DEBATING THE SCIENCE OF JURISPRUDENCE; STUDYING JURISPRUDENCE FROM PHILOSOPHY OF SCIENCE PERSPECTIVE

Nur Ro'is

University of Baturaja, South Sumatera, Indonesia

e-mail: nurrois@unbara.ac.id

ABSTRACT

The Article discusses jurisprudence in terms of the philosophy of science; so far, there have been doubts in the study of jurisprudence due to the object, whether jurisprudence is included in science or only knowledge of legislation. In discussing jurisprudence, the author uses literature search methodology (library research) using the Philosophy of Science approach, specifically Epistemology, Ontology, and Axiology. The Philosophy of science approach will reveal the meaning of science on Jurisprudence

Keywords: Legal Studies, Jurisprudence, Philosophy of Science, Epistemology of Jurisprudence, Ontology of jurisprudence, Axiology of jurisprudence.

1) INTRODUCTION

Philosophy and science are two interrelated words, both substantially and historically, because the birth of science is inseparable from the role of philosophy. On the other hand, the development of science also strengthens the existence of philosophy (Bachtiar, 2010).

Philosophy has changed the mindset of the Greeks and mankind from a myth-centric view to a logocentric view. Natural events are no longer considered activities of the gods but are considered events that the mind can explain (Bachtiar, 2010).

The word philosophy comes from the Greek word that means liking wisdom, where the wisdom that lies in the Greeks is thinking to uphold the truth. (Soewardi, 1999) Humans with their brains can think and reason to gather knowledge hidden in this universe, and this process is carried out since humans are born until they enter the burrow. (Soewardi, 1999) Reasoning is a thought process in concluding the form of knowledge. Humans are creatures who think, feel, behave, and act, while their attitudes and actions are based on the knowledge, they get by feeling or thinking activities. (Soewardi, 1999)

Science comes from Arabic: *'alima, ya'lamu, 'ilman*, in English it is called science, from Latin *Scientia* (knowledge)-*scire* (knowing), the closest synonym to Greek is *episteme* (Nasution, 1989). In the Big Indonesian Dictionary, as quoted by Proverbs Bahtiar, Science has the notion of knowledge about a field arranged systematically according to certain methods, which can explain certain symptoms in that field (knowledge) (Bachtiar, 2010).

According to Herman Soewardi, we can begin to understand science with the "philosophy of science" as the basic foundation of science in the form of empirical science. In the philosophy of science, science is divided into three parts, namely Ontology, Epistemology, and Axiology. (Soewardi, 1999) .

If it is related to Jurisprudence (legal science), in its development, Jurisprudence (legal science) is always debated about its "scientific" status. Since the 19th century, there have been views that doubt the scientific position of Legal Science. J.H. von Kirchmann in 1848 in a speech *entitled Die Wertlosigkeit der Jurisprudenz als Wissenschaft* (The worthlessness of Law as a Science) stated that Jurisprudence/Legal Science is not a science. In the 20th century, some views rejected the scientific of Legal Science. This is reflected in the work of A.V. *Lundstedt's Die Inwissenschaftlichkeit der Rechtswissenshaft* (Unscientific Law), which was published in 1932. Based on his method, A.V. Lundstedt emphatically rejects the scholarship of the Science of Law (Rondonuwu, 2014).

JH von Kirchmann argues that the object of study of Jurisprudence/Legal Science is positive law that lives and applies in a society. Once Jurisprudence/Legal Science has finished explaining the positive legal system that applies in society, the dynamics of positive law itself will leave behind the results of its presentation. This is due to the nature of the positive legal system, which always moves dynamically and changes according to the dynamics of community needs. With this background, Kirchmann concluded that the object of Jurisprudence/Legal Science - unlike the other sciences that have a universal nature - is local. The object of Jurisprudence/Legal Science cannot be held by Jurisprudence/Legal Science because it is always changing and varies from time to time and from place to place, so, Jurisprudence/Legal Science does not have a scientific basis as other sciences have, thus the core view that rejects science from Legal studies. On this minor view of Legal Studies, Paul Scholten, through his work entitled *De Structuur der Rechtswetenschap,* which was published in 1942, tried to clarify the status of Jurisprudence/Legal Science as real science. In this work, Scholten briefly, clearly, and clearly describes his views on law, Justice, and Legal Studies (Rondonuwu, 2014).

The answer to this question regarding the scientific status of Jurisprudence/Legal Science is not only answered through a statement. However, it must be studied with a strong and clear analytical foundation from the scientific aspect. (Muhjad, 2004).

The basis in assessing the scientific status of the most appropriate Jurisprudence/Legal Science is to use the method of philosophy of science which is based on three parts, namely; Ontology, Epistemology, and Axiology. This is because every knowledge has specific characteristics regarding what (ontology), how (epistemology), and for what (axiology) knowledge is structured. The three foundations are interrelated. (Suriasumantri, 2007).

Based on the background that has been described previously, it can be drawn a problem regarding the scientific status of Jurisprudence/Legal Science can be as follows:

How is the scientific status of Jurisprudence/Legal Science if studied from the perspective of the Philosophy of Science through Ontological, Epistemological, and Axiological studies?

2) METHODS

The methodology used in writing is library research by looking from the point of view of the Philosophy of Science, as Herman Soewardi's opinion that in understanding science with the philosophy of science by looking at the side of Ontology, Axiology, and Epistemology (Soewardi, 1999).

3) RESULTS

Ontology in Jurisprudence

Ontology comes from the Greek word, which means being. (Blackburn, 2013). Ontology is one of the most ancient fields of philosophical investigation. According to Amlah Bahtiar, ontology is a theory/science about existence, about the nature. Ontology is not based on the real world but is based solely on logic. (Bachtiar, 2010). Ontology discusses the universal existence, presents the universal thought, tries to find the core contained in every reality, explains all reality in all its forms, a study of the theory of "being" (Blackburn, 2013).

Ontology questions about the law have existed since the time law existed, and modern philosophy owes Austin in explaining the ontology of law, which consists of at least two aspects; the first is reducing the notion of legal ontology, Austin gives the meaning of law articulated in social facts that show political sovereignty, compliance and legal awareness of the community. Secondly, the law differs from other forms such as (decency, religion, and customs), Austin shows that the ontology of law is different from norms due to two things, namely the reduction and uniqueness of the law itself. (Marmor, 2018)

Ibn Sina, as quoted by Hannah C. Erlwein related to the ontology of Legal Theory, said that the best law was spoken by the Prophet (Qur'an and Hadith). However, in its development after the Prophet, legislators had to refer to many issues, especially those related to transactions, to the individual judgment of jurists (ijtihād) because different times require different decisions. (Hannah C. Erlwein, 2019)

Legal Science, also known as Jurisprudence, means legal knowledge (Marzuki, 2011). As quoted by Peter Mahmud Marzuki, Robert L Hayman understands that Jurisprudence is broadly everything that is theoretical about law and has an understanding of a method of study about the meaning of law in general. (Marzuki, 2011).

Legal Science is divided into two, namely Formal and Empirical Science, based on its substance. Formal science refers to knowledge that is not based on experience or empirical. At the same time, empirical science aims to obtain factual knowledge about actual reality, which comes from empirical or experience. Empirical science belongs to the Theoretical Science group, which is intended to gain knowledge only, the partner of Theoretical Science is Practical Science which studies the application of science itself as its object, Practical science itself consists of two groups, namely *Normological* practical science which seeks to obtain factual knowledge about the prevailing steady relationship on two or more things based on the principle of causality-determinism, while Nomological Practical Science, also called Normative Science tries to find a relationship between two or more things based on the imputation principle (linking responsibilities/obligations) (Sidharta, 2009).

Jurisprudence, according to Bernard Arif Sidharta, is included in the Practical Sciences group, in the *Normological* Practical Sciences group, which has its peculiarities, not only because of its history but also because it has a direct impact on humans and society, the object of study relating to demands to behave in a manner certain parties whose compliance does not completely depend on the free will in question but can be imposed by public power (Sidharta, 2009).

There are three types in the science of law: the science of law about the rule of law, the science of basic understanding in law, and the science of legal reality. (Soekanto & Mamudji, 2014). The science of law on the rule of law and the science of basic understanding in law tends to limit itself to

the rules of law as an aspired view of judging. In contrast, the science of legal reality usually examines the law as a reality, usually called living law. (Soekanto & Mamudji, 2014).

Jurisprudence/Legal Science has an interdisciplinary nature. We use this nature for scientific disciplines that help explain various aspects related to the presence of law in society, this is because this nature cannot be explained properly without the help of other sciences such as politics, anthropology, sociology, economy and so on (Satjipto, 2018).

The science of law has a universal reach. It goes beyond a particular nation and state's legal boundaries and observes law as a phenomenon in certain human societies (Rahadjo, 1983).

Jurisprudence/Legal Science has an object of knowledge, namely the law itself (Rahadjo, 2009). It turns out that according to Hans Kelsen, the meaning of the statement is not clear, it turns out that according to him it is not only legal norms, but also human behavior contained therein, human relations are the object of Jurisprudence/Legal Science in this case relationships regulated by legal norms, Jurisprudence/Legal Science tries to understand the object "legally." "that is, from a legal point of view, understanding something means understanding something as law" (Kelsen, 2014).

Epistemology of Jurisprudence

Epistemology comes from the Greek, *episteme* which means knowledge (Blackburn, 2013). Epistemology or theory of knowledge is a branch of philosophy that deals with the nature and scope of knowledge, its presuppositions, its foundations, and accountability for statements about the knowledge possessed. (Bachtiar, 2010).

Epistemology is the study of how we acquire knowledge; what are the sources of knowledge; what is essence; the range and scope of knowledge; whether humans can acquire knowledge; and to what extent the knowledge might be captured by humans (Suriasumantri, 2007).

The philosophical methodology is included in what is called epistemology methodology. In this case, the scientific method is a procedure for obtaining knowledge called science, so science is knowledge obtained through the scientific method. Not all knowledge can be called science because science is the knowledge that must be obtained. Meet certain conditions. These conditions are known as the scientific method (Suriasumantri, 2007).

Although the methodology has an important meaning in epistemology, its presence does not necessarily eliminate epistemology as a whole. Eliminating or not studying epistemology will lead us to the abyss of superficiality as Western science always states that it must be true and cannot be more true than that, this is because, based on narrow Western rationale, epistemology teaches us the meaning or meaning of science that lays out the basics of reasoning used, what it achieves, and what are its limitations. (Soewardi, 1999).

Aristotle laid the foundation of the scientific method by changing the belief that all-natural events are always connected with supernatural powers by using mathematical and logical methods to obtain scientific facts and principles. Francis Bacon developed the inductive method, which starts from something specific or specific then goes to something more general. Bacon himself got his inspiration from the Muslim philosopher Ibn Khaldun, who compiled three levels of human intelligence: seeing, trying, and formulating theories. (Wiradipradja, 2015).

When viewed from an epistemological perspective, law as an object of jurisprudence has two distinctly dualistic (if not always dichotomous) meanings. On the one hand, the law is defined as a norm, namely statements with the substance of necessity (*sollen*), with the inclusion of sanctions as a

logical consequence of not complying with these sanctions. On the other hand, the law is also interpreted as nomos, namely statements regarding the existence or absence of a certain behavior constancy in a factual collective life, in everyday language, the law can be interpreted with the concept normative as "rule" and on the other hand as a factual concept of "order"(Wignjosoebroto, 2001).

Legal methodology, according to Soerjono Soekanto has certain characteristics that are its identity because Jurisprudence/Legal Science can be distinguished from other sciences, even according to him, there is a possibility that scientists from other fields outside of law will assume that legal research is not scientific research, this is because the requirements for scientific activities have universal aspects and special aspects that apply to a particular knowledge (Soekanto & Mamudji, 2014).

The characteristic of legal research, as previously mentioned, is the result of different methods of studying the law. Satjipto Rahardjo describes several methods of legal study, namely (Sunggono, 2005) :

1. If we choose to see the law as the embodiment of certain values, then that choice will lead us to an idealistic method. This method will always test the law that must embody certain values. One of the main ideas in law that has been going on for centuries is to understand the meaning of Justice. This thinking discusses the demands of these values and what the law should do to realize those values. This is one example of the ideological method.
2. Suppose one sees law as an abstract system of regulations. In that case, one's attention will be focused on law as a truly autonomous institution, which we can talk about as a separate subject, regardless of its relation to matters outside these regulations. This concentration of attention will lead someone to use the normative method in working on the law. Following the analytical discussion, this method is referred to as analytical normative.
3. If someone understands the law as a tool to regulate society, then the choice will fall on sociological methods. Unlike the previous methods, this method links the law to efforts to achieve goals and fulfill concrete needs in society. Therefore, this method focuses its attention on observing the effectiveness of the law

The scope of legal research is a research frame that provides boundaries and narrows research problems in law. The aim is to study one or several certain legal phenomena, which are deemed relevant to research by analyzing, conducting in-depth examinations of a legal fact, then seeking a solution to problems that arise in the symptoms in question (Wiradipradja, 2015).

According to Soerjono Soekanto, as quoted by E. Saefullah, legal research can be divided into two typologies (Wiradipradja, 2015) :

1. Normative Legal Research, which consists of:
    a. Research on legal principles.
    b. Research on legal systematics.
    c. Research on the level of legal synchronization.
    d. Legal history research and.
    e. Comparative law research.
2. Sociological or Empirical Legal Research, which consists of:

a. Research on legal identification.

b. Research on legal effectiveness.

Normative legal research or doctrinal methods are usually qualitative (not in the form of numbers). This research is based on secondary data. Meanwhile, data is taken directly from the community for sociological or empirical research, known as basic data or primary data (Wiradipradja, 2015).

Viewed from the point of view of the form of legal research is divided into three, namely, *First*, diagnostic research which aims to obtain information about the cause of a symptom or several symptoms, *secondly*, prescriptive research, namely research aimed at obtaining suggestions that must be done to solve a particular problem, and *third*, evaluative research, namely research aimed at assessing programs that have been implemented. Has been executed (Wiradipradja, 2015).

To understand the relationship between Jurisprudence/Legal Science and positive law, a study of the legal elements or "*gegevens van het recht*" is needed. These elements include ideal and real elements, ideal elements include human desires and ratios, these moral desires produce the basic principles. The principle of law (*rechtbeginselen*), the human ratio produces an understanding/principle/basic in law, fundamental elements include humans, culture (material), and the natural environment that produces a legal system (Wiradipradja, 2015).

One of the branches of epistemology is Cybernetic Epistemology, known as Complexity Theory, an alternative approach to the Jurisprudence/Study of Legal Science in the scientific recognition of Jurisprudence/Legal Science. Cybernetic Epistemology uses all known approaches to scientific cognition and becomes more productive in comparative law research. (Fedorov, 2016).

When legal science is defined as a practical science, the development of "legal experience" has an important philosophical-methodological meaning for several reasons. First, when introducing this idea into modern humanitarian inquiry, it is possible to consider the world of law (or legal reality) from a new perspective. Legal experience can be an instrument for considering many legal and historical events. (Davletshina, 2015)

Axiology of Legal Studies

Axiology comes from the word *Axios* (Greek), which means value, and logos which means theory, so that axiology can be interpreted as "the theory of value."(Bachtiar, 2010). Jujun S Suriasumantri defines axiology as a theory of value related to the usefulness of the knowledge gained (Suriasumantri, 2007). Axiology is also often referred to as the study of values (Bachtiar, 2010).

As quoted by Proverbs Ibrahim, in the Encyclopedia of Philosophy, axiology is equated with value and valuation. There are three forms of value and valuation, namely as follows: (Suriasumantri, 2007):

1. Value is used as an abstract noun, in a narrower sense, such as good, interesting, and good. Meanwhile, in a broader sense, it includes, in addition, all forms of obligation, truth, chastity. The broader use of value is the original noun for all kinds of criticism or predicates pros and cons, as opposed to something else, and it is different from fact. Value theory or axiology is part of ethics. Lewis mentions it as a tool to achieve some goal, as an instrumental value or being good or something interesting, as an inherent value or goodness such as the aesthetics of a work of art, as an intrinsic value or being good in itself, as a contributor value or value that is an experience. Who contributed;

2. Value as a concrete noun. For example, when saying a value or value, it is often used to refer to something of value, such as its value, value, and value system. Then it is used for anything that has value instead of what is not considered good or valuable.
3. Value is also used as a verb in appraise, rate, and value. Judging is generally synonymous with evaluation when actively used to judge actions. Dewey distinguishes two things about value. It can mean appreciating and evaluating.

Jurisprudence/Legal Science has characteristics as a prescriptive and applied science (Marzuki, 2011). As a prescriptive science which is the substance of Jurisprudence/Legal Science, Jurisprudence/Legal Science studies the purpose of the law, values of Justice, the validity of legal rules, legal concepts, and legal norms. Jurisprudence/Legal Science establishes standard procedures, provisions, and signs in implementing the rule of law as an applied science.

In reality, the science of law has two aspects: practical and theoretical. Practical aspects are used for the benefit of clients and law enforcement. In contrast, the theoretical aspects are used for the academic world and legislators for further practical purposes in judges' opinions. (Marzuki, 2011).

The principles of Jurisprudence/Legal Science and theories of Jurisprudence/Legal Science are used practically in the judiciary, legislation, and outside legislation. In legal practice activities, legal research produces legal arguments as outlined in a Legal Memorandum (LM) which is made by legal experts which is full of legal language, if, for clients, it is in the form of a Legal Opinion (LO) in a language that is easier to understand. If in court, it is stated in the form of exceptions, pleas, replicas, duplicates, conclusions, and judges' decisions. In addition to being used in legislation, Jurisprudence/Legal Science principles are also included in the writing of contracts. For academics, legal studies are written in scientific journals, theses, theses and dissertations, books that can be a practical reference for legal practitioners.

The results of the study of Jurisprudence/Legal Science, if it is associated with the law itself, can be a means for development, as Mochtar Kusumaatmadja argues that the purpose of the law is for order because this is a fundamental requirement for the existence of an orderly society. (Mochtar Kusumaatmadja, 1986). Besides order, Justice is also a legal goal with different contents and dimensions for each society and era (Mochtar Kusumaatmadja, 1986). Likewise, regulations regarding terrorism have different contents and sizes in each society and period of validity.

Law is a tool to maintain order in a society with a conservative nature, namely maintaining and defending what has been achieved (Mochtar Kusumaatmadja, 2002). However, according to Mochtar Kusumaatmadja, the law must play a significant role in the renewal process despite having a conservative nature. Roscoe Pound's language is referred to as "law as a tool of social engineering." (Mochtar Kusumaatmadja, 2002).

Regarding the value issue, Jurisprudence/Legal Science in one of its parts, namely the philosophy of law, is very focused on Justice. Justice is one of the main legal goals in addition to legal certainty and benefit. (Mochtar Kusumaatmadja, 2002). However, the law was not born as a tribute to the theory of Justice. But the law was born to meet the urgent need that cannot be avoided for the security and certainty of social life. The application of the principles of Justice is practically stated in the legislation, contracts, and judicial decisions.

One practical example, a principle of "fairness" in Rawl's theory the emphasizes equality in a position, which he calls the "original position" used in the contracts combined with the principles of freedom of contract to create a fair and equal contract.

4) DISCUSSION

Doubts about the science of law begin with doubts about the methodology in the science of law. It is true that the science of law has a distinctive methodology and is different from the methods in other sciences. However, by studying the philosophy of science, doubts about the science of Jurisprudence/Legal Science can be eliminated, and it can be concluded that Jurisprudence/Legal Science is included and part of science.

Ontologically, Jurisprudence/Legal Science has a unique structure. Jurisprudence/Legal Science is included in the Nomological Practical Sciences group, not only because of its history but also because it directly impacts humans and society. It depends on the free will concerned but can be imposed by public power.

Epistemologically, Legal Science has its methods of finding the truth, namely with two main methods, normative and empirical. With the scope to study one or several certain legal phenomena deemed relevant to the research by analyzing, conducting an in-depth examination of a legal fact, then seeking a solution to the problems that arise in the symptoms concerned.

Ontologically, Legal Studies have two values as prescriptive and applied science. Apart from being studied academically, Legal Studies can also be applied practically.

For further research, it is recommended that there is a need to deepen whether legal science is a theoretical science or just a practical science

REFERENCES

Bachtiar, A. (2010). *Filsafat Ilmu*. Rajawali Press.

Blackburn, S. (2013). *Kamus Filsafat*. Pustaka Pelajar.

Davletshina, A. M. (2015). Epistemological Analysis of Experience and Legal Experience: Non-classical Stage. *Asian Social Science*, *11*(8). https://doi.org/10.5539/ass.v11n8p103

Fedorov, M. V. (2016). Cybernetic Epistemology as a New Methodological Paradigm of Comparative Legal Researches. *Indian Journal of Science and Technology*, *9*(48). https://doi.org/10.17485/ijst/2016/v9i48/90195

Hannah C. Erlwein. (2019). Ibn Sīnā's Moral Ontology and Theory of Law. *Philosophy and Jurisprudence in the Islamic World*. https://doi.org/10.1515/9783110552386-004

Kelsen, H. (2014). *Teori Hukum Murni Dasar-Dasar Ilmu Hukum Normatif ; Penerjemah: Raisul Muttaqien*. Nusa Media.

Marmor, A. (2018). What's left of general jurisprudence? On law's ontology and content. *Jurisprudence*. https://doi.org/10.1080/20403313.2018.1545457

Marzuki, P. M. (2011). *Penelitian Hukum*. Kencana Prenada Media Group.

Mochtar Kusumaatmadja. (1986). *Fungsi dan Perkembangan Hukum Dalam Pembangunan Nasional*. Bina Cipta.

Mochtar Kusumaatmadja. (2002). *Konsep-Konsep Hukum Dalam Pembangunan* (O. S. S. & E. Damian (ed.)). Alumni.

Muhjad. (2004). *Peran Filsafat Ilmu dalam Ilmu Hukum: Kajian Teoritis dan Praktis*. Unesa University Press.

Nasution, A. H. (1989). *Pengantar ke Filsafat Sains*. Pustaka Litera Antar Nusa.

Rahadjo, S. (1983). *Hukum dan Perubahan Sosial*. Alumni.

Rahadjo, S. (2009). *Sisi-sisi Lain Dari Hukum di Indonesia*. Penerbit Kompas.

Rondonuwu, D. E. (2014). Hukum Progresif: Upaya Untuk Mewujudkan Ilmu Hukum Menjadi Sebenar Ilmu Pengetahuan Hukum. *Jurnal Lex Administratum*, *2*.

Satjipto, R. (2018). *Ilmu Hukum* (A. Marwan (ed.)). Citra Aditya Bakti.

Sidharta, B. A. (2009). *Refleksi Tentang Struktur Sistem Hukum*. Mandar Maju.

Soekanto, S., & Mamudji, S. (2014). *Penelitian Hukum Normatif*. Rajawali Press.

Soewardi, H. (1999). *Roda Berputar Dunia Bergulir Kognisi Baru Tentang Timbul-Tenggelamnya Sivilisasi*. Bakti Mandiri.

Sunggono, B. (2005). *Metode Penelitian Hukum*. Rajagrafindo Persada.

Suriasumantri, J. S. (2007). *Filsafat Ilmu Sebuah Pengantar Populer*. Pustaka Sinar Harapan.

Wignjosoebroto, S. (2001). Penelitian Hukum dan Hakikatnya Sebagai Penelitian Ilmiah. In S. Irianto & Sidharta (Eds.), *Metode Penelitian Hukum Kontelasi dan Refleksi*. Yayasan Pustaka Obor.

Wiradipradja, E. S. (2015). *Penuntun Praktis Metode Penelitian dan Penulisan Karya Ilmiah Hukum*. Keni Media.