

7. Dimensions of National Law Development in Indonesia

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Dimensions of National Law Development in Indonesia

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Abstract: Legal development is a necessity for the Indonesian people. Having its product law becomes the identity of a free nation. The original Indonesian law will later become a national law that is free from colonial legal products. This study aims to describe the terminology of legal development and reform and urgency of developing a national criminal law in Indonesia. The results of this study indicate that legal development is synonymous with legal reform. Legal development is an inseparable part of national development. Integrating and synergizing with other fields such as politics, economy, society, environment, and security in legal development is necessary. Legal development must be sustainable and well planned. Legal development can also mean legal reform which includes updating existing or outdated legal provisions and creating new laws needed to meet the demands of developments that occur in society. The implementation of legal development is not only limited to statutory regulations but also leads to a legal system such as the development of legal materials, institutional development and law enforcement, development of legal services, and development of public legal awareness. These elements influence each other, and the law must be built simultaneously, synchronously, and integrated. The development of criminal law for the Indonesian nation is very urgent because as an independent nation it does not yet have its criminal law system. The current criminal law system is the Dutch colonial legacy legal system.

Keywords: legal development, criminal, Pancasila, identity, Indonesia

I. INTRODUCTION

Legal development is a necessity for a nation, especially for a nation that has been freed from colonialism like Indonesia. As an independent nation, of course, we do not want to continue in the shadow of the invaders. Having its product law is also a free national identity.

It is a natural thing that legal development is one of the problems that often becomes a long discussion among legal experts in Indonesia. This is because legal development is the entry point for the emergence of original Indonesian law, or based on local wisdom in it. The original Indonesian law will later become a national law that is free from colonial legal products.

So far, there have been unequal perspectives and alignments with the essence of law in Indonesia, which still inherits colonial law. The Indonesian nation certainly has benchmarks of justice, usefulness, happiness as well as certainty and

balance (Djatmiko, 2018), which are different from the Dutch. The worst impact of the dissimilarity of perspective and culture behind the law is chaos in the law, especially in its application.

Until now, the Indonesian nation does not have its national law, especially in the criminal field, even though it has long been independent. The government itself seems less serious. At the same time, the products of legislation in the political or business fields are very products of law-making.

There is a tendency for the political and business fields the government to be very productive in law-making but is weak in law enforcement and other political obstacles (Hajiji, 2013). This situation illustrates that the law has not yet become an instrument for creating social order in society and an instrument for the development of the nation and state. Because, what needs to be prioritized is the main law that has an impact on the very basic interests of the community, namely the criminal and civil fields.

Indeed, the law is an instrument to achieve the government's agenda. The law is a reflection of the legal awareness of the Indonesian people (Mulyadi, 2013). The applicable law must not deviate. There is a saying that even though the world is collapsing, the law must be enforced (Fiat Justitia et perat Mundus) (Kenedi, 2017).

Legal development has many aspects. Its scope includes the development of legislation and structures and substantial behavior (Zuhri, 2012). The legal development process is carried out to get the correct form of social change that will be the fate of a nation (Zuhri, 2016).

Policies carried out in legal development are ideally through a mechanism that maintains the plurality of the applicable legal order. Its scope is very broad which includes efforts to increase legal awareness, legal certainty, legal protection, law enforcement, and legal services that are based on justice and truth in the context of an increasingly orderly and orderly state administration. One thing that is no less important is the legal development agenda as part of the implementation of national development (Pardede, 2016).

Legal development must be a way to build a society in general and to build law in particular (Manan, 2021). The legal form is made to protect the community (Kencanawati, 2017). Legal development must be based on values derived from

Indonesian culture and based on basic values, namely Pancasila.

The problems discussed in this study are the terminology of legal development and reform, and the urgency of developing a national criminal law in Indonesia.

II. RESEARCH METHODS

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. Sources of data used in this study is secondary data. Secondary data is data obtained indirectly or has been provided by other parties. Secondary data is used as the main reference that is already available in written form in books, scientific journals, and other written sources. Data collection techniques are carried out through conventional and online searches. Conventional literature review is an activity to find library sources to data storage areas. While online writing is an activity to find library resources in cyberspace through the internet. Conventional literature searches are carried out by searching for library materials, purchasing books, journals and attending scientific activities (seminars). While online search is done by searching on the internet. 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.

III. DISCUSSION

A. *Dialectic of Law*

Meanwhile, the law is substantially sometimes difficult to define. The legal form is abstract and has a very wide scope, thus opening up space for the emergence of religious definitions. The scope of the law is so wide that humans are born and picked up by law, regulated by law, and even death is brought by law (Asikin, 2017).

The law has not found a single meaning, because everyone can give color, understanding, and meaning to the meaning of the law. Differences in perspective on the law gave birth to various schools or schools of law, where each school tried to provide interpretations of it (Wasitaatmadja, 2015). In general, the law can be defined as a collection of rules, either as a result of formal or customary legislation, in which a certain state or society claims to be bound as members or as subjects (Muslehuddin, 2000).

The general definition of law is a set of behavioral rules that contain orders/recommendations, prohibitions, and sanctions (coercive efforts) for violators (Mahfuz, 2019). Law is a system consisting of many interrelated and mutually influencing elements, in such a way that if one element does not function (work) as it should. If one part is changed, for

example, the regulations, all other legal elements must also be changed (Adhayanto, 2014).

When the law is present in society, it must have a noble purpose to guarantee and create security and order in every community interaction. The sense of security felt by the community is a sense of security from all kinds of threats, terror, and also all other actions that harm the rights and interests of every human being (Sukma, 2021). Naturally, Cornelis van Vollenhoven defines law as a symptom in social life that is constantly turbulent in a state of relentless collision with other phenomena (Vollenhoven, 1981).

Another definition of law is the whole collection of rules or rules in common life, the overall rules of behavior that apply in a common life, which can be enforced with sanctions (Mertokusumo, 2008). Law as a whole of the principles and rules that regulate the association of human life in society also includes institutions (institutions) and processes that embody these rules in society (Kusumaatmadja, 1998). According to pure legal theory, the law must be cleared of non-judicial elements such as sociological, political, historical, and even ethical and moral values (Snanandar, 2018) and must be able to provide regulation on all aspects of human life (Zuhraini, 2012).

The notion of law as a tool has been shifted to the law as an instrument for community development. Law is a tool used to achieve the state goals that have been inspired to (Fitriana, 2015). The main ideas that underlie this concept are that order and order in development and renewal efforts are desirable, even necessary, and that law in the sense of norms is expected to direct human activities in the direction desired by development and renewal (Harjono, 2014).

Law is defined more broadly than law as a tool especially in Indonesia because:

1. The role of legislation in the legal reform process in Indonesia is more prominent, for example when compared to the United States which places jurisprudence (especially the Supreme Court's decisions) in a more important place.
2. The concept of law as a "tool" will result in results that are not much different from the application of "legalism" as was held during the Dutch East Indies era, and in Indonesia, there is an attitude that shows the sensitivity of the community to reject the application of such a concept.
3. If law includes international law, then the concept of law as a means of community renewal has been applied long before this concept was officially accepted as the basis for national legal policies (Mulyadi, 2009).

The legal definition is complex. Law is a system of rules that includes heterogeneous social reality and has many fields, aspects, dimensions, and periods. As an object, he is like a

diamond, which gives a different impression to people who see it (Fitriana, 2015).

The dialectic of law above can be understood that law is seen as several regulations, as a collection of rules or rules that have general and normative content. The law applies to everyone and is normative because it determines what should be done, what should not be done or should be done, and determines how to implement compliance with these rules (Ishaq, 2008). As a set of rules, the law requires action and reaction, as well as legal consequences, without which the law does not function, and is a norm, where each norm must contain the value.

B. Terms of Legal Development and Reform

In general, legal development is the equivalent of two words, namely: development and law. Development implies efforts to make improvements from unfavorable conditions to better ones. The word that means development is renewal.

Reform is an effort to reorient and reform something that will be pursued through policy (2010). There is an endless orientation and business activity. Renewal is essentially improving a system by making various changes to system (Subandi, 2011).

Development or renewal associated with the law will have the same scope, namely making new laws. Legal development means building a new law. Meanwhile, legal reform means updating the old law with the new law.

The scope of another meaning of renewal is to go in a better direction than before. Three things should be noted from the explanation of the renewal, namely:

1. Updates are made to a system. This means that the renewal is not done partially / fragmentation, but comprehensively on a system.
2. Updates are made by making changes. This means that change is a condition of renewal so that there is no change, so there is no renewal.
3. Updates are made to get a better system. This means that renewal as a goal must be better than before (Kenedi, 2012).

In addition to the meaning of renewal, development is a coordinated effort to create more legitimate alternatives for every citizen to fulfill and achieve his most human aspirations (Dahuri & Nugroho, 2012). There are main themes that become messages in it. One of the development themes is coordination, which implies the need for a planning activity, and the creation of more alternatives.

Development should be oriented towards diversity in all aspects of life. The development mechanism demands the creation of trusted institutions and laws that can play an efficient, transparent, and fair role. The theme of development is also to achieve the most human aspirations.

The development orientation is ideally on problem-solving and fostering the moral and ethical values of the community. Development as a continuous process must always be responsive and sensitive to the dynamics that occur in society, both in the political, economic, technological, social, and cultural fields and so on (Muin & Karsa, 2019). In addition, development must also be an economic, social, and cultural transformation.

Indeed, development can be interpreted as a process of change carried out through conscious and planned efforts (Bratakusumah & Riyadi, 2004). Although development requires a series of changes, it is necessary to maintain order in society (Lubis, 2014). Development is a business or series of growth and change efforts that are planned and carried out consciously by a nation, state, and government, towards modernity in the context of nation-building (Siagian, 1994).

Although development is required to be in line with global developments, it must not ignore the ideal values it has. By building a new law or updating the law into a new law, it is hoped that the function of the law will be achieved not only as a means to renew the community (social engineering) but also as a law that lives and develops in society (living law) (Pokja Compilation of DPHN 2020). Development of legal reform is directed at producing a national legal system that is stable and able to function both as a means to create order and prosperity, as well as as a means to carry out development (Nadir & Wardani, 2018).

The Indonesian nation has Pancasila as the basis of the state. Pancasila is a crystallization of the Indonesian nation's perspective which is reduced to five basic values, namely divinity, humanity, nationality, democracy, and justice. These values must be the ideal basis for determining a legal norm (Pahlevi, 2016). If the basic values of a nation have not become the contents of national law, during that time a state building will face difficulties in various aspects of life, and in time the state will have difficulty developing.

C. Dimensions Of National Law Development In Indonesia

The development of national law is very important for the Indonesian nation. As a nation that has been independent for a long time, until now it has not had its own product criminal law system. This shows that the Indonesian people do not view the development of national criminal law as a very important priority.

The development includes all planned change processes to improve various aspects of people's lives. The most important meaning of the development process is progress, improvement, growth, and measurement. The development process occurs and is needed in all aspects of people's lives such as economic, social, cultural, political, legal, and so on (Hamzani, Mukhidin, Rahayu, 2018).

The basic meaning of development covers all aspects of community life. A society that is developing must know the interaction between law and other factors in the development

of society, especially economic and social (Syariah, 2018). Legal development is one aspect of development but has a broad impact because it is the basis of all development.

The function of law as a behavioral control system (ethical control). The legal form is a norm that is the product of a center of power that has the authority to create and apply the law. Law is a unidirectional control system carried out by a central organ that has power.

Unidirectional control implies that control only takes place from a certain organ that is given the capacity and function for it. The nature of unidirectional control applies automatic-mechanical that guides behavior. The law recognizes the adage *ibi societates ibi us*, namely where there is law in society.

Law exists because of the existence of society and the relationship between individuals in society. The relationship between individuals in society is an essential thing according to human nature who cannot live alone because humans are polis creatures, so creatures (zoon political) (Alin, 2017). The ultimate goal of the law is to create justice, benefit, and certainty (Fitriana, 2015).

If development and law are combined into legal development, it can be interpreted as an effort to change the legal order with conscious and directed planning concerning the future based on observed trends. Legal development has a progressive as well as adaptive meaning. Development means progressive because it is always active in updating the law in the direction desired by the community and its efforts to carry out social changes. While adaptive because of its efforts to serve the community at the latest level of development (Prabandani, 2011).

In more succinct terms, legal development has two dimensions. The first dimension is an effort to renew positive law (modernize law). Meanwhile, the second dimension is an attempt to function the law, namely by carrying out social changes under the needs of the developing community.

Legal development is not limited to legislative activities but also efforts to make the law a social engineering tool (Lala, 2021). According to Paton, legal development essentially consists of two things, namely legal development and legal reform. Legal reform is the establishment of a new legal order. Meanwhile, legal development in the treatment of existing laws, not destroying, spoiling, and letting them grow as they please (Ismayawati, 2021).

One thing that needs to be emphasized is that legal development is a process of implementing legal development through repairing, modernizing, or replacing it with new ones (Rasyidi, 2021). Law development is a continuous and never-ending process so law enforcement must not ignore the circumstances and the time dimension when the law is enacted and applied. Apart from being unwise, this in turn will have the potential to deny legal certainty itself.

IV. CONCLUSION

Based on the discussion above, it can be concluded that legal development is an activity that is intended to shape legal life in a better and more conducive direction, and by the objectives of the law, to create justice, benefit, and provide an ideal meaning for the continuation of life. Legal development is an inseparable part of national development. Legal development needs to be integrated and synergized with other fields, such as economic, social, political, environmental, and security, and is sustainable and well-planned, not partial and oriented towards continuous improvement. Legal development can also mean legal reform which includes updating existing or outdated legal provisions and creating new laws needed to meet the demands of developments that occur in society. The implementation of legal development is also not only aimed at the legal aspect in a narrow sense limited to legislation but in a broad sense that leads to the legal system such as the development of legal materials, institutional development and law enforcement, development of legal services and development of public legal awareness. These elements influence each other, the law must be built simultaneously, synchronously, and integrated, also sustainable and following the development of society and the development of crime, because the development of crime always follows the development of society itself.

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