

INDONESIAN LEGAL DEVELOPMENT PROGRESSIVE LAW APPROACH TO BUILD THE LAW IN INDONESIAN SENSE

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Abstract

Law is a social tool that is used to realize the order of life of society and state fairly and humanity. Indonesia's current legal problems are its culture and systems are dominated by colonial law which is unable to strengthen the national identity in facing the future. Issues arising from the arbitrariness of law are enforcement officers, unfair trials, legal uncertainties, the loss of humanity in the law, and the law as a tool of human rights violations. It all occurs due to influence: 1) the dominance of power, 2) The interests of stability, and 3) contrary to Indonesia's own national identity. As a result, any method for formulating law products and enforcement efforts is ambiguous and inhumane. The law stands by itself, while society becomes the object. Progressive law as a new paradigm that puts forward the humane ideals of law, is a model of a new approach that in the sense of Pancasila and constructive to amputate the "crime law" itself. Indeed, in order to build a legal product with Pancasila's sense, we must do a "legal revolution" by using a progressive approach.

Keywords: *Legal Development, Progressive Law and Indonesian Sense Law.*

INTRODUCTION

After 72 years of Indonesian independence, the law is still a dilemma in providing justice to the justice seekers. The law that truly serves as a tool for the transformation of society's social life into a high and dignified civilization is trapped into the paradigm of orderliness and obedience. At the same time the regularity and compliance stem from the values and principles of Dutch colonialism. This can not be denied, as seen in law studies in faculty of law, is still dominated by legal lessons and legal rules born by the Dutch.

Pancasila as *welstanchaung* of Indonesia should be the legal basis. Construction of philosophical and *welstachaung* values with divine, humanitarian, unity, wisdom and wisdom, and justice principles must be implemented into legal philosophy and legal products.

When Satjipto Rahardjo presented the Progressive Law paradigm that was very accommodating to Pancasila, the courage of legal experts and legal practitioners was required to "sue" the legal paradigm that has been misguided in protecting the interests of the Indonesian people. Law is a virtue that will direct and bridge the interests of a nation to move forward and be civilized. *Ubi societas, ibi ius* is statement for there is society there is a law. Law is not born by itself, it was born by society. Therefore, the law should become a tool for the people to realize the ideals of the nation.

LITERATURE REVIEWS

Several studies that have studied Indonesian legal development with a taste of Indonesia can be sum-

marized in three paradigms; 1) the paradigm of Pancasila law¹, 2) Progressive legal paradigm², and 3) integrative legal paradigm³. These three paradigms are post-reformation and began to be studied intensively not only by the legal academics, but also by groups of people who care about the future of Indonesian Law. They conducted studies to provide solutions to the legal problems that occur in Indonesia today.

RESEARCH METHOD

This study used normative legal research method of doctrinal legal research, which is the study against norms that prevail in the community, so that it can offer a problem solving or solution to the problems faced by the community, whether concrete or potential⁴. The concrete problem is in the form of legal ideals which corresponds to Indonesia, while the potential problem is legal capacity to provide a sense of happiness to the community. The nature of this research is the analytical descriptive that describes the facts, certain circumstances and traits⁵. Analytical nature means that this research can describe the various findings of legal materials to clarify the concept of Indonesian sense law, so that it can be a solution in the existing legal problem. In order to analyze the accumulated legal material, normative qualitative analysis was conducted, where the existing legal materials were collected⁶, then arranged in order to form a systematic, concrete and clear sequence so as to produce a conclusion to be formulated.

INDONESIAN LEGAL DYNAMICS

The history of legal growth in Indonesia has begun since the first kingdom stood in Indonesia⁷, more or less in 130 AD. The various great and small kingdoms grew up in various parts of the archipelago, ranging from Hindu and Islamic kingdoms. Up to the arrival of the invaders and ended, when the proclamation of 17 August 1945 was announced. The people of the archipelago already live in the state of implementing legal norms to regulate the social order and the kingdom, from ancient to modern era, there were many legal norms underlying the life of the Indonesian nation.

Configuration of Western law, customs and Islam that developed in the early modern century in Indonesia, further reinforced what kind of legal formulation would be realized by Indonesia to reconstruct this nation in the future. The development of legal infrastructure in systemic models, courts, police institutions, and other legal institutions living in the community are certainly a momentum to encourage the realization of legal certainty, both as a norm and a law as a product of legislation. However, Romli stated that “since independence, the development of Indonesian law is very backward⁸”. After seeing the dynamics of Indonesian law today, there are three main issues that are very dominant in influencing the legal development, namely;

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- 1 The idea of Pancasila law is already in the beginning of the New Order era, but because of its dominant political influence on the law, the study of the paradigm of Pancasila law then deviates from the expected substance. Last idea reiterated by Prof. Dr. Asep Warlan Yusuf, Guru Besar FH Unpar dan Prof. Dr. Syaiful Bakhri Rektor UMI.
 - 2 This idea was first put forward in an article in Kompas Daily with the title “*Indonesia Butuhkan Penegakkan Hukum Progresif*”. 15 Juni 2002 oleh Prof. Dr. Satjipto Rahardjo
 - 3 While the integrative legal notion put forward by Prof. Dr. Romli Atmasasmita dalam bukunya *Teori Hukum Integratif, Rekonstruksi Terhadap Teori Hukum Pembangunan dan Teori Hukum Progresif*.
 - 4 Soenarti Haryono, *Penelitian Hukum di Indonesia Pada Akhir Abad ke 20*, 1994, Bandung, Alumni, page. 74
 - 5 Suryabrata, *Metode Penelitian*. 1993, Jakarta, Rajawali, page.19.
 - 6 Satjipto Rahardjo, *Ilmu Hukum*, 1991, Bandung, PT. Citra Aditya Bakti, page. 95
 - 7 Dewawarman menerima tongkat kekuasaan. Tahun 130 Masehi ia kemudian mendirikan sebuah kerajaan dengan nama Salakanagara (Negeri Perak) beribukota di https://id.wikipedia.org/wiki/Kerajaan_Salakanagara downloaded on 18 August 2017
 - 8 Romli Atmasasmita, *op.cit.* page. 1
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1) the dominance of power, 2) the interests of stability, and 3) contrary to Indonesia's own national identity.

1) Dominance of Power

The legal product is a political product of the legislative body. The legal product must be more impartial to the interests of the law itself rather than the maker of political institutions. Mahfud MD's thesis has proved this, from the Political Law to the Law on Regional Government, all of which is full of political determination against the law⁹. Likewise with the Act on ASN, the preferred interest is not for the development of personnel professionalism, but rather for the sake of voting for elections¹⁰. On behalf of the authority possessed by Patrialis Akbar as a judge of the Constitutional Court who later became entangled in bribery test cases of animal husbandry and animal health.¹¹

The Century Bank case, the Jakarta Bay Reclamation, the Tax, the Regional Head are all due to the existence of legal products made not for the benefit of the law itself.

The dominance of police, judicial and prosecutorial powers that often "sell chapters" and act in favor of "pro justice" often sacrifices rules for the sake of individual interests is not uncommon even "congregation" violates the law.

2) The importance of Stability

The interests of national stability, both the interests of development and the political interests of the state elite, the law becomes a shield and a tool to legitimize the interests of the authorities. In the era of the old order to the new order and even in the order of reform, the law was played by the authorities to take any action in order to safeguard the interests of the stability of national development. Hate Speech as a Chief of Police Chief which is considered by many to be a tool of silencing the freedom of opinion and Organization Regulation which has banned several Islamic organizations, all made with the consideration of the importance of maintaining stability.

3) Contrary to National Identity

What kind of building of our national identity to this day is still a big question. The same thing is also experienced by the law, such as whether the law of national identity. Therefore, it is not surprising, if the legislators are completely ignorant of the philosophy and values that deserve and deserve in the product of law. Stuck with the interests of the law must exist, with no consideration of national identity, the strength of the necessity of order without considering the interests of the nation's morality makes the various laws and regulations that are born to be barren and momentary. One case can be read from the Health Act no. 36 of 2009, with consideration of human rights and economics, this law needs to exist. Is the nation's humanity and morality for health only focused on getting health care and economic interests? The health service is very closely with the professionalism of medical personnel and empathy attitude that must be prioritized to serve patients.

9 Moh. Mahfud MD, *Hukum dan Pilar-Pilar Demokrasi*, 1999, Yogyakarta, Gama Media, page. 155-156

10 <http://nasional.kompas.com/read/2017/01/31/18334571/revisi.uu.asn.sarat.kepentingan> politik, downloaded on 20 August 2017

11 <https://news.detik.com/berita/d-3509434/patrialis-akbar-segera-jalani-sidang-soal-kasus-suap>

Of the three frameworks of this issue, it appears that the legal product that was born was still far from the substance of legal interest. Any law and other regulations are often regarded as legal products, however, between the contents of the rules are contradictory and contrary to the content and substance of the law itself.

NEW LEGAL PARADIGM WITH INDONESIAN SENSE

The law developed in accordance with the development of society. The law must become virtue, and virtue of the law must refer to Pancasila as the nation's philosophy. Roeslan Abdulgani in Resappoint and Preach Pantjasila writes: "Pancasila is the subject of the mind of a legal ideal"¹². The misconception of the law as a formulation of the righteous law even though empty of the spirit remains recognized as law. Yet as Satjipto conveyed "the law is made not only contains articles, but has spirit or spirit as well"¹³. On another occasion, Satjipto said "the behavior and practice of the law of a nation is too great to be merely inserted into the articles of the law for granted. It may be that the law says so or so, while other behaviors show, in the end, the picture of our real state of law appears through the behavior of the law, not the article of the law."¹⁴

As Romli Atmasasmita notes, the development of law compared with economics and politics is very backward¹⁵. Indonesian law is trapped into a seal to merely legalize every progress of various development infrastructures. Frederic Bastiat saw that the law had been used to destroy itself.¹⁶

The ideology of the Pancasila nation with its principles has the power of virtue and virtue that can interpret the law of Indonesian flavor. This will be realized of course by changing the paradigm used so far. Satjipto refers to Pancasila as "these values are the roots of our legal culture"¹⁷. However, he further said "if our formal system is still referring to liberal legalism will certainly cause problems"¹⁸.

In order to realize the Law in Indonesian sense, it can only be done with, first; strengthen the position of Pancasila as the law moral and normative basis. Second; Pancasila can only be ad home with to Indonesian if the paradigm used to formulate the values of Pancasila in various positive legal norms using the rationality of Indonesia itself. The combination of values and principles which contains Indonesian culture with methods and approaches that also has sense of Indonesia will be able to realize the law flavored Indonesia.

CONCLUSION

A. Summary

Indonesia's independence should also be enjoyed by our law by freeing the Indonesian legal system from the influence of Dutch colonialism and liberal legalism. To realize this notion, it needs a close combination of Pancasila entity with a progressive approach so that the birth of the law flavored Indonesia.

B. Suggestions

¹² Roeslan Abdulgani, *Resapkan Pantjasila*, t.tp, Jakarta, Prapatja, page. 88-99

¹³ Satjipto Rahardjo, *Sisi-Sisi Lain dari Hukum di Indonesia*, 2006, cet, ke-2, Jakarta, Kompas page. 86

¹⁴ *Ibid.*, page. 122

¹⁵ Romli Atmasasmita, *loc.cit.*

¹⁶ Frederic Bastiat, *Hukum Rancangan Klasik untuk Membangun Masyarakat Merdeka*, terjemahan, 2010, Jakarta, Freedom Institute, page. 5

¹⁷ Satjipto Rahardjo, *op.cit.*, page. 10

¹⁸ *Ibid.*

1. Colleges must perform creative designing to formulate legal constructs of Indonesian flavor.
2. It takes courage of law colleges and law enforcers to perform “mental revolution” in order to see the potential of Indonesian Law as an advantage and wealth.

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