

Legal Reform Based on Dignified Justice Theory

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Abstract

The people want to understand the concept of law renewal, the general impression is that the meaning or ontology of the concept of law renewal is something like this: "The law is what you change and what you change." Legislative renewal is instead interpreted as the function of law as a tool or instrument (tool) for bringing about change, especially social change. On the other hand, in legal reform, law actually becomes a tool, a parameter, to guide the goals of society. The research method used to create this article is legal research. In general, the intended method of legal research is understood as prescriptive legal research. The theory used to analyze the importance of legal reform is the theory of dignified justice. This research clarified that legal renewal means efforts to bring about change in society using law as a tool (law as a tool for social engineering). In an engineering society, the law does not change, but the direction of change is determined according to the purpose of the law. The theory used to analyze the importance of legal reform is the theory of dignified justice. This research clarified that legal renewal means efforts to bring about change in society using law as a tool (law as a tool for social engineering). In an engineering society, the law does not change, but the direction of change is determined according to the purpose of the law.

I. Introduction

Legal reform is a concept that has the same meaning or the same ontology¹ with the concept of legal reform (law reform).² The meaning of the

¹ Finding the nature of law (juridical ontology) is an activity in the Philosophy of Law of Dignified Justice, the legal theory used to compile this paper, to understand and explain and justify or otherwise falsify law. On this matter, see Teguh Prasetyo, Dignified Justice Perspective of Legal Theory, Print I, Nusa Media, Bandung, 2015, p., 37; Cf., Teguh Prasetyo, Law and Legal Theory Perspective of the Dignified Theory of Justice, Print I, Nusa Media, Bandung, 2020, p., 5.

² Teguh Prasetyo, Legal Reform Perspective of Dignified Justice Theory, First Edition, Setara Press, Malang, 2017, h., v. While experts use the concept of legal coaching. Others use the term legal development. See, for example Aminuddin Ilmar, Construction of Theory and Methods of Legal Studies, First Printing, Hasanuddin University Press, Makassar, 2009, p., 13. Several other

concept of legal renewal in this paper is the use of law as a tool in order to bring about changes. What is meant by change here is community development or social development. Law is a tool or means used to bring about changes in society. Law is a tool for development. There are thinkers who popularize legal renewal or reform in the sense of law as a means of renewing society in Indonesia with the phrase: law as a tool of social engineering. Such is the Roscoe Pound school of thought, which has long been referred to and popularized by Prof. Mochtar Kusumaatmadja.³

Adhering to the meaning of the concept of legal renewal mentioned above, one cannot interpret legal renewal as a "change to the law". People also cannot interpret legal renewal as a "state of law that can be changed". On the contrary, the correct meaning of legal renewal is that law is used as a tool, means, vehicle to bring about changes in the social sector. Law is a tool for development. That is, whenever people talk about the concept of legal renewal, surely what changes or may experience changes is certain, it must be the community, not the law. It is the community that actually asks for legal assistance, because through and only with law can the changes desired by society be realized. While the law has not changed, Laws cannot, and indeed should not, change. Because, if the law changes, there is a *contradictio in terminis*. What is meant by *contradictio in terminis* is that there is a contradiction in something. The law is always sovereign, the law is supreme.⁴ This is in line with the principle of the rule of law. Law should not be dictated by society. Instead, it is the law that dictates society.

Because if the law can be changed, or changed by the community, there will be no legal certainty, and thus there will be no justice and benefits that should actually come/derive from the law. According to the theory of

books related to the theory of Justice Talking about constitutional aspects with dignity, see: Teguh Prasetyo, *Introduction to Indonesian Law*, 1st Print, RajaGrafindo Persada, Depok, 2021; Teguh Prasetyo, *Introduction to Law*, 1st Printing, RajaGrafindo Persada, Depok, 2018; Teguh Prasetyo, *Dignified Elections (Reorientation of New Thoughts on Democracy)*, 1st Printing, RajaGrafindo Persada, Depok, 2017; Teguh Prasetyo and Muhammad, *Election Philosophy for Dignified Elections*, Print 1, Nusa Media, Bandung, 2020.

³ Mochtar Kusumaatmadja, *Legal Concepts in Development*, Collection of Papers, 4th Edition, Alumni, Bandung, 2013, p., 14. Generally jurists have no objections to the function of law in the sense of legal renewal. One of the experts is S. Tasrif. In his response to Muchtar Kusumaatmadja, Tasrif stated: "We agree that law can be used as a tool to change society and form a new society". In Mochtar Kusumaatmadja, *Legal Concepts...*(2013), *Ibid.*, p., 44.

⁴ Pay attention to the formulation of the basic and fundamental principles in Article 1 Paragraph (3) of the 1945 Constitution, which is based on the theory of Dignified Justice referred to as the soul of the nation (*volksgeist*) of Indonesia, a derivation of Pancasila in the 4th Alenia of the Preamble to the 1945 Constitution as the supreme law. Indonesia is a state of law. The formulation of the rule of law provisions (Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia is also known in many other civilized countries with the conception of the rule of law. In the concept of a rule of law the principle of the rule of law is firmly recognized). In the sense of supremacy law, there should be nothing and no one who can dictate the law or be higher than the law. In fact, nothing or anyone is allowed to sit on equal footing with the law. Likewise with society, in law reform, the law should not be dictated by society,

Dignified Justice, the changes in society that are to be realized by using the law as a tool are changes or reforms that are in accordance with the law (*de lege lata*), not contrary to the law. Law as a tool here must be interpreted as: law becomes a benchmark or parameter as well as a direction for the direction of change in society. This parameter cannot be changed. Law is the cornerstone, the mecca of societal change. This is fundamental in the theory of Dignified Justice.

The parameter that does not change is Pancasila as the supreme law. What is meant by Pancasila here is Pancasila which is formulated in the 4th Alenia of the Preamble of the 1945 Constitution. As a parameter, the law cannot or may not change. People call those parameters that don't change legal goals according to law. In this case, the goal in question is the goal formulated in the Preamble to the 1945 Constitution, namely "a just and prosperous society" based on Pancasila as the highest law in the Pancasila Legal System.⁵

The parameter of "just and prosperous society" is a parameter that is referred to as the objective of law according to the theory of Dignified Justice. Within the purpose of law, namely "a just and prosperous society" based on Pancasila which is formulated in the 4th Alenia of the Preamble of the 1945 Constitution as the highest law, there is justice which cannot be separated from usefulness and legal certainty. Such legal objectives are intermediate goals (three objectives) which form a unified system of objectives in the theory of Dignified Justice towards the ultimate goal of law. What is meant by the ultimate goal of the law is the law of humanizing humans (*nguwongke uwong*) as creatures created by God Almighty in society according to law.

Based on the meaning or ontology of the concept of renewal or the concept of legal reform above, a more operational understanding emerges. That reformor legal renewal technically or operationally means human and societal efforts to change, add, correct, reviews, replace or completely delete and other provisions, rules, legal principles in law and provisions of laws and regulations that apply in a legal system.⁶ Here below is presented briefly, the

⁵ Regarding the Pancasila Legal System, see the following works: Teguh Prasetyo, *Law and Legal System Based on Pancasila*, First Edition, Media Perkasa, Yogyakarta, 2013, p., 55-58; Teguh Prasetyo and Arie Purnomosidi, *Building Law Based on Pancasila*, Print I, Nusa Media, Bandung, 2014; Teguh Prasetyo, *Pancasila Legal System (System, Legal System and Formation of Legislation in Indonesia)*, The Dignified Justice Theory Perspective, Print I, Nusa Media, 2016.

⁶ Teguh Prasetyo, (2017) *Legal Reform...* Loc. cit. Bdnk., Sudikno Mertokusumo, Revised Edition of *Legal Theory*, 6th Printing, Cahaya Adma Pustaka, Yogyakarta, 2018. Much is discussed about the legal system in Teguh Prasetyo and Abdul Halim Barkatullah, *Philosophy of Theory, & Legal Studies, Thoughts Towards a Just Society and Dignified*, 1st Printing, RajaGrafindo Persada, Jakarta, 2012; Teguh Prasetyo, *Election Philosophy*, Print I, Nusa Media, Bandung, in Collaboration with the Indonesian Election Organizer Ethics Council (DKPP), Jakarta, 2018; Teguh Prasetyo, Muhammad and Ida Budhiati, *Philosophy of Elections Based on the Theory of Dignified Justice*, Franciscus XW (Ed.), Print I, K-Media, Yogyakarta, 2021; Teguh Prasetyo, *Elections and the Ethics of Dignified Election Organizers*, Print I, Nusa Media, Bandung in collaboration with the Election Organizer Ethics Council (DKPP-RI), Jakarta, 2019;

meaningful legal renewal, namely legal renewal in the sense of "changing" rules, legal principles and provisions of laws and regulations that apply in the legal system as stated above.

2. Research Method

The research method for producing this paper is the research method according to the theory of Dignified Justice. In the world of legal science, this research method is called the legal research method.⁷ Generally, the intended legal research method is understood as normative legal research.⁸ The legal materials examined in normative legal research or legal research are primary and secondary legal materials. The primary legal material is the constitution. Meanwhile, secondary legal materials are books that explain the meaning of legal reform contained in primary legal materials. The two legal materials were studied and then from them legal principles or principles were taken to support the author's argument that the meaning of legal renewal or reform was social change or societal change by using law as a means of change.

3. Results and Discussion

Legal Renewal in the Definition of "Change"

The law is a tool of change (the agent of change) according to law. Within the framework of Dignified Justice, the Amendments to the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) can be put forward here as an example that most clear and most up-to-date from the fact that there is legal renewal or reform in the sense of "changing" the rules, or legal principles in the Pancasila Legal System. based Dignified Justice, legal renewal or reform in the sense of "changing" norms, legal principles as a form of social change must not deviate from law as a tool, namely law as a parameter determining the objectives of reform or legal renewal as stated above. The instrument, or parameter/standard for legal purposes in carrying out legal reforms based on the Dignified Justice theory, is a "just and prosperous society" based on Pancasila as formulated in the 4th Alenia of the Preamble to the 1945 Constitution as the supreme law.

Legal reform or legal renewal as "changing" the rules or legal principles in the Pancasila Legal System have manifested and carried out many times in many areas of human life in society. On this occasion the author only presents an example of legal renewal in the sense of "changing" legal principles or principles. The author takes this example from the first amendment to the 1945 Constitution. It is common knowledge that legal renewal or reform in the sense of "changing"

⁷ Teguh Prasetyo, *Legal Research A Perspective of Dignified Justice Theory*, Print I, Nusa Media, Bandung, 2019, p., 24.

⁸ Peter Mahmud Marzuki, *Revised Edition of Legal Research*, 13th Printing, Kencana, Jakarta, 2017, p., 47.

legal principles or principles was decided at the 12th Plenary Meeting of the People's Consultative Assembly of the Republic of Indonesia (MPR-RI) The General Session of the MPR-RI. The amendment to the 1945 Constitution is said to be one of the first amendments to come into effect on October 19, 1999.

On October 19, 1999 the MPR-RI carried out a legal reform by taking the path (epistemology) of "changing" for the first time a number of articles or concrete legal regulations in the 1945 Constitution. It is also common knowledge that a number of articles of the 1945 Constitution that were amended include Articles 5 Paragraph (1), Article 7, Article 9, Article 13 Paragraph (2), Article 14, Article 15, Article 17 paragraph (2) and (3), Article 20, Article 21. Due to the limitations of the pages of this paper, not all the articles in the amendments to the 1945 Constitution stated above are discussed in this paper. In order to further understand the concept of legal renewal or reform, here the author only presents and briefly discusses the meaning of the first amendment to the 1945 Constitution, in particular, the amendment to Article 5 Paragraph (1) of the 1945 Constitution.

Originally, before the amendment, the formulation of the provisions of Article 5 Paragraph (1) of the 1945 Constitution was: "The President holds the power to form laws with the approval of the House of Representatives". Now, after updating or reforming the law in the sense of "changing" the rules, legal principles in the legal system, the formulation of Article 5 Paragraph (1) of the 1945 Constitution has then changed to the formula: "The President has the right to submit draft laws to the House of Representatives". Seen in the meaning of renewal or legal reform by using law as a tool above, there is a very significant form of social change.

The form or form of social change that uses law as a tool is, originally in the "old society" it was acceptable, or it was possible that the President was also the organ holding the power to form laws (legislature) with the approval of the House of Representatives. So now in the "new society" (rules, legal principles resulting from changes), there has been a shift, if not to say a degradation of the President's power. That is, in the result of social engineering in the "new form of society," namely Article 5 Paragraph (1) of the results of the First Amendment, which was created through the use of law as a tool for social engineering, the President no longer holds the power to form laws (legislator). with the approval of the House of Representatives. In the "new society" or in the new formula Article 5 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which has been realized through the use of law as a tool for social engineering, the President only has the right (not the power) to propose a bill (RUU). The president is no longer a legislator. The President does not hold the power to form laws with the approval of the House of Representatives.

The problem arises, after almost a quarter of a century since the date of the first change resulting from engineering to the original society (old society) which

initially could accept its President as an organ of state power that holds the power to form laws (legislators) with the approval of the People's Representative Council. Now in the "new society", it is no longer possible for the President (except to make Government Regulations in Lieu of Laws or Perppu) which are equivalent to laws, have the power to form laws with the approval of the DPR, but only have the right (not the power) to submit bills.

The issue in question is: is legal renewal or reform in the sense of using law as a tool to realize social engineering, changing "old society" into "new society" as stated above, truly in accordance with law or in accordance with law as a parameter? As stated above, the parameter referred to is that by renewing the law, it is possible for the community to absorb what is called the legal objective, namely: "a just and prosperous society" based on Pancasila as the highest law formulated in the 4th Alenia of the Preamble of the 1990 Constitution of the Republic of Indonesia. 1945?

According to the theory of Dignified Justice, every new law and regulation (including the formulation of Article 5 Paragraph (1) of the First Amendment to the 1945 Constitution of the Republic of Indonesia) as stated above, is a manifestation of the spirit of the Indonesian nation (the Indonesian volkgeist), especially those that offend the interests of society or the people as a whole, as long as the formulation of statutory provisions is in effect, it must be believed that it really reflects the legal objectives contained in Pancasila as the highest law, the source of all sources of law, which is formulated in the 4th Alenia of the Preamble of the 19th Republic of Indonesia Constitution 1945. Likewise with the shift or degradation of "the original society" which can accept its President holding the power to form laws with the approval of the House of Representatives to become a "new society" whose President no longer has the power to form laws, but only has the right to submit bills, perhaps noble purpose. Your Honor, considering that it truly reflects the legal objectives contained in Pancasila which are formulated in the 4th Alenia of the Preamble of the 1945 Constitution of the Republic of Indonesia as the highest law.

Perhaps, shifting, or degrading, or technically referred to as limiting the power of the President through changing the rules, the principles of constitutional law above have noble intentions. That the renewal was carried out with a noble purpose. What is meant by honor, because the Government whose power has been changed from having the power to form laws (legislators) with the approval of the DPR, is no longer able to, on behalf of or on the pretext of development, as in the past when they still had the power to form laws with the approval of the DPR conspire with certain parties to violate individual rights by making various laws that are detrimental to the interests of ordinary people or society in general.

Based on the theory of Dignified Justice, according to the author, there is a background from the formulation of Article 5 Paragraph (1) of the 1945

Constitution before the amendment. The background of the new formulation (which was manifested by legal reform) must be understood as being within the framework or effort to move towards a welfare state as the original design of the state. In a welfare state, government intervention in all aspects of the lives of citizens and citizens in general is a necessity, a necessity. And, the interference is increasing day by day. The state, which is administered daily by the Executive Government from the Center to the Regions, assisted by its technocrats, also those who carry out affairs related to citizens abroad, should have power with strict supervision, through applicable laws and regulations, especially through laws, have the power to regulate the lives of citizens and society in general in a broad way. In that perspective, almost no human life in society lies outside the authority of the state (Executive Government) to interfere.

Another background nuance that also justifies the welfare state, which allows the President of the Republic of Indonesia (Head of State), who in this case also doubles as the Head of Government in the Executive field, is given the power to form laws with the approval of the DPR, is in the 4th Alenia of the Preamble of the UUD 1945. It was stated there, that:

...to form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate the nation's life, and participate in carrying out world order based on freedom, eternal peace and social justice, the Indonesian National Independence was drafted in an arrangement of the Republic of Indonesia which is sovereign by the people.

Based on the theory of Dignified Justice, which requires that the search for legal values can only be "excavated" from within the soul of the nation (volkgeist), legal renewal or reform in the sense of using law (Amendment to the formulation of Article 5 Paragraph (1) of the 1945 Constitution) as a tool, the means (tools) or "vehicles" may not "go off track", that is, the change must aim to bring the Government of the State of Indonesia and the entire nation of Indonesia and all of Indonesia's bloodshed moving towards the goal according to the Preamble to the Constitution as stated above, namely parameters of the Indonesian welfare state.

4. Conclusion

The meaning or understanding of the concept of law reform is essentially no different from the meaning or understanding of the concept of law reform. One of the ideas in legal reform is the use of law as a tool or tool in engineering community change. Change means development in the social field in a direction that is in line with legal objectives, *de lege lata* or dignified. In this case law becomes a tool used as a measure or parameter in realizing change or law as a tool of social engineering.

According to the theory of Dignified Justice, the ultimate goal of Dignified social engineering or according to law (*de lege lata*) is "a just and prosperous society" based on Pancasila as the highest law. The principle of Dignified Justice unites justice with the benefit and certainty of law as an intermediate goal so that in the end the law will bring society to the ultimate goal of law, according to the theory of Dignified Justice, namely law to humanize humans (*nguwongke uwong*) as creatures created by God Almighty who is noble in the world. in society according to law.

An example of legal reform that has been carried out can be seen when there was an amendment to the 1945 Constitution of the Republic of Indonesia. Based on the theory of Dignified Justice, legal renewal or reform in the sense of "changing" norms, legal principles as a manifestation of social change must be in line with the parameters of reform objectives according to law. Tools, or parameters/standards for legal purposes in carrying out legal reforms based on the Dignified Justice theory, namely "just and prosperous society" based on Pancasila as formulated in the 4th Alenia of the Preamble of the 1945 Constitution as the supreme law.

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