

Between Legality and Morality (*The Conflict Between Natural Law and Legal Positivism in Defining the Nature of Law*)

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Abstract

Law is not only concerned with order and legal certainty but also raises philosophical questions concerning the relationship between legality, morality, and justice. Natural law holds that true law must be connected to morality and justice, whereas legal positivism determines the validity of law based on its source, procedure, and system of enactment, regardless of moral judgments concerning its content. This difference raises the question of the status of rules that are procedurally valid but conflict with morality and justice. This article aims to analyze the tension between natural law and legal positivism concerning the nature of law and its relevance to the Indonesian legal system. This study employs a normative-juridical method with conceptual and philosophical approaches. The findings indicate that natural law and legal positivism emphasize different aspects in understanding the nature of law. In the Indonesian context, Pancasila as the legal ideal (rechtsidee) plays a role in harmonizing legal certainty, justice, and utility as complementary values in the formation and application of law.

Abstrak

Hukum tidak hanya berkaitan dengan ketertiban dan kepastian, tetapi juga menimbulkan persoalan filosofis mengenai hubungan antara legalitas, moralitas, dan keadilan. Hukum kodrat memandang bahwa hukum yang sejati harus memiliki keterkaitan dengan moral dan keadilan, sedangkan positivisme hukum menilai keberlakuan hukum berdasarkan sumber, prosedur, dan sistem pembentukannya tanpa bergantung pada penilaian moral terhadap isinya. Perbedaan tersebut menimbulkan persoalan mengenai kedudukannya. Artikel ini bertujuan menganalisis ketegangan antara hukum kodrat dan positivisme hukum mengenai hakikat hukum serta relevansinya dalam sistem hukum Indonesia. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan konseptual dan filosofis. Hasil penelitian menunjukkan bahwa hukum kodrat dan positivisme hukum memiliki titik tekan yang berbeda dalam memahami hakikat hukum. Dalam konteks Indonesia, Pancasila sebagai cita hukum (rechtsidee) berperan dalam mengharmonisasikan kepastian hukum, keadilan, dan kemanfaatan sebagai nilai yang saling melengkapi dalam pembentukan dan penerapan hukum.



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INTRODUCTION

Background

Every discussion of law will, sooner or later, confront one fundamental question: "What makes a rule worthy of being called law?" This question appears simple, yet it actually touches on the most fundamental problem in the philosophy of law, namely the nature of law itself (*hakikat hukum*). The answer to this question cannot be settled by a purely normative approach that merely points to statutes or to the procedures by which they are enacted; it also demands a philosophical explanation of the basis for the validity of law.

In the reality of legal life, it is entirely possible for a rule to be formed through a procedure that is valid under the procedures for the formation of legislation, while the substance of that rule is regarded as unjust, discriminatory, or even oppressive. This phenomenon has given rise to two great traditions of legal thought that stand in opposition to one another. On the one hand, the natural law school holds that law must have an inseparable relationship with morality and justice; a command that is substantively unjust, however valid it may be procedurally, does not deserve to be called true law (*lex iniusta non est lex*).

On the other hand, legal positivism asserts that law must be understood as a social fact: its validity is determined by its source, authority, and enactment procedure, not by its conformity with morality. For positivists, conflating the question "is a rule valid as law" with the question "is that rule just" in fact blurs the objectivity of legal science itself.

This conflict is not merely an outdated academic debate. Historical experience, for example how the Nazi regime in Germany exploited formal legality to legitimize morally barbaric policies, shows that the question of the relationship between legality and morality carries very serious practical consequences. From that point arises the fundamental question at the heart of this article: if a law that is procedurally in force turns out to be in extreme contradiction with justice, does that law lose its character as law? Departing from this problem, this article is directed at comparing these two major schools of legal philosophy and at

examining how the position in that debate is reflected in the Indonesian legal system.

Problem Formulation

1. How do the views of natural law and legal positivism differ in determining the nature of law?
2. What is the relevance of this conflict between legality and morality for understanding law in Indonesia?

Research Objectives

1. Analyzing the differences between the views of natural law and legal positivism on the nature of law.
2. Analyzing the relationship between legality, morality, and justice from the perspective of legal philosophy.

Explaining the relevance of this debate to the Indonesian legal system.

METHODS

This research is normative legal research that focuses on the study of doctrines and concepts in legal philosophy, rather than on the empirical behavior of society toward law. The approaches used are the philosophical approach, to trace the underlying reasoning of each school; the conceptual approach, to analyze key concepts such as "legal validity," "legal certainty," and "justice"; and the statute approach, to link the discussion with Pancasila and the 1945 Constitution of the Republic of Indonesia.

The legal materials used include primary legal materials in the form of the 1945 Constitution of the Republic of Indonesia and related legislation; secondary legal materials in the form of the works of legal thinkers such as Thomas Aquinas, John Finnis, John Austin, Hans Kelsen, H.L.A. Hart, and Gustav Radbruch, supplemented by Indonesian legal philosophy literature and recent scholarly journals; and tertiary legal materials in the form of legal dictionaries to clarify technical terms. The analysis is carried out descriptively-analytically, by philosophically comparing the frameworks of thought of natural law and legal positivism and then drawing them into the context of the Indonesian legal system.

RESULT AND DISCUSSION

The Nature of Law in the Perspective of Natural Law

The natural law school does not view law merely as a product of human will set out in written regulations. For this tradition, there is an essential relationship between law and a more fundamental moral order, within an order that is rational and universally applicable, regardless of formal recognition by the state. Classical natural law doctrine formulates this idea in the maxim *ius quia iustum*: law is law precisely because it is just, not merely because it is commanded by the ruler.

Thomas Aquinas, one of the central figures of the scholastic natural law tradition, defined law as an ordinance of reason directed toward the common good, made by the one who has charge of the community, and promulgated publicly. For Aquinas, there is a hierarchy of law that culminates in eternal law (*lex aeterna*), which is reflected in natural law (*lex naturalis*) through human reason, and which is ultimately elaborated into positive law (*lex humana*). An important consequence of this view is that positive law that fundamentally contradicts natural law is no longer law in the true sense, but merely a “corruption of law” (*corruptio legis*) (Aquinas, 1947, I-II, Q. 90–95).

This thought was later developed in the modern natural law tradition, among others by John Finnis, who places law within the framework of *practical reasonableness* and a number of basic human goods such as life, knowledge, and friendship. For Finnis, good law is law that is coherently directed toward realizing the common good of society on the basis of those basic values, so that legal authority must ultimately remain morally accountable (Finnis, 1980, chs. 3–5).

From this exposition arises a fundamental question that continues to be debated: if positive law seriously contradicts the demands of justice, does it still possess the moral legitimacy to bind citizens? For adherents of natural law, the answer tends to be negative; law that is extremely unjust loses its binding force as law, even though formally and procedurally it appears valid.

The Nature of Law in the Perspective of Legal Positivism

In contrast to natural law, legal positivism holds that the question of the validity of law must be sharply separated from the question of its moral goodness. This principle of separation (*separation thesis*) is the hallmark that unites the various variants of legal positivism, although each thinker develops it with different emphases.

John Austin

John Austin, in his work *The Province of Jurisprudence Determined*, defined law as a command of a sovereign to those in a relationship of subordination, accompanied by the threat of a sanction if it is not obeyed. For Austin, valid law is law that is factually commanded by a ruler who holds supreme sovereignty and is habitually obeyed by society, regardless of whether the content of the command is morally good or bad (Austin, 1995, Lecture I).

Hans Kelsen

Hans Kelsen developed the *Pure Theory of Law*, which views law as a system of norms arranged hierarchically (*Stufenbau*), in which the validity of a norm is determined by the norm above it, ultimately culminating in a hypothetical basic norm (*Grundnorm*). For Kelsen, the validity of a legal norm does not depend at all on a moral assessment of its content; law must be studied as an object of “pure” science, free from sociological, political, and ethical elements (Kelsen, 1967, chs. 1–4).

H.L.A. Hart

H.L.A. Hart, in his monumental work *The Concept of Law*, corrected the weaknesses of Austin’s command theory by developing a concept of law as a combination of *primary rules*, which impose obligations on members of society, and *secondary rules*, namely the *rule of recognition*, the *rule of change*, and the *rule of adjudication*, which govern how primary rules are recognized, changed, and applied. Through the *rule of recognition*, a legal system obtains an objective criterion for determining which rules are valid as law, without having to refer to their moral goodness. Nevertheless, Hart acknowledged a “minimum content of natural law” that is factually needed for a

legal system to survive in human society (Hart, 1961, chs. 5 & 9).

The foregoing exposition shows that legal positivism is not always identical with the simple idea that “law is the command of the sovereign.” The development from Austin to Kelsen and Hart shows a continuing effort to formulate more sophisticated criteria of legal validity, while still adhering to the basic principle that legality and morality are two conceptually separate matters.

The Conflict between Legality and Morality in Determining the Nature of Law

The point of convergence, and at the same time the point of conflict, between the two schools lies in one core question: does the validity of law depend on its morality? Natural law answers affirmatively, in that justice and morality are substantive conditions for the existence of true law. Conversely, legal positivism expressly separates two different questions: “Is the rule valid as law?” on the one hand, and “Is the rule just or moral?” on the other.

This debate becomes even more relevant when linked to the context of the legal system in Indonesia, where positivist sources of law based on legislative procedure often confront value-based sources of law, as seen in studies on the position of Pancasila as a source of law under Article 2 of the Law on the Formation of Legislation. These studies show that legal positivism bases the validity of law on a procedural basic norm (*Grundnorm*), while Pancasila law bases its validity on Pancasila as a legal ideal (*rechtsidee*) and as a basic norm that carries values (Holqi & Widiyanto, 2024).

The main argument that can be drawn from this comparison is that legality is not always identical with morality. A rule may be regarded as legally valid according to procedural criteria, yet at the same time be criticized morally or philosophically because it contradicts society’s sense of justice. Accordingly, there is no need to conclude that one school is absolutely “most correct”; it is more appropriate to understand that the two answer different questions about the nature of law: natural law answers the question of the moral legitimacy of law, while legal positivism

answers the question of the objective identification of the law in force.

Gustav Radbruch and the Problem of Unjust Law

The thought of Gustav Radbruch occupies a special position in this debate because it stands precisely at the crossroads between legal certainty and justice. Before the Second World War, Radbruch was known as a proponent of legal positivism who demanded a sharp separation between law and morality. However, his experience of witnessing how the Nazi regime in Germany exploited formal legality to legitimize morally barbaric policies fundamentally changed his view of the nature of law.

In his highly influential essay, “*Gesetzliches Unrecht und übergesetzliches Recht*” (*Statutory Lawlessness and Supra-Statutory Law*, 1946), Radbruch formulated three basic values of law, namely justice (*Gerechtigkeit*), legal certainty (*Rechtssicherheit*), and utility/finality (*Zweckmäßigkeit*). Ideally the three go hand in hand, but in reality they often collide (Radbruch, 2006a, pp. 13–15).

To resolve this tension, Radbruch formulated what later became known as the “Radbruch formula”: positive law, secured by legislation and power, continues to take precedence even though its content is unjust or does not benefit the people, unless the conflict between the statute and justice has reached an “intolerable” degree (*unerträgliches Mass*), such that the statute, as “defective law” (*unrichtiges Recht*), must yield to justice (Radbruch, 2006b, p. 7).

The Radbruch formula serves as an important bridge between the debate over natural law and legal positivism and the problems of modern law, because it neither wholly rejects positivism (legal certainty remains the primary rule) nor wholly accepts pure positivism (there is a limit of tolerance for injustice which, if exceeded, negates the legal character of a rule). The question that remains relevant to this day is: how “extreme” must the injustice of a law be for it to deserve to be set aside by a judge or by law enforcement officials? Radbruch himself did not provide a precise threshold, and this is what makes his formula a continuing subject of discussion in judicial practice,

including in the post-war decisions of the German Federal Constitutional Court.

The Relevance of the Conflict between Natural Law and Legal Positivism in the Indonesian Legal System

The Indonesian legal system cannot be separated from Pancasila and the 1945 Constitution of the Republic of Indonesia. Article 1 paragraph (3) of the 1945 Constitution expressly states that “The State of Indonesia is a state based on the rule of law,” which affirms the importance of legal certainty as emphasized by legal positivism (Republic of Indonesia, 1945, Art. 1(3)).

However, the Indonesian concept of a state based on law does not stop at legal certainty alone. Pancasila functions not only as a formal source of law but also as a moral and ethical guide in the formation and enforcement of law, so that every legal product ideally reflects the values of humanity and social justice. Within this framework, Pancasila can be understood as Indonesia’s integral legal paradigm, which unites the values of divinity, humanity, unity, democracy, and social justice into one whole (Fadliansyah, 2022).

Accordingly, the Indonesian legal system in fact does not place legal certainty and justice as two poles that cancel each other out, but as two values that should go hand in hand under the umbrella of the Pancasila legal ideal. The practical implication is evident in the task of the judge: in deciding cases, it is not always sufficient for judges to read the text of the rules mechanically and textually (*legisme*); they are also required to understand and uncover the values of justice that live in society (*living law*), as mandated by the provision concerning the judge’s obligation to uncover the legal values living in society.

Nevertheless, it must be emphasized that recognition of the role of substantive justice does not mean that judges are free to disregard positive law at will. The freedom to interpret and discover law (*rechtsvinding*) must still be exercised within the corridor of an accountable legal methodology, so as not to create legal uncertainty that actually harms society. Herein lies the point of balance sought by the Indonesian legal system: legal

certainty as the procedural frame, and Pancasila justice as its substantive spirit.

ANALYSIS

Based on the discussion in the preceding sections, a main argument can be built: the conflict between natural law and legal positivism fundamentally shows that the nature of law cannot be understood from one dimension alone. Legality is needed to guarantee certainty and social order, while morality and justice are needed to test the legitimacy and ultimate purpose of law itself. This argument can be elaborated into the following four propositions.

First, law requires legality in order to have certainty. Without formal criteria for what can be recognized as law, as offered by Hart’s *rule of recognition* or Kelsen’s hierarchy of norms, society would lose an objective and predictable guide for its conduct, and social order would become fragile.

Second, law requires justice so that it does not lose its human orientation. Studies of the practice of legal positivism in Indonesia show that applying a rigid and formalistic positivist paradigm can hinder the pursuit of substantive justice, because the formal-procedural justice it produces does not necessarily represent or satisfy society’s sense of justice (Hermanto, n.d.).

Third, morality is not always an absolute requirement for determining the validity of positive law in the technical-formal sense, but it still has an important function as an instrument of criticism and evaluation of the law in force. This critical function is affirmed by both the natural law tradition and the Radbruch formula: law that is extremely unjust loses its moral justification for being obeyed, even though formally it may still be recorded as “law in force.”

Fourth, in the Indonesian context, legal certainty and justice should not be placed as two values that must always cancel each other out. Comparative studies of positive law and the legal values living in society show a gap where an overly formalistic legal system prioritizes legal certainty over substantive justice, so continuous effort is

needed to bring the two closer together through legal interpretation grounded in Pancasila values.¹

With these four propositions, it can be concluded that the nature of law is in fact two-dimensional: it is a system of norms that requires legality in order to function as an instrument of order, and at the same time a moral project that requires justice in order to maintain its legitimacy before the conscience of the society it governs.

CONCLUSION

Conclusions

Based on the above exposition, two main points can be concluded that answer the problem formulation of this research. First, natural law and legal positivism differ fundamentally in understanding the nature of law. Natural law places law in a close relationship with morality and justice, so that law that is extremely unjust is regarded as losing its character as law; legal positivism, by contrast, emphasizes that the validity of law is determined by its source, structure, and enactment procedure, regardless of any moral assessment of its content. This difference essentially shows a fundamental distinction between *legal validity* and the *moral merit* of law.

Second, in the Indonesian context, the conflict between legality and morality remains relevant because law in Indonesia is intended not only to create certainty but also justice and utility, as reflected in Pancasila and the 1945 Constitution. Therefore, the relationship between legality and morality needs to be understood proportionally, not as a relationship in which each cancels out the other, so that law does not become merely a rigid instrument of order but is also able to perform its function of justice as law that is alive and imbued with spirit in the midst of society.

Recommendations

First, in the formation of legislation, lawmakers need to consistently test draft norms not only from the aspect of procedural compliance but also from the aspect of their conformity with Pancasila values as the nation's legal ideal. Second,

in judicial practice, judges need to be encouraged to develop methods of legal discovery (*rechtsvinding*) capable of combining legal certainty with substantive justice in a responsible manner, without falling into rigid legism or into moral relativism that disregards legal certainty. Third, further legal philosophy research is needed to examine more deeply how formulas such as the Radbruch formula can be adapted contextually into the Indonesian legal system, particularly in dealing with legal cases that are in extreme contradiction with society's sense of justice.

REFERENCES

- Aquinas, T. (1947). *Summa theologiae: I-II, Q. 90–95* ("Treatise on law") (Fathers of the English Dominican Province, Trans.). Benziger Brothers.
- Austin, J. (1995). *The province of jurisprudence determined* (W. E. Rumble, Ed.). Cambridge University Press. (Original work published 1832)
- Fadliansyah, K. (2022). Pancasila as the integral legal paradigm of Indonesia. *De Jure: Jurnal Ilmiah Ilmu Hukum*, 4(1), 1–15.
- Finnis, J. (1980). *Natural law and natural rights*. Clarendon Press.
- Hart, H. L. A. (1961). *The concept of law*. Clarendon Press.
- Hermanto, A. B. (2016). Ajaran positivisme hukum di Indonesia: Kritik dan alternatif solusinya. *Jurnal Hukum dan Bisnis (Selisik)*, 2(2), 108–121.
<https://doi.org/10.35814/selisik.v2i2.650>
- Holqi, F. G. F., & Widiyanto, I. T. (2024). Analisis makna sumber hukum pada Pasal 2 UU PPP: Studi komparatif doktrin positivisme hukum dan hukum Pancasila. *SEIKAT: Jurnal Ilmu Sosial, Politik dan Hukum*, 3(1), 12–19.
<https://doi.org/10.55681/seikat.v3i1.1113>

¹ Compare with studies on the gap between positive law and the legal values living in society in legal systems of a pluralistic

character, as examined in studies on the implications of legal positivism for law enforcement in Indonesia.

- Kelsen, H. (1967). *Pure theory of law* (M. Knight, Trans.). University of California Press.
- Paulson, S. L. (2006). On the background and significance of Gustav Radbruch's post-war papers. *Oxford Journal of Legal Studies*, 26(1), 17–40. <https://doi.org/10.1093/ojls/gqi043>
- Radbruch, G. (2006a). Five minutes of legal philosophy (1945) (B. L. Paulson & S. L. Paulson, Trans.). *Oxford Journal of Legal Studies*, 26(1), 13–15. <https://doi.org/10.1093/ojls/gqi042>
- Radbruch, G. (2006b). Statutory lawlessness and supra-statutory law (1946) (B. L. Paulson & S. L. Paulson, Trans.). *Oxford Journal of Legal Studies*, 26(1), 1–11. <https://doi.org/10.1093/ojls/gqi041>
- Rahardjo, S. (2000). *Ilmu hukum*. Citra Aditya Bakti.
- Republic of Indonesia. (1945). *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*.
- Republic of Indonesia. (2011). *Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan*.
- Sidharta, B. A., & Rasjidi, L. (1994). *Filsafat hukum: Mazhab dan refleksinya*. Remaja Karya.