



Justice Versus Certainty: The Antinomy of Law in the New Indonesian Criminal Code from the Perspective of Radbruch's Formula

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Article	Abstract
<p>Keywords: Antinomy of Law, Justice; Certainty; New Criminal Code; Radbruch Formula.</p>	<p><i>The ratification of the new Criminal Code in Indonesia, while aiming to reform criminal law, also presents legal issues, particularly from a legal philosophical perspective. This is as stated in Article 53, paragraph (2) of the New Criminal Code, which accommodates the formula, potentially leading to judicial bias and case manipulation due to subjectivity in prioritizing justice over legal certainty. This research is normative legal research that prioritizes philosophical, conceptual, and legislative approaches. The research findings confirm the essence of the formula in Indonesian legal and criminal philosophy, which emphasizes the supremacy of the value of justice over legal certainty in conditions of value conflict. Article 53, paragraph (2) of the New Criminal Code, which accommodates the formula, needs improvement and legal renewal to avoid judicial arbitrariness in criminal law enforcement. Therefore, it is necessary to renew and perfect Article 53 paragraph (2) of the New Criminal Code through norm revision or judicial review to maintain the constitutionality of the article and achieve a balance between legal certainty and objective justice in the Indonesian criminal justice system.</i></p>

INTRODUCTION

The ratification of the new Criminal Code (KUHP Baru) in Indonesia through Law Number 1 of 2023 marks a significant milestone in the history of national law. After more than a century of implementing the Dutch colonial legacy of the Criminal Code, Indonesia finally has a criminal law formulation based on the philosophy, values, and needs of its own nation. Drafting and ratifying this new Criminal Code was quite lengthy. It involved the participation of various elements of society, legal experts, and relevant state institutions to ensure that the regulated substance aligned with the times and societal aspirations.

Law No. 1 of 2023 consists of two main books: the First Book, which contains general rules as the main guideline for applying various provisions both within the Criminal Code itself and in criminal regulations outside the Criminal Code, including

those regulated in regional regulations, unless specifically regulated by other laws. This demonstrates the fundamental role of the First Book as the primary basis for Indonesia's future criminal justice system. Meanwhile, Book Two contains offenses or crimes and their sanctions, which not only adopt international legal principles but also align with the nation's culture, morals, and national interests.

The ratification of the new Criminal Code brings significant updates not only to the structure of criminal law regulations but also to human rights protection, law enforcement mechanisms, and the regulation of customary criminal law. Although the implementation of this New Criminal Code will face challenges in terms of socialization, readiness of law enforcement officials, and public response, the presence of Law No. 1 of 2023 remains a symbol of Indonesia's commitment to building a more modern, contextual, and inclusive legal system. The ratification of the new Criminal Code in 2023 brings several vital substances that significantly differentiate it from the old Criminal Code inherited from the Dutch colonial era. One fundamental change is the elimination of the dichotomy between the terms "crime" and "offense"; all offenses are now combined into a single category, "criminal act," thus no longer creating differences in the legal treatment of these two forms of behavior. From a fundamental legal perspective, the New Criminal Code reinforces the principle of legality by explicitly prohibiting analogical interpretation in determining a criminal act, unlike the Old Criminal Code, which allowed for limited legal analogy.

The paradigm of punishment has also undergone significant changes. The new Criminal Code prioritizes a more humanistic and restorative approach, introducing alternative punishments such as community service and rehabilitation, as well as stronger protection for human rights, vulnerable groups, and gender-based justice. Also included is recognition of customary law through the regulation of customary offenses that were not recognized in the old Criminal Code. The new Criminal Code even expands criminal liability, not only for individuals but also for corporations, with specific provisions regarding fines, confiscation, and detailed rules on corporate actions as subjects of criminal law.

In terms of criminal liability, the old Criminal Code applied liability based on fault, while the new Criminal Code also accommodates strict liability for certain types of crimes. The new Criminal Code also provides a clearer legal basis for crime prevention and supervision efforts, and details the penalties for attempted crimes with a more systematic and measurable approach; for example, the maximum penalty for attempted crimes is now 2/3 of the main sentence (compared to a one-third reduction in the old Criminal Code). In terms of structure, the Old Criminal Code consisted of three books (General Provisions, Crimes, Violations). In comparison, the New Criminal Code only has two books (General Provisions and Criminal Acts), marking a shift towards a more focused and organized system. Additionally, the new Criminal Code is more adaptable to modern crime developments such as cybercrime and

organized crime, and strengthens protection for vulnerable groups in society. All these innovations and updates are expected to realize a national criminal justice system that is inclusive, progressive, and more contextual with the needs and values of the Indonesian nation.

From the various substances in the new Indonesian Criminal Code, there is critical substance as stated in Article 53 paragraph (2) of the new Criminal Code, which emphasizes that if there is a conflict between certainty and justice in a criminal case, the judge is obliged to prioritize justice. The substance of Article 53 paragraph (2) of the new Criminal Code (Law No. 1 of 2023) is an essential breakthrough in the Indonesian criminal justice system because it explicitly states that if there is a conflict between legal certainty and justice in the process of upholding the law and justice, the judge is obliged to prioritize justice. This provision is not merely technical-legal; it has a profound philosophical dimension. From a philosophical perspective, this article places justice as the primary value in criminal law enforcement, correcting the old paradigm that often prioritized textual legal certainty without considering the sense of substantive justice for those seeking justice.

Its philosophy is rooted in the view of progressive law and the values of Pancasila, where law should be used as a tool to achieve social justice, humanity, and respect for human rights. This article reflects criticism of rigid and positivistic laws and rejects the notion that all legal problems can be solved solely by written rules. With this provision, judges are expected not to be trapped solely by the formalities of the law, but to be able to delve into the values of justice in life within society, considering the evolving moral, social, and humanitarian context. As a result, the judge's decision is not only legally legitimate but also ethically and socially legitimate, in order to create a more humane, responsive, and just judicial system that aligns with the pluralistic and equitable dynamics of Indonesian society.

In legal philosophy, the provision of Article 53 paragraph (2) of the New Criminal Code is commonly known as the formula. The formula is a legal theory first formulated by German law professor and politician Gustav Radbruch in his essay in 1946. The formula teaches postulates that not all positive laws must be obeyed if they are in extreme conflict with fundamental principles of justice; in such cases, the law loses its status as legitimate law, and justice must be prioritized. This research aims to deeply analyze the dimensions of certainty and justice in the new Indonesian Criminal Code (KUHP) from the perspective of formula. There are two legal issues that this research attempts to analyze: (a) the nature of the formula in legal and criminal philosophy, and (b) the legal implications of the new Indonesian Criminal Code provisions from the perspective of formula.

Certainty and justice in Indonesia within the context of criminal law, as stipulated in Article 53 paragraph (2) of the New Criminal Code, which is the focus of this research, is a normative legal study. Its main characteristic is the doctrinal analysis of

law based on legal theories, concepts, and philosophies, with this research focusing on the formula. As a study focused on the philosophical aspects of law, this research uses a philosophical approach as the primary approach, accompanied by conceptual and legislative approaches. The primary legal materials in this study are the New Indonesian Criminal Code (Law No. 1 of 2023), and the secondary legal materials used are journal articles, books, and research findings discussing legal philosophy, criminal law, and theories related to the formula. To expand the analysis in depth, the non-legal material used in this study is a language dictionary. The collected legal materials were comprehensively analyzed using a prescriptive-based analysis, where existing legal issues were then analyzed in depth to formulate a legal solution.

METHOD

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RESULTS AND DISCUSSION

The Essence of the Radbruch Formula in Indonesian Legal Philosophy and Criminal Law

Gustav Radbruch was a German jurist and legal philosopher who played a very important role in the development of modern legal science. He is primarily known for his legal philosophy, which emphasizes three fundamental values of law: justice, legal certainty, and utility. Once served as Minister of Justice during the Weimar Republic and is also known as one of the most influential legal philosophers of the 20th century, alongside Hans Kelsen and H.L.A. Hart. He developed a theory that unites ideal values and the practical realities of law. According to him, law is not just about certainty or formal compliance, but it must also contain justice and provide benefits to society. He opposed blind obedience to unjust laws and emphasized the importance of morality in the validity of law.

Through his works such as "Rechtsphilosophie" (1932) and other writings, provided a profound foundation for modern legal philosophy and the development of

legal systems that integrate the values of justice, legal certainty, and utility. Radbruch His thoughts continue to influence the academic world and legal practice, including in addressing contemporary legal challenges such as legal pluralism and globalization. Thus, he is not only a legal theorist but also a thinker who integrates normative and practical aspects of law, making him a central figure in the field of legal science who has made significant contributions to how law is understood and applied fairly and meaningfully in modern society.

The thoughts of Gustav Radbruch have a profound influence on the study of legal science, particularly in building a bridge between legal positivism and the idea of justice that is moral in nature. The central concept developed by Radbruch is what is known as the "triadic values of law," namely justice (gerechtigkeit), legal certainty (rechtssicherheit), and utility (zweckmäßigkeit). The triadism of these three basic legal values proposed by Gustav Radbruch—namely justice, legal certainty, and utility—becomes a fundamental framework in legal practice, especially in the process of legal interpretation by judges. According to Radbruch, these three values complement each other and cannot stand alone, but they often create tension in their application in court. In practice, a judge does not merely adhere rigidly to the text of legal norms (legal positivism), but must also consider the extent to which law enforcement can realize a sense of substantive justice for the parties involved in the case. Justice functions as an ethical and moral orientation that limits the application of law so that it is not merely legalistic but also humanistic. On the other hand, legal certainty demands clear, consistent, and predictable rules—so that society is protected from arbitrary decisions. Utility refers to the role of law in meeting social needs and serving the interests of the broader community.

When a judge faces a case with legal rules that result in an unjust verdict, Radbruch's approach allows them to make a progressive interpretation, even—in extreme situations—prioritizing justice over positive law. This view is highly relevant in the context of modern jurisprudence, for example, in cases of serious human rights violations or state tyranny, where the enforcement of formal law can be corrected if it clearly contradicts the principles of universal justice. Judges are required to provide considerations that balance guaranteeing legal certainty for society while ensuring that the value of justice is not sacrificed merely for procedural legality. Thus, his triadism serves as an ethical compass as well as an analytical framework for judges in interpreting the law reflectively, critically, and responsibly—so that the law truly serves just, dignified, and solution-oriented humanity for the needs of society.

Gustav Radbruch believes that the ideal concept of law must always rest on these three pillars—with justice as the primary determinant, but without neglecting the certainty and utility of the law. He emphasized that—in practice—a good law is not only binding in terms of legal formalities but must always be tested for its justice and usefulness to society. He argued, "law is a reality given meaning to serve the idea of

law itself," where the idea of law is understood as a manifestation of the balance between these three fundamental values.

fundamental values.

One of Radbruch's most monumental contributions is the birth of the Radbruchsche Formel, also known as the Radbruch formula, introduced after World War II, influenced by the dark experiences of the Nazi regime in Germany. Through this formulation, he stated that the validity of positive law still takes precedence, even if its substance is considered unjust or morally unacceptable—; however, there is a maximum limit that must not be exceeded. If a law, or legal product, is in stark and intolerant contradiction with the principles of justice, especially if it consciously negates the principle of human equality, then that legal product should not be recognized as valid law and must be defeated by a higher value of justice. In other words, "positive law cannot be relied upon if it is in extreme conflict with justice; in such situations, positive law must yield to justice."

The Radbruch formula, as proposed by Gustav Radbruch, is a highly influential concept in modern legal philosophy that connects aspects of positive law with morality and justice. This formula emerged as a response to the repressive experiences endured by Germany during the Nazi regime, where the formally applicable positive law resulted in extreme injustice and violated fundamental human values. According to Radbruch, positive law—which is usually prioritized when legal certainty is emphasized—has a moral limit that must not be exceeded. Suppose the law in force is manifestly and openly contrary to justice, becoming intolerant, discriminatory, or cruel. In that case, that law is no longer considered legitimate and must be defeated by a higher principle of justice. In other words, in extreme situations, positive law must yield to universal and moral justice.

More specifically, the Radbruch formula emphasizes three main pillars of legal values: justice, legal certainty, and utility. However, Radbruch stated that if there is a tension between legal certainty and justice, then justice must be the highest priority. This means that although legal certainty is essential for maintaining social order and legal security, laws that enforce extreme injustice lose their moral and philosophical legitimacy. This doctrine bridges the gap between legal positivism, which places formal legality above all else, and the moral view of law that demands substantive justice as a condition for the validity of law.

The contribution of Radbruch's formula in legal philosophy is highly significant because it introduces a critical paradigm against pure legal positivism and emphasizes the integration between the validity of formal law and objective moral values. forces legal scholars and practitioners to consider that law is not merely a set of formal rules to be followed unconditionally, but also a manifestation of moral and humanitarian values. Thus, the formula becomes essential instrument in judicial practice, especially in the interpretation of law by judges faced with legal norms that have the potential to

cause injustice. This formulation proposes that judges have the authority and moral responsibility to disregard positive law that drastically contradicts universal justice, thereby reinforcing the ethical and humanitarian aspects in the application of law.

This Radbruch formula extends into the realm of jurisprudential theory, where Radbruch demonstrates that the dimension of law cannot be separated from the idea of an ideal law that contains justice as its core. This view underpins a sharp critique of blind legalism and strengthens the justification for moral-based legal intervention, especially in rejecting arbitrary and oppressive laws. Thus, his contribution to legal philosophy is to open a dialogue between law and morality, enriching the perspective of legal scholarship so that law is not only a tool of power but also an instrument for achieving social justice and protecting human dignity. In summary, the formula is essential ethical-juridical formula in legal philosophy as a reminder and guide that the validity of law must not ignore universal justice, especially when positive law deviates from moral and humanitarian values. This makes Gustav Radbruch one of the key figures in the evolution of modern legal thought, balancing between legal certainty and the supremacy of justice.

The Radbruch formula has significant relevance in the practice of criminal law in Indonesia, especially in the context of law enforcement, which must integrate three fundamental legal values: justice, legal certainty, and utility. In Indonesian criminal law, this formulation emphasizes that although legal certainty is a fundamental aspect to ensure clear, consistent, and predictable legal rules within the criminal system, the value of justice must remain the top priority when there is a tension between certainty and justice. This is crucial in criminal law practice, where a judge's decision not only considers the formal applicability of the law but also its impact on the sense of justice for both the defendant and the broader community.

In the context of Indonesian criminal law, the Radbruch formula encourages judges not to merely follow the text of positive law if the norm results in extreme injustice, such as in cases involving human rights violations or the imposition of criminal sanctions that contradict humanitarian values. This practice requires judges to conduct progressive and humanistic legal interpretations, balancing legal certainty to prevent arbitrary actions with the utility of law to maintain public order and safety. Radbruch's approach reminds us that criminal law is not merely a tool of social control, but also an instrument for protecting individual rights that must be based on substantive justice.

Furthermore, in Indonesia, the value of the utility of law as proposed by Radbruch is also a consideration in the imposition of penalties, such as the selection of the type and severity of punishment; the application of penalties must be helpful not only for upholding justice for the victims and society but also effective in preventing future crimes. Thus, the formula in the practice of criminal law in Indonesia serves as an ethical and philosophical framework that demands the application of criminal law to

be not rigid and mechanical, but rather reflective and responsive to the social and moral context of society.

Overall, the application of the Radbruch formula in Indonesian criminal law shows that criminal law must bring real justice, where legal certainty and utility should not sacrifice moral and humanitarian values. This makes the formulation essential foundation in addressing the dilemma between formal legal rules and the need to uphold true justice in the practice of criminal justice in Indonesia. The formula is highly relevant in the context of Article 53 paragraph (2) of the New Indonesian Penal Code, which emphasizes that if there is a conflict between legal certainty and justice in a criminal case, the judge must prioritize justice. It highlights three fundamental legal values: justice, legal certainty, and utility, with justice as the central pillar when there is a conflict of values. Article 53, paragraph (2) of the New Penal Code explicitly adopts the Radbruch principle by requiring judges to place justice as the top priority, even if it means disregarding formal legal certainty. In the practice of criminal law in Indonesia, this provides judges with the space to interpret and apply legal rules in a more humane and moral manner, especially in cases where the rigid application of the law could cause substantive injustice to the accused or society.

This provision becomes an important mechanism to avoid the application of law that is merely legalistic without considering the value of substantive justice, in accordance with Radbruch's warning that positive law that fundamentally contradicts the principle of universal justice loses its legitimacy as valid law and must be defeated by justice. This also shows that criminal law does not only function as a strict tool of social control but also as an instrument for the protection of human rights and humanitarian values. Thus, Article 53 paragraph (2) of the New Criminal Code strengthens the position of judges as guardians of legal morality tasked with maintaining the balance between the enforcement of rules and justice, helping to prevent potential cruelty or injustice from the application of overly rigid laws.

Operationally, the provision of Article 53 paragraph (2) of the New Penal Code encourages judges to conduct reflective and responsive legal interpretations in criminal cases, including considering the utility of law in a broader social context, as emphasized by Radbruch. This encourages the application of substantive justice principles in legal decision-making, providing opportunities for legal correction of norms or legal policies that have the potential to oppress or exceed acceptable moral boundaries. Therefore, Article 53 paragraph (2) of the New Penal Code becomes a practical implementation within the Indonesian criminal justice system, emphasizing that legal certainty must yield to justice as the highest value when the two conflict in the law enforcement process. Article 53, paragraph (2) of the New Penal Code adopts and reinforces the fundamental principle of the Radbruch formula, which asserts the supremacy of justice over legal certainty, particularly in Indonesian criminal law. This emphasizes the crucial role of judges not only as enforcers of formal law but also as guardians of moral values

and substantive justice, so that criminal law does not merely become a normative tool but also an instrument of humane and dignified social justice.

The essence of Radbruch's formula in legal philosophy and its application in Indonesian criminal law is a critical blend of formal legality and substantive morality, emphasizing that law is not merely a normative rule to be followed without exception, but also must uphold the value of justice. Philosophically, the formula was born from the bitter experience of positive law being used as a tool of oppression, especially during the Nazi regime in Germany, which sparked the idea that there are moral boundaries that positive law must not violate. Radbruch emphasizes three interconnected fundamental legal values: justice, legal certainty, and utility, but places justice as the highest value that must be prioritized when there is a conflict between these three values. This philosophy rejects legal positivism, which prioritizes legal certainty absolutely without considering substantive justice, thereby allowing for legal norms that starkly contradict the principles of universal justice not to be recognized as valid law. Thus, the formula paves the way for the integration of formal legal norms and moral principles that prioritize humanity and human dignity as the foundation of true law.

In the context of Indonesian criminal law, the essence of Radbruch's formula is highly relevant because criminal law not only functions as a regulation of norms and sanctions but also as an instrument for the protection of human rights and social justice. Article 53, paragraph (2) of the New Criminal Code, which requires judges to prioritize justice when there is an apparent conflict with legal certainty, explicitly adopts Radbruch's principle. This shows that in the implementation of Indonesian criminal law, judges should not rigidly enforce formal law if the rule causes substantive injustice that could harm the defendant or society at large. This approach demands that judges use reflective and humanistic interpretations, prioritizing substantive justice while maintaining legal certainty and utility for the greater social good. In other words, the formula provides a philosophical and ethical foundation for the Indonesian criminal justice system so that the law does not become a tool of repressive power, but an instrument that promotes welfare and protects citizens' rights fairly and with dignity.

In short, the essence of Radbruch's formula in the philosophy of law and Indonesian criminal law is the assertion of the supremacy of justice over legal certainty in situations of value conflict, connecting formal juridical aspects with universal moral dimensions. This concept strengthens the role of judges as guardians of moral values and substantive justice in the enforcement of criminal law, making law a vehicle for the struggle for human values and social justice, rather than merely a rigid set of rules to be followed dogmatically. The formula also marks a crucial evolution in modern legal thought that rejects blind legalism and encourages the integration of legal norms and morality to create a humane and dignified legal system.

B. Legal Implications of the New Indonesian Criminal Code Provisions Viewed from the Perspective of Radbruch's Formula

Legal implications are the indirect and implied consequences or effects resulting from an action, decision, or event within the context of the legal system. Legal implications are usually the result of formulating, interpreting, or applying legal norms, leading to specific consequences that may not be explicitly stated but are inferred from the legal situation that arises. The legal implications of this could include changes in legal status, the emergence of legal liability, or other effects related to rights and obligations under the law.

The fundamental difference between legal implications and legal consequences lies in their clarity. Legal implications are more implicit, and their consequences may still be potential or likely to occur. In contrast, legal effects are the real and direct consequences that arise from a legal action or decision. Legal effects are usually specific to occur and are clearly concrete, such as a change in a person's legal status, the imposition of sanctions, or legal obligations that must be fulfilled. In other words, legal consequences are the direct results that follow from a legal event, while legal implications focus more on potential consequences, including those not explicitly stated. This study focuses on analyzing legal implications because, in addition to examining legal philosophy, it also reviews the Radbruch formula in the formulation of Article 53 paragraph (2) of the New Criminal Code, which is more likely to occur in the reasoning and formulation of legal decisions by judges.

Analyzing the provisions of Article 53, paragraph (2) of the New Criminal Code requires not only focusing on that paragraph but also a deep understanding of its connection to other articles and paragraphs. This requires an effort to interpret legal norms, particularly based on systematic interpretation. According to Sudikno Mertokusumo, systematic interpretation in law is a method of legal interpretation that involves giving meaning and significance to the content of a legal regulation in a comprehensive and structured manner. This includes understanding various parts of the regulation, such as the title, the "considering" and "recalling" sections, the wording of each article, general and article-by-article explanations. The aim is to understand the law's meaning based on the systematic framework and the relationships between the parts within the legislation itself so that the interpreted law becomes complete and consistent within its system's context.

Systematic interpretation is necessary because every law is part of a larger and interconnected legal system. It ensures that the meaning of a legal provision is not taken partially or in isolation but is connected to other relevant provisions within the legal system, thus providing a complete and coherent meaning. Therefore, systematic interpretation maintains the consistency of legal norms and prevents contradictions between articles or different laws. This is very important so that the law's application in law enforcement practice is fair, logical, and consistent with its purpose.

A systematic interpretation of Article 53 paragraph (2) of the New Criminal Code must consider two aspects: the provisions of Article 53 paragraph (1) of the New Criminal Code, which state that judges are obliged to decide a criminal case in to realize law and justice, and the wording of Article 53 paragraph (2) of the New Criminal Code, which emphasizes that if there is a conflict between justice and certainty, the judge must prioritize justice. The substance of Article 53 paragraph (1) of the New Criminal Code systematically has similarities in substance with the wording of Article 5 paragraph (1) of Law No. 48 of 2009 on Judicial Power, which states that the court is obliged to decide a case based on law and a sense of justice in society. This means that when delivering a verdict, judges should not only focus on legal rules, but must also understand and explore the values of substantive justice prevalent in the society where the law is applied. Thus, judges are required to integrate written legal norms with a local sense of justice that reflects the customs, culture, and social values of the community.

This obligation is essential because Indonesia's pluralistic legal system must be able to respond to social dynamics and the diversity of values that exist. In practice, this provision encourages judges not only to examine formal legality but also to consider aspects of justice, ensuring legal certainty and benefiting society. The ideal judge must possess expertise (skill), attitude, and integrity, as well as broad knowledge, including an understanding of legal values and the sense of justice prevalent in Indonesia's diverse society, so that the resulting decisions are truly fair and aligned with the social and legal context. Thus, Article 5 paragraph (1) of Law No. 48 of 2009 affirms the function of judges as actors of judicial power who must uphold the principle of substantive justice, not merely adherence to legal text, to ensure the enforcement of law that is fair, equitable, and acceptable to the broader community as a reflection of social justice. This provision of Article 5 paragraph (1) of Law No. 48 of 2009, which is essentially reiterated in Article 53 paragraph (1) of the New Criminal Code, also indicates the same thing: that judges in adjudicating a criminal case must uphold the principle of substantive justice, not merely adherence to legal text, to ensure the enforcement of law that is fair, equitable, and acceptable to the broader community as a reflection of social justice for all Indonesian people, as mandated by Pancasila.

Further provisions of Article 53 paragraph (2) of the New Criminal Code, as related to Article 53 paragraph (1) of the New Criminal Code, essentially affirm that judges, in adjudicating criminal cases and striving for law and a sense of justice in society, also need to optimize the aspect of justice. If justice conflicts with legal certainty, the judge is obliged to pursue justice. The orientation of the provisions of Article 53, paragraph (2) of the new Criminal Code is essentially inspired by the Radbruch formula, which originates from the thinking of legal philosopher Gustav Radbruch. The formula postulates that although law provides critical certainty, if the

legal rule contradicts very fundamental justice (unjust law or very unfair law), then justice must be prioritized even if it means disregarding the existing legal text.

In applying Article 53 paragraph (2) of the New Criminal Code, this provision allows judges to consider the value of substantive justice that exists in society and not be solely focused on legal certainty. Thus, in cases of criminal trials, if the rigid application of legal certainty is felt to conflict with a just outcome, the judge has an obligation to prioritize justice, as an implementation of the more humane and equitable principle of law. This is an essential step in balancing legal certainty and justice in criminal justice practice, considering that criminal attempts are a grey area between intent and actual consequences. With this formulation, the New Criminal Code explicitly accommodates flexibility in law enforcement, so that judicial decisions are not only mechanical but also consider social and moral context in accordance with the community's sense of justice and high human values. Therefore, Article 53 paragraph (2) opens the possibility for judges to prioritize justice inspired by the Radbruch formula, making substantive justice the main principle in upholding criminal law for attempted crimes in Indonesia.

The Radbruch formula in criminal law is a legal theory proposed by the German legal philosopher Gustav Radbruch. It asserts the existence of three fundamental values in law: justice, utility, and legal certainty. According to Radbruch, ideal law must balance these three values. Still, when there is a sharp conflict between legal certainty and justice, especially when the applicable positive law is very unjust, justice must take precedence over legal certainty. In other words, a law that is highly contradictory to justice essentially loses its force as a legitimate law and is not obligatory to obey because it contradicts the value of substantive justice.

The parameters used in the Radbruch formula to assess whether a law can be considered just are that the legal norm must contain elements of legal certainty that provide clarity and order, aspects of utility or the function of law to achieve social order, and elements of material justice that ensure equal rights and fair treatment for all citizens. When legal certainty, which usually consists of fixed rules that must be followed without compromise, conflicts with the value of justice that lives in society or the basic moral values inherent in legal culture, Radbruch argued that judges are obliged to disregard legal certainty alone and prioritize justice in their decisions. This is the institutionalization of humane and just legal principles, which avoids the mechanistic application of law that could lead to extreme injustice, such as discriminatory or oppressive laws.

In criminal law, the Radbruch formula provides a basis for judges not to adhere solely to the text of positive law rigidly but also to consider the values of substantive justice, especially in cases where the punishment feels disproportionate or deviates from the human values upheld in society. This principle also forms the basis that positive law which does not meet the value of substantive justice, regardless of its

certainty and usefulness, is not worthy or cannot even be considered truly legitimate law. Thus, the Radbruch formula balances two fundamental aspects in criminal law: legal certainty to ensure order and social control, and legal justice to prevent oppressive injustice in the application of the law.

The provision of Article 53 paragraph (2) of the new Indonesian Criminal Code, which explicitly orders judges to prioritize justice when there is a conflict with legal certainty, fundamentally reflects the philosophy of the Radbruch formula. This is evident in his postulate, which prioritizes justice over positive legal provisions when legal values conflict. In addition, this provision also affirms that law enforcement in Indonesia is not merely formalistic and mechanistic, but must also consider the values of substantive justice that exist within society. Thus, Article 53, paragraph (2) of the New Criminal Code explicitly provides a normative basis for judges to prioritize the perspective of justice in their decisions when legal certainty conflicts with justice, in accordance with the essence of the formula. This acknowledges that law is not merely a rigid set of rules to be followed absolutely, but a means to achieve higher goals of justice and social utility, as emphasized by Radbruch in his legal value system. Therefore, the application of Article 53 paragraph (2) of the New Criminal Code is a concrete manifestation of the progressive law principle, which places justice as the central pillar of law enforcement, above rigid legal certainty.

Despite this, the provision of Article 53 paragraph (2) of the new Indonesian Criminal Code, which explicitly orders judges to prioritize justice when there is a conflict with legal certainty on the other hand, has the potential to cause two major problems: first, because the standards and parameters of justice as stipulated in Article 53 paragraph (2) of the new Indonesian Criminal Code are not clearly defined, justice in this formulation can potentially lead to "legal manipulation" where justice can be interpreted subjectively by judges, thus potentially resulting in "misleading and deceptive courts." The second problem is related to the obligation of judges as formulated in Article 53 paragraph (2) of the new Indonesian Criminal Code, which can actually affect the independence of judges because judges are required to refer to aspects of justice and legal certainty. In fact, there is often an antinomy or conflict of values between justice and certainty because they have different goals and are sometimes difficult to achieve simultaneously. Justice demands fair and equal treatment, focusing on morality and ethical values. In contrast, legal certainty demands clear, precise, and predictable rules so that society can act in accordance with those rules without confusion.

The Radbruch formula, as the main idea of Gustav Radbruch, asserts that although legal certainty is essential, when positive law blatantly and severely denies justice, justice must take precedence over legal certainty. He argued that an extremely unjust law is not true law, so in that antinomy, priority is given to justice to achieve true legal morality. Thus, the legal antinomy between justice and legal certainty

according to Radbruch, is a conflict of values that cannot be fully resolved. Still, in extreme cases, justice must be the primary guiding principle.

Gustav Radbruch's view, known as the Radbruch formula, is essentially a framework of "ideas" that should not need to be formulated as a norm in law. As a framework for "ideas," this formula must indeed be followed by judges in criminal cases. Still, it must be formulated based on the expertise, integrity, and convictions of the judge, not as it is formulated in Article 53 paragraph (2) of the New Criminal Code. Formulating the formula by emphasizing the aspect of justice over legal certainty, as explained in Article 53 paragraph (2) of the New Criminal Code, actually has the potential to cause judicial bias in trying criminal cases because the term "justice" in Article 53 paragraph (2) of the New Criminal Code can be used as a basis for manipulating the law for specific interests that originate from judicial bias.

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The implications of formulating Article 53 paragraph (2) of the New Criminal Code, which substantially accommodates aspects of the Radbruch formula, could lead to judicial bias and potentially result in "case manipulation" where judges could act arbitrarily and disregard written rules based on subjective views of justice. To avoid judicial bias and the potential for "case manipulation," it is necessary to revise the formulation of Article 53 paragraph (2) of the New Criminal Code, emphasizing that "a judge's efforts to prioritize justice over legal certainty must be based on evidence and the judge's conviction and carried out based on propriety." This formulation can be achieved by revising the provisions of Article 53 paragraph (2) of the New Criminal Code or by conducting a judicial review of Article 53 paragraph (2) of the New Criminal Code in the Constitutional Court, with a petition emphasizing that Article 53 paragraph (2) of the New Criminal Code is conditionally constitutional as long as, in prioritizing justice over legal certainty, the judge must base their decision on evidence and their conviction and carry it out based on propriety in realizing a sense of justice in society.

CONCLUSION

The essence of the Radbruch formula in Indonesian legal and criminal philosophy essentially affirms the supremacy of the value of justice over legal certainty in conditions of value conflict. This concept integrates formal legal aspects with universal moral dimensions, thereby strengthening the role of judges as guardians of moral values and substantive justice in criminal law enforcement. Thus, law is not merely seen as a rigid set of rules that must be dogmatically obeyed, but rather as a vehicle for the struggle for human values and social justice. The formula also reflects a significant evolution in modern legal thought, which rejects blind legalism and encourages the integration of

legal norms and morality to achieve a legal system that is more humane, dignified, and responsive to the true value of justice.

The implications of formulating Article 53 paragraph (2) of the New Criminal Code, which accommodates aspects of the Radbruch formula, have the potential to cause judicial bias and open the door to "case manipulation" due to arbitrary judges who prioritize subjective justice over written rules. Therefore, it is crucial to update the formulation of Article 53 paragraph (2) of the New Criminal Code by emphasizing that the judge's efforts to prioritize justice over legal certainty must be based on rational evidence and conviction, and carried out based on propriety. This improvement can be realized through revising the norm or through judicial review mechanisms in the Constitutional Court, provided that the constitutionality of Article 53 paragraph (2) of the New Criminal Code is maintained as long as justice is upheld proportionally and based on evidence and propriety. Thus, this step is expected to maintain a balance between legal certainty and substantive justice, aiming to create a sense of objective fairness within the Indonesian criminal justice system.

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