Questioning the Harmonization of Basic Legal Values in the Diorama of Indonesia's State of Law Thought

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Abstract
Radbruch has long discovered three basic values in law, namely the values of justice, expediency, and certainty in law, however, Radbruch has not yet explained the applicability of these three values within the framework of a harmonious system, this in its development has resulted in spannungsverhaltnis between these three values. This paper, which uses a sociological and philosophical juridical method, tries to explain the disharmony of the three basic values of Radbruch's law. Based on various existing studies, it can be seen that Radbruch only divides the three basic legal values partially, not as a unit as a sub-system, therefore the ecosystem in law which is based on Radbruch's three basic values experiences distortion, problems of distortion or spannungsverhaltnis between the three values. This basis can be avoided by creating harmony between these basic legal values through an ecosystem of interrelated legal basic values as a holistic integrated system.

I. Introduction

Law in its development cannot be separated from the presence of legal principles,[1] The article contains in the law the basic principles that form the basis for the formation of law, thus the legal principle can also be said to be the source of the existence of law. In this regard. Satjipto Rahardjo stated that the principle of law is the heart of law.[2] In line with this, Karl Larenz in his work Methodenlehre der Rechtswissenschaft said that legal principles are ethical legal measures that give direction to the formation of laws.[3]

[1] Andri Winjaya Laksana, Keadilan Restoratif Dalam Penyelesaian Perkara Anak Yang Berhadapan Dengan Hukum Dalam Sistem Peradilan Pidana Anak, *Jurnal Pembaharuan Hukum*, Vol 4, No. 1 (2017), page 57-64
[2] Satjipto Rahardjo, *Ilmu Hukum*, Citra Aditya Bakti, Bandung, 2012, page. 45.
[3] Dewa Gede Atmaja, Asas-Asas Hukum Dalam Sistem Hukum, *Jurnal Kertha Wicaksana*, Volume 12, Nomor 2, 2018, page. 146.

The existence of legal principles that contain ethical demands makes legal principles said to be a bridge between legal regulations and social ideals and the ethical views of society.[4] Legal principles are ethical legal measurements that give direction to the formation of law so that the goal is nothing but an overview, the position of such legal principles makes legal principles incapable of being applied directly to resolve a legal issue like legal norms which are normatively stated in regulations. legislation, so that it can be said that legal principles do not include positive law and certainly cannot be applied directly to resolve legal disputes. In relation to this view, Van Eikema Hommes expressly says that "legal principles should not be regarded as concrete legal norms, but are seen as general principles or guidelines for applicable law".[5]

The position of the legal principle as explained above clearly shows that the starting point of the legal principle is not in the normative realm but in the ideal legal realm or the das sollen dimension. These principles are basically born from the basic values of law, so it can be said that the principles are a further elaboration of the existence of values in society related to law.[6] Gustav Radbruch in his work entitled "einführung in die rechtswissenschaften" states that in law there are 3 (three) basic values, namely:[7]

1. Justice (Gerechtigkeit);
2. Expediency (Zweckmassigkeit); And
3. Legal Certainty (Rechtssicherheit).

In line with Radbruch's view, Satjipto Rahardjo then added that in relation to one another, the three values attract each other and often conflict with one another, this is often known as (spannungsverhaltnis).[8] The legal value in Radbruch and Satjipto Rahardjo's sketch needs to be understood as an instrument in measuring and assessing the goals in actual law enforcement. The tension between these three legal values, as meant by Satjipto Rahardjo, in its development has also affected the applicability of law in Indonesia. This can be observed in the radical dialogue regarding the relationship between legal certainty and the expediency that has been happening a lot lately. Like water and fire, legal certainty that requires law as a whole is capable of realizing relatively

[4] Jamal Wiwoho, Anis Mashdurohatun, *Hukum Kontrak, Ekonomi Syariah Dan Etika Bisnis*, Undip Press, Semarang, 2017
[5]Notohamidjojo, *Soal-Soal Pokok Filsafat Hukum*, BPK Gunung Mulia, Jakarta,1975, page. 49.
[6] G.W. Paton, *A Textbook of Jurisprudence*, Oxford University Press, 1969, page. 204.
[7] Satjipto Rahardjo, *op, cit,* page. 19.
[8] *Ibid,* page. 20.

and dynamic justice in society, even though it has to put aside formalities in judging, it is often at odds with the value of certainty which requires clarity in the formation of law in society.

The background of this legal system can really be felt in the application of law in Indonesia. Several years ago there were many satirical views on the law in this country due to the Mbok Minah case related to her actions in stealing some cocoa beans. His actions led to a panel of judges at the Purwokerto District Court led by Muslich Bambang Luqmono on Thursday 19 November 2009 to sentence Mbok Minah to 1 month and 15 days in prison with 3 months probation. The panel of judges at that time found Mbok Minah guilty on the grounds that Mbok Minah's actions had violated Article 362 of the Criminal Code on Theft.[9] Mbok Minah's case received extraordinary scrutiny from various layers in the country at that time, the imposition of sanctions on Mbok Minah was considered unfair in law, because the value of the losses incurred for Mbok Minah's actions only reached thirty thousand rupiahs. Immediately the dignity of the Purwokerto Court collapsed at that time, students and activists from various groups kept shouting about it.[10] At first glance the judge's decision against Mbok Minah has violated basic legal values as well as legal principles, however this narrative in the study of basic legal values is not entirely true.

The judge's decision in the Mbok Minah case from the perspective of the study of legal values as explained by Radbruch cannot be said to be completely wrong, in the Mbok Minah case the judge decided according to the values and principles of legal certainty. This becomes seen as wrong when the existing judge's decision has set aside the values of justice and humanity that are widely believed by the community. The brief narrative about the gloomy face of the judiciary in the Mbok Minah case above is enough to describe the existence of a spannungsverhaltnis between the value of legal justice that Mbok Minah wants and the value of legal certainty which is the basis for judges in making decisions. This situation will clearly result in an anomaly in the legal and orderly climate in Indonesia. Disharmonization between these basic legal values can occur because the legal tradition in Indonesia has so far placed these three basic values parallel

[9]Muhamad Ridlo, *Mbok Minah Dan Catatan Hitam Peradilan Di Hari Kehakiman,* diakses melalui https://www.liputan6.com/news/read/3901107/mbok-minah-dan-catatan-hitam-peradilan-di-hari-kehakiman, on March 12 2021, at 14.00 WIB.
[10] *Loc, cit.*

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2. Research Method

In this study, The method used in this paper is a sociological and philosophical juridical method. Where the approach taken is in the form of a sociological approach and a philosophical approach.

3. Results and Discussion

1. Reinterpreting Gustav Radbruch's Thought

Gustav Radbruch is a legal philosopher who stands in the school of moral relativism which has been widely embraced by the sophists.[11] The thought of moral relativism then developed into a stream of moral relativism. Meta-ethical relativism says that moral truth or validity is always relative to a moral framework, and no such framework is truer or more valid than any other.[12] According to this view, morals are seen as something subjective, or as a subjective

[11] W. Martin Bloomer (ed), *A Companion to Ancient Education: Blackwell companions to the ancient world*, (John Wiley & Sons, 2015), page. 70,

[12] Michael Krausz & Jack W. Meiland (eds.), *Relativism: Cognitive and Moral*, (University of Notre, Notre Dame & London, Dame Press, 1982), page. 229–243.

variable that stands alone with different values and goals. This view contributes to Radbruch's dialectic about law, especially regarding the basic values of law.

Radbruch said that in the development of a person's experience and values in a social activity often merge.[13] Radbruch also stated that in terms of moral relativism everyone has their own choice, where morals depart from social dynamics which have validation for presenting information about values in a limited way, so that knowing the core of morals that integrates with values depends on the depth of one's subjective view and is based on on Conscience is not mere pleasure.[14]

Radbruch's concept in viewing legal justice is related to the extent to which the law is able to realize equality, however this is not based on a fundamental view regarding the procedures for realizing this justice.[15] So that this view is only limited to the initial narrative about the relationship between legal performance and equality without any explanation regarding the administration of justice for society which is the object of law. this was confirmed by Stanley L. Paulson who was also adapted by Spaak namely:[16]

Radbruch is, however, careful to point out that justice does not exhaust the idea of law – it determines only the form, not the content of law. The reason is that justice, which on Radbruch's analysis requires that equals be treated equally, leaves it an open question whom to consider equal and how they should be treated.

Meanwhile, according to Spaak, using Paulson's view, Radbruch is discussing the contents of the law, so that according to Radbruch, justice cannot be said to be fully alive. Meanwhile, the value of expediency is tasked with providing clarity regarding the effectiveness of law in society which departs from individual values, collective values, and values in terms of the world of work or what he calls it werkwerte. This view is confirmed in the Spaak article which states that:[17]

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[13]Edwin W. Patterson (ed.), *The Legal Philosophies of Lask*, Radbruch, and Dabin, Cambridge, Massachusetts, Harvard University Press, 1950, page. 43.

[14] *Ibid,* page. 57.

[15] Gunarto, Nurlaily, Anis Mashdurohatun, Reconstruction Of Legal Protection To The Debtor Of The Motorized Vehicle As The Fiduciary Guarantee In Financing Agreement Based On Justice Values, *International Journal for Studies on Children, Women, Elderly And Disabled,* Vol. 5, Oct 2018, page 115-123

[16] Stanley L. Paulson, On The Background and Significance of Gustav Radbruch's Post-War Papers, *Oxford Journal of Legal Studies,* Vol. 26, No. 1 (Spring, 2006), Published By: Oxford University Press, page. 17-40.

[17] Torben Spaak, *Meta-Ethics and Legal Theory: The Case of Gustav Radbruch, Law and Philosophy Journal,* Vol. 28, No. 3, May, 2009, page. 268.

To get the content of law, Radbruch says, we must add expediency to justice, But, on Radbruch's analysis, what is legally expedient depends on what the purpose of law is, and the purpose of law may be found (i) in individual values, (ii) in collective values, or (iii) in work values (Werkwerte). Spaak then stated that in addition to justice and expediency, a value of certainty or rechtssicherheit was also needed to determine the form and validity of law.[18]

2. *Harmonization of Benefit Values, Certainty Values, and Justice Values in the Concept of Judgment*

The various explanations above have shown that Radbruch views the three basic values as separate parts and each has its own purpose. In more detail, these three values will be discussed in the various dimensions below:

a. Value of justice

In fact, the concept of justice is very difficult to find a benchmark because fairness for one party may not necessarily be felt by the other party. The word justice comes from the word fair, which means objectively acceptable.[19] Furthermore, according to Aristotle, there are several notions of justice, including justice based on equality, distributive and corrective. Equality-based justice, based on the principle that the law binds all people, so that the justice to be achieved by law is understood in the context of equality.

The similarity referred to here consists of numerical similarity and proportional similarity. Numerical equality is based on the principle of equality before everyone before the law, while proportional equality is giving everyone what they are entitled to. Distributive justice, this is synonymous with proportional justice, where distributive justice stems from the granting of rights according to the size of the service, so that in this case justice is based on equality, but according to their respective portions (proportional).

Corrective justice, basically, is justice that rests on correcting an error, for example, if there is a person's mistake that causes harm to another person, then the person causing the loss must provide compensation (compensation) to the party receiving the loss to restore the situation as a result of mistakes made.[20] Meanwhile, according to Thomas Aquinas, justice can be divided into two, namely general justice and special justice. General justice is justice that is

[18] *Loc, cit.*
[19] Algra, dkk., *Mula Hukum*, Jakarta, Binacipta, 1983, page. 7.
[20] *Loc, cit.*

formulated in laws and regulations that must be obeyed in the public interest. Meanwhile, special justice is justice based on equality or proportionality.

Furthermore, Hans Kelsen has the view that a social order is a just order.[21] This view means that the order regulates human actions in a way that can provide happiness for the whole society. Justice is a social happiness that cannot be found by humans as individuals and try to find it in society. Therefore, human longing for justice is essentially a longing for happiness. This means that there is public recognition of the resulting justice, justice can only be obtained from the order. Furthermore, according to Socrates, as quoted by Ahmad Fadlil Sumadi, said that, "the essence of law in giving a just decision must be: impartial, hold on to the correct facts, and not act arbitrarily on his authority.[22] Then according to Satjipto Rahardjo as quoted by Syafruddin if he said that, "justice is the core or essence of law."[23]

Justice can not only be formulated mathematically that what is called fair is if someone gets the same share as other people. Because justice actually lies behind something that appears in that number (metaphysical), philosophically formulated by law enforcers, namely judges.[24] Then according to L.J Van Apeldoorn said that, "justice should not be seen as synonymous with equality, justice does not mean that everyone gets an equal share."

This means that justice requires that each case must be weighed separately, meaning that being fair to one person may not be fair to another. The purpose of law is to regulate the association of life peacefully if it leads to fair rules, meaning rules where there is a balance between the interests protected, and everyone gets as much as possible which is his share.[25] Furthermore L.J Van Apeldoorn added that:[26]

Justice should not be seen as synonymous with equality. Justice does not mean that everyone gets an equal share... If the law solely wants justice, so it has the sole aim of giving each person what he deserves, then he cannot form general regulations. ...There is no rule of law that has no general regulations, written or

[21] Ma'ruf Cahyono, Bahtiyar Efendi, Anis Mashdurohatun, Restructuring Institutional and Legal Policies in Fostering the Ideology of Pancasila, *Lex Publica: Jurnal Ilmu Hukum Asosiasi Pimpinan Perguruan Tinggi Hukum Indonesia*, Vol 7, No. 1, (2020), page 28-39

[22] Ahmad Fadlil Sumadi, "Hukum dan Keadilan Sosial" dikutip dari http://www.suduthukum.com diakses 13 Desember 2020, page. 5.

[23] Syafruddin Kalo, "Penegakan Hukum yang Menjamin Kepastian Hukum dan Rasa keadilan Masyarakat" dikutip dari http://www.academia.edu.com diakses 8 Desember 2020, page. 5.

[24] *Loc, cit.*

[25] L.J. Van Apeldoorn, Pengantar Ilmu Hukum, Jakarta, Pradnya Paramita, 1993, page. 11.

[26] *Ibid,* page. 11-13

unwritten, is impossible. The absence of general rules means serious uncertainty about what is fair or unfair. That uncertainty will lead to discord. So the law must determine general rules, must generalize. Justice forbids generalization; justice demands that each case must be weighed separately....the more laws meet the requirements, the more permanent regulations, which eliminate uncertainty as much as possible, the more precise and sharp the legal regulations are, the more pressing is justice. That is the meaning of summum ius, summa iniuria, the highest justice is the highest injustice.

According to Satjipto Rahardjo, as quoted by Syafruddin, when he emphasized that, "to formulate the concept of justice, how can you create justice based on the values of balance of equal rights and obligations?."[27] Then according to Ahmad Ali MD said that, "justice a legal decision handed down by a judge against justice seekers must be taken based on substantive truth, giving something to those who are entitled to receive it."[28]

b. Certainty value

According to Syafruddin Kalo said that, "We can see legal certainty from two angles, namely certainty in the law itself and certainty because of the law." Syafruddin Kalo further stated that:[29]

Certainty in law means that every legal norm must be able to be formulated in sentences that do not contain different interpretations. The result will bring compliance or non-compliance with the law. In practice, many legal incidents arise, where when confronted with the substance of the legal norms governing them, it is sometimes unclear or imperfect so that different interpretations arise which will consequently lead to uncertainty. Certainty in law means that every legal norm must be able to be formulated in sentences that do not contain different interpretations. The result will bring compliance or non-compliance with the law. In practice, many legal events arise, where when confronted with the substance of the legal norms governing them, it is sometimes unclear or imperfect so that different interpretations arise which will consequently lead to uncertainty.

[27] Syafruddin Kalo, "Penegakan Hukum yang Menjamin Kepastian Hukum dan Rasa keadilan Masyarakat" dikutip dari http://www.academia.edu.com diakses 8 Desember 2020, page. 5.
[28] Ahmad Ali MD, "Keadilan Hukum Bagi Orang Miskin," Jurnal Mimbar Hukum dan Keadilan, (Jogjakarta) Edisi 1, 2012, page. 132.
[29] Syafruddin Kalo, *op, cit,* page. 4.

Furthermore, Satjipto Rahardjo as quoted by Syafruddin Kalo said that:[30]

One aspect of legal life is certainty, meaning that the law wishes to create certainty in relations between people in society. One that is closely related to the problem of certainty is the problem of where the law comes from. Certainty regarding the origin or source of law has become important since law has become an increasingly formal institution.

Furthermore, Hurricane Husain Hasibuan and Rahmi Purnama Melati said that:

In practice in the field, it turns out that we can see that there are many people seeking justice, especially those with a weak economy, who feel they do not get legal certainty. This is due to the fact that the judicial process in Indonesia is relatively long, and the costs are quite expensive, whereas one of the purposes of establishing a court is to obtain legal certainty.

The various explanations above show that the meaning of legal certainty is also very important for the community. Legal certainty as outlined in the judge's decision is a result based on the facts of the trial that are legally relevant and considered with conscience. Judges are always required to always be able to interpret the meaning of laws and other regulations that are used as the basis for implementation.[31]

This is very important, because the existence of legal certainty will greatly affect the authority of judges and the electability of the court itself. Because the judge's decision which contains elements of legal certainty will contribute to the development of science in the field of law. This is because the judge's decision has permanent legal force, it is no longer the opinion of the judge himself who decides the case, but is already the opinion of the court institution and becomes a reference for the community in daily interactions.[32]

c. Benefit value

According to Jeremy Bentham as quoted by Mohamad Aunurrohim said, "only a law can be recognized as law, if it provides maximum benefit to as many

[30] *Ibid,* page. 4 dan 16.
[31] Syafruddin Kalo, *op, cit,* page. 4.
[32] Fence M. Wantu, "*Mewujukan Kepastian Hukum, Keadilan dan Kemanfaatan Dalam Putusan Hakim di Peradilan Perdata*," Jurnal Dinamika Hukum, (Gorontalo) Vol. 12 Nomor 3, September 2012, Dikutip dari http://www.academia.edu.com diakses 14 September 2020, jam 20.30 WIB, page. 483.

people as possible."[33] For example, for example, the judge's decision will reflect benefits, if the judge does not only apply the law textually and only pursues justice, but also directs benefits for the interests of the litigants and the interests of society in general. That is, the judge in applying the law, should consider the end result later, whether the judge's decision will bring benefits or uses for all parties.[34]

Basically, according to Satjipto Rahardjo, among the three basic legal values there is often tension or spannungsverhältnis. This means that the three basic values have different demands. This is because in every process of realizing these three basic values it is inseparable from the interests of individuals or groups in society in a complex manner.[35] The spannungsverhältnis issue has resulted in delays in law enforcement in its various dimensions.

In its development, law between schools of thought often even partially becomes a polemic, it can be positivistic versus non-positivistic, as well as in other forms. This is rooted in the nature of change with all its consequences (for example the fact that is currently happening, namely progressive law versus conservative law).

With regard to law enforcement, even though legal polemics will never end as long as human life still exists, the process of law enforcement must be no less important in line with legal criticisms, especially in this discussion in the Indonesian context. Talking about law enforcement also means talking about law enforcers and the public who occupy a strategic position in upholding the rule of law.[36]

The process of achieving a sense of justice is a chain that cannot be separated, at least from the making of laws and regulations, the occurrence of cases or legal events, to the verbal processing of police and prosecution of prosecutors, or lawsuits in civil cases, and then ending with a judge's verdict. obtain permanent legal force (inkracht vangeweisde) so that the quality of the process actually guarantees the quality of the culmination point of the results or benefits of a set of laws and regulations that are made. Thus it is very possible to

[33] Mohamad Aunurrohim, "*Keadilan, Kepastian, dan Kemanfaatan Hukum di Indonesia*" dikutip dari http://www.academia.edu.com diakses 9 Desember 2020, page. 7.
[34] Sudikno Mertokususmo, *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta, 2005, page. 160.
[35] Satjipto Rahardjo, *op, cit,* page. 19-20.
[36] Sabian Ustman, *Penegakan Hukum Responsif,* Pustaka Pelajar, Yokyakarta, 2010, page. 11-12.

uphold the rule of law in our country. Harold J. Laksi quoted by Sabian,[37] says "that citizens are obliged to comply with certain laws only if that law satisfies their sense of justice."[38]

Based on the various explanations that exist, it is clear that justice, expediency, and certainty have a relationship between one and the other. So that the three basic legal values are not in the form of clusters that stand alone and are not related to each other.

If these three values stand separately and are not related to each other, it is clear that there will be a clash between values that results in legal distortions. This distortion will result in the partialization of the three basic legal values which will lead to legal failure due to the existence of pluralism of legal purposes like a pendulum.

The reflexivity of legal values in achieving legal goals has shown that point A which is legal values that stand alone with their respective goals will be reflected in point B which is a process of law and at the end of the goal these values will be born as goals of law, namely point C which varies depending on the underlying value.

This situation has resulted in pluralism of legal purposes which ultimately creates distortion and confusion in sentencing, in other words that the value of Radbruch's law in achieving legal objectives is not seen as a unified system. So that the value variables and legal objectives are different from each other. As a result of not creating a clear system, the legal ecosystem is experiencing problems. The three Radbruch values must be able to be realized in the form of a unified system, in other words the three basic legal values are supposed to be sub-systems that form a large system of legal values, where benefit and certainty have their respective duties and positions which are interconnected with one another. others and has one goal, the goal in this legal value system is the value of justice.

So that the certainty and benefit reflected in the law has one unified goal, namely to realize justice in society. If you look at the three basic legal values as a system, then these three values can be analogous to the human body.

The value of benefit is the spirit or soul while the value of certainty is the human body, while justice is the goal of the human being. Meanwhile, the human

[37] Sabian Utsman, *Anatomi Konflik dan Solidaritas Masyarakat Nelayan,* Yogyakarta: Pustaka Pelajar, 2007, page. 262.
[38] Sabian Ustman, *op, cit,* page. 13-14.

bridge to achieve its goal, namely justice, is through legal politics. The legal form adjusts to the socio-cultural, economic and political dynamics in a dynamic society. So to ensure that the law which is abstract and full of sub-systems of society is able to lead to the value of justice, the law must contain certainty and benefit.

So that with the working cycle of the interrelated basic legal values as described above, the basic legal values are expected to have synergy that forms an ideal social ecosystem. The value of certainty is able to realize the effectiveness of law in society,[39] then the value of the usefulness of law is able to meet the community's needs for legal protection guarantees in a balanced manner, with the fulfillment of these two values in law then it is certain that the law will be able to realize justice that requires equal rights through legal politics that lives and develops the soul of the Indonesian people or what is referred to as Pancasila.

4. Conclusion

Radbruch in its development tries to describe the values contained in the law, however, Radbruch's classification does not really reflect the correlation between values, resulting in the problem of spannungsverhaltnis as a classic problem in discussions of basic legal values to date. So that the three basic legal values should be able to become a unified, interrelated system where the benefits and legal certainty are the driving force that is able to realize a just law.

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[39] Andri Winjaya Laksana, Pemidanaan Cybercrime Dalam Perspektif Hukum Pidana Positif, *Jurnal Hukum Fakultas Unissula*, Vol 35, No 1 (2019), page 52-76

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