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Legal Values and Sources: A Paradigm in Understanding Indonesian Law

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Abstract— One of the legal issues is justice, which is related to values. Within the scope of philosophy, it is related to decisions regarding moral judgments, aesthetic judgments, religion, culture, and other social issues. Value here means an abstract quality of an object. According to Kuhn, the established science is ruled by a single paradigm. This paradigm guides scientific activities in normal science, where scientists can describe and develop paradigms in detail and depth. Legal norms that contain two elements, assessment and behavior standards, are used to assess people's lives.

Keywords— Corporate University, Apparatus Competence, Integrated Learning.

INTRODUCTION

The word philosophy is derived from the Greek philosophia which is made up of the words philos (love) and sophia (wise knowledge). Philosophy is the mother of all sciences [1]. The development of philosophy in science is inseparable from various opinions that conceptualize the parts in its study. Philosophy is said to be the mother of science. Its development gave birth to fields of science, which developed into branches of science and sub-branches of science. One of the most important parts is the philosophy of science.

Then in its development, science becomes more specific and technical. In its development, a lot of basic problems emerged which caused science to be further away from its essence. Philosophy can be divided into three fields, namely the theory of knowledge (epistemology), the theory of nature (ontology), and the theory of value (axiology). According to some experts, these fields can be further divided based on their discussion.

a. Ontology is concerned with the existing nature (being, sein), whether there is something permanent, eternal, or constantly changing, and whether there is something abstract, universal, or concrete.
b. Epistemology is concerned with the means and how to use these means to obtain knowledge, truth, or reality (reason, character, or their combination). It talks about what are the standards of something true and real that science is constantly looking for.
c. Axiology is concerned with values and norms. It focuses on what is the meaning and purpose of life and which values to be imperatively fulfilled.

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A never-ending question in the legal context is about justice. The controversy of justice arises as justice has a relative and individual nature. What is perceived to be just by someone is often considered unjust by others. Due to this diverse understanding of justice, this philosophical approach provides the notion of justice through detailed concepts.

According to Muhamad Erwin, by understanding the philosophy of law, one will get three benefits, namely ideal, practical, and real benefits. The ideal benefit is understanding human existence and humanity in the dynamics of life [2].

Philosophical issues are related to decisions about moral, aesthetic, religious, and cultural judgments, as well as judgments of other social issues. Value here means an abstract quality of an object. Values can be understood and lived.

Values, principles, norms, and legal facts constitute a hierarchy. Legal norms are related to legal principles in a legal system. Legal principles as fundamental rules and basic thoughts contained in a legal system are formulated into statutory rules. Legal principles are used as consideration materials by legislators in formulating a statutory regulation. The legislators should not make a legal principle a legal norm in the articles in the law [3]. Regulations through laws are expected to provide legal instruments to enforce values. Law enforcement is essential to promote values, especially justice.

METHOD

In this paper, the author examined the development of a paradigm in understanding the law through the meaning of legal sources using conceptual approach. The research subject in this paper was the concepts of thought in the philosophy of science that are value-oriented or are in an axiological position. The data or materials studied were library data. To provide a precise interpretation of the thoughts of the expert or figure, the concepts of thought in the philosophy of science were studied according to their conformity with one another. Then, the rationale was formulated to find the right concept to answer the problems studied in this paper.

RESULT AND DISCUSSION

Legal Science

The term science has two meanings, namely as a product and as a process. As a product, science is verified knowledge in a field that is arranged in a system. As a process, science refers to the activities of the human mind to acquire knowledge in a field orderly (stelselmatig) or systematically by using a set of specific meanings for that purpose to observe relevant phenomena (gegevens). The results are decisions whose validity can be reviewed by others based on the same criteria, has been agreed upon, or is common in the relevant community [4].

The substance of a legal system and its development is explained through the flow of law, its substance of the law, and its development patterns comprises of several variations, caused by the diversity of values in

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society which influences the substance and model of legal development. [5] Thus, the existence of science refers to a structured intellect containing elements of presumptions as guiding principles, systematic buildings, i.e., methods and substances (concepts and theories), intersubjective validity, and ethical responsibilities. This results in various ways to classify science based on the criteria used. For example, from the substance perspective, there are formal and empirical sciences. Formal science is a science whose object of study rests on a pure structure, namely the analysis of operational rules and logical structures.

Legal Source

The law in Indonesia cannot be separated from human life [6]. Therefore, the preamble and the body of the 1945 Constitution of the Republic of Indonesia which is an important part of the construction of national law must be able to realize a national paradigm in the sense that it can bring about change from a colonized nation to a new nation under its legal ideals. This is as stated by Satjipto Rahardjo that the Constitution is the grand design of a new society and life in Indonesia [7].

Darji Darmodiharjo stated that the level legal norm theory by Nawiasky is special because it is concerned with the application of legal norms issued by the state. Instead of Grundnorm, Staatsfundamentalnorm is a term to refer to the highest norm because, according to Darji Darmodiharjo, the basic norms of a country may be changed while Grundnorm is unlikely to change [8. Grundnorm is different from Staatsfundamentalnorm. According to Attamimi, Staatsfundamentalnorm is the highest norm, but its degree is not the same as Grundnorm, which is still abstract and universal [9]. The theory of Die Stufenordnung der Rechtsnormen [10] by Hans Nawiasky views that the level of the norm system starts with Staatsfundamentalnorm or the highest norm of the state, followed by Staatsgrundgesetz or the state constitution, Formellgesetz or formal law, and Verordnung und outonomesatzung or implementation of regulations and autonomous regulations such as concrete and operational regulations.

Mark Van Hoecke argues that the systematization of legal materials at the technical level is collecting and organizing research materials (law) to describe and classify legal rules based on a generally accepted hierarchy of legal sources to build a basis for legitimacy in interpreting the rule of law [11]. The theory of legal sources which views legal material as a hierarchically arranged quantity with written legal sources is dominant.

Legal material sources are legal sources that determine the content of a legal norm. Dardji Darmodiharjo stated, in addition to legal sources in the form of laws, other sources of law are still needed. Further, the source of all sources of law is needed to an assessment tool, a measurement tool, or a touchstone against the applicable law to follow justice and realize peace and order in society [12].

Law, in relation to the development of national law, requires the formulation of an integrated and comprehensive legal policy as a further elaboration of the general matters as outlined in the development goals. Legal policy covers the politics of law development, politics of law formation, and politics of law enforcement and application [13].

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Legal Paradigm

The term paradigm initially developed in science, especially concerning the philosophy of science. It was developed by Thomas S. Kuhn in his book entitled The Structure of Scientific Revolution [14]. The notion of paradigm is a basic assumption and general theoretical assumption (a source of value), so it is a source of laws, methods, and applications in science that greatly determines the nature, characteristics, and character of science itself.

Paradigm can also be interpreted as a unity of ideas from a scientific community within a certain period that is firmly held [15]. Thomas Khun explained that a paradigm is a perspective, values, methods, basic principles, or problem-solving that is embraced by a scientific community. If a perspective is challenged from the outside or is in crisis, trust in that perspective will fade away and become less authoritative. It is when this becomes a sign of a paradigm shift [16].

According to Kuhn, the established science is ruled by a single paradigm. This paradigm guides scientific activities in normal science, where scientists can describe and develop paradigms in detail and depth. In this stage, a scientist is not critical of the paradigm that guides other scientific activities [17]. Values contain ideals, hopes, desires, and compulsory teachings because values are believed to be useful in life. Therefore, talking about values means talking about ideals, hopes, desires, and musts. It means talking about das sollen not das sein.

Legal positivism has failed to present a truer picture of the law. This is evidenced by the emergence of various disciplines which indicate that the object of legal study is not as narrow as understood by legal scientists in the 19th century [18].

Based on the current movement in science towards a holistic approach as stated in Consilience; The Unity of Knowledge [19], Edward O. Wilson proposes and develops new insights in science, namely the unification or holistic view of knowledge called consilience. It is a broad concept to draw a theme line to see the relationships in science. Wilson's holistic paradigm lies in the consilience model which contains the value of the unification model in the unified model. The unification model places humans as the dominant actor in reality. Humans in this position make various active efforts to integrate themselves into the reality of their lives. This task includes efforts to eliminate aspects that can interfere with model unification. Meanwhile, Wilson's unified model is a way to escape the confines of modern knowledge [20].

Similarly, Wilson, Capra, and Sadra [21] criticize the disparity between social and natural sciences by stating that there are many problems in the world today that cannot be solved by independent scientific disciplines. A complete and balanced picture cannot be obtained if we depart from separate scientific disciplines. Therefore, the boundaries between disciplines must be fluidized (Wilson). Fluidization is a term that shows all the components of the Cartesian-Newtonian (Mulla Sadra) paradigm. This needs to be done because the world is no longer seen as blocks that are separate from one another but a unified whole or a unified network of units (Capra).

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Epistemologically, Philip M. Hadjon argues that legal science has distinctive characters, namely normative, practical, and prescriptive. As a prescriptive science, legal science studies the purpose of the law, the values of justice, the validity of the rule of law, legal concepts, and legal norms. As an applied science, it establishes standard procedures and signs in setting rules. Legal science is divided into three layers, namely legal dogmatics, legal theory, and legal philosophy. Legal science also has two aspects, namely practical and theoretical. In practice, legal science is used to solve legal problems. In theory, legal science is used for scientific development through normative research with legal approach, case approach, comparative approach, and conceptual approach [22].

Legal science is an exemplar of normology which belongs to the practical sciences group by collecting, explaining, systematizing, analyzing, interpreting, and evaluating positive law based on the framework of the applicable legal order [23]. Legal issues cannot be separated from the community in a certain region and time. This means that the law in Indonesia cannot be separated from the people and territory of Indonesia and its historical journey. In connection with that, legal material in Indonesia must be explored and made from the values held by Indonesian society. [24]

Ontologically, the study object of legal science is the law. Studying law means understanding the intrinsic conditions of the rule of law. Meanwhile, the law as an object of legal study has several meanings. Van Kan states that law is a coercive provision of life that protects the interests of people in society. Rudolf von Jehring states that law is the entire coercive rule or provision that applies in a country. E. Utrecht states that law is a set of life guidance containing orders and prohibitions that regulate behavior or order in society and that those who violate the law will be sanctioned by the authorities [25].

Axiology describes the usefulness of legal science. A norm in its position can eliminate existing contradictions in the legal system and become a critique in an amendment to existing laws and regulations as well as in the formation of new statutory regulations. It can also be used to critically analyze judge decisions for jurisprudence development [26].

The axiological dimension emphasizes that human actions are a function of their interests. The fulfillment of these interests means that there is freedom in the human will [27]. Based on ethical-idealism, ethical-deontology, and ethical-teleology, good law is the law that covers aspects of a large or broad movement.

Based on the above study, the law can be seen in terms of its values, including customary law which is a product of a cultural system. However, nowadays, the development of practical law in the formation of laws that develops (guides) the national legal system in Indonesia may not fully rely on customary law although it remains that the eastern philosophy as conveyed by Stevenson has its features and characteristics [28].

Legal science tries to systematize separate legal materials comprehensively in a legal book by codification, unification, and other methods. In the process of law formation, the research results and theoretical studies from the doctrinaires are important inputs for drafting a bill to produce laws that can be implemented and function optimally because they have fulfilled philosophical, juridical, and sociological analyzes.

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CONCLUSION

Legal norms contain two elements, judgmental and behavioral standards. In judgmental standards, the law is used to assess people's lives by stating what is considered good and bad. This assessment will result in instructions about community behavior. In behavioral standards, the view of behavior emerges as the law is seen as an order, that is when people behave under the order of the law.

In legal science, basic norms, basic rules, or the ultimate source of all legal rules are the first norms, rules, or legal provisions that exist in the legal system concerned. Therefore, these norms, rules, or provisions serve as the basis for the enactment of all kinds of other norms, rules, or legal provisions. This is what it means by the source of all other legal norms. All kinds of other legal norms contained in the legal system must be able to be returned to the first norm.

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