

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Legal Dynamics In Responding To Digital Technology Developments In China, Reflective Efforts On Legal Development In Indonesia

Asep Saripudin

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: Asepsarifudin51@yahoo.com

Abstract. *Law enforcement and economic growth are the state's goals to be able to achieve and continuously improve these growth achievements. Economic growth is interpreted as the success of filling the state's financial coffers in the form of increasing the country's foreign exchange sources, increasing the standard of living of citizens, and improving the quality of human resources (Human capital). In order to achieve this goal, a legal arrangement is needed that is designed to protect the economic, political and public order.*

Keywords: *Economic Growth; Law Enforcement; Legal Arrangements; Public Order.*

1. Introduction

On the development of modern China as a world economic giant, Peter K. Yu as Director of the Intellectual Property Law Centre, Drake University Law School, provides an overview of how China's economic growth stage is in line with the development of the implementation of Intellectual Property Law, especially the development of the patent law system in China, as for These stages are the creation stage, the standardization stage and the implementation of regulations (Relation to China's WTO Membership), the Local Strengthening Stage, and the advanced stage. Since mid-2000 the Chinese government has paid great attention to developing an innovation and science-based economy, not only focuses on developing the agricultural and manufacturing sectors.¹

¹ Peter K. Yu, "Building the Ladder: Three Decades of Development of the Chinese Patent System", The WIPO Journal, 5: 1, p. 5-12 (2013)

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

If we open up historical spaces that will provide freshness in thinking, it will provide energy that will encourage us to gain an understanding of what has happened in China, so that it can transform into a world economic giant, as written by Peter K. Yu, there is a continuous process without cease to master science and technology through the application of Intellectual Property Law, especially Patent Law.

2. Research Methods

The approach used in this research is normative juridical or library-based legal research, namely legal research by examining library materials and secondary materials. The research specifications used are descriptive analysis research.

3. Results and Discussion

The very long history of Chinese civilization as part of China's very mature history can be seen in the very rigid relationships between family members, in social relations dominated by the idea of respect between members of society, the urge to show off achievements, or the desire to gain prestige. This is expressed in polite behaviours among members of society.²

In this way, it can be seen how enthusiastic China is to be able to make big leaps forward, achievements in the fields of agriculture and technology that were not achieved overnight but took a long time, while still adopting positive values from previous generations.

Next, the history of the development of the legal system in China is explained, as a comparison of how a legal system that has been designed comprehensively, integrated and looking at future legal needs will be adaptive to developments in science and technology and have an impact on the country's economic development. Opens the history of the development of the Chinese legal system by making efficient needs and space limitations, so as not to go too deep pulling the thread of history, so that the breath, aroma and spirit can be felt.

The historical development of Chinese law after the Qin dynasty, which first transplanted western law in 1840, then produced the first Civil Code which was introduced to Chinese citizens in 1911, but in its historical development before the transition from the Qin dynasty to Republican rule in October 1911 There are several sub-laws that were originally part of the Civil

² Marcel Granet, Chinese Civilization, London: Kegan Paul, Trench, Trubner & CO. LTD 1930: p. 427

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Code that were never announced, namely: Commercial Activities, Company Law, Shipping law, and the Law of Negotiable Instruments.³

The next stage after entering the Republican period and the end of the Dynasty period, the Chinese government made dynamic efforts to develop the legal system in its country, namely by carrying out a Legal Transplant. In the series of Chinese legal history, when the Chinese government entered the Republican Government Period (the period after the dynastic form ended), this period was characterized more by internal wars in China (conflict over the separation of Taiwan) and wars fought in the face of Japanese expansion. The initial period of the formation of the People's Republic of China (1912-1949) in Beijing as the embodiment of Chinese government after the end of dynastic government in China.⁴

The Chinese Legal System began by strengthening the implementation of Civil Law, as the foundation for implementing legal reforms carried out by the Chinese government. The refinement of the Civil Law draft was completed in 1926 with regulations regarding general principles of regulation in civil law, obligations, ownership, family and inheritance matters. Then the next draft during the government led by Nanjing added regulations relating to trade, politics and social culture (1929-1933).⁵

Furthermore, the legal transplants carried out by the Chinese government since 1949 had great influence from the laws implemented in the Soviet Union. Influence of the Soviet Union on the system Chinese law, when publishing a constitution and preparing a draft Civil Law Code. The only foreign legal experts who were in China until the 1950s appeared to be legal experts from the Soviet Union, and legal experts in China at that time received their legal education in the Soviet Union. In general, the influence of Soviet law is very visible in its influence on the general principles contained in the Civil Law Code until 1986.⁶

In contrast to the general parts adopted by French Civil Law, it distinguishes three large parts, namely: law of person, law on property and law on acquisition of property. Or in the civil law system adopted in Germany which is divided into five parts, namely: general principles, property, obligations, family and succession. Meanwhile, the Civil Code in force in China has

³ John Shijian Mo, Legal Culture and Legal Transplants Convergence of Civil Law and Common Law Tradition in Chinese Private Law, Selected Readings in Chinese Legal System, Finland: Turku Informyth, 2015, p. 11

⁴ John Shijian Mo, *ibid* p. 12

⁵ John Shijian *Ibid*

⁶ John Shijian *Ibid*, p. 14

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

adopted a division with a division pattern that is different from that applied in Germany and France. China divides it into nine major divisions such as: general principles, property, obligation, family, succession, intellectual property, personal rights, tort and private international laws. The division into nine major groups is evidence of the influence of the Soviet Union's legal system on the Chinese Civil Law System in the past few years.⁷

The influence of Soviet Union law on the structure of the Chinese Civil Law system in the period 1949-1977, during that period China did not have a dominant source of foreign law to be transplanted into the Chinese legal system. Some of these influences will provide a distinctive style to the process of strengthening and forming the character of the Chinese Legal System as what is called Legal Culture.⁸

China in the history of the development of its dynamic and adaptive legal system, it has carried out convergence between Civil Law and Common Law since 1978. China turned to the Civil Law tradition to develop its modern legal system about a hundred years ago and the legal culture was formed against such a background. led to a Civil Law transplant back in 1978 when the current Chinese government decided to rebuild its legal system to provide structural support. for modernization efforts. since 1978, the concepts, principles and practices of Civil Law have become influential major in the development of China's legal system. This has been seen in the codification system adopted in China, and the legal principles underlying much of China's written law, as well as China's judicial system and juridical practices. However, China has not yet turned into a real Civil Law country as many special laws were passed to offer solutions to many economic, political, social, cultural and legal problems that also influenced the Common Law tradition, indicating the convergence of Civil Law and Common Law in modern China.⁹

The legal transplant carried out by the Chinese government after the end of the dynasty period was a step designed with a big vision of how to prepare an adaptive legal system capable of encouraging accelerated economic development in China. The legal system chosen is not just one legal system, but how to combine civil law and common law systems. The strategic step in carrying out legal transplantation and combining the civil law legal system with the common law legal system which was designed to provide more specific problem solving was apparently able to frame a big plan for China's massive development efforts. Economic development is driven by maximizing the ability to control the manufacturing industry, the availability of raw materials

⁷ John Shijian Mo, Ibid

⁸ John Shijian Mo, Ibid. p. 15

⁹ John Shijian Mo, Ibid, p. 20

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

and labour, which in the next stage is the control of high technology-based industries which increasingly establishes China as a world economic giant.

Kenneth W. Dam Professor Emeritus of American Foreign Law at the University of Chicago Law School analyses how China's economic and industrial rise correlates with adaptive legal development strategies.¹⁰ Kenneth W. Dam emphasized how legal transplantation was carried out by China by adopting more substantive laws and regulations as has become best practice from the west, followed by the next strategy of reducing excessive state dominance in both development planning and state dominance in determining prices to become more oriented towards in a market economy, this measure is very effective for a great leap forward in China's economic development.

China adopted a different reform strategy. One can characterize them as additive, adaptive, selective, or more numerous perspectives. (Deng Xiaoping called it “crossing the river by feeling the stones.”) But it was certainly different and arguably smarter. Since legal reform is necessary to enable economic reform, legal reform must take on some of the same characteristics; Lichtenstein mentions "gradualism, experimentation, regional differences" and "piecemeal and sometimes disconnected approaches and initial vagueness compounded by later details. Most importantly, economic and legal reforms were evolutionary; although China's reforms were more centrally directed and only needed decades to make a fundamental difference, it is reminiscent of centuries of evolutionary development in the English legal and political system that culminated in the Glorious Revolution.¹¹

How will China carry out various regulations after "The best route for a better future" was successfully implemented by carrying out legal transplantation and converging the two legal systems of Civil Law and Common Law, so that it can understand the relationship between the ability to prepare an adaptive legal system and the growth of economic development, which Of course, the legal system that is formed does not apply exclusively, meaning that it cannot stand alone in a science but has intersections with other scientific disciplines. China continues to strengthen its control in the fields of information technology, e-commerce, artificial intelligence in relation to maximizing control of the digital economy.

¹⁰Kenneth W. Dam, “CHINA US A TEST CASE, Is the Rule of Law Essential for Economic Growth?”, Chicago John M. Olin Law & Economics Working Paper no. 275, p. 34-35 (2006).

¹¹ Kenneth. W. Dam, Ibid.

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

How does the regulatory landscape in China relate to the development of the internet industry? The initial stage was 1987 to 1988, when the internet was still in its embryonic stage and governments did not yet fully understand its potential. Thus, the world wide web remains largely a “wild” web and unregulated. This does not mean that there were no regulations at all during this period. On the contrary, two important regulations were introduced in a short period of one year, namely the 1996 Temporary Regulations on the Management of international networks of Computer Information Networks and the 1997 Measures for the Administration of Security Protection of International Networks of Computer Information Networks. However, the regulatory framework of this period had the following weaknesses: First, these regulations were very low in the legislative hierarchy, as they were temporary regulations and administrative rules issued by the executive branch, which did not have the same force as national laws issued by the NPC and its Standing Committee. Additionally, these regulations were not created with legislative authorization. So, at least in theory, these regulations can be challenged, especially with regard to provisions that conflict with rules in legislation of a higher rank. Second, the regulatory framework was built piecemeal. There is no central agency to coordinate the powers of the various agencies, and there are no clear jurisdictional boundaries between the various agencies. This could potentially result in gaps and overlaps in the regulatory framework, making the entire system slightly inefficient. Third, all of these regulations focus on internet hardware and there is no regulation on the software, let alone the content. Paradoxically, this contributed to the exponential growth of China's cyberspace at the turn of the century, where people flocked in pursuit of freedom of speech that was not available offline.¹²

Mingshen Zhang, from the Institute of Economic Research, Academy of Macroeconomic Research, China, explained how China has designed in great detail, executed and evaluated efforts to master digitalization which will have an impact on China's economic development. Mingshen Zhang says:¹³

“As we enter a new era called the 4th Industrial Revolution, where digital technology blurs the boundaries between the physical, digital and biological world (2017), we can expect a more prominent role by digitalization in boosting productivity and economic growth. As the second largest economy in the world, China is experiencing a new wave of digitalization with new drivers. ICT development plays an essential role in the process of digitalization. Since the

¹² Henry Gao, Idem, Data Regulation with Chinese Characteristics, National Research Foundation, Prime Minister's office, Singapore under its Emerging Area Research Project Funding Initiative, 2019 p. 5

¹³ Mingshen Zhang, “China's Digitalization and its Implications for China – South Korea Economic Cooperation”, World Economy Brief, 8:31 p.1 (2018)

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

early 1980s, China has actively strengthened the development of its ICT sector within the backdrop of the “opening-up” reform.”

The Chinese government is strengthening its top-level digitalization design by developing a national strategy on big data and internet applications. For example, a decision is made to implement a national strategy for data big at the third plenary session of the CPC Central Committee in 2015. The 13th Five-Year Plan (2016-2020) further stipulated that big data is a very important type. strategic resources to be developed and utilized. In 2016, China issued a notice on project implementation in the four relevant areas of data applications, data sharing, digital infrastructure and standards systems. In addition to grants and special funds as part of industrial policy, the government is also accelerating regulatory reforms and formulating regulatory rules for emerging industries in line with the principles of encouraging innovation and carrying out regulations in a tolerant and wise manner. The favourable regulatory environment has fuelled the prosperity of digitalization in areas such as transport and accommodation, with many unexpected digital applications and new types of businesses emerging.¹⁴

4. Conclusion

Thus, various achievements, regulatory patterns and the role of the full state are not absent in driving a big leap forward for China in mastering digital economic development. The Chinese government is reforming the bureaucracy and creating regulatory formulas so that the regulations created are able to provide a strong impetus for the birth of various innovations, but still in a thorough, evaluated manner and with ample space, not placing too much emphasis on restrictions but rather tolerant and careful regulations. Legal transplantation is another strategic step taken by the Chinese government to transplant laws from other countries with more advanced legal systems. China's development achievements through mastery of information and communication technology have leapt far ahead, showing that seriousness, hard work is framed by regulations and of course the government's role in spurring very big achievements, by being able to surpass the achievements of the European Union and even the United States in the ability to export goods. technology and information based. What is the role of the Chinese Government in spurring the achievement of mastery of information technology? The growth of a new series of digitalization cannot be achieved without the active role of government.

¹⁴ Mingshen Zang, *ibid*, p.3



Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

5. References

Journals:

- Henry Gao, Data Regulation with Chinese Characteristics, National Research Foundation, Prime Minister's office, Singapore under its Emerging Area Research Project Funding Initiative, 2019
- Kenneth W. Dam, "CHINA US A TEST CASE, Is the Rule of Law Essential for Economic Growth?", Chicago John M. Olin Law & Economics Working Paper no. 275, (2006).
- Mingshen Zhang, "China's Digitalization and its Implications for China – South Korea Economic Cooperation", World Economy Brief, 8:31 (2018)
- Peter K. Yu, "Building the Ladder: Three Decades of Development of the Chinese Patent System", The WIPO Journal, 5: 1, p. 5-12 (2013)

Books:

- Marcel Granet, Marcel Granet, Chinese Civilization, London: Kegan Paul, Trench, Trubner & CO. LTD 1930:
- John Shijian Mo, Legal Culture and Legal Transplants Convergence of Civil Law and Common Law Tradition in Chinese Private Law, Selected Readings in Chinese Legal System, Finland: Turku Informyth, 2015