



The Position of Legal Philosophy Science in Science Constellation

Supriarno; Abdul Rachmad Budiono; Setyo Widagdo; Moh. Fadli

Faculty of Law, Universitas Brawijaya, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v7i11.2145>

Abstract

The philosophy of law is a science that analyzes law in a philosophical way. So that, the object of the science of legal philosophy is legal norms, and the object is evaluated in a way that is at the heart or basis, which is called the law. The philosophy of law has a wider area than the investigation of the workings of law regarding certainty, truth and objectivity. The position of the philosophy of law in the scientific constellation is as a basis for ethical logic about law. Philosophy of law is a science that specifically discusses the nature of law in a fundamental and comprehensive manner which is always dealing with scientific constellations consisting of the social and natural sciences, so that it's also at the intersection of the sciences as well as at the meeting point between the sciences. Science and it intersects with the ethics and logic.

Keywords: *Position; Philosophy of Law; Scientific Constellation*

Introduction

The science of legal philosophy is a hypothesis to provide a plausible description of law at a time and at a place, or the effort to formulate a general theory of legal order in order to meet the needs of legal development at a certain time, or the results of both, namely hypothesis to state universally about the law so it applies everywhere and anytime.[1]

Legal struggles, of course, don't only involve legal science, but there are several other aspects such as philosophy of law and other sciences. So that legal thinking in general develops not only in the spirit of contractual justice, where law is understood as a human creation, the result of an agreement by members of the community to secure their rights. Therefore, starting with trust, humans with their own abilities are able to answer various problems by relying only on reason.[2]

The development of science and technology in various fields has raised various problems and social crises and caused a number of scientists and philosophers to pay special attention to science. The question of why positive law requires further determination, why does it in its application raise questions? this question seems simple, but in fact the answer is very complex and involves (bringing in) a lot of philosophical analysis of the sciences in it.

The science of legal philosophy, in all means, however, the way of thinking, no matter what one thinks, all thinking about law systematically (philosophizing about law), will always be on the other hand (theory on the other hand) humans's view of the best form of the masses. Thinking about the purpose of law is based on the "conception" (view) of human beings as beings who think and are political beings. These two aspects must be considered in answering questions about the philosophy of law.

Therefore, trimming is killed at providing the opening according to it's own angle of view. There is a tendency that these philosophical groups are increasing and often trained scholars who do not have a complete framework and analysis, so that it cannot be called a particular scholar. Therefore, it's important to carry out and reexamine the position of the philosophy of law with all it's connectivity to the various sciences with the development of law.

Research Method

Using normative research with an orientation that is not based on the conceptual attitude that must be taken but also a combinatin of laws and regulations which are fundamental beliefs. This belief is important for producing objective research results.[3]

Research Results and Discussion

Legal Philosophy Among the Science

A science with scientific knowledge always departs from knowledge. Knowledge as a result of knowing activities, namely the disclosure of a reality into the soul so that there is no doubt about it and is used to tell the results of one's experiences about something. And a knowledge cannot be called a science if there is no scientific activity to determine it's truth. The division of knowledge according to German philosopher Wilhelm Dilthey (1833-1911) is divided into two groups, namely *Naturwissenschaften* and *Geisteswissenschaften*, which are translated into the terms natural science and social science. Natural science is a science that is subject to natural facts while social science investigates phenomena which in their occurrence are at least influenced will by human.[4] Meanwhile, philosophy focuses more on fundamental questions. Meanwhile, science focuses more on factual symptoms, namely symptoms that can be experienced and observed at least by the human sense. Symptoms that are natural are natural symptoms that can occur repeatedly, regularly, are measurable, predictable and occur causally.[5]

Philosophy is reflection which is made continuously about the world, human and divine, including various sciences that describe three main things. He traces the development of various kinds of various kinds of knowledge in the course of history so that he is able to compile a systematic world view. Analysis and reflection are based on discoveries, so that the work of science doesn't contradict one another.

Philosophy as a science will not be satisfied with existing knowledge.[6] He always tries to find the deepest (radical) answers to all the questions asked about various objects or phenomena that exist in human experience, therefore philosophy is also known as critical science. It has a wider area and more transcendent concerns.

Philosophy will take responsibility for truth or knowledge based solely on facts form empirical evidence, although philosophy can be retrieved from the data empirical, but the empirical evidence is not the ultimate accountability for philosophy just because something is empirical.[7]

Every truth can always be challenged, not by showing new empirical evidence, linking up with build new arguments that are better. Of course philosophy is different from the philosophy of science. Philosophy of science was born as a philosophical reflection on the nature of science which doesn't recognize a stopping point towards the goal to be achieved, namely the essential truth and the real reality about science. Furthermore, the science of legal philosophy or popularly known as legal philosophy is the science that processes and analyzes legal norms philosophically. So that the object of the science of legal philosophy is legal norms that are assessed at the core or basis, which is called the law.[8]

In some literature, the terminology of legal philosophy is often found in foreign languages (English), namely *Legal philosophy* and *Philosophy of Law*. Both have the same translation meaning but have different meanings and knowledge. *Legal philosophy* is a law that is studied in a philosophical manner whose study is inherent in law and its scientific field is legal science, while the *philosophy of Law* is a philosophy that studies law so that its studies are attached to philosophy and its scientific field is philosophy.[9] So the philosophy of law has a wider area than the investigation of how law works. Among them certainty, truth and objectivity about law.[10]

The Position of Legal Philosophy in the Scientific Constellation

The kayries of ancient Greek philosophers such as Plato[11] and Aristotele[12], will be seen clearly that the philosophy of law is a lot of political philosophy. Even now, the philosophy of law has become a stand-alone philosophy. The science of legal philosophy questions and seeks answers: What is the emergence of the law, how it arises and what it's intended for, is the suggestion and growth and purpose or function of law and the nature of law.

The philosophy of law becomes a normative science, he tries to find a rechtside which can become a general basis and ethically, there is a positive legal system so that it's far from common, the philosophy of law is generally based on general ideology. That the philosophy of law is a form of defense against the inadequacy of legal science in shaping and enforcing the case and breaking the law as a system that is logical and conceptual. Therefore, the philosophy of law is considered the right alternative to obtain correct solutions to legal problems.

The philosophy of law is not shown to question certain positive laws, reflecting on laws in general or law as such. Whereas the law functions as a norm to regulate the relationship between members of the masses to make human beings aware of the responsibility and responsibility of the law. The means that the philosophy of law tries to reveal and find a foundation that lies in the extent of the existence of law that is capable of being human.[13]

Whereas science in its scope is empirical while law is non-empirical. Law science is the knowledge about the principles and norms that apply. In the meaning of pure pretext, then the science of law is the most important form of theoretical law development. The object of the study of the science of law is the law that applies, which is the law that is true and that is. So, the science of law is not primarily concerned with studying or exposing laws that are true and which should be, life under the law and the fact of the law.[14] When viewed from the process of science and law, it cannot solve various human problems about the need for justice. It means that the process is not sufficient to describe the valid requirements of law, then it's necessary to have an analysis that is written and calculated so that legal justice can be obtained which means that the science of law becomes a source of law, which makes law become a source of law.

Since the philosophy of law is a branch of philosophy, in many respects the history of legal philosophy runs frequently with the history of philosophy in general. The schools of legal philosophy can actually be returned to several major groups of philosophy, such as materialism, idealism and dualism

(from the ontology aspect) or empiricism, nationalism, positivism, and intuitionism (from the epistemological aspects).[15]

The position of legal philosophy in the scientific constellation when viewed from the schools of legal philosophy, namely in the flow of natural law there is no scientific constellation here. This is because the philosophy of natural law places morals in a central position, which means that both the social and natural sciences must follow the nature of nature to achieve its truth. Natural law philosophy has a position as a controller of the various existing sciences and those that will be developed. It's different with the flow of legal positivism, it doesn't care about morals and nature so that what humans think is purely on the basis of their rationale, puts the human ratio in the highest position and is considered a truth whose instrument of testing is logic which also comes from humans.[16] Next is the utilitarianism flow which views that law has a goal that must be achieved, namely individual happiness and its benefits in society. Here it is clear that the role of social science and anthropology plays a role in realizing happiness. Furthermore, in the school of history, history is also greatly influenced by anthropological and social science studies by emphasizing the values of the nation and social values that are ongoing and applicable. The position of the philosophy of law of this school functions as a compass of the value of law enforcement that comes from the development of the nation itself. In the flow of *sociological jurisprudence*, the position of legal philosophy is as a path to change by identifying social phenomena, legal philosophy functions dynamically to manipulate social where law will protect each other between public interests, social interests and personal interests. It's different from the flow of legal realism, in this flow disputes in the judiciary are the basis for making laws by relying on the ability of judges.[17] The position of the philosophy of law of this school always correlates with both social and economic empiricism. In its development, the *Critical Legal Studies (CLS)* flow was born which showed that law must be separated from politics but prioritized the transformation of liberalism values in law.[18] Furthermore, feminism was born[19], the position of its legal philosophy is clearly seen that women's equality is part of the subject, policy and relationship in law. So the important and main subject in this flow is women, namely women who in the past were not placed as proper legal subjects, and in this flow women as subjects, namely women who are justice with social, political, economic and legal sciences.

Conclusion

Based on its formal object, philosophy is a science with its own degree. Philosophy of law is part of philosophy. The position of the philosophy of law in the scientific constellation is as a basis for ethical logic about law whose material object is legal norms. Thus there will always be a meeting point between the science of law and the philosophy of law and that is the deepest basis for achieving a philosophical degree, namely the essence of law.

Law and philosophy of law are both separated and distinguished by their formal object, namely law, which is a science, while philosophy of law is a philosophy, legal science is not part of legal philosophy, and legal philosophy is not a part of legal science.

The position of the philosophy of law originates from the contemplation of intelligent humans, where from the whole of the law all about humans, so that the philosophy of law cannot be separated from human life, the relationship between humans and the universe as a science consisting of natural sciences and social sciences. So the science of legal philosophy is a science that specifically discusses the nature of law which is always faced with the scientific constellation which consist of the social and natural sciences, so that the philosophy of law is at the intersection of the sciences as well as at the meeting point between the sciences that. Besides that, the philosophy of law also intersects with ethics, which is about good or bad and logic, which is about right or wrong.

References

- [1] Marmor A, 2010 *Philosophy of law* .
- [2] Held D t. D, 2005 Aristotle and the Philosophy of Friendship *Anc. Philos.*
- [3] Michael T, 2020 Bentuk Pemerintahan Perspektif Omnibus Law *J. Ius Const.*
- [4] Mooney T D, 2015, Dilthey, Wilhelm (1833-1911), in *International Encyclopedia of the Social & Behavioral Sciences: Second Edition*, .
- [5] Chirimuuta M, 2020, Philosophy of science, in *The Routledge Handbook of Philosophy of Colour*.
- [6] Ritaudin M S, 2017 Mengenal Filsafat Dan Karakteristiknya *Kalam*.
- [7] Wahana P, 2016 Filsafat Ilmu Pengetahuan *Filsafat Ilmu*.
- [8] Syarifuddin A, 2015 Filsafat Positivisme dan Aliran Hukum Positif *Leg. Ed.*
- [9] Posner R A, 1998 The problematics of moral and legal theory *Harv. Law Rev.*
- [10] 2012 Mempersoalkan Objektivitas Hukum : Suatu Perbincangan Filsafat Hukum *Masal. Huk.*
- [11] Trepanier L, 2009 Plato: The Republic *Anc. Philos.*
- [12] Edwards M and Edwards M, 2019, The philosophy of Aristotle, in *Aristotle and Early Christian Thought*, .
- [13] Horner D A, 2006 God's Call: Moral Realism, God's Commands, and Human Autonomy *Philos. Christi*.
- [14] Yara M, 2017 Teori Hukum *J. Huk. Pembang.*
- [15] Dr.Firdaus Achmad M H, 2014 Filsafat Ilmu dalam Kajian Hukum *Posbakum Antara Teor. Dan Prakt.*
- [16] Agus Riwanto, 2017 Mewujudkan Hukum Berkeadilan Secara Progresif Perspektif Pancasila *Al-Ahkam*.
- [17] Nobles R, 2012, A Sociology of Jurisprudence, in *Law and Sociology*, .
- [18] Unger R M, 1983 The Critical Legal Studies Movement *Harv. Law Rev.*
- [19] Sheptycki J and Smart C, 1991 Feminism and the Power of Law *Br. J. Sociol.*

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).