

## **LEGAL DEVELOPMENT POLICY DIRECTION IN THE PERSPECTIVE OF SOCIAL JUSTICE**

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### ***Abstract***

*This study focuses on legal development in various aspects of the life of the nation and state. The main dimension in legal development has a negative correlation and a positive correlation for the people. The perspective of authoritarian legal characteristics in legal development will encourage legal development that can damage the order of substantial justice in various aspects of people's lives, so that the law that is built must be based on the urgency of the interests of the community to achieve the ideals of the Indonesian nation as stated in the preamble of the 1945 Constitution of the Republic of Indonesia. The constitutional instrument clearly lays out the main fundamental values in aspects of the life of the nation and state, but in the process of implementing the constitution requires derivative norms that can provide further policy direction for the implementation of the constitution. From this perspective, the dimensions of the rule of law in legal development are illustrated with the aim of creating substantive social justice, not based on the interests of certain parties by placing variable interests in legal development for the welfare of society. This study aims to explore the perspective of legal development to achieve social justice with a legal approach.*

***Keywords:*** Policy, Legal Development and Social Justice

### ***Abstrak***

Dalam kajian ini memfokuskan pembangunan hukum dalam berbagai aspek kehidupan berbangsa dan bernegara. Dimensi utama dalam pembangunan hukum memiliki korelasi negative dan korelasi positif bagi rakyat. Persepektif karaktersitik hukum otoriter dalam pembangunan hukum akan mendorong pembangunan hukum yang dapat merusak tatanan keadilan substatif dalam berbagai aspek kehidupan rakyat, sehingga hukum yang dibangun harus didasarkan kepada urgensi kepentingan masyarakat untuk mencapai cita-cita bangsa Indonesia yang termaktub pembukaan dalam UUD NRI 1945. Instrument konstitusi secara jelas meletakkan nilai-nilai fundamental utama dalam aspek kehidupan berbangsa dan bernegara, tetapi dalam proses impleentasi konstitusi memerlukan norma turunan yang dapat memberikan arah kebijakan lanjutan bagi impelemenasi konstitusi tersebut. Dari persepektif tersebut, maka tergambar dimensi negara hukum dalam pembangunan hukum dengan tujuan untuk menciptakan keadilan social yang bersifat substantif, bukan berdasarkan kepada kepentingan-kepentingan pihak tertentu dengan meletakkan variabel-variabel kepentingan dalam pembangunan hukum untuk kesejahteraan masyarakat. Dalam kajian ini bertujuan untuk mengeksplorasi persepektif pembangunan hukum untuk mencapai keadilan sosial dengan pendekatan hukum.

**Kata kunci :** Kebijakan, Pembangunan Hukum dan Keadilan Sosial

## A. Introduction

Development in all fields organized by the Indonesian Nation since the first national leadership of President Soekarno, in the old order era until the reform, the leadership of President Susilo Bambang Yudhoyono, is an effort to implement the mandate of the 1945 Constitution (UUD 1945), which has been used as a basic guide in the normative and / or juridical dimension by the Republic of Indonesia. This means that the development carried out by the government is the implementation of the mandate of the 1945 Constitution, that the development carried out is based on the direction of the norms or rules contained in the constitution of the Republic of Indonesia.<sup>1</sup> This conception is an instrument in development that aims to build true prosperity.

Indonesia is a state of law, one of the goals envisioned by the constitution is to make Indonesia an independent, prosperous, just and prosperous state (welfare state).<sup>2</sup> According to Pound, that the law functionally aims as a means of social engineering ("law as a tool social engineering"), this can be justified that the law will be used for certain purposes in accordance with the purpose of the law (functional theory of law). For example, the law is formed and built to regulate how the law can regulate business behavior carried out by investors so that the economic activities they make are protected by law, to ensure that there is legal protection, a legal method in the field of investment is formed in the form of legislation, doctrine, jurisprudence, treaties, and other agreements.<sup>3</sup>

The 1945 Constitution is a whole series of

formulations of Indonesia's basic law in the future. Its contents include normative fundamentals that function as a means of social and political control against deviations and irregularities in the dynamics of the times, as well as a means of social and political reform and a means of social and political engineering towards the nation's collective ideals. Learning from the shortcomings of political democracy systems in various countries in the world that make the basic law only a political constitution, while also containing the basic ideas of economic democracy and social democracy.<sup>4</sup>

Law enforcement can be defined as the implementation of the by law enforcement officials and everyone concerned in accordance with their respective authorities according to the applicable laws.<sup>5</sup> Indonesia is a state of law. This is reflected in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which explicitly states that "Indonesia is a state of law". As a state of law, all aspects of society, nationhood, and statehood, including government, must always be based on law. Historically, the concept of the rule of law emerged in various models, including the state of law according to Islam, the state of law according to the Continental European concept called *rechtsstaat*, the state of law according to the Anglo Saxon concept (rule of law), the concept of socialist legality, and the concept of Pancasila state of law.<sup>6</sup>

The 1945 Constitution of the Republic of Indonesia as the written constitution of the Indonesian state is the main foundation that also

<sup>1</sup> SyafruddinMuhtamar dan Iswandi Rani Saputra, *Konstitusi dan Arah Kebijakan Pembangunan Hukum; Sebelum dan Sesudah Amendemen*, Amsir Law Journal Vol 1 Issue 2 2020, hlm. 70

<sup>2</sup> Nurya Gustina, et.al. *Pemberian Informed Consent Dalam Hal Perlindungan Hukum Terhadap Tenaga Kesehatan*, Sultan Jurisprudence: Jurnal Riset Ilmu Hukum Volume 2 Nomor 1, Juni 2022, hlm. 80.

<sup>3</sup> Mardalena Hanifah, *Arah Kebijakan Hukum Politik Ekonomi*, Jurnal Ilmu Hukum, 1volume 3 No. 1, diakses melalui <https://media.neliti.com/media/publications/9127-ID-arrah-kebijakan-hukum-politik-ekonomi.pdf>

<sup>4</sup> Asshiddiqie, Jimly. (2010). *Konstitusi dan Konstitusionalisme di Indonesia*. Jakarta: Sinar Grafik dalam SyafruddinMuhtamar dan IswandiRaniSaputra, *Ibid.*, hlm. 72

<sup>5</sup> Dyah Suryani Sulistyaningtyas, et.al. *Patients' Rights Fulfillment towards Medicines Information Services; Law Enforcement and Pharmacist Criminal Liability*, *International Journal of Social Sciences Review Volume 3, No.2, October 2022*, hlm. 70.

<sup>6</sup> Dewi Rayati, et.al. *Legal Efforts For A Ruling of Permanent Legal Force that Cannot be Executed*, Jurnal Hukum Replik Universitas Muhammadiyah Tangerang Vol. 10 No. 1 (2022), hlm. 19.

provides a definite position and scope for every legal institution in Indonesia. So that the 1945 Constitution of the Republic of Indonesia, which is the main source of law, is also the juridical basis for the formulation of regulations under it, because hierarchically, laws and regulations have the highest position in the 1945 Constitution of the Republic of Indonesia.<sup>7</sup> The existence of the constitution is the main instrument in encouraging legal development to achieve prosperity for the community.

## **B. Research Methods**

Legal development as an instrument in a state of law in accordance with the provisions of Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, is part of an effort to create prosperity and legal certainty in the life of the nation and the life of the state. In studies related to the direction of legal development policies in the perspective of social justice, using qualitative research using a legal approach as an instrument to analyze in depth.

## **C. Results and Discussion**

### **State Legal Development Policy**

Reform has changed many aspects of state, nation and society in Indonesia. The amendment of the Constitution of the Republic of Indonesia 1945 (UUD 1945) four times is one of the monumental results of the Indonesian nation's journey. Amendments to the 1945 Constitution are needed to realize a more democratic and fair living space. The will of the people to limit and control the power of the state administrators got the right place with the amendment of the 1945 Constitution. Constitutional change as one of the demands of reform, is a reaction to the organization of government in the past that led to

the crisis. The changes to the constitution have led to a more democratic and law-based state administration. The changes implied an effort to realize the noble goals and ideals of the founding fathers, namely a just and prosperous society, material and spiritual. The rule of law platform in principle determines that every government action or action through the government apparatus is carried out based on the authority regulated by laws and regulations. The amendments to the 1945 Constitution show that the changes made towards a democratic state are carried out through certain stages.<sup>8</sup>

Law with its elements plays an important role in strengthening national resilience. Harmonious legal substance will realize the national goal of creating a just, prosperous and prosperous society. This must also be supported by consistent law enforcement, accompanied by a legal culture of state administrators to serve the community and public awareness to comply with the law. Such conditions, if supported by the spirit of maintaining the integrity of the Republic of Indonesia, will greatly help increase national resilience. Therefore, national resilience must always be fostered throughout the period so that the survival of a nation or state is guaranteed. National resilience needs to be developed and improved. Or in other words, the higher the level of national resilience of a nation, the stronger the position of the nation both outward and inward. Strong national resilience will create determination, fortitude in the framework of awareness in maintaining the sovereignty, unity and unity of a nation and state.<sup>9</sup>

The sharp debate on whether or not human rights should be included in the Constitution at the BPUBKI meeting on July 15, 1945 has become part of the history of the differences between the political views of human rights law between Soekarno and Supomo on the one hand and M. Yamin and M. Hatta on the other. The

<sup>7</sup> Restu Gusti Monitasari, et.al, *Authority Of The Board Of Regional Representatives To Monitor And Evaluate The Design Of Local Regulations And Local Regulations In Constitutional Perspective*, Jurnal Hukum Replik Universitas Muhammadiyah Tangerang Vol 10 No 1 tahun 2022, hlm. 90

<sup>8</sup> Danang Risdiarto, *Kebijakan Dan Strategi Pembangunan Hukum Dalam Memperkuat Ketahanan Nasional*, De Jure, Jurnal Penelitian Hukum Volume 17, Nomor 2, Juni 2017, hlm. 178

<sup>9</sup> Danang Risdiarto, *Ibid.*, hlm. 179.

core of their differences is their view on the substance of human rights and the existence of the state, which each party constructs between individualism, which is considered a Western character, and collectivity, which is considered an Eastern character. Human rights, said Supomo, do not require the guarantee of *Grund und freiheitsrechthe of the individual contra staat*, because the individual is nothing but an organic part of the *staat* that organizes the glory of the *staat*, and vice versa by politics that stands outside the atmosphere of freedom.<sup>10</sup>

Soekarno thought that human rights would have a negative impact because of their association with individualism. Soekarno's and Supomo's views on human rights could not sound the thick sentiment of anti-Western ideology on the one hand, and the tendency towards cultural collectivity on the other. Hatta and M. Yamin eventually succeeded in pushing for several articles on the protection of civil rights in the body of the 1945 Constitution,<sup>11</sup> However, the debate that ended in a compromise revealed three important historical records of the politics of human rights law outlined by BPUPKI. First, the human rights included in the 1945 Constitution are human rights that are suspected or perceived as Western Individualistic, and therefore must be watched out for. Second, the inclusion of human rights in the 1945 Constitution is limited, not only in the sense that these rights will be further regulated by law, but also in a conceptual sense.<sup>12</sup> Third, Soekarno, who later became President, lacked a clear and firm basic commitment to respect and protect human rights.<sup>13</sup>

A legal concept is very influential on a legal substance, this is because the legal concept is a formulation that becomes the basis for

determining choices in shaping the substance of a country's law, meaning that the substance of the law is strongly influenced by a legal concept that exists and is used as a reference in the process of making law products.

Indonesia is a state of law, we can find this in article 1 paragraph (3) of the 1945 Constitution, after experiencing four amendments in the reform era. In the previous era (Orba) it was clearly stated that the Indonesian state is based on law (*rechtsstaat*), not based on power (*machtsstaat*). We can find this statement in the explanation of the 1945 Constitution before the amendment.<sup>14</sup>

The making of the rule of law that applies in Indonesia has an open nature, meaning that the rule of law is made as a representation of the need for the law as well as in its implementation will also be measured by the level of effectiveness and usefulness of the law for the community, so it is not uncommon for the existing rules of law to undergo changes and replacements, this is due to the demands of the community and the times for these changes. Changes and replacements of the rule of law are very possible, however, the basic principle of law is the achievement of order, comfort, justice, recognition of human rights and also the increasing welfare of society, and in order to realize this, the law-making policy must consider the aspects and values of the purpose of the law itself.<sup>15</sup>

Examined from a historical perspective, around the seventies, the Legal Theory of Development was born and its elaboration was not intended by the initiator as a "theory" but a "concept" of legal development modified and adapted from Roscoe Pound's theory "Law as a tool of social engineering" which developed in the

<sup>10</sup> Muh. Yamin, *Naskah Persiapan UUD 1945 (Jilid I)*, Yayasan Prapanca, 1959, hlm. 114, dalam Virdatul Anif dan Galuh Mustika Dewi, *Arah Politik Hukum Kebijakan Perlindungan HAM di Indonesia Quo Vadis of Politics of Law of Human Rights Protection Policy in Indonesia*, Lex Scientia Law Review, Volume 1 No. 1, November 2017, 6.

<sup>11</sup> Virdatul Anif dan Galuh Mustika Dewi, *Ibid.*, hlm. 7

<sup>12</sup> Virdatul Anif dan Galuh Mustika Dewi, *Ibid.*, hlm. 7

<sup>13</sup> Virdatul Anif dan Galuh Mustika Dewi, *Ibid.*, hlm. 7

<sup>14</sup> Pristiwiyanto, *PROBLEMATIKA PENEGAKKAN HUKUM DAN ARAH KEBIJAKAN PEMBANGUNAN SISTEM HUKUM*, Jurnal Fikroh. Vol. 9 No. 1 Januari 2016, hlm. 40-41.

<sup>15</sup> A. Rusman, Cucu Solihah, *Arah Kebijakan Pembuatan Hukum Di Indonesia Dalam Orientasi Maqosidusyariah*, Disampaikan pada acara Saresehan Nasional Islam Dan Ilmu Pengetahuan Ke 2, "Mengembalikan Kejayaan Peradaban Umat Islam", Gedung Pusat Studi Islam dan ilmu pengetahuan (PSI2P), 20 Oktober 2018, Malang Jawa Timur, hlm. 3.

United States. When further elaborated, theoretically the Development Law Theory of Prof. Dr. Mochtar Kusumaatmadja, S.H., LL.M. is influenced by the way of thinking of Herold D. Laswell and Myres S. McDougal (Policy Approach) coupled with Roscoe Pound's theory of law (minus the mechanical conception). Mochtar processed all these inputs and adapted them to Indonesian conditions. There is an interesting side of the theory presented by Laswell and McDougal where it is shown how important the cooperation between theoretical law bearers and scholars in general (scholars) and practical law bearers (specialists in decision) in the process of producing a public policy, which on the one hand is politically effective, but on the other hand is also enlightening. Therefore, the Theory of Development Law from Prof. Dr. Mochtar. In the process, Mochtar Kusumaatmadja added a pragmatic goal (for the sake of development) as suggested by Roscoe Pound and Eugen Ehrlich where there is a correlation between Laswell and McDougal's statements that cooperation between legal scholars and practical law bearers should ideally be able to give birth to a theory of law, a theory that has a pragmatic dimension or practical use. Mochtar Kusumaatmadja brilliantly changed the notion of law as a tool (tool) into law as a means (instrument) to develop society. The main ideas underlying the concept are that order and regularity in development and renewal efforts are desirable, even absolutely necessary, and that the law in the sense of norms is expected to direct human activities towards the desired development and renewal. Therefore, a means is needed in the form of unwritten legal regulations that must be in accordance with the laws that live in society.<sup>16</sup>

<sup>16</sup> Lilik Mulyadi, *Teori Hukum Pembangunan Prof. Dr. Mochtar Kusumaatmadja, S.H., LL.M. Sebuah Kajian Deskriptif Analitis*, [https://badilum.mahkamahagung.go.id/upload\\_file/img/article/doc/kajian\\_deskriptif\\_analisis\\_teor\\_i\\_hukum\\_pembangunan.pdf](https://badilum.mahkamahagung.go.id/upload_file/img/article/doc/kajian_deskriptif_analisis_teor_i_hukum_pembangunan.pdf)

### **Model of Legal Policy Direction from the National Development Perspective**

The main relevance in state development is social welfare. National Long-Term Development 2005-2025 is a continuation of previous development to achieve development goals as mandated in the Preamble of the 1945 Constitution of the Republic of Indonesia, so that in the next 20 (twenty) years, it is very important and urgent for the Indonesian nation to reorganize various steps including: development of human resources (HR), political development, economic development, social development, cultural development, legal development, development of access to employment, health development, food development, infrastructure development, development of facilities and infrastructure, defense and security development, development of border areas of the Republic of Indonesia, so that the Indonesian state has a strong competitiveness, high competitiveness and high bargaining position in the international arena, especially ahead of the implementation of the ASEAN economic community 2015. The goal of national long-term development for the period 2005 to 2025 is to realize an advanced, independent and just nation as a foundation for the next stage of development towards a just and prosperous society in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Indonesia's National Long-Term Development Plan for the period 2005 - 2025 is a necessity for the State of Indonesia as a guiding star as well as a guideline for the government of the Unitary State of Indonesia to realize national ideals and goals as implied in the preamble of the 1945 Constitution of the Republic of Indonesia.<sup>17</sup> in legal development that makes the country prosperous can be studied in the perspective of

<sup>17</sup> Nadir dan Win Yuli Wardani, *Politik Hukum Dalam Pembangunan Hukum Nasional Indonesia: Arah Dan Substansinya*, Jurnal YUSTITIA Vol. 19 No. 1 Mei 2018, hlm. 12-13.

GDP per capita as follows:

**Figure I**  
**GDP per capita**



Source of RPJMN 2020-2024

The per capita target from 2015 to 2045 is to become a country with a high per capita income. This policy direction is certainly inseparable from legal certainty in legal development that affects various aspects of state legal development.

Law is one of the means to realize the development of the Indonesian nation which aims to achieve the ideals of the Indonesian nation as stated in the preamble of the 1945 Constitution, namely to protect the entire Indonesian nation and all Indonesian blood spills and to realize general welfare, educate the nation's life and participate in creating world peace based on eternal peace and social justice. In practice, during the New Order era, there were not many laws that favored the people, but more laws that protected the interests of rulers and businessmen, causing inequality or inequality in society, both economic inequality and inequality in law enforcement.<sup>18</sup>

The hope to realize national legal development is currently faced with various conditions that are currently not ideal. There are many factors that cause such legal conditions. In terms of legal substance, for example, there are

still many positive legal substances that are not harmonized, causing implementation difficulties and legal uncertainty. There are also many complaints that the current positive law formation is only based on momentary considerations and does not touch the interests of the wider community. In the legal structure component, the weakness of law enforcement agencies also contributes to the poor appearance of law in society. For this reason, continuous efforts are needed to carry out legal development through careful planning in a comprehensive development design, so that the expected national legal development can be realized.<sup>19</sup>

A clear and comprehensive grand design in the context of national legal development, serves as a guideline for all stakeholders covering all elements from planning, legislation, dissemination and the formation of a legal culture of society. This grand design becomes the focal point and goal of all legal development stakeholders, which includes the design of the legal development structure as a whole. The grand design can begin with the most basic thoughts, namely legal development must include principles, norms, institutions, processes and enforcement without neglecting legal culture; in the context of legal harmonization, a more systemic, comprehensive and holistic legislative mechanism is needed; consistency in the regulatory hierarchy culminating in the constitution; devotion to the national interest as a pillar for the achievement of legal objectives, namely the creation of justice and order within the framework of a welfare state; and the grand design is carried out per legal sector.<sup>20</sup>

Law, along with various other aspects of *Poleksosbudhankam* (political, social, economic, cultural and security defense), functions as an engineering tool for community life. This means that the rule of law can participate in directing the development of community life through

<sup>18</sup> M. A. H. Tahapary, *Hukum Masyarakat dan Pembangunan*, diakses melalui <https://fh.unpatti.ac.id/hukum-masyarakat-dan-pembangunan/>

<sup>19</sup> Pokja Penyusunan DPHN, *Dokumen Pembangunan Hukum Nasional Tahun 2020*, Badan Pembinaan Hukum Nasional Kementerian Hukum Dan Hak Asasi Manusia RI 2020, hlm. 5-6

<sup>20</sup> Pokja Penyusunan DPHN, *Ibid.*, hlm. 6

structuring the association of community members. With the threat of legal sanctions, the rule of law can encourage members of the community to behave in certain ways and/or vice versa to prevent members of the community from behaving in certain ways. In the formation of the rule of law, there are three things that need to be considered, namely: (1) Matters of a technical-juridical nature; (2) Matters of the substance of the rule of law to be formed; and (3) Matters in the form of national legal political direction.<sup>21</sup>

Technical-juridical matters concern the procedures for the formation, promulgation and enforcement of legal rules. This includes the status of institutions related to the exercise of legislative power and the procedural liaison between these institutions. What needs to be considered in this point is the creation of a working mechanism that is as effective as possible, so that all work units in the exercise of legislative power can work optimally. Regarding the substance of the rule of law, it focuses on matters relating to the material that becomes the content of the rules to be formed. At this point, it is very crucial to draw on the opinions of resource persons, namely experts who have expertise in the field to be regulated in addition to input from experienced actors in the field to be regulated. What needs to be realized is that the legislature, despite being the authority in the formation of the rule of law, does not need to position itself as an all-knowing institution. The organization of intense consultations with experts and actors who are experienced in the ins and outs of the field to be regulated is very important and should not be ignored.<sup>22</sup> In substance that the legal policy aims to create public welfare.

#### D. Conclusion

Legal Development as the main dimension in an effort to create social justice for the community requires the main instrument, namely the 1945

Constitution/UUD NRI. The instrument is derived in legislation, so that it can encourage development towards social justice and legal certainty in the process of legal development itself. The constitution and derivatives in legal development are the main basis for formulating the meaning of justice which is substantial for the community, so that the orientation of social justice and other aspects of legal development can be achieved. Therefore, it can be concluded simply, that legal development has an impact on various aspects, but can have a positive impact and a negative impact on development in general.

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<sup>21</sup> Kastorius Sinaga, et.al, Hukum dan Pembangunan, Penerbit Badan Pendidikan dan Pelatihan Departemen Dalam Negeri, 1997, hlm. 19.

<sup>22</sup> Kastorius Sinaga, et.al, *Ibid.*, hlm. 19.

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