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Legal Policy on Trade Facilitation Agreements as a Basic for Legal Policy Development

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Abstract

Global Competitiveness Report 2016-2017 released data on port competitiveness in Indonesia is ranked 41st, come down from previous ranking which was 47th. To increase port competitiveness in Indonesia, Indonesia Government ratified Trade Facilitation Agreement (TFA). Context that is claimed in the trade facilitation substantial is the one of the great mainly components on the wheel of Indonesia's economics and the one of economy development key factors (key word) form particular country. This key factor involved the procedure of maintaining the international products progress, thus it would be more efficient. In the field of economic and business, regulation strategy that is related to the trade facilitation is used upcoming port legal politics to increase the capacity of Indonesia in drawing up and implementing the trade facilitation policy.

Keywords: port, trade, facilitation, legal politics.

1. Introduction

Global Competitiveness Report (Schwab & Salai-Martín, 2016) studied about the port problems in Indonesia. It revealed that the port competitiveness in Indonesia in in the 41st rank, decrease from the previous position was 47th. Indonesia position is lower than Singapore, Malaysia, and Thailand. The weakness of port in Indonesia is the infrastructure and superstructure quality. In 2018, Indonesia is in 45th position out of 140 countries in the Global Competitiveness Index (2018). The index was released by the World Economic Forum (WEF). Previously, Indonesia was ranked 47th in the index. Indonesia recorded an overall score of 64, meaning that Indonesia was superior compared to Mexico in position 46th, Philippines (56th), India (58th), Turkey (61st), and Brazil (72nd). Nevertheless, Indonesia's competitiveness index lost compared to Malaysia (25th), Russia (43rd), and Thailand (38th) (Schwab, 2018).

Regarding the problem against port, it is very crucial, complex and not ease to be identified with certainty, given that development in the port from regulation to business activities always change at any time. Surely, the role of ports is vital in the Indonesian economy, the presence of adequate ports plays a major role in supporting the mobility of products and people in this country (Tentowi, 2016). Ports are the most important factor to connect between islands and

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countries. However, ironically, the condition of ports in Indonesia is very terrible. Almost all ports in Indonesia are out of date.

Regulation to manage port in Indonesia is very urgent to be recovered immediately, concretely even deconstructing the regulation contained in Law No. 17 of 2008 concerning shipping. The current Government Regulation No. 69 of 2001 is derived from the Shipping Law. The reason why there should be urgent regulation in this port sector is caused by prioritizing regulation that can ensure the element of certainty and fairness will be easily reflected in the port structure.

Through 4.0 industrial revolution, many economy experts who predict that logistic market in 2013 would be the one of the biggest industries in the world, ports in Indonesia has still lower competitiveness than others. It can be happened because the author's observation considered that logistic cost that is still expensive and dwelling time is still high, and it is one of the main causes.

Nowadays, Indonesia is in ASEAN – Economic Community (AEC), (ASEAN Economic Community Blueprint 2025 Jakarta: ASEAN Secretariat, November 2015), thus the improvement of national logistic operational performance must be improved. Collaboration between government and national private sector is an important determinant in construction to build competitiveness of national logistic operational system. Compared to another ASEAN country, Indonesia is relatively low in terms of the logistic competitiveness system. The financial benefits of the ASEAN Economic Community (AEC) 2015 cannot be optimal. Forming commodity price at the consumer level is determined by logistic costs, both product logistics costs and input logistics costs.

The author's observation as businessman in the port has several facts that are in the spotlight of the World Bank worthy of being used as evaluation material in improving the performance of the current and future logistics systems. Henry Sandee stated that logistic cost per 55 kilometers (Kms) in Indonesia is needed around 550 USD, whereas in Malaysia is needed around 300 USD. The cost of shipping one container from Jakarta to Singapore is 185 USD, however the same indicator for shipping Jakarta to Padang costs up to 600 USD. The high logistics costs are not only influenced by the age of the transportation equipment, the factors such as the size of the ship and the condition of the port, but also the factor of the high cost of logistics. Indeed, there are a number of factors that affect logistics, such as ship size and port conditions.

Henry Sandee explained that there are six indicators that can be measured on Logistic Performance Index (LPI). Six indicators are infrastructure conditions, border agency performance, ship availability, and ease of tracking products. Based on survey, Indonesia did not qualify for two of the six factors such as infrastructure condition and performance of the agency at the border. Then, there are further consideration, World Bank released the Logistics Performance Index (LPI) in 2018. This index has a function to measure the country's logistical and economic performance in every 2 years. Meanwhile, components that are measured include customs, infrastructure, international freight forwarding, logistics quality and competency, tracking products, and timeliness.

The port has a very strategic important role for industrial and trade growth as well as business segment that can contribute to national development. This has consequences for the management of the port business segment so that operation can be done effectively, efficiently, and professionally. This can make the port services become smooth, safe, and fast at an affordable cost.

The services that are given to the port are basically the services against ship and service to cargo (products and passengers). The academic point of view sees it as part of the sea transportation chain, the function of port is a meeting place (interface), two modes of transport or

more and interfaces of various interrelated interests. It can be also said as a line (link) which is one of the links in the process of transportation from the place of origin product to the destination. This will be the gateway (gate), namely as the gateway of a country, where each ship that visits must comply with the rules and procedures that apply in the area where the port is located. The port also functions as an industrial entity, and it means that the port has an important role in the development of the industry of a country/region that is generally oriented to export activities (Putra & Djalante, 2016).

The author's field observation found that there is unsynchronization or unharmonization between one policy and the others in the port. Therefore, it causes law enforcement to sectoral or partial, legal uncertainty becomes an obstacle. It can make people's welfare is hindered to be able to enjoy the convenience of economic activities. There are many port inefficiencies, inadequate infrastructure, and the absence of logistical laws that will cause high logistical costs. The complexity of the bureaucracy has the effect of reducing the competitiveness of ports in Indonesia. It causes the main vessels to choose ports in Singapore and Malaysia, where the administrative management is more efficient and effective. The absence of a law, especially regulating ports, considering that currently Indonesia has approximately 2,000 ports that are already operating.

Empirical facts prove the gap between reality (*das sein*) and hope, what aspired is (*das sollen*), in terms of trade facilitation, such as promoting increased customs and cross-border cooperation between various countries, with the implementation of provisions under the Trade Facilitation Agreement (TFA) of the World Trade Organization (WTO). For instance, the partial implementation of Trade Facilitation Agreement (TFA) can reduce trade costs in the Asia region by up to 5% every year, whereas implementation completely will result in a 9% reduction in costs – equivalent to a savings of \$2,019 billion every year (Asian Development Bank, 2017).

In addition, there is also an online delivery order (DO) service, which until now is not suboptimal and been felt by business people. Implementation of online delivery order (DO) is only the movement of products data from shipping to terminal operators which has actually been done for a long time. Currently, the redemption of online delivery orders (DO) to shipping companies runs on a small portion of large shipping companies and has not been integrated in one system. Government efforts to reform and develop the Indonesia port sector are also seen in several Economic Policy Packages (PKE) as accelerated Trade Facilitation Agreement (TFA). This trade facilitation is a member of WTO and it will be very profitable for Indonesia. Indonesia which in fact is a developing country will get trade facilities from other member countries.

2. Theoretical design

Trade facilitation (TFA-WTO) nowadays is getting a various places and studies, either economics, politics, law, social, or culture. Through the Law Ratification No. 17 of 2017 concerning Ratification of The Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization (Protocol to Amend the Marrakesh Agreement), finally trade facilitation (TFA-WTO) is legally enforced for Indonesia.

Trade facilitation aims to create conducive system related to products expenditures from the custom area. Thus, trade facilitation agreement is ease of procedure. Article V, VIII, and X the General Agreement on Tariffs and Trade 1994 concerning Free Transit do not be able yet to be the answer of products transit problems such as the products transit progress is too long, the administrative costs are expensive, and the process of moving products is slow. Article VIII of the General Agreement Tariffs and Trade – 1994 concerning Costs and Import-Export Formality is also not be able yet to be a solution of tariffs and cost problem in the custom area. In regard to the article X of the General Agreement Tariffs and Trade – 1994 concerning Publication and Administration of Trade Policy which are deemed necessary to be regulated further is concerning

the information disclosure. It is unclear what kind of information can be informed and what type of information cannot be informed. In addition, there is a lack of information about Laws and Regulation changes.

Agreement on Trade Facilitation (TFA) is not claiming about the definition of trade facilitation, either explicitly or implicitly. In essence, trade facilitation is an effort to facilitate the custom procedures, namely transferring, shipping, and licensing of products. WTO only explains that trade facilitation is a simplification and harmonization of international trade procedures, which includes activities, practices, and formalities involved in collecting, presenting, communicating, and processing data required for the products movement in international trade. Electronic Business also confirms trade facilitation as: “The simplification, standardization and harmonization of procedures and associated information flows required to move goods from seller to buyer and to make payment”.

International Chamber of Commerce (ICC). According to ICC, the definition of trade facilitation focuses on the improvement of process efficiency related to the comprehensive approach and integrated to simplify and decrease the transaction of international trade cost as well as ensure that all relevant activities is done efficiently, transparently, and predictable, based on the norms that is accepted internationally, on standard, and the best practice. Regarding trade facilitation, there are 4 things that supposed to be as indicator. These four indicators are including: port efficiency; custom area; policy area; and the use of electronic transaction. According to the Organization for Economic Co-operation and Development (OECD), trade facilitation is influenced by some factors, such as:

- (1) Availability of information, whether in the form of publishing data through the internet; or other media;
- (2) Participation in the trading community;
- (3) Advance rulings, namely the provisions for determining the requirements for traders, both regarding classification and product originality;
- (4) Appeal procedures mean the process that can be taken to raise the objections to the administrative policies or border officers;
- (5) Fees and chargers imposed on export-import activities;
- (6) Formality documents is as a form of administrative harmonization requirements based on the international standard;
- (7) Formalities-automation: electronic data exchange; automated border procedure; and use of risk management;
- (8) Formalities-procedures: streamlining of borders controls (simplification of border controls), one-stop integrated services for submission of all required and authorized economic operators;
- (9) Internal cooperation is cooperation between one authority and others in the context of tax system supervision;
- (10) External cooperation means the cooperation of state regulation with neighboring countries and third country;
- (11) Governance and impartially related to the structure and function of custom.

The provisions in the Trade Facilitation Agreement (TFA-WTO) are in line with the direction of the Welfare State concept. It can be seen from the policy and reformation spirit of Indonesia economy in the field of trade facilitation. Benefits that are expected of the applying of Trade Facilitation Agreement (TFA-WTO) for Indonesia trade in accordance with the concept of Welfare State are as follows:

- (1) Smooth and increasing trade in traditional and non-traditional products export markets;
- (2) Reduction of logistic and trade cost paid by businessman;
- (3) Increasing export for Micro, Small, and Medium Enterprises;
- (4) Increasing transparency of export import process.

Indonesia has improved the port efficiency and customs. But it still necessary to be conducted further improvement. Indonesia's Logistics Performance in accordance with 2014 Logistic Performance Index still lags behind other countries, even with the Southeast Asia region. Various obstacles obstruct thee national logistic condition. Dwelling time at the port is still high which is 3-4 days, while in other countries are only 1 day. Logistic cost that reaches 24% of the total GDP or Rp1,820 trillion per year makes Indonesia's logistic costs as the highest in the world because the industry is not competitive. Not only about that, but also logistic system that provides convenience for Small and Medium Industries (IKM) and not supported the existence of export commodity exchange. Various burdensome and unclear administrative procedures also contribute to the delays in import and tend to do corrupt behavior which could reduce the competitiveness of industries using imported components.

3. Discussion

Port legal politics can be seen by Law No. 17 2008 about the cruise that port is everything that related to the implementation of port functions to support the smoothness, security, and orderliness of ship, passenger and/or good traffic flow, sailing safety and security, intra and/or intermodal transfer sites as well as encourage the national and regional economy to pay attention toward territorial layout. This legal politics is implemented by Government Regulation (PP) No. 61 2009 concerning port. The main topic of legal port politics is the smooth flow of products. The main purpose is reducing the dwelling time.

Several things that has already been conducted in the port legal policy including: (1) the Ministry of Transportation has issued Port Operational Service Performance Standards in 100 commercially operate ports, based on Regulation of the Directorate General of Sea Transportation No. HK 103 / 2 / 18 / DJPL – 16 and No. HK 103 / 4 / 7 / DJPL – 16 for 61 ports that have not been commercially cultivated; (2) the working pattern in the port is applied at the Harbor 24/7. The initiation of open port service operation 24/7 is a good thing and should be appreciated, because it has a positive impact on many parties, it can be done because an integrated manner; Port has already been determined online Delivery Order system, this system is implementation of the Minister of Transportation Regulation (Permenhub) No. 120 2017 concerning Electronic Order Delivery Service Online (DO). In order to give ship and product services effectively and efficiently, that involved the institutions and stakeholders in the port through an integrated internet-based single service system or Inportnet system. This is in accordance with Permenhub No. 157 2015 concerning the Implementation of Inportnet for Ship and Port Services, which has been updated with PM. No. 192 2015 concerning Amendment to Permenhub No. 157 2015 concerning the Implementation of Inportnet for Ship and Port Services.

There is an implementation weakness of port legal politics today. For instance, 24/7 service has not yet run 100 percent. In this case, not all K/L has operationally fully applied the 24/7 services. For instance, shipping companies through their agencies serving export-import transportation at the port only operate Monday-Friday with operational hours until 16.00 WIB every day. Thus, the activities redemption of delivery order (DO) on shipping time is limited.

This condition is still reasonable because this policy is new and facing many obstacles in the field. Therefore, the improvement and adjustment will be needed in the future. One of factors that influences is the aspect of coordination that has not been in line between the parties involved. It is needed to synergize all related parties simultaneously in the effort of improve them. Besides that, the 24/7 implementation was still hampered by banking activities that were not operating during this time, Inportnet was not yet integrated with INSW, and DO Online was not yet integrated in one line.

Regarding the acceleration of Trade Facilitation Agreement (TFA), the relationship with port legal politics that Trade Facilitation Agreement (TFA), as decreasing or reducing of non-

tariff barrier. The substances consist of trade transactions, transparency, and professionalism of customs and excise, and the regulatory environment as harmonized with standardization and converted to international provisions or regional provisions.

The main purpose of Trade Facilitation Agreement (TFA) is improving the global trade by expedite the movement, expenditure and licensing of products in and out (movement, release, and clearance of goods), including those in transit (transit). In regard to legal port politics, Trade Facilitation Agreement (TFA) can be used as an effort to regulate the smooth flow of goods in and out of ports in a fast, cheap, and easy way. Hence, the international trade can be increased and price formation occurred profitable for consumers (Suryana, 2016). Trade Facilitation Agreement has 4 indicators. Those are port efficiency; customs environment; policy environment; and the use of electronic transaction equipment.

According to the Organization for Economic Co-operation and Development (OECD), trade facilitation is influenced by several factors, such as (OECD, 2018):

- (1) The information either data publication through internet or others;
- (2) Trade community participation;
- (3) Advance rulings, namely the provisions for determining the requirements for the traders, either classification or product originality;
- (4) Appeal procedures that mean the process that can be taken to raise objections to the administrative policies or border officers;
- (5) Fees and charges imposed on export-import activities;
- (6) Documents-formalities as a form of harmonization of administrative requirements based on the international standard;
- (7) Formalities-automation (formalities-automated): electronic data exchange;
- (8) Automated border procedure, and use of risk management;
- (9) Formalities-procedures (stream formalities): streamlining of borders controls (simplification of border controls), one-stop integrated services for submission of all required documents;
- (10) Post-clearance inspection, and authorized economic operators;
- (11) Internal cooperation that means the cooperation between one authority and another authority in the context of tax system supervision;
- (12) External cooperation that means the cooperation of state regulation with neighboring countries and third countries;
- (13) Governance and impartiality related to the structure and function of customs.

Trade facilitation as written on Bali Package Agreement if we associate with port facilitation, then it has been in line with the port policy in Indonesia, for instance trimming costs at the port, simplifying procedures and permits, dwelling time, standardizing port performance, DO online as well as improving and increasing the port facilitation. The main point between port facilitation and trade facilitation can improve the smooth flow of goods and services through the simplification of export-import procedures in the port, as one of efforts to improve competitiveness.

The explanation above can influence the flow of international trade. Trade facilitation also includes transportation cost that can be seen from the distance factor between exporter and importer countries as well as supporting infrastructure. In December 2013 WTO conducted the negotiation agreement about trade facilitation that was discussed about the obstacle that still can be found such as type of documents, procedure on trade partner country borders, and customs

fee. This is focused on completing the producers that are considered complicated which hamper export and import activities between countries.

As a basic explanation above, Trade Facilitation Agreement (TFA-WTO) with port facilitation can be seen as the relationship between politics and law. As same as justice perspective theory that reanalyze the basic problem based on politics philosophical study by reconciling between the principle of freedom and the principle of equality. Surely, there is similarity principle between countries which ratifies it in the trade facilitation. Hence, quality principle before the law can be used as a reference to obey the trade facilitation as an improvement to port facilitation.

Another context claimed that the more prosperous civilization, the more economics justice based on the purpose of law, so the law will be easier to be updated (law reform). It means that the harbor is healthy, providing many opportunities for justice, then the establishment of maritime law will be easily realized.

While legal order is conceptualized as only a subsystem that supposed to be functional in a supersystem that is called society (port society), so the development process and development of society to realization of a new political society (port politics) absolutely on efforts to re-function the law as institution that should be considered strategic in social-politics. Legislation process emphasizes on the process of new national port law realization. The process of integrating the law for realization the new law without being denied is part of a progressive and reformative political process.

Port and trade facilitation are tools, so legal order that would be formed can be functioned as a tool of social engineering whether it is activated by judicial processes (as Roschoe Pound claimed) or by legislative processes (as introduced by Mochtar Kusumaatmadja for Indonesia development practice) (Kusumaatmadja, 1976).

The reformative function which is as a tool of engineering often still discussed in its limited concept as legal reform in Indonesia. It means that port legal politics is limited to legal reform or renewal of the act. It must literally be interpreted as a renewal in the system of mere legislation. The answer of this problem is very clear, which is in the renewal of the updated law.

Legal politics surely has important meaning because every law that was created, every law that was applied in the society, should be acceptable in the society. It is supposed to rule by the right law (Karim, 2013). Legal politics is used to reveal the changes that is necessary to be issued to the law to fulfill the new needs in the society. As the theoretical foundation in Chapter II, the author uses Political Theory of Law. It can be applied in legal politics of renewal of Law No. 21 1992 towards Law No. 17 2008 concerning shipping.

Legal politics manifested in the kind of living together with society. In other words, legal politics are closely even almost integrated (integrated, systematic) with the use of power in reality (social and legal reality), to regulate the state, nation, and people. Political law is manifested in all types of state legislation. The use of this legal political discourse is actually to support the mandate and ideals as set out in the 1945 Constitution Article 33. This context shows that the economic constitution in substance Article 33 1945 Constitution was born from the socio-context historical independence revolution. Economic decolonization from the colonial to the national constitutes the legal politics paradigm of economic Constitutional Law Article 33 1945 Constitution.

This paradigm makes countries to be active in the economics. It is same as the prosperous country concept that is written on economy Constitution Article 33 1945 has changed in the reformation era, which initiated a fundamental shift in the direction of the Indonesia economy towards economic reform by incorporating the paradigm of liberalism in the constitution.

Political Law No. 17 2008 concerning shipping which regulates port issues is stipulated in Government Regulation (PP) No. 61 2009 concerning port. According to the author has explained in Chapter II that legal politics as stated in Law No. 17 2008 concerning shipping can be found in the consideration as follows:

- (1) The Unitary State of the Republic of Indonesia (NKRI) is an archipelago that is characterized by an archipelago united by vast territorial waters with boundaries, rights, and sovereignty stipulated by the Law.
- (2) To achieve national goals based on Pancasila and 1945 Constitution of the Republic of Indonesia, realizing the archipelago's insight and strengthening national security, a national transportation system is needed to support economic growth, regional development, and strengthen national sovereignty.
- (3) Shipping which consists of transportation in the sea, port, safety and security of shipping, and protection of the maritime environment is part of the national transportation system that has to be developed for its potential and role to realize an effective and efficient transportation system, and to help create a national distribution pattern steady and dynamic.
- (4) The development of national and international strategic environment demands the implementation of shipping in accordance with the development of science and technology, private participation and business competition, regional autonomy, and accountability of state administrators, while prioritizing shipping safety and security in the national interest.

Political Law that is contained in point No. 3 above, that the discussion on port needs to be specifically regulated is as contained in Government Regulation (PP) No. 61 of 2009 concerning Port. In the legal political substance of the Shipping Law, it implies that the Port / PT. Pelindo, as a State-Owned Enterprise (BUMN), as well as a Port Business Entity (BUP), is under the authority of the Port Authority (OP) as an authority that carries out control, regulation and supervision. However, in the reality of legal life in the port this is not progressively done, there is something called the polemic of interest, pulling withdrawing authority and banging lower rules on the authority given by the act.

The existence of law in every area of daily life, both the steps taken, decided or the policies of the Government must be suitable with the values that live in the community (the living law). The concept of law can be interpreted as lines of legal policy formed by a legal society. This contains a sign that the law must be rooted in and for the community (David Nelken, Eugen Ehrlich, Living Law, and Plural Legalities). Determination of this concept is an initial stage that is very important for the process of forming, implementing, and developing the law of a society. Its importance lies in the potential possessed by a legal concept, which in turn is the basis and orientation for a legal implementation and development process.

The purpose of establishing (positive) law is fulfilling the basic needs of the whole community and as a legal social tool clearly serves, as a guiding principle, as a means to safeguard people's needs and as a social control system. According to Kusumaatmadja (2006), it was explained that the law has a dimension to support national development through legislation specifically designed to mobilize development by mobilizing and motivating people as actors of development, including relevant government apparatus.

Law in this context means that community reforms (law reform society), which is based on the assumption that the existence of order in the business of development and renewal is a desired or deemed necessary. Another assumption that is contained in the legal conception which means of renewal is that law in terms of rules or legal rules can indeed function as a tool (regulator/regulation) or means of development in the sense of channeling the direction of human activity in the direction desired by development and renewal.

Through the legal paradigm, both sociological, philosophical and positivism (legist), of course justice, order is the main purpose, while the development of law is the impact of achieving the objectives of the law. All the objectives of the law are reflected in each of the joints of life, in this case, the author has not seen the points that the purpose of the law can be achieved carefully. Why has not been achieved, one example of which is a legal goal that is not achieved in Law No. 17 of 2008 concerning shipping.

4. Conclusion

Substantial that is written on the port legal politics can be reflected in the Law ratification No. 17 of 2008 about cruise. Legal politics is supported by any devices such as: Port Operational Service Performance Standard in 100 commercially-operated ports; 24 hours seven-day week-long work program (24/7 program) is implemented, and the online Delivery Order (DO) system has been implemented as well as internet-based single service system is integrated or the Inportnet system. After that, The International Security Code is applied at the port to ships and port facilities (the International Ship and Port Facility Security Port – ISPS Code). This political legal device has function to support the 4.01 industrial revolution in the port. Related to the acceleration of trade facilitation agreement based on justice, it is the same as 1945 Constitution in Article 33 (verse 1, 2, 3, 4) and Law No. 17 2008. Justice and certainty legal value is reflected in simplification, transparency, standardization, harmonization of procedures, and international trade documents that must be supported by the smooth flow of products and port efficiency under the coordination of the Port Authority (OP).

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New Concept of Personality Rights in Romanian and French Law

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Abstract

Under the name of personality rights can be defined those rights inherent to the quality of person belonging to any individual by the very fact that he/she is a human being. Since they are rights which are attached to the person, the concept has found its origins even in antiquity, in the form of theatrical masks, in Christianity of the Middle Ages and up to the Modernity of contemporary thinkers. The concept of “personality rights” can be clearly found in the art. 58 of the Romanian Civil Code, which stipulates that “every person has the right to life, health, physical and mental integrity, dignity, an image, respect for private life, as well as other similar rights recognized by law”, and they are not transmissible. However, the French Civil Code does not regulate these rights equally clearly, but interprets them from the contents of civil rights and human body regulations, correlated with the chapters governing the examination of a person's genetic characteristics and the identification of a person by its genetic fingerprints, and brain imaging techniques.

Keywords: personality rights, bioethics, right to private life, dignity.

1. Brief history of the concept of “person”

1.1 In antiquity

The notion of *person* comes from Antiquity. The Greek word *prosopon* designates the face or the image. Over time, it became a “theater mask” referring to the idea of a person acting and speaking. It coexists alongside the words *anthropos* (man in general) and *soma* (successively the body, then “the animated individual, after anchoring the psyche to the *soma*, sometimes provided with a legal entity”). The Latins introduced an additional concept, *individuum*, which designates the human subject. But they continue to talk about *Homo* (the man in general), *Caput* (legal personality) and *Persona* (mask). With Cicero, the word *Persona* assumes the fullness of the person's meaning and ontic dimension and the term ends up by imposing itself.

By signifying “the concrete individual, encountered every day in his proximity and indivisibility”, *Persona* integrates both the role of an individual in justice, and also his social role, his collective reality or dignity, his remarkable personality or his dignity, the legal person as opposed to things, the personality or concrete character of an individual and the philosophical

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notion of a person or human nature, whether strictly individual or rational. *Persona* thus gradually becomes “a concrete, individual, indivisible, measurable and unique individual”.

1.2 *The influence of the Christian middle ages*

With the emergence of Christianity, the notion of person is considered to be in accordance with the dogma of the Holy Trinity, one God in three persons. After the Council of Chalcedon in 451, it is then redefined as the principle of identity and unity, a definition that will prevail in the Middle Ages. In the 6th century, Boethius defines the person as “the individual substance of a reasonable nature”. For Thomas Aquinas, on the same line, it corresponds in the 13th century, “to be as he lives, rather finding in another than in himself the support of his existence,” a definition that prefigures the modern concept of self-consciousness. Thus, we have progressively moved from an ontological conception of the person, widespread in ancient Greece and Rome, to an ontological conception devoted to the Middle Ages, which refers to the person as “a concrete existence, the object of a quest for its intrinsic nature”.

- From the ontological concept of the Person, modern authors come to a subjective conception (referring to the subject) of the person.
- The rights of personality are in tandem with bioethics.
- The evolution of personality rights is constantly influenced by the evolution of medicine and science.
- In the Romanian system, the concept of personality rights is expressly defined in art. 58 of the new Romanian civil code.
- In the French system, the concept of personality rights is not expressly regulated, but it is interpreted by the civilian regulations.

1.3 *Modern age*

“Moderns can smell objectivity traps containing a monolithic substance”. They then complement the concept of person with new dimensions. In his famous *Discourse on the Method*, Descartes proposes the notion of subject, *Cogito ergo sum*. According to him, the subject is what makes the thought appear. By thinking, the subject assures his personal existence and discovers his certainty through methodical doubt. Through action, the Cartesian subject exercises its free will.

Kant influences the Cartesian concept of the subject by introducing the notion of “moral” subject. It is “the autonomy that forces the personality of the moral subject, assures his dignity, making him able to become the lawmaker of his own law and to further fulfill his duty”.

Hegel will help evolve the concept of person by introducing the notion of relational subject. Therefore, it highlights the “inevitable conflicts among subjects, allergic to each other, and the struggle for recognition”. He states that the original experience is not that of the thinking subject, but it is constituted through the interaction of the other’s view of the “Ego” and the confiscation of its radical otherness. He also adds the “principle of relational differentiation”.

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1.4 *Contemporary thinkers*

Emmanuel Mounier proposes in the 20th century a constant dialectic between the person and the community, opposed to individualism, existentialism and the Marxism of the time. Here we can find the fundamental notions of the body, interiority, liberty, generosity,

commitment, etc. In Mounier's opinion, "the person is a being capable of responding to interpellations of events, a being who must, through engagement," assume responsibilities "within a community of people". The person is therefore constantly in contact with his environment, and the interaction with it defines him as a person.

Gabriel Marcel develops the concept of person distinguishing between the individual – the Ego – of the person. According to him, the Person encompasses and exceeds the Ego, and the individual is only a "Static Element (...) of (...) others whose views reflect (...) the ideas received in his environment". He distinguishes the person from the individual by saying that "specific to the person is not only to consider, to appreciate, to face, but to assume". In other words, the person is directly confronted with a given situation and is actually committed. Gabriel Marcel also brings the notion of availability as an "ability to offer oneself to what it is presented and to link oneself to the donation". He affirms the importance of commitment and responsibility to others: "affirmation of the person requires faith in the existence of others and recognition of responsibility for his actions in a real society".

Starting with *Emmanuel Levinas*, the human becomes first and foremost an ethical subject, before thinking of himself as being rational, subject to a commitment or being altruist. The ontological dimension goes on the second plane to make room for the central concept of the image. While the person is conceived as a "mask borrowed from the being," "the image" is the transcendence of the person. The ethical relationship occurs when it transcends the surface or the image of people, if it is "de facto" about the plastic form (ontological, social or legal mask) in order to "re-create the image and maintain its essential ambiguity". This ethical relationship makes it possible to "perceive the singularity, the invisible depth" and the vulnerability of the other. It testifies the dignity of others by "giving the due respect".

Paul Ricoeur insists, in the meantime, on the person-community relationship and that between "thought and action". According to him, "the person is in a situation of crisis caused by conflicts of values". He proposes a philosophy of the person approaching the acts of speech – such as expression, communication and language – the moral ethos – such as self-esteem, solicitude, and fair institutions. He also suggests an ethical purpose, such as a good life together and for others in fair institutions (*les institutions justes*).

These contemporary thinkers brought, beyond the subjectivity of the Modern authors, the notion of the Person involved in the community, where the action is guided by a moral or ethical order.

As *Lucien Sève* remembers, medical professionals in the exercise of their profession can meet during their experience of confronting the others, three dimensions of the Person: the biological individual, the subject endowed with personality and the human person. Difficulty occurs when these three realities may not coincide perfectly. Lucien Sève thus offers every man a value in itself².

1.5 *The impact of modernity on personality*

At first glance, for individuals, the legal person appears at birth and disappears with death. In many ways, this is only an approximation, especially because of the uncertainty between life and death, absence and disappearance. For millennia, birth and death have discovered the nature, for centuries, medicine has healed people and protected life by helping nature, never by distorting it. Contemporary medicine has changed mentalities. Science (often to improve the quality of life) and individual wills (to satisfy personal desires: the child's desire, the desire for life

² G. Maujeana, b,d, & B. V. Tudrejč, d, La notion de Personne, évolution d'un concept. In: *Ethics, Medicine and Public Health* (2016), 2, 319-321. <http://dx.doi.org/10.1016/j.jemep.2016.04.007>

and the desire to die) intend to have power over procreation and death. Will humanism resist in such conditions?

Medicine has seen considerable changes in recent years: life can be transmitted in a different manner than the one nature knows, quality of life can be appreciated before birth through prenatal or pre-implantation diagnosis, life can also be saved by prenatal transplantation or transformed by gene modification, and survival can be provided by artificial manners, biological destiny, identity and secrecy of the genome can be perceived and discovered in their true meaning.

Nowadays, man has the technical power to modify the human genome by transforming his own species. The law sets out a rather religious and philosophical principle than legal: “no one can harm the human being”, then sets out three prohibitions by condemning “eugenic practices”, “reproductive cloning” and genetic alteration, but allowing, for example, the conception of hybrid beings, the so-called “mythological or medieval monsters”.

The quality of life is a vague notion; in the current language it means a “beautiful life” that includes feelings of happiness, pleasure, love, youth, good luck, beauty, intelligence, success, etc. In law and morality, there is no question whether there is a choice that can be made between suppressing life and its quality. In this situation, three contradictory answers can be imagined:

- (1) Utilitarianism (or the morality of happiness): keeping a patient alive will not be acceptable unless survival is viable³;
- (2) The autonomy of the will: every ill person is free to decide his fate, and to the extent that he is lucid and informed, he has the decision to live or die (objection: what are his lucidity and information?)
- (3) The absolute imperative of the sacredness of life (the Judeo-Christian tradition), no one can decide for someone else’s life, neither his nor someone else’s (objection: medically assisted procreation, obsolete coma, therapeutic anger leads to a case-law on what is allowed and what is being defended)⁴.

The bioethics issue is involved by several factors: biological (whether medical or environmental), the individual as a bio-psycho-social entity, the stake of values and standards in force in a state.

If we look at the evolution of social values throughout history, we can see that ethics often appears before the law. In fact, many rules fall into disuse for losing legitimacy in relation to what society values as “self-regulatory” standards. There is a discrepancy between what the law says and what society claims to represent the norms for itself.

It is noteworthy that, to the extent that the rules are discussed and internalized by society, there would be no reason to violate them, since it would correspond to the rules that every individual wants and for whom each one is held responsible.

Since the problem of bioethics combines social values with individual interests and often self-referential behaviors that are allowed or not by the law, we can say that the link between the two disciplines is purely dialectical. For the Law, Bioethics can be a source of updating and

³ The term “viable” is ambiguous: Tolerant? Agreeable? The meaning of this expression and in this context refers to the existence of ill people whose life is not worth saving and for which neither money nor effort should be sacrificed. An example would be the decision to suppress the life of a malformed fetus, a child with severe deficiencies, or an old man, a good-quality child would rather deserve a chance than an infirm child. The objection: this is the thinking of eugenics or of Nazism. (Source: Philippe Malaurie, Laurent Aynes, *Les personnes. Les incapacités* [Persons. Disabilities], Defrenois Publishing House, Paris, 2007, 9-10).

⁴ Philippe Malaurie, Laurent Aynes, *Les personnes. Les incapacités* [Persons. Disabilities], Defrenois Publishing House, Paris, 2007, 10.

interpreting the norm in relation to individual assessments or the strength of society at a given time (without, therefore, excluding certain minimum principles inherited from Kantian ethics), and for Bioethics, the Law is an instrument that can reflect social or individual values in written norms, so that the same result works in the final requirement or final rules like those Rawls would call legitimate in a “well-ordered society”⁵.

The laws of bioethics come to untie and confuse at the same time the mysteries of life, their juridical-moral realm being quite difficult to penetrate under all their aspects into a society whose technological evolution is much faster than that of legal evolutionary regulations. The laws of bioethics come to offer compromise solutions to the detriment of moral issues widely debated by other sciences (religion, philosophy).

2. The new rights of the personality regulated by the new Romanian Civil Code

Under the denomination of “personality rights”, are qualified the rights inherent to the quality of human person, rights belonging to any individual by the very fact of being a human being. They mainly refer to the “protection of the physical and moral characteristics of the human being, to his individuality or personality”.

Without claiming a definitive definition, we will remember that these are the prerogatives according to which the holder is granted the faculty of enjoying and defending the essential attributes and interests of his person. Or, in another vision, the personality is the ensemble of goods (or values) that belong to a person from the simple fact of its existence: life, physical and psychic integrity, private life, etc., are also “properties” of personality. Each “property” of the personality corresponds to a right that each person possesses for himself.

The personality to which these rights refer is not limited to the technical notion of legal personality in the sense of being a subject of the law. The term wants to express more, namely: the human person as a whole, in his biological, psychological and social reality.

Personality rights can resemble extra-patrimonial rights because they do not have an economic content and do not integrate the person’s patrimony. Indeed, life, dignity, honor, right to an image, etc. cannot be measured in money; they are not goods in the strict sense of the term. In our doctrine, most authors classify extra-patrimonial rights in three categories: (a) rights that pertain to the existence and integrity (physical and moral of a person, the right to life, health, body integrity, the right to honor, honesty or reputation, the right to human dignity); (b) rights regarding the identification attributes of natural and legal persons (the right to a name, denomination, home, etc.); and (c) rights concerning intellectual creation, which means, those derived from the literary, artistic or scientific work and from invention⁶.

The definitions given to “the rights of personality” under the rule of the Romanian Civil Code of 1865 preserve its actuality. In the new Civil Code, the picture of the personality rights is practically improved by the legislative amendment of the old legislation (Decree-Law no. 31/1954), the non-patrimonial rights regulated by the Decree were, in fact, rights of personality, even if the law of that time did not name them as such⁷. Therefore, the new Romanian Civil Code introduces a new institution through Chapter II. “Respect for Human Being and his Inherent Rights”, from

⁵ Carlos Burger, *Ética y Moral. Principales teorías éticas. Ética, Bioética y Derecho / Moral and Ethics. Main ethical theories. Ethics, Bioethics and Law*. Visited 21 September 2018 at <http://muerte.bioetica.org/doc/doct23.htm>.

⁶ Ovidiu Ungureanu, Cornelia Munteanu, *Civil law. Persons in the regulation of the New Civil Code*, Hamangiu Publishing House, Bucarest, 2013, 44-45.

⁷ Calina Jugustru, *The right of persons. The right of obligations*, Hamangiu Publishing House, 2013, 3-4.

Title II “The Physical Person” of Book I. “About Persons” of the Civil Code (art. 58-81), the article 58 being the one consecrating the concept of “Rights of personality”.

It is the first time that a normative act expressly enshrines, in the Romanian law, the rights of personality. In a declarative way, the code mentions some of the prerogatives without pecuniary content closely related to the human person. First of all, in direct relation to the effects of biomedicine, there are rights that concern the integrity of the person; then follow the prerogatives closely related to the moral integrity and social relationship of the individual⁸. This change is mostly welcomed and especially the civil regulation of the bioethical aspects, Romania being among the inactive countries in the field of Bioethics, with a very low presence in the European and international debates in the field.

Old Romanian legislation prior to 1990, prior to the current Constitution, recognized as facets of the *right to private life*, the secrecy of correspondence and inviolability of the home, without mentioning anything regarding the respect for private life. After the change of the social and political context in Romania after 1990, the Romanian constitutional law had to absorb the international regulations in the field (Universal Declaration of Human Rights, European Convention on Human Rights, International Covenant on Civil and Political Rights) in order to officially protect private life⁹.

Also, the right to private life, often associated with the right to an image, was also regulated by special laws, such as the Audiovisual Law no. 504 / 2002 or the Law no. 677/2001⁶³ which aim to “safeguard and protect the fundamental rights and freedoms of individuals, in particular the right to intimate, family and private life, regarding the processing of personal data”, being the first Romanian law regulating the issue of private life in the information society¹⁰.

Through their specific emphasis, personality rights, in tandem with Bioethics, bring modern connotations to moral rules, medical practice, and biology. By manipulating the most intimate prerogatives of the human being, Bioethics leaves its mark on the essential characteristics of the human being. Since some legislation already have a long standing in the regulation of Bioethics and the confluence between law-biology-medicine and morals, Romanian law must become more energetic and more adaptable to changes in order to be able to keep pace with new scientific developments that could influence social, moral and biological nature of the individual and for the state to be able to create valid protection instruments for this individual.

Therefore, adapting to facts that can no longer be ignored, including through wider provisions in special laws in the medical field, is imperative¹¹.

3. Regulation of personality rights in French law and classification of these rights by the doctrine

Apart from some theories of the last two decades of the 19th century, which focused more on the philosophy of law than on positive law, the theory of personality rights emerged in France only at the beginning of the 20th century. *Perreau* is considered the first to define the expression in French law. In his famous article, published in 1909, in the *Quarterly Civil Law Magazine* titled “Rights of Personality,” *Perreau* defined a new category of non-patrimonial rights, those rights “whose main object is not that of foreign affairs”. Personality rights were *erga omnes*

⁸ *Ibid.*, 9.

⁹ Article 26, paragraph 1 of the Romanian Constitution: “Public authorities respect and protect intimate, family and private life”.

¹⁰ Institute of History, G. Barit” from Cluj-Napoca, Humanistica Series, tom. V, 2007, 325-340, last visited on 21 May 2019.

¹¹ Calina Jugastru, *Op. cit.*, 32.

and could not be valued in money, as a consequence, they were inalienable, imprescriptible and non-transferable and could only be exercised by the owner and not by anyone else.

Despite the increasing use of the expression “rights of personality”, it remained unclear at the time if these were true subjective rights. The most popular authors of this subject have denied the quality of subjective rights, such as *Nerson* – whose thesis entitled “Extra-Patrimonial Rights” has long remained the standard work in the field¹². This view is shared by *Roubier* in his famous study of “Subjective Rights and Legal Situations” published in 1963¹³. However, after the mid-twentieth century, the opinion that the rights of personality should be seen as representing a new category of subjective rights, has begun to gain ground. At that time, a proposal to amend the Civil Code was prepared, containing a chapter on the rights of personality. Even though this proposal was never adopted, it became obvious the importance that personal rights gained in the middle of the century.

Regarding the relevant casuistry in the field, in many of their decisions, the courts sanctioned the disclosure of details from private life or the publication of a picture taken without the consent of the person concerned, based on the dispositions of the article 1382 of Civil Code¹⁴, which states that: “any act of the men which causes damage to another, obliges the person by whose fault it happened, to repair it”¹⁵.

In fact, French law does not recognize a general right of personality but a general principle of personality protection that can be achieved through subjective rights for attributes that contain a certain “materiality” (name, image, voice, private sphere) and through offenses for other interests such as honor, dignity and feelings.

The rights of personality, in the traditional French conception, are extra-patrimonial rights that cannot be measured in money. Their purpose is to protect the individual in its individuality. This uncontested move to sell the human person, even if it is not a new element, seems to question the dogma of the extra patrimony of the personality rights. Since anyone can sell their image, voice, names or details of their private life, does that mean that, to some extent, the rights of personality have become patrimonial? Are there still rights whose use of personality attributes must be forbidden, or do they confer today the power of the owner to take advantage of the commercial exploitation of his personality?¹⁶

The French Civil Code regulates the rights of personality in Book I, Title I – Civil Rights, at Chapter II – Respect of the Human Body, Chapter III – Examination of a person’s genetic characteristics and identification of a person through his genetic fingerprints and Chapter IV – Use of brain imaging techniques, which we will analyze extensively in the thesis.

¹² In his opinion, “the rights of personality” only entitle the holder the right to sue somebody: “no one can speak of the right to one’s life or his integrity, his honor or his image, etc.” ...; before suffering loss or injury, the injured person protected by the provisions of the art. 1382 of Civil Code, has no *abstract right*; his right only occurs when the damage occurs”. Huw Beverly-Smith, Ansgar Ohly, Agnes Lucas-Schloetter, *Privacy, Property and Personality. Civil law perspectives on commercial appropriation*, Cambridge University Press, Cambridge, 2005, 151.

¹³ “These claimed rights of personality do not have the usual appearance of subjective rights, as there is no question of adapting elements such as image, honor, etc. which are not adaptable”. Huw Beverly-Smith, Ansgar Ohly, Agnes Lucas-Schloetter, *Privacy, Property and Personality. Civil law perspectives on commercial appropriation*, Cambridge University Press, Cambridge, 2005, 151.

¹⁴ See: Marlene Dietrich case, Bernard Blier case, Trintignant case, Gunther Sachs case.

¹⁵ Article 1382: “*Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé, à le réparer*”.

¹⁶ Huw Beverly-Smith, Ansgar Ohly, Agnes Lucas-Schloetter, *Privacy, Property and Personality. Civil law perspectives on commercial appropriation*, Cambridge University Press, Cambridge, 2005, 150-154.

French law evolved in the same sense as medical technology and science, the doctrine regrouping the rights of personality. One of the authors, *Philippe Malaurie*, grouped the rights of personality into two main categories: *Respect for physical integrity* – including references to physical integrity and to the respect due after death (sepulture), and *Respect to human dignity* (including respect for private life, the right to free speech, the right to an image, the right to an honor, the right to a secret).

One of the most important French lawyers of the 20th century, *Jean Carbonnier*, claims that the doctrine varies with regards to this expression – the rights of personality – or often with regards to the equivalent expression of *primordial rights*, prerogatives which are sufficiently precise in terms of their object in order to be qualified as subjective rights and provided by way of legal action. Among the ones we order as ordinary in this category, is the right to life, the right to a name, which we have met before, because they are also subject to other aspects of law; but here are three, which may be rights of the personality by excellence, and that go together, as though they were part of the same immateriality.

The right to one's own image – by virtue of this right, recognized by the jurisprudence, a person may object to third parties, without express or tacit authorization from him, reproducing his portrait, namely taking pictures or filming it.

The right to honor – notion which implies two phenomena, a psychological and a social one. Honor is the feeling a person has to be irreproachable in morals and in law and the fact that he is considered such by the others (global society or a restricted circle).

The right to dignity – appeared later in the 1990s, coming from Germany. More than in the first two previous cases, the bypass made by subjective law seems superfluous.

The issue forming is that, before imposing on others the respect for dignity, everyone must take care of their own dignity. It is enough and it could be much clearer, the ban on all violations of human dignity. It is what the first bioethical law has done under the article 16 of the Civil Code at the same time as the New Criminal Code, which devotes an entire chapter to such violations. Between honor and private life, however, it is difficult to structure a specific domain for human dignity. It is likely that the body is again involved, and body posture; if we make a synthesis, we would reasonably ask whether the issue of respect for the human body is of current interest. In the rich doctrine that welcomed the emergence of the right of dignity, an opinion detaches itself which is already present through deontology, between the patient and the physician and, more generally, through the social function of lifting protection from the excess of a science too prepared to classify the human body¹⁷.

4. Conclusion

Current debates on bioethics would have more to gain by opening to the history of the conception of the human being, which is a part of the history of the Christian Occident. This conception, of which we are the heirs, is that of the *imago Dei*, the Man created according to the image of God and called in this way to impose himself as the master of nature. Like Him, the human is a unique and indivisible being; like Him, he is a sovereign subject endowed with the power of the Verb, as He is, in the end, a person, an incarnate spirit.

But, created by the image of God, man is not God. His unique greatness does not derive from himself, but from his Creator, and he shares it with the other people. Here's where stands the ambivalence of the three attributes of humanity that are: individuality, subjectivity and

¹⁷ Jean Carbonnier, *Droit civil. Les personnes* [Civil right. Persons]. Presses Universitaires de France, Paris, 2000, 148-150.

personality. As an individual, each person is unique, but at the same time just like everyone else is. As a subject is sovereign, but also tributary to the common law, as a person he is not only spirit but also matter. This anthropological ensemble has survived the secularization of Western institutions, and the three attributes of humanity are found in their full ambivalence, in the Declaration of Human Rights. The reference to the Divinity has disappeared from the Right of Persons, without, however, losing the logical need to confer on every human being a Guarantor of his Identity which symbolizes the prohibition of treating man as a thing¹⁸.

From the point of view of the relation between the personality-subject of Law and the State, one can observe juridical values that predominantly preserve the ethical society: state security, community property, attributes of the person. On the other hand, there are legal values that preserve mainly the legal personality: human rights, personality, autonomy of will, citizens' freedoms. Nowadays, the values that predominantly preserve the ethical society are immanent to the normative or circumstantial legal system, specific to a normative legal system. Instead, the values that predominantly preserve the legal personality are only circumstantial, because their form and content have historical variability determined by the changes and transformations that take place in the process of social development. They are, however, under the sign of the structural legal value immanent to the legal system, which confers them a historical time¹⁹.

Thus, the concept of personality rights appears differently regulated in the Romanian system and the French system. If in the Romanian system the rights of personality are regulated in the chapter dedicated to the respect for human beings and their inherent rights, there is no article in the French system that defines or encompasses the name of personality rights, as they are found in the chapter on civil rights, the chapter on respect for the human body as well as the chapter that regulates the examination of the genetic characteristics of a person and the identification of a person through his genetic fingerprints, as well as the use of brain imaging techniques.

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¹⁸ Alain Supiot, *Homo Juridicus. Essay on the anthropological function of law*, Rosetti Educational Publishing House, Bucharest, 2011, 49-51.

¹⁹ Popescu, Gabriel, Gheorghe Mihai, *Introduction to the Theory of Personality Rights*, Romanian Academy Publishing House, Bucharest, 1992, 54.

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New Romanian Civil Code

French Civil Code

Romanian Constitution

Universal Declaration of Human Rights

European Convention on Human Rights

International Covenant on Civil and Political Rights



Improving Higher Education in Europe Through Main Managerial Laws – The Case of Greece

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Abstract

In this paper a comparative approach between the laws of the Greek state concerning higher education and main managerial laws is attempted, trying to examine whether they can be applied, but also contribute to the improvement of the existing structure in Greek universities. An analysis of Greek laws that came into force in the last 30 years in order to improve higher education in Greece is initially attempted. These laws were introduced so as to improve higher education in Greece, but also to harmonize, quantitatively as well as qualitatively, with the wishes and needs of the employees involved, i.e. professors, students and administrative staff. In parallel, Deming's theory is presented and examined as a one which focuses on improving business structures in companies and organizations.

Keywords: higher education, managerial law, Deming's theory, Greek university.

1. Introduction

Greek universities have become the field during the past decades, of a constant implementation of new laws which were adopted through these years by ministers and their staffs in order to change, partially or generally, many of the existing data and lead to minor or major changes in the way they operate. It is a fact that every organization, institution or enterprise must be adjusted to any new data of the era in which it operates, in order to improve and provide significantly improved services to citizens served by them.

The question is whether known management theories worldwide, those that have proved that they can actually help the improvement of many organizations – not only educational – are consciously adopted and ultimately help to improve the functioning of the institutions concerned. In the following lines the correlations between individual laws and the Deming's principles are examined.

The big question is whether these higher staffs know from the inside what is going on in Greek universities and if they can establish laws that really improve the functioning of these institutions. Often, higher staff who implements new laws does not know the Greek educational reality and simply implement what they are asked to do, by some leaders of some institutions or regions to which they belong (Nova-Kaltsouni, 2010: 153).

2. Methodology

Our first step was to read many scientific texts on the management and more specifically related to organization. We focused on the theory of Deming, because the principles contained therein have helped many countries and organizations to improve, up to a maximum level, their overall production process (Montana & Charnov, 2009: 347). We compared the content of the laws related to the changes of structures and services in Greek universities, with the aforementioned theory.

Along with research in law articles and sources, we studied articles of university professors in prestigious media, which offer a direct and timely analysis of the phenomena of Greek education, focusing on issues of quality of higher education. Some of them are former ministers, so their opinion is weighty (Kremastinos, 2013: A49).

Our analysis was based on two parameters. On the one hand, and at first, we studied all laws adopted by the Greek governments over the last 30 years, related to educational issues. We analyzed them in depth, in order to realize their objectives in relation to the desired result, but also to the existing social conditions.

Our third step was to attempt comparisons so that to see whether new laws are related directly or indirectly with it and the principles it contains. We wanted to see if the proposed laws include simply some nuggets from Deming's theory and if scientific theories about organization may ultimately help Greek education.

The last step in our methodological approach was to find and analyze whether these laws are related directly or indirectly to Deming's theory and the principles it contains. Since we broke the Deming's principles in four categories, we attempted to build four corresponding tables which facilitate and demonstrate those correlations. They were then analyzed and explained so as to draw a comprehensive and centralized result of our research.

2.1 *Basic aspects of improving quality in universities*

Every human activity concerning education at all levels should be characterized by a high degree of quality. The last word has several interpretations and any involved party of education system, from the smallest student to the relevant minister, interprets it as they want. By the term "quality" in education and by a common opinion, we mean optimal working conditions for teachers and administrators as well as the high degree of knowledge transfer to pupils and students.

These two cases (working conditions – high degree of knowledge transmission) are interlinked, because if the first is not at a high level, may adversely affect the latter, as well as *vice versa*. Saying "working conditions", we mean buildings and educational equipment, as well as the relationship between wages and hours of working.

The situation in Greek universities concerning high quality has always been – by the viewing of all ministers who have served it – an attempt to modify it, in order to improve it, according to what they thought about the concept of improvement. But often their ideas run completely contrary to the beliefs of all kinds of employees or professors in higher Institutions (Kremastinos, *op. cit.*: A49).

This controversy led to many dangerous rifts between the two sides, to the point of risking sometimes even the function of the institutions. The disagreements ranged from the fact that the top executives of the Ministry always have a technocratic opinion, while teachers, administrators and students a human-centered and more close to the situation within the institutions.

The laws enacted during all these years from behalf of these executives, had to do with three main issues: (1) the implement of rules related to the way of the central organization of universities, (2) the way and amounts of annual funding, and (3) about engagement and staff development (Kladis & Panousis, 2004: 113, 161, 179). In that way, more practical and serious problems were not examined such as the mode of instruction, examination methods, the degree of satisfaction of students by professors, especially the relationship between final knowledge and requirements of society. We must mention that the first two do not ever interest senior executives who enact laws.

These problems led us to a big question about what constitutes quality in higher education and if it can be calculated. Can we measure it based on some variables? For instance, can we delineate it based on degrees and publications of all levels of the professors themselves? Can we measure it by the number of graduate students, in which are also included doctoral students? Or maybe we should put as first criterion the quality of teaching within the university halls? (Kladis & Panousis, *op. cit.*: 161-163). Is it quantitative or rather qualitative the criteria of creativity and inspiration within universities? And how much these criteria are affected by technocratic economic theories about organization?

2.2 Basic management theories

A great amount of the action for quality, including specialized techniques to improve quality has been affected by W. Edwards Deming (Montana & Charnov, *op. cit.*: 395). He was an American economist who worked in several countries and offered a great contribution in improving production of goods and services in many public and private enterprises. He established a number of principles, which were adopted by many organizations, leading to a vast improvement of their productivity (Kotler, 2000).

Deming formulated certain principles which should be followed by managers to lead their organizations to a quality target. We found that no other economic theory is so close to the education and the specific conditions prevailing in this as the Deming's principles (Sarmaniotis, 2005: 329).

The same author felt that the "persistence in a purpose", combined with statistical quality control, will lead to a continuous quality improvement. Additionally he believed that the job board of high level administrative staff is to find and correct the causes of failure, more than to identify the mistakes and failures as they occur. Deming summarizes the philosophy on three basic principles:

- Insistence on quality;
- All in a group;
- Use of the scientific method.

The most important of these principles are:

- Get rid of the barriers that deprive employees the pride in their work;
- Open communications and break down barriers between different departments;
- Do not rely on mass inspection to detect defects. Instead, use the statistical checking to be sure that the quality is created through the services offered;
- Eliminate labor levels defining live numerical proportions;
- Adopt a new philosophy of quality without delay;
- Identify problems whether they consist of faulty systems or employees and correct them;

- Improve continually your services so that to improve the competitive position of your institution;
- Enhance and streamline the monitoring methods;
- Get rid of fear from the workplace so that everyone can work productively;
- Use modern methods of education and training over labor;
- Establish a dynamic training programme;
- Eliminate numerical goals, as a way of mobilizing the employees. Instead give them methods to achieve these goals.

2.3 *The legislation concerning Greek universities*

Legislative changes introduced in Greece after the fall of the dictatorship in 1973 (milestone year for the Greek society because it went from authoritarianism to democracy) and relating to the operation and improvement of the structures of higher education are the 1268/1982 (Kladis & Panousis, 2009), 2083/1992, 3549/2007 (Nova-Kaltsouni, *op. cit.*; Lakasas, 2012: 8) and 4009/2011 (FEK A' 195/6-9-11).

The fourth one has sparked great debates and conflicts among all actors of modern Greek education and is essentially the component and the effect of fermentation of all above mentioned laws.

All tried to change for the better the situation in Greek higher institutions, but they did not achieve many goals, because practice has shown that in a society that is constantly changing and transforming, education system can't adapt quickly and easily, even based on successive laws, voted for its own interest (Lakasas, *op. cit.*: 8). In just 30 years four (4) different laws were established and a large number of individual amendments to the three original, which complicated the data, rather than simplified. Some modifications are also contradictory to the previous laws, instead of improving or enhancing them (Filios, 2013).

Often the new Education Laws in Greece come not to improve standards in higher education, but to install new institutions or rules that simply facilitate their operation rather than improving it. Facilitating the function is an adaptive measure to the new state of affairs and not a one that improves quality.

The main achievement of recent laws (namely 4009/2011) is the foundation of ADIP (Archi DIasfalisis Piotitas – Quality Assurance Agency – Q.A.A), which is the instrument that controls the level of quality in higher education in Greece.

Specifically, all professors in higher education institutions in Greece are required to complete each year an identical form on the Internet, which contains the record of all their scientific works per year (G.O. A' 195/6-9-11). Their responses are transferred to a central network and are grouped in order to find, on one hand, the total number of all works classified by department and by institution, and also the average quantitative activity of professors.

Simultaneously, through the same system, it is required by all students to give their opinion about the quality of teaching, as well as about the services offered by the administrative staff. All these (student opinions – scientific studies of professors – administrative services) are couched in the form of Q.A.A. basically in a quantitative way, rather than qualitative. Results give an overview of each department, spherical and technocratic, rather than specific and in a human scale.

2.4 Managerial principles in the frame of Greek legislation

The first finding by the study and comparison attempted is that none of the higher administrative staff who elaborated respective laws, has ever mentioned publicly, even indirectly, any of the above names of international prestige economists associated to the improvement of management in various workplaces (according to the study and analysis of official notices in the press by representatives of the Greek Ministry of Education, 1998-2012). This proves that these officers either do not want to admit their ignorance on the principles of modern management, or do not reveal the fact that they actually resorted to these principles, even by simply reading them.

The second finding is that although some of the relevant laws have a small even relation compared to the Deming's principles, this is rather indirect or coincidental.

The following tables show the relationship between the Deming's principles to the above laws.

Table 1. Internal issues of quality

A. DEMING'S PRINCIPLES	B. CORRESPONDING LAWS	RELATION A - B
Adopt a new philosophy of quality without delay	4009/2011	great
Identify problems whether they consist of faulty systems or employees and correct them	4009/2011	average
Eliminate labor levels defining live numerical proportions	None	-
Open communications and break down barriers between different departments	1268/1982	small
Get rid of the barriers that deprive employees the pride in their work	None	-

Two laws dealt with internal quality issues, the last 30 years, and by the five principles of Deming mentioned above, only three are associated to these laws. And although the 4009 Law has large and middle relation with two corresponding Deming principles, the other, that of 1982, has a very small one.

The fact that no law was interested in numerical ratios and harmful working levels (even as a simple reference) shows that in the Greek universities prevails quantity at the expense of quality, and in parallel, the general interest is the mass production of graduates rather good knowledge provided to them. These references also concern the figures of professors and administrators.

Only two laws are related to issues of quality in education, that of 1982 and the one of 1992, but the relationship to the principles of Deming are from small to medium in size. As mentioned above, the training of professors pass only through participation in conferences and writing articles, not at all by improving their capacities within university halls.

Table 2. Training issues

A. DEMING'S PRINCIPLES	B. CORRESPONDING LAWS	RELATION A - B
Use modern methods of education and training over labor	2083/1992	small
Establish a dynamic training programme	1268/1982	average
Eliminate numerical goals, as a way of mobilizing the employees. Instead give them methods to achieve these goals	none	-

Improving quality of teaching can be realized thanks to attending seminars related to the transmission of knowledge and new pedagogical methods, particularly in regard to teacher-student relationships, both within auditoriums and academia in general, as well. But none of the above mentioned laws adopt something similar, so the quality of education remains low.

Table 3. Control Systems

A. DEMING'S PRINCIPLES	B. CORRESPONDING LAWS	RELATION A - B
Enhance and streamline the monitoring methods	3549/2007	great
Do not rely on mass inspection to detect defects. Instead, use the statistical checking to be sure that the quality is created through the services offered	4009/2011	average
Get rid of fear from the workplace so that everyone can work productively	None	-

As regards control systems, the beginning was in 2007 with the 3549 act and having great relation to the Deming's principles, but the effort was restricted in 2011 with a mid-sized relationship between law and Deming's principles. The statistical tests reported by him are not analyzed or supported by that law, who submits checks rather technocratic than in a human scale.

Fear, concerning the educational process, is not existing of course in the Greek Universities, but we find this concept in other levels, such as securing the jobs of administratives and, in a second hand, of professors. Many were the references in Greek media about these problems the last two years and many members of the academic community are now out of work because of the absence of relevant laws, those who knock fear and provide a certain level of security that will lead to an increase of quality work.

Only the latter act, the one of 2011 is attempting a correlation between the internal and external environment of universities, trying to give impetus to the improvement of all academic institutions, regarding their competitiveness with other institutions. However, here also the law does not use largely the Deming's correlative principle, leaving universities to compete themselves with others abroad, without clear results.

Table 4. Correlations with the external environment

A. DEMING' S PRINCIPLE	B. CORRESPONDING LAW	RELATION A – B
Improve continually your services so that to improve the competitive position of your institution	4009/2011	average

Competitiveness here does not mean that the universities within and outside the country will try to outbid each other in numerical level, but that they will be able to reach each other for scientific purposes only, in order to achieve exchanges of knowledge and experiences, which will lead to a better position in the Greek and the world map ranking quality of these institutions.

3. Conclusions

Known worldwide management theories have proven that they can actually help the improvement of many organizations – not only educational – but they finally are applied only minimally in the case of Greek higher education. The relationship between Deming’s principles and laws of the Greek state is infinitesimal or non-existent.

The careful reader of laws relating to the improvement of the situation in Greek universities can easily notice some small correlations with the principles of Deming, but also easily understand that this is rather random or relevant from a general academic knowledge of managers on the principles of management.

Greek state is trying at times to provide incentives for increased quality in the Greek educational institutions at all levels and for all involved in this, employees or students.

The quality is measured initially with some quantitative criteria (number of degrees before the intake, number of publications, etc.), but mostly with some endogenous factors, such as the quality level of teachers in the classroom, satisfaction of students from these, the relationship between final knowledge and social reality.

The fact that just in the year 2011 the Greek state reported quality issues and wanted to deal in depth with this, means that Greek education goes very slowly. The main reason for that is that the way it works is mechanistic and based on a formal, we would say, bureaucratic process.

The fact is that a broader and deeper knowledge of the Deming’s principles will allow a better implementation by the occasionally leaders of the Ministry of Education and would help in a more scientific approach to improve the quality of higher education in Greece, which will have a direct impact on the overall situation of society in this country.

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