

DIVERSITY OF EXISTENTIALISM THEORY, PATTERNS AND ITS REFLECTION IN JURISPRUDENCE

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ABSTRACT

The theory of existentialism that focuses on human thoughts as entities that have the freedom to give effect in the jurisprudence. The theory of existentialism is reflected in the jurisprudence by legal philosophers, especially by the German existentialist Werner Maihofer which adopted the thinking of Martin Heidegger, and Ulrich Hommes which adopted the thinking of Karl Jaspers existentialism. This study aims to mapping the patterns and influence of existentialism theory in the jurisprudence, by used philosophical and conceptual approach in doctrinal legal research terms. The result and findings of this study shows that: The style of existentialism theory initiated by Maihofer who disagree with Heidegger is thought that the character of social legal existentialism because it puts the corporate aspect framed by law to build a life together in order to ensure the existence of each individual. Hommes adopts Jaspers existentialism that identified as existentialism patterned divinity law was based on the theory of existence of human existence as being transcendence. In addition to thinking existentialism which is reflected in the jurisprudence, there is also the theory of existentialism is patterned value as described by Sartre and Poulantzas.

Keywords: existentialism theory, pattern, reflection, jurisprudence.

A. Introduction

Existentialism is an ideology that emerged in the 20th century at the end of the colonial era. This understanding emerged as a critique of neopositivism¹ increasingly dominate the world of thought, which believes that the only legitimate method for scientific investigation is an empirical investigation, as practiced in the science of physics.²

Existentialism has a closeness with phenomenology³ as ideas that appear in neopositivisme react, even existentialism can be said to be understood that continue the tradition of phenomenology⁴ and use it as a method to explain human existence in life in the world.

¹ As the basis of logical positivism thinking, nineteenth century marked the emergence of positivism in legal science and the century inherited ideas of earlier times were idealistic. Developments and changes in society that occurred in the nineteenth century to raise the spirit and attitude that are critical to the problems faced. Khudzaifah Dimiyati, *Teorisi Hukum*, (legal theory) Genta Publishing, Yogyakarta, 2010, pp. 68. In this century, was born the modern legal system. According Adji Samekto, modern legal system is a legal system that was born during the development of industry and capitalism in Western Europe patterned liberal. Patterned legal system is built in the liberal tradition of thought that believes in the theory, and practice of law can be constructed as a neutral institution and value-free. The law stipulated in the regulations - rational formal written to ensure the certainty that can be predicted. FX. Adji Samekto, *Studi Hukum Kritis: Kritik Terhadap Hukum Modern*, (critical legal studies: critique to modern law), Badan Penerbit Universitas Diponegoro, Semarang, 2003, pp 1. The building in question is the construction positivism positivism thought namely: Evidence empirical, objective reality, reductionist, neutral/value-free and deterministic. Ibid, FX. Adji Samekto, *Ilmu Hukum dalam Perkembangan Pemikiran Menuju Post-Modernisme*, (Jurisprudence in Tough Development to the Post-Modern), Indepth Publishing, Bandar Lampung, 2012.

² See, Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah* (Philosophy of Law in track history), pp. 227.

³ Understand the phenomenology of Edmund Husserl introduced by (1859-1939) as an alternative to counter the hegemony neopositivisme. He apply this understanding to the science of psychology with the method focused on themselves and refusing phenomenon common causal explanation (cause-effect) in the natural sciences. According to him, in order to arrive at the true meaning, it is necessary first of all prapandangan that fool the eye removed. *Ibid*, pp 228.

⁴ Heidegger as an existentialist hero is a student of Husserl, as will be explained later in the footnote on Heidegger.

Existentialism flourished in Europe, especially in Germany and France by philosophers. Got it interesting to study and further described because of the existentialist philosophers have different perspectives and patterns related to his understanding of the meaning of existentialism. In Indonesia's, study and research about existentialism theory and the relation with jurisprudence has a little number of it. There is just a few Indonesian literature that describe and presented about existentialism theory and the relation with jurisprudence. That reality is the reason why this paper needed to drawing the diversity of existentialism theory, patterns and its reflection in jurisprudence in Indonesia.

In understanding the fundamental aspects of existentialism dwell on the existence of human beings as individuals who have freedom. The concept of 'free' it would be interesting if drawn into the realm of jurisprudence that describe the law as something that actually give a 'threshold' for men to behave. Through this short article with all its shortcomings and will try mapped the core ideas of the philosophers of existentialism that developed in Europe and then will see its reflection in the jurisprudence. After the mapping, then it will be classified a variety of theories of existentialism in a particular pattern.

Based on what has been presented in the background, the problems that will be mapped in this paper is: How does the diversity of existentialism theory, style and its reflection in the jurisprudence? The aim of this study is to mapping diversity of existentialism theory style and its reflection in the jurisprudence. The next sections of this paper will explain the research methods that used in this study and then the result and discussion of this paper that will be the state of the art of this study. Each version of existentialism theory will be mapped with philosophical and conceptual analysis. The next section is conclusion of this paper.

Research Method

This research is a doctrinal research, model of legal research is a analytical study that only used secondary data. The secondary data splitting to the books, journal, reports, results of previous research and law dictionary. Approach the problem using the philosophy approach and the conceptual approach.⁵ The philosophy approach is done by examining the problems of radically reflective by using materials that have been collected, in this case will examine the theory of existentialism kinds of styles that exist in the realm of philosophy and then classified the patterns and influence in the jurisprudence. Conceptual approach is done by studying the views and doctrines in the jurisprudence, researchers will find the ideas that created to notions of law, legal concepts and principles of law that are relevant to the issue at handle.⁶

The data have been obtained will be analyzed descriptively by using a model qualitatively analyze by describing the data generated in the form of an explanation of the study systematically so as to obtain a clear picture of the problem under study.

Result and Discussion

As explained earlier, that existentialism is understood that emerged as a critique of existing neopositivisme understand first and hegemony almost every branch of science there. Phase criticize criticism that led to a new understanding as the antithesis is a common thing happening in the turnaround process of science and the search for truth, include in philosophy field.⁷ Philosophy is sometimes dismissed as a wholly "head in the clouds" discipline with no relevance to everyday life. The truth is that philosophy can be, and very often is, very relevant indeed.⁸ The 'philosophy of law', as its name implies, normally proceeds from the standpoint of the discipline of philosophy (e.g. it attempts to unravel the sort of problems that might vex moral or political philosophers, such as the concepts of freedom or authority).⁹

As happened in other branches of science, the notion of existentialism in the jurisprudence is also the contagious nature of the philosophy of existentialism that arise in general. Thought leaders existentialism philosophy was later adopted by legal thinkers that provide color in legal thought. The existentialist figures who have been widely recognized by existentialism thought, which are: Martin Heidegger¹⁰ (1889-1976), Karl Jaspers¹¹ (1883-1969), and Jean Paul Sartre¹² (1905-1980).

⁵ See; Johnny Ibrahim, *Teori dan Metode Penelitian Hukum Normatif*, Malang: Bayu Media, 2006, hlm. 302-318; and Peter Mahmud, *Penelitian Hukum*, Kencana Prenada, cet-7, Jakarta, 2011. pp xx.

⁶ *Ibid*, pp 95.

⁷ The phenomenon of criticism has even been criticized many times, for example Karl Raimund Popper therefore known by his falcification also Jacques Derrida with his deconstruction.

⁸ Stephen Law, *Philosophy*, Dorling Kindersley Limited, 2007, Pp. 14.

⁹ Raymond Wacks, *Philosophy Of Law A Very Short Introduction*, Oxford University Press Inc., New York, 2006, pp. XIII.

¹⁰ Martin Heidegger (born in Mebskirch, Germany, 26 September 1889 - died May 26, 1976 at the age of 86 years) was a German philosopher. He studied at the University of Freiburg under Edmund Husserl, phenomenology initiators, and later became a professor there in 1928. It affects many other philosophers, and his students included Hans-Georg Gadamer, Hans Jonas, Emmanuel Levinas, Hannah Arendt, Leo Strauss, Xavier Zubiri and Karl Löwith. Maurice Merleau-Ponty, Jean-Paul Sartre, Jacques Derrida, Michel Foucault, Jean-Luc Nancy and Philippe Lacoue-Labarthe also studied his writings with depth. In addition to its relationship with phenomenology, Heidegger considered to have great influence can not be ignored or against existentialism, deconstruction, hermeneutics and post-modernism. He tried to divert Western philosophy of metaphysical questions and epistemological toward ontological questions, that is to say, the

Heidegger introduced existentialism in humans interpret as *dasein*, meaning a creature who would not want to be in this world as free beings.¹³ In using his freedom, human exceeded the world around and declare themselves as existence. This is where human existence in this world as being immanent (as consciousness) and transcendence (for freedom)¹⁴. *Dasein* is brought face to face with its own uncanniness,¹⁵ its irreducibility to any substantive identity that might later be disclosed for it. ¹⁵ It is tempting to assume that in Heidegger's thinking the return to the hermeneutic ground that man is expected to define is an ontological turn toward what had claimed his being the message of his destiny.¹⁶

Existentialism by Jasper who also saw man as existence, he combines it with a transcendence of existence, so that absolute earnest appeared in life. What is revealed by Jasper contrast to Sartre's existentialism are more inclined to interpret the freedom of each individual, so that the absolute values do not exist in this world.¹⁷

Existentialism philosophy was later adopted by the philosophers of law that led to the flow of existentialism in the jurisprudence. As for existentialism in the jurisprudence developed in western Europe, especially in Germany and France.¹⁸ The following will try to understand existentialism presented in the jurisprudence, which was initiated by the German existentialism Werner Maihofer¹⁹ (1918-2009) which adheres to the philosophy of existentialism, Heidegger, and also Ulrich Hommes who embrace the philosophy of existentialism Jasper, while for French existentialism²⁰ of Sartre's ideas will be presented and NA Poulantzas.

Based on some existing literary source, the author will try to describe the theory of existentialism in the form of tables, making it easier to compare them. The comparison will be presented both comparisons between thought leaders and the pure existentialism philosophy also comparison between the thought leaders who reflect the philosophy of existentialism law theories of existentialism in the jurisprudence. About the comparison will be authors presenting on the table one.

questions concerning the meaning of existence, or what it means for humans to be. Heidegger also an academic member of the Nationalsozialistische Deutsche Arbeiterpartei important. www.wikipedia.org. accessed March 30, 2015.

¹¹ Karl Theodor Jaspers was a German existentialist philosopher. He was born in 1883 and died in 1969. Originally Jaspers worked as a psychiatrist, but in 1621, he worked as a professor of philosophy at Heidelberg. Jaspers lived during the Nazi rule and experiencing difficulties because his wife was Jewish. On April 14, 1945, Jaspers and his wife decided it will be taken to a concentration camp. But apparently the United States occupied Heidelberg and the German defeat in World War II. After the war, Jaspers became a writer of political issues, and move to Switzerland. Ibid.

¹² Jean-Paul Sartre (born in Paris, France, June 21, 1905 - died in Paris, 15 April 1980 at the age of 74 years) is a French philosopher and writer. Which is considered to develop eksistensialisme.Sartre flow states, there first existence than the essence (L'existence precede essence). Humans do not have anything at birth and during his life he was more the result of the calculation of its commitments in the past. Therefore, according to Sartre later, the only basis is the value of human freedom (L'homme est à être libre condamné). In 1964 he was given the Nobel Prize for Literature, but Jean-Paul Sartre refused. He died on 15 April 1980 at a hospital in Broussais (Paris). Funeral was attended by approximately 50,000 people. Her partner is a woman philosopher Simone de Beauvoir called. Sartre writing many of them leave work entitled Being and Nothingness or There and absence. Ibid. In this paper, Sartre also be positioned as a philosopher of law because his work is specifically elaborated on the state and law (Critique de la raison dialectique-1960). Op. cit, Theo Huijbers, Philosophy, pp. 240.

¹³ For manifestly you have long been aware of what you mean when you use the expression 'being.' We, however, who used to think we under-stood it, have now become perplexed."C. Mantzavinos, *Naturalistic Hermeneutics*, Cambridge University Press, 2005, P. 22.

¹⁴ Ibid, Theo Huijbers, Philosophy, pp. 229.

¹⁵ Martin Heidegger, *Being and Time*. J. Macquarrie and E. Robinson, transl. Blackwell: Oxford. 1962, pp. 342 in Thomas Brockelman, *Žižek and Heidegger, The Question Concerning Techno-Capitalism*, Continuum International Publishing Group, London SE1 7NX, 2008, pp. 5.

¹⁶ Wei Zhang, *Heidegger, Rorty, And The Eastern Thinkers A Hermeneutics of Cross-Cultural Understanding*, State University of New York Press, Albany, 2006 pp. 69

¹⁷ Ibid, See Theo Huijbers, Philosophy, pp. 229-230.

¹⁸ Mapping of thought is enough existentialism me realize: The process of falsification and /or verification or deconstruction not only in the philosophical understanding of the emergence of a new offer above disclaimer or other philosophical understanding, because it turns out the characters who are involved in a particular philosophical understanding was also mutual falcification and/or verify ideas from his predecessors, in the context of this paper with respect to existentialism.

¹⁹ Werner Maihofer (20 October 1918-6 October 2009) was a German jurists and legal philosopher. He served as Germany's Federal Minister of the Interior from 1974-1978 until he resigned after a scandal involving an illegal Wiretapping of Klaus Traube. He Studied law at the University of Freiburg, and received his Doctor of Laws degree in 1950. Maihofer Gained his habilitation in 1953 and eventually Obtained a professorship at the University of Saarbrücken. Maihofer did not join the Free Democratic Party until 1969. One of the leaders of thought of social liberalism in Germany, he co-authored the Freiburg theses alongside Karl-Hermann Flach and Walter Scheel in 1971. In 1974, he succeeded Hans-Dietrich Genscher as the Federal Ministry of the Interior, and-during the German Autumn-had-to-back several restraints of civil liberty. Op cit, www.wikipedia.org.

²⁰ Actually there are some French existentialist philosopher Sartre apart and Poulantzas, namely: Marcel, Merleau-Ponty, Levinas, etc.. However, due to limitations, only the author will present ideas and Puoulantzas Sartre.

Table 1. Comparison of theoretical ideas of existentialism and its reflection in the jurisprudence

No.	Existentialism Theory	
	Pure Existentialism	Existentialism in Jurisprudence
1.	<p>German Existentialism; Martin Heidegger:</p> <ul style="list-style-type: none"> - Humans are the subject individual must develop an authentic self, which according to his personality. - Only people who are not living authentically to abide by the values of abstract and general. - People who want to live at the level of authentic humanity must free themselves from the burden of the law to take the course itself. 	<p>Werner Maihofer:</p> <ul style="list-style-type: none"> - Man opposite of individual freedom, but must also pay attention to the social aspect, because humans always live with one another. It is not a coincidence, but it is a necessity. - The law is necessary for the construction of a good life together, living together since the construction is a necessary condition for the existence of the development of each person.
2.	<p>Karl Jaspers:</p> <ul style="list-style-type: none"> - Man is the existence in the sense that human beings are naturally self to overcome toward something other than itself. - The above process is called transcendence. Human existence is at once transcendensi. 	<p>Ulrich Hommes:</p> <ul style="list-style-type: none"> - Symptoms of the law should be interpreted as a statement of human being as transcendence. As creatures bertransen presidency, every human being to live with another man. - In association with the existence of the existence of another law arises. French Existentialism;
3.	<p>France Existentialism; Jean Paul Sartre:</p> <ul style="list-style-type: none"> - At first, just looking at the human in terms of personal (as human existence). - Got the influence of Marxism in his old age, so that helped also consider the social aspects of human. - Bottom line: Man is a creature that manifests itself freely with other people in history through his work in the community. In accordance with the meaning of this existence, human life is determined as praxis in which humans realize humanity with others. 	
4.	<p>N.A. Poulantzas:</p> <ul style="list-style-type: none"> - Man is the existence of free beings develop themselves in accordance with the ideals of the most pure conscience. - By developing themselves, each person creates their own values. - Personal existence is only an authentic existence in relation to the existence of authentic others. - Personal freedom is not a freedom without social relations, it is the freedom with real freedom. 	

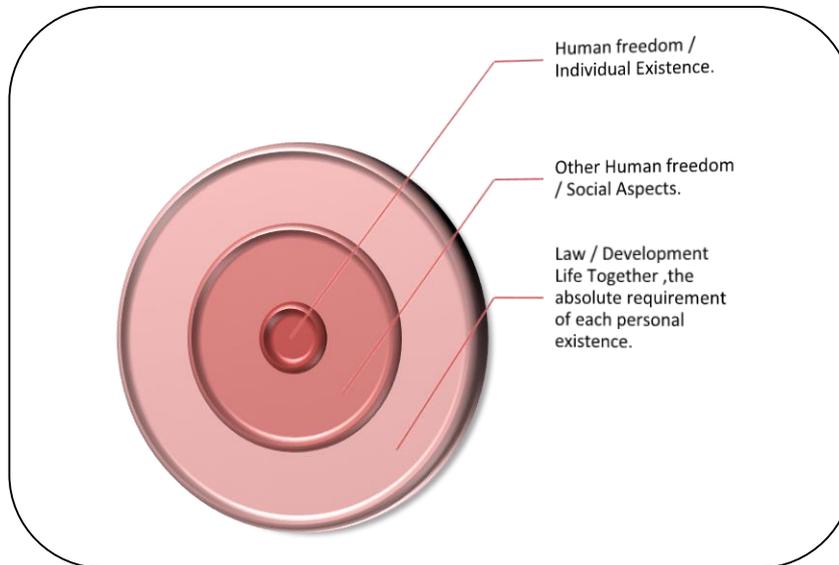
Source: Excerpted from the book Theo Huijbers; Philosophy of Law in a history, and also from Book Bernard L Tanya; Legal Theory.

From the table one above can we see the difference in mind in view of human existence which is then used as the basis of thought in the theory of existentialism. Despite all the existentialist philosophers basing his thinking on human freedom as the entities that have in existence, but they vary in deciphering the meaning of human existence, as well as linking with the law. These differences are reflected in the understanding of existentialism in the jurisprudence with respect to style existentialism conceived.

Maihofer which adopts existentialism of Heidegger adds a social aspect and put the law as something that is necessary for the development of a good life together, living together since the construction is a necessary condition for the development of each personal existence. The author further understand these thoughts as thoughts of existentialism socially patterned law.

The social pattern is very visible because Maihofer trying to put the existence of individuals living together in the frame construction, for the law is needed in order to guarantee the existence of the personal development of each individual that exist in society. The adoption/pull Maihofer thought existentialism made in the jurisprudence starts from the basic understanding that the existentialist individual liberties drawn wider then the next layer is the freedom of other individuals who then framed by law. Author try to describes mapping of Maihofer existentialism in the spectrum contained in picture one.

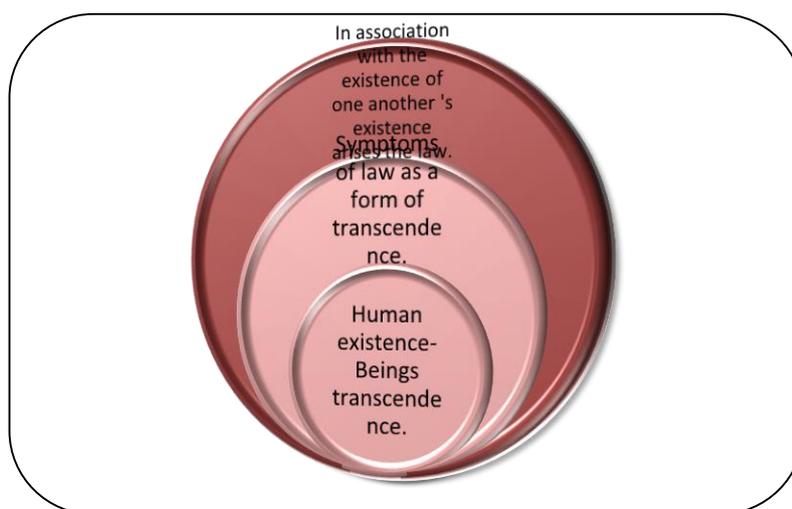
Picture 1. Legal Existentialism Theory from Werner Maihofer



Hommes Jaspers existentialism which adopts the symptoms articulate transcendence law should be interpreted as a statement of human transcendence. As beings who transcend, every human being to live with another man. Then from the interaction between human beings with each other the law emerges.

The author also tried to map the core ideas in this Hommes gradation consisting of several layers. Although the outer layer Hommes restore context to something that smells social existentialism. However, the authors are more likely to give the complexion thoughts as thoughts of existentialism law patterned divinity as the initial layer Hommes dispatch footing on basic issues of human existence as a creature of transcendence. The layer Hommes thinking about the existence in relation to the jurisprudence, author try to describe to the picture two.

Picture 2. Legal Existentialism Theory from Ulrich Hommes

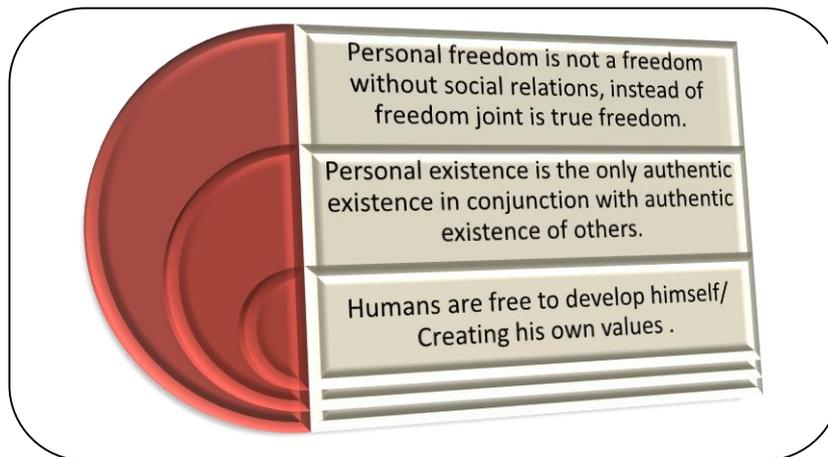


Picture one and two writers who have presented above is a reflection of existentialism theory contained in the jurisprudence as described by Theo Huijbers. The classification is done because Werner Ulrich Maihofer and Hommes is a figure of existentialism legal educational background. Maihofer interesting thought existentialism of Heidegger, while Hommes has been using the basic ideas of existentialism theory initiated by Jaspers. In addition to the German existentialist figures, as the authors

alluded to at the outset that in France there are also figures such as Jean Paul Sartre's existentialism and Poulantzas. Sartre's concept of "being-for-itself," which refers to the subject, and is characterized by the intentional nature of translucent consciousness, is surely distinguished from the empirical self, which is "out in the world."²¹

Sartre and existentialism Poulantzas is character. Although both are not set in legal education, but they need also thought to existentialism presented in this paper. Poulantzas is in line with Sartre's existentialism as embodying human development that creates personal value. According to personal existence is only an authentic existence in relation to the authentic existence of others, freedom is freedom right along. Poulantzas the thought that based on the existentialism of Sartre, the author is more comfortable to call and give into the thought patterns of thought eksistensialismenya patterned existentialism value. The theory of the existentialism of Sartre and Poulantzas try to writer explained in picture three.

Picture 3. Sartre and Poulantzas Existentialism Theory



Some theories of existentialism that have described above, both of which have been drawn into the jurisprudence by Maihofer and Hommes by adopting Heidegger's thought and Jasper, and thought that was conceived by Sartre's existentialism and Poulantzas, all of which have a distinctive style. Patterns of thought existentialism departed from the ideas that exist in the tradition of thinking of each character, so that enrich the flow of existentialism is well developed in the jurisprudence and science in a broader scope.

Conclusion

Existentialism theory that focuses on human thinking as an entity that has the freedom to give effect to the jurisprudence. The theory of existentialism is reflected in the jurisprudence by legal philosophers, especially by the German existentialist Werner Maihofer which adopts the thought of Martin Heidegger, and Ulrich Hommes which adopted the thinking of Karl Jaspers existentialism. As an object of this study, existentialism theory that influence to jurisprudence have some unique pattern based on the existentialist philosopher. The pattern existentialism theory initiated by Maihofer who disagree with Heidegger an existentialist thought because of the social character of the legal aspects of putting together framed by law to build a life together in order to ensure the existence of each individual. Hommes which adopts Jaspers existentialism existentialism identified as thinking patterned divinity law was based on the theory of existence of human existence as a creature of transcendence. In addition to the existentialism of thought is reflected in the jurisprudence, there is also the theory of existentialism patterned values as described by Sartre and Poulantzas. Suggestions that can be offer from this study is to understand the existentialism theory and the relation with jurisprudence must be in comprehensive view that realize the unique pattern of each existentialism theory by the existensialist philosopher. This way of view will help scholars from egoist attitude that framing other existentialism theory that influence in jurisprudence is lower than the view that they convinced.

References

- Brockelman, Thomas. *Žižek and Heidegger, The Question Concerning Techno-Capitalism*, Continuum International Publishing Group, London SE1 7NX, 2008.
- C. Mantzavinos, *Naturalistic Hermeneutics*, Cambridge University Press, 2005.
- Dimiyati, Khudzaifah. *Teorisasi Hukum*, (Legal Theory) Genta Publishing, Yogyakarta, 2010.
- Heidegger, Martin. *Being and Time*. J. Macquarrie and E. Robinson, transl. Blackwell: Oxford. 1962.
- Huijbers, Theo. *Filsafat Hukum* (Philosophy of Law), Kanisius, Yogyakarta, 1995.

²¹ David Sherman, *Sartre and Adorno The Dialectics of Subjectivity*, State University of New York Press, 2007, pp. 77.

- _____. *Filsafat Hukum Dalam Lintasan Sejarah* (Philosophy of Law in track history), Kanisius, Yogyakarta, 1982.
- Ibrahim, Johnny. *Teori dan Metode Penelitian Hukum Normatif*, (Theory and Method of Doctrinal Legal Research), Malang: Bayu Media, 2006.
- Law, Stephen. *Philosophy*, Dorling Kindersley Limited, 2007.
- Mahmud, Peter. *Penelitian Hukum* (Legal Research), Kencana Prenada, cet-7, Jakarta, 2011.
- Samekto, FX. Adji. *Studi Hukum Kritis: Kritik Terhadap Hukum Modern*, (Critical Legal Studies: Critique To Modern Law), Badan Penerbit Universitas Diponegoro, Semarang, 2003.
- _____. *Ilmu Hukum dalam Perkembangan Pemikiran Menuju Post-Modernisme*, (Jurisprudence in Tough Development to the Post-Modern), Indepth Publishing, Bandar Lampung, 2012.
- Sherman, David. *Sartre and Adorno The Dialectics of Subjectivity*, State University of New York Press, 2007.
- Tanya, Bernard dkk. *Teori Hukum; Strategi Tertib Manusia Lintas Ruang dan Generasi* (Legal Theory; Man Standing Cross Space Strategy and Generation), Yogyakarta, 2013.
- Wacks, Raymond. *Philosophy Of Law A Very Short Introduction*, Oxford University Press Inc., New York, 2006.
- Zhang, Wei. *Heidegger, Rorty, And The Eastern Thinkers A Hermeneutics of Cross-Cultural Understanding*, State University of New York Press, Albany, 2006.