



Legal Principles in Legal System

I Dewa Gede Atmadja¹, Ketut Adi Wirawan²

^{1,2} Faculty of Law, Warmadewa University, Denpasar, Indonesia

Abstract. This article is about to reveal regarding principle of law on a legal system. Law principles sense the broad reason, which lies as the based on the rules govern. Refer to this law principle is an abstract as analysis on the philosophy of law, way this research is based on Jurisprudence. The other hand legal system is three component as one as could be operated. The three components are ideal, consist of (i) principle, norm, institution, and process; (ii) operational is an organizations of bureaucracies law enforcement; (iii) real component, is behaviour of community based on cultural background. Legal issues are, first about basic philosophy and theoretical law principle on legal system; second, how the law principle's function on making rules and the influences on court justice of judge decisions. Research Method is a normative legal research. The analyses with primer books, statute and cases approach; second books, on library studies, with snow ball approach, selected literature and the replivin's journal. Research result, two items: (1) The basic legal philosophy and theoretical of the principle are normative jurisprudence; (2) the function principle on making law content of normative moment as a normative basic of the rules. Where the principle of the general of proper administration application by judges' decision based on systematics interpretation.

Keywords: Legal Principal, Legal System, Judges Decision Based on Systematics Interpretation

1 Backgrounds

A.R. Lacey, stated that “The principles may resemble scientific laws in being descriptions of ideal world, set up to govern actions as scientific laws are to govern expectation”. This shows the concept of how basic legal principles have vast scope, which can become the foundations of various legal norm as a guidance for behaving properly around societies. Legal principles are abstract, and behind all of that lies public norms and manners that are rigid. Legal principles are considered as a public field, because it has a much broader jurisdiction than legal norms. In a legal system, legal principles work as a meta-norm, something that functions as an ideal and most common norm. Hence, the implementation of these legal principles must be specialized by directing them on factual situations. Legal principles in terms of law emulation (*rechtsvinding*) has an indirect force which is through interpretations. With that in mind, philosophical research regarding legal principles in the context of its position

within the legal system becomes urgent for the advancement of theoretical and practical law.

1.1 Problem Identification

Based on the issues stated in the backgrounds, there are two problems being assessed, which are:

- What are the philosophical-theoretical foundations of legal principles in creating basic legislations?
- How do legislators analyze numerous factors, regulation impacts, and implementation of legal principles by judges so they can adjudicate legal cases properly as well as guaranteeing a legal system that is fair, beneficial, and certain towards society?

1.2 Purpose of Research

As for the purpose of this research are:

- To identify and analyze regarding common philosophical-theoretical foundations in the context of creating just ideas that can inspire judges in adjudicating legal cases.
- To analyze and implement legal principles in the context of numerous factors and regulation impacts in forming a legislation, as well as applying it in judges' decisions that can guarantee justice, certainty, and benefits towards society.
- To analyze the values of legal principles for law enforcement officers in applying legal principles for solving legal cases.

1.3 Research Urgency

This research is very critical to be done since there are misguided perceptions and controversies regarding the functionality of these legal principles in their position for implementing positive law. Hence, philosophically, it causes legal uncertainties and injustice if it's not being used properly. If there is inaccuracy, either in the forming of macro-law (common and abstract norms; forming legislations) or micro-law (rigid norms; forming court decisions), this condition can be called as inconcrete law (law inconcreto). With that in mind, the philosophical research for legal principles becomes an urgent matter.

2 Literature Review

2.1 Concepts

Concepts can be defined as an idea that later can be manifested towards numerous definitions. Different etymologies in definition can be standardized using limitations.

Through limitations, we can elaborate certain argumentations which are limited to three aspects, open structure, thinking synthetically and problematically, as well as the integral aspect from legal essential values.

- Legal Principles

As of now, in forming legislation, legislators are obligated to determine and emulate legal principles. Nevertheless, writers assess legal principles that are formed have no correlations as of how scientific prerequisites in the context of legal principles functionality as ‘ratio-legis’, which is a value and rationality that works as a foundation and functions as a guide for manners, both in political life and social life.

Furthermore, the connection of different perspective, that in one corner, a legal expert stated that since legal principle is more abstract compared to legal norms, legal principle can’t be implemented by judges in adjudicating legal cases. From other perspective, even though legal principle is different with legal norm, but since it is a meta-norm as long as categorized in the foundations of manner, it can be implemented directly in solving conflict, as well as a tool to assess numerous matters in the eye of the law. Moreover, the legal principles that have been formulated into articles of a statutory regulation, although the nature of the principle is still more general than legal norms/rules, as a rule of behavior these legal principles can be applied to the settlement of disputes by judges. Examples of general principles of good governance (aaupb) in the field of Administrative Law are regulated in Article 10 of Law no. 30 of 2014 concerning Government Administration can be applied directly as a basis for state administrative lawsuits at the State Administrative Court.

The difference in perspective is being mediated by Klandermann, from two perspectives which are:

- From the point of view of jurisprudence, legal principles only regulate and explain (explanation) the purpose is to provide an overview and is not normative, because it does not include positive law, of course it cannot be applied directly to resolve disputes.
- Legal optics, existing legal principles or their presence in legislators and judges (giving legitimacy) and giving normative influence, therefore binding on the parties in the application of these legal principles.

From Klandermann’s (1950) opinion in his book called *Rechtswetenschap en Ratio* (bridging the gap between opposed perspectives being stated before), can be understood that from the point of view of the science of law, these principles are justifications for justifying juridical arguments based on general societal truths. Behind that, from a legal perspective, these principles are interpreted to replicate juridical objectives in responding to legal issues related to conflict resolution. This opinion indicates that legal principles in their application, both theoretical and practical, require explanation, explanation regarding the function of legal principles in line with their uses.

2.2 The Legal System in the Context of Essential Legal Values

The legal system conceptually in the National Law Development, it forms as a legal order consisting of two layered components, namely:

- The external component, the visible rule of law, consists of: constitution, conventions, laws and regulations, treaties, doctrines, and jurisprudence.
- The internal component, which does not appear outwardly, is a deposit of values and thoughts, in the form of legal principles, both universal legal principles, national legal principles, as well as specific legal principles in various branches of law which are reflected in court decisions. The legal principles function as the basis of the external legal rules.

The essential values of law, according to Gustav Radbruch, in the context of the legal objective of the synthesis of Ethical Jurisprudence, justice; Positivism Jurisprudence, legal certainty, Sociological Jurisprudence, and Expediency Gustav (1950). Thus, the value of the use of legal principles in the scientific context of law shows the completeness of the purpose of law.

2.3 Theoretical Foundations

Normative legal theory and application of law.

A statement once Stated by Mahadi (USU Professor of Law), who formulated a proposition that the basic source of Indonesian law is Pancasila. He stated:

“If in the field of law we have agreed that Pancasila is the source of all sources of law, then it is only natural that when we talk about principles, we also think that Pancasila is the source of all legal principles as well as Pancasila. Pancasila is firmly adhered to as the basic norm, which animates the creation of law and the application of Mahadi (1989).”

The function of legal principles in the formation of law as a ratio-legis, gives direction to legislators, in which statutory regulations whose contents are norms so that people's behavior obeys legal regulations, so that order, security, justice and legal certainty are realized.

3 Research Method

This research is about Legal Principles in the Legal System. This research is normative legal research. In this study the author will examine 2 (two) problems, namely regarding the philosophical-theoretical foundation of common law principles in the context of the idea of justice inspiring judges in solving concrete cases that are examined and tried, factors and the impact of regulations in forming laws that ensure the realization of legal certainty and the impact of social benefits, as well as justice. The

second issue is regarding the value of the use of legal principles for law enforcers in the application of legal principles by courts in resolving legal cases.

The research method used is a normative method whose scientific realm is prescriptive science. In this method, the scientific truth value is in coherent propositions, so there is no contradiction in the statement.

Legal materials consist of primary legal materials that are authoritative. Legal products which are part of primary legal materials are legal regulations and jurisprudence, with a statutory and case approach. On the other hand, there is secondary legal material in the form of scientific papers both in books and journals. This legal entity utilizes a conceptual approach. Analysis of legal material relevant to legal issues or problems and types of research, in normative legal research with the nuances of legal philosophy and the legal system begins with descriptions of normative riddles, both those that have not been formulated in and those that have been formulated in legislation. Next is the systematization of legal principles and legal norms, classification with regard to the similarities and differences in the views of legal philosophy writers, as well as differences of opinion on understanding legal norms. has not been formulated and/or has been formulated in the form of legislation. The whole of this analysis is strengthened in the form of legal arguments in the characteristics of legal reasoning.

4 Results and Discussion

4.1 4.1. Philosophical and Theoretical Basis of Legal Principles

Jurisprudence atau Legal Philosophy stated:

“The fourth body of jurisprudence focus on finding to answer such abstract question as what is law? What is principle of law? How do judges properly adjudicate legal cases?

- a. Ideal component, including principles, norms and regulatory institutions;
- b. Operational component, namely law enforcement organizations, such as the police, prosecutors, courts, and;
- c. The real component, namely the attitude and evaluation of society towards legal regulations with regard to compliance, is one of the factors in evaluating a legal regulation.

Legal principles with a legal system like Schui argue that legal sociology does not only play a role in social research but also examines and studies juridical institutions, such as legislators and judges, where legal principles function as the basis for the strength of statutory norms Jan van (1982).

O. Notohamidjojo argues that (1) legal principles for legislators have a role or function as the foundation or basis for forming laws and; (2) legislators need to examine the basics of thought as well as being able to formulate legal principles in laws Notohamidjojo (1975).

4.2 Application of Legal Principles in Court Judge Decisions

According to Raoul Van Caenegem opinion, titled “Judges, Legislators, and Professors”, he wrote:

...to my mind, the rule of law refers not only to enacted law but to the legal rules of various origins on which various the court protection of the individuals is based Caenegem (1987).

Aligned with Caenegem’s view, Benjamin N. Cardozo, Former Associate Justice for The US Supreme Court, in his lecture at Yale University titled “The Nature of Judicial Process”, stated:

“The work of deciding cases judges goes on every day in thousands throughout the land. Any judges, one might suppose, would find it easy to describe the process which he followed to thousand and more. Nothing could be farther the truth”.

Researcher also found the view from Alf Ross, legal philosopher from Scandinavia in his book titled “On Law and Justice” published in 1959, which he wrote:

“As we have seen, the idea of justice resolves itself into the demand that a decision should be the result into of the applications. Justice is the correct application by the judges based on law as opposed to arbitrariness. Justice, therefor cannot, be a legal – politics. The ideology of justice has thus no place in resonables discussion of the values of law” Rosse (1959).

Cardozo also wrote in his other statement, “Today, a great school of continental jurists is pleading for a still wider freedom of adaptation construction. The statute, they say, is often fragmentary and ill-considered and unjust. The judges as the interpreter for the community of it sense of law and order must supply omissions, correct uncertainties, harmonize result with justice through the method of free decisions

Based on Indonesian Supreme Court Rule Number 179/K/SIP/196120 that issued on October 23th 1969, certain considerations were made on the basis of humanity, the principle of general justice, and on the nature of equal rights between men and women. Based on these considerations, the rule above becomes the cancellation of the Medan Court Decision, and stated that boys and girls are considered to have the right to inherit the assets of their parents, based on the principle of humanity and the principle of living law.

Another example regarding the implementation of legal principles in dispute resolution can be seen in the Supreme Court Jurisprudence, Supreme Court Decision Number 29 P/HUM/2019 concerning Requests for Judicial Review of Bali Governor Regulation Number 97 of 2018 concerning Limitations on Plastic Waste Stockpiles. The Supreme Court decided to reject the application for objection to the right to judicial review from the applicant, namely the Indonesian Plastic Recycling Association (ADUPI). Our comments, in which the application of the application of the Supreme Court's decision to law is classified as a Proper Judge Decision, his argument is to carry out a systematic interpretation taking into account environmental principles related to justice, community welfare, including local communities.

5 Closing Statement

5.1 Conclusion

- The philosophical foundations of legal principles are the basic thoughts that form the basis of norms or rules so that they have legal validity, so that they become guidelines for thinking and behaving correctly in social life, the philosophical basis of which is in the right mind or logic. Logic lies in the realm of philosophy which examines principles, so that legal philosophy is part of philosophy, so mastery of legal principles becomes very important and meaningful for legal researchers that there are no errors in their argument.
- The theoretical location of legal principles is intertwined with the legal system.
- The function of legal principles as a theoretical factor in the formation of laws, principles are part of the "normative" momentum, the juridical foundation of law.
- Legal principles in the application of law to court judge decisions, legal principles reflecting basic thoughts that contain truth are also legal considerations for decisions made by the panel of judges at every level of the court up to the decision of the Supreme Court (MA).

5.2 Suggestions

Referring to research on Legal Philosophy in the context of legal theory, legal principles are interpreted as basic thoughts that contain moral values and function as meta-norms or legal rules. In the future, it is recommended for law students to understand these legal principles in every branch of Law (Criminal Law, Civil Law, State Law, Administrative Law, International Law, and Business Law). In addition, legal practitioners are advised to understand and study legal principles in the context of law enforcement, law enforcement, state administration and/or government administration, and the provision of legal services. This is because legal principles universally function (i) ratio-legis laws and regulations; (ii) the basic idea is a legal validity framework, both in the context of legality and legal legitimacy, and; (iii) Legal principles are strengthened by legal adages which pay attention to the realization of "proper law enforcement in accordance with the objectives of law: justice, benefit and legal certainty."

References

1. J.J.H. Bruggink, 1996, *Refleksi Tentang Hukum* Pengertian Dasar Teori Hukum, PT. Citra Aditya Bakti, Bandung.
2. Mahadi, 2003, *Falsafah Hukum Suatu Pengantar*, Alumni, Bandung, cetakan ke-3,
3. H.Ph. Visser t'Hofft, 2020, *Filosofie VAN DE Rechtswetenschap*, Penyadur, I Dewa Gede Atmadja, untuk Intern, Fakultas Hukum Universitas Warmadewa
4. *Gustav Radbruch, Legal Philosophy, in the Legal Philosophies of Lask, Radbruch and*
5. *Dabin, translated by Kurt Wilk, Massachusetts: Harvard University Press,*

1950, s

6. Budiono Kusumohamidjjo, 2016, *Teori Hukum Dilema antara Hukum dan Kekuasaan*, Yrama Widya, Bandung.
7. Budiono, Kusumohamidjojo, 2016, *Teori Hukum Dilema antara Hukum dan Kekuasaan*, Yrama Wijaya, Bandung.
8. Peter Mahmud Marzuki, 2001, *Penelitian Hukum*, dalam Jurnal Hukum, Penerbitan khusus, Volume 16, No. 2, Fakultas Hukum Universitas Airlangga, Surabaya.
9. Sidharta, 2006, *Penalaran Hukum Dalam Konteks Keindonesiaan*, C.V. Budi Utomo, Bandung.
10. Law. cornel.edu/wex/jurisprudence, *Legal information Institute*, Cornell School, p..1, akses 13 Mei 2003.
11. H.M. Meuwissen, 2009, *Pengembangan Hukum, Ilmu Hukum, Teori Hukum, Dan Filsafat Hukum*, Alih Bahasa, B. Arief Siddharta, Refika Aditama, Bandung.
12. Jan van Gijssel dan Mark van Hocke, *Wat is Rechtstheorie*, ahli Bahasa Mohamad Ibrahim, Universitas Braijaya, Malang.
13. Oeripan Notohamidjojo, *Demi Kemanusiaan dan Keadilan, Beberapa Hal Mengenai FILSAFAT Hukum*, Kanisius
14. R.C. Van Caenegem, 1987, *Judges, Legislators and Professors, Chapters In European Legal History*, Cambridge University Press, Cambridge, London, New York, Meulberne Sydney.
15. Benjamin Cardozo 1949, *The Natre of Judicial Process*, The Storrs Lecture Delivered at university.

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