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The Role of Legal History in the Creation of Aspirational Legislation in Indonesia

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ABSTRACT

The history of law is a systematic recording of certain symptoms affecting a nation, an institution, or social group that is usually accompanied by an explanation of those symptoms, as well as a descriptive and interpretive record of events experienced by humans in the past that something to do in the present. This paper aims to gain an understanding of Indonesian law with current legal legislation, which enables it to reflect the rules of the future law. The development of the history of law is defined by the school of history whose development of law thought cannot be detached from the influence of positive law theory on the development of modern state concepts and nationalism in the early 19th century. the history of Indonesia's law is appropriate and reasonable if it starts from time to time or period to period. The particular object is the history of the formation of law or the influence of legal sources in the formal sense of certain regulations.The paradigm used as the basic framework of research is legal sources in the formal sense.One of the uses of legal history is to reveal the legal facts of the past in relation to the present.It is a process, a unity, and a statement of fact, that is important to the historian and that the evidence must be accurate, inclined to follow a systematic, logical, honest, self-aware, and powerful imagination.The history of the law can provide a broad view of the law, it is impossible to stand on its own, constantly being influenced by other aspects of life and also affecting it.

Keywords: History of Law, Indonesia, Legislation,Customary law, Jurisprudence, Treaty, Doctrine.

INTRODUCTION

The history of law has an essential meaning and has a significant role within the framework of Indonesian National Law., where history discusses the development of the law from the past to the present. According to Soerjono Soekanto “Through the history of the law can be traced various aspects of the law so that it can be used as a tool to understand the laws and institutions of law in society, nation and the country today”. Thus the history of law is the method of the branch of history, not from the branch of law that studies, analyzes, verifies, interprets, or constructs propositions that tend and draw certain conclusions about each fact.

Law in the present and law in the past is a unity. That means that we can understand our law today only by historical inquiry. Therefore studying the law in science must also study its history (Van Apeldroon, p. 417)

The concepts of rules and regulations relating to the law have always been applied either chronologically and systematically following their consequences in relation to other areas of law, or in other words, the history of law also studies the process of events and the development of symptoms in the past, and their interrelationships about what is happening today as found in literature, manuscripts, and even oral discourse by way of characterization, uniqueness of facts and norms, thus discovering the symptoms and arguments of past legal developments (symposium with the Minister of Justice, 1-3 April 1975).

The history of law is a systematic recording of certain symptoms affecting a nation, an institution, or social group that is usually accompanied by an explanation of those symptoms, as well as a descriptive and interpretive record of events experienced by humans in the past that something to do in the present.

Indeed, the law is similar to humans. Born and raised in youth, adulthood, old age, and death. The law is passionate and ambitious so that while the process of creation or birth is engineered, it will be a special record in the history of law.

By analogy with the emergence of law, identical to the origin of language, there is no universal. The law is not by order of the ruler or by the custom but by the sense of justice which rests upon the soul of the people, the nation itself (instinctively). The soul of the nation (volsgeist) is the source of law (an is an expression of common consiuness or spiit of people). This is an illustration of *ubi sociates ibi ius*, meaning, where there is a society there is a law, thus it begins with primitive law and old scripts.

This paper aims to gain an understanding of Indonesian law with current legal legislation, which enables it to reflect the rules of the future law.

LITERATURE REVIEW

The development of Indonesian law historical

The trace for the development of the history of law is defined by the school of history whose development of law thought cannot be detached from the influence of positive law theory on the development of modern state concepts and nationalism in the early 19th century. On the other hand, the development of the historical school also was influenced by the political conditions of the day that gave birth to an understanding of individual independence.

According to Von Savigny, what is mentioned in the law is not only the law written in the book of the Act. The law also grows and develops with the society. In Germany, the influence of the school was growing and spreading to other parts of the world. The jurists of the Indonesian schools of history who opposed the unification of Indonesian law by the Dutch colonialists succeeded in providing a place to the customary law that has long been at the heart of Indonesian life as a law applicable to indigenous peoples in their homeland. That the emergence of the school was due; (1) The existence of 18th-century rationalism, based on the laws of nature, the power of reason, and the principles that all play a part in the philosophy of law, relies on a deductive mindset without regard to historical facts, specificities and national conditions. (2) The spirit of the French revolution against traditional authority with the cosmopolitan mission (belief in the ratio and strength of human determination to overcome its environment). (3) There are opinions that prohibit judges from interpreting the law because the law is considered to solve all legal issues. (4) Codification of law in Germany proposed by Thibaut (teacher from Heidelberg): the law does not grow from history.

Speaking in the history of Indonesian law interpreted the existence of legal and legislation products since Indonesia's independence on August 17, 1945, which embodied these products, the 1945 Constitution, but when examined and understood the provisions of Article 2 of the Transitional Rules of the 1945 Constitution which read, "All-State bodies and regulations still valid as long as there is no new one according to this Basic Law "

Thus this signifies an acknowledgment that prior to Indonesia's independence there was a regulation (law) in Indonesia, which means that even after Indonesia was still independent of the law, therefore, the history of Indonesia's law is appropriate and reasonable if it starts from time to time or period to period:

The period of colonialism

The period of colonialism was divided into three major phases: the VOC

period, the Dutch liberal period, ethical politics, to the time of Japanese occupation.

The VOC period

At the time of the occupation of the VOC, the legal system implemented was intended for: (1) The importance of economic exports to address the economic crisis in the Netherlands; (2) Indigenous peoples' discipline in an authoritarian way; (3) Protection against VOC workers, relatives, and European immigrants.

Dutch law applies to the Dutch or Europeans. As for Indigenous people, the rules apply to each community individually. Governance and politics at that time had abolished the basic rights of the people in the archipelago and had brought great suffering to the Indigenous Peoples at that time.

The Dutch liberal period

In 1854 the Dutch East Indies published Regeringsreglement (hereinafter RR 1854) or Regulations (in the Dutch East Indies) whose main purpose was to protect the interests of private enterprises in the colonies and for the first time regulate the protection of indigenous peoples from independence - the government of the colonial government. This can be found in the (Regeringsreglement) RR 1854 which sets out restrictions on executives (especially Residents) and police, and guarantees of the independent judicial process.

The colonial administration's autocracy was still in effect during this period, though not as bad as before. However, the legal reform underpinned by the politics of economic liberalization did not improve indigenous well-being, as exploitation continued, only the subject of exploitation changed, from exploitation by the state to the exploitation of private capital.

Ethical political period - Japanese colonialism

Ethical political policies were issued in the early 20th century. Among the early policies of ethical politics directly related to law reform was: 1) Education for indigenous children, including advanced law education; 2) Establishment of the Volksraad, a representative institution for Indigenous people; 3) Structuring of government organizations, especially in terms of efficiency; 4) Structuring of judicial institutions, especially in terms of professionalism; 5) Establishment of laws and regulations oriented to legal certainty.

Until the collapse of colonial rule, legal reform in the Dutch East Indies left: 1) Dualism/pluralism of private law and dualism/pluralism of judicial institutions; 2) Classification of the people into three groups, European and equivalent, Foreign East, Chinese and Non-Chinese, and Indigenous.The Japanese occupation of law reform did not occur much, and all the laws that were not in conflict with the rules of the military of Japan continued to abolish the privileges of the Dutch and other Europeans. Some legislative changes have occurred: 1) The Civil Code, which initially only applies to Europeans and the equivalent, applies also to the Chinese people; 2) Some military regulations are inserted in the applicable criminal legislation. In the field of justice, the reforms carried out are 1) Elimination of dualism/pluralism of justice; 2) Prosecutor's Unification; 3) Eliminating the distinction of city and rural / field police; 4) Establishment of a legal education institution; 5) Passively filling government and legal administration positions with indigenous people.

Indonesia's independence period

Since the Declaration of Independence of the Republic of Indonesia on August 17, 1945, it has been said that since then the Indonesian nation has made the decision to determine and enforce its own law, namely the law of the Indonesian nation with its new constitution of Indonesian law. It is stated in the proclamation text, "*We the Indonesian people hereby declare Indonesian*

Independence and so on ... ". Likewise in the opening of the 1945 Constitution, "By the blessing of Almighty Allah's Grace and by being encouraged by a noble desire, for a free national life, the Indonesian people hereby declare their independence. Then from that. . . . Indonesian independence was compiled in an Indonesian Constitution ... " This statement implies making Indonesia an independent and sovereign country and at the same time establishing the Indonesian legal system, only regarding the written part. In the state constitution that is written Indonesian legal system written.

This was also confirmed in the DPRGR memorandum on June 9, 1966, which stated, among other things, "*The Proclamation of Indonesian Independence which was declared on August 17, 1945, was the second of the breaking down of colonial legal order and at the same time the development of national legal order, Indonesian legal order and so on ".*Thus the proclamation was meaningful and understood two things:First, make Indonesia a nation;Second, at the same time set the rules of IndonesiaThe Constitution of 1945 contains only the basic provisions and is the framework of the Indonesian Constitution. It still requires a lot of provisions in the rules of organic law for its maintenance.

Although there are currently many organic laws as referred to above, then through the provisions of Article 2 of the transitional provisions of the 1945 Constitution there are still applicable regulations originating from the time of the former Dutch East Indies.

However, it cannot be said that the Indonesian legal system is a continuation of the Dutch East Indies Law, because the intended regulations are temporary, as long as they have not been replaced with new ones, and are not only contrary to the spirit of the 1945 Constitution.In the historical development of the 1945 Constitution experienced ups and downs and tides in a period of time:

1.The 1945 Constitution(August 18, 1945, to December 27, 1949)
2.The RIS Constitution(December 27, 1949, to August 15, 1950)
3.The 1950 Constitution(August 15, 1950, to July 5, 1959)
4.Presidential Decree July 5, 1959 (returned to the 1945 Constitution until now)

Every Constitution at that time always had a transitional rule (transitoir law) stating that the previous law existed until it was replaced by the new Constitution.Also, before the proclamation of independence (Constitution 45), there was Law No. 1 In 1942, in Article 3 it read, "all governmental bodies and their powers and laws of the former government (the Dutch government of India) remain valid temporarily as opposed to the rule of the Japanese military government."

After Indonesian Proclamation

After Indonesian Independence Proclamation

The rules governing to show other rules of Indonesian law since the ratification of the 1945 Constitution dated August 18, 1945, while the legacy laws of the colonizers are not possible to be abolished and replaced immediately with new laws because making new laws requires a long time and requires a process convoluted, then some of the old laws can still be used, to fill the vacuum in the field of law. In the 1945 Constitution article 2, the transitional regulation reads, "all State bodies and regulations are still in effect immediately, as long as no new provisions have been made according to this constitution."

The period of validity of the RIS Act 1949.

R.I.S. Constitution is a provisional constitution because according to article 186 of the R.I.S. constitution, the constituent (the session of constitution-making) together with the government immediately determines the constitution of R.I.S. which will replace this temporary constituent.The transitional rule is set forth in article 192 (1) of the constitution of R.I.S. as follows: (a)

The regulations, laws and administrative provisions that existed at the time this constitution came into force remained in force unchanged as the rules and conditions of the United States of Indonesia itself, as long as and were merely rules and regulations. the provision is not revoked, added or amended by the Law or Administrative Provisions on the power of this constitution; (b) Continuation of the existing regulations, laws and administrative provisions as explained in clause (1) only applies, only those rules and provisions do not conflict with the provisions of the restoration of sovereignty, this status, transfer agreement or other agreements relating to the restoration of sovereignty and merely constitutional rules and provisions are not contrary to the provisions of this constitution that do not require statutory regulations or implementing actions.

The period of validity of the 1950 Constitution (August 15, 1950)

It was the time when the formation of the unitary state of the Republic of Indonesia on August 17, 1950, began with the enactment of the 1950 RI Constitution.The transitional rules are stated in Article 142 of the 1950 UUDS, "Regulations, laws and administrative provisions that existed on 17 August 1945 remain in force unchanged as the rules and regulations of the Republic of Indonesia, during and merely these rules and regulations are not revoked, added and or amended by the law, and the administrative provisions for the power of this constitution."During the Constitution or at that time also in 1955, the Indonesian people held the first general election to elect the House of Representatives (DPR) and constituent members who would later be tasked with making a permanent constitution to replace the constitution but in fact, faced obstacles or failed or in other words, the constituents were unsuccessful drafting the constitution in question and in fact the situation and conditions at that time prompted President Soekarno to issue a decree.

The period after the Presidential Decree July 5, 1959

On Sunday, July 5, 1959, at 17.00 WIB Soekarno as the president of the Republic of Indonesia / Supreme Commander of the Armed Forces, issued a decree stating that starting from the date of the adoption of the decree, the 1945 Constitution was valid again for all Indonesian people and all Indonesian blood spills, and not UUDS applies again.This was done on behalf of the people of Indonesia. The decree does not confirm the certainty of the 1945 Constitution in the sense that whether the 1945 Constitution has become a permanent Constitution for the Republic of Indonesia, or is it still temporary.This statement about whether it is still temporary can be related among other things to Article 3 of the 1945 Constitution, where it is said that the MPR will determine the Constitution.

The period of President Sukarno's administration from the Proclamation to 1966 in particular in 1959-1966 was known as a period of guided democracy even though in practice the administration was not in accordance with the spirit of democracy contained in the 1945 Constitution.

Political Crisis and Reformation Era

Towards the fall of the Soeharto regime in 1998, there were strong demands from the community to carry out reforms in all aspects of life. The trigger for these demands was a monetary crisis in mid-1997 which turned into an economic crisis and then turned into a political crisis. The culmination of the demand for reforms finally led to the fall of President Soeharto, who was replaced by President B.J. Habibie.This incident led to the holding of the 1999 general election which resulted in the People's Consultative Assembly (MPR), which in its plenary meeting elected Abdurrahman Wahid (Gus Dur) as President

and Megawati Soekarnoputri as Vice President. In 2001, the MPR held a special session to remove Abdurrahman Wahid from the presidency and then appoint Megawati Sukarnoputri as President and Hamzah Haz as Vice President of the Republic of Indonesia.

Amendments to the 1945 Constitution

Important changes and various aspects of community, nation, and state life occurred during the reform period. This includes important changes or amendments to the 1945 Constitution by the MPR through its sessions in 1999, 2000, 2001, and 2002. This not only reformed the administrative system of government in Indonesia but also the lives of the people, nation, and state in a more democratic direction.

Some important changes to the 1945 Constitution have been made, including the direct election of the President and Vice President with the most votes, the formation of the Regional Representative Council (DPD), the Constitutional Court (MK), the Judicial Commission (KY), and also regional autonomy.

Legal History Research

In the history of general law, the scope is the overall development of a certain positive law. The particular object is the history of the formation of law or the influence of legal sources in the formal sense of certain regulations.The paradigm used as the basic framework of research is legal sources in the formal sense which includes: (1) Legislation; (2) Customary law: (3) Jurisprudence; (4) Treaty; (5) Doctrine.

Each of these sources is examined in terms of its development and influence on the formation of law (rechtvorming). Research can be done thoroughly and can also be limited to a particular source. From the description above, the writer can conclude that one of the uses of legal history is to reveal legal facts about the past in relation to the present.

The above is a process, a unity, and a reality that is faced, the most important thing for historians of data and evidence is to be precise, tend to follow a systematic, logical, honest, self-awareness and strong imagination.The history of law can provide a broad perspective for the legal community because the law cannot possibly stand-alone, is always influenced by various other aspects of life, and also influences it. The present law is the result of the development of the law of the past, and the present law is the basis for a future law.

The history of law will be able to complement the knowledge of the legal community regarding these matters.In the stages of legal research, it is necessary to choose a research topic based on the following elements: (a) Worth it; (b) Originality; (c) Practical and efficient; (d) Unity

After determining the topic of research the next steps are covered; (a) Heuristic (data collection). This is the first step in historical research to hunt down and collect various sources of data related to the issues under study. For example by tracking down historical sources by researching various documents, visiting historical sites, interviewing historical witnesses; (b) Criticism (verification). Criticism is the ability to evaluate the historical sources that have been searched. History source criticism includes external criticism and internal criticism; (c) Interpretation, It is the interpretation of historical facts and combines them into a harmonious and sensible unity. From the existing facts, it has to be arranged to have shape and structure. Existing facts are interpreted so that their logical structure is found based on existing facts, to avoid a mere interpretation of narrow-mindedness. For academic historians, mere descriptive interventions are not enough. In recent developments, historians are still required to find the basis for the interpretation used; (d) Historiography (history writing). A process of compiling historical facts and various sources that have been compiled in a

historical form. After interpreting the data, historians need to be aware that the writing is not just for their benefit, but for others to read. Therefore, it is important to consider the structure and style of the writing language. Historians should be aware of and strive for others to understand the basics of thinking.

The Meaning of Legal History

Von Savigny's contribution as the "Father of Legal History" has produced historical flow (history). This branch of science is younger than the legal sociology. In connection with this problem Soedjono D. explained that "The history of law is one of the fields of law study that studies the development and origin of the legal system in a particular society and compares between different laws because they are limited by time differences" (Sudarsono, p. 261).

Likewise, a similar sentiment was expressed by the Minister of Justice in a speech and briefing at the Legal History Symposium (Jakarta 1-3 April 1975) where it was stated that "The discussion of legal history has an important meaning in the context of fostering national law because efforts to foster law do not only require materials about the development of current law but also materials about the development of the past. Through the history of law, we will be able to explore various aspects of Indonesian law in the past, which will be able to provide assistance to us to understand the rules and legal institutions that exist today in our nation's society "(Soerjono Soekanto p. 9).

What has long been called the history of law, is actually nothing but a review of a number of juridical events from ancient times that are arranged chronologically, so it is a chronicle of law. Formerly the history of such law was called "antiquiteitarian", a name that fits right. History is a process, so it is not something that stops, but something that moves, not death but life.

Law as a historical phenomenon means subject to continuous growth. Understanding growth makes two meanings, namely is change and stability. The law of growth means that there is a close, continuous, or unbroken relationship between the law of the present and the law of the past.Law in the present and law in the past is a unity. That means, that we can understand our law today, only by the historical investigation, that studying law in a scientific manner must also study history (Van Apeldroon p. 417).

The Purpose of Legal History

The purpose of historical or historical research is to understand the past and try to understand the present on the basis of facts or developments in the past (Jhon W. Best, 1977 in Orphan Riyanto, 1996: 23 in Nurul Zuriah, 2005: 52). While Donal Ary (1980) in Orphan Riyanto (1996: 23) in Nurul Zuriah (2005: 52) states that historical research to enrich the researcher's knowledge of how and why a past event can occur and the process of how the past becomes the present, it is hoped that this will increase the understanding of current events and provide a more rational basis for making choices in the present.Later Jack R. Fraenkel and Norman E. Wellen (1990) in Orphan Riyanto (1996: 23) in Nurul Zuriah (2005: 52) include that legal history researchers conduct historical research with the aim ofMake people aware of what happened in the past in legal events so that they might learn from the failure and success of past legal concepts; Learn how things have been done in the past, to see if they can apply the problem to the current legal system; Helps predict something that will happen in the future (ius contituedum); Helps test hypotheses regarding relationships or trends. For example, it still dominates the understanding of 19th-century positivism in law enforcement today; Understand the practice and direction of legal politics now more fully.

Thus, the purpose of historical research cannot be relinquished with the importance of the present and the future.

CONCLUSION

From the above description, one can conclude that one of the uses of legal history is to reveal the legal facts of the past in relation to the present.It is a process, a unity, and a statement of fact, that is important to the historian and that the evidence must be accurate, inclined to follow a systematic, logical, honest, self-aware, and powerful imagination.The history of the law can provide a broad view of the law, it is impossible to stand on its own, constantly being influenced by other aspects of life and also affecting it. The present law is the result of the development of the law of the past, and the law of the present is the basis for the future law.The history of law will be able to complement the knowledge of the legal community regarding these matters.

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