

Moral Position In Legal Science: An Analysis of The Dynamics of Legal Science Development

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Abstract : *The emphasis of moral principle lies in the beneficial purpose of law subjected to lengthy problems regarding the placement. Different analyses have been carried out relating to the effects of natural law and positivism in legal science. Therefore, this study aims to achieve an understanding of the position of moral principle in legal science in the dynamics of legal development. The results show that moral principle assumes a significant role in legal science in the context of natural law theory. Conversely, positivism suggests the purification of legal constructs from moral components, emphasizing the need to remain detached from moral principles.*

Keywords : *Moral, Legal Science, Civilization of Legal Science*

Abstrak : Moral menekankan kepada manfaat tujuan dari hukum itu sendiri. Sedangkan Hukum masih memiliki probalematik yang cukup panjang tentang penepatan moral di dalam hukum itu sendiri. Peredabatan tidak kunjung usai antara aliran hukum alam dan aliran postivisme mengenai kedudukan moral di dalam ilmu hukum. Menurut aliran hukum alam moral memiliki kedudukan yang penting dalam ilmu hukum bahkan hal yang sangat fundamental, sedangkan menurut aliran hukum postiviseme produk hukum harus dibersihkan dari anasir-anasir moral Oleh karena itu, pada tulisan ini hendak dicapai pemahaman mengenai bagaimana kedudukan moral dalam ilmu hukum dalam dinamika perkembangan hukum sebagai peradaban ilmu hukum.

Kata kunci : Moral, Ilmu Hukum, Peradaban Ilmu Hukum

I. INTRODUCTION

Legal science is the entirety of the theoretical discourse of the law in the context of *jurisprudence*.¹ Gijssels and van Hoecke stated that *jurisprudence* was a systematic and organized knowledge relating to legal phenomena, power structures, norms, rights, and

¹ FX Joko Priyono, *Kedudukan Ilmu Hukum Dalam Ilmu Pengetahuan*, Materi Kuliah Teori Hukum, Program Doktor Hukum Universitas Diponegoro Semarang, 2023.



obligations.² Legal science is different from law since the concept does not originate directly from the evolutionary progression of the systems but can be transformed through the mechanism of societal justice.³

According to Peter Mahmud Marzuki, legal science is the study of law and cannot be classified into social sciences due to empirical analysis. In this context, social sciences do not provide space for creating legal concepts. Previous study only analyzed the implementation of legal concepts, focusing on individual compliance with legal rules.⁴ According to Philipus M. Hadjon, the four factors describing legal science as a *sui generis* include normative character, terminology, types, and layers of legal science.⁵

An institution in the pursuit of truth, legal science continues to evolve but the development is not linear. The comprehensive scale is aimed at absolute truth and justice,⁶ where legal science is related to existing and designed laws.⁷ According to Durkheim, legal principle represents societal moral, depicting the embodiment of solidarity and togetherness⁸ to regulate individuals in society. The adoption of the classic expression "*ubi societas ibi ius*" shows that the term legal cannot exist without the society.⁹ Van Apeldorn stated that the term should be interpreted as rules and justice to ensure certainty without exception.¹⁰

A primary support for moral position of legal science is the assertion that equitable frameworks should be derived from universal moral principles. John Rawls reported the significance of justice in the formulation of laws. Furthermore, policymakers should make decisions with the assumption without preference for social or economic positions to uphold justice without bias. According to FX Joko Priyono in Legal Theory lecture dated December 6, 2023, the legitimacy of the law is forfeited when the concept deviates from moral principles. The purpose of legal science should include moral values, aiming to guide society towards virtue and obey moral obligation.¹¹

Some methods used for moral position in legal science are inconsistent. H.L.A. Hart emphasized that legal positivism should be understood separately from moral considerations. For positivists, the term legal is established by the legitimate authority,

² Ilmu Hukum Dalam Perspektif Ilmu Pengetahuan Moder, https://ditjenpp.kemenkumham.go.id/index.php?option=com_content&view=article&id=259:ilmu-hukum-dalam-perspektif-ilmu-pengetahuan-modern&catid=108&Itemid=161&lang=en, diakses tanggal 15 Desember 2023.

³ Lilik Mulyadi, *Kajian Deskriptif Analisis Tentang Hakikat Ilmu Hukum Ditinjau Dari Aspek Ontologi, Epistemologi dan Aksiologi Ilmu*, Malang, 2008, hlm. 1.

⁴ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Jakarta : Kencana, Cetakan ke-10, 2020, hlm. 36.

⁵ Herowati Poesoko, *Ilmu Hukum dalam Perspektif Filsafat Ilmu*, Yogyakarta : LakBang PRESSindo, 2018, hlm. 91.

⁶ Sudjito, *Hukum dalam Pelangi Kehidupan*, Yogyakarta : Gajah Mada University Press, 2012, hlm. 30

⁷ Theo Huijbers, *Filsafat Hukum*, Yogyakarta : Kanisius, 1995, hlm. 139.

⁸ Bernard L Tanya, dkk, *Teori Hukum*, Yogyakarta : Genta Publishing, 2013.

⁹ Peter Mahmud Marzuki, *Op.cit*, hlm. 41

¹⁰ Fithriatus Shalihah dan Oksep Adhayanto, *Hukum, Moral dan Kekuasaan Dalam Telaah (Hukum Adalah Alat Teknis Sosial)*, Jurnal Fiat Justisia, Volume 10 Issue 4, 206, hlm. 654.

¹¹ Muhammad Erwin, *Filsafat Hukum Refleksi Kritis Terhadap Hukum dan Hukum Indonesia (dalam Dimensi Ide dan Aplikasi)*, Depok : Rajawali Pers, 2019, hlm. 224-225.

without necessarily considering moral. Furthermore, it connects legal and moral principles to achieve certainty.¹² The views are countered by Lon L. Fuller, stating that the purpose of legal is to achieve a high level of moral principle. The development of legal system, disregarding moral aspects and considerations is highly possible.¹³ In addition, law maintains an inherent connection with moral principles and any legal framework reflecting the concept.¹⁴ The question of moral position in legal science has become an interesting topic in various contexts, specifically when viewed from the perspectives of natural law and legal positivism.

II. DISCUSSION

The Meaning of Moral

Moral is a concept inseparable from human life and relates to ethical principles, values, and standards of behavior that govern social interactions and individual decision-making. The term originates from Latin words "mos" (singular), "mores" (plural), and the adjective "moralis". The plural form "mores" means customs, behavior, moral, while the adjective "moralis" represents moral.¹⁵ According to W. Poespoprodjo, moral is the actions of humans to determine right or wrong, as well as good or bad. Moral includes the understanding of the goodness or badness of human actions. The term can also be interpreted as objective and subjective, as well as intrinsic and extrinsic.¹⁶ Failure to adhere to the standards or values shows that actions may be subject to judgment as morally reprehensible or undesirable. The term "bad" carries a dual meaning similar to "good", and "action" includes feelings, thoughts, or speech. In this context, good deeds and circumstances are closely related. Similarly to legality, the entire system of rules and values constitutes a conceptual system relating to spiritual life. This is because moral rules and values are products of human moral consciousness.¹⁷

Moral can be defined as a set of rules that govern human behavior based on ethical values, goodness, and justice. In this context, the principle determines the concept of good and bad, or right and wrong. Most societies rely on the principle as a foundation for decision-making and interacting with others

¹² Asep Bambang Hermanto, *Ajaran Positivisme Hukum di Indonesia : Kritik dan Alternatif Solusinya*, Jurnal Selisik, Volume 2, 2016, hlm. 108.

¹³ Muhammad Rusydi, *Hukum dan Moral : Mengulik Ulang Perdebatan Positivisme Hukum dan Teori Hukum Kodrat H.L.A. Hart & Lon F. Fuller*, Jurnal Al-Wasath 2 No. 1 : 1-7, Hlm. 4.

¹⁴ Petrus CKL Bello, *Sabkah Hukum yang Buruk secara moral ? Perdebatan Antara Lon Luvois Fuller dan H.L.A. Hart*, Honeste Vivere Journal, Volume 33 Issue 2, 2023, hlm. 1

¹⁵ Ridwan, *Relasi Hukum dan Moral : Perspektif Pemikiran Hukum Kodrat, Positivisme Hukum dan Hukum Profetik*, hlm. 13.

¹⁶ W. Poespoprodjo, *filsafat Moral Kesuksesan Dalam Teori dan Praktek*, Bandung: Remaja Karya, 1986, hlm. 102-103.

¹⁷ JJ. H. Bruggink, *Refleksi tentang Hukum Pengertian-Pengertian Dasar Dalam Teori Hukum*, diterjemahkan oleh B. Arief Sidharta, Bandung : PT Citra Aditya Bakti, 2015, 223-224.

Moral influences the behavior of societies and serves as the basis for the formation of legal and justice. However, the complexity also presents challenges in achieving universal moral agreements among cultural differences and diverse perspectives.

The Meaning of Legal Science

The study of legal is known as *jurisprudence*, derived from the Latin word "*jus, juris*," meaning legal or rights, and "*prudens*," translating as expertise. Therefore, the common meaning of *jurisprudence* is the "study of legal".¹⁸ Gustav Radbruch stated that legal science was the study of the objective meaning of the norms. Paul Scholten defined the concept as an analysis conducted to examine the existing legal framework as an immutable entity (*een gegeven grootheid*). According to Mochtar Kusumaatmadja, legal science includes the study of the applicable norms in a specific country or society during a particular period.¹⁹ The field should incorporate insights from diverse disciplines without compromising the distinctive identity as a normative science.²⁰ In the context of the law, legal science is a discipline dedicated to cataloging, presenting, interpreting, and systematizing the entirety of positive legal norms applicable in a specific society or country. This is achieved through the use of concepts, theories, classifications, and methodological developments.

In classifying disciplines, legal science falls under the category of Practical Normative Sciences, which establishes relationships between two or more entities. The classification is based on the principle of imputation to determine the obligation of a particular subject, regarding the occurrence of certain actions, events, or conditions. This practical science serves as the convergence point for various disciplines, particularly Humanities, to be processed and integrated proportionally into legal theories and propositions of norms.²¹

The Position of Moral in Legal Science According to a Natural Legal Perspective

Natural legal is also known as *jus naturale, lex naturalis*, and the concept describes legality of nature. According to John Finch, as cited by Zainal Arifin Mochtar and Eddy O.S Hiariej, there are many other names for the term, such as *legal of the universe, legal of God, eternal legal, legal of mankind, and legal of reason*.²²

¹⁸ Satjipto Rahardjo, *Ilmu Hukum*, Bandung : CV. Citra Aditya Bhakti, Cetakan Kelima, 2000, hlm.9.

¹⁹ Herowati Poesoko, *Op.cit*, hlm. 83.

²⁰ Bernard Arief Sidharta, *Refleksi Tentang Struktur Ilmu Hukum*, Bandung : CV. Mandar Maju,2009, hlm. 114.

²¹ Herowati Poesoko, *Op.cit*, hlm. 86.

²² Zainal Arifin Mochtar dan Eddy O.S Hiariej, *Dasar-Dasar Ilmu Hukum : Memahami Kaidah, Teori, Asas dan Filsafat Hukum*, Red & White Publishing, 2021, hlm. 218

The theory of natural legal was first introduced by Aristotle,²³ who taught two kinds of natural legal, namely:²⁴

- 1) Legal in force due to the determination of the state authorities.
- 2) The applicable legal depends on human views about good and bad, "real" legal.

Aristotle states that "natural legal" is "legal perceived by healthy individuals as harmonious with the nature of things."²⁵ Furthermore, Cicero reports that "true legal" is legal whose reasons are true according to universal, immutable, and eternal nature.²⁶ In the context of thought, legal science is seen as a necessity (*nomos*) for both the universe and human life. According to Philip Selznick, as cited by Satjipto Rahardjo, the ability of natural legal to influence life includes:²⁷

1. Natural legal accepts the existence of scientific study.
2. Natural legal accepts the existence of a final view in carrying out an assessment.
3. Natural legal summarizes moral relevance truths, such as the need for self-esteem.
4. Natural legal summarizes eternal truths about the nature of society that have moral relevance, such as the distribution and use of social power.
5. Natural legal summarizes eternal truths regarding the nature and trustworthiness of an order.

The flow of natural legal can be divided into (1) irrational and (2) rational.²⁸ According to the proponents of the irrational school, the term "legal" is considered universal and eternal, connecting human rationality and the aspects of reason.

The rational natural legal school defines the term as universal and eternal, emphasizing human ratios. An important figure of the irrational school of nature is Thomas van Aquinas, who argues that all events are governed by an "eternal law" (*lex eterna*), serving as the basis for the power of other regulations.²⁹ The necessity of *lex eterna* (*eternal legal*) and *lex naturalis* (*natural legal*) is based on the postulates of causality. The postulates of the syllogism are used as a pillar for self-evident and suppositive premises. A form of self-evident premise states that "all humans love truth and justice" in life. This is consistent with the vision of natural legal teachings in responding to human needs.³⁰

Other figures of the rational natural legal school are Hugo de Groot or Grotius and Immanuel Kant. According to Grotius, the principles originate from human reason, and

²³ *Ibid*, hlm. 220.

²⁴ C.S.T. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Jakarta : Balai Pustaka, 1986, hlm. 59.

²⁵ *Ibid*, hm. 59-60.

²⁶ Zainal Arifin Mochtar dan Eddy O.S Hiarriej, *Op.cit*, hlm. 222.

²⁷ Satjipto Rahardjo, *Op.cit*, hlm. 173.

²⁸ Darji Darmodiharjo dan Shidarta, *Pokok-Pokok Filsafat Hukum Apa dan Bagaimana Filsafat Hukum di Indonesia*, Jakarta : PT Gramedia Pustaka Utama, Cetakan keenam, 2006, hlm. 103.

²⁹ *Ibid*.

³⁰ Rasdi, *Eksistensi Nilai Moral dalam Ilmu Hukum*, Jurnal Hukum Progresif, Vol. 8, No. 2, 2020, hlm. 189.

God's commands, which cannot be altered. This is because God is the *causa remota* of natural legal as the creator of humans and reasons. In addition, humans describe and implement the principles of legal.³¹ The tendency to be morally just and divine should be able to change the concept into standard legal.

Human superiority is designed from the consistency with standards inherent to beings endowed with rationality.³² Immanuel Kant discussed moral issues in depth and reported three building blocks of philosophy, namely:³³

1. Moral is autonomous as a form of freedom for intelligent creatures.
2. In the context of definite command, an action is built before transforming into a universal legal.
3. There is a conflict between reason and passion in achieving ideal objectives and the empirical conditions applied in natural legal.

A purposeful good deed does not show a selfless attitude, provided the interests of individuals are followed. For Immanuel Kant, moral action is completely independent, including good intentions, goals and conditions, without restrictions.³⁴

According to natural legal teachings, preserving nature is essential for humans to attain objectives. The essence of legal science in natural interests is manifested as goodness to establish moral. Therefore, legal science should contain moral values to guide society towards virtue.³⁵

Fuller reports that a genuine legal system is tied to certain moral principles termed "*the inner morality of law*." This legal principle is the *prima facie* obligation for every citizen to respect the law.

Some legal products of the authorities are consistent with moral principles. Validity is retained even though legal product may not be morally commendable. Fuller also stated another perspective, suggesting that legal product might lack validity according to the "*inner morality*" and could be justified for social purposes.³⁶ Legal science is a human attribute depending on eight principles, namely *generality, promulgation, non-retroactive, clarity, non-contradiction, possibility of compliance, constancy, and congruence between declared rule and official action*.³⁷ John Finnis reported that the construction of natural legal, departing from primary moral, should be used in making legislation and judges' decisions.³⁸

According to Dworkin, every legal product should be interpreted and applied with a moral method. Integrity may not guarantee the achievement of justice, but there is a

³¹ Zainal Arifin Mochtar dan Eddy O.S Hiarriej, *Op.cit*, hlm. 244.

³² *Ibid*, hlm. 245.

³³ *Ibid*, hlm. 249.

³⁴ S.P. Lili Tjahyadi, *Hukum Moral : Ajaran Immanuel Kant tentang Etika dan Imperatif Kategoris*, Yogyakarta : Kanisius, 1991, hlm. 81.

³⁵ Muhammad Erwin, *Op.cit*, hlm. 224-225.

³⁶ Shidarta, *Hukum Penalaran dan Penalaran Hukum*, Yogyakarta : Genta Publishing, 2013, hlm. 190

³⁷ Muhammad Erwin, *Op.cit*, hlm. 257-258.

³⁸ *Ibid*, hlm. 259.

certain degree of moral in every legal product. Legal science is an expression of government philosophy, consisting of moral principles to establish the fundamental objectives of government and the relationship with individuals. These principles are legitimate bases of legal decisions to guide the interpretation of legal rule. Natural legal recognizes the existence of objective and universal moral standards. The perspective asserts that there are fixed and universal moral principles.

For example, human rights, justice, and truth are considered part of legal nature inherent in human nature. From the perspective of natural legal, the position of moral is important because the principles are considered the basis underlying the formation of positive legal. Positive legal established by government authorities is expected to reflect moral principles. In this context, the concept is considered valid and authoritative legal.

The Position of Moral from the Perspective of Legal Positivism

Legal positivism views the need for a strict separation between legal and moral, as well as *das Sein* and *das Sollen*. Considering this perspective, legal authority is exclusively dependent on the decrees of the ruler. In the Positive Legal School, a faction known as Legism reports that the term legal is synonymous with the law.³⁹

Legal norms must exist objectively as positive norms through concrete agreements among members of society. The term legal, or *ius*, is subjected to positivism in *lege* or *lex* to ensure clarity. The initiators of legal positivism separated legal and moral domains.

According to positivists, the fundamental nature of legal is separate from moral and does not distinguish between immoral, expedient, or factual interpretations.⁴⁰ Positivism depends on a tangible and concrete foundation, maintaining a connection to reality. However, the concept relies on facts, reality, and scientific methods for the principles and methodologies. The term "positive" is used in various literature as legal rule enforced by humans.⁴¹

As a basis for thought, Auguste Comte was the first person to develop positivist thinking. Comte is renowned for contributing to the theory of cause and effect, with the assertion that a distinct order is important to establish justice. This thinking was supported by the presumption that human civilization included liberation from "superstitious" beliefs, using unequivocal and scientific methods.

According to John Austin, legal science is an order from a ruler or authority and the essence lies in the command element classified as a fixed, logical and closed system. The concept is a regulation for carrying out accepted acts with a politically lower position.

³⁹ Yusrayadi, *Ilmu Hukum : Dogmatik dan Teoretik Serta Problema Penegakan Hukumnya*, Semarang, UNDIP Press, 2017, hlm. 77-78.

⁴⁰ Cahya Wulandari, *Kedudukan Moralitas dalam Ilmu Hukum*, Jurnal Hukum Progresif, Vol. 8, No. 1, April 2020, hlm. 4.

⁴¹ Zainal Arifin Mochtar dan Eddy O.S Hiarriej, *Op.cit*, hlm. 261

Legal and moral relationship is diametrically separated due to differences in objects, sources and methods.

The interconnection of the two disciplines leads to methodological syncretism and the terms are considered as different domains.⁴² Legal system constitutes an expression of the ruler's will, distinctly devoid of emptiness.⁴³ According to Hans Kelsen, the term is an order obeyed and desired by individuals to act under the rules. In the form of a pyramidal structure, the system is known as the Stufenbau theory or sequence of norms.⁴⁴ Legal system includes a tangible process of individualization or positivization, namely abstract, general, concrete, and specific legal norms. The most abstract norm is the *Grundnorm*, followed by other norms that progressively attain greater concreteness.

Legal system should be cleared of sociological, political, historical and ethical non-juridical elements in regulating human behavior as rational creatures. In this case, the enquiry is not "*what the law ought to be*", but "*what the law is*". Therefore, positive law (*ius constitutum*) is used rather than aspirational law (*ius constituendum*) despite being in legal theory.⁴⁵

H.L.A. Hart reported five principles of *legal positivism*, namely:⁴⁶

1. To describe the idea of law as a command of a superior.
2. To describe the view that there is no necessary link between law and moral.
3. To show the analysis of legal concepts.
4. To denote the concepts of legal system.
5. Moral judgments cannot be derived from rational argument.

According to H.L.A Hart, legal principle is a positive norm without moral considerations. In this context, *secondary* rules give rights and obligations to state authorities, consisting of *change*, *adjudication* and *recognition*. The *rule of recognition* shows that there is a close relationship between legal and society.⁴⁷ The dependence of legal principles on moral values leads to uncertainty and subjectivity that can disrupt justice.

By separating the concept, legal principles become clearer and are applied consistently without considering various moral values. Supporters of positivism also emphasize that legal principles should be predictable and applied fairly, without any consideration of diverse moral values. This provides legal certainty to maintain social order and justice for all individuals. However, legal positivism view has also received criticism from various parties. The main criticism is that legal principle can become an unjust and oppressive tool, despite moral values acting as the basis. The separation between legal and moral principles has negative consequences in the implementation.

⁴² Ridwan, *Op.cit*, hlm. 13.

⁴³ Shidarta, *Op.cit*, hlm. 198.

⁴⁴ Yusriyadi, *Op.cit*. hlm. 77.

⁴⁵ Darji Darmodiharjo dan Shidarta, *Op.cit*, hlm. 115.

⁴⁶ Yusriyadi, *Op.cit*, hlm. 81.

⁴⁷ Asep Bambang Hermanto, *Op.cit*, hlm. 113.

III. CONCLUSION

In conclusion, the position of moral in legal science was important based on the discussion related to the natural legal perspective and positivism. The principles were the basis of positive legal considered valid and authoritative. The position of moral should be neutral in legal science according to the perspective of legal positivism. The dependence of legal principle on moral values led to uncertainty and subjectivity, disrupting justice in the system.

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