Philosophy Of Law And The Development Of Law As A Normative Legal Science

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Abstract.

Philosophy is an attempt to fundamentally study and express a man's depiction in the world towards the afterlife. The object is material and formal. Through this normalization of human behavior, the law traces almost all areas of human life. Legal philosophy analyzes the legal principles and answers questions related to legal problems in both normative and empirical juridical forms so that legal objectives can be achieved, namely for improvement in human life. The method of approach used is normative juridical, analytical descriptive research specifications are expected to provide a detailed, systematic, and comprehensive picture based on the correlation of data with each other on the Philosophy of Law and The Development of Law Normative Legal Sciences. The type and source of data used are secondary as a primary data source, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The data analysis method is qualitative. The legal theory does speak of many things that can fit into the political field of law, legal philosophy, legal science, or a combination of those three fields. Therefore, the theory of law may at some point talk about something universally numbered. Still, he may be talking about very specific things according to a particular place. The function of the law is not enough just as social control, but more than that. The function of the law expected today is to move the community to behave by new ways of acting or behaving by the provisions of the law.

Keywords: *Social control, normative law, legal regulations*

1. INTRODUCTION

Law is a science that is Sui generis, Sui generis is Latin which means only one for its own kind [1]. The science of law has a distinctive character. The hallmark of legal science is that it is normative. Such characteristics cause some people who do not understand the personality of legal science to begin to doubt the nature of legal scholarship. This doubt is due to the normative nature of legal science, not empirical science [2].

The peculiarity or specificity of the science of law is seen in the science of law as a normative legal science. Normative law has a distinctive study method. Normative jurisprudence describes its specific objects. But the object is the norm, not the actual behavior patterns [3]. The science of law explains the legal norms created by acts of human behavior and must be applied and obeyed by these actions; and in so doing it explains the normative relationship between the facts established by those norms [4].

Philosophy is thinking in terms of meaning, and it is tied to the importance of something [5]. Thinking deeply about meaning means finding the most profound sense of something in the content of that thing. In philosophy, a person seeks and needs answers not only by showing appearances alone but tracing them far behind the appearance to determine something called the value of reality.

Philosophy has a very broad object of discussion, includes all things that can be reached by the human mind, and tries to interpret the world in terms of meaning. Many issues regarding law raise further questions that require fundamental answers. Many of these basic questions cannot be answered by law. Real problems that are not answered by the science of law become the object of discussion in philosophy [6].

Seeing the function of legal philosophy further is a way of thinking creatively by setting values, setting goals, determining direction, and leading to new paths [7]. The existence of particular characteristics of the philosophical thought of law above also points to the location of its urgency [8]. By knowing and to understand the philosophy of law with its various characteristics and characteristics, then the philosophy of law can be used as an alternative to help provide a way out of the orientation of social justice so far[9].

II. METHODS

The method of approach used is normative juridical, which refers to written legal norms, both as outlined in the form of regulations and in the form of literature. Descriptive analytical research specifications are expected to be able to give a detailed, systematic and comprehensive picture based on the correlation of data from one another about Philosophy of Law and The Development of Law As A Normative Legal Science. Types and sources of data used are secondary data sources as primary data sources, consisting of primary legal materials, secondary legal materials and tertiary legal materials. Data collection techniques carried out by means of literature study. Literature study was conducted to obtain secondary data. The method of data analysis is qualitative, namely research that refers to the legal norms contained in the legislation and norms that live and develop in society.

III. RESULT AND DISCUSSION

According to Paul Scholten, legal science is different from descriptive science. He argued that the science of law is not to look for historical facts and social relations as found in social research. Legal science deals with legal prescriptions, decisions of a legal nature and materials processed from habits [10].

Legal norms are different from other norms, legal norms have their own characteristics or characteristics. Leopold Pospisil put forward four characteristics of law (attribute of law), namely [11]:

1. *Attribute of authority*

Law is the decisions of legal officers who have power and authority in society that provide solutions to tensions in society.

2. *Attribute of intention of universal application*
   a. That the decisions of the parties in power must be intended as decisions that apply to anyone and have a long period of time
   b. Such decisions should be considered applicable also to similar events in the future.
3. *Attribute of obligation*
   Such decisions must contain formulations of the obligations of one party to the second party and also the rights of the second party that must be fulfilled by the other party.
4. *Attribute of sanction*
   That the decisions of the authorities should be strengthened by sanctions in the broadest sense.

Other peculiarities of legal science as normative legal science are :

1. Normative law has its own research method.
   a. The nature of legal science is prescriptive and applied. As a prescriptive science, jurisprudence studies the purpose of law, values of justice, validity of the rule of law, legal concepts and legal norms. As an applied science, jurisprudence establishes standard procedures, provisions and signs in implementing the rule of law, therefore there is no need for a hypothesis.
   b. Normative legal research does not use data sources, data collection techniques and data analysis (empirical meaningful data), so normative legal research does not use quantitative analysis. Normative legal research uses legal materials that are valid (doesn't depend on the situation, amount and time of collection).
   c. Normative legal research does not use population and sampling, normative legal researchers may not limit their studies, for example to only one law.
2. In normative legal science, legal scientists (jurists) actively analyze norms, so that the role of the subject is very prominent (subjects). Meanwhile, in empirical law, the attitude of the scientist is as a spectator who observes the symptoms or objects that can be captured by the five senses (objects).
3. In terms of scientific truth, in normative legal science the basis of scientific truth is pragmatics which is basically the consensus of peers. Whereas in empirical law the basic scientific truth is correspondence, meaning that something is true because it is supported by facts (correspond to reality).
4. In terms of propositions, normative law is normative and evaluative, while empirical law is only informative and empirical.
5. In terms of argumentation, juridical (law) argumentation is a special argumentation model. The specificity of the argument is: no judge or lawyer starts arguing from a vacuum. Legal arguments always start from positive law. Positive law is not a

closed or static situation, but is a continuous development. Legal argumentation or legal reasoning is based on rational argumentation and rational discussion.

One of the great findings in the field of normative law is about legal entities as legal subjects. These normative findings have had a tremendous impact on economic life because with these findings a business does not only depend on the age of the owner of limited capital, while a business entity does not recognize old age. Another normative legal finding in the field of Criminal Law is corporate responsibility.

Legal science is the study of law, legal science cannot be classified into social science whose field of study is empirical truth. Social science does not give space to create legal concepts. Social studies are only concerned with the implementation of legal concepts and often only pay attention to individual compliance with rules or emphasize factual patterns of behavior.

Likewise, law is not included in the humanities, humanities do not provide a place to study law as a rule of social behavior. In humanities studies, law is studied in relation to ethics and morality. There is no denying that justice is an issue within the scope of philosophy. Justice is an essential element in law, but philosophy is not related to the implementation of justice.

Legal Studies Viewed from Ontology, Axiology and Epistemology

Philosophy of science is a philosophical study that wants to answer questions about the nature of science, which is viewed from an ontological, epistemological and axiological point of view [6]. In other words, the philosophy of science is part of epistemology (philosophy of knowledge) which specifically examines the nature of science, such as [12]:

1. What object is studied by science? What is the true form of the object? What is the relationship between the object and the human perception that produces knowledge? (ontological basis)
2. What is the process that enables the acquisition of knowledge in the form of science? How does this work? What things must be observed in order to acquire true knowledge? What are the criteria? What is the truth called? Are there criteria? What methods/techniques/means help us to gain knowledge in the form of knowledge? (Epistemological foundation)
3. What is knowledge in the form of science used for? How is the relationship between the way of use and moral rules? How to determine the object under study based on moral choices? How is the relationship between procedural techniques which are the operationalization of the scientific method with moral/professional norms? (Axiological basis).

Philosophy has a material object and a formal object. The material object is what is studied and peeled off as material (material) for discussion[13]. Material objects are objects that are targeted for investigation by a science, or objects studied by that

science. The material object of the philosophy of science is knowledge itself, namely scientific knowledge, knowledge that has been systematically arranged with certain scientific methods, so that the truth can be accounted for in general [14].

The formal object is the approach used for the material object, which is so distinctive that it characterizes or specializes the field of activity in question. If the approach is logical, consistent and efficient, a system of philosophy of science will be produced. The formal object is the point of view from which the subject examines the material object.

Ontology explains the nature of everything that exists. The first time people are faced with the existence of two kinds of reality. The first is the reality in the form of material, and second, the reality in the form of spiritual. Ontology includes two important things, namely material objects and formal objects. Likewise, legal science in terms of ontology has two objects, namely material objects and formal objects.

The material object of legal science is humans themselves and legal norms, and the formal object of legal science is regarding the origin, structure, method, and validity of legal science. Normative jurisprudence describes its specific objects. The object is the norm, not the actual behavior patterns.

The science of law explains the legal norms created by acts of human behavior and must be applied and obeyed by these actions; and in so doing it explains the normative relationship between the facts established by those norms.

Epistemology, etymologically comes from the Greek, namely episteme and logos. Episteme means knowledge; logos is usually used to denote systematic knowledge. So it can be concluded that epistemology is systematic knowledge about knowledge [15]. Epistemology or theory of knowledge is a branch of philosophy that deals with the nature and scope of knowledge, its presuppositions, and its foundations as well as accountability for statements about knowledge possessed [13].

Legal science in terms of epistemological perspective has clearly been accounted for as a science seen from the scientific method or scientific method. Legal science has its own methodology or scientific method which shows that legal science is a science that has a clear existence. From an epistemological perspective, legal science can be seen from the conceptual basis of legal research [16].

In legal research, the existence of a conceptual framework and a theoretical basis or framework is a very important requirement. In the conceptual framework, several conceptions or understandings are expressed that will be used as the basis for legal research, and in the theoretical basis or framework everything contained in the theory is described as a system of various "theorems" or teachings. In a legal research, the conceptual framework paradigm includes: the legal community; legal subjects; rights and obligations; legal events; legal relationship; and legal objects.

Likewise, the theoretical basis or framework for legal research uses several paradigms, including: the legal meaning paradigm; paradigm of legal distinction; and the legal system paradigm. The existence of legal science as a science is very clear because the conceptual basis and theoretical basis or framework for legal research are

also part of the realization of the rule of law concept. In modern times, the concept of the rule of law in Continental Europe was developed by, among others, Immanuel Kant, Paul Laband, Julius Stahl, Fichte, and others using the German term "rechtsstaat".

Meanwhile, in the Anglo-American tradition, the concept of the rule of law was developed by the pioneering A.V. Dicey as "The Rule of Law". According to Julius Stahl, the concept of the rule of law which he calls the term 'rechtsstaat' includes four important elements, namely:

1. Protection of human rights.
2. Power sharing.
3. Government by law.
4. State administrative court.

While A.V. Dicey describes the existence of three important characteristics in every rule of law which he calls the term "The Rule of Law", namely:

1. *Supremacy of Law.*
2. *Equality before the law.*
3. *Due Process of Law*.

The four principles of 'rechtsstaat' developed by Julius Stahl above can basically be combined with the three principles of 'Rule of Law' developed by A.V. Dicey to mark the characteristics of the modern rule of law today. In fact, by "The International Commission of Jurist", the principles of the rule of law have been added to the principle of independence and impartiality of judiciary which is now increasingly felt to be absolutely necessary in every democratic country.

The principles that are considered as important characteristics of the rule of law according to "The International Commission of Jurists" are:

1. The state must obey the law.
2. The government respects individual rights.
3. An independent and impartial judiciary.

Likewise, the science of law is viewed from an axiological perspective. Axiology is a theory of value. Axiology is also defined as a theory of value related to the usefulness of acquired knowledge. According to philosophers, several definitions of value can be put forward, including:

a. Richard Bender's definition states that a value is an experience that provides a satisfaction of a recognized need to be integrated, or that contributes to such satisfaction. Thus a fruitful life is the attainment of an ever-increasing number of value experiences.
b. Findlay's definition states that value is a philosophical equivalent of goodness, excellence, desirability, etc. Values are based on reality or in principle with human attitudes called valuations.

c. Mc Cracken's definition states that value is that aspect of a fact or experience based on that fact or experience that is seen in its nature or essence, sufficient reason for its existence as a fact or experience remains so, or sufficient reason for its position which is considered an end for the purposes of practice or reflection.

From the definitions of axiology above, it is clear that the main problem is about value. The value in question is something that humans have to make various considerations about what is being assessed. Axiology or ethics is the study of the principles and concepts that underlie judgments on human behavior.

Humans are judged by other humans in their actions. The theory of value which in philosophy refers to ethical and aesthetic problems. In the context of the relationship between ethics and science, ethics is inherent (inherent) with science. To realize moral, ethical and aesthetic values is to respect human dignity. Respecting human dignity concretely means: guaranteeing human rights aspects.

From an axiological point of view, the science of law, in this case legal norms, contains a record of ideas which are none other than values that are upheld by the society where the law was created. Law and morality are an inseparable unity. The law must serve and uphold morality. Morals are concerned with the goodness or badness of a trait or character, or on the difference between right and wrong related to human behavior.

IV. CONCLUSION

The purpose of law is to create order, regulate the structure of social life in a particular society. The moral purpose is to regulate human life as a human being. The embodiment of moral and ethical values in the legal field is concretely seen in professional responsibilities and ethics in the legal profession. A professional education without education regarding professional responsibilities and ethics is incomplete. Technical skills education in the field of law must prioritize responsibility and be guided by moral and ethical values. Law is related to ethics, because through legal norms a just social order is established. The law requires ethical-juridical, because the law creates justice.

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