

Politics Of Legislation As *Socio-Equilibrium* In Indonesia

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Abstract: The formation of laws and updates to legal materials must be aimed at realizing social equilibrium, namely an orderly, just and prosperous life. The pattern of communication or dialogue and dialectics that occur in the process of forming legislation will affect the character of the law, the more transparent and participatory the more responsive the law will be. This research method uses normative juridical. The legal policy of legislation should include three things: (i) guarantee justice in society; (ii) create a peaceful life (create alive placidity) by maintaining legal certainty; and (iii) realize usefulness (realize use) by handling real interests in common life in a concrete manner. The application of the principle of justice is based on "legal enforceability" and "equality before the law". The principle of legal certainty is achieved through: (i) clear and firm norming regarding obligations and prohibitions; (ii) legal transparency that prevents society from normative confusion; and (iii) continuity of legal order that provides a reference for future behavior. The principle of utility is based on the ability of law as a social instrument to integrate the aggregation of social interests so that they do not clash with each other, and instead order occurs.

Keywords: Legal Politics; Legislation; Socio-equilibrium

1. INTRODUCTION

The concept of a state based on law in Indonesia has changed after the amendment to the 1945 Constitution. After the amendment, the concept of a state based on law in Indonesia is no longer *rechtsstaat* or *rule of law*, but rather the State of Law of Indonesia. The meaning of this affirmation has a very important meaning, especially when associated with the legal system that already exists in the world. The concept of a state based on law, *rechtsstaat* and rule of law are very influential for the state based on law in Indonesia.

The concept of a State of Law, in addition to meaning not a State of Power (*Machtstaat*), also contains the meaning of recognition of the principle of the supremacy of law and the constitution, the adoption of the principle of separation and limitation of power according to the constitutional system regulated in the constitution, the existence of guarantees of human rights in the constitution, the existence of the principle of an independent and impartial judiciary that guarantees equality of every citizen before the law, and guarantees justice for everyone, including against abuse of authority by those in power.

In fact, the concept of the rule of law itself has long been a topic of discussion among experts. Even in ancient Greek times, the concept of the rule of law had begun to be debated and became a topic of ongoing discussion. as one of the foundations of human life. Plato and Aristotle in their heyday already viewed the rule of law as one of the quite interesting discussions and were predicted to be an interesting discussion in the future. This is also

proven by the fact that currently, the concept of the rule of law always gets a very prominent portion of discussion in the constitutional system of a country.

Law is a political product (formed and ratified) of the state to regulate the life of society, nation and state in order to lead to the goal of welfare through legal certainty, justice and benefit. Politics and law are always intertwined, assuming each other and becoming the domain of the state, both at the central level to the smallest regional level throughout the country. The indication of political will is not measured by "how many laws have been made", but rather whether the "path to justice" has been felt by most people in Indonesia, especially from the lower classes in rural areas.

The Indonesian legal state can be likened to a house project, where it must be built, then maintained, then inherited to its successors. Self-discovery or identity is needed in its formation. Seen from the historical side, Indonesia follows the steps of *Rechtsstaat* or *civil law*, because Indonesia was colonized by the Netherlands for quite a long time. However, if this *civil law concept* is applied in its pure form, it is likely not to bring happiness to the Indonesian people. The law will move much slower than the dynamics of Indonesian society. Even worse, the implementation of government will move rigidly and tend to be repressive. Likewise, with the application of the *Rule of Law concept* in its pure form, state control over society will be very weak, because Indonesian society is very plural and spread out. When compared to *the Rule of Law* that applies in England, British society is 'one descendant' so that there are not too many cultural differences, and there is also the figure of the king as a symbol of national unity. Even if applied as is by prioritizing liberalism, it will bring division to Indonesia.

Rationality and morality of law rely on on humanity, guided by basic human rights and obligations. The laws that are formed should nuanced in fighting for humanity, so that it can be applied without discrimination. The nature of humans as social beings has a political dimension or recognizes common interests, so that it is understood that law is a normative institution of shared life, while the state is seen as effective life system .

The law must be able to regulate, discipline and protect public interests, so that it can produce the desired effect. The formation of law should lead to the essence of law (*law truth*). This means that the formation of laws is a way to advance and protect certain interests or prioritize one interest over another. This article reviews the legal policy of legislation in Indonesia in relation to the function of law as a *socio-equilibrium* so that it has the desired impact.

2. FORMULATION OF THE PROBLEM

- 1) How paradigm of legal formation in the Perspective of the Legal System in Indonesia?
- 2) How is the Legal Policy of Legislation as *a Socio-Equilibrium* in Indonesia ?

3. RESEARCH METHODS

Method approach useful For approach object from study or in gather data Which required. Method the approach used in study This is method approach legal normative, that is a approach Which hold on from aspects legal/legal or the rules in search of And gather data. Source data Which used in study This is data secondary. Data secondary This obtained through studies literature. Material law collected And separated into 2, namely legal materials primary And material law secondary. Analysis is step final in research activities.

4. DISCUSSION

a. Paradigm Of Law Formation In The Perspective Of The Legal System

The term ' law ' is absorption from Arabic for to mention law , which is literally Can means ' straight '. As for the term wet, no only interpreted as ' law ' but also ' inevitability ' natural depicting existence regularities in the sensory world ', for example ' *Archimedes ' law , Lavoisier's law* ', the law Newton's law of gravity request a quote as determinant level price , law Gossen about connection backwards between amount unit consumption and level the pleasure felt consumers , and still more Lots what else can mentioned .

Paradigm law at least can read in two current main mutual scramble superior , namely : (i) understand classical (Aristotelian), that essence law is moral inevitability of a nature normative ; and (ii) understanding contemporary (*Gallilean*), that essence law is inevitability empirical in nature factual . Concept law (*law concept*) is " *the lines basic , wisdom law formed by a public law . Lines base wisdom This in essence is statement attitude a public law to various choice tradition or culture law , philosophy or theory law , form law , designs formation and implementation the law that is intended chosen* " .

Law develop in a a dynamic society , so that every public law own system regular relationship with the law individually , both written and also No written . Dynamics law can read from balance two antinomy , namely certainty law and justice law . A system modern law must can to form good law , which reflects a sense of

justice for all parties and in accordance with condition society . Law made in accordance with procedures that have been determined , and must also be understood or understood by the community in a way Overall . Function law is look after interest general in society , maintaining rights human beings , and realize justice in life together . Purpose from the legal system is realize order and tranquility for the sake of continuity life society , so that must maintained with put aside demands demands and considerations others . Laws determined by the government , must have certainty valid (legality), because certainty law influential to development development . For those who want invest naturally want certainty law , order , and justice in society . Conditions the will can ensure continuity as well as security of the business world and development . Through law man want to reach order general and justice . However must it is realized that order general and justice that is intended achieved through law That must can achieved and maintained in a way dynamic through organization law in a social process accepted by society .

Philip Nonet and Philip Selznick formulated draft law responsive as method realize justice social through law that can fulfil needs urgent social needs , with still maintain results institutions that have achieved by power based on law . Provisions law (UU) has relationships community Good in formation and also its implementation . The formation of the law is adjusted with evaluation to interest and also need social , and purposeful For For influence fact society . Its application bound to the possibilities that life provides society . Therefore that , interpretation against the law according to objective settings and relationships with circumstances community demand the place in invention law by judge.

Formation law (system) law) is determined by the concept the law adopted by a public law , also by quality its shape . Pattern formation law can shared to in four system , namely : (i) Europe Continental (*civi law*), forming Constitution through the legislative body ; (ii) Anglo Saxon (*common law*), authority to form law centered on judges (*judges as a central of legal creation*); (iii) law custom , where the process of formation law through the acceptance process or confirmation to habits law which is direct involving Unity law in society ; and (iv) a combination (*civil law, common law and customary law traditions*). *custom*), where the formation of law carried out by judges, institutions legislative , as well as institutions custom .

The Republic of Indonesia is a state based on law (Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia) , meaning every action from

government and all tool state equipment against the people must based on applicable laws determined by the people / representatives in representative bodies people (*rechtsstaat*), not based on will ruler personal or action deadly arbitrariness rights basic human (*machtsstaat*). Indonesia as a country of law , places a legislative body called with the House of Representatives (DPR) as former law . As stated in a way constitutional in Article 20 of the 1945 Constitution, Paragraph (1): "The People's Representative Council holds power forming ". Then in Article 20 paragraph (2): " Every design Constitution discussed by the House of Representatives and the President For get agreement together ".

b. Legal Politics Of Legislation As *Socio-Equilibrium* In Indonesia

Political law is policy law (*legal policy*) that is intended or has implemented in a way nationally by the government , including : (i) development law , good formation law and also Updates to ingredients the law that is considered foreign or No in accordance with need with creation the required laws ; and (ii) implementation provision the law that has been There is including affirmation function institutions and training of members enforcer law .

Legal development in context *legal policy* should covers three thing : (i) guarantee justice in society (*guarantee justice in society*); (ii) create peace live (*create alive placidity*) with look after certainty law ; and (iii) realize utility (*realize use*) with handle real interests in life together in a way concrete .

Formation law , is activities involving structure social (*social structure*) and behavior society . Structure social democratic society tend will produce democratic legislation . On the other hand , in system totalitarian society , will produce system and order laws that tend to be totalitarian, even though No closed possibility the totalitarian law can appear in normal legal culture tradition . Quality compilation democratic legislation will walk in accordance with dynamics democratization in society , can measured from the level of “ transparency ” and “ participation ” in formation law .

Formation responsive law give opportunity and space open For participate . This means that the formation of Constitution is a political forum for group or organization public For play a role as well as in determine wisdom general . Formation and interpretation law No Possible free from influences social , such as community morals and makers law That self , religion, and pluralism politics . That is , law No isolated

from condition existing or environment social , " *negotiable, subjective and policy - dependent as politics* ".

Formation law must show awareness law society , at the same time create patterns new in society , so in the end create awareness law new in accordance with the conditions required . So that law truly can influence behavior inhabitant society , then provision law the must disseminated so that institutionalized in society . The existence of tool communication is one of condition for distribution as well as institutionalization law , good both formally and informally , so that what the law wants can achieved . This is can seen that guarantee against the rule of law That is determined by two the problem , namely whether the law made through appropriate processes and then ratified in a way democratic , and whether law That adhered to and implemented by the government and by the people he governs in a way written and also implied . Answer positive to second matter This also determines the level balance politics produced by the constitution (law) in question . From the statement This can understood that the constitution (law) of a country must made based on balance socio existing politics (*socio-equilibrium*) . So that law That can accommodate all circles and not tend benefit one party . This is where need existence similarity view or perception to content from regulation the law that was created from various party , both from element society , party politics , organization social and also government and institutions statehood other .

The process of formation , implementation and enforcement law , implementation laws , as well as the roles involved in it very influenced by forces politics , economics and socio- culture.²⁸ In Indonesia it is seen that strength political very influence formation and enforcement law . Indeed Can imagined that reason at work based on will free , can until to various different decisions or crossed . To That need existence benchmark such a simple behavior appearance , so that can distinguish which behavior can be accepted by the public and which ones are not . Therefore That government as state administrators in general political must can give benchmark or limitation to product the law is issued , so No there was a misinterpretation between various parties and circles , for the sake of creating certainty law . Certainty law related with effectiveness law will guaranteed only when the country has adequate facilities For ensure coming into effect regulations that exists , so that apparatus enforcer law play role important . There are several factors that can used as reference For going to to certainty law , namely : (i) Clear norms set what is required and what

is prohibited ; (ii) Transparency law that avoids public from confusion normative ; and (iii) Continuity orderly the law that gives reference for future behavior .

Implementation factors the as reference for orientation public and also implementation principles applicable law general must done based on two principle justice , so as not to hurt the sense of justice society , namely " the principle of Power in demand general law " and " principles equality in the face law " .

Change law appear from the political process and not from action policies by institutions law For fulfil demands of the fighters politics . In matter This separation between law and politics must clear , and violations law must prosecuted with firm without existence difference . Certainty law must have formal and material weight . Formal performance is produced by consistency in implementation relative methods and procedures The same to a deviant behavior from norm law . Rawls gives high value to formal performance of law , so that law can give guarantee for substantial justice . However moment This seen that law give design institutional for action authority State politics . Formation and reality Work law very influenced by nature as well as character of the country, and bound close to relationships power political and the process of change order social .

Viewed from fact the can concluded that stability political very need be careful not to until the occurrence chaos and tension politics , so that can create anxiety in society . In general theoretical , stability political Lots determined by three related variables One each other, namely : (i) development adequate economy ; (ii) development institutionalization Good structure and political processes ; and (iii) participation politics . What is important according to review policy strategic , is to what extent the institution formulator policies and compilers regulation law , in consistent still referring to to system philosophical values so that every line policies and rules the law that was created , was assessed accommodating and responsive to aspiration society , in general fair with even attention . Wisdom political with approach cultural is demands constitutional all over Indonesian people whose structure social full diversity , pluralistic and heterogeneous , various sub- ethnicities , religions, customs customs and elements culturally . If stability politics and attention towards community culture can guarded , then law always can enforced in a way Certain in accordance with the procedure , but if on the contrary so No Possible matter the can achieved with Good .

Continuity attitude , consistency and action from institutions statehood That very determine level certainty and action from institutions statehood That very determine level certainty law . Fragility continuity attitude and consistency in action will result in the escape certainty law . Because the institutions statehood always responsible and authorized to to organization law , which ultimately is product of the political process . Continuity attitude and consistency action they are also very depends from stability politics .

5. CONCLUSION

The country as the institution that will realize hope public to an orderly , just and prosperous life or balance social (*socio-equilibrium*). Through his government must capable to organize wheel statehood based on law as rules of the game in emit various policy . Efforts to realize objective together said , then government in a country always create stability politics , so that decisions law can implemented in a way consistent in effort going to to certainty law , for the sake of order and welfare public .

Likewise , with power politics carried out by the government together institutions statehood others , must in accordance with the constitution that has been agreed together for the sake of upholding the rule of law . In matter This all component nation , good society , organization social and political , must in a way aware carry out his duties and obligations in accordance with rule law . The embodiment of the Pancasila legal state is form prismatic from all system law , namely joining all element Good from all system existing laws .

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