

Trend of Economy Law Development In National Law System

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A. Introduction

Development can be understood simply as an effort to change a situation faced by human or people to be profitable for the developer. Comprehensively, “development” is a concept born from long dispute of Capitalism and Socialism, as stated by Mansour Fakhri;¹

“The competition between Capitalism and Socialism has taken the form of ideology and theory war. More than fifty years ago, in 20 January 1949, US President Harry S Truman first stated their foreign policy, and for the first time the discourse of “*underdevelopment*” was used. At the time, the concept of *development* was officially launched, with the main objective to prevent socialism in the Third World.”

Since that time, *developmentalism*, which later translated into *development*, has been used as the ideology promising new hope to the life changing for millions of people in the *Third World*. Furthermore, Mansour Fakhri explains that *development* is not more than Western Paradigm reflection on the social change, which are steps towards “*higher*

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¹ Mansour Fakhri, Tinjauan Kritis Terhadap Revolusi Hijau, dalam Hatta Sunanto et.al, Menggeser Pembangunan Memperkuat Rakyat, Emansipasi dan Demokrasi Mulai dari Desa, (Yogyakarta: Laper Pustaka Utama, 2000), hal 4

modernity". Modernity is interpreted in the form of technology and economic growth following the path of industrial countries referring to industrial revolution. *Development* furthermore is meant in term of the escalation of living standard, and it can be achieved through industrialization. Government in this perspective is the subject whose task is to transform people to be *objects, recipients, clients or participant*².

Modernization furthermore becomes the base of *developmentalism*. The word modernization has also connotation as secularism, industrialization, national unity and mass participation. The basis assumption is that *tradition* is "problem" (which should be solved) and transformed, like what was experienced by Europe long time ago. This theory uses some arguments. First, with the metaphor of organism growth, development is understood as evolutionary steps from traditional to modern. All people start from the same situation, which is "traditional" and that is Third World and will be transformed like western countries which become "modern". Secondly, the opinion that if Protestant Ethic is the cause of western economic development, so it needs to find the same factor for the other part, which is called *the need for achievement* (N Ach). What is described as prototype of achieving society is basically capitalist society. In fact, modernization and *developmentalism* is not different with capitalism.³

Such developmentalism concept can not be taken for granted to be adopted in Indonesia whose history and social culture are different with western society. Therefore, if this concept is forced to be implanted, it results in much more

complicated conflicts. It is rather difficult to discuss "development" separated from the debate of ideology as explained above, but for the time being, to facilitate the analyses in this paper, "development" is simply interpreted as the effort to change something better.

Economy development is process which is held continuously to achieve the welfare and prosperity of a nation. As an integral part of national development, the realization of the objectives above is reflected in the increase of economy activities in line with life quality improvement of every inhabitant. The situation requests economy activities which increase continuously in quality and quantity, the stability economy maintained, and the result of economy development which really enjoyed by all people.

In National Development Agenda 2004-2009 based on Presidential Regulation Number 7 Year 2005 on Midterm Development Planning 2004-2009, economy development has the agenda to increase public prosperity. This agenda aim to achieve 5 (five) main targets with national development priority, those are:⁴ *First*, the availability of job to reduce unemployment. *Second*, narrowing the development gap, both in income gap and district gap. *Third*, increasing human resources quality which is reflected in the fulfillment of people social rights. *Fourth*, enhancement of living environment quality and natural resources management directed to *mainstreaming* of continuing development principles whose priority is in natural resources management and living environment function maintain. *Fifth*, infrastructure support increasing, which

² *ibid*

³ *ibid*

⁴ See at annex of Midterm Development Planning 2004-2009

is performed by the enhancement of quantity and quality of various development facilities whose priority is based on Development Infrastructure acceleration.

Development agenda in this economic field is basically ideal and a reflection of what are aimed in the Constitution. Only in implementation, various problems will be faced and need the solutions, either in economy and law perspective. Some of the problems are;⁵ *First*, long and time-consume permit procedure, *Second*, low level of law certainty, *Third*, various obstacles derived from various regulations in central level or district level as the impact of transition to district autonomy, and *fourth*, Corruption-Collusion-Nepotism and bad public service, and lack of support to micro, small and medium enterprise.

Thus, the problem is how to formulate the steps in economy law field to smooth the law development agenda realization but still in the frame of national law development? How to eliminate factors blocking economy development in the perspective of national law system development?

B. Analysis

B.1. Shortening the long and time consuming permit procedure

Compared to other ASEAN member countries, permit to start one business in Indonesia takes longer time with 12 procedures and 151 days (more or less 5 months) and cost 131 percent *per capita income* (more or less US\$ 1.163). While

to start a business in Malaysia only takes 9 procedures and 30 days, with the cost only 25 percents from *per capita income* (more or less US\$ 945)⁶. On another side, to start business in Philippines and Thailand only needs each of them 50 days and 33 days with the cost each of them is 20 percents (more or less US\$ 216) and 7 percents (more or less US\$ 160) from *per capita income*.⁷

The long and complicated procedure not only results in high cost economy but also eliminate the business chance which should be taken either for the company interest and national interest in the form of jobs availability.

B.2. Providing Law Certainty

Generally, it can be stated that the law certainty has function to protect human interest. Law implementation can be normal, peaceful, but also can happen due to law violation. And, law violated should be enforced. Only through law enforcement the law objectives can be realized. And, to enforce the law, three elements should be focused, those are: law certainty (*rechtssicherheit*), Benefit (*zweck-massigkeit*) and Justice (*gerechtigkeit*)⁸.

Low law certainty is reflected from the overlapping of policies in central and district level and inter sectors. The unsteadiness of decentralization program results in the uncertainty of authority between central and district government in investment policy. Besides, there are large diversities of investment policies among districts. All causes uncertainty in national investment policy which in turn will decrease the investment interest.

⁵ *ibid*

⁶ See at annex of Midterm Development Planning 2004-2009

⁷ See at annex of Midterm Development Planning 2004-2009

⁸ Sudikno Mertokusumo dan A. Pitlo, Bab-bab tentang Penemuan Hukum, (Yogyakarta: Citra Aditya Bakti, 1993) , hal 1

Department of Domestic Affairs has cancelled 506 District Regulations (PERDA) from 1999 until March 2006.⁹ Whereas District Regulations (PERDA) as a part of positive law can be important means to preserve the order. So it needs to develop and maintain to give space for changes, and not otherwise, blocking the renewal effort just to keep the former values¹⁰, or just to accommodate a short-term interest from certain groups.

The district regulation establishment should be viewed as a law renewal effort in order to direct and accommodate law needs in line with legal awareness level of people which is developed towards modernization corresponding to the level of development progress in all fields. Therefore, law certainty and order are expected as infrastructure which should be directed to the nation's unity implementation as well as supporting infrastructure on the whole reformation.

B.3. Advancing Public Service

In accordance to the study of District Autonomy Implementation Monitoring Committee (KPPOD), cost for various quotations and for bad public service adds the overhead cost around 8.7 percents - 11.2 percents.¹¹ The Paradigm of state

organization moves from "rule government" to "good governance". Government in organizing the governance, development, and public service regarding with paradigm of *rule government* always leans more on the existing legislations which its process is done only by one part. On the contrary, the paradigm of *good governance*, governance organization, development and public service are based not only on the *government* or *state*, but has to involve all elements both intern and outside of bureaucracy (society).¹²

According to Sjahrir *Good governance* at least should be supported by three factors which should be handled well, those are;¹³ politic support factor, government administration quality, and capacity to establish, implement and evaluate the policies.¹⁴ The three factors should be fulfilled in the same time. What is stated by Sjahrir is similar with what is stated by W.J.M van Genugten explaining that:

Good governance concerns the fulfilment of three elementary tasks of government: to guarantee the security of all persons and society itself; to manage an effective framework for the public sector, the private sector and civil society; and

⁹ Data from www.depdagri.go.id

¹⁰ Further about it see Speech of President of RI in the Inauguration of Ministry of Justice 19 January 1974 in Mochtar Kusumaatmadja, *Konsep-konsep Hukum Dalam Pembangunan*, (Bandung: Alumni, 2002) hal.74

¹¹ See at annex of Midterm Development Planning 2004-2009

¹² Joko Widodo, *Good Governance, Telaah Dari Dimensi: Akuntabilitas dan Kontrol Birokrasi Pada Era Desentralisasi dan Otonomi Daerah*, (Surabaya: Insan Cendekia, 2001) hal.1

¹³ Sjahrir, *Good Governance di Indonesia Masih Utopia: Tinjauan Kritis Good Governance*, in *Media Transparansi*, 14th Edition, November 1999, from www.transparansi.or.id/majalah/edisi14/14berita, at 16 May 2005 on 09.30 WIB. In his article, Sjahrir stated that the third factor is capacity to create, implement and evaluate policies in economy. In writer's view, it is not only the capacity to create, implement, and evaluate policies in economy which become supporting factor of good governance, but also policies in all fields, either economy, politic, social, security and culture. Therefore, the writer considers that it is not necessary to put the words "especially in economy" in the third factor.

¹⁴ In administration law literature, the terminology "policy rule" in Indonesia is usually meant as *beleidsregels* or policy rules, or also called as *pseudo-wetgeving*. This product can not be separated from its use *fries ermissen*, that is body or business arrangement officials concerning to formulate the policy in various forms, such as regulation, directive, announcement, circulate. Policy rule is not legislation because the body producing does not authority as legislator. Furthermore about it, see Philipus M Hadjon cum socio, *Pengantar Hukum Administrasi Indonesia*, (Yogyakarta: Gajah Mada University Press, 1993) page.148. However, the writer viewed that what is meant by Sjahrir in his article can be regarded as "policy in the broad sense" which includes not only *beleidsregels*, but also *beschikking* dan *regeeling*.

*to promote economic, social and other aims in accordance with the wishes of the populatin.*¹⁵

B.4. Increasing Support for Micro-Small-Medium Enterprise as National Economy Development Supporting

Act Number 9 Year 1995 on Small Enterprise distinctly states the goals of small enterprise empowerment, those are: (1) Grow and increase the capacity of small enterprise to be tough and independent enterprise and can improve itself to be medium enterprise, and (2) Increase the role of small enterprise in national product establishment, extend job and business opportunity, increase export, and upgrading and even distribution of income to realize itself as the backbone and strengthening national economy structure. To accelerate goal achievement in the Act, was issued Presidential Instruction No.6 Year 2007 On Real Sector Development Acceleration Policy and Micro, Small and Medium Enterprise Empowerment.

In the Midterm Development Planning Period Year 2004 - 2009, Cooperation and Micro-Small-Medium Enterprise plays strategic position to accelerate structural changes in term of increasing living standard of people. As the place between producer and customer, a cooperation is hoped to play significant role to upgrade the bargaining position and people economy efficiency, as well as fixing business competition in

market through its positive external impact.¹⁶ On the other hand, Micro-Small-Medium Enterprise plays its role in providing job opportunity,¹⁷ giving significant contribution on economy growth,¹⁸ and spread income standard evenly. Together with that is increase of competition power and national economy endurance. It is due to large amount of Micro-Small-Medium Enterprise and become the largest number of business in every country. In Indonesia 99,9 % from the whole business is Micro-Small-Medium Enterprise.¹⁹

Micro-Small-Medium Enterprise needs to be focused on the sector which gives significant contribution in upgrading productivity for economy growth, mainly agribusiness/agro industry, manufacturing, mining and finance. Hence, it needs to enhance several points such as Micro - Small - Medium Enterprise partnership improvement, technology shift, management quality enhancement, and market extend. It is supported by Presidential Instruction Number 6 Year 2007 On On Real Sector Development Acceleration Policy and Micro, Small and Medium Enterprise Empowerment containing 2 (two) policies, those are Mobility and Human Resources Quality enhancement and supporting the growth of technology-based Enterprise.

The good news is that now Government is preparing the establishment of Micro, Small and Medium Enterprise Innovation Center as the

¹⁵W.J.M. van Genigten, Human Rights Reference Handbook, [first edition: Th. R.G. van Banning (ed)], Netherlands Ministry of Foreign Affairs, Human Rights, Good Governance and Democratization Departement, second edition, 1999, hal.97

¹⁶PSpeech of Minister for Cooperative and Small & Medium Enterprise read by Governors and Regencies/Mayors from the whole of Indonesia in the Commemoration of "The 60th Cooperative Day year 2007", Ministry for Cooperative and Small & Medium Enterprise at http://www.dekop.go.id/index.php?option=com_content&task=category§ionid=46&id=213&Itemid=302

¹⁷MSME absorbs 96,18 % from the whole labor numbers, furthermore see the article in the magazine of Deputy on Enterprise Restructure and Development, Kebijakan Peningkatan Daya Saing UKM, paper presented in National Seminar, Workshop and Exhibition of Micro, Small and Medium Enterprise (MSME) Competitive enhancement through Establishment of MSME innovation Center, 1 August 2007 in BPPT.

¹⁸In some countries SME contributes 40% from national income, while in Indonesia 53,27% PDB from SME, *ibid*

¹⁹*ibid*

coordination platform of various institutions which handle Micro, Small and Medium Enterprise in Indonesia both private and state institution.²⁰ Before the establishment of innovation center, government establish preparation team through the Coordinating Minister on Economy Affair Decree Number Kep-30/M.Ekon/06/27 on Establishment of Micro, Small and Medium Enterprise Innovation Center Team. This team involves 15 ministries added with Technology Implementation and Study Agency (BPPT), Indonesian Science Institution (LIPI) and Center Statistic Agency. This team will identify the expired patent of Micro, Small and Medium Enterprise, road map of MSME, and socialization into districts. It is hoped to establish MSME Innovation Center in the beginning of 2008 and the establishment is hoped through Presidential Decree. This innovation Center is significant to support the growth of technology-based enterprise because today there are 18 thousands applicable technology owned by MSME which have not been patented yet and almost belong to public. Through this innovation center, this technology is hoped to be owned by MSME²¹.

C. Economy Law Development in National Law System

Objects of Economy Law is mainly how to develop our national economy to fulfill public expectation. 1945 Constitution, mainly in fourth Amendment has clearly explain the national hope in

article 33 subsection (4) and article 34 subsection (2) and (3), so that the principles and duties of state apparatus in holding their economy tasks as well as become the measuring rod and direction of national economy development are clear.

National Law focus is hence to keep and enable so that, first, the legal obligation of state apparatus is implemented; Secondly, enabling all people, mainly in economy, to gain the goal properly, so national economy is a step closer to Indonesian people's expectation. Therefore, economy law does not only deal with macro economy, but also has to pay attention to the micro aspects of economy.²²

In 1945 Constitution Article 33 of Fourth Amendment, it is clearly stated that;

- (1) The Economy shall be organized as a common endeavor based upon the principles of family system;
- (2) Sectors of production which are important for the country and affect the life of the people shall be under the powers of the State;
- (3) The land, waters and the natural resources within shall be under the powers of State and shall be used to the greatest benefit of the people;
- (4) The organization of the national economy shall be conducted on the basis of economic democracy upholding the principles of togetherness, efficiency with justice, continuity, environmental perspec-

²⁰ Furthermore see <http://www.antara.co.id/arc/2007/7/21/pemerintah-siapkan-pembentukan-pusat-inovasi-umkm/>

²¹ This innovation center has been started as can be found in Jababeka and Solo, as stated by BB Triatmoko, and SD Darmono in Pengembangan Pusat Inovasi UMKM dan Inisiatif Daerah, paper presented in National Seminar, Workshop and Exhibition of Micro, Small and Medium Enterprise (MSME) Competitive enhancement through Establishment of MSME innovation Center, 1 August 2007 in BPPT.

²² CFG Sunaryati Hartono, Strategi Sistem Hukum Ekonomi Menuju Sistem Ekonomi Nasional Yang Memberdayakan Sektor Ekonomi Informal Serta Usaha Kecil Dan Menengah in "National Dialog in the field of Law and Non Law", held by National Law Development Agency, Department of Law and Human Rights RI, Jakarta, 7 - 9 September 2004

...tive, self-sufficiency, and keeping a balance in the progress and unity of the national economy;

(5) Further Provisions relating to the implementation of this article should be regulated by law.

Subsection 5 from Article 33 1945 Constitution marks that not only law shall follow the government desire as our national policy and politic, but also the determination of economy policy and politic should submit to stipulation and Law bases which are decided by 1945 Constitution and MPR Resolution, and still will be determined by law and other legislation in the future.

In another word, to arrange legislation or to decide the dispute in the court or arbitrary or to negotiate which will result in Economy Law document, the law scholar shall understand local, national and international economy problems to result fit and proper law economy product.

On the other side, to determine economy politic and policy fit to national law bases and good governance basis, economy scholar should understand national law principles and economy law regulations existing; or at least requesting and getting legal opinion from Economy Law experts.

Today, overlapping and contradiction among the legislations possibly happen. Even, the overlapping symptom, more over the contradiction among the legislation, mainly the contradiction between the lower legislation towards the higher ones; or District Regulation with

Law, becomes a violation and “ the biggest and unforgiven sin” in every legislation²³ because contradiction or inconsistency in law destructs the whole law system, that it results in law uncertainty and lost of relation of politic-law which is determined before.

Legislation in national law system development should be viewed as an effort of law reform to direct and accommodate law needs fit to legal awareness which is developed towards modernization in line with development progress in every aspect. Therefore, it is hoped to achieve law order and certainty as facilitation which should be directed towards the realization of national unity as well as functioned as the means to support progress and thorough reformation.

Legislation of law and regulation in Economy Law in accordance to Prof. Verloren van Themaat²⁴ should focus on 3 (three) aspects, those are:

- a. Protection on market role coordination towards annoyance (prevent from market coordination disturbance);
- b. Coordination of market stakeholders;
- c. Coordination among various change which will be determined by various laws, so the continuity of Economy Law regulation is maintained, in order to establish the clear and guided economy strategy/policy.

Besides, it should be considered that basically national law is a system.²⁵ System is a structure or arranged-order, a totality which consists of parts related one

²³M.R. Mok 'Economisch recht' dalam "Problemen van Wetgeving", Kluwer, Deventer, 1982, h. 145.

²⁴Op. cit. h. 151

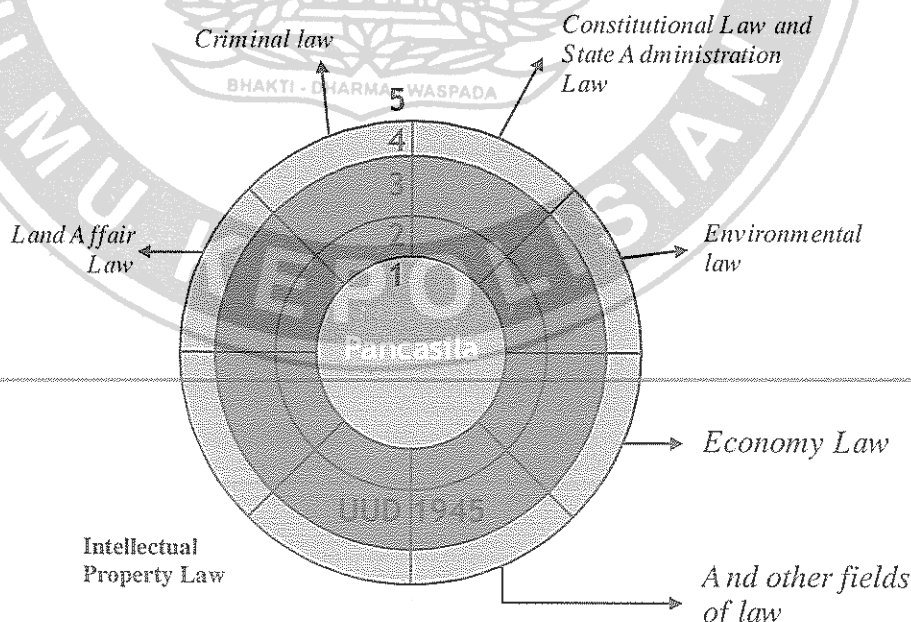
²⁵BPHN, Pola Pikir dan Kerangka Sistem Hukum Nasional Serta Rencana Pembangunan Hukum Jangka Panjang, (Jakarta: BPHN, 1995/1996) page.19

another, arranged in a plan or pattern, a result of the thought to gain one goal.²⁶ This system consists of several elements or components or function/variable which influences each other, connected one to another by one or several bases and interacts one to another. All elements/components/function/variables are closely joined and organized in accordance to a structure or certain pattern, so always influence and interact each other. The main principles correlating all elements or national law components are Pancasila (Five Principles) and 1945 Constitution, besides several other law aspects such as archipelago, nationality, and diversity. National Law System does not only consist of merely principles or legal norms, but also include all organization and apparatus institutions, legal mechanism and procedure, philosophy and legal culture, including legal behavior of government and society.

National Law System Development focuses more to substitute Dutch Colonial law and to establish new law fields which are more suitable for Indonesian base to develop. The picture of National Law System can be seen below:²⁷

Based on systemic view, National Law System includes various sub field of law and various existing forms of law which all of them have Pancasila as the main source. Pluralism of laws in Indonesia is directed to be transformable in fields of law which will develop and be developed (*ius constituendum*).

The fields of law as depicted above will be the focus of the National Law development and improvement towards Indonesian Modern Law which is based on the behaviors (last circle), jurisprudence (fourth circle), legislation (third circle), 1945 Constitution (second circle), and Pancasila as the source of law sources.



²⁶Subekti, Beberapa Pemikiran Mengenai Sistem Hukum Nasional Yang Akan Datang, Paper of National Law Seminar IV, year 1979. see also Kusnu Goesniadhie S, Harmonisasi Hukum Dalam Perspektif Perundang-undangan (Lex Spesialis Suatu Masalah), (Surabaya: JP BOOKS, 2006) hal. 75

²⁷Sumber: CFG Sunaryati Hartono, Pembinaan Hukum Nasional dalam Suasana Globalisasi Masyarakat Dunia. Speech at Professor Inauguration in Law Science at Faculty of Law, Padjadjaran University Bandung, 1991

Only with cooperation and fulfill each other interdisciplinary, a National Law System is expected to be realized, especially Indonesian Economy Law System which is modern, synchronous, holistic, and systemic. Economy Law development can not be separated from other fields of law development, even can not be separated from wider filed such as politic and culture.

Furthermore, in economic field, citizen and inhabitant should not be burdened with various law limitation and conditioned permits, before they carry out deregulation. Therefore, **coordination between institutions and synchronization between legislations is *conditio sine qua non***; not only in the field of Economy Law, but also in the field of Social Law, Education Law, Health Education, Anti Corruption, Electronic Law, Environmental Law, Law Enforcement, Court, State Administration, and so on.

D. Some Strategic Steps

From what has been explained above, some strategic steps which should be taken are:

1. Reducing transaction cost and high cost economy practice in the level of *start up* and operational of a business. The heart of this activity is deregulation completion (bureaucracy haircut) of regulations and permit procedure and implementing public institutions development.
2. Guarantee the business certainty and upgrade law enforcement, mainly dealing with interest to respect business contract, maintain property rights, mainly related to land

ownership, and fair management on the dispute settlements especially with trade dispute, strengthening business competition implementation, strengthening product standard implementation in market, and dispute settlement between producer and customers to protect the customer.

3. Developing infrastructure and supporting means for trading, among them through developing regional level commodity logistic network system and production and market information network, as well as logistic commodity network, local and regional auction market extension at district level, strengthening monitoring circulating goods, and increasing understanding and awareness about technology tools benefit.
4. Enhancing support through legal and economy structure for MSME.
5. Reform legislation harmonization between central and regional level in forming and operating business in district level by prioritizing legal certainty principle, deregulation (simplification) and efficiency in cost and time.

E. Recommendation

From explanation above, several points can be recommended as follow;

1. Completing legislation in investment;
2. Simplifying investment service procedure;
3. Consolidating in investment planning in district and central level;
4. Monitoring and supervising investment

- implementation, both foreign and domestic;
5. Developing Information system on investment both in central and district level;
 6. Strengthening capital investment institutions both in central and district level; and
 7. Reviving and strengthening farming and rural institutions to increase

access for farmers and fishermen towards production tools, developing delivery system as support from government towards farming sector, and enhancing business scale which can increase bargain position of farmers and fishermen.

8. Intensifying support towards MSME through several law products in term to support development in economy field.



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