Jurnal Hukum dan Keadilan

P-ISSN : 0000-0000
E-ISSN : 3031-6782
Available:https://jurnalhafasy.com/index.php/jhk

Vol.3. No.6, October 2026
DOI : https://doi.org/10.61942/jhk.v3i6.592

The Dynamics of the Principle of Justice in the Modern Legal System: Between Legal Certainty and Substantive Justice

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Received: September 01, 2026
Revised: September 30, 2026
Accepted: October 22, 2026
Published: October 29, 2026

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Abstract: *The dynamics of justice in the modern legal system demonstrate the ongoing tension between legal certainty and substantive justice, two fundamental values that are often at odds. This study aims to critically analyze the dialectical relationship between these two principles and formulate a conceptual model capable of bridging the two in legal practice, particularly in the Indonesian context. The method used is normative legal research with a philosophical, conceptual, comparative, and critical approach through a study of relevant doctrines, theories, and judicial practices. The results of the study indicate that a legal positivist approach that emphasizes procedural certainty is not fully capable of addressing the demands of substantive justice, while an approach that is too justice-oriented risks creating legal uncertainty. Therefore, this study offers a synthesis in the form of a responsive justice model that emphasizes progressive, contextual legal interpretation and is oriented towards the values of justice that exist in society. This model is expected to be an adaptive normative framework in facing the complexity of the modern legal system and supporting the realization of a legal system that is not only certain but also just and responsive to social dynamics.*

Keywords: Principle of Justice, Legal Certainty, Substantive Justice, Legal Philosophy, Legal Positivism, Progressive Law.

INTRODUCTION

The question of justice is one of the oldest in the philosophy of law. Since Aristotle formulated the concepts of justitia distributiva and justitia commutativa in his Nicomachean Ethics, the debate about the nature, measure, and mechanism of justice has never been truly resolved. In the context of modern law, this question takes on a more concrete and pressing form: does a legal system that provides certainty and predictability always align with the demands of true justice? Or are the two inherently and unavoidably in tension?[1]

John Rawls, in A Theory of Justice (1971), begins his inquiry with a proposition that has now become an axiom: "Justice is the first virtue of social institutions, as truth is of systems of thought." Rawls himself acknowledged that formal justice as embodied in positive legal norms is not sufficient to guarantee substantive justice for every citizen.[2] This is the root of the dilemma that is described in depth in this article.

Modern legal systems, inheriting both Continental European and Anglo-Saxon traditions, are built on the foundation of legal

[1]John Rawls, A Theory of Justice (Cambridge: Harvard University Press, 1971), hlm. 11-12.

[2] Sulaiman, Heri, et al. "John Rawls' Theory of Justice and Its Relevance in the Formulation of Community Property Division Policy in the Contemporary Era: Teori Keadilan John Rawls dan Relevansinya dalam Formulasi Kebijakan Pembagian Harta Bersama di Era Kontemporer." *Al Hairy| Journal of Islamic Law* 1.1 (2025): 25-36. https://doi.org/10.64344/hry.v1i1.13

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certainty (Rechtssicherheit). Gustav Radbruch, a German legal philosopher whose thinking greatly influenced 20th-century jurisprudence, stated that legal certainty is one of the three fundamental values that a legal system must fulfill, along with utility (Zweckmassigkeit) and justice (Gerechtigkeit).[3] But Radbruch also realized that these three values often conflicted, and there was no mathematical formula to reconcile them.

On the one hand, legal positivism pioneered by Hans Kelsen with his pure legal theory (Reine Rechtslehre) views law as a system of norms separate from morality and substantive values of justice.[4] For Kelsen, the validity of a legal norm does not depend on its moral or just content, but rather on the procedure for its formation, which conforms to higher norms in the legal hierarchy. On the other hand, legal schools opposing positivism—from natural law to legal realism to progressive law—argue that law divorced from substantive justice is fundamentally flawed.

John Rawls' idea of justice as fairness actually opens up space for compromise between the demands of legal certainty and substantive justice through its two main principles, namely the principle of equal freedom and the difference principle.[5] Within this framework, inequality can only be justified to the extent that it provides the greatest benefit to the least advantaged. Thus, law is no longer understood simply as a neutral formal instrument, but rather as a corrective tool to address structural inequalities. This perspective implicitly critiques positivistic approaches that overemphasize proceduralism, ignoring the distributive dimension of justice in social practice.

The tension between legal certainty and substantive justice becomes increasingly complex when faced with the dynamic realities of judicial practice.[6] In many cases, judges serve not only as "mouthpieces of the law" but also as active actors interpreting and even shaping the law through their decisions. This phenomenon demonstrates that rigid legal certainty has the potential to give rise to injustice when the norms applied are not responsive to the evolving social context. Therefore, there is a need to place judicial discretion within a framework that is not merely legalistic but also oriented towards the values of substantive justice.

In the context of a modern rule of law, including Indonesia, this problem demands a paradigm reconstruction that no longer pits legal certainty and justice against each other, but rather as two elements that must be managed dialectically. This means that legal certainty remains necessary to ensure stability and predictability, but there must be room for flexibility to achieve substantive justice in concrete cases.[7] This approach demands intellectual courage and moral integrity from law enforcement officials, especially judges, to avoid getting caught up in narrow formalism, while still maintaining the legitimacy of the legal system as a whole.

[3]Gustav Radbruch, Rechtsphilosophie, terj. K. Wilk (Cambridge: Harvard University Press, 1950), hlm. 107.

[4]Hans Kelsen, Pure Theory of Law, terj. Max Knight (Berkeley: University of California Press, 1967), hlm. 63.

[5] Suhardin, Yohanes. "Konsep Keadilan Dari John Rawls Dengan Keadilan Pancasila (Analisis Komparatif)." *Fiat Iustitia: Jurnal Hukum* (2023): 200-208. https://doi.org/10.54367/fiat.v3i2.2535

[6] Haeruddin, Muhammad, and Syukriadi Amil. "Positivisme dan Realisme Hukum dalam Sistem Hukum Indonesia: Antara Kepastian Normatif dan Keadilan Sosial." *Journal of Sharia, Law, and Economics* 1.1 (2026): 1-8. https://journalfseiunika.com/shariqonomica/article/view/6

[7] Febrianto, Joghinanda Raihan, and I. Dewa Gede Dana Sugama. "Diskresi Jaksa Dalam Penanganan Perkara Pidana Berdasarkan Asas Kemanfaatan Dan Kepastian Hukum." *Jurnal Media Akademik (JMA)* 3.10 (2025). https://doi.org/10.62281/g1f6ss61

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This article aims to map, analyze, and offer a synthesis of this centuries-old tension. It employs a normative legal research method (doctrinal legal research) with a comparative and critical approach to legal philosophy. The relevance of this discussion extends beyond academic considerations: in Indonesian judicial practice, the tension between legal certainty and substantive justice is palpable, from debates over the binding force of jurisprudence, judicial discretion in legal interpretation, to the increasingly prevalent phenomenon of judge-made law.

METHODOLOGY

This research uses a normative legal research method (doctrinal legal research) which focuses on the study of norms, doctrines and legal theories as its main material.[8] The choice of this method is based on the nature of the problem being studied, namely a legal philosophy analysis that requires a deep understanding of existing theoretical and normative constructs, rather than the collection of empirical field data. The approach used encompasses three analytical dimensions. First, a conceptual approach to analyze key concepts such as legal certainty, substantive justice, legal positivism, and progressive law in depth. Second, a comparative approach to compare various traditions of Western legal philosophy and integrate them with Indonesian legal thought. Third, a critical approach to critically evaluate various existing theoretical claims and propositions. The legal materials used consist of primary legal materials in the form of normative texts and relevant court decisions; secondary legal materials in the form of academic literature on legal philosophy and legal theory from various traditions; and tertiary legal materials in the form of legal dictionaries and encyclopedias. The analysis is conducted qualitatively through systematic, teleological, and hermeneutical interpretation of the collected legal materials.

RESULTS AND DISCUSSION

Legal Positivism and Substantive Justice in the Perspective of Modern Legal Philosophy

Legal positivism in its most consistent and systematic form is embodied in the work of Hans Kelsen. Kelsen's pure legal theory is based on the epistemological assumption that legal science must be free from moral and sociological considerations to be a true science.[9] Legal norms, in Kelsen's view, originate from higher norms in the hierarchy, ultimately rooted in a hypothetical Grundnorm (basic norm). Legal validity is entirely a formal-procedural matter, not a material-substantive one.[10]

However, even within positivism itself there is significant internal criticism. Lon L. Fuller, in his seminal work The Morality of Law (1964), introduced the concept of an "internal morality of law" consisting of eight principles that must be met for something to be considered law: generality, promulgation, non-retroactivity, clarity, non-contradiction, plausibility, stability, and correspondence between the rule and its application.[11] For Fuller, a system that fails to adhere to these principles is not simply bad law, but no law at all. This is a soft form of positivism—still remaining within a formal framework, but incorporating a minimal moral dimension into the concept of law itself.

HLA Hart, often considered the chief inheritor of the analytical positivism tradition, recognized the existence of what he called the “penumbra zone” in law – areas where the legal rules do not provide clear answers and judges are forced to use discretion.[12] The famous debate between Hart and Fuller in the pages of the Harvard Law Review (1958) illustrates very clearly the line separating positivism from natural law: is there a moral obligation to obey

[8]Peter Mahmud Marzuki, Pengantar Ilmu Hukum (Jakarta: Kencana, 2008), hlm. 158.

[9] Nabillah, Tahsya, et al. "Hakikat Keilmuan Hukum Sistem Civil Law dalam Perspektif Teori Hukum Murni." *Jurnal Hukum Legalita* 7.2 (2025): 210-220. https://doi.org/10.47637/legalita.v7i2.2003

[10]Hans Kelsen, op.cit., hlm. 120.

[11]Lon L. Fuller, The Morality of Law (New Haven: Yale University Press, 1969), hlm. 39.

[12]H.L.A. Hart, The Concept of Law, 2nd ed. (Oxford: Clarendon Press, 1994), hlm. 193-200.

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Vol.3. No.6, October 2026
DOI : https://doi.org/10.61942/jhk.v3i6.592

positive laws that are substantively unjust?[13] Hart answers negatively, while Fuller argues that truly evil laws have no morally binding force.

The Radbruch Formula (Radbruchsche Formel), born out of the traumatic experience of Nazi Germany, offers an elegant but controversial solution: positive law must be obeyed even when it is unjust and ineffective, unless the injustice of the law reaches such an intolerable level (unerträgliches Mass) that the law must yield to justice.[14] This formula became the basis for the Nuremberg Tribunals' sentencing of Nazi officials who argued that they were simply "carrying out the law." From this we see that even the positivist tradition itself—at least in its converted version of Radbruch—recognized the limits of claims to legal certainty in the face of the most fundamental demands of justice.

The most systematic and influential attack on legal positivism came from Ronald Dworkin. In Taking Rights Seriously (1977) and Law's Empire (1986), Dworkin developed a theory of law he called "law as integrity."[15] Dworkin argues that law does not consist only of rules, as Hart claimed, but also includes principles and policies that cannot be reduced to explicit normative formulations.

Dworkin's concept of the ideal judge, whom he calls Hercules - a judge with unlimited intellectual capacity, time, and patience - describes what every judge should do in deciding a case: he does not simply "find" the answer that is already available in the legal text, but "constructs" the best interpretation from the whole of existing legal practice, while maintaining the coherence and moral integrity of the entire legal system.[16] For Dworkin, in every legal case - no matter how difficult - there is always one right answer, and the judge's job is to find it through interpretation with integrity.

Dworkin's theory has powerful implications for the debate about legal certainty versus substantive justice. By asserting that law always contains a moral dimension—that the principles of morality are not something external to the law, but rather part of the law itself—Dworkin rejects the sharp dichotomy between positive law and morality that characterizes positivism. Legal certainty, in Dworkin's framework, is not a mechanical, textual certainty, but rather an interpretive certainty constructed through honest and honest legal reasoning [17]

John Rawls built his theory of justice on two principles that emerged from the electoral procedure behind the "veil of ignorance": first, the principle of equal liberty for all; and second, the difference principle, which justifies inequality only if it benefits the least advantaged in society.[18] Rawls's theory offers a very interesting framework for assessing whether a legal system has met the demands of substantive justice.

Amartya Sen, in The Idea of Justice (2009), offers a fundamental critique of Rawls. Sen argues that the Rawlsian project of finding “perfectly just” institutions is flawed, because in practice we are never faced with a choice between a perfectly just situation and an unjust one, but rather with a choice between a variety of imperfect situations.[19] Sen proposes a more pragmatic comparative approach: instead of seeking a perfect theory of justice, we should focus on ways to reduce real injustices in real people's lives.

Martha Nussbaum, with her capabilities approach, offers another dimension of substantive justice that is highly relevant for the legal system: the law must be able to guarantee and protect a number of basic human capabilities - the ability to live, to use the senses and imagination, to feel emotions, to use

[13]Lon L. Fuller, "Positivism and Fidelity to Law - A Reply to Professor Hart," Harvard Law Review 71, no. 4 (1958): hlm. 630.

[14]Gustav Radbruch, "Statutory Lawlessness and Supra-Statutory Law," Oxford Journal of Legal Studies 26, no. 1 (2006): hlm. 7.

[15]Ronald Dworkin, Law's Empire (Cambridge: Harvard University Press, 1986), hlm. 225.

[16]Ronald Dworkin, Taking Rights Seriously (Cambridge: Harvard University Press, 1977), hlm. 81.

[17]Ronald Dworkin, Law's Empire, op.cit., hlm. 410.

[18]John Rawls, op.cit., hlm. 302.

[19]Amartya Sen, The Idea of Justice (Cambridge: Harvard University Press, 2009), hlm. 9.

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DOI : https://doi.org/10.61942/jhk.v3i6.592

reason, to affiliate with others, and so on.[20] This perspective reminds us that substantive justice is not just about the distribution of primary goods in the Rawlsian sense, but also about the actual ability of humans to live dignified lives.

The Dynamics of Legal Criticism and Reconstruction Towards Responsive Justice

The Critical Legal Studies (CLS) movement, which developed in the United States in the 1970s and 1980s, posed the most radical challenge to claims of legal neutrality and certainty. Roberto Mangabeira Unger, a leading figure in CLS, argued that law is inherently political—that behind every legal rule and every judicial decision lie non-neutral political and ideological choices.[21] The claim of legal certainty, in CLS's view, is a myth that serves to legitimize the existing social order and obscure the power relations at work behind it.

Karl Llewellyn and the American realists showed early that judicial decisions are much more influenced by intuition, personal values, and practical considerations than by logical deduction from the text of legal rules.[22] What is called "the sure and consistent application of the law" in many cases turns out to be nothing more than a post-hoc rationalization of conclusions that have already been determined by considerations unspoken in the text of the judgment.

Eugen Ehrlich, the father of the sociology of law, provided another dimension that is often overlooked in this debate: the distinction between the “living law” in society and the “law in the books” contained in positive norms.[23] When these two things conflict – when state law is not aligned with the norms that actually govern people's behavior – then formal legal certainty becomes a source of substantive injustice for marginalized communities.

In the Indonesian context, the tension between legal certainty and substantive justice takes on a more complex dimension as it interacts with the distinctive legal pluralism: the legacy of Dutch colonial law, diverse customary legal traditions, Islamic legal principles, and the demands of modern national legal development. Mochtar Kusumaatmadja, the architect of the concept of "law as a tool of social engineering," emphasized that good law must be able to encourage orderly and directed social change.[24]

Satjipto Rahardjo, with his progressive legal concept which has become mainstream in Indonesian legal academic discourse, has made a very sharp criticism of the dominance of legal positivism in Indonesian legal practice.[25] For Rahardjo, progressive law is law that aims for human welfare and happiness, and therefore must dare to make breakthroughs and leaps in facing stagnation and errors produced by the system.[26] Judges must dare to be "lions" who lead the truth, not just "mouths" who pronounce the words of the law - borrowing and reversing Montesquieu's famous parable.

Jimly Asshiddiqie, former Chief Justice of the Constitutional Court of the Republic of Indonesia, argued that Indonesia's transformation into a truly constitutional state (Rechtsstaat) requires not only the fulfillment of formal requirements for legal certainty, but also a substantive commitment to the values of justice, equality, and respect for human rights.[27] The Constitutional Court, in many of its groundbreaking decisions, has tried to bridge the gap between formal legal certainty and the

[20]Martha C. Nussbaum, Creating Capabilities: The Human Development Approach (Cambridge: Belknap Press, 2011), hlm. 23.

[21]Roberto Mangabeira Unger, The Critical Legal Studies Movement (Cambridge: Harvard University Press, 1983), hlm. 1.

[22]Karl Llewellyn, The Bramble Bush: On Our Law and Its Study (New York: Oceana Publications, 1960), hlm. 12.

[23]Eugen Ehrlich, Fundamental Principles of the Sociology of Law, terj. W. Moll (Cambridge: Harvard University Press, 1936), hlm. 489.

[24]Mochtar Kusumaatmadja, Konsep-Konsep Hukum dalam Pembangunan (Bandung: Alumni, 2002), hlm. 14.

[25]Satjipto Rahardjo, Ilmu Hukum (Bandung: Citra Aditya Bakti, 2006), hlm. 53.

[26]Satjipto Rahardjo, Membedah Hukum Progresif (Jakarta: Kompas, 2006), hlm. 10.

[27]Jimly Asshiddiqie, Konstitusi dan Konstitusionalisme Indonesia (Jakarta: Sinar Grafika, 2011), hlm. 67.

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Vol.3. No.6, October 2026
DOI : https://doi.org/10.61942/jhk.v3i6.592

demands of substantive justice – an effort that has not always been met without controversy.

To understand this tension more concretely, we can examine several paradigmatic legal cases. In the Indonesian context, the case of Sengkon and Karta—two men convicted of crimes committed by others, and only released after the perpetrators confessed—is a particularly tragic example of how formal legal certainty (in the form of a final and binding court decision) can produce gross injustice.[28] This case became a significant catalyst for reforming judicial review procedures in the Indonesian judicial system. In cases involving conflicts between customary law and positive state law—for example, disputes over customary land or the management of natural resources by indigenous communities—this tension is starkly apparent. Positive state law guarantees certainty through formal certification and registration, while substantive justice for indigenous communities demands recognition of unwritten rights that have been in effect and respected for generations. This is where legal certainty and substantive justice go beyond mere theoretical reconciliation; they must be genuinely pursued in the real legal arena.

Having mapped out the various positions in this debate, it is now time to attempt a synthesis. The author argues that the tension between legal certainty and substantive justice should not be resolved by choosing one at the expense of the other, but rather should be managed through what we call a "responsive justice model." Philippe Nonet and Philip Selznick, in their classic work, Law and Society in Transition (1978), distinguish three types of law: repressive law, autonomous law, and responsive law.[29] Autonomous law is law that provides certainty through clear rules and strict procedures, but often fails to respond to the substantive needs of society. Responsive law, on the other hand, is law that is able to integrate societal demands into its normative structure without losing its integrity as a legal system.

Jurgen Habermas, with his discourse theory (Diskurstheorie), offers a procedure that can bridge certainty and justice: the validity of legal norms does not depend only on their formal procedures (as positivism claims) or on their substantive moral content (as natural law claims), but on the quality of the discursive process that produces them.[30] A legal norm is morally valid if it can obtain the consent of all parties affected by it through rational, free, and equal discursive procedures.

In the Indonesian context, this synthesis can be realized through several concrete mechanisms. First, strengthening the judges' progressive hermeneutical capacity: judges must not be mechanical interpreters of legal texts, but rather must be capable of interpreting them contextually, teleologically, and responsively to the demands of justice that exist in society.[31] Second, developing mechanisms for substantive public participation in lawmaking, so that positive legal norms reflect the true moral consensus of society. Third, strengthening the institution of judicial review as a corrective mechanism for laws that substantively conflict with constitutional values of justice. Fourth, formal recognition of the legal pluralism that exists in Indonesian society, including the recognition of customary law in contexts where state law has proven incapable of delivering substantive justice.

Neil MacCormick, in Rhetoric and the Rule of Law (2005), reminds us that legal certainty and substantive justice are not two completely incompatible ideals.[32] Authentic legal certainty requires substantive justice as its foundation, because society will not respect and obey laws that consistently produce outcomes they perceive as unjust. Conversely, substantive justice requires legal certainty as its operational

[28]Mahkamah Agung RI, Putusan No. 1 PK/Pid/1991 (Kasus Sengkon-Karta), hlm. 12.

[29]Philippe Nonet & Philip Selznick, Law and Society in Transition: Toward Responsive Law (New York: Harper & Row, 1978), hlm. 73.

[30]Jurgen Habermas, Between Facts and Norms, terj. W. Rehg (Cambridge: MIT Press, 1996), hlm. 287.

[31]Satjipto Rahardjo, Hukum Progresif: Sebuah Sintesa Hukum Indonesia (Yogyakarta: Genta Publishing, 2009), hlm. 16.

[32]Neil MacCormick, Rhetoric and the Rule of Law (Oxford: Oxford University Press, 2005), hlm. 23.

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Vol.3. No.6, October 2026
DOI : https://doi.org/10.61942/jhk.v3i6.592

framework, because without predictability and consistency, the justice it aspires to cannot be realized systematically and equitably.

Brian Tamanaha reminds us of the dangers of "legal instrumentalism" – the view that law is merely a tool to achieve certain social goals – which can threaten both values simultaneously.[33] When law is fully instrumentalized for particular interests (economic, political, or ideological), it loses its integrity as an autonomous normative system, and with it its capacity to guarantee justice for all. This lesson is particularly relevant for Indonesia, where strong political and economic pressures remain that attempt to divert the law from its true purpose.

CONCLUSION

The dynamics of the principles of justice in modern legal systems is a never-ending struggle, as it reflects the tension inherent in the project of modernity itself: between formal rationality, which guarantees predictability and efficiency, and substantive rationality, which demands meaningfulness and justice. This article has shown that this tension cannot be resolved through the victory of one party over the other, but must be managed dynamically and contextually through responsive legal mechanisms.

Legal positivism, in its most rigid form, which claims that formal-procedural certainty is everything and that substantive justice is a matter outside the law, has proven inadequate both theoretically and practically. Historical events such as Nazi Germany and judicial cases like the Sengkon-Karta case in Indonesia clearly demonstrate the limits of this approach. On the other hand, a romanticism of substantive justice that ignores the importance of legal certainty and predictability also carries its own risks: judicial subjectivism, uncertainty, and the potential for abuse of discretion. A responsive justice model that integrates progressive hermeneutics, democratic discursive procedures, and recognition of legal pluralism is not a final solution that closes the debate. It is a framework that remains open and adaptive, acknowledging the complexity of issues while providing sufficiently substantive normative guidance for action. For Indonesia, which is in the process of democratic consolidation and legal reform, this framework can serve as a solid theoretical foundation for building a legal system that is both certain, just, and responsive to the needs of a diverse society.

[33]Brian Z. Tamanaha, Law as a Means to an End (Cambridge: Cambridge University Press, 2006), hlm. 227.

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P-ISSN : 0000-0000
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Vol.3. No.6, October 2026
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