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Post Reform Legal System Updates in Indonesia

H. Richard
Lecturer at the Faculty of Law, Indonesian Entrepreneur University, Jakarta
email: dr.richard.se.sh.mkn.uwi@gmail.com

ABSTRACT

Applicable law in Indonesia is a law or statutory regulation based on the ediological foundation and the Indonesian state constitution, namely Pancasila and the 1945 Constitution or laws built on creativity based on the taste and engineering of the nation itself. The development of the Indonesian Legal System since Indonesia's independence has been characterized by laws with a social control paradigm. Legislation with this social control paradigm is characteristic of a developing country

The principle of state responsibility in a philosophical basis is inseparable from the sovereignty that is absolutely owned by every entity known as the state. Sovereignty which has the root word daulat, is a form of supreme power by a certain country. Sovereignty is a very important thing in determining the existence of a country both in its continuity in conducting relations with other countries and in regulating citizens within the territory of the country concerned.

Development related to post-reform legal reform is not an "instant" process, meaning that it is a process that takes place very quickly. In building laws to create a legal reform order in Indonesia, a visionary is needed who determines the "soul / paradigm" and frees the mind from the shackles and normative dogmas that are responsive and progressive. The functional urgency of national law in its development takes into account political, sociological, philosophical, juridical, and practical-adaptive elements.

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1. Introduction

Since the independent state of Indonesia in 1945 until the reform era in 1998/1999, the Indonesian people have not had the ability to realize or develop laws that are purely derived from the socio-cultural values of the Indonesian nation itself. This is very unfortunate, even though the state makes Pancasila the source of all sources of orderly law in Indonesia. Meanwhile, regarding applicability for the public interest, the fact is that the state still uses many legacy regulations from the Dutch colonial government. In this case, since the development of a national law development strategy since the New Order era in 1966, efforts should be required to develop a law that is oriented towards reforming national law.

Efforts to improve until now have always been carried out by repairing, replacing or perfecting articles in the 1945 Constitution through the first to fourth amendments, which many parties consider that there are articles that are no longer relevant to the times by replacing new laws that are derived from values. -the cultural values of the Indonesian people are in accordance with the current development of Indonesia. In line with that, since the era of political law reform has played a very important role for the authorities or the government to build the desired national law in Indonesia, the development of legal reform based on strengthening the national legal system has been gradually carried out.

Law as a social principle is inseparable from the values prevailing in a society. It can even be said that the law is a reflection of the values prevailing in society. Good law is the law in accordance with the laws that live in society, as well as a reflection of the values that apply in that society. The implementation of national development, which escapes the construction which is only realized by the number of buildings, bridges and ships. More than that, it can also be measured by the quality of values held by community members in the form of attitudes and traits that (should) be possessed by the developing community. Without the change in attitudes and characteristics in the direction required by a modern life, all development in the sense of physical objects will have little meaning. This can be proven by the waste that occurs in many developing countries, ignoring the aspects of reforming ways of thinking and attitudes of life.

The rapid development of global life since the 1980s until today has had a lot of influence on the development of regional and national development strategies in countries in the world. Accelerated development of development in all fields, especially those related to various legal activities supported by high technological development capabilities, has been able to produce intelligent human creations, to sustain the interests of mankind, which should protect the law.

According to Zudan, “The development of a national legal system is a discourse that is never finished. The discourse revolves around several issues such as whether Indonesian national law has a certain system, is it

true that the national legal system has been formed, whether the choice of the national legal system is made consciously, will it be based on the paradigm of whether the Indonesian national legal system is built.[1]

The role of legal politics in developing national law in Indonesia cannot be separated from its historical context. This means that throughout the history of the Republic of Indonesia there have been alternating political changes (based on the period of the political system) between democratic politics and authoritarian politics. In line with these political changes, the character of the legal product has also changed. The change occurs because the law is a political product, so the character of the legal product changes if the politics that gave birth to it change.

During the 1998 reform period, for example, there were changes in various laws, such as laws on political parties, elections and the composition and position of the MPR, DPR and DPRD and others. In addition, there were also changes to higher regulations, namely the abolition of the Decree of the People's Consultative Assembly (MPR) and amendments to the 1945 Constitution.

Reform of each country contains legal politics whose role is as a basic policy for state administrators to determine the direction, form and content of the law to be formed. Political law is the policy of state administrators regarding what is determined as a criterion for punishing something in which it obliges, implements and enforces the law. Low legal authority and legal protection related to law enforcement in Indonesia. The implementation of law in everyday people's life, which has a very important meaning, because what is the purpose of law lies in the implementation of the law.[2] Order and peace can only be realized in legal supervision which is dynamically created and implemented as the will of the legal community which is not desired in parallel in order to realize justice and legal certainty. With legal certainty, order in society will be achieved. In order to find the existence of the law, it requires a responsive and progressive concept based on the needs of the legal community.

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2. Research Methods

The approach to the problem used in this language is to use a normative juridical approach, namely literature law research and because this research is carried out by having library material. In this research, a descriptive-analytical type of research will be used with the reason being that the results obtained from the literature study are then analyzed and discussed using a systematic discussion flow. Thus the results of the analysis and discussion are then described for ease of drawing conclusions and submitting suggestions

3. Results And Discussion

a. Politics (Policy) Law

Moh. Mahfud MD stated that political law is a legal policy or official line (policy) regarding the law that will be enforced either with new laws or replacing old laws, in order to achieve state goals. "Political law is a concept, principle, basic policy and state law governance which contains political reporting, politics of legal determination and political application and law enforcement, institutional functions and guidance of legal lawyers to determine direction, or law in the form of law enforcement," he said. law that is appropriate in its territory and regarding the direction of legal development that is built and formed to achieve the goals of the state. "[3]

Laws are made to be enforced. If not, then the rule of law is only a composition of words that have no meaning in people's lives. Such a rule of law will become self-defeating. Applicable law in Indonesia is a law or regulations based on the ideological and constitutional foundations of the Indonesian state, namely Pancasila and the 1945 Constitution or laws built on creativity based on the taste and engineering of the nation itself. In this

[1]Zudan Arif Fakrulloh, 2011, *Ilmu Lembaga dan Pranata Hukum,* Rajawali Press, Jakarta, p. 55.

[2] Cahyo Mujiono, 2016, *Indonesia Negara Berdasarkan Atas Hukum*, Pamator Press, Jakarta, p. 160

[3] Moh. Mahfud MD, 2009, *Politik Hukum di Indonesia*, RajaGrafindo Persada, Jakarta, p. 2.

connection, [1] Indonesian law is actually none other than the law that originates from the cultural values of the nation that have existed for a long time and are developing now. The implementation of the law can take place in society normally because each individual is examined with the awareness that what the law determines is a necessity or as something that should be. [2]Law enforcement can also occur because of the law, namely by enforcing the law with the help of state equipment.

According to Satjipto Rahardjo, law enforcement is an effort to realize ideas about justice, legal certainty and social benefits as sponsors. The process of embodying ideas which is the essence of law enforcement. The law must be enforced and enforced. Everyone who wants laws can be determined against the concrete events that occur. The implementation and enforcement of the law must also pay attention to its benefits or benefits to the community. Because the law is actually made for the benefit of the community. Therefore, law enforcement and enforcement must provide benefits to society. Do not let the implementation and enforcement of the law harm the community, which in turn will cause unrest. Law enforcement and enforcement must also be fair. The rule of law is not synonymous with justice. Therefore, legal regulations are general in nature and binding on everyone. In a comprehensive law enforcement relationship, this is a reflection of the legal politics made and the strategic function of legal development that can provide protection for the people of a country.

b. Indonesian State Administration

Politically, the legal system for administering the Indonesian state administration develops based on the constitutional political system which affects the development of national law. Indonesia, is in the position of a country that arranges its legal politics in a systematic and programmed manner, either for reasons of being an independent colony or for the ideological reasons of the rechtsidea mandate, namely the legal ideals contained in the constitution and the preamble to the 1945 Constitution. There is a desire and even need to continue to improve, replace or perfecting colonial legacy laws with new laws.

According to Lawrence M. Friedman, there are three aspects of the legal system, namely: legal structure, legal substance and legal culture. First, the legal structure is the institutions that make and implement laws (court institutions and legislative bodies). Second, the substance of the law, namely the legal material of legislation, and the third aspect of legal culture, namely the attitudes of people towards the law and the legal system - beliefs in their values, thoughts or ideas and expectations (attitudes of society towards the law and legal system, beliefs, values , their ideas and hopes). The integration (integrated) of the legal system is carried out simultaneously, integrally and parallel.[3]

Friedman further argues that the four functions of the legal system: First, as part of a social control system that regulates human behavior. Second, as a means of resolving disputes. In this case, the legal system is seen as an agent of conflict or dispute resolution. Third, the legal system has a function as a function of social engineering. In this third function, law becomes part of social planning in public policy. Fourth, law as social maintenance, which is a function that emphasizes legal work as the maintenance of the "status quo" that does not want change. In the early days of independence, through the 1945 Constitution, there was no possibility of replacing colonial laws. Various requests and warehouses about what laws characterized the development of modern Indonesian national law. Some circles view that the colonial legacy of western law needs to be maintained by only updating it with various new developments in society.

In another group, the customary law pioneer group wants to implement and elevate customary law to become Indonesian national law and other groups so that Islamic Shari'ah needs to be introduced as Indonesian national law. The development of legal politics and its role in the development of law in Indonesia from independence to post-reformation. After the Proclamation of Independence, Indonesia was faced with two choices in determining the national legal system, namely the colonial legal system with all its details and the people's legal system with all its diversity. Initially the national leaders tried to build Indonesian law by trying to break away from colonial legal ideas. However, in reality it ends with the admission that the realization process is not as simple as the strategic models in doctrine.

In addition, in the national legal system there is a consideration that there should be no legal vacuum, Article 1 of the Transitional Rules of the 1945 Constitution states that "all regulations that are still ongoing as long as they have not been issued are new according to this Basic Law". This provision gave constitutional legitimacy for legacy colonial regulations to remain in effect. However, this phenomenon is of course not allowed because the vision and mission contained in the colonial legacy regulations contradict the religious traditions of the people.

On that basis, efforts to develop national law in Indonesia are imperative. A legal system that is more characterized by Indonesia with all the attributes of authenticity is indeed a hope (das sollen). Because inheriting

[1] Sunaryati Hartono, 2003, *Politik Hukum Menuju Sistem Hukum Nasional*, Alumni,Bandung, p. 64.
[2] Satjipto Rahardjo, 2001, *Masalah Penegakan Hukum di Indonesia*, Garafitty Press, Jakarta, p. 13.
[3] asuki Wibowo, 2013, *Penegakan Hukum Di Era Globalisasi*, Erlangga Press, Surabaya, p. 15.

a number of regulations and legal institutions from the colonial period actually means maintaining a way of thinking and a basis for acting that comes from individualistic ideology. This of course is not in line with the minds of the Indonesian people which are based on collectivistic ideas. That is, the new law must substantially meet the needs of the community. , The right or the next obligation, was also created in accordance with our goal to achieve a just society in prosperity and prosperous in justice.

The reform era, is the climax is the society of Indonesia in realizing the goals and ideals of law, namely a just and prosperous society.[1] The embodiment of the principle of equality before the law is a reflection of the conclusiveness of Pancasila as the source of all legal order that must be realized. Efforts to develop law in Indonesia to date have actually always been carried out by improving, replacing or perfecting articles in the 1945 Constitution, such as in the New Order era which attempted to refine Pancasila and the implementation of the 1945 Constitution by rearranging legal sources and order of regulations invitations. [2]However, in practice during the 32 years of the New Order era, as well as the rules of the reform era, the state has not yet compiled a form of legislation that can be used as a reference for efforts to strengthen future laws. So in addressing this problem of national legal development, it seems that efforts are needed to restructure the legal institution, which is supported by the quality of human resources and culture and the increasing legal awareness of the community, along with the reform of legal materials that are structured harmoniously and continuously after all, the development of community needs has become the data of the reform era society. In line with that, political law plays a very important role in the authorities or the government to develop the desired national law in Indonesia.

c. A Paradigm Shift in the History of the Development of the Indonesian Legal System

The principle of state responsibility in a philosophical basis is inseparable from the sovereignty that is absolutely owned by every entity known as the state. Sovereignty which has the root word daulat, is a form of supreme power by a certain country. Sovereignty is a very important thing in determining the existence of a country both in the continuity of relations with other countries or in fostering citizens within the territorial territory of the country concerned. Even though in reality the sovereignty itself is in a very theoretical realm. In the principle of state development in internal implementation, it consists of assessing the extent to which a state entity has committed a failure to provide a proper function of peace and welfare for its citizens. This is deemed necessary in order to provide a comprehensive picture of the form or form of state accountability. The application of the principle of state responsibility in external implementation, namely the assessment of state responsibility for the implementation of a country which results in injury to other countries.

This in turn makes a country collaborate on various legal theories in making law a part of the foundation of national and state life, including for the State of Indonesia which makes Pancasila the source of all sources of legal order. The principle of state responsibility has an external function as well as an internal function, namely towards citizens of the country concerned. A significant difference from the state that is responsible to citizens is the application of this principle, which involves the relationship between the state or government that performs state functions and citizens of the country concerned. In other parts of the world, the state has the responsibility to provide political freedom, security, health, education, opportunities for economic activity, good services, law order and other fundamental matters. When the state is unable to provide this, the state is declared to have failed to run a regime. One of the important things in discussing the principle of state responsibility in its implementation is the failure of the state to which citizens and under what circumstances.

Theoretically, the various doctrines of failure of the fast developing state in the third world countries were heavily relied on by geopolitical factors at the time. Factors that have played a role in the development of the doctrine of state failure include the end of World War II, which was accompanied by the collapse of several superpowers, so that many people have high hopes for their country. In addition, state failure is also a new paradigm in modern development by placing the state not only as an authoritarian entity.

In the development of modern state civilization, the national legal development system is a constantly evolving discourse that compromises various theories of legal science and is never finished. In Indonesia, the discourse revolves around the paradigm of Indonesian national law which is related to and has a certain system. Thus, in fact, the legal development system in Indonesia has historically been built based on the period from before Indonesia's independence to the current era. The real fact is that the national legal system was formed as an option, as the basis for the paradigm of the Indonesian national legal system being built.

d. Development of the Legal System in the Post-Reform Era

The development of the Indonesian Legal System since Indonesia's independence has been characterized by laws with a social control paradigm. Invitations with the social control paradigm are characteristic of a developing country. At the beginning of the establishment of the Indonesian state, the Founders of the Believing

[1] Antika Yuliani, 2009, *Dasar-dasar Politik Hukum*, Raja Grafindo Persada, Jakarta, p. 49.
[2] Padmo Wahjono, 2007, *Indonesia Negara Berdasarkan Atas Hukum*, Ghalia Indonesia, Jakarta, p. 78.

State would be able to lift Indonesian law from the substance of customary law, so that Indonesian national law really originated from Indonesian soil itself. In fact, the praxis was different. From the point of view of the history of law in Indonesia. This effort is difficult to realize because the customary law system is not formulated explicitly, while Dutch law has existed for a long time and manifests itself in very explicit written regulations. Of course, this is a legacy from colonialism that cannot be replaced in a short time.

It becomes impossible to construct a national law from a completely new configuration or build a legal order from scratch. Sociologically this is not going to happen. Also, the entire flow of the legal system in Indonesia was structured and followed the principles outlined by the colonials before they were overthrown. Therefore, it can be implemented that the laws that developed at the beginning of the republic still contained a social control paradigm and a liberal paradigm. The social control paradigm, which is later constructed in law as a legal function as a means of manipulating society, has a large portion. This stems from the understanding expressed by Roscoe Pound about the need to function "law as a tool of social engineering". Mochtar Kusumaatmadja argues that the use of law as a means of manipulating society according to the government's wishes is necessary for a developing country like Indonesia. Currently, the development of national law can be carried out in a more progressive manner since the post-reform era in 1998.

Enumeratively, it can be detailed starting from the aspects of legal ordering, implementation and enforcement of the law, aspects of the legal substance, aspects of procedural, institutional and mentality of the apparatus, as well as human resources and the provision of facilities and infrastructure. Prior to the Reformation Era, the public also questioned the extent to which the government also carried out the mandate of the 1945 Constitution which states that our country is a country based on law, not mere power. Problems related to the strengthening of people's aspirations for change, openness, justice, justice and democratization. Another problem that arises is the existence of outdated and outdated positive laws. In principle, the weakness of the legal substance is resolved by law enforcement agencies with noble integrity, but in reality the existing legal apparatus is fragile in enforcing the law.

Syringe law enforcement is seen as a source of disease in legal development. This means that collusion cases in court destroy the authority of the law, and in the long run will hinder the legal development process that is being carried out.

The decline in the authority of the law occurs because people no longer believe in law as norms that govern social life. There is an "anomie" situation where the community loses the values it has to adhere to. The development of national law during the New Order era was felt to be very urgent for the first reason, what happened recently shows the assumption of a culture of mass fraternity, legal errors in all levels of society that have resulted in a decline in the authority of the law. Second, the guarantee law inherent in national development is because the law is capable of being embedded in all aspects of ipoleksosbud-defense and security. Third, as norms and values, the law will provide signs in the social order of the community so that the law will become the main mirror of civilized life. Fourth, related to the era of free trade in 2020, the law will become a more important part as a manifestation of the nation's identity in a global atmosphere that tends to be liberal.

In the framework of legal development, legal reform, with the Pancasila legal system, seems important to introduce Pancasila as a new paradigm. An important step that is indispensable in building national law is to free the mind from normative and dogmatic shackles. This means that the European / Western (especially the Dutch) legal system is related to the only ideal legal system and is compatible with the conditions of the Indonesian legal community. Building the law to conform to the legal system with the Pancasila paradigm requires a critical attitude, independent thinking, and openness because in the current structure there are many values that are not easy to accommodate in the Pancasila system. The reality that exists in Indonesia today is that there is a miss-synchronization between values and prevailing norms. The existing values and norms are not harmonious. The values that want to be raised are the values of Indonesian culture, but the norms that emerge are European norms which in fact are capitalist liberal. It can be exemplified that, the strengthening of conglomeration, monopoly, workers who are paid below the UMR, and others. These are all descriptions of the unsynchronized values desired with emerging norms. If this is not realized, our nation will become a nation with a "split personality", where there is an imbalance between the desired values and the structure and norms.

Legal development in the post-reform period with extraordinary enthusiasm for restructuring aspects of legal institutions and institutions related to the democratization of euphoria after the fall of President Soeharto. In this period it was seen that there was a manifestation to avoid things that were "The" New Order. The New Order as a social and legal order did not succeed in realizing a democratic, clean, transparent and accountable government. The fundamental change in this period was the courageous thought to dismantle the constitution through four amendments, namely in 1999, 2000, 2001, and 2002.The amendments to the 1945 Constitution have brought major changes in the entire constitutional structure of the Republic of Indonesia to enter a new state life. different from the previous period.

In the Amendment to the 1945 Constitution and National Law Development, the fact is that:

1) The first amendments to the 1945 Constitution were made in 1999 with the direction of changing the power of the president and monitoring the House of Representatives (DPR) as a legislative body;
2) The second amendment to the 1945 Constitution was carried out in 2000 with the direction of changes to the problem of state territory and the division of regional government, perfecting the first amendment in matters that lie in the DPR and detailed provisions concerning Human Rights;
3) The third amendment to the 1945 Constitution was carried out in 2000 with the direction of changes in the principles of the foundation of the state, state institutions, and relations between state institutions and the provisions concerning General Elections;
4) The fourth amendment to the 1945 Constitution was carried out in 2000 with the direction of changes to the provisions concerning state institutions and relations between state institutions, the abolition of the Supreme Advisory Council (DPA), provisions on education and culture, economy, and social welfare, and transitional rules and additional regulations.

Amendments to the 1945 Constitution have brought about major changes which must then be followed by these changes. The implementation of the amended 1945 Constitution can only run well and be carried out systematically by rearranging legal norms into the practice of organizing the life of the nation and state.24 With the amendment of the 1945 Constitution, since 2002 all legal institutions and institutions in Indonesia have had to adjust self. The birth of various new invitational regulations and new state institutions are the "biological children" of the amendment to the constitution. For example, the enactment of Law Number 32 of 2004 concerning Regional Government which is Law Number 22 of 1999 is an explanation of the spirit of decentralization contained in Articles 18, 18 A, 18 B, and 18 C of the 1945 Constitution. real results of amendments to the 1945 Constitution.

After the amendments to the 1945 Constitution, the Supreme Advisory Council (DPA) was dissolved and several new state institutions were also formed. The birth of state institutions or implementation commissions from the amendments to the 1945 Constitution, for example:

1) The Constitutional Court;
2) Corruption Eradication Commission;
3) Judicial Commission;

The National Legislation Program is a program planning, a statutory plan that is formulated in a planned, integrated and systematic manner. Through Prolegnas, it is hoped that a better and more integrated national legal system can be built.26 Meanwhile, the material for the amendment of the law continues to develop to accompany the will of progressiveness desired by the Indonesian people, as well as being part of national legal policy or politics. The development of national law in a global era is felt to be so urgent with the first reason, that the phenomenon of globalization entering Indonesia cannot be allowed to develop without regulations. Second, the guarantee law inherent in national development is capable of being attached to all aspects of the constitutional political strategy. In the administration of governance, law must appear as an integrator that can unite the various interests of the internal interests of the nation, between national and international interests and between sectors of national life. Third, as a norm, the law will provide signs in the social order of the community so that the law will become the main mirror of civilized life. Fourth, related to the existence of a country globally, law will become an increasingly important part as a manifestation of the nation's identity in a global atmosphere that tends to be liberal.

4) Closing

Reforms related to legal reform after reform process reform are "instant", meaning a process that takes place so quickly. In building law in order to realize legal reform in Indonesia, it is necessary to have a visionary who determines the "soul / paradigm" and frees the mind from the shackles and normative dogmas that are responsive and progressive. The functional urgency of national law in its development takes into account political, sociological, philosophical, juridical, and practical-adaptive elements. The role of legal politics in developing national law in Indonesia cannot be separated from its historical context. As is known, after Indonesia's independence until post-reformation the Indonesian nation has made efforts to reform the national system in accordance with the current development of the Indonesian state.

Entering the reform era which was in the millennium, irrelevant regulations became a priority for legal political development in post-reform Indonesia. Political law is defined as a basic policy that generates legal reforms to be utilized by state administrators in the field of law who will be, are being and are ready, and come from the values prevailing in society for the aspired state goals. Thus, that political law is formed in the context of realizing the ideals of the Republic of Indonesia, namely the realization of a just and prosperous society as a means of welfare for the people in the jurisdiction of the Republic of Indonesia.

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