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RELEVANCE CAUSA PARADIGMATIC OF LEGAL POSITIVISM

(A Study and New Interpretation Paradigmatic Law)

Deny Puspitasari
Universitas Safin Pati,
deny_puspitasari@usp.ac.id

Rengga Kusuma Putra
Universitas Sains dan Teknologi Komputer
renggakusuma@stekom.ac.id

Abstrak
Hukum, sebagai sebuah ilmu, merupakan serangkaian *nalar* falsafi terhadap aturan yang komprehensif, sedang hukum sebagai instrumen merupakan perangkat aturan yang mengatur perilaku yang sangat profan dan cenderung *one way perspektif.* Di mana antara *das sein* dengan *das sollen* kadang mengalami kontra produktif asumsi, implementasi, persepsi, dan ekspektasi khususnya yang berkaitan dengan alasan dibalik penetapan hukum. Salah satu yang menarik adalah paradigma positivisme. Di mana nalar mengkonstruksi nilai berdasarkan *postulat* hukum semata, mengabaikan konteks, nalar pembentuk, asumsi, persepsi dan fakta *simbiota* yang mendorong terjadinya pelanggaran hukum.Penelitian ini bertujuan untuk mengkaji bagaimana konstruksi, implementasi logis, dan adakah kontradiksi logis dari paradigma positivisme dalam hukum. Hasilnya Paradigma ini ditujukan untuk membentuk persepsi teks sebagai sebuah fakta pengetahuan, Secara implementatif, konstruksi paradigma Positivisme tidak dilepas dari konstruksi pembentuknya, yaitu filsafat yang mencakup apa itu positivisme (*Ontologys*), bagaimana Positivisme terbentuk atau diperoleh (*epistimologys*) dan untuk apa Positivisme itu dilahirkan (*Actiology*) dan Kontradiksi logis pada

paradigma positivisme dipengaruhi oleh perbedaan bentuk, baik itu pada aspek konstruksi unsur, dasar pemikiran, dasar persepsi, dasar asumsi, dasar interpretasi, dasar faktual dalam ranah sosial yang membentuk nalar logika berdasarkan anasir-anasir faktual dalam masyarakat.

Kata Kunci : *hukum, paradigma, positivisme*

Abstract

Law, as a science, is philosophical series of reasoning towards comprehensive rules, while law as an instrument is set of rules that regulate behavior is very profane and tends to have a one-way perspective. That beside *das sein* and *das sollen* sometimes be through contra productive assumptions, implementation, perceptions and expectations, especially those related the reasons behind legal determination. Interesting one thing is positivism paradigm. Where reason constructs values based solely on legal postulates, ignoring the context, forming reasoning, assumptions, perceptions and *simbiota* fact that encourage legal violations. The aims of this research is to examine how the construction, logical implementation, and whether there are logical contradictions of the positivism paradigm in law. As a result, this paradigm is aimed forming a perception of the text as a fact of knowledge. Implementably, construction of positivism paradigm cannot be separated from the construction of its constituents, that philosophy which includes what positivism is (ontology), how positivism is formed or obtained (epistemology) and why positivism was born (actiology) and logical contradictions in the positivism paradigm are influenced by differences in form, both of aspects elemental construction, basic thoughts, basic perceptions, basic assumptions, basic interpretations, factual basics in the social domain which form logical reasoning based on factual factors in society.

Keywords : *law, paradigm, positivism*

INTRODUCTION

Law is philosophical series reasoning towards in comprehensive rules as a science, while law as an instrument is set of rules that regulate behavior is very profane and tends to have a one-way perspective.[1]

Therefore, law cannot be constructed partially, because law is humanistic instrument of humanism. Where *das sein* (reality) and *das sollen* (ideal conditions that are expected) sometimes experience counterproductive assumptions, implementation, perceptions and expectations, especially those related to reasons behind legal determination.

On the other hand, as a scientific discipline, law is a set of study objects whose understanding requires construction of a philosophical and contextual-based understanding. This is because law cannot be separated from the social order of life, so its function is closely related to social governance, both as social change where law contains principles, concepts or rules, standards of behavior, doctrine and professional ethics, as well as everything that is carried out by "individuals" in an effort to satisfy needs and "interests" or as a social of charge that is limited by human needs (interests) which are always developing, then the world will not satisfy these human needs (interests).[2]

Law is not only implemented because of mistakes, but is also implemented with piety as form of obedience to applicable law. Therefore, in essence law is a norm that actively reduces human freedom within framework of social communal order, because in fact if we understand and look at legal philosophy, basically human freedom is a problem of law itself. Because the legal context is to regulate norms, provide effect and consequences for violations of existing legal norms.

Therefore, law in a philosophical context can be explored in several paradigms as part of the brainstorming of norms and values in life, which not only has complexity in content, but also comprehensive

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[1] Safrin Salam, "Rekonstruksi Paradigma Filsafat Ilmu: Studi Kritis Terhadap Ilmu Hukum Sebagai Ilmu," *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan* 18, no. 2 (2019): 885–96.

[2] Osgar S Matompo, "Efektifitas Penerapan Sanksi Hukum Terhadap Persaingan Curang Dalam Pelelangan Pekerjaan Di Kota Palu," *Maleo Law Journal* 4, no. 1 (2020): 69–84.

in value (axiological), where the ontological (metaphysical) aspect is a constructive part, has a methodological and reasoning realm that sometimes absurd but can be logicalized and contextualized.

Not only that, this ontological aspect becomes constructive when rational thinking is contextualized in critical reasoning, so that the process of reasoning transformation finds the logic of thinking deeply and comprehensively to find the truth of the law essentially and substantially.

The emersion of philosophical thoughts indirectly gives rise to different constructions of thinking, depending on basis of analysis and contextualization which is greatly influenced by social conditions, behavior, culture, civilization, power, welfare and theological aspects that influence the emersion of law as a norm.

These differences philosophical construction, especially in the context aspect, have given rise to various paradigms in dissecting content and values of law itself. Because not only law as a norm, but also a driving force moral (ethical).[3] So it becomes more rational if before implementing law as a norm that has consequences, it is necessary to first dissect several legal paradigms themselves.

One of the interesting things to dissect, is exploring how the basic concepts in legal positivism, especially "paradigmatic causa", remain relevant in context of current legal paradigm. Where this reasoning constructs values based on existing legal postulate (postulates) alone, ignoring the context, forming reasoning, assumptions, perceptions and *simbiota* facts (cause and effect) that encourage legal violations. Legal positivism often focuses on compliance with formal laws without considering whether laws themselves produce substantial justice for all individuals in society. This can be result in injustice practice, where people with limited access to resources or legal protection may not receive fair treatment in positive legal systems. But behind the simplicity of the terminological perception of positivism paradigm, this paradigm accelerates value as a construction of legal compliance from a legal institution and political institution policy that is public safety (public

[3] Hani Risdiany and Dinie Anggraeni Dewi, "Penguatan Karakter Bangsa Sebagai Implementasi Nilai-Nilai Pancasila," *Jurnal Pendidikan Indonesia* 2, no. 04 (2021): 696–711.

security).[4] So it is interesting to dissect construction, concept, logical implementation, and whether there are any contradictions in positivism paradigm.

Research Methods

The research methodology of this paper uses a Normative-Positivistic approach which is literary in nature, because this research is based on literary perspective from the context of object being studied, so it is more about the formation of perceptions, assumptions and logic based on acceptable theoretical values. Normative-positivistic construction is very relevant for studying and constructing methodologically matters relating to analysis, interpretation and legal analogies both in text and context, so that the results of the analysis can be more comprehensive and credible.

DISCUSSION

Construction of Positivism Paradigm

Term of Positivism was first introduced by Auguste Comte (1798-1857 AD) in his book entitled Cours De Philosophie Positive which refers to thinking that emphasizes factual aspect of knowledge, especially scientific knowledge as a basis for application/sensation. The factual aspect in context of Comte's thought is aimed at forming a perception text as a fact of knowledge. So the construction really emphasizes the purity of the text as a knowledge base.[5] However, Comte really prioritizes knowledge as a construction of thought, so that in Comte's view the text is object of analysis while thought is subject of analysis. Objects are standard elements that can develop only when the subject creates perceptions and assumptions. So the object will find its factual function if subject is able to explore the values or norms in text in the form of thought constructions.

[4] Arditya Prayogi, "Paradigma Positivisme Dan Idealisme Dalam Ilmu Sejarah: Tinjauan Reflektif Terhadap Posisi Sejarah Sebagai Ilmu," *Tamaddun: Jurnal Kebudayaan Dan Sastra Islam* 21, no. 1 (2021): 75–90.

[5] M Hidayat Panuntun Muslim, Azmi Fitrisia, and Ofianto Ofianto, "Filsafat Positivisme Dan Ilmu Pengetahuan Serta Perannya Terhadap Etika Administrasi Publik Sebagai Upaya Mengatasi Mal Administrasi Publik," *Jurnal Pendidikan Dan Konseling (JPDK)* 4, no. 6 (2022): 2550–57.

Therefore, Comte views that there are three important stages in human life which form perceptions and beliefs in life as a construction of a code of behavior (Law, red), that: first, the theological stage where humans try to explain facts or events related to puzzles mystical nature. Second, the metaphysical stage where humans reform old ways of thinking which are deemed no longer able to fulfill human desires. Third, the positive stage where natural phenomena and events are no longer explained a priori but rather based on strict and through observation, experimentation and comparison.[6]

In legal context, the positivism paradigm finds a quite interesting form, where the construction of factual thoughts in text is able to move the perception algorithm as an absolute authority. The positivism paradigm in law emerged due to contemplation of values or norms in society related to implementation of rules which were not easily implemented due to appearance of other conflicting legal postulates. This paradigm leads to existence of a unique textual perception in addressing the contextual dynamics of legal behavior in society.

This paradigm also emerged due to appearance of positivism-based philosophical thoughts in the 19th century which was initiated by John Austin (1790-1859 AD) who developed the philosophy of analytical positive law (Analytical Jurisprudence) or what we often know as Sociological Positivism which views the nature of law it lies in element of command, where law is seen as a fixed, logical, and closed legal system.[7] In his view, Austin said that: "*A law is a command which obliges a person's...Laws and other commands are said to proceed from superiors, and to bind or oblige inferiors*". That, law is a command that obliges a person... Laws and others, commands are words that come from higher elements, and bind or oblige lower elements.[8]

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[6] Fadhil Akbar, "Kajian Ontologis Dan Epistemologis," *Dirasah: Jurnal Studi Ilmu Dan Manajemen Pendidikan Islam* 6, no. 2 (2023): 286–95.

[7] Annisa Dwi Nur Rachmah Annisa et al., "Aliran Positivisme Dan Implikasinya Terhadap Ilmu Dan Penegakan Hukum," *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 2, no. 01 (2024).

[8] Alvin Reinardus, "Ketetapan MPRS No. XXV Tahun 1966 Ditinjau Dari Positivisme Hukum," *Al Qodiri: Jurnal Pendidikan, Sosial Dan Keagamaan* 20, no. 1 (2022): 1–11.

Then the pure legal school philosophy (Reine Rechtslehre) or known as Juridical Positivism was developed by Hans Kelsen (1881-1973 AD). Where Kelsen views that law must be cleared of non-juridical factors such as sociological, political, historical and even ethical. So, in Kelsen perspectives, law is a *Sollens Catagory* (ideal necessity category) not a *Seins Catagory* (factual category). In Kelsen views, law is a necessity that regulates rational human behavior. So there is no longer a question of what the law should be? But how the law is applied.

These two sects have shaped appearance of the positivism paradigm in law, a paradigm that constructs law in its positive legal context (*ius consituium*) and frees itself from influences outside law itself, in order to achieve the desired ideal level of law. This paradigm tries to escape from social, psychological and even ethical dogmas so that the textual essence of law can be applied. Although it must be admitted, this paradigm clearly narrows dialectical space for existence of *simbiota* law in more comprehensive sense, where every action is definitely influenced by the triggering cause, it is triggering causes that should not be ignored in the construction of legal implementation.

Both Austin and Kelsen believe that law is a compelling command, whether it comes from God (the divine laws) or comes from humans (Law comes from humans). [9]

Austin views that law is divided into two, namely first, actual law (positive law) which consists of (a) law made by authorities, and (b) law made by individual humans to implement the rights given to them. Second, laws that are not real, namely laws that are made by the authorities, but do not meet the requirements as law that is commands, sanctions, obligations and sovereignty.[10]

Meanwhile, Kalsen believes that the law as an order that has authority cannot be implemented based solely on what is desired or aspired to (*ius constituendum*), without strictly implementing the law in accordance with the authority of order contained in positive law (*ius constitutum*). .

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[9] Mukhlish Mukhlish and Zaini Zaini, "Fungsi Hukum Prespektif Filsafat Hukum," *Jurnal Fundamental Justice*, 2021, 87–98.

[10] Ade Rizki Saputra, Hernawati Ras, and Yeti Kurniati, "Views on Legal Perspectives on John Austin's Thoughts," *Formosa Journal of Sustainable Research* 2, no. 11 (2023): 2649–58.

The positivism paradigm developed by Austin and Kalsen cannot be freed from thoughts that influenced philosophical construction of both of them, although it must be admitted, if analyzed in depth, the thoughts both of them have similarities in positioning of law as a construction rules that must be implemented textually *unsich*, but the principle of thought they are influenced by two different sources of thought.

From the aspect of his thought construction or paradigm as Austin himself, is very close to philosophical patterns of Utilitarianism developed by Jeremy Bentham (1748-1832), namely sects that prioritizes utility as goal of law and is oriented towards creating social order, in this context the existence of happiness. Meanwhile Kalsen tends to the thoughts of Emanuel Kant (1724-1804 AD) with a new perspective that emphasizes of sociological aspect as a transcendental element of value, and separates form and content where law deals with form (forma) not content (material) so he is classified as Neokantianism.[11]

The legal positivism paradigm, in principle places of law as an authority, regardless of whether the law is applied ideally or not, it is still a binding law. Therefore, this paradigm, although in several thought there are concepts of developing norms for application law as carried out by Austin and Kalsen, the essence of implementation tends to be paradoxical, because it ignores many aspects such as *simbiota* aspect of law, sociological aspects that shape culture, perception and other assumptions that influence law as an authoritative rule construction to be insensitive to the times.

Austin and Kalsen's perception is certainly different from Comte's view of positivism. He said that the positivism paradigm is the highest paradigm of human thought behavior which is free from time and space and is universal.[12] Comte saw that appearance of positivism began with theology first, which constructed ontological (metaphysical) aspects until it became an absolute text.

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[11] Joni Laksito, "YURISPRUDENSI," *Penerbit Yayasan Prima Agus Teknik*, 2024, 1–126.

[12] Darwati, *Filsafat Hukum Islam*, Makasar : Fakultas Ushuludin dan Filsafat UIN Alaudin, (2019):138

This means that the construction of Positivism Paradigm is basically not a stagnant paradigm, because this paradigm basically uses science as its analytical methodology where aspects of experimentation, observation and comparison are still carried out to find the truth of the law itself. However, Comte rejected the psychological aspect as part of knowledge, even though this aspect has vulnerabilities that cause someone to violate of law. This aspect was rejected by John Stuart Mill (1806-1873 AD), one of the supporters of Utilitarianism who believed that psychology was most fundamental science which studied sensation according to its structure, so that the construction of behavior was greatly influenced by the psychological structure that formed it.

From this perspective that term positivism finds its form, where positivism is a paradigm that seeks to escape from confines of ontological (metaphysical) perception of thought, by looking more comprehensively at the existence of existing legal facts. Positivism views law as a text, nothing less and nothing more. But contextualization is certainly not limited to the text, there are interpretations, perceptions, analysis, observations and constructions carried out to explain the text so that it becomes a comprehensively implementable law.

Logical Implementation of Positivism Paradigm

As a paradigm that shapes a perceptions, assumptions, basis of analysis, and even philosophical practice of person. Positivism is the foundation for thinking about texts or laws in lives of people. If Comte constructs Positivism as a paradigm for dissecting sociologically based empirical aspects based on a scientific approach (science), then Austin is more concerned with the application of these sociological aspects and is constructed as a driving force for legal behavior to then be confirmed in the legal text itself.[13] Meanwhile, Kalsen views law more as text itself which is constructed from forming facts, both sociological and psychological, which shape legal perceptions based on the text.

[13] Hasudungan Sinaga, "Advokasi Hukum Sebagai Seni Hukum," *Innovative: Journal Of Social Science Research* 4, no. 1 (2024): 5817–29.

Positivism as a paradigm is essentially a philosophy of science that constructs in-depth thoughts about texts within the framework of contextual implementation. Therefore, the construction of Positivism paradigm cannot be separated from the construction of its creator, namely philosophy which includes what positivism is (Ontology), how Positivism is formed or obtained (epistemology) and why Positivism was born (Actiology) to dissect how the human mind works, so that aspects physical and metaphysical are the main elements of positivism as a paradigm.[14]

In context of law, positivism is understood as pure law based on text, so that the explicit aspects of law become the main indicators of basis for applying the law. However, this will be counter-productive and perceptual, because after all legal positivism is part of the entity of knowledge, so that the construction of knowledge, especially in legal context, cannot be separated from three things, namely: (1) Law as a moral principle or principle of justice that is universal and is an inherent part of the legal system, (2) Law as positive rules, (3) Law as a social institution, institution of justice, social control, social integration mechanism, and social engineering.[15]

Therefore in certain contexts, potential differences in perception regarding implementation aspects will create a distance between law as a text and law as an element of creating social justice. Because the positivism paradigm does not provide space for emergence of dialectics that arise outside the perspective of text, so it ignores the perception of *simbiota* in law, which is precisely what actually forms and becomes the basis for legal behavior in life which is caused by differences in perception between written law (law in book) with reality of empirical practice (law in action)

So there is a gap in thinking in positivism paradigm where the text as law is sometimes irrelevant to the context, or even completely different. Therefore, in its development of positivism paradigm was used solely to maintain the supremacy of text in the context so that the essence of norms in the text was maintained, but it began to be

[14] Adam Setiawan and Rezky Robiatul Aisyiah Ismail, "Paradigma Positivisme Hukum John Austin Di Era Posmodernisme," *Arena Hukum* 16, no. 3 (2023): 485–508.

[15] N Budi Arianto Wijaya, "Peranan Teori Hukum Pada Peradapan Digital Revolusi Industri 4.0," *Jurnal Kewarganegaraan* 7, no. 2 (2023): 2571–85.

reduced when faced with logical facts in the field which tended to use the constructivism paradigm as a basis for analysis to find ultimate truth of the law.

This perception and basic construction is carried out so that the law cannot be separated from the norms of justice, so as to avoid establishment of unfair laws. Of course this is a problem, because the essence of law is in principle to create justice in life.

However, Positivism Paradigm in legal context is a methodological instrument in analyzing legal texts in the perception of pure legal norms. Where legal construction must maintain the purity of its essence and function, so that this paradigm will remain relevant in legal contexts which are letter lease in nature. Because the positivism paradigm, especially that constructed by Kalsen, is a system consisting of a pyramid-shaped arrangement of norms. This theory is similar to the level theory (*Stufentheory*) developed by Adolf Merki. On the one hand Kelsen's construction of pure positivism, provides little space for the dialectic of text and context, but on the other hand places the text at the top of the perception of law makers.[16] Therefore, pure positivism in Kelsen is placement of text that avoids the aim of law as an instrument of justice for all people, necessitates empirical construction of values as part of the logical pyramid structure, so that aspects of text no longer stand alone in absolute terms, but are formed in construction knowledge, context and contemplative methodological interpretation.

Thus, in logical implementation aspect, the positivism paradigm is a constructive paradigm based on text, which has dialectical potential over context, but the text has more absolute role than empirical facts. This paradigm is also constructed based on science, where the interpretation of text is contextualized based on facts of the text and context.

This methodological construction also seems to be internalized legal context in Indonesia, where texts have absolute authority, texts shape perceptions of context, texts shape social order, texts shape systems and texts shape products and results absolutely. However, in its journey in Indonesia, absolute authority in text was reduced to non-

[16] Ni'matul Huda, *Politik Hukum Dan Pembangunan Sistem Hukum Nasional*, Sinar Grafika, (2024):53.

juridical elements such as politics, economics, social and culture by making changes to the text. Of course, this is a paradox regarding the implementation of law in Indonesia, although it is not a mistake. Where texts in legal context are considered to have absolute authority, but are easily changed through political, social, economic and cultural mechanisms that form the basis for the reduction of texts that should be profane.

Analysis Contradiction of Positivism Paradigm Concept

Positivism Paradigm is a philosophical construction of human perception and perspective on a situation. Because it is formed from a perception, each individual will find perceptions that are not necessarily the same or are completely different. Perceptions that are constructed based on ontological, epistemological and actiological aspects will give rise to dialectic form of thinking that is influenced by background of thinker, so that the perceptions are realized will be vary.

The positivism put forward by Comte, which sees texts as a set of pure legal orders, both sociologically and philosophically, is basically starting point for thinking to carry out developments in thought and the dialectics of knowledge.[17] So normally in some aspects there are many differences in perception, even contradictions.

Contradiction in this context is interpreted as a difference in form, whether in aspect of elemental construction, basic thinking, basic perception, basic assumptions, basic interpretation, and factual basis in social domain which forms logical reasoning based on factual factors in society. Positivism in author perspective is a school of thought that places primary sources, namely texts as objects, so that the perception of object really depends on how the subject explores it. However, it seems that is what made Comte construct the Positivism Paradigm, namely to limit wild interpretations and perceptions of text, so that the values and norms of text are not separated from the true essence of text.

[17] Andi Munafri D Mappatunru, "The Pure Theory of Law Dan Pengaruhnya Terhadap Pembentukan Hukum Indonesia," *Indonesian Journal of Criminal Law* 2, no. 2 (2020): 132–52.

The two perceptions above are form of scientific dealing, with a process of grounded contemplation, so that in context of law, this paradigm develops in two characteristic forms of values. First, Austin's analytical positive law sect which essentially tolerates existence of texts, where Austin views that law is the text itself which is logical and closed. It is logical because Austin accepts that there is a perception of the text based on assumptions based on comprehensive dialectical process of knowledge, starting from observation, analysis and facts without need to radically change essence of the text, while it is closed to mean that there is no need for a new perception other than the text itself. For Austin, law is a command as a constitution that contains obligations and gives rights.

Second, the Kalsen pure legal sect, which views law as a text that is absolute and must be removed from non-juridical elements that would affect the sacredness of law itself. For Austin, law is a necessity that regulates humans rationally. Rational perception in Austin views cannot be separated from the influence of Adolf Merki thinking with his level theory, thus forming Austin perspectives in a pyramid-based or inductive thought construction. Analysis in Austin perspectives is carried out by sorting quality and quantity of facts regarding the text so that the authority of text as a law remains absolute. According to Austin, as in Grundnorm Theory (basic norms), the essence of law is text itself as a foundation, while other aspects are analytical supporting aspects, without changing the essence of text or law.[18]

The perceptions and perspectives of Comte and his two followers of sect of perception, that Austin and Kelsen had completely different construction bases, even though the basic principles were same, namely the text as something absolute. However, the construction was different because Comte did not specifically draw on positivism paradigm in the context of law and rules, Comte only constructed his thoughts in context of norms in which there was law as part of forming the social order or norms. Meanwhile, Austin and Kalsen use the authority of Comte's text as a basis for exploration to place law as an absolute authority in life. Even though they have

[18] Humiati Humiati, “Komentar Terhadap Hukum Dan Masyarakat Dalam Pemikiran John Austin, HLA Hart Dan Hans Kelsen,” *Yurijaya: Jurnal Ilmiah Hukum* 3, no. 1 (2020).

seemingly different footing and construction, Austin seems to leave the dialectical space between text and context more freely, and Kelsen confirms the absolutism of his text as the main authority compared to other contextual aspects. However, they have same end, that placing texts or laws as absolute authorities at the top level of pyramid.

Dialectics of the three essentially boils down to the text as an authority, text as a source, and text as an object. The text must not be eliminated by context and construction of the text must be absolute, where the form (forma) is more important than the content (Materia). The essence in their view is context that is related to the text as a source of substantial law, not the other way around.

Therefore, the contradiction of thinking in positivism paradigm lies in the existence of dialectical space in the text, not in the text itself. But outside positivism sect of thought, the text is not the main authority, but the context. The priority of the text lies in its level of relevance to the context. Even though this was strongly opposed by Comte, Austin and Kelsen. For them, dialectics is only limited to perceptions that support the text, not perceptions that change essence of the text. The text as an object is indeed very susceptible to being influenced by perception of the object, this is what adherents of positivism paradigm sect of thought want to maintain, that to prevent text from non-juridical factors that bias essence of the text as an absolute norm. If that happens, they are worried, the law will no longer show its form, the law will become very multi-interpretive, the rules will become very flexible, and susceptible to being influenced by subject perceptions. It is in this context that Positivism paradigm places its role as the guardian of absolute text supremacy which avoids non-juridical elements that have subjective potential. Because both Comte, Austin, and Kalsen consider the text to be an absolute authority that cannot be analyzed subjectively, but must be analyzed objectively based on literal meaning of the *unsich* text, while still placing constructive dialectics as a consideration of absolute authority of the text.[19]

[19] Annisa et al., “Aliran Positivisme Dan Implikasinya Terhadap Ilmu Dan Penegakan Hukum.”

In context of the Positivism paradigm, cause of the problem between legal facts and legal application refers to identification that there is a discrepancy between theory or concept proposed by the Positivists and empirical evidence or facts observed in the real world. In this paradigm the main emphasis is on validity and truth of knowledge obtained through scientific methods and empirical observations.

So this Positivism paradigm may involve evaluations regarding the extent to which scientific theories or propositions can be accepted or should be rejected based on existing empirical evidence. This aims to ensure that what is proposed by a theory or concept can really be justified empirically, and to avoid spreading claims that are not based on real evidence or repeatable observations.

Thus, analysis of contradictions in the positivism paradigm is critical for building reliable and scientific knowledge, by balancing theory with empirical observations critically and objectively.

CLOSING

If we look at the construction of positivism paradigm, this paradigm places the text in main position and has absolute authority as a law. This absolute authority must not even be influenced by non-juridical factors that have subjective potential. The positivism paradigm was first introduced by Auguste Comte, where the factual aspect in the context of Comte thoughts was aimed at forming the perception of text as a fact of knowledge. So the construction really emphasizes the purity of text as a knowledge base. In legal context, the positivism paradigm was developed by John Austin who developed the philosophy of analytical positive law (Analytical Jurisprudence) or what we often know as Sociological Positivism which views that the essence of law lies in command element, where law is seen as a fixed, logical legal system, and closed. As well as Hans Kelsen who believes that law must be cleared of non-juridical factors such as sociological, political, historical and even ethical. So that law is a *Sollens Catagory* (ideal category of necessity) not a *Seins Catagory* (factual category) and a necessity that regulates rational human behavior.

The implementation of positivism paradigm construction cannot be separated from the construction that formed it, that philosophy which includes what positivism is (Ontology), how Positivism is formed or obtained (epistemology) and why Positivism was born (Actiology) to dissect how the human mind works, so that the physical aspects and Metaphysics is the main element of positivism as a paradigm. In legal context, the positivism paradigm is methodological instrument in analyzing legal texts in perception of pure legal norms. Where legal construction must maintain the purity of its essence and function, so that this paradigm will remain relevant in legal context of the nature of letters. This means that the implementation aspect is logical, positivism paradigm is a constructive paradigm based on text which has dialectical potential over context, but the text has a more absolute role than empirical facts. This paradigm is also constructed based on science, where the interpretation of text is contextualized based on empirical facts of the text and context.

Logical contradictions in positivism paradigm are influenced by differences in form, both in aspects of elemental construction, basic thoughts, basic perceptions, basic assumptions, basic interpretations, factual basics in the social domain which form logical reasoning based on factual factors in society. In principle, the positivism paradigm places primary sources, namely texts, as objects, so that the perception of object really depends on how the subject explores it. This perception is what underlies the birth of Positivism Paradigm, that to limit wild interpretations and perceptions of text, so that the values and norms of text are not separated from the true essence of the text. On the other hand, this paradigm provides space for dialectic of texts which have absolute authority over factual contexts, in the inductive realm which places text as the main consideration, the text is rule itself which is binding. But on the other hand, the text is sacred and transcendental.

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