

The Position Of Legal Philosophy In The Formation Of State Legal Policy As An Effort To Realize Justice

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Abstract

Legal philosophy plays a strategic role in shaping the direction and orientation of state legal policy, particularly in realizing the ideals of justice. As a branch of philosophy that studies the nature of law, its underlying values, and the purpose of its formation, legal philosophy serves as a normative foundation that guides policymakers so that legal products are not merely legal-formal, but also full of moral and humanitarian values. State legal politics is essentially the state's policy and strategy in forming, implementing, and enforcing laws to achieve certain goals idealized by the constitution. In this context, legal philosophy provides a conceptual framework for determining the principles of justice to be realized, both based on classical theories of justice such as distributive, commutative, and legal justice according to Aristotle, as well as modern theories such as social justice ala John Rawls. The relationship between the two is complementary: legal philosophy provides ethical justification and value direction, while legal politics translates them into applicable positive norms. This research uses a juridical-normative approach with a literature review of legal philosophy theories, legal politics concepts, and the practice of law formation in Indonesia. The study's findings indicate that the absence of a strong philosophical foundation in legal politics has the potential to produce legislation that is unequal, inconsistent, or even contrary to society's sense of justice. Conversely, integrating legal philosophy into the legal policy formulation process can produce a more responsive, humanistic, and just legal system, in accordance with the mandate of the Preamble to the 1945 Constitution and Pancasila as the source of all sources of state law. Thus, legal philosophy is not merely theoretical, but also a crucial instrument in social engineering through law, to ensure the creation of a just, prosperous, and dignified society.

A. Introduction

Size about justice often interpreted different . Justice That even alone various , in various field , for example economy , as well as law . Speaking about welfare , things This always become the main and interesting topic , because always relate with related solutions with enforcer law . The number of case laws that do not can be completed or decided with fair because it was pulled in problem politics . Legal truth and justice manipulated with systematic way so that justice No give decision fair Because No through correct procedure , action court often No wise Because No give example to public .

The law is results from method various aspect public interact One each other. (Djuyandi , 2023; Fadli et al., 2024; P, 2006) This based on how people interact One each other in a political , economic , social and technological . Sometimes , law determine form and nature society . Satjipto Rahardjo said knowledge law is type the science that investigates all aspect law . This includes learn law That alone , and knowledge and understanding about topic related law .

As instrument important in life nation and state , law naturally No can separated in development public towards more good . So from that's the law expected capable direct or engineer Where to direction civilization that is about to aimed at by the state. Not only that grow and develop in accordance condition or desire public without existence control from the country. Along with developments over time, studies critical about law national we too Keep going developing . And philosophy law be one of object study philosophical about law . Law in its development always influenced by various thing . Law is results from strength social and tools control social in life together in a country. The law is basically No sterile from subsystem society . Politics often do intervention on actions and implementation law so that appear question about which subsystem between more laws and politics supremacy . (Ali, 2002)

Question This appear caused by Because many regulation blunt law in cut arbitrariness , law No make an effort uphold justice and not can display himself as the problem that should be become task law For finish it . Hart explained in his book

the concept of law, that law That is deep legal system Hart's view has *double set of rules*, namely that legal system is unity from rules primary rules or also known as primary obligations and rules additional (*secondary rules*). Rules primary rules contain norms regarding behavior in demand humans , whereas rules additional (*secondary rules*) are about the formation of norms That alone , besides it also analyzes How enforcement against these norms implemented , and concerning whether the norm is valid or not no and so on . (Hart, 2019; MH, 2025)

In a way terminology , terms political law is translation Indonesian from term law Dutch *rechtspolitiek* , which is formation from two words *recht* and *politics* . This term No disguised with terms that appear back , *politiekrecht* or law politics , which was put forward Hence van Maarseveen Because both of them own different connotations . The terms mentioned final related with other terms offered Hence van Maarseveen For replace fill it in constitutional law . (Hart, 2019) Legal politics reviewed from corner theory is is part from aspect constitutional law where political law according to aspect constitutional law is policy base state administrators in field laws that will , are and have been applicable sourced from prevailing values in public For reach the desired goals of the country . In this case This in a way No direct confess dependent relationship between law and politics through adage that says that " the law without power is dreams and power and power without law is tyranny " . (*Interaction Constitution and Politics* , tt)

Philosophy law give framework think normative and reflective that directs formation laws to be in harmony with values justice , truth and humanity . Without existence philosophy law , politics law risky trapped in interest practical power solely so that lost his moral and ethical orientation . Therefore that 's important For put philosophy law as foothold in compile direction policy state law there are two questions important *First* How position philosophy law in the process of formation political state law ? *second* How far is philosophy law can play a role in realize justice through political law ? purpose writing article This is *the first* For analyze position philosophy law in the process of formulation and direction political *second* state law For study role strategic philosophy law in push formation just and value - oriented

law humanity .

B. Research methods

Study This use approach juridical-normative (Atikah, 2022; Efendi et al., 2016) , namely method study law that focuses on study against legal norms positive , principles laws and doctrines relevant laws . Approach This chosen Because focus study lies in the relationship between philosophy law and politics law in formation regulation justice -oriented legislation . The data used is secondary data obtained through studies library research , including material primary laws such as the 1945 Constitution, regulations legislation related , and the decision court ; material law secondary in the form of books , journals scientific , results research and opinions experts ; and material law tertiary like dictionary law and encyclopedia . Data analysis was carried out with method analysis qualitative , namely interpreting data deep For reveal relatedness conceptual between theory philosophy law , concept political law , and objectives justice in system Indonesian law . Approach This allows researchers For identify values philosophical influences formation law and study to what extent the value the implemented in policy political state law . Results of the analysis Then served in a way descriptive-analytical For give description comprehensive about position philosophy law as runway normative in realize justice through instrument political law .

C. Position Legal Philosophy in the Formation of Legal Politics

Philosophy law is branch from philosophy , namely philosophy ethics , philosophy about behavior . Philosophy law is knowledge knowledge that speaks about essence law or existence law . (*PHILOSOPHY of law schools and their reflections editor , Lili Rasjidi ... [et a.] | DIY Regional Library and Archives Service , tt*) Understanding Philosophy the law developed by Aristotle in Sunaryati more explain function philosophy to law with say that quality applicable law should measured according to criterion to what extent the nature morality , rationality and social (social) can developed in it . (Hartono, 1991)

In line with matter That according to expert B. Arief Sidharta's philosophy

explains that philosophy law is establishment or appreciation (the most fundamental) held by people or public or country about nature , characteristics essential as well as runway its validity law . (Darmodiharjo & Shidarta, 1995) The definition of philosophy law formulated by Sutikno that philosophy law something activity in look for essence law with investigate or study rules law as consideration values . (*PHILOSOPHY of law schools and their reflections editor , Lili Rasjidi ... [et a.] / DIY Regional Library and Archives Service , tt*) On the other hand , in the law that occurs is an assessment process , which is assessed is behavior human inside socializing life human behavior in network various connection social , assessment the done by humans too. The law embodies himself as a social process related arrangement or rule method behave in connection social processes . the produce rules law .

As arrangement behavior , besides For realize order and regularity in society , law is also intended For realize principle justice . (Darmodiharjo & Shidarta, 1995) Understanding to the goals to be achieved achieved by law especially reviewed from aspect philosophical is something achievement highest about law that is essence law through runway love Darling humanity and justice guided by direction the grace of God Almighty. (Darmodiharjo & Shidarta, 1995; LL.M, tt)

Other related matters existence philosophy law then political law , interesting For reviewed more Far is about how relationship and position philosophy law and politics law in knowledge law , Friedman in matter This explain that as reference temporary can explained that study field political law This move between philosophy in one end theory and theory politics on the other end . Depiction This Actually intended to assessment about theory law (*Legal Theory*), but thus can used For all over study science about law , with thus can put framework study politics in knowledge law . (Friedman, 1975)

In line with principles and teachings modern constitutionalism , problems in life state That No Enough only seen from aspect law only , will but also must see from aspect philosophy , wisdom and policies so that method the review become complete and mutual fill in ; good to aspect philosophy , aspects politics and also aspects the

law . (Hafsah et al., 2013) Furthermore in every draft constitutionalism is known to have 3 (three) parameters (paradigms) or reference , namely (Darmodiharjo & Shidarta, 1995) : **First Paradigm Philosophical (*Philosophical Paradigm*)** In the form of values the philosophy contained take root as something system value inside public a nation that is state , originally abstracted by the founders nation (*founding fathers*) later crystallized become ideology or the basis of the state, and so on derived and elaborated to in system life social , and endeavored so that underlying and reflected in system life , all subsystem life national the .

Second Paradigm Juridical (*Juridical/Legal Paradigm*) which culminates in the state constitution . The 1945 Constitution is reference law the highest (*de hoogste wet, the highest norm*). And under rule law others . Both regulations in the form of Central and Regional. Furthermore , in the UUD Alone there are political messages , namely mandates policy in articles certain , such as mandate political related arrangement economy and so that riches this homeland utilized For as wide as possible interest society , things This reflected in Article 33 of the 1945 Constitution.

Third Political Paradigm (*Political Paradigm*) Namely in the form of derivation from Pancasila and the 1945 Constitution, in the form of policy about management governance and development national , such as policy yangg poured in forms , RPJPN, RPJMN and so on .

D. Draft Justice in Philosophy of Law

First Justice according to Plato Plato have an opinion that justice is outside ability man usual . Source injustice is existence change in society . Society has principal elements that must be maintained , namely : a) Sorting strict classes ; for example class a ruler filled with shepherds and dogs guard must separated in a way firm with sheep human . b) Identification the destiny of the country with destiny class the ruler ; attention special to class this and its union ; and adherence to its unity , rigid rules for maintenance and education class this , and strict supervision as well as collectivization interests its members .

From the elements principal these elements other can lowered , for example

following This *First Class* the ruler has a monopoly to all matter like benefits and training military , and rights own weapons and receive all form education , but class ruler This No permitted participate in activity economy , especially in business look for income . *Second There* must be a sensor on all activity intellectual class rulers , and constant propaganda aimed at For standardize thoughts all of them innovation in education , regulations , and religion must prevented or pressed . *Third* The state must nature *self-sufficient* . The state must aiming at autarky economy , if No Thus , the rulers will depending on the traders , or in fact the rulers That Alone become trader . Alternative First weaken power they , while the second alternative will weaken unity class ruler and stability his country . (Popper, 2002)

Justice is also understood in a way metaphysics its existence as quality or function superhuman beings , whose nature No can observed by humans . The consequences is , that realization justice shifted to another world, beyond experience human beings ; and reason essential human being for justice submitting to God's ways is not can changed or God 's decisions are not can allegedly .

Second Justice According to Aristotle The decline Athenian democracy , in war Peloponnese and afterward , became material contemplation about dominant justice philosophy the laws of Plato and Aristotle . Both pour out part big from work they For give concrete definition about justice and relationships between justice and law positive . Plato tried For get the concept about justice from inspiration , while Aristotle developed it from analysis scientific on principles rational with background behind the models of society politics and laws that have been There is . (*Ethics and Law: The Relevance of Thomas Aquinas ' Natural Law Theory* / Metro City Regional Library and Archives Service , tt)

Aristotle's doctrines are not only put basics for theory law , but also to Western philosophy in general . Aristotle's contribution to philosophy law is the formulation to problem justice , which differentiates between : “ *distributive* ” justice with “ *corrective* ” or “ *remedial* ” justice which is base for all discussion theoretical to main problem . Distributive justice refers to to distribution goods and services to everyone according to with his position in society , and equal treatment to equality

in front of law (*equality before the law*).

Aristotle in to interpret justice is greatly influenced by the element of ownership object certain . Ideal justice in Aristotle's view is when all element public get the same part from all objects that exist in nature . Humans are seen by Aristotle parallel and have equal rights on ownership something goods (material). Aristotle's view on justice Can obtained in his work nichomachean ethics, politics, rhetoric . Book This fully intended for justice based on philosophy Aristotle's law must considered as This from philosophy the law , "Because the law only Can set in relation with justice ". (Friedrich, 2008)

Third Justice According to John Rawls John Rawls stated that justice in essence is principle from policy applied rationale For conception amount from welfare all over group in society . For reach justice said , then rational If somebody force fulfillment his wish in accordance with principle usefulness , because done For enlarge profit clean from satisfaction obtained by members its people . (RAWLS, 2009)

There are two goals from theory justice according to John Rawls, namely : *first* This theory Want to articulate a row principles general underlying justice and and explain various serious moral decision considered in circumstances special we . What he mean with “ moral decisions ” is a row moral evaluation that has been We make and if cause action social We . A truly moral decision considered refers to the moral evaluation that we make for in a way reflexive . *Second* Rawls wants develop something theory justice more social superior on theory utilitarianism . Rawls means “average” (average utilitarianism). What he means is is that institutions social it is said fair If dedicated For maximize benefits and uses . While utilitarianism generally contains view that institutions social it is said fair If only be taught For maximize average profit per capita . For second version utilitarianism the “ profit ” is defined as satisfaction or the profits that occur through choices . Rawls said that base truth the theory make his views more superior compared to second version utilitarianism those principles . the justice that he put forward more superior in explain ethical moral decisions on justice social . (RAWLS, 2009)

E. Influence Philosophy of Law in Legal Politics in The Ideal Legal System

As something nation , life public controlled by a law known basis with Constitution base or constitution . The 1945 Constitution as constitution confirm that Indonesia is a country based on on law (rechtstaat). Affirmation This means that as a country, Indonesia has choose a legal state (welfarestaat) as form of state. This is own consequence that every actions and their consequences , must be based on on law . The concept of the Indonesian legal state has contained in Article 1 paragraph (3) of the 1945 Constitution , which is amendment third from The 1945 Constitution which states that Indonesia is a country of law . Consequences from statement that the Republic of Indonesia is a state of law , then every form organization government and life state must based on law . Therefore in every form implementation state administration , aspects law Already should made into as guidelines . In a country in the form of thus , then law is means main thing by the nation That agreed as means For arrange life . (*PHILOSOPHY of law schools of thought and their reflections editor , Lili Rasjidi ... [et a.] / DIY Regional Library and Archives Service , tt*)

In a concept of state based on law , then law must seen in a way functional , so that in the end law understood or understood as gathering values life state and society . (Marzuki, 2022) Good values the Then made into as material input in frame organizer state administration , in matter This related manufacturing something policy in field law . The Basics of Legal Politics are said to be that politics law adhere to the principle of double movement, namely besides as framework formulating thought policy in field law (*legal policy*) by institutions authorized state institutions , it is also used For criticize products the law that has been promulgated based on *legal policy* above . Based on description said , Sugeng set room scope or study area political as following *First* Excavation process mark evolving values and aspirations in society by authorized state officials formulate political law *second* The process of debate and formulation mark values and aspirations the into the form A design regulation legislation by authorized state administrators formulate political law . *Third* Authorized state administrators formulate and determine political law *fourth*

Regulation legislation that influences and determines something political law , both that which will , is and has been set *fifth* Implementation from regulation legislation invitation which is implementation from politics law a country.

Formation political law in a country basically No let go from context ideology , history , culture , and needs social society . However , in order for politics law No solely become tool power or interest group certain , then need There is framework underlying values in a way profound and rational . (Jaya et al., 2023) This is where philosophy law play role crucial as foundation values and thoughts in direction policy state law . Philosophy law Work with put forward questions normative about What is should become law , not just what happened moment this . He questioning whether something product law truly reflect mark justice , or only legitimate formally but contradictory with moral and humanitarian values .

In the Indonesian context , for example , many policy laws that are procedural valid , but cause controversy Because considered No fair in a way substantive (example : revision The Corruption Eradication Commission Law , the New Criminal Code, and the Job Creation Law). When the law formed without consider values philosophical like justice , benefit and dignity human , then law lost its legitimacy in the eyes of public . On the side else , if political law formed based on philosophy justice - oriented law , such as Rawls' theory , then law can functioning No only as tool control social , but also as instrument emancipation and protection rights base man . (*Legal Position in Realize Justice and Welfare in Indonesia | AL-MANHAJ: Journal of Islamic Law and Social Institutions* , tt) However in in practice , challenges big appear from : *first* Pragmatic politics that only chase stability or interest term short . *Second* Lack of capacity the philosophy of the makers policy law . *Third* The low participation public in the legislative process . Therefore that , it is necessary There is awareness collective bring formation just law No Enough only through legal-formal approach . Required approach philosophical view law as from moral struggle for build just and humane society . Integration of philosophy law in political the law must also supported by education more laws critical , participatory , and rooted in values substantive .

A. Conclusion

Philosophy law hold a very important role in formation political law a country, in particular in frame realize values justice . As branch philosophy that discusses essence law , morality , and values basics , philosophy law give direction normative and reflective for the law that will formed , implemented , and enforced . Without foothold strong philosophical , political law potential lost direction and only will interest - oriented power or pragmatic agenda solely , which in the end keep away law from the goal as instrument justice and protection rights base human beings . In the context of state , politics law is form real from policy laws taken by the state, fine in form legislation and policy law others . However , politics good law No only stop at achievement legality , but rather must uphold tall moral legitimacy that originates from values justice . Philosophy law present as determinant direction for politics law No just oriented towards power , but also towards values noble , universal and humanistic nature . Through the thoughts of philosophers like Plato, Aristotle, and John Rawls, can understood that justice No nature single , but rather own Lots dimensions distributive , corrective , and procedural . Therefore that , in form something policy law , the state needs consider various dimensions the in a way comprehensive and not solely adhere to the formal aspects of law . Placement philosophy law as base political law allows law No only become tool regulator society , but also as means For build a just , dignified and based civilization humanity . With thus , it can concluded that existence philosophy the law is very decisive direction and quality from political law a country. The laws that are formed based on principles philosophical will own moral strength that is capable answer demands justice in society . In conditions thus , the law No Again only become set of norms, but become part from moral and social struggle For create life a just and humane nation .

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