

Regula Et Mensura: Philosophical Exploration of Moral Position in The Indonesian Legal System According to The Thoughts of Thomas Aquinas



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ABSTRACT: The relationship between law and morals in the perspective of legal thought focuses on the conflict between positivism and natural law. The main problem concerns whether or not there is a relationship between the two rules which influence the existence and validity of legal rules so that they bind members of society. The aim of this research is to find out the legal system in Indonesia and how the position of moral values is towards the legal system in Indonesia and its practice in the justice system in Indonesia. The research method used in this writing is a normative juridical method, namely legal research conducted by examining library materials and examining laws and regulations related to the problem. The results of this study indicate that the moral position is very influential on the legal system in Indonesia and in its enforcement, because the morale of law enforcement officials is needed to archive true justice. Good law enforcement requires implementation that is directed at the process of archiving goals which includes the actualization of values/morals towards law enforcement officials or often referred to as the legal structure that underlines and becomes a reference for the behavior of law enforcement processes, which is aimed at achieving legal goals. To elements of good law enforcement.

KEYWORDS: Morals, Law, Legal System in Indonesian.

A. INTRODUCTION

As is commonly known, the discourse of thought on the relationship between law and morals in the perspective of legal thought is centered on the conflict of thought between positivism and natural law. The main issue is whether or not there is a relationship between the two rules that influences the existence and validity of legal rules so that they bind citizens. However, the relationship between law and morals is much broader than just the conflict of thought between positivism and natural law. The relationship between law and morals is also related to the dialectical relationship between the two rules that form a reciprocal functional relationship between law and morals (Ananda, 2006). This means that there is a reciprocal influence between law and morals in various aspects of human life, there is a moral contribution to law and a legal contribution to morals.

Historically, it has been proven that law and morality were not originally two separate things, but two aspects that are united in God's law (divine law). This can be seen from the concept of Jewish law and Canonical law. In addition, the form of unity between law and morality can also be found in the cultural construction of indigenous peoples in the archipelago who choose to continue to preserve socio-cultural values as instruments of life regulation, or guidelines for social order. This issue has actually verified what Thomas Aquinas called *ordo rationis* or the command of reason. That the relationship between law and morality is an "objective natural command".

In practice, there is an asymmetrical state between law and morality, it is influenced by the secularization of human life that separates worldly life which is a matter of state (politics) and afterlife affairs which are the domain of morals and religion. Although initially secularization occurred in the Western world (Christianity) with the birth of the "renaissance", the idea of secularization has penetrated almost all parts of the world, including the Islamic world. In Indonesia, the idea of secularization has also developed, which shows itself in the discourse on the relationship between state and religion and the derivation of the pattern of that relationship.

According to Kant, obligation is the basis of moral action, in the *grundlegung* Kant said that the only thing that is good without qualification or exception is "good will (*guter wille*)". For the sake of obligation, only this practical love can then be the object of moral command. With the same intention, Kant said that acting based on formal maxims, pure and a priori, absolute, not particular but universal. In Thomas Aquinas' qualification, it is said that humans have a natural tendency to do good and reject evil or known as the principle of *bonum est faciendum et prosequendum, et malum vitandum*.

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Autonomous morality as the highest form of morality and humans as the goal, starting from the inner/spiritual through free reason, gives birth to two forms of rules, namely subjective maxims and objective rules. At the subjective rule stage, it cannot be said to be the highest form of morality or cannot give birth to unconditional commands or categorical imperatives, because at this stage humans take action still influenced by other tendencies. To reach the categorical imperative stage, there must be an objective norm, this norm is objective in itself because it is carried out for the sake of the obligation, without motives of profit and loss, pleasure or displeasure, and it is free from heteronomous morals.

Morality for Kant is whether or not this conformity in itself is not yet moral, because the inner drive is not considered at all. Moral values are only obtained in morality. What Kant meant by morality is the conformity of our attitudes and actions with our inner norms or laws, namely what we see as our obligations. Morality will be achieved if we obey the outer law not because it brings consequences that benefit us or because we are afraid of the power of the law giver, but we ourselves realize that the law is our obligation (Ridwan, 2021).

Morality should be inherent in a person; therefore, it is important for law enforcement officers to have high morality to achieve integrative legal goals, and must feel that they have a natural tendency as a natural objective command to do good and reject evil.

Based on this question, the formulation of the problem in this writing is: What is the moral position in the legal system in Indonesia according to the thoughts of Thomas Aquinas?

This research is to find out the relationship between morals and law which greatly influences the legal system and law enforcement in Indonesia. This research is a legal research or normative juridical research. Therefore, in accordance with the legal issue, this research will examine the Indonesian legal system and the moral position of the judicial system in Indonesia, by examining it, an understanding will be obtained. moral position in the legal system in Indonesia and its practice in the judicial system in Indonesia.

Considering that research focusing on the moral standing of the justice system in Indonesia has been conducted previously, such as by: 1). Ahmad Rofiq in 2019, namely Criminal Objectives Integrity In The Indonesian Criminal Justice System (Rofiq, 2019). 2). Mahrus Ali in 2007 which focused on the Progressive Criminal Justice System: Alternatives in Criminal Law Enforcement (Ali, 2007). 3). Ronald Weitzer in 1996, namely Racial Discrimination in The Criminal Justice System: Findings and Problems in the Literature (Weitzer, 1996). 4). Michael Barama in 2016, namely the Model of the Criminal Justice System in Development (Barama, 2016). 5). Ridwan in 2021, namely the Relationship between Law and Morals from a Categorical Imperative Perspective (Ridwan, 2021).

The difference in focus of the research that will be carried out now compared to existing research is that this research places more emphasis on...Moral Position in the Legal System in Indonesia and its Practice in the Justice System in Indonesia, thus making discussion on this matter something that is always important and actual to conduct further study.

B. RESEARCH METHODS

The method used in this writing is the normative legal method, namely research with in-depth literature through an approach carried out based on basic legal materials by analyzing various theories, concepts, legal principles, norms, rules of statutory provisions, or court decisions (Marzuki, 2021). Three types of approaches were used in this study, namely the conceptual approach, the statute approach, and the case approach.

C. RESULTS AND DISCUSSION

1. Legal System in Indonesia

The system is a unity or wholeness which consists of several parts or components that are interconnected in the sense of influencing and complementing each other, to achieve certain goals. Thus, the law in force in Indonesia is a system, meaning that, in it, several types of laws apply that are interconnected in the sense of influencing and complementing each other, to achieve certain goals, namely order, tranquility and peace in society (Bakrie, 2011).

In general, the legal system in the world consists of 2 systems, namely the Continental European Legal System (civil law) and the Anglo-Saxon Legal System (common law). The civil law system has a source of law that comes from the codification of written law (written code). John Henry Merryman in his writings stated that there are 3 (three) sources of law in a country with a civil law system, namely statutes, derivative regulations (regulations), and customs that do not conflict with the law (customs), where the judge's decision in the civil law system is often considered not a law. While the Anglo-Saxon legal system (common law) has historical roots in the British Empire which uses court decisions as its legal basis, where when a case is decided by a judge, the decision is not only binding on the parties to the case but also applies generally to similar cases (Dainow, 1966- 1967).

Indonesia is one of the countries that adheres to the Continental European Legal System (civil law). Limiting the role of judges to make laws in countries that adhere to the civil law system is a policy that has socio-political reasons and goals (Ramadhan, 2018). In the civil law system, the courts do not use a jury system. This also applies to the courts in Indonesia (Dharmasisya, 2022).

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When viewed from a theoretical/conceptual perspective on the "legal system", SHN can be said to be a unity of various national sub-systems, namely "national legal substance", "national legal structure" and "national legal culture".

If SHN is only seen as a legal substance, then it can be said that SHN is the Pancasila Legal System. If explained further, SHN-Pancasila is SHN that is based on/oriented to the three pillars/balance values of Pancasila, namely:

- 1) Oriented towards "divine" values (religious morals);
- 2) Oriented towards "humanistic" values; and
- 3) Oriented towards "social" values (nationalistic; democratic; social justice).

Thus, the legal system/order in Indonesia which is not oriented towards these 3 pillars/values/approach/souls (spirit), CANNOT be said to be SHN, even though it was created by the Indonesian legislative body. It is very appropriate that the II/1968 National Law Seminar emphasized that:

"The 1945 Constitution may only be implemented on the basis of Pancasila. Implementation of the 1945 Constitution that is contrary to the spirit and soul of Pancasila means manipulation of the constitution and betrayal of Pancasila" (Arief, 2021)

To implement or implement the legal system in Indonesia, the judicial system is present as a support to enforce the law. The judicial system is often interpreted narrowly as "a court system that administers justice on behalf of the state or as a mechanism to resolve a case/dispute". According to Barda Nawawi Arief, this understanding is narrow, because it only looks at the structural aspect (namely the "system of courts" as an institution) and only looks at the aspect of the power to try/resolve cases (administer justice as a mechanism for the resolution of disputes) (Arief, 2017).

The implementation of criminal justice is a policy, namely the policy of protecting society (social defense policy). The policy of protecting society is directed at protection from various disturbances, especially disturbances to the security and safety of life, property and honor. As a protection of society, the implementation of criminal justice is also an effort to overcome crime by using criminal law/penal means (Barama, 2016).

There are many definitions of the criminal justice system (CJS). Among them, according to Remington and Ohlin, is a system of approach to the mechanism of criminal justice administration. Hagan defines the criminal justice system as the relationship between the Decisions of each Institution involved in the criminal justice process. Meanwhile, Mardjono Reksodipoetro argues that the criminal justice system is a crime control system consisting of the police, prosecutors, courts and prisons.

The judicial system is essentially identical to the law enforcement system, because the judicial process is essentially a process of enforcing the law. So it is essentially identical to the "judicial power system", because "judicial power is basically the authority to enforce the law".

In simple terms, it can be said that the criminal justice system is a means of combating crime in which there are interrelated sub-systems (Ali, 2007).

The judicial system (or law enforcement system hereinafter abbreviated as SPH) is seen integrally, as a unity of various sub-systems (components) consisting of the components of "legal substance", legal structure and "legal culture" (Ariyanti, 2019). As a law enforcement system, the judicial/law enforcement process is closely related to these three components, namely legal norms/statutory regulations (substantive/normative components). Law enforcement institutions/structures/apparatus (structural/institutional components along with their procedural/administrative mechanisms), and legal culture values (cultural components). What is meant by legal culture values, Friedman said in the context of law enforcement, of course, is more focused on the values of legal philosophy, legal values that live in society and awareness/attitudes of legal behavior/social behavior, and legal education/science. This means that in a broad sense, legal culture values also include the concept of basic ideas/concepts/insights and scientific values, intellectual philosophy.

The close relationship between the three components can be illustrated as in the system of "driving a car". If the law is illustrated as a tool/means in the form of a car to achieve a certain goal, then "enforcing/implementing the law" is essentially identical to "driving a car". A car/vehicle (identical to "legal substance") can only run if there is a driver (identical to "legal structure", legal structure/apparatus/law enforcement agency) and the driver must also "master the science of driving a car" (have a driving license). The science of driving a car is identical to "legal science" (the science of enforcing the law) which is included in "legal culture". It should be emphasized that having a legal driving license alone is certainly not enough. The driver must also know and master the science/conditions of the environment. If they do not know, they can go in the wrong direction/go the wrong way. This means that law enforcement must pay attention to the Indonesian context (namely the national legal system/SISKUMNAS).

Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia affirms that all citizens have equal standing before the law. The meaning of equality before the law is found in almost all state constitutions. This is the norm that protects the basic rights of citizens. Equality before the law means that every citizen must be treated fairly by law enforcement officers and the government. Therefore, every law enforcement officer is constitutionally bound by the value of justice that must be realized in practice, but enforcing equality before the law is not without obstacles. These can be legal and political obstacles, or sociological and psychological obstacles.

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Guarantees of protection and justice in all areas of life are the rights of every Indonesian citizen as mandated by the Constitution. The legal process should always and continue to consider the needs, aspirations, and interests for the sake of a sense of justice for women and men. Law is not just a regulation, but a legal system that includes substance, structure, and legal culture (Safarini, 2020).

2. The Position of Moral Values in the Legal System in Indonesia and its Practice in the Justice System in Indonesia

Morals have five functions towards the first law, morals function as an ethical basis for the formation of legal rules. As an ethical basis, moral values become the basis for policies to form new legal rules and to update existing legal rules because they are no longer in accordance with legal needs and the level of community development. Moral values, especially the values of justice for all people and the values of virtue in human social life must inspire and direct the formation of legal rules (statutes). The determination of rights and obligations in a legal relationship and the determination of an act as a command or prohibition must refer to the values of justice for all people and the values of virtue in human social life.

Second, morality is a source of law. This means that moral rules can be a source for the formation of legal rules. The implementation of the function of morality as a source of law is carried out through the determination of actions that are not morally good.(immoral)become an unlawful act (illegal) or a criminal act (criminal act). In addition, acts that are morally unlawful should not be determined as illegal or criminal acts. Thus there is significance between morality and legality and immorality and illegality or criminality.

Acts that are qualified as immoral acts such as breaking promises, harming the interests of others, hiding defects in goods to be sold can be considered as unlawful acts in the field of civil law. In addition, acts of stealing, murder, adultery which are included in the qualification of immoral acts are qualified as crimes (criminal acts) which are threatened with certain criminal sanctions. Third, morality is a means to test (evaluate) the existence of legal rules. Does a rule or regulation meet the qualifications of morality to be called law or not? And whether the legal rule has met the qualifications of fair law or good law from a moral perspective.

Third, morality is a means to test (evaluate) the existence of legal rules. Does a rule or regulation meet the qualifications of morality to be called law or not? And does the legal rule meet the qualifications of fair law or good law from a moral perspective?

According to Fuller, there are eight internal legal morals, namely: eight values that must be realized by law. These eight values are called the eight principles of legality, namely: (i) there must be regulations first, meaning that there is no place for ad-hoc decisions, or arbitrary actions; (ii) the regulations must be announced properly; (iii) the regulations must not be retroactive; (iv) the formulation of the regulations must be clear and detailed, meaning that they must be understandable by the people; (v) the law must not be carried out by impossible things; (vi) there must be no conflict between regulations; (vii) regulations must be permanent, must not be changed frequently; (viii) there must be conformity between the actions of legal officials and the regulations that have been made (Rahardjo, 2012).

Fourth, morality becomes a justification reference to resolve legal cases that have no legal basis or are unclear in their legal basis. It has become common for judges to seek justification for decisions based on moral considerations. In the concept of civil law, an unlawful act does not only mean an act that violates the law, but also an act that is contrary to propriety and morality. In this context, violating the rule of law is the same as violating moral principles.

Constructing moral violations as violations of law in the field of civil law can be an instrument to resolve private disputes between one person and another in order to seek peace (justice) between them. Peace between the disputing parties is the ultimate goal to be achieved by the disputing parties in the field of civil law. However, constructing moral violations as violations of law in the field of criminal law can damage the criminal law system which is based on the principle of legality.

In French law, as stipulated in Article 6 of the French Civil Code, a cause is not legally permissible if it is prohibited by law, or is contrary to morals (*bonnes moeurs*) or public order (*ordere public*). In German law, the single concept of good morals has been used, which includes general rules and can also annul all transactions that are contrary to this very important rule (Peter, 2010)

By constructing moral violations as violations of criminal law means giving a blank check to the authorities to use their power in determining an act as a crime that is threatened with certain criminal sanctions or in interpreting the provisions of criminal law. Constructing moral violations as violations of criminal law can encourage the authorities to abuse their power or use their power arbitrarily. Which can harm the human rights and legal rights of citizens, especially since disputes in criminal law are not disputes between one person and another, but disputes between countries and citizens whose ultimate goal is to punish the guilty and free the innocent.

Fifth, public moral awareness can support public compliance with legal rules, especially legal rules that are in line with moral rules. A person's compliance with moral rules is based on self-awareness that these moral rules are good rules for his personal life. Self-awareness to obey moral rules carried out by many people will become a collective awareness of community members regarding good living patterns in communal life.

In a moral context, people voluntarily oblige themselves to obey moral rules because these moral rules are in accordance with their conscience and the way of life that they perceive to be good. A person obliges themselves to carry out moral commands, for example the command to be good to fellow human beings, the command to keep promises, and the command to be honest,

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because these moral commands are in accordance with the pattern of good life that they believe in. Likewise, if a person obliges themselves not to follow moral prohibitions, such as stealing, raping, committing adultery, and cheating, because these prohibitions are contrary to the way of life that is good. That is the command of reason (*ordo rationis*).

The phenomenon of public compliance with legal rules cannot be directly interpreted as public fear of legal sanctions that are threatened against certain legal norms. Public compliance with legal rules may be driven primarily by the compliance of individual members of society to moral rules that are in line with legal rules. However, public compliance with legal rules can also be driven solely by fear of legal sanctions that will be imposed against lawbreakers. (Isdiyanto, 2018). Public compliance with legal rules can be driven by the compliance of individual members of society to moral rules, and at the same time the fear of legal sanctions that will be threatened against certain legal rules.

Moral awareness can not only encourage people's compliance with the rule of law, but can also be a trigger for disobedience to the legal system, certain legal norms, or law enforcement practices (*civil disobedience*). Moral awareness can trigger civil disobedience if the legal system, legal rules, and enforcement practices are unfair, full of discrimination against citizens. The social revolutions that have occurred in various countries were triggered by people's moral awareness to fight against the oppression carried out by the ruling regime.

Law enforcement in a broad sense includes activities to implement and apply the law and take legal action against any violation or deviation of the law. Law enforcement activities also include all activities intended so that the law as a set of normative rules that regulate and bind legal subjects in all aspects of social and state life is truly obeyed and truly carried out as it should be. In a narrow sense, law enforcement involves taking action against any violation or deviation of laws and regulations (Mustopadidjaja, 2003).

The main key in understanding good law enforcement governance is understanding the principles therein. Based on the principles of good law enforcement, a benchmark for the performance of law enforcement can be obtained. The good or bad implementation of law enforcement can be assessed if its implementation has touched on all elements of the principles of good law enforcement, referring to the principles of democracy with its elements, such as legitimacy, accountability, protection of human rights, freedom, transparency, division of power and community control. Therefore, the implementation of law enforcement can be called a good moral style if its implementation meets the elements of the principles of democracy.

Among the principles of democracy with its elements, four principles are the main prerequisites that are interrelated with each other. In other words, the implementation of law enforcement can be called a good moral style, at least fulfilling four requirements which include legitimacy, accountability, transparency and participation. First, law enforcement is legitimate or principled, so that its shortcomings and advantages can be predicted in advance (*predictable*). Second, law enforcement implementers can be held accountable by the community (*accountable*). Third, the process is not carried out in secret which can indicate collusion (*transparency*). Fourth, the process is open to accommodate critical public opinion (*participated*).

These four prerequisites do not stand alone, one is separate from the other. Predictability will determine whether law enforcement, collectively by an institution, agency or organization with its respective bureaucratic qualities, or individually by an official, has been implemented rationally, and objectively as part of a normative system that has been built. Thus, it can truly be held accountable (Goesniadhie, 2010)

Public participation can only be fulfilled if something has been implemented transparently to a certain extent. Meanwhile, it is impossible for accountability norms to be realized if the opportunity for public participation is not opened. Likewise, transparency norms are useless if they are not intended to enable public participation and demand for accountability. Public participation cannot be implemented without transparency. Soetandyo said that accountability is difficult to implement without public monitoring and participation in the law enforcement process. The ambiguity and non-transparency in the law enforcement process make the public always be filled with various questions, whether it is true that the interests of the public are always prioritized. For this reason, community capacity must be strengthened (*empowering*), public trust must be increased and the opportunity for public participation must be increased.

Thus, building "good law enforcement" is largely determined by the attitudes and behavior of law enforcement officials. Honesty is the most important thing to develop in human resource development, because honesty has no module. Honesty is greatly influenced by a person's faith and integrity. As a consequence, the government itself is required to improve the capabilities of its human resources in accordance with their field of duty, their welfare, including determining their attitudes and behavior, so that they are able to think well and correctly.

To ensure good law enforcement, the law-making process must be aimed at achieving the supremacy of law. The formation of law as a means of realizing the supremacy of law must be interpreted to mean that law, including law enforcement, must be given a place as the main instrument that will direct, maintain and supervise the running of government. Law enforcement must be carried out systematically, directed and based on a clear concept, and high integrity. In addition, law enforcement must be truly aimed at increasing legal guarantees and certainty in society, so that justice and legal protection of human rights can truly be felt by the community.

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Good law enforcement requires implementation that is directed at the process of achieving targets that include the actualization of values that underlie and become a reference for the behavior of the law enforcement process, which is aimed at achieving legal objectives. All of this is developed in order to realize good law enforcement governance, maintaining consistency with various dimensions of values contained in the state constitution which is the basis for the existence and reference for the behavior of a good law enforcement system and process. This situation has encouraged the harmonization of law and harmonization of law enforcement in an integrated, consistent and principled manner.

The relationship between law and morality according to K. Bertens as quoted in the article "Legal Morality in Practical Law as a Virtue", states that law requires morality, there is a close relationship between law, morality and religion. Law that is not accompanied by morality will have no meaning and is considered to be of poor quality because the quality of law is measured by morals (Subiharta, 2015).

Moral values should not be separated from the law itself. Law without moral values in it is just words that provide rules or provisions as a norm but eliminate the values contained in Pancasila and are intended to be realized through law. There is a rather concerning example as a result of the separation of law from moral values, namely related to the enforcement of adultery laws which will be further explained in the discussion of the separation of law and morals. The law should reflect the moral values of the place where the law develops. The legal values and moral values in the national legal system must be based on Pancasila (Maroni, 2012)

D. CONCLUSION

The judicial system is essentially identical to the law enforcement system, because the judicial process is essentially a process of enforcing the law. So it is essentially identical to the "judicial power system", because "judicial power is basically the authority to enforce the law".

Good law enforcement requires implementation that is directed at the process of achieving targets that include the actualization of values/morals towards law enforcement officers or often referred to as a legal structure that underlies and becomes a reference for the behavior of the law enforcement process, which is aimed at achieving legal objectives. To ensure good law enforcement, the formation of law (law making process) must be aimed at achieving the supremacy of law. The formation of law as a means of realizing the supremacy of law, must be interpreted that law including law enforcement, must be given a place as the main instrument that will direct, maintain and supervise the running of government. Law enforcement must be carried out systematically, directed and based on a clear concept, and high integrity. In addition, law enforcement must really be aimed at increasing legal guarantees and certainty in society, so that justice and legal protection of human rights can truly be felt by the community.

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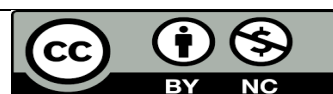
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