

Published by the decision of the Scientific Council
of Khachatur Abovian
Armenian State Pedagogical University



Department of Philosophy and Logic
named after Academician Georg Brutian



W I S D O M

2(22), 2022



*WISDOM is covered in Clarivate Analytics' Emerging Sources
Citation Index service*

YEREVAN – 2022

PHILOSOPHY OF LAW

DOI: 10.24234/wisdom.v22i2.790

Arief BUDIONO,
Yogi PRASETYO,
Kelik WARDIONO,
Wardah YUSPIN,
Khudzaifah DIMYATI,
Dewi IRIANI

LEGAL CONSCIENCE AND THE PRESSURE OF THE FORMAL LAW SYSTEM

Abstract

Society has concerns when there are actions that are not according to the law. Law enforcers must develop legal mindsets to fill the legal void in society by providing legal practice or legal rationing through legal interpretation. This paper aims to analyze: (1) What is the role of logic and legal rationing in achieving justice? (2) Describe the legal condition and the image of the pressure of formal law in society! And (3) What roles do judges have in justly enforcing the law? The results of the study found that (1) A just decision with a conscience will result in quality decisions. They are progressive as opposed to blindly following formality, (2) In reality, the law no longer represents high virtues, but rather, it represents political interests to sustain some people's domination. The positivist legal system should develop a new alternative structure that is less rigid, (3) Judges have the freedom to choose the best and most accurate alternative in reaching a just decision. In conclusion, judges must be able to make decisions based on conscience without ignoring the formal law to fulfil society's need for justice.

Keywords: law, legal rationing, justice, conscience.

Introduction

Law enforcers resolve various issues concerning conflicts between legal objectives, namely conflicts between justice, legal certainty, and law enforcement in society. Legal cases in society are often assessed based on their actions. A just legal process is usually based on scientific logic and intelligence (Grossi & Rotolo, 2012). In Indonesia, not only is the normative law applied, but there are also socialist and empirical schools of thought. It is hoped that the law can be accepted and enforced maximally in society (Darmodiharjo & Shidarta, 2002). A balance between legal thoughts that emphasize equality between constitutive efforts and formal logic is desired in resolving legal cases. Thus, good legal rationing is

crucial in providing good feedback to resolve the ever-complex legal cases.

The law is a norm that regulates and binds all social components. Apart from holding on to the normative law that usually becomes the foundation for success in undergoing certain actions, it is hoped that people consider using conscience (Warasih, 2005). This is because, in law, we must not only see from one side, but we must be able to comprehend a case as a whole. We must think critically with good legal rationing. We must not just see the laws and regulations but also how the law develops and lives in society as a concrete unity. The law has been embedded in the local cultures, norms, and customs in certain places. Thus, good legal argumentation and logical rationing will help resolve legal issues. This

will be different if we only regard the statute aspect (Weruin, 2017).

Thus, this paper aims to analyze: (1) What is the role of logic and legal rationing in achieving justice? (2) Describe the legal condition and the image of the pressure of formal law in society! And (3) What roles do judges have in justly enforcing the law?

Research Method

This paper employed the empirical approach. Law enforcement in Indonesia is still low, as it upholds the legal positivism system as the formal law that regulates society. Law enforcers tend to be inflexible. They comply with and submit to the formal law. Thus, the practical law in society falls behind. Many courtly decisions of judges fail to fulfil people's demands for the law to see the truth in the field (Dimiyati & Wardiono, 2004).

Such a condition will become a boomerang for the law as society loses its trust in the law and the law enforcers. There needs to be a collaboration in normatively and empirically combining the law so that the law is neutral without ignoring the law's aim to find justice. Justice is crucial as society views the law as a regulation for the society that is free from any influence (Ridwan, 2021).

Results and Discussion

A. The Role of Logic and Legal Rationing in Achieving Justice

Logic is a basis for determining a framework of thought. It is a way to determine a rational action. Logic can determine how to act and how to appropriately study and apply the law (Haryadi & Suteki, 2017).

Logic and legal rationing emphasize seeking the legal basis of legal phenomena or legal actions. Philosophical and critical thinking in legal rationing demands responsibility; thus, they must be carried out carefully. Logics are important in

philosophical thinking, and this must be considered by law enforcers. Law enforcers must understand how the law lives in society rather than strictly bowing down to the constitution. Legal processes will grow well according to their objective when conscience and logical thinking are involved (Cindawati, 2014).

Unfortunately, the Indonesian laymen tend to negatively perceive the law. Places with low legal enforcement regard the law as having a bad track record, even though the law is a reference in the stately life and to maintain structure and order. In paying attention to the law's urgency and objectives, logic needs to be considered as it is one of the central things in legal rationing (Dimiyati, Absori, Wardiono, & Hamdan, 2017).

Logic is a rule that concludes consequences, legal regulations, and other rationing. It is an interpretation to construct the meaning of the legal expression, for instance, in laws that are commonly known in society. It also functions to contradict legal regulations and to factually determine the environment, that the law must not only submit to formal government-made regulations but also acknowledge that the law lives in the Indonesian society. Logic sees empirical facts without ignoring formal regulations (Arifin, 1994). In a thought process, logic mediates the truth or the wrongness behind a particular thing. This can be carried out through induction or deduction methods (Rasjidi & Rasjidi, 2004). Induction and deduction are actually opposites. But the researcher can choose and apply one of the two, considering that both are choices of methods. The choice is taken based on the data, conclusion, and classification. The former concludes a specific thing from general things, whereas the latter interprets special things to find a general conclusion (Scharffs, 2004).

Legal rationing functions in becoming a basis for deciding upon a legal case. This must be considered apart from the formal law. This is important to achieve justice as a legal objective. It also functions to analyze laws, to know the urgency of the law and how the law was made.

Logical thinking and rationing function to obtain a profound insight into law so that law enforcers understand the essence of law as opposed to blindly following it.

Logic does not only function to achieve good legal roles, but it is an integral part of legal philosophy (Gunawan, 1990). It is part of practical philosophy that can be applied in society. Legal rationing and legal argumentation require critical thinking to see from the perspective of logic. It functions to examine the law's accuracy and to justify hidden meanings of laws. Thus, legal professionals such as judges, lawyers, attorneys, legal activists, and legal practitioners need rational logic and legal argumentation (Ridwan, 2017). This cannot be separated from their activities in inductively or deductively concluding laws (Salma, 2016).

Rational logic guarantees legal objectivity and impartiality so that legal logic does not depend on other considerations or interests outside of logic with its objective of certainty. It must be based on a logical proportion, and it must be formulated objectively using the proportion of an accepted or a rejected thing. The law is a guideline of behaviour that has been formulated proportionally. It is a tool to control social behaviours as some actions may violate the law. This proportion may be contradictory if placed holistically in a context. There must be a breakthrough or an alternative through the action of that proportionate decision. This consequence is a logical model that is implicit in the government and is written in law. The good relationship between legal argumentation logic and legal rationing is something in a critical perspective on the law (Dimiyati, 2010). This is important concerning the legal understanding and legal perspective that tries to manifest the meanings of legal regulations. It is relevant as logical criteria may be used to determine the direction of an opinion or a decision. Good rationing will also open to scientific and reflective thoughts. It is an effort to lengthen the series of legal rationing and to resolve complex issues with the practice of critical

thinking. People will know and analyze mistakes quickly in the effort to achieve the law obtained from a good thought framework, and also certainly produce a legal bias that is in line with the legal objective (Sutanto & Werson, 2016).

A just decision with a conscience will result in quality decisions. Such innovations uphold justice values. They are progressive as opposed to blindly following formality. These decisions need to be appreciated to create a jurisprudence that is followed by other Indonesian judges, as upholding justice is more important than strictly referring to formal laws.

The positive law oftentimes fails to follow the current development or to fulfil the sense of justice in court. The judicial power is deemed independent, but in practice, some courts are still influenced by executive power. Thus, judicial legal products should become a fierce facility of innovation to achieve a just society.

This justice must be present in the law. The law's crown is in the form of courtly decisions. Thus, in essence, courtly decisions are justice according to law. It does not only depend on positivism or laws as a basis. It creates judges that are funnels of those laws. Judges should be able to apply laws that create justice based on logical ratios, including based on the examination of the present evidence.

Before deciding upon a case, a judge will bring materials such as values, principles, or theories as well as evidence to the court. This is to fulfil the objectives of legal justice, benefit, and certainty. Without its fulfilment, legal certainty will be violated. It also violates a sense of justice and conscience; thus, people will no longer trust the law. Good judicial decisions that are according to society's feelings will substitute for the weaknesses of laws.

There are two types of judges in Indonesia, namely practical and progressive ones. It is difficult for practical judges to leave the law that was developed by Dutch colonials. Thus, they resolve issues based on positive laws or laws on courtly decisions. Meanwhile, progressive judges dig

into constitutional texts. This requires good and scientific legal rationing through scientific methods.

The scientific method is an objectively, rationally, and empirically correct method. It encompasses laws that can be logically or generally accepted, just like the Criminal Code that follows scientific ratios or requirements and several empirical laws whose implementation follows the existing legal reality. Then, the non-scientific method is rationing which does not always use the requirement of positive law, but it is beyond that. This method may not be rationally accepted, but it is necessary to resolve cases that cannot be resolved scientifically. This method is often deemed inappropriate to be used as it is difficult to determine the standard of legal certainty.

No scientific knowledge can yet explain the validity of values derived from non-scientific legal rationing. But, conscience is used to create just policies and laws in some cases in Indonesia. It is not only about legal positivism, but conscience is needed to resolve certain cases, for instance, when an old lady stole firewood or when a farmer is accused of copying corn-planting methods, etc. Such cases do not always have to follow the positive law, as the background of the case must first be analyzed.

B. The Legal Condition and the Image of Formal Law's Pressure on Society

Legal positivism is known as the set of explicit constitutional regulations. This makes it easy for law enforcers to apply it linearly according to the mechanism. A characteristic of modern law is that legal objectives must be achieved through determined stipulations. Thus, modern law has become highly instrumental. It is as if the authorities, law experts, and law enforcers in Indonesia have engineered the people's lives through the law. Instrumentally, the law aims to achieve its own goals. But perspectively, the law that is applied in Indonesia is repressive. Repressive law is used by repressive power to have unlimited authority. Thus, the state of politics is

inseparable as highly related instrumental aspects (Dewantara, 2018).

Positivism has a strong influence in Indonesia, shown by the desire to unify or codify the law. But if we see the society, legal certainty is more important than unification. This causes resistance in certain areas. The domination of legal positivism shifts certain customs or cultures. Society has a plural sense of law. It is not the only law that exists in society, but it aims to provide the goal of the law. It is not enough for law enforcers to just become the funnel of the law; but they must listen to and see society before making a decision. In the empirical-inductive perspective, the law implementation is not only legal-formal, but it also lives in a society which has complex and diverse local wisdom that requires acknowledgement in that society. The law is not understood normatively as merely written rules to be complied with, but it is an integral part of the holistic life in society. A law that holds too strongly to positivist law and ignores conscience and legal rationing will cause issues. Progressive law desires to find the truth from the holistic legal system. Human life loses its meaning as modern legal studies fail to touch the inner virtues that are necessary to find the essence in laws (Salma, 2016).

The critical paradigm developed by the formal law influences people's perspective on legal studies as a representation and a holistic reality. The law does not only run with textual certainty, but it needs a disuniformity for a systematic understanding and critical subjection. This approach is crucial as legal certainty and order are inseparable from social relations. In rationing, there is a link between ethics and morality that is not only understood from one aspect, but it is more than that. These values can be dialogued with the development of legal, social studies and the culture of thought that emphasizes the value and meaning behind that law. Thus, transcendental thought starts to direct to irrational things such as emotion, morality, and spirituality in understanding science.

An issue that has become a topic of critical legal studies is the reality that the law no longer represents high virtues, but rather, it represents political interests that use the law to perpetuate some people's domination and hegemony. Critical legal studies can criticize the existence of laws and moralities that it contains. The positivist legal system should develop a new alternative structure that is less rigid. Here, morality is understood as the spirit of human existence that has the role of maintaining the sustainability of the universe. Morality places the human existential dimension as a high virtue and further determines the virtue of human creation. Legal morality is not free from value, and it is filled with the value of legal advocacy. Morality is born from a framework that sides with values of divinity and humanity. Such a law has a wider perspective. It does not differentiate groups of people, but it strives to guarantee the sustainability of humanity's nature. This contains an important point on humanization, which is a basis for the substance of the legal order that humans must undergo their responsibilities to people and the environment. Good or bad is based on rationality that is guided by conscience. The legitimization and validity of legal regulations must not only be according to the order in authority, but it is a form of the existence of norms that is used as a substantial basis of morality. It means that each creation or witness to action basically does not limit human freedom. Further, the legal spirit guarantees and aims so that humans may be protected from the potential of authority's arbitrary actions that may injure their existence. Thus, the law applies a procedural framework to help form a law based on spiritual values. There is a tendency for legal morality to insert legal values as an axis for the legal development system. The existence of morality in law and mentality is inseparable from humans as legal agents. These moralities are attached to human existence, wherein social beings and individual also acts as a legal subject. Law and morality have long been developed, but discussions still roll out. This regards issues that

become the basis for the unclarity of the concept of morality, namely the development of that legal thought that purely applies religious values, legal rationing, and conscience. There can be a reconceptualization of morality through a profound meaning in the existing religious texts and contexts.

Indonesia's law enforcement still holds on to positivism. There is also modern philosophy with the legal philosophy school of thought with positivism as the formal law. Positivism cannot be progressive, but it is merely an instrument. Laws, articles, clauses, and jurisdictions are currently farther from justice. Thus, there must be a new paradigm in law enforcement. Law enforcement feels tasteless and flawed when law enforcers only mechanically apply regulations without conscience, good legal rationing, or morality. To create a good legal system, formal law and legal rationing (with religious values) must be included. In Indonesian law enforcement, there is a loss of the transcendence spirit as the positivist paradigm and religion are deemed separate. Transcendence is a basis for humanist law enforcement, as it orients to achieve social welfare at the legal level with good implementation. Thus, Indonesian law enforcement must be constructed through a different methodology with abstract laws which deliver ideological laws. The law enforcers must be transformed into objects. This is because there is no synchronization between legal theory and the implementation of law in society, as law enforcement is far from just moral or ethical values. Thus, the authorities must be courageous in creating policies that enliven the law that is an inseparable part of society and the environment, based on religious values that will strengthen the unity to create justice and to achieve the best legal objectives (Sutanto & Werson, 2016).

An issue of law enforcement in Indonesia is the imbalance of the dynamic interaction. The weak law enforcement is visible from the various unresolved cases. Not many perpetrators have legally been punished. The law is weak to the top

and strict to the bottom. From the reflection of legal philosophy, there are some strange things in law enforcement. Law enforcement has not reached the common ideal of achieving justice. Thus, society is unsatisfied, and they distrust the law. People have negative perceptions or assumptions about the law.

Many people were not liberated by legal decisions. Thus, the law's dignity decreases in society. Legal experts have tried to fix this, as negative public assumptions on law may decrease the dignity of judges. Thus, individual judges must repair this to create the practice of law enforcement based on the principle of justice. Another issue is the misuse of authority in a case in court. Law-bearer may stop the investigation without concrete reasons. This is odd for the legal system in Indonesia. From the public perspective, judges decide upon a case according to their interest in obtaining income. Society knows of the legal practice under the authority of the law enforcers. This loses the public trust in the law and justice. This cannot be ignored. There must be efforts to save the dignity of the law so that judges have better track records.

Seeing the legal positivism paradigm, the law is an arrangement that explicitly contains a complete law that applies a linear mechanism as a basis to resolve cases according to the legal ideal. Unfortunately, legal positivism sometimes places judges as hostages of the law. This certainly influences the court into an institution that inhibits social development. This contradicts the condition wherein the perspective of sociological jurisprudence, judges have the ability and the authority to resolve cases by truly considering their condition apart from applying formal legal values. This is how to create the best decisions, and these decisions have a big role in the development of Indonesian society. Judges do not always use positivism in resolving a case without considering other things that have causality that may support the determination of a decision. The weakness of the formal law that absolute normative truth will encourage people to show law

that falls behind humanity's objectives. The theory should be critical so that legal studies are not based on the devotion to interests but beyond that. In legal decisions, judges must think logically to find the best, most accurate, and most just decision. This cannot be achieved without theories outside of the formal law. With the development of law, theories outside of the formal law must also touch on social humanity.

C. What Roles Do Judges have in Justly Enforcing the Law

A justice institution is a place for the public to obtain justice, but in reality, it is far from the people's expectations. It is hard for low-class society to obtain justice as there is systematic manipulation carried out by the court mafia that happens in almost all layers of legal development. There is manipulation in police forces, judges, attorneys, law clerks, and advocates, though not all of them are like that. There are conflicts in court in manifesting justice. There are often conflicts between legal certainty and justice. There must be efforts to eliminate this conflict to manifest the desired law. Legal positivism or formal law is deemed as an inarguable truth. This results in the understanding to maintain formal legal certainty in which its output is procedural justice. The positivist paradigm can be seen from the actions of law enforcers that fail to undergo progress and empowerment. It becomes an instrument with interests in an arena of power that refers to the concrete laws and articles it contains. Meanwhile, the law that lives in society is marginalized, and it starts to disappear. Worse, the law enforcers underwent actions without any moral basis. But rather, they do so for individualistic objectives (Salma, 2016).

Indonesia is a legal state, but it has serious issues with democracy that results in violence and discrimination. The law enforcement crisis in Indonesia is an impact of the paradigm product that only depends on the type of traditional continental law. Thus, this law is orthodox as the state institutions have dominant roles in deter-

mining the direction of the law in society. The essence of the legal objective lies in legal justice. This cannot be separated from Pancasila (the Five Principles) as a state ideology and the basic principle of Indonesia. It is an ideological and conceptual basis. Its principles are interrelated and inseparable. As one of the law enforcers, as stipulated in the 1945 Constitution and Law No. 4 of 2004, judges have the function of enforcing law and justice. Thus, they should become role models in law compliance. Their job has a wide scope; they must justly formulate laws. It is a noble yet difficult job, as judges are normal human beings that have advantages and weaknesses in deciding the right actions. A judge will be noble if she can decide according to her knowledge and position as a law enforcer and create social justice. In this case, judges are free to decide without the influence of the government or other influences.

Judges must fulfil society's expectations as an enforcer of justice. They have double roles: they are officials that must apply the law to concrete cases, and they are law enforcers that must understand and acknowledge values in society to bargain the law and to decide professionally. As a courtly element, judges must discover, follow, and understand the legal values and justice that society must obtain. This should motivate them to increase the quality of their job based on the law to achieve public satisfaction. They should be professional. Personal interests should not be brought to court as they may influence judicial decisions. In resolving a case, judges must pay attention to some stages, as they are demanded to be more careful in making decisions. This is because judges know an instrument to resolve an issue (Egziabher & Edwards, 2013).

The mandate given to the judge should inspire and motivate them to grow and uphold the law. Law enforcement must be according to the legal objectives. The legal certainty aspect can result in a safe and orderly society. Without certainty, one cannot know what to do. This certainty aims to bring benefits to society. It protects

society to strive for justice enforcement. It is the obligation of the aspects of legal certainty, legal benefit, and legal justice to be consistent in enforcing the law to achieve benefit and justice.

Here, law enforcement does not only regard how to apply the law. What's more important is how to spread justice to society and how to realize it holistically. Law enforcement is a common responsibility between courtly institutions and society's important roles. Just law enforcement is a human right. From legal politics, it is known that one of the causes of the multidimensional crises that happen in Indonesia is the suboptimum law enforcement. Society desires clean, just, courageous, and committed law enforcers as opposed to evil and impure ones that emphasize personal interest. Unfortunately, law enforcement is still far from society's desires. There are still strong interventions from political interests in various legal issues. When the law is provoked by political interests, it will open the potential for contaminated judicial decisions that are controlled by political interests. Law enforcement is closely related to law enforcers' integrity and morals. To enforce the law well, there needs to be a balance between a good legal rationing system and the enforcement of regulations and consequences of law violations. This is because the law was created to strive for humanity's missions. So, it must be liberated from the influences of people with certain interests. Judges also have ethical codes that include the intellectual aspect and the moral aspect. These two aspects often become issues in judicial decisions. Thus, the judicial profession in the positive law and the Islamic law obtain special attention. It is difficult to become a judge as the decisions they make must be accounted for even up to the Hereafter. This profession is full of risks if a judge fails to show her performance professionally and proportionally. Thus, the logical consequence is obtaining bad perspectives from society. Certainly, there are temptations and challenges in the profession. The development of theoretical law is the action of using the mind to obtain intellectual

mastery and scientific, legal understanding. Meanwhile, the development of practising law is when legal functionaries empirically drive the law in life (Adonara, 2015).

The judicial profession works based on the law as the organization of power they are responsible for. Thus, the legal profession may be defined as a profession that has the rightful power to act and behave according to the law. Thus, this development obtains the power legality to act with limitations. It is a value-free profession rather than an exclusive one. It concerns and intersects with values that live in society. The judicial ethics in upholding the law is crucial in Indonesia. These ethics do not only contain functions and roles that must be carried out or avoided by judges, but further, it instructs on how judges become individuals with good morals and conscience that comply with the rules as human beings. The professional judicial ethics are stipulated in the joint decision between the Indonesian Supreme Court and the Head of the Judicial Commission on the judicial behaviours as follows:

1. Justice

Judges must act justly, meaning placing things according to the proportions and the rights. This is based on the principle that legal certainty is true and everyone is equal in law. The most fundamental demand from justice is giving everyone the same treatment and opportunity. Thus, people in the judicial profession have the responsibility to enforce the law justly.

2. Honesty

Honesty is absolute, and this is the key for judges to not side with certain parties. She must be brave in differentiating between truth and wrongness according to their beliefs. Honesty will encourage the formation of an individual who is aware of the essence between the truth and the wrongness.

3. Independence

Independence is the ability to act alone without intervention or influence from other parties or other people. This attitude brings a judge to be

fiercer in upholding principles and beliefs on truth according to the applicable morals and stipulations.

4. Wisdom

Judges do not only side with the law as legal positivism, but they must act according to the religious, decency, and customary norms in society. Thus, a judge can harmonize people's beliefs. This encourages judges to have good insight, high tolerance and care. They prioritize the mission to become professional and capable judges.

5. High Integrity

Integrity means someone has wisdom and is not easily swayed. Integrity will be created when one is loyal and strongly holds on to values or regulations. This high integrity will encourage a person to emphasize truth and to think with conscience in reaching justice. A person with integrity will not be monopolized by parties who want to sway his decision.

6. Responsibility

A judge must be willing to become the best individual who is capable of undergoing his job. He must have the courage to accept all consequences that emerge from applying his authority. This responsibility will prevent one from misusing his profession. It helps one become loyal in upholding the truth.

7. High Discipline

Discipline is crucial in life. For a judge, discipline is a noble calling in undergoing his mandate and in accommodating the public trust in seeking justice. This discipline will create an orderly and sincere individual who is undergoing her job and who will become a role model wherever she lives and socializes.

8. A Professional Attitude

A professional attitude is crucial in all sectors, especially for law enforcers. This attitude is based on the willingness to undergo the profession with the seriousness that is supported by legal competence and expertise. This attitude encourages the formation of a person who maintains and increases the quality of his job.

Judicial decisions and justice in Indonesia are essential. Unfortunately, not many understand this. Some legal experts a priori state that a sense of justice based on the judges' conscience is subjective. They suggest that if judges resolve cases based on conscience, the decisions will cause uncertainty of the law, thus resulting in social injustice and chaos. This is why judges reject making decisions based on their conscience and reject formal constitutional stipulations. This is often debated by law experts, as the two are interrelated but also sometimes contradictory. Concerning this perspective, it can be said that the conscience is that which is according to the social interests rather than personal interests or protecting the interests of those with access to power. The conscience means the conscience that is reflected in the social spirit that is always aware of the responsibilities in society. A judge is empathetic to the social concerns that arise due to the law that is under the power of the authorities or political groups. Meanwhile, the judge is the right hand of that powerful group. He is used as an instrument to support their own interests. Thus, judges are part of the social figures that must always place themselves in the most extensive position. They must have extensive insights and perspectives to understand and listen to social concerns. Thus, they will create decisions that are according to the social ideals (Syamsudin, 2012).

Apart from upholding justice, judges also have the job of reinforcing violated legal stipulations. Here, these violations may be defined narrowly (i.e., the violation of written laws) or extensively (i.e., the violation of written and unwritten laws). This is closely related to the principle of legality, which is a principle in law. In essence, a judge has the job of reinforcing the violated constitutional regulations. This is not as easy as imagined. Many factors influence this, for instance, the relevance with the reality in society. If the judges force herself to determine or to apply a regulation towards a concrete event, there is a great chance of injustice. This is why in reenforcing violated laws, judges cannot be con-

strained to the sound of the Article or clauses written in the laws. But, they must create law through their decisions or the law created by the judge herself (Haryadi & Suteki, 2017).

Apart from that, the judge's main task that cannot be forgotten is the role of creating a law or determining a law. The judicial power has great authority to determine decisions that will be taken in adjudicating a case faced by the said judge. Because of that, some things need to be described. One of them is what is the basis for the judicial thought; thus, they need to act as the law creator and what are the methods carried out to create these laws. It cannot be denied that the perfect or complete laws also have weaknesses. The law has two main potential weaknesses. First, it is not always pure and relevant to the reality in society. This is because the formulation process is incomplete, unclear, and not concrete. Second, in the aspect of the material contents, they are not always relevant to the reality in social life. This law originated from different periods and different cultures. Thus, it can be deemed as sediment from past things. They are relics of past thoughts that are no longer relevant to the current situation. A legal construction requires time rationing to further develop the law no longer holds on to mere articles but by still considering the legal requirements as a legal system. As a legal state, it cannot be denied that the principle of legality is highly fundamental in constitutional regulations. It expects violations to be clearly stated. It also rejects the analogy of the opinion that a criminal program cannot work retroactively recede (Haryadi & Suteki, 2017).

Judges have the freedom to choose the best and most accurate alternative in reaching a just decision. Thus, as great humans that have the freedom to determine their actions and decisions, judges can make decisions without ignoring the law. These two things can run simultaneously. Further, on judge's independence or courtly independence, it is to prevent the misuse of power and authority by state officials. Judicial freedom or independence is hoped to legally control state

power, apart from preventing the misuse of authority. The constitution has regulated and guaranteed the independence of judicial and courtly powers where they are free and neutral. These stipulations are deemed to have weaknesses as there are still two institutions that organize developments for judges. In principle, judges have the power to undergo their tasks and professions. Based on the legality, a judge must uphold the law. But in practice, this is not an absolute thing to be held by the judge. A judge cannot be bound by anything or pressured by anyone if she wants to create a well-developed law, as judges have individual and existential freedom (Egziabher & Edwards, 2013).

The implementation of the judges' principle of freedom in deciding upon a case is so that they are free from judicial intervention, both from executive and legislative power. Judges have the freedom to give orders and adjudicate to be able to think critically and to use good legal rationing in determining a decision without intimidation from any parties. This is because judges have extensive insight and knowledge in creating a just law. The mindset with good and logical legal rationing will then form a legal system that is relevant to social activities or cultures and even the customs that grow in society. It cannot be denied that sometimes judges do not produce jurisprudence that is according to the situation in society. This may be because there is a lack of relevance between the law-making officials with society as subjects or objects of that law.

Conclusion

Legal positivism has a strong influence in Indonesia. This is marked by the desire to unify or codify the law. But if we see the society, legal certainty is more important than unification. This causes resistance in certain areas. The domination of legal positivism is shifted with certain customs or cultures. Thus, the sense of law in society is plural. It is not the only law that exists in society, but it aims to provide the goal of the

law. It is not enough for law enforcers to just become the funnel of the law.

As a legal state, it cannot be denied that the principle of legality is highly fundamental in the constitutional regulations that desire that violations are stated clearly. It also rejects the analogy of the opinion that a criminal program cannot work retroactively recede. Judges have the freedom to choose the best and the most accurate alternative in achieving a just decision, as humans have the freedom to determine their actions and decisions.

References

- Adonara, F. F. (2015). Prinsip kebebasan hakim dalam memutus perkara sebagai amanat konstitusi (The principle of the judicial freedom in deciding upon a case as a mandate of the constitution, in Indonesian). *Jurnal Konstitusi*, 12(1), 1-20.
- Arifin, M. (1994). *Teori dan filsafat hukum-idealisme filosofis dan problema keadilan* (Legal theory and philosophy: Philosophical idealism and the issue of justice, in Indonesian) (2nd ed.). Jakarta: Raja Grafindo Persada.
- Cindawati. (2014). *Filsafat hukum etika dan profesi* (Philosophy of legal ethics and profession, in Indonesian). Palembang: Putra Penuntun. Retrieved March 20, 2022 from http://eprints.ukh.ac.id/id/eprint/848/1/2_FILSAFAT%20DAN%20ETIKA%20PROFESI_1.pdf
- Darmodiharjo, D., & Shidarta (2002). *Pokok-pokok filsafat hukum* (The main points of legal philosophy, in Indonesian) (4th ed.). Jakarta: Gramedia Pustaka Utama.
- Dewantara, A. (2018). *Filsafat moral: pengumuman etis keseharian hidup manusia* (Moral philosophy: The ethical thought of the human daily life, in Indonesian). <https://doi.org/10.31227/osf.io/5cmby>
- Dimiyati, K. (2010). *Teorisasi hukum: studi ten-*

- tang perkembangan pemikiran hukum di Indonesia 1945-1990* (The theorization of law: A study on the development on the legal thoughts in Indonesia, in Indonesian). Surakarta: Genta Publishing.
- Dimiyati, K., & Wardiono, K. (2004). *Metode penelitian hukum* (Legal research method, in Indonesian). Yogyakarta: UMS Press.
- Dimiyati, K., Absori, A., Wardiono, K., & Hamdan, F. (2017). Morality and law: Critics upon H. L. A Hart's moral paradigm epistemology basis based on prophetic paradigm. *Jurnal Dinamika Hukum*, 17(1), 23-30.
- Egziabher, T. B. G., & Edwards, S. (2013). *Africa's potential for the ecological intensification of agriculture*. Rome: FAO.
- Grossi, D., & Rotolo, A. (2012). Logic in the law: A concise overview. *Logic in the Law*, 2(1), 1-19.
- Gunawan, S. A. (1990). *Dialektika hukum dan moral dalam pembangunan masyarakat Indonesia* (Legal and moral dialectics in the development of Indonesian people, in Indonesian). Surabaya: Kanisius.
- Haryadi, L., & Suteki, S. (2017). Implementasi nilai keadilan sosial oleh hakim dalam perkara Lanjar Sriyanto dari perspektif Pancasila dan kode etik profesi hakim (Implementation of the social justice values of judges in the case of Lanjar Sriyanto from the perspective of Pancasila and the ethical code of the judicial profession, in Indonesian). *Law Reform*, 13(2), 164-179. <https://doi.org/10.14710/lr.v13i2.16153>
- Rasjidi, L., & Rasjidi, I. T. (2004). *Dasar-dasar filsafat dan teori hukum* (The basics of philosophy and legal theory, in Indonesian). Bandung: Citra Aditya Bakti.
- Ridwan, R. (2021). The law of transcendence liberation. *Jurnal Jurisprudence UMS*, 11(2), 156-169. Retrieved March 18, 2022, from <https://journals.ums.ac.id/index.php/jurisprudence/article/view/14047>
- Ridwan. (2017). Hukum dan perubahan sosial: perdebatan dua kutub antara hukum sebagai social control dan hukum sebagai social engineering (The law and social justice: The debate on the two poles between law as social control and law as social engineering, in Indonesian). *Jurnal Jurisprudence UMS*, 6(1), 28-39. <https://journals.ums.ac.id/index.php/jurisprudence/issue/view/461>
- Salma, S. (2016). Urgensi etika profesi hakim dalam penegakan hukum di Indonesia (The urgency of the professional ethics of judges in the law enforcement in Indonesia, in Indonesian). *Jurnal Pendidikan Islam: Pendekatan Interdisipliner*, 1(1), 45-56.
- Scharffs, B. G. (2004). The character of legal reasoning. *Washington and Lee Law Review*, 61(2), 733-736
- Sutanto, S. & Werson, V. (2016). Ekuivalensi logika formal terhadap upaya konstitutif (The equivalence of the formal logic towards constitutive efforts, in Indonesian). *Jurnal Pemberdayaan Hukum*, 6(2), 32-43.
- Syamsudin, M. (2012). Keadilan substansif yang terabaikan dalam sengketa sita jaminan (The ignored substantive justice in the collateral confiscation dispute, in Indonesian). *Jurnal Yudisial*, 5(1), 36-50.
- Warasih, E. (2005). Pranata hukum sebuah telaah sosiologis (Legal order, a sociological analysis, in Indonesian). Semarang: Suryandaru Utama.
- Weruin, U. U. (2017). Logika dan argumentasi hukum (Logic and legal argumentation, in Indonesian). *Jurnal Konstitusi*, 14(2), 374-395.