

IMPROVING ORIENTED WELFARE LAW

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IMPROVING ORIENTED WELFARE LAW

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ABSTRACT

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The idea of state in law is constructed by developing the law itself as a functional and fair system⁹ developed by arranging supra and infra-structure of the institutional structures of political, economic and social orderly and organized, and nurtured by building cultural and legal awareness of rational and impersonal in the life of society, state and nation. To that destination, it is Necessary to build a legal system (law making) and enforced (enforcing the law) as Appropriate, starting with the constitution as the highest legal position. To Ensure the enforcement of the constitution⁴ as the fundamental law of the topside (the supreme law of the land), Also formed a Constitutional Court the which serves as 'the guardian' and also the ultimate interpreter of the constitution¹.

Keywords: Law, Welfare, Constitution, Court

INTRODUCTION

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In order to change the Constitution of the Republic of Indonesia Year 1945, then in the Fourth Amendment in 2002, the conception of the State Law or "Rechtsstaat" previously only contained in the elucidation of the 1945 Constitution, explicitly formulated in Article 1 (3) which states, "Indonesia is a State of Law." In the concept of the State of Law, idealized that should be the commander in the dynamics of national life is the law, not politics or economy⁵. Therefore, the jargon commonly used in English to refer to the principle of the Rule of Law is 'the rule of law, not of man'. The so-called government in essence is the law as a system, not individuals who simply acted as a 'puppet' of scenarios that govern the system.

Normative basis of the 1945 Constitution mandates that the state promote the general welfare and means of government policy should be oriented to the welfare of the people. One of the instruments to make it happen is the law, so that law enforcement should be oriented to the welfare of the people as well. Law is not only positioned as an instrument to provide legal certainty or order, or a sense of fairness individually. View of the law for the welfare oriented law and provide the greatest possible benefits for people as much as possible.²

Development is seen as a bridge that is capable of realizing the rule of law. In the implementation of development affairs of government are not always organized by the center, but can be delegated to the regions through the dispersal based on broad autonomy. So that the maximum area to function it is necessary to impose autonomy index measures the area that serves local independence in carrying out development, uphold the rule of law and human rights.

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¹Chairman of the Constitutional Court of the Republic of Indonesia and Chairman of the Association of Constitutional Law and Administrative Law State Indonesia. PDF PDFPDF Created with desk Writer- Trial:: <http://www.docudesk.com>

² - AidulFitriciadaAzhari, Footage Papers, lecturer Graduate Program Muhammadiyah University of Surakarta (UMS) through <http://suaramerdeka.com>

The law was formed in order to realize a just society to allow each person to live her life in a reasonable and dignified. Therefore basically, the general of law to curb the functioning of society, realizing the human values fundamental, resolve disputes in an orderly and fair, as well as maintain and sustain law and order the rules if necessary to use violence in an organized manner (applying legal sanctions) through the procedure certain implementation should be carried out strictly, regulate how the setting and maintenance of order, changing rules and regulations in order adjustments (changes) the needs of the community, set the way the formation and alteration pollutes and rules. Generally Said, the law is aimed at establishing peace in the community.³

Since the beginning of Indonesia was established by putting the ideology of social justice as the ultimate goal of the development process. The entire economic development policies and strategies chosen towards the common good, it is hoped no one group of people more prosperous significantly compared with other communities. Footing is not just because social justice is a prerequisite for an integrity but also the reality that the Earth Indonesia inhabited by a variety of cultures, customs, religions, races and ethnicities are diverse, so strapless justice diversity undoubtedly has the potential to ignite conflict. By this option of social justice as a pillar of the state is an intelligent choice of the founding fathers to see the character of the people of Indonesia

However ideals - ideals form the ideal country to prosperity and welfare for its citizens, be shattered when mid-1997, Indonesia was hit by a prolonged monetary crisis that extends into an economic crisis which lead to a deterioration of the economic activities, disruption of production and distribution. The problem of a serious impact on the increase in the number of unemployed and the poor, both in urban and rural areas. Indonesia ever proud of being able to reduce the poverty rate from 40% to 11% in 1976, in 1997 slumped again and ballooned to 60%, so the Vice President of the World Bank for the eastern region and the Pacific, Jamaluddin Kassum when opening a meeting of donor members of the *Consultative Group on Indonesia (CGI)* in Jakarta, Wednesday 7 November 2001 warned that three-fifths or 60% of the Indonesian population back to live below the poverty line, 10-20% of whom live in absolute poverty (*extreme poverty*)⁴

Furthermore Kassum warned, will result in stagnation of reform efforts are very expensive cost to the economy that would disrupt Indonesia's efforts to rebuild its economy to the path of growth and reduce the number poor. but much more dangerous is the rising crime and the emergence of social unrest that could potentially cause disintegration. (kompas, 8 November 2001)

CONSTRUCTION OF LEGAL INSTITUTIONS IN THE REGION⁵

The state is a legal order. The elements of the state covering the area and the people is the field of territorial and personal validity of the legal order. In this case the centralization and decentralization should be understood as two types of legal order. The differences between countries should be centralized to decentralized is the difference in the legal order. Conception of centralized legal order means that all the norms applicable to the entire territory to be reached; This means that all norms have the same territorial validity field. On the other hand, decentralized legal order consists of norms that have different territorial

³Agussuryosuripto 2005"Kebijakan Pemerintah Daerah dalamUpayaMenangulangiKemiskinan" TesisHukum Tata Negara " (UniversitasMuhammadiyah Surakarta.),hlm 2

⁴kompass 8 November 2001

⁵ Written in Online innovation Vol 12/XX/November 2008, can be downloaded in <http://io.ppi-jepang.org/article.php?id=289>

validity. A number of the norm applies to the entire territory, while a number of other norms apply only to portions different territorial.

The norms that apply to all territorial referred to as the norms of the center, while the norms that apply to most territorial area called norm. Norms of this area then institutionalized in a legal product areas, one of which is regulation. By law is an instrument of local governments to describe legislation that higher according to the factual conditions of demography, geography and geo-socioeconomic each region into a legal system. Will be reflected in the legal political regulations of local governments to manage their local governance.

When viewed from the configuration of the number of regulations by category, it can be seen that the issues raised and the type of regulation that was issued more struggling in the bylaws institutional or government institutions and financial areas as well as in particular taxes and levies. Decentralization then interpreted as an opportunity to enrich their respective areas by increasing the coffers PAD each with a variety of ways that legalized: taxes, levies, dredging of natural resources (SDA). In relation to the prevention of global warming, a category that is related regulations are regulations governing the SDA. Bylaw in this category become one of the excellent in the implementation of regional autonomy. Factor decoy to set the SDA because it considers these resources are given and easy profit without the need to invest in advance, enough to permit format. In this case, the development of legal institutions conducted in the area is more focused on the utilization aspects and not on aspects of the maintenance and protection. After all sectors of natural resources, such as forests, are closely related to the carrying capacity of the environment and the ability to prevent global warming.

Meanwhile, the development of legal institutions in the region, especially related to the prevention of global warming must be based on a careful planning and should be placed in a unitary system of formation of Local Legislation Program as stipulated in Law No. 10 of 2004 Article 15 (2) which states that "Planning the preparation of the Regional Regulation is done in a Local Legislation Program". Local Legislation Program, hereinafter referred Prolegda are instruments for drafting local regulations that are arranged in a planned, integrated and systematic. An important goal Prolegda existence is the priority regulation accordance with the development needs of the local law and regulation to keep the products remain in the unity of the national legal system. However, very unfortunate practice of programming of local legislation is not carried out by each region so that the development of legal institutions in the region sometimes are not systematic and not in accordance with the planned program. It would be nice if the development of legal institutions regarding the prevention of global warming is placed within a framework of the preparation of the program of harmonization of local legislation so that the law and order institutions in the region can be maintained.

From a legal perspective, the synergy of the institutional aspects of international law, national legal institutions and legal institutions in the area. In this regard, Indonesia's commitment to the prevention of global warming is not only done with ratified international legal instruments, but also to be followed by the development of national legal institutions, and even more important is the development of legal institutions in the region. Is not "*the advance guard in the frontier*" in order to prevent global warming is the regional administration in this decentralization era.

LAW FOR THE WELFARE OF THE PEOPLE

Outlook law by Donald Black called a model welfare law has a proactive character. By implication, the state as a legal apparatus has a broad spectrum of intervening in the economic life of the people and establish long-term plan to promote the welfare of the people. The state also set policies that are favoring (*affirmative*) to help social groups marginal enjoy common prosperity.

The antithesis of the model of welfare laws are more liberal legal model of priority access to the legal community initiatives. Law is only used to create order and provide legal certainty for the sake of protecting the economic activity of society. By implication, the state tends to refrain from interfering in the economic life of the people and let the economic activity goes according to market mechanisms.

With the law itself be reactive, or even passive, to the needs of citizens. However, the practice of normative formulation was not entirely successful. Political systems, leadership and government management, quality of human resources, and the pressure of global forces into a number of factors that led to the failure of the welfare state to enforce the law. First; as the former Dutch colony of imperialist-capitalist character, Indonesia is not entirely successful decolonize the socio-economic field. The efforts of many hit poor management of government that gave birth to the social and political crisis that eventually open up opportunities for foreign powers to impose their will. That's what happened during the Sukarno who intend socio-economic decolonize but without his government's good management.

STATE LAW AND DEVELOPMENT IN LAW ENFORCEMENT.

The concept of State of Law with the concept of democratic countries like Siamese twins ⁶ In addition to democratize, as well as the role of local government is meant as the spearhead of public services. In this concept to consider the principles of *good governance*. There are several major factors that influence each other in applying principles of *good governance* into a government, as follows:

1. Good rule of law, namely a set of rules that govern the relationship between citizens, government, Parliament, the Court, the Press, Environmental as well as other stakeholders;
2. *Law Enforcement* good, which is a set of mechanisms that directly or indirectly support the efforts of law enforcement;
3. System of government that is effective, efficient, honest, Transparent, *Accountable*, and insightful human rights;
4. System of government that can create an intelligent and Egalitarian society;
5. Conducive governance system to economic growth and equity.⁷

As did the central government, a concrete manifestation of the implementation of the State affairs is through development in all areas of both physical and non-physical. Importance of development is inseparable from the important role of both public and private. It is at the same time also be a challenge. Say so because, according to Kenneth W.Dam, the rules

⁶Quoted from the set of writings Thought Full Frame devotion Prof DR.H.BAGIR MANAN, SH., M.CL page.541. sourced from <http://andalanunair.blogspot.com/2011/02/prospek-otonomi-daerah.html>, on 8 / 5/2011 12:19:08 AM

⁷ Ibid page 539 (79)

applicable between private parties can mean something entirely different if one of the parties has the power of the state behind -say, through political influence (cronies' capitalism) or corruption.

According to scholars trying to find basic fundamental principles which must be followed if the rules of law prevail. While the approaches in the literature broad rule of law are so varied, the most basic idea is:

1. The rule of law must be written and available to residents. No secret law
2. Rules should be applied and enforced, with and without emotion for all, regardless of position; furthermore, the state and the authorities should also be subject to the law: Nothing is above the law.
3. Individuals have the right to have rules that encourage them to obtain a profit. In other words, they are entitled to access to justice on the basis of the Non -discriminative no matter who they are from anyone who might be accused.

In the context of regional development, the fundamental approach of the above are expected to encourage autonomy, which is understood to independence. The achievement of independence is a combination of various components, as stated Joseph RiwiKaho as factors supporting regional autonomy. According to the factors that influence successful then Regional autonomy is as following:

1. Managing the Human Factor, which is run by the head of the Region, the Regional Representatives Council, the ability of local government officials, and community participation;
2. Regional financial factors; in the form of local taxes, retribution local, regional companies, and the efforts of other regions;
3. Infrastructure Factors facilities and support, in the form of infra structure of government, supporting equipment, organization and management factors, the government organization that effectively and efficiently and in accordance with the needs and potentials, and management of effective governance and efficient. (JosepRiwukaho, Prospects for regional autonomy in Indonesia, Jakarta: Eagle Press, 2001)⁸

ENFORCEMENT

Law enforcement expected Clean, Bold, and Professional and has a determination that is strong. The spread of mal practice in the ranks of law enforcement institutions, an obstacle that law enforcement in particular the eradication of Corruption, Collusion Nepotism (KKN) among bureaucrats. In general, the three institutions to eradicate corruption in demand have a "track record" Clean, Bold, Professional and have a strong determination.

The step to unify law enforcement in connection with the eradication of corruption, it must be understood that the eradication of corruption is a part of the criminal justice system (*Criminal Justices system*) It is no exaggeration when the three institutions are in a work coordination. The attorney general should be able to integrate labor law enforcement.

⁸Quoted from the set of writings Thought Full Frame devotion Prof DR.H.BAGIR MANAN, SH., M.CL page.541. sourced from <http://andalanunair.blogspot.com/2011/02/prospek-otonomi-daerah.html>, on 8 / 5/2011 12:19:08 AM

Most people feel that social rights, the economy and welfare has been taken it is because as a result of the eradication of corruption that have not been fully implemented by the government. Many people wish to worry about the government's seriousness in combating it.

The establishment of the Corruption Eradication Commission (KPK) is a form of concern for the Government. As an independent institution is specific, the Commission has conducted innovation on combating corruption in dragging Abdullah Puteh in corruption cases in Aceh, deserves high appreciation. So eradication of corruption in West Sumatra. Nevertheless, prosecutors and militaries feel the presence of the Commission has been overstepping their duties.

The phenomenon of delegitimizing the police and prosecutors in the fight against corruption seems to need to be careful. How could a good and clean government (Good governance and Clean Governance) can be formed, if they do not use an integrated approach?

An integrated approach in this article⁹ is defined as a common understanding of concepts, strategy and methods in the ranks of law enforcement agencies in combating corruption. Therefore, corruption is an extraordinary crime that is contrary to the International Convention on Rights, Basic Rights, Social, Economic and Cultural Rights (*International Convention On Social Economics and Cultural Rights*) in 1969.

To the indifference of society towards the eradication of corruption is a boost Moral (*Moral Force*) for the Government, it has been duly elected president establishes the National Police, the Attorney General and Minister of Justice, as the three forces in crushing Corruption (*three in one for Law enforcement*). United of justice in a roof under the Supreme Court (Law No. 5 of 2004 concerning Judicial Power) is critical to the implementation of the principle of *fair trial*. So that justice justice and public satisfaction can be obtained by the public. However, in practice very dependent on the quality of human resources.

CLOSING

View of the law as a model welfare law has a proactive character. By implication, the state as a legal apparatus has a broad spectrum of intervening in the economic life of the people and establish long-term plan to promote the welfare of the people. The state also set policies that are favoring (*affirmative*) to help the marginal social groups enjoy the prosperity together.

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⁹JawahirThantowi, "Law Enforcement & diplomacy SBY administration," Yogyakarta, Leutika Pers.2009

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