



Formation of Indonesia's National Law System

Ramadhani Puji Astutik* and Anita Trisiana

Universitas Slamet Riyadi Surakarta

Email: *pujyastuti003@gmail.com

Published: 15/09/2020

How to cite (in APA style):

Astutik, R, P., Trisiana, A. (2020). Formation of Indonesia's National Law System. *Jurnal Hukum Prasada*, 7(2), 85-90. doi: <https://doi.org/10.22225/jhp.7.2.2302.85-90>

Abstract

The formation of Indonesia's national legal system cannot be separated from the politics of law, because it is used as a guide in the process of making and enforcing the law to achieve a dream and national goal. The formation of the legal system in Indonesia has not gone well, Indonesia should have its own law. By having its own law, Indonesia will have national identity and will be seen as advanced by other countries. The formation of the national legal system in Indonesia is heavily influenced by external elements. It should maintain all the material sources of law that already exist in Indonesia. The objective of this study is to describe the formation of the national legal system in the State of Indonesia. This study uses a normative approach by using secondary data from library materials. The results of this study indicate that the formation of a national legal system is a process of developing a legal system and along with its element. With the development of the national legal system, it must be able to replace the Dutch colonial legal products with its own legal products. The development of the national legal system is a way to make changes in Indonesian legal products that must be in accordance with the values that are in people's lives. In the process of legal development, it is impossible to be separated from a legal politics.

Keywords: Legal system formation, National law, Indonesia law

INTRODUCTION

In various regions of the country in the world in legal thinking and its role in public life depends on the actions of the ruling class in the country. However, in a democratic country which is controlled by an exclusive group, it is more likely to reject an alternation. Therefore, they will be more inclined towards traditional or conservative thinking of the law so that they can only see the law as a tool that will be carried out to maintain a security and order for the state.

If studied sociologically with the existence of national legal politics, it will become an obligation that must be carried out quickly after Indonesia's independence, because with Indonesia independence there will be an indirect change in ideals and reality for all Indonesian people, while before Indonesia's independence, the structure and ideas of life in Indonesian society were based on colonialism which was very exploitative, but after Indonesia's independence these structures and ideas had changed into independent societies (Said, 2010). In accordance with the development of the national legal system in Indonesia currently trying to find a form and size that must be in accordance with the soul and spirit of the proclamation along with the values contained in society and cannot reject the influence of other legal systems either in cultural or legal way a separate consequence in the process of the formation of Indonesian national law. The development of national law must be directed so that a national legal system that can benefit the national interest can be realized, which contains the beliefs held by the Indonesian people. Thus, it must also always respond to any new problems or concerns about the need for law which is always

needed as a supporter of general tasks that must be carried out by the government and can promote national interests.

Indonesia is one of the countries that is currently starting to develop. Of course, in this condition, we need assistance on how to develop and formation a national legal system that is good which can encourage and support the development process in various sectors, as Roscoe Poud said, "as tool as social engineering", which should develop and a guidance of a national law will be able to provide direction and guidance for the law. The state and society must be interrelated to each another. Indonesia as an independent country, should have its own national legal products in order to meet the new state law. When viewed in terms of the existing law in Indonesia which was influenced by the old laws of the colonials which gave a separate view. This indicates that the law in Indonesia is still not independent. In other words, it is still influenced by the legal system of the Dutch government and the legal system of the French government which underlies the formation of a legal system in Indonesia (Wignjosoebroto, 1995). Therefore, to realize an independence on the basis of the law that exists in the territory of Indonesia, then the establishment of a legal system must be implemented immediately for the territory of Indonesia.

There are some previous researches that had discussed about Indonesian's national law system. Firstly, (Adhayanto, 2014) about development of the national legal system. In this research result said that Development of the Indonesian national law which is strongly influenced by outside elements wherever possible to retain legal sources material from Indonesian laws. Besides that (Aedi, 2019) revealed that he process of reconstructing the criminal law system in resolving minor criminal offenses based on local wisdom based on customary law, can use the basis of the approach of Legal Structure, Legal Substance, Legal Culture, by mapping the impact of the law and then aligning legal policies. Through various policies to map positive law and local wisdom of customary law. Furthermore, (Djatmika, 2018) said that there are two legal development strategies namely responsive development strategies, that is, inviting as much participation as possible and orthodox legal development strategies, which means the process of legal formation is centralistic in the sense that the state institution is more dominant, especially the executive power holder in giving a pattern to the law. In addition to the formation of Indonesia's national legal system, there are other things that must be improved namely human resources must be more professional in the field of law, oriented towards the future progress of Indonesia. The government and universities in Indonesia have held a variety of activities that are natural on a local or national scale in order to formulate the development of the National Legal System. Likewise with legal experts participating in giving proposals about the national legal profile. Based on the description above, this study aim to describe the formation of the national legal system in the State of Indonesia.

METHOD

The method used in this research is the Empirical-normative legal approach which is an amalgamation of the normative legal approach and the addition of various empirical elements. In the method of normative-empirical approach, it is expected to be able to influence an implementation of the provisions in normative law or the Act in an event that will occur in a particular law and will be explored by the public.

DISCUSSION

Definition of legal system

The legal system is a system in which there are rules and norms that govern human behavior or actions, both the rules in oral and written form. If someone makes a mistake, commits an immoral act or deliberately violates the norms, of course, a sanction will be given in accordance with the applicable rules. With the law, it will reduce crime. However, sometimes, the existence of law is often ignored by those in power who behave as they wish. Even the law applies only to people who are weak or people who are born from poor families. Therefore, it should, the State must still have a legal system that is equitable,

appropriate and balanced or applies to all Indonesian people. According to (Mertokusumo, 2018), the legal system is a unit consisting of elements that have interactions with one another and work together to achieve the objectives of that unit.

National Legal Formation

Definition of national law is a regulation in which there is legislation that has been formed and must be implemented properly in order to achieve a main goal along with the ideals of law in a country. (Prayogo, 2018) stated that legislation is considered imperfect in response to the emergence of such technological products, because it has not fully provide protection for people as well as the certainty for cryptocurrency users While the simple development is to make an effort to improve from conditions that are not conducive or still bad to a better condition. From the above understanding it can be concluded that formation is a renewal. Legal formation is an effort to make new legal regulations in order to renew the old legal system that is no longer relevant. Renewing means replacing old laws with new ones. In other words, renewing the law is the same as building a legal order and instruments relating to the upholding of a life of the legal system.

The formation includes all processes of change that have been planned to improve various aspects of social life. From a process of national law development, it means that there is improvement, progress, growth and measurability. With the national law development process, there will be a good change in all aspects of people's lives such as economic, social, cultural, political and legal aspects. As it is known that Indonesia adheres to a concept that is a concept of development law which establishes law as a means of development for the community which always emphasizes the function of law as a creation of order and security of public education facilities and development facilities.

The legal system is basically a written law which is accompanied by an unwritten law so that it can form a legal system that is applicable and sovereign at a certain place, applicable at a certain time and place. That is, depending on a group of people and according to the view of life that can be binding within the time frame that has been implemented by the executive, legislative, judiciary, supreme and constitutional court. In addition, the role of the community is also very important to help the development of law, because basically legislation is made to bind the people or the community. The ideals of law have a positive function that determines the formality of the principle of truth, while a regulative function will lead to the determination of the content of justice in legal norms as the principle of justice. In order for the development of law to achieve the right target, government law elections should pay attention to the stability of all fields that are still interrelated to national interests and must balance the elements that exist in society, namely religion, culture, and customs of the Indonesian people. It is similar with (Sinaga, 2019) expressed that The government needs to conduct a review regarding this matter, so that the political legislation in the Indigenous People Bill can reflect the spirit of diversity as contained in the 1945 Constitution. In the development of law must be able to achieve spiritual and material welfare both in general society and individually and of course the law that has been formulated is not just a collection of letters that is meaningless.

There is one thing that must be considered in the development process, especially in the field of law, which must be based on the ideals contained in the view of life, awareness and noble moral ideals that present the mental and character atmosphere that has been implanted by the Indonesian people as contained in the Pancasila, the basis of the Republic of Indonesia and the Constitution of Republic Indonesia 1945.

The law will serve as an embodiment of the values already stated in a meaning that its presence is actually a protector and will show value that is highly valued and must be obeyed by the people themselves. The development of national law can be formed as a guide to the realization of a good national legal system and will serve the interests determined by the Indonesian people since the beginning of the preparation of a legal material which as a whole jumped from the Pancasila and the Constitution 1945 of Republic Indonesia, and especially in the preparation of a new legal regulations are needed support from the community in general and of course the government itself so that national development of national law can be realized.

Development of the National Legal System

The national legal system in Indonesia is a legal system that has been applied throughout Indonesia that has passed all elements of national law, namely consideration of the structure, content, culture, facilities, laws and regulations and all its sub-elements among one another which are interdependent and sourced from the opening of the Act along with the articles in the 1945 Constitution. The effectiveness of the law will not be able to stand on its own if it does not have a positive effect on the problems that exist in people's lives, especially the problem of building the character of the Indonesian communities. Therefore, the development of a national legal system cannot be separated from people's lives, because without the legal community it cannot be carried out. Development of a national legal system should form a desire to be achieved together from elements of government in order to create a desired legal system that is orderly and systematically so that it can affect the development of the national legal system. If there is no national legal system, it will cause a problem for the development of existing laws in Indonesia and a problem since the beginning of the independence of the Indonesian people. The development in the national legal system is an input from an existing layer in the community to see how the implementation of the legal system that is currently running. In the development of the national legal system, there is one thing that must be considered, namely the development in various fields of law must remain based on the nation's noble ideals contained in the view of life, awareness and moral ideals based on the mood of nature and spirit of the nation contained in the Act the 1945 Constitution of the Republic of Indonesia. The development of the national legal system must be balanced between the interests of the rule of law and concrete events that occur in society, including theory and reality. The development of the national legal system not only takes place on paper, but also comes out of a framework of developing a national legal system that can be implemented to the public and in accordance with the objectives of the Indonesian state which are listed in the fourth paragraph of the opening of the Republic of Indonesia's Constitution. In line with (Hamzani, Mukhidin, & Rahayu, 2018), national law is just an idea. It means change of law are just the replacement colonial era to its own product. Changing or completing outdated law.

Indeed, the formation of the national legal system is included in the framework of developing the legal system in Indonesia so that it can be made as a guideline in the development of the law in the future by applying positive law or being taken into consideration or referring to the development of an aspect of law that is immediately developed and harmonized in the development of society. When the development of the national legal system has been run, the development of the national legal system can run well too. Besides that by having its own law, Republic of Indonesian will have national identity in accordance with the hopes and ideals of Indonesian independence as stipulated in the Opening of the 1945 Constitution of the Republic of Indonesia. The law must be upheld by the whole community because the law is a positive value whose presence promotes and protects people's lives. Legal development should have changed all kinds of laws made by the Dutch government and replaced with laws from Indonesia itself. But in reality, Indonesia is still unable to make such a big change. Indonesia is only able to change laws that are patchy. In one view that the development of the national legal system must continue to assume that there are unwritten laws and values that have prevailed in people's lives that have been in effect since the past or the days of our ancestors until now. The national legal system must be immediately built on the foundation of the ideals of the nation, the ideals of the law, the goals of the nation and the guidance contained in the 1945 Constitution of the Republic of Indonesia and must be in accordance with Pancasila as the basis of the Indonesian State.

The development of the national legal system in Indonesia is still continuing. One example is in the field of Civil Law, which is still attached and has three types, namely: customary law, Islamic law and Dutch law. On the basis of an awareness of plurality of law, so that the government has made a policy of legal development as formulated in Outlines of the direction of the state (GBHN) on 1999 as follows.

Construct or develop a legal culture throughout the life of the community so as to

create awareness and compliance with applicable laws

Formulate an integrated and equitable legal system in Indonesia while still respecting and respecting each other's religious and customary laws that have been in effect since ancestors and updating legacy laws from the Dutch government and discriminating national laws, which include the injustice of a gender law and their dissatisfaction with the demands for reform through a legality program

The national legal system has broad dimensions. During the New Order era, the development of the national legal system could be developed into four elements: law enforcement officials, legal material, legal culture, and facilities with legal infrastructure.

CONCLUSION

The development of the Indonesian national legal system is a problem that must be followed up immediately by the government and in collaboration with the community to carry out the process of forming national law that will be embedded in the entire life of the people in Indonesia. The development of the Indonesian national legal system is a process to establish the legal order and the ranks involved in enforcing it. With Indonesia having its own law, the Indonesian people will show their true identity to other nations. The development of the national legal system must be able to change all types of laws made by the Dutch government and replaced by the laws of the Indonesian people themselves. The development of the national legal system is a way to make changes in Indonesian legal products that must be in accordance with the values that are in people's lives. In the process of legal development, it is impossible to be separated from a legal politics. Legal politics functions as a path that must be taken in the process of establishing and enforcing the legal system for the achievement of the noble ideals of the Indonesian people. Influence or mixing of legal elements from outside that has influenced national law must be neutralized immediately.

Political Law should be able to pay attention to harmony in all fields both related to national and international interests and must also be balanced with the elements contained in society. The direction of the Political Law in Indonesia in carrying out the process of legal development which includes how to simplify the list of positive legal material plans that will be formed in a Prolegnas progress. National goals are state goals such as protecting the Indonesian nation, promoting the welfare of the people, educating the nation's life to realize a just and prosperous society both in spiritual and material terms. The state as a political institution must dynamically be able to enforce regulations on humans, one of which is formulating national law. In the development of the national legal system must synergize with national objectives.

REFERENCES

- Adhayanto, O. (2014). Perkembangan Sistem Hukum Nasional. *Jurnal Ilmu Hukum*, 4(2), 207–228. Retrieved from <https://media.neliti.com/media/publications/9160-ID-perkembangan-sistem-hukum-nasional.pdf>
- Aedi, A. U. (2019). Penyelesaian tindak pidana ringan melalui kearifan lokal dalam pembangunan sistem hukum nasional. *Jurnal RECHTS VINIDNG: Media Pembinaan Hukum Nasional*, 8 (April), 113–126. Retrieved from <https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/307>
- Djatmika, W. P. (2018). Paradigma Pembangunan Hukum Nasional Yang Responsif Dalam Perspektif Teori J.H. Merryman tentang Strategi Pembangunan Hukum. *Arena Hukum*, 11(2), 415–433. Retrieved from <http://dx.doi.org/10.21776/ub.arenahukum.2018.01002.10>
- Hamzani, A. I., Mukhidin, & Rahayu, D. P. (2018). Pembangunan Hukum Nasional Sebagai Implementasi Tujuan Nasional. *Prosiding SENDI_U*, 1(3), 366–372. Retrieved from <https://www.unisbank.ac.id/ojs/index.php/sendu/article/view/6008>
- Mertokusumo, S. (2018). *Mengenal hukum : Suatu Pengantar*. Jakarta: Cahaya Atma.
- Prayogo, G. (2018). Bitcoin, Regulation and the Importance of National Legal Reform. *Asian Journals of Law and Jurisprudence*, 1(1), 1–9. Retrieved from <http://journal-ajlj.com/index.php/ajlj/article/view/4>
- Said, N. A. (2010). Aspek-Aspek Sosiologik Sistem Hukum Nasional (Tinjauan Kritis Terhadap

Kasus Bank Century). *Jurnal Dinamika Hukum*, 10(3), 222–233. <https://doi.org/10.20884/1.jdh.2010.10.3.93>

Sinaga, E. M. C. (2019). Politik legislasi hukum tidak tertulis dalam pembangunan hukum nasional. *Jurnal RECHTS VINIDNG: Media Pembinaan Hukum Nasional*, 8(1), 1–18. Retrieved from <https://rechtsvinding.bphn.go.id/artikel/1>. Erlina Maria.pdf

Wignjosebroto, S. (1995). *Dari Hukum Kolonial ke Hukum Nasional: Dinamika Sosial Politik dalam Perkembangan Hukum di Indonesi*. Jakarta: PT Raja Grafindo Persada.