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Study Of Legal Positivism

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Abstract:
This article is a result of study that aims to explain the importance of the thought of legal positivism. The rapid development of science and technology can cause problems in life. The demands of the necessities of life to be fulfilled by human beings. Therefore, the development of legal positivism as a legal discipline closely related to the rational method of legal thinking becomes very important. There are various issues that require assertiveness and legal certainty to solve them. Understand how laws in legislation are important in law science, because law embraces the principle of legality in the system of state positive law norms. The study method used is literature with philosophical approach. From the results of the study shows that the study of legal positivism is very important to understand the law in writing in the legislation. Deductive that became characteristic in the method of reasoning legal positivism to get a correct understanding of the law of the general provisions established in the legislation. Rational-based legal positivism is very useful to establish the degree of legal certainty.
Keywords: *study, legal positivism, rational, philosophy*

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Introduction

During the development of the country and the globalization that is currently happening, state needs to redevelop its law by making development-based legislation and keeping in mind the aspiration of society as well, as what had been stated by researchers. By doing so, the legislation had been formed can support the expected national development. In a more complex phase, researchers said that law in state should be formed as future-oriented law. The old style laws are not able anymore to accommodate common interests of the society. That is why law is supposed to be made as clear, decisive as possible in form of legislation in order to regulate the public order. Moreover, researchers described that studies concerning the legal principles, legal systems, legal synchronizations, legal comparisons, and legal histories is significant to be conducted so that normative legal positivism of law does not lose its philosophical meaning. By conducting those studies, the legislation of law is able to maintain its significant role in the legal systems in order to achieve the national goals. Apparently, normative legal positivism of law sometimes restricts itself from the external influence, such as society's interests, in order to remain the its values. Law is an independent ruling system and it is neutral from the influence of any current situation. In accordance with this statement, researchers describes that law is not the behavior of society, but instead, it is a normative-positivism regulations or legislation that rules the society's behavior.

The implementation of normative legal positivism in state is greatly influenced by *civil law system*, in which law is perceived as a written legislation. Later, this perception results a legal concept of normative legal positivism. According to this concept, everything must be regulated in the legislation before it is implemented. Otherwise, the rest is not considered as law. According to researchers, to transform the normative legal positivism of law as what is formed in the legislation, a special, authorized institution is needed to form the constitution of state as the fundamental law. Therefore, state is expected to have fundamental law to regulate its country. In reviewing the normative legal positivism of law, researchers emphasizes more on the aspect of institutional and constitutional of state. These two aspects become the main reason in deciding the law making. Even in its development, the use of normative-positivism legal thought depends on the constitution as the fundamental norm as well as the highest law that becomes the basic of current legislation. Meanwhile, the institution that is authorized to make the constitution and legislation is the legislative council. Thus, the position of the legislative council is very strategic in the constitutional system.

Normative thought of legal positivism of law is symbolized by the characters of legal thought that emphasize on the rigid principles of positive legal form of law in the constitution. This thought becomes the main flow of legal practices and legal theories. Thus, many researchers and jurists in country are interested in studying the field of legal thought. Normative thought of legal positivism has formal characteristic that is oriented more on adjustment of legislation to the reality currently happening in the society. In this case, legislation is used as a mean to control the state's life and it is must be formed by an authorized institution. Thus, a law can be considered as a united system that is ruled in a country. Making a law is supposed to be done through several procedural mechanisms in accordance to the legislation, and it is also should be conducted by the authorized institution, so what is resulted is legal positivism in form of state legislation. Normative-positivism legal thought is similar to legal positivism that clearly and decisively perceives law in the formal procedures based on the rigid postulated legal in the legislation.

Legal Positivism

Understanding a law as positive norm system in form of legislation has similar perspective with perceiving legal positivism theory that in its development, it is influenced by positivism concept proposed by August Comte. Legal positivism tries to clarify the judgment about the values of jurisprudence by limiting its field in the analytical phase only. Legal positivism concept perceives the law as a ruling regulation that is made by authorized institution of the state. Legal positivism also emphasizes on dividing the law from everything irrational or beyond human's rational, feeling, moral and etiquette and something that tends to identify the justice only based on legality and obedience to the law. In legal positivism, law is perceived as a specific phenomenon that should be analyzed scientifically. Moreover, it aims to form a system of rational structure so that this concept leads to a consideration that law making is something professional. In other words, law is the scientific result from jurists' studies. Law is a legal-state-concept-based legislation. Thus, the rightful law is the one regulated in a state. There is no correlation between law and moral because law is a product created by professionals in the field of law. Law is a method of closed logical system in which to make interpretation, religious norm, moral norm, and social norm are not included. Understanding legal positivism can be done by reviewing the thoughts from: John Austin, H.L.A. Hart and Hans Kelsen.

John Austin views law as a regulation made by more powerful human beings to manage their fellow human beings. Law, then, is used as a means of managing all people's activity in a state and it must be made by authorized institution. As the result, law becomes an autonomous institution without correlation with external factor of field of law. Law is separated from justice, and as a replacement, law is right-and-wrong-based ideas based on the supreme power. According to Austin, jurisprudence analyzes the legal positivism by considering laws without noticing the good and the bad. Legal positivism is made by a sovereign, the most demanding lawmaker. Sovereign as supreme decision maker, is not the one who has highest power that is glorified by the people. It does not solely bounded by the legal restrictions, not by the superiors' principles nor the legal itself. In Austin point of view, law is characterized by its imperative reflecting the order from the superior. Law as the imperative law can be explained that: first, set by men as political superior to political inferior, e.g. laws set by a sovereign in the state; secondly, law set by men as privat individuals in pursuance of legal right, e.g. rule made by a guardian for his ward.[1] However, not every imperative command can be said as law. Only the general ones that make people obey to fulfill it. General command based on Khudzaifah Dimyati has three principles: firstly, wish or desire expressed by political superior; secondly, a conditional evil incurred if command not obeyed; and thirdly, an expression or intimation of the wish by word or other signs. A command as an imperative law is not always issued by the state, but it may be issued by an institution delegated by the authorized one to make a law. The example is a verdict issued by a judge. In opposite of the previous statement, there is a circumstance in which one side party become the sovereign who gives the command while another party becomes the one being commanded. The reason why people should obey the command is not really important, but one thing to be sure is that there will be sanction once they disobey it. To call something as a law, John Austin described that some elements should be accomplished first, they are sovereign, command, duty, and sanction.[2] Beside, Friedman argued that John Austin have change the traditional ideal of the justice with the command of sovereign superior. The definition of law according to John Austin is that "every positive law is directly or circuitously decided, by souvereign individual or institution, to a member or members of the independent

[1] M.R. Zafer, 1984, *Jurisprudence an Outline*, Kuala Lumpur: International Law Book Services, p.6-7.

[2] John Austin, 1995, *The Province of Jurisprudence Determined*, Cambridge: University Press, p.20-22.

political society wherein its author is supreme". Its means that law is every positive law that is made directly or circuitously by an individual or a group of intelligent for sovereign political society, in which the law making is made by the supreme power.[3]

H.L.A. Hart described that law is united regulation in country and state citizenship, so legal positivism is a law having an authority to force the people.[4] There are two aspects in understanding law as a controller. They are internal and external aspects. Internal aspects are those that come from people's motives in obeying the law. Meanwhile, external aspects are viewpoints outside people insight concerning how people act as they respond toward the law. According to Friedman, Hart perceives legal positivism in several opinions. They are: *first*, legislation is a law consisting commands for the people; *secondly*, the correlation between laws with morals or existing laws with the should-be-existing laws;[5] *thirdly*, the studies concerning the concept of law should be divided with the historical studies concerning the causes of the legislation, such as sociological study of the correlation between law and the social phenomenon;[6] *fourth*, the system of positive law is a closed logical system of law, in which the rightful verdict is resulted from logical ways that is rationally taken from legislation formerly decided without involving the correlation of social and moral prerequisite; *fifth*, the judgment of moral and statements of fact cannot be given to make a law when it is supported by rational reason and proven evidence.[7]

Another legal positivism that is also described by Hans Kelsen is known as pure theory of law. The pure theory of law tries to answer the question concerning what law is instead of what law is supposed to be. It emphasizes solely on law while trying to separate the jurisprudence from the influences of other fields of science such as psychology, sociology, history, politics, and even moral and ethics. Those aspects or elements are the legal ideas or the legal contents that cannot be separated from the political aspects, psychological aspects, social and cultural aspects, and

[3] W. Friedman, 1990, *Teori dan Filsafat Hukum*, Jakarta: Rajawali Press, p. 259.

[4] H.L.A. Hart, 1972, *The Concept Of Law*, Oxford: Oxford University Press, p. 30.

[5] Ronald Dworkin, 2017, *Hart's Posthumous Reply*, Harvard Law Review, Vol. 130, p. 2097; See to David Dyzeinhaus, 2007, *Shopia Reibetanz Moreau and Arthur Ripstein, Law and Morality: Readings in Legal Philosophy*, University of Toronto Press, p. 30.

[6] Cynthia Nicoletti, 2016, *Writing The Social History Of Legal Doctrine*, Buffalo Law Review, Vol. 64, p.121-123

[7] W. Friedman, 1967, *Legal Theory*, New York: Columbia University Press, p. 4-5; See to M.D.A. Freeman, 2001, *Lloyd Introduction to Jurisprudence*, London: Sweet Maxwell, p. 336-337; See to Kennet Einar Himma, 2002, *Inclusive Legal Positivism*, Oxford: Oxford hand Book Jurisprudence and Philosophy of Law, Oxford University Press, p. 125.

also the other aspects. It is defined in the definition of law that law in formal meaning is considered as regulation having jurisdiction of the clear law making based on the rational reasoning. Hence, the law understanding is supposed to be considered as the pure theory of law (*das reine Recht*). The logic of formal law proposed by Hans Kelsen basically is developed to become the main characteristic of neo-Kantianism philosophy that later on, it becomes the structuralism concept. Started from this logic, there are two aspects available in formal law; first, static aspect or *nomostatis* that understands the certain actions regulated by law; and second, dynamic aspect or *nomodinamic* that understands law is regulating certain actions. Friedman also elaborated that in legal positivism proposed by Hans Kelsen, there are several principles reflecting its main concept; *first*, the objective of legal theory is similar to other field of sciences that is to minimize the chaos and pluralism of law to make it as one single unity; *second*, legal theory is a study of current applicable law instead of what law should be applied, so that it will be free from any ideology; *third*, law and jurisprudence is a normative scientific study, not merely a natural study; *fourth*, legal theory as the theory of norm does not have correlation with how the certain norm works*; fifth*, legal theory is formal in accordance with how it manages and changes the legal contents based on the procedures of legal principles have been decided. The correlation between legal theories with the specific system of positive law is considering the correlation of what is probably occurs with the real, applied law.[8] According to Hans Kelsen, the basis of all laws is the constitution of the state. In the state, there is a ruler who gives the command and the people who must obey the command. The people being regulated must have the will to accept the rule as a juridical obligation that must be obeyed and should not be avoided. Juridical obligation is a normative and reasonable rule. Taking a statement from Immanuel Kant, Kelsen states that legal obligations are included in the transcendental-logical sense as pursuing it to be accepted as an inevitable condition for understanding the law. If Immanuel Kant stated that the basic norm for morality is "act according to your conscience", then in law, Hans Kelsen mentions that there is a hidden norm that to be regarded as a source of legal necessity. People should be able to adapt to what has been determined. The general theory of law as a legal concept is closely related to a correlation between the state and the law. The law established by the state is general, and it is applicable to all people without any exception. This is the general legal

[8] W. Friedman, 1993, *Legal Theory*, Trans. M. Arifin, Jakarta: PT Raja Grafindo Persada, p. 170

principle that is written by Hans Kelsen in his book "*General Theory of Law on State*".[9]

In "*The Pure Theory*", Hans Kelsen asserted that law is the primary norm containing instructions for law enforcement to impose sanctions. In relation to the application of sanctions, law is a legal ought to be implemented in order to avoid the sanctions. Hans Kelsen with his pure theory of law that views law to be separated from aspects but the juridical aspects (moral, ethics, moral and justice) has established the law as a closed system. The legal basis on which the validity is based is the juridical hypothesis, not the meta-juridical principles. A law must be able to be understood in logical analysis based on the juristic thought.[10] Every legal activity is drawn to be a norm that later, it is set to be the rule. Norms become the standard of human behavior to determine whether or not the behavior is legal. The principle of pure law does not require a metaphysical process or a physical event in understanding the related norms. As what is stated in a tautology, the only thing that becomes the object of law is the norm itself. This is correlated to what is stated by Friedman concerning two objects of interrelated legal studies; the empirical facts that occur in society and the legal norms. When it is turned back to the principle of legal positivism, the nature of legal studies is based more on the rationality that fills the whole way of working in all activities related to the law. Legal positivism understanding proposed by Hans Kelsen not only separates the law with morals as what is embraced by natural law, but it also separates the law with empirical facts as what is embraced by legal realism.[11]

Basic Philosophy Of Legal Positivism

In legal positivism, most of the legal issues that occur are analyzed by using rational deductive reasoning model or syllogistic method,[12] in which the conclusion is drawn from the general one to the specific one.

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[9] Hans Kelsen, 1961, *General Theory of Law on State*, Translated by Anders Wedberg, New York: Russell & Russell,.

[10] Hans Kelsen, 1967, *Pure Theory Of Law*, Translated by Max Knight, Berkeley, Los Angeles: London University of California Press, p.1-5: See to Andrei Marmor, 2002, *Exclusive Legal Positivism*, Oxford: The Oxford Hand Book of Jurisprudence and Philosophy of Law, Oxford Press, p.104-124.

[11] Stanley L. Paulson, 1992, *On Kelsen's Place in Jurispruden, Intruduction to Hans Kelsen, Introduction to the Problems of Legal Theory: A Translation of the First Edition of the Reine Rechtslehre or Pure Theory of Law*, Translated by Bonnie Litschewski Paulson and Stanley L. Paulson, Oxford: Clarendon Press, p. xxvi

[12] Thomas B. Nachbar, 2016, *The Rationality Of Rational Basis Review*, Virginia Law Review, Vol.102, p. 1627-1628

The use of this strict reasoning method affirms the characteristic of formalism in legal positivism in which logics are always used to decide the premises of law in order to make a legal conclusion.[13] Legal formalism, further, is divided into two. The first is the rule of formalism. It deals with how law is identical with legislation (in the case of formal text). In this case, law enforcement officers only work mechanistically as a legal mouthpiece in searching for the correct answer of each case by relying only on the formal text of law. The second is conceptual formalism. It means that laws are composed of concepts and principles such as legal principles and concept of discretion in which in law, both of them are inevitably, logically included in the legal material.[14] As what is described by Kelsen, such opinions is not merely based on an empty law, but it always started by current applicable positive law. Therefore, legal reasoning is closely related to procedural requirements containing rational arguments. Nevertheless, there is an interpretation in understanding the law included in the legislation. This interpretation, however, should be based on the sentence of law as what is written in the positive law of the state.

The object of rational-based legal epistemology is the system of positive norms in form of rules or legislation. Positive norm is used to provide a justification and prescriptive assessment of currently occurring legal issues. The study of the object of law is conducted with the intention to give legal statements that is used as the basis for determining whether or not a legal issue is rightfull as well as to see how exactly is the legal issue in the point of view of applicable law. In any legal issue or legal event that occurs, a reference to which system of positive norm regulated to is always be referred. It is done in order to get a construction of the legal issues so that it can be analyzed in accordance with logical system of law.[15] The system of positive norms as the object of legal epistemology rests only on the scope of legal conception, legal principles and regulations in the norms of positive law, not to how human behavior that implements the rule. Therefore, the study of legislative law is sufficiently conducted by reviewing the legislative legislation. In the other hand, the study concerning how the legislative members behave in carrying out their

[13] Richard A. Posner, 1990, *The Problems of Jurisprudence*, Cambridge: Harvard University Press, p. 40

[14] Brian Z. Tamanaha, 2006, *Law as a Means to an End*, Cambridge University Press, p. 48

[15] John F. Manning, 2010, *Second-Generation Textualism*, California Law Review, Vol.98, p. 1317; See to Philip P. Frickey, 2005, *Getting from Joe to Gene (McCarthy): The Avoidance Canon, Legal Process Theory, and Narrowing Statutory Interpretation in the Early Warren Court*, California Law Review, Vol.93, p. 397

functions as legislator does not necessary to be conducted. The study of the transactional behavior of legislative members in making until legitimizing the law does not include as an object of rational-based jurisprudence, even though the matter is surely taking place. The limitation of the object of legal studies affirms the specific characteristic of legal thought in the sense of positive norm of legislation. Positive norm as the legal object and legal studies is the elements of legal norm that contains the values regulating how people should behave in accordance with the applicable law. The objects will be analyzed hierarchically based on systematic structure of law according to the order of rules of applicable legislation. In other words, it can be said that the object of rational-based jurisprudence epistemology in form of positive norm will always come from a legal system whose material has been considered exists and is ready to be used to make legal drafting. Thus, the additional information comes from outside the provided source is no longer necessary to be looked for. This consideration should be used as a clear, firm limitation of basic guideline in deciding whether or not the source is included as a legal object. It happens for several times that the object being studied in the positive norm is not a legal object, since the scope of the problem is concerning the symptoms of personal or institutional behavior.

Rational-based legal epistemology uses secondary data in analyzing a law. Secondary data is the data obtained from the results of literature study, not from the results of direct observation in the field. The term of secondary data in legal studies is often referred to as legal material, that further, it is divided into three groups. The first is primary legal material. This is a legal material consisting of legislation, legal treatises, verdict or court decisions, official documents of the state and letters of agreement. Primary legal material has the authority value since it is a result of actions performed by the certain authorized institution; the second is secondary legal materials. It is a legal material consisting of books, journals, research results, legal dictionaries and encyclopedias, and notes of interviews with jurists that can provide further explanation concerning the primary legal material; the third is tertiary legal material or sometimes, is called as non-legal material. This is a material that are not directly related to the law, such as books on politics, economics, education, religion or other subjects, yet it contains explanations concerning the primary and secondary legal material. Tertiary legal material has high possibility in supportting the legal analysis process since in some cases, there are several legal issues that require explanation from other studies beyond the legal studies. Generally, secondary data that in the form of library study results are ready-made data. The format and the contents of this data have

already been made by the previous legal reviewers. Secondary data, actually, can be obtained without considering place and time limitation, because the nature of the data is in the form of literature documents.

The data collection techniques of legal studies focusing on the positive norms is done by conducting literature studies towards the legal materials. The analysis process of these materials can be conducted by reading, reviewing, observing or searching it online in the internet. Normally, the data resulted from the literature study may appear in two conditions; complete or incomplete data. Therefore, these data should be proven in advanced by making adjustments with the other data. However, one thing to be sure is that the data is categorized as ready-made data since it is formed in a ritten document. Of course, the authenticity of the secondary data taken from the literature study should be thoroughly, critically analyzed before it is applied for further legal studies. In term of data collection techniques, further explanations related to the certain literature data are often not found, so the people may find it difficult to know what methods are used in collecting and analyzing the data. Furthermore, they also find it difficult to exactly know from what source the researcher gets the secondary data. According to the data analysis techniques, the locations used for obtaining literature data are the libraries for sure, whether it is private libraries, universities libraries, or government and private agencies libraries, as long as it provides various reference of required material. In addition, the data are also can be obtained by searching it online through various credible sites on the internet.

In this study, data analysis of positive norm data is conducted to systematize the legal materials in a system of positive norm. The process of data analysis is conducted by, first, selecting the secondary or the literature data, then classifying the data based on the classification of legal materials, and finally, organizing the data logically, systematically. The use of this logically arranged system becomes the most important principle in the rational logic-based legal studies that is commonly encountered in the reasoning method of legal positivism theory. Logical reasoning is used to analyze the correlation among legal materials in order to achieve a general legal understanding. These types of data analysis techniques are conducted under the clear procedures and it must be measurable based on the standards arranged in formal mechanisms. By doing so, it is aimed that what is believed to be a truth by one party can be understood as truth by others as well based on the method of logical analytical reasoning.

After the literature's secondary data was collected and processed, the next step was data analysis. This step was to study the results of library data processing supported by the theory of legal positivism based on the

rigorous on the mind. Data analysis is an activity to provide a review of studies that may be supportive, opposed or give argument to add or reduce the judgment from legal justification and ended by drawing a conclusion from the results of their own thinking. The process analysis of legal data that has an object of positive norm system has several characteristics: *first*, is descriptive to give exposure or systematically and neutral illustration toward the object of law in the form of positive norm system; *secondly*, evaluative by justifying the judgment of literature legal data, whether the hypotheses of the legal positivism theory used to analyze acceptance or rejection; *third*, is prescriptive in order to provide arguments against legal data related to right or wrong to a legal problem logically analyzed according to the positive norm system.

Rational-based legal epistemology in the theory of legal positivism cannot be separated from the influence of the philosophy of rationalism knowledge. Plato as a classical figure in the ancient Greeks declared that senses cannot provide a solid knowledge, because their characteristic is fickle, so the truth cannot be trusted and assured. Then Plato discovers truth beyond the sense knowledge called fixed and eternal ideas. Intellect can also explain the ideas from concrete objects. The understanding of people whose their epistemology based on mind is often referred to rationalism. Epistemology-based intellect is understood by the rationalism community in obtaining the correct knowledge in getting and developing intangible ideas that is clear and acceptable. According to the figure of modern rationalism, Rene Descartes, epistemology based on mind produces a certain truth, like his statement about "*cogito ergo sum*" (I think, therefore I exist). This idea, according to rationalists, is a creation of the human mind. The principle basically existed long before humans tried to think about it. The function of human reason only recognizes that principle which then makes it as right knowledge. This principle is already existing and a priori and can be known by humans through the ability to think rationally. An experience as in sense-based epistemology does not produce knowledge and just the opposite. Only by understanding the principle derived by reasoning of mind, so the people can understand the activity that prevails in the world. Ideas are a priori and pre experience obtained by human reasoning based mind.

Epistemology of the basic science of reason as in other sciences is influenced by the notion of rationalism in obtaining knowledge through deductive reasoning method. The deductive method is the scientific reasoning method commonly used in quantitative research. In deductive reasoning methods are based on a common premise that the truth has been believed (known) and ends in a more specific (new knowledge)

conclusion. The truth in the general premise is an axiomatic ideal truth (*self-evident*) which the essence of truth is unquestionable. The proportion in deductive reasoning can be said to be true if it can be prosecuted logically from the results of general axiomatic conclusions. In deductive reasoning the truth is judged right if it is obtained from a basic premise through the correct procedure, so this truth is usually called as a formal truth. The deductive reasoning procedure proved to be very effective in developing a consistently logical and consistent system of legal thinking in epistemology based on reason, so it is appropriate to explore the truth of positivistic normative legal science in the form of legislation. The result of deductive conclusion is made by using syllogistic thought patterns composed of two or more statements and one conclusion. Conclusion is the knowledge gained from the deductive reasoning method based on the major premise and the minor premise.

For example:
all those who steal punishment of prison (major premise),
"A" has stolen (minor premise),
"A" was imprisoned (conclusion).

By using deductive reasoning method, the conclusion drawn is the correct form of knowledge according to epistemology based on reason and has been in accordance with two statements if major premise and minor premise. The conclusion is said to be true if it can be seen and restored to the truth of the premise that supports it, if the two supported premises is true then it can be ascertained that the resulting conclusion is true. In deductive reasoning, a conclusion in the form of new knowledge is essentially not as a new knowledge, but rather the consequence of two known knowledge. According to Ludwing von Wiittgenstein, there has never been any new knowledge in deductive reasoning, since the knowledge gained is a tautological truth.[16]

The validity and legality of the truth resulting from the deductive reasoning method can use the method of coherence or consistency by understanding a statement considered to be true if the statement is coherent or has a consistent nature with the previous assertions that have been considered true. The nature of consistency becomes an important way to determine the truth in the epistemology of the legal studies based reason. In the system of science that contains of certainty element is composed by several basic assertions that are considered as correct statement (axiom) by using some axioms then compiled as a theorem.

[16] Ludwing von Wiittgenstein, 1972, *Tractatus Logico Philosophicus*, London: Routledge & Kegan Paul, p. 129

After the theorem is made then it developed the rules of science as definite and consistent. A statement is said to be true when it is consistent with another that has been accepted. A truth is the underlying of an idea, because everything is formed from an idea. The concept of logic has been settled in the fact of life.

Some benefits of epistemology of law-based science have the object of study in the form of positive norms systems: *first*, to determine the relationship of legal status related or involved parties in a legal problem. The parties in the legal matter here are not domiciled as the main object of law, but they are as the trigger of the implementation of the main object of the law in the form of a positive norm system in legislation; *Second*, to provide judgment or legal justification for a particular legal event, related to wrong or right based on the applicable law. This judgment is like in a judge ruling imposed on the basis of legal considerations extracted from the text of legislation, so in this case the principle of legality becomes very important role. All legal matters must first be regulated in legislation in order to have legal force (legality). Any decision which has no legal basis or in other languages are not regulated in legislation is not a correct decision, so it can be referred to as a legal error; *Third*, to straighten and maintain consistency in a positive norm system in order to the law runs in accordance with the hierarchical structure that has been determined by the state as the supreme authority holder of the positive law; *Fourth*, to maintain the formation of laws in accordance with formal requirements as set out in the system of positive norms; *Fifth*, the process of composing the law runs in the rational logical realm by applying strict procedures and has been described and affirmed in the law, so that the required runts can be measurable and can be logically analyzed.[17]

There is a truth problem generated by epistemology based on reason through deductive reasoning method and coherence validity test. The main problem that arises is about the criteria for knowing the truth of an idea according to someone that is clear and trustworthy. An idea for a particular person is a clear and credible principle, but not necessarily for others. So the evaluation problem of the truth of the premises is used in deductive reasoning. Because the premises derive from reasoning that is abstract and limited from certain experiences. Therefore, knowledge will be obtained from a particular object without any consensus that can be accepted by all parties. For example the idea of freedom that is only

[17] Joshua Revesz, *Ideological Imbalance and the Peremptory Challenge*, The Yale Law Journal, Vol.125, 2016, p. 2548; See to Erica Newland, *Executive Orders in Court,* The Yale Law Journal, Vol.124, 2015, p. 2026-2027.

acceptable by liberalism and the idea of communal equality that is only acceptable by socialism. The results of epistemology based on reason with deductive reasoning methods tend to produce subjective and solipsistic truths (only true in a particular framework of thought that resides in the mind of the thinker).

CONCLUSION

The regulation of country and state citizenship in state requires a law that is formally stated in form of legislation. In this case, law becomes the regulation that should be written with legal positivism. Thus, law is set as normative-positivism that has important role in deciding the legal certainty. This situation is signed by the legal thought that shows a characteristic emphasizing the reinforcement of rigid principles in the forms available in the postulated law. Normative-positivism law is oriented to the legal adjustment that is clearly, decisively ruled as the basic of national policy. A law as a mean to regulate the state life is supposed to be made by an authorized institution. In making a this law, some formal, procedural mechanisms of legislation making should be taken so that it can produce positive law in form of written legislation that is called as legal positivism.[18] Jurisprudence of normative-positivism law is a formal study that is managed and conducted by legal institution and this law should be obeyed by all citizens. Broadly speaking, the main objective of Jurisprudence of normative-positivism law is strengthening the law reinforcement to guarantee the legal certainty in accordance with the legislation. Legal positivism concept perceives the law as a ruling regulation that is made by authorized institution of the state. Legal positivism also emphasizes on dividing the law from everything irrational or beyond human's rational, feeling, moral and etiquette and something that tends to identify the justice only based on legality and obedience to the law. In legal positivism, law is perceived as a specific phenomenon that should be analyzed scientifically. Moreover, it aims to form a system of rational structure so that this concept leads to a consideration that law making is something professional. In other words, law is the scientific result from jurists' studies. Actually, there are three main principles of legal positivism; *first*, law is a legal-state-concept-based legislation. Thus, the rightful law is the one regulated in a state; *secondly*, there is no

[18] Hari Chand, 1994, *Modern Jurisprudence*, Selangor: Selangor Darul Ehsan Malaysia, International Law Book Services, p. 65-66.

correlation between law and moral because law is a product created by professionals in the field of law; *thirdly*, law is a method of closed logical system in which to make interpretation, religious norm, moral norm, and social norm are not included.

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