

DIALECTICS-IMPLICATIVE LAW AND SOCIAL CHANGE

By Achmad Irwan Hamzani

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ABSTRACT

As social beings, human beings can not live outside the order. Since the beginning of human history interacting with other human beings, the problem of norms or norms becomes the need to achieve harmonization. Law is one of human need to achieve harmonization. The problems in this study are: What are the relations of law and social change? What is the relation of dealectic-implicative social change and legal change in modern society? The results of this study show that: the law will change as the development and change of social life. The interaction of social change and legal change is an integral whole. Ideally the law change is done gradually to minimize the resistance and simultaneously as a shock therapy. There are two paradigms used to provide the format of legal relationships with social change, namely the law of serving the society and the law of creating social change. Two paradigms that led to making legal products in the form of legislation. The form of written law further ensures legal certainty and becomes the need of modern society. But the law will be difficult to adapt to changes very quickly.

Keywords: dialectics, implicative, law, social change.

Introduction

As social beings, human beings can not live outside the network of the order of how and whatever their form. Sociality provides a description that humans are creatures such as ants, bees and others. If the ant community is natural, then the network of the human order is man made and artificial. Law is a deliberate order created by man and deliberately charged to him (Bruggink, 1995).

Man wants to be tied up and bond made it himself. But at the same time man is trying to break away from the bond he made himself when he felt unsuited. Throughout its history, humans have left traces making the law then knock it down. Although the law is self-made, it is not easy to live by the law. Since the law is finished, life does not necessarily go smoothly, still full of conflict (Huijbers, 1995: 25).

As development and social change, the law will undergo changes, both evolution and revolution in accordance with the changes occurring within the society itself. Since the beginning of human history interacting with other human beings, the problem of norms or norms becomes the need to achieve harmonization. Empirically rules or norms are key in achieving interaction stabilization. Violations of rules or norms will be subject to minimal social sanctions.

The interaction of human life in society throughout the course of life no one walks straight. Disputes, crimes, injustices, discrimination, social inequality, conflict and so on are the colors of the reality of life. These problems are increasingly evolving with all its modifications due to the ever-expanding social change. Social change is a natural thing because humans have an unlimited and growing need (Baharudin, 2015).

Humans eventually realize that peace and serenity will not be achieved without self-awareness to change by improving behavior other than public support to restore it. Naturally this will be achieved if the community "provides" control and oversight tools in the form of both written and unwritten rules. Furthermore there are institutions that apply sanctions and forms of community agreements that carry out the function. The device is called law.

Social change will have a significant effect on the law. The response to social change with legal change is very important especially nowadays the law is generally in written form. Coherent law change with the present social situation. If social change is not accompanied by legal changes, it will create a conflict that can not be reached by law. Though the law is needed by the community. The law is not to limit and sanction it, but also to give an opportunity to encourage people to continue to be dynamic (Zaini, 2012).

The implications of social change to legal change are inevitable. The tip of a legal change in modern society today is a written arrangement called positive law. The process of drafting, forming, and endorsing the law will be attached to the terms of the law of law. The written arrangement is a legal document and follows according to modern law. All parties must submit and obey the laws that have governed it. Upon enactment anyone must submit to the law. The phrase that everyone is supposed to know the law called legal fiction.

The positive law in modern society is very important as the complexity of the social contract needs grows. Complexity will run harmoniously with the presence of positive law. Even with the written form of legal certainty is more assured and a part of the identity of modern society. But on the other hand, positivism as a necessity of modern society also suggests that positive law is

often difficult to adapt to the rapid changes of modern society. The dialectical-implicative relationship of social change and the change of law in modern society is what will be discussed in this study.

Problems

Based on the background of the problem as illustrated above, the problems in this study are: How are legal relations and social change? What is the relation of dealectic-implicative social change and legal change in modern society?

Discussion

1. Legal Relation and Social Change

Legal relations and social change are issues that continue to require study. Many theories have been formulated to explain the legal relationship with social change. Cotterrell (2004) says even law is an agent of power that is used as an instrument to govern. Since the government is centralized to the State, the law exclusively looks like the laws of the State. The law is seen as being separate from the society it regulates even though it is created by institutions representing the community.

The drive for legal change begins with a gap between community interaction and the existing set of rules. The demand for legal change arises when the gap can not be compromised. Legal changes to respond to social change are very important. Only tension changes can be different, can be gradual, can also be radical. The slightest change in resistance resistance is gradual. Even a gradual change can be used as a medium for shock therapy. While the radical changes, the risk of resistance is higher and can lead to horizontal conflicts.

The consequences of law are turned into artificial institutions and increasingly away from society. The law becomes an esoteric world that can only be entered by people who have undergone initiation or special education. Since order is represented by a rationally structured and administered law, no longer is a person unable to move safely and safely away from society, unless it obtains guidance from legal professionals. People can no longer fight for the truth, their rights and so on unless they are channeled into legal channels (Rahardjo, 2006: 13).

Legal change is a consequence of the legal system. The death and the life of the law depend on the social changes that take place. Legal changes serve to bridge the human desires to avoid anarchic, destructive, and other chaotic conditions. Moreover, the grass root are usually affected directly.

What is expected of a change is a recovery in a better state and not the other way around. Naturally the desired changes are not immediately results, such as turning the palm of the hand. Changes that occur in legal are sociological problems that can not be sterile from personal desires, economic factors and political interests. It is even this political interest that is becoming more and more dominant.

In order to achieve the goal of change in a better direction, the law must act as social control or social control. Social control or social control is the goal of legal formation within society. If the law does not work functionally, then the aspect of order, tranquility and dynamic social stability will not be created and obeyed.

Implementation of the regulation is a manifestation of the desire of the rule of law for the function of social control, social control can be implemented in society. Since the implementation of the rule run since then also the rules of mixing with the community. Rules will be tested for reliability in terms of effective applicability or otherwise just as a complement only. Since then the rules have experienced the dynamics of intervention, clash, shift and finally change due to social friction in interaction in society. This condition will return again to the initial social setting of the phasing phase of the workings of the law in society which is the natural cycle to be faced and continuously taking place.

The demands of the law that must restore its existence in society will have different consequences for the legal changes to be made. As long as the law changes are responsive and follow the rhythm of the living law in society, the law will always be in harmony with the lives of the people (Nonet & Selznick, 1978). The law will not move away from society. If the law away from society, then the law will be like a foreign object, something that is out of context. This is not allowed by law itself, either juridically, sociologically or philosophically. Law for human society, not human society for law (Rahardjo, 2006).

There is a pameo yam societas ibi ius whose meaning is where there is society, there is law, so it reflects the relationship of social change and change of law. Society exists and creates law, society changes, law changes. Legal change through two forms: society changes first, new laws come to pass the change (passive change), or law as a tool of social engineering (Hamzani, 2018). Law will be in tune with social change and highly dialectic to social change even as a reflection of the fulfillment of social needs.

The great moving forces against legal change are technology. Law has been influenced by technology especially in its application. The contribution of technology to the improvement of legal techniques by providing instruments that should be used in applying the law (eg, through fingerprints or lie testers). The technological effects in the process of formulation and application of law as a result and the changes caused by technology in the social and intellectual climate in which the legal process is executed (eg, television hearings). Technology affects the substance of the law by generating new problems and new requirements that must be administered by law (Miller, 1979).

The law is reactive and follows social change. Legal change is necessary because it represents the state's authority and power in applying it. The legal response to social change is often through a time lag and will lead to new social changes. Law can be viewed as a reactive factor (which rejects) as well as proactive (which agrees) in social change. The interaction of social change

on the one hand and the change of law on the other is an inseparable unity like two sides of a coin. The law continues to develop from time to time as problems arise in society.

Dialectics-Implicative Relation of Law and Social Change in Modern Society

Discourses on law and community structures are useful to explain why the law develops. The structure of society can be an obstacle in terms of facilitating the means of social institutions that allow the law to have its form. Law is seen as an institution that is not autonomous. As Eugen Ehrlich once stated that "... both now and at any time, the center of activity and the development of law is not in legislation, not in law, nor in court but in society itself" (Curvon 1998: 169). Society as the center of legal development is the forerunner to the birth of a legislation. Social changes that occur in society is an instrument that can give effect to the center of activity and legal development.

The existence of law in society undergoes changes as a result of the influence of globalization both evolution and revolution. The demand for social change has had an impact on the existence of the legal system that has been going on. The natural change of law through natural selection changes itself. If the law does not change it will encounter many obstacles, especially in law enforcement because the law can not reach new problems.

Legal developments follow certain stages of development, from simple forms to the latest stages in which laws are systematically arranged and professionally run. The stages of legal development are much more to the idealized forms of law and accentuate social power. The ideal types of legal systems develop from the irrational to the rational. With the bureaucracy in modern industrial society, the legal system is formal.

The social life of society continues to develop into modern life as a natural one. The development of society continues to occur both material and immaterial. Material change that is change of structure, institution, organization, power and social interaction. While the immaterial change is a change to the values, ideas, ideology and way of life.

As society's life continues to change, changes in the law in modern society become a necessity. Coherent law change with the situation and condition of the society which represents the authority of the state and the power of its sanction. If the change of society is not accompanied by a change of law, it will create conflict that can not be reached by law. If this happens will have an impact on the pessimism of society against the law. Because the law is needed to regulate the life of society in all aspects of life, both in aspects of social life, political life, culture, education and economy. The role of law aims to protect, organize and plan life together. The law can not only limit and suppress it, but also provide an opportunity to even encourage people to continue to be dynamic (Zaini, 2012).

Law as a tool of social control is a role in society. Along with the demands of the development of modern society, the role of law is directed as a means to social engineering life, or to make social changes to achieve the social conditions desired by the state. Law also serves as a medium for facilitation of human interaction, to achieve order in social life.

The ideals of the law are basically meant to achieve three goals at once: to achieve justice (*gerechtigheid*), usefulness (*doelmatigheid*), and legal certainty (*rechtmatigheid*) in common life. The rule of law has the power to apply philosophically in accordance with the ideals of the law that reflects the value of justice in society, be socially sociological behavior, recognized as a norm in accordance with the values that live in the community and conduct lawlessly according to the hierarchy of legislation (Nurjaya, 2011).

Legal change starts from the gap between the behavior of society and the applicable law. The demand for legal change arises when the gap is no longer acceptable so the need for change is more urgent. Legal change is a consequence of the legal system. The death of the law depends on the social changes that take place. Legal change serves to bridge the human desires in order not to arise anarchist behavior. The end of the amendment of the law shall be a written arrangement (as a valid document according to modern law), so that any person shall be subject to whatever has been set out in the law's amendment.

Modern law is laden with formal forms, with procedures and bureaucratic law enforcement. Legal material is formulated in a measurable and formal way to create new concepts and constructions. Not everyone can be a legal operator. Only those with special qualifications and undergoing certain formal initiatives may become legal operators. Judges, prosecutors, and advocates must be graduated with a law degree (Rahardjo, 2006: 13).

Modern society desperately needs a consensus or social contract to create a harmonious life together. The social contract is confirmed in the form of legal certainty in the form of written provisions. The process of appointment of the agreement in the principle of unwritten to written is the process of loading normative concepts in legal rules formally. This legality is the implementation of community representation.

Positive law in modern society is very important as the complexity of the need for social contracts to remain in harmony. The increasingly varied social system will run harmoniously with the presence of positive law. The existence of positive law in modern society will strengthen other components juridically that form a unity within a legal system.

Lawrence M. Friedman (1975) mentions that the legal system consists of devices; the legal structures (in the form of legal institutions), legal substances (laws and regulations) and legal or legal culture. These three components support the running of the legal system for modern society. Although written law will guarantee certainty, it also has a weak side of difficulty adaptation to rapid social change.

Legal changes can be through various ways. For example through the formation of laws (legislation) in the material sense (rule of law written). Legal change can also be through obedience to custom, or jurisprudence. In addition, legal change can also be initiated by gradual changes (gradual) in the values and attitudes of society with the standards required by the society itself that continues to grow. The paradigm that develops in providing the format of legal dialectics with social change is:

First, the law serves the needs of society. This paradigm positions for the law not to be left behind because of the progress of society. The law in this paradigm is very pragmatic, because the law will adjust to the needs. The meaning implied in this case is that the law will move quickly to adjust to the developments that occur in society. The need for new legislation is evident in this paradigm. It is inevitable that the community's need for such a regulation is not accompanied by maximum legal assistance.

The speed of modernism that has had an impact on legal changes is not necessarily followed by the immediate needs of legislation. This issue has entered the realm of mechanisms in the people's representative institutions. However, the need of the community so that the law is able to follow so much so that the guarantee of justice, legal certainty can be maintained.

For example in this paradigm is advanced technological crime such as computer, internet (cyber crime), arrangement of religious marriage, cloning, syari'ah banking, witchcraft and the like, pornography, terrorism, transvestite law status, lesbian and homo marriage legal, baby tube , euthanasia, to the status of pregnant men. The number of new issues in society needs to be framed by law. The matters governed by law in the future are already public policy choices of the government with some consideration.

This paradigm in the interaction of social change to legal change is most prevalent. This proves that law has a role when society needs its arrangement. After a dispute, conflict, and even a falling victim, it is thought that a formal arrangement is required in the legislation. This condition shows the position of law is highly dependent as a dependent variable on social changes that occur.

Second, the law creates social change. This paradigm positions law to create social change in society or at least can spur the changes that take place in society. The characteristics contained in this second paradigm are law as a tool of social engineering, and law as a tool of direct social change. The law in this paradigm is also forward looking and ius Constituendum also play an active role. Even the law not only creates order but creates and encourages such change and development

The essence of this paradigm is the creation of laws used to deal with upcoming or expected legal problems. This second paradigm can also be referred to as the paradigm of anticipation law of the future or law as social engineering. Future legal issues faced by planning or preparing for example in terms of legislation. It is encountered with the ratification in the field of international law by the state.

The two paradigms above will ultimately lead to the desire to create legal products in the form of legislation. With a written form of legal certainty is more assured and a part of the identity of modern society. But the cost is also expensive, namely the difficulty to make a fairly fast adaptation to changes that occur around him.

Conclusion

Based on the above description can be concluded, that the law will undergo changes along the development and changes in social life. The interaction of social change on the one hand and the change of law on the other is an integral whole. The drive for legal change starts from a gap between interactions in society. The demand for legal change arises when the gap can not be compromised. Ideally the law change is done gradually to minimize the resistance and simultaneously as a shock therapy. There are two paradigms used to provide the format of legal relationships with social change, namely the law of serving the society and the law of creating social change. The first paradigm requires a very pragmatic law. The law will always adapt to the needs. The second paradigm positions the law as social engineering. The law will play an active role in creating change as desired by law. Two paradigms that led to making legal products in the form of legislation. The form of written law further ensures legal certainty and becomes the need of modern society. But the law will be difficult to adapt to changes that occur very quickly.

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