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THE FUNCTION OF LEGAL PHILOSOPHY IN LAW ENFORCEMENT PRACTICE AND LEGISLATION FORMATION: A STUDY OF CONSTITUTIONAL COURT DECISION NO. 62/PUU-XXII/2024

Hafis Rizki Putra,[1] Aisyah Sadea Fitri,[2] Muhammad Afdil Zikri,[3]

Universitas Islam Riau[1] Universitas Prima Nusantara Bukittinggi[2]

Email: hafisrp128@gmail.com , aisyahsadea315@gmail.com , mhdafdil0107@gmail.com

Abstract

This study examines the function of legal philosophy in law enforcement practice and legislation formation in Indonesia. Using a normative juridical method with a philosophical-conceptual approach, this article analyzes how classical and contemporary legal philosophical theories—including those of Gustav Radbruch, Hans Kelsen, Satjipto Rahardjo, John Rawls, and Ronald Dworkin—shape the interpretive reasoning of Indonesian judges, legislators, and constitutional justices. The research finds that legal philosophy serves four primary functions: methodological (providing frameworks for legal interpretation), critical (exposing injustice hidden behind legal formalism), transformative (driving legal reform), and integrative (harmonizing various norms within the legal system). These functions are demonstrated in Constitutional Court Decision No. 62/PUU-XXII/2024, which declared the presidential threshold provision unconstitutional through substantive philosophical-constitutional reasoning. The study concludes that robust legal philosophical foundations are indispensable for producing just, coherent, and democratically legitimate law.

***Keywords**: legal philosophy, law enforcement, legislation formation, constitutional court, presidential threshold*

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A. Introduction

Law is one of the most vital instruments in social, national, and state life. Law not only establishes rules that regulate human behaviour but also reflects the noble values that exist and develop within society. More profoundly, law contains philosophical elements that serve as the epistemological, ontological, and axiological foundation of the entire legal order of a state.[1]

As a branch of philosophy that specifically examines the nature, basis, and purpose of law, legal philosophy is strategically important for building a comprehensive understanding of law both as a social phenomenon and as a normative system. Fundamental questions concerning justice, the legitimacy of power, and the relationship between positive law and natural law have been debated by

[1]Prio Suryanto Ibrahim, Karmila Saleh, and Roy Marthen Moonti, 'Philosophy of Law as the Foundation of Indonesian Legal Order,' Jurnal Hukum dan Pembangunan 55, no. 1 (2025).

[1] ***Corresponding author: Hafis Rizki Putra, Aisyah Sadea Fitri, Muhammad Afdil Zikri***
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philosophers since ancient Greece.[2] These traditions of thought have continued to evolve through the Roman era, the Middle Ages, the Renaissance, modernity, and postmodernity.

Indonesia faces unique challenges in constructing a national legal system that is both identity-bearing and sovereign, given its diverse customary law traditions, Dutch colonial legal heritage, and exposure to global legal systems.[3] At this juncture, legal philosophy is not regarded as an abstract discipline disconnected from reality but as a critical thinking tool that assists lawmakers and law enforcers in deliberating and justifying their decisions.

The challenges facing Indonesian law enforcement are complex and multifaceted. Law enforcers must not only comply with statutes literally but also understand the underlying principles. Judges, prosecutors, the police, and lawyers must go beyond being mere 'mouths of the law' (la bouche de la loi) and develop the capacity to interpret the law with a focus on substantive justice.[4] Legal philosophy provides law enforcers with the intellectual tools to answer fundamental questions about justice, legal certainty, and the consequences of legal actions.

The role of legal philosophy is equally important in legislation formation. Every statute enacted by the legislature should reflect principles of truth, justice, and humanity rather than being merely the outcome of political compromise. According to Hans Kelsen's Pure Theory of Law (Reine Rechtslehre), every legal norm must be traceable to a higher norm, ultimately grounded in the grundnorm—the basic norm that underpins the entire legal order.[5]

A series of paradigmatic and transformative decisions by the Constitutional Court (Mahkamah Konstitusi) illustrate the role of legal philosophy in both law enforcement and legislation formation. As the guardian of the constitution, the Constitutional Court must assess whether statutes are substantively aligned with the foundational principles of the 1945 Constitution of the Republic of Indonesia.[6]

Constitutional Court Decision No. 62/PUU-XXII/2024, issued on 2 January 2025, declared Article 222 of Law No. 7 of 2017 on General Elections—which required political parties or coalitions to hold at least 20 percent of House of Representatives seats or 25 percent of national valid votes to nominate a presidential candidate—to be unconstitutional and without binding legal force.[7] This decision demonstrates how legal philosophy shapes judicial reasoning at the highest constitutional level in Indonesia.

The persistent problems of low public legal awareness, institutional corruption, and inequitable access to justice further underscore the importance of legal philosophy. In this context, legal philosophy functions to expose systemic injustice concealed beneath legal formalism, provide philosophical arguments for legal reform, and instil the understanding that law is an instrument for achieving justice rather than an end in itself.[8]

In accordance with Law No. 13 of 2022 on the Second Amendment to Law No. 12 of 2011 on Legislation Formation, a strong philosophical basis is required during the planning stage and in the

[2]W. Friedmann, Legal Theory, 5th ed. (New York: Columbia University Press, 1967).

[3]Mochtar Kusumaatmadja, Konsep-Konsep Hukum dalam Pembangunan (Bandung: Alumni, 2002).

[4]Satjipto Rahardjo, Hukum Progresif: Sebuah Sintesa Hukum Indonesia (Yogyakarta: Genta Publishing, 2009).

[5]Hans Kelsen, Pure Theory of Law, trans. Max Knight (Berkeley: University of California Press, 1967).

[6]Jimly Asshiddiqie, Pengantar Ilmu Hukum Tata Negara (Jakarta: Rajawali Pers, 2010)

[7]Constitutional Court of the Republic of Indonesia, Decision No. 62/PUU-XXII/2024, January 2, 2025.

[8]Mahfud MD, Hukum dan Pilar-Pilar Demokrasi (Yogyakarta: Gama Media, 1999).

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preparation of academic manuscripts. Every bill must have an academic foundation from philosophical, sociological, and juridical perspectives, indicating that every legal product must be rooted in systematic and intellectually accountable philosophical thought.[9]

B. Research Methodology

This study employs a normative juridical research method. The primary sources consist of primary legal materials (the 1945 Constitution, legislation, and Constitutional Court decisions), secondary legal materials (scholarly books, journal articles, and academic commentaries), and tertiary legal materials (legal dictionaries and encyclopaedias). The approach combines a philosophical-conceptual approach—examining the ideas of key legal philosophers—with a case study approach focused on Constitutional Court Decision No. 62/PUU-XXII/2024 as a concrete manifestation of legal philosophy in Indonesian judicial practice. Data were collected through library research and document analysis, then analysed qualitatively using prescriptive-analytical techniques.

C. Discussion and Analysis

1. The Concept of Legal Philosophy

Legal philosophy is the branch of philosophy that specifically focuses on fundamental questions concerning the nature, basis, and purpose of law. W. Friedmann defines legal philosophy as the science that studies questions about the nature, function, and foundations of law that cannot be answered solely by positive legal science.

Gustav Radbruch, one of the most celebrated legal philosophers of the twentieth century, defined legal philosophy as the field that studies law in relation to values and purposes. He characterised law as a cultural phenomenon (Kulturerscheinung) constituted by three interrelated core values: justice (Gerechtigkeit), legal certainty (Rechtssicherheit), and utility (Zweckmaessigkeit). [10] These three values frequently conflict with one another, and it is the task of legal philosophy to find ways of balancing them in contemporary social contexts.

Lili Rasjidi and Ira Thania Rasjidi provide a more practical delimitation, stating that legal philosophy studies questions related to the foundations of law: Why is law binding? What makes a statute valid? What is the relationship between justice and law? What is the relationship between ethics and law?[11] These are not technical legal questions but meta-legal questions necessary for a comprehensive understanding of law.

Soetikno defines legal philosophy as the science of law that goes beyond experience (transempirical), seeking to study the deepest aspects of law not accessible through empirical observation alone.[12] Legal philosophy questions not only what constitutes valid law (das Sein) but also what ought to constitute just and good law (das Sollen).

2. Scope and Objects of Legal Philosophy

The scope of legal philosophy encompasses several major themes that have attracted the attention of legal philosophers throughout history: ontological questions about the nature of law (What is law?), epistemological questions about the sources and means of acquiring legal knowledge,

[9]Soerjono Soekanto, Faktor-Faktor yang Mempengaruhi Penegakan Hukum (Jakarta: Raja Grafindo Persada, 2004).

[10]Gustav Radbruch, Rechtsphilosophie, 8th ed. (Stuttgart: K.F. Koehler Verlag, 1973)

[11]Lili Rasjidi and Ira Thania Rasjidi, Dasar-Dasar Filsafat dan Teori Hukum (Bandung: Citra Aditya Bakti, 2004).

[12]Soetikno, Filsafat Hukum Bagian I (Jakarta: Pradnya Paramita, 1976).

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axiological questions about the values law aims to achieve, and questions about the relationship between law and morality, politics, and society. These four dimensions are interrelated and form a unified field of study.[13]

In the context of Indonesian law, Muhammad Erwin argues that the scope of legal philosophy must be extended to include the study of the relationship between positive law and the principles of Pancasila as the philosophical foundation of the state, as well as the relationship between national law and customary law and local wisdom.[14] Pancasila contains rich philosophical values encompassing divinity, just and civilised humanity, national unity, people's sovereignty guided by wisdom, and social justice—each carrying significant implications for the legal order.

3. The Function of Legal Philosophy in Law Enforcement

Law enforcement is one of the most important components of any state legal system. Soerjono Soekanto describes law enforcement as the effort to create, maintain, and uphold peace in social life by integrating values expressed in legal norms and translating them into concrete social conduct. Lawrence M. Friedman analyses the legal system through three interrelated components: legal structure (institutions and processes), legal substance (rules and decisions), and legal culture (the attitudes, values, and beliefs of society towards law).[15]

Satjipto Rahardjo's concept of progressive law enforcement emphasises that the interests of human beings—justice and truth—must be the foundation of law. Rahardjo argues that overly mechanical and textual law enforcement can produce formalised injustice. To achieve substantive justice, judges and law enforcement officials must possess the courage to engage in innovative and contextual legal interpretation.

One of the most important functions of legal philosophy in law enforcement practice is providing the methodological and axiological foundation for legal interpretation. Paul Scholten, a leading Dutch legal scholar, observed that legal discovery (rechtsvinding) always involves a 'leap' (sprong) from text to context that requires the judge's philosophical and moral judgment.[16]

Sudikno Mertokusumo and A. Pitlo note that various approaches to legal interpretation each carry distinct philosophical foundations: grammatical interpretation is grounded in linguistic positivism; historical interpretation relies on legal hermeneutics; systematic interpretation draws on the idea that law constitutes a coherent structure; and teleological-sociological interpretation is underpinned by legal functionalism, which views law as a tool for achieving specific social goals.

The constitutional adjudication process at the Indonesian Constitutional Court demonstrates the use of multiple interpretive techniques grounded in legal philosophy. Constitutional justices do not merely interpret the text of the 1945 Constitution grammatically but also employ originalist, evolutionary, and value-based interpretive methods to extract the deepest philosophical meaning from each constitutional provision.

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[13]Notohamidjojo, Demi Keadilan dan Kemanusiaan: Beberapa Bab dari Filsafat Hukum (Jakarta: BPK Gunung Mulia, 1975).

[14]Muhammad Erwin, Filsafat Hukum: Refleksi Kritis terhadap Hukum dan Hukum Indonesia (Jakarta: Rajawali Pers, 2012).

[15]Lawrence M. Friedman, The Legal System: A Social Science Perspective (New York: Russell Sage Foundation, 1975).

[16]Paul Scholten, Mr. C. Asser's Handleiding tot de Beoefening van het Nederlands Burgerlijk Recht – Algemeen Deel (Zwolle: Tjeenk Willink, 1931).

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4. The Role of Legal Philosophy in Legislation Formation

Legislation formation is one of the most important tasks of a constitutional state (rechtsstaat). Maria Farida Indrati Soeprapto defines legislation formation as a process essentially comprising planning, preparation, drafting, formulation, deliberation, ratification, promulgation, and dissemination.[17] Legal philosophy plays a critical role at each stage, particularly in providing justification for the values and goals that regulations seek to achieve.

A. Hamid S. Attamimi laid the foundation for the idea that every statute must have a juridical, philosophical, and sociological basis. The philosophical basis requires that regulations reflect the fundamental values upheld by the nation, particularly the values of Pancasila.[18] Law No. 12 of 2011 on Legislation Formation enshrines this requirement by mandating that bills be accompanied by academic manuscripts (naskah akademik) containing explicit philosophical, sociological, and juridical grounds.[19]

Jazim Hamidi and Kemilau Mutik argue that the quality of a statute is determined not only by technical drafting precision but also by the depth of philosophical reflection underlying it. Statutes drafted without strong philosophical foundations tend to produce incoherent, unsystematic, and mutually contradictory rules.[20] Conversely, legislation grounded in robust philosophical foundations produces systematic, coherent rules capable of withstanding diverse social and constitutional challenges.

With respect to harmonisation of legislation, Lon L. Fuller identifies eight requirements for a legal system to qualify as 'law' in the full sense: generality, promulgation, non-retroactivity, clarity, non-contradiction, compliance possibility, constancy, and congruence between official action and declared rules.[21] These requirements collectively represent philosophical values of legal certainty that must guide the harmonisation of Indonesia's diverse regulatory landscape.

5. Constitutional Court Decision No. 62/PUU-XXII/2024: A Philosophical Analysis

Constitutional Court Decision No. 62/PUU-XXII/2024, issued on 2 January 2025, is one of the most historically significant and paradigmatic decisions ever rendered by the Indonesian Constitutional Court since its establishment in 2003. The decision was based on a petition for judicial review of Article 222 of Law No. 7 of 2017 on General Elections, which required political parties or coalitions to hold a minimum of 20 percent of House of Representatives seats or 25 percent of national valid votes to nominate a presidential candidate (the presidential threshold).

The ratio decidendi of this decision rests on multiple legal philosophical foundations. First, the Court employed the argument of popular sovereignty: in a constitutional democracy constructed by the 1945 Constitution, the right of the people to elect and be elected must be restricted only by proportionate and strongly justified reasons. The Court regarded the presidential threshold—requiring specific party support as a precondition for nominating presidential candidates—as a disproportionate restriction on popular sovereignty.

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[17]Maria Farida Indrati Soeprapto, Ilmu Perundang-Undangan: Jenis, Hierarki, dan Materi Muatan (Yogyakarta: Kanisius, 2007).

[18]A. Hamid S. Attamimi, Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintahan Negara (Jakarta: Disertasi Doktor UI, 1990).

[19]Law of the Republic of Indonesia Number 12 of 2011 on Legislation Formation, as amended by Law Number 13 of 2022, Article 5.

[20]Jazim Hamidi and Kemilau Mutik, Legislative Drafting (Yogyakarta: Total Media, 2011).

[21]Lon L. Fuller, The Morality of Law, rev. ed. (New Haven: Yale University Press, 1969).

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Second, the Court applied the theory of constitutional rights, concluding that the presidential threshold violated the constitutional rights of small and medium-sized political parties that could never fulfil the 20 percent seat or 25 percent vote requirements. Jimly Asshiddiqie notes that constitutional rights guaranteed by the constitution may be restricted by law only in a proportionate and legitimately justified manner.

Third, the Court reinforced its reasoning through the lens of multiparty democracy and pluralist democracy theory. It declared that Indonesia's multiparty system reflects diverse ideologies, interests, and social groups, and that the presidential threshold effectively fostered a party oligarchy inconsistent with the pluralist democratic spirit guaranteed by the 1945 Constitution.

From the perspective of John Rawls's theory of justice as fairness, this decision closely aligns with the principle of equal liberty: every citizen must have equal rights to participate in political processes, including in choosing candidates for public office.[22] A presidential threshold that systematically advantages large parties and disadvantages small ones contravenes Rawls's equal liberty principle.

From Ronald Dworkin's perspective of rights as trumps, the decision recognises that the constitutional rights of citizens and political parties to participate in presidential elections are fundamental rights that cannot be overridden by utilitarian considerations of political stability or governmental efficiency.[23]

Through the lens of Satjipto Rahardjo's progressive law, the decision exemplifies judges who are willing to make a legal breakthrough (terobosan hukum) to achieve substantive justice. For more than a decade, the Court had consistently rejected petitions challenging the presidential threshold, treating it as open legislative policy. In 2024, the Court overruled its prior jurisprudence, reflecting the spirit of legal progressivism that places justice above procedural formalism.

In terms of its implications for legislation formation, the decision—as res judicata with the force of law—compels the government to immediately revise Law No. 7 of 2017 on General Elections to align its provisions on presidential nomination with the Court's ruling. This legislative revision obligation demonstrates how constitutionally grounded judicial decisions directly drive legislative reform.

D. Conclusion

Legal philosophy is the branch of philosophy that critically examines fundamental questions concerning the nature, basis, and purpose of law that cannot be resolved by positive legal science alone. Its scope encompasses ontological, epistemological, and axiological dimensions of law. In the Indonesian context, legal philosophy is uniquely anchored in Pancasila as the ultimate source of all law, encompassing values of divinity, just and civilised humanity, national unity, people's sovereignty, and social justice.

Legal philosophy performs at least four indispensable functions in Indonesian law enforcement. The first is the methodological function: providing the conceptual framework for judges and law enforcement officials to conduct legal interpretation oriented towards substantive justice rather than mere formal compliance. The second is the critical function: offering the perspective needed to expose and correct injustice concealed behind legal formalism. The third is the

[22] John Rawls, A Theory of Justice (Cambridge: Harvard University Press, 1971).

[23] Ronald Dworkin, Taking Rights Seriously (Cambridge: Harvard University Press, 1977).

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transformative function: inspiring and legitimising legal reform. The fourth is the integrative function: providing normative principles that serve as standards for the harmonisation of laws and regulations.

Legal philosophy exerts a significant and concrete influence on the Indonesian legislative process through several mechanisms. First, through the requirement of a philosophical basis (philosophische grondslag) in the academic manuscript, which compels legislators to explicitly identify and articulate the moral and ethical values underpinning every bill. Second, through the principles of good legislation formation, which crystallise philosophical values of utility, legal certainty, and justice. Third, through the Constitutional Court's judicial review process, which employs philosophical-constitutional reasoning to evaluate and invalidate statutes incompatible with constitutional principles.

Constitutional Court Decision No. 62/PUU-XXII/2024 provides a vivid illustration of all four functions of legal philosophy in action. By declaring the presidential threshold unconstitutional through substantive reasoning grounded in popular sovereignty, constitutional rights theory, pluralist democracy theory, and the progressive law paradigm, the Court demonstrated that justice cannot be achieved through textual compliance alone. A profound understanding of legal philosophy is indispensable for any legal system that aspires to be not merely valid, but genuinely just.

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