

Theoretical Study of Practical Debate Natural Law and Legal Positivism

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ABSTRACT: The revision of The debate between natural law and legal positivism is a classic discourse in legal philosophy that remains relevant today. Natural law emphasizes moral principles, justice, and universal values considered inherent in humans and the universe. In contrast, legal positivism prioritizes legal certainty derived from formal rules established by sovereign authorities, regardless of substantive justice. This study uses a qualitative approach with conceptual and analytical methods to examine the philosophical foundations of both schools of thought and their implications for modern legal practice. The results show that while positivism provides certainty and order, it often neglects aspects of morality and justice. Conversely, natural law provides a normative framework that serves as a critical benchmark for positive law. Thus, the integration of natural law and legal positivism is essential to creating a balanced legal system that guarantees both certainty and justice.

KEYWORDS: Natural law, Legal Positivism, Legal Philosophy, Justice, Legal Certainty.

I. INTRODUCTION

Debate has always been a common thing in the world of legal science, this of course makes legal experts debate in arranging the world order with various concepts and ideas. As time goes by, Positivism emerged as a school of law in the early 19th century. This school has several basic principles, including that only what appears in experience can be called true. This principle was taken over based on the empiricist philosophy of Locke and Hume. What can be confirmed as reality can be said to be true, therefore not all experiences can be called true, but only experiences that are in accordance with reality. Positivism is a school of thought that runs in accordance with empiricism to respond to the limitations shown. As a school of thought, positivism was originally developed as sociology by Comte. Positivism in the modern sense is a philosophical system that only considers positive facts and various observable phenomena. With the objective relationship between these facts and the laws that determine them, leaving the investigation into the highest causes or origins. (3). Positivism is a scientific attitude that rejects a priori speculations, and builds itself on experience.

Natural law is everything that exists based on the rules of the universe. According to the Greek Sophists, Thomas Hobbes, and others, natural law governs human life, just as other living creatures follow physical tendencies. This law also proves that there are fundamental demands in human life that are evident in their form as rational beings. Humans are not allowed to follow their irrational instincts, but rather rational and moral considerations. (5) Natural law itself received criticism from David Hume (1711-1776) who said that reason is only a desire and can never pretend to be anything other than serving desire. This statement by David Hume certainly not only undermines the foundation of natural law, but also indirectly states that reason is essentially a slave to human desire which itself inspires human actions. Reason does not teach how to act, but is dictated by desire. Based on the views of legal philosophers, in the neothomism school there is a natural law that has its existence above positive law. Natural law is rooted in metaphysical rules, as planned by God. Natural law is recognized as a law that has real legal force and can be recognized by human reason. If natural law is seen as such, then it is possible that natural law is recognized as exceeding positive law, and therefore can also lose its power. As Radburch has said, natural law breaks down positive law (Naturrecht bricht Positives Recht). (6)

Potential to create a "sharing of power". If this revision only serves certain political interests, this clearly conflicts with the state's goal of advancing public welfare and creating social justice.

In addition, the changes that give the president full discretion in determining the number of DPA members without clear limitations, raise concerns about the potential for abuse of power. A democratic system based on the principles of constitutionalism and the rule of law requires limitations on power, including in the appointment of state officials. If this discretion is not controlled, the state's goal of protecting the entire nation and improving the nation's life could be disrupted by decisions that prioritize short-term political interests.

The revision of the Wantimpres Law needs to be analyzed critically to ensure that the steps taken do not sacrifice the integrity of the government system that aims to realize the nation's ideals. Reform of the Wantimpres institution should aim to improve the

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quality of strategic decision-making for the benefit of the nation, not to expand executive power that could weaken the oversight and check and balance mechanisms in the state.

II. FORMULATION OF THE PROBLEM

1. How is the conceptual basis of natural law related to legal positivism?
2. How is the theoretical study between natural law and legal positivism?

III. DISCUSSION

A. Conceptual Basis of Natural Law with Legal Positivism

Auguste Comte divided legal science into three stages: theological, metaphysical, and positivist. Since the advent of positivism, science has developed rapidly. This may be because it overturned the theological and metaphysical methods of human knowledge, which relied on assumptions that could not be observed and tested in laboratories. Positivism established science on earth by observing nature and life. Legal science also uses a positivistic model, one example being Hans Kelsen's *Reine Rechtslehre*. Law is a logical arrangement of regulations that apply in a particular place, and legal science is the science of those regulations. The essence of Kelsen's theory is as follows (Suteki, 2018):

- A. The aims of a theory of law, as of any science, is to reduce chaos and multiplicity to unity.
- B. Legal theory is science, not volition. It is knowledge of what the law is, not what the law is. The law is normative not natural science.
- c. Legal theory as a theory of norms is not concerned with the effectiveness of legal norms.
- d. A theory of law is formal, a theory of the way of ordering, changing contents in a specific way.

Kelsen attempted to elevate legal science to a level with the positivism of the natural sciences. Although he employed analytical positivism, Hans Kelsen certainly rejected the equating of legal science with the natural sciences. Essentially, modern legal science began amidst the dominance of positivism. Legal studies follow empirical and quantitative methods. The legal positivism movement was certainly strengthened by John Austin. John Austin's writing, "The Province of Jurisprudence Determined" (1832), contains three theses about juridical imperatives recognized in the world of legal thought: the law is a command issued by the sovereign, commands are backed by threat, and a sovereign is one who is habitually obeyed. Based on this, law is identical to orders issued by the ruler, and law has a feared coercive power. Austin's approach adheres to a system of norms, the legitimacy of state power by law, and legal formalism.

The 19th century was the era of positivism, marked by the emergence of modern law as part of the rational organization of society. Since then, law has become a distinct intuition, both in substance, administration, and methodology. In terms of substance, law relies on regulations that it produces itself, namely, legislated rules. There are no other regulations in society except those produced by legal institutions. Therefore, a special body was formed with the purpose of creating these regulations. This change gave rise to the presence of a large number of regulations created specifically and with objectives by modern law, an era never before experienced by the world community. This development resulted in legal attention being focused on the flood of regulations. Legal science naturally became a science containing regulations or positive law. Modern legal science began its journey when positivism dominated. Legal studies followed in the footsteps of the natural and social sciences, which used empirical and quantitative methods. Legal science also became the science that studied various regulations, which constituted legislated law or written law. Legal positivism can be distinguished by two experts:

A. Analytical Positive Law School (John Austin)

Law is an order from the ruler of a state. According to him, law is viewed as a fixed, logical, and closed system. Actual law has four elements: orders, sanctions, obligations, and sovereignty.

B. Pure Law School (Hans Kelsen)

According to Hans Kelsen, law must be purified of non-juridical elements, such as sociological, political, historical, and even ethical elements. This thinking is known as pure legal theory. For him, law is a necessity that regulates human behavior as rational beings (Suteki, 2018).

According to John Austin, law has several elements, including the existence of a ruler (sovereignty), a command (command), an obligation to obey it (duty), and sanctions for those who disobey (sanction). Therefore, it can be understood that Austin's teachings can be summarized as follows.

1. Law is the command of the sovereign
2. Legal Science is positive law
3. The concept of state sovereignty (doctrine of sovereignty)
4. Separation between law and morals, justice, good and bad (Suteki, 2018).

Pure legal theory is a rebellion aimed at ideological legal science, namely that which only develops law as a tool of government in totalitarian states. This theory is usually associated with the Vienna School whose figure is Hans Kelsen ((Rahardjo, 1983). According to Hans Kelsen, law is applied only with a normative-juridical approach, free from non-juridical elements such as

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sociological, political, historical and ethical. Where regulations do not speak of fairness or not but law is written positive law. Therefore, it is justified if Hans Kelsen is a neo-kantian because he has used Kant's thoughts regarding the separation of form (formal) and content (material). According to Kelsen, law deals with form (formal) not content (material). Therefore, justice is outside the law, even if there is an unjust law, as long as it has become positive law, then the non-juridical elements are set aside. The natural law school is one of the schools known as ancient, yet this school of thought has always existed, and natural law itself is nicknamed the universal and eternal school. According to Friedman, the natural law school emerged due to humanity's failure to seek absolute justice. There are also several ideas that state that natural law is based on the assumption that through reasoning, the nature of living things can be understood, and that knowledge can form the basis for the legal order of human existence. Natural law itself is divided into two schools: irrational and rational. There are several fundamental differences between the two schools. One is that the irrational school of thought holds that universal and eternal law originates directly from God. Meanwhile, the rational school of thought holds that the source of universal and eternal law is human reason. This school of thought has a broad scope due to its long history and the involvement of numerous prominent figures with diverse thoughts and concepts. Because of its different interpretations, its definition is constantly changing, reflecting changes in society and the prevailing political climate. There are several characteristics of the natural law school that are certain and present in every figure: absolute, or absolute, and universal. The following is the definition of natural law based on the opinions of legal philosophy figures:

A. Friedmann, a renowned Greek philosopher, concluded that natural law is always related to and identical with moral obligation. Indirectly, a concept existed to distinguish morality from law. Natural law is a rule of absolute justice.

B. Charles Stampford stated that natural law is based on God and reason, this statement is almost the same as the opinion of Rudy T. Erwin who explains that natural law is a religious view. Based on these two views, it can be understood that natural law has provided a complete set of principles, so that all legal problems can be answered with these principles.

C. According to Satjipto Rahardjo, natural law can be viewed as both a method and a substance. As a method, natural law formulates a method that can be used to create regulations that can address different circumstances. As a substance, natural law contains norms.

Based on the several definitions that have been mentioned, several conclusions can be drawn regarding several characteristics of natural law that can be found, namely:

1. Natural law is eternal, eternal, valid for all ages and nations;
2. Natural law applies universally or to all people, without exception to just a few people or groups, and to all times and circumstances.
2. Natural law can only be recognized by reason;
3. Natural law is not merely a yardstick for positive law, but also a touchstone. If positive law conflicts with natural law, then the positive law can be set aside or violated.

The natural law school also has several functions and uses according to the opinions of experts, namely:

a. According to Rahardjo, natural law has the following functions (Rahardjo, 2000):

1. Natural law is an ideal that guides the development of law and its implementation;
2. Natural law as a basis for moral law, which ensures that there is no total separation between "what is now" and "what should be";
3. Natural law as a method for finding the perfect law;
4. Natural law is the content of perfect law, which can be deduced through reason;
5. Natural law is a condition that must exist for the presence of law.

b. According to Friedman, natural law has multiple functions, including:

1. Natural law as the main instrument in the transformation from ancient civil law in Roman times to a broad and cosmopolitan system;
2. Natural law was used as a weapon by both sides in the conflict between the medieval church and the German emperors;
3. Natural law as a background for thinking to support the implementation of international law, and demands individual freedom against absolutism; and
4. The principles of natural law are also used by American judges to oppose attempts by state legislation to modify and reduce the absolute freedom of the individual in the economic sphere.

The main principle of natural law is that it applies universally and is personal. Therefore, because of its universal nature or characteristic, it is necessary to positivize the values within natural law, of course, so that its legal form can be concretely and more standardized for its application in social life. The principles in natural law are abstract in nature, so they must be translated into clearer regulations to have legal force in the community environment. Natural law also emphasizes its existence with an approach that is at the philosophical level, so that the validation used to measure the level of legal justice must be based on the values of natural law originating from God, the meaning of which is difficult to do and complex.

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B. A Theoretical Study of Natural Law and Legal Positivism

The theoretical study of natural law and legal positivism is a crucial topic in the philosophy of law. Natural law, often considered universal and independent of positive law, is rooted in the idea that there are inherent moral principles in the universe accessible to human reason. In contrast, legal positivism emphasizes that law is a product of human decision-making and has no intrinsic connection to morality. In this context, it is important to understand how these two schools of thought interact and influence the development of law in society.

Legal positivism, as explained by Arifan, is a school of thought that strictly separates law from morality. According to him, legal positivism focuses on positive law, which can be analyzed empirically and does not involve metaphysics (Arifan, 2023). In this view, law is considered an autonomous system, where positive law functions to regulate societal behavior without considering the moral values that may underlie it. This aligns with Hans Kelsen's view that discussions of morals and values are over once positive law is established (Harun, 2019). Kelsen argues that law should be understood as a norm separate from moral considerations, and that the validity of law must be determined based on its existence within a positive legal system.

However, although legal positivism provides clear and measurable legal certainty, there are critics who argue that this approach often neglects aspects of justice and the broader objectives of law. Endratno highlights that legal positivism tends to neglect other legal objectives, such as justice, by focusing too much on legal certainty (Endratno, 2022). This suggests that while legal positivism has advantages in terms of certainty and predictability, it also has limitations in addressing more complex moral and justice issues.

In the Indonesian legal context, the influence of legal positivism is strongly felt, particularly in law enforcement. Sitabuana and Adhari note that judges at the Constitutional Court often base their decisions on positive norms contained in statutory regulations (Sitabuana & Adhari, 2020). This suggests that in practice, legal positivism dominates the law enforcement process, with judges applying positive law without considering the broader moral or social context. This can lead to dissatisfaction among the public, who expect more substantive justice, not just legal certainty.

On the other hand, criticism of legal positivism also emerges from a progressive legal perspective, which emphasizes the importance of considering moral and social values in the application of law. Haryono asserts that although legal positivism provides certainty, it often fails to meet society's need for justice (Haryono, 2019). In this context, natural law can serve as a basis for assessing and criticizing positive law, by referring to higher moral principles. Thus, natural law and legal positivism can be seen as two sides of the same coin, both playing a crucial role in shaping a just and effective legal system.

Furthermore, Julianto and Sulistyawan emphasize that the principle of legal certainty in legal positivism shares similarities with the notion of clarity expected in the application of law (Julyano & Sulistyawan, 2019). However, they also point out that this clarity does not always guarantee justice, especially when positive law does not reflect the values held by society. Therefore, it is important to consider how positive law can be improved or amended to reflect more substantive justice, often represented by principles of natural law.

In this study, it is also important to note that legal developments in Indonesia are inseparable from global influences and paradigm shifts in legal philosophy. Afifi notes a shift from a positivistic paradigm to a post-positivistic one, which is more open to the integration of moral values into law (Afifi, 2022). This shift reflects the need to adapt the legal system to be more responsive to social dynamics and the changing needs of society.

In this context, it is important to further explore how natural law can contribute to the development of fairer and more just laws. Purwadi emphasizes that the regulation of natural obligations can occur both through positive law and through the principles of propriety and appropriateness, which reflect moral values within society (Purwadi, 2020). This demonstrates that while positive law plays an important role, natural law remains relevant in guiding the implementation of fairer laws.

Overall, theoretical studies of natural law and legal positivism show that both schools of thought have their respective advantages and disadvantages. Legal positivism offers certainty and clarity, but often neglects moral and justice aspects. Conversely, natural law provides a strong moral foundation, but may lack clarity in its application. Therefore, it is important to find a balance between these two approaches in developing a better legal system in the future.

The natural law school can be said to be the oldest school of thought in legal science. In viewing law, this school is divided into two: irrational and rational. The irrational school views law as originating from God, with famous exponents such as St. Augustine and Thomas Aquinas. The rational school views law as originating from human reason (reason), with famous exponents such as Grotius, Immanuel Kant, and others. However, the starting point of this school is that "law is used as an instrument to achieve justice." Regarding law, the natural law school states that "...that law is to be identified by reference to morals and ethics" (McCoubrey & White, 1996).

Thomas Aquinas stated that the natural law view is based on laws based on human moral nature. Furthermore, Thomas Aquinas stated that (McCoubrey, 1987).

"...implies not that 'bad' laws cannot be made and imposed, but that such laws are defective in being wrongly made and are thus limited or even entirely lacking in their claim to be obeyed as a matter of conscience. This is in fact concerned with the moral nature of the power to make laws rather than with the formal identification of state prescription." From Thomas Aquinas's perspective above, law cannot be separated from morals and ethics. Laws that are not based on morals and ethics are categorized as

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bad laws and should not be made law and imposed on society. Therefore, Hilaire McCoubrey and Nigel D. White argue that natural law has two pillars: 1) a proper purposes doctrine of lawmaking; and 2) the nature of an limitation of the obligation to obey law (McCoubrey & White, 1996). Law was born not only to fulfill the physical aspects of humans, but also existential aspects. Therefore, law is not a value-free object but is full of values—good or bad, right or wrong, just or unjust—which form the basis of meaningful law in human life. Law is not just a sovereign decree, but law must be moral and the highest moral is "justice." Thomas Aquinas stated that justice can be divided into three, namely distributive justice (*iustitia distributive*), commutative justice (*iustitia comutativa*) and legal justice (*iustitia legalis*). Distributive justice refers to the principle that equals are given equally, and unequals are given unequally. Commutative justice refers to asymmetric justice, namely adjustments that must be made if an act occurs that is not in accordance with the law. Legal justice refers to obedience to the law (Tanya, 1995). John Rawls stated that "Justice is the first virtue of social institutions, as truth is of systems of thought." From this view, John Rawls sees justice as the first virtue of social institutions. John Rawls's theory of justice is known as "justice as fairness." John Rawls stated that:

"One feature of justice as fairness is to think of the parties in the initial situation as rational and mutually disinterested. This does not mean that the parties are egoist, that is, individuals with only certain kinds of interests, say in wealth, prestige, and domination. But they are conceived as not taking an interest in one another's interests. They are to presume that even their spiritual aims may be opposed, in the way that the aims of those of different religions may be opposed...". With this rationale in mind, John Rawls put forward two principles of justice, namely (Austin, 1995):

"First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all." John Rawls's opinion above is a rebuttal to utilitarianism which considers justice as "the greatest good for the greatest number" (Hart, 1970). Therefore, John Rawls stated that justice lies in proportionally siding with those who are least advantaged, but that siding must not cause others to suffer. The first principle establishes equal freedom for everyone to gain access to wealth, income, food, protection, prestige, power, self-respect, rights and freedom. The second principle consists of two principles, namely the difference principle and the principle of equality of opportunity (the difference principle and the principle of fair equality of opportunity). The difference principle contains that social and economic differences must be regulated to provide the greatest benefit to those who are least fortunate. Law is not a reflection of justice and ethics, therefore law must be separated from ethics. Law must be free from the values of "good or bad", "right or wrong", or "fair or unfair". It is not important whether the law is fair or not, what is important is the "sovereign command", then that is the true law and everyone is asked to obey it. Law also does not come from the soul of society, but the law comes from the command of the sovereign. Therefore, law exists because of the command of the sovereign ruler. Valid law is law that comes from the command of the ruler. Law is binding because there is an element of "command" that can be enforced on the subject addressed by the law. On the other hand, Hans Kelsen with his "pure theory of law" sees law as a legal order. Through his "pure theory of law," Hans Kelsen stated that law is law, which must be separated from non-legal elements. Hans Kelsen stated that:

"It is called a "pure theory of law, because it only describes the law and attempts to eliminate from the object of this description everything that is not strictly law: its aim is to free the science of law from alien elements..." (Kelsen, 2008). From the opinion above, Hans Kelsen considers law only as a sovereign command. In addition, with his "stufentheorie" Hans Kelsen stated that legal validity is determined if lower regulations are sourced from and do not contradict higher regulations, and the highest validity lies in the presupposed Grund norm. From the two views above, there is a sharp difference between the natural law school and the legal positivism school regarding the basis for binding law. The natural law school views law as a reflection of morals, ethics, and justice. Law cannot be separated from justice. There is even an adage "lex iniusta non est lex". Law is justice. The only goal and purpose of law is justice. The law is binding because it has the value of justice. If the law does not contain the value of justice, then it cannot be said to be law and not obligatory to be obeyed. Meanwhile, the positivist school views law as a sovereign command. Law is defined "as a command of the sovereign backed by sanction." It is not law if it is not commanded by the sovereign. In fact, the positivist school considers law to have no connection to morals, ethics, and justice. The ideal or purpose of law is more about legal certainty. Fair or unfair, the law must be obeyed. Therefore, the law is binding because it is a command from the sovereign.

IV. CONLUCSION

Based on the explanations outlined, it can be concluded that natural law, as a philosophical approach to law, has differing definitions from various scholars, as each definition is based on a different time period and way of thinking. Essentially, natural law is a human endeavor to achieve absolute justice. However, if natural law is enforced alone without the support of positive law, it will be subject to uncertainty. Therefore, the use of natural law must be linked to positive law, of course, to obtain a logical side, so that what will be produced will be clearer and more standardized, thus being enforceable and having legal force.

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