

Legal Philosophy In Establishing Justice

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Abstract

Legal philosophy seeks to solve problems, create more perfect laws, and prove that law is able to provide solutions to problems that live and develop in society by using a legal system that is in effect at a time, somewhere as Positive Law. The approach method used in this study uses a normative juridical approach. The results of the research obtained state that Justice is an effort to find balance, equality, truth and decide if there is a violation that has been formally regulated, based on the opinion of experts Justice is an abstract concept in forming a perspective. The role of the philosophy of law provides a perspective that justice is manifested in law. Legal philosophy seeks to solve problems, create more perfect laws, and prove that law is able to provide solutions to problems that live and develop in society by using a legal system that applies at a time, somewhere as positive law.

Keywords: *Justice; Law; Legal Philosophy;*

1. Introduction

Philosophy of law, some call it the philosophy of law, is actually a sub-branch of human philosophy, called ethics or human philosophy. Because the philosophy of law and philosophy of law is a science that studies law in a philosophical way, its object is law. Regarding the distinction between law and law, Curzon said that the science of law includes and discusses all matters relating to law. Such is the extent of the problem that this science covers that it has provoked people's opinion to say that "the boundaries are not determined."¹

Through the philosophy of law asking questions which are fundamental about law. These issues are related to the position, nature, function and objectives of law and others. The objectives of law in the form of certainty, justice, benefit and others are a study of legal philosophy. With a philosophical approach, justice becomes an inseparable part of the purpose of law, in addition to certainty and benefits.²

1. Satjipto Rahardjo, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung 2000, page. 3.

2. Muhammad Helmi, Konsep Keadilan Dalam Filsafat Hukum dan Filsafat Hukum Islam, *Mazahib*, Vol. XIV, No. 2 (Desember 2015), page.133-144

Measures regarding justice are often interpreted differently. Justice itself also varies, in various fields, such as economics and law. Talking about justice, this is always a main and interesting topic, because it is always related to resolutions related to law enforcement. There are many legal cases that cannot be resolved or decided fairly because they are drawn into political problems. Legal truth and justice are manipulated in a systematic way so that the judiciary does not give fair decisions because they do not go through correct procedures, court actions are often unwise because they do not give satisfaction to the community.

As is well known, the term justice is always contrasted with the term injustice. Where there is a concept of justice, there is also a concept of injustice. Therefore, legal philosophy is relevant to building actual legal conditions, because the task of legal philosophy is to explain the basic values of law in a philosophical manner which is able to formulate ideals of justice, order in life that are relevant to the statements of legal facts that are valid, and even change in a philosophical way. radical with the pressure of human desire through a new legal paradigm in order to meet the development of law at a certain time and place.

Regarding the function of Philosophy of Law, Roscoe Pound stated, that philosophers try to solve the problem of the idea of creating a perfect law that must stand forever, then prove to mankind that the law has been established, its power is no longer in question.³

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The evolution of the philosophy of law, which is inherent in the evolution of philosophy as a whole, revolves around certain problems that arise over and over again. Among these problems, the most frequently discussed discourse is about the issue of justice in relation to law. This is because the laws or regulations should be fair, but in fact they are often not. Justice can only be understood if it is positioned as a condition that the law intends to bring about.

Through the philosophy of law asking fundamental questions about law. These issues are related to the position, nature, function and purpose of law and others. The objectives of law in the form of certainty, justice, benefit and others are a study of legal philosophy. With a philosophical approach, justice becomes an inseparable part of the purpose of law, in addition to certainty and benefits.

Knowledge of justice, there are several formulations in providing a definition of justice,

3. Roscoe Pound, Pengantar Filsafat Hukum, Bhratara Karya Aksara, Jakarta, 1973, page.3

4. Satjipto Rahardjo, *Op. Cit*, page.106

but it is not easy to understand the meaning of justice given by experts. Justice is one of the objectives of law which demands equal rights in fulfilling obligations. This is in order to preserve and the happiness of human life.

Talking about justice seems to be an obligation when talking about legal philosophy, considering that one of the goals of law is justice and this is one of the most talked about legal objectives throughout the history of legal philosophy. Understanding the notion of justice is not that difficult because there are several simple formulations that can answer the notion of justice. However, to understand the meaning of justice is not as easy as reading the text of the understanding of justice provided by experts, because when talking about meaning, it means that it has moved at a philosophical level that needs deep reflection to its deepest essence. The court is not only a body that examines and adjudicates cases but also falls into an abstract sense, namely providing justice.

2. Research Method

The method used is a normative juridical approach. normative juridical approach. Namely, research that explains the provisions in the prevailing laws and regulations, related to the realities in the field, then analyzed by comparing the demands of ideal values that exist in laws and regulations with the reality in the field.⁵ This type of research is descriptive analysis, because the researcher desires to describe or explain the subject and object of the study, which then analyzes and finally draws conclusions from the results of the study.⁶ It is said to be descriptive because this research is expected to obtain a clear, detailed, and systematic picture, while it is said to be an analysis because the data obtained from library research and case data will be analyzed to solve problems in accordance with applicable legal provisions.

3. Result and Discussion.

1. The Concept of Justice in Legal Philosophy

Philosophy of law, some call it the philosophy of law, is actually a sub-branch of human philosophy, called ethics or human philosophy. Because the philosophy of law and philosophy of law is a science that studies law in a philosophical way, its object is law. Regarding the distinction between law and law, Curzon said that the science of law includes and discusses all matters relating to law. Such is the breadth of the problems covered by this science, so that it had time to provoke people's opinion to say, that "the boundaries are not determined".⁷

The ideal value of justice can regulate the balance of human interests, including legal

5. Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, 1990, page. 33.

6. Mukti Fajar ND dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, Pustaka Pelajar, Yogyakarta, 2010, page. 183.

7. Carl Joachim Friedrich, *Filsafat Hukum: Perspektif Historis*, Nuansa dan Busamedis, Bandung, 2004, page.239.

certainty, welfare, happiness, education and so on. Therefore, in order to affirm the means to achieve justice, a country must be able to formulate the concept of justice to be achieved both individually and collectively.⁸ Justice is a measure used by a person in giving to objects that are outside the person. Considering that the object being assessed is human, the measurements given by one person to another cannot be separated from how that person gives a concept or meaning about humans. If someone sees other people as noble beings, then that person's treatment will follow the assumption used as an approach and at the same time will determine the size used in dealing with other people. Thus it can be said that the problem of justice cannot be separated from the philosophy of human beings.⁹ The following is the concept of justice in legal philosophy:

1. Justice According to Plato.

Plato was an abstract idealist thinker who recognized forces beyond human capabilities so that irrational thinking entered his philosophy. Likewise with the issue of justice, Plato argues that justice is beyond the capabilities of ordinary humans. The source of injustice is changes in society. Society has principal elements that must be maintained, namely: a) a strict segregation of classes; for example, a ruling class filled with shepherds and guard dogs should be strictly separated from human sheep. b) Identification of the destiny of the state with that of the ruling class; special attention to this class and its unity; and adherence to its unity, rigid rules for the maintenance and education of this class, and the strict supervision and collectivization of the interests of its members.

From these principal elements, other elements can be derived, for example the following:

- a. The ruling class has a monopoly on all things such as profits and military training, and the right to own weapons and receive all forms of education, but this ruling class is not allowed to participate in economic activity, especially in the search for income.
- b. There must be censorship of all intellectual activity of the ruling class, and constant propaganda aimed at homogenizing their thoughts. All innovations in education, regulation and religion must be prevented or suppressed.
- c. The state must be self-sufficient. The state must aim at economic autarchy, otherwise the rulers will depend on the merchants, or the rulers themselves become traders. The first alternative will weaken their power, while the second alternative will weaken the unity of the ruling class and the stability of the country.¹⁰

8. Muhammad Helmi, *Op.Cit*, hlm.133-144

9. Dominikus Rato, *Filsafat Hukum, Mencari, Menemukan, Dan Memahami Hukum*, LaksBang Yustisia, Surabaya, 2010, page.34.

10. Karl R. Popper, *Masyarakat Terbuka dan Musuh-Musuhnya, (The Open Society and Its Enemy)*,

To bring about justice, society must be returned to its original structure, sheep become sheep, shepherds become shepherds. This task is the duty of the state to stop change. Thus justice is not about the relationship between individuals but the relationship between individuals and the state. How do individuals serve the country.

Justice is also understood metaphysically as a quality or function of a superhuman being, whose nature cannot be observed by humans. The consequence is that the realization of justice is shifted to another world, outside human experience; and human reason which is essential to justice is subject to God's unchangeable ways or God's unpredictable judgments. Thus Plato revealed that those who led the country should be superhuman, namely the king of philosopher.¹¹

2. Justice According to Aristotle

The decline of Athenian democracy, in the Peloponesian wars and after, became the subject of reflection on the justice that dominated the legal philosophy of Plato and Aristotle. Both of them devote a large part of their work to providing a concrete definition of justice and the relationship between justice and positive law. Plato sought to derive his concept of justice from inspiration, while Aristotle developed it from a scientific analysis of rational principles against the background of existing models of political society and law.¹²

Aristotle's doctrines not only laid the foundations for legal theory, but also for western philosophy in general. Aristotle's contribution to the philosophy of law is his formulation of the question of justice, which distinguishes between: "distributive" justice from "corrective" or "remedial" justice which is the basis for all theoretical discussion of the subject matter. Distributive justice refers to the distribution of goods and services to everyone according to their position in society, and equal treatment of equality before the law. (*equality before the law*).¹³

Corrective justice focuses on correcting something that is wrong. If an offense is violated or an error is committed, then corrective justice seeks to provide adequate compensation for the injured party; if a crime has been committed, it is necessary to give appropriate punishment to the perpetrator. However, injustice results in disturbing the established or established "equality". Corrective justice is in charge of rebuilding that equality. From this description it appears that corrective justice is the area of justice while distributive justice is the area of government.

In *Ethica Nicomachea*, for example, Aristotle saw justice between the disputing

diterjemahkan oleh: Uzair Fauzan, Cetakan I, Pustaka Pelajar, Yogyakarta, 2002, page.110.

11. John Cottingham, *Western Philosophy, An Anthology*, Blackwell: Oxford-UK, 1996, page. 43.

12. E. Sumaryono, *Etika dan Hukum: Relevansi Teori Hukum Kodrat Thomas Aquinas*, Kanisius, Yogyakarta, 2002, page. 7.

13. *Ibid.*

parties as a basic prerequisite for a good life order in the policy. In this context, he distinguishes three kinds of justice: distributive, restorative and commutative. In particular, the principle of “commutative justice” governs the dealings of transactions between parties involved in an exchange or trade. For example: First, there must be an equal proportion of the goods exchanged, and second, there must be irritation; all goods exchanged must be comparable. It is for this purpose that money is used, and in some sense the intermediary. The number of shoes in exchange for a house (or an amount of food) must thus be equal to the ratio of a house builder to a shoemaker.¹⁴

Aristotle in interpreting justice is strongly influenced by the elements of ownership of certain objects. Ideal justice in Aristotle’s view is when all elements of society get an equal share of all objects in nature. Aristotle viewed humans as equal and had the same rights over the ownership of an object (material). Aristotle’s views on justice can be found in his work *Nicomachean Ethics*, *Politics*, *Rhetoric*. This book is entirely devoted to justice based on Aristotle’s philosophy of law to be regarded as this from his philosophy of law, “Because law can only be established in relation to justice”.

3. Keadilan Menurut John Rawls

John Rawls stated that justice is basically a principle of rational policy which is applied to the conception of the sum of the welfare of all groups in society. To achieve this justice, it is rational if a person enforces the fulfillment of his desires in accordance with the principle of utility, because it is done to increase the net profit from the satisfaction obtained by members of his community.¹⁵

Inequality must be given such a rule that it is most beneficial to the weakest groups of society. This happens when two conditions are met. First, the situation of inequality guarantees a maximum minimum for the weakest person. This means that the situation of society must be such that the highest possible profit is generated for the little people. Second, inequality is tied to positions open to all. It means that everyone has the same opportunity in life.¹⁶

Equality can put down the principles of justice, because basically the law must be a guide so that people can take a fair position while still paying attention to their individual interests, and acting proportionally in accordance with their rights and not violating applicable laws. Thus justice is closely related to the rights and obligations of the parties in carrying out the agreement as a form of responsibility.¹⁷

14. Aristoteles, *Nicomachean Ethics*. In S. G. Medena & W. J. Samuels (eds), *The History of Economic Thought: A Reader*, London: Routledge, 2003, page.14.

15. John Rawls, *A Theory of Justice*, The Belknap Press, Cambridge, 1971, page.103.

16. *Ibid.*

17. *Ibid.*

- There are two objectives of the theory of justice according to John Rawls, namely:
- a. This theory wants to articulate a series of general principles of justice that underlie and explain the various moral decisions that are taken into account in our particular circumstances. What he means by "moral decisions" are the series of moral evaluations we have made and presumably led to our social actions. Considerable moral decisions refer to the moral evaluations we make reflexively.
 - b. Rawls wants to develop a theory of social justice that is superior to the theory of utilitarianism. Rawls means "average" (average utilitarianism). The point is that social institutions are said to be fair if they are served to maximize profits and benefits. Meanwhile, utilitarianism on average contains the view that social institutions are said to be fair if they are only supposed to maximize the per capita average profit. For both versions of utilitarianism "gain" is defined as the satisfaction or benefit that occurs through choices. Rawls says that the correctness of his theory makes his views superior to both versions of utilitarianism. The principles of justice he puts forward are superior in explaining ethical moral decisions on social justice.

Two of Rawls's principles of justice below are solutions to the main problem of justice.

- a. The principle of the greatest possible freedom (*principle of greatest equal liberty*). These principles include: 1) Freedom to participate in political life (the right to vote, the right to run in elections), 2) Freedom of speech (including freedom of the press), 3) Freedom of belief (including religious belief), 4) Freedom to be yourself (person), and 5) The right to maintain private property.
- b. The second principle consists of two parts, namely the principle of difference (*the difference principle*) and the principle of equality of opportunity (*the principle of fair equality of opportunity*). The crux of the first principle is that social and economic differences must be organized in order to provide the greatest benefit to those most disadvantaged. The term socio-economic difference in the difference principle refers to a difference in one's prospects for obtaining the essential elements of welfare, income and authority. While the term the most disadvantaged (least profitable) refers to those who have the least opportunity to achieve the prospects of welfare, income and authority.¹⁸

Therefore, difference demands the arrangement of the structure of society so that the gap in the prospect of obtaining the main things welfare, income, authority is intended for the benefit of the less fortunate. This means that social justice must be fought for in two

18. *Ibid.*

ways. First, make corrections and improvements to the inequality experienced by the weak by presenting empowering social, economic and political institutions. Second, each regulation must position itself as a guide for developing policies to correct injustices experienced by the weak.

2. The Role of Legal Philosophy in Upholding Justice

To understand the values of truth and justice in law, one must first know the meaning or meaning of truth and justice itself. Scientists still differ in terms of providing the meaning of justice, because there is no formula that can be accepted by all parties.

To know the overall framework of philosophy, it is necessary to know in advance what is insisted by that philosophy, "Philosophy" in Latin is known as Philosophy (English), Philosophie (French and Dutch), philosophy, wijsbegeerte (Dutch), Philosophia (Latin). The word "philosophy is taken from Arabic, namely" philosophy ". Etymologically, philosophy or philosophy itself comes from Greek, namely Philos or filo which means love (in the broadest sense), and sophia or sofia which means wisdom. So from the point of origin of his words, philosophy can be interpreted as the love of wisdom.¹⁹

Satjipto Rahardjo further added, as with every branch of science, this legal science has its own object, namely law, how the science of law covers a very broad field. This characteristic is a result of the burden it carries, namely exposing before us the phenomena of law in essence, its properties, its function in society so that it is understandable why it contains quite various thoughts and explanations, both philosophical, technical and sociological.²⁰

In the legal literature, this knowledge of law is known as jurisprudence, derived from the word jus, juris, which means law or rights; prudence means looking forward or having expertise. The general meaning of this jurisprudence is the study of law, but one also knows the other three. The British writers used it in comparative anatomy to the advanced legal systems. French writers interpret this as

The trend of the decisions taken by the courts. In several other countries, especially the United States, the word is used synonymously with the law itself. From the explanation above, it is clear that the distinction between the use of philosophy of law and philosophy of law lies only at the level of terms, without the intention of sorting out and distinguishing them in crucial matters, in fact both of them study philosophy which has legal objects.

The correlation between philosophy, law and justice is very close, because there is a rigging between wisdom, norms and a balance of rights and obligations. Law is inseparable from society and the state, legal material is extracted, made from the values contained in the motherland in the form of legal awareness and ideals (rechtidee), moral ideals, human

19. Darmodiharjo, D., & Shidarta, *Pokok-pokok filsafat hukum apa dan bagaimana hukum di indoensia*, PT. Gramedia Pustaka Utama, Jakarta, 2006, page.43

20. Satjipto Raharjo, *Op. Cit.* page.35

freedom of individuals and nations, peace, political ideals and state goals. Law reflects the value of life that exists in society which has the power to apply juridically, sociologically and philosophically. The laws that live in society are rooted in positive law, namely:

1. Law (Constitutional)
2. Customary law (Costumary of law)
3. International treaties
4. Judge's Decision (Jurisprudence)
5. Doctrine (Doctrine)
6. Treaty
7. Consciousness of law²¹

From the above statement, it must be admitted that law without justice will be arbitrary. Actually justice and truth are the most important virtues, so these values cannot be exchanged for any value.

The relationship between philosophy, law and justice, with philosophy as the mother of science, is to find a way out of the shackles of life rationally by using applicable laws to achieve justice in life. The role of philosophy is never finished, it never ends because philosophy does not investigate one aspect but is not limited to its object, but philosophy remains true to its own method by declaring that all in this world nothing is eternal, it is only change, so it is true that the philosophy of science is limitless. Philosophy has objects, methods, and systematics that are universal.

Philosophy of law focuses on the philosophical aspect of law which is oriented to the problems of the function and philosophy of law itself, namely carrying out legal order, settling disputes, maintaining and maintaining order, making changes, arranging order for the realization of a sense of justice based on abstract and concrete legal rules. The thought of legal philosophy has a positive impact because it carries out a not superficial but in-depth analysis of every legal problem that arises in society or the theoretical development of legal science itself, its horizons are broad and comprehensive. The use of the combination of legal science with legal philosophy is legal politics, because legal politics is more practical, functional by describing constructive teleological thinking carried out in relation to the formation of law and legal discovery which are generally accepted abstract rules, while legal discovery is the determination of concrete rules. that applies specifically.

In understanding the relationship between legal science and positive law, regarding normative law, it is necessary to study the elements of law. The legal element includes ideal and rational elements. The ideal element includes the moral desire and the human ratio which produces legal principles, the real element includes culture, the natural environment that

21. Sudikno Mertokusumo, *Mengenal hukum, suatu pengantar*, Liberty, Yogyakarta, 1988, page.28

produces the legal system. The ideal element produces legal rules through the philosophy of law. The real element produces a legal system which in this case is influenced by legal principles starting from certain areas of the legal system by identifying legal principles that have been formulated in certain laws.

Legal principles are provisions, guidelines, formulation of opinions, contain normative facts that are mandatory, requiring adherence to prevent violations so that humans are freed and sanctioned. This is what underlies the emergence of schools and views of legal philosophy, for example:

1. Philosophy of Natural Law
2. Historism School
3. General Law School
4. The Theory of George Wilhelm Friederich Hegel
5. The Marx-Engels School of Theory
6. School of Jhering Theory
7. School of Relativism Theory
8. Stammler's flow of theory.²²

Indonesia as a rule of law (Rechtsstaat) in principle aims to uphold legal protection (iustitia protectiva). Law and legal ideals (Rechtidee) as the embodiment of culture. The embodiment of culture and human civilization is upright thanks to the legal system, the aims of law and the ideals of law (Rechtidee) are enforced in justice that displays a moral and benevolent image which is a cultural and civilization phenomenon. Humans always struggle to demand and defend truth, goodness, virtue to become the mind and moral image of humanity and the moral image of the human person. Justice is always integrated with the principle of legal certainty (Rechtssicherheit) and legal utility (Zweckmassigkeit). Each meaning and type of justice refers to what value and purpose and how commutative, distributive and protective justice is for the realization of the physical and mental well-being of citizens, which is essentially for human dignity.

Law and the image of law (justice) are at the same time a world of values and as a whole as a cultural phenomenon. The role of legal philosophy provides insight and meaning of the purpose of law as legal ideals (rechtidee). The ideal of law is an a priori that is normative and at the same time an a priori that is normative and constitutive, which is a transcendental prerequisite that underlies every dignified Positive Law, without legal ideals (rechtidee) there will be no law that has a normative character.

Law functions as a protection for human interests, so that human interests are protected, the law must be implemented firmly and fairly. Law enforcement can take place

22. W. Friedman, *Law in Change Society*, Chapter IX, CV. Rajawali, Jakarta.1959, page.23

normally, peacefully, orderly. Laws that have been violated must be enforced through law enforcement. Law enforcement requires legal certainty, legal certainty is a justisable protection against arbitrary actions. The community expects legal certainty because with legal certainty the community will be orderly, safe and peaceful. The public expects benefits in the implementation of law enforcement. Law is for humans, so the implementation of the law must provide benefits, benefits for the community, so that the law should not be implemented causing unrest in the community. People who get good treatment, will really create a situation that is peaceful and orderly. The law can protect the rights and obligations of every individual in actual reality, with solid legal protection the objectives of the law in general will be realized: order, security, tranquility, welfare, peace, truth and justice.²³

The application of the philosophy of law in state life has various variations depending on the philosophy of life of each nation (Wealtanchauung). In reality, if a country without ideology it is impossible to achieve its national goals, because a state without ideology is a failure, the state will run aground along the way. The Philosophy of Life of the Nation (Wealtanchauung) which is commonly the philosophy or ideology of the state, functions as a basic norm (groundnorm).²⁴

These fundamental values are the source of the ideals and moral principles of the nation because these values become the ideals of law (rechtidee) and the paradigm of justice, the meaning of justice is the meaningful substance of justice which is determined by the value of the nation's own philosophy of life (wealtanchauung).

Taking into account all the discussions in this paper, that justice in legal philosophy will still exist throughout the life of law enforcement and will be upheld because justice is an ideal and balances other elements, namely legal benefits and certainty. An understanding of true legal philosophy will be able to explain the basic value of law in a philosophical manner and it should be further strengthened by competent parties so as to build the actual law.

4. Conclusion.

Keadilan merupakan upaya untuk menemukan keseimbangan, persamaan, kebenaran serta memutuskan jika terdapat pelanggaran yang telah diatur secara formalitas, berdasarkan pendapat para ahli Keadilan merupakan konsep abstrak dalam membentuk cara pandang. Peranan filsafat ilmu Hukum memberikan prespektif bahwa keadilan diwujudkan dalam hukum. Filsafat hukum berupaya memecahkan persoalan, menciptakan hukum yang lebih sempurna, serta membuktikan bahwa hukum mampu memberikan penyelesaian persoalan-persoalan yang hidup dan berkembang di dalam masyarakat dengan menggunakan sistim hukum yang berlaku suatu masa, disuatu tempat sebagai Hukum Positif

23. Soejadi, *Refleksi Mengenai Hukum dan Keadilan, Aktualisasinya di Indonesia*, Universitas Gadjah Mada, Yogyakarta, 2003, page.5

24. Hans Kelsen, *General Theory of Law and State*, London University, USA, 1998, page.118

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