

LEGAL CODIFICATION RELEVANCE WITH THE NATIONAL LEGAL SYSTEM

Khomaini

khomaini1980@gmail.com

The Student of Law Doctoral Programme UNISSULA

Abstract

Problems related to the validation of law or legislation are actually not based on the substance of content material contained in codified laws or regulations. The problem with the actual legal codification lies in the codification procedure which is still a debate. The legal or legal codification is indeed not in conflict with Pancasila as the source of all legal sources. Code of law or legislation also does not conflict with the conditions of the community. Likewise the 1945 Constitution of the Republic of Indonesia is as the highest constitution or law. So the legal validation is constitutional. In addition, legal or statutory codification also does not conflict with other laws and regulations.

A. INTRODUCTION

The State of Indonesia is a legal state that has been very clearly stated in the 1945 Constitution of the Republic of Indonesia. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the State of Indonesia is a State of Law. As a law state, it is clear that the law is upheld in the life of the state. Therefore, the state often makes laws through state organs to ensure order for the people. No wonder there are so many laws made by the Indonesian state. Even before the independent state of Indonesia, there were laws created by the colonial state and later adopted by the State of Indonesia.

The Criminal Code, the Civil Code, and the Commercial Code are colonial inheritance laws which were later adopted and made into law in Indonesia through law. This condition is now not surprising if many Indonesian people say that the Criminal Code, Civil Code and Commercial Law are not in accordance with the conditions of the Indonesian people. This situation gave rise to new laws and regulations that are *lex specialis*.

Besides the issue of the Criminal Code, the Civil Code, and the Commercial Law Act that are not in accordance with the current conditions of the Indonesian people because of the Criminal Code, the Civil Code, and The Commercial Law are a colonial heritage. There are

other problems that are actually related to the law in Indonesia, namely about legal validation. Colonial laws or regulations that are still in use today are in the form of codification.

A. Hamid S. Attamimi stated that the existence of the condition of the community which is currently changing very dynamically so that the law must be able to keep up with human development, the legal validation is actually irrelevant. The legal validation will only cause the law to be rigid so that it is not dynamic in following the times. Codified law will cause the law to run static. This is different from the non-codified law, so it will run dynamically because it can be made repairs or changes quickly (Indarti, 2007: 3-4).

Therefore, it is necessary to identify the relevance of legal codification with the national legal system. This is a form to find out whether the legal codification up to now is still needed if it is associated with the national legal system. If it is still needed, legal codification needs to be done. But if it is not needed, then there is no need for legal certifications in Indonesia.

B. PROBLEM FORMULATION

1. Does the legal codification contradict the national legal system?
2. How is the relevance of legal codes with the national legal system?

C. DISCUSSION

Codification of the Law Does Not Contradict the National Legal System

As previously explained, the legal codification actually existed before Indonesian independence. After the Indonesian state became independent on August 17, 1945 the new life of the Indonesian state began. The Indonesian state in starting a new life in fact still maintains the legal certifications. Many colonial inheritance laws in the form of codification were then retained while still being applied in Indonesia. Although in the journey there are some articles or verses that are deleted, changed, or replaced. But in general, the colonial heritage law in the form of codification still exists.

The question is whether the legal codification is against the national legal system? The question indeed deserves to be given the legal codification that is now applied in Indonesia which is a colonial legacy. If we response spontaneous, there will be an opinion that the codification of colonial heritage laws is contrary to the national legal system. This is because it is based on several arguments.

The first argument is that the codification of colonial heritage is in conflict with the national legal system because colonial heritage law is not based on Pancasila as a source in all legal sources. The second argument is that, the codification of colonial inheritance laws applied in the Indonesian state clearly contradicts the national legal system. This is because the codification of the colonial inheritance law applied in Indonesia is not in accordance with the conditions of the Indonesian people. The arguments are really true if you look at the substance of the colonial legal code validation applied in Indonesia.

But if seen from the procedure aspect, namely codification, the question is the legal codification is contrary to the national legal system? The legal validation which is adopted is not the codification of colonial inheritance law applied in the country of Indonesia but the codification process. If the issue is related to the legal validation or codifying the law, then coding the law or legislation does not actually conflict with the national legal system. If you look at the national legal system, there are no laws and regulations that exist in the country of Indonesia forbid doing legal validation.

The State Constitution of the Republic of Indonesia in 1945 as the highest constitution or law does not prohibit the validation of the law. There are no articles or verses in the 1945 Constitution of the Republic of Indonesia which prohibit the conduct of legal verification. The same thing happened in other laws and regulations. There is no single law or other legal regulations that prohibit the conduct of legal verification. This means that the codification of the law does not conflict with the 1945 Constitution of the Republic of Indonesia which also means that it does not conflict with the Pancasila which is a source of legal resources. Legal validation also does not conflict with the laws and regulations in Indonesia. So the legal validation does not conflict with the national legal system.

It is said that the codification of colonial inheritance law applied in the country of Indonesia contradicts the Pancasila and the conditions of the Indonesian people are related to the substance contained in the codification of colonial heritage law applied in the country of Indonesia. As for relating to the codification procedure or codifying the law, this does not conflict with the Pancasila and the conditions of the Indonesian people. So the legal validation does not conflict with the national legal system.

Relevance of the Codification of Law with the National Legal System

It has been explained before that the legal validation does not conflict with the national legal system. The next question is how the relevance of legal codes with the national legal system. As stated by A. Hamid S. Attamimi that the legal codification is no longer

suitable to be applied to see the development of a very dynamic society. Because legal codification tends to be static, so it will be difficult to keep up with the rapid development of society (Indarti, 2007: 3-4).

Statement from A. Hamid. S. Attamimi is really right when he sees the phenomenon now. The rapid development of Science and Technology, and Art or Science and Technology is no longer relevant if there is still legal validation. The law must be able to keep up with the rapid development and development of Science and Technology, and Art so that the law can be relevantly applied to a very dynamic society. Legal verification is irrelevant if applied now for various reasons. First the law or legislation in the form of codification will require a very long time to make. Comprehension and the amount of material that must be regulated makes the legislation in the form of codification take a long time.

The second, laws or regulations in the form of codification will be difficult to change. Difficulty in changing the law or legislation in the form of codification is due to the large amount of charge material that is regulated, so that if it is not possible to change one by one but must change with a large quantity. Third, namely the laws and regulations that are not codified, it will be difficult to provide a breakthrough to resolve new legal issues. The existence of new legal issues cannot be resolved with laws or regulations in the form of codification. This is because codified laws or regulations are static. This condition then led to the existence of special laws and regulations (*lex specialis*).

These three reasons at least become the basis that the legal validation is irrelevant if implemented with the current dynamic state of society. Then is the legal codification also irrelevant to the national legal system? The existing national legal system is actually always following the developments of the times. This can be seen from the constitutional changes. The amendment to the 1945 Constitution of the Republic of Indonesia is proof that the 1945 Constitution of the Republic of Indonesia follows the development of the times. This also applies to other laws and regulations that often change. That is because as part of being able to keep up with the times.

If the 1945 Constitution of the Republic of Indonesia and other laws and regulations follow the development of the era, the national legal system will also keep abreast of the times so that it remains relevant to the current conditions of society. Even though maintaining good values, Laws or regulations that follow the developments of the age have actually become evidence that the national legal system also follows developments. If the national legal system follows the developments, then the legal validation is actually not relevant to the national

legal system. Codification of law or legislation that is difficult to define the development of the era is not relevant if it is related to the national legal system.

Laws or regulations currently do not need codification to be able to keep up with the times. This is as stated by A. Hamid S. Attamimi that the legal codification is not needed in the present era (Indarti, 2007: 3-4). Even though the condition is still debatable, but the authors assume that the legal codification is actually not relevant to the times. This means that the codification of the law is not relevant to the National legal system. So if the question is how the relevance of legal codification with the national legal system, then the answer to legal validation is no longer relevant to the national legal system.

D. CONCLUSION

Problems related to the validation of law or legislation are actually not based on the sub-substance of content material contained in codified laws or regulations. The problem with the actual legal codification lies in the codification procedure which is still a debate. The legal or legal codification is indeed not in conflict with Pancasila as the source of all legal sources. Code of law or legislation also does not conflict with the conditions of the community. Likewise the 1945 Constitution of the Republic of Indonesia is as the highest constitution or law. So the legal validation is a constitutional matter. In addition, the codification of law or legislation also does not conflict with other laws and regulations.

Problems about legal validation are not in accordance with the relevance of the national legal system. Today's rapid development requires the development of a national legal system. The national legal system must also be developed rapidly in order to keep up with the times. But the legal or statutory codification will be difficult to keep abreast of the times because of its strategic nature. Therefore, the legal codification or legislation is actually irrelevant if it is associated with the national legal system. This means that the relevance of legal codes or legislation with national legal systems is irrelevant.

REFERENCES

Indarti, Maria Farida. 2007. *Ilmu Perundang-Undangan 1: Jenis, Fungsi, dan Materi Muatan*. Yogyakarta: PT Kanisius.

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945