

Law in a Transitional Society: Discussing Emile Durkheim's Thoughts on Law and Society in an Indonesian Context

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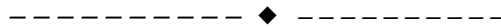
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Abstract

This paper discusses Emile Durkheim's thoughts as a figure in early legal sociology studies, and their contextualization in Indonesian reality. Durkheim in his theory divides society into two types, simple and modern. Simple society is characterized by streamlined work differentiation, mechanical social solidarity, and repressive types of laws. Meanwhile, modern society is characterized by an increasingly diverse and specific division of labor, organic solidarity and restitutive legal types. In the Indonesian context, the New Order era was an era of economic development that was full of issues of industrialization, law was used as a tool of social engineering and served for practical purposes, the volume of regulations increased until there was what Susskind called hyperregulation. Another issue is the legal unification project, this project is powerless because it has to deal with local legal forces inherent in society. This kind of legal condition shows the social condition of a society that still upholds collective spirit or awareness, a characteristic of a simple society in Durkheim's perspective of thought. but on the other hand, the need for and the applicability of positive law nationally along with the development of society as well as the development of legal institutions and professions, can be used as a reflection of the characteristics of modern society in the perspective of Durkheim's thought. The two categories of law and society that Durkheim theorized were in one container, namely Indonesian law and society, a uniqueness as well as a criticism of Durkheim's theory.

Keywords: *Law, Society, Solidarity, Repressive, Restitutive, Industrialization, Legal Unification, Transition.*



A. INTRODUCTION

The study of law and society or what is popularly known as legal sociology is a study that cannot be missed in legal studies (Windfield, 2020). Historically, this study was born in Europe through the touch of the minds of academics such as Emile Durkheim (1818 -1883 AD) who was later recorded as the pioneer and ancestor of this study of law and society (Wandi et al., 2021; Utama, 2021). Durkheim's name had not been taken into account by sociologists of law when the ideas of his two predecessors, namely Karl Marx and Henry S. Maine, had been widely read and studied by people. Durkheim's thoughts began to emerge among legal sociologists after the publication of his work *De La Division du Travail* (1883), thirty-two years after Maine's *Ancient Law* (1861) was published (Abbot, 2019; Umanailo et al., 2019).

During Durkheim and subsequent periods, the study and analysis of law through a social perspective was also of interest to legal realism figures in Scandinavia such as Benjamin Nathan Cardozo (1870-1938 AD) and in the United States such as Oliver Wendell Holmes (1841-1935 AD) as which they have shown through their

actions of defiance of the practice of judges in courts which are hegemony by a positivistic legalistic philosophy (Buly, 2021). Likewise, the name of Roscoe Pound (1870-1964 M) cannot be missed in a row of figures who gave shares of thought to this study, even Nonet and Selznick (1978) argue that the study of law and society has found an era of revival and development in the decade 1960 to 1970. In the late 1990s, the era when Roscoe Pound's thoughts were widely discussed and cannot be missed by legal sociologists.

The study of law and society, which originated in Europe and then developed in America, has welcomed developments in developing countries like Indonesia. It is Satjipto Rahardjo, one of the figures who seems very enthusiastic about consistently developing this study to produce a manifesto of progressive legal thought which is worth reading and cannot be missed by researchers of the sociology of law in this country (Tandi, 2019; Tada, 2020).

The brief description of the history of the development of the study of law and society above leads the author to try to discuss the early study of the sociology of law pioneered by Emile Durkheim and born in European society which was in the era of industrialization. This study of Emile Durkheim's thoughts will try to be communicated with the reality of Indonesianness, as a European ex-colonial country which of course cannot be separated from European ideas. This discussion of the Indonesian context will focus on the issues that emerged and formed the background for Durkheim in developing his theory, in addition to issues related to the substance of Durkheim's own thoughts.

B. METHOD

This study uses a type of qualitative research with a descriptive analysis approach. The research data was collected using the historical literature study method and the triangulation method in the form of secondary data and analyzed using a qualitative approach so as to produce specific conclusions.

C. RESULT AND DISCUSSION

1. Emile Durkheim Biography Sketch

Emile Durkheim is one of the two main founders of modern sociology, besides Max Weber. He was born on April 15, 1858 in Epinal, capital of the Vosges section of Lorraine, eastern France. He was a descendant of Jewish priests who were prepared to become priests (rabbis), but he was disappointed with his religious education, and he decided to become an agnostic. he then turned his interest to general knowledge, especially scientific sociology and philosophy (Chya & Engel, 2021).

His academic career began with education at the famous school, namely the École Normale Supérieure (ENS) in 1879 AD in Paris. His class was classified as the most brilliant generation in the 19th century AD. The majority of his classmates, such as Jean Jaurès and Henri Bergson became major intellectuals in France. At ENS, Durkheim studied with Fustel de Coulanges, a classical scholar with a social scientific outlook. At the same time, he read the works of Auguste Comte and Herbert Spencer.

This shows Durkheim's interest in a scientific approach to society since the beginning of his career and felt no interest in the human sciences. He graduated with the second last rank in his class when he took the agrégation exam – a requirement for a teaching position in general teaching – in philosophy in 1882 AD (Parsons in Durkheim, 1991).

In 1885-1886 AD, he went to Germany and met Wilhelm Wundt, a psychologist who later became Durkheim's inspiration especially in encouraging his deepening of scientific psychology. Starting from here, Durkheim focused on teaching pedagogy and moral education with a view to communicating the moral system to teachers. He hopes that these teachers will pass it on to young people in order to help overcome the moral decline that is occurring in French society. Durkheim's intellectual development was rapid, and its peak was marked by the publication of his Doctoral thesis, *The Division of Labor in Society* (*The Division of Labor in Society*) in 1893 AD (Cotterrell, 2019).

His work in the academic world can be seen in his efforts in establishing the first sociology faculty at a university in 1895 AD, and the publication of one of the first journals devoted to social science namely *L'Année Sociologique* in 1896 AD. In addition, he also held several academic positions such as being a full professor at the University of Bordeaux around 1896 AD, having the honor of teaching at the University of the Sorbonne, France in 1902 AD and becoming a professor of education and sociology in 1906 AD (Durkheim et al., 2020).

The 1890s were Durkheim's creative period. After the publication of his doctoral thesis, *The Division of Labor in Society*, he published *The Rules of Sociological Method* in 1895 AD, a manifesto which stated what and how sociology should be treated. In 1896 AD, he published the journal *L'Année Sociologique* which he used as a vehicle for publishing and publicizing the writings of an increasing number of his students and associates. In 1897, he published *Suicide*, a case study which provides an example of what a sociological monograph could look like. A few years later he wrote several articles such as *Primitive Classification* in 1903 AD and *Determination Moral Facts* in 1906 AD. His momentum, in 1912 AD, he published *The Elementary Forms of Religious Life* (*Fundamentals of Religious Life*), a quite important work. in the development of sociology at a later date (Parsons in Durkheim, 1991).

He died on November 15, 1917 as a well-known French intellectual, but his work began to influence American sociology twenty years later after the publication of Talcott Parson's *The Structure of Social Action* in 1937 AD (Ritzer and Goodman, 1991).

2. Examine Emile Durkheim's Thoughts on Law and Society

No theory develops out of a vacuum. This adage should be considered in discussing a theory or idea. Much of Durkheim's thinking was inspired by real situations in Europe when it was in a state of transition. The political revolution in 1789 AD, the industrial revolution and the emergence of capitalism in the 19th and early 20th centuries, the emergence of Marx's socialism, and the rise of feminism in

the 1780s to 1790s were a series of realities that were developing in Europe (Feder, 2019).

On the one hand, this transitional situation has brought European life in the field of economic, political, social and culture to the tip of further development and is idealized, namely, nation-state and modern society. The life situation surrounding the community at that time was more dominated by straightforward and dynamic industrial life and formal and centralized bureaucratic life, the life of its political organization changed from originally local under the patriarchs to become the state, and implicit and sacred local customs turned into positive law. which is explicit, formal and secular yet guarantees certainty (Gutierrez, 2021).

The European national legal system is becoming increasingly real, increasingly institutionalized, managed by professionals so that it turns law into a more independent normative system. Such a legal system is formed through legal unification efforts that work to work on various existing legal systems into a single normative system based on the substance or objects of jurisdiction and not based on the subjects. In other words, legal unification wants to form a nation state based on territorial law and will not revive personal law (Indrayani, 2022).

The other side that Durkheim faced at that time was social change which often led to various disturbances such as labor strikes, class gaps between the rulers and the people, state and church divisions and so on. According to Durkheim, such chaos must be overcome through what he calls social reform, not to be taken for granted as an inevitability arising from modern life as viewed by classical theorists at the time such as Weber (Keim, 2021).

What needs to be emphasized from the bit of description above is that Durkheim's thoughts were inspired by the transitional conditions of European society which were marked by social and legal changes. Social change appears to be accompanied by social chaos so that Durkheim sees the need to raise moral issues in order to fix this social disorder. Changes in the field of law were marked by the unification of the legal system from personal law to national law as an influence of legal positivism that was established at that time.

This assertion is reminiscent of what Turkel wrote (tt: 26) that Durkheim's sociological thought as in his works is based on strong principles of rationalism, morality and positivist approaches to knowledge. Such approaches are used by Durkheim to explain the causal relationship (not technical) between law and society as well as to seek boundaries of moral and social functions of law under patterns of social relations or solidarity. Such an approach provides a richer and more in-depth analysis of the causes that link social forces to legal categories and institutions.

3. Law as a Social Fact

Durkheim is a person who views the sociologist's proper, professional and theoretical methodology as a more adequate approach to explaining social issues such as law, crime and deviance. Such a sociological approach will be able to explain law and society as objective facts (Kudratulloevich et al., 2020).

Durkheim was a sociologist who was at the forefront of developing the social facts paradigm. Durkheim stated that social facts must be considered as things distinct from ideas. It departs from reality or everything that is the object of research and investigation in the study of sociology. The point of departure and the nature of the analysis is not to use speculative thinking which is typical of philosophy, but to understand reality it is necessary to compile real data outside of human thought. The research he produces is descriptive in nature and is only a presentation of the data and reality that occurs. Social facts consist of two types, namely social structure and social institutions (Kumar, 2020).

Social facts are determined by the state of society in general, the nature of coercion and the externality of society to individual consciousness and will. Social facts such as the rule of law and crime rates are a social reality that is independent of individual wishes and desires. Social facts are patterns of action, thought and feeling that are outside the individual and always control the individual. So is law, like a ring of facts that externally compels individuals and monitors their actions (Langer, 2020).

Social facts describe the basic patterns of moral beliefs and social organization that shape individuals' expectations of one another. Such patterns of social organization and morality constitute a reality which has its own corresponding scientific methods and laws. Social facts are reproduced through institutions such as government, courts, legal education, family and religion. They form a purpose and become a continuing historical reality. Social facts influence what people will do. It forces people to fulfill social expectations because it represents the power of society above the individual. Criminal law, for example, is a social fact that specifies how society affirms and reacts to actions that disturb the balance and stability justified by norms (Layantara, 2020).

The description of Durkheim's thoughts above shows that Durkheim's approach is more in favor of society than individuals. According to him, human life is born from society, therefore human life is determined by society. This collectivism approach ushered in Durkheim's further studies in viewing society (Malik, 2020). Such a collectivism approach is certainly different from Herbert Spencer and August Comte (originator of positivism) who emphasized individualism and were more interested in the long-term evolutionary development of modern societies, both of whom wanted to apply the theory of evolutionism to nature and biology in the area of study of the social sciences. so that the individualism approach is considered more appropriate for both (Marcel, 2020).

In order to explain how social facts can be related to others, Durkheim views the sociology of law as requiring a comparative method. Comparison of law and society within different types of society allows the examiner to focus on the ways in which legal phenomena function in the maintenance of society as a whole organizational and moral. This functional and comparative approach will be able to explain the causal relationship between law and society by specializing in how law plays a role in different societies. Institutions and legal rules indicate the relations among social organizations, the pattern of social relations that people have with one

another and morality. This comparative approach is also used to assess the level of legal contribution to social reproduction, social orders, and solving problems (Mirsha & Rath, 2020).

4. Society, Division of Labor, Solidarity and Law

Initially, Durkheim analyzed the phenomenon of complexity in the institutional structure of society and the relationships that occur within it, but in reality the community has continuity and is in strong cohesion and can survive the times. Durkheim concluded that the cause of this reality is the existence of a social order, namely people's lives. Community life can survive continuously because the community is able to organize itself with the help of legal instruments (Muljadi, 2020).

Social order is full of morals which this time is identified by Durkheim with law. Law as moral is essentially an expression or reflection of social solidarity that develops in a society. The moral referred to here is not moral in the normative sense but as a social reflection manifested in the form of solidarity (Mulyantno, 2022). Social solidarity is certain and continuous expectations that society creates together through the forms of personal internal associations that they build and then are expressed in the form of norms and legal institutions. These legal norms and institutions will maintain these expectations and associations, which of course vary according to the shape of society (Mulyantno, 2022). Durkheim linked the social order which was reflected as community solidarity with the developments in society that occurred, as well as the legal developments that it influenced (Mustofa, 2019).

Durkheim's analysis concludes that society develops from a simple society to a complex one. In simple societies, mechanical solidarity will be reflected, while in complex societies organic solidarity will be reflected. This development occurs in line with the increasing differentiation of the division of labor in society, from the segmental and streamlined to the functional and specialist. This division of labor is a central theme that will explain the occurrence of various kinds of changes in terms of structure and restructuring of society, types of solidarity and legal functions (Prus, 2019).

In a simple society, society is at the stage of segmental differentiation, society appears as a set of many disaggregated units, each of which is small in format and very similar to one another (Rime & Paez, 2023). The population of this simple society is usually relatively small, the technology used is simple so that the division of labor is lean, community interaction is more dominated by the quantity of meetings, the collective spirit is more dominant than the individual, beliefs and primordialism become social symbols. This shows the existence of a great attachment among community members which is the basis of the existence of this simple society. This is what is meant by mechanical social relations.

In the life of a local community that is homogeneous and does not know advanced differentiation as above, a deviation or disorder will not be tolerated because it is considered as a disturbance of stability that threatens society and causes the collapse of this simple society. Every evil act is considered to injure the collective

conscience of society and to react to such an act, punishment needs to be carried out because only with such a spontaneous retaliatory reaction can social solidarity be protected and preserved. Regarding the rehabilitation of criminals, the law does not need to worry about it.

In a simple society, law will be supported by repressive sanctioning forces which have the main objective of wreaking vengeance. Such repressive laws are very dominant in social life with this mechanical solidarity, in order to deal with threats and violations of what is called collective conscience. Repressive sanctions can be in the form of criminal law such as public reproach, humiliation of honor either death penalty or corporal punishment and abolition of freedom.

Furthermore, at the stage of modern society, society has grown to become a unified system that is single and more coherent and large format, complex with heterogeneous component units, each of which has its own specific function but is integrated into an aggregation unit that is very organic so that it can be concluded that the type of solidarity is organic (Smith, 2020).

The division of labor in modern society is increasingly specified so that competence in functional practical activities is more at the forefront. For example, a person who wants to fix a car will go to a mechanic, so does a person who wants to fix his teeth, he will go to the dentist. Individual interests and competencies are considered more than the collective consciousness of society. Individuals become part of society and are considered to be able to contribute to the survival of society as a whole. Different jobs have the function of strengthening society together. Conflicts arising from tensions between individuals are more easily tolerated because they do not involve the community. To integrate the different and increasingly specific divisions of labor, legal institutions emerged with the specific function of making and implementing laws and punishments. Law-making institutions were formed, courts became institutions free from political institutions and the legal profession became organized through education and special ties.

In such a complex and organic form of society, the law is required to be more restitutive in nature which emphasizes the importance of restitution or restoration to its original state (restitutive in integrum) or compensation to preserve society (Tandi, 2019). As an example, Turkel's experience can be mentioned here, when she lost her belongings, all she could think about was that they could be returned to her. He complained to the police so that the evidence from his complaint could be used for his insurance claim. Whether the thief was caught or not, he didn't really worry about it. This example shows how restitutive law plays an important role in a complex society. Through this individual restitutive settlement, losses and damages due to violations can be recovered so that functions in society can be maintained.

Restitutive law includes all civil law, procedural law, administrative law and so on. Restitutive law seeks to maintain social relations arising from the differentiation of social work, which are certainly not based on collective consciousness and do not involve a strong shared sentiment. Consequently, the suffering caused by restitutive sanctions is not as severe as that of repressive sanctions.

Durkheim divides restitutive relations into two categories. First, the negative relationship that arises from the relationship between individuals (person) and goods, for example the positive rights of a person in the law of wealth. Second, positive relations arising from cooperation, for example contracts and other branches of law such as commercial law, administrative law and constitutional law fall under this category.

Restitutive law places a high value on individualism and avoids chaos in endless social activities. Unlike repressive sanctions, restitutive law seeks to reintegrate crime into society through education and reform, compensating victims of crimes and resolving them through specialized legal agencies. Law is an important condition for the life of people who are separated from one another and used in the implementation of their individual lives. Restitutive law restores complex relationships between individuals and institutions in such a way that the ongoing activities of society are minimally disrupted.

Under a complex society and organic solidarity, law not only becomes more restitutive but also increases. The volume of legal rules, legal instruments and legal activities grew to become more numerous and specialized. Law becomes as complex and specific as the individual's relationship with the regulated institution. The complexity of this restitutive law continues to grow along with the development of society's attainment of higher stages in the division of labor.

Durkheim's thinking above shows that law as a social norm is successfully conceptualized as an objective reality. Durkheim was considered the first person who dared to say that norms that have been objectified by law can be tested empirically. He implies the claim of legal studies as an empirical sociological study at the macro analysis level.

Durkheim's thinking at least boils down to three axioms of interrelation, namely treating social facts as inanimate objects, explaining forms of solidarity that bind society and discarding things that are metaphysical as far as possible (Podgorecki and Whelen (ed), 1987: 102). The law has created basic forms of solidarity or social bonds so that the classification of legal types is used to determine solidarity in society while punishment or sanctions function to maintain this solidarity through forced togetherness (Podgorecki and Whelen (ed), 1987).

5. Discussing Durkheim's Thought in Indonesian Context

There are several interesting things in discussing Durkheim's thoughts that have been described above, their relation to the Indonesian context. First, Durkheim's emergence was inspired by social changes in society from communal to industrial. This social change also affects changes in law in its form and system. In a society that is developing into a complex society, law is often used as a tool of social engineering for the benefit of economic industrialization. Second, social change is followed by a change in legal orientation from individual and plural personal law to national law with a single territorial basis through what is called legal unification. Third, this social change causes a change in law from a repressive form to a restitutive form, this

transition cannot be separated from the role of community solidarity which is composed of religious sentiments and public beliefs. These three points will be the limitations of this sub-topic discussion.

6. Industrialization and the Role of Law as a tool of social engineering: An Inevitability

Discussing industrialization in the Indonesian context seems appropriate when it is referred to and linked to the social, political, economic and legal conditions of the New Order era. The New Order was known as a developmental order that struggled and cared about economic improvement, which at that time was at a minimal stage.

To realize this development agenda with an industrialization tone, law is often used as a weapon or a policy instrument. We can witness what Suharto, as the ruler of the New Order, did in response to the need for foreign investment as capital for the country's economic development, he returned foreign companies that had been taken over by the previous government. As legitimacy, the government soon issued Law Number 1 of 1967 concerning Foreign Investment.

Along with the influx of investors, the need for a number of legal instruments related to investment matters has become a necessary necessity. This can be seen from the various regulations that are on the government's agenda to be promulgated immediately such as: a) forms of business entities, patents, trademarks, copyrights and scales; b) road traffic, shipping, air transportation and security, telecommunication, tourism; c) procedures for the use, ownership and use of land land, state finances and regional finances; and d) inland fisheries, plantations, agricultural equipment, animal husbandry, preservation of natural resources and protection of forests.

This bit of data shows how law becomes a tool of engineering for those in power to realize their will and agendas. Acceptance of the doctrine of law as a tool of social engineering means acceptance of the idea of central control over all areas of life, so that regulations are multiplied to the point of causing over-regulation (Hertanto, 2008:14), or hyperregulation in Susskind's terms (Susskind, 1996), a condition not much different from that of the Chinese state when it carried out modernization in order to accelerate its country's economic growth in the 1970s. At that time, it was recorded that within a span of ten years (1979-1989), the Chinese government had to amend more than 3,000 regulations, especially those relating to taxes, investments and so on.

Another consequence of the treatment of law as a tool of social engineering is the slavery of law to the interests of those in power (Wignjosoebroto, 1995). As a consequence, the authorities often enforce laws repressively, exactly what Nonet and Selznick (1978) have theorized that repressive laws are laws that serve repressive power, namely power that pays little attention to the interests of the people which it prioritizes in society. In addition, existing legal institutions are directly open to political power. Such a law means turning away from responsive law, namely a law that functions as a form of response to social needs and aspirations (law as a facilitator

of response to social needs and aspirations), and not infrequently this repressive legal practice will cause legal gaps which lead to chaos. social. What happened to Indonesia in this era is arguably not much different from what happened to the European condition which inspired Durkheim's thinking as described above.

7. The Tug-of-war between Positive Law and Local Law (Customary Law): A Form of Lack of Empowerment of the Legal Unification Project

Legal unification is the most important legal project for Europe at a time of transition. Legal unification has ushered in a change in European law from individual, local and plural personal law to national law based on a single territorial basis. This idea of unification was then propagated to colonial countries, including Indonesia. Inevitably the idea of legal unification is included in historical references to the development of legal systems and the national legal system during the colonial period.

Legal unification was a way for the colonial government to apply the idea of European national law which was full of individualistic liberal values, replacing local law or customary law which had long been respected. This effort appears to have encountered difficulties because colonial law had to deal with local law or plural customary law. People obey and carry out their local traditions and laws rather than having to know, study and adapt their lives to colonial laws that are considered new and whose values clearly contradict the rich values of the local laws that they have so far adhered to. That is why colonial policy appeared to be compromising in enforcing the law, namely allowing the local law of indigenous peoples to apply temporarily as long as it did not conflict with the general principles of colonial law regarding decency and justice, in addition to gradually applying European law to the entire population of the country. This fact lasted until the end of the colonial period.

After Indonesia's independence, law development was handled by national leaders. They want to break away from colonial legal ideas because they believe that the substance of people's law can be raised and fully developed into the substance of national law. In fact, this noble desire is difficult to realize because apart from the pluralism of people's law which is generally not formulated explicitly, the problem is also because the legal management system as a modern legal system has already been fully created as a colonial legacy which cannot be easily replaced in a short time. Finally, the national leaders were forced to apply the provisions of colonial law with several exceptions based on transitional articles. Not only the rule of law, decolonization was also followed by the nationalization of judicial bodies, which gradually reduced and limited customary and autonomous justice bodies. This kind of thing can be seen as a political strategy to unite Indonesia under one authority and national justice organization.

The situation of customary law is increasingly critical when the era of development of Indonesian law enters the next period, namely the New Order. Policy authorities see it as more practical to apply national law which is full of individualistic liberal values and contains legal certainty because it responds to foreign demands in fostering investment in national development, rather than having to bother thinking

about pluralism of customary law which is far from certain, although they have to admit that customary law is more guaranteeing justice and community satisfaction rather than national law which often creates counterproductive effects because it is imposed on society. The New Order period was a time when legal conditions in Indonesia experienced a tug-of-war between western law which was presented as positive legislation versus customary law which was sociologically historical.

This conflict between local law and positive law was shown by Bernard L. Tanya in his dissertation research. He concluded that national law was not always compatible with local law on Savu so that national law appeared to be a burden on the community, because local law had to recognize national law, while national law was required to ensure the usefulness of the law. Likewise, Korolus Kopong informed that criminal law was a burden for law enforcement in Lamalahot Flores, NTT, because local people had their own thoughts about how a dispute should be resolved. According to the customary law of the community, regardless of the type of dispute and the court that adjudicates it, efforts are always made to proceed to the stage of peace through a traditional rite called *mela seraka* (peace rite). This will become a burden if the ritual is not carried out as a result of the imposition of the national criminal law because the philosophy of society is different from the individualistic philosophy adopted by criminal law (Rahardjo, 2007: 53).

Another fact is that the implementation of Law Number 5 of 1979 concerning Village Administration has also become a problem for villages in Maluku, Minangkabau, Aceh and Bali. The village which was originally the main house because it was still considered capable of carrying out its function in preserving local values, was forced to respond to the rational administration contained in the law and this could be a decisive blow for the community (Rahardjo, 2007 : 135). The cultural clash between the use of modern law and the resistance of the traditional spirit has also been documented by Daniel.S Lev which leads to the conclusion that the liberal character of modern individualist law ultimately becomes a burden for a society based on collectivism.

Such conditions are increasingly detrimental to the understanding of customary law which is starting to appear to be declining and a process of constant extinction is occurring. This condition is also further clarified by Boedi Harsono's observations regarding land law, especially in relation to customary rights, that national land law tends to leave customary customary rights alone so that they seem to have been allowed to just be eroded by the times themselves, especially the individual rights of members of indigenous peoples over parts of the land. customary customary land under his control is increasingly becoming a reality (Smith, 2020).

8. Portrait of Law and Society in Indonesia: Reflection on Transitional Society (An Analysis)

The previous description of the tug-of-war between positive law and customary law, which until now still characterizes our legal atmosphere, can be used as information and explanation about the current social condition of Indonesian

society. The attachment of customary law in the midst of society at least explains how part of society is still overwhelmed by the spirit of collectivity, as well as the application of positive law explains how individual spirit has been appreciated and felt by some people. In other words, the contradictory spirit of collectivism and individualism runs together in one forum, namely Indonesian society.

At first glance, this kind of social condition will be confusing, when it is related to Durkheim's thought which dichotomizes two types of community development. A simple society will be characterized by mechanical solidarity where religious sentiments and beliefs are framed in collective consciousness, so that the type of law that is suitable and needed is a repressive law. While in a complex society it will be marked by organic solidarity where individual competence is very decisive and the type of law needed is restitutive law.

It should be remembered that Durkheim's thought, as described above, was born in the midst of European society which reached an ideal stage of modern development where the differentiation of people's work was very complex as the quantity of population and technological development increased, individual competence was valued more than collective sentiment, unified law. become an established national law. A condition that departs far from the previous European conditions which were simple where the population was relatively small with simple technology, the differentiation of society's work was streamlined, religious sentiments and collective consciousness were very influential and the applicable laws were dominated by local personal laws.

Back to the social conditions of the Indonesian people, which of course cannot be compared with the social conditions of European society. Indonesian social conditions like this make it difficult for us to categorize Indonesian society into one of the types of society that Durkheim theorized. If it is categorized into a simple society then it is not correct, because what Durkheim characterized about modern society will be found in our society even though not entirely, for example the increasing number of population, the increasingly specific division of labor marked by the formation of various kinds of institutions and professions that appear and increasingly detailed, the increasing needs of the community, especially large urban areas, for positive law that guarantees legal certainty for their activities, especially in the business sector, the need for restitutive law is increasing along with the development of economic and private law which tends to favor individual interests.

If Indonesia's social conditions are categorized as a modern and complex society, then it is also not very appropriate because what Durkheim characterized as a simple form of society is still found in our society. One of them is that religious sentiments and beliefs that are covered in the collective consciousness are still being influenced by the legal actions of society so that things which in the typology of modern society should be an individual's choice and are completely private affairs, have become and must be subject to and influenced and even determined by religious sentiments and beliefs that are covered in the collective consciousness. As an example, fights between villages that have occurred in big cities such as Jakarta. The fight

occurred because of a trivial problem between two individuals which then continued to become a problem for the local community. This fact shows how individual problems that should be in modern society become private affairs and often use formal legal institutions in their settlement, are still a matter of the community which is ignited by collective emotions as a form of collective solidarity of society so that the resolution tends to be repressive, namely by taking the law into your own hands (eigenrichting). Such cases are reminiscent of Chand's critique of Durkheim's theory. Chand (1994) states that religious sentiments and morality will always color the realization of community solidarity that is in a developmental transition.

Indonesia's social reality like this can be said to be unique as well as a criticism of Durkheim's theory. If this kind of Indonesian case is related to Indonesia's position between the two typologies of society that Durkheim theorized, then in the writer's opinion the social conditions of Indonesian society deserve to be positioned at the stage of transitional development, namely a society that has left the model of a simple society and is developing in the process towards a modern society, an ideal stage that has been achieved by the European community.

D. CONCLUSION

The description of the writing in this paper can be summarized as follows: 1) Durkheim's thoughts were inspired by the situation of European society when it was in a transitional period which was full of issues of industrialization in the economic field and unification in the field of law so that in the end it became a modern society marked by the establishment of institutions and professions. laws that led to the creation of European national laws, replacing local personal laws; 2) Durkheim in his theory divides society into two types, simple and modern; 3) In the Indonesian context, the New Order era was an era of economic development full of industrialization issues, law was made by the authorities as a tool of social engineering, all aspects of life increasingly could not be separated from the entanglement of legal legitimacy, regulation became a necessity so that the volume increased even arrive at a stage termed by Susskind with hyperregulation; 4) Another issue is the legal unification project. If Europe has succeeded in forming its national law through a legal unification project, then this is not the case with Indonesia; and 5) The Indonesian case is a unique model in explaining Durkheim's thought as well as a critique that can enrich Durkheim's thought. This is because Indonesian society, which can be said to be in a transitional position, is not in a simple society and it is also not appropriate to be positioned as a modern society like Europe because religious sentiments and beliefs that are covered in the collective consciousness still have a strong influence on the actions taken. should be an individual choice and a private matter in modern society.

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