

Implementation of the Legal Justice Concept in Indonesia: Study of John Locke's Perspective

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Article	Abstract
<p>How to cite: Abdul Haris Alfianto, et al, 'Implementation of the Legal Justice Concept in Indonesia: Study of John Locke's Perspective' (2024) Vol. 5 No. 1 Rechtenstudent Journal Sharia Faculty of KH Achmad Siddiq Jember State Islamic University.</p> <p>DOI: 10.35719/rch.v5i1.321</p> <p>Article History: Submitted: 12/12/2023 Reviewed: 11/03/2024 Revised: 18/04/2024 Accepted: 20/04/2024</p> <p>ISSN: 2723-0406 (printed) E-ISSN: 2775-5304 (online)</p>	<p>Law serves as the fundamental cornerstone of society, crucial for maintaining order and addressing societal challenges. Within a rule of law framework, the availability of legal sources facilitates the exploration and understanding of legal principles. However, the concept of justice, inherent to human existence, remains elusive and multifaceted, defying simple translation. This study aims to delve into the essence of justice from a legal philosophical perspective. Employing a normative juridical approach, data collection includes diverse scholarly materials and legal documents. The findings underscore the significance of justice as a pivotal concept in human affairs, transcending disciplinary boundaries. Moreover, within legal philosophy, justice emerges as a guiding principle embedded in the fabric of law, grounded in righteousness, fairness, and accountability.</p> <p>Keywords: <i>Philosophy, Legal Justice, John Locke.</i></p> <p>Abstrak</p> <p>Hukum bertindak sebagai fondasi paling mendasar dalam kehidupan, penting untuk menjaga ketertiban dan menangani tantangan-tantangan sosial. Dalam kerangka negara hukum, ketersediaan sumber-sumber hukum memfasilitasi eksplorasi dan pemahaman prinsip-prinsip hukum. Namun, konsep keadilan, yang melekat pada eksistensi manusia, tetap sulit dan kompleks untuk diterjemahkan dengan sederhana. Penelitian ini bertujuan untuk menggali esensi keadilan dari sudut pandang filsafat hukum. Dengan pendekatan yuridis normatif, pengumpulan data melibatkan beragam bahan akademis dan dokumen hukum. Temuan penelitian menegaskan pentingnya keadilan sebagai konsep sentral dalam urusan manusia, melampaui batas-batas disiplin ilmu. Lebih lanjut, dalam filsafat hukum, keadilan muncul sebagai prinsip panduan yang tertanam dalam struktur hukum, berlandaskan kebenaran, keadilan, dan akuntabilitas.</p> <p>Kata Kunci: <i>Filsafat, Keadilan Hukum, John Locke.</i></p>

Introduction

Indonesia as a legal state involves historical journey, cultural values, as well as political and legal developments that have occurred. The following are several important points that form the background of Indonesia as a country of law. This can be seen in Article 1 paragraph

(3), stated as a country of law, which confirms that "The State of Indonesia is a State of Law." The concept of the rule of law prioritizes law as the main guide in state governance, not politics or economics. Thus, the term often used in English to refer to the principle of the rule of law is 'the rule of law, not of man'. Government, in essence, refers to the law as a system, not just a figure that follows the scenario of the system that governs it like a 'wayang'.¹

The concept of a legal state is developed by creating legal instruments that are functional and just, by organizing the infrastructure and superstructure of political, economic and social institutions in an orderly manner, as well as fostering a logical and impersonal legal culture and awareness in social, national and state life..

For a state of law there is a source of law which in essence is a source of law where we can find and explore the law⁶. Pancasila as the source of all sources of law in the national legal system is pursued in two ways, namely: first, making Pancasila a legal school so that there is no longer legal pluralism which is proven to contradict each other.² In particular, in applying law, the Indonesian state has a complete and impartial legal system that is in accordance with the character and development needs of Indonesian society. Second, placing Pancasila as the top in the hierarchy of laws and regulations so that Pancasila has binding power on all laws and regulations. Thus, Pancasila is no longer just normative-semantic as the source of all sources of law but can truly be applied in the national legal system.³

Law has a strategic and dominant position in the life of national and state society.⁴ Law as a system has dominated the thinking of the majority of legal circles. It can play a good and correct role in society if its implementation instruments are equipped with authorities in the field of law enforcement. The implementation of the law can take place normally, but it can also occur due to violations of the law. Therefore, the law that has been violated must be enforced optimally.⁵

The principle of justice is one of the expectations that must be fulfilled.⁶ Based on its characteristics, although legal certainty is closely related to justice, law is not identical with justice. Law is general, binding on everyone, generalizing, while justice is subjective, individualistic and does not generalize. If law enforcement focuses on the value of justice while the value of benefit and legal certainty is put aside, then the law cannot work well. Likewise, if the emphasis is on the value of benefits while legal certainty and justice are put aside, then the law will not work.

¹ Jimly Asshiddiqie, "Gagasan Negara Hukum Indonesia," in *Makalah Disampaikan Dalam Forum Dialog Perencanaan Pembangunan Hukum Nasional Yang Diselenggarakan Oleh Badan Pembinaan Hukum Nasional Kementerian Hukum Dan*, 2011.

² Aga Wiranata, "Pancasila Sebagai Sumber Hukum dan Pengaruh Politik Dalam Pembentukan Hukum Nasional," *Jurnal Insan Pendidikan dan Sosial Humaniora* 1, no. 1 (2023): 1-14.

³ Fais Yonas Bo'a, "Pancasila Sebagai Sumber Hukum Dalam Sistem Hukum Nasional," *Jurnal Konstitusi* 15, no. 1 (2018): 21-49.

⁴ Hasaziduhu Moho, "Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan Dan Kemanfaatan," *Warta Dharmawangsa* 13, no. 1 (2019). ¹⁰ Nur Iftitah Isnantiana, "Hukum Dan Sistem Hukum Sebagai Pilar Negara," *Jurnal Hukum Ekonomi Syariah* 2, no. 1 (2019): 19-35.

⁵ Laurensius Arliman, "Mewujudkan Penegakan Hukum Yang Baik Di Negara Hukum Indonesia," *Dialogia Iuridicia: Jurnal Hukum Bisnis dan Investasi* 11, no. 1 (2019): 1-20.

⁶ Arfiani Arfiani Arfiani et al., "Penegakan Hukum Sesuai Prinsip Peradilan Yang Berkepastian, Adil Dan Manusiawi: Studi Pemantauan Proses Penegakan Hukum Tahun 2020," *Riau Law Journal* 6, no. 1 (2022): 48-74. ¹³ Dollar Dollar and Khairul Riza, "Penerapan Azas Itikad Baik Dalam Transaksi Jual Beli Online Demi Mewujudkan

Ideally, in enforcing the law, the basic values of justice which are the basic values of philosophy and the basic values of expediency are a unity that applies sociologically, as well as the basic value of legal certainty which is a unity that juridically must be applied in a balanced manner in law enforcement.⁷ The sociological basis as the basis that will give rise to beneficial values is very important and should not be ignored if it is related to the implementation of a legal regulation.

It cannot be denied that justice is a basic value of human life or society which is still a classic problem that has never been completely resolved. There is no conformity in translating justice itself so it is necessary to discuss this matter. Justice can be interpreted as a constant and continuous distribution to provide rights to each individual. Based on the description above, the aim of this research is to find out the nature of justice from a legal philosophy perspective.

Research Methods

This research uses normative legal research methods and literature study because this research refers to appropriate statutory regulations so that the research is based on the relevant legal standards. How to collect research data: the researcher collects.

Materials related to this research such as books, articles, journals, writings by experts, court decisions, and all statutory regulations related to this research. After collecting the data or materials, the researcher analyzes the materials or data that have been obtained and in this research there is additional information and important information taken through literature studies and field studies.

Result and Discussion

The Concept of Justice According to Experts

Justice comes from the Arabic word "*adl*" which means behaving and acting in balance. Balance includes balance between rights and obligations and harmony with fellow creatures.⁸ Justice is essentially treating someone or other people according to their rights regarding the obligations they have carried out. What is the right of every person is to be recognized and treated according to their equal dignity and worth in the eyes of God Almighty. Human rights are rights that humans need for their survival in society. The following are several opinions regarding the meaning of justice.⁹

Talking about justice is an important concept in human life. The problem of justice is not only an area of legal study, but this problem can also be studied from various disciplines in the social sciences and humanities. Justice is a goal, while law is only a tool to achieve that goal. It turns out that the concept or even value of justice is often influenced by elements of human subjectivity, so that justice can sometimes only be felt by certain parties. What one person feels is fair may not necessarily be felt by other people or certain groups.¹⁰

⁷ Moho, "Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan Dan Kemanfaatan." Elfa Murdiana, "Analisis Yuridis Sosiologis Terhadap Perubahan Undang-Undang Koperasi," *Istinbath: Jurnal Hukum* 12, no. 1 (2015): 133–152.

⁸ Aryati Arfah and Muhammad Arif, "Pembangunan Ekonomi, Keadilan Sosial Dan Ekonomi Berkelanjutan Dalam Perspektif Islam," *SEIKO: Journal of Management & Business* 4, no. 1 (2021): 566–581.

⁹ Afifa Rangkuti, "Konsep Keadilan Dalam Perspektif Islam," *TAZKIYA: Jurnal Pendidikan Islam* 6, no. 1 (2017).

¹⁰ Agus Romdlon Saputra, "Konsep Keadilan Menurut AlQur'an Dan Para Filosof," *Dialogia* 10, no. 2 (2012): 185–200.

Several experts have argued about the meaning of justice, including according to W.J.S. Poerwadarmint that justice means not being biased. Justice means the absence of partiality towards one party.¹¹ Well, it's not arbitrary. So, the definition of fairness includes no arbitrariness. People who act arbitrarily are acting unfairly. Meanwhile, according to Frans Magnis Suseno in his book *Political Ethics* states that justice is a condition where people in the same situation are treated equally.

Regarding the meaning of justice, Aristotle in his work entitled *Nichomachean Ethics* explains his thoughts about justice. For Aristotle, virtue, namely obedience to the law (police law at that time, written and unwritten) is justice. In other words, justice is a priority and this is general. Theo Huijbers explains justice according to Aristotle in addition to general virtues, also justice as a special moral virtue, which is related to human attitudes in certain fields, namely determining good relations between people, and balance between two parties. The measure of this balance is numerical and proportional equality. This is because Aristotle understands justice in terms of equality. In numerical equality, every human being is equalized in one unit. For example, everyone is equal before the law. Then proportional equality is giving each person what is their right, according to their abilities and achievements.¹²

Aristotle distinguished two types of justice, namely Commutative Justice and Distributive Justice. Commutative justice is justice that gives each person the same amount without considering their individual services,¹³ whereas justice is determined by the legislator, the distribution contains services, rights and goodness for members of society according to the principle of proportional equality.¹⁴ On the other hand, Plato, Aristotle's teacher, said there were three types, namely Commutative Justice, Distributive Justice, and Legal Justice or Moral Justice.

According to John Rawls, justice is fairness (justice as fairness). John Rawls' opinion is rooted in the social contract theory of Locke and Rousseau as well as the deontological teachings of Immanuel Kant. This justice is also a result of fair choices. This comes from Rawls's assumption that actually humans in society do not know their true position, do not know their goals and plans for life, and they also do not know what society they belong to and from which generation (veil of ignorance). In other words, individuals in society are unclear entities. Because of this, people then choose the principle of justice. Justice as fairness produces pure procedural justice. In pure procedural justice there is no standard for determining what is "fair" apart from the procedure itself. Justice is not seen from the results, but from the system (or process) itself.¹⁵

Roscoe Pound saw justice in the concrete results it could provide to society. He saw that the results obtained should be in the form of satisfying as many human needs as possible with the smallest sacrifice. Pound himself said that he himself was pleased to see "the increasingly widespread recognition and satisfaction of human needs, demands or desires through social

¹¹ Zakki Abdillah, "Studi Tematik Tentang Konsep Keadilan Dalam Perspektif Al-Qu'ran Dan Hadis," *TERAJU: Jurnal Syariah dan Hukum* 1, no. 01 (2019): 21–27.

¹² Hyronimus Rhiti, *Filsafat Hukum Edisi Lengkap (Dari Klasik ke Postmodernisme)*, (Yogyakarta: Universitas Atma Jaya, 2015), 241.

¹³ Mertokusumo Sudikno, "Mengenal Hukum Suatu Pengantar" (Liberty, Yogyakarta, 2005).

¹⁴ Subhan Amin, "Keadilan Dalam Perspektif Filsafat Hukum Terhadap Masyarakat," *El-Afkar: Jurnal Pemikiran Keislaman Dan Tafsir Hadis* 8, no. 1 (2019): 1–10. ²³ Rangkuti, "Konsep Keadilan Dalam Perspektif Islam."

¹⁵ Hyronimus Rhiti, op.cit, 246-247.

control; increasingly widespread and effective guarantees of social interests; an effort to eliminate continuous and increasingly effective waste and avoid clashes between humans in enjoying resources, in short social engineering is increasingly effective.¹⁶

Justice is an important thing in the life of the nation and state. Charles E. Merriam in Miriam Boedihardjo places justice as one of the principles in the goals of a state, namely external security, internal order, justice, general welfare and freedom. It is the duty of state administrators to create justice. The goal of the Indonesian state is to fulfill justice for all Indonesian people. This can be seen well in the Preamble to the 1945 Constitution, the state that is to be established is an Indonesian state that is just and aims to create social justice.

Implementation of Justice in Indonesia based on Legal Philosophy from John Locke's Perspective

According to Hobbes, without law one human would be a wolf to other humans (*homo homini lupus*). Under natural conditions, humans are wolves to other humans. They will not stop robbing and even killing other humans until their prosperity and happiness is achieved.¹⁷ There is no concept of fair or unfair, if there is to be justice then there must be regulations that regulate it, for this we need a State.

The idea of the State and law as protectors of human natural rights was introduced by John Locke, an English Philosopher. As with other natural law ideas, Locke based his theory on naturalistic human justice. In contrast to Hobbes, who described the naturalistic state of humans as being in a state of disorder, Locke actually saw humans in a state of society full of order. This ideal situation occurs because in a naturalistic situation, no basic human rights are violated. human rights are a component that is inherent in every human being from birth; where this right is owned by every human being, which is intended so that every individual human being has the same proportionality as other humans, the proportionality in question is justice. And equality of every human being in the continuation of life. On the other hand, human rights are a gift from God given to every human being. Therefore, the essence of human rights contains the meaning that every human being has the right to treatment to receive protection, honour and respect in any field or condition.¹⁸ The state and law were created to protect property rights, the right to life and freedom. This concept from Locke became the concept of human rights which is still known today.

In his book *Two Treatises of Civil Government*, Locke analyzes the stages of development of society. According to Locke, the development of society is divided into three stages, namely the state of nature, the state of war, and the formation of the state (commonwealth).¹⁹ "The state of nature" is the first stage of development of society. Locke explained that in the "state of nature", each person lives in a state of harmony characterized by freedom and equality of rights. In the "state of nature", humans are as free as they can be, and no one is more powerful than another. Humans are free because they are born from the same

¹⁶ Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2014), 174.

¹⁷ Daya Negri Wijaya, "Kontrak Sosial Menurut Thomas Hobbes and John Locke," *Jurnal Sosiologi Pendidikan Humanis* 1, no. 2 (2016): 183–193.

¹⁸ Rizky Ahadyan Ardyansyah & Saiful Rizal, "Instrument for Protection and Enforcement of Human Rights in Indonesia" *Rechtenstudent Journal*, Vol. 4 No. 3 (2023), 290.

¹⁹ Simron Petrus L. Tjahjadi, *Petualangan Intelektual: Konfrotasi dengan Para Filsuf dari Zaman Yunani hingga Zaman Modern*, (Yogyakarta: Kanisius, 2004), 238-241.

species from the same marriage, namely humans who are naturally born free and enjoy nature equally. For Hobbes, humans are "wolves of others" (*homo homini lupus est*).²⁰ Meanwhile, for Locke, the state of nature is characterized by harmony. In the circumstances stated by Locke, every human being is free to determine himself and use what he has without depending on the will of others. However, each individual does not act as he pleases. Each person is not free to destroy himself and other creatures or what he has.²⁰

Natural law requires everyone to view others as equals and equals. Locke emphasized that in the "state of nature" each person should not destroy each other. May not deprive or damage life, liberty, health, limb, or property. Each person in the "state of nature" lives in freedom without threat. Such conditions occur because each person lives based on the provisions of natural law given by God. Furthermore, the harmonious natural situation gradually turns into war, namely a situation full of hostility, evil, violence, mutual destruction and elimination. Locke explained that in the "state of nature" people only owned what they could use, but with the creation of money, humans accumulated and hoarded excessive wealth.²¹

If in natural conditions the difference in wealth between humans is not striking because they do not accumulate more than they can consume themselves for a certain time, with the creation of money, humans actually seek wealth beyond their consumption capacity and for a long period of time. Locke added that each person, because of his nature as a free creature, has equal and unlimited opportunities to accumulate money and valuable property. "As much land as has been cultivated, planted, repaired and maintained, as well as used for its results, that is how much he has ownership rights to." According to Locke, this is the situation that is the forerunner to the creation of inequality.

This inequality in the amount of wealth divides humans into the status of master-slave, master-servant, bourgeois-laborer. Those who are more diligent, skilled and smarter will become richer faster. On the other hand, those who are uncreative, lazy, poor, disabled and do not own property will remain poor. Status based on wealth makes the gap between the poor and the rich wider. As a result, jealousy, envy, mutual suspicion emerge, and humans live in competition. One human being confronts another human being with negative thoughts and feelings. In this way, the harmonious "natural state" turns into a state of war characterized by hostility, envy, violence and mutual destruction. This kind of war situation has the potential to destroy the lives of fellow humans and all their possessions.²²

However, according to Locke, destruction and destruction can be overcome when society agrees to enter into a "original agreement". For Locke, this agreement gave birth to a commonwealth state. The purpose of the founding of the state is not to create equality for everyone, but rather to guarantee and protect the private property of every citizen of the country that entered into the agreement. For Locke, laws were created not primarily as restrictions, but as life guidance for someone who is free and intelligent for their own interests. In other words, the purpose of law is to preserve and enlarge freedom. Locke argued that the state formed as a result of the "original agreement" was not an absolute state as proposed by Hobbes. Locke himself initiated the formation of a state with a very limited role. State power is

²⁰ John Locke, *Kuasa itu Milik Rakyat: Esai mengenai Asal Mula Sesungguhnya, Ruang Lingkup, dan Maksud Tujuan Pemerintahan Sipil*, translate by. A. Widyamartaya (Yogyakarta: Kanisius, 2002), 25.

²¹ John Locke, 46-52.

²² Tajhajadi, Op.cit, 239-240.

not absolute, because its power comes from the citizens who founded it. Thus, the state can only act within the limits set by society for it.²⁶ The state is only considered fair if it allows its citizens to act according to their respective freedoms and abilities. The state must not intervene with each person to accumulate as much capital as possible. Also, the state has no role in creating equality between investors and unequal people. The state's duty is to ensure the protection of everyone's life and property.²³

From the description above we can see that justice in legal philosophy is the main basis that must be realized through existing law. Justice is formed by correct thinking, carried out fairly and honestly, and being responsible for the actions taken. A sense of justice and law must be upheld based on positive law to uphold justice in law in accordance with the reality of society which desires to achieve a safe and peaceful society. Justice here must be built in accordance with legal ideals in a state of law, not a state of power.²⁴

John Locke divided power in the State into three, namely, first, the power to form laws (legislative); second, the power to implement laws (executive); and third, the power regarding war and peace, making unions and alliances as well as all actions with all people and bodies abroad (federative). This thought was born as a reaction to absolutism by supporting limitations on the king's political power. John Locke argued that the reason why humans enter into a "social contract" is to defend life, liberty and the right to property. The three basic models are seen as "property". This possession is what gives humans political status.²⁵

Regarding the function of the state, John Locke differentiated it into four functions. The four functions of the state are forming laws (legislating), making decisions (judging), using force internally in implementing the laws (employing forces internally in the execution of the laws) and using these forces abroad, in defending society. Locke called the first function "legislative powers", the third function was called "executive powers". The fourth function he calls "federative powers", which includes the powers of war and peace as well as foreign powers. Meanwhile, the second function, namely making decisions (the function of judging), is not considered power. Therefore, according to him, there is no need to individualize the power of judging separately in a separate part because this function is a traditional state function. Furthermore, John Locke thought that if power was placed in different hands, balance could be achieved. Still related to law and justice, here law is confronted with power. Basically, the law is imperative, so that it can be obeyed. However, in reality the law in people's lives is not obeyed, so the law needs to be supported by power. How much power is supported depends on the level of public awareness. The higher the public's legal awareness, the less power is needed.

Law is a source of power in the form of strength and authority in the practice of power which is negative, because power stimulates intentions beyond limits, beyond the authority possessed. Law without power is imaginary, power without law is dholim. Law has a close relationship with the values that live in society, society changes which can be avoided and change itself is questionable which values are used. In change there are bound to be obstacles, including the values that are changed which are still relevant to the national personality, the

²³ John Locke, Op,cit, 57-58.

²⁴ Liani Sari, "Hakekat Keadilan Dalam Hukum," *Legal Pluralism: Journal of Law Science* 2, no. 2 (2012).

²⁵ Efik Yusdiansyah, *Impliasi Keberadaan Mahkamah Konstitusi terhadap Pembentukan Hukum Nasional dalam Kerangka Negara Hukum*, (Bandung: Lubuk Agung), 24.

existence of heterogeneity in different religions and beliefs, the existence of community attitudes that do not accept changes and do not practice existing changes.²⁶

Since the foundation of the independent Indonesian state was laid, President Soekarno has emphasized that Indonesia is not a follower Lockean liberalism and Marxian socialism. This is reflected in The basic formulation of the Indonesian state, namely Pancasila. Pancasila is a conception of justice that is 'neutral' towards various things beliefs and outlook on life. Such neutrality is intended to provide equal opportunities to adherents of various views life. The concept of justice as fairness contained in Pancasila is a conception that obtains support through overlapping consensus from philosophical, religious and moral doctrines which is reasonable. That slice of consensus is a kind of shared reasoning (public reason), which is as neutral as possible towards doctrines comprehensive. Such neutrality is not intended as an attitude of indifference indifferent to religious, philosophical and moral doctrines, but rather as a form of respect and attention towards each other mark. Thus, Pancasila can be accepted by every individual, groups, and groups, and with whatever religion, ethnicity, culture, their respective beliefs, moral views and political beliefs.

Here, legal philosophy is needed to answer unsolved legal problems. The task of legal philosophy is to explain the values and foundations of law philosophically, and to be able to formulate ideals of justice and order in life that are relevant to the legal realities in force. In fact, it does not rule out the possibility of law adapting, changing radically under the pressure of human desires which change endlessly, to build a new legal paradigm, in order to meet the needs of legal development at a certain time, at a time and in a place.

A common thread can be drawn that the correlation between philosophy, law and justice is very close, here there is a connection between wisdom, norms and the balance of rights and obligations. Law cannot be separated from society and the State, legal material is explored, made from cultural values contained in society in the form of legal awareness and ideals, moral ideals, individual and national independence, humanity, peace, political ideals and State goals. The law here reflects the cultural values of life that exist in society which have the power to apply juridically, sociologically and philosophically.²⁷

Conclusion

Based on the research results, it can be concluded that justice is an important concept in human life. The problem of justice is not only an area of legal study, but this problem can also be studied from various disciplines in the social sciences and humanities. Justice is a goal, while law is only a tool to achieve that goal. It turns out that the concept or even value of justice is often influenced by elements of human subjectivity, so that justice can sometimes only be felt by certain parties.

Justice in legal philosophy is the main basis that must be realized through existing laws. Justice is formed by correct thinking, carried out fairly and honestly, and being responsible for the actions taken. A sense of justice and law must be upheld based on positive law to uphold justice in law in accordance with the reality of society which desires to achieve a safe and peaceful society. Justice here must be built in accordance with legal ideals in a state of law, not a state of power.

²⁶ Budiono Kusumohamidjojo, "Ketertiban Yang Adil, Suatu Tinjauan Problematik Filsafat Hukum Indonesia" (PT, Gramedia Pustaka Utama, Jakarta, 1999), h.37.

²⁷ Sari, "Hakekat Keadilan Dalam Hukum."

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