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## Construction of legal morality: Integrity in legal development in Indonesia

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### Abstract

The word *integrity* has been commonly used in recent decades, but its meaning remains unclear. It may be because this word has been attributed to too many domains. This research aims to describe the construction of legal morality in the study of values which can be carried out using conceptual approach with deductive analysis. The development of law requires seriousness and certainty, especially regarding the construction of morality in the development of law in a better direction. Critical analysis of the legal system, values, and legal ratios is part of the moral existence of legal development.

**Keywords:** morality, legal development

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### Introduction

Where there is a community, there is a civilization that describes the state of a society, which will potentially cause a conflict. A conflict is inseparable from society. It will always emerge as long as people live in society<sup>[1]</sup>. These conflicts will bring up the law to offer a resolution. The law is made as an implication of an essence that offers a resolution to the collectivity of feuds in society; therefore, an ideal law is needed to resolve this conflict and feud. *Ubi societas ibi ius* means *where there is society there is law*<sup>[2]</sup>. To achieve the ideal law, humans are required to always think. *Coqito ergo sum* means *I think that's why I exist*. Thus, poetically, Rene Descartes has a philosophy about the existence of a human being<sup>[3]</sup>. Human nature is thinking because it is their superiority, and this ability is only owned by humans, not other living creatures<sup>[4]</sup>. Thinking is basically complete freedom. There is no prohibition to think about anything in this world.

Throughout the history of legal science, from ancient Greek to the post-modern era, the dynamics in legal thought are always related to the dialectical process of civilizations and cross-civilizations. Every scientific paradigm that arises always has different historical background, basic assumptions, values, and alignments considering the different anthropological contexts<sup>[5]</sup>. In the context of modern science which taboos the existence of subjective and immaterial elements in science, the law is separated from morality; even at a certain stage, the law is considered to have its own autonomous world. In this pattern, the law is like in a vacuum, where the variables of life around are forced to submit to the will of the law. Law, a product of power, is considered to have a value that is not bound by external social variables. Even the construction of justice is built from the internal perspective of the law by setting aside the construction of values and a sense of justice that may be present in its social space. There is a philosophy of law. Philosophy of law is part of general philosophy as it offers a philosophical reflection on the foundations of general law<sup>[6]</sup>. Philosophy of law seeks to find the nature of law, to know the reality behind legal norms, to look for what is hidden in law, to investigate legal norms as a consideration of legal values and postulates, and to investigate the last basis.

In this context, what is considered is law and justice. Justice is part of the purpose of the establishment of law. *Just* mainly means that decisions and actions are based on objective norms, so they are not subjective or arbitrary. Justice is a relative concept in which everyone is not equal. Something fair for a person is not necessarily fair to the other. When someone asserts that he is doing justice, this must be relevant to public order where a scale of justice is recognized. The scale of justice varies greatly in each setting. Each scale is defined and fully determined by the community under the public order and the developing legal paradigm.

For most people, justice is a general principle that individuals should receive what they deserve. It is also called legal justice which refers to the implementation of the law according to the principles specified in the rule of law<sup>[7]</sup>. Based on this, humans continue to discuss and continue to do paradigms of thinking. Continuous paradigm shifts will bring a continuous dialectical process that will result in the process of achieving something.

Hart set morality as the minimum requirement of the law by overcoming the rigidity that exists in Austin's classic *legal positivism* in which law is considered as an institution impermeable to morale. However, to some extent, Hart and Austin had come into agreement, especially related to the separation between law and morality but they reject absolute closure on morale. According to Hart, the law system is social rules system. As an example, regulation is commonly considered as an excuse or justification for an action, and violations are generally open to critics<sup>[8]</sup>. The legal issue being studied is the construction of legal morality, particularly related to the significance of religion as a basic value and conceptual framework for legal morality. This research was

conducted on the basic assumption that every human being has a different construction of values and moral awareness; therefore, a good legal system must rely on the moral construction of the nation.

### **Research Method**

The study of the construction of legal morality is included in the study of values which can be carried out using conceptual approach with deductive analysis. In this study, the researchers showed some relevant cases as part of the process of analyzing the problem.

### **Results and Discussion**

#### **Moral is Law: Redefining Morality in Law**

To understand the concept of morality in law, we need to discuss the formulation of morality (law) in the Black Law Dictionary. In the Black Law, morality is conformity to the rules that are recognized (as correct) which originate from the abstraction of behavior that is agreed upon as right by society<sup>[9]</sup>. The formulation also includes the existence of morality as ethics, a task system that contains what should be, by following which a person is considered pious by the society. Black Law distinguishes morality from moral law, which is defined as a set of principles that form the basis for defining right and wrong behavior. In this notion, moral existence is recognized as part of the instruments to assess the quality of one's behavior. However, at the same time, by opening up the possibility of moral existence as a moral norm, the existence of morals in law should only be placed as one of the basic values that are separate from the law. Objectively, because these values concern all aspects of human life, there is a set of values that have a higher position or hierarchy compared to others. There are lower values and even there are absolute levels of values<sup>[10]</sup>.

The pattern of meaning as in the Black Law above is common considering the paradigmatic background that underlies the compilation of the dictionary. Despite the periodic revision of the formulation of the concept of morality, Bryan A. Garner as the author of the dictionary seems to deny the controversy raised by Hart and Fuller. It shows that the meaning of morality in legal science is dynamic because it is related to the existence of values and goals in legal construction in terms of science and social practice. This controversy is correlated with the polemic that arises on the meaning and positioning of morality in the context of law and legality. Regardless of this debate, the meaning of morality they put forward is not much different from James Rachels' view of morality. For Rachels, the concept of morality can at least be understood as an attempt to guide one's actions with reason while giving equal weight to the interests of each individual who will be affected by that action<sup>[11]</sup>. In this concept, an action is declared moral if it is carried out with full awareness of the implications and logical consequences. Therefore, a moral decision is a decision that is supported by good reason (healthy and straight) and ensures impartiality with individual interests. Impartiality in this case emphasizes the existence of good reasons not influenced by subjectivity and individual interests.

The conception identified by Rachels as a minimal concept for morality can be put forward as a starting point for understanding the construction of morality more broadly with the choices of values and ideologies that accompany it. An interesting example is when Rachel examines the relationship between morality and religion where she points out an empirical fact that, in every building of civilization (even in a secular society), religious people are considered as moral experts, who can be referred to in understanding moral construction in their community<sup>[12]</sup>. As Rachels requires the existence of good reason as a basis for moral decisions, the function of common sense is as an instrument to reach the divine spirit (value) that exists in religious teachings.

The minimal concept for morality, in this case, can be used as a basis for building a new meaning for legal morality which requires the integration of morals and law, not only in its context as a source of value and validity, but furthermore, it also determines the content and direction of the law. Morality and law exist in the same dimension and cannot be separated as a product of human culture, which places the primacy of reason as its forming instrument. When humans form laws, they also build values as the basis for determining right and wrong behavior.

With this assumption, the question of whether morality is the source of law, or the law underlies morality is irrelevant to be raised. Law in this perspective is not just a representation or a moral reflection but the moral existence itself. Law as a product of good reason contains virtue values that are recognized and agreed upon by society because it becomes the basis for everyone to decide whether a behavior is right or wrong, good or bad. The law does not require effectiveness and efficiency to be considered as a law because everyone is naturally bound by the law (and therefore moral values) which he recognizes as true and good for his life.

When problems arise regarding the existence of legal products that are not in line with or even contrary to morality, the process of forming the law, especially related to the quality of the lawmakers themselves, should be considered. The concept of law as a moral requires the existence of lawmakers who have adequate quality and qualifications of reason and conscience to explore, discover, digest, and formulate the existing virtue values into the form of norms with practical dimensions.

Understanding the existence of morality in law is fundamentally inseparable from human existence as legal agents. Morality is inherent in human existence in the praxis of life as individuals as well as social beings. The existential problem of morality is also related to the existence of individuals as legal subjects because moral existence is in the spiritual and/or psychological dimensions of humans. Law as moral and moral law can only be realized by people whose lives are guided by a pure conscience. Without individual and community instruments

whose minds are guided by revelation and illuminated by conscience, it is difficult to realize the hope for the realization of moral law and law as moral <sup>[13]</sup>.

### **Morality in Critical Legal Studies Movement**

The three main ideas of Roberto. M. Unger are interesting to discuss. First, I'm interested in *Criticism of the Critical Legal Studies Movement against Liberalism Legal Thought* because I want to know in more detail why the critical legal studies movement criticizes and contradicts the legal system in the country. It is important to discuss because there are 3 core views of this movement towards liberalism, including that law is not neutral, that law is not autonomous, and that law and politics are unity. Second, I am interested in *Criticism of Liberalism Legal Thought to Construction* to find out more about what offers or alternatives from this movement are given to the public from the criticisms made against liberalism. This second main idea is very important so that we not only discuss the problem of the criticisms of this critical legal studies movement against liberalism but also understand the solutions and alternatives offered by this movement to liberalism adopted in their country. The third interesting material is *Rights Granted to People in Countries Adhering to Liberalism*. It is an offer from the leaders of this movement, which is manifested in the form of rights, one of which is well known, namely the granting of the right to destabilization.

Critical legal studies do not explicitly talk about the existence of law as morality (or vice versa), but the criticism put forward leads to the absurdity of the truth value that exists in law as a result of the strong political influence and interests of capital owners. This criticism indirectly leads to the problem of positivist legal logic which measures its truth only based on the regularity of deductive logic and state authority without considering conscience and aspects of the socio-cultural values <sup>[14]</sup>. In this context, it is not wrong when law and legal scientific discipline are not positioned as a scientific clump but a logic game without values and clear meaning.

Laws should be the bridge or instrument to realize the aspiration of the people. They are expected to be formed and developed to simultaneously influence and reflect the dynamics of the ongoing process of interaction between several social realities such as human aspirations, religious beliefs, social, economic, political, moral, and cultural conditions as well as the civilization within natural boundaries to raise human awareness and appreciation of the reality of society. This is rooted in the view of life adopted and the interests of real human needs <sup>[15]</sup>.

### **Legal Formalism**

Formalism is a commitment to belief in the possibility of a method of legal justification. This includes impersonal goals, policies, and principles which are necessary components of legal rationalization. Unger's critique of formalism stems from the argument that the thinking of every branch of doctrine must be inclusive, instead of explicit, on a realistic form of human interaction in the life of the society in which the doctrine applies. For example, a constitutional jurist needs a theory of democratic republic that describes the exact relationship between the state and society or the essential features of social organization and the granting of private rights that the government must protect <sup>[16]</sup>. Without this guiding vision, legal thought seems trapped in a cheap game of analogy. Conflicting interests and various visions concerning the formation of laws must be a vehicle for rationality that can be articulated in a single unified theory. Dominant legal theories carry out a daring and unreasonable purification by taking the form of treating law as a repository of goals, policies, and principles that are completely at odds with standard legislative political views.

### **Conclusion**

Issues related to morality and law throughout the history of the development of European legal thought have never been solved. The underlying problem is the ambiguity of the concept of morality and the basis of morality. In secular society, this condition cannot be separated from the construction of thinking that is anthropocentric, which puts humans as the center of everything. Meanwhile, the face of modern legal science does not require subjectivity of values to be in law. The development of legal thought that places values such as religious values as the key to the development of civilization can offer alternative solutions to the problems that occur by reconceptualizing morality through the deep meaning of texts and existing religious contexts.

Moral existence is in the realm of guidance about right and wrong, good and bad which relies on revelation and rationality guided by conscience. The legitimacy and validity of orders and rules of law are not solely on the authority of the maker but the existence of norms as the basis of morality which is substantively believed and agreed upon as true and good and in harmony with human nature. The spirit of liberation in the legal context means that any prohibition issued on action is not intended to limit human freedom. The prohibition issued as a law is to ensure human existence.

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