

LEGAL SYSTEM IN GLOBALIZATION TRANSFORMATION

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Abstract

The purpose of this study is to investigate the distribution of the legal system, especially common law and civil law which have the same classical pattern through colonialism. The research method used is normative juridical method with statutory approach and concept approach. The legal materials used are primary, secondary and tertiary legal materials. by using literature study techniques. The research concludes that the infiltration of the legal system into other legal systems has changed patterns through various international treaties, both bilateral and multilateral in nature, both those agreed between countries as subjects of international law, as well as conventions issued by international organizations that require ratification from a country that wants and / or is requested to be implemented based on international pressure.

Keywords--- Common Law, Civil Law, Colonization, Globalization

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INTRODUCTION

Understanding of the legal system in a nation will give us knowledge regarding the legal system that pattern. This knowledge will also provide a descriptive description of matters relating to a law enforcement process. These things can also be known through defining the meaning of the Legal System itself. Muliadi define the term legal system is the legal system implies a comprehensive structure of the scope of the legal sciences which are included in the law, official decisions, and (legal) habits (Muliadi, 2013). Clearly the legal sciences that present a systematic reconstruction of some of the facts examined within the scope of a country (Indonesia). The legal system can be learned in a logical and systematic way. Meuwissen explained that the legal system as a construction (theoretical) in which various norms/legal rules are considered in a logical relationship-consistent into a particular entity (Titon Slamet Kurnia, 2019). The legal system is the whole legal rules and forms of appearance in legal rules arranged in a system (Bernard Arief Sidharta, 2004).

Regarding this understanding, he explained that the existence of these legal rules must indeed be formed in such a way into a system of mutual synergy. Because, if not, then it is not impossible or there will be an easy conflict between legal rules which will cause the existence of the law to be problematic and not functional to realize the purpose of its existence, namely to realize true peace in society. Therefore, the legal aspects of social life can be viewed and studied as a system.

Notonagoro describing the meaning of the legal system. He explained as follows (Hyrominus Rhiti, 2011): "What is meant by orderly law is the whole rather than legal regulations that fulfill four conditions: there is a unit of subject that establishes legal regulations, there is a unity of spiritual principles which includes all the rules, there is a unity of time in which the legal regulations applies, and there is a regional unity where the legal regulations apply". From the description of Notonagoro, it is very clear that what is meant by 'orderly law' is identical to the legal system that the researcher is currently discussing. From various descriptions relating to defining the legal system, Friedman's opinion, it seems very appropriate in giving conclusions from the various meanings mentioned above. Where Friedman explains that the legal system has more codes

(rules of ruler), rules (do's and don'ts), regulations and orders (Lawrence M. Friedman, 2001). This is because the word 'law' often refers not only to rules and regulations; however, it can be distinguished between the rules and regulations themselves and the structure, institutions, and processes that fill them.

Then the broad field is called the "Legal System". However, it remains to be remembered that the view of Friedman takes an external stand point, namely from the viewpoint of Social Sciences and not from Legal Studies. In its development, the study of the legal system has become more interesting to study when it is associated with the current era of globalization. The resilience and integrity and purity of a legal system adhered to a particular nation becomes a political and economic bet.

Soekanto explained that social changes in a society can occur due to various causes (Soerjono Soekanto, 1997). The causes can come from the community itself (internal) even from outside the community (external). As internal causes, among others, it can be mentioned, for example, population growth; new discoveries; conflict; or maybe because of a revolution. External causes can include causes originating from the physical natural environment, the influence of other cultures, warfare and so on. A change can occur quickly if a community more often contacts communication with other communities, or has an advanced education system. Changes in a legal system are essentially a change in legal politics nationally. The embodiment of a legal political view which then forms a certain legal system, which in the end by an institution that has authority is set out in legislation. Where legislation is aimed at behavior. In general, all regulations express a collective decision, that the community or elements in power want the behavior to lead to a certain goal (Lawrence M. Friedman, 2011).

This rapid development by itself encourages globalization processes which are now impossible for any country to avoid. These processes of globalization in turn encourage economic liberalization and the development of free markets, which in themselves open up opportunities for life and the development of free markets with free competition, even hospitals and universities are encouraged or pushed into the arena of competition. All of that causes global capitalism to dominate

socio-economic life everywhere. This development led to an increasingly intense cultural interaction between various nations in the world, which in itself resulted in a shift in values and changes in attitudes and behavior of citizens, especially in newly independent nations since the 20th century, due to colonialism in a period of time long isolated from the development and progress of the times. The citizens of the newly independent nation and the nation-state whose process of forming the nation still have not achieved crystallization so that it is quite integrated and strong, and therefore still lives in the old tradition, like the Indonesian nation, directly confronted with complicated modern caused by the rapid development of science and technology. Therefore, even the nihilistic (a philosophy view) tendency in western culture engulfed the young Indonesian nation (Bernard Arief Sidharta, 2009).

As a result of the influence of legal relations that have occurred extensively, even across national borders, or better known as globalization, the influence of the philosophy of law in shaping legal politics and the legal system of a country, can also be said to be one of the elements that influence mindset in the formation of law. As explained by CFG. Hartono said that there are philosophies of law that influence the development of national law both past and present (CFG. Sunaryati Hartono, 1991).

The urge and encouragement to implement the Pancasila as the ethical demands of the nation's soul (volkgeist) in the politics of criminal law and the criminal law system are considered to be the answers to the challenges that emerge today. The challenge in principle has been identified in the MPR Decree Number V / MPR / 2000 concerning Strengthening Unity and National Unity and the current condition of the Indonesian people, where one of them is affirmed that Globalization in political, economic, social and cultural life can benefit the Indonesian people, but if not watched out, it can have a negative impact on the life of the nation (Eddie Siregar, 2012).

Based on the descriptions above, it should be a question about how the development of the legal system in Indonesia in the current era of globalization, as a result of the development of the technology industry and the development of the economy internationally?

METHODOLOGY

The research method used is normative juridical method with statutory approach and concept approach. The legal materials used are primary, secondary and tertiary legal materials by using literature study techniques.

DISCUSSION

General Legal System Development

Broadly speaking, there are 2 (two) legal systems from 2 (two) legal families that are very influential in the development of law in the world, namely common law from Anglo Saxon and civil law families from Continental European legal families. Although it is undeniable that based on reality there are still other legal systems, for example, among others, Islamic law (Islamic legal system), socialist law (Socialist Legal system), far east law and the Customary legal system.

Whereas according to Sidharta that in this world there are usually three families of legal systems, namely (1) civil law system, (2) common law system, and (3) socialist law system (Bernard Arief Sidharta, 2004). The third group, the socialist law system, is often not mentioned specifically in many writings because it is considered rooted in the civil law system. Outside of the three groups, there are other categories, which are commonly called mixed legal system families. The above division is actually oversimplified, given the legal systems that fill so many parts.

Cruz divides into 42 legal systems (Peter de Cruz, 1995) while Esmein divides into 5 legal systems (Pargendler, Mariana, 2012) and other legal experts are Zweigert and Kotz, which divide based on legal ideology and techniques, so that 6 (six) types of systems arise. In essence, the method of dividing the family of the legal system is strongly influenced by the indicators used as "analytical blades." The more sharp the "knife of analysis", the more parts can be displayed as families of the legal system. The dominant (common law and civil law), according to Rasjidi, can be distinguished through several methods including history and techniques (Lili Rasjidi & Ida Bagus Wyasa Putra, 2012). Furthermore Cruz explains a number of factors that can be used as indicators to classify the legal system of certain countries into one separate family (Peter de Cruz, 1995).

These factors include:

Historical background and development of its legal system (the historical background and development of the system);

1. Characteristics typical of its characteristic mode of thought;
2. Different institutions (its distinctive institutions);
3. Types of legal sources that are known and their uses (the types of legal sources are acknowledgments and its treatment of these);
4. His ideology (its ideology).

Soetoprawiro explains that there are at least two other terms to designate this legal group. In addition to the group of Civil Law (civil law systems), people also commonly refer to as the Romano-Germanic Law family (Romano-Germanic system) or Continental European Law family (Koerniatmanto Soetoprawiro, 2015). The Continental European term refers to the fact that this family mainly developed in the region. While the term Civil Law refers to the history of the development of this legal family which is basically closely related to the relations of citizens of European society. Finally, the Romano-Germanic term appears given that this legal family consists of a number of influences on the flow of law, which are predominantly dominated by Roman law and German law.

As explained by Friedman, where lawyers usually divide legal systems into certain families, clusters, circles or groups. Each family, family, group or group includes legal systems that are seen to be closely related. Legal comparison experts agree that there are some dominant "families" in the world of law. One large group of civil law is influenced by classical Roman law and has the same codification, so called because at the beginning because Roman law originated from the great work of Emperor Justinianus Corpus Iuris Civilis (Peter Mahmud Marzuki, 2008). In another view, it was explained that the development of the Civil Law System had begun since the Code, the XII Tables (Lili Rasjidi & Ida Bagus Wyasa Putra, 2012).

However, in addition to Roman law and German customs, this legal family was essentially formed as a result of the interaction of these two laws with canonical law and commercial law as well. In addition, efforts to destroy feudalism and the emergence of nation-states in Europe also have a large share in the formation of this civil law family (Koerniatmanto Soetoprawiro, 2015). The civil law legal tradition is the oldest legal system, the discussion always returns to its origins in 450 BC, but although it is the oldest, civil law has experienced a longer development than common law, which incidentally has a faster origin Vivienne O'Connor, 2012).

Rasjidi explains that long before the text of Roman Law was found in Northern Italy, Roman law was a living law and was the reason for the similarity of Roman Law to Customary Law, namely both formed through procedures, then continued through Civile Code 1804 France (Lili Rasjidi dan Ida Bagus Wyasa Putra, 2012). During the development that initiated it, there was an influence from Christian Law. In the next

development, the Civil Law System was also influenced by the flow of rationalism and in the nineteenth century, the Civil Law System was influenced by the rise of nationalism.

Thus, this civil law family is based on Roman law. The rule of law according to this legal group is a rule of conduct that is closely related to the concepts of justice and morality. The main substance of this legal family is the views of legal experts (la doctrine). Meanwhile jurisprudence (la jurisprudence) and legal practice are merely mere peripherals. Furthermore, on the basis of historical factors, the main position of this legal family is occupied by private law, which regulates interpersonal relations. Whereas the other branches of law were developed on the basis of these le droit civil principles. This civil law family was essentially developed by European universities, especially in the Latin region and the German region since around the 12-13th century. The main basis for the development of the civil law family is the compilation of the legal legacies of Emperor Justinian.

To later obtain various adaptations on the basis of the influence of the modern world. In turn, this civil law family then spread throughout the world first through European colonialism. However, this civil law family also spread through receptions by various countries that were not touched by the colonialism process on the basis of the needs of those countries in responding to the challenges of modernization itself. This spread ultimately has variations in form and substance. This is considering that these countries have their own civilizations. Islamic countries, for example, continue to maintain the principles of their Islam law in perceiving this civil law family. Likewise with countries in East Asia that show a very different model of implementation, given the richness of its culture. Meanwhile, given its geographical and demographic conditions, the development of civil law clusters in America and Africa also shows different growth (Koerniatmanto Soetoprawiro, (2015).

Some experts divide the civil law world into sub-families of France and Germany. The countries that are common law are West Europe, Latin America and African speaking French. And another major group is the common law, which includes the United Kingdom, its colonies, former colonies, and colonies of its former colonies, including the United States and Canada, Australia and New Zealand, Jamaica, Trinidad, Barbados and the Bahamas. Common Law is also an important element in Kenya, Ghana and Nigeria, in ex-colonies in Africa, and in Liberia. The influence of common law also feels strong in India, Pakistan and Malaysia (Lawrence M. Friedman, (2011).

In the early Middle Ages until the XII century, British and Continental European law entered into the family of the same legal system, namely German Law. The law is feudal in nature, both in substance and procedure. A century later the situation changed. Roman law which is a material law and canonical law which is the law of the event has changed life in Continental Europe. As for in England escaped the influence, so that it still uses the original laws of the British people. When the dichotomy occurs it can be determined precisely that is during the reign of King Henry II (Peter Mahmud Marzuki, (2008).

British common law arose from the change and centralization of the king's power during the Middle Ages. In principle, the common law was built by the Anglika and Saksa tribes who inhabited most of England, so-called Anglo Saxon, long before the Conquest of the Normans (Rudianto, (2011). After the events of the Norman Conquest in 1066, medieval kings began to consolidate power and form new institutions of royal authority and justice. Some experts view the European socialist system - the Soviet Union and Eastern European people's democracy - as a separate family. Even so, this group has a strong resemblance to the world of civil law. Muslim countries (Islamic law - Pen) form

a separate family. The Far East (far east law - Pen) also stands alone. Japanese law is a unique blend of civil law and customary law (Pen) imbued with the latest American influence (Lawrence M. Friedman. (2011).

Interesting developments actually exist in the common law legal system, where in reality, the United States legal system which is actually a former colony of Britain, applies the common law system differently from its home country, except the State of Louisiana which still adheres to the legal system civil law due to strong influence from France. In the twentieth century, the Common Law System was formulated into two main forms, namely Anglo Saxon Law System and Anglo American Law System. This legal system was not affected and rejected the Roman Law System. The development of the Common Law System began with his rejection of universal justice-oriented Roman Law. The rejection began with a view of the reality of human limitations, that humans are not extraordinary beings who can realize absolute justice. Absolute justice is God's business, and humans must place more realistic goals for life (Lili Rasjidi & Ida Bagus Wyasa Putra, (2012).

Common law systems began to develop in England almost a thousand years ago. When the British Parliament was established, royal judges who had begun to base their decisions on "general" law for the kingdom (Peter J. Messite, (1999). Common law is generally not codified. This means that there is no comprehensive compilation of laws and regulations. Common law countries are not dependent on a number of scattered laws, which are legislative decisions, most of which are based on precedents, which means that court decisions have been made in similar cases or based on previous judges' decisions which later became the basis for subsequent judges (Juhaya S. Praja, (2011) unlike civil law which is always developed through the top-down method by the legislature (Vivienne O'Connor, (2012). This precedent is maintained from time to time through court records and historically documented in a collection of legal cases known as yearbooks and reports.

The precedent to be applied in the decision of each new case is determined by the presiding judge. As a result, judges have a very large role in shaping law in America and Britain. Common law functions as an adversarial system, a contest between two opposing parties before a moderate judge. A judge from ordinary people without legal training decides the facts of the case. The judge then determines the sentence according to the jury's decision (*The Common Law And Civil Law Traditions*).

Marzuki explained that the British people in applying the law in America were different from what was applied by the United Kingdom Court (Peter Mahmud Marzuki, (2008). This is because, local law, which is in the form of community habits, is appointed as law, so that the goods are certainly different from the legal roots. However, according to the Researcher, due to the very strong pressure to apply the original law, so that the legal formation process owned by America has similarities with common law from England. Therefore, it is only natural that the United States is generally classified as a follower of the common law system. What is the main differentiator between America and Britain is that America has the highest law in the form of written law, namely the constitution, while the United Kingdom does not have a written constitution. This is because British constitutional practice is based on convention (Peter Mahmud Marzuki, (2008).

According to Soetoprawiro that the pattern of the spread of the influence of this legal family to the whole world is also more or less the same as the pattern of the distribution of civil law groups, namely: colonization and reception (Koerniatmanto Soetoprawiro, (2015). However, in the end, it is necessary to distinguish between Common Law in Europe (Britain and

Ireland) and Common Law outside Europe. Outside Europe Common Law is accepted as part of overall local law. The other legal system is also the coexistence of the local legal system. This is evident in a number of Islamic countries or in India. Similarly, in the United States and Canada, because of differences in civilization with Britain, the Common Law in force in both countries is also autonomous.

In a broader sense of the American legal system, it is fitting that America as a British colony basically developed a system that was different from the one prevailing in the UK even though it adhered to common-law. On the other hand economic, political and social developments in America cause American law to become a reference or foundation in economic activity. Therefore the common law system in America is currently commonly referred to as Anglo-American (Rudianto, (2011).

Development of the Legal System in Indonesia

As a former Dutch colony, Indonesia has a legal system that is quite unique. Although in general, it cannot be denied that civil law hegemony is very strong in Indonesia, especially in the process of enforcing criminal law. Looking at the dominant position of the Civil Law System and the Common Law System that affects most parts of the world, namely expanding its influence through European colonialism towards minor nations in various other world regions. Through this process, the colonial nations forced the imposition of their innate legal system on their colonies. Post-colonialism, the process of influencing the legal culture came through the concepts of donor imperialism, aid, loans and foreign investment which often put changes in the legal system as a prerequisite for aid and loans (Lili Rasjidi & Ida Bagus Wyasa Putra, 2012). One of the factors that contributed to the infiltration of the legal system from common law was technology globalization.

Entering the era of technological globalization, mastery of digital technology is an absolute thing in the development of the modern world. The development of Information Technology (IT) in the life of the 21st century mankind has marked a new advance that is no less important than the discovery of molecules for nuclear manufacture during Einstein's time. Many important things in the 21st century related to the use of Information Technology can be used as a benchmark for the progress of mankind. The success of space shuttle flights into space by the United States, the Soviet Union and China are some examples of the success of Information Technology in facilitating space technology. However, the success and positive side of the use of technology for the advancement of human civilization, on the other hand also causes excess misuse for the purpose of obtaining material benefits illegally and against the law that harms the interests of individuals, groups and countries (Mas Wigantoro Roes Setiyadi, 2003). Information and communication technology (ICT) has spawned a new legal regime called Cyber Law (CyberLaw). In an effort to provide clear legal corridors for various cyber activities (Ahmad M Ramli, 2005).

Information and communication technology has changed the behavior and patterns of life of society globally. The development of information technology has also caused the world to become borderless and cause significant changes in social, cultural, economic and law enforcement patterns that take place rapidly. Information technology is currently a double-edged sword, because in addition to contributing to the improvement of human welfare, progress and civilization, it is also an effective means of acting against the law (DEPKOMINFO, (2006).

Globalization itself includes a very broad dimension of life with its profound effects. Globalization is not only related to the fields of economics, science and technology, but also related to the philosophy and ideology. All of that will lead to the socio-cultural

dimension so that it is often said that nations now live in an age of cultural globalization or culture. When it says cultural globalization, it will involve the dimensions of the values of human life. In this process, there is also a movement of mutual influence in the field of values between one nation and another, which then proceed in acculturation or syncretism. Acculturation is said if the process takes place smoothly to the "inside" side of people's lives. Conversely, if it only reaches its outer layers, it is called syncretism (Slamet Sutrisno, (2006). These influences in the field of life values take place between modern and global values on the one hand, with traditional values on the side other. These traditional values are usually well-owned by nonwestern nations.

As another example, the United States Government on 17 January 2013 issued a Foreign Account Tax Compliance Act (FATCA), in which the United States Government essentially wanted its citizens to invest abroad to be taxed on their investment returns. Therefore, the recipient country of investment from a citizen of the United States, is obliged to open banking data from the United States citizen. Another pattern is to begin developing legal comparative studies today. So that through comparative studies of the law, a country gets a picture of another legal system model that is compared with its own legal system. Which ultimately began to influence the legislative process in the formation of legislation.

This shows that the development of society, both nationally and internationally, causes a legal system to always be imperfect. And indeed it will be very difficult to produce perfect legislation. If we examine in depth the descriptions above, then relying on the views of Friedman (2011), it is known that the function of a Legal System is to produce legal output based to respond to social demands by guaranteeing the right or the right and most convenient distribution allocation based on the implementation of regulations.

CONCLUSION

It can be concluded later, the spread of the legal system, especially the common law and civil law, has the same classic pattern, namely through colonialism or colonialism. But today, the infiltration of the legal system into other legal systems has changed pattern, namely through various international agreements, both bilateral and multilateral, both agreed upon between countries as subjects of international law, as well as conventions issued by international organizations in need ratification from the country that wants and / or is requested is applied based on international pressure. The common law system in the United States, for example, is known that the legal system in America is inherent in the behavior of British colonialism, through the discovery of new continents. Although in the end through the declaration of American independence, it declared its independence from supremacy from Britain, but the embedded legal system was common law.

Whereas in Indonesia itself, in the end, it is no longer a mere civil law hegemony, although in the realm of Public Law, especially Criminal Law, it is still a binary opposition and is a hegemony in its development to date, but the common law system in certain domains has contributed coloring for example in the Law of Leasing. Broadly speaking, the legal systems that are the elements in the formation of the National Legal System are the Civil Law Legal System, the Common Law Legal System, the Islamic Law Legal System, the Customary Law System, and the Pancasila Legal System.

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