

## Legal Science Perspective in Modern Science Concepts

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### Abstract:

**Purpose** - This research examines the problem of legal science, which is the center of debate among legal scholars with the problem of the perspective of Law in the concept of modern science.

**Methodology** - This study uses empirical legal research methodology. Empirical legal research is a legal research method that uses empirical facts taken from human behavior, both verbal behaviors obtained from interviews and actual behavior carried out through direct observation. This research was conducted by examining the actual situation in society, namely looking for facts related to the problems in research.

**Findings** - The development of the science of Law is progressing very fast along with the development of science and technology, so every law graduate must be able to adjust his knowledge to keep up with these developments. However, this has changed by leaving the original characteristics of the knowledge he studied. The science of Law is independent and should be able to work independently following pure legal concepts and produce laws following the development of more modern society.

**Implication** - The science of Law must return to its central concept as pure legal science. The approaches used in understanding the science of Law as a modern science are by returning the science of Law to its existence as a body of knowledge that will be studied and studied accordingly.

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## INTRODUCTION

Science is developing so fast. It is possible because it shakes off the way people seek knowledge as something very sacred in theological view; the science of Law is part of a study that never ends along with technological and human advances in people's lives so that views on the science of Law often collide with existing circumstances where the study is more integral and not on a separate part of science.

The first meaning in Latin is called *ius*; in French, *Droit*; in Dutch, *Recht*; in German, it is also called *Recht*, while in Indonesian, it is called *Hukum*. Meanwhile, in the second meaning, in Latin, it is called *Lex*; in French, it is *loi*; in Dutch, it is *wet*; in German, it is *Gesetz*; while in Indonesian, it is called *UU*. The word law in English comes from the word *song*, the codified rules made by Anglo-Saxon kings. The *song* turns out to be in the *Lex* line, not the *ius*. If this is followed, legal science will mean knowledge of statutory rules. It will occur due to the incompatibility of meaning contained in science.

From an etymological point of view, it can be seen that Robert L Hayman does not exaggerate in giving the notion of legal science, in this case, *Jurisprudence*, broadly as everything theoretical about Law. Here it can be seen that the science of Law is a field of science that stands alone and can then be integrated with other sciences as an application in other sciences. As an independent science, the object of research from the science of Law is the Law itself, bearing in mind that the study of Law is not an empirical study, Gijssels & Van Hoecke (1982) say that the science of Law (*jurisprudence*) is a science which is systematically and organized about phenomena laws, power structures, norms, rights, and obligations.

*Jurisprudence* is a scientific discipline that is *sui generis*. *Jurisprudence* is not merely the study of Law, but more than that, namely the study of something related to Law in general. So, the study is not included in the field of study that is empirical or evaluative. Chand (2018) aptly compares Law and medical students studying their respective fields of knowledge. It is the same as a law student who will study the substance of the Law and must learn legal concepts, legal principles, the structure, and function of the Law itself. Chand stated that medical students who study human anatomy must study the head, ears, eyes and all the parts of the body and their

respective structures, relationships, and functions. He further stated that besides studying the human body, a medical student must also study external factors that affect the body, such as heat, cold, water, germs, viruses, insects, et cetera. The same is valid for law students, namely studying external factors that influence the Law, including social, political, cultural, and economic factors and values contained in other fields of science.

Modern legal science begins its steps amid the dominance of experts in the field of Law who study it as a form of social development so that the foundations of legal science are neglected. It is the object of study by the author because now, many legal scholars consider legal studies to be in the order of study. Legislation (legislative Law) differs from the order of jurisprudence due to entering empirical studies into the science of Law as a basis for study.

Before we discuss what and how Law as a field of science is, of course, we must look at how the experts view that Law. When questioning what (the nature of) Law is, it has also entered the realm of legal philosophy. Legal science can also answer this question, but the answer needs to be more satisfactory. It, among other things, can be based on Van-Apeldoorn (1985), which, among other things, states that the science of Law only provides one-sided answers because the science of Law only looks at legal phenomena. Van does not see Law; he only sees what can be seen with the five senses, not the world of Law that cannot be seen, which is hidden in it. Thus the rules of Law as a value judgment lie outside the view of the Science of Law Norms (rules) of Law do not belong to the realm of reality (Sein) but reside in the world of values (Sollen and Mogen), so that legal norms are not the world of legal research.

According to Utrecht: "Philosophy of Law answers questions such as: What is Law really? (Problem: the existence and purpose of Law). Why is it that we obey the Law? (Problem: the application of the Law). Is justice the measure of the good and bad of the Law? (Problem: legal justice). These are questions that are also answered by the science of Law. However, for many people, it is not satisfying. Jurisprudence as an empirical science only sees Law as a symptom; that is, it accepts Law as a mere "gegebenheit." Legal philosophy wants to see the Law as a rule in the sense of the word "ethisch wardeoordeel."

The scope of Legal Philosophy, among others, can be seen from formulating the notion of Legal Philosophy. Legal Philosophy is not standard and stagnant but relatively flexible and continuously developing due to various formulations. However, the starting point remains the same: the nature of the most profound or essential Law.

The development lies in the essence of Law, which can be seen from various perspectives, including regarding the purpose of the Law, justice, the basis for binding the Law, why the Law is obeyed and so on. The development of the scope of Legal Philosophy can be identified with the premise that the scope of Legal Philosophy has shifted to the limits of the scope made or agreed upon as a matter of Legal Philosophy by past philosophers. For example, the primary issues concerning past philosophers of legal philosophy were limited to the purpose of Law (especially the issue of justice), the relationship between natural Law and Positive Law, the relationship between the state and Law, et cetera.

In this regard, Friedmann stated, "Before the nineteenth century, legal theory was essentially a byproduct of philosophy, religion, ethics, or politics. The great legal thinkers were primarily philosophers, churchmen, and politicians. The decisive shift from the philosopher's or politician's to the lawyer's legal philosophy is recent. It follows great developments in juristic research, technique, and professional training. The new era of legal philosophy arises mainly from the confrontation of the professional lawyer, in his legal work, with social justice problems".

Socrates, who conducted a dialogue with Thrasymachus (Sofinsft), argued that when measuring what is good and what is terrible, beautiful, ugly, entitled, and illegitimate, it should not be left solely to individuals or to those who have power or unjust rulers, but objective measures should be sought to assess it. The question of justice is not only beneficial for those who are strong, but justice should apply to the whole society.

Plato also discussed almost all the problems in the Philosophy of Law. For him, justice (justice) is the right action and cannot be identified with only adherence to the rule of Law. Justice is a characteristic of human nature that coordinates and limits the various elements of humans against their environment to enable humans in their wholeness to function correctly. Plato also argued that Law is a reasonable thought (reason thought, logismos) formulated in state decisions. He rejects the notion that the authority of Law rests solely on the will of the governing power.

Aristotle never formally defined Law. He discusses the Law in various contexts. In another way, Aristotle says that "Law is a kind of order and good Law is good order, passions do not influence the reason; Aristotle also rejects the view of the Sophists that Law is just a confession. However, he also admits that Law is often only an expression of the will of a particular class and emphasizes the role of the middle class as a stabilizing factor.

Human ratio regardless of Divine order. In the world of thinking about Law, at this time, there is also the opinion that human reason can no longer be seen as an incarnation of God's ratio. Furthermore, this independent human ratio is the only source of Law. Elements of human logic are essential elements in the formation of Law.

In this case, 4 (four) types of Law are distinguished, namely, first, Lex Aeterna (eternal Law), an expression of the rational rules of the universe from God; second, Lex divina (divine Law), which guides humans towards their supernatural goals, God's Law is revealed through the scriptures; third, Lex naturalis (Natural Law), guiding humans towards their realistic goals, the result of human participation in cosmic forms; fourth, Lex human (human Law), regulates the relationship between humans in a particular society within the framework of specific demands in that society (according to the conditions of the society concerned).

Thomas Kuhn defines: "...Recognized scientific achievements that for a time provide model problems and solutions to a community of practitioners". Meanwhile, Liek Wilardjo formulates: "As a model that scientists in their scientific activities use to determine the types of problems that need to be worked on, and with what method and through what procedures the cultivation must be carried out." according to Angkasa (n.d), "Fundamental Views from a Community of Scientists Regarding Models That Indicate the Fundamental Issues, Theories and Methods for Solving them."

Kelsen (2021) also says that pure "purity," to avoid recognizing positive Law from all extraneous elements, delimits this subject. Recognition must remain clear in two directions: the specific science of Law, the principles of which are usually called jurisprudence, must be distinguished from the philosophy of justice, on the one hand, and from sociology, or the cognition of social reality, on the other.

The science of Law shows a normative interpretation of its object only by understanding the behavior of humans who are members of a society, which is the content of and determined by legal norms. The science of Law explains the legal norms created by acts of human behavior. It must be applied and obeyed by these actions, thereby explaining the normative relationship between facts established by those norms.

According to Hegel, the separation of "law that exists" and "law that should exist" in no way underestimates the importance of values in Law; as explained in Austin and Kelsen's works, this separation places the two in completely different fields.

In this case, the science of Law in search of a more modern form uses the positivism model; this can be seen when Hans Kelsen in *Reine Rechtslehre* says that Law is a logical arrangement of laws and regulations that apply in one place. Legal science is the science of these rules; the essences of Hans Kelsen's theory are:

1. As with any science, a theory of Law aims to reduce chaos and multiplicity to unity.
2. Legal theory is science, not volition. It is knowledge of what the Law is, not what the Law is. The Law is a normative, not a natural science.
3. Legal theory as a theory of norms is not concerned with the effectiveness of legal norms.
4. A theory of Law is formal, a theory of ordering, changing contents in a specific way.

In the twentieth century, the study of Law underwent many changes from its primary domain as a science; this happened with the emergence of the sociological school of jurisprudence pioneered by Pound (1911). Pound proposed the idea of a legal study that also pays attention to the social effects of the working of Law. The study of Law can include more than the analytical study of the legal regulations in their application but also the consequences that arise for society.

Flows and movements out of the positive Law realm then experienced remarkable progress. Hunt (2015) called this development a "sociological movement in law." Hunt's book with the same title begins with the sentence, "The 20th century has moved to the sociologically oriented study of Law. The study of Law can no longer be regarded as the exclusive preserve of legal professionals, whether practitioners or academics. There has emerged a sociological movement in Law which has had as its common and explicit goal the assault on legal exclusivism..."

From the author's perspective, the study of Law must be based on the subject, object, and purpose of Law itself before exiting and integrating with other sciences so that the view of Law as a science still stands following the corridors of Law itself. Because Law does not mean that it must become a burden in society but as an art (the art of Law) to regulate society, and Law is not just a sanction that must be obeyed by society. According to the writer, Law, in general, can be said as "a manifestation of human behavior individually and not society in general. Or, more specifically, the law can be said to be "the repetition of human behavior that is integrated/integrated with other humans that forms a society with norms that individually already exist and is formed in a sacred rule and is obeyed by sanctions in the form of punishment and good morals." whether coercive or not."

Based on the movements of society and the development of science, technology continues to change rapidly; therefore, Law must be able to adapt to these developments, so naturally, Law as a field of science can guide a legal scholar who is now involved and enters the realm of integrated legal science with other sciences. It has led many legal scholars to think more practically and no longer think of legal scientists.

By referring to the statement above, the author examines the problem of legal science, which is the center of debate among legal scholars with the problem "What is the Perspective of Law in the Concept of Modern Science."

## METHODS

This study uses empirical legal research methodology. Empirical legal research is a legal research method that uses empirical facts taken from human behavior, both verbal behaviors obtained from interviews and actual behavior carried out through direct observation. This research was conducted by examining the actual situation in society, namely looking for facts related to the problems in research.

## RESULT AND DISCUSSION

**The perspective of Legal Studies.** The science of Law has characteristics as a prescriptive and applied science. As a prescriptive science, jurisprudence studies the purpose of Law, the values of justice, the validity of legal rules, legal concepts, and legal norms. As an applied science, jurisprudence establishes standard procedures, provisions, and guidelines for implementing the rule of Law.

The prescriptive nature of legal science is something substantial in legal science. Learning from other disciplines whose object is also the Law is impossible. An initial step from the substance of this legal science is a discussion about the meaning of Law in social life.

In this case, the science of Law does not only place Law as a social activity that is only viewed from the outside; instead, it enters something more essential, namely the intrinsic side of the Law. Any such conversation will answer why laws are needed when other social norms exist. In such discussions, legal science will question the purpose of Law. What is desired by the presence of Law? In such a case, what is opposite to what should be? The conversation will seek answers to bridge the gap between the two realities.

The next issue, a condition sine qua non in Law, is a matter of justice. Regarding this problem, it is necessary to remember Gustav Radbruch's view, which correctly stated that the idea of Law is nothing other than achieving justice "Est autem jus a justitia, sicut a matre sua ergo prius fruit justitia quam jus."

The issue of justice is not a classical mathematical problem but rather a problem that has developed along with human society and intellectual civilization. The form of justice may change, but the essence of justice is always present in human life in social life. Hans Kelsen's view that separates justice from Law is unacceptable because it contradicts the very nature of Law. It raises a question about managing justice. So this is where the prescriptive science of Law emerges.

The rule of Law can be complex since humans are members of society and individuals with unique personalities, which can create various challenges in understanding its validity. As a member of society, his behavior must be regulated. Moreover, if society lays down rules that emphasize order, it will hinder its members' personal development. On the other hand, everyone tends to uphold their interests while violating the rights of others if necessary.



Studying legal norms is essential in the science of Law. Studying Law without legal norms is the same as studying medicine without the human body. Therefore, the science of Law is normative, this cannot be denied, and this is indeed the case. Thus, there is no reason for a legal scholar to consider still Law a normative science.

The nature of Law as an applied science is a consequence of its prescriptive nature. An incorrect application will affect something substantial. A goal that is correct but, in practice, is not following what is to be achieved will result in meaninglessness. Bearing in mind this, in setting standard procedures or methods, one must rely on something substantial. In this case, the science of Law will examine the possibilities of setting these standards.

Based on the scientific nature of law science, it can be divided into three layers; in their book, Jan Gijssels & Van Hoecke (1982) divide the three layers, namely *rechtsdogmatiek* (Legal Dogma), *rechtsteorie* (Legal theory) and *rechtsfilosofie* (Legal Philosophy). Regarding the purity of the science of Law, two of the three divisions (legal dogma and legal theory) are pure legal science and have not been integrated with other sciences. In contrast, legal philosophy has been integrated with other sciences because it teaches many things that cross with other sciences. Therefore, the science of Law has two aspects: practical and theoretical.

**Law as a Modern Science.** In present terms, it denotes a particular paradigm that dominates science at a given time. Prior to the existence of this paradigm, it was preceded by separate and unorganized activities that initiated the formation of a science (pre-paradigmatic).

Starting from Kuhn's ideas about paradigms in the context of the development of science as mentioned above, the following is the paradigm (science) of Law, which also plays a role in the development of Law. Starting from the idea of natural Law, which was challenged by later legal views (the rational natural law paradigm), the science of Law has developed in the form of a distinctive scientific revolution.

However, there is a difference with the paradigm found in the (exact) natural sciences, where the presence of a new paradigm tends to subvert the old paradigm. In the paradigm of social science (including Law), the presence of a new paradigm in front of the old paradigm does not always cause the collapse of the old paradigm. The existing paradigms only compete and have implications for strengthening or weakening each other.

Natural Law provides a moral basis for Law, which cannot be separated from Law if Law is applied to humans. The implication is that natural Law is embodied in the constitution and state laws. This potential for natural Law results in natural Law always appearing to meet the needs of the times when legal life requires moral and ethical considerations.

The historical legal paradigm, which is based on *Volksgeist*, is not identical in that the soul of the nation of every citizen of that nation produces Law. The source of Law is the spirit of the nation, which lives and works within everyone to produce positive Law. According to Savigny, this does not happen by conscious use of reason but grows and develops in the nation's consciousness which cannot be seen with the five senses.

Discussing justice feels like an obligation when talking about legal philosophy, bearing in mind that one of the goals of Law is justice, and this is one of the most discussed legal goals throughout the history of legal philosophy.

Understanding the notion of justice is relatively easy because several simple formulations can answer the notion of justice. However, reading texts on the notion of justice is more challenging than understanding the meaning of justice given by experts because when talking about meaning, it means moving at a philosophical level which requires in-depth contemplation to the most profound essence.

Adherents of the Natural Law paradigm believe that the universe was created with the principle of justice, so they are known, among others, as Stoicism. This general primary natural law norm states: Give everyone what is due (*unicuique suum* tribute) and do not harm someone (*neminem laedere*). Cicero also stated that Law and justice are not determined by human opinion but by nature.

In the paradigm of Legal Positivism, justice is seen as the goal of the Law. However, it is also fully realized that the relativity of justice often obscures another critical element, namely the element of legal certainty. The adage always echoed is *Suum jus, summa injuria; summa lex, summa crux*. The expression means a harsh law will hurt unless justice can help it.

In the legal paradigm of Utilitarianism, justice is seen broadly. The only measure to measure whether something is fair is the impact on human welfare (human welfare). As for what is considered helpful and not, it is measured from an economic perspective.

By adopting a holistic approach, the field of Law can further its development as a stand-alone science rather than being integrated with other sciences. It will ultimately lead to the advancement of the Law as a discipline in its own right. Furthermore, legal studies have guided us in every study of Law that is better regarding scientific principles. Therefore this paradigm will undoubtedly change the map of Law.

## CONCLUSION

The development of the science of Law is progressing very fast along with the development of science and technology, so every law graduate must be able to adjust his knowledge to keep up with these developments. However, this has changed by leaving the original characteristics of the knowledge he studied.

The science of Law is independent and should be able to work independently following pure legal concepts and produce laws following the development of more modern society. Therefore, the science of Law must return to its central concept as a pure legal science

The approaches used in understanding the science of Law as a modern science are by returning the science of Law to its existence as a body of knowledge that will be studied and studied accordingly.

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