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Partialities in the Methods of Legal Interpretation

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Abstract
This topic will respond the following fundamental problems: First, theoretical one, concerning the theoretical basis of the legal-interpretation method. Its questions would be: (a) Why are there many differences and partialities in interpreting the same legal text? (b) Can any of all existing methods of legal interpretation provide us a comprehensive legal-interpretation? Following the fundamental problems, the research then aims firstly at finding the advantage and the weakness of each method of legal interpretation.
Keywords: partial, methods of legal interpretation.

1. Introduction

This topic will respond the following fundamental problems: First, theoretical one, concerning the theoretical basis of the legal-interpretation method. Its questions would be: (a) Why are there many differences and partialities in interpreting the same legal text? (b) Can any of all existing methods of legal interpretation provide us a comprehensive legal-interpretation? Following the fundamental problems, the research then aims firstly at finding the advantage and the weakness of each method of legal interpretation.

In the Civil Law legal system, statutes and codes are the foundations of the legal system in the same way that cases are the foundation of the common-law system. Because of the primacy of written law in the Civil Law legal system, statutory interpretation lies at the heart of that system. However, statutory interpretation is very flexible, and there are no strict canons of interpretation.[1] Legal interpretation, especially interpretation of statutes, does not attract the attention of legal science particularly in the common law legal system.[2] However, the last twenty years of the twentieth century saw an 'interpretive turn' in legal philosophy.[3] The impetus for the interpretive turn came in part from the observation that written laws—statutes and constitutions—are 'texts'. It was argued that the model of literary theory is important in developing a conception of textual meaning, and therefore that an examination of literary interpretation would shed light on the nature of legal interpretation.[4]

Debate on the parsialities in the theories of legal interpretation has been so long in the democratic states. Mitchell N. Berman divides those theories into two groups, 'originalism' dan 'non-originalism'[5]; whereas Natalie Scholtjar devides it more detail, into intensionalism and non-intensionalism, which it is devided into textualism, value maximizing, and continental approach. This article identifies various theories of legal interpretation which have been the background of each methods of legal interpretation, whom are devided by Natalie Scholtjar into intentionalist, textualist, value-maximizing, historical, pragmatist, and critical.[6]

Tradition of written law makes legal texts an important object to understand. It follows that the meaning of Law cannot be separated from its linguisticality, its written form of the law. Understanding a text means to know the meaning of the text, and the knowledge of it can only be obtained through interpreting that text.[7]

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[1] Claire M. Germain, "Approaches to Statutory Interpretations and Legislative History in France", *Duke Journal of Comparative and and International Law*, Vol 13, 2003, p. 195.
[2] John Bell, "Bennion's Statutory Interpretation", *Oxford Journal Legal Studies* Vol. 6/ 1986, p.288.
[3] Michael Moore, "The Interpretatif Turn in Modern Theory: A Turn for the Worse? *Stanford Law Review*, 41, 871–957, 1989 dalam Natalie Stoljar, "Interpretation, Indeterminacy and Authority: Some Recent Controversies in the Philosophy of Law", *The Journal of Political Philosophy:* Volume 11, Number 4, 2003, p. 470.
[4] See, for example: Dworkin, R. 1983. "Please don't talk about objectivity any more" dalam Mitchell J. T., ed. 1983. *The Politics of Interpretation.*(Chicago: Chicago University Press) which was reprinted with the title: 'On Interpretation and Objectivity' dalam Dworkin, R. 1985. *A Matter of Principle*. (Cambridge, Mass.: Harvard University Press).
[5] Berman, Mitchell N., Constitutional Interpretation: Non-originalism The University of Texas at Austin, *Philosophy Compass* 6/6 (2011): p. 408–420.
[6] Natalie Stoljar, Interpretation, Indeterminacy and Authority: Some Recent Controversies in the Philosophy of Law, *The Journal of Political Philosophy:* Volume 11, Number 4, 2003, p. 470). The theme-based - not periodical-based classification is chosen by the writer in order not to get confused with the history of interpretation. Besides that, this categorization is chosen in order to make the character of each legal method of interpretation will be clear.
[7] Satjipto Rahardjo, 2005 "Legal interpretation yang Progresif" in Anthon Freddy Susanto, *Semiotika Hukum Dari Dekonstruksi Teks Menuju Progresivitas Makna*, Bandung: Refika Aditama. The same thing was said by B. Arief Sidharta in "Ciri Khas Keilmiahan Ilmu Hukum", in *Perkembangan Hukum di Indonesia: Tinjauan Retrospeksi and Prospektif*, PT Remaja Rosdakarya in collaboration with Bagian Hukum Internasional Fakultas Hukum Universitas Padjadjaran, Bandung, 2012, p. 96.

"Law", in a narrow sense, is authoritative norms as expressed in official texts; and as such is always bound to a certain linguistic expression. In other words, the rule of law must first be expressed textually in order to be really a "rule of law" – i.e., the actual and potential guidelines that give direction to human behavior. Positivists view that laws already regulate everything. In reality, however, social life is so dynamic in character and is always in a continuous change. Consequently, law is no longer able to regulate everything in a perfect and undisputable formulation. In this position, lawyers as well as legal scientists should be able to understand and determine what the actual meaning of legal text is, through interpreting the text. Thus, Interpreting the law is one and the only method that can bridge the gap between legislation that is static in nature and social facts that is dynamic. However, in interpreting a phenomenon, some interpreters of law and facts could be different. Of course, these causes different implementation of the law interpreted.

There are many ways of interpreting the same text, each with its own particular emphasis. E.D. Hirsch and Monroe Beardsley, for example, give stress on the importance of the author's intention; while Hans-Georg Gadamer, by making the text as locus of interpretation, emphasizes on the interaction between text and its reader, which never results in a simple "repetition" of the text but in the "fusion of horizons" of the text and of the interpreter. Derrida in the same way uses such terms as différance and iterability to emphasize the inevitable "difference" between the text and any interpretation of it.[1]

2. Philosophical Problems of the Methods of Legal Interpretation

What is the meaning of a concept or a norm in a statute actually intended? What meanings the language is capable of letting in? Is the *sign* – which is formulated though language as the medium – able to be a vehicle for conveying thoughts, idea, or for realizing the meaning (*signed*) actually intended?[2] Such these questions become an ontological-philosophical problem of legal interpretation. Ontological Philosophical–problem is a problem dealing with "being". The ontological aspect of interpretation or hermeneutics is how to understand the esssence of human being. By recognizing (understanding) the essence of the human person, we recognize (understand) the very essence of law.[3] This topic has been discussed continuously by legal philosophers since the century of 19-20 especially by Heidegger and Gadamer.

According to Heidegger, *language is the home of being*, which is supported by Gadamer that *the only being that can be understood is language*.[4] The two philosophers show that within the language the *being* is manifest. Without language, the being is impossible to exist. Therefore, the ontological-philosophical problem of legal interpretation is the interpretation of "being", or how is the "being" is interpreted through its "home", because "the home" of the "being" is language. However, "the house" which is "a room for the being" cannot be a perfect place. It means that the interpreter should scrutinize what are the actual meaning behind a word or a term expressed.[5] This problem of *sign-meaning* is confirmed by the modern understanding that there is no perfect formulation of a rule. There is always *limits of wording*[6], which in turn makes legal interpretation is necessary. This is actually the ontological-philosophical problem of legal interpretation, i.e., the distance between *signed-meaning*, between the "sign" and the "signed".

While the ontological problem is dealing with the distance of the sign and the signed,the epistemological problem concerns with the desire to know the meaning and the truth. The desire to know is natural for human being.[7] Also, the act of interpreting always and already bound to a chain of interpretations, which is not to say a predetermined meaning or set of possible meanings stands in complicity with the desire of absolute knowledge: interpretation works on behalf of absolute knowledge and it struggles to free itself from the all-encompasing framework of the desire for absolute knowledge. Interpretation, calls the need to interpret, mediates, and in effect, is mediated by desire." As a consequence of this complicity, the act of interpreting, especially if comprehended as an act of creating connections, reintroduces the question of unity and harmony,

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[1] Bruce Ellis Benson, "The Improvisation of Hermeneutics: Jazz lesson for interpreters", in Kevin Vanhoozer, James K. A. Smith, and Bruce Ellis Benson (*Eds.*), *Hermeneutics at the Crossroads*, Bloomington and Indianapolis: Indiana University Press, p. 193.

[2] Osman Bilen, *The Historicity of Understanding and the Problem of Relativism in Gadamer's Philosophical Hermeneutics*, Washington, D.C.: The Council for Research in Values and Philosophy, 2000, p. 49.

[3] Hoffmann, "Uber den ZirkelschulB in der Rechtsfindung", in Stermach and Brozek, *Op. Cit*., p. 198.

[4] Jerzy Stelmach and Bartosz Brozek, *Methods of Legal Reasoning,* Dodrecht, Nederlands: Springer, 2006, p. 172.

[5] Louis Kattsoff, *Pengantar Filsafat, Sebuah Pegangan untuk Mengenal Filsafat,* translated from *Elements of Philosophy,* by Soejono Soemargono, Yogyakarta: Tiara Wacana Yogya, 1987, p. 42 and 163.

[6] Mathias Klatt, *Making the Law Explicit:The Normativity of Legal Argumentation,* Oxford and Portland Oregon: Hart Publishing, 2008, p. 3. *See also*: Dworkin, *Law as Interpretation*, in Wacks, Raymond, *Introduction to Philosophy of Law*, Oxford: Oxford University Press, 2006, p. 41-55.

[7] The famous statement of Aristotle: "All men by nature desire to know", continued by Montaigne "There is no desire more natural than that of knowledge", Gayle L. Ormiston and Alan D. Schrift, *Transforming the Hermeneutic Context: From Nietzsche to Nancy Intersections*. Albany: State University of New York Press, p.1.

that is to say "totality".[1]

In the context of legal interpretation, it means to search what is the content of the "signed" or to find out the meaning within the legal text through the sign or through its wording. So, the epistemological problem in the legal interpretation is, considering the limits of wording, how the interpretation of a legal text should be done? How is the interpreter able to comprehend or understand a text comprehensively?

3. Doctrin of Legal Indeterminacy

The partiality of each method of legal interpretation produces a legal problem: it cannot be determined "what is the law" actually (*legal indeterminacy*). This *legal indeterminacy* is possibly caused by *vagueness*, *ambiguity*, *inconsistency*, and concepts which are basically in conflict or contradictory, which is called by Gallie as *evaluative openness,* or concepts which are still open to evaluate.[2] This *legal indeterminacy* is called semantic indeterminism or we cannot determine exactly the actual meaning. Moreover, the vagueness of language directly affects the claim to correctness which is of neccesssity inherent in legal reasoning.[3] This legal indeterminacy, unavoidably requires legal interpretation, as stated by Klatt: "*The omnipresence of interpretation is inevitable, and any denial of this fact is not only illusory but misses the potential rationality that lies in profound analysis of the process of interpretation*".[4]

In its wide sense, "interpretation" refers to the simple necessity of some form of understanding, is a ubiquitous and unavoidable feature of every law – applying activity. Interpretation as a legal method is concerned with "interpretation in the strict sense" which can be defined as the understanding of a legal text that allows for some doubt with regard to its meaning or proper application. Interpretation in the strict sense begins with a question and ends with a choice between different possible construction. This choice is made by means of argument, and this establishes a close connection between interpretation and argumentation. This connection has been formulated by Robert Alexy in the shortest possible form: "interpretation is argumentation".[5]

There are two things differentiate between legal interpretation and other types of text: normative and institutional character.[6] Its normative character stems from the claim of correctness inherent in every proposed interpretation. Its institutional character stems is rooted in both authoritative objects of interpretation (statutes, sub-statutory enactments, etc) and the subject who interpret –most prominently the judiciary).

The understanding of legal meaning is mediated by a sign, which can only be interpreted by reference to yet another sign. In the same fashion, legal semiotics has emphasized dynamic character of legal concepts and stressed the importance of interpretation and the construction of meaning. However, the open and conjectural nature of legal language raises some foundational question regarding the nature and function of law. How is, for example, the openness of legal rules to be reconciled with the quest for final authority? Who has the power to define words and concepts in a concrete case? How is the construction of meaning in law affected by societal discourses?[7]

Up to now, judicial interpretation becomes the focus of such intense critical scrutiny than that of legal scientist. Judges sit at a junction in the system where the abstract democratic powers of legislature, derived in constitutional theory ultimately from the people, meet again those people as individuals in the flesh who are now the direct subjects of the law "people" themselves.[8] How excessive the power given to the judges in interpreting so there is a close relationship between the legal language and legal violence by examining the precise point at which judges stop reasoning and start unleashing the violence of the state.[9] Judges and lawyers, they have no absolute and final authority in "reading the moral content" existed in the law, even in the common law legal system. The problem in interpretation is not only about "whose authority", that's why it is important to discuss legal interpretation conducted by legal scientists.

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[1] Gayle L. Ormiston and Alan D. Schrift, *Ibid.* p.5.
[2] Klatt, *Op. Cit.*, p. 262 – 264. *See*:_J.J.H.Bruggink, translation of Arief Sidharta, *Refleksi tentang Hukum,* Bandung: Citra Aditya Bakti, 1996, p. 60, classifies specific difficulties in law: 1) Synonymy, 2) Ambiguity, 3) Vagueness, and 4) Open Terms. *See also*: L. Wittgenstein, *Philosophical Investigation*, proposes different terms with the same intent: *Legal Determinacy,* which questioning whether law (without linguistic analysis always provide a correct answer for each legal question, in Brian Bix, *Law, Language, and Determinacy*, New York: Clarendon University Press, 2003, p. 1.
[3] Klatt, *Ibid.,* p. 2.
[4] Klatt, *Ibid.,* p. 22.
[5] R. Alexy, "*Juristische Interpretation*" , *Recht, Vernunft, Diskurs, Studien zur Rechtsphilosophie* (Frankfurt am Main, 1995, p. 73) in Mathias Klatt, *Ibid.* p. 4.
[6] MacCormick, "Arguing About Interpretation" in Klatt, *Op. Cit.*, p. 4.
[7] Anne Wagner, Wouter Werner, and Deborah CAO. *Interpretation, Law, and The Construction of Meaning: Collected Papers on Legal Interpretation in Theory, Adjudication, and Political Practice.* A.A. Dodrecht, Detherlands: Springer, 2007, p. XI
[8] Christopher Hutton, *Language, Meaning, and the Law*, Edinburgh: Edinburgh University Press, 2009, p. 64.
[9] Wolcher, Louis E, *Law's Task,The Tragic Circle of Law, Justice, and Human Suffering,* New Hampshire, England: Ashgate Publishing Limited, 2008, p. 91.

For legal scientists, legal interpretation is an example of shared, reflexive praxis, in which the internalized norms, formal and informal institutionalized feedback and professional self-discipline ensure objectivity and impartiality/independence. The shared socialization in law of judges means that judicial interpretation "is not a function of a single judicial or lawyerly mind, acting alone"; it is collective or community-bound" and the interpretive criteria are "elaborative intersubjectively, among an interpretive community that is constituted by fidelity to law". These criteria are pubic and available as justification for a decision.[1]

Methods of interpretation are argumentations. Interpretive arguments can be classified in many different ways. German theory of legal argumentation has discussed the so-called canons of interpretation ever since the time of Savigny. Alexy distinguishes between six canons: The semantic argument concerns the linguistic usage of a term; the genetic argument refers to the intention of the legislator; the historical argument uses facts concerning the history of the legal problems under discussion; the comparative argument looks at different legal systems; the systematic argument examines the position of a norm or single term in a legal text; and the teleological argument considers the purpose, aims and goals of a legal norm.[2]

Legal science acknowledges, at least 9 (nine) types of legal interpretations: (1) *authentic interpretation:* interpretation arrived at by asking the drafter or drafting body what the intended meaning was; (2) *comparative interpretation:* A method of statutory construction by which parts of the statute are compared to each other, and the statute as a whole is compared to other documents from the same source on a similar subject; (3) *customary interpretation:* interpretation based on earlier rulings on the same subject (4) *extensive interpretation*: A liberal interpretation that applies a statutory provision to a case not falling within its literal words. (5) *grammatical interpretation:* Interpretation that is based exclusively on the words themselves. (6) *liberal interpretation:* Interpretation according to what the reader believes the author reasonably intended, even if, through inadvertence, the author failed to think of it; (7) *limited interpretation or restrictive interpretation:* An interpretation that is bound by a principle or principles existing outside *(8) logical interpretation:* Interpretation that departs from the literal words on the ground that there may be other, more satisfactory evidence of the author's true intention. - and (9) *unrestrictive interpretation*: an interpretation based on good faith, without refering to any other principles

4. Partialities in the Methods of Legal Interpretation

Each method of legal interpretation is partial in nature. That partiality refers to the certain aspect or part which is to be the focus of analysis of that method. The focus on the only one aspect or certain aspect tends to cause a bias in interpretation.[3] Beyond each methods or theory of legal interpretation, always there is a theory or philosophy as its background.

Grammatical method of legal interpretation, for instance, has the positivism theory as its background. The term "positivism" derives from Latin *positum*, which refers to the law as it is laid down or posited. Broadly speaking, the core of legal positivism is the view that the validity of law can be traced to an objectively verifiable source.[4] If legal interpretation is still based on the positivism, which only refers to the written law, then the interpreter will be trapped into the text literally, imprisoned by the law's sentences formulated, which in return would keep away *the sign* from *the signed.* Meanwhile, for the textualist who devout to the language of law, the most faithful interpretation is literal interpretation.[5] The stress on the authentic interpretation (elucidation of a Law) would entrap the interpreter to stop thinking, so that if the interpretor is a judge of a person sitting in a state authority, it would indirectly cause a "violence by a state" [6], and the fault which is continuously done would cause a continuous victim.

The method of historical legal interpretation or genetic argumentation has also been much criticized. This method is backed by intentionalism - a theory stating that legislative intent play a role in statutory interpretation, that legislative intent is the only legitimate source for statutory interpretation.[7] The endeavor to understand the drafter's intention is criticized because actually - the result – is not the intention of the drafter, but the intention of the interpreter themselves, so that the intention of the drafter is only used as a mask to cover that

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[1] Wendel, 2005:1190-1 in Hutton, *Op. Cit.,* p. 64.
[2] R. Alexy, *A Theory of Legal Argumentation, The Theory of Rational Discourse as Theory of Legal Justification* (Oxford, 1989), 233-44, in Klatt, *Op. Cit.*, p. 5.
[3] Berkhofer, Robert F., Jr. *Beyond the Great Story: History as Text and Discourse.* (Harvard: Harvard University Press, 1997), p. 39.
[4] Raymond Wacks, *Philosophy of Law*: *A Very Short Introduction*, Oxford: Oxford University Press, 2006, p. 18
[5] Klatt, *Op. Cit.,* p. 7.
[6] Wolcher,*Op. Cit.*, p. 9 compare with: Karlie Hanafi Kalianda, "Moralitas dan Peradilan Ditinjau dari Ilmu Hukum", in Sinta Dewi, dkk. (Eds.) *Perkembangan Hukum di Indonesia, Tinjauan Retrospektif dan Prospektif, dalam Rangka 70 Tahun Prof. Dr. Mieke Komar S.H.,M.C.L.*, Bandung: Remaja Rosdakarya, 2012, p. 371.
[7] Andrei Marmor, *Interpretation and Legal Theory*, Oxford and Portland, Oregon: Hart Publising, 2005, p. 120.

the actual needed is the intention of the drafter.[1]

Furthermore, what is meant by "legislator's intent" may cause difficulties at the descriptive level and justification level. At the descriptive level, the intentionalist must show that it is possible to identify both the "legislator" whose intentions are meant to count, and the kind of intentions which are potentially relevant to statutory interpretation. Legislator is not a single person so that we cannot say that the indivdual's intention is a group's intention.

The more radical version of that sceptic stance may be taken to be representative[2]: 1) intention is a mental practice. It is only those possessing certain mental capacities who can be said to form intention; 2) a group of people as such, as opposed to its individual members, does not possess a mind, only individual people have the requisite mental capasities to form intention; and 3) unless there are determinate ways of identifying certain individuals whose intention represent the intentions of the group, no intention can be attributed to a group of people. The sceptic rejects the idea of this group intention.

Therefore, it must be distinguished between the idea of "group intention" and "shared intention", which is the relevant concept here. The former is purportedly the intention of the group, organization, etc. But the idea of "shared" intention involves no such ontological perplexities. But this is not so simple. Attributing shared intentions to a group is not a purely quantitative matter of counting, as it were, how many members of a given group happen to share a certain intention (*majority model*)[3]. But statutory interpretation in a modern legal systems presents a special problem in this respect as "the legislator" is often not a single person, but a whole legislative body composed of numerous members. Still there is a problem about whether the majority is based on comprises those who voted for or against the bill or those who share an intention with respect to the particular issue at hand. the people who agree with the bill, or the people who have the same intention.

Meanwhile, if the vague norm is asked to the drafter, the interpretation of the drafter cannot be certain in explaining the actual intention, as stated by Lord Halsbury: "*The worst person in the world to interpret a statute is the draftsman of a statute, because he was likely to be unconsciously influenced by what he meant rather than by what he had said".*[4]

At the level of justification: why is it ever a good reason to defer to legislative intent, even if there is one. Whether the applicability of the doctrine is confined to certain kinds of case, or applies whenever a legislative intent bearing upon the issue at hand can be discovered. The following question is: granted that legislative intent constitutes a reason for decision in a given case, how strong of a reason is it? Should it replace all other, potentially conflicting, reasons for decision, only some of them, or none? How should it be weighed against such other, potentially conflicting, reasons for decision – it is a very weak reason, binding upon judges only in the absence of other good reasons for decision, or is it a very strong one, not easily overridden by other types of reason?[5] Thus, to reiterate, we can say that the question of justification comprises three main issues: why should legislative intent be a reason for decision, in which cases, and to what extent? This method of legal interpretation stresses only on the historicity if the text or text archeology (*mens auctoris*), whereas law has also contextual – contemporer character.

Systematic Method of Legal Interpretion has the textual in a broad sense as the background, because this method only stresses on the coherence of textual-linguistic and forget the coherence of non-linguistic character. Whereas the teological-sociological method of legal interpretation only focuses on the contemporarity of the text and forget the historicity of it. This would cause the interpretor to trapped on the "dictator of majority".

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[1] Saulius Geniusas, *Death of the Author and the Question of the Legislative Intent*, New School University, Department of Philosophy, Graduate Faculty of Political and Social Sciences, p. 6. Bandingkan juga: Klatt, *Ibid.,* p. 7: "*For American textualists, for example, statements of purpose tend to be vague and encourage judges to follow their own policy views under the guise of 'discovering' the legislator's 'intent'. These scholars, then, emphasise the priority of the text in order to delimit judicial discretion*." The same thing is stated by Dworkin, that *moral reading*, it should be avoided an interpretation that gives authority only to the judge or to the originalism which makes interpreting constitution too much rendered on the drafters who have been pass away, *see*: Ronald Dworkin, *Freedom's Law; The Moral Reading of the American Constitution,* Cambridge, Massachussets: Harvard University Press, p. 14.

[2] Andrei Marmor, Loc. Cit.

[3] Maccallum, Jnr., G.C. "Legislative Intent" in R.S. Summers (ed). *Essays in Legal Philosophy*, 237 – 73, Blackwell, Oxford, 75 Yale LJ (1966), p. 745, in Marmor, *Op. Cit*., p. 125.

[4] Klatt, *Op. Cit.,* p. 8. Compare with the statement of Lord Watson in Ross Charnock, *Lexical Indeterminacy: Contextualism and Rule-Following in Common Law Jurisdiction,* in Anne Wagner, Wouter Werner, and Deborah CAO. *Interpretation, Law, and The Construction of Meaning: Collected Papers on Legal Interpretation in Theory, Adjudication, and Political Practice.* AA.Dodrecht, Detherlands: Springer, 2007, p. 21., that "*Intention of legislature" is a common but very slippery phrase, which, popularly understood, may sign intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it.*

[5] Marmor, *Op. Cit.,* p. 120.

Authentic interpretation, which focuses in the description of the legislator as the institution having the authority, actually has the same idea with the intentionalism which seeks for the intention of the legislator. The stress on the authority of the legislator would neglect the reality that the legislator is only one of many parts or "moments" from the whole process of interpretation, it is only concern with the "mens auctoris". It would cause the linguistic positivism and be trapped into the *fallacy of argumentum ab auctoritate* – an argumentation which refers to the one having authority, or into *argumentum ad baculum* – an argument relies in the phisical force protecting it.[1]

The extensive method of legal interpretation only stresses on the gramatics-linguistics and neglect the interpretor as the part of interpretation. This would be dangerous because the interpretor would fall down into linguistic positivism becaue actually there is ni extention at all but an endeavor to seek for the extention of the words interpreted. The same danger happens also to the restrictive method of legal interpretation.

The literature shows little or no interest in the question, partly be- cause the literature is largely uninterested in positive questions of any sort (with honorable exceptions), and partly because of a pervasive assumption that changes in interpretive doctrine are the products of changes in variables exogenous to the interpretive system. Interpretive change, when it is discussed at all, is approached through two major styles of explanation, both of which share the exogeneity assumption. The older style of explanation treats the history of statutory interpretation as a subfield of the intellectual history of the law or even of intellectual history generally. On this view, changes in interpretive doctrine are caused by conceptual or ideological change in the wider society by the spirit of the age. A newer style of explanation depicts interpretive doctrine as an equilibrium reached in a sequential game among lawmaking institutions. On this view, changes in the institutional equilibrium result from exogenous disturbances, such as a string of judicial appointments or an election that changes the composition of the legislature. Together, the intellectual-history approach and the political-equilibrium approach suggest that changes in interpretive doctrine are the product of exogenous causes, so nothing interestingly general can be said about the pattern of change, absent some large- scale account of political or social change itself.[2]

On the other hand, Victoria F. Nourse said that we have penal procedure, private procedure, administrative procedure, but we have no legislation procedure. This causes serious consequences in the field of statutes interpretation. Supreme Court and courts use routinely invoke to the history of the statute when there is ambiguity. Even textualists suggest that legislative history be a reference to determine the meaning if there is a vagueness. Because nor legal scientists or legal practitioners debate on this matter, in fact, *legislative history* is used. But the question is: how the legislative history is used? "[3] Next, civil and criminal procedures are studied, but there is no curriculum at faculty of law provide legislative procedure. It reflects the failure of the standard of curriculum. So there is no wonder, generally legal scientist reads the record of legislative history through the ways as they have never read the court's opinion or court's records.[4]

Stanley Fish posed that it is impossible to understand a statute without reading the law making process, because statements in that statute is the actions which are intended by the maker. However, this statement is challenged by Jeremy Waldon, that it s impossible to know the true intention of various people and interests.[5] That is why Victoria F Nourse does not agree with the term "intention", because "intention" refers to many parties and it distorts "legal debates" in intellectual experiments. She tends to term it as *Legislative Decision*, not *legislative intent*).[6]

5. Conclusion: Comprehensive Interpretation is Needed

Reviewing each method of legal interpretation, it can be conclude that each concept of method of legal interpretation is partial in nature. If the partial methods – which is backed by certain theory – be used, the result will be partial. All partiality existed in the interpretation method reinforces the urgency of a comprehensive method of legal-interpretation, which does not reduce the wholeness as well as ignore the part, which in turn result in a partial justice (injustice), partial benefit (profitable for certain party), and partial certainty (ambigue decision).

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[1] Bryan A. Gardner (Ed.), *Black's Law Dictionary* (seventh edition), St.Paul Minn, 1999, p. 102
[2] Adrian Vermeule, The Cycles of Statutory Interpretation, The University of Chicago Law Review, Vol. 68, No. 1 (Winter, 2001), p.152.
[3] Victoria F Nourse, A Decision Theory of Statutory Interpretation; Legislative History by the Rules, The Yale Law Journal, 122:70, 2012, p. 71.
[4] Victoria F Nourse, *Ibid*., p. 73.
[5] Stanley Fish, *Play of Surfaces: Theory and The Law;* dalam Legal Hermeneutics, History, Theory, and Practice, 297, Gregory Leyh, ed. 1992, 300-01.
[6] Victoria F Nourse, The Yale Law Journal, A Decision Theory of Statutory Interpretation; Legislative History by the Rules), 122:70, 2012, p. 83.

Legal science is a part of human sciences, and human being is its object. So, legal interpretation is rather than "reading" (only practicing what is written/*erklaren*) in the texts, but understanding (*verstehen*) the horizon of meaning of the texts for the sake of human dignity. How the creative and inovative process of legal interpretation should be done so that the legal interpretation makes the law becomes "for the sake of human being", not only for "the text itself", where it begins and where it ends, must be continuously developed, and it would be the concern of legal science. The consistency of legal interpretation to a legal text need legal scientist's role to guard the interpretation. For that reason, it is needed a comprehensive interpretation, so the partiality attached to each legal interpretation method can be solved.

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