

## PHILOSOPHY OF LAW IN LEGAL REALITY

**Irman Syahriar, Benhard Kurniawan Pasaribu, Dina Paramitha Hefni Putri,  
Khairunnisah**

*Faculty of Law, Universitas 17 Agustus 1945 Samarinda*

*[irman.syahriar@gmail.com](mailto:irman.syahriar@gmail.com), [benhardkpasaribu.untagsmda@gmail.com](mailto:benhardkpasaribu.untagsmda@gmail.com), [radinaparamitha@gmail.com](mailto:radinaparamitha@gmail.com),  
[nisa289@gmail.com](mailto:nisa289@gmail.com)*

### ABSTRACT

In recent decades, the phenomenon of disobedience or even 'harassment' of the law has been rife. Both in terms of action and giving court decisions are often considered unwise because they do not provide satisfaction to people who are experiencing legal problems. The judge is considered to no longer give a fair verdict on the initial process to the end of the ongoing trial, including due to court procedures that are not in accordance with legal provisions. As stated by Bismar Siregar, currently many cases are decided based on certain 'orders' through cooperation between law enforcement officials (oknum) and perpetrators of law violations who with their intelligence are able to distort the meaning of the rule of law with the opinion of judges. Researchethode is a type of normative legal research or research using the rules in existing laws and regulations and research carried out by collecting data directly in the field from competent parties related to the object studied because it is in the form of secondary data such as legislation and literature books. A judge's decision that reflects justice is not easy to find a benchmark for disputing parties. Because fair to one party is not necessarily fair to the other. The duty of the judge is to uphold the acidity in accordance with the trash made at the head of the judgment which reads "For Justice Based on the One and Only Godhead". Legal considerations are basically constructed in a judge's decision as a process of deduction, which means the process of applying relevant legal regulations to assess these legal facts.

**Keywords:** *Philosophy, Reality, Law*

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## INTRODUCTION

The current state and reality of law is very concerning because laws and regulations only become regulatory traffic, do not deal with the main problem, but develop, and elaborate with aspirations and interpretations that do not arrive at truth, justice and honesty (Vellinga, 2017). The function of law is no longer meaningful because there is unlimited freedom of interpretation driven by political power packaged with a specific purpose (Jeffries Jr, 1985). The law is only a political reliance to achieve goals, even though politics is difficult to find direction. Politics has a multi-purpose dimension, shifting according to party lines that are able to break through the law from any angle of origin to the destination of the desired target. Legal philosophy is relevant to build actual legal conditions, because the task of legal philosophy is to explain the basic values of law philosophically that is able to formulate ideals of justice, order in life that are relevant to applicable legal statements, even change radically with the pressure of human desires through new legal paradigms to meet legal developments at a certain time and place (Čerka et al., 2017).

Philosophy is an attempt to study and reveal the fundamental depiction of man in the world leading to the afterlife (Weber, 2007). The object is material and formal. Material objects are often called everything that exists, even those that may exist, this means studying everything that is contained in the universe, ranging from inanimate objects, plants, animals, humans and the creator. Hereinafter this object is called reality or reality.

The application of Philosophy of Law in state life has various variations depending on the philosophy of life of each nation (Wealtanchauung). In reality, if a country without ideology is impossible to achieve its national goals because a state without ideology is a failure, the country will run aground on the way. The Philosophy of National Life (Weltanschauung), which is prevalent as the philosophy or ideology of the state, serves as a ground norm (Theo Huijbers, 1982).

The role of legal philosophy in the practice of legal justice in public life, especially to position the diction of 'justice' on its true meaning, not just as a slogan (Waldron, 1999). In recent decades, the phenomenon of disobedience or even 'harassment' of the law has been rife. Both in terms of action and giving court decisions are often considered unwise because they do not provide satisfaction to people who are experiencing legal problems.

The judge is considered to no longer give a fair verdict on the initial process to the end of the ongoing trial, including due to court procedures that are not in accordance with legal provisions. As stated by Bismar Siregar, currently many cases are decided based on certain 'orders' through cooperation between law enforcement officials (oknum) and perpetrators of law violations who with their intelligence are able to distort the meaning of the rule of law with the opinion of judges. From this phenomenon finally emerged the term 'judicial mafia'. Not a few legal products are injured and deceived by violators, resulting in the authority of the law falling and as if it is no longer meaningful. What's worse is apathy in some people about the law, even to the point of judging 'the law can be bought'.

## **METHOD**

Based on the problems that the author presents, the author uses research methods, namely the type of normative legal research or research using the rules in existing laws and regulations and research carried out by collecting data directly in the field from competent parties related to the object studied, because it is in the form of secondary data such as legislation and literature books. "In this research, the way to access and research is to take a lot of library materials, namely materials that contain new or latest scientific knowledge, or new understandings of known facts and ideas, in this case including books, journals, dissertations or theses and other legal materials. The research of these normative legal materials fully uses premier legal materials and secondary legal materials (Nasution, 2008)."

## **RESULTS AND DISCUSSION**

Indonesia as a state of law (Rechtsstaat) in principle aims to uphold legal protection (iustitia protectiva) (Budiarti et al., 2021). Law and the legal mind (Rechtidee) as the embodiment of culture. The embodiment of human culture and civilization is established thanks to the legal system, the purpose of law and the ideal of law. Legal philosophy is considered relevant to build and improve actual legal conditions (Rhode, 1992). As quoted from Roscoe Pound who states that philosophers try to solve problems and ideas in creating perfect laws, as well as prove that established laws can no longer be disputed about their power (Pound, 1910).

Legal philosophy is inseparable from various sides of human life, both as subjects and objects of law and subjects and objects of philosophy (Bieliauskaite & Slapkauskas, 2015). Because man always needs laws and only man is able to think about philosophy. This human

ability then becomes a way to seek justice and truth in accordance with existing regulations, and measure whether something is just, right, and legitimate.

Indonesia as a state of law in principle has the aim of enforcing the law and legal protection for its citizens without exception, all citizens are equal before the law (Djarmiko & Pudyastiwi, 2019). In addition, man by nature also constantly strives to demand and defend the truth.

Is legal justice in Indonesia as expected or vice versa? of course, it becomes 'PR' with law enforcement officials and the community. The many phenomena of harassment of the law can be used as a benchmark for the sustainability of legal life in Indonesia. In reality, there are still many people who have not felt justice in law.

We can take from an example of a case that has gone viral on social media (social media), a grandmother who was accused of stealing cassava due to starvation was then charged with a fine of one million rupiah or 2.5 years in prison. Then compare it with state officials who commit corruption (eat state money) which is very large but only prosecuted with an average charge of 3 years and 4 months in prison. Despite the pros and cons of this, isn't that reality very contrasting and ironic in law enforcement efforts? Although the comparison of cases is not 'apple to apple', we can see where the grandmother committed the act on the grounds of wanting to survive and harm the cassava owner, while most officials who commit corruption are more because of their lust and greed but harm many parties are rewarded with light sentences.

As a state of law, Indonesia should pay attention to and apply the principles of justice and truth and consider human values in the administration of law. To realize this, support from various institutions and communities is needed. Because, in essence, law and justice are very closely related because justice can be realized if the law is enforced in accordance with its spirit. A judge's decision that reflects justice is not easy to find a benchmark for disputing parties. Because fair to one party is not necessarily fair to the other. The duty of the judge is to uphold the acidity in accordance with the trash made at the head of the judgment which reads "For Justice Based on the One and Only Godhead". Justice referred to in the judge's decision is that which is impartial to one of the parties to the case, recognizing the equality of rights and obligations of both parties. In handing down a verdict, the judge must be in accordance with existing regulations so that the decision can be in accordance with the justice desired by the community. The winning party can demand or get what is rightfully his, and the losing party must fulfill what is his obligation. In order to uphold justice, the judge's decision in court must be in accordance with its true purpose, which is to provide equal opportunities for litigants in court. The value of justice can also be obtained when the case resolution process is carried out quickly, simply, at low cost because delaying the resolution of cases is also a form of injustice.

The judge's decision that reflects legal certainty, of course, in the process of solving cases in the trial has a role to find the right law. Judges in making decisions do not only refer to the law, because it is possible that the law does not regulate clearly, so judges are required to be able to explore legal values such as customary law and unwritten law that live in society. In this case, the judge is obliged to dig up and formulate it in a decision. The judge's decision is part of the law enforcement process which has one of the objectives, namely legal truth or the realization of legal certainty. Legal certainty as stated in the judge's decision is a law enforcement product based on juridically relevant trial facts from the results of the case resolution process in the trial.

The application of the law must be in accordance with the case that occurs, so that judges are required to always be able to interpret the meaning of laws and other regulations on which the decision is based. The application of the law must be in accordance with the case that occurs, so that the judge can construct the case that is tried as a whole, wise and objective. Judges' decisions that contain elements of legal certainty will contribute to the development of science in the field of law. This is because the judge's decision that has the force of law is no longer the opinion of the judge himself but is the opinion of the court institution that will be a reference for the community.

A judge's decision that reflects expediency is when the judge not only applies the law textually, but the decision can be executed in a real way so as to provide benefits for the interests of litigants and benefits for society in general. The decision issued by the judge is a law that must maintain balance in society, so that the community again has trust in law enforcement officials as a whole. Judges in their legal considerations with good reason can decide a case by placing the verdict when it is closer to justice and when it is closer to legal certainty. Basically, the principle of expediency lies between justice and legal certainty, where judges value the purpose or usefulness of the law in the interests of society.

Before examining what and how the influence of legal philosophy in court/judge decisions, it is better to first understand the understanding of legal science and legal theory and its relationship with legal philosophy. This is because court/judge decisions as part of legal practice are also the object of study of legal science and legal theory. Sudikno Mertokusumo said that legal science is not the same as legal theory. Legal science is the theory of positive law or the theory of legal practice, while legal theory is the theory of legal science or legal science is the object of legal theory. Legal theory can be defined as a whole of statements that are interrelated with the conceptual system of legal rules and legal decisions, and that system is for a significant part positive.

The judge's decision is made based on two main considerations, namely consideration of facts at trial and legal considerations. The facts before the trial considered by the judge must be further divided into 2, namely legal facts and non-legal facts. Legal facts must always be based on the presence of at least 2 pieces of evidence and also strengthened by the judge's belief. Non-legal facts must be set aside because they do not need to be considered in making decisions. The second consideration is the legal consideration of legal facts that have been constituted to then be qualified as a certain legal event, before finally constituting the law. Legal considerations are basically constructed in a judge's decision as a process of deduction, which means the process of applying relevant legal regulations to assess these legal facts. In this process of deduction, legal philosophy actually plays an important role in producing judges' decisions.

The deduction process should not only be based on the sound of the text of the law, but the judge should try to understand the legal concept - the legal concept and legal doctrine - the legal doctrine behind the text of the law. The legal concepts and legal doctrines that underlie the text of the law are of course motivated by certain legal philosophies, especially the value of justice and what kind of truth to aim for. Legal philosophy is very useful for developing a sense of justice for judges so that when applying and interpreting statutory provisions on concrete legal issues, they can fulfill and explore the sense of social justice in society before deciding cases submitted to them. Friedmann as quoted by Sudikno Mertokusumo said that

this new era of legal philosophy was born from the confrontation of legal practitioners in their work with issues about social justice.

## **CONCLUSION**

Legal philosophy is inseparable from various sides of human life, both as subjects and objects of law and subjects and objects of philosophy. Because man always needs laws and only man is able to think about philosophy. A judge's decision that reflects justice is not easy to find a benchmark for disputing parties. Because fair to one party is not necessarily fair to the other. The duty of the judge is to uphold the acidity in accordance with the trash made at the head of the judgment which reads "For Justice Based on the One and Only Godhead". Legal considerations are basically constructed in a judge's decision as a process of deduction, which means the process of applying relevant legal regulations to assess these legal facts. In this process of deduction, legal philosophy actually plays an important role in producing judges' decisions. The deduction process should not only be based on the sound of the text of the law, but the judge should try to understand the legal concept - the legal concept and legal doctrine - the legal doctrine behind the text of the law. The legal concepts and legal doctrines that underlie the text of the law are of course motivated by certain legal philosophies, especially the value of justice and what kind of truth to aim for. Legal philosophy is very useful for developing a sense of justice for judges so that when applying and interpreting statutory provisions on concrete legal issues, they can fulfill and explore the sense of social justice in society before deciding cases submitted to them.

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