

Principles Of the Development of National Law in Supporting National Development

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Abstract. The development of national law through a legal political approach is a basic policy of state administrators in the field of law originating from the values prevailing in society for the aspired state goals. The real desire for the Indonesian people, namely to improve, replace or perfect the constitution of the 1945 Constitution, has become part of the development and renewal of national law. The problem that can be raised as a study is how to realize a Legal System and Ideas that are in accordance with the concept of national legal development. Philosophically ideologically, a legal reform, starting from a very basic thing, namely the concept. Each field has its own concept. The concept of law from a legal point of view will remain different because of the different objectives to be achieved. In the context of the Legal Development theory approach, which is put forward by Mochtar Kusumaatmadja, it is known that there are 2 (two) aspects behind the emergence of this legal theory, namely: First, there is an assumption that the law cannot play a role and even inhibits societal change. Second, in reality in Indonesian society there has been a change in the nature of people's thinking towards modern law.

Keywords: Principles of Legal Development

1 Introduction

From Indonesia's independence until the reformation of the Indonesian nation, it has not had a legal system that is purely based on the socio-cultural values of the Indonesian country itself but utilizes the laws and regulations left by the Dutch colonial government. Nevertheless, legal development efforts to date have always been carried out by improving and even replacing or perfecting articles that are no longer relevant to the development of the times by replacing laws that are sourced from the cultural values of the Indonesian nation.

In line with these political changes, the character of legal products has also changed. For example, during the 1998 reform period, there were changes to various laws, such as the law on political parties and elections. The composition and position of the MPR, DPR, DPRD, and others changed to the 1945 Constitution (UUD). The excellent desire for the Indonesian people to improve, replace, or perfect the 1945 constitution of the 1945 Constitution has become part of the development and renewal of national law.

The development of national law through a legal, political approach is a fundamental policy of state administrators in law originating from the values prevailing in society for the aspired state goals. Thus, legal development was formed in realizing the ideals of the Republic of Indonesia.

In the process of law formation, there is a political conception and power, namely that law is more or less always a political tool and that the place of law in the state depends on the balance of politics, power, the evolution of political, economic, social ideology and so on. Therefore, lawmakers should note that it is essential to pay attention to the voice of the majority of the people who do not have access to influence public opinion and do not have access to influence political policies so that legal development is of high quality and integrity.

This is where the role of the elected representatives of the people through the existing democratic mechanism in the structure and political infrastructure is to protect the interests of the majority of the people and to fully understand the norms, rules, interests, and needs of the people so that the values of legal development produce favorable laws that provide benefits, justice, and legal certainty. The problem that can be raised as a study is how to realize a Legal System and Ideas following the concept of national legal development.

2 Discussion

2.1 The Nature of Legal Development

The fundamental and important aspect that is always present in the nomenclature of development is an improvement. In the legal context, improvements tend to be termed as revisions that can be made either in whole or only partially as needed. Philosophically ideologically, a legal reform starts from a very basic thing, namely the concept. Each field has its own concept. The concept of law from a legal point of view will remain different because of the different objectives to be achieved. The law in the concept always does not come out of its normative nature, and it contains the meanings of values about justice, propriety, and so on.

The concept determines the direction of an improvement effort, and therefore good development is a development based on the concept; Likewise, in the sense of revision, it too must have a concept. With that concept, development becomes a measurable and measurable activity [1].

In the context of the Legal Development theory approach, which is put forward by Mochtar Kusumaatmadja, it is known that there are 2 (two) aspects behind the emergence of this legal theory namely: First, there is an assumption that the law cannot play a role and even inhibits societal change. Second, in reality, in Indonesian society, there has been a change in the nature of people's thinking towards modern law.[2] Furthermore, according to Mochtar Kusumaatmadja [2], the main purpose of the law, when reduced to one thing, is an order which is the main condition for the existence of an orderly society. Another goal of the law is the achievement of justice, which varies in content and size according to society and its era.

Furthermore, to achieve order, it is endeavored to have legal certainty in human interaction in society because it is impossible for humans to develop the talents and abilities that God has given to them optimally without the certainty of law and order.[3] The function of law in a developing Indonesian society is not sufficient to guarantee certainty and order. According to Mochtar Kusumaatmadja, the law is expected to function more than that, namely as a "means of community renewal," "law as a tool of social engineering," or "a means of development" with the following main points:[4]

Law is a "means of community renewal" based on the assumption that the existence of order or order in development and renewal efforts is something that is desired or deemed (absolute) necessary. Another assumption contained in the conception of law as a means of renewal is that law, in the sense of legal rules or regulations, can indeed function as a tool (regulator) or a means of development in the sense of channeling the direction of human activity in the direction desired by development and renewal. Law in the sense of legal rules or regulations can indeed

function as a regulatory tool or a means of development in the sense of channeling the desired direction of human activity towards renewal. In relation to the function of law, Mochtar Kusumaatmadja provides a definition of law in a broader sense, not only as a whole of the principles and rules that govern human life in society but also includes institutions and processes. (processes) that embodies the application of these rules in reality.[5] Adequate law must not only view the law as a set of rules and principles that regulate human life in society but must also include the institutions and processes needed to realize the law in reality. For this reason, good and correct thinking and enrichment of implementations are needed in order to enhance and sharpen the quality of law in Indonesia.

Thus, legal development must start from the system because by starting from the system, the holistic scope of legal reform will be more actual. Without such coverage, the improvement is only partial, and it is possible that the law will develop wildly. The purpose of the law will never be realized because legal certainty and usefulness have no role in providing legal protection for the interests of the wider community.

2.2 Legal Systems and Ideas

The basic understanding of the system concerns the existence of goals, the whole (holism), interaction with the larger system, transformation, and their compatibility with each other (connectedness), and there is a unifying force that binds the system[5]. The legal system, in general, can be interpreted as a collection consisting of various elements, namely norms, principles, concepts, and theories that are interrelated with each other and also influence each other in a legal "building." Discussing the legal system also means a thorough review of what and how the law works from the point of view of a systems approach.

The legal system is a building in which there are legal ideas, which can be a measure in which a rule can be incorporated into law or not in the community concerned.[6] It can be concluded that the idea of law as an "identifier" is to mark the presence or absence of the law in a particular community as well as to mark whether a rule has legal value or not. Furthermore, inductively whether or not there is a legal system will also be determined by legal ideas. If there is no legal idea in a system, then by itself, there is no legal system.

The legal idea is in touch with justice, as also emphasized by Radbruch that the legal idea contains the issue of justice. But equating the idea of law as a legal goal, as stated by Radbruch, is not quite right. The idea of law is not the goal of law but the basic appearance of a legal structure. Perspective Legal ideas in the legal system are found in the organs of a country, such as the executive, legislative and judicial circles which essentially implement a legal idea.[6] The role of the executive, legislature, and judiciary triggers and spurs the movement of law in certain trajectories of time, place, and circumstances by carrying out a legal mission, namely realizing values such as justice, certainty, and expediency in law.

[6] Such implementation carried out by the three-state driving institutions is essentially a functional sociological effort and, at the same time, describes the role of a legal system. In addition to containing legal concepts, it is also proven that there are legal ideas to be applied as legal concepts in the context of realizing justice.

Development in the idea of law should be in one package of the objectives of the law itself. If so far, the purpose of the law is still with the pattern of looking at issues of justice, benefits, and legal certainty that are discussed in a separate section, it must be changed as a complete discussion. That is, we no longer need to think about the development of legal objectives in the context of selecting suitable principles to be applied, for example, justice as a priority, benefit, or certainty. The development of the law through system means would be better if the three principles of the objective were made one as the final goal (final goal) of law.

Applying the three elements of justice, expediency, and certainty separately opens up wide horizons for the emergence of a legal system conflict, but uniting the three together is not an easy task.

2.3 Development of the Legal System in Indonesia

There are two important reasons why a study on the development of the legal system in Indonesia is seen as very necessary. The first reason is that it is a fact that we do not yet have an ideal national legal system. A system is said to be ideal if it accommodates legal values as the essence of national culture. The existing law is a law that is full of western philosophy and not the philosophy of the Indonesian nation.

The second reason is that Indonesia's situation and conditions are undergoing various changes. As mentioned earlier, development in the system aspect has consequences for the construction of several items that make up the system itself, which include the legal education system, renewal of the statutory system or the rule of law itself, renewal of recognizing law enforcement procedures, including reforms in the field of legal services, to the wider community.

3 Conclusion

Legal development, which includes reform and development, must rely on the system itself because if the system does not provide an opportunity for the executor to do something that is not good, then the act cannot be carried out or at least acts that are against the system will be very easily detected and, in the end, will help a lot in terms of the need for law enforcement efforts. Legal development, both in terms of renewal and the creation of legal elements, is carried out in the context and content of the legal system.

In this context, the development of the law is none other than in the context of realizing Indonesia, which has the title of a state of law and upholds the law in every breath of state life. In content, the development must be carried out thoroughly on every element that makes the legal system more real, better able to regulate the subsystems in it. It takes extraordinary courage from the government to improve the law in terms of choosing a crucial alternative: a complete replacement of the legal system, either with the label of a national legal system or something else.

Legal development does not only depend on political will, but it requires state courage to determine which legal system is good with all the consequences. Efforts to "patch up" legal regulations actually affect other elements, which ultimately reduce the role and function of the legal system itself. The boundary between what is a system and what is a subsystem is no longer visible, biased, and finally, it is difficult to detect in which legal function it should be under more pressure to be improved. Not the other way around, that the development of law is just rhetoric from time to time, from regime to regime.

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