

National Legal Development Regarding Illegal Business Impact Toward Society

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ABSTRACT--Illegal business is essentially a legal business that does not have a license. Illegal business is part of the reality of the community so that the existence of illegal business has a direct impact toward society. The existence of illegal business activity needs to be anticipated by using legal mechanisms through the development of national law, one of which through the development of national law. Legal development in Indonesia can be discussed by using Development Law Theory, Indonesia National Long-Term Development Plan(RPJPN 2005-2025 and RPJMN 2020-2024). How can the development of national law anticipate the impact of illegal business on society? This research is a normative legal research using secondary data which is divided into qualitative in nature, and then categorized into primary, secondary, and tertiary legal sources. Then the data is analyzed by using descriptive analysis approach. According to this research, it can be concluded that the development of a renewed national law, which is in line with the Legal Development Theory, RPJPN 2005-2025, and RPJMN 2020-2024, has the ability to anticipate the impact of illegal business on society.

Keywords: legal development theory, illegal business, society

I. INTRODUCTION

There are three variables in the title of the paper, namely; (1) The development of national law, (2) The impact of illegal business, and (3) The society. The independent variable is "the development of national law", while the dependent variable is "the impact of illegal business" and "society".

Against these backgrounds, it can be seen that the main theme or discussion on this paper is the development of national law caused by the existence of illegal business which has a negative impact toward society. Below will be explained dependent variable first.

Illegal business is basically a type or form of business that has similarities with a legal business. What distinguishes both kind of businesses is that illegal business does not have the licenses needed to run their businesses, whereas legal business has such license. Illegal business, If in the future could take care of license as it should, it will be able to transform into a legal business.

Illegal business which is generally considered as an unlawful act. Illegal business is often connoted with the

business of "social ills". Society ills are[1]; "Acts and behavior that are contrary to the norms, morals, property rights, family solidarity, living together in harmony, discipline and formal law".

The social ills in this regard included;

- (1) Alcoholic beverages drinker,
- (2) Homeless people and beggars,
- (3) Prostitution,
- (4) Gambling.

The problem of social ills is still defined differently. According to the District Regulation of Serang, Social ills [2] is "every act of a person or legal entity that is against the law and damages social life, including prostitution and alcoholic drinks". Furthermore, what considered as social ills are as follow:

- (1) Alcoholic Beverages,
- (2) Prostitution.

In this case, the author defines "society ills business" as a business violating criminal law, while "illegal business" is a business violating civil law or administrative law related to licensing. What is meant by illegal business in this paper is a business that does not have license or business that has administrative problems.

According to the meaning of the word[3], business is commercial activity in the sense of the trade terms; business fields; trading business. Business is all activities carried out by a person in organized manner to collect profit by providing products needed by the society.[4]

In line with this, business is defined as an activity carried out by individuals or groups.[5] Meanwhile, While the word "illegal" is contradictory and is the opposite of "legal". Illegal is defined as; "Not legal; not according to law; invalid". The society, according to the meaning of the word, is defined as; "A number of people in the broadest sense and bound by a culture that they think is the same".

To build a building, one of the legal requirements is to have a Building Permit (IMB). For buildings that are already in operation but does not have the IMB whether necessarily be declared illegal and must be dismantled? A legal business entity must have a Business License (SIUP), Can the junkyard collection business whose turnover of tens of millions a month do not have a SIUP be automatically referred to as an illegal business and must be closed down?

In the two examples mentioned above, the difference between legal and illegal is more about the completeness of the administration, not associated with the presence of a specific criminal offense.

At the time this paper was being compiled, there was a lot of news about the closing of the Indo XXI (an online movie watching site that was held illegally (without a license)) on January 1, 2020. It was allegedly violated the Intellectual Property Rights of the film owner, but it gives beneficial for the community because it provides entertainment services for free.[6]

Related to this there are several things that can be observed, namely:

- 1) As an online movie watching service provider, Indo XXI can be categorized as "unlicensed".
- 2) Because the film provided by Indo XXI service was obtained illegally (without the owner's permission), it can be categorized as a violation of Intellectual Property Rights (IPR), specifically in the case of copyright infringement.
- 3) As an online movie watching service provider that earns income from advertising, Indo XXI does not make tax payments, violating tax laws and regulations.
- 4) Indo XXI as a provider of free movie watching services that gives benefit for people who feel unable to watch movies to the cinema because the ticket prices are too expensive, and unable to subscribe to online movie watching service providers because of the price of the package is still too expensive. That one of the tasks of the state to guarantee the welfare of its people.

Based on the description numbers 1-4 mentioned above, it can provide an understanding that an "illegal business" at the same time can be related to problems;

- (1) Administrative law (licensing issues),
- (2) Criminal law (violation of IPR),
- (3) Tax law, and
- (4) The function of state welfare concept.

In other words, the activities of "illegal business" carried out by Indo XXI, although it may violate the law but it brings prosperity to the society. What about the advertisers on the Indo XXI service, can it be categorized as a violation of the law as well?

One internet service in Indonesia at the moment (at the time of this paper is writing) still allows users to access pornographic sites. At one time the internet service had "blocked" the services of these porn sites. In other words the internet service providers actually has the ability to block porn sites, but they do not do so. If one of the porn sites is accessed, it turns out automatically directed to "advertisements" of a company in Indonesia.

Other than that; when accessing the porn site, then automatically the smartphone used to access the porn site will receive advertisements on a regular basis (continuously). It is understandable that even a legal company can provide services that are reasonably suspected of being illegal and benefit from these services. Can the company be subject to legal sanctions?

Based on the description above, how can the development of national law anticipate the impact of illegal business on society?

II. RESEARCH METHODS

This research is a normative [7] or doctrinal legal research, using qualitative[8] data that is equipped with descriptive analysis. Data analysis was carried out by a documentary study[9], using secondary data categorized as primary, secondary and tertiary legal sources.[10]

III. FINDINGS AND DISCUSSION

The development of national law can be caused by various things, whether it is caused by something internal or external, one of which is due to the development of the law itself. This paper will describe legal development according to the development law theory, the National Long-Term Development Plan 2005-2025, and the National Medium-Term Development Plan 2020-2024 which are considered as the cause of the development of national law related to the impact of illegal business on citizen of Indonesia.

According to the development law theory from Mochtar Kusumaatmadja, it was realized the importance of cooperation between theoretical law developers and scholars and practical law developers (specialists in making decision) in the process of public policy making, which on the one hand is politically effective.[11]

Then, Mochtar Kusumaatmadja[12] also said that all developing societies are always characterized by change and the function of law is to ensure that changes occur in an orderly manner. Regular changes according to Mochtar, can be helped by legislation or court decisions or a combination of both. He rejects irregular change by using mere violence.

In the National Long-Term Development Plan (RPJPN) 2005-2025, legal development is carried out to achieve the mission of realizing a competitive nation and a democratic society based on law.[13]

This proves that legal development in Indonesia is dedicated to the interests of economic and political development. Legal development with a mission to realize a competitive nation directed to support:

- 1) The realization of sustainable economic growth. In this case the existence of sustainable economic growth is one indicator of the success of legal development in Indonesia.
- 2) Regulatory issues (dispute resolution) are related to the economic field, especially in terms of business and industry. In this case one indicator of the success of legal development in Indonesia is the existence of legal ability to resolve business and industrial disputes.
- 3) The creation of investment certainty, especially in terms of enforcement and protection of investment law. Thus the law enforcement and protection of investment serve as indicator legal development in Indonesia.
- 4) Eradicate corruption and resolve completely issues related to collusion, corruption, nepotism.

The success indicator of legal development (number 4 above) in Indonesia is fully related to legal aspect. Meanwhile, the success of legal development in Indonesia (numbers 1-3 above) is used as criteria in the economic field. The development of law with a mission to create a democratic society based on law is directed at:

- 1) The realization of a high quality of national legal system that is based on Pancasila (as a philosophical foundation) and the 1945 Constitution of the Republic of Indonesia (as a legal foundation), which includes the development of legal materials, legal structures including legal apparatus, and legal facilities and infrastructure. In this case the development of the legal sector in Indonesia is influenced by the thoughts of Lawrence M. Friedman.
- 2) The realization of a society that has a high awareness and legal culture in order to realize the rule of law. That is because Indonesia is a state based on law that has an obligation to prosper its citizen. [14]
- 3) The creation of a society that is fair and democratic. Related to this; the word "fair" must be seen in the perspective of the fourth paragraph Opening of the 1945 Constitution of the Republic of Indonesia, namely social justice for all Indonesian people. While the word "democratic" must be seen in the perspective of the philosophical thinking of the Indonesian people, namely Pancasila. And it must be implemented based on the basic law of the Indonesian state, namely the 1945 Constitution of the Republic of Indonesia.

Legal development with a mission to realize a nation that has global competitiveness shows that legal development implemented in Indonesia is not only consists of local or national dimension, but also an international dimension. This is based solely on the understanding that the existence of the Indonesian nation and state must be part of the international community. Realizing a democratic society based on the law is implemented through:

- 1) Renewal of legal material which is carried out with due regard to the plurality of applicable legal orders and the effects of globalization. This is done as an effort to increase legal certainty and protection. The plurality of legal orders in the world is marked by the existence of various legal traditions used by various countries in the world. Globalization allows interaction between these different legal traditions, so each legal tradition must make adjustments internally. As an example; the civil law tradition is paying more attention to the existence of jurisprudence to solve similar problems, while the anglo saxon legal tradition has begun to use the law as a means of law enforcement.
- 2) Law enforcement and human rights protection. In this case, law enforcement must be interpreted as an effort to provide guarantees for the protection of human rights as an implementation of the existence of a rule of law, namely the Indonesian rule of law.

- 3) Increased legal awareness that can have an effect on reducing the level of violations of the law, which directly follows the intensity of law enforcement and increases guarantees of protection for human rights.
- 4) Legal services in Indonesia must be conducted with the core of justice and welfare in accordance with the Pancasila and the 1945 Constitution of the Republic of Indonesia.

In the 2005-2025 RPJPN it is further explained that the development of legal material (substance) is basically directed to continue the renewal of legal products by changing the legislation of the legacy of the Netherlands. The development of legal material must be able to reflect the social values and interests of the Indonesian people, be able to encourage the growth of creativity, and the implementation of the development of legal material must involve the community in order to support governance and national development. Included in the construction of legal material are;

- (1) Legal planning,
- (2) Legal formation, and
- (3) Legal research and development.

National legal arrangement activity could be seen in the current existing national legislation program or *Program Legislasi Nasional* (Prolegnas). The intention of Prolegnas is to create a grand design in forming national legislation that is in a manner with planning, integrating, and systematic.[15]

The creating of national legislation can be seen by the existing product of law, which enacting by legal institutions or by institution having the capability to produce regulations. While research activities and legal development will be conducted through academic paper analysis, i.e.; "manuscript which resulting from research, legal assessment, or in another form which focusing on particular issue and the outcome can scientifically justified regarding a regulation for particular issue on a draft bill, provincial draft bill, and regional draft bill as an effective way to answer social problematics and people legal need's."

The development of the legal structure is carried out through strengthening and streamlining various organizations and institutions, the legal profession, and the judiciary through the improvement of quality standards and professionalism.

The construction of the legal structure is carried out on the legal structure as part of the governmental organs, and the legal structure which is outside the governmental organs.

The development of the legal structure is carried out through the education system (formal and professional) and training, using an accommodative curriculum in accordance with developments that enable the development of the attitude of the legal apparatus which always upholds honesty, truth, openness, and justice, free from corruption, collusion, and nepotism, as well as responsibility that is implemented in the form of exemplary behavior.

Equitable development in Indonesia after five years always be maintained. However, the Rule of Law index in Indonesia for five years (2013-2018) period was decreasing. According to the index, a dimension of legal development in Indonesia relatively weak, relating to real conditions of the justice system (which consisting of criminal law and private law), law enforcement, and absence of corrupt practices.

Furthermore, this issue arose because there was hyper-regulation, overlapping regulations, inconsistency, ambiguity, and disharmonic and its impact on legal uncertainty. On the other hand, justice system practice, both criminal and private law to guiding law enforcement, has not been gaining to give certainty of justice and raising public trust yet.

Bribery is common in many sectors, including law enforcement, even if prevention and eradication against it had consistently done"[16]

According to the description above, it can be understanding that legal development in Indonesia is dedicated to overcoming legal development problems, i.e.;

1. There was a large number of existing regulations, and the development of the legal system will be decreasing the number of regulations to reach efficiency and enhancing the quality of new regulations.
 2. Overlapping regulations, legal development will be harmonizing existing regulations.
 3. Inconsistency regulations. Legal development through unification draft bill. In this regard's codification of law, according to characteristics of civil law tradition shall be considered.
 4. Ambiguity on regulations, legal development shall be implemented following authenticate interpretation in every new regulation; in another way, authentic interpretation of the existing draft bill can be an appeal to the constitutional court to be in line with National Act 1945 souls and spirit.
 5. Legal disharmony that creates legal uncertainty, in this case legal development must be able to codify and make authentic interpretations of laws and regulations. Legal justice system practice has not effectively yet; legal development shall be updating procedural law.
 6. The implementation of system of justice is not optimal yet, legal development must be carried out by updating the procedural law.
 7. The practice of bribery, legal development must be able to eliminate bribery practices through good Standard Operating Procedure mechanisms, and optimize online and paperless administrative processes.
1. There is a change in law, both through law-making institutions and by judicial institutions
 2. Legal development is dedicated primarily to the interests of economic and political development, then to the benefit of legal development itself. In this case the field of law is a subordination of the economic and political fields.[17]
 3. Legal development does not only have a local or national dimension, but more than that with an international dimension.
 4. Legal development carried out by substances, structures, and legal culture.

In the introduction it has been explained that what is meant by illegal business in this paper is a business that is not equipped with permits as they should. Because they do not have the necessary permits, illegal businesses cannot qualify as legal subjects. Therefore, illegal business cannot carry legal rights and obligations.

When the illegal business does, the provisions of Article 1320 of the Civil Code apply, which must meet the requirements; agreed, capable, a certain cause, and a cause that is not prohibited. Terms of agreement and competence are objective conditions which if not fulfilled then the agreement/agreement can be canceled. The other two conditions are subjective conditions, which if not fulfilled then the agreement/agreement is null and void.

Because illegal business is not a legal subject, it is not capable of carrying out legal actions. Because they are not capable of carrying out legal actions, the agree ment/agreement (in the form of business activities) between the illegal business provider and the community can be canceled. However, if the party organizing illegal business with the community does not intend to cancel their business activities, then the business activity is legally binding on the parties.

This issue of "not capable of doing legal action" will arise if the agreements between parties had a dispute. In this case, a legal dispute occurs between the community and the person (person) who signed the agreement, has not related to the institution of the illegal business provider. How can this be facilitated through the development of national law so that it can become part of the development of national law.

Legal development can happen along with law changing carried out by the institution that forms legislation (i.e., changes or amendments of laws), or by other legal institution (i.e., through jurisprudence, or legal interpretation by the constitutional court).

Furthermore, relating to the relation between illegal business subject and community, this can be overcome by making "law" that allows illegal business has an equal obligation with legal business. This can be compared with a house that has a building permit and does not have a building permit that must pay the Land Tax (PBB). However, in the end, the illegal business does not have any right as the legal business have.

Legal development is primarily dedicated to economic interest. The existence of illegal business ties with economic activity in the real sector, viz; "real

Legal development as mentioned above is comprise legal development as law development theory, according to national long terms development 2005-2025, and according to national mid-terms development 2020-2024. Basically legal development must be covers several aspects;

circumstances that directly intersect with the market.” “Real sector had directly interacting with social economy activity greatly affect, or its existence can be used as a benchmark to determine economic growth.”[18]

Because the illegal business had a direct correlation with economic growth, then it should not necessarily be illegal business must be closed, but it would be better to "legalized" with a specific legal mechanism which certainly does not harm the legal business subject. In this regard, the law is dedicated to economic interest.

Implementation of legal development cannot use "blindness," "lens" (perspective) must set up to "panoramic." National legal development must tie with another country's legal development. For example, in several countries, gambling is a legal business in terms of law; thus, money from gambling is legal to use. Different from Indonesia, gambling activity is illegal.

In short, gambling is a criminal act, and any gamblers will facing penalties if they do gambling in Indonesian territory. However, any gambling activity cannot be convicted by the Indonesian criminal code if these activities were outside Indonesian territory. Then, how about money from gambling, which generated in-country legalized gambling? (according to the origin).

National legislation must have an international dimension, and then the legal development must be able to prevent the entry of money from gambling into the jurisdiction of Indonesia, even though gambling in the country of origin of the money is legally to use.

This can be done by statutory regulatory bodies by making laws and regulations which basically "seize" the money from gambling to later become state property. Judges who must "find" the law can also "seize" money from the gambling through the mechanism of lawsuits against the law by the state (though state lawyers/prosecutors) to the owner of the gambling money.

Legal development is comprehensive, including substance, structure, and legal culture. The existence of illegal business is caused by the substance, structure, and legal culture that still allows happening.

Based on these facts, then legal development shall be capable of covering the substance, structure, and legal culture. This is in a state of "immunity" to illegal business, does not provide an opportunity to grow and developing illegal business.

IV. CONCLUSION

Development of national law as referred to the theory of development law theory, RPJPN 2005-2025, and RPJMN 2020-2024, has capabilities to anticipate impact illegal business to society by means of developing comprehensive national law which includes;

- (1) Changing of law,
- (2) Legal development which devoted to economic and legal development,
- (3) Legal development within international dimension, and

- (4) Development of the substance, structure, and legal culture.

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