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THE LINGUISTIC FUNCTION OF THE EXPLANATORY MEMORANDUM TO THE SUBMISSION OF A BILL TO A LEGISLATIVE ENTITY

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ABSTRACT

The research investigates the linguistic function of the explanatory memorandum of the law, coordinating it with that which the law recognizes as that of its prescriptive language. Through bibliographic research, the study adopts the method of Logical-Semantic Constructivism, using the categories of legal norm, source, system and legal fact, as well as the categories of language: enunciation, enunciation-enunciation, enunciation and enunciation-enunciation. The answer will contribute to deciding whether or not the law enacted from the bill has a defect of validity in the cases in which its semantic construction is dissonant with the explanatory memorandum, also specifying the relevance of these motivations to the positive legal system.

Keywords: Speech Acts. Explanatory Memorandum of the Law. Normative Interpretation. Prescriptiveness.

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INTRODUCTION

Among the legal rules for the drafting of normative acts under the competence of the bodies of the Executive Branch is the explanatory memorandum of the authority proposing a bill to the legal procedure that leads it to the edition of the prescriptive statement valid in the system, that is, the reasons for introducing a rule into the legal system.

The explanatory memorandum of a bill or explanatory memorandum of the law is the object of legal-scientific incursions, taken as an object to identify its linguistic function in comparison with the language of positive law. Such a perspective is opportune, even, for the confirmation of validity defects in the legal norm, a hypothesis in which its construction of meaning is dissonant from the explanatory memorandum, awarding the relevance of this text to positive law.

Some questions show a path to research: is the text of the explanatory memorandum a normative text? Are the statements of the bill linked to the statements of the explanatory memorandum? And are the legal statements that derive from the bill as a basis for validity – because they result from the legislative rite that links them – linked to the explanatory memorandum? If not, what is the value of an explanatory memorandum to the presentation of a bill to the legal system?

The expressive dedication made by the Complementary Bill (PLP) No. 68/2024 to the explanatory memorandum for the submission of a draft normative act to a legislative entity for its conversion into law, renews the interest of scientific research on the subject of the nature of the explanatory memorandum, to elucidate the scope of this text in the legal order of society.

The legal scientific research on the explanatory memorandum of the law, as a text that travels the roads of the Brazilian legislative process, in addition to consolidating whether or not there is a legal communication in the Brazilian legislative process, will unveil whether this textual part has a legal value with the legislated product.

Thus, it will contribute to deciding whether or not the law enacted from the bill has a defect of validity in the cases in which its semantic construction is dissonant with the explanatory memorandum, also specifying the relevance of these motivations to the positive legal system.

Through bibliographic research, the study adopts the method of Logical-Semantic Constructivism, using the categories of legal norm, source, system and legal fact, as well as the categories of language: enunciation, enunciation-enunciation, enunciation and enunciation-enunciation, with the objective of coordinating the linguistic field of the text of

the explanatory memorandum to that which the law recognizes as its prescriptive language, in the light of this method of studying law.

SPEECH ACTS AND THE EXPLANATORY MEMORANDUM OF THE LAW

The theory of speech acts has its bases in the works of JOHN LANGSHAW AUSTIN.[3] Any speech act, even if simple, is a complex reality, with many dimensions, which presents itself as a communicative expression that produces utterances, that is, enunciation. Speech acts, therefore, are acts of enunciation, and, in law, they are the acts of enunciation aimed at the production of legal statements. Therefore, they consist of legal decisions as a conduct-process of decision-making, of choosing/reasoning what will enter the legal system as a prescriptive statement.

In the same vein, FABIANA DEL PADRE TOME (2016, p. 310) says of the decision-making act: "*The decision-making act, being the creator of the legal norm, presents itself as a speech act, a communicative expression that produces statements, that is, enunciation".*[4] PAULO DE BARROS CARVALHO (2015) also refers to the enunciative activity of the legislator (in a broad sense) as an act of speech in law[5].

From the perspective of a product, the legal decision consists of the positive law itself, thus escaping the field of enunciation. It is concluded that the conduct-process of legal decision-making embodies the enunciation aimed at the production of legal statements. It is the source of law, and, as such, will result in the legal decision-product, which embodies the legal statements, the law itself.

Certainly, the diverse semantic possibilities of the term legal decision, whether as a process or as a product, should be highlighted, because only in the former does it have a correlation with speech acts in law. It is clarified that, although without prescriptive force, the decision-process is said to be legal because it refers to a conduct in the manner authorized by the legal system: it is made by a competent agent, in the form, procedure and content provided for by law. [6]

Taken in a performative aspect, the legal decision consists of a norm of systemic amplification, as it applies norms of conduct. The normative acts established by the judicial

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[3] *Apud* OLIVEIRA, Manfredo Araújo. Linguistic-pragmatic turnaround in contemporary philosophy. São Paulo: Loyola, 1996.

[4] TOMÉ, Fabiana Del Padre. Proof in tax law. 4. ed., São Paulo: Noeses, 2016 – chapter 7, item 7.3 – Theory of speech acts and the judge's decision (p. 310).

[5] CARVALHO, Paulo de Barros. Derivation and positivity in tax law, by Paulo de Barros Carvalho, vol. I, São Paulo: Noeses, 2011 - Theme I. The preamble and the constitutive prescriptiveness of legal texts. (p.6)

[6] *Law arises through legal decisions." [...] "It is the speech acts, understood as enunciation, the conducts that characterize decision-making, the result of which are the normative statements placed in the legal system."* TOMÉ, Fabiana Del Padre. Proof in tax law. 4. ed., São Paulo: Noeses, 2016 – chapter 7, item 7.3 - Theory of speech acts and the judge's decision. (p. 309)

or legislative authorities (in the broad sense) are embodied in instruments that introduce norms, produced in the course of the enunciation process. The decision-making content, therefore, consists of a statement-statement, bearers of a statement-statement proper to the jurisdictional or legislative activity[7].

The enunciation (decision-process) is linguistically registered in statements (decision-product). The distinction necessary to give prescriptive force of the right to an utterance is reserved for the term enunciated to the linguistic register of the act of enunciation that has not yet been inserted in the legal system, and the term enunciation-enunciate to the linguistic register of the act of enunciation that demarcates the content of the decision-making product. And the term enunciation-enunciation will express the linguistic legacy of the decision-making conduct: the tangible marks of enunciation.

In relation to concepts, we can define enunciation as all human (physical) activity of producing utterances, in a process of language creation. The *enunciation-enunciation* are the marks of person, space and time of the enunciation projected in the utterance. The *utterance-utterance* is the part of the text devoid of the marks of the enunciation, and the utterance is conveyed by the enunciation-enunciation[8].

Therefore, by adducing to the linguistic categories of enunciation, utterance, utterance-utterance and enunciation-enunciation, the law observes, in summary, that: (i) enunciation is an activity related to speech acts aimed at normative production; (ii) utterance is the linguistic record of this activity; (iii) enunciation-enunciation is an enunciation of a normative document whose linguistic function is to register the enunciation, which can be referred to by enunciation marks; (iv) statement-statement are the prescriptive statements that are products of the statement that appear in the core of a normative document as its substantive content: the legal statements.

It is the legal decisions-process that absorb, in the end, the choice of authority in a tangle of legal statements, respecting the form and procedure prescribed by law for the creation of norms, so that, in a path that generates meaning, the positivization of legal norms can result.

The legal system establishes rules for the drafting of normative acts, including propositions of a legislative nature initiated within the scope of the Executive Branch and subject to the signature of the President of the Republic, such as bills and provisional measures.

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[7] MESSIAS, Adriano Luiz Batista. Theory of the legal norm: concretizing interpretation and tax relations. São Paulo: Noeses, 2020. (p. 284)
[8] *Ibidem.*

Article 59 of the Federal Constitution sets out some of the forms for legislative introduction, reserving, in its sole paragraph, the matter of the elaboration of laws to the complementary law. Complementary Law No. 95, of February 26, 1998, applies to the determination.

In the example, a bill is approved or not in view of the statements intended to be converted into law. But the legal system also requires the wording of a pre-textual part in the text of the proposal.

Article 3 of the complementary law provides[9] that a law will contain three basic parts, including what it calls the preliminary part to the normative part. That is, a pre-textual part of the normative provisions, but which are necessarily also normative, as statements that structure a law, so norms in a broad sense.

Therefore, the full text of a bill includes a so-called pre-textual part, where the text of the explanatory memorandum of the authority proposing the bill is positioned. In this, voters are made aware of the factual assumptions of real life that justify the legislator's will to introduce prescriptive norms in society, and are therefore essential for legal decision-making.

Enunciations in law are made by those who are given legislative competence by law, who present them because they express their competence, because they emit an intention to someone, and because this is how someone receives a message.

The raison d'être of positive law is the existence of prescriptions that regulate man's intersubjective conducts with a view to his stabilization and, therefore, to social peace through the stabilization of conflicts. Therefore, the reasons for the existence of the proposed law should confirm the intended reasons for the existence of the law, by provoking the voting agent to insert protection to certain objectives for which values are materialized within society, through the jurisdicization[10] of statements, all in view of that given moment, and taking into account the history of society.

In this context, it is important to clarify that speech acts can assume three functions of language, which are distinguished by the communicative intention and the desired effect on the interlocutor: locutionary, illocutionary or perlocutionary. The act of being locutional is its linguistic dimension, in which it expresses something through a linguistic set, a code of

[9] Article 3 The law shall be structured in three basic parts: I - preliminary part, comprising the title, the summary, the preamble, the statement of the object and the indication of the scope of application of the normative provisions; II - normative part, comprising the text of the rules of substantive content related to the regulated matter; III - final part, comprising the provisions pertaining to the measures necessary for the implementation of the rules of substantive content, the transitional provisions, if applicable, the validity clause and the revocation clause, when applicable.

[10] Legality refers to that which carries a legal value, since it is already considered a prescriptive text of the positive legal system.

communication, such as a certain language, a noise or gesture; illocutionary refers to the specific intention of the sender in pronouncing it; and, perlocutionary to the effect that the sender desires with the receiver of the speech act. [11]

The speech act in law is multidimensional in its linguistic function. It should be noted that, when enunciating the explanatory memorandum of the bill, the legislating entity does not intend a merely rhetorical discourse, but aimed at its approval for the discipline of intersubjective conducts in a society according to a certain objective, and for this reason it can be said that it is endowed with a strong perlocutionary dimension, although without the prescriptive force of legal language, Otherwise, it should be noted that the normative introduction is intended precisely because it is not yet a norm.

For this very reason, the enunciation of positive law, as it operates in the field of non-jurisdictional facts, is generally not subject to judicial control before the positivity of its enunciations. The decision-making choices during a process of enunciation will only be tangible to a control of legality after being legally enunciated (under the terms of the law), from which such enunciation may be taken as a jurisdicized fact.

In addition, the consecration of the separation of powers established in Article 2 of the Federal Constitution[12] and the guarantee of freedom to debate established in Article 53 of the Charter[13] remains, with the non-jurisdictional statements remaining of a merely political nature[14].

The explanatory memorandum for the submission of a bill for its conversion into a normative act is made by written text, which accompanies the statements that are taken to the discussion and vote for entry into the legal system, notably on the stage of a legislative assembly. When the law is published, the textual part of the explanatory memorandum of the bill is referred to as the explanatory memorandum of the law. But will it remain as an enunciation enunciated by the authority proposing the project, which registers the enunciation?

[11] TOMÉ, Fabiana Del Padre. Proof in tax law. 4th ed., São Paulo: Noeses, 2016 – chapter 7, item 7.3 – Theory of speech acts and the judge's decision. (p. 310)
[12] Article 2 The Legislative, the Executive and the Judiciary are Powers of the Union, independent and harmonious among themselves.
[13] Article 53. Deputies and Senators are inviolable, civilly and criminally, for any of their opinions, words and votes. (Text given by Constitutional Amendment No. 35, of 2001)
[14] MS 32033 - FEDERAL DISTRICT. Rapporteur: Justice GILMAR MENDES, Rapporteur for the Judgment: Justice TEORI ZAVASCKI, Full Court, judged on 06/20/2013, Electronic Process DJe-033 DIVULG 02/17/2014 PUBLIC 02/18/2014.

THE ENUNCIATION-ENUNCIATION AND THE INTRODUCTORY LEGAL NORMS

In the field of positive law, the use of semiotic expedients and analysis of normative discourse has great value in allowing new perspectives regarding the construction of meaning of the legal norm. As law behaves as a language, the use of Semiotics is possible for the unraveling of legal problems, opening horizons for investigation. Thus, two premises are established: a) the law is a text, and is inserted in a specific communicational context, that is, the prescription of conducts; and b) the text is translated into its own language, different from the social reality and, therefore, the language has the attribute of legal.

It is possible to affirm, therefore, that language consists of the use of symbols that refer to one or more objects, and when inserted in the discourse, integrate the set of existing utterances in a given body of language, constituting their own reality. Such utterances establish the reality inaugurated by language. Specifically in the legal field, TÁREK MOYSÉS MOUSSALLEM (2006)[15] defines that the source of law is the activity of enunciation, that is, the activity that produces statements not contained in the normative document, which vanishes in time and space (enunciation). The activity carried out by an organ accredited by the system of positive law, which has the effect of producing norms, an activity that is inaccessible immediately to human knowledge, because it lacks language.

The notion of sources of law as the acts of enunciation aimed at normative production, in the light of Logical-Semantic Constructivism, induces the understanding that norms *always come in pairs,* authorizing the reference to introductory norms and introduced norms, in a sense of double composition of the legal norm.[16]

It is clarified that the enunciation-enunciation embodies the vehicle that introduces legal norms, both to allow the receiver of the produced language to access the content produced (the norm introduced), and to allow the verification that the production of the normative language has occurred in accordance with the legal prescriptions (that is, according to the sources of law authorized by the legal system itself in attention to its autopoiesis): agent, form, procedure and content to the introduction of norms in the legal system).

The activity of producing the normative document by a determined authority is carried out in a given time and space, leaving its marks. The marks of enunciation

[15] MOUSSALLEM, Tárek Moysés. Fontes do direito tributário. 2. ed. São Paulo: Noeses, 2006. (p. 137).
[16] "The meaning of the expression sources of law implies that we reflect on the circumstance that no legal rule enters the system of positive law without being introduced by another norm, which we will call, from now on, the "vehicle for introducing norms". This already authorizes us to speak of "introduced norms" and "introductory norms", or, in other words, to affirm that "norms always come in pairs". CARVALHO, Paulo de Barros. Tax law, language and method. 6. ed., São Paulo: Noeses, 2015 - Item 2.3 ("Sources of law") of the second part. (p. 436)

effectively prescribe that everyone considers as valid the statements produced (the propositions aimed at regulating an intersubjective conduct). Therefore, the enunciation-enunciation, by integrating the description of the exercise of normative competence in the construction of the complete legal norm, exposes the introductory legal norm, being in what is conveyed to the legal system.

As the explanatory memorandum is present in the enunciation, the conclusion of the enunciation-enunciation integrating the legal norm in a broad sense is a first point revealing its linguistic function coordinated with positive law: the construction of the legal norm.

POSITIVE LAW AND ITS SOURCE

Law is an ambiguous term, which can express both Legal Science and positive law, differing according to whether the language is expressed by a normative introducer vehicle or not. The language of the Science of Law has a descriptive function, submitting to the value of truth or falsity, governed by Alethical or Aphantic Logic. The language of positive law, on the other hand, is prescriptive, submitted to Deontic Logic, and can then be verified for validity or invalidity, depending on whether it belongs to the legal system.

The Science of Law will be produced by the emission of descriptive propositions by dogmatists – observers of the system, at the level of overlanguage, because it will speak of the law-language of positive law, describing it, however, without the power to change it.

Law, on the other hand, is produced from legal decision-making, up to the normative composition affirmed in the legal system. As previously stated, it is the law itself, by its legal prescriptions, that authorizes decision-making that produces statements. The elaboration of laws is the result of a set of previously established procedures used by the Legislative Branch in its function of legislating and supervising. It is, therefore, the formal source of the norm related to the enunciation-enunciation, resulting from the determined legislative process whose introductory instrument is determined by the Internal Regulations. The proposal of a bill, through speech (language), can be defined as enunciation, which consists of the activity that produces statements not contained in the normative document. It is not to be confused with the normative document that it is the physical support of the statements. The norm will therefore contain the enunciation-enunciation, which consists of its introductory vehicle, and the enunciation-enunciation, which will contain the prescriptions introduced in the normative command.

The explanatory statement is produced in the field of enunciation. Like the propositions aimed at normative conversion, it is also enunciated by the legislative entity. The explanatory memorandum is conveyed as an enunciation-statement with which the

investigation of legal decision-making is achieved, but its access is made from the contact of the physical support by the interpreter. The normative construction is embodied in a dialectically complex process, conditioned by (and conditioning of) several factors, among them, the individual's experience, formed by the situations experienced in his existence, conformed in his essence. Thus, more important than the normative message of the text of the law prepared by the legislator, is the construction of meaning made by the interpreter of the legal norm. The enunciator has control over the semantic inference, but cannot be sure of the perlocutionary act he will produce, because rhetoric stems from reasoning whose conclusion is probable (MESSIAS, 2020)[17].

The study of law as a communicational system, which regulates its own creation depending on the interpretation of its statements, enables the interpreter and the applicator of the law to make a more uniform analysis of the prescriptive statements that substantiate the construction of a legal rule, because communication is also better understood in relation to the introductory rules, and not only in relation to those introduced in the dispute solutions.

Law observes an autopoietic system of production, so that law will create law. So, how to identify what gives rise to it? The answer is obviously found on a plane other than that of positive law, which is not the field of statements of law that are the law itself, but in the field of enunciation, in which legal decision-making conducts are assessed, as an enunciation issued by those in a legislative function.

It is the system of law that will say about the decision-making process (legal decision, because it is a process governed by law). In this step, the lesson of PAULO DE BARROS CARVALHO teaches that sources of law refer to the competent agent and to the activity developed by him to conform to the enunciations of the source of law:

> By sources of law we must understand the ejector foci of legal rules, that is, the bodies empowered by the system to produce norms, in a staggered organization, as well as the activity developed by these entities, with a view to creating norms. (CARVALHO, 2015, p.436)[18]

Therefore, the sources of law will be the statements made by those who the legal system prescribes to be competent to do so, in respect to a normative form and the procedure that must be observed, all according to the prescriptions of the system of law itself. The study of the sources makes it possible to analyze whether any statement, taken as a legal rule, originated in the legislative process, that is, it came from an activity carried

[17] MESSIAS, Adriano Luiz Batista. Theory of the legal norm: concretizing interpretation and tax relations. São Paulo: Noeses, 2020. (p. 156-157).
[18] CARVALHO, Paulo de Barros. Tax law, language and method. 8th ed., São Paulo: Noeses, 2021 - Item 2.3 ("Sources of law") of the second part. (p.436)

out by bodies qualified in the system, accredited for the production of prescriptive statements, established by an act of will, which is called *enunciation*.

But it is not enough to have authority for normative production. The procedure to be followed is provided for in structural rules (among these, those of competence).

In the scope of Tax Law, positive law establishes tax competences, as designed in the Federal Constitution, notably in attention to the Federative Principle, in order to guarantee a minimum budget for the maintenance of federated entities, including the Municipalities. Therefore, the legislator or producer of norms may not move outside this federative competence structure, and must stick to decision-making on matters that are legally delimited to it, and respecting the molds provided for the vehicle that introduces norms determined for each material prescription.

It is verified, then, that the activity of enunciation is exercised in the field of sources of law, but by powers authorized in the legal system for the production of prescriptive statements, the latter being on which the authentic interpreter will rely to construct the meaning of legal norms, being how the law reaches the phase external to its internalization: through regulation. Law, as a set of valid norms, has in its origin, in its source, the identification of the origin of legal norms.

And firm that law is a positive legal language because it is produced as determined by the legal system itself (that is, issued by a competent agent, according to the procedure and form prescribed by law, duly publicized for the primary purpose of regulating intersubjective conduct), by sources of law will be understood the facts that produce legal statements, therefore, the enunciations consistent in legal decisions as a process.

Sources of law are none other than in the field of origin of law, and therefore are external to it, although it is also its object of regulation. But not every fact that has not yet been internalized to the law by competent language is the source of the law, but the facts that are produced again, that give it existence again, because it is so prescribed.

The study of sources of law confirms that there is a legal communication in the field of the legislative process to which the legislative process is subordinated - in the designation of agents competent to legislate, and of a delimited material field that removes their free will to the exercise of legislative power, whether in the drafting of bills (form) or in the choice of materialities related to the edition of a normative act (content), for example, but as sources, and not law, sources are not substantially prescriptive.

Therefore, the explanatory memorandum will further reveal the context of the text of the statements that came to be legalized, presenting legal relevance only when the normative interpretation is made.

THE COMMUNICATION SYSTEM OF LAW

The study of law as a communicational system from the legislative process also improves the understanding of what the legislator elects as legal facts, which is of paramount importance, because occurrences in the social field will attract normative incidence.

The communicational system of law is integrated by the linguistic categories of enunciation, enunciation, enunciation-enunciation, and enunciation-enunciation. And the marks of the enunciation process (*enunciation-enunciated*) allow the formulation of legal norms, since they are integrated by the duality of introductory norm and introduced norm.

Once the enunciation is enunciated by a competent agent (there is also the one authorized to present bills), its content is considered positive, feeding the national order of enunciations (linguistic registers), whether the enunciation-enunciations (substantial content of the prescriptions of intersubjective behavior), or also the enunciation-enunciations, as a way of tracking the legitimate incidence of the structural norms that govern the legislative process – and the affirmed enunciations will be valid until another legal norm is produced revoking its existence, expressly or tacitly.

The process of positivization of the norm requires the production of a concrete and individual norm, since the abstract and general norm depends on it to effectively discipline conducts, having as its content a legal duty or its non-compliance[19]. This process requires interpretation. Only through interpretative activity is the approximation of the material region of intersubjective conducts possible through the logical operation of subsumption and implication of a legal relationship[20]. The construction of the legal message, therefore, begins with the contact of the interpreter of the lexicon of statements placed in the legal system by means of an appropriate procedure, resulting from the enunciation activities inherent to the legislative work.

It should be noted, above all, that legal communication, like any other communication, depends on its reception.

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[19] The placement requires attention to verify that, even in the individual and concrete norm, the law does not touch the world of being, remaining in the should-be. "The hypothesis has a semantic relationship with reality of a descriptive nature, but not a knowing one, and this is its denotative or referential dimension." CARVALHO, Paulo de Barros. Tax law, language and method. 6. ed., São Paulo: Noeses, 2015. (p.140)

[20] An understanding confirmed by the doctrine of PAULO DE BARROS CARVALHO: *"This path, in which the law starts from comprehensive but distant conceptions, to reach the vicinity of the material region of intersubjective conducts, or, in its own terminology, starting with general and abstract legal norms, to arrive at individual and concrete norms, and which is known as the "process of positivization", ...".* Op.cit. (p*element.*278)*element.*

NORMATIVE INTERPRETATION

In order to produce a norm, the competent agent must seek a basis of validity, operating in this normative incidence, which reveals the importance of the firm position of PAULO DE BARROS CARVALHO regarding the relationship of the theme sources of law with the hierarchy of legal norms:

> The study of the hierarchy of norms, taking the word "hierarchy" as an axiom, is very relevant. .... since all legal norms have the same syntactic structure (logical homogeneity), although endowed with different semantic contents (semantic heterogeneity). (CARVALHO, 2015, (p. 456)[21]

The theme of sources of law is related to the issue of the hierarchy of legal norms to the extent that, for each typical process of normative production, there are structural norms that impose, in a specific way, who are the competent agents or authorities for legal decision-making, the type of activity (issuing a decision, sentence, judgment, Constitutional Amendment, law, decree, ordinance, normative instruction, etc.) and the procedure (monocratic or collegiate decision, compliance with quorum, etc.). The matter of drafting laws in the strict sense, as seen, obeys normative hierarchy, being reserved to the complementary law.

Furthermore, the construction of the complete norm in the form of a hypothetical-conditional judgment "If... then it must be", does not allow us to say which norm should prevail in the tangle of statements of the legal system. After all, legal norms have syntactic homogeneity, but allow semantic heterogeneity.[22]

It is in a trajectory of interpretation of a norm by the legal interpreter, in observance of a staggered organization, that it is possible to coordinate the norms of the positive legal system to the phenomenon of normative incidence, also because positive law, unlike the science of law, allows antinomies.

It is not denied that the Science of Law and positive law are two regions of legal knowledge; Both are bodies of language linked to the exercise of human interpretation, through the formulation of propositions. After all, text is all that allows interpretation. In this sense, the legal norm is also the construction of meaning by the interpreter of the law, who starts from the prescriptive statements, and, on the way, prescriptively goes through the search for the basis of validity of the norm he applies.

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[21] CARVALHO, Paulo de Barros. Tax law, language and method. 6. ed., São Paulo: Noeses, 2015 - Item 2.3 ("Sources of law") of the second part. (p. 456)

[22] "... principle of "syntactic homogeneity" of the system's norms, in view of the linguistic heterogeneity of the statements of positive law. In fact, as Celso Lafer warns us, "(...) what characterizes Positive Law, in the contemporary world, is its continuous change. Hence the need to know, identify and qualify the rules as legal by their form." Op. Cit. First part. Chapter 2. Item 2.8.1 - Ambiguity of the term legal rule. (p. 134)

PAULO DE BARROS CARVALHO proposes an analytical division of the norm's meaning-generating path into four planes: S1 - plane of literality, S2 - plane of signification, S3 - plane of legal norms, S4 - plane of systematization: search for a foundation of validity (CARVALHO, 2015).[23] It is explained.

In the S1 plane is the plane of expression. The utterances are presented as loose sentences, without enclosing a complete unity of deontic signification. The utterances are the object of the first step of the work of interpretation: contact with the literal content of the text, the only material data to which the knowing subject has access. The text is in the strict sense.

In plane S2 are the contents of meaning of prescriptive statements. After the analysis of the morphological and grammatical structures found in the utterances in terms of expression, of the literalness of the text, we proceed to unveil their content of signification. Even as propositions not yet structured in the hypothetical normative form, the statements are prescriptive, seen as a norm in a broad sense and, because they are prescriptive to those authorized to construct norms, they are full of meaning; they have a complete meaning, although of incomplete significance.[24]

It is in the S3 plane that we move to normative significations, this being the plane of deontic structuring apt to normative incidence. In this phase of the interpreter's work of a legal text, normative meanings are sought, that is, the meaning structured in the formula "D (H → C)", which expresses that given a hypothesis, it must be the consequence, by normative imputation. It is the structure of complete meaning inserted in the legal system with the aim of transmitting a regulation of the relationship between two or more subjects, in the modals of obligation, permission or prohibition. It is not simply a positive rule in itself seen by the literalness of the prescriptive statement, but also the interpretation that is constructed from the reading of the provision in line with the other elements of the normative system, in the formulation of a hypothetical-conditional judgment. A legal norm is the minimum logical-syntactic structure, but of complete meaning, of the law's performance.

In understanding the relationships between norms, it is possible to understand the legal system as a whole, which consists of the S4 plane. The norms of positive law are necessarily related to other norms, improving the composition of the juridical-normative

[23] CARVALHO, Paulo de Barros. Tax law, language and method. 6. ed., São Paulo: Noeses, 2015. (p.192/197)
[24] "In spite of this, however, it is important to maintain the secular way of distinguishing, using "legal norms in a broad sense" to allude to the significant contents of the sentences of the established law, that is, to the prescriptive statements, not as empirical manifestations of the order, but as meanings that would be constructed by the interpreter. At the same time, the articulated composition of these meanings, in such a way that it produces messages with a complete deontic-legal sense, would be called "legal norms in the strict sense". Op. Cit. (p. 135)

system. Therefore, in the course of constructing a legal norm in the strict sense, propositionally structured in a hypothetical-conditional judgment, through the interpretation of the legal text, the interpreter must be aware of the coordination and subordination links that are established between the other legal rules that make up the system of positive law. And so, a legal norm can only be understood based on full knowledge of the legal system.

These four levels of interpretation will be in the trajectory of the interpretation of a legal text. In addition, the work of intertextuality and dialogism is added, in the exchange between utterances and between utterances. And, also, the empirical-dialectical movement promoted by the interpreter for the production of meaning aimed at the regulation of intersubjective conducts.

The constituted authorities use the linguistic function of the prescriptive conduct to construct the legal reality. However, it is from the established rule that one seeks, through elements of language, its producing source, that is, the procedure and the agent. This is because the normative document, the only objective (linguistic) datum, is the object of studies of legal dogmatics, and the procedure, as an activity of enunciation, is immediately unattainable, since it is not projected in the normative document, but only its indications. The same does not occur with the agent competent to edit the act, since it is projected in the statement, being immediately tangible.

As the enunciation-procedure is outside the utterance, it only becomes accessible through the linguistic projections released by it in the utterance, embodied in the enunciation-enunciation (MOUSSALEM, 2006).[25]

Thus, the norm-producing procedure may or may not give rise to normative production (specifically, legislative production), that is, it may or may not create legal rules. Obviously, the normative document, as a set of statements, presupposes by logical imposition its productive activity. Every utterance presupposes the activity of enunciation, but not every enunciation is a creator of utterances.

Therefore, in the construction of meaning of the legal norm, there is no way for the interpreter to escape the explanatory memorandum that was linked to the decision-making in the field of enunciation, and which is subject to tracking because such enunciation is enunciated therein.

By ignoring the explanatory memorandum of the law, the interpreter does not succeed in introducing legal statements into the positive system, because its normative construction depends on it. LUIS ANTONIO MARCUCHI places texts as dynamic entities for the materialization of communicative actions, justifying the possibility that they hybridize

[25] MOUSSALLEM, Tárek Moysés. Fontes do direito tributário. 2. ed. São Paulo: Noeses, 2006. (p. 122)

in order to achieve communicative objectives (MARCUCHI, 2008).[26] The position enables a socio-interactive analysis of textual genres in the speech-written continuum, allowing the utterances of the enunciation to be consubstantiated enunciation-enunciation, approaching the legal norm by serving the normative interpretation.

The enunciation-enunciation is a normative legal fact, which allows the creation of the legal norm introducing enunciation-enunciations. Even if it is said that enunciation marks assume the function of language descriptive of the enunciation process, it should not be ignored that *the statements of positive law are not expressions of acts of knowing objectification*[27]. The emphasis is made so that the apophantic form that the legislator sometimes adopts in statements of positive law does not serve to remove the prescriptiveness inherent in the language of law.

In this sense, the linguistic function of the explanatory memorandum is to interpret legal, in that it sometimes allows the receiver of legal norms to identify a vehicle that introduces legal norms so that it can then address its content that shapes conducts, to allow the verification of the conformity of the normative production process, so that everyone then observes the elements of communication to reach the prescriptiveness of the commands or can submit to legality control to extirpate the legal effects.

The law is not watertight. Recognizing the prescriptive burden of the pre-textual part of a normative act does not imply that the regulation of conducts is rigid to the historical context in force at the time of the publication of the reasons. From the historical study of the time of enunciation that led to the edition of the normative text, there is no way to raise the incompatibility of the statements of the explanatory statement with the prescriptive statements, since they are on different systematic planes: the former, on the plane of social events, the latter on the plane of legal facts.

However, since the explanatory memorandum is enunciated by the legislator in the activity of normative production, even if in a document separate from those that convey the propositions of the enunciations-enunciations, its enunciations allow, through normative interpretation, that the producer of the legal norm proceed to the normative construction of the introductory norm with respect to the values pursued according to the evaluation of the advances of society.

[26] MARCUSCHI, Luis Antonio. Textual production, gender analysis and comprehension. São Paulo: Parábola Editorial, 2008.
[27] CARVALHO, Paulo de Barros. Tax law, language and method. 6. ed., São Paulo: Noeses, 2015 - Item 2.3 ("Sources of law") of the second part. (p.439)

Thus, because it is necessary to consider the explanatory statement as marks of enunciation, inescapable of the construction of meaning by the interpreter, applicator and producer of various legal norms.

The meaning of a legal text is correct in terms of its application to each incidence of the norm it conveys, according to the path of generation of meaning carried out therein. In general terms, each legal text must convey a meaning endowed with a certain stability to confer legal certainty in legal relations to all its addressees, in order to bring peace to society.

The literal and logical hermeneutic methods are on the syntactic plane of language, while the historical and teleological methods are on the semantic as well as on the pragmatic plane of the former. The perspective of normative meaning is achieved through the hermeutic-analytical posture.

On the syntactic level, the position of each word in a sentence, in an utterance, is a condition for offering a certain meaning. In the attribution of meaning to a legal text, it will be necessary to apply the correct legal grammar. On the semantic level, the denotations and connotations of legal terms will be evaluated. On the pragmatic level, the manifestation of language will be placed to indicate what behavior should be observed by society.

Thus, the use of one method or another, in isolation, in the interpretation of a legal text is not enough to absorb the full content of the legal text, which imposes a systemic analysis, which involves the three levels of legal language – syntactic, semantic and pragmatic – in the trajectory of its interpretation.

Furthermore, it is important to say that a norm that claims to be interpretative is not purely interpretative, because law does not describe, but prescribes: law has prescriptive language.

PAULO DE BARROS CARVALHO rightly asserts:

> Even new laws that convey rules identical to those previously existing imply changes in the legal system, to the extent that, since the new law is informed by other principles and has a different systematic framework, there will necessarily be an innovative meaning. (CARVALHO, 2015, p.320)[28]

Debates about the prescriptiveness of an explanatory memorandum to the submission of a draft normative act to a legislative entity for conversion into law is not a new subject. Part of the doctrine recognizes the exposition of reasons as having its prescriptive force, precisely in what serves as a necessary parameter of interpretation for normative

[28] CARVALHO, Paulo de Barros, Tax Law, Language and Method, 6th Ed. Noeses: São Paulo, 2015. (p. 320)

constructions. [29] This is the position of PAULO DE BARROS CARVALHO (2015, p. 445/446), in which he brings together the explanatory memorandum, the preamble and the syllabus in the category of enunciation texts internal to the normative act, when he states that "*The prescriptive tone, however, is equally present in the three figures, since those who legislate are not accredited to manifest themselves in any other way than the one that organizes conducts*".[30]

Furthermore, the author refers well to Complementary Law No. 95/98, based on the sole paragraph of article 59 of the Constitution of the Republic, to point out, in the wording of article 3, physical support for the prescriptive semantics of the preamble of a normative act, in which the necessary parts for a normative edition are: preliminary part, normative part and conclusive part, there listing the preamble. If the preamble exists due to the obedience of the norm producer to its necessary prescriptiveness, its content reveals the prescriptive function of language. This is legal proof of the possibility of the enunciation enunciated, which is also the function of the preamble of a law, to have prescriptive force.

On the other hand, the absence of normative force of the preamble of the Federal Constitution recognized by the Federal Supreme Court (STF)[31] in the context of concentrated control of constitutionality, leads to a similar understanding all texts that precede the statements-statements of normative acts, such as the text of an explanatory memorandum, sealing a position contrary to the doctrine exposed, climbed in the linguistic position of this pre-textual part of enunciation enunciated.

CONCLUSION

Law is a communication system. The beginning of the communication that is intended to be legal should be with speech acts, which, in law, refer to legal decisions as a process: the process of enunciation aimed at the production of prescriptive statements. And the enunciations of authority are only made legal when effectively enunciated by conversion into law, before which legal communication does not take place.

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[29] https://www.conjur.com.br/2024-mai-30/a-natureza-juridica-do-preambulo-da-constituicao/ . Accessed on 06/28/2024, at 8:10 pm.

[30] CARVALHO, Paulo de Barros, Tax Law, Language and Method, 6th Ed. Noeses: São Paulo, 2015. Second part. Item 2.3.4.2 Preamble, syllabus and explanatory memorandum. (p. 445/446)

[31] CONSTITUTIONAL. CONSTITUTION: PREAMBLE. CENTRAL NORMS. Constitution of Acre. I. - Central norms of the Federal Constitution: these norms are mandatory in the Constitution of the Member State, even because, whether reproduced or not, they will affect the local order. Complaints 370-MT and 383-SP (RTJ 147/404). II. - Preamble of the Constitution: it does not constitute a central rule. Invocation of God's protection: it is not a mandatory norm of reproduction in the State Constitution, and it does not have normative force. III. - Direct action of unconstitutionality dismissed. (STF - ADI: 2076 AC, Rapporteur: CARLOS VELLOSO, Judgment Date: 08/15/2002, Full Court, Publication Date: 08/08/2003)

To say that a text is normative is to say that it is prescriptive, because this is the language of law in its pragmatic function of regulating intersubjective conduct of man in society. Orders that are not in the positive legal system do not achieve this strength. Therefore, it is not possible to say that texts that are not part of the legal system have a legal nature.

Legal norms are statements adduced in competent language: that language produced according to the prescriptions of the law about the issuing agent, procedure, form and content proper to normative acts. In this way, the primacy of the legal order will not achieve the implementation of the objectives and values that, exposed in the explanatory memorandum, participated in the jurisdicization of the statements of the law.

The activity that produces the statements not included in the normative document, which fades away in time and space, is the enunciation. This is the source of law. But the activity of enunciation is exhausted in itself, projecting into the product, which is the normative document, only the competent agent, time and space in which the document was produced, in addition to the procedure used for its preparation. Only the mark of the enunciation process is retained in the utterance.

In the activity of normative production there is still no legal norm, so there is no need to speak of a legal fact that produces norms, but only a procedural fact, related to the enunciation, without the qualifier of legal. Its approximation by the knowing subject is only executable by the enunciation marks left in the enunciation: we will only have access to the normative production procedure after the publication of the normative document, and before there is no prescriptive enunciation.

Positive law captures what has been produced by its competent organs and exerts subsequent filtering to identify the statements that have been generated in accordance with its norms of normative production. This is a characteristic of the self-referential system. From the introducer vehicle (enunciation-enunciation), the language of the enunciation-producing procedure (enunciation) is reconstructed and the confrontation with the language of normative production (the basis of validity of the introducer vehicle) is carried out to assess whether or not the normative production took place in accordance with the provisions of the legal system. The tests will tell you whether the procedure carried out is in accordance with the rules of procedure.

Even if it is considered that the explanatory memorandum is of a non-legal nature, because it refers to the enunciation procedure in the context of the production of statements, only with the insertion of the legal norm in the system, by the competent

introducer vehicle (qualified body and appropriate procedure), one has access to the plane of signifiers, physical support, to which the process of normative construction begins.

In this context, the integration of the explanatory memorandum of the law with the interpretative activity inherent to the construction of normative meaning during the cycle of normative positivization is the element of coordination with the linguistic field of this text to that which the law recognizes as that of its prescriptive language. Its function is to enable the interpretation of the normative text in the construction of the legal norm that stabilizes conflicts in society.

The positive legal system is not watertight, and it is autopoietic, which allows systemic dynamism in normative productions, either by introducing new norms or by removing those that belonged to such a system (in addition to the systemic possibility of semantic heterogeneities).

But, although the non-prescriptive descriptive discourse of the science of law does not immediately lead to the application of norms in a different sense from the existing ones, since its system is dogmatic legal, scientific production should not be reaped before judicial positions are taken, since it can convince the operators of the law to give new interpretations to the statements and enunciations enunciated.

The correct understanding of the prescriptibility of a statement immediately interferes with the phenomenon of normative incidence that leads the man - agent authorized to legislate - to the application of the law and the production of another norm, following the dynamics of societies according to their history and values at the time of the necessary stabilization of intersubjective [32]conducts. If a statement is not prescriptive, it will not serve as a basis for the validity of the normative production that will operate subsumption and implication to the lus of the interpretative activity. But if it is, it cannot be ignored there.

The conclusion is that the linguistic function of the explanatory memorandum of law (normative act) is the prescriptive function of the construction of a legal norm. Despite the existence of divergent understanding, the study presented rules out the inadmissibility of a legal nature to this text, since the cycle of positivization of the law imposes on the legislative agent the activity of interpretation in the operations of normative subsumption and imputation, based not only on the norms introduced, but also on the introductory vehicles.

[32] "The interpretation of the event and the creation of the legal fact are equivalent to a translation made from social language to legal language. The interpreter gives the event meaning, through the use of its values, meanings that will vary according to the perspective that is taken into account, so that the same event may give rise to the creation of several facts. The context, this perspective to which we have alluded, will be decisive for the construction of the fact, since the event is a sephic support for the creation of the fact, not having content per se, dependent, therefore, on the determination of the interpreter when adding this event (text in the strict sense) to its context (text in the broad sense)". SOUZA, Cecilia Priscila de. Intertextuality in tax law. 1st ed. – São Paulo: Noeses, 2021. (p. 97/98)

And the latter, as enunciations, are integrated into the positive legal system also by the text of the explanatory memorandum.

If it were not endowed with prescriptiveness, the explanatory memorandum could not have a linguistic function in the analysis of legal statements as a support for the construction of the legal norm, which, in its double conception, is composed of introductory and introduced legal norms, but the history of a society is not irrelevant to its legal system.

Even when it remains in the past, in that previous moment of the enunciation of the normative act, the explanatory memorandum is binding on decision-making about the linguistic statements intended for juridicization, notably serving as a compass of the context of the construction of meaning. Therefore, the explanatory memorandum is a legal fact, and therefore a legal one, prescriptive in the normative composition of the introductory rule.

The text of the explanatory memorandum is the language of normative interpretation. The statements contained in the bill are linked to its statements, to the extent that they find their context there. And the statements that derive from the former as a basis of validity are also linked to the extent of a legal interpretation of the advances of society. This is the measure that the law gives protection to the objectives/values adduced in the explanatory memorandum to the normative production to which a draft normative act submitted for approval by a legislative entity and conversion into law refers.

Constitutional Amendment No. 132 of December 20, 2023 promoted a tax reform in the Brazilian positive legal system, by changing the national tax system. On 04/25/2024, authored by the Chamber of Deputies, its regulation began processing Complementary Bill (PLP) No. 68/2024, with a view to the jurisdictionalization of statements aimed at the institution of new taxes: Tax on Goods and Services - IBS, Social Contribution on Goods and Services - CBS and Selective Tax - IS; creation of the IBS Management Committee, among other measures. To the evolution, the project was sanctioned – with vetoes – on January 16, 2025, by the Presidency of the Republic, being converted into Complementary Law No. 214 of January 16, 2025.

As far as it is concerned, it is noteworthy that the aforementioned PLP No. 68/2024 was presented in a document that gives great textual participation to the explanatory memorandum. In its initial drafting, the legislative document was composed of (356) three hundred and fifty-six pages, with the explanatory memorandum concentrated in forty of them (fl.315/355), that is, a percentage of about 11% (eleven percent). This proportion increases to almost 14% (fourteen percent) if the eighty-four (84) pages alluding to the annexes (fl.230/314) are excluded. Another comparison highlights it: there are 499 (four hundred and ninety-nine) articles intoned to the normative conversion, and 289 (two

hundred and eighty-nine) to the explanatory memorandum. In other words, the dedication to the reasons for the legislative work was as expressive as the wording of the statements proposed for normative conversion.[33]

The legislative experience reveals the importance that the explanatory memorandum has as a preliminary part of the law, integrating it, prescriptively, as it is inescapable of being inescapable of interpreting the construction of the legal norm to the advent of the law into which the accompanying project was converted.

[33] The entire content of the document is available for download at https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2430143 . Accessed on 02/14/2025, at 10:00 am.

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