THE URGENCY OF UNDERSTANDING THE LEGAL SYSTEM IN LEARNING LEGAL SCIENCE

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Abstract

The importance of understanding the basic concepts of the legal system in the context of the study of legal science, the relevance of understanding the legal system as the main foundation for students of legal science in developing knowledge, skills, and in-depth understanding of the legal principles that govern society. The results of the research highlight the critical role of understanding the legal system in forming a holistic perspective on the development of legal science. A deep understanding of the structure, function and dynamics of the legal system provides a solid foundation for students to face the complex challenges of modern legal practice. The implications of this research highlight the need for an emphasis on legal systems understanding as a central element in the design of legal studies curricula to ensure that students not only have a substantial understanding but are also able to integrate and apply legal knowledge in social and practical contexts.

Keywords: Urgency, Legal System, Legal Science

1. Introduction

Urgency is defined as an urgent necessity, something that is very important. (kbbi, n.d.) Legal science has an important role in regulating people's lives and improving the welfare of the nation. To be able to understand and apply legal science properly, understanding the legal system is very important in learning legal science because it includes basic principles that regulate social life. Therefore, the urgency of understanding the legal system in learning legal science cannot be ignored.

The parts of the legal system contained in the structural component have functions in an institutional mechanism, namely lawmaking institutions, courts and other institutions that have the authority to enforce and apply the law. The relationship between these institutions is found in the 1945 Constitution and its amendments. The substance component contains the real results published by the legal system. This real result can take the form of in concerto (individual legal rules) and in abstraco (general legal rules).

In-abstraco legal rules, are general rules that are abstract in nature because the enactment of such rules is not addressed to certain individuals but these rules are

addressed to anyone who is subject to the formulation of these general rules. This rule can be read in the formulation of various existing laws.

The legal substance component is all legal rules, both written and unwritten, including legal principles and norms as well as court decisions that are used as a guide by the community and government resulting from the legal system. (Barkatullah) Legal substance and legal structure are the real components of the legal system, but these two things only act as blueprints or designs, not as working tools. (Friedman L. M., 2019)

The third component is the legal culture component, the attitudes of the public or citizens and the values they hold greatly influence the utilization of the court as a place to resolve disputes. The attitudes and values held by citizens are called legal culture, so that legal culture is defined as all social values related to law and attitudes that influence law. The division of the legal system into three components carried out by Lawrence M. Friedman is intended to analyze the operation of a legal system in the study of law and society, the legal system is often referred to as the legal system.

In every legal system, we will always find a unity called legal rules, from which we will be able to recognize some attitudes that are required, allowed or prohibited in various different situations. Various legal rules are still widely found in unwritten form, in traditional societies, legal rules are often mixed or almost indistinguishable from other rules such as customs, beliefs or traditions. In addition to legal rules can be found in written and unwritten form, legal rules are also often found in a scattered state not collected in a particular form and collection.

The existence of unity or roundness of various legal rules that seem detached and independent can also be explained by using the theoretical framework of Hans Kelsen. According to Kelsen, that the legal system is a system of rules, meaning that a lower level legal situation must have a basis or grip on the rules of law that are higher in nature. Each rule of law must reflect this cushion system and ultimately the highest rule of law called the constitution must also be sourced to a basic norm called grundnorm. The theory of Hans Kelsen is called stufenbau theory.

Another reason that can support that the law is a system is the fact that the legal system is not just a collection of rules that do not have a systematic or unitary bond, but these rules are united by the issue of validity, this rule is considered valid if it comes from the same source so as to create a unified pattern. Based on the above background, the problems in this study, How is the legal system in learning legal science? and How is the form of implementation of the legal system in the interests of learning legal science?

2. Theoretical Background

The system comes from Latin (systema) and Greek (sustema) is a unit consisting of components or elements that are connected between one part and another together to facilitate the flow of material information or understanding of something as a whole. The system is a set of elements that have a functional relationship that are regularly interrelated to form a totality. (Harahap, 1997)

The legal system according to Lawrence M. Friedman, who explains that a legal system can be divided into three components, namely the legal structure component (legal structure), legal substance (legal substance) and legal culture (legal culture). (Lutfi Ansori, 2017) The three components in a legal system are interconnected and interdependent. Therefore, the urgency of understanding the legal system in learning legal science cannot be ignored.

Law as a system means that the law is an order, a whole unit consisting of parts or elements that have interactions with each other and work together to achieve the objectives of the unity. (Mertokusumo, 2005) So a legal system should be an essential unity and divided into several parts, where each problem or problem is an answer or solution. The answer is contained in the system itself.

Lawrence Friedman states that the legal system includes three components or sub-systems, namely First, the legal structure component, including operational or structural elements that include all institutions. Second, legal substance, including all rules, rules, and legal principles called the juridical meaning system. Third, legal culture, including actual elements including the actions of officials and citizens. (Mahbub, 2012)

3. Methodology

The exploration utilized recorded as a hard copy is regularizing juridical. The wellsprings of lawful materials utilized in this examination are essential legitimate materials and auxiliary lawful materials. The primary materials used are legal science books. (Bahder Johan Nasution, 2006) The types of approaches used in this study are statutory approaches, case, and legal concept analysis approach. The data processing method used is the analytical method which is then outlined in descriptive-analytical writing.

4. Result and Discussion

The legal system is a set of rules (a set of rules) in which the rules contain values and structures. This means that a legal system sees value and structure, meaning that a legal system contains aspects of substance (rules), structural aspects and cultural aspects. (Said) The legal system is a whole of rules about what should be done and what should not be done by humans that are binding and integrated from one unit of activity to another to achieve goals.

The legal subsystem is more accurately referred to as an inter-subsystem, because the law regulates certain areas of each of the other subsystems. The legal inter sub system includes parts that are functionally interrelated. One example of a legal system is the Indonesian national legal system, because it concerns the entire Indonesian national legal system. Then, in the national legal system there are several independent legal systems, among others: Civil law system, criminal law system, constitutional law system, then in the civil law system there is still a family law system, property law system, all of which are a unity of the Indonesian National Legal system.

The legal system is logical, but by its very nature, it is not closed or frozen, because it requires judgements or decrees, which will always increase the breadth of the system. Therefore, it is appropriate to call it an open system. The legal system is dynamic, not only because of the conscious creation of new laws by legislative bodies, but also because of their implementation in society. Implementation is always accompanied by judgement in either making legal constructions or interpreting the law. In this regard, it should not be seen that the legislature has the job of shaping the law and the judges are merely defending it or that the legislature is decisive while the judges are bound.

4.1 The Legal System in Legal Studies

The legal system in learning legal science involves understanding the structure and components of law in a country. The legal system is an open system that has reciprocal contact with its environment. In legal science, law is seen from two aspects, namely law as a value system and law as a social rule.

The legal system and legal science have a close relationship and both influence each other in the context of understanding, analysing and developing legal knowledge. Legal science studies the legal system as one of the objects of study, while the legal system is the main focus for analysing the structure, function and development in society.

The legal system is the main instrument that determines rights and obligations in society, the legal system and legal science work in synergy, where an understanding of the legal system becomes the basis for legal science, and legal science provides insight and analysis of the dynamics and evolution of the legal system itself.

Indeed, the legal system is an open system because it correlates reciprocally with things outside the legal system itself. In addition, there are also factors outside the law that affect the operation of a legal system. Similarly, the legal system is an abstract or conceptual system. The division or classification of law consists of the function of law as a criterion, the criterion of time in force and the criterion of its working power. The time criterion is the positive law that is currently in effect or ius conctitutum and the law that is aspired to or ius constituendum. As for the criterion of its working power, some are imperative as coercion and some are facultative as an option.

The characteristics of the legal system itself are several things, namely. First, a legal system is bound to time and place. The validity of a legal norm is not eternal but always undergoes development to be adjusted to the dynamics in the social order. Therefore, the legal system is bound by time. Similarly, there are times when a legal system only applies to certain areas. For example, local regulations with the concept of Islamic law in Aceh called Qanun. This system only applies in Aceh and certainly does not apply in other regions.

The second characteristic of the legal system is sustainable or continuous and independent. Related to the norm system, the enforceability of a rule of law is intended for a long period of time. This means that the formation of law does not only indicate the current situation and conditions but must also anticipate various possibilities in the future. Even if there is a change, there must be continuity from the previous arrangement.

Similarly, the legal system is independent. This means that if a problem occurs, it will be resolved by the system itself.

The third characteristic of the legal system is that it recognises the breakdown within it. In general, there are several legal decompositions such as material law and formal law. Material law is a substance that contains a subject matter to be regulated, while formal law is to implement or maintain material law.

The fourth characteristic of the legal system is that it does not require conflict between elements or parts. In this case, between one subsystem and another subsystem there should be no conflict. This is based on the postulate non est certandum de regulis juris which means that there is no law that contradicts one another. If in a legal system there is a conflict, it will be resolved by the legal system itself. This is where the importance of the legal system as a unit consisting of parts or elements.

The fifth characteristic of the legal system is as a complement. As a system of norms, the legal system does not only consist of concrete legal regulations but also consists of legal principles, doctrine, jurisprudence and so on as a subsystem of the legal system as a whole.

The sixth characteristic is that the legal system has a Fundamental concept. This means that a legal system is constructed based on values, the most fundamental principles in the interaction of relationships between individuals and other individuals and between individuals and the state. In the study of law itself, the legal system has a component, according to Friedman this component is known as the Three Elements of Legal System. Where these components also greatly affect law enforcement. (Friedman L. , 2009)

4.2 Forms of Legal System Implementation in the Interest of Legal Studies Learning

In the study of law, legal systems take various forms. There are at least four kinds of legal systems in the world, among others:

First, the Civil Law System or better known as the civil law system or the Continental European system. Based on its history, the Continental European legal system originated from Roman laws. The codification of Roman law was carried out during the time of Emperor Justianus in the Byzantine State. In general, the codification of Roman law consists of three sets of Roman law, namely the Edict of Theodoricus promulgated by the King of East Goten in Northern Italy, Lex Romana Burgondionum, the Roman law of the Burgondians and Lex Romana Visigothorum, the Roman law of the West Goten people. (John Gilissen & Frits Gorie, 2009) Roman law evolved with the common law of Germana. At the same time, the Leges Babarorum was also in force in western Europe which contained ancient legal texts, including the Lex Salica. Lex Salica is a law book known as Franka Salia which contains many criminal provisions. The revival of Roman law occurred at the end of the 19th century which was marked by the movement in Bologna, Italy. At that time legal science was taught in various universities, more specifically related to Roman law. One of the characteristics of the continental European system is the codification or unification of various legal laws in a statute book. Laws are not made on a case-by-case basis, but rather by institutions that have legislative authority.

Another feature of the continental European system is the field of legal discovery, which will be discussed in more detail in a different chapter.

Second, the Common Law System or Anglo Saxon System. The name refers to the legal order that grew and developed in England under King Edward. (Hudson, 1988) The expression Common Law is used to mention English law as a whole, whether it applies in England or applies in its protectorates such as America, Canada, Australia, New Zealand and so on. While the term Anglo Saxon comes from two tribes of German origin namely Anglo and Saxon who inhabited England in the fifth century, but the laws used by Anglo and Saxon originated from Scandinavia (Denmark and Norwergia). The laws of the two tribes then became the customs and traditions of law in England. The designation common law or commune loy or loi commune was to separate it from the French Law as the commonly used legal language based on Roman law.

In a further development, jurists in England used the term common law to compare it with civil law. The common law system is essentially judge made law. This means that the law is created by judges through court decisions and the binding force of precedent is known as the binding force of precedent. Some of the principle differences between Common Law and Civil Law are that Common Law is "judge made law" while in Civil Law, the judiciary only plays a very minimal role in the formation and development of legal orders. Further, in Common Law, local customs did not play a significant role in the evolution of Common Law, whereas in Civil Law, the influence of customs until the 18th century was still quite visible. Furthermore, in Common Law, legislation until the 19th century only played a supporting role, while in Civil Law from the 13th century to the 19th century gradually became the most important source of law. Therefore, the legal order of Civil Law is largely a codified legal order, while in Common Law it does not recognise a codification.

Third, Islamic law. In principle, Islamic law applies to all Muslims. In that sense, this legal system is not limited by the territory of a country. However, not all countries with a majority Muslim population use this legal system. Islamic law leans on the religious aspect which broadly consists of theology as a dogma that is believed to be valid by Muslims and Sharia which contains laws or provisions containing commands or prohibitions. The Islamic Legal System originates from the Qur'an which is the holy book of Islam consisting of 30 juz, 114 letters and 6666 verses. As-Sunnah, is all that is narrated from Rassululah SAW be it speech, action and recognition of an act performed by the companions (qauliyyah, fi'liyyah, or tagririyyah). Ijma, is the agreement of the previous great scholars about a way of life whose provisions have not been explained in detail by the Al-Quran and As-Sunnah. Qiyas, an analogy in tracing as many similarities as possible between two or more events to draw conclusions that give birth to new laws. Some countries that adhere to this legal system are Alzasair, Egypt, Libya, Morocco and Sudan. While on the Asian continent such as in Saudi Arabia, Iran, Iraq, Syria, Afghanistan and Pakistan. Although Indonesia is the largest Muslim population, Islamic law only applies partially, specifically civil law for followers of Islam alone. Along with

the development of special autonomy, in Aceh, the local legal system uses Qanun / Islamic law.

Fourth, the Customory Law System or customary law system. In principle, customary law originates from traditions that grow, live and develop in a community order. In order for a custom to become a law, several requirements are needed. First, it is not an individual habit, but a community group habit. It can be interpreted that the custom is not limited to a member of the community but is carried out by the community as a whole. Second, the habit is the realm of a positive action in the sense of doing an action or not doing an action. Third, life as a habit of doing or not doing something must be experienced by the community so that it has binding force. Fourth, the custom must be confirmed by the public authority.

In general, the system of customary law or adat has the characteristic of being traditional based on the will of the ancestors. The benchmark of the will carried out by humans is based on a form of devotion to the sacred will of their ancestors. Generally, the customary legal system will change with the influence of changing social events and circumstances. With its nature to easily change or adjust to the development of social situations, customary law itself has elastic properties.

Changes in customary law often go unnoticed and sometimes even unnoticed by the community, because they usually occur alone in daily life activities. Because the source of customary law is unwritten, it has a non-rigid nature and is easy to adjust. Of course, this situation is very different when juxtaposed with laws whose rules are written and codified in a book of laws or other laws and regulations that are not easy to change quickly in terms of adjusting to certain social situations, because in changing it requires a tool to change through state organs that have the authority to require new laws and regulations.

Sixth, the National Legal System. The Indonesian legal system is the Pancasila national legal system. Because all laws in Indonesia must be based on Pancasila. As the basis of the State of Indonesia, Pancasila is the source of all sources of law in Indonesia. Pancasila means that the legal position of Pancasila is placed in the highest position in law (Grundnorm) in Indonesia, although Indonesia since independence still uses Dutch law, the position of Pancasila in this case becomes a guide and direction for every Indonesian in formulating and perfecting all laws in Indonesia. Seeing that the law is constantly changing and following the development of society, any changes that occur will always be adjusted to the aspirations of the Indonesian people who refer to Pancasila.

The forms of legal systems that exist in the world as described above are often used in learning legal science. Why is it so important to study the legal system because it is the main pillar in the implementation of law in the real world. Every society has its own legal system that reflects its history, culture, and values so learning about the legal system needs to be learnt, implemented, and developed.

5. Conclusion

The legal system in learning legal science involves understanding the structure and components of law in a country. In studying the legal system, there are various things that are studied such as knowing the function of the legal system, the characteristics of the legal system, the components contained in a legal system until finally its implementation, namely formulating various legal systems used in all parts of the world starting from a study of the science of law itself.

The form of implementation of the legal system in learning legal science includes the common law system, civil law system, Islamic law, customary law system or customary law, and the national legal system.

5.1 Sugesstion

Suggestions that can be conveyed by the author, related to learning about the legal system in legal science need to be developed continuously, this is necessary so that future generations are able to find new legal systems and learn existing legal systems. The need for emphasis on understanding the legal system as a central element in the design of the legal science curriculum to ensure that students not only have a substantial understanding but are also able to integrate and apply legal knowledge in a social and practical context.

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