Interrelation of Ethics, Law, and Justice

M. Natsir Asnawi(✉)

Faculty of Law, Borobudur University, Jakarta, Indonesia
natsir@gmail.com

Abstract. The research's aim is to describe the interrelation of ethics, law, and justice as an inseparable unit, both in terms of norm formation, enforcement, and legal reform. A standing point of the research is that the law and its enforcement cannot be separated from the ethical creed that underlies all aspects of human life. Based on the study of various references, two things can be concluded. First, justice is a legal concept that rooted to the ethical philosophy perspective. Justice was built in ethical norms and being a part in human life as well, namely the implementation of human nature as servants of God to do good to oneself and others. Second, justice which is defined as "doing justice" and/or "actualizing justice" is the implementation of two main currents of views in ethical philosophy, deontology and teleology. Justice is the implementation of "good deeds" which are basic human obligations as well as efforts to create harmony of human life as the "good results" of "doing justice".

Keywords: Ethics · Law · Justice · Deontology · Teleology

1 Introduction

The discussion about justice as the substance and the ultimate goal of law has been focused on the normative dimension of justice. There is an impression that the discussion about justice is actually the most original legal concept and is built on the internal dynamics of law from the era of natural law to the post-modern era. Justice seems to be seen as law itself, it exists and is dynamic in a legal column that is separate from the non-legal column. We call it a column of law because in fact, law is a part (column) of the entire column that builds a social system of human life. Law is not a single and independent system, nor is it a perfect and unified system (the finite scheme). Law, on the other hand, is a subsystem related to other subsystems in the universe of social order. Law depends on these other subsystems, and together they build what we call social order.

We simply can not understand the substance of law just by looking at and observing the law in the sense and meaning of the law an sich. On the other hand, discussing law in the framework of finding the essence of law must be in a broader perspective, taking into account all non-legal phenomena that are intertwined and even encourage legal reform toward a more dynamic and substantive legal system.

Justice as the essence of law, in our opinion, is not a pure concept of law. On the other hand, the concept of justice, for such a long period of time before the concept of law

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found its current form, was a representation of moral views and values embodied in a series of ethical norms and behavior. Justice is a noble will that was born and developed along with the presence of humans on earth. Human creation, coupled by God with a moral obligation to maintain good relations with fellow humans and the surrounding environment.

The command to do justice, unless it is interpreted as God's command which later becomes law, is in principle the actualization of the moral obligation of every human being in maintaining the harmony of life with fellow humans and the surrounding environment. In such a point of view, discussing justice – the obligation to act fairly and realize justice in social life – is not always related to the normative discussion of justice itself. It is actually a discussion from another, far more basic point of view why someone is obliged to do justice.

For this standpoint, we then assume that "justice is not always related to legal norms", justice is significantly rooted by the ethical aspects of human life. This paper will examine justice from the point of view of ethical philosophy with the hope that the inner attitude of every human being in doing justice and realizing justice is not merely an actualization of legal norms, but also an actualization of ethical values that are fundamental to human life.

2 Method

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3 Result and Discussion

3.1 Configuring the Meaning of Justice

The word "justice" comes from the Latin "iustitia". The word "justice" has three different meanings, as follows: (1) attributively means a quality that is fair or fair (justness), (2) as an action means the act of carrying out the law or actions that determine rights and rewards or punishments (judicature), and (3) people, which is public officials who have the right to determine requirements before a case is brought to court (judge, jurist, magistrate) [1].

Justice as a universal value is interpreted differently by legal scholars. To interprete "justice", Thomas Aquinas [2] suggests three fundamental structures (basic relationships), as follows:

a. Relations between individuals (ordo partium ad partes);
b. The relationship between society as a whole and the individual (ordo totius ad partes);
c. The relationship between individuals and society as a whole (ordo partium ad totum).

Distributive justice which is the idea of Thomas Aquinas is a representation of respect for oneself (acceptio personarum) and human dignity. Thomas Aquinas emphasizes the meaning of justice in the existence of similarities between one thing and another (aequalitas rei ad rem) [3].

Meanwhile, Ulpianus defines justice as a continuous effort or will and still gives to each what is his or her right (iustitia est constans et perpetua voluntas ius suum cuique tribuere). It appears that the definition of justice by Ulpianus emphasizes two things; efforts or actions and the rights inherent in a person.

Vinogradoff quotes the definition of justice from Domitius Annius Ulpianus (died 223 AD), the famous Roman jurist whose works and speeches are remembered and used as references to this day. Ulpianus defines justice in a simple editorial: "Honeste vivere, alterum non laedere, suum cuique tribuere" [5].

The meaning of this definition can be explained in three ways. First, he asserts that justice is an honorable individual life. This statement reminds us of Alfred N. Whitehead's similar view on religion. In his book 'Religion in the Making,' Whitehead states religion is solitude. "Religion is solitariness; if you are never solitary, you are never religious!" he said. Thus, every individual who maintains his honor will certainly maintain the honor of his social environment. Therefore, justice is an ethical view of respect for the individual [6].

Ulpianus' second dimension of justice reflects the heteronomous aspect of justice. The second dimension (alterum non laedere) represents respect for the rights of others that are publicly agreed upon [7]. Here, Ulpianus emphasizes that the existence of an individual is always related to the lives of other individuals. The ethical implication marked that every individual is obliged to maintain good relations with each other.

The third dimension (suum cuique tribuere) is respect for privately agreed rights. This heteronomous aspect is then more prominent, so that, in terms of terminology, justice has always been identified with social justice. Justice is identified with social justice because justice is directed at comparing the treatment of different target subjects. A husband who has several wives would be considered unfair if, for example, he spends more time with one wife than with the other. This assessment does not occur if this husband only marriage to single wife [8].

When Ulpianus asserts the honeste vivere, he is not in a position to compare the treatment of norm subjects outside himself. For Ulpianus, justice that compares such treatment is the next stage because justice must first begin with personal contemplation, namely philosophical contemplation of the true meaning of life. The true life is a life of self-glorification. This is the source of justice in life. So, justice must depart from the results of critical reflection on the meaning of life.

Actually, in the world of legal science and legal philosophy, there are many definitions of justice put forward by the parties. However, to facilitate the implementation of the theory of justice in this study, it is necessary to put forward the abstraction of the meaning of justice proposed by Notohamidjojo. Notohamidjojo [9] summarizes the meaning of justice from various legal scholars' opinions, as follows:

a. Iustitia comutativa, namely justice that rests on the principle of achievement-contra-achievement or the principle of equivalence. This justice is expressed massively in the field of civil law (private);

b. Iustitia distributive, namely justice that relies on the principle of proportionality. This concept is generally expressed in the field of public law;
c. Iustitia vindicativa, namely justice that rests on the principle of "no punishment without fault (niet staff zonder schuld). This means that everyone who is convicted must pay the loss according to the severity of the offense;
d. Iustitia creativa, namely justice that relies on the principle of "protection" of rights in the field of culture, such as copyrights, patents, and so on;
e. Iustitia protectiva, namely justice that relies on the concept of human rights. This justice emphasizes that everyone should not be arbitrarily, so that basically individual freedom is limited by the said obligation. The aim is to bring about public order;
f. Iustitia legalis, namely justice that applies to all legal subjects. Patronage of this justice is "wettelijk rechtsvardigheid"

One of the most widely discussed theories of justice today is the theory of justice from John Rawls, that is to say justice as fairness. Rawls's theory of justice emphasizes the principles of rationality, freedom, and equality [10]. Raymond Wacks [11] argues that Rawls's theory of justice contains two main principles of justice, as follows:

a. First principle
"each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all" [12].
b. Second principle
Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantage, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity. [13].

3.2 Ethical Perspective on Justice

a. Why Ethics?

Ethics was categorized as moral philosophy or normative ethics. Ethics is a normative behavior. Normative ethics teaches everything that is right according to law and morality. Ethics teaches that what is wrong is wrong and what is right is right. Something that is right cannot be said to be wrong and conversely something that is wrong cannot be said to be right. Right and wrong cannot be mixed up for the sake of a person or group.

To understand the practical meaning of ethics, it is necessary to compare ethics with morality. Ethics and morality are often treated equally in giving meaning to an event of interaction between humans. First, ethics comes from the Greek word ethos, its plural form (ta etha) means "customs". This means that ethics is related to the goodness of life, habits or good character towards a person, society or community group. Second, Ethics in this second sense is understood as a moral philosophy, or a science that discusses and examines the values and norms given by morality and ethics [14].

This paper is not in the context of comparing the meaning of ethics and morals. More than that, this paper emphasizes that when talking about ethics, at that time the

discussion about morals is taking place. In other words, the ethical point of view in the main discussion of this paper is a moral point of view.

The discussion of justice in the perspective of ethical philosophy begins with a discussion of the relationship between law and morals. Regarding the relation between law and morals, Hans Kelsen suggests that the question of the relationship between law and morals can be answered from various perspectives. However, Kelsen put more emphasis on answering these questions in terms of legal and moral substance [15]. This is because the form or form of law and morals in many ways is different, it is different when viewed from the substance of law and morals themselves, law and morals have an identity that can be said to be similar.

The school of natural law does not clearly separate law and morals. It is distinguished from school of positivism which separates law and morals, and even tends to negate morals as an inherent aspect of law. An important thesis of natural law related to law and morals is "law and morals are a reflection of human life and the relationships formed with one another". This thesis is emphasized by Immanuel Kant who states that morality regulates human life in interacting with one another and underlies every motive of thought, word, and deed. From this legal and moral relation, set standards of speech and behavior that must be obeyed [16].

Even though it existed long before modern civilization was formed, the influence of natural law thought is still felt. In fact, several judges in England put morals as the foundation of the law, including The House of Lords in the case of Shaw v. D.P.P. (1962) argues that the function of the court is as a guardian of morality so that it remains upright in the midst of people's lives (the courts as guradians of morality). In line with this opinion, Lord Mansfield asserted that the court is a guardian for the upholding of moral values in society and provides appropriate laws for any violations that are contrary to these moral values (guradian of morals of the people and had the superintendency of offense contra). Good behavior) [17].

Aristotle, one of the main exponents of law, linked law with social-ethical feelings. For Aristotle, law is a medium that allows people to understand and obey moral values. The ultimate goal of every human being is to achieve happiness. This happiness will not be realized if he does not identify himself as a 'moral enforcer' by making truth the priority of life. [18] Therefore, it can be understood why those who choose to resolve legal problems peacefully tend to be calmer than those who choose to resolve all problems through legal channels (courts).

Our nature is basically to want peace in life, away from the chaos of conflict. Settlement of legal problems does not always have to go through litigation. Besides being too procedural, the interactions that are built in it are also rigid, win-lose oriented, mutual suspicion between the parties, and has the potential to cause physical and emotional fatigue. That is why in Islamic law, there is a rule that must always be reminded, "ash shulhu sayyidul ahkâm" (peace is the commander/highest goal of law). No matter how good a dispute resolution is through the courts, it will not be able to exceed the goodness and tranquility that results from a peace.

Law by its nature has a moral content or is a moral value. The implication of the statement is that the law exists and applies in the moral sphere. The legal order is ultimately seen as a moral order. Thus, it can be understood that the law is actually a

moral representation; meaningful morals and leads to "justice" [19]. Although Kelsen rejects absolute morality as stated by the exponents of natural law, Kelsen does not deny that law is based on morals. The morals that underlie the law are relative in the sense that the moral standards in a particular society may differ from the moral standards in other societies. However, various different moral standards still lead to one postulate, namely morals related to "doing good things".

An interesting thing in the relationship between law and morals can be seen, for example, from the results of Salman Luthan's research. In his research, Salman Luthan concluded that the legal and moral relationship is a reciprocal or reciprocal functional relationship. Morality affects the law in several ways, on the other hand the law also plays a role in transforming moral values [20]. Salman Luthan's conclusion is in line with Gandhi M. K. Ed's view which states that law and morals are closely related to each other. The close relationship between law and morals is complementary. Gandhi rejected the view that strictly separated law and morals. On the other hand, Gandhi emphasized that the essence of law is actually how the law reflects moral values [21].

The functional relationship between morals and law is established within the framework of law formation and law enforcement. Regarding the formation and enforcement of law, morality has several functions, as follows [22]:

1) The source of ethics (values) for the formation of positive law
   Moral values act as the ethical basis for law formation. Moral values provide the basis for the policy of establishing new legal rules. In addition, moral values also provide a basis for efforts to update the applicable legal rules which are considered to be no longer in line with the development of the legal system, legal needs, and the complexity of legal problems in society. Some moral values such as the values of justice and the values of virtue in the association of human life must animate and direct the formation of legal rules (laws). The attribution of the rights and obligations of the parties in a legal relationship and the attribution of an act as a mandatory command or prohibition is based on the values of justice for all people and the values of virtue in the association of human life [23].
2) The source of the rules for positive law
   Morals are loaded with values (rules) that can be a source of legal rules. Many moral principles are then co-opted into legal rules. The rule about keeping promises, for example, is co-opted by law into legal rules such as "good faith". Moral emphasizes the importance and obligation to keep and keep promises made to other parties. For example, morally, keeping a promise is an inherent obligation of an act in the form of a promise. Apart from the inherent nature of it, keeping promises also aims to maintain good relations with others and to manifest goodness in oneself and others. As for keeping promises, "good faith" which has been introduced as a rule of law emphasizes the importance and obligation of a person to have good faith or good intentions in making contracts with other parties. It is clear then if the moral code becomes the source for the legal code.
3) An evaluative instrument for the substance of the rule of law
   The validity of the law is often the center of discussion about the rule of law. Legal validity in the perspective of moral values is an attempt to test the validity of a rule and/or rule of law based on moral qualifications. Moral as it is known to have a

set of values which – unless interpreted as a particular value – is universal, such as "behaving fairly", "keeping promises", and so on.

Regarding the moral function as an evaluative instrument for the validity of the rules and/or the rule of law, Fuller [24] put forward eight internal moral laws which he later referred to as the eight principles of legality, as follows:

a) A new regulation must be based on the previous rules and/or regulations;
b) Regulations must be properly announced (must comply with the publicity principle of a legal regulation);
c) The application of the non-retroactive principle of new regulations to legal events or events and/or actions before the regulations are made;
d) The formulation of a regulation must be clear and understandable by the public and the government or law enforcement as the subject and implementer of law enforcement;
e) Regulations and/or implementation of regulations may not be carried out in cases where it is impossible to implement;
f) There should be no conflict between one rule and another;
g) Regulatory consistency is mandatory, it should not change frequently without any justification for such changes or updates;
h) There is a match between the actions of law enforcers and the regulations that have been made;
i) Reference sources of justification for the settlement of legal cases whose legal rules are not clear.

The explanation above provides a clear picture that understanding the law cannot be done by looking at the law in the sense of an sich. On the other hand, understanding the law must be carried out in a broader and fundamental optic, namely understanding the law from an ethical point of view. Because as it is recognized that many legal norms come from ethical norms, no deeper understanding of the law starts with an understanding of the underlying ethical norms. This is where a consensus is reached that many legal concepts can be understood comprehensively by starting from the norms or ethical standards related to them, in case the concept of justice is a representation of ethical norms or standards that are born and develop along with the existence and dynamics of human life.

Ethics are generally compiled in a code of ethics. This association represents values that are lived, believed, and implemented both in the community and in certain professional groups. All of them collect views on what is considered good and what is considered bad. When understood in a broader context, ethics rests on a conscience that determines what things are good and bad, and right and wrong. Thus, from the ethical order emerge instruments such as suggestions, orders, prohibitions, and permissibility. These instruments regulate the attitude of human action which contains psychosocial aspects in a broad sense.

3.3 Justice as an Implementation of Ethics

The discussion about the ethical basis for the obligation or prohibition of an act morally which then becomes an act that is obligatory and prohibited by law is a very basic discussion. Because as the theory of natural law precedes and becomes the material for the development of further legal theories, the ethical foundation is the basis of thinking that precedes and becomes the material for formulators of rules in formulating legal rules and new legal regulations.

For example, in ethics, everyone is prohibited from breaking promises. The act of breaking a promise is prohibited for two reasons. First, breaking a promise, by its nature, is a disgraceful act, both by ethical standards and in religious teachings. Second, the act of breaking a promise is prohibited because it can cause adverse effects or impacts on other people or in other words cannot provide benefits to the promised party. These two reasons represent two poles of thought about the ethical basis of an act that is considered good or bad, namely deontology and teleology.

The importance of discussing ethics in relation to the formation and enforcement of law is because ethics examines human behavior or actions based on existing moral standards or values. Ethics gives a prescription which actions should be done and which should not be done based on these moral standards. From here, ethics then produce new rules that are more practical and become guidelines for behaving in everyday life.

We often dealed specific question of why a rule and/or rule of law must be obeyed by the community? Thus the law is simply obeyed without any ethical reasons in the compliance?.

Ronald Dworkin describes law as more than just a rule of law (laws). The scope of law was not merely to the law as it is, but also the law as it is ought to be. For Dworkin, law is not just a mere rule (consist not merely rules) but also contains norms outside the law itself (non-rule standards). Thus, Dworkin emphatically rejects the view that separates law and morals. For him the essence of law is morality [26].

Julia J. A. Shaw describes the relationship of morality to law and its consequences as follows:

"Law has been described as having the moral authority to coerce; also, moral considerations become pertinent especially when we can recognisea genuine legal obligation, yet determine there are other moral factors which have greater authority. Inarguably, morality is important to legal theory and legal practice. So, how can we define morality? First of all, the term ethics is sometimes used interchangeably with morality; however, ethics relates to the narrower field of codes of conduct and chosen moral principles of specific groups or organizations…Immanuel Kant's deontological formulation of the 'categorical imperative' is based on the notion of duty, in that an actor must freely choose impartially conceived moral maxims (or reasons given for legitimating a certain action) which, because of their moral content, can ideally be applied to everyone in the same circumstances without contradiction or exception" [27].

The argument shows that the coercive nature of the law is based on the aspect of morality contained in the law itself. The moral essence in law has the effect that every person is obliged to carry out the obligations that are morally required, or at least the act in question is his obligation as a legal subject. In certain cases, an act that is morally obligatory to be carried out by a person but is not regulated by law, turns out not to be

carried out by the person concerned, then he or she can be "forced" to do the act because it is morally stipulating it as an obligation.

Ethical standards are often used in the study of law. The coercive nature of law cannot be separated from the morals or ethics that actually underlie each person's legal actions. Teleological philosophy is a branch of ethical philosophy that emphasizes legal and moral relations. If deontology talks about the imperative nature inherent in an action, then teleology talks about the implications of an action that is required of someone.

George Whitecross Paton referred to teleology as "the teleological school". [28] Teleology is a school in ethical philosophy that analyzes law from the point of view of the purpose of law creation. George once said:

"This school therefore asks: 'What should be the ideal end of law? What should guide us in developing the law? The functional school shows somewhat the same interest, for Pound's doctrine of social engineering assumes that law must be developed to meet changing social values…" [29].

Teleology discusses the purpose of law is. Teleology therefore elaborate pragmatic things to law. Related to legal pragmatism, teleological studies have a lot to do with Roscoe Pound's concept which places law as a tool of social engineering. In discussing the purpose of the law, teleology sees an act as required by law because the act has a good aim. Maybe the act is not regulated in the existing legal texts, but ethically the act is required because there is a good goal to be achieved.

The concept of justice can be summed up as an implementation of ethics. Justice, both in its understanding as a condition and as a process and act of doing justice, reflects the two main currents in ethical philosophy, namely deontology and teleology.

From a deontological perspective, doing justice or realizing justice is an inherent human obligation. Doing justice, for example, is a good deed (good things) and is inherent in human nature as personal beings and social beings. Doing justice is an internal part and inherent in the history of human civilization. It is certain that all religious teachings command their adherents to do justice. Therefore, it can be understood that the obligation to do justice is a universal obligation, regardless of religious barriers, ethnicity, and other humanist attributes.

Meanwhile, from a teleological perspective, doing justice is an act that is obligatory because it gives goodness and benefits to human life (for something good to human mankind). Doing justice is obligatory because the resulting implications are good for the lives of individuals and society. This is like a postulate that justice breeds benefit, justice breeds tranquility, and justice creates harmony in life. How many examples show us that if in a society, doing justice becomes a preference in the pattern of social relations, what is certain to be created is harmony and the goodness of life.

From this explanation, it can be concluded that, apart from justice which has been identified as a legal concept per se, justice is the implementation of ethics within the framework of the relationship between individuals in society. Doing justice is actually a calling of the soul; a moral calling that demands the dedication of every individual to do justice to themselves and others. Doing such acts reflects the nature of his existence as a human being who is God's representative in managing and maintaining a harmonious life.

In understanding the relationship between ethics and law (the formation and enforcement of norms), Soerjono Soekanto [30] concludes that there is a content of professional ethics in law enforcement, which is summarized as follows:

a. The values of the responsibility of the legal profession which include: i) protecting life and property as well as maintaining peace and order; and ii) Enforcing the law based on truth and justice for all parties without discrimination;
b. Every law enforcer must comply with the limits of authority that have been set. There is no justification for abuse of authority that causes other legal rights to be harmed;
c. Understanding and skills in implementing norms in concrete cases;
d. Law enforcers are obliged to be role models so that society as legal subjects is moved to obey the law as an internal part of itself;
e. Law enforcement will be realized properly if there is coordination or cooperation between law enforcers. Sectoral ego in law enforcement must be put aside so that the role of every law enforcer can be carried out properly;
f. The moral attitude of law enforcers is to always serve the community, not be served. This kind of moral attitude is very important so that law enforcers are truly aware of their responsibilities in law enforcement and solely carry out their profession for law enforcement and justice [31].

As Soerjono Soekanto's view, Thomas Aquinas stated that obeying and enforcing the law means the same as being good in all things. Thus, legal behavior is in line with moral behavior, so all legal provisions must be based on or in line with moral behavior. In the construction of Aquinas, every norm and rule of law must not conflict with moral norms. In other words, norms and rules of law must be accepted by common sense and based on common sense. This is where Aquinas emphasizes the importance of harmony between legal decisions and moral decisions [32].

In order to reaffirm the relation between law and morals, Aquinas introduced ius positivum humanum and ius naturale. Ius positivum humanum is a positive law (law) that must be in harmony with ius naturale (natural law). If in fact the content or content of ius positivum humanum is contrary to that of ius naturale, then positive law must be marginalized and put forward natural law [33]. The natural law referred to here is the law that originates from the divine order which contains basic values that are universal and eternal. The values referred to are the moral values of humanity, which exist, live, and develop along with the development of social dynamics of society. In this construction of Aquinas, it is further understood that justice as the goal of law enforcement will only be realized if in the process it relies on moral values. The judge's decision, especially in the context of law enforcement, must represent the nobility of the will to uphold justice for every community seeking justice.

Satjipto Rahardjo reminded every law enforcer that what is really required of them is the ability to understand the essence of a rule, not just read the rules. According to Satjipto, when law enforcement officers stop reading the rules, the underlying rules can be forgotten. The rules in question are spiritual in nature, namely the soul or spirit that underlies the law so that every formation, enforcement and renewal of legal norms is always on the path of iustitia legalisi (legal justice) [34].

4 Conclusion

We then concludes two things, as follows:

1. Justice is a legal concept that can be studied from the point of view of ethical philosophy. Unless interpreted as a legal concept per se, justice is actually rooted in ethical norms inherent in human life. Justice is the implementation of human nature as a servant of God, which in life is not only related to personal interests, but also social interests as a necessity;
2. For such conceptual frames, justice as interpreted as "doing justice" and/or "realizing justice" is the implementation of two main currents of views in ethical philosophy, namely deontology and teleology. Justice is the implementation of "good deeds" which are basic human obligations as well as efforts to create harmony of human life as the "good results" of "doing justice".

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