INTERNATIONAL JOURNAL OF RESEARCH AND INNOVATION IN SOCIAL SCIENCE (IJRISS)
ISSN No. 2454-6186 | DOI: 10.47772/IJRISS |Volume VII Issue XI November 2023

Positivism and the Separation of Law and Morals

Nadia Rohadatul Aisyi , FX Joko Priyono

Master of Law, Diponegoro University

DOI: https://dx.doi.org/10.47772/IJRISS.2023.7011096

Received: 04 November 2022; Accepted: 11 November 2023; Published: 13 December 2023

ABSTRACT

Legal positivism makes a strict separation between law and morality. The originators of legal positivism separated the legal domain from the moral domain. The purpose of this paper is to explore how law and morality are separated in the positivism paradigm. This research is a normative type of research with a conceptual approach. Legal positivism or positive law strictly separates law and morals, as well as between the law that applies and the law that should be. There is no room for considerations that refer to other normative sources. The case involving *Grandma Minah* is one example of the application of the view that the law is considered normative and does not consider the moral elements contained therein.

Keywords: *Legal Positivism, Morals, Separation of Law and Morals*

INTRODUCTION

Law broadly means covering all normative rules that regulate and become the basis for behavior in the life of society and the state with the support of a certain sanction system for any legal deviations. Some forms of such normative rules either grow on their own in social and state life or are deliberately created based on procedures determined by the system of a power organization in the society concerned. The more advanced and complex the life of a society, the more developed the demands for regularity in the patterns of behavior of social life.[3]

To realize Indonesia as a state of law, the state must implement national legal development which is carried out in a planned, integrated and sustainable manner in a national legal system that guarantees the protection of the rights and obligations of all Indonesian people based on the 1945 Constitution. The formation of laws and regulations is one of the requirements in the implementation of national legal development which can only be realized if it is supported by definite, standard and standard methods and methods that bind all institutions authorized to make laws and regulations.[4]

Positivism is a school that believes that human knowledge is objective and derived from empirical and rational investigation. This simple limitation can be related to the five basic assumptions of Positivism.

The first assumption is *logico-empiricism*, where positivism believes that every truth must pass empirical proof. The second assumption is objective reality, namely everything that has a single object of study that arises because Positivism views objects as always separate from the subject. Furthermore, the third assumption is *reductionism*, which is an assumption that continues the first and second assumptions related to the rational and empirical truth of the single object of study. Furthermore, the fourth assumption is *determinism*[5] or determinant nature when subject to the law of causality. The last assumption is *value-free*, which is closely related to the view of objective reality as mentioned in the second assumption.[6]

The above assumptions of positivism appear in the third stage of the development of human thought and culture. Auguste Comte named this third stage the positivist (real) stage. This stage is a stage of human

maturity characterized by the human ability to overcome natural problems through technology. In his idea, Auguste Comte coined the famous *Law of Three Stages* (theological, metaphysical, and positive stages) in his book entitled *Cours de Philosophie Positive.[7]* The word Positivism in Legal Positivism explains the two words are interrelated. Positivism as a school of philosophy in general that was prominent in the modern era has a very large influence on scientific discourse in modern times.

Based on the legal system in Indonesia, the legal theory that has a strong influence on legal concepts and implementation in Indonesia is legal positivism. Legal positivism is known as a legal theory that assumes that the separation between law and morals is very important. In this theory, laws are made by the authorities such as laws and regulations.[8]

Based on this understanding, the development of positivism has impacted Indonesian law with the emergence of legal rigidity. In this context, there is a view that Indonesian law is not always able to create justice, which is the result of the dominance of the doctrines of the positivism paradigm. One of the legal doctrines influenced by positivism is "equality before the law or justice for all", which looks good in theory. However, in practice, the law often appears to be sharp downwards, meaning it applies strictly against ordinary citizens, while tending to be blunt upwards, meaning it is not equally strict in dealing with those who have greater power or influence. This shows that the law is not always neutral, and in practice, the operationalization of the law is influenced by other forces in society.

In practice, the use of the positivism paradigm in law turns out to hinder efforts to achieve truth and justice in accordance with moral values. The search for justice is often hampered by the procedures established by the law itself, so that what can be achieved is only a form of formal or procedural justice that does not necessarily reflect or fulfill the demands of conscience. In reality, the legal positivism approach does not always provide a comprehensive solution to legal problems. Solutions that only focus on legislation or positive law tend to only address the symptoms of the problem, without touching the deeper roots of the problem.

As described above, the author will take the following problem formulation:

1. What is the concept of separation of law and morals based on Legal Positivism?
2. What is an example of the application of the separation of law and morals in a case based on the concept of Legal Positivism as a paradigm in problem solving in Indonesia?

RESEARCH METHODOLOGY

This research is a qualitative research type with a literature study research method. The research method used is normative research, namely research that relies on legal norms, legal principles, and Indonesian positive law relating to Legal Positivism with a conceptual approach. Legal materials used in normative legal research are primary legal materials and secondary legal materials. Primary legal materials in this research are the Constitution of the Republic of Indonesia and related laws and regulations, while the acquisition of secondary legal materials comes from books, articles, papers, and the internet.

DISCUSSION AND RESEARCH RESULTS

The concept of separation of law and morals based on the school of Legal Positivism

In a book entitled Pure Theory of Law, Hans Kelsen presents pure legal theory as an answer to the question of what and how the law is, not how the law should be. Pure legal theory only describes the law and eliminates everything that is not fully legal with the aim of keeping legal science away from elements

outside the law that enter other disciplines.[9]

Positivism in law means that law is positivized as the highest status among various norms (*The Supreme of Law)*, which consists of a long series of many statements about various actions identified as legal facts with their consequences called legal consequences. As Positivism jurisprudence or positivism of law argues the science of law is at the same time a science of life and behavior of citizens who should be orderly following the norms of causality.[10]

In reality, there are two kinds of Positivism theses, namely the Segregational Positivism Thesis and the Amalgamational Positivism Thesis. The segregational thesis is the separation of two worlds, namely law in the sense of existence and law in the sense of non-exist. Existing law is the law that is analogous to positive law, then non-existing law is not positive law. Existing law is a law that exists and applies (positively) at a certain time and space, and the law is contained in a concrete form or written form. Therefore, positive (written) law finds its form as a written text. Hard positive law is still widely used because the law is written, certain, and clear, so it does not cause potential disputes about its legality. The form of this law is the rules of legislation, the existence of jurisprudence is an agreement that has been agreed upon as a consensus.[11]

The second is soft positivism or amalgamational positivism, which is a rejection of analytic segregation or hard positivist law. This positivism exists to recognize all components of written law and all components of unwritten law as positive law. This thesis seeks to present a philosophical view of law in broader ways. This thesis seeks to present a philosophical view of law in broader ways. It seeks to separate positive law (*ius positum**[12]*) and natural law. In the context of amalgamation, positive law refers to certain basic assumptions that are considered true without the need for testing or verification. Figures that characterize this approach include Friedrich Karl Von Savigny (Germany), Paul Vinogradoff, H.L.A Hart (USA), Paul Scholten, and J.J.H. Bruggink (Netherlands).

Legal positivism has its roots in the school of positivism, which itself developed in line with the major changes that took place in European Society, especially after the Industrial Revolution in England and the Bourgeois Revolution in France in the mid-18th century. Both revolutions called into question the long-held dominance of the monarchy and the church in terms of knowledge (epistemology) in Europe. As a result, thoughts began to emerge that questioned the authority of monastic and monarchical thought, while searching for more essential truths. This passion in search of truth was unstoppable and expanded from the time of the Enlightenment (Aufklarung). Religion no longer dominated as before, and science began to replace the church as the intellectual leader. This was reflected in the establishment of universities and the shift of knowledge from metaphysics to rational and empirical knowledge. The culmination of this change, by purging knowledge of subjective elements, was achieved through the concept put forward by the famous French figure, Auguste Comte.[13]

In his book entitled Cours de Philosophie Positive, Auguste Comte came up with the idea of a three-stage law commonly referred to as the "*Law of Three Stages*" (theological, metaphysical and positive stages). The positivist meaning stated by Auguste Comte at this stage is interpreted in 5 (five) possibilities, among others: [14]

1. As the opposite or opposite of imaginary, positive meaning means a characterization of something real
2. As the opposite of something that is not beneficial, the notion of positivity is defined as the characterization of something beneficial.
3. As the opposite or opposite of something doubtful, the notion of positivity is defined as the characterization of something certain.
4. As the opposite of something negative, the positive sense is used to indicate the nature of the philosophy, which is always towards structuring or ordering.

ISSN No. 2454-6186 | DOI: 10.47772/IJRISS |Volume VII Issue XI November 2023

According to Erlyn Indarti, legal positivism is included in one of the paradigms in the positivism school, along with the "*legal philosophy*" and "*natural law*" schools. According to him, in the view of legal positivism, the law highlights the *law as* "*law as what it is written in the books*", namely positive rules that apply generally in a form in abstract at a certain time and place. Thus the law can be understood as ius constitutum, namely the existing and applicable law.[15]

Han Feizi expressed his opinion that: "*A law is that which is recorded on the registers, set up in the government offices, and promulgated among the people"*. This view states that laws should be officially recorded and archived in government offices and promulgated among the people. Through this, people can know what actions to take and what actions to avoid. Once the law is set out in statute, the government has the responsibility to closely monitor the behavior of its people. With its authority, the government can punish those who break the law and reward those who obey the law. In this regard, Han Feizi explained his opinion, namely: "*In his rule of a state, the sage does not depend upon men doing good themselves but brings it about that the people can do no wrong, the entire state can be kept peaceful. He who rules a country makes use of the majority and neglects the few, and so does not concern himself with virtue but with law".**[16]***

Today legal positivism according to Herbert Lionel Adolphus Hart has five characteristics contained in it, namely:[17]

1. Law is an order that comes from humans;

2. There is no absolute relationship between law and morality, or between law and morality or between the law *as it is* and the law as it *ought to be*;

3. Analysis of the *legal concept* is important and must be distinguished from:

   a. Historical investigation of the causes of law or the source of law;
   b. Sociological investigation of the relationship between law and other societal symptoms, investigation of laws based on morality, and social objectives of legal functions and so on;

4. The legal system is a *closed logical* system, in which the correct legal provisions can be obtained by logical means from previously established legal regulations, without regard to social goals, politics, measures, morals and so on;

5. Considerations of decency cannot be made or proven by using arguments and evidence based on logic, for example in statements of facts (non-cognivism in ethics).

Apart from these 5 (five) characteristics, according to Theo Huijbers legal positivism is based on several principles, namely: [18]

1. Only what appears in experience can be called true;
2. Only what can be confirmed as true can be called true. That means that not all data experiences are true, but only those experiences that are found to be true.
3. Only through the sciences can it be determined whether something experienced is truly a reality.

Legal positivism holds that law emerges as a direct result of a particular political power that has legitimacy. In this context, law is primarily manifested in the form of explicit commands that are formulated to ensure certainty, such as laws and regulations that apply at the national level in a country. As such, legal positivism focuses on positive legislative norms in the positive normative realm.[19] The existence of legal positivism suggests that laws are created and revoked by human action, independent of considerations of morality and

the norm system itself. In other words, the law stands alone and is strictly separated from moral considerations (between the law that applies and the law that should be, between das sein and das sollen). In this context, the only law that exists is the order of the sovereign.[20]

From the various understandings above, the basis of legal positivism can be formulated into several premises and postulates regarding law, namely:[21]

1. The legal system of a country is valid not because it has a basis in social life, nor in the soul of the nation, nor is it based on natural law, but it gets its positive form from the competent authority;
2. The law must be viewed solely from its formal form, thus it must be separated from its material form;
3. Legal content or legal material is recognized as existing, but it is not the material of legal science, because it can damage the scientific truth of legal science.

In the view of legal positivism there is a clear separation between law and morals. Law in the context of positivism has rationalistic, technocentric, and universal characteristics. In the view of positivism, law only exists in the form of orders from the authorities, there is even a school of positivist legalism that considers that law is identical to the law. Law is understood through a rational and logical perspective, while legal justice is formal and procedural. In positivism, spiritual dimensions such as religion, ethics, and morals are considered as separate elements of the development process of modern civilization. Modern law in its development loses an essential element, namely spiritual values. In other words, legal positivism emphasizes aspects of law that are concrete, logical and separate from moral and spiritual considerations in the formation and enforcement of law.[22]

Legal positivism strictly separates law and morality. The originators of legal positivism classified the legal and moral spheres as distinct entities. Legal positivists believe that the core characteristics of law stand alone, independent of moral considerations, and are not concerned with whether or not something is moral, wise, or factual.[23]

According to Lon Fuller, there are eight internal legal morals (eight principles of legality) that must be realized by law, namely:

1. Some rules are created in advance, no ad-hoc decisions or arbitrary actions;
2. Properly promulgated regulations;
3. Regulations should not apply retroactively;
4. The formulation of regulations can be understood by the people (clear and detailed);
5. The law as a possible thing to do;
6. There is no conflict between one regulation and another;
7. Rules should not be changed frequently (fixed), and;
8. There is conformity between the actions of legal officials and the regulations that have been made.

Legal positivism believes that law should be established based on a rational and objective approach. Subjective opinions such as moral considerations play no role in the Legal Positivism perspective. This again reinforces the strict separation between law and morals as outlined earlier. The consequence of this rational and objective approach is that legal positivism operates within the framework of a closed system of logic. This system requires the formulation of a major premise as the determining factor, and this major premise is derived from positive norms in legislation. This positive norm is doctrinal because it is considered as something that already exists (given). Therefore, no effort is required to prove the truth of this positive norm; in principle, this positive norm is considered self-evident.[24]

The development of positivism first introduced by Auguste Comte was then followed by John Austin, a

jurist who advanced the concept of legal positivism. In his concept of legal positivism, John Austin emphasized the need to separate positive law from moral considerations. For Austin, positive law is an order emanating from a sovereign authority, enforced through the threat of sanctions and obeyed by Society. However, the view of legal positivism influenced by Auguste Comte's thinking is less precise when applied in the context of legal positivism. This is because the object of law itself is humans who have dynamics, and the law should be able to adapt to meet the needs of society. This is different from John Austin's view which explicitly separates positive law from moral considerations. Related to objective reality, positive law cannot easily ignore values, because positive law is always formed in the context of space and time with consideration of certain interests that cannot be separated from special values such as moral values.[25]

Examples of the application of the separation of law and morals based on the concept of Legal Positivism in Indonesia

There is an interesting case that can be analyzed using a philosophy of law perspective. It involves a 55-year-old grandmother named Minah who was sentenced to 1 month's probation and 15 days' imprisonment because of the simple act of picking three cocoa pods on a plantation owned by PT Rumpun Sari Antan (RSA) was considered a violation of the law. This case illustrates the irony of Indonesia's legal system. The incident began when Minah was harvesting mules on her land in Sidoarjo Hamlet, Darmakradenan Village, Ajibarang District, Banyumas, Central Java on August 2, 2009. Minah's land was also managed by PT RSA to grow cocoa. When Minah saw three ripe cocoa pods, she decided to pick them to plant them as seedlings on her farm. After picking, she did not hide the three cocoa pods but placed them under the cocoa tree. Shortly afterward, a foreman of PT RSA's cocoa plantation passed by and asked who had picked the cocoa pods, and Minah honestly admitted that she had picked them. However, Minah was then lectured that this action should not be done and was considered theft. In this case, there are questions of justice, morality, and the disproportionality of the punishment applied to Minah's simple act. This shows the complexity in the application of law and legal policy in Indonesia, which can be analyzed from various perspectives of legal philosophy.

After realizing her mistake, Minah apologized to the foreman and promised not to repeat her actions. She then handed over the three cocoa pods she had picked to the foreman and continued her work, confident that everything was done. However, the allegations turned out to be protracted. A week after the incident, Minah was summoned by the police for questioning. The legal process continued and eventually she had to face the court as a defendant in a theft case at the Purwokerto District Court (PN). The panel of judges led by Muslih Bambang Luqmono, S.H. decided to sentence Minah to 1 month and 15 days in prison with a three-month probation period. She was found legally and convincingly guilty of violating Article 362 of the Criminal Code on theft. Therefore, based on these considerations, the presiding judge decided in case No. 247/Pid.B/2009/PN.Pwt, that:

1. Stating that the defendant: Minah alis Mrs. Sanrudi Binti Sanatma, who is complete with all her identities mentioned above, has been proven legally and convincingly guilty of committing the crime of theft;
2. Therefore, the sentence imposed on the defendant is 1 (one) month and 15 (fifteen) days imprisonment, provided that the sentence shall not be served unless in the future a decision of the Judge imposes a sentence on the defendant because the defendant committed a crime before the expiration of the probation period of 3 (three) months;
3. Ordered that the evidence in the form of: 3 (three) kg of chocolate or cocoa fruit along with the beans and skins are returned to PT RSA IV Darmakradenan through the witness Tarno bin Sumanto; 1 (one) kandi is confiscated for destruction.
4. Charge the defendant with court costs for Rp 1,000 (one thousand rupiah).

As said, legal positivism or positive law strictly separates the law from the moral aspect, and separates the applicable law from the law that should apply. It is not even allowed to combine considerations by referring to other normative sources. All regulations produced by the government are considered absolute truths that must be applied without exception. In addition, there is a view in the positive school, namely legism, which considers that law is equivalent to legislation.[26]

The issues raised in the case of Nenek Minah show that the law is seen as something normative, without considering moral elements. The judge hearing the case only referred to the text of the law or what was written in it. As a result, many people felt that the judge did not exercise discretion when making his decision.[27]

The legal case against Nenek Minah was analyzed using the positivism paradigm, which is based on the view that the law is an existing reality. The law applied in this case is Article 362 of the Criminal Code. The judge investigated the case by calling witnesses and examining evidence which was then compared with the testimony of Nenek Minah as the defendant. If all the elements listed in Article 362 are fulfilled, then Grandma Minah is found guilty and sentenced. In short, the positivism paradigm always emphasizes objectivity. The positivism paradigm, which embraces the school of Legal Positivism, explains that the law does not exist outside the law; the law is identified with the law itself. In this view, the law must be enforced and justice measured by the provisions of the law. The law must be separated from considerations of human and moral values to maintain legal certainty. Therefore, Grandma Minah was still punished, without considering the extent of the losses suffered by PT Rumpun Sari Antan, because she was legally proven to have committed theft by Article 362 of the Criminal Code.[28]

According to the positivist view, every legal norm must exist in its objective context as positive norms. These norms must be generated through concrete contractual agreements between citizens or their representatives. In this view, law is no longer regarded as meta-juridical and abstract moral principles of justice, but rather as ius (law) that has undergone a process of motivation into legal or lex, which aims to ensure certainty regarding what counts as law and what, despite having normative elements, cannot be considered part of the law.[29]

From the perspective of legal positivism, it is important to maintain a strict separation between law and morals. Therefore, judges must use the law or the main basic regulation in the interpretation process when giving a verdict. In this case, the judge clearly and by the positivistic approach declared Grandma Minah guilty and proven of the crime of theft. This was based on a clear legal causal relationship, where Grandma Minah's legal actions caused harm to the Company.

In the view of positivism, Nenek Minah's case is an act that must be punished, regardless of how big or small the stolen goods are. Law enforcement against Nenek Minah must be carried out without taking into account social aspects or moral considerations because in the view of this school, the main objective of law is to create legal certainty. Without legal certainty, the goal of the law cannot be achieved, even though this may ignore aspects of justice.

According to Austin, law is independent of justice and independent of good and bad. Therefore, legal science serves as a tool that analyzes the elements that are factual in the modern legal system. Legal science only deals with positive law, which is law that is accepted without regard to its goodness or badness. Law is the command of the sovereign political power in a country.

In the evidentiary process in this trial, the judge used the theory of proof based on negative law (*negatief wettelijk*). This approach is based on Article 184 of the Criminal Procedure Code, which mandates that the judge may only impose a sentence on a defendant if there are at least two valid and convincing pieces of

evidence that a criminal offense occurred and that the defendant is the perpetrator. This system of evidence negatively guides the judge, as the judge must have a strong belief in the guilt of the defendant before imposing a criminal sentence. This approach is considered beneficial because it provides clear guidelines for judges, so that there are binding rules in the process of determining the judge's belief during the trial.[30]

Positivism in law, both in theory and practice, is a view that reduces the role of humans in their lives, which is dominated by the importance of legal certainty. Therefore, this school survived even into the XXth century. This school describes the view of life as legalism, which prioritizes that in the context of the life of the nation and state, everything depends solely on the law. Laws are considered to originate from agreements that are transformed into written rules that apply.

Undeniably, the influence of the positivism school of thought has swept through Indonesia, although not completely. The impact can be seen in some court decisions, which are one component of the law enforcement system. Many court decisions only consider the literal text of the law. Judges, as interpreters of the law, are often limited to grammatical interpretation alone. Therefore, judges are often referred to as "the mouthpiece of the law" (*la bouche da la loi)*. In this situation, there is often a disregard for the meaning of justice that should be realized in the principle of legal certainty. The principle of legal certainty should include elements such as justice, expediency and certainty. If judges only focus on the statutory aspects without understanding the meaning of the paragraphs and articles in the law, or without considering the philosophical and sociological aspects that may have influenced the making of the paragraph or article, then this can reduce a holistic understanding of the law and its impact on society.

Every country has laws that are based on a certain ideology, and this also applies to Indonesia, which adopts the ideology of Pancasila. Therefore, Pancasila acts as a guide in the creation, establishment and implementation of laws. However, the issue between what should be and what is remains an interesting topic, and it is often difficult to reconcile the two concepts. Sometimes, the laws that are formed may not always be in line with the values espoused by the ideology, and this opens up opportunities for legal actions that are different from what is expected.

CONCLUSION

Legal positivism is an approach that emphasizes the importance of a strict separation between law and morals. Law in this view tends to be rational, technocentric, and universal. Legal positivism believes that law should be developed through a rational and simplistic approach. Subjective views, such as moral considerations, have no place within the framework of Legal Positivism. This reinforces the principle of separation between law and morals, as explained earlier. The impact of this rational and objective approach to law is that Legal Positivism operates within a *closed logical system*.

The problems that arose in the case of Nenek Minah reflect the view that the law is considered normative and does not consider moral concepts. The judge handling the case adhered to the *letter leg*, which is what is expressly written in the law. The legal case involving Nenek Minah was analyzed using the Positivism Approach, which assumes that law is an existing reality (ontology). The law referred to in this case is Article 362 of the Criminal Code. The judge examined the case by calling witnesses and examining evidence that was confirmed by the testimony of Nenek Minah as the defendant. If all the elements contained in Article 362 were fulfilled, then Grandma Minah was found guilty and sentenced.

Indonesia is a legal state that has been influenced by positivism, although its influence is not fully dominant. This is reflected in several court decisions which are one of the elements of law enforcement. Many of these decisions only consider the law literally. Judges as interpreters of the law, often only perform grammatical interpretations. Therefore, judges are often dubbed as the mouthpiece of the law (*la bouche de la loi*).

REFERENCES

Books

1. Achmad Ali, 2009. "*Uncovering Legal Theory*", Kencana, Jakarta
2. Erlyn Indarti, 2010, "*Discretion and Paradigm An Analysis of Legal Philosophy",* Delivered at the Ceremony of Acceptance of Professor Position in Legal Philosophy at the Faculty of Law, Diponegoro University, Diponegoro University Publishing Board: Semarang.
3. Fung Yu-Lan, 1966, "*A Short History Of Chinese Philosophy*", The Free Press: New York.
4. Hans Kelsen, 1995, *"General Theory Of Law and State*", translated by Somardi, Pure Legal Theory, Rimidi Press: Bandung.
5. Hans Kelsen. "*Pure Theory of Law*" (United States of America: University of California Press, 1967).
6. Dr. Wirjono Prodjodikoro, 1989, "*Principles of Criminal Law in Indonesia*", Bandung: Eresco.
7. Shidarta, 2020, "*Legal Positivism*", (UPT Penerbitan: Tarumanagara University).
8. Soetiksno, 2004, "*Philosophy of Law part 1*", Pradnya Paramita: Jakarta.
9. Teguh Prasetyo and Abdul Halim Barkatullah, 2014, *"Philosophy, theory, & Legal Science Thought: Towards a Just and Dignified Society*", Rajawali Pers: Jakarta.
10. Theo Huijbers, 1993, "*Philosophy of Law in History"*, Pustaka Pelajar: Yogyakarta.

Journal

11. Abd Halim, "*Legal Theories of the School of Positivism and the Development of Its Critics*" (Journal of Asy-Syir'ah Vol. 42 No. II, 2008).
12. Akhmad Khubby Ali Rohmat, *"Positivism and its Effect on Law Enforcement in Indonesia",* Journal of Sharia and Law Laboratory Volume 03, Number 03 June 2022.
13. Cahya Wulandari, "The *Position of Morality in Legal Science",* (Progressive Law Journal, Vol. 8, No. 1, April 2020).
14. Fikrotul Jadidah, "*Grandma Minah's Case Viewed from the Perspective of Positivism Legal Theory*", Vol. 02 No. 03 Year 2022.
15. Haryono, "*The Existence of Positivism in Legal Science*", Meta-Juridical Journal Vol. 2 No.1 2019.
16. Mario Julyano and Aditya Yuli Sulistyawan, 2019, *"Understanding the Principle of Legal Certainty Through the Construction of Legal Positivism Reasoning*", (Crepido Journal: Vol. 01 No. 01).
17. Muhammad Citra Ramadhan, *"The Influence of the Flow of Positivism in the Policy of Formation of Legislation in Indonesia",* Journal of Warta Ed. 53 ISSN: 1829 – 7463, 2017.
18. Soetandyo Wignjosobroto, "*Law, Paradigms, Methods and the Dynamics of the Problem*", (Jakarta: Elsam & Huma, 2002).

FOOTNOTES

[1] Master of Law, Diponegoro University

[2] Master of Law, Diponegoro University

[3] Muhammad Citra Ramadhan, *"The Influence of the Flow of Positivism in the Policy of Formation of Legislation in Indonesia",* Journal of Warta Ed. 53 ISSN: 1829 – 7463, 2017.

[4] Ibid, Muhammad Citra Ramadhan

[5] Determinism, in philosophy and science, the thesis that all events in the universe, including human decisions and actions, are causally inevitable.

[6] Shidarta, *"Legal Positivism"*, (UPT Penerbitan: Tarumanegara University)

2020, pp. 4.

[7] Mario Julyano and Aditya Yuli Sulistyawan, "*Understanding the Principle of Legal Certainty Through the Construction of Legal Positivism Reasoning*", (Crepido Journal: Vol. 01 No. 01), 2019, pp. 17

[8] Achmad Ali, 2009, *"Uncovering Legal Theory"*, Kencana: Jakarta

[9] Hans Kelsen, *"Pure Theory of Law"*, United States of America: University of California Press, 1967, pp. 1.

[10] Haryono, *"The Existence of the School of Positivism in Legal Science",* Meta-Juridical Journal Vol. 2 No. 1 2019, pp. 98.

[11] *Ibid, p. 97.*

[12] a human-made law that requires or prescribes an action

[13] Op.Cit, Mario Julyano, p. 16.

[14] Op.Cit, Shidarta, p.69.

[15] Erlyn Indarti, *"Dissection and Paradigm An Analysis of Legal Philosophy"*, Delivered at the Ceremony of Acceptance of Professor Position in Legal Philosophy at the Faculty of Law, Diponegoro University, Diponegoro University Publishing Board: Semarang, 2010, p.21.

[16] Fung Yu-Lan, *"A Short History of Chinese Philosophy",* The Free Press: New York, 1996, p.160.

[17] Soetiksno, *"Philosophy of Law Part I"*, Pradnya Paramita: Jakarta, 2004, p.53.

[18] Theo Huijibers, *"Philosophy of Law in History",* Pustaka Pelajar: Yogyakarta, 1993, p.122.

[19] Op.Cit, Erlyn Indarti, p. 21.

[20] Hans Kelsen, *"General Theory of Law and State",* translated by Somardi, Pure Legal Theory, Rimidi Press: Bandung, 1995, p. 115.

[21] Cahya Wulandari, *"The Position of Morality in Legal Science"*, (Progressive Law Journal, Vol.8 No.1, April 2020) Page. 4.

[22] Abd Halim, *"Legal Theories of the School of Positivism and the Development of Its Critics"*, (Journal of Asy-Syir'ah Vol. 42 No. II, 2008), p. 401. 401.

[23] Cahya wulandari, "The Position of Morality in Legal Science", (Progressive Law Journal, Vol. 8, No. 1, April 2020), p.4.

[24] Op. Cit, Shidarta, p. 51.

[25] Op.Cit, Cahya, p.5.

[26] Akhmad Khubby Ali Rohmat, *"Positivism and its Influence on Law Enforcement in Indonesia",* Journal of Sharia and Law Laboratory Volume 03, Number 03, June 202022, Page. 225.

[27] Ibid, Akhmad Khubby Ali Rohmat, Page 227.

[28] Fikrotul Jadidah, "*Grandma Minah's Case Viewed from the Perspective of Positivism Legal Theory*", Vol. 02 No. 03 Year 2022, Page. 130

[29] Soetandyo Wignjosobroto, "*Law, Paradigms, Methods and the Dynamics of the Problem*", (Jakarta: Elsam & Huma, 2002), pp. 96

[30] Prof. Dr. Wirjono Prodjodikoro, "*Principles of Criminal Law in Indonesia*", Bandung: Eresco, 1989,