

THE ROLE OF THE LAW IN DEVELOPMENT ACCELERATION TO GENERATE PEOPLE WELL-BEING

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Abstract

The role of law in national development has a strategic role. The state is seen as the primary vehicle for implementing the plans that have been made and the law as a means of translating development goals into applied norms. The results show that the role of law in national development includes law as a tool of social engineering, law as a tool of social control, law as a means of controlling development, law as a means of enforcing justice, and law as a community education. Laws play an important role in national development. Indonesia as a constitutional state has laws that regulate various aspects of state life. Government policies are implemented with the aim of providing welfare. The conclusion in this paper is that the role of law in development has actually begun to appear when decisions made by development planners must be carried out.

Keywords: *Role of Law; Development; Well Being.*

Abstrak

Peran hukum dalam pembangunan nasional mempunyai peran strategis. Negara dilihat sebagai wahana utama untuk menjalankan rencana yang telah dibuat dan hukum sebagai alat untuk menerjemahkan tujuan-tujuan pembangunan ke dalam norma-norma yang diterapkan. Hasil penelitian menunjukkan bahwa peranan hukum dalam pembangunan nasional diantaranya adalah hukum sebagai a tool of social engineering, hukum sebagai a tool of social control, hukum sebagai alat kontrol pembangunan, hukum sebagai sarana penegak keadilan, dan hukum sebagai pendidikan masyarakat. Undang-undang berperan penting dalam pembangunan nasional. Indonesia sebagai negara hukum memiliki perundang-undangan yang mengatur berbagai aspek kehidupan bernegara. Kebijakan-kebijakan pemerintah dilaksanakan dengan tujuan memberikan kesejahteraan hidup. Simpulan dalam tulisan ini adalah peranan hukum di dalam pembangunan sesungguhnya sudah mulai nampak pada waktu keputusan-keputusan yang dibuat oleh para perencana pembangunan harus dijalankan.

Kata Kunci: *Peran Hukum; Pembangunan; Kesejahteraan Hidup.*

A. Introduction

The general explanation for the 1945 Constitution affirms that the Indonesian government system is one of them is that Indonesia, is a State based on Law (Rechtsstaat), unfounded sheer power (Machtsstaat). Implementation of the concept of the rule of law in the practice of the administration of the State, putting the law as commander-in-chief in order to realize the goals of the State. Law is supreme which must be obeyed by every citizen of the State and must be enforced by the State in the framework of the life of the nation, state and society. This

constitutional foundation provides an understanding that the administration of the Indonesian State is based on the concept of law.¹ The role of law in the reform era in all fields of science is evidence real, essentially community life requires a set of rules laws which can always keep order and furthermore provide legal certainty, benefit and justice.

The development of the legal system must be able to provide a platform for the achievement of the goal in establishing the Indonesian state. The objectives for the establishment of the Indonesian state are listed in the fourth paragraph of the Preamble to the 1945 Constitution, as follows: 1) Protect the entire Indonesian nation and homeland; 2) Promote the general welfare; 3) Educate the nation's life; and 4) Participate in carrying out world order based on freedom, eternal peace, and social justice.

The built-up legal system must be able to ensure the achievement of the national goals of the Indonesian state. The national legal system basically consists of 3 components, i.e. the legal substance; legal structure; and legal culture. The concept of law as a means of regulating life together is indeed diverse. However, the teaching that teaches that law must reflect a sense of justice is the most widely held teaching.²

Thus, if we conduct legal politics in order to form a national legal system, then reforms must be made in the three fields to make up the legal system.³ The community really expects that there is a political law that gives an institution the authority to examine and identify the changes that need to be made to the applicable law (*ius constitutum*) in order to meet the demands of development and new needs in community. The legal politics carry on the direction of law order development from the *ius constitutum*, which is based on the framework of the previous legal foundation leading to the formulation of laws in the future (*ius constituendum*). The existence of legal politics will be a benchmark for implementing the principle of a rule of law state. If legal politics goes well, then the indication to become a rule of law state has been achieved. Conversely, if the legal politics is poor, then it can be ascertained that the principle of a rule of law state cannot be implemented properly. Legal politics is also part of social politics (which is effort to achieve social welfare), as the policy of legal reform is essentially an integral part of community protection efforts (social defense) and efforts to achieve social welfare.⁴

¹ Sukardi, "Peran Penegakan Hukum Dalam Pembangunan Ekonomi," *Jurnal Hukum & Pembangunan* 46, no. 4 (2016): 434–53, doi:10.21143/jhp.vol46.no4.48.

² Djoko Imbawani Atmadjaja, "Membangun Hukum Untuk Kesejahteraan," *Jurnal Konstitusi* IV (2011): 17–36.

³ Nyoman Serikat Putra Jaya, *Politik Hukum* (Semarang: Badan Penerbit Universitas Diponegoro, 2016).

⁴ Sudarto, *Hukum Dan Hukum Pidana* (Bandung: Alumnus, 1997).

In realizing a social welfare, it is necessary to have a actions that encourage the creation of a good public welfare by the government and society itself, as well as in carrying out an action it is appropriate requires a guide as a reference or basis, guidelines or basic references this is the law, considering that the State of Indonesia is a country where the law is in the provisions of the State of law all citizens must act accordingly the law is no exception to the government. The role of government is based on the concept of a welfare state act more dominantly than society itself in realizing community welfare where *bestuurzorg* submission (as organizer general welfare) is also given to the government.⁵ The problem studied in this paper is what is the role of law in development acceleration to create people's welfare rapidly and fairly?

B. Discussion

National Development is a series of activities covering the entire life of the people of the nation and the state to carry out the tasks as mandated in the 1945 Constitution. The law plays an important role in national development. Government policies are implemented with the aim of building a better nation. Indonesia as a constitutional state has the law that regulates various aspects of state life. National development is basically in dire need of synergizing between the people and the government. The community is the main actor in development and the government is obliged to direct, guide and create a supportive atmosphere.

Talking about the role of law in development, this role actually begins to appear when decisions made by development planners must be carried out, decisions regarding economic policy will only become an academic exercise if they cannot be formulated into in one form or another of legislation. With the formulation into these laws, it can be formulated clearly and openly, it can be communicated to the wider community and becomes the basis for activities that will be carried out by all parties and agencies involved in the development process or implementation of these decisions. We recognize several models in the relationship between law and economic development and law with political development.

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⁵ Isnaini Apri Dawati and Shinta Rukmi Budiastuti, "Peran Hukum Saat Pandemi Sebagai Terobosan Dalam Mewujudkan Kesejahteraan Masyarakat" 12 (2021): 33–41.

can be communicated to the wider community and becomes the basis for activities that will be carried out by all parties and agencies involved in the development process or implementation of these decisions. We recognize several models in the relationship between law and economic development and law with political development.⁶

The law associated with economic development will present two models, i.e., the market economy model and the planned economy. In the market economy model, the law encourages people to carry out economic activities creatively and ensures that the results of these activities will be protected. Through institutions such as contracts and individual property rights, the law promotes the development of markets and thus economic development. The planning economy model emphasizes on purposive nature and aspects of the power of law.⁷ Development is regarded as a conscious and deliberate transformation of economic activities. The state is considered as the main mode for carrying out the plans that have been made. And law is a tool for interpreting development goals into applied norms. The more effectively the law can be used to guide human behavior, the more successful this development will be.⁸

Apart from the role of law in economic development, it also holds a share in political development. It is often regarded as an autonomous institution in community of which task is to protect people from acts of arbitrariness by the state. In particular, modern law is called pluralistic law, as it gives members of community an individual freedom and fosters a democratic government. In general, it can be stated that the role of law in Indonesia's national development is as follows:⁹

1. Law as a Tool of Social Engineering

The concept of law as *a tool of social engineering* was generated as the legal concept taught by the historical model of Friederich Karl van Savigny was deemed inappropriate to lead community into change. According to Savigny, law is an expression of legal awareness, from *volksgeist* and from the soul of the people. It was originally generated from the habit and awareness of community's law.¹⁰ Then from the judge's verdict, however, it is created from within which works secretly, rather than by the will of the

⁶ Satjipto Rahardjo, *Hukum, Masyarakat Dan Pembangunan* (Bandung: Alumni, 1980).

⁷ Dawati and Budiastuti, "Peran Hukum Saat Pandemi Sebagai Terobosan Dalam Mewujudkan Kesejahteraan Masyarakat."

⁸ Rahardjo, *Hukum, Masyarakat Dan Pembangunan*.

⁹ Abdul Manan, *Peranan Hukum Dalam Pembangunan Ekonomi* (Jakarta: Kencana Prenada Media Group, 2012).

¹⁰ Nazaruddin Lathif, "Teori Hukum Sebagai Sarana Alat Untuk Memperbaharui Atau Merekayasa Masyarakat," *Palar | Pakuan Law Review* 3, no. 1 (2017): 73–94, doi:10.33751/palar.v3i1.402.

legislative. The concept of historical law is appropriate to apply to the simple community, as they have no legislative role and the most stands out is the role of customary law.¹¹ Meanwhile, in advanced community, the concept of historical law is considered outdated, as the role in making the legislative is a necessity. In the face of this historical model concept, Roscoe Pound put forward a new concept called “*law is a tool of social engineering*” that provides a basis for the possibility of conscious use of law to bring about changes in community, or in other words, law plays an active role in manipulating social change in community.¹² According to Roscoe, the law must be a driving factor towards community change so that it can be better than before.¹³ The function of law in every community (except in totalitarian community) is determined and limited by the need to balance the stability of law and certainty of legal development as a tool of social evolution. Therefore, changes in people's lives should be well planned and directed, so that the goals of these changes can be achieved with direction and protection from the law.

Closely related with efforts to reform community through the concept of *law is a social engineering tool* has inspired Mochtar Kusumaatmadja's thought to be developed in Indonesia. He stated that the concept of *law is a tool of social engineering* in Indonesia has been implemented with the principle of “law as a mode for carrying out community reform” long before this concept was formally formulated as a basis for legal policy so that this formulation is the experience of the Indonesian people and nation according to history.¹⁴ Even through the culture of the Indonesian nation, for example, it is formulated with saying that describe the mindset of customary law that has been recognized and accepted by legal reform.

2. Law as a Tool of Social Control

The role of law as social control is a normative aspect that applies in community life, it can take the form of prohibitions, demands, punishment and it can also take the form of

¹¹ Ashadi L. Diab, “Peranan Hukum Sebagai Social Control, Social Engineering Dan Social Welfare,” *Jurnal Al-’Adl* 7, no. 2 (2014): 53–66.

¹² H Yacob Djasmani, “Hukum Sebagai Alat Rekayasa Sosial Dalam Praktek Berhukum Di Indonesia,” *Masalah-Masalah Hukum* 40, no. 3 (2011): 365–74, doi:10.14710/mmh.40.3.2011.365-374.

¹³ Martha Eri Safira, “Law Is A Tool Of Social Engineering Dalam Penanganan Tindak Pidana Korupsi Di Indonesia Ditinjau Dari Hukum Islam Dan Perundang-Undangan Di Indonesia,” *Kodifikasia* 11, no. 1 (2018): 181–208, doi:10.2991/icsse-17.2018.28.

¹⁴ Mochtar Kusumaatmadja, *Fungsi Dan Perkembangan Hukum Dalam Pembangunan Nasional* (Bandung: Bina Cipta, 1970).

compensation. The emphasis of the role of law here is on determining which behavior is considered a deviation from legal rules and what sanctions are imposed by the law in the event of such deviation. Social control determines which behavior is deviant behavior, as the light or weight of deviant behavior is very dependent on social control itself.¹⁵ In order for the role of law as *a tool of social control* to work well, socialization to the community is required, so that they know that the law is very important in creating order and peace in people's lives. Once the community recognizes that the law is a sign that must be concurrently observed for the realization of peace and a tool for resolving conflicts, it is expected that the community will observe the law and live up the law in their lives. In this regard, J.S. Roucek stated that law as a *mechanism of social control* is things that is carried out to implement the planned and unplanned processes with the aim of educating and urging to observe the law, rather than forcing people to adapt themselves to habits and values of the community's life concerned.

In Indonesia, the role of law as *a tool of social control* to create order and peace in people's lives is inseparable from the Pancasila philosophy, which requires the achievement of social justice for all Indonesian people. This provision is defined more detailed in article 33 and article 27 (2) of the 1945 Constitution and the 1973 GBHN in which it is stated that according to the Pancasila law, social justice must be continuously strived for and social justice will be realized if there is a balance between the provision of community needs as a whole and the individual needs of the whole community's needs. In other words, the role of law as social control is not just maintaining public order, security, and stability in the sense of *keeping the peace at all events at any price*, but more than that, which is directed at the aspiration to achieve the welfare of the Indonesian people.¹⁶

The role of law as *a tool of social control* involves the state to run it. Therefore, the role of the executive and legislative in making legal regulations is very significant and dominant as the state has the obligation to protect all of its citizens. In addition, the role of the judiciary to enforce the law in achieving order and peace in community is also very decisive, as how good the legal rules are made without strict law enforcement, public order and peace will not be realized. Therefore, the law cannot function well and act as a public

¹⁵ Suryadi, "Fungsi Hukum Sebagai Alat Dan Cermin Perubahan Masyarakat," *Journal of Rural and Development I*, no. 2 (2010): hal. 171, <https://jurnal.uns.ac.id/rural-and-development/article/view/23810>.

¹⁶ Ida Bagus Sudharma Putra, "Sosial Control : Sifat Dan Sanksi Sebagai Sarana Kontrol Sosial," *Vyavahara Duta* 13, no. 1 (2018): 27-32, doi:10.25078/vd.v13i1.529.

control for a better direction in life, if law enforcement is not carried out firmly without discriminating against people. Thus, implementing law as *a tool for social control* is highly subject to the legal material made by the state power (the ruling class) and also by the law enforcers.

3. Law as a Tool of Development Control

Development carried out by a state is necessity and inevitability, as with this development the people's welfare can be achieved. The role of law in a state that prioritizes development in the agricultural sector is different from the role of law in community that relies on industrial development. In an agrarian community, legal principles are not much needed, whereas in an industrialist community, legal principles are more necessary. In connection with the foregoing, it can be seen that in a factory there is an organization that is much more complicated than an agricultural business. Likewise, an industrial community is much more complex than an agricultural community. In industrial community, accuracy and accuracy, timeliness and coordination between one division and another is necessary, if it is not well implemented, then the whole system will go through delays and chaos. It is important as with legal signs, the order of community life and injustice in community can be eliminated, conflicts can also be avoided, and the ongoing development can proceed as expected.

Mochtar Kusumaatmadja stated that in order to reconstruct a legal theory of development into a policy (legal policy) for the formation of laws in the field of environment and natural resources, it must have an optics and a holistic, comprehensive and interdisciplinary approach. Environmental damage and pollution after reform which are packaged in the form of regulations and policies (decisions of state administrative officials) show that the formation process does not involve community participation and keeps the spirit of law as a means of reforming society.

Law plays a role in controlling development. Sudikno Mertokusumo said that the function of the rule of law is to protect human interests. Legal principles are tasked with striving for a balance of order in society and legal certainty so that the objective of the law is achieved, namely public order. In order for human interests to be protected, the law must be implemented. Law enforcement can take place normally, peacefully, but it can also occur because of lawlessness. In this case, the law that has been violated must be enforced. Through this law enforcement, law becomes a reality. A number of rules or norms

regulated in environmental and natural resource legislation are supposed to protect human behavior from exploitation of natural resources and environmental destruction, such as burning forests, polluting rivers and oceans.

The role of law as *a tool of development control* is very dominant, both during the period of preparation, production activities, and distribution of development products to those in need.¹⁷ Economic activities carried out by economic actors are inseparable from various laws, whether these activities are carried out by business entities or as individuals in various scales and in various forms of activity. The activities referred to can be taken in the form of production (goods and services), trade, and intermediaries locally, nationally, and internationally. These activities refer to two legal orientations based on two activities, i.e., macro and micro. Therefore, economic activity always refers to two legal concepts simultaneously, which is public law and private/civil law of trade law.

4. Law as a Tool of Enforcing Justice

Justice is one of the most discussed objectives of law throughout the history of legal philosophy. The justice is such important in the point that everyone learns the philosophy of law, and the question always arises “what is justice?” According to this question, the Ulpian philosopher once gave an answer by explaining that justice is a constant will and still gives to each of its shares (*Justitia est constans et perpetua voluntas ius suum euique tribuendi*).¹⁸ The meaning of justice put forward by the Ulpian philosopher was taken over by the Justinian Law Book that was enforced by several European countries at that time. Aristotle has also written extensively on this justice. He stated that justice is a policy related to human relations. It can be interpreted according to the law, and it can also mean what is proportional, which is what it should be. One is said to be unfair if that person takes more than the share he should have received.

Justice will be generated from an established legal system. If there is a conflict in the legal system in a state, the development of the law will be obstructed and people feel dissatisfied with the law. Therefore, in order to build a legal system that is legitimized by the community, conflicts in the legal system must be immediately eliminated. According to

¹⁷ Dwi Ratna Indri Hapsari, “Hukum Dalam Mendorong Dinamika Pembangunan Perekonomian Nasional Ditinjau Dari Prinsip Ekonomi Kerakyatan,” *Legality: Jurnal Ilmiah Hukum* 26, no. 2 (2019): 238, doi:10.22219/jihl.v26i2.7798.

¹⁸ Budi Sastra Panjaitan, “Bantuan Hukum Sebagai Sarana Dalam Mewujudkan Keadilan,” *Doktrina: Journal of Law* 2, no. 1 (2019): 45–65, doi:10.31289/doktrina.v.

Tasrif, there are four minimum conditions for justice to have a proper place in a legal system, i.e., *first*: justice is fair and impartial, *second*: for its fair character, it must have two ends and it is between the two ends that justice lies, *third*: for its nature as proportional, that proportionality must be expressed in two equal parts of what is shared, *fourth*: in its nature as being just, there must be certain persons for whom it is being just. Considering these four conditions, the understanding of justice according to Tasrif is a perfect virtue, that is, a person who has justice must be able to apply it to other parties (other people), not only in matters concerning himself.¹⁹

Regarding law and justice, Cicero in *De Legibus* as quoted by M. Shodiq Dahlan explained that there is nothing more important to understand that humans are born for justice and justice is not served based on human opinion, but is served by nature itself.²⁰ Justice according to the law is defined as what the legislators expressly require. The law itself is made with the aim of goodness, security, peace and realization of justice for all community. Accordingly, in order to achieve what is expected, legislators must formulate the substance of the law in accordance with moral standards and general happiness so that the people are willing to accept and observe it, in which all the essence and power of justice is included. Even though the laws and regulations hold higher justice values, these laws and regulations are meaningless, if the law enforcement of the rules is not carried out in accordance with the principles of justice. Injustice in implementing the rule of law leads the people to disobey the rule of law. Good law is a law full of the values of justice and its implementation must be carried out in a fair manner without differentiating one from another, all people must be treated equally before the law.²¹

Law and justice are inseparable two sides as they are interrelated. If the law is well-implemented, then justice will be materialized. If justice can be united, order and peace as well as happiness will be crystallized in people's lives. Therefore, it is required to play an active role in realizing justice and the law must be enforced without discrimination and favoritism. In this regard, an exemplary attitude is needed from the authorities to make a move and take action through which people follow the example to observe the law with their own awareness. People will submit to the law as they feel their interests are protected

¹⁹ Tasrif, *Rampai Filsafat Hukum* (Jakarta: CV. Abadin, 1987).

²⁰ Ibid.

²¹ Haryono Haryono, "Penegakan Hukum Berbasis Nilai Keadilan Substantif (Studi Putusan MK No. 46/PUU-VII/2012 Tertanggal 13 Februari 2012)," *Jurnal Hukum Progresif* 7, no. 1 (2019): 20, doi:10.14710/hp.7.1.20-39.

and they observe the law as the law is considered to be able to educate and guide better organs in protecting community and being fair in all their actions.

5. Law as a Tool of Public Education

In order for the law to play an effective role in the context of public education, it is very significant that the laws to be enforced are socialized first to the community. It is required so that the community is ready to accept the law for its implementation. Thus, it is not because of coercion that people observe the law, as they understand the law and correspond with the existing values in community. With this socialization it is expected that it will be an internationalization of law into people's lives, meaning that such legal principles have permeated into the community. If the community has already known that the law to be implemented will bring order and peace, then they will observe the law to be enforced with their own awareness.

In term of the foregoing, it can be seen that legal education for the community is very significant to be implemented. In this regard, Otje Salman states that there are four indicators to turn laws into a tool to educate people that they have awareness of the law, i.e., *first*: legal knowledge, which is one's knowledge of certain behavior that are regulated by law, *second*: legal understanding, which is closely related to the assumption that the community is considered to be familiar with the contents of a regulation when the regulation has been enacted, in fact, this assumption is untrue.²² Legal understanding is an understanding of the content and purpose of a regulation in a particular law and its benefits in people's lives, *third*: legal positions, which is a tendency to accept the law because of respect for the law as a useful thing if the law is observed, *fourth*: legal behavior, which is the main thing in legal awareness, as it can be seen whether a regulation applies or not in community. If the four indicators are fulfilled, then the degree of legal awareness is increased, and vice versa. The higher level of public legal awareness of a legal rule results in community members observing the applicable legal rules, and vice versa. If the degree of legal awareness is lower, the degree of observance to the law is also lower.²³ Therefore, it is very necessary to provide community legal education before the law is applied to the

²² Franciscus Xaverius Wartoyo, "Tanggung Jawab Hukum Pemerintah Dalam Penyelenggaraan Pendidikan Nasional," *Yustisia Jurnal Hukum* 5, no. 1 (2016): 216–30, doi:10.20961/yustisia.v5i1.8734.

²³ H. Asep Suparman, "Pendidikan Hukum Humanistik," *Jurnal Wawasan Yuridika* 32, no. 1 (2016): 52–57, doi:10.25072/jwy.v32i1.89.

community, thus it is very necessary that the law can work effectively as expected in the context of national development.

C. Conclusion

The role of law in development has actually begun to turn up when decisions made by development planners must be carried out, of which decisions regarding economic policies will only become an academic exercise if they cannot be formulated into one or the other form of legislation. With the formulation into these laws, it can be formulated clearly and openly, and it can be communicated to the wider community, which becomes the support for activities that will be carried out by all parties and agencies involved in the development process or implementation of these decisions.

The author suggests that the law exists as an instrument of national development, it needs to be aimed at the greatest possible welfare of the people, the law exists to humanize humans. Laws that are poured into statutory regulations can take into account the common interests of both the people, institutions and the government in realizing national development.

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