

THE INFLUENCE OF POLITICAL ASPECTS IN LEGAL REFORM
PENGARUH ASPEK POLITIK DALAM PEMBAHARUAN HUKUM

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Received: June 24, 2023 Accepted: June 29, 2023 Online Published: September 30, 2023.

ABSTRACT

This paper aims to see the influence of political aspects in legal reform. By using a conceptual approach, it was found that: In the context of legal reform, political aspects have a significant influence, this can be seen in the formation of the Constitutional Court. The formation of the Constitutional Court was realized because of the political desire to form a state institution that could control the legislative products of the DPR, synchronize it with the 1945 Constitution so that there would be no violations of the constitutional rights of citizens and to maintain the principle of checks and balances between state institutions. The establishment of the Constitutional Court is a form of legal reform in a formal institutional sense. Apart from the context of forming legislation for legal reform, political aspects can also actually influence law enforcement. This can be seen in the handling of protracted corruption cases, as well as the use of a reverse evidence system in corruption cases, making it easier for law enforcers to work. This reverse evidence system is a form of legal reform.

Keywords: Politics, Influence, Law, Reform.

ABSTRAK

Tulisan ini bertujuan untuk melihat pengaruh aspek politik dalam pembaharuan hukum. Dengan menggunakan pendekatan konseptual, didapati hasil pembahasan bahwa: Dalam konteks pembaharuan hukum aspek politik mempunyai pengaruh yang signifikan, hal tersebut dapat dilihat dalam pembentukan Mahkamah Konstitusi. Pembentukan MK tersebut terwujud karena keinginan politik untuk membentuk sebuah lembaga negara yang dapat mengontrol produk legislasi DPR, sinkronisasinya dengan UUD 1945 agar tidak terjadi pelanggaran hak-hak konstitusional warga negara

dan untuk menjaga prinsip checks and balances antar lembaga negara. Pembentukan Mahkamah Konstitusi tersebut merupakan salah satu bentuk pembaharuan hukum dalam arti formal kelembagaan. Selain dalam konteks pembentukan peraturan perundang-undangan untuk pembaharuan hukum, aspek politik juga sebenarnya dapat mempengaruhi penegakan hukum. Hal ini dapat dilihat dalam penanganan perkara korupsi yang berlarut, maupun digunakannya sistem pembuktian terbalik dalam perkara korupsi sehingga memudahkan bekerjanya para penegak hukum. Sistem pembuktian terbalik ini merupakan salah satu bentuk pembaharuan hukum.

Kata Kunci: politik, pengaruh, hukum, pembaharuan.

I. INTRODUCTION

Positive law in the form of statutory regulations is a model of legal system that applies in countries adhering to a civil law legal system (enacted law system). Existing laws and regulations are a form of positive law that applies and originates from fundamental legal norms, namely the basic law or state constitution.

Almost all modern countries have a Constitution (except a few countries such as England, Israel, Saudi Arabia and a few more). Even though they have a Constitution, no country has the same Constitution. Differences occur due to various factors such as the form of the country, form of government, history of the country, ideals of the country, including differences in ideology in the political, economic, social and other fields.¹In Indonesia, the basic law is called the 1945 Constitution of the Republic of Indonesia which is the basic law in the life of the nation and state.

The 1945 Constitution of the Republic of Indonesia fundamentally regulates the powers of state institutions in carrying out government functions in a broad sense. Both executive, legislative and judicial functions. The regulation of the power of state institutions constitutes legal politics in realizing state goals. The 1945 Constitution of the Republic of Indonesia, which was formed based on the nation's political interests, will determine the political constellation in the implementation of law and government.

In the formation of statutory regulations, many aspects will influence them. The dominant aspects are economic and political aspects. The economic aspect will relate to economic goals to benefit individuals and groups. Meanwhile, politics is an important aspect which is a 'way' to achieve certain interests. The political aspect will more or less determine the substance of regulation and law enforcement. For example, currently in the era of regional autonomy, regional governments are given the authority to make regional regulations. However, regional governments actually make many regional regulations in the form of levies on the community in the form of regional taxes and regional levies compared to making regional regulations that provide services to the community. This is because the political aspect that underlies the making of regional regulations is so that they can be used as a

¹Jimly Asshiddiqie, Bagir Manan et al, Ideas for Amendments to the 1945 Constitution and Direct Presidential Election, Secretariat General & Registrar of the MKRI, 2006, p. 02.

basis for legitimation for collecting taxes from the community, the ultimate aim of which is to increase local original income.

In terms of legal reform, the political aspect should play a role in making the law even better in the future, both in terms of regulation and enforcement. With a strong political desire to realize just and responsive laws, it is hoped that legal reform will run well and be in accordance with the legal ideals of society. Based on the description above, the author is interested in analyzing political aspects and their influence on legal reform. The author will try to map the influence of political aspects in positive legal reform in Indonesia.

II. METHOD

This paper is in the corridor of doctrinal research, which only uses secondary data. The legal research model is a comprehensive and analytical study of secondary legal materials. The approach to the problem uses a conceptual approach.²The data were analyzed qualitatively by describing the data generated from the research into a systematic explanation form so that a clear picture of the problem under study can be obtained. The results of the data analysis were concluded deductively.

III. DISCUSSION

a. Legislation as a Form of Modern Law

Law is a very important aspect in people's lives. With law, social life becomes better and more orderly. In a historical context, law develops dynamically following the development of society. Until now, the majority of countries in the world have used modern law in the form of written law.

During the centuries-old development of law, Indonesia was only a spectator. He was not at all actively involved as an actor in the history of the formation of modern law, such as Germany, France, Italy and other European countries.³Through Dutch colonialism, Indonesia only accepted and ultimately used a ready-made product, namely the modern legal system.⁴

Indeed, if we are looking for a reference to describe modern law, then we cannot do other than refer to the development of society and its laws that occurred in the western part of the world. This is simply because modern law grew and developed in the west, not within our own society. The journey of (modern) law that we use has now gone beyond the liberal stage and reached the post-liberal stage in accordance with the development of western society. The law of priority of values in the east and the west. In the west, rationality has the highest value, while the east gives priority to happiness.⁵

The modern legal order is different from the traditional order, it is not taken for granted, but is the result of the thoughts and agreements of the members of modern society. In this sense, the legal order is an order that is

²Peter Mahmud (2005). *Legal Research*, Kencana Prenada, Jakarta, page xx.

³Legal thought in the history of western civilization can be divided into two main periods. First, the period from ancient Greece to the Middle Ages and the second, after the Middle Ages. E. Fernando M. Manullang, *Achieving Just Law*, PT Kompas Media Nusantara, Jakarta. 2007. Page 1.

⁴Satjipto Rahardjo, *Law and Behavior (Good Living is the Basis of Good Law)*, PT Kompas Media Nusantara, Jakarta. 2009. Page 37.

⁵Satjipto Rahardjo, *Dissecting Progressive Law*, PT Kompas Media Nusantara, Jakarta. 2006. Page 13.

reflective. For modern society which tends to become increasingly complex, law functions as the last safety belt that binds society if moral solutions are not found to maintain social integration.⁶

Modern law is full of formal forms, procedures and bureaucratic legal administration. Legal material is formulated in a measurable and formal manner and new concepts and special constructions are also created; also not everyone can become a legal operator, but rather those who have special qualifications and undergo certain formal initiations. Judges must have a law degree, advocates must have a work license, and so on.⁷In this way, it is hoped that those who carry out law enforcement can understand and interpret the legal problems that occur so that they can get closer to society's sense of justice in accordance with the legal ideals encapsulated in statutory regulations.

Trubek provides the following characteristics of modern law: It is a regulatory system, a form of human action carried out deliberately and is both part and autonomous of the state.⁸In this way, tiered and written legislative regulations can also be said to be modern law because they are a system of regulations created with a planning program (Prolegnas for planning law making and Prolegda for planning regional regulation making).

Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislative Regulations describes the types and hierarchy of Legislative Regulations consisting of:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Decree of the People's Consultative Assembly;
- c. Law/Government Regulation in Lieu of Law;
- d. Government regulations;
- e. Presidential decree;
- f. Provincial Regional Regulations; And
- g. Regency/City Regional Regulations.

Based on the hierarchy above, there are several principles of statutory law which serve as guidelines for the implementation of statutory regulations, including: lower regulations must not conflict with higher regulations/higher regulations override lower regulations (*Lex Superior Derogat Legi inferior*). The new regulations override the previous regulations if the substance of the regulation is the same (*Lex Posterior Derogat Legi Priori*). Specific regulations override general regulations if the legal regime is the same (*Lex Specialist Derogat Legi Generali*).

b. The Influence of Political Aspects in Legal Reform in Indonesia

In fact, law is very esoteric, it can only be understood by people who have studied law. Many legal languages, terms, concepts and doctrines sound foreign to the ears of the general public.⁹However, law in the form of statutory

⁶F Budi Hardiman, *Deliberative Democracy*, Kanisius, Yogyakarta. 2009. Page 64.

⁷Satjipto Rahardjo, *Let the Law Flow (Critical Notes on Human and Legal Struggle)*, PT Kompas Media Nusantara, Jakarta. 2007. Page 13.

⁸I Gede AB Wiranata, *Law and Modernization Lecture Materials*, MH Unila 2011.

⁹Satjipto Rahardjo, *Progressive Law Enforcement*, PT Kompas Media Nusantara, Jakarta. 2010. Page 85.

regulations is not a norm that is freely formed by itself, it is the result of a formulation that represents all certain interests.

To better capture the dynamics of a legal rule, it is recommended here to trace the design process. By understanding the accompanying background, it is possible for us to understand what the law makers intended at that time. Apart from that, we can contrast the relevance of these rules with the actual situation currently faced.¹⁰The design process is a mechanism that must be passed and it will be colored by political aspects, including from the discussion phase to the enforcement phase.

The formation of good rules must be based on philosophical, sociological, juridical, political and administrative aspects¹¹and its implementation must also be reflected philosophically, sociologically, juridically and politically. Philosophical Applicability means that the philosophical values of the Republic of Indonesia are contained in Pancasila as "staatsfundamentalnorm". The formulation of the five principles of Pancasila contains the values of religiosity in the Almighty God, just and civilized humanity, nationality in the bonds of diversity, popular sovereignty, and social justice for all Indonesian people. None of these five philosophical values may be ignored or even opposed by legal norms contained in various possible forms of legislation within the Unitary State of the Republic of Indonesia.¹²

Juridical validity is the validity of a legal norm with its binding force for the public as a dogma seen from technical juridical considerations. Juridically, a legal norm is said to be valid if the legal norm itself is (i) determined as a legal norm based on superior or higher legal norms as in the view of Hans Kelsen with his theory "Stufenbau Theorie des Recht", (ii) determined binding or valid because it shows a necessary relationship between a condition and its consequences as in the view of JHA Logemann, (iii) is determined as a legal norm according to the applicable law formation procedure as in the view of W. Zevenbergen, and (iv) is determined as a legal

¹⁰Pranoto Iskandar and Yudi Junadi. *Understanding Law in Indonesia*, IMR Press, Cianjur, 2011. Page 22.

¹¹Philosophical basis, laws always contain legal norms idealized by a society towards which the noble ideals of social and state life are to be directed. The sociological basis is that every legal norm outlined in the law must reflect the demands of society's own needs for legal norms that are in accordance with the reality of society's legal awareness. Political Foundation The political basis referred to here is that the consideration must also depict the existence of a constitutional reference system according to the ideals and basic norms contained in the 1945 Constitution as the main policy source or legal political source that underlies the formation of the law in question. Juridical Basis: The juridical basis in the formulation of every law must be placed in the "Remembering" Precautions section. Administrative Basis The five types of basis mentioned above must be listed sequentially in the introductory part of the law. The formulation can be divided into three groups or sub-sections, namely (a) consideration sub-section or "Considering Consideration", (b) reminder sub-section or "Remembering Consideration", and sometimes also added with (c) sub-section attention or "Consideration of Paying Attention". In the usual practice of forming statutory regulations in Indonesia, the first two sub-sections, namely the consideration sub-section and the warning sub-section have been considered absolute in the format of the Republic of Indonesia's statutory regulations for a long time. Meanwhile, the third sub-section, namely "paying attention" is facultative according to needs. Jimly Asshiddiqie, *Concerning Laws*, Constitution Press, Jakarta, 2006, pp. 170-173.

¹²*ibid*, p. 241.

norm by an institution that is authorized to do so. If these three criteria have been fulfilled as they should, then the legal norm in question can be said to be juridically valid.¹³

A legal norm is said to apply politically if its implementation is supported by real political power factors (riële machtsfactoren). Even though the norm in question is supported by the grassroots level of society, is in line with the state's philosophical ideals, and has a very strong juridical basis, without the support of sufficient political power in parliament, the legal norm in question is unlikely to get political support to be implemented as a law. In other words, political enforcement is related to the theory of power which in turn gives legitimacy to the enforcement of a legal norm solely from the perspective of power. If a legal norm has received the support of power, whatever its form and however the political decision-making process is achieved, it is sufficient to become a basis for legitimacy for the application of the relevant legal norm from a political perspective.¹⁴

Sociological Applicability: This sociological view of applicability tends to prioritize an empirical approach by prioritizing several choices of criteria, namely (i) recognition criteria, (ii) acceptance criteria, or (iii) legal facticity criteria. The first criterion (principle of recognition) concerns the extent to which the regulated legal subject recognizes its existence and binding force as well as its obligation to submit itself to the relevant legal norms. If the legal subject in question does not feel bound, then sociologically the legal norms in question cannot be said to apply to him.¹⁵

In line with the concept of enforceability above, according to Syauckani and Thohari, if the law is built on a foundation that is not in accordance with the spiritual structure of society, it is certain that society's resistance to the law will be very strong.¹⁶ Hart stated that the existence of a legal system is a social phenomenon that always presents two aspects, which we must pay attention to so that our view of it is realistic. These aspects include attitudes and behavior that take the form of recognition of the rules and also simpler attitudes and behavior in the form of mere obedience or silent acceptance.¹⁷ Because recognition that is manifested in attitudes and behavior means that a legal rule can be accepted by society and has reached its complete form in a sociological aspect, because basically, according to Gilissen and Gorle, the primary source of law is the legal habits of society.¹⁸ Meanwhile, Kelsen believes there are only organs, on a limited basis, that can comply or not comply with legal norms, by applying or not applying specified sanctions. As commonly used, the words complying with norms and disobeying norms refer to the subject's actions.¹⁹

¹³ibid, p. 242.

¹⁴ibid, pp. 242-243.

¹⁵ibid, pp. 243-244.

¹⁶Imam Syauckani and Ahsin Thohari, *Basics of Legal Politics*, Jakarta: Raja Grafindo Persada, 2008. p. 52.

¹⁷ HLA Hart, *Legal Concepts*, Nusamedia, Bandung, 2009, p. 311.

¹⁸John Gilissen and Fritz Gorle, *Historische Inleiding Tot Het Recht*, which has been translated into Indonesian by Freddy Tengker, *Legal History*, PT Refika Aditama, Bandung, 2007, p. 23.

¹⁹Jimly Asshiddiqie and M. Ali Safaat, *Hans Kelsen's Theory of Law*, Constitution Press, 2006, Jakarta, p. 58.

Apart from the influence of political aspects in the formation of laws and regulations which have been explained above, in the context of legal reform political aspects also have a significant influence. For example, the establishment of the Indonesian Constitutional Court which is a state institution that has the authority to adjudicate at the first and last level whose decisions are final to review laws against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of parties politics, and deciding disputes about the results of general elections.

The idea of forming the Constitutional Court is one of the developments in modern legal and state thinking that emerged in the 20th century. The idea of this formation became a reality after the passing of the Third Amendment to the 1945 Constitution, so in order to wait for the formation of the Constitutional Court, the MPR determined that the Supreme Court (MA) would carry out the functions of the Constitutional Court temporarily as regulated in Article III of the Transitional Regulations on the 1945 Constitution as a result of the Fourth Amendment. The DPR and the Government then made Draft Law concerning the Constitutional Court.²⁰The Constitutional Court of the Republic of Indonesia is a new (high) state institution which is equal and has the same high position as the Supreme Court (MA). This idea is in line with the idea of reviewing the constitutionality of laws adopted in the norms of the constitution and even institutions that are formed separately.²¹

The formation of the Constitutional Court was realized because of the political desire to form a state institution that could control the DPR's legislative products in synchronization with the 1945 Constitution so that there would be no violations of the constitutional rights of citizens and to maintain the principle of checks and balances between state institutions. Apart from that, the establishment of the Constitutional Court is a form of legal reform in a formal institutional sense.

Apart from the context of forming legislation for legal reform, political aspects can also actually influence law enforcement. Especially with regard to public law, both in the form of criminal law and state law (state administration and state administration).

In law enforcement, there is a desire for the law to be upheld, so that the values fought for through the relevant legal instruments can be realized. Meanwhile, in using the law, the ideals contained in the law are not necessarily truly achieved, because the law is used to justify the actions taken (to use the law to legitimate their actions).²²In this case, the law is used as a justification for a government action.

Meanwhile, in criminal law enforcement, for example enforcement of criminal acts of corruption. Political aspects will emerge and influence the law enforcement process. In fact, with the enactment of written law (UU) as the

²⁰Jimly Asshiddiqie, *Development and Consolidation of Post-Reformation State Institutions*, Jakarta: PT BIP, 2007, pp. 26-27.

²¹Jimly Assiddiqie, *Principles of Constitutional Law*, Jakarta, Buana Ilmu Popular, 2007, p. 583.

²²Tubagus Ronny Rahman Niti Baskara, *Enforce the Law Using the Law*, PT Kompas Media Nusantara, Jakarta. 2006. Page 9.

first formal benchmark criterion, the concept also still provides opportunities for unwritten sources of law that live in society as a basis for whether an act should be punished.²³ So that law enforcement officials can further explore the community's sense of justice without having to violate laws and regulations that are full of political interests. Apart from that, with strong political will, legal reform relating to this aspect of enforcement could take the form of using a reverse evidence system in corruption cases, making it easier for law enforcers to work.

Law enforcers must set an example so that the law becomes the supreme commander without being influenced by any force. Indonesia needs a legal institution that is specifically tasked with making the law supreme.²⁴ So that the legal objectives of justice, certainty and usefulness can be realized properly.

IV. CONCLUSION

In the context of legal reform, political aspects have a significant influence, this can be seen in the formation of the Constitutional Court. The formation of the Constitutional Court was realized because of the political desire to form a state institution that could control the legislative products of the DPR, synchronize it with the 1945 Constitution so that there would be no violations of the constitutional rights of citizens and to maintain the principle of checks and balances between state institutions. The establishment of the Constitutional Court is a form of legal reform in a formal institutional sense. Apart from the context of forming legislation for legal reform, political aspects can also actually influence law enforcement. This can be seen in the handling of protracted corruption cases, as well as the use of a reverse evidence system in corruption cases, making it easier for law enforcers to work. This reverse evidence system is a form of legal reform.

REFERENCES

- Anwar, Yesmil and Adang. Criminal Law Update, Grasindo, Jakarta. 2008.
- Asshiddiqie, Jimly. Concerning Laws, Constitution Press, Jakarta. 2006.
- Asshiddiqie, Jimly, Bagir Manan et al. Ideas for Amendments to the 1945 Constitution and Direct Presidential Election, Secretariat General & Registrar of the MKRI, Jakarta 2006.
- Asshiddiqie, Jimly and M. Ali Safaat. Hans Kelsen's Theory of Law, Constitution Press, Jakarta, 2006.
- Asshiddiqie, Jimly. Development and Consolidation of Post-Reformation State Institutions, PT BIP, Jakarta. 2007.
- Asshiddiqie, Jimly. *Basics of Constitutional Law*, Buana Popular Science, Jakarta. 2007.
- Baskara, Tubagus Ronny Rahman Niti. Enforce the Law Using the Law, PT Kompas Media Nusantara, Jakarta. 2006.
- Gilissen, John and Fritz Gorle. Historische Inleiding Tot Het Recht, which has been translated into Indonesian by Freddy Tengker, Legal History, PT Refika Aditama, Bandung, 2007.

²³Yesmil Anwar and Adang. Criminal Law Update, Grasindo, Jakarta. 2008. Page 32.

²⁴Oksidelfa Yanto, Legal Mafia (Exposing Conspiracy and Legal Manipulation in Indonesia), Achieve Hope of Success, Depok. 2010. Page 17.

- Hardiman, F Budi. *Deliberative Democracy*, Kanisius, Yogyakarta. 2009.
- Hart, HLA *Legal Concept (The Concept of Law)*, Nusamedia, Bandung. 2009.
- Iskandar, Pranoto and Yudi Junadi. *Understanding Law in Indonesia*, IMR Press, Cianjur. 2011.
- Manullang, E. Fernando M. *Achieving Just Law*, PT Kompas Media Nusantara, Jakarta. 2007.
- Rahardjo, Satjipto. *Dissecting Progressive Law*, PT Kompas Media Nusantara, Jakarta. 2006.
- Rahardjo, Satjipto. *Let the Law Flow (Critical Notes on Human and Legal Struggle)*, PT Kompas Media Nusantara, Jakarta. 2007.
- Rahardjo, Satjipto. *Law and Behavior (Good Living is the Basis of Good Law)*, PT Kompas Media Nusantara, Jakarta. 2009.
- Rahardjo, Satjipto. *Progressive Law Enforcement*, PT Kompas Media Nusantara, Jakarta. 2010.
- Syaukani, Imam and Ahsin Thohari. *Basics of Legal Politics*, Raja Grafindo Persada, Jakarta. 2008.
- Yanto, Oksidelfa. *Legal Mafia (Exposing Conspiracy and Legal Manipulation in Indonesia)*, Achieve Hope of Success, Depok. 2010.
- The 1945 Constitution of the Republic of Indonesia.
- Law Number 24 of 2003 concerning the Constitutional Court, State Gazette of the Republic of Indonesia of 2003 Number 98, Supplement to State Gazette of the Republic of Indonesia Number 4316.
- Law Number 12 of 2011 concerning the Formation of Legislative Regulations, State Gazette of the Republic of Indonesia of 2011 Number 82, Supplement to State Gazette of the Republic of Indonesia Number 5234.