

THE FUNCTION OF IDEAL LAW IN PREPARATION REGULATION LEGISLATION IN ORDER TO CREATING EQUITABLE REGIONAL DEVELOPMENT

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Abstract

Indonesia as a country that adheres to the concept of the welfare of the duty of the welfare, in order to achieve the necessary guidance in the formation of the law, in the form of legal ideas. Indonesia has set a goal of Pancasila as the law, which includes the noble values developed from their own community. Efforts to create equitable regional development can be achieved through legislation that is based on the ideals of the law.

Keywords: *Ideal Laws, regulations, equitable regional development.*

1. Introduction

The state as the embodiment of modern society, carry out all the activities are planned and directed towards on what the objectives of the state and in accordance with the ideals of the country (staatsidee) existing at the time the country stands. The Ideals connote ideas, flavors, initiative, creativity, and mind, chooses it to be a person or a particular community. Tutorial these activities are controlled and regulated by the domestic legal system, the laws that regulate, control, and direct people's behavior fostered and built towards the realization of the value system in accordance with the ideals of law established.

The Ideal law (rechtsidee) is an idea, initiative, creativity, and thoughts with regard to the law or the perception of the meaning of the law consisting of fairness, effectiveness (doelmatigheid) and legal certainty². The Ideal law should be embodied in the various legislation, judiciary and bureaucracy of government and their peoples.

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² Dedy Nursamsi, 2014, Kerangka Cita Hukum (Recht Idee) Bangsa Sebagai Dasar Kewenangan Mahkamah Konstitusi Menguji Peraturan Pemerintah Pengganti Undang-Undang (Perpu), Jurnal Cita Hukum, Vol. 1 No. 1, Juni 2014, Jakarta, Syarif Hidayatullah State Islamic University, Page. 92.

The fighters and the founding fathers have set Pancasila as the "ideal of the law" (rechtsidee) which must animate the entire positive law, legal institutions, and the behavior of all the legal subjects of Indonesian society to realize the state of Indonesia as a legal state. Pancasila as an ideal law should reflect some basic values stated in the Preamble and the Articles of the Constitution of the Republic of Indonesia Year 1945. Therefore to understand, realize, and consequently adhere to ideals of law, then it can be seen clearly the extent to which law applies in reality (das sein) in accordance with the ideals of the law should apply (das sollen). The Ideal law must always be the general principles which guide the realization of the ideals and objectives of the state.

Laws must be built in terms of the philosophy of the nationality of the country, Pancasila which is the goal of the nation and the state are the highest that became the foundation of philosophical and ideological state, the views and goals of the nation, the state's objective and as the state must be a measurement and testing stone of the good or bad, fair or not the applicable law, including in creating equitable regional development, because Pancasila became the source of all sources of law in Indonesia.

2. Research Method

The Function Of Ideal Law As A Legal Pancasila Guiding Star Formation In Regulation Legislation

On August 18, 1945, PPKI set 1945 means the 1945 Constitution came into effect, it is since that time that the old legal order ceases to apply and be replaced by the enactment of legal order Indonesia. Pembukaan UUDNRI 1945 contains basic thoughts which are the embodiment of the Proclamation Indonesian independence. The basic thoughts include the mystical atmosphere of the Constitution of the State of Indonesia. These basic thoughts to realize the ideals of law (rechtsidee) that controls the basic law of the state, both the written law and the unwritten law.

In the opening UUDNRI 1945 includes destination country, where the country's goal to be achieved by the state as the nation's highest organization of Indonesia that its implementation is based on a five-country basis. Law as a tool to achieve the objectives of

the country, in addition, rests on five principles for achieving the state's goal, also must serve and always adheres to the four principles of legal ideals (rechts idea) namely:³

1. Protect all elements (nation) for the integral (integration).
2. Ensuring social justice in the economy and society.
3. Realizing the sovereignty of the people (democracy) and state law (nomocracy).
4. Creating tolerance on humanity and civilized in religious life.

The four principles of the legal ideals must always be the general principles which guide the realization of the ideals and objectives of the state, because the law is a framework ideal confidence (belief framework) normative or regulative and constitutive.

Pancasila as the ideals of law has the constitutive and regulative function of the life of the nation. All legislation must be a derivation of the principles and values contained in Pancasila. The Ideal law is regulative means that Pancasila as the ideal of law as the base and the ideal prerequisites underlying any positive law, so that every substance of Regulation Legislation must not conflict with the values of Pancasila, while the function of the constitutive means that Pancasila as the ideal law directs law on goals to be achieved by the state, so as not to be deflected law, law as a tool of power so that its formation, as well as enforcement, has always intervened.

Pancasila as the ideal law of the Indonesian people in the community, the nation and the state in a positive way is a guiding star that provides guidelines and guidance in all activities give substance to each legislation, and negatively is a template that limit the space for the content of the legislation , Of the content of legislation these precepts either individually or jointly, either singly or in pairs is a principle of common law.⁴

Indonesia is a state based on law, the rule of law one of which is their normative and empirical recognition of the principle of the rule of law, namely that all the problems solved by the law as the supreme guideline. Normative recognition of the rule of law embodied in the establishment of legal norms hierarchical culminating in the supremacy of the Constitution, while empirically manifest in the behavior of government and society that bases itself on the rule of law.

³ Moh Mahfud MD, 2006, Membangun Politik Hukum, Menegakkan Konstitusi, Jakarta, Pustaka LP3ES, Page.18.

⁴ A. Hamid S Attamimi, 1990, Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintah Negara (Suatu Studi Analisis Mengenai Keputusan Presiden yang Berfungsi Pengaturan dalam Kurun Waktu Pelita I Pelita IV), Disertasi Doktor Universitas Indonesia, Jakarta, Page. 308.

Indonesia as a legal state has organized its legal system in such a way in a hierarchical arrangement so that there are legal certainty and clarity sort order legislation. Through Law No. 12 Year 2011 on the Establishment of legislation has set the sort order for the legislation, as stipulated in Article 7 paragraph (1), that the type and hierarchy Regulation of Regulations consist of:

- a. Constitution of the Republic of Indonesia Year 1945
- b. People's Consultative Assembly Decree
- c. Law / Government Regulation in Lieu of Law
- d. Government regulations
- e. Presidential decree
- f. Provincial regulations, and
- g. Regulation of the District / Town

In the state of Indonesian law, the development of the national legal system based on the Constitution of the Republic of Indonesia Year 1945 as the basis for the legitimacy of the highest and last either material or formal in determining the validity of legal norms that have a lower level in the hierarchical structure of norms Indonesia's legal system.

The principle of hierarchy as espoused in the legal system of Indonesia said that ladder any kind of legislation based on the principle that legislation should not be lower odds with legislation higher. Legislation higher is the source and basis for legislation lower. Based on the principle of the hierarchy, then UUD NRI 1945 consisting of the opening and the Articles, as the basis of written supreme law, should guide the Establishment of Legislation in Indonesia.⁵ Pancasila contained in the Preamble UUDNRI 1945 is the source of all sources of state law. Placed the Pancasila as the state and the state ideology and simultaneously a philosophical basis for the state, so any substance of legislation must not be inconsistent with the values of Pancasila.

The Consequences placement of Pancasila as the source of all sources of state law that, when violated, the legislation can be canceled through a testing mechanism to the Constitutional Court, the Constitutional Court was established as the guardian of the Constitution, as the consequences for Indonesia as a legal state.

⁵ Retno Saraswati, 2013, Problematika Hukum Undang-Undang No. 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan, Yustisia Jurnal Hukum, Edisi 87 Periode September-Desember, Tahun XXII, Surakarta, Fakultas Hukum Universitas Sebelas Maret, 2013, Page. 99.

3. Result and Discussions

Law As A Tool Of The Achievement Of Goals Through The Efforts Equitable Regional Development

Constitutionally, the Indonesian state adopts a dynamic state law or state welfare (welfarestate) that in order to achieve its objectives demanded consequences for the role the country.⁶

The task of the state in the context of a constitutional state material, not only implement legislation to impose order but also covers a wider sense, including the justice in it, as well as to achieve the welfare of the people as a form of justice (welfare state).⁷

Procedurally, the overall interest in the achievement of objectives the country became part of the state policy, if the policy-making mechanism to grant access to the achievement of the state's goals for the achievement of the people's welfare. The only mechanism that allows is a democratic mechanism in which the law is formed by representatives of the people and by the people's aspirations,

Substantially, the achievement of state goals can be achieved, if the laws of the state can be realized, the need for a guarantee in order to realize the objectives of the state, the rule of law, protection of human rights, transparency, and so forth as well as the characteristics of the state of law.

Indonesia explicitly states that Indonesia is a unitary form of state, the unitary Republic of Indonesia "is divided into" areas of the provinces and regions of the province is divided into districts and municipalities. The term is divided up, the term is immediately explained that our country is a country of unity in which the sovereignty of the country is in the hands of the Central Government. In contrast to the term "consisting of" more shows the substance of federalism because it indicates where the term sovereignty is in the hands of the states.⁸ The principle of unity of the country is that the highest authority on all matters of state is the Central Government.

⁶ Irfan Nur Rachman, Politik Hukum Pengelolaan Sumber Daya Alam Menurut Pasal 33 UUD 1945, Jurnal Konstitusi, Volume 13 Nomor 1, Maret 2016, Mahkamah Konstitusi Republik Indonesia, Page. 175.

⁷ Jimly Asshiddiqie, 2009, Menuju Negara Hukum yang Demokratis, Jakarta, Bhuana Ilmu Populer, Page. 397.

⁸ MPR RI, 2003, Panduan Dalam Memasyarakatkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Jakarta, Sekretariat Jenderal MPR RI, Page. 102-103.

The concept of a unitary state is organized according to the principle of decentralization, the decentralization requires the authority to regulate and manage governance is not solely carried out by the central government, but by government units lower level of autonomous self. Thus decentralization⁹ is not just a dispersal of authority but also contains a power-sharing to organize and manage governance between the central government and state government units lower levels.

Through Law No. 23 of 2014 on Regional Government, has arranged affairs division between the central government, provincial government, and the government district/city. There are Governmental Affairs under the authority of the Central Government called Absolute Affairs, then there are matters which are divided by the Regional Government called Government Affairs Concurrent, which consists of Affairs Affairs Mandatory and options. Government Affairs Mandatory Mandatory divided in matters related to fundamental services and Mandatory affairs unrelated to the Basic Service. Besides there Absolut Affairs and Government Affairs Concurrent, there is also the General Government Affairs under the authority of the President as the head of the government related to the maintenance of the ideology of Pancasila, the Constitution of the Republic of Indonesia Year 1945, Bhinneka Tunggal Ika.

Decentralization in a unitary state gave birth to the so-called regional autonomy. Granting regional autonomy to the widest area is directed to accelerate the realization of public welfare through the improvement of service, empowerment, and community participation. In addition, through a broad autonomy, the strategic environment of globalization, Regional expected to improve competitiveness with due regard to the principles of democracy, equality, justice, privilege and specificity and the potential and diversity of the regions in the Unitary State of the Republic of Indonesia.

In essence, the Regional Autonomy is given to the people as a whole legal community with authority to regulate and manage the Government Affairs granted by the central government to the regions and the implementation is done by the head of the region and the Parliament with the assistance of the regional. In the performance of Government Affairs under the authority of local, regional heads and DPRD as the organizer of the Regional Government has the right to make regulation as the legal basis for the Region in organizing Autonomy.

⁹ Ni'matul Huda, 2014, Desentralisasi Asimetris Dalam NKRI, Bandung, Nusa Media, Page. 6.

Through Autonomous Region is expected to constitute a force capable of bringing development policy more closely with the community, in addition to promoting economic growth must also encourage the equitable regional development. Regional policies through the establishment of local regulations to encourage equitable development in the area, both on equity in the field of subsistence, education services, health services, equitable distribution of development in the area, and so is the effort to achieve the welfare of local communities through law. The law will set up in such a way both in terms of budgeting, and implementation of order equalization method that can be realized. For example existence of legal policy allocation of development¹⁰ funds for educational equity and equity of health facilities, education costs are cheaper and the availability of better health facilities and more affordable will directly benefit the community.

Not only through legal policies (regional regulations and legislation at the local level) carried out by the area, but instead, the existing regulations at the central level should also lead to the realization of equality since the regulations at the regional level should refer to the regulations issued by the center. The regulations it all culminates in the Constitution, the law must animate ideals of Pancasila.

If any rule is always oriented to the ideals of Pancasila law, which among other things want to achieve social justice in the economy and society, then by itself of achieving the objectives will be realized with either country. Therefore, in achieving the country through legal, strategy is needed in the establishment and development of Indonesian law, namely the need for legal politics. Political law is landing or the official line that formed the basis of departure and how to create and implement the law in order to achieve the goals of the nation and the state.¹¹ The law in Indonesia should be based on the ideals of the community of nations, development of the law must be addressed to end social order is unjust and oppressive human rights.

Indonesia has the burden of state law and moral commitment to actively go to the field to realize the happiness or prosperity for their people.¹² Indonesia is running the state law to run the activities of the state of one's conscience so that the goal of the law is very

¹⁰ M. Arief Djamaludin, 2009, Upaya Pemerataan Pembangunan, <http://www.yohanli.com> , downloaded on 10 September 2016 At 20.00 pm.

¹¹ Moh Mahfud MD, Op.cit, hlm. 14. Lihat dan bandingkan juga tentang definisi politik hukum dalam bukunya Ahmad Muliadi, 2013, Politik Hukum, Padang, Akademia Permata, Page. 1-4.

¹² Satjipto Rahardjo, 2008, Negara Hukum yang Membahagiakan Rakyatnya, Yogyakarta, Genta Press, Page. 103-104.

important because there is an important moral value and commitment to be realized the present and build a state that welfare of its people.

4. Conclusion

In the state of Indonesian law, the objective law of Pancasila is the framework of beliefs (belief framework) normative and constitutive, with such properties, the position of ideal law is very strong, which has the function of a general principle which is guiding star which provides guidance and assistance in the establishment of regulations legislation. One embodiment of ideals of law in the legislation in the form of regulations contents to create justice development through equitable regional development, in order to achieve state goals.

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