free human beings from cruelty, poverty, violence, the dominance of oppressive structures and the lives of false consciousness. Marx's liberation ideology considers religion to be opium, while Kuntowijoyo puts religion as a means of liberation after a scientific process of science.<sup>44</sup>

Third, transcendence which is the constructive meaning of the word "*tu 'minuuna billah*" basically means faith in God. The meaning

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40 Kuntowijoyo, *Paradigma Islam : Interpretasi... Op. Cit.*, p. 228-230.

41 Ali Syariati, *Sosiologi Islam*, Yogyakarta: Ananda, 1982, p. 85.

42 Kuntowijoyo, *Identitas Politik Umat Islam*, Bandung: Mizan, 1997, p. 38.

43 Micheil Lowy, *Teologi Pembebasan*, Yogyakarta: Insist Press-Pustaka Pelajar, 1999, p. 26-47.

44 Husnul Muttaqien, "Menuju Sosiologi Profetik: Telaah Gagasan Kuntowijoyo Tentang Ilmu Sosial Profetik dan Relevansinya Bagi Pengembangan Sosiologi," Undergraduate Thesis, Faculty of Social and Political Sciences UGM, Yogyakarta, 2003, p. 125.

of transcendence generally relates to theology like the divine and the unseen. The existence of transcendence in the prophetic paradigm is the basis of humanization and liberation actions. For Kuntowijoyo, the existence of transcendence becomes the basic value that will improve the crisis of modernism. For him, the modernism born of the renaissance paradigm has separated the revelation (religion) from science as the impact of resistance to the theocentrism in the middle ages so that there is distability. Modernism is not even just a distability, but also a journey into a total disintegration, a catastrophe of human history.<sup>45</sup>

From the above conceptions, the prophetic paradigm is a set of theories that not only describe, transform social phenomena, and simply change a thing for change, but also hopefully direct change on the basis of ethical and prophetic ideals.<sup>46</sup> In the basis of humanization conception, liberation and transcendence as stated in the letter of Imron Ali: 110, will also encourage the formation of other constructive concepts, including: first, the concept of the best people can mean that the people must be responsive and progressive who are competing to be the best human . Second, historical activism can be interpreted that the people must be involved in incising the history of civilization. Third, the importance of consciousness means that people must be aware of their responsibilities. Fourth, the existence of prophetic ethics means that every people must uphold the spirit of humanization, liberation and transcendence in its private and social spaces.<sup>47</sup>

The prophetic paradigm differs greatly from the positivist paradigm. The transcendence base, humanitarian orientation and liberation embedded in law enforcement will encourage its existence to always be total in making legal findings (*ijtihad al hukmi*) objective

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45 F. Budi Hardiman, *Melampaui Positivisme dan Modernitas : Diskursus Filosofis tentang Metode Ilmiah dan Problem Moderitas*, Yogyakarta: Kanisius, 2003, p. 151.

46 Moh. Sofan, *Pendidikan Berparadigma Profetik : Upaya Konstruktif Membongkar Dikotomi Sistem Pendidikan Islam*, Yogyakarta: IRCiSoD-UGM Press, 2004, p.131.

47 Kuntowijoyo, *Muslim Tanpa Masjid... Op. Cit*, p. 357-358.

to be applied to a case. Law enforcement in this context is placed in a very strategic and decisive position, namely *mujtahid*. Its position must think hard to be part of law enforcement that is able to record the history of humanity and engage in building a civilized order. The decision must be based on the critical and intuitive knowledge of the sciences, the behavior must be maintained ethically and prophetically and vie to be role models in law enforcement.

The orientation of the prophetic paradigm in law enforcement is actually "similar" to the progressive legal notion declared by Satjipto Rahardjo, in which man and the people are the purpose of the existence of law. Enforcement of progressive legal law, as Suparman Marzuki says, is a submissive law enforcement of the existing system, but more affirmative (affirmative law enforcement). Affirmative means the courage to exempt from conventional practice and affirm the use of one other way, which breaks through the longstanding practice of law. The human rights law enforcement apparatus is realistic, not residing in the ivory tower. They have to sharpen their intuition by coming down to absorb the growing aspirations of society. Law enforcement officials should be agents of change and not staff of the legal system. They must dare to break through the barriers built by oppressive ideologies of social justice. They must come out of the monolithic interpretation because the text of the legislation provides only a limited sphere of interpretation. Progressive law enforcement is more of a context than a rule-only text.<sup>48</sup>

The ideals of law enforcement of the prophetic paradigm equal the ideals of progressive law enforcement. Only progressive law as Satjipto declares has no offensive position of transcendence as the basis of enforcement. Therefore, the basic orientation of enforcement is simply humanism as developed in the liberation society of Europe. Meanwhile the prophetic paradigm, the orientation of humanization and liberation in the law must stand on the transcendence, so law enforcement is not solely responsible for materially, but also responsibly immaterial. The existence of transcendence in the law of prophetic

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48 Suparman Marzuki, *Robohnya Keadilan: Politik Hukum HAM Era Reformasi*, Yogyakarta: Pusham UII, 2011, p. 269-270.

paradigm is a fundamental one. Its absence will lose the orientation of humanization and liberation into the European humanism that indeed separate the science from religion on **the basis of that the value must be free.**

Methodologically, the prophetic paradigm, if personalized to law enforcement, will create the patterns:

First, law enforcers must transform "abstract laws into the concrete ones. The law in Indonesia so far with its positivism paradigm is in the ivory tower, and does not touch the sociological real facts of society. Law becomes a rigid, transcendent and not grounded language with sociological conditions when established. Then the law must be earthed and cultivated so that it becomes a blessing for social life and able to be an effective solution to the real problems faced by the community.<sup>49</sup>

Second, law enforcers must transform "ideological law into science". Ideology according to Kuntowijoyo is subjective, normative and closed unlike science that is open, objective, and factual. Laws placed in an ideological context often experience difficulties when they are upheld in the life of the community. Then law enforcement is able to spell the law so as to fit the needs of a multicultural society. Laws in ideological positions tend to be centralistic, dominative, and marginalizing. The ideological paradigm must be transformed into a science because in the ideology, reality is interpreted depending on the conventional conventions. However in the perspective of science, reality will be seen as an autonomous reality from the consciousness of its viewer. Approach of science in the context of law will later bear the concepts that are objective, theoretical, factual and open.<sup>50</sup>

Third, law enforcement must transform itself subjective on objective issues. Subjective transformative positioning toward objective is the ideal of law enforcement that has been centered on the subjective nature of law enforcement, whereas the law enforcers have not done objectively to the cases they handle. Hence, what happens is a judgment that is unfair, arbitrary and not in accordance with the

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49 Kuntowijoyo, *Identitas Politik ... Op. Cit*, p. 17-20.

50 *Ibid*, p. 20-23.

actual reality. Objectives require realistic meanings. Kuntowijoyo pointed out, *zakat* (alms) subjectively aims to clean up the wealth and soul, but in fact the objective side of the goal of *zakat* essence is the achievement of social welfare. It means that Islam wants social welfare should always be developed.<sup>51</sup>

The above prophetic law paradigm is expected to be able to solve the problem of law enforcement in Indonesia. Law that holds to the values of religion can make law enforcement officers aware of their role and function as human being and their responsibility as *khalifah fil 'ardh*. In addition, they can create legislation that is full of humanization, liberation and transcendence values.

## **E. Conclusion**

Law enforcement have not been successful and do not give justice for the community because Indonesia both apparatus and law un Indonesia are very positivist. Something is fair if it is in accordance with the article in the law. On the other hand in practice, the law is inseparable from social reality in society because it is a part of social reality. Positivist conditions make our law enforcement very rigid and not responsive to the development of society so that it results in injustice everywhere. To make improvements to law enforcement, the first thing to do is to remove the positivist culture that has been upheld by law enforcement officers. If it has been done, the improvement of legal substance, legal structure and legal culture can be done, too.

Prophetic law is essentially liberating law, which adheres to the values of prophethood, of which the values have been established in the Qur'an and the hadith of the Prophet. Prophetic law is oriented on three things, namely Humanity, Liberation, and Transcendence . With the application of this concept of prophetic law, law enforcement officers are expected to change the paradigm that has been positioned as a mouthpiece of the law. Law enforcement officers are free people that means not being shackled by the rules because the main purpose is to provide justice rather than applying the rules.

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51 Kuntowijoyo, *Paradigma Islam... Op. Cit*, p. 284.

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