



Globalization of National Culture and the Legal System: A Comparative Perspective of the Indonesian Legal System and the British Common Law System

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Abstract

Indonesia is a country that adheres to a multi-legal system because it is influenced by a multi-ethnic society and different cultures from Sabang to Merauke. In its development in Indonesia, a set of laws and regulations from colonial countries were adapted to the principles of Pancasila. National legal policies are challenged to realize the ideals of functioning the rules as a force of renewal, encouraging changes in the form of local communities. One of the recognized legal systems in Indonesia which is a cultural transplant of the local community is the customary law system (common law). If it is associated with legal culture, then moral and ethical norms are part of the transplantation of the Indonesian legal culture system. English law never 'accepted' Roman law as Roman law was accepted in civil law countries. English law also creates prerogative written court provisions (certiorari, mandamus, and prohibition) which allow objections to administrative decisions of state organs and officials, thus there is no need to create a separate administrative court as other countries have developed. civil law.

Keywords: *National Culture; Common Law; Legal System*

Introduction

Many countries are positioned as developing countries by the map of world economic strength, for example, countries throughout Latin America, Africa, and Asia itself. Some developing countries that including in the Southeast Asian region, namely, Thailand, Malaysia, the Philippines, Cambodia, Vietnam, Laos, Brunei Darussalam, and Indonesia. These countries are European colonial countries that have long gripped their colonies, including forcing their laws into society, which then when they achieved independence have not been able to rise to form their own legal system, even now (Ade Saptomo, 2013). Of course what happens when citizens start to move to form their own state, it takes a set of laws that are

used as legal and political instruments so that the wheels of government run well in accordance with the expectations of the law of the community itself.

Indonesia is a fertile and rich country, not only abundant in natural resources, but it is also crossed by the equator and is between the continents of Asia and Australia and between the Pacific Ocean and the Indian Ocean. Indonesia is the largest archipelagic country in the world which consists of 13,466 islands. For example, for the wealth of ethnic groups, Indonesia has hundreds of tribal names and even thousands if it is broken down into sub-tribes. With a population of more than 258 million in 2016, Indonesia is the fourth most populous country in the world and the most populous Muslim country in the world, with more than 207 million people.

In its development in Indonesia, a set of laws and regulations from the colonial state are adapted to the principles of Pancasila. It has become a fundamental basis that the birth of Pancasila as an agreement and a state doctrine that is used as a view of life, awareness and moral ideals that includes the psychological atmosphere and character of the nation, becomes a foothold or lean on any existing legal issues, a place to test the validity of starting from philosophical and juridical side. By prioritizing the principles of Pancasila, it is hoped that social, cultural, political, economic and legal activities will be referred to the philosophical Pancasila which has been recognized as the nation's culture and is a crystallization of the entire local culture throughout the archipelago.

When connected to if you are faced with the culture of the Indonesian people, you will feel the difference in the direction you will go. Globalism is a philosophical concept that provides an open space for the spread of something throughout the world by a force that allows ideas and values including technology, ideas, social, cultural, economic, legal, and so on to be accepted by other parties.

Objectively, globalism is a good idea, but overtly or subtly there is often a coercion of will, ideas, norms, values or standardization. Life created or held by one entity (stronger) to another (less powerful) entity. With the coercion of a desire, one party will be harmed. The national aspiration to unite Indonesia as a political and governmental unit has tended to ignore plural and local people's laws to be replaced by unified and codified national laws (Badrulzaman, 1997).

Seeing the empirical reality in the legal world as which is described above, has implications for power relations between the nation's culture and the existing legal system, both those seen according to mutually agreed normative legal norms but contradicting the legal facts of society with political products in writing based on laws and regulations. regulation. Although what is studied and introduced in this thinking is included in the context of domestic law, what needs to be considered is how the world is now getting narrower and the interaction between nations is even more intensive (Dimiyati, 2010). This condition shows that the problem of the intensity of relations between the powers of the nation can color the problems of culture and the legal system which is local in nature.

Methods/Ideas

This writing specification uses a descriptive method. It aims to create an objective picture of a situation in a main idea related to a theoretical understanding of the study of national culture and the legal system (a comparative perspective of the Indonesian legal culture system and the common law system in England. In collecting the data of this writing, using library research by referring to relevant articles, books, internet and media. This theoretical understanding is important as a means to describe and explain, and understand the problem better, thus very helpful to understand all something that is known intuitively.

Results and Discussion

The culture of a nation is determined by certain values that become a reference in practicing its law (Rahardjo, 2006) and for the Indonesian nation that particular value is Pancasila. Pancasila is the fundamental ideology and basis of the state. In the context of legal culture, Pancasila can be seen in its urgency as a legal basis and source of national law, which can be seen in the results of various seminars and national conventions, including the following (Arief, 2009):

- a. The Second National Law Seminar stated that the implementation of the 1945 Constitution against the spirit and spirit of Pancasila meant manipulation of the constitution and betrayal of Pancasila.
- b. The IV National Law Seminar stated that Pancasila was the nation's psychological values; the basis of Indonesian legal order; guidelines and directions; and the touchstone of decency and legislation. It is also stated that the reflection of Pancasila values in legislation is the essence of the formation of a national legal system.
- c. The 5th National Law Seminar in 1990 stated that at the end of Repelita VI, the mindset and framework of the national legal system should be formulated based on Pancasila and the 1945 Constitution.
- d. The VI National Law Seminar in 1994 stated that the national legal system, which is also the Pancasila legal system, must be an elaboration of all the Pancasila precepts as a whole.
- e. The recommendation of the 2008 National Law Convention states that it is necessary to draw up a Grand Design of the National Legal System and Politics with the foundation of the 1945 Constitution of the Republic of Indonesia as the constitutional basis and Pancasila as the philosophical basis.

In addition, in order to prove that Pancasila is the foundation of the national legal culture, the precepts of Pancasila must be viewed as a value system, so that in essence Pancasila is a unity. The values contained in each precept are as follows:

- a. The precepts of the One Godhead contain the value that all matters relating to the implementation and administration of the state, even the morals of the state, the morals of state administrators, state politics, state government, state laws and regulations, freedom and human rights of citizens must be imbued with values. Belief in the one and only God.
- b. The Precepts of a Just and Civilized Humanity are the embodiment of human values as a being who is cultured, moral and religious, and fair in their relationships with themselves, others and their environment.
- c. The precepts of Unity and Unity contain the value that the Indonesian state is an alliance among diversity which is described in Bhineka Tunggal Ika. The values of nationalism must be reflected in all aspects of state administration.
- d. The Precepts of Democracy Led by Wisdom of Wisdom in Deliberation/Representation contain the value that the state is from, by, and for the people. The value of democracy is absolutely applied in the life of the state, both regarding aspects of state morality, political aspects, as well as aspects of law and legislation.
- e. The precepts of Social Justice for All Indonesians contain values which are the goals of the state as a common goal (social justice) aimed at the welfare of all citizens.

According to Barda Nawawi Arief (2009) that the national legal system (SHN) is essentially the Pancasila Legal System. If further elaborated, the nature of the Pancasila legal system is oriented to the three pillars/values of the balance of Pancasila, namely:

- a. Oriented to the values of "God" (religious morality);
- b. Oriented to the values of "Humanity" (humanistic); and
- c. Oriented to "Society" values (nationalistic; democratic; social justice)

Based on the explanation above, Pancasila is the foundation of the legal culture of the Indonesian nation. The law must be based on Pancasila, legal products may be changed in accordance with the times and social interactions, of course Pancasila must be a framework of thought. Pancasila can guide the national legal culture in various fields which are integrated from the opinion of Mahfud MD (2006), namely:

- 1) The precepts of the One Godhead are the foundation of a legal culture based on religious morals.
- 2) The Precepts of a Just and Civilized Humanity form the basis of a legal culture that respects and protects non-discriminatory human rights.
- 3) The principle of Indonesian Unity is the basis of a legal culture that unites all elements of the nation with their various primordial ties.
- 4) Populist Precepts Led by Wisdom and Wisdom in Deliberation/Representation are the basis of a legal culture that places power under the power of the people (democratic).
- 5) The precepts of Social Justice for All Indonesians are the basis of a legal culture in social justice so that those who are socially and economically weak are not oppressed by those who are strong arbitrarily.

According to Mahfud MD (2009), there are two main reasons that cause Pancasila to be inviolable, namely, First, Pancasila is very suitable to be used as a platform for common life for the Indonesian nation, which is very diverse, in order to remain closely bound as a unified nation. Second, Pancasila is contained in the Preamble to the 1945 Constitution of the Republic of Indonesia in which there is a declaration of independence by the Indonesian people, so that if Pancasila is changed, it means that the Preamble to the 1945 Constitution of the Republic of Indonesia has also been changed. Mahfud MD also stated that Pancasila as the final *modus vivendi* or noble agreement, unites all primordial ties into one nation and all of Indonesia's bloodshed which is very broad and plural in the principle of unity.

According to Aidul Fitriadi (2014), culturally it shows that the New Order interpreted the 1945 Constitution based on Javanese tradition. This can be compared with Soekarno who also used Javanese tradition to legitimize Guided Democracy. Both the New Order and Sukarno interpreted Indonesia's constitutional system based on a concentric state system, with the President or Government being the center or axis of the life of the country. Broadly speaking, the role of culture greatly affects the legal system of Pancasila and the Indonesian state administration which is fundamental in nature.

It has become a constitutional provision as an agreement and state doctrine, that Pancasila is the view of life, the ideology of the Indonesian nation and the source of all sources of Indonesian law. That Pancasila is a view of life, awareness and moral ideals that includes the mental atmosphere and character of all people and is a place to stand or rely on every legal issue that exists or that arises in Indonesia, a place to test the validity of both from a philosophical and juridical perspective.

One of the recognized legal systems in Indonesia which is a transplant from the culture of the local community is the customary law system (common law). The customary law system in Indonesia is a system of rules that apply in people's lives and comes from customs, which are respected and obeyed by the community for generations as a tradition of the Indonesian nation.

There is a well-known fact, namely that the laws of different countries are often very similar. Human life is a gift from God Almighty and must be lived based on the rules in life which are usually called norms. Norm is a term that is often used to refer to everything that regulates human life.

The norm system that applies in Indonesia consists of at least 4 elements of norms, namely moral norms, religious norms, ethical norms or norms of courtesy, and legal norms. The four norms of life run systemically, simultaneously, and are complementary to humans, meaning that they are interlinked and complementary to one another.

If it is associated with legal culture, then moral and ethical norms are part of the transplantation of the Indonesian legal culture system. Moral norms are a system of rules that apply to humans that originate from every conscience that works on the basis of every human being's awareness of his surroundings (consciousness). Ethical norms or norms of manners are a system of rules for human life originating from agreements (consensus) created by and within a community of people in a certain area. The size of ethical norms is basically in the form of propriety, appropriateness, and feasibility that grows in the community or community (Bisri, 2014).

In communities that still adhere to a system of customs or what is often referred to as customs that are still thick, customary punishments are still used in efforts to resolve problems or disputes between local indigenous peoples, for example, punishments in the form of exile or ostracism can be given to violators of ethical norms. local.

If we look at the reality in Indonesia, especially in rural areas, it is clear that the values contained in the law are different from the values that have been embedded in the lives of rural communities. This is because the level of knowledge of the village community is still low, so it is difficult for them to understand what the law requires.

The application of a legal system that does not originate or grow from the content of society is a problem, especially in countries that are changing because there is a mismatch between the values that support legal systems from other countries and the values that are lived by members of the community themselves. In general, it can be said that the decision-making layer generally chooses a rational modern legal system, while this is not always in line with the readiness of the community to accept the system. The close relationship between a set of norms and the substance that is regulated will be seen if the law is re-institutionalized to fulfill a more targeted goal,

One of the recognized legal systems in Indonesia which is a transplant from the culture of the local community is the customary law system (common law). The customary law system in Indonesia is a system of rules that apply in people's lives and comes from customs, which are respected and obeyed by the community for generations as a tradition of the Indonesian nation.

The enactment of customary law in Indonesia is implicitly recognized by the 1945 Constitution through a general explanation, which states that: "The Constitution is a written basic law, while in addition to the Basic Law, the unwritten basic law is also applicable. basic rules that arise and are maintained in the practice of state administration, even though they are not written (Bisri, 2014)."

In accordance with the nature and main characteristics of customary law which is not written in the sense that it is not promulgated in the form of legislation, customary law grows and develops and is rooted in traditional culture as a real feeling of people's law in people's lives. The national aspiration to unite Indonesia as a political and governmental unit, has tended to ignore plural and local people's laws to be replaced by unified and codified national laws. National legal policies are challenged to realize the ideals of functioning rules as a force of renewal, encouraging changes in the form of local communities that are agrarian and local in scale,

The hope that there will be unification efforts in every making of legislation is continuously fought for, in order to achieve the ideals of a national law that has truly accommodated the values and norms that are the essence of life in society. Seeing the empirical reality in the legal world as described above, it has implications for the power relations between the existing legal system and the legal system that has similarities with countries that apply the common law system of customary law. In this paper, the author will present the common law system in England as a comparison of the Indonesian legal culture system.

The English common law system, which is made up of several characteristics of the legal tradition, is naturally regarded as one of the major legal systems in the world, like the two most influential systems. The British legal system can be compared to the oldest legal system, namely civil law, in terms of its worldwide spread, and its tremendous influence, which has been adopted by many countries and cultures, even after its post-colonial era. Like the civil law system, the English legal system was born through a series of historical events, a different set of legal sources, ideologies, doctrines, institutions and modes of legal thought that collectively make up the English common law tradition. This legal tradition has been successfully 'transplanted' from England to various countries around the world which are culturally, also geographically and linguistically different from England. This tradition, in places such as Australia, Southeast Asia, India, and Hong Kong, was later formalized and made part of the legal system prevailing at that time in certain jurisdictions. It is remarkable that these unique sources of British law, institutions and laws can co-exist with the indigenous cultures, religions and customary laws of these places and often dualistic systems emerge. Indeed, while still respecting and maintaining the local culture, the administration of justice and government was soon transformed into an infrastructure that was ready to be identified as a British style of government and administration. 'This legal transplant' (Watson) is a testament to the genius and adaptability of British law,

English law was established through judicial decisions (or case law), and equity only until the late 19th century could be held by the Courts of Chancery. Equity and common law were eventually 'merged' through the Supreme Court Judiciary Decree 1873-1875 in their jurisdictional application, but continue to survive as separate sets of laws that can now be used only by the same court.

English law never 'accepted' Roman law as Roman law was accepted in civil law countries. The robustness of common law procedures, the need to conform to established frameworks and centralized courts, have all helped shape the uniformity of local customs and primitive Anglo-Saxon practices into a law which is followed by the entire territory of the country. thus become unified and commonly used.

It has been said that common law has existed since ancient times, but actually it was only identified and said to be in use in the mid to late 12th century. Furthermore, in the 12th-13th centuries AD amid concerns over the 'intellectualism' of Roman law that pervaded all of Continental Europe, which consisted of the recognized treatises of the Corpus Juris, treatises on Romano-Canonical legal procedures (church law, Roman law), customary law and royal legislation, all of which have experienced a very large absorption of Roman law, English law has undergone an era of modernization. The tradition of English common law and common law courts was well established and at that time was resistant to the 'acceptance' of Roman law or even other foreign laws.

English law also creates prerogative written court provisions (certiorari, mandamus, and prohibition) which allow objections to administrative decisions of state organs and officials, thus there is no need to create a separate administrative court as other countries have developed. civil law.

Some examples of common law jurisdictions are Australia, the United States of America, Singapore, Malaysia, New Zealand and most of Africa, India, Pakistan, Southeast Asia and the Americas.

Despite having gained independence, some Commonwealth countries have maintained ties to the British monarchy and although they have adopted written constitutions, their judges continue to interpret these constitutions according to typical British legal methods, doctrines and conventions (Cruz, 2010).

Closing

Conclusion

From the discussion on National Culture and the Legal System (A Comparative Perspective of the Indonesian Legal Culture system and the British Common Law system), the following conclusions can be drawn:

1. The legal culture of a nation is determined by certain values that become a reference in practicing its law and for the Indonesian nation that value is Pancasila. One of the legal systems recognized in Indonesia as a transplant from the culture of the local community is the customary law system (common law). The customary law system in Indonesia is a system of rules that apply in people's lives and comes from customs, which are respected and obeyed from generation to generation by the community as a tradition of the Indonesian nation. Pancasila is the fundamental ideology and foundation of the state. The values of Pancasila are used as the moral foundation in every personal, group, community and national activity and state.
2. The Indonesian legal culture system or commonly referred to as common law has grown and developed and is rooted in traditional culture as a real feeling of people's law in people's lives. The British legal system was born through a series of historical events, a different set of legal sources, ideologies, doctrines, institutions and modes of legal thought that collectively make up the English common law tradition. English law was established through judicial decisions (or case law), and equity only until the late 19th century could be held by the Courts of Chancery. Equity and common law were eventually 'merged' through the Supreme Court Judicial Institution Decree 1873-1875 in their jurisdictional application,

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