

Critical Legal Studies: Civil Code in Philosophical Basis

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Abstract

Civil Code which is a provision or regulation relating to someone personal with other people, or also civil law has a broad scope in its arrangement. One field of law that regulates the relationships between individuals in society with certain means. The classification of existing civil law includes: Family law; the law of wealth; material law; engagement laws; and inheritance law. A critical study of civil law that has been applied in Indonesia by using a normative juridical research method, so that should be the basis of his thinking is the philosophy of the Pancasila. The results of the discussion as it is known that Pancasila is the source of all sources of the Indonesian rule of law. This must be in accordance with the philosophy of Pancasila, which is the soul of the struggle of the nation's fighters, as a unifying tool, from the previously fragmented by a region, race, ethnicity, class, and religion.

Keywords

civil code; philosophical basis;
 critical legal studies



I. Introduction

Law is the most important system in society to regulate life related to an order that is always moving either in an evolutionary or revolutionary way. The internal order regulated in the law itself includes the transcendental order, the social/community order and the political order. So, it is also said that the law is a regulatory system in all aspects of human life. The purpose of the law is used as a means to benchmark human behavior in determining that every action taken has a good or bad impact. Human Resources (HR) is the most important component in a company or organization to run the business it does. Organization must have a goal to be achieved by the organizational members (Niati et al., 2021). Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired (Shah et al, 2020). The development of human resources is a process of changing the human resources who belong to an organization, from one situation to another, which is better to prepare a future responsibility in achieving organizational goals (Werdhiastutie et al, 2020).

Philosophers provide their understanding of the law, for example Von Savigny reflects on law as the embodiment or application of public awareness of law. In this teaching, there is a justification that the law differs between different societies. The development of law is inseparable from the existence of politics and power from a region. Law and humans have a unique and inseparable relationship. The law exists to provide rules for humans who apply the law, without humans, the law has no function for life.

The use of Civil Law was originally conveyed by Djojodiguno as Bugerlijkrecht during the colonial period by the Japanese. Civil law are civil law and private law. This characteristic is unique in Civil Law so that the regulation in the law is in direct contact with the legal subject itself. According to Subekti, civil law contains several terms including, first, civil law in a broad sense includes all material law, namely all basic laws

that regulate individual interests. Included in the meaning of civil law in this broad sense is commercial law. Second, civil law in a narrow sense, is used as opposed to commercial law Corpus.

In the short history of Dutch civil law, it comes from French civil law, which is compiled based on Roman law "Juris Civilis" which at that time was considered the most perfect law. Law Civil law as a private law that applies in France is contained in two codifications called civil law and commercial law (code de commerce).³ Therefore, the civil law so far that is still in effect for the Indonesian nation is still very tightly regulated in every human action in the territory of Indonesia as a former colony of the Dutch nation.

Indonesian civil law itself is civil law that applies to all regions in Indonesia. Civil law that applies in Indonesia is western civil law (the Netherlands) which was originally based on the Civil Code (hereinafter abbreviated as KUHPer) which in

- 1 Theresia Ngutra, "Law and Legal Sources", Journal of Supremacy, Volume XI, Number 2, Oktober 2016, p. 193-196.
- 2 Tutik Dot Quarter, Civil Law in the National Legal System, (Jakarta: Kencana, 2008), p. 28.
- 3 Lastuti Abubakar, "Revitalization of Customary Law as a Source of Law in Building the Indonesian Legal System", Journal of Legal Dynamics, Volume 13, Number 2, May 2013.
- 4 Theresia Ngutra, "Law and Legal Sources", op cit., hlm. 210.

Original form uses Dutch, and is known as Burgerlijk Wetboek (hereinafter abbreviated as BW). Furthermore, in Indonesia, some of the material in the BW has been revoked and has been replaced with the Law of the Republic of Indonesia such as Marriage, Mortgage, Bankruptcy, Agrarian Affairs and others.

II. Review of Literature

Laws that develop in society provide the goal of creating order and order for the community groups themselves. The implementation of the law should be carried out peacefully, normally, but there are also violations committed by each community itself. In the application of the law, it must be related to the existence of events/events experienced by the legal subject. Everyone hopes that the law can be enacted in the event of a real (concrete) event.

Civil law which is a provision or regulation relating to a person's personal relationship with another person, or also civil law has a broad scope in its regulation. One of the fields of law that regulates the relationships between individuals in society by certain means. The current classification of civil law includes:

1. Family law;
2. Property law;
3. Material law;
4. Law of Obligations;
5. Inheritance law.

From the above scope, civil law has a broad scope of regulation and is only limited to the legal subjects themselves. The civil law system that applies in Indonesia is pluralism (diverse). This diversity has been going on since the Dutch colonial period. As a consequence of the diversity in the application of this civil law, there are several rules that are specifically "lex specialist" for the group of people themselves. The population groups in Indonesia which are based on the application of civil law include European groups; foreign eastern group; and the son of the earth group (natives).⁷

The history of enactment of Indonesian civil law which is still being used is a long and gradual process and is continuous. This process experiences and contains scientific truths which are the result of essential thinking in the form of generalizations whose meanings are general, while their implementation and operations in empiricism are different. On October 31, 1837, CJ Scholten was appointed Chairman of the codification committee with AA van Vloten and Meyer, each of which was a member, which was later replaced by J. Scheneither and AJ Van Nes. In Indonesia, it has been announced that on April 30, 1847 through Staatsblad Number 23 and January 1848, with the application of the principle of concordance (principle of equality), where after Indonesia's independence, the provisions in Article II of the Transitional Provisions of the 1945 Constitution of the Republic of Indonesia, confirms: existing state regulations and regulations are still in effect immediately, as long as new ones have not been enacted according to this Constitution”.

The Dutch East Indies Criminal Code was in effect before being replaced by a new law based on the 1945 Constitution of the Republic of Indonesia. Burgerlijk Wetboek (BW) of the Dutch East Indies is also known as the Indonesian Criminal Code as a book of civil law. According to Sudikno Mertokusumo, the legal validity of the Dutch products and heritage in Indonesia is based on several legacies, including:⁸

1. Experts have never questioned in depth about why
“Dutch law still applies in Indonesia. The Indonesian legal order should not be seen as a continuation of the Dutch legal order, but as a national law”;
2. As long as the law does not conflict with Pancasila and the 1945 Constitution of the Republic of Indonesia, laws and regulations are required; and
3. if the law contradicts, then it becomes no longer valid.

Civil law rules can be seen from several things, including form, legal subject, and substance. Based on the form of civil law can be divided into two kinds, namely written and unwritten. The written rules of civil law are contained in statutory regulations, such as the Criminal Code, Law Number 1 of 1974 concerning Marriage. The unwritten legal rules are the rules of civil law that arise, grow, and develop in the practice of social life (habits/customs) such as customary law and Islamic law.

III. Result and Discussion

In the context of a study of an applicable legal product (positive law) if it is based on a very dynamic community development, then the problems regarding the provisions of positive law (civil law) will increase. Therefore, a method or method is needed to understand a clear picture of the problem in the law itself. The use of philosophical methods (contemplation) on legal issues is able to provide a more comprehensive/intact thought. Judging from the development of schools of thought (laws), one school of thought will depend on other schools of thought as a critical basis for building the next theoretical framework. The emergence of new schools of thought does not automatically mean that the old schools or ideas are abandoned. It is difficult to mix all the ideas that develop in law for two reasons, namely: First, law is an object of study that still has to be constructed (built) as the constructivists explain, created according to the term positivism or using the language of the hermenians to be 'interpreted' so that one's point of view about the law will be determined by how the person constructs, creates or interprets what is called the law. Second, one thought (certain school) will have a different background or point of view from other schools (thoughts), this is a variety of weaknesses and strengths of each. This condition basically provides flexibility because the law will become an open area which may have more positive results. If we talk about philosophy, we seem to be in a very

abstract realm, and legal philosophy is a branch of philosophy, legal philosophy has a strategic function in the formation of law in Indonesia. Definition of Philosophy in the Big Indonesian Dictionary, is knowledge and investigation with reason about the nature of everything that exists, its causes, origins, and laws, another meaning is a theory that underlies the mind or a theory activity or also means science with the core of logic, aesthetics, metaphysics, and epistemology.

In the context of a critical study of civil law that has been applied in Indonesia using the philosophical method (philosophical), then the basis of thought should be the philosophy of Pancasila. As it is known that Pancasila is the source of all sources of Indonesian state law. This is considered appropriate considering the philosophy of Pancasila is the soul of the struggle of the nation's fighters, as a unifying tool, from what was previously divided by region/region, race, ethnicity, class and religion. It is the background of the heterogeneous and pluralistic Indonesian society, so that based on the values of Pancasila, it is able to uphold the noble ideals of the fighters to create a just and prosperous society that can be realized for the Indonesian people as a whole truth of science is the result of human efforts to think and investigate knowledge and science produces a relative truth, which can always change and develop. Science begins with a very large human curiosity to know something that produces "knowledge (knowladge)" ie everything that is known to humans for the sake of human consciousness. Humans have knowledge for the sake of infinite curiosity, knowledge is accepted by humans with or without testing its truth.

Knowledge is accepted and owned by humans as long as it can satisfy their curiosity. Likewise in civil law which is the result of human thinking along with the times and changes in various things. Many laws have been amended or repealed because they are no longer appropriate.

As stated, as long as the law does not conflict with Pancasila and the 1945 Constitution of the Republic of Indonesia, statutory regulations are needed and if the law contradicts, then it is no longer valid. According to the 1945 Constitution of the Republic of Indonesia, the obligations and authorities of the Constitutional Court have the authority to adjudicate at the first and final levels whose decisions are final to examine laws against Constitution. In legal awareness (legal awareness), cognitive style refers to a person's knowledge about whether there are rules that govern the actions he is currently doing or is being a major concern, while the effective style refers to his emotional involvement in a particular party, based on the belief that what is it is known that it is something true so that it should be obeyed and obeyed (or is something that is not right, so it should be resisted).general, philosophical thinking will identify using the basic aspects used, including ontological, epistemological and axiological. In connection with the study of civil law that has been applied in the State of Indonesia so far, it is necessary to understand this matter. According to the term ontology is the science that discusses the nature that exists, which is the ultimate reality in the form of physical/concrete and spiritual/abstract. Suriasumantri, that ontology is discussing what you want to know, how far you want to know, or a study of the theory of "being". In the case of civil law ontologically it is a norm/rule that contains the relationship of rights and obligations to every human being such as marriage, property, inheritance, and so on. Civil law is a guideline for legal subjects as implementers of rights and obligations as they exist in humans.

Epistemology or theory of knowledge is a branch of philosophy that deals with the nature and environment of knowledge, its presuppositions and foundations, and accountability for statements about knowledge possessed. Epistemology is a discussion of

the methods used to gain knowledge. In the context of civil law, it is a regulation that regulates matters that are very essential for individual freedom, property rights and engagement. Epistemology in civil law relates to the existence of legal events experienced by each individual who are accommodated into a statutory regulation in order to be able to resolve the problems that occur between these individuals.

Jujun S. Suriasumantri's understanding of axiology is a theory of value related to the usefulness of the knowledge gained.¹⁶ Meanwhile, Wibisono argues that axiology is values as a benchmark for ethical and moral truth as a normative research and exploration and application of science. Talking about axiology means that the context is in civil law which provides goals for society, especially for individuals to solve private law problems. Furthermore, realizing a life between individuals that runs in peace, comfort and prosperity.

Within the scope of civil law, one of them regulates the family (family law). As it is known that the state (government) has regulated marriage and family life, everyone needs to know the nature of the family itself. In the ontology aspect, it can be understood the nature of the relationship between humans and the values of a marriage and family that is carried out between men and women. Basically the human ontology that underlies family life and marriage is sourced from the values of Pancasila as contained in the Preamble of the 1945 Constitution of the Republic of Indonesia which is the constitutional basis of the Indonesian nation. So aspired to take place in a harmonious state that reflects the fulfillment of family and marital needs related to: Personal (individual); social; and God.

Meanwhile, in the epistemological aspect, which understands the ratio of humans to family and marriage laws so that they can be maintained properly as a human means to fulfill their life in the world. In the aspect of axiology seeks to know the nature of the value of family law. The focus of the value here is on good and bad from a moral and ethical point of view, where the base of the family is formed on the basis of marriage between a man and a woman, then creates a family relationship. Furthermore, from family relationships arise inheritance relationships which are in the interest of the state to regulate it in positive law. The aspect of axiology as part of philosophy is very important as the basis of human ontology which has implications for the order of knowledge it produces.

IV. Conclusion

Civil law which is a rule relating to a person's personality with others One of the fields of law that regulates the relationships between individuals in society by means of certain means. The current classifications of civil law include: Family law; property law; material law; Law of Obligations; and inheritance law. The implementation of legal regulations in Indonesia must be based on the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia. This is an effort to actualize the values that have been instilled by the fighters of the Indonesian Nation in realizing independence which aims to prosper the entire Indonesian nation.

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