ALTERNATIVE MODEL CONCEPT OF LAW TO RESPOND THE IMPACT OF GLOBALIZATION OF LIBERAL DEMOCRATION IN INDONESIA

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Abstract

Democracy is a universal state order with the concept of sovereignty vested in the people and implemented as an application of human dignity with the value of brotherhood, equality and freedom. The big issue for Indonesia is a communal atmosphere and collective behavior that is fading while the competitive behavior of individuals is increasingly valued. Subsequent impact is the blurring of the benchmark assessment of individual behavior, which in turn trigger the formation of social issues that increasingly complex. There are at least three alternative models of law concept responded impact of globalization of democracy, first: engineering and social control over management model, characterized by results rather than process-oriented; second, the critical model where the law continually refined through process of falsification; third, the law is formulated, implemented and enforced based on the postulate-progressiveresponsive.

Keywords: globalization, democracy, law concept

Abstrak

Demokrasi secara universal adalah tatanan kenegaraan dengan konsep kedaulatan berada di tangan rakyat dan dilaksanakan sebagai penerapan martabat manusia dengan nilai-nilai persaudaraan, kesetaraan dan kebebasan.Persoalan yang besar bagi bangsa Indonesia adalah suasana dan perilaku kolektif komunal yang semakin memudar sedangkan perilaku individual yang kompetitif semakin dihargai. Dampak selanjutnya adalah kaburnya tolok ukur penilaian terhadap perilaku individu, yang pada gilirannya memicu terbentuknya persoalan sosial yang semakin komplek. Terdapat sedikitnya tiga model alternatif konsep hukum merespons dampak globalisasi demokrasi, *pertama*, model rekayasa dan kontrol sosial yang lebih berciri managemen berorientasi hasil ketimbang proses; *kedua*, model kritikal di mana hukum terus menerus disempurnakan melalui proses falsifikasi; *ketiga*, hukum diformulasikan, diterapkan, dan ditegakan dengan berpedoman pada postulat-postulat hukum progresif-responsif

Kata kunci : globalisasi, demokrasi, konsep hukum

Preface

Conceptually, the law can be interpreted as a kind of social phenomenon. Law, in fact, is not a phenomenon that is alienated from other social phenomena. Society consists of individuals who have in common and unique. Every individual has an infinite desire but his ability is limited, so in social life there is always the potential for dispute/conflict and/or cooperation among individuals/groups.

Continued existence of society, in this situation, is only possible if there is provided a method of problem-solving agreed. Such methods must be convincing or, if necessary, forced realization. That "asbabun nuzul," "raison d'etre" law inherence existence in society. However, the public was never fully static, fast or slow changing. Based on the thinking of structural-functional sociology Talcott Parsons, community change by itself trigger a change in the legal sys-

tem as well. In this case the cause of social change is interpreted as a change in the law.[1]

Today Globalization,[2] as the most massive form of social interaction, is a special phenomenon in human civilization, which is constantly moved shaping the global community. The development of globalization has become a major force that keeps flushing and affects various aspects of life in the nation and state. Indonesia in towards a more dignified civilization faced a variety of influences other ideo-logies.[3]

Changes triggered by a wave of liberal democracy, on a more subtle level, touching aspects of the ideals of the law itself. The essence of democracy is the power vested in the people. Government comes from, selected by, and works for the welfare of the people, while the essence of liberal ideology is "freedom". Implementation of that twometa-narrative (power and freedom) is undoubtedly leads to pluralism.

Globalization of liberal and pluralism democracy has been implicated in the pattern of social life in Indonesia. As a method of human and social problem solving, then of course in turn the impact of liberal democracy to the complexity of the social problems in Indonesia will affect the effectiveness of the law. The essence of freedom in both meta-narrative described above is a catalyst for the infinite complexity of the legal function in people's lives. Therefore, the construction of an ideal model required for the law identification with ideals of law in terms of responding to the impact of liberal democracy.

Problem

How does the concept of alternative models of law in responding to the impact of globalization of liberal democracy in Indonesia?

Discussion

Alernative Models
Engineering and Social Control Model

For Pound, law progression arguably is a necessity. "Law must be stable and yet it can not stand still". Thus, the opening sentence Roscoe Pound in the Interpretation of Legal History. Furthermore Pound stated that thus all thinking about the law is an attempt to reconcile the conflicting demands between the need for stability and the need for change. Social interest in terms of public security (general security) directs man to establish a definite basic for controlling human action, and thus a social order that is sturdy and stable can be guaranteed. Social change which is steady also requires continuous adjustments to the demands both for the fulfillment of other social interests as well as responds against new forms of threat to social security.[4]

According to Pound, a common problem for law thinkers is how to continuously identify and describe the development of the social problems that the solution is within the jurisdiction of the law. The next problem is how to"up-date"the theory of existing laws in order to build a solution model.[5] Roscoe Pound, with such understanding, judging that the paradigm of law before the era dominated by the "lex naturalist" as found by the inspiration or the ratio already "out of date, and needs to be replaced. Pound, In the early twentieth century, postulates a new legal paradigm. Law is not found, but deliberately made and used as a means to control and manipulate people's lives. This Pound's legal paradigm establishes the reason of the state nation governments to legitimize the maximization of control and engineering of life of its citizens.

On a more general level, history reveals the existence of a variety of large and small civilizations in the past, each of which is characterized by the way and lifestyle (way of life, life style) typical of the various community groups.

1   Sharyn L. Roach Anleu, 2010, *Law and Social Change.* Los Angeles: Sage, page 41.
2   See Budi Winarno, "Globalisasi dan Masa Depan Demokrasi", available at the website journal.unair.ac.id, accessed on 7th January 2015.
3   Lemhanas RI, "Memperkokoh Nilai-Nilai Pancasila", *Jurnal Internasional Kajian Lemhanas RI*, 14th December 2012 Edition available at the website www.lemhanas.

go.id/images/.../jurnal/jurnal_internasional3.pdf, accessed on 11th January 2015.
4   Bernard L. Tanya, Yoan N. Simanjuntak, and Markus Y. Hage, 2013, *Teori Hukum; Strategi Tertib Manusia Lintas Ruang dan Generasi*. Yogyakarta: Genta Publishing, page 139.
5   *Ibid.* page 143

Many civilizations in the past resulted in no positive law that is universal in the beginning. However, one characteristic of a great civilization, where and anytime, is the ex-pansionist nature that is based on feelings "adigang, adiguna, adigung". The nations of white felt to have a superior civilization and therefore feel obliged to civilize other parts of the world which are assumed to be uncivilized. Civilitation varied ways, such as through colonization, ideology domination, economic activity, how to having state and how to arbitrate.

Dutch colonization against Indonesia and concordance political law on one side can be inter-preted as part of the "white man burden" for civilized inlander, and on the other side can also be in-terpreted as a form of law west globalization to the eastern world. Since then, the "ratio legis" and "anima legis" law in Indonesia is dominated by two pairs of keywords western civilization, namely the "cosmos vis a vis anthropos", and "nomos vis a vis logos". In the most widely sense, the globalization of law is part of the globalization of western civilization; whereas in the more specific sense is the ratio legis of globalization and anima legis western law.

Social control is a means of social engineering partner in sociological jurisprudence. That is why Pound convinced that social engineering is a crucial task of all thinking about law. More realistically, the function of law is to establish a balance between the various interests. Pound sort of interest in three main categories: public interest, individual, and social.

Besides as a means of engineering, the law also serves as a means of social control. This dual function includes all pieces of contemporary thinking about overcoming all social problems, including those triggered by the emergence of liberal democracy and pluralism social reality. In this case, the "rational" is the key word and in which the paradigm of engineering and social control affirmated. Transformation understanding of the law and social change as a result of liberal democracy, so it do not grow in the empty environment, but rather related to changes in major changes in the social life of previous centuries, of a free market society, through the reform period, towards the welfare state in the era of globalization-postmodern recently.

Legality, under the influence of the legal function as a means of social control and, is one option, the law is no longer the only action determinant of what conduct should be punished and how to punish. Those who are "on duty" to uphold the law are relatively free to determine what and how. Discrete enhanced law enforcement authority, for which the benchmark is not a process but its effects.

In law philosophical definition and control as a means of social, goals are no longer limited to the scope of the meaning of the text of legislation, but determinated and controlled by extralegal policy. When the law was conditioned as a set of instruments to achieve certain social objectives, then the problem for the criminal judge is to determine policy options, to determine what rules are used, within the meaning of whatinterpretative and in what way is implemented. Policies judge may exceed or eliminate the scope of the meaning of the text of legislation. Strategic thinking can only take over the normative thinking.

Critical Legal Studies Model

Critical Legal Study Model (CLS)[6] is the antithesis of the previous models that decomposed by Pound. Criticism target of the Critical Legal Studies exponent to the law legalism, if want to be summa-rized, rests on three (3) things. *First*, that the real ideology of legal certainty is a myth. In fact, the idea of legal certainty is difficult to materialize, except in the simple case and the rules of the law have been established. Moreover, the existence and manifestation of the rule certainty idea will depend on the orientation and political vision, moral and economic of judges or law enforcement. *Second*, the law has failed to realize the main purpose of demo-

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6   See on Widodo Dwi Putro, "Kritik Proyek Justice For The Poor", *Jurnal Arena Hukum*, Vol. 6, No. 2, August 2012

Edition, Malang: Fakultas Hukum Universitas Brawijaya, page 151.

cracy which requires law enforcement and equitable manner fairly. This is evident from the empirical reality in which there are many groups in the periphery that are not able to enjoy the protection and equal treatment before the law. *Third*, in the economic field the judges pointed out that, as well as through the management of the law rule, are not able to determine the point of balance between the interests of the state and individual interests.

The three main issues that became the criticismtarget of Critical Legal Studies's exponent, namely the ideology of the law certainty democracy or more precisely equal treatment before the law and problem of the interests balance, packed with a radical critique of the formalism and objectivism. Formalism intended Unger, as the main exponent of the CLS, is a commitment to the legal justification methods that vary due to differences in cognition on the basis of social life and or ideological conflicts, philosophical and visionary. While objectivism is rather than that the authoritative law materials such legislation, to maintain or preserve the pattern of human relationships.

A social change in the country is due to the globalization.[7] In the context of globalization changes according to Scholten analysis includes three aspects: improvement in the relationship boundaries (cross border relations), an increase in the openness of the area (open border relations) as well as in relations between regions (transborder relations). The amendment is the compression of space and time which raises the complexity of the meaning of globalization.

Changes as the impact of globalization not only cause economic inequality[8] that generates a representation of divergence between the north as the representative of the developed countriesand south as a third world country, so as to form a dichotomy develop-underdevelop, and raises the issue of inequality culture. The indication can be seen from the east public attitudes began to move away from the estearn roots become westernized by adopting western values such as individualism, personal egoism, consumerism, materialism, and hedonism.

State order of the most widely used is a democracy (a country with a system of government in any democratic country in the world admitted). Many democratic countries result from the process of democratization and democratization move from an authoritarian regime through the stages of tran-sition to democracy that leads the next stage is the stage of democratic consolidation. Democratic transition contains political liberalization and democratic consolidationcontains structures and proce-dures institutionalization of democracy. But not all political liberalization continues with the success of democratic consolidation. Many failures in the process of consolidating democracy[9] and the country is led by authoritarian regimes for example in some countries of Latin America.

The transition period has passed by beginning with the fall of the authoritarian new order. At this time the result of democratization processfrom the transition period which requires considerable time and tremendous efforts at stake.[10] Democracy more easily thrives in communities whose economies are good, equitable and fair. Instead of democracy will be halting the public irrational, subjective, and primordial. Building a democracy is not enough to develop a mechanism of succession but the more important is to build a culture as the democration moral basis. The condition of Indonesian economy

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[7] See Yanto Sufriadi, "Penerapan Hukum Progresif Dalam Penegakan Hukum Di Tengah Krisis Demokrasi", *Jurnal hukum UII*, Vol. 17 No. 2, April 2010 Edition, Yogyakarta: Fakultas Hukum UII, page 237.

[8] See Larner opinion in Mark Purcell, "City-Regions, Neoliberal Globalization and Democracy: A Research Agenda", *Internationl Journal of Urban and Regional Research*, Vol. 31 No. 1, March 2007 Edition, page 200 available at www. faculty.washington. edu, accessed on 5th January 2015.

[9] See Soebagio, "Distorsi dalam Transisi Demokrasi di Indonesia", *Journal UI Makara, Social Humaniora,* Vol.

13 No. 12, Decem-ber 2009 Edition, page 116, available at Journal.ui.ac.id/humanities/article/view, accessed on 10th January 2015.

[10] Muhammad Labolo and Muhammad Alif Hamka, "Reconsidering The Indirecr Election For the Head of Region, Response toward the current Direct Democration Mechanism System in Indonesia", *Asian Social Science,*Vol. 8 No. 13, 2012 Edition, available at htpp://www.ccsenet.org/journal/index.php/ass/ accessed on 9th January 2015.

which are unbalanced and unfair accompanied by too many unemployed and the poor results in less conducive to the consolidation of democracy.

Concept, idea, the values idea of democratization actually had existed in the beginning of independence and the results is Republic of Indonesia agreed as state of thesovereignty people. This can be seen in the thinking of the Republic of Indonesia founders, Hatta to express the value of bro-therhood through the idea of helping ideals that have been embedded in the hearts of Indonesian society since time immemorial and Soekarno with the ideas of mutual cooperation.[11]

Democracy which is proposed by Sukarno of Indonesia's democracy is based on a different philosophy of mutual cooperation with liberal democracy that is based on the philosophy of individualism. Difference between the two is a liberal democracy that is based on the philosophy of individualism emphasizes the value of freedom and equality rather than the value of fraternity, while democracy is based on the philosophy of mutual cooperation emphasizes the brotherhood and equality value rather than the value of freedom.

Democracy, in general, is a state order with the concept of sovereignty vested in the people and implemented as an application of human dignity with the values of brotherhood, equality and freedom in a democratic manner and purpose. Liberal democracy and mutual cooperation democratic similar based on brotherhood values, freedom and equality. The differrence is only in the prioritization of the three values. Indonesian Democratic expected (ideal) as a concept that has been thought by The Faunding Father[12] Indonesia is a mutual coorperation democracy that emphasizes brotherhoodand equality value than the value of freedom.

Democracy is essentially a form of civilization and civilization is a product of consciousness.[13] Related with that thing, looks a process is the process of implanting the individual values into collective culture is being happened in Indonesia. As a process it is a tug between the individual and the com-munal. This process will take a long time until finally reached a steady state, namely Indonesia as a democratic constitutional state to create a social order that is orderly, harmonious equitable, and prosperous.

Progressive/Responsive Law Model

Law is undoubtedly a progressive character, in the sense of never ever stagnant.[14] Progressive law, as such, can be ambiguous: "back to basic", or in contrast, the old legal order deconstructed before the new reconstructed. Progression of law, when it reached the zenith stagnation, the reforms should be departed from the law of nature itself.

Norbert Jegalus, specifically trying to apply the thought of Jacques Derrida's deconstruction tothe law texts as an issue in the implementation of progressive laws. In short, the text of legislation needs to be deconstructed its meaning in order to obtain a new understanding, which is not preferred, but veiled, in the sense intended. Law text should not be treated as "noun", a representation of a par-ticular object, but rather treated as "verb" is dynamic, referring to various other texts, and therefore actually implies infinite. Meaning and implementation of progressive laws, thus have a very wide selection of alternatives.

According to the authors, the progressive understanding of the law refers to the concept of Kohler about law order task. According to Kohler, the task is two-sided. *First*, "... to maintain the existing values of civilization". This is which believed to be the final destination of law

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[11] See on I Nyoman Nurjaya, "Pembangunan Hukum Negara dalam Masyarakat Multikutural: Perspektif Hukum Progresif", Jurnal Hukum Progresif, Vol. 3 No. 2, Year 2007 Edition, Semarang: PDIH Universitas Diponegoro, page 16.

[12] Lemhanas RI, *op.cit.*, page 98.

[13] Idjang Tjarsono, "Demokrasi Pancasila dan Bhineka Tunggal Ika Solusi Heterogenitas", *Jurnal Transnasional,*

Vol. 4 No. 2, February 2013 Edition, Universitas Riau, page 883 available at ejournal.uri.ac.id. Accessed on Sunday 11th January 2015.

[14] Satjipto Rahardjo, "Hukum Progresif, Kesinambungan, Merobohkan dan Membangun", *Jurnal Hukum Progresif*, Vol. 2 No.1, Year 2006 Edition, Semarang: PDIH Universitas Diponegoro, page 1.

by the ancient Greek, Roman, and medievallaw philosophers. *Second*, "... to create new ones --- to carry forward the development of human powers". This is consistent with the concept of human rights on the principle that human beings are born and exist independent. Every generation is not necessarily tied to the legal norms of the past, which is constructed by the ancestors who had long implemented. Old legal norms are constructed according to the past situation, but not necessarily suited to the conditions of the present and the future. Humans today are free to choose new legal norms in accordance with the present conditions, as well as the man future is free to determine its own legal norms. The denial of this proposition is a deviation from the principle of freedom and also "counter-productive" to the goal of human perfection. Herbert Spencer calls such deviations as: "... the government of the living by the dead", when in fact, as stated by Thomas Jefferson: "The earth belongs in usufruct to the living; ... the dead have neither rights nor power over it". In order to respect the freedom of future generations to organize themselves, bearers of law in Indonesia today can adopt the principle of education in Indonesia: "Ing ngarso sung tulodo, ing madya mangun karso, tut wuri handayani".

Closing
Conclusion

Democracy is universally a state order with the concept of sovereignty vested in the people and implemented as an application of human dignity with the values of brotherhood, equality and freedom. Liberal democracy and mutual cooperation democracy alike based on the values of brotherhood, freedom and equality, while the difference is on the third priority of these values. Liberal democracy prioritize equal freedom; mutual coorperation democracy help prioritize equality in the fraternity. Big problem for Indonesia is communal atmosphere and collective behavior is decreasingly fading while individual competitive behavior increasingly appreciated. Subsequent impact is the blurring of the benchmark assessment of individual behavior, which in turn triggers the for-

mation of increasingly complex social problems. There are at least three alternative models in terms of responding to the impact of liberal democracy, namely: *first*, engineering model and social control over management, characterized by results rather than process-oriented; *second*, the critical model in which the law continuously refined through a process of falsification; *third*, the Law is formulated, implemented and enforced based on the postulates of progressive-responsive law.

Suggestion

The idea of Pancasila democracy should be implemented as a form of democracy based on the values of Indonesian culture. The law must be reconstructed continuously, in order to keeps it functioning effectively to ensure legal certainty in solving social problems in the situation of the people who always changing, so it does not left behind social development.

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