

**Rethinking Law and Justice: The Core Principles of Critical Legal Studies against Legal Formalism**

**Vincentius Setyawan<sup>1\*</sup>, Bariah Safrut<sup>2</sup>**

<sup>1</sup>Universitas Atma Jaya Yogyakarta, Indonesia

<sup>2</sup>Madrasah Nurul Ihsan, Thailand

Email: [vincentpatria@gmail.com](mailto:vincentpatria@gmail.com)\*, [bariah16224@gmail.com](mailto:bariah16224@gmail.com)

DOI: [doi.org/10.5281/zenodo.17332128](https://doi.org/10.5281/zenodo.17332128)

\*Corresponding Author

|| *Received: 14-04-2025* || *Revised: 17-05-2025* || *Accepted: 05-10-2025* || *Published On: 10-10-2025*

**Abstract:** The core idea of Critical Legal Studies is that law is not a neutral and objective system but is influenced by social, political, and economic factors. This perspective challenges the Legal Formalism doctrine, which holds that the law should be applied consistently in accordance with existing rules, without regard to social or political context. This article will explore the key ideas of Critical Legal Studies and its critique of the Legal Formalism school of thought. The article is written based on research using a normative legal research method with a philosophical approach. The research findings highlight that Critical Legal Studies' critique of Legal Formalism begins with the reality that its implementation leads to law enforcement that neglects the values of justice, equality, and equity in everyday life. Critical Legal Studies seeks to establish a legal system that is more just and responsive to the public's need for justice in their daily reality. This study contributes to legal theory by reaffirming that law cannot be separated from its socio-political and economic contexts. Through a normative legal research method with a philosophical approach, this article reconstructs the understanding of justice beyond the rigidity of Legal Formalism. It highlights that the Critical Legal Studies movement provides a transformative framework for developing a more contextual, equitable, and human-centered legal system, offering a significant alternative paradigm within contemporary legal philosophy.

**Keywords:** Critical; Formalism; Justice; Legal; Studies.

Copyright (c) 2025 Vincentius Setyawan et. al.



This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License

**Abstrak:** Gagasan inti dari Critical Legal Studies menekankan bahwa hukum bukanlah sistem yang netral dan objektif, melainkan dipengaruhi oleh faktor-faktor sosial, politik, dan ekonomi. Perspektif ini menantang doktrin Formalisme Hukum, yang menyatakan bahwa hukum harus diterapkan secara konsisten berdasarkan aturan yang ada tanpa mempertimbangkan konteks sosial dan politik. Artikel ini akan membahas gagasan utama dari Critical Legal Studies dan kritiknya terhadap aliran pemikiran Formalisme Hukum. Artikel ini ditulis berdasarkan penelitian yang menggunakan metode penelitian hukum normatif dengan pendekatan filosofis. Temuan penelitian menyoroti bahwa kritik Critical Legal Studies terhadap Formalisme Hukum berawal dari kenyataan bahwa penerapan Formalisme Hukum mengarah pada penegakan hukum yang mengabaikan nilai-nilai keadilan, kesetaraan, dan pemerataan dalam kehidupan sehari-hari. Critical Legal Studies berusaha untuk membangun sistem hukum yang lebih adil dan responsif terhadap kebutuhan masyarakat akan keadilan dalam kenyataan hidup mereka sehari-hari. Penelitian ini berkontribusi terhadap pengembangan teori hukum dengan menegaskan kembali bahwa hukum tidak dapat dipisahkan dari konteks sosial, politik, dan ekonomi. Melalui metode penelitian hukum normatif dengan pendekatan filosofis, artikel ini merekonstruksi pemahaman tentang keadilan melampaui kekakuan Legal Formalism. Penelitian ini menyoroti bahwa gerakan *Critical Legal Studies* menawarkan kerangka transformasional untuk membangun sistem hukum yang lebih kontekstual, adil, dan berorientasi pada kemanusiaan, serta menghadirkan paradigma alternatif yang signifikan dalam wacana filsafat hukum kontemporer.

**Kata Kunci:** Formalime; Hukum; Kajian; Keadilan; Kritis.

## Introduction

From the perspective of the Legal Formalism school of thought, law is viewed as a system that embodies neutrality, objectivity, and autonomy. This approach treats law as a set of norms that cannot be equated with other aspects of societal life, such as the community's moral values, the political goals that guide social interactions, or the cultural practices that shape people's behavior. Legal Formalism assumes that law operates independently from these external influences, remaining distinct from morality, politics, and culture.<sup>1</sup> This perspective leads to the formulation and practice of law being structured, rational, and logical, grounded in specific assumptions and legal principles. Legal rules, within this framework, are applied strictly according to their written form, without regard for the underlying social, political, or moral context in which they are enacted. The application of law, according to this view, should be impartial, uniform, and predictable, focusing solely on the text of the law itself rather than any subjective or extralegal factors. As a result, legal Formalism advocates a legal system that is systematic

---

<sup>1</sup> Risydam Bashier, "Kritik Terhadap Formalisme Hukum," Jurnal Pelita Nusa 3, No. 1 (2023), <https://doi.org/10.61612/Jpn.V3i1.34>.

and internally coherent, in which laws are implemented consistently and are detached from the complexities of real-world circumstances and societal values.<sup>2</sup>

However, this approach has been criticized by various legal scholars, particularly by proponents of Critical Legal Studies, who argue that such a rigid, isolated application of the law often fails to account for power dynamics, inequalities, and the lived experiences of individuals within society. Critics contend that Legal Formalism overlooks how law is typically shaped by political, social, and economic forces and can perpetuate injustice when applied without regard for these broader contexts. Legal Formalism treats law in its textual form (such as statutes and regulations) as the highest source of law and as the primary reference for resolving legal cases in court. In this approach, legal decisions are primarily based on written law, with little or no consideration of external factors or the broader context in which the law operates. The written text of the law is considered the ultimate authority, and its application is expected to be straightforward and objective, thereby ensuring uniformity and consistency in legal rulings.

The Legal Formalism approach has drawn significant criticism, especially from legal realists. Curzon argues that the core idea of legal realism is that law is a tool for achieving social goals and cannot be viewed as a self-contained system of rules that provides definitive answers to what courts should do. Unlike formalists, who believe that legal rules and concepts are sufficient to guide judicial decisions, legal realists contend that law is deeply interconnected with social, political, and economic contexts.<sup>3</sup> According to legal realism, judicial decisions cannot be determined solely by abstract legal norms or rigid textual interpretation. Instead, judges are influenced by a variety of external factors, including personal biases, societal values, and the practical realities of the cases they encounter. Legal realists emphasize that law is not a mechanical application of pre-existing rules, but a dynamic and evolving tool that should be responsive to society's needs and circumstances.<sup>4</sup> This perspective challenges the formalist view that legal decisions can be made in a neutral, objective, and predictable manner solely based on the written law. For legal realists, the idea that the law can function independently of social realities is unrealistic and insufficient for addressing the complexities of real-world legal disputes. Thus, legal realism calls for a more flexible, context-sensitive approach to law that recognizes judges' role in shaping legal outcomes in light of the broader social and political environment.

This has led to a tension between two opposing assumptions: on the one hand, proponents of Legal Formalism, who view law strictly in its textual form; on the other hand, advocates of Legal Realism, who interpret law through a contextual lens. The formalists argue that law should be applied objectively and consistently on the basis of its written texts, believing that legal rules, when followed to the letter, yield precise and predictable outcomes. According to this view, the law is a set of impartial, stable norms

---

<sup>2</sup> Muchamad Ali Safa'at And Milda Istiqomah, "Critical Legal Studies (Cls): An Alternative For Critical Legal Thinking In Indonesia," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 7, No. 1 (2022), <https://doi.org/10.22373/Petita.V7i1.122>.

<sup>3</sup> Poniman Poniman, "Penyelesaian Konflik Pewarisan Akibat Hibah Berdasarkan Hukum Progresif," *Jurnal Yudisial* 10, No. 1 (2017), <https://doi.org/10.29123/Jy.V10i1.40>.

<sup>4</sup> Muhamad Izazi Nurjaman Et Al., "Teori Legal Realism: Konsep Dan Eksistensinya Dalam Hukum Ekonomi Syariah Di Indonesia," *Al Mashalih - Journal Of Islamic Law* 4, No. 2 (2023), <https://doi.org/10.59270/Mashalih.V4i2.210>.

that should govern judicial decisions without external influences, such as social or political contexts.<sup>5</sup> In contrast, Legal Realism challenges this approach by asserting that law cannot be fully understood or applied without considering the surrounding social, economic, and political realities. Legal realists argue that judicial decisions are influenced by the context in which they are made, including judges' personal experiences and values, the specific circumstances of a case, and broader societal issues at play. They contend that law is not a static set of rules but a dynamic system that must adapt to society's changing needs and complexities.<sup>6</sup>

This ideological divide between the textual, rule-based perspective of Legal Formalism and the context-sensitive, pragmatic approach of Legal Realism has sparked ongoing debates within the legal community. It raises fundamental questions about the role of law in society: Should it be treated as an objective, fixed system that operates independently of external influences, or as a flexible tool that responds to the realities of human experience and societal change? These contrasting views continue to shape legal theory and practice, influencing how laws are interpreted, applied, and developed in various legal systems. This tension between assumptions led to the emergence of the Legal Realism movement, which gave rise to a new school of thought known as Critical Legal Studies (CLS). Critical Legal Studies began to take shape in the United States, coinciding with the organization of the Conference on Critical Legal Studies at the University of Wisconsin-Madison in 1977.<sup>7</sup> Critical Legal Studies (CLS) aims to critically reexamine and even challenge the fundamental norms and standards within legal theory.<sup>8</sup> This concept indicates that Critical Legal Studies is closely linked to the emergence of critical theories and intellectual movements during the 1960s and 1970s.

The conclusions drawn from Critical Legal Studies (CLS) make it an intriguing area of study, particularly for understanding its foundational concepts and for examining the best position between the schools of Legal Formalism and Legal Realism in the context of legal development, both materially and procedurally. The contribution of CLS can be seen as a philosophical approach to law that seeks to understand reality as a key reference point for legal sources, challenging the notion that legal texts are the sole source of law to be applied. By emphasizing the role of social, political, and economic contexts, CLS pushes for a more dynamic, context-sensitive interpretation of law, one that recognizes the complexities of real-world circumstances rather than relying solely on rigid legal Formalism.

---

<sup>5</sup> Boy Nurdin And Khayitjon Turdiev, "Paradigm Of Justice In Law Enforcement In The Philosophical Dimensions Of Legal Positivism And Legal Realism," *Lex Publica* 8, No. 2 (2021), <https://doi.org/10.58829/Lp.8.2.2021.65-74>.

<sup>6</sup> Christina Bagenda, "Filsafat Realisme Hukum Dalam Perspektif Ontologi, Aksiologi, Dan Epistemologi," *Jurnal Ius Constituendum* 7, No. 1 (2022), <https://doi.org/10.26623/Jic.V7i1.4777>.

<sup>7</sup> Nadir, "Filsafat Hukum Dan Dekonstruksi Critical Legal Studies: Sebuah Paradigma Pembaruan Hukum Dalam Menggugat Eksistensi Dominasi Asumsi Kemapanan Hukum," *Jurnal Yustitia* 20, No. 2 (2019).

<sup>8</sup> Victor Imanuel Nalle, "Kritik Positivisme Dalam Hukum Modern," *Sapientia Et Virtus* 2, No. 1 (2015), <https://doi.org/10.37477/Sev.V2i1.55>.

## Literature Review

### Critical Legal Studies

Critical Legal Studies (CLS) emerged in the 1970s as a legal theory movement that challenged traditional understandings of law. Rooted in the broader wave of intellectual and social movements of the 1960s and 1970s, CLS sought to question the supposed neutrality and objectivity of the legal system. It arose in response to what its proponents saw as the limitations of existing legal doctrines, particularly those grounded in Legal Formalism, which held that law should be applied strictly according to written texts and established rules, without considering the social, political, or economic context in which legal decisions are made.<sup>9</sup> CLS scholars argue that law is not a neutral, autonomous system but a tool that serves the interests of the powerful. They assert that legal decisions are shaped by social, political, and economic factors, often reinforcing existing power structures rather than serving justice. This perspective runs counter to the traditional formalist view, which holds that law is a set of objective principles that can be applied consistently and predictably, regardless of broader societal context. In essence, Critical Legal Studies calls for a shift from viewing law as a static set of rules to understanding it as a dynamic process shaped by social realities and power relations.<sup>10</sup>

One of the central tenets of CLS is that law should be understood as a reflection of society's values, biases, and inequalities, rather than as a neutral or objective entity. This view stems from the recognition that laws often reflect the interests of dominant social groups, whether based on class, race, gender, or other forms of power. By deconstructing legal norms and analyzing how they operate in practice, CLS scholars aim to expose how the legal system can perpetuate social injustice.<sup>11</sup> The movement gained considerable momentum following the first Conference on Critical Legal Studies held at the University of Wisconsin-Madison in 1977. This conference brought together a diverse group of scholars, including law professors, social theorists, and activists, who collectively sought to challenge the status quo of legal scholarship. By the early 1980s, CLS had become a prominent force in legal academia, with its influence spreading across civil rights, feminist legal theory, and postcolonial studies.<sup>12</sup>

At its core, CLS is not merely an academic exercise; it is an activist-driven approach that seeks to bring about social change. Proponents of CLS argue that law should be used as a tool to address social inequalities and promote justice, rather than as an instrument for maintaining the privileges of those already in power, by examining how laws and legal systems are shaped by, and in turn shape, the social context, CLS advocates for a more flexible, inclusive, and context-sensitive approach to legal theory and practice.<sup>13</sup> Despite its critical stance, CLS is not without its detractors. Critics argue that the movement's emphasis on deconstructing legal principles can lead to legal nihilism, where the law is seen as entirely subjective and arbitrary. Others contend that CLS's focus on power dynamics and social critique can undermine the legitimacy of legal institutions and hinder meaningful reform. Nevertheless, the impact of

<sup>9</sup> Roberto Mangabeira Unger, "The Critical Legal Studies Movement," *Harvard Law Review* 96, No. 3 (1983), <https://doi.org/10.2307/1341032>.

<sup>10</sup> John Henry Schlegel And Duncan Kennedy, "A Critique Of Adjudication: Fin De Siecle," *Law And History Review* 17, No. 3 (1999).

<sup>11</sup> Peter Gabe1, "The Phenomenology Of Rights-Consciousness And The Pact Of The Withdrawn Selves," In *Rights*, 2017.

<sup>12</sup> Chris Butler, "Critical Legal Studies And The Politics Of Space," *Social And Legal Studies* 18, No. 3 (2009), <https://doi.org/10.1177/0964663909339084>.

<sup>13</sup> Ibid.

Critical Legal Studies on legal thought and practice is undeniable, offering a transformative lens through which to view the intersection of law, society, and power.<sup>14</sup>

## Method

This article uses a normative research methodology. Normative legal research analyzes the gap between law as theory and its application in practice.<sup>15</sup> This study will focus on law from a theoretical perspective, with particular attention to the principle of legal certainty, analyzed within the framework of legal positivism. The approach used in this research is philosophical.<sup>16</sup> The legal materials used include both primary and secondary sources. The technique used to analyze the legal materials is a literature review.

## Results and Discussion

The result is a description of the data obtained, which is required by the research question. The results must address the problems raised in the research question. Research results must be clear and concise. Results should summarize scientific findings rather than convey detailed data. The discussion is the central part of the article, in which the research results are analyzed using the main theory and other supporting theories to identify the novelty relative to other studies. Critical Legal Studies (CLS) is a 20th-century intellectual movement that emerged as a response to the Formalism traditionally applied in law. CLS represents a shift from rigid, rule-based interpretations of law, aligning more closely with the empirical approach to legal theory, particularly the American Legal Realist tradition. This new line of thought draws heavily on critical philosophical frameworks, including the works of thinkers such as Jürgen Habermas, Émile Durkheim, Karl Mannheim, Herbert Marcuse, and Antonio Gramsci, all of whom contributed to the broader tradition of critical theory. Their ideas, deeply influenced by the writings of Karl Marx and Friedrich Engels, provided a foundation for understanding law not as an isolated or neutral system but as a social construct shaped by power, ideology, and economic relations.<sup>17</sup>

Critical theory, as developed by these scholars, is a philosophical system that employs a critical approach to analyze and challenge the underlying structures of society. It focuses on examining how social realities—such as class, race, gender, and other forms of power—are embedded within legal systems, often perpetuating inequality and injustice. In the context of law, CLS builds on these critical traditions by questioning the assumption that law is objective and detached from the social forces at play in the world. Instead, it views law as a dynamic and evolving process shaped by broader societal and political forces. CLS critiques the formalist notion that legal rules can be applied mechanically and neutrally, independent of the social contexts in which they operate. It calls for a more nuanced understanding of how law interacts

---

<sup>14</sup> Ellectrananda Anugerah Ash-Shidiqqi, "Rule Of Law Dalam Perspektif Critical Legal Studies," *Amnesti Jurnal Hukum* 3, No. 1 (2021), <https://doi.org/10.37729/Amnesti.V3i1.895>.

<sup>15</sup> Jonaedi Efendi dan Johnny Ibrahim, "Metode Penelitian Hukum: Normatif Dan Empiris / Jonaedi Efendi, Johnny Ibrahim," *Kencana* 2, no. Hukum (2018).

<sup>16</sup> Peter Mahmud Marzuki, "Penelitian Hukum, Cetakan Ke-11," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022).

<sup>17</sup> Dudang Gojali, "Filsafat Hukum: Aktualisasi Critical Legal Studies Di Indonesia," *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 4, No. 2 (2022).

with society and highlights how legal systems can uphold and reinforce existing power structures, rather than serving as impartial arbiters of justice. Drawing from the work of Marx, Habermas, and others, Critical Legal Studies seeks to reveal the ideological underpinnings of legal norms and practices, offering a transformative view of law that aims to address systemic injustices and promote social change. Through this lens, law is not just a tool for maintaining order but a complex, socially embedded practice that reflects and perpetuates the values and interests of those in power.<sup>18</sup> This approach continued into the 1890s, when the prevailing view shifted, and judges were seen as required to base their decisions on the application of a specific rule. In this context, if the legal system in question followed the Common Law tradition, decisions should be grounded in judicial precedents (case law). On the other hand, if the legal system adhered to the Civil Law tradition, the decisions were expected to be based on the relevant statutes and codes in force. This concept views the law as existing solely in a foundational textual form, whether in the form of judicial decisions (precedents) or statutory laws, both of which are central doctrines within the framework of legal Formalism.<sup>19</sup>

After 1937, the legal realism movement emerged, challenging the long-held belief in the law's objectivity and neutrality, viewing these concepts as mere illusions. This line of thinking eventually gave rise to the Critical Legal Studies (CLS) movement, which sought to dismantle legal doctrines and theories, particularly those grounded in positivism and Formalism. In its radical approach, Critical Legal Studies questioned and critiqued fundamental legal principles, including the autonomy of law, the neutrality of law, and the separation of law and politics. CLS argued that these concepts were not as objective or impartial as they were often portrayed, and instead, the law was deeply intertwined with social, political, and power dynamics, often serving the interests of dominant groups.<sup>20</sup> This critique was not just theoretical but aimed at deconstructing the traditional foundations of legal thinking, pushing for a more critical and reflective understanding of how law operates in society. The core idea here is that law is regarded as an objective and fixed entity, whether through prior judicial rulings or codified legislation, and judges are seen as mere interpreters of these pre-existing rules, with little room for policy-driven interpretation. The focus is entirely on adherence to the established texts and doctrines, embodying a strict formalist approach to legal reasoning.

The perspective adopted by Critical Legal Studies is rooted in the empirical viewpoint of legal realism, which situates law within a practical, real-world context. Moreover, Critical Legal Studies is influenced by left-wing social science paradigms, including Marxism, Structuralism, the Frankfurt School, and Neo-Marxism. However, it is important to note that CLS does not fully adopt these ideologies; instead, it employs an eclectic scientific method, synthesizing elements from various existing theories to construct new concepts. This approach allows CLS to challenge traditional legal doctrines and explore how law is shaped by and reinforces social, economic, and political structures. By blending ideas from different intellectual traditions, CLS seeks to provide a more nuanced and critical understanding of the law's role in society.

---

<sup>18</sup> Rizky Saeful Hayat, "Konsep Dasar Critical Legal Studies: Kritik Atas Formalisme Hukum," *Hermeneutika: Jurnal Ilmu Hukum* 5, No. 1 (2021).

<sup>19</sup> Islamiyati Islamiyati, "Kritik Filsafat Hukum Positivisme Sebagai Upaya Mewujudkan Hukum Yang Berkeadilan," *Law, Development And Justice Review* 1, No. 1 (2018), <https://doi.org/10.14710/Ldjr.V1i1.3574>.

<sup>20</sup> Indra Rahmatullah, "Filsafat Hukum Aliran Studi Hukum Kritis (Critical Legal Studies); Konsep Dan Aktualisasinya Dalam Hukum Indonesia," *Adalah* 5, No. 3 (2021), <https://doi.org/10.15408/Adalah.V5i3.21393>.

Roberto M. Unger was also a key figure in the development of Critical Legal Studies. In this context, Unger attempted to integrate two competing paradigms: the conflict paradigm and the consensus paradigm. He sought to reconcile these opposing views by demonstrating how both conflict and consensus are central to understanding the dynamics of law and society. Through this integration, Unger aimed to highlight the complex, often contradictory nature of legal structures, which are shaped by both power struggles and cooperative agreements within a given society.<sup>21</sup> Critical Legal Studies emerged as a critique of the legal system, which at the time was seen as failing to achieve true justice, and, according to Selznick and Philip's analysis, the practice of law seemed to present two contradictory faces. On the one hand, the law appeared as a spokesperson and defender of disadvantaged groups in society. On the other hand, it was also used as a repressive and interventionist tool to suppress and combat those groups deemed as opposition or dissenters.<sup>22</sup> This dual role of the law highlighted its potential to both promote justice and reinforce power structures, depending on the context and the interests at play.<sup>23</sup>

This gave rise to two dominant themes of critique within Critical Legal Studies: first, that the internal institutions of law had become corrupted, leading to disruptions in social order; and second, that the law primarily functioned as a tool of oppressive power. These critiques form the core of Critical Legal Studies' argument against a legal system that is "blunt at the top and sharp at the bottom," meaning it disproportionately benefits the powerful while harshly applying the law to the less privileged. Critical Legal Studies, as an antithesis to legal positivism and Formalism, encompasses several core ideas that underpin its intellectual movement. One of the key concepts within Critical Legal Studies can be divided into at least three paradigm models. The first is the critical paradigm articulated by Roberto M. Unger, who sought to integrate two competing paradigms: the paradigm of conflict and the paradigm of consensus. According to Unger, law can emerge from two aspects: at times, it is shaped by conflict, while at other times, it arises from consensus (resultant). In this regard, Unger argued that law should be viewed as a projection of social reality, serving as a collective agreement to manage and mitigate conflicts between individuals and social groups.<sup>24</sup>

Second, the critical paradigm proposed by David Kairys views liberal law as a system that oppresses the weaker segments of society while reinforcing the power of the capitalist class, leading to significant social inequality. In this perspective, law is seen as the most powerful and fundamental tool for sustaining a capitalist system. Kairys' thinking is strongly influenced by Marxist tradition, which emphasizes the role of law in perpetuating social and economic hierarchies that benefit the powerful at the expense of the marginalized.<sup>25</sup> Third, the critical paradigm articulated by Duncan Kennedy is based on the eclectic method he employs, which

---

<sup>21</sup> Hugh Collins, "Roberto Unger And The Critical Legal Studies Movement," *Journal Of Law And Society* 14, No. 4 (1987), <https://doi.org/10.2307/1410255>.

<sup>22</sup> Sulaiman, "Hukum Responsif: Hukum Sebagai Institusi Sosial Melayani Kebutuhan Sosial Dalam Masa Transisi (Responsive Law: Law As A Social Institutions To Service Of Social Need In Transition)," *Jurnal Hukum Samudra Keadilan* 9, No. 2 (2014).

<sup>23</sup> Henry Arianto, "Hukum Responsif Dan Penegakan Hukum Di Indonesia," *Lex Jurnalica* 7, No. April (2010).

<sup>24</sup> Emma Dymala Somantri, "Kritik Terhadap Paradigma Positivisme Hukum," *Wawasan Hukum* 28, No. 01 (2011).

<sup>25</sup> Robert M. Bohm And David Kairys, "The Politics Of Law: A Progressive Critique," *The Journal Of Criminal Law And Criminology* (1973-) 76, No. 1 (1985), <https://doi.org/10.2307/1143371>.

blends structural-phenomenological perspectives with neo-Marxist views. In this approach, Kennedy combines these two perspectives to contribute to the reconstruction of Critical Legal Studies, shaping its intellectual framework. His work integrates insights from both structuralism and neo-Marxism to critique and reimagine the role of law in society, reflecting a broader, more complex understanding of legal systems.<sup>26</sup> However, despite the existence of three distinct critical paradigm streams, the key figures within Critical Legal Studies remain united in the shared perception and argument that the core issue of Critical Legal Studies lies in dissatisfaction with the liberal legal paradigm, which is critiqued through the Critical Legal Studies framework. In this regard, Samekto outlines six fundamental patterns within Critical Legal Studies, based on the theses of earlier thinkers, including the following:<sup>27</sup>

First, the rejection of liberalism: Critical Legal Studies seeks to reject the concept of liberalism, which is seen as deviating significantly from the true essence of communal living. The glorification of subjective values is seen as a hindrance to the stability of social values. This also has significant implications for the law that is formed. Liberalism tends to steer the law towards adopting subjective values over collective values, ultimately undermining the social cohesion necessary for a balanced and just legal system. Second, the emphasis on fundamental contradictions: Critical Legal Studies seeks to highlight the fundamental contradictions that, in liberal theory, are often framed as the liberation of the individual to pursue their own interests. This is in direct conflict with the principle of justice, as the freedom of one individual to pursue their interests may come at the expense of another. When applied to the law, this dynamic undermines its authority and its ability to deliver true justice, perpetuating inequality and exploitation under the guise of individual freedom.

Third, marginalization and delegitimization: Critical Legal Studies seeks to marginalize, in the sense of rejecting liberalism, particularly in the context of law and society. This is because law should reflect society's moral values, rather than merely serve to protect or legitimize individual interests through the creation of legal principles and existing laws. The focus should be on ensuring that the law serves the collective good and reflects the community's ethical standards, not just individual or ideological interests. Fourth, the rejection of Formalism: As stated in the introduction, Critical Legal Studies rejects the existence of Formalism in law. Law must be grounded in social reality and should not be confined solely to textual domains such as judicial precedents or statutes. This represents a central critique of Critical Legal Studies thinkers, who argue that law must reflect the lived experiences of society rather than rigidly adhering to abstract legal texts that may be disconnected from the social context.

Fifth, the rejection of positivism: Similar to its rejection of Formalism, Critical Legal Studies also opposes the concept of legal positivism. Friedmann outlines several key principles of legal positivism, including: law as commands from human beings; the absence of a connection between *\*das sein\** (the law as it is) and *\*das sollen\** (the law as it ought to be); the distinction between the analysis of legal concepts and the study of the origins of law; legal decision-making based on a hierarchy of laws without regard to the realities of social conditions; and the view that judgment should be rational and not based on moral considerations. These principles of positivism are precisely what the Critical Legal Studies movement challenges. Sixth, the

---

<sup>26</sup> Donald Galloway, "Nothing If Not Critical - A Review Of A Critique Of Adjudication {Fin De Siecle} By Duncan Kennedy," *Alberta Law Review* 36, No. 1 (1997), <https://doi.org/10.29173/Alr1024>.

<sup>27</sup> Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah*, Kanisius, 1982.

integration of politics and law: In this regard, Critical Legal Studies asserts that law does not exist in isolation; rather, it is a product of politics. Within the concept of legal politics, Critical Legal Studies views politics as a determinant of law, with the law being continuously influenced by political forces. These six fundamental patterns form the central focus of Critical Legal Studies in analyzing, rejecting, and reconstructing legal principles, theories, and the laws that are currently in force.

Critical Legal Studies launches a critique against legal Formalism, focusing on three main points: the autonomy of law, the neutrality of law, and the separation between law and politics. In this regard, Critical Legal Studies argues that law is never autonomous. This is because law is not merely a collection of legal texts, but rather a set of moral norms agreed upon by society to maintain social order. According to Critical Legal Studies, law cannot stand on its own; it is always dependent on the empirical aspects of life and shaped by social, political, and economic realities. The neutrality of law is also a target of Critical Legal Studies, due to the numerous internal and external influences involved in its creation, which render it absent. A law can only be considered neutral if it is free from such influencing pressures. In a liberal system, achieving legal neutrality is particularly difficult, as law is often the primary and most potent tool for protecting individual interests. This dynamic, according to Critical Legal Studies, undermines the idea that law can be impartial or neutral, as the interests of those in power inherently shape it. The final point of critique from the thinkers of Critical Legal Studies is the legal formalism view that separates law from politics. In this regard, when linked to the concept of legal politics, Critical Legal Studies argues that politics is a determinant of law. This means that political processes heavily influence both the substance and implementation of the law. According to Critical Legal Studies, law is not an independent entity but is continually shaped and influenced by political forces.

## Conclusion

Conclusions should be written briefly. Conclusions must include three elements, namely important research findings, contributions to science, and explanations of research limitations. Do not repeat abstracts or list research results. Give scientific consideration to your work and state possible applications and developments. You should suggest further research based on your results. Critical Legal Studies (CLS) is a movement of legal thought that rejects the concepts of legal positivism, legal Formalism, and liberal law. This intellectual stream views law as a social projection, arguing that it cannot be static but must be understood as a dynamic set of norms inherently tied to evolving social values and moral principles. CLS challenges the foundational doctrines upheld by legal Formalism, including the autonomy of law, the neutrality of law, and the separation of law and politics. At its core, Critical Legal Studies aims to dismantle, reject, and reconstruct existing legal principles and theories. The thinkers within this movement employ three primary methods to achieve this: trashing, deconstruction, and genealogy. Trashing refers to the outright rejection and dismissal of existing legal structures. Deconstruction involves reinterpreting and reconstructing legal concepts to reveal their underlying assumptions and contradictions. Genealogy, a method inspired by historical analysis, uses historical facts to challenge established legal narratives and to demonstrate how power structures and social contexts have shaped laws over time. Ultimately, Critical Legal Studies represents a significant step forward in rethinking the law. It pushes for a legal system that better reflects social realities and actively engages with the dynamic interplay of law, politics,

and society. By challenging the rigid, formalistic view of law as a set of fixed, textual rules, CLS aims to open new pathways toward a more just and responsive legal framework—one grounded in the lived experiences of individuals and communities.

### Acknowledgments

The authors would like to express their sincere gratitude to the Rector of Universitas Atma Jaya Yogyakarta for the continuous support, encouragement, and facilitation provided during the research process.

### Authors Contribution

VS conceived the research idea, designed the study framework, and conducted the data collection. BS provided theoretical guidance, contributed to data analysis, and critically reviewed and refined the manuscript.

### Conflict of Interest

The author states that there is no conflict of interest in the research.

### References

- Ali Safa'at, Muchamad, and Milda Istiqomah. "Critical legal studies (cls): an alternative for critical legal thinking in indonesia." *petita: jurnal kajian ilmu hukum dan syariah* 7, no. 1 (2022). <https://doi.org/10.22373/petita.v7i1.122>.
- Ash-shidiqqi, Ellectrananda Anugerah. "Rule of Law Dalam Perspektif Critical Legal Studies." *Amnesti Jurnal Hukum* 3, no. 1 (2021). <https://doi.org/10.37729/amnesti.v3i1.895>.
- Bagenda, Christina. "Filsafat Realisme Hukum Dalam Perspektif Ontologi, Aksiologi, Dan Epistemologi." *Jurnal Ius Constituendum* 7, no. 1 (2022). <https://doi.org/10.26623/jic.v7i1.4777>.
- Bashier, Risydam. "KRITIK TERHADAP FORMALISME HUKUM." *Jurnal Pelita Nusa* 3, no. 1 (2023). <https://doi.org/10.61612/jpn.v3i1.34>.
- Bohm, Robert M., and David Kairys. "The Politics of Law: A Progressive Critique." *The Journal of Criminal Law and Criminology (1973-)* 76, no. 1 (1985). <https://doi.org/10.2307/1143371>.
- Butler, Chris. "Critical Legal Studies and the Politics of Space." *Social and Legal Studies* 18, no. 3 (2009). <https://doi.org/10.1177/0964663909339084>.
- Collins, Hugh. "Roberto Unger and the Critical Legal Studies Movement." *Journal of Law and Society* 14, no. 4 (1987). <https://doi.org/10.2307/1410255>.
- Emma Dysmala Somantri. "Kritik Terhadap Paradigma Positivisme Hukum." *Wawasan Hukum* 28, no. 01 (2011).
- Gabe1, Peter. "The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves." In *Rights*, 2017.
- Galloway, Donald. "Nothing If Not Critical - A Review of A Critique of Adjudication {fin de Siecle} by Duncan Kennedy." *Alberta Law Review* 36, no. 1 (1997). <https://doi.org/10.29173/alr1024>.

<https://doi.org/10.5281/zenodo.17332128>

- Gojali, Dudang. "FILSAFAT HUKUM: Aktualisasi Critical Legal Studies Di Indonesia." *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 2 (2022).
- Hayat, Rizky Saeful. "Konsep Dasar Critical Legal Studies: Kritik Atas Formalisme Hukum." *Hermeneutika: Jurnal Ilmu Hukum* 5, no. 1 (2021).
- Henry Arianto. "Hukum Responsif Dan Penegakan Hukum Di Indonesia." *Lex Jurnalica* 7, no. April (2010).
- Huijbers, Theo. *Filsafat Hukum Dalam Lintasan Sejarah*. Kanisius, 1982.
- Islamiyati, Islamiyati. "Kritik Filsafat Hukum Positivisme Sebagai Upaya Mewujudkan Hukum Yang Berkeadilan." *Law, Development and Justice Review* 1, no. 1 (2018). <https://doi.org/10.14710/ldjr.v1i1.3574>.
- Jonaedi Efendi dan Johnny Ibrahim. "Metode Penelitian Hukum: Normatif Dan Empiris / Jonaedi Efendi, Johnny Ibrahim." *Kencana* 2, no. Hukum (2018).
- Marzuki, Peter Mahmud. "Penelitian Hukum, Cetakan Ke-11." *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022).
- Nadir. "Filsafat Hukum Dan Dekonstruksi Critical Legal Studies: Sebuah Paradigma Pembaruan Hukum Dalam Menggugat Eksistensi Dominasi Asumsi Kemapanan Hukum." *Jurnal YUSTITIA* 20, no. 2 (2019).
- Nalle, Victor Imanuel. "KRITIK POSITIVISME DALAM HUKUM MODERN." *Sapientia Et Virtus* 2, no. 1 (2015). <https://doi.org/10.37477/sev.v2i1.55>.
- Nurdin, Boy, and Khayitjon Turdiev. "Paradigm of Justice in Law Enforcement in the Philosophical Dimensions of Legal Positivism and Legal Realism." *Lex Publica* 8, no. 2 (2021). <https://doi.org/10.58829/lp.8.2.2021.65-74>.
- Nurjaman, Muhamad Izazi, Anas Bayan Mubarak, Ayi Yunus Rusyana, and Hasan Bisri. "Teori Legal Realism: Konsep Dan Eksistensinya Dalam Hukum Ekonomi Syariah Di Indonesia." *Al Mashalih - Journal of Islamic Law* 4, no. 2 (2023). <https://doi.org/10.59270/mashalih.v4i2.210>.
- Poniman, Poniman. "PENYELESAIAN KONFLIK PEWARISAN AKIBAT HIBAH BERDASARKAN HUKUM PROGRESIF." *Jurnal Yudisial* 10, no. 1 (2017). <https://doi.org/10.29123/jy.v10i1.40>.
- Rahmatullah, Indra. "Filsafat Hukum Aliran Studi Hukum Kritis (Critical Legal Studies); Konsep Dan Aktualisasinya Dalam Hukum Indonesia." *ADALAH* 5, no. 3 (2021). <https://doi.org/10.15408/adalah.v5i3.21393>.
- Schlegel, John Henry, and Duncan Kennedy. "A Critique of Adjudication: Fin de Siecle." *Law and History Review* 17, no. 3 (1999).
- Sulaiman. "HUKUM RESPONSIF: HUKUM SEBAGAI INSTITUSI SOSIAL MELAYANI KEBUTUHAN SOSIAL DALAM MASA TRANSISI (Responsive Law: Law as a Social Institutions to Service of Social Need in Transition)." *Jurnal Hukum Samudra Keadilan* 9, no. 2 (2014).
- Unger, Roberto Mangabeira. "The Critical Legal Studies Movement." *Harvard Law Review* 96, no. 3 (1983). <https://doi.org/10.2307/1341032>.