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The Concept of Countering Material Law (*Materiele Wederrechtelijk*) And Its Relevance To The Natural Law Stream

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Abstract

Introduction: *The development of the concept of unlawfulness (wederrechtelijk) is interesting to accentuate, because unlawful is not only limited to unlawful in the formal sense, but also includes unlawful material law (materiele wederrechtelijk) which has abstract content, because unlawful material law can be interpreted even though the act does not violate the rules of criminal law.*

Purposes of the Research: *This paper aims to analyze how the relevance of the concept against material law (materiele wederrechtelijk) with the natural law stream that is in line and has an identity between the two.*

Methods of the Research: *This paper uses a type of normative legal research. The approaches used in this paper are the conceptual approach, the theoretical approach, and the philosophical approach.*

Findings of the Research: *The concept of material law is interpreted as not only violating the applicable legal rules. However, this is because an act is considered "against the law" from its origin. This means that the common sense of the community views the act as reprehensible, evil, and immoral. Violating material law is not always interpreted as violating written rules, it can be that the act is not written, but it is considered unlawful (against the law). In that position, the natural law stream became the foothold for the establishment of the concept against material law. Because the natural law school that builds its main thesis on lex naturalist always makes the principles of truth and justice the main benchmark in determining actions between good and bad, evil and not evil, and morals and immorality.*

Keywords: Against Material Law; Natural Law Streams; Lex Naturalis.

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INTRODUCTION

The concept of unlawfulness in the context of criminal law is one of the interesting issues to continue to be studied. Because this concept can be said to be a bridge and even the main "heart" of a criminal act (delict). Not without reason, because the concept of breaking the law is the main condition for whether or not a person can be criminalized. Especially with the passage of the National Criminal Code Law Number 1 of 2023, the discourse on this concept will be even more interesting, especially when it is connected to the natural law stream in legal philosophy.

The development of criminal law that seeks to adapt to the demands of today's times is a necessity.[1] Although recognized as an "evil" and "cruel" law, criminal law has been transformed into a practical instrument because it offers solutions to every problem faced by humans as a society. For example, the subject of law used to be only a natural person (*naturalijke persoon*). This means that the subject of the law who can be held criminally

[1] lihat H. Joko Sriwidodo, *Politik Hukum Pidana Dalam Pendekatan UU No. 1 Tahun 2023 Tentang KUHP* (Yogyakarta: Penerbit Kepel Press, 2023), hal. 115; lihat Maroni, *Pengantar Politik Hukum Pidana* (Bandar Lampung: CV. Anugrah Utama Raharja, 2016), hal. 14.

responsible for a mistake is an individual.[2] However, recently, a new concept of legal subject has developed, as well as expanding the definition of legal subject which is not only limited to an individual person, but has also penetrated into legal subjects in the sense of legal entities or corporations that we commonly know as *recht persoon*.[3]

The shift in the concept above has indirectly given a new color to criminal law which is synonymous with rigid law. At the same time, it denies itself as a law that cannot "evolve" following the demands of the times. In addition, other shifts in the concept of criminal law can be seen from the concept of against the law (*wederrechtelijk*) which is currently shifting from being against formal law alone to against material law.[4] Against formal law may have a strong position because it is supported by the principle of legality as its main foundation. But what about against material law? This then becomes an interesting question to be studied and discussed together.

As is known, violating formal law is defined as an act that is considered unlawful because it is contrary to the provisions of applicable criminal laws and regulations.[5] That means, an act/action of a person can be said to be unlawful, when the act violates the law or the established criminal rules.[6] This is where the formal law gets its epistemological basis because it is backed by the principle of legality which is the main foundation. It is different from going against material law. This one violation of the law is still considered an unlawful act even though the act committed does not violate the applicable criminal law rules at all. So what is the epistemological basis? In simple terms, a person's actions are said to be against material law because indeed since the beginning of the act by most humans (*common sense*) has been considered unlawful, contrary to the law, reprehensible, evil, violating the norms that live in the midst of society, and contrary to the principles of justice embraced by society.[7]

In fact, this concept against material law when studied from the perspective of legal philosophy will be very relevant. This is because the concept of acts against material law has a wedge with the natural law stream (*lex naturalis*) which highly upholds the existence of morality and ethics as the main spearhead of human beings when they are "lawful."".[8] In fact, moral and ethical positions are highly accentuated in the preparation of criminal laws and regulations. Morality is a tool that legitimizes the law. Even the best and most

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[2] Shidarta, "Makna Hakiki Subjek Hukum dan Subjek Norma," ResearchGate, 3 Agustus 2016, https://www.researchgate.net/publication/355077336_Makna_Hakiki_Subjek_Hukum_dan_Subjek_Norma?enrichId=rgreq-fd7c4557b77590a29d151106b6a4aa93-XXX&enrichSource=Y292ZXJQYWdlOzM1NTA3NzMzNjtBUzoxMDc1NTU4MDU4MzA3NTg0QDE2MzM0NDQ0MzIyMDE%3D&el=1_x_2&_esc=publicationCoverPdf.

[3] Shidarta, "Subjek Norma Itu Apakah Sama dengan Subjek Kalimat?," ResearchGate, 10 Maret 2018, https://www.researchgate.net/publication/355834650_Subjek_Norma_Itu_Apakah_Sama_dengan_Subjek_Kalimat?enrichId=rgreq-d8ebe180cf7568b4122644a53d5ccc91-XXX&enrichSource=Y292ZXJQYWdlOzM1NTgzNDY1MDtBUzoxMDg1NDk1NTg1MDU0NzQ2QDE2MzU4MTM3MjM2MjQ%3D&el=1_x_2&_esc=publicationCoverPdf.

[4] lihat Erdianto Effendi, "Tafsir Ayat Sifat Melawan Hukum Materil Yang Dilakukan Aparat Penegak Hukum Dalam Kaitan Dengan Tindak Pidana Korupsi," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 14, no. 02 (2018): p. 401, https://doi.org/10.30631/alrisalah.v14i02.394.

[5] lihat Budi Suhariyanto, "Putusan Pemidanaan Melebihi Tuntutan Dalam Perkara Korupsi Politik," *Jurnal Yudisial* 12, no. 1 (31 Mei 2019): p. 47, https://doi.org/10.29123/jy.v12i1.303.

[6] lihat Muhammad Ikhwan Adabi dkk., "Perbuatan Melawan Hukum Materil Terhadap Tindakan Mengambil Brondolan Sawit (Studi Kasus Kabupaten Nagan Raya Desa Lamie)," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 5, no. 2 (2021): p. 65-66, https://doi.org/10.35308/jic.v5i2.4416.

[7] lihat Septri Yustisiani, "Pemberlakuan Sifat Melawan Hukum Materil Berfungsi Negatif Dalam Tindak Pidana Korupsi," *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi* 7, no. 1 (2017): hal. 69, https://doi.org/10.28932/di.v7i1.710.

[8] lihat Amanda Vencly Vaniai, Sayekti Putri Dayati, dan Erwin Kusumastuti, "Nilai-Nilai Etika, Akhlak Dan Moral Dalam Kehidupan Berbangsa Dan Bernegara," *Ta'dib: Jurnal Pendidikan Islam Dan Isu-Isu Sosial* 20, no. 1 (2022): p. 21, https://doi.org/10.37216/tadib.v20i1.537.

sophisticated law, if it does not contain moral content, then the law will be rejected in the stream of natural law. Strictly speaking, the law is considered failed and flawed. This paper aims to analyze how the relevance of the concept against material law (*materiele wederrechtelijk)* with the natural law stream is in line and has an identity between the two. In addition, this article will provide an overview of the wedges between the two that are interconnected with each other. It is very important to accentuate, because acts that violate the material law in the criminal law will later make a great contribution in the context of reforming the criminal law for the better. It can even be said that the existence of the natural law stream will also be a guide in directing this in the future.

METHODS OF THE RESEARCH

This paper uses a type of normative legal research. That is a type of research based on literature studies by focusing on secondary data. Secondary data is taken from legal materials, which consist of primary legal materials, secondary legal materials, and tertiary legal materials. These legal materials include laws, court decisions (jurisprudence), the results of previous research, legal literature that contains various kinds of legal principles, theories, values and concepts. This paper uses qualitative descriptive analysis, in order to obtain a comprehensive picture of the issues being raised. Meanwhile, the approaches used in this paper are conceptual approach, theoretical approach, and philosophical approach.

RESULTS AND DISCUSSION

A. An Unlawful Glance, Between *Onrechtmatige Daad* and *Wederrechtelijke*

The use of the terminology "unlawful" is usually known by 2 (two) terms. Namely *onrechtmatige daad*[9] and *Wederrechtelijke.* However, the use of the two terminology technically has little difference. *Onrechtmatige daad* is commonly used to refer to "unlawful" acts in the context of civil law and state administration.[10] Meanwhile, *wederrechtelijke* is often used to mention "unlawful" acts in the context of criminal law.[11] Therefore, it is very natural in the practice of proceedings at a trial, the parties, especially the advocate who is the plaintiff's legal representative, often use the word "*onrechtmatige daad*" to mention the unlawful act of a person who has brought both material and immaterial losses to the plaintiff who is claiming the loss. It is different from the context of criminal law. The use of unlawful acts uses the terminology *wederrechtelijke.* The context of unlawful acts here is the actions of perpetrators who have brought impact or harm to the public, because of the nature of criminal law as public law. There is also an opinion that the terminology *onrechtmatige daad* is indeed interpreted as an unlawful act, while *wederrechtelijke* is interpreted as an "unlawful" act to distinguish it from unlawful in a civil context.

However, it causes confusion and confusion. Because if we study criminal law, the terminology "against the law" is a concept that is very closely related to criminal law. Even if we read the Criminal Code, the criminal acts regulated in it do use the word "against the law", not "against the law" even though it is a translation of the Dutch *wetboek van strafrecht* at that time. For example, article 362 of the Criminal Code concerning theft, in the article contains the word "unlawfully". Likewise, article 378 of the Criminal Code regulates fraud, which contains the word "unlawful", not "unlawful". Likewise with a number of other

[9] lihat Suryaningsi, *Pengantar Ilmu Hukum* (Samarinda: Mulawarman University Press, 2018), p. 216.
[10] lihat Tami Rusli, *Pengantar Ilmu Hukum* (Lampung: Universitas Bandar Lampung (UBL) Press, 2017), p. 87.
[11] lihat Ade Adhari, "Konstitusionalitas Materiele Wederrechtelijk Dalam Kebijakan Pemberantasan Tindak Pidana Korupsi," *Jurnal Yudisial* 11, no. 2 (2018): p. 135, https://doi.org/10.29123/jy.v11i2.260.

articles in the Criminal Code that use this word. In addition, the term "against the law" in the context of criminal law has also been accepted and used as a condition for convicting a person who violates the law.

One of the strong reasons why the use of "unlawful" is used in the context of criminal law, not "unlawful", is because the main condition for a person to be convicted is that it must be against the law.[12] Especially against the law in a formal sense because the act has been regulated in the rules of criminal law. Besides that, in terms of meaning, the word against in the phrase "against the law" is interpreted as having violated the law by itself. On the other hand, people who break the law in Padang are not necessarily against the law

B. The Concept of Resisting Material Law (*Materiele Wederrechtelijk*)

The discussion in this paper will be limited to the concept of violating material law. Therefore, the discussion of violating formal law will not be mentioned much in this article. The first thing that must be emphasized is what exactly is the concept of going against material law?. The nature of violating material law, is an act that is contrary to the formulation of delicacies (written) but also that is contrary to existing associations, or associations that live and develop in society. In the Netherlands itself, it is related to the nature of material lawlessness as in the famous case of *the lindenbaum Cohen Arrest* (*Arrest H.R Nederlaand* 1919) which later according to Hoge Raad, unlawful acts (*onrechtmatige daad*) are not only acts that are contrary to the law but also acts that are contrary to inappropriate community associations.[13] The nature of material law is things that are contrary to the laws that exist in society (*living law*), as well as contrary to the principles and values of propriety in society itself.[14] The unlawful nature is an absolute element in a criminal act, so some say that "there is no criminal act without unlawfulness" and "there is no criminal liability without unlawfulness". In Dutch, against the law is *wederrechtelijk* (*weder*: contrary to, against; *recht*: law), which means that it is contrary to the law.[15]

This element of unlawful nature is not only a formal unlawful nature (*formele wederrechtelijkheid*) or a material unlawful nature (*materiele wederretelijkheid)).*[16] Violating material laws is seen as an act that violates the law not only because it violates written laws, but also because it violates unwritten laws or customary laws that live in society.[17] Because breaking the law is an absolute condition that must be met to impose a criminal penalty on a person, his existence in an act must be there.[18] In criminal law, the inclusion of the phrase "against the law" poses a slight problem in terms of proof. Because it has consequences on whether the phrase "against the law" is explicitly included (expressive verbis) in an article formulation, or not at all.

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[12] lihat Alwan Hadiyanto, "Pelaksanaan Dan Penerapan Ajaran Sifat Melawan Hukum Materil Dalam Perundang-Undangan Tindak Pidana Korupsi Di Indonesia," *PETITA* 4, no. 2 (2022): hal. 165, https://doi.org/10.33373/pta.v4i2.4969.

[13] lihat Yanto Yunus, Juwita Sarri, dan Syahirudin Syahir, "Hilangnya Sifat Melawan Hukum Pidana Materil Dalam Tindak Pidana Korupsi Pasca Pengembalian Seluruh Kerugian Keuangan Negara," *Media Iuris* 4, no. 2 (2021): p. 248-249, https://doi.org/10.20473/mi.v4i2.25457.

[14] *Ibid*., p. 251.

[15] lihat Hanafi Amrani, *Politik pembaruan hukum pidana*, Cetakan pertama (Yogyakarta: UII Press, 2019), hal. 100; Sriwidodo, *Politik Hukum Pidana Dalam Pendekatan UU No. 1 Tahun 2023 Tentang KUHP*, p. 133.

[16] lihat Surohmat Surohmat, "Pengaturan Ketentuan Pidana Dalam Undang-Undang Pemilihan Umum," *Al-Qisth Law Review* 5, no. 1 (Agustus 2021): p. 111, https://doi.org/10.24853/al-qisth.5.1.99-128.

[17] lihat Amir Ilyas, *Asas-Asas Hukum Pidana Memahami Tindak Pidana dan Pertanggungjawaban Pidana Sebagai Syarat Pemidanaan (Disertai Teori-Teori Pengantar dan Beberapa Komentar)* (Yogyakarta: Rangkang Education, 2012), hal. 53; Fitri Wahyuni, *Dasar-Dasar Hukum Pidana di Indonesia* (Tangerang: PT Nusantara Persada Utama, 2017), p. 49.

[18] lihat Nursya A, *Beberapa Bentuk Perbuatan Pelaku Berkaitan Dengan Tindak Pidana Korupsi Menurut Undang-Undang Tindak Pidana Pemberantasan Korupsi* (Jakarta: CV Alumgadan Mandiri, 2020), p. 7.

For example, as mentioned above, article 362 of the Criminal Code and article 378 of the Criminal Code both include the phrase "unlawful" in the article. As a result, the public prosecutor is obliged to prove this element in the evidentiary process at trial. Meanwhile, an article that does not explicitly mention the phrase unlawful, has consequences for the absence of an obligation for the public prosecutor to prove this element. R. Wiyono revealed that in the criminal law literature, there are two functions of the teaching of material unlawfulness, namely the teaching of material unlawfulness in a positive function, namely an act even though it is not determined by laws and regulations as unlawful, but if according to the community's assessment the act is unlawful, then the act is unlawful; and the teaching of material unlawful nature in its negative function.[19] The concept against material law will always live forever (perenial), immanent and can even touch the transcendental realm. In a critical position, the concept of countering material law in criminal law has a wedge and is correlated with the flow of natural law in legal philosophy which is also perennial, immanent and even transcendental.

C. The Flow of Natural Law: Human *Common Sense* Morality and (Actions) Against Material Law (*Materiele Wederrechtelijk*)

The natural law school, or sometimes in the study of legal philosophy at the law faculty, is often called the "natural law school" or in other languages it is called "natural law". The term natural law in the context of the natural law school must be distinguished from the term "law of nature", which is a term that refers to the concept of natural law in the context of laws that naturally apply to nature. Such as the laws of physics, the laws of chemistry, the laws of biology, and the laws of gravity. The laws in question refer to the term "law of nature", not natural law in the context of the natural law school that applies in the philosophy of law. Thus, there are differences in the meaning of the use of the word natural law in the context of natural law and law of nature.

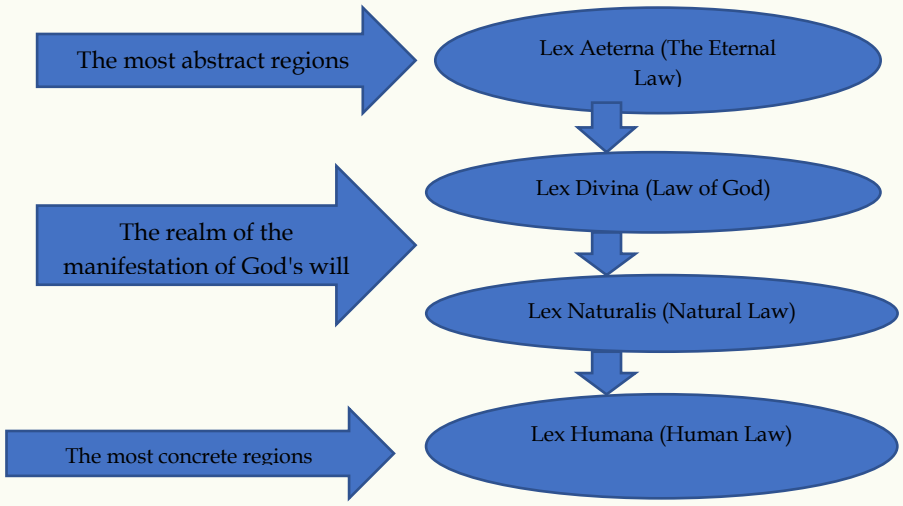
So what is the main thesis of the natural law school in establishing its existence as the oldest school in legal philosophy? This question is a question that should be accessualized before arriving at the answer to how the concept of countering material law can be in line with the flow of natural law. As is known, the natural law school is the oldest school in the history of the development of legal philosophy. The school of natural law of dissociation began to exist in classical times (ancient Greece)[20] and continues to experience the growth of discourse in the medieval era. Even the natural law school in ancient Greece often pinned Aristotle as the "father of natural law".[21] The natural law school departs from a major thesis that law is synonymous with morality. Even morality itself is law.[22] The natural school of law makes morality the main basis for the enforcement of law. Without morals, the law is nothing and the law has no legitimacy. In the perspective of the natural law school, legal norms are found through the treasures of universal morality. Ontologically, law is a principle of truth and justice that is subject to idealism, that is, an idea of values that already exist and are true by themselves (*self-evidence*).[23]

E. Sumaryono said "legal truth" here can be read as "legal validity." Thus, the essence of law, both in terms of its formality (validity, validity) and in terms of its substance (content

[19] Komisi Pemberantasan Korupsi, *Pedoman Pengendalian Gratifikasi* (Jakarta: Komisi Pemberantasan Korupsi, 2015), p. 47.
[20] Fithriatus Shalihah, *Sosiologi Hukum* (Jakarta: Rajawali Pers, 2017), p. 47.
[21] Liudmyla Knodel, *English for masters of law Philosophy of law* (Kiev, 2015), p. 8.
[22] Fokky Fuad Wasitaatmadja, *Filsafat Hukum Rasionalisme dan Spiritualisme* (Jakarta: Kencana, 2019), p. 146.
[23] Shidarta, "Menilik Kepantasan Labelisasi Pancasila sebagai Staatsfundamentalnorm dalam Sistem Hukum Indonesia," *Digest Epistema Berkala Isu Hukum dan Keadilan Eko-Sosial* 4 (2013): hal. 19; Sukarno Aburaera, Muhadar, dan Maskun, *Filsafat Hukum: Teori Dan Praktik* (Jakarta: Kencana, 2013), p. 94.

of justice) is a natural reality. This understanding departs from the assumption that all human attitudes and behaviors in living their lives must be subject to a system of morality that is natural. The morality system then internalized into individual human beings for the sake of individuals, so that it finally became social morality.[24] "All human beings love truth and justice" is one of the forms of *self-evident* premise that is most relevant to the context of this description. This truth and justice is the deepest longing of human beings that continues to be sought throughout the ages. The School of Natural Law seems to be designed to answer this need. This means *that human law*, without exception, must be interpreted as the embodiment of the *self-evident* premise.

So strong is the demand, so that meaningfully this man-made law is given ideal limits as the principles of truth and justice as well. The meaning of law as the principles of truth and justice in the Nature Law Stream is supported by idealism. According to this understanding, the idea of truth and justice does not come from experience, but precedes experience (*a priori*, not *aposteriori).* The idea is something very basic and at the same time it is the origin that must be maintained in every form of law.[25] The natural law wants that every man-made law (*lex humana*) must refer to and be based on the idea of the principles of truth and justice.[26] Thomas Aquinas (1224-1274 A.D.[27]), was one of the main exponents of natural law schools other than Saint Augustine (354-430 A.D.).M)[28], In his teachings, Thomas Aquinas introduced hierarchically the natural laws into 4 (four) types. They are *lex aeterna* (eternal law), *lex divina* (divine law that has been established), *lex naturalis* (natural law captured through ratio and morality), and *lex humana* (human law/positive law). These four legal classifications are the main guides and are the central thesis built by the classical natural law school. In addition, there are also variants of the modern natural law school as introduced by its exponents, namely Lon Fuller and Ronald Dworkin. However, the study of the legal school in this paper will only focus on the classical natural law school, without reducing the existence of the modern natural law school in the slightest. To further clarify the position of the natural law school in building its central thesis, the following will be described.



Source: Processed From Various Literature

[24] Shidarta, *Hukum Penalaran dan Penalaran Hukum (Buku 1: Akar Filosofis)* (Yogyakarta: Genta Publishing, 2013), p. 157.
[25] *Ibid*., p. 199.
[26] Bernard L. Tanya, "Pengembangan Epistemologi Ilmu Hukum," dalam *Prosiding Seminar Nasional* (Seminar Nasional "Pengembangan Epistemologi Ilmu Hukum", Kerjasama Asosiasi Filsafat Hukum Indonesia (AFHI) dan Program Doktor (S3) Ilmu Hukum Sekolah Pascasarjana Universitas Muhammadiyah Surakarta, Surakarta, 2015), p. 52.
[27] Shidarta, *Legal Positivism* (Jakarta: UPT Publishing University of Tarumanagara, 2020), p. 21.
[28] Muhammad Junaidi, *Ilmu Negara Sebuah Konstruksi Ideal Negara Hukum* (Malang: Setara Press, 2016), p. 29.

Lex aeterna is an eternal law[29] and is the most abstract form of God's will and is unattainable by human ratio.[30] This law contains God's will in the sense of everything about the universe community governed by God's ratio.[31] Therefore this law of nature must be rooted in an eternal law (*lex aeterna*) which lies in the nature of God Himself and what is his will from the beginning of the creation of this universe.[32] In other words, this eternal law is the starting point of all existence and the beginning of life in this vast universe. The universe, including the world and all its contents, began from God's will through *lex aeterna*.

Because of its very abstract nature and beyond the range of human ratios, the *lex aeterna* is further derived by *lex divina. Lex divina* itself is a law given by God which is partly found through religious teachings, especially through the holy book.[33] *Lex divina* contains guidelines from God to direct how people should act. These guidelines are contained in the Old and New Testament books.[34] It is through *this lex divina* that God's ratio and will can be understood and accepted by man from his five ideologies.[35] In addition, lex divina can also be understood as God's revelation which contains teachings on the principles of equality and justice as well as instructions to do something according to God's will. *Lex divina* in the context of religious teachings can be represented by the Gospel for Christianity and the Qur'an for Islam.

Besides *the lex divina*, it is also known *as lex naturalis* which is the epicenter (main center) of the classical nature stream.[36] *Lex naturalis* itself is a natural law (natural law) itself that relies on morality and ethics as its main base. *lex naturalis* is the most explicit manifestation of the divine will (*lex aeterna*). It is the Divine will factor that causes why the natural law is identified with the standard moral principles that must be followed. The Divine Will, is something perfect, good, and beautiful, and thus has a normative character that is all-round and requires.[37] *It is this lex naturalist* who directs human activity through the basic rules that prescribe what is good to do and what is evil to avoid.[38] Like *lex aeterna, lex naturalis* is also abstract. However, the abstract nature of *lex naturalis* is revealed to every human being as God's creation manifests in the form of principles of truth and justice manifested through morals and ethics that are embraced, believed, trusted, and recognized as something true, just, proper, and worthy in life.

Then the most concrete form of the natural law stream is *the human lex.* This last law is translated as man-made law in the form of positive law. However, this positive law must not "betray" the main essence that has been outlined by the natural law school, namely the law that contains the principles of truth and justice and resides in human morality as God's creation. Therefore, *lex humana* requires that every positive law made by man must get validation and legitimacy from the natural law stream. That means, man-made positive

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[29] Amir Syarifuddin, "Filsafat Positivisme Dan Aliran Hukum Positif," *Legalitas: Jurnal Hukum* 7, no. 1 (2017): p. 11.

[30] Tanya, "Op.Cit," hal. 52; lihat Aditya Yuli Sulistyawan, *Argumentasi Hukum* (Semarang: Penerbit Yoga Pratama, 2021), p. 90.

[31] I Dewa Gede Atmadja dan I Nyoman Putu Budiartha, *Teori-Teori Hukum* (Malang: Setara Press, 2018), p. 18.

[32] Kamarusdiana, *Filsafat Hukum* (Jakarta: UIN Jakarta Press, 2018), hal. 29; lihat Farkhani dkk., *Filsafat Hukum; Merangkai Paradigma Berfikir Hukum Post Modernisme* (Solo: Kafilah Pubishing, 2018), p. 32.

[33] Shidarta, "Sekali Lagi, tentang Keadilan," ResearchGate, 15 Mei 2017, https://www.researchgate.net/publication/355565271_Sekali_Lagi_tentang_Keadilan?enrichId=rgreq-fd8d0e3ed980f51dc56cb46941fb0935-XXX&enrichSource=Y292ZXJQYWdlOzM1NTU2NTI3MTtBUzoxMDgyODQ2MzI4NDIyNDAwQDE2MzUxODIwOTE3ODk%3D&el=1_x_2&_esc=publicationCoverPdf.

[34] Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana, 2008), p. 94.

[35] Farkhani dkk., *Op.Cit*, p. 85.

[36] Marzuki, *Op.Cit*, p. 98.

[37] Tanya, "Op.Cit," p. 52.

[38] Marzuki, *Op.Cit*, p. 93-94.

laws will be judged as flawed laws when they are contrary to the principles of human common sense.

When associated with the concept of material law as previously reviewed, the concept of material law is viewed that not all criminal acts that have been regulated in the law and declared unlawful, are seen as contrary to the law by the community. Why? Because there are legal rules made by the state with the aim of "ordering" perpetrators who are seen as committing criminal acts and since the beginning of the act is indeed considered completely irreprehensible. For example, breaking through a red light, not having a driver's license/STNK while driving, and not wearing a helmet when driving. An example of such an act in criminal law is considered a criminal act (violation) because the traffic law does state that the act violates the law. However, these acts are not necessarily considered by the *common sense* of the community as reprehensible "unlawful" acts, contrary to the values that live in society, and are considered immoral acts.

Compare it with the act of stealing, killing, raping, committing adultery or taking the rights of others without the permission of the owner of the right. These acts are basically also regulated in the Criminal Code. For example, stealing is regulated in article 362 of the Criminal Code, murder is regulated in article 338 of the Criminal Code, rape is regulated in article 285 of the Criminal Code and several other criminal acts. The question is, if the articles were repealed (declared invalid) again, then making the act no longer a criminal offense? Based on *our common sense* as human beings, even though the articles in the act are revoked, it does not necessarily make the act lose its "unlawful" nature. Acts such as stealing, killing, and raping are forms of acts that will still be considered by society as reprehensible, evil, contrary to values and norms, and morally hurting feelings. Why? Because since its inception these deeds have indeed been reprehensible, against the law and contrary to human morality as a gift from God.

Man has been equipped by God with ratio, morality and his considerations. In man, the principles of truth and justice and morality have been embedded as "gifts" from God. These principles of truth, justice and morality are the filters in determining what is good, bad, evil, "black-white", just-unjust, ethical-unethical, beautiful-unbeautiful, and moral-immoral. This means that since humans are still in the womb until they are born for the first time in the world, humans have been equipped with the instinct to determine and recognize the problems of good-bad, evil-not evil and other considerations that have the nuances of the dichotomy. Therefore, it is not surprising that when we see a heartbreaking event, such as a murder, our feelings are jolted. This is natural, because it emphasizes that there are principles of truth, justice and morality that are still felt in us.

Therefore, the concept of countering material law in criminal law and natural (classical) legal schools have relevance and intersect with each other. The concept of material law in criminal law is like a guide in the context of future criminal law reform. Because he will always respond to the demands of the times and the conditions of society which will be increasingly complex in the future. For example, in the past, the issue of living together without husband and wife (kumpul kebo) was seen as something that was considered an ordinary act. However, as the situation and conditions of society develop and there is a shift in values in the community, "kumpul kebo" begins to be considered as a despicable act, contrary to the moral values that live in society. Until finally the act of "gathering kebo" has been criminalized and is currently officially regulated in article 412 of Law Number 1 of 2023 (national Criminal Code).

The position of the natural law school, which bases its main thesis on the collection of principles of truth and justice as well as morality, has a very determinant position. Because indirectly, the natural law stream has quite a lot of influence on the development of the concept of material law in criminal law. The perennial stream of natural laws will forever reside in human beings as God's creatures and the embodiment of *the naturalist lex*. It is through *the lex naturalist* that humans are guided to behave and act according to God's will.

CONCLUSION

In the end, it must be recognized that the existence of the concept against material law (*materiele wederrechtelijk)* in criminal law must be subject to and "served" to the natural law *stream (lex naturalis*) as its epistemological basis. The concept of counter-material law (*materiele wederrechtelijk)* substantially has a correlation and slice with the classical natural law school that originated in *the lex aeterna*, then manifested in the form of *lex divina* and *lex naturalis* as its main epicenter, and finally boiled down to *the lex humana*. The concept of material law against the law focuses on the main thesis that an act or action is said to be "against the law" because it is not only a violation of the applicable law, but also because by default, the act is indeed "against the law" because it is seen as reprehensible, evil, contrary to the values that live in society, and is considered an a-moral act. Thus, the concept of going against material law can be said to remain based on the standing position of the natural law stream.

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