Silogisma Makna Hukum menurut Ronald Dworkin (1931-2013)

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BIOGRAFI

- Ronald Myles Dworkin, December 11, 1931 – February 14, 2013, was an American philosopher and scholar of constitutional law. He was Frank Henry Sommer Professor of Law and Philosophy at New York University and Emeritus Professor of Jurisprudence at University College London, and had taught previously at Yale Law School and the University of Oxford. An influential contributor to both philosophy of law and political philosophy, Dworkin received the 2007 Holberg International Memorial Prize in the Humanities for "his pioneering scholarly work" of "worldwide impact.

SILOGISME ?

- suatu proses penarikan kesimpulan secara deduktif, diatur dalam dua proposisi (pernyataan) dan sebuah konklusi (kesimpulan).
- Jenis-jenis silogisme:
  1. silogisme katagorial
  2. silogisme hipotetik
  3. silogisme alternatif
  4. entimen
  5. silogisme disjungtif (1. Generalisasi, Analogi, Klasifikasi, Perbandigan dan Sebab akibat)

LAW is an interpretative concept.

- *interpretative concepts* are a special kind of concept—a concept whose correct application depends not on fixed criteria or an instance-identifying decision procedure, but rather on the normative or evaluative facts that best justify the total set of practices in which that concept is used.
- Moral sebagai landasan tujuan utama

Dworkin:

- Ide Dworkin berangkat dari kritiknya terhadap postivism yang menganggap bahwa hukum adalah undang-undang
- Hukum meliputi prinsip-prinsip, politik, dan standar-standar juga aturan-aturan yang menyatu dengan moral
- Untuk mempertahankan cita fairness, due process of law dan hak-hak individual sebagai dasar untuk legalitas
- Menurutnya, hakim terikat oleh prinsip moral dan harus memutuskan sengketa dengan mengakui hak-hak institusional seseorang, tetapi legislator melakukan tugasnya secara tepat ketika mereka mengimplementasikan kebijakan dari berbagai jenis.

Kasus "Elmer" Riggs dan Palmer

- Elmer membunuh kakeknya dgn cara meracuni karena curiga bahwa sang kakek akan mengubah testamen karena sang kakek kawin lagi.
- Di dalam testamen, Elmer mewarisi sejumlah harta
- Elmer dinyatakan bersalah dan masuk penjara
- Anak-anak perempuan sang kakek gugat agar Elmer tidak dpt warisan atas dasar tidak layak
- Di pengadilan New York tidak ada ketentuan ttg ini seperti di BW ps.912
- Elmer diputuskan bersalah dengan dasar kepatutan

Kasus Henningsen vs Bloomfield

- Henningsen membeli mobil berdasarkan suatu kontrak yang mengadung klausula bahwa tanggung gugat produsen hanya sebatas memperbaiki bagian yg cacat dan selebihnya tidak.
- Terjadi kecelakaan, produsen digugat minta biaya pengobatan meskipun tahu hal ini tidak ada di dalam kontrak
- Pengadilan New Jersey mengabulkan gugatan henningsen dan berpendapat bahwa berdasarkan kepatutan produsen harus bertanggung gugat atas cacat mobil yang mengakibatkan kecelakaan

Suatu pemikiran dari kasus

- Kasus Elmer:
- ✓ Apabila sesuatu tidak dilarang bukan berarti bahwa sesuatu itu dibolehkan.
- ✓ Pengadilan New York telah memberikan bingkai untuk sesuatu yang tidak boleh dilakukan
- ✓ Bingkai itu bukan berupa aturan hukum, melainkan suatu nilai kepatutan
- Kasus Henningsen:
- ✓ Kepatutan lebih merupakan acuan daripada klausula-klausula yang secara formal tertuang di dalam praktek

Kesimpulan:

- Dworkin yang memaknai hukum secara luas dimana hukum itu menyatu dengan moral yang diartikan sebagai prinsip-prinsip dasar yang menjadi landasan manusia di dalam berpikir dan bertindak.

Catatan:

- Ide atau pemikiran Dworkin yang demikian sangat sesuai dengan konteks kapan dan dimana Dworkin berada yaitu di New York dengan latar belakang Common Law (asas preseden). Disini Hakim menjadi ujung tombak dalam proses mencari keadilan
- Bagaimana dengan di Indonesia? Kita berkiblat pada Civil law dimana undang-undang sebagai utama. Apakah boleh seorang hakim memutuskan melampui UU? Dalam UU Kekuasaan kehakiman, di dalam memutuskan perkara hakim menggali nilai-nilai yang ada di dalam masyarakat.

Syarat dan Ketentuan ide Dworkin:

- Sejak awal dipastikan hakim-hakim itu bersih bebas suap dan lain-lain
- Nilai-nilai tersebut harus diberikan penjelasan yang masuk akal secara hukum
- Nilai-nilai tersebut harus diperjuangkan sekuat tenaga sehingga masuk akal bahwa nilai-nilai itu memang layak menjadi ukuran
- Hakim-hakim harus menguasai logika dan cara berpikir silogisme

The Main Elements of Dworkin's Legal Philosophy from J. L. Mackie: "The Third Theory of Law," Philosophy and Public Affairs

- The law consists not only of rules but also of principles. Rules are applicable in an all-or-nothing fashion, whereas principles have the extra dimension of weight.
- He rejects the positivist notion of a single ultimate or fundamental test for law, such as a rule of recognition. In its place he puts the sort of reasoning that he ascribed to his imaginary judge, Hercules.

- In any sufficiently rich legal system the question, What is the law on this issue? Always has a right answer, discoverable in principle, and it is the duty of the judge to try to discover it.
- Though judges in hard or controversial cases have discretion in the weak sense that they are called upon to exercise judgment—they are not supplied with any cut and dried decision procedure—they never have discretion in the strong sense which would exclude a duty to decide the case one way rather than the other.

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- Even in a hard case one does not reach a stage where the law has run out before it has yielded a decision, and the judge has to make some new law to deal with a new problem. Judges never need to act, even surreptitiously, as legislators, though Dworkin allows that they may in fact do so as they sometimes do when they make a mistake or when they prospectively overrule a clear precedent.
- If judges are not legislating but still discovering an already existing law, they must confine themselves to considerations of principle; if they let policy outweigh principle, they will be sacrificing someone's rights in order to benefit or satisfy others, and this is unjust.

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- Dworkin rejects the traditional positivist separation of law from morality. The task assigned to Hercules is to find the theory that best explains and justifies the settled law, and to use this theory to decide otherwise unsettled issues. He construes the phrase —best explains and justifies || as including a moral dimension.

Kesimpulannya:

- The law consists of the explicitly adopted rules plus the best moral principles that can be interpreted as lying behind those rules.
- judges must interpret which moral principles lie behind the explicitly adopted rules. There are two dimensions of interpretation:
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- Formal dimension – Which set of principles better —fits ‖ the existing legal system and history of precedent? Relevant here are:

(a) logical consistency

(b) the fit between principles and past decisions (a judge —must continue the past and not invent a better past ‖).

- Substantive dimension – Which principles are morally speaking the best ones, that is, closer to the moral truth?

Example: a right to privacy = the principle that best explains the 4th Amendment's ban on unreasonable searches and seizures, and this extends to wiretapping.

Daftar Bacaan:

- http://en.wikipedia.org/wiki/Ronald_Dworkin
- Law as interpretation, Ronald Dworkin
- The Problem of Jurisprudence by Ricard Posner
- Pengantar Ilmu Hukum, Peter Mahmud Marzuki
- Teori Hukum, otje Salman dan Anton F. Susanto
- The Main Elements of Dworkin's Legal Philosophy from J. L. Mackie: "The Third Theory of Law," Philosophy and Public Affairs