INDONESIAN LEGAL SYSTEM AND ITS DEVELOPMENT

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Abstract: The development of law in Indonesia is inseparable from the history that has been going on for quite a long time. If you look at this long history, the laws in Indonesia originate from the Netherlands, which once colonized Indonesia. It is undeniable that Indonesia has adopted the law originating from the Netherlands. The development of Indonesian national law is something that the government inevitably has to do in order to form a national law that is rooted in all levels of society. The development of Indonesia's national law, which is currently heavily influenced by external elements, is as much as possible in order to maintain the material legal sources of Indonesian laws. The development of national law that focuses on the Indonesian spirit and Indonesian taste can only be carried out with the consensus of all elements of the nation.

Keywords*: Legal System, Development.*

Introduction

The system comes from the Greek "systema" which can be interpreted as a whole consisting of various parts. According to Subekti, a system is an orderly arrangement or order, a whole consisting of parts that are related to each other, arranged according to a plan or pattern, the result of a writing to achieve a goal (Syafie, 2003). In general, according to the Big Indonesian Dictionary, a system is an organized and complex whole or whole, a set or combination of things or parts that form a complex whole or whole. There are components that are connected and have their respective functions connected to a system according to a pattern. The system is an orderly arrangement of views, theories, principles (Alwi and Hasan, 2003).

The development of law in Indonesia is inseparable from the history that has been going on for quite a long time. If you look at this long history, the laws in Indonesia originate from the Netherlands, which once colonized Indonesia. It is undeniable that Indonesia has adopted the law originating from the Netherlands. Given that Indonesia is a colonial country that was a Dutch colony, whether we want it or not, Indonesia must also apply the legal system that existed in the Netherlands. Indonesian law as a whole still uses laws originating from its colonial country, namely the Netherlands. Almost all laws that apply in the Netherlands are also applied in Indonesia. In other words, Indonesian law is a law that still refers to the law made by the Netherlands. The Continental European Legal System is the legal system applied in the Netherlands. Because Indonesia is a former Dutch colony, the Continental European system has also been implemented in Indonesia. The Continental European Legal System places more emphasis on written law, and legislation occupies an important role in this legal system. In Indonesia itself, the legal basis is the constitution.

Literature Review

1. Continental European Legal System

The Civil Law system has three characteristics, namely codification, judges are not bound to the president so that laws become the main source of law, and the judicial system is inquisitorial. The main characteristic that forms the basis of the Civil Law system is that law gains binding force, because it is embodied in regulations in the form of laws and systematically arranged in codification. This basic characteristic is adhered to bearing in mind that the main value which is the goal of law is legal certainty. Legal certainty can only be realized if human legal actions in social life are regulated by written legal regulations. With the aim of the law and based on the legal system adopted, judges cannot freely create laws that have general binding force. Judges only function to establish and interpret regulations within the limits of their authority. A judge's decision in a case is only binding on the litigants (Res Ajudidicata Doctrine).

The second characteristic of the Civil Law system cannot be separated from the doctrine of the separation of powers which inspired the French Revolution. According to Paul Scolten, the real intention of organizing the organs of the Dutch state was to separate the powers of law-making, the powers of the judiciary and the cassation system, meaning that one power did not allow one to interfere in the affairs of another. Adherents of the Civil Law system provide great flexibility for judges to decide cases without the need to follow the decisions of previous judges. What the judges rely on is the rules made by parliament, namely laws. The second characteristic of the Civil Law system cannot be separated from the doctrine of the separation of powers which inspired the French Revolution. According to Paul Scolten, the real intention of organizing the organs of the Dutch state was to separate the powers of law-making, the powers of the judiciary and the cassation system, meaning that one power did not allow one to interfere in the affairs of another. Adherents of the Civil Law system provide great flexibility for judges to decide cases without the need to follow the decisions of previous judges. What the judges rely on are the rules made by the parliament, namely laws (Lemek, 2007).

The third characteristic of the Civil Law legal system is what Lawrence Friedman calls the use of the Inquisitorial system in the judiciary. In that system, judges have a big role in directing and deciding cases; judges are active in finding facts and careful in assessing evidence. According to Friedman's observations, judges in the Civil Law legal system try to get a complete picture of the events they face from the start. This system relies on the professionalism and honesty of judges. Forms of sources of law in the formal sense in the Civil Law legal system are in the form of laws and regulations, customs, and jurisprudence. In order to find justice, juries and judicial as well as quasi-judicial institutions refer to these sources. From these sources, the first reference in the tradition of the Civil Law legal system is statutory regulations. Civil law adhering countries place the constitution at the highest order in the hierarchy of laws and regulations. All civil law adhering countries have a written constitution (Wignjodipoero, 1983).

Method

A study cannot be said to be research if it does not have a research method (Koto, 2021). The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively (Koto, 2020). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Koto, 2022). In qualitative research, the process of obtaining data is in accordance with the research

objectives or problems, studied in depth and with a holistic approach (Rahimah & Koto, 2022).

Result and Discussion

1. Indonesian Legal System

The Indonesian legal system is formed from two terms, system and Indonesian law. The system is adapted from the Greek systema which means a whole which is composed of many parts, or relationships that take place between units or components regularly (Syaukani, Imam, 2004: 59). In English, the system means arrangement or network. So in other words the term system implies a set of parts or components that are interconnected and form a whole. Meanwhile, Indonesian law is law or statutory regulation based on the ideological and constitutional basis of the state, namely Pancasila and laws. In this regard, Indonesian law is actually nothing but a legal system that originates from the nation's cultural values that have existed and developed for a long time. In other words, Indonesian law is a legal system that arises as a result of the cultural endeavors of the Indonesian people that have a national reach, namely a legal system that covers all the people as far as the national boundaries of the Indonesian state (Syaukani, Imam, 2004: 63).

It should be explained here that such an understanding cannot be separated from the historical context. As is well known, after independence the Indonesian nation did not yet have laws originating from its own tradition but still made use of statutory regulations left by the Dutch colonial government. Although indeed, on the basis of political considerations and nationalism these laws and regulations underwent a nationalization process, such as changing the name: the Criminal Code (KUHP) was the nationalization of Wetboek Van Straafrechts, etc. In addition to changing names, several articles no longer fit the needs of an independent, sovereign and religious country were also replaced and new ones were added (Syaukani, Imam, 2004: 64). Such an approach in the short term is very beneficial because it can avoid the occurrence of a legal vacuum (Rechtsvacuum). However, in the long term the "Patchwork" or Transplantation effort is actually less effective and tends to be counter productive if it is continuously implemented. This is based on the fact that the "Patch Sulam" or transplant effort in essence does not change the basic character of colonial inheritance laws which tend to be repressive, feudal, discriminatory and individualistic, as one of the colonial efforts to suppress inlenders. Such legal characteristics are clearly contrary to the characteristics of Indonesian society which upholds collectivism.

Indonesia itself has submitted itself to adopting a civil law system, so that its main principle is to posit law in the form of written rules or set forth in the form of laws. Unwritten laws are not recognized as law, nor are regulations made other than by the state also not referred to as law, but as social morality. However, this civil law system in practice has many weaknesses due to its written nature, which makes it inflexible to keep up with societal developments, tends to be rigid and static. Normalization in the form of written rules can be said to be a form of limitation on something that is abstract in nature or a limitation in the material and dynamic context or a limitation in the time dimension. Therefore, the community's value consciousness into law will logically bring a substance behind the law (Mustaghfirin, 2011).

The civil law system also makes judges the mouthpiece of the law as Montesquieu said, meaning that judges only enforce the law as written in the law. This civil law system follows

the philosophy of legal positivism which states that the main purpose of law is legal certainty, not justice and/or expediency, because the positivism philosophy prioritizes things that are clear and past (positive) above all with the argument that only something that is past can be used as a measure of truth. Thus, in the culture of the civil law system, law is synonymous with law, the source of law is law, values originate from law, therefore the civil law system does not recognize the laws and values that live in society (Aditya, 2019).

2. The Development of the Legal System in Indonesia

After experiencing colonization by the Dutch state, Indonesia at that time still used the legal system originating from the Netherlands, namely the continental European legal system. However, as time goes by and the development of Indonesian people's lives, after that there is a change in the legal system that applies in Indonesia. Initially, the legal system applied in Indonesia was only a continental European legal system, after that the legal system in force in Indonesia underwent a combination of the continental European system and the Anglo-Saxon legal system. Continental European Legal System prioritizes written law, statutory regulations occupy an important place. Good laws and regulations, in addition to guaranteeing legal certainty, which is an absolute requirement for the establishment of order, can also be expected to accommodate the values of justice and expediency. Judicial institutions must refer to the law. The static nature of written laws is expected to be more flexible with a tiered system from basic norms to technical norms, as well as by providing a mechanism for changing laws. The Anglo Saxon legal system tends to prioritize customary law, law that operates dynamically in line with the dynamics of society. Formation of law through the judiciary with a jurisprudence system is considered better so that the law is always in line with the real sense of justice and benefits felt by the community. The legal system in Indonesia today is a unique legal system, a legal system built from a process of discovery, development, adaptation, and even compromise of several existing systems. The Indonesian legal system does not only prioritize local characteristics, but also accommodates general principles adopted by the international community. Whatever legal system is adopted, basically no country is based solely on written law or customary law. There is no country whose legal system denies the importance of laws and the importance of courts (Maysarah, 2017).

The development of the Indonesian legal system is increasingly visible when there is a contribution from the thoughts of legal philosophers. One of these developments is from the positivist school of thought. In this sense, positivism is as old as philosophy. But as persistent movements in general philosophy, sociology and jurisprudence are essentially modern phenomena. Which, on the one hand, accompanies the importance of science, and on the other hand explains political philosophy and the theory of jurisprudence. Positivism or what is known as the positivist school has a major influence in the process of establishing and enforcing law in Indonesia. In most of the actions of the legislature to make laws, the actions of the Government (Executive) and apparatus in enforcing the law, even the actions of judges in deciding cases always use this school of thought as a reference. In addition, the aspect of justice in law enforcement in the national legal system is always seen from the perspective of legal justice. Positivism emphasizes that every methodology that is thought of to find a truth, should make reality something that exists and is objective and must be released from various kinds of subjective metaphysical conceptions. When positivism thinking is applied to the field of law, legal positivism releases legal thinking as embraced by natural law school thinkers. So every legal norm must objectively exist as positive norms. Law is not conceptualized as abstract moral principles about the nature of justice, but something that has been positive as a law to guarantee legal certainty. The formation of the law referred to here is the birth of

written rules that have the validity to be enforced. Legitimate law is born because of a decision from an agency/institution authorized by the constitution to create law. If interpreting law as a system of positive rule of law, then the institutions that form law (legislative functie) in the Indonesian Government system are run by Legislative Institutions (People's Consultative Assembly, People's Representative Council, and Regional Representative Council), Executive Institutions (President/Vice President assisted by Minister), and the Judiciary Institution (judiciary). Formation of Laws by the DPR/DPD Institution with the approval of the President. The legal form created by this institution is law. The characteristic feature of laws made by the DPR/DPD Institutions with the approval of the President is that the material or content is of a "general" nature. This is in accordance with Hans Kelsen's thought that the law is a general legal norm. The contents of laws are always general in nature, so that most of the articles contained therein still require implementing regulations in the form of government regulations (Maysarah, 2017).

In Indonesia, the application of this principle creates problems because law has always been an obstacle in development, even law is static and cannot adapt to any changing circumstances. Many people say clearly that the law is static and rigid (rigid). Such a view is wrong because it ignores other aspects of law formation. The law enforcement model in Indonesia is inseparable from the influence of positivism thinking. According to Kelsen, legal norms become a standard of evaluation for every action committed by each individual/group in society. The intended assessment standard is the relationship between human actions and legal norms. So legal norms become a measure for punishing someone or not, and claiming someone is guilty or not must be measured based on articles in written regulations, without regard to moral and justice aspects (Maysarah, 2017).

Conclusion

The development of Indonesian national law is something that the government inevitably has to do in order to form a national law that is rooted in all levels of society. The development of Indonesia's national law, which is currently heavily influenced by external elements, is as much as possible to maintain the material legal sources of Indonesian laws. The development of national law that focuses on the Indonesian spirit and Indonesian taste can only be carried out with the consensus of all elements of the nation.

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