AGRARIAN JUSTICE AND CONTEXTUALITY IN MAXIM FIAT JUSTITIA RUAT CAELUM AND FIAT JUSTITIA NE PEREAT MUNDUS

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ABSTRACT

Maxim is a short sentence with deep meaning related to value and purpose of law include agrarian law. This article analyse the meaning of fiat justitia ruat caelum and fiat justitia ne pereat mundus as well as its relation to agrarian justice and its contextuality. Both of those maxim are paradigmatically analysed. This is a normative juridical research, use conceptual and historical approach with secondary data then qualitatively analysed. Concluded that fiat justitia ruat caelum and fiat justitia pereat mundus is part of legal formalism. The agrarian justice is achieved when the law is enforced as the text and its acontextual. In contrast, fiat justitia ne pereat mundus consider law is valid when it is according to the purpose and agrarian justice exist when it bring out prosperity for all people. Paradigmatically, fiat justicia ruat caelum and fiat justitia pereat mundus fall in positivism paradigm, consider rule is perfect, no interpretation, separation of law and morality, impossibility of interdisciplinary approach. In another hand, fiat justitia ne pereat mundus falls in post positivism paradigm which consider law is imperfect, interpretation is possible, no separation of law and morality and interdisciplinary approch is opened. The law is acontextual.

Key Words: contextuality justice, fiat justitia ruat caelum; fiat justitia ne pereat mundus.

INTRODUCTION

Maxim fiat justitia ruat caelum, fiat justitia pereat mundus and fiat justitia ne pereat mundus are legal maxims in many legal literatures and color academic discourse. Fiat justitia ruat caelum as the most popular maxim means let justice be done though the heavens fall which is stated by Lucius Calpurnius Piso Caesoninus in 43 BC (known as Piso Justice). This maxim is tightly related to legal certainty, eventhough the rule is wrong but it must be enforced.

In accordance with fiat justitia ruat caelum is fiat justitia pereat mundus means let justice be done though the world perish stated by Roman Emperor, Ferdinand I (1503-1564). Both of those maxims are defied by Peter Baehr that the world must not be sacrificed for the law (Baehr, 2000).
Historical approach shows that both of those maxim is tightly related to Roman Empire which is absolutely positivistic. So that, justice in both maxim must be understood as rule (Echewija, 2016).

Besides, there is another maxim namely fiat justitia ne pereat mundus means let justice be done to uphold the the heaven stated by Hegel in 19 AD. In his perspective, law exist to protect and bring prosperity for human being. Based on previous explanation, all of those maxims can be divided into two groups namely fiat justitia ruat caelum and fiat justitia pereat mundus as maxims which put ahead the rule above everything and the last is maxim which emphasize law is an instrument to bring prosperity.

The meaning of those maxims is very related to justice as the ultimate value in law, the best political morality and the primacy of justice (Dworkin, 1986). The question is which maxim that must be choosen as guidance in creating agrarian justice. Agrarian justice is justice that give prosperity for all Indonesian, access to the justice and consider Indonesian pluralism. This is not a textual justice, rigid but flexible, opened and contextual.

Agrarian justice is related to prosperity of Indonesian people because most of Indonesia work as a farmer and other professions on natural resources. Agrarian justice must not be only understood as distribution of resources but also recognition and respect of cultural diversity.

It is necessary to make a scientific, sharp, detail and systematic to determine which maxim is precise to develope agrarian law and bring justice for all. It is caused by those maxims will influence agrarian policy. To attain a comprehensive depiction on those maxims must use a paradigmatic philosophy. Paradigm as an overarching philosophical system consists of ontology, epistemology and methodology that will guide human being in understanding a phemenon and complexity inside. Ontology means essence of something, epistemology means relation between researcher and object/subject and methodology means way to understand reality. This article aims to understand the meaning of fiat justitia ruat caelum, fiat justitia pereat mundus, fiat justitia ne
pereat mundus and its relevance to create an agrarian law based on contextuality and justice. This article is also intended to analyze those maxims paradigmatically.

RESEARCH METHODS

This article is based on normative juridical research which consider law as doctrin with conceptual and historical approach. Historical approach is chosen to explore the history of those maxims and conceptual approach is used to analyze maxim as abstract and theoretical matter. This research method is guided by paradigmatic philosophy as worldview of this research. This article use secondary data which is collected through literature review. Those data consist of primary, secondary and tertiary data. Then, data are analyzed qualitatively and make conclusion.

DISCUSSIONS AND ANALYSIS OF RESULTS

1) The Relevance of Maxim Fiat Justitia Ruat Caelum and Fiat Justitia Ne Pereat Mundus with Agrarian Justice and Contextuality

Fiat justitia ruat caelum is identical with fiat justitia pereat mundus in Immanuel Kant perspective. The meaning of both maxims is law is not made with intention to create justice, happiness and prosperity but based on a priori logic (Kanawrow, 2010). Fiat justitia ruat caelum and fiat justitia et pereat mundus related to legal formalism. Legal formalism has several characteristics, namely: (1) internal (free from legal function and purpose); (2) coherence (diversity exemption), (3) based on rationalism (Leiter, 2010). The essence of law enforcement for this school is to create legal certainty.

Law (rule) making is a priori and free from intention to create common prosperity. It is different from Notonogoro statement that agrarian law purpose namely prosperity for all Indonesian (Notonogoro, 1984). This purpose is based on justice to ascertain that all people have access over natural resources dan get benefit of that. Justice also base Indonesian agrarian law as regulated
under Article 4 Of People’s Consultative Assembly Decree on Agrarian Reform and Natural Resources Management. Based on that, separation of purpose and rule is imprecise in agrarian management.

Fiat justitia ruat caelum and fiat justitia pereat mundus is part of legal formalism that will bring out textual and procedural justice. In Stone perspective, it is not truly justice because law for itself not law for man (Stone, 1996). This textual justice arise many critiques, on of those critiques from Laura Scully which state law must be enforced without considering its consequence is non sense, old and impossible (Schully, 2008). Another critique come from Schall which even state that those maxims are notorious because divert the true justice (Schall, 2004).

The existence of law for itself is not according to our agrarian purpose namely benefit for all Indonesian people as regulated under Article 33 verse 3 of Indonesian constitution and then elaborated as prosperity and freedom regulated under Article 2 verse 3 of Indonesia Basic Agrarian Law. This purpose can not be achieved through textual justice but through substantive justice because justice in Indonesia must give real impact for the people and stand on Indonesian pluralism. More over, textual justice is universal and Indonesian justice must also consider locality or stay in peculiar form of social life. Plural condition in Indonesia always ask for legal contextualisation. Legal contextualisation need active interpretation to fit the law with people legal culture.

Legal contextualisation will disappear if law is considered and limited as written rule which is universal and a priori. Hannah Arendt adress her critique on truth in modern era which is only produced from logic or in a priori manner which finally will derogate factual truth (Arendt, 1967). At this point, there is difference between Hannah Arendt and Imanuel Kant in considering the truth, in Kant view factual truth is lower than axioma, theory and even speculation of man ratio. So that, truth which is not according with logic is denied and wrong. In contrast, Arendt consider that hold on rationality is as susceptible as human being. The susceptibility of rationalism and denial of factual truth cause true justice can not be attained.
Based on recent justice concept as stated by Ronald Dworkin with his personal preferences concept namely personal or group interest must be figured out in creating a just agrarian policy. It is according to Amartya Sen’s concept of justice which focus on personal interest. So that, the diversity of personal interest be the main point of his concept and justice is consensus of all people. Both of those justice concepts show that agrarian law can not be based on legal formalism as stated in maxim fiat justitia ruat caelum and fiat justitia pereat mundus. More over, Indonesian people understand natural resources not only as production object or economical buat also socio, cultural and spiritual within.

In broader perspective, textual justice in maxim fiat justitia ruat caelum and fiat justitia pereat mundus also bring out danger because rule or act is a political product so that it is influenced by political interest of politician. In such condition, rule can be instrument of the ruler (government) to support his particular purpose and not bring justice and prosperity for the people. It means law can be put under control of political interest in authoritarian government (Nonet & Selznick, 1978). In other words, ruler or government interest will be put higher than people interest. In extreme case, rule can be instrument to uphold tyranny and not according to justice as people desire.

In agrarian law context, there are several Constitutional Court Decision which abrogate several rules or acts in judicial review because those rules are unjust for people in common such as Forestry Act, Plantation Act, Management of Coastal and Small Islands Act etc. Some of those regulations give previlige position for businessman and not according with purpose of agrarian law namely people prosperity.

Explanation above shows that rule based on rationalism is susceptible and the truth also has the same consequence. It means rule can not be absolutely considered as just and bring benefit for the people. Even, one of prominent Indonesia scholar, Satjipto Rahardjo say that law has flaws or loopholes and this can not be used directly to solve a case because law is abstraction that can not be used in deciding all cases. He said that law is no more than a language game. If law is enforced as
the text, this will bring injustice, disaster for the people or heaven falls (*pereat mundus*). The heaven falls is a symbol of human end and it is not according to the purpose of agrarian law.

The implementation of *fiat justitia ruat caelum* and *fiat justitia pereat mundus* which is not able to achieve prosperity to get negative reaction from some scholars, one of them is Hegel which state *fiat justitia ne pereat mundus* (let the justice be done in order the heaven not falls). Hegel perspective on *fiat justitia ne pereat mundus* as follows:

In this idea well-being has value, not independently as the realization of the separate particular will, but only as universal well-being, as universal, that is, in its essence, intrinsically or in accordance with freedom. Hence, well-being is not a good, if separated from right; nor is right a good, if separated from well-being. *Fiat justitia* ought not to have *pereat mundus* as a consequence. The good, carrying a necessity to be actualized by the particular will, and comprising the vital essence of such a will, has absolute right over the mere abstract right of property and the particular ends of well-being. If either of these elements is distinguished from the good, it has validity only in so far as it accords with the good and subordinates itself to it.

Hegel analysis on *fiat justitia ne pereat mundus* emphasize that prosperity is inseparable from rule. If rule is a phonemenon (sensible), value and purpose of law is nomenon (insensible) which base that rule. Separation of prosperity from from rule is wrong. The enforcement of law (*fiat justitia*) must not fall the heaven (*ne pereat mundus*). The fall will not happen if justice is uphelded and prosperity is achieved and this can happen if there is good intention.

Hegel put justice as main priority and validity standard to attain prosperity. In his view, justice is composed of prosperity and truth. In agrarian law, justice will be achieved when people get recognition, calmness and prosperity over natural resources. Plato state that human being must fit all his life institution include law and politic with justice. Prerequisite to achieve justice is social cooperation with indicator of success is social benefit. This social benefit is main requisite and the only in making regulation (Mises, 2015).

Related to national agrarian law, intention to create justice based on cooperation is according to land social function and adat law as base of national agrarian law. Social function means no absolute individual ownership on natural resource but must consider common interest of all people.
It is according to hierarchy of land title in which nation and state title is higher than individual title. Besides, adat law as base of national agrarian law means all principles and titles base all policy in national agrarian law. One of those principles is communalism or togetherness.

All perspective above shows that law must be instrument of prosperity attainment as stated in maxim fiat justitia ne pereat mundus has surpassed legal formalism and be part of functionalism. Maxim fiat justitia ne pereat mundus is directed to achieve substantive justice not procedural or textual justice which stress on legal certainty. Another Hegel’s perspective namely justice is contextual or taken in to account space and time in which the rule is enforced. It is similar to his perspective that morality is diverse depends on social context as addressed in sittlicchkeit or ethic as social-moral structure (Engelhardt, 1994).

Maxim fiat justitia ne pereat mundus with purpose to create public prosperity and consider contextuality is according to purpose of agrarian law to create prosperity for all Indonesian people. It means justice always in need to be contextual, law is not in void, rigid and closed. This maxim also has been enforced in international law such as in International Criminal for Former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), Special Court of Sierra Leone (SCSL) and International Criminal Court. In 1994, Antonio Casse, Head of Justice in Tribunal For Former Yugoslavia (ICTY), in his report state that this tribunal is based on maxim fiat justitia ne pereat mundus which he call as hegelian maxim. He stress that all tribunal must be according to this maxim for achieving substantive justice as axiology of a tribunal (Campbell, 2005).

2) Paradigmatic Analysis On Maxim Fiat Justitia Ruat Caelum, Fiat Justitia Ne Pereat Mundus And Its Relevance Toward Agrarian Justice And Contextuality

In paradigmatic analysis, fiat justitia ruat caelum is under positivism paradigm meanwhile fiat justitia ne pereat mundus is under post positivism paradigm. Positivism has been developed since 15 AD up to now. It is related to legal formalism and rationalism to control people life to create
order and predictability. In this paradigm, law is considered as rule which is made a priori and logic.

In the article entitle *Law In The Spirit Of Our Age* stated that logic is religion of positivism and mind set of the positivist is deductive. In deciding a case must be based on rule. This mindset is rigid and closed because it is only based on ratio without figuring out social complexity (Platsas, 2015; Harding & Platsas, 2013).

According to ontology of positivism paradigm namely naive realism, law is considered as perfect. Realism means law is external, real, sensible or in law sphere is rule and command of the king/queen which is considered to be perfect or flawless. So that, the rule is only enforced. In John Austin perspective, law is the command of sovereign power. It means positivism emphasize on power centralism. The history of maxim fiat justititia ruat caelum and fiat justititia pereat mundus command of the king which is flawless and enforced as it is. It is according to naive realism as ontology of positivism paradigm. This ontology means law is not contextual, general, universal, mechanistic and deterministic to all cases eventhough every case has its own uniqueness or even the rule or command is imprecise and unjust.

The development of agrarian law in Indonesia is imprecise to be based on power centralization in which law is understood as regulation made by state. In Indonesia there are many indigenous people with his own legal structure and has authority to manage all his resources based on its own value. If legal centralism base agrarian law, indigenous people authority to manage his area will be diminished.

Law as rule is universal and prevail in every area without considering space and time in which law is implemented or separation of law from context. The uniqueness of socio cultural in every society is neglected (*reductionism*). In agrarian law context, prevulation of legal positivism must be reconsidered because Indonesia stand on diversity of tribe, religion, culture and social. Reductionism as a world view of positivism paradigm get any critiques because all phenomena
include human phenomena is reduced into single phenomena and treated with the same rule. Moreover, management of agrarian law has a lot of model, understanding and interest within.

Epistemology of positivism paradigm is dualist/objectivist. There is separation between human and law (rule). It means rule is external reality, interpreted textually and not consider justice. Law must be freed from bias or subjectivism to maintain objectivity. Objectivism means humanity aspect must be avoided. People values must be neglected or value free. Separation of law and morality is godparent of positivism paradigm (Platlas, 2015). So that, law enforcement must be procedural and strict to ascertain that individual bias is eliminated. For positivist, justice is accordance with rule and procedure. Rule will be enforced as it is without any contextual interpretation and judgement. Law official is la bouche de la loi. Law is enforced in mechanistic way namely rule is fitted in particular case as the object. Through mechanistic enforcement law is for itself not for human interest. The unjust rule must be still enforced eventhough this will bring detriment for human life. It is according with maxim fiat justitia ruat caelum (let justice be done though the heaven falls) and maxim fiat justitia pereat mundus (let justice be done though the world perish.

Separation of law and morality is imprecise to be implemented in agrarian law because the purpose of this law is to create justice and prosperity for all Indonesian. Moreover, article 11 of Basic Agrarian Law regulate that the poor must get better access and attention. Protection and priority for the poor is a form of justice that must be maintained in agrarian management. It is also according to the concept of justice as stated by Ronald Dworkin, Amartya Sen, Wojciech Sadurski and John Rawls. Those scholars believe that priority for the poor is prerequisite to create a just society.

Based on ontology (naive realism) and epistemology (dualist/objectivist), the methodology of positivism paradigm is experimental manipulative means law is interpreted gramatically or uphold the regulation text to maintain law’s purity. Law officer will only fit the text and particular
phenomenon (for example crime and etc). It is absolutely in accordance with maxim fiat justitia ruat caelum and fiat justitia pereat mundus. For positivist, to analyze and understand a phenomenon as well as solve the problem must be only based on law or put law in a void. Interdisciplinary science such as sociology, anthropology and other science is prohibited to investigate a phenomenon because this will diminish the purity of law.

In the context of agrarian law in Indonesia, law making and law enforcement should be based on interdiscipinary or involve a lot science to understand agrarian problem so that the legal rule is much more comprehensive and natural resources management is tightly related to the economic, social and cultural aspect. Through interdisciplinary approach, agrarian law phenomena can be understood thoroughly. More information on agrarian aspect in policy making, better decision and rule can be made. Agrarian law also will accomodate custom, consent, morality and rationality.

In paradigmatic analysis, maxim *fiat justitia ne pereat mundus* stated by Hegel lie in different paradigm from *fiat justitia ruat caelum* and *fiat justitia pereat mundus*. Different from *fiat justitia ruat caelum* and *fiat justitia pereat mundus* maxim lie in positivism paradigm, *maxim* *fiat justitia ne pereat mundus* lie in post positivism paradigm. Ontology of post positivism paradigm is critical realism. Realism means law is real or sensible namely rule. The difference is positivism lie in positivism paradigm and enforced as it is meanwhile ontology post positivism paradigm namely rule is imperfect. The imperfection of law is according to statement that law is flaw since it is made because rule is abstraction from a lot of phenomenon in society so that every decision in agrarian law need contextualisation and law enforcement must be done carefully and critically.

Rule must be examined critically about its accordance with legal principles and purposes namely justice, utilitarianism and legal certainty. Based on maxim *fiat justitia ne pereat mundus*, rule must present to uphold the heaven, prevent world perish and bring prosperity for every person or law for man not law for itself. In broader scope, it can be understood that law is considered as
instrument in maxim fiat justitia ne pereat mundus and two other maxims namely fiat justitia ruat caelum and fiat justitia pereat mundus consider law or rule as their purpose.

Based on critical realism as ontology, post positivism paradigm has modified dualist/objectivist as its epistemology. Modification means the separation of law officer and rule has been narrowing. It means law officer start interpreting the rule and value take role in solving legal problem. Value is guidance used by law officer in solving legal problems. This value is embedded through interpretation of law officer. Based on maxim fiat justitia ne pereat mundus, prosperity as purpose is highly related to agrarian justice as a value. It is different from positivism paradigm whose desire to wholly separate value and law named as purification of law by setting it as a closed system and justice is achieved when rule is enforced as the text.

According to stratal, connectional and sequential in basic belief of paradigm, ontology (critical realism) and (epistemology) modified dualist/objectivist base modified experimental/manipulative as methodology of this paradigm. If positivism is based on verification, in contrast post positivism is based on falsification. It means there is an active role of law officer to justify whether the rule is according to purpose of agrarian law and bring prosperity for the people or bring injustice and even poverty. This make law officer is much more active and not only be the tongue of rules (la judge est la bouche qui prononce les paroles de la loi). This law officer will examine the rules through scientific interpretation and his experience in handling a case. This also will consider all of the aspect related to the case, from the motive of perpetrator, his social, economic and cultural condition. It means law enforcement in post positivism paradigm is not textual enforcement but direct law enforcement in more substantive matter.

Legal analysis in post positivism paradigm is much more comprehensive because it open the gate for other science in sociology, anthropology, economy and other sciences in solving a legal case. Interdisciplinary approach in post positivism paradigm shows that emic perspective take part in law enforcement. Analysis on public condition and people view is considered and important. It is
different from positivism paradigm which use etic perspective which only consider the government or ruler view and people opinion is neglected.

Through post positivism paradigm, law making, law enforcement and legal analysis is more contextual. Through such an understanding, law in post positivism paradigm is an open system not a closed system like in positivism paradigm. Interdisciplinary approach in post positivism paradigm as base of agrarian law is according to fiat justitia ne pereat mundus. Hegel say that ne pereat mundus (in order the heaven not fall) menas law must bring prosperity and justice for the people. Word “prosperity” in agrarian law has wider scope not only an economical term but also a social, security, anthropology and cultural term. It means to create prosperity in agrarian law must be based on multi science and considerations. It means fiat justicia ne pereat mundus can achieve a substantantive justice namely prosperity in every aspect of man life.

The entire analysis above show that maxim fiat justitia ruat caelum and fiat justitia pereat mundus is different from fiat justitia ne pereat mundus not only grammatically but also paradigmatically. Maxim fiat justitia ruat caelum and fiat justitia pereat mundus lie in positivism paradigm with its ontology naive realism, epistemology dualist/objectivist and methodology experimental/manipulative. It is different from maxim fiat justitia ne pereat mundus which lies under postpositivism paradigm with ontology : critical realism, epistemology : modified dualist/objectivist and methodology modified experimental manipulative. Maxim fiat justitia ruat caelum and fiat justitia pereat mundus will make law enforcement is limited in textual manner, law is otonom or self referential in autopoetic system and law is limited as rule. In contrast, maxim fiat justitia ne pereat mundus which lies under post positivism paradigm consider law as an opened system that can be understood through many sciences and approached from many perspectives so that legal problem can be solved not only based on procedural but also substantive. Such a problem solving will create happiness and beneficial for the people.
CONCLUSIONS

Fiat justitia ruat caelum means let the justice be done though the heaven falls and fiat justitia pereat mundus meand let the justice be done though the world perish lie under legal formalism with a priori and rational character. Based on both maxims, justice are achieved when law enforcement is according to regulation text. It makes agrarian law made by ruler is acontextual or consider socio cultural aspect. In another hand, maxim fiat justitia ne pereat mundus means let justice be done in order the heaven not fall. This maxim shows that law exists to kindness of human life. It is according to the purpose of our agrarian law namely prosperity for all people. Agrarian justice is achieved when prosperity exist. Besides, agrarian justice is more contextual or consider socio cultural aspect.

Maxim fiat justitia ruat caelum and fiat justitia pereat mundus lie under positivism paradigm with ontology naive realism which consider law (limited only rule) is perfect or has no flaws. This ontology base dualist/objectivist as epistemology of this paradigm which means there must be separation between agrarian law and justice. Interpretation of law in this epistemology is prohibited. In methodology realm, analysis on agrarian law is mono discipline and the use of other disciplines in dealing with agrarian problem is disallowed. It is different from maxim fiat justitia ne pereat mundus which lie under post positivism paradigm with ontology critical realism which consider agrarian regulation is imperfect and must be analysed critically based on legal principles and stipulated purpose. In epistemological realm, there is relationship between law official and rule. Law official is allowed even supported to interpret the text. It cause agrarian law in this paradigm is more contextual than in positivism paradigm. In methodological realm, interdiciplinary (multidiscipline) approach in analysing the rule and also in law enforcement is allowed. This makes consideration in agrarian law making and law enforcement is mucf more comprehensive. This also will bring substantive justice in agrarian law.
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