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The Philosophical Construction of Legal Justice by John Rawls and Gustav Radbruch and Its Relevance in The Context of The Indonesian Legal System

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Abstract: *This study aims to examine the philosophical construction of legal justice proposed by John Rawls and Gustav Radbruch and to analyze its relevance within the context of the Indonesian legal system. The study employs a qualitative approach using a literature review method of the primary works of both thinkers, namely a theory of justice by John Rawls and* Statutory Lawlessness and Supra-Statutory Law *by Gustav Radbruch. Data were collected through a literature review and analyzed using categorization techniques to facilitate a comprehensive comparative analysis. The findings indicate that Rawls's concept of* justice as fairness *emphasizes the importance of equal basic liberties, fair equality of opportunity, and the protection of the least advantaged groups. Meanwhile, Radbruch asserts that law must integrate the values of justice, legal certainty, and expediency, and rejects the validity of positive law that clearly contradicts principles of justice. The analysis of both theories shows that each offers relevant ideas for the development of the Indonesian legal system, particularly in realizing a just and responsive legal order while ensuring legal certainty. The implication of these findings is that the philosophical thoughts of John Rawls and Gustav Radbruch have the potential to serve as foundational principles in legal reform efforts and in strengthening the principles of justice within the Indonesian legal system.*
Keywords: *Legal Justice, John Rawls, Gustav Radbruch, Indonesian Legal System*

Abstrak: Penelitian ini bertujuan untuk mengkaji konstruksi filosofis keadilan hukum yang dikemukakan oleh John Rawls dan Gustav Radbruch serta menganalisis relevansinya dalam konteks sistem hukum Indonesia. Penelitian menggunakan pendekatan kualitatif dengan metode studi kepustakaan terhadap karya-karya utama kedua pemikir, yaitu teori keadilan karya John Rawls dan Statutory Lawlessness and Supra-Statutory Law karya Gustav Radbruch. Data penelitian dikumpulkan melalui telaah literatur dan dianalisis menggunakan teknik kategorisasi untuk mempermudah analisis komparatif secara mendalam. Hasil penelitian menunjukkan bahwa konsep justice as fairness yang dikembangkan Rawls menekankan pentingnya kebebasan dasar yang setara, persamaan kesempatan yang adil, dan perlindungan terhadap kelompok yang kurang beruntung. Sementara itu, Radbruch menegaskan bahwa hukum harus mengintegrasikan nilai keadilan, kepastian hukum, dan kemanfaatan, serta menolak berlakunya hukum positif yang secara nyata bertentangan dengan prinsip keadilan. Analisis terhadap kedua teori menunjukkan bahwa masing-masing menawarkan gagasan yang relevan bagi pengembangan sistem hukum Indonesia, khususnya dalam mewujudkan hukum yang berkeadilan, responsif terhadap kebutuhan masyarakat, serta tetap menjamin kepastian hukum. Implikasi dari temuan ini menunjukkan bahwa pemikiran John Rawls dan Gustav Radbruch berpotensi dijadikan dasar filosofis dalam upaya pembaruan hukum serta penguatan prinsip-prinsip keadilan dalam sistem hukum Indonesia
Kata Kunci: Keadilan Hukum, John Rawls, Gustav Radbruch, Sistem Hukum Indonesia

Introduction

Legal justice, as the main foundation for the functioning of a fair legal system, is a central focus in the discourse of legal philosophy.[1] In the effort to formulate a concept of justice applicable to various legal systems, including Indonesia, diverse perspectives emerge, enriching discussions on justice principles.[2] Two significant thinkers in the realm of legal philosophy, John Rawls and Gustav Radbruch, emerge as central figures contributing significantly to the theoretical foundation of legal justice.

In the context of Indonesia, like many other countries, it grapples with complex legal issues requiring in-depth scrutiny through the lens of the legal justice philosophies of John Rawls and Gustav Radbruch. Serious challenges, such as the widespread social and economic disparities in Indonesia, uneven access to the judicial system[3] and notably, corruption–exemplified by the Chairman of the Corruption Eradication Commission (KPK) facing extortion charges[4] pose a significant alarm for

[1]Bahder Johan Nasution, "Kajian Filosofis Tentang Hukum Dan Keadilan Dari Pemikiran Klasik Sampai Pemikiran Modern," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 11, no. 2 (2017), https://doi.org/10.19105/al-lhkam.v11i2.936;

[2]David Luban and Bradley Wendel, "Philosophical Legal Ethics: An Affectionate History," *Revista de Derecho* 33, no. 2 (2020); Jerzy Zajadło, "Axiology of Law – from General to Specific Philosophy of Law," *Studia Iuridica Lublinensia* 32, no. 4 (2023), https://doi.org/10.17951/sil.2023.32.4.191-217.

[3]Bustamin Bustamin et al., "Reformasi Birokrasi Pengadilan Agama Di Indonesia: Apakah Hanya Sekedar Formalitas ?," *Transparansi : Jurnal Ilmiah Ilmu Administrasi* 5, no. 2 (2022): 30–36, https://doi.org/10.31334/transparansi.v5i2.2659.

[4]BBC News Indonesia, "Firli Bahuri Jadi Tersangka Pemerasan, Presiden Jokowi Segera Tunjuk Ketua KPK Sementara," BBC News Indonesia, 2023, 1, https://www.bbc.com/indonesia/articles/c84312ew4vgo.

the Indonesian legal system. These are chronic issues affecting the continuity of justice in Indonesia.

Based on these challenges, the philosophical thoughts on justice by Rawls and Radbruch are relevant as a lens to examine the context of the legal system in Indonesia. Rawls and Radbruch play a central role in providing significant contributions to the theoretical construction of legal justice. In his monumental work, "A Theory of Justice," Rawls proposes the concept of equality and resource distribution as key elements of justice.[5] On the other hand, Gustav Radbruch, with the concept of "Statutory Lawlessness and Supra-Statutory Law," offers a critical perspective on positive law, emphasizing the role of justice in transforming social structures.[6] Thus, this article aims to elucidate the philosophical constructions presented by John Rawls and Gustav Radbruch and their relevance in the context of the Indonesian legal system.

At this juncture, the article will delve into the philosophical constructions of legal justice advocated by John Rawls and Gustav Radbruch, examining their relevance in the context of the Indonesian legal system. The focus of this article is specifically on the philosophical constructions of legal justice proposed by Rawls and Radbruch, with the aim of detailing and understanding the conceptual and theoretical aspects of these two philosophers' thoughts. Additionally, this study is concentrated on analyzing the relevance of Rawls and Radbruch's legal justice theories within the context of the Indonesian legal system. The goal is to explore how these theories can be applied and to what extent they align or require adjustments in the legal reality of Indonesia.

This article employs a qualitative approach to delve into the philosophical constructions of legal justice by John Rawls and Gustav Radbruch and evaluate their relevance in the context of the Indonesian legal system.[7] The primary data sources include original writings, books, and papers authored by John Rawls and Gustav Radbruch. The analysis will encompass works such as "A Theory of Justice" by Rawls and "Statutory Lawlessness and Supra-Statutory Law" by Radbruch. Additionally, legal and philosophical literature discussing the application of legal justice concepts in the Indonesian context will be included.[8]

The data will be collected through textual analysis of Rawls and Radbruch's original writings. An in-depth understanding will be obtained by identifying and synthesizing the key concepts within their works. The collected data will be systematically organized using a categorization method to separate the main concepts from the philosophies of Rawls and Radbruch. Subsequently, data management will

[5]John Rawls, *A Theory of Justice, Harvard Paperback* (Harvard University Press, 2009); Markus Marselinus Soge, "Release and Social Reintegration of Prisoners from the Perspective of John Rawls' Theory of Justice," *Law Review*, no. 2 (2022), https://doi.org/10.19166/lr.v0i2.6034; Soge; D. D. Raphael, H. Gene Blocker, and Elizabeth H. Smith, "John Rawls' Theory of Social Justice: An Introduction.," *The Philosophical Quarterly* 32, no. 127 (1982), https://doi.org/10.2307/2960091.

[6]Gustav Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)," *Oxford Journal of Legal Studies* 26, no. 1 (2006): 1–11, https://doi.org/10.1093/ojls/gqi041.

[7]Lexy J. Moleong, *Metode Penelitian Kualitatif* (Bandung: Remaja Rosdakaya, 2007).

[8]Sugiono, *Metodelogi Penelitian Kuantitatif Kualitatif Dan R&D* (Bandung: Alfabeta, 2015).

involve creating categorizations to facilitate comparative analysis. The aim is to generate a profound understanding of the philosophical constructions of legal justice by Rawls and Radbruch, as well as their relevance in the context of the Indonesian legal system.[9]

John Rawls Theory of Justice

John Rawls, born in Baltimore in 1921 and passing away in 2002, was full name was John Borden Rawls. In his youth, after completing his studies at Princeton, Rawls faced challenging experiences as a soldier. He witnessed events in the Pacific region, being stationed in New Guinea, the Philippines, and Japan, even present in the Pacific during the American bombing of Hiroshima in 1945.[10]

Five years after the bombing incident, Rawls vehemently criticized the actions through his article in the American political journal, Dissent. While at Harvard University in the 1960s, he actively participated in the anti-war campaign during the Anti-War Conference in Washington when the United States was involved in efforts to control Vietnam.[11]

Feeling that war contradicted his moral principles and values, John Rawls decided to leave the military in 1946. Subsequently, he returned to his alma mater, Princeton University, to write his doctoral dissertation in moral philosophy. In 1949, Rawls married Margaret Fox, a scholar and painter, and they were blessed with five children. At the end of his studies in 1949-50, Rawls took courses in political theory, which later became the foundation for his monumental work on justice, "A Theory of Justice," published in 1971. This book became one of the most influential philosophical works of the 20th century, receiving widespread responses and comments not only from philosophers but also from economists and political experts.[12]

Recognized as Rawls's major work in ethics addressing social justice issues, "A Theory of Justice" has undergone more than 22 reprints since its initial publication in 1971. In the book's introduction, Rawls conveyed his writing's purpose by explaining his socio-ethical position and advocating moral views and coverage for individuals in society.[13] He proposed the idea that socio-political institutions are suitable objects for moral assessment. His theory provided an effective method for addressing moral issues. Following the publication of this monumental work, Rawls continued to actively write articles and papers to defend and explain his theory. His ideas were also

[9]Muhammad Abdul Kadir, *Hukum Dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2004); Ahmad Sutedi, *Metodologi Penelitian Hukum: Pendekatan Normatif Dan Socio-Legal* (Bandung: Refika Aditama, 2020).

[10]Peter T. Leeson, "The Laws of Lawlessness," *Journal of Legal Studies* 38, no. 2 (2009), https://doi.org/10.1086/592003.

[11]Ari Hernawan, "Industrial Relations In The Perspective Of Justice Theory By John Rawls," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 26, no. 2 (2014), https://doi.org/10.22146/jmh.16042; Pan Mohamad Faiz, "Teori Keadilan John Rawls," *Jurnal Konstitusi* 6, no. 1 (2009).

[12]Faiz, "Teori Keadilan John Rawls."

[13]Raphael, Blocker, and Smith, "John Rawls' Theory of Social Justice: An Introduction."

discussed in various symposiums and seminars, receiving responses from various thinkers such as Robert Paul Wolff, Michael Sandel, William Galston, Brian Barry, Patrick Rior, and Ross Poole.[14]

His progressive and revolutionary thinking gave birth to what he termed the Theory of Justice. Rawls demonstrated boldness by presenting statements offering a higher level of abstraction than before, surpassing renowned thinkers such as John Locke, J.J. Rousseau, and Immanuel Kant. This courage and conviction propelled Rawls to become one of the prominent philosophers of the 20th century. His ideas sparked serious debates between communitarianism and liberalism.[15] His works can be likened to rain in the philosophical drought of that political era. Yet, the impact of Rawls's thinking extends beyond politics; like other philosophers, his works significantly influence various fields, including social theory, law, economics, culture, and even theology.

In his justice theory, Rawls attempts to describe two principles of distributive justice in an understandable manner. *Firstly*, the principle of the greatest equal liberty, meaning everyone should have an equal right to the broadest basic freedoms, to the extent that these freedoms are the same for everyone. This is the most fundamental basic right that everyone should possess, emphasizing equality of rights. The principle of the greatest equal liberty, or the principle of equal rights, guarantees the same rights and is naturally connected to the burdens of obligations that everyone has. In essence, it ensures that justice can be achieved only by ensuring that everyone has the same freedom to contract.[16]

Secondly, social and economic disparities should be arranged to consider two principles: the difference principle and the principle of fair opportunity. These principles aim to provide the greatest benefit to those less fortunate, asserting that, under the same conditions and opportunities, all positions and roles should be open to everyone (Objective Difference Principle). The difference principle and the principle of fair opportunity are objective difference principles, meaning both ensure the proportionality of the exchange of rights and obligations so that these differences can be accepted fairly and objectively, meeting the criteria of honesty and equality. Thus, the first and second principles cannot be separated from each other. According to the proportionality principle, Rawlsian justice will be achieved if both conditions are applied comprehensively.[17] With a strong emphasis on the importance of providing equal opportunities for all parties, Rawls strives to avoid the extremes of capitalism on one side and socialism on the other. In situations of conflict, Rawls asserts that the

[14]Faiz, "Teori Keadilan John Rawls."

[15]Ana Carla Coelho Bessa and Nestor Eduardo Araruna Santiago, "An Interface between the Theory of Justice of John Rawls and the Restorative Justice as Criminal Policy," *Sequencia* 43, no. 92 (2022), https://doi.org/10.5007/2177-7055.2022.e70556.

[16]Maulana Fahmi Idris, "Access to Justice for Disability in the Perspective of John Rawls Theory (Case of Demak Regecy Indonesia)," *Journal of Law and Legal Reform* 2, no. 3 (2021), https://doi.org/10.15294/jllr.v2i2.46486.

[17]Hernawan, "Industrial Relations In The Perspective Of Justice Theory By John Rawls."

principle of the greatest equal liberty should take precedence over the difference principle and the principle of fair opportunity. Meanwhile, the principle of fair opportunity should take precedence over the difference principle.[18]

One of the key concepts underpinning Rawls's two principles of justice is the idea of the *original position* and the *veil of ignorance*. Rawls envisions a hypothetical situation in which rational individuals are asked to formulate the basic principles of justice without knowing their own position in society, whether their social status, economic class, natural talents, religion, or political views. Under this condition of ignorance, Rawls argues that everyone would choose principles that are fair and safe for all, since they cannot specifically advantage themselves. This mechanism functions as a philosophical tool to ensure that the resulting principles of justice are impartial, rational, and not biased toward any particular group.

In developing his theory, Rawls also introduced the method of *reflective equilibrium* to test and refine the principles of justice. This method involves a back-and-forth process between moral intuitions, rational considerations, and theoretical principles until a consistent alignment is achieved. In other words, Rawls does not regard the principles of justice as final dogmas, but rather as the result of an ongoing process of critical reflection. This approach demonstrates that Rawls's theory of justice is dynamic, open to revision, and grounded in a reasonable practice of moral reasoning in real life.

In his later work, particularly in *Political Liberalism* (1993), Rawls developed the idea of *overlapping consensus* to respond to criticisms that his theory relied too heavily on a single moral perspective. He argued that in a pluralistic society composed of various religious, philosophical, and moral doctrines, political justice must be based on principles that can be accepted by these diverse views. Thus, social stability does not depend on moral uniformity, but on a rational political agreement among citizens who hold different beliefs. This idea extends the relevance of Rawls's theory from merely a moral theory to a normative foundation for a modern, plural, and inclusive democracy.[19]

In sum, John Rawls's conception of justice represents a rigorous and influential attempt to reconcile freedom, equality, and fairness within a pluralistic society. Through the original position and veil of ignorance, he provides a rational and impartial framework for selecting principles of justice, while reflective equilibrium ensures that these principles remain open to critical scrutiny and refinement. His two principles of justice balance equal basic liberties with fair social and economic arrangements that benefit the least advantaged and guarantee equal opportunity. Furthermore, with the idea of overlapping consensus, Rawls extends his theory beyond moral philosophy to offer a stable normative foundation for democratic societies

[18]Rawls, *A Theory of Justice, Harvard Paperback*; Faiz, "Teori Keadilan John Rawls."

[19]John Rawls, *Political Liberalism, The John Dewey Essays in Philosophy 4* (New York: Columbia University Press, 1993).

marked by diversity, demonstrating that justice can be both principled and compatible with reasonable pluralism.

Gustav Radbruch's Theory of Justice

Gustav Radbruch, born on November 21, 1878, in Lübeck, Germany, and passing away on November 23, 1949, in Heidelberg, Germany, was a distinguished philosopher and legal scholar. His life and contributions to the legal world had a significant impact on contemporary legal thought, particularly through the theory of justice known as "Radbruch's theory of justice." [20]

Radbruch spent most of his career as a law professor at several leading universities in Germany, including Heidelberg and Königsberg. His outstanding education and expertise in law earned him a reputation as one of the most influential legal thinkers of his time.[21] One of Radbruch's most important contributions to the legal world is the development of the theory of justice, which has become a cornerstone for many discussions in modern legal and legal philosophy. This theory is notably famous in the discourse on the conflict between positive law and justice.[22]

Gustav Radbruch's life was shaped not only by academic achievement but also by deep political and historical experiences. He was an active member of the Social Democratic Party (SPD) and served as Germany's Minister of Justice during the Weimar Republic, where he helped promote legal reforms, including expanding women's access to the justice system and strengthening protections against political violence. After the Nazi regime came to power in 1933, Radbruch was removed from his university position because of his political background and was barred from public academic work. During this period, he focused on cultural and historical studies and spent time in England at Oxford. The trauma of World War II and the misuse of law under totalitarianism strongly influenced his later thinking, leading him to develop ideas emphasizing that extreme injustice should not be recognized as valid law.

According to Radbruch, there are three essential elements in law: justice (related to philosophy), legal certainty (related to law itself), and societal benefits (related to sociology). In his view, these three values must be fundamental to our understanding of the law to ensure an orderly society. Society always desires an orderly state, and to achieve this, the law must provide justice, benefits, and legal

[20]Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946).."; T. Britannica, "Gustav Radbruch," in *Encyclopedia Britannica* (Encyclopedia Britannica, 2023).

[21]Supriadi Wibowo, "Tiga Nilai Dasar Hukum Dalam Perspektif Gustav Radbruch Dan Relevansinya Terhadap Penegakan Hukum Di Indonesia," *Jurnal Hukum Ius Quia Iustum – Universitas Islam Indonesia* 29, no. 3 (2022).

[22]Tristam Pascal Moeliono and Tanius Sebastian, "Tendensi Reduksionis Dan Utilitarianis Dalam Ilmu Hukum Indonesia: Membaca Ulang Filsafat Hukum Gustav Radbruch," in *Konferensi Ke 5 Asosiasi Filsafat Hukum Indonesia (AFHI), Solo, 17-18 November 2015*, 2015; Gustav Radbruch and Tristam P Moeliono, "Tendensi Reduksionis Dan Utilitarianis Dalam Ilmu Hukum Indonesia :," *Jurnal Filsafat Hukum*, 2015.

certainty.[23] Therefore, according to Radbruch, the primary purpose of the law is to achieve justice, benefits, and legal certainty.

In the pursuit of these goals, it is crucial to prioritize among these three fundamental values. This is reasonable because sometimes, to achieve justice, the law may contradict benefits and legal certainty. Conversely, legal certainty may sometimes override justice and benefits. The priority order taught by Radbruch is: first, Legal Justice; second, Legal Benefits; and third, only then, Legal Certainty. By establishing such priorities, it is hoped that the legal system can resolve conflicts arising from these three legal values. [24] For Radbruch, justice means fair, impartial treatment, supporting what is right, not favoring any party, not harming anyone, and providing equal treatment to all according to their rights. Benefits mean the law must provide advantages to the entire society that needs them, benefiting both those who feel aggrieved and those who do not. Legal decisions must be felt by both parties. Legal certainty means that legal provisions or judicial decisions must be based on clear, consistent, organized, and coherent rules and not influenced by subjectivity.[25] Radbruch believed that the law must be able to integrate these three goals, with legal justice being the top priority, followed by legal benefits, and only then legal certainty.

Radbruch's legal thought was also deeply shaped by his historical experience, particularly the rise and fall of the Nazi regime in Germany. Witnessing how a formally valid legal system could be used to justify extreme injustice led him to critically reconsider the relationship between law and morality. This historical context is crucial for understanding why Radbruch placed such strong emphasis on justice as the highest legal value. His reflections were not merely abstract philosophical speculation but were grounded in real political and legal failures that demonstrated the dangers of an overly rigid commitment to legal certainty at the expense of moral principles.

Statutory Lawlessness and Supra-Statutory Law are a concept developed by Gustav Radbruch in his 1946 essay responding to the misuse of law during the Nazi regime. Radbruch criticized extreme legal positivism summarized in the phrase "a law is a law," arguing that blind obedience to statutes had allowed immoral and oppressive laws to function as if they were legitimate law. He introduced the idea of statutory lawlessness (*gesetzliches Unrecht*) to describe situations where a statute exists formally but is so unjust that it loses its nature as law, especially when it deliberately violates equality and basic justice. According to Radbruch, law must serve justice as its core purpose, and when a statute completely abandons that purpose, it should no

[23]Widodo Dwi Putro and Adriaan W. Bedner, "Ecological Sustainability from a Legal Philosophy Perspective," *Journal of Indonesian Legal Studies* 8, no. 2 (2023), https://doi.org/10.15294/jils.v8i2.71127.

[24]Wibowo, "Tiga Nilai Dasar Hukum Dalam Perspektif Gustav Radbruch Dan Relevansinya Terhadap Penegakan Hukum Di Indonesia."

[25]Petar Popovic, "Reading Finnis and Aquinas on Justice as the Evaluative Standard for Positive Law," *American Journal of Jurisprudence* 68, no. 1 (2023), https://doi.org/10.1093/ajj/auad005; Ismail Rumadan, "Problematika Eksekusi Putusan Pengadilan Tata Usaha Negara," *Jurnal Hukum Dan Peradilan* 1, no. 3 (2012), https://doi.org/10.25216/jhp.1.3.2012.435-462.

longer be treated as valid law.At the same time, Radbruch proposed the idea of supra-statutory law (*übergesetzliches Recht*)—moral or fundamental legal principles that stand above written statutes. These include core ideas such as human rights and basic justice that judges can rely on when statutory law becomes intolerably unjust.

This concern later gave rise to what is known as the "Radbruch Formula," a key aspect of his theory that has had lasting influence in legal philosophy and constitutional law. According to this formula, when the conflict between statutory law and justice reaches an intolerable level—such that the law becomes "extreme injustice"—then such law loses its validity and must give way to justice. In other words, legal rules that fundamentally violate basic principles of fairness and human dignity cannot be considered true law. This idea has been widely discussed and applied, particularly in post-World War II legal debates regarding the prosecution of Nazi officials who acted under formally valid but morally reprehensible laws.[26]

Furthermore, Radbruch's theory highlights the dynamic and value-laden nature of law, rejecting the purely positivist view that law is simply a neutral system of rules. For him, law is inherently connected to ethical and social considerations, requiring constant balancing among justice, benefit, and legal certainty. This perspective has significantly influenced modern legal theory by encouraging jurists, judges, and scholars to view law not only as a technical instrument but also as a moral and social institution that must serve human dignity, social welfare, and fairness within a structured and predictable legal framework.

In conclusion, Gustav Radbruch's legal philosophy offers a profound and balanced framework for understanding the nature and purpose of law by emphasizing the interrelationship between justice, legal benefits, and legal certainty. Drawing from his historical experience, particularly under the Nazi regime, Radbruch demonstrated that law cannot be separated from morality and that legal certainty must not be used to justify extreme injustice. Through the Radbruch Formula, he established that unjust laws that violate fundamental principles of fairness and human dignity cannot be considered valid law. Ultimately, Radbruch's thought highlights that law is not merely a technical system of rules but a value-laden institution that must continuously strive to achieve justice while maintaining social order and legal stability.

Actualization and Relevance of Legal Justice Philosophy by John Rawls and Gustav Radbruch in the Context of the Legal System in Indonesia

At its core, the essence of Rawls and Radbruch's thought lies in the idea that justice must stand above mere legal formalism. Rawls emphasizes fairness through equal basic rights and the protection of the most disadvantaged members of society, while Radbruch stresses that law loses its validity when it contradicts fundamental principles of justice and humanity. Combined, their perspectives suggest that justice can be upheld when legal systems not only enforce written rules but also ensure moral

[26]B. H. Bix, "Radbruch's Formula and Conceptual Analysis," *The American Journal of Jurisprudence* 56, no. 1 (2011), https://doi.org/10.1093/ajj/56.1.45.

legitimacy, protect human dignity, and prioritize fairness over rigid legal certainty when the two are in conflict. The philosophy of legal justice, as the primary foundation for the establishment of a fair legal system[27], plays a crucial role in addressing legal dynamics in Indonesia. The concepts of justice proposed by two prominent figures in the world of legal philosophy, John Rawls and Gustav Radbruch, are highly relevant for actualization within the complex legal system context of Indonesia.

In his work "A Theory of Justice," John Rawls articulates the principle of justice as equality and the distribution of resources. His perspective opens opportunities to reassess the distribution of justice within the Indonesian legal system, still haunted by significant social and economic disparities. In the context of uneven justice distribution, Rawls introduces the theory of distributive justice. According to Rawls, distributive justice relates to the allocation of resources and benefits in society [28]. This theory comprises two main principles: the Principle of Equal Basic Liberties and the Fair Difference Principle.[29]

Regarding the Principle of Equal Basic Liberties, Rawls argues that every individual has an equal right to the basic system of fair political and social freedoms.[30] In the context of Indonesian society, this implies that every citizen has an equal right to access and enjoy basic freedoms such as freedom of speech, assembly, and equal political rights. On the other hand, the Fair Difference Principle states that social and economic inequalities are acceptable as long as they benefit the least advantaged in society.[31] In the context of resource distribution in Indonesia, the question arises: How can the allocation of resources provide the greatest benefit to the most vulnerable and least advantaged group?

In analyzing this question, Rawls' theory emphasizes the importance of prioritizing the well-being of those in the lowest positions. The distribution of resources must be designed to maximize the benefit for the most vulnerable groups, such as economically weak groups, indigenous communities, or minority groups. This means that resource distribution policies should focus on enhancing the well-being of the less advantaged groups, as Rawls argues that justice is fairness.[32] Simultaneously, he defines justice as the goodness of social institutions, and in distributive justice, it must be positioned as the original position formed from the reflective equilibrium conditions based on the values of freedom, rationality, and equality.[33]

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[27]Ronald Dworkin, *Justice in Robes* (Harvard University Press, 2008).

[28]Jeppe Platz, *Theories of Distributive Justice: Who Gets What and Why* (Routledge, 2020).

[29]Pablo Aguayo Westwood, "Self-Respect and the Justification of Rawlsian Principles of Justice," *Ethics and Social Welfare* 15, no. 3 (2021): 232–45, https://doi.org/10.1080/17496535.2021.1915355.

[30]Timothy Waligore, "Rawls, Self-Respect, and Assurance," *Politics, Philosophy & Economics* 15, no. 1 (2016), https://doi.org/10.1177/1470594x15599100.

[31]Philippe Mongin and Marcus Pivato, "Rawls's Difference Principle and Maximin Rule of Allocation: A New Analysis," *Economic Theory* 71, no. 4 (2021), https://doi.org/10.1007/s00199-021-01344-x.

[32]John Rawls, *Justice as Fairness: A Restatement* (Harvard University Press, 2001).

[33]Devon Cass, "The Priority of Liberty: An Argument from Social Equality," *Law and Philosophy* 40, no. 2 (2021), https://doi.org/10.1007/s10982-020-09393-4.

Thus, Rawls sees the State as a determinant element to uphold justice.[34] Consequently, all instruments within the State must reflect justice. Radically, this justice must be applied in the system of each instrument, providing equal opportunities regardless of class and economic differences.[35] In the context of the chairman of the Corruption Eradication Commission (KPK) committing corruption, it should not be considered based on their position. However, in Rawls' perspective, the chairman of the KPK who commits corruption is in the same legal position as an ordinary citizen. Therefore, they must be subject to the sanctions stipulated by the law.

In its actualization process, the concept of Rawlsian justice may not fully resonate in the Indonesian context. In other words, Rawls's concept of legal justice must be adapted to the socio-cultural conditions of a country.[36] This is because Rawls interprets justice as equal and free to the widest extent, with the condition that one holds the position of a legitimate Indonesian citizen. If this were to be actualized, it would be highly inconsistent with the character of Indonesian society, as reflected in the principles of Pancasila, which include belief in the one and only God and a just and civilized humanity. Hence, these principles indicate that Indonesian society adheres to humane values, such as a friendly attitude and a willingness to help anyone regardless of background. This is often demonstrated by native communities welcoming undocumented Rohingya immigrants. At this juncture, Amartya Sen criticizes Rawls's justice as a closed impartiality that can only be applied to states strictly adhering to egalitarian liberal principles[37], whereas Indonesia is not a liberal state, where freedom does not mean absolute freedom.

On the other hand, Gustav Radbruch, through the concept of "Statutory Lawlessness and Supra-Statutory Law," provides critical insights into positive law, emphasizing the importance of justice in social transformation. In Indonesia, issues of corruption and unequal access to the judicial system remain serious concerns. Radbruch's concept serves as crucial contemplation to view justice as the key to transforming social structures for the better.

These actions need to be recognized as inherently having legal certainty in the form of agreed-upon and legislated regulations. Issues such as corruption have been addressed in the Indonesian legal framework through laws such as Law Number 8 of 1981 on Criminal Procedure Law; Law Number 28 of 1999 concerning State Administration Free from Corruption, Collusion, and Nepotism; and Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. On the other hand, the distribution of natural resources in the 1945 Constitution Article 33 paragraph (3) stipulates, "the earth and water and the natural wealth contained therein are

[34]ALEXANDER RAWLS, "A Theory of Justice with Claims of Desert.," *Independent Review* 26, no. 3 (2021): 333–60.

[35]Kevin Vallier, "Rawls, Piketty, and the Critique of Welfare-State Capitalism," *Journal of Politics* 81, no. 1 (2019): 142–52, https://doi.org/10.1086/700108.

[36]Jason Brennan, "Against the Moral Powers Test of Basic Liberty," *European Journal of Philosophy* 28, no. 2 (2020): 492–505, https://doi.org/10.1111/ejop.12497.

[37]Amartya Sen, *The Idea of Justice* (Harvard University Press, 2011).

controlled by the state and are used for the greatest prosperity of the people." Simultaneously, a non-partisan judicial system is regulated in Article 28 D paragraph (1) of the 1945 Constitution, stating, "Everyone has the right to recognition, guarantees, protection, and legal certainty as well as fair and equal treatment before the law."

However, ironically, the established legal certainty does not seem to breathe fresh air into legal developments in Indonesia.[38] Issues of legal prostitution continue to occur, even affecting legal experts and law enforcement. According to the Corruption Perceptions Index, Indonesia ranks 110 out of 180 countries, dropping from a score of 38 to 34.[39] The regulated legal certainty cannot eliminate the culture of corruption, and suspects, even after a long time of processing, sometimes escape .[40] Take Harun Masiku as an example.[41] What is wrong with the principle of legal certainty embraced?

The purpose of law must be understood. Thus, the mindset of legal certainty must shift towards justice. For him, the Primacy of Justice over Legal Certainty principle states that justice holds higher value than legal certainty.[42] If a law or legal decision contradicts fundamental moral justice principles, justice must take precedence.[43] This means that in situations where positive law contradicts fundamental moral principles, the law must be adjusted to achieve justice.

In the context of Indonesia, rich in local wisdom in the form of customary laws institutionalized in adat law, each holds its own meaning of justice . This does not rule out the possibility that positive law may contradict the justice principles embraced by society. Therefore, Radbruch introduces the concept of "Widerspruch" between Statutory Law and Justice (Contradiction between Statutory Law and Justice) or the contradiction between positive law and justice.[44] If a positive law results in real injustice or contradicts basic moral values, the law must be declared invalid. This is highly relevant in the context of Indonesia to bridge the gap between positive law and the justice values embraced by the community.

At the same level, it does not mean that Radbruch does not agree that legal certainty is not important. In the concept of Balancing Legal Certainty and Justice, Radbruch states that both the justice principles existing in society and legal certainty

[38]Donald J. Black, " Law, Society, and Industrial Justice. Philip Selznick , Philippe Nonet , Howard M. Vollmer ," *American Journal of Sociology* 78, no. 3 (1972), https://doi.org/10.1086/225378.

[39]Indonesia Corruption Watch, *Laporan Akhir Tahun ICW 2022* (Jakarta Selatan, 2022).

[40]Said Muniruddin, *Bintang Arasy: Tafsir Filosofis-Gnostik Tujuan HMI* (Banda Aceh: Syiah Kuala University Press, 2014).

[41]BBC News Indonesia, "Harun Masiku Disebut 'bersembunyi' Di Indonesia - Apa Sulitnya Menangkap Buronan KPK?," BBC: News Indonesia, 2023, https://www.bbc.com/indonesia/articles/c4nr3d3erz3o.

[42]Gustav Radbruch, "Five Minutes of Legal Philosophy (1945)," *Oxford Journal of Legal Studies* 26, no. 1 (2006): 13–15, https://doi.org/10.1093/ojls/gqi042.

[43]Felipe Fernandes Pinheiro and Felipe Chiavone Bueno, "Gustav Radbruch's Legal Culturalism System," *Revista Eletronica Direito e Sociedade* 11, no. 3 (2023), https://doi.org/10.18316/redes.v11i3.7167.

[44]Gustav Radbruch, *Legal Philosophy* (Harvard University Press, 1950).

are equally important to maintain stability and certainty in the legal system [45]. Therefore, in cases of contradiction between positive law and justice, a careful assessment is needed to achieve an appropriate balance.

In the context of the Indonesian state, the actualization of Radbruch's justice concept is highly relevant. On one hand, Indonesia is a legal state, as stated in Article 1 paragraph (3) of the 1945 Constitution: "The State of Indonesia is a legal state." This means Indonesia upholds the law in a central position, referring to written laws in the form of the constitution and legislation. On the other hand, Indonesia is filled with diverse local wisdom, resulting in various definitions of justice. Simultaneously, the character of Indonesian society is based on the belief in one God, and consequently, Indonesian society highly upholds morality in its way of life.

Conclusion

In the context of Indonesia, facing complex issues within its legal system, an understanding of the perspectives of Rawls and Radbruch brings valuable insights. Firstly, John Rawls's ideas on justice as equality and the distribution of resources offer a profound view of distributive justice principles. In a situation where social and economic disparities are widespread in Indonesia, Rawls's principles of resource distribution become relevant. Efforts to achieve true justice must consider redistributing resources to strengthen societal equality. Secondly, Gustav Radbruch's concept of "Widerspruch" or contradiction in the philosophy of legal justice depicts significant relevance in addressing inequality and moral issues within Indonesia's legal system. Prioritizing justice over legal certainty, Radbruch's perspective provides a foundation for evaluating and correcting positive law that deviates from fundamental moral principles. In the context of crucial issues in Indonesia, such as unequal access to the justice system and rampant corruption, the thoughts of Rawls and Radbruch offer critical insights for reforming and improving the legal system. By delving into the philosophical construction of their legal justice concepts, this article aims to detail the conceptual and theoretical aspects, providing a profound understanding of the relevance of these theories in the legal reality of Indonesia.

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