

Beknopte samenvatting Inleiding

Week 1

Het doel van **rechtsregels** is menselijke gedragen te ordenen en daarmee ook te uniformeren.

Het recht heeft twee functies, het ordenen van het menselijk gedrag door rechtsregels en het handhaven van rechtsregels. Het recht kan onderverdeeld worden in. Het recht heeft twee functies.

1. Doelmatigheid -> de ordening van de menselijke samenleving
2. Gerechtigheid -> de bescherming van de fundamentele menselijke waarden

Rechtsbronnen

Het geheel van geldende rechtsregels is het positief recht een andere benaming is ook wel objectiefrecht:

- **Objectief recht** -> is het geheel van rechtsregels en normen, zoals die voortvloeien uit wetgeving, rechtspraak en gewoonten.
- **Subjectief recht** -> een bevoegdheid of recht dat toekomt aan één persoon (of een groep personen)

Het recht kan ook weer onderverdeeld worden in

- **Materieel recht** -> regels die betrekking hebben op de rechten en plichten van personen in hun onderling verkeer. Op de inhoud gericht. Deze regels pogen het gedrag van mensen en dus de samenleving te ordenen en te uniformeren
- **Formeel recht** -> regels over de wijze van procederen bij de rechter. Ook wel procesrecht genoemd

Er zijn twee verschillende soorten algemene regels:

1. **Descriptieve regels** -> beschrijvend van aard, beschrijven de feiten
2. **Normatieve regels** -> rechtsregels voor wenselijk gedrag, normen en waarden
 - Deze normatieve regels kunnen weer onderverdeeld worden
 - Godsdienst
 - Moraal -> of menselijk gedrag goed of fout is
 - Fatsoensregels
 - Recht

Een regel behoort tot het recht als het afkomstig is van een van de vier **rechtsbronnen**

1. Verdragen -> geschreven recht
2. Wetten -> geschreven recht
3. Gewoonterecht -> ongeschreven recht
4. Jurisprudentie -> ongeschreven recht
 - ➔ $W + V + G + J =$ het positieve recht, het geldend recht -> het is door de mens vastgesteld

Naast het positieve recht bestaan er fundamentele rechtvaardigheid principes die van nature gelden -> **natuurrecht**

- Ze zijn gegeven door de schepping
- Bepaalde rechtvaardigheidsprincipes zijn van nature gegeven
 - ➔ Als de wet in strijd is met het natuurrecht dat in de wet ongeldig. Wetten hoeven niet rechtvaardig te zijn om te gelden

Primaire regels zijn regels die vaak overeenkomen met morele regels en een bepaalde verplichting of verbod opleggen -> gedragsregels. Deze regels volstaan echter niet. **De secundaire regels** komen tegemoet aan de tekortkomingen van een pre juridische wereld, waar alleen primaire regels de samenleving beheersen -> bevoegdheidsregels.

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G. A. de Brie



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