



Legal Sciences in the Perspective of Philosophy of Science

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<http://dx.doi.org/10.18415/ijmmu.v8i7.2911>

Abstract

Legal science covers a limited scope since it only focuses on norms or law. Many problems relating to law raises further questions that require a fundamental answer. The fact is that these questions are impossible to be answered by legal science. This phenomenon is being the object of discussion in the field of philosophy. Philosophy, with its metaphysics, epistemology, and axiology ways of thinking, besides providing fundamental answers to problems in philosophy and general science, also give a solid foundation for the existence of law itself. Law, if reflected through philosophical science, is included as science which has its own characteristics for its normative nature.

Keywords: *Philosophy of Science; Perspective; Legal Science; Positive Law*

Introduction

In general, there is an assumption that all problems related to the law have rules or have laws. When there is a problem related to the law, there is often an assumption that the law already regulates how something should be resolved. This is how the law is understood by most people. In legal science or jurisprudence, the notion of law often refers to positive law.

Law which is used as the object of study for law students has many meanings. Legal experts provide a very diverse understanding of law making it very difficult to give a single definition of law. This shows how extensive the problems that are covered by the law, as well as the characteristics and aspects contained in it. This wide coverage of law gives rise to various meanings of law.

Many things are related to law, not just the notion of law as a rule (positive law), because the rules and characteristics associated with law are so broad. Aspects and characteristics can also include elements from other fields or issues such as economics, politics, environment, family, technology, poverty and so on (Anshori, 2005, p.2). Such discussions of law are a separate field of science—the legal science or jurisprudence. In order for law to be studied empirically, according to Hans Kelsen (as cited in Rahardjo, 2000, pp. 49-50), requirements of making positive law the object of study must be met. Legal science has the object of discussion (rules) of law (positive). A legal regulation is made to regulate human life, therefore Radbruch (1961, p. 36) argue that law is required to have three basic values. These three basic values are justice, certainty, and legal expediency. A legal regulation can be implemented in society

if it meets the elements of validity, these are philosophically valid, sociologically valid, and juridically valid.

Legal science has a limited scope because it only studies about norms or rules (law). Many questions concerning the law give rise to further questions that require more basic answers. In fact, many of these basic questions can no longer be answered by legal science. Fundamental problems that cannot be answered by legal science become the object of discussion in philosophy. Philosophy has the object of everything that can be reached by the human mind.

Philosophy of science is part of epistemology (philosophical knowledge) which specifically examines the nature of science (scientific knowledge). Science is a branch of knowledge that has certain characteristics (Suriasumantri, 2003, p. 33). Although methodologically, science does not distinguish between natural sciences and the social sciences, due to technical problems that are unique. Therefore, the philosophy of science is often divided into the philosophy of natural sciences and the philosophy of social sciences and does not characterize the branch autonomous philosophy. Science is indeed different from philosophical knowledge, but no principal difference exists between natural sciences and social sciences, both of which have similar scientific characteristics.

Methodology

The type of research used is normative doctrinal/judicial research. This study uses several approaches, namely the statutory approach, the conceptual approach, and the comparative approach (Marzuki, 2014, pp. 142-176). The data used are collected from library materials or literature studies (Soerjono, 1984, p. 53). Library research is research in which data are taken mainly or entirely from the literature (Soehartono, 2000, p. 65). The materials used to compile this manuscript consist of primary legal materials such as legislation, secondary legal materials such as journal books, articles, papers, seminar results, and so on. The analysis used in this study is qualitative in the sense that the existing data will be presented together with the analysis that has been carried out (Soekanto & Marmudji, 1987, p. 69).

Analysis and Discussion

Definition of Philosophy of Science

Philosophy is an attempt to grasp or understand the world in terms of its meanings and values. The field of philosophy is very broad and covers the whole as far as the mind can reach. Philosophy seeks to answer questions about the origin and nature of the universe in which humans live and what is the purpose of their lives. Philosophy when it uses descriptive materials presented in specific fields of study and goes beyond that description by investigating or inquiring about its nature, values, and possibilities. The goal is understanding and wisdom (Mudhofir, 2003, p. 17).

It is for this reason that philosophy is a holistic approach to life and the world. A field that is closely related to the main areas of human experience. Philosophy seeks to incorporate the results of science and understanding of morals, aesthetics, and religion. Philosophers have been looking for an integrated view of life, finding its meaning and trying to provide a reasonable conception of the universe and human place in it (Mudhofir, 2003, p. 17).

Etymologically, philosophy comes from the Greek (*Philosophia*), which means love of wisdom. Based on the nature and function of philosophy, Titus et al. (1984, pp.11-15) classify as follows:

1. Philosophy is a set of attitudes and beliefs about life and nature that are usually accepted uncritically (informal meaning);
2. Philosophy is a process of criticizing or thinking about beliefs and attitudes that we highly value (formal meaning);
3. Philosophy is an attempt to get the whole picture. This means that philosophy seeks to combine the results of various sciences and human experiences so that it becomes a consistent view of nature (speculative meaning);
4. Philosophy is a logical analysis of language as well as an explanation of the meaning of concept words. This style of philosophy is also called logocentrism; and
5. Philosophy is a set of immediate problems, which have received attention from men and for which philosophers have sought answers.

Based on the description above, it can be concluded that the philosophy of science is tasked with providing a philosophical foundation, at least to understand various concepts and theories of a scientific discipline, to equip the ability to build scientific theories.

Thus, the scope of the philosophy of science in the field of philosophy as a whole is discussing the "nature of scientific knowledge" and examining "ways of seeking scientific knowledge". In the first subject, the philosophy of science is closely related to the philosophy of knowledge or epistemology, which is a field of philosophical study that generally investigates the conditions and forms of human knowledge. In the second subject, which is related to the subject of "ways to cultivate scientific knowledge", the philosophy of science is closely related to logic and methodology, and in this case the philosophy of science is sometimes grown in its understanding with methodology. Thus, the philosophy of science is a philosophical inquiry about the characteristics of scientific knowledge and the ways to obtain it. In other words, the philosophy of science is, in fact, a follow-up investigation (Wahyudi, 2003, pp. 12-13).

Wahyudi (2003, pp. 12-13) classifies the philosophy of science into two categories, these are:

1. **Philosophy of general science**, which includes the study of issues of unity, uniformity, and the relationship between all sciences. This study is related to the problem of the relationship between science and reality, unity, tiers, the arrangement of reality, and so on.
2. **Philosophy of special science**, namely the study of the philosophy of science that discusses the categories and methods used in certain sciences or in certain scientific groups, such as in the natural sciences group, the community science group, the engineering science group, and so on.

Thus, the understanding of the philosophy of science is indeed very broad and a deep study or contemplation of science requires patience and humility. To understand the ins and outs of a field of science, of course it must be studied from three approaches to the Philosophy of Science, namely **ontology** (metaphysics), **epistemology** (procedures for the occurrence of science), and **axiology** (usability and usefulness).

Understanding Legal Science

Mochtar Kusumaatmadja (as cited in Sidharta, 1998, pp. 16-17) stated that legal science is "the science of the laws that apply in a particular country or society at a time." Gustav Radbruch (as cited in Sidharta, 1998, pp. 16-17) define legal science as a science that studies the objective meaning of positive legal order. Paul Scholten (as cited in Sidharta, 1998, pp. 16-17) said that legal science is a study that examines the law that applies as a given quantity. J.W. Harris (as cited in Sidharta, 1998, pp. 16-17) explain "legal science is that activity ... whose necessary objective is the systematic exposition of some corpus of legislative materials". For Aulio Aarnio (as cited in Sidharta, 1998, pp. 16-17), legal science is "the study that seeks to put forward statements about the content of valid (i.e., binding) legal norms as well as about the systematic interrelations between them", which on another occasion confirmed it as "the doctrinal or analytical study of law" which carries out "two tasks: the interpretation and the systematization of legal norms".

The object of the study of legal science is the applicable legal system, namely the conceptual system of legal rules and legal decisions whose important parts are positive by the bearers of legitimate legal authority in the community or state in which legal science is carried out. Thus, the whole authoritative text contains legal rules consisting of products of legislation, judges' decisions, unwritten law, and the work of authoritative legal scientists in their fields (doctrine), (Bruggink as cited in Sidharta, 1998, pp. 16-17).

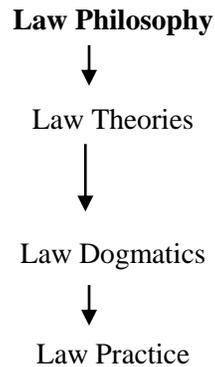
The development of Legal Studies is directed at the efforts to answer legal questions in order to find and offer alternative juridical solutions for certain social problems (micro and macro) with reference to and within the framework of the applicable positive legal system. This means that the activities of developing legal science are activities to anticipate and offer solutions to concrete legal problems that may occur in society, both those faced by individuals and those faced by society as a whole. In connection with the latter, the development of legal science absolutely requires a deep understanding of the products of the human sciences, especially the Social Sciences (Sidharta, 1998, pp. 16-17). In other words, the development of legal science is the activity of preparing legal decisions that can be rationally justified, decisions that can be placed within the framework of the legal order that applies as one of the subsystems of the social system as a whole. For this reason, authoritative texts that carry out various applicable legal rules must be compiled, arranged, presented, and systemized, which absolutely requires interpretation of the authoritative text. In order to be able to interpret and systematize the mass of legal material in the form of authoritative texts whose volumes are very large and always changing appropriately so that they can be understood, controlled and used effectively aimed, then in carrying out Legal Science itself, the formation of notions (concepts), categories, theories and classifications, and the development of functional methods for doing these things.

Legal Science Classification

In this section, the views of legal experts who make the classification of legal science based on its scope and substance will be presented.

1. Legal science in a broad sense;
2. Legal science in a narrow sense.

Legal science in a broad sense includes:



Meanwhile, legal science in a narrow meaning is only dogmatic law. Furthermore, Hadjon (1999, pp. 2-3) explains that:

- a. **Legal dogmatics**, the object of legal science is positive law. Its characteristic is the legal concept, which is technically juridical, full of normative values.
- b. **Legal theory** has two sides, namely the contemplative side and the empirical side. The hallmark of legal theory is its general concepts and interdisciplinary character.
- c. **The philosophy of law**, very specific, because the philosophy of law is not part of legal science because the philosophy of law is a general philosophy that is applied to the legal science.
- d. **Legal practice**, the activities of law formation and law application, especially for the application of the law. The typical argumentation model is legal reasoning.

From the description above, it is clear that the law can be systematically studied from various aspects, especially metaphysically the philosophy of law. Regarding general concepts, studies are based on aspects of legal theory. Meanwhile, the study of legal dogmatics is directed at positive law such as the law established by the government in a country.

Nature of Legal Science

In explaining the nature of legal science, it is necessary to use two approaches from different perspective—the science philosophy and law theories. The philosophy of science distinguishes science based on two points of view, namely the positivistic view that gave birth to empirical science and the normative view that gave birth to normative science (Hadjon, 1994, pp. 2-3). Legal science has these two sides that, on the one hand, legal science displays a distinctive character as normative science, while on the other hand, legal science shows characteristics as empirical science (Hadjon, 1994, pp. 2-3). The empirical side has developed in such a way through the use of social research methods. Therefore, without a doubt, people include legal science as one of the social sciences (Wignjosoebroto, n.d.).

The consequence of including legal science in the social sciences is the requirement to use the social science format as an empirical science in legal research activities. Terms such as data sources, data collection techniques, data analysis, and problem formulation in interrogative sentences, such as how and

how far are ex-post, therefore have empirical meaning. Meanwhile, on the side as a normative science, the accent of its juridical work lies in the ex-ante dimension (Meuwissen, 1994).

Philipus M. Hadjon (1994, pp. 2-3) diametrically confronts the empirical legal science that gave birth to legal positivism on the one hand and the normative legal science on the other hand. Legal positivists (empirical legal science) view law as a fact that can be constated and value free. However, when faced with the reality of the needs of normative legal practitioners and scientists in everyday legal practice, legal positivists cannot provide satisfactory answers to questions as critical touchstones posed to them (Ibrahin, 2005, p. 111).

Furthermore, from the point of view of legal theory, it can be seen in two senses, namely the layer of legal science, which is between legal dogmatics and legal philosophy, has a narrow meaning, while in a broad sense includes legal dogmatics and legal theory. Starting from these opinions and views above, it can be said that the nature of legal science reflects a deep philosophical meaning based on scientific thoughts in order to obtain scientific truth.

The Position of Legal Science based on Philosophy of Science

The science that first appeared was philosophy, then the special sciences (including law) became part of philosophy. This is why philosophy is said to be the mother or mother of science or *matter scientiarum*. Because the material object of philosophy is very general, which is the whole of reality, whereas the sciences require a special material object. This resulted in the separation of science from philosophy. Although in its development each science separates itself from philosophy, this does not mean that the relationship between philosophy and the special sciences is severed (Mudhofir, 2003, p. 15).

The specific characteristics of law, as well as those of every science, create clear boundaries between these different sciences. In other words, there is no field of knowledge that connects these different sciences. This is where philosophy seeks to reunite the special sciences. The task of philosophy is to overcome specialization and formulate a view of life based on the broad experience of humanity. Therefore, philosophy is one part of the natural educational process of thinking creatures. There is a reciprocal relationship between law and philosophy. Many philosophical problems require a foundation of scientific knowledge if the discussion is not to be said to be shallow and erroneous. Today's science can provide philosophy with a large amount of material in the form of facts that are very important for the development of philosophical ideas that are consistent with scientific knowledge (Mudhofir, 2003, p. 5).

Because scientific knowledge or science is a higher level of knowledge, science philosophy was born as the successor to the development of the Philosophy of Knowledge. Science philosophy as a branch of philosophy places its target object on science (knowledge) (Wibisono, p. 11). Thus, science philosophy is a philosophical study that tries to answer the question of what the object of science is, how is the scientific process, and what are the benefits of science that encourage the emergence of philosophical thought that is mainly directed at the components that become the pillars of the existence of science—the ontology, epistemology, and axiology.

Ontology of science includes what is the nature of science, what is the nature of truth and reality inherent in scientific knowledge, which cannot be separated from the philosophical perception of what and how "existence" is (being). Monism, which is divided into idealism or spiritualism, dualism, pluralism with its various nuances, is an ontological understanding which ultimately determines the opinion that each of us believes in what and how (what) existence as the manifestation of the truth we seek (Wibisono, pp. 12-13).

Epistemology of science includes sources, means, and procedures for using these facilities to achieve scientific knowledge. Differences regarding the choice of ontological basis will naturally result in differences in determining the means we will choose. Sense and experience or a combination of reason and experience, intuition, are the means referred to in epistemology, so there are known epistemological models such as rationalism, empiricism, criticism or critical rationalism, positivism, phenomenology with various variations. It also shows how the strengths and weaknesses of an epistemological model and its benchmarks for scientific knowledge are such as coherence, correspondence, pragmatic, and intersubjective theories (Wibisono, pp. 12-13).

The axiology of science includes values that are normative in giving meaning to truth or reality as we encounter in our lives exploring various areas, such as social areas, symbolic areas, or physical-mental areas. Moreover, values are also shown by the axiology as a condition sine qua non that must be obeyed in our activities in conducting research and in applying knowledge (Wibisono, pp. 12-13).

Studies of Philosophy can be carried out in all fields of science, including law. The study of philosophy in the field of law is known as the philosophy of law. Philosophy of law is a general philosophy which is applied to law or legal phenomena (Gijssels & Hoecke, 1982, p. 8). Philosophy of law addresses the deepest questions relating to the meaning, foundation, structure, and the like of reality. Thus, the object of the study of Philosophy of law is the basis and limits of the rule of law. This can be interpreted as philosophy of law discussing or questioning matters more deeply to the basic truths and values that are focused on juridical data.

Gijssels and Hoecke (1982, p. 57) divide the study area of Philosophy of Law into several sub-regions, including:

- a. Legal Ontology (the teaching of existence, research on the "nature" of law, on the "nature" for example democracy, on the relationship between law and morals;
- b. Legal Axiology (value teaching): determination of content and values such as feasibility, equality, justice, freedom, truth, abuse of rights;
- c. Legal ideology (literally: the idea of teaching): processing a comprehensive insight into humans and society that can function as a basis and/or as legitimacy for existing or future legal institutions, legal systems as a whole or parts thereof;
- d. Legal Epistemology (teaching of knowledge): research on the question of the extent to which knowledge of the "nature" of law or other fundamental Philosophy of Law issues is possible. So, this is a form of meta philosophy;
- e. Legal theology (final teaching): determining the meaning and purpose of law.

In addition, in terms of the object of the study of Philosophy of Law, which questions basic things, it shows that Philosophy of Law has a position at a higher level than other branches of legal science, namely Legal Theory and Legal Dogmatics. Meuwissen's scheme (1994) describes Philosophy as being in the highest position followed by Legal Theory and then Legal Dogmatics and all of them have an effect on positive law and its application (See Meuwissen, 1994).

In developing the national legal order, processing facilities are needed, namely a National Legal Science and a National Legal Philosophy. The legal science taught in the legal higher education environment in Indonesia originally came from legal science developed by the Netherlands whose legal order was included in the Romano-Germanic Law environment (Continental). In its development, the

legal science in Indonesia has also begun to gain influence from legal science whose legal order includes the environment of Common Law (Anglo Saxon) (Sidharta, 2000, p. 12).

In developing an adequate National Legal Science to carry out the establishment of national law and legal practice in Indonesia, critical reflection on philosophical foundation, scientific nature, and structure of legal science will make a positive contribution. Based on an understanding of the philosophical foundation, the nature of science, and the building of legal science, it can be rationally estimated to what extent can be expected and what is needed and what must be done to enact legal science in the development and practice of national law.

The systematic-crisis reflection on the philosophical foundation, the nature, and characteristics of science, as well as the building (structure) of legal science is included in the discipline of philosophy of law. This reflection rests on the conception of science itself (Sidharta, 2000, p. 12).

Based on the description above, it can be concluded that the philosophy of law has a broad point of view because the philosophy of law must provide answers to a legal system or a legal order which is a product of legal theory and legal dogmatics. Philosophy of law addresses the deepest questions concerning the meaning, foundation, structure, and the like of reality. Thus, the object of the study of Philosophy of Law is the foundation and limits of the rule of law.

The basis and boundaries of the rule of law that become the object of legal philosophy here cannot be separated from the values of the individuals and groups of people behind them. Values, views, ethics, beliefs, religion, and even customs that must be preserved and protected by law have a decisive influence on the formation of legal theory and legal dogmatics which in turn also affect the positive law currently in force (Sidharta, 2000, p. p.12).

In relation to the discussion above, legal science (as another theoretical legal knowledge in addition to legal science theory and legal philosophy) must always be developed so that it can always support the implementation of practical law (creation, implementation, application, and enforcement of legal rules). In order to be able to play a more effective-positive role in legal science in carrying out practical law, it is necessary from time to time to reflect on the philosophy of law itself. With this reflection, the development of legal science can be carried out in a more conscious way, and thus can be more rational and more directed (contextual). This is important with respect to the instrumental character aspect of the law itself (Sidharta, 2000, p. 12).

A complete philosophical reflection on legal science will question aspects of ontology, epistemology and axiology. The study of these three aspects will determine the existence and scientific character of legal science and eventually have implications for the development and practice of legal science—the development of practical law) in the life of society. This is because the view of legal studies influences the form and method of legal higher education as well as the way of thinking and working of the legal experts it produces.

Conclusion

Philosophy of Science is a reflective thinking knowledge on issues concerning all matters concerning the basis of science and the relationship of science with all aspects of human life. The foundation of science includes basic concepts, assumptions basic, initial principles, theoretical structures, and measures of scientific truth. Philosophy of science is a branch of knowledge whose existence and understanding depend on the mutual and mutual influence relationship between philosophy and science. The philosophy of science, with metaphysical, epistemological, axiological approach, and philosophical

thinking, in addition to providing basic answers to the problem of philosophical science in particular and scientific problems in general, also provides a strong foundation for the existence of legal science itself. The science of law when reflected in the philosophy of science is classified as science, but it has its scientific character due to its normative nature.

References

- Anshori, A. G. (2005). *Filsafat Hukum Kewarisan Islam* [Philosophy of Islamic Inheritance Law]. Yogyakarta: UII Press.
- Gijssels, J. & Hoecke, M. (1982). *Apakah Teori Hukum itu?* [What is Law Theory?] (B. A. Sidharta Trans.). Bandung: Laboratorium Fakultas Hukum Universitas Katolik Parahyangan.
- Hadjon, P. M. (1994). Pengkajian Ilmu Hukum Dogmatik (Normatif) [Dogmatic (Normative) Legal Studies]. *Jurnal Hukum Yuridika*, 6(1), pp. 2-3.
- Soehartono, I. (2000). *Metode Penelitian Sosial: Suatu Teknik Penelitian Bidang Kesejahteraan Sosial dan Ilmu Sosial Lainnya* [Social Research Methods: A Research Technique in Social Welfare and Other Social Sciences]. Bandung: Remaja Rosdakarya.
- Marzuki, P. M. (2014). *Penelitian Hukum* [Law Research]. Jakarta: Pranada Media.
- Mudhofir, A. (2003). *Pengenalan Filsafat* [Introduction to Philosophy]. *Filsafat Ilmu*. Yogyakarta: Liberty.
- Radbruch, G. (1961). *Einführung in Die Rechtswissenschaft*. Stuttgart: KF Kohler.
- Rahardjo, S. (2000). *Ilmu Hukum* [Legal Science]. Bandung: Citra Aditya Bhakti.
- Sidharta, B. A. (1994). *Rechtswetenschap, Pro Justitia*, 12(4).
- Sidharta, B. A. (1998). *Struktur Ilmu Hukum Indonesia* [Structure of Indonesia Legal Science], in W. C. Supriadi (Ed.), *Percikan Gagasan Tentang Hukum Ke-III* (pp. 9-52), Bandung: Manadar Maju.
- Sidharta, B. A. (1999). *Refleksi Tentang Struktur Ilmu Hukum: Sebuah Penelitian tentang Fundasi Kefilsafatan dan Sifat Keilmuan ilmu Hukum Sebagai landasan Pengembangan Hukum Nasional Indonesia* [Reflection on the Structure of Legal Studies: A Research on Philosophical Fundamentals and the Scientific Nature of Law as the Foundation for the Development of Indonesian National Law]. Bandung: Manadar Maju.
- Suriasumantri, J. S. (2003). *Filsafat Ilmu: Sebuah Pengantar Populer* [Science Philosophy: A Popular Introduction]. Jakarta: Pustaka Sinar Harapan.
- Titus, H. H., Smith, M. S., & Nolan, R. T. (1984). *Persoalan-persoalan Filsafat* [Philosophical Problems] (H. M. Rasjidi, Trans.). Jakarta: Bulan Bintang.
- Wahyudi, I. (2003). *Ruang Lingkup Kedudukan Filsafat* [Scope of Philosophy Position]. *Filsafat Ilmu*. Yogyakarta: Liberty.

- Wibisono, K. (2003). *Ilmu Pengetahuan Sebuah Sketsa Umum mengenai Kelahiran dan perkembangannya sebagai Pengantar untuk memahami Filsafat Ilmu* [Science A General Sketch of the Birth and Development as an Introduction to Understanding the Philosophy of Science]. *Unpublished manuscript*. Yogyakarta.
- Wignjosoebroto, S. (n.d.). *Ilmu Hukum dan Ilmu Sosial (Sebuah Perbincangan tentang Perbedaan Ajangannya dan Tentang Upaya mengatasi Silang Selisihnya)* [Law and Social Sciences (A Conversation on the Differences in Their Approaches and on Efforts to Overcome the Cross Differences)], Universitas Airlangga, Surabaya.

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