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HISTORY OF LEGAL SYSTEM AND SOURCES OF LAW IN PREVAIL IN INDONESIA

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Abstract

This study aims to analyze the history of law and legal sources in Indonesia. The research method used is qualitative with a historical review. The research results show that the history of Law Administration in Indonesia is grouped from the Compagnie era (1602) to the present as follows: (1) Vereenigde Oostindische Compagnie Period (1602-1799), (2) Besluiten Regerings Period (1844-1855), (3)) Regerings Reglement / RR Period (1855-1926), (4) Indische Straatsregeling Period (1926-1942), (5) Japanese Period (Osamu Seirei), (6) Post Independence. The sources of law can be divided into 2 (two), namely material sources of law and sources of formal law. Sources of formal law, sources of law are seen from a juridical perspective in a formal sense, namely sources of law in terms of form, which in principle are imitated from: (i) Law. (ii) Habit. (iii) Treaty. (iv) Jurisprudence. (v) Doctrine. This material source of law is a factor that limits the division of law, for example social relations, political power relations, social and economic situations, traditions (religious views, morals), scientific research results (traffic criminology) international development, geography is all an important object of study for sociology. Law

Keywords: History, System, Resources, Formal, Material

A. INTRODUCTION

Indonesia is a unitary state based on Pancasila as well as a country of law as stated in the explanation of the 1945 Constitution of the Republic of Indonesia that "Indonesia is a country based on the law (*Rechsstaat*)". Then it is further explained that "the Indonesian state is based on law (*Rechsstaat*), not based on mere power (*Machtstaat*)." The concept of a legal state here must be interpreted and implemented in line with the values of Pancasila because Pancasila is the source of all sources of law, namely law that is godly, humane, civilized law, justice, and so on.(Kusumaatmadja & Sidharta, 2000)

History and legal science are two entities that are difficult to separate because in fact law is a product of history that is constantly evolving according to human civilization. That is why studying the science of law is also part of studying the historical stage itself. Where the product of law in every phase of history will be a mirror of the development and growth of law in the latest era. The influence of legal history in the past is enormous on the dynamics of law in the present. So knowing the history of law in the past becomes a necessity to be able to explore the development of legal history in a nation (Setiono, 2004)(Setiono, 2014)

Every nation always keeps a chronicle of its history that will be the capital for its sustainability or stability and change of laws at a time. This is where its relevance places the history of law as an important part of the study and research of the development of legal science. As stated

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by the Minister of Justice in a welcome speech and briefing at the Legal History symposium (Jakarta 1-3 April 1975) which among others stated that "The Discussion of Legal History has an important meaning in the context of national legal development, because in legal development it requires not only materials about the development of current law, but also materials regarding the development of past laws. Through the history of law we will be able to explore various aspects of the law in the past, which will be able to provide assistance to us to understand the rules and institutions of law that exist today in our nation's society (Riwanto, 1997)

Legal history is a method and science that is a branch of historical science (not a branch of legal science), which studies (studying), analyzing (analysing), verifying (verifiying), interpreting (interpreting), compiling postulates (setting the clausule), and tendencies (tendention), drawing certain conclusions (hypotheting), about every fact, concept, rule, and rule that pertains to the law that has ever been in force . Both chronologically and systematically, along with the cause and effect and its contact with what is happening in the present, both as contained in literature, manuscripts, and even oral speech, especially its emphasis on the unique characteristics of these facts and norms, so as to find symptoms, postulates, and legal developments in the past that can provide broad insight for the person who studies them, in interpreting and understanding the current law(Petter and Jimmy, 2009)(Rahardjo, 2006)

Therefore, based on the description above, the author will discuss the history of law and legal sources in Indonesia. The history and sources of law are studied based on the sources of law in force since before Indonesia became independent to the sources of law in force until now, both laws and regulations and other sources of law.

B. DISCUSSION

1. History of Legal System in Indonesia

History studies the time travel of society in its totality, while the history of law is one particular aspect of it, namely law. What applies to the whole, however applicable to the part, as well as the intent and purpose of legal history inevitably ends up determining also the "postulates or laws of social development" Thus, the problems facing legal historians are no less "imposible" than any investigator in any field. But by arguing that legal historians must endeavor to do integral historical writing, it seems that Van den Brink is too far-reaching. It is precisely at the last stage that he oversteps the specific objectives of the history of this law. It is certain that legal historians should contribute to writing in a unified manner. In fact, this contribution is very important, given the enormous role played by law in the development of human legal associations.(T.O, 1993)(Mertukusomo, 1996)(Apeloorn, 2009)

Laws not only change in space and place (American law, Belgian law and Indonesian law, for example), but also in the trajectory of time and time. Such as the sources of formal law, namely the forms of self-appearance of legal norms, as well as the content of the legal norms themselves (sources of material law). The modern legal order recognizes legal norms such as:

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(i) legislation (ii) jurisprudence (iii) doctrine (iv) Conventions (Soedjono, 2005)

Today's legal norms are often and often only understandable through the history of the law. For example Henri de Page in the book "Traite Eleentaire de Droit Civil" 1930-1950. That "the more he deepens the study of civil law", the more convinced that the history of law, ahead of the logic and teachings of the law itself is capable of explaining why and how our legal institutions emerged as they exist today. Holmes "the journey that the law takes is not a path and a section of logic but rather a rail of experience."(Rahardjo, 2003)

Through legal history research, it will be possible to find out about the possibility of legal institutions that are no longer needed, or can still be developed in an effort to hold legal guidance (BPHN-1975). Indeed, the history of law in particular, as well as history in general has a very important role for a nation. As Soedjatmoko (1968) puts it: "... (Muhlashin, 2021)*history instruction is an important means of training gogg citizens of developing love and loyality for noes country; it is essential to a young country like Indonesia for the nation building in which its people are all engaged*". How important a history is to a society, has also been affirmed by Barzan dam Graff (1977), following: "*for a while society to lose its sense of history would be tantamount to going up its civilizations, we live end are moved by historical ideas and images, and our national existence goes on by reproducing them* (Rahardjo, 2012a)

Indonesia's legal system has a long history. The politics of law used as the executor of the enactment of the rule of law. This is because Indonesia has a noble and priceless national history in this world. In addition, there are also legal developments experienced as regulators of the behavior of the Indonesian nation in life associations. Indonesian life in the field of law that began to be clearly known was: After the arrival of Europeans, especially the Dutch people with an effort to instill their influence through colonialism. It is from this nation that many experiences and korban suffered by the Indonesian nation in carrying out its fight (Rahardjo, 2012b)

The following is the history of the Legal System in Indonesia from the Compagnie era (1602) to the present;

1. Masa Vereenigde Oostindische Compagnie (1602-1799)

This period stemmed from the privileges granted by the Dutch government to the VOC in the form of octrooi rights (including shipping and trade monopolies, declaring wars, holding peace and printing money). Finally, Governor-General Pieter Both was given the authority to make regulations to resolve problems within the VOC employees to decide civil and criminal cases.(Wignjosoebroto, 2002a)

The first set of regulations was carried out in 1642, this collection was named the Batavian Statute. In 1766 a 2nd batch was named the Statute of Bara. VOC rule ended on December 31, 1799(Wignjosoebroto, 2002b)

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2. Masa *Decrees Government* (1844-1855)

The legal system of the Dutch East Indies consisted of: (Apeldoorn, 2009)

a. Codified written regulations.
b. Uncodified written regulations.
c. Unwritten regulations (customary law) that are specific to Europeans.

At this time, the king had absolute and supreme power over the colonies including absolute power over the property of other states. The king's absolute power was also applied in making and issuing generally accepted regulations under the name of Algemene Verordening (Central regulation).

There are two kinds of king's decisions.(Faisal, 2012)

a. The decree of the king as an executive act is called Besluit. Such as the decree of appointment of the Governor-General.
b. The decree of the king as a legislative act is called Algemene Verodening or Algemene Maatregel van Bestuur (AMVB)

At this time also began the implementation of agrarian politics called forced labor by Governor-General Du Bus De Gisignes. In 1830 the Dutch Government succeeded in codifying the civil law promulgated on October 1, 1838(Bruggink, 1999)

3. Period of Regerings Reglement/RR (1855-1926

Successfully promulgated:(Salim, 2012)

a. The Book of Criminal Law for Europeans through S.1866:55.
b. Algemene Politie Strafreglement as an addition to the Criminal Code for Europeans.
c. The Book of Criminal Law of non-Europeans through S.1872:85.
d. Politie Strafreglement for non-Europeans.
e. The Wetboek Van Strafrecht which applies to all classes of the population through S.1915:732 came into force on 1 January 1918.

4. Period of Indische Straatsregeling (1926-1942)

At this time under article 163 IS the population is divided into 3 groups as follows: (Fuady, 2012)

a. European Faction – European Law
b. Foreign Eastern Class – Part European Law and partly Customary Law.
c. Indigenous Groups – Customary Law.

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The purpose of this division of groups is to determine which legal system applies to each group under article 131 IS. For procedural law used Reglement op de Burgelijk Rechtsvordering and Reglement op de Strafvordering for Java and Madura (Presetyo, 2014)

The composition of the Judiciary is as follows:

- Residentiegerecht
- Ruud van Justice
- Hooggerechtsho

For those outside Java and Madura it is regulated in the Recht Reglement Brugengewesten based on S.1927:227. The procedural law applicable to each class, the judicial arrangement is as follows:(Scholten, 1997)

a. Swapraja Court
b. Religious Courts
c. Military Tribunals

For indigenous groups, customary law applies in unwritten form but can be replaced by an ordinance issued by the Dutch Government under article 131 (6) IS.

5. Japanese Period (Osamu Seirei)

During the Japanese colonial period, the Indies were divided into Eastern Indonesia (under the rule of the Japanese Navy domiciled in Makassar) and Western Indonesia (under the rule of the Japanese Army based in Jakarta). The regulations used to govern the government were made on the basis of "Gun Seirei" through Osamu Seirei. Article 3 of Osamu Seirei No. 1/1942 specifies that "all governing bodies and their powers, laws and laws of past governments remain recognized as valid for a time, as long as they do not conflict with the regulations of the military government."(Muhammad, 2004)

6. Post-Independence

a. Period 1945-1949

In carrying out government, Constitution 45 is its juridical foundation, while the prevailing legal politics is contained in Article II of the transitional rules of the Constitution 45 "all existing state bodies and regulations are still in effect as long as a new one has not been held according to this Constitution. This period applies the RIS constitution. The prevailing legal system was the legal system in the period 1945-1949 and the new regulatory products produced during the period 27/12/1949 to 16/8/1950. Basis of article 192 KRIS (to Arif, 2019)

b. Period 1950 – 1959

At this time, the Constitution applies. The prevailing legal system is a legal system consisting of all regulations that are declared in force with article 142 of the 1950 Constitution which is supplemented by new regulations during the period 17/8/1950 to 4/7/1959(Nafis & Rahmad, 2020)

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c. Period 1959

Based on the Presidential Decree of July 5, 1959 we return to Constitution 45. The prevailing legal system is a legal system consisting of all regulations for the period 1950-1959 and all applicable regulations based on article II of the Supplementary Rules and Regulations established after the Presidential Decree of July 5, 1959(Absori, 2013)

d. New Order Period

The New Order began after the G.30.S/PKI coup. There was a change of government from President Soekarno to President Soeharto through a Warrant of March 11, 1966 which is often referred to as "Supersemar". In this order, government policy was formulated through the Long-Term Development Plan I (RPJP I) which began in 1969 with a series of implementation of the Five-Year Development Plan (Reprlita) (Soekanto, 1986)

The wisdom of RPJP I focuses on economic development. This is because at that time it was very bad with inflation of 600%. Therefore, for economic smoothness and stability, it requires political stability. Political authority at that time rested on the level of legitimacy of economic development/stability and political stability with a security approach to various societal issues (Supriadi & Ali, 2014)

Legal pouring in the form of laws and regulations refers to MPRS Decree Number XX / MPRS / 1966 jo. MPR Decree Number V / MPR / 1973 concerning the irrigation of laws and regulations as an implementation of what is mandated in the 1945 Constitution. The hierarchy referred to is: (1) The 1945 Constitution (2) MPR Provisions (3) Government Laws/Regulations in Lieu of Laws (4) Government Regulations (5) Presidential Decrees (6) other implementing regulations: a. Ministerial Instructions b. and others. During the New Order period, between 1993 and 1997 there was a change in the political paradigm (Manulang, 2007)

At that time legal development was excluded from the construction of the political sphere and placed separately. Formally GBHN 1993-1998 paved the way for a view that no longer sees law as a subsystem of the political order, but rather the legal system has been seen as a sub-system of the national system. The development targets in GBHN as stipulated in MPR Decree Number II / MPR / 1993, it is stated that the national development targets are divided into seven areas, namely: a. Economic field b. Areas of people's welfare, education, and culture c. The field of religion and belief in God Almighty d. Field of science and technology e. Field of law f. The field of politics, state apparatus, lighting, communication and mass media g. Field of security defense (Dysmala, 2014)

The administration of government during the New Order period abused the provisions of laws and regulations for the sake of power. This deviation can be seen from constitutional practices by interpreting the 15 paradigms of the 1945 Constitution through the conception of an integralistic state as a basic reference in political development, thus giving rise to very strong and uncontrolled state power, especially in executive institutions.(Satjipto Rahardjo, 2006)

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e. The Period of the Reformation Order

At this time, the enthusiasm of the nation's components to demand political reforms in the Indonesian constitutional system for improvement in state life. This spirit emerged in a movement that was carried out by students who wanted to demand that the life of the nation and state be carried out more democratically. From this movement, changes were made to the 1945 Constitution by the MPR through amendments made four times (Mertokusumo, 2008)

With this change, originally the 1945 Constitution consisted of 16 chapters and 37 articles, and after this amendment, the 1945 Constitution changed in the form of 20 fixed articles, 43 articles were changed, and 128 articles were new additions. The four changes can be seen in the form of: a) The first amendment concerns the limitation of the power of the President , covering Articles 5, 7, 9, 13,14,15, 17, 20, and 21. b) The second amendment, there are three proceedings which include c) The third amendment concerns the Presidential Institution and the People's Representative institution which has not been discussed in the third amendment, as well as the abolition of the state institution of the Supreme Advisory Council and the institutionalization of Bank Indonesia followed by Educational and Cultural Issues as well as the Social Economy and Social Welfare, which include: Article2, 6A, 8, 11, 16, 23D, 24, 31, 32, 33, 34, 37, I-III Switching Rules, and I-II Supplementary Rules(Wahjono, 1989)

2. Sources of Applicable Law in Indonesia

Various sources of law according to Sudikno (1986: 63) are divided into sources of hukun in the sources of material and formal law. The source of material law is the place from which the material is taken. This material source of law is a factor that limits the division of law, for example social relations, hubugaa of political power, social economic situation, traditions (religious views, decency), the results of scientific research (traffic criminology) iternational development, the existence of geography these are all important objects of study for the sociology of law. The source of law is the place or source from which a peratura derives legal power. It relates to the form or manner in which the regulation takes effect formally. Commonly recognized as a source of formal law are laws, treaties between states, jurisprudence and customs (Mertokusumo, 2007)

Van Apeldoorn in his book introduction to the science of law translated Mr. Octarid Sadino. Distinguish four sources of law, namely: (Apeldoorn, 2009)

(1) Source of law in the historical sense;

That is the place that we can find its law in history or in terms of history it is divided into two namely:

(a) The source of the law that is the place where the historical law can be found or introduced, ancient documents, lontar and so on.

(b) The source of the law that is the place of formation of the law takes its material.

(c) Sources of law in a sociological (teleological) sense are factors that determine the content of positive law, such as the state of religion, religious views and so on.

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(2) The source of the law in a philosophical sense.

It is divided into two parts:

(a) The source of the content of the law, here is asked where the content of the law comes from. There are three opinions that answer:

(i) According to this view, the law comes from God.

(ii) The law of nature, is this content of law derived from human reason.

(iii) The view of the historical masab, according to this view the content of the law comes from the consciousness of the law.

(b) The source of the binding force of the law, why the law has binding force, why we are subject to the law. The binding force of the legal method is not based solely on coercive force, because the power of people is driven by reasons of decency or belief.

(3) Source of law in the sense of formil;

What is meant is that the source seen from the way in which positive law occurs is a fact that gives rise to applicable law and is binding on judges and residents. The content arises from the consciousness of the people. In order to be in the form of regulations on the level of practice of darus is set forth in the form of laws, customs, and treaties or agreements between countries. Van Apeldoorn mentions treaties, jurisprudence and legal teachings or doctrines as factors that help the formation of law, while Lamaire mentions jurisprudence, legal consciousness and legal science as determinants for the formation of law.(Setiono, 2004)

Achmad Sanusi (1977:34) divides the sources of law into two groups as follows:

(a) The sources of normal laws are further divided into:

(1) The normal sources of law that are directly on the basis of legislation are: (i) Acts. (ii) Treaties between countries. (iii) Habits. (b) The indirect source of normal law upon recognition of the statute is: (i) the Treaty. (ii) Doctrine. (iii) Jurisprudence.

(2) Sources of abnormal laws; (a) Proclamation. (b) D'etat revolution/coup.

Using legal orderly sources namely: (Mahmud Marzuki and Peter Mahmud, 2011)

(a) Pancasila

(b) Proclamation of independence of August 17, 1945.

(c) Presidential decree July 5, 1959.

(d) Constitution of 1945

(e) Warrant of March 11, 1966.

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(4) Idiosyncratic philosophical sources of law and juridical sources of law. The source of this law can be divided into: (Rahardjo, 2006)

a. Sources of idiosyncratic philosophical law

Ad asource of law seen from individual, national or international interests, in accordance with the philosophy and idiology adopted by a country. For example; (i) In western bloc countries (US, UK, Netherlands, west Germany, France, Belgium) the source of law is liberalism and the individual. (ii) In the country of the iron curtain (formerly) and bamboo curtain (Soviet Union, PRC, Chekoslovakia), it was communism, historical materialism applied with leninism, maoism, titoism. (iii) In our country RI the idiosyncratic philosophical source is Pancasila.

b. Sources of juridical law,

is the direct application and dissemination of ideological philosophical legal sources that distinguish between formal sources of law and material sources of law: (i) Sources of material law sources of law that are seen in terms of their contents, for example: The Criminal Code in terms of material aspects is to regulate general criminals, crimes and offenses; The Civil Code in its material terms regulates the issue of people as a subject of law, goods as a subject of law, agreements, agreements, proofs and validities.

c. Formal sources of law,

The source of law is viewed from a juridical point of view in a formal sense, namely the source of law in terms of its form which is derived from:

(i) Law.

(ii) Habit.

(iii) Treaty.

(iv) Jurisprudence

(v) Doctrine

C. CONCLUSION

History and legal science are two entities that are difficult to separate because in fact law is a product of history that is constantly evolving according to human civilization. That is why studying the science of law is also part of studying the historical stage itself. Where the product of law in every phase of history will be a mirror of the development and growth of law in the latest era. The influence of legal history in the past is enormous on the dynamics of law in the present. So knowing the history of law in the past becomes a necessity to be able to explore the development of legal history in a nation.

Indonesia's legal system has a long history. The politics of law used as the executor of the enactment of the rule of law. This is because Indonesia has a noble and priceless national history in this world. In addition, there are also legal developments experienced as regulators of the behavior of the Indonesian nation in life associations. The following is the history of the Legal

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Sources of law can be divided into 2 (two) namely material sources of law and sources of formal law. The source of law is formal, the source of law is viewed from a juridical point of view in a formal sense, namely the source of law in terms of its form which is derived from: (i) The law. (ii) Habits. (iii) Treaty. (iv) Jurisprudence. (v) Doctrine. This source of material law is a factor that limits the division of law, for example social relations, hubugaa of political power, social economic situation, traditions (religious views, decency), the results of scientific research (traffic criminology) iternational development, this geography is all an important object of study for legal sociology.

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