

Correlation of national criminal law development with national goals in Indonesia

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Abstract

The development of national criminal law ideally correlates with the national goals of a country. National goals are the basis and objectives of legal politics. Legal development is also one of the reform agendas. The purpose of this research is to examine the correlation between the development of national criminal law and national goals in Indonesia. This study uses secondary data and uses a philosophical approach that is idealizing the future national criminal law. The results of this study indicate that the national goals of the Indonesian state are contained in the Pancasila and the 1945 Constitution. The national goals are the goals of the state, namely protecting the Indonesian nation, promoting the general welfare, and educating the nation to realize a just and prosperous society. The meaning of national goals must be broken down in the administration of the nation and state based on the morals and spirit of Pancasila. The purpose of developing national criminal law cannot be separated from the ultimate goal of state and community life. The purpose of the law as social control, social order, and social guardian must be placed in the cultural measurement frame. The purpose of criminal law is to tackle crime. Legal development is also inseparable from efforts toward community welfare through social policies. The development of national law ideally correlates with national goals, even as one of the implementations of national goals. It is necessary to build a synergy of legal development goals in all its fields, such as the criminal field with national goals. To create a synergy between the goals of criminal law and national goals, between the interests of the community, perpetrators of crimes, and victims, a new concept of criminal law is needed as national criminal law.

Keywords: legal development, national goals, constitution, Indonesia

Introduction

The development of national criminal law ideally correlates with the national goals of a country. National goals (national goals) are general policy lines that form the basis and at the same time the goal of achieving legal politics. Meanwhile, national goals are also the basis and objectives of any legal reform efforts, including the development or renewal of Indonesian criminal law.

Legal reform is one of the reform agendas. One of the results was the amendment of the 1945 Constitution 4 (four) times. At that time, the Indonesian people felt that the human factor was not the only cause of the absolutism of government administration, but also the underlying factor, namely law.

Absolutism has also been felt in the legal substance that characterizes the life of society, nation, and state. Some various laws and regulations are more oriented towards perpetuating the power of certain groups to produce oligarchic government. This happens because of weak social control and community participation so the development of national law is carried out with the orientation to maintain the status quo by ignoring the essence and process of democratic state administration.

After more than 22 years of reformation, the development of national law seems to be still in the stage of finding the ideal form and pattern. However, it must be admitted that the governance process can be said to be much better. This is due to an increase in social control and community participation in the preparation and implementation of the concept of national law development.

The direction of legal development is not something that stands alone but is integrated with the direction of development in other fields requiring harmonization. However, the direction of legal development is based on the outlines of ideas in the 1945 Constitution, it is necessary to harmonize it with the level of development of society that is dreamed of being created in the future. Legal development is not identical and should not be identified with the development of laws or regulations according to terms commonly used in Indonesia.

Forming as many laws as possible does not mean the same as forming laws. The rule of law is not a state of law. The formation of laws only means the formation of legal norms. The social, cultural, economic, and political order is not merely normative, so a certain spirit is needed so that the order has capacity. When viewed from the aspect of legal norms, this is only one small part of legal life.

Legal norms are a substantial aspect of law. In addition, there is a legal structure and culture. The structure refers to the institutions of formation and implementation of the law (law enforcement) and legal culture which refers to the values, orientations, and hopes or dreams of people about the law. The latter can be equated with secondary rules. The values, orientations, and dreams of people about the law or things that are outside the norms of positive law, play a very decisive role in the capacity of positive law.

The problem that will be discussed in this article is about the correlation of the development of national criminal law with national goals. Furthermore, these problems are detailed in the discussion of national goals, development goals of national criminal law, and the correlation of national criminal law development with national goals.

Research Methods

This research is a type of library research, because it only uses secondary data in the form of legal documents. The approach used in this research is philosophical. The philosophical approach in legal research is to examine the law from the ideal side. This study uses a philosophical approach because the law being studied is at an ideal level. Data collection techniques are carried out through conventional and online searches. The data analysis method used is qualitative. Qualitative data analysis is the process of organizing and sorting data into patterns, categories and basic units of description so that themes can be found that are presented in narrative form. This study uses qualitative data analysis because the data will be presented in a narrative-descriptive manner, not in the form of numbers or numeric.

Discussion

6 National Destination

The national goals of the Indonesian state are contained in the values of Pancasila and the 1945 Constitution. It is stated in the fourth paragraph of the Preamble to the 1945 Constitution, namely: "Then from that to form an Indonesian State Government that protects the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the life of the nation, and participate in carrying out world order based on independence, peace, eternal peace, and social justice, this Indonesian National Independence is drawn up in a Constitution of the State of Indonesia, which is in the form of a structure of the Republic of Indonesia which is sovereign by the people based on Belief in the One and Only God, Just and Civilized Humanity, Indonesian Unity and Democracy Led by Wisdom in Deliberation/Representation, as well as by realizing a Social Justice for Indonesian people". This opening is the basis of national goals.

The Preamble of the 1945 Constitution is a source of reference and inspiration for the political and legal activities of the Indonesian nation. His position is also hardcore for managing the Indonesian state administration. All state policies must originate and return to what has been outlined in the Preamble to the 1945 Constitution (Zulfirman & Manurung, 2018) [15].

State goals based on the preamble to the 1945 Constitution can be divided into general goals and specific goals. The general objective is contained in the sentence "... to participate in carrying out world order based on freedom, eternal peace, and social justice...". The general objective is related to the problem of international relations which is an active foreign policy.

While the specific objectives are contained in the sentence "... to protect the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation's life". Specific goals are the national goals of the Indonesian state. In addition, special goals are also the common goals of the Indonesian people in forming a state to realize a just and prosperous society, both materially and spiritually (Kaelan, 2004).

The national goal is essentially a state goal, namely protecting the Indonesian nation, promoting the general welfare, educating the nation to realize a just and prosperous society. The root of the goal must reflect Pancasila as stated in the opening of the fourth paragraph of the preamble to the 1945 Constitution, which means that the 1945 Constitution is based on Pancasila. The relationship between the opening of the 1945 Constitution cannot be separated from the values of Pancasila.

The meaning of national goals must be broken down: the administration of the nation and state which is based on morals and the spirit of God, humanity, unity, democracy, and social justice. The values contained in the administration of the state are:

- a. Religious;
- b. Ensure humane justice;
- c. Protection and public order;
- d. Manifestation of differences and laws that live in a society;
- e. Benefit, welfare; and
- f. The balance of the individual with society.

The social setting of the multi-ethnic, multi-racial and multi-religious Indonesian state should not be forgotten by policymakers to understand the development of society and at the same time the desire to direct legal development to a better goal (Burlian, 2021) [2]. The existence of the law is a means to realize the happiness and well-being of inner and outer life in a shared life. The essence of the law is everyone equal before the law (everyone is equal before the law).

Furthermore, it is stated in Article 1 paragraph (3) of the 1945 Constitution that "the state of Indonesia is a state of law". This shows that the state as a political institution must dynamically regulate human beings in the state to prevent and resolve disputes that occur in society. One way to realize and maintain this goal is the establishment of national criminal law.

2. National Criminal Law Development Goals

The essence of the goal of developing national criminal law cannot be separated from the ultimate goal of state and community life which cannot be separated from the values and philosophy of life of the community itself, namely justice (*rechtsvaardigheid* or justice). The purpose of the law as social control, social order, and social guardian must be placed in the cultural measurement frame. Meanwhile, the national development goal, concerning the Preamble to the 1945 Constitution, is a form of balance between social defense (protection of society/public interest) and social welfare (protection of individual development) (Sulaiman, 2013). Everyone has the right to get justice which should be guaranteed by law. The goal to be achieved in the context of criminal law is social protection to achieve social welfare. Specifically, the punishment itself is aimed at three R and one D.

The meaning of the three R's are Reformation, Restraint, and Retribution, while one D is Deterrence, which consists of individual deterrence and general deterrence. Reformation means repairing or rehabilitating criminals to become good people and useful to society. Restraint means alienating offenders from society. By eliminating lawbreakers, society will be safer. Retribution is retaliation against violators for having committed a crime. Meanwhile, deterrence means to deter or prevent so that both the defendant as an individual and other people who are potential criminals will be deterred or afraid to commit a crime (Hamzah, 2008).

In general, criminal purposes are to:

- a. Prevention;
- b. Prevention is not the ultimate goal but only a means to achieve the higher goal of human well-being;
- c. Only violations of the law that can be blamed on the perpetrator (for example, on purpose or culpa) are eligible for a crime;
- d. Penalties should be defined according to their purpose as a tool for crime prevention;
- e. Criminal looking forward (prospective) criminal can contain elements;
- f. Reproach but neither the element of reproach nor the element of retaliation can be; and
- g. Accepted if it does not help prevent crime for the benefit of public welfare (Muladi & Arief, 2005).

The purpose of criminal law is to tackle crime. However, in the context of legal development, it also cannot be separated from efforts toward social welfare through social policy. There are three well-known theories in explaining the purpose of criminal law as follows.

a. Absolute theory

The absolute theory (absolute) is also called the theory of retaliation, namely, the basis of legal justice must be in the evil act itself. A person gets punished because he has done evil, or as a recompense for his actions. In ethical terms, according to this theory, punishment is imposed because people have committed crimes. Criminal is an absolute consequence that must exist as a retaliation to the person who committed the crime. So the basic justification lies in the existence of the crime itself (Usman, 2016).

b. Relative theory

Relative theory or goal theory, also called utilitarian theory, was born as a reaction to absolute theory. Broadly speaking, the purpose of crime according to relative theory is not just revenge, but to create order in society (based on the purpose of punishment). The purpose of punishment is to seek the benefits of punishment, namely to prevent future mistakes. With the imposition of a sentence, it is hoped that potential criminals will cancel their intentions because there is a feeling of fear of the consequences. The orientation punishment is aimed at the community, and prevention is for the perpetrators not to repeat their evil deeds (Usman, 2016).

c. Combined theory

The combined theory is a combination of absolute theory and relativity theory. The basis of punishment lies in the crime itself, namely retaliation or torture (absolute theory), preventing criminal acts, protecting the community, and at the same time rehabilitating perpetrators. This theory sees that the two theories above contain several weaknesses, among others: first, the weakness of the absolute theory is that it creates injustice because in sentencing it is necessary to consider the existing evidence and the intended retaliation does not have to be the state that implements it. Second, the relative weakness of the theory is that it can cause injustice because the perpetrators of minor crimes can be given heavy penalties; community satisfaction is neglected if the goal is to improve society; and preventing crime by scaring is difficult to implement (Usman, 2016).

The three theories regarding the purpose of criminal law are manifestations of the three schools that have developed in the discussion of criminal law, namely:

a. Classical criminal law school (Daad Strafrecht)

According to this school, the central point of concern for criminal law and its enforcement is the actions of the perpetrators of the crime (without looking at the motivation that drives the perpetrators). The emergence of this thought is theoretically the result of the strong influence of indeterminism, namely the notion that views humans and actions as autonomous (independent). The purpose of criminal law is a reflection or elaboration of the concept of the main purpose of the law, namely protecting broad or societal interests (Hamzah, 2008)^[3].

b. The flow of modern criminal law (Daader strafrecht)

According to this school, the central point of concern for criminal law is the perpetrator of the crime. The emergence of this thought is theoretically due to the strong influence of determinism, namely the notion which views that humans and their actions are not at all autonomous (dependent). The next development is the need to change the concept of giving criminal sanctions from punishment to treatment. This flow is a reflection of the concept of the purpose of holding criminal law, namely protecting individual interests (Hamzah, 2008)^[3].

c. The neoclassical-neo-modern criminal law school (D171-daader strafrecht)

According to this school, the central point of attention of criminal law is the aspect of criminal acts and the perpetrators of criminal acts in a balanced way. A punishment must be based on careful and balanced consideration between the facts in the form of a study of the occurrence of a crime and the subjective condition of the perpetrator of the crime. This flow is a reflection of the concept of the purpose of holding criminal law to protect interests that are social and at the same time individual (Hamzah, 2008)^[3].

Judging from the purpose of criminal law (Strafrechtscholen), then there are at least two major schools that discuss it. The first flow is called the classical flow. According to this school (de klassieke school/de klassieke richting) the purpose of the criminal law structure is to protect individuals from the power of the ruler (the State). The foundation stone was Markies van Beccaria who wrote about "Dei delitte edelle pene" (1764). Criminal law must be regulated by written law.

While the second stream is known as the modern school (de moderne school/de moderne richting). This school teaches the purpose of the imposition of the criminal law to protect the public against crime. In line with this goal, the development of criminal law must pay attention to crime and the circumstances of the criminal (Wahyuni, 2017)^[14].

Substantially the construction of criminal law in Indonesia, in this case, the Criminal Code, reflects the flow of classical criminal law. This is inseparable from the purpose of criminal law which was built to protect social interests. To protect the interests of the community, those who violate must be punished, regardless of the condition (subjectivity) of the perpetrator when they act, and their enforcement is colored by strong social reactions from the community. Law enforcement is still speculated on a rigid and mechanical positivistic paradigm (Prasetyo, 2012)^[8].

The law is carried out without case selection and is more embodying retaliation and procedural justice. The context of justice as a legal goal is also different between the community and law enforcement. Law enforcement according to law enforcement officials is nothing but for the sake of certainty, order, peace, and community protection (Hendriana, (2013)^[5].

Certain people in certain cases want a more humane justice. Sometimes people also want a non-procedural legal solution. Factually, when several cases bring public reaction, it has shown a desire to shift the purpose of criminal law. When this happens, it shows that legal justice is not by the sense of justice that the community has.

3. Correlation of National Criminal Law Development with National Goals

The development of national law ideally correlates with national goals. This means that the development of national law is one of the implementations of national goals. It is necessary to build a synergy of legal development goals in all its fields, such as the criminal field with national goals.

Synergy is a combination or combination of elements or parts that can produce a better and greater output. It will be easy to happen if the existing components can think in synergy, there is a common view and mutual respect. The development goals of national law will be in synergy with national goals if they have the same reference base and orientation.

The goal to be achieved by establishing a national criminal law as formulated in the Preamble to the 1945 Constitution is to protect the entire Indonesian nation and to promote public welfare based on Pancasila. This goal is a general policy line that forms the basis and objectives of legal politics in Indonesia. This is also the basis and goal of every effort to develop criminal law and crime prevention policies in Indonesia (Arief, 1994).

In general, from a historical perspective, the development of post-independence criminal law has begun with the promulgation of Law Number 1 of 1946 concerning the Regulation of Criminal Law. The law was promulgated on February 26, 1946. With this law, the gaps in the criminal law in newly independent Indonesia could be overcome even though it was only enacting the laws that previously existed in the Dutch East Indies.

Starting from the goal of "public protection" (social defense), the objectives of developing criminal law can be divided into:

- a. Protection of the public from anti-social acts that harm and endanger the community, then the purpose of punishment is to prevent and overcome crime;

- b. Protection of society from the dangerous nature of a person, then the purpose of punishment is to correct the perpetrator of the crime or try to change and influence his behavior so that he returns to obey the law and becomes a good and useful citizen;
- c. Protection of the public from misuse of sanctions or reactions from law enforcement or citizens in general, then the purpose of sentencing is to prevent arbitrary treatment or action outside the law; and
- d. Protection of the community from disturbances in the balance or harmony of various interests and values as a result of the existence of a crime, then criminal law enforcement must be able to resolve conflicts caused by criminal acts, be able to restore balance, and bring a sense of peace in society. Community protection in this case also includes specifically (Arief, 1994))^[1].

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The urgency of criminal national development, whose goal is to protect the entire Indonesian nation, is in line with Talcott Parsons' theory of functional prerequisites and their development by other thinkers. Parsons, with the theory of functional prerequisites (imperative-functional), formulated that society includes a broad system and its elements fulfill four basic functions. The four basic functions are adaptation (Adaptation), continuing the goal (Goal), integration (Integration), and maintaining norms (Latent Pattern Maintenance) or the AGIL approach (Turner, 1975)^[12].

AGIL developed by Parsons is nomotechnical in considering the functions of social systems. Each function is associated with a sub-system. The economic sub-system aims to adapt; the political sub-system is responsible for defining the ultimate goal; the cultural sub-system (religion and school) is tasked with defining and maintaining norms and values; social sub-systems (including law) serve as social integration (Turner, 1975)^[12].

Parsons places law as one of the sub-systems within a larger social system. Law refers to the rules as the rules of the game (rule of the game). The four sub-systems, apart from being a reality inherent in society, are also challenges that must be faced by each unit of social life.

The life and death of a society are determined by the functioning or not of each sub-system according to their respective duties. The law is in charge of managing the harmony and synergistic motion of the other sub-systems, and this is the integration function of the law. Law occupies a central position because it must be able to "tame" other sub-systems so that they can run synergistically without colliding with each other (Tanya, 2010)^[11]. Parsons' theory was further developed by Harry C. Bredemeier who stated that law can be used as a social integrator in society. Harmony between citizens and the norms that govern them creates harmony in relationships within the community concerned (Soekanto, 1979)^[9]. When there is an understanding that law is limited to a set of norms independent of social unity, it will only negate the relevance of law as a norm from the social basis where the law is born and where the law works.

Law is a system of norms to achieve the desired goals effectively, then the success of enforcement always requires the functioning of all components. Shifting the purpose of criminal law to synergize with national goals regarding the treatment of perpetrators of criminal acts must also pay attention to the interests of the community in general, and no less important are the interests of victims of criminals. It can be seen from the three streams above, that crime victims do not get any attention at all (Hasuri, 2019)^[4].

To create a synergy between the goals of criminal law and national goals, between the interest of the community, perpetrators of crimes, and victims, a new concept of criminal law is needed as national criminal law. The concept of the new criminal law is expected to make the law a regulator of the orderly society so that justice is realized for all components of legal actors, both victims, and perpetrators, as well as being a lesson for others not to take similar actions. Understand and understand as well as possible the nature of the law to maintain the balance of rights and obligations on the one hand and the other hand, and provide appropriate punishment for people who do not walk on the actual legal corridor. From there, justice, usefulness, and legal certainty emerge which ultimately lead the community in a better and more advanced direction.

3 Conclusion

Based on the above discussion, it can be concluded that the national goals of the Indonesian state are contained in the Pancasila and the 1945 Constitution. The Preamble to the 1945 Constitution is a source of reference and inspiration for the political and legal activities of the Indonesian nation. National goals are the goal of the state, namely protecting the Indonesian nation, advancing general welfare, and educating the nation's life in the context of realizing a just and prosperous society. The meaning of national goals must be broken down in the administration of the nation and state which is based on morals and the spirit of God, humanity, unity, democracy, and social justice. The essence of the goal of developing national criminal law cannot be separated from the ultimate goal of state and community life which cannot be separated from the values and philosophy of life of the community. The purpose of the law as social control, social order, and social guardian must be placed in the cultural measurement frame. The purpose of criminal law is to tackle crime. Legal development is also inseparable from efforts toward community welfare through social policies. The development of national law ideally correlates with national goals, even as one of the implementations of national goals. It is necessary to build a synergy of legal development goals in all its fields such as the criminal field with national goals. The goal to be achieved by building a national criminal law is to protect the entire Indonesian nation and to promote public welfare based on Pancasila. This goal is a general policy line that forms the basis and objectives of legal politics in Indonesia. To create a synergy between the goals of criminal law and national goals, between the

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