



Building a New Concept of the Purpose of Law: A Preliminary Effort

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Abstract. There is a contradiction between the concepts of 'the purpose of law' and 'the antinomy of the purpose of law'. The ideas must meet the requirements of 'coherence', where each element in the concept must not conflict and constitute one unit. For legal purposes, justice, legal certainty, and legal benefits should be linked, comprehensive, and consistent. However, the antinomy of lawful purpose justifies the existence of eternal conflict between elements of legal purpose, especially between justice and legal certainty. Law students must understand these two concepts as two ideas that are applied as absolute truth. The antinomy of the purpose of law is the essence of the adage '*summum ius summa iniuria*' (absolute legal certainty is a fundamental injustice). It is a strange lesson because it confirms the existence of two contradictory concepts. The inconsistency of the purpose of law and the antinomy of the purpose of law has created confusion. The article reconstructs the concepts of the purpose of law and the antinomy of the purpose of the law by using the principles of coherence, reconstruction, and the main ideas from 'The Revival of Natural Law'. Then, build a new concept regarding the legal purpose that is more comprehensive. The research method used is theoretical research, using a conceptual approach to obtain secondary legal material in the form of related legal ideas from various books, journals, and other sources. Discussion of the problem uses prescriptive analysis in the form of legal arguments about the need to reconstruct the concept of 'legal purpose'. The analysis results are arguments regarding the error of thinking about the purpose of the law, the antinomy of the purpose of the law and building a new concept.

Keywords: Purpose of Law, Antinomy of Purpose of Law, Coherence, Reconstruction, The Revival of Natural Law

1. Introduction

There is a contradiction between the concepts of legal purpose and the antinomy of legal purpose. The ideas must meet the requirements of coherence where each element in the concept must not conflict and constitute one unit. In legal purposes, the aspects of justice, legal certainty, and legal benefits should be coherent, comprehensive, and consistent.

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However, the antinomy of legal purposes confirms conflict between legal purposes, especially between justice and legal certainty. Surprisingly, we seem to ensure these two concepts, which are implemented as dogmas with absolute truth. The antinomy of legal purpose embodies the adage 'summum ius summa iniuria' (absolute legal certainty is fundamental injustice). A strange lesson because it confirms the existence of two conflicting concepts. The inconsistency of the legal purpose and the antinomy of the legal purpose has created confusion in thinking. Learning about the concept of legal purpose and their antinomies not in the context of deepening but rather as an introduction to these two concepts at the beginning of lectures. Such learning results in these two concepts being understood more dimly. Even at the master's and doctoral levels, learning about legal purpose and their antinomies of legal purpose has not yet been analyzed critically.

Not all schools of law discuss legal purpose. It is because the purpose of the law is a characteristic of natural law. The purpose of the law leads to something to achieve, and we cannot deny that the goal refers to something ideal so that it is felt to be abstract and not operational.[1]

Gustav Radbruch argues that the purpose of the law is *gerechtigkeit*/justice, *rechtssicherheit*/legal certainty, and *zweckmassigkeit*/legal benefits.[2] Justice must have the first and most important position in terms of legal certainty and benefits. There is often a conflict between legal certainty and legal benefits, justice and legal certainty, or justice and legal benefits.[2] I Wayan Budha Yasa argue the same about the purpose of the law.[3]

Satjipto Rahardjo stated that society not only wants to see justice created in the community and its interests served by law but also wants the community to have regulations that guarantee certainty in their relationship. Law is required to fulfill various works: justice, legal benefits, and legal certainty. This opinion tries to harmonize the 3 (three) elements of legal objectives. The component of legal purpose is also positioned as a 'basic legal value'. And then stated that: "Even though these three (justice, legal certainty, and legal benefits) are basic legal values, there is a '*spannungsverhältnis*', a tension with one another. We can understand this kind of relationship or situation because all three contain different demands, and each can potentially lead to conflict".[4] It makes sense if each element of the purpose of law is always tense because the fundamental legal values are always tight.

Hardjono Tjitrosoebono expressed the same opinion: "We know and experience in reality that there are tensions, contradictions, and discrepancies between legal certainty and justice. Improving legal certainty and justice is inseparable because increasing legal certainty without justice means terror and oppression.[5] Laws that work too great will cause injustice".[5]

Cahya Palsari quotes the opinion of Mertokusumo (2009) that three elements of legal ideals must be present proportionally: justice, legal certainty, and legal benefits. The purposes of law are one unit. We cannot be separated them one by one. In its implementation, these three elements of legal ideals need each other.[6] In legal practice, the antinomy of legal purposes occurs factually. Applying the principles of

legal certainty, justice, and legal benefits must be implemented harmoniously and rationally. Legal certainty is prioritized over justice and legal benefits.[7]

There are two conflicting concepts, namely the concepts of the purpose of law and the antinomy of purposes of law. The essence of the idea purpose of law should contain ideas with the character of a unified whole. The elements in the concept must reinforce each other, not contradict each other, let alone negate each other. The idea must meet the requirements of coherence.

According to KBBI, coherence is the arrangement of descriptions or views to relate the parts.[8] Based on the principle of coherence, the elements and fundamental values of law must fulfill the requirements as a unified whole, mutually reinforcing, not contradicting each other, and not negating each other.

The concept of legal purpose has been positioned as dogma, an absolute truth that cannot be debated any longer. At the same time, there is also learning about the antinomy of legal purpose, which teaches about the truth of the existence of contradictions between the elements of the purpose of law. The legal issue in this article is the conflict between the concept of legal purpose, which requires the principle of coherence, and the antinomy of legal purpose, which collides with the principle of coherence.

2. Problem

The formulation of the problem is necessary to discuss why there is a conflict between the concept of legal purpose and the antinomy of lawful purpose, as well as what is the new, more comprehensive idea of legal purpose.

3. Method

The research method used is theoretical research, using a conceptual approach to obtain secondary legal material in the form of related legal ideas from various books, journals, and other sources. Discussion of the problem uses prescriptive analysis in the form of legal arguments about the need to reconstruct the concept of legal purpose and the antinomy of legal purpose. To discuss the formulation of the problem, the concepts of coherence and reconstruction are needed, as well as the idea of reviving natural law.

4. Discussion

4.1. The Concept of Coherence and Reconstruction as an Analytical Instrument

Three elements, as well as the fundamental values of the concept of 'purpose of law', namely: justice, legal certainty, and legal benefits, constitute the ontological basis of the idea of 'Purpose of Law', which must fulfill the requirements of coherence. This

coherence requirement reflects one of the characteristics of philosophical thinking: comprehensive. A concept is considered philosophically correct if, within the idea, the elements that compose it are complete and consistent. The concept of law must embody a whole (totality). Opinions, which in themselves do not reflect a total, are challenging to be accepted as a philosophical truth. The essence of coherence is integration and linkage.

The meaning of coherence can be described as follows. The Oxford Dictionary defines coherence as 'the quality of being logical and consistent'. According to the Merriem-Webster Dictionary: 'the quality or state of cohering: (1) such as systematic or logical connection or consistency, and (2) integration of diverse elements, relationships, or values.

The character of holistic thinking is the same with the concept of coherence. Hayyan Ul Haq stated that an idea is said to be coherent if: (a) it's consistent; (b) it's comprehensive, and (c) Its elements support each other. A concept is said to be coherent if it contains conditions of consistency, comprehensiveness, and each element must mutually support one another.[9]

A concept is considered to have internal coherent if:

- a. Everything that, according to this concept, ought to be accepted is part of the concept (alternative version of comprehensiveness);
- b. Nothing that, according to this concept, ought to be rejected is part of the concept (alternative version of consistency);
- c. Its elements support each other.[9]

The concept contains internal coherence. If all things are associated with the idea, each element can be accepted as part of the concept (comprehensiveness). There is not a single thing when it is associated with the idea. There is an element that is precisely rejected as part of the concept (consistency). The impact of comprehensiveness and consistency is that each element in the idea must support each other and not contradict and negate each other.

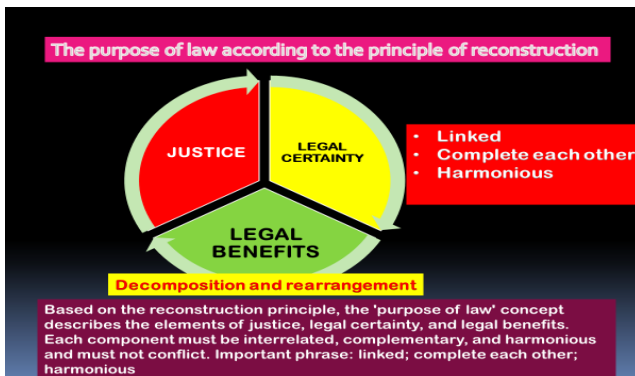
Figure 1. The Coherence of Legal Purpose



Another concept used to reconstruct 'the Purpose of Law' is the principle of 'reconstruction'. According to KBBI, reconstruction is (1) returning to the way it was before and (2) rearranging or redrawing.[9] According to the Merriem-Webster Dictionary, 'reconstruction' is 'the action of reconstruction: the act or process of rebuilding, repairing, or restoring something.

Associating reconstruction with legal ideas means a process of rearranging specific legal ideas. Legal reconstruction must frame various interrelated legal ideas into a 'wholism' (totality). An absolute requirement for each legal view is that it is not just a collection of meaningless ideas but that each legal concept must be integrated (linked) and not contradictory to each other to form a complete legal image.

Figure 2. The purpose of law according to the principle of reconstruction

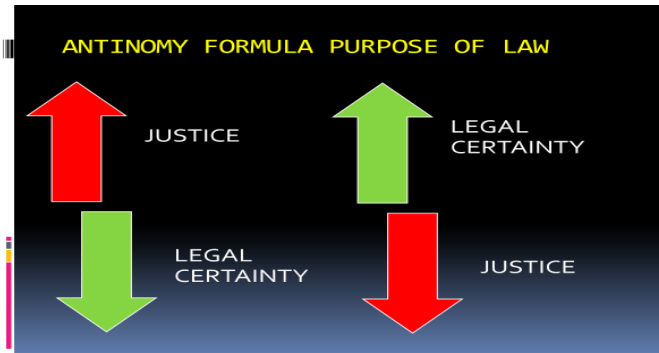


Based on the reconstruction principle, the 'purpose of law' concept describes the elements of justice, legal certainty, and benefits. Each component must be interrelated, complementary, and harmonious and must not conflict. Important phrase: linked; complete each other; harmonious.

The concept of purpose of law is correct coherently and reconstructively if the elements of justice, certainty, and legal benefits are not contradicting and negating each other but become a unified whole. As well as, its elements, resulting from decomposition, can be rearranged into its original form.

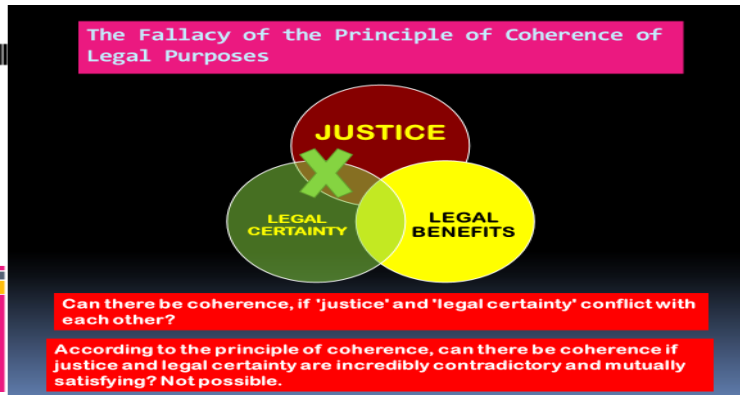
The concept that is in conflict with the legal purpose is the antinomy of legal purpose. This concept is based on the adage 'summum ius, summa iniura' (Rigorous law is often rigorous injustice). There is a conflict between each element of legal purposes. The eternal conflict between each element of legal purposes (especially between justice and legal certainty).

Figure 3. The Antinomy Formula of Purpose of Law



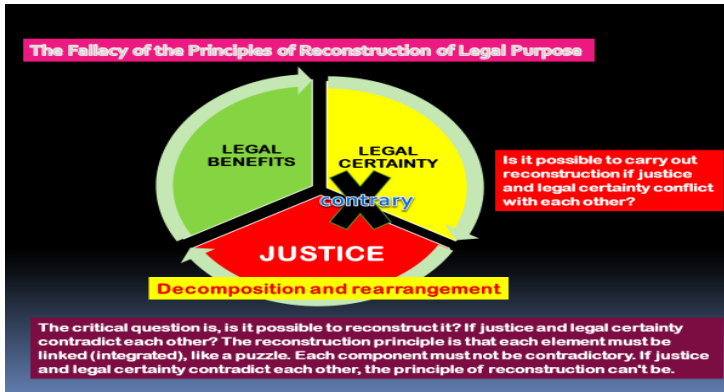
The fomula of the antinomy legal purpose: the greater the purpose of legal certainty, the more influential the decline injustice. The more significant the pursuit of justice, the greater the decline in legal certainty.

Figure 4. The Fallacy of the Principle of Coherence of Legal Purposes



According to the principle of coherence, can there be coherence if justice and legal certainty are incredibly contradictory and mutually satisfying? Not possible.

Figure 5. The Fallacy of the Principles of Reconstruction of Legal Purpose



The critical question is, is it possible to reconstruct it? If justice and legal certainty contradict each other? The reconstruction principle is that each element must be linked (integrated), like a puzzle. Each component must not be contradictory. If justice and legal certainty contradict each other, the principle of reconstruction can't be.

4.2. The Revival of Natural Law as An Analytical Concept

The revival of natural law' is to provide criticism and correction of XIX-century Legal Positivism. Some legal philosophers have attempted to revive a theory of natural law to defend justice as an essential element of law. Which is neglected in a system of legal positivism. A system that does not recognize an ethical norm for the enactment of law. Ethical standards are needed to form the basis of a valid law, and these moral norms are in the notion of Natural Law.[10]

According to Allen, using the term 'revival' is inappropriate because it differs from the natural law in previous centuries. The current natural law adheres to the concept of 'relativity', which is different from the prior idea of natural law which is absolute. The only connecting point between the two is based on the desire to express a moral ideal.[10]

Friedrich stated that the revival of natural law is not quite right because natural law has always remained in European and American legal thought.[11] Although different, these two opinions further emphasize that the idea of natural law needs to be revived to give an element of justice to the substance of the law.

Adherents of natural law in the 20th century were content with formulating several main principles. In contrast, we deduced secondary principles from these main principles after confronting the situation's needs and the times.[11] Some Natural Law

thinkers did not wish to return to the idea of the 'eternal truth' of unchangeable Natural Law as taught in the XVII and XVIII centuries.[11]

The natural law is considered a law with real legal force that can be recognized by human reason. Natural law supersedes positive law and can therefore eliminate the power of positive law. In this case, Radbruch stated, '*Naturrecht bricht positives Recht*'. [11] It means that the position of natural law has a more critical part than natural law. Radbruch switched from adherents of Legal Positivism to proponents of Natural Law theory.

Messner expresses his main ideas as follows:[11]

- a. Positive law is a law that is directly based on Natural Law, or as a law that is indirectly based on Natural Law, namely insofar as the law has the force of effect from state power authorized by Natural Law; and
- b. If there is a conflict between positive law and natural law, then the positive law will lose its force of effect, or become a law that has no legal force anymore.

Luyten put forward his main ideas: [11] (a) What worries humanity today is the lack of a basis and a critical norm for living together. There is indeed a legal system, but it is not sufficient to guarantee a good rule of living together; (b) All violations of law occur because a basis and critical norms for the legal system are not accepted. The legal system is considered valid regardless of its contents; (c) There needs to be a basis or critical norm for forming a legal system to guarantee justice in living together; (d) Only laws based on the standards of fairness oblige. With this, a critical norm for the formation of the legal system has been accepted; (e) The mistake of adherents of positivism (law) is that they get the legal system as a reality without daring to think further and therefore do not arrive at the proper understanding of the law; (f) Lack of views on law is something essential in law that is neglected, namely the 'consciousness of justice' that lives in the human heart. We must heed norms of justice in the formation of law. If not, there is no natural law; and (g) The standard of justice for constructing law is natural law, which has long been accepted.

Stamler's idea is considered a milestone in the revival of natural law, namely that all positive law attempts to achieve just law. Stammler accepts the power of positive law, even though positive law has failed to meet the demands of justice. He tried to devise a rational method that could be used to determine the 'relative truth' of positive laws in each situation. This method is expected to be a guide if the positive law fails the test and brings it closer to its goal.[11]

Stammler's relevant ideas are as follows: [11] (a) Law is a specific structure that shapes human goals that move people to act; (b) to determine the general principles of such a structure, we must abstract these goals from actual social life. We have to find its origin and ask what is the essential thing that we must do to understand it as a harmonious and orderly system of goals; and (c) Then, with the help of a logical analyst, we will discover certain valid principles of juridical organization, which will safely guide us in making judgments about which purposes deserve recognition by law and how these objectives are legally related.

Satjipto Rahardjo said that Stammler's central idea was Natural Law as a method because it shows the says that should be taken to be able to find 'the contents of certain legal norms' while changing situations, according to time, different places and peoples. The contents of such legal norms may only partially meet the demands of ideal and absolute justice, but they have adapted to the needs of social harmony in certain situations. They, therefore, can be referred to as 'objectively correct'. Stammler has presented a technique for determining what constitutes 'relatively just', which he calls 'natural laws of variable content'.^[11]

Huijbers summarizes the whole idea of the 'Revival of Natural Law': Twentieth Century Natural Law Theories fill a need that is felt by everyone who wants to live honestly according to his conscience. In the human conscience remains the belief that the laws governing human life must be just and that a legal system that violates the norms of justice is not the fundamental law. Natural Law is the formulation of justice norms inspired by honest people living together.^[11] It continued: "Nevertheless, the new Natural Law obliges juridically and can be considered valid law after it becomes a legal system. In addition, we should note that the principles of natural law cannot be seen as static principles that have always existed. These principles develop in life, so they are dynamic as part of the growing truth of life.^[11]

Seller states that: The basis of law is justice because the essential and fundamental purpose of law is to realize justice, and it is the central and necessary claim of every legal system that it does so. It is the nature of law that it claims to realize justice and the proper purpose of law is to do so. Law has value only to the extent that law serves justice and law has no value when it does not.^[12]

Based on all of the above, the main ideas of 'The Revival of Natural Law' are as follows:

- a. The natural law theory has always maintained that law is a 'dual' object, namely the harmonization of the substantial aspect (the values of justice) and the formal aspect (positive law/written law). Law is the embodiment of the values and principles of justice. The law must be 'correct' (correct) and 'certain' to reflect its formal aspects and 'just' (fair) to remember its substantial element. The ethical (substantial) and juridical (legal/formal) categories are two moments of one 'legal' reality;
- b. Justice and legal certainty are 2 (two) aspects of a legal entity. Law consists of elements of 'justice' and 'certainty'. But considering that justice is an ethical norm and a critical norm for law, justice has a higher gradation than legal certainty;
- c. The purpose of the law is to realize and achieve the ideals of justice. The existence of legal certainty is solely to learn and achieve justice.

4.3. The New Concept of 'Purpose of Law'

The entire description confirms that the concepts of 'purpose of law' and the antinomy of the the purpose of law contain conceptual contradictions, so we should reconstruct them. Reconstruction of the purpose of law will harmonize the law's essential

elements or values. This reconstruction uses the principles of coherence and rebuilding and the ideas in the 'Revival of Natural Law'.

Analyzing the concept of legal purpose needs to relate it to the adage '*ubi societas ibi ius*'. The meaning of the adage is: "where there is society, there is law." It often expresses that law is essential to human society and that social order would break without it.[13] Law is a crucial aspect of society. Without it, the social order will collapse. In a broader sense, it can also be understood as a reminder that laws and regulations are made by and for the benefit of the people and must be used to promote the common good.

The Agadium emphasized that law is a basic need of society. This adage teaches us that law depends on the community's presence. There can be no law if there is no society, no matter how simple that form of organization is. The law must follow the existence of the law. The law must be devoted to the main interests in people's lives. The main attraction in society is all important things in human life, both physical and existential.

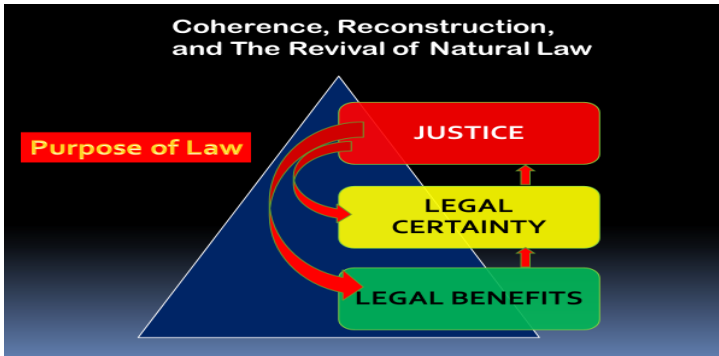
Oksidelfa quoted Gustav Radbruch's opinion that law is the bearer of the value of justice. Justice has both normative and constitutive characteristics for law. It is normative because it is from justice that positive law originates. It is constitutive because justice must be an absolute element of law. With justice, a rule deserves to become law.[14]

Melisa et al argue that for Gustav Radbruch, law is the bearer of the value of justice. Because justice has both normative and constitutive characteristics for law. Justice must originate from positive law and must also be an absolute element of law. For Bernard L Tanya, without justice, a rule does not deserve to become law. However, when referring to the principle of priority, Gustav Radbruch stated that to apply the law appropriately and fairly in fulfilling legal objectives, and Satjipto Rahardjo emphasized that the main thing is justice, then expediency, after that legal certainty.[15]

For Asep Warlan Yusuf, this complexity is why the law should function to guarantee justice. We can not separate the goal of law from the ultimate goal of state and social life, which is based on the community's values and philosophy of life, namely justice (*rechtsvaardigheid*).[16]

According to Effendi Lotulung, there are many theories about how to realize a quality judge's decision. For justice seekers who desire legal justice for their case from the judge, a quality judge's decision is nothing but a decision that can realize justice or reflects a sense of justice that we can implement and is acceptable or satisfactory to justice seekers.[17]

Figure 6. Reconstruction of Legal Purpose (1)



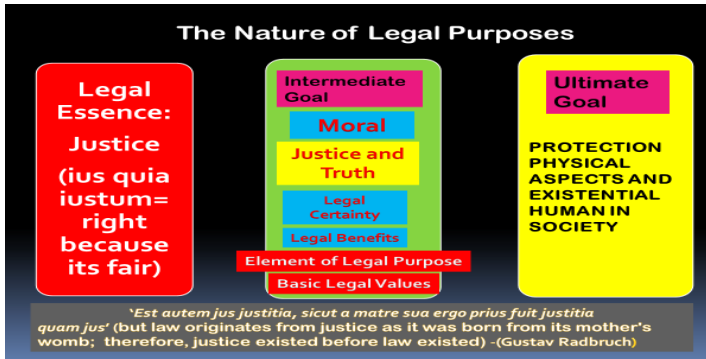
Reconstructing the 'purpose of law' must be based on the prohibition against conflict and the ban of negating among elements or fundamental values of law. The idea of 'Revival of Natural Law' places justice in a higher gradation than legal certainty and legal benefits. The primary purpose of the law is to achieve justice, with justice expected to provide certainty and benefit. The values of justice flow with the matter of certainty and benefit.

Figure 7. Reconstruction of Legal Purpose (2)



We can achieve legal goals in 2 (two) ways. First, achieving justice is necessary, then channeling it to the purposes below, namely legal certainty and benefit. Second, it can only achieve legal certainty and benefits; but must be devoted to justice. In the context of public life, the law always aims to serve society's interest. The public interest is the ultimate goal of the law. This image can illustrate the nature of the purpose of the law.

Figure 8. The Nature of Legal Purpose as New Concept



The explanation of the image is as follows:

- a. The essence of law is justice and truth (two in one), but we must understand that justice produces truth;
- b. What we usually position as legal goals (ultimate goals), we position as intermediate goals. The intermediate goal is the first step to achieving the primary goal.
- c. Based on justice and truth, the law intends to achieve legal certainty and legal benefits. After that, we need to work hard to achieve the ultimate goal, which is the protection of the physical and existential aspects of humans in social life.

5. Conclusion

- a. The concept of legal purpose requires coherence, comprehensiveness, and consistency, and each element of lawful purposes must support each other. Meanwhile, the antinomy of legal objectives allows for incoherence, where each component of legal purposes is deemed to contradict and eliminate each other.
- b. We are building a new and more comprehensive concept of legal purposes to provide an accurate idea of the essence of lawful purposes. The ultimate goal of law is to protect the physical aspects and human existence in social life. The intermediate goal is to achieve justice, which will then be able to achieve legal certainty and legal benefits.

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