

INTRODUCTION TO ANTHROPOLOGY OF LAW

Team Teaching:

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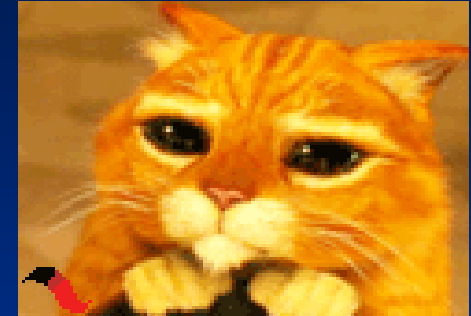
Course Year of 2015/ 2016



(STUDENT BASED LEARNING):

Towards on Excellent, Smart, Commit and Enthusiast Legal Scholar”

- **1. Seriously**
- **2. Active & Smart**
- **3. On time attending class**
- **4. Participation**
- **5. Plenty of Constructive Ideas**
- **6. Honest**
- **7. Braveness**
- **8. Transparency**
- **9. Open-mind**
- 10. Best Result**



PRE TEST

- 1. Do you know and what do you think about anthropology and anthropology of law ?
- 2. What the aim to study Anthropology of law?
- 3. If we look the object of study regarding anthropology of law, it means that it refers to study of law or anthropology ?
- 4. Would you so kind to mention why do you interested to study Anthropology of law ?
- 5. Would you mention what is handycap/challenge when we conducting study Anthropology of law ? According to you what is solution/ to solve those problem?

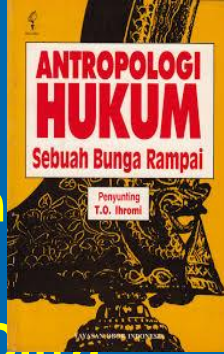


Outline of The Topic of The Study of Introduction to Anthropology of Law (SAP)

- **Introduction: contract of study of this course ,
method of course & References**
- **Scope, Aim, Back ground of study**
- **Comparison, definitions, concepts,**
- **Position of LA in two types study of law**
- **Ethnographic Foundations:**
 - **1.Classic Period: Malinowski, Schapera,
Hoebel, Gluckman, Bohannan, Pospisil**
 - **2.Post Classic: L Nader, Barr & Conley**
 - **3.Comparative Anthropology: cross cultural
comparison, dispute settlements, legal
pluralism**
 - **4.Applied Legal Anthropology : human rights,
IPR, terrorism, natural resources, Indigenous
community**



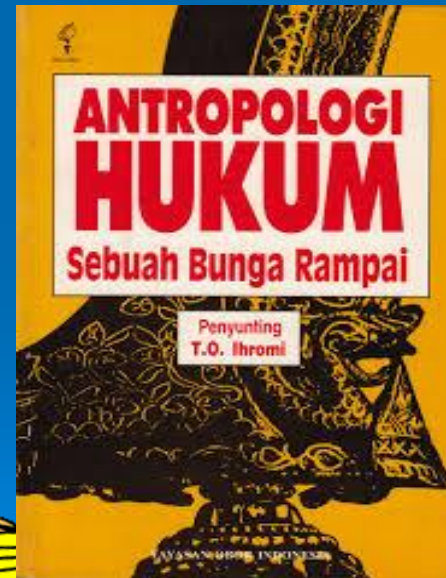
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- James M Donnavan., 2008., Legal Anthropology An Introduction, Alta Mira Prees, USA

VARIOUS TERMS OF ANTHROPOLOGY OF LAW

- Anthropology of law
- Legal anthropology
- Anthropological study of law
- Introduction to Legal Anthropology
- Recht Anthropologie



THE DEFINITIONS

- A part study of anthropology which learn regarding definitions, concept, ideas, types portraits of human being or community when the scientists get it through some methods of study or learn
- A part study of law which based on norms whom developed by human beings in practical or emphirical phenomenon

Conclusion: “the scientific understanding of law through obtaining norms, a specific characterizations, cultural, comparative regarding indigenous or modern community ” (Goldschmidt 1979)



LET WE KNOW WHAT THE EXPERTS SAY:

1. Herskovits (1980): "to understand about law it doesn't but comprehensive approach system of law in which it is in society"

2. Paul Bohannan: study of counter action of wrongful social norms in a narrow view, but a wide range & indepth of sanctions as totality expression in the community existence

3. Tapi Omas Ihromi (UI): "a study of how the community have a system of norms control and strengthen it along the ages;

Thus according to Hoebel (1967) the study of LA are :

a. Study of norms which reflected in real life of community

b. management of social order & control

c. dispute resolution or settlement

d. Rethinking and rewrite of social order in social change

Why do we should study of Anthropology of Law ?

- **Satjipto Rahardjo (1986):** “ law doesn’t separated from societies, so AL can explain what really happen in our society through comprehensive & cross cultural with universal study of law”
- 3 layers of AL EA Hoebel (1954):
 - a. Ideology (within community peceptions),
 - b. Descriptive & analitical perspective of law
 - C. Dispute & Resolution/ settlement



Position of Legal Anthropology in the Legal System

Legal Science

(1)

Jurisprudence (Normative)

(law in the book)

Study of Legal Concept, Legal Terms,

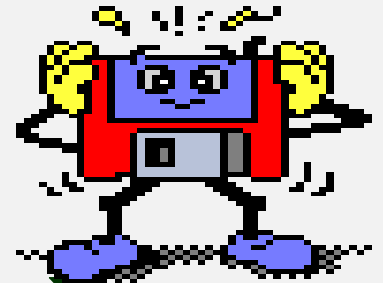
The Principles of Law

Norms as we find in all Laws

Judge Made-Law

International Convention

**Law as it is in Society (A Socio-Legal
Perspectives)**



Emphirical Study of Law
(law in action) the study of what law as it is
in society

Sociology of Law
Anthropology of Law
Psychology of Law
Politics of Law
History of Law
Comparative of Law

LEGAL THEORY (DISPLIN HUKUM)

WOLFGANG FRIEDMANN (1967)

(Purnadi Purbacaraka & Chidir Ali, 1986, Alumni Bandung h. vii – viii, Wignjosebroto, 1990, 1993, 1999, 2003, 2010)

1. POLITIK HUKUM

2. FILSAFAT HUKUM

3. ILMU HUKUM (TEORI HUKUM) :

**3.1. Normwissenschaft (Ilmu Kaidah Hukum) (Sollen),
(Hans Kelsen)**

**3.2. Ilmu Pengertian Hukum (Begriffwissenschaft)
(Kamphuysen)**

3.3. Tatsachenwissenschaft (Sein) :

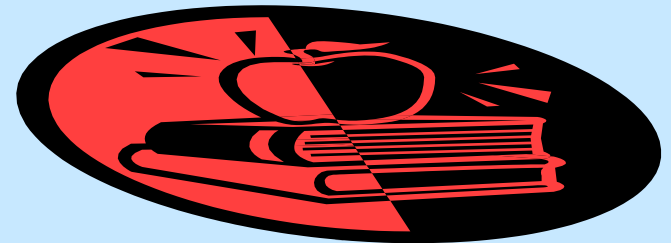
3.3.1. Sosiologi Hukum

3.3.2. Anthropologi Hukum

3.3.3. Sejarah Hukum

3.3.4. Perbandingan Hukum

3.3.5. Psikologi Hukum



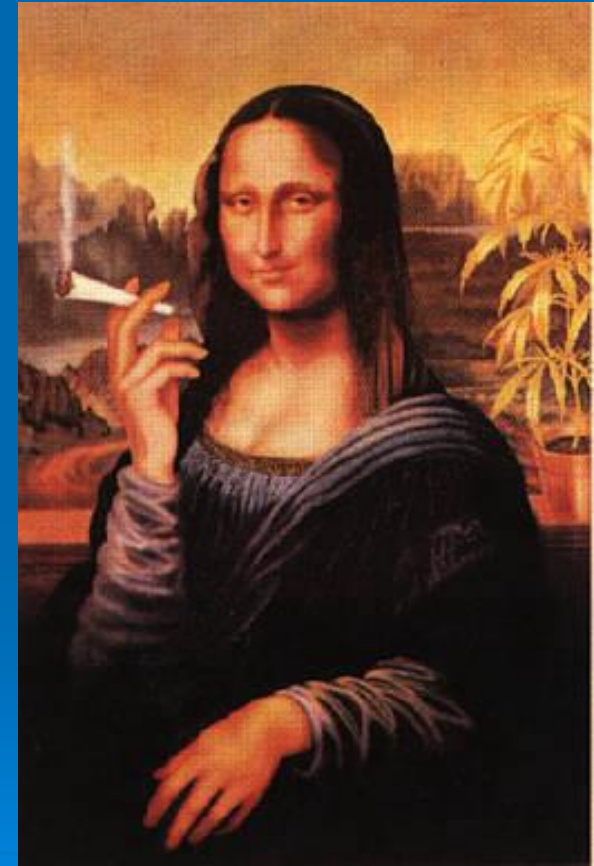
SCOPE & AIMS of Legal Anthropology→ TO IHROMI

- Definition & concepts, Aims
- Theory, Concepts, Method, Goals
- Development of Anthropological thinking concerning law in society (genre)
- Classical Theory of LA/AL
- Post Classical theory of LA/AL
- Modern theory of LA/AL
- Application Study of LA/AL



Anthropology of Law
Sociology of Law
Adat Law

- Historical Approach to LA
- Focused Study of LA
- Method of Approach to LA
- Scope & Aims
- Theoretical to Practical Study
- Recent Development of LA



The Differences Between Anthropology & Sociology

➤ **Historical: Ethnography**

➤ **Approach Method: Qualitative**
Holistic
Comparative

➤ **Object of study:**

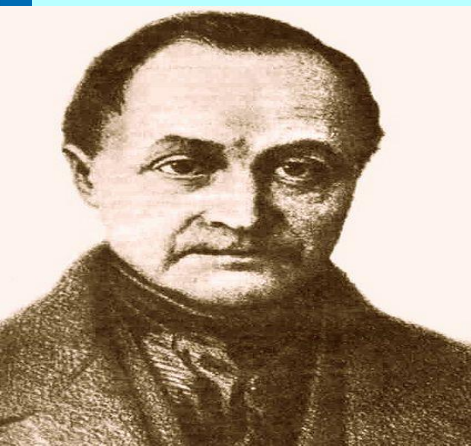
➤ **Indigenous to Modern**

➤

Philosophy

Quantitative
Process
Interaction

**Modern to Indi-
genous**



SIMILARITIES & DIFFERENCES BETWEEN ANTHROPOLOGY OF LAW & ADAT LAW

- **Similarities:** to indicate/find out social manner in society
- **Differences:** AL study of how the society maintain the social values in social control system (in legal perspective);
- **Adat Law** a study of Adat which have legal consequences (when it was followed & has sanction);
- **Method:** Comparative & Cross cultural (AL), Adat Law: & locality (situs & time) (Ihromi, 1993)



Anthropology of Law

Refers to TO IhromiStudy of law focusing on:.....

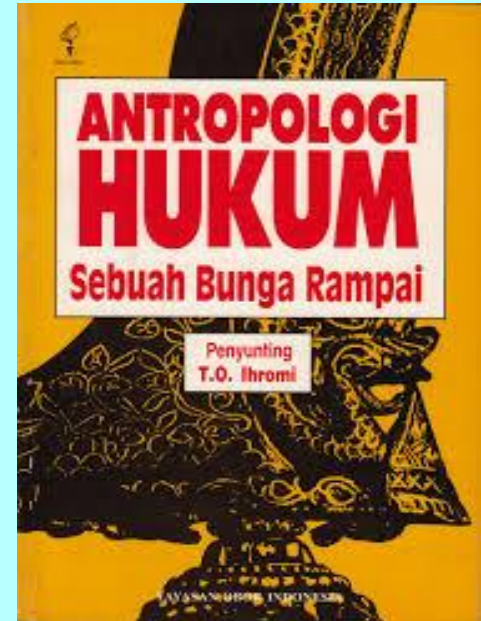


- 1. Social Processes**
- 2. Habit/ Manner**
- 3. As a Product of Culture of a Nation**
- 4. Law operates as it is in Society**



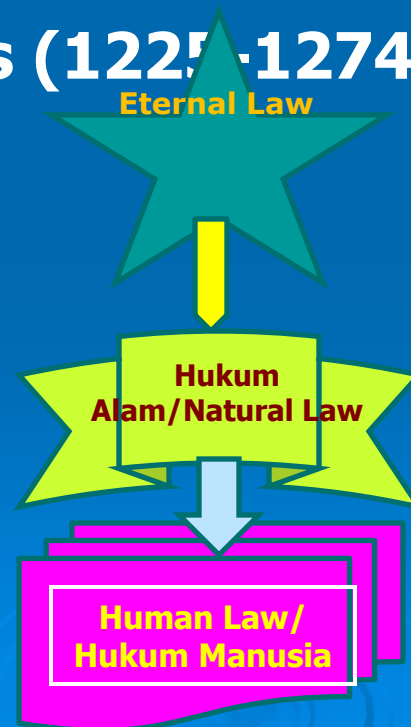
SCOPE OF THE STUDY OF ANTHROPOLOGY OF LAW ARE:

1. How is the function of law ?
2. Effectivity of law
3. Dispute Settlement
4. Legal Pluralism
5. Law & Social Change
6. Law & Development



ETNOGRAPHY PERIODIZATION: JAMES M DONNAVAN

- Based on Natural Law as a foundation
- Plato (428-348 SM)→pleasure & pain
- Aristoteles (384-322 SM)→ conduct of the state→ empowering→eudaimonia (happiness)
- Cicero (106-43 SM)→ oikeion harmonization of nature & human being
- Thomas Aquinas (1225-1274)summa theologia



ETNOGRAPHY PERIODIZATION: JAMES M DONNAVAN

➤ **Classic Period:**

- **1. Bronislaw Malinowski** → resiprositas berbasis hukum
- **2. Isaac Schapera** → kodifikasi (hk) masy aseli
- **3. Bronislaw Malinowski** → crime & custom savage
- **4. E Adamson Hoebel** → rise of legal realism
- **5. Gluckman** → identification of legal universals
- **6. Paul Bohannan** → relativism
- **7. Leopold Pospisil** → pemilahan lembaga dari aturan sosial

➤ **Post Classic:**

- **1. Laura Nader** → prosesualism
- **2. William O'barr & John Conley** → etnografi sbg diskursus hk → pendekatan interdisiplin

➤ **Comparative Anthropology**

THE DEVELOPMENT OF LEGAL ANTHROPOLOGY THINKING

- ☹ Evolutionistic Theory ➡ Henry Sumner Maine (Ancient Law)
- ☹ Theory of Social Control ➡ Automate Spontaneous submission to tradition ➡ Radcliffe Brown
- ☹ Theory of Functionalism ➡ (Reciprocity & Publicity) Bronislaw Malinowski
- 😊 4 Attribute of Law ➡ (Authority, intention of universal application, obligatio & sanction) Leopold Pospisil
- 😊 Teori Double Institutionalization of Norms ➡ Paul Bohannan
- ☹ Teori Trouble Case Method ➡ Llewelyn & E Adamson Hoebel (3 approach: ideologi, deskriptif & trouble case)
- ☹ Trouble-less case method ➡ FA Holleman
- ☹ Teori Semi autonomous Social field ➡ Sally Falk Moore

GUIDELINE HOW TO SUBMIT A RESEARCH PROPOSAL

- **1. The Topic → should have a legal issue & legal problem → contains of two variables**
- **2. Background should mention an argumentation how a research is a must → describe a facts & data which contains a gap between das sollen & das sein**
- **3. Research Problem → make a questions by focusing & specific, originaire, actual, has a valuable result by using “what, why, when, where, who & how”**
- **4. Research Aim: to identify, describe, analysis, proof, compare**
- **5. Research Goals → theoretically & practically**
- **6. Literature Review → basic theory, opinion, doctrine, informations which being used → grand, middle, applied ← find literature at least 5 years**
- **7. Legal Method → approach, how to analyse the data**

GUIDELINE HOW TO SUBMIT A RESEARCH PROPOSAL

- **8. Research Types**→ inline with our research problem→ emphyrical legal research by mentioning some reason why you chose those type
- **9.Research Approach** → inline with our research problem→ emphyrical legal research by mentioning some reason why you chose those type→ sociological or anthropological legal research
- **10. Types of Data**→ primary & secondary data
- **11. Data Collecting Technique**→ interview→ questionnaire→respondent
- **12.Universe & Sampling**→ identify & describe→ probability sampling, purposive sampling, accidental sampling, snowball sampling
- **13.Data Analysis Technique**→ qualitative, quantitative
- **14.Writing/Design Systematic** → chapter I, II, III etc

GUIDELINE HOW TO SUBMIT A RESEARCH PROPOSAL

- 15. Research Schedule→ planning, organizing, preparing instrument, library research, actuating, writing a report, submit a report
- 16. Bibliography→ make sure that it used to write a research proposal
- Please find this guideline at “Pedoman Penulisan Karya Ilmiah Program Studi sarjana, FH-UB 2013,page: 7-14



😊 THE HISTORICAL DEVELOPMENT OF AL DISCOURSE

- Legal Pluralism theory ➡ J Gillissen (living law & state law) John Griffiths, Gordon R Woodman, Franz & Keebet von Benda Beckmann
- (3 step of shaping of thinking: strong & weak legal pluralism, mapping of law & critical legal pluralism

HOW DOES LAW IN ANTHROPOLOGICAL PERSPECTIVE ?

COMMUNITY/ SOCIETY PERCEPTIONS TO LAW:

1. UNIVERSAL VALUE CONCERNING JUSTICE & TRUTH
2. NORMS
3. REGULATIONS/ ACT
4. INSTITUTION OF COURTS- ATTORNEY-POLICE
5. LAW ENFORCEMENT APARATUS (Police-Attorney-Judge)
6. TRAFFIC SIGNS
7. SANCTION/ JAIL
8. SCIENCE



LAW AS A CULTURAL HERITAGE PRODUCT MEANS:

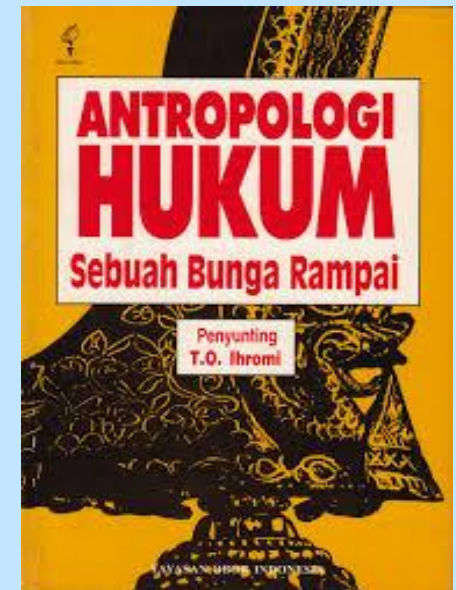
Ideal CULTURE

NORMS-VALUE-TRADITION- ADAT

HOW DOES THE FUNCTION OF LAW ?

Guardian of Legal System

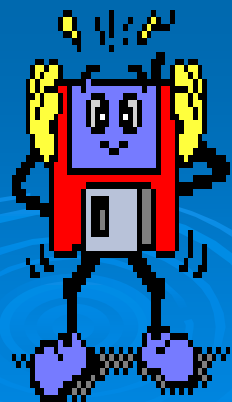
1. Social Order
2. Social Control
3. a Tool of Social Engineering



Method of Anthropology of Law

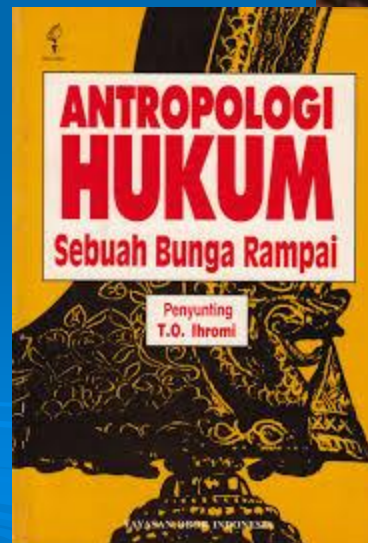
3 It means a method of how researcher find a real legal problem in society, not only to find the gap between sein and sollen through:

- 1. Ideological METHOD**
- 2. Descriptive METHOD**
- 3. Trouble-case METHOD**
- 4. Troubleless-case METHOD**



METHOD OF APPROACH in ANTHROPOLOGY OF LAW

1. Fieldwork
2. Holistic
3. Emic view
4. Empathy
5. Rapport
6. Micro-processes
7. Historical
8. Comparative



WHAT THE LAW REALLY IS ?

1. **Radcliffe-Brown**
Automatic-Submission to Law
2. **Bronislaw Malinowski**
Reciprocity Principle



WHAT IS THE LAW ?

3. Leopold Pospisil

FOUR Attributes of Law

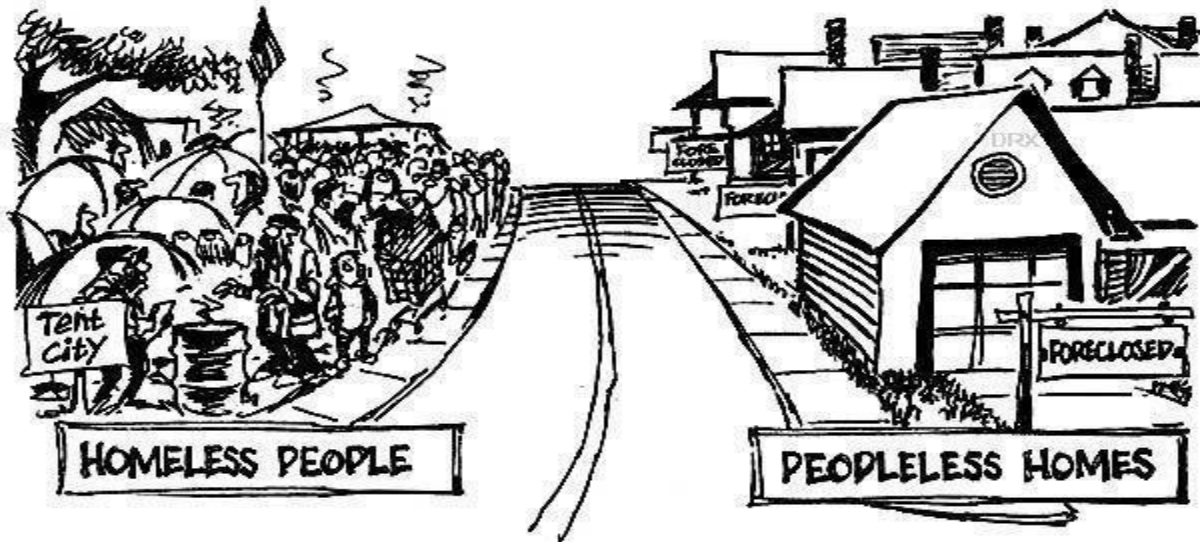
1. Authority
2. Intention of universal Application
3. Obligation
4. sanction



Paul Bohanan

Llewelyn & Hoebel

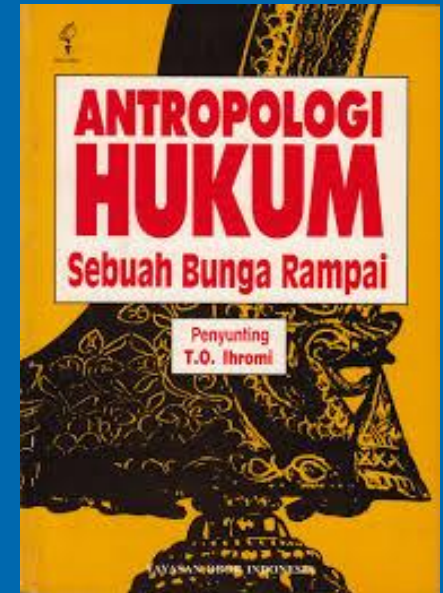
FREE MARKET CAPITALISM



What is Legal Function ?

**law as a tool of
social order
social control
social engineering**

**conflict resolution
facilitation of human interactions**



What is Legal Pluralism Mean?

1. **State law**
2. **Folk/ Customary/ Adat Law**
3. **Religious law**
4. **Self-Regulation/ Inner-Order Mechanism**



THE IDEOLOGY OF LEGAL DEVELOPMENT

(Legal Centralism)

**Law is and should be the law of the state,
uniform for all persons, exclusive of all other
law, and administered by a single set of state
institutions**



**Legal centralism
is a myth, an ideal, a claim,
an illusion**

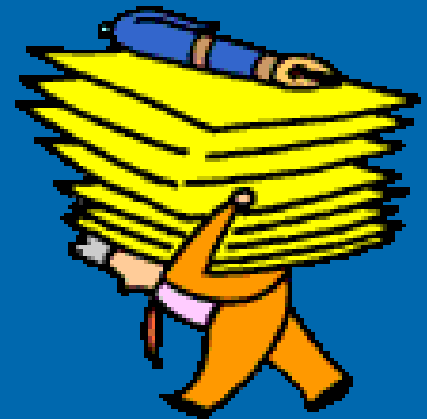
LEGAL PLURALISM

**Legal pluralism is the name of a social
state of affairs and it is a characteristic
which can be predicted of a social group**

A decorative graphic consisting of three sets of concentric circles, resembling ripples in water, located in the bottom right corner of the slide. The circles are light blue and have a subtle gradient.

FOUR TYPES OF LAW

1. Repressive Law
2. Autonomy Law
3. Responsive Law
4. Progressive Law



HUKUM SEBAGAI SISTEM (legal system)

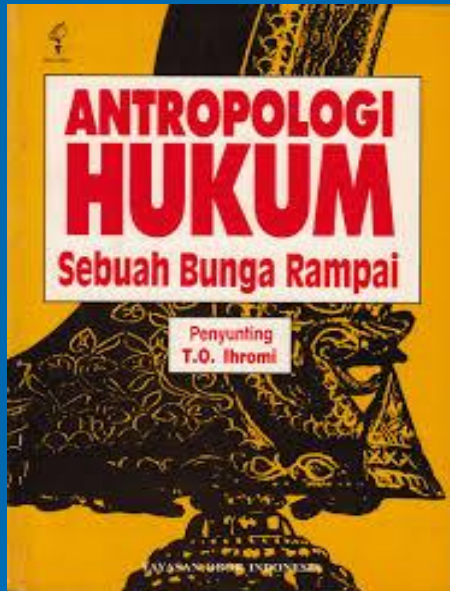
TIGA Komponen hukum

1. peraturan perundang-undangan (Substance of law)
2. Lembaga penegak hukum (Structure of law)
3. Budaya hukum masyarakat (legal Culture)



penyelesaian sengketa (conflict resolution)

Two Types Model of Dispute Settlement



(1)
litigasi
pengadilan
(In court settlement)

(2)
Non litigasi
Di luar pengadilan
(Out court settlement)

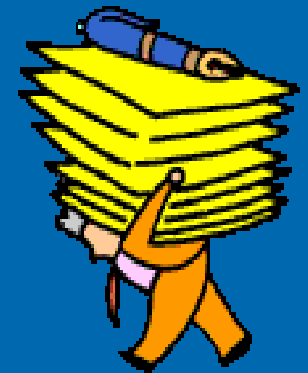
Jalur litigasi (pengadilan) hukum acara (substantive & prosedural law)

Jalur non litigasi (LUAR PENGADILAN)

- 1. Negosiasi**
 - 2. Mediasi**
 - 3. Musyawarah**
 - 4. Konsiliasi**
 - 5. islah**
- 

(Dispute Stages)

1. **Pre-conflict**
2. **Conflict**
3. **dispute**



(Dispute Settlement)

1. (Negociation
2. Mediation
3. Avoidance
4. Lumping it
5. Self-help (Eigenrichting)



Philosophy

Litigation & Non litigation

**Litigation means:
Win-lose solution**

===

**Non litigation means:
Win-win solution**



Recover unbalance situation: injustices in a society

POST TEST

- 1. Why legal anthropology is a science, can you explain?
- 2. Can you explain, why does the development of Anthropology of Law thinking has a special characteristic, give an example
- 3. Why does in trouble case method & troubleless case method has different?
- 4. Why does in Legal Pluralism has a specific character and what is usefulness researcher to study it?
- 5. What is development of historical thinking regarding Anthropolofy of Law in Indonesia and abroad, can you compare it ?



THANK YOU & GOOD LUCK

