

The Legal Theory of Space as a Means of Legal Development in the Perspective of the Indonesian Law

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Abstract—A reality if Indonesia's written constitution has not placed space as part of its natural wealth, even though the written constitution has been amended several times. This provides space for the law to continue to develop into a part of national development in the field of law. The fact is that space above the equator has special features that can be of economic value so that it can prosper the countries passed by the equator. Thus, the development of space law becomes an inseparable part of the welfare development of the community itself. This research can prove that the development of the law in the field of space is closely related to welfare which can be presented by a legal state. Because this research is related to legal theory, this study uses primary legal material in the form of secondary data which is a characteristic of a normative legal research.

Keywords—written constitution; legal theory; space; legal state

I. INTRODUCTION

The three main national problems formulated in the 2015-2019 National Medium-Term Development Plan are; 1) the decline of the authority of the State, 2) the weakening of the joints of the national economy, and 3) the outbreak of intolerance and the nation's personality crisis [1]. One way to overcome the decline of state authority is by strengthening the presence of the state in carrying out system reforms and fair law enforcement. The development targets for the legal sector for 2015-2019 are; 1) improve the quality of law enforcement, and 2) the realization of respect, protection and fulfillment of the right to justice for citizens. One of the directions of policy and strategy for law enforcement is through the development of national law directed at supporting the realization of sustainable economic growth. Related to this, it can be concluded that legal development in Indonesia is dedicated to economic growth, the law is a means of achieving economic growth which is expected to be able to prosper the people of Indonesia [2].

Meanwhile the direction of national priority policy in the legal field contained in the Government Work Plan (RKP) of 2018 is to provide legal certainty for the community through; 1) quality law enforcement, 2) effective prevention and eradication of corruption, and 3) respect, protection and fulfillment of the right to justice [3]. Because the Government

Work Plan of 2018 is the implementation of the 2015-2019 National Medium-Term Development Plan, the national priority policy in the legal field must be seen in the framework of achieving national economic growth.

Legal development in Indonesia has a more tangible form in the 2019 [4]. Government Work Plan which states that legal development aims to create legal certainty supported by transparent and accountable law enforcement, fulfillment of access to justice, and increasing the effectiveness of prevention and eradication of corruption. The target is; 1) the implementation of transparent and accountable law enforcement and ensuring access to justice and 2) increasing the effectiveness of prevention and eradication of corruption. It is understandable that legal development is carried out within the framework of a legal State to create legal certainty through transparent and accountable law enforcement in order to achieve national economic growth that enables the creation of the welfare of the Indonesian people.

The Strategic Plan of the Ministry of Law and Human Rights of the Republic of Indonesia for 2015-2019 as the implementation of the 2015-2019 National Medium Term Development Plan determines the Policy and Strategy Direction of the Ministry of Law and Human Rights through harmonizing Political Policy legislation with the direction of national development and improvement the quality of the establishment of laws and regulations, where one of the strategies he adopted was through the process of establishing legislation carried out by further applying the principles of the formation of good legislation and promoting community participation in drafting [5]. The Ministry of Law and Human Rights strategy is in accordance with this research, where the formulation of the theory of space law is one form of public participation in the formation of legislation.

Based on the description above, the formulation of the research problem is arranged as follows:

- What is the correlation between the formulation of the theory of space law and the development of law in Indonesia?

- How is legal development in Indonesia in the perspective of the Indonesian law?

II. RESEARCH METHODS

This study fully uses secondary data as the primary legal material. Thus, this research method can be categorized as normative legal research. Normative legal research is also known as doctrinal legal research or library legal research. This is because almost all the primary legal materials are obtained and/or available in the library. For now, in certain levels the function of libraries in terms of places to obtain secondary data can be replaced by internet technology which has advantages in terms of flexibility because it can be accessed 24 hours a day and 7 days a week.

III. DISCUSSION

Laws that regulate the use of space for peaceful purposes are currently positioned as one of the laws that are part of international law. Thus, it is understood that the law relating to space consists of and/or is formed from a set of international agreements. Thus space-related laws are not currently built on a particular legal theory.

At present space is positioned as an area that is not the jurisdiction of any country in the world. On the one hand, it has positioned all countries in the world in equality related to the mastery of space. On the other hand, this has provided justification to certain parties or countries to use space for their own interests. Of course, the "interests" will be packaged in a form that can be generally accepted, one of which is; "In the name of science and technology". In 2013; "Our planet is currently covered by more than 1,000 satellites that are still active and thousands of tons of space junk [6]." It is so that most of the satellites and/or space junk are in the equator region, so Indonesia in the equator area is "at risk" of being the place where the satellite and/or space junk fall.

In an Islamic perspective, space is the product of God's creation. Allah said: "O genie and human group! If you are able to penetrate (cross) the corners of heaven and earth, then penetrate. You will not be able to penetrate it except with strength" (QS. Ar-Rahman (55): 33). God commands humans (other than jinn) to penetrate or cross the sky (space) and also the earth. Of course, we understand the word "penetrate" or "cross" the sky is not "just passing", but what is meant here is to use space for the benefit of humans. This corresponds to the fact that humans were created as caliphs. The commandment of God also gives us clues that there is "something" that can be used in space for the benefit of humans. God's command to humans to use space is accompanied by a condition, namely; humans must have the power to use the space in question. What is meant by strength here can not only be interpreted as mere physical strength, but must also be accompanied by high technology mastery and financing capabilities. These three things can be classified as "hard power", strength in reality.

"And He is the Lord who spread the earth and made mountains and rivers to it. And making him all fruits in pairs, God closed the night to noon. Verily in that there are signs (the greatness of Allah) for those who think", (Surah Ar Rad verse

3). Space is a creature created by God and God creates pairs of creatures. Based on this thought, Hard power as the power to utilize space will not function properly if it is not accompanied by soft power. Soft power here is a law in the broadest sense, including ethics and wisdom (wisdom). Law is the result of the synergy between general and universal thoughts and hearts, which are possessed by civilized humans.

From time to time the existence of space has become increasingly important for many nations of the world, especially for the purposes of communication and the development of science. However, not all countries in the world have the ability to explore and/or exploit the economic potential possessed by space. This is because the use of space is an activity that requires large costs and high technology, where not many countries in the world are able to do so.

Meanwhile not all parts of space have the same characteristics. The space region that is above the equator (equator) naturally has a privilege because at an altitude of 35,800 Km can be occupied by satellites in a relatively stable position (silent), so the satellite placed in that position will remain relatively in place all the time so that the satellite can be functioned as it should be optimally. This is influenced by the geographical conditions of the equator itself where the length of the circle of the earth surrounding the equator is longer than the length of the circle of the earth that passes through the polar region. This is because the earth is not completely round, but is more "convex" in the equator. "According to computer simulations and analysis conducted by Scott Tremaine of the Institute for Advanced Study in Princeton, New Jersey and Tomer Yavetz of Princeton University" [6], the shape of the earth is not perfectly round, flatter on the poles and fatter in the equator. Gravity in the fatter part of the earth (the equator) keeps the satellite in position.

Based on the description above, it can be seen that the space area above the equator has features that have economic value, which should be able to participate in bringing prosperity to the people of Indonesia. Thus, the space area can be categorized as part of a limited amount of natural wealth. Nevertheless, the existence of space as part of the natural wealth has not been accommodated in the 1945 Constitution of the Republic of Indonesia as a source of all sources of law in Indonesia. Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia has not explicitly "recognized" the territory of space as part of Indonesia's natural wealth. "Earth and water and the natural wealth contained in them are controlled by the state and used for the greatest prosperity of the people".

According to the nature of the law is dynamic so that it can grow and develop along with the development of the community where the law is located. What distinguishes it is the "speed" of the growth and development of the law. As is known, in the world today there are various legal traditions adopted by various countries in the world. These legal traditions include the legal traditions of the European continental (civil law), Anglo Saxon (common law), Islamic law, and others. The legal tradition adopted by a country has a significant influence on the process of establishing law in that country. It is understandable that the formation of law in a

country that adheres to the Anglo-Saxon legal tradition is possible relatively faster than the formation of law in a country that adheres to the European continental legal tradition. This is because in a country that adheres to the Anglo-Saxon legal tradition based on unwritten law making it easier to develop. Meanwhile the State which adheres to the European continental legal tradition is based on written law, so that it is relatively more difficult and / or slower to experience development. It is understandable that the development of written law is more difficult than the development of unwritten law due to the different mechanisms for establishing the law itself.

In a state of law that adheres to the European continental legal tradition such as Indonesia, the law is often identified with legislation that is formed through certain [7], formalities by certain state institutions in charge of it [8]. In Indonesia the law is actually made not by a legal institution (a judicial institution) [9], a law is made by a political [10], institution authorized by the constitution to make laws. According to the constitution, Indonesia is a legal state [11]. Regarding how the Indonesian state of law protects the entire Indonesian nation and all of Indonesia's bloodshed, the Indonesian state of law must be able to advance public welfare, educate the nation's life, and participate in carrying out world order [12]. In simple terms it can be said that the objectives of the Indonesian law can be achieved if the economy, education, law and politics (world order) can be carried out well and synergize with each other. Thus, the formulation / development of the theory of space law as part of legal development in Indonesia in the perspective of the Indonesian legal state, is the implementation of the tasks of the Indonesian state government according to the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia.

IV. CONCLUSION

Based on the description in the previous section, it can be concluded that:

- The formulation of the theory of space law is an integral part of legal development in Indonesia. This has positioned the law of space as part of a national legal entity in Indonesia.
- Development of law in Indonesia must be able to advance public welfare, educate the life of the nation, and participate in carrying out world order. Thus, the

development of law in Indonesia is the implementation of the mandate of the fourth paragraph of the Preamble of the 1945 Indonesian Constitution.

ACKNOWLEDGMENTS

Master of Law Studies Post-Graduate School of Islamic University of Nisantara, Bandung, Indonesia. This research is funded by DIPA Kopertis Region IV West Java Banten, Ministry of Research, Technology and Higher Education, in accordance with the 2018 Letter of Agreement of Decentralized Grant Research Fiscal Year Higher Education Research Program of Higher Education Number: 0048-B / LPPM-UIN / II / 2018.

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- [7] The 1945 Constitution of the Republic of Indonesia, Article 20 paragraph (2), (3), (4), and (5).
- [8] Op.cit., Article 20 paragraph (1), "The House of Representatives holds the power to form laws".
- [9] Op.cit., Article 20A paragraph (1), "The House of Representatives has legislative functions, budget functions, and supervisory functions.
- [10] Op.cit., Article 19 paragraph (1), "Members of the People's Legislative Assembly are elected through General Elections.
- [11] Op.cit., Article 1 paragraph (3), "Indonesia is a legal state.
- [12] Op.cit., Opening, Fourth Paragraph.