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POLITICS OF LAW AND POWER IN THE COUNTRY OF INDONESIA

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Abstract:

Law and power are two different things but influence each other. Law is a system of rules about human behavior. So the law does not refer to a single rule, but can be called a set of rules that make up a system. While strength is the ability of a person or a group to influence the behavior of another person or group, according to the desired behavior. the political configuration of a country will present the character of certain legal products in that country. In countries where the political configuration has a democratic character, the political product is responsive (populist), whereas in countries where the political configuration is characterized by authoritarianism, the legal product is orthodox (conservative/elistic). Changes in political configuration from authoritarian to democratic have an impact on changes in the character of legal products. A democratic political configuration will produce legal products. A democratic political configuration will produce responsive legal products, while an authoritarian political configuration will produce conservative legal products. Indonesia since the proclamation of independence on August 17, 1945 there has been a union between democratic political configurations and authoritarian political configurations, even though all of their constitutions stipulate democracy as one of the principles of living together in one country and a state.

Keywords: Law, Coercion, Politics, Power

INTRODUCTION

Humans and law are 2 (two) things that cannot be separated in life in this world. This is because without a law that regulates human behavior, chaos will occur in human life (society). Human nature that always wants to win alone (known as *homo homini lupus*) and selfishness must be organized and regulated in such a way by law without exception, so as not to violate the rights of others. It is this important role of law that the Indonesian people later embed in Article 1 paragraph (3) of the 1945 Constitution which states that Indonesia is a state of law. This means that all citizens and apparatus of the Indonesian state government must act according to the applicable law.

Understanding the law cannot be separated from society. Marcus Tullius Cicero (106-43 BC), the greatest jurist of the Romans, once said, where there is society there is law (*ubi societas, ibi ius*). Usually there are several people who are trusted by the community to make and determine legal policies that will be enforced in the area of the community, the people who are given the authority to determine these policies are people who are responsible for the environment of their community. Furthermore, the notion of law cannot be separated from the state in a broad sense (state society). Law exists because of legitimate power. It is the legitimate power that creates the law and the law is an order from the ruler (*law is a command of the lawgifer*). Provisions that are not based on legal basis are not law. So, the law originates from legitimate power. In history, it is not uncommon for us to encounter laws that do not originate from legitimate powers or powers that, according to the applicable law, are actually devoid of authority. The law itself is essentially power. The law regulates, maintains order, and limits the space for individual movement. It is impossible for the law to carry out its function if it is not a power. Law is power, power that strives for order.

If it is said that law is power does not mean that power is law. For example, a thief controls stolen goods: he has power over his stolen goods. This does not mean that his relationship with stolen goods is protected by law, he has no right to these laundered goods. Even if the law is power, it has the power to enforce it with sanctions, it should be avoided so that it does not become a law of power, a law for those in power. Because there are authorities who abuse the law, create laws solely for the benefit of the authorities themselves or who arbitrarily ignore the law, the term *rule of law appears.*

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The law functions as the protection of human interests. In order for human interests to be protected, the law must be implemented. The implementation of the law can take place normally, peacefully, but it can also occur due to violations of the law. In this case the law that has been violated must be upheld. It is through law enforcement that the law becomes a reality. In enforcing the law there are three elements that must always be considered, namely: legal certainty (*Rechtssicherheit*), expediency (*Zweckmassigkeit*), and justice (*Gerechtigkeit*).

Law and power are two different things but influence each other. Law is a system of rules regarding human behavior. So that the law does not refer to a single rule, but can be referred to as a set of rules that make up a system. While power is the ability of a person or a group to influence the behavior of another person or group, in accordance with the desired behavior. You can imagine the impact if law and power influence each other. On the one hand, power without a system of rules will result in competition as is the case in nature. Who is strong, then he is the one who wins and has the right to do anything to anyone. Whereas law without power behind it, the law will be "barren" and cannot be well accepted by society. This is because the community does not have an obligation bond with the policy maker. So that the community has the right to do things that are outside the law that has been made and on the other hand the party issuing the law cannot force the community to comply with the law.

From the basis of thought above, it can be concluded that between law and power are interconnected in the form of mutual influence on one another. Power needs a "packaging" that can fight for and maintain power, namely politics. The problem is which is the thing that influences or is influenced. As previously explained, that one thing cannot influence the thing that is affected. Between law and power influence each other or can be called complementary. So that on the one hand the law is influenced by power and vice versa. However, it cannot be denied that the proportion of power in influencing law plays a more significant role or touches the substantial realm in the sense that law is used as a "vehicle" to legalize the policies of those in power. Meanwhile, the law in influencing power only touches on formal domains, which means it only regulates how to divide and organize power as contained in the constitution.

RESULTS AND DISCUSSION

Law and the Force of Law

Legal experts disagree in providing a definition of law, in fact some legal experts say that law cannot be defined because it is very broad in scope and covers all areas of people's lives which are always experiencing development and change. If you want to make a legal definition, it should be seen from various aspects and perspectives. According to Hans Wehr, the word law comes from Arabic, the origin of the word is "Hukm", the plural word is "Ahkam" which means decision (*judgment, verdice, decision*), provision (*provision*), order (*command*), government (*government*) and power. (*authority, power*). According to Vinogradoff, law is a set of rules held and implemented by a society with respect for the policies and exercise of power over every human being as well as goods. Meanwhile, Bellefroid argues that law is all the rules that apply in society, regulates social order and is based on the power that exists in that society. According to *the Oxford English Dictionary* it is stated that law is a collection of rules, legislation or customary law in a country or society that recognizes it as something that has binding power on its citizens.

According to Plato law is rules that are well structured and orderly and have binding properties for judges and society. Immanuel Kant said that law is all the conditions in which a person has the free will of one person, can adjust to the free will of another person and obey the legal regulations regarding freedom. According to E. Utrecht that law is a collection of regulations which contain orders and prohibitions that govern the order of social life and must be obeyed by everyone in society, because violations of the law can lead to action by the government of a country or institution. Meanwhile, according to Aristotle law is just a collection of rules that can be binding and also as a judge for society. where it is the law that oversees the judge in carrying out his duties to punish those who are guilty or violators of the law. And according to Karl Max: law is a reflection of the legal economic relations of a society in a certain stage of development.

From the definition as mentioned above, it can be seen that law is a series of regulations that govern certain behaviors and actions of humans in social life. The law itself has a permanent characteristic, namely that the law is an organ of abstract rules, the law is to regulate human interests, anyone who violates the law will be subject to sanctions in accordance with what has been determined. In terms of its formation, the law can be in the form of written law, namely law made by an authorized agency or institution in a country and in its application it is often referred to as statutory regulations. Laws in written form are usually codified in certain types of law systematically so that they are easy to study. Written laws that have been codified are the Criminal Code, the Civil Code, the Criminal Procedure

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Code, and various other laws and regulations. In addition, there are also unwritten laws, namely laws that live in society, are not written but are obeyed and obeyed by the community as written law. Written law applies in the *Common Law system* . In Indonesia, unwritten law is known as customary law.

Both written law and unwritten law have functions, among others, first: as a *standard of conduct* , namely the basis or measure of behavior that must be obeyed by everyone in acting in dealing with one another, second: as *a tool of social engineering* , namely as a means or tool to change society in a better direction, both personally and in people's lives, third: as *a tool of social control* , namely as a tool to control human behavior and actions so that they do not commit acts that are against legal, religious, and moral norms, fourth: as *a facility on human interaction,* that is, the law functions not only to create order, but also to create societal change by facilitating the process of social interaction and is expected to be a driving force to bring about changes in people's lives .

In order for the function of law as mentioned above to run as expected, the law must not be static, but must always be dynamic, changes must always be made in line with the times and the dynamics of people's lives. If the law is to be replaced with a new law, several conditions are needed so that the new law can apply effectively in people's lives. These conditions include:

1. The law that is made must be permanent, not temporary;
2. The new law must be known by the community because it is the community's interest to be governed by the new law, on the other hand, before the law is enforced on the community, it must first be socialized to the community, so that the community is ready to accept it;
3. The new law does not conflict with one another, especially with the positive law in force;
4. May not apply retroactively (*Retroactive*);
5. The law that is made must contain philosophical, juridical and sociological values;
6. It should be avoided to frequently change a law because people can lose standards and guidelines in interacting in society;
7. The application of the new law should pay attention to the legal culture of society;
8. The new law should be made in writing by the agency authorized to make it.

In order for the new law to be effective in the midst of people's lives, the change in law must pay attention to 3 (three) provisions, namely:

1. Changes to the law are not carried out partially, but changes must be made as a whole, especially to doctrines, norms that are no longer in accordance with the conditions of the times;
2. The change must also cover the way it is applied, the static mindset in the way the law is applied should be abandoned, as well as in ways of interpreting the law that do not look at the times;
3. It must also be based on rules (rules) that are in accordance with the philosophy of life of the Indonesian nation, so that the updated rules (rules) can be obeyed by the community, then the rules (rules) must contain sanctions and coercive powers and for this they must be made by an agency that authorized.

Legal force

The relationship between statutes or general norms of customary law and court decisions can be interpreted in the same way. Court decisions give birth to special norms that must be considered valid, therefore legal, as long as the court decision has not been annulled according to the method stipulated by law, because its "illegality" is determined by the competent organ. The law not only stipulates that a court must comply with certain procedures in reaching its decision and that the decision must have a certain content, it also stipulates that a court decision which is not in accordance with these direct provisions must remain in effect before the decision is overturned by a decision of another court according to the procedure. certain, because of its "illegality". This is a common way to annul a court decision, whereas a law, because of its "unconstitutionality", is not annulled in the usual way, namely by means of *a judicial review.* If this procedure has been carried out, or if no such procedure has been established, then it has the force of law (*res judicata*).

Lower norms have legal force in relation to higher norms. Thus, the determination of lower norms or higher norms, in the relationship between the specific norms of a Court Decision and the general norms of statutory law or custom which determines this decision, has the character of an alternative provision.

If the decision of the court which is the lower norm is in accordance with the first of the two alternatives provided by the higher norm, and that means if the organ in this case is the higher court which has the authority to test the conformity of the lower with the higher norm higher court does not find evidence of the illegality of the lower norm, or if there is no determination of the legality test of the lower norm, then the court's decision may be said to have full validity, and that means that the court's decision cannot

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be canceled. If the Court's Decision is in accordance with the second alternative, the decision may be said to have only limited validity, and that means that the court's decision, for this reason, can be overturned by a special court of an organ which is usually different from the organ that makes legal norms lower and competent to test the conformity of lower norms with higher norms. There is no third possibility, an irrevocable rule in this way must be a perfectly valid norm or not at all a norm.

Law and Power Politics

The political system can be interpreted as a set of interactions abstracted from the totality of social behavior through the values shared by a society. A political system must have the ability to maintain life (*viability*), direct and sustainable as well as natural impulses (*propensity*), survive (*persistent*) in all environmental conditions that emphasize it to a certain extent. The government as the personification of the state in this concept is only a formal mechanism, in addition to other social and political institutions (associations) that are not official.

From the description above it can be seen that in every political system, 3 (three) things that need to be considered are:

1. The function and adaptation of society both into and out of social groups;
2. Application of values in society based on the authority they have;
3. Use of authority or power either legally or illegally.

If we look closely at the three things above, it can be seen that in every country there are problems related to values, namely people who are controlled by values on the one hand and those who hold power as those who enforce values on the other. Thus, talking about the political system is the same as talking about the political life of society (infrastructure) and the political life of the government (*superstructure*), where the conflicting relations between the two are very large in intensity and have different effects. Regarding which one has a stronger influence, whether infrastructure or superstructure, this depends on the socio-cultural conditions of the community, the teachings adopted by the community and the state, as well as the characteristics of the government as the holder and at the same time as the executor of sovereignty.

The government is essentially an executor of the will of the state which is nothing but a manifestation of the political system. The government is a small part of the total members of society in a country who are given the task of carrying out state power. In the relationship between law and state power, John Austin argued that law is an order from the state authorities, and the nature of the law lies in the elements of that order. The law is a fixed, logical, and closed system, therefore the law is divided into 2 (two) types, namely the law from God to humans (*the divine laws*) and laws made by humans. In law itself there are actually four elements, namely *command* , *sanction* , *duty* and *sovereignty* . So according to John Austin, as a pioneer of legal positivism, he views that law is nothing but an order given by the authorities (*law is a command of lawgivers*).

In the view of legal realism, the law is not always an order from the state authorities, because the law in its development is always influenced by various things. Law is the result of social power and means of social control in the common life of a country. Law is basically not sterile from its social sub-system. Politics often intervenes in the actions and implementation of the law so that the question arises about which subsystem between law and politics is more supremacy. This question arises because many legal regulations are blunt in cutting arbitrariness, the law is unable to uphold justice and cannot present itself as a problem that should be the duty of law to resolve it. Even today, many legal products are more colored by the political interests of those in power.

The problem of power (*authority*) is an important element in human life, and is often used as a place of conflict to get it. In this regard Mochtar Kusumaatmadja said that, "law without power is wishful thinking, power without law is tyranny". Lili Rasjidi explained that the law in its implementation requires power to support it. Power is necessary because the law is coercive, without power, the implementation of the law will be hampered. The more orderly and orderly society, the less power support is needed. If the latter exists in society, it means that in that society there is already legal awareness of the community to obey and comply with the law without any coercion from those in power. The element of the holder of power is an important thing in the use of the power it has in accordance with the will of the people. Therefore, in addition to the necessity of law as a barrier, other elements are also needed that must be possessed by those in power, such as honest character and a high sense of dedication to the interests of society.

In Van Apeldoorn's view, law itself is actually power. Law is also a source of power, in addition to other sources such as strength (*physical and economic*

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), authority (*spiritual, intelligent and moral*). In addition, the law is also a barrier to power, because usually that power has a bad nature, namely it always stimulates the holder to want to have power that exceeds what he has. In relation to this, Soerjono Soekanto argued that the good or bad of a power really depends on how the power is used. That is, the good or bad of power must always be measured by its usefulness to achieve a goal that has been determined or realized by the community first. It is an essential element for the orderly life of society and even for any orderly form of organization.

Regarding why law is a reflection of the will of those in power or synonymous with power, Moh Mahfud MD, citing Dahrendorf's opinion, noted that there are six characteristics of dominant groups or groups holding political power, namely first: their number is always smaller than the number of groups controlled, second: *they* have *advantages* . special wealth to maintain its dominance in the form of material, intellectual and moral wealth, *third* : in conflict it is always better organized than the group that is subdued, *fourth* : the ruling class only consists of people who hold a dominant position in the political field so that the ruling elite is defined as the ruling elite in the political field, *fifth* : the ruling class always seeks to monopolize and pass on its political power to its own class/group, *sixth* : there is a reduction in social change to changes in the composition of the ruling class.

From the description above, it can be seen that the political configuration of a country will give rise to the character of certain legal products in that country. In a country with a democratic political configuration, the political product has a responsive (*populist*) character, whereas in a country with an authoritarian political configuration, the legal product has an orthodox (*conservative/elistic*) character. Changes in political configuration from authoritarian to democratic or vice versa have implications for changes in the character of legal products. A democratic political configuration will give birth to legal products. A democratic political configuration will produce responsive legal products, while an authoritarian political configuration will produce conservative legal products. Since Indonesia's proclamation of independence on 17 August 1945, there has been a tug-of-war between a democratic political configuration and an authoritarian political configuration, even though all of its constitutions stipulate democracy as one of the principles of living together in one nation and state. In the current reform era, democratic political configurations are marked by the many political products that the rulers involve various elements of society in making decisions.

In implementing the democratic political configuration that is currently rife, so as not to go too far, it is necessary to remember about Indonesia's national political goals which are based on the struggle of the Indonesian people who have succeeded in winning their independence, based on Pancasila and the 1945 Constitution to fill this independence in order to achieve a just and prosperous society. This ideal was stated in the preamble of the 1945 Constitution which issued key policies which included protecting the entire Indonesian nation and all of Indonesia's bloodshed, advancing public welfare, educating the nation's life, and participating in carrying out world order while expanding efforts overseas. carry out free and active politics devoted to national interests. This national political goal cannot be separated from the existence of the Indonesian nation and state.

With regard to the formation of law, in terms of determining the legal process is a conception and structure of political power, which more or less is a political tool that depends on political balance. Although the legal process in question is not always synonymous with law formation, in reality the process of law formation always presents the conception and structure of political power that prevails in society which determines the formation of a legal product.

In the process of forming a rule of law by a political institution, the role of political forces sitting in that political institution is very decisive. Political institutions officially given the authority to form law are only institutions that are *vacuum* without being filled by them given the authority to do so. Because of that, political institutions are only tools for groups holding political power. Political forces can be seen from two sides, namely the side of power possessed by formal political forces (political institutions) in this case which is reflected in the power structure of state institutions, such as the President, the People's Representative Council and other state institutions and the political power side of Political infrastructure includes: political parties, community leaders, community organizations, non-governmental organizations, professional organizations and others. Thus it can be concluded that the formation of legal products is born from the influence of political power through the political process in state institutions that are given the authority to do so.

The influence of political forces in forming laws is limited by the enactment of a constitutional system based on *checks and balances* , such as that adopted in the 1945 Constitution (UUD 1945) after the

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amendment. If we examine more deeply the material of the amendments to the 1945 Constitution regarding the administration of state power is to reinforce the power and authority of each state institution, to emphasize the limits of the power of each state institution and place it based on the functions of state administration for each state institution. Such a system is called a *"checks and balances" system,* namely the limitation of the powers of each state institution by the constitution, there is no highest and no lower, all are equally regulated based on their respective functions.

With such a system, it provides an opportunity for every citizen who feels their constitutional rights have been impaired by political products from law-forming political institutions to file lawsuits against these state institutions. In the event that the violation is committed through the formation of a law, an objection can be submitted to the Constitutional Court and in the case of all legal products from other political institutions under the law, it can be submitted to the Supreme Court.

The principle of a rule of law contains three main elements, namely the separation of *checks and balances of powers,* the principle of *due process of law,* the guarantee of an independent judiciary and the guarantee and protection of human rights. The constitutional principle requires that every state institution that exercises state power operates only in the corridors regulated by the constitution and based on the mandate given by the constitution. With the principle of democracy, public/people's participation runs well in all fields, both in the process of filling positions in the political structure, as well as in the process of determining the policies adopted by the various political structures. Because of that democracy also requires transparency (openness of information), guarantees of freedom and civil rights, mutual respect and respect as well as adherence to mutually agreed rules and mechanisms.

With such a political system various political products in the form of political policies and laws and regulations were born. In such a paradigmatic framework, political products as a source of law as well as a source of binding force for law are expected to be as adhered to by the positivist school, namely to accommodate all interests from various levels of society, moral and ethical values that are generally accepted by society.

CONCLUSION

Law exists because of legitimate power. It is legitimate power that creates law. Provisions that are not based on legal basis are not law. So, the law originates from legitimate power. In history, it is not uncommon for us to encounter laws that do not originate from legitimate powers or powers that, according to the applicable law, are actually devoid of authority. The law itself is essentially power. The law regulates, maintains order, and limits the space for individual movement. It is impossible for the law to carry out its function if it is not a power. Law is power, power that strives for order.

In Van Apeldoorn's view, law itself is actually power. Law is also a source of power, in addition to other sources such as strength (*physical and economic*), authority (*spiritual, intelligent and moral*). In addition, the law is also a barrier to power, because usually that power has a bad nature, namely it always stimulates the holder to want to have power that exceeds what he has. In relation to this, Soerjono Soekanto argued that the good or bad of a power really depends on how the power is used. That is, the good or bad of power must always be measured by its usefulness to achieve a goal that has been determined or realized by the community first. It is an essential element for the orderly life of society and even for any orderly form of organization.

With regard to the formation of law, in terms of determining the legal process is a conception and structure of political power, which more or less is a political tool that depends on political balance. Although the legal process in question is not always synonymous with law formation, in reality the process of law formation always presents the conception and structure of political power that prevails in society which determines the formation of a legal product.

Suggestion

In the process of forming a rule of law by a political institution, the role of the political forces sitting in that political institution is very decisive. Political forces can be seen from two sides, namely the side of power possessed by formal political forces (political institutions) in this case which is reflected in the power structure of state institutions, such as the President, the People's Representative Council and other state institutions and the political power side of Political infrastructure includes: political parties, community leaders, community organizations, non-governmental organizations, professional organizations and others. Thus it can be concluded that the formation of legal products is born from the influence of political power through the political process in state institutions that are given the authority to do so. In this regard, the authors provide suggestions for makers of legal products so that in terms of making legal products it must reflect the

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values of justice and be based on the aspirations of the people, not only on political values and power alone, because basically the makers of legal regulations are an institution or political institution that gets the mandate of the people.

In this case the author also gives advice to the public so that people trust political institutions or institutions that are given authority in terms of the process of forming a legal regulation, because basically the influence of political forces in forming law is limited by the enactment of a constitutional system based on checks and *balances* , as adhered to the 1945 Constitution (UUD 1945) after the amendment.

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