

Politik And Nasional Law System

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ABSTRACT

It has become a national consensus that Pancasila and the 1945 Constitution are the source (system) of national law, Pancasila (and the 1945 Constitution) also contain various legal ideals (rechtsidee). In an effort to translate legal ideals into the legal system, it must always be tested with the dynamics of society, legal ideals must always be understood dynamically, not statically. Based on this understanding, the national legal system, which originates from and supports Pancasila and the 1945 Constitution, also contains various legal ideals (rechtsidee). In an effort to translate legal ideals into the legal system, it must always be tested by the dynamics of society. The ideals of law must always be understood dynamically, not statically. This understanding means that the national legal system which originates from and supports Pancasila and the 1945 Constitution must always take into account legal awareness that grows and develops in society, social realities that apply both in the social, cultural, economic, political and defense fields. An understanding of social reality is not just recording a situation that actually exists. This fact includes looking at trends that occur as part of the dynamics of society. Thus, formation must simultaneously consider the possibilities that will occur in the future and all the consequences. Such an understanding is not without risk. If the "predictions" are too far from the reality of society, then it can happen that the law in that form cannot apply properly. So, sociologically a rule of law cannot work properly, not only because it is lagging behind the community, but also because it is too far ahead of the existing reality, so that it is not known and has not been reached by the community.

Key Words : Legal Certainty, Legal Benefits

ABSTRAK

Telah menjadi konsensus nasional, bahwa Pancasila dan UUD 1945 merupakan sumber (sistem) hukum nasional, Pancasila (dan UUD 1945) juga memuat berbagai cita hukum (rechtsidee). Dalam upaya menerjemahkan cita hukum kedalam sistem hukum, harus selalu diuji dengan dinamika masyarakat cita hukum harus selalu dipahami secara dinamis bukan secara statis. Berdasarkan pemahaman tersebut, sistem hukum nasional yang bersumber dan mendukung Pancasila dan (UUD 1945), juga memuat berbagai cita hukum (rechtsidee). Dalam upaya menerjemahkan cita hukum kedalam sistem hukum, harus selalu diuji dengan dinamika masyarakat. Cita hukum harus selalu dipahami secara dinamis bukan secara statis. Pemahaman tersebut, sistem hukum nasional yang bersumber dan mendukung Pancasila dan UUD 1945 harus selalu memperhitungkan kesadaran hukum yang tumbuh dan berkembang dalam masyarakat, kenyataan-kenyataan sosial yang berlaku baik dibidang sosial, budaya, ekonomi, politik, maupun hankam. Pemahaman mengenai kenyataan sosial bukanlah sekedar merekam keadaan yang nyata-nyata ada berlaku. Ke dalam kenyataan tersebut termasuk pula mencermati kecenderungan-kecenderungan yang berlaku sebagai bagian dari dinamika masyarakat. Dengan demikian, pembentukan harus sekaligus mempertimbangkan kemungkinan-kemungkinan yang akan terjadi di masa datang beserta segala akibat-akibatnya. Pemahaman semacam itu bukan tidak mengandung risiko. Apabila "prediksi-prediksi" itu terlalu jauh dari kenyataan masyarakat, maka dapat terjadi hukum yang bentuk tersebut tidak dapat berlaku dengan baik. Jadi, secara sosiologis suatu aturan hukum tidak dapat berjalan dengan baik, bukan saja karena tertinggal dibelakang masyarakat, tetapi juga karena terlalu jauh ke depan kenyataan yang ada, sehingga tidak tahu dan belum terjangkau oleh masyarakat.

Kata Kunci : Kepastian Hukum, Kemanfaatan Hukum

Preliminary

Legal politics in the law curriculum is one of the subjects that must be studied in graduate education programs in the field of law studies in Indonesia and is a relatively young subject when compared to other compulsory subjects. The subject of legal politics was only known and taught in 1996, with the Decree (SK) of the Minister of Education and Culture (now the Minister of National Education) of the Republic of Indonesia Number: 002/U/1996 concerning the Curriculum that applies nationally to the Master of Law Program, the subject Legal politics is designated as a compulsory subject that applies nationally in the Master of Laws Program. However, the syllabus and obligatory literature for legal politics courses are not set, but will be determined by the Director General of Higher Education based on the considerations of the Legal Studies Consortium.

This raises uncertainty about what subjects should be the target of legal political studies? Meanwhile, the Law Studies Program at the Bachelor level (S1) at the Faculty of Law in Indonesia also cannot be used as a basis for determining the subject matter of legal politics courses in the Postgraduate Study Program (S2) because legal politics is not a compulsory subject in the Legal Studies Program at Faculty of Law throughout Indonesia.

This situation makes the lecturers of legal politics in the existing Postgraduate legal study programs each set their own subject matter to be the target of the legal politics course they care for. Several lecturers of legal politics, such as Prof. Padmowahyono, who made the state government system the main target of his discussion. Prof. Mochtar Kusumaatmadja, who made development law the main target of his discussion. Soehardjo, who made changing the law the main target of his discussion. The subject matter of legal politics determined by the teachers is different from one another.¹ Moh. Mahfud MD himself believes that there are substantial similarities between the various existing meanings. According to him, legal politics is a legal policy that will be or has been implemented nationally by the Government of Indonesia which includes: *First*, legal development with the aim of making and updating legal materials so that they are

¹ Moh Mahfud MD, *Politik Hukum di Indonesia*, Cetakan Pertama., LP3ES Indonesia, Jakarta, 1998. pg. 9.

in accordance with needs. *Second*, the implementation of existing legal provisions includes affirming the functions of institutions and coaching and law enforcers.² The scope of this understanding can be seen that legal politics includes the process of making and implementing laws that can indicate the nature and direction in which the law will be built and enforced.

Nonetheless, the difference even appears to be a principal difference. F. Sugeng Istanto,³³ stated that until now there appears to be no conformity of opinion among legal politics instructors in Indonesia about what should be the subject matter of the subject matter of legal politics courses they care for. As a result of the fact that until now there has been no agreement on the main objectives of the discussion of legal politics, it is understandable that until now there has not been a common understanding of legal politics adopted and developed by various Postgraduate Law Study Programs (S2) in Indonesia.

As far as legal politics can be traced, it has been introduced in Indonesia by Prof. Lemaire in 1955 in his book *Het Recht in Indonesia (Law in Indonesia)*. Legal politics has also been expressed by Utrecht in 1966 in his book *Introduction to Indonesian Law*. However, the legal politics presented in the introductory book on legal science does not have a continuation of the discussion, in the sense that there is no book that further discusses what and how the politics of law is.

Research Methods

The research method used in this study is an empirical legal research method, namely a research that seeks to examine positive practices in society and is protected by law. Thus it can be said that empirical legal research methods in dissertation research are used to find out various statutory provisions governing the implementation of Intellectual Property Rights. The secondary data will provide an explanation regarding primary legal materials. Collected in this research are the following legal materials;

² See, Abdul Hakim Garuda Nusantara, *National Legal Politics*, paper on Legal Aid Training, LBH, Surabaya, September 1985

³³ F. Sugeng Istanto, *Politik Hukum* (Collection of Lecture Materials) on Graduate School Gajah Mada University, without publisher., Yogyakarta, 2005. pg. 3.

Secondary data collection was carried out by means of literature study which included laws and regulations, jurisprudence, and legal literature books or other written legal materials. Normative juridical research uses secondary data, namely:

- a. Primary legal materials are binding library materials which include statutory regulations including the 1945 Constitution, book references and readings related to legal politics.
- b. Secondary legal materials that provide an explanation of primary legal materials, namely in the form of scientific writings in the field of law, politics, journals, papers related to legal politics. Also search online.
- c. Tertiary legal materials, namely legal materials that provide instructions and explanations of primary and secondary legal materials, for example, are legal dictionaries and Indonesian language dictionaries

Finding & Discussion

What is meant by national legal politics here is the policy of developing national law. In order to realize a unified national legal system based on Pancasila and the 1945 Constitution. The national legal system is ultimately a reflection of the contents of national law and contains dimensions of goals and national principles, namely as follows.

1. National law must contain and constitute an instrument for realizing general welfare and social justice for all Indonesian people.
2. To realize a democratic and independent Indonesian society.
3. To reflect legal certainty, justice and truth.

National Legal Politics includes:

- a. Law as a field of development.
- b. The scope of PHN.
- c. Formulation of the framework of the National Legal system and national legal mindset.

1. Law as a Field of Development

Even though as a whole, national development remains focused on the economic sector, with an increase in the " status" of legal development to become

a field that stands alone, creating a new direction that economic development and others cannot be separated from legal development.

The development of law in the future is not only a complementary effort to overcome problems that are immediate or fighting the problem, but must be seen as an effort that will better guarantee the achievement of national goals.

Law is not only a tool to support national development but must be seen as an effort that will better guarantee the achievement of national goals.

2. Scope of Development of National Law

The development of National Law, includes the development of legal materials, the development of legal apparatus and the development of legal infrastructure and facilities, including:

a. Development of legal materials

1. Formation and renewal of laws and regulations.
2. Fostering unwritten law from jurisprudence and other written laws.
3. Inventory and adjustment of the elements of the applicable legal system in Accordance with the national legal system

b. Development of Legal Apparatus

The development of the legal apparatus is not separate from the state or government apparatus in general. The development of the apparatus is directed at increasing quality, efficiency, effectiveness of administrative arrangements, capacity building, discipline, dedication, example, and welfare. These things are achieved by improving institutions, improving work procedures and increasing human resources (apparatus). In the field of law, institutional development includes fostering legal professional organizations, legal counselling, law enforcement, law enforcement, human resource development in the context of creating professional legal apparatus.

3. Preparation of National Law System and National Law Regulations

Framework

These two means can be distinguished, but cannot be separated. The national legal mindset (SHN), the composition of the SHN framework which will accommodate the national legal system must be prepared in accordance with and in

line with the National Laws and Regulations (PPHN). SHN in outline will consist of the main components, namely:

a. National Legal Content System

Comprised of legal principles and legal principles originating from and supporting Pancasila and the 1945 Constitution, the formulation of the contents of national law is not limited to the development of its principles.

Equally important is the development of legal principles, both of a general nature (general principles) and principles related to each field of law (criminal law principles, economic law principles and so on). criminal law, economic law principles and so on), every legal system cannot ignore legal principles.

The legal principle functions, among other things:

1. As a binding rope between various legal rules, which will guarantee the linkage of rules in one system bond.
2. Ensure that legal rules are formed and implemented in accordance with legal objectives (justice and legal certainty). For example, the principle of *nullum delictum* is for legal certainty and to prevent arbitrariness. Likewise, the principle of *bezit* for movable objects is for the sake of legal certainty.
3. Guarantee the flexibility (flexibility) of applying the rule of law in a concrete situation. For example, the principle of "buying and selling does not break the lease relationship" will also apply to other similar legal relationships, such as inheritance and *kibah*.
4. As an instrument to direct the application of legal rules that will conflict with the principles of general law that apply. For example, the presumption of innocence in a criminal case. The judge may not presume that the accused is guilty until proven guilty for which he can be held accountable.

b. National Law Enforcement System

The national law enforcement system will include institutions and procedures for national law enforcement that must be viewed and placed as part of the national legal subsystem. As a subsystem of national law, the enforcement system not only determines whether or not the objectives of national law are

achieved, but also serves as an instrument that guarantees the dynamics of the legal system.

c. Legal Formation System

The legal formation system is also a subsystem of national law. Formation of law is not only concerned with the authority and procedure for forming law but also determines the content and form of national law. The possibility of legal formation by lower-level government units, or by judges depends on the legal formation system, namely the extent to which the national legal system recognizes legal systems made by lower-level government units and jurisprudence. The three components are a single tri, one cannot be separated from the other. These three components are called the national legal system or the Indonesian legal system.

One of the factors influencing the national legal system mentioned above is legal politics. How the form and style of the legal system will be determined by the legal politics pursued by the government. Legal Politics in the context of creating a national legal system will be determined by various factors such as the political basis and style to be built; The economic system to be developed; understanding of security and so on. In addition, no less important are: (1) Community development; (2) Community realities; (3) Community structure, including; (4) Global trends.

Therefore, in order to understand legal politics properly, it is necessary to know exactly the direction of development of various aspects of social and state life both internally and externally. Therefore legal politics is none other than: (1) economic politics; (2) Cultural politics; (3) Social politics; (4) Defense and Security Politics and the politics of politics itself. With this understanding, it can be estimated that the direction of legal development and the function of law, namely aspects of social and state life will determine whether law will become an instrument for building a democratic and self-sufficient society, a society that leads to social justice, a society that lives under the rule of law or vice versa. .

Likewise, whether the law will function to provide convenience, encourage change or simply maintain stability depends entirely on the direction of development of people's lives in the political, economic, social, cultural and defense fields. Thus, law in relation to the development of national law requires an integral and comprehensive formulation of legal politics as a further elaboration of the

general matters outlined in the development targets. The legal politics will include the politics of legal development, the politics of determining the content of the law and the politics of law enforcement and application. This legal politics must also cover aspects of management system resources and so on. Changes in economic politics, especially those concerning the role and position of the state in economic activity. There are 3 (three) economic political thoughts that are carried out:

1. Economic politics that lead to economic etatism (understanding that the state is more important than the people). The state is the actor in almost all sectors of the economy. Constitutional restrictions as stipulated in Article 33 of the 1945 Constitution, such as businesses that affect the lives of many people, are no longer considered. The state also influences various economic activities carried out by the community through various forms of controlling authority which often become redundant.
2. Political economy that leads to a market economy system. This system wants the community to be the main actor in economic activity. The role of the state must be limited to things that encourage and provide facilities for economic activity. This tendency towards a market economy has led to criticism of, for example, the Agrarian Law, licensing regulations, investment regulations and others. These regulations are seen as not providing the way needed for the convenience of the economic system that is being implemented.
3. Political economy that wants to create a balance between the tendency of etatism and market economy. This kind of balance is seen as a form of political economy that is constitutionally desired by UUU 1945. Ideologically and normatively this political economy wants to prioritize the factors of "social justice", "general welfare" and "maximum prosperity of the people" as the main pillars of a sustainable economic system. should be executed. Creating a legal instrument that will really guarantee the balance of the roles of the state and society is not easy because it does not rule out the possibility of various conflicts between these two forms of interest. This is where, for example, problems arise regarding the development of cooperatives, the development of small and medium enterprises and so on.

In making these rules, a balance must be maintained which will ensure healthy economic dynamics without abandoning the interests of other parties.

Laws And Changes In Community Life

Legal politics is part of the science of law that examines changes from *ius constitutum* to *ius constituendum* to meet changes in people's lives. To understand the changes in people's lives, it is necessary to examine what the meaning of change is, the meaning of life, and the understanding of society.

What is meant by the notion of change in this paper is the state of something different from its original state. Everything in the world consists of elements or parts. For example, a person consists of a head, body, hands and feet; A tree consists of roots, stems, branches, branches, leaves, flowers and fruit.

As stated below, society also consists of elements. Changes in these elements can be changes in the number of elements of something, for example, the elements increase or decrease. In addition, the change can also be a change in the composition of the elements of that thing.

Life in this description is defined as existence. However, being does not always mean living. The stone by the road is there, but it is not alive. Thus, it can be formulated that life is a dynamic life. Life is a dynamic existence, which develops, which changes. Life will change. The life of something can be a positive change, that is, it develops for the better, but life to a certain extent is also a negative change, namely, it recedes for the worse. To some extent those negative changes are still life and end in death.

In general, society is defined as a group of people who are bound by a certain culture (KBBI). However, according to Open heim (op.cit) formulating society is *a body a number of individuals more or less bound together through common interests as creating constant and manifold intercourse between individuals*. From this formulation what is important is Oppenheim's statement that a set of individuals creates a constant relationship between these individuals. In other words, in that society there is a steady relationship between humans.

In connection with this steady relationship between humans, Logemann even defines society as traffic or relations between people. He said that society is a

verkeer tus sen mensen. Society is a coordinating scheme of stable human relations. The steady relationship between people in society by Logemann is called an institution or agency. These institutions as stable relations between humans in society, are a set of actions related to certain consequences that are accepted and obeyed in the life of the community concerned. These institutions, for example, are buying and selling, pawning, marriage, monogamous inheritance, *maatschap*, and so on.

Some of these institutions are without a division of labor, such as buying and selling, for example, some are with a division of labor, such as the *Maatschap*. Institutions that contain a division of labor are called organizations by Logemann. Thus, society consists of two kinds of institutions, namely ordinary institutions and institutions which are organizations.

From the description above it can be concluded that society is a collection of institutions. There are institutions that are legal institutions and non-legal institutions. These institutions are elements of community life. Changes in people's lives are thus changes in these institutions. This change can be a change in the number of these institutions, it can also be a change in the composition of these institutions without changing their number, and it can also be a change in the internal elements of these institutions.

These institutions are formed in a society because of the similarity in the assessment of the members of the community concerned that certain actions are accepted as having such consequences. When there is a change in judgment about certain actions with such consequences, the institution will change. Thus, changes in institutions in people's lives are mainly due to changes in the assessment of these institutions. For example, in the past, in the Netherlands, living together (*samenleven*) was considered bad, therefore living together was prohibited.

Now the assessment of living together is different. Living together is now considered a human right, therefore living together is now permissible. Changes in people's lives are something that cannot be avoided (Astrid Susanto). The existence of changes in people's lives has also been understood by ancient Greek society. At that time the ancient Greeks were familiar with the saying *panta rei*, which means that everything flows.

Factors that affect changes in the life of a community can be factors that exist within the community itself (internal factors) and can also be factors that come from outside (external factors). These internal factors include the human thinking of the members of the community concerned, the needs of the members of the community concerned, and the way of life of the members of the community concerned.

External factors that can change the life of a society, for example the arrival of modern technology, the inclusion of modern means of communication and transportation in that society.

Changes in people's lives can penetrate all areas of life in the community concerned. Changes in one area of community life can also affect changes in other areas of life. Call it for example the five areas of community life, such as the field of legal life, the field of political life, the field of economic life, the field of social life, and the field of cultural life. The field of legal life is a field of life that seeks to meet the needs of an orderly and just life.

The field of political life is a field of life that seeks to fulfill the necessities of life in power in society. The field of economic life is a field of life that seeks to meet the needs of physical life. The field of social life is a field of life that seeks to meet the needs of life in togetherness. The field of cultural life is a field of life that strives to meet the noble needs of life. Changes in one area of life can affect changes in another. For legal politics, what needs to be noted is that changes in areas of life other than changes in law can affect changes in other areas of life.

Conclusion

Constitution must always take into account legal awareness that grows and develops in society, social realities that apply both in the social, cultural, economic, political and defense fields. An understanding of social reality is not just recording a situation that actually exists. This fact includes looking at trends that occur as part of the dynamics of society. Thus, formation must simultaneously consider the possibilities that will occur in the future and all the consequences. Such an understanding is not without risk. If the "predictions" are too far from the reality of society, then it can happen that the law in that form cannot apply properly. So,

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