Philosophical Discussion Of Legal And Moral Relationships In Perspective Of Natural Law And Legal Positivism

achmad Soeharto[1], taufik[2], anik kunantyorini[3], Ong Argo Victoria[4]
achmadsoeharto012@gmail.com,[1] taufik2022@gmail.com,[2] anik@gmail.com,[3] argovictoriaipin@gmail.com[4]
Faculty Of Law PekalonganUniversity[1, 2, 3], Internasional Islamic University Malaysia[4]

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Abstract

The relationship between law and morals has become an academic and philosophical debate throughout the ages, especially in the schools of natural law and legal positivism. The school of natural law always relates law and morals in a close, inseparable relationship, like a coin. The law must contain moral values. Meanwhile, legal positivism clearly separates the relationship between law and morals. Thus the law is not at all related to morality, the problem of law contains moral values or not, not the substance and legal issues, the most important thing is that the law is made by a sovereign ruler. Law is separated from non-juridical elements, such as ethics, morals, politics, economics, sociology, and so on. In other words, the law is purified from something that is not law. With the very sharp differences between the two schools of law, the schools of natural law and legal positivism for hundreds of years have never agreed on the relationship between law and morals. Each has a paradigm, method, theory, and a strong philosophical basis in seeing the relationship between law and morals.

Keywords: Natural Law, Legal Positivism, Law and Morals

Abstrak

Kata kunci:
Hukum Alam, Positivisme Hukum, Hukum dan Moral

Hubungan hukum dan moral menjadi perdebatan akademis dan filosofis sepanjang masa, khususnya pada mazhab hukum alam dan positivisme hukum. Mazhab hukum alam senantiasa menghubungan antara hukum dan moral dalam jalinan hubungan yang erat, tidak dapat dipisahkan, seperti sekeping mata uang. Hukum harus mengandung nilai-nilai moralitas. Sedangkan positivisme hukum dengan tegas memisahkan hubungan antara hukum dengan moral. Dengan demikian hukum tidak berkaitan sama sekali dengan moralitas, masalah hukum itu mengandung nilai-nilai moralitas atau tidak, bukan substansi dan persoalan hukum, yang terpenting hukum tersebut dibuat oleh penguasa yang berdaulat. Hukum dipisahkan dari anasir-anasir yang tidak yuridis, seperti etika, moral, politik, ekonomi, sosiologi, dan sebagainya. Dengan kata lain hukum dimurnikan dari sesuatu yang bukan hukum. Dengan perbedaan yang sangat tajam diantara dua mazhab hukum tersebut, maka mazhab hukum alam dan positivisme hukum selama ratusan tahun yang lalu tidak pernah ada kata sepakat dalam melihat hubungan hukum dan moral. Masing-masing mempunyai mempunyai paradigma, metode, teori, dan dasar filosofis yang kuat dalam melihat hubungan antara hukum dan moral.

Kata Kunci : Hukum Alam, Positivisme Hukum, Hukum dan Moral

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I. Introduction

The philosophical views of adherents of Natural Law and Legal Positivism in seeing the relationship between law and morals have been hundreds of years ago, still leaving philosophical debates to this day. Adherents of natural law interpret law as not just legal certainty, but furthermore that law must contain moral values and principles, so that the quality of law can be seen from how much the principles and moral values are contained in the law. . The view of Natural Law has been built since the Greek era as the peak of the triumph of philosophy. During the Greek period, philosophical thought flourished, giving birth to famous philosophers who have influence to this day. Natural law reached its peak in the XVII and XVIII centuries. On the one hand, adherents of the Legal Positivism school adhere to legal certainty, and do not annul all elements that are not juridical. Each of these sharp differences has a strong basis and argument. As we know, that in the nineteenth century, the triumph of natural law faded and wasreplaced by legal positivism until today in the twentieth century. In a period of about two centuries, of course, there have been many theoretical, methodological, paradigm and justice struggles. Along with the development of the Legal Positivism School, various problems have arisen and it turns out that legal positivism has not been satisfactory in responding to the various challenges and problems that exist. Codified law is rigid and in terms of justice like the horizon that is difficult to reach. So now there is a longing for universal, eternal law and focuses on subtsansial justice, namely: Natural Law.

In this XXI century, the issue of legal and moral relations is still relevant to be discussed, discussed and seems to be a debate throughout the ages. Mainly two schools of law, namely between Legal Positivism and Natural Law. Both schools of law expressly have their own paradigms, methods,

arguments and beliefs, so that they become academic and philosophical debates, in a big question what is the real relationship between law and morals according to Natural Law and Legal Positivism.

B. RESULT AND DISCUSSION

1. Legal and Moral Relations in the Perspective of Natural Law (Natural Law)

The word natural law was used in an entirely different sense by the so-called "School of Natural Law", which in the 17th and 18th centuries reached their peak. These legal philosophers defined natural law as a complete, truly existing complex of norms, which are themselves perfect and also sufficient to regulate life down to the details…Natural laws are not laws that apply in reality. . It is a law that should apply, which must be implemented, if people's lives are to be perfect… Natural law will only become a real law if it accepts the form of a legal norm as the result of the work of jurists and legislators. The philosopher Sopholes in his famous writing, Antigone, accepted the enactment of a law other than positive law. In his opinion, this other law is divine which applies eternally and is the basis for the application of positive law. This means that the contents of this positive law must not conflict with the Natural Law, because if it is contrary to the positive law it has no valid force.

Natural law, according to Aristotle, is a law which by nature is a law, regardless of whether this law is considered good or not by humans. This Law of Nature is not absolute, but within it has a power that can be felt everywhere. Regarding the position of Natural Law against Positive Law, Aristotle argues that Natural Law adds to positive law all deficiencies and

vacancies experienced by positive law are filled and fulfilled by Natural Law. Because after all as man-made there is no positive law that is perfect[1].

Thomas Van Aquino is the most famous philosopher in the Middle Ages, although his teachings were heavily influenced by Aristotle, but in dividing / classifying the law is different from the legal classification made by Aristotle. Thomas Aquino divides the law into 4 (four) groups, namely Lex Aaeterna: God's ratio law which cannot be grasped with the five human senses, Lex Devina: God's ratio law which can be captured with the human senses, Lex Naturalis: natural law, part of the lex aeterna into the human ratio, and Lex Positivism: the application of Lex Naturalis in human life. It must be admitted that it was Aristotle who first classified the laws of Natural Law and Positive Law. Even Aristotle, who stated that if positive law violates natural law, it is possible when society wants it, but its relevance remains positive law does not abolish natural law. In the seventeenth and eighteenth centuries, natural law philosophers saw the relationship between law and morals as a single unit, meaning that law and morals have an absolute relationship, law must contain elements of morality, so there is an adage "law without morality is empty". This certainly provides a place for morals to fill in and add to the sides of the law which are expected, so that positive law is as expected.

The will to be kind to fellow human beings leads to an association between individuals based on rational and moral principles. But the same will pushes people also to make a rule of living together in accordance with these moral principles. This is done by establishing a system of norms that certain people in a society adhere to. Between law and morals are like two sides of a coin, where one can justify the other. Morals can be the basis for

judges to determine and implement legal rules that are not related or have very little relation to the moral sector.

If one follows the history of natural law, then one is following the history of mankind struggling to find absolute justice in this world and its failures. Throughout time spanning thousands of years, also up to the present, the idea of this Natural Law has always emerged as a manifestation of such human endeavor, namely the longing for a law that is higher than positive law. . . . What is meant by natural law according to this teaching is law that applies universally and eternally. Judging from the source of this natural law, there are those that come from God (irrational) and those that come from human reason (ratio) ... natural law as a substance (content) contains norms. Regulations can be created from absolute principles commonly known as human rights regulations. All natural law regulations originate from the stipulation, "that we must do good and avoid bad things." Because in humans reign and this tendency places humans in their entirety in society. All nations have the same natural law…according to its principles, natural law cannot be changed. Apart from that, after all, natural law cannot be removed from the human conscience.

In looking at the relationship between law and morals, the school of natural law argues that law and morals are one unit. The law must contain moral values in order to be called a law. The norms that exist in moral norms need to be derived into a norm, so that the norms that exist in abstract legal norms will turn into operational when they are included in a norm. The logic that concerns us all is that the laws of nature do not speak of humans in a particular place but speak of humans in general. Likewise, when talking about law, we are not talking about the law in a particular country but talking about the law universally. With the function

of law as order in human life related to its ethical function in this world, it is appropriate when law and morals become one coin, or a harmonious rhythm in human life. Natural law gives a spirit to existing positive law where with this spirit it is hoped that all positive legal regulations have the quality of being a just law.Legal and Moral Relations in Legal Positivism Perspectiv, Positivism has the pretension to rebuild a new objective order that is not based on metaphysics, but on the methods of the natural sciences; positivism into scientism. Legal positivism has a relationship with positivism, where positivist thought in the seventeenth century, pioneered by Auguste Comte, focused on what could be observed and avoided subjective knowledge. Scientific knowledge requires grounded knowledge.

C. CONCLUSION

Law Number 8 of 1999 regulated about the exertion of standard forms of clauses which prohibited by law albeit existed because of based on legal principles of agreement which have been recognized and agreed upon by both parties, it still illegitimate if it contains an exoneration clause in it.

Illegitimate here imply that the agreement is null and void, that legally signify the agreement is considered to have never abide and is not binding on the parties so that things return to normal. The enactment of Article 18 UUPK is a guarantee given by government as a policy maker to provide a balance in the freedom of contract which is usually applied as the basis for making agreements so as to provide equality of position for a balanced bargaining position. The application of Article 18 of the UUPK must be used as a clear standard in making a standard contract in an agreement, which if violated will result in legal consequences of both criminal and civil sanctions as well as cancellation by law of the agreement.

The author hopes that there will be a similar understanding regarding the imposition of interpretation the freedom of contract and consensualism which is used as the basis of the agreement that have to pay attention against limitations of the applicable amercement for the realization of an equal rights from the interests of the parties. In fact, with the provisions of the rules regarding the requirements for the inclusion of standard clauses and content material in accordance with the provisions, it certainly makes it easier to make deeds related to the realm of the agreement. So it should not be necessary to make their own laws in the name of freedom of contract which is considered every agreement agreed by the parties to be valid as law. Standard contracts posit on the freedom of contract are allowed as long as its not contrary and have been adjusted to the amercement.

Notaries as public officials are concede to render authentic deeds which are the strongest and most complete written evidence, which exist because they are obliged by laws and regulations and are appetence by parties to assure the due and onus in order to define certitude, order and patronage of the law. Thus, as public officials who are charged with important duties and responsibilities, Notaries must knowing all legal knowledge related to the deed so can avoid all lawsuits from parties who are harmed due to disputes from the deed made in the future.

BIBLIOGRAPHY

F Budi Hardiman.2003. *melampaui Positivisme dan Modernitas Diskursus Filosfis tentang MetodeIlmiah dan Problem Modernitas,* Yogyakarta, Kanisius

H.L.A. Hart. 2011. *Konsep Hukum (The Concept of law)*, Cet. IV, Bandung, Nusa Media

Juhaya S Praja.2014. *Filsafat hukum Antar Madzab-Madzab Barat dan Islam*. Bandung : Latifah Press

Lili Rasjidi dan Ira thania Rasjidi.2010. *Pengantar Filsafat Hukum*, Bandung : CV. Mandar Maju

Munir Fuady.2014. *Teori-Teori Besar Dalam Hukum,* Cet. III. Jakarta, Prenada Media Group

Petrus CKL Bello.2012. *Hukum dan Moralitas Tinjauan Filsafat Hukum*. Jakarta : Erlangga

Satjipto Rahardjo, 2000. *Ilmu hukum*, Cet.V. Bandung, PT. Citra Aditya Bakti

Sutikno.2003. *Filsafat Hukum Bagian 2*. Cet. VIII.Jakarta, Pradya Paramitha

Theo Huijbers.2005. *Filsafat Hukum,* Cet. III.Yogyakarta : Kanisius

_____.1982. *Filsafat Hukum Dalam Lintasan Sejarah*. Yogyakarta : Kanisius

Ridwan, Khudzaifah Dimyati, Absori. *Relasi hukum dan Moral: sebuah Potret antar Mazhab dan Konteks Keindonesiaan,* Prosiding Konferensi Nasional ke-3 Asosiasi program Pascasarjana perguruan Tinggi Muhammadiyah Yogyakarta (APPPTM)