Digitization of Legal Philosophy from a Postmodernism Perspective

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Abstract
Digitalization in the era of the industrial revolution 4.0 also had an impact on the development of legal philosophy, especially towards postmodernism. The process of digitizing the modern world seems to have become a culture of all aspects of life which includes laws that are constantly developing towards post-modernity (after modernity). This article aims to explore the influence of the digitalization phenomenon on the development of legal philosophy, especially the postmodern school. This article is written using a normative legal research method with a conceptual approach. Data collection was carried out by means of a literature study. The results of the research in this article show that the development of the postmodernism school of legal philosophy produces a new school of "digimodernism" which is constantly developing and always in the process of dialecticization so that tracing the direction of its development requires a journey of thinking in the style of digitalization, breathing virtual but actually happening in legal reality. developed in human civilization.
Keywords: *Postmodernism, Digitalization, Digimodernism.*

INTRODUCTION

Has postmodernism ended or -according to the popular phrase he likes to use-, has it reached the end of? If still alive, "where" is he now? As an "ism" postmodernism may not have ended, even though there are indications in that direction, for example from the term after postmodernism.[1] The reality as the foundation of the explanation has changed: digitization. Postmodernism is however – if we agree that it is not dead – is a perspective, a passionate philosophical account of the times (Zeitgeist), but different from the times themselves. He moves in all directions covered in various things: experiences, events, deconstruction, and everything that exists. Theories, schools, insights, and mocking opinions about it are also numerous, varied and contradictory according to their paradigm: ambiguous, disassembled, different and contradictory.[2]

How is postmodernism in the digital age? Does it still have a place in legal theory or philosophy or has it lost its prestige? It may also be that the emergence of the digital era with all its culture is the exact moment of "death" of postmodernism. One of the signs of the "end" of postmodernism, for example, is the emergence of the term digimodernism (digital modernism) as a substitute for postmodernism by Alan Kirby: digimodernism has decisively displaced postmodernism to establish itself as the twenty first century's new cultural paradigm.[3] So postmodernism is replaced by digimodernism. In other words, there is an era reversal: from

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[1] Jose Lopez & Garry Potter (*ed*), 2001, *After Postmodernism. An Introduction to Critical Realism*, The Athlone Press, London, p. 25-26.

[2] Jan Pakulski, "Postmodern Social Theory" dalam Bryan S. Turner (ed), 2009, *The New Blackwell Companion to Social Theory*, Wiley-Blackwell, West Sussex, UK, p. 255-256.

[3] Alan Kirby, 2009, *Digimodernism: How New Technologies Dismantle the Postmodern and Reconfigure Our Culture*, Continuum, London, p.1-3.

postmodernism back to modern with digital as its dominant sign. The history of postmodernism, then, is almost or nearly over (not to say "it's over already").

The next question that should be asked is what about the law and philosophy in the digital era which proclaims "the end of postmodernism"? Law -according to classical sociological beliefs- "is not problematic", because it follows developments or changes in society. When the legal foundation, namely society, changes, the law also changes, at least it adapts (not just from confrontation) with the situation, condition or reality.[4] Even when, for example, the world of experience, the reality of civilization becomes chaotic, non-linear, complex, and even virtual, law increasingly finds its world (Lebenswelt) there, that is, it – as Charles Sampford believed in his Disorder of Law – exists. in the pattern of social and legal melee (essentially: disorder).[5]

Or is the world's disorder now precisely the "law" itself? And vice versa: the law becomes more meaningful when the world becomes orderly and orderly according to its ideals. The digital world, aka "the world within our fingers" is the "new world culture" before us, coexistence: order or disorder?[6] Perhaps people would choose that world as "order." If so, such a world is intertwined with laws that aspire to order, because they have and are willing to regulate anything.

Laws can also be "problematic" in the context of the changing realities of the times mentioned above. It's not because it's outdated, unused, cellular dysfunction, can't adapt to any acceleration of change, but because it doesn't or hasn't been able to define itself in the midst of digital civilization, for example. Also when it becomes a classical identity, be it ethical, normative, juridical, political, sociological, institutional etc. - who do not know themselves to be in the midst of digital civilization, but are reluctant to engage in intensive dialectics with this new model world that seems "really real". Laws like that can be the target of discussion at this afhi conference: starting from understanding, principles, norms, theories and even up to law enforcement, they may then change or experience a shift in meaning.

Then what about philosophy, including legal philosophy? Postmodernism literature (Heidegger, Derrida, Lyotard for example) has made the announcement: "philosophy is dead." If philosophy dies, so will philosophy of law, because philosophy of law is philosophy. The bottom line: the ideal world, the realm of mind (including Rechtsidee), logos, foundations, grand narratives of various kinds of ideology, for example, falter and "collapse" and are replaced by "robotics and artificial intelligence as a result of the digital revolution. It seems reasonable to assume that the complexity of the normative problems created by new advancements in computer sciences, artificial intelligence, robotics and their convergence is only going to increase. [7] When that is all reality, philosophy and legal philosophy become 'fiction.' Fictional philosophy and legal philosophy is not new and it does not mean to belittle that philosophy. Hans Vaihinger had written about it in 1935 through his "as if philosophy".[8] The meaning of Vaihinger's words simply means when the law is realized from reality, it only seems real. This all happens when legal philosophy, for example, is far from reality as the basis for the life and death of law. However, in this simple paper it is assumed that the philosophy of law is still alive and has the energy or power to explain itself and law in the broadest sense

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[4] Satjipto Rahardjo, 2009, *Hukum dan Perubahan Sosial*, Genta Publishing, Yogyakarta, p.25.
[5] Charles Samford, 1989, *The Disorder of Law. A Critique of Legal Theory*, Basil Blackwell Inc., NY, p. 8-9.
[6] R.C. Ellickson, 1991, *Order Without Law. How Neighbors Settle Disputes*, Harvard University Press, p. 9.
[7] Marcelo Corrales dkk (ed), 2018, *Robotics, AI and the Future of Law*, Springer Natur Singapore Pte Ltd., p. 7
[8] Hans Vaihinger, 1935, *The Philosophy of 'As if'* (second edition, translated by C.K. Ogden), Kegan Paul, Trench, Trubner & Co., Ltd, London, p. 12.

RESEARCH METHODS

The research method used in writing this article is normative legal research with a conceptual and philosophical approach. The legal material collection technique used in this article is library research. The legal materials used are in the form of primary legal materials and secondary legal materials. The technique of analyzing legal material is carried out using a deductive syllogism, starting from the major premise to the minor premise in order to answer the legal problems faced to reach a conclusion.

RESULTS OF RESEARCH AND DISCUSSION

Due to the many and extensive explanations about postmodernism, not all of them will be written here. It is almost impossible to present all models or views of postmodernism here. Likewise, in the limited space and opportunities, this paper is only able to touch on postmodernism on the outside, namely the outer shell. The choice for the purposes of this paper is constructive postmodernism. Constructive or revisionary postmodernism – as written by I. Bambang Sugiharto is a group of postmodernists who are still trying to maintain various aspects of modernity and process them in a new way in an effort to construct a new picture of the world.[9] This kind of postmodern is an immanent critique that wants to correct aspects of modernity or revise modernity from a hermeneutical point of view.[10] It seems that the use of postmodernism as a perspective is quite fitting or compatible with the culture of digimodernism as a "hermeneutic target or object" for the benefit of new meanings regarding law and legal philosophy in digital civilization.

Bearing in mind that the terms used here are different and can overlap with each other, resulting in confusion, then for ease of understanding here a simple line of thinking is given as a possibility, as follows: first starting from postmodernism as an interpretation of the world; that postmodernism is not very allergic to the emergence and existence of the era of information and communication technology; and also that postmodernism "predicted" it, for example through the description of the simulacrum by Jean Baudrillard.[11] Second, we need to take a quick look at one of the characteristics of postmodernism, namely the "death" of the subject and the life of a new narrative about being or Sein in the form of digital culture which is seen as a fact of the times. Subjects are centralized in human beings (whether ordinary humans, who are posthuman models or digital humans) transformed (not transubstantiated) into a reality that lines up with everything else.

From there, thirdly, postmodernism enters the legal map. Indeed, a map is not an area, but an important area in legal practice. Of course the law here is primarily a "form of thought, denkvorm, in a general sense, not primarily a positive law.[12] Fourth, the understanding of law here is an assumption, that the founding foundation is heading towards a change towards "digitalization, 'screenization', computerization" and the possibility that it (law) turns into a sign of a reality that actually does not exist or is hyperreality. Finally fifth is his legal philosophy. Here legal philosophy is not an answer, but questions about the fate of law. So when people look for

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[9] I. Bambang Sugiharto, 1996, *Postmodernisme. Tantangan Bagi Filsafat*, Kanisius, Yogyakarta, p. 17.

[10] *Ibid*.

[11] J. Lechte, 2001, 50 *Filsuf Kontemporer. Dari Strukturalisme sampai Postmodern*, Kanisius, Yogyakarta, p. 352-358.

[12] Kevin D. Ashley, 2017, *Artificial Intelligence and Legal Analytics. New Tools for Law practice in the Digital Age*, Cambridge University Press, p. 4-8.

answers in legal philosophy, they will be disappointed, because legal philosophy actually prepares questions. There is an answer, but it is also a question.[13]

That is the work of philosophy throughout the centuries. They start by creating concepts and then arrange them into texts.[14] Philosophy then is those texts. Text is the whole reality; everything there is including ideas.[15] If we use the opinion of J. Derrida who stated il n'y a pas de hors-texte (nothing is outside the text), then indeed "everything is text".[16] Postmodernism, among other things, also views "everything is text" or "text is everything" including digital civilization which actually falls into the category of postmodernist culture. Postmodernity here is different from postmodernism. Postmodernity refers more to pop culture, fashion, tastes, styles, art, etc., rather than philosophical thought. Civilization or "text" like that can then "osmotically" construct thoughts, yes postmodernist thinking.

Second, actually what is visible or perceived by the senses is the culture of postmodernity, because it is precisely in the area of direct (conative) experience. The world of numbers, screens, applications, computers, big data, platforms, etc. experienced and even lived by "us" is now real, existing or positive. Even today's people, especially in the world of education, are required to have intelligence in the field of according to the term digital literacy.[17] Then what about postmodernism? Postmodernism and its "successor" namely digimodernism are abstractions, explanations, explanations or just literature (if you are allergic to it, it is called philosophy) about it. So the question arises here, does digital culture need philosophical explanations (philosophical thoughts) in order to really exist and be called digital culture? Perhaps that kind of culture now no longer needs philosophy so that it lives and continues to exist. Thus actually postmodernism stops here, while digimodernism may continue to live on a scientific level, namely in various literatures about it, without any philosophical attachments for digital civilization. Or is it really a "digital philosophy"?

However, before postmodernism really disappears, a possible explanation is attempted here regarding the new reality in the form of the digital age, especially digital civilization from the perspective of constructive postmodernism. The point (among others): begins with the phenomenology of E. Husserl (subject awareness creates reality) versus M. Heidegggger (Dasein, hermeneutics of reality).[18] Heidegger focuses on facticity or real existence, real or the world of phenomena, not the world of noumena (which is impossible to know), while Husserl departs from thought or consciousness (reality as a product of consciousness). If the two of them are arbitrarily linked with today's digital civilization, then Hussel and Heidegger can be reconciled with the assumption that digital civilization is a product of human-centered subject consciousness, but when it is purely in the realm of experience (Da Sein), then civilization digital is a fact. Faktizität ist die Bezeichnung für den Seinscharakter »unseres« »eigenen« Daseins (facticity is the marking for the character of our own Dasein being).[19] This is theoretical and can be said to be a modern-style synthesis attempt to reduce the dichotomy.

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[13] F. Schleiermacher, 1998, *Hermeneutics and Criticism and Other Writings* (translated and edited by Andrew Bowie), Cambridge University Press, Cambridge, UK, p. 5.

[14] G. Deleuze & F. Guattari, 1994, *What Is Philosophy?*, Columbia University Press, USA, p. 5.

[15] F. Budi Hardiman, 2015, *Seni Memahmi. Hermeneutik dari Schleiermacher sampai Derrida*, PT. Kanisius, Yogyakarta, p. 12.

[16] Jacques Derrida, 1976, *Of Grammatology*, Johns Hopkins University, Baltimore, p. 157-159.

[17] Literasi Digital, https://mediaindonesia.com/tag/literasi-digital, posted on 21th December, 2021, accesed on 05th January, 2023.

[18] M. Heidegger, 1988, *Ontologie* (*Hermeneutik der Faktizität*), (Gesamtausgabe), II. Abteilung: Vorlesungen, Vittorio Klostermann, Frankfurt am Main, 1988, p.1.

[19] Ibid, p. 7.

It is quite relevant that the existence of "us" in the digital age, if we try to look at it from the point of view of J. Baudrillard's theory, is interesting to question and discuss: is it oriented towards usability, exchange or just a sign or even status? Initially, Baudrillard, if this article is not mistaken, emphasizes the object of reality in the form of a consumerist society on exchange rates, then use values and sign or status values.[20] In the end it must be said, that now digital civilization is dealing with simulation code as discussed also by Baudrillard digital technology, kinds of computers, information engineering, communication, internet of things, etc. (virtual reality). For him, simulation is more or less reproduction, but actually now digital civilization is "productive reproduction" or continuous production.

Third, the fundamental question about the reality of digital civilization is how to explain the nature of that reality? Can simulacra, namely the erasing of the difference between the real and its representation, and also hyperreality, namely the loss of the difference between the real and the imaginary, from Baudrillard, still be used? It can still be explored in the design of postmodernism, but a more fundamental question is actually in the area of digimodernism, namely what about "awareness"? This question is important, because perhaps without philosophy, it appears in haste, that the digital world "has consciousness". This, for example, can be seen in various digimodernist literature regarding this matter, one of which is for example the "computer representation of an artificial consciousness".[21] In that book, lack of title it's shows a transition or transformation from human consciousness to artificial awareness. Why does the artificial world have consciousness and how to explain it?

Fourth, when digital civilization with its artificial world enters the legal map, the thing that must be acknowledged and realized is that reality as the legal basis has changed, even becoming "hyperreal" which is considered more real than natural reality. As it is known that these are all products of digital culture. Now the all-digital world that is moving towards the internet of things (Internet of Things (IoT) is slowly starting to leave paper which can mean "leaving the text." As with conventional authoritative texts (written legal regulations issued by the government) that although raw and rigid can still be added (because of human freedom) by individual or group creations, so that it becomes a new problem regarding certainty, as well as information and communication techniques. With the sophistication of information and communication extraordinary creative things are created, so that they become a series creative: productive reproduction. Precisely because of the higher creative power, techniques are emerging that are able to transform reality into on-screen reality, digital reality and reality that can be obtained by touching the screen. Unfortunately, screen reality or "mirage reality" is then believed to be "more real" or is n "original or natural reality" rather than actual reality.

Fifth, what about the law? Laws can also be affected by screen "illness", namely "moving" from institutional reality, behavioral reality, and social facticity to screen reality or "film reality (law on the screen).[22] Space in the legal sense as a natural condition turns into space on the screen

[20] J. Lechte, *op.cit.*, p. 354.

[21] Alain Cardon, 2018, *Beyond Artificial Intelligence*: *From Human Consciousness to Artificial Consciousness*, ISTE Ltd and John Wiley & Sons, Inc., London, p. 2.

[22] See Austin Sarat, Lawrence Douglas & Martha Merril Umphrey (ed), 2005, Law on the Screen, Stanford University Press, California. When moving to the screen, then –as written by Orit Kamir in the book- law becomes "film". He wrote, firstly, that both law and film are dominant participants in the construction of concepts such as subject, community, identity, memory, gender roles, justice, and truth; they offer major sociocultural arenas where collective hopes, dreams, beliefs, anxieties, and frustrations are publicly portrayed, evaluated, and enacted. Second, films, much like judicial and legislative rhetoric decisions, can—and do—constitute communities (of viewers) that are often engaged in judgment, legal-like reasoning, the pursuit of justice, and self-creation through judgment and justice. Third, law films, which treat the law as their subject matter, create on-screen fictional legal

(virtual space). Legal certainty then becomes "screen certainty" which is actually fictional, but is longed for. So there is a battle between reality and fiction in the field of law and what emerges victorious is that hyperreality (not that this is different from Baudrillard's thinking). In other words, there are quite a number of substantial and fundamental dimensions in law that are "forced" to changed or to be changed.

In summary: a) the question was ist der Mensch und was ist seine Stellung im Sein (M. Scheller) is still relevant, but the answer needs to be sought in digital civilization. Humans who are always in relation with (miteinandersein) are compatible with humans in the midst of conative reality: the center of everything in relation to everything, including fellow human beings (this kind of human has passed). Now humans are no longer the center of everything, but hyperreality with sophisticated and contemporary digital technology (homo digitalis and digital humanities). Then humans as the key to understanding themselves and everything can no longer continue to have a central position as the key holder. Now that position is being replaced, for example by artificial intelligence which is "fairer, more disciplined, faster, precise and cheaper, not deceptive, not arrogant, etc."; b) human existence is no longer as popularized by Descartes: I think, therefore I exist (cogito ergo suum), but "I click, therefore I exist" (aka the certainty of existence is determined by the fingers, not by the brain);[23] c), the understanding of the subject, including the subject of classical law can collapse. Robots or – say – machines in general can become "subjects" of law. It is inanimate in nature, but carries out a humane function, d) orders and prohibitions as a characteristic of legal norms, can no longer be claimed as derivatives of human nature (likes to order and likes to forbid), because now machines can fire employees, can make contracts, can prohibit people enter shops, etc. and this too is real, no longer just imagination, or ideals; e) the question of consciousness is also a question: do machines, artificial intelligence, have consciousness? In particular, the latter is not only a legal issue, but also a philosophical one. When philosophers are busy debating and have not defined "what is consciousness", then machines and artificial intelligence can become "existential phenomenological philosophers" and interpret consciousness according to digital principles (read: digital awareness). Maybe consciousness is not what machines are aware of, but the existence of machines that humans are aware of. Human consciousness is only the will to operationalize it, then "it is the machine that thinks and teaches 'itself' to do something".[24]

Sixth, legal philosophy? This paper attempts to predict legal philosophy by embedding the term "digitization of legal philosophy" or "digital legal philosophy". Exactly what the legal philosophy of the digital model is, there has not been a thorough explanation about it. One thing is clear: digital legal philosophy is problematic in itself: a) digital legal philosophy or digitization of legal philosophy is difficult to imagine, because legal philosophy has so far been playing in the field of abstraction, not digitalization, b) there is no philosophy regarding legal digitization yet, because it must wait for the law and digital civilization to stop. Even though the legal foundations are being reconstructed by digital civilization. When will it stop? It is when it stops that a new philosophy begins. If you never stop? That is what is called flowing, except that nothing else is flowing. Perhaps the philosophy of law in the digital era is a philosophy of process (to borrow AN.

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systems that execute judgment, pursue justice, and construct social subjects and communities both on- and off-screen. At the same time such law films may pass cinematic judgment on these "legally constructed" individuals and communities and on the judgment and justice their fictional legal systems demonstrate and execute.

[23] F. Budi Hardiman, 2021, *Aku Klik maka aku ada. Manusia dalam Revolusi Digital*, Kanisius, Yogyakarta, p.1.
[24] Joseph S. Nye, "Our Artificial Intelligence Odyssey and Futur Democracy", Harian *The Jakarta Post*, 7 Desember 2021.

Whitehead's term): productive reproduction follows the development of digital culture. Now we are still in a position to provide information about the digital world map with all its forms, while experiencing reality or hyperreality which has an impact on legal praxis. Is that precisely part of the philosophy of digital law which first started in postmodern thinking?

CONCLUSION

This paper is an unfinished introduction. Philosophy of law is no exception to the model of postmodernism or "digimodernism" which are unfinished explanations. There is always the possibility of "new" information, including legal philosophy in the digital era. For this reason, we need to take a "digital journey" to get there.

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