



Legal Ideology on Social Justice Perspective

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ABSTRACT - This research focus on study the synthetic legal ideology and social justice from legal philosophy. On literature there are debatable of legal ideology in legal philosophy, it is about meaning of justice too. According philosophy of natural law, legal ideology is legitimation of virtue people behavior and eternal justice for human being. Opposed to the philosophy of law positivism, there is no place to discuss ideology of justice in science of law, because no criteria and no reference, no argumentation about just or unjust law. Essence of justice is correct applied rule of positive law to settlement dispute, called a procedural justice or legal justice om the contrary to substantive justice. On Marxist philosophy justice is an ideology essence power for socialism community, opponent capitalistic-liberalism philosophy that justice not for all but justice and rule of law is illusion only. Hinduism philosophy there is only moral justice its *dharm*a. The first duty of King to realized *dharm*a, integrated politics, economics, social, and culture in reality high moral standard behavior of human being. It aims realized prosperity for people in the world. Compatible with based of State Philosophy of PANCASILA are legitimation Indonesian system of law, core aim realized "social justice". Essence distribution all national asset, taxation, regulation of wages for workers welfare, wealth, education, allocation houses and also distribution natural resources for benefit of all people of Indonesian. It regulation equality benefit constitute and accountability our Government. According The 1945 Constitution of The Republic Of Indonesia to reach Indonesian justice and prosperity.

Keywords: philosophy; legal ideology; social justice; Distribution of benefit

I. INTRODUCTION

Legal ideology in legal science is called *the "RECHTSIDE"* in Duct Language, and in Indonesian language called "CITA HUKUM". Netherland literature legal ideology are the one part of the philosophy of law. Its mean: "*de rechtsideogje (letterlijk ideenleer): uit uitwerken van totalvisies op means-en maatscappij die als grondslag en/op als legitiaal matie kunnen dienen voor bestaande of toekomstige rechtsinstellingen, volledige rechtssystem et delen ervan (de natuurecht; de marxistischtsetsel filosofie (Gijssel & Hocke, 1982).* Translate:

"Legal Ideology is (strictly mean theory of ideas) looking totally about people and society as principle legitimate legal order and or from legal system mention of Natural Law and philosophy of Marxist". D Roger Brownsword, Senior Lecture in Law University of Sheffield, 1986, write:

...framework of our Theory of Accountability and our Theory of Restraint, only if claims to legality are viewed as moral claims, rather than as statements of morally neutral fact, can be ideological force of this claims can be appreciated. Given our argument for a natural –law theory, principle social function of legal rhetoric resides legitimation-rhetoric" (Brownsword & Beleyveld, 1986). According Gustaf Radbruch that the function of natural law as a principle of

constitutive law. Like Emil Bruner (1889-1966) said that the state must be under laying to the principle of the critical norm it's a natural law. Natural law is no law, when looking only inner, but functionally as principle of constitutive of statute, and natural law is the ideal for justice for all of human being in action (Ansari, 2003).

It is very interesting, what's Lord Denning (Lord Justice in England), said; "Justice is not something does not you can see. It is not temporal but eternal. How does a man know what is justice. It is not the product of his intellect but of his spirit".

On academic literature there are three qualification of what is justice, it is moral justice, legal justice, and social justice. Moral justice in Philosophy of Hinduism, whose duty of the Kings to maintain *dharma* in the society. Justice relates all individuals with connect with fact as to what type of moral, social, economic, political, legal relations are develop together between individuals.

Legal justice mean justice based on statute, like Hans Kelsen write on book's *General Theory of Law and State*: Justice is an ideal but irrational, made rational and objective, when justice formulation by the positive legislators (Kelsen, 1961).

The last's social justice mean criteria of the equal on economic, political, and social rights, and it is government responsibility to distribution natural resources, and all state's income for society prosperity. The other hand National Social Workers aim to open the doors of access and opportunity those in greatest need', encompasses economic justice (Sandiego Foundation, dd).

This paper focus analysis about "Social Justice" as the fundamental Philosophy of our State is "PANCASILA" the five principle, as write in THE Indonesian PREAMBULE of THE 1945 CONSTUTION, are: belief is the One and Only God, just and civilize humanity, the unity of Indonesia, democratic live led by wisdom of thoughts in deliberation amongst representative of the people, and achieving social justice for all the people of Indonesia (Secretariat Genera Constitutional Court Of The Republic Of Indonesia, 2015). The five principle of the Philosophy of PANCASILA is the fundamental legal ideology for our National Law System.

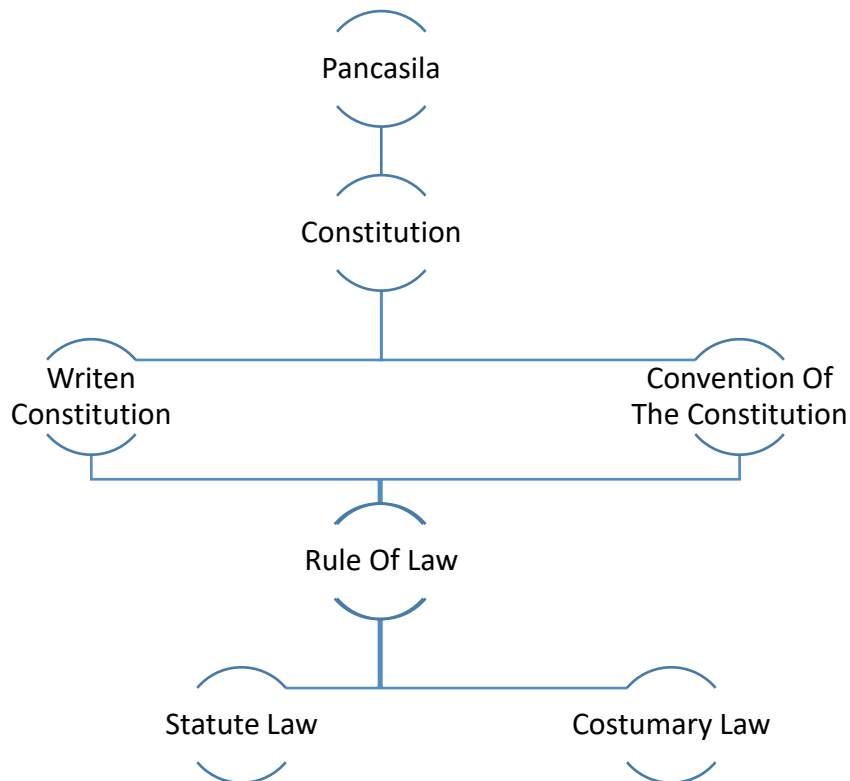
II. Analysis-Synthesis Legal Ideology and justice.

1. Analysis Legal ideology

Sociological legal literature, reveere (Cotterrell & Cotterrell, 1992), in analysis about "Law, Class and Power" (1992), he write's relates doctrine of Marxism, that legal ideology based on power, means power concentration in liberal ideology, the characteristic of capitalistic legal ideologies. On the other and according to Carl Marx, power must be dominant on proletariat or workers class, that the legal ideology as no class power, it is non class society, called the theory of class struggle. In legal ideology core of socialist community.

Roger Cotterell, itself writes: "legal ideology can be thought of, then, not as legal doctrine itself but as forms of social consciousness-system of values and cognitive assumption reflected in and expressed through legal doctrine. The other hand Hans Kelsen, write: "the function of ideology that in this way the state power transformation to be a legal institution justifying itself as community government by law (*Rechtsstaat*) (Kelsen, 1970).

Refer to Roger Cotterell thesis that legal ideology reflected and expressed through legal doctrine, Mohamad Koesnoe (Professor in Law, Faculty of Law Airlangga University) based on Yuridisme Pancasila doctrine of Indonesia National Legal System, write, that legal ideology operationally virtue values of The 1945 Constitution. Its mean state law and customary law based on spirit of social justice. The implication of behavior higher moral standard of Indonesian society legitimate the statute law and customary law. (Koesnoe, 2013) describe the identity of Indonesian Legal System, on figure, bellow



Source: Varia Peradilan, 1994.

Hamid S. Attamimi (Faculty of law Indonesia University) based on doctrine source of law that PANCASILA as legal ideology and Dutch language call *Rechtsidee*, Indonesian legal system “CITA HUKUM” has two function, i.e. the function of constitutive norm, mean that all of norm binding force; and regulative function, mean to justify justice or unjust law (Attamimi, 1992).

Mahadi (Faculty of Law North Sumatera University), based on principle of legal doctrine, refer to G.W. Paton books “Tax Book of Jurisprudence 1969, p. 205, write:

“Legal rules are sometimes born from principles, sometimes even the greatest ingenuity cannot discover the reason which relies behind a particular rule”. Based on Indonesian legal system, PANCASILA as the fundamental principle of legal rules, called the fundamental principle of legal ideology (*beginisel rechtsideology*) parallel with *Grundnorm* Kelsenian’s doctrine (Mahadi, 2003). And I conclude Philosophy of PANCASILA as legal ideology is legitimate Indonesian legal system.

2. Analysis Problem of Justice

‘Justice’ is word that highly ambiguous and debatable and pregnant with various meaning. Aristotele’s great philosopher of ancient Greek, in his book of *ETHICS*, distinguish two concepts of justice are: (1) justice in general and (2) justice in particular sense.

Ad. 1. General Justice are lawfulness and equality. ‘The just’ therefore means that which lawful and that which is equal or fair, and the other and ‘unjust, means that which is illegal and that which is unequal or unfair (Kelsen, 1957). Next according Aristotele, the relationship between lawfulness and equality that two concepts are not identical. Not everything unlawful is unequal, though everything unfair is unlawful. Equality is related to lawfulness sense of lawfulness “as part to whole”. Consequently justice in the sense of lawfulness is not a part of virtue but the whole of virtue; it is perfect virtue with a qualification, namely that is displayed toward others. That means that justice in the sense of lawfulness is a social virtue. By lawfulness undoubtedly understands conformity to positive law. He says: “We saw that the lawbreaker is unjust and law-a binding man just. It is therefore clear that all lawful things are

just in one sense of the word, for what lawful is decided by legislature, and the several decisions of legislature call rules of justice (Kelsen, 1957).

(2) Of the particular justice, which consists in equality, are two kinds (a) distributive justice, and (b) corrective justice. Distributive justice is exercised in the distribution of honor, wealth and the other divisible assets of the community which be allotted among its members equal or unequal compatible with the contribution for every members for its community.

The corrective justice is that "which supplies a corrective principle in private transactions ...those which the voluntary and those which are involuntary. The corrective justice is exercised by the judge in settling dispute and inflicting punishment upon delinquents. Aristotele's distinction between voluntary and involuntary transactions probably coincides by and large with our distinction between private and criminal law. He Says: Example:

'Of voluntary transactions are selling, buying, lending at interest, lending without interest, letting for hire; these transactions being termed voluntary because they are voluntarily entered upon. Of involuntary transactions some are furtive, for instance, theft, adultery, poisoning, procuring, enticement of slaves, assassination, false witness. Others are violence, maiming, abusive language, imprisonment, murder, robbery with violence, contumelious treatment. All these acts are crimes which are punishable under positive law" (Kelsen, 1957).

Hari Chand, Professor of law, National University of Malaysia, written that to note the various usages justice this day:

1. Social justice; mention justice is an-all- encompassing concept but social justice concerns the distribution of benefits and burdens throughout a society as it results from major social institutions, property system and public organization. It deals with matters of wages and profits, the allocation of housing, medicine, welfare benefits. It essence social justice is distributive justice. Because the advantages and disadvantages, wealth are distributive among people or members of society. When we examine, the operation of economy, taxation, welfare works and availability of society's resources to various people or groups, we are in the domain of social justice.
2. Commutative justice as well as same with corrective justice, the concept of Aristoteles. It is a matter of redress in private transactions. Supposing A has enter agreement with B, and breaches the agreement, A must be compensated for inconvenience or loss to him by B. The other hand he said division between commutative justice and distributive justice is no absolute. For instance, the payment of wages by employer to his employee is covered by commutative justice but this may be effect the distribution of wealth in the society. The principle of commutative justice demands equivalent exchange. And equivalent exchange may be determined by distributed consideration. Thus this why the distribution justice and commutative justice is not distinction in absolute.
3. Substantive justice; it refers to the substance of the matter involved in a dispute. In other words, it concerns the rights, privileges, duties, powers, liabilities, immunities or disabilities, of the parties to a dispute.
4. Procedural justice; it refers to the procedures applied in settling a dispute or taking a decision.
5. Corrective justice; it seek to restore equality when it is disturbed by wrong behavior. Supposing, A damages B's car, and the law requires A to pay damages to B, this would be corrective justice as would put B in is previous position and thus, regain status quo.
6. Global justice which not does not change from place to place and remains the same all over the earth. It takes into account not the geographical or political boundaries but the whole mankind with all the treasures or miseries that it may have.
7. Particular justice; in contrast to global justice, particular justice is narrow in scope as it confined to a particular country or society. What may be regarded as justice particular a society may be described by others as sheer justice, if look from their view (Hari, 1994).

My comment, that global justice as common justice, and humanity principle; contrasted with particular justice as community justice based on local culture and belief religious perspective. Like in Bali customary law, women and widow have not rights receive an inheritance from his parents. The Republic of Indonesian Higher Court (called

Mahkamah Agung), the Decision Number 200 K/SIP/1958, according to the BALI Customary law, only son has rights of inheritance material and immaterial property from a parents.

8. Legal justice; it is justice according to law and justice which is done or meted out as a result of the application of law. It may be the case that the law in question is unjust. The consequence would be that the outcome of the application of such unjust but it is still called legal justice (Hari, 1994).

On the idea of justice, I think it is interested what Alf Ross write, in his book's On Law and Justice, he said: "justice is the correct application of a law, as opposed to arbitrariness. Next he said:

- a) Justice, therefore cannot be legal a legal-political yardstick or an ultimate criterion by which law can be judged.
- b) To declare a law unjust contain no real characteristic, no reference to any criterion, no argumentation. Alf Ross concluding that the ideology of justice has thus no place in reasonable discussion of the value of laws (Ross, 1999).

I think, Alf Ross same with Kelsenion legal opinion, that only one criteria of justice it is the procedural justice on settlement dispute, judges is applied of positive law; its law making by authorities body. Kelsen said justice as an ideal but irrational.

The popularity thinking of justice we known is the Rawls theory of justice, the theory is concern to the social justice. Rawls theory is focus on the basic structure of society, political, constitution, the legal system, laws, institution, and social systems. He want to seek and find a set of principles of justice with should determine how the basic structure of society should distributive burden and profits to achieve social justice. There are three principles of social justice according Rawls theory justice:

First, principles of greatest equal liberty, means liberty to gets benefits for society and personal without harmful the other persons; liberty in political life, liberty to expression, liberty choice and freedom of press;

Second, principle of fairness, meaning equality on occupy a public position with fair play, and transparency; and

Third, principle of social economic unequal, in reality social structure there are and unequal position on society, contrast the poor and the rich man, the lower people and elite or the ruling class; employee and employer, on that condition, Government must be regulation to give benefits to the weak society or groups (Hari, 1994).

III. CONCLUSION

First, on philosophy Hinduism, the legitimation legal system is moral justice it essence "dharma" it is the duty of King to realized a higher moral standard behavior of society, and integrated political, social, economic and culture for prosperity of human being.

Second, on philosophy of natural law, legitimation of legal system is based morality it essence justice and truth. On the other and philosophy of Marxist legal ideology based on socialist legality, with dialectical method, thesis FEUDALISM and antithesis BOURGOUIS—CAPITALISTIC, the last synthetic is SOSIALIS-COMUNISM. Next Philosophy of Legal Positivism, Hans Kelsen and Alf Ross, there is no place discussion about ideology of justice, because, to declare a law is just or unjust contains no characteristic, and no reference to any criterion, no argument.

Third, the fundamental legal ideology PANCASILA a fundamental philosophy Indonesian State, based of five principle is essence Social Justice's legitimation of Indonesian system of law. In reality means prosperity for all Indonesian people based o. n an exalted only one God. A realized of Social justice has a duty and an accountability of our Government. It must be regulated to distribution of burden and benefits of all asset of natural resources, and tax for all of Indonesian people. According article 33 paragraph (3) THE 1945 CONSTITUTION OF THE REPUBLIC OF INONESIA regulate "The land, the waters and the natural resources within the powers of the State and shall be used to the greatest benefits of the people".

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