

Position and Moral Existence in System Law in Indonesia



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ABSTRACT: This research will specifically discuss the position and essence of morality in the legal system in Indonesia. The research method used is normative juridical with a conceptual approach. The results of the study concluded that Essence Moral is determinant Good bad behavior man from corner ethical or ethics, moral based on decency and decency. Moral principles occupy a basic role in enforcement law. According to, Ronald dworkin law interpreted using a morality approach consistent, especially fairness. Which thing to do especially in solve cases Which difficult And complicated. By therefore, moral become part Which No inseparable from knowledge law. If Law is seen as a rule loaded mark And contained moral in inside so truth Which want to embodied more on truth substantive. For support law enforcement that is no longer confined to dogmatics law or method think *legalistic formalistic* so Already it's time developed idea law progressive in process enforcement law as part development from system law modern.

KEYWORDS: Morale, Law, System Justice

A. INTRODUCTION

Law always develop in accordance with need life socialize, nation, And patriotic.¹ Aspect law like fields law criminal, law civil, law system country And etc always move And develop in accordance dynamics his era. In form most simple, law can felt And embodied that is regulation legislation. In more shape complicated, exists law the controlled by a number principle, doctrine, theory, or philosophy law Which acknowledged by system law in a manner universal.²

In matter This Knowledge law can studied in two perspective. First, knowledge law Which conceptualize law as a teaching, norms that contain values (*values*). The study characteristic normative Which *us law* characteristic *what in the written* or law *US what in the books*. Knowledge law in study Which characteristic normative or doctrinal This load necessity (*whatought to b*), So characteristic *das sollen*.³ In in study perspective normative (*doctrinal*) including also study philosophical Which its nature a priori, the It means No based on evidence Formerly but on teachings, values Which its nature abstract.

Essence law if seen from scope the rules is whole regulation legislation Which must obeyed whole people man Where law That is at. Essence Moral is determinant Good bad behavior man from ethical or ethical point of view, morals are based on decency and courtesy.⁴ Moral contains principles called principles moral that is matter fundamentals in system law in Indonesia. Principle moral occupy role base in law enforcement. benchmark morality is conscience Which Can seen from action Which done Connection morality with law enforcement is very close, morality become base in enforcement law in Indonesia.⁵

Hugo Sinzheimer, the law is always in motion dynamic follow order social growing in public so that always face to face with things Which characteristic concrete And humans Which live ⁶. By therefore Already should law No separated of values and morals. Law is not only limited to text Constitution with objective give

¹ Suriel Samuel Mofu Andreas Jefri Deda, 'Customary law communities and customary rights in the province of West Papua as indigenous Papuans in terms of customs and culture: a contemporary ethnographic study', *Journal of Public Administration*, 11.2 (2014), 11–22 .

² Atang Hermawan Usman, 'Society and Government Legal Awareness as Factors in Upholding the Rule of Law in Indonesia', *Journal of Wawasan Yuridika*, 30.1 (2014), 26–53.

³ Masnur Tiurmaida Malau, 'Legal Aspects of Indonesian Government Regulations and Policies Facing Regional Economic Liberalization: ASEAN Economic Community 2015', *Rechts Vinding Journal: National Legal Development Media*, 3.2 (2014), 163–82.

⁴ Supriardoyo Simanjuntak and Kornelius Benuf, 'The Relevance of Divine Values and Human Values in Eradicating Corruption', *DIVERSI: Jurnal Hukum*, 6.1 (2020), 22–46 <<https://doi.org/10.32503/diversi.v6i1.890>> .

⁵ Niru Anita Sinaga, 'The Role of Legal Principles of Contracts', *Binamulia Hukum*, 7.2 (2018), 107–20.

⁶ Subiharta, 'Legal Morality in Practical Law as a Virtue', *Journal of Law and Judiciary*, 4.3 (2015), 385–98.

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certainty law, will but more from That that law can be interpreted with the aim of providing justice for para seeker justice.⁷

In development law, existence public become part And is One unity which cannot be separated. Based on a popular adage Which put forward by Marcus Tullius Cicero, *Ibi societaunt yus* (Where There is public there There is law). Public need structure government For create law Which give regularity in life socialize. Law Which expected No regardless of moral rules because of the formation of society discipline comes from good moral conduct. Thomas Aquinas argue that order moral contain mark For do matter Good And avoid Which wicked. By therefore order moral need concretized in form rule law Which fair.⁸

In development, positivism law Of course No can maintained as on moment born Because public develop such hurry. Community development cannot be separated of social reality that is indeed experiencing changes from period to period. The existence of the law is expected to be road solving for problem Which appear in public. Law Which regardless from moral No can reach to base public, eroded with dynamics Which the more develop in public Which Then raises *conflict of interest* between country with public.⁹ Based on the introduction that has been described previously so can formulated problem includes: How position Moral in System Law in Indonesia and its practice in the System Justice in Indonesia?

Issue Theory Law

Legal system theory according to **Lon Fuller** is every system law genuine (original) always bound on principles moral certain, Which given term "*inner morality*". *inner morality* law, Which is principles moral lowered from idea that law it's an instrument For arrange And controller for behavior manas agent Which own ability consider And choose. Regulation law must enforced to front No can apply ebb, Because only by going forward, humans as agents capable determine choice in behave. Same the case that the rule of law must be relatively clear, possible regulation law Which apply obeyed.¹⁰

Fuller confess that between idea base Theory Law Natural can maintained with hook between positive law and morality, and that linkage rooted on characteristic law That Alone. According to Fullers, possibility fact If system law Which No fair in a manner moral law positive That No must obeyed.¹¹ It is also warned more firmly that inner morality is not ensure that every system law *genuine* That is fair law, and if the law is seriously not fair from side moral fundamentals so obligation For obey must aside, with words other laws that are fundamentally morally unjust No need obeyed.

Lon Fuller in his book entitled "*The Morality of Law*" proposes eight principles that must be fulfilled by law. If No fulfilled, so law will fail For called as law or with say other there must be legal certainty. The eight principles are as following:

- 1) Something system law Which consists from regulation- regulation, No based on judgments perverted For things certain;
- 2) Regulation the announced to public;
- 3) No apply ebb, Because will damage integrity system;
- 4) Made in formula Which understandable by general;
- 5) No can There is regulation Which each other contrary;
- 6) No can demand something action Which exceed What Which Can done;
- 7) No can often changed;
- 8) There must be conformity between regulations and implementation everyday.

Ronald Dworkin based his legal theory on his ongoing critique of positivist legal theory, especially theory Which developed by Hart in "The Concept of law",¹² for Dworkin system law own four characteristics, namely the elements / parts (*elements*), connection (*relation*), Structure (*structure*) And unification (*wholeness*). Ronald Dworkin No doubt Again Wrong One thinker law leading Which avoid from influence legal positivism which continues to be dominant even in versions modification in philosophy law HLA Hart.¹³ Dworkin give support to philosophy law principle- principle morality And ethics Kant. Wrong One attention main Dworkin is developing and defending *a Theory of Interpretation*, adjudication, For offer explanation about How court (And judge) No only decide cases difficult but How they should decide cases difficult, that is case-case

⁷ Salman Luthan, 'Dialectics of Law and Morals in the Perspective of Legal Philosophy', *Journal of Law IUS QUIA IUSTUM*, 19.4 (2012), 506–23.

⁸ Saudamara Ananda, 'Law And Morality', *Journal of Pro Justitia Law*, 24.3 (2006), 301–8.

⁹ Jerry White, *Moral Honesty and Conscience* (Jakarta: BPK Gunung Mulia, 2004).

¹⁰ Matthew Kramer, 'How Moral Principles Can Enter into the Law', *Journal of Legal Theory*, 6.1 (2000), 83–108.

¹¹ Khudzaifah Dimiyati, *Legal Ethics and Morals*, Genta Publ (Yogyakarta, 2018).

¹² I. Dewa Made Suartha, 'Criminal Policy Formulation on Regulation of Death Penalties for Criminal Actors', *Journal of Morality and Legal Culture*, 1.1 (2020), 12–17.

¹³ Islamiyati Islamiyati, 'Criticism of Legal Philosophy of Positivism as an Effort to Realize Equitable Law', *Law and Justice Journal*, 1.01 (2018), 82–96.

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in in where rules Which has resolved , have finished or in where No There is rule Which has set Which apply. Worries here it is Which trigger critics dworkin to Hart. Outlook mainly is his perception that when judge reason about cases difficult, they refers on principle And standard besides rule positivism, that is rules Which can identified based on family tree they, with How they appear like Which determined by a number of device secondary. Essence from teachings Ronald dworkin is Interpretation Law, Where Law is something draft interpretation, Law is interpreted using approach morality Which consistent, especially fairness. Matter where can done especially in solve cases Which difficult And complicated . Theory Interpretation dworkin is Law as integrity, Which is unity from three mark Which very related that is *justice, fairness And procedural due process* Which related One The same other so that Can produce decision Which weighty from side law nor moral.

- a. Mark *justice* emphasize on quality results end a public decision that must protect rights individual in ways Which most can acceptedmoral.
- b. *Fairness* values are the principles associated with award And obedience to right people as maker law by apparatus enforcer law.
- c. Mark *procedural due process* demand obedience against existing norms both when establishing law new or moment law applied in cases unique. Mark This related with principle certainty law.⁷

Ronald dworkin reject Thesis Fact Social positivism with reason that There is a number of standard law whose authority cannot be explained in term fact social. In decide cases difficult, for example, judge often use principles moral Which believed dworkins, No obtain authority law they from criteria social legality Which contained in rule confession. However thereby, Because judge bound For consider principle- principle the when relevant, they must characterized as law. With thereby, dworkin concludes, "if we treat principles as law, We must reject principle First clan positivist, that law something community distinguished from other social standards with some tests in the form rule main".¹⁴ dworkin Also against paradigm law liberal Which attached strong in studies knowledge law in America union, dworkin state that " law is based on objective decision principles, while politics depends on subjective decisions of policy" so according to Dworkin law based on principles decision objective, whereas political depends on decision subjective from policy That Alone. So that in he argued process formation or interpretation law No Possible regardless from influence influence moral, religion And pluralism political.¹⁵

Basics theory law third dworkin covers two claim:

- 1) Judge in system law like in US No own discretion making Constitution in cases difficult; And
- 2) Fill law in system law the determined by norms moral Which show practice law Which There is with method Which best in a manner moral.

Andrew Altman in the book Which title *Arguing About law: An Introduction to Legal Philosophy* write that dworkin own difference opinion with fuller. dworkin No hold on on principles the legality of which in itself is sufficient to create something obligation moral main For obey regulation from something system law positive. However, Dworkin agreed on fuller that obligation law own strength moral ie something reason moral tie it obligation- obligation the. dworkin put source strength moral No solely only in principles legality, but on integrity law. With words others according to Dworkin "moral principles" (*inner morality of law*) is broader than Fuller, i.e. consists of not only principles legality, but Also principles moral Which Good based by existence law That Alone.¹⁶

B. DISCUSSION

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The science of law ¹⁷is a normative science as well as a science practical. Knowledge law said as knowledge normative because it is not free of value but contains value. The science of law contains judgments about what should be done or No must done. Said as knowledge practical Because knowledge law finish problem- problem practical in life man. Knowledge law Alone as knowledge normative at a time knowledge practical Which in in practice, man No only "practice art law" but Also "practice knowledge law". Man No just operate practice law but practice law And law positive observed, collected, systematized, explained, summed up and in the end

¹⁴ Yati Nurhayati Said, M.Yasir, 'Paradigm of Environmental Ethics Philosophy in Determining the Political Direction of Environmental Law', *Al'Adl* , 12.1 (2020), 39–60 <<https://doi.org/10.1017/CBO9781107415324.004>>.

¹⁵ Ganesh Sitaraman, 'The Political Economy of the Removal of Power', *Harvard Law Review* , 134,398 (2021), 398–441.

¹⁶ Erlina Maria Christn Sinaga, 'The Politics of Unwritten Legal Legislation in the Development of National Law', *RechtsVinding Journal* , 8.1 (2019), 1–20 <<https://doi.org/http://dx.doi.org/10.33331/rechtsvinding.v8i1.306>>.

¹⁷ Satjipto Rahardjo, *Law Studies* , ed. by Awaludin Marwan, VIII (Bandung: Citra Aditya Bakti, 2014).

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produce knowledge (knowledge) about practice law and positive laws which are then used in practice law.¹⁸ Although knowledge law explain but in its development becomes material for the science of law to analyzed more carry on Which Then become material for legal practice. And so on so as to form law in a manner continuous.¹⁹

Discuss position values moral in knowledge law And implication in enforcement need see First, the relationship between law and morals in fact own connection tightly with 5 (five) connectedness tightly in including:²⁰

- a) Law need moral;
- b) Laws are codified and more objective in comparison with morality Which No written;
- c) Law related with deed outwardly whereas moral concerns related inner somebody;
- d) Morality is fill drink law". Legals norm And norm moral You're welcome containing rule Which made guidelines for man For behave, And;
- e) Law concerns normative And inner Which tie in a manner moral if believed in heart, whereas morality is only concerned with the attitude of the heart man (Emmanuel Kant).

Immanuel Kant argued that formation law as part from demands moral Which characteristic imperatives (every person must life in accordance with moral principles and just laws ²¹. Will but in level in practice, public put hope Which tall will it works law That Alone. Ronald dworkin explain in the book "Law's Empire" contains the theory of Legal Interpretation, where Law is something draft interpretation, Law interpreted by using a consistent approach to morality, especially justice. Matter where can done especially in solve cases Which difficult And complicated. Discussion the in on no solely view subjective from writer Which of course No agreed positivism law with see the truth That as truth Constitution just And released with morals and values. Even some cases that occur in society show contradictions between law and morals. For example in Article 284 of the Criminal Code there is difference view Which caused Because there are differences in underlying values and morality view person "West" with Nation Indonesia. Criminal Code made by the Netherlands is of course based on the values mark Which develop that related with sexuality is part from right And freedom each individual, free, without coercion And considered reasonable, not reprehensible while done Like The same Like And No bound marriage. Adultery And institution marriage considered as something matter Which very personal by therefore made as offense complaint in Criminal ²²Code

On actually in enforcement criminal law No just enforce norm just but more on the values contained therein. Law enforcement with prioritize mark- mark This aligned with progressive law enforcement that the law was created for human ¹⁶. Incompatibility between moral values and This law then creates a gap between country with public Which on Finally raises conflict.²³ Law Already should well interpreted by para enforcer law so No just become line words Which free mark. Law expected can realize justice substantive as Which aspired to by public. Concern satjipto Rahardjo will the condition of law enforcement in Indonesia which already so apprehensive as a result of thought positivism law This so appear idea law progressive (laws are made for humans, contain value humanity by achievement happiness man, justice and welfare). ²⁴Progressive law does just that see law on its nature Which form something rule written Which rigid, but Also see aspect behavior existing in society to be able to provide justice as something One unity Which *holistic* (whole).²⁵

Ahmad Ali argue in he wrote Which entitled: "From Formal Legalism to Delegalization", a failure in providing procedural justice And No can produce justice Which substantial caused by the views of law enforcement officials who become funnel Constitution as influence from positivistic rigid.²⁶ Principle legality Which Still honored tall in enforcement law in Indonesia on specifically, cause the more away justice substantive to be realized. Law enforcement officials confined in the thinking of legal positivism and not many dare to make decisions by doing interpretation on Constitution Which There is. Whereas law Indonesia actually No dry from humans Which potentially For turn the way law so that fulfil hope public. Judge should not only stick to the formal text but consider that text That only as guide And base decision on heart his conscience

¹⁸ Erlyn Indarti, *Philosophy of Science: A Paradigmatic Study. Lecture VII* (Semarang, 2011).

¹⁹ Susanto Anthon F, *Non-Systematic Law Studies* (Yogyakarta: Genta Publishing, 2010).

²⁰ Abdul Halim Barkatullah Teguh Prasetyo, *Philosophy, Theory and Science of Law: Thoughts Towards a Just and Dignified Society* (Jakarta: Raja Grafindo Persada, 2007).

²¹ Mohammad Adib, *Philosophy of Science, Ontology, Epistemology, Axiology, and the Logic of Science* (Yogyakarta: Student Library, 2010).

²² Herpin Hadat, 'The Existence of Tri Hita Karana in the Establishment of Legal Regulations in Bali (Scientific Philosophy Perspective)', *Journal of Udayana Law Masters*, 9.1 (2020), 132–41 <<https://doi.org/https://doi.org/10.24843/JMHU.2020.v09.i01.p09>>.

²³ Jujun S. Suriasumantri, *Philosophy of Science A Popular Introduction* (Jakarta: Pustaka Sinar Harapan, 2007).

²⁴ Erlyn Indarti, *PHILOSOPHY OF SCIENCE: A Paradigmatic Study, (Lecture VII Teaching Materials)* (Semarang, 2015).

²⁵ Ramla Surbakti, *Understanding Political Science* (Jakarta: Grafindo Publisher, 1982).

²⁶ Niru Anita Sinaga.

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first new searched chapter Constitution For give legitimacy .²⁷ As example, Judge Bismar Siregar argue that justice must laid in on law so that in disconnect something case judge base on heart conscience with find regulation Which arrange about deed the so that can givedecision based on on law.²⁸

Judge have responsibility For dig, understand And apply laws Which lifein society based on the cultural values of the Indonesian Nation For realize justice substantial. Law not only _ seen from facet formal in on paper mere, but customized with development Andchange law in life public. According to **K. Bertens** , the link between law and morals as quoted in the article “Legal Morality in The Law of Praxis as a Priority”, argued that law need moral, there is linkages Which tightly between law, moral And religion. law which not accompanied by morality will have no meaning and considered No quality because quality lawbe measured with moral. Values moral of course No should separated from law That alone ²⁹. Law without mark moral in it's just words that give rules or provisions as a norm but eliminates values Which contained in Pancasila And want embodied through law. Already should law reflects the moral value of the place where the law is develop. Legal values and moral values that exist in system law national must based on Pancasila.

C. CONCLUSION

The moral standing in the legal system in Indonesia And practice/implementation in system Justice criminal law in Indonesia, is not only seen as a regulation written or *law as what in the books* , but must be seen as a value-laden rule. Hence, morals become part Which No can inseparable from knowledge law. View para expert law And enforcer law to law That Alone influential on level the practice. If law seen as a rule loaded mark And contained moral in inside so truth Which want to embodied more on truth substantive. To support law enforcement that is not Again confined on dogmatics law or method *think legalistic formalistic* so Already it's time developed progressive legal ideas in the process of law enforcement as part development from system law modern. In Indonesia use system law based on Pancasila. And it's time for the development of science and law enforcement based on Indonesian culture itself, based on the values of Pancasila which are full of mark moral.

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²⁷ Nurfaqih Irfani, 'The Principles of Lex Superior, Lex Specialis, and Lex Posterior: Meaning, Problems, and Their Use in Legal Reasoning and Argumentation', *Journal of Indonesian Legislation* , 16.3 (2020), 305–25.

²⁸ Habib Shulton Asnawi, 'Disassembling the Paradigm of Legal Positivism in Combating Corruption in Indonesia: Fulfillment of Human Rights in a State of Law', *SUPREMACION OF LAW* , 2.2 (2013), 333–58.

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