
A COMPREHENSIVE – INTEGRATED APPROACH ON THE THEORY OF DEVELOPMENT LAW IN INDONESIA

Amiruddin A. Dajaan Imami

Lembaga Pengkajian Independen Kebijakan Publik

Susi Herawati

Lembaga Pengkajian Independen Kebijakan Publik

ABSTRACT: There is a fundamental change of the idea about law and development comes from a prominent Indonesian legal scholar, Mochtar Kusumaatmadja, that law as a tool of social engineering within the Indonesian context. He also stated that law as principles, norms, institutions as well as processes. Moreover he also mentioned that law as a system of norms that could enhance society's development. Meanwhile another prominent legal scholars, the late Satjipto Rahardjo, said that law as a system behavior, which he stated that: 'Law for human-beings, not the opposite; and Romli Atmasasmita added that law as a system of values which placed 'Pancasila' as a way of life of Indonesian society. Those three opinions are integrated, comprehensive and complementing each other. The function and role of law in Indonesian development as leitmotif of development processes in achieving development goals in orderly manner, such as prosperity, unity and justice. It could be achieved based on scientific—inter and multidisciplinary—approach, as well as based on integrated sectors.

Maximum of 250 words. (Century Gothic, font 9)

KEYWORDS: *Diversity, interdisciplinary, multidisciplinary and inter-sector*

INTRODUCTION

Indonesia is a country in Southeast Asia, crossed by Equatorial Line, located between [Asian](#) Continent and [Australian](#) Continent as well as between [Pacific Ocean](#) and [Indian Ocean](#). Indonesia is a largest archipelago country in the world consisting of 13,466 islands. The population is about 260 million people in 2013, this country has the fourth-largest population and has the largest [Muslim](#) population in the world.

Indonesian nation since long time ago had effective and developed law prevailing in the society, Traditional/ Adat Law taught from generation to generation orally and as a role model in their social intercourse. Law Education as today being in the form of *Rechtsschool* has been performed by Dutch Colonial Government in 1908 as level as senior high school and justly in 1924 performed *Rechtshoogeschool* as level as college. Law Education in the period of Dutch Colonial Government had an objective to produce the highly legalistic graduates to fill in the law apparatus from and for indigene.

Law Education in the early independence when Soekarno, President at that time considered the jurists had a conservative-legalistic attitude to the law made for the colonial interest.

In the period of President Soeharto (1968), Law Education has been pointed to produce the graduates who support and safeguard the process of development, pioneered by Mochtar Kusumaatmadja. The graduates were expected to be sensitive to the changes occurred and expected to happen in the society. The law has been given a function to show a direction in order that the process of development can be performed orderly and regularly. But the Law remains to provide a space for the occurrence of changes, and constantly ensure the certainty of law although crossing the specific time span.

In the Reformation era having an impact on the strengthening legislative institution, The law has been directed to produce the graduates who have progressive views, after leaving responsive views behind in order that they don't maintain status quo, pioneered by Satjipto Rahardjo, as another side from previous views.

Mochtar Kusumaatmadja viewed The Law as Normative System, and Satjipto Rahardjo viewed The Law as Behavioral System, and Romli Atmasasmita completed it by viewing The Law as Value System, and the three subsystems have been integrated to form one system, that is in the life it must be viewed as one unity that is integrated by constantly having a core of *Pancasila* (Romli Atmasasmita, 2012 : 97)

The developed of definition and law function, as proposed by the three Professors above, then we need the material of Law Education such that it produces its graduates who can become 'scout mom guide' (*Pandu Ibu ku*) in giving a space for the process of development and constantly giving the certainty of the Law having a justice orderly and regularly.

National Development as amended by The Constitution of 1945 was initiated by "protecting the entire nation and all Indonesian nation", thereby in line with the concept of Sustainable Development. Furthermore, the amendment says "making the nation to be intelligent and making all Indonesian people to be prosperous".

The nation intended is Indonesian nation with Insight of archipelago and Indonesian nation intended is Indonesian environment, as archipelago country having a characteristic of archipelago that has sovereignty for its region, having sovereign rights outside its sovereignty's region, as well as other specific authorities managed based on *Pancasila* and The Constitution of 1945.

Article 1 par (3) The Constitution of 1945 says that Indonesian Country is based of Law. Thereby the attitude in the actions of Government, Society as well as personal must be based on

The Law. The development as amended by The Constitution of 1945 must be performed based on The Law.

National Development is an effort carried out by all national components in achieving the objective of country. Likewise with Local Development, it is performed based on the Long-Term Plan of Local Development, covered into Local Regulations as document of planning.

Act Num. 25 of 2004 concerning Planning System of National Development amends National Long-Term Development Planning established by The Law. The Law says that National Long-Term Development Planning is a document of National Development Planning for period 20 (twenty) years counted since 2005 to 2025, and then established Act Num. 17 of 2007 concerning National Long-Term Development Planning.

The Law Education producing the conservative-legalistic graduates has been abandoned, and developed thinking about The Systemic Law, as well as the implementation of National Development carried out simultaneously, so that the demand for the graduates of Law Education who have views that are wide and comprehensive-integrated approach.

This paper restricts it self on a 'approach method' required for the graduates of The Law Faculty in dealing with various problems in social life changing simultaneously based on the concept of Sustainable Development for realizing the objective of country based on *Pancasila*.

METODOLOGY

From the description above, then the approach method and research method to be conducted are as follows.

Initiated with a descriptive analytic approach, describing various problems completely, and then analyzing it to become the parts of The Law as a material part of the final task writing methodology for Law Education in Indonesia.

The data collecting has been carried out with literature study. These literature data have been obtained from the college's literature predicted has a competency in the area of research methodology of the Law, The Law Faculty of Diponegoro University, Semarang, Central Java, The Law Faculty of Gajah Mada University, Yogyakarta, Central Java, and The Law Faculty of Padjadjaran University, Bandung, West Java.

The information gathering has been carried out with interview with the selected sources. The interview was conducted in a planned and staged manner to the faculties of Research Methodology of The Law in each college mentioned above.

According to the data and information obtained, both obtained through literature study and interview, will be analyzed qualitatively.

RESULTS AND ANALYSIS

Philosophy of Science

The science is a collection of knowledge having the certain characteristics distinguishing the science from other knowledge. The characteristics of these sciences are based on the answers given by the sciences to the basic questions of philosophy. (Jujun S. Suriasumantri, 1997 : 4).

The science is knowledge obtained through a thinking process called Science Method. It is this method distinguishes the science from the other thinking results (Jujun Suriasumantri, ed, 1977 : 9). In its development, according to Jujun Suriasumantri, the science is a combination of human manners previously in seeking the knowledge. Reviewed from the history of the human thinking manner, there are two patterns in obtaining the knowledge.

First, thinking rationally, based on the rationalism, but it doesn't create and also doesn't know it through experience. In other words, the idea about truth becoming the base of its knowledge is obtained through the thinking manner rationally, separated from human experience. The pattern of rational thinking, known by Western World through Islamic philosopher, among of them: Al Kindi (809-873), Al Farabi (881-961), Ibnu Sina (980-1037) and Ibnu Rusyd (1126-1198).

Second, thinking empirically. The empiricists recommend to return to the nature to get the knowledge. According to the followers of empiricism, the knowledge is not exist in a priori manner in human mind, but it must be obtained through experience. Thinking empirically, originally coming from Islamic experts and then famed in West.

The two patterns of thinking: Rationalism and Empiricism form two contradicting perspective, and then each of the two realize that each of the two thinking patterns has excess and weakness. It gives up an idea to combine the two approaches to arrange a method that can be more reliable in finding the knowledge and science (Jujun Suriasumantri, ed, 1977 : 12).

Rationalism gives a frame of coherent and logic thought, while Empiricism gives a frame of testing in as certain a truth. The two methods are used dynamically; producing a consistent and systematic knowledge, as well as it can be reliable, because the knowledge has been tested empirically.

Rationalism Approach demands the presence of a coherent explanation with the knowledge that has been known previously. A symptom must be able to explain based on the knowledge previously that has been arranged systematically. The knowledge that has been known previously is convinced as a knowledge that is correct or contains a truth. The Law in this case as wholly the principles and norms are not science, but the knowledge obtained through the thinking process rationally.

One aspect of the science activities is to arrange the concept of explanation or thinking theoretically, that is deductive. Rationalism Approach, in arranging a theory, must be equipped with Empiricism approach to test the truth of theory. Basically the theory proposed is still a hypothesis, and it is this hypothesis that must be tested empirically. If the testing empirically supports the hypothesis, then the hypothesis is correct in a scientific manner, likewise vice versa.

Empirically approach in the research of The Law science, it is not different from other sciences of reality, such as both natural science and social science. Empirically approach in the research of The Law science is pointed to test the knowledge convinced to be correct or containing a truth, that has been known previously in a real life.

This Empirically approach, then the law science needs other sciences, both the sciences of reality and the knowledge that is not including the group of sciences, such as Mathematics, Letters, including the law. The Law in this case is a part or branch of Humaniora (Jujun Suriasumantri, 2007 : 132). Hence, in this case it is properly said as Research of The Law and The Law science, describing the research of Normative Law, all at once the research of Empiric The Law.

Munadjat Danusaputro, generally the philosophy is subdivided into 4 (four): Philosophy of Mathematics, Philosophy of Natural Sciences, Philosophy of Social Science, and Philosophy of Humaniora (Munadjat Danusaputro, 1981 : 86). Hence, it can be known that the science is only branches of Natural Science Philosophy and Social Science Philosophy, where as Mathematics and Humaniora are not knowledge.

Philosophy of Natural Science, based on its method individually and then branched to become geology, physics, chemistry, and biology, likewise with Philosophy of Social Science branched to become anthropology, sociology, economics, politics and *the Law* as social symptom. Natural Science restricts it self by only discussing the natural symptoms that can be observed, where as Social Science discusses social symptoms that can be observed in social life. As for the Philosophy of Mathematics branched to become Mathematics and Statistics, where as Humaniora branched to become Religion, Letters, Art, and *The Law* as normative symptom.

The National Law System

The conception of the Law is not always equal. This is associated with a change of life perspective from time to time, so that partly experts stated the definition of The Law was considered to be important, at least as a hand-grip for those who learn the Law.

Based on the observation to the characteristic of Indonesian nation that is religious, feudal, conservative and pluralistic, both reviewed from tribes and the effective The Law System, we recognized the law essentially that is in the thought of Indonesian nation, according to the awareness of the Law society. Mochtar Kusumaatmadja proposed the conception of The Law appropriately and suitable to the condition of Indonesian nation that is developing.

In the variety of life in the nation, society and country, Mochtar Kusumaatmadja has successfully defined the conception of 'The Law, the entire principles and norms regulating human life, also included the institutions and processes for realizing them in the reality'. (Mochtar Kusumaatmadja, 1975 : 11).

Romli Atmasasmita (2011 : 11) added: *First*, extending the conception of institutions, the institutions of country bureaucracies, including executive, legislative, and judicative, including the up holding institution of the Law. *Second*: The engineering of bureaucracy and society based on the Normative System, Behavioral System, and Value System having resources from *Pancasila*, called Integrative Law Theory (Romli Atmasasmita, 2012 : 96-97).

Lili Rasjidi, the words 'principle and norm' describe the law as normative symptom, while the words 'institutions and processes' describe the law as empirical symptom. Thereby, the law is a system (Lili Rasjidi, 2004 : 53)

Furthermore, Sunaryati said it would be developed a national law system based on the Insight of Archipelago/ *Wawasan Nusantara* and The Insight of Nationality/ *Wawasan Kebangsaan* (Sunaryati Hartono, 1991 : 47). The National Law System is a system of law prevailing in Indonesia with all its elements as well as mutually supporting each other in anticipating and dealing with the problems emerging in the life of nation, country, and society based on *Pancasila*. (Sunaryati Hartono, 1991 : 64).

The Developmental Law Theory

Starting from the conception of The Law proposed by Mochtar: "... for realizing the prevailed norms in the reality", shows the function of the law in the process of the change of society/ development (Mochtar Kusumaatmadja, 1975 : 11).

Pertaining to the function of the law in the National Development, it has been revealed by "The law as Developmental Means". The process of development is orderly and regularly a

necessity for the sake of the certainty of the Law in the society that is developing, hence the law can't be neglected in its role in the process of development.

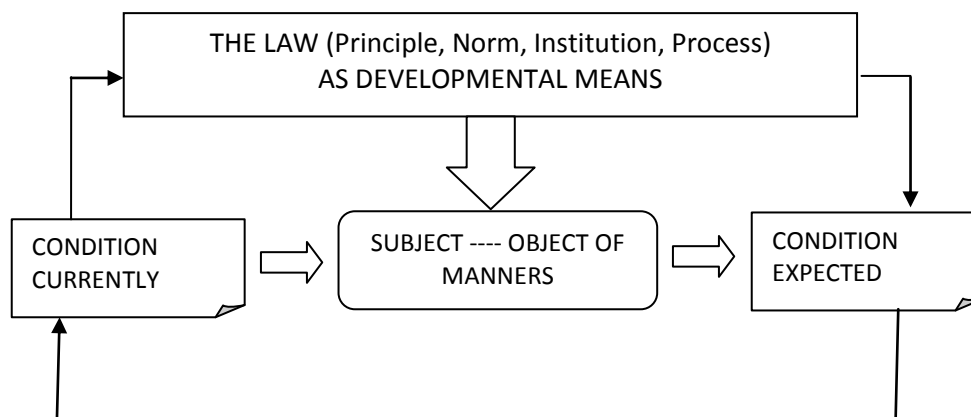
Placing the law as Developmental Means, the demand for the abilities and skills of the Law experts for understanding the interaction of the law to the related knowledge and science, as well as other factors in the development of society. Also it is required the abilities and skills of the law experts in predicting the expectations and challenges in the future, so that the law becomes a direction in achieving the objective of country.

The development is characterized by the presence of change, and the change is certain. The ability for recognizing the life values in the society currently becomes a base for predicting the values expected, and it will change the attitude of the actions of government and society for attaining the happiness and welfare of Indonesian nation. Sunaryati Hartono said that it is required a futuristic approach for assuring the change occurred according to the expectation wished.

The developmental planning has been covered into the regulations of legislation so that it binds and become the base of the law for the attitude of the actions of each governmental apparatus, including the up holding apparatus of the Law, as well as the society.

Figure : 1

The Function of Law in Process of Development



Source : Amiruddin A. Dajaan I, *Identifying, Perspective , and Developing "The Developmental Law Theory"* Mochtar Kusumaatmadja, Law Faculty of Unpad, 2010.

From this perspective, then "The Law must be stand at the front, shows a direction for the National Development performed sustainable" (Mochtar Kusumaatmadja, 1972 : 11). This view

places the planning process and its plan, as a thing that must be obeyed, so that the violation to a plan must be stated to be equal to the violation to The Law.

Research Method used in the Research of The Law

Faculty of Law Padjadjaran University (Unpad) when firstly founded was called Faculty of Law and Social Science. Faculty of Law Unpad distinguished between Law and Social Science. Where as Faculty of Law Indonesia University (UI) was a continuance of *Rechtshooge school*, that was originally very legalistic, currently it has changed to become a sociology pioneered by Soerjono Soekanto. Faculty of Law Gajah Mada University (UGM), was a separation from The Faculty of Law, Social, and Politics, so since beginning it has been separated between The Law, Social, and Politics. Faculty of Law Diponegoro University (Undip) since founded it has indeed followed Indonesia University.

Based on the result of research (2012), the research method used by the students of Faculty of Law Unpad in arranging their Final Task in the form of Mini thesis, generally used a juridical normative-rational approach, likewise the students of Faculty of Law UGM. The final tasks of the students of UI generally used juridical sociologic-empiric approach, likewise the students of Faculty of Law Undip. Hence, it can be distinguished, Unpad and UGM used juridical normative-rational approach, as well as UI and Undip used juridical sociologic-empiric approach, although with different terms.

Comprehensive-Integrated Approach

Discipline of the law must contain the elements of philosophy, in the form of human reflection about himself or herself in the universe, and about the goals in the form of best society (Purnadi Pubacaraka and Chaidir Ali, 1980 : 1). Discipline of the law must get a separated place, because containing lessons and rules, and the rules are always based on the lessons. In the discipline of the law, the regulations intended among other things are the legislation: knowledge about anything relating to the legislation.

Disciplines of the law and the law science traditionally appear in the various curriculums in The Law Faculty, generally they can be arranged as follows: including: 1) The Constitutional Law; 2) The Criminal Law; 3) The Civil Law; 4) The International Law.

Sunaryati Hartono, in a frame of The National Law System, proposed the branches of The Law and The Law science as follows: 1) The Constitutional Law; 2) The Family Law; 3) The Health Law; 4) The Environmental Law; 5) The Economy Law; and so on.

Getting up from the conception of the description above, as well as considering that the National Development is essentially is a change in the senses of human resource, natural resource, and cultural resource.

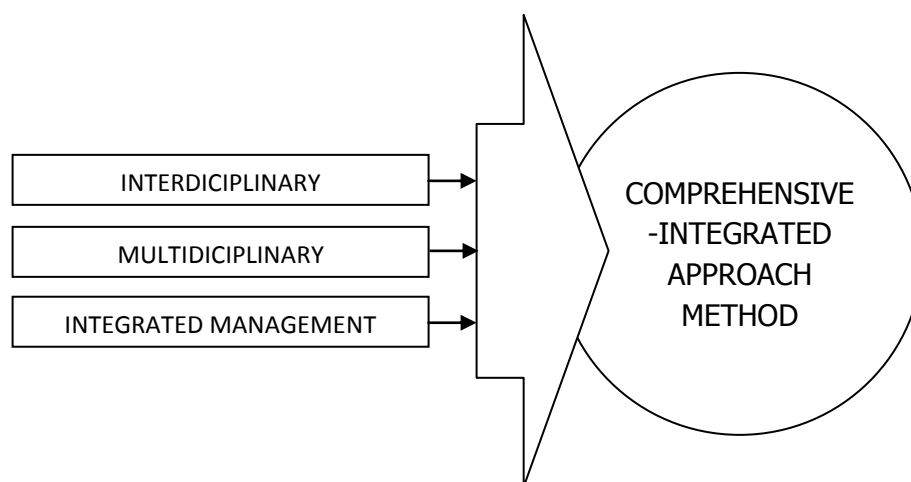
The perspective patterns of development that is ecocentric, based on Declaration of Stockholm 1972, and the development of ecocration perspective in the trend of Natural Law Philosophy (Naturalism), Munadjat Danusaputro proposed an comprehensive-integrated approach method (Munadjat Danusaputro, 1981 : 138). This Comprehensive-Integrated/ systemic approach method is a consequence of the conception of environment as Ecosystem, and a comprehension of National Development that must be carried out simultaneously based on the principle of Sustainable Development.

In addition, in relation with institutional, this approach method studies from the side of its management or the implementation of development. This is determined by governmental institution/ agency that is responsible for managing each developmental sector.

Munadjat Danusaputro, proposed comprehensive-integrated/ systemic approach method, a approach that can be distinguished from the side of science, including Interdisciplinary Approach (inter-science) and Multidisciplinary Approach (various sciences), as well as from the side of Management, including cross-sector or integrated/ coordinated Approach.

Figure 2.

Comprehensive-Integrated Approach Method



Explanation :

1. Interdisciplinary Approach (inter-science) is inter-science approach that is in one of the Law philosophy branches, such as The Constitutional Law, The Public Administration Law, The Environmental Law, The Economy Law, The Criminal Law, and so on;
2. Multidisciplinary Approach (various sciences) is various-sciences approach that is outside of the Law philosophy branches, such as Geology, Chemistry, Biology, and Sociology, Politic, Economi, Religion, Letters, Art, and *The Law*, and so on.
3. Integrated/Coordinated Mangement Approach involves 4 (four) Sustainable activities: *First*: Communicate The Policy of each sector, *Second*: Integrate The Developmental Plan of each sector, *Third* : Synchronize The Developmental Programs, and *Fourth*: simple Simplify The Processes in its implementation.

The Developmental Law Theory says that the development is characterized occasionally into a change, and the change is certain. Because the change is certain, then it can be planned. Mochtar said that Development must be carried out orderly, it means that is suitable to the plan that has been established, in order that it has been achieved the objectives of development. The attainment of the developmental objectives must be assured by the certainty of the Law passing the time dimension. Therefore, it is said that The Law must stand at the front, showing a direction for the implementation of National Development orderly and regularly. In this case Sunaryati Hartono introduced a futuristic approach.

IV. CONCLUSIONS AND SUGGESTIONS

From the description above, presumably we draw several conclusions and suggestions as follows :

- a. In the developing country, the knowledge and science of a Law scholar must be extensive, not only the law and the law science.
- b. In the country that is developing simultaneously and sustainable, the Comprehensive-Integrated/ Systemic Approach Method is a necessity;
- c. The plan of National Development, and its derivatives are established with the law and other regulations of legislation, then the violation to the plan is a violation to the Law.

REFERENCES

- Abdulkadir Besar, 2005, *Pancasila, Refeksi Filsafati, Trasformasi Ideologik, Niscayaan Metode Berfikir*, PustakaAzhary, Jakarta,
- Achmad Ali, 1996, *Menguak Tabir Hukum, Suatu Kajian Filosofis dan Sosiologis*, Chandra Pratama. Jakarta.
- DanusaputroMunadjat, 1981.*Hukum Lingkungan, Buku I : Umum*, Bina Cipta, Bandung.
- , 1985, *Hukum Lingkungan, Buku II :Nasional*, BinaCipta, Bandung.
- Hardjasoemantri Koesnadi, 2000, *Hukum Tata Lingkungan*, Seventh Edition, fourteenth Print.
- Kartohadiprodjo Soediman, 2010, *Pancasila dan Pandangan Hidup Bangsa Indonesia*, Gatra Pustaka, Jakarta.
- Kusumaatmadja Mochtar, 1972 *Fungsi dan Perkembangan Hukum dalam Pembangunan Nasional*, Bina Cipta, Bandung.
- , 1975 *Pembinaan Hukum dalam rangka Pembangunan Nasional*, Bina Cipta, Bandung.
- , 1976, *Hukum, Masyarakat dan Pembinaan Hukum Nasional*, Bina Cipta, Bandung.
- Lili Rasjidi dan Ira Thania, 2004, *Filsafat dan Teori Hukum*, Citra Aditya, Bandung.
- , 2004, *Dasar-dasar Filsafat dan Teori Hukum*, Citra Aditya, Bandung.
- , 2002, *Pengantar Filsafat Hukum*, Mandar Maju, Bandung.
- Purbacaraka Purnadi dan M. Chidir Ali, 1990, *Disiplin Hukum*, Citra Aditya, Bandung.
- Romli Atmasasmita, 2012, *Teori Hukum Integratif*, Genta Publishing, Yogyakarta.
- , tanpa tahun, *Tiga Paradigma Hukum dalam Pembangunan Nasional*, Law Faculty of Padjadjaran University, Bandung.
- Satjipto Rahardjo, 2009, *Hukum Progresif, Sebuah Sintesa Hukum Indonesia*, Genta Publishing, Yogyakarta.
- , 2009, *Membangun dan Merombak Hukum Indonesia*, Sebuah Pendekatan Lintas Disiplin, Genta, Yogyakarta.

Silalahi M. Daud, 1992, *Hukum Lingkungan, Dalam Sistem Penegakan Hukum Lingkungan Indonesia*, Alumni, Bandung.

-----, 2000, *Perkembangan Hukum Lingkungan Indonesia, Tantangan dan Peluang*, Orasi Pengukuhan Jabatan Guru Besar Fakultas Hukum Padjadjaran University, Bandung.

Sunaryati Hartono, 1991, *Pembinaan Hukum Nasional dalam Suasana Globalisasi Masyarakat Dunia*, Orasi Pengukuhan Jabatan Guru Besar, Padjadjaran University, Bandung.

-----, 1991, *Politik Hukum menuju Satu Sistem Hukum Nasional*, Alumni, Bandung.

-----, 1994, *Penelitian Hukum di Indonesia pada Akhir Abad ke – 20*, Alumni, Bandung.

Suria Sumantri Jujun S. (ed), 1997, *Ilmu dalam Perspektif, Kumpulan Karangan tentang Hakekat Ilmu*, Yayasan Obor Indonesia, Jakarta.