



The Philosophical Role of Morality in Law Enforcement

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Abstract

Law enforcement is not merely the application of positive norms contained in statutory regulations, but also involves the dimension of morality inherent in every legal process. This study emphasizes the role of morality in law enforcement through a philosophical approach that focuses on the relationship between law, justice, and moral values. The relationship between morality and law is a central issue in the study of legal philosophy and continues to be a subject of debate among legal scholars and practitioners. Although law and morality are distinct entities, they are closely related and influence one another. Laws that do not reflect the moral values of society tend to lose their legitimacy and enforceability. Conversely, morality as the foundation for lawmaking can enhance substantive justice and foster public trust in the legal system. Therefore, understanding the link between law and morality is crucial to ensure that the law is not only formally legal but also ethically sound. This article also examines the extent to which morality influences the process of law enforcement in the context of achieving substantive justice, particularly in the decisions of law enforcement officers such as judges, prosecutors, and police. Morality plays a vital role as an ethical consideration in interpreting and applying the law fairly. However, in Indonesia, the influence of morality in law enforcement remains sporadic and highly dependent on the integrity and moral sensitivity of legal actors. Hence, integration between morality and positive law must be strengthened so that the law enforcement process can consistently and sustainably achieve substantive justice. Morality plays a crucial role in assessing the justice of legal norms and in the practices of law enforcement officials. When positive law contradicts the sense of justice and public morality, morality becomes an essential reference for assessing the legitimacy and acceptability of law enforcement. Therefore, harmonizing positive law with moral values is necessary to ensure that law enforcement is not only formally legal but also substantively just.

Keywords: Philosophical Study; Role of Morality; Law Enforcement.

INTRODUCTION

A moralist is an individual who emphasizes the virtues of ethics and studies or teaches morality as a branch of philosophy. Morality is understood as a set of values and norms that become a handle for a person or group in regulating their behavior. Morality is subjective because it is influenced by the conscience and culture of the community, so that each individual or group can have a different understanding of morals, to overcome this difference, normatively ideal standards are formed called rules or rules, which function as guidelines for human behavior in social life, so that the interests of each can be maintained. These rules are commonly called rules in Arabic, and norms or measures in Latin.¹

Norms have two kinds of content, namely commands as the necessity to do something because the consequences are seen as good, and prohibitions as the necessity not to do something because the consequences are seen as bad. The use of norms is to give instructions

¹ Luh Suryatni, "Pancasila sebagai Basis Moralitas Haluan Kebangsaan dan Kenegaraan dalam Implementasi Nilai-Nilai Pancasila Berdasarkan Bhineka Tunggal Ika," *Jurnal Ilmiah Hukum Dirgantara* 14, no. 2 (2024): 1-13. <https://journal.universitassuryadarma.ac.id/index.php/jihd/article/view/1313>

to humans about how one should act in society, as well as which actions should be carried out and which should be avoided.

In order for the law to run as it should, it is necessary to have power, but the existing power must not violate the rights and interests of individuals, because the law also functions as a protection of human interests. In order for human interests to be protected, the law must be implemented and enforced, it is through the enforcement of the law that the law becomes a reality, in enforcing the law there are three elements that must always be considered, namely legal certainty (*rechtssi-cherheit*), utility (*zweckmassigkeit*), and justice (*gerechtigheit*).² Law enforcement is one of the fundamental pillars in realizing an orderly and fair community life, to ensure the running of the law in accordance with the original purpose of its formation, it is necessary to have legitimate power as an instrument to enforce compliance with legal norms. However, this power cannot be exercised absolutely, because the law in essence also functions as a protector of the rights and interests of individuals. The law is not merely a tool for legitimizing power, but also as a mechanism for the protection of human dignity and rights.³

It is important to emphasize that successful law enforcement can only be realized if the law is actually implemented and enforced consistently. Law enforcement is a tangible manifestation of the law itself in people's lives. Therefore, the law enforcement process must always pay attention to three essential elements, namely legal certainty (*rechtsicherheit*) which ensures the stability and predictability of norms, usefulness (*zweckmassigkeit*) which reflects the relevance of the law to the needs of society, and justice (*gerechtigheit*) as the highest value in the law.⁴ How the law must apply, basically it is not allowed to deviate, that is what legal certainty wants, legal certainty is a judicial protection against arbitrary actions, in law enforcement must also be considered about its usefulness or usefulness for the community, so that precisely because the law is implemented or enforced there is unrest in the community.⁵ Through the synergy between legitimate power, the protection of individual rights, and the implementation of laws that are oriented towards certainty, utility, and justice, it is hoped that the law will be able to truly function as a means of social renewal and an instrument for the realization of public civilization.

METHODS OF THE RESEARCH

This research is *normative juridical* research, which in this study is called normative legal research or also called literature law research, is research that is carried out by researching library materials or secondary data,⁶ With the deception in this study, we will immediately search and find results/answers to the problems being researched.

RESULTS AND DISCUSSION

A. The Relationship Between Morality and Law Reviewed from the Perspective of Legal Philosophy

The law of religion and morality are an inseparable unit; The law must serve and uphold morality. The law is not only known as the main instrument of social control, but also as a

² Sudikno Mertokusumo, *Bab-Bab tentang Penemuan Hukum*, (Bandung: Citra Aditya Bakti, 1993), p. 1.

³ Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2000), p. 53.

⁴ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, (Surabaya: Bina Ilmu, 1987), p. 15.

⁵ H. M. Agus Santoso, *Hukum, Moral dan Keadilan*, (Jakarta: Prenada Media Group, 2012), p. 5.

⁶ Soerjono Soekanto dan Sri Mamuji. *Pengantar Penelitian Hukum*. (Jakarta: UI Press, 1986), p. 13.

means of realizing moral values in society. Morality pays attention to the good or bad of a trait or disposition, as well as to the difference between right and wrong in relation to human behavior. The source and content of moral obligations often comes from religious teachings, where knowledge of God naturally leads individuals to understand and carry out their moral obligations. The belief that a creator is the one who can fulfill one's life goals and desires strengthens the relationship between religion and morality.⁷

Law, religion, and morality, when established, will become the norm. Norma is a written description of a series of actions that are concrete and seen as *desirable*. The description is combined with a compulsion to encourage certain actions in the future to match the desired action. Another opinion says that a norm is a statement made by members of a group, stating that a certain act provides satisfaction and is expected to conform to the ideal behavior described by the norm. So that the norms that are made are a will that is desired by the community.⁸

The relationship between morality and law is a classic problem in the study of legal philosophy. Both are social norms that govern human behavior, but they have differences in form, nature, and sanctions. However, morality and law are often met at the same point, namely in order to realize justice, order, and benefits in social life.

Morality is generally understood as a set of values related to good and bad based on the conscience and culture of society. Morality is internal, individual, and unwritten, but it has a strong binding effect on human behavior in social life.⁹ On the contrary, law is a system of norms that are external, written, and run by official state institutions to regulate and enforce public compliance through strict sanctions. However, in natural *law theory*, law cannot be separated from moral values, because unjust law is not true law (*lex iniusta non est lex*).¹⁰

Plato and Aristotle, in classical philosophy of law, have stated that good law must rest on moral values and justice. According to Aristotle, law is a lustless reason that aims to achieve the common good. He argued that justice as a legal goal would not be achieved if the law was kept away from morality.

Thinking about the relationship between law and morality has been a major concern in classical legal philosophy, particularly in the works of Plato and Aristotle. These two great Greek philosophers held that good law should not only be obeyed because of its formal power, but should reflect moral values and justice that derive from rationality and the common good. Meanwhile, Aristotle in *his Nicomachean Ethics* and *Politics* emphasized that law is an expression of *the logos* (intellect) which is not based on passion, but on reason. He stated that "law is reason free from passion" and that justice is the ultimate goal of law. Aristotle divides justice into two: *justice as equality* and *justice as lawfulness*. However, laws that do not contain moral values are considered to fail to realize this goal, because the justice in question is not only formal, but also substantive, thus both Plato and Aristotle affirm that laws separate from morality will lose their legitimacy as an instrument of justice. This thought became the foundation for later developed *natural law theory*, which held that positive law is valid only insofar as it is in line with universal moral principles.

⁷ H. M. Agus Santoso, *Hukum, Moral dan Keadilan*, (Jakarta: Prenada Media Group, 2012), p. 88.

⁸ *Ibid.*

⁹ K. Bertens, *Etika*, (Jakarta: Gramedia, 2013), p. 5.

¹⁰ Luh Suryatni, "Pancasila sebagai Basis Moralitas Haluan Kebangsaan dan Kenegaraan dalam Implementasi Nilai-Nilai Pancasila Berdasarkan Bhineka Tunggal Ika," *Op.Cit.*

Furthermore, in Thomas Aquinas' thought, law has a hierarchy starting from *eternal law*, *natural law*, to *human law*, all of which must basically be in harmony with the universal moral principles derived from natural law. Aquinas emphasized that if a positive law is contrary to natural or moral law, then it loses its legitimacy and is not obligatory to obey. Gustav Radbruch in the modern context, stated that there are three basic values of law, namely legal certainty, utility, and justice, but justice has the main position. According to Radbruch, when there is a conflict between positive law and extreme moral justice, positive law must be corrected for the sake of justice.¹¹

In contrast to the theory of natural law, the school of legal positivism pioneered by John Austin and Hans Kelsen made a firm separation between law and morality. For Kelsen, law is a system of norms that is autonomous and independent of moral values, and the validity of law is determined solely by formal procedures and its legality in a hierarchical system of norms (*Stufenbau*). However, this view of positivism drew criticism, especially when formal law was abused by authoritarian regimes, Gustav Radbruch, who had been a positivist before, later corrected his view by stating that law should not be blind to justice and morality.¹²

Moral principles are the guidelines of human behavior that are usually captured through interactions in their environment and are considered a necessity from the beginning. This can occur within the scope of a particular family or society, so that individuals believe that certain behaviors are rooted in nature and their social environment. Morality has never experienced a void where there is human civilization, there must be morality that reflects human behavior. In principle, moral teachings encourage good deeds and avoid evil, which are closely related to human reason. However, due to the different nature and disposition of human beings, moral teachings are not always able to control all individuals, so morality and ethics are highly dependent on the behavior of each individual.

The relationship between law and morality in the Indonesian context is increasingly evident through the establishment of Pancasila as the source of all legal sources. Pancasila is not only the basis of the state, but also the basic norm (*grundnorm*) that is moral and philosophical in forming positive laws. Law in Indonesia must normatively reflect moral values such as social justice, humanity, and divinity.

In the legal system, there is a functional relationship between one norm and another, where the basis for the validity and legality of a norm lies in a higher norm in the hierarchy of legal norms. The basis for the validity of a legal provision rests on the applicability of the norms that govern it. For example, the legality of a regulation is in the law, the legality of the law refers to the Constitution, and the legality of the Constitution itself is in the unwritten basic norms, which in Hans Kelsen's theory are known as Grundnorm. This Grundnorm is often identified with fundamental moral values that are commonly believed in in society, so it can be said that morality is the highest foundation of the enactment of the law in the sense of legislation.¹³

The Indonesian legal system, which is used as a grundnorm or basic norm is Pancasila, so that Pancasila serves as a basic rule, which is the norm that is the basis for the validity and

¹¹ Asep Bambang Hermanto, "Ajaran Positivisme Hukum di Indonesia: Kritik dan Alternatif Solusinya," *Selisik: Jurnal Hukum dan Bisnis* 2, no. 2 (2016): 108-121. <https://journal.univpancasila.ac.id/index.php/selisik/article/view/650>.

¹² Abdul Halim, "Teori-teori Hukum Aliran Positivisme dan Perkembangan Kritik-kritiknya," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 42, no. 2 (2008): 387-408. <https://doi.org/10.14421/ajish.v42i2.115>

¹³ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, (Jakarta: Sinar Grafika, 2006), p. 22.

legality of positive law in Indonesia. Pancasila is the source of all sources of law or legal order for the state of the Republic of Indonesia.¹⁴ This meaning means that the source of legal order of the Republic of Indonesia is the view of life, awareness, and legal ideals as well as moral ideals which include the psychological atmosphere and character of the Indonesian nation.

Pancasila in the Indonesian legal system, occupies the highest position as a *grundnorm* or basic norm, a concept that refers to the legal theory of Hans Kelsen. According to Kelsen, *grundnorm* is a fundamental norm that is the basis for the legitimacy of the entire legal system of a country. Pancasila in the Indonesian context is not only the basis of the state politically and philosophically, but also as a fundamental norm in the structure of legal norms that form the national legal system. This shows that Indonesia's positive law must be in harmony and must not contradict the values contained in Pancasila.

As a source of all legal sources, Pancasila contains universal values that are sourced from the outlook on life, consciousness, and moral ideals of the Indonesian nation. Values such as Godhead, Humanity, Unity, Democracy, and Social Justice are fundamental footholds in the formation of legal norms. Thus, all forms of laws and regulations, public policies, and court decisions must reflect the values of Pancasila, so that Indonesian law is not only legal-formalistic, but also loaded with ethical and moral values.

Furthermore, Pancasila as a source of legal order also has a function as an evaluative parameter for the applicable positive laws. If a law, government regulation, or legal policy is contrary to the values of Pancasila, then the regulation is substantively defective ideologically and constitutionally. Therefore, the placement of Pancasila as a *norm* is not only symbolic, but normative and constitutionally binding.

B. The Extent to Which Morality Affects the Law Enforcement Process in Indonesia in The Context of Substantive Justice

Law enforcement cannot be separated from the moral values that live in society. Law enforcement in the Indonesian context should ideally not only be based on textual-formal positive law, but also consider broader substantive justice, namely justice that lives in public consciousness and is rooted in the values of Pancasila. Morality in this case acts as an ethical compass that guides law enforcement officials to not only pursue legal *certainty*, but also justice and benefits for the wider community. The concept of substantive justice refers to justice that does not only stop at compliance with written legal norms, but also at the moral and ethical substance of a legal action or decision. The law in cases that are formally enforced actually causes injustice because it ignores the social, economic, and cultural context of the community. This is where morality plays a role in correcting the application of "cold" and mechanistic laws so as not to move away from the sense of justice that lives in society.

Morality is important because law enforcement officials such as judges, prosecutors, and police have discretion in interpreting and applying the law. If their morality is in favor of social justice, then their decisions will be closer to substantive justice. On the contrary, if their morality is defeated by self-interest or the pressure of power, then the law will be used instrumentally, and give birth to injustice.

Pancasila as a *grundnorm* (basic norm) has placed moral values such as justice, humanity, and divinity as the philosophical foundation of national law. This reinforces the importance

¹⁴ Maria Farida Indrati, *Ilmu Perundang-Undangan: Proses dan Teknik Pembentukannya*, (Yogyakarta: Kanisius, 2007), p. 11.

of morality in law enforcement. However, in practice, many legal rulings do not reflect these values, especially in cases of corruption, human rights violations, and real social inequality in the judicial process.

The sociology approach of law, law is seen as a social product that must reflect the dominant values in society. Therefore, law enforcement that ignores public morality will actually create a crisis of public trust in the law. The public will see the law as an instrument of power, not as a guardian of justice. Therefore, the integration between law and morality is an absolute requirement to realize substantive justice in Indonesia.

Justice is the last joint as a legal goal. In order for justice to be achieved in accordance with the justice that exists in society, the law that is created must be in harmony with morality, because in fact law is moral, meaning that laws and all legal norms must be in accordance with moral norms. Laws in the form of laws and those implemented in judicial institutions will be meaningless and will not achieve a sense of justice if they abandon moral principles, both by the lawmakers and law enforcement officials. There are injustices and arbitrary actions in the making of laws and the process of law enforcement, there must be moral values that are abandoned, moral is that which concerns the human mind, morality is the basic norm (*grundnorm*) as the last basis as the foundation of all laws and their implementation.¹⁵ Justice is indeed the *telos* (ultimate goal) of law as formulated by classical philosophers such as Aristotle, who stated that law is "reasoning without passion" directed to achieve justice in social life. A fair legal perspective must be in harmony with moral values, because morality is a reflection of the conscience and noble values of a living society. This means that every law that is created, both in the form of a law and in the practice of enforcement, is obliged to make morals as its basis.

Natural *law theory*, morality is seen as the source of legitimacy of a law. Thomas Aquinas emphasized that laws that are not in accordance with morals or natural laws are not laws in the true sense (*lex iniusta non est lex*).¹⁶ Therefore, morality is not only a complement, but a *grundnorm* – the basic norm that is the foundation for the enactment of the entire legal system. In Indonesia, these moral values are reflected in Pancasila which is the source of all sources of law. When the law in practice, is produced or enforced without considering morality, then it is likely that the law will move away from the sense of justice of the community. This phenomenon can be seen in various cases of injustice, such as light sentences against corruptors, criminalization of small communities, and human rights violations that are allowed. This injustice is not only due to legal defects, but also because of the uprooting of the law from the moral values that should underlie its formation and implementation.

Morality is rooted in the inner consciousness of man and concerns *the good and bad values* that are collectively believed in society. Therefore, morality is fundamental and is an ethical measure in assessing the validity of the law. Law enforcement without considering morality will give birth to empty legalism, which is a situation in which the law is only enforced formalistically without touching a sense of substantive justice. So that the law must make morality a normative foundation, both in the formation of laws and regulations and in the practice of law enforcement institutions. When morality is ignored, the law loses its orientation towards justice, and turns into a repressive tool of power.

¹⁵ *Ibid.*

¹⁶ Satjipto Rahardjo, *Hukum dan Masyarakat*, (Bandung: Angkasa, 2008), p. 45–50.

Justice is the ultimate value that the law wants to realize. Justice in the view of legal philosophy is not only understood as the fulfillment of formal procedures, but also as a reflection of the moral values that live in society. Therefore, good law cannot be separated from morality, because law is basically part of morality itself. Laws and other legal norms must be rooted in fundamental moral principles.¹⁷

Harmony between law and morality is the main requirement to bring substantive justice in society. If a law is drafted without considering moral values, or law enforcement officials carry out their duties without upholding ethical principles, then the law will only become an instrument of power that is dry from a sense of justice. History has shown that injustice and arbitrary actions often arise when moral aspects are ignored in the legislative and law enforcement processes.

The statement that harmony between law and morality is the main requirement for achieving substantive justice is in line with the thinking in the philosophy of *natural law*, which emphasizes that law should not be separated from moral values. Substantive justice is not simply formal adherence to legal texts, but includes the fair and moral application of the law in social reality. The law must have an ethical dimension that is in harmony with the conscience of the community.

If a law is made without taking into account the moral values that live in society, then the law loses its social and ethical legitimacy. Jeremy Bentham, in his critique of laws that do not bring benefits and justice, states that a good law is one that leads to *the greatest happiness of the greatest number* – a principle that can only be achieved when it is in harmony with moral and ethical values.

When law enforcement officials work without upholding moral and ethical principles, the law turns into a repressive tool of power. Hans Kelsen, although known as a figure of *legal positivism*, still realizes that in its implementation, law requires living values so that they are not separated from the social and moral reality of society. This is where we see the urgency of the legal profession's ethics, which require judges, prosecutors, and police to act not only according to procedure, but also on the principles of justice and humanity. In Indonesia, there are many cases of human rights violations, legal inequality between the rich and the poor, and the practice of criminalization of the small people which strengthens the evidence that the law that is free from moral values is only a tool of oppression. Therefore, the reconstruction of the legal system must begin by affirming moral values as the soul of the law, not only in the form of discourse, but in the mechanism of legislation, law enforcement, and professional ethics development, morality is not only positioned as an ethical guide, but also as a basic norm (*grundnorm*) that supports the legal structure as a whole. Morality is the inner foundation that shapes legal awareness both among lawmakers and law enforcement officials. Without a moral foundation, the law loses its legitimacy as a tool for creating order and justice in society.

CONCLUSION

Morality and law are closely and inseparably related from the perspective of legal philosophy. A just law must be based on moral values. Morality is the ethical foundation for law to achieve its main goal, which is justice. Without morality, the law loses its soul and

¹⁷ Satjipto Rahardjo, *Hukum dan Perubahan Sosial*, (Bandung: Sinar Baru Algensindo, 2007), p. 95.

meaning, and has the potential to become a tool of arbitrary legitimization of power. Therefore, in the philosophy of law, the ideal law is not only legally legal, but must also be morally just. Morality in the context of Indonesian law should play an important role in the law enforcement process, especially in realizing substantive justice. Pancasila as *a norm* reflects the nation's moral values that must be a foothold in making and implementing laws. Law enforcement that ignores morality risks giving birth to injustice. On the other hand, laws that are carried out by upholding moral principles will be better able to fulfill the sense of justice of society in real terms. Morality is not only complementary, but it is an absolute requirement for law enforcement to be truly fair and functional in the life of the nation and state in the context of law enforcement in order to realize legal certainty of justice, law and the benefits of law.

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