

# Naskah Jurnal ICT4T

*by* Anthon Susanto

---

**Submission date:** 24-Sep-2018 02:23PM (UTC+0700)

**Submission ID:** 1007290050

**File name:** T4T\_-\_Anthon\_F.\_Susanto,\_Hesti\_Septianita,\_Rosa\_Tedjabuwana.docx (32.93K)

**Word count:** 2796

**Character count:** 16277

# A New Paradigm in Indonesian Legal Research *From Positivistic to Participatory*

ANTHON F. SUSANTO, HESTI SEPTIANITA, ROSA TEJABUWANA

*anthon.aiki@gmail.com*

## ABSTRACT

*Debates around research method have taken us so far into what is called as clash of paradigm. Despite the circumstances, the positivist paradigm is still dominant and thus created a paradigmatic gap between old values and contemporary changes and progress. This is why a research cannot accommodate variations in reality. The paradigmatic bias of science and methods of legal research arising from the transplantation of Western law (modern law) to local law and practices, and the emergence / sparking of all injustice practices that arise in various legal systems, since there is no legal system that is practically free from the scandal on abuse of power, consequently, those who are far from power will be excluded from access to justice, and are always marginalized. Through the study of hermeneutics and philosophy of law, it can be explained that legal research is undergoing a shift from the dogmatic nature to become participatory, the reality of the truth changes and jumps, so there is no absolute truth in this study. Through a participatory transformative paradigm, legal research will be able to play a role in the context of marginalized societies. Through collaborative legal research, the value of legal alignment towards the community will be more pronounced in living conditions today, especially in Indonesia that experiencing a crisis of values, crisis, moral and severe identity crisis.*

**Keywords:** *Transformative-participatory paradigm, collaborative legal research, identity crisis*

## INTRODUCTION

Academic research as a scientific activity in universities is generally based on several things as follows: (a) Research solely (done) only to meet the demands of the three services of the college (formal) which more characterizes the standard academic research model and stuck to technical issues with rigid methodology. (b) This academic research tends to be a curricular activity, such as writing academic paper for bachelor degree, master theses and doctoral dissertation. (c) The research prioritizes the academic format rather than the published eligibility for scientific information for the public. (d) The weight of academic fields is closely related to the academic climate of the college and is not a series of deepening and orientation phases. (Susanto, Anthon F.; 2015: 6-7)

Various efforts are being made to improve and develop research in several law schools, combining various approaches both traditional and contemporary view, the aim is to spur the innovative spirit of researcher. But most of them are still struggling with the model or pattern of old research and still difficult to escape from the dominance of the classical paradigm. These conditions show a situation that is not much different from what happened in Britain in the past years. The critiques of sociological law research, under their constructivism paradigm, are aimed against what lawyers have done with internal-traditional legal approaches. Researchers incorporated in the sociology of law show to traditional law researchers that approaches to analyzing legal problems are not merely laden on mere internal law theories. It also urged those traditional law researchers to fully understand a legal system and its relation to a social system, so it takes a multi dimensional theoretical perspective (Adam Podgorecki & Christopher J Whelan; 1987: 4-12).

In some Indonesian universities the competition and debate about research methods has led further to the so-called clash of paradigm. Writings of Peter Mahmud, Johnny Ibrahim, Soenaryati Hartono, explain that legal research should be normative research (Johny Ibrahim; 2006: 277 and Soerjono Soekanto & Sri Mamudji; 1995). On the other hand, there is a desire to find new alternatives, namely the use of qualitative methods for legal research, such as Adrian Bedner, Sulistiyowati Irianto, Jan Michiel Otto (Bedner, Adrian W., et. al.; 2012: 1), Anthon F Susanto (2015), Esmi Warrasih, Ade Saptomo, Shidarta (Ferdiana Mahita Paksi Rian Ahmad Perdana; 2016: 25).

In the middle of the debate over the method of legal research, the positivist paradigm is still dominant. There are many problems that arise from the strengthening of the dominance of positivism in legal research, among others: (a) the existence of paradigmatic gap between old value with contemporary change and development, so that the research cannot accommodate the diverse reality; (b) the paradigmatic bias of science and legal research methods arising from the transplantation of Western law (modern law) to local law and practices. (c) The research culture in the legal education environment (legal academics) is overly engrossed with tri-dharma research and personal orientation, for the sake of the lecturer accreditation; they tend not to care even blind to real conditions of society and changes around it. (d) Raise / trigger any unfair practices that arise in various legal systems, since there is no legal system that is practically free from the scandal of abuse of power; consequently, those who are far from power will be excluded from access to justice, and remain marginalized.

## METHODOLOGY

The entire description of this paper is presented through a philosophical point of view using hermeneutic approach as a method of philosophy, in order to support the understanding of truth and philosophical interpretation of the paradigmatic changes that occur in the field of legal research. Hermeneutics is always intertwined with two interacting matters, namely, the event of understanding and / or interpretation of the text. (Susanto, Anthon F; 2016: 58-60), which is often taken as the art of interpreting both spoken and written texts (Franz Magnis Suseno; 2005: 18). This is the essence of reasoning in a philosophy that is always critical, reflexive, radical and integral, to try to penetrate the most basic essence of the object studied in this paper (Susanto, Anthon F; 2010: 21-29), The philosophical study, especially with regard to the use of hermeneutics is able to free the legal study not only from positivistic-authoritarianism as well as freeing the law from structural and behaviorist studies that are too empirical in character (Susanto, Anthon F.; 2010), and this philosophical study can provide a holistic explanation (Jujun S. Suriasumantri; 1986: 57).

## RESULTS

### **‘Clash of paradigm’, where does it take us?**

For researchers, various research paradigms provide an explanation of what they want to do, and what goes in and out of legitimate research boundaries (Guba, Egon G. & Lincoln Yvonna, S.; 2009: 134). A paradigm generally includes three key elements; epistemology, ontology, and methodology. Over the last three decades, some debates about paradigms - some mentioning ‘clash of paradigm’ (Tashakkhori, A. and Teddlie, C.; 2010: 3) have caused annoyance related to the superiority of each other between two major paradigms of science. As the two alternate model paradigms are the positivist / empirical approaches and the constructivist / phenomenological approaches.

The positivist paradigm is the conceptual basis of what is called the quantitative method, while the constructivist paradigm underlies what is called a qualitative method (Tashakkori & Teddlie, 2010:4). The war

of paradigms takes place in various battlefields, with a primary concern on conceptual issues, such as 'the basis of reality or 'possible causality'.

Tashakhori dan Teddlie (2010) post four comparisons similar to Guba & Lincoln, those are:

**Figure 2.** Comparative of Paradigm

Paradigm	Positivism	Post-Positivism	Pragmatism	Constructivism
Method	Quantitative	Mainly quantitative	Qualitative + quantitative	qualitative
Logic	Deductive	Mainly deductive	Deductive + inductive	Subjective, no separation between object and the observer
Epistemology	Belief in objective truth. Observer and the object are dualistic	Modified dualism	Objective and subjective point of view	Subjective, no separation between object and the observer
Axiology	Value-free	Controlled value	value give influence in deduction	Research never value-free
Ontology	Naïve realism	Realism transcendental	Acceptance to external reality, prefer to useful means	Relativism
Causality	Cause is prior to or simultaneously with effect	Cause is always a matter of probability and subject to changes	Possible causality exist, despite no sufficient evidence to prove it	Every entity happened simultaneously with each other. It is impossible to understand the cause by observing mere effect

### New paradigm, a more productive dialogue

In his most recent book, Guba and Lincoln added one other paradigm he referred to as "participatory" (Guba, Egon G. & Lincoln Yvonna, S.; 2011: 209) paradigm. It can be extracted as follows:

**Figure 3.** Extention to Paradigm

Item	Participatory
<b>Ontology</b>	Participatory reality - subjective-objective reality, generated under certain condition of thoughts/cosmos
<b>Epistemology</b>	Critical subjectivism is under participatory transaction with cosmos; experiential epistemology, proportionate and extended practical knowledge, collaborative findings
<b>Methodology</b>	Political participatory in collaborative action research; focused on practical matter; using common language

This world view is a general orientation to the world and the nature of research firmly held by researchers. Cresswell (2010: 8), illustrates that there are at least four dominant paradigms today as Post-positivism, Constructivism, Participative Advocacy, and Pragmatism.

According to the advocacy and participatory world view, post-positivist assumptions had imposed structural laws and theories that were often incompatible with/did not include individuals marginalized in our society or issues of social justice that need to be raised. This worldview seems to fit well with qualitative research, but it can also be the basis for quantitative research (Cresswell, 2010: 13). This view states that there are certain issues that need to be given more attention, especially issues concerning social life, such as empowerment, injustice, oppression, mastery, oppression and isolation. Researchers can begin their research with one of these issues as the focus of his research.

The research characteristics in this worldview are as follows (Cresswell, 2010: 14) (1) Participatory action is dialectical and focused to promote changes. (2) this research is emphasized to help individuals to be free from obstacles that arise from the media, language, work rules and power relations within the education sphere. Advocacy / participatory research often began with important issues or particular attitudes toward social issues such as empowerment. (3) This research is emancipatory, which means this research helps to free human from injustices that can limit development and self-determination; (4) this research is also practical and collaborative since it can only be perfect if it is collaborated with other studies, rather than refining other research studies.

### **Transformative-Participative Legal Research Paradigm**

According to Mertens (2010: 123), there are at least 3 (three) main paradigms applicable in the current research community, the academic roots of this paradigm are quite broad, but at least as explained by Mertens (2010), it can be identified, among others:

1. Feminist experts; feminist views of research take many different forms, but all are based on knowledge / awareness of the oppression of women and the vision of social justice for women through research as one of the scope of its strategy.
2. Experts focused for people with disabilities; this paradigm seeks to shift and alter people's view on disability from the perspective of social and cultural minorities in such a way that powerlessness is defined as a dimension of human difference, not a flaw.
3. Critical Theory; Critical theory has contributed to an understanding of oppression and discrimination that is in principle based on social economic status and class. Critical theorists are, in essence, sharing the same understanding with feminist thinking.

### **New Chapter of Legal Research: an urge towards openness**

There is no value-free science, as well as law science, and therefore law science is full of interests and power. In that position, the science of law becomes the means and means of the interests of the owner of power thus legal research ultimately becomes a means to perpetuate the interests of that interest, which in the end the small community often becomes the victim of oppression. An approach that able to respond to change and take sides to the marginalized community is necessary, as well as participatory, so that the legal presence is felt by the community. Therefore, legal research must have the following requirements:

1. Subject-Subject relation,
2. Legal research not only focused in dogmatic textual study and quantified facts

3. Legal research must be varied in methods
4. Legal research should not only focus to study norms, principles, or legislations but also more open space that lead to interpretation and critical behavior, in order to improve the life quality of society.
5. Legal research should not only focus on rigid procedures that tend to be difficult to do
6. Legal research is essentially a learning process.
7. Legal research should be participatory

### **Reconstructing the Concept of truth**

Kirkham (2013), argue about concept of truth that is always stand in ambiguity, there are many paths to truth. Truth has multiple meanings; it can be explained as following:

1. Truth is a dynamic concept; the search for truth never ends and related to the fact that live is a process of historical evolution.
2. Truth is also a paradox, meaning it should not pure relative and pure absolute (dogmatic or fundamental), instead the truth is in between. Truth is paradox, it stands for relative and absolute, objective and subjective, static and dynamic, finite and infinite. For this nature, truth is always on the edge of contradiction (Van Melsen, A.G; 1961: 149).
3. Truth is multidimensional. Observation only limits itself to empirical phenomena, and there are other dimensions cannot be accessed through observation. That is why there are variety of method to unveil such dimensions. In this kind of truth-verification, occasionally we encounter a kind of *grensoverschrijding* (beyond limit/infinite) (Snijders, Adelbert; 2006:9).

Truths should no longer be understood through the concepts of essence, correspondence, confidence, affirmation and stabilization, but rather understood primarily through different concepts, such as production, reproduction, procedures, priorities, interpretations, authority, practice and even games. Starting from such an approach, it examines the truth in proportion to reviewing materials, using standards, constructing paradigms, forming facts, creating objects, formatting discourses, and embedding meanings. Man is relation of the subject with itself and the relationship of existence with the form, namely the structural relationship that is open to many sides and possesses other dimensions and shapes (Ali Harb; 2004: 129).

### **CONCLUSION**

In the dawn of 21<sup>st</sup> Century, social problem is escalated, and in the middle of clash of paradigm, development is in thrive, environment is in degradation, and case of poverty, gender, social anomaly, collapse of farmer, and severe crisis of identity and morality, the law must take definite stand on the side of marginal society, who are always become the excess of progress. Legal research must take significant role to overcome and provide real solution for social problem. Under the Transformative-Participatory Paradigm, a researcher must be able to collaborate with the people and urge their participation to improve their empowerment. A participative legal research should construct a collaborative study between the researcher and the people. Hopefully.

### **REFERENCES**

#### **Journal Article**

Andre A. Hardjana (1999), *Perkembangan Penelitian Ilmu Komunikasi di Perguruan Tinggi; Catatan Pendahuluan*, Jurnal Komunikasi Indonesia, April , Remadja RosdaKarya, Bandung

#### **Books**

- 13 Abbas Tashakkori, Charles Teddlie, (2010) *Handbook of Mixed Methods In Social & Behavioral Research*, 2010, Pustaka Pelajar, Yogyakarta.
- 17 Adam Podgorecki & Christopher J Whelan (1987), *Pendekatan Sosiaologis terhadap Hukum*, Bina Aksara, Jakarta
- Adelbert Snijders (2006), *Manusia Kebenaran*, Kanisius, Jakarta
- Adrian W. Bedner, et. al., (2012), *Kajian Sosio-Legal*, Pustaka Larasan, Bali
- Ali Harb, (2004), *Kritik Kebenaran*, LKiS, Yogyakarta
- Anthon F. Susanto, (2017), *Hukum. dari Consilience ke Paradigma Konstruktif Transgresif*, Refika Aditama, Bandung.
- Anthon F. Susanto (2016), *Ilmu Hukum Indonesia. Identitas ataukah Ilusi*, on *Seri Tokoh Hukum Indonesia*, Bernard Arief Sidharta, *Penziarah Hukum Indonesia*, Epistema-Huma, Jakarta.
- 10 Anthon F. Susanto, (2015), *Penelitian Hukum Transformatif Partisipatoris, Fundasi penelitian Kolaboratif & Aplikasi Campuran (Mixed-Method) dalam Penelitian Hukum*, Intrans Malang.
- Anthon F. Susanto, *Dialog tentang Keilmiahan Ilmu Hukum*, on Bernard Arief Sidharta, Anthon F. Susanto, Shidarta, (2014), *Pengembangan Hukum Teoretis*, Logoz Publising, Bandung.
- Anthon F Susanto, (2010), *Ilmu Hukum Non-Sistematis, Fundasi Filsafat Pengembangan Ilmu Hukum Indonesia*, Genta Publishing, Yogyakarta.
- Ferdiana Mahita Paksi Rian Ahmad Perdana (2016), *Penelitian Hukum Interdisipliner; Sebuah Pengantar menuju Sosio-Legal*, Thafamedia Yogyakarta.
- 8 Franz Magnis Suseno (2005), *Pijar-Pijar Filsafat; Dari Gatholoco ke Filsafat Perempuan, dari Adam Muller ke Postmodernisme*, Kanisius, Yogyakarta
- 18 Gregory Leyh, (2008). *Hermeneutika Hukum, Sejarah Teori dan Praktik*, Nusa Media, Bandung
- Guba, Egon G. & Lincoln Yvonna, S. (2009) Berbagai Paradigma yang Bersaing dalam Penelitian kualitatif, dalam *Denzin and Lincoln “ (Eds), Handbook of Qualitative Research*, London.
- 20 Guba, Egon G. & Lincoln Yvonna, S. (2011), *Kontroversi Paradigmatik, Kontradiksi dan Arus Perpaduan Baru*, dalam Denzin Norman K and Lincoln, Yvonna. S “ (Eds), *Handbook of Qualitative Research London*.
- 16 Johnny Ibrahim (2006), *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia Publishing, Jawa Timur.
- Jujun S. Suriasumantri, (1986), *Ilmu dalam Perspektif Moral, Sosial dan Politik; Sebuah Dialog tentang Dunia Keilmuan Dewasa ini*, Gramedia, Jakarta
- 3 Otje Salman, Anthon F. Susanto, (2015), *Teori Hukum, Mengingat mengumpulkan dan membuka kembali*, Refika Aditama, Bandung.
- Peter Mahmud marzuki, (2005) *Penelitian Hukum*, Mredana Media, Jakarta.
- Richard L. Kirkham (2013), *Teori-Teori Kebenaran; Pengantar Kritis dan Komprehensif*, Nusamedia, Bandung.
- Soerjono Soekanto dan Sri Mamudji, (1995), *Penelitian Hukum Normatif; Suatu Tinjauan Singkat*, RajaGrafindo Persada, Jakarta
- Tashakkori, A. dan Teddlie, C. (2010a) *Mixed Metodology*; mengkombinasikan pendekatan Kualitatif dan Kuantitatif, Pustaka pelajar, Yogyakarta.
- 14 Van Melsen, A.G (1961), *Science and Technology*, Pittsburgh; Duquesne University Press.

# Naskah Jurnal ICT4T

---

## ORIGINALITY REPORT

---

11%

SIMILARITY INDEX

7%

INTERNET SOURCES

4%

PUBLICATIONS

8%

STUDENT PAPERS

---

## PRIMARY SOURCES

---

1	<a href="http://rajawaligarudapancasila.blogspot.com">rajawaligarudapancasila.blogspot.com</a> Internet Source	1%
2	Submitted to University of Sheffield Student Paper	1%
3	Submitted to Udayana University Student Paper	1%
4	Submitted to Laureate Higher Education Group Student Paper	1%
5	<a href="http://hukumprogresif.blogspot.com">hukumprogresif.blogspot.com</a> Internet Source	1%
6	<a href="http://theartsjournal.org">theartsjournal.org</a> Internet Source	1%
7	Submitted to University of Ulster Student Paper	1%
8	<a href="http://documents.mx">documents.mx</a> Internet Source	1%
9	<a href="http://usupress.usu.ac.id">usupress.usu.ac.id</a> Internet Source	<1%

---



10

Submitted to Universitas Komputer Indonesia

Student Paper

<1%

---

11

[ejournal.unisba.ac.id](http://ejournal.unisba.ac.id)

Internet Source

<1%

---

12

[shura.shu.ac.uk](http://shura.shu.ac.uk)

Internet Source

<1%

---

13

[abdulhakimsiagian.files.wordpress.com](http://abdulhakimsiagian.files.wordpress.com)

Internet Source

<1%

---

14

David Smith. "The evolution of Duquesne University's project for a human science psychology", *The Humanistic Psychologist*, 1996

Publication

<1%

---

15

Submitted to Northcentral

Student Paper

<1%

---

16

[jurnal.umsu.ac.id](http://jurnal.umsu.ac.id)

Internet Source

<1%

---

17

[www.saplav.top](http://www.saplav.top)

Internet Source

<1%

---

18

[www.scribd.com](http://www.scribd.com)

Internet Source

<1%

---

19

Submitted to Lincoln Memorial University

Student Paper

<1%

---

20

Julia Maurer. "Relationships between Foreign

# Subsidiaries", Springer Nature America, Inc, 2011

Publication

<1%

---

---

Exclude quotes      Off

Exclude matches      Off

Exclude bibliography      Off

# Naskah Jurnal ICT4T

---

## GRADEMARK REPORT

---

FINAL GRADE

**/30**

GENERAL COMMENTS

**Instructor**

---

PAGE 1

---

PAGE 2

---

PAGE 3

---

PAGE 4

---

PAGE 5

---

PAGE 6

---