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Ontology of Legal Science in the Prophetic Paradigm

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Abstract

Indonesia is a diverse nation in terms of religion and belief, ethnic groups, languages, races, and cultures. In terms of belief, Islam is the most dominant religion in Indonesia, with a Muslim population of 237.53 million as of December 31, 2021. This number accounts for 86.9% of the national population, which reaches 273.32 million people. The country has a very high level of diversity, especially in terms of religion and belief systems, framed within the philosophy of Indonesian life known as Pancasila. Therefore, it is necessary to study and explore national values derived from Pancasila and those present in society, including religious values, cultural values, and customs. This needs to be done because the colonial legacy laws, which are considered outdated, have become obsolete and often cause injustice, resulting in an inability to accommodate current legal needs. The research approach used is normative jurisprudence, which aims to uncover scientific logic from a normative perspective. The data sources used in this research consist of primary data, secondary data, and tertiary data. The primary data used in this normative legal research is obtained thru library studies,

utilizing legislation and court decisions as the main sources. Secondary data comes from various sources, such as books, magazines, newspapers, articles, journals, internet media, and other references that support the research. Meanwhile, tertiary data consists of supporting legal materials that provide guidance and explanations for primary and secondary legal materials. Tertiary legal materials include information sources such as legal dictionaries, the Great Dictionary of the Indonesian Language, and encyclopedias. The data obtained is then analyzed qualitatively to provide an understanding of the law as an instrument to guide human life in accordance with moral and ethical values derived from revelation, reason, and social reality. Law is a mandate based on the values of divinity and humanity to realize substantive justice. The essence of law is not limited to positive norms formed by the state, but also includes moral, ethical, and welfare values aimed at humanizing humans (humanization), liberating from all forms of oppression (liberation), and directing life toward divine values (transcendence).

Keywords: Ontology, Legal Science, Prophetic

Introduction

Indonesia is a diverse nation in terms of religion and belief, ethnic diversity, language, race, and culture. As a country with a high level of diversity, Indonesia has a society that highly upholds the values of belief in the One and Only God. According to data from the Ministry of Home Affairs, Islam is the most widely practiced religion in Indonesia, with a Muslim population of 237.53 million as of December 31, 2021. That number is equivalent to 86.9% of the national population, which reaches 273.32 million people. The second position is occupied by the Christian population, totaling 20.45 million people. There are 8.43 million Catholics in Indonesia. Then, the Indonesian population who are Hindu and Buddhist number 4.67 million (1.71%) and 2.03 million (0.74%), respectively. The population practicing Confucianism amounts to 73,635 individuals. Meanwhile, there are 126,515 Indonesian residents who adhere to traditional beliefs. The proportion is only 0.05% of the total population of Indonesia.¹

In the historical journey of the Indonesian state, constitutionally and legally, Pancasila as the state ideology is the source of all sources of law. Because Pancasila contains universal values of the One and Only God, Just and Civilized Humanity, the Unity

¹ <https://dataindonesia.id/ragam/detail/sebanyak-869-penduduk-indonesia-beragama-islam>, downloaded on Tuesday, March 15, 2022 at 8:00 pm.

of Indonesia, Deliberative Representation, and Social Justice for All Indonesian People. These values, as understood by Sudjito, possess normative flexibility in the sense of customary law (local), national law, and global/international law. Therefore, the adaptability of Pancasila values is undoubtedly recognized as the state ideology and an open worldview.²

Pancasila as a "Worldview" that creates a binding force effectively, where the contents of rights and obligations have been adhered to by both society and government officials. In the legal framework, the values of Pancasila function as a stabilizer or developer between rights and freedoms and obligations, as well as responsibilities for upholding a more civilized state and societal life. As the source of all sources of law, Pancasila serves as a guiding star that contains the fundamental values of the legal ideals (rechtsidee), which govern the foundation of the state, both written law (laws) and unwritten law.³

Fundamentally, religion and the principle of the One and Only God occupy a dominant position in the national legal system as a whole. The principle of Belief in One God itself, as the first and foremost principle, serves as the unifying and illuminating principle for the other four principles in Pancasila. Therefore, in the realm of legal thought in Indonesia, Pancasila is regarded as the source of all sources of law, and the principle of Belief in One God is also the first and foremost principle, functioning to provide a value orientation direction to the legal system being built and to be built in Indonesia.

Thus, the principle of religion as a *prima causa* must be reflected in the national legal system. Therefore, all religions (not just Islam) that are recognized in Indonesia have the same opportunity to participate in the process of forming the Pancasila legal system. In relation to Islamic law, of course, Islamic traditions are derived from sources: first, the textual sources of the Qur'an and Hadith; second, from sources drawn from socio-historical or empirical experiences regarding the placement of fiqh law throughout Islamic history; third, from local sources of Indonesian society itself.

Because the sources of law in the Islamic perspective cannot be separated from these three sources, which are known by the principle of "*al-'adatu al-muhkamat*" (local customs considered part of the law as long as they do not contradict the text) and the principle of *urf* as a source of law. There is a great possibility that the legal study from the three sources above can produce legal formulations that are completely different from the general impression of Islamic law, which is usually considered "absolute" and unable to adapt to changes because it is fixated solely on textual sources.⁴ Based on the above description, this paper aims to examine the question: "How is the Ontology of Legal Science Within the Prophetic Paradigm?"

Research Method

This is a normative legal study, which examines law as written norms (law in books). The data sources for this research are based on primary data obtained thru literature review in the form of legal regulations, legal books, scientific journals, theses, and official documents related to the ontology of legal science in the prophetic paradigm. Data analysis is conducted qualitatively, which involves processing and interpreting the data systematically and logically.

Results and Discussions

Ontology in Legal Studies

Ontological dimension (the essence of knowledge). Ontology is the essence of being (ontos/being, sein), which serves as the fundamental assumption for what is referred to as reality and truth. Ontology is the theory of being qua being (the theory of existence as existence). In the perspective of science, the ontology of science can be understood as a theory about existence from the perspective of the material objects of science, with important concepts assumed by science critically examined in the ontology of science.⁵

Rudolf Goclenius in 1936 introduced the term ontology to name the metaphysical nature. Christian Wolf (1679-1754) divided metaphysics into two, namely general and special metaphysics. The philosophy of the entire reality in general is called ontology, which discusses the most fundamental and profound principles of everything that exists, while special metaphysics consists of metaphysical theology, anthropology, and cosmology.⁶ Ontology discusses universal existence, presenting universal cosmic thought. Ontology seeks to find the essence contained in every reality. In the formulation of Lorens Bagus, ontology explains what exists, encompassing all realities in their various forms.

Correlating ontology with legal science, legal science essentially answers questions about the substantial study of legal science, where law as a doctrine consists of rules that must be obeyed by members of society, and violations of these rules will incur sanctions. Legal science is a discipline that studies norms as its object, discussing what is prohibited (forbidden) and what must be done (commanded). In depth, legal science studies the efforts to apply justice in society thru norms and rules. The field of law, which is *sui generis* (a distinct discipline), is the most complex in examining law, a discipline that discusses the rules on how to act correctly.

The science of law, referred to as *recht-swetenshap* or *recht theorie* in Dutch, jurisprudence or legal science, and jurisprudent. *Recht-swetenshap* is literally interpreted as the science of law, but the term science is avoided because it is identified with empirical studies (*a posteriori*), whereas in reality, law is not an empirical study (*a priori*).⁷ From an Ontological Optics perspective, the substantial study of Legal Science lies in the "Legal Norms." Clearly, Legal Science cannot be separated from Legal Norms. However,

² Jawahir Thontowi, *Pancasila Dalam Perspektif Hukum: Pandangan Terhadap Ancaman the Lost Generation*, UII Press, Yogyakarta, 2016, p. 11.

³ Barda Nawawi Arief, *Pembaharuan Hukum Pidana Dalam Perspektif Kajian Perbandingan*, PT Citra Aditya Bakti, Bandung, 2005, p. 4-6.

⁴ Jimly Asshiddiqie., *Pembaharuan Hukum Pidana Indonesia*, Angkasa, Bandung, 1996, p. 51-52.

⁵ Rizki Nugraha A, dkk, *Filsafat Ilmu*, Pustaka Ma'arif Press, Jambi, 2017, p. 42.

⁶ Asmoro Achmadi, *Filsafat Umum: Edisi Revisi*, PT RajaGrafindo Persada, Jakarta, 2010, p. 14.

⁷ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2005, p. 20.

in this correlation, the issue arises regarding the position and situation of which legal norms should be the focus of Legal Science. At the ontological level, law is seen as something that ought to be (*das sollen*), which in essence means that everything that ought to be is always far removed from human life, both individually and socially.

Ontology of Legal Science in the Prophetic Paradigm

If we observe the development of legal science, there are two major paradigms proposed by Prof. Soetandyo Wignjosoebroto, which then help us understand legal science more easily and simply. According to him, when looking at major theories, there is one paradigm called the Aristotelian paradigm, which assumes that nature is orderly (controlled by laws), and this order is due to regulations, including natural and even supernatural laws, which humans should adhere to and live harmoniously with nature.⁸

The second paradigm is the scientific paradigm of Galileo, which always assumes that nature is not pre-established, where nature emerges from fragments of action and reaction, and so on (cause and effect). The task of scientists within this paradigm is to seek out and reveal the mysteries of the cause-and-effect arguments to control them (not just to obey). So what is called a 'paradigm'?

Paradigm is a term that is now very popular in various contexts among academics to refer to "a basis or pattern of thinking that conditions an individual's or a group's collective interpretative understanding of an entire body of knowledge along with the theories they master." This term originates from the classical Greek language, *paradeigma*, with its initial philosophical meaning, which means 'pattern or model of thinking'.⁹

The initial proponent of the paradigm was Thomas Kuhn, a historian of science. Thomas Kuhn used the term paradigm not only to indicate the existence of different patterns or foundations of that but also to highlight the potential and process of conflict between various patterns of that that would give rise to what is called a paradigm shift. He explained that, throughout the long history of civilization, human communities can only maintain their existence based on their ability to develop the same patterns or models of thinking to define their knowledge, and to structure it as a science that is collectively accepted and believed to be "normal and most correct," which is then utilized as a support for life that is also considered "most normal and most correct." But insisting on one cluster of knowledge with paradigmatic belief does not always last in the long term. From the history of science, it is known that there is always a shift or gradual movement of a community with all its knowledge and science from one paradigm to another. This is what is called the paradigm shift.

Jawahir Thontowi in the book *"Ilmu Hukum Profetik: Gagasan Awal, Landasan Kefilsafatan dan Kemungkinan Pengembangannya di Era Postmodern,"* states that the birth of legal regulations as formulated in Germany and France consists of written law, which sometimes the text later becomes inconsistent. The paradigm in the science of

sociology functions according to the development of the times, and it is clear that this paradigm is supported by social facts, social definitions, social behavior, and analysis. The sociological view of law is that of Santos, a Professor of Sociology from Portugal. In sociology and other social theories, advancing a thesis that makes breakthroughs in the modern world and the presence of a new paradigm is one of the purposes of the book, which as a whole identifies several legislative elements of a postmodernist law.¹⁰

Fundamental changes in social and political life will present many new problems that require new answers, including constitutional changes that impact national development and policy changes. Romli Atmasamita stated that there has been a paradigm shift in the political life of the state in Indonesia, from an authority system to a democratic system and from a centralized system to an autonomous system. This paradigm shift certainly impacts the legal system that has been adhered to, which has emphasized legal products that favor the interests of the rulers over the interests of the people and legal products that prioritize the dominance of central government interests over regional government interests. In addition to these paradigm shifts, it is also appropriate for us (legal scholars and practitioners) to observe the phenomena occurring in the political arena and state life in Indonesia, as we often become allergic to and neglect this aspect. Meanwhile, the changes in the political system and state governance have fundamental impacts on the development of the legal system.

In the context of Indonesian-ness, the paradigmatic approach cannot be separated from the presence of the Pancasila legal philosophy. Bernard Arief Sidharta believes that the reality of law in Indonesia is still relevant to be prioritized. According to him, the national legal paradigm refers to the ideal of law, with Pancasila as the starting point of the belief that the universe and all its contents, including humans, are harmoniously created by God as a whole. The essence of law as a rule of conduct is rooted in the ideas, feelings, will, creativity, and thoughts of the society itself. However, the legal politics of Indonesia, which have been built since Indonesia's independence to produce "sovereign" laws, transforming the values of Pancasila, especially religious values, is not an easy task and cannot be accepted as a guide for society in their daily lives. The impact of using the legal heritage of the Dutch colonizers is the loss of the foundational framework that forms the authenticity of Indonesian law, which is derived from the socio-cultural values of society, including Islamic values. Although Islam is the religion embraced by the majority of the Indonesian population, the "grip" of Western legal values, which are deeply rooted as the legal system in Indonesia, transforms Islamic legal values not easy to achieve.¹¹

There is some debate among Islamic thinkers regarding the existence of Islamic law in Muslim countries that do not

⁸ Lecture materials and lectures for the Philosophy of Law course by Dr. Sidharta, S.H., M. Hum. Doctoral Program of UII 2021/2022.

⁹ Soetandyo Wignjosoebroto, *Pergeseran Paradigma Dalam Kajian-Kajian Sosial dan Hukum*, (Malang: Setara Press, 2013), p. 8-10.

¹⁰ Jawahir Thontowi, *Paradigma Profetik Alam Pengembangan Pengetahuan Hukum*, dalam Syamsuddin, *Ilmu Hukum Profetik: Gagasan Awal, Landasan kefilisafatan dan kemungkinan Pengembangannya di Era Postmodern*, FH UII PRESS, Yogyakarta, 2013, p. 232.

¹¹ Solly Lubis, *Pembangunan Hukum Nasional, disampaikan dalam Seminar Pembangunan Hukum dengan tema Penegakan Hukum dalam Era Pembangunan Berkelanjutan*, organized by the National Law Development Agency, Denpasar, July 14-18, 2003. p. 4.

ideologically adopt it as the state religion. The first view doubts the existence of Islamic law in Muslim societies whose countries are not based on Islam. In this case, the assumption is that Islamic law is understood and developed as a product of the state's power structure. Therefore, the absence of a formal legislative structure, including Islamic courts, is interpreted as the absence of Islamic law in society. The view that sees Islamic law as "black and white" is less recognized as a rather lengthy process. Resulting in only scholars having the authority to gather, memorize, compare, and apply what has been outlined by the previous imams. The existence of the complete Quran and Sunnah results in Muslims lacking the academic authority to conduct re-examinations, including efforts to critically carry out in-depth studies freely and independently. The key phrase "ijtihad was closed" has become a principle for orthodox scholars.

As a result of the flexible nature of Islamic law, it is unable to respond to the developments of modern times. One of the reasons is that the scholars are not very familiar with the rapid social changes, including substantial changes in the structure of legislative institutions. Speaking of the current development of legal science, despite the rapid advancement of science, technology, and social sciences, to what extent do these developments impact the evolution of law itself? Some thoughts that have developed in Indonesia, such as those by Satjipto Rahardjo, explain the influence of science and technology on law. The emergence of legal semiotics and legal hermeneutics with a text-critical approach. The work of Absori and Kelik Wardiono with prophetic legal science explains their critique of legal positivism and non-systematic legal science.¹² However, modern legal science still bases its ontology on Descartes' dualism and legal positivism, resulting in the continued compartmentalization and segregation of the field of legal science, known as the scientific discipline of law, which leads to the loss of the flexibility of legal science. Law is separated from morality, ethics, and metaphysical (spiritual) matters, resulting in legal science becoming value-dry, as it only views knowledge about positive texts/verses. Legal interpretation is still reductionist, focusing on a normative (dogmatic) interpretation that is mechanistic, with a relationship between rules and logic, and believing that there is no law outside of positive law. The scientific approach is still dominated by approaches based on dogmatic legal theory, techniques, and tools.

The reluctance of legal experts to use various newer external approaches is due to various reasons. Some believe it could damage the distinctive aspects or eliminate the uniqueness of legal science as it is currently understood. This group views legal science as an "ancient site" that needs to be preserved and maintained from change, but more so due to problems of understanding and the entrapment of that by old paradigms.

This line of thinking, of course, also constrains higher legal education from viewing law with an external approach, from seeing the complex factors in shaping modern legal science. Higher legal education prioritizes the mastery of positive law, which turns students and graduates into "legal robots" focused on legal skills/techniques and becoming instruments

of power. Legal education is still hegemonized by conventional approaches, limiting legal expertise to exclusive domains. In fact, the field of law is becoming increasingly open and profound, not limited to rules and logic alone. Tom Nichols said that expertise or specialization has died, so what is needed are various abilities (multi-skill, talent, interpretation), as David Epstein mentioned, that mastering various fields can make us more superior in a world that prioritizes specialization.

A reformulation of the ontological aspects of Indonesian legal science needs to be carried out, namely reexamining, analyzing, and opening opportunities to explore the spiritual side and the values of local wisdom as the essence of Indonesian legal science. This aspect is always alive in society and underlies behavioral patterns that lead to a more dynamic life. Therefore, the science of law must not be separated from human life, which contains religious values.

For legal science, the emergence of prophetic science feels like a new idea that deserves to be embraced and then developed as a legal science, based on prophetic values whose main source is divine revelation. Therefore, the Quran and Hadith in the context of prophetic legal science become the main epistemological basis. Prophetic jurisprudence is a field of law whose paradigm, basic assumptions, principles, teachings or theories, methodology, and structure of norms are built on an epistemological basis derived from the Qur'an and Hadith. Basic assumptions are developed, which then evolve into theories, doctrines, principles, rules, and legal norms that apply to society according to its respective context. Prophetic jurisprudence has basic assumptions related to its material object, some of which align with the assumptions of general jurisprudence and can be used to build prophetic jurisprudence.

However, this is not sufficient, as it would render prophetic jurisprudence indistinguishable from general jurisprudence. The weakness in general science, which is criticized for its secular nature, should not become a recurring mistake in prophetic legal science. That is, by desecularizing it and reintroducing sacred elements, divine elements into Prophetic Legal Science.¹³

For prophetic jurisprudence, it is necessary to reconsider what constitutes its material object, which makes it different from general jurisprudence. According to Soetandyo Wignjosoebroto, there are at least 5 (five) basic assumptions that form different legal concepts. First, law is conceived as the basis of morality or justice that holds universal value and becomes an inherent part of the natural law system or even supernatural principles; Second, law is conceived as positive rules that apply generally in abstracto at a certain time and in a specific region, and emerge as an explicit product of a particular legitimate political power source, commonly known as national law or state law; Third, law is conceived as decisions made by judges in concreto during the judicial process as an effort by judges to resolve a case that may become a precedent and be used in other cases; Fourth, law is conceived as a real and functional social institution within the system of community life, both in the processes of restoring order and resolving disputes as well as in the processes of directing and forming new patterns; Fifth, law

¹² Anthon F. Susanto dan Mella Ismelina Farma Rahayu dalam *Kontruksi Hukum Dalam Perspektif Spiritual Pluralistik*, Thafa Media, Yogyakarta, 2021, p. 20-21.

¹³ Syamsuddin, *Ilmu Hukum Profetik: Gagasan Awal, Landasan kefilsafatan dan kemungkinan Pengembangannya di Era Postmodern*, FH UII PRESS, Yogyakarta, 2013, p. 101.

is conceived as symbolic meanings as manifested and perceived in and from the actions and interactions of community members.

Based on the division of legal concepts above, in the context of prophetic legal science, the first basic assumption (law as the foundation of moral principles) seems not far removed and in line with the basic assumption of prophetic legal science, but it needs to be more clearly defined in terms of its prophetic characteristics. According to Syamsuddin, the prophetic nature can be demonstrated with the basic assumption that "law is essentially the will of God about something just, the source of which is found in the Qur'an and Hadith." Therefore, it is necessary to seek verses and Hadiths of the Prophet that contain God's will about something just as its basis.

Conclusion

In conclusion, as a country with a society that has faith in the Almighty God, the spiritual dimension that contains values of faith and devotion to the One and Only God serves as the foundation of all values in the philosophy of the state. Therefore, reformulation thru the study of Indonesian law needs to be carried out by exploring the values of wisdom as the essence of Indonesian legal science, so that the law in force in Indonesia is a law that is certain, just, and beneficial.

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