

The Integration For Morality Values In The Concept of Law

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Abstract

The adoption of moral values into legal concepts seems to still be a debate among legal thinkers, especially between legal thinkers positivism and natural law. This paper analyzes the point of view of the positivism school and the school of natural law. This paper is the result of legal research. The type of legal research used is a type of normative legal research with a conceptual approach. The results of the study indicate that there are differing views between the school of positivism and the school of natural law about the integration of moral values into legal concepts. The school of positivism says that moral value is a different aspect that cannot be included in the legal concept because law is a formal command of power, while the view of the school of natural law says that legal concepts should not ignore moral values because this moral is a standard for law to guarantee value of justice.

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Introduction

The School of Natural Law and the School of Law of Positivism, are born from the results of legal thoughts which are rooted in Western legal thought. What distinguishes the two schools of thought, of course, from the epistemological point of view of how to find legal truth. The school of natural law, argues that the search for the value of legal truth must adopt moral values. Meanwhile, the school of positivism law holds that the search for legal values must be explored through written legal products issued by the authorities. The discourse of the school of natural law and the school of law of positivism has become a debate about the coloring of almost every study of legal philosophy. The two schools of law, claim to have succeeded in uncovering the nature of the law. However, the basis of the methodological instrument used by both remains the same, which is still based on the logic.

The discussion of the relevance of moral values with the concept of law has indeed been a long debate in the history of the law of western civilization. The glorification of rationalism and secularism, since of the industrial revolution and the renaissance, has strengthened the view of positivism and rationalism that moral values and legal values are two different poles that cannot intervene with each other anymore. The bearers of positivistic rationalism hold that law is something autonomous that has nothing to do with moral values because according to this view, the law is a command of power. After the second world war, humanitarian values declined, the more victims of war from innocent civilians, then the existence of law as a value by having to adopt the values of morality increasingly received the most attention among western legal experts, especially legal experts adherents of the school of natural law. At this point of view, this paper tries to explain the integration of moral values in the legal concept, so that the law can guarantee justice and uphold human values.

Research Method

This paper is legal research that contains ideas about legal thinking, the type of research used in this study is normative legal research with a conceptual approach. That is to analyze the relevance of legal concepts with morality values, whose analysis refers to the theories of the legal philosophy of legal writers.

The Concept of Morality

The term morality comes from Latin, which is from the word “mos” (plural: “mores”) which means habit or custom. The word “mores” in English still uses the same meaning, which means habit. Morality also has the same meaning as the term moral which in Latin is called the term morality. According to the Indonesian

Dictionary¹, The term moral inside is grouped into two categories of understanding, first: morality in the noun category: (1). Discussion of good and bad received in general which is related to actions, attitudes, obligations, etc .; morals; character; moral; (2). Mental conditions that make people still brave, passionate, passionate, disciplined, etc .; the content of the heart or state of feeling as revealed is made; (3). Moral values can be drawn from a story. Second, morality in the verb category: 1. bad deeds; good character; 2. By morality (the custom of manners and so on).

The term morality is also explained in the Indonesian National Encyclopedia that morality is a branch of philosophy that specifically studies human behavior. Morality is said to be the norm, so what is discussed is about how a person should act, so morality in that sense is a characteristic of someone's behavior that is associated with a measure that applies in the community, especially regarding good or bad behavior, so morality is not something become innate, but it is born as a result of the influence of the environment in which a person grows and develops².

K Berten³ also defines morality as value and norm that serves as guidelines for individuals and group which is used as a basis for regulating certain actions. K Berten's formula was concluded by Eri Hendro Kusuma, that morality is a standard for a person or group of people when performing an act or action. For example, a corrupt state official. The action of the official, considered to have a bad morality value. That is, the action of this official is seen as the bad morality because of corruption, according to the moral value in any society, as a disgraceful act.

According to Frans Magnis Suseno, morality is essentially a reference standard for a person's good and bad deed as human beings who live in society. Good and bad, is not placed solely on its nature, but there is the reference that is used as a standard to categorize which action is seen as a good deed or not. If society views the action as good, it is good morality, and vice versa. If the deed is considered bad then it is bad morality.

Furthermore, Frans Magnis Suseno⁴, that morality is related to the character and personality of a person as an individual or can also be related to the character inherent in society, so according to Frans Magnis Suseno, there is no connection between one's work performance and the morality inherent in its. For example, a lawyer who is very good at defending his clients at trial, but he often asks for payment, even though the client has a mediocre economic level. In this example, a lawyer has great work performance but services to his clients, he has a bad morality. From this view, Frans Magnis Suseno considers that in the aspect of work skills, a person is often not related to morality. Based on this example, Shidarta⁵ concluded that morality is closely related to the good and bad of a person as a human being. The description of the meaning of morality both etymologically and terminologically is also discussed in the writings of Budiono Kusumohamidjojo⁶, that the use of the term morality in ethical terms should not be equated. The two terms have fundamental differences, namely, the term morality refers to a theoretical understanding, whereas morality refers to a more practical understanding.

The terms morality and ethics, according to Karen Lebacqz, is often used erroneously. She said that In the public arena, most people use the terms "morality" and "ethics" as though they are interchangeable. But in the field of ethics, they are understood differently: morality refers to the "mores" or customs or rules or expected/accepted behavior of a community, but "ethics" refers to a discipline of examining those customs and rules to see whether they are truly defensible. In many countries, for example, women cannot own property – this is a custom. But is it a defensible custom? Would it stand up to the scrutiny of disciplined rational reflection?⁷

Karen Lebacqz explained that morality essentially refers to habits or called mores which apply as a standard for human actions that are accepted good or bad, while ethics refers to a particular discipline that examines whether the standard of human actions called good or bad is indeed something that really can be accepted rationally or not.

¹Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*.

² Indonesian National Encyclopedia Volume 10, Cipta Adi Pustaka, 1990, p. 371.

³ K Berten, *The Ethic*, Gramedia Utama, Jakarta, 2007, p. 4.

⁴ Franz Magnis Suseno, *The Ethic of Politic*, Gramedia Pustaka Utama, Jakarta, 2015, p. 14.

⁵ Shidarta, *Legal Professional Morality (An offer of thinking framework)*, Refika Aditama, Bandung, 2009, p. 43.

⁶ Budiono Kusumohamidjojo, *Legal Theory (Dilemma Between Law and Power)*, YRama Widya, Bandung, 2016, p. 163

⁷ Results of the discussion by the author with Karen Lebacqz via email on November 2016.

The difference in the meaning of morality with ethics, also mentioned by Frans Magnis Suseno¹, with a different perspective. According to Frans Magnis Suseno, morality is a set of systematic teachings while ethics is critical thinking that is fundamental to morality views.

Detail of Frans Magnis Suseno's explanation of the differences in the meaning of morality and ethics, in Mustain's writing is also described concretely, that ethics falls within the scope of moral philosophy that discusses things about good and bad deeds in the perspective of theory, while morality examines things of good deeds and bad in a practical perspective. The meaning, as revealed by Budiono Kusumohamidjojo, is that morality sets the standard value of human action which is permissible and what cannot be done, whereas ethics is a deep critical study of the standard value of human action as a morality. Ethics as a critical study, the existence of ethics does not pretend to assess an act that is good or bad. In essence, as written by L Sinour Yosephus², morality is a set of teachings that contain what is good and bad, and what becomes a taboo for humans, both as individuals and as members of society, while ethics does not advocate how we should live and act behavior. Ethics is only a critical study that questions why human actions are seen as good or bad.

Morality always talks about the value standards of human actions that refer to values that apply in society as something good or bad. The example of being honest is good morality which is set as a general standard in the life of any society, while ethics conducts in-depth studies of why people should be honest. Ethics conducts critical and in-depth studies of why people should be honest without having the authority to determine whether to be honest is good or bad. Ethics conducts critical studies using logical reasoning or argumentation, while morality sets standards for the value of human actions, is guided by tradition, prevailing habits in the community, or based on the advice of community leaders, or can be based on certain religious doctrines. In conclusion, morality is prescriptive, that is, advocating or prohibiting, whereas ethics is merely an expository, ie describing or explaining.

The meaning of ethics according to Shidarta³ is a critical study of morality. Not only as a critical study of morality, but ethics also discusses a value system that is a guideline for certain professional groups, namely what is good and what is bad according to the values of the profession itself. Usually, the values are formulated in a written norm, called a code of ethics. The meaning of ethics according to Shidarta, can be grouped into two things, namely: ethics as a system of values and ethics as a science which is a branch of the study of philosophy.

Discussion On Integrating Value of Morality in Law

Dirkusus about morality relations with the law has indeed become a discourse of legal thinkers since centuries past until now. The thinkers of the School of Natural Law think that between morality and law are two mutually integrated components that cannot be separated from each other, while positivism viewers argue that the discussion of morality and law are two things different from their respective characteristics.

The discussion of morality relations with the law has been discussed by Peter Mahmud Marzuki that morality should be integrated into law because it is this law that serves to operationalize law in the context of human social interaction. According to Peter Mahmud Marzuki⁴, morality is a basic mental state of man. Morality actualizes as a command to oneself about good and evil deeds. A noble morality can occur because of the control of the passions through the utilization of the will and the mind, if one's will and mind are controlled by lust which harms other people or society, it means that morality is bad. Peter Mahmud Marzuki's view seems to be influenced by Thomas Aquinas's version of the theory of natural law.

Explanation of Peter Mahmud Marzuki⁵, who correlates morality with law, that law with morality is indeed inseparable, but correlating morality with law, is not necessarily by putting morality in the perspective of messages, but morality in question is morality in the context of behavior human actions in community life. Peter Mahmud Marzuki, seeks to position the relationship between morality and law at the point of contact that can be accepted by reason. The normalization of morality values manifested in the product of the rule of law, according to Peter Mahmud Marzuki, is measured according to rationality. According to Peter Mahmud Marzuki that

¹ Frans Magnis Suseno, *Op. Cit.*, p. 14-15.

² L. Sinour Josephus, *Business Ethics (Moral Philosophy Approach to the Behavior of Contemporary Businessmen)*, Pustaka Obor Indonesia, 2010, p. 33.

³ Shidarta, *Op. Cit.*, p.16.

⁴ Peter Mahmud Marzuki, *Op. Cit.*, p. 123-124.

⁵ *Ibid*, p. 84-84.

morality that is to be adopted becomes a legal value, the morality that looks outwardly in the form of human actions as a manifestation of the reality of people's lives. Peter Mahmud Marzuki, believes that the adoption of moral values into legal norms is only possible if morality has actualized as real action, not in the context when morality is merely an inner form of human beings. The reason, according to Peter Mahmud Marzuki, is that the goal of the law is outward human behavior, the law will not act when a person's actions do not violate the rule of law even though the person's mind wants to do something illegal.

Peter Mahmud Marzuki¹ also does not deny that the law sometimes enters one's inner area. Provisions regarding intentions in criminal law and good faith in civil law, for example, are provisions that enter one's inner area. Even in the trial, the defendant's inner attitude is often taken into consideration in imposing sanctions as a mitigating factor or incriminating sanctions, a defendant who does not regret his actions and in court proceedings is rude and convoluted in court hearings, tends to be punished more severely than the defendant who regretted his actions, was polite in the trial, and honest in answering the judge's questions. Only that needs to be emphasized according to Peter Mahmud Marzuki, that factors are inward, only in contact with the law if someone commits a violation or against the law.

Peter Mahmud Marzuki's view that formulates the relationship between moral values and legal norms and how the integration of adopting moral values into legal norms, it is influenced by the thinking of the school of natural law. This is different from the thought of the school of law positivism, which originated from the ideas of Auguste Comte², which this idea was increasingly popular after World War I when the school of thought positivism was developed by John Austin³. The school of thought John Austin holds that the law has the characteristics of forced force manifested as the will of the authority of the sovereign authority. Based on this view, John Austin holds that the actual law is a law whose adoption is characterized by three components, namely, a command that is coercive, sanctioned, and a ruling party. These three components are interlinked and integrated, but the most prominent is the authority of power⁴.

John Austin argues that the law must be seen as it is, in the legal sense which is an order, so that law is always a compulsory obligation that must be obeyed by most citizens. John Austin criticized adherents of the theory of natural law, which he said the law was not a stack of advice or morality. The reason, the law is merely an instrument that has forced power, which according to John Austin, contains two basic elements. First, the law as a command that realizes the desire of the ruler, that someone must do or refrain from doing something. The desire of the ruler in question is one that has a specificity character, namely that the parties affected by the law must bear the unpleasant consequences of sanctions if they do not comply with the legal provisions imposed. Law in the sense of an order is the desire of the ruler which contains punishment for anyone who is against the law. Second, the law can create something that causes suffering. For a citizen who is subject to an order, he is bound, obliged to do what he is told. Adherence to legal orders, a person will be sanctioned.

Positivism moves on two principles of thinking, namely: First, what is referred to as law is only positive law; Second, even though the substance of a legal product is contrary to the principles of morality, it is still valid law. According to Zippelius, a product of the law that applies if it is by official procedural powers, it remains legal as law without regard to any contents. Thomas Hobbes asserts that the application of a norm becomes a legal law, does not depend on its contents, but depends on whether the norm is by applicable legal procedures. Thomas Hobbes said, "authority is not the truth, but it is the essence of the law".

The basis of the thinking of positivism is to require space to be closed to natural law. According to positivism, the application of legal norms does not depend on conformity with morality. The only legal enactment criteria are the law offices. Such a position of thinking of positivism has consequences that separate morals from the law. Law is a system of norms established by legitimate authorities. The law is obeyed not because the law is judged to be morally good but because it is determined by a legitimate authority, as Karl Bergbohm⁵ states, even though a legal product contains evil or harmful values, but insofar as it is applied through formal procedural

¹ *Ibid.*, p. 77-78.

² Edgar Bodenheimer, *Jurisprudence (The Philosophy And Method Of The Law)*, Harvard University Press, Cambridge, Massachusetts, 1970, h. 89.

³ Stanford Encyclopedia of Philosophy, "John Austin" (2 February 2002), <http://plato.stanford.edu>, accessed March 20, 2016.

⁴ *Ibid.*, p. 94-97.

⁵ Andrey Masing, "Karl Bergbohm" (February 23, 2016), <https://www.geni.com/people/Karl-Bergbohm>, accessed February 20, 2017.

power, it must remain recognized as law. Such a view of positivism has placed the law not in a moral framework but within the framework of formal procedures issued by the authorities.

The view of positivism, which separates law from morality as two components that must not be confused with one another, of course, has been rejected by some legal thinkers, especially those that are still consistent with the school of natural law. Peter Mahmud Marzuki argues that the law contains moral values because what determines a rule is law is not the content of the rules, but which determines whether the contents of the rules emit moral principles or not. It does not matter, according to Peter Mahmud Marzuki, whether the law is made by the authorities or grows and develops in society or is the creation of judges as long as the contents of the rules emit moral principles. That is, the law can be said as law if the content emits moral principles. The emission of moral principles is in the framework of maintaining human existential functions. That is, human existential functions can only be maintained through laws that reflect morality values¹.

Law contains moral values that function to maintain human existence. The basis of this view is the argument of Peter Mahmud Marzuki, to reject the thesis of the John Austin version of the school of positivism which views the law as merely a formal order from the authorities. According to Peter Mahmud Marzuki when the essence of law is only placed in terms of the command of power, then the law can ignore the existential aspects of man. Law will be a tool of arbitrariness for power, which aims to secure a regime of power.

Closing

The school of positivism, looking at moral is a separate thing from the law. Legal norm according to positivism only appears when the law is legalized in a formal procedure by the holder of power, so that the law as part of the decree of the authorities, it must be placed on the frame as it is. Whereas in the view of the school of natural law, the moral is an absolute thing that must be integrated into legal values, because according to the school of natural law, normalization of legal values that do not reflect moral values, is only an instrument of arbitrariness for power.

REFERENCES

- 1) Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*, Jakarta, Indonesia, 2000.
- 2) Indonesian National Encyclopedia Volume 10, Cipta Adi Pustaka, 1990.
- 3) K Berten, *The Ethic*, Gramedia Utama, Jakarta, 2007.
- 4) Franz Magnis Suseno, *The Ethic of Politic*, Gramedia Pustaka Utama, Jakarta, 2015.
- 5) Siddharta, *Legal Professional Morality (An offer of thinking framework)*, Refika Aditama, Bandung, 2009.
- 6) Budiono Kusumohamidjojo, *Legal Theory (Dilemma Between Law and Power)*, YRama Widya, Bandung, 2016.
- 7) L. Sinour Josephus, *Business Ethics (Moral Philosophy Approach to the Behavior of Contemporary Businessmen)*, Pustaka Obor Indonesia, 2010.
- 8) Edgar Bodenheimer, *Jurisprudence (The Philosophy And Method Of The Law)*, Harvard University Press, Cambridge, Massachusetts, 1970.
- 9) Stanford Encyclopedia of Philosophy, "John Austin" (2 February 2002), <http://plato.stanford.edu>, accessed March 20, 2016.
- 10) Andrey Masing, "Karl Bergbohm" (February 23, 2016), <https://www.geni.com/people/Karl-Bergbohm>, accessed February 20, 2017.

¹ Peter Mahmud Marzuki, *Op. Cit.*, h. 66-67.