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UNDERSTANDING THE NATURE OF LEGAL KNOWLEDGE: IN-DEPTH CRITIQUE OF THE LEGAL FICTION PRINCIPLE

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Abstract: This article seeks to explore the meaning and purpose of the foundation of pure legal fiction, criticizing it. This article asks the fundamental question: Why should legal knowledge be understood? With arguments based on empirical facts and literature, the analysis concludes that the foundations of legal fiction become irrational when applied in social life, especially given the high quantitative complexity and legal language. Public understanding of the law is a source of ethics, customs, and empirical experience, requiring a contextual regulatory approach. Therefore, the fundamental change in the knowledge of the law that society expects to become optional provides a new foundation more in line with social reality. This articulation can contribute to positive legal thinking and broaden public insight into the role of law in everyday life.

Artikel ini berupaya untuk mengeksplorasi makna dan tujuan dari asas fiksi hukum sembar memberikan kritik terhadapnya. Artikel ini mengajukan pertanyaan mendasar, yaitu mengapa pengetahuan hukum perlu dipahami? Dengan argumentasi yang didasarkan pada fakta empiris

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dan literatur, analisis menyimpulkan bahwa asas fiksi hukum menjadi tidak rasional ketika diterapkan dalam kehidupan sosial, terutama seiring dengan kompleksitas jumlah dan bahasa hukum yang tinggi. Pemahaman masyarakat terhadap hukum bersumber dari etika, kebiasaan, dan pengalaman empiris, memerlukan pendekatan regulasi yang kontekstual. Oleh karena itu, perubahan asas dari pengetahuan hukum yang diharapkan masyarakat menjadi tidak wajib, memberikan landasan baru yang lebih sesuai dengan realitas sosial. Artikulasi ini dapat memberikan sumbangan pada pemikiran hukum positifistik dan perluasan wawasan masyarakat terhadap peran hukum dalam kehidupan sehari-hari.

Keywords: Legal Fiction; Positive Law; Regulation.

INTRODUCTION

Talking about law and the principle of legal fiction, it cannot be separated from the social development of society. Globalization, which is characterized by rapid advances in technology and information today, has brought consequences for social life, namely the dynamics of the development of social life. Various literature tries to hypothesize that globalization and modernization are the actors most responsible for the emergence of various social problems, including laws in it (Silitonga 2020).

Currently, the law is required to be able to meet the needs of the community, it aims to filter the negative effects of globalization and protect people's rights. So that in conditions like this eventually resulted in the need for law increasing (Saleh, Evendia, and Riananda 2020). The House of

Representatives is an institution that has a function in the field of legislation, in fact it has tried to continue to form various concepts and ideal legal forms, which aim to answer the problems of the development of modern society today. Such a statement can be proven by data from the National Legislation Program (Risnain 2015) in 2019-2024 where in the working period of the House of Representatives this year has determined as many as 214 bills to be included in the national legislation to be discussed and determined to be positive law.

The data above is only sourced from legal products issued by the DPR, namely laws, legal products that are recognized for their existence in the system of laws and regulations in Indonesia are also made by several state institutions both at the Central Government level, and the Regional Government level. The next question is how many legal products have been issued by the institution authorized to make them? Based on data compiled by Wicipto Setiadi as quoted from his scientific article, it is stated that the total number of laws and regulations in Indonesia, both at the central and regional levels, reached 40,903 legal products that are still valid (Faithful 2018). The fact that the number of regulations in Indonesia that have been established both at the central and regional levels is 40,903, raises the question of whether we really need to be considered to know the law (legal fiction).

In general, the problems that are the object of study and analysis in writing this article are problems related to ideas, or basic ideas contained in the principle of legal fiction. Legal fiction is a principle that requires that everyone be presumed to know the law (Annurdi 2017). The basic idea and

purpose of this principle is that it is assumed that everyone knows the law *(presumptio iures de iure).* Legal fiction, known in Latin *adagium ignorantia jurist non excusat*, which means that ignorance of the law is unforgivable. A person cannot evade the trap of the law by arguing that he has not or does not know the existence of a certain law (Nursari 2020).

It is this principle that everyone is supposed to know the law, which then disturbs the thinking of academics, so that the author will try to refute the application of the principle of legal fiction by asking the question of why we need to enforce the law? To answer this question, we are required to discuss and analyze the legal knowledge of the community. So that with the discussion of things as mentioned, it is hoped that the author can break the argument that originally stated that “everyone is considered to know the law" to "everyone is considered not to need to know the law".

Studies that discuss the principle of legal fiction have previously been widely researched by academics both at the national and international levels. Although it has the same theme, this article has differences in the scope of discussion. Like the example of writing written by Ali Marwan, where he discusses the theme of technical legal fiction, in thes final conclusion he suggests that the principle of legal fiction needs to be applied provided that there are efforts needed such as publishing regulations and so on (Marwan 2016).

The second is the writing of Parita Mashruwala, in which she states that the principle of legal fiction is a principle that plays an important role in law enforcement, legal fiction can prevent crime, fraud and injustice (Mashruwala 2020).

Legal fictions, as defined by Demos (1923), are a key aspect of legal practice, enabling courts to communicate and experiment with potential changes in the law (Mar 2015) and Russian courts usually do not acknowledge for legal purposes the fact of not understanding legal documents (Belov 2019). While they can be seen as a necessary tool for legal change, they also have the potential to obscure important legal and moral truths (Belov and Tarasova 2019; Demos 1923; Del Mar 2015). Therefore, a critical examination of the legal fiction principle is essential to understand its nature and implications.

Different from previous researchers, this article will try to provide criticism and refutation of the concept of legal fiction in terms of various public knowledge of the law, so that in conclusion raises the assumption that the law does not need to be fully known by the community.

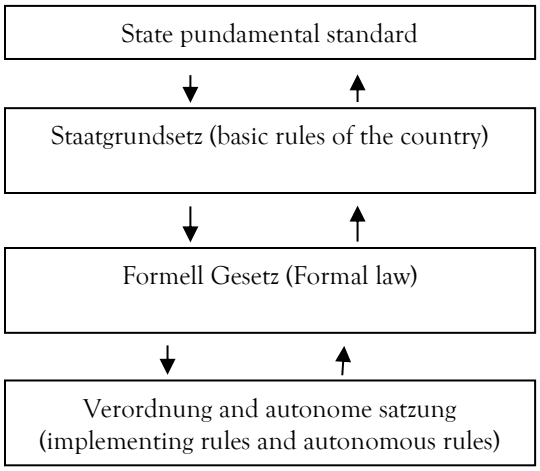
RESULT AND DISCUSSION

To interpret the law, the author asserts, the law in this article is a law viewed from the point of view of positivism. Simply put, positivism focuses more on understanding concretely defined laws (Park, Congo, and Artino 2020) in the legal sense is a written product, (Ryan 2018). In the form of laws and regulations, made and determined by institutions that are given the right to make them (Oktavinanda 2013).

Hans Kelsen is one of the philosophers of the mahzab positivism (Da Silva Barreto and de Cadermatori 2021). Hans Kelsen views that a law can be said to be a law if it meets two core points, namely that the law needs to be neutral (Kraevsky 2021), which means that the law must be cleansed from meta-juridical factors such as ethical, sociological, political and so on

(Samekto 2019). Then the second point focuses on laws that need to have degrees hierarchically. This second point means that the existence of certain laws is born and originates because of the existence of other laws, so that there is a vertical line of connection between one legal norm and another legal norm (Riofrío 2019) as in image number 01.

Image 01 - Norm linkage line chart in Hans Nawiasky's Stufenbau theory



Based on the points as stated earlier, the diction of "law" in this article refers to the meaning of written law, which is in the form of all laws and regulations both at the level State pundamental standard, State Principle, Formal Law, and Decree and Autonomous etching (Paulson 2020).

About Legal Fiction

The principle of Legal Fiction has the basic assumption that when the regulation has been established, then directly everyone is considered to have known the substance of the regulation that has been determined *(presumption iures de iure),* then the regulation that has been determined has binding applicability to the community, so that for all ignorance the

community cannot release / forgive him from lawsuits (*ignorantia jurist non excusat).*

The existence of the principle of legal fiction in the national legal system is contained in the explanatory construction of Article 81 of Law Number 12 of 2011 concerning Laws and Regulations which states "With the promulgation of laws and regulations in the official gazette as referred to in this provision, everyone is deemed to have known it". Legal fiction assumes that established rules have binding legal legitimacy, for everyone to recognize and obey a rule. So, then we can see that the principle of legal fiction has weaknesses, where officials can carry out law enforcement actions against people who are considered to have violated the provisions by ignoring ignorance of community law.

The principle of legal fiction itself has its pros and cons in its current existence, from the point of view that agrees with the existence of the principle of legal fiction will say that legal fiction has a role to effectively and efficiently use the legislative budget, considering the range when the law passed by the House of Representatives of the Republic of Indonesia must be implemented, with the principle of legal fiction, the law can be implemented. While the cons are, that the principle of legal fiction cannot touch the whole society so that the principle of legal fiction has the potential for injustice and equity. In addition, criticism of the application of the principle of legal fiction is also caused because the legal system can be very complex and difficult for ordinary people to understand. If everyone must know and understand the law can be unrealistic, especially when the law changes or differs in various jurisdictions, such as the enactment of local

regulations that have the substance of local wisdom content in an area A, will be difficult for people who are not part of the community in area A to understand.

Legal Complexity to Understand and Know

Furthermore, to justify the author's hypothesis that every citizen does not need to know the law, it is necessary to put forward the logical foundations that support the author's hypothesis. for this reason, in this section the author will try to provide an overview of the current legal conditions in Indonesia.

Today the law in Indonesia can be said to be quite complicated to be understood and known by the "layman" (Lukman and Yahyanto 2016), this is not only because of the large number of legal regulations as stated earlier, but nevertheless there is one other factor that makes it impossible for the law to be understood, understood and known perfectly, this factor is the legal language factor.

The legal language used in current laws and regulations has its own characteristics, which require special knowledge and techniques in the writing system (Qamar and Djanggih 2017). The legal language in Indonesia is actually not regulated in a standard form of regulation (Rahmad Nuthihar, Mursyidin, and Wahdaniah 2020). So, that the language used comes from the experience and habits of perpetrators who are involved in the legal field (Purbacaraka and Soekanto 1983).

The language and variety of language used in current legislation is unique for its time, because in history there has not always been the use of the same variety of language as it is used today (Rahmad Nuthihar et al.

2020). The variety of statutory language now has its own distinctive feature, which is to seek to coerce through the rational use of language. Therefore we can be able to see the details of these main characteristics into the following characteristics free and emotional, without feeling, flat like a mathematical formula (Priyatno and Aridhayandi 2018).

According to Satjipto Rahardjo, modern legal language tends to be complicated and difficult to understand because of efforts to express legal concepts and norms in a very technical and formal language. Legal decision makers often use special terms, long phrases, and complex sentence structures in drafting laws and regulations (See 2014). It aims to achieve accuracy and clarity in conveying legal regulations, but in practice it creates obstacles to the understanding of the general public. The use of complicated and difficult to understand legal language can have a negative impact on public participation and understanding of the law. Ordinary people often have difficulty in understanding applicable legal regulations, resulting in their inability to comply with or know their legal rights and obligations. Complex legal language can also create gaps between jurists and the public, resulting in people feeling alienated from the legal and regulatory systems.

In addition, the language used in law and has a standard and rational style, is clearly very confusing, especially for people who are not actors or actors in the process of law enforcement or formation (Purbacaraka 2017). Given the difficulty in understanding legal language, the next question is whether the concept and purpose of legal fiction can still be justified and applied in society. Obviously, this is very impossible.

The next question is, if the law is impossible to understand then is society obliged to not know the law to make people legally illiterate? The community has its own understanding and knowledge of the law, for that in the next discussion it is necessary to describe the knowledge of the community in terms of the source of legal knowledge originated.

Sources of Knowledge of Legal Society

Basically, people's knowledge of law comes from two sides, namely the source of universal understanding of law, and the source of contextual understanding of law. The source of universal understanding of law means that people's knowledge of the law is only limited to meta-juridical matters such as basic ethics, customs, customs, and manners. This understanding does not originate in a codified understanding of law, but an understanding that has existed and been given naturally since man was born.

This view by the author is based on Immanuel Kant's view of the Law of Morality. Immanuel Kant's moral law, otherwise known as the "Categorical Imperative," is an ethical theory put forward by the German philosopher Immanuel Kant. According to Kant, morality depends on actions based on obligation and good intentions, not on the result. Its main principle is actions that are based on universal "moral obligations" and cannot be violated by anyone. Thus, moral truth is objective and applies to all human beings without exception (Dahlan 2009).

Based on Immanuel Kant's view above, the key word that needs to be considered is the existence of universal values that can be accepted and carried out by humans as a form of moral obligation. The principles of understanding community law derived from universal values can be

exemplified such as the command that humans/society can respect life, uphold justice, uphold truth and honesty, respect the property rights of others, be honest, and prioritize empathy and concern for.

In relation to the principle that everyone should know the law, which implies that every individual is considered to know the applicable law, but it is impossible for the whole society to know perfectly all existing legal regulations. This is due to the complexity and large number of legal regulations that apply in a country and the process of legal dynamics that continue to develop and change according to the needs and development of society. Therefore, it is natural that not everyone can follow the development of the law perfectly.

Society already understands the principles of legal understanding derived from universal values such as justice, human dignity, and equality. However, this understanding does not necessarily cover all the details and substance of existing legal regulations. For example, in a concrete situation, a citizen may know that justice must be upheld, but not know in detail the rights he has in facing the justice system or how to access legal services fairly. This shows that an understanding of legal principles derived from universal values such as justice, human dignity, and equality does not necessarily cover all the details and substance of the legal regulations that exist in society.

In addition, the source of universal understanding of community law, according to the author there is also a source of understanding community law contextually, this source refers to the way people understand and interpret law in a certain situation or environment. The value of understanding and interpreting society in this study is more focused on the

empirical experience of an individual community. Like if a society has been convicted, then, the individual must know about the law that resulted in him being criminalized for example, there is individual A as an employee in the government sector who is involved in corruption cases. Once established as a suspect, individual A faces a complex and lengthy legal process. During this legal process, individual A is directly involved in various stages, such as investigation, detention, and trial.

During this situation, individual A realizes that he needs to understand the laws governing corruption to better deal with the legal process. He began to study various laws and regulations related to corruption, including the types of corruption, the evidence needed to prove the crime, and the threat of punishment he might face. In the trial process, individual A also interacts with lawyers, judges, and other law officials, so that his empirical experience further enhances his understanding of judicial mechanisms and the rules that apply in court.

As time goes by, individual A becomes more knowledgeable about the law, especially criminal law related to corruption cases. His empirical experience in dealing with the legal process made him better understand his rights and obligations as a suspect, as well as the rights he has in the judicial process. Thus, the corruption case faced by individual A becomes a momentum for him to increase his knowledge of the law and understand the importance of compliance with the law.

In addition, legal needs and interests can also be said to be a source of contextual understanding of law, because it places the position of individuals as parties who have direct interests, so that individuals need to

understand the law as a basic guideline so that their interests can be fulfilled. For example, A is a worker, then A will be more proficient in laws and regulations in the labor sector such as wage plans, labor rights and obligations, length of service and other provisions related to taxation. This condition is because A has legal needs and interests, so that understanding of the law continues to increase.

However, Worker A is unable to master all existing laws due to limited information and unnecessity of laws outside labor law. So, it can be understood that the community will understand the law if the rule of law can provide benefits in the form of welfare and its interests are achieved. This statement is in harmony with the theory of utilitarianism as proposed by Jeremy Bentham (Faradillah 2023; Harun 2019). Jeremy Bentham himself was an English philosopher and jurist who lived in the 18th century. He is known for his contributions in developing the theory of utilitarianism, an ethical approach that emphasizes the achievement of maximum happiness and well-being for as many people as possible. Bentham's theory of utilitarianism views that actions that are considered good are those that produce the greatest accumulation of happiness and reduce suffering as much as possible.

In Bentham's view of utilitarianism, individual actions, government policies, and the legal system should be evaluated based on their impact on the happiness and well-being of society. According to him, the goal of every action is to achieve happiness, and pleasure is regarded as a good thing, while suffering as a bad thing. Therefore, Bentham proposed a basic principle,

namely the "greatest happiness principle", which became the main basis in the theory of utilitarianism.

The connection between the argument that people understand the law because of their need and happiness for the rule of law and the concept in Bentham's theory, namely "the greatest happiness principle" lies in the same philosophical basis, namely happiness as the goal of action or policy both carried out by policy makers and by people who will understand the law itself. So that knowledge of the laws of society is born because the existing legal rules have a correlation with the happiness and welfare of the community.

CONCLUSION

By detailing the theory of legal fiction, this principle cannot meet the needs of all elements of society, mainly due to the large number of legal regulations and the complexity of legal language. Current realities show that society's understanding of the law is limited to only two dimensions or sides. The universal side includes basic ethics, customs, customs, and manners, while the contextual side is limited to empirical experience as well as people's legal needs or interests. With this consideration arises an anti-thesis to the principle of legal fiction which originally emphasized that everyone knows the law, now changed to the view that not everyone needs to know the law. [*W*]

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