



The Dynamics of Schools of Thought in The Sociology of Law: Exploring The Relevance in The Formation of Citizenship Values in Contemporary Indonesia

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Abstract

This study explores the evolution of legal thought within the sociology of law and its relevance to the formation of citizenship values in contemporary Indonesia. Drawing from Soerjono Soekanto's foundational work, Pokok-Pokok Sosiologi Hukum, the research emphasizes the significance of understanding law as a social institution influenced by cultural and societal dynamics. Robert W. Hefner's Islam and Citizenship in Indonesia provides insights into how Islamic traditions intersect with democratic principles, shaping inclusive notions of citizenship in the Indonesian context. Additionally, the study considers the impact of globalization on citizenship policies, referencing Antikowati et al.'s analysis of dual citizenship demands in Indonesia. Through a sociological lens, the research underscores the interplay between legal frameworks, cultural values, and societal changes in shaping contemporary Indonesian citizenship.



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INTRODUCTION

In the context of a multicultural and dynamically evolving society like Indonesia, the relationship between law and citizenship cannot be fully understood through purely normative or positivist frameworks alone. Law, when examined through the lens of sociology, transcends being a mere collection of codified rules; it is a living social institution that constantly interacts with social structures, cultural values, power relations, and the historical consciousness of the community. As Soerjono Soekanto (1982) emphasized, the sociology of law seeks not only to analyze legal norms in their idealized form but also to understand how these norms operate in real social contexts, how they are shaped by human interactions, and how the law in action often diverges significantly from the law in books. This approach is particularly relevant in discussing citizenship, a concept that has become increasingly complex in contemporary times not merely a formal legal status but encompassing political participation, social identity negotiation, and institutional legitimacy. In a pluralistic and democratic country like Indonesia, the understanding of citizenship must incorporate substantive dimensions that recognize ethnic, religious, linguistic diversity, as well as the legacies of colonialism and nationalism shaping the current socio-legal landscape.

Given Indonesia's persistent legal pluralism where state law coexists with customary (adat) law and religious norms analyzing citizenship solely from a legal-formal perspective is insufficient. Therefore, the sociological approach to law becomes essential, as it bridges the gap between formal legal structures and the lived social realities of its people. To deepen this understanding, it is crucial to revisit and critically examine the dominant schools of thought within the sociology of law. Each school offers a distinct interpretation of how law originates, functions, and acquires legitimacy in society. The Formalist School, championed by John Austin and Hans Kelsen, views law as commands issued by a sovereign authority, organized hierarchically with the Grundnorm as the ultimate source of validity in Kelsen's Stufentheorie. Although logically rigorous and systematic, this approach tends to overlook the social realities that shape the lived experience of citizenship within diverse societies marked by inequality.

Conversely, the Historical and Cultural School, led by Friedrich Karl von Savigny, Henry Maine, and Georg Friedrich Puchta, argues that law is not artificially constructed but organically evolves from a nation's collective consciousness, or Volksgeist. This perspective is particularly pertinent to Indonesia's legal pluralism, where adat law remains influential alongside state and religious law. Meanwhile, the Utilitarian School, associated with thinkers like Jeremy Bentham, John Stuart Mill, and Rudolf von Jhering, emphasizes that law's primary purpose is to maximize societal welfare and minimize harm. Bentham's principle of utility laid the foundation for modern penal and policy reforms, while Jhering's social utilitarianism stresses law as an instrument for aligning individual conduct with collective goals. This school resonates with Indonesia's ongoing efforts to reform citizenship policies in alignment with democratic development and public welfare.

Further, the Sociological Jurisprudence School, represented by Roscoe Pound and Eugen Ehrlich, introduces the critical distinction between law in books and law in action, advocating for the understanding of law as a social institution and a tool for social engineering. Ehrlich notably argued that the core of legal development lies not in statutes or judicial rulings but in the "living law" embedded within society itself. This approach is instrumental in assessing the practical effectiveness of citizenship laws whether they facilitate genuine inclusion or perpetuate exclusion and marginalization. Finally, the Legal Realism School, with figures such as Karl Llewellyn, Jerome Frank, and Oliver Wendell Holmes Jr., contends that law is not a fixed, objective entity but is shaped by judicial discretion, social pressures, and institutional contexts. Holmes famously stated, "The life of the law has not been logic; it has been experience," underscoring the primacy of lived realities over formal logic. This perspective highlights

the judiciary's active role in shaping legal meanings, including nationality, rights, and legal identity, often entangled with political and moral considerations.

Against this backdrop of divergent legal philosophies, this study raises the central research question: How do the dynamics of legal thought within the sociology of law contribute to the formation of citizenship values in contemporary Indonesia? The objective is to analyze the conceptual and practical contributions of each school of thought in shaping an inclusive, responsive, and socially grounded understanding of citizenship—one that transcends formal legal definitions and reflects the complex realities of Indonesia's legal and cultural landscape.

METHOD

This study adopts a qualitative-descriptive research design using the library research method, aimed at examining the conceptual and practical relevance of various schools of thought in the sociology of law in shaping citizenship values in contemporary Indonesia. The qualitative approach is chosen because it allows for an in-depth, flexible, and contextual interpretation of complex socio-legal dynamics that cannot be reduced to numerical or statistical representation. As stated by Moleong (2017), qualitative research seeks to understand meaning, patterns, and structural relationships among phenomena in a particular social context, based on the researcher's interpretive insight.

This study does not employ population and sample in the quantitative sense. Instead, it uses units of analysis in the form of academic texts and legal documents that represent each major school of legal thought and their intersection with citizenship discourse. These units were selected purposively, meaning based on the academic relevance and theoretical value of the texts to the research questions. Key texts include *Pure Theory of Law* by Hans Kelsen (Formalism), writings of Friedrich von Savigny (Historical School), works by Jeremy Bentham and Rudolph von Jhering (Utilitarianism), Roscoe Pound and Eugen Ehrlich (Sociological Jurisprudence), and Holmes, Frank, and Llewellyn (Legal Realism). These are complemented by contemporary studies such as *Islam and Citizenship in Indonesia* by Robert W. Hefner and the article by Antikowati et al. (2023) on dual citizenship and globalization.

The primary data sources for this study include classical legal theory texts and sociological works authored by foundational thinkers of each school. These include Soekanto's *Pokok-Pokok Sosiologi Hukum*, Kelsen's *Pure Theory of Law*, Pound's *An Introduction to the Philosophy of Law*, Holmes' *The Common Law*, and Ehrlich's *Fundamental Principles of the Sociology of Law*. In addition, secondary sources consist of peer-reviewed journals, legal policy documents, and scholarly articles that discuss the evolution of citizenship, legal pluralism, and civic engagement in the Indonesian context. For instance, the journal article by Antikowati et al. (2023) in *Legality* offers insight into the current challenges and policy debates surrounding dual citizenship in Indonesia.

Data collection was carried out through systematic literature review and document analysis. Academic texts were retrieved from physical libraries as well as online databases such as Google Scholar, ResearchGate, and national repositories such as SINTA and Garuda. Documents were selected based on relevance, theoretical depth, and authorship credibility. The data collection process involved categorizing each text according to the school of legal thought it represents and identifying key arguments relevant to the formation of citizenship values.

The data analysis in this research uses the content analysis method, a qualitative technique aimed at interpreting the meaning embedded in texts and documents through systematic and objective categorization. The analytical process consists of three stages: (1) data reduction, where irrelevant data

are excluded and only relevant arguments are retained; (2) data display, which organizes the arguments thematically into the five schools of thought and their connections to citizenship values; and (3) conclusion drawing, where interpretive insights are synthesized to evaluate the theoretical and practical contributions of each legal school to the Indonesian socio-legal context (Miles & Huberman, 1994).

Throughout the research, the researcher also applies a critical interpretive approach to legal narratives and the sociological discourse of citizenship, especially concerning issues of multiculturalism, minority rights, and global citizenship. Using hermeneutic and constructivist perspectives, this study aims to go beyond mere description and critically analyze how legal thought both shapes and is shaped by political and cultural realities. Hence, the methodology not only addresses “what the law says” but more importantly “how the law lives” in the plural, evolving landscape of Indonesian society.

RESULTS AND DISCUSSION

The Dynamics of Legal Thought in Sociology of Law and the Formation of Citizenship Values in Contemporary Indonesia

The central question of this study how do the dynamics of legal thought within the sociology of law contribute to the formation of citizenship values in contemporary Indonesia? demands a broad, multi-perspective, and interdisciplinary approach. Citizenship, especially in a legally plural and socio-culturally diverse country such as Indonesia, transcends the narrow confines of formal legal status. It must be understood as a complex construct shaped at the intersection of formal law, everyday social practices, political institutions, and deeply rooted cultural values. This approach recognizes citizenship not merely as a static legal category but as a living process reflecting the ongoing negotiation of identity, rights, and belonging.

To critically engage with this complexity, the study draws upon the major schools of thought in the sociology of law: Formalism, the Historical-Cultural School, Utilitarianism, Sociological Jurisprudence, and Legal Realism. Each of these intellectual traditions offers unique conceptual tools and empirical insights into how law operates within society and how citizenship is formed, shaped, and redefined within Indonesia’s multifaceted legal and social landscape.

1. Formalism: Legalism without Contextuality

The Formalist School, articulated by scholars such as John Austin and Hans Kelsen, conceptualizes law as a hierarchical system of norms, wherein each legal rule derives its validity from a higher norm, ultimately culminating in a basic norm or *Grundnorm* (Kelsen, 1967). According to this perspective, law’s authority is rooted in its formal characteristics and its issuance by a sovereign authority, rather than any social or moral considerations. Kelsen’s “Pure Theory of Law” thus seeks to establish a science of law free from political, ethical, or sociological influences, focusing solely on the logical coherence and normative validity of legal rules.

In the Indonesian context, the influence of formalism is visible in the codification of citizenship criteria, notably in Law No. 12 of 2006 on Citizenship. This legislation provides a clear, legalistic framework outlining who qualifies as an Indonesian citizen through birth, naturalization, marriage, or application. Such a codified approach aims to ensure legal certainty and administrative clarity, which are essential for governance, national security, and international diplomacy.

However, the formalist approach’s emphasis on rigid legal definitions often neglects the complex social realities faced by many Indonesian citizens. For example, families resulting from

inter-ethnic or international marriages, marginalized ethnic minorities, indigenous groups, and stateless persons frequently encounter legal ambiguities or exclusionary practices despite their lived experience of belonging. The formalist framework's rigidity tends to overlook the social, cultural, and political dimensions that shape the experience of citizenship on the ground.

Moreover, formalism's emphasis on sovereign authority and hierarchical norms may obscure power imbalances within society that affect access to citizenship rights. In Indonesia, where local adat laws coexist with national legislation, and where regional autonomy complicates state sovereignty, formal legal norms alone cannot fully account for the pluralistic nature of citizenship. Thus, while formalism contributes to legal stability and predictability, it remains insufficient for capturing the lived realities of citizenship in a plural society.

2. Historical and Cultural School: Law as Collective Cultural Consciousness

In contrast to the rigid formalism, the Historical and Cultural School, developed by Friedrich Karl von Savigny, Henry Maine, and Georg Friedrich Puchta, conceptualizes law as an organic expression of a community's shared historical and cultural identity. Law, from this perspective, emerges from customs, traditions, and the collective consciousness (*Volksgeist*) of the people, rather than being artificially imposed by the state (Anto, 2018). This school emphasizes the embeddedness of law within society's lived experience and cultural context.

Indonesia's legal pluralism vividly exemplifies the relevance of this approach. The country's diverse ethnic groups maintain distinct customary (*adat*) laws, which often coexist, overlap, or conflict with national legislation and religious norms. For instance, *adat* law in Papua, Aceh, and West Sumatra not only governs property relations and dispute resolution but also shapes conceptions of identity, belonging, and community membership in ways that challenge the national citizenship framework.

This school's critical contribution lies in recognizing citizenship as more than a formal legal status; it is a culturally embedded identity shaped by history, tradition, and community norms. Ignoring this dimension risks legal alienation and social exclusion, as many Indonesians continue to identify with their ethnic or regional communities as primary sites of belonging. For example, indigenous communities' struggles to have their *adat* rights recognized illustrate how formal citizenship laws can marginalize groups whose identity is intimately linked to customary legal systems.

The Historical and Cultural School thus invites a more nuanced understanding of citizenship that accounts for Indonesia's plural heritage. It urges policymakers and scholars to appreciate that citizenship must reconcile state sovereignty with respect for local customs and traditions. This balancing act is vital for maintaining social cohesion and justice in a diverse nation.

3. Utilitarianism: Citizenship as a Tool for Public Welfare

The Utilitarian School, associated with thinkers like Jeremy Bentham, John Stuart Mill, and Rudolf von Jhering, evaluates law based on its utility—its capacity to promote the greatest happiness for the greatest number by minimizing suffering and social conflict (Bentham, 1789; Darmodiharjo, 1999). From this perspective, citizenship is not merely an abstract legal identity but a pragmatic tool for achieving broader social and political goals, including national stability, economic development, and social welfare.

In Indonesia, the utilitarian perspective provides an important framework for debates surrounding dual citizenship and migration policy. The exclusionary stance of the 2006 Citizenship Law towards dual nationality contrasts with the realities of the Indonesian diaspora, which actively

contributes to the country's economy and cultural exchange. Scholars such as Antikowati et al. (2023) argue for pragmatic reforms that align citizenship policy with the socio-economic benefits of global migration and transnational identities.

From a utilitarian viewpoint, inclusive citizenship policies foster national loyalty, social integration, and diplomatic leverage, contributing to Indonesia's broader goals of democratic consolidation and economic progress. This school's emphasis on outcomes rather than abstract principles supports policy experimentation and flexibility in citizenship regulations, encouraging adjustments based on societal needs.

However, utilitarianism's focus on collective welfare may risk overlooking minority rights and identity politics, potentially justifying exclusionary practices if deemed beneficial for the majority. Therefore, while utilitarianism offers a valuable policy lens, it must be balanced with normative concerns about justice and equality.

4. Sociological Jurisprudence: Citizenship as Living Law

Sociological Jurisprudence, as developed by Roscoe Pound and Eugen Ehrlich, foregrounds the distinction between "law in books" and "law in action." Ehrlich's notion of "living law" posits that the true source of legal development lies not in formal statutes but in the social norms and practices actually observed by communities (Ehrlich, 1922; Pound, 1942). This approach highlights the dynamic interplay between formal law and social reality.

This perspective is critical in Indonesia, where formal legal guarantees often fail to translate into equitable experiences for marginalized groups such as women, persons with disabilities, and indigenous peoples. Although the constitution and citizenship laws guarantee equality, social stigmas, bureaucratic hurdles, and discrimination frequently undermine these promises. For example, many indigenous communities face difficulties obtaining official identity documents, impeding their ability to exercise political rights.

Sociological Jurisprudence thus stresses that citizenship must be understood through its actual social practice, not merely its legal articulation. It advocates for law to be responsive to social change, inclusive of diverse experiences, and attentive to the evolving values of society. By emphasizing "law in action," this school offers a framework to assess citizenship not just in terms of legal entitlement but through access, recognition, and participation in social life.

5. Legal Realism: Citizenship through Judicial Interpretation

Legal Realism, advanced by scholars such as Oliver Wendell Holmes Jr., Karl Llewellyn, and Jerome Frank, critiques the notion of law as a fixed, logical system. Instead, it views law as a human activity shaped by judicial discretion, social context, and power relations (Holmes, 1881). Holmes's famous dictum, "The life of the law has not been logic; it has been experience," underscores the contingent nature of legal meaning.

In Indonesia, this approach is highly relevant to understanding how citizenship rights are negotiated in courts, particularly in cases involving complex identity issues such as gender recognition, the status of children born of mixed marriages, and stateless persons. Judicial discretion plays a pivotal role in interpreting citizenship laws, often reflecting broader societal norms, political pressures, and evolving conceptions of justice.

Legal Realism highlights the importance of courts as arenas where citizenship is contested and redefined, demonstrating that legal meaning is not static but dynamic and subject to interpretation. This perspective encourages critical scrutiny of judicial decisions and their impact on inclusivity,

equality, and human rights in citizenship matters.

In an era marked by globalization, religious intolerance, identity-based political fragmentation, and mass migration, the traditional state-centric, legalistic conception of citizenship proves increasingly inadequate. Contemporary Indonesia faces multifaceted challenges that expose the limits of citizenship as merely legal status. Religious intolerance, often rooted in historical and social tensions, reflects the failure of national legal frameworks to guarantee equal protection and participation for minority groups. Narrow definitions of citizenship tied to ethnicity, religion, or cultural homogeneity create social exclusion and “second-class citizens,” fostering alienation and conflict. At the same time, identity politics can serve as both a tool for marginalized groups to assert rights and a force for divisiveness when it hardens into exclusivist ideologies.

In this context, scholars such as Yasemin Soysal (1994) argue for a “postnational” conception of citizenship, wherein rights and belonging are increasingly decoupled from exclusive national membership and anchored in universal human rights and active social participation. This vision encourages citizenship as a dynamic, multilayered practice that embraces diversity and recognizes multiple identities. Migration, whether forced or voluntary, poses a profound challenge to traditional citizenship. Migrants, refugees, and stateless persons contribute to their host societies but are often excluded from full legal recognition. Seyla Benhabib (2004) identifies the ethical paradox of democratic states founded on universalist ideals yet enforcing exclusionary citizenship laws. The emerging concept of “citizenship as practice” (Isin & Nielsen, 2008) reframes belonging through acts of participation, solidarity, and contribution, even without formal status.

To realize this expanded notion of citizenship, institutional and cultural transformations are necessary. Education must go beyond patriotic instruction to foster intercultural dialogue and critical engagement. Local governments and civil society must create inclusive participatory spaces. Digital platforms, while promising new forms of civic engagement, require regulation to prevent polarization and promote media literacy. As Etienne Balibar (2004) argues, citizenship is “always in the making,” a contested and evolving practice demanding continuous negotiation and adaptation. Rather than a gatekeeping mechanism, citizenship can become a democratizing force, rebuilding political community around justice, plurality, and mutual recognition.

The sociology of law plays a crucial role not only as an analytical tool for understanding law but also as a foundational approach in shaping public policy, especially in the realm of citizenship in Indonesia. Policymakers and government officials can leverage sociological insights to craft regulations that are more inclusive and responsive to the diverse needs of society. Through in-depth social research, it has been revealed that many citizens are administratively marginalized due to documentation issues, which has prompted initiatives such as biometric ID card registration programs targeting remote populations. Moreover, the sociological approach, which recognizes customary law and minority cultural identities, allows the government to accommodate adat (customary) law systems without conflicting with national legislation. For instance, acknowledging indigenous communities’ rights over land and cultural identity, which historically have had limited recognition in formal law, is a direct application of this perspective. Furthermore, sociology of law helps prevent social conflict among ethnic and religious groups by providing data and analyses useful in designing conflict resolution mechanisms, such as intercommunal dialogues and social mediation programs that foster mutual understanding and peace.

In the digital age and era of globalization, the concept of citizenship undergoes significant transformation. Digital citizenship emerges as a vital aspect that cannot be ignored. In Indonesia’s context, the digital divide remains a major barrier to equitable access to technology-based civil registration

services. This disparity results in unequal recognition of citizenship among citizens from different regions, especially between urban and rural or remote communities. On the other hand, social media and digital platforms open new spaces for political participation and democracy, including for advocacy and mobilization around civil rights. However, digital spaces also pose risks such as misinformation and polarization, which can undermine social cohesion and shared citizenship values. Hence, data privacy protection and cybersecurity policies become critical components in managing citizenship in the digital realm. Globalization also introduces the phenomenon of transnational citizenship, where many Indonesians living and working abroad seek recognition of dual citizenship to maintain their rights and identities in both countries. This development calls for a more flexible and responsive citizenship regulation that accommodates increased human mobility. Additionally, the presence of stateless persons and migrants in Indonesia, whether as hosts or transit populations, highlights the urgent need to adopt humane and adaptive citizenship policies that address their legal and social vulnerabilities.

Cases involving children born from mixed marriages between Indonesian citizens and foreigners provide concrete examples of how sociological legal thought dynamics influence citizenship management. Formally, Indonesian law stipulates that such children can hold only one citizenship until a certain age, often leading to loss of rights once they reach adulthood. However, sociological studies show that these children identify with the cultures of both parents and require more flexible citizenship recognition to avoid social alienation. In judicial practice, judges' rulings play a decisive role in determining these children's citizenship status, illustrating the relevance of legal realism thought, which emphasizes judicial interpretation's impact on law enforcement. Civic pressure and sociological research findings have pushed the government to consider revising policies to become more inclusive and accommodating for children of mixed marriages. This phenomenon demonstrates the importance of viewing citizenship as a dynamic concept, grounded not only in formal rules but also in social context and evolving cultural identities.

Therefore, the diverse streams of thought within the sociology of law provide invaluable insights for the formation and development of citizenship values in contemporary Indonesia. Integrating formalist, historical-cultural, utilitarian, sociological, and legal realist perspectives contributes to creating a citizenship framework that is both inclusive and contextually relevant. Particularly amidst the challenges posed by digital transformation and globalization, citizenship concepts must be adaptable to social, technological, and geopolitical changes to ensure equitable rights, participation, and a sense of belonging among all citizens. Recognizing plural identities and social needs becomes a fundamental prerequisite for building a healthy and sustainable citizenship model. The integrative sociological legal approach not only strengthens formal legal legitimacy but also vitalizes citizenship as a dynamic social practice that resonates with the lived realities of Indonesian society today.

CONCLUSION

The dynamics of legal thought within the sociology of law reveal that citizenship in contemporary Indonesia cannot be adequately understood solely through formal legal frameworks. Instead, citizenship is a multifaceted and evolving social construct shaped by an interplay of legal norms, cultural traditions, political contexts, and lived social realities. The formalist approach provides necessary legal clarity and state sovereignty, yet it often fails to capture the complexities of Indonesia's pluralistic society, where customary adat laws and diverse ethnic identities coexist with national legislation. Historical and cultural perspectives emphasize the deep-rooted significance of community identity and tradition

in shaping citizenship values, highlighting the need to integrate local customs within broader legal frameworks to prevent marginalization. Utilitarianism stresses the importance of citizenship policies that promote social welfare and national stability, though such pragmatic concerns must be balanced with the protection of minority rights. Sociological jurisprudence and legal realism shift focus towards the lived experiences of citizens, underlining how law in practice, judicial discretion, and social norms shape actual access to rights and belonging. Together, these intellectual traditions underscore that citizenship is not a fixed legal status but a dynamic process involving continuous negotiation among individuals, communities, and the state. In light of globalization, digital transformation, and evolving identity politics, citizenship in Indonesia demands flexible, inclusive, and context-sensitive approaches that acknowledge social diversity, address structural inequalities, and adapt to emerging social challenges. This integrative understanding is essential for fostering social cohesion, democratic participation, and equitable citizenship in one of the world's most complex plural societies.

Finally, it is important to emphasize that citizenship is not just a static formal legal status, but a dynamic social practice that continues to evolve in accordance with the changing times and conditions of society. This understanding requires public policies that do not only focus on administrative and legalistic aspects, but are also able to respond to the real needs, aspirations, and diversity of citizens' experiences in everyday life. Inclusive policies must be able to bridge social, cultural and economic differences, and accommodate various identities that intersect in a plural society like Indonesia. In addition, policy responsiveness to technological developments and digitalization is also crucial, given how digital spaces have become a new arena for citizens to participate, express, and build communities. By adopting the perspective of citizenship as an evolving social practice, the government and stakeholders can design programs and regulations that are more adaptive, humane, and encourage the active involvement of all levels of society in order to create social justice and stronger national cohesion.

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