

## Conference Paper

# Law as an Autonomous Discipline

Muhammad Aswan<sup>1\*</sup> and Ririn Nurfaathirany Heri<sup>2</sup>

<sup>1</sup>Faculty of Law, Hasanuddin University, Makassar, Indonesia

<sup>2</sup>Faculty of Social and Law, University Negeri Makassar, Makassar, Indonesia

### ORCID

### Abstract.

The development of legal studies is colored by the views of legal scholars who are in opposition to one another, namely views that emphasize that law is sui generis, self-sufficient, and immanent rationality as well as the view that law is not independent or can be influenced by other disciplines, such as politics and economics. Based on these differences in views, the problem to be examined is formulated, namely whether the science of law is an autonomous scientific discipline. These problems are examined based on the type of normative research with a conceptual approach. The analysis related to legal autonomy begins with examining the subject matter of jurisprudence which is nothing but an attempt to find out the nature of law or an attempt to answer the question 'what is law?'. Many jurists have provided definitions of law, including Roscoe Pound, Jeremy Bentham, Hans Kelsen, H.L.A. Hart, Ronald Dworkin, and John Finnis. These jurists have something in common in that law is a rule of conduct or has a normative character. Next is described a view that rigidly states that law is autonomous, namely from Ernest J Weinrib with his concept of 'law as immanent rationality', and a view that does not rigidly state that law is autonomous, namely from Gunther Teubner and Niklas Luhmann with his concept of 'law as an autopoietic system'. The conclusion of this research is that law is autonomous, but not understood in a rigid manner, where law is closed and open at the same time.

**Keywords:** law, autonomy, openness

## 1. Introduction

Each discipline, e.g. jurisprudence, must have formal objects and material objects as *conditio sine qua non* to qualify as science. Formal objects are questions about methodology (object matter), while material objects are questions about the goals of thought (*Gegenstand*) or the main issues studied (subject matter) [1].

J.W. Harris in *Legal Philosophies* mentions the differences in the use of the term jurisprudence in France and England, viz:

“‘jurisprudence’...sometimes this word is used as a heavy word for the study or knowledge of the law. There was a time when it was used in England to stand merely for the analysis of legal concepts. In French, ‘la Jurisprudence’ signifies what we call case law; and ‘*theorie generale du droit*’ covers much of the same ground as what is here

Corresponding Author:  
 Muhammad Aswan; email:  
 aswan.unhas@gmail.com

**Published** 3 January 2024

Publishing services provided by  
**Knowledge E**

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Selection and Peer-review under the responsibility of the ICHELSS Conference Committee.

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(United Kingdom) called jurisprudence. I believe that use of 'jurisprudence' to stand for general speculations of all kinds about the law is now fairly common in modern English usage

Jurisprudence itself is classified by several jurists into several parts, viz general jurisprudence and particular jurisprudence [2]. General jurisprudence at least examine four things, namely first, the relationship between law and morals; second, formulation and development of vocabulary to be used by legal students; third, the logical accuracy of the propositions in the science of law; fourth, the socio-political conditions of society as legal subjects . Meanwhile, particular jurisprudence specifically examines the decisions of the judiciary, laws and legal concepts [2]. Posner in *The Problem of Jurisprudence* emphasizes:

“by jurisprudence I mean the most fundamental, general, and theoretical plane of analysis of the social phenomena called law. Thus the traditional definition of jurisprudence as the philosophy of law, or as the application of philosophy to law, is *prima facie* appropriate”

Furthermore, Hilaire McCoubrey and Nigel D. White put forward “the subject matter of jurisprudence, whether the discipline be classified as an art or a science, is the nature of law and its working” [1] Referring to these opinions, it can be understood that the subject matter of jurisprudence is the nature of law theoretically and philosophically.

According to Alexy, there are three problems that always arise in questioning the nature of law (jurisprudence), namely, first, regarding the definition of law which includes discussion of concepts and systems of norms, second, examining the real or factual dimensions of law—which is the area of study of legal positivism which questions authority and applicability or acceptance of law, and thirdly, related to legal philosophy which questions legitimacy, where the main issue is the relationship between law and morals..

Answering the question what is the law? is an attempt to study the nature of law which is the main issue in jurisprudence. Ratnapala insists “It is a specific project within jurisprudence”[3]. Pound historically put forward twelve concepts about the nature of law, starting from primitive law to post-enlightenment and post-aufklarung. Apart from the differences in these concepts, one can understand the point of similarity, namely “law is a rule of conduct, so that in the context of jurisprudence law has a normative character in the sense that law regulates what legal subjects should and should not do.”[4]

The development of legal studies is colored by the views of legal scholars who are in opposition to one another, namely the views in legal studies which emphasize that law

is sui generis, self-sufficient, immanent rationality, autonomous, etc., as well as views which reject these theses. As well as the view that law is not independent or can be influenced by other disciplines, such as politics and economics.

Based on these differences in views, the problem to be examined is formulated, namely whether the science of law is an autonomous scientific discipline?

## 2. Method

This research will be carried out using the Juridical-Normative research method, what is meant here is Legal Research which has the character of a perspective or applied science, Law Science as Sui Generis. This is consistent with the characteristics of jurisprudence. Like previous research studies, this research uses several appropriate approaches and should be used in every legal research. The intended approach is:

- a. Statute Approach
- b. Conceptual Approach
- c. Comparative Approach

This research is normative, so the researcher used the Statute Approach first. Related to this, researchers will examine the nature of several relevant laws and regulations. A conceptual approach is needed to examine the views and thoughts of legal experts.

## 3. Result and Discussion

There are views in legal studies which emphasize that law is sui generis, self-sufficient, immanent rationality, autonomous, etc., as well as views which reject these theses. In this paper, two views will be described, namely those put forward by Ernest J Weinrib and the views put forward by Niklas Luhmann and Gunther Teubner.

### 3.1. Law as the immanent rationality (immanent intelligibility)

Legal formalism version of Ernest J Weinrib will be used as the main reference in studying legal autonomy as will be described below. The main postulate of Weinrib's theory is the immanent rationality of law or law as the immanent intelligibility which is claimed to originate from western philosophical rationalism which is reflected in the natural law and natural rights traditions which can be traced in the thoughts of St. Thomas Aquinas, Immanuel Kant, G.W.F. Hegel, and John Finnis, until finally Weinrib

stated “in the formalist understanding law is not the realization of a utopian project. It is, nonetheless, a supreme achievement of mind”. In connection with the postulates proposed by the legal formalists, Weinrib stated:

“In construing law as an immanent moral rationality, formalism directly challenges these assumption about law’s provenance, nature, and characteristic process. In the formalist conception, law has a content that is not imported from without but elaborated from within. Law is not an instrument in the service of foreign ideals as an end in itself constituting, as it were, its own ideal.[5]”

Thus it can be understood that legal formalism views the concept of legal autonomy in a rigid manner, in which law has its own subject matter inherently and law is not a tool to achieve goals that originate outside the law. So the function of law is “to express this immanent rationality in the doctrines, institutions, and decisions of the positive law.”[6] Weinrib e further emphasizes his theory by stating:

“Legal formalism postulates that the law’s content can be understood in and through itself by referene to the mode of thinking that shapes it from inside. (p. 962) Just as one can understand geometry by working through a geometrical perplexity from the inside, so one can understand law by an effort of mind that penetrates to, and participates in, the structure of thought that the law embodies...The task for the formalist is to make explicit the intelligibility latent in the legal materials and thereby to indicate that from which legal error is a deviation.[7]”

For Weinrib, legal autonomy can be understood as internally elaborated geometry. In fact, the main task of the formalists is to make the concept of immanent intelligibility explicit in overcoming legal problems that are latent in legal materials. Elaborating more deeply on the concept of legal autonomy for legal formalists, there are several stages that are used as a reference in building the intended argument, namely:

1. Form is the integration of character, genericity, and unity that renders a determinate content intelligible,
2. The content of a sophisticated legal system is intelligible from within,
3. The presentation of legal intelligibility as the interpretation of form and content stakes out a vintage point internal to law,
4. Law authoritatively orders the external relation between persons, and justice is the intelligibility of this ordering,

5. The intelligibility of law therefore involves the disclosure of the relationship between the law's content and the forms of justice that constitute the most inclusive justificatory structures applicable to external relations,
6. Two different forms of justice can be discerned. Corrective justice constitutes the internal rationality of transactions. Distributive justice, which mediates the relations among persons, and between persons and things, according to some criterion, is the rationality of distributions,
7. These two forms exhibit differing structures and are not reducible one to the other,
8. Justifications that blend the component of these two different forms are necessarily incoherent,
9. Only distributions are amenable to the extrinsic—and thus instrumental operation of political purpose,
10. The juridical consists of the elucidation and specification, in the context of particular transactions and distributions, of a content that is adequate to the justificatory structures of these two forms,
11. The two forms of justice have inherent normative force because they presuppose the Kantian notion of moral personality,
12. The forms of justice, being immanent to the understanding of external interaction, are not divorced from social and historical world, and
13. They determine the juridical character, genericity and coherence of that world through the positive law that is their existence at the level of particular transactions and distributions.

Furthermore, it should be understood that Weinrib's version of legal formalism is different from positivism which holds that the subject matter of law can be introduced from outside the law and does not consider the moral dimension and makes law a tool to realize non-legal ideals, as adhered to by Posner, Calabresi, Epstein, Unger, Kelsen, Austin, etc.

### **3.2. Law as an autopoietic system**

Weinrib is very firm in applying the concept of legal autonomy, this is different from Niklas Luhmann and Gunther Teubner. Luhmann and Teubner argue that the opponent is an

autopoietic system. The concept was adopted from a biological concept developed by Chilean biologists Humberto Maturana and Francisco Varela. Autopoietic itself comes from the Greek terms *autos* which means alone and *poiein* which means to produce, which when combined will mean self-(re)production .

According to Maturana and Varela, an autopoietic system is a system that produces itself from within itself, like a plant that produces cells through its own cells. However, the character of autonomy in an autopoietic system does not mean that it is absolutely closed to the environment outside the system. The autopoietic system is closed and open at the same time, open to energy but closed to reproductive processes and control [8].

The concepts in biology were then introduced into the social and legal sciences by Luhmann and Gunther Teubner. In the legal context, Luhmann argued “The autopoiesis of the legal system is normatively closed in that only the legal system can bestow legally normative quality on its elements and thereby constitute them as elements,” namun “at the same time, and precisely in relation to this closure the legal system is a cognitively open system”[9]. So that legal autonomy must be understood as a closed and open concept of autonomy. Which is closed in terms of giving normative character to its elements and in producing its elements, but open to other disciplines in the development of legal theory.

The Concept of law as an autopoietic system as a concept autonomy of law thereby determining that law has the characteristics of closure which are implemented in self-referential and self-reproduction and the characteristics of openness are implemented while remaining open to other disciplines through communication methods between sub-systems, in which law and other disciplines are sub-disciplines. -the system of the social system

In this regard, Teubner argued that there are three different dimensions in the concept of legal autonomy in which there is interconnection with the environment (other disciplines)[10] is Transversality, Responsiveness, Self-normativity.

## 4. Conclusion

The analysis related to legal autonomy begins with examining the subject matter of jurisprudence which is nothing but an attempt to find out the nature of law or an attempt to answer the question ‘what is law?’. Many jurists have provided definitions of law, including Roscoe Pound, Jeremy Bentham, Hans Kelsen, H.L.A. Hart, Ronald Dworkin, and John Finnis. These jurists have something in common in that law is a rule

of conduct or has a normative character. Next is described a view that rigidly states that law is autonomous, namely from Ernest J Weinrib with his concept of 'law as immanent rationality', and a view that does not rigidly state that law is autonomous, namely from Gunther Teubner and Niklas Luhmann with his concept of 'law as an autopoietic system'. The conclusion of this research is that law is autonomous, but not understood in a rigid manner, where law is closed and open at the same time.

## Acknowledgments

Thank you to the executors, in this case HISPISI, in particular the International Conference on Humanities, Education, Law and Social Sciences (ICHELSS) committee, Faculty of Social and Legal Sciences, Makassar State University. as well as all parties involved in the completion of this article.

## Funding

This research was carried out using private funds, so this research is independent

## References

- [1] Harris JW. Law and legal science: an inquiry into the concepts legal rule and legal system 1979.
- [2] Harris JW. Legal philosophies 1997.
- [3] Joerges C, Sand IJ, Teubner G. Transnational governance and constitutionalism. Hart Publishing; 2004.
- [4] Ratnapala S. Jurisprudence. Cambridge University Press; 2017. <https://doi.org/10.1017/9781316716960>.
- [5] Simpson AW. The Salmond Lecture. Victoria U Wellington L Rev. 2007;38(4):669–88.
- [6] Coubrey HM, White ND. Textbook on jurisprudence 1993.
- [7] Weinrib EJ. Legal formalism: on the immanent rationality of law. Yale Law J. 1987;97(6):949.
- [8] Teubner G. Autopoiesis in law and society: a rejoinder to Blankenburg. Law Soc Rev. 1984;18(2):291–301.
- [9] Teubner G. Autopoietic Law-A New Approach to Law and Society. Volume 8. Walter de Gruyter; 2011.

- [10] Teubner G. Law and social theory: three problems. *Asian J Law Soc.* 2014;1(2):235–54.