
Research Article

Restore Recognition of Legal Pluralism as A National Law Development Model That Is Justice

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ABSTRACT

Article 18 B paragraph (2) of the 1945 Constitution explains that the state recognizes and respects the customary law community and their traditional rights as long as they are still alive. The purpose of macro-legal politics that accommodates written and unwritten laws is implemented in a variety of meso (intermediate) legal politics through various laws.

During this time the recognition of the existence of customary law as a manifestation of recognition of legal pluralism for example in Agrarian Law is often ignored. Then it takes recognition of strong legal pluralism in supporting legal development in Indonesia regulated in Law no. 17 of 2007 concerning the National Long-Term Development Plan of 2005. with due regard to the plurality of applicable legal arrangements.

Keywords: *Restore, recognition of legal pluralism, legal development models, justice*

Introduction

The legal structure during the New Order era developed in a political configuration marked by the success of codification and unification of law. Authoritarian political configurations appear even though the number of legal products produced is quantitatively increasing, but the substance and function of the law is not always increasing or in accordance with the aspirations of the people and tends to ignore the people due to the strong role of the Government. This happens because of the unsynchronization of the legal structure with the legal function referred to above caused by interference or interference from political actions.

The background of the above does not escape from the situation during the New Order, where the State at that time was led by the president freely exercising his power to conduct the removal and denial in legal format through his interpretation. Interpretation of the law has the use of violence to sustain power at that time. Legal politics pursued by maintaining power or which can be used as a tool to reduce the resistance of political forces that are not in line with New Order policy. (Simarmata, 2005)

Uniforming the law (unification of the law) in a diverse / diverse society such as in Indonesia as many as 550 ethnic groups (Prudentia MPSS, 2011), will cause injustice. For example

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in Law No. 5 of 1960 concerning Basic Rules for Agrarian Principles, which clearly states that the agrarian law that applies to earth, water and space is customary law, has been distorted by the state. It is just as unfair as applying diverse laws (legal pluralism) to uniform societies. Indonesia with the motto of the famous country "Unity in Diversity" has a variety of tribes, races, religions, cultures, etc., but although diverse, Indonesia is an inseparable unity.

With the diversity of ethnic ethnics, languages, multicultural cultures is a gift from God Almighty it is not possible to do with a centralized system of government (Handoyo. 1998). This is confirmed in Article 18 B paragraph (2) of the 1945 Constitution explaining that the state recognizes and respects traditional law communities and their traditional rights as long as they are still alive and in accordance with the development of the community and the principles of the Unitary Republic of Indonesia which are regulated in the law.

Therefore, recognition of strong legal pluralism in supporting legal development in Indonesia is required in Law No. 17 of 2007 concerning the National Long-Term Development Plan 2005 - 2025 in Section G. Law and Apparatus states "the development of legal substance, both written and unwritten laws as mandated by the Pancasila and the 1945 Constitution of the Republic of Indonesia pay attention to the plurality of applicable legal orders."

Problem

The issues raised in this paper are:

1. What the existence of legal pluralism been recognized in state law?
2. How to restore recognition of legal pluralism as a model for the development of equitable state law?

Discussion

The Existence of Recognition of Legal Pluralism in State Law

Uniformity of local governance in the new order, as happened when Law No. 5 of 1974 concerning Regional Government and Law No. 5 of 1979 concerning Village Government, directly or indirectly, has destroyed the local

order because of the uniformity of the term village, whereas initially with other designations such as nagari, clan etc. in Indonesia. Unification of law in that context, has hit the local community with a system that is not necessarily in accordance with the soul or local characteristics.

The problem is the use of authority in the country which brings certain consequences, including in the matter of the application of state law to the people. This consequence will be more apparent when the state has a positivistic perspective and places the position of superior state law compared to existing local laws as inferior law. This view was born because legal positivism is so dominant because of the nature of formalized, institutional and definitional laws, and resulting from the process of using state authority and actions (centralism), while on the other hand there are no other paradigms that are able to offer guarantees of the status quo in a strict and clearly as it should be offered legal positivism. There are 2 types of legal pluralism according to Griffiths, namely 1) Weak legal pluralism (weak legal pluralism) with the characteristics of legal centralism, recognizing legal pluralism, but state law is still seen as superior, while other laws are united in a hierarchy under the law state, and 2) Strong legal pluralism (strong legal pluralism), with the characteristics of the plurality of legal arrangements found in all groups of people, all existing legal systems are considered to be equal in society.

That is because the characteristics and substance of legal products during the new order require that state law be applied uniformly and legal unification in the management of irrigation water. As a result, local institutions or local wisdom are artificially recognized and lack of living space in the territory of Indonesia. (Nurjaya, 2008) For example, the application of customary sanctions through customary / local justice is felt to be more psychologically and culturally appropriate for local communities to solve problems.

The Reform Order Period in the framework of regulating the law of legal development in Indonesia, the foundation used was Law No. 17 of 2007 concerning the National Long-Term Development Plan 2005-2025, in Section G. Law

and Apparatus states that in the reform era the effort to realize the national legal system continues to include several things. First, the development of legal substance, both written and unwritten laws have a mechanism to form national laws that are better suited to the development needs and aspirations of the people.

Second, improvements to the more effective legal structure continue. With the enactment of this law, the overall direction and priority of development which will be carried out in stages to realize a just and prosperous society as mandated by Pancasila and the 1945 Constitution.

As explained above that, Article 4 letter c MPR Decree Number. IX / MPR / 2001 reads: Respect the rule of law by accommodating diversity in law unification. In this context - in the field of praxis, legal pluralism has been used to: first, be a medium / environment for sowing and maintaining local rules, both those that already exist and those that will be constructed to respond to the development of local needs; secondly, it becomes a fortress or shield for the community from intervening values or external norms that are not in line with the ideals of the community, by saying that in the community concerned there are rules. The community's right to care for and carry out these rules must be respected and facilitated by values that come from outside the community concerned. and third, to be an energizer for the rise and operation of the local social system. In this way of working, for social movement activists in legal reform, the use of legal pluralism is precisely aimed at facilitating the re-emergence of justice for marginalized communities, while at the same time ensuring the continued control of society over available resources.

In various formulations of regulations, for example, Indonesia in 1945-1950 did not yet have a clear land law, then in the Soekarno government, Law No. 5 of 1960 concerning Basic Rules on Agrarian Principles to clarify the authority of the state regarding land, the 1960 (UUPA) Act has the concept of "Right to Control by the State", where the state has the sole authority over land. (Pranoto, 2017) Here can be seen the absolute power of the state that causes customary rights that have long been owned by indigenous peoples can be abolished. With the

existence of the legal system, horizontal and vertical conflicts can occur, namely a gap between the legal formers (state institutions) and indigenous peoples in substance of the law, the state recognizes the diversity of laws that live in people's daily lives because they realize that the Indonesian state has a lot of cultural diversity. For the next step, the State must have a strategy in the development of law by means of the state emphasizing the introduction of law to society rather than imposing the enforcement of the country's law. In this context, the approach of legal pluralism in the formation of national law is very important.

Restore the Recognition of Legal Pluralism as a Model of State Law Development

To support the development of law in Indonesia, it is regulated in Law no. 17 of 2007 concerning the National Long-Term Development Plan 2005 - 2025 in Part G. Law and Apparatus states that the development of legal substance, both written and unwritten law has a mechanism to form national law in accordance with the mandate of the Pancasila and the Basic Law of the State the Republic of Indonesia in 1945 with due regard to the plurality of applicable legal arrangements. Thus, macro political law is formulated in a basic regulation, which in the composition of the legislation is placed as the highest regulation, namely the 1945 Constitution (including Preamble), as a constitution.

The purpose of macro-legal politics that accommodates written and unwritten laws is implemented in a variety of mесо (intermediate) legal politics through various laws. Micro-political law is implemented through various laws and regulations which are even lower in level. In this way, a law (national law) will be created which adheres to the principle, which is justified at the political level of macro law (Soepi-adhy, 2010)

The problem that arises with regard to national land law based on customary law is, where is the position / position of customary law over national land law as much as possible as outlined in the form of the laws and regulations. If you pay attention to one of the requirements of customary law used the basis of national land law that is, it does not conflict with statutory regulations. It can be concluded that,

the position of customary law is lower than the legislation. If there are provisions of customary law that conflict with statutory regulations, then the customary law is set aside.

This contradicts a very well-known principle in intergroup law, namely, "the principle of equality" means, all legal sets are equal in value, are equally equal in price. According to this principle, all legal systems (customary law and statutory regulations) are of equal value / degree. Therefore, laws and regulations cannot override / not enforce customary law, and vice versa customary law cannot override / not enact legislation.

Customary law requirements must not conflict with statutory regulations, so that if there is a legal conflict between customary law and statutory regulation, customary law that is overridden, based on the principle of equality, cannot be justified. The position of customary law that still lives in the community (living law) of the laws and regulations is the same level or equal, so it can not overthrow each other.

The two laws were allowed to coexist (dualism of land law), as had happened during the Dutch East Indies government. During the Dutch East Indies government, there was a dualism of land law, meaning that it coexisted two sets of land laws, namely, customary law and western law. Although the Dutch East Indies government stated that all land other than those owned by eigendom rights belonged to the state, customary lands were left subject to their respective customary laws.

Law in anthropological perspective is studied as an integral part of the culture as a whole. Therefore, law in anthropological perspective is not only in the form of laws and regulations created by the State (state law), but also law in its form as local regulations that sourced from a customary law (customary law / folk law), including the mechanisms of regulation in the community (self regulation) which also functions as a means of social control (legal order).

The conception of legal pluralism, is often seen as a part that undermines the element of legal certainty, opposes the official product of the state, disrupts the structuring of formal institutions in solving problems, and in its most extreme form is undermining the 'rule of law'. Criticism of legal pluralism is often leveled in

relation to its practicality in regulating social relations, where state law is seen to be more able to resolve and be above all parties as a meeting point for all differences.

While on the other hand, especially among policy makers, legal pluralism is seen as something that is troublesome in the formation of laws that govern certain local communities, often even against the wishes of political officials, both those who sit in parliament and in the bureaucracy. Especially when in the process of establishing the law (state law), local communities are not invited to formulate or be involved in a participatory manner.

In fact, indigenous peoples also have a model of legalization that is applied in their own local communities. Inevitably, legalization conflicts intensified after the government issued concessions on Forest Tenure, Industrial Concession Rights, Industrial Concession Rights, and other rights that came into and occupied areas of these customary lands.

In the Indonesian context according to (Irianto, 2001), the problem of legal pluralism refers to 4 (four) things namely: 1) The complexity of legal pluralism in the country's legal system and the people's legal system. In daily life we can always find a variety of other legal systems in addition to state law, namely customary law, religion, customs agreements or other social conventions that have been lived as "law" by the community. In other words, state law is not the only monopolizing law or the only reference that regulates social relations of citizens in their daily lives. 2) Citizens can respond to a rule of law in different ways depending on their knowledge, interests and especially their culture. The problem of legal pluralism is not only in the existence of legal diversity but also in individuals who are subject to more than the legal system. Because everyone has knowledge, hopes and interests (social, political, economic) or rather a different legal culture.

Conclusion

1. The existence of legal pluralism has been recognized in state law through the existence of Article 18B paragraph (2) of the 1945 Constitution but in its legal substance, state recognition of legal diversity for example in land law is still weak (weak legal

pluralism) of legal pluralism. who live in people's daily lives because they realize that Indonesia has a lot of cultural diversity.

2. To restore recognition of legal pluralism as a model for the development of equitable state law, the state must have a strategy in legal development by means of the state emphasizing the introduction of law to society rather than imposing the enforcement of the country's law. The approach of legal pluralism in the formation of national law is very important. state law.

Suggestion

1. It is time for the legislators to reaffirm the political commitment to full recognition through legislation at the national level to protect the rights of local wisdom to reform and reform national laws to be more responsive to the existence of local wisdom.
2. The state must have a strategy in legal development by means of the state emphasizing the introduction of law to the community through a legal pluralism approach with recognition of strong legal pluralism in

the formation of national law highly imbued with Pancasila values.

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