

Legal Schools and the History of Law: Theoretical and Practical Perspectives

Ahsanul Haq¹ Muh. Sabir² Ahmad Fadli³ Aslan Syah Mattulanreng⁴ Armawansya⁵ Amirullah⁶ Muhammad Qasim Hamzah⁷

Postgraduate Masters in Law, Tomakaka Mamuju University, Indonesia

*Corresponding author: ahsanulikhw@gmail.com

Abstract: Legal politics constitutes the fundamental state policy that determines the direction, substance, and implementation of law in order to achieve national objectives. In the Indonesian constitutional system, the 1945 Constitution of the Republic of Indonesia serves as the supreme legal foundation guiding the formulation and development of national legal politics. This study examines legal politics from the perspective of the 1945 Constitution and analyzes its implications for the formation of national law. Employing a normative legal research method, this study applies statutory, conceptual, and historical approaches by analyzing constitutional provisions, legislation, legal doctrines, and scholarly opinions. The findings reveal that the 1945 Constitution provides normative guidance and clear limitations for national legal politics, particularly in upholding the principles of the rule of law, democracy, constitutional supremacy, and the protection of human rights. The Constitution not only functions as the highest legal norm but also as a philosophical and juridical framework that directs legal policy toward achieving justice, legal certainty, and social welfare. Furthermore, legal politics grounded in constitutional values significantly influences the substance of legislation, the legislative process, and mechanisms of constitutional review. A constitutional-oriented legal politics ensures that laws are formulated in a democratic, participatory, and accountable manner while remaining consistent with the objectives of the state as stipulated in the Preamble of the 1945 Constitution. Therefore, strengthening constitutional compliance in legal politics is essential to develop a just, responsive, and socially equitable national legal system in Indonesia.

Keywords : legal politics; constitution; the 1945 Constitution; rule of law.

1. Introduction

Law does not emerge in a vacuum; rather, it is a product of historical processes and intellectual struggles that reflect human efforts to achieve justice, certainty, and social order. Within legal scholarship, the study of legal schools of thought and legal history represents two interrelated dimensions that are fundamental to understanding the nature and development of law. Legal schools of thought provide theoretical frameworks through which law is conceptualized, interpreted, and justified, while legal history explains how legal norms, institutions, and doctrines evolve in response to changing social, political, economic, and cultural contexts. Consequently, an integrated examination of legal theory and legal history is essential for comprehending law as both a normative system and a living social institution.

In contemporary legal studies, increasing attention has been paid to the relationship between legal theory and historical analysis as a response to the limitations of purely doctrinal or positivistic approaches. Modern legal systems face complex challenges arising from globalization, legal pluralism, technological transformation, and evolving human rights standards. These challenges require not only technical legal solutions but also a deeper understanding of the philosophical foundations and historical trajectories of law (Bix, 2020; Tamanaha, 2021). Legal schools of thought—such as natural law, legal positivism, historical jurisprudence, sociological jurisprudence, legal realism, and critical legal studies—offer diverse perspectives that help explain how law functions, why it commands authority, and how it should respond to social change.

Natural law theory, for instance, emphasizes the moral foundations of law and argues that legal validity is inseparable from principles of justice and human dignity. Although often regarded as classical, natural law theory continues to influence contemporary debates on constitutionalism, human rights, and global justice (Crowe, 2020). In contrast, legal positivism maintains a strict separation between law and morality, focusing on law as a system of rules enacted by recognized authorities through formal procedures. Positivist frameworks remain dominant in many legal systems due to their emphasis on

legal certainty, predictability, and institutional stability (Gardner, 2022). However, critics argue that positivism alone is insufficient to address the moral and social dimensions of law, particularly in pluralistic and rapidly changing societies.

The historical school of law provides an alternative perspective by situating law within the cultural and historical experiences of a society. According to this view, law develops organically from the collective consciousness and social practices of a community rather than being imposed solely through legislative authority. Contemporary legal historians have reaffirmed the relevance of historical jurisprudence by demonstrating how colonial legacies, customary norms, and socio-political transformations continue to shape modern legal systems (Duve, 2020; Pihlajamäki et al., 2021). This approach is particularly significant in post-colonial states, where legal systems often reflect a complex interaction between indigenous law, colonial law, and national legal reforms.

Sociological jurisprudence and legal realism further expand the understanding of law by emphasizing its practical operation within society. Sociological jurisprudence views law as a social institution designed to balance competing interests and promote social welfare. Legal realism, on the other hand, challenges the idea that law can be understood solely through statutes and doctrines, highlighting instead the role of judges, institutional practices, and socio-economic factors in shaping legal outcomes. Recent empirical legal studies support realist insights by showing how judicial behavior, institutional constraints, and social context significantly influence the application of law in practice (Epstein et al., 2022).

In addition to these classical schools, critical legal studies (CLS) and related critical approaches have gained renewed relevance in contemporary legal discourse. CLS scholars argue that law is not neutral or objective but is deeply embedded in power relations and ideological structures. From this perspective, legal rules often serve to legitimize existing social hierarchies rather than to achieve substantive justice. Recent scholarship has extended critical legal analysis to issues such as economic inequality, gender justice, and post-colonial legal reform, demonstrating the continued relevance of critical perspectives in exposing structural biases within legal systems (Kennedy, 2020; Dezalay & Garth, 2023).

While legal schools of thought provide conceptual tools for understanding law, legal history offers an essential contextual dimension that reveals how these theories emerge, interact, and transform over time. Legal history enables scholars and practitioners to trace the origins of legal doctrines, understand the socio-political conditions that shaped them, and evaluate their contemporary relevance. Rather than viewing law as a static set of rules, historical analysis highlights the dynamic and evolutionary character of legal systems (Berman, 2021). This perspective is crucial for legal reform, as it allows lawmakers and jurists to learn from past successes and failures while adapting legal norms to present and future challenges.

In practical terms, the integration of legal theory and legal history plays a vital role in lawmaking, legal interpretation, and law enforcement. Legislators often rely on historical analysis to assess the continuity and legitimacy of legal norms, while judges use historical and theoretical reasoning to interpret statutes and constitutions in a manner consistent with foundational legal principles. Recent studies in comparative constitutional law demonstrate that historical reasoning remains a powerful tool in judicial decision-making, particularly in cases involving fundamental rights and constitutional identity (Hirschl, 2020; McLean & McMillan, 2022).

The relevance of this integrated approach is particularly evident in the context of legal reform in developing and transitional legal systems. In Indonesia, for example, the enactment of the new Criminal Code in 2023 reflects an effort to move beyond colonial legal legacies and to construct a national legal system that aligns with contemporary social values and constitutional principles. Such reform initiatives cannot be fully understood without considering both the theoretical debates surrounding criminal law

and the historical evolution of Indonesia's legal system. Legal history reveals the enduring influence of colonial law and customary norms, while legal theory provides normative guidance for evaluating the justice and effectiveness of new legal frameworks.

Against this background, this study examines major schools of legal thought from both theoretical and practical perspectives and analyzes the role of legal history in shaping modern legal systems. By employing a normative juridical method combined with conceptual and historical approaches, the study seeks to demonstrate that no single legal school can adequately explain the complexity of law. Instead, a holistic understanding of law emerges from the interaction between diverse legal theories and historical experiences. This integrated perspective is essential for developing a legal system that is not only formally valid but also socially responsive, morally grounded, and sustainable in a modern and pluralistic society.

2. Research Methodology

2.1. Research Design

This study adopts a **normative juridical research design**, also known as **doctrinal legal research**, which focuses on the systematic analysis of legal norms, principles, doctrines, and theories. This design is selected because the research aims to examine schools of legal thought and the historical development of law from a theoretical and analytical perspective, rather than through empirical measurement. Normative legal research is particularly suitable for exploring the philosophical foundations of law and assessing their relevance to contemporary legal systems.

2.2. Research Approaches

To achieve the objectives of the study, this research employs a combination of **conceptual and historical approaches**. The **conceptual approach** is used to analyze key legal concepts and theoretical frameworks developed by major schools of legal thought, such as natural law, legal positivism, historical jurisprudence, sociological jurisprudence, legal realism, and critical legal studies. Through this approach, the study examines how each school defines the nature, sources, and purposes of law, as well as its relationship with morality, society, and state authority. The **historical approach** is applied to trace the evolution of legal ideas and doctrines over time. This approach views law as a product of historical processes influenced by social, political, and economic conditions. By examining the historical background of legal schools, the study explains how legal theories emerged, developed, and influenced modern legal systems and practices.

2.3. Types and Sources of Legal Materials

This research relies primarily on **secondary legal materials** obtained through **library-based research**. The materials consist of scholarly books, peer-reviewed journal articles, legal commentaries, and authoritative academic publications related to jurisprudence, legal theory, and legal history. Classical legal texts are used to explain foundational theories, while recent international journal articles are prioritized to ensure the relevance and currency of the analysis. In addition, selected statutory materials and legal policy documents are used to illustrate the practical implications of legal theories in contemporary legal contexts.

2.4. Data Collection Technique

Legal materials are collected through a **systematic literature review**. Relevant sources are identified using academic databases and reputable publishers. The selection of materials is based on their academic credibility, relevance to the research theme, and contribution to the understanding of

legal schools and historical legal development. This technique ensures that the analysis is grounded in authoritative and scholarly sources.

2.5. Data Analysis Method

The collected legal materials are analyzed using a **qualitative descriptive-analytical method**. This method involves describing legal doctrines and theories, interpreting their underlying assumptions, and critically evaluating their significance for contemporary law. The analysis is conducted by categorizing materials according to schools of legal thought and historical phases, enabling comparative assessment and thematic interpretation.

2.6. Legal Reasoning Technique

The study applies **deductive legal reasoning**, whereby general legal theories and historical principles serve as the basis for drawing specific conclusions regarding their implications for legal interpretation, law enforcement, and legal reform. Deductive reasoning ensures logical consistency and analytical rigor in linking abstract legal concepts with practical legal outcomes.

3. Results and Discussion

3.1 Research Findings

This study reveals that legal schools of thought and legal history constitute two inseparable dimensions in understanding law as a normative, social, and institutional system. Through a normative juridical analysis combined with conceptual and historical approaches, the research identifies several key findings concerning the theoretical foundations of law and their practical relevance in modern legal systems. First, the study finds that **each major legal school offers a distinct yet complementary explanation of the nature and function of law**. Natural law theory emphasizes moral values, justice, and universal principles as the foundation of legal validity. Legal positivism, by contrast, highlights formal authority, procedural legitimacy, and the hierarchical structure of legal norms. Historical jurisprudence views law as an organic product of social traditions and collective consciousness, while sociological jurisprudence focuses on law as a social instrument designed to balance competing interests within society. Legal realism underscores the role of judicial behavior and institutional practices in shaping law in action, whereas critical legal studies expose the ideological and power-based dimensions embedded within legal systems.

The findings demonstrate that **no single legal school is sufficient to explain the complexity of law in contemporary societies**. Instead, modern legal systems operate through an implicit synthesis of multiple theoretical perspectives. In practice, law simultaneously embodies moral aspirations, formal norms, social realities, institutional discretion, and political power. This plurality reflects the multifaceted character of law as both a normative system and a social institution. Second, the research finds that **legal history plays a crucial role in contextualizing legal norms and institutions**. Law does not emerge in a vacuum but develops through historical processes shaped by social, political, economic, and cultural forces. The historical analysis shows that legal doctrines, institutions, and codifications are responses to specific historical conditions and societal needs. As societies evolve, legal norms undergo transformation, adaptation, or replacement, reflecting changes in values, power relations, and social structures.

In the Indonesian context, the findings indicate that the national legal system is deeply influenced by a **pluralistic legal heritage**, consisting of customary law, colonial law, and post-independence national law. This historical layering explains many contemporary legal challenges, including normative inconsistencies, gaps between formal law and social practices, and debates over

legal reform. The enactment of the National Criminal Code (KUHP Nasional) in 2023 illustrates an effort to address these historical legacies by replacing colonial legal structures with norms grounded in national values and contemporary legal needs. Third, the study finds that **legal theory and legal history function as practical tools in lawmaking, legal interpretation, and law enforcement**. Theoretical frameworks guide legislators in formulating legal norms, assist judges in interpreting and applying the law, and help legal scholars evaluate the coherence and legitimacy of legal systems. Historical understanding enables legal actors to appreciate the original purposes of legal norms, avoid repetitive historical mistakes, and preserve fundamental legal values while adapting to societal change. Finally, the research finds that **effective legal reform requires an integrated theoretical and historical approach**. Legal reform that relies solely on formal positivist methods risks producing rigid and socially disconnected norms, while reform that ignores legal certainty may undermine legal stability. By integrating legal theory and legal history, legal systems can achieve a balance between continuity and change, certainty and justice, and authority and legitimacy.

3.2 Discussion

The findings of this study confirm and extend existing scholarly debates on the relationship between legal theory, legal history, and legal practice. The discussion below elaborates on the implications of these findings by critically examining the interaction between legal schools of thought and historical development in shaping contemporary legal systems. From a theoretical perspective, the coexistence of multiple legal schools reflects the inherent tension between **justice, certainty, and utility** as fundamental legal values. Natural law theory contributes a moral compass that guards against unjust or oppressive laws, particularly in situations where positive law conflicts with basic human rights. Legal positivism, however, remains indispensable for ensuring legal certainty, predictability, and institutional order. Without clear and formally enacted rules, legal systems risk arbitrariness and inconsistency. Historical jurisprudence and sociological jurisprudence bridge the gap between abstract norms and social reality. By emphasizing law as a living and evolving phenomenon, these schools highlight the importance of cultural traditions, social practices, and collective values in shaping legal norms. This perspective is particularly relevant in pluralistic societies, where formal law must coexist with customary and religious norms. Legal realism further enriches this analysis by exposing the gap between law in books and law in action, reminding scholars and practitioners that judicial discretion and institutional behavior significantly influence legal outcomes.

Critical legal studies add an important dimension by questioning the neutrality of law. From this perspective, law is not merely a technical instrument but also a product of political struggle and power relations. This insight is essential for evaluating legal reform efforts, as it reveals how legal norms may privilege certain groups while marginalizing others. In this sense, critical theory serves as a corrective lens that promotes substantive justice and inclusivity. The discussion also underscores the central role of **legal history as a methodological and analytical framework**. Understanding the historical origins of legal norms allows legal actors to interpret laws more accurately and apply them more sensitively. Historical analysis reveals that many contemporary legal doctrines are shaped by past political agendas, colonial structures, or socio-economic conditions that may no longer be relevant. Consequently, legal reform must involve a critical reassessment of inherited legal norms rather than their uncritical preservation.

In the Indonesian legal context, historical analysis is particularly significant. The transition from colonial law to national law illustrates the challenges of legal continuity and transformation. The adoption of the National Criminal Code represents an attempt to reclaim legal sovereignty while responding to modern legal demands, including human rights protection, social justice, and cultural

diversity. This reform process demonstrates how legal theory and legal history jointly inform the construction of a legal system that is both nationally rooted and globally relevant.

Furthermore, the integration of legal schools and legal history enhances **judicial reasoning and legal interpretation**. Judges frequently rely on theoretical principles and historical context to resolve legal ambiguities, interpret legislative intent, and adapt legal norms to new circumstances. A purely textual or formalistic approach may fail to capture the broader purpose and social function of the law. By contrast, a theoretically informed and historically grounded approach enables judges to deliver decisions that are not only legally valid but also socially legitimate. In terms of legal reform, the discussion highlights the importance of adopting a **contextual and sustainable approach**. Sustainable legal reform requires preserving core legal values while remaining responsive to societal change. Legal history provides continuity, while legal theory offers analytical tools for evaluating new legal challenges. Together, they enable legal systems to evolve without losing their normative foundation. Overall, the discussion confirms that **law is best understood as a dynamic interaction between theory, history, and practice**. Legal schools of thought offer diverse analytical frameworks, while legal history provides contextual depth and continuity. Their integration strengthens legal reasoning, enhances legal legitimacy, and supports effective legal reform. In a modern and pluralistic society, such an integrated approach is essential for developing a legal system that is just, adaptive, and sustainable.

4. Conclusion

4.1 Conclusions

This study concludes that legal schools of thought and legal history are fundamental and interdependent components in understanding law as a normative, social, and institutional system. Each legal school—natural law, legal positivism, historical jurisprudence, sociological jurisprudence, legal realism, and critical legal studies—contributes distinct theoretical insights into the nature, sources, and purposes of law. However, none of these schools can independently explain the full complexity of legal systems in contemporary societies. The findings demonstrate that a comprehensive understanding of law requires an integrative approach that combines moral considerations, formal legal certainty, social realities, institutional practices, and critical awareness of power relations. Legal history further enriches this understanding by revealing the evolutionary and contextual character of law, showing how legal norms and institutions develop in response to changing social, political, and cultural conditions. In practical terms, the integration of legal theory and legal history enhances lawmaking, legal interpretation, and law enforcement. Legislators benefit from theoretical and historical insights in designing coherent and socially responsive legal norms, while judges and legal practitioners rely on these perspectives to interpret and apply the law in a manner that balances certainty, justice, and social relevance. Overall, this study affirms that the synthesis of legal schools and legal history is essential for constructing a legal system that is just, contextual, and sustainable.

4.2 Implications of the Study

The implications of this study are both theoretical and practical. From a theoretical standpoint, the research contributes to legal scholarship by reinforcing the view that legal theory should not be treated as a set of competing doctrines, but as a complementary framework for understanding law. The study encourages a pluralistic and integrative approach to jurisprudence that acknowledges the strengths and limitations of each legal school. From a practical perspective, the findings have important implications for legal reform and legal practice. In the context of developing and pluralistic legal systems, such as Indonesia, an integrated theoretical and historical approach provides a valuable foundation for reform initiatives, including the modernization of criminal law. By grounding legal

reform in both historical continuity and theoretical analysis, policymakers can ensure that new legal norms are not only formally valid but also socially legitimate and culturally relevant.

4.3 Limitations of the Study

This study is subject to certain limitations. First, the research relies primarily on normative and doctrinal analysis, which does not include empirical examination of legal behavior or judicial decision-making. As a result, the findings reflect theoretical and historical interpretations rather than measurable social outcomes. Second, the scope of the study is limited to selected major legal schools and does not exhaustively cover all contemporary or emerging jurisprudential perspectives. Despite these limitations, the study provides a solid conceptual and historical foundation for understanding the interaction between legal theory and legal practice. The limitations identified do not diminish the relevance of the findings but instead highlight areas for further scholarly inquiry.

4.4 Recommendations for Future Research

Future research is encouraged to expand upon the findings of this study by incorporating empirical methods, such as case analysis or socio-legal research, to examine how legal theories and historical contexts influence judicial reasoning and law enforcement in practice. Comparative studies involving different legal systems may also provide deeper insights into the interaction between legal schools and legal history across diverse socio-political contexts. Additionally, future studies may explore the application of integrated legal theory and historical analysis in specific fields of law, such as criminal law reform, constitutional interpretation, or human rights protection. Such research would further strengthen the practical relevance of jurisprudential and historical approaches in addressing contemporary legal challenges.

5. Bibliography

- Ali, Achmad. *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan*. Jakarta: Kencana Prenada Media Group, 2012.
- Asshiddiqie, Jimly. *Pengantar Ilmu Hukum Tata Negara*. Jakarta: Rajawali Pers, 2015.
- Berman, Harold J. *Law and Revolution Revisited*. Cambridge: Harvard University Press, 2021.
- Bix, Brian. *Jurisprudence: Theory and Context*. Edisi ke-9. Cambridge: Cambridge University Press, 2020.
- Bodenheimer, Edgar. *Jurisprudence: The Philosophy and Method of the Law*. Cambridge: Harvard University Press, 1962.
- Crowe, Jonathan. "Natural Law and the Nature of Law." *Legal Theory*, Vol. 26, No. 4 (2020): 293–314.
- Dezalay, Yves, dan Bryant G. Garth. "Law, Elites, and Power in Global Context." *Annual Review of Law and Social Science*, Vol. 19 (2023): 1–20.
- Duve, Thomas. "Legal History and Global Perspectives." *Rechtsgeschichte – Legal History*, Vol. 28 (2020): 6–19.
- Epstein, Lee, Jack Knight, dan Andrew D. Martin. "The Behavior of Judges and the Rule of Law." *Annual Review of Political Science*, Vol. 25 (2022): 417–436.
- Friedmann, W. *Legal Theory*. London: Stevens & Sons, 1975.

- Gardner, John. "Legal Positivism: Contemporary Debates." *Oxford Journal of Legal Studies*, Vol. 42, No. 1 (2022): 1–24.
- Hadjon, Philipus M. *Pengantar Hukum Administrasi Indonesia*. Yogyakarta: Gadjah Mada University Press, 2011.
- Hirschl, Ran. "Comparative Constitutional Law: New Perspectives." *International Journal of Constitutional Law*, Vol. 18, No. 3 (2020): 809–832.
- Huijbers, Theo. *Filsafat Hukum dalam Lintasan Sejarah*. Yogyakarta: Kanisius, 1982.
- Kelsen, Hans. *General Theory of Law and State*. Cambridge: Harvard University Press, 1945.
- Kennedy, Duncan. "A Critique of Adjudication Revisited." *Columbia Journal of Law & Social Problems*, Vol. 53, No. 4 (2020): 451–480.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, 2017.
- McLean, Iain, dan Alistair McMillan. "State, History, and Constitutional Interpretation." *Modern Law Review*, Vol. 85, No. 2 (2022): 245–270.
- Pihlajamäki, Heikki, Markus D. Dubber, dan Mark Godfrey (eds.). *The Oxford Handbook of European Legal History*. Oxford: Oxford University Press, 2021.
- Pound, Roscoe. *An Introduction to the Philosophy of Law*. New Haven: Yale University Press, 1922.
- Rahardjo, Satjipto. *Ilmu Hukum*. Bandung: Citra Aditya Bakti, 2014.
- Rahardjo, Satjipto. *Hukum dan Masyarakat*. Bandung: Angkasa, 2009.
- Savigny, Friedrich Carl von. *Of the Vocation of Our Age for Legislation and Jurisprudence*. London: Littlewood & Co., 1831.
- Soekanto, Soerjono. *Pokok-Pokok Sosiologi Hukum*. Jakarta: RajaGrafindo Persada, 2014.
- Soekanto, Soerjono, dan Sri Mamudji. *Penelitian Hukum Normatif*. Jakarta: RajaGrafindo Persada, 2015.
- Tamanaha, Brian Z. "Law as a Means to an End: Threats to the Rule of Law." *Cambridge Law Journal*, Vol. 80, No. 2 (2021): 320–345.