Legal Framework for the Development of the Indonesian Economy: Mochtar Kusumaatmadja's Perspective

M. Zaid
Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Kentingan, Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126
zaidm@student.uns.ac.id

Hartiwiningsih Hartiwiningsih
Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Kentingan, Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126
hartiwiningsih@staff.uns.ac.id

Muhammad Rustamaji
Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Kentingan, Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126
muhammad_rustamaji@staff.uns.ac.id

***Abstract*—The trickle-down effect in development posits that regardless of the specific approaches employed, the development process is inherently impartial and will inevitably progress. This indicates that the action will have a more extensive impact than in industrial or peripheral regions, even though most incidents occur in urban or industrial areas. Sustainable development must ensure that the social welfare standards established in preceding phases do not decline or disappear throughout the story. As a methodology, normative legal research has been chosen for this investigation. This methodology effectively addresses legal issues by systematically analyzing and evaluating legal regulations, tenets, and principles. Sajipto Rahardjo, the author of Law and Society, emphasizes the criticality of achieving unity between economic and legal dimensions and the prevailing social reality. It is critical to prioritize this alignment when addressing the challenges that arise in society. Consequently, the author asserts that establishing a progressive legal framework is essential to confront these challenges effectively. Using the research conducted by Brian Z. Tamanaha, it becomes evident that legal pluralism is prevalent in various settings. This assertion posits that diverse normative systems are indispensable within social interactions. Furthermore, the resources employed to analyze legal theory must align with the principles elucidated by Sajipto Rahardjo in his work "Law and Society."This necessitates the implementation of a progressive legal framework to address these concerns effectively.**

***Keywords*—Progressive Law; Law; Economic.**

I. INTRODUCTION

The legal system assumes a critical function in propelling societal advancement in Indonesia by guaranteeing that development advances lawfully and efficiently. The term "development" encompasses a multifaceted progression of society, which comprises the legal, social, cultural, and economic spheres, among others. The procedure above is advanced through the execution of calculated strategies and collaborative endeavors under the direction of humanistic and credible principles to achieve the desired goals of a country. [1] The mission of the Development Law Institution is to assess the present condition of legal progress in Indonesia. This subject is of considerable significance in the field of legal theory. In essence, the notion of development incorporates a thorough analysis of the language utilized in legal progress, specifically in Indonesia, and the dialectics of law in a more general sense. [2]

The discussion about development law is inextricably linked to the vast array of development concepts that have arisen and persistently developed in modern society. Theories are urgent due to their capacity to analyze empirical issues that arise in society. [3] Without an idea, there can be no perfect and comprehensive

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comprehension of the realities that arise, particularly those about the evolution of development law. The two predominant paradigms that comprise development theories are the Dependency Paradigm and the Modernisation Paradigm. [4]

The Modernisation Paradigm elucidates the internal factors that contribute to a nation's development accomplishments, particularly in the case of a peripheral or third-world country. [5] The works of Evsey Domar and Roy Harrod, who contend that a country's development is exclusively associated with its capital investment level—with the quantity of capital being directly correlated to the degree of development encountered—illustrate the proponents of this paradigm. The emphasis of the Dependency Paradigm, which is also known as the Structural Paradigm, is on the consequences of extrinsic factors. It asserts that the advancement of a country, especially one categorized as a third-world nation, is significantly dependent on the interaction and relationships between that country and industrialized or developed nations. The execution of advancements is dependent on external conditions. [6]

A phenomenon recognized within the development domain is called the trickle-down effect. According to this concept, development is an independent procedure that will materialize organically, regardless of the approaches utilized. Thus, irrespective of the concentration of development in industrial or urban areas, its effects will inevitably percolate down to lower-tier regions, including rural and peripheral areas. [7] On the contrary, empirical observations in the field indicate that the trickle-down effect is valid, given the development disparities and inequalities between rural and urban regions. The aspired law can yield advantages and transform into a mechanism for progress instead of a mere instrument of progress in the conventional sense. [8]

Sustainable development ensures that social welfare is not diminished or eradicated compared to pre-development levels. This is consistent with Mochtar's hypothesis that the law frequently needs to demonstrate more trust due to the hectic pace of development processes. Undoubtedly, this circumstance is inconsequential as it fundamentally undermines the significance of the legal system within society. The role of law in national development is to facilitate community renewal and progress through the application of legal principles. [9] Extensive academic inquiry has been devoted to the theory of development law that Mochtar Kusumaatmadja postulated. A noteworthy scholarly article, "Development Law from Mochtar Kusumaatmadja: Directing Development or Serving Development?" was written by M. Zulfa Aulia. This research highlights the importance of development law in facilitating the revitalization of communities and emphasizes its pivotal function in advancing societal development. Due to the necessity for clarity regarding the standards for development enhancements that require legal support, the current political climate frequently affects the characteristics of legal decisions. As a result, endeavors toward development often encounter limitations imposed by the dictator's discretion. [10]

Additionally, "Reconstruction of Development Law Theory into the Formation of Post-Reform Environmental and Natural Resources Legislation in Building the State of Law," a study conducted by Wahyu Nugroho, is noteworthy. This study clarifies the imperative nature of a comprehensive legal framework in guiding the DPR and the government in formulating environmental and natural resources legislation. A complete legal framework is crucial to promote societal transformation and effectively respond to the changing needs of the general public. [11] Community participation is essential in development as it encourages adherence to environmental regulations. This is consistent with Mochtar Kusumaatmadja's theory of development law, which asserts that legislation ought to function as a mechanism to facilitate progress. However, the previous author must analyze the critique of Mochtar Kusumaatmadja's legal development theory. The primary objective of this discussion is to explore the notion of law catalyzing economic development in Indonesia. Mochtar Kusumaatmadja's ideas will be scrutinized in particular.

II. LITERATURE REVIEW

Mochtar Kusuma-atmadja is an Indonesian legal figure who, in contrast to the majority of legal figures, has held a diverse array of positions. In addition to being a legal scientist and technologist who disseminated his ideas through working papers for public consumption, he held the positions of minister of justice and minister of foreign affairs while serving under the New Order regime. Given his dual responsibilities, Mochtar can be categorized as a legal technocrat specifically, a technologist endowed with authoritative authority. 1 In addition to being documented as a diplomat and advocate, Mochtar is also described as a humanist. Indeed, within the realm of legal discourse and legal science in Indonesia, the notion of development law is as unique as the copyright of Mochtar Kusuma-atmadja. The relationship between Mochtar Kusuma-atmadja and development law is inseparable. Thus, it is conceivable that law students in Indonesia would invariably associate Mochtar's name with discussions of building construction law. The term "Unpad school of thought" has been coined to describe the academic organization where Mochtar authored the treatise on development law and contributed to its development.[12]

Mochtar then contemplated the nature and operation of law in its natural state. The figure indicates that while law is a component of social norms, it is not the only one. In addition to legal frameworks, human existence within a given society is influenced by religious beliefs, moral standards, etiquette, and customs. He stated that the law and other social regulations are intricately intertwined; each reinforces the other. Nevertheless, a distinct distinction can be observed between the law and other social regulations: it is in the way the provisions are organized. It is possible to enforce laws in a systematic fashion. Coercion designed to guarantee the organization of legal provisions is governed by specific regulations concerning its structure, method, and means of execution.

The originatory circumstances surrounding Mochtar Kusumaatmadja's theory of development law. The inception of this legal development theory can be attributed to two significant factors. To begin with, it is postulated that the law possesses an inherent inability to facilitate or even hinder societal changes successfully. Furthermore, it is indisputable that in the present day Indonesian society, a shift in communal mentality has occurred, leading to a progression towards incorporating contemporary legal principles. Furthermore, this theory is supported by the legal profession's lullaby or melancholy in Indonesia during that period, which led to a decline in public confidence in legal work. When confronted with the plethora of complaints and anxieties articulated by proponents of "The rule of law," who sincerely seek the reinstatement of justice in society, malaise or lethargy assumes a paradoxical character.[13]

III. METHOD

On the basis of legal certainty, this is normative legal research employing the case method, statutory approach, comparative legal approach, and conceptual approach. The normative legal methodology employed in this study was derived from a comprehensive review of the literature. This article draws upon a variety of primary and secondary legal sources, including legislation, literature, and periodicals. This research study employed a legislative methodology to ascertain the legal foundation and evaluate pertinent regulations.

IV. RESULT AND DISCUSSION

According to the author, legal theory functions as a foundational structure that enables a critical examination of a paradigm in law. [14] This paradigm is then translated into a legal reality observed in society. Legal symptoms comprise manifestations relevant to various spheres, such as the economic, legal, and social domains. [15] Given the prevailing climate of corruption today, progressive legislation that adheres to the tenets of development law as they pertain to the economy is urgently required. [16] The fundamental principles underpinning legal theory investigation are delineated in Sajipto Rahardjo's seminal work, Law and Society. For prevailing issues to be effectively addressed, the legal and economic dimensions must correspond with the social context, according to Rahardjo. As a result, the implementation of progressive legislation is crucial for the successful resolution of these issues. [17]

The progressive legislation that has been proposed will make a valuable contribution to the continuous legal progress that is presently occurring. This is consistent with the ontological paradigm that underpins the modern legal system, specifically about fundamental economic progress. The progressive legal analysis is profoundly contradicted by the concept of development law, as demonstrated by critical studies in various Indonesian legal literature.[18]

The critical theory regarding the rise of legal pluralism is apparent in numerous legal spheres in Indonesia, as evidenced by the proliferation of complex legal structures. [19] The legal plurality in Indonesia has been a matter of enduring importance and scholarly investigation for a considerable time. Legal pluralism has become a pervasive and prevalent phenomenon in modern society.[20] This critique concerns the application of legal principles to regulate individuals, with a particular focus on positivism and centralism. The concept of legal plurality can be understood from various vantage points. Legal pluralism is a conceptual structure that explicates the interaction and motion of numerous legal systems that function within a particular society. In addition, legal pluralism acts as a structural framework to distinguish the various legal systems that exist concurrently in a specific societal sphere. Furthermore, this article clarifies the complex dynamics that govern the interaction, adaptation, and competition among legal systems. [21]

Furthermore, legal pluralism illustrates how individuals willingly choose particular legal frameworks in the face of contradictory circumstances. Multiple perspectives indicate that legal pluralism is, in fact, a pervasive occurrence in the lives of individuals. By this concept, legal pluralism is ubiquitous, as articulated by Brian Z. Tamanaha. [22] This assertion contends that varied normative systems are critical in social interactions. However, the allure of legal pluralism is not solely derived from the diversity of normative systems; it also originates from the inherent potential for these systems to collide, leading to uncertainty. Legal pluralism endeavors to mitigate the issue of ambiguity, which is a vulnerability. However, it is critical to note that this assertion requires correction, as the principal obstacle is the asymmetrical structure of normative systems and not the possibility of conflict. [23]

John Griffiths formulated the concepts of feeble legal pluralism and robust legal pluralism. The idea of weak legal pluralism pertains to a scenario wherein the state recognizes the presence of non-state legal systems but enforces these systems by state affairs. [24] In contrast, robust legal pluralism exists when the state acknowledges the legitimacy of non-state law and grants the legal system equivalent enforcement authority to state law. Ultimately, the perspectives above of Tamanaha and Griffiths lead us to examine the flaws and criticisms of legal pluralism. [25]

The continued existence of power differentials among advocates of various legal systems can erode the foundations of legal pluralism, transforming it into a potentially false or misguided ideal. Legal uncertainty may also result from this circumstance, mainly if legal pluralism permits accepting all non-state legal systems lacking clearly defined boundaries. These two indicators demonstrate that legal pluralism, originally proposed as a method of criticism, is not immune to criticism. This segment will analyze the critique of legal pluralism and its correlation with the current obstacles in advancing the Indonesian legal system.[26]

The endorsement of the subordinate party is a prerequisite for the acquisition and maintenance of power by the principles of development law theory. A monarch must, therefore, commit to the public good to guarantee the consolidation of power. Furthermore, it is anticipated that the subordinate party will exhibit deference towards the sovereign, thus carrying out their obligation of civil obedience. A transition occurred in Indonesian society from a confined to an open, dynamic, and modern state. The fundamental difficulty in development pertains to the necessity for a cognitive revolution, encompassing a change in values, attitudes, and characteristics among the governing bodies and the general public. As per his viewpoint, members of society ought to undergo a metamorphosis, shifting from compliant citizens who are subservient to the directives of the state to citizens who are proactive in their recognition and readiness to defend their rights.

As contended by Mochtar K., specific obstacles are probably to be confronted when examining the role of law in development. The following barriers could be identified: a difficulty in determining the objectives of legal evolution or reform; b. More empirical evidence is required to conduct a descriptive and predictive analysis. The task involves developing an unbiased evaluation of the efficacy or inefficacy of initiatives to reform the law and identifying the presence of compelling and influential leadership. Disagreements between the interests of charismatic leadership and the tenets of legal engineering in promoting the rule of law are not uncommon. The adherence to legal norms needs to be improved, especially in societies developed in revolutionary environments.[27]

Moreover, public opposition to change is frequently unfavorable due to apprehensions that it might erode the populace's collective prestige. How individuals react is contingent upon their perception of the possibility that the proposed change could erode national pride. Furthermore, intellectuals who abstain from practicing law may also demonstrate a particular disposition—the reaction of scholars who neglected to exemplify the virtues they professed; h. Indonesian society is characterized by a considerable level of diversity in its composition, encompassing various aspects, including socioeconomic progress, religious affiliations, linguistic variety, and other pertinent factors.

Mochtar Kusumaatmadja argues that the Indonesian perspective on law as a vehicle for societal transformation is more comprehensive than that of the United States. This is primarily because the legislative aspect dominates the legal reform process in Indonesia, although jurisprudence also contributes. Mochtar posits that the rationale for employing such methods can be ascribed to the alterations implemented in Indonesia's existing circumstances. Furthermore, these modifications are intricately connected to the policy orientation gained from Laswell and the cultural philosophy acquired from Northrop, both of which emphasize the application of legislation as a rejuvenating mechanism. When applied within the Indonesian context, praiseworthy legislation becomes firmly entrenched in the local populace. According to this theory, the function of the law is to maintain and safeguard preexisting achievements. Moreover, the law is an embodiment and tangible representation of the societal principles within a specific community. The significance of the law's function in enabling societal transformation is paramount, especially in the context of an expanding society marked by rapid changes.

After careful analysis of Mochtar Kusumaatmadja's concept of development law, it becomes apparent that the law should play a crucial role in bringing about constructive societal change. However, a considerable segment of the populace, including law enforcement agencies and judicial institutions officials, needs greater trust in the legal system. This significantly affects the capacity of the community to make independent decisions without resorting to vigilantism. The irregular distribution of benefits in Indonesia has been observed to manifest in regional discrepancies within the country and among nations. Should one define emerging countries by the condition that their populations are impoverished, then developed countries are distinguished from developing countries by the profusion of easily accessible means of subsistence. There is a pressing need to enhance the effectiveness of the law in Indonesia's dynamic society to ensure certainty and uphold order. Legislation is expected to transform into a tool utilized for social engineering. The bill's primary objective is to efficiently regulate and oversee human actions to correspond with progress and rejuvenation goals.

V. CONCLUSION

Based on the preceding explanation, the following can be deduced: A foundational framework for studying legal theory should correspond with the principles delineated by Sajipto Rahardjo in his seminal work, Law and Society. Rahardjo asserts that the legal and economic aspects must align with the tangible circumstances present in society. By adopting this approach, it becomes feasible to tackle the challenges that emerge from these phenomena. As a result, it is imperative to employ progressive legal measures to resolve these issues effectively. The results regarding the conceptual framework of Mochtar Kusumaatmadja's Development Law Theory, as illustrated by Muchtar Kusuma Atmadja, are presented in the following section. Two significant factors precipitated this theory of legal development. To begin with, it is presupposed that the law is inherently incapable of fostering societal transformation; rather, it substantially hinders such advancements. Furthermore, the communal mentality has been revolutionized in modern-day Indonesian society, which has led to a developmental trajectory towards a more contemporary legal system. Moreover, this notion is motivated by the legal profession's malaise or lethargy in Indonesia, which led to a decline in public confidence in legal work. The phenomenon of malaise or lethargy is contradictory when confronted with the multitude of vocalizations and apprehensions expressed by individuals advocating for the principle of "The rule of law" in the optimistic aspiration for restoring justice within society.

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