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RESEARCH ARTICLE

Bridging Law and Morality Principles: Legal Theory Approach

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ABSTRACT

The relationship between law and morality has been debated until now. For the legal positivistic scholars, law must be separated from morality. On the other hand, for non-positivistic scholars, a law that does not reflect morality is considered invalid. Both do not solve the problem of legal theory. This research is a legal or doctrinal research at the level of philosophy (justice) and legal theory (rationalism, empiricism, and positivism). Research materials cover primary, secondary, and tertiary legal materials. All legal materials are compiled, systematized, and then analyzed using the interpretation method. The results of the study show that law and morality cannot be separated in black and white. Morality values and justice can be found in hard cases where legal positivism is unable to reach. This is where morality determines the validity of the law. Indonesia has Pancasila as the main foundation of morality, and justice. Therefore, the law is a combination of what the law is and what the law ought to be.

INTRODUCTION

The relationship between law and morality has been a central issue in the thinking of legal scholars since the 18th and early 19th centuries when legal positivism advocates put into words that law and morality have no relationship at all because moral judgments cannot be defended or established by rational arguments or evidence. It claims that good law is a law made by the authority, following the rules, procedures, and limitations of the legal system.

In the hands of natural law philosophers, natural law derives its validity from the moral order and reason and is based on what is believed to be the best interests of the common good. It is also important to note that the moral standards for governing human behavior are derived to some extent from the inherent nature of humans and the nature of the world. In the natural law perspective, good law is the law that reflects the natural moral order through reason and experience. It is also important to understand that the word moral here is not used in a religious sense, but refers to the process of determining what is good and what is right based on reason and experience.

The difference in views of moralistic natural law scholars and legal positivists has become an everlasting issue until now. However, both start from the same normative logic from asking what the law is to answer the question "What is the law for a particular case of action".[1] The major premise of each scholar is different. Principles in moral teachings or philosophical principles are the main premises for natural law scholars. On the other hand, legal positivism scholars rely more on the provisions and paragraphs contained in the law as the major premise. This gave rise to the

[1] Soetandyo, Wignjosoebroto, Keragaman Dalam Konsep Hukum, Tipe Kajian, Dan Metode Penelitiannya Dalam Butir-Butir Pemikiran Dalam Hukum, Memperingati 70 Tahun Prof.Dr.B.Arief Sidharta, SH, ed. Sri Rahayu dan Savitri, Niken Oktoberina (PT Refika Aditama, 2008).

impression that there were positivist and non-positivist jurists. Even some people negatively equate positivistic with normative jurisprudence and also *recht* and *wet*.

If we look at the development of legal thought, law and morals should complement each other. Moral, of course, will be irrelevant if the law is identical with legal certainty. While we see many authoritarian regimes in the 20th century using law as an instrument to suppress the people, such as freedom of expression during the Soeharto administration era or the Nazi regime in Germany to legitimize the power to kill the Jews. Gustav Radbruch moved his thinking from legal positivism to "post-positivism." As written in Hart's postscript entitled "Positivism and the Separation of Law and Morals,"[2] Gustav Radbruch was a positivist. However, with his life experience of seeing the terrible experiences during the Nazi regime in power, which used legal positivism as a legitimacy of power, Radbruch rethought the truth of legal positivism. He even opposed legal positivism and opposed the concept of the separation of law and morals.

Moral considerations and justice are the main things in every legal system. Hart considers Radbruch's view as the momentum of the return of natural law and at the same time the collapse of legal positivism. The culmination of Radbruch's thinking is the breakthrough of the legal deadlock caused by the clash between legal certainty and justice. One of his famous opinions is that positive law as a product of regulations from a state power should indeed be prioritized, but when positive law conflicts with justice to a degree that can no longer be tolerated, then justice must be prioritized.

The hard debate on the relationship between law and morals can be seen in the debate between Lon Luvois Fuller (1902-1975) and H.L.A Hart. Fuller disagreed with the separation of law and morals as taught by H.L.A Hart's legal positivism. For Fuller, laws that do not reflect morals are not valid (legitimate). Fuller's legal theory is a natural law theory without theology and teleology. The nuances of this debate occurred in the post-World War II era, where positive law was used as a means for the authorities to commit crimes against humanity. Hart acknowledged the importance of morals in law, which he called the minimum content of natural law, but according to him, the relationship between law and morality is not absolute. This means that morality cannot be used as an absolute requirement for the validity of a law.[3]

Thus, the main issue of the debate between Fuller (natural law) and Hart (legal positivism) is the existence of morality to determine the validity of law. The discussion on legal thinking needs to be studied in the context of judges' implementing laws and legal decisions. Therefore, in the case approach, it will be a rational experience to test how morals are positioned in legal decisions (*putusan hukum*). Of course, this must be studied through a comparative approach with legal models in both the common and civil law systems. Indonesia is certainly part of the civil law system model. In the common law system, it is said that law does not determine the outcome of a legal dispute, judges do. This means that judges have freedom and can set aside the law to reach the fairest decision. Conversely, it is very rare for Indonesian Judges to decide outside the positive law (out of the box) in terms of justice.

RESEARCH METHOD

Legal research on Bridging Law and Morality Principles in The Legal System is a doctrinal or normative research that focuses on the study of philosophy and legal theory. The used legal materials are primary, secondary, and tertiary legal materials. The collected legal materials are then systematized and analyzed through interpretation methods by using standards in law, namely legal principles, legal values, and justice.

Legitimacy, Morality, and Legality

[2] H L A Hart, Harvard Law Review I Positivism And The Separation Of Law And Moral, vol. 71, 1958.

[3] Petrus Bello, "SAHKAH HUKUM YANG BURUK SECARA MORAL ? PERDEBATAN ANTARA LON LUVOIS FULLER DAN H.L.A. HART," Honeste Vivere 33, no. 2 (July 17, 2023): 98–112.

Legitimacy and legality are two things that are often in conflict. For those who educate themselves in legal positivism circles and conceptualize law as formal regulations made by authorized authorities, the validity of a law is determined by subjective formal elements and procedural objective formal elements. The address is the legality of the law. it means that the law's legality deals with "what the law is" rather than "what the law ought to be." In reality, many laws and regulations do not have legitimacy but are legally valid.

Legitimacy lies in the philosophical and sociological realm. Philosophical aspects concern morality and values of justice, while sociological aspects concern law acceptance in society. For example, Law Number 17 of 2017 on General Elections, specifically Article 240 Paragraph 1 letter g which states: candidates for members of the Central (DPR), Provincial (DPRD), and Regency/City Parliament are Indonesian citizens and must meet the requirement of never having been sentenced to prison based on a court decision that has obtained permanent legal force for committing a crime that is punishable by imprisonment of 5 (five) years or more unless they openly and honestly state to the public that the person concerned is a former convict. Is this article appropriate to the former suspected parliament members? This provision is also discriminatory because it equates to all types of criminal acts. Whereas in doctrine, each criminal act has its nature and character. Likewise, each criminal act has a different level of danger, and the impact caused by the criminal act varies. To follow up on the law, the General Election Commission, as the election organizer, issued the General Election Commission Regulation (PKPU) Number 20 of 2018 concerning the Nomination of Members of the Dewan Perwakilan Rakyat (DPRD), Provincial DPRD, Regency/City DPRD which in Article 7 paragraph 1 letter h states that prospective candidates for members of the DPR, Provincial DPRD, and Regency/City DPRD are Indonesian citizens and must meet the requirement of not being a former convict of drug trafficking, sexual crimes against children, or corruption. It mentions the types of criminal acts. Both regulations have the same normative logic, namely that it is inappropriate for a former convict to represent the people.

The equalization of all types of criminal acts that limit a citizen from running as a member of the council does not guarantee fair legal certainty and equal treatment before the law. Perpetrators of criminal acts in the form of crimes with heavier legal consequences are equated with perpetrators of criminal acts in the form of violations with lighter legal consequences. This contradicts justice and the principle of non-discrimination. The issue of the threat of imprisonment of 5 (five) years is also unfair because people can be punished for example 1 year with waiting period of 5 years, those who are 5 years with a waiting period of 5 years, if sentenced to a serious sentence, it is also 5 years. Thus, the provisions of Article 240 paragraph 1 letter g cannot be used as a standard for legal validation because it contradicts the principle of non-discrimination.

Another rule that has caused controversy regarding the propriety (of natural law) with positive law is the emergence of Presidential Regulation Number 10 of 2021, one of the substances that provides asymmetric licensing of the liquor industry. Although the regulation fulfills the formal legality aspect, it does not have a basis for legitimacy because it contradicts philosophical values (national morals) and sociological aspirations.

This conflict of legitimacy and legality is a long-standing conflict between rationalism and empiricism. It was Immanuel Kant who cleared metaphysics from science, including separating the morality and legal domains, which were then followed by other positivist thinkers, starting from the empirical/classical and logical/pure positivism, which have been widely adopted by modern countries to this day. It should be noted that Kant's thinking became the forerunner of the establishment of positivism, which also gave rise to variants of other established schools of thought that dominate the minds of modern society today. In addition, the claim of rational-objective positivism has led to the release of transcendent values, including religion-God and morals, as part of the elements that validate the law. Furthermore, the closedness of the law to morality raised by

adherents of legalism, legal positivism, or *reinerechtslehre* not only gave rise to injustice but also the law appeared with a totalitarian face or repressive law, even law as a tool of crime.[4]

To understand the law and morality relations pattern in Immanuel Kant's thinking, one should understand Kant's explanation of the aspects of objects, sources, and the separation of law and morality disciplines. The objects of law and morality are different and separate. The morality position is in the content, while the law is manifested in the form of positive law. For Kant, law is a product of human free will that is not at all associated with metaphysics (faith), and empirical reality. This free will of reason will give birth to autonomous morality, namely morality that departs from the argument *for the sake of duty,* departing from the inner/conscience as opposed to heteronomous morals, namely moral actions taken based on the argument *according to duty*. It should, therefore, be distinct morality (the law ought to be) and legality (the law is) or legitimation and legality. Morality employs the senses, reason, and intuition, called morality autonomy (true morality). Conversely, law in the form of legality is out of morality and works based on pure *a priori* reason (independent-dialogue relation).

Morality for Kant is conformity or non-conformity and has no morality value because the inner drive is not considered. Moral values are only obtained in morality. What Kant meant by morality is the conformity of our attitudes and actions with our inner norms or laws as obligations. Morality will be achieved if we obey the law, not because it brings consequences that benefit us or because we are afraid of the power of the lawgiver but because we realize that the law is our obligation.[5] Legality is a good deed that is not done to fulfill moral law, on the contrary, morality is an act according to conscience or a moral act.

Max Weber regarded the political systems of modern Western societies as forms of "legal domination." Their legitimacy is based upon a belief in the legality of their exercise of political power. Legal domination acquired a rational character in that, among other things, belief in the lawfulness of authorities and enacted regulations has a quality different from that of belief in tradition or charisma. It is the rationality intrinsic to the form of law itself that secures the legitimacy of power exercised in legal forms. This thesis has sparked a lively discussion. With it, Weber supported a positivistic concept of law: the law is precisely what the political legislator — whether democratic or not — enacts as law following a legally institutionalized procedure. Under this premise, the form of law cannot draw its legitimating force from an alliance between law and morality. Modern law has to be able to legitimate power exercised in a formally legal manner through its formal properties. These are to be demonstrated as "rational" without any reference to practical reason in the sense of Kant or Aristotle. According to Weber, law possesses its rationality and is independent of morality.

Referring to the outline of Kant and Weber, we may conclude that no relation between law and morality. Then what about the law made by the authoritarian ruler to suppress human rights? Is it legitimate? In the era of the Soeharto administration, whose political system was authoritarian, law was used as a legitimacy of power and as a tool to justify government actions and policies. It even tended to be repressive. This can be seen in the rampant human rights violations that often occurred for the sake of security, the deprivation of civil and political rights without going through the judicial process, all forms of criticism were prohibited, the press was severely restricted in its movements, and the freedom of judges was silenced. In short, the law was systematically used for the interests of those in power.[6]

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[4] Ridwan, "Relasi Hukum Dan Moral Perspektif Imperative Categories," FUNDAMENTAL: JURNAL ILMIAH HUKUM 10 (January 1, 2021).

[5] S.P. Lili Tjahjadi, Hukum Moral: Ajaran Immanuel Kant Tentang Etika Dan Imperatif Kategoris (Yogyakarta: Kanisius, 1991).

[6] FX. Joko Priyono, Prinsip Moral Sebagai Penentu Validitas Hukum Dalam Hukum Sebagai Pancaran Moral Dalam Rangka Memperingati 70 Tahun Guru, Sahabat, Dan Bapak Kami Prof.Dr.Peter Mahmud Marzuki, SH, MS, LLM, ed. Moechthar Oesman, pertama. (Jakarta: Prenada media Group, 2019).

Something not much different also happened in the Nazi era in Germany. At that time, the law was solely used for the interests of power, even though it was unfair. That is what made a famous German philosopher of the 20th century named Gustav Radbruch move his thinking from legal positivism to "post-positivism." As written in Hart's postscript entitled "Positivism and the Separation of Law and Morals," Gustav Radbruch was a positivist. However, with his life experience seeing the terrible experiences during the Nazi regime in power, which used legal positivism as a legitimacy of power, Radbruch rethinks the truth of legal positivism. He even opposed legal positivism and the separation of law and morality. Morality and justice are the main considerations in every legal system. Hart considers Radbruch's view as the momentum of the return of natural law and, simultaneously, the collapse of legal positivism. The culmination of Radbruch's thinking is the breakthrough of the legal deadlock caused by the clash between legal certainty and justice. One of his famous opinions is that positive law as a product of regulations from a state power should indeed be prioritized, but when the positive law is contrary to justice to the point that it can no longer be tolerated, then justice must be prioritized (preference should be given to the rule of positive law, supported as it is by due process and state power, even when the rule is unjust and contrary to the general welfare unless the violation of justice reaches so intolerable a degree that the rule becomes in effect “lawless law” and must therefore yield to justice[7]).

Legitimacy, morality, and legality cannot be separated from each other. Indonesia is not a secular country like Western countries that prioritize universal liberal rationalism but has a particularistic wealth of values and local wisdom. This is reflected in the first principle of Pancasila (Belief in the one and only God). It is, therefore, not right to say that Indonesia is a country with a positivistic legal system. When positive law contains multiple interpretations and ambiguous provisions and cannot resolve major cases to achieve justice, morality values become very relevant to determine legitimacy and validity, not legality.

Morality Principles in Court

The *Arrest Hoge Raad* decision on electricity theft in the Netherlands on May 23, 1921, was a decision that elaborated the meaning of goods, and this decision took quite a long time to be accepted by legal experts. The meaning of goods in Article 362 of the Criminal Code is tangible goods, while electricity is intangible. This analogy requires not only legal reasoning but also a natural law approach (morality), especially regarding the theft of goods. The *Arrest Hoge Raad* decision has become an inspiration for Judge Bismar Siregar in decision Number 144/Pid/1983/PT-Mdn, which analogized women's genitals as goods. This case began when a man named MR Sidabutar (the defendant) did not want to take responsibility for his sexual intercourse with a woman (victim), K. Boru Siahaan, which resulted in pregnancy. The defendant was charged with multiple articles, namely Article 293 of the Criminal Code (indecent acts with a minor), Article 378 (fraud), and Article 335 (unpleasant acts). Bismar thinks that the relevant article is Article 378. It stipulates that *fraud occurs when someone intentionally uses a false name, false dignity, trickery, or a series of lies to induce another person <u>to hand over goods</u> or write off a debt.*

The question is how to prove “to hand over goods,” including services. The sexual intercourse between the defendant and the victim witness has benefited the defendant, and therefore, he has also received services. In this matter, Bismar equated the vagina to goods and aimed at protecting the victim. She let her honor (vagina) due to the defendant's seduction. If Article 378 is interpreted literally, the perpetrator cannot be held responsible for his actions.

The positivistic scholar might say that Bismar's decision was wrong and irrational. There was tension between justice and morality values with legal certainty of the use of Article 378. Bismar prioritized the philosophical approach and rationality by elaborating on the meaning of goods in Article 378 to achieve justice and protect the victim. The decision is sometimes called “rule-breaking”. Justice and morality have been a way in legal theory to determine the validity of law when the positive law is

[7] Maruarar Siahaan, Hukum Acara Mahkamah Konstitusi RI (Jakarta: Sinar Grafika, 2011).

incapable of reaching justice. Law is not just a rule in formal positive law, but it consists of principles of law as part of natural law.

The use of morality principles in court decisions is rare in Indonesia. This proves that legal positivism has been deeply rooted in the practice of legislation and justice in Indonesia. Laws and court decisions are the main legal basis in every dispute to guarantee legal certainty. Judicial review of Article 284 of the Criminal Code on adultery and Article 285 of the Criminal Code on rape, the scope of which is requested to be expanded, aimed at the Lesbian, Gay, Bisexual, and Transgender (LGBT) group, the Basuki Tjahaja Purnama (BTP) case regarding blasphemy reflects the tension between positivism and non-positivism.

The BTP case began when he visited the Seribu Islands (Kepulauan Seribu) community on September 27, 2016, during the DKI Jakarta Governerial election. BTP gave a speech in front of fishermen who are residents of the Seribu Islands. Ahok's speech as the Governor of DKI Jakarta touched on article Al-Maidah verse 51. Here is BTP's speech: "Well, it's possible that in your heart you didn't choose me because *you were lied to using article Al-Maidah 51* and all that. That's your right. If you can't choose because you're afraid of going to hell, being fooled like that, that's okay because this is your private calling. This program (grouper fish farming) is going ahead. So you don't need to feel bad because your conscience can't choose BTP." Even though the BTP case has been decided by the court to imprison BTP[8], the legal issue is whether the BTP statement regarding the use of article Al-Maidah verse 51 can be categorized as blasphemy. Is there BTP's intention to do blasphemy? This is the limits of law and morality. The judge is the one who is very decisive in this case. This means that the judge's ability to determine the legal validity is at stake for a judge. It is like what practices in the United States: the law does not determine the outcome of a legal dispute, the judge does.

Jeremy Bentham and John Austin stated that law and morality need to be separated or termed between *law as it is from law as it ought to be*. They criticized natural law thinkers because they considered it confusing. On the other hand, adherents of Natural Law stated that the separation between law and morals is shallow and wrong because it will blind humans to the truth of moral values that have been accepted and rooted in social life.[9] Law and morality have been a serious debate among legal philosophers. They are Jeremias Bhentam, John Austin, Hans Kelsen, HLA Hart, Ronald Dworkin, Lon L. Fuller, and other legal experts who are still interesting issues for academics and practitioners. The relationship between law and morality is indeed related to the existence of legal positivist thinking with moral values. We know that legal positivism was born as an antithesis of natural law theory and cannot be separated from the presence of the modern state.

Hart acknowledged the weaknesses of regulations known as "open texture." These weaknesses include language limitations and limitations in their reach to situations that arise in the future, such as language problems that are less straightforward and open to multiple interpretations. According to Hart, *discretionary* space is needed for judges to match legal events with the regulations that govern them in dealing with such conditions. Hart said that law has an open dimension. Therefore, there is also space for the court to function as a lawmaker to resolve the problem.

Hart's thinking was criticized by legal philosopher Ronald Dworkin, who disagreed with judicial discretion. Dworkin agreed on legal principles that were more valuable than rules because the basis for binding rules lies in their conformity with legal principles as long as they are relevant. Dworkin insisted on his thesis that legal phenomena are always clouded by theoretical disagreements, which Hart considered an illusion.[10] Theoretical disagreement does not question the legal basis of a legal proposition but rather questions the validity of the law itself. Law for Dworkin is an argumentative

[8] "Putusan PN Jakarta Utara Nomor 1537/Pid.B/2016/PN.Jkt.Utr" (n.d.).

[9] W.Friedman, Legal Theory, 5th ed. (Newyork: ColumbiaUniversityPress, 1967).

[10] Ronald M. Dworkin, "The Model of Rules, ," Yale Law School. (1967).

structure in which each party can express their opinion about the essence of the law.[11] He considers Hart's thinking to be based only on the plain fact view through two principles. First, the law is the business of legislators. Second, all legal issues can be answered easily by looking at past court decisions (legal precedent). Legal problems are questions of historical fact rather than moral issues. Therefore, according to Dworkin, Hart's legal thinking only covers empirical issues.

Two relevant cases of the Hart and Dworkin debate are *Tennessee Valley Authority v. Hill*[12] and the *Elmer* case[13]. Dworkin wants to answer Hart's weak thinking regarding the importance of morality in handling hard cases. *Tennessee Valley Authority v. Hill* began when Hiram (Hank), a law student at Tennessee University of the United States, discovered an endangered "snail darter" (*Percina tanasi*) protected by the *Endangered Species Act 1973* and categorized "critical habitat." Hiram consulted and asked his professor and Donald Cohen (lawyer) if the completion of the Tellico Dam and the potential effect on the fish under the Endangered Species Act would be a suitable topic for an environmental law paper and filing a lawsuit before the court to *Tennessee Valley Authority (TVA)*, a state-owned enterprise, which was being operated Dam Construction Project (Tellico Dam) to supply power, flood control, navigation, fertilizer, and economic development in the Tennessee region. The legal issues of the case are as follows: first, whether the completion of the Tellico Dam by the Tennessee Valley Authority would violate the Endangered Species Act. Second, if so, whether an injunction is required to halt the construction of the dam. TVA argued that an exception to the Endangered Species Act should be granted for balancing equities. They argued that Congress had already spent $100 million on the project and that it would not make economic sense to stop the project. TVA argued for an exception to be made in this case since the dam was started prior to the Endangered Species Act being passed and claimed it should be grandfathered in. Another argument made was that since the appropriations committees continued to appropriate funding for the project after knowing it would be detrimental to the snail darter's critical habitat, Congress had implicitly repealed the Endangered Species Act. Section 7 of the Endangered Species Act offers no exceptions to the jeopardizing of the continued existence of listed endangered species or their habitat. Endangered species should be afforded the highest of priorities no matter the economic costs. Judge Burger concluded that the court had no choice but to rule in favor of the conservationists. Judge Powell, in contrast, dissented from Burger, stating that it was unreasonable for a major project worth hundreds of millions of dollars to be stopped simply because it protected an endangered species that had no value.[14]

Similarly, in the case of Elmer (*Riggs v. Palmer*, 115 N.Y. 506 (1889), Judge Gray and Judge Earl had different views. Elmer was to be the recipient of his grandfather's large estate, and fearing that his grandfather might change his will after getting married, he murdered his grandfather by poisoning him. In the will, Elmer was confirmed as the heir to his grandfather's property. The plaintiffs argued that by allowing the will to be executed, Elmer would be profiting from his crime. While a criminal law existed to punish Elmer for the murder, no statute under either probate or criminal law invalidated his claim to the estate based on his role in the murder. In his decision, Judge Earl said that the law must be built from a text that is not in historical isolation but with a background of general legal principles. On that basis, he argued that a person should not benefit from his crime. In contrast,

[11] Petrus CKL Bello, Hukum Dan Moralitas Tinjauan Filsafat Hukum (Jakarta: Erlangga, 2012).

[12] JUSTIA Supreme Court, "Tennessee Valley Auth. v. Hill, 437 U.S. 153 ," Https://Supreme.Justia.Com/Cases/Federal/Us/437/153/.

[13] Court of Appeals of New York, "Philo Riggs, as Guardian Ad Litem et al., Appellants, v Elmer E. Palmer et al., Respondent," Https://Www.Nycourts.Gov/Reporter/Archives/Riggs_palmer.Htm.

[14] Ronald Dworkin, The "Hart-Dworkin" Debate: A Short Guide for the Perplexed, Contemporary Philosophy in Focus , ed. Scott J. Shapiro (Cambridge: Cambridge University Press, 2007).

Judge Gray had a different opinion that Elmer was still entitled to the inheritance because the law did not exclude murderers.[15]

For Dworkin, theoretical disputes are very binding on a problem and require judges to interpret using constructive general principles, not interpretations by social actors. Law is not only limited to the legislator's passed rules or legal precedents but also the principles of law. These principles are not part of the discretion, as Hart meant. Hart's legal thinking does not reach the theoretical legal problems. Dworkin emphasizes the importance of morality principles in applying law, especially in hard cases where justice is at stake. Dworkin's legal approach is indeed more suitable to be applied in Indonesia's legal system, considering that Indonesian society is pluralistic with cultural, ethnic, and religious diversity. Pancasila as a way of life or legal ideal has become the spirit and guideline in making laws and legal decisions. The sentence "for the sake of justice based on the Almighty God" actually reflects that the legal approach in Indonesia is not only *what the law is (wet)* but also *what the law ought to be (recht)*. This is what Matthew Kramer[16] stated that the inclusion of the principle of morality in law, especially in serious cases, is called stated that the inclusion of the principle of morality in law, especially in hard cases, is referred to as "Incorporationist."

CONCLUSION

The relationship between law and morality cannot be separated and needs each other in the context of "law-making" and legal decisions. Judging from its function, morality values can be used as a basis for deciding cases when a regulation (rule) does not have legal certainty. These morality values should not be subjective and are not part of the judge's discretion, but to be objective, they must be manifested in legal principles. Separation of law and morality (*Exclusive Legal Positivist*) is unsuitable for the Indonesian rule of law (*resistant*), while we have Pancasila as a way of life and the 1945 Constitution of the Republic of Indonesia. These principles are the spirit and pillars of the Indonesian legal system and aim at reaching justice, utilities, and legal certainty. It places the element of "morality," namely "by the grace of God" and "God Almighty" as the main guidance. No exception for the judiciary as one of the state institutions that is always required to enforce the law as fairly as possible for the sake of legal certainty and order for the community. To realize the law enforcement that is aspired to, the judge in examining, trying, and deciding is required to be based on legal facts in court, norms and rules, morality, and legal doctrine as considerations for his decision on a case, for the sake of upholding justice, certainty, and legal order, which is the main purpose of the law itself. So, the hard debate on law and morality (positivistic and non-positivistic) should be ended. Legislators (lawmakers) and judges should have the same perception of law and morality.

Recognition of these moral values depends on legal officials who are given the authority to do so to guarantee the existence and content of all legal norms by the standards that have been set through clear criteria, which, according to Hart's term, is called the "rule of recognition." Judge integrity is at stake to use the morality and justice principle in interpreting the prevailing law and certain cases.

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