

Aspects of Legal Change and Social Change

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ABSTRACT

Social life requires law as a tool to create harmony, resolve conflicts, and control social behavior. Law also acts as a social engineering tool that can direct societal change towards a better, fairer, and more prosperous life. However, law often faces challenges in responding to dynamic social changes due to developments in technology, economy, and social structure. This study aims to analyze the relationship between law and social change and the aspects that influence legal change. By using normative legal research methods, the results of the study show that legal change and social change are closely related. Law must be responsive to demands for change in society in order to remain relevant in carrying out its function as a social controller and a tool for change.

INTRODUCTION

Social life in society requires an order that aims to create harmonious relationships and overcome conflicts or differences that arise. To ensure order in society, legal regulations are created, both written and unwritten. The function of law is as a tool of social engineering, so that the ruler or government has a very large role as a law maker. Likewise in the Indonesian legal system where law is a legal product made jointly by the government and the people's representative council as the party that produces laws (written law) ((Eman Sulaiman, 2013)

In addition to the functions mentioned above, another function of law is as a tool of social control. The function of law as a tool of social control means that law has a role or obligation to ensure that society adapts to patterns of behavior accepted by law. In its role, law only maintains what remains and is accepted in society or law as a guardian of the status quo, but beyond that, law can still carry out other functions, namely to make changes in society, for example to shape human behavior to be better, prevent conflict or conflict in social relations in society, and then realize a harmonious, just, and prosperous community life. ((Eman Sulaiman, 2013)

Society has order as part of the universe that determines social reality. As time goes by, social life also develops more dynamically following current developments. This development brings social change. The development of increasingly modern society reflects a process of a series of efforts to achieve or create values (physical, material, and social) that are universal, rational, and functional.

Society has a dynamic nature, always trying to develop and change. The rate of change is slow, moderate, and fast because it is driven by the development of science and technology and economic growth. As a result, the pattern of interaction that occurs between community groups becomes increasingly complex. Social phenomena themselves cannot be separated from social elements, namely social structure and social processes. This is because a social structure is automatically composed of several parts that systematically influence a social phenomenon. The parts involved are culture, social institutions, power, social groups, and social strata. These developments and changes will certainly have an impact on norms and order in community life.

Law in a developing society will always provide ideas to change the law in accordance with the function of law in society as social engineering or as a tool to control society. This means that before the legal product is changed by parliament, government or court, there is already a call/need for such change in society. The faster the law responds to demands for legal renewal/change in society, the greater the role of law in changing society. Conversely, the slower the law responds to demands for renewal/change, the less the application and role of law in changing society, because society itself has changed. In this case, the law only functions as an affirmation and legitimation. So in cases like this, it is not the law that changes society, but what happens is the development of society that changes the law. In urgent situations, laws and regulations must be adjusted to changes in society. What are the characteristics that indicate a gap between the law and the events that should be regulated so that a change in the law is needed?

According to Dror, this characteristic or sign is "characterized by the behavior of members of society who no longer view the obligations required by law as something that must be fulfilled". on the one hand and society on the other hand regarding what must be done. So "das sollen" is very different from "das sein".(Jihan Fadillah, 2023)

The purpose of the law is to coordinate the activities of members of society if these activities are constantly changing according to changes in society. Therefore, the law is obliged to intervene more seriously and directly in the form of legal regulations. The effectiveness or ineffectiveness of a law is not only determined by its regulations, but also by the support of various institutions around it, such as human factors, legal culture factors, economic factors, and so on. Based on the description above, the problems of the study topic are:1) What is the theory of law and social change? 2) What are the aspects of legal change in relation to social change?

LITERATURE REVIEW

Legal Theory

Legal theory does not only explain what law is down to concrete things, but also the fundamental issues of the law. As Radbruch said, quoted by Satjipto Rahardjo, the task of legal theory is to clarify values by legal postulates up to the highest philosophical explanation. Legal theory will question things like: why the law applies, what is the basis of its binding power, what is the purpose of the law, how the law is understood, what is the relationship between individuals and society, what the law should do, what is justice, and how is a just law (Satjipto Raharjo, 2000). Legal theory is a continuation of the effort to study positive law. Legal theory uses positive law as a study material with philosophical analysis as one of the means of assistance to explain the law. Legal theory has been studied since ancient times, by Greek and Roman legal experts. Before the nineteenth century, legal theory was the most important by-product of religious, ethical or political philosophy. The greatest legal thinkers were initially philosophers, religious experts, and political experts. The most important change in the philosophy of law from philosophers or political experts to the philosophy of law from legal experts, only occurred recently. Namely after the great development in research, technical studies and legal research. Legal theories in ancient times were based on general philosophical and political theories. While modern legal theories are discussed in the language and thought systems of legal experts themselves. The difference lies in the method and emphasis. The legal theories of modern legal experts, like the legal theories of scholastic philosophers, are based on the highest beliefs whose inspiration comes from outside the field of law itself.

Social Change

Social change is an inevitable phenomenon in society. Soerjono Soekanto defines social change as a change in social institutions that impacts the social system, values, attitudes, and behavioral patterns between individuals in society. In the context of law, this change often triggers the need for adaptation of norms and regulations in order to remain relevant to the ever-evolving social dynamics. Law, in this case, has a role as a social engineering tool that can direct society to

better conditions through planned policies. As stated by Lawrence M. Friedman, legal change can occur both from within the legal system and through encouragement from outside the legal system, which ultimately has an impact on society at large (Lawrence M. Friedman, 2009).

Changes in Law

The theory of legal change attempts to explain why, how, and under what conditions the law changes. This involves identifying and analyzing various factors that influence legal change, including social, political, economic, cultural, technological, and legal factors themselves. There are several approaches to the theory of legal change, including, first, the Sociological Approach: This approach emphasizes the role of social factors in legal change. Social factors such as societal values, changes in social structure, and cultural developments can influence the direction and content of legal change (Fithriatus Shalihah, 2017). Second, the Political Approach: This approach refers to the influence of political factors on legal change. Political factors such as political power, changes in political regimes, political pressure, and public policy can influence the formation, implementation, and change of law (Elih Yuliah, 2020). Third, the Economic Approach: This approach looks at the role of economic factors in legal change. Factors such as economic development, market pressure, economic regulation, and economic interests can influence changes in the legal framework and fourth, the Historical Approach: This approach involves analyzing legal change from a historical perspective. This involves the study of the development of law from the past to the present to understand the trends, patterns, and factors that contribute to legal change. (Jonaedi Efendi, 2019)

The Function of Law in Facing Change

Durkheim stated that law is an expression of social solidarity that comes in two forms, namely mechanical solidarity and organic solidarity. Mechanical solidarity is found in simple societies, where personal relationships and common goals dominate. In contrast, organic solidarity emerges in modern, heterogeneous societies, where complex divisions of labor strengthen social cohesion (Emile Durkheim, 1984). In the face of social change that often creates a mismatch between old norms and new needs, law functions as a bridge to create new harmony.

Podgorecki introduced five relevant legal functions in the context of social change, namely: (1) Integration, namely the law acts to unite the collective hopes of society, (2) Petrification, the law determines the desired behavioral patterns to achieve social goals. (3) Reduction, the law simplifies the diversity of views in society to align with common needs. (4) Motivation, the law provides incentives for society to choose behavior according to social values. (5) Education, the law functions to provide understanding that encourages legal awareness. (Podgorecki, 2001)

Legal Paradigms: Reactive and Proactive

Ahmad Ali put forward two main paradigms related to the role of law in social change. The first paradigm is law as an adjuster of needs, where law is

reactive to social dynamics. This paradigm places law as a response to conflicts or needs of society that have already occurred. The second paradigm is law as a tool to anticipate the future. In this paradigm, law acts proactively by designing regulations that not only create order but also encourage change in the desired direction, for example by regulating the use of technology to support modern life. Proactive law not only functions as a regulator of society, but also as a driver of social change. By utilizing a futuristic perspective, law is able to support sustainable social transformation and create a more harmonious and just society. (Ahmad Ali, 1996)

METHODOLOGY

Research Object

The object of research in writing this article is normative legal research. Normative legal research is legal research that is based on regulations, norms, principles, rules and other laws related to the material discussed. The nature of the research used by the author is analytical descriptive research. Analytical descriptive research is a study that describes as completely as possible the object of research to be analyzed in providing answers to existing problems. (Soerjono Soekanto, 2018)

Data and Data Sources

The data required in this study is secondary data, namely data obtained indirectly from the source, usually through literature studies. Literature data is classified into three legal materials, namely: (a) Primary legal materials, namely legal materials that have binding force. (b) Secondary legal materials are legal materials that provide explanations to primary legal materials. (c) Tertiary legal materials, namely legal materials that complement primary legal materials and secondary legal materials. (Johnny Ibrahim, 2012)

How to Collect Data

The data collection used is a literature study.(Library Research), namely a technique for collecting data and information through several reading books and legislation related to the problem to be researched.

Data analysis

Analysis of research data results was carried out qualitatively, namely the qualitative method, namely data analysis that emphasizes the quality of the data in question. (Soerjono Soekanto, 2018)

How to Draw Conclusions

Drawing conclusions is done using deductive logic. Deductive logic is a method of drawing specific conclusions from general statements. (Dhany Rahmawan, 2010)

DISCUSSION

Theory of Law

Hans Wehr in his book, *A Dictionary of Modern Written Arabic*, states that the word law comes from Arabic, with the original word "Hukm", and "Ahkam" for the plural. The word means judgment (judgment, verdict, decision), provision, command, government and authority, power. Bellefroid states that law is all regulations that exist in society, which regulate public order and are based on the power that exists in that society. (Hans Wehr, 1980) Meanwhile, according to Vinogradoff, Law is a set of rules established and enforced by a society regarding the policies and exercise of power over all persons and property..(Achmad Ali, 1996) In the Oxford English Dictionary The law is said to be a collection of regulations, provisions or customary laws in a country or society that act as something that binds its citizens. (Law is a set of regulations, whether made formally or customary, which is recognized by a community country as something that binds its members).(Ahmad Ali, 1996)

Law is a system in which all regulations are interrelated, one determines the other, so that the regulations can be arranged logically and specifically, so that general regulations can be sought, so that we arrive at the principles. However, this does not mean that a legal decision can be reached only by working logically in all things. Because besides the work of reason, decisions are always based on judgments that create something new.

According to Soerjono Soekanto, law has three dimensions, namely values, rules, and behavior. Therefore, law can be viewed and studied from various perspectives. Legal philosophy and legal politics study law as a value. Jurisprudence studies law as a rule. While Legal Sociology, Legal Anthropology, and Legal Psychology study law as behavior. In addition, according to Soerjono Soekanto, by using the historical method, the development of law is studied from the beginning until a certain set of legal rules emerges. The law is then compared with the laws applicable in other societies, to find similarities and differences. All of these are objects of research related to legal history and comparative law. Legal science also studies the permanent characteristics of a legal structure, characteristics that can be considered as the core or basis of law.(Jihan Fadillah, 2023)

According to Jimly Asshiddiqie, law is essentially a product of humans who build their world, which can be observed or studied through interactions that occur in society. As Cicero said, *Ubi Societas Ibi Ius* (where there is society, there is law). Soediman Kartohadiprodo said that human "law" is actually. In the sense that law is born by the people and guarantees the interests and rights of the people themselves. Law is a reflection of human life. And because humans who live from God always have a Body, Feeling, Rationality and Harmony, these four things are used to distinguish one person from another, one society from another. This totality then influences the meaning of law and its role in community life. .(Jihan Fadillah, 2023).

Law has an important function to support the development of various aspects of life, such as(1) Law is an explanation of human thoughts and experiences in regulating their lives. (2) The nature of law in a society, especially to regulate the lives of society. (3) Law also plays a role as a provider of certainty,

security, protection and balance which is not only adaptive and flexible but also a provider of anticipation and anticipation. (4) In the issue of global development, law is trusted to carry out its newest mission, namely as a means of social change and development. (Lili Rasjidi and IB Wyasa Putra, 1993).

Social change

Social change is usually a change that causes social consequences. The social consequences are changes in the form of structures and relationships that are different from those that existed before. Here there is a change in the pattern of relationships between humans and humans or groups and groups in society or elements in a system (Grossman, M. Mary H. eds., 1971).

According to Soerjono Soekanto in his book entitled *Principles of Legal Sociology*, he defines social change as a change in social institutions in a society, which influences its social system, including values, attitudes, and behavioral patterns between groups in society (Soerjono Soekanto, 2001).

Social change in people's lives is a common phenomenon that occurs in all societies and is a social phenomenon that continues to occur. Because of the basic nature of social change, it is not an exaggeration to say that everything in society experiences change, except for one thing, namely change itself. This means that change itself does not change, fade or stop over time.

Basically there are only 2 (two) factors caused by social change that occurs in society, namely internal factors including population growth or population decline; new discoveries; contradiction (conflict); or also because of revolution. While external factors include causes arising from the physical natural environment, the influence of other people's cultures, war and so on. Things that facilitate or encourage social change include if a society often comes into contact with other societies, an open social strata system, a heterogeneous population or dissatisfaction with a certain type of life and so on (Soerjono Soekanto, 2001).

It should also be understood that social change also has factors that delay the occurrence of social change, this is caused by the attitude of society that glorifies the past (traditionalism), that change is deep there. interests (vested interest) with the reason for logical thinking as a justification for the degree of negativity towards new or foreign things that will harm and/or destroy the old order that they (certain people who oppose change) consider to be still good and still good. able to coordinate with the values that exist in the surrounding community.

Aspects of Legal Change in Relation to Social Change

Law is born by humans and to guarantee human interests and human rights. It is from society that will determine the color of the law and its application, what society experiences in community life. ((Soedjono Dirdjosisworo, 1983) In Durkheim's email it is stated that law is an expression of social solidarity in society. According to him, in society there are two types of solidarity, namely mechanical and organic solidarity. Mechanical solidarity is found in simple and homogeneous societies, where the bonds of its citizens are based on personal relationships and common goals. While organic solidarity is found in heterogeneous societies, where there is a complex division of labor.

The relationship between social change and legal change can be described more clearly. However, first it is necessary to obtain legal regulations that contain instructions regarding the sensitivity of the law to social change. According to Hoebel, the understanding of law that provides the possibility in this direction is the understanding that states that the law does the following work (Maharidiawan Putra, 2018)

1. Establishing relationships between community members by indicating which actions are prohibited and which are permitted.
2. Allocate and determine who can use the power of attorney on behalf of, along with the procedures.
3. Resolving disputes.
4. Maintaining the adaptive capacity of society by restructuring relationships within society as circumstances change.

The causality and reciprocity of law with society cannot be separated from the ideas or opinions that live in society, where the laws made must be in accordance with the social order and life institutions in society of course. This is where the view arises that laws are not made, but from a society that continues to develop. So the law will play a good role if its responsiveness reflects social phenomena that are directly proportional to the modernity of life, accompanied by standardization of the order of goals and functions in the openness of law, noble social values. (Otje Salman, HR and Anthon F. Susanto, 2009)

The illustration shows that the social system must be understood as a balance of responsive legal improvement and change. Legal change will follow and depend on social change to the function of law as a reflector, where law must reflect the wishes of society so that law must be neutral. In the context of the relationship between legal change and social change, Podgorecki explains that the function of law in society is as follows: (Otje Salman, HR and Anthon F. Susanto, 2009)

1. Integration function, namely how the law realizes the collective hopes of society.
2. The petrification function, namely how the law selects human behavior patterns to achieve social goals.
3. Reduction Function, namely how the law selects different human attitudes in a complex society to suit the needs of society. In this case, the law functions to reduce complexity when making certain decisions.
4. Motivational function, namely the law that regulates so that society can choose behavior that is in accordance with the values that exist in society.
5. The function of education, namely the law does not merely provide punishment and encouragement to society, but also provides education and socialization.

Therefore, when deciding what needs to be reflected in the law, the social context is essentially the main element that forms and changes the law, which means that all concrete social phenomena and/or situations in society are closely intertwined with regularities (behavioral patterns) that are able to build legal institutions that always move towards concrete abstract matters in the transformation of legal changes along with social changes that prioritize the

principles of dynamism and diversity of community needs. Yudin Chandra Nan Arif, 2013)

Seeing the relationship between legal change and social change, it cannot be separated from two opposing or contradictory views, namely:

1. Traditional View

In order to change the law, society must change first, then the law controls it. The legal position in this view is to protect what happens, so that the function of the law is a service function (*dienend functie*). Law develops after an event occurs in a place and is always behind the event that occurs (*hetrechtinktachterdefeitenaan*). Changes that occur in society must be adjusted to the law. (Abdul Manan, 2006)

2. Modern View

The law tries to be able to welcome all new developments, so that the law must always be in line with the events that occur. The law does not only function as justification, but the law must appear together with the events that occur, even if necessary the law must appear first before the events that occur later. The law plays an active role as a social engineering tool, where the law must be able to move society towards planned change. The function of social control of personal life is placed in the context of community life. (Abdul Manan, 2006)

Regardless of the dominance of the 2 (two) views above, theoretically according to Lawrence M. Friedman, legal changes can be divided into 4 (four) types according to the starting point of the change and the final point of impact: (Lawrence M. Friedman, 2009)

1. Changes that start outside the legal system, namely from society, but have an impact on the legal system only and then end like a bullet that is fired and reaches its target.
2. Changes that start outside the legal system and pass through the legal system (with or without certain internal processes) then have a point of influence outside the legal system, namely in society.
3. Changes that begin in the legal system also have an impact on the legal system.
4. Changes that start from within the legal system, which then seep into the legal system with final consequences outside it, namely in society.

According to Ahmad Ali, the law is unquestionable. Legal change and social change are two things that cannot be separated from each other. The relationship between legal change and social change will give rise to two paradigms, namely (Ahmad Ali, 1996)

1. The legal paradigm adapts to needs

In this paradigm, the law acts as a servant to the needs of society, so that the law is not left behind by the rapid development of society. The characteristics of this paradigm are that other systems usually continue to change, social change is faster than the law, the law adapts quickly to new circumstances, the law functions as a service, the law follows events and not vice versa, for example sophisticated technological crimes. This paradigm is the most common, it shows that society needs law after conflicts, disputes, and so on.

2. Legal paradigms to anticipate the future

This second paradigm views law as something that can create change or at least be a driver of change in society. The characteristics of this second paradigm are that law is a tool of social engineering, law as a tool of social change that is direct, oriented to the future (looking forward), *ius constituendum*, law plays an active role, and not only creates order but also creates order. creates. and drives change and development. Such as the Road Traffic Law. However, in reality, law can also drive change. It is true that wherever in the activity of legal change, law plays a role in the change and also plays a role in realizing a better community life.

But in reality, law can also help drive change. Wherever in the activity of legal change, law plays a role in the change and also plays a role in realizing a better community life. In this context, in the context of reform and development of national law, there are 3 (three) elements that must be implemented, as conveyed by Abdul Manan ((Abdul Manan, 2006)

1. Maintenance Dimension, namely the dimension to maintain the existing legal order, even though it is no longer in accordance with current developments and must be based on situations and conditions that 'change and are intended for the common interest. This characteristic aims to prevent the emergence of a legal vacuum and is actually a logical consequence of the provisions of the Transitional Rules contained in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945).
2. The Renewal Dimension, which is a dimension that is an effort to further improve and complete national development. In addition to the formulation of new laws and regulations, efforts are also made to improve existing laws and regulations to be in line with emerging needs.
3. Dimension of Creation, namely the element of creativity which means that a new set of regulations will be created that has never existed before, but is necessary for the interests of the nation.

Basically, the law in society is a manifestation of social and cultural values, both formal and informal, that society believes in what should be (*das sollen*). The history of human civilization has proven that transformations occur from time to time in the lives of nations in the world. This is caused by continuous social interaction. The patterns and forms of social, political, and economic interactions over time are increasingly enriched by various historical experiences that shape ways of thinking and outlooks on life, which ultimately shape the structure and culture of society itself.

Law itself is a formal manifestation of the structure and culture of society. Therefore, positive law in Indonesia is a formal expression of the structure and culture of our social system which is still colored by various elements that are the structure and culture of our previous society. In other words, in positive law we can still see the pattern of the legal system which has elements that are directed towards the past, present, and future. In this case, the development of law seeks to direct this phenomenon towards the realization of the desired national law (*ius constituendum*).

In relation to the above, regarding the changes implemented in Indonesia, Satjipto Rahardjo said that the implementation of legal changes should be distinguished between legal development and activities that only change a law that is currently in force. If legal development activities are referred to as actions to plan a new legal system, then the action of changing a law means changing an existing law.

Furthermore, H. Abdul Manan explained in this case that the legal change activities carried out in Indonesia have their own characteristics and are independent. These changes are not only made because the law is considered insufficient to regulate people's lives, but the changes that are currently occurring in Indonesian society itself and these changes are fundamental changes and aim to create a new Indonesian society that is in accordance with the law. in society.

Thus, each method of changing society has its own shortcomings. If changes in traditional society occur very slowly, but the law grows and develops in accordance with the goals of the society concerned. Therefore, in countries that use law as a means of changing society, change will be accelerated moderately, but it is possible that the wishes of the society concerned do not receive sufficient attention, so that the culture of society can be taken in its context. legal change. becomes a necessity.

CONCLUSIONS AND RECOMMENDATIONS

Legal change and social change are two things that cannot be separated from each other. The relationship between legal change and social change will give rise to two paradigms, namely legal paradigm that adapts to needs and legal paradigm to anticipate the future. In reality, law can also help drive change. Wherever in the activity of legal change, law plays a role in the change and also plays a role in realizing a better community life. Basically, the law that exists in society is a manifestation of social and cultural values, both formal and informal.

The implementation of legal changes should be distinguished between legal development and activities that only change a law that is currently in force. If legal development activities are referred to as actions to plan a new legal system, then the action of changing a law means changing an existing law. Legal change activities carried out in Indonesia have their own characteristics and are independent (self-reliant).

Each way to change society has its own shortcomings. If changes in traditional society occur very slowly, but the law grows and develops according to the goals of the society concerned. Therefore, in countries that use law as a means to change society, change will be accelerated moderately, but it is possible that the wishes of the society concerned do not receive enough attention, so that the culture of society can be taken in its context. legal change. becomes a necessity.

FURTHER RESEARCH

The relationship between legal change and social change is an interaction that is mutually influential and inseparable. Legal change often serves as a response to societal needs while also acting as a tool to anticipate future

challenges. On the other hand, law can also play a role in driving social change by creating frameworks that support the development of a better society.

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