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Article

Responsive Law and Progressive Law: Examining the Legal Ideas of Philip Nonet, Philip Selznick, and Sadjipto Raharjo

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Abstract

Responsive Law and Progressive Law are two relevant approaches in legal studies developed by legal thinkers such as Philip Nonet, Philip Selznick, and Sadjipto Raharjo. These approaches offer different perspectives on understanding and applying the law in a constantly changing social context. Despite having different perspectives, both Progressive Law and Responsive Law share the same goal of creating a more just and relevant legal system in a social context. This paper aims to examine the ideas of Philip Nonet, Philip Selznick, and Sadjipto Raharjo regarding Responsive Law and Progressive Law. Through this examination, it is expected to reveal the differences, similarities, and contributions of each thinker to the development of more inclusive, adaptive, and just legal thinking in an evolving social context.

Keyword

Responsive Law, Progressive Law, Philip Nonet , Philip Selznick, Sadjipto Raharjo

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INTRODUCTION

In legal studies, there are various approaches to understanding and applying the law in complex social contexts (As-suvi & Zainullah, 2022). Two relevant approaches are Responsive Law and Progressive Law. Philip Nonet and Philip Selznick developed the concept of Responsive Law, which emphasizes the adaptability of the law to social changes. Nonet and Selznick recognize that society is a complex entity, evolving over time, and with diverse values (Philippe Nonet, 2003). Therefore, the law must be able to respond to social changes and accommodate the needs and aspirations of the community. The concept of Responsive Law proposed by Nonet and Selznick emphasizes the importance of legal flexibility and its ability to follow social dynamics.

On the other hand, Progressive Law emphasizes the role of law in promoting a more just social change, while Responsive Law focuses on the ability of law to respond and adapt to social changes. The ideas of Philip Nonet, Philip Selznick, and Sadjipto Raharjo have made significant contributions to the development and analysis of these two approaches. Sadjipto Rahardjo proposed the concept of Progressive Law as a reaction to the traditional view of law as a mere instrument of individual action restriction (Rahardjo, 2006). They argue that the law should function as a tool to achieve broader social goals. Progressive Law involves critical thinking about the social values that must be accommodated by the law, as well as the law's ability to transform unjust social structures. With this approach, Rahardjo emphasizes the importance of understanding the social context and aspirations of the community in developing a more inclusive and fair law.

Previous research has provided a deeper understanding of the concepts of Progressive Law and Responsive Law, as well as critical perspectives and empirical analyses of judicial practices and the roles of legal actors in promoting a more just social change. For example, "Character Formation for Law Students: Exploring the Thoughts of Satjipto Rahardjo" written by Herlindah, Siti Rahmah, and Ahmad Qiram As-Suvi in 2022. This study analyzes Satjipto Rahardjo's thoughts on Progressive Law and his contributions in the context of Indonesian law. Herlindah, Siti Rahmah, and Ahmad Qiram As-Suvi highlight the importance of the concept of Progressive Law in addressing social challenges in Indonesia, especially in shaping the character of law enforcement officers, and evaluate Rahardjo's thoughts on the role of judges in applying Progressive Law (Herlindah, Siti Rohmah, Ahmad Qiram As-Suvi, 2022). Furthermore, "The Concept of Responsive Law by Nonet and Selznick in the Perspective of the Philosophy of History" written by Agam Ibnu Isa, Misnal Munir, Rr. Siti Murti Ningsih. This research attempts to critically develop the concept of Progressive Law through the philosophy of history. Isa, Munir, and Ningsih analyze the role

of law in achieving social change through the history of the development of law that lacks adaptability to social conditions, resulting in passive law (Asa, Munir, & Ningsih, 2021).

At this point, this paper aims to bridge and affirm that responsive law developed by Nonet and Selznick is the genealogy of Rahardjo's progressive law, thus showing a clear coherence between responsive and progressive law. This paper will conduct an in-depth examination of the ideas of Philip Nonet, Philip Selznick, and Sadjipto Raharjo regarding Progressive Law and Responsive Law. Through this examination, it is expected to gain a better understanding of the differences, similarities, and contributions of each thinker to the development of a more inclusive, adaptive, and just legal thinking in an evolving social context. In the process, valuable concepts will be discovered to understand the role of law in meeting the needs of society and achieving social justice.

This writing views law from a social perspective (non-doctrinal), as it does not solely consider law as a collection of norms. Rather, law is seen as a space for the process of scholarly study in the search for truth. In this regard, other sciences will be used in the writing process. Thus, this writing is not confined to a single line of thought in addressing the issues discussed in this paper.

The purpose of this paper is to delve into a deeper understanding of the concepts of Progressive Law and Responsive Law proposed by these thinkers. This objective involves analyzing the concepts, definitions, and underlying principles that guide both approaches. Additionally, this research aims to evaluate the contributions of Philip Nonet, Philip Selznick, and Sadjipto Raharjo to the development of the concepts of Responsive Law and Progressive Law. This involves analyzing their ideas, theories, and arguments, as well as how their contributions influence legal thinking and practice. Furthermore, it aims to identify and analyze the practical applications and implementations of Progressive Law and Responsive Law in the context of law and justice.

METHODS

The scientific value of a discussion and problem-solving regarding the researched legal issue highly depends on the approach used. If the approach is not appropriate, the research weight may be inaccurate, and its accuracy can be invalidated. This is certainly not desired by researchers. Therefore, in the work titled "Responsive Law and Progressive Law: An Examination of the Thoughts of Philip Nonet and Philip Selznick, as well as Sadjipto Raharjo," the author employs a normative research method using a Comparative Approach(Kadir, 2004).

Normative research involves studying written law from different perspectives, including theoretical aspects, scope and material, formality and

legal nature, as well as the language used in law. Normative legal research is also often referred to as dogmatic or theoretical legal research (Marzuki, 2021).

The approach used is the Comparative Approach. Comparative approach refers to comparing one legal institution from one legal system with another legal institution. Through this comparison, similarities and differences between the two legal institutions can be identified (Suhaimi, 2018).

RESULT AND DISCUSSION

Biography of Philip Nonet and Philip Selznick

When discussing the biography of a famous writer or thinker, it is important to get to know them better, their works, and their significance in the history of their thinking. Therefore, a biography becomes essential before delving into their thoughts as reflected in their works. Philip Nonet was an American legal scholar known as one of the pioneers of the concept of responsive law or sometimes referred to as value-based law (Dahwir, 2020).

Nonet was born on September 6, 1932, in Boston, Massachusetts, and passed away on October 26, 2016, in Palo Alto, California. He obtained his bachelor's degree from Harvard University in 1954 and a doctoral degree in political science from the University of California, Berkeley in 1960. He went on to teach at various universities, including the University of Michigan, the University of Chicago, and Stanford Law School.

The concept of law emphasizes the importance of considering social and moral values in the lawmaking process. Nonet introduced the concept of responsive law as an alternative to positivist legal approaches that solely focus on formal provisions in legislation without considering their social and moral implications.

During his academic life, Nonet immortalized his thoughts through numerous works, including "Law in Modern Society" (with R.M. Unger, 1976), "Five Kinds of Legal Arguments" (1987), "Community and Collective Rights" (1990), "Law and the Social Order" (1996), and others. He also taught at various universities, including the University of Michigan, the University of Chicago, and Stanford Law School. Throughout his career, Nonet was involved in several research projects on legal and justice issues, including studies on racial discrimination in the criminal justice system. His contributions to the field of responsive law have influenced legal thinking and practice in many countries.

On the other hand, Philip Selznick was born in Newark on January 8, 1919. He obtained his bachelor's degree from the City College of New York in 1938. During college, Selznick joined and sometimes led radical Trotskyite youth organizations and met future figures such as Irving Kristol, Gertrude

Himmelfarb, Daniel Bell, Nathan Glazer, Seymour Martin Lipset, and his first wife, Gertrude Jaeger (Cotterrell, 2004).

Selznick earned a master's degree in sociology from Columbia University in 1942. However, after obtaining the degree, Selznick's academic training was interrupted by his military service in the United States Army from 1943 to 1946, during which he served as a research analyst in the Philippines and Japan during World War II.

After the war, Selznick returned to Columbia, where he obtained a Ph.D. in sociology in 1947. Two years later, he published "TVA and the Grass Roots," a renowned sociological study of the Tennessee Valley Authority. In this work, Selznick found that formal organizations "are adaptive social structures" facing problems independent of their creators.

Selznick taught at the University of Minnesota for one year and five years at UCLA. He then joined the UC Berkeley faculty in 1952 as an assistant professor of sociology. He led the Sociology Department from 1963 to 1967 amidst heated debates and political tensions resulting from the Free Speech Movement.

Selznick served as the director of the Center for the Study of Law and Society from 1961 to 1972, providing a platform for interdisciplinary research on law and legal practices. He joined the Berkeley Law faculty in 1977, and in 1978, he became the founding chair of the first and, for many years, the only Ph.D. (Kagan, Robert A. Krygier, Martin; Winston, 2022), program in Jurisprudence and Social Policy based at a major U.S. law school

Selznick was married to Jaeger since 1939. They shared a common interest in philosophy and social theory, and in 1964, they co-authored an article, "A Normative Theory of Culture," in the American Sociological Review journal. Jaeger joined UC Berkeley in 1959 as a research fellow in the Survey Research Center. She became a sociology lecturer in 1967 and a professor in 1972 (Krygier, 2012).

Throughout his career, Selznick was a faculty researcher at the Social Science Research Council, a Guggenheim Fellow, and a fellow of the American Academy of Arts and Sciences, the Center for Advanced Study in the Behavioral Sciences, and the Woodrow Wilson International Center. He won the Clark Kerr Award from the UC Berkeley Academic Senate in 1996 and a lifetime achievement award from the Law and Society Association in 2003 and the Law and Society Section of the American Sociological Association in 2009.

Biography of Satjipto Rahardjo

Prof. Satjipto Rahardjo is a prominent academic and law professor from Indonesia. He is known as one of the leading legal experts in his country and has made significant contributions to the development of law in Indonesia

(Hasanah, 2020). Additionally, he is also known for his prolific writing. Rahardjo was born on February 15, 1930, in Karanganyar (Banyumas), Central Java. As an academician, Satjipto Rahardjo has contributed extensively to the development of legal studies in Indonesia, and even after his passing, he remains known for his critical thinking on the legal system and justice in Indonesia.

In 1960, he completed his legal education at the Faculty of Law, University of Indonesia (UI) in Jakarta. He then pursued a visiting scholar program in the field of Law and Society at the University of California for one year in 1972. Later, in 1979, he completed his doctoral studies at the Faculty of Law, Undip. During the same period, America was experiencing a legal movement based on social legal perspectives. The movement, known as critical legal studies (CLS), influenced the perspectives of legal scholars in the powerful country (Herlindah, 2022). CLS, or Critical Legal Studies, is a development of legal sociology, a field that Satjipto has been firmly devoted to since the beginning of his legal career. This is not to suggest that Satjipto's scholarly perspective is entirely influenced by Critical Legal Studies, but at the very least, Satjipto experienced the intellectual horizon in America when the CLS movement was being embraced (Aulia, 2018).

As a scholar, in gathering his knowledge, Satjipto Rahardjo certainly encountered many social issues that indirectly influenced his thinking. Starting from his experience as a lecturer, interacting with students in teaching and legal research, he felt that he was expanding his understanding of social realities and the problems faced by society in the context of law. Moreover, when he became involved in various legal organizations in Indonesia, such as the Association of Constitutional Law Lecturers (PPTN) and the Indonesian Center for Environmental Law (ICEL), he gained insights into the legal issues faced by the community and could see the social impact of the legal system (Aulia, 2019).

As previously mentioned, in addition to being a legal expert, Rahardjo is also an active writer, and his articles frequently appear in various print media outlets such as Kompas, Forum Keadilan, Tempo, Editor, Suara Merdeka, and others. Some of his notable works include "Ilmu Hukum dan Tata Negara" (1983): This book is one of Satjipto Rahardjo's important works that discusses the concepts and basic principles of legal science and constitutional law. The book provides a profound understanding of the fundamentals of law in the context of Indonesia; "Membangun Hukum Progresif" (1993): This book presents the concept of progressive law, which serves as the foundation for Satjipto Rahardjo's thoughts on change and renewal of law in Indonesia (Qodry Azizy, Satjipto Rahardjo, Muladi, Gunawan Setiardja, Abdullah Kelib, Bustanul Arifin, Achmad Gunaryo, Adji Samekto, Erman Suparman, Ghofar Shidiq, Mahmutarom, 2006). He critiques conservative views on law and advocates for a more dynamic and adaptive approach to societal developments; "Hukum dan Perilaku Manusia"

(2000): In this book, Satjipto Rahardjo discusses the relationship between law and human behavior. He highlights the importance of understanding the social, cultural, and psychological factors that influence human behavior in the context of law (Raharjo 2010).

The Concept of Responsive Law by Philip Nonet and Philip Selznick

Responsive law is a model or theory proposed by Nonet and Selznick in response to the strong criticisms of liberal legalism by Neo-Marxists (Philipe Selznick, 2019). Liberal legalism assumes law as an autonomous institution with objective, impartial, and fully autonomous rules and procedures. The epitome of liberal legalism is the autonomy of law, and its most tangible manifestation is the rule of law regime.

Responsive law is law that emerges from cultural processes (La Ode Husen, 2022). It arises from the desire of the state to have a legal system that is open to the aspirations of its society. The model of law proposed by Nonet and Selznick historically originated from the repressive phase of law, which was oriented towards the legitimacy of power. However, they argue that repressive law is weak in terms of unstable legitimacy. This gave rise to the concept of autonomous law, which promised a stable institutional order. However, in its implementation, autonomous law has limitations, leading to the demand for responsive law that emphasizes flexibility within the political society.

In the perspective of responsive law, responsive institutions preserve their essential integrity while taking into account new forces in their environment. Responsiveness strengthens the ways in which openness and integrity can support each other, even in the face of conflicts between them. Responsive institutions consider social pressures as sources of knowledge and opportunities for self-improvement. Responsive law is synonymous with a type of law that is adaptive to the dynamics of culture and civilization, which is not fixed..

For adherents of responsive law, law is a social institution. Therefore, law is seen as more than just a system of rules but also as a means of fulfilling social functions for its community (Kholish & Ulumuddin, 2022).

Nonet and Selznick position law as a means of responding to social provisions and public aspirations through responsive law. This aligns with the nature of responsive law, which is open, and this type of responsive law emphasizes accommodation to accept social changes in order to achieve public justice (Henry Arianto, 2010). According to Nonet and Selznick, responsive law is a program of sociological jurisprudence and realist jurisprudence. Both streams essentially call for a more empirical study of law beyond the boundaries of formalism, the expansion of legal knowledge, and the role of policy in legal decisions(Sulaiman, 2014).

There are several characteristics and principles of responsive law according to Nonet and Selznick: Participation of the community in lawmaking: Responsive law values the participation of the community in lawmaking and considers it an important aspect of decision-making in law. Responsive to societal needs: Responsive law attempts to address social problems that arise in society, such as injustice and social inequality, by responding and providing appropriate solutions. Flexible and adaptive: Responsive law must be flexible and adaptive to respond to changes in society, allowing it to adjust to evolving needs. Outcome-oriented: Responsive law focuses not only on enforcing existing legal rules but also on achieving desired outcomes such as justice and equality. Collaborative: Responsive law combines collaboration between the community, government, and legal institutions to achieve common goals (Philipe Selznick, 2012).

The implementation of responsive law in Indonesia can be seen in several initiatives and programs carried out by the government and relevant institutions (Budi Handoyo, 2018). Some examples of the implementation of responsive law in Indonesia are:

1. Establishment of the National Commission on Human Rights (Komnas HAM) as an independent institution tasked with promoting and protecting human rights in Indonesia.
2. Corruption eradication programs carried out by the Corruption Eradication Commission (KPK) as the government's efforts to reduce corrupt practices that harm society.
3. Programs addressing violence against women and children implemented by government institutions such as the Ministry of Women's Empowerment and Child Protection and the National Commission on Child Protection.
4. Improved access to justice for the poor and vulnerable through legal aid programs conducted by civil society organizations and government-supported legal aid institutions.
5. Development of a technology-based legal system and the use of big data to expedite legal cases and ensure transparency and accountability within the legal system.

Although there have been efforts to implement responsive law in Indonesia, there are still various challenges that need to be overcome, such as limited access to justice for the poor and vulnerable, as well as ongoing issues of corruption and human rights violations. Therefore, greater and sustained efforts are needed to ensure the successful implementation of responsive law in Indonesia.

The Thought of Progressive Law by Satjipto Rahardjo

Law reform in Indonesia can be said to have not been successful, considering the prevalence of corruption, commercialization, and commodification that are often found (Rahardjo, 1997). Recognizing this, Prof. Satjipto Rahardjo offers a concept of thought called progressive law. Progressive law starts from the basic assumption that law is for humans, not the other way around. Progressive law does not accept law as an absolute and final institution but is highly determined by its ability to serve humanity. In Rahardjo's thinking, progressive law is defined as an institution that aims to bring about a just, prosperous, and happy life.

The emergence of this idea to the public arises from concerns about the deteriorating state of the legal system and public dissatisfaction with the performance of law and the judiciary. In the context of law as a moral institution, society combines ideas, hopes, and moral aspirations into law. Therefore, society expects the judiciary to be the "Last Bastion of Justice" (Noor, 2022). However, this becomes futile when they become aware of the practice of selling cases resulting from the commodification of the legal process. Through this, progressive law seeks to communicate to the public that law should be a moral institution that is not influenced by economic motivations but aims to achieve true justice (Christianto, 2011).

Satjipto Rahardjo states that progressive law is a series of radical actions to transform the legal system, including changes to legal regulations if necessary, to make the law more useful in upholding the dignity and ensuring the happiness and welfare of humans (Rahardjo, 2006). Simply put, progressive law is law that frees thinking and action, allowing the law to flow naturally to fulfill its duty in serving humans and humanity (Warikum Sumitro, Moh. Anas Kholish, 2017). There is no manipulation or bias in law enforcement according to Rahardjo. According to him, the purpose of the law is to create justice and welfare for all people without discrimination.

Progressive law rejects the view that order can only be achieved through state institutions. On the contrary, progressive law aims to protect society towards legal idealism and opposes the status quo. It also rejects the view that law is merely a technology without morals but rather an institution with moral values. This concept of thought is offered for implementation in academic agendas and real actions. In this context, progressive law seeks to promote social change through an active role in society, including the prioritization of justice, community participation, and the protection of important moral values (Sastroatmodjo, 2005).

The implementation of progressive law in Indonesia involves a series of

steps and efforts to apply the principles of progressive law in the national legal system. Here are some examples of the implementation of progressive law in Indonesia:

1. The implementation of progressive law can begin with changes to legislation that accommodate progressive values. This includes revising laws that strengthen the protection of human rights, gender equality, social justice, the environment, and reduce social and economic disparities.
2. Law enforcement officials, including judges, prosecutors, and lawyers, need to adopt a progressive approach to legal interpretation. They must consider principles of justice, sustainability, and humanity in interpreting existing legal regulations.
3. Legal education institutions, such as universities and legal training institutions, need to organize educational programs that prioritize an understanding of progressive law. This will prepare the younger generation of legal practitioners who understand and apply the principles of progressive law in their practice.
4. The implementation of progressive law also involves empowering communities in the formulation and implementation of laws. Public participation and active involvement in lawmaking can ensure that the interests of the wider community are represented and considered.
5. Advocacy groups and civil society organizations can play a crucial role in promoting the implementation of progressive law. Through advocacy and legal advocacy, they can raise issues related to social justice, environmental protection, human rights, and fight for progressive legal changes.
6. Indonesia can collaborate with other countries and international organizations to learn and implement best practices in progressive law. Knowledge and experience exchange with countries that have successfully implemented progressive law can provide insights and guidance for Indonesia.

Although the implementation of progressive law in Indonesia has been carried out in various aspects, there are still challenges and room for further improvement. Sustained efforts are needed to strengthen and expand the implementation of progressive law to achieve more inclusive, fair, and responsive goals to social changes and the needs of Indonesian society (Hadi, 2023).

Comparison and Evaluation of the Thoughts of Three Experts

Comparison and evaluation of the thoughts of Philip Nonet, Philip Selznick,

and Satjipto Rahardjo in the context of Progressive Law and Responsive Law are as follows:

1. Understanding of social change: Nonet and Selznick argue that law should be able to adapt to social changes and evolving values within society. They emphasize the importance of adaptive and responsive legal interpretation to social change. Rahardjo also addresses the issue of social change, but with a focus on the Indonesian context. He highlights the need for law that is responsive to the aspirations and needs of Indonesian society.
2. Contribution of judges: Nonet and Selznick emphasize the role of judges as agents of change in implementing Progressive Law. They argue that judges should have a broader understanding of society and its evolving values. Rahardjo also emphasizes the role of judges in implementing Progressive Law in Indonesia. He emphasizes the need for judges as agents of change who can go beyond narrow legal interpretations and advocate for social justice.
3. Practice of law: Nonet and Selznick highlight the need for transformation in legal practices to achieve a more just social change. They emphasize the role of advocates and legal practitioners as agents of change. Rahardjo also addresses the role of legal practitioners in promoting change through Progressive Law in Indonesia..
4. Social dimensions: Nonet and Selznick analyze law in a broader social context. They acknowledge the importance of considering social values and aspirations in legal interpretation. Rahardjo also directs his attention to the social dimension of law. He emphasizes the importance of inclusive and democratic law in achieving social justice goals in Indonesia. (Saifullah, 2018).

Overall, the thoughts of Nonet, Selznick, and Rahardjo have similarities in emphasizing social change, the role of judges, and the need for legal practices that are responsive to social values. They also share similar thoughts regarding the specific contexts they study, namely the United States and Indonesia. The evaluation of their thoughts will depend on the research context, objectives, and their relevance to the social and legal issues at hand.

Speaking about the thoughts of Philip Nonet, Philip Selznick, and Satjipto Rahardjo, they have significant relevance in the context of global law today. The Responsiveness to Social Change in the thoughts of Nonet, Selznick, and Rahardjo emphasizes the importance of legal responsiveness to the social changes occurring in society. In the era of globalization and technological development, social changes and emerging values are becoming more complex. Their thoughts indicate that law must be able to adapt and respond to these

changes in order to remain relevant and effective in upholding justice and social welfare.

Selznick, Rahardjo, and Nonet also highlight the importance of active participation of the community in the process of formulating and implementing the law. In the current global legal context, where challenges and complex issues transcend national boundaries, community participation becomes increasingly relevant. Their thoughts advocate for empowering the community to actively take part in formulating and implementing the law, thereby strengthening the legitimacy and accountability of the legal system, such as fair law enforcement and advocating for social justice. (Lubis, Dhevi, & Yasid, 2020).

When viewed in the context of Local and Cultural aspects, Rahardjo and Nonet emphasize the importance of considering local context and culture in formulating and implementing the law. Amidst globalization, these thoughts offer ways to preserve legal diversity and incorporate local values within a broader global context. This is important to ensure that the law accommodates local needs and aspirations without sacrificing universal principles of justice.

In order to address the complex challenges in global law today, the thoughts of Nonet, Selznick, and Rahardjo provide meaningful contributions. They present perspectives that are responsive to social change, strengthen community participation, ensure justice in law enforcement, and consider local context and (Barrière et al., 2019)

CONCLUSION

The legal model proposed by Nonet and Selznick historically originated from the first phase of repressive law, which was oriented towards power legitimacy. However, they argue that repressive law is weak in terms of unstable legitimacy. Responsive law, on the other hand, is synonymous with a type of law that is adaptive to the dynamics of culture and civilization, which are not fixed. Both streams essentially call for a more empirical legal study that goes beyond the limits of formalism, expands legal knowledge, and incorporates policy considerations into legal decisions.

The emergence of the idea of progressive law stems from concerns about the deteriorating state of the legal system and public dissatisfaction with the performance of law and courts. Satjipto Rahardjo states that progressive law entails a series of radical actions to transform the legal system, including changing laws and regulations if necessary, in order to make the law more useful in uplifting human dignity and ensuring happiness and well-being. Simply put, progressive law is a law that frees thinking and action, allowing the law to flow naturally in fulfilling its duty to serve humanity and humaneness.

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