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The Role of Roscoe Pound's Social Engineering Theory in Realizing Social Justice Through Legal Discovery in Indonesia

Yeni Triana[1], Wandi Hartono[2], Jetmiko Setiawan[3], Dekky Muhardi[4]
Master of Law (S2) Postgraduate Program, Lancang Kuning University, Indonesia[1-4]

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ABSTRACT

Roscoe Pound, a well-known legal expert from the United States, said The theory of "social engineering" describes law as a tool to engineer society towards a better order. In this context, the law is not only seen as a set of rules that govern human behavior, but also as a mechanism to create positive social change and realize social justice. The judge in examining and deciding the case, faces a reality, that the written law does not always solve the problem at hand. In fact, often judges often find the law themselves (Rechtsvinding), to complement the existing law in deciding a case. Judges on their own initiative must find the law, because judges should not reject cases on the grounds that the law does not exist, is incomplete, or the law is vague. The method used is normative legal research. Based on the results of the study, it is known that the Role of Roscoe Pound's Social Engineering Theory in Realizing Social Justice Through Legal Discovery in Indonesia that Roscoe Pound's social engineering theory offers a useful framework to understand and improve the role of law in realizing social justice in Indonesia. Through the application of social engineering principles, law can serve as a tool to create positive social change, protect the interests of society, and ensure an equitable distribution of justice. In the Indonesian context, the application of this theory has been seen in various regulations aimed at improving social welfare and overcoming injustice. By continuing to develop and apply social engineering theories in legal discovery, Indonesia can be more effective in facing social challenges and realizing a more just and prosperous society

Corresponding Author:
Yeni Triana
E-mail: yenitri@gmail.com

INTRODUCTION

Roscoe Pound, a well-known legal expert from the United States, put forward the theory of "social engineering" which describes law as a tool to engineer society towards order which is better. In this context, the law is not only seen as a set of rules that govern human behavior, but also as a mechanism to create positive social change and realize social justice.

Indonesia as a country of law (Recht Staat) adheres to the Continental European legal system (civil law), which was inherited from the Dutch colonial government hundreds of years ago. In the

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Continental European legal system (civil law), written law is the source of law. It was marked by the emergence of a codification movement by the school of legislation, which is a school in law and justice that does not recognize laws outside the law. Law is synonymous with law while legal customs and science are recognized as law if the law designates it. They say that the law (codification) was actually held to limit judges, who because of their freedom have led to arbitrariness or tyranny.

It is in the interest of man to feel that he is safe. Safe means that their interests are not disturbed. Therefore, man always hopes that his interests are protected from conflicts, disturbances and dangers that threaten and attack his interests and common life. Disturbances and conflicts must be prevented and not allowed to continue, because they will damage the balance of the social order. So humans in society need the protection of their interests. The protection of these interests will be achieved if guidelines or regulations are created that determine that humans should live in society so as not to harm themselves and others. Guidelines, benchmarks or measures for behaving or behaving in a common life are called social norms or rules. Social rules are essentially the formulation of a view regarding behavior or attitude that should or should not be done, that is prohibited or that is recommended to be carried out.

Law functions as the protection of human interests. So in order for human interests to be protected, the law must be implemented. The implementation of the law can take place normally and peacefully, but there can also be violations of the law. In this case of violation of the law, the law must be enforced. It is through the enforcement of this law that the law becomes a reality. In enforcing the law, there are three elements that must be considered, namely: legal certainty, usefulness and justice.

The theory of social engineering according to Roscoe Pound states that law must function as a tool to engineer or regulate social relations in order to achieve certain goals in society. Pound views the law as a social engineering tool aimed at regulating various interests in society so that balance and justice are created. The basic principles of social engineering theory are:

1. Social Interests: The law must identify and protect various social interests.
2. Balance Interests: Law must Balance conflicting interests to create social harmony.
3. Distributive Justice: The law must distribute rights and obligations fairly among members of society.

The absolitism of the judges at that time supported, or legalized, the king's power in the system of government of the Absolute Monarchy. However, if the written law is incomplete or cannot answer the existing problems to resolve the dispute at hand, then completeness is sought from other legal sources. The source of law is laws and regulations, then Customs, Jurisprudence, International Treaties, and Doctrine. So there is hierarchy in the sources, and there are levels. In addition, according to the MPR TAP, legal sources include Pancasila, written law, and unwritten law, which are used as a source of material for drafting laws and regulations.

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The judge in examining and deciding the case, faces a reality, that the written law does not always solve the problem at hand. In fact, often judges often find the law themselves (Rechtsvinding), to complement the existing law in deciding a case. Judges on their own initiative must find the law, because judges should not reject cases on the grounds that the law does not exist, is incomplete, or the law is vague. Discussions about law tend to be associated with legislation. The law itself is not perfect, it is impossible for the law to regulate all human activities completely. Sometimes the law is unclear and sometimes incomplete. Although incomplete and unclear, the law must still be implemented. The judge cannot and should not suspend or refuse to impose a judgment on the grounds that the sentence is incomplete and unclear. He is prohibited from refusing to impose a verdict on the grounds of imperfection of the law or the absence of law. If in a particular case it is incomplete or unclear in the law, the judge must look for the law or find the law. He must make a legal discovery. Law enforcement and enforcement often forget about legal discovery and not just the application of law. Therefore, this legal discovery effort is one of the activities that must be carried out by the judge in deciding the case. This legal discovery is a more interesting subject because of its dynamics in referring to laws and similar cases that have been decided.

Law has a vital role in regulating social life and realizing justice. In this context, the social engineering theory proposed by Roscoe Pound becomes very relevant. Roscoe Pound, a prominent jurist, introduced the concept that law should serve as a tool to engineer society towards a better order. In Indonesia, the application of this theory in the discovery of law is very important to achieve the desired social justice. Roscoe Pound's theory of social engineering views law as a tool for regulating social relations in order to achieve certain goals in society. Pound emphasized that the law must be able to identify and protect various existing social interests. The basic principle of this theory is that the law should function to balance conflicting interests and distribute rights and obligations fairly among members of society. In Pound's view, the law is not just a rigid set of rules, but must be adaptive and able to play an active role in creating social change.

Legal discovery in Indonesia involves the process by which judges, legislators, and other policymakers create or find the laws necessary to address complex social problems. This process often requires innovation and progressive interpretation of the law. In this context, social engineering theory can provide a useful framework for designing laws that are not only legally fair but also provide broader social benefits. Based on the description of the background of the problem, the author formulates the problem as follows: What is the role of Roscoe Pound's Social Engineering Theory in realizing social justice through legal discovery in Indonesia?

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METHOD

The research that the author will conduct is normative legal research, which is research based on applicable legal principles, in this case the research was carried out on the Role of Roscoe Pound's Social Engineering Theory in Realizing Social Justice through Legal Discovery in Indonesia. Furthermore, it was also explained that the research approaches used to answer research problems are:

1. The Statute Approach is an approach used to examine all laws and regulations related to the legal problems or issues faced. An approach used to review and analyze laws/regulations related to research problems.
2. Conceptual Approach is an approach used that departs from the views and doctrines that develop in legal science.

The data sources used in this normative law research are secondary data which are divided into 3 (three) parts, namely:

1. Primary Legal Materials, namely legal materials that are closely related to the problem being researched.
2. Secondary Legal Materials, which are legal materials that provide explanations or discuss more matters that have been researched in primary legal materials.
3. Tertiary Legal Materials, which are materials that provide explanations for Primary and Secondary legal materials, namely the Great Indonesian Dictionary, Legal Dictionary, and various other relevant dictionaries.

The data collection technique in normative law research is only used in the documentary study technique, namely by collecting literature data contained in the literature study which will later be correlated with the problem to be researched. And also non-structured interviews that function as a support rather than a tool to obtain primary data.

The data collected from primary, secondary, and tertiary legal materials are then analyzed in a qualitative descriptive manner. This analysis technique does not use numbers or statistics, but rather an explanation in the form of sentences that are presented straightforwardly. The data that has been analyzed and descripted is then concluded by an inductive method, namely inferring from a specific statement into a general statement.

Drawing conclusions uses deductive thinking logic, namely reasoning (law) that is generally applicable to individual cases and concrete (concrete factual legal issues) faced. The process that occurs in deduction is concretization (legal), because legal findings in the form of values, principles, concepts, and legal norms that are formulated in general in positive legal rules, then concretized (described) and applied to solve concrete legal problems faced, so that conclusions are obtained as an answer to the legal problems that were submitted earlier. Where in getting a conclusion begins by looking at real factors and ends with drawing a conclusion which is also a fact where the two facts are bridged by theories..

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RESULTS AND DISCUSSION

The Role of Roscoe Pound's Social Engineering Theory in Realizing Social Justice Through Legal Discovery in Indonesia

Legal discoveries in Indonesia, especially through court decisions and legislation, can be seen as a form of application of social engineering theory. Judges and legislators in Indonesia often

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times face situations where they have to invent or create new laws to address complex social problems. In this process, they can use social engineering principles to create laws that are not only legally fair, but also provide broader social benefits.

Social engineering theory has an important role in realizing social justice in Indonesia. Some of his main contributions are:

1. Protection of Vulnerable Groups: Laws designed based on social engineering principles often target protection for vulnerable groups such as workers, women, children, and indigenous peoples. These fair regulations help reduce social and economic injustices.
2. Economic Balance: Laws governing the redistribution of economic resources help reduce social and economic disparities. For example, fair fiscal policies and property regulations that take into account the interests of small communities.
3. Maintenance of Public Order: Laws that maintain public order and ensure that individual interests do not harm the interests of the wider community contribute to social stability. For example, strict traffic regulations and public health regulations.

In practice, it is not uncommon to find events that have not been regulated in laws or legislation, or even though they have been regulated, they are incomplete and unclear. Indeed, there is no law or legislation that is very complete or as clear as clear. The function of law is to protect human interests by regulating human activities. Meanwhile, human interests are very many and innumerable in number and type. Besides that, human interests will continue to grow over time. Therefore, unclear legal regulations must be explained, which are incomplete must be equipped with a way to find the law so that the legal rules can be applied to the event.

Thus, in essence, all cases require a method of legal discovery so that the legal rules can be applied appropriately to the event, so that the desired legal decision can be realized, namely one that contains aspects of justice, legal certainty, and utility. The definition of legal discovery put forward by experts includes:

a. According to Paul Scholten, the discovery of law by a judge is something other than just the application of rules to the event, sometimes and even very often that the rules must be found, either by interpretation or by analogy or rechtssvervijning.

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b. John Z Laudoe, stated that legal discovery is the application of factual provisions and these provisions sometimes have to be formed because they are not always contained in existing laws.
c. Sudikno Mertokusumo, argues that legal discovery is the process of law formation by judges or other legal officers who are given the task of applying the law to concrete legal events. In other words, it is a process of concretization or individualization of legal regulations (das sollen) that is general by remembering certain concrete events (das sein). What is important in the discovery of law is how to find or find a law for concrete events.

There are several terms that are often associated with legal discovery, namely:

1. Law Formation (Rechtsvorming), which is formulating regulations that apply generally to everyone, is usually carried out by lawmakers. Judges are also possible as judge made law if their decisions become permanent jurisprudence (vaste jurisprudence) which is followed by judges and is a guideline for legal circles in general.
2. Application of Law (Rechtstoepassing), which is the application of abstract legal regulations to the event. For this reason, concrete events must be made legal events first so that the legal regulations can be applied.
3. Law Implementation (Rechtshndhaving), can mean implementing the law whether there is a dispute or violation or no dispute.
4. Rechtschepping, means that the law does not exist at all, then is created, i.e. from nothing to exist.

Basically, legal discovery must still be based on the existing legal system. Legal inventions that are solely based on laws alone are called oriented systems. Legal discovery must basically be system-oriented, but if the system does not provide a solution, the system must be abandoned and go to problem-oriented. The background of the emergence of problem-oriented is the tendency of society in general to make the law more general, so that with this general nature judges get more freedom.

In Continental European countries (Civil Law) originally adhered to the invention of heteronomic law, but in its development has shifted towards autonomy. The implication in Europe tends to contain heteronomic and autonomous elements. Judges in Indonesia adhere to heteronoun legal findings, as long as judges are bound by the law. But in the discovery of the law it also has a strong element of autonomy, because judges often have to explain or supplement the law according to their own views. For example, if there is a judge

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The District Court refers to the decision of the judge above it (PT or MA), but the principle remains that the judge is not bound by the decision of another judge. This is an autonomous trait. Referring a judge to the decision of another judge does not mean adhering to the principle of the binding force of precedent, as embraced by Anglo Saxon countries, but because there is a belief that the decision he adheres to is indeed correct (the persuacive force of precedent). The main sources of legal discovery include laws and regulations (written law), unwritten law (custom), jurisprudence, international treaties, doctrines (opinions of legal experts).

One of the main characteristics of Continental Europe (civil law) is the use of written and codified rules as the source of law. A judge has a passive position in applying the rule of law, he will translate a rule of law if there has been a dispute between individuals and others in society and then the result of the translation of the rule of law is determined in a court decision that is binding on the parties to the dispute. However, the existence of these various legal systems until now is felt that the existing law is not yet an integrated and consistent system, but consists of several legal orders that are divided and contradictory to each other. But these various legal systems cannot be just thrown away, because almost every one of them is contained in the laws and regulations in Indonesia that give rise to the plurality of the legal system.

Indonesia in the world legal system, including one of the Continental European legal systems (civil law), as explained in the introduction. This Continental European system, prioritizes written and codified law as the main joint of this continental European legal system. This codification thinking was influenced by the conception of law in the 18th–19th centuries. To protect the public from arbitrary actions and for the sake of legal certainty, legal rules must be written in the form of laws. Furthermore, this thinking states that a law must be general (algemeen). Generalize either about the time, place, person or object. Second, the law must be complete, structured in a codification. Based on this view, the Government and Judges are nothing more than a machine tasked with implementing laws mechanically.

By 1800 BC, most of the laws used were customary laws. According to Hart, the great role of customary law mainly occurs in situations where there are only 2 models of society, namely society with an order of primary and secondary obligation rules. In the first order, the required behavioral guidelines are still very simple and can be satisfied by elementary norms. This elementary property is

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visible both in the content and the form. The norms of such an order are very close to reality and daily life. Unlike the legislation, at that time there was no conscious effort to make a code of conduct in a formal and definitive form, namely in writing. Law No. 4 of 2004 article 28 paragraph (1) concerning judicial power states that judges as law enforcers and justice are obliged to explore, follow, and understand the values of law and the sense of justice that live in society. Therefore, in certain circumstances, customary law may defeat complementary laws. Some examples of jurisprudence in such courts are as follows:

1. Initially, the widow was only the party entitled to the inheritance, then her position changed to heir (Supreme Court Jurisprudence, April 13, 1960).
2. Rent purchase is not regulated in the law, but the legal basis is found in the Supreme Court cassation decision, dated December 18, 1957.
3. Fiducia based on article 1152 of the Civil Code is invalid, because the pawned goods are still left in the power of the debtor (the borrower of the goods), but then justified in the jurisprudence of Hooge Raad, dated January 25, 1929. Therefore, fiducia is often referred to as a forbidden pawn.

Law is not only in the form of rules or norms, but can be in the form of behavior (sein). Of human behavior, there are active ones, namely concrete actions, and there are also passive ones, such as attitudes or attitudes. Judges as a position that has a judicial function, basically have two actions/roles:

1. To prove the existence of a fact that is qualified as a civil or criminal offense by a general norm that must be applied to a particular case.
2. The judge imposes a concrete civil or criminal sanction that is generally stipulated in the norms that must be applied.

From these two roles, it can be concluded that judges are the implementers of legal norms in the form of laws and regulations which are then followed by the application of sanctions for the enforcement of these laws and regulations.

Historically, according to van Apeldoorn, the role of judges can be divided into 3 periods consisting of the 19th century period (legism), the period of free law teaching or the teaching of finding law freely and in this period. The role of judges in the period of legalism (19th century) reached its peak only as a legal trumpet/legal mouthpiece. Judges in this context are positioned to apply laws and

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regulations using logical principles, without paying attention to other aspects outside of logic and the rule of law.

During this period of legism, the judge did not question the motive, such as whether a person committed an act of theft for the reason of hunger or for other reasons. So that at this time, judges have a duty as a subsumptie-automaton because their duties solely consist of making a match (subsumptie) into the appropriate laws and regulations for this matter.

The role of judges in the era of free law or the teaching of finding law freely, is a rejection of the view of legism that developed in the 19th century. This free law doctrine states that not all laws are contained in the law, that besides the law there are other sources, where the judge can take the law (free law) as the basis for the decision. As to where the free law comes from, this teaching is divided into two:

1. Sociological law schools
   Namely the school of sociological law fronted by Hamaker who stated that the free law comes from customs and habits in society that are more empirical.
2. Natural law stream
   That is, it refers to things that are contemplative in contemplative spaces full of ideas.

Nevertheless, the schools that came after were increasingly radical in abolishing the law as the only source that viewed the judge in deciding not only to consider the free law as a supplement to cover the legal vacuum. This free law can exclude written laws and regulations and make corrections if it is considered to be contrary to the law. The proponents of this new school gave the judge the role of what was called in Roman law as the rechter-konigschap, but this view was considered to eliminate legal certainty, and there was much rejection of this idea.

Sociological theories or schools explain that law is the reality of what is true in society and how in fact law is accepted, grows, and applies in society. This theory was pioneered by Roscou Pound (Juris of the United States), Eugen Ehrlich (1826-1922), Emil Durkheim (1858-1917), and Max Weber (1864-1920).

Max Weber was a legal expert and considered a figure in modern sociology, Weber considered law to be a very important aspect that dominated society. According to Weber, there are four types of legal ideals, which are as follows.

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1. Irrational and material law, that is, where the formation of laws and judges base their decisions solely on emotional values without reference to any method
2. Irrational and formal law, where lawmakers and judges are guided by rules beyond reason, because they are based on revelation and prophecy.
3. Rational and material law, where the decisions of lawmakers and judges refer to a holy book, the wisdom of a ruler or ideology.
4. Rational and formal law, that is, where law is formed solely on the basis of abstract concepts from legal science,

Therefore, formal law is more likely to compile a systematic system of legal rules, while material law is more empirical. However, the two laws can be rationalized into formal laws based on pure logic, while material in their usefulness.

This Sociological Law theory is based on several experts, such as Roscoe Pound, Eugen Ehrlich, Benjamin Cardozo, Kantorowics, Gurvitch, and others. The core of this mahzab thought that developed in America is:

A good law is a law that is in accordance with the law that lives in society.

Realist movements in law emerged in the United States and Scandinavia, realists thinking based on a radical conception of the judicial process. And according to the realist school, what laws are made by judges and judges are more worthy of being called making laws than discovering laws. This realist school emphasizes the human essence in the implementation of the law.

The originators of the realist school from the United States were Karl Llewellyn (1893 - 1962), Jerome Frank (1889 - 1957), and United States Supreme Court Justice Olive Wendell Holmes (1841 - 1935). Then from Sweden it was spearheaded by Hagerstron (1868-1939) and from Denmark was Alf Ross. The essence of Holmes's teachings of legal realism can be explained as follows:

1. The development of legal science lies in the testing of facts
2. The life of the law has been not logical, but experience.
3. What is considered a law is prophecy, and nothing is more important than that.

Roscoe Pound is one of the thinkers of world law whose name and thoughts are always discussed and taken into account. He is one of the leaders of the sociological jurisprudence and pragmatic legal realism schools. Roscoe Pound is also known as a figure who has a strong tendency to make classifications regarding legal materials. Thing

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This can be understood because of his background as a biology scholar, so some experts dub Pound as a figure who has done the botanical law of Ibotanized her). In addition, Pound also used many other theories of legal thinkers, including Rudolf Von Jhering (1818-1892), especially related to the function of law as a means to protect interests. In this regard, Lyoid said the following: "According to Pound, law should realize and protect six social interests: common security, social institutions (like family, religion and political rights), sense of morality, social goods, economic, cultural and political progress and protection of an individual's life. The last of these 'social interests'Pound deems to be the most important. In order to realize those goals a new sociological jurisprudence, Pound argues, must be developed".

Pound distinguishes between sociological jurisprudence and sociology of law. The first term refers to practical matters, i.e. related to how the law is implemented, while the second ishlah is related to theoretical problems. Pound wants to change the law from a theoretical level (/ow' in book) to a law in reality (/ow' in action). Therefore, as a supporter of the pragmatic school of legal realism, Pound also stated that the real law is the law that is practiced. The law is not only what is written in the law, but what is done by the law enforcement apparatus and or anyone who carries out the function of implementing the law with its legal concept, namely the law can play a role as a tool of social enfinering. Pound's thinking began to be known, even famous, in Indonesia after one of the Indonesian legal thinkers who is also a professor at the Faculty of Law, Mochtar Kusumaatmadja, introduced his thoughts on legal development in Indonesia in the 1970s.

Roscoe Pound, law must be seen as a social institution that functions to meet social needs, and it is the duty of legal science to develop a framework by which social needs can be met to the maximum. Pound also advocated studying law as a process (law in action), which is distinguished from written law (law in the books). This distinction can be applied to all fields of law, both substantive law and adcedural law. The teaching highlights the problem of whether the laws established are in accordance with patterns of behavior.

Sociology of law is a branch of sociology that studies the influence of society on the law and the extent to which the phenomena that exist in society can affect the law in addition to also investigating the opposite influence, namely the influence of law on society.

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Roscoe Pound considers that law as a tool of social engineering and social control which aims to create harmony and harmony in order to optimally can meet the needs and interests of humans in society. Justice is a symbol of harmonious and impartial efforts in seeking the interests of the members of the community concerned. For the ideal interest, forced force carried out by the ruler of the state is needed.

Roscoe Pound's social engineering theory offers a useful framework for understanding and improving the role of law in realizing social justice in Indonesia. Through the application of social engineering principles, law can serve as a tool to create positive social change, protect the interests of society, and ensure an equitable distribution of justice. In the Indonesian context, the application of this theory has been seen in various regulations aimed at improving social welfare and overcoming injustice. By continuing to develop and apply social engineering theories in legal discovery, Indonesia can be more effective in facing social challenges and realizing a more just and prosperous society.

The Realist school of legal theory towards legal discovery in Indonesia is because along with the development of the times, it is necessary for judges to think about changes in legal development so that there is no legal vacuum. Realists are not a sect. Realists are a movement in the way of thinking and working about law.

a. Realist is a conception of law that changes and as a means to achieve social goals, each part of it must be investigated as to its purpose and its result. This means that social conditions change faster than the law
b. Realists base their teachings on the temporary separation between sollen and sein for the purposes of an investigation. In order for the investigation to have a purpose, the existence of values should be considered, and the observation of these values should be as general as possible and should not be influenced by the will of the observer or the objectives of morality.
c. Realists do not base themselves on traditional legal concepts because realism intends to describe what the courts and their people actually do. For this reason, definitions in the rules are formulated which are general predictions of what the court will do. In accordance with this belief, realism creates classifications of cases and legal circumstances that are smaller in number than the number of classifications that existed in the past.
d. The realist movement emphasizes that the development of every part of the law must be carefully considered as a result.

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Through the thoughts of John Chipman Gray and Oliver Wendell Hulmes, who are exponents of this realist movement, it will be clearer how the basis of legal thought is the core of his teachings. These two figures, although also adherents of legal positivism, do not place the law as the main source of law. They put the judge as the center of attention and legal investigation. In addition to the element of logic which holds an important factor in the formation of legislation, also elements of personality, prejudice, and other elements outside of logic have a very large influence. Gray proved his theory by giving examples from the history of law in Britain and the United States that show the great influence of political, economic, and individual judges' factors on the settlement of matters important to millions of people for hundreds of years. Jhon Chipman Gray's famous slogan is that the main source of law is judge-made law (All the law is judge-made law).

CONCLUSION

The conclusions that can be drawn from the results of the research that have been carried out by the author include: The Role of Roscoe Pound's Social Engineering Theory in Realizing Social Justice Through Legal Discovery in Indonesia that Roscoe Pound's social engineering theory offers a useful framework to understand and improve the role of law in realizing social justice in Indonesia. Through the application of social engineering principles, law can serve as a tool to create positive social change, protect the interests of society, and ensure an equitable distribution of justice. In the Indonesian context, the application of this theory has been seen in various regulations aimed at improving social welfare and overcoming injustice. By continuing to develop and apply social engineering theories in legal discovery, Indonesia can be more effective in facing social challenges and realizing a more just and prosperous society.

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