THEORY OF DIGNIFIED JUSTICE AS A LEGAL FOUNDATION OF LAW REFORM IN INDONESIA

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Abstract

Every country, and the nation builds its own legal theory in order to explain every legal phenomenon in each country. Similarly, the theory used to explain law reform. During this time, generally used Western theories to justify the model of law reform used throughout the world, including those who are aware or unaware of various Western legal theories that have been used in Indonesia, to understand, explain, justified law reform in Indonesia. Therefore, without intent to underestimate the efforts of scientists and philosophers in understanding the law, it is time for us to build our own theory. A theory of one's own that is more suitable for us in order to understand and explain the legal phenomena that are around us and that we experience ourselves. This short paper contains a description of the main points, concerning a new legal theory. This new theory, if it can be used in order to understand, explain or even justify the legal system based on Pancasila. This includes understanding and explaining law reform in Indonesia. The new theory, I call it the Theory of Dignified Justice. This theory was built in Indonesia with sources or references of legal (*materials*) in Indonesia. As a product of thinking activities the theory of dignity takes the process of thinking activities characterized as fundamental or radical thinking.

Keywords: Dignified Justice, Law Reform, Pancasila Law.

INTRODUCTION

Reformation as a legal concept, synonymous with the concept in Indonesian, namely renewal[1]. Thus, law reform or *law reform* in Indonesian can be equated with its meaning with the concept of law reform[2]. As a model of legal life, after weakening the concept of legal life, namely "development", reform or law reform requires justification or scientific explanation through a theory or philosophy of law. Every country and nation builds its own legal theory in order to explain every legal phenomenon in each country. Similarly, the theory used to explain law reform. During this time, generally used

[1] Following the good and correct Indonesian grammar rules, the word "Renewal" comes from the "new" basic word. The word "new" gets the affix: that is the prefix "pe", with the insertion of the "m", then ends with the suffix "an". However, there are still parties who prefer the use of the word "renewal", with the same meaning.

[2] Law reform or *Law Reform* is a standard terminology that is widely used in various literatures, both within the Indonesian legal system and in other legal systems. Ali Budiardjo, *et. al.*, using terminology *Law Reform* in Indonesia. See Ali Budiardjo, et. al., *Law Reform in Indonesia*, *Diagnostic Assessment of Legal Development in Indonesia* (IDF Grant No. 28557) Vol., I, CYBER consult., Bappenas, Jakarta, 1997; See also the same terminology usage by Christoph Antons, *Intellectual Property Law Reform in Indonesia*, in Timothy Lindsey, *Indonesia Law and Society*, The Federation Press, Leichhardt, NSW, 1999, p., 304. Likewise the use of the term *Law Reform*, by GW Paton and David P. Derman (Ed.), In *A Text Book of Jurisprudence*, Fourth Edition, Oxford University Press, Oxford, 1972, P. 259

Western theories to justify the model of law reform used throughout the world, including those who are aware or unconscious of various Western legal theories that have been used in Indonesia, to understand, explain, justify law reform in Indonesia.

Once the dominance of the use of Western theories in Indonesia, has led to a hegemony or a kind of imposition of thoughts that are "colonizing", indoctrinal, carried out by a nation to other nations in the field of science, especially legal science in Indonesia. In fact, as we can generally understand, Western legal theories are built in the Western world. So, it may be that the theories are not very suitable with the conditions to be understood and also explained by using these theories, in Indonesia. In fact, there is a view, many times those theories bring problems more often, rather than solve problems.

Therefore, without intending to underestimate the efforts of scientists and philosophers in understanding the world, including the legal universe, it's time we build our own theories. A theory of one's own that is more suitable for us in order to understand and explain the legal phenomena that are around us and that we experience ourselves. This short paper contains a description of the main points, concerning a new legal theory. This new theory, if it can be used in order to understand, explain or even justify the legal system based on Pancasila. This includes understanding and explaining law reform in Indonesia. The new theory, I call it the Theory of Dignified Justice. This theory was built in Indonesia with sources or references of legal *(materials*) in Indonesia.

It is important to emphasize that even though the Theory of Dignified Justice is built as a scientific endeavor, prioritizing the legal materials in Indonesia, the Dignified Justice Theory is not allergic, or antipathy and thus behaves immediately rejects the *comparative law approach* that pays attention to also legal materials, experiences in other parts of the world, not least in the Western world.

However, the legal materials used in building a new theoretical perspective to understand, explain and even justify the legal phenomena that occur in Indonesia must first be filtered with Indonesian values, so that they are in line with Indonesian legal tastes or ideals. As we have received together, as an Agreement First[3], the values that become filters in filtering out the thoughts built using legal materials in the other hemisphere, are in the Pancasila as the (*Volksgeist soul* Indonesian). The new theory, which in this case can be used to explain the model of law reform (*law reform*) or the model of law reform in Indonesia, I call the Theory of Dignified Justice. Based on the description above, the problem in this article is how is the paradigm of dignified justice in law reform in Indonesia?

DISCUSSION

Philosophical (ontological, epistemological, and axiological) understanding of

[3] Teguh Prasetyo Dan Halim Barkatullah, 2012, *Filsafat, Teori, & Ilmu Hukum Pemikiran Menuju Masyarakat yang Berkeadilan dan Bermartabat*, Jakarta: RajaGrafindo Persada, p., 367. Read also Teguh Prasetyo, 2015, *Keadilan Bermartabat Perspektif Teori Hukum*, Bandung: Nusa Media, p., 46.

law reform in the perspective dignified Justice Theory can be explained by looking at a comparative picture of law and legal practice - how to implement law reform - referred to. Following this, an overview of the meaning of law reform in the perspective of the Dignified Justice Theory with a comparative approach to law reform (*law reform*) conducted in England and in Indonesia.

There is a view that comprehensive studies or studies in order to understand and explain law reform, generally can only be done by exploring political, economic and social goals and culture[4]. It's just that, if it is done then it is not enough to describe everything in this short paper. After all, considering so many conflicting questions in political, economic and societal and cultural goals, then the science of law, in this case the Theory of Dignified Justice goes a long way in fulfilling the demands behind the understanding as stated above, enough only to learn *(excursions)* at least two or object investigation. *First*, namely the laws and regulations that apply in a country; *second*, to study court decisions.

or *law reform* found its first meaning by reviewing the fact in the literature that all countries in the world, including Britain and Indonesia, see it as something urgent (*an urgent need*) to carry out continuously, without stopping, what is called cut or amputate and dispose of remnants of old relics that feel unworthy and useless anymore, and even instead create a lot of disturbances (*the inconvenient relics*)[5] in the system, so that they are no longer fit to be maintained in the system of laws and jurisprudence (*case laws*) that still exist in the legal systems of each country. In carrying out legal development to reorganize and renew, legal politics includes the formulations of new rules and principles of law, without having to change the basic principles that form the basis on which the legal structure of each country is laid.

Renewal, in the first meaning according to the Theory of Dignified Justice above, is carried out for example by fulfilling legal demands to simplify and clarify in the implementation of the principles and principles of law in the prevailing legal system. In addition, in the first meaning, law reforms simplify procedures, including costs and timeframes for resolving cases or in fulfilling the demands of justice from justice seekers, whether it is procedures for criminal, civil, state administration procedures, religion, military and so on; not underestimated the simplification of various procedures for the management of licensing, dispensation and various types of administrative instruments, formalities that must apply in a country.

In Indonesia, all the things related to the meaning of the first law reform that I just mentioned above, must involve qualified legal experts. The jurists must be truly people who have the will to continue working hard, especially in carrying out detailed, detailed and in-depth studies in order to ascertain what must be changed, or even what must be

[4] WS Holdsworth, California Law Review, Vol. 28, (1940), p, 586.

[5] GW Paton and David P. Derham, *Op. Cit.*, p., 259.

amputated and what will be replaced and the rules and principles that replace everything that must be changed and improved, in principle in accordance with the desired goals, or in line with the goals of the country[6].

It is necessary to reiterate the purpose of establishing an Indonesian Government, as formulated in the original 1945 Constitution of the Republic of Indonesia, namely: "... to protect the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, to educate the lives of the nation, participate in carrying out world order based on independence, eternal peace and social justice ... ". I am of the opinion that a postulate contained in the Theory of Dignified Justice, namely the purpose of law to achieve dignified justice, has only been achieved if the law, including the legal system, is capable of humanizing human beings (*nguwongke uong*). The postulate can be distilled from the formulation of legal objectives outlined in the Preamble to the Original 1945 Constitution above.

In line with the meaning of the first law reform above, it needs to be added, specifically in criminal law, criminal law reform contains the meaning of changes to criminal law. Criminal law reform also concerns the issue of the formation of a new Criminal Code as a source of Indonesian criminal law[7]. In addition, in Indonesia criminal law reform (KUHP) is felt to be very urgent because in terms of sociological, political and philosophical and practical aspects of the existing Criminal Code are no longer sufficient. In terms of sociology, the Criminal Code is out of date and no longer matches the condition of the Indonesian people today[8]. From the political point of view, the current Criminal Code is a legacy of Dutch colonial products. From a philosophical point of view, the Criminal Code does not originate from traditional philosophical values, but coming from the outside after being screened with the values of Indonesian philosophy, namely Pancasila, is still felt as a juridical reference. In practical terms, the Criminal Code has a lot of limited legal spirit confined by texts that are generally in Dutch[9].

He also stated that the reform of criminal law is an effort to reorient and reform criminal law in accordance with the sociopolitical, socio-philosophical, and socio-cultural central values of Indonesian society that underlie social policy, criminal policy and criminal law enforcement policies are essentially pursued by an approach policy-oriented as well as value-oriented approaches. On that basis, the nature of criminal law is established[10].

In essence, criminal law reform is part of policy (rational effort) to renew the substance of the law (*legal substance*) in order to make law enforcement more effective. Criminal law reform is also essentially a part of

[6] Paton & Derham: "*In this sphere jurisprudence should indeed be crative study by focusing attention on such parts of the law as do not achieve the purpose for which they were designed*". Paton & Derham, (1972), *Loc. Cit*.

[7] Teguh Prasetyo, 2013, *Hukum dan Sistem Hukum Berdasarkan Pancasila*, Yogyakarta: Media Perkasa, p., 100.

[8] *Ibid.*

[9] *Ibid*, read also Teguh Prasetyo, 2011, *Kriminalisasi dalam Hukum Pidana*, Cet. Kedua, Bandung: Nusa Media, hal., 30.

[10] Teguh Prasetyo, (2013), *Loc. Cit*.

a policy (rational effort) to eradicate / overcome crime in the context of protecting the community. Furthermore, the nature of criminal law reform is also part of policy (rational effort) to overcome social problems and humanitarian problems in order to support national goals (ie "*social defense*" and "*social welfare*"). Similarly, criminal law reform is an effort and reassessment of the main points of view, basic ideas, philosophical, socio-political and socio-cultural values that underlie criminal policies and criminal law enforcement policies so far. It is not a renewal of criminal law (reform) of criminal law if the value orientation of criminal law is aspired to be the same as the value orientation of the criminal law of the colonial inheritance[11].

The second meaning of law reform is the establishment of a special commission Act which is tasked with investigating all legal issues that arise, and is also tasked with proposing to parties who have the authority to make laws and regulations with consideration and facts. supporting facts, the results of scientific research on law that can be used as a basis for improving the law and the legal system.

The Royal Commission or Special Commissions established in the UK, like what they call *the Criminal Law Revision Committee*, are examples of further steps in the meaning of law reform. In the perspective of the theory of dignified justice, in Indonesia, it has actually been started for a long time, including during the era of President Gus Dur. During the reign of Gus Dur, a Presidential Decree was enacted regarding the National Law Commission. The commission was formed in order to realize a national legal system that guarantees the rule of law and human rights based on justice and truth, and reviews legal issues and prepares reform plans in the field of law.

Compared to *the Law Commission* British, the Indonesian Law Commission is more advanced, namely the number of those involved in the Commission is more than one person. The number of legal experts involved in *theLaw Commission* Britishis five people, while in the National Law Commission there are six people.

Law reform also means the readiness of higher education laws, and the faculties of law *(legal education),* to continue to strive hard in doing research on the reality of the norms governing the various dimensions of life in society. Legal education can contribute to the parliament that makes laws together with the President, as well as contributing in the form of thoughts of the results of research to judges who decide cases in the courts to continue to ensure that they use their capacity to realize a just and dignified law .

National criminal law reforms in the future must be able to adjust to new developments, especially international developments that have been agreed upon by civilized society[12]. The renewal of criminal law as part of law reform in general, has the

[11] Barda Nawawi Arief, 2005, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Bandung: Citra Aditya Bakti, p., 3.

[12] Muladi, 24 Februari 1990, *Proyeksi Hukum Pidana Materiil Indonesia di Masa Mendatang*, Pidato Pengukuhan Guru Besar dalam bidang Hukum Pidana pada Fakultas Hukum Universitas Diponegoro, Semarang, p., 8 – 9.

character, is formed not only for sociological, political and practical reasons, but consciously must be prepared in the framework of the national ideology Pancasila. The next characteristic of criminal law reform is not to ignore aspects related to the human condition, nature and traditions of Indonesia.

Criminal law reform is also characterized by being able to adapt itself to universal tendencies that grow in the association of civilized society. In connection with the recognition that the criminal justice system, criminal politics and law enforcement politics are part of social politics, the reform of criminal law also needs to remember the very harsh nature of the criminal justice system and one of the preventive criminal objectives, then criminal law reform must also follow think of preventive aspects. It is also a characteristic of criminal law reform.

Likewise, criminal law reform is basically characterized as part of a larger system, namely the political, economic, social, cultural, defense and scientific systems and technology systems. In such conditions, the position of criminal law is a *dependent variable*. The thing that needs to be highlighted is that criminal law must always be responsive to the development of science and technology in order to improve the effectiveness of its functions in society[13].

Beyond that, in Indonesia, law reform has also been implemented through the involvement of the World Bank as a funder. At that time it was stated that law reform was a pragmatic way that was chosen by the world that respected Indonesian lawyers to pay attention to its own law reforms in order to support prosperity and prosperity not only for Indonesia, but for the world. Therefore, with a background of consideration to facilitate Indonesia's increasing economic growth, as well as the opening of investments and in order to adjust to the pattern of transactions in increasingly complex international trade, a number of law reform agendas were proposed.

At that time, some of the things that were recommended to be updated in the Indonesian legal system were: first, there were a lot of legal basics, especially the trade law which was still conservative, and relied more on the laws of the products of the colonial government followed in the 19th century. Indonesia needs an affirmation that the structure of its legal basis, namely Pancasila can truly guarantee that this country enters the era of global economy in the 21st century.

One thing related to reform is to ensure that the basic structure of the Indonesian legal system, in the law reform report referred to in above, namely about alternative dispute resolution mechanisms or what is known as *Alternative Dispute Resolution* (ADR). It is recommended that the value of consensus in the basic structure of the Indonesian legal system must be modernized, so that it can cover the techniques of modern consensus deliberation, such as negotiation, conciliation, mediation, and arbitration.

The meaning of reforms to ensure that consensus is reached, a value in Pancasila,

[13] Teguh Prasetyo, (2011), *Loc. Cit.*, p., 32-33.

especially the Fourth Precept, also contains the possibility of recognition of modern methods of dispute resolution as stated above in line with the demands of the world. In this connection, the ninth United Nations (UN) Congress held in 1995 has raised the issue of empowering ADR as an international issue for reforming criminal justice management which is a legal demand and a sense of universal justice.

In a document, namely A / CONF, 169/6, the intended need is revealed as follows:

The technique of mediation, consiliation, and arbitration, which has been developed in the civil law environment, may be more applicable in criminal law. For example, it is possible that some of the serious problems that involve fraud and white-collar crime poses for courts can be reduced, if not enterprisingly eliminated. In particular, if the accused is a corporation or business entity rather than and individual person, the fundamental aim of the court hearing must be to be implemented but to achieve outcomes that are in the interest of society as a whole and to reduce the probability of recidivism.[14].

The emergence of thinking about the use of alternative settlement or alternative dispute resolution (ADR) mechanisms in the settlement of criminal cases on the basis of the consensus agreement, in Indonesia can be seen as a form of correction of the existing system. The correction is precisely contained in the system itself, namely in Pancasila, in this case, as stated above, is contained in the Fourth Precept of Pancasila. Correspon-dingly, the correction also came from the peak environment of the highest court in Indonesia, in this case from the element of the Supreme Court of the Republic of Indonesia. In the perspective of the Theory of Dignified Justice, that thought can be seen as an expression of desire from within the (*Volksgeist soul* Indonesian); because he was born from the history of the nation's development and sense of justice even though it was not too different in meaning and enthusiasm with universal thinking, the demand for justice as seen in the above quotation, was also considered at the level or in international forums such as the United Nations.

Indonesia as a rule of law (rechtstaat) has determined Pancasila as the foundation and philosophy of the state, so all state rules must be sourced and imbued by Pancasila and the 1945 Constitution[15]. In relation to the renewal of criminal law in Indonesia, the values of Pancasila must penetrate the national law, including the national criminal law, which must be oriented towards values as stated in the First Precept of Pancasila: Godhead of the One. Here law and criminal law in particular must be based on Godly values. Law and criminal law must also be fair and civilized humanity. Law and criminal law contain the values of Indonesian Unity. Among others, not discriminating between ethnic groups, races, groups and religions, seeking a balance between common interests rather than personal or group interests. Law and criminal law must also be inspired by

[14]Dokumen PBB A/CONF, 169/6 .

[15] Teguh Prasetyo, (2013), *Op. Cit.*, p, 105.

popular values led by Wisdom and the Policy in Representative Consultation. Among other things, prioritizing the interests of people's welfare, resolving conflicts wisely through deliberation or kinship, and the law and criminal law must be Socially Just. Among other things, fair treatment regardless of status, position and position, especially in the fields of law, economics, politics and social culture[16].

CONCLUTION

Thus a brief description of the theory of dignified justice as a finding that can be used, not only to understand and explain philosophically the existence and establishment of law, including legal politics, and more specifically criminal law politics but can also be used to carry out reforms (reformation of law in general in the Indonesian legal system based on Pancasila, especially the reform of Indonesian criminal law).

As a product of thinking activities, the Dignified Justice Theory takes the process of thinking activities characterized as fundamental or radical thinking. The process of observing or thinking activities rather than the Theory of Dignified Justice, as a legal science and which results in a Theory of Dignified Justice takes a method, path or scientific approach[17]. The approach used in the thinking process until the theory of dignified justice is obtained as a product; The following, how to use the Theory of Dignified Justice is dominated by a philosophical or *philosophycal approach*.

Philosophy is thinking radically. Radicals come from the Greek word, *radix* which means "root"[18]. Thinking radically is a philosophical characteristic; Likewise the same characteristics can be found in the Theory of Dignified Justice. Radicals, which are understood in the Theory of Dignified Justice not radicalism. Radicalism is ideology, there is a suffix of *ism* in radicalism. The growth of *ism* in English is the same as *ism*, a *suffix* which means ideological teaching. Legal philosophy is not dogmatic and not skeptical[19]. While the radical concept in understanding the Theory of Dignified Justice has limits.

Meant by the limit, and can be seen as another feature of the Dignified Justice Theory is that in thinking fundamentally, the Theory of Dignified Justice is responsible for his conscience. Here is the relationship between freedom of thought in philosophy and ethics contained in the law that underlies the process and results of these thinking activities[20]. The theory of dignified justice has a vision that is in line with the purpose of the law itself but rejects the radicalization of science, including legal science for ideological purposes.

The theory of dignified justice is the product of a process of fundamental or radical thinking and takes place in a long time and is*sustainable*. As a result of a process of thinking or philosophizing activities, the

[16] *Ibid*., p., 105-106.

[17] Poedjawijatna, *Tahu dan Pengetahuan, Pengantar ke Ilmu dan Filsafat,* 1991, Jakarta: Rineka Cipta, hal., *25.*

[18] Teguh Praseyo dan Abdul Halim Barkatullah, *Op Cit*, p., 1-3.

[19] *Ibid*., hal., 6.

[20] *Ibid*., hal., 3.

Theory of Dignified Justice does not stop with the writing of a book containing the main points of thought about the Theory of Dignified Justice. As stated above, the thought activity process adopted in the Theory of Dignified Justice continues as long as the law still exists and guides human life and society in general. *Ubi societas ibi ius*[21]. Moreover, the Theory of Dignified Justice will continue to continue to follow and be in and guide the life of the law and the legal system of *de lege lata*.

Scope of meaning in the process of thinking that is endless in the Theory of Dignified Justice as a new theory, the manifestation of the law reform effort exerts greater weight on the enactment of the law and the operation of the legal system of the Republic of Indonesia (NKRI) based on the philosophy of the nation or mind Indonesian law (*Volksgeist* Indonesia) namely Pancasila. Even so, it does not mean that the Theory of Dignified Justice must feel lost the opportunity to function as a reflective tool or used in the framework of the falsification process, then justification, and legal reasoning as a system of people's life human beings with universal values in Pancasila.

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[21] Teguh Prasetyo, 2012, *Op Cit*., p. 1.